



THE WILDERNESS SOCIETY

LEGAL STATUS OF THE ROADLESS AREA CONSERVATION RULE May 2008

SUMMARY: The Roadless Area Conservation Rule was adopted by the U.S. Forest Service on January 12, 2001, after the most extensive public involvement in the history of federal rulemaking. The Roadless Rule generally prohibited road construction and timber cutting in 58.5 million acres of inventoried roadless areas, covering about 30 percent of the National Forest System. In December 2003, the Bush Administration amended the Rule by temporarily exempting Alaska's Tongass National Forests pursuant to a settlement with the State of Alaska. In May 2005, the Administration repealed the Roadless Rule and replaced it with a State petition process. However, in September 2006, a federal district court in California invalidated the Bush Administration's action and reinstated the 2001 Roadless Rule nationwide, except in the Tongass. Therefore, the Roadless Rule is currently in effect on 49.2 million acres of inventoried roadless areas and is not in effect on the 9.3 million acres of the Tongass National Forest.

The Roadless Area Conservation Rule came under a coordinated and sustained attack by the timber industry and its allies immediately after it was adopted in January 2001. In May 2001, U.S. District Court Judge Edward Lodge in Idaho issued a preliminary injunction blocking implementation of the Roadless Rule. The Bush Administration elected not to appeal Judge Lodge's decision, but several environmental groups that had intervened in the Idaho lawsuits did appeal.

In December 2002, the Ninth Circuit Court of Appeals reversed Judge Lodge, rejecting the District Court's assertions that the Rule was illegally adopted. In April 2003, the full court of appeals denied a request by the State of Idaho to reconsider its decision. The decision by the Ninth Circuit court – which covers most of the western United States -- remains the controlling case law on the Rule's legality.

In July 2003, U.S. District Court Judge Clarence Brimmer in Wyoming issued an opinion that directly contradicted the Ninth Circuit in a decision invalidating the Rule and enjoining its implementation. Brimmer also ruled that the Roadless Rule violated the Wilderness Act by creating "de facto wilderness areas." As in the Idaho case, the Bush Administration opted not to appeal, but once again environmental intervenors, represented by Earthjustice, appealed.

In May 2005, the Bush Administration repealed the Roadless Rule and replaced it with a State petition process. The State Petitions Rule allowed road building and logging to resume in accordance with local forest management plans, and established a cumbersome process for individual State governors to request different management rules for roadless areas within their respective States. However, there was no certainty that the petition process would result in any protection for roadless areas.

In July 2005, Tenth Circuit Court of Appeals dismissed environmentalists' appeal of the Wyoming district court decision and vacated the decision, solely on the grounds that the case was made moot by the Administration's May 2005 repeal of the Roadless Rule. The Tenth Circuit's decision temporarily ended the litigation over the Roadless Rule and cleared the way

for litigation over the Administration's State Petitions Rule. It also meant that the Ninth Circuit Court's decision strongly upholding the Roadless Rule remained the controlling case law on the issue of the Rule's legality.

In August 2005, the states of California, Oregon, and New Mexico (later joined by Washington) sued over the State Petitions Rule, and environmental groups filed a similar lawsuit a month later. The case was filed in Northern California federal district court and assigned to U.S. Magistrate Judge Elizabeth Laporte.

On September 20, 2006, Judge Laporte issued a landmark decision invalidating and enjoining the State Petitions Rule and reinstating the 2001 Roadless Rule. Judge Laporte held that the State Petitions Rule amounted to a repeal of the Roadless Rule and had been promulgated without complying with the requirements of the National Environmental Policy Act and Endangered Species Act. The Bush Administration has appealed that ruling to the Ninth Circuit.

Undeterred by the California court's invalidation of the State Petitions Rule, the Administration has relied on general authorities of the Administrative Procedures Act to continue pursuing state-specific amendments to the Roadless Rule. Federal rulemaking processes are underway that could weaken the Roadless Rule's protection for roadless areas in Idaho and Colorado.

The California decision requires the Forest Service to comply with the Roadless Rule in all national forests except the Tongass National Forest, since the Bush Administration had previously exempted the Tongass from the Rule. In April 2007 the Forest Service agreed to temporarily defer timber sales in the Tongass roadless areas through settlement of a lawsuit over the Tongass land management plan. The Tongass logging moratorium continued until the Forest Service completed a revision of its management plan, which occurred in February 2008. Since then the Forest Service has resumed preparing timber sales in roadless areas, but no logging has begun.

In response to the California court decision reinstating the Roadless Rule, the State of Wyoming has sought to revive the injunction on the Roadless Rule that was issued by Judge Brimmer in 2003 and vacated by the Tenth Circuit in 2005. However, in July 2007 the Tenth Circuit denied on procedural grounds Wyoming's request to immediately reinstate the 2003 injunction. The Tenth Circuit also cautioned the Wyoming district court of the potential for conflict with the California district court decision. In October 2007, Judge Brimmer held a hearing in the State's re-filed case against the Roadless Rule in which he expressed frustration with the California court's ruling. A decision from Judge Brimmer is expected soon.

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