

Chapter 2

Process, Planning, Policies, and Laws

This chapter includes six main sections: National Forest Management Act, National Environmental Policy Act, Interim Direction, Other Policy Concerns, Appeals and Litigation, and Other Legal Concerns.

National Forest Management Act

This section includes four subsections: National Rulemaking General, Compliance with the National Forest Management Act, Planning Regulations, and Relationship to Other Plans/Policies.

National Rulemaking General

Summary

A number of respondents question the Forest Service's legal authority to issue national regulations which change land allocations in national forests. They believe this is outside the parameters of the National Forest Management Act. Others, however, assert that national rulemaking is entirely consistent with NFMA. According to some respondents, they believe it was Congress's intent in passing NFMA to help the Forest Service make local forest planning decisions based on accurate local information. They also think that NFMA inherently recognizes interests at the local level frustrating the achievement of national needs. Consequently, these respondents ask that programmatic decisions be reserved at a national level with the Secretary of Agriculture bearing the responsibility for assuring that national forest management is consistent with the principles of multiple use and sustained yield.

38. Public Concern: The Forest Service should clarify its legal authority to issue national regulations.

WHICH CHANGE LAND ALLOCATIONS IN ANY NATIONAL FOREST

We believe the Forest Service lacks the legal authority to issue a national regulation that either changes land allocations in one or more national forest management plan or establishes a land allocation outside the forest planning process prescribed by the national Forest Management Act (NFMA). (Business or Association, Rockville, MD - #A13306.20201)

It would be unlawful for the Forest Service to adopt any similar national level rules which alter a forest plan by changing the allowed land use in roadless areas, but without also amending the governing forest plan.

The July 10 notice suggests that one regulatory option the Forest Service has under consideration is to leave in place temporary some form of rules generally prohibiting road construction and timber harvesting in all inventoried roadless areas, until long-term management decisions are made on a roadless area-by-area basis during revision of each forest plan. 66 Fed. Reg. 35919 the "best way to achieve this objective is to ensure that we protect and sustain roadless values until they can be

appropriately considered through forest planning”. The Forest Service lacks legal authority to adopt a regulatory option which purports to change the forest plan’s decisions on allowable multiple uses in a roadless area without first amending the governing forest plan. (Business or Association, Terra Bella, CA - #A15588.20201)

39. Public Concern: The Forest Service should recognize that the Secretary of Agriculture does have the legal authority to issue a national roadless rule.

The first question, which asks “What is the appropriate role of local forest planning as required by NFMA in evaluating protection and management of inventoried roadless areas,” deserves an additional response. While congress clearly intended the NFMA to help the Forest Service make local forest planning decisions based on accurate local information, it also recognized the danger of parochial interests at the local level frustrating the achievement of national needs. Consequently, it reserved to the Secretary of Agriculture the responsibility for assuring that national forest management was fully consistent with the principles of multiple use and sustained yield. This broad statutory authority provides the Secretary with all the authority, and indeed the duty, to adopt a national roadless area conservation rule. See 16 U.S.C. 1607. [Footnote 5: similarly, this statute provided ample authority for the Secretary of Agriculture to exercise discretionary review over the administrative appeals of the 1997 TLMP decision and modify that decision to protect high-value community use areas on the Tongass in the final 1999 TLMP decision.] (Organization, Juneau, AK - #A23091.20201)

The National Forest Management Act and other laws clearly provide authority for executive action through the Secretary of Agriculture. I absolutely oppose further fragmentation of decision-making as proposed by President Bush and others. (Individual, Olympia, WA - #A20844.12110)

NFMA provides that plans may “be amended *in any manner whatsoever* after final adoption after public notice. . . . “Thus, a national role setting forth standards for the protection of Roadless Areas that has the effect of amending local forest plans is fully consistent with NFMA’s procedures. Just as local forest planning must incorporate the effect of other national-level decisions, e.g., congressional wilderness designation, Forest Service Manual and Handbook directives, and national monument designation, so, too, local planning has to accommodate national level policy decisions regarding road building and protection of Roadless Areas. Unless national circumstances change, e.g., road maintenance backlog is eliminated and social preferences for protecting back-country, wildlands are reversed, local forest planning is not the appropriate venue to revisit national roadless policies. (Organization, Sitka, AK - #A12003.20201)

Compliance with the National Forest Management Act

Summary

Respondents encourage the Forest Service to comply with the National Forest Management Act (NFMA). Some assert that compliance is necessary to ensure a fair and open public involvement process. Compliance can be achieved, some suggest, by addressing specific environmental protections mandated by the Act; by providing enough staff and resources in the field to implement forest plans and achieve objectives; or by simply withdrawing the Roadless Area Conservation Rule. Several respondents suggest the Forest Service consider the Senate’s report on NFMA, which stipulates that there should be no national land management prescriptions. Many also stress the need, under NFMA, to hold adequate public meetings (see Chapter 3: Working Together (Question 2): Adequacy of Public Involvement Processes/Methods: *Adequacy of Public Meetings*). Additionally, one of the more common comments is that, per NFMA, decisionmaking must occur at the local (forest planning) level (see Chapter 3: Informed Decisionmaking (Question 1): Local vs. National Decisionmaking: *Local (Forest Level)*)

Decisionmaking and Chapter 3: Informed Decisionmaking (Question 1): The Forest Planning Process).

Others suggest that the Forest Service apply NFMA processes to national level decisionmaking. The assertion becomes one of separating site specific, local management and national protection and consistent decision making across all forests.

40. Public Concern: The Forest Service should comply with the National Forest Management Act.

The NFMA should be knowledgeable about protection of flora and fauna in the roadless areas and make decisions on that basis. (Individual, Metuchen, NJ - #A507.20201)

My comments on this latest iteration of the “roadless area” nonsense will be relatively brief, as my opinion of the whole situation has not changed since Clinton made his initial proclamation in October, 1999. The whole process was, and still is, blatantly illegal, in that it violates NFMA (16 USC 1604 (f)(1)) that calls for one integrated plan dealing with all the uses and resources present on a National Forest, not a separate plan for roadless areas or anything else. It still violates the planning regulations in even the new version of 36CFR219 that requires the management of roadless areas to be dealt with in Forest Plans, not separately (36CFR219.9(b)(8)). It also violates the release language in all the individual State Wilderness Acts that came out of the RARE II process, that state that these areas are available for multiple use management pending revision of Forest Plans. It’s time to comply with existing laws and regulations, and forget this nonsense of dealing with roadless areas outside the Forest Planning process. (Individual, East Kingston, NH - #A4893.20200)

TO ENSURE A FAIR AND OPEN PUBLIC INVOLVEMENT PROCESS

The most effective, proven tool for working with various groups to ensure that concerns about roadless values are heard and addressed through a fair and open process is the NFMA-mandated forest land and resource management planning process. The Forest Service must allow all interested parties, to offer their views and to help define the issues without being constrained by a pre-established planning format.

Establishing forest-level advisory committees as envisioned by NFMA can strengthen this process. Removing the bureaucratic, straitjacket requirements of the Federal Advisory Committee Act would facilitate this approach. Meaningful, productive relationships evolve from the contacts on the individual National Forests. This is where specifics can best be applied on the ground to work to the benefit of local individuals, the community, the state and the nation. (Individual, Lawrenceville, GA - #A6196.15161)

Legally, the protection and management of inventoried roadless areas can only be addressed through the planning process required by NFMA. In fact, the Clinton Administration’s Roadless Rule violates NFMA by amending the land management plans for the Tongass without following NFMA procedures and without the required local involvement. 16 U.S.C. subsection 1604 (f). Furthermore, the Roadless Rule violates NFMA principles of multiple use and sustained yield (16 U.S.C., subsections 1600, 1602, and 1604). (Ketchikan Gateway Borough, AK - #A17476.20201)

BY ENSURING THAT FOREST PLANS ARE IN COMPLIANCE

According to the NFMA, the Secretary of Agriculture shall involve the public in the development of management plans. Those plans must be developed, maintained, and revised as necessary for each unit (where “unit” means each National Forest) of the NF System. The plans must provide for multiple use as provided in The Multiple Use Sustained Yield Act of 1960, taking into account the “coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness”. Protection of these resources is paramount and forest plans and revisions must include ways to protect the resources from fire, insect infestation and other types of harm. This would include the construction of roads, if necessary, to abide by this mandate. Maximizing the multiple use aspects of the forest is mentioned numerous times throughout the NFMA, and it is the sole purpose of 16USC532. (Individual, Los Alamos, NM - #A3720.20202)

BY ADDRESSING SPECIFIC ENVIRONMENTAL PROTECTIONS MANDATED BY THE ACT

There are numerous issues of scientific concern you refuse to discuss, despite the fact that the 1982 regulations originally mandated forest protections specifically to address watershed protection; protections for endangered species and their habitats; ways to seek removal of species from endangered species list, and that the plan must preserve healthy populations and habitats for larger animals for larger animals such as mammals, birds, and fish. You refuse to support these regulations of the 1982 NFMA. (Individual, Melvindale, MI - #A30286.20201)

BY PROVIDING ENOUGH STAFF AND RESOURCES IN THE FIELD TO IMPLEMENT FOREST PLANS AND ACHIEVE OBJECTIVES

Competing Values and Limited Resources: There will likely never be full agreement between all the parties interested in the national forests. With a lack of political consensus to change the statutory mission of the national forests, the Forest Service must adhere to the current body of legislation, most importantly to the National Forest Management Act. The Forest Service should re-emphasize local forest-level decisionmaking as the best possible means of achieving desired resource conditions. In addition, the agency should ensure that there are enough staff and resources in the field so that forest plans are implemented and objectives are achieved. (Organization, Rapid City, SD - #A17010.13110)

BY WITHDRAWING THE ROADLESS AREA CONSERVATION RULE

NFMA provides that plans may “be amended in any manner whatsoever after final adoption after public notice” Thus, a national rule setting forth standards for the protection of roadless areas that has the effect of amending local forest plans is fully consistent with NFMA’s procedures. I believe that it can be hard for those who live close to large roadless areas and take them for granted to see their significance in a national and global setting. Thus, I think it is appropriate that a national policy to protect them be created. (Individual, Sitka, AK - #A15506.10150)

I do not support the U.S. Forest Service’s Roadless Initiative in its present form for a variety of reasons. My main point of disagreement is that the roadless initiative appears to be designed to circumvent the National Forest Management Act process of review, and prevents local users of public land, representatives and U.S. Forest managers the opportunity to have reasoned and studied input. Creating 50 to 60 million acres of additional wilderness will mean that nearly 50% of all US National Forest lands are severely restricted and that millions of Americans will be prevented from accessing previously accessible lands. (Individual, Irvine, CA - #A937.10131)

The primary tool for evaluating and establishing management direction for all inventoried roadless areas should continue to be the planning process mandated by the National Forest Management Act (NFMA). This is a time-proven, science-based process that provides an opportunity for people to comment about individual forests and specific areas in those forests. (Individual, Juneau, AK - #A17238.10120)

UNTIL THE STATUTORY SYSTEM IS MODIFIED

Until such time that the statutory system is modified, the Forest Service must comply with the planning process as mandated by NFMA. (Individual, Edgewood, NM - #A5638.20201)

41. Public Concern: The Forest Service should consider the Senate’s report on the National Forest Management Act.**WHICH STIPULATED THAT THERE SHOULD BE NO NATIONAL LAND MANAGEMENT PRESCRIPTIONS**

Twenty-five years ago, the National Forest Management Act (NFMA) established forest planning at the local level as the tool by which local people (those most knowledgeable regarding the particular forest) including agency personnel, industry, the environmental community, local government representatives and other interested parties could work together to make decisions regarding the most appropriate use of these public lands. 16 U.S.C. [Sections] 1601-1614. All subsequent resource plans and provisions governing occupancy and use of the lands within a given forest must be consistent with the adopted forest plan, which then guides those activities for a period up to fifteen years. The wisdom of this

localized planning process has not changed, nor have events over the course of time pointed to the necessity for abandoning a local focus in favor of a national rule.

The importance of local knowledge and participation in decisionmaking was highlighted in the Senate Report to the NFMA, when Congress concluded that it was “unwise to legislate national prescriptions” for all national forests because of the “wide range of climatic conditions, topography, geologic and soil types” on individual national forests. Further reading of the Senate Report reveals a specific directive to the Forest Service that “there is not to be a national land management prescription.” S. Rep. No 94-893 at 26 (1976) reprinted in 1976 U.S.C.C.A.N.6684, 6685. (Business or Association, Denver, CO - #A20676.20201)

42. Public Concern: The Forest Service should consider that the National Forest Management Act has not prevented development of roadless areas.

The National Forest Management Act has not prevented relentless consumption of roadless areas by excessive road building and logging. (Individual, Carson City, NV - #A11788.20201)

43. Public Concern: The Forest Service should apply the National Forest Management Act to national-level decisionmaking.

TO ADDRESS THE DESIRES OF ALL AMERICANS

The National Forest Management Act (NFMA) needs to be dealt with on a national level. While the concerns of local citizens regarding issues close to home is important, national concerns are important, as well. Many of Wrangell, Alaska’s 2000 plus citizens grew up with and rely on the timber industry, however, their feelings should not out-weigh the sentiments of millions of other Americans. In addition, local Forest Service authorities may be strongly influenced by their friends, neighbors, and other community members. They may be more familiar with physical details and specifics of their managed areas than other United States citizens, but the protection and management of National Forests is a national issue. Furthermore, if local forest planning officials feel that the nation is not informed on their issues, then they should take the initiative to better inform the national public. (Individual, Akron, OH - #A17697.13100)

Planning Regulations

Summary

A number of respondents comment on the relationship between a possible roadless rule and the Planning Regulations. Comments include the suggestion that roadless area regulations be coordinated with the Planning Regulations; that the Roadless Area Conservation Rule be implemented under the former Planning Regulations; and that decisions regarding roadless area management be postponed until completion of the revised Planning Regulations.

Respondents also comment on revision of the Planning Regulations. Some say the Planning Regulations should address management direction of unroaded areas smaller than inventoried roadless areas. Some suggest that ecological sustainability should not be given first priority in planning; rather equal consideration should continue to be given to social, economic, and ecological values. On the other hand, some respondents assert that revisions must not weaken existing environmental safeguards. Additional suggestions include removing the phrase “at the discretion of the decision officer,” including oil and gas leasing decisions and procedures; and removing the objection procedures and retaining existing appeal regulations.

Additionally, there are comments suggesting that the Forest Service should prioritize completion of forest plan revisions once the new Planning Regulations are finalized. Another asserts that the Forest Service should comply with the new Planning Regulations before finalizing the Roadless

Rule because they will provide clear direction in how the agency must carry out local forest planning to ensure the ecological sustainability of roadless areas. Several respondents also request that the Forest Service should seek further public input before taking further actions regarding the Planning Regulations and Roads Policy. Finally, one individual states that the Forest Service should explain why the word “access” was removed from the Code of Federal Regulations (CFR) 212 rule without notifying the public in federal register notices, and should open the CFR 219 rule for full public discourse.

44. Public Concern: The Forest Service should coordinate the roadless area regulations with the Planning Regulations.

I cannot possibly offer meaningful comments on the validity of conducting roadless area management decision through planning until I clearly understand how “planning” will be conducted once the planning regulations are revised. Therefore, if Roadless Area management decisions are made through forest planning, this rulemaking must be postponed until the Planning Rule changes are finalized. (Individual, Moab, UT - #A15790.14422)

BY EVALUATING THE SOCIAL AND ECONOMIC IMPACTS OF EACH ALTERNATIVE

The roadless regulations and planning regulations must be coordinated. There must be a comprehensive evaluation of the social and economic impact of each alternative on surrounding communities. This should be based on real data, not models bearing little resemblance to the real communities. (Individual, Boise, ID - #A5165.16120)

THE SECRETARY OF AGRICULTURE SHOULD ELIMINATE THE NATIONAL APPLICATION OF THE CURRENT RULE AND ESTABLISH NATIONAL STANDARDS TO GUIDE THE FOREST PLANNING PROCESS

There appears to be a conflict between the current rule and the recently revised regulations as 36 CRF Part 219 Guiding the Development of Forest Plans (Nov.9, 2000; 65 FR 67571).

The current rule intent is to provide lasting protection for inventoried roadless areas within the National Forest System in the context of multiple use management.

However, the recently revised regulations guiding the development of Forest Plans provide that during the plan revision process or at other times as deemed appropriate, the responsible official must identify and evaluate inventoried roadless areas and unroaded areas and then determine which, if any, of those areas warrant additional protection and the level of protection to be afforded.

With the current rule in place, the responsible official in the plan revision would not be able to determine which, if any, of the inventoried roadless areas warrant additional protection and the level of protection because of the direction contained in the current rule.

To resolve this conflict, the Sect. Of Agriculture would have to eliminate the National application of the current rule and establish national standards to guide Forest Service officers in applying these standards through the Forest Service Planning Process. (Individual, McMinnville, OR - #A3361.12000)

45. Public Concern: The Forest Service should implement the Roadless Area Conservation Rule under the former Planning Regulations.

If the Roadless Conservation rule is to be reconsidered and left to local planning, it should be done so under the planning rules that were in place during the development of the original plan, not what is presently in place. (Organization, Huntsville, AL - #A13542.16120)

The process under NFMA using the old (existing) Planning Regulations without the RACR seems to work well. The process should be open . . . and use sound science to guide final decisions. (Individual, Logan, UT - #A13482.20201)

46. Public Concern: The Forest Service should postpone decisions regarding roadless area management until completing the revision of the Planning Regulations.

In the same Federal register volume notice [Vol. 66, No. 132/Tue. July 10 2001] the Forest Service states: "The Forest Service is committed to protecting and managing roadless areas as an important component of the National Forest System. The best way to achieve this objective is to ensure that we protect and sustain roadless values, until they can be appropriately considered through forest planning." However we are uncertain as to which Forest Planning Regs we will be legally operating under or within, therefore we are unable to interpret much of the language proposed in the Proposed Forest Plan Revision still incomplete.

There are so many interrelated subjects all overlapping it makes commenting impossible.

We can give general comments, but they are meaningless until we have all the final outcomes after all lawsuits have been settled and we are certain which rules will be used and which regulations we will be operating under. (Fire Department, Uinta County, WY - #A15287.14422)

I cannot possibly offer meaningful comments on the validity of conducting Roadless area management decisions through planning until I clearly understand how planning will be conducted once the planning regulations are revised. Therefore, if Roadless Area management decisions are made through forest planning, this rulemaking must be postponed until the Planning Rule changes are finalized. (Individual, Quarryville, PA - #A15217.14422)

The "appropriate role" of the planning procedures required by NFMA is impossible to determine since the planning regulations have been recently revised and then subsequently temporarily withdrawn. It is impossible for the general public to answer this question until the Planning Rule changes are finalized.

Since the primary purpose of any NEPA process is full public disclosure of proposed changes and their impacts on the human environment we would advise the agency to withdraw the rule until the planning regulations are finalized. (Organization, Salt Lake City, UT - #A15263.14422)

PARTICULARLY THE 36 CODE OF FEDERAL REGULATIONS 219 RULE

Although your present directives (2400-2001-3, 7710-2001-1 and 7710-2001-2) and proposed new rules might alleviate those concerns brought forth by the above mentioned lawsuits, they by no means alleviate those still lurking that were not addressed and are not presently being addressed from future litigation.

Definitions at 219.36 are contradictory to new or reconstructed roads, yet we concern ourselves with 219.35 transition issues. Most publics applaud the move to establish procedure and management direction for "roadless" protection to the forest management and resource planning process without full knowledge of the November 2000, 36 CFR 219 rule as it stands today.

Until the various interests, including forest personnel, have a complete understanding of what 219 states, and inconsistencies in the management rule are remedied, the "Roadless" Area Conservation at 36 CFR [219] should immediately be suspended until the appeal procedure is complete. The forest management rule implementation date should be postponed at that time for the same reason. (Individual, Rock Springs, WY - #A15658.16100)

47. Public Concern: The Forest Service should review and amend the Planning Regulations.

We feel the best action would be to abandon this effort and put more effort into revising the Planning Regulations and updating the individual forest plan. (Business, Colville, WA - #A3362.16120)

TO ADDRESS THE APPROPRIATE MANAGEMENT DIRECTION FOR UNROADED AREAS

Scoping for the roadless conservation rule included provisions for identification and development of appropriate management direction of unroaded areas smaller than inventoried roadless areas. This component has dropped from the roadless conservation rule and placed in the planning process. Brief

note of unroaded areas was made in the 2000 revision of the planning regulations. However, these regulations are currently being revised further and it is unclear how the topic of unroaded areas will be integrated into these planning regulations and the implementing language in the Forest Service Manual and Handbook. We advocate attention to the delineation of and appropriate management direction for unroaded areas in the revised planning process. (Individual, Asheville, NC - #A22623.16120)

WITH RESPECT TO EMPHASIS GIVEN TO ECOLOGICAL SUSTAINABILITY AND TO TREATMENT OF UNROADED AREAS

The new planning regulations developed under the out-going Clinton administration are not an improvement. They need to be reviewed to fix some serious flaws:

A. The change from equal consideration of social, economic and ecological values TO ecological sustainability as the first priority in the management of National Forests is **not good** for quality land stewardship. Determining ecological sustainability is very complex with no hard and fast science on how to make the “call”. This will leave most decisions ripe for litigation where the courts will end up deciding how to best manage natural resources. Itasca County does not support court managed National Forests.

B. Moving the issue of unroaded areas from the Roadless Rule to the new Planning Regulations (late in the process) without any public review and comment is no way to treat constituents and was very likely an illegal move. Unroaded areas are vaguely defined and leave us with unknown impacts when their management is finally resolved.

**A positive aspect of the new planning regs is that there is more emphasis on local government cooperation and the local Forest supervisor is designated as the responsible official/decision maker.

Decision making at the local level is a good idea. (Elected Official, Itasca County, MN - #A2561.16120)

WITHOUT WEAKENING EXISTING ENVIRONMENTAL SAFEGUARDS

It should not revise the forest planning regulations so as to greatly weaken existing environmental safeguards and public participation opportunities in the planning process. (Organization, Oak Ridge, TN - #A12830.16120)

It is disingenuous for the Bush administration to suggest that local forest planning will adequately protect roadless areas. The administration is simultaneously revising the forest planning regulations to greatly weaken existing environmental safeguards of public participation opportunities. There is no reason to believe that roadless areas will be protected by future forest plans any better than they have been in the past. (Individual, Hatboro, PA - #A15489.16120)

BY REMOVING THE PHRASE “AT THE DISCRETION OF THE DECISION OFFICER”

The new planning regulations need to be revisited to return mandatory coordinated planning with local government to the regulations, removing the “at the discretion of the decision officer” portion. This will greatly aid the Service in meaningful collaborative planning. (Business or Association, Alturas, CA - #A17770.14422)

BY INCLUDING OIL AND GAS LEASING DECISIONS AND PROCEDURES

Include oil and gas leasing decisions and procedures in the body of the regulations. Make both the 36 CFR 228.102(d) and (e) decisions in the LRMP. (Business, Denver, CO - #A25688.10130)

The final rule published in the Federal Register on November 9, 2000 circumvented the decision making process with respect to where and what level of oil and gas leasing decisions will be made as a part of the planning process. **No reference to leasing is made** in Sections 219.10 Site-Specific Decisions or Authorized Use of Land or 219.26 Identifying and Designating Suitable Uses. Nevertheless, it is critically necessary to include specific direction on how oil and gas leasing is to be integrated into the planning process. To meet the legal requirements of the Mineral Leasing Act, the Energy Security Act and the Federal Onshore Oil and Gas Lease Reform Act, it is essential for direction to be included in the regulations establishing standards for making both the 36 CFR 228 Part 102 (d) and (e) leasing

decisions, availability and specific lands decisions, in the planning process. A key element of the process must be that the FS make both of these decisions during planning to avoid the unnecessary and costly supplemental NEPA (National Environmental Policy Act) documents currently required to make the “specific lands” leasing decision. Furthermore, a discussion of oil and gas resources and how they will be integrated into the forest planning revision and amendment regulations needs to be added to the regulatory preamble as well as the rule itself. (Business, Denver, CO - #A25688.65310)

BY REMOVING THE OBJECTION PROCEDURES AND RETAINING EXISTING APPEAL REGULATIONS

Abandon the “pre-decisional objection” procedures and retain existing appeal regulations. (Business, Denver, CO - #A25688.10130)

48. Public Concern: The Forest Service should prioritize completion of forest plan revisions once the new Planning Regulations are finalized.

The Forest Service needs to move forward with the development of a realistic revision of the NFMA and the implementation regulations. Upon the completion of the new Planning Regulations, there should be a priority placed on the completion of Forest plan amendments and/or revisions. These amendment/revisions should be done for each individual National Forest although some analysis may be necessary at a larger scale to properly analyze the effects to the ecosystem. I also strongly recommend that future Forest Plans be “ground proofed” as the final step in the planning process. “Ground proofing” is the only way to eliminate the questionable assumptions, gross generalizations, and the subjective values. Future plans must be explicit enough for reasonable people to properly evaluate and understand. (Individual, Colfax, WA - #A5421.13200)

49. Public Concern: The Forest Service should comply with the 2000 Planning Regulations.

Though not fully in force until November 2002, the Forest Service must comply with new planning regulations effective November 9, 2000. The regulations provide clear guidance in how the agency must carry out local forest planning to ensure the ecological sustainability of roadless areas. (Individual, Penn Valley, CA - #A12007.20200)

50. Public Concern: The Forest Service should seek further public input before taking further actions regarding the Planning Regulations and Roads Policy.

Of great concern to us is that you have allowed the Forest Service to suspend significant parts of both the planning and road management rules in the absence of any public involvement or consideration. We request that the Forest Service seek public input before taking further actions concerning these rules, which are of considerable importance to us all. (United States Senator, Georgia, - #A23325.16110)

Involvement of the public in the planning process is an issue that has been a component of the planning regulations. An aspect that has gotten increased attention in the 2000 planning regulations is the role of the public in developing Forest plans through a collaborative process. This emphasis should be retained as the planning regulations are revised further. (Civic Group, Roanoke, VA - #A1713.16120)

51. Public Concern: The Forest Service should explain why the word “access” was removed from the Code of Federal Regulations (CFR) 212 rule without notifying the public in federal register notices, and should open the CFR 219 rule for full public discourse.

Suspend the “roadless rule”, explain to the public why the word “access” was removed from the 212 rule without notifying the public in federal register notices, and open the 219 rule in its entirety for full public discourse. (Individual, Rock springs, WY - #A15658.25200)

Relationship to Other Plans/Policies

Summary

Several respondents urge the Forest Service to coordinate roadless area management with local forest plans. As one person points out, that the national forests are more often than not, disconnected areas, that make it difficult to coordinate all different types of direction, such as fire plans and ski resorts, hence close cooperation must be achieved. Other respondents remind the Forest Service that they are obligated to coordinate land management planning with other Federal, State, Tribal and County planning. While another respondent points out that the Agency should be also coordinating the Roadless Rule with the Interior Columbia Basin Ecosystem Management Project planning process.

52. Public Concern: The Forest Service should coordinate roadless area management with local forest plans.

The Forest Service cannot legally enact a rule that changes existing forest plans without going through the process of amending those forest plans. The issue of overriding existing forest plans strikes especially close to home for members of this Association, who spent the better part of 7 years involved in the revision of the Black Hills National Forest plan, only to see the decisions about how to manage Roadless Areas in the Forest changed by the Washington, D.C. Clinton Roadless Rule. (Organization, Rapid City, SD - #A17010.16000)

Fire has been a major issue during these last two summer seasons, and will probably grow in importance in the coming years. The Moose fire has burned to within 4.5 miles of our ski resort and has involved some of the proposed roadless parcels. How can our Flathead Forest management plan implement a comprehensive fire plan with this patchwork of lands? Do they take a "let it burn" approach to these 5,000+ acre parcels, and then try for control/containment on surrounding lands? What is the impact on wildlife, fish, water quality, and air quality both within the roadless parcel and the surrounding areas which may be both public and private? (Permit Holder, Whitefish, MT - #A20669.30410)

The regionalized method to planning allows for local concerns to be incorporated in to the planning effort. Instituting a blanket policy, such as the roadless policy, does not address the concerns Southeast Alaska might express in the Tongass Land Management Plan.

The Tongass Land Management Plan is a flexible and living document designed to change with the times. National mandates, such as the roadless policy, eliminate the public's opportunity to provide meaningful input. (Tribal Association, No Address - #A23324.16100)

53. Public Concern: The Forest Service should coordinate land use management with the planning and land use policies of local governments.

The Forest Planning regulations specify that the responsible officer for making planning decisions, such as the roadless policy, is to undertake a review of the planning and land use policies of local governments and display the results of this review within the environmental impact statement. This coordination with the local land use plans and communities must occur in the initial steps of developing forest land use management programs. (Elected Official, Douglas County, OR - #A11811.14430)

Roadless Proposal is in opposition to County Comprehensive Land Use Plans. We also wish to remind the USFS that by law and policy public land management agencies must recognize and consider County Comprehensive Land Use Plans as they manage public land. These county land use plans are developed through a formal public process including public hearings and legislatively adopted. The documents provide a legal foundation on which lands within the county should be used. All counties in Utah have recently updated their Comprehensive Land Use Plans. Through this process the citizens identified and

prioritized how land should be used. In all cases county citizens identified “access to public land” as their highest priority and number one objective regarding public land issues. We recognized the USFS is not bound by law to follow these county plans and that they only need to be “considered” when making management decisions. (Professional Society, No Address - #A27584.16000)

The debate over the purpose of the national forest extends far beyond management of roadless areas and has been greatly heightened in recent times. This proposal will not answer that question but makes the case for sticking with the existing planning framework as created by NFMA. Reworking the new planning regulations to retain the mandatory coordination with local government will help insure that local involvement remains high. The Service needs to remember that the goal is not planning and collaboration but implementation of management on the ground. (Business or Association, Alturas, CA - #A17770.15160)

It is important to recognize that, along with local forest plans, agencies such as Caltrans, who are responsible for transportation facilities in and through Forest Service lands, prepare and maintain long-range plans for their facilities. These plans must be considered by the Forest Service, so that decisions are not made unilaterally. (State Agency, Sacramento, CA - #A28870.12313)

54. Public Concern: The Forest Service should support the Giant Sequoia National Monument Management Plan.

The Giant Sequoia National Monument Management Plan should be an obvious necessity, overseen by the Department of Interior and the National Parks System. The U.S. Forest Service, which seemingly should shepherd the forests, has allowed itself to become timber-oriented. So putting thousand-year-old trees under the jurisdiction of that Service which sees no problem in chopping trees down would be as disastrous as dismissing the endangered species list because, say, it’s not important that our children actually see a bald eagle. (Individual, Frazier Park, CA - #A5010.16100)

55. Public Concern: The Forest Service should coordinate roadless area regulations with the Interior Columbia Basin Ecosystem Management Project planning process.

We are particularly concerned about the application of this roadless review of the lands within the Interior Columbia Basin project area. The counties were repeatedly told that planning for this region was to be ecosystem wide and in collaboration with the counties. While it was envisioned that a collaborative process was being established, the imposition of a new roadless policy without questions as to the integrity of the Interior Columbia Basin planning process. The ICBEMP cannot succeed if it is overridden by a piece-meal approach developed outside the region. The ICBEMP is [not] only an ecosystem strategy it is, and probably most important, a new collaborative approach to forest management that was designed to collaboratively resolve the very issues raised in this proposed rulemaking (i.e. proper treatment of roadless areas, transportation systems, and forest health and recovery). (Elected Official, Douglas County, OR - #A11811.16130)

National Environmental Policy Act

This section includes two subsections: Compliance with the National Environmental Policy Act and Environmental Analysis Documents.

Compliance with the National Environmental Policy Act

Summary

Respondents state that the Forest Service should comply with the National Environmental Policy Act (NEPA). To that end, individuals suggest the Agency include input from local, state, and federal elected officials; provide accurate, site-specific information about roadless areas to allow informed comment; ensure that the outcome is not predetermined; avoid committing resources such as to prejudice selection of an alternative; or simply withdraw the Roadless Area Conservation Rule. Some respondents, however, assert that NEPA is itself to blame for the Rule. They believe the Forest Service should work toward revising the National Environmental Policy Act (NEPA) process which, they consider to be an ill-conceived rule and is the cause of declining level of timber removal on federal lands.

56. Public Concern: The Forest Service should comply with the National Environmental Policy Act.

In response to your question, the appropriate role of local forest planning regarding the Roadless proposal is to ensure compliance with all laws and regulations. The National Environmental Policy Act (NEPA) and the Council on Environmental quality (CEQ) regulations are the key federal law and regulation. The pending Roadless proposal is under NEPA and its CEQ regulations. Catron County Commission requested last year to be a partner in the Environmental Impact statement process. Unfortunately, Catron County Commission did not receive any response regarding our request pursuant to 40 CFR 1506.2. Hence, the appropriate role of the Forest Service is to follow the rules and procedures of NEPA and CEQ, and request that the State and affected counties be involved, government-to-government, in the environmental analyses and documentation. (Elected Official, Catron County, NM - #A15538.20200)

The best way to work with different groups and different people who want different things is to continue to use the NEPA process, where all participants have a voice. Whatever the process though, it must be regulated by an umbrella of federal environmental laws which are designed to ensure the viability and sustainability of the forest ecosystem and all of its inhabitants. Opinion on roadless management would only be acknowledged if those opinions maintained or promoted the long-term survival of the forest ecosystem. We cannot meet all the desires of all groups, but we must be responsible enough to maintain and improve our natural resource base, and not let it fall victim to short term political favors or unreasonable economic considerations. (Individual, Bozeman, MT - #A5998.20203)

BY HOLDING FAIR AND OPEN PUBLIC MEETINGS AND CONSIDERING SUBSTANTIVE WRITTEN COMMENTS

The creation of the Roadless Initiative violated several laws. The ‘public meetings’ were a sham at which those supporting the Rule were given more time and more opportunity to comment. Substantive written comments were evidently disregarded. Inadequate time was allowed for comment. These are all NEPA violations. (Individual, Cedaredge, CO - #A10364.20203)

Many of our local citizens attended the community hearings in Plumas and other counties that were held by the Forest Service. The hearings were called “listening sessions” and we believe that they fell short of NEPA requirements. (Elected Official, Plumas County, CA - #A4846.20203)

BY INCLUDING INPUT FROM LOCAL, STATE, AND FEDERAL ELECTED OFFICIALS

I am encouraged by your efforts to solve the problems that the Roadless Area Conservation Rule will cause if implemented as is. This is an example of the NEPA process completed without accurate information or the input of local, State and Federal elected officials. (Business or Association, Alexandria, LA - #A5426.20200)

I am writing to support the Forest Service's efforts to fix the fatal flaws in the Roadless Area Conservation Rule as it now stands. This policy is the product of a deeply-flawed NEPA process, which was conducted without adequate, accurate information about the affected areas, and which ignored significant concerns raised by local, state, and Federal elected officials. (Individual, Buckley, WA - #A704.20203)

This rule is the product of a deeply flawed NEPA process, which was conducted without adequate or accurate information about the affected areas, and is contrary to the agency's legal authority. I agree with U.S. District Judge Edward Lodge's decision that the U.S. Forest Service violated public disclosure requirements before approving the Clinton administration's roadless plan and that the initiative violated the National Environmental Policy Act. (Business or Association, Concord, NH - #A1050.20203)

This rule is the product of a deeply flawed NEPA process, which was conducted without adequate or accurate information about the affected areas, and is contrary to the agency's authority. I agree with US. District Judge Edward Lodge's decision that the U. S. Forest Service violated public disclosure requirements before approving the Clinton administration's roadless plan and that the initiative violated the National Environmental Policy Act.

The rulemaking process ignored substantive concerns raised by local, state, and federal elected officials. For instance, in January 2000 the NH House of Representatives voted overwhelmingly to oppose President Clinton's plan, voting 269-62 to support a resolution opposing President Clinton's action to establish vast roadless areas in the White Mountain National Forest and called up President Clinton to rescind his "roadless" area proposal and allow decisions regarding land allocation to be made through the Forest Planning process. The Democratically-led NH Senate passed the same resolution and Governor Jeanne Shaheen expressed strong opposition to the plan as well. Many New England residents rely upon access to the sustainable timber base on the White Mountain National Forest and have long participated in and supported the collaborative forest planning process as the only legitimate way to make decisions about all aspects of national forest management. (Individual, Cornish, NH - #A1712.20203)

BY INCORPORATING ACCURATE INFORMATION ABOUT ROADLESS AREAS

We are pleased to read that the Forest Service is attempting to fix the fatal flaws in the Roadless Conservation Rule. This policy is the result of a poorly conducted NEPA process. It was made without accurate information about the roadless areas. It ignored significant concerns raised by elected officials and the public. (Individual, Boise, ID - #A13385.10120)

BY ADEQUATELY ANALYZING ALL ISSUES AND CONCERNS IN THE ROADLESS AREA CONSERVATION RULE FINAL EIS

[The Roadless Area Conservation Rule] violates NEPA by failing to adequately and accurately analyze all issues and concerns in the FEIS. (Professional Society, Anchorage, AK - #A21707.20200)

BY PROVIDING SITE-SPECIFIC INFORMATION

How could the public possibly provide comments when the areas to be impacted by the rule were not identified; no information was provided on the location and size of the roadless areas to be studied or on environmental issues or alternatives. The environmental, social, and economic implications of the roadless rulemaking could not be properly analyzed in any environmental impact documents without this information.

The Forest Service must remember that NEPA requires site-specific analysis. In *California v. Bergland*, 483 F. Supp. 465 (E.D. Cal. 1980), *aff'd sub nom.*, *California v. Block*, 690 F.2d 753 (9th Cir. 1982),

the U.S. Court of Appeals for the Ninth Circuit rejected under NEPA, a blanket approach to roadless reviews. In its review of the Forest Service's RARE II program, the court in *Block* held that, "having decided to allocate simultaneously millions of acres of land to nonwilderness use, the Forest Service may not rely upon forecasting difficulties or the task's magnitude to excuse the absence of a reasonably thorough site-specific analysis of the decision's environmental consequences." *Id.* at 765. Indeed, "broad, generic statements neither inform the public of the environmental consequences of action, nor require the agency to take a 'hard look' at environmental factors." 483 F. Supp. at 465 ("site-specific information is especially vital in considering wilderness issues."). The January 12, 2001, rule has the same fatal flaws as noted by the Federal District Court. The Forest Service, in pursuing this ANPR process, should dedicate time and resources to mapping the national forest system to determine exactly what areas are considered roadless, as well as the resources that are located in such areas. (Business or Association, Washington, DC - #A29622.10135)

BY PROVIDING THE PUBLIC WITH ADEQUATE INFORMATION TO ALLOW INFORMED COMMENT

Binding NEPA regulations require that there "shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action" that will be addressed in the EIS (40 C.F.R. 1501.7). In the rulemaking process resulting in the January 12 Rule, the Forest Service completely failed to provide the public with adequate information on details of the roadless area initiative to allow informed public comment on the scope of issues to be addressed or on the significance of issues related to the proposed action. How could the public possibly provide comments when the areas to be impacted by the proposed rule were not identified, and no information was provided on the location and size of the roadless areas to be studied or on environmental issues or alternatives? The environmental, social, and economic implications of the roadless rulemaking could not be properly analyzed in any environmental impact documents without this information. (Business or Association, Spokane, WA - #A17351.10135)

BY ADEQUATELY STUDYING THE ISSUES BEFORE INITIATING POLICIES

It appears that the intent of NEPA has been badly violated with the current roadless policy as there does not appear to have been a proper study taken before implementation of this policy was made. (Individual, South Royalton, VT - #A13393.20203)

BY ENSURING THAT THE OUTCOME IS NOT PREDETERMINED

NWMA is obligated to point out that the Forest Service would likely not be engaged in this ANPR process if adequate compliance with NEPA had occurred in developing the January 12 Rule. The Forest Service should learn from its past mistakes. The rulemaking process resulting in the January 12 rule was a rushed process with a predetermined outcome. Decisions were made based on inadequate or incomplete information, and pertinent data were ignored. (Business or Association, Spokane, WA - #A17351.10135)

This rule is inconsistent with the intent of the National Environmental Policy Act, the National Forest Management Act, the Multiple Use Sustained Yield Act, the Organic Administration Act and most other legislation under which the national forests are managed. . . . although some hearings were held, the decision was made to go forward with the roadless area plan long before the hearings were held. For the most part, those who opposed the plan were ignored. Only those who favored the plan were heard. This is contrary to the intent of the National Environmental Policy Act. (Business, No Address - #A17224.20200)

BY NOT COMMITTING RESOURCES SUCH AS TO PREJUDICE SELECTION OF AN ALTERNATIVE

Under the NEPA regulations an agency can not commit resources prejudicing selection of alternative or otherwise limiting the choice of alternatives before making a final decision. We note that the Forest Service has been closing and obliterating roads with the stated intent to create larger unroaded areas. To ensure that the agency allows for proper review and comment by the public, we suggest that all roadless areas created or enlarged by road closures be identified. (Elected Official, Douglas County, OR - #A11811.45100)

BY WITHDRAWING THE ROADLESS AREA CONSERVATION RULE

I was very pleased that the Federal Judge in Idaho recently ruled that there is strong evidence that the Forest Service policy was predetermined and that the agency violated the National Environmental Policy Act. It is my hope that your Administration will agree with the Judge's ruling and seek to withdraw the rule. (Individual, Provo, UT - #A2875.20203)

I am writing to support the Forest Service's efforts to fix the fatal flaws in the Roadless Area Conservation rule as it now stands. This policy is the product of a deeply-flawed NEPA process, which was conducted without adequate, accurate information about the affected areas, and which ignored significant concerns raised by local, State, and Federal elected officials. (Individual, Temple City, CA - #A753.10130)

This letter is in support of the Forest Service's worthwhile efforts to rehabilitate the Roadless Area Conservation Rule (Rule). Shasta County supports the reasoned and reasonable oversight of land uses, on federal land and elsewhere. Sound land use policies are developed through open, deliberative, and participatory processes, as required by the National Environmental Protection Act (NEPA). The Rule's shortcomings can be traced to its hasty enactment, without sufficient opportunities for review, analysis, public input, and refinement. Shasta County supports the Forest Service's efforts to go back and address these critical shortcomings. (Elected Official, Shasta County, CA - #A4943.10130)

57. Public Concern: The Forest Service should recognize that it is circumventing the National Environmental Policy Act by requiring additional comments after the record of decision was issued for the Roadless Area Conservation Rule.

I am appalled that the NEPA process is being circumvented and ignored by requiring additional comments after the ROD was completed. (Individual, Lacey, WA - #A27032.20203)

58. Public Concern: The National Environmental Policy Act should be revised.

I encourage the Forest Service to work toward revising the National Environmental Policy Act (NEPA) process which has led to this ill-conceived rule and to the continually declining level of timber harvest on federal lands. (Business or Association, Escanaba, MI - #A8364.20203)

Environmental Analysis Documents

Summary

General Comments – Some respondents state that, in general, management decisions on roadless areas should require environmental assessments rather than EISs, since many of the areas are already roaded. With respect specifically to the Advance Notice of Proposed Rulemaking, however, some suggest that if the Agency believes the prior review was so inadequate as to require additional action, the extent of which is not now known, that an additional environmental review under NEPA should be required. Some believe that if this is not done, it weakens the process and jeopardizes the final Rule. They are also concerned about the possibility of a revised Rule not requiring an EIS before entering Roadless Areas. Respondents wonder how the public would then be involved in these site specific decisions.

Roadless Area Conservation Rule EIS – A number of respondents assert that the Roadless Area Conservation Rule Draft EIS was inadequate in a number of ways: it was not sufficiently site-specific and did not consider a sufficient range of alternatives; it failed to adequately discuss environmental and economic impacts; it failed to address meaningful input by affected citizens and parties; and its underlying analysis was insufficient. Additionally, some respondents state that the Final EIS included vital aspects of the policy which were not included in the Draft EIS,

such as restrictions on lands outside of unroaded portions of inventoried roadless areas; thus they believe the public was denied adequate opportunity for comment. Some suggest that the Forest Service should prepare a supplemental Draft EIS; suggestions include quantifying miles of existing roads in inventoried roadless areas and providing maps of roadless areas. Another person states that the Finding of No Significant Impact document, which allowed the roadless initiative to proceed, violated legal requirements for land withdrawals over 5,000 acres.

One individual takes exception to the Agency's claim that "it is difficult, and perhaps infeasible to collect in a short timeframe, on a national scale, the local data needed to produce a sufficient EIS that analyzes all relevant information or that proposes an adequate range of alternatives." This respondent asserts that the Forest Service has 30 years of data regarding EIS implications all over the country and believes the Agency does have a great deal of experience that shows that diminishing roadless areas diminish our forests. Finally, some respondents refer to the alternatives presented in the Draft EIS and offer their preferences.

Environmental Analysis Documents General

59. Public Concern: The Forest Service should require an environmental assessment or EIS before undertaking any significant action.

RATHER THAN ARBITRARILY PROHIBITING ROAD CONSTRUCTION

Before any action can be taken that would result in a significant environmental impact, such as the construction of a new road, an environmental assessment (EA) and if necessary an EIS, has to be done. This is the best way to manage projects on our National Forests, taking each situation on its own, rather than arbitrarily prohibiting all road construction. (Organization, Albuquerque, NM - #A8813.15169)

Moreover, at the same time the Bush administration wants to hand the fate of roadless areas to this process, it has proposed weakening the process itself. It wants to make writing an environmental impact statement optional and not required, for example. Now how in the heck is the public supposed to participate in local forest planning if the Forest Service does not provide an EIS to explain the different management options? If the administration really wants local input, it should aggressively uphold and apply the National Environmental Policy Act, instead of trying to avoid and ignore it. (Individual, Boulder, CO - #A20728.20203)

60. Public Concern: The Forest Service should require environmental assessments for roadless areas rather than EISs.

BECAUSE MANY OF THE AREAS ARE ALREADY ROADED

Since many of the areas and conditions on the land are already roaded simple EAs not EISs should be all that is necessary. Forest Supervisors need to be able to flatly state that roadless conditions do not exist, or have not existed and the areas are needed for semi-primitive motorized recreation and forest management activities. (Individual, Alturas, CA #A28581.45500)

61. Public Concern: The Forest Service should conduct an additional environmental review under the National Environmental Policy Act.

IF THE PREVIOUS REVIEW WAS INADEQUATE AS TO REQUIRE ADDITIONAL ACTION

If the prior review was so inadequate as to require additional action, the extent of which is not now known, an additional environmental review under NEPA should be required. (Individual, Chico, CA - #A17483.20203)

62. Public Concern: The Forest Service should prepare another EIS for a revised Roadless Rule.

The National Environmental Policy Act (NEPA) provides an excellent tool for local citizens and governmental officials to provide input into a considered decision on determining the need for and extent of additional “roadless” areas. NEPA requires “site-specific” analysis of the specific major federal actions. It requires that “responsible officials” prepare an adequate Environmental Impact Statement on such actions as the “Roadless Area Conservation” plan that has been proposed. Meaningful input by affected citizens and parties is a “must” for an adequate EIS. Such an EIS was not properly prepared for the rule implemented in January 2001. (Business or Association, Novato, CA - #A17652.20203)

If your roadless proposal is implemented in Alaska, you will eliminate all major uses, except one, backpacking, in a significant portion of the National Forests in Alaska. Such an action by the federal government constitutes a significant environmental impact on the human environment and must be documented in an environmental impact statement in accordance with NEPA, in fact, you are required to document the impacts of this proposal on each individual forest by completing an environmental impact statement for each forest affected by the proposal. (Individual, Eagle River, AK - #A23920.20203)

The NEPA process with scoping meetings, preparation of an EIS, circulation of the document to the public and evaluation of comments followed by decision on the best plan seems like a reasonable approach. (Individual, Las Vegas, NV - #A28178.20203)

PRIOR TO RELEASING LANDS FOR OTHER MANAGEMENT PURPOSES, AS REQUIRED BY CALIFORNIA V. BLOCK

Since the designation of some lands for roadless protection will also result in other lands being released or designated for other development usage, the draft EIS should discuss the impact and management activities expected on the released lands. This analysis is necessary to comply with the requirements of CALIFORNIA V. BLOCK, 690 F. 2d 753 (9th Cir. 1982) that an EIS is required prior to releasing lands for other management purposes. (Elected Official, Douglas County, OR - #A11811.25000)

TO FACILITATE WORKING TOGETHER WITH ALL INTERESTED PARTIES

The best way to do this would be to go through a full EIS process, and hold public meetings nationwide and allow all individuals and organizations to comment. *This has already been done, and the results are in.* Any attempt to repeat the NEPA process until the citizenry becomes so jaded with it that people cease to participate makes a mockery of NEPA and our democratic form of government. There is no reason to give states or local communities any greater weight than any other citizen in this process. Since collaborative processes by their very nature exclude large and diverse segments of the public, they should not be used to form public policy. Instead, the full NEPA process, which allows participation by **all** Americans, is the model of choice. (Individual, Laramie, WY - #A10590.10152)

THAT MEETS PAGE LIMITATIONS

The environmental document should be held to less than 150 pages as specified under Section 1502.7 Page Limits of NEPA. Including volumes of data in the text is confusing to public and makes the document unapproachable to the public. The volumes of data should be taken out of the EIS and put into separate Appendices. The EIS document should be condensed to measurable and quantitative discussions with reference to Appendices as required. The decision-making should be based on the key issues and the key measurable and quantitative impacts associated with those issues. (Organization, Helena, MT - #A13226.20203)

63. Public Concern: The Forest Service should employ the programmatic approach to EISs consistently.

The Forest Service is a multiple use agency; to not allow multiple uses on National Forest System (NFS) land should be carefully analyzed and specifically identified. If a programmatic approach and EIS works in this case, why wasn't a programmatic EIS of oil and gas leasing and potential oil and gas

development wells on NFS land used? This inconsistency in NEPA [policy] must be fully explained in the roadless EIS if we continue down this path. (Individual, Missoula, MT - #A30049.20203)

64. Public Concern: The Forest Service should consider that the Finding of No Significant Impact document, which allowed the roadless initiative to proceed, violated legal requirements for land withdrawals over 5,000 acres.

NATIONAL ENVIRONMENTAL POLICY ACT AND FEDERAL LAND POLICY AND MANAGEMENT ACT REQUIREMENTS

The Roadless Initiative was flawed since its inception. The Finding of no Significant Impact (FONSI), which allowed the Initiative to proceed violated NEPA and FLPMA requirements for land withdrawals over 5,000 acres. (Individual, Cortez, CO - #A9094.45310)

Roadless Area Conservation Rule EIS

65. Public Concern: The Forest Service should address inadequacies in the Roadless Area Conservation Rule Draft EIS.

IT FAILED TO SUBSTANTIATE STATEMENTS

In several areas of the draft EIS, the desire to return the forests to a “pre-European settlement conditions” is described. What are pre-European settlement conditions? How will the conditions be verified?

In the draft EIS, you refer to the “strong public sentiment for protecting roadless areas and the clean water, biological diversity, wildlife habitat, forest health, dispersed recreational opportunities and other public benefits they provide.” How many people does this “strong public sentiment” actually represent? (Organization, Albuquerque, NM - #A8813.10135)

IT WAS NOT SUFFICIENTLY SITE-SPECIFIC AND DID NOT CONSIDER A SUFFICIENT RANGE OF ALTERNATIVES

The Ninth Circuit federal court of appeals has held that a prior attempt at “national evaluation of roadless areas categorization was insufficiently site-specific and did not consider a sufficient range of alternatives.” Id. at 35919, citing *California v. Block*, 690 F.2d 753 (9th Cir. 1982). The Federal Register notice of July 10, 2001, for the solicitation of comments for review of the Roadless Rule, further explains the folly of the national guidance approach:

Similarly, with respect to January 12, 2001, rule, it is difficult, and perhaps infeasible to collect in a short timeframe, on a national scale, the local data needed to produce a sufficient EIS that analyzes all relevant information or that proposes an adequate range of alternatives. Moreover, within an extended timeframe, collecting and analyzing the information may unnecessarily duplicate the forest planning process.

66 Fed. Reg. 35919. COHVCO suggests that the Department of Agriculture and Forest Service heed their own advice and abrogate, in its entirety, the Roadless Rule, as a misbegotten and illegal attempt to usurp the legislative function from the Congress and a fruitless endeavor to overlay a broad national policy on a functional and working local forest planning process. (Organization, Denver, CO - #A29624.10139)

The DEIS does not abide by the National Environmental Policy Act (NEPA). The DEIS did not explore and objectively evaluate all reasonable alternatives to the proposed action. The DEIS needs to be rewritten to fully evaluate other middle ground alternatives and their economic impacts and compare them to the single alternative being proposed by the USFS. The current DEIS also predetermines the outcome of the final rule. (Business or Association, Juneau, AK - #A23080.10136)

IT FAILED TO ADEQUATELY DISCUSS ENVIRONMENTAL AND ECONOMIC IMPACTS

The DEIS was very verbose in talking anti-road philosophy and in taking a negative viewpoint about roads. But the DEIS is very lacking in not talking about any specific negative or positive environmental or economic impacts that will result in Alternative 2, 3, or 4. The DEIS fails to acknowledge those improvements in road building technology that have been developed. There are no specific economic or environmental impacts on the individual Forests or IRAs.

According to NEPA and 40 CFR 1500-08), an EIS is supposed to lay out the best estimates of specific and cumulative impact of both the detrimental and beneficial impacts of alternatives to allow the public to balance the impacts and make a scientifically based decision. But this DEIS has few specific instances of the impacts listed; many impacts are ignored, and the cause and effect analysis of the linkage of the impacts on the way the Forest Service currently builds roads is very weak.

The DEIS will not allow the public to make an informed decision. There is a saying that applies here: If we can't get the facts right, we will get the decisions wrong. The DEIS has failed to elucidate those facts. (Union, No Address - #A28881.10135)

IT FAILED TO ADDRESS MEANINGFUL INPUT BY AFFECTED CITIZENS AND PARTIES

We strongly encourage the Forest service to solicit and take serious comments made by local citizens, local, county and state government officials and others to all actions taken by the agency affecting the various forest management plans and areas of jurisdiction under their supervision. Local citizens and officials often "know best" how individual actions on Forest Service lands will affect both the local communities as well as the various resources on the land involved. (Business or Association, Novato, CA - #A17652.15111)

The National Environmental Policy Act (NEPA) provides an excellent tool for local citizens and government officials to provide input into a considered decision on determining the need for an extent of additional "roadless" areas. NEPA requires "site-specific" analysis of the specific major federal actions. It requires that "responsible officials prepare an adequate Environmental Impact Statement on such actions on the "Roadless Area Conservation" plan that has been proposed. Meaningful input by affected citizens and parties is a "must" for an adequate EIS was not properly prepared for the rule implemented in January 2001. (Business or Association, Novato, CA - #A17652.20203)

ITS UNDERLYING ANALYSIS WAS INSUFFICIENT

Our review of the Preceding EIS led us to conclude that the underlying analysis upon which these proposed rules were based was insufficient. The minerals and hazards analyses were too superficial for specific commentary. (State Agency, Cheyenne, WY - #A22609.14100)

66. Public Concern: The Forest Service should consider that the final Roadless Area Conservation Rule includes restrictions on lands outside of unroaded portions of inventoried roadless areas.**RESTRICTIONS WERE NOT INCLUDED IN THE ALTERNATIVES**

We appreciate the opportunity to provide our perspective on RAC through the advanced notice of rulemaking. We were especially disappointed that the final RAC rule included restrictions on lands outside of unroaded portions of inventoried roadless areas (IRAs) since those restrictions were not included in the alternatives offered for public comment and offer the greatest concern for continued access to intermingled state lands. This does little to build trust and the "working together" partnerships the USDA Forest Service says it is seeking. (State Agency, Saint Paul, MN - #A30025.45000)

67. Public Concern: The Forest Service should consider that the public was not given the opportunity to comment on vital aspects of the Roadless Area Conservation Rule which were added to the Final EIS, but which were not part of the Draft EIS.

The Forest Service did not give the public opportunity to comment on vital aspects of the Roadless policy that were added into the Final EIS, but not part of the initial analysis done in the Draft EIS. (Business or Association, Washington, DC - #A28689.20203)

When the initial Roadless Area Conservation Rule was announced in January 2001, I couldn't help but feel that the policy developed was a result of a top down approach dictated from Washington without the benefit of input from Americans living in close proximity to the forests managed by the U.S. Forest Service. I base this upon the fact that the FEIS was so radically different from any alternative in the DEIS that it appeared that the DEIS and review was a "smokescreen" to divert attention while the real rule was written. Reopening this rule for additional comment is an important step in remedying this serious oversight by the previous Administration. (Organization, Huntsville, AL - #A13542.10131)

68. Public Concern: The Forest Service should prepare a supplemental Draft EIS.

USDA should prepare and circulate a new or supplemental DEIS. The intent behind the new or supplemental DEIS would be to see that the public is fully informed and that all relevant data and information is contained in the DEIS. Maps and diagrams should be specific, detailed, and clear with respect to applicable boundary lines, including IRAs, proposed new roadless areas, areas affected by the Roadless Initiative, management prescriptions within national forests, permit boundaries within national forests. (Permit Holder, Mammoth Lakes, CA - #A21901.14000)

THAT QUANTIFIES MILES OF EXISTING ROADS IN INVENTORIED ROADLESS AREAS

If the agency relies upon the environmental analysis done in connection with the final rule issued January 12, 2001, [Footnote 17: 66 Fed. Reg. 3243] it must:

1) Prepare a supplement to the Final Environmental Impact Statement (EIS) which quantifies the miles of roads existing in Inventoried Roadless Areas in order to know the potential for road loss in the event that any or all of these roads require, but are denied, road reconstruction. (Organization, Chesapeake, VA - #A11804.10130)

THAT PROVIDES MAPS OF ROADLESS AREAS

Prepare a supplement to the Final EIS, which provides maps of roadless areas that indicate locations of all classified and unclassified roads lying within these roadless areas. (Organization, Chesapeake, VA - #A11804.10135)

69. Public Concern: The Forest Service should consider that data from the past 30 years of Environmental impact statements is sufficient to analyze the effects of the Roadless Area Conservation Rule.

It states that "it is difficult, and perhaps infeasible to collect in a short timeframe, on a national scale, the local data needed to produce a sufficient EIS that analyzes all relevant information or that proposes an adequate range of alternatives." The administration has 30 yrs. of data regarding EIS implications all over the country and a great deal of experience that shows that diminishing roadless areas diminishes our forests. It overtly attempts to nullify the EIS by making this statement and again opens the door to special interests. (Individual, Brookport, IL - #A17229.10152)

70. Public Concern: The Forest Service should adopt Alternative 3D.

BECAUSE IT REPRESENTS THE BEST CHARACTERIZATION OF ROADLESS AREA VALUES AND MANAGEMENT PLANNING

I supported the roadless area conservation proposal and feel that the Prohibition Alternative 3, including stewardship logging and fuel removal and Procedural Alternative D most closely fit my idea of what

roadless areas should be and what the procedure should be for planning at the forest level. Although not as high a concern from the horse use point of view, but because of hunting, fishing and wilderness values, I supported Alternative T3 for the Tongass National Forest. (Individual, Wauconda, WA - #A5442.10150)

71. Public Concern: The Forest Service should adopt Alternative 4D.

I support strengthened versions of alternatives 4 (including the Tongass National Forest) and D to prohibit all destructive activities in all roadless areas larger than 1,000 acres. (Individual, Portland, OR - #A17383.45320)

72. Public Concern: The Forest Service should adopt Alternative T4.

I believe if you would review a summary of the combined effects not addressed in the EIS for alternative T4 you would conclude it is the least impacting and again could still be reversible in the long term. (Individual, North Little Rock, AR - #A814.10161)

WHICH EMPHASIZES FRAGILE ECOSYSTEM PROTECTION OVER LOCALLY CONTROLLED DEVELOPMENT

I take exception, however, to your preferred alternative regarding the Tongass National Forest alternative. I would request that you adopt alternative T4 which emphasizes fragile ecosystem protection over local control development. This would provide a form of population control in an environmentally sensitive area. I also feel that local control will promote oil development regardless of the other elements of the equation. (Individual, North Little Rock, AR - #A814.45623)

Interim Direction

This section includes two subsections: Interim Direction General and The Interim Directive.

Interim Direction General

Summary

Some respondents suggest that the Forest Service establish interim direction for roadless area management for various reasons. One reason given is the length of time between Forest Plan Revision, 4-6 years and the uncertainty of the Roadless Rule status. These respondents believe there should be guidance during this time period or no work will be done on the ground. There are other individuals who ask that direction goes further than the ten questions in the ANPR and list items such as; all lands originally identified as roadless should be given full interim protection plus progress should be made on identifying new areas.

Some say interim direction should be established for national forests which are revising or have recently revised their forest plans; and some that it should be established to protect areas that cannot be actively managed during the current planning cycle or for smaller areas in forests through project-by-project analysis. Others assert that it should be established in collaboration with other agencies and affected users. Some specifically suggest that it should be established for mining.

On a similar note, respondents also suggest establishing a temporary moratorium on activities in roadless areas—for at least 50 years; for development projects that are inconsistent with the Rule; until litigation has been resolved; until the entire maintenance and reconstruction backlog is eliminated; until a new management policy is developed; or until the Agency determines what type of forestry should be practiced.

Finally, some respondents urge the Forest Service to clarify that the Rule is not now in effect and that roadless areas will continue to be managed according to already existing procedures and classifications.

73. Public Concern: The Forest Service should establish interim direction for roadless area management.

Unfortunately, forest management planning can often take 4-6 years to complete. While this time frame can be managed in some circumstances, the specter of the Roadless Area Rule (as of January 12, 2001) makes this completely unworkable. The Forest Service must decide and clearly articulate what is expected during the interim period between the flawed Roadless Area Proposal and the amended rule. The most logical outcome is that the status quo is preserved until the new rulemaking can be completed. Areas that were previously designated as inventoried roadless areas that allow road construction and reconstruction, should continue to be managed in that fashion. The Forest Service has no basis on which to pretend that the enjoined rule has been implemented. There areas should continue to be managed in the same fashion as they were prior to the January 12, 2001 rule—local decisions made on a case-by-case basis. (Business, Wright, KY - #A23085.12460)

Should the Forest Service still deem it necessary to reopen discussion of the Roadless Rule, the following issues and concerns should be addressed along with the 10 questions in the ANPR.

All the lands originally identified should be given full interim protection and the process for identifying additional areas should be implemented, until the process is complete. (Business, Spokane, WA - #A22047.12400)

TO ADDRESS ROADLESS AREA MANAGEMENT FOR NATIONAL FORESTS WHICH ARE REVISING OR HAVE RECENTLY REVISED THEIR FOREST PLANS UNDER THE 1982 PLANNING REGULATIONS

Some Forests such as the five Southern Appalachian Forests are continuing the revision of their plans under the 1982 planning regulations. These currently have no direction regarding delineation of unroaded areas or the development of appropriate management direction for them in the planning process now underway. We urge you to provide interim direction to address this situation. (Civic Group, Roanoke, VA - #A1713.45000)

The Forest Service is currently moving forward with timber sales and oil and gas leases in roadless areas. There is a long list of pending timber sales and oil and gas leases for roadless areas in Colorado and Wyoming that will likely proceed if the Roadless Rule is not implemented—a stark illustration of the need for a national rule and the inadequacy of depending on forest-by-forest planning to protect roadless areas. Furthermore, we note that, in the interim while the fate of the Roadless Rule is being decided, the three Colorado forests with recently revised plans (i.e., Routt, Rio Grande and Arapaho-Roosevelt NFs) are not even covered by Forest Service Chief Dale Bosworth's August 22nd directive to regional forest managers that would, at the very least, afford protection for roadless areas during this 60-day comment period. (Organization, Denver, CO - #A21367.12440)

TO PROTECT AREAS THAT CANNOT BE ACTIVELY MANAGED DURING THE CURRENT PLANNING CYCLE

Recognize that there are areas for fiscal or other reasons, cannot be actively managed during the current planning cycle, protect them and leave their management to future planning. (Individual, Fairfield Glade, TN - #A325.25230)

FOR SMALLER AREAS IN FORESTS THROUGH PROJECT-BY-PROJECT ANALYSIS

We should . . . give interim protection to the smaller acreages in forests through project by project analysis as a transition to the forest planning process. (Individual, Bozeman, MT - #A31208.12450)

IN COLLABORATION WITH OTHER AGENCIES AND AFFECTED USERS

Interim protections for roadless areas could be put in place while local forestland and resource management plans are updated or amended. Such amendments should be the product of comprehensive collaborative planning with local and state agencies and other affected resource users. Assessments of roadless areas could be part of collaborative wilderness reviews that are conducted in association with the plan amendments. In some cases, better management and maintenance of existing roads, off-highway vehicle management and other measures could protect important values without a wilderness designation. (State Agency, Carson City, NV - #A17669.12400)

74. Public Concern: The Forest Service should establish interim direction for mining.

IN GUNNISON COUNTY

Discussion of these areas in the Forest Management Planning process is certainly appropriate. Unfortunately, this planning process can take four to six years. In many instances this time frame may be satisfactory, but in the case of the coal mines in Gunnison County the enjoined rule is already impacting the daily operations of the coal mines. There also needs to be a more immediate solution to this problem between now and the time the revised forest management plan is completed. (Elected Official, Gunnison County, CO - #A22061.12400)

75. Public Concern: The Forest Service should establish a temporary moratorium on activities in roadless areas.

I also urge the agency to immediately halt all development projects in roadless areas that are inconsistent with the rule. Despite President Bush's pledge to uphold the roadless policy, the Administration

mustered no defense of the plan when it was recently challenged in court. To make matters worse, the Forest Service is moving forward with destructive logging projects in some of the nation's most pristine forests, including Alaska, Oregon, California, and Idaho. For example, logging projects on the Six Rivers National Forest in northern California and on the Tongass National Forest in Alaska threaten roadless areas, imperiled fish and wildlife, and scenic and recreational values. It is fair to ask then, why as the Service asks for more input and as the President expresses his commitment to conserving wild forests—the agency is preparing and implementing logging projects in roadless areas? (Individual, Napa, CA - #A1037.12440)

FOR AT LEAST 50 YEARS

It is my professional opinion based upon my career as a logging engineer/forester with the USFS in Alaska, Montana and Idaho that the remaining biologically productive unaltered areas throughout the National Forest System, especially the Tongass should have a development moratorium of at least fifty years, the Roadless Rule of January 2001 best accomplishes this. (Individual, Sitka, AK - #A1056.12440)

FOR DEVELOPMENT PROJECTS THAT ARE INCONSISTENT WITH THE ROADLESS AREA CONSERVATION RULE

I write to support the Forest Service Roadless Area Conservation Rule and to respond to your intentions to amend this balanced approach to forest conservation. I urge the agency to immediately halt all development projects in roadless areas that are inconsistent with the rule. (Individual, Buckley, WA - #A5962.10150)

WHILE THE MATTER IS BEING LITIGATED

We believe this ANPR is a waste of time and taxpayers' precious resources. The health of our national forests and the will of the American populace would be better served if the FS recommends the following with respect to the IRAS:

Declare a complete and strict moratorium on further road building and material extraction like logging, grazing and mining, while this matter is being fought in our judicial system. While these very words are being written, new roads are being laid on the IRAS, and mature old growth trees are being felled in Alaska, California, Oregon and Utah. The protection and management of "Roadless values" cannot happen in this scenario. (Organization, Seattle, WA - #A11782.12440)

UNTIL THE ENTIRE MAINTENANCE AND RECONSTRUCTION BACKLOG IS ELIMINATED

Other Concerns. On December 17, 1999, I commented by e-mail on National Forest System Roadless Areas. I suggested that the Forest Service establish a temporary moratorium (rather than complete prohibition) on activities within the current roadless areas until such time that the Forest Service completely eliminates its entire maintenance and reconstruction backlog. In essence, this would result in a total rehabilitation of all degraded lands including erosion control, weed control and reforestation. It would put pressure on the Forest Service and Congress to provide funds to accomplish this enormous job. Then, and only then, would the Forest Service be permitted to make carefully planned entries through the Forest Planning process into the present roadless areas.

I still think this is a reasonable approach and will again offer it as a suggestion to improve environmental conditions on all National Forest lands. (Individual, Salmon, ID - #A8830.12400)

UNTIL A NEW MANAGEMENT POLICY IS DEVELOPED

I would like the Forest Service to immediately call for a moratorium on all commercial exploitation and development of roadless areas in our National Forests. This moratorium should be in place until we can develop a new policy on what constitutes responsible forestry. If I could have my wish, I would have that moratorium applied to all National Forest lands! (Individual, Washington, DC - #A27348.12440)

UNTIL THE AGENCY DETERMINES WHAT TYPE OF FORESTRY SHOULD BE PRACTICED

The Roadless Initiative presents us with a unique opportunity to address the central question at the heart of all the disputes that have mired the Forest Service in the past: What type of forestry should we practice? This question can initially be posed in the context of the roadless areas, but can and should be expanded to the entire National Forest system. Until we do that, we should act according to the

precautionary principle and institute an immediate moratorium. (Individual, Washington, DC - #A27348.12440)

76. Public Concern: The Forest Service should clarify that the Roadless Area Conservation Rule is not in effect and that the lands will be managed according to already existing procedures and classifications.

Clarify that during this new rulemaking period that the enjoined Roadless Area Rule (January 12, 2001) is not in effect and that the lands will be managed according to procedures and classifications in effect prior to that time. (Business, Wright, WY - #A23085.45500)

The Interim Directive

Summary

According to some respondents, the Forest Service should make the Interim Directive effective until forest plans are revised; some say it should be strengthened to prevent any further loss of the roadless area base. One group asserts that it would essentially return land management to its prior state by leaving the fate of roadless areas to the forest planning process. On the other hand, one business states that it is essentially an implementation of the Roadless Area Conservation Rule, and thus violates the district court ruling.

77. Public Concern: The Forest Service should make the Interim Directive permanent.

UNTIL FOREST PLANS ARE REVISED

We urge you to make permanent the interim directive dated June 6, 2001. This directive clarifies the scope of local authority to make decisions in inventoried roadless areas until Forest plans are revised. (Civic Group, Roanoke, VA - #A1713.12400)

78. Public Concern: The Forest Service should strengthen existing interim protection of roadless areas.

TO PREVENT ANY FURTHER LOSS OF THE ROADLESS AREA BASE

Our National Forest Roadless Resource is a precious one that continues to grow smaller as development activities disqualify areas from the roadless inventory. Only under the most exceptional circumstances should development activities be allowed in our roadless areas and only under the authority of the Chief. The interim protections now in place are insufficient and full of exceptions. They should be strengthened. As the U.S.F.S. takes more time to come to grips with the roadless issue, it is imperative that the finite roadless base be undiminished. This should include all National Forests including the Tongass and regardless of the status of management plans, revisions or supplements. (Organization, Cave Junction, OR - #A17235.12450)

BY ADOPTING THE ROADLESS AREA CONSERVATION RULE UNTIL FEDERAL OFFICERS ARE CONVINCED OF ITS NEED

Please push for the adoption of the Roadless Rule! At least for some interim period until federal officers are convinced of absolute need! (Individual, Meeker, CO - #A6184.12400)

79. Public Concern: The Forest Service should consider that the Interim Directive would return land management to its prior state.

BY LEAVING THE FATE OF ROADLESS AREAS TO THE FOREST PLANNING PROCESS

We are troubled by the Interim Directive on the Roadless Rule, which essentially returns us to the situation that existed prior to the creation of the Roadless Rule, that is, with the fate of roadless areas being left to the forest planning process. (Organization, Washington, DC - #A18031.12400)

80. Public Concern: The Forest Service should recognize that the interim direction outlined in the June 7, 2001, memo to staff is an implementation of the Roadless Area Conservation Rule.

WHICH IS A VIOLATION OF THE DISTRICT COURT RULING

I have recently reviewed a copy of your letter of June 7, 2001 to the Regional Foresters, Station directors, Area Directors, and WO Staff. This letter, in effect stops all planned actions within existing Inventoried Roadless Areas by reserving to yourself the decision authority for timber harvest and road construction.

I, and my clients, are interested in your response to the following comments . . . :

Although you could argue that your action does not, in effect, stop activities within inventoried areas, it is clear to us that in the real world of Forest Service operations this action has the same effect as the Roadless Area Conservation Rule of May 12, 2001. Why shouldn't we consider this an implementation action of the above Rule which is a violation of the District Court Ruling? (Business, Colville, WA - #A2593.12400)

Other Policy Concerns

This section includes two subsections: Other Policy Concerns General and Other Policy Concerns – Specific Policies.

Other Policy Concerns General

Summary

Foremost among general policy comments is the comment that the Forest Service should evaluate the cumulative effects of multiple management proposals and policies. Suggested proposals and policies to evaluate include the Roadless Area Conservation Rule, the Planning Regulations, and the Roads Policy; and other withdrawals of National Forest System lands; multiple use mandates, and the fire plan, etc. Likewise, respondents ask the Forest Service to address related policies and regulations concurrently, in order to understand the cumulative impacts of these proposals. They believe a piecemeal approach will create additional confusion and will never get to the heart of the issues associated with the Roadless Actions. One individual requests that the Forest Service withdraw the Roadless Initiative, the revised Transportation Plan and the revised Forest Planning Rules and work towards a “fair use plan”. In particular, people wonder how the roadless rule and the topic of unroaded areas will be integrated into the Planning Regulations and the Forest Service Manual and Handbook.

81. Public Concern: The Forest Service should evaluate the cumulative effects of multiple management proposals.

THE ROADLESS AREA CONSERVATION RULE, THE PLANNING REGULATIONS, AND THE ROADS POLICY

The Forest Service must address the cumulative impact of three related, yet uncoordinated rulemakings, regarding Planning, Inventoried Roadless Area Management, and the Forest Transportation System. (Individual, Des Moines, IA - #A12587.16100)

THE ROADLESS AREA CONSERVATION RULE AND OTHER WITHDRAWALS OF NATIONAL FOREST SYSTEM LANDS

The DEIS fails to adequately consider cumulative impacts. The CEQ regulations specify that direct, indirect and cumulative impacts, both adverse and beneficial, must be considered in a NEPA analysis. The USFS has not considered the cumulative impacts of the various USFS pending environmental initiatives. There is no recognition at all of the cumulative impact of the proposed Roadless Areas program with other withdrawals of National Forest Lands including those for wilderness areas, wild and scenic river areas, Forest Service natural areas, and others. (Business or Association, Juneau, AK - #A23080.10141)

THE ROADLESS AREA CONSERVATION RULE, MULTIPLE USE MANDATES, AND THE FIRE PLAN, ETC.

Over-arching policies such as multiple use, the fire plan, etc. must be clearly described and their interrelationships and mandates impacting the roadless proposal must be clearly stated. This will permit an evaluation by interested parties as to the strength of the justifications used to rationalize local and regional decisions with national policies. (Business or Association, Sacramento, CA - #A15787.16000)

82. Public Concern: The Forest Service should concurrently address related policies and regulations.

THE ROADLESS AREA CONSERVATION RULE, PLANNING REGULATIONS, AND ROAD MANAGEMENT POLICIES

The United States Forest Service (USFS) has issued three Interim Directives related to National Forest management and the transportation system. The USFS has now requested comments regarding those interim directives (*see* Volume 66, Number 163, pp. 44111-44114; and Volume 66, Number 165, pp. 44590-44591). The first two interim directives related to “approval of activities in roadless areas—one to Forest Service Manual (FSM) 2400 Chapter Zero Code, which covers timber harvest decisions, and another to FSM Chapter 7710, which governs decisions on road construction and reconstruction in roadless areas [the Transportation Policy].” 66 F.R. 163, 44112. The third interim directive relates to the Road Management Rule and portions of the Forest Service Manual associated with forest-scale roads analyses. *See* 66 F.R. 165, 44590. The interim directives and the ten questions . . . are interrelated and interdependent. For those reasons, the State of Wyoming believes that all of these matters and issues should be addressed concurrently using one comprehensive process that will allow the States and the impacted parties to fully assess the cumulative impact of the Roadless initiative, Planning Regulations, Transportation Policy, and Road Management Rule. A piecemeal approach will only create additional confusion and will never get to the heart of the issues associated with the Roadless Actions. (State Agency, Cheyenne, WY - #A22608.10120)

83. Public Concern: The Forest Service should withdraw the Roadless Area Conservation Rule, the revised Roads Policy, and the revised Planning Regulations.

Please withdraw the Roadless Initiative, the revised Transportation Plan and the revised Forest Planning Rules and work with all involved for a fair use plan. (Individual, Buckley, WA - #A6702.10130)

84. Public Concern: The Forest Service should clarify how the topic of unroaded areas will be integrated into the Planning Regulations and the Forest Service Manual and Handbook.

In initial scoping for the roadless conservation rule, a key component of the proposed rule was identification and development of appropriate management direction of unroaded areas smaller than inventoried roadless areas. This component has been dropped from the roadless conservation rule and placed in the planning process. Brief note of unroaded areas was made in the 2000 revision of the planning regulations. However, these regulations are currently being revised further and it is unclear how the topic of unroaded areas will be integrated into these planning regulations and the implementing language in the Forest Service Manual and Handbook. We advocate attention to the delineation of and appropriate management direction for unroaded areas in the revised planning process. (Civic Group, Roanoke, VA - #A1713.45000)

Other Policy and Project Concerns – Specific Policies

Summary

Some respondents suggest that the Forest Service should review its own manual. According to one, roadless area management is already laid out in the Forest Service Manual, section 7703.1. Another respondent suggests the Forest Service coordinate review of the Roadless Area Conservation Rule with review of the Forest Service Manual 7710 revision because they have complementary direction.

The other specific policy most often mentioned is the Roads Policy. Some simply ask that the Forest Service support the Roads Policy. Several respondents, however, suggest the Forest

Service address the cumulative effects of the Roads Policy in combination with the Roadless Rule. Likewise, one individual suggests the Agency inform the public regarding the impact of the Roads Policy on management of inventoried roadless areas. Others assert that the Forest Service should coordinate the Roads Policy with the Rule, and that roadless area management should be decided only after completion of the Roads analysis. These respondent is would be helpful to have a clear definition of roads and road policies before revisiting the Roadless Inventory issue.

Forest Service Manual

85. Public Concern: The Forest Service should consult the 7703.1 Forest Service Manual for roadless area management direction.

Roadless area management direction is specifically laid out for the FS in Forest Service Manual 7703.1, "Make road construction and reconstruction decisions locally, with public involvement and based on thorough analysis considering the latest scientific information on the adverse effects of roads on ecosystems." (State Agency, Las Cruces, NM - #A18061.20500)

86. Public Concern: The Forest Service should coordinate review of the Roadless Area Conservation Rule with review of the Forest Service Manual 7710 revision.

BECAUSE THEY HAVE COMPLEMENTARY DIRECTION

Your review of the roadless rule should coincide with reexamination of the manual policy governing road management (FSM 7710), which was recently put in place. This policy reversed or seriously constrained the management decisions in many forest plans and their extensive public involvement. The roadless rule and the FSM 7710 revision have complementary direction.

Changing only one of them will result in ambiguous direction. The road policy, which precludes all road construction and most road maintenance in uninventoried roadless areas, irrespective of size or shape, preempts any land management decision in forest plans that would require constructing and maintaining a road system in these areas. The road policy effectively would drive the land management decisions—a perversion not only of NFMA but also of fundamental management principles. (Individual, Lawrenceville, GA - #A6196.16000)

Quincy Library Group

87. Public Concern: The Forest Service should support the Quincy Library Group legislation.

Though the QLG land base classification will sunset with the term of the pilot project, considerable acreage of productive forest lands are not being rehabilitated or reforested. The ultimate resolution to the classification of the various unroaded areas will hopefully be resolved through local participation in the land management revision process. The QLG legislation directs the three forests to commence the appropriate forest revisions within two years of the signing of the Act and I urge your support of that effort. If the national environmental crisis industry desires to dictate the management policies for a particular parcel of land in one of the affected eight counties, then let them come to the community meetings and express their opinions like the rest of us. (Professional Society, Chico, CA - #A29719.16100)

Recreation Agenda

88. Public Concern: The Forest Service should recognize that the Roadless Area Conservation Rule conforms to the Recreation Agenda.

The roadless rule also conforms to the tenets outlined in the Forest Service's Recreation Agenda, released less than one year ago. The Agenda highlights the need to maintain the integrity of the landscape setting and protect natural character for ecological sustainability and the recreation experience. (Organization, Silver Spring, MD - #A13495.16000)

Roads Policy

89. Public Concern: The Forest Service should support the Roads Policy.

I am writing to express my full support for the three primary actions identified in the proposed road management strategy. This type of management approach will allow the Forest Service to retire the most environmentally damaging roads and at the same time allow the public better access to our national forests with better constructed and maintained roads. (Individual, Mount Shasta, CA - #A8360.10157)

90. Public Concern: The Forest Service should consider the cumulative effects of the Roads Policy in combination with the Roadless Area Conservation Rule.

When combined with the Forest Service transportation policy that limits the amount of roads in the national forests, this rule creates a minimalist road system that cannot adequately respond to changing transportation needs. (Individual, Eagle, ID - #A17754.16110)

When this initiative is combined with the new transportation policy, it creates a permanently shrunken road system at a time when Forest Service data indicates the most popular use on service land is recreational driving (and it's increasing rapidly). (Business or Association, Alturas, CA - #A17770.30200)

91. Public Concern: The Forest Service should inform the public regarding the impact of the Roads Policy on management of inventoried roadless areas.

It is important for the public to be given information by the agency on the impact that conformance with the Roads Policy will have on management decisions made for Inventoried Roadless Areas. (Individual, Moab, UT - #A15790.14120)

92. Public Concern: The Forest Service should coordinate the Roads Policy with the Roadless Area Conservation Rule.

Clearwater National Forest:

North Fork Country

Closure of a few, unnecessary dirt roads could unite the large roadless areas in the North Fork into one whole of over 1,000,000 acres. These areas should be prioritized for obliteration as the roadless policy and the roads policy work together at restoring the destruction that has taken place on our national forests. (Organization, Moscow, ID - #A22654.16110)

It is believed that the proposed Roads Policy will have an impact on the availability of recreation opportunities, but is unclear how the roads and roadless policies will interact. In reevaluating the Roadless Area Conservation Rule the Forest Service must consider the context of other recent initiatives such as the Roads Policy. The Forest Service should present an overview that explains the interaction of the separate regulatory acts. (Individual, Victoria, KS - #A2874.16110)

93. Public Concern: The Forest Service should decide roadless area management only after completion of the Roads Policy.

The primary characteristic that should be evaluated is whether or not roads exist in the so-called roadless areas. It is inconceivable that the roadless area initiative would go forward when the definition and standards for roads, road construction and maintenance are being reviewed. The Road Rules will not even be out for public review until 2002. How can one determine what constitutes a roadless area and propose management of roadless areas when the definition and rules for roads has not been finalized. The first step should be to complete the Road Rules and then revisit the roadless areas to determine whether the definition still fits. (Organization, Murphy, ID - #A18024.45200)

The entire inventoried roadless area should be shelved and reviewed only when the Road Rules have been completed and a determination can be made as to whether the inventoried area even conforms to the definitions to be developed in the Road Rule. . . . The roadless inventory is now more than 20 years old. The USFS is currently in the process of developing new rules for roads including definitions, construction standards and reconstruction standards etc. The process is operating backwards by trying to establish designated roadless areas and determine the management of those areas without first completing the Road Rules. The USFS should complete the Road Rules, consider public input as to road definitions and then re-visit the roadless areas to determine their status with regard to the new definitions. If the roadless areas are finalized with specific dictated management schemes, it will be meaningless for the public to participate in the Road Rules. Alternatively, the Road Rules may change to the point that current roadless areas would no longer qualify but would already be anchored to a roadless management scheme. (Organization, Murphy, ID - #A18024.14421)

Sierra Nevada Framework

94. Public Concern: The Forest Service should support the Sierra Nevada Framework decision.

As elected officials concerned about the Sierra Nevada region from various counties throughout California, we are writing to urge your continued support of the Sierra Nevada Framework Decision. The national forests are an important part of our public lands legacy that should be managed wisely for the benefit of this and future generations.

We believe that the recent Sierra Nevada Framework provides a comprehensive, scientifically sound and balanced approach to addressing the region's priorities. Our constituents, both urban and rural, rely on national forests for a number of benefits including clean water and air, wildlife, plants, recreation, community safety, sustainable timber production, and the region's high quality of life.

Due to past forest management practices, there are thousands of acres in the Sierra Nevada that now have forest conditions that heighten the risk of catastrophic wild fires. We support the Framework's strategic focus on reducing the small trees, brush, and ground fuels that contribute to wild fire risk.

We also support the Framework's protection of tourism and recreation which are the main economic engines of the Sierra Nevada. Over a ten-year frame, the Framework Decision will support more than 137,000 jobs based upon recreation spending. The amount of wages paid in recreation-related employment is estimated at \$2.66 billion (in 1997 dollars).

For the first time, the Framework establishes a comprehensive aquatic and riparian habitat conservation strategy which includes riparian buffer zones and special protection for critical areas near streams, meadows and lakes. We are very interested in maintaining a healthy ecosystem to support wildlife and to help ensure a continuing supply of clean water for the many beneficial uses for the people of California.

We strongly urge you to support the Sierra Nevada Framework as it stands. Revision of this decision could diminish the forests, watersheds and Sierra communities that rely on them. It is time to move away from past conflict and embrace the Forest Service decision as a positive step forward for all Californians. (Elected Official, Placer County, CA - #A12069.16000)

Other

95. Public Concern: The Forest Service should incorporate rulemaking 65 FR 11680m 11682 into future planning efforts.

WITH RESPECT TO THE REQUIREMENT TO CONSULT WITH AFFECTED STATE, TRIBAL, AND LOCAL GOVERNMENTS IN IDENTIFYING TRANSPORTATION NEEDS

The Proposed Rules failed to incorporate the requirement for “consultation with affected State, tribal, and local governments in identifying transportation needs” as set forth in the companion rulemaking (65 FR 11680m 11682). We suggest that in any future planning efforts that this consulting provision be closely followed. (Elected Official, Douglas County, OR - #A11811.15000)

96. Public Concern: The Forest Service should manage the forests with the pre-1994 direction.

The only acceptable choice for your multiple-choice initiative is Alternative A. Do Nothing. Please with draw your environmental takeover rule and get back to managing the Federal Forests and Forestland with the pre 1994 policy. (Individual, Salmon, ID - #A22536.10130)

Appeals and Litigation

This section includes two subsections: Appeals and Litigation General and Appeals and Litigation – Specific Cases.

Appeals and Litigation General

Summary

Respondents assert that endless appeals are interfering with forest management and preventing the implementation of plans which were themselves years in the making. People suggest that time limitations be imposed on the appeals process and that litigants be required to submit to arbitration before their cases can proceed to court. Some suggest that the Forest Service should not make settlement agreements with groups who bring ‘citizen lawsuits’ to curtail activities. One individual suggests employing a land-use clearing house, an ombudsman to sort out the issues before it goes to court.

97. Public Concern: The appeals process should be limited.

District Rangers and Forest Service Supervisors must be empowered to make decisions affecting National Forests. There should be one level of administrative appeal to decisions and no appeal should go higher than the Regional Forester level. Administrative appeals should be addressed promptly to avoid unnecessary delays. Appeals taken to the judicial level should be bonded and the appellant should be required to pay financial damages that result from frivolous appeals. Financial damages should include administrative costs by the federal government and costs incurred by third parties affected by the appeal. (Governor, State of South Dakota, - #A23354.12125)

REGARDING IMPLEMENTATION OF NEW POLICIES AT THE LOCAL LEVEL

The current processes of redress of Forest Service decisions (appeals and litigation) needs a major overhaul or special provisions made for policy related to roadless areas (Q10). I suspect that any policy changes that this process results in that are different from the protections provided by the last administration’s proposal will be vigorously challenged through the legal system. This is acceptable and necessary on a national scale. Endless appeals and litigation of every decision to implement new policy on the local level by extremists on either side of the issue needs to have limits. The gridlock over activities we are experiencing today and the repeated hardships imposed on rural western communities (near to where most of the “roadless areas” are located) by current administrative/legal review processes is not beneficial to the people of this nation. (Individual, Challis, ID - #A28346.10139)

REQUIRE LITIGANTS TO SUBMIT TO ARBITRATION BEFORE THEIR CASES CAN PROCEED TO COURT

I get really frustrated by law suits that are meant to tie up money, land and personal over picky little things.

I think that such suits should go to arbitration first before they end up in court. Let a judge determine if the case merits a trial, leave room for an appeal, then let it go to court if it makes it that far.

Too many special interest groups are abusing the system to get what they want at great cost to public interests. (Individual, Centerfield, UT - #A27645.10139)

RESTRICT LITIGATION TO ENTIRE MANAGEMENT PLANS, NOT INDIVIDUAL SALES OR ASPECTS THEREOF

Lawsuits by environmental groups need to be curtailed or contained somehow. When every sale or 80% of all sales are taken to court, it is an abuse of the power to litigate. I suggest that the management plan for the whole be challengeable, but not each individual sale or aspect. Perhaps have the forest service present a year’s plan as a whole. If they wanted to challenge the proposed sales they would have to show the whole plan to be flawed, not the pieces, and not just flawed possibly, but hard science to show that

the plan would cause significant irreparable harm to the forest. The possibility of harm should not be cause to prevent public use of the resource. (Individual, Boseman, MT - #A59.20000)

98. Public Concern: Time limitations should be imposed on litigation.

Limitation should be placed on the time required to settle a lawsuit, this may require an act of Congress to establish or pay local judges to adjudicate matters on a rapid timetable. Taxpayers should be freed from payment for any lawsuit and the cost associated therefrom should be borne by the parties involved, i.e., if the forest Service is being sued, and they lose the lawsuit, the cost thereof awarded by the judge should come from the Forest Service already approved budget and lawsuits should not be part of an approved budget. (Individual, Kalispell, MT - #A3380.12000)

99. Public Concern: The Forest Service should not allow litigation to sidetrack the legitimate forest planning process as defined by the National Forest Management Act.

The appropriate role of forest planning in resolving the roadless issue was well defined in settlements of RARE II lawsuits. Unfortunately, attempts to resolve the issue through forest planning as defined by the National Forest Management Act of 1976 have failed due to the appeal process and lawsuits. The forest planning process should be allowed to work as intended by the 1976 act. IWIT has invested considerable effort in the forest planning process only to see forest plans not implemented because of the effort of outside groups. (Business or Association, Moscow, ID - #A5428.20201)

100. Public Concern: The Forest Service should not make settlement agreements with groups who bring 'citizen lawsuits' to curtail activities.

On the Shawnee NF in Southern Illinois, the residents were dependent on recreation and tourism using trails into the Shawnee. Alleging "trail erosion" conservation groups were successful in closing trails into half of the areas used by customers and clients of the local residents. Grapefruit-sized stones were placed on the horse-trails to make sure horses could [not] use them. Even hiking was prohibited. This sort of closure is totally inappropriate. They nearly destroyed the tourist-dependent businesses. In "citizens lawsuits" to close national forests, the FS should not make "settlement agreements" with those groups. They should force the issue into higher courts on the basis of Acts of Congress. Congress never intended for these abuses to take place by closing the national forests to public use. (Organization, Three Rivers, CA - #A28739.90410)

101. Public Concern: The Forest Service should develop a land-use clearinghouse to sort out issues before litigation.

The Departments of Agriculture and Interior should not have to go to court to defend every decision they make. You guys are overworked and the courts are overworked. What this country needs is a land-use clearing house, an ombudsman, someone or something, to sort out the issues before it goes to court. And those decisions should be based on a realistic, non-political point of view that prioritizes, and re-prioritizes, the current needs of the country. (Individual, No Address - #A8879.15160)

102. Public Concern: The Forest Service should not allow Environmental Protection Agency data in court.

AS IT POINTS TO A LACK OF DUE PROCESS

In no way should EPA studies be allowed as data in court, this points to a lack of due process. We need to allow the people of the United States of America the chance to life, liberty and happiness. Please allow the citizens to make these joint decisions by working with the Forest Service and BLM. (Individual, Sandy, UT - #A6747.15110)

Appeals and Litigation – Specific Cases

Summary

A number of respondents discuss appeals and litigation with specific reference to the Roadless Area Conservation Rule. According to some, litigation frequently arises because of polarization of the public regarding cumulative effects and access issues. These respondents conclude that implementation of a national policy would cut down on both litigation and appeals during local decisionmaking.

One individual asserts that any attempt to modify the Rule through settlement of litigation would be illegal. Others suggest that the only reason the Rule is tied up in litigation now is because the Forest Service did not pay sufficient heed to public concerns expressed during the previous comment periods. These people say the Agency should delay any decision on the Rule until judicial review so that the impacts of proposed management can be appropriately analyzed.

Some respondents assert that the Forest Service should meet the stated objectives presented in its review of the Roadless Area Conservation Rule to the U.S. District Court. Additionally, others call on the Forest Service to address specific issues related to the legal challenge to the Rule brought by North Dakota interests.

Roadless Area Conservation Rule

103. Public Concern: The Forest Service should implement the existing Roadless Area Conservation Rule.

TO ELIMINATE PROLONGED AND COSTLY LEGAL BATTLES

The implementation of the existing rule will eliminate prolonged and costly legal battles that have been the history of the “local decision process.” The local decision making process usually results in battles between extractive industries and environmentalists on issues of roads and cumulative impacts. (Individual, Juneau, AK - #A11676.10159)

The Roadless Rule deals with specific issues that the Forest Service determined were inadequately considered and handled in forest-specific planning processes for many years. As written, it takes a targeted, balanced, and fiscally responsible approach to these issues. It addresses only two management categories, logging and roads (and only in areas long since identified and mapped by individual national forests, as corrected during the Rule’s public comment period). These are activities that the Forest Service found had costs—both ecological and economic—and cumulative national-level significance that were not reflected in local planning processes. The essence of the Rule, and its promise to lead your agency into a more responsible and less contentious future, lies in barring most logging and road-building in previously inventoried roadless areas, and in foreclosing reconsideration of that decision at the local level. (Organization, Olympia, WA - #A20145.10111)

104. Public Concern: The Forest Service should recognize that any attempt to modify the Roadless Area Conservation Rule through settlement of litigation would be illegal.

Merely being in litigation on the rule in a Federal Courtroom (far removed from public scrutiny) does not relieve the administration of its duties to the Congress and the public they represent. It is my firm belief that any attempt to modify the rule through settlement of litigation would be illegal under current law and certainly a breach of public trust in their elected officials. (Individual, Broomfield, CO - #A211.10159)

105. Public Concern: The Forest Service should pay greater heed to public comment.

TO AVOID LITIGATION

The material enclosed with this letter is on account of Forest Service Roadless Area Conservation Plan Final EIS volume 3 response, p. 2, #5 - *“The public submitted a large number of suggestions about national forest and grassland management in general, rather than roadless area conservation in specific In most cases, Volume 3 explained that these were outside the scope of the analysis.”* [emphasis mine] This attitude forced states and organizations into litigation. The USFS basically told those Americans, “So what? Sue us!”—and they did. Such attitude gives rise to question the reasons for over 40 firefighters killed over the last two fire seasons.

Nonetheless, as you state on page four of your advance notice of proposed rulemaking, request for comment (36 CFR Parts 219 and 294), “Eight lawsuits, involving seven states in six judicial districts of four federal circuits have been filed against the January 12, 2001, rule.” Had the former Chief and down-line Washington D.C. officials in CEQ and USFS environmental who collaborated together in ignoring comments pertaining to the resultant lawsuits reviewed the comments and questions of the day equally, you would not now be wasting taxpayer dollars pleasing the courts. (Individual, Rock Springs, WY - #A15658.10139)

106. Public Concern: The Forest Service should delay any decision on the Roadless Area Conservation Rule until judicial review.

It would be inefficient, and may not be in the public interest, for the Forest Service to proceed with any rulemaking proposal that tinkers at the margins with the January 2001 roadless area rules, (e.g., by transforming them from permanent rules into rules which govern only until a revised forest plan has been issued) before the legal constraints on nationwide roadless area rules are resolved in the roadless area cases. If the Forest Service initiates rulemaking now, the agency’s NEPA, NFMA, and Regulatory Flexibility Act (RFA) compliance documents would likely assume that the 2001 roadless area rules are in effect under the “no action” alternative, and would compare the incremental impacts of the new proposal to that baseline. If a final court order in the roadless cases later sets aside the roadless area rules, then (at the very least) the NEPA, NFMA, and RFA documents on the proposed revised rules will have used the wrong baseline for calculating the incremental impacts of the proposal. New documents would have to be prepared that analyze impacts from a “no action” baseline that consists of the protection of, and uses allowed in, individual unroaded areas under the governing forest plans. The agency’s time and money in preparing the draft documents will have been wasted. The public comments on draft NEPA and RFA documents will have been for naught, and the public would be asked to comment on revised documents. (Business or Association, Terra Bella, CA - #A15588.10139)

SO THAT THE IMPACTS OF PROPOSED MANAGEMENT CAN BE ANALYZED AGAINST THE APPROPRIATE BASELINE

The Forest Service should defer further Roadless Rulemaking until the Roadless Area Cases resolve the legal constraints on national roadless rules. . . . If the Forest Service initiates rulemaking now, the agency’s NEPA, NFMA, and Regulatory Flexibility Act (“RFA”) compliance documents would likely assume that the 2001 roadless area rules are in effect under the “no action” alternative, and would compare the incremental impacts of the new proposal to that baseline. If a final court order in the roadless cases later sets aside the roadless area rules, then (at the very least) the NEPA, NFMA and RFA documents on the proposed revised rules will have used the wrong baseline for calculating the incremental impacts of the proposal. New documents would have to be prepared that analyze impacts from a “no action” baseline that consists of the protection of, and uses allowed in, individual unroaded areas under the governing forest plans. The agency’s time and money in preparing the draft documents will have been wasted. The public comments on draft NEPA and RFA documents will have been for naught, and the public would be asked to comment on revised documents.

Further, a finding that the 2001 roadless area rules are invalid could change the type of roadless area proposal that this Administration chooses to advocate and adopt. If the Administration’s roadless area initiative is compared against the baseline of the roadless area uses allowed under the controlling forest

plans (rather than the baseline level of protection under the invalid January 2001 roadless area rules), the Forest Service may have more room to adopt measures that include greater preservation of roadless areas than the forest plans provide for: but which allow for more forest health protection and developmental uses than under the January 2001 roadless area rules. The Forest Service and this Administration would be exposed to greater public criticism: (1) if it starts with one roadless regulatory proposal, then shifts course after the roadless area rules have been invalidated in court; and (2) requests public comment several times on different rulemaking proposals, and NEPA, NFMA, and RFA compliance documents. Thus, the public interests in efficient government, in not wasting the public's time in commenting on likely-unlawful proposals, and in legal certainty all favor obtaining judicial resolution of the roadless cases before the Forest Service proceeds too far on another roadless rulemaking proposal. (Business or Association, Rockville, MD - #A13306.20200)

107. Public Concern: The Forest Service should meet stated objectives presented in its review of the Roadless Area Conservation Rule to the U.S. District Court.

Forest Service Position in *Kootenai Tribe of Idaho v. Veneman*] (Consolidated)

The Forest Service identified the following objectives in its review of the roadless regulation to the Idaho U.S. District Court and in the ANPR: (1) protect roadless area values and characteristics; (2) remedy procedural concerns, including but not limited to (a) lack of site-specific identification of the areas; (b) exclusion of actual roaded areas; (c) assure that any amendment responds to local information and conforms to NEPA and NFMA; and (3) protect communities, homes, and property under a good neighbor policy. Declaration of Dale N. Bosworth, May 3, 2001. The Forest Service also represented to the federal court that it has adopted a more formal policy to implement the above objectives, including protecting access to property. 66 Fed. Reg. at 35919. To date that has not occurred in North Dakota. (Organization, Denver, CO - #A21358.10131)

108. Public Concern: The Forest Service should address issues related to the legal challenge brought by North Dakota interests.

The National Grasslands were acquired for specific purposes, which are established in the complaints in condemnation. The United States chose to specify the public purposes and they were incorporated and adopted in the judgment of condemnation. Thus, the United States is still subject to the terms and conditions. These have been fully described and discussed in the HAND [Heritage Alliance of North Dakota] comments and the chapter on roads.

Furthermore, the county royalty rights and state lands further limit the Forest Service ability to restrict land uses. The lands should remain in agriculture use, available for mineral development and recreation. Even the artificial constraints like prohibiting hunters from cross-country access to retrieve their big game are unwarranted and should be repealed. (Elected Official, McKenzie County, ND - #A27737.90100)

STATE-GRANTED PUBLIC RIGHTS-OF-WAY ALONG SECTION LINES

The roadless rule does not take into account North Dakota laws that allow for public right-of-way along section lines throughout the National Grasslands. North Dakota's previous Attorney General issued an opinion which supported this local right-of-way access, and our current Attorney General has just announced that the state of North Dakota will join the legal challenge to this roadless rule submitted by North Dakota interests earlier this year. (United States Representative, North Dakota, - #A23212.20400)

The access and private property rights issue has been controversial in North Dakota for some time. Several counties have filed lawsuits, as has the State of North Dakota. The North Dakota suit claims the roadless areas and road-building ban are contrary to a law created by the Dakota Territorial Legislature in 1871. The law designated all section lines in the state as public highways, regardless of whether a road actually existed. The state suit claims any Forest Service proposal that would deprive the state of its right to develop section lines would be illegal. (Business or Association, Bismarck, ND - #A30187.20400)

DESCRIPTION OF THE ROADLESS ISSUE AS IT APPLIES TO THE NORTH DAKOTA LITIGATION IS INACCURATE

The Forest Service's description of the roadless issue as it applies to the North Dakota litigation is . . . inaccurate. The Forest Service notes that there are 8 lawsuits in six different jurisdictions and all express a common theme of inadequate public comment and review. *Id.* The North Dakota case takes the position that countless comments on the Dakota Prairie Grasslands Draft Plan Revision, the roadless rule and forest road transportation regulations that North Dakota lands managed by the Forest Service are not subject to the same laws and roadless management is both without legal authority and not feasible given the extensive network of roads and rights-of-way which run through each and everyone of the "roadless conservation areas" in North Dakota. The North Dakota situation is also different because the final plan revision converts the proposed wilderness areas to roadless conservation areas, while purporting to make site-specific determinations that these areas have "roadless values" which were actually "wilderness values." The decisions in the forest plan are no more accurate or valid than the roadless regulation now so heavily criticized throughout the country. (Elected Official, McKenzie County, ND - #A27737.10139)

ROADLESS AREAS RECOMMENDED AS WILDERNESS IN THE NORTH DAKOTA DRAFT PLAN REVISION WERE ALSO RECOMMENDED AS ROADLESS AREAS IN THE ROADLESS AREA CONSERVATION RULE

The Idaho litigation specifically took the national roadless regulation process to task for the failure to do a site specific inventory, to provide accurate maps, or to provide sufficient information and time for the affected interests and state and local governmental entities to comment. *See Kootenai Tribe of Idaho v. Glickman*, No. 01-10, Complaint [sections] 71-72; *Kemphorne v. U.S. Forest Service*, Complaint [sections] 163-66. However, additional notice and comment will not address the legal deficiencies of the FEIS in North Dakota where the underlying legal and factual assumptions are wrong.

The roadless conservation areas in North Dakota were first proposed as recommended wilderness areas in the draft plan revision released in July 1999. Northern Great Plains Plan Revision, DEIS, App. C. The comment period for the draft plan revision overlapped with the initiation of the roadless conservation rule and the areas designated in the regulation are identical to those proposed for wilderness in the draft plan revision. (Organization, Denver, CO - #A21358.10130)

THE ROADLESS AREA CONSERVATION RULE FAILED TO RECOGNIZE THE EXTENSIVE ROAD SYSTEM IN AREAS IN NORTH DAKOTA IDENTIFIED AS ROADLESS

One of the major issues regarding proposed wilderness and now roadless conservation areas in North Dakota is the fact that these areas have extensive road systems. This fact is admitted in the 1987 Custer Forest Plan. *See* Appendix C, FEIS. The 1999 draft plan revision, which preceded the roadless rulemaking by a few months, omits any enumeration of roads, although these roads still exist. The 2001 final plan revision and FEIS do not address the specific comments made about each unit, especially the roads found throughout these units. Thus, the record shows a specific failure of the agency to deal with the material information, that these units are not roadless, but in fact are "roaded areas".

The ANPR does not correct this failure because it incorrectly assumes that all of these roadless conservation areas are in fact roadless. Unless and until the Forest Service addresses this issue, no amount of process will undo the harm to North Dakota communities and governmental interests. (Elected Official, McKenzie County, Watford City, ND - #A27737.45514)

Other Cases

109. Public Concern: The Forest Service should disclose its role in the Luppi case.

As an inholder myself I have been trying to get some response to the following article in the New American. Could you, please comment on the Luppi case and the Forest Service's part in it. (Individual, No Address - #A26701.14140)

Other Legal Concerns

This section includes three subsections: Other Legal Concerns General; The U.S. Constitution; and Federal Laws, Acts, and Policies.

Other Legal Concerns General

Summary

Most general comments regarding legal issues revolve around the Forest Service's legal authority to enact regulations such as the Roadless Area Conservation Rule and the legal adequacy of the Rule in general. One organization responds that the USFS has only as much authority to make law as may be delegated to it by Congress under Congress's constitutional authority to make law. This respondent believe that agencies cannot create legitimate regulations in, what they consider, defiance of Congress by calling inherent regulatory components such as definitions 'policy'. Some respondents assert that the Forest Service should not implement the Roadless Area Conservation Rule because it fails to adhere to existing laws, regulations, and policies.

Other respondents urge the Agency to develop a new national roadless rule that is fully compliant with the law and suggest that the fair way to address the concerns raised by interested parties is to urge the Administration to develop a new rule that is fully compliant with the law, including the National Environmental Policy Act and the National Forest Management Act.”

Another individual comments more broadly that legal criteria must be developed which strictly defines what government agencies and private corporations can and cannot do on public land because, this respondent goes on, both the Forest Service and the Bureau of Land Management have shown themselves incapable of protecting the environment. A state agency urges the Forest Service to support the consolidation of existing federal legislation and rules because they believe there are too many statutes and regulations pulling the USDA Forest Service in too many directions. At the same time, one individual says the Forest Service should stop trying to enact legislation through changing rules and regulations in the Federal Register. Finally, one respondent suggests that foresters be required to review their assigned territory annually and make management recommendations to their supervisors for the purpose of reviewing and updating relevant laws, regulations, and policies.

110. Public Concern: The Forest Service should recognize that it has only as much authority to make law as may be delegated to it by Congress.

TO MAINTAIN ITS LEGITIMACY WITH THE PUBLIC

The USFS has only as much authority to make law as may be delegated to it by Congress under Congress's constitutional authority to make law. The agencies cannot create legitimate regulations in defiance of Congress by calling inherent regulatory components such as definitions “policy.”

The matter of legitimacy arises when a government is perceived by those it governs to act outside the bounds of its authority. The reason the Soviet Union lost its hold over its constitutive nations and fell apart was not because the Soviet Union ran out of machine guns, jack booted thugs, barbed wire, dogs, hydrogen bombs, or KGB agents. It was because the Soviet government lost legitimacy in the eyes of its citizens.

The USFS may believe that, no matter how unlawful its rules and no matter how much these rules are hated by those upon whom they are imposed, all USFS needs is a large enough army of armed enforcers to get its way. But the perception of a certain degree of legitimacy is necessary, even in a totalitarian state such as the Soviet Union. To many westerners, USFS must obey the law or suffer the consequences that will inevitably occur as you erode your own legitimacy. (Organization, Tonopah, NV - #A20337.12230)

111. Public Concern: The Forest Service should not implement the Roadless Area Conservation Rule.

BECAUSE IT FAILS TO ADHERE TO EXISTING LAWS, REGULATIONS, AND POLICIES

Our opposition to the Rule is based on our belief that the Rule violates numerous existing national laws, including the National Forest Management Act (NFMA), the National Environmental Policy Act (NEPA), the Alaska National Interest Lands Conservation Act (ANILCA), the Tongass Timber Reform Act (TTRA), the Organic Administration Act (OAA), and the Multiple-use Sustained Yield Act (MUSYA). Alaska would be irreparably harmed by the failure to follow these existing laws and by the arbitrary amendments to the revised Tongass Land Management Plan (TLUMP) that implementation of the Roadless Rule would create. (Elected Official, Petersburg, AK - #A23084.20200)

In my judgment the entire Roadless area Conservation Rule effort should be dropped. The Roadless Area Conservation Rule is illegal because it was conducted without adequate information about the affected areas; it was pre-decisional; it was based on new Planning Regulations (36 CFR 219) that have been withdrawn; it is illegal under the Washington State Wilderness Acts; it amends or revises individual Forest Plans without compliance with the National Forest Management Act; the EIS did not have an adequate array of alternatives; and the analysis ignored substantial concerns raised by the public. (Business or Association, Colville, WA - #A3091.20000)

The January rules violated the National Forest Management Act (NFMA), the Multiple Use Sustained Yield Act (MUSYA), the Acts of Congress designation Wilderness areas in a State and releasing remaining roadless areas for the multiple uses prescribed in forest plans, (Statewide Wilderness Acts), and other laws, as we allege in the lawsuit brought by AF and PA and 16 other plaintiffs, American Forest and Paper Association v. Veneman, No. 01-CV-00871 (D.D.C.) and in our comments on the proposed roadless area regulations. We have attached copies of our July 14, 2000 comments and our Second Amendment Complaint. We incorporate those documents by reference.

In brief, the January 2001 roadless area rules unlawfully attempt to override and ignore the forest plans and the multiple use allocation process mandated by the NFMA and Statewide Wilderness Acts.

In AF and PA v. Veneman, AF and PA's position is that national level rulemaking on roadless areas is unlawful unless the Forest Service conducts the rulemaking in a manner that also complies with the constraints in the NFMA, MUSYA, the Statewide Wilderness Acts, and other laws. We believe that the January 2001 roadless area rules are unlawful and must be set aside. (Business or Association, Terra Bella, CA - #A15588.20200)

112. Public Concern: The Forest Service should develop a new national roadless rule that is fully compliant with the law.

I believe that the only fair way to address the concerns raised by interested parties is to urge the Bush administration to develop a new rule that is fully compliant with the law, including the National Environmental Policy Act and the National Forest Management Act. This may include a determination that some roadless areas be recommended for permanent wilderness designation; some roadless areas be identified for protection of their outstanding roadless characteristics in the National Forest Plan; and some existing roadless areas be allocated to allow roads to be built for management of the resources and to allow public vehicle access. (Individual, McMinnville, OR - #A3714.10130)

113. Public Concern: The Forest Service should comply with existing federal laws, acts, and regulations.**SO STATES, COMMUNITIES, ORGANIZATIONS, AND INDIVIDUALS MAY BENEFIT FROM THE ENTIRE RANGE OF USES**

The Roadless Area Conservation Rule, published January 12, 2001 was challenged by the State of Alaska's Complaint filed in District Court January 31, 2001. At least five other states, tribes and various interested parties have also challenged this rule. The Facts and Claims of the Alaska Complaint enumerates specific violations of the National Forest Management Act (NFMA), National Environmental Policy Act (NEPA), Alaska National Interest Lands Conservation Act (ANILCA), Tongass Timber Reform Act (TTRA), The Organic Administration Act (OAA) and the Multiple-Use Sustained-Yield Act (MUSYA). Alaska has been irreparably harmed by the failure to follow these laws and by the arbitrary and capricious amendments to the revised Tongass and Chugach National Forest Land Management Plans.

The Ketchikan Chamber of Commerce supports Alaska's Complaint and endorses the Forest Service's decision to re-examine the Roadless Area Conservation Rule.

It is imperative that National Forests be managed in accord with the above statutes, so states, communities, organizations and individuals may benefit from the entire range of uses including intensive commodity and recreation use: dispersed and remote backcountry experiences as well as Wilderness Areas designated by Congress. Management plans and action programs must be science-based. (Business, Ketchikan, AK - #A8066.20200)

114. Public Concern: Legal criteria must be developed which strictly defines what government agencies and private corporations can and cannot do on public land.**BECAUSE BOTH THE FOREST SERVICE AND THE BUREAU OF LAND MANAGEMENT HAVE SHOWN THEMSELVES INCAPABLE OF PROTECTING THE ENVIRONMENT**

I live surrounded by heavily-roaded National Forest Service Land, and have seen USFS land that is roadless. The latter surpasses the former in terms of habitat, watershed, and ecosystem quality. Historically the USFS and its companion agencies (BLM, etc.) have shown absolutely no capability to manage for ecosystem health, watershed quality or habitat protection, nor should any reasonable citizen expect those agencies to protect limited resources in the near future. The full letter of the law must be brought to bear in order to define what government agencies and private corporations can and cannot do on public land. (Individual, Missoula, MT - #A21345.13100)

115. Public Concern: The Forest Service should support the consolidation of existing federal legislation and rules.

National Forest planning processes and land management decisions would benefit from a consolidation of existing federal legislation and rules (i.e., there are too many statutes and regulations pulling the USDA Forest Service in too many directions). (State Agency, Saint Paul, MN - #A30025.20000)

116. Public Concern: The Forest Service should stop trying to enact legislation through changing rules and regulations in the Federal Register.

I believe that the Forest Service and other Federal agencies need to stop trying to enact legislation through changing rules and regulations in the Federal Register. The Federal Register was never meant to be a vehicle to bypass Congress and due process of law. If scientific studies show that an area has wilderness value or is too sensitive to have roads then propose it as wilderness and work through Congress for the proper designation. There should not be a separate designation as "Roadless" which amounts to de facto Wilderness. (Individual, Elko, NV - #A30690.20000)

117. Public Concern: The Forest Service should require foresters to review their assigned territory annually and make management recommendations to their supervisors.

FOR THE PURPOSE OF REVIEWING AND UPDATING RELEVANT LAWS, REGULATIONS, AND POLICIES

The forest service has undertaken a project that is long over due. To dig deep into the regulations, laws, policies. They sure need a thorough re-reading for the purpose of updating each set of rules, polices, regulations, and even updated laws that need re-writing. From year to year each forester should be required to review the territory that he or she is assigned to. After this review each should write a thorough report of his findings in his territory. Also make recommendations to his supervisor. Remember this should have in mind that these changes mentioned above will have to be programs through your congressman, so that funds are appropriated for the job. (Individual, Celina, TN - #A11902.13212)

118. Public Concern: The Forest Service should avoid extreme interpretations of environmental laws.

Stop giving Environmentalists the benefit of the doubt.

Work to the short sides of the environmental laws instead of pushing their extreme limits. (Individual, Greeley, CO - #A28995.20000)

The U.S. Constitution

Summary

The constitutional issue most frequently mentioned by respondents is the doctrine of states' sovereignty. Some respondents assert that the Roadless Area Conservation Rule is a violation of states' sovereignty inasmuch as it seeks to control land within state borders. According to one individual, the only land the government should manage for is forts, post offices, and other conceived legitimate needs. According to others, the claim that federally owned lands within a state are illegally occupied, and a violation of that state's sovereignty, is false and believe that these lands are owned in common by all Americans, and should not be managed for the benefit of local residents and landowners.

One association asserts that the Rule seeks to protect spiritual values of the land which are associated with, they believe, religious connotations which they conclude, if the Roadless Rule is implemented would constitute a violation of the establishment clause of the First Amendment. Another respondent urges the Forest Service to comply with the commerce clause of the Constitution by avoiding any policy that would make it easier to remove timber in one state than in another. Others advise compliance with the Second and Tenth Amendments; and according to one respondent, the Forest Service should consider the constitutional impacts of one administration summarily dismissing the previous administration's rulings.

119. Public Concern: The Forest Service should ensure that the Roadless Area Conservation Rule is in line with the U.S. Constitution.

I challenge the authority of the [Executive] Branch of government to make rules and regulations of this nature. I challenge any act of Congress that violates our Constitution. The Roadless Initiative and ESA do indeed violate our Constitution. Marbury vs: Madison says any act, rule, regulation, or law that is repugnant to the Constitution does not have to be obeyed and no court is bound to enforce it. The roadless initiative is repugnant to the Constitution and I will not obey it. The roadless initiative and the ESA has led to the death of four fighters this year. Our acts and initiatives are now killing citizens. Do away with them. (Individual, Seiad Valley, CA - #A5092.20100)

120. Public Concern: The Forest Service should recognize the U.S. Constitution's doctrine of states' sovereignty.

I oppose former President Clinton's 58 million acre Roadless plan. President Clinton exceeded delegated powers defined in Article 2, Section 2 of the U.S. Constitution. There is no power granted which allows the President power to control sovereign State lands beyond those designated by Article 1, Section 8, which limits lands controlled by the United States "not to exceed ten mile square", within the District of Columbia and lands purchased and delegated by State governments voting approval of such land occupation by the federal government.

As such, President Clinton violated the Constitution and his oath of office as sworn to in Article 2, section 2. All such Presidential declarations, by whatever means, are null, void and of no effect.

Given the above violations, Presidential designation of road closure or controls in sovereign State territory contrary to the Constitution and laws of the sovereign States, are unenforceable and must be vacated immediately. (Individual, No Address - #A27381.20100)

The sovereignty of the states in which these areas lie is another casualty of Clinton's orders. Local input and local decisions are completely eliminated by a de facto closing of large tracks of forestland. It is outrageous that in the United States of America we still have to remind elected officials about constitutional principles. Among them (in this instance) the strict limits the Constitution places on the federal government. Even though this land is ostensibly federal lands, it resides within the borders of sovereign states and must give, at a minimum, respect to the local authorities and citizens and allow them a much greater role in the process. (Organization, Brattleboro, VT - #A27756.20100)

Lands within the States, which were not purchased by the Federal Government, belong to the States (Article 1, Sec.8, Clause 17, US Constitution). We believe this and therefore any claim by the Federal Government and Forest Service as its agent, is void, as pertains to the roadless issue. It is reserved to the States themselves. (Individual, Hawthorne, NV - #A736.20100)

121. Public Concern: The Forest Service should review the U.S. Constitution's doctrine of states' rights before considering any actions affecting Revised Statute 2477 roads.

Please note these facts before any further rule making and before any further actions are taken by any federal agency regarding: 'Public Lands', the forest and RS2477 Roads.

The 10th Amendment to the Constitution (Bill of Rights) plainly states: "Those powers not granted to the federal government within the Constitution are reserved to the States and their people respectively." (Individual, No Address - #A783.20100)

122. Public Concern: The Forest Service should recognize that, under the U.S. Constitution, the government may only own land for forts, post offices, and other legitimate needs.

Follow the basic constitution that states the only land the government should have is for forts, post offices, and other legitimate needs. (Individual, Fallon, NV - #A21953.20100)

123. Public Concern: The Forest Service should acknowledge that federal ownership of land is not a violation of the U.S. Constitution's doctrine of states' sovereignty.

There is a belief that the federally owned lands within a state are somehow illegally occupied, and a violation of that state's sovereignty. That is completely false—those lands are owned in common by all Americans, and should not be managed for the financial benefit of a few loggers or ranchers, any more than I should be compelled to allow a logging company to clear cut my backyard, and then pay them for their costs. (Individual, No Address - #A470.12300)

124. Public Concern: The Forest Service should comply with the establishment clause of the First Amendment.

BY AVOIDING MANAGEMENT BASED ON RELIGIOUS VALUES

To our knowledge, the Clinton Administration did not properly review one aspect of the [Roadless] Initiative, its compliance with the Establishment Clause of the First Amendment of the Federal Constitution. We ask that you suspend the Rule providing for the Roadless Initiative until compliance has been sustained as a matter of law. We believe the Roadless Initiative violates the Constitution because it favors a narrow set of religious beliefs. The purpose as stated within the Final Environmental Impact Statement (FEIS) of the Roadless Initiative does not rest on scientific necessity, but rather on value-based concepts regarding humans' relationship to nature, an ideology. Page ES-1 states that the purpose and need for the Roadless Initiative is to "stop activities that pose the greatest risk to the social and ecological values of inventoried Roadless areas." Those activities are human activities. To stop them implies a value judgment being made about human activities. On what justification does such a value judgment rest?

Pages ES-5 and 3-17 of the FEIS clarifies what value the United States Forest Service feels are put at risk and would be protected by a prohibition on road building and timber cutting. Page ES-5 states that road building and timber cutting could "lead to a loss of non-commodity values such as ecological values, solitude, and personal renewal in wild areas."

Page 3-17 Spiritual and aesthetic values towards forests include the belief that NFS lands have intrinsic value, and a right to exist; that current generations have an obligation to pass on healthy wild lands to future generations; that forests are sacred; that forests have spiritual values. This is the language of religion, not science. The FEIS clearly states protecting values as a management objective. Whose spiritual values? The religious beliefs and values of all the citizens protected by the Constitution?

This spiritual value, which is a management objective of the proposed Roadless Initiative, parallels the religious ideology known as Deep Ecology and other religions who worship nature. (Business or Association, Tower, MN - #A17499.20100)

125. Public Concern: The Forest Service should comply with the commerce clause in the U.S. Constitution.

BY AVOIDING ANY POLICY THAT WOULD MAKE IT EASIER TO HARVEST TIMBER IN ONE STATE THAN IN ANOTHER

Lumber is obviously an article of interstate commerce. Consequently, it would seem violative of the commerce clause to permit logging more easily in one state than in another. It does not seem that this issue has been adequately addressed, but it should be violative to allow a lumber company to cut national forest trees more easily in one state than another. In any event, it would certainly not appear the exercise of responsible stewardship to permit that to happen. (Organization, Birmingham, AL - #A21582.20200)

126. Public Concern: The Forest Service should honor the Second Amendment.

Let's keep the second amendment and manage our wildlife and waters for the future. (Individual, Edmore, MI - #A7313.50000)

Please don't let down in the 2nd Amend. Keep the areas for the hunters and fishermen. This country needs to get back to the founding fathers plans for the statement by the people and for the people. Don't become a dictator nation. (Individual, McCook, NE - #A11142.20100)

127. Public Concern: The Forest Service should abide by the Tenth Amendment.

We must adhere to the 10th amendment to the US Constitution. There is no place for the man in the biosphere now should any entity of the United Nations have any say so whatsoever! (Individual, Mount Ida, AR - #A13372.20100)

128. Public Concern: The Forest Service should consider the constitutional impacts of one administration summarily dismissing the previous administration's rulings.

I am writing you concerning the call for 'written comments before September 10th' about the Clinton Administration's ban on logging and road construction, and the Bush Admin's taking issue with this ban. I am very much afraid of what the indiscriminate shredding of one administration's rulings by the next does constitutionally for this country. (Individual, Seattle, WA - #A11712.12111)

Federal Laws, Acts, and Policies

Respondents comment about the legality of the Roadless Area Conservation Rule specifically as it relates to certain federal laws, acts and policies. Following are major topics associated with some of the more frequently cited acts.

Alaska National Interest Land Conservation Act (ANILCA) – Respondents urge the Forest Service to comply with ANILCA by providing reasonable and timely access to inholdings (see also Chapter 6: Protecting Access to Property (Question 5): Legal Considerations); by excluding the Tongass National Forest from the final rule (see also Chapter 5: Designating Areas (Question 8): Inclusion/Exclusion of Specific Areas from a National Roadless Rule: *Exclusion*); and by, in general, foregoing sweeping national level withdrawals such as the Roadless Area Conservation Rule. On the other hand, at least one respondent suggests that ANILCA needs to be revised to allow ownership of private inholdings within roadless areas without the accompanying obligation to allow roaded access to them.

Americans with Disabilities Act (ADA) – ADA comments arise most frequently in connection to access. Some respondents comment that roadless protection will seriously impact the ability of elderly or physically impaired forest visitors to access roadless areas, and claim that, per the ADA, the Forest Service has a legal obligation to maintain roaded access or allow such access to be developed. Others, however, say there is already sufficient access and that the preservation of access for the elderly and handicapped should not be used as an excuse to build roads. (See also Chapter 4: Social Environment and Values: Social Values of Roadless Areas; *Access for Special Populations*.)

Clean Water Act (CWA) – Respondents urge the Forest Service to comply with the CWA by including in management plans roads that cross streams or wetlands, and by obtaining the necessary permits and exemptions for closing forest system roads. One respondent reminds the Forest Service of their legal obligations to follow the law. Some suggest that the CWA and the Endangered species Act should be integrated early in the forest planning process.

Endangered Species Act (ESA) – Comments regarding the ESA are mixed. Some respondents urge the Forest Service to comply with the Act. Others advocate eliminating the ESA in its present form because of its impact on private property rights, because of its perceived role in closing roads, and because of its use in litigation. Some assert that groups are unfairly using the ESA as a weapon against traditional uses of forest lands, and that the Forest Service should support legislation which would prevent litigation over the ESA and reimbursement of legal fees. (See also Chapter 4: Environmental Values: Threatened and Endangered Species.)

Mining Laws – One association lays out the history of multiple laws and regulatory acts which, this association concludes, obligates the Forest Service to maintain roaded access for mineral exploration and development. Generally, respondents urge the Forest Service to comply with the

Mining Law of 1872 and the Mining and Mineral Policy Act to ensure access to mineral deposits in National Forest System lands that they believe would enable this country to remain free of foreign dependence on raw materials. Others suggest such laws should be repealed. (See also Chapter 4: Economic Environment and Values: Economic Effects: *Effects on the Mining, Oil, and Gas Industries*; and Chapter 5: Activities (Question 7): Mining, Oil, and Gas Development.)

Multiple Use and Sustained Yield Act (MUSYA) – Respondents frequently comment that a national roadless rule would effectively eliminate multiple use management of roadless areas. A number of respondents suggest that, under MUSYA, public lands must remain open to such uses as extraction activities and motorized recreation. Others, however, assert that multiple use does not mean that every use must be accommodated in every part of the forest and that protection of roadless areas is fully in keeping with MUSYA. Further, some say, the congressional mandate to provide sustained yield of renewable resources ought to be reevaluated inasmuch that they conclude that forest management has not successfully provided sustained yield. (See also Chapter 4: Environmental Values: Management: *Multiple Use Management, Allow Multiple Use Management, and Do Not Allow/Reconsider Multiple Use Management*.)

Regulatory Flexibility Act (RFA) – Some respondents assert that the Forest Service should comply with the RFA by completing a regulatory flexibility analysis for the Roadless rule that would show no direct or indirect financial impact on small businesses. They believe that only then, after certifying no significant economic impact on a substantial number of small entities, should the Agency go forward with a national policy. Likewise, one respondent points out that each IRFA [Initial Regulatory Flexibility Analysis] contain a description of any significant alternatives to the January 12 Rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the January 12 Rule on small entities. This respondent believes that the IRFA prepared by the USFS was devoid of any attempt to satisfy this requirement. (See also Chapter 4: Economic Environment and Values: Adequacy of Analysis.)

Revised Statute 2477 (RS 2477) – Some assert that the Forest Service should comply with RS 2477 with respect to road closures. A number of people say that a national roadless rule would result in the closure of many roads whose status as public rights-of-way, they claim, is protected under RS 2477. A typical belief, regarding this issue, is that it is illegal to close many of these roads under RS 2477 and the Roadless Rule seeks to decrease public access to the back country. At the same time, one respondent states that the Forest Service currently has no policy in place to recognize or deal with RS2477 roads, and asks the Agency to clarify its position on this issue, especially as it relates to roadless areas. (See also Chapter 5: Activities (Question 7): Travel Management General: *Roads*.)

Tongass Timber Reform Act (TTRA) – Some respondents urge the Forest Service to comply with the TTRA by excluding the Tongass National Forest from a national roadless rule. According to respondents, by including the Tongass in the final Rule prohibits the Forest Service from complying with the Tongass Timber Reform Act (TTRA) and the Alaska National Interest Lands Conservation Act (ANILCA). These respondents do not see how the Forest Service will be able to supply an adequate volume of timber to meet the needs of Alaska resource dependant businesses and residents.

Other respondents assert that, per multiple legal rulings, the TTRA does not require unconditional timber sale offerings; thus the TTRA cannot be used as a rationale for excluding the Tongass from national roadless protection. (See also Chapter 5: Designating Areas (Question 8): Inclusion/Exclusion of Specific Areas from a National Roadless Rule.)

Wilderness Act – A number of respondents state that the Roadless Area Conservation Rule violates the Wilderness Act. They assert that by imposing special restrictions on roadless areas, the Forest Service is in effect creating de facto wilderness areas without benefit of congressional approval. Others, however, assert that the Rule does not constitute a violation of the Act. Beyond that, many comments regarding the Wilderness Act are made in reference to procedures for wilderness recommendation. (See also Chapter 5: Designating Areas (Question 8): Wilderness Recommendations.)

Administrative Procedures Act

129. Public Concern: The Administration should comply with the Administrative Procedures Act.

This is a ‘desk drawer’ rule in violation of the Administrative Procedures Act. (Individual, Gold Bar, WA - #A28501.20209)

BY PROVIDING ADEQUATE INFORMATION AND TIME TO COMMENT

The Administrative Procedures Act (APA) requires that a Federal agency shall give notice of a proposed rulemaking in the Federal Register, and thereafter provide interested persons an opportunity to participate in that rulemaking by submitting comments. 5 U.S.C.A., Chapter 5 [section] 553. Furthermore, the agency must consider all of the comments received before finalizing the rule, *Id.* The time provided by the Forest Service for public comments was insufficient due to the breadth and complexity of both the proposed rule and the Draft EIS prepared by the agency. Additionally, there were vital aspects of the Roadless policy that were added into the final rule, but not available for public comment in the proposed rule. Both of these deficiencies are a violation of the APA by the Forest Service. (Business or Association, Washington, DC - #A28689.20209)

The time period provided by the Forest Service was inadequate and the agency did not fulfill its requirements under the APA to provide the public with sufficient opportunity to comment. (Business or Association, Washington, DC - #A28689.20209)

BY PROVIDING EFFECTIVE PUBLIC PROCESS IN PROMULGATING RULES

It is also the responsibility of any administration to follow the dictates of Congress in exercising their authorities. In this case, that particularly implicates the Administrative Procedures Act’s requirements for an effective public process in promulgating these rules. (Individual, Broomfield, CO - #A211.20209)

Alaska National Interest Land Conservation Act

130. Public Concern: The Forest Service should comply with the Alaska National Interest Lands Conservation Act.

BY ADEQUATELY ANALYZING IMPACTS OF A NATIONAL ROADLESS RULE ON ALASKA’S NATIONAL FORESTS

The USFS lands in Alaska, representing over 25 % of lands affected by the roadless rule (14.8 million acres), are subject to federal laws unique to Alaska. The Alaska National Interest Lands Conservation Act (ANILCA) of 1980 established regulatory framework for all federal lands in Alaska and laws specific to the conservation system units established by ANILCA. Preservation of access rights are central to ANILCA and must be preserved in administrative or forest plan level decisions. The Roadless

FEIS claims to have addressed the unique characteristics of federal lands and socioeconomic needs in Alaska in the section devoted specifically to the Tongass National Forest, but in fact failed to identify many provisions of ANILCA.

The FEIS, in its analysis of unique characteristics in Alaska, essentially ignored the 5.6 million acre CNF [Chugach National Forest]. The CNF, with an astonishing 98.9% of its land base classified as roadless, is by far the most affected national forest in the nation. The immense impact that the roadless role, as presently written, will have on the CNF was not analyzed in the FEIS in even the most rudimentary fashion. For instance, national forests in Alaska were not analyzed for fire risk because “of the low fire hazard and fire occurrence associated with their temperate rain forests” (p. 3-409 Roadless Area Conservation FEIS). (Professional Society, Anchorage, AK - #A21707.20207)

BY EXCLUDING THE TONGASS NATIONAL FOREST FROM THE FINAL RULE

Including the Tongass in the final rule prohibits the Forest Service from complying with the Tongass Timber Reform Act (TTRA) and the Alaska National Interest Lands Conservation Act (ANILCA). (Elected Official, Haines, AK - #A18063.20400)

BY FOREGOING SWEEPING NATIONAL LEVEL WITHDRAWALS SUCH AS THE ROADLESS AREA CONSERVATION RULE

With respect to national forests in Alaska, sweeping national level withdrawals such as the Roadless Rule promulgated by the previous administration are contrary to the provisions of subsections 101 (d), 708 and 1326 of the Alaska National Interest Land Conservation Act (ANILCA). (Ketchikan Gateway Borough, AK - #A17476.20201)

All areas of a national forest should be managed in accordance with local land management plans rather than through nationally directed land set-asides. With respect to national forests in Alaska, Section 708 and 1326 of ANILCA prohibit nationally directed agency land set-asides because as found in Section 101(d) of ANILCA, Congress had already set aside enough land in Alaska:

“(d) This act provides sufficient protection of the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly, the designation and disposition of the public lands in Alaska pursuant in this Act are found to present a proper balance between the preservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition and thus Congress believes that the need for future legislation designating new conservation units, new national conservation areas or new national recreation areas has been obviated thereby.” (Tribal Corporation, Seattle, WA - #A20468.20207)

BY FOREGOING ANY ATTEMPT TO SET ASIDE LANDS IN ALASKA OUTSIDE THE NATIONAL FOREST MANAGEMENT ACT PLANNING REGULATIONS

With respect to National Forests in Alaska, Section 708 and 1326 of ANILCA prohibit nationally directed agency land set-asides because, as Congress found in Section 101(d) of ANILCA, Congress had already set aside enough lands in Alaska:

“(d) This act provides sufficient protection of the national interest in the scenic, natural, cultural and environmental values of the public lands in Alaska and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly, the designation and disposition of the public lands in Alaska pursuant in this Act are found to present a proper balance between the preservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition and thus Congress believes that the need for future legislation designating new conservation units, new national conservation areas or new national recreation areas has been obviated thereby.”

The National Forest Management Act (NFMA) was in existence at the time that ANILCA passed and was not explicitly changed thereby. This means that land planning through National Forest System Planning regulations remain in place as the method by which land management should be formulated on the National Forests in Alaska. Efforts by the bureaucracy to set aside lands in Alaska outside these

planning regulations are illegal under Section 708 and Section 1326 of ANILCA. (Business or Association, Ketchikan, AK - #A20443.20200)

ANILCA Section 101(d) specifically prohibits designation of new conservation system units, new national conservation areas, or new national recreation areas on federal lands in Alaska.

ANILCA Section 708(b)(4) specifically prohibits the Department of Agriculture from conducting any statewide roadless area review or study for the purpose of determining their suitability for inclusion in the National Wilderness Preservation system in Alaska.

ANILCA Section 1326(a) specifically prohibits administrative closures of more than 5,000 acres in Alaska unless approved by Congress, which approval has not been granted.

ANILCA Section 1326(b) specifically prohibits study of federal lands in Alaska for the single purpose of consideration for CSU's or other similar designations unless specifically authorized to do so by Congress, which authorization has not been given. (Professional Society, Anchorage, AK - #A20340.20207)

BY NOT RECOMMENDING ANYMORE AREAS FOR WILDERNESS DESIGNATION IN ALASKA

In Alaska, new wilderness designations would be in violation of the "no more" clause of ANILCA. (Organization, Anchorage, AK - #A15542.20207)

BY FOREGOING ANY FURTHER ROADLESS AREA REVIEW AND EVALUATION IN ALASKA

Section 708 of ANILCA, when combined with Section 1326 of ANILCA, can only be read to direct the Forest Service to conduct no further roadless area reviews and evaluations on the Tongass. In Section 708(a)(2) of ANILCA, Congress stated that it had made its own review and examination of the National Forest Roadless Areas in Alaska and "of the environmental impacts associated with alternative allocations of such areas". Congress further found in Section 708(b)(2), that the 1979 roadless area review and evaluation "was an adequate consideration of suitability of such lands for inclusion in the National wilderness Preservation system". In Section 708(b)(4), ANILCA specifically directs that there will be no "further statewide roadless areas review and evaluation of the National Forest System Lands in the State of Alaska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System". Clearly the "no timber harvest" uses and "no road building" uses to which the roadless rule would subject these lands is de facto wilderness and thus the roadless rule should not apply to National Forests in Alaska. Finally, Section 1326(b) of ANILCA states as follows:

"(b) no further studies of federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area or for related or similar purposes shall be conducted unless authorized by this Act or further act of Congress."

Clearly the proposed Roadless Rule is a review and study of roadless areas on the Tongass and Chugach. To set these areas aside as "roadless areas" is similar to the establishment of a conservation unit, national recreation area or national conservation area. Thus is prohibited by 1326(b) of ANILCA. The State of Alaska's lawsuit against the roadless rule is based in part on this point. (Business or Association, Ketchikan, AK - #A20443.20207)

BY FOREGOING ANY FURTHER ROADLESS REVIEWS ON THE TONGASS NATIONAL FOREST

With respect to the Tongass, Congress had determined in ANILCA that the proper balance between preservation and development has been struck. It is also clear under Sections 708 and 1326 of ANILCA that the Forest Service is not to conduct further roadless reviews on the Tongass for the purpose of managing such areas as wilderness or for similar purposes. (Manager, City of Wrangell, AK - #A17670.20200)

BY NOT CLOSING AREAS OF MORE THAN 5,000 ACRES WITHOUT CONGRESSIONAL APPROVAL

ANILCA Section 1326(a) specifically prohibits administrative closures of more than 5,000 acres in Alaska unless approved by Congress, which approval has not been granted. (Tribal Corporation, Anchorage, AK - #A20340.20207)

BY PROVIDING REASONABLE AND TIMELY ACCESS TO INHOLDINGS

The Forest Service must provide reasonable and timely access to inholdings as required by the Alaska National Interest Lands Conservation Act. If access is limited or if the effects of federal policies preclude owners from effectively managing their lands, land exchange may be necessary. (State Agency, Saint Paul, MN - #A6063.20207)

In Minnesota, we have over forty parcels of state owned land contained within these new roadless areas. The rights of private citizens, states and counties to access their land-as required by the Alaska National Interest Lands Conservation Act-must be provided in a reasonable and timely manner. (Elected Official, State of Minnesota - #A15541.40100)

131. Public Concern: The Alaska National Interest Land Conservation Act should be amended.**TO ALLOW OWNERSHIP IN INVENTORIED ROADLESS AREAS WITHOUT ROADED ACCESS**

Some states, tribes, organizations, and private citizens do own property within inventoried roadless areas. The Alaska National Interest Land Conservation Act should be changed to allow ownership in such areas without roaded access. (Individual, Grangeville, ID - #A830.20207)

132. Public Concern: The Forest Service should not use the Alaska National Interest Land Conservation Act as an excuse to grant access.

USFS needs to stop hiding inappropriately and illegally behind ANILCA in granting access. (Organization, Columbia Falls, MT - #A17951.20207)

*Alaska Native Claims Settlement Act***133. Public Concern: The Forest Service should comply with the Alaska Native Claims Settlement Act.****BY ALLOWING ACCESS TO AMERICAN INDIAN LAND INHOLDINGS**

The proposed policy violates the provisions of the Alaska Native Claims Settlement Act, ANCSA, which guarantees access to native land inholdings. This access problem is readily evident in the Chugach National Forest and the difficulties which Chugach Alaska Natives have had in securing access to their Carbon Mountain land holdings. (Individual, Anchorage, AK - #A11831.20200)

134. Public Concern: The Forest Service should clarify the rights specified to Alaska Native Claims Settlement Act corporations.

The national forests in Alaska are different than other national forests in the U.S. in a number of ways, including the passage of the Alaska Native Claims Settlement Act (ANCSA) of 1971. With the passage of ANCSA, 44 million acres of federal lands were made available in 12 regions of the state. Large tracts within both the Tongass and the Chugach National Forests were made available to satisfy the ANCSA mandate, causing ANCSA corporations to be effectively joined at the hip with the USFS in these regions. Despite the spirit and intent of ANCSA, access to their lands continues to be one of the largest obstacles Alaska Native Corporations face in Alaska. The roadless rule, while providing for "valid and existing rights", does little to clarify those rights specified to ANCSA corporations as provided for in ANILCA. (Professional Society, Anchorage, AK - #A21707.20207)

Americans with Disabilities Act

135. Public Concern: The Forest Service should comply with the Americans with Disabilities Act.

I am a disabled American citizens. I fall under the Americans With Disabilities Act. Legislators have made access for me in my business and public places but you have failed in the area that I need access to the most, the Federally Controlled lands of this nation. When you close access to the roads in our National Forests, you lock me out. I cannot hike or back pack and I want the same access as the more healthy and younger people of this county have. I want to be able to drive to good fishing spots, good camping areas away from the crowds, I want to see nature at its best just as do the hikers and back packers. I want the old roads, trails and 4x4 access road left open for me, the elderly, handicapped, infirm, and the young. Do not close them. (Individual, Seiad Valley, CA - #A5092.20210)

BY PROVIDING ADEQUATE ACCESS

All forms of recreation must be allowed. I believe the roadless policy violates the Americans With Disability's Act. How can old and feeble people enjoy the forests if they don't have motorized access? How can crippled people enjoy their favorite park or stream if they can't drive to it? (Individual, Miami, AZ - #A880.20210)

Making our forests only accessible to hikers is against the disabilities act! The old, frail, young and disabled enjoy access to forests via 4-wheel drive vehicles. Close off these roads and they are being denied access! (Individual, No Address - #A296.20210)

Remember the American's with disability act requires accommodations, and just what is a handicap? My hip limits how far I can walk to 3-4 miles and an ATV would give me access to a greater amount of land. (Individual, No Address - #A917.20210)

I agree that roads should not be built for the sole satisfaction of transportation, but I do not agree that any roads that have already been built should be closed. These roads provide a way for people who enjoy the outdoors to reach those sites and sounds. Why not park and walk in? Well what about our commitment to our disabled persons of this land who can't walk, or can't walk very far. As I recall there is an act in place that provides for these citizens, the Americans with Disabilities Act (ADA). These people need some sort of transportation to get there so they are not discriminated against. (Individual, No Address - #A10448.20210)

I am almost 80 years old and in my later years I have resorted to traveling the mountain jeep trails in my 4 wheel Jimmy. The roads have been there for centuries and seem none the worse for wear. Many are logging and mining roads and without travel will take hundreds of years to cover over (remains of the Santa Fe and Oregon Trails are obvious). Many people like me have dedicated much of their spare time to the mountains and have been good stewards of the land and now we are being eliminated because of our age (which seems to me is a violation of the Disabilities Act). (Individual, Longmont, CO - #A17891.20210)

The Americans With Disabilities Act passed in 1990 has provisions requiring equal access for all Americans. If there are no roads into the National Forests, there is no access. If the existing roads are destroyed, as they have been under the previous administration, existing access into National Forests is reduced. If restrictions on motorized transport into federal lands are levied by bureaucratic fiat, access is reduced. If logging has been systematically shut down in the National Forests, no new roads will be cut, and no new access into those forests for the disabled will be created. The actions that limit the access of all Americans into federal lands also limit disabled access, and are therefore illegal under federal law. (Individual, No Address - #A26180.20210)

TO AVOID THE THREAT OF LITIGATION

I realize that law suits and threat of law suit have forced you to manage the forest by court rather than by what is learned in training. But, if the money is spent for the few that use the wilderness with the exclusion of the old and infirm, maybe a new set of law suits are in order. (Individual, No Address - #A4560.10159)

Clean Air Act

136. Public Concern: The Forest Service should comply with the Clean Air Act.

In some cases, the Forest Service has legal obligations in management decisions (e.g., in those touching the Endangered Species Act, and the Clean Air Act and Water Acts, in addition to relevant local laws and ordinances). (Individual, Bozeman, MT - #A20412.20200)

Clean Water Act

137. Public Concern: The Forest Service should comply with the Clean Water Act.

BY INCLUDING IN MANAGEMENT PLANS ROADS THAT CROSS STREAMS OR WETLANDS

The Clean Water Act (copy of their acknowledgement included) was completely ignored. No permits were even applied for. Roads that cross streams or wetlands have to be included in the management plan. It would be very difficult to consider closing or opening any of the roads remaining without considering that water is involved. If permits are to be issued for new road construction, including the wilderness, or any reason then the laws that apply should be enforced on an even playing field. (Individual, Rock Springs, WY - #A5695.20221)

BY OBTAINING THE NECESSARY PERMITS AND EXEMPTIONS FOR CLOSING FOREST SYSTEM ROADS

Of the road systems closed wholesale in the Bridger Teton, Medicine Bow-Routt, and Wasatch-Cache National Forests over an extended number of years, no record can be found of a national permit, exemption, or state permit filed for or extended from the Corps of Engineers for stream channel work. Hundreds of access ways (thousands nationally) were closed using ground disturbance methods in or near navigable waters simultaneously—especially between June 1996 and October 1999.

According to Jim Furnish (May 14, 2001), the USFS “did not obtain, nor is required to obtain a permit” mainly because the long-term effect is an increase in water quality (never stating exactly by what authority). Region 8 EPA (July 11, 2001) states that “we are not aware of laws that authorize non-compliance with the Clean Water Act”.

This was followed (July 19, 2001) from EPA with, “Section 404(f) of the Clean Water Act addresses exemptions for forest roads and the regulations at 40 CFR 232.3 may be relevant as well. 40 CFR 232.3 (c)(6) in particular, deals with construction and maintenance of forest roads and might be useful. I would also like to point out that Section 404 (r) of the Clean Water Act provides that certain Congressionally authorized projects do not need a permit if certain conditions are met.” The USFS has never expressly stated what authorities they operated under as it concerns Jim Furnish’s statement of May 14, 2001.

Then (August 3, 2001) the Corps of Engineers, Omaha District stated, “Omaha District has searched its records and does not have any record indicating that Bridger Teton National Forest applied for and/or was issued exemptions or national permits...” And finally on August 30, 2001, in response to “copies of all documents for and issues showing **exemptions** or national permits issued to the Bridger Teton National Forest beginning from Jan. 1, 1984 to Jan 1, 2001 showing authorization for non-compliance of the Clean Water Act”, the Forest Service, Region 4, responded with “...we are providing you with a no records determination.” The August 30, 2001 letter was stated as the final word, subject to a “right of appeal”.

It is true that records regarded are primarily from the Medicine Bow-Routt, Bridger-Teton, and Wasatch-Cache national forests, however, this probably runs true throughout all 58.5 million acres of inventoried “roadless” areas and other areas of approximately 192 million acres comprising the National Forest

System. The point being, the Clean Water Act is a law for everyone to abide by, not just the private sector of business or landowner. Competing values aside, the USFS is not above the law. (Individual, Rock Springs, WY - #A15658.20221)

138. Public Concern: The Forest Service should comply with the Clean Water Act and the Endangered Species Act.

BY NOT REMOVING TIMBER OR BUILDING ROADS

The 10 questions listed as part of the Public Comment for Roadless Area Conservation avoided mentioning Federal Laws such as the CWA and the ESA. In order to meet the CWA requirement to maintain the physical and biological integrity of the Nation's waters that are in the roadless area watersheds, and to meet all ESA requirements, logging and road building should not be allowed in the roadless areas. (Organization, Coeur d'Alene, ID - #A17112.20200)

139. Public Concern: The Forest Service should integrate the Clean Water Act and the Endangered Species Act early in the forest planning process.

In addition to the traditional multiple use values that have guided national forest planning since before NFMA was enacted, I believe we would be well served by a constructive integration of ESA and CWA into the early forest planning process. (Individual, Spokane, WA - #A17819.20200)

140. Public Concern: The Forest Service should not use the Clean Water Action Plan as a guideline for roadless area management.

UNTIL CURRENT LITIGATION OVER ITS IMPLEMENTATION HAS BEEN SETTLED AND ITS IMPACTS HAVE BEEN ANALYZED UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT

The Clean Water Action Plan (CWAP) has been cited as a reason for initiating this roadless policy. The use of the CWAP as a guideline is inappropriate and in violation of the National Environmental Policy Act (NEPA). The CWAP represents a significant Federal action that requires an EA or full EIS under NEPA, and they have not been completed. Use of the CWAP as a guideline should be held up until a judgment has been rendered in the lawsuit filed against its implementation and its impacts have been analyzed under NEPA. (Organization, Albuquerque, NM - #A8813.20203)

Conservation and Reinvestment Act

141. Public Concern: The Forest Service should encourage the Senate to pass the Conservation and Reinvestment Act.

IF STAKEHOLDERS ARE NOT ALLOWED TO REMOVE TIMBER

If private or Tribal forest surrounding or inside U.S. State and Federal Forest remain dead locked to the extent the owner/tribe will more than likely never be allowed to harvest their timber, which presently continues to be reality, even though the loss of 7-million-acres in the west is looming in the eyes of us who still have some common sense left, and in the future other private forest will more than likely burn, because USDA CLAIMS no one wants roads, helicopters, cable systems, etc. in the "ROADLESS AREAS;" then by all means, encourage the Senate to PASS CARA, encourage Americans who own private forest to sell to the government, compensate the Indian Tribes for the loss of timber harvest or farmers due to the lack of water as is the case of Klamath basin, allow counties to exchange funding they're entitled to, without the consideration of the county or states local economy, adjustment for inflation, federal spending, governmental control and monopolization of all privately owned forest or "SO CALLED SENSITIVE AREAS" in the 11 Western States, which by the way, CARA affects more than eastern states. (Individual, Jefferson, OR - #A775.30200)

142. Public Concern: The Forest Service should delay any decisions regarding the Roadless Area Conservation Rule until the Senate votes on its version of the Conservation and Reinvestment Act.

Endangered Species Act was never intended as the United States Department of Agriculture Forest Service, DEO [Department of Energy], BLM [Bureau of Land Management], DOI [Department of Interior] Fish and Wildlife Service, IUCN [International Union for Conservation of Nature and Natural Resources], Groups, Associations, Societies or individuals private tool in order to control the forest, farms or grasslands in the U.S. Therefore, ESA [Endangered Species Act] has direct relationship to past and present policies regarding roadless wilderness. CARA [Conservation And Reinvestment Act] as the funding mechanism for “new” property acquisition is passed into law will directly affect present roadless wilderness areas and future designations of “new” lands because private lands within the national forest could be purchased, thereby eliminating existing roads and shelving the construction of new roads in order to gain access to those forest previously privately owned. Yet without access to all national forest “wilderness areas,” in order to thin the forest, wildfires will continue to deplete wildlife sustainable habitat, and natural resources, i.e., lumber. CARA has passed the house of Representatives with a comfortable margin of victory, and appears headed for passage in the Senate. Until the Senate passes its version of CARA and once and for all either ratifies or reinforces the present ESA, roadless wilderness decisions, including former President Clinton’s roadless wilderness decisions announced in January 2001, any or all decisions should be postponed. (Individual, Jefferson, OR - #A775.20000)

Enabling Act

143. Public Concern: The Forest Service should comply with the Enabling Act.

BY PROVIDING A CONTINUOUS SUPPLY OF TIMBER AND PRESERVING THE WATERSHED

The primary purposes of the USFS as stated in the Enabling Act are: (1) to provide a continuous supply of timber to the American people and (2) to preserve the watershed. These two purposes were confirmed by the US Supreme Court as the primary purposes of the USFS and that all other purposes are secondary and of less importance. (Individual, Ruidoso, NM - #A17775.20200)

Endangered Species Act

144. Public Concern: The Forest Service should comply with the Endangered Species Act.

Local forest planning is important for specific management decisions but it should be strictly subject to national policy, especially compliance with NEPA [National Environmental Policy Act] and the ESA [Endangered Species Act]. (Individual, Black Mountain, NC - #A707.20000)

145. Public Concern: The Forest Service should consider that the Roadless Area Conservation Rule will jeopardize compliance with the Endangered Species Act.

BECAUSE IT WILL REDUCE ACCESS FOR REGULAR INSPECTION FOR DISEASES AND PESTS

It is clear that the ESA is seriously jeopardized by the current roadless policy because access to the interior of the roadless areas compromises regular inspection for diseases and pests that may destroy endangered or threatened species. (Individual, South Royalton, VT - #A13393.20222)

146. Public Concern: The Forest Service should clarify the relationship of the Endangered Species Act to international environmental legislation.

Endangered Species Act is a concrete example of the authoritarian power of international treaties over Americans’ rights and property.

Read U.S. Code 16, Sec. 1531 (a)(4) Congressional Findings and Declaration of Purposes and Policy. You will find that the Endangered Species Act is conformable to and in accordance with: (A) migratory bird treaties with Canada and Mexico; (B) the Migratory and Endangered Bird Treaty with Japan; (C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere; (D) the International Convention for the Northwest Atlantic Fisheries; (E) the International Convention for the High Seas Fisheries of the North Pacific Ocean; (F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and (G) other international agreements in a mockery of the “advice and consent” responsibility placed upon the Senate by our constitution, the U.S. Senate ratified 34 international treaties without debate, without a vote, and almost without notice during the 106th Congress. (Individual, Jefferson, OR - #A775.20222)

147. Public Concern: The Endangered Species Act should be revised.

BECAUSE IT DOES NOT STOP EVOLUTION

Obviously, this would require a complex answer and I would hope that the Forest Service knows this in greater detail than I do, but common sense tells me that this entails balancing the needs of humans with those of other animals on U.S. Forest lands. The gauges for making this balance are difficult to come by, but I suspect that the Endangered Species Act is one gauge that has been used to protect the interests of the other animals. The problem with using such narrow gauges, as has been applied extensively in Klamath County, is that there likely have been more extinct species in the “history” of this planet only in the last 200,000 years than the total number of species that exist now, not to mention the previous 3.8 billion years of this planet’s “history”. What is fallaciously presumed in the Endangered Species Act and by radical environmentalists that interpret this Act is that evolution of all animal species stopped on the date of the inception of this Act. What we are witnessing before our eyes is survival of the fittest and evolution itself. I see this everyday as bacteria develop resistance to antibiotics that they are presented when humans are being invaded by them and I treat these humans. This is not to say that the U.S. Forest should be cut and plowed down because there is a basic human need to seek solace in the wilderness, and there needs to be a basic respect for other animals and organisms. Nevertheless, there is only so much that human interaction can do to stop evolution. (Individual, Klamath Falls, OR - #A6931.53200)

BECAUSE IT HARMS RESOURCE INDUSTRIES, RECREATION, AND AGRICULTURE

CARA [Conservation And Reinvestment Act], if it passes, will be the mechanism providing USDA Forest Service funding for forest/land acquisition, Endangered Species Act gives USDA Forest Service the license to designate any area sensitive if an endangered species is found on any particular lands. With 1,243 species on the endangered list and an additional 2,000 under consideration, the future of private forests, farms and grasslands are uncertain. I would not encourage USDA to visit my rural community or my local privately owned forest, many that allow hunting, off road, etc., a benefit to the National and State Forest of the 11 western states. Yet more forests managed by USDA Forest Service are sought after. USDA Forest Service presently has not the funding to adequately manage the national forest at present. There has to be a balance. The government cannot own everything. Corporate America and international entities already have a big piece of America. Is it the intention of the USDA Forest Service in association with U.S. DOE [Department of Energy] (EIS No. 010222, Fish and Wildlife Mitigation and Recovery Draft, DOE [Department of Energy], Fish and Wildlife Implementation Plan) BLM [Bureau of Land Management], International Union for Conservation of Nature and Natural Resources (IUCN) . . . , Switzerland and Department of Interior Fish and Wildlife Service to continue using the Endangered Species Act to systematically deplete resources privately owned forests, farms and grasslands represent for the economy by declaring areas in the west sensitive for habitat or the home of one of the 1,243 species? While endangered species are being protected, is the death of other species now acceptable or destruction of entire farming communities as is the present situation in Klamath Basin? (Individual, Jefferson, OR - #A775.20222)

ESA has not been authorized since 1992 but Congress has been making appropriations for ESA every year. Forests have been closed, farms have been threatened by wildlife refuges. All of this without being officially reauthorized.

The Klamath Basin is the result of an ESA citizen’s lawsuit.

Somebody needs to be held accountable for economic, social, and cultural damages and human suffering caused by ESA actions.

Rural America is out of work, and thousands of farmers, loggers, miners, ranchers and people working in related businesses have been put out of work due to ESA Actions and ESA protections.

Our economic way of life is being destroyed. Natural Resources need to be used not just for oil energy, but mining, logging, grazing, etc. We need to work the land to produce raw materials for American industries and to produce food for our tables. (Individual, Eckert, CO - #A28671.20222)

BECAUSE IT IS BEING USED BY GROUPS AS A TOOL AGAINST TRADITIONAL USES OF FOREST LANDS

Congress passed the Endangered Species Act of 1973 into law in an effort to ensure the long-term solution, which satisfied the needs of both man and his surroundings. The Endangered Species Act was a noble endeavor in both concept and theory. Provide protection to the plant and animal species threatened with extinction, or endangered by the spread of the human population throughout the country. On its face the Endangered Species Act appeared to be a “common sense” piece of legislation. The idea was that there was more than enough room to go around and that man could easily coexist with his natural surroundings. America is a big place after all. Yet things are rarely what they seem. Over the years the Endangered Species Act, like the species it purports to “protect,” continued to “evolve.” At the behest of the Green Advocacy Groups, amendments to the original legislation along with creative interpretation by an activist judiciary have turned the law into little more than a weapon to be used against business, development interest, property owners and recreational groups...to name but a few. Today, once the Endangered Species Act is invoked in a land use battle, the battle is almost always over. How many among us can afford to go up against the near-limitless resources of the federal government, the GAGs [Green Advocacy Groups], and often complicit media effort combined? (Individual, Jefferson, OR - #A775.20222)

Property rights advocates have long contended environmentalists use the Endangered Species Act (ESA) to further such unrelated interests as limiting population sprawl, restricting natural resources recovery, and restricting the construction of new roads, airports, and dams. The National Wilderness Institute (NWI) notes no species have ever been removed from the endangered species list due to actions taken under the Endangered Species Act. Although NWI has filed many court actions and has fought diligently for the protection of endangered species, it recognizes that many species that are not threatened have been improperly added to the list. (Individual, Jefferson, OR - #A775.20222)

The most insidious weapon in the environmentalists’ hands is the Endangered Species Act. It is destroying farmers, ranchers, commercial fisherman, loggers, the petroleum industry, motorized recreation industry, and other recreational pursuits. Thousands upon thousands of people are losing their farms, ranches and jobs. This again is an underlying attempt by the Globalists to destroy our ability to produce in order to make us dependent on the U.N. (Individual, Sedona, AZ - #A1566.20222)

BECAUSE IT HAS NOT BEEN ESTABLISHED LONG ENOUGH TO OBTAIN THE NECESSARY DATA TO DECLARE SOME SPECIES ENDANGERED

The Endangered Species Act may be correct and needed but the management of the intent is wrong. Every species has its cycle from maximum population to minimum population. The ESA has not been established long enough to obtain the necessary data to declare some of these species endangered. Some of these declarations may affect forest health. (Individual, Klamath Falls, OR - #A8809.20222)

TO ELIMINATE THE PRINCIPLE THAT HABITAT IS MORE IMPORTANT THAN USE

Join the people in demanding hearty revision of the ESA.

Eliminate the goal, concept, or operational principle that habitat is more important than use. They are both important. (Individual, Greeley, CO - #A28995.53100)

TO ALLOW AN AUTOMATIC EXEMPTION TO PROTECT LIFE AND PROPERTY

ESA should be reformed or repealed the worst ESA travesty yet is the death of the four young firefighters in Washington. Due to endangered fish in the Chewick River the Forest Service) delayed for

several hours to take water from the river to drop on the fire. If Congress cannot reform the ESA to protect human life they should repeal it. This should never have happened, and who is to be held accountable? There should be an automatic exemption to protect human life and property. (Individual, Eckert, CO - #A28671.20222)

The ESA should be reformed or repealed. The worst ESA travesty yet is the death of the four young fire fighters in Washington due to endangered fish and Chewuk River. The Forest Service delayed several hours to deliver water on the fire, thus causing the death of these four fire fighters. (Individual, Cedaredge, CO - #A21879.20222)

148. Public Concern: The Endangered Species Act should be eliminated in its current form.

BECAUSE OF ITS IMPACT ON PRIVATE PROPERTY RIGHTS

ESA [Endangered Species Act] and International ESA policies combine together in a manner that allows others to decide the fate of your private property if someone trespassing discovers an endangered species, which by the way, may increase to 3,243 species from the present 1,243 critters and varmints since ESA's inception and only nine species have been taken off due to their recovery. The reality of the ESA today is not about protection. It is about control of a population through the use of its land and natural resources.

In short, proposals by both Democratic and Republican officials are all over the boards everywhere but where they need to be-De-finding and eliminating the ESA in its current form from the law books of the American judicial system. When people are forced by our government to eradicate what could very well be truly endangered species from their own property in order to protect both their rights and its value, you have a problem that runs far deeper than a piece of legislation. You have a government and related NGOs (non-governmental organizations) that are acting against the will of the people they serve, to the detriment of the species they purport to protect. (Individual, Jefferson, OR - #A777.20222)

BECAUSE OF ITS ROLE IN CLOSING ROADS

We already have millions of acres locked up in wilderness Areas, National Parks, Refuges, study areas etc. and far too many roads locked up because of the Endangered Species Act. (Individual, Kalispell, MT - #A1071.20222)

BECAUSE THE SCIENCE IS FLAWED

Also, the Endangered Species Act is flawed, and many land closures are based on "junk" science, with no scientific proof that certain areas should be closed to human access. (Individual, San Diego, CA - #A6766.20222)

149. Public Concern: The Forest Service should support legislation that prevents litigation over the Endangered Species Act and reimbursement of legal fees.

Remove the weapon used by our "Environmental Extortionist". Have legislation to prevent any lawsuits in regard to the Endangered Species Act or from these groups collecting reimbursement of legal fees or damages from the USFS. (Individual, Lawrenceville, GA - #A6196.15000)

Seek reform of the endangered species act so we can save our forests instead of litigate. (Individual, Canby, OR - #A15507.20222)

Reductions in the use of even-age and other habitat management practices on National Forests are due primarily to obstructionist legal challenges. These legal challenges are commonly based on existing Forest Service Land and Resource Management Planning Regulations. The wording of some of these regulations and judicial interpretation thereof can place sometimes-unreasonable requirements on the agency, thereby exacerbating efforts to implement needed habitat management projects.

Specifically, many suits allege that the Forest Service hasn't adequately monitored populations of certain species to ascertain whether or not these populations are viable, a requirement under the current interpretation of existing planning regulations. Given that these lists of species, which vary by National Forest, can include several dozen to almost 1,000 species, the population monitoring necessary to meet this viability requirement can be both technically and fiscally impractical, if not impossible. I would even go as far as to suggest that legislation be introduced to prevent such groups from collecting damages of legal fees in association with any endangered species. If our concerned environmentalists had to pay their own fees I wonder how often we would see a suit brought against USFS? Maybe Chief Bosworth you should lobby for legislation to save the taxpayers and the budget of USFS some money. (Individual, Lawrenceville, GA - #A6256.16120)

ENCOURAGE THE REPEAL OF THE CITIZEN SUIT PROVISION OF THE ENDANGERED SPECIES ACT

Repeal the "citizen suit" provision of the Endangered Species Act, and then **repeal the Endangered Species Act**. When regulations are issued and enforced as a result of bureaucratic interpretation which is inconsistent with law, or which result from a lawsuit filed against a government agency by an environmental extremist organization or any of its members, the persons and organization involved need to receive a large fine and considerable time in prison. Personal and organizational responsibility in following the law will go a long way toward protecting access to, and unfettered use of, private property. (Individual, Fredericktown, MO - #A11981.20222)

150. Public Concern: The Forest Service should consider that protection of unroaded areas on federal lands has provided state and private lands more latitude for management under the Endangered Species Act.

I would also point out that protection of unroaded areas on federal lands has provided state and private lands more latitude for management under the Endangered Species Act. Protection of federal lands has consistently been cited by the U.S. Fish and Wildlife Service and the Department of Interior as a reason to have less stringent protections of habitats of Threatened and Endangered species on nonfederal ownerships in Washington State. Thus private individuals and state trustees (beneficiaries of Washington DNR-managed lands) benefit directly from habitat conserved on federal lands. (Individual, Olympia, WA - #A30305.20222)

Federal Advisory Committee Act

151. Public Concern: The Forest Service should comply with the Federal Advisory Committee Act.

BY AVOIDING CLOSED-DOOR SESSIONS WITH TARGETED GROUPS

This Initiative was constructed, we believe, in closed-door sessions with radical environmentalists—a FACA violation. It violates the mandate of the USFS—to provide the greatest use for the greatest number—and probably the ADA. It shuts a huge percentage of our 'public' lands off to the public. (Individual, Cedaredge, CO - #A10364.20000)

152. Public Concern: The Forest Service should seek removal of the bureaucratic requirements of the Federal Advisory Committee Act.

TO FACILITATE FORMATION OF FOREST-LEVEL ADVISORY COMMITTEES

The most effective, proven tool for working with various groups to ensure that concerns about roadless values are heard and addressed through a fair and open process is the NFMA-mandated forest land and resource management planning process. The Forest Service must allow all interested parties to offer their views and to help define the issues without being constrained by this input.

Establishing forest-level advisory committees as envisioned by NFMA can strengthen this process. Removing the bureaucratic, straitjacket requirements of the Federal Advisory Committee Act would facilitate this approach. Meaningful, productive relationships evolve from the contacts on the individual National Forests. This is where specifics can best be applied on the ground to work to the benefits of

local individuals, the community, the state and the nation. (Business or Association, Portland, OR - #A19004.20201)

Forest and Rangeland Renewable Resource Planning Act

153. Public Concern: The Forest Service should comply with the Forest and Rangeland Renewable Resource Planning Act.

BY ADDRESSING ROADLESS AREA MANAGEMENT IN THE FOREST PLANNING PROCESS

To be consistent with the Forest and Rangeland Renewable Resource Planning Act of 1974 as amended (hereafter "RPA"); the National Forest Management Act (hereafter "NFMA"); and, the Multiple Use Sustained Yield Act (hereafter "MUSY"), the Forest Service should address the roadless management issues through the comprehensive planning process of the Land and Resource Management Plans (hereafter "LRMPS") process. By examining one issue (roadless management) in isolation, the resulting management policies will not provide for multiple use and sustained yield in a coordinated and consistent manner.

The LRMP process was designed to guide all natural resources management activities and in turn determine resource management activities in turn determining resource management practices, levels of resource production and management, and suitability of lands, all in a comprehensive approach that was responsible to changing social and economic demands.

The nationwide approach to roadless management runs counter to the goal of a coordinated, integrated, and consistent planning process. It is our recommendation that the roadless issue be addressed in the LRMP process wherein all resources outputs are balanced to determine the maximum long term net public benefits. (Elected Official, Douglas County, OR - #A11811.13110)

BY NOT MANAGING ROADLESS AREAS AS DE FACTO WILDERNESS

We note that the adoption of the proposed rule to temporarily suspend road construction and reconstruction within National Forest System roadless areas is viewed as critical to preserve land and resource management options. (63 F.R. 9980-02). However, this preservation of management option for the roadless areas is in direct contradiction to the Congressional intent relative to roadless areas as expressed during the 1981 designation of wilderness in California. We note the following statement in the Committee Report:

The fact that the wilderness option for the roadless areas will be considered in future planning raises the hypothetical argument that the areas therefore must be managed so as to preserve their wilderness attributes so that these may be considered in the future. Such an interpretation, however, would result in all roadless areas being kept in de facto wilderness for a succession of future planning processes. SUCH AN INTERPRETATION IS OBVIOUSLY INCORRECT, AND IF APPLIED, WOULD COMPLETELY FRUSTRATE THE ORDERLY MANAGEMENT OF NONWILDERNESS LANDS AND THE GOALS OF THE FOREST AND RANGELAND RENEWABLE RESOURCE PLANNING ACT. (Committee on Interior and Insular Affairs, 97th Cong. 1st Sess. Report No. 97-181, p.45) (emphasis added). SEE ALSO Committee on Energy and Natural Resource, 96th Cong. 2d Sess., Report No. 96-914, p. 26.

As noted above, the preservation of roadless areas to maintain options for future plans is inconsistent with the Forest and Rangeland Renewable Resources Planning Act as well as the various wilderness acts. (Elected Official, Douglas County, OR - #A11811.12460)

Knutson-Vandenberg Act

154. Public Concern: The Knutson-Vandenberg Act should be repealed.

BECAUSE IT AGGRAVATES CONFLICTING INTERESTS

The conflicting interests that are mentioned in several of the questions are, in part, due to the way the Knutson-Vandenberg Act has intermeshed local incentives with profits from national lands. This

outdated law creates many of these conflicts. It allows the best interest of the forest to be weighed against local county needs for bridges and schools, local businesses who are partly supported by the harvest of forests, and the numerous support functions that go along with logging and milling.

Consider for a moment if the Knutson-Vandenberg Act were repealed, that ALL revenue generated off of national lands was sent to the general treasury to benefit everyone (not just the local county), and that any harvest or extraction from national lands was strictly a forest service function, using forest service equipment, then I think you would get a picture of how differently this issue would become. . . . The repeal of the Knutson-Vandenberg Act is likely 'wishful' thinking, but I fail to see the logic that allows one county to benefit over another, simply because national land happens to be in its borders. Perhaps some compromise of locking in a fee that the federal government would pay to offset local county revenue that would be a flat fee per acre could be worked out. I am pessimistic however as I believe as long as there remains a financial incentive to cut trees, that no forest will ever be truly safe. (Individual, No Address - #A3649.20200)

Mining Laws General

155. Public Concern: The Forest Service should recognize its legal obligation to maintain roaded access for mineral exploration and development.

AS REQUIRED BY MULTIPLE LAWS AND REGULATORY ACTS

Apart from the general inadequacies of the rulemakings related to roadless areas, e.g., Land and Resource Management Planning Rule, 65 Fed. Reg. 67514, (November 9, 2000); Road Management and Transportation System Rule, 66 Fed. Reg. 3206 (January 12, 2001); Forest Transportation System Administrative Policy, 66 Fed. Reg. 3218 (January 12, 2001); and Roadless Area Conservation Rule, 66 Fed. Reg. 3244 (January 12, 2001), as applied to both federal and private minerals located within or nearby the National Forest System, these rules fail to properly consider and account for the public laws that specifically control access and development of minerals on public lands. Whatever mandate, or authority, the Forest Service believes it can derive from the laws it administers generally for activities that affect surface resources within the National Forest Service System, they do not supercede, or override, the more specific mandates and requirements of the mineral laws. For example, the Mining Law of 1872, 30 U.S.C. 22 et seq., establishes the right to access public lands to explore and develop locatable minerals on public lands, and the Forest Service cannot materially interfere with prospecting, mining, and other incidental uses on those lands in the course of its management of surface resources. Likewise, the disposition of solid minerals subject to the leasing laws cannot be impaired by unilateral action by the Forest Service under the guise of its general authority to manage surface resources within the National Forest System.

Again, by way of example, the disposition and development of federal coal under National Forest Lands is subject to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181 et seq., and the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 et seq. These laws establish specific land use planning considerations for the availability of federal coal resources. These specific provisions control and cannot be superceded by Forest Service edicts or rules purportedly taken pursuant to the National Forest Management Act (NFMA), 16 U.S.C. "1601-1614, Multiple Use and Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. " 528-531, or the Organic Administration Act of 1897, 30 Stat. 11 (June 4, 1897). Rather, the Forest Service's obligation, and the Secretary of Interior's as well for that matter, is to assure that the Forest Service's actions conform to the specific laws providing for access and development of the mineral resources within the National Forest System.

Our review of the records developed to support the Forest Service's rules for roadless areas are shockingly devoid of any indication that these considerations were part of its decision making. Similarly, there is no indication that the Bureau of Land Management performed its obligations in assuring that these rules comport, and not interfere, with the Secretary of the Interior's obligations under our Nation's mineral laws. The National Mining Association was prepared to bring legal action to obtain appropriate relief to bar the application of the rules to mineral activities in light of these specific, as well as other general, infirmities with the rules. However, NMA decided to refrain from such action in light of the agency's announcement to review the rules.

We see this as an opportunity for the Forest Service to cure the unlawfulness of these rules as applied to mineral development within the National Forest System. In the meantime, we request that the Forest Service refrain from applying the rules in a manner that interferes with the exploration and development activities that are the subject of the mineral laws.

Mining is unique, because federally owned minerals are primarily managed by the Department of Interior not the Forest Service. As such, the Forest Service has a limited role in the regulation of mineral resources. For mineral activity on Forest Service lands, the appropriate role of the local forest planning in evaluating protection and management of inventoried roadless areas is defined not only by NFMA but also other statutes particular to mineral development. Among those statutes upon which the agency must rely in the course of its planning process are: SMCRA; Federal Coal Leasing Amendments Act of 1975 (FCLAA) Pub.L.No. 94377, 90 Stat. 1083 (1976); Mining and Minerals Act of 1970 (30 U.S.C. 21a); Mining Law of 1872.

The Forest Service Only Has Limited Authority Over Minerals Governed by the 1872 Mining Law

The Forest Service only has limited regulatory authority over mineral resources governed by the 1872 Mining Law, as amended. This limited authority simply does not permit designation of roadless areas in a manner that unreasonably interferes with exploration for and development of minerals.

The Mining Law allows for “A free and open exploration and purchase” of “all valuable mineral deposits in lands belonging to the United States.” 30 U.S.C. [section] 22. Congress established the National Forests through the Organic Administration Act of 1897, 30 Stat. 11 (Jun. 4, 1897), with administrative authority originally vested in the Department of the Interior. In 1905, Congress transferred from the Interior Department to the Department of Agriculture the power to execute or cause to be executed all laws affecting public lands in the National Forests, but the 1905 Act limited that authority by excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any such lands.” 16 U.S.C. [section] 472; 30 Stat. 628 (Feb. 1, 1905). For decades, this qualification has been construed consistently as withholding administrative power over locatable mineral exploration and mining activity on National Forest lands from the Department of Agriculture. See, e.g., H.H. Yard, 38 Pub. Lands Dec. 59, 61-65, 1909 WL 936 (D.O.I. July 3, 1909) (stating that the Transfer Act of 1905 recognized the right, authority, power, and jurisdiction [over surveying, entering, patenting, prospecting, and appropriating] as already existent and vested and declares that such power and authority shall remain where now seated, viz: with the Interior Department.”); Apex and Extralateral Rights Issues Raised By The Stillwater Mineral Patent, 93 Interior Dec. 369, 384 n. 2, 1986 WL 222959 (D.O.I. Apr. 18, 1986) (The Interior Department has the statutory responsibility to administer the Mining Law of 1872 . . . on National Forest lands.”).

Even without consideration of the 1905 Act transfer provisions, the Organic Administration Act of 1897, which remains a central statutory authority for the Forest Service today, does not provide the authority to limit locatable mineral exploration and mining on National Forest Lands. To the contrary, the Act explicitly warns: “nor shall anything herein prohibit any person from entering . . . national forests for all proper and lawful purposes, including that of prospecting, locating and developing mineral resources . . . “ 16 U.S.C. [section] 478. Interpreting the Forest Service’s Organic Act, the U.S. Court of Appeals for the Ninth Circuit recently stated:

The Forest Service may regulate use of National Forest lands by holders of unpatented mining claims . . . but only to the extent that the regulations are “reasonable” and do not impermissibly encroach on legitimate uses incident to mining and mill site claims.

United States v. Shumway, 199 F.3d 1093, 1107 (9th Cir. 1999) (citing United States v. Weiss, 642 F.2d 296, 299 (9th Cir. 1981)). In addition, the court emphasized that the right of the Forest Service to manage surface resources shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto.” Id. Roads are most certainly legitimate uses incident to mining and mill site claims and the prohibition of roads in inventoried roadless areas would be a material interference with mining that is certainly an unreasonable and impermissible encroachment on legitimate uses.

Not only have courts and administrative adjudicatory bodies consistently interpreted the Organic Act of 1897 regarding locatable minerals, but also the Congress, in subsequent grants of authority to the Forest Service, has uniformly done so too. Thus, in 1960, Congress passed MUSYA, which directed the Forest Service to manage the National Forests according to the principles of “multiple use” and “sustained

yield.” Significantly, in the MUSYA, as in the Forest Service’s Organic Act, Congress warned that “nothing” in the Act “shall be construed so as to affect the use or administration of the mineral resources of national forest lands” 16 U.S.C. [section] 531(a) Similarly, Congress defined the term “sustained yield” to exclusively refer to the output of the various renewable resources of the national forests” 16 U.S.C. [section] 531(b) The Act’s legislative history demonstrates a deliberate effort by Congress to limit Forest Service authority over mineral resources. The House of Representatives Interior Committee Report on the Act states:

It is made clear that nothing in the bill would affect the authority which the Secretary of the Interior has with respect to the mineral resources in the national forest lands. Thus, the bill would not impair mining operations and activities under the authorities which the Secretary of the Interior has with respect to such mineral resources. House Report No. 1551, 1960 U.S.C.C.A.N. 2377 (Apr. 25, 1960).

In 1974, Congress spoke to this principle again when it enacted the Forest and Rangeland Renewable Resources Planning Act, (1974 Renewable Resources Act) 16 U.S.C. [section] 1600-1614.

While authorizing the Forest Service’s land use planning functions, Congress once again made clear, beginning with the 1974 Act’s title (“Renewable Resources”), that minerals were beyond the scope of Forest Service jurisdiction. Significantly, the term “renewable resources” is defined by the 1974 Act “to involve those matters within the scope of responsibilities and authorities of the Forest Service on the date of this Act” 16 U.S.C. [section] 1610 (emphasis added). Thus, the Act relates back to the MUSYA, which in turn specifically and deliberately exempted minerals from the Forest Service’s discretionary planning and management authority.

In 1976, the NFMA made significant amendments to the 1974 Renewable Resources Act. As in the original 1974 Act, however, the NFMA relates back to the principals of multiple use and sustained yield—applicable only to renewable resources—used by Congress in the MUSYA. See 16 U.S.C. [section] 472a(c). In the 1976 Act’s statement of policy, Congress stated:

To serve the national interest, the renewable resource program must be based on a comprehensive assessment of present and anticipated uses, demand for, and supply of renewable resources from the Nation’s public and private forests and rangelands, through analysis of environmental and economic impacts, coordination of multiple use and sustained yield opportunities as provided in the Multiple-Use Sustained-Yield Act of 1960 16 U.S.C. [section] 1600(3)

Thus, Congress repeatedly has acknowledged through legislation and legislative history that the Forest Service does not have discretionary planning authority over mineral resources on National Forest lands.

The Forest Service’s own regulations recognize this limitation on the Agency’s authority over locatable minerals. Thus, the regulations found at 36 C.F.R. Part 228, promulgated by the Forest Service in 1974 immediately after enactment of the 1974 Renewable Resources Act correctly set the boundaries of the Forest Service’s limited authority over locatable mineral resources and mining activities. In the statement of purpose for the Part 228 regulations, the Forest Service recognized that there is a statutory right to enter public lands in search of minerals. Thus, the purpose of the regulations was to:

Set forth rules and procedures through which use of the surface of National Forest System lands in connection with operations authorized by the United States mining laws (30 U.S.C. 21-54), which confer a statutory right to enter upon the public lands to search for minerals, shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources. It is not the purpose of these regulations to provide for the management of mineral resources; the responsibility for managing such resources is in the Secretary of the Interior. 36 C.F.R. [section] 228.1 Surely, restrictions on the construction of roads for mineral exploration and mine development interferes with that statutory right. The Part 228 regulations, which remain in full force today, require mining claimants to obtain Forest Service approval of a plan of operations, and post necessary bonding to secure compliance with the plan of operation’s reclamation requirements, but make no attempt to limit access to roadless areas. See, e.g., 36 C.F.R. [section] 228.4, 228.5. It is important to note that mining roads constructed pursuant to the Part 228 regulations do not become part of the National Forest Road System. Instead, as discussed below, the Part 228 regulations requires that such roads be reclaimed by the operator when they are no longer needed.

In the preamble to the Part 228 regulations, the Forest Service specifically and correctly recognized that it may not adopt surface regulations that impede upon the statutory mining rights:

The Forest Service recognizes that prospectors and miners have a statutory right, not mere privilege, under the 1872 mining law and the Act of June 4, 1897, to go upon and use the open public domain lands of the National Forest System for the purposes of mineral exploration, development and production. Exercise of that right may not be unreasonably restricted. Specific provision has been made in the operating plan approval section of the regulations charging Forest Service administrators with the responsibility to consider the economics of operations, along with the other factors, in determining the reasonableness of the requirements for surface resource protection. 39 Fed. Reg. 31317 (Aug. 28, 1974) (emphasis added).

The Forest Service lacks the authority to designate roadless areas in a manner that impedes longstanding statutory rights to explore the public lands for minerals and develop minerals discovered. The limitations on Forest Service authority with regard to minerals have been recognized and applied consistently.

Land Use Planning and The Federal Coal Management Program

In 1979, the Department of Interior (DOI) formally implemented by regulation the Federal Coal Management Program (Coal Program), after the completion of a Programmatic Environmental Impact Statement in which the Forest Service participated. The new Coal Program implemented three newly enacted statutes, the Federal Lands Policy Management Act (FLPMA), FCLAA and SMCRA. See Final Environmental Impact Statement for Federal Coal Management Program at pp.1-15-1-17. The Bureau of Land Management (BLM) has the primary responsibility for administering the Coal Program.

A major component of the Coal Program is comprehensive land use planning, which must be prepared and continually updated. It is only through such planning that federal coal suitable for further leasing consideration is identified. While general land use planning is conducted by BLM under FLPMA or by the Forest Service under NFMA (if National Forest lands are involved), as to coal leasing, both agencies must comply with FCLAA's more specific land use planning requirements. Specifically, section (3)(A)(i) of FCLAA mandates that "no lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land use plan and such sale is compatible with such plan." Additional review of federal lands is required by section 522(b) of SMCRA which states the Secretary of the Interior must "review federal lands to determine whether they contain areas unsuitable for all or certain types of certain coal mining."

The FCLAA and SMCRA planning and review requirements are implemented through the Coal Program. See e.g., 43 C.F.R. 3420.1-4(a) (implementing Section (3)(A)(i) of FCLAA, "The Secretary [of Interior] may not hold a lease sale under this part unless the lands containing the coal deposits are included in a comprehensive land use plan or land use analysis.") and 43 C.F.R. 3420.1-4(b)(2) (also implementing Section (3)(A)(i) by specifying that in the case where the surface overlying the subject coal is managed by an agency other than the DOI, that department or agency has responsibility to prepare the land use plan. "The Department of Agriculture or any other agency with surface management authority shall prepare comprehensive land use plans or land use analysis for lands it administers.").

As to SMCRA's unsuitability review, the Coal Program developed specific unsuitability criteria that must be used by BLM or any other surface managing agency conducting the land use planning process. See 43 CFR 3420.1-4(e)(2) ("the Bureau of Land Management or the surface management agency conducting the land use planning **shall, using the unsuitability criteria and procedures** set out in part 3461 of this title, review Federal lands to assess where there are areas unsuitable for all or certain stipulated methods of mining."). The Coal Program regulations, based on SMCRA's unsuitability provisions, establish 20 specific unsuitability screening criteria for making such a determination.

The Forest Service agreed with the Department of the Interior—as a condition of the Memorandum of Understanding (MOU) by which the Secretary delegated the SMCRA federal lands unsuitability review for national forest lands to the Forest Service—to employ the unsuitability criteria and procedures adopted by Interior, by regulation, as parts of the Coal Program. Specifically, the MOU states:

The Secretary of the Interior and the Secretary of Agriculture will review Federal lands under their respective jurisdictions to determine which are unsuitable for all or certain types of surface coal mining operations. Such reviews shall be conducted and such assessments shall be made by the FS and BLM using [the 20 unsuitability] **criteria which have been promulgated as regulations by the Secretary of the Interior as part of the Federal coal management program** (43 CFR part 3400). May 20, 1980 Memorandum of Understanding between the Department of Agriculture and the Department of the

Interior Providing for Coordination of Activities Pursuant to the Federal Coal Management Program. No. 80-SIE-001 (Emphasis added.) More broadly, the MOU is intended to “establish a system for coordination between the BLM and FS on the Federal coal management program.” Id. As far as NMA can establish, the Forest Service has not coordinated with BLM on the interaction of the roadless rule with the Coal Program. NMA submitted Freedom of Information Act requests to both agencies to determine if there was any communication amongst the agencies as to such interaction or more broadly if there were any communications about the impacts of the roadless rule on any mining activities. The response received by NMA indicates no such communications took place. This lack of active consultation conflicts directly with the requirements of the Coal Program. See generally, 43 CFR 3420; 3461.

Thus, the Coal Program implements the planning and review requirements of FCLAA and SMCRA, by establishing a comprehensive federal system for identifying federal coal suitable for further leasing consideration. The Forest Service has no authority to ignore, as it did in the January 12, 2001 final rule, the Coal Program regulations, or their statutory basis, by declaring vast amounts of public land off-limits to future coal leasing activities. To do so, would be to violate the legal requirement to use the unsuitability requirements to determine areas available for leasing.

In addition, the Coal Program establishes that the local forest planning plays an essential role in determining areas unsuitable for mining, including the construction, reconstruction and maintenance of roads constructed in support of mining operations. In fact, it is the only procedure for determining whether Forest Service lands are suitable for mining. The local forest planning process is the common thread that holds together the three statutes that authorize and regulate coal mining on Forest System lands. These forest plans include reports on the application of the unsuitability criteria. See 43 CFR 3461. If the local forest planning process were bypassed in whole or in part, the Coal Program collapses. Without a predictable mechanism to lease and recover coal underlying Forest Service lands, the Nation’s energy supply could be significantly and seriously affected.

Leasable Solid Minerals other than Coal

The role of local forest planning is equally important in the leasing of solid minerals other than coal. 43 C.F.R. 3501.17(a) provides that ABLM will not issue you a permit or lease unless it conforms with the decisions, terms and conditions of an applicable land use plan@ 43 C.F.R. 3501.17(c) states that ABLM will issue permits and leases consistent with any unsuitability designations under part 1600 of this title.@ 43 C.F.R. 1610.7-1(b)(1) declares, The resource management planning process is the chief process by which public land is reviewed for designation as areas unsuitable [for] entry or leasing for mining operations for minerals and materials other than coal under section 601 of the Surface Mining Control and Reclamation Act of 1977.@ 30 U.S.C. 1281. Together these three planning provisions in conjunction with section 601 of SMCRA affirm that the local forest planning process plays an essential role in the evaluation protection and management of inventoried roadless areas on Forest Service lands.

January 12, 2001 Rule Not Explicit Enough in Exempting Mineral Activities from its Purview

Section 294.12 of the January 12, 2001 rule prohibits road construction and reconstruction in inventoried roadless areas. One of the exceptions to the general prohibition on roads is contained at section 2914.12 (b)(3) which allows roads “needed pursuant to reserved or outstanding rights or as provided for by statute or treaty.” This vague exception may be intended to address access for mineral exploration and development pursuant to the Mining Law of 1872, the Mineral Leasing Act and other laws, but the rule’s preamble provides little explanation of the exception’s scope. Indeed, statements in the preamble undermine the mining industry’s confidence that this exception will ensure access **via roads**. Specifically, the preamble states:

Access for the exploration of locatable minerals pursuant to the General Mining Law of 1872 is not prohibited by this rule. Nor is reasonable access for the development of valid claims pursuant to the General Mining Law of 1872 prohibited. **In some cases, access other than roads may be adequate for mineral activities. This access may include, but is not limited to, helicopter, road construction or reconstruction, or non-motorized transport.** 66 Fed. Reg. 3253. (Emphasis added.) While aerial access may not be prohibitive in connection with some exploration, we submit that aerial access will be prohibitive, i.e., unreasonable, with respect to essentially all mining activities. While the Forest Service may have more discretion over leasable mineral activities, the exception to the road prohibition would still apply to provide access for such activities to fulfill existing contracts. Permitting only aerial access

or non-motorized access is a constructive denial of access. To reiterate previous comments, the Forest Service has no authority to prevent access for mineral activities under the Mining Law. As the United States Court of Appeals for the Ninth Circuit has recently noted: "Congress has refused to repeal the Mining Law of 1872. Administrative agencies lack authority effectively to repeal the statute by regulations." United States v. Shumway, 199 F.3d.1093, 1107, (9th Cir. 1999). In addition, denial or restriction of access may effect a taking under the Fifth Amendment of the U.S. Constitution, and any denial or restriction on access for a leasable mineral activity may also constitute a violation of the Contracts Clause of the U.S. Constitution.

The Forest Service must allow road construction for mineral exploration and development as guaranteed by statutory right in the various federal mining and mineral leasing laws. (Business or Association, Washington, D.C. - #A29622.20223)

Mining Law of 1872

156. Public Concern: The Forest Service should comply with the Mining Law of 1872.

The Forest Service should rely on local control and input to determine the best use of forest resources, while conforming to the Mining Law of 1872. (Individual, Aptos, CA - #A16303.20223)

TO REMAIN FREE OF FOREIGN DEPENDENCE ON RAW MATERIALS

The Mining Law of 1872 should be of prime concern, as our ability to remain free of foreign dependence on raw materials is of utmost importance. (Individual, Aptos, CA - #A16303.20223)

The Forest Service should rely on local control and input to determine the best use of forest resources, while conforming to the Mining Law of 1872. . . . The Forest Service must consider economic factors by law. The Mining Law of 1872 should be of prime concern, as our ability to remain free of foreign dependence on raw materials is of utmost importance. The Forest Service should allow local jurisdictions to make their own decisions on how best to use forest lands because local citizens are affected the most by these decisions. (Individual, Albuquerque, NM - #A10497.15111)

BY MAINTAINING ACCESS FOR MINERAL EXPLORATION AND DEVELOPMENT

Rights provided under the 1872 Mining Law to explore for and develop minerals cannot be abridged by the adoption of an administrative regulation in the absence of other Congressionally enacted statute granting such specific authority. No such Congressionally-granted authority can be found among the plethora of laws governing the management of federal lands. To the contrary, Congress granted specific protection for the exercise of valid mining rights, as set forth in:

Surface Resources and Multiple Use Act of 1955 30 U.S.C. 612

Multiple-Use Sustained Yield Act of 1960 16 U.S.C. 528

Wilderness Act of 1964 16 U.S.C. 1134

National Forest Management Act 16 U.S.C. 1601-1614

Access to Forest Service lands containing minerals under federal lease is also protected, since the contractually granted right given by the federal government to develop those minerals is dependent upon access necessary to conduct the operation in a safe and prudent manner in accordance with applicable laws, including requirements of OSM [Office of Surface Mining], MSHA [Mine Safety and Health Administration], and other agencies. Subsequent administrative inclusion within a defined roadless area cannot, and should not, infringe on existing rights. (Business or Association, Denver, CO - #A20676.20200)

First and foremost, the Forest Service must review its statutory authority as to whether it can prohibit any specific activities. For example . . . the Forest Service has no statutory authority to prevent access to federal lands pursuant to the Mining Law of 1872. Therefore, arguably, roaded access for mineral development should be expressly allowed. (Business or Association, Spokane, WA - #A17351.20000)

BY ALLOWING UNRESTRICTED MODES OF TRANSPORTATION

Mineral entry to public lands, as guaranteed by the 1872 Mining Act, is an act of Congress. The Act is a complete bundle of rights that includes, among other things the construction of access roads for exploration and development, the removal of bulk samples for test milling, and unrestricted modes of transportation to gain access to lands subject to the Act.

This bundle of rights to explore and develop federal minerals cannot be partially extinguished by administratively limiting modes of access, or any other valid rights granted by Congress when it enacted the 1872 Mining Act. (Business or Association, Reno, NV - #A15364.20223)

BY NOT MATERIALLY INTERFERING WITH PROSPECTING, MINING, OR MINERAL PROCESSING

Certain other federally owned minerals, e.g., gold and silver, are governed by the laws of location as set forth in the 1872 Mining Law, which predates the establishment of the National Forests (1897). The Mining Law allows for “free and open exploration and purchase” of all valuable mineral deposits in lands belonging to the United States.” 30 U.S.C. [Section] 22. Thus, while the Forest Service may have statutory authority to regulate surface use of the National Forests by holders of unpatented mining claims, that regulation must be reasonable and may not materially interfere with prospecting, mining or mineral processing as guaranteed under the Mining Law on lands open to the public. For a more comprehensive treatment of this issue, we refer you to and hereby incorporate by reference the comments of the National Mining Association. (Business or Association, Denver, CO - #A20676.20223)

157. Public Concern: The Mining Act of 1872 should be revised.

TO GRANT ROYALTIES AND LEASING FEES TO GOVERNMENT MANAGERS COMMENSURATE WITH THOSE RECEIVED FROM PRIVATELY OWNED LAND

Mining and the exploitation of non-renewable resources can impose major permanent impacts upon the land. Often these impacts can be localized; but none-the-less should be restrained. The 1872 Mining Act as well as grazing privileges need to be revised to result in the government managers receiving royalties and leasing fees commensurate to if the land was privately owned. National Forests are not intended for being tree farms, mines or cattle pastures. (Individual, Geneva, NE - #A15512.90110)

158. Public Concern: The Mining Act of 1872 should be repealed.

The 1872 Mining Act needs to be thrown out as well. (Individual, Boise, ID - #A8715.90720)

Mining and Mineral Policy Act

159. Public Concern: The Forest Service should comply with the Mining and Mineral Policy Act.

BY MAINTAINING ACCESS TO MINERAL DEPOSITS IN NATIONAL FOREST SYSTEM LANDS

Creation of vast “roadless” areas is in direct conflict with the Congressional mandate established in the Mining and mineral Policy Act of 1970 (MMPA). MMPA states the following: “The Congress declares that it is the continuing policy of the Federal government in the national interest to foster and encourage private enterprise in: (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries; (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs.” Clearly, maintaining access to mineral deposits in the national forest system is essential to complying with the MMPA’s directive. (Individual, Reno, NV - #A21755.20223)

Compliance with the Mining and Mineral Policy Act of 1970—Creation of vast roadless areas is in direct conflict with the Congressional mandate established in the Mining and Mineral Policy Act of 1970 (MMPA). MMPA states the following: “The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in: (1) the development of economically sound and stable domestic mining, minerals, metal and mineral

reclamation industries; (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industries, security and environmental needs.” Clearly, maintaining access to mineral deposits in the National Forest System is essential to complying with the MMPA’s directive. (Individual, Reno, NV - #A21377.20200)

Multiple Use and Sustained Yield Act

160. Public Concern: The Forest Service should comply with the Multiple Use and Sustained Yield Act.

BY ENSURING THAT FOREST PLANS ARE IN COMPLIANCE

The plans must provide for multiple use as provided in The Multiple Use Sustained Yield Act of 1960, taking into account the “coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness”. (Individual, El Dorado, KS - #A5117.20202)

BY MAINTAINING ACCESS

I am writing to support the Forest Service’s Multiple Use Act. The public lands belong to the public, that’s you and me, not to the federal government. We want access to what is legally ours. (Individual, Seiad Valley, CA - #A1150.20202)

BY PROVIDING FOR A COMBINATION OF USES IN WHATEVER MATRIX WILL BEST MEET THE NEEDS OF THE AMERICAN PEOPLE

The Multiple Use and Sustained Yield Act of 1960 (16 U.S.C. sec. 528 to 531) provides that our public lands shall be “utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources and related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions, that some land will be for less than all of the resources...”

Your public pronouncements suggest that the new leadership at the Forest Service has lost sight of this legal principle. It is not legally necessary to provide for every use on every acre of our national forests. Rather, it is your legal obligation to meet the needs of the American people, applying whatever combination of uses in whatever matrix is necessary. (Organization, Titusville, NJ - #A6288.20202)

The BLM Strategic Plan FY 2000 to 2005 states that: “To achieve this mission, the Bureau of Land Management follows these principles: Manage natural resources for multiple use and long-term value, recognizing that the mix of permitted and allowable uses will vary from area to area and over time.”

Multiple-use management goals are the only goals that will “best meet the needs” of the public and provide for equal program delivery to all citizens including motorized visitors. All of us have a responsibility to accept and promote diversity of recreation on our public lands. Diversity of recreation opportunities can only be accomplished through management for multiple-uses and reasonable coexistence among visitors.

The significant closing of roads and motorized trails in the project area is not consistent with meeting the needs of the public and the goals of Multiple-Use Management as directed under Federal Land Policy and Management Act of 1976 (FLPMA), Multiple Use Sustained Yield Act of 1960 and P.L. 88-657. The proposed rulemaking combined with the cumulative effects of other proposed and enacted federal land management policies have resulted in a significant reduction of multiple-use and OHV recreation opportunities. We request further evaluation of compliance with multiple-use policies and laws and that the decision support these policies and laws. (Organization, Helena, MT - #A13226.20200)

BY USING MULTIPLE-USE SUSTAINABILITY AS THE STANDARD RATHER THAN ECOSYSTEM SUSTAINABILITY

The Forest Service asks what characteristic, environment values, social and economic considerations they should consider as it evaluates inventoried roadless areas. ABATE of Illinois asks that the Forest Service return to the 1960 Multiple-Use Sustained Yield Act. This act outlines multi-use sustainability as opposed to the current standard of “ecosystem sustainability”.

The “ecosystem sustainability” standard currently being used could eliminate access of the forest to almost all recreationists, including motorcycles. (Organization, Naperville, IL - #A20342.20202)

BY GIVING EQUAL CONSIDERATION TO ALL RESOURCES

While the Forest Service is permitted under the MUSYA to prefer some uses over others based on relative resource values in particular areas, the Forest Service cannot, in a proposal that would impact the entire National Forest System, elevate one resource (i.e., environmental resources) over all others. In explaining the Act’s multiple-use directive, the House Report discusses the “relative values” analysis as follows:

One of the basic concepts of multiple use is that all of these resources in general are entitled to equal consideration, but in particular . . . localized areas’ relative values of the various resources will be recognized . . . In practice, the priority of resource use will vary locality by locality and case by case. In one locality timber use might dominate; in another locality use of the range by domestic livestock; in another outdoor recreation or wildlife might dominate. Thus, in particular localities the various resource uses might be given priorities because of particular circumstances. This is the meaning of the last sentence of section 2 of the bill. But no resource would be given a statutory priority over the others. The bill would neither upgrade nor downgrade any resource.

H.R. Rep. No. 1551, 86th Cong., 2d Sess.—(1960), reprinted in 1960 U.S.C.C.A.N. 2377, 2379. Thus, the Forest Service may [not] “upgrade” one resource use, i.e. roadless areas, over all others. (Business or Association, Washington, DC - #A29622.20202)

161. Public Concern: The Forest Service should clarify how the Roadless Area Conservation Rule complies with the Multiple Use and Sustained Yield Act.

Modifications to the revised Rule must clearly reflect how the new Rule will provide needed access for congressionally mandated multiple uses. (Business, Colville, WA - #A3362.20202)

162. Public Concern: The Forest Service should analyze how many wild fires in 2000 occurred in study areas and whether the Multiple Use and Sustained Yield Act has been suspended.

Check how many of the wild fires of 2000 started in study areas and whether the Multiple Use Act of 1960 has been suspended. (Individual, Corvallis MT - #A8081.20202)

163. Public Concern: The Forest Service should reevaluate the legal mandate to provide sustained yield of renewable resources.

I believe it is time to reevaluate the congressional mandate for the Forest Service to provide sustained yield of renewable resources. Past forest management has NOT provided sustained yield as required by the 1960 MUSYA Act, and public forests have been decimated over the past 40 years. (Individual, Olympia, WA - #A4929.20202)

I believe it is time to reevaluate the congressional mandate for the Forest Service to provide sustained yield of renewable resources. Past forest management has not provided sustained yield as required by the 1960 MUSYA Act, and public forests have been decimated over the past 40 years. (Individual, Olympia, WA - #A6262.20202)

National Forest Protection and Restoration Act

164. Public Concern: The Forest Service should comply with the proposed National Forest Protection and Restoration Act.

BY ELIMINATING COMMERCIAL LOGGING AND DIVERTING SUBSIDIES TO TRUE RESTORATION

The ultimate solution lies in the National Forest Protection and Restoration Act, which eliminates commercial logging and diverts subsidies towards true restoration. Only by fully protecting roadless

areas from commercial logging will we manage for “healthy” forests, in the true ecological sense. (Individual, Pullman, WA - #A6234.20200)

TO ELIMINATE FUTURE MANAGEMENT ERRORS

To eliminate the possibility of future management errors such as this proposal, I have introduced the National Forest Protection and Restoration Act. This Act would eliminate the commercial timber program, and neutralize the commercial incentives that are clearly at work in this reverse-rulemaking proposal. While the Forest Service may feel the need to hand our National Forests over to special interests, I do not share this vision, and will resist your efforts until you move in a new direction. (United States Representative, Georgia, - #A693.20000)

Northern Rockies Ecosystem Protection Act

165. Public Concern: The Forest Service should support the Northern Rockies Ecosystem Protection Act, HR 488.

TO PROTECT REMAINING PRISTINE LANDS

I am writing to please urge you to support the Northern Rockies Ecosystem Protection Act, HR 488. With all of the opposition you must be receiving against the act, I’m sure this puts you in a difficult position. But the very few pristine lands we have left in our country deserve to be left alone. (Individual, Alberton, MT - #A11755.20200)

Organic Act

166. Public Concern: The Forest Service should comply with the Organic Act.

I am more concerned about the trend of the Forest Service in management of the rest of the national forests. I think it is time for the Forest Service to re-examine its origin and purpose. The Organic Act of 1897 affirmed that the forests’ reservations are “for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States.”

A plethora of policy and management legislation has confused and complicated administration of the national forests, but none has repealed the basic premise so well stated in 1897. (Individual, Missoula, MT - #A4987.20204)

Before replying specifically to the 10 questions you pose, I believe it is essential first to refer back to the Organic Administration Act.

While the Multiple Use-Sustained Yield Act, Wilderness Act, Forest and Rangeland Renewable Resources Planning Act and National Forest Management Act, among others, modify the Organic act, and while the Clean Water Act, National Environmental Policy Act and Endangered Species Act, among others, affect its implementation, the core provisions of the Organic Act remain controlling law.

In 1978 the U.S. Supreme Court, after reciting the familiar language in the Organic Administration Act setting out the reasons why the national forests were created, added: “They are not parks set aside for nonuse” (United States v. New Mexico), the Wilderness Act did not change this. Quite the opposite, it recognized that to convert national forest land to “nonuse” required a specific act of Congress.

While the Forest Service’s ANPR does a good job summarizing the legal history of the roadless dispute since 1972, I raise the issue of the Organic Administration Act because it remains an essential legal context for any policy decisions about the national forests. (Individual, Spokane, WA - #A17819.20204)

BY MANAGING FOR MULTIPLE USES

The proposed policy is contrary to the Forest Service’s Organic Act which requires multiple use management of the National Forests. The policy would create de-facto wilderness covering 50-60 million acres. (Individual, Anchorage, AK - #A11831.20204)

Regulatory Flexibility Act

167. Public Concern: The Forest Service should comply with the Regulatory Flexibility Act.

As part of the revised rulemaking process on the Roadless Area Conservation Plan, the Forest Service must comply with regulations under the Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and the Benefit Cost Analysis/Unfunded Mandated Reform Act in promulgating the rules under this process. (Business or Association, Salt Lake City, UT - #A28991.20000)

BY PROVIDING A REGULATORY FLEXIBILITY ANALYSIS

The Final Rule was issued without benefit of a regulatory flexibility analysis. *66 Fed. Reg. at 3270*. The Department of Agriculture asserted that “Because the roadless rule does not directly regulate small entities, the Department does not believe the Regulatory Flexibility Act applies to this rule.” *Id.* HAI believes that this conclusion is grossly in error. The civil helicopter operators that provide aerial fire suppression and other services to federal land management agencies are all small business organizations, based on Small Business Administration criteria. Because helicopter operations in remote areas are dependent upon ground support teams and vehicles, the Final Rule will have a substantial negative impact on the ability of these small businesses to conduct operations in fulfillment of their contracts with federal land management agencies and others. This rulemaking is incomplete without a regulatory flexibility analysis of its potential economic impact on civil helicopter operators and related small businesses. (Business, Alexandria, VA - #A30200.20217)

The rules should be considered in light of the Regulatory Flexibility Act (5 USC 601 et seq). Under this law which guides broad planning principles and management of the Forest Service road system, this proposed rule must be shown to have no direct or indirect financial or other impact on small businesses. The Forest Service is required to certify that this action will not have a significant economic impact on a substantial number of small entities as defined by the Act. (State Agency, Cheyenne, WY - #A22609.20217)

The Forest Service previously claimed in its proposed rule, “*This proposed rule has been considered in light of the Regulatory Flexibility Act.*” It was further stated that “*the proposed rule primarily involves agency terminology and board principles to guide the planning and management of the Forest Service road system and has no direct or indirect financial or other impact on small businesses. Therefore, it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by the Act.*” However, the FS also stated that a road constructed into a roadless or unroaded area automatically constitutes a significant impact, requiring an EIS. In other words, any road required for mineral exploration or development will also require an EIS, which could cost millions of dollars. In view of the agency’s purported budgetary woes, we are extremely concerned that the FS will force project proponents to pay for these NEPA analyses. It is unquestionable that the cost of a small exploration program would increase exponentially in conjunction with the required analyses. When one considers the number of mining claims, leases, or prospecting permits within the roadless areas, it is clear that the rule would definitely pose a significant economic impact on a sizable number of small companies. Consequently, we dispute the FS’s finding that its proposed rule would have no significant impact on small business and formally request the agency to conduct a specific analysis to clearly illustrate the genuine impacts of the proposed rule on small business. (Business, Denver, CO - #A29112.20217)

I request that the Forest Service conduct a detailed Regulatory Impact Analysis, including cost-benefit analysis, of any changes to the RACR as required by the Administration Procedures Act and the several Executive Orders and acts of Congress concerning cost-benefit analysis. These analyses must evaluate the net impact of any changes to the rule, and a draft analysis must be made available concurrent with the publication of the Notice of Proposed Rulemaking. I request that these analyses include the value of

ecosystem services provided by intact roadless areas. (Individual, Huntington Woods, MI - #A7706.20209)

Neither the Cost-Benefit analysis nor the Initial Regulatory Flexibility Analysis (IRFA) met the letter or intent of the Regulatory Flexibility Act (RFA), the Small Business Regulatory Enforcement Fairness Act (SBREFA), and the Benefit-Cost Analysis/Unfunded Mandates Reform Act. While much of the IRFA is couched in the proper terms and tone expected of an objective analysis, a knowledgeable reviewer quickly perceives that the document is seriously flawed in many respects. The overall credibility of IRFA is seriously diminished by the notable absence of hard data or facts substantiating the many assumptions used throughout the Final EIS and the January 12 Rule. The full range of management alternatives cannot be determined without a proper IRFA or Cost-Benefit Analysis.

As a result, the USFS has failed to analyze adequately the impact of the January 12 Rule on small entities and did not fairly consider regulatory alternatives that would minimize significant economic impacts to small entities. As the U.S. District court in Florida has keenly observed, **agencies must be mindful that even commendable goals like preservation do not excuse violations of the RFA.** “Although the preservation of Atlantic shark species is a **benevolent, laudatory goal**, conservation does not justify government lawlessness.” (emphasis added) *Southern Offshore Fishing Association v Daley*, 55F. Supp> 2d 1336 (D. FL 1999). (Business or Association, Spokane, WA - #A17351.75900)

BY STATING THE LEGAL BASIS FOR THE PROPOSED ACTION AND DESCRIBING ALTERNATIVES WHICH MINIMIZE THE ECONOMIC IMPACT ON SMALL BUSINESSES

The IRFA [Initial Regulatory Flexibility Analysis] is deficient in a number of respects. The RFA requires “a succinct statement of the objectives of, and legal basis for, the proposed action; a description of and, where feasible, an estimate of the number of small entities to which the proposed action will apply.” The IRFA was devoid of any attempt to satisfy either of these statutory requirements. The IRFA did not contain a statement of the legal basis for the proposed action. *The reason is simple: the agency lacked statutory authority for this rulemaking and was fully aware of this fact.*

The RFA further requires that each IRFA contain a description of any significant alternatives to the January 12 Rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the January 12 Rule on small entities. Again, the IRFA prepared by the USFS was devoid of any attempt to satisfy this requirement.

The alternatives discussed in the preamble to the January 12 Rule are not “alternatives that minimize any significant economic impact of the rule on small entities.” Compliance with the RFA is not achieved by consideration of alternatives that do not meet the requirements of the Act. Accordingly, when the USFS considers alternatives that are more burdensome to small business, they are not valid for RFA purposes. In addition, the USFS did not consider several other obvious alternatives that would accomplish the objectives of the statute but would have protected small entities. These are temporary roads; well-maintained roads; privately maintained roads; and recognized RS 2477 roads. (Business or Association, Spokane, WA - #A17351.20217)

Our members have asked, “Did the USFS avoid the RFA mandated economic impact analysis because it knew that the impact to small businesses and rural communities would be large and devastating?” The USFS use of an all-or-nothing approach in developing the January 12 Rule, when experience, the laws written by Congress, and just plain common sense, dictated a middle ground, make their question pertinent. We believe the courts would agree.

One purpose of the RFA is to make sure reasonable alternatives are considered that avoid economic dislocation to small entities, while still accomplishing the stated regulatory goal. The technical and management capabilities exist to provide for continued judicious use of both new and existing roads on those tracts of land that remain largely unroaded. Middle-ground alternatives should have been considered, and their economic impacts evaluated and compared to the January 12 Rule. This nation has the means to avoid adverse environmental impacts to the land without essentially having to stop all resource-based economic activities. Not only was the absence of other reasonable alternatives inconsistent with RFA, but NEPA requirements as well. (Business or Association, Spokane, WA - #A17351.20217)

Revised Statute 2477

168. Public Concern: The Forest Service should comply with Revised Statute 2477.

WITH RESPECT TO ROAD CLOSURES

I am disgusted by the very prospect of the roadless initiative. For starters, it is illegal to close many of these roads under RS 2477. It seeks to decrease public access to the back country, eventually corralling the citizens of the US into small urban areas. (Individual, Anoka, MN - #A359.20208)

If you so much as touch an RS-2477 you will be trying to defend yourself before a judge. (Individual, No Address - #A6724.20208)

Most of the motorized trails have served as important public access routes since the turn of the century. This significance is clearly demonstrated by the number of historic mines and structures that are located along these routes. We have observed that these travelways are currently significant recreation resources for motorized visitors in the area including ATV, motorcycle, and four-wheel drive enthusiasts. Many of these travelways have right-of-ways as provided for under the provisions of Revised Statute 2477. These roads are shown on many older mapping sources including: aerial photographs, 15-minute USGS quadrangle sheets, and older county maps. The cut and fill sections and obvious roadbed indicate that these roads were constructed and used by the public for access to the forest. RS 2477 was created to provide adequate public access to our public lands. Now this public access is being eliminated. These travelways must remain open based on; (1) their history of public access, (2) the access that they provide to interesting historical sites, and (3) their significance to public access. The document must evaluate all of the issues surrounding RS 2477 including the cumulative impact of all past closures of RS 2477 routes. (Organization, Helena, MT - #A13226.20208)

All of the routes proposed for closure by the Forest Service were in existence before 1976 and, therefore, have RS 2477 rights-of-way to provide the public with access to public lands. (Organization, Helena, MT - #A13226.20208)

The rule ignores state law that reserves to the public, access to all section lines. In 1866 Congress provided rights of way for the public to federal lands, commonly known as R.S. 2477 grants. The State accepted the R.S. 2477 grant upon statehood, by declaring all section lines open to the public. (Governor, State of North Dakota - #A22065.20208)

A major concern of Catron County Commission is the RS 2477 Roads that lace the Gila and Cibola national forests in Catron County, including the proposed Roadless areas. The Catron County RS 2477 Roads are property of the County and its citizens. Yet the County Commission is concerned that the Roadless Initiative would usurp County jurisdiction with the federal government illegally "taking property" that belongs to the County. Catron County Commission has notified the national forest of its RS 2477 Roads has been done in the current Roadless EIS. The County has also requested to be a partner in joint environmental analyses of any Forest Service initiatives that could impact Catron County and its citizens' private properties. The County was not properly notified for early consultation, given the number of RS 2477 Roads on the national forests in Catron County. (Elected Official, Catron County, NM - #A15538.20208)

BY ACKNOWLEDGING ALL IDENTIFIED REVISED STATUTE 2477 RIGHTS-OF WAY AS ROADS

The proposed roadless policy must acknowledge the existence of Revised Statute 2477 rights-of-way (R.S. 2477) which allow access to lands owned by the State of Alaska and other private property. All identified RS 2477 rights-of-way in Alaska's and in the Lower 48 states, must be acknowledged as

“roads” for purposes of this regulation, regardless of the width of the roadway and its current condition. Otherwise, the proposed policy would violate RS 2477 and the Alaska Statehood Act. (Individual, Anchorage, AK - #A11831.20208)

169. Public Concern: The federal government should issue easement deeds that title insurance companies will insure.

INCLUDING REVISED STATUTE 2477 ROUTES

The Federal Government should issue easement deeds that Title Insurance Companies will insure including RS2477 routes. Enforcement jurisdiction lies within the counties. The Federal government may be obstructing justice by interfering with access guaranteed by Congress under RS2477, exempted by FLPMA and the National Preservation Act.

California Civil code 15:66 provides that the owner of an easement has the right to maintain and repair the easement, and the duty extends to the city or other public agency on a public easement so as to prevent injury. (Individual, Santa Ysabel, CA - #A26392.20000)

170. Public Concern: The Forest Service should defer action on roadless area management until local communities complete studies of Revised Statute 2477 claims.

The Forest Service is forcing local communities to begin costly and time consuming RS 2477 claims and studies since this appears to be the only avenue local communities have in maintaining local access to their public lands. These studies must be completed prior to any Forest Service roadless area designations or restrictions. (Individual, Alturas, CA - #A28581.20208)

171. Public Concern: The Forest Service should clarify its position on Revised Statute 2477 roads.

WITH RESPECT TO ROADLESS AREAS

We have one other concern that we did not see expressed here. That concern is: How is the Forest Service going to deal with RS 2477 roads, and how do those roads fit into the roadless area discussion?

Currently the Forest Service has no position on RS 2477 roads. There is no policy in place to recognize or deal with such roads. If a county asserts RS 2477 routes they are met with silence by the agency. If the county then pushes the issue the routes are grudgingly recognized (maybe), subject to unilateral action on the part of the agency to cancel that recognition if it (the agency) so decides.

This question can have an impact on a roadless area. If a county asserts an RS 2477 right-of-way for a road through a roadless area, and the agency refuses to accept that assertion, what happens to the roadless area until that disagreement is settled, and what process is used to settle the disagreement?

We would like to see this issue addressed at some point. It may have to be addressed in a separate regulation or policy statement, but we believe it ties in with the roadless issue. (Elected Official, Fremont County, ID - #A4942.20208)

172. Public Concern: The Forest Service should consult with counties regarding Revised Statute 2477 roads.

SIERRA COUNTY

The Gila National Forest in Sierra County already has substantial non-multiple use (Roadless, restricted and wilderness) areas. In addition, Sierra County RS 2477 Roads could be in jeopardy unless there is proper Forest Service consultation with the County Commission. (Manager, Sierra County, NM - #A22059.20208)

A major concern of Sierra County Commission is the RS 2477 Roads that lace the Gila National Forest in Sierra County, including the proposed Roadless areas. The Sierra County RS 2477 Roads are property

of the County and its citizens. Yet the County Commission is concerned that the Roadless Initiative would usurp County jurisdiction with the federal government illegally “taking property” that belongs to the County. Sierra County Commission has notified the national forest of its RS 2477 properties on the forest. Yet no proper consideration of the RS 2477 Roads has been done in the current Roadless EIS. The County has also requested to be a partner in joint environmental analyses of any Forest Service initiatives that could impact Sierra County and its citizens’ private properties. The County was not properly notified for early consultation, given the number of RS 2477 Roads on the national forest in Sierra County.

It should also be noted that federal agencies couldn’t extinguish or adversely impact RS 2477 Roads. Only the affected county of US Congress can extinguish, change or abandon RS 2477 Roads. The 1997 omnibus act, section 108, states that 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 RS 2477 shall take effect unless expressly authorized by an act of Congress. (Manager, Sierra County, NM - #A22059.20208)

173. Public Concern: The Forest Service should comply with the Revised Statute 2477 (RS 2477) savings provisions and the Section 108 prohibition against redefining what an RS 2477 road is.

First and foremost, the Forest Service must obey the law, most particularly the RS 2477 savings provisions of FLPMA and the Section 108 prohibition against redefining what an RS 2477 is. The 30,000 or so comments that you have received from eco-fanatics do not trump these laws. We doubt that Congress will change these statutes, because to do so would result in multi-billion dollar claims under the Taking clause of the US Constitution’s Fifth Amendment. This is why Congress wrote the savings provisions of FLPMA in the first place. (Organization, Tonopah, NV - #A20337.20000)

The USFS is attempting to define the terms “roadless areas” and “unroaded areas” in a way which adversely affects the recognition and validity of RS-2477 rights-of-way in a manner that has been expressly prohibited by a Congressional moratorium (Section 108). **These definitions are an inherent component of both the proposed “roadless area” moratorium rule and the ANPR.** Moreover, these definitions have been published in the Federal Register for public comment, as is required under the Administrative Procedures Act. This attempt to establish regulations through the use of a unilateral proclamation of the USFS is an illegal action, in defiance of Congress and in violation of the Administrative Procedures Act, the savings provisions of FLPMA, and Section 108.

The U.S. Constitution states that “ALL legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” (emphasis added) The executive agencies, including the USFS, have **no** constitutional authority of their own to make law. Only the Congress can do that. Hence, a unilateral act of the USFS (or any agency) to establish rules (or inherent components thereof such as definitions) by cloaking them as “policy” in defiance of the express will of Congress is unconstitutional and unlawful. (Organization, Tonopah, NV - #A20337.20000)

BY RESPECTING ALL VALID EXISTING RIGHTS

The Forest Service should respect ALL “valid existing rights,” as stated in the Federal Land Policy and Management Act of 1976. (Individual, Eckert, CO - #A28671.20205)

Tongass Timber Reform Act

174. Public Concern: The Forest Service should comply with the Tongass Timber Reform Act.

BY EXCLUDING THE TONGASS NATIONAL FOREST FROM THE FINAL RULE

Including the Tongass in the final rule prohibits the Forest Service from complying with the Tongass Timber Reform Act (TTRA) and the Alaska National Interest Lands Conservation Act (ANILCA). (Elected Official, Haines, AK - #A18063.20400)

BY PROVIDING AN ADEQUATE VOLUME OF TIMBER

It . . . fails to consider the Tongass Timber Reform Act's directive that the Forest Service should supply an adequate volume of timber to meet the needs of Southeast Alaska's timber industry and timber-dependent communities such as the Borough. (Ketchikan Gateway Borough, AK - #A17476.20200)

The Tongass Land and Resource Management Plan (TLMP) just completed an 11-year, \$13 million revision funded by American taxpayers, which is currently under appeal by several entities. In addition to other legal impediments to the application of the roadless proposal on the Tongass, no changes in land allocations on the Tongass can be made by the Forest Service except to correct legal errors in the TLMP revision procedures or pursuant to a forest plan amendment following NFMA procedures. Adoption of the proposed rule will lead to violation of the Tongass Timber Reform Act (TTRA) because the Forest Service will be unable to meet market demand for timber sales as called for in this statute. (Tribal Corporation, Anchorage, AK - #A20340.20400)

175. Public Concern: The Forest Service should acknowledge legal rulings that the Tongass Timber Reform Act does not require unconditional timber sale offerings.**BY INCLUDING THE TONGASS NATIONAL FOREST FROM A NATIONAL RULE**

The Forest Service claims that the agency cannot include roadless areas of the Tongass in the policy because "use of the Tongass National Forest's inventoried roadless areas for timber production contributes to the Forest Service's effort to seek to meet (within the meaning of Section 101 of the Tongass Timber Reform Act) market demand for timber in the Tongass National Forest consistent with providing for the multiple use and sustained yield for all renewable forest resources. . . . First of all, the "seek to meet market demand" provision is subject to all other laws, consistent with providing for the multiple use and sustained yield for all renewable forest resources. Those forest resources include outdoor recreation, watersheds, wildlife and fish purposes (see Multiple Use Sustained Yield Act, 16 USC Sec. 528.)

The Ninth Circuit Court of Appeals, in *Alaska Wilderness Recreation and Tourism Association vs. Morrison* (1995), held that "TTRA envisions not an inflexible harvest level, but a balancing of the market, the law, and other uses, including preservation."

The Forest Service itself has advocated this more flexible and more accurate interpretation of the TTRA. In *AFA v. U.S.*, the Forest Service argued "The use of the word 'seek' necessarily implies a congressional recognition that the Forest Service may be in full compliance with Section 101's mandates, even though less than 'market demand' is offered. (*Defendants' Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendants' Cross-Motion for Summary Judgment*, 4/14/95, p. 10.)

In a case from this year, the Forest Service argued: "Reliance on the TTRA is misplaced because the TTRA directive is subject to numerous qualifications and because the Ninth Circuit has rejected the interpretation that the TTRA directive to seek to meet market demand is 'mandatory.'" (*Southeast Alaska Conservation Council v. Lyons, Defendants' Opposition to Plaintiffs' Brief on the Merits*, 2/18/00.)

Finally, the Department of Agriculture formally adopted these interpretations in the decisions on the appeals of the Tongass Land Management Plan Revision:

Section 101 clearly states that this provision is "subject to appropriations, other applicable law, and the requirements of the National Forest Management Act of 1976." In addition, it also clearly states that meeting demand is subject to being "consistent with providing for multiple use and sustained yield of all renewable forest resources." (Organization, Sitka, AK - #A30486.75510)

Weeks Act

176. Public Concern: The Forest Service should comply with the Weeks Act.

BY MANAGING FOR MULTIPLE USES

Please insist that **your** Agency manage **my** forests for multiple-use including timber production. The 1911 Weeks Act requires it. (Individual, Princeton, WV - #A18086.50200)

Wild Horse Act

177. Public Concern: The Wild Horse Act should be revised.

DUE TO ITS ROLE IN INCREASING THE HORSE POPULATION

The Wild Horse Act must be revised. The cost is too high. The overall horse population in the United States is forced to increase when it should be decreasing. (Individual, Klamath Falls, OR - #A8809.20200)

Wilderness Acts

178. Public Concern: The Forest Service should comply with the Wilderness Act.

I believe that the Roadless initiative violates the Wilderness Act. Congress should have oversight of any policy of such magnitude. (Individual, Sumter, SC - #A6210.20206)

Protection for “roadless” areas is unnecessary given the existence of the Wilderness Act. Inventoried “roadless” areas selected for future protection should be proposed to Congress for wilderness designation; there is no need for two separate processes to achieve the same goal. In addition, by proposing inventoried “roadless” areas to Congress, the Forest Service will avoid allegations that it is attempting to create de facto wilderness areas in violation of the Wilderness Act. (Business or Association, Reno, NV - #A21755.20206)

REGARDING LAND INVENTORY AND WILDERNESS RECOMMENDATIONS

In 1964 the Wilderness Act was passed and signed into law. The law required that the Forest Service and the Bureau of Land Management inventory the lands under their responsibility and recommend to Congress the areas that should be considered “wilderness.” (Elected Official, Gila County, AZ - #A3013.20206)

BY NOT CREATING DE FACTO WILDERNESS AREAS

Not only is this outcome poor public policy, but also designation of this roadless area directly flouted Congress’ intent in carefully drawing the boundaries of the Jarbidge Wilderness. The original designation of that wilderness area occurred as part of the Wilderness Act of 1964, 16 U.S.C. [section] 1132(a) (“1964 Wilderness Act”), and it was expanded in 1989, 103 Stat. 1784. The Wilderness Act and its legislative history make clear that Congress drew the boundaries carefully, and no protective perimeters outside of those boundaries were to be presumed. Instead, the remaining lands were intended to remain open to multiple use. Moreover, no further roadless area review and evaluation of National Forest lands in Nevada was to be conducted without congressional authorization. See 135 Cong.Rec. S11510-11515 (Sept. 20, 1989). Through the Roadless Rule, however, the Forest Service has acted directly contrary to congressional will by making a *de facto* extension of the Jarbidge Wilderness to include the area between AGNA’s operations at Jerritt Canyon and Big Springs as well as other “roadless” designations throughout Nevada. (Business or Association, Washington, DC - #A19636.20206)

The West Elk Mine is located a few miles from the West Elk Wilderness Area designated by Congress under the 1964 Wilderness Act. 16 U.S.C. [section] 1132. Despite its proximity to the Wilderness Area, the Mine has been able to operate successfully, largely because in 1964 Congress carefully considered the boundaries of that Wilderness and explicitly noted that “no future administrator” of the Forest Service could “make wholesale designations of additional areas in which use would be limited.” House Report No. 1538, 88th Cong. (July 2, 1964), reprinted in 1964 U.S.C.C.A.N. at 3616-17. (Business or Association, Washington, DC - #A19636.20206)

179. Public Concern: The Forest Service should comply with the Wyoming Wilderness Act.

BY NOT CREATING DE FACTO WILDERNESS AREAS

Be very careful road selection by the BTNF some of the roads closed violated “The Wilderness Act”. Authority to extend or reduce the wilderness boundaries is invested solely in Congress. By closing these selected roads they extended the wilderness boundary from the point of closure to the original wilderness boundary. At the very least they created many more square miles of de facto forest. This was also a violation of “The Wyoming Wilderness Act of 1984.”

This needs to be set right before any reasonable form of road management can be formulated. Many times I have asked from the Attorney General down to the local management for just one law or rule or what ever that allowed the enactors of the road plan to extend the wilderness boundary. If that information was forthcoming then we could let that old dog lie in peace. (Individual, Rock Springs, WY - #A5695.20206)

BY NOT ESTABLISHING BUFFER ZONES

In the Wyoming Wilderness Act of 1984 it specifically prohibits establishment of Buffer Zones and it appears that so-called roadless areas could be constructed as Buffer Zones. (Conservation District, Sublette County, WY - #A28888.20200)

BY NOT CONDUCTING ANY FURTHER ROADLESS AREA REVIEW AND EVALUATION

The advance notice of proposed rulemaking dated July 3, 2001 states “The Forest Service has been evaluating roadless areas for nearly 30 years”. While this may be true Service-wide, this effort was concluded in Wyoming with the passage of the Wyoming Wilderness Act of 1984 (Public Law 98-550).

This public law states in Title II, the Congress has made its own review and examination of the National Forest Roadless Areas in Wyoming and the environmental impacts associated with alternative allocation of such areas.

Section 401(b) On the basis of such review, the Congress hereby determines and directs that—(2) the Forest and Rangeland Renewable Resources Act of 1976 (Public Law 94-588) to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revisions of the plan, but shall review the wilderness option when the plans are revised.

Section B(3) areas in the State of Wyoming reviewed . . . shall be managed for multiple use in accordance with the land management plan.

Section B(5) unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Wyoming for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System. (Business or Association, Cody, WY - #A41559.45400)

180. Public Concern: The Forest Service should comply with the Oregon-Washington Wilderness Act.

BY HONORING ITS PROMISED EXCHANGE OF 86,000 ACRES OF TIMBER GROUND FOR DESIGNATED WILDERNESS AREA

The 1984 Oregon-Washington Wilderness Act promised our community 86,000 acres of timber ground in the unroaded area in exchange for the designated wilderness we got. We're still waiting for the first mile of road to be built. (Individual, Clarkston, WA - #A6015.20206)

The roadless regulation dictated unilateral prohibitions, which illegally usurped the authority of national forest plans, violated the National Environmental Policy Act, as well as violated the 1984 Oregon Wilderness Act (OWA). National forests comprise a majority (58%) of the productive forest acreage in Oregon. The roadless regulation instituted a unilateral prohibition on 1.620 million acres of Oregon national forests—or 10 percent of the state's national forest acreage. National forest plans directed that some 931,000 acres of this acreage be managed for multiple uses, including road access. Another 2.923 million acres of national forest area [were] already in designated Wilderness and other legally withdrawals. We find the roadless regulation illegally ignored the authority of the NFMA, NEPA, and OWA. (Business or Association, Salem, OR - #A21754.20200)

Executive Orders

181. Public Concern: The Forest Service should comply with Executive Order 12866.

In a great many areas our schools, roads, family and community incomes have been adversely effected by this proposal. This proposal contradicts the September 1993 executive order 12866 handed down by Clinton himself. (Organization, Orofino, ID - #A8393.20300)

BY IDENTIFYING A NEED FOR A NEW REGULATION

In the proposed rule that led up to the January 12, 2001, rule, the Forest Service advanced three principal reasons why the proposed rule is necessary: (1) road construction can alter the fundamental characteristics of roadless areas; (2) budget constraints limit the number of roads that can be adequately maintained; and (3) the controversy over management of roadless areas causes costs and delays. But the Forest Service did not identify a market failure or other compelling public need for the proposed rule. None of the above reasons indicate a need for a nationwide prohibition on road construction.

Executive Order 12866 requires regulatory agencies to identify a need for new regulations, stating: "Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem [emphasis added]." [see Clinton 1993, Executive Order 12866, Section 1(b)(1)] The Executive Order also states: Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. [Ibid., Section 1]

To implement the Executive Order and to comply with Section 638 of the Fiscal Year 1999 Omnibus Appropriations Act and Section 628 of the Fiscal Year 2000 Treasury and General Government Appropriations Act, the Office of Management and Budget (OMB) in March 2000 released guidelines standardizing the measurement of costs and benefits. In the Guidelines, the Director of the OMB explained to heads of departments that you should explain whether the problem arises because of a significant market failure or some other compelling public need." [See Lew, Jacob. 2000. Guidelines to Standardize Measures of Costs and benefits and the Format of Accounting Statements. Washington, D.C.: Office of Management and Budget, March 22. URL:] The Director added: If the problem is not a significant market failure, you should provide an alternative demonstration of compelling public need [emphasis added]." [Ibid]

The description of the need for the regulation provided by the Forest Service in the proposed rule that resulted in the January 12, 2001, rule fails to satisfy the Administration's requirements for economic analysis of regulations. None of the three reasons provided satisfy the requirements of Executive Order 12866 or OMB's Guidelines to Standardize Measures of Costs and Benefits. To comply with the Administration's regulatory policies, and with the well-accepted principles of good governance that they represent, the Forest Service should identify a need for the regulation before proceeding further with the development of specific regulatory proposals. (Business or Association, Washington, DC - #A29622.20300)

182. Public Concern: The Forest Service should comply with Executive Order 13211.

BY PREPARING A STATEMENT OF ENERGY EFFECTS

Because of the aforementioned flaws in the Forest Service's analysis of the impacts of the Roadless Rule on coal production and reserves, the Companies believe that the Agency must now undertake the preparation of a "Statement of Energy Effects," as required by President Bush's Executive Order 13211. See 66 Fed.Reg 28355 (May 22, 2001). That Executive Order recognizes (as a matter of federal policy) the need to address the sort of problem the companies have identified in the Forest Service's flawed analysis.

Section 4(b) of E.O. 13211 defines the term "significant energy action" to include agency action that "is likely to have a significant adverse effect on the supply, distribution, or use of energy..." Id. at 28356. The effects of the Roadless Rule on the Nation's coal production and reserves fall squarely within this definition. (Business or Association, Washington, DC - #A19636.20300)

The Forest Service should review the ANPR in light of Executive Order 13211, to determine if this process may constitute a "significant energy action" that may have any adverse effects on energy. The Forest Service should determine: any adverse effects on energy supply, distribution, or use (including a shortfall, price increases, and increased use of foreign supplies) should the proposal be implemented, and reasonable alternatives to the action with adverse energy effects and expected effects of such alternatives on energy supply, distribution, and use.

Among the mineral commodities that will be affected by a national roadless rule is the increasingly important reserve base of federal coal located on National Forest System lands. The Nation must use this vast supply of domestic energy to meet the growing energy requirements of an expanding economy. During the 1990s, about 350 million tons of coal was produced annually from federal coal leases. Demand for coal for affordable reliable electricity is expected to increase over 25% during the next 20 years.

Nearly 90% of this additional coal production will come from lands in the West and most of this coal will come from federal leases. The U.S. Energy Information Agency forecasts that by 2020 over 785 million tons of coal will be produced from the West. The coal underlying the National Forest System is of critical importance to our Nation's energy needs. Some 21 million acres within the System contain about 30 billion tons of recoverable reserves. Watson W.D. et al., 1995, Coal Resources in Environmentally-Sensitive Lands Under Federal Management: Reston, VA, U.S. Geological Survey, Open File Report 95-631. If this affordable coal is not available, high costs for alternative fuels will result in higher electricity costs and lower reliability. Coal resources from federal leases are vital to supplying electricity at a reasonable price and in an environmentally sound manner to American consumers both east and west of the Mississippi River.

The federal treasury, as well as state and local governments, share in the economic benefits derived from the production of America's most abundant energy resource from federal lands. The already small margin on which miners that produce federal coal operate will be shrunk further by this additional prescription on federal coal leasing. The cumulative impact of this process must be evaluated as required by EO 13211. (Business or Association, Washington, DC - #A29622.20300)

BY ENSURING AN ADEQUATE LAND BASE IS AVAILABLE FOR LEASING WITH REASONABLE STIPULATIONS

While we recognize that oil and gas leasing may be controversial in some parts of the NFS, we encourage the agency to take particular care in making sure that an adequate land base is available for leasing with reasonable stipulations in accordance with President Bush's Executive Order 13211. The FS must certainly recognize that industry has repeatedly demonstrated its ability to conduct oil and gas operations in a sound environmental manner, with little or no long-term disturbance. (Business, Denver, CO - #A25688.65310)

183. Public Concern: The Forest Service should reevaluate its application of Executive Orders 11644 and 11989.

WITH RESPECT TO RESOLUTION OF CONFLICTS BETWEEN USERS

Executive Order 11644 was passed on February 8, 1972 and Executive Order 11989 was passed on May 24, 1977. These Executive Orders have been used to enact thousands and thousands of motorized recreation and access closures since the 1970s. The cumulative effect of Executive Orders 11644 and 11989 has been a dramatic loss of recreation and access opportunities for motorized recreationists and a dramatic increase in recreation opportunities for non-motorized recreationists.

Executive Orders 11644 and 11989 allowed the reason "minimize conflicts among the various uses" to be used to enact motorized closures (see attached Executive Orders). It did not state "minimize conflict with other users". However, the implementation of Executive Orders 11644 and 11989 has been largely based on the incorrect usage of "minimize conflict with other users". The crux here is that "use" conflict is rather different from "user" conflict. There are certainly "uses" that are incompatible from an objective standpoint. For example, a ski run and a mine cannot operate in the same place at the same time . . . it is physically impossible and therefore a clear "use conflict." But there could be a case where a mine is located next to a ski hill and both can operate without interference, with no genuine use conflict. Whether there is a "user conflict" or not depends primarily on user attitudes. (Organization, Helena, MT - #A13226.20300)

184. Public Concern: The Forest Service should comply with executive orders directing federal agencies to expedite permitting and to reduce impediments to energy development.

We also believe the Roadless Initiative is in direct contrast to the President's Executive orders directing federal agencies to expedite permitting and to reduce impediments to energy development. (Business, Bismarck, ND - #A19270.20300)

Other

185. Public Concern: The Forest Service should comply with Public Law 96-550.

BY RESCINDING THE ROADLESS AREA CONSERVATION RULE

An Executive Order on the Roadless initiative will:

1. Overturn the Public Law 96-550 enacted by the 96th Congress December 1980
2. Be contrary to the 1986 Carson National Forest Plan concerning Sipapu Ski Area
3. Negate 15 years of work and expense by the Forest Service and Sipapu in developing an EIS for ski area expansion
4. Be an environmental injustice by creating economic and social hardships on the poorest counties in northern New Mexico
5. Circumvent the right for appeal

Public Law 96-550 enacted by the 96th Congress December 1980

The purpose of the act is very specific with its main points:

1. Designate certain National Forest lands to be included in the National Wilderness Preservation System.
2. **Insure certain other National Forest System lands in NM be promptly available for non-wilderness uses including but not limited to campground and other recreation site development, timber harvesting, intensive range management, mineral development and watershed and vegetation manipulation.**
3. Designate certain other National forest System land in NM for further study in furtherance of the purposes of the Wilderness Act.

The land surrounding the ski area was not included as wilderness lands, not included for further study and **was included in other lands promptly available for non-wilderness uses.**

The EIS for the Carson National Forest Plan, completed in 1986, is in accordance with Public Law 96-550 and designated management area 15 for ski area expansion. (Permit Holder, Vadito, NM - #A20142.10140)

186. Public Concern: The Forest Service should comply with Public Law 105-359.

BY PROVIDING RECREATION AND OUTDOOR OPPORTUNITIES FOR THE HANDICAPPED, ELDERLY, AND PHYSICALLY IMPAIRED

Handicapped, elderly, or physically impaired, can only recreate on motorized roads and trails and recreation opportunities must be considered for them. On November 10th, 1998, President Clinton signed Public Law 105-359, requiring the Secretary of Agriculture and the Secretary of the Interior to conduct a study to improve access for persons with disabilities to outdoor recreation opportunities made available to the public.

The Study prepared to address P.L. 105-359 (Improving Access to Outdoor Recreational Activities on Federal Land, prepared by Wilderness Inquiry, June 27, 2000) found and recommended the following areas of action:

- 1) Agencies must re-dedicate their efforts to achieve the goal of equal opportunities for access to outdoor recreation by persons with disabilities.
- 2) Agencies should conduct baseline assessments of existing facility and programmatic accessibility, and develop and implement transition plans for facilities and programs that are not now accessible to bring them into compliance.
- 3) Increase accessibility related awareness and educational opportunities for agency personnel, service providers, and partners.
- 4) Increase funding to federal land management agencies for accessibility.
- 5) Increase accountability and oversight in implementing accessibility initiatives.
- 6) Improve communications about opportunities for outdoor recreation to persons with disabilities.
- 7) Clarify the balance between resource protection and accessibility.

The document and decision must adequately address and comply with the recommendations of the Study conducted to address P.L. 105-359 including items 1 and 7. (Organization, Helena, MT - #A13226.20200)

187. Public Concern: The Forest Service should comply with the 1997 guidance document by the Council on Environmental Quality regarding environmental justice.

AS IT RELATES TO EQUAL TREATMENT AND ACCESS TO PUBLIC LANDS

The document and decision must comply with the requirements of Environmental Justice as presented in the 1997 guidance document by the Council on Environmental Quality. These requirements must be evaluated as they relate to equal treatment and access to public lands for all people including disabled and motorized visitors. One example of unequal treatment can be seen demonstrated by the number of publications and web site information pages that each forest provides for non-motorized visitors versus

the publications and web site information pages provided for motorized recreationalists. Non-motorized recreation opportunities are easy to find using agency web sites and printed information. Often very little information is provided about motorized recreation opportunities. (Organization, Helena, MT - #A13226.20300)