



USDA Forest Service Update

July 2008

SUBJECT: Status of Roadless Area Conservation Management

Litigation History

The Roadless Area Conservation Rule (RACR) prohibiting road construction and timber harvesting with exceptions on 58.5 million acres of National Forest System lands was issued on January 12, 2001. Ten lawsuits were filed against the rule. In May 2001, Judge Lodge (District of Idaho) issued preliminary injunctions in the two Idaho cases barring implementation of the rule. The 9th Circuit Court reversed Judge Lodge's decision making the RACR effective in April 2003. In June 2003, the government settled its case with Alaska, which led to an exemption for the 9.3 million roadless acres of the Tongass National Forest in December 2003. In March 2007, the government settled the two cases in North Dakota. The State of Utah, Communities for a Great Northwest, and the American Forest and Paper Association lawsuits were dismissed.

In July 2003, Judge Brimmer (District of Wyoming) upheld Wyoming's challenge and declared promulgation of the RACR procedurally flawed under NEPA and substantively illegal under the Wilderness Act. He permanently enjoined its application. The Brimmer decision was appealed, but the appeal was mooted and the Brimmer decision vacated by the 10th Circuit Court after the State Petitions Rule was issued in May 2005.

Two lawsuits were filed in the Northern District of California challenging the State Petitions Rule: one by the States of California, New Mexico, and Oregon with Washington (intervening); the other by a coalition of environmental groups. On September 20, 2006, Magistrate Judge Laporte set aside the State Petitions Rule, and reinstated the RACR including the Tongass amendment. This decision has been appealed to the 9th Circuit Court. A federal opening appellant brief was filed on September 14, 2007. In response to the Laporte reinstatement of the RACR, the State of Wyoming asked Judge Brimmer to re-open its case and again enjoin the rule. On June 7, 2007, Judge Brimmer denied the request based on the 10th Circuit's mandate to vacate and dismiss the case without prejudice. Wyoming had already filed a second lawsuit on January 12, 2007. Oral argument for this second lawsuit was heard by Judge Brimmer of the Wyoming District Court on October 19, 2007, and his decision is pending.

State Petitions Status

The States of California, Idaho, New Mexico, North Carolina, South Carolina, and Virginia filed petitions under the State Petitions Rule. The North Carolina, South Carolina, and Virginia petitions were essentially the same as the RACR. California sought a "no net loss" policy for inventoried roadless lands. New Mexico requested the RACR plus the inclusion of the 101,000 acres of the Valle Vidal. Since the New Mexico petition, the area is now being conserved by the 2006 Valle Vidal Protection Act.

After Magistrate Laporte's decision, all six states were encouraged by the Under Secretary to re-file their petition under the Administrative Procedure Act (APA). Idaho Governor James Risch resubmitted the state's petition for the management of 9.3 million inventoried roadless acres. The agency is proceeding with promulgation of an Idaho state-specific rule with the State as a cooperating agency. A proposed rule was published in the Federal Register on January 7, 2008 (73 FR 1135) with a 90 day comment period. The notice of availability for the supporting draft environmental impact statement (DEIS) was published in the Federal Register on December 21, 2007. The comment period for both ended on April 7, 2008. A final environmental impact statement (FEIS) is expected in August, and a final rule in early October.

In November 2006, Colorado Governor Bill Owen submitted a petition for the management of 4.4 million roadless acres. Colorado Governor Bill Ritter amended the petition in April 2007. The agency is proceeding with promulgation of a Colorado state-specific rule with the State as a cooperating agency. A Notice of Intent for the supporting environmental impact statement was published in the Federal Register on December 26, 2007. The 60 day comment period closed February 25. A proposed rule and supporting DEIS is expected in July, an FEIS in late November and final rule in late December.

Pending Legislation

On April 20, 2007, the Northern Rockies Ecosystem Protection Act (H.R. 1975) was introduced in the house. Under section 503 of this bill, there is a proposal for a prohibition on road construction, timber harvesting, and mineral development in roadless areas 1,000 acres or larger until Congress states otherwise. On May 24, 2007, House (H.R. 2516) and Senate (S.1478) bills for the protection of inventoried roadless areas were re-introduced with bipartisan support. They would make the RACR law. These bills are available at the Library of Congress website: <http://thomas.loc.gov/>.

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