

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
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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

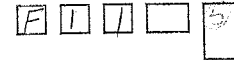
PAGE 01

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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

Roadless Area Conservation

Volume 4 - Letters from Agencies and Elected Officials



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

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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 43% 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 Skuter, 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

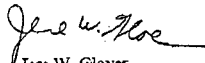
The Office of Advocacy recognizes the importance of protecting the environment, conserving our national forests, and preserving the natural beauty of the area. However, there is also a significant public interest in allowing access to natural resources in order to preserve our economic base. The potential 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.

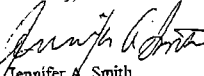
Thank you for the opportunity to comment on this proposal. If you have any questions, please feel free to contact us. Please place a copy of these comments in the record.

Sincerely,



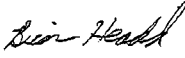
Jere W. Glover
Chief Counsel
Office of Advocacy

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,

Monty Bengochia
Monty Bengochia, Chair
Bishop Tribal Council

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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:

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

FACT RECEIVED
JUL 17 2000

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".

Dear Sirs:

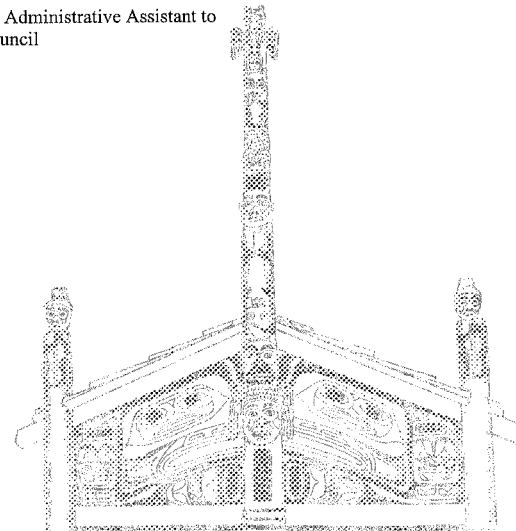
At a duly convened meeting on July 10, 2000, Ketchikan Indian Corporation Tribal Council authorized the submission of the attached Position Statement regarding the roadless.

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

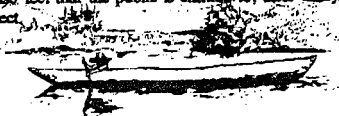
Dear Secretary Glickman:

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.

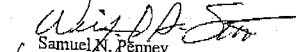
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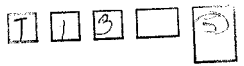
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The Tribe appreciates the opportunity to comment on the proposed rule. We look forward to conducting formal consultation on the rule as the process goes forward to address the concerns discussed above. If you have any questions regarding these comments,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

Sincerely,


Samuel M. Penney
Chairman

43977



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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,

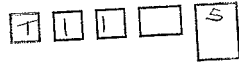
Sally Nickelson
Wildlife Program Coordinator
Point No Point Treaty Tribes
7999 NE Salish Lane
Kingston, WA 98346
360-297-6540



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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. 3/3

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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.

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.

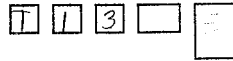
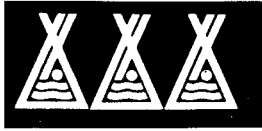
Larry A. Weisman
Sitka Tribe of Alaska - Tribal Chairman

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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KOOTNOOWOO | 5

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.

PETER G. MORROS
Director
Department of Conservation
and Natural Resources
PAMELA B. WILCOX
Administrator

5 7 1 1 5
KENNY C. GUINN
Governor



STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
Division of State Lands

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State Land Office
State Land Use Planning Agency
Address Reply to
Division of State Lands
333 W. Nye Lane, Room 118
Carson City, Nevada 89706-0857
Phone (775) 687-4363
Fax (775) 687-3783

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JUL '7 2000
CHIEF'S OFFICE

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Page 2
Letter to Forest Service
7/12/00

related requirements of the National Environmental Policy Act: "Agencies shall: ...Make diligent efforts to involve the public in preparing and implementing their NEPA procedures...." (see 40 CFR 1506.6(a)).

Thank you and sincerely,

Mark Farman

Mark Farman
Public Lands Planner

c: Buzz Harris, Governor Guinn's office

7/12/00

Mike Dombeck, Chief
USDA Forest Service
1400 Independence Ave., S.W.
Washington, D.C. 20090-6090

JUL 17 2000

Bradley E. Powell
Regional Forester
R5 Regional Office
1323 Club Drive
Vallejo, CA 94592

USDA Forest Service - CAET
Sierra Nevada Framework Project
PO Box 7669
Missoula, MT 59807

CAET RECEIVED
JUL 17 2000

Dear Forest Service:

We request a 90-day extension of the Sierra Nevada Forest Plan Amendment Draft Environmental Impact Statement's (DEIS) public comment period. The DEIS's comment period ends on 8/11/00 and this is clearly not enough time to provide meaningful comments on such a complex and far-reaching project. This project would affect our public lands in both California and Nevada and on ten different National Forests plus the Lake Tahoe Basin Management Unit.

As you are aware, the reviewers of this DEIS also are trying to review, and understand the relationships between, three other complex Forest Service studies (two of which are also in the public comment phase of their schedule). These projects are the Roadless Area Conservation DEIS, the Northern Sierra Area Forest Plan Amendment DEIS and the National Road Management Policy study. Trying to review these related projects and understand their relationships is difficult.

An extended comment period on the Sierra Nevada Forest Plan Amendment DEIS would greatly help the Forest Service in terms of receiving more informed public comments. The extension also would help the Forest Service comply with the public involvement-

KENNY C. GUINN
Governor

STATE OF NEVADA

JOHN P. COMEAUX
Director

17303



DEPARTMENT OF ADMINISTRATION

209 E. Muzer Street, Room 200
Carson City, Nevada 89701-4298
Fax (775) 684-0260
(775) 684-0209

July 17, 2000

USDA Forest Service-CAET
Attention: Roadless Area Proposed Rule
PO Box 221090
Salt Lake City, UT 84122

Re: SAI NV # E2000-137

Project: Roadless Area Conservation Proposed Rule and DEIS

To Whom It May Concern:

Enclosed are the comments from the Nevada Divisions of Water Resources and Minerals and sent under separate cover, the Divisions of Lands and Wildlife concerning the above referenced report.

The Nevada State Clearinghouse would like to reinforce the attached comments made by all of the Divisions against a wide variety of the alternatives in the DEIS as well as many of the inaccuracies.

The document is unclear and contradictory. The USFS is to be commended for its efforts to reach the public for input. However, if the issues identified in the DEIS and addressed in the meetings are difficult to unravel, the comments cannot be as concise or specific as they should be for a proposal of this importance. If one doesn't understand the document, how can one have an informed opinion?

In addition, the Clearinghouse would like to request strong consideration be made for any plan of this magnitude to be implemented at the local level. A global decision cannot possibly address the individual issues that pertain to a

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particular road relative to a given neighborhood. Unilateral, top down decisions preclude the opportunity for citizens to offer genuine input and to, perhaps, positively impact the environment most directly affecting their homes and communities. Case in point - perhaps some road you propose closing is important enough to a neighborhood for them to volunteer both time and equipment to improve and maintain that road on a volunteer basis. Conversely, one you may have determined will be maintained might be one not much used or which generates little or no concern if you close. Without the opportunity to implement this proposal on a case-by-case, local level, significant opportunities for win/win partnerships and collaboratives may be missed. We strongly request that the comment period be extended by several months and possibly, a more accurate and clear supplement be produced.

These comments constitute the State Clearinghouse review of this proposal as per Executive Order 12372 at this time. If the comment period is extended, we may offer additional remarks at that time. Please address these comments or concerns in your final decision. If you have questions, please contact me at 684-0209.

Sincerely,

Heather K. Elliott
Nevada State Clearinghouse/SPOC

Cc: The Honorable Governor Guinn
Nevada Division of Water Resources
Nevada Division of Minerals
Nevada Division of State Lands
Nevada Division of Wildlife

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KENNY G. GUINN
Governor

RECEIVED

JUL 17 2000

DEPT. OF ADMINISTRATION
DIRECTOR'S OFFICE

STATE OF NEVADA
COMMISSION ON MINERAL RESOURCES
DIVISION OF MINERALS

400 W. King Street, Suite 106
Carson City, Nevada 89703

(775) 687-5050 • Fax (775) 687-3957
<http://www.state.nv.us/minerals/>

Las Vegas Branch:
2501 E. Sahara Ave., #206
Las Vegas, Nevada 89104
(702) 486-4343
Fax (702) 486-4345

ALAN R. COYNER
Administrator

Heather Elliott
State Clearinghouse Coordinator
Department of Planning
Budget and Planning Division
209 E. Musser Street, Suite 200
Carson City, NV 89701

July 13, 2000

Dear Heather:

The following comments are for the US Forest Service Roadless Area Conservation Draft EIS. These comments reflect the concern the Nevada Division of Minerals has on this proposal as it impacts access, economic development and public safety on federal lands in Nevada.

- 1) A disproportionately large amount of Nevada's USFS lands will be affected. According to published reports, approximately 3.1 million acres of USFS national forest land would be included in the new Roadless Area, out of a total of 6.3 million acres. When this is added to the current 850,000 acres of already protected acreage (wilderness and NRA designations) more than 60% of Nevada's USFS holding will have significant restrictions for access and development.
- 2) Withdrawal of roadless areas as envisioned by the USFS will have significant impacts on mineral and energy resource development. Although it is stated that inholders with valid existing rights will have access to their properties, it is not clear if additional restrictions will be placed upon them. New areas without claim holders or current information on potential resources will be difficult if not impossible to examine. Building temporary roads for exploration and drilling will

All waters of the state belong to the public and may be appropriated for beneficial use pursuant to the provisions of Chapters 533 and 534 of the Nevada Revised Statutes and not otherwise. This office supports the continued efforts of the United States Forest Service to assess watershed and riparian conditions, and to modify land use practices that tend to improve the condition of the public lands for all uses.

Thomas K. Gallagher, P.E.

Nevada Division of Water Resources

6/22/00

Omels Bryan; Small-Scale Mining and Prospecting
Jim Chardas; General Public
Patrick Fagan; Geothermal Resources

Commission on Mineral Resources
Fred D. Gibson, Jr., Chairman; Large-Scale Mining

Peter Hummel, Vice-Chairman; Oil and Gas
John T. McDonough; Large-Scale Mining
Ran Farnill; Exploration and Development

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FAX NO. 7756840260

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not be allowed, impacting the ability of communities and the state to benefit from mineral resource exploration and development. The USFS summary of the results of the "initial regulatory flexibility analysis" (page A-22 of the Summary document) does not acknowledge the impacts to small business in the metal mining sector. This analysis failed to acknowledge that in several states, but particularly in Nevada, metals (i.e. precious metals) are a major commodity from USFS managed lands.

- 3) The decision to prevent new road building on much of Nevada's forested land will prevent access to new mineral resources, thereby denying their use by the general public. To do this without having a better understanding of the mineral and energy potential of these areas is detrimental to the economic health and security of the nation. Congress has made very clear its intentions that the federal land management agencies must inventory mineral resources before lands are withdrawn from multiple use. Before any roadless area conservation plan goes into effect the USFS should complete a comprehensive mineral inventory evaluation.
- 4) The decision to allow roads to deteriorate, remove roads or not build new roads will have significant impacts on other agencies abilities to combat wildfires, manage wildlife, repair habitat, secure abandoned mines and manage other programs which enhance the environment or promote public safety. The USFS Roadless Area EIS is inadequate in that it does not seek input and serious dialogue with states and local government.
- 5) The USFS uses costs of maintaining roads as a driving force in developing this Roadless Area plan. The Draft EIS does not address the possibility of local communities, counties or the states maintaining existing roads deemed essential by local governments. The Draft EIS also does not address the R.S. 2477 issues which have been raised by counties and states over the past decade. The USFS needs to determine R.S 2477 roads within its jurisdiction, improve the quality of the maps used in identifying roads in the "roadless" areas, and consult with local and state governments to adequately address these issues.
- 6) After attending scoping, informational and public hearing meetings at different times in Reno, Ely and Las Vegas it was apparent that USFS personnel did not understand the scope and process under which the Roadless Area Conservation Plan would be initiated and implemented. Conflicting viewpoints were presented by USFS personnel at different meetings leaving confusion in the minds of the public as to the real scope and impacts of this plan. It is imperative that the public comment time-line should be extended as many issues not adequately addressed or were presented in a confusing manner.

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We appreciate the opportunity to comment on this document.

Sincerely;



Walter S. Lombardo
Senior Geologist
Chief, Southern Nevada Operations
Nevada Division of Minerals

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JUL-17-2000 MON 01:59 PM BUDGET

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PETER G. MORROS
Director
Department of Conservation
and Natural Resources
PAMELA B. WILCOX
Administrator

KENNY C. GUINN
Governor



STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Division of State Lands

July 5, 2000

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

Dear Sir/Madam:

This agency has spent a considerable amount of time and effort reviewing the draft document and attending public meetings regarding the Roadless Area Conservation Proposed Rule and Draft Environmental Impact Statement. We have not yet been able to determine a need for the proposed rule nor do we fully understand what the actual impacts would be with the new rule. A reading of the DEIS has not revealed any actual benefit from establishing a new rule. The proposal appears to be a "backdoor" effort to establish limited use areas of the forest under the guise of addressing USFS road maintenance and construction problems. Implementation of the new rule would effectively restrict the use of renewable and nonrenewable resources of this nation and limit access to many areas of public land for the benefit of a few.

To begin with, the proposal and the documents explaining what is proposed are extremely confusing. The DEIS is one of the most difficult documents to read and understand. It seems to be self-serving and is written to support the point of view of those that seek to eliminate any future use of existing "roadless" areas (and "roaded" roadless areas). It also appears that the DEIS was designed and prepared to be a more formidable document to read and understand than most people can endure, "thinning out" the people with time and energy to review and comment on the proposal. The comment period must be extended beyond the July 17, 2000 deadline to allow those with sufficient fortitude to complete their review of the DEIS. There is far too much "information" in the document for most people to try to understand and provide comment on within the established comment period.

State Land Office
State Land Use Planning Agency
Address Reply to
Division of State Lands
333 W. Nye Lane, Room 118
Carson City, Nevada 89706-0857
Phone (775) 687-4363
Fax (775) 687-3783

USDA Forest Service -CAET
July 5, 2000
p. 2

It is hard to understand how we can have "roadless" areas with roads and unroaded areas which are not "roadless". These concepts of roadless and unroaded depend on the definition of a road used for the rule. A more comprehensive definition of a road than which is now used would disqualify many of the inventoried "roadless" areas included in the document. A broader definition would also reduce the amount of acreage that would be subject to use and access restrictions in the future under the proposed rule. The limited definition of a road being used, however, allows for the creation of de facto wilderness by the executive branch, bypassing the Wilderness Act of 1965. This sadly seems to be the underlying intent of the proposed rule. The definition must be broadened to include all roads which may exist in an area.

We strongly support Alternative 1 (No Action) among the Prohibition Alternatives. This alternative would allow continued management of national forest units by local managers closest to the situation. A national-level rule on road construction and maintenance or possible uses in individual national forest units eliminates the flexibility local managers may need to best manage for resources and needs. National forests and the use of those public lands have the greatest impact on those that reside in the regions where the forest units are located. Many rural communities are dependent on the use of resources located on public land and continued access. Local participation in the development of individual forest unit plans must be allowed to continue and should be more actively promoted. A broad national-level rule will discourage and disqualify local and state input into the forest planning process. The other alternatives add sweeping, national level restrictions that will unnecessarily limit management options and are not desirable for the overall public good.

We also strongly support Alternative A (No Action) among the Procedural Alternatives. Again, there is no compelling need to restrict the ability of local managers and the affected public to appropriately manage the public resources and use of the national forest lands by adding an unnecessary and unwanted rule. If the roadless values in a national forest unit warrant the protection the proposed action will mandate, these values can just as well be protected using existing planning procedures and implemented when individual project proposals are being evaluated.

Sincerely,

Mike Del Grosso
Deputy Administrator

cc: Nevada State Clearinghouse

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Roadless Area Conservation

Volume 4 - Letters from
Agencies and Elected Officials



KENNY C. GUINN
Governor

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF WILDLIFE

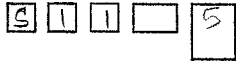
1100 Valley Road
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Reno, Nevada 89520-0022
(775) 688-1500 • Fax (775) 688-1595

13983
PETER G. MORROS
Director
Department of Conservation
and Natural Resources

TERRY R. CRAWFORTH
Administrator

USDA Forest Service – CAET
Attention Roadless Area Proposed Rule
P. O. Box 221090
Salt Lake City, UT 84112

July 10, 2000



FACT RECEIVED

JUL 17 2000

Dear Sir:

The following represents the Nevada Division of Wildlife's review of the USFS Roadless Area Conservation Initiative. While the Division does have some definitive information to go on, most of our comments are made relative to the ramifications of designating additional areas as roadless and the potential of further limiting access to public lands. In our discussions with USFS personnel, two significant aspects of this proposal have come to the forefront: (1) a prohibition on new road construction in designated roadless areas and (2) local level involvement in decision making relative to future use of existing roads in designated roadless area.

In most instances, the issue of new road construction is less pertinent to our discussion of this initiative in Nevada. Efforts of the Forest Service to construct roads on National Forest lands are at present so time consuming and costly that this aspect of the roadless issue should not be a major point of dissent. However, any roadless designation will ultimately limit the ability of the Forest Service or our agency to manipulate vegetative communities for the benefit of wildlife resources. Considering the ecological conditions existing in the Great Basin and the severity of threats to the health of those systems, it is utmost concern to us that planning remain flexible to allow for access associated with these habitat restoration projects. There are major efforts underway, by federal and state agencies as well as private organizations to address the issues evolving around the health of Great Basin habitats. Restoration actions and projects are becoming more important and aggressive. It would be unacceptable to manage access to a point that would prohibit restoration activities. This is already occurring with regard to wildlife management activities and restoration efforts in Wilderness Study Areas.

The Division supports a common sensed approach to public recreational access throughout the Humboldt-Toiyabe National Forest. In instances where the proliferation of roads has had a negative affect on wildlife habitats or resources, we would agree with the decommissioning of some roads. It makes no sense to have multiple routes into the same general area when one road will provide the same benefit. When roads have been built in environmentally sensitive areas without any regard to this sensitivity,

it is appropriate that the Forest Service determine how to remedy the situation. We additionally do not favor the indiscriminate construction of roads into sensitive areas for the sole means of creating additional public access. We have backed up this rhetoric with our support for the creation of wilderness areas within the National Forest System in Nevada. It remains important, however, that decisions on road decommissioning be made at the local level by a variety of individuals which have a knowledge of and interest in the affected area.

One pervasive fear which we in state government have is that many important access routes will be eliminated through this initiative and the Road Management Initiative (65 CFR 11676). In reviewing the maps provided by the Forest Service, one sees that most of the areas designated as roadless do have significant numbers of roads, which are presently important to the public for access. Under the current proposal or the Road Management Initiative, could these roads be closed to future public access in an effort to maintain an area's true roadless characteristics? Maintaining access for the hunting and non-hunting public at the current level in the majority of designated roadless areas within the State is integral to allowing the public to make use of the important resource which we call public lands. The Division supports local level planning for the implementation of this program and for that of the Road Management Initiative. It will be critical in addressing the site-specific issues and in providing sound decisions that will provide for the needs of those with management responsibilities and for the publics for whom the Division manages those natural resources.

Sincerely:

Doug Hunt, Habitat Bureau Chief

DP:SF:DH
CC: Nevada State Clearinghouse

17290



Office of the Churchill County Manager

July 17, 2000

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

Via Fax (877) 703-2494

To whom it May Concern:

Enclosed are Churchill County's comments to the Roadless Area Conservation Proposed Rule and Draft Environmental Impact Statement (DEIS). Although there are no National Forest lands in Churchill County, many of our neighboring counties have significant tracts of land managed by the USFS, with the majority of these lands included in the unroaded portion of the inventoried roadless areas. In many instances, minor county roads are included in the inventoried roadless area, and/or form the boundaries of the unroaded portions. In Lander County on our eastern border, at least two areas have been identified on Forest Service maps as unroaded when in fact minor county roads appear to cross through them. It is our understanding that Lander County intends to maintain or reconstruct these roads as necessary in accordance with direction established by their Board of County Commissioners.

Churchill County supports the no-action alternative based upon a clear lack of demonstrated need for additional administrative authority. The Forest Service already has adequate administrative authority to control road development and manage National Forest Lands. Pg. S-7 states, "Road construction and reconstruction would continue to be prohibited only where land management plan prescriptions prohibit such action". In the affected counties a majority of the unroaded portions of inventoried roadless areas already have vehicle access restrictions. As a result, the proposed rule is very similar to the no-action alternative. It is difficult to see how the proposed rule would achieve the purpose and need of the proposed action. The proposed rule is overly restrictive and limits local decision-making authority, particularly in communities that rely upon the development and use of natural resources on National Forest Lands.

National Forest Lands accessed by many Churchill County residents, such as the Toiyabe, Shoshone and Toquima Ranges, provide for a host of multiple uses and have a long history of mineral exploration and development. In fact, it appears that most of the unroaded roadless inventoried lands fall within active mining districts (Reese River, Birch Creek, Big Creek, Kingston, Washington, and Spencer Hot Springs). These mining districts have produced a variety of minerals including Gold, Silver, Tungsten, Uranium, Copper, Lead, Zinc, and Molybdenum. Churchill County is opposed to any Forest Service administrative rules or policies that would interfere with or unnecessarily increase the cost of exploration and development of mineral resources.

Page 2:

The proposed rule is somewhat confusing with respect to mineral exploration and development, particularly as it relates to locatable minerals. The rule appears to allow road construction only in those cases where existing valid mining claims exist. The language of the proposed rule is unclear with respect to development of claims filed in the future. The County is also opposed to the language in the rule that prohibits the development of leasable minerals. The development of leasable minerals is a Forest Service decision. Once the proposed rule is in place, the Forest Service could not implement a decision contrary to Section 294.12.

If the Forest Service is unwilling to include leasable minerals in the exceptions, Churchill County is opposed to any retroactive prohibition to development activities unless adequate mitigation measures are negotiated with affected parties and included in the Record of Decision as committed mitigation.

It is noted that Tables 3-49, 3-50, and 3-51 indicate that there is more than \$7.5 trillion dollars in gross value of metal, oil and gas, and coal resources on inventoried roadless areas, which may never be developed due to prohibitions in the rule. We find it troubling that the current administration again moves to place restrictions on western coal development. The placement of such restrictions does nothing for the environment since it only "exports" the extraction of coal and other minerals overseas to third-world emerging nations where there are no environmental controls for the exploitation of such resources?

The analysis in the EIS indicates that natural resource users could face regulatory abuse. Page 3-143 states, "These alternatives could affect a more liberal use of SUDs as a management option for locatable mineral activities in inventoried roadless areas to assure the highest degree of protection for roadless characteristics". This section goes on to imply that an EIS would likely be required for road building in the inventoried roadless areas that would increase the cost to develop the site. There is no clear justification as to why such a requirement would now have to be more strictly enforced. The designation of an area as roadless does not necessarily result in any greater environmental impact than would occur if the area were not roadless. NEPA was not intended to become a regulatory roadblock to be used solely to increase cost and discourage development. Since mineral exploration and claim development are exempted from the proposed rule, the Forest Service cannot simply employ a more stringent standard to achieve what was not allowed in the rule.

There is no cumulative analysis. The Forest Service does not even attempt to address past, present and reasonably foreseeable events. Instead the cumulative analysis section relies upon a discussion of two other pending rules. Clearly, the Forest Service has not met its obligations under 40CFR1508.7.

Roadless Area Conservation

Volume 4 - Letters from Agencies and Elected Officials


Page 3:

The County is concerned about the adequacy of the analysis and information in the document. This DEIS has been prepared in a somewhat expedited fashion. It is difficult to understand how the Forest Service could prepare an adequate analysis of a proposed action that affects such a large area and includes so many critical and contentious issues in record time. Unfortunately, the answer is simple. In some cases there is little or no analysis of impacts and the Forest Service repeatedly attempts to down play impacts and the importance of traditional natural resource industries while promoting the so called "non-use values" of a rather small minority of the population that has no direct stake in the outcome. Nowhere in the analysis does the Forest Service prove or show with any certainty that environmental conditions will improve even slightly over the no-action alternative. In other words, the Forest Service proposal does not live up to the purpose and need described in the DEIS.

Instead, this roadless initiative appears to be a blatant attempt to assuage the strident demands of a rather small segment of the population who embraces "non-use values" at the expense of grazing, the timber and mining industries, and the communities that rely upon those resources, and more traditional recreational users. The expedited timeframe for completion, limited analysis, questionable need for the proposal, and subversion of true public debate undermines the credibility of the Forest Service and further erodes the trust and confidence that many in Nevada have in this agency's ability to manage lands and resources. For these reasons and the comments attached, the Forest Service should withdraw this proposal or adopt the no-action alternative.

Should you have any questions concerning this proposal, please do not hesitate to call me at (775) 423-5136

Sincerely



Bjorn P. Selinder, Manager
Churchill County

Cc:

Board of Churchill County Commissioners
Gov. Kenny Guinn
U.S. Senator Reid
U.S. Senator Bryan
Congressman Gibbons

**Churchill County, Nevada Comments to
The Roadless Area Conservation Proposed Rule
And Draft Environmental Impact Statement**

I. Comments on the Proposed Rule

First and foremost, the proposed rule is unnecessary. The Forest Service already has the ability to manage lands for road development under their current authority. In Counties impacted by the Forest Service proposal most unroaded portions of an inventoried roadless area are already within travel-restricted areas. Therefore, what is the purpose of further imposing even more complexity to the management process?

Section 294.11 Definitions

The definition of a classified road under 294.11(1) should specifically include RS2477 roads. The definition should be expanded to roads that are *planned or managed, or used* for motor vehicle access.

Section 294.11 (3) *Rebuilding* This Section is unduly restrictive. It appears that it would apply to a classified road that is currently being utilized below its service level. The definition makes no distinction between classified and unclassified roads.

The proposed rule needs to make clear that the definition of Road Construction, Road Maintenance, and Road Reconstruction do not apply to classified roads other than Forest Service Roads.

The Forest Service needs to distinguish between what constitutes minor maintenance under Section 294.11 versus road rebuilding and what criteria comprise rebuilding.

Section 294.12

Section 294.12 (a) applies to classified and unclassified roads. By definition an unroaded area does not have classified roads within its boundaries. It also appears that the Forest Service is attempting to apply this prohibition to non-Forest Service roads for which they have no administrative authority. Most counties impacted by the Forest Service proposal would not abide by any federal restriction that would deny the County the ability to reconstruct their existing roads classified or otherwise, or to construct new roads on existing rights-of-way.

Section 294.12 (b)(3) This section needs to be clarified, particularly with respect to mining claims. The analysis of the proposed rule indicates that road construction and reconstruction would be permitted for valid existing rights.... under the General Mining Law of 1872. It is unclear whether roads would be permitted for claims filed after the proposed rule. The rule should be changed to clearly reflect the Forest Service's intent

Churchill County Comments to the
Roadless Area Conservation DEIS

17290

with respect to locatable minerals. The development of leasable minerals should also be included under this Section as an exception.

Section 294.13

Churchill County is adamantly opposed to Section 294.13(b)(2). This language provides far too much discretionary authority for the responsible official. This situation can lead to abuse of the administrative authority granted under this rule and exacerbates a continued atmosphere of mistrust between local residents and the federal government, a condition all too evident in some counties in Nevada and throughout the West. This section should be dropped from the proposed language.

The proposed rule also needs to contain a provision to resolve road disputes at the local level. It is very possible that the roadless inventories are inaccurate and will have some disputed roads, particularly state, county and RS2477 roads.

II. Comments on the DEIS

General Comments:

1. The DEIS does not contain sufficient information to prepare site-specific analysis. The level of detail provided is consistent with a programmatic or comprehensive EIS used to evaluate national policy directives. The development of a programmatic EIS is followed by tiered EIS(s) to more adequately analyze site-specific impacts as recommended in 40CFR1502.20 and 40CFR1508.28. Does this EIS contain the appropriate site-specific analysis to implement the decision? Please explain.
2. Statements made on pg. 1-11 clearly indicates that this DEIS is to address national level issues and does not have the ability in many instances to address site specific issues.
3. The proposed rule, along with the other pending rules, are related actions that should be considered in one EIS. Page S-46 indicates that there are two other related rulemaking proceedings (Proposed Planning Rule and the Proposed Road Management Rule). Page S-46 states, "It is estimated that these rules and associated policies would provide a comprehensive and consistent strategy for managing NFS lands". Furthermore pg S-46 indicates that the proposed rules combined may have cumulative impacts. These three actions clearly fall with the scope of an EIS consistent with the direction under 40CFR1508.25. Why did the Forest Service treat the proposed rules as separate actions in violation of the aforementioned regulation? These three actions could be easily consolidated into one proposed action and evaluated in a manner consistent with Council on Environmental Quality's guidelines. Proceeding separately appears to be a blatant attempt to segment three closely related actions.

17290

4. Alternatives 2, 3 and 4 are virtually the same. There is little or no difference in terms of impacts among these alternatives. Each one provides varying degrees of timber harvest otherwise they are the same. The Forest Service has failed to adequately develop a full range of alternatives under NEPA. None of the alternatives result in significantly different impacts. In many instances the impacts are virtually the same. As a result, the Forest Service has failed to meet the requirements of 40CFR1502.14. The alternatives are nothing but "straw man" proposals. The Forest Service needs to consider an alternative that allows leasable minerals and analyzes the impacts and compares those impacts against the no-action alternative.
5. The DEIS has failed to adequately analyze the impacts to mining instead claiming that adequate information is not available at the national level to assess the impact. Substantial information is available locally that allows for such an assessment. The time required to assemble such information would likely take longer than the Administration would like and delay the record setting pace the Forest Service has established for the preparation of this draft EIS.
6. The DEIS must also examine the potential impacts of designating "other roadless areas". Other unroaded areas are not included in the proposed action or analyzed in the DEIS. The amount of lands that could be designated is substantial. Although it is difficult, if not impossible, to know exactly which lands would be designated as unroaded, the Forest Service should consider a worst-case scenario where all the lands would be included.
7. It appears that the evaluation of environmental consequences focuses on inventoried roadless areas whereas the prohibitions of the proposed rule primarily applies to the unroaded portions. Please provide the justification for using roadless area instead of the unroaded portion of the roadless area.
8. There is not a credible impact analysis provided in this document. The analysis of impacts for most resources contains a discussion of road miles and makes generalized conclusions based upon road miles. The analysis assumes that road construction or reconstruction would create an impact without providing any justification. It does not consider a host of standard operating procedures and other mitigation that would minimize road construction and related project impacts.
9. The cumulative analysis fails to adequately analyze all past, present and reasonably foreseeable actions that have impacted access and use of National Forest lands including the extensive loss of timber jobs and harvest due to other prohibitions. Cumulative actions are often inappropriately integrated into the

baseline description in an attempt to mask their impact and to minimize the incremental impacts related to this proposal.

10. The overall approach to the analysis is disturbing. In most cases the environmental consequences section provides little in terms of real impact analysis. Many of the section are generalized impacts based upon the potential for road miles. There are few, if any, objective, meaningful comparisons of impacts between the no-action alternative and action alternative.

Specific Comments

11. Pg. 3-13 discusses the Forest Service Road System. Based upon the discussion, it appears that recreation users, solitude seekers, etc generate most roads use. The Forest Service needs to devise a plan to recoup user fees from this group.
12. Pg. 3-13 Forest Service Road System. This Section needs to include a map showing planned road construction by region.
13. Pg. 3-15 indicates that road construction has declined to about 192 miles a year in 1999 with decommissioning of nearly 2,660 miles of road per year resulting in a net loss of 2,468 miles per year. This represents a cumulative impact that should be analyzed along with the roadless initiative. Please provide a discussion of the types of roads decommissioned each year. How many miles would affect the inventoried areas?
14. Pg. 3-15 last para and again on pg 3-23 indicate that best management practices for road planning, design and construction can minimize adverse environmental impacts. Please define and quantify remaining impacts. Are these best management practices assumed in the baseline and the no-action alternative? If so, the roadless initiative would appear to provide only a slight marginal improvement (perhaps insignificant) to the ecological health of some areas affected by this proposal. Following the same logic, decommissioning efforts have a far greater impact on Forest Health than this proposal.
15. Pg. 3-18 and 3-19 indicates that 1,444 miles of road are planned for construction over the next four years-please show locations on a map(s). Approximately 806 acres of road disturbance are timber related. Since timber harvest would not occur in Nevada (with the exception of small amounts in the Sierra Nevada range), only roads for non-timber related purposes would be constructed or reconstructed. Total non-timber planned road construction in the Intermountain Region over the next four years would be 152 miles which would disturb approximately 500 acres. Even if the entire 152 miles were in roadless areas of Nevada, this would account for 0.0156 percent of the inventoried roadless area in Nevada. Specifically, what beneficial impact would this have on inventoried

roadless areas in Nevada? How does the protection of this minuscule amount of land achieve the action's purpose and need?

16. Table 3-19 needs to be consistent with Table 3-4. How many miles of planned road construction are reconstruction activities by region?
17. Pg. 3-20 Ecological Factors-The EIS needs to contain maps that show areas most likely to be impacted and roadless areas where timber harvest would be curtailed due to this proposal.
18. Pg. 3-22 Watershed Health. This entire discussion relates primarily to timber harvest areas. Can we assume that watershed health; water quantity and timing are not significant issues outside timber harvest areas.
19. Page 3-142 Where is the baseline description for minerals and geology. At a minimum the description should show existing mining operations, proposed mining operations that require roads, areas of known valuable resource deposits.
20. Page 3-143 states, "An EIS would likely be required for proposed activities that would substantially alter the undeveloped character of an inventoried roadless area of 5,000 acres or more" What is the justification for this statement? It is inappropriate to make such a generalized statement in this EIS. The analysis in this EIS cannot support such a statement since it does not analyze with any detail regional or site-specific locations. Requiring the preparation of an EIS is not part of the proposed action and it should not be treated as such in this document. An EIS is required to study the potential impact of a proposal. Whether or not an area has a certain designation is irrelevant.
21. Page 3-143 states; "There is currently a trend of decreasing interest by the minerals industry.....appeals and lawsuits". This statement describes cumulative impacts and should be considered in the cumulative analysis section. Also the Forest Service needs to provide some general impact analysis related to this statement, i.e., loss of jobs, income, taxes, etc.
22. Page 3-143 The analysis in this section is inadequate because it only discusses additional regulatory measures imposed by the Forest Service that may create additional delay and cost. By including this type of language it presupposes that the Service already knows what the impacts are. Furthermore, the EIS does not consider appropriate mitigation measures. There is nothing in this EIS that could justify for any specific project the need for an EIS.
23. Page 3-143 states, "These alternatives could affect a more liberal use of SUDs as a management option for locatable mineral activities in inventoried roadless areas to assure the highest degree of protection for roadless characteristics".

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Again, this statement implies a degree of regulatory abuse and attempts to circumvent the Mining Law.

24. Page 3-144 The description of the affected environment needs to include some description of the types of leasable minerals developed on NFS lands and the quantities of extraction. There is no way to gauge the order of magnitude of the impact without the appropriate baseline information.
25. Page 3-144 and 145. The analysis needs to include areas that have the potential for leasable minerals. Those areas that are within the unroaded portion of the roadless area should be delineated. Estimates of leasable minerals in the unroaded portion should be compared to leasable mineral deposits outside roadless areas. Estimates of potential losses from the prohibition of developing this resource should be assessed in the EIS.
26. Page 3-145 indicates that standing decisions with regard to leasable minerals could be reviewed. The Service needs to be clear with respect to retroactively changing previous decisions. Private companies involved in leasable mineral ventures may have already allocated significant amounts of money for exploration and development. At a minimum, mitigation needs to be proposed for situations where private entities have committed funding to resource development.
27. Page 3-145 last paragraph states, "Thus, there is an opportunity cost to these alternatives, but the magnitude is unknown". The Forest Services needs to make a good faith estimate of the magnitude of impact. Page 3-143 identifies a list of potentially cumulative impacts, which should be integrated into this section and thoroughly analyzed.
28. Page 3-177 States that most ranchers depend on off-farm sources of income to remain economically viable. That is for the most part an untrue statement of central Nevada. The statement implies that livestock production is merely a hobby rather than a way of life producing a valuable commodity and food source. How many ranching operations have been forced into this situation from allotment reductions and other regulatory constraints imposed by federal agencies?
29. Page 3-182 Affected Environment Timber Harvest. The discussion on the first page is a cumulative impact that has resulted from regulatory and environmental restrictions steadily imposed on timber producers by federal land management agencies.
30. Pg. 3-193 states, "Like most extractive industries, mechanization has led to a decrease in the number of jobs per unit of output". This statement may be true, however, mining contributes indirectly to jobs in the non-manufacturing sector. In Nevada mining directly provides approximately 15,000 jobs. For each direct

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- job, mining generates another 0.75 jobs in the Nevada economy resulting in some 26,250 direct and indirect jobs in Nevada. The analysis should include the indirect benefits as well. Mining also provides a substantial amount of local government resources through sales and property taxes.
31. Pg. 3-193 No Action Alternative states a downward trend is in place. The only reason for a permanent downward trend is Forest Service policy towards the mineral industry. Market fluctuations create the cyclical nature of the mining industry, but it is difficult to predict a continuing downward trend.
 32. Pg. 3-194 states, "The prohibition of road construction or reconstruction in inventoried roadless areas is more likely....". The proposed rule only considers the unroaded portion of the roadless area.
 33. Pg 3-195 Tables 3-49 through 3-51 indicates that the gross value of metals, oil and gas, and coal exceeds more than 7.5 trillion dollars. Does the Forest Service consider limiting access to some 7 trillion dollars worth of oil, gas, and coal an insignificant impact? It would appear that the USFS believes that energy stocks and minerals can be obtained from third-world emerging nations without concern for strategic implications to the United States and attendant environmental consequences for countries ill-equipped to deal with these impacts?
 34. Cumulative Impacts This section contains a few pages about cumulative impacts related only to the other proposed rules and ignores many of the past, present and foreseeable actions which may have cumulative impacts particularly on the timber industry and timber dependent communities. The impact of the related proposed rules should be included with this analysis along with other restrictions and regulations that have created similar impacts to affected areas. The cumulative impacts of further restrictions need to be analyzed. Clearly, the Forest Service has not met the requirements under 40 CFR1508.7. This section is so poorly developed that it is difficult to make any further comments.
 35. Page 3-243 The Mitigation Options need to be committed in the Record of Decision. Otherwise they are meaningless.

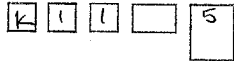


Department of Comprehensive Planning

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(702) 455-4181 • Fax (702) 385-8940

John L. Schlegel, Director • Phil Rosenquist, Assistant Director • Lesa Coder, Assistant Director

July 12, 2000



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

PAID RECEIVED
JUL 17 2000

COMMENTS ON THE ROADLESS AREA CONSERVATION PROPOSED RULE

Dear Content Analysis Enterprise Team:

In December 1999, Clark County submitted a preliminary response to the Roadless Area Conservation Proposed Rule. We also attended local public meetings conducted by the Forest Service to review local impacts and monitor public sentiment in Clark County and Southern Nevada.

Clark County wants to reiterate the comments we made in our preliminary response (see attachment), and want to emphasize the need for collaborative involvement in the decision-making process among federal agencies, state and local governments, and interested citizens. While the current Roadless Area Conservation Proposed Rule will not significantly impact Forest Service administered lands in Clark County, there are many areas throughout the Western United States with greater impact potential that will certainly benefit from interactive public involvement processes.

Thank you for the opportunity to review the USDA Forest Service Roadless Area Conservation Draft Environmental Impact Statement.

Sincerely,

John L. Schlegel, Director
Clark County Department of Comprehensive Planning

Attachment

cc: Tom Kuekes, District Ranger, Spring Mountains National Recreation Area

BOARD OF COUNTY COMMISSIONERS
BRUCE L. WOODBURY, Chairman • ERIN KENNY, Vice-Chair
YVONNE ATKINSON GATES • DARIO HERRERA • MARY J. KINCAID • LANCE M. MALONE • MYRNA WILLIAMS
DALE W. ASKEW, County Manager



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John L. Schlegel, Director • Phil Rosenquist, Assistant Director • Lesa Coder, Assistant Director

December 15, 1999

USDA Forest Service CAET
Attention: Roadless Areas NOI
P.O. Box 221090
Salt Lake City, UT 84122

Dear Content Analysis Enterprise Team:

Clark County, Nevada is responding to the Federal proposal concerning the future of inventoried roadless areas within the National Forest System. We understand the need to address the concerns of access and maintenance of roads throughout National Forest System lands. At the same time, those concerns must be addressed on a case by case basis for a specific area and driven through a local process with both local government and citizen involvement. Bottomline, the communities and individuals that are the most affected by the ultimate decision must be actively involved in the decision making process.

Attempting to complete a national Environmental Impact Statement covering 318,000 miles of road within one year is a tough task under the best of conditions. The "emotional triggers" associated with roads and access make this a virtually impossible task. The National Environmental Policy Act is specific regarding both the level of analysis necessary and public involvement and should be used as a guide in this process. Specifically, heavy public and local government involvement must be incorporated as part of this process. A complete inventory of roads should be completed as well as a transportation and access plan that would include recommendations for maintenance, adoption by user group, and overall trails and roads management.

We use existing roads to protect our forest resources from fires, to provide access for recreational opportunities, to protect the numerous plants and animals that live nowhere else in the world, and provide for the livelihood of Clark County residents. We are a desert community in a different ecosystem than the Pacific Northwest, Midwest, or Northeast. The Environmental Impact Statement must adequately address these specific environmental conditions and variations.

In addition to being a destination gaming resort, Las Vegas is a world-wide destination for visual and outdoor recreational opportunities. Las Vegas is also the fastest growing metropolitan area in the United States.

Historically, recreation opportunities have been available to residents in the undeveloped open-space immediately adjacent to, and within, residential areas. With the in-fill development of these open-spaces, these recreational opportunities are being eliminated. To correct this situation, Clark County is working collaboratively and successfully with the Forest Service, Bureau of Land Management, National Park Service and Fish & Wildlife Service. We are also working with a very proactive group of concerned citizens to preserve and develop new or existing roads and

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trails. Our citizen groups have currently adopted hundreds of miles of jeep trails, equestrian routes, mountain bike routes, and hiking trails to the benefit of the federal agencies, the community and these separate user groups

In May 1999, Clark County moved to formalize a regional trail development effort by establishing the Southern Nevada Regional Trails Partnership. Partners include all appropriate local and federal land management agencies, user groups and concerned citizens. The outcome will be the development of a regional and interconnected trail system providing new and existing opportunities for diverse experiences and access. These opportunities range from the urban desert washes of Las Vegas, to the remote areas the Lake Mead National Recreation Area, the Red Rock Canyon National Conservation Area, and the Spring Mountains National Recreation Area of the Humboldt-Toiyabe National Forest. These linkages provide an absolutely necessary nexus between the urban environment and these open space areas.

We use this as an example of the type of environmental analysis and active public involvement process that the USDA Forest Service needs to encourage. This national Environmental Impact Statement, and programmatic analysis, must assure that local alternatives for addressing local issues remain available to federal decision makers. This national effort also needs to assure that the beneficial working relationships that do occur between local and federal governments are not compromised.

Sincerely,

John L. Schlegel
Director

JLS:AP:bh

COMMISSIONERS
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Board of County Commissioners

CLARK COUNTY BOARD OF COUNTY COMMISSIONERS
COUNTY ADMINISTRATION CENTER
1000 SOUTH MAIN STREET, SUITE 100
SPRINGFIELD, NEVADA 89501

July 12, 2000

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USDA Forest Service - CAET
Attention: Roadless Area Proposed Rule
P.O. Box 221090
Salt Lake City, Utah 84122
FAX: 877-703-2494

4 1 1 5

RE: **Roadless Area Conservation Proposed Rule
And Draft Environmental Impact Statement**

**Response of the Elko County Public Land Use
Advisory Commission, County of Elko, Nevada.**

RECEIVED

JUL 17 2000

Ladies/Gentlemen:

The Elko County Public Land Use Advisory Commission, Elko County, Nevada are submitting the following comments for consideration on the Forest Service Roadless Area Conservation Draft Environmental Impact Statement. We are in the process of conducting a detailed and comprehensive review of the Draft EIS in conjunction with other counties in Nevada and the Nevada Association of Counties. Our comments, today, are general in nature and will be supported by submission or our detailed review to the Chief, USDA-Forest Service prior to the close of the comment period on July 17, 2000.

Our review, to date, has revealed the following issues and concerns:

1. The Draft EIS appears to be Biased and Predecisional

However harsh this may appear, recent actions by the Chief of the Forest Service, statements by the Executive Branch and numerous biases in the Draft EIS lends support only for selecting the preferred alternative and proposed action. Let us cite some examples.

A. On February 12, 1999 the Forest Service published an interim final rule that temporarily suspended road construction and reconstruction in most roadless areas of the National Forest System. The Draft EIS is written in support of continuing that rule without any regard for the values of roads, timber harvest, or many other multiple uses.

B. The Vice President's statements regarding his preference to preserve all roadless areas on National Forest System lands in the United States. He is quoted as saying, "And

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 July 12, 2000
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just so I'm crystal clear about it: No new road building and no timber sales in the roadless areas of our national forests." Since this analysis is under the umbrella of the Executive Branch, the Forest Service may feel incumbent to follow the direction of the Vice President without conducting an objective analysis.

C. The document is written very subjectively and leans toward justifying the proposed action of prohibiting roads and timber harvest in inventoried roadless areas rather than providing an objective analysis of all alternatives, issues, and effects.

2. The Draft EIS Does Not Adequately Address the Impacts on Counties and Local Governments.

The Forest Service admits that its assessment method conducts a "qualitative" analysis of most impacts. In fact, the analysis only provides a "quantitative" evaluation of agency costs, timber, and road construction and reconstruction - and framed mostly in a negative context. There are many associated impacts that are not "quantified" and relate to recreation use, stewardship timber harvest associated impacts that are not "quantified" and relate to recreation use, stewardship timber harvest, fuel reduction, catastrophic fire, ecological factors, wildlife, etc. We do not believe the Forest Service can make a reasonably informed decision based on this significant lack of information that is necessary to adequately analyze and disclose effects. This violates the basic premise of NEPA and leads us to the next point.

3. The Draft EIS Contains Numerous NEPA Deficiencies.

The Draft EIS fails to meet basic Council on Environmental Quality (CEQ) Regulations for NEPA in the following areas:

- The NEPA process must be useful to decision-makers.
- Emphasize interagency cooperation including counties.
- Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses.
- Study, develop, and describe appropriate alternatives.
- Consult early with State and local agencies.
- Invite the participation of Federal, State and Local agencies.
- Statements shall be concise, clear, and to the point, and shall be supported by evidence.
- Statements shall be analytic rather than encyclopedic.

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- Agencies shall not commit resources prejudicing selection of alternatives.
- Statements shall assess the environmental impacts, rather than justify decisions already made.
- Each statement shall contain a summary that adequately and accurately summarizes the statement.
- Rigorously identify, explore, and objectively evaluate all reasonable alternatives.
- Avoid useless bulk.
- Circulate the statement and request comments from Federal, State, and local agencies authorized to develop and enforce environmental standards.
- Incorporate material by reference only when it is reasonably available.
- Insure the scientific integrity of discussions.

We will be providing numerous examples in our detailed response of how the Draft EIS fails to meet these requirements.

4. The Draft EIS Contains Discrepancies and Contradictions Relating to Conclusions and Data.

We have discovered that so much of the document contains discrepancies and contradictions as it relates to conclusions and data that it is difficult to determine which are fact and which are the authors' personal biases. Here are a few examples:

A. The document states that many decisions need to be made at the local level but literally removes all the discretion for analyzing and selecting management options. The only options that remain open are activities that further protect roadless areas.

B. The Forest Service is willing to accept the risk of catastrophic fire and the resulting adverse effects which can be equal to or more destructive than planned management activities. However, the agency considers the risk of road construction and timber harvest to be unacceptable.

C. In one statement the Forest Service says that "As roads are decommissioned, the resulting unroaded areas will be evaluated for roadless characteristics and values." In another section, they state that "... the proposed prohibition on road construction would reduce roadless caused irreversible and irretrievable commitments to dispersed recreation activities in roadless areas." You can't have it both ways--Irreversible means you can't go back to the way it was. The first statement severely contradicts the second statement which is a legal conclusion of the agency.

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5. Conclusion

As relief to our concerns, the Elko County Public Land Use Advisory Commission would like to go on record in requesting the Forest Service, either,

1. Withdraw this proposed rule and subsequent documentation and delegate the decision for determining the disposition of roadless areas to local forest supervisors through normal land management planning processes. Then, local governments can play an active role as participants in the process.
2. Supplement this Draft EIS, as per CEQ Regulation 40 CFR 1502.9(c)(ii), to address the significant new circumstances and information that is relevant to our environmental concerns and bearing on the proposed action and its impacts.
3. Revise the Draft EIS, as per CEQ Regulation 40 CFR 1502.9(a), to address inadequacies that preclude meaningful analysis.

6. Supplementary Statement.

The NEPA process is unconstitutional based on the following data:

"There are serious questions regarding the constitutionality of the implementation of NEPA and the NEPA process within the boundaries of a member State of the Union. In the case, *Public Lands Council v. United States Department of the Interior*, No. 95-CV-165-B, (decided in the United States District Court for the District of Wyoming) the Court said:

NEPA does not require the agency to reach a particular result, "It simply prescribes the necessary process." *Robertson v. Methow Valley Citizens Council*, 40 US 332,350 (1989)... The Court need not decide "whether the (FEIS) is based on the best scientific methodology available, or resolve disagreement among experts." *Seattle Audobon Society v. Moseley*, 798 F. Supp. 1473, 1479 (W.D. Wash 1992). The Court need only ensure that the agency identified areas of scientific controversy and "respond(ed) to adverse opinions held by respected scientists." *Id.* at 1482.

The, the National Environmental Policy Act does not provide for due process and operates outside of the Constitution. There are no provisions for just compensation. If anything, it only provided color of law.

Under the common law right of due process and the Constitution, a statute must be reasonably expected to correct the evil prescribed. *McInerney v. Ervin* (Fla) 46 So 839. There must always be an obvious and real connection between the actual provisions of a regulation and its avowed purpose. Under due process, any action must be based upon the findings of fact and conclusion of law. Under the NEPA process, the agencies are not required to base their decisions or actions on the finding of facts or conclusion of law."

This concludes the response submitted by the Elko County Public Land Use Advisory Commission to the Board of County Commissioners, County of Elko, Nevada.

Thank you for providing the opportunity to local county government entities to comment on the Roadless Area Conservation Draft Environmental Impact Statement.

Sincerely yours,

ROBERTA K. SKELTON
Chairman


by GEORGE R.E. BOUCHER
Elko County Manager

/jw

COMMISSIONERS
 ANTHONY L. LESPERANCE
 NOLAN W. LLOYD
 MIKE NANNINI
 BRAD ROBERTS
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Board of County Commissioners
 BOARD OF COUNTY COMMISSIONERS
 COUNTY OF ELKO, NEVADA
 100 SOUTH MAIN STREET, SUITE 200, ELKO, NEVADA 89801

July 12, 2000

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RECEIVED
 JUL 17 2000

USDA Forest Service - CAET
 Attention: Roadless Area Proposed Rule
 P.O. Box 221090
 Salt Lake City, Utah 84122
 FAX: 877-703-2494

RE: **Roadless Area Conservation Proposed Rule
 And Draft Environmental Impact Statement**

**Response of the Board of County Commissioners
 County of Elko, Nevada.**

Ladies/Gentlemen:

The roadless policy being proposed by the United States Forest Service represents great concern to the Citizens of Elko County, Nevada. Forest Service lands represent a significant portion of the land mass of this County. They represent the principal watershed component of this County, as well as the majority of the State of Nevada. Consequently, they also represent some of the finest grazing lands found anywhere in the west. Further, the mountain ranges comprising this resource are heavily mineralized. As such, these areas have been highly productive resource areas for both economic gain as well as abundant recreational opportunities, often recognized as such, for the last 150 years.

Because of the above activities, a significant infrastructure of roads exist in this County, representing several thousand miles of all types of roads, including federal, state, county and private. This infrastructure of roads did not just occur because of someone's desire to build a road, rather, each and every one of these roads occurred because of the driving force that built this nation, civilization. The vast majority of these roads were in existence far longer than the United States Forest Service.

This County, as represented by its Board of Commissioners, has and continues to guard these roads with all of its ability for the protection of the health and welfare of the citizens. As such, the Board of Commissioners has passed unanimously two major Forest resolutions dealing with roads in Elko County. They are:

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 July 12, 2000
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1. Resolution No. 76-94, a Resolution Declaring Elko County Public Roads Across Public Lands.
2. Resolution No. 14-98, a Resolution Establishing County Law and Policy Pursuant to its Policy Within the Nevada Revised Statutes with Respect to Roads within Elko County.

To enforce these resolutions the Board of Commissioners has established a set of maps, commonly known as the "Gardner Maps", duly recorded with the County Recorder as File No. 328522 on October 26, 1992, for all to see. It is the firm resolve of the Elko County Board of Commissioners to treat any proposed road closure that is referenced in any fashion by the above resolutions, or occurs on the "Gardner Maps", in the exact same manner as this Commission has reacted to the attempts by the United States Forest Service to close the County road, commonly called the South Canyon Road, located near Jarbidge, Nevada.

Further, even though the present local administration of the United States Forest Service has assured this County that all existing roads (classified and unclassified) on Forest Service lands will be protected, it is also the firm resolve of the Elko County Board of Commissioners that the existence of these roads (classified and unclassified) must not only be protected now, but for perpetuity. Protection of existing roads (classified and unclassified) must be addressed in the final Environmental Impact Statement, as so noted in the Federal Register and other appropriate media.

Sincerely yours,

ROBERTA K. SKELTON
 Chairman

George R. E. Boucher
 by GEORGE R.E. BOUCHER
 Elko County Manager

RKS/GREB/fjw
 Enclosures

13984

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SUMMARY: Elko County Public Roads Resolution.

RESOLUTION NO. 76-94

A RESOLUTION DECLARING ELKO COUNTY PUBLIC
ROADS ACROSS PUBLIC LANDS

WHEREAS, before the territory of Nevada was settled, the area was inhabited by Native Americans and descendants of Spanish explorers; and

WHEREAS, there were no roads as we know them today, but there were single track ways, pathways, and trails connecting two points; and

WHEREAS, since that time, miners, ranchers, sportsmen, and other members of the public began establishing numerous roads and similar public travel corridors by usage across public lands; and

WHEREAS, in recent years local and state governments and others have been constructing and maintaining roads and highways by mechanical means across public lands; and

WHEREAS, these ways, pathways, trails, roads, stock driveways, highways, and similar public travel corridors have a public purpose such as but not limited to mining, ranching, recreation, water, timber, utilities, wood gathering, hunting, fishing, and sight seeing; and

WHEREAS, the Act of Congress of July 26, 1866 (RS 2477), is evidence that Congress executed a Quit Claim of any right, title or interest in any road, right-of-way, ditch, etc.; and

WHEREAS, NRS 244.155 provides: "The boards of county commissioners shall have power and jurisdiction in their respective counties to lay out, control and manage public roads, turnpikes, ferries and bridges within the county, in all cases where the law does not prohibit such jurisdiction, and to make such orders as may be necessary and requisite to carry it control and management into effect."

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF ELKO COUNTY COMMISSIONERS DOES HEREBY DECLARE ON THE 17TH DAY OF AUGUST, 1994, THAT:

1. All ways, pathways, trails, roads, county highways, stock trailways, and similar public travel corridors across public lands in Elko County, Nevada, whether passable by foot, beast of burden, carts or wagons, or motorized vehicles of each and every sort, whether currently passable or impassible, that were established in the past, present or may be established in the future on public lands in Elko County, excluding Interstate 80, United States Highways 40, 93 and 93A, and State Highways 225, 226, 227, 228, 229, 232, 233, 278 and 766, are hereby declared to be Elko County Public Roads.

2. All rights-of-way to all ways, pathways, trails, roads, county highways, stock trailways, and similar public travel corridors across public lands that are declared to be Elko County Public Roads are the property of Elko County as trustee for the public users thereof and will consist of a 60 foot right-of-way or more if required to accommodate cuts and fills.

3. Elko County hereby ratifies historic practices in the County that public roads have been maintained either by usage or mechanical means and the County will continue this practice in the future. The County's decision not to mechanically maintain any pathway, trail, road, county highway or similar public travel corridor across public lands shall not terminate or affect in any way such road's status as an Elko County Public Road.

4. This resolution hereby incorporates by reference, NRS 405.193(2) which provides:

No action may be brought against the county, its officers or employees for damage suffered by a person solely as a result of the unmaintained condition of a road made public pursuant to NRS 405.195.

5. Pursuant to NRS 405.193, Elko County disclaims all duty and responsibility of maintenance of the Elko County Public Roads so designated pursuant to this resolution.

6. Abandonment or road closure of any Elko County Public Road across Public Lands must follow procedure in accordance with Nevada Revised Statutes and only after public hearings. See NRS 405.195.

7. That a copy of this Resolution be forwarded to all interested parties and the Resolution shall be followed by an ordinance.

ORIGINAL

13984

Proposed this 17th day of August 1994, by Elko County Commissioner Skelton. Passed and adopted this 17th day of August 1994.

Vote: Ayes: LLEE CHAPMAN, MIKE NANNINI, ROBERTA SKELTON, BARBARA WELLINGTON

Nays: NONE

Absent: DALE PORTER

Signature of Chairman of the Board

ATTEST:

Signature of Karen Vasquez, Elko County Clerk

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ELKO COUNTY, NEVADA RESOLUTION # 14 - 98

A RESOLUTION FROM THE BOARD OF COMMISSIONERS, ELKO COUNTY, NEVADA, ESTABLISHING COUNTY LAW AND POLICY PURSUANT TO ITS AUTHORITY WITHIN THE NEVADA REVISED STATUTES WITH RESPECT TO ROADS WITHIN ELKO COUNTY, AND OTHER MATTER RELATED THERETO.

WHEREAS, Elko County, Nevada, is a political subdivision of the sovereign State of Nevada, and;

WHEREAS, Elko County (through its Board of County Commissioners), is charged with the fiduciary public trust obligation to protect right of way and access of roads and protect the economic, environmental and general welfare of Elko County for its Citizens and their Rights through consistent enforcement of the Nevada Revised Statutes (NRS), Laws of the United States (USC) and Elko County Code, and;

WHEREAS, Elko County is scheduled to take action on this issue in regular session pursuant to proper request of the Citizens of Elko County and the "Regular Meeting Agenda" item dated for the Board of Commissioners meeting this day, and;

WHEREAS, the Citizens of Elko County have expressed concerns that their right of road access is under attack and has petitioned that the county take action to secure their road access within the county, and;

WHEREAS, this Board of Commissioners has reviewed certain maps setting apart the County's roads and recorded in the office of the Elko County Recorder and finds said maps to be an accurate set of documents defining the County's road structure within Elko County securing all rights of road access for its Citizens.

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WHEREAS, this Board finds that Nevada achieved statehood in 1864 and that neither the county nor its Citizens are bound by the decisions of any agency attempting to redefine roads and/or right of access under the Act of 1866 (RS2477).

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

1. THAT, the Board of Commissioners for Elko County, Nevada, by and through this Resolution is acting within its sovereign capacity in and for the County of Elko as the Legislative and Administrative body and that this Resolution establishes the law and policy on road access within Elko County and that said right of road access shall not be interfered with or impeded by any agency acting beyond its authority.
2. THAT, this Board establishes herein and adopts that the maps filed in the office of the Elko County Recorder, in File #/Map Case 328522, Exhibits A-1 through T-1, Sheets 1-40, properly define the county roads of Elko County, Nevada in and for the benefit of its Citizen's and the public's right of road access and the roads defined and set apart within said maps are not be construed as all inclusive.
3. THAT, Elko County reserves its sovereign right under the law to amend said maps at any time in the future for road expansion when the facts present it is necessary to do such.

BE IT FURTHER RESOLVED, that a copy of this Resolution be transmitted to Elko County Recorder (for proper recording with herein identified maps), each member of the 1997 session of the Nevada Legislature, Governor for the State of Nevada, Nevada's Attorney General, each member of Nevada's delegation to the Congress of the United

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States, the President of the United States, the Secretary of the Agricultural, all State and Local agencies and local federal agencies.

PROPOSED by Commissioner Chapman

Seconded by Commissioner Skelton

PASSED and ADOPTED this, 4th day of February, 1998.

VOTE:

AYES - R. Llee Chapman, Tony Lesperance, Mike Nannini, Roberta Skelton

NAYES - NONE

ABSENT - Royce L. Hackworth

SIGNED:

Mike Nannini
MIKE NANNINI, VICE CHAIRMAN

BOARD OF COUNTY COMMISSIONERS
ELKO COUNTY, NEVADA

ATTEST:

Karen Dredge
KAREN DREDGE, COUNTY CLERK

SEAL

JUL-17-2000 11:54

ESMERALDA CO. COMMISSION



BOARD OF COUNTY COMMISSIONERS
ESMERALDA COUNTY, NEVADA

MEMBERS
BENJAMIN VILJOEN, CHAIRMAN
GARY O'CONNOR, VICE CHAIRMAN
HARRIET EALEY, LIQUOR BOARD

STAFF
BEVERLY J. RELYEA
ADMINISTRATIVE ASSISTANT
(775) 485-3406; FAX: (775) 485-6351

K 1 2 5 6F 16085¹

1861
USDA Forest Service - CAET
P. O. Box 221090
Attn: roadless Areas Proposed Rule
Salt Lake City UT 84122

July 10, 2000

CAET RECEIVED
JUL 17 2000

Dear Forest Service,

RE: Forest Service Roadless Area Conservation Draft Environmental Impact Statement

The Esmeralda County Commission has conducted a review of the aforementioned document. Many disturbing findings show a definite need for significant changes in the document and the processes of evaluating and deciding on the disposition of roadless areas across the United States.

The Draft EIS contains significant flaws pertaining to CEQ Regulations 40 CFR 1500-1508 that govern the NEPA process; misleading statements between the Summary and Volume 1; inconsistencies in information, data, and the level of analysis; discrepancies in and unsupported statements, assumptions, and conclusions; contradictions in assumptions and conclusions; inadequate analysis and disclosure of effects; poorly developed alternatives that do not represent a full range; biases and value judgements on behalf of the author(s); and prejudicial actions on your behalf. Specific information and evidence is provided in the attached review.

Based on our review, the Forest Service has only two courses of action. We request that you:

1. Immediately withdraw the Proposed Rule and Draft EIS and delegate the decision for the disposition of roadless areas to local officials (forest Supervisors) of your organization using the Forest Plan Revision or Amendment process. Since the proposed rule is essentially an allocation decision of resources, the proper venue for analysis and decision-making is at the national forest level. This will insure consultation and coordination with local governments that is necessary to address the inadequacies identified above and in our attached review.
2. If you choose NOT to withdraw the Proposed Rule and Draft EIS, the Forest Service as a minimum, must significantly revise the Draft EIS to account for the inadequacies found and distribute it for public comment. CEQ Regulation 1502.9 states that "...if a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft..." Our review has revealed that much of the draft EIS is woefully inadequate and meaningful analysis is not possible.

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ESMERALDA CO. COMMISSION

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If you choose not to pursue either of the above courses of action you must extend the comment period for review of the Draft EIS another 180 days. The document cites over 350 references that local governments cannot possibly acquire and review within the 60 day comment period.

Thank you for the opportunity to comment and we look forward to working with the Forest Service on the Roadless Area Conservation issue at the local level in the spirit of "collaboration" you so often talk about.

Sincerely,

Benjamin Viljoen, Chairman
Esmeralda County Commission
State of Nevada

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State of Nevada
Esmeralda County Review of Forest Service
Roadless Area Conservation Draft Environmental Impact
Statement

Esmeralda County is in support of the comments made by Nevada Association of Counties and find following a summary of review findings.

This summary represents inconsistencies, errors, deficiencies and biases found in a detailed and comprehensive review of the Forest Service Roadless Area Conservation Draft Environmental Impact Statement.

- 1. NEPA Deficiencies
- 2. Range of Alternatives
- 3. Ecological Factors
- 4. Fire
- 5. Vegetative Treatment
- 6. Recreation
- 7. Impacts to Counties
- 8. Risk
- 9. Transportation
- 10. "Conservation" of Roadless Area
- 11. Costs of Implementation
- 12. Land Allocations
- 13. Mitigation
- 14. National vs. Local Analysis
- 15. Summary Document

1. NEPA Deficiencies

A review of the Forest Service Draft EIS indicates numerous deficiencies in meeting the Council on Environmental Quality Regulations (40 CFR 1500-1508) that govern the National Environmental Policy Act (NEPA) process. These deficiencies include:

- a. Lack of interagency cooperation and consultation with local governments

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- b. Failure to request participation from local governments
- c. Insufficient range of alternatives
- d. Taking actions that prejudice selection of alternatives
- e. Prejudiced selection of the proposed alternative
- f. Biased assumptions and conclusions
- g. Failure to support assumptions, effects, and conclusions with evidence
- h. Excess bulk, lack of clarity, and difficult to understand
- i. Incorporation of material by reference that is not readily available
- j. Inaccurate summary
- k. Lack of scientific integrity
- l. Inadequate specific information on environmental effects

2. Range of Alternatives

Far less than a full range of alternatives are to be considered within the document. Most prohibition alternatives reiterate regulation, policy or requirement by law. In example, alternatives were developed that require project level analysis or forest planning to determine effects when entering roadless areas for any reason. However, Forest Service direction, law or regulation currently requires these activities. This represents the "No Action" alternative, rather than additional alternatives. Therefore, the alternatives developed do not represent a full range as required by CEO regulations. Alternatives are developed without regard to effect on the historical use for "public" land utilization. In example "all existing roads would be scheduled for closure and removal in a timely manner". Areas have been developed historically for various reasons including conservation, ecological factors, economic factors, recreations and more. Past reasons and future uses do not disappear because the Forest Service inventories them as roadless areas. The definition of a roadless area includes "standard passenger vehicles" as a requirement; most of these roads were originally made for other types of vehicles. Such rule making will allow a permanent restriction on the future use and access to an area based solely on the fact that a road does not presently exist in the area according to Forest Service inventory.

3. Ecological Factors

The Forest Service did not take into account the ecological and resource use factors that other agencies contribute through their management for biodiversity, ecoregions, fragmentation, size, open space, roadless recreation, etc. The Bureau of Land Management, National Park Service, Fish and Wildlife Service, all should be considered. Since this analysis is on a national scale all agencies need to be considered for their contribution to the numerous ecological and resource use factor. If the Forest Service does not want this analysis on a national scale the agencies to be collaborated with are the individual county governments concerning each individual case.

4. Fire

The document references increased risk of catastrophic fires. The need is identified for fuel reduction, through mechanical and prescribed fire treatments, to reduce risk. Ponderosa Pine forests are used as examples however this species is a short-fire interval species and does not represent a majority of forested areas across our great nation. Long-interval fire species, such as lodgepole pine and spruce should be the addressed species for aging, subject to insect and disease and contribute to fire risk. In recent years, (1988 fires in Yellowstone, Montana, Wyoming, and Idaho) many of the catastrophic fires did not occur in Ponderosa Pine ecosystems. Fireline insertions WOULD be feasible for these species as treatment against catastrophic fire. Thinning and prescribed fire are LESS feasible. The forest Service needs to display the acres of short-interval fire ecosystems v. long-interval fire ecosystems in order to comprehend the magnitude of this problem.

5. Vegetative Treatments

Much of the document references the use of fire and mechanical treatments (thinning for vegetation and ignores or provides arguments against the use of timber harvest and fire lines. The proposed action alternatives will have many of the same effects.

6. Recreation

We are opposed to broad policies to eliminate road construction just because an area is currently roadless. This policy would prohibit the future development and severely curtail multiple use activities in roadless areas even if there is a significant social value placed on that potential development or use. We believe the Forest Service SHOULD allow for the construction of roads in roadless areas if there is a locally determined social value to do so.

Historically, roads were developed for recreation, food supply (hunting & fishing), and pure enjoyment of the various areas of our great country. Never is the time to permanently close "Forest Service inventoried roadless areas" on "public" land. The definition of a Recreationist (1904) one who seeks recreation especially in the outdoors; how can this be accomplished if the person is prohibited from being on the land outdoors?

The entire recreation section focuses on the supply side of recreational opportunities. The document states the demand for roaded recreation opportunities are increasing; however the focus is on making more unroaded recreation opportunities available. If the Forest Service cannot sustain the maintenance of roads, more collaboration should be made with the county and state government in needed areas, rather than classify areas roadless to alleviate the maintenance expense.

7. Impacts to Counties

There are numerous impacts that will affect counties. We believe management decisions on individual forests should be made in cooperation with the state and local governments

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and with residents of the affected area, since these agencies and individuals will be impacted the most.

The proposed rule identifies the type of impact assessment and most impacts are described as a "qualitative discussion" and not "quantitative" analysis. This leaves local officials in the dark about how the proposal will impact their jurisdiction. During public meetings Forest Service officials state not all roads and/or trails in roadless areas will be closed. However the document states the opposite.

8. Risk

The document refers to the risk of implementing many actions. There is an appearance that the risk of catastrophic fire, greater human impact, impacts to communities, etc. is acceptable but the risk of road construction, reconstruction, and timber harvest is not acceptable. The management of forests or public land appears to be against the public rather than FOR the public.

9. Transportation

The document does not address impacts to jobs, income, and local economies as a result of prohibiting road construction, reconstruction and maintenance. Historically our "lands", and access to them, have offered the people of the United States their livelihood, pleasure and home.

10. "Conservation" of Roadless Areas

Preservation and protection of the roadless areas are what this document proposes, not "conservation". Preservation and protection leads the public to believe closure and non-use as the end result. Conservation is more appropriately defined as the "wise use" of resources - not withdrawing them from use.

11. Costs of Implementation

The draft EIS suggests that little funding will be required to implement the Proposed Action. However, many associated costs pertaining to management, including field and administrative personnel in each area along with costs pertaining to fire suppression, fuel reduction, mitigating impacts, planning, etc. are not sufficiently addressed. In addition, the Forest Service withdrew funding for FY2000 from every national forest to conduct this roadless analysis at the expense of producing local goods and services.

12. Land Allocations

Normally, the Forest service employs the forest land management planning process to make determinations of land allocation with full public input and disclosure. This document refers to special areas be designated by the Forest Service for purposes of preservation, such as conservation reserves, buffer zones, ecoregions, etc. that have no

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legal or regulatory standing in management of the national forests. This would be other rights taken away from the People of our Country.

13. Mitigation

In order to deal with the Forest Service, it is suggested in the document that communities be stripped of resources while attempting to fund their resiliency, attract new business and diversify their economy by using Rural Development funding to offset impacts. The document proposes to take funding from proactive communities to mitigate these impacts. Rather than mitigation and monies needed for rural development taken for Forest Service impacts, is not the true answer individual collaboration with local government in each individual case to eliminate these redundant rules and regulations that should not apply to "all Forest Service lands"? The Forest Service is to manage the public lands not restrict and close off from the public. Who will enjoy the closed public land, buffer zones, and special areas the Forest Service personnel?

14. National Vs. Local Analysis

The Draft EIS many times references the fact that not enough information is available to assess impacts of the proposed action or alternatives on local communities and forests. This is sufficient reason that this decision must be made at the local level using the forest plan revision process and emphasizing participation of local governments, conservation districts, rural fire departments, and counties in each individual case. A decision of this magnitude cannot be made at the national level and address all of the potential impacts to local communities and national forests.

15. Summary Document

The summary does not present a true recap of the information contained in Volume 1 of the Draft EIS. Items of utmost importance are in the summary that does not coincide with the full document. For example:

- a. The statement "No roads or trails would be closed because of the prohibitions" is included in the Summary; while the quote in Volume One states "all existing roads would be scheduled for closure and removed in a timely manner". This is misleading when reading the Summary. The main document provides unlimited discussion on why roads should be obliterated and closed rather than show the historical, economical, social or any other type of reason for continued use.
- b. The Summary omits the importance of the local managers having power to decide on the future disposition of roadless areas.
- c. Importance to community health in regard to economics, stability, dependency for survival etc. has not been defined in relation to roadless areas. These resources are the fabric that holds many communities together only the watershed and ecosystem health are defined for the importance of roadless areas in the Summary.

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Esmeralda County Commission, State of Nevada would like to take this opportunity to thank you for the invitation to comment on the aforementioned Draft Environmental Impact Statement.

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1 Resolution No. 99-015

2
3 RESOLUTION OF THE
4 ESMERALDA COUNTY, NEVADA BOARD OF COUNTY COMMISSIONERS
5 SEEKING COOPERATIVE AGENCY STATUS; REQUESTING ASSURANCE
6 THAT ECONOMIC AND SOCIAL IMPACTS WILL BE ADEQUATELY EXPLORED;
7 AND OPPOSITION TO USFS PROPOSAL

8 WHEREAS, on October 13, 1999, President William Jefferson Clinton directed the
9 United States Forest Service [USFS] to begin "an open and public dialog" about the future
10 of purported "roadless areas" which have been inventoried by the USFS; and

11 WHEREAS, on October 19, 1999, the USFS published in the Federal Register
12 proposed rules, which, if promulgated, will immediately and, pending the conclusion of
13 public dialog and any actions resulting from that dialog, restrict certain activities, such as
14 road construction, reconstruction and maintenance, in the inventoried "roadless areas;"
15 and

16 WHEREAS, the public comment period on the current scoping hearings will end
17 December 20, 1999, with written comments to be mailed to USDA Forest Service-CAET,
18 Attn: Roadless Areas NOI, P.O. Box 221090, Salt Lake City, UT 84122; and

19 WHEREAS, the Esmeralda County, Nevada Board of Commissioners, a political
20 subdivision of the State of Nevada, has legal responsibility, authority and jurisdiction to
21 participate in and facilitate for its constituents the "open and public dialog" regarding
22 roads and "roadless areas," as called for by President Clinton. It is imperative for
23 Esmeralda County to be involved in the proposed rule-making process in order to protect
24 the economic and social viability, general well-being and other vital interests of its
25 constituents and visitors to Esmeralda County; and

26 WHEREAS, Esmeralda County has a right pursuant to 40 CFR section 1501.7 to
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1 request and receive "cooperative agency" status for purposes of this rule-making process;
2 and

3
4 WHEREAS, the Esmeralda County, Nevada Board of Commissioners agrees that it
5 is in the best interest of the constituents of Esmeralda County that, on behalf of Esmeralda
6 County, it seek cooperating agency status, it urge full investigation of the impacts of the
7 proposed rules, and it ask USFS to consider a viable alternative to the proposed action;
8 and

9
10 WHEREAS, a review of the USFS proposal(s) suggests that this is an effort to create
11 a new classification of public lands designation which would severely limit the public's
12 access to their public lands, limit or eliminate road construction in areas designated
13 "roadless," prohibit future development and curtail multiple use activities;

14 NOW THEREFORE, IT HEREBY IS RESOLVED AS FOLLOWS:

15
16 1. The Esmeralda County, Nevada Board of Commissioners, a political subdivision
17 of the State of Nevada, is on record that it opposes this broad policy, with little time given
18 to muster constructive public input, to eliminate road construction just because an area
19 is currently "roadless." In addition, the Esmeralda County, Nevada Board of
20 Commissioners is on record that the USFS should allow for the construction of roads in
21 "roadless" areas if there is a locally determined social value to do so.

22
23 2. The Esmeralda County, Nevada Board of Commissioners is also on record that
24 the USFS should extend the December 20, 1999 deadline for public comment for an
25 additional 120 days.

26 ///

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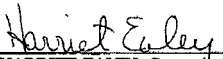
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1 3. The Clerk of the Board of Commissioners is directed to forthwith forward a copy
2 of this resolution to the USDA Forest Service-CAET at the address reflected herein.

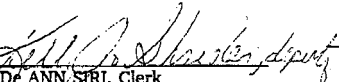
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4 PASSED, ADOPTED and APPROVED by the ESMERALDA BOARD OF COUNTY
5 COMMISSIONERS this 17th day of December, 1999.

6 
7 BENJAMIN VILJGEN, Chairman

8
9
10 GARY O'CONNOR, Vice-Chairman

11 
12 HARRIET EALEY, Commissioner

13 ATTEST:

14 
15 De ANN SIRI, Clerk
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DISTRICT ATTORNEY, ESMERALDA COUNTY
P.O. BOX 339
GOLDFIELD, NEV. 89013-0339
PHONE: 775-485-6352 • FAX: 775-485-6356

Eureka County
Public Land Advisory Commission
POB 682
Eureka, NV 89316

10 July 2000

USDA Forest Service-CAET
POB 221090
Attn: Roadless Areas Proposed Rule
Salt Lake City, Utah 84122

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RECEIVED
JUL 17 2000

To Whom It May Concern:

Enclosed are the Eureka County Public Land Advisory Commission's (ECPLAC) comments and response to the Roadless Area Conservation Proposed Rule (hereinafter "proposed rule") and Draft Environmental Impact Statement (DEIS).

Executive Summary:

There are approximately 9,600 acres of the Toiyabe National Forest that are within the boundaries of Eureka County, at the southwest corner of the county. Within this portion of the Toiyabe NF, there is an "inventoried roadless area" (IRA) per Map 5 of the Humbolt-Toiyabe National Forest, dated March 1, 2000. While this area is identified as "roadless," there are in fact, at least two roads of common use within the IRA, in which Eureka County's road department have performed for the US Forest Service. The definition of "roadless" as used by the USFS is rather tortured. For example, to call the area of the Toiyabe NF within Eureka County a "inventoried roadless area," the following definition is used by the USFS: "While many in inventoried roadless areas remain 'roadless,' others have been roaded to varying degrees. If implemented, the proposed action would require responsible officials to apply the rule only to those portions of inventoried roadless areas that have not been roaded since the area was inventoried."

The Eureka County Public Land Advisory Commission supports the "no action" alternative. The Proposed Rule is unnecessary as the USFS already has sufficient and ample administrative authority to control the construction and development of roads in National Forests and USFS-controlled lands. Indeed, this is clearly stated: "Under current agency management policy, local agency officials have the authority to make decisions about road construction on the national forests and grasslands on a case-by-case basis." The Cost-Benefit Analysis contains little substance to uphold any quantifiable economic benefit from the proposed rule. And the Draft EIS does not address site-specific analysis, which is recommended in 40CFR1502.20 and 40CFR1508.28.

I. Comments on the Cost-Benefit Analysis.

ECPLAC finds several contradictory and conflicting statements in the document titled "Cost-Benefit Analysis for the Proposed Rule on Roadless Area Conservation" dated April 19, 2000, (hereinafter called "the CBA") which call into question the validity and thoroughness of the cost-benefit analysis:

- There is no cumulative analysis and the USFS does not address "past, present and reasonably foreseeable events" per the language in 40CFR1508.7.
- Throughout the entire CBA, there is little foundation, quantification or substantiation of the benefits of the proposed rule. The CBA repeatedly makes note of "qualitative" benefits, which are based on perception rather than economic analysis that is required in public policy documents, particularly a cost-benefit analysis.
- On p. 8 of the CBA, there is a statement addressing cost savings: "Implementing the rule, as proposed, could result in agency cost savings. First, local appeals and litigation about some management

Eureka County Public Land Advisory Commission
Comments to the Roadless Area DEIS/Proposed Rule

Roadless Area Conservation

Volume 4 - Letters from Agencies and Elected Officials

activities in roadless areas could be reduced, which would avoid future costs.”

This statement is purely speculative. There is no data in the CBA showing how much money has been spent on litigation to date, by whom, for what and there is no quantification of how much of the litigation brought in the past might be avoided in the future. Further, there is no thought or analysis given to how much litigation might be brought against the USFS and agencies in the future as a result of this rule. Therefore, this statement is purely speculative and without any merit in the CBA.

- Also on p. 8 of the CBA, from the same paragraph: “Secondly, the reduction in miles of roads construction would reduce the number of miles the agency is responsible for maintaining, resulting in avoiding up to an additional \$565,000 per year of costs.” While the USFS enumerates this as the only quantified cost savings, there is the following quantification of increased costs on p. 10: “The procedural provisions would be applied to the 54 million acres of inventoried roadless areas, as well as up to 95 million acres of other National Forest System lands. The procedures would add about \$11 million to planning costs over the next 5-15 years.” Using a median figure of 10 years for these procedures, we can infer an increase of \$1.1 million per year in administrative costs as a result of the procedures resulting from the proposed rule.
- The CBA only briefly details the expected decreases in forest product and mineral leases, with a low estimate decrease in direct income from the proposed rule of \$9,702,000 from timber leases alone. There is no quantified analysis of how the proposed rule would result in any increase in economic activity to make up for this decrease in revenues.
- On p. 26 of the CBA, it states that “Mineral activities on National Forests and Grasslands generated over \$100 million in receipts to the U.S. Treasury...” The CBA further estimates that there are 4,684 metric tons of gold, 142,036 metric tons of silver and over 200 million tons of copper, lead and zinc resources contained in the inventoried roadless areas. There is no attempt to compute the value to the U.S. Treasury of the potential loss of mineral lease income in the proposed IRA’s and no attempt to compute the loss in state and local mineral tax revenue from the proposed rule. Further, there is no attempt to compute the secondary tax revenue decreases from the loss of jobs, sales and property taxes at the state and local levels where the proposed rule would impact local economic activity.

The net summary of all the quantifiable data that is found in the CBA shows a net loss to the U.S. Treasury from the proposed rule, with the quantifiable costs larger than the benefit by at least an order of magnitude. The effects on state and local economies are not quantified outside the timber industry, regardless of how substantial they might be. The projected savings are far below the \$8.4 billion road repair and reconstruction backlog stated in the DEIS, p. S-4. Given that Eureka County derives substantial tax and economic revenue from mining and mineral extraction activities, ECPLAC questions the adequacy of the analysis and the information in the document. Clearly, the CBA was prepared in a timeframe too short to allow for a proper and thorough analysis and it is difficult to understand how the USFS could hope to prepare a complete and thorough analysis in the timeframe the agency allowed for this activity. In area after area, the USFS attempts to reduce the required analysis to a summary of “...the overall level of activity is expected to continue to trend downward...” without any analysis of the rate of decrease, the timeframe of the trend and other basic analytic substantiation.

II. Comments on The Draft Environmental Impact Statement (DEIS).

1. The DEIS considers only this one proposed rule. The USFS has two other rules out for public comment (“Road Management Policy, 36CFR212 and “Land and Resource Management Planning Rule, 36CFR217 & 219). These three rules are related, indeed per p. S-46 of the DEIS: “It is estimated that these rules and associated policies would provide a comprehensive and consistent strategy for managing NFS lands.” Per 40CFR1508.25(2), the impacts of these three proposed rules should be discussed in the same EIS. They are not.
2. The general and consistent manner in which the DEIS is written is very insubstantial. In most all cases, the consequences of the proposed rule are discussed in very general terms, with very little quantified impact analysis. There are few meaningful comparisons between the “no action” alternative and the preferred alternative.
3. The DEIS does not adequately analyze the impacts to the mining industry. The DEIS claims that there is not adequate information on the mining industry at the national level to assess the impact. In fact,

Eureka County Public Land Advisory Commission
Comments to the Roadless Area DEIS/Proposed Rule

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there is substantial information available on mining revenues at the state and local level, both for private sector revenues and employment information as well as tax receipts to state and local governments. Per 40CFR1502.9, the USFS has clearly provided a DEIS which is so inadequate as to preclude meaningful analysis. Per 40CFR1502.9, “If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.” ECPLAC hereby formally requests a revision to the DEIS to show meaningful analysis of the impacts of the proposed rule to the mining industry.

4. In addition to the failure to adequately quantify the analysis of the impacts to the mining industry, the DEIS fails to quantify impacts to state and local government tax revenues from impacts to the mining, oil, gas and other non-forest extractive industries. There is no discussion under “Mitigation Options” (p 3-243) of mitigation of lost mining, oil and gas revenues to state and local governments.
5. Page 3-177 states that most ranchers depend on off-farm income to remain economically viable. This is not true for the majority of central, eastern and northeastern Nevada ranchers. The statement appears to originate in the “Socioeconomic Specialist Report” on Livestock Grazing, wherein it is stated “The cattle-raising subsector consists of nearly 650,000 ranches. Most are small, specializing in cow-calf and feeder cattle production. Most operators work full time off the ranch, and have operations which are suited to small-scale production.” This is a broad assessment across these 650,000 ranches nationwide. Applying such nationwide statistics to those ranchers who would be affected by the proposed rule will give a highly inaccurate assessment of the impact of the rule to ranchers with grazing allotments in the IRA’s under the proposed rule. For the majority of central/eastern Nevada ranches, the application of the national statistics leads to an utterly flawed analysis.
6. Page 3-195 and tables 3-49, 3-50 and 3-51 indicate a 50% confidence in the gross value of metals, minerals, oil, gas and coal in affected areas to be \$7.5 trillion dollars. The coal, oil and gas figures alone are quite substantial when viewed in the context of our current and future energy requirements and their economic multipliers from price increases in these commodities. Given the EPA’s incentives to electric power producers to convert to natural gas as part of an overall initiative towards cleaner air, the analysis of the proposed rule’s impact on the nation’s natural gas supply is inadequate.
7. The cumulative analysis fails to analyze all past, present and reasonably foreseeable future actions that have impacted or will impact access and use of National Forest lands, including (but not limited to) loss of timber, mining, oil and gas extraction jobs, state and local tax revenues and economic multipliers resulting from these activities.

III. Comments on the Proposed Rule.

As stated in the Executive Summary of this letter, ECPLAC believes the proposed rule is not necessary. Aside from this general finding, ECPLAC also notes the following:

1. In Section 294.11, “Definitions”, the definition of a classified road under 294.11(1) should specifically include RS2477 roads. The definition should also be expanded to roads that are planned or managed or used for wheeled vehicle access.
2. The proposed rule must make clear that the definition of Road Construction, Road Maintenance and Road Reconstruction does not apply to classified roads other than USFS roads.
3. The USFS does not clearly define what constitutes road rebuilding and minor maintenance in Section 294.11.
4. In Section 294.12(b)(3), clarification and amplification is required with respect to mining claims. The rule must address the USFS’s intent with respect to locatable minerals, gas and oil deposits. Development of minerals, gas and oil that could be leased should also be clarified and excepted from the rule.
5. In Section 294.13(b)(2), too much latitude is allowed for the responsible official. This section should be removed from the proposed rule.

Eureka County Public Land Advisory Commission
Comments to the Roadless Area DEIS/Proposed Rule

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IV. Violations of Federal Advisory Committee Act of 1972

ECPLAC also notes that in a "Preliminary Staff Review" of the US House Committee on Resources, dated February 18, 2000, that the USFS appears to be in violation of the 1972 Federal Advisory Committee Act. As stated in the Preliminary Staff Review, a recent memorandum from the Chief of the USFS on Oct. 2, 1995 warns: "no group can become a preferred source of advice for the agency without sparking FACA concerns." The Preliminary Staff Review shows that the USFS did, in fact, prefer the counsel of a small, select group of environmentalists to the exclusion of all other users of USFS lands. Further, the USFS gives ample evidence that the spirit and letter of FACA was not followed when the list of references for the CBA is examined. In a list of 50 references, only one cited source could be found that might reflect input from an affected industry or economic sector when there are no fewer than four extractive economic sectors which clearly have a large economic interests in this policy and several other groups of users of USFS lands who were not consulted at all. Clearly, there has been little consultation or input sought from the spectrum and a preference for only one point of view has been exhibited, which is clearly in violation of FACA.

These violations of FACA are especially noteworthy given the USFS's own regulations in 36CFR219 clearly specify an interdisciplinary approach to USFS resource and policy planning at the local level. The proposed rule specifically states an intent to supercede local resource and policy planning with a national policy, perhaps with an intent to sidestep adherence to 36CFR219. In light of the recent poor relationship between the USFS, district USFS officials and local communities in central and northeastern Nevada, this is clearly an unwise policy decision, with a probable outcome of further degrading the relationship between the USFS, local governments and local users of USFS lands in northeast Nevada for some time to come.

Sincerely,

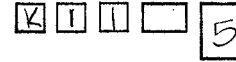
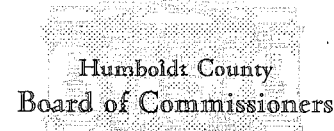
Jim Baumann,
Chairman Eureka County Public Land Advisory Commission

CC:
Eureka County Commissioners
Governor Kenny Guinn
U.S. Senator Harry Reid
U.S. Senator Richard Bryan
U.S. Representative Jim Gibbons

Eureka County Public Land Advisory Commission
Comments to the Roadless Area DEIS/Proposed Rule

County Commissioners:

JOHN H. MILTON III, *Chairman*
JANET C. KUBICHEK, *Vice Chairman*
DAN CASSINELLI
BUSTER DUFURRENA
CHUCK GIORDANO



June 28, 2000

USDA Forest Service-CAET
Post Office Box 221090
Salt Lake City, Utah 84122

CAET RECEIVED

JUL 05 2000

Dear Sirs:

Attention: Roadless Areas Proposed Rule

Thank you for the opportunity to review and comment on the proposed Roadless Areas Rule. The Humboldt County Commission has reviewed the Draft Environmental Impact Statement and would offer the following comments.

We have reviewed the map for the Santa Rosa District of the Humboldt-Toiyabe National Forest which is located in our County. This rule proposes to include 210,000 acres of the District in roadless status. The existing map shows numerous roads on the District, however we are not certain that all of the roads on the map are classified roads. We feel very strongly that none of these roads should be closed by this rule or by the proposed Road Management Rule. Consequently we would recommend that the rule be modified to allow the local Forest Manager to update the roadless inventory through the Forest Planning process to insure that all existing roads are in the inventory and will continue to be available for use by the public. Once this local analysis is completed, the boundaries of the roadless areas could be adjusted. We would also recommend under the prohibition alternative that an exception be made to allow the reconstruction of an existing road if the road is washed out or destroyed by an act of God such as a cloud burst. Our existing roads must remain open and access provided to the Forest.

We note that the DEIS speaks to the increasing demand for dispersed, developed, and road dependent recreation. In our review of this proposed rule, it appears that this demand is being ignored. As the population ages, this demand will only increase. One way to address this demand and still protect the roadless characteristics of these areas is to widen the buffer area of existing roads. While we could not find a specific reference to the buffer

Roadless Area Conservation

Volume 4 - Letters from Agencies and Elected Officials

-2-

size, we feel that a minimum of one half mile on each side of the road would allow the local Forest Manager the latitude to plan for recreation and other uses which are road dependent.

We also note that this rule appears to allow access to locatable minerals even if they are in a roadless area. While it appears that the level of analysis required to permit this activity is less than in the Road Management Rule, it is imperative that this access be allowed as quickly as possible and that it not be tied up in a long drawn out permitting process.

In the last year the Forest Service has issued three proposed rules which may not be consistent with each other. These are the Planning Rule, the Road Management Rule, and the Roadless Area Rule. These rules need to be reviewed together to ensure that the conflicts, contradictions, and inconsistencies are resolved prior to adoption of any of the rules. The local Forest Managers in cooperation with the people most affected must be given the authority to implement these rules at the local level. Top down driven policy is not good public land management practice.

Sincerely,

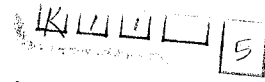
John H. Milton III
Chairman, Humboldt County Board of Commissioners

JHM/kb

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Lander County Board of Commissioners

William Elquist, Chair
Mickey Yarbrow, Vice-chair
Cheryl Lyngar, Member



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Maps in File
To bring copy

July 12, 2000

CAET RECEIVED

JUL 13 2000

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

Attention: Roadless Areas Proposed Rule

To Whom It May Concern:

Enclosed are Lander County's comments to the Roadless Area Conservation Proposed Rule and Draft Environmental Impact Statement (DEIS). There are approximately 300,000 acres of National Forest lands in Lander County, the majority of these lands are included in the unroaded portion of the inventoried roadless areas. Several minor County roads are included in the inventoried roadless area, and or form the boundaries of the unroaded portions. At least two areas have been identified on Forest Service maps as unroaded when in fact minor County roads appear to cross through them. Approximate locations are shown in Attachment A (T16N, R41E Elkhorn Pass and T15N, R46E Clipper Gap Canyon). A copy of the draft Lander County Road Map is included as Attachment B. Lander County intends to maintain or reconstruct these roads as necessary in accordance with direction established by the Board of County Commissioners.

Lander County supports the no-action alternative. The Forest Service already has adequate administrative authority to control road development and manage National Forest Lands. Pg. S-7 states, "Road construction and reconstruction would continue to be prohibited only where land management plan prescriptions prohibit such action". In Lander County a majority of the unroaded portions of inventoried roadless areas already have vehicle access restrictions. As a result, the proposed rule is very similar to the no-action alternative. It is difficult to see how the proposed rule would achieve the purpose and need of the proposed action. The proposed rule is overly restrictive and limits local decision-making authority, particularly in communities that rely upon the development and use of natural resources on National Forest Lands.

315 South Humboldt Street <> Battle Mountain NV 89820
Phone: (775) 635-2885 <> Fax: (775) 635-5332

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National Forest Lands in Southern Lander County (Toiyabe, Shoshone and Toquima Ranges) provide for a multitude of competing uses and have a long history of mineral exploration and development. In fact, most of the unroaded roadless inventoried lands fall within active mining districts (Reese River, Birch Creek, Big Creek, Kingston, Washington, and Spencer Hot Springs). These districts (Attachment C) have produced a variety of minerals including gold, silver, tungsten, uranium, copper, lead, zinc, and molybdenum, etc. Lander County is opposed to any Forest Service administrative rules or policies that would interfere with or unnecessarily increase the cost of exploration and development of mineral resources. Each year thousand of mining claims are filed in Lander County.

The proposed rule is somewhat confusing with respect to mineral exploration and development, particularly as it relates to locatable minerals. The rule appears to allow road construction only in the case where existing valid mining claims exist. The language of the proposed rule is unclear with respect to development of claims filed in the future. The County is also opposed to the language in the rule that prohibits the development of leaseable minerals. The development of leaseable minerals is a Forest Service decision. Once the proposed rule is in place, the Forest Service could not implement a decision contrary to Section 294.12.

If the Forest Service is unwilling to include leaseable minerals in the exceptions, Lander County is opposed to any retroactive prohibition to development activities unless adequate mitigation measures are negotiated with affected parties and included in the Record of Decision as committed mitigation.

We note that Tables 3-49, 3-50, and 3-51 show that there is more than \$7.5 trillion dollars in gross value of metal, oil and gas, and coal resources on inventoried roadless areas which may never be developed due to prohibition in the rule. We find it interesting that the current administration again moves to place restrictions on western coal development perhaps looking towards other areas like Indonesia for such resources.

The analysis in the EIS indicates that natural resource users could face regulatory abuse. Page 3-143 states, "*These alternatives could affect a more liberal use of SUDs as a management option for locatable mineral activities in inventoried roadless areas to assure the highest degree of protection for roadless characteristics*". This section goes on to imply that an EIS would likely be required for road building in the inventoried roadless areas that would increase the cost to develop the site. There is no clear justification as to why such a requirement would now have to be more strictly enforced. The designation of an area as roadless does not necessarily result in any greater environmental impact than would occur if the area were not roadless. NEPA was not intended to become a regulatory roadblock to be used solely to increase cost and discourage development. Since mineral exploration and claim development are exempted from the proposed rule, the Forest Service cannot simply employ a more stringent standard to achieve what was not allowed in the rule.


There is no cumulative analysis. The Forest Service does not even attempt to address past, present, and reasonably foreseeable events. Instead the cumulative analysis section relies upon a discussion of two other pending rules. Clearly, the Forest Service has not met its obligation under 40CFR1508.7.

The County is concerned about the adequacy of the analysis and information in the document. This DEIS has been prepared in a somewhat expedited fashion. It is difficult to understand how the Forest Service could prepare an adequate analysis of a proposed action that affects such a large area and includes so many critical and contentious issues. In some cases there is little or no analysis of impacts and the Forest Service repeatedly attempts to down play impacts and the importance of traditional natural resource industries while promoting the so called "non-use values" of a rather small minority of the population. No where in the analysis does the Forest Service prove or show with any certainty that environmental conditions will improve even slightly over the no-action alternative. In other words the Forest Service proposal does not live up to the purpose and need described in the DEIS.

Instead this roadless initiative appears to be an attempt to pander to a rather small segment of the population who embraces "non-use values" at the expense of the timber and mining industries, communities that rely upon those resources, and more traditional recreation users. The expedited timeframe for completion, limited analysis, questionable need for the proposal, and subversion of true public debate undermines the credibility of the Forest Service and further erodes the trust and confidence our community has in this agency's ability to manage lands and resources. For these reasons and the comments attached, the Forest Service should withdraw this proposal or adopt the no-action alternative.

If you have any questions concerning this proposal, please do not hesitate to call me at (775) 635-2885.

Sincerely,



Bill Elquist, Chair
Lander County Board of Commissioners

BE/sr

Attachments

cc: Governor Kenny Guinn w/comments
U.S. Senator Reid w/comments
U.S. Senator Bryan w/comments
Congressman Gibbons w/comments

Lander County, Nevada Comments to
The Roadless Area Conservation Proposed Rule
And Draft Environmental Impact Statement

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JUL 15 2006

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I. Comments on the Proposed Rule

The proposed rule is unnecessary. The Forest Service has the ability to manage lands for road development under their current authority. In Lander County most unroaded portions of an inventoried roadless area are already within travel restricted areas.

Section 294.11 Definitions

The definition of a classified road under 294.11(1) should specifically include RS2477 roads. The definition should be expanded to roads that are *planned or managed, or used* for motor vehicle access.

Section 294.11 (3) *Rebuilding* This Section is unduly restrictive. It appears that it would apply to a classified road that is currently below its service level. The definition makes no distinction between classified and unclassified roads.

The proposed rule needs to make clear that the definition of *Road Construction, Road Maintenance, and Road Reconstruction* do not apply to classified roads other than Forest Service Roads.

The Forest Service needs to distinguish between minor maintenance under Section 294.11 and road rebuilding and what criteria constitute rebuilding.

Section 294.12

Section 294.12 (a) applies to classified and unclassified roads. By definition an unroaded area does not have classified roads in it. It also appears that the Forest Service is attempting to apply this prohibition to non-Forest Service roads for which they have no administrative authority. Lander County would not abide by any federal restriction that would deny the County the ability to reconstruct their existing roads classified or otherwise, or to construct new roads on existing rights-of-way.

Section 294.12 (b)(3) This section needs to be clarified, particularly with respect to mining claims. The analysis of the proposed rule indicates that road construction and reconstruction would be permitted for valid existing rights... under the General Mining Law of 1872. It is unclear whether roads would be permitted for claims filed after the proposed rule. The rule should be changed to clearly reflect the Forest Service's intent with respect to locatable minerals. The development of leasable minerals should also be included under this Section as an exception.

Section 294.13

Lander County is adamantly opposed to Section 294.13(b)(2). This language provides far too much discretion for the responsible official. This situation can lead to abuse of the administrative authority granted under this rule and creates a continued atmosphere of mistrust between local residents and the federal government. This section should be dropped from the proposed language.

The proposed rule also needs to contain a provision to resolve road disputes at the local level. It is very possible that the roadless inventories are inaccurate and will have some disputed roads, particularly state, county and RS2477 roads.

II. Comments on the DEIS

General Comments:

1. The DEIS does not contain sufficient information to prepare site-specific analysis. The level of detail provided is consistent with a programmatic or comprehensive EIS used to evaluate national policy directives. The development of a programmatic EIS is followed by tiered EIS(s) to more adequately analyze site-specific impacts as recommended in 40CFR1502.20 and 40CFR1508.28. Does this EIS contain the appropriate site-specific analysis to implement the decision? Please explain.
2. Statements made on pg. 1-11 clearly indicates that this DEIS is to address national level issues and does not have the ability in many instances to address site specific issues.
3. The proposed rule along with the other pending rules are related actions that should be considered in one EIS. Page S-46 indicates that there are two other related rulemaking proceedings (Proposed Planning Rule and the Proposed Road Management Rule). Page S-46 states, "It is estimated that these rules and associated policies would provide a comprehensive and consistent strategy for managing NFS lands". Furthermore pg S-46 indicates that the proposed rules combined may have cumulative impacts. These three actions clearly fall with the scope of an EIS consistent with the direction under 40CFR1508.25. Why did the Forest Service threat the proposed rules separate actions in violation of the aforementioned regulation? These three actions could be easily consolidated into one proposed action and evaluated in a manner consistent with Council on Environmental Quality's guidelines. Proceeding separately appears to be a blatant attempt to segment three closely related actions.

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4. Alternatives 2, 3 and 4 are virtually the same. There is little or no difference in terms of impacts among these alternatives. Each one provides varying degrees of timber harvest otherwise they are the same. The Forest Service has failed to adequately develop a full range of alternatives under NEPA. None of the alternatives result in significantly different impacts. In many instances the impacts are virtually the same. As a result, the Forest Service has failed to meet the requirements of 40CFR1502.14. The alternatives are nothing but strawman proposals. The Forest Service needs to consider an alternative that allows leasable minerals and analyzes the impacts and compares those impacts against the no-action alternative.
5. The DEIS has failed to adequately analyze the impacts to mining instead claiming that adequate information is not available at the national level to assess the impact. Substantial information is available locally that allows for such an assessment. The time required to assemble such information would likely take longer than the Administration would like and delay the record setting pace the Forest Service has established for the preparation of a draft EIS.
6. The DEIS must also examine the potential impacts of designating "other roadless areas". Other unroaded areas are not included in the proposed action or analyzed in the DEIS. The amount of lands that could be designated is substantial. Although it is difficult, if not impossible, to know exactly which lands would be designated as unroaded, the Forest Service should consider a worst-case scenario where all the lands would be included.
7. It appears that the evaluation of environmental consequences focuses on inventoried roadless areas whereas the prohibitions of the proposed rule primarily applies to the unroaded portions. Please provide the justification for using roadless area instead of the unroaded portion of the roadless area.
8. There is not a credible impact analysis provided in this document. The analysis of impacts for most resources contains a discussion of roads miles and makes generalized conclusions based upon road miles. The analysis assumes that road construction or reconstruction would create an impact without providing any justification. It does not consider a host of standard operating procedures and other mitigation that would minimize road construction and related project impacts.
9. The cumulative analysis fails to adequately analyze all past, present and reasonably foreseeable actions that have impacted access and use of National Forest lands including the extensive loss of timber jobs and harvest due to other prohibitions. Cumulative actions are often inappropriately integrated into the baseline description in an attempt to mask their impact.

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10. The overall approach to the analysis is disturbing. In most cases the environmental consequences section provides little in terms of real impact analysis. Many of the section are generalized impacts based upon the potential for road miles. There are few, if any, real meaningful comparisons of impacts between the no-action alternative and action alternative.

Specific Comments

11. Pg. 3-13 discusses the Forest Service Road System. Based upon the discussion it appears that most roads use is generated by recreation users, solitude seekers, etc. The Forest Service needs to devise a plan to recoup user fees from this group.
12. Pg. 3-13 Forest Service Road System. This Section needs to include a map showing planned road construction by region.
13. Pg. 3-15 indicates that road construction has declined to about 192 miles a year in 1999 with decommissioning of nearly 2,660 miles of road per year resulting in a net loss of 2,468 miles per year. This represents a cumulative impact that should be analyzed along with the roadless initiative. Please provide a discussion of the types of roads decommissioned each year. How many miles would affect the inventoried areas?
14. Pg. 3-15 last para and again on pg 3-23 indicate that best management practices for road planning, design and construction can minimize adverse environmental impacts. Please define and quantify remaining impacts. Are these best management practices assumed in the baseline and the no-action alternative? If so, the roadless initiative would appear to provide only a slight marginal improvement (perhaps insignificant) in the ecological health of the some areas affected by this proposal. Following the same logic, decommissioning efforts have a far greater impact on Forest Health than this proposal.
15. Pg. 3-18 and 3-19 indicates that 1,444 miles of road are planned for construction over the next four years-please show locations on a map(s). Approximately 806 acres of road disturbance are timber related. Since timber harvest would not occur in Nevada (with the exception of small amounts in the Sierra Nevada range), only roads for non-timber related purposes would be constructed or reconstructed. Total non-timber planned road construction in the Intermountain Region over the next four years would be 152 miles which would disturb approximately 500 acres. Even if the entire 152 miles were in roadless areas of Nevada, this would account for .0156 percent of the inventoried roadless area in Nevada. Specifically what beneficial impact would this have on inventoried roadless areas in Nevada? How does the protection of this minuscule amount of land achieve the action's purpose and need?

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16. Table 3-19 needs to be consistent with Table 3-4. How many miles of planned road construction are reconstruction activities by region?
 17. Pg. 3-20 Ecological Factors-The EIS needs to contain maps that show areas most likely to be impacted and roadless areas where timber harvest would be curtailed due to this proposal.
 18. Pg. 3-22 Watershed Health. This entire discussion relates primarily to timber harvest areas. Can we assume that watershed health, water quantity and timing are not significant issues outside timber harvest areas.
 19. Page 3-142 Where is the baseline description for minerals and geology. At a minimum the description should show existing mining operations, proposed mining operations that require roads, areas of known valuable resource deposits. Much of the areas in southern Lander County are contained within four mining districts (See Attachment C).
 20. Page 3-143 states, "An EIS would likely be required for proposed activities that would substantially alter the undeveloped character of an inventoried roadless area of 5,000 acres or more" What is the justification for this statement? It is inappropriate to make such a generalized statement in this EIS. The analysis in this EIS cannot support such a statement since it does not analyze with any detail regional or site-specific locations. Requiring the preparation of an EIS is not part of the proposed action and it should not be treated as such in this document. An EIS is required to study the potential impact of a proposal. Whether or not an area has a certain designation is irrelevant.
 21. Page 3-143 states, "There is currently a trend of decreasing interest by the minerals industry.....appeals and lawsuits". This statement describes cumulative impacts and should be considered in the cumulative analysis section. Also the Forest Service needs to provide some general impact analysis related to this statement i.e loss of jobs, income, taxes, etc.
 22. Page 3-143 The analysis in this section is inadequate because it only discusses additional regulatory measures imposed by the Forest Service that may create additional delay and cost. By including this type of language presupposes that the Services already knows what the impacts are. Furthermore, the EIS does not consider appropriate mitigation measures. There is nothing in this EIS that could even justify for anyone project the need for an EIS.
 23. Page 3-143 states, "These alternatives could affect a more liberal use of SUDs as a management option for locatable mineral activities in inventoried roadless areas to assure the highest degree of protection for roadless characteristics". Again this statement implies a degree of regulatory abuse and attempts to circumvent the Mining Law.

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24. Page 3-144 The description of the affected environment needs to include some description the types of leasable minerals developed on NFS lands and the quantities of extraction. There is no way to gauge the order of magnitude of the impact without the appropriate baseline information.
 25. Page 3-144 and 145. The analysis needs to include areas that have the potential for leasable minerals. Those areas that are within the unroaded portion of the roadless area should be shown. Estimates of leasable minerals on the unroaded portion should be compared to leasable mineral deposits outside roadless areas. Estimates of potential losses from the prohibition of this resource should be estimated in the EIS.
 26. Page 3-145 indicates that standing decisions with regard to leasable minerals could be reviewed. The Service needs to be clear with respect to retroactively changing previous decisions. Private companies involved in leasable mineral venture may have already allocated significant amounts of money for exploration and development. At a minimum, mitigation needs to be proposed for situations where private entities have committed funding to resource development.
 27. Page 3-145 last paragraph states, "Thus, there is an opportunity cost to these alternatives, but the magnitude is unknown". The Forest Services needs to make a good faith estimate of the magnitude of impact. Page 3-143 identifies a list of potentially cumulative impacts which should be integrated into this section and thoroughly analyzed.
 28. Page 3-177 States that most ranchers depend on off-farm sources of income to remain economically viable. That is for the most part an untrue statement of central Nevada. The statement implies that livestock production is merely a hobby and way of life rather than a valuable commodity and food source. How many ranching operations have been forced into this situation from allotment reductions and other regulatory constraints imposed by federal agencies?
 29. Page 3-182 Affected Environment Timber Harvest. The discussion in the first page is a cumulative impact that has resulted from regulatory and environmental restrictions place on timber producers by federal land management agencies.
 30. Pg. 3-193 states, "Like most extractive industries, mechanization has led to a decrease in the number of jobs per unit of output". This statement may be true, however, mining contributes indirectly to jobs in the manufacturing sector. In Nevada mining directly provides approximately 15,000 jobs. For each direct job, mining generates another .75 jobs in the Nevada economy resulting in some 26,250 jobs in Nevada. The analysis should include the indirect benefits as well. Mining provides a substantial amount of local government resources through sales and property tax.

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- 31. Pg. 3-193 No Action Alternative states a downward trend is in place. The only reason for a permanent downward trend is Forest Service policy towards the mineral industry. Market fluctuations create the cyclical nature but it is difficult to predict a continuing downward trend.
- 32. Pg. 3-194 states, "The prohibition of road construction or reconstruction in inventoried roadless areas is more likely....". The proposed rule only considers the unroaded portion of the roadless area.
- 33. Pg 3-195 Tables 3-49 through 3-51 indicates that the gross value of metals, oil and gas, and coal exceeds more than \$7.5 trillion dollars. Does the Forest Service consider limiting access to some \$ 7 trillion dollars worth oil, gas, and coal a significant impact? Perhaps the coal can be obtained from Indonesian?
- 34. Cumulative Impacts This section contains a page or two about cumulative impacts related only to the other proposed rules and ignores many of the past, present and foreseeable actions which may have cumulative impacts particularly on the timber industry and timber dependent communities. The impact of the related proposed rules should be included with this analysis along with other restrictions and regulations that have created similar impacts to affected areas and needs to be analyzed. Clearly, the Forest Service has not met the requirements under 40 CFR1508.7. This section is so poorly developed that it is not worth making any further comments.
- 35. Page 3-243 The Mitigation Options need to be committed in the Record of Decision. Otherwise they are meaningless.



BOARD OF COUNTY COMMISSIONERS

LYON COUNTY • NEVADA

27 SOUTH MAIN STREET • YERINGTON • NEVADA 89447

(775) 463-6531

FROM OTHER AREAS OF THE COUNTY

(775) 577-5037

FAX: (775) 463-6533

43997

DAVID FULSTONE II

LEROY GOODMAN

CHESTER HILLIARD

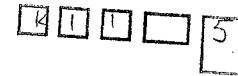
PHYLLIS HUNEWILL

BOB MILZ

STEPHEN SNYDER

COUNTY MANAGER

July 14, 2000



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

CAET RECEIVED
JUL 17 2000

Dear Mr. Dombeck:

The Lyon County, Nevada, Board of County Commissioner's is aware of the Draft EIS on Roadless Area Conservation, and have received various documents, data, and information regarding the Draft EIS. Based on our review, the Forest Service has two courses of action. We request that you:

1. Immediately withdraw the Proposed Rule and Draft EIS, and delegate the decision for the disposition of roadless areas to local officials (Forest Supervisors) of your organization using the Forest Plan Revision or Amendment process. Since the proposed rule is essentially an allocation decision of resources, the proper venue for analysis and decision-making is at the National Forest level. This will insure consultation and coordination with local governments that is necessary to address any inadequacies identified.
2. If you choose NOT to withdraw the Proposed Rule and Draft EIS, the Forest Service as a minimum, must significantly revise the Draft EIS to account for the inadequacies found and distribute it for public comment. CEQ Regulation 1502.9 states that "...if a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft..." Our review has revealed that much of the Draft EIS is woefully inadequate and meaningful analysis is not possible.

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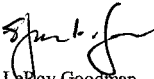
Mr. Mike Dombeck
Roadless Area Proposed Rule

July 14, 2000
Page -2-

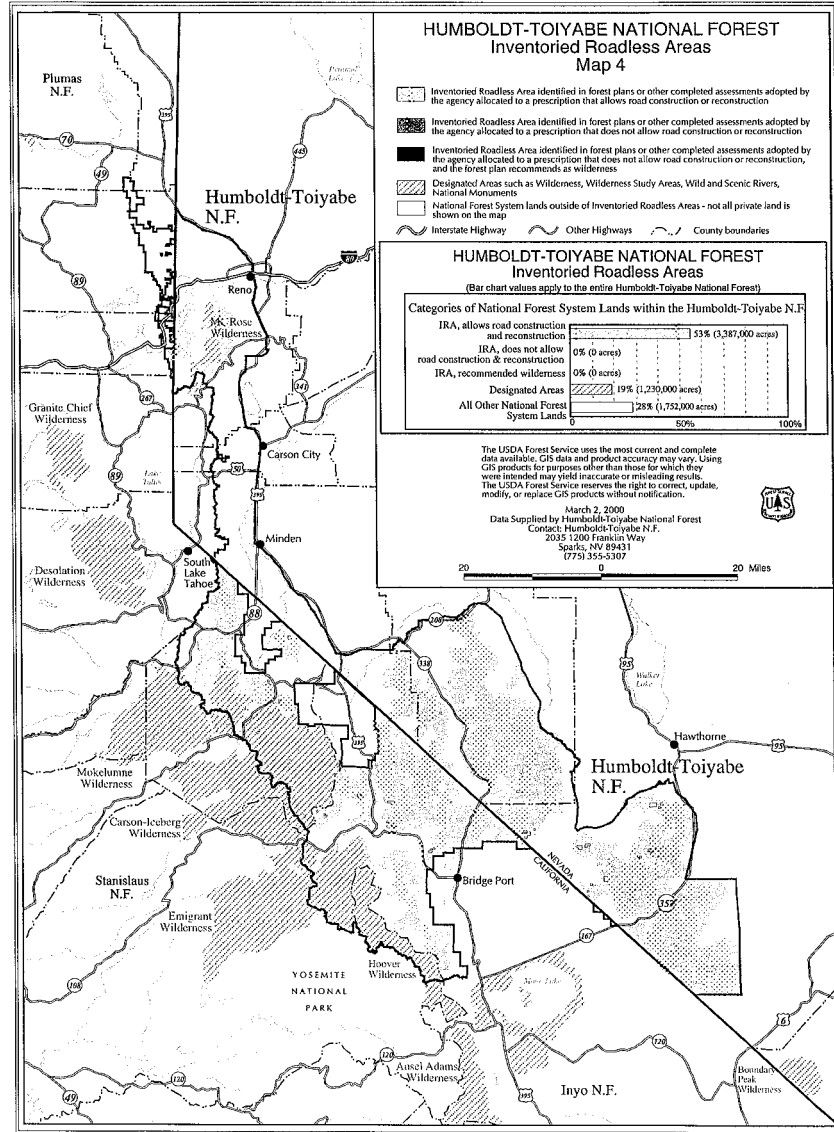
If you choose not to pursue either of the above courses of action, request is to extend the comment period for review of the Draft EIS another 180 days. The document cites over 350 references that local governments cannot possible acquire and review within the 60 day comment period.

Thank you for the opportunity to comment, and we look forward to working with the Forest Service on the Roadless Area Conservation issue at the local level in the spirit of "collaboration" you so often talk about.

Sincerely,

for 
LeRoy Goodman
Chairman,
Lyon County Board of Commissioners

cc: Nevada Association of Counties
Lyon County Board of Commissioners



Humboldt-Toiyabe N.F. Map Page 3 of 5

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JUN 28 2000

LYON CO. COMM.

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NACO
NEVADA ASSOCIATION OF COUNTIES

308 NORTH CURRY STREET, SUITE 205 • CARSON CITY, NEVADA 89703 (775) 863-7863 FAX (775) 883-7398



BOARD OF COUNTY COMMISSIONERS
LYON COUNTY, NEVADA

31 SOUTH MAIN STREET, YERINGTON, NEVADA 89447
(775) 463-6531
FROM OTHER AREAS OF THE COUNTY
(775) 577-5037
FAX: (775) 463-6533

TO: NACO Board Members and County Contacts
FROM: Robert S. Hadfield
RE: Forest Service Roadless Area Draft Environmental Impact Statement
DATE: June 27, 2000

AGENDA REQUEST FORM

#13

MEETING DATE REQUESTED: July 6, 2000

SUBJECT TITLE:

NACO request for comments on U.S. Forest Service Draft EIS on proposed roadless area conservation.

DISCUSSION:

Nevada Association of Counties (NACO) has circulated information on the U.S.F.S. proposed roadless area conservation draft EIS, and is soliciting comments and response to the draft EIS by individual county's within Nevada.

RECOMMENDED ACTION:

Adopt comments suggested by NACO, and forward to the U.S.F.S.

FUNDING SOURCE:

N/A

REQUESTED BY:

NACO

PREPARED BY:

Maureen Williss

REVIEWED BY:

Stephen Snyder, County Manager

MEMO MEMO MEMO MEMO MEMO MEMO

You have been mailed documents obtained by NACO for use by our membership in understanding and addressing the Forest Service Roadless Area Conservation Draft Environmental Impact Statement.

These documents are available on the Internet for your use in customizing the comments for your county's needs. The author of the documents is Environmental Tracking and Review Services. Their website is: www.e-tarservices.com. Click the Login button and a state window will pop up. Select Nevada and the next window will display a list of counties and at the top, Roadless NEPA Review. Click Roadless NEPA Review and a window will query you for a user ID and a password. Type in: USER ID: roadless. Password: nepareview. This will bring you to the web page menu containing all the documents you have been mailed. Each document's location on the website is listed on the bottom of the pages you have been mailed.

Please feel free to make use of these comments.

43997

FS Roadless DEIS Environmental Tracking and Review Services

"Simplifying Federal Agency Decision-Making"

**Review of
Forest Service
Roadless Area Conservation
Draft Environmental Impact Statement**

Comments Must be Received by July 17, 2000

**Suggested Statements Counties Can Make
At Public Comment Meetings On
The Forest Service Roadless Area Conservation
Draft Environmental Impact Statement**

The County Commissioners of (Name of County), (Name of State) are submitting the following comments for consideration on the Forest Service Roadless Area Conservation Draft Environmental Impact Statement. We are in the process of conducting a detailed and comprehensive review of the Draft EIS in conjunction with other counties in (Name of State) and the (Name of other organizations). My comments, today, are general in nature and will be supported by submission or our detailed review to the Chief, USDA-Forest Service prior to the close of the comment period on July 17, 2000.

Our review, to date, has revealed the following issues and concerns:

1. The Draft EIS appears to be Biased and Predecisional

However harsh this may appear, recent actions by the Chief of the Forest Service, statements by the Executive Branch and numerous biases in the Draft EIS lends support only for selecting the preferred alternatives. Let me cite some examples.

A. On February 12, 1999 the Forest Service published an interim final rule that temporarily suspended road construction and reconstruction in most roadless areas of the National Forest System. The Draft EIS is written in support of continuing that rule without any regard for the values of roads, timber harvest, or many other multiple uses

B. The Vice Presidents has made statements regarding his preference to preserve all roadless areas on National Forest System lands in the United States. He is quoted as saying, "And just so I'm crystal clear about it: No new road building and no timber sales in the roadless areas of our national forests." Since this analysis is under the umbrella of the Executive Branch, the Forest Service may feel incumbent to follow the direction of the Vice President without conducting an objective analysis.

<http://www.e-tarservices.com/roadless/sugcom.htm>

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C. The document is written very subjectively and leans toward justifying the proposed action of prohibiting roads and timber harvest in inventoried roadless areas rather than providing an objective analysis of all alternatives, issues, and effects.

2. The Draft EIS does not Adequately Address the Impacts on Counties and Local Governments

The Forest Service admits that it's assessment method conducts a "qualitative" analysis of most impacts. In fact, the analysis only provides a "quantitative" analysis on agency costs, timber, and road construction and reconstruction--and framed mostly in a negative context. There are many associated impacts that are not "quantified" and relate to recreation use, stewardship timber harvest, fuel reduction, catastrophic fire, ecological factors, wildlife, etc. We do not believe the Forest Service can make a reasonable informed decision based on this significant lack of information that is necessary to adequately analyze and disclose effects. This violates the basic premise of NEPA and leads me to the next point.

3. The Draft EIS Contains Numerous NEPA Deficiencies

The Draft EIS fails to meet basic Council on Environmental Quality Regulations for NEPA in the following areas:

The NEPA process must be useful to decision-makers
Emphasize interagency cooperation including counties
Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses
Study, develop, and describe appropriate alternatives
Consult early with State and local agencies
Invite the participation of Federal, State, and local agencies
Statements shall be concise, clear, and to the point, and shall be supported by evidence
Statements shall be analytic rather than encyclopedic
Agencies shall not commit resources prejudicing selection of alternative
Statements shall assess the environmental impacts, rather than justify decisions already made
Each statement shall contain a summary that adequately and accurately summarizes the statement
Rigorously identify, explore, and objectively evaluate all reasonable alternatives
Avoid useless bulk
Circulate the statement and request comments from Federal, State, and local agencies authorized to develop and enforce environmental standards
Incorporate material by reference only when it is reasonably available
Insure the scientific integrity of discussions

We will be providing numerous examples in our detailed response of how the Draft EIS fails to meet these requirements.

4. The Draft EIS is Full of Discrepancies and Contradictions Relating to Conclusions and Data

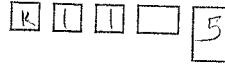
We have discovered that so much of the document contains discrepancies and contradictions as it relates to conclusions and data that it is difficult to determine which are fact and which are the authors personal biases. Here are a few examples:

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A. The document states that many decisions need to be made at the local level but literally removes all the discretion for analyzing and selecting management options. The only options that remain open are activities that further protect roadless areas.

B. The Forest Service is willing to accept the risk of catastrophic fire and the resulting adverse effects which can be equal or more destructive than management activities. However, the agency considers the risk of road construction and timber harvest to be unacceptable.

C. In one statement the Forest Service says that "As roads are decommissioned, the resulting unroaded areas will be evaluated for roadless characteristics and values." In another section, they state that "...the proposed prohibition on road construction would reduce roadless caused irreversible and irretrievable commitments to dispersed recreation activities in roadless areas." You can't have it both ways--Irreversible means you can't go back to the way it was. The first statement severely contradicts the second statement which is a legal conclusion of the agency.

5. Conclusion

As relief to our concerns, the Commissioners of (County Name) would like to go on record in requesting the Forest Service, either,

1. Withdraw this proposed rule and subsequent documentation and delegate the decision for determining the disposition of roadless areas to local forest supervisors through normal land management planning processes. Then, local governments can play an active role as active participants in the process.

2. Supplement this Draft EIS, as per CEQ Regulation 40 CFR 1502.9(c)(ii), to address the significant new circumstances and information that is relevant to our environmental concerns and bearing on the proposed action and its impacts.

3. Revise the Draft EIS, as per CEQ Regulation 40 CFR 1502.9(a), to address inadequacies that preclude meaningful analysis.

Thank you for the opportunity to comment on an issue of such importance to the counties and local governments of the United States.

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

From: Dick Carver, Chairman
Nye County Board of Commissioner
HCR 60 Box 5400
Round Mountain, Nevada 89045
775-377-2175 or 482-8103

Re: Road Area Conservation Proposed Rule and Draft Environmental Impact Statement (DEIS)

July 13, 2000

I, Richard L. Carver, Chairman, Board of Nye County Nevada Commissioner is submitting the following comments for consideration on the Forest Service Roadless Area Conservation Draft Environmental Impact Statement (DEIS) involving approximately 1,119,000 acres of roadless designation in Nye County, very roughly over 1/3 of the roadless designation in Nevada, whereby only 01.98% of the Nye County land mass is private property.

My review, to date, has revealed the following issues and concerns:

1. The DEIS appears to be Biased and Pre-decisional
2. The DEIS does not adequately address the impacts on Counties and Local Governments
3. The DEIS contains numerous NEPA Deficiencies
4. The DEIS contains Discrepancies and Contradictions relating to Conclusions and Data
5. THE DEIS failed to address my request as an alternative to any proposed action initiating and EIS following 40 CFR 1502.14 regarding a pilot project to resolve RS 2477 issues prior to designation of roadless areas
6. The DEIS fails to recognize and adequately address existing road rights-of-way and rights-of-use that are claimed and owned by county government(s) and included within areas determined ROADLESS by the Forest Service.
7. The DEIS fails to recognize and adequately address Nye County Nevada law defining a "Nye County Public Road" Federal Courts have held that Administrative Agencies lack authority effectively to repeal the statute by regulations.

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Therefore, the Forest Service must withdraw the proposed rule and subsequent documentation and proceed with the No Action Alternative allowing for normal land management planning processes based on the following:

I have many constituents, friends and family that access the public domain for multiple uses for their livelihood and/or recreational purposes today. My father came to Nye County, Nevada from California in 1938. He purchased a ranch in Smoky Valley where he established a "right-to-use" the public access corridors across the public domain to utilize his forage rights, water rights, to cut fire wood and fence posts, to prospect, hunt, fish and enjoy life and to raise his family, to mention a few. My great grandfather and the Carver Family trailed 800 head of cattle across the Great Basin during the California Gold Rush recognizing their "right-to-use" liberty. At that time there was no State of Nevada or California, but there were individuals applying labor with the resources establishing a "property right", access being one of those "rights".

Our Nevada Constitution recognizes; "all men are, by nature free and equal and have certain inalienable rights among which are those of enjoying and defending life and liberty; acquiring, possessing and defending property and pursuing and obtaining safety and happiness (Art 1 Sec 1).

Many people across America have helped me understand and develop this text on the history and legal grounds concerning access across our public domain. For many years we have been allowing the Federal Government to close access to the public domain because we did not have an understanding of the "road jurisdiction" issue. I have been a Nye County Commissioner for almost 12 years. If government is instituted for the protection and benefit of the people, what is my duty as an elected official as applied to public roads issues? Being a Constitutional officer of the State of Nevada, I have a duty to protect and defend property rights, including the "right-to-use" and/or "right of way" across our public domain, based on the following:

Nevada Constitution; "All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people ..." (Art 1 Sec 2)

Off highway vehicles are valued today in Nye County for transportation just like horses were valued for transportation one hundred years ago. Many of us in Nye County rely on "Nye County public roads" across our public domain, commonly referred to as public lands, allowing access to Nye County's tax base and, to access the public domain for recreational purposes, grazing, mineral extraction, timber harvest, etc. Nye County has worked hard in keeping our public roads across our public domain open for our young, our senior and our disabled. The closing of access roads across the public domain discriminates against both our young and senior generations alike.

Every canyon within the National Forest System lands in Nye County, if not all canyons have single-track ways, pathways and/or other trails connecting two points that have been historically used by the public. Primitive as they may be, they are in fact "Nye County public roads" just as a modern day paved street in our county seat of Tonopah is a "Nye County public road". Based on the definition of a "Nye County Public Road", there are no areas of

five thousand acres or more that are considered roadless by the Nye County Board of Commissioner within the National Forest System lands in Nye County. Nye County law defining a "Nye County Public Road" does not violate the supremacy clause of the United States Constitution to the extent it applies to roads for which a valid existing right-of-way exists under federal law (see US v. Nye County).

A little about Nye County, Nye County is the third largest county in the continental United States, covering over 18,155 square miles. Nye County is the shape of a hammer, about 170 miles wide and about 220 miles long. Nye County has the county seat in Tonopah and a second complete county courthouse in Pahrump, 170 miles away. Pahrump is about 60 miles west of Las Vegas and is one of the fastest growing communities in America. Our largest community, Pahrump, with a population of 30 to 35 thousand people today, is made up of about 70% senior citizens. Nye County is rated one of the fastest growing counties in America. Nye County is struggling to provide services to its people whereby only 01.98% of Nye County's land mass is privately owned and on the tax roll. The current land status is as follows:

U.S. Government	97.77%
BLM	56.36
USFS	16.93
DOD	16.75
DOE	06.60
NPS	00.93
USF&WS	00.21
State of Nevada	00.18
Native American	00.07
Private	01.98

Nye County's survival, economically and socially is very dependent upon the access to and across the public domain within Nye County. RS 2477 rights-of-way are important components of state and local infrastructure, essential to the economic growth and social well being of the entire rural west.

Historically mining and ranching have been the backbone of our tax base. Today, the largest single taxpayer in Nye County is a world-class gold mine being operated on private and the public domain lands. We do not want mining and mine exploration restricted, more than it is today, as it will eliminate the future mineral production in Nye County and the entire west altogether. The mining law of 1872 gives the people of America the "right" to explore, locate, and mine minerals on the public domain. Denying miners access violates the 1872 Mining Act. In the first Forest Manual issued June 14, 1907; "Uses of the National Forest " page 27

"Prospecting and Mining proceeds just as on the open public domain. National Forests do not interfere with these matters at all".

Ranching followed the mining booms here in Nevada to supply food for the miners. Property rights to the forage for livestock grazing were established on the public domain well over a

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hundred years ago. Access to the public domain, (including but not limited to the public lands managed by the Bureau of Land Management and the National Forest System lands managed by the U.S. Department of Agriculture Forest Service), is a key component to a viable mineral and livestock industry.

Today access to the public domain for recreation is of great importance to the people and economy of Nye County. Recreational opportunities are much more important to Nye County today than 75 years ago as recreational income has to take the place of the lost revenue to the county because of the decline in mining and ranching. Whether you are talking about mining, ranching, or recreation, they all involve access, and associated "rights". Whenever a federal agency is undertaking an Environmental Impact Statement (EIS) involving road or roadless issues and/or policy, they must completely address the impacts on the social and economical stability of the county's tax base.

The Federal Land Policy and Management Act of 1976 (FLPMA) states in part as follows: "That Congress declares that it is the policy of the United States that...goals and objectives be established by law and guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law." Any , road closures will diminish the multiple use of our public domain.

Many of us are of the understanding that when the wilderness areas were designated wilderness several years ago within the National Forest System land, there would be no more wilderness consideration in Nye County. When the Forest Service was doing roadless inventory in 1997-98, I asked an assistant forest supervisor what if a county definition of a "road" differed from the Forest Service definition, what definition did we have to follow? Her reply was that we had to follow the county's definition.

NYE COUNTY LAW defines the term "Nye County Public Road" as each and every way, pathway, trail, stock trail and driveway, road, county highway, railbed and other similar public travel corridors across public lands in Nye County, connecting two points of societal importance (regardless of whether the points so connected are located inside or outside the boundaries of Nye County), whether established and maintained by usage or mechanical means, whether passable by foot, beast of burden, carts or wagons, or motorized/mechanized vehicles of each and every sort, whether currently passable or impassable, that was established and accepted by public use and enjoyment under common law doctrines of property rights; under R.S. 2477, but only if established and accepted by public use and enjoyment before October 21, 1976; or under other statutory authority, except as follows: State Highways 160, 361, 372, 373, 374, 375, 376, 377, 378, 379, 844 and U.S. Highways 6 and 95 are not Nye County Public Roads.

Forest Service definitions cannot pre-empt state or local laws or any Congressional Act. The Federal court recently ruled that "Administrative Agencies lack authority effectively to repeal the statute by regulations." (USA v. Shumway) Now let us compare the definitions established by statutes of the United States Congress versus that of the United States Forest Service, and also included is the different Forest Service Definitions.

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USC TITLE 23

PUBLIC ROAD – Any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

PUBLIC AUTHORITY – A federal, state, county, town or township, Indian tribe, municipal or other local governments or instrumentality with authority to finance, build operate or maintain toll or toll-free facilities.

PUBLIC LANDS HIGHWAY – A Forest road under the jurisdiction of and maintained by a public authority and open to public travel or any highway through un-appropriated or unreserved public lands, non-taxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by a public authority and open to public travel.

FOREST ROAD OR TRAIL – A road or trail wholly or partly within, or adjacent to, and serving the National Forest System and which is necessary for the protection, administration, and utilization of the National Forest system and the use and development of its resources. (Special Note – this does not mention Forest Service jurisdiction)

FEDERAL LANDS HIGHWAY – Forest highway, public lands highway, park roads, parkways, and Indian Reservation road which are public roads

FOREST DEVELOPMENT ROADS OR TRAILS – A forest road or trail under the

FOREST SERVICE

PUBLIC ROAD – Any road or street under the jurisdiction of and maintained by a public authority and open to public travel. (Federal Register 03-03-2000)

PUBLIC ROAD – A road open to public travel under the jurisdiction of and maintained by a public authority such as state, counties, and local communities. (Forest Service Road Analysis 1999)

FOREST ROAD – A road wholly or partly within, or adjacent to, and servicing the National Forest System and which is necessary for the protection, administration and utilization of the National Forest System and the use and development of its resources. (Federal Register 03-03-2000)

FOREST SERVICE ROAD – A forest road under the jurisdiction of the Forest Service. (Federal Register 03-03-2000)

FOREST DEVELOPMENT ROAD – A road wholly or partly within or adjacent to a

jurisdiction of the Forest Service.

national forest boundary and necessary for protecting, administering, and using National Forest lands which the Forest Service has authorized and over which the agency maintain jurisdiction. (Forest Service Road Analysis 1999) (Note: compare with USC Title 23 Forest Road or trail above)

ROADS – A motor vehicle travel-way over 50 inches wide, unless classified and managed as a trail. (Federal register 03-03-2000)

CLASSIFIED ROADS – Roads within National Forest System lands planned or managed for motor vehicle access including state roads, county roads, private roads, permitted roads, and Forest Service roads. (Federal Register 03-03-2000)

CLASSIFIED ROAD – A road constructed or maintained for long-term highway vehicle use. (Forest Service Road Analysis 1999)

UNCLASSIFIED ROAD – Roads not intended to be part of and not manage as part of the Forest Transportation System, such as temporary roads, and unplanned roads, off-road vehicle tracks and abandoned travel-ways. (Federal Register 03-03-2000)

FOREST TRANSPORTATION SYSTEM – Those facilities, including Forest Service roads bridges, culverts, trails, parking lots, log transfer facilities, road safety and other appurtenances, and airfields in the transportation network and under the jurisdiction of the Forest service. (Federal register 03-03-2000)

ROADS SUBJECT TO THE HIGHWAY SAFETY ACT – Forest Service roads that are open to use by the public for standard passenger cars. (Federal Register 03-03-2000)

ROADLESS AREA – An area without any roads which have been constructed or

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improved, and which are maintained for use an passable by standard passenger vehicles. (Humbolt-Toiyabe 1998 Undeveloped / Roadless Inventory Executive Summary)

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Wake up America! Federal Register/ Vol. 65 No 43/ Friday March 3, 2000 states as follows in two different sections:

CIVIL JUSTICE REFORM ACT

THIS PROPOSED RULE REVISION HAS BEEN REVIEWED UNDER EXECUTIVE ORDER 12988, CIVIL JUSTICE REFORM. THE PROPOSED REVISION WOULD (1) PREEMPT ALL STATE AND LOCAL LAWS AND REGULATIONS THAT ARE FOUND TO BE IN CONFLICT WITH OR THAT WOULD IMPEDE ITS FULL IMPLEMENTATION; (2) WOULD NOT RETROACTIVELY AFFECT EXISTING PERMITS, CONTRACTS, OR OTHER INSTRUMENTS AUTHORIZING THE OCCUPANCY AND USE OF NATIONAL FOREST SYSTEM LANDS; (3) DOES NOT REQUIRE ADMINISTRATIVE PROCEEDINGS BEFORE PARTIES MAY FILE SUIT IN COURT CHALLENGING THESE PROVISIONS.

(1) Federal Regulations cannot preempt state and local laws (2) no mention of prior existing rights or RS 2477 rights-of-way

FEDERALISM

THE AGENCY HAS CONSIDERED THIS PROPOSED RULE UNDER THE REQUIREMENTS OF EXECUTIVE ORDER 12612 AND HAS MADE A PRELIMINARY ASSESSMENT THAT THE RULE WILL NOT HAVE SUBSTANTIAL DIRECT EFFECTS ON THE STATES, OR THE RELATIONSHIP BETWEEN THE NATIONAL GOVERNMENT AND THE STATES, OR ON THE DISTRIBUTION OF POWER AND RESPONSIBILITIES AMONG THE VARIOUS LEVELS OF GOVERNMENT. THEREFORE THE AGENCY HAS DETERMINED THAT NO FURTHER ASSESSMENT OF FEDERALISM IMPLICATIONS IS NECESSARY AT THIS TIME.

Proposed rule will have substantial direct effect on county governments survival; both economic growth and social well being.

For about ten years now, Nye County has been a leader in the public domain road jurisdiction issue in the West. A great many people's livelihood depends on access across the public domain in Nye County. "Hostility and distrust" is fueled by certain individuals within the agencies misinterpreting federal law, regulations, court decisions and disregarding state law. A few months ago a cabin was destroyed outside of Pahrump by Forest Service officials. Several

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years ago a cabin was burned by Forest Service officials in San Juan Canyon on private lands so the road could be closed to protect the wildlife. In 1994, the U.S. Attorney's office met with the Forest Service, BLM and the FBI discussing the best approach to take to be the most effective at stopping the CARVER CRUSADE. In 1997 the Forest Service filed a violation against me charging me \$83,000.00 for damage done to archeological resources in Jefferson Canyon, knowing very well that I had sovereign immunity as a county commissioner, and the attached regulations to the violations exempt road maintenance from Archeological Resource Protection Act (ARPA) regulation. Trust is not a given, it must be earned. When a trust is developed, the "hostility" will go away.

I believe as many do, any federal agency action involving access issues across public domain is circumventing Public Law 104-208 of 1997. Section 108 states as follows: "No final rule or regulation of any agency of the federal government pertaining to the recognition, management or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act." General council of GAO reported that Congress intended Section 108 to be permanent.

Which did we have first, the federal government or the state government? Which did we have first, state government or county governments? County's existed long before states. The power of government comes from the people. Governments are instituted among men deriving their just powers from the consent of the governed. The United States of America Constitution divides authority between the federal government and the state governments. The United States of America Constitution only delegates to the federal government the ability to create post offices and post roads. Establishment and maintenance of public roads was left to the states. Historically here in Nevada during the late 1800's the federal government did not establish post roads. Instead, congress had to certify a public road served a community before a post office could be established.

To get a clear understanding of the road jurisdiction issue, first we must understand some important milestones in American History. The people of the original thirteen colonies on July 4, 1776 declared themselves as free and independent States and that they may do all acts and things which independent States may of right do. There was no federal government at this time so the States were in control of roads across and through the un-appropriated public domain.

In 1783, at the end of the Revolutionary War, through the Treaty of Paris, the King of England ceded, to each individual State, as a separate nation, all powers of government and all of the un-appropriated land, commonly referred to as public domain. Again, there was no federal government at that time, so the States were in control of all land including roads within their borders.

The people of the original thirteen States realized that to survive as individual States, to pay off the war debt, and to provide for trade and commerce among the States and to provide for defense they should form a union of states. But before each state would agree to uniting to form that union of States, they unanimously agreed that each State would retain its sovereignty, freedom and independence and every power, jurisdiction and right which was not expressly

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delegated to Congress. This agreement was incorporated into the Articles of Confederation in Article II.

Another agreement that the people of the original thirteen states agreed to was "that no state shall be deprived of territory for the benefit of the United States" and was incorporated into the Articles of Confederation in Article IX.

In view of the fact that the Articles of Confederation did not contain any provision for the Central Government to own, hold, or control any public domain land, it was considered in the Ordinance of 1787 that the Central Government - "The Confederation" - held these lands in trust for the states that would be later created in a given area. Since this was a legislative act adopted by the Continental Congress before the United States Constitution was adopted, there seemed some doubt that it continued to be in full legal effect. When the Constitution of the United States of America was framed in 1787, one of the most important parts was included in the States rights section of the Constitution. Article IV reads in part, "...that all engagements entered into before the adoption of the Constitution would be valid against the United States under the Constitution, as under the Confederation"... and was to insure the continuation of "the Articles of Confederation" and those of "the Ordinance of 1787" and the "Declaration of Independence".

The Founding Fathers of America considered the new Constitution to be one in which sovereignty was to be retained by the individual states? Hamilton, covers their views in his Federalist Paper Number 32. While this paper deals primarily with taxation, Hamilton expands on the limitations of sovereignty in his second paragraph:

"An entire consolidation of the States into which one complete national sovereignty would imply an entire subordination of the parts; and whatever powers might remain in them, would be altogether dependent on the general will. But as the plan of the convention aims only at a partial union or consolidation, the State government would clearly retain all the rights of sovereignty which they before had, and which were not, by the act, exclusively delegated to the United States. This exclusive delegation, or rather this alienation of State Sovereignty, would only exist in three cases; where the Constitution in express terms granted an exclusive authority to the Union; where it granted in one instance an authority to the Union, and in another prohibited the States from exercising the like authority; and where it granted an authority to the Union, to which a similar authority in the States would be absolutely and totally contradictory and repugnant."

In other words, the State did not give up their sovereignty of the land, including roads. They retained this sovereignty when the Union of States was organized and they most certainly did not go to the Federal Convention of 1787 to give it up!

Roads were of importance in framing the Constitution, but not "public roads". Congress was expressly delegated authority to establish post offices and post roads. Nowhere in the Constitution did the people of the original thirteen States cede to the federal government the power to establish "public roads". This is a power and jurisdiction that the States had prior to

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the creation of the federal government, and was retained by the States. This is the reason why the Federal Courts on numerous occasions have based public roads decisions on state law.

The Supreme Court has ruled the following: "State officials cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution."

The Supreme Court even went further and ruled as follows: "If the state ratified or gives consent to any authority which is not specifically granted by the United States Constitution, it is null and void."

The President of the United States had to take an oath before he entered office to preserve, protect and defend the Constitution of the United States. In this Republic known as the United States of America, all legislative powers are vested in a Congress of the United States, which consists of Senate and a House of Representatives as stated in the Constitution. The Supreme Court of the United States has told us that on a number of occasions, but no one is listening. The administrative branch of the government does not have legislative powers. The Supreme Court has ruled the Constitution's division of power among the three branches is violated where one branch invades the territory of another whether or not the encroached-upon branch approves the encroachment. The Supreme Court ruled years ago that an unconstitutional act is not a law; it confers no rights; it imposes no duties; affords no protection; it created no office; it is in legal contemplation, as inoperative as though it had never been passed. (*Norton v. Shelby County*, 118 U.S. 425 p. 442.)

To resolve the road concerns of today across the public domain, we must understand the history of access in America. For thousands of years, Native Americans were the only inhabitants of the western hemisphere. Some tribes traveled continuously in search of food and never established permanent settlements, while other tribes founded cities that had huge, magnificent buildings. There were no roads or highways as known today but there were single track ways, pathways and other trails connecting two points before the original colonies were settled in the New World (America).

Before the Territory of Nevada was settled the area now comprising the Great Basin was inhabited by Native Americans and descendants of Spanish explorers and again there were no roads or highways as known today but there were single track ways, pathways and other trails connecting two points.

The federal circuit courts have held that an existing right-of-way recognized as such, primitive at its conception, may evolve from a trail to road as frontier conditions give way to modernization. A route that was used first as a trail, later by horse-drawn vehicles, and went through a gradual process of occasional improvement and use until it becomes a road suitable for automobiles and trucks. The courts have held the condition of the highway -- whether **paved and wagon worthy** or simply a "minor footpath" is irrelevant if the claimant can show that a **right-of-way** was used no matter for what purpose.

While settling the Great Basin, miners, ranchers, trappers, hunters, fishermen and other members of the public established, re-established, developed and/or maintained by usage

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numerous roads and similar public travel corridors across the public domain connecting two points.

Article II of the Treaty of Ruby Valley 1863 states in part the several routes of travel through the Shoshonee country, now or hereafter used by the white men, shall be forever free, and unobstructed by all emigrants and travelers under its authority and protection....

In more recent years, in the part of the Great Basin known as the state of Nevada, miners, ranchers, recreationists and other members of the public, together with federal, state and county governments also have established, re-established, developed, constructed and/or maintained, by mechanical means, roads and highways across the public domain within the borders of Nevada.

On December 7, 1993, the Board of Nye County Commissioners adopted Resolution 93-49, entitled "A Resolution declaring certain public travel corridors across public lands within Nye County as Nye County public roads", and in part, defining a "Nye County Public Road", as have several other counties in the west.

On July 4, 1994, Nye County woke up the nation when we re-opened a road within the National Forest at Jefferson Canyon without USFS permission. Did Nye County violate any law?

On March 8, 1995, the United States Justice Department filed suit against Nye County, in part because Nye County resolution 93-49 claimed ownership of virtually every road on public lands within the county boundaries built in the past, present or in the future.

This issue of road jurisdiction on public lands was clearly addressed in federal district court in *U. S. v Nye County*.

On March 14, 1996, Judge Lloyd D. George, U. S. District Court for the District of Nevada, issued an order in the case of *U. S. v. Nye County*, case number CV-S-95-232-ldg(RJJ), which in pertinent part provided that: "It is declared the Nye County Resolution 93-49 is invalid and unenforceable to the extent, *and only to the extent*, it applies to ways, pathways, trails, roads, county highways and similar public travel corridors across public lands in Nye County, Nevada, for which **NO** valid right-of-way exists or is recognized under federal law."

In *U. S. v. Nye County* the court clearly stated:

The United States concedes that the resolution (93-49) does not violate the Supremacy Clause to the extent it applies to roads for which a valid right-of-way exists under federal law.

The United States has shown that it has enacted a comprehensive right-of-way regulation, generally allowing new rights-of-way to be granted only under Title V of the FLPMA.

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RS 2477 was repealed in 1976 by a law establishing a more comprehensive resource management framework for the Bureau of Land Management (BLM) and the United States Forest Service (USFS), the Federal Land Policy and Management Act, commonly referred to as "FLPMA". However, FLPMA specifically and clearly stated that all existing RS 2477 "right-of-ways" were not affected by the repeal of RS 2477 and remained valid. FLPMA contained in its Title V a new mechanism for granting "right-of-way" from October 21, 1976 to the present.

TITLE V--RIGHTS-OF-WAY

AUTHORIZATION TO GRANT RIGHTS-OF-WAY

The Secretary of Interior, with respect to the public lands and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System, or

EXISTING RIGHTS-OF-WAY

Nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title.

Authorization to grant new rights-of-way is post FLPMA - existing rights-of-way is pre-FLPMA.

In settlement conference the Justice Department wanted Nye County to rewrite Resolution 93-49 to reflect the judge's decision. Nye County agreed but the request was dropped by the Justice Department before final settlement. Nye County went ahead and rewrote Resolution 93-49 and on January 19, 1999, Nye County passed Resolution 99-01 that defines a Nye County public road, as stated on page 4.

Equally important is that Nye County Resolution 99-01 establishes the guidelines in determining a "county road." A county road must meet three criteria to determine if a right-of-way or right-of-use exists.

- (1) Was the "road" used by the public?
- (2) Does the "road" tie two points together?
- (3) Was the "road" in existence prior to October 21, 1976?

This resolution was presented to the USFS and BLM months prior to passage for their concurrence. Both the district ranger of the USFS and the field station manager of the BLM agreed they had no problems with the resolution prior to passage by the Board of Nye County Commissioners on January 19, 1999.

Nevada Revised Statutes 405.191 defines the term "public road" to include all roads existing on RS 2477 rights-of-way and "accepted by general public use and enjoyment...", and endues every **Board of County Commissioners** with the authority to "locate and determine the width of such rights-of-way and locate, open for public use and establish thereon county roads or highways."

The definition of a "public road," pursuant to NRS 405.191, also includes roads designated by the **Board of County Commissioners** as major, general and minor roads (pursuant to NRS 403.170) and "[a]ny way which is shown upon any plat, subdivision, addition, parcel map or record of survey of any county city, town or portion thereof duly recorded or filed in the office of the county recorder and which is not specifically therein designated as a private road or a nonpublic road, and any way which is described in a duly recorded conveyance as a public road or is reserved thereby for public road purposes of which is described by words of similar import.."

There is also the continuing validity of other common law authority for the establishment of roads for the good of the citizenry, including but not limited to the authority set forth in the doctrine of easement by necessity and the doctrine of implied easement, authority which we believe has not been preempted, superseded or otherwise set aside by RS 2477 or other statutory scheme.

Since Nye County rewrote Resolution 93-49 some personnel in the Forest Service have claimed that the Forest Reserve Act that created the Humboldt and Toiyabe National Forest in 1906 repealed RS 2477 rights-of-way. I have repeatedly requested that the Forest Service show Nye County the law, but no one can produce it. RS 2477 was not repealed in 1906 but 70 years later, October 21, 1976 as applied to lands in the National Forest System.

A quick review of the Federal Land Policy and Management Act of October 21, 1976;

"REPEAL OF LAWS RELATING TO RIGHTS-OF-WAY--Section. 706.(a) Effective on and after the date of approval of the Act, R.S. 2477 (43 U.S.C. 932) is repealed in its entirety and the following statutes or part of statutes are repealed insofar as they apply to the issuance of rights-of-way over, upon, under, and through the public lands and **lands in the National Forest System...**

EFFECT OF EXISTING RIGHTS -- Section 701 (a) of FLPMA of 1976 states: Nothing in the Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way or other land use right or authorization existing on the date of approval of the Act.

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Additionally, Section 701 (h) of FLPMA of 1976 reads as follows: "All actions by the Secretary concerned under this Act shall be subject to valid existing rights."

Federal Courts have held that "the right to make reasonable and necessary improvement within the boundaries of the right-of-way is part of the county's valid existing rights, as long as the project stays within the county's right-of-way, no authorization is needed for construction to proceed".

What is a RS 2477 right-of-way as recognized today?

The Mining Act of July 26, 1866, codified at 43 USC 923 (commonly known as RS 2477) is a law of the land which was enacted for the purpose of memorializing the right of access to the public lands by the people of the United States and establishing the express right to construct highways (roads) and the implied right to access, by there and then granting self-establishing/self-authenticating rights-of-way for all roads previously or thereafter located, established and/or developed, whether by usage or by mechanical means, to allow travel from one point to another, across or through public lands to encourage the settlement of the West; and the federal courts have interpreted RS 2477 to provide a public right-of-way for all roads across or through public lands, so long as those roads were established and "accepted" by general public use and enjoyment before October 21, 1976 (the effective date of the Federal Land Policy and Management Act) and serviced to connect two points of societal importance (towns, stage stops, mines, ranches, water sources, etc.) whether by constant alignment or alignment subject to seasonal, weather, economic or other adjustment.

What is a valid existing road right-of-way? A "right-of-way" is a legitimate property right, and consequently, carries with it a bundle of associated rights, including the right to maintain and upgrade roads. Once the grant was made, the federal governments interest in the land actually containing the right-of-way became that of the servient estate. That means that it's rights as manager of the underlying land are still protected against undue or unnecessary damage but it cannot interfere with the owner of the right-of-way exercising its bundle of rights, including maintenance and upgrading of roads.

The U.S. Court of Appeals for the Ninth District filed an opinion 12-28-99 in the case of USA v. Shumway regarding 'mining claims' that I believe has a direct relationship on "R.S. 2477 roads". The court quoted, "The Supreme Court has established that a mining "claim" is not a claim in the ordinary sense of the word, but rather a property interest, which is itself, real property in every sense.

I, therefore, believe that the original intent of R.S. 2477, an expressed grant allowing access to "mining claims" authorized by Congress in the Mining Act of July 26, 1866 would have to possess the same property interest as a "mining claim". In USA v. Shumway, the court determined, "When the location of a mining claim is perfected under the law, it has the effect of a grant by the United States of the right of PRESENT AND EXCLUSIVE POSSESSION. The claim is property in the fullest sense of the term."

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Again a valid existing right-of-way or right-of-use, or a RS 2477 right-of-way etc are all a real property interest, a property right owned by the holder thereof.

Prior to October 21, 1976 and the passage of the Federal Land Policy and Management Act how did a RS 2477 right-of-way come into existence? The federal courts have held that:

- (1) A RS 2477 right-of-way comes into existence automatically when a highway is established across the public lands in accordance with the law of the state.
- (2) The scope of a RS 2477 right-of-way is defined by the use of state law.
- (3) Whether a right-of-way has been established is a question of state law.
- (4) An existing right-of-way recognized as such, primitive at its conception, may evolve from trail to road as frontier conditions give way to modernization.
- (5) The condition of the highway--whether paved and wagon-worthy or simply a minor footpath is irrelevant if the claimant can show that the right-of-way was used no matter for what purpose.
- (6) The manner of travel (by foot or beast of burden or vehicle) is legally irrelevant to the RS 2477 determination. What matters is that there was travel between two definite points.

Whenever a Nye County Public Road came into existence across or through the public domain, no matter for what purpose, there was automatically a valid existing right-of-way as long as it was before October 21, 1976, ties two points together, and was used by the public.

Forest Service Personnel are incorrect and not following agency guidelines when requiring that in order to establish that a County owns a right-of-way under RS 2477, it would have to be shown that the elements of perfection of the right-of-way grant were met in accordance with Federal Law prior to March 1, 1907 when the land was reserved for National Forest purposes.

WO Amendment 2700-94-7

Construction:

Construction is a physical act of readying the highway for use by the public according to the available or intended mode of transportation – foot, horse, vehicle, etc. Removing high vegetation, moving large rocks out of the way, or filling low spots, etc., may be sufficient as construction for a particular case.

Survey, planning, or pronouncement by public authorities may initiate construction but does not, by itself, constitute construction. Construction must have been initiated prior to the repeal of RS 2477 and actual construction must have followed within a reasonable time.

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Road maintenance over several years may equal actual construction.

The passage of vehicles by users over time may equal actual construction.

Public Highway:

A public highway is a definitive route or way that is freely open for all to use. It need not necessarily be open to vehicular traffic for a pedestrian or pack animal trail may qualify. A toll road or trail is still a public highway if the only limitation is the payment of the toll by all users. Multiple way through a general area may not qualify as a definite route, however, evidence may show that one or another of the ways may qualify.

The inclusion of a highway in a State, county, or municipal road system constitutes being a public highway.

Expenditure of construction or maintenance money by an appropriate public body is evidence of the highway being a public highway.

Absent evidence to the contrary, a statement by an appropriate public body that the highway was and still is considered a public highway will be accepted.

Some personnel in the Forest Service are misleading the public and claiming that when lands were included in the National Forest System they were reserved for public uses, and were no longer available for establishment of public highways under RS 2477. They claim RS 2477 when enacted in 1866 did grant right-of-ways for the construction of public highways on public lands there were not otherwise reserved for public uses. This is totally false. What were "public lands not reserved for public uses" as applied to in 1866 time frame? There was no such thing.

RS 2477 reads as follows: "the right-of-way for construction of highways over public lands, not reserved for public uses, is hereby granted." (19 words total)

If it was "public lands not reserved for public uses" there would not be a comma after public lands, or it would have been just worded unreserved public lands. "Not reserved for public uses", is simply describing the right-of-way. This law was to give an expressed consent or grant to miners in the mining act of 1866, to build private roads to mining claims to encourage the discovery and production of minerals. In 1866 there was no such thing as public lands not reserved for public uses, unless possibly it was a military reservation.

If RS 2477 did grant "right-of-ways for the Construction of public highways on public lands that were not otherwise reserved for public uses", why did FLPMA of 1976 repeal RS 2477 right-of-way over, upon, under and through the lands in the National Forest System, if National Forest System lands are reserved land?

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The public lands managed by the Bureau of Land Management is not reserved lands and yet FLMPA of 1976 repealed RS 2477 rights-of-way over, upon, under and through the public lands, just as the lands in the National Forest System, what is different? It is because in 1976 just as in 1866, the "not reserved for public uses" described the right-of-way and not "public domain"?

I have a hard time believing that RS 2477 or any other pre-existing right or right of use was repealed when the Humboldt or Toiyabe National Forest was created in 1906 and 1907 respectively. Three pages out of the first USDA Forest Service Manual issued on June 14, 1907, which states the following:

Page 13, "HOW CAN THE LAND ITSELF BE USED? ...railroads, wagon roads, trail, canal, flumes, reservoirs and telephone and power lines may be constructed whenever and wherever they are needed, as long as they do no unnecessary damage to the forest..."

Page 23, "TO USE WELL ALL THE LAND. ...is open to improvements such as the construction of railroads, wagon roads, trails, canals, reservoirs, and telephone and powerlines..."

Page 32, "IMPROVEMENT WORK. Nothing will do more toward giving the National Forest the best kind of protection against fire, and nothing will help more to open up their resources for everybody's use than the construction of a great many well-built trails, roads, bridges, and telephone lines. Easy and quick communication to all parts of a forest must be had if fire is to be kept down. The settlers, prospectors, miners, lumbermen, and stockmen profit directly from all work of this kind and can be of great assistance in pushing it through.

Does the first Forest manual recognize a "public road"?

Page 30--To drive stock across a forest it is necessary to get a permit from the nearest ranger or the supervisor EXCEPT ALONG A PUBLIC ROAD.

I wonder why no permit was required on a public road--maybe because the Forest Service has no jurisdiction.

For almost two years now Nye County has requested the Forest Service and/or the BLM provide Nye County a copy of any law indicating that there is no valid existing right-of-way when a road was established on the public domain prior to October 21, 1976 that connects two points of societal importance and was accepted by general public use and enjoyment in Nye County. If Nye County is wrong, we want to correct our county law.

If Nye County is correct as Resolution 99-01 reads, we are not in violation of the Supremacy Clause of the Constitution of the United States of America as the United States conceded in U.S. v. Nye County and county law does not violate the Supremacy Clause of the United States Constitution to the extent it applies to roads for which a valid existing right-of-way exists under federal law.

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In reference to the Forest Service, Fact Finding Report, Work Environment and Community Relations, Humboldt-Toiyabe National Forest, February 4, 2000:

“Chief Mike Dombeck and Regional Forester Jack Blackwell chartered a fact-finding team to look into issues of work environment and community relations on the Humboldt-Toiyabe National Forest ...”

The teams recommendation state in part as follows:

“IV. Other Issues Requiring Nation and Regional Attention

These findings, while identified on the Humboldt-Toiyabe National Forest, are issues that **MUST BE** addressed appropriately at the Regional and/or National levels of the Forest Service:

1. Lack of resolution of RS 2477 rights-of-way determination issue precludes local managers from effectively resolving road related conflicts with Counties.

County elected officials stated they believe many of the roads being closed not maintained, etc., are actually County roads under RS 2477 and the decision on road status is theirs alone to make. They disagree with the definition of what constitutes a road under RS 2477 and as long as that atmosphere continues to exist, conflicts will remain between the Forest Service and the Counties on access and road management issues. The team believes this key issue must be resolved before relations can move forward in many Western States.

Recommendations:

- The Washington Office should begin work through the Agriculture and Interior Departments to bring the RS 2477 issue to resolution.
- The Regional Office either should adopt the Humboldt-Toiyabe draft pilot for Nye County or develop a pilot for evaluating claims in the Region for testing the pilot. Multiple counties should be considered for involvement. The pilot should be designed to identify areas of agreement and disagreement and provide a means to focus on agreements until RS 2477 is resolved nationally.”

Until the road jurisdiction is resolved with the counties any agency action including the Forest Service Roadless Initiative will only move our (USFS and County) relationship backwards.

Conclusion:

As relief to my concerns, I Richard L. Carver, Chairman Board of Nye County Nevada Commissioners, would like to go on record in requesting the Forest Service to;

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- (1) The Forest Service, Bureau of Land Management and Nye County have agreed to resolving public lands issues at the table through what we call the “Tri-Party Framework for Interactions” dated December 1996. Pursuant to 40 CFR 1502.14, as an alternative to any proposed action initiating an Environmental Impact Statement (EIS), I propose to the Secretary of Agriculture and the Secretary of Interior to develop a pilot project, with Nye and Elko Counties in Nevada, on how to resolve the RS 2477 issue and to report back to Congress within one year on proposed legislation that will resolve the road issue on the public lands once and for all, and;
- (2) Withdraw the proposed rule and subsequent documentation and proceed with the No Action Alternative allowing for normal land management planning processes, or;
- (3) Withdraw the proposed rule and subsequent documentation and delegate the decision for determining the disposition of roadless areas to local forest supervisors through normal land management planning processes. Then, local governments can play an active role as participants in the process, or;
- (4) Supplement this DEIS, as per regulation 40 CFR 1502.9(c)(ii), to address the significant new circumstances and information that is relevant to our environmental concerns and bearing on the proposed action and its impact, or;
- (5) Revise the DEIS, as per Regulation 40 CFR 1502.9(a), to address inadequacies that preclude meaningful analysis.

My comments may or may not be the position of the Board of Nye County Nevada Commissioners. Nye County and/or staff may submit additional comments.

Thank you for the opportunity to comment on an issue of such importance to the counties and local governments of the United States.

Respectfully submitted,



Dick Carver, Chairman
Nye County Nevada Board of Commissioners

RC/jdf



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NYE COUNTY
DEPARTMENT OF NATURAL RESOURCES & FEDERAL FACILITIES

1210 E. Basin Rd. Ste. #6 • Pahrump, Nevada 89048
(702) 727-7727 • Fax (702) 727-7919

July 15, 2000

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

CAET RECEIVED
JUL 17 2000

Dear Sirs:

Subject: Comments on Roadless Areas Proposed Rule DEIS

The following are the official comments of Nye County, Nevada, on the document cited above. This office prepared them at the direction of the Board of Commissioners and submits them with its approval. I have organized the comments into the following: Recommended Alternatives, Lack of Planning, Adequacy of the DEIS, and Analysis of Impacts.

Recommended Alternatives

We recommend the following alternatives:

Prohibition	Procedural	Tongass National Forest
Alternative 1	Proposed Action and Preferred Alternative B	Proposed Action and Preferred Alternative T3
No Action; No Prohibitions	Forest Planning Process Implemented at Next Forest Plan Revision	No Prohibitions; Determine Whether Road Construction Should be Prohibited in Unroaded Portions of Inventoried Roadless Areas as Part of the 5 Year Plan Review; Implement Forest Planning Process Next Plan Revision

Roadless DEIS Comments.wpd

Roadless Areas Proposed Rule DEIS Comments
July 15, 2000

Page 2 of 10

Nye County supports Prohibition Alternative 1 (No Action; No Prohibition) for several reasons. Foremost is the lack of planning involved in a simplistic nationwide ban of the Proposed Action and Preferred Alternative.

Lack of Planning

The values of each roadless area differ from those of other roadless areas. They depend on the circumstances of nature and the people throughout the country. They do not hold the same values equally across the nation. Nevertheless, those values are very important on the local level. For this reason, evaluations and decisions should occur on the local level. A nationwide ban is a very clumsy approach. It is a disservice to the American people and is not in the best interests of the United States.

The reasons for the prohibition, as presented in the DEIS, lead us to believe that the Preferred Alternative is an effort by the Forest Service to shirk its responsibility to plan in accordance with the diverse needs of the American people throughout the country. The DEIS states,

“Over the last 20 years, local management decisions in both inventoried roadless areas and other unroaded areas have been steeped in controversy, especially when they dealt with road building, timber harvest, or other areas that alter the areas’ roadless characteristics. Costly, lengthy appeals and litigation have accompanied virtually every attempt to enter these areas.” (p. S-4)

Clearly, the prohibition is simply an autocratic circumvention of the planning process by making a pre-emptive decision on all roadless areas, disregarding the underlying differences between regions. The Forest Service is mistaken that this reckless substitute for problem-solving will decrease litigation. It is most likely a blunder that it will escalate litigation and rightly undercut public trust and respect for the Forest Service and the Federal government.

Plainly, the proposed prohibition is contrary to the stated purpose of the Proposed Planning Rule. The DEIS states the following:

“Bases land and resource planning on sustainability. Emphasizes collaboration, integrates science. Planning becomes problem solving.” (Table 1-1, page 1-14)

In effect, this pre-emptive decision will further diminish consultation and collaboration with local citizens because the decision has been dictated from the Forest Service headquarters before any collaboration. It eliminates the integration of science into the decision; rather, the “problem” has been decided politically. Because this process is oblivious to local conditions, it eliminates problem solving and will only create more problems.

Roadless DEIS Comments.wpd

Inadequacy of the Statement

Nye County notes several inadequacies in the DEIS. The following comments evaluate some of the most egregious. The statement of Purpose and Need for the Action has serious problems that are symptomatic of the problems throughout the document. The following paragraphs describe some of them.

The conclusions reached in this section are not supported by the information provided.

The reasoning is faulty and shows a strong prejudice toward the simplistic preferred alternative. The language seems more like a propaganda vehicle than an impartial evaluation. It lacks the objectivity and professionalism that the American people deserve from land managers.

One example is the following statement: "Although this [inventoried roadless areas] is only 2% of the continental United States, these roadless lands encompass a major share of watersheds and ecosystems important to the American people, and numerous fish, wildlife, and plant species." (p.1-1)

This amount should be quantified so that the American public and land managers can decide for themselves if this is "a major share" or a minuscule share. It is illogical and untrue that less than 2% of the country contains "a major share of watersheds and ecosystems." Is "major" more than 50%, or perhaps 25%?

The document exaggerates the role of National Forest lands and fails to put their role into the context of the national land situation. Other watersheds exist throughout the country and undoubtedly are vastly more important nationally than those in the National Forest system. Indeed, the role of Forest Service roadless areas are important only on local levels in a few places. Therefore, management decisions should be made through site-specific analysis and locally-based.

The subjective use of the term important begs the question to be decided. These watershed and ecosystems are described as "important to the American people" without defining "important." Are they important to national public health and safety, important to survival of the human species, or important in an abstract aesthetic sense?

The Wilderness Act has no provisions for buffer zones, but the Forest Service proposes to unilaterally create them through the Roadless Initiative. Without scientific evidence, public input, nor congressional action, the Forest Service has decided that all roadless areas everywhere are needed to function in the roles already filled by the National Wilderness Preservation System (NWPS). This circumvents Congressional authority and the National Forest Management Act.

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The intention to effectively extend the NWPS is expressed under "Impacts to to [sic] Designated of Potential Wilderness" on table S-1 (p. S-21). The DEIS states,

"Maintaining inventoried roadless areas would sustain a low level of threat to wilderness values and protect land between Wilderness areas and developed land. Opportunities for recreation that require remote characteristics, but are of a less restrictive nature than Wilderness, would be maintained."

The "smoking gun" is in the following statement: "Maintaining inventoried roadless areas in their current state will reduce the need for recreationists in search of remote experiences to move to Wilderness areas to enjoy a comparable experience. This will lessen the visitation pressure on Wilderness areas and help maintain the quality of Wilderness experiences (p. 3-172)." Clearly, the Roadless Initiative is a transparent effort to expand the wilderness system without Congressional action and in circumvention of the NFMA.

Analysis of Impacts

The analyses of impacts are so vague and unquantifiable that no reasonable decision can be made based on this document. Furthermore, it is possible for the Forest Service to make rough calculations and comparisons to other sources of the same impacts. The following comments explain these problems. I have organized them to follow the organization of the DEIS.

Ecological Factors p. 3-20

This section focuses on abstract concepts and factors that are virtually unmeasurable. For instance, a "healthy ecosystem" is an abstraction that cannot be measured.

The DEIS says,

"Scientists have used various rating systems to measure or characterize healthy ecosystems. These ratings are often based on professional judgment, when information is limited or no consensus exists. They usually measure or rate a variety of important ecological factors such as plant or animal communities or individual species, size or type of habitat, or type of disturbance process. When considered together, these ratings attempt to give an overall, although incomplete, picture of the general health of an ecosystem. Ecosystem health is used in this analysis to evaluate relative differences in outcomes of planning alternatives.

Various factors were evaluated and estimates were made on the relative degree to which they contribute to ecosystem health. Ecosystem structure, composition, and process broadly describe these factors. Structure is the attributes of the environment that are important to those organisms. For example, a fallen tree is a structural attribute that many species use for their home. Structure is also the size

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or type of habitat patch an animal uses. Composition is the biological diversity of an ecosystem, the plants and animals that live there. Process refers to the various kinds of activities, interactions, cycles, or disturbances that occur within an ecosystem. For example, fire is a natural disturbance process.

An environmental baseline is needed in these types of analyses to compare the change that may result from a land management decision. The estimated historic range of variability (based on conditions prior to European settlement) is often used as a baseline when evaluating ecosystem health (ICBEMP 1996). Scientists compare historic reference conditions with today's conditions and provide an overall rating of ecosystem health that is a measure of departure from historic conditions (pp. 3-20 to 3-21)."

If scientists cannot agree on rating systems and parameters to measure the conceptual ideal of ecosystem health (see above), how can the Forest Service implement planning and management based on it? The best that the Forest Service offers us is that these factors have some effect. With no agreement on parameters or data, the American people and land managers cannot intelligently decide if the impacts are significant.

The FEIS should attempt to calculate the impacts and make comparisons to impact from other sources. The DEIS says, "Most often, ecological factors were rated qualitatively by alternatives to obtain an estimate of relative differences" (p. 3-21). The qualitative comparisons offered in the DEIS are useless. We cannot determine if it is minimal, like the effect of a ship on world sea level, or significant, like the effect of the ice age glaciation on sea level. The Forest Service offers not even the roughest estimate on a national scale. For example, the amount of soil lost due to roads compared to the amount lost due to natural processes. Similar comparisons should be made for structure, composition, and various processes (interactions, cycles, or disturbances such as fire) that occur within an ecosystem. For example, how much fire is due to roads compared to "natural pre-European levels."

This action is predicated on the discredited concept of "estimated historic range of variability (based on conditions prior to European settlement) (p. 3-21)." This concept is based on the unfounded idea the ecological conditions prior to European contact were stable and ideal. This paradigm begs the question of what is the most stable and productive condition of public lands. It is influenced by nostalgia and the 19th Century concept of the noble savage living in harmony with the land. Science has little to do with the underlying assumptions. This concept will undoubtedly fall aside in time like the paradigm of the "super organism," the popular old-time notion that forest stands induced rainfall, or the popular notions about fire suppression. The problems created in the meantime may vastly overshadow those caused by fire suppression.

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Forest Service should not make a nationwide ban based on reasoning that admittedly does not apply nationwide. The DEIS says, "In some parts of the country, the historic range of variability is not useful as a benchmark due to lack of records of pre-settlement ecological conditions or due to substantial and irreversible ecosystem changes."

Watershed Health (p. 3-22 to 3-97)

Watershed health can be improved by Forest Service managing logging operations rather than merely banning logging. This section places primary blame for soil loss and low water quality on roads built for logging activities. Even after that, the DEIS says, "Although these impacts can be greatly reduced by using best management practices, poorly managed timber harvest activities can be the major source of sediment from the sale area. (p. 3-22)" It is the job of the Forest Service to manage such operations to reduce the impacts. It is not the job of the Forest Service to simply ban logging so it doesn't have to do its job.

Forest Service should not address concerns over logging impacts by applying the same management to areas where logging does not occur and where roads have minimum impact on watershed health. For example, there is no logging in Nye County, Nevada, and very little human use of Forest Service watersheds (see fig. 3-12, p. 3-28). Please note that no watersheds in Nye County appear in Figure 3-13. "Watersheds That Do Not Meet Clean Water Act Standards That Contain Inventoried Roadless Areas" (p. 3-30).

Locally, impacts on these areas are minimal and other forest use needs are great. Despite this, Forest Service proposes to close vast roadless areas here regardless of other community needs. Few benefits will come at the price of many other impacts. Statements in the DEIS support this, stating, "Annual water-yield volumes are unlikely to change in the drier portions of the Interior West, even where harvests will be heaviest, or in the East, where harvest volumes and roading are modest (p. 3-25)." The DEIS further supports this, saying,

"Collectively, these studies suggest that the effect of roads on basin stream flow is generally smaller than the effect of forest cutting, primarily because the area occupied by roads is much smaller than that occupied by harvest operations. Generally, hydrologic recovery after road building takes much longer than after forest harvest because roads modify physical hydrologic pathways but harvesting principally affects evapotranspiration processes. (Forest Service Roads: A Synthesis of Scientific Information," [In Press]" (p. 3-25).

Areas with roads only and no logging are at a much lower level of risk and there are fewer impacts. Such a prohibition may be reasonable on watersheds that serve as drinking water source areas. The same can be said for other related soil, water, and air impacts in Nye County.

Impacts of roads should be mitigated by appropriate design and construction rather than by simply banning roads. Road building may be banned after sight-specific evaluation.

A prohibition of road building and logging is contrary to the good of the United States. The DEIS says, "Alternatives that completely prohibit timber harvest would limit managers' options in high-risk areas (p. 3-23)." Similarly, other decisions concerning roadless areas should be made in the local planning process so that managers have flexibility to respond to problems.

Efforts to maintain biodiversity should focus on identifiable ecoregions that are underprotected rather than make a blanket road ban in currently unroaded areas. This discussion (pp. 3-47 to 3-97) should be a reasoned process rather than simply locking up all lands considered "roadless." Currently, Nye County is developing a Multispecies Habitat Conservation Plan. Forest Service efforts should be coordinated with other efforts rather than unilateral.

Forest Health (p. 3-97 to 3-111)

This issue is a prime example of the need for site-specific locally-based planning rather than a national prohibition on road construction. The complex issues of forest health will be affected positively in some respects and adversely in other aspects.

Human Uses (p. 3-112)

Recreation decisions should be made at the local level and not controlled by a national prohibition on road-building. The discussion on recreation recognizes that the demand for dispersed recreation will increase but fails to address the inevitably much larger increase in demand for motorized transportation. The conclusions focus only on demands for dispersed recreation. Nye County, for example, has an abundance of Wilderness and roadless areas for dispersed recreation. Nye County has 1,119,000 acres of roadless areas. This is over 35% of the roadless area in Nevada (total 3,142,000 acres). The roadless area in our county is greater than the entire area of the Tonopah Ranger District (1,115,000 acres). However, recreation opportunities for the vast majority of the population (i.e., motorized access and developed campgrounds) is severely limited. Most of the recreation public in this area is terribly under served by the Forest Service. Local citizens generally travel hundreds of miles, even to California, for outdoor recreation because of the lack of amenities on the large tracts of Forest Service land in our region. The development of better recreation opportunities in this area should not be hampered by a nationwide prohibition. Rather, local planning efforts should strike the balance. We think that your evaluation should be rewritten with more emphasis on the following statement.

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Scoping revealed conflicting opinions regarding motorized recreation use in unroaded areas. This is an important issue, but the appropriate balance between motorized and non-motorized dispersed recreation use is highly variable throughout the country and dependent on distinct social and environmental conditions.

The alternative of prohibiting all activities was considered (see Alternatives Considered but Eliminated from Detailed Study, Chapter 2), but was eliminated from further study because decisions of this nature are better made through local planning and collaboration processes (p. 3-121)."

The previous statement notwithstanding, the DEIS subsequently states, "Alternatives 2, 3, and 4 are barely distinguishable. This cluster of alternatives is rated high because they provide considerable and immediate stability to the level of supply; whereas, Alternative 1, the No Action Alternative is rated low because it allows for continued erosion of the supply of inventoried roadless areas maintained in an undeveloped condition.

Demand for SPM, SPNM, and P dispersed recreation opportunities is increasing (Cordell and others 1999b) in an environment of diminishing supply. Alternatives 2, 3, and 4 maintain higher levels of supply, so they have more opportunities to resolve the issue of balance between motorized and non-motorized dispersed recreation activities. Controversies are considerably less than Alternative 1 and have a higher probability of being resolved over time (p. 3-122)."

Alternatives 2, 3, and 4 will not provide "more opportunities to resolve the issue of balance between motorized and non-motorized dispersed recreation activities." On the contrary, proposals 2, 3, and 4 will extinguish those opportunities. The DEIS states,

"In essence, the local manager determines what activities are appropriate in an area. Such determinations would be constrained in inventoried areas, however, by a prohibition alternative if one were selected in the final rule (p. 2-7)."

It goes on to state, under the Preferred Action and Alternative,

"With respect to inventoried areas, local responsible officials could not authorize the construction or reconstruction of roads but would retain discretion to consider appropriate additional management protection for inventoried roadless areas (p. 2-7)."

Social and Economic Factors (p. 3-160 to 3-225).

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This section starts with an important realization that local stakeholders bear the brunt of forest land management decisions while absentee stakeholders bear almost none of the burden.

“Those who have the strongest interests in NFS lands, and those whose livelihood or recreational pursuits are most closely tied to the national forests, are more directly affected by Forest Service policy than people who have little involvement with these public lands. It is these forest stakeholders who comprise the affected socioeconomic environment discussed here, and who are the focus of the socioeconomic effects analysis (p. 3-160).”

Unfortunately, the authors seem to totally forget this as the discussion progresses and this focus is lost. For example, the studies and statistics quoted in the subsequent sections focus on perceptions and desires of absentee stakeholders nationwide who are insulated from the burdens of Forest Service policy. Those stakeholders are generally unaware of the oppressive burdens placed on small communities by Forest Service policies.

Wildland Values (p. 3-161)

None of the wildland values described are dependent on the roadless policy proposed. The statements in this section about quality of life and economic well-being are false for the local stakeholders. These are the people for whom the impacts are most intense. They are the very people the authors said “are the focus of the socioeconomic effects analysis (p. 3-160).” It is small wonder that the public confuses the term “roadless” with “wilderness.” Similarly, the Forest Service thinks that roadlessness is essential to all of the wildland values described in this section. Water and Air Quality can be maintained with proper construction. Solitude and Personal Renewal can be found in the extant National Wilderness Preservation System. Sense of Place is a resource most threatened by loss of access and is a source of much anger in local communities. Research and Teaching values are available in the Forest Service Natural Research Areas and the NWPS lands. Passive use values are derived from those areas already protected in the NWPS and through proper management of other areas.

Recreation, Scenic Quality, Wilderness, and Recreation Special Uses

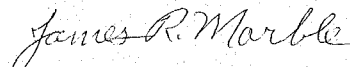
The authors present ample evidence that the demand for recreation experiences will increase and that the overwhelming portion of that demand is for motorized recreation. Predictably, the authors illogically conclude that the best response to increasing demand is to increased resistance to meeting that demand. In this section, as in the last, the Forest Service presents roadless values as equivalent to wilderness values. Currently, wilderness designation reserves 28% of the National Forests for use by less than 2% of the people who visit forests lands. The proposal would increase that proportion of land to nearly 50%. The Forest Service clearly places disproportionate emphasis on remote recreation opportunities. Clearly, the Forest Service is averse to meeting the recreation needs of the American people (the owners of

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the land and employers of the Forest Service). The authors show the vast economic importance of recreation industry, yet they propose to cripple that potential. The comments relating to discrimination by limiting motorized recreation access remain unanswered (p. 3-169).

The remainder of this section is fraught with data that conflicts with the recommendations. These inconsistencies follow the pattern demonstrated above. This document will surely serve for years as the prime example of a document written to support a predetermined decision.

Sincerely,



James R. Marble, Ph.D.
Director of Natural Resources Office

Johr. A. Chachas, Commissioner
 Julio Costello, Commissioner
 Brent Eldridge, Commissioner
 Kevin S. Kirkeby, Commissioner
 Cheryl A. Noriega, Commissioner
 Donna M. Bath, Ex-Officio Clerk of the Board

White Pine County
 Board of County Commissioners

June 29, 2000

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

CAET RECEIVED
 JUN 29 2000

Dear Forest Service Roadless Area Conservation Team:

The White Pine Board of County Commissioners assigned the task of reviewing and making comment on the National Road Management Policy draft Environmental Assessment to their Public Land Users Advisory committee.

The County Commission has placed their faith in their official advisory board members, and, as in the past, they have not failed in doing their duty. Enclosed, please find a letter from White Pine County's Public Land Users Advisory Committee. This nine member board, represents a wide range of back grounds and expertise. The White Pine County Board of Commissioners have reviewed their comments and concur with their remarks.

Please accept their comments as official comments of the White Pine County Commissioners.

Additional comments adopted in a public meeting by the White Pine County Commissioners are as follows:

1.) The Draft EIS appears to be Biased and Predecisional

Recent actions by the Chief of the Forest Service, statements by the Executive Branch and numerous biases in the Draft EIS lends support only for selection the preferred alternative and proposed action. To Wit:

A) On February 12, 1999 the Forest Service published an interim final rule that temporarily suspended road construction and reconstruction in most roadless areas of the National Forest System. The Draft EIS is written in support of continuing that rule without any regard for the value of roads, timber harvest, or many other multiple uses.

B.) The document is written very subjectively and leans toward justifying the proposed act of prohibiting roads and timber harvest in inventoried roadless areas rather than providing an

44345
 Courthouse Annex
 953 Campton St.
 Ely, Nevada 89301
 (775) 289-8841
 (775) 289-8842

Attention: Roadless Area Conservation
 Page 2 of 4

objective analysis of all alternatives, issues, and effects.

2.) The Draft EIS does not Adequately Address the Impacts on Counties and Local Governments

The Forest Service admits that it's assessment method conducts a "qualitative" analysis of most impacts. In fact, the analysis only provides a "quantitative" evaluation of agency costs, timber, road construction and reconstruction--and framed mostly in a negative context. There are many associated impacts that are not "quantified" and relate to recreation use, stewardship timber harvest, fuel reduction, catastrophic fire, ecological factors, wildfire, etc. We do not believe the Forest Service can make a reasonable informed decision based on this significant lack of information that is necessary to adequately analyze and disclose effects. This violates the basic premise of NEPA.

3.) The Draft EIS Contains Numerous NEPA Deficiencies

The Draft EIS fails to meet basic Council on Environmental Quality (CEQ) Regulations for NEPA in the following areas:

- A.) The NEPA process must be useful to decision-makers
- B.) Emphasize interagency cooperation including counties
- C.) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses
- D.) Study, develop, and describe appropriate alternatives
- E.) Consult clearly with State and Local agencies
- F.) Invite the participation of Federal, State, and local agencies
- G.) Statements shall be concise, clear, and to the point, and shall be supported by evidence
- H.) Statements shall be analytic rather than encyclopedic
- I.) Agencies shall not commit resources prejudicing selection of alternatives
- J.) Statements shall assess the environmental impacts, rather than justify decisions already made
- K.) Each statement shall contain a summary that adequately and accurately summarizes the statement
- L.) Rigorously identify, explore, and objectively evaluate all reasonable alternatives
- M.) Avoid useless bulk
- N.) Circulate the statement and request comments from Federal, State, and local agencies.
- O.) Authorized to develop and enforce environmental standards
- P.) Incorporate material by reference only when it is reasonably available
- Q.) Insure the scientific integrity of discussions

Attention : Roadless Area Conservation
Page 3 of 4

4.) The Draft EIS Contains Discrepancies and Contradictions Relating to Conclusions and Data

Much of the document contains discrepancies and contradictions as it relates to conclusions and data that it is difficult to determine which are fact and which are personal biases. To Wit:

A.) The document states that many decisions need to be made at the local level but literally moves all the discretion for analyzing and selecting management options. The only options that remain open are activities that further protect roadless areas.

B.) The Forest Service is willing to accept the risk of catastrophic fire and the resulting adverse effects which can be equal to or more destructive than planned management activities. However, the agency considers the risk of road construction and timber harvest to be unacceptable.

C.) In one statement the Forest Service says that "As roads are decommissioned, the resulting unroaded areas will be evaluated for roadless characteristics and values." In another section, they state that "...the proposed prohibition on road construction would reduce roadless caused irreversible and irretrievable commitments to dispersed recreation activities in roadless areas." You can't have it both ways--Irreversible means you can't go back to the way it was. The first statement severely contradicts the second statement which is a legal conclusion of the agency.

5.) Conclusion

As relief to our concerns, the Commissioners of White Pine County would like to go on record in requesting the Forest Service, either,

1. Withdraw this proposed rule and subsequent documentation and delegate the decision to determining the disposition of roadless areas to local forest supervisors through normal land management planning processed. Then, local governments may play an active role as participants in the process.
2. Supplement this Draft EIS, as per CEQ Regulation 40 CFR 1502.9 (c)(ii), to address the significant new circumstances and information that is relevant to our environmental concern and bearing on the proposed action and its impacts.
3. Revise the Draft EIS, as per CEQ Regulation 40 CFR 1502.9 (a), to address inadequacies that preclude meaningful analysis.

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Attention : Roadless Area Conservation
Page 4 of 4

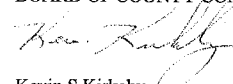
The White Pine County Nevada Public Land Users Advisory Committee has adopted, as ordinance, the WHITE PINE COUNTY PUBLIC LAND USE PLAN which is the legal guideline by which public lands in White Pine County shall be managed.

To further demonstrate White Pine County's position in this matter, enclosed is a copy of Ordinance #350 Bill # 1 -26- 2000 A. "Ordinance Declaring White Pine County's Policy Regarding Public Roads." White Pine has formally adopted these ordinances.

Thank you for the opportunity to comment on an issue of such importance to the counties and local governments of the United States.

Should you require further comments or information, please feel free to contact this office.

Sincerely,
BOARD OF COUNTY COMMISSIONERS


Kevin S. Kirkeby,
Commissioner

Xc: W.P.C. Public Lands Advisory
Nevada Association of Counties
Congressman Jim Gibbons
U.S. Senator Harry Reid
U.S. Senator Richard Bryan
Governor Kenny Guinn
Lt. Governor Lorraine Hunt
NV. Assemblywoman Marsha De Braga
NV. Senator Mike McGinness

KSK/dm/nf

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1 Summary: Ordinance Declaring White Pine County's Policy regarding Public Roads

2 BILL NO. 1-26-2000-A

3 ORDINANCE NO. 350

4 **ORDINANCE DECLARING WHITE PINE COUNTY'S**
5 **POLICY REGARDING PUBLIC ROADS**

6 WHEREAS, the County of White Pine Nevada is vast, sprawling and mostly rural
7 having approximately 6,000,000 acres and fewer than 11,000 residents within its borders; and

8 WHEREAS, before this territory was settled, the area now comprising White Pine
9 County was inhabited by Native Americans and early explorers; and, there were no roads or
10 highways, as known today, but there were single-track ways, pathways and other trails connecting
11 two points; and

12 WHEREAS, since the creation of White Pine County, miners, ranchers, hunters
13 fishermen, recreationists and other members of the public have by usage established, reestablished
14 developed and/or maintained, numerous roads and similar public travel corridors across the public
15 lands of the County; and

16 WHEREAS, in more recent years miners, ranchers and other members of the public
17 together with federal, state and local governments have, by usage or through mechanical means
18 established, reestablished, developed, constructed and/or maintained roads and highways across the
19 public lands of the County; and

20 WHEREAS, the ways, pathways, trails, roads, highways and other public corridor
21 (hereinafter, collectively "Roads") established within White Pine County, whether by usage or by
22 mechanical means, have a public purpose, e.g., to allow travel from one point to another within the
23 hinterlands of White Pine County, and thereby permit and enable all of the economic and social
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1 components of life in the County, including but not limited to mining, ranching, logging, wood-
2 harvesting, hunting, fishing, water acquisition, and all types of recreation; and

3 WHEREAS, the Mining Act of July 26, 1866, codified at 43 United States Code
4 Section 932 (commonly known and hereinafter referred to as R.S. 2477) is a law of the land which
5 was enacted for the purpose of memorializing the right of access to the public lands by the people
6 of the United States, and establishing the express right to construct highways (roads) and the implied
7 right to access, by there and then granting self-establishing/self-authenticating rights-of-way for all
8 roads previously or thereafter located, established and/or developed, whether by usage or by
9 mechanical means, to allow travel from one point to another, across or through public lands, to
10 encourage the settlement of the West; and

11 WHEREAS, the federal courts have interpreted R.S. 2477 to provide a public right-
12 of-way for all Roads across or through public domain lands, so long as those Roads were
13 established and "accepted" by general public usage and enjoyment before October 21, 1976 (the
14 effective date of the Federal Land Policy and Management Act) or prior to the withdrawal of federal
15 lands from public domain (e.g., national forests, national parks, national trails, military, reservations,
16 etc.) and served to connect two points of societal importance (towns, stage stops, mines, ranches,
17 water sources, etc.), whether by constant alignment or alignment subject to seasonal, weather,
18 economic or other adjustment; and

19 WHEREAS, Nevada Revised Statutes Section 405.191 defines the term "public
20 road" to include all roads existing on R.S. 2477 rights-of-way and "accepted by general public use
21 and enjoyment . . ." and endows every board of commissioners with the authority to "locate and
22 determine the width of such rights-of-way and locate, open for public use and establish thereon
23 county roads or highways"; and
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1 WHEREAS, the definition of a "public road," pursuant to N.R.S. Section 405.191
 2 also includes roads designated by the White Pine County Board of commissioners ("Board") as
 3 major, general and minor roads (pursuant to N.R.S. Section 403.170), and "[a]ny way which is
 4 shown upon any plat, subdivision, addition, parcel map or record of survey of any county, city town
 5 or portion thereof duly recorded or filed in the office of the county recorder, and which is not
 6 specifically therein designated as a private road or a non-public road, and any way which is
 7 described in a duly recorded conveyance as a public road or is reserved thereby for public road
 8 purposes or which is described by words of similar import"; and

9 WHEREAS, the board recognizes the continuing validity of other--common--law--
 10 authority for the establishment of roads for the good of the citizenry, including but not limited to the
 11 authority set forth in the doctrine of easement of necessity, where the easement is indispensable to
 12 the enjoyment of the dominant custody, and the doctrine of implied easement where a land use
 13 result may be inferred from a transaction, authority which the Board believes has not been
 14 preempted, superseded or otherwise set aside by R.S. 2477 or other statutory scheme; and

15 WHEREAS, THE Americans with Disabilities Act, known as the "ADA", enacted
 16 on July 26, 1990, provides for comprehensive civil rights protections to individuals with disabilities
 17 including services to be provided by government.

18 WHEREAS, that White Pine County's survival, economically and socially, is
 19 dependent upon access to its public lands, which comprise more than ninety-seven percent (97%)
 20 of the whole of the County's land mass, and upon the Roads which allow that access; and

21 WHEREAS, the Board recognizes that in exercising its authority to locate, lay out,
 22 open, construct, rehabilitate, maintain and/or close public Roads, it has a duty to act in a manner
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1 which will result in a benefit to the general public; will avoid or mitigate, to the fullest extent
 2 reasonably possible, any significant impairment of the environment or natural resources; and, unless
 3 unavoidable for purposes of the greater good, will not result in a significant reduction in the value
 4 of public or private property; and

5 WHEREAS, the Board desires to resolve any and all issues and concerns relating
 6 to its designation of roads as White Pine County Public Roads in accord with the processes set forth
 7 in the Memorandum of Understanding had by and between this Board and the Board of Lincoln
 8 County Commissioners, the Board of Nye County Commissioners, Ely District, Bureau of Land
 9 Management U.S. Department of the Interior and Humboldt-Toiyabe National Forests U.S.
 10 Department of Agriculture, titled MOU-NV-040-0701 (BLM) and 17-MOU-97-010 (USFS
 11 (hereinafter referred to as the Memorandum of Understanding) which reflect R.S. 2477 and
 12 applicable Nevada Revised Statutes; and

13 WHEREAS, the Americans with Disabilities Act, known as the "ADA", enacted
 14 on July 26, 1990, provides for comprehensive civil rights to protections to individuals with
 15 disabilities involving services to be provided by government.

16 NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF
 17 THE COUNTY OF WHITE PINE DO ORDAIN:

ARTICLE I

PUBLIC ROAD DEFINED

18 Section 1.0. **Public Road Defined.** The term "White Pine County Public Road" shall
 19 and shall be defined as each and every way, pathway, trail, stock trail and driveway, road, county
 20 highway, railroad and other similar public travel corridor across public lands in, and such other road
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1 as defined by Section II hereof, White Pine County, connecting two points of societal importance
 2 (regardless of whether the points so connected are located inside or outside the boundaries of White
 3 Pine County), whether established and maintained by usage or mechanical means, whether passable
 4 by foot, beast of burden, carts or wagons, or motorized/mechanized vehicles of each and every sort
 5 whether currently passable or impassable, that was established and accepted by public use and
 6 enjoyment under common law doctrines of property rights, under R.S. 2477, but only if established
 7 and accepted by public use and enjoyment or under statutory authority, except State and U.S.
 8 Highways.

ARTICLE II

PRIVATE ROAD USE

12 Section 2.0. Private Road Use. Roads across private lands within White Pine
 13 County not otherwise established by other law or authority are or shall be designated as White Pine
 14 County Public Roads only if they are offered to, accepted by and dedicated to White Pine County
 15 according to the roads policies and regulations which then are in effect.

ARTICLE III

PUBLIC ROAD OWNERSHIP

17 Section 3.0. Public Road Ownership. All White Pine County Public Roads are the
 18 property of White Pine County, as trustee for the public users thereof; and, the Board and/or the
 19 Board acting as Highway Commissioners, shall have the authority, from time to time, to locate and
 20 determine the alignment and width of such rights-of-way and open, reopen, establish, construct
 21 rehabilitate, maintain and/or close thereon county roads or highways, subject to applicable federal
 22 laws and regulations; provided, however, that pursuant to its commitment to full implementation o
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1 the letter and spirit of the Memorandum of Understanding which has been executed by the parties
 2 thereunder.

3 Section 3.1. Action Related to Ownership. The board shall not, except in the
 4 event of an emergency requiring immediate action, make or implement decisions pursuant to the
 5 authority described in this Article without first having advised the appropriate government agency
 6 of its proposed decision or action; and, by and through the Memorandum of Understanding
 7 processes, attempted to resolve any challenge or opposition to such decision or action by the
 8 appropriate governmental agencies.

ARTICLE IV

SUBSEQUENT ADOPTION OF RULES AND REGULATIONS

12 Section 4.0. Subsequent Adoption of Rules and Regulations. The Board and/or
 13 the Board acting as Highway Commissioners, hereafter by ordinance or resolution, will adopt all
 14 rules and regulations necessary and proper to assure that decisions made and actions taken under its
 15 authority to locate, lay out, open, construct, rehabilitate, maintain and /or close public Roads are
 16 made upon sufficient findings that such decisions and actions will result in a benefit to the general
 17 public, will, avoid or mitigate to the fullest extent reasonably possible any significant impairment
 18 of the environment or natural resources; and, unless unavoidable for purposes of the greater good,
 19 will not result in a significant reduction in the value of public or private property.

22 Section 4.1. Effect Upon "Taking Ordinance." This section is not intended to
 23 modify Ordinance 339, enacted by the Board of County Commissioners the 12th day of May,
 24 1999; that such Ordinance shall control relating to any issue relating to the taking of property by
 25 an entity of government, notwithstanding any provision herein to the contrary.

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ARTICLE V

ACQUISITION OF RIGHTS OF WAY

Section 5.0. Acquisition of Rights of Way. For each road established subsequent to R.S. 2477 authority and proposed for designation as a White Pine County Public Road, and for each road which is established by White Pine County in the future, the Board and/or the Board acting as the Highway Commissioners, will acquire all rights-of-way necessary for the establishment and management of the road from the appropriate federal land managing agency or other persons or governmental entity prior to designation as a White Pine County Public road (if already established) or reestablishment by White Pine County (if not already established).

ARTICLE VI

HISTORIC ROAD USE

Section 6.0. Historic Use Defined. Historic use or practice is defined as a period of twenty (20) years or more.

Section 6.1. Historic Use Adopted. The Board here adopts and ratifies historic uses and practices in White Pine County allowing for maintenance of county roads by usage or mechanical means; and, the Board's decision to not mechanically maintain any one or more of the Roads shall not terminate, or affect in any way, the status of such Roads as White Pine County Public Roads.

ARTICLE VII

IMMUNITY FROM SUIT

Section 7.0. Immunity from Suit Relating to Public Roads. Pursuant to N.R.S. Section 405.193(2), no action may be brought against White Pine County, its officers, or employees ...

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for damage suffered by a person solely as a result of the un-maintained condition of a Road made public by the Board pursuant to N.R.S. Section 405.195;

Section 7.1. Immunity from Suit Relating to Minor Roads. Pursuant to N.R.S. Section 403.170, White Pine County is immune from liability for damages suffered by persons as a result of using any road designated by the Board as a minor County road.

ARTICLE VIII

PROCEDURE FOR ABANDONMENT

Section 8.0. Procedure. Abandonment or road closure of any White Pine County Road must follow the procedures provided in N.R.S. 405.195, including but not limited to public hearings.

ARTICLE IX

ATTACHMENT OF MAPS

Section 9.0. Attachments. Attached hereto and incorporated herein are maps which specify and designate those Roads located within White Pine County which the Board, and/or the Board acting as the Highway Commissioners, preliminarily has/have determined are White Pine County Public Roads, pursuant to the definition given herein-above and all applicable federal and state law.

Section 9.1. Reservation. The Board expressly notes that the process of designation of such Roads is not complete; thus, the maps are not and shall not be deemed a comprehensive or exhaustive listing or designation of those Roads which are or may be White Pine County Public Roads.

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1 Section 9.2. Update of Maps. It is intended that these maps will be revised and
2 reissued periodically, as other or additional Roads are determined to be White Pine County Public
3 Roads or Roads preliminarily so designated are determined, upon further review, not to be
4 appropriately or lawfully designated as White Pine County Public Roads.

5 **ARTICLE X**

6 **CHALLENGE TO DESIGNATION OF PUBLIC ROADS**

7 Section 10.0. Challenge by Governmental Entity. Other entities of local, state,
8 or federal government, or any such other entity of government shall have the standing and right to
9 challenge the designation of Roads as White Pine County Public Roads, when and if such entity
10 through its representatives, believes that such designation is inappropriate and/or unlawful, based
11 upon application of federal and state law and the history of the Road(s).

12 Section 10.1. Challenge by Private Person. A private person shall also have the
13 standing and right to challenge the designation of roads as White Pine County Public Roads as
14 provided in Section 10.0.

15 Section 10.2. Notice. The White Pine County Clerk, as Clerk of this Board, shall
16 send copies of this Ordinance and attached maps to other entities of government, specifically for
17 their review of the designation of White Pine County Public Roads.

18 Section 10.3. Protests. Any governmental entity or private person may protest the
19 designation of public roads by the Board of County Commission by the filing of a written protest
20 prior to final adoption of this ordinance. The Board shall consider all such protests.

21 Section 10.4. Intent. The intent of this Article is to invite and encourage other
22 governmental entities to initiate the resolution process set forth in the Memorandum of
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1 understanding for any and all Roads preliminarily designated as White Pine County Public Roads
2 where any such have reason to believe that any designation made hereunder is contrary to the best
3 interests of the public, private rights of ownership, or applicable law.

4 **ARTICLE XI**

5 **REPEAL OF CONFLICTING ORDINANCES**

6 Section 11.0. Repeal of Conflicting. Any and all ordinances or parts of ordinances
7 theretofore adopted by the County which are in conflict with this Ordinance are hereby repealed.

8 **ARTICLE XII**

9 **SEVERABILITY**

10 Section 12.0. Severability. If any provisions of this Ordinance are held invalid,
11 such invalidity shall not affect other provisions and each provision is hereby declared to be
12 severable.

13 **ARTICLE XIII**

14 **EFFECTIVE DATE**

15 Section 13.0. Effective Date of. This Ordinances shall take effect from and
16 after passage, approval, and publication. Collection of the tax authorized pursuant to this Ordinance
17 shall then be made effective as of the date provided for by Section 3.29.100.

18 **ARTICLE XIV**

19 **DESIGNATION OF FUTURE ROADS**

20 Section 14.0. Designation of Roads. Any addition, amendment, correction,
21 deletion, or modification to the definition of public roads borne by the maps attached hereto pursuant
22 to Article IX may be made by resolution. Any subsequent designation may be protested as provided
23 for by Article X, Section 10.3.

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Section 14.1. Public Hearing. This ordinance is to be construed as allowing a public hearing on any matter relating to public roadways in White Pine County. The Board of County Commissioners may in its discretion conduct a public hearing, where deemed advisable, to consider any matters pertaining to public road policy.

This Ordinance shall take effect from and after passage, approval and publication by law, to-wit: From and after the 8 day of March, 2000.

PROPOSED on the 26 day of Jan, 2000.

PROPOSED by COMMISSIONER Eldridge.

VOTE: AYES: Brent Eldridge
John A. Chacka
Julio Costello
Cheryl Nohies
Kevin Cirkel

NAYES: NONE

ABSENT: NONE

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1st Brent Eldridge
CHAIRMAN OF THE BOARD

ATTEST:

Donna M. Bath
CLERK OF SAID BOARD

THIS ORDINANCE shall be in force and effect from and after the 8th day of March, 2000.

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**WHITE PINE COUNTY
PUBLIC LAND USERS ADVISORY
COMMITTEE**

Courthouse Annex
953 Campton St.
Ely, NV 89301
June 13, 2000

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

Dear Forest Service Roadless Area Conservation Team:

The White Pine County Nevada Public Land Users Advisory Committee, an advisory committee appointed to advise the White Pine County Commission, is commenting on the National Roadless Conservation Plan.

The White Pine County Commission has adopted, as ordinance, the WHITE PINE COUNTY PUBLIC LAND USE PLAN which is the legal guideline by which public lands in White Pine County are to be managed.

While the National Forests belong to all Americans, Congress expressly intended for National Forests to benefit and sustain the local communities and governments adjacent to and surrounded by such forests to a greater degree than the general public. Accordingly, local governments and communities which are most directly affected by the management of a particular national forest should have a greater opportunity to comment and participate in decision making for that Forest. Likewise, such decisions should primarily be made by local Forest Service officials within the guidelines of the County Land Use Plans rather than to have regional and national officials developing blanket rules. Such local participation and decision making is consistent with the intent of Congress. While Forest Service management plans may be possible in some circumstances, they should not take precedence over local decision making within each National Forest. In other words, one-size-fits-all policies are not in the best interests of the local communities as the law intended.

Locally, White Pine County is participating in a Technical Review Team through the Coordinated Resource Management Process with the federal agencies to address the road issues. The team is making progress and is working within the guidelines of the County and the current needs of the environment with an eye to the future as well as the economic development of the County. We appreciate the authority provided for local forest managers to work within the specific needs of the local forests and believe that through the efforts currently in progress we can meet the goals of the County as well as those of the local forest, thereby meeting the letter of the law in the Organic act, the law which created the United States Forest Service.

The DEIS defines unroaded area as any area without the presence of a classified road, and of a size and configuration sufficient to protect the inherent characteristics associated with its unroaded condition. This definition excludes roads defined as unclassified which are defined as roads not intended to be part of, and not managed as part of, the forest transportation system, such as temporary roads, unplanned roads, off-road vehicle tracks, and abandoned travelways. This rule may be contrary to the courts' 2477 road decisions and is contrary to the definition of road in the White Pine County road definition. It has the effect of limiting mining exploration, that portion of the economy which stands to be most effected and conflicts with the stated intent of the Organic Act.

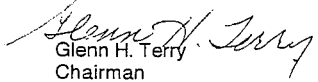
The economy of rural Nevada depends almost exclusively on mining and ranching. The DEIS recognizes the 1872 Mining Law and previous existing rights. But this is only for existing claims. We believe that this policy will contribute to loss of access to future prospects and discoveries. Deborah J. Shields presents a good discussion of the transitory geographic nature on mineral economics in the Energy and Minerals section of FOREST ROADS: A SYNTHESIS OF SCIENTIFIC INFORMATION, United States Department of Agriculture, Forest Service, Draft Final, March 2000.

Roadless area decisions must include access to potential as well as known mineral and energy resources. It is important to have "figures available" regarding the value of minerals not extracted. Access is critical also to be able to determine economic benefits to the community which are yet to be discovered. Most mineral deposits have been located in areas that would be classified as roadless as defined by this DEIS.

Ranchers must have access to their ranges in order to facilitate the best management of the range. Ranchers must have access to riparian and water sources in order to properly manage them, they must have roads in order to move water tanks to graze livestock throughout their allotments evenly to meet the requirements of their grazing resource management plans. These decisions must be made at the local level.

In order to enhance the local economy a great deal of effort is being made, with the cooperation of the local Federal offices, to develop further recreation opportunities in White Pine County. The local governments, with the cooperation of the Forest Service, must be the deciding agencies in determining the definitions of road and roadless.

According to those experienced in this matter, the effects of the proposed rule have a greater negative impact as it is implemented in the Intermountain west. In Nevada, where the rural populations are centered in the areas where there is National Forest, it is expected that there will be a serious negative economic impact.


Glenn H. Terry
Chairman

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WHITE PINE COUNTY PUBLIC LAND USE PLAN

MOU-NV-040-9701 (BLM)
17-MOU-97-010 (USFS)

MEMORANDUM OF UNDERSTANDING AMONG

BOARD OF LINCOLN COUNTY COMMISSIONERS,
BOARD OF NYE COUNTY COMMISSIONERS,
BOARD OF WHITE PINE COUNTY COMMISSIONERS,
ELY DISTRICT, BUREAU OF LAND MANAGEMENT
U.S. DEPARTMENT OF THE INTERIOR,
AND
HUMBOLDT-TOIYABEE NATIONAL FORESTS
U.S. DEPARTMENT OF AGRICULTURE

Section I COUNTY AUTHORITY

Congress has bestowed considerable power and authority on counties to influence the federal agency land use planning for federal lands. The nine major laws which grant this power are:

- * The Federal Land Policy and Management Act.
- * The National Forest Management Act
- * The National Environmental Policy Act.
- * The Endangered Species Act
- * The Wild and Scenic River Act.
- * The National Historic Preservation Act
- * The Wild Horse and Burro Act
- * The National Wildlife Refuge System Improvement Act
- * The Great Basin National Park Enabling Legislation

Because White Pine County participated in the planning process for the Great Basin National Park General Management Plan 1993, Great Basin National Basin National Park is not included in this Land Management Plan. Refer to the Final General Management Plan of the Great Basin National Park.

The language in the regulations that have been promulgated to implement these laws clearly set forth the power and influence of the counties. The apparent lack of county influence over federal agency land use plans has not been from lack of authority. The problem has been the failure of the county to assert its authority.

Section 2 AGREEMENTS

The language in the Memorandum of Understanding is an outstanding expression of intent and commitment to work together on land use planning and other areas of mutual interest. In general terms, both the county and the BLM and U.S. Forest Service agreed to cooperate in land use decision making, inform each other in advance of plans, and cooperate in any supplemental agreements to the MOU, such as the Memorandum of Agreement between the BLM and White Pine County pertaining to proposed land exchanges involving lands outside White Pine County and offered lands within White Pine County.

The actions constitute an unusually straightforward expression of intent and commitment.

- * Note Memorandum of Understanding
- * Note Memorandum of Agreement

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I. PURPOSE:

The goals and objectives of this Memorandum of Understanding emphasize the need to address long-term land use within the Counties in order to preserve the Quality of Life for the areas' current and future generations and strike a balance among the many and often competing needs and interests. With over 90 percent of the land within the Counties in the National Forest System or administered by the Bureau of Land Management, the actions of the federal land management agencies can and do have a significant effect on the economic and environmental climate of each County. The Forest Service and ELM are directed by laws to develop and implement land and resource management plans. The agencies have a responsibility and obligation under these laws to coordinate the preparation of management plans with local governments and agencies. Conversely, local governments have an obligation to join with the federal agencies to ensure that the needs of the citizens of the Counties are recognized and addressed in the resulting plans. Therefore, it is recognized that it is in the best interest of all parties to join together in a coordinated effort to develop and implement plans and activities that will result in a vital economy and environment within Lincoln, Nye and White Pine Counties.

II. MUTUAL AGREEMENT:

A. All Parties Agree:

1. To develop a dynamic, collaborative approach to land management planning that builds or improves trusting relationships.
2. To be mutually respectful of each others goals and objectives through the incorporation of the values, expectations, and needs of people within appropriate contexts.
3. To facilitate better communication and understanding of how each entity's actions contribute to the area's resources and people.
4. Cooperate in land use planning processes, including consultation and participation in preparation of land use plans, including, for example, County master plans, County public lands policy plans, resource management plans, forest plans, project plans and significant amendments to or revision of said plans. Cooperate in economic analysis for these planning efforts, as appropriate.
5. Inform each other as far in advance as possible of anticipated plans and proposed activities that might affect either party.
6. Cooperate in development and implementation of specific agreements supplemental to this agreement, including, but not limited to, agreements regarding zoning, subdivision of lands, road construction, maintenance, use, and closures; abandonments; control or restriction of roads and rights-of-way; and cooperative fire agreements.
7. Share resources and expertise to facilitate exchange of non-proprietary resource and land use information concerning land located in the Counties including electronic data, personnel to assist in data gathering and land use planning to the extent

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- practical within financial, legal and personnel limitations. Share, when appropriate, training, workshops, and technical sessions.
8. Recognize that the authorities and responsibilities of the entities are different and each is guided by the specific laws and regulations which pertain to their respective level of government.
 9. Initiate cooperative efforts that could lead to the execution of protocols, letters, or supplemental memoranda of understanding on, but not limited to, the following subjects:
 - a. Water resources development
 - b. Range and grazing allotment management
 - c. Desert Land Entries
 - d. Minerals exploration, mining and reclamation
 - e. Public Safety and emergency management including communication planning
 - f. Economic values and tax base
 10. Make representatives available to attend a tri-county meeting, at least once a year, to discuss proposed actions, activities, etc. of mutual interest.

B. The Forest Service and BLM will:

1. Make representatives available as needs arise as identified by either party to attend regularly scheduled County Commission meetings, special sessions of the County Commission, or any meetings of advisory boards representing the County Commissions to discuss proposed actions or activities scheduled by the Agencies.
2. Notify the applicable County(ies) at least sixty (60) days in advance of the interest in sale or conveyance of public lands within the county.

C. All Counties will:

1. Make available to the BLM and Forest Service, social and economic information in possession of the County.
2. Notify the BLM, Ely District Office, and Forest Service, Ely Ranger District, in writing, of any apparent inconsistencies between the county policies, plans, and programs and the policies, plans and programs of the BLM or Forest Service.

III. AUTHORITIES

- A. Executive Order 12866 of September 30, 1993.
- B. Federal Advisory Committee Act (FACA) of 1972 (5 USC App 2) (41 CFR 101-6) and amended by P.L.104-4, Section 204.
- C. FLPMA of 1976 (42 USC 1701 et seq. as amended) (43 CFR).
- D. National Environmental Policy Act of 1969 (42 USC 4321), (40 CFR 1500-1508).
- E. National Forest Management Act (NFMA) of 1976 (16 USC 1600), (36 CFR 219).
- F. The Organic Administration Act (Organic Act) of June 4, 1897 (16 USC 473 et seq.).

IV. ADMINISTRATION

- A. Nothing in this memorandum shall obligate the parties to this agreement to expend funds or to enter into any contract or other obligations.

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- B. Specific work projects or activities that involve the transfer of funds, services, or property among the cooperators of this MOU will require the execution of separate agreements or contracts, contingent upon the availability of funds as appropriated by Congress or White Pine, Lincoln and Nye Counties.
 - C. Each subsequent agreement or arrangement involving the transfer of funds, services or property between the parties to this MOU must comply with the applicable statutes and regulations, including those applying to procurement activities.
 - D. This MOU in no way restricts the cooperators from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
 - E. No part of this agreement modifies existing authorities under which the parties currently operate.
 - F. This agreement shall become effective as soon as signed by the parties hereto. Amendments or supplements to this agreement may be proposed by any party and shall become effective upon written approval of all parties. This MOU will be reviewed by all parties every two years and modified as needed. The MOU shall continue in force unless formally terminated by any party after thirty (30) days notice in writing to the others of the intention to do so.

Edward E. Wright

 Chairman, Board of County Commissioners
 Lincoln County

20 Dec 1996

 Date

Richard Cunn

 Chairman, Board of County Commissioners
 Nye County

01/21/97

 Date

Carol O' McKenna

 Chairman, Board of County Commissioners
 White Pine County

02/3/97

 Date

Melissa J. Blumhach

 Assistant Forestry Supervisor
 Humboldt-Toiyabe National Forests

2-6-97

 Date

David Kolla

 District Manager
 Ely District, BLM

2/7/97

 Date

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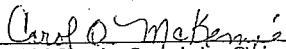
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MEMORANDUM OF AGREEMENT
BETWEEN
THE BUREAU OF LAND MANAGEMENT
AND
WHITE PINE COUNTY

3. White Pine County will designate a representative pertaining to the land exchange process.
4. White Pine County will share all information pertinent to the exchange with the BLM.

I. INTRODUCTION AND PURPOSE

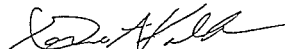
This Memorandum of Agreement (MOA) establishes an agreement between the Bureau of Land Management (BLM), Ely District, and White Pine County pertaining to proposed land exchanges involving selected lands outside White Pine County and offered lands within White Pine County. The purpose of the MOA is to establish a framework of actions by each of the parties to facilitate such land exchanges.


Carol McKenzie, Commission Chair

3/12/97
Date

II. BLM RESPONSIBILITIES

1. BLM will be a cooperater toward accomplishment of any said land exchange.
2. BLM will do all within its power to cause a meeting(s) between proponents of such land exchanges as described in the above paragraph and White Pine County to occur. If desired by White Pine County, BLM will attend said meeting(s).
3. BLM will designate a representative pertaining to the land exchange process.
4. BLM will share all information pertinent to the exchange with White Pine County.


Gene A. Kolkman, District Manager

3/12/97
Date

III. WHITE PINE COUNTY RESPONSIBILITIES

1. White Pine County will be a cooperater toward accomplishment of any said land exchange.
2. White Pine County will attend meeting(s) with the proponent as mentioned in II. 2., above. At such meeting(s), White Pine County will negotiate and attempt to cause actions to occur that would mitigate tax base loss to White Pine County. The idea is to leave the county tax base whole while concurrently attempting to support the land exchange. White Pine County will also negotiate and attempt to cause actions to occur that would mitigate loss of lands used for agricultural purposes.

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Section 3 Existing Plans

Nevada has a statewide policy plan for public lands. The plan was signed by the Governor on June 9, 1986. The Statewide Policy Plan is comprised of individual public land policy plans for all seventeen counties. The plans are an outgrowth of Senate Bill 40.

SB40 was designed, in part, to take advantage of the consistency language in Section 202(c)(9) of FLPMA. Section 202 (c)(9) governs BLM planning and requires that BLM land use plans be consistent with state and local land use plans. Statute 43 USC Section 1712(c)(9) directs that BLM land use plans should be consistent with state and local plans to be the maximum extent the Secretary of the Interior finds consistent with Federal law and the purposes of FLPMA.

As set forth in County Ordinance No. 309, the Advisory Committee shall recommend a comprehensive Land Use Plan for public lands located in White Pine County to the Board of County Commissioners. It is the understanding of the White Pine County Public Lands Users Committee that the citizens of White Pine County want an updated SB40/White Pine County Public Land Policy Plan providing numerous and wide ranging policy statements related to federal lands in general, water, minerals, agriculture, recreational, wildlife, transportation, cultural, wild horses, wilderness, forest management and public lands identified for non federal ownership.

The White Pine County Public Land Management Plan is the County Land Management Plan developed by the White Pine County government to guide the use of public lands and public resources in White Pine County and to protect the rights of private landowners. This Land Management Plan, developed by the people of White Pine County and adopted by the White Pine County Board of Commissioners, shall serve as the primary guide in the use and management of all public lands within White Pine County. This plan builds upon the foundation set forth by the SB 40 plan.

Existing Land Use Plans

1983 Schell Management Framework Plan
 1985 Refuge Management Plan Ruby Lake National Wildlife Refuge
 1985 Egan Resource Management Plan
 1986 Humboldt National Forest Plan and Amendments
 1993 Final General Management Plan Great Basin National Park

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Background

Public lands make up a substantial part of White Pine County. Moreover, White Pine County's economy is dependent on business activities on public lands. These activities are inseparably tied to the small fraction of private lands in White Pine County. To a substantial degree local communities are at the mercy of planning decisions made outside the county, often to the detriment of local communities and citizens. Such circumstances are contrary to the basic principles of Freedom and Liberty, and sound resource management. Believing that the American concept of "government by the people for the people" is best served when government affairs are conducted as close to the people as possible (i.e., at the county level).

Custom and Culture

By the time the Western Territories of today's United States of America began to be settled, the tradition of individual freedom, free enterprise, and the right of the people as individuals to the use and enjoyment of the lands and resources within their communities, had been well established in America. It was well recognized that private ownership always led to the greatest resource enhancement. Mining and agriculture have been the historic custom and culture of White Pine County. White Pine County has always been willing to gamble a lifetime on round after round of dynamite blasts or on the often marginal productivity of the soil and the fickle clouds or on the faith that down under the valleys are vast reservoirs of life giving waters.

Community Stability

One of the biggest problems facing the local governments today is loss of tax base. In order for any community to provide needed schools, health care, police protection and other services, industry and commerce within the community must be encouraged and strengthened. As it is today, increasing governmental regulations are hampering local enterprises that rely on public lands. The loss of these local enterprises leads to the loss of economic stability.

Community stability is defined as a combination of custom, culture and economic preservation. Forest Services, United States Department of Agriculture, The Use Book 13, 1906 ed.

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Principles and Objectives

The Plan addresses public land management issues directly and is intended to be used as a positive guide for public land management agencies in their development and implementation of land use plans and management actions. The County and its citizens support the continued multiple use of public lands in White Pine County. Therefore, it is the policy of White Pine County that public agencies shall inform local governments of all pending actions affecting local communities and citizens and coordinate with them in planning and implementation of these actions. The White Pine County Board of Commissioners, when affected by such actions, shall be consulted and coordinated with in accordance with the laws of Nevada and the Constitution of the United States of America. Finally, as stated in public land laws, all laws affecting public lands in this county and public agencies shall comply with the White Pine County Land Management Plan and coordinate with the Board of Commissioners for the purpose of planning and managing public lands within the geographic boundaries of White Pine County, Nevada. Public agencies proposing actions that will economically impact White Pine County shall prepare and submit in writing, and in a timely manner, report(s) on the purposes, objectives and estimated impacts of such actions to the White Pine County Board of Commissioners. These report(s) shall be provided to the White Pine County Board of Commissioners for review and coordination prior to initiation of any action thereon.

Preamble

We, the People of White Pine County, State of Nevada accept, support and sustain the Constitution of the United States of America and the State of Nevada. The Constitution of the United States of America limits the authority of the federal government to specific lands as stated in Article 1, Section 8, Clause 17. We hereby reaffirm our rights that all lands in White Pine County that are not so specifically designated pursuant to Article 1 Section 8, Clause 17 be managed in coordination with citizens thereof. Further, we reaffirm the fundamental rights of mankind as enumerated in the Declaration of Independence and acknowledge the limited nature of government as intended by the nation's founding fathers. Based on these cherished traditions, the White Pine County Land Use Plan shall be used as a guide in all public land natural resource decisions, thereby protecting local custom and culture and maintaining traditional economic structures through reliance on the use of public lands.

Water

The water supply of White Pine County is its agricultural capital. The land forms a vehicle for carrying plants and conveying to them the immense quantity of liquid required to maintain vegetal and animal life. The Public lands are managed to produce water for the citizens, wherever they may be, in whatever quantity. Also under the multiple use concept, livestock are grazed, minerals are mined, timber is cut for market, hunters and fishermen are welcome, skiing and camping are encouraged and managed and federally controlled lands have produced water. For over 135 years, Nevada water law has worked. We understand the federal governments claims for wilderness watershed protection, healthy stream conditions, wildlife and other uses; yet, we have never met a producer who was proud of soil erosion, dirty water or plants or animals in poor condition. White Pine County supports the White Pine Riparian Coalition to discuss and coordinate water issues, for water is a precious resource, and we are committed to ensure all animals are afforded the opportunity to drink on clear mountain streams and springs.

It is our recommendation that each application of a water permit on federal land by the Federal government as an applicant shall be reviewed by the board of County Commissioners. It is our opinion that the State of Nevada shall maintain primacy of control over its most vital resource through the application of the state's water laws.

Policies

1. The protection of existing water rights and water uses within White Pine County is of primary importance to the County's economic and cultural well being. Therefore, transfers in water use shall be carefully considered in relationship to the history, traditions and culture of White Pine County.
2. White Pine County recognizes that the protection and development of its water resources are essential to its short and long term economic and cultural viability.
3. White Pine County shall consider the impact of water users on existing as well as future water rights for agricultural, municipal, industrial and domestic purposes.
4. White Pine County shall encourage alternative uses of water, including but not limited to geothermal uses and hydroelectric power.

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5. White Pine County shall actively engage in providing opportunity for the development of water based agriculture within the County.
6. It is the intent of the White Pine County government to be notified of all state, interstate and other actions that have any impact on the water of the County prior to such actions being initiated.
7. White Pine County shall develop its water use policy to ensure both water quantity and water quality.
8. White Pine County shall participate in the development of riparian management plans in concert and coordination with landowners, ranchers and the appropriate public agencies.
9. No Wild and Scenic Rivers shall be designated in White Pine County without concurrence by White Pine County.

Minerals

White Pine County recognizes that the development of its abundant mineral resources is desirable and necessary to the state and the nation. Therefore, it is the policy of White Pine County to encourage mineral exploration and development.

Policies

1. White Pine County supports large and small scale mining, the 1872 Mining Law, exploration and development consistent with sound economic and environmental practices.
2. White Pine County promotes the use of public mineral resources to realize a sustainable and continuous supply of minerals. Such sustainable levels assume that minimal lands be given single use or restrictive designations and that the maximum areas of land be outside Wilderness Areas and be available for active and intensive exploration, development and management.
3. White Pine County supports the transportation of mineral and mining products and material essential to the mining operation over public roads and highways within White Pine County.

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Agriculture

Agricultural production in White Pine County is necessary to the livelihood and well being of its citizens. Therefore, it is the policy of White Pine County to protect agricultural land, promote the continuation of agricultural pursuits by protecting private property rights, relying on self determination and open market conditions.

Policies

1. Opportunities for agriculture on public lands shall be encouraged.
2. White Pine County shall encourage agencies managing public lands to coordinate with appropriate advisory board on all matters affecting livestock grazing on public lands within the borders of White Pine County.
3. Formally recognize the value of and necessity for the retention and expansion of agricultural land by all levels of government.
4. The federal government should continue to make the public rangelands economically and realistically available for livestock grazing, along with the other multiple use objectives.
5. Livestock adjustments should be based on appropriate long term monitoring and where ecological conditions indicate management actions are needed. See appendix.
6. Range improvements should be encouraged where appropriate incentive programs and participating financing should be provided.
7. Soil surveys should be consulted in land use planning.

Recreation

White Pine County receives a higher level of recreational use than population levels would indicate. This attractiveness of White Pine County is believed to be due to the abundance of perennial streams, scenic diversity offered by vegetation and land forms, hunting, fishing and wildlife viewing opportunities and easy accessibility to areas of interest. Recreational activities play an important part in the life styles and economy of White Pine County.

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Policies

1. Dispersed recreational opportunities on public lands shall be encouraged and provided. Opportunities for unstructured recreation such as camping, fishing, hunting and off road vehicles in White Pine County on public lands should continue to be made available.
2. Federally managed lands with value for concentrated recreation use (campgrounds, water recreation sites, etc.) should be identified, protected and developed for recreation purposes and adequately maintained. New reservoirs shall be considered where feasible. The county and the Nevada Division of State Parks should be involved in recreational site designation and planning.
3. A county wide recreation plan covering year round activities should be developed with all affected agencies involved. The affected agencies include the federal land management agencies, the Nevada Division of State Parks, and local governments and organized recreation groups. The recreational activities should include, but not be limited to, hunting; camping; off road vehicles; historic sightseeing; trails; fishing; boating; nature viewing; wild horse, wildlife and bird watching; horse back riding; mountain bike riding; rock hounding; rock art viewing; spelunking; pine nut collecting; Christmas tree cutting and winter sports.
4. Public land use planning should analyze the White Pine County area for the feasibility and practicality of a destination ski resort.

Wildlife

White Pine County residents support a diversity of wildlife species. We encourage that recommendations by the White Pine County Advisory Board to Manage Wildlife be followed and action taken upon recommendations proposed by the White Pine County Advisory Board To Manage Wildlife.

Policies

1. Identify habitat needs for wildlife species, such as adequate forage, water, cover, etc. and provide for those needs so as to, in time, attain appropriate population levels compatible with other multiple uses as determined by public involvement.

2. White Pine County supports the 1991 Animal Damage control Environmental Analysis for the Humboldt National Forest and the 1995 Animal Damage Control Plan for the Ely District BLM.
3. White Pine Supports vegetation manipulation to improve wildlife habitat when compatible with other uses.
4. Introductions or reintroduction of big game species should only be supported after careful consideration of a) the species, b) unallocated forage available c) population management d) impacts on local licensed livestock operators and adjacent private land owners and e) after it meets with the approval of all affected parties and a management plan is completed.
5. The Ruby Lake National Wildlife Refuge should be continued to be managed for wildlife and appropriate recreational uses.

Access and Transportation

The public lands in White Pine County should by right be accessible to all. White Pine County has many old access roads and trails, used for many years, but often not perfected by easement or dedication. Growth and increasing demands for natural resources within White Pine County and the nation create a demand for transportation, utilities and communication corridors. Route locations should be planned in harmony with other resources on public lands.

Policies

1. Retain existing access to public lands and provide new means of access where necessary.
2. White Pine County shall adhere to all rights claimed under RS 2477 with respect to roads, trails, ways and byways.

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Culture

White Pine cultural resources and customs include all the prehistoric and historic activities and accomplishments of the people of White Pine County. These cultural resources include, but are not limited to, buildings, structures, caves, rock shelters, trails, roads, objects made or modified by people of the county. Less tangible resources such as dance forms, customary beliefs, material traits of a group, and integrated pattern of human behavior passed to succeeding generations by stories and traditions. White Pine County supports its customs as used or practiced by the people which by common adoption and acquiescence, and long and unvarying habit has become compulsory as a way of life. White Pine County supports its cultural resources of prehistoric and historic significance and where appropriate and feasible will avoid disturbing these resources. White Pine County will protect its significant cultural resources and customs for the benefit of the present and future generations.

Policies

1. It is the intent of White Pine County to participate in planning for appropriate use and protection of cultural resources and develop a county wide Cultural Resources Management Plan which identifies outstanding cultural sites and landscapes.
2. White Pine County promotes educational programs for citizen stewardship of White Pine County cultural resources in a manner that will guarantee the 'thrill of discovery' for future generations.
3. White Pine County supports professionally managed public museum and library repositories and exhibits to the extent financial resources allow, so that tangible artifactual remains and records of folklife and cultural heritage can be preserved locally to the extent feasible, rather than being removed to remote in state or out of state repositories or being controlled by private individuals where the whole citizenry does not have access.
4. The custom and culture associated with American Indian activities in White Pine County is necessary to the livelihood and well being of American Indians. White Pine County supports protection these inherent aboriginal rights.
5. Government agencies shall not obstruct American Indian cultural activities on their respective lands.

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Wilderness

White Pine County understands the nation's desire for wilderness, but White Pine County favors continued practices of multiple use in a literal sense.

Policies

1. By County Resolutions 81-90, 84-15, 85-39, 87-14 White Pine County dislikes the continued study of wildness study areas,, strongly opposes recommendations by the United States Department of Interior and United States Department of Agriculture, and/or designation by Congress of any wilderness areas in or near White Pine County; and, favors continued practices of multiple use in a literal sense.
2. White Pine County shall lobby Congress to ensure that the best interests of the County are given consideration in any wilderness designation legislation affecting public lands within the County.
3. White Pine County urges Congress to drop the proposed Wilderness Study Areas located in White Pine County.
4. In the event wilderness areas are designated wildlife, fire control, economic impacts, grazing, mineral resources, visitor impacts and management needs should be considered.
5. In the event wilderness areas are designated the enabling legislation should include language which will eliminate any consideration or application of "buffer" area concepts.

Wild Horses

Manage wild horses to minimize detrimental impact of other multiple uses.

Policies

1. Wild horse herds should be managed at appropriate levels to be determined with public involvement and managed with consideration of the needs of wildlife species, livestock grazing and ecological conditions of the herd management area. White Pine County strongly supports collaborative efforts such as the Resource Advisory Council, the White Pine Coordinated Resource Management and Planning process and the Nevada Wild Horse Commission as avenues to solve wild horse issues.

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Forest and forestry products production in White Pine County is necessary to the livelihood and well being of its citizens. Therefore, it is the policy of White Pine County to protect forest resources and promote the continuation of a sustainable forestry products industry by providing economic opportunity, relying on self determination and open market conditions.

Policies

1. White Pine County promotes multiple use of public forest resources to realize sustainable and continuous provisions of timber, forage, firewood, wildlife, fisheries, recreation and water.
2. White Pine County supports the prompt salvage of forest losses due to fire, insect infestation or other events.
3. White Pine County supports the education of both residents and visitors to wide and productive forest uses.
4. White Pine County supports the White Pine County Fire Management Plan using the planning management process in progress.
5. White Pine County supports the management of woodlands/forests by ecological condition for a diversity of vegetative communities. See appendix.

Land Disposition and Acquisitions

Recognizing that land is essential to local industry and residents, it shall be the policy of this County that the design and development of all public land disposals, including land adjustment and exchanges, be carried out to the benefit of the citizens of White Pine County.

Policies

1. Increase opportunities for local economic development by increasing the amount of private land within the County.
2. Public lands that are difficult to manage or which lie in isolated tracts will be targeted for disposal.

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3. The general public, the State of Nevada and local communities shall be notified of, consulted about and otherwise involved in all public land adjustments in White Pine County. White Pine County shall review all proposed changes to see if the proposal is in the County's best interest.
4. White Pine County will review and make recommendations on proposed public land withdrawals for hazardous and non-hazardous waste storage as well as the types of such waste.
5. Before public land agencies can change land use, impact studies on uses shall be conducted and mitigation measures adopted in coordination with White Pine County. Impact studies shall, as needed, address community stability, local custom and culture, grazing rights, mining rights, flood lands and access.

The following are criteria for land dispositions or acquisitions which shall be given consideration.

1. Will the land disposition or acquisition have or may have a high level of visibility so that implementation of the project will inspire additional political, practical support to the White Pine County Land Use Plan.
2. Will the project be an effort of substantial pride of accomplishment for White Pine County.
3. Will consideration of the expenditure of funds or values to realize the completion of the project be accepted as wise and understandable in view of the County's interest and purpose.
4. Will the project either balance or not create a substantial imbalance in the geographic diversity of the county's direction and planning.
5. Will the proposed project effect access, historic values, wildlife or domestic livestock movement without reasonable alternatives.
6. Will the transfer of real estate to the responsibility of the tax roles afford a higher priority over any conflicting proposal or suggestion present or future.
7. Will the project incur any unusable risks of liability.

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8. Will the project be supported by the neighboring community when honestly portrayed and presented, be free of problems of maintenance or general operations.

Private Property Rights on Public Lands

Pursuant to the Fifth Amendment to the Constitution of the United States, ~~Government~~ no private property rights, ~~associated~~ with public lands, shall be taken with out just compensation and due process of law ~~being given~~.

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Rangelands are those areas of the world, which by reason of physical limitations... are a source of forage for free-ranging native and domestic animals, as well as a source of wood products, water, and wildlife. [Rangeland Management, by Stoddart, Smith and Box (1975)]

Standard #1.

Rangelands comprising of Native Plant Communities exhibit a 50 percent or better range condition rating with a stable or upward trend where the potential natural community meets planned objectives. Soil loss "T" values, in tons/acre/year are found in the soil survey and regardless of the range condition rating, accelerated erosion should not be occurring.

(accelerated erosion is defined as values greater than the allowable soil loss tolerance determined for a particular soil.)

Guidelines:

The managed species exhibit growth potentials for the site, show no evidence of stress due to management, and are not overly susceptible to drought, disease, or insect damage.

It is recognized there are special cases where a lower condition rating is acceptable in situations where planned objectives are most reasonably attained by managing for lower successional plant communities. For those cases, documentation is required in the case file and information is recorded as a case study.

Standard #2.

Rangelands comprising of Desired Plant Community exhibit the kind, proportion, and amount of vegetation necessary for meeting or exceeding the land use plan/activity plan objectives established for an ecological site. The desired plant community must be consistent with the site's capability to produce the desired vegetation through management, land treatment, or the combination of the two. Soil loss "T" values, in tons/acre/year are found in the soil survey and regardless of the what the Desired Plant Community is, accelerated erosion should not be occurring.

Guidelines:

When grazing practices or lack of grazing alone are not likely to restore range site degeneration, land management treatments should be designed and implemented to meet the minimum quality criteria for the soil, water, air, plant and animal resources that meets the land managers' objective.

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Realize that these standards also apply to riparian areas, soil loss tolerances have been determined for all soils. Thus if you stay within standard one or two you will be adhering to water quality and quantity criteria.

The study of patterns, this is what these two standards allow people interested in landscape to accomplish. A particular soil may have a mosaic of colors and patterns if viewed from above. All have a story,

Standard #1 is a self-perpetuating community in which populations remain stable and exist in balance with each other and the environment; the final stage of a succession or sere. The present state of vegetation and soil protection of an ecological site in relation to the historic climax plant community for this site in relation to the historic climax plant community for the site. Vegetation status is the expression of the relative degree of which the kinds, proportions, and amounts of plants in a community resemble that of the historic climax plant community.

Standard #2 There are cases where it is doubtful that a ecological site will return to the final stage of succession in an reasonable frame of time such as 25 years, such an example would be a winterfat site taken over by halogeton or rabbitbrush on a saline bottom. Natural disturbances are inherent in succession and in some case we may manage for lower successional stages. Collaborative processes use Desired Plant Community extensively to create a landscape that has some of everything meeting or exceeding land use objectives established for an ecological site.

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CITE 43 USC Sec. 1712 01/24/94
EXPCITE TITLE 43 - PUBLIC LANDS
CHAPTER 35 - FEDERAL LAND POLICY AND MANAGEMENT
SUBCHAPTER II - LAND USE PLANNING AND LAND ACQUISITION AND
DISPOSITION

HEAD Sec. 1712. Land use plans

STATUTE (a) Development, maintenance, and revision by Secretary

The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) Coordination of plans for National Forest System lands with Indian land use planning and management programs for purposes of development and revision

In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

(c) Criteria for development and revision

In the development and revision of land use plans, the Secretary shall -

- (1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;
- (2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;
- (3) give priority to the designation and protection of areas of critical environmental concern;
- (4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;
- (5) consider present and potential uses of the public lands;
- (6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;
- (7) weigh long-term benefits to the public against short-term benefits;
- (8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and
- (9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use

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inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended (16 U.S.C. 4601-4 et seq.), and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

- (d) Review and inclusion of classified public lands; review of existing land use plans; modification and termination of classifications

Any classification of public lands or any land use plan in effect on October 21, 1976, is subject to review in the land use planning process conducted under this section, and all public lands, regardless of classification, are subject to inclusion in any land use plan developed pursuant to this section. The Secretary may modify or terminate any such classification consistent with such land use plans.

- (e) Management decisions for implementation of developed or revised plans

The Secretary may issue management decisions to implement land use plans developed or revised under this section in accordance with the following:

- (1) Such decisions, including but not limited to exclusions (that is, total elimination) of one or more of the principal or

major uses made by a management decision shall remain subject to reconsideration, modification, and termination through revision by the Secretary or his delegate, under the provisions of this section, of the land use plan involved.

(2) Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate. If within ninety days from the giving of such notice (exclusive of days on which either House has adjourned for more than three consecutive days), the Congress adopts a concurrent resolution of nonapproval of the management decision or action, then the management decision or action shall be promptly terminated by the Secretary. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the management decision or action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same management decision or action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) Withdrawals made pursuant to section 1714 of this title may be used in carrying out management decisions, but public lands shall be removed from or restored to the operation of the Mining Law of 1872, as amended (R.S. 2318-2352; 30 U.S.C. 21 et seq.) or transferred to another department, bureau, or agency only by withdrawal action pursuant to section 1714 of this title or other

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Town of Pahrump

Past and Present Working Towards a New and Better Future

action pursuant to applicable law: Provided, That nothing in this section shall prevent a wholly owned Government corporation from acquiring and holding rights as a citizen under the Mining Law of 1872.

(f) Procedures applicable to formulation of plans and programs for public land management

The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.

SOURCE (Pub. L. 94-579, title II, Sec. 202, Oct. 21, 1976, 90 Stat. 2747.)
REFTEXT REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (c)(9), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

Act of September 3, 1964, as amended, referred to in subsec. (c)(9), is Pub. L. 88-578, Sept. 3, 1964, 78 Stat. 897, as amended, known as the Land and Water Conservation Fund Act of 1965, which is classified generally to part B (Sec. 4601-4 et seq.) of subchapter LXIX of chapter 1 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 4601-4 of Title 16 and Tables.

The Mining Law of 1872, as amended, referred to in subsec. (e)(3), is act May 10, 1872, ch. 152, 17 Stat. 91, as amended, which was incorporated into the Revised Statutes of 1878 as R.S. Sec. 2319 to 2328, 2331, 2333 to 2337, and 2344, which are classified to sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 42, and 47 of Title 30, Mineral Lands and Mining. For complete classification of R.S. Sec. 2318-2352, see Tables.

SECRET SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1713, 1732, 1752, 1781, 1783, 1784, 1901, 1903, 1904 of this title; title 16 sections 460uu-43, 460iii, 1333; title 42 section 6508.

June 28, 2000

USDA Forest Service-CAET
Attention: Roadless Areas Proposed Rule
P.O. Box 221090
Salt Lake City, Utah 84112

RE: Roadless Area Conservation

On behalf of concerned citizens, the Pahrump Public Lands Advisory Board and the Pahrump Town Board, we are asking that the comment period for the above referenced be extended sixty (60) days from the current deadline date of July 17, 2000.

Though countless efforts were made to obtain a copy of this proposal, the Public Lands Advisory Board was unable to obtain a copy until May 31, 2000. And in abiding by the Open Meeting Laws, it takes time for the different entities to evaluate this proposal.

Our main areas of concern are the reconstruction of roads, the Tongass National Forest being exempt until the year 2004, ability to fight fires in roadless areas, and seniors and disabled people having access to our natural resources.

We appreciate your consideration of our request.

Sincerely,

Edward Bishop
Edward Bishop
Chairman, Pahrump Town Board

Charles Gronda
Charles Gronda
Clerk, Pahrump Town Board

cc: Town Board
Public Lands Advisory Board

CAET RECEIVED
JUL 10 2000

FROM : Town of Pahrump

PHONE NO. : 702-727-0345

Jul. 17 2000 01:56PM P1

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Town of Pahrump

July 17, 2000

Past and Present Working Towards a New and Better Future

USDA Forest Service - CAET
 Attention: Roadless Areas Proposed Rule
 P.O. Box 221090
 Salt Lake City, Utah 84112

RE: Roadless Area Conservation

The Pahrump Town Board along with our Public Lands Advisory Board opposes the roadless proposal.

The vast majority of the State of Nevada is public land. Nye County has well over a million acres of planned roadless area. This plan would not only affect the livelihood of many, but also recreational opportunities of others.

Natural resources are a product of our environment. If the production of fuel and minerals in the United States is limited more than it is today, the consumer will still acquire the necessary raw materials at a greater cost from imports.

With the event of no roads, will this impede our ability to fight the wild land fires?

The outdoors and the natural environment are essential for the education of our youth. The wonder that a child from the city experiences cannot be measured. It is a whole new world for them to explore.

How will older citizens and the disabled enjoy nature first hand? How does the ADA fit into this proposal?

We request that this proposal be reconsidered as there are many areas of concern that need to be addressed. Take no action.

Sincerely,

Ed Bishop
 Ed Bishop
 Chairman
 Pahrump Town Board

Charles Gronda
 Charles Gronda
 Clerk
 Pahrump Town Board

cc: Town Board
 Public Lands Advisory Board

400 N. HIGHWAY 160 PAHRUMP NEVADA 89048 (775) 727-5107 FAX: (775) 727-0345