

Introduction

The letters in this volume were submitted by Federal, State and local agencies, and elected officials.¹ Letters from Federal agencies and federally recognized Tribes are listed first. Letters from State and local agencies and officials are organized by State as shown in the table of contents. Government agencies or elected officials in 33 States submitted comments. If we did not receive any letters from agencies or elected officials in a particular State, that State is not listed in the table of contents. Letters from members of Congress are included in their respective States. All attachments submitted with these letters are included, unless limited by format or excessive length.

¹ Section 102(C) of the National Environmental Policy Act of 1969, as amended, requires that “... comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality, and to the public...” The Forest Service Environmental Policy and Procedures Handbook (FSH 1909.15, 24.1 (3)) states that “As a minimum, include in an appendix of a final EIS copies of all comments received on the draft EIS from Federal, State, and local agencies and elected officials.”



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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CAET Review
Jul 17 2000

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

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USDA Forest Service
Attention: CAET, Roadless Areas Proposed DEIS/Rule
Scott Conroy, Project Director
P.O. Box 221090
Salt Lake City, UT 84122

Dear Mr. Conroy:

Pursuant to our responsibilities under the National Policy Act (NEPA) and section 309 of the Clean Air Act, the U.S. Environmental Protection Agency (EPA) has reviewed the U.S. Department of Agriculture, Forest Service (USFS) Draft Environmental Impact Statement (DEIS) on Roadless Area Conservation and the accompanying proposed Rule at 36 CFR Part 294, Special Areas; Roadless Area Conservation. Our comments are organized to provide an overview of the issues, highlighting areas where EPA has concerns, as well as detailed information for your consideration as the USFS prepares the Final Roadless Area Conservation EIS (FEIS) and Rule.

The DEIS and proposed rulemaking are in response to the strong public sentiment voiced on protecting roadless areas and the associated benefits associated with these areas found in our National Forests. This effort was initiated by the President's October 13, 1999, memorandum to the Secretary of Agriculture directing the USFS to "...develop, and propose for public comment, regulations to provide appropriate long-term protection for most or all of these currently inventoried *roadless* areas and to determine whether such protection is warranted for smaller *roadless* areas not yet inventoried."

EPA commends the USFS for its monumental efforts to solicit input from the public and explain the impacts of this undertaking. Its efforts with outreach and supplying access to the DEIS and proposed rule, supporting documents, public meetings and outreach to the relevant federal agencies are unprecedented.

The DEIS presents four alternatives, including an agency preferred alternative, and is accompanied by a proposed rule. Alternative 1, the No Action alternative, supports current practices concerning activities in inventoried roadless areas. Alternative 2, the preferred

alternative, prohibits road construction and reconstruction in the unroaded portions of inventoried roadless areas. Alternative 3 prohibits road construction, reconstruction, and timber harvest (except for stewardship purposes) in the unroaded portions of inventoried roadless areas and Alternative 4, the maximum protection alternative, is the same as Alternative 3, but with no exceptions for any timber harvest. In addition, four separate alternatives are presented to address the Tongass National Forest (Tongass), which may warrant other approaches. These four alternatives range from the no action alternative which supports current practices to prohibiting road construction and reconstruction in specified inventoried roadless areas in the Tongass.

The proposed rule offers a two pronged approach to conserve roadless areas. The proposed rule would prohibit new road construction and reconstruction in the unroaded portions of inventoried roadless areas and use local planning procedures to ensure consideration of roadless values and characteristics in other roadless areas not covered by the prohibitions.

EPA is especially interested in this DEIS and proposed rule because 80 percent of the nation's rivers originate in the national forests and, consequently, this rulemaking may have significant impact on water quality. This rule could greatly increase the protection to ground and surface water resources which are directly related to the status of riparian and aquatic habitats, wildlife habitat, biological diversity, forest health and other benefits derived from roadless areas found on the national forests and grasslands. EPA supports this rulemaking, one of several recent efforts the USFS has undertaken to address road management on its lands. The proposed rule intends to identify and stop activities with the greatest likelihood of degrading the desirable qualities of inventoried roadless areas at the national level and ensure that "roadless character" qualities of inventoried and other unroaded areas are identified and considered during local forest planning efforts.

Although EPA supports the proposed rulemaking effort, based on our review of it and the supporting DEIS, we wish to raise several environmental concerns. While it is important to recognize that the rule's purpose has been developed in the context of overall multiple-use objectives, the multiple use mandate does not fully justify a prohibition limited only to road building. EPA suggests that the FEIS more fully discuss the rationale for why other uses that can be expected to degrade the desirable environmental qualities of inventoried roadless areas were not included in the proposed prohibitions. For example, other uses such as recreation, timber production and mining have clearly led to significant environmental degradation in the past and should be further addressed in the FEIS.

The FEIS should also disclose to the public the uncertainty in using procedures implemented at the local level versus prohibitions issued at the national level to provide environmental protection to these areas. While the "one size does not fit all" concept has merit and local decision making is necessary to address the unique needs of local areas, EPA has concerns that some areas may not receive the environmental protection they need.

Because the determination to revise or amend a forest plan is based on a variety of factors and time lines, EPA suggests that the application of procedures as provided for in section 294.14 be revised to include a project-by-project review when the project meets a "significance criterion". EPA recognizes that a project-by-project review of all actions would be unduly burdensome;

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however, those proposed actions with the potential to have significant impacts should be reviewed.

Finally, EPA does not believe the DEIS gives adequate support for excluding coverage of the proposed rule to the Tongass and our detailed comments provide additional information on this issue.

Based on our review EPA has assigned a rating of EC-2 (Environmental Concerns, Insufficient Information) to the preferred alternative. EPA appreciates the opportunity to submit comments on the DEIS and proposed rule and commends the USFS for orchestrating extensive sessions for early interagency cooperation in the scoping and development stages of the process. EPA welcomes the chance to continue working with the USFS as it completes the FEIS and final rule. If I can provide additional explanation of our comments please contact me at (202) 564-2400 or Elaine Suriano of my staff at (202) 564-7162.

Sincerely,



Anne Norton Miller
Acting Director
Office of Federal Activities

Enclosure

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DETAILED COMMENTS ON THE DEIS AND PROPOSED RULE

DEIS

Purpose and Need

EPA strongly agrees with the underlying purpose and need for national direction on roadless area conservation, and we offer the following comments for your consideration. The purpose presented on page S-4 is three-fold, whereas the purpose stated on page 1-10 is only two-fold; the FEIS should reconcile this inconsistency. Second, the purpose stated on page A-26 of the proposed rule is further condensed and less specific than the purpose stated on pages 1-10 or S-4. EPA recommends that the FEIS and final rule use the same language to describe the purpose of this action, preferably the language used on page S-4.

Alternatives

EPA highlighted several issues related to the alternatives in our December 21, 1999, comment letter on the Notice of Intent for this DEIS and proposed rule. These included the range of alternatives and their analysis, and adequate explanation on implementing the selected alternative. While the DEIS offers a range of alternatives, EPA believes that this range should have been broader and more inclusive of other uses in an attempt to more fully comply with the direction provided in the President's October 19, 1999, memorandum.

EPA believes that Alternative 3-Procedure D (3-D) provides additional environmental advantages over the preferred alternative including: 1) providing significant protection for inventoried roadless areas while still accommodating harvest of small diameter trees where necessary to address fire and fuels issues; 2) reducing the likelihood that smaller roadless areas will be impacted pending the completion of transportation and access plans as described in the proposed USFS Transportation Policy; and 3) ensuring that appropriate protections are applied to the Tongass. In addition, we suggest that the FEIS consider confining Off Highway Vehicles (OHVs) only to roads and trails that have been specifically designated for that purpose following analysis pursuant to NEPA.

EPA has environmental concerns with the range of Tongass alternatives presented and offers the following modification based on alternatives considered in the DEIS. We view this as a "win-win" alternative, achieved by adding several mitigation measures.

EPA recommends that the FEIS consider in detail an alternative that: 1) applies the national prohibitions (Alternative 2, 3 or 4) and national procedures (Alternative B, C or D) to the Tongass; and 2) mitigates the social and economic impacts on the communities in Southeast Alaska pursuant to 40 CFR 1502.14(f). We believe that this latter objective can be accomplished through a combination of adjustments to the Tongass Land Management Plan (TLMP) and a financial and technical assistance package for the affected communities (e.g., under the auspices of the Southeast Alaska Community Economic Revitalization Team).

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For example, the Record of Decision (ROD) could include the Tongass in the roadless area conservation rule and direct the Alaska Regional Forester or the Tongass Forest Supervisor to amend or revise the TLMP to offset some of the effects of the final rule on the Tongass timber program. Specifically, the ROD could direct the responsible official to consider the following adjustments to the TLMP:

1. Seek to maintain the total land suitable for timber production at 576,000 acres as set forth in the April 1999 TLMP ROD. To the extent practical and appropriate, reallocate those suitable acres by changing Land Use Designations (LUDs) in inventoried roadless areas from timber to non-timber LUDs, and in roaded areas from non-timber to timber LUDs.
2. Where necessary to meet the objective of #1 above, and where appropriate and consistent with other management objectives, recapture some of the young growth that was removed from the suitable timber base in the revised forest plan. The Tongass harvested roughly 400,000 acres of timber from 1954 to 1999. Approximately 140,000 acres of young growth remain in the suitable timber base; the other roughly 260,000 acres of young growth were removed from the timber base due to riparian buffers, beach and estuary buffers, old growth reserves, etc. It would certainly be inappropriate to place all of these acres back in the timber base (e.g., riparian buffers). However, if the Tongass is included in the Roadless Area Conservation Rule, it may be appropriate to recapture some of those acres (e.g., young growth within beach buffers and old growth reserves) in order to maintain the current suitable timber base. While this would have no effect on the timber volume harvested in the short term, in the long term it would expedite the transition from harvesting old growth to harvesting young growth. It would also enable the Tongass to use "timber dollars" to thin these young growth stands, which in the absence of an alternative funding source will continue to suffer from neglect.
3. Where necessary to meet the market demand for timber from the Tongass, consistent with the Tongass Timber Reform Act, adjust certain standards and guidelines that restrict timber harvest. For example, consider adjusting the 200-year rotation that was adopted in the 1999 TLMP ROD. The intent of the 200-year rotation is to reduce impacts to deer winter range and deer habitat capability by reducing the rate of timber harvest in developed areas (1999 TLMP ROD, page 29). Unfortunately, one of the unintended consequences of the 200-year rotation is that, in order to meet market demand and the ASQ, it increases the rate of entry into undeveloped areas (i.e., inventoried roadless areas and other unroaded areas). This explains, in part, why under the no action alternative (T1), roughly 90% of the total timber-related road construction on the Tongass National Forest, and roughly two thirds of the total 5-year timber volume offered by the Tongass National Forest is projected to come from inventoried roadless areas (DEIS, Tables S-3, and page 3-232). However, if the Tongass is included in the roadless rule, then the prohibitions and procedures may substantially reduce, if not eliminate, the need for the 200-year rotation.
4. Adjust the Allowable Sale Quantity (ASQ), including the Non-Interchangeable Components (NIC I and NIC II), in response to #1 through #3 above and to better reflect projected market demand over the planning cycle.

EPA believes an alternative based on the above proposal is more environmentally protective,

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more socially desirable and more economically efficient than the proposed action and preferred alternative presented in the DEIS. In the absence of developing or selecting such an alternative, EPA recommends selecting alternative 3D, without exempting the Tongass.

Should the USFS select the preferred alternative as presented, EPA believes the FEIS should address the following issues. The proposed rule would establish protection of "unroaded areas in inventoried roadless areas" on all National Forests except the Tongass. The protections sought by the President for roadless areas on the Tongass would rely on the Forest Service's planning process exclusively. It should be noted the USFS proposed rules to revise the existing planning process are currently under review and it is uncertain when and what the Forest Service planning process will be once finalized. Because the rulemaking process and the USFS planning process are distinctively different, particularly in their final products, EPA suggests that the FEIS include a discussion of protecting roadless areas on the Tongass by rule versus by the revisions to the forest plans via the planning process. It should be disclosed to the public that the rule has a certain degree of "permanence" that is not the same as a forest plan. Forest plans are currently required to be reviewed and revised every 10 years, and the proposed revisions to the Forest Service planning regulations indicate that forest planning will be less structured in the future. Because of the present and proposed nature of forest planning, issues regarding protecting roadless areas can be revisited as part of a forest plan amendment or revision. Although rules can be revised, there is no requirement to do so periodically; therefore, the protection they offer is more predictable over a long time period. Consequently, areas protected by the prohibitions have a more certain likelihood of receiving the long-term protection that the President expressed, while there is no mechanism to ensure long-term protection of roadless areas on the Tongass. EPA suggests that the FEIS address the potentially different levels of long-term protection that would be applied to the Tongass and the rest of the National Forest System under the preferred alternative.

Page S-7 lists four exceptions from prohibitions. As they are stated in very broad terms EPA suggests that the FEIS cite a few examples, especially for exemptions three and four. These are intended to provide specific examples of actual situations and disclose the potential scope of such actions.

Proposed Rule

294.10 Purpose

EPA suggests that the final rule include language clarifying the intent and purpose statement to help guide the implementation of the rule. As currently worded, the proposed purpose statement is less specific than the purpose stated on page S-4 of the DEIS. EPA recommends that the FEIS and final rule include the same language to describe the purpose of this action, preferably the language used on page S-4.

294.11 Definitions

Inventoried roadless areas

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The proposed definition of inventoried roadless areas is confusing. The first sentence implies that inventoried roadless areas may include designated areas such as Wilderness. However, the second sentence refers to the maps contained in Volume 2 of the DEIS, which display inventoried roadless areas and designated areas (such as Wilderness, Wilderness Study Areas, Wild and Scenic Rivers, National Recreation Areas, National Monuments, and other special designations) as mutually exclusive categories of National Forest System lands. Adding to this confusion, Volume 2 shows recommended Wilderness as inventoried roadless areas but places Wilderness Study Areas in with designated areas. This approach is counterintuitive and may result in situations where administratively designated inventoried roadless areas are subject to a higher level of protection than some Congressionally designated areas.

For example, Wilderness Study Areas that are not recommended in the future for Wilderness designation but are instead allocated to a prescription that allows roads would not benefit from the prohibitions under the roadless area conservation rule. Yet these areas that may otherwise "fall through the cracks" represent some of the best opportunities to respond to the underlying purpose and need of this action.

Therefore, EPA recommends: 1) clarifying the definition of inventoried roadless areas to explicitly include designated areas (or at a minimum, roadless designated areas of 5,000 acres or more); and 2) adding "inventoried roadless areas" in front of "Designated Areas" in each legend of every map in Volume 2. Alternatively, we recommend the following:

1. define *designated areas* in Section 294.11;
2. add *designated areas* to the title of Section 294.12 and add a new paragraph to this section to clarify that the prohibitions also apply to *designated areas*; and
3. add new paragraph to Section 294.13 to clarify that the procedures also apply to *designated areas*.

A third option, in the interest of plain English and practicality, would be to replace *inventoried roadless areas* and *unroaded area* with *large roadless area* and *small roadless area*, respectively (with the threshold between the two set at 5,000 acres or 1,000 acres, as appropriate). Subsequent decisions would be based on actual on-the-ground conditions instead of on whether an area is inventoried or designated as roadless.

Road maintenance.

Consider adding "...or to prevent or correct environmental problems" to the end of the proposed definition.

Road reconstruction.

Consider adding "...or to prevent or correct environmental problems" to the proposed definitions of *realignment*, *improvement* and *rebuilding*.

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Unroaded area.

Insert "(other than an inventoried roadless area)" between "Any area" and "... without..."

The final rule should include definitions for *trails*, *primitive and semi-primitive non-motorized*, and *semi-primitive motorized* classes of dispersed recreation.

294.12 - Exemptions

It is not explicitly stated in the rule that once an emergency that created the need for building a road is over the road should be closed and the area restored to the previous condition. EPA suggests including an additional provision - "(e) - roads constructed for an emergency purpose under b(1), (2), and (3) are to be removed once they are no longer needed for the initial emergency purpose and the area will be restored to the natural condition."

EPA appreciates the change made from scoping comments in paragraph (a) that the prohibition applies to both classified and unclassified roads, including temporary roads.

Delete paragraph (c), application to the Tongass.

294.13 - Consideration of Roadless Area Conservation During Plan Revision

EPA has environmental concerns with leaving the choice of method of selection or delineation of unroaded areas for evaluation under 294.13(b)(2) entirely to the responsible official. The final rule should provide a list of methods that are accepted nationally to promote consistency.

Delete paragraph (e), related to the Tongass.



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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
ROCKY MOUNTAIN, DENVER
633 17TH ST.
DENVER, COLORADO 80202-3690

May 15, 2000

USDA Forest Service-CAET
Post Office Box 221090
Attention: Roadless Areas Proposed Rule
Salt Lake City, UT 84122

Dear Sirs:

The Department of Housing and Urban Development (HUD) has reviewed the Draft Environmental Impact Statement (DEIS) for the Roadless Area Conservation Proposed Rule with consideration of the areas of responsibility assigned to HUD.

This review considered the impact of the proposed rule on housing and community development within the states of Montana, Utah and Wyoming that are part of our office's area of responsibility. We find your transmittal adequate for our purposes since there is no significant adverse impact on HUD assisted housing and community development activities in proximity to the areas covered by the proposed rule.

If I may be of further assistance to you, please contact me at (303) 672-5285, extension 1305.

Sincerely,

Howard S. Kutzler
Regional Environmental Officer
Office of the Secretary's Representative

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MWTC SUPPLY

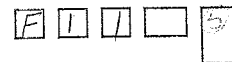
PAGE 01

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UNITED STATES MARINE CORPS
MARINE CORPS MOUNTAIN WARFARE TRAINING CENTER
BRIDGEPORT CA 93517-6501

IN REPLY REFER TO:
5090
ENV/04
14 Jul 00



USDA Forest Service - CAET
Attention: Roadless Area Conservation Proposed Rule
P.O. Box 221090
Salt Lake City, UT 84122

Gentlemen:

Thank you for the opportunity to provide written comments on the Forest Service's proposed Roadless Area Conservation rule. As a long-time user of the Humboldt-Toiyabe National Forest, the Marine Corps Mountain Warfare Training Center (MWTC) has several concerns with the proposed rule.

First, the web based maps of inventoried roadless areas you provided lack sufficient detail to conclusively compare them to roads and trails MWTC uses. We request a more detailed map be provided as well as sufficient time to review it. From the available map, we have determined that some roads are missing from your inventory. Please add the following former roads as shown on the attached map:

1. From Summit Meadows to Lost Cannon Creek.
2. From Grouse Meadows to Mill Canyon Road.
3. From Grouse Meadows to Chris Flat.
4. From the Grouse Meadow Road to the gaging station on HWY 395.

The MWTC requires continued access to this area of forest to conduct training per public law 100-693 of November 18, 1988. We recommend that District Rangers retain the authority to authorize or prohibit specific roads for the proper management and use of National Forest System lands. These decisions are based on appropriate environmental documentation and public participation. Local control is needed to fairly address existing uses of existing roads, whether classified or unclassified.

My point of contact for this matter is Mr. Kendall Yargus at 760-932-7761 ext. 332.

Sincerely,

J. H. NEAL
Lieutenant, CEC, USN
By direction

Encl: Annotated Forest Visitor/Travel Map, Toiyabe National Forest, Bridgeport Ranger District, California, 1994

Copy to:
MCB Camp Pendleton AC/S ES
Bridgeport Ranger District

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MAY 17 2000



United States Department of Agriculture

Natural Resources Conservation Service

Caribbean Area PO Box 364868 San Juan, PR 00936-4868

14635

F I I I I 5 yes

June 28, 2000

USDA Forest Service-CAET P. O. Box 221090 Salt Lake City, Utah 84122

Dear Sir or Madam:

SUBJECT: Roadless Areas Proposed Rules

After an extensive review of the Draft Environmental Impact Statement (DEIS) for the proposed rules to conserve roadless areas within the national forests, we do not have any comments to make, since the proposed rules are for the benefit of the ecosystems of such areas.

Should you have any questions, please contact Felix A. Latorre, Water Resources Planning Specialist at (787) 766-5206, Ext. 234.

Sincerely,

JUAN A. MARTINEZ Director

NOT RECEIVED JUL 06 2000

Aug-17-2000 14:49 From-FOREST SERVICE--Roadless Team

T-204 P.002/002 F-382



U.S. SMALL BUSINESS ADMINISTRATION WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

JUL 17 2000

VIA ELECTRONIC & REGULAR MAIL

Hilda Diaz-Soltero Associate Chief United States Department of Agriculture Forest Service Washington, DC Email: roadlessdeis@fs.fed.us

Dear Ms. Diaz-Soltero:

As stated in previous correspondence on this issue, the Office of Advocacy of the U.S. Small Business Administration (SBA) was established by Congress under Pub. L. No. 94-305 to represent the views of small business before federal agencies and Congress. Advocacy is also required by §612(a) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) to monitor agency compliance with the RFA. In that Advocacy is an independent office within SBA, the comments provided are solely those of the Office of Advocacy and do not necessarily reflect the views of SBA.

A Brief Review of RFA Compliance Requirements

Initial Regulatory Flexibility Analysis

The RFA requires agencies to consider the impact that a proposed rulemaking will have on small entities. If the proposal is expected to have a significant impact on a substantial number of small entities, the agency is required to prepare an initial regulatory flexibility analysis (IRFA) describing the reasons the action is being considered; a succinct statement of the objectives of, and legal basis for the proposal; the estimated number and types of small entities to which the proposed rule will apply; the projected reporting, recordkeeping, and other compliance requirements, including an estimate of the small

entities subject to the requirements and the professional skills necessary to comply; all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and the significant alternatives that accomplish the stated objectives of the of the statutes and that minimize any significant economic impact of the proposed rule on small entities. 5 U.S.C § 603. The analysis or a summary of the analysis must be published with the proposal for public comment.

Final Regulatory Flexibility Analysis

When an agency issues any final rule, it must prepare a final regulatory flexibility analysis (FRFA) when a rule will have a significant economic impact on a substantial number of small entities. The FRFA must discuss the comments received, the alternatives considered and the rationale for the final rule. Specifically, each FRFA must contain a succinct statement of the need for and objectives of the rule; a summary of the significant issues raised by public comments in response to the IRFA; a summary of the agency's assessment of such issues and a statement of any changes made in the proposed rule as a result of such comments; a description and an estimate of the number of small businesses to which the rule will apply or an explanation of why no such estimate is available; a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record; and a description of the steps the agency has taken to minimize the significant economic impacts on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy and legal reasons for selecting the alternative adopted in the final rule, and the reasons for rejecting each of the other significant alternatives. In complying with the provisions of section 603 and 604 of the RFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable. 5 U.S.C. § 607.

Certification in Lieu of a Regulatory Flexibility Analysis

If the proposed or final rulemaking is not expected to have a significant economic impact on a substantial number of small entities, 5 USC §605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA or FRFA. If the head of the agency makes such a certification, the agency shall publish such a certification in the Federal Register at the time of the publication of the general notice of proposed or final rulemaking for the rule along with a statement providing the factual basis for the certification. See 5 U.S.C. §605(b).

The Proposed Rulemaking

Because of the nature of this rule, the Office of Advocacy consistently maintained in its pre-proposal comments to the Forest Service (FS) that certification was inappropriate from a public policy standpoint. On May 10, 2000, FS published a proposed rule in the *Federal Register*, Vol. 65, No. 91, p.30276 on *Special Areas; Roadless Area Conservation*. The purpose of the proposal is to protect the environmental resources in

national forests by prohibiting road construction and reconstruction in most inventoried roadless areas of the National Forest System and require the evaluation of roadless area characteristics in the context of overall multiple-use objectives during land and resource management plan revisions. The intent of the rulemaking is to provide lasting protection in the context of multiple use management for inventoried roadless areas and other unroaded areas within the National Forest System. Id.

Prior to the proposal, the Office of Advocacy worked with FS in an effort to assist FS with RFA compliance. Throughout the process, FS has maintained that it believed that the proposed rulemaking would not have a significant economic impact on a substantial number of small businesses. FS has also contended that the proposed rule does not directly regulate small entities and, therefore, an IRFA was not necessary. Nevertheless, FS prepared an Initial Regulatory Flexibility Analysis (IRFA) at Advocacy's request. Because FS did not have sufficient economic information to prepare a complete IRFA, Advocacy advised FS to include a list of questions in the IRFA to solicit from the public information on the economic impacts of the proposal. FS complied with this request also.¹ See, Fed. Reg. at 30285-30286.

FS Should Abandon Its Assertion that the Rule Does Have a Direct Impact on Small Entities

As stated above, FS has consistently asserted that a regulatory flexibility analysis is not required since the proposal does not have a direct impact on small entities. It is Advocacy's understanding that the basis of the assertion is that the proposal establishes procedures, and nothing more, to be followed in local forest planning processes. Local FS offices will maintain the authority to determine the actual forest plan; hence national FS is not directly regulating small entities. Consequently, a regulatory flexibility analysis is not required.

Advocacy acknowledges that there is case law that states that the RFA only requires an agency to perform a regulatory flexibility analysis of small entity impacts when a rule directly regulates them. However, Advocacy asserts that the cases are inapplicable to FS' proposal. If anything, the case law and the facts support a finding that the impact of the proposal is indeed direct, not indirect.

The primary case on the consideration of direct versus indirect impacts for RFA purposes in promulgating regulations is Mid-Tex Electric Co-op Inc. v. F.E.R.C., 249 U.S. App. D.C. 64, 773 F.2d 327 (1985). In Mid-Tex Electric Co-op Inc. v. F.E.R.C., FERC ruled that electric utility companies could include in their rate bases amounts equal to 50% of their investments in construction work in progress (CWIP). In promulgating the rule, FERC certified that the rule would not have a significant economic impact on a substantial number of small entities. The basis of the certification was that virtually all of the utilities did not

¹ Usually, the Office of Advocacy does not publicize its interaction with an agency during the prior to the proposal of a rule. However, since Forest Service has agreed to release communications that it had with the Office of Advocacy to House Committee on Small Business, Subcommittee on Rural Enterprises, Business Opportunities, and Special Programs, the communications are now part of the public record.

fall within the meaning of the term small entities as defined by the RFA. Plaintiffs argued that FERC's certification was insufficient because it should have considered the impact on wholesale customers of the utilities as well as the regulated utilities. The court dismissed the plaintiffs' argument and concluded that an agency may certify that no RFA analysis is necessary when it determines that the rule will not have a significant economic impact on a substantial number of small entities that are not subject to the requirements of the rule. *Id.* at 64.

The US Court of Appeals for the District of Columbia applied the holding of the *Mid-Tex* case in *American Trucking Associations, Inc. v. U.S. E.P.A.*, 175 F.3d 1027, 336 U.S.App.D.C. 16 (D.C.Cir., May 14, 1999) (hereinafter ATA). In the ATA case, EPA established a primary national ambient air quality standards (NAAQS) for ozone and particulate matter. At the time of the rulemaking, EPA certified the rule pursuant to 5 USC § 605(h). The basis of the certification was that EPA had concluded that small entities were not subject to the rule because the NAAQS regulated small entities indirectly through the state implementation plans (SIPs). *Id.* Although the Court remanded the rule to the agency, the Court found that EPA had complied with the requirements of the RFA. Specifically, the Court found that since the States, not EPA, had the direct authority to impose the burden on small entities, EPA's regulation did not directly impact small entities. The Court also found that since the states would have broad discretion in obtaining compliance with the NAAQS, small entities were only indirectly affected by the standards. *Id.*

In *Mid-Tex*, compliance with FERC's regulation by the utilities would have a ripple effect on customers of the small utilities. There were several unknown factors in the decisionmaking process that were beyond FERC's control like whether utility companies had investments, the number of investments, costs of the investments, the decision of what would be recouped, who would the utilities pass the investment costs onto, etc. In this instance, FS is the ultimate decision-maker and its decisions will have a direct effect on known small entities that have profited from multiple use of FS' lands in the past or which planned to profit from the resources in the future.

Likewise, this matter is distinguishable from the ATA case. Unlike the ATA case, where EPA was setting standards for the States to implement under state regulatory authority, FS is developing a framework for the local/regional FS offices to use in adopting multiple use plans for national forests. The fact that it is a local office of FS versus the national office of FS is inconsequential. In either event, FS will implement the rule, not a third party entity. Regardless of where the office is located, FS is making the ultimate decision of whether a road will or will not be constructed. The proposed rule clearly states that roads may not be constructed or reconstructed in the unroaded portions of inventoried areas of the National Forest System unless the road is needed for public safety, for environmental response or restoration, for outstanding rights or interests protected by statute or treaty, or to prevent irreparable resource damage. See, Section 294.12, *Fed. Reg.*, p. 30288.

Direct Impacts on Small Entities

Moreover, small entities will be directly affected as a result of FS' decisions. The word "direct" is defined as "to regulate the activities or course of action thereof; stemming immediately from a source, cause, or reason; operating without agency or step..."² Small entities that already operate in national forests will have their operations seriously curtailed. (FS recognizes that the majority of these entities are small.) These and others, like the construction companies that build the roads, may have developed their business plans based on expectations of continued access and as a result of previously published FS plans. These impacts need to be evaluated. FS has some data already that would allow it to do so. For example, according to Tables 4 and 6 of the IRFA, the proposal estimates that there will be a 45% reduction in forest harvest in the Manti-Lasal National Forest alone in Utah. Other forests, such as Dixie (Utah) and Shoshone (Wyoming) will experience reductions in harvest that exceed 20%. In Montana, the Helena Forest will experience a reduction in total harvest volume of 12%. In those same areas of the country, FS controls more than 50% of the forested land base.³ For example, FS controls 52.3% of forested land in Montana; 66.6% of the land in Wyoming; and 68.5% of the forested land in Utah.⁴ Considering the vast amount of area owned by the FS, moving to or procuring from another location to harvest or process natural resources may be unrealistic or a short term solution. The end result of this proposal may be the ultimate demise of small businesses and small governmental jurisdictions that rely on the resources.

Advocacy recognizes that there is a substantial public policy interest in maintaining the natural beauty of the national forests and protecting the environmental resources found in the national forests. However, just these few examples indicate that the overall impact of this initiative could be economically devastating to many small businesses. The high percentage of reduction, combined with the fact that FS owns such a high percentage of the land in some areas, indicates that this rule may have a direct economic effect that cannot be recouped at other locations by the small entities that rely on them. Since the FS has some data, and will receive additional data from the comment period, it is not plausible for FS to continue to maintain that the proposal will not have a direct effect on small entities.⁵

² The Merriam Webster Dictionary.

³ Testimony of Mr. Frank Giatics, President of Independent Forest Product Association, before The House of Representatives Subcommittee on Rural Enterprises, Business Opportunities, and Special Business Programs, Tuesday, July 11, 2000, pp. 9-10.

⁴ *Id.*
⁵ Advocacy notes that FS may be arguing that the RFA does not apply because the use of FS property for harvesting natural resources is a future activity that may or may not occur, depending on the decision of the forest planners. While this argument may have some validity, it is not necessarily convincing. Some of the land that is being placed off limits by the initiative was originally targeted for resource harvesting. As a result of this rule, forest planners will not be able to allow the original tentative multiple use plans to be implemented. Small entities may have relied on the original plans in making business decisions. This issue should be addressed.

Information Provided By the Public Must Be Addressed in the FRFA

At the time of the proposal, FS asserted that they could not perform a complete IRFA because it lacked sufficient economic information about the economic impacts on the industry. Because its information was insufficient, FS provided a list of questions in an attempt to obtain the necessary information from the public. In reviewing the comments from the public, Advocacy hopes that FS will give full consideration to the information provided by the industry in response to FS' solicitation for additional information and perform an analysis that reflects 1) the impact on small entities that had access to resources that will have limited or no access after the rulemaking; 2) the impact of the regulation on small entities that were relying on future activities that will not occur as a result of the regulation; and 3) the impact of the regulation on activities outside of the FS lands (i.e. small communities).

Since our comments are being submitted prior to the close of the comment period, we cannot comment on the full scope of the information that FS may receive from the public regarding the economic impacts of this rule. However, we have received some information from the industry about potential impacts. The early information received indicates that the impact may in fact be significant. For example, representatives of the timber industry, which FS acknowledges is primarily dominated by small businesses, assert that FS controls 73.3% of the saw timber in Montana; 80.8% of the saw timber in Wyoming; and 85.4% of the timber volume in Utah.⁶ In the IRFA, FS asserts that the reduction in harvest as a result of this rule could range from 1 to 8% depending on the location.⁷ Fed. Reg. at 30286. Considering the high dependence on FS timber in certain areas, a 1 to 8% reduction could be economically significant. If not, FS needs to provide data showing why it is not economically significant to support its conclusion in the FRFA.

Moreover, the mining industry has indicated that the proposal disallows mining on 43 million acres of federal land. It asserts that more than \$7 trillion dollars of coal and metal resources will be placed off limits by the proposed rule.⁸ If this is not correct, then FS must explain why these resources will still be available and the approximate costs of obtaining access to the resources in areas where road construction and reconstruction is prohibited.

Economic effects such as these cannot be ignored. These early numbers indicate that the impact may indeed be significant. FS needs to explain why they are not significant and provide this information to the public. On the other hand, if the analysis indicates that the impact is indeed significant, Advocacy asserts that FS must fully address this in the FRFA and possibly repropose the rule.

⁶ *Id.*

⁷ On the surface, the percentages in the IRFA summary appear to be inconsistent with the tables found in the IRFA. FS needs to explain the inconsistencies found in the documents.

⁸ Testimony of Laura Skauter, Northwest mining Association

Alternatives Provided By Public Must be Given Full Consideration

The RFA requires an agency to consider alternatives to the proposal and provide a statement of the factual, policy and legal reasons for selecting the alternative adopted. 5 USC §605. If a reasonable alternative is provided from a member of the public, the agency must give it its full consideration. In its testimony before the House Subcommittee on Rural Enterprises, Business Opportunities, and Special Small Business Problems, the Northwest Mining Association suggested the alternative of allowing temporary roads, on an as needed basis, with either natural or affirmative reclamation. While Advocacy acknowledges that it is not an expert in forest planning, this seems like an alternative in allows harvesting of natural resources while assuring that the forests are not permanently damaged or irreparably harmed. At least the mitigating impacts of this alternative should be carefully analyzed.

Northwest Mining's suggestion is only one of what may be several strong alternatives offered by the public as a less burdensome solution to the problem. Failure to fully address alternatives that may provide a workable solution to the problem may violate the RFA and raise questions as to whether the agency actions were arbitrary and capricious. If challenged, a court may find that FS' treatment of alternatives was insufficient.

In addition, Advocacy believes that FS should require local FS planners to require local FS planners to perform an RFA analysis in drafting future forest plans that implement this rulemaking to assure that the implementation minimizes the economic impact while achieving the goal of preserving the environment. RFA compliance will provide the public with information necessary to participate fully in the rulemaking process and possibly provide suggestions as to ways that may make implementation less costly.

Conclusion

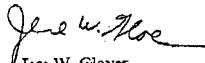
The Office of Advocacy recognizes the importance of protecting the environment, conserving our national forests, and preserving the natural beauty of the area. However, there is also a significant public interest in allowing access to natural resources in order to preserve our economic base. The potential economic impact of this proposal on small businesses and small communities could be devastating. Prior to implementing such a rule, FS should make every attempt to understand fully the economic impact of its actions and to find less burdensome or mitigating alternatives. In the alternative, it should explain fully why these alternatives will not help FS achieve its environmental objectives. As Advocacy has stated on several occasions, the requirements of the RFA are not intended to prevent an agency from fulfilling its statutory mandate. Rather, it is intended to assure that the economic impacts are fairly weighed and considered in the regulatory decision making process.

The public has an interest in knowing the potential economic impact of a particular proposed regulation. As the court stated when remanding a rule to the agency in *Northwest Mining v. Babbitt*, "While recognizing the public interest in preserving the environment, the Court also recognizes the public interest in preserving the rights of parties which are

affected by government regulation to be adequately informed when their interests are at stake and to participate in the regulatory process as directed by Congress." *Supra* at 13. Providing the public with a complete economic analysis that fully discloses the potential impact of the action and considers less burdensome alternatives not only complies with the requirements of the RFA, it also complies with the basic tenets of sound public policy that balance conflicting interests.

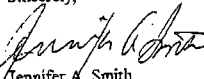
Thank you for the opportunity to comment on this proposal. If you have any questions, please feel free to contact us. Please place a copy of these comments in the record.

Sincerely,



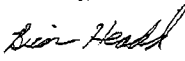
Jere W. Glover
Chief Counsel
Office of Advocacy

Sincerely,



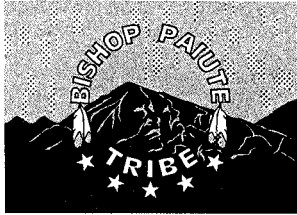
Jennifer A. Smith
Assistant Chief Counsel
for Economic Regulation &
International Trade

Sincerely,



Brian Headd
Economist

Cc: Charles Rawls



BISHOP TRIBAL COUNCIL

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CAET RECEIVED
JUL 13 2000

March 15, 2000

Jeff Bailey, Supervisor
Inyo National Forest
Bishop, CA 93514

Dear Jeff:

The Bishop Tribal Council appreciates the opportunity to respond to the Notice of Intent to prepare an EIS protecting roadless areas.

The Bishop Tribal Council appreciates the efforts of the US Forest Service to protect and manage and the natural resources and cultural sites now under their management. These resources and sites remain intrinsic to our people's cultural and religious beliefs and customs. We believe that the unique trust responsibility the Forest Service has to the Indian people unquestionably includes providing access at any time to areas and sites that are of cultural and religious significance to us. As you know, the remains of our ancestors and the evidence of their existence are sacred to us, as are the natural resources that to this day provide for our sustenance and cultural and spiritual needs. So, while we offer our comments on protecting roadless areas, we do so with the understanding that the Forest Service will continue to work with our Tribe to ensure our unrestricted access to and use of the natural resources and sites throughout our ancestral homelands.

The Bishop Tribal Council believes that it is extremely important that the US Forest Service live up to its trust responsibility to protect tribes' rights regarding freedom of religion. This trust responsibility cannot be separated from issues of access.

We support a plan throughout the forest (not just in roadless areas) that includes no new road construction anywhere in the Inyo National forest. Most importantly, we believe there should be no new roads within a perimeter of three to five miles of known cultural sites. If road construction must occur, it should occur only in areas that are already highly impacted by unregulated human encroachment. In addition, existing roads should be closed where there is evidence of environmental and / or cultural site degradation has occurred or is occurring.

Our specific concerns regarding the EIS protecting roadless areas relate primarily to the large number of acres involved and our desire to maintain access for our Elders so that we may preserve our cultural and spiritual traditions.

In California, a vast acreage is considered roadless. Any of these areas may include important cultural and spiritual areas. The Bishop Paiute Tribal Council is concerned that access to these cultural and spiritual areas be maintained for our people. Our Elders are the keepers of our

traditions. Many are unable to walk long distances. The only way we can continue our traditions and teach our young people about them is by having our Elders take us to these important places. Our most knowledgeable Elders are frail and are not able to travel long distances by foot. Any plan governing the management of roadless areas must maintain access to spiritual and cultural sites for traditional purposes.

Thank you for your consideration of these issues. We hope to discuss them with you at our next regularly scheduled meeting.

Sincerely,

M Bengochia
Monty Bengochia, Chair
Bishop Tribal Council

PAIUTE PROFESSIONAL BUILDING • 50 TU SU LANE • BISHOP, CA 93514
PHONE (760) 873-3584 • FAX (760) 873-4143

E-Mail mervin@telis.org

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Confederated Tribes of Grand Ronde
Natural Resources Department
P.O. Box 10
Grand Ronde, Oregon 97347
Contact: Cliff Adams (503) 879-2375

Ketchikan Indian Corporation

2960 Tongass Avenue
Ketchikan, Alaska 99901
(907) 225-5158
Fax (907) 247-0429

USDA Forest Service - CAET

T T T 5

July 14, 2000

The Fish and Wildlife Committee and the Timber Committee of the Confederated Tribes of Grand Ronde are offering comments regarding the "Roadless Area Conservation Proposed Rule".

The Tribal Committees are requesting that the following items be considered when adopting the Rule:

- 1. Recreation within the Roadless areas continue to be allowed
- 2. The existing roads be maintained and not closed to allow public access
- 1. Rules and policies regarding management and any restrictions in the Roadless Area be decided at the local level
- 2. Continue to acknowledge the rights and historical uses of The Native American Tribes in the proposed Roadless Areas
- 1. Continue to consult with The Native American Tribes regarding any future proposals or decisions other than what has been proposed as the preferred alternative for the "Roadless Area Conservation Proposed Rule".

USDA Forest Service - CAET
Attn: Roadless Area Conservation Proposed Rule
P.O. Box 221090
Salt Lake City, UT 84122

FACT RECEIVED
JUL 17 2000

Dear Sirs:

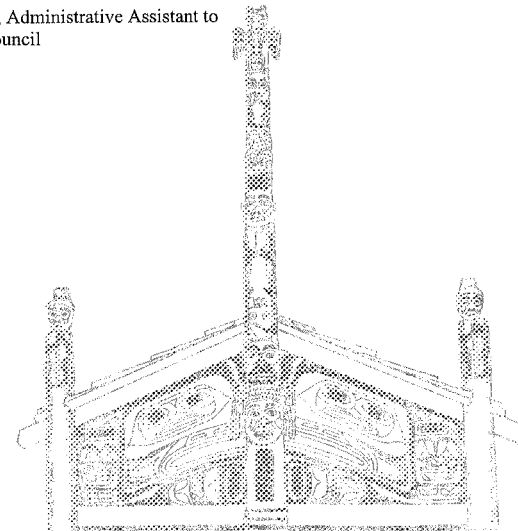
At a duly convened meeting on July 10, 2000, Ketchikan Indian Corporation Tribal Council authorized the submission of the attached Position Statement regarding the roadless.

If you have any questions, please feel free to contact me at: (907) 225-5158.

Sincerely,

Cheryl Haven, Administrative Assistant to
KIC Tribal Council

Enclosure



KIC

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Ketchikan Indian Corporation

2960 Tongass Avenue
Ketchikan, Alaska 99901
(907) 225-5158
Fax (907) 247-0429

Testimony for the Roadless issue
Discovery Center
6:00 p.m.

Position Statement

submitted by Merle Hawkins, Tribal Council and Subsistence Committee Chair

KIC Tribal Council would like to see Gravina Island remain a roadless area for the following reasons:

- ◆ Historically, and currently it is still is used by Alaska Native people from the Ketchikan area for subsistence fishing, gathering and hunting.
- ◆ The Saxman people use it and they have Rural status.
- ◆ This is traditional land of the Tongass Tribe, and although they are not federally recognized IRA Tribe, I represent them as an IRA Tribal Council. A respected Tongass Tribal leader, Esther Shea, said during the March 2000 Traditional Ecological Knowledge Conference, Co-hosted by Ketchikan Indian Corporation and the U.S. Forest Service: "We may not own the land anymore, but in our hearts it's ours." Her words are etched in our hearts.

The Forest Service is proposing a timber sale on Gravina Island with a proposal for road building in several alternatives. KIC opposes **any** road building on Gravina Islands public lands.

I recently met with other land holders of Gravina - DNR, Forest Service, Ketchikan Gateway Borough, Fish and Wildlife etc., for discussions of the following concerns:

- ◆ We are concerned that if roads are built on Gravina that the State DNR will again reopen the roads and clear cut all of their land on Gravina.
- ◆ The Forest Service would like to open the lands up for recreational use also. They cannot afford to maintain the roads they have now, let alone assume the maintenance burden on additional roads.
- ◆ All of the proposed or possible activities would jeopardize the subsistence areas on Gravina, especially Bostwick inlet.
- ◆ Gravina Island is a pristine environment and needs to be protected from road building, timber harvesting, recreation or other activities that would alter its current roadless characteristics.
- ◆ Gravina Island has been used by many generations of Alaska Natives-Tlingit, Haida and Tsimshian, for traditional hunting, fishing and food gathering. KIC would like to see that this area is available for future generations.
- ◆ These subsistence gathering activities provide significant social and ecological values. There is a lot of archeological evidence on Gravina Island which shows how important this area was and still is. Any road construction would jeopardize these values.

The Forest Service proposed action, under the roadless alternatives, would be to evaluate the quality and importance of roadless characteristics. KIC does not feel that the Forest Service is qualified to do this. A conflict of inherent extent as they have the responsibility to provide a certain amount of timber for market demand within the Tongass National Forest. The same circumstance exists with recreational areas; the pressure for people in Ketchikan to provide more recreational areas, but Alaska is special because of its historical access by canoe or boat, and unique due to all the islands.

- ◆ The Forest Service protects public lands on Gravina with multiple use objectives.
- ◆ If Gravina is opened up for recreation, you cannot protect the island's public land.
- ◆ Multiple use objectives would not work.
- ◆ Leaving that decision up to a local Tongass Ranger does not make sense as we get a new one about every three to five years and they do not know the local people.
- ◆ By the time they (new Rangers) acquire some of this knowledge they get transferred and the people suffer from their decision. Building roads on Gravina to Boswick would be mismanagement, timber harvest, road building and recreational use are not compatible with subsistence.
- ◆ KIC's position is that any timber harvest, road access, or recreational use on Gravina would have a detrimental environmental impact on the subsistence resources of the Island and waters.
- ◆ KIC opposes any timber harvest and/or any recreational use or development on Gravina Island.
- ◆ KIC supports Alternative # 4, 4D with full Tongass inclusion, **no road building on the**

Tongass.

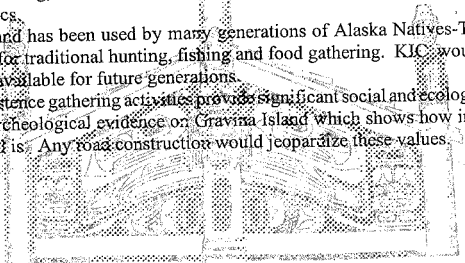
Merle Hawkins

Signed: Merle Hawkins, KIC Tribal Council

and Subsistence Committee Chair

July 13, 2000

Date



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The Klamath Tribes

P.O. Box 436
Chiloquin, Oregon 97624
Telephone (541) 783-2219
Fax (541) 783-2029
800-524-9787

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CAET RECEIVED

JUN 29 2000

June 19, 2000

The Honorable Dan Glickman
Secretary of Agriculture
United State Department of Agriculture, Room 213-A
14th Street and Independence Avenue, SW
Washington, D.C. 20250

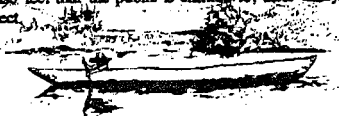
Dear Secretary Glickman:

As Chairman of the Klamath Tribes, an organization within Klamath County that has a major concern with establishing and maintaining a diversified and viable economic base within the Klamath Basin, I have been asked to comment upon the impact of the President's Roadless Plan (64 Federal Register 56306, October 19, 1999), particularly as it may impact the Pelican Butte Ski project under consideration in the Winema National Forest and, ultimately, the Klamath Tribes Economic self Sufficiency Plan, currently in the final stages of preparation for the Secretary of the Interior and the Congress. Without the benefit of having all the data needed yet, it does appear that this project, if successfully implemented, will have a significant positive financial impact on the Tribes' Economic Self Sufficiency Plan.

Without being able at this time, due in large part to the unavailability of the final EIS and other economic data, to address whether the Tribes will ultimately support or not support the project based upon its environmental, Tribal cultural and economic impacts, we strongly feel that, given the potential impacts to the entire community, this project should be provided a "grandfather" clause exemption to complete its EIS process and presentation to the Basin community for their consideration.

Several factors argue strongly for this exemption. First, this project has been under review and development by the Forest Service, the City of Klamath Falls, and private developers for over thirty years. It has always been a part of the regional economic development industrial diversification plan of a devastated timber dependent community. It needs resolution.

Second, the developer undertook the project at the invitation of the Forest Service under its Winema National Forest Plan, agreeing to prepare and write an Environmental Impact Statement under NEPA requirements. Given the years and \$3.75 million spent in good faith on a project under the previous rules, we feel that the research, feasibility and environmental impact analysis should be completed and placed before the public for their information. We also feel that the public is entitled to, after thirty years to render their position on the project.



D. Glickman, U.S. Sec of Ag., June 16, 2000
Page 2

Finally, the Tribes and I, personally, have spent a great amount of time and energy participating in six different community committees evaluating this project. We feel that there is a responsibility to the great number of hours and effort that many of our community leaders have put into this project over the years.

No organization or peoples in the Klamath Basin is more concerned with the environment and the protection of the forest that the Klamath Tribes and we are committed to the restoration and preservation of all lands and resources that are currently or will ever be under our jurisdiction. This position does include the recognition of the need for the Tribes and the general community to have a protected, multi-use forest for the benefit of all. In order to be able to determine which projects are beneficial and needed or not, we do need to have these project processes completed.

Sincerely,

Allen Foreman
Tribal Chairman
The Klamath Tribes

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D. Glickman, U.S. Sec. of Ag., June 16, 2000
Page 2

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Sincerely,



Allen Foreman
Tribal Chairman
The Klamath Tribes



Nez Perce

TRIBAL EXECUTIVE COMMITTEE
P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

July 14, 2000

USDA Forest Service - CAET
P.O. Box 221090
Attention: Roadless Areas Proposed Rule
Salt Lake City, Utah 84122

RE: Roadless Areas Proposed Rules

Dear Madam or Sir:

The Nez Perce Tribe appreciates the opportunity to comment on the Roadless Area Conservation Proposed Rule and Draft Environmental Impact Statement (DEIS). The Tribe recognizes and appreciates the enormous effort put forth by the Forest Service in developing these important protection measures for the Nation's valuable roadless areas.

The Nez Perce Tribe strongly supports the Roadless Area Conservation Proposed Rule. We believe that this rule represents a positive step forward to protect the lands the Forest Service has been assigned to protect and manage.

By virtue of the Treaty of 1855, the Nez Perce Tribe maintains treaty-reserved rights to hunt, fish, gather, and pasture cattle and horses within "open and unclaimed lands." These treaty lands include vast areas encompassed in the National Forests of northeastern Oregon, southwestern Washington, and Idaho. The Tribe believes that the protections provided for by this rule would be consistent with the treaty and trust responsibilities of the United States to preserve, protect, and enhance tribal treaty rights and treaty-reserved resources.

Further, this rule appears to be consistent with the salmon recovery plan adopted by four of the Columbia River treaty Tribes, including the Nez Perce Tribe. *Wy-Kan-Ush-Mi Wa-Kish-Wit: Spirit of the Salmon* calls for, amongst other actions, a decrease in roaded miles in managed watersheds, as well as improved drainage and decreased sediment delivery from roads that will not be obliterated or relocated.

It is critical that the Forest Service recognize and consider how this proposed rule would integrate with the federal government's salmon and steelhead recovery efforts for the Columbia River basin. The Conservation of Columbia Basin Fish or "All-H Paper" produced by a number

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of federal agencies, including the Forest Service, calls for a number of habitat measures to restore imperiled fisheries. The Forest Service and other federal agencies must recognize the importance of the measures called for in the proposed rule to these efforts, especially if the federal government fails to take decisive action to restore salmon and steelhead such as Snake River dam drawdown.

In addition to these general comments, the Tribe has the following specific comments:

1. The proposed rule provides that roads may be constructed or reconstructed if "[a] road is necessary pursuant to reserved or outstanding rights as provided for by statute or treaty." This exception should be revised to explicitly state that road construction and reconstruction may occur to ensure exercise of tribal treaty-reserved rights.
2. The proposed rule provides that roads may be constructed or reconstructed if "[a] road is needed to conduct a response action under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or to conduct a natural resource restoration action under CERCLA, section 311 of the Clean Water Act, or the Oil Pollution Act." In addition, roads may be constructed or reconstructed if "needed to protect public health and safety ... that, without intervention, would cause the loss of life or property." These sections should be revised, expanded, or clarified to allow road construction and reconstruction to protect the habitat of endangered or threatened species from an imminent threat of flood, fire, or other catastrophic event that would cause the destruction of the species or of critical habitat.
3. Pages 4-2 and 4-3 of the Draft Environmental Impact Statement (Volume 1) describes tribal consultation. This section describes how "Forest Service field line officers were directed to personally initiate contact with all potentially impacted tribal leaders." While such contacts were made and detailed presentations were made about the proposed rule, the local Forest Service staff had no authority to conduct a meaningful consultation on the rule or its impacts to the Tribe. Executive Order 13084 provides that each "agency shall have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." According to the President's April 29, 1994 memorandum regarding Government-to-Government Relations with Native American Tribal Governments, federal agencies "shall assess the impacts of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that Tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities." Consultation is the formal process of negotiation, cooperation, and mutual decision-making that ultimately leads to the development of a decision, not just a process or a means to an end. Consultation does not mean notifying the Tribe that an action will occur, requesting comments on that prospective action, and then proceeding with the action. In this scenario the decision is not affected. As such, the Tribe requests that appropriate staff be directed to conduct meaningful consultation with the Tribe on the further development of the proposed rule.

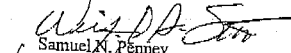
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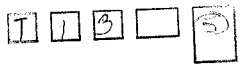
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The Tribe appreciates the opportunity to comment on the proposed rule. We look forward to conducting formal consultation on the rule as the process goes forward to address the concerns discussed above. If you have any questions regarding these comments, please feel free to contact Rick Eichstaedt in the Office of Legal Counsel (208-843-7355). Thank you.

Sincerely,


Samuel M. Penney
Chairman

43977



43977

DATE: July 17, 2000

TO: USDA Forest Service

FROM: Sally Nickelson
Wildlife Program Coordinator
Point No Point Treaty Tribes

RE: DEIS Roadless Areas Proposal

I am the Wildlife Program Coordinator for the four Point No Point Treaty Tribes (which include the Skokomish, Port Gamble S'Klallam, Jamestown S'Klallam and Lower Elwha Klallam Tribes) located on the Olympic Peninsula in Washington State. These four tribes strongly support the proposal in the DEIS to maintain current roadless areas in perpetuity. We support protecting all roadless areas, regardless of size and/or whether they have been inventoried. Even small patches of the late-successional habitat found in roadless areas can provide essential habitat and refugia for many species.

Our four tribes retained off-reservation fishing, hunting and gathering rights when they signed their treaty in 1855. Tribal members use Forest Service land for hunting, gathering and spiritual purposes. In addition, upstream land use practices on Forest Service ownership greatly influence fish habitat downstream. High road density, and concomitant road failure, has been a primary cause of fish habitat destruction and decline in salmon populations on the Olympic Peninsula.

Elk is a species of great cultural importance to these four tribes. Unfortunately, during the past 10 years, elk populations on the Olympic Peninsula have declined rapidly, in part due to overharvest because of easy access on the extremely dense road network on both Forest Service and private industrial timberland. In many areas on the Peninsula, road density is 6 miles of road for every square mile of habitat. This high road density increases the vulnerability of wildlife species to both legal and illegal hunting to a point where many local populations can no longer maintain themselves. The Point No Point Tribes closed two Game Management Units to tribal elk hunting in the past decade because of population declines. One of these, the Skokomish Game Management Unit, contains a culturally important herd that ranges along the South Fork Skokomish River. The upper reaches of this river contains one of the proposed roadless areas, which can serve as a refuge for the elk during hunting season, when seasons are reopened.

In addition, roadless areas generally contain older trees, and can provide old growth habitat for species dependent on late successional forest, including the federally listed Northern Spotted Owl and Marbled Murrelet. The Tribes support completely protecting all remaining late successional habitat (not only from road building, but also from other destructive uses such as helicopter logging, grazing, mining, and ATV use). Some culturally important plant species are found primarily in old growth stands, and many of these stands have spiritual significance.

Our tribes disagree with previous federal policy of subsidizing private timber companies by building and maintaining roads so that the private companies could log public land. This was usually done at a fiscal loss

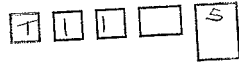
to the public (the cost of building and maintaining the road was greater than the amount received for the timber). We believe that the greater value of the land lies in its ability to provide fish and wildlife habitat.

Our tribes urge the Forest Service to completely protect the few remaining roadless areas on their ownership in perpetuity. Unfortunately, most of these roadless areas occur at high elevation in very steep terrain, which is marginal habitat for most wildlife species. In addition to protecting already roadless areas, we suggest that the Forest Service reduce road density in the more productive low elevation stands to protect both wildlife species and fish habitat. Maintaining tribal access to Forest Service land for treaty hunting and gathering is critical. However, a balance must be achieved between reasonable and dispersed access and reducing road density to decrease vulnerability of game species to hunting and poaching. We believe that scarce dollars should be spent in decommissioning many roads and upgrading the remaining ones to current standards, not in building new roads.

Thank you for the opportunity to comment on this important proposal.

Sincerely,

Sally Nickelson
Wildlife Program Coordinator
Point No Point Treaty Tribes
7999 NE Salish Lane
Kingston, WA 98346
360-297-6540



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13 July, 2000

USDA Forest Service
 Attention: Roadless Area NOI
 Box 221090
 Salt Lake City, UT 84122

Subject: Roadless Initiative --- Proposed Rule and DEIS

To Whom It May Concern:

Sealaska Corporation appreciates the opportunity to respond to the Forest Service Roadless Area Conservation Draft Environmental Impact Statement, dated May 2000. This EIS results from the proposal by the Forest Service to review the National Forest System Roadless Areas Initiative as published in Federal Register/Vol. 64, No. 201/ Tuesday, October 19, 1999 (p56306-56307).

Sealaska Corporation, the Regional Native Corporation for Southeast Alaska, was created under the Alaska Native Claims Settlement Act (ANCSA) of 1971. Sealaska represents 16,000 shareholders whose heritage derives from Tlingit, Haida and Tsimshian Native tribes of Southeast Alaska. The economy of Southeast Alaska is dominated by the Tongass National Forest, largely because it surrounds all of our towns and villages.

Sealaska has determined that the Proposed Rule is inappropriate as a National policy; and specifically, should not be applied to the Tongass and Chugach National Forests. The basis for our determination is set forth in the following sections.

JUL 17 2000

On behalf of Sealaska Corporation, thank you for the opportunity to provide our comments regarding the proposed National Forest System Roadless Areas review. Sealaska reserves the right to provide additional comments should the deadline be extended.

Sincerely yours,

SEALASKA CORPORATION

Robert W. Loescher
 President and Chief Executive Officer

CC: The Honorable President Bill Clinton
 Lynn Cutler, Deputy Assistant to the President
 George Frampton, Council on Environmental Quality
 The Honorable Governor Tony Knowles
 The Honorable Senator Stevens
 The Honorable Senator Murkowski
 The Honorable Congressman Young
 S.E. State Senators and Representatives
 Alaska Speaker of the House
 Alaska President of the Senate
 SE Alaska Communities
 SE Alaska ANCSA Village and Urban Corporations
 ANCSA Regional Corporations
 Alaska Municipal League
 S.E. Conference
 Jack Phelps, Alaska Forest Association
 Resource Development Council
 Alaska Miners Association
 Rick Cables, Regional Forester
 TNF District Rangers
 Ed Thomas, Tlingit & Haida Central Council
 Jacqueline Martin, ANS Grand President
 Sam Jackson, ANB Grand President
 Rick Harris
 Chris McNeil
 Ross Soboleff
 Budd Simpson
 Alan Mintz
 Gregg Renkes

GENERAL COMMENTS

By delaying a decision on the exclusion or inclusion of the Tongass until 2004, the Forest Service will stop all investment in new manufacturing caused by uncertainty in the future timber supply. Delaying a review of the Tongass National Forest for inclusion effective 2004 is self-fulfilling in terms of assuring that demand for Forest Service timber will continue to diminish. The forest products industry is actively reconfiguring itself to utilize Forest Service timber from the Tongass National Forest at current supply levels. Active projects include veneer mills, ethanol manufacturing from wood wastes, and sawmill reconfiguration to fully utilize timber expected to be offered in stumpage sales. By placing the Tongass NF into a review category in 2004, the government is effectively closing the door on any opportunities to create a viable industry for the benefit of many communities. No company can be expected to pursue opportunities if there is a real risk that stumpage volume will not be available in as little as a few years.

If the Tongass National Forest (TNF) is included in the Proposed Rule no roadless areas should be designated without first conducting a detailed analysis of alternatives. This analysis must be very broad to identify all impacts such designations may have on the people that reside within the TNF. This analysis must go beyond the biological analysis and include analysis on subsistence, cultural, social, economic, job and family sustainability that will be affected by such designations. Further, the analysis must evaluate the result of any site specific designation on the ability of the TNF to meet other Federal obligations made to the State of Alaska and Alaska Natives through prior laws and land agreements regarding land and resource allocations from the TNF. Specific agreements, geographic areas and communities that should be included in the analysis are described in further detail in the following sections.

DETAILED COMMENTS

1. The Proposed Rule recommends a categorical elimination of road construction in roadless areas. This proposal is contrary to Federal law and recommendations of the "Committee of Scientists" (COS). The

scope of analysis and alternatives must rectify these obvious conflicts with National forest policy and laws and recommendations of the COS.

- ◆ The Proposed Rule eliminates all road construction and designates roadless areas on the National Forests which is against the law. The National Forest Management Act (NFMA) establishes a process for forest planning, including new roadless management policy, when the agency proposes significant changes to a forest plan. Development and implementation of a new roadless management policy will constitute a significant and major plan amendment because it will affect the classification and use of resources on millions of acres of forestland.

Under NFMA, a plan amendment which results in a significant change in a plan must undergo the same land management planning process that is used for original and revised plans including, but not limited to, the preparation of an environmental impact statement (EIS) in accordance with NEPA. The proposed Roadless Initiative NEPA-EIS is not consistent with the NFMA because the changes being proposed are not being done in the same manner as the plan itself was developed. In this case, a plan is developed by the Forest Supervisors using the NEPA process as the decision making process for meeting NFMA planning requirements (36 CFR 219.1 et seq). Hence a proposed amendment must follow the same process as the original plan including plan amendment occurring at the forest level.

- ◆ The Proposed Plan does not respond to the Report of the Committee of Scientists (COS) 1999. The COS recommends that the planning process consider a broad range of values, uses, products, and services. The process should be democratic, open and accessible with a large degree of public participation representing all stakeholders. It should be oriented to local areas with the highest level of approval being the Regional Forester. It should fit the organization, communication, and decision-making styles of the community; and should work to reduce the negative economic and social impacts of land-use changes.

The procedure by which the Administration is identifying areas for roadless designation accomplishes none of these recommendations. Alternatives must be included that meet the COS recommendations as described above.

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2. The Proposed Rule proposes to establish the criteria that must be used “through the forest planning process” to protect roadless areas. The scope of analysis overtly emphasizes biological protections and fails to consider the impacts of roadless designations on sustainability of affected communities, school funding and families that are dependent on National Forests for their livelihoods. The EIS alternatives analysis should include the following:

- ◆ Require that forest planning, including roadless designations, be done at the forest and local (community) level.
- ◆ Include authorities such that the roadless area designations can be vacated to manage for desired habitat characteristics, and provide reasonable road access if insect, disease, and fire outbreaks pose a risk to National forest and adjoining private and non-Federal public lands.
- ◆ The report of the Committee of Scientists (COS) finds the less populated areas of the west will suffer substantial economic and social dislocations due to their low economic and social resiliency. Practically all of the communities in Southeast Alaska have such low resiliency. The further designation of roadless areas on national forests would be devastating to those living in that region. For the reasons described by the COS, the criteria for designating roadless areas must be expanded to include specific requirements that ensure school funding and jobs are protected and that the resources on the national forests will be available to maintain sustainable communities and families. Consequently, the alternatives analysis must include options that preclude roadless designation (both inventoried and un-inventoried) if the areas being considered have resources that would contribute to the economic and social welfare of nearby communities. Alternatives must include preclusion of roadless designations if the affected communities meet one or more of the following criteria:
 1. Have a seasonally adjusted unemployment rate that is 5% above the average for the State.
 2. Have an average per student expenditure that is less than the average per student expenditure for the State.
 3. Have more than a 30% minority population.

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4. Have a per-capita income that is less than 10% of the average per-capita income for the State.
5. Requires road access across roadless areas for community infrastructure including municipal drinking water supply, development of hydroelectric power sources and access to regional road and transportation systems.
6. If roadless areas are designated and, subsequently, the community fails to meet the above benchmarks, the roadless areas can be rescinded as a plan amendment.

3 Federal laws preclude the inclusion of the Tongass National Forest and Chugach National Forest in the “Roadless Initiative”. Before either forest can be included under the Proposed Rule, conclusive legal authority to include these forests must be proven. The basis of excluding these forests follows:

- ◆ The temporary roadless suspension correctly exempts the Tongass and Chugach National Forest from the Roadless Initiative. That suspension should be made permanent due to the applicable Federal laws governing land designations in both forests. The legal basis for exclusion includes:
 1. Designation of additional roadless areas would violate the Alaska National Interest Land Conservation Act (ANILCA). ANILCA prohibits: (1) Forest Service studies that contemplate the establishment of additional conservation, recreation, or similar units; (2) the withdrawal of more than 5,000 acres of land, in aggregate, without Congress’s approval, and (3) the review of roadless areas of national forest lands in Alaska for the purpose of evaluating their suitability as wilderness.
 2. Under ANILCA § 1326, the Forest Service is prohibited from (1) using the plan amendment process, the moratorium, or any other process to conduct additional studies of public lands in Alaska, the single purpose of which is to set aside roadless areas from further development; and (2) withdrawing lands in excess of 5,000 acres in aggregate, without Congressional approval.
 3. ANILCA § 1326(b) prohibits the executive branch from studying federal lands in Alaska for the single purpose of considering

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whether to establish "a conservation system unit, national recreation area, national conservation area, or for related similar purposes." Unless authorized under ANILCA (16 USC § 3213(b)) or by Congress, the Forest Service is prohibited from studying any roadless areas during a plan amendment process, much less the administrative appeal process, if the purpose is to establish a conservation unit, recreation area, conservation area or any other unit serving related or similar purposes.

4. Congress expressly stated that the conservation areas established under ANILCA were sufficient protection "for the national interest in the scenic, natural, cultural, and environmental values on the public lands in Alaska." (15 USC § 3101(d)).
- ◆ In addition to the authorities that exclude both the Tongass and Chugach National Forest from any roadless initiatives, including this Proposed Rule. The following legal authorities further exclude the Tongass National Forest from further consideration:
 1. No regulatory or statutory process exists for the Forest Service to unilaterally change the revised TLMP during the appeal process or otherwise. Any determinations that the Forest Service attempts to make during the TLMP appeal process must be limited to correcting what the Forest Service agrees were legal errors in the TLMP planning process. Any other changes (including changes to the Tongass roadless area policy) must be pursued as a plan amendment through the appropriate forest planning regulations.
 2. In the Tongass Timber Reform Act (Public Law 101-626; (TTRA)), Congress addressed wilderness issues (16 USC 539(d)). The wilderness clauses dealt with designating wilderness areas, additions to areas, and certain roadless managed areas. There are no clauses stating that there shall be no more wilderness or roadless areas, because Congress foreclosed the creation of more such areas since it has reserved for itself the determination of wilderness and roadless areas per ANILCA and TTRA.
 3. The TTRA Title I-Forest Management Provisions; Sec. 101 amends Sec. 705(a) of ANILCA to read: "(a) Subject to appropriations, other applicable law, and the requirements of the

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National Forest Management Act of 1976 (Public Law 94-588), except as provided in subsection (d) of this section, the Secretary shall, to the extent consistent with providing for multiple use and sustained yield of all renewable forest resources, seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber from such forest and (2) meets the market demand from such forest for each planning cycle."

- ◆ Under the Tongass Land Management Plan Record of Decision (1999) the Forest Service has established an allowable sale quantity (ASQ) of 187 mmbf. However, the application of the roadless initiative would substantively reduce the ASQ to about 50 million board feet. This volume will not meet the needs of local industry, and will have extensive negative effects on the Southeast Alaska regional economy. If the Tongass is included, the alternatives analysis must ensure that the roadless action will not preclude the Secretary from meeting the provisions of Title I, Section 101 of TTRA and preclude the Forest Service performing under its own forest management plan.
- 4. If the Tongass National Forest is included in the Proposed Rule, no areas should be designated until the scope of the analysis and alternatives are prepared that consider all impacts such designations may have on the people that reside within the TNF. The scope of analysis and alternatives should include the following:**
- ◆ The Tongass contains over 15 million acres of land. Over 6 million acres are placed in national monuments and wilderness areas. An additional 728, 000 acres are legislated Land Use Designation II (un-roaded) areas. Another 7.14 million acres prohibit road construction/reconstruction. About 1.5 million acres (10%) are left for development activities. Given the extensive ecological protections that already exist, the alternatives analysis, before concluding that additional roadless areas should be designated, must first conclusively prove that the current land allocations and management practices fail to provide clean-water, biological diversity, wildlife habitat, forest health, dispersed recreation and other public benefits.
 - ◆ The Roadless Initiative must not supersede or abrogate the rights of Alaska Natives to achieve their entitlements granted under the 1971

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Alaska Native Claims Settlement Act (ANCSA). The final rules must include unimpeded exercise of land selection rights and authority to use Native land and land selection entitlements to exchange for other for public land that may include roadless areas.

- ◆ The Forest Service must analyze the social and economic effects for each community in Southeast Alaska before designating roadless areas. Further, the alternatives analysis must be done on a local and a regional basis to quantify the cumulative effects, and to demonstrate that economy of scale industries can be sustained. There are numerous Southeast Alaska rural communities, whose residents are predominately Alaska Natives, who rely on the timber industry for a substantial portion of the economic activity necessary to assure community viability. Reductions in Forest Service timber sales as a result of the Proposed Rule will negatively effect the economic well being of these communities. The alternatives analysis must identify "realistic economic alternatives" that assure that these communities retain current or improved levels of economic and social viability.

Communities in Southeast Alaska, that must be included in individual social-economic studies include but are not limited to: Annette, Ketchikan, Hydaburg, Craig, Klawock, Hollis, Kasaan, Thorne Bay, Naukati, Coffman Cove, Whale Pass, Calder mine, Point Baker, Port Protection, Laboucher Bay, Meyers Chuck, Edna Bay, Cape Pole, Rowan Bay, Kake, Petersburg, Kupreanof, Wrangell, Sitka, Baranof Warm Springs, Tenakee Springs, Hoonah, Excursion Inlet, Gustavus, Juneau, Elfin Cove, Pelican, Skagway, Haines, and Klukwan. Most of these communities have been identified as having low resiliency.

- ◆ Southeast Alaska is developing an integrated regional transportation and energy system. Each community is improving their essential community infrastructure (e.g. municipal water supplies, and transportation infrastructure). Before any roadless designations occur, the analysis of effects and alternatives must be prepared that affect these major initiatives. Specific areas for analysis and alternatives development include:
- ◆ The State of Alaska is revising its regional ferry/road system to allow more efficient and economical travel throughout Southeast Alaska.

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Access must be preserved for the State's regional ferry/road transportation system.

1. On Prince of Wales Island, communities that are connected, or may be connected in the future by roads and powerlines include: Hydaburg, Klawock, Craig, Hollis, Kasaan, Thorne Bay, Naukati, Coffman Cove, Whale Pass, Calder mine, Laboucher Bay, Point Baker, and Port Protection. In addition, hydroelectric sites in the higher elevations of Prince of Wales Island need to be identified in order to eventually replace or supplement electric demands in these communities.
2. The current road access between Cape Pole and Edna Bay must be preserved. In addition, a hydroelectric facility servicing those communities may be feasible in the Mount Holbrook area on Koskiusko Island.
3. There must be a road corridor and power line corridor between Kake, Kupreanof and Petersburg to be developed when future economics make the project feasible.
4. Sitka must be allowed to have a road corridor to Rodman Bay on Peril Straits for potentially more efficient ferry access.
5. Although not warranted at the present time, there must be provisions for a future road and electrical intertie between Hoonah and Tenakee Springs.
6. Allowances must be made for a power line easement between Juneau, Greens Creek mine, and Hoonah.
7. Road access from Skagway and Haines to Juneau needs to be preserved along both shorelines of Lynn Canal so that the best access to Juneau can be preserved. In case the Taku River road becomes more viable, a road corridor must be included in any transportation plan.
8. In the future, Rowan Bay may find a source for hydroelectric power to replace diesel generation. The best sources probably are in the watersheds along the ridge that fronts onto Chatham Straits.

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◆ The DEIS does not present a balanced picture of characteristics attributed to roadless areas compared to roaded areas.

1. By utilizing current road building standards little or no foreign material is introduced into the riverine environment. Water is not degraded. In the Tongass National Forest and the rest of Southeast Alaska, best management practices (BMPs) dictate that roads be located and constructed so that pollutants do not reach streams. Roads systems are designed to avoid oversteep slopes. Full bench and-hauling are required on lesser slopes over a defined steepness. In many instances bridges are designed and constructed with abutments that are above stream banks. These and similar BMPs result in maining a high quality riverine environment. A reasonable amount of timber harvest is appropriate for every national forest in the United States. In the case of the Tongass NF, the Forest Service administratively has vastly exceeded reserving areas in a roadless category for the alleged protection of scenery, biodiversity, sustaining populations of indicator species, protection of salmon habitat, etc. This has resulted in much more land being reserved to a roadless category than is necessary to protect these non-commodity characteristics in every part of the national forest.
2. Development is not necessarily antagonistic to other values. In the Pacific Northwest, including Alaska, the modification of stream riparian areas, using methods such as partial timber harvest, has resulted in providing more food for invertebrates, which are the animals that initiate the food cycle that results in more food for fish. In addition, different species of anadromous fish prefer different kinds of in-stream habitat. Stream access allows fishery biologists to manage the habitat for the most desirable species. Forest Service and other scientists are discovering that secondary benefits can have a neutral effect or even positively accrue to stream productivity (Gregory et al¹, Martin², Murphy and Koski³, Murphy and Hall⁴, Murphy and Meehan⁵, Wipfli⁶).

¹ Gregory, S.V. et al. 1987. Influence of forest practices on aquatic production. Pp 233-255, In Salo and Cundy editors, Streamside Management, Forestry and Fishery Interactions Univ. Washington, Seattle.

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3. The DEIS has failed to adequately explain the many benefits that users enjoy due to the availability of Forest Service roads. The Forest Service has published reports that show that roads are being used with increased frequency by many citizens. Should road building be substantially restrained in the future, the impact on roaded areas will be very substantial. A great majority of the public demands easier access to enjoy the great outdoors compared to the very few who can afford to recreate in roadless areas. More, not less, area is needed to provide for multiple uses including recreation for people who prefer to drive, access for hunters, fishermen and subsistence gatherers, mineral exploration and development, and timber harvest. The final EIS must recognize the need for a different balance providing more favor for those who want the easier access.

In an October 12, 1999 letter, from Governor Tony Knowles to Mr. George Frampton, Chair, Council on Environmental Quality, Governor Knowles enumerated reasons why the Tongass National Forest should not be included. In that letter he stated that the TLMP process must be allowed to proceed, that "It would be an outrage because we were assured previously that the Tongass would not be included in this review...". "A change now in that course and direction would constitute a doublecross of the citizens of the State of Alaska." Sealaska fully supports the Governor's position that ANILCA and TTRA defined those areas in the Tongass National Forest that should be roadless. Those areas that shall be maintained for economic development including timber harvest, road construction, and mineral development.

² Martin, D.J., M.E. Robinson and R.A. Grotfendts 1998. The effectiveness of riparian buffer zones for protection of salmonid habitat in Alaska coastal streams. A Report for Sealaska Corporation, Juneau, Alaska. 85 pp.

³ Murphy, M.L. and K.V. Koski 1989. Input and depletion of woody debris in Alaska streams and implications for streamside management. North American Jour. Fish. Mgt. 9(4): 427-436.

⁴ Murphy, M.L. and J.D. Hall 1981. Varied effects of clear-cut logging on predators and their habitat in small streams of the Cascade Mountains, Oregon. Can. Jour. Fish. Aquat. Sci. 38: 137-145.

⁵ Murphy, M.L. and W.R. Meehan 1991. Stream ecosystems. American Fish. Soc. Spec. Publ. 19: 17-46.

⁶ Wipfli, M.S. 1997. Terrestrial invertebrates as salmonid prey and nitrogen sources in streams: contrasting old-growth and young-growth riparian forests in southeastern Alaska. Can J. Fish. Aquat. Sci. 54: 1259-1269.

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NO. 443 P. 2/3

JUL. 14. 2000 2:18PM

NO. 443 P. 3/3

Sitka Tribe of Alaska

Tribal Government Sitka, Alaska

Tribal Resolution 00-25

A Resolution of the Sitka Tribe of Alaska opposing inclusion of the Tongass National Forest in the U.S. Forest Service National Roadless Initiative Policy Review & Supporting Alternative T-1

- WHEREAS,** the Sitka Tribe of Alaska is a federally recognized tribal government responsible for the health, safety, welfare, and cultural preservation of over 3,000 tribal citizens residing in Sitka, Alaska; and
- WHEREAS,** Section 708 of the Alaska National Interest Lands Conservation Act of 1980 resolved roadless issues in a compromise bill establishing over 5,000,000 acres in 14 acres as Wilderness on the Tongass National Forest and the Tongass Timber Reform Act of 1990 added over 1,000,000 in additional Wilderness designations to maintain their wildland characteristics; and
- WHEREAS,** the Record of Decision signed by Undersecretary on the Revised Tongass Land Use Management Plan notes that the Tongass National Forest would be exempt from the roadless moratorium as the newly revised plan had the benefit of considerable science and public involvement in the 12 year revision process for the Forest Plan; and
- WHEREAS,** the Tongass National Forest is comprised of approximately 17,000,000 acres, of which 90% is currently un-roaded and approximately 50% of the current Tongass National Forest timber base would become included in the acres proposed for the Roadless Initiative; and
- WHEREAS,** the Tongass National Forest is essential in bringing in stability and certainty to the economy of SE Alaska, providing jobs for many families dependent on such stability and inclusion in the Roadless Initiative would cause economic harm to the region; and
- WHEREAS,** the implementation of the Roadless Initiative to the Tongass National Forest would greatly diminish access to all natural resources and may eliminate opportunities for the construction of future - transportation and utility corridors throughout SE Alaska.

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NOW THEREFORE BE IT RESOLVED, by the Sitka Tribe of Alaska strongly opposes the inclusion of the Tongass National Forest in the "Roadless Initiative" that the Sitka Tribe of Alaska supports Alternative T-1, further that the Sitka Tribe of Alaska supports the current Land Management Plan.

BE IT FURTHER RESOLVED, that the Sitka Tribe of Alaska opposes any unilateral actions to modify the Record of Decision as such actions are contrary to proper resource planning and circumvents the public planning process as mandated by the National Forest Management Act.

CERTIFICATION

The foregoing Resolution was adopted at a duly called and convened meeting of the council of the Sitka Tribe of Alaska held on July 13, 2000, at which a quorum was present, by a vote of 4 IN FAVOR, 1 AGAINST, AND 3 ABSENT.

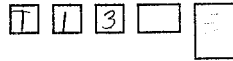
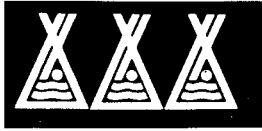
Larry A. Weisman
Sitka Tribe of Alaska - Tribal Chairman

Attest:

Doreen Jones
Sitka Tribe of Alaska - Tribal Secretary

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JUL 17 2000



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THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

NATURAL RESOURCES DEPARTMENT
P.O. Box C, Warm Springs, Oregon 97761

July 17, 2000

USDA Forest Service
Box 221090
Salt Lake City, Utah 97701

RE: Roadless DEIS/Proposed Rule

Dear Sirs:

The Confederated Tribes of the Warm Springs Reservation of Oregon ("CTWSRO") are pleased that the proposed roadless area rule protects unroaded portions of inventoried roadless areas from further road construction. As the DEIS recognizes, protection of these areas is critical to the health of our ecosystems, including fish, wildlife, and native plant populations. Although the proposed rule takes some solid first steps toward protecting remaining areas, it doesn't go far enough. We ask that you address the following concerns when making your final decision on roadless area protection:

1. We are disappointed that the proposed rule fails to go further and prohibit logging, mining, ORV use, and other detrimental uses in the unroaded portions of inventoried roadless areas. There are sufficient opportunities for these uses in roaded areas. Conversely, there are few areas that have not been degraded by these activities. The latter is particularly true for areas that support anadromous fish within CTWSRO ceded lands (see ICBEMP designation of A1 watersheds in Oregon).
2. Given the poor forest health conditions in the Columbia Basin (and presumably elsewhere), we are disappointed that uninventoried roadless areas receive no protection under the rule. The DEIS recognizes that unroaded and unlogged areas comprise our best remaining ecosystems. These areas generally offer little commercial harvest potential (hence their unroaded condition) are in no need of "stewardship" or other types of treatment. You should reconsider extending automatic protection to roadless areas larger than 1000 acres. (See *Wj-Kan-Ush-Mi Wa-Kish-Wit (Spirit of the Salmon)*, The Columbia River Anadromous Fish Restoration Plan of the Nez Perce, Umatilla, Warm

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Springs and Yakama Tribes (CRITFC, 1995), calling for cessation of logging, mining, and road construction in all roadless areas ≥ 1000 acres).

At a minimum, the rule should direct local units to immediately determine the suitability of uninventoried roadless areas for the protections given inventoried roadless areas. Putting off this analysis until forest plan revision is a mistake. Forest planning is a long process, and given current administrative burdens (ICBEMP implementation, ESA consultations, etc.) it is highly unlikely that forest plans will be revised in the foreseeable future. If analysis of these areas is put off until the next forest planning cycle, it is imperative that these areas receive interim protection through project-by-project analysis of roadless characteristics (procedural alternative D).

3. The proposed rule should offer some protection to inventoried and uninventoried roadless areas in the Tongass National Forest. While we understand the arguments in favor of a transition period, we strongly recommend providing interim protection for these areas. The DEIS states that "the Forest's] high degree of overall ecosystem health is largely due to the quantity and quality of its inventoried roadless areas" and 98% of southeast Alaska's fish runs originate on the Tongass. If so, and if many Tongass timber sales go unsold because of lack of demand, why not give some interim protection to the Forest's inventoried roadless areas? The DEIS statement that project-by-project analysis doesn't provide the appropriate scale for roadless analysis is puzzling; in reality, the lack of a project-by-project analysis ensures the forest will be unable to analyze roadless values at the appropriate scale because ad-hoc interim decisions will have compromised many roadless areas.

In summary, we commend the Forest Service for recognizing the value of roadless areas and undertaking this effort to protect the few remaining roadless areas in our national forests. Given the unquestioned importance of these areas, we urge you to reconsider providing stronger substantive and procedural protections for both inventoried and uninventoried areas, and for the Tongass National Forest.

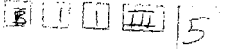
Sincerely,

Brad Nye
Off-Reservation Habitat Policy Advisor

cc: Tribal Council
Robert A. Brunoe, General Manager, Department of Natural Resources

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 Kootznoowoo, Incorporated
 U.S. Forest Service Roadless Area Testimony
 Angoon, Alaska
 June 29, 2000

RECEIVED

JUL 13 2000

Comments of Carlton Smith, CEO Kootznoowoo, Incorporated.

Kootznoowoo, Incorporated is the for profit Village Corporation for Angoon created pursuant to the terms of the Alaska Native Claims Settlement Act (ANCSA) for the benefit of the Alaska Native People of Angoon. Kootznoowoo represents over 900 shareholders plus an estimated 1000 additional family members.

Kootznoowoo owns approximately 32,000 acres of land conveyed as a result of the terms of ANCSA, the Alaska National Interest Lands Conservation Act (ANILCA) and through private acquisitions. Kootznoowoo also has access, development and traditional use rights to lands located within the Kootznoowoo Wilderness in the Admiralty Island National Monument, as well as the right to select additional land on Prince of Wales and Chichagof Island.

The lands Kootznoowoo owns are located throughout Southeast Alaska. These include approximately 21,000 acres on Southern Prince of Wales Island, 8000 acres in the Mitchell Bay, Kanalku Bay and Favorite Bay areas of the Kootznoowoo Wilderness; and, 3500 acres of land on the Angoon Peninsula and Killisnoo Island, along with a couple of hundred acres of private acquisitions, within the boundaries of the Admiralty Island National Monument and Kootznoowoo Wilderness.

In addition, Kootznoowoo has hydro power development rights, which it intends to exercise, to 14,500 acres of land in the Kootznoowoo Wilderness. And, Kootznoowoo has co-management rights to thousands of acres in Mitchell, Kanalku and Favorite Bays and their environs, pursuant to section 506 of ANILCA.

All of these lands and rights were conveyed to Kootznoowoo in recognition of the historical aboriginal ownership, rights, and uses by the Tlingit People of Angoon. And, to help provide for their current and future subsistence, cultural, employment, economic and social needs.

After consideration of these rights, and the needs of its Shareholders and their families; and, after careful consideration of the Roadless Areas Proposal; and, after consultation with Sealaska Corporation, Kootznoowoo, Incorporated encourages the Forest Service to abandon the idea of imposing the Roadless Areas in the Tongass and Chugach National Forests.

The reasons for our objections to this proposal are many, but we will speak to a few key points.

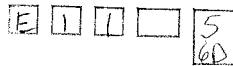
1. The Administration's Roadless Area Proposal will violate the terms and conditions of ANCSA, ANILCA and the Alaska Statehood Act. All of these acts provide for access to ANCSA lands and Alaska's isolated communities. They were enacted by Congress after long and careful deliberations and they cannot be overturned or have their purpose defeated by unilateral administrative fiat.

In summary, Kootznoowoo encourages the Forest Service to discard the Roadless Area Proposal for Alaska and return to professional multiple use forest land planning. There are many existing laws, regulations and plans that protect and manage the environment. The Roadless Area Proposal is not the way to achieve ecosystem protection.

On behalf of Kootznoowoo and its family of Shareholders, thank you for this opportunity to address this important issue and thank you for considering these comments.

BYRON L. DORGAN
NORTH DAKOTA
111 HART DRILLING
WASHINGTON, DC 20510-3405
202-224-2261
202-224-6978 TDD

COMMITTEES:
APPROPRIATIONS
COMMERCE, SCIENCE & TRANSPORTATION
ENERGY & NATURAL RESOURCES
INDIAN AFFAIRS
CHAIRMAN, DEMOCRATIC POLICY COMMITTEE



United States Senate

WASHINGTON, DC 20510-3405

July 10, 2000

CAET RECEIVED
JUL 17 2000

Dr. Mike Dombeck
Chief of the Forest Service
PO Box 96090
Washington, D.C. 20090-6090

Dear Chief Dombeck:

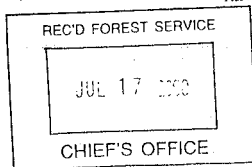
I write to request a 90-day extension of the current comment period for the Proposed Future Management of Roadless Areas.

In light of the Forest Service's decision to simultaneously implement six plans for the management of the grasslands in North Dakota, additional time for comment seems an appropriate and reasonable request. The July 17 deadline simply doesn't provide the time needed to fully understand the implications of the Roadless Plan and how it fits with the Forest Service's five other proposed plans.

I believe the Forest Service should allow a more significant time period for interested parties to thoroughly review and comment upon the Proposed Roadless plan, and I urge you to extend the deadline.

Thank you for your consideration.

Sincerely,



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43714
STATE OFFICES
312 FEDERAL BUILDING
THIRD AND ROSSER AVENUE
P.O. BOX 2579
BISMARCK, ND 58502
701-230-4518
1-800-695-4462 TOLL-FREE
112 ROBERTS STREET, ROOM 110
P.O. BOX 2250
FARGO, ND 58107
701-225-2889
102 NORTH 4TH STREET, ROOM 108
GRAND FORKS, ND 58001
701-745-8972
100 1ST STREET, S.W., ROOM 105
MINOT, ND 58701
701-852-0703

July 17, 2000

USDA Forest Service-CAET
Attention Roadless Areas Proposed Rule
P.O. Box. 221090
Salt Lake City, UT 84122

Roadless Area Conservation Proposed Rule
Proposed Rule 36 CGF Part 294 & Draft EIS

Dear Sir or Madam:

I offer these comments to the Roadless Area Proposal published in the Federal Register May 9, 2000. On behalf of the people of North Dakota, I oppose the proposed rule, and ask that North Dakota be exempted for reasons stated below.

My overriding concern for objecting to the proposed rule and for seeking an exemption, is because of the status of the Proposed Revision of the Land and Resource Management Plan (Management Plan) for the Dakota Prairie Grasslands. The State of North Dakota provided comments to the proposed Management Plan on February 2, 2000, and sought cooperating agency status for the State and an immediate dialogue with Forest Service officials to refine the Management Plan in a way acceptable to the people of North Dakota.

Since that time, the Forest Service and the State of North Dakota, have expended hundreds of hours refining the Management Plan in a fashion we believe to be acceptable to the people of this state and interested parties. We are reaching agreements that will properly provide for multiple use and maintain the ecosystem of the Dakota Prairie Grasslands. However, the proposed Roadless Area rule will supercede those agreements and obliterate the acceptance of the Management Plan we've been able to foster thus far.

of the Tongass National Forest include

- Allowing use of forest resources will help to meet market demands for timber.
- A recent decision under the management plan provides for land use designations that restrict or prohibit road construction.
- If road construction were prohibited, approximately 95% of timber production for the next five years would be eliminated.
- The local economy is in transition from Forest Service timber sales.

North Dakota should be exempt from Roadless Area rule, for similar reasons.

- The Management Plan is well underway and will provide for multiple use and protection of the resource within the Dakota Prairie Grasslands, including backcountry, non-motorized areas.
- Implementation of the Roadless Area rule will supercede discussions now taking place concerning the Management Plan.
- North Dakota and the Forest Service have decades of successful experience reclaiming lands previously used for oil and gas development, reclaiming 500 oil well locations and 480 miles of roads.
- The management of the Dakota Prairie Grasslands heavily influences the economies of local communities.
- Finally, oil and gas production from the National Grasslands represents 27% of the State's oil production, 30% of the oil supply for the BP Amoco Refinery in Mandan North Dakota, thereby helping to meet market demands for oil and gas. Oil and gas production from the Grasslands also contributes \$15 million in tax revenues annually.

For these reasons North Dakota requests that it be exempted from the proposed Roadless Area rule. Any roadless proposal for North Dakota should be the result of the forest management process, currently underway.

17294

2. The rule creates a risk of abandonment or loss of use of state and privately owned mineral and surface acres surrounded by or adjacent to Roadless Areas. State and privately owned minerals and surface contribute enormously to school budgets, local economies and the state general fund.
3. It does not identify the potential impact to the State and local economies. Although the DEIS identifies an analysis of impacts to timber production, no such analysis is present regarding oil and gas production and its impact to the State of North Dakota. In fact the proposed rule acknowledges that oil and gas production is likely to be reduced, but does not quantify the impact.
4. Restricting further access to public lands for oil and gas production runs counter to a sound national energy policy. Nationally, the proposal will take 50% of the Forest Service land base out of multiple use, reducing access for oil and gas production and making the United States more dependent upon foreign oil.
5. The Plan includes Roadless Areas, different than those included in the Proposed Revision of the Land and Resource Management Plan for the Grasslands. This variance creates confusion amongst the public, but also hampers the State and Forest Service from progressing towards implementing a new management plan.
6. Finally, the Plan calls for two parts to be implemented without fully identifying the "unroaded areas" that are to be identified in the management planning process. In short, the Plan suggests implementing a plan on public lands, without fully identifying what areas are to be effected.

The Western Governor's Association (WGA) has previously provided comment regarding the Notice of Intent to Prepare an Environmental Impact Statement to the Forest Service, has met with Chief Michael P. Dombeck, and has urged the Forest Service to work with western states before proceeding with the Roadless Plan, now under consideration. WGA has

17294

JUL 17 2000 12:42PM ND AG DEPT

NO. 001 P. 2

17294

19290

COMMISSIONER OF AGRICULTURE
ROGER JOHNSON



PHONE (701) 328-2231
(800) 242-7535
FAX (701) 328-4567

600 East Boulevard, Dept. 602
6th Floor, State Capitol
Bismarck, ND 58505-0020

input and cooperation of western states to implement sound resource management that considers local input, and the impact to state and local economies.

Sincerely,

Edward T. Schafer,
Governor

July 17, 2000

Mike Dombeck, Chief
USDA Forest Service - CAET
P O Box 221090
Attn: Roadless Areas Proposed Rule
Salt Lake City, Utah 84122

RE: Proposed Rule - Forest Service Roadless Area Conservation -36 CFR Part 294

Dear Mr. Dombeck:

I would like to thank the United States Forest Service for the opportunity to comment on the proposed Roadless Area Conservation Rule.

As I referenced in my January 20, 2000, comments on the **Proposed Land and Resource Management Plan - Dakota Prairie Grasslands 1999 Revision**, many agriculture organizations, ranchers, and affected local communities have been closely following the Forest Service's ongoing policy initiatives regarding Forest Service controlled grasslands in North Dakota. Again, I ask that special attention be given to the comments submitted by the impacted communities, industries, and individuals that make a living from activities directly related to the grasslands.

§ 294.10 Purpose.

The stated purpose of this subpart is to provide lasting protection in the context of multiple-use management for inventoried roadless areas and other unroaded areas within the National Forest System. Limiting agriculture producers' access to grasslands does not achieve a true multiple-use management system.

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19290

Dombeck
July 17, 2000
Page Two

§ 294.12 Prohibition on road construction and reconstruction in inventoried roadless areas.

Many ranchers and private landowners fear access to grasslands will be so limited that the use of the land for agriculture purposes will be severely restricted. Language in this section appears to perpetuate this belief. The Forest Service's preferred alternative would prohibit road construction and reconstruction in unroaded portions of the grasslands. Agriculture producers (permittees) need to access public lands to conduct normal maintenance or conduct emergency services. Lack of access and prohibition of road construction or reconstruction appears to go against the proposed land and resource management plan which may require permittees to continually access certain grasslands tracts in order to monitor conditions to ensure the tracts are being managed in accordance with Forest Service requirements.

I support Alternative 1 (No Action, No Prohibitions) at this time. I agree that future proposals for road construction and reconstruction should be considered on a case-by-case basis. Until there is a joint assessment of all the transportation and access needs by all local affected parties, it is difficult for me to support Alternative 2 (Forest Service Proposed Action and Preferred Alternative).

§ 294.13 Consideration of roadless area conservation during forest plan revision.

Procedural alternatives outline how local grasslands managers should address roadless characteristics in future projects or revisions of resource management plans. It is important to local interests that they have input into the evaluation of the importance of roadless areas during local planning. Again, this can be accomplished on a case-by-case basis.

I support Alternative A which indicates that no procedures would be established directing local managers to evaluate the roadless area characteristics during local planning. I believe the local managers need to meet with local interests and evaluate access and road systems on a case-by-case basis as questions are raised. Alternative B (Forest Service Proposed Action and Preferred Alternative) appears to place local managers in a prescribed system that would prohibit the manager from being flexible as different circumstances arise in each case.

One of the key public issues is the impact that access determinations will have on local economies. We must ensure that local communities have a strong role in determining acceptable impact. It is also imperative that agriculture producers continue to have

JUL. 17. 2000 12:43PM ND AG DEPT

NO. 001 P. 4

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Dombeck
July 17, 2000
Page Three

the ability to access grasslands in order to conduct normal maintenance and deal with emergency situations. An evaluation, conducted by the assistance of local interests, must be completed first to determine where problem areas potentially exist.

If I can be of further assistance, please feel free to contact Ken Junkert of my staff at 701-328-4764.

Thank you for consideration of my comments and recommendations.

Sincerely,


Roger Johnson
Commissioner of Agriculture

RJ:kj

CC: United States Senator Kent Conrad
United States Senator Byron Dorgan
Congressman Earl Pomeroy
Secretary of Agriculture Dan Glickman
Governor Edward T. Schafer
Dale Patten, HAND
North Dakota Farmers Union
North Dakota Farm Bureau
North Dakota Stockmen's Association

g:\ken\grassroad



**NORTH DAKOTA
HOUSE OF REPRESENTATIVES**

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Rep. Audrey Cleary
District 49
104 Seminole Avenue
Bismarck, ND 58501

COMMITTEES:
Human Services and Veterans Affairs
Transportation

July 12, 2000

USFS c/o Alaska Rainforest Campaign
406 G. Street #209
Anchorage, Alaska 99501

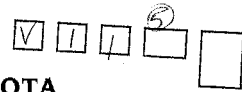
Dear Sir,

Please support President Clinton's plan to protect the remaining roadless wildlands of our national forests, including Alaska's Tongass and Chugach National Forests. Alaska is the last frontier and I want it to be there in all it's pristine beauty for my children and grandchildren to enjoy. Most of our country is overtaken by urban sprawl. Let's keep these areas as natural as possible.

My husband and I spent several weeks in Alaska last summer and we were impressed with its natural and awesome beauty. We were especially pleased to hear that snowmobiles are *not* allowed in many areas of Denali National Park. Please keep these wilderness areas as beautiful and wild as the Creator intended.

Sincerely,

Audrey Cleary
Audrey Cleary
North Dakota State Representative



17286



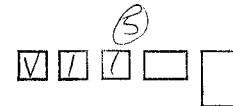
Representative Todd Porter
District 34
704 Sixth Avenue NE
Mandan, ND 58554-3422

**NORTH DAKOTA
HOUSE OF REPRESENTATIVES**

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
Human Services
Natural Resources



19315

PAID RECEIVED

JUL 12 2000

July 6, 2000

USDA Forest Service-CAET
Attn: Roadless
P. O. Box 221090
Salt Lake City, UT 84122
Email: roadlessdeis@fs.fed.us

Re: Roadless Area Conservation Proposed Rule
Proposed Rule 36 CFR Part 294 & Draft EIS

Dear Sir or Madam:

Thank you for allowing me to comment on the Roadless Initiative. I am opposed to the Roadless Initiative and urge the Forest Service to postpone the implementation of this rule in the Dakota Prairie Grasslands. This rule will have a devastating impact on the oil and gas industry in North Dakota and the economy and well being of the state of North Dakota. The following facts support my opposition to the Roadless Initiative:

- The Dakota Prairie Grasslands hold 27% of the state's oil production and 30% of the state's producing wells and provides nearly 1,000 jobs brings in nearly \$15 million per year in tax revenues and only temporarily disturbs less than one-half of one percent of the grasslands surface area.
- The oil industry in ND has explored and drilled the grasslands for the past 50 years and has restored over 500 wells and 480 miles of roads. This represents more than 5,500 acres returned to vegetation after the oil and gas reserves were depleted and 45% of all roads constructed by the oil and gas industry.
- The oil and gas industry and other users along with wildlife can all co-exist in the Dakota Prairie Grasslands because reclamation is fast, effective, and very successful. That may not be true in National forests in other states where reclamation can be more of a challenge.
- The BP Amoco Refinery in Mandan receives 36% of its supply from the grasslands; the roadless plan places the future of the refinery at risk. The importance of allowing multiple use on public lands is extremely important to our state and the ability of the oil and gas industry to provide a cheap energy source to our citizens.
- Currently, 67% of the oil reserves in the U.S. lie under federal lands. In the past ten years access has decreased by 60% and the Forest Service plans under consideration will make that much worse. The nation's dependency on foreign oil has increased to 58% on a daily basis. Responsible access to oil and gas reserves is critical to our nations energy supply.

This one-size fits all program does not meet the needs for management of the Dakota Prairie Grasslands in ND. Oil and gas reserves in ND can be developed on public lands by the oil

Page 2

industry with little environmental impact and technology continues to lessen the impact of production and enhance the reclamation efforts. The BP Amoco Refinery in Mandan is a prime example of industry and nature working in harmony. The financial impact to Mandan through lost jobs and property taxes by implementation of this plan would be devastating.

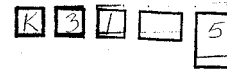
Please reconsider implementing this rule.

I appreciate your thoughtful consideration of my comments.

Sincerely,

Todd Porter
Representative Todd Porter

19315 -



6345



BILLINGS COUNTY

Board of Commissioners



Phone: (701)623-4377

PO Box 168 MEDORA, ND 58645

Fax (701) 623-4896

District 1
Philip Malkowski
(701)575-4965

District 2
Wesley Schuhrke
(701) 225-6586

District 3
Jerry Redmond
(701)575-4528

June 21, 2000

USDA Forest Service-CAET
Attn: Roadless
P. O. Box 221090
Salt Lake City, UT 84122
Email: roadlessdeis@fs.fed.us

Re: Request for Extension on Comments
Proposed Rule 36 CFR Part 294 & Draft EIS

Dear Sir or Madam:

Billings County, Medora, North Dakota, respectfully requests a 90-day extension of the comment period on the Forest Service (FS) Proposal for Future Management of Roadless Areas/Draft Environmental Impact Statement published in the May 9, 2000 Federal Register. The 60-day comment period that will close on July 17, 2000 does not provide sufficient time to analyze the documents and prepare comments.

There are currently six plans, rules, or initiatives the Forest Service is attempting to implement. The size and complexity of them makes it extremely difficult to understand and comment on each. The FS, in conjunction with the release of the proposal and DEIS, scheduled 300 public meetings throughout May and June. The later meetings are for public input regarding the proposal. Therefore, it is necessary to have the proposal thoroughly analyzed prior to the hearings/meetings in June. The comment time frame actually provides for approximately 30 days to review nearly 1,000 pages that affect over 55 million acres. Again, this is not a sufficient comment period for such an important issue.

Additional time will afford the public the opportunity to provide the Forest Service with more thorough responses, thus aiding the agency in achieving a more mutually acceptable management approach.

We appreciate your thoughtful consideration to this request and look forward to hearing from you.

Sincerely,

Jerry Redmond
Jerry Redmond, Chairman

Philip Malkowski
Philip Malkowski, Commissioner

Wesley Schuhrke
Wesley Schuhrke, Commissioner

cc: Governor Ed Schafer
Senator Kent Conrad
Senator Byron Dorgan
Rep Earl Pomeroy



BILLINGS COUNTY

Board of Commissioners

Phone: (701)623-4377

PO Box 168 MEDORA, ND 58645

Fax (701) 623-4896

District 1
Philip Malkowski
(701)575-4965

District 2
Wesley Schuhrke
(701) 225-6586

District 3
Jerry Redmond
(701)575-4528

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56495

56495

Billings County, North Dakota
Comments on USDA Forest Service Roadless Proposal
July 17, 2000

Page 2

Illegal Roadless Designations

The Forest Service's proposal to designate as roadless over 200,000 acres within the Dakotas National Grasslands is illegal. These areas cannot legally be deemed roadless by the federal government because North Dakota law established rights-of-way for roads along section lines on all public lands in the state. North Dakota Attorney General Heidi Heitkamp has issued a binding legal opinion which establishes that public roads may be constructed along rights-of-way on federal land in ND under the state's section line law and that they are not eligible for federal agency roadless designation or management. Her opinion concludes that the federal government must honor these rights-of-way. Therefore, we demand that the Forest Service exempt lands in North Dakota from the Roadless Initiative.

Impact of Proposed Rule

Under the proposed rules, the FS asserts, "The only negative effects expected during the transition period would be from reduced timber harvest and mineral exploration and extraction." The FS goes on to actually predict the expected reduction in timber harvest and revenue. However, no such prediction is made for energy and mineral resources. We find this shoddy analysis untenable. For the Forest Service to suggest such impacts without specifying the projected loss of mineral revenue and opportunities to develop energy and mineral resources as a result of the new regulation and its transition period is inexcusable. This oversight is exceptionally grim given the fact that the agency insists it does not have the funding to maintain its current road system, particularly in light of the federal, state and county revenues generated by oil and gas activities on the NFS. We advocate that the FS clarify the projected impacts from the proposed rule on the energy and minerals industries and modify the proposal to reduce or eliminate such impacts to our local economy and to our domestic energy and minerals supplies.

Inadequate Economic Evaluation

The economic analysis performed by the Service fails to even identify and clarify the genuine need for the proposed regulations. It is our understanding that the Office of Management and Budget recently released guidance, which standardized how to measure costs and benefits of a proposed rule. As such, the agency must determine whether the problem has cropped up due to a "significant market failure" or some other necessity. It is further mandated that "if the problem is not a significant market failure, you should provide an alternative demonstration of compelling need." This omission occurs despite the fact that the Service must identify the problem it plans to focus on as well as determine the significance of the problem. Moreover, the analysis does not meet the requirement for an economic analysis of regulation. We oppose the proposed rule and recommend that it be withdrawn in order for the FS to conduct the requisite analysis prior to making the assumption that a new rule is, in fact, necessary.

July 14, 2000

USDA Forest Service-CAET
Attn.: Roadless
PO Box 221090
Salt Lake City, UT 84122

CAET RECEIVED
JUL 17 2000

Re: Proposed Roadless Area Management Comments

Dear Sir:

Billings County, North Dakota is submitting these comments on the US Forest Service's Roadless Area Conservation Proposed Rule and Draft Environmental Impact Statement. Federal lands comprise approximately 50 percent of Billings County, of which 30 percent has been inventoried as ostensibly "roadless." The federal land in Billings County is acquired land, purchased by the federal government from the county and private landowners in the 1930's. The county's share of the federal revenue totals approximately 85% of the county's budget. Billings County reserved 6.25% royalty interests when the lands were purchased by the federal government and the county claims mineral interests on 54% of what is now inventoried roadless areas. We oppose not only this current proposal, but also oppose the rule's encouragement to local Forest Service managers to seek or locate additional large areas for future roadless consideration.

We oppose the proposal to ban new road construction and manage inventoried roadless areas as de facto wilderness because it will have a devastating impact on our county revenue. The federal government has an obligation to ensure that rural communities are not adversely affected by federal land use decisions. Nevertheless, the roadless area initiative will severely impact our rural communities and our economy by significantly restricting access to the federal lands for grazing and oil and gas exploration and production, uses upon which the County relies as its economic base. At a minimum, this initiative severely affects oil and gas activities by withholding high potential areas from leasing, classifying currently leased areas as roadless or imposing highly restrictive stipulations (no surface occupancy) in situations where less restrictive requirements (seasonal use) would be effective. In so doing, the proposed rule not only precludes access but also significantly increases the cost of doing business in our county. Grazing activities will be equally affected due to reduced roaded access required to manage livestock and the likelihood that many areas would be unavailable for grazing activities.

Roadless Area Conservation

Volume 4 - Letters from Agencies and Elected Officials

Billings County, North Dakota
 Comments on USDA Forest Service Roadless Proposal
 July 17, 2000

Page 3

Inadequate Cost-Benefit Analysis

It is extremely troublesome that the FS has not completed a cost-benefit analysis on the proposed rule. We are enormously concerned that the assessment does not provide quantitative estimates for the wide variety of cost-benefit categories affected by the proposed rule. Of additional concern, is that the agency does not even provide adequate support for the qualitative discussion of costs and benefits. Moreover, the benefits claimed in the proposed rule are not justified through the analysis. Clearly, the sweeping nature of the proposal requires a much more in-depth analysis than the FS has conducted.

Oil and Gas Resources

The Dakota Prairie Grasslands hold 27% of the state's oil production and 30% of the state's producing wells and provides nearly 1,000 jobs. The oil industry's activities on the grasslands bring in nearly \$15 million per year in tax revenues and only temporarily disturb less than one-half of one percent of the grasslands surface area. Please note that the oil industry in North Dakota has explored in and drilled on the grasslands for the past 50 years and has restored over 500 wells and 480 miles of roads. This reclamation constitutes more than 5,500 acres returned to productive vegetation after the oil and gas reserves were depleted and the elimination of 45% of all roads constructed by the oil and gas industry.

In its study entitled, *Natural Gas, Meeting the Challenges of the Nation's Growing Natural Gas Demand*, the National Petroleum Council estimates there are 460 trillion cubic feet (TCF) of remaining natural gas in the Rocky Mountain states. About 288 TCF of this resource occurs on federal lands, of which the Forest Service controls 8 percent. NPC also estimates that another 2 TCF on Forest Service lands are threatened by potential new wilderness designations. When one adds this new proposal to those areas already unavailable, potentially unavailable or highly restricted, the consequences are extreme.

Evidently, the Forest Service has ignored its own minerals policy which states the agency's intent is to "meet most demands for access to explore for and develop mineral resources, except when doing so would pose unacceptably high risks to other resources." Under the Roadless Initiative, lands unavailable for oil and gas leasing and development would leap from the current **22 percent** (wilderness) to **50 percent of the agency's total land base**. Therefore, we oppose the current proposal because it will have a **severe impact** on western state and local economies. We dispute the claims that clean water, biological diversity, wildlife habitat, forest health, dispersed recreational opportunities can be adequately protected only through preservation of inventoried roadless areas. The National Forest Management Act (NFMA) requires the agency to manage the entire NFS, outside of designated wilderness, with full consideration and mitigation of these resource values.

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Billings County, North Dakota
 Comments on USDA Forest Service Roadless Proposal
 July 17, 2000

Page 4

Oil & Gas Activities should be exempted from the Roadless Initiative

The Forest Service states that only 40 percent of the NFS roads are maintained to established safety and environmental standards, the backlog on arterial and collector roads alone is estimated to be over \$10 million, and current funding levels are inadequate to maintain existing roads to planned standards. These are some of the professed reasons for the road initiative.

The Forest Service appears to have also disregarded the fact that the oil and gas industry **privately** funds construction, maintenance and reclamation of all roads required to explore for and produce oil and gas resources. The petroleum industry does not look for financial assistance from the Forest Service nor any other federal agency for its road construction needs. Moreover, it must be recognized the oil and gas activities are temporary uses that are reclaimed to a natural condition once operations have been completed. There are many examples of reclaimed oil and gas sites in currently designated wilderness. Is this proposed rule truly aimed at the funding question or is it really focusing on a new manner in which to preclude multiple use activities on Forest Service lands? We believe the explanation is the latter and we oppose that goal.

Poor Forest Service Management

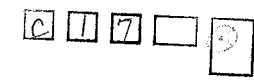
Billings County has significant concerns regarding the manner in which the federal government manages its lands. An example is noxious weed control. The federal government did not start its program to control noxious weeds until the situation had become critical. Due to that lack of foresight on the federal government's part, the county has had to institute a large budget and several employees to address the severe weed problem that is overtaking the entire county. Clearly, lack of access will only make the problem worse. This initiative grossly underestimates the cost of implementation on counties and ignores the example of disastrous non-management and inaccessibility for many management programs, including fire prevention and protection, as experienced in the recent fires in New Mexico and other states, and should be withdrawn.

Flawed Management Approach

By focusing only on roadless areas, the Forest Service is circumventing the NEPA/planning process, which mandates full consideration of **ALL** uses. The purpose of the land and resource management planning process as required by the National Forest Management Act is to consider all uses equally to determine the best management plan for site-specific areas. Imposing a "one plan fits all" approach geared toward a non-management philosophy to land management eliminates local flexibility and disregards the individual resource needs of a specific areas.

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Billings County, North Dakota
Comments on USDA Forest Service Roadless Proposal
July 17, 2000

Page 5

Conclusion

Billings County strongly opposes the proposed rule and urges the Forest Service to withdraw the proposed rule, or at a minimum, exempt the Dakota Prairie Grasslands from the Roadless Initiative. First, as mentioned previously in these comments, a roadless management designation is illegal under North Dakota law. Second, these lands do not qualify for a roadless designation since they are covered with existing roads. Therefore, they should be managed in keeping with the economic interests of North Dakota. Please do not hesitate to contact us if you have any questions regarding our comments,

Sincerely,

Jerry Redmond, Chairman
Billings County Board of County Commissioners

- cc: The Honorable Byron Dorgan, United States Senate
- The Honorable Kent Conrad, United States Senate
- The Honorable Earl Pomeroy, United States House of Representatives
- The Honorable Ed Schafer, Governor

McKenzie County Grazing Association
P.O. Box 572
Watford City, ND 58854
(701) 842-3384 - Phone
(701) 842-6046 - Fax
mcga@ruggedwest.com

CAET RECEIVED
JUL 17 2000

July 14, 2000

USDA Forest Service-CAET
Attn: Roadless
P.O. Box 221090
Salt Lake City, UT 84122

Dear Sirs:

The McKenzie County Grazing Association hereby adopts the attached resolution as its official response to the President's Roadless Initiative.

One additional comment from MCGA is that U.S. owned historical documents, agencies records and Federal District Court proceedings show that the National Grasslands in McKenzie County were purchased as Agricultural projects under the authority of the 1933 National Recovery Relief Act.

This history and court orders make a roadless plan for the National Grasslands both illogical and illegal since roadless areas were not a purpose for the repurchase program.

Sincerely,

Keith Winter
President

Frances M. Olson, Auditor

Office of the County Auditor
McKenzie County
PO Box 543
Watford City, North Dakota 58854-0543
Telephone: 701-842-3616 Fax: 701-842-4113
email folson@4eyes.net

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Debora Johnston, Deputy

Resolution of McKenzie County
7/14/00
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RESOLUTION

OF

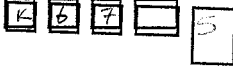
McKENZIE COUNTY

NORTH DAKOTA

July 14, 2000

USDA Forest Service-CAET
Attn: Roadless
PO Box 221090
Salt Lake City, UT 84122

CAET RECEIVED
JUL 17 2000



Dear Sirs:

The McKenzie County Board of Commissioners adopted the enclosed resolution regarding the roadless initiative at their regular July meeting.

They appreciate this opportunity to comment and request that this information be given careful consideration.

Sincerely,

Frances M. Olson
McKenzie County Auditor

The County Board of Commissioners in and for McKenzie County, a political subdivision of the State of North Dakota, being duly convened and with all members of the Board of Commissioners being present, and having held considerable discussion in regard to the U.S.D.A. Forest Service proposed road less initiative has determined the following:

WHEREAS, McKenzie County is the largest county in the State of North Dakota;

WHEREAS, McKenzie County is bounded on the north and east by the Missouri River, now largely consisting of a man made lake due to the Garrison Dam which was a Federal Project unwantingly imposed upon the people of McKenzie County, and which destroyed the most valuable farmland in McKenzie County, and which has created a permanent barrier for travel and commerce to and from McKenzie County that is financially impractical to overcome;

WHEREAS, McKenzie County is bounded on the west by the Yellowstone River and there are but two bridges allowing travel to and from McKenzie County from the west across the Yellowstone River;

WHEREAS, McKenzie County is bounded largely to the south by the Little Missouri River and there are but two bridges that allow travel across said river in high water;

WHEREAS, the rivers and dam that surround McKenzie County virtually make it an inland island, which impedes commerce;

WHEREAS, McKenzie County economy consists primarily of agriculture as its base industry, including cattle, small grains, oil seeds, and other produce which require transportation to and from market and that roads are critical for raising these products to feed and supply the nation; and,

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the continued use and improvement of existing roads and construction of new roads are critical for this economy and the people who live not only in McKenzie County, but through out the nation;

WHEREAS, due to biological catastrophes caused by the federal government failing to prevent introduction of non-native plant species onto federal lands, noxious weeds have infested the National Grasslands, such as - leafy spurge, Russian thistle, spotted knap weed, etc., and due to the fact that the U.S.D.A. have failed to implement appropriate countermeasures to eradicate or prevent such infestation of noxious weeds on the National Grasslands the native grasses and wildlife are threatened by further infestation of noxious weeds which have spread from federal lands unto private lands and will continue to spread onto private lands; presently the only way to meaningful combat existing noxious weeds and prevent the further spread of the same is through application of chemical spray; and, the only way to provide limited use of such chemicals is with spot application which can only be done by ground driven motor vehicles requiring roads;

WHEREAS, the National Grasslands periodically experiences fires caused by various sources (including for example failure of a federally owned power pole in the fall of 1999); and fires upon the National Grasslands threaten private land intermingled with such federal lands, and destruction of private property, homes, and threats to the safety and lives of residents and firefighters occur when such fires take place; and since roads are necessary for McKenzie County to prevent, fight, control such fires when they occur, existing roads must be maintained, improved, and new roads constructed to assist in this regard; further, the experience of federal agencies in Los Alamos New Mexico demonstrates that the federal agencies are incapable of exercising common sense in the prevention of wild fires and further incapable of preventing massive destruction when such fires occur upon federal lands; accordingly, maintenance, improvement, and construction of roads upon the National Grasslands is necessary to protect the people who live in McKenzie County and the property of those who own land in McKenzie County;

WHEREAS, oil and gas exploration and production has been present in McKenzie County for at least thirty-eight years and there are vast oil and gas reserves in McKenzie County, many as yet undeveloped, which are crucial to the economy of McKenzie County, North Dakota, and the United States; said oil and gas production is further critical to the national security of the United States;

WHEREAS, real estate taxes primarily fund public works and schools in McKenzie County and North Dakota yet the federal lands that are located in McKenzie County provide no real estate taxes to benefit McKenzie

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County or North Dakota; rather funds in lieu of taxes are paid to McKenzie County through operation of the Bankhead Jones Farm Tenant Act; limiting maintaining of existing roads, improvement of existing roads, and the construction of new roads wrongfully and maliciously takes funds away from public works projects and damages the education of the youth in McKenzie County;

WHEREAS, most of the federal lands in McKenzie County were not always federal lands, but once were held privately and were reacquired by the federal government in various ways in the early and mid 1930's; as such the federal government condemned and took tens of thousands of acres that belonged to McKenzie County; through such takings McKenzie County negotiated and the federal government provided that McKenzie County would receive and did in fact receive 6.25% of all oil and gas from said lands together with ownership of all existing roads, right of ways; this is established and confirmed by condemnation judgments in Federal District Court and are binding upon the federal government; any attempt to now take away the rights to these roads and prevent development of royalty interests owned by McKenzie County would be conversion of property by the federal government and a taking without authority harming the people of McKenzie County and the State of North Dakota;

WHEREAS, the majority of private lands reacquired by the federal government in McKenzie County are "Land Utilization Agriculture Projects", now renamed "National Grasslands"; the primary purpose stated in condemnation proceedings for land so acquired was "establishment of a demonstrational area for the proper grazing of livestock", land so acquired by the federal government in McKenzie County is to be managed with intermingled private and state lands to benefit the economy and the people of McKenzie County and the State of North Dakota;

WHEREAS, it is established as a matter of law that Section Lines in North Dakota are in fact and in law public roadways, and the same having been confirmed by North Dakota Attorney General's opinion 2000-05, January 26, 2000; and state law provides authority for counties to build, maintain, improve or otherwise use section lines for roads, any attempt by the federal government to prevent the use of section lines for public roads, or to prevent or limit the improvement of such public roads which section lines are would be illegal, without authority, taking without compensation, and conversion of property rights owned by McKenzie County;

WHEREAS, oil and gas development and production and agriculture are dependant upon roads and there is a public need to maintain, improve and construct roads for such endeavors;

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WHEREAS, it appears that the roadless initiative proposed for the National Grasslands is being pursued by the Forest Service for the desire of special interest groups who do not have knowledge or understanding of the National Grasslands nor the needs of McKenzie County and North Dakota or its citizens, nor who have a understanding of the present status of roads and roadways upon said lands and that such is not in the best interests of McKenzie County, North Dakota or the United States, but rather are the misguided and shortsighted vision of radical special groups, the roadless initiative is inappropriate and harmful to the National Grasslands and people who use them and the native plants that grow there and wildlife that inhabit the same;

WHEREAS, this issue is so crucial to the well being of McKenzie County and preservation of County assets that expenditure of County funds to resist, and if necessary to legally challenge, the roadless initiative should be authorized;

WHEREAS, all persons living in McKenzie County are critically dependent upon existing roads, improvement of roads, and construction of new roads for their livelihood, health, safety, and security;

BE IT THEREFORE RESOLVED THAT:

McKenzie County, a political subdivision on behalf of all persons living and working in and near McKenzie County and those desiring or needing to travel to or through McKenzie County and all those persons who have an ownership interest in property in McKenzie County, and for and in the best interests of the National Grasslands and the species that utilize the same, OPPOSES any operation or application of the road less initiative proposed by U.S.D.A. Forest Service for the National Grasslands; and, that the lands in the National Grasslands, in particular those lands in McKenzie County, should be withdrawn from such roadless initiative proposal immediately. And, that if not withdrawn, McKenzie County shall move forward with all available means to prevent the roadless initiative from becoming effective for the National Grasslands located in McKenzie County and shall if necessary initiate legal challenge to any such roadless proposal for lands located in McKenzie County.

Commissioner Anderson moved the adoption of the above resolution. Commissioner Chinn seconded the motion.

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This resolution adopted by unanimous vote of the full board of County Commissioners for McKenzie County this 6th day of July, 2000.

Richard Cayko
Richard Cayko, McKenzie County Commissioner

Roger Chinn
Roger Chinn, McKenzie County Commissioner

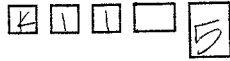
Harold Rolfsrud
Harold Rolfsrud, McKenzie County Commissioner

Orville Mjelstad
Orville Mjelstad, McKenzie County Commissioner

Ronald A. Anderson
Ronald Anderson, McKenzie County Commissioner

ATTEST:

Frances Olson
Frances Olson, McKenzie County Auditor



13531

**Testimony of the
North Dakota County Commissioner's Association**

June 28, 2000

Addressing

**U.S. Forest Service Proposed Rule
Regarding
Roadless Area Conservation**

0002 S 0 100

02/28/2000 13:30

The North Dakota County Commissioner's Association is an organization that has represented the 53 County Commissions and the 221 individual county commissioners of the State of North Dakota since 1905. Our Association is uniquely positioned to monitor and address issues that directly effect government service delivery to our citizens, the economic health of our communities, and the general welfare of our State.

While we understand the large task that faces the Forest Service in balancing the competing needs for our Nation's natural resources, we do not believe that adoption of this proposed rule is an appropriate step in achieving that balance. The grasslands region of North Dakota is an extremely important component of our State's economy, both through its contribution to agriculture and through the energy resources it contains. Now, particularly when our Nation faces escalating energy prices due to an over-reliance on foreign supplies, this region has become critical to the economy of the whole country.

While it may appear on the surface that the immediate effects of the proposed rule may be minimal, the broad "procedures for use" of these important lands suggest significant restrictions on their use. Our Association does not believe that an adequate outside economic analysis has been conducted of the full economic impact of this proposed rule. As stated in the resolution passed at our full-membership Business Meeting last October; *"This Association therefore urges independent, objective, and scientific research into the economic and social impact of the proposed changes in grassland management before such changes are made into policy."*

Thank you for the opportunity to express our interests and concerns in this matter.

**Resolution Adopted by the
North Dakota County Commissioner's Association
October 4, 1999**

99-12 Forest Service Grasslands Policy. The public grasslands under the control of the U.S. Forest Service have contributed to the economy and tax base of North Dakota through grazing, employment, energy development, tourism, recreation, hunting, and other uses. The public use of this resource has been the right and heritage in North Dakota for almost 70 years. The U.S. Forest Service however proposes policy changes that severely reduce grassland use by the public, including farmers and ranchers. These proposed changes affect ownership of road rights-of-way and restrict the roadway access necessary for energy development, tourism, camping, and game retrieval, adversely impacting our State's economy. This Association believes that the Forest Service should not proceed without objective, independent, scientific analysis to assess the impact of these proposed changes. This Association therefore urges independent, objective, and scientific research into the economic and social impact of the proposed changes in grassland management before such changes are made into policy.

