

LEGAL STATUS OF THE ROADLESS AREA CONSERVATION RULE

May 2006

THE ROADLESS RULE

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 Administration amended the Rule by temporarily exempting Alaska's Tongass National Forests, pursuant to a settlement with the State of Alaska. On May 13, 2005, the Administration repealed the Roadless Rule and replaced it with a State petition process. In addition, the Forest Service re-issued an "interim directive" that generally requires the Chief of the Forest Service to approve road building and logging projects within inventoried roadless areas.

ROADLESS RULE IN THE COURTS

The Roadless Area Conservation Rule came under a coordinated and sustained attack by the timber industry and its allies ever since it was adopted in January 2001. The Ninth Circuit Court of Appeals in December 2002 strongly upheld the legality of the Roadless Rule and reversed a preliminary injunction by the federal district court in Idaho. A federal district court in Wyoming also enjoined the Rule, but the Tenth Circuit Court of Appeals dismissed an appeal and vacated the district court decision as moot in July 2005 because the Rule had been repealed by the Administration. Consequently, the Ninth Circuit decision is the last word of the courts on the Rule's legality.

Idaho and the Ninth Circuit

On May 10, 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. On December 12, 2002, the Ninth Circuit Court of Appeals issued a 2-1 decision reversing Judge Lodge and soundly 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. Judge Lodge subsequently postponed any further action in the Idaho case until the Tenth Circuit Court of Appeals ruled on a Roadless Rule case in Wyoming. The Ninth Circuit Court of Appeals covers most of the western United States, including California, Oregon, and Alaska.

Wyoming and the Tenth Circuit

On July 14, 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 opined 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. On July 11, 2005, Tenth Circuit Court of Appeals dismissed environmentalists' appeal of the Wyoming district court decision and vacated the

decision, solely on grounds that the case was made moot by the May 13 repeal of the Roadless Rule. The Tenth Circuit's decision marks the end of litigation over the Roadless Rule and clears the way for litigation over the Administration's Roadless Repeal. It also means that the Ninth Circuit Court's decision strongly upholding the Roadless Rule is the controlling case law on the issue of the Rule's legality.

ROADLESS REPEAL AND STATE PETITION PROCESS

On May 13, 2005, the Bush Administration repealed the Roadless Rule and replaced it with a State petition process. The Roadless Repeal allows road building and logging to resume in accordance with local forest management plans, and establishes a cumbersome process for individual State governors to request different management rules for roadless areas within their respective States. However, there is no certainty that the process will result in any protection for roadless areas. A governor's petition will not necessarily be accepted, and even if a petition is accepted, the outcome of the subsequent State-specific rulemaking will still be left up to the Administration. Governors have 18 months to submit petitions, which will be reviewed by a national advisory committee. In the meantime, pursuant to a Forest Service "interim directive," road building and logging projects within inventoried roadless areas will generally have to be approved by the Chief of the Forest Service.

Roadless Repeal in Court

On August 28, 2005, the States of California, Oregon, and New Mexico filed a lawsuit challenging the 2005 Roadless Repeal. The case was filed in Northern California federal district court and assigned to Magistrate Judge Elizabeth Laporte. The lawsuit alleges that the Forest Service failed to comply with the National Environmental Policy Act and Administrative Procedures Act when it repealed the Roadless Rule. On October 5, Earthjustice filed a similar lawsuit in the same district court on behalf of The Wilderness Society and 19 other conservation groups. The lawsuits request the court to enjoin the 2005 Roadless Repeal and reinstate the 2001 Roadless Rule. The attorneys general for Montana and Maine have filed amicus briefs in support of the plaintiffs. A court hearing is scheduled for August 1, 2006.

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