

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF  
CALIFORNIA *ex rel.* BILL LOCKYER,  
et al.,

Plaintiffs,

No. C05-03508 EDL consolidated

with  
v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE; MIKE JOHANNIS,  
Secretary of the Department of Agriculture,  
et al.,

Defendant(s).

\_\_\_\_\_  
THE WILDERNESS SOCIETY, CALIFORNIA  
WILDERNESS COALITION, et al.,

Plaintiffs,

No. C05-04038 EDL

v.

**ORDER GRANTING INJUNCTIVE  
RELIEF**

UNITED STATES FOREST SERVICE, an agency  
of the United States Department of Agriculture;  
DALE BOSWORTH, Chief of the United States  
Forest Service, et al.,

Defendants.  
\_\_\_\_\_

Previously, in these consolidated cases, the Court held on cross-motions for summary judgment that Defendants violated the National Environmental Policy Act (“NEPA”), 42 U.S.C.

1 §§ 4321-4370d, the Endangered Species Act (“ESA”), 16 U.S.C. § 1531-1544 and the  
2 Administrative Procedures Act (“APA”), 5 U.S.C. §§ 701-706, by issuing the State Petitions for  
3 Inventoried Roadless Area Management Rule (“State Petitions Rule”) (70 Fed. Reg. 25,654 (May  
4 13, 2005) (to be codified at 36 C.F.R. pt. 294)) without complying with the procedures required by  
5 those Acts. The Court thus concluded that the State Petitions Rule unlawfully repealed the Roadless  
6 Area Conservation Rule (“Roadless Rule”) (66 Fed. Reg. 3,244 (Jan. 12, 2001) (to be codified at 36  
7 C.F.R. pt. 294).

8 In the Court’s Memorandum and Opinion, issued on September 20, 2006,<sup>1</sup> the Court set aside  
9 the State Petitions Rule, reinstated the Roadless Rule including the Tongass Amendment, and  
10 enjoined Defendants from taking any further action contrary to the Roadless Rule without  
11 undertaking environmental analysis consistent with the Court’s opinion. The Court ordered the  
12 parties to meet and confer regarding specific language to be included in the Court’s injunction.

13 On October 18, 2006, Plaintiffs filed their brief in support of further injunctive relief,  
14 including a proposed order. In their proposed order, Plaintiffs seek to enjoin any further action by  
15 Defendants that would be contrary to the Roadless Rule. Specifically Plaintiffs seek to enjoin a  
16 group of oil and gas leases as well as the Coal Creek-Big Creek Road Project in the Salmon-Challis  
17 National Forest in Idaho. The Court notes that Plaintiffs followed the Court’s admonition not to  
18 seek to enjoin projects that are already underway based on the Court’s previous balancing of the  
19 equities in declining to enjoin the timber harvesting that had already commenced on the ground in  
20 the Mike’s Gulch and Blackberry projects.

21 On November 1, 2006, Defendants filed their response to Plaintiff’s brief, including an  
22 alternative proposed order restricting the scope of injunctive relief. Defendants oppose Plaintiffs’  
23 proposed relief, instead seeking reinstatement of the Roadless Rule as of September 20, 2006, and  
24 denial of an injunction of oil and gas leases and the Coal Creek-Big Creek Road Project. On  
25 November 6, 2006, Plaintiffs filed their reply brief and on November 9, 2006, Defendants filed a  
26 sur-reply. On November 13, 2006, the Court granted Plaintiffs leave to file supplemental authority  
27  
28

---

<sup>1</sup> On October 11, 2006, the Court issued an Amended Memorandum and Opinion deleting one footnote from the September 20, 2006 Opinion, but otherwise not altering the original Opinion.

1 and response. Upon careful review of the papers and relevant law, the Court issues the following  
2 injunction for the reasons stated below.

3 **DISCUSSION**

4 **1. The Scope of the Reinstatement of the Roadless Rule**

5 The Court's injunction barred Defendants from "taking any further action contrary to the  
6 Roadless Rule without undertaking environmental analysis consistent with this opinion." Sept. 20,  
7 2006 Order at 52:20-22. The parties dispute the scope of this injunction.

8 Like the vast majority of regulations, the Roadless Rule by its terms did not apply  
9 retroactively to revoke or halt Forest Service permits issued or activities undertaken prior to its  
10 effective date of January 12, 2001. 66 Fed. Reg. 3244, 3273. Defendants argue that this Court's  
11 injunction should therefore not apply to any project decision made prior to the Court's September  
12 20, 2006 opinion or to any permit, contract or other legal instrument authorizing occupancy and use  
13 of Forest System lands issued prior to September 20, 2006, even though the Court already held that  
14 the proper remedy for Defendants' unlawful repeal of the Roadless Rule was to reinstate it as if it  
15 were never unlawfully repealed. Defendants point out that the Roadless Rule was not in effect for  
16 the majority of the past six years and argue that the Forest Service made decisions in good faith  
17 during that time in reliance on the alternative regulations then in effect.

18 Defendants provide no authority for applying the Roadless Rule only as of the date of the  
19 Court's Opinion. Contrary to Defendants' argument, the fact that the Roadless Rule when adopted  
20 in January 2001 applied to permits and projects undertaken after that date, as rules typically do, in  
21 no way supports delaying its reinstatement until the unrelated date in 2006 of this Court's ruling that  
22 Defendants unlawfully repealed the Rule, rather than the date of the unlawful repeal. The Court  
23 specifically reinstated the Roadless Rule, as it stood with the Tongass Amendment, as of the date of  
24 its unlawful repeal by the State Petitions Rule, consistent with the teaching of Paulsen v. Daniels,  
25 413 F.3d 999, 1008 (9th Cir. 2005). Adopting Defendants' approach would impermissibly narrow  
26 the injunctive relief that the Court has already issued, thereby making the remedy inadequate to  
27 afford complete relief for Defendants' violations of NEPA and ESA as described in the Court's  
28 Memorandum and Opinion. Moreover, Defendants' approach would constitute an improper partial

1 repeal of the Roadless Rule through exempting projects and activities occurring since its illegal  
2 replacement by the State Petitions Rule, accomplishing through the injunctive phase of this case  
3 what Defendants could not accomplish during the merits phase. While the Court assumes that the  
4 Forest Service acted in good faith, it was nonetheless on notice that its repeal of the Roadless Rule  
5 through the State Petitions Rule was subject to legal challenge and must have known that its actions  
6 were legally vulnerable.

7 Defendants also argue that Plaintiffs' proposed injunction would improperly encompass  
8 numerous previously approved projects, which Defendants maintain that Plaintiffs may only  
9 challenge on a project-by-project basis in a series of new lawsuits. Even though the Court already  
10 held that Plaintiffs had satisfied standing and ripeness to bring this lawsuit for injunctive relief,  
11 Defendants argue that Plaintiffs must somehow once again surmount purported standing and  
12 ripeness hurdles to obtain the relief that normally flows from proving that a new rule unlawfully  
13 repealed a prior rule. This is not the law. The cases cited by Defendants for this argument do not so  
14 hold. Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 891 (1990) (dismissing programmatic challenge  
15 to agency action where no specific agency action challenged, but not addressing standing and  
16 ripeness with respect to a request for injunctive relief for a specific final agency action that the court  
17 held unlawful). To accept Defendants' argument would stretch standing and ripeness jurisprudence  
18 beyond its breaking point.

19 To the contrary, courts often enjoin agency projects in the context of NEPA violations  
20 without revisiting the issues of standing and ripeness. See, e.g., Klamath Siskiyou Wildlands Center  
21 v. Boody, \_\_ F.3d \_\_, 2006 WL 3164793 (9th Cir. 2006); Northwest Ecosystem Alliance v. Rey,  
22 2006 WL 44361, \*7 (W.D. Wash. Jan. 9, 2006). In Klamath Siskiyou Wildlands Center, the  
23 appellate court held that decisions by the Bureau of Land Management to downgrade a species and  
24 remove the requirement for pre-disturbance surveys of its habitat violated the Federal Land Policy  
25 Management Act and NEPA. As a remedy, the court held that timbers sales made without the pre-  
26 disturbance surveys must be enjoined, without revisiting the issues of standing and ripeness, based  
27 on the same "straightforward" reasoning that this Court applies here:  
28

1 Finally, because BLM's 2001 and 2003 ASR Decisions violated  
2 FLPMA and NEPA, we hold that the Cow Catcher and Cottonsnake timber  
3 sales are invalid and must be enjoined because they do not 'conform to the  
4 approved [resource management] plan[s].' 43 C.F.R. § 1610.5-3.

5 The reasoning is straightforward. BLM did not conduct pre-  
6 disturbance surveys for red tree voles in preparing either the Cow Catcher or  
7 Cottonsnake timber sale. Under the Survey and Manage designations,  
8 Category C clearly requires pre-disturbance surveys to be conducted at the  
9 habitat level prior to habitat-disturbing activities. Because the 2001 and 2003  
10 ASR Decisions are invalid and must be set aside, 5 U.S.C. § 706(2)(A), the  
11 Survey and Manage designations under the 2001 ROD are reinstated. See  
12 Paulsen v. Daniels, 413 F.3d 999, 1008 (9th Cir. 2005) ('The effect of  
13 invalidating an agency rule is to reinstate the rule previously in force.') BLM  
14 did not comply with the resource management plans and the 2001 ROD for  
15 either sale because it failed to satisfy the Survey and Manage requirements  
16 pertaining to a Category C species. Therefore, the sales may not go forward.

17 Klamath Siskiyou Wildlands Center, 2006 WL 3164793, \*11.

18 Similarly, in Northwest Ecosystem, the court set aside a 2004 Record of Decision that had  
19 eliminated a set of standards and guidelines from a forest plan and reinstated the 2001 Record of  
20 Decision. The plaintiffs in that case sought to enjoin any ground-disturbing projects that did not  
21 comply with the 2001 ROD. As here, the defendants argued that the remedy was not properly  
22 before the court because the plaintiffs challenged the 2004 ROD, not the site-specific projects  
23 approved thereunder, and contended that the plaintiffs had not established standing. The court  
24 rejected the defendants' arguments, holding that although the plaintiffs did not challenge site-  
25 specific projects on an individual project basis, injunctive relief with respect to those site-specific  
26 projects should issue because the plaintiffs had successfully challenged the 2004 ROD. As the court  
27 correctly observed, "It would be incongruous for the court to set aside the 2004 ROD and to  
28 reinstate the 2001 ROD, while at the same time allowing timber projects that do not comply with the  
2001 ROD to proceed." Northwest Ecosystem, 2006 WL 44361, \*7.

29 Defendants also argue that Plaintiffs' proposed injunction would effectively preclude  
30 Defendants from litigating management issues affecting roadless areas in other circuits, citing  
31 United States v. Mendoza, 464 U.S. 154, 162 (1984) (holding that nonmutual offensive collateral  
32 estoppel does not apply against the government in such a way to preclude relitigation of issues) and  
33 Hart v. Massanari, 266 F.3d 1155, 1173 (9th Cir. 2001) (in decision upholding practice of  
34 unpublished appellate decisions, noting that one circuit is not bound by another circuit's decision).

1 The Court is mindful of the doctrine of nonacquiescence as described in Mendoza, but Defendants’  
2 argument about its application here is misplaced. The issue here is not collateral estoppel or  
3 unpublished decisions. Rather, the issue before the Court is fashioning an injunction that is tailored  
4 to the violation of law that the Court already found – an injunction that is no broader but also no  
5 narrower than necessary to remedy the violations of NEPA and ESA. Because Defendants  
6 unlawfully repealed a broad national regulation, whose very purpose was to achieve uniform  
7 national protection of roadless areas, the partial reinstatement that Defendants urge would deny  
8 Plaintiffs’ adequate relief. See Earth Island Inst. v. Ruthenbeck, 2005 U.S. Dist. LEXIS 29511, \*5-6  
9 (E.D. Cal. Sept. 16, 2005) (“in order to adequately address the harm suffered by Plaintiffs, the  
10 invalidation of the Forest Service regulations as outlined in the July Order must reach beyond the  
11 borders of the Eastern District of California. . . . The appropriate remedy, therefore, is to prevent  
12 such injury from occurring again by the operation of the invalidated regulations, be it in the Eastern  
13 District of California, another district within the Ninth Circuit, or anywhere else in the nation.”); The  
14 Wilderness Society v. Rey, CV-03-119-M-DWM (“The concept of nonacquiescence does not trump  
15 providing the prevailing party the relief to which it is entitled. The decision must provide the  
16 ‘breadth’ necessary to ensure that relief is adequate. [citation omitted]. The Congress intended for  
17 parties to enjoy expansive rights to appeal Forest Service decision[s]; consequently, a nationwide  
18 injunction will not ‘be more burdensome than necessary.’ [citation omitted]”). Moreover, as  
19 Plaintiffs point out, Defendants’ position on nonacquiescence here is in tension with their position  
20 taken previously with regard to the Wyoming district court’s injunction against the Roadless Rule.

## 21 2. Oil and gas leases

22 Plaintiffs seek an injunction against a number of oil and gas leases that are in various stages  
23 of government approval, but none of which have matured to any on-the-ground activity. Plaintiffs  
24 argue that these leases are in violation of the Roadless Rule. With respect to mineral leases, the  
25 Roadless Rule states:

26 (b) . . . a road may be constructed or reconstructed in an inventoried roadless area  
27 if the Responsible Official determines that one of the following circumstances  
28 exists:

1 (7) A road is needed in conjunction with the continuation, extension, or renewal  
2 of a mineral lease on lands that are under lease by the Secretary of the Interior as  
3 of January 12, 2001 or for a new lease issued immediately upon expiration of an  
4 existing lease. Such road construction or reconstruction must be conducted in a  
5 manner that minimizes effects on surface resources, prevents unnecessary or  
6 unreasonable surface disturbance, and complies with all applicable lease  
7 requirements, land and resource management plan direction, regulations, and  
8 laws. Roads constructed or reconstructed pursuant to this paragraph must be  
9 obliterated when no longer needed for the purposes of the lease or upon  
10 termination or expiration of the lease, whichever is sooner.

11 66 Fed. Reg. at 3273.

12 The leasing process is a lengthy one, involving several layers of approval by the Forest  
13 Service and the Bureau of Land Management. See Wyoming Outdoor Council v. US Forest Service,  
14 284 F. Supp. 2d 81, 83 (D. D.C. 2003) (describing the leasing process). Briefly, the Forest Service  
15 first conducts a leasing analysis including compliance with environmental protection laws, and  
16 notifies the BLM regarding lands available for leasing. When the BLM receives a request for  
17 leasing, the Forest Service conducts review of the leasing proposal, and the BLM assesses the  
18 conditions of lease offered by the Forest Service after that review and decides whether to offer the  
19 lease. The BLM then conducts a lease sale and issues a lease with any applicable Forest Service  
20 conditions, such as a “no surface occupancy” condition (“NSO”), attached. The lessee then  
21 proposes surface use plan operations. The BLM reviews the plan and decides whether to approve  
22 the lessee’s application for an application for permit to drill (“APD”). Id.

23 According to Defendants, 327 leases have been sold in the relevant geographical area, 284  
24 leases have been issued, and 12 lessees have submitted APDs. Declaration of Tracy Parker ¶ 5.  
25 However, no APDs have been approved with activity currently taking place on any of the leases. Id.  
26 Defendants argue that no injunction is necessary because no activity is currently underway and,  
27 historically, even after leases issue, no ground disturbing activity ever takes place on the majority of  
28 them. Defendants also argue that Plaintiffs can challenge individual APDs when they are issued.  
Plaintiffs point out, however, that approval of a lease is a critical juncture because the government  
cannot forbid all development once a lease is issued. See Northern Alaska Environmental Ctr. v.  
Kempthorne, 457 F.3d 969, 976 (9th Cir. 2006) (“There is no question here that approval of the  
leasing program represents an irretrievable commitment of resources.”). Plaintiffs are correct that

1 leases issued without an NSO condition constitute a commitment by the government that requires an  
2 injunction to issue if the balance of equities tips in Plaintiffs' favor. See Conner v. Burford, 848  
3 F.2d 1441, 1451 (9th Cir. 1988) ("In sum, the sale of a non-NSO oil or gas lease constitutes the  
4 'point of commitment;' after the lease is sold the government no longer has the ability to prohibit  
5 potentially significant inroads on the environment.")<sup>2</sup>.

6 This Court concludes that the equities weigh in favor of enjoining the leases issued in  
7 violation of the Roadless Rule, as reinstated by this Court, that do not contain an NSO condition that  
8 already prohibits activities that would violate the Roadless Rule. First, Plaintiffs do not seek to  
9 enjoin any leases for which on-the-ground activity has taken place. Second, although Defendants  
10 argue that enjoining the leases would cause economic harm to the lessees as well as to governmental  
11 entities that benefit from mineral development activities, economic loss is not irreparable.

12 Defendants admitted that most leases will not result in mineral extraction activity even absent an  
13 injunction. See Defs.' Response Brief at 15, n. 6. Moreover, the Forest Service previously  
14 considered the economic harm argument with respect to the Roadless Rule, and concluded that any  
15 such harm was outweighed by the harm of further development in roadless areas. 66 Fed. Reg.  
16 3,244, 3,265 (2001) ("The Department recognizes that this decision may have major adverse  
17 economic impacts on a few communities dependent on mineral leasing from inventoried roadless  
18 areas. However, if road construction and reconstruction were allowed for future mineral leasing on  
19 lands not under mineral lease as of the date of publication of this rule in the Federal Register, an  
20 estimated 59 miles of new roads would be constructed in inventoried roadless areas over the next  
21 five years. Road construction or reconstruction in support of future mineral leasing on lands not  
22 presently under mineral lease could continue at this level or in greater amounts into the foreseeable  
23 future. Over an estimated 10 million acres of inventoried roadless areas could be roaded for

---

24  
25 <sup>2</sup> Defendants' argument based on the Federal Onshore Oil and Gas Leasing Reform Act  
26 of 1987, 30 U.S.C. § 226, et seq., ("FOOGLRA") does not point to a different result. Post-FOOGLRA  
27 cases demonstrate that leasing continues to represent a commitment to development and does not alter  
28 the development rights conveyed by leases. See Pennaco Energy v. US Dep't of Interior, 377 F.3d  
1147, 1160 (10th Cir. 2004) (lessees acquired certain rights subject only to the stipulations contained  
in the leases); see also New Mexico v. Bureau of Land Management, \_\_\_ F. Supp. 2d \_\_\_, 2006 WL  
3072603, \*11 (D. N.M. 2006); Montana Wilderness Association v. Fry, 310 F. Supp. 2d 1127, 1145 (D.  
Mont. 2004).



1 exploration and development of leasable minerals, although the agency believes it is unlikely that  
2 more than a small percentage of these acres would contain minerals sufficient for economic  
3 development. The effects of road construction over time could substantially alter valuable roadless  
4 area characteristics by fragmenting habitat, increasing soil disturbance, decreasing water quality, and  
5 providing new avenues for the invasion of non-native invasive species.”).

6 Third, Plaintiffs do not seek to invalidate the leases altogether; rather, they seek to enjoin  
7 Defendants from permitting any road building in connection with the leases which would be  
8 prohibited by the Roadless Rule. For example, Plaintiffs do not seek to enjoin work accomplished  
9 by helicopter, rather than by road construction. Fourth, Plaintiffs’ ability to challenge individual  
10 APDs is not an adequate substitute for enjoining leases that are in violation of the Roadless Rule.  
11 See Kootenai Tribe v. Veneman, 313 F.3d 1094, 1110 (9th Cir. 2002) (“Whatever protections of the  
12 involved environmental interests remain in the absence of the Roadless Rule, there can be no doubt  
13 that the 58.5 million acres subject to the Roadless Rule, if implemented, would have greater  
14 protection if the Roadless Rule stands.”). Thus, an injunction against activities that would violate  
15 the Roadless Rule on those leases that lack an NSO condition that already prohibits such activities is  
16 warranted.

17 Defendants also argue that, as a matter of equity, participation of the third party leaseholders  
18 should be allowed in crafting this injunctive relief. Defendants provide no authority requiring, or  
19 even suggesting the advisability of, their participation, and admit that they are not necessary parties  
20 pursuant to Federal Rule of Civil Procedure 19. See Defs.’ Sur-reply at 8 n. 5. Cf., e.g., Conner,  
21 848 F.2d at 1461 (holding that lessees were not indispensable parties: “We enjoin only the actions of  
22 the government; the lessees remain free to assert whatever claims they may have against the  
23 government.”); Klamath Siskiyou Wildlands Center, supra, 2006 WL 3164793, \*11 (holding a  
24 completed timber sale as well as one in progress invalid and enjoining both sales in environmental  
25 groups’ successful lawsuit against the government, without participation by timber sale buyers or  
26 discussion thereof). Significantly, the leaseholders have not sought to intervene in the remedy phase  
27 of this case despite the timely intervention of various amicus groups in support of Defendants and  
28 the publicity that has accompanied the filing of these lawsuits and the Court’s Opinion. Nor would

1 the Court be inclined to grant leave to intervene given the delay. In addition, injunctive relief with  
2 respect to the leases at issue in this case is appropriate under the “public rights exception,” which  
3 applies to cases in which the third parties’ interests at issue would not be destroyed, because this  
4 litigation “transcends the private interests of the litigants and seeks to vindicate a public right.”  
5 Kettle Range Conservation Group v. BLM, 150 F.3d 1083 (9th Cir. 1998) (quoting National  
6 Licorice v. NLRB, 309 U.S. 350 (1940)); see also Conner, 848 F.2d at 1461 (applying the public  
7 rights exception in modifying the leases at issue in that case instead of voiding them). Here,  
8 Plaintiffs seek to enjoin only certain conduct by the Forest Service, not the leaseholders, with  
9 respect to the oil and gas leases that would be inconsistent with the Roadless Rule, but not to void  
10 the leases.

11 The parties do not fully address the issue of whether the leases enjoined should include those  
12 which completed the leasing process anytime after the promulgation of the Roadless Rule in 2001,  
13 or only from the date of the unlawful repeal of the Roadless Rule by the State Petitions Rule in  
14 2005. Plaintiff proposes a 2001 date. Defendants, having argued unpersuasively for a 2006 date, do  
15 not otherwise contest the 2001 date in favor of 2005. The parties should meet and confer on this  
16 topic and inform the Court by joint statement no later than December 11, 2006, whether any further  
17 court proceeding or modification of this order is necessary or appropriate with respect to this portion  
18 of the injunction.

### 19 3. Coal Creek-Big Creek Road Project, Salmon-Challis National Forest, Idaho

20 The Coal Creek-Big Creek Road Project re-establishes authorized motorized access to the  
21 Big Creek trailhead, which is currently only accessible by an unauthorized route within the Borah  
22 Peak inventoried roadless area (“IRA”). The Forest Service conducted an Environmental  
23 Assessment and issued a Finding of No Significant Impact with respect to the Road Project. See  
24 Defs.’ Response Brief Ex. 1, 2. Plaintiffs seek to enjoin this project, which has not yet commenced,  
25 as a violation of the Roadless Rule and against Plaintiffs’ interests in enjoying that roadless area.  
26 See Gehrke Decl. ¶ 4.

27 Defendants contend that the Coal Creek project is a road realignment project that comes  
28 within an exception to the Roadless Rule, pointing to the agency’s denial of an administrative

1 appeal, issued after this Court reinstated the Roadless Rule, that so concluded. See Defs.’ Response  
2 Brief Ex. 3; 66 Fed. Reg. at 3273 (“(b) . . . a road may be constructed or reconstructed in an  
3 inventoried roadless area if the Responsible Official determines that one of the following  
4 circumstances exists: (4) Road realignment is needed to prevent irreparable resource damage that  
5 arises from the design, location, use, or deterioration of a classified road and that cannot be  
6 mitigated by road maintenance. Road realignment may occur under this paragraph only if the road  
7 is deemed essential for public or private access, natural resource management, or public health and  
8 safety.”). Alternatively, Defendants argue that even if the Road Project violates the Roadless Rule,  
9 the equities weigh against enjoining it, because if the project does not proceed, safe motorized  
10 access to the trailhead will not be afforded. Defendants also argue that in the absence of the Road  
11 Project, sediment delivery will not be reduced and the area will not comply with the Bull Trout  
12 Recovery Plan. On the other side of the balance, Defendants argue that the project will only impact  
13 a small portion of the Borah Peak IRA, without harming outdoor recreation or special features of the  
14 IRA.

15 Plaintiffs counter that the Road Project does not come within the exception to the Roadless  
16 Rule’s prohibitions for road realignment, which only applies to classified roads. 66 Fed. Reg. 3,244,  
17 3,273 (“(1) Classified road. A road wholly or partially within or adjacent to National Forest System  
18 lands that is determined to be needed for long-term motor vehicle access, including State roads,  
19 county roads, privately owned roads, National Forest System roads, and other roads authorized by  
20 the Forest Service.”). Rather, the Road Project would in part replace an unclassified, unauthorized  
21 road improvised by frustrated visitors who have been denied access to a portion of the previously  
22 used route by a private landowner. Plaintiffs also respond that the fundamental policy of the  
23 Roadless Rule of preventing incremental local encroachment on roadless areas would be frustrated  
24 by the project, while alternatives exist that would meet the project’s legitimate objectives without  
25 violating the Roadless Rule. According to the Finding of No Significant Impact, the project has  
26 three primary objectives:

1 Abandon and rehabilitate the Coal Creek Road (Forest Road 40417) and the  
2 unauthorized segment of road between Big Creek and Coal Creek, totaling about  
two and one-half miles, to reduce sediment to Coal Creek and Wet Creek;

3 Construct about 1.7 miles of new road from the Pass Creek Road, skirting the  
4 private land boundary, and connecting to the existing Big Creek Road to  
reestablish motorized access to the Big Creek Trailhead;

5 Abandon and rehabilitate three segments of the Big Creek Road, totaling about  
0.5 mile, install three culverts and construct 0.3 mile of new road to reduce  
6 excessive road grades.

7 Defs.' Response Brief Ex. 2 at 2. Although it is not entirely clear from the limited material provided  
8 by the parties, it appears that to the extent that the Road Project realigns the unauthorized road  
9 segment, it does not fall within the Roadless Rule's exception for road realignment because that  
10 segment is not a classified road. Accordingly, the Court questions whether the Coal Creek-Big  
11 Creek Road Project complies with the Roadless Rule. The Court is not persuaded by the Forest  
12 Service's hearing officer's recent determination that the project meets the criteria for the realignment  
13 exception, because that decision only briefly addresses the exception without even discussing its  
14 limitation to classified roads. On this record, however, the Court cannot make a final determination  
15 on whether the project complies with the Roadless Rule. If the project does not comply, then for the  
16 reasons stated by Plaintiffs, the balance of equities weighs in favor of enjoining the project. The  
17 parties shall meet and confer and inform the Court by joint statement no later than December 11,  
18 2006 whether any further court proceeding or order is necessary or appropriate with respect to this  
19 portion of the injunction.

## 20 **INJUNCTIVE RELIEF**

21 For the reasons stated above, the Court orders the following injunctive relief:

### 22 I. STATE PETITIONS RULE

23 The State Petitions Rule, adopted at 70 Fed. Reg. 25,654, 25,661-62 (May 13, 2005), is set  
24 aside, and the Roadless Rule, adopted at 66 Fed. Reg. 3,244, 3,272-73 (January 12, 2001) (including  
25 the Tongass Amendment, adopted at 68 Fed. Reg. 75,136, 75,146 (December 30, 2003)), is  
26 reinstated.  
27  
28

1 II. FURTHER FOREST SERVICE ACTIONS

2 As the Court previously ordered, federal defendants are enjoined from taking any further  
3 action contrary to the Roadless Rule without first remedying the legal violations identified in the  
4 Court’s opinion of September 20, 2006. Such further actions by the Forest Service include, but are  
5 not limited to, approving or authorizing any management activities in inventoried roadless areas that  
6 would be prohibited by the 2001 Roadless Rule (including the Tongass Amendment), and issuing or  
7 awarding leases or contracts for projects in inventoried roadless areas that would be prohibited by  
8 the 2001 Roadless Rule, including the Tongass Amendment. The effective date of this injunction is  
9 September 20, 2006.  
10

11 III. SPECIFIC ACTIVITIES IN ROADLESS AREAS

12 A. Oil and Gas Leases

13  
14 The 2001 Roadless Rule shall apply to activities commenced hereafter with respect to any  
15 and all mineral leases in IRAs in National Forest lands not affected by the Tongass Amendment that  
16 issued after January 12, 2001. The Forest Service is enjoined from approving or allowing any  
17 surface use of a mineral lease issued after January 12, 2001, that has not already commenced on the  
18 ground and which would violate the Roadless Rule (including the Tongass Amendment). This order  
19 does not apply to roads that have already been constructed or reconstructed on lease parcels pursuant  
20 to approved surface use plans of operation, nor does it apply to leases that include a strict “no  
21 surface occupancy” condition that already prohibits road construction that would violate the  
22 Roadless Rule.

23 B. Coal Creek-Big Creek Road Project, Salmon-Challis NF, Idaho

24 The Forest Service is enjoined from proceeding with the Coal Creek-Big Creek Road Project

25 //

26 //

27  
28

1 as to any portion of the project that is not permitted under the exception to the Roadless Rule for  
2 road realignment of classified roads. See 66 Fed. Reg. 3,244, 3,273 (§ 294.12(b)(4)).

3 **IT IS SO ORDERED.**

4 Dated: November 29, 2006

*Elizabeth D. Laporte*

ELIZABETH D. LAPORTE  
United States Magistrate Judge

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28