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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Roadless Area Conservation; National Forest System Lands in Idaho

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service, U.S. Department of Agriculture, is initiating a public rulemaking process to address the management of roadless areas on National Forest System (NFS) lands within the State of Idaho. This rulemaking is the result of a petition submitted by Governor James Risch on behalf of the State of Idaho pursuant to 7 CFR § 1.28, reviewed and recommended by the Department's Roadless Area Conservation National Advisory Committee, and accepted by the Secretary. The State requests specific regulatory protections with certain management flexibility for the 9.3 million acres of affected NFS lands. The Forest Service will prepare an environmental impact statement to analyze and disclose potential environmental consequences associated with this rulemaking.

**DATES:** Comments concerning the scope of the analysis must be received by May 10, 2007.

**ADDRESSES:** Comments may be sent via e-mail to [IDcomments@fsroadless.org](mailto:IDcomments@fsroadless.org). Written comments concerning this notice should be addressed to Roadless Area Conservation-Idaho, P.O. Box 162909, Sacramento, CA 95816-2909, or via facsimile to 916-456-6724.

All comments, including names and addresses, when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at <http://roadless.fs.fed.us>.

**FOR FURTHER INFORMATION CONTACT:** Brad Gilbert, Idaho Roadless Interdisciplinary

Team Leader, 208-765-7438, [bjgilbert@fs.fed.us](mailto:bjgilbert@fs.fed.us).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

#### SUPPLEMENTARY INFORMATION:

##### Background

As a leader in natural resource conservation, the Forest Service provides direction for the management and use of the Nation's forests, rangeland, and aquatic ecosystems. The Forest Service is charged to collaborate cooperatively with states and other interested parties regarding the use and management of the National Forest System (NFS).

##### *The 2001 Roadless Area Conservation Rule (Roadless Rule)*

On January 12, 2001, the Department promulgated the Roadless Rule at 36 CFR 294 (66 FR 3244), which fundamentally changed the Forest Service's longstanding approach to management of inventoried roadless areas by establishing nationwide prohibitions that, with some exceptions, generally limited timber harvest, road construction, and road reconstruction within inventoried roadless areas on NFS lands. Prior to 2001, inventories of roadless areas were used primarily as tools for evaluating wilderness potential. Unless otherwise provided for by law, during forest planning the Forest Service generally evaluated each area's wilderness potential, made preliminary legislative recommendations, and assigned appropriate management area direction in land management plans. Land management plans were developed for each unit of the NFS through a public notice and comment process, building on years of scientific findings, analyses, and extensive public involvement.

Following promulgation of the Roadless Rule, concerns were immediately expressed by states, Tribes and local communities. These concerns included the sufficiency and the accuracy of the information available for public review during the rulemaking process; the inclusion of an estimated 2.8 million acres of roaded lands in the inventoried roadless area land base; the denial of requests to lengthen the public

review period; the denial of cooperating agency status requested by several Western States; the sufficiency of the range of alternatives considered in the rulemaking process; the need for flexibility and exceptions to allow for needed resource management activities; and the changes made in the final rule after the closure of the public comment period. Concerns were also expressed about applying one set of standards uniformly to every inventoried roadless area.

The Roadless Rule became the subject of 10 lawsuits in Federal District Courts in Idaho, Utah, North Dakota, Wyoming, Alaska, and the District of Columbia. In one of these lawsuits, the U.S. District Court for the District of Idaho issued a preliminary injunction prohibiting implementation of the Roadless Rule on May 10, 2001. The preliminary injunction was reversed by the U.S. Court of Appeals for the Ninth Circuit on December 12, 2002.

Secretary Veneman expressed the Department's commitment to conserving inventoried roadless area values in the NFS while acknowledging concerns raised by local communities, Tribes, and states regarding the Roadless Rule. In May 2001, the Secretary indicated that the Department would move forward with a responsible and balanced approach to re-examining the Roadless Rule. The Department was able to reach a settlement agreement with the State of Alaska leading to the adoption of a final rule on December 30, 2003, that withdrew the Tongass National Forest from the prohibitions of the Roadless Rule.

However, on July 14, 2003, the U.S. District Court for the District of Wyoming set aside the Roadless Rule and issued a nationwide, permanent injunction against its implementation. The ruling was appealed.

##### *The State Petitions Rule*

On May 13, 2005, the Department adopted a new rule (70 FR 25654), the State Petitions Rule, that established a process allowing Governors an opportunity to seek establishment of or adjustment to management requirements for NFS inventoried roadless areas within their states. The opportunity for submitting state petitions was available for 18 months. Under the State Petitions Rule, submission of a petition was strictly voluntary, and management of

inventoried roadless areas was to be guided by individual land management plans until and unless these management requirements were changed through a state-specific rulemaking. At the same time, the Department established the Roadless Area Conservation National Advisory Committee in accordance with the Federal Advisory Committee Act (5 U.S.C. App. II) to assist the Secretary with the implementation of this rule.

On July 12, 2005, the Tenth Circuit Court of Appeals held that the appeal was moot after promulgation of the State Petitions Rule (see below). The Tenth Circuit dismissed the appeal and vacated the district court decision in May 2005, the States of California, New Mexico, Washington, and Oregon, as well as a coalition of environmental groups, challenged the State Petitions Rule in the Northern District of California. On September 20, 2006, the District Court set aside the State Petitions Rule and reinstated the Roadless Rule. The California court's order triggered the State of Wyoming to seek reinstatement by the Wyoming District Court of the vacated 2003 injunction against the original Roadless Rule. The State of Wyoming also filed a new complaint, again challenging the Roadless Rule.

#### **State of Idaho Petition**

On June 23, 2005, the State of Idaho announced it would submit a petition pursuant to the State Petitions Rule, requesting specific regulatory protections and certain management flexibility for the 9.3 million acres of NFS inventoried roadless areas in Idaho. As part of that announcement, the State invited affected county commissioners to develop specific recommendations for the NFS inventoried roadless areas in their respective counties. Additionally, over 50 public meetings were held and the general public was encouraged to send individual comments directly to the Governor's office for consideration.

Idaho's petition was submitted to the Secretary of Agriculture for consideration on September 20, 2006. When the State Petitions Rule was enjoined, Idaho submitted a petition on October 5, 2006, under section 553(e) of the Administrative Procedure Act and Department regulations at 7 CFR 1.28 which allow an interested person the opportunity to petition for the issuance, amendment, or repeal of a rule.

The Roadless Area Conservation National Advisory Committee reviewed the Idaho petition on November 29 and 30, 2006, in Washington, DC. Governor James Risch, on behalf of the State of

Idaho discussed his views on the scope and intent of the petition during the first day of the meeting. The Committee also heard comments from other State and Forest Service officials, and members of the public. On December 19, 2006, the Committee issued a unanimous consensus-based recommendation that the Secretary direct the Forest Service, with the State of Idaho as a cooperating agency, to proceed with rulemaking.

On December 22, 2006, the Secretary accepted the petition based on the Advisory Committee's review and report and directed the Forest Service to initiate rulemaking.

#### **Estimated Dates**

The Draft environmental impact statement is expected September, 2007 and the final environmental impact statement is expected August, 2008.

#### **Purpose and Need for Action**

Following promulgation of the Roadless Rule, the State of Idaho was one of several states to express concerns about applying one set of standards regulating road construction, reconstruction, and timber harvest uniformly to every inventoried roadless area. The State undertook an extensive public comment process to assess the desired management objectives for each individual inventoried roadless area. This information was then used to construct the petition, including where and under what circumstances road construction and timber harvest should be prohibited in inventoried roadless areas. The State examined a management continuum that includes at one end, a restrictive approach emphasizing passive management and natural restoration approaches, and on the other end, a fairly unrestrictive approach emphasizing flexibility and active management. The petition, as presented by Governor Risch, requests that road construction and timber harvest be administered in accordance with five management themes applied to NFS inventoried roadless areas within the State of Idaho. While developing the petition, the State developed a set of guiding principles to evaluate the strength of submitted comments including: Current land management plan prescriptions, County/Tribal/Public comments, the wildland urban interface and forest health, consistency between National Forests within the State, and consistency between interstate National Forests.

Although the State is seeking a rule with accompanying management themes that only directly administers timber harvest and road construction

and/or reconstruction within NFS lands in Idaho, the State indicates that each theme would be an important consideration for the Forest Service's future management of inventoried roadless areas for activities and uses outside of the proposed regulations. The State has identified that the description of the themes is not intended to mandate or direct the Forest Service to propose or implement a proposed action; rather, the description of each theme is envisioned to function as a backdrop for future discussions between the Forest Service and the Governor's Roadless Rule Implementation Commission that was established by Idaho Executive Order 2006-43. The State also anticipates that the rulemaking will direct the Forest Service to develop a Memorandum of Understanding with the Implementation Commission outlining their relationship and responsibilities.

#### **Petitioned Action**

The Forest Service, in cooperation with the State of Idaho is initiating a public rulemaking process to address the management of roadless areas on National Forest System (NFS) lands within the State of Idaho. The regulation sought would administer road construction and timber harvest in inventoried roadless areas in accordance with five management themes and allow most appropriate uses in inventoried roadless areas to be decided through the forest planning process in accordance with the National Forest Management Act. The management themes are Wild Land Recreation (1.3 million acres), Primitive Areas (1.7 million acres), Backcountry/Restoration (5.5 million acres) General Forest Areas (0.5 million acres) and Areas of Cultural, Historical, and Tribal Significance (0.25 million acres).

In Wild Land Recreation Areas, road construction and reconstruction would be prohibited. Timber harvest would be permitted in these areas only if the responsible official determines it is for personal or administrative use as defined at 36 CFR § 223; the areas show little evidence of historical or human use; natural processes are predominant; and people visiting these areas can find outstanding opportunities for recreation, including exploration, solitude, risk, and challenge.

In Primitive Areas, road construction and reconstruction would be prohibited. Timber harvest would be permitted only if existing roads or aerial systems are used and the responsible official determines the harvest falls within exceptions consistent with those outlined in the Roadless Rule. These

areas generally reflect the primitive character of the Wild Land Recreation theme, however, they fall short of the Forest Service's recommended wilderness suitability criteria. They are naturally appearing and are relatively undisturbed by human management activities.

In Backcountry/Restoration Areas, roads may be constructed or reconstructed only if the responsible official determines the roads fall within exceptions consistent with those outlined in the Roadless Rule. Timber harvest will be permitted if the responsible official determines that it meets exceptions consistent with those outlined in the Roadless Rule. These areas may display increased evidence of management activities, however, they would generally retain their roadless character. Areas are to provide a variety of recreation opportunities, while also ensuring adequate flexibility to maintain forest health.

In General Forest, Grassland and Rangeland Areas, road construction and timber harvest would be permitted after necessary environmental analysis is completed. Areas may display high levels of human use including roads, facilities, evidence of vegetative manipulation, and mineral exploration/extraction.

Three areas of cultural, historic, and tribal significance (Pilot Knob, Mallard-Larkins Pioneer Area, and Lewis and Clark Trail) will be defined and managed similarly to areas designated under the Primitive theme.

The petition does not seek to address leasable and locatable minerals. The public sale of salable minerals would be prohibited in areas designated as Wild Land Recreation or Primitive.

The petition does not seek to address recreation, grazing, or other multiple uses not expressly prohibited in Idaho inventoried roadless areas. Those management activities will be governed by existing land management planning, travel planning, and grazing allotment analysis processes. The petition does not affect current or future management status of existing roads or trails in Idaho inventoried roadless areas or the status of existing grazing allotments.

The petition does not address whether or how the Roadless Rule or State Petitions Rule apply to the inventoried roadless acres in national forests and grasslands outside of Idaho.

#### **Possible Alternatives**

The NEPA implementing regulations require that an Environmental Impact Statement evaluate alternatives. Possible alternatives to be considered in the Draft

Environmental Impact Statement include:

- Promulgation of a rule pursuant to the Idaho petition.
- Roadless management direction as set forth in the Roadless Rule.
- Roadless management direction as set forth in current Land and Resource Management Plans.

Additional alternatives may arise from public comments or new information.

#### **Lead and Cooperating Agencies**

State governments are important partners in management of the Nation's land and natural resources. States, particularly in the West, own and manage large tracts of land with tremendous social and biological value. State governments have frequently pioneered innovative land management programs and policies. State governments exert considerable influence over statewide economic development and private land use, both of which significantly affect natural resource management. In addition, state conservation agencies' relationships with others, including the general public offer additional opportunities for collaborative decisionmaking. Strong state and Federal cooperation regarding land management can facilitate long-term, community-oriented solutions.

As part of its petition, the State of Idaho committed to participation as a cooperating agency in the preparation of any environmental analysis for this rulemaking.

#### **Responsible Official**

The Responsible Official is the Secretary, USDA or his designee.

#### **Nature of Decision To Be Made**

The Forest Service is initiating a public rulemaking process to address the management of roadless areas on National Forest System lands within the State of Idaho. This rulemaking is the result of a petition submitted by the State of Idaho pursuant to 7 CFR 1.28 and presented by Governor Risch on November 29, 2006. The State requests specific regulatory protections with certain management flexibility for the 9.3 million acres of affected land.

#### **Scoping Process**

This Notice of Intent initiates the scoping process in compliance with the National Environmental Policy Act and its implementing regulations (40 CFR part 1500). As part of the scoping period, the Forest Service solicits public comment on the nature and scope of the environmental, social, and economic issues related to the rulemaking that

should be analyzed in depth in the Draft Environmental Impact Statement. Comments collected during promulgation of the Roadless Rule and the extensive public involvement process used by the State to craft their petition will be heavily relied upon. The nature and scope of the analysis for the Draft Environmental Impact Statement will focus on the land management direction sought in the petition, and the alternative to it. Because of the extensive amount of public comment that has already been received on the issue of protecting roadless areas in Idaho (see background above) no public meetings are planned for this scoping effort. However, public meetings will be held after the Draft Environmental Impact Statement and proposed rule have been issued, and the public has had a chance to take a careful look at the site-specific proposed rule, alternatives, and effects.

#### **Supplemental Addresses**

Additional information on how the State of Idaho petition was developed can be found in the State's petition at [http://gov.idaho.gov/roadless\\_petition.html](http://gov.idaho.gov/roadless_petition.html).

Detailed maps of the management themes, Idaho's petition, a summary of the November 29 and 30, 2006 Advisory Committee meeting, the recommendation made by the Roadless Area Conservation National Advisory Committee to the Secretary, and the Secretary's letter to the Governor can be found at the Forest Service Roadless Area Conservation Web site: <http://roadless.fs.fed.us>.

#### **Comment Requested**

Reviewers should provide their comments during the comment period. Timely comments will enable the agency to analyze and respond to them at one time and to use them in the preparation of the Environmental Impact Statement, thus avoiding undue delay in the decisionmaking process. Furthermore, the more specific and substantive the comments, the better for reviewers and the agency alike. Reviewers have an obligation to "structure their participation in the National Environmental Policy Act process so that it is meaningful and alerts the agency to the reviewer's position and contentions." *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 552 (1978). *Dept. of Transportation v. Public Citizen*, 541 U.S. 752, 764 (2004). Environmental concerns that could have been raised at the draft stage may therefore be forfeited if not raised until after completion of the Final Environmental Impact

Statement. Comments on the draft should be specific and should address the adequacy of the draft and the merits of the alternatives discussed (40 CFR 1503.3).

Dated: March 30, 2007.

**Frederick Norbury,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. E7-6756 Filed 4-9-07; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### National Tree-marking Paint Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Tree-marking Paint Committee will meet in Portland, Oregon on May 15-17, 2007. The purpose of the meeting is to discuss activities related to improvements in, concerns about, and the handling and use of tree-marking paint by personnel of the Forest Service and the Department of the Interior's Bureau of Land Management.

**DATES:** The meeting will be May 15-17, 2007, from 9 a.m. to 5 p.m. each day.

**ADDRESSES:** The meeting will be at the Portland Marriott Downtown Waterfront, 1401 SW Naito Parkway, Portland, OR 97201. Persons who wish to file written comments before or after the meeting must send written comments to Dave Haston, Chairperson, National Tree-marking Paint Committee, Forest Service, USDA, San Dimas Technology and Development Center, 444 East Bonita Avenue, San Dimas, California 91773, or electronically to [dhaston@fs.fed.us](mailto:dhaston@fs.fed.us).

**FOR FURTHER INFORMATION CONTACT:** Dave Haston, Sr. Project Leader, San Dimas Technology and Development Center, Forest Service, USDA, 909-599-1267, extension 294 or [dhaston@fs.fed.us](mailto:dhaston@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** The National Tree-marking Paint Committee is comprised of representatives from the Forest Service national headquarters, each of the nine Forest Service Regions, the Forest Products Laboratory, the Forest Service San Dimas Technology and Development Center, and the Bureau of Land Management. The General Services Administration and the National Institute for Occupational Safety and Health are ad hoc members and provide technical advice to the committee.

A field trip on May 15 is designed to supplement information related to tree-marking paint. This trip is open to any member of the public participating in the meeting on May 16-17. However, transportation is provided only for committee members.

The main session of the meeting, May 16-17, is open to public attendance.

#### Closed Sessions

While certain segments of this meeting are open to the public, there will be two closed sessions during the meeting. The first closed session is on May 16 from approximately 10 a.m. to 12 p.m. This session is reserved for individual paint manufacturers to present products and information about tree-marking paint for consideration in future testing and use by the agency. Paint manufacturers also may provide comments on tree-marking paint specifications or other requirements. This portion of the meeting is open only to paint manufacturers, the Committee, and committee staff to ensure that trade secrets will not be disclosed to other paint manufacturers or to the public. Paint manufacturers wishing to make presentations to the Tree-marking Paint Committee during the closed session should contact the committee chairperson at the telephone number listed at **FOR FURTHER INFORMATION CONTACT** in this notice. The second closed session is on May 17 from approximately 9 a.m. to 11 a.m. This session is for Steering Committee members only.

Any person with special access needs should contact the Chairperson to arrange for accommodations. Space for individuals who are not members of the National Tree-marking Paint Committee is limited and will be available to the public on a first-come, first-served basis.

Dated: April 3, 2007.

**Frederick Norbury,**

*Associate Deputy Chief—NFS.*

[FR Doc. E7-6666 Filed 4-9-07; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### Marysville Irrigation Company Gravity Pressurized Irrigation Delivery System; Fremont County, ID

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Marysville Irrigation Company, Gravity Pressurized, Irrigation Delivery System, Fremont County, Idaho.

**FOR FURTHER INFORMATION CONTACT:** Richard Sims, State Conservationist, Natural Resources Conservation Service, 9173 W. Barnes Dr., Suite C, Boise, Idaho 83709-1574, telephone (208) 378-5700.

**SUPPLEMENTARY INFORMATION:** The Plan/Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national adverse impacts affecting the quality of the human environment. As a result of these findings, Richard Sims, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The Proposed Action consists of replacing an open ditch irrigation delivery system with buried plastic pipelines to distribute gravity pressurized irrigation water. The Proposed Action includes the construction and operation and maintenance of three plastic pipelines that provide for the delivery of gravity pressurized irrigation water to approximately 6,130 acres surrounding Marysville, Idaho, eliminating most of the need for pumping by electric motors. Approximately 1,000 acres would require booster pumps. Water would only be drawn from the pipe when irrigation is required, eliminating overflow to the Henry's Fork River. The Proposed Action would eliminate about 90% of the water seepage loss from the canals and the need for approximately 1,600 horsepower from electric pump motors while not adversely affecting the environment.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the plan/environmental assessment is on file and may be reviewed by contacting Mr. Richard Sims. The FONSI has been sent to various Federal, State, and local agencies, and interested parties. A limited number of copies of the FONSI