

Introduction

The letters in this volume were submitted by Federal, State and local agencies, and elected officials.¹ Letters from Federal agencies and federally recognized Tribes are listed first. Letters from State and local agencies and officials are organized by State as shown in the table of contents. Government agencies or elected officials in 33 States submitted comments. If we did not receive any letters from agencies or elected officials in a particular State, that State is not listed in the table of contents. Letters from members of Congress are included in their respective States. All attachments submitted with these letters are included, unless limited by format or excessive length.

¹ Section 102(C) of the National Environmental Policy Act of 1969, as amended, requires that “... *comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality, and to the public...*” The Forest Service Environmental Policy and Procedures Handbook (FSH 1909.15, 24.1 (3)) states that “*As a minimum, include in an appendix of a final EIS copies of all comments received on the draft EIS from Federal, State, and local agencies and elected officials.*”



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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CAET Review
Jul 17 2000

JUL 14 2000

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

USDA Forest Service
Attention: CAET, Roadless Areas Proposed DEIS/Rule
Scott Conroy, Project Director
P.O. Box 221090
Salt Lake City, UT 84122

Dear Mr. Conroy:

Pursuant to our responsibilities under the National Policy Act (NEPA) and section 309 of the Clean Air Act, the U.S. Environmental Protection Agency (EPA) has reviewed the U.S. Department of Agriculture, Forest Service (USFS) Draft Environmental Impact Statement (DEIS) on Roadless Area Conservation and the accompanying proposed Rule at 36 CFR Part 294, Special Areas; Roadless Area Conservation. Our comments are organized to provide an overview of the issues, highlighting areas where EPA has concerns, as well as detailed information for your consideration as the USFS prepares the Final Roadless Area Conservation EIS (FEIS) and Rule.

The DEIS and proposed rulemaking are in response to the strong public sentiment voiced on protecting roadless areas and the associated benefits associated with these areas found in our National Forests. This effort was initiated by the President's October 13, 1999, memorandum to the Secretary of Agriculture directing the USFS to "...develop, and propose for public comment, regulations to provide appropriate long-term protection for most or all of these currently inventoried *roadless* areas and to determine whether such protection is warranted for smaller *roadless* areas not yet inventoried."

EPA commends the USFS for its monumental efforts to solicit input from the public and explain the impacts of this undertaking. Its efforts with outreach and supplying access to the DEIS and proposed rule, supporting documents, public meetings and outreach to the relevant federal agencies are unprecedented.

The DEIS presents four alternatives, including an agency preferred alternative, and is accompanied by a proposed rule. Alternative 1, the No Action alternative, supports current practices concerning activities in inventoried roadless areas. Alternative 2, the preferred

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alternative, prohibits road construction and reconstruction in the unroaded portions of inventoried roadless areas. Alternative 3 prohibits road construction, reconstruction, and timber harvest (except for stewardship purposes) in the unroaded portions of inventoried roadless areas and Alternative 4, the maximum protection alternative, is the same as Alternative 3, but with no exceptions for any timber harvest. In addition, four separate alternatives are presented to address the Tongass National Forest (Tongass), which may warrant other approaches. These four alternatives range from the no action alternative which supports current practices to prohibiting road construction and reconstruction in specified inventoried roadless areas in the Tongass.

The proposed rule offers a two pronged approach to conserve roadless areas. The proposed rule would prohibit new road construction and reconstruction in the unroaded portions of inventoried roadless areas and use local planning procedures to ensure consideration of roadless values and characteristics in other roadless areas not covered by the prohibitions.

EPA is especially interested in this DEIS and proposed rule because 80 percent of the nation's rivers originate in the national forests and, consequently, this rulemaking may have significant impact on water quality. This rule could greatly increase the protection to ground and surface water resources which are directly related to the status of riparian and aquatic habitats, wildlife habitat, biological diversity, forest health and other benefits derived from roadless areas found on the national forests and grasslands. EPA supports this rulemaking, one of several recent efforts the USFS has undertaken to address road management on its lands. The proposed rule intends to identify and stop activities with the greatest likelihood of degrading the desirable qualities of inventoried roadless areas at the national level and ensure that "roadless character" qualities of inventoried and other unroaded areas are identified and considered during local forest planning efforts.

Although EPA supports the proposed rulemaking effort, based on our review of it and the supporting DEIS, we wish to raise several environmental concerns. While it is important to recognize that the rule's purpose has been developed in the context of overall multiple-use objectives, the multiple use mandate does not fully justify a prohibition limited only to road building. EPA suggests that the FEIS more fully discuss the rationale for why other uses that can be expected to degrade the desirable environmental qualities of inventoried roadless areas were not included in the proposed prohibitions. For example, other uses such as recreation, timber production and mining have clearly led to significant environmental degradation in the past and should be further addressed in the FEIS.

The FEIS should also disclose to the public the uncertainty in using procedures implemented at the local level versus prohibitions issued at the national level to provide environmental protection to these areas. While the "one size does not fit all" concept has merit and local decision making is necessary to address the unique needs of local areas, EPA has concerns that some areas may not receive the environmental protection they need.

Because the determination to revise or amend a forest plan is based on a variety of factors and time lines, EPA suggests that the application of procedures as provided for in section 294.14 be revised to include a project-by-project review when the project meets a "significance criterion". EPA recognizes that a project-by-project review of all actions would be unduly burdensome;

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however, those proposed actions with the potential to have significant impacts should be reviewed.

Finally, EPA does not believe the DEIS gives adequate support for excluding coverage of the proposed rule to the Tongass and our detailed comments provide additional information on this issue.

Based on our review EPA has assigned a rating of EC-2 (Environmental Concerns, Insufficient Information) to the preferred alternative. EPA appreciates the opportunity to submit comments on the DEIS and proposed rule and commends the USFS for orchestrating extensive sessions for early interagency cooperation in the scoping and development stages of the process. EPA welcomes the chance to continue working with the USFS as it completes the FEIS and final rule. If I can provide additional explanation of our comments please contact me at (202) 564-2400 or Elaine Suriano of my staff at (202) 564-7162.

Sincerely,



Anne Norton Miller
Acting Director
Office of Federal Activities

Enclosure

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DETAILED COMMENTS ON THE DEIS AND PROPOSED RULE

DEIS

Purpose and Need

EPA strongly agrees with the underlying purpose and need for national direction on roadless area conservation, and we offer the following comments for your consideration. The purpose presented on page S-4 is three-fold, whereas the purpose stated on page 1-10 is only two-fold; the FEIS should reconcile this inconsistency. Second, the purpose stated on page A-26 of the proposed rule is further condensed and less specific than the purpose stated on pages 1-10 or S-4. EPA recommends that the FEIS and final rule use the same language to describe the purpose of this action, preferably the language used on page S-4.

Alternatives

EPA highlighted several issues related to the alternatives in our December 21, 1999, comment letter on the Notice of Intent for this DEIS and proposed rule. These included the range of alternatives and their analysis, and adequate explanation on implementing the selected alternative. While the DEIS offers a range of alternatives, EPA believes that this range should have been broader and more inclusive of other uses in an attempt to more fully comply with the direction provided in the President's October 19, 1999, memorandum.

EPA believes that Alternative 3-Procedure D (3-D) provides additional environmental advantages over the preferred alternative including: 1) providing significant protection for inventoried roadless areas while still accommodating harvest of small diameter trees where necessary to address fire and fuels issues; 2) reducing the likelihood that smaller roadless areas will be impacted pending the completion of transportation and access plans as described in the proposed USFS Transportation Policy; and 3) ensuring that appropriate protections are applied to the Tongass. In addition, we suggest that the FEIS consider confining Off Highway Vehicles (OHVs) only to roads and trails that have been specifically designated for that purpose following analysis pursuant to NEPA.

EPA has environmental concerns with the range of Tongass alternatives presented and offers the following modification based on alternatives considered in the DEIS. We view this as a "win-win" alternative, achieved by adding several mitigation measures.

EPA recommends that the FEIS consider in detail an alternative that: 1) applies the national prohibitions (Alternative 2, 3 or 4) and national procedures (Alternative B, C or D) to the Tongass; and 2) mitigates the social and economic impacts on the communities in Southeast Alaska pursuant to 40 CFR 1502.14(f). We believe that this latter objective can be accomplished through a combination of adjustments to the Tongass Land Management Plan (TLMP) and a financial and technical assistance package for the affected communities (e.g., under the auspices of the Southeast Alaska Community Economic Revitalization Team).

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For example, the Record of Decision (ROD) could include the Tongass in the roadless area conservation rule and direct the Alaska Regional Forester or the Tongass Forest Supervisor to amend or revise the TLMP to offset some of the effects of the final rule on the Tongass timber program. Specifically, the ROD could direct the responsible official to consider the following adjustments to the TLMP:

1. Seek to maintain the total land suitable for timber production at 576,000 acres as set forth in the April 1999 TLMP ROD. To the extent practical and appropriate, reallocate those suitable acres by changing Land Use Designations (LUDs) in inventoried roadless areas from timber to non-timber LUDs, and in roaded areas from non-timber to timber LUDs.
2. Where necessary to meet the objective of #1 above, and where appropriate and consistent with other management objectives, recapture some of the young growth that was removed from the suitable timber base in the revised forest plan. The Tongass harvested roughly 400,000 acres of timber from 1954 to 1999. Approximately 140,000 acres of young growth remain in the suitable timber base; the other roughly 260,000 acres of young growth were removed from the timber base due to riparian buffers, beach and estuary buffers, old growth reserves, etc. It would certainly be inappropriate to place all of these acres back in the timber base (e.g., riparian buffers). However, if the Tongass is included in the Roadless Area Conservation Rule, it may be appropriate to recapture some of those acres (e.g., young growth within beach buffers and old growth reserves) in order to maintain the current suitable timber base. While this would have no effect on the timber volume harvested in the short term, in the long term it would expedite the transition from harvesting old growth to harvesting young growth. It would also enable the Tongass to use "timber dollars" to thin these young growth stands, which in the absence of an alternative funding source will continue to suffer from neglect.
3. Where necessary to meet the market demand for timber from the Tongass, consistent with the Tongass Timber Reform Act, adjust certain standards and guidelines that restrict timber harvest. For example, consider adjusting the 200-year rotation that was adopted in the 1999 TLMP ROD. The intent of the 200-year rotation is to reduce impacts to deer winter range and deer habitat capability by reducing the rate of timber harvest in developed areas (1999 TLMP ROD, page 29). Unfortunately, one of the unintended consequences of the 200-year rotation is that, in order to meet market demand and the ASQ, it increases the rate of entry into undeveloped areas (i.e., inventoried roadless areas and other unroaded areas). This explains, in part, why under the no action alternative (T1), roughly 90% of the total timber-related road construction on the Tongass National Forest, and roughly two thirds of the total 5-year timber volume offered by the Tongass National Forest is projected to come from inventoried roadless areas (DEIS, Tables S-3, and page 3-232). However, if the Tongass is included in the roadless rule, then the prohibitions and procedures may substantially reduce, if not eliminate, the need for the 200-year rotation.
4. Adjust the Allowable Sale Quantity (ASQ), including the Non-Interchangeable Components (NIC I and NIC II), in response to #1 through #3 above and to better reflect projected market demand over the planning cycle.

EPA believes an alternative based on the above proposal is more environmentally protective,

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more socially desirable and more economically efficient than the proposed action and preferred alternative presented in the DEIS. In the absence of developing or selecting such an alternative, EPA recommends selecting alternative 3D, without exempting the Tongass.

Should the USFS select the preferred alternative as presented, EPA believes the FEIS should address the following issues. The proposed rule would establish protection of "unroaded areas in inventoried roadless areas" on all National Forests except the Tongass. The protections sought by the President for roadless areas on the Tongass would rely on the Forest Service's planning process exclusively. It should be noted the USFS proposed rules to revise the existing planning process are currently under review and it is uncertain when and what the Forest Service planning process will be once finalized. Because the rulemaking process and the USFS planning process are distinctively different, particularly in their final products, EPA suggests that the FEIS include a discussion of protecting roadless areas on the Tongass by rule versus by the revisions to the forest plans via the planning process. It should be disclosed to the public that the rule has a certain degree of "permanence" that is not the same as a forest plan. Forest plans are currently required to be reviewed and revised every 10 years, and the proposed revisions to the Forest Service planning regulations indicate that forest planning will be less structured in the future. Because of the present and proposed nature of forest planning, issues regarding protecting roadless areas can be revisited as part of a forest plan amendment or revision. Although rules can be revised, there is no requirement to do so periodically; therefore, the protection they offer is more predictable over a long time period. Consequently, areas protected by the prohibitions have a more certain likelihood of receiving the long-term protection that the President expressed, while there is no mechanism to ensure long-term protection of roadless areas on the Tongass. EPA suggests that the FEIS address the potentially different levels of long-term protection that would be applied to the Tongass and the rest of the National Forest System under the preferred alternative.

Page S-7 lists four exceptions from prohibitions. As they are stated in very broad terms EPA suggests that the FEIS cite a few examples, especially for exemptions three and four. These are intended to provide specific examples of actual situations and disclose the potential scope of such actions.

Proposed Rule

294.10 Purpose

EPA suggests that the final rule include language clarifying the intent and purpose statement to help guide the implementation of the rule. As currently worded, the proposed purpose statement is less specific than the purpose stated on page S-4 of the DEIS. EPA recommends that the FEIS and final rule include the same language to describe the purpose of this action, preferably the language used on page S-4.

294.11 Definitions

Inventoried roadless areas

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The proposed definition of inventoried roadless areas is confusing. The first sentence implies that inventoried roadless areas may include designated areas such as Wilderness. However, the second sentence refers to the maps contained in Volume 2 of the DEIS, which display inventoried roadless areas and designated areas (such as Wilderness, Wilderness Study Areas, Wild and Scenic Rivers, National Recreation Areas, National Monuments, and other special designations) as mutually exclusive categories of National Forest System lands. Adding to this confusion, Volume 2 shows recommended Wilderness as inventoried roadless areas but places Wilderness Study Areas in with designated areas. This approach is counterintuitive and may result in situations where administratively designated inventoried roadless areas are subject to a higher level of protection than some Congressionally designated areas.

For example, Wilderness Study Areas that are not recommended in the future for Wilderness designation but are instead allocated to a prescription that allows roads would not benefit from the prohibitions under the roadless area conservation rule. Yet these areas that may otherwise "fall through the cracks" represent some of the best opportunities to respond to the underlying purpose and need of this action.

Therefore, EPA recommends: 1) clarifying the definition of inventoried roadless areas to explicitly include designated areas (or at a minimum, roadless designated areas of 5,000 acres or more); and 2) adding "inventoried roadless areas" in front of "Designated Areas" in each legend of every map in Volume 2. Alternatively, we recommend the following:

1. define *designated areas* in Section 294.11;
2. add *designated areas* to the title of Section 294.12 and add a new paragraph to this section to clarify that the prohibitions also apply to *designated areas*; and
3. add new paragraph to Section 294.13 to clarify that the procedures also apply to *designated areas*.

A third option, in the interest of plain English and practicality, would be to replace *inventoried roadless areas* and *unroaded area* with *large roadless area* and *small roadless area*, respectively (with the threshold between the two set at 5,000 acres or 1,000 acres, as appropriate). Subsequent decisions would be based on actual on-the-ground conditions instead of on whether an area is inventoried or designated as roadless.

Road maintenance.

Consider adding "...or to prevent or correct environmental problems" to the end of the proposed definition.

Road reconstruction.

Consider adding "...or to prevent or correct environmental problems" to the proposed definitions of *realignment*, *improvement* and *rebuilding*.

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Unroaded area.

Insert "(other than an inventoried roadless area)" between "Any area" and "... without..."

The final rule should include definitions for *trails*, *primitive and semi-primitive non-motorized*, and *semi-primitive motorized* classes of dispersed recreation.

294.12 - Exemptions

It is not explicitly stated in the rule that once an emergency that created the need for building a road is over the road should be closed and the area restored to the previous condition. EPA suggests including an additional provision - "(e) - roads constructed for an emergency purpose under b(1), (2), and (3) are to be removed once they are no longer needed for the initial emergency purpose and the area will be restored to the natural condition."

EPA appreciates the change made from scoping comments in paragraph (a) that the prohibition applies to both classified and unclassified roads, including temporary roads.

Delete paragraph (c), application to the Tongass.

294.13 - Consideration of Roadless Area Conservation During Plan Revision

EPA has environmental concerns with leaving the choice of method of selection or delineation of unroaded areas for evaluation under 294.13(b)(2) entirely to the responsible official. The final rule should provide a list of methods that are accepted nationally to promote consistency.

Delete paragraph (e), related to the Tongass.



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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
ROCKY MOUNTAIN, DENVER
633 17TH ST.
DENVER, COLORADO 80202-3690

May 15, 2000

USDA Forest Service-CAET
Post Office Box 221090
Attention: Roadless Areas Proposed Rule
Salt Lake City, UT 84122

Dear Sirs:

The Department of Housing and Urban Development (HUD) has reviewed the Draft Environmental Impact Statement (DEIS) for the Roadless Area Conservation Proposed Rule with consideration of the areas of responsibility assigned to HUD.

This review considered the impact of the proposed rule on housing and community development within the states of Montana, Utah and Wyoming that are part of our office's area of responsibility. We find your transmittal adequate for our purposes since there is no significant adverse impact on HUD assisted housing and community development activities in proximity to the areas covered by the proposed rule.

If I may be of further assistance to you, please contact me at (303) 672-5285, extension 1305.

Sincerely,

Howard S. Kutzler
Regional Environmental Officer
Office of the Secretary's Representative

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MWTC SUPPLY

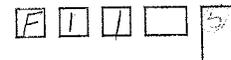
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UNITED STATES MARINE CORPS
MARINE CORPS MOUNTAIN WARFARE TRAINING CENTER
BRIDGEPORT CA 93517-6501

IN REPLY REFER TO:
5090
ENV/04
14 Jul 00



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

Gentlemen:

Thank you for the opportunity to provide written comments on the Forest Service's proposed Roadless Area Conservation rule. As a long-time user of the Humboldt-Toiyabe National Forest, the Marine Corps Mountain Warfare Training Center (MWTC) has several concerns with the proposed rule.

First, the web based maps of inventoried roadless areas you provided lack sufficient detail to conclusively compare them to roads and trails MWTC uses. We request a more detailed map be provided as well as sufficient time to review it. From the available map, we have determined that some roads are missing from your inventory. Please add the following former roads as shown on the attached map:

1. From Summit Meadows to Lost Cannon Creek.
2. From Grouse Meadows to Mill Canyon Road.
3. From Grouse Meadows to Chris Flat.
4. From the Grouse Meadow Road to the gaging station on HWY 395.

The MWTC requires continued access to this area of forest to conduct training per public law 100-693 of November 18, 1988. We recommend that District Rangers retain the authority to authorize or prohibit specific roads for the proper management and use of National Forest System lands. These decisions are based on appropriate environmental documentation and public participation. Local control is needed to fairly address existing uses of existing roads, whether classified or unclassified.

My point of contact for this matter is Mr. Kendall Yargus at 760-932-7761 ext. 332.

Sincerely,

J. H. NEAL
Lieutenant, CEC, USN
By direction

Encl: Annotated Forest Visitor/Travel Map, Toiyabe National Forest, Bridgeport Ranger District, California, 1994

Copy to:
MCB Camp Pendleton AC/S ES
Bridgeport Ranger District

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MAY 17 2000

Roadless Area Conservation

Volume 4 - Letters from Agencies and Elected Officials



United States Department of Agriculture

Natural Resources Conservation Service

Caribbean Area PO Box 364868 San Juan, PR 00936-4868

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F I I I I 5 yes

June 28, 2000

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

Dear Sir or Madam:

SUBJECT: Roadless Areas Proposed Rules

After an extensive review of the Draft Environmental Impact Statement (DEIS) for the proposed rules to conserve roadless areas within the national forests, we do not have any comments to make, since the proposed rules are for the benefit of the ecosystems of such areas.

Should you have any questions, please contact Felix A. Latorre, Water Resources Planning Specialist at (787) 766-5206, Ext. 234.

Sincerely,

JUAN A. MARTINEZ Director

COPIES RECEIVED JUL 06 2000

Aug-17-2000 14:49 From-FOREST SERVICE--Roadless Team

T-204 P.002/002 F-382



U.S. SMALL BUSINESS ADMINISTRATION WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

JUL 17 2000

VIA ELECTRONIC & REGULAR MAIL

Hilda Diaz-Soltero Associate Chief United States Department of Agriculture Forest Service Washington, DC Email: roadlessdeis@fs.fed.us

Dear Ms. Diaz-Soltero:

As stated in previous correspondence on this issue, the Office of Advocacy of the U.S. Small Business Administration (SBA) was established by Congress under Pub. L. No. 94-305 to represent the views of small business before federal agencies and Congress. Advocacy is also required by §612(a) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) to monitor agency compliance with the RFA. In that Advocacy is an independent office within SBA, the comments provided are solely those of the Office of Advocacy and do not necessarily reflect the views of SBA.

A Brief Review of RFA Compliance Requirements

Initial Regulatory Flexibility Analysis

The RFA requires agencies to consider the impact that a proposed rulemaking will have on small entities. If the proposal is expected to have a significant impact on a substantial number of small entities, the agency is required to prepare an initial regulatory flexibility analysis (IRFA) describing the reasons the action is being considered; a succinct statement of the objectives of, and legal basis for the proposal; the estimated number and types of small entities to which the proposed rule will apply; the projected reporting, recordkeeping, and other compliance requirements, including an estimate of the small

entities subject to the requirements and the professional skills necessary to comply; all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and the significant alternatives that accomplish the stated objectives of the of the statutes and that minimize any significant economic impact of the proposed rule on small entities. 5 U.S.C § 603. The analysis or a summary of the analysis must be published with the proposal for public comment.

Final Regulatory Flexibility Analysis

When an agency issues any final rule, it must prepare a final regulatory flexibility analysis (FRFA) when a rule will have a significant economic impact on a substantial number of small entities. The FRFA must discuss the comments received, the alternatives considered and the rationale for the final rule. Specifically, each FRFA must contain a succinct statement of the need for and objectives of the rule; a summary of the significant issues raised by public comments in response to the IRFA; a summary of the agency's assessment of such issues and a statement of any changes made in the proposed rule as a result of such comments; a description and an estimate of the number of small businesses to which the rule will apply or an explanation of why no such estimate is available; a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record; and a description of the steps the agency has taken to minimize the significant economic impacts on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy and legal reasons for selecting the alternative adopted in the final rule, and the reasons for rejecting each of the other significant alternatives. In complying with the provisions of section 603 and 604 of the RFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable. 5 U.S.C. § 607.

Certification in Lieu of a Regulatory Flexibility Analysis

If the proposed or final rulemaking is not expected to have a significant economic impact on a substantial number of small entities, 5 USC §605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA or FRFA. If the head of the agency makes such a certification, the agency shall publish such a certification in the Federal Register at the time of the publication of the general notice of proposed or final rulemaking for the rule along with a statement providing the factual basis for the certification. See 5 U.S.C. §605(b).

The Proposed Rulemaking

Because of the nature of this rule, the Office of Advocacy consistently maintained in its pre-proposal comments to the Forest Service (FS) that certification was inappropriate from a public policy standpoint. On May 10, 2000, FS published a proposed rule in the *Federal Register*, Vol. 65, No. 91, p.30276 on *Special Areas; Roadless Area Conservation*. The purpose of the proposal is to protect the environmental resources in

national forests by prohibiting road construction and reconstruction in most inventoried roadless areas of the National Forest System and require the evaluation of roadless area characteristics in the context of overall multiple-use objectives during land and resource management plan revisions. The intent of the rulemaking is to provide lasting protection in the context of multiple use management for inventoried roadless areas and other unroaded areas within the National Forest System. Id.

Prior to the proposal, the Office of Advocacy worked with FS in an effort to assist FS with RFA compliance. Throughout the process, FS has maintained that it believed that the proposed rulemaking would not have a significant economic impact on a substantial number of small businesses. FS has also contended that the proposed rule does not directly regulate small entities and, therefore, an IRFA was not necessary. Nevertheless, FS prepared an Initial Regulatory Flexibility Analysis (IRFA) at Advocacy's request. Because FS did not have sufficient economic information to prepare a complete IRFA, Advocacy advised FS to include a list of questions in the IRFA to solicit from the public information on the economic impacts of the proposal. FS complied with this request also.¹ See, Fed. Reg. at 30285-30286.

FS Should Abandon Its Assertion that the Rule Does Have a Direct Impact on Small Entities

As stated above, FS has consistently asserted that a regulatory flexibility analysis is not required since the proposal does not have a direct impact on small entities. It is Advocacy's understanding that the basis of the assertion is that the proposal establishes procedures, and nothing more, to be followed in local forest planning processes. Local FS offices will maintain the authority to determine the actual forest plan; hence national FS is not directly regulating small entities. Consequently, a regulatory flexibility analysis is not required.

Advocacy acknowledges that there is case law that states that the RFA only requires an agency to perform a regulatory flexibility analysis of small entity impacts when a rule directly regulates them. However, Advocacy asserts that the cases are inapplicable to FS' proposal. If anything, the case law and the facts support a finding that the impact of the proposal is indeed direct, not indirect.

The primary case on the consideration of direct versus indirect impacts for RFA purposes in promulgating regulations is Mid-Tex Electric Co-op Inc. v. F.E.R.C., 249 U.S. App. D.C. 64, 773 F.2d 327 (1985). In Mid-Tex Electric Co-op Inc. v. F.E.R.C., FERC ruled that electric utility companies could include in their rate bases amounts equal to 50% of their investments in construction work in progress (CWIP). In promulgating the rule, FERC certified that the rule would not have a significant economic impact on a substantial number of small entities. The basis of the certification was that virtually all of the utilities did not

¹ Usually, the Office of Advocacy does not publicize its interaction with an agency during the prior to the proposal of a rule. However, since Forest Service has agreed to release communications that it had with the Office of Advocacy to House Committee on Small Business, Subcommittee on Rural Enterprises, Business Opportunities, and Special Programs, the communications are now part of the public record.

fall within the meaning of the term small entities as defined by the RFA. Plaintiffs argued that FERC's certification was insufficient because it should have considered the impact on wholesale customers of the utilities as well as the regulated utilities. The court dismissed the plaintiffs' argument and concluded that an agency may certify that no RFA analysis is necessary when it determines that the rule will not have a significant economic impact on a substantial number of small entities that are not subject to the requirements of the rule. *Id.* at 64.

The US Court of Appeals for the District of Columbia applied the holding of the *Mid-Tex* case in *American Trucking Associations, Inc. v. U.S. E.P.A.*, 175 F.3d 1027, 336 U.S.App.D.C. 16 (D.C.Cir., May 14, 1999) (hereinafter ATA). In the ATA case, EPA established a primary national ambient air quality standards (NAAQS) for ozone and particulate matter. At the time of the rulemaking, EPA certified the rule pursuant to 5 USC § 605(h). The basis of the certification was that EPA had concluded that small entities were not subject to the rule because the NAAQS regulated small entities indirectly through the state implementation plans (SIPs). *Id.* Although the Court remanded the rule to the agency, the Court found that EPA had complied with the requirements of the RFA. Specifically, the Court found that since the States, not EPA, had the direct authority to impose the burden on small entities, EPA's regulation did not directly impact small entities. The Court also found that since the states would have broad discretion in obtaining compliance with the NAAQS, small entities were only indirectly affected by the standards. *Id.*

In *Mid-Tex*, compliance with FERC's regulation by the utilities would have a ripple effect on customers of the small utilities. There were several unknown factors in the decisionmaking process that were beyond FERC's control like whether utility companies had investments, the number of investments, costs of the investments, the decision of what would be recouped, who would the utilities pass the investment costs onto, etc. In this instance, FS is the ultimate decision-maker and its decisions will have a direct effect on known small entities that have profited from multiple use of FS' lands in the past or which planned to profit from the resources in the future.

Likewise, this matter is distinguishable from the ATA case. Unlike the ATA case, where EPA was setting standards for the States to implement under state regulatory authority, FS is developing a framework for the local/regional FS offices to use in adopting multiple use plans for national forests. The fact that it is a local office of FS versus the national office of FS is inconsequential. In either event, FS will implement the rule, not a third party entity. Regardless of where the office is located, FS is making the ultimate decision of whether a road will or will not be constructed. The proposed rule clearly states that roads may not be constructed or reconstructed in the unroaded portions of inventoried areas of the National Forest System unless the road is needed for public safety, for environmental response or restoration, for outstanding rights or interests protected by statute or treaty, or to prevent irreparable resource damage. See, Section 294.12, *Fed. Reg.*, p. 30288.

Direct Impacts on Small Entities

Moreover, small entities will be directly affected as a result of FS' decisions. The word "direct" is defined as "to regulate the activities or course of action thereof; stemming immediately from a source, cause, or reason; operating without agency or step..."² Small entities that already operate in national forests will have their operations seriously curtailed. (FS recognizes that the majority of these entities are small.) These and others, like the construction companies that build the roads, may have developed their business plans based on expectations of continued access and as a result of previously published FS plans. These impacts need to be evaluated. FS has some data already that would allow it to do so. For example, according to Tables 4 and 6 of the IRFA, the proposal estimates that there will be a 45% reduction in forest harvest in the Manti-Lasal National Forest alone in Utah. Other forests, such as Dixie (Utah) and Shoshone (Wyoming) will experience reductions in harvest that exceed 20%. In Montana, the Helena Forest will experience a reduction in total harvest volume of 12%. In those same areas of the country, FS controls more than 50% of the forested land base.³ For example, FS controls 52.3% of forested land in Montana; 66.6% of the land in Wyoming; and 68.5% of the forested land in Utah.⁴ Considering the vast amount of area owned by the FS, moving to or procuring from another location to harvest or process natural resources may be unrealistic or a short term solution. The end result of this proposal may be the ultimate demise of small businesses and small governmental jurisdictions that rely on the resources.

Advocacy recognizes that there is a substantial public policy interest in maintaining the natural beauty of the national forests and protecting the environmental resources found in the national forests. However, just these few examples indicate that the overall impact of this initiative could be economically devastating to many small businesses. The high percentage of reduction, combined with the fact that FS owns such a high percentage of the land in some areas, indicates that this rule may have a direct economic effect that cannot be recouped at other locations by the small entities that rely on them. Since the FS has some data, and will receive additional data from the comment period, it is not plausible for FS to continue to maintain that the proposal will not have a direct effect on small entities.⁵

² The Merriam Webster Dictionary.

³ Testimony of Mr. Frank Giatics, President of Independent Forest Product Association, before The House of Representatives Subcommittee on Rural Enterprises, Business Opportunities, and Special Business Programs, Tuesday, July 11, 2000, pp. 9-10.

⁴ *Id.*
⁵ Advocacy notes that FS may be arguing that the RFA does not apply because the use of FS property for harvesting natural resources is a future activity that may or may not occur, depending on the decision of the forest planners. While this argument may have some validity, it is not necessarily convincing. Some of the land that is being placed off limits by the initiative was originally targeted for resource harvesting. As a result of this rule, forest planners will not be able to allow the original tentative multiple use plans to be implemented. Small entities may have relied on the original plans in making business decisions. This issue should be addressed.

Information Provided By the Public Must Be Addressed in the FRFA

At the time of the proposal, FS asserted that they could not perform a complete IRFA because it lacked sufficient economic information about the economic impacts on the industry. Because its information was insufficient, FS provided a list of questions in an attempt to obtain the necessary information from the public. In reviewing the comments from the public, Advocacy hopes that FS will give full consideration to the information provided by the industry in response to FS' solicitation for additional information and perform an analysis that reflects 1) the impact on small entities that had access to resources that will have limited or no access after the rulemaking; 2) the impact of the regulation on small entities that were relying on future activities that will not occur as a result of the regulation; and 3) the impact of the regulation on activities outside of the FS lands (i.e. small communities).

Since our comments are being submitted prior to the close of the comment period, we cannot comment on the full scope of the information that FS may receive from the public regarding the economic impacts of this rule. However, we have received some information from the industry about potential impacts. The early information received indicates that the impact may in fact be significant. For example, representatives of the timber industry, which FS acknowledges is primarily dominated by small businesses, assert that FS controls 73.3% of the saw timber in Montana; 80.8% of the saw timber in Wyoming; and 85.4% of the timber volume in Utah.⁶ In the IRFA, FS asserts that the reduction in harvest as a result of this rule could range from 1 to 8% depending on the location.⁷ Fed. Reg. at 30286. Considering the high dependence on FS timber in certain areas, a 1 to 8% reduction could be economically significant. If not, FS needs to provide data showing why it is not economically significant to support its conclusion in the FRFA.

Moreover, the mining industry has indicated that the proposal disallows mining on 43 million acres of federal land. It asserts that more than \$7 trillion dollars of coal and metal resources will be placed off limits by the proposed rule.⁸ If this is not correct, then FS must explain why these resources will still be available and the approximate costs of obtaining access to the resources in areas where road construction and reconstruction is prohibited.

Economic effects such as these cannot be ignored. These early numbers indicate that the impact may indeed be significant. FS needs to explain why they are not significant and provide this information to the public. On the other hand, if the analysis indicates that the impact is indeed significant, Advocacy asserts that FS must fully address this in the FRFA and possibly repropose the rule.

⁶ *Id.*

⁷ On the surface, the percentages in the IRFA summary appear to be inconsistent with the tables found in the IRFA. FS needs to explain the inconsistencies found in the documents.

⁸ Testimony of Laura Skuter, Northwest mining Association

Alternatives Provided By Public Must be Given Full Consideration

The RFA requires an agency to consider alternatives to the proposal and provide a statement of the factual, policy and legal reasons for selecting the alternative adopted. 5 USC §605. If a reasonable alternative is provided from a member of the public, the agency must give it its full consideration. In its testimony before the House Subcommittee on Rural Enterprises, Business Opportunities, and Special Small Business Problems, the Northwest Mining Association suggested the alternative of allowing temporary roads, on an as needed basis, with either natural or affirmative reclamation. While Advocacy acknowledges that it is not an expert in forest planning, this seems like an alternative in allows harvesting of natural resources while assuring that the forests are not permanently damaged or irreparably harmed. At least the mitigating impacts of this alternative should be carefully analyzed.

Northwest Mining's suggestion is only one of what may be several strong alternatives offered by the public as a less burdensome solution to the problem. Failure to fully address alternatives that may provide a workable solution to the problem may violate the RFA and raise questions as to whether the agency actions were arbitrary and capricious. If challenged, a court may find that FS' treatment of alternatives was insufficient.

In addition, Advocacy believes that FS should require local FS planners to require local FS planners to perform an RFA analysis in drafting future forest plans that implement this rulemaking to assure that the implementation minimizes the economic impact while achieving the goal of preserving the environment. RFA compliance will provide the public with information necessary to participate fully in the rulemaking process and possibly provide suggestions as to ways that may make implementation less costly.

Conclusion

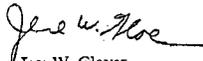
The Office of Advocacy recognizes the importance of protecting the environment, conserving our national forests, and preserving the natural beauty of the area. However, there is also a significant public interest in allowing access to natural resources in order to preserve our economic base. The potential economic impact of this proposal on small businesses and small communities could be devastating. Prior to implementing such a rule, FS should make every attempt to understand fully the economic impact of its actions and to find less burdensome or mitigating alternatives. In the alternative, it should explain fully why these alternatives will not help FS achieve its environmental objectives. As Advocacy has stated on several occasions, the requirements of the RFA are not intended to prevent an agency from fulfilling its statutory mandate. Rather, it is intended to assure that the economic impacts are fairly weighed and considered in the regulatory decision making process.

The public has an interest in knowing the potential economic impact of a particular proposed regulation. As the court stated when remanding a rule to the agency in *Northwest Mining v. Babbitt*, "While recognizing the public interest in preserving the environment, the Court also recognizes the public interest in preserving the rights of parties which are

affected by government regulation to be adequately informed when their interests are at stake and to participate in the regulatory process as directed by Congress." *Supra* at 13. Providing the public with a complete economic analysis that fully discloses the potential impact of the action and considers less burdensome alternatives not only complies with the requirements of the RFA, it also complies with the basic tenets of sound public policy that balance conflicting interests.

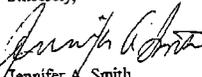
Thank you for the opportunity to comment on this proposal. If you have any questions, please feel free to contact us. Please place a copy of these comments in the record.

Sincerely,



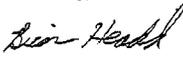
Jere W. Glover
Chief Counsel
Office of Advocacy

Sincerely,



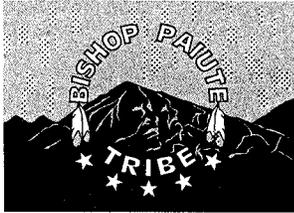
Jennifer A. Smith
Assistant Chief Counsel
for Economic Regulation &
International Trade

Sincerely,



Brian Headd
Economist

Cc: Charles Rawls



BISHOP TRIBAL COUNCIL

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CAET RECEIVED
JUL 13 2000

March 15, 2000

Jeff Bailey, Supervisor
Inyo National Forest
Bishop, CA 93514

Dear Jeff:

The Bishop Tribal Council appreciates the opportunity to respond to the Notice of Intent to prepare an EIS protecting roadless areas.

The Bishop Tribal Council appreciates the efforts of the US Forest Service to protect and manage and the natural resources and cultural sites now under their management. These resources and sites remain intrinsic to our people's cultural and religious beliefs and customs. We believe that the unique trust responsibility the Forest Service has to the Indian people unquestionably includes providing access at any time to areas and sites that are of cultural and religious significance to us. As you know, the remains of our ancestors and the evidence of their existence are sacred to us, as are the natural resources that to this day provide for our sustenance and cultural and spiritual needs. So, while we offer our comments on protecting roadless areas, we do so with the understanding that the Forest Service will continue to work with our Tribe to ensure our unrestricted access to and use of the natural resources and sites throughout our ancestral homelands.

The Bishop Tribal Council believes that it is extremely important that the US Forest Service live up to its trust responsibility to protect tribes' rights regarding freedom of religion. This trust responsibility cannot be separated from issues of access.

We support a plan throughout the forest (not just in roadless areas) that includes no new road construction anywhere in the Inyo National forest. Most importantly, we believe there should be no new roads within a perimeter of three to five miles of known cultural sites. If road construction must occur, it should occur only in areas that are already highly impacted by unregulated human encroachment. In addition, existing roads should be closed where there is evidence of environmental and / or cultural site degradation has occurred or is occurring.

Our specific concerns regarding the EIS protecting roadless areas relate primarily to the large number of acres involved and our desire to maintain access for our Elders so that we may preserve our cultural and spiritual traditions.

In California, a vast acreage is considered roadless. Any of these areas may include important cultural and spiritual areas. The Bishop Paiute Tribal Council is concerned that access to these cultural and spiritual areas be maintained for our people. Our Elders are the keepers of our

traditions. Many are unable to walk long distances. The only way we can continue our traditions and teach our young people about them is by having our Elders take us to these important places. Our most knowledgeable Elders are frail and are not able to travel long distances by foot. Any plan governing the management of roadless areas must maintain access to spiritual and cultural sites for traditional purposes.

Thank you for your consideration of these issues. We hope to discuss them with you at our next regularly scheduled meeting.

Sincerely,

M Bengochia
Monty Bengochia, Chair
Bishop Tribal Council

PAIUTE PROFESSIONAL BUILDING • 50 TU SU LANE • BISHOP, CA 93514
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Confederated Tribes of Grand Ronde
Natural Resources Department
P.O. Box 10
Grand Ronde, Oregon 97347
Contact: Cliff Adams (503) 879-2375

Ketchikan Indian Corporation
2960 Tongass Avenue
Ketchikan, Alaska 99901
(907) 225-5158
Fax (907) 247-0429

USDA Forest Service - CAET

T T T 5

July 14, 2000

The Fish and Wildlife Committee and the Timber Committee of the Confederated Tribes of Grand Ronde are offering comments regarding the "Roadless Area Conservation Proposed Rule".
The Tribal Committees are requesting that the following items be considered when adopting the Rule:

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

FACT RECEIVED
JUL 17 2000

1. Recreation within the Roadless areas continue to be allowed
2. The existing roads be maintained and not closed to allow public access
1. Rules and policies regarding management and any restrictions in the Roadless Area be decided at the local level
2. Continue to acknowledge the rights and historical uses of The Native American Tribes in the proposed Roadless Areas
1. Continue to consult with The Native American Tribes regarding any future proposals or decisions other than what has been proposed as the preferred alternative for the "Roadless Area Conservation Proposed Rule".

Dear Sirs:

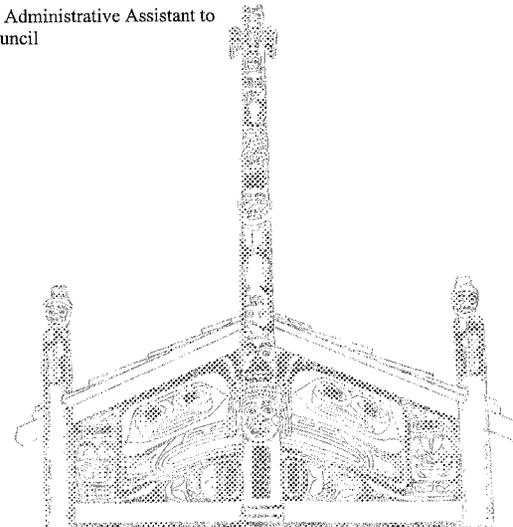
At a duly convened meeting on July 10, 2000, Ketchikan Indian Corporation Tribal Council authorized the submission of the attached Position Statement regarding the roadless.

If you have any questions, please feel free to contact me at: (907) 225-5158.

Sincerely,

Cheryl Haven, Administrative Assistant to
KIC Tribal Council

Enclosure



KIC

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Ketchikan Indian Corporation

2960 Tongass Avenue
Ketchikan, Alaska 99901
(907) 225-5158
Fax (907) 247-0429

Testimony for the Roadless issue
Discovery Center
6:00 p.m.

Position Statement

submitted by Merle Hawkins, Tribal Council and Subsistence Committee Chair

KIC Tribal Council would like to see Gravina Island remain a roadless area for the following reasons:

- ◆ Historically, and currently it is still is used by Alaska Native people from the Ketchikan area for subsistence fishing, gathering and hunting.
- ◆ The Saxman people use it and they have Rural status.
- ◆ This is traditional land of the Tongass Tribe, and although they are not federally recognized IRA Tribe, I represent them as an IRA Tribal Council. A respected Tongass Tribal leader, Esther Shea, said during the March 2000 Traditional Ecological Knowledge Conference, Co-hosted by Ketchikan Indian Corporation and the U.S. Forest Service: "We may not own the land anymore, but in our hearts it's ours." Her words are etched in our hearts.

The Forest Service is proposing a timber sale on Gravina Island with a proposal for road building in several alternatives. KIC opposes **any** road building on Gravina Islands public lands.

I recently met with other land holders of Gravina - DNR, Forest Service, Ketchikan Gateway Borough, Fish and Wildlife etc., for discussions of the following concerns:

- ◆ We are concerned that if roads are built on Gravina that the State DNR will again reopen the roads and clear cut all of their land on Gravina.
- ◆ The Forest Service would like to open the lands up for recreational use also. They cannot afford to maintain the roads they have now, let alone assume the maintenance burden on additional roads.
- ◆ All of the proposed or possible activities would jeopardize the subsistence areas on Gravina, especially Bostwick inlet.
- ◆ Gravina Island is a pristine environment and needs to be protected from road building, timber harvesting, recreation or other activities that would alter its current roadless characteristics.
- ◆ Gravina Island has been used by many generations of Alaska Natives-Tlingit, Haida and Tsimshian, for traditional hunting, fishing and food gathering. KIC would like to see that this area is available for future generations.
- ◆ These subsistence gathering activities provide significant social and ecological values. There is a lot of archeological evidence on Gravina Island which shows how important this area was and still is. Any road construction would jeopardize these values.

The Forest Service proposed action, under the roadless alternatives, would be to evaluate the quality and importance of roadless characteristics. KIC does not feel that the Forest Service is qualified to do this. A conflict of inherent extent as they have the responsibility to provide a certain amount of timber for market demand within the Tongass National Forest. The same circumstance exists with recreational areas; the pressure for people in Ketchikan to provide more recreational areas, but Alaska is special because of its historical access by canoe or boat, and unique due to all the islands.

- ◆ The Forest Service protects public lands on Gravina with multiple use objectives.
- ◆ If Gravina is opened up for recreation, you cannot protect the island's public land.
- ◆ Multiple use objectives would not work.
- ◆ Leaving that decision up to a local Tongass Ranger does not make sense as we get a new one about every three to five years and they do not know the local people.
- ◆ By the time they (new Rangers) acquire some of this knowledge they get transferred and the people suffer from their decision. Building roads on Gravina to Boswick would be mismanagement, timber harvest, road building and recreational use are not compatible with subsistence.
- ◆ KIC's position is that any timber harvest, road access, or recreational use on Gravina would have a detrimental environmental impact on the subsistence resources of the Island and waters.
- ◆ KIC opposes any timber harvest and/or any recreational use or development on Gravina Island.
- ◆ KIC supports Alternative # 4, 4D with full Tongass inclusion, **no road building on the**

Tongass.

Merle Hawkins

Signed: Merle Hawkins, KIC Tribal Council

and Subsistence Committee Chair

July 13, 2000

Date

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The Klamath Tribes

P.O. Box 436
Chiloquin, Oregon 97624
Telephone (541) 783-2219
Fax (541) 783-2029
800-524-9787

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CAET RECEIVED

JUN 29 2000

June 19, 2000

The Honorable Dan Glickman
Secretary of Agriculture
United State Department of Agriculture, Room 213-A
14th Street and Independence Avenue, SW
Washington, D.C. 20250

Dear Secretary Glickman:

As Chairman of the Klamath Tribes, an organization within Klamath County that has a major concern with establishing and maintaining a diversified and viable economic base within the Klamath Basin, I have been asked to comment upon the impact of the President's Roadless Plan (64 Federal Register 56306, October 19, 1999), particularly as it may impact the Pelican Butte Ski project under consideration in the Winema National Forest and, ultimately, the Klamath Tribes Economic self Sufficiency Plan, currently in the final stages of preparation for the Secretary of the Interior and the Congress. Without the benefit of having all the data needed yet, it does appear that this project, if successfully implemented, will have a significant positive financial impact on the Tribes' Economic Self Sufficiency Plan.

Without being able at this time, due in large part to the unavailability of the final EIS and other economic data, to address whether the Tribes will ultimately support or not support the project based upon its environmental, Tribal cultural and economic impacts, we strongly feel that, given the potential impacts to the entire community, this project should be provided a "grandfather" clause exemption to complete its EIS process and presentation to the Basin community for their consideration.

Several factors argue strongly for this exemption. First, this project has been under review and development by the Forest Service, the City of Klamath Falls, and private developers for over thirty years. It has always been a part of the regional economic development industrial diversification plan of a devastated timber dependent community. It needs resolution.

Second, the developer undertook the project at the invitation of the Forest Service under its Winema National Forest Plan, agreeing to prepare and write an Environmental Impact Statement under NEPA requirements. Given the years and \$3.75 million spent in good faith on a project under the previous rules, we feel that the research, feasibility and environmental impact analysis should be completed and placed before the public for their information. We also feel that the public is entitled to, after thirty years to render their position on the project.



D. Glickman, U.S. Sec of Ag., June 16, 2000
Page 2

Finally, the Tribes and I, personally, have spent a great amount of time and energy participating in six different community committees evaluating this project. We feel that there is a responsibility to the great number of hours and effort that many of our community leaders have put into this project over the years.

No organization or peoples in the Klamath Basin is more concerned with the environment and the protection of the forest that the Klamath Tribes and we are committed to the restoration and preservation of all lands and resources that are currently or will ever be under our jurisdiction. This position does include the recognition of the need for the Tribes and the general community to have a protected, multi-use forest for the benefit of all. In order to be able to determine which projects are beneficial and needed or not, we do need to have these project processes completed.

Sincerely,

Allen Foreman
Tribal Chairman
The Klamath Tribes

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D. Glickman, U.S. Sec. of Ag., June 16, 2000
Page 2

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Sincerely,



Allen Foreman
Tribal Chairman
The Klamath Tribes



Nez Perce

TRIBAL EXECUTIVE COMMITTEE
P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

July 14, 2000

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

RE: Roadless Areas Proposed Rules

Dear Madam or Sir:

The Nez Perce Tribe appreciates the opportunity to comment on the Roadless Area Conservation Proposed Rule and Draft Environmental Impact Statement (DEIS). The Tribe recognizes and appreciates the enormous effort put forth by the Forest Service in developing these important protection measures for the Nation's valuable roadless areas.

The Nez Perce Tribe strongly supports the Roadless Area Conservation Proposed Rule. We believe that this rule represents a positive step forward to protect the lands the Forest Service has been assigned to protect and manage.

By virtue of the Treaty of 1855, the Nez Perce Tribe maintains treaty-reserved rights to hunt, fish, gather, and pasture cattle and horses within "open and unclaimed lands." These treaty lands include vast areas encompassed in the National Forests of northeastern Oregon, southwestern Washington, and Idaho. The Tribe believes that the protections provided for by this rule would be consistent with the treaty and trust responsibilities of the United States to preserve, protect, and enhance tribal treaty rights and treaty-reserved resources.

Further, this rule appears to be consistent with the salmon recovery plan adopted by four of the Columbia River treaty Tribes, including the Nez Perce Tribe. *Wy-Kan-Ush-Mi Wa-Kish-Wit: Spirit of the Salmon* calls for, amongst other actions, a decrease in roaded miles in managed watersheds, as well as improved drainage and decreased sediment delivery from roads that will not be obliterated or relocated.

It is critical that the Forest Service recognize and consider how this proposed rule would integrate with the federal government's salmon and steelhead recovery efforts for the Columbia River basin. The Conservation of Columbia Basin Fish or "All-H Paper" produced by a number

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of federal agencies, including the Forest Service, calls for a number of habitat measures to restore imperiled fisheries. The Forest Service and other federal agencies must recognize the importance of the measures called for in the proposed rule to these efforts, especially if the federal government fails to take decisive action to restore salmon and steelhead such as Snake River dam drawdown.

In addition to these general comments, the Tribe has the following specific comments:

1. The proposed rule provides that roads may be constructed or reconstructed if "[a] road is necessary pursuant to reserved or outstanding rights as provided for by statute or treaty." This exception should be revised to explicitly state that road construction and reconstruction may occur to ensure exercise of tribal treaty-reserved rights.
2. The proposed rule provides that roads may be constructed or reconstructed if "[a] road is needed to conduct a response action under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or to conduct a natural resource restoration action under CERCLA, section 311 of the Clean Water Act, or the Oil Pollution Act." In addition, roads may be constructed or reconstructed if "needed to protect public health and safety ... that, without intervention, would cause the loss of life or property." These sections should be revised, expanded, or clarified to allow road construction and reconstruction to protect the habitat of endangered or threatened species from an imminent threat of flood, fire, or other catastrophic event that would cause the destruction of the species or of critical habitat.
3. Pages 4-2 and 4-3 of the Draft Environmental Impact Statement (Volume 1) describes tribal consultation. This section describes how "Forest Service field line officers were directed to personally initiate contact with all potentially impacted tribal leaders." While such contacts were made and detailed presentations were made about the proposed rule, the local Forest Service staff had no authority to conduct a meaningful consultation on the rule or its impacts to the Tribe. Executive Order 13084 provides that each "agency shall have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." According to the President's April 29, 1994 memorandum regarding Government-to-Government Relations with Native American Tribal Governments, federal agencies "shall assess the impacts of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that Tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities." Consultation is the formal process of negotiation, cooperation, and mutual decision-making that ultimately leads to the development of a decision, not just a process or a means to an end. Consultation does not mean notifying the Tribe that an action will occur, requesting comments on that prospective action, and then proceeding with the action. In this scenario the decision is not affected. As such, the Tribe requests that appropriate staff be directed to conduct meaningful consultation with the Tribe on the further development of the proposed rule.

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

Sincerely,


Samuel M. Penney
Chairman

43977



43977

DATE: July 17, 2000

TO: USDA Forest Service

FROM: Sally Nickelson
Wildlife Program Coordinator
Point No Point Treaty Tribes

RE: DEIS Roadless Areas Proposal

I am the Wildlife Program Coordinator for the four Point No Point Treaty Tribes (which include the Skokomish, Port Gamble S'Klallam, Jamestown S'Klallam and Lower Elwha Klallam Tribes) located on the Olympic Peninsula in Washington State. These four tribes strongly support the proposal in the DEIS to maintain current roadless areas in perpetuity. We support protecting all roadless areas, regardless of size and/or whether they have been inventoried. Even small patches of the late-successional habitat found in roadless areas can provide essential habitat and refugia for many species.

Our four tribes retained off-reservation fishing, hunting and gathering rights when they signed their treaty in 1855. Tribal members use Forest Service land for hunting, gathering and spiritual purposes. In addition, upstream land use practices on Forest Service ownership greatly influence fish habitat downstream. High road density, and concomitant road failure, has been a primary cause of fish habitat destruction and decline in salmon populations on the Olympic Peninsula.

Elk is a species of great cultural importance to these four tribes. Unfortunately, during the past 10 years, elk populations on the Olympic Peninsula have declined rapidly, in part due to overharvest because of easy access on the extremely dense road network on both Forest Service and private industrial timberland. In many areas on the Peninsula, road density is 6 miles of road for every square mile of habitat. This high road density increases the vulnerability of wildlife species to both legal and illegal hunting to a point where many local populations can no longer maintain themselves. The Point No Point Tribes closed two Game Management Units to tribal elk hunting in the past decade because of population declines. One of these, the Skokomish Game Management Unit, contains a culturally important herd that ranges along the South Fork Skokomish River. The upper reaches of this river contains one of the proposed roadless areas, which can serve as a refuge for the elk during hunting season, when seasons are reopened.

In addition, roadless areas generally contain older trees, and can provide old growth habitat for species dependent on late successional forest, including the federally listed Northern Spotted Owl and Marbled Murrelet. The Tribes support completely protecting all remaining late successional habitat (not only from road building, but also from other destructive uses such as helicopter logging, grazing, mining, and ATV use). Some culturally important plant species are found primarily in old growth stands, and many of these stands have spiritual significance.

Our tribes disagree with previous federal policy of subsidizing private timber companies by building and maintaining roads so that the private companies could log public land. This was usually done at a fiscal loss

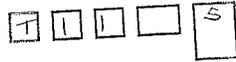
to the public (the cost of building and maintaining the road was greater than the amount received for the timber). We believe that the greater value of the land lies in its ability to provide fish and wildlife habitat.

Our tribes urge the Forest Service to completely protect the few remaining roadless areas on their ownership in perpetuity. Unfortunately, most of these roadless areas occur at high elevation in very steep terrain, which is marginal habitat for most wildlife species. In addition to protecting already roadless areas, we suggest that the Forest Service reduce road density in the more productive low elevation stands to protect both wildlife species and fish habitat. Maintaining tribal access to Forest Service land for treaty hunting and gathering is critical. However, a balance must be achieved between reasonable and dispersed access and reducing road density to decrease vulnerability of game species to hunting and poaching. We believe that scarce dollars should be spent in decommissioning many roads and upgrading the remaining ones to current standards, not in building new roads.

Thank you for the opportunity to comment on this important proposal.

Sincerely,

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



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13 July, 2000

USDA Forest Service
 Attention: Roadless Area NOI
 Box 221090
 Salt Lake City, UT 84122

Subject: Roadless Initiative --- Proposed Rule and DEIS

To Whom It May Concern:

Sealaska Corporation appreciates the opportunity to respond to the Forest Service Roadless Area Conservation Draft Environmental Impact Statement, dated May 2000. This EIS results from the proposal by the Forest Service to review the National Forest System Roadless Areas Initiative as published in Federal Register/Vol. 64, No. 201/ Tuesday, October 19, 1999 (p56306-56307).

Sealaska Corporation, the Regional Native Corporation for Southeast Alaska, was created under the Alaska Native Claims Settlement Act (ANCSA) of 1971. Sealaska represents 16,000 shareholders whose heritage derives from Tlingit, Haida and Tsimshian Native tribes of Southeast Alaska. The economy of Southeast Alaska is dominated by the Tongass National Forest, largely because it surrounds all of our towns and villages.

Sealaska has determined that the Proposed Rule is inappropriate as a National policy; and specifically, should not be applied to the Tongass and Chugach National Forests. The basis for our determination is set forth in the following sections.

JUL 17 2000

On behalf of Sealaska Corporation, thank you for the opportunity to provide our comments regarding the proposed National Forest System Roadless Areas review. Sealaska reserves the right to provide additional comments should the deadline be extended.

Sincerely yours,

SEALASKA CORPORATION

Robert W. Loescher
 President and Chief Executive Officer

CC: The Honorable President Bill Clinton
 Lynn Cutler, Deputy Assistant to the President
 George Frampton, Council on Environmental Quality
 The Honorable Governor Tony Knowles
 The Honorable Senator Stevens
 The Honorable Senator Murkowski
 The Honorable Congressman Young
 S.E. State Senators and Representatives
 Alaska Speaker of the House
 Alaska President of the Senate
 SE Alaska Communities
 SE Alaska ANCSA Village and Urban Corporations
 ANCSA Regional Corporations
 Alaska Municipal League
 S.E. Conference
 Jack Phelps, Alaska Forest Association
 Resource Development Council
 Alaska Miners Association
 Rick Cables, Regional Forester
 TNF District Rangers
 Ed Thomas, Tlingit & Haida Central Council
 Jacqueline Martin, ANS Grand President
 Sam Jackson, ANB Grand President
 Rick Harris
 Chris McNeil
 Ross Soboleff
 Budd Simpson
 Alan Mintz
 Gregg Renkes

GENERAL COMMENTS

By delaying a decision on the exclusion or inclusion of the Tongass until 2004, the Forest Service will stop all investment in new manufacturing caused by uncertainty in the future timber supply. Delaying a review of the Tongass National Forest for inclusion effective 2004 is self-fulfilling in terms of assuring that demand for Forest Service timber will continue to diminish. The forest products industry is actively reconfiguring itself to utilize Forest Service timber from the Tongass National Forest at current supply levels. Active projects include veneer mills, ethanol manufacturing from wood wastes, and sawmill reconfiguration to fully utilize timber expected to be offered in stumpage sales. By placing the Tongass NF into a review category in 2004, the government is effectively closing the door on any opportunities to create a viable industry for the benefit of many communities. No company can be expected to pursue opportunities if there is a real risk that stumpage volume will not be available in as little as a few years.

If the Tongass National Forest (TNF) is included in the Proposed Rule no roadless areas should be designated without first conducting a detailed analysis of alternatives. This analysis must be very broad to identify all impacts such designations may have on the people that reside within the TNF. This analysis must go beyond the biological analysis and include analysis on subsistence, cultural, social, economic, job and family sustainability that will be affected by such designations. Further, the analysis must evaluate the result of any site specific designation on the ability of the TNF to meet other Federal obligations made to the State of Alaska and Alaska Natives through prior laws and land agreements regarding land and resource allocations from the TNF. Specific agreements, geographic areas and communities that should be included in the analysis are described in further detail in the following sections.

DETAILED COMMENTS

1. The Proposed Rule recommends a categorical elimination of road construction in roadless areas. This proposal is contrary to Federal law and recommendations of the "Committee of Scientists" (COS). The

scope of analysis and alternatives must rectify these obvious conflicts with National forest policy and laws and recommendations of the COS.

- ◆ The Proposed Rule eliminates all road construction and designates roadless areas on the National Forests which is against the law. The National Forest Management Act (NFMA) establishes a process for forest planning, including new roadless management policy, when the agency proposes significant changes to a forest plan. Development and implementation of a new roadless management policy will constitute a significant and major plan amendment because it will affect the classification and use of resources on millions of acres of forestland.

Under NFMA, a plan amendment which results in a significant change in a plan must undergo the same land management planning process that is used for original and revised plans including, but not limited to, the preparation of an environmental impact statement (EIS) in accordance with NEPA. The proposed Roadless Initiative NEPA-EIS is not consistent with the NFMA because the changes being proposed are not being done in the same manner as the plan itself was developed. In this case, a plan is developed by the Forest Supervisors using the NEPA process as the decision making process for meeting NFMA planning requirements (36 CFR 219.1 et seq). Hence a proposed amendment must follow the same process as the original plan including plan amendment occurring at the forest level.

- ◆ The Proposed Plan does not respond to the Report of the Committee of Scientists (COS) 1999. The COS recommends that the planning process consider a broad range of values, uses, products, and services. The process should be democratic, open and accessible with a large degree of public participation representing all stakeholders. It should be oriented to local areas with the highest level of approval being the Regional Forester. It should fit the organization, communication, and decision-making styles of the community; and should work to reduce the negative economic and social impacts of land-use changes.

The procedure by which the Administration is identifying areas for roadless designation accomplishes none of these recommendations. Alternatives must be included that meet the COS recommendations as described above.

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2. The Proposed Rule proposes to establish the criteria that must be used “through the forest planning process” to protect roadless areas. The scope of analysis overtly emphasizes biological protections and fails to consider the impacts of roadless designations on sustainability of affected communities, school funding and families that are dependent on National Forests for their livelihoods. The EIS alternatives analysis should include the following:

- ◆ Require that forest planning, including roadless designations, be done at the forest and local (community) level.
- ◆ Include authorities such that the roadless area designations can be vacated to manage for desired habitat characteristics, and provide reasonable road access if insect, disease, and fire outbreaks pose a risk to National forest and adjoining private and non-Federal public lands.
- ◆ The report of the Committee of Scientists (COS) finds the less populated areas of the west will suffer substantial economic and social dislocations due to their low economic and social resiliency. Practically all of the communities in Southeast Alaska have such low resiliency. The further designation of roadless areas on national forests would be devastating to those living in that region. For the reasons described by the COS, the criteria for designating roadless areas must be expanded to include specific requirements that ensure school funding and jobs are protected and that the resources on the national forests will be available to maintain sustainable communities and families. Consequently, the alternatives analysis must include options that preclude roadless designation (both inventoried and un-inventoried) if the areas being considered have resources that would contribute to the economic and social welfare of nearby communities. Alternatives must include preclusion of roadless designations if the affected communities meet one or more of the following criteria:
 1. Have a seasonally adjusted unemployment rate that is 5% above the average for the State.
 2. Have an average per student expenditure that is less than the average per student expenditure for the State.
 3. Have more than a 30% minority population.

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4. Have a per-capita income that is less than 10% of the average per-capita income for the State.
5. Requires road access across roadless areas for community infrastructure including municipal drinking water supply, development of hydroelectric power sources and access to regional road and transportation systems.
6. If roadless areas are designated and, subsequently, the community fails to meet the above benchmarks, the roadless areas can be rescinded as a plan amendment.

3 Federal laws preclude the inclusion of the Tongass National Forest and Chugach National Forest in the “Roadless Initiative”. Before either forest can be included under the Proposed Rule, conclusive legal authority to include these forests must be proven. The basis of excluding these forests follows:

- ◆ The temporary roadless suspension correctly exempts the Tongass and Chugach National Forest from the Roadless Initiative. That suspension should be made permanent due to the applicable Federal laws governing land designations in both forests. The legal basis for exclusion includes:
 1. Designation of additional roadless areas would violate the Alaska National Interest Land Conservation Act (ANILCA). ANILCA prohibits: (1) Forest Service studies that contemplate the establishment of additional conservation, recreation, or similar units; (2) the withdrawal of more than 5,000 acres of land, in aggregate, without Congress’s approval, and (3) the review of roadless areas of national forest lands in Alaska for the purpose of evaluating their suitability as wilderness.
 2. Under ANILCA § 1326, the Forest Service is prohibited from (1) using the plan amendment process, the moratorium, or any other process to conduct additional studies of public lands in Alaska, the single purpose of which is to set aside roadless areas from further development; and (2) withdrawing lands in excess of 5,000 acres in aggregate, without Congressional approval.
 3. ANILCA § 1326(b) prohibits the executive branch from studying federal lands in Alaska for the single purpose of considering

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whether to establish “a conservation system unit, national recreation area, national conservation area, or for related similar purposes.” Unless authorized under ANILCA (16 USC § 3213(b)) or by Congress, the Forest Service is prohibited from studying any roadless areas during a plan amendment process, much less the administrative appeal process, if the purpose is to establish a conservation unit, recreation area, conservation area or any other unit serving related or similar purposes.

4. Congress expressly stated that the conservation areas established under ANILCA were sufficient protection “for the national interest in the scenic, natural, cultural, and environmental values on the public lands in Alaska.” (15 USC § 3101(d)).
- ◆ In addition to the authorities that exclude both the Tongass and Chugach National Forest from any roadless initiatives, including this Proposed Rule. The following legal authorities further exclude the Tongass National Forest from further consideration:
 1. No regulatory or statutory process exists for the Forest Service to unilaterally change the revised TLMP during the appeal process or otherwise. Any determinations that the Forest Service attempts to make during the TLMP appeal process must be limited to correcting what the Forest Service agrees were legal errors in the TLMP planning process. Any other changes (including changes to the Tongass roadless area policy) must be pursued as a plan amendment through the appropriate forest planning regulations.
 2. In the Tongass Timber Reform Act (Public Law 101-626; (TTRA)), Congress addressed wilderness issues (16 USC 539(d)). The wilderness clauses dealt with designating wilderness areas, additions to areas, and certain roadless managed areas. There are no clauses stating that there shall be no more wilderness or roadless areas, because Congress foreclosed the creation of more such areas since it has reserved for itself the determination of wilderness and roadless areas per ANILCA and TTRA.
 3. The TTRA Title I-Forest Management Provisions; Sec. 101 amends Sec. 705(a) of ANILCA to read: “(a) Subject to appropriations, other applicable law, and the requirements of the

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National Forest Management Act of 1976 (Public Law 94-588), except as provided in subsection (d) of this section, the Secretary shall, to the extent consistent with providing for multiple use and sustained yield of all renewable forest resources, seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber from such forest and (2) meets the market demand from such forest for each planning cycle.”

- ◆ Under the Tongass Land Management Plan Record of Decision (1999) the Forest Service has established an allowable sale quantity (ASQ) of 187 mmbf. However, the application of the roadless initiative would substantively reduce the ASQ to about 50 million board feet. This volume will not meet the needs of local industry, and will have extensive negative effects on the Southeast Alaska regional economy. If the Tongass is included, the alternatives analysis must ensure that the roadless action will not preclude the Secretary from meeting the provisions of Title I, Section 101 of TTRA and preclude the Forest Service performing under its own forest management plan.
- 4. If the Tongass National Forest is included in the Proposed Rule, no areas should be designated until the scope of the analysis and alternatives are prepared that consider all impacts such designations may have on the people that reside within the TNF. The scope of analysis and alternatives should include the following:**
- ◆ The Tongass contains over 15 million acres of land. Over 6 million acres are placed in national monuments and wilderness areas. An additional 728, 000 acres are legislated Land Use Designation II (un-roaded) areas. Another 7.14 million acres prohibit road construction/reconstruction. About 1.5 million acres (10%) are left for development activities. Given the extensive ecological protections that already exist, the alternatives analysis, before concluding that additional roadless areas should be designated, must first conclusively prove that the current land allocations and management practices fail to provide clean-water, biological diversity, wildlife habitat, forest health, dispersed recreation and other public benefits.
 - ◆ The Roadless Initiative must not supersede or abrogate the rights of Alaska Natives to achieve their entitlements granted under the 1971

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Alaska Native Claims Settlement Act (ANCSA). The final rules must include unimpeded exercise of land selection rights and authority to use Native land and land selection entitlements to exchange for other for public land that may include roadless areas.

- ◆ The Forest Service must analyze the social and economic effects for each community in Southeast Alaska before designating roadless areas. Further, the alternatives analysis must be done on a local and a regional basis to quantify the cumulative effects, and to demonstrate that economy of scale industries can be sustained. There are numerous Southeast Alaska rural communities, whose residents are predominately Alaska Natives, who rely on the timber industry for a substantial portion of the economic activity necessary to assure community viability. Reductions in Forest Service timber sales as a result of the Proposed Rule will negatively effect the economic well being of these communities. The alternatives analysis must identify "realistic economic alternatives" that assure that these communities retain current or improved levels of economic and social viability.

Communities in Southeast Alaska, that must be included in individual social-economic studies include but are not limited to: Annette, Ketchikan, Hydaburg, Craig, Klawock, Hollis, Kasaan, Thorne Bay, Naukati, Coffman Cove, Whale Pass, Calder mine, Point Baker, Port Protection, Laboucher Bay, Meyers Chuck, Edna Bay, Cape Pole, Rowan Bay, Kake, Petersburg, Kupreanof, Wrangell, Sitka, Baranof Warm Springs, Tenakee Springs, Hoonah, Excursion Inlet, Gustavus, Juneau, Elfin Cove, Pelican, Skagway, Haines, and Klukwan. Most of these communities have been identified as having low resiliency.

- ◆ Southeast Alaska is developing an integrated regional transportation and energy system. Each community is improving their essential community infrastructure (e.g. municipal water supplies, and transportation infrastructure). Before any roadless designations occur, the analysis of effects and alternatives must be prepared that affect these major initiatives. Specific areas for analysis and alternatives development include:
- ◆ The State of Alaska is revising its regional ferry/road system to allow more efficient and economical travel throughout Southeast Alaska.

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Access must be preserved for the State's regional ferry/road transportation system.

1. On Prince of Wales Island, communities that are connected, or may be connected in the future by roads and powerlines include: Hydaburg, Klawock, Craig, Hollis, Kasaan, Thorne Bay, Naukati, Coffman Cove, Whale Pass, Calder mine, Laboucher Bay, Point Baker, and Port Protection. In addition, hydroelectric sites in the higher elevations of Prince of Wales Island need to be identified in order to eventually replace or supplement electric demands in these communities.
2. The current road access between Cape Pole and Edna Bay must be preserved. In addition, a hydroelectric facility servicing those communities may be feasible in the Mount Holbrook area on Koskiusko Island.
3. There must be a road corridor and power line corridor between Kake, Kupreanof and Petersburg to be developed when future economics make the project feasible.
4. Sitka must be allowed to have a road corridor to Rodman Bay on Peril Straits for potentially more efficient ferry access.
5. Although not warranted at the present time, there must be provisions for a future road and electrical intertie between Hoonah and Tenakee Springs.
6. Allowances must be made for a power line easement between Juneau, Greens Creek mine, and Hoonah.
7. Road access from Skagway and Haines to Juneau needs to be preserved along both shorelines of Lynn Canal so that the best access to Juneau can be preserved. In case the Taku River road becomes more viable, a road corridor must be included in any transportation plan.
8. In the future, Rowan Bay may find a source for hydroelectric power to replace diesel generation. The best sources probably are in the watersheds along the ridge that fronts onto Chatham Straits.

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◆ The DEIS does not present a balanced picture of characteristics attributed to roadless areas compared to roaded areas.

1. By utilizing current road building standards little or no foreign material is introduced into the riverine environment. Water is not degraded. In the Tongass National Forest and the rest of Southeast Alaska, best management practices (BMPs) dictate that roads be located and constructed so that pollutants do not reach streams. Roads systems are designed to avoid oversteep slopes. Full bench and-hauling are required on lesser slopes over a defined steepness. In many instances bridges are designed and constructed with abutments that are above stream banks. These and similar BMPs result in maining a high quality riverine environment. A reasonable amount of timber harvest is appropriate for every national forest in the United States. In the case of the Tongass NF, the Forest Service administratively has vastly exceeded reserving areas in a roadless category for the alleged protection of scenery, biodiversity, sustaining populations of indicator species, protection of salmon habitat, etc. This has resulted in much more land being reserved to a roadless category than is necessary to protect these non-commodity characteristics in every part of the national forest.
2. Development is not necessarily antagonistic to other values. In the Pacific Northwest, including Alaska, the modification of stream riparian areas, using methods such as partial timber harvest, has resulted in providing more food for invertebrates, which are the animals that initiate the food cycle that results in more food for fish. In addition, different species of anadromous fish prefer different kinds of in-stream habitat. Stream access allows fishery biologists to manage the habitat for the most desirable species. Forest Service and other scientists are discovering that secondary benefits can have a neutral effect or even positively accrue to stream productivity (Gregory et al¹, Martin², Murphy and Koski³, Murphy and Hall⁴, Murphy and Meehan⁵, Wipfli⁶).

¹ Gregory, S.V. et al. 1987. Influence of forest practices on aquatic production. Pp 233-255, In Salo and Cundy editors, Streamside Management, Forestry and Fishery Interactions Univ. Washington, Seattle.

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3. The DEIS has failed to adequately explain the many benefits that users enjoy due to the availability of Forest Service roads. The Forest Service has published reports that show that roads are being used with increased frequency by many citizens. Should road building be substantially restrained in the future, the impact on roaded areas will be very substantial. A great majority of the public demands easier access to enjoy the great outdoors compared to the very few who can afford to recreate in roadless areas. More, not less, area is needed to provide for multiple uses including recreation for people who prefer to drive, access for hunters, fishermen and subsistence gatherers, mineral exploration and development, and timber harvest. The final EIS must recognize the need for a different balance providing more favor for those who want the easier access.

In an October 12, 1999 letter, from Governor Tony Knowles to Mr. George Frampton, Chair, Council on Environmental Quality, Governor Knowles enumerated reasons why the Tongass National Forest should not be included. In that letter he stated that the TLMP process must be allowed to proceed, that "It would be an outrage because we were assured previously that the Tongass would not be included in this review...". "A change now in that course and direction would constitute a doublecross of the citizens of the State of Alaska." Sealaska fully supports the Governor's position that ANILCA and TTRA defined those areas in the Tongass National Forest that should be roadless. Those areas that shall be maintained for economic development including timber harvest, road construction, and mineral development.

² Martin, D.J., M.E. Robinson and R.A. Grotfendts 1998. The effectiveness of riparian buffer zones for protection of salmonid habitat in Alaska coastal streams. A Report for Sealaska Corporation, Juneau, Alaska. 85 pp.

³ Murphy, M.L. and K.V. Koski 1989. Input and depletion of woody debris in Alaska streams and implications for streamside management. North American Jour. Fish. Mgt. 9(4): 427-436.

⁴ Murphy, M.L. and J.D. Hall 1981. Varied effects of clear-cut logging on predators and their habitat in small streams of the Cascade Mountains, Oregon. Can. Jour. Fish. Aquat. Sci. 38: 137-145.

⁵ Murphy, M.L. and W.R. Meehan 1991. Stream ecosystems. American Fish. Soc. Spec. Publ. 19: 17-46.

⁶ Wipfli, M.S. 1997. Terrestrial invertebrates as salmonid prey and nitrogen sources in streams: contrasting old-growth and young-growth riparian forests in southeastern Alaska. Can J. Fish. Aquat. Sci. 54: 1259-1269.

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NO. 443 P. 2/3

JUL. 14. 2000 2:18PM

NO. 443 P. 3/3

Sitka Tribe of Alaska

Tribal Government Sitka, Alaska

Tribal Resolution 00-25

A Resolution of the Sitka Tribe of Alaska opposing inclusion of the Tongass National Forest in the U.S. Forest Service National Roadless Initiative Policy Review & Supporting Alternative T-1

- WHEREAS,** the Sitka Tribe of Alaska is a federally recognized tribal government responsible for the health, safety, welfare, and cultural preservation of over 3,000 tribal citizens residing in Sitka, Alaska; and
- WHEREAS,** Section 708 of the Alaska National Interest Lands Conservation Act of 1980 resolved roadless issues in a compromise bill establishing over 5,000,000 acres in 14 acres as Wilderness on the Tongass National Forest and the Tongass Timber Reform Act of 1990 added over 1,000,000 in additional Wilderness designations to maintain their wildland characteristics; and
- WHEREAS,** the Record of Decision signed by Undersecretary on the Revised Tongass Land Use Management Plan notes that the Tongass National Forest would be exempt from the roadless moratorium as the newly revised plan had the benefit of considerable science and public involvement in the 12 year revision process for the Forest Plan; and
- WHEREAS,** the Tongass National Forest is comprised of approximately 17,000,000 acres, of which 90% is currently un-roaded and approximately 50% of the current Tongass National Forest timber base would become included in the acres proposed for the Roadless Initiative; and
- WHEREAS,** the Tongass National Forest is essential in bringing in stability and certainty to the economy of SE Alaska, providing jobs for many families dependent on such stability and inclusion in the Roadless Initiative would cause economic harm to the region; and
- WHEREAS,** the implementation of the Roadless Initiative to the Tongass National Forest would greatly diminish access to all natural resources and may eliminate opportunities for the construction of future - transportation and utility corridors throughout SE Alaska.

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NOW THEREFORE BE IT RESOLVED, by the Sitka Tribe of Alaska strongly opposes the inclusion of the Tongass National Forest in the "Roadless Initiative" that the Sitka Tribe of Alaska supports Alternative T-1, further that the Sitka Tribe of Alaska supports the current Land Management Plan.

BE IT FURTHER RESOLVED, that the Sitka Tribe of Alaska opposes any unilateral actions to modify the Record of Decision as such actions are contrary to proper resource planning and circumvents the public planning process as mandated by the National Forest Management Act.

CERTIFICATION

The foregoing Resolution was adopted at a duly called and convened meeting of the council of the Sitka Tribe of Alaska held on July 13, 2000, at which a quorum was present, by a vote of 4 IN FAVOR, 1 AGAINST, AND 3 ABSENT.

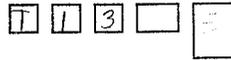
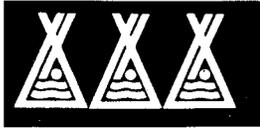
Larry A. Weisman
Sitka Tribe of Alaska - Tribal Chairman

Attest:

Doreen Jones
Sitka Tribe of Alaska - Tribal Secretary

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JUL 17 2000



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THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

NATURAL RESOURCES DEPARTMENT
P.O. Box C, Warm Springs, Oregon 97761

July 17, 2000

USDA Forest Service
Box 221090
Salt Lake City, Utah 97701

RE: Roadless DEIS/Proposed Rule

Dear Sirs:

The Confederated Tribes of the Warm Springs Reservation of Oregon ("CTWSRO") are pleased that the proposed roadless area rule protects unroaded portions of inventoried roadless areas from further road construction. As the DEIS recognizes, protection of these areas is critical to the health of our ecosystems, including fish, wildlife, and native plant populations. Although the proposed rule takes some solid first steps toward protecting remaining areas, it doesn't go far enough. We ask that you address the following concerns when making your final decision on roadless area protection:

1. We are disappointed that the proposed rule fails to go further and prohibit logging, mining, ORV use, and other detrimental uses in the unroaded portions of inventoried roadless areas. There are sufficient opportunities for these uses in roaded areas. Conversely, there are few areas that have not been degraded by these activities. The latter is particularly true for areas that support anadromous fish within CTWSRO ceded lands (see ICBEMP designation of A1 watersheds in Oregon).
2. Given the poor forest health conditions in the Columbia Basin (and presumably elsewhere), we are disappointed that uninventoried roadless areas receive no protection under the rule. The DEIS recognizes that unroaded and unlogged areas comprise our best remaining ecosystems. These areas generally offer little commercial harvest potential (hence their unroaded condition) are in no need of "stewardship" or other types of treatment. You should reconsider extending automatic protection to roadless areas larger than 1000 acres. (See *Wj-Kan-Ush-Mi Wa-Kish-Wit (Spirit of the Salmon)*, The Columbia River Anadromous Fish Restoration Plan of the Nez Perce, Umatilla, Warm

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Springs and Yakama Tribes (CRITFC, 1995), calling for cessation of logging, mining, and road construction in all roadless areas ≥ 1000 acres).

At a minimum, the rule should direct local units to immediately determine the suitability of uninventoried roadless areas for the protections given inventoried roadless areas. Putting off this analysis until forest plan revision is a mistake. Forest planning is a long process, and given current administrative burdens (ICBEMP implementation, ESA consultations, etc.) it is highly unlikely that forest plans will be revised in the foreseeable future. If analysis of these areas is put off until the next forest planning cycle, it is imperative that these areas receive interim protection through project-by-project analysis of roadless characteristics (procedural alternative D).

3. The proposed rule should offer some protection to inventoried and uninventoried roadless areas in the Tongass National Forest. While we understand the arguments in favor of a transition period, we strongly recommend providing interim protection for these areas. The DEIS states that "the Forest's] high degree of overall ecosystem health is largely due to the quantity and quality of its inventoried roadless areas" and 98% of southeast Alaska's fish runs originate on the Tongass. If so, and if many Tongass timber sales go unsold because of lack of demand, why not give some interim protection to the Forest's inventoried roadless areas? The DEIS statement that project-by-project analysis doesn't provide the appropriate scale for roadless analysis is puzzling; in reality, the lack of a project-by-project analysis ensures the forest will be unable to analyze roadless values at the appropriate scale because ad-hoc interim decisions will have compromised many roadless areas.

In summary, we commend the Forest Service for recognizing the value of roadless areas and undertaking this effort to protect the few remaining roadless areas in our national forests. Given the unquestioned importance of these areas, we urge you to reconsider providing stronger substantive and procedural protections for both inventoried and uninventoried areas, and for the Tongass National Forest.

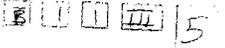
Sincerely,

Brad Nye
Off-Reservation Habitat Policy Advisor

cc: Tribal Council
Robert A. Brunoe, General Manager, Department of Natural Resources

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 Kootznoowoo, Incorporated
 U.S. Forest Service Roadless Area Testimony
 Angoon, Alaska
 June 29, 2000

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JUL 13 2000

Comments of Carlton Smith, CEO Kootznoowoo, Incorporated.

Kootznoowoo, Incorporated is the for profit Village Corporation for Angoon created pursuant to the terms of the Alaska Native Claims Settlement Act (ANCSA) for the benefit of the Alaska Native People of Angoon. Kootznoowoo represents over 900 shareholders plus an estimated 1000 additional family members.

Kootznoowoo owns approximately 32,000 acres of land conveyed as a result of the terms of ANCSA, the Alaska National Interest Lands Conservation Act (ANILCA) and through private acquisitions. Kootznoowoo also has access, development and traditional use rights to lands located within the Kootznoowoo Wilderness in the Admiralty Island National Monument, as well as the right to select additional land on Prince of Wales and Chichagof Island.

The lands Kootznoowoo owns are located throughout Southeast Alaska. These include approximately 21,000 acres on Southern Prince of Wales Island, 8000 acres in the Mitchell Bay, Kanalku Bay and Favorite Bay areas of the Kootznoowoo Wilderness; and, 3500 acres of land on the Angoon Peninsula and Killisnoo Island, along with a couple of hundred acres of private acquisitions, within the boundaries of the Admiralty Island National Monument and Kootznoowoo Wilderness.

In addition, Kootznoowoo has hydro power development rights, which it intends to exercise, to 14,500 acres of land in the Kootznoowoo Wilderness. And, Kootznoowoo has co-management rights to thousands of acres in Mitchell, Kanalku and Favorite Bays and their environs, pursuant to section 506 of ANILCA.

All of these lands and rights were conveyed to Kootznoowoo in recognition of the historical aboriginal ownership, rights, and uses by the Tlingit People of Angoon. And, to help provide for their current and future subsistence, cultural, employment, economic and social needs.

After consideration of these rights, and the needs of its Shareholders and their families; and, after careful consideration of the Roadless Areas Proposal; and, after consultation with Sealaska Corporation, Kootznoowoo, Incorporated encourages the Forest Service to abandon the idea of imposing the Roadless Areas in the Tongass and Chugach National Forests.

The reasons for our objections to this proposal are many, but we will speak to a few key points.

1. The Administration's Roadless Area Proposal will violate the terms and conditions of ANCSA, ANILCA and the Alaska Statehood Act. All of these acts provide for access to ANCSA lands and Alaska's isolated communities. They were enacted by Congress after long and careful deliberations and they cannot be overturned or have their purpose defeated by unilateral administrative fiat.

In summary, Kootznoowoo encourages the Forest Service to discard the Roadless Area Proposal for Alaska and return to professional multiple use forest land planning. There are many existing laws, regulations and plans that protect and manage the environment. The Roadless Area Proposal is not the way to achieve ecosystem protection.

On behalf of Kootznoowoo and its family of Shareholders, thank you for this opportunity to address this important issue and thank you for considering these comments.



STATE OF SOUTH DAKOTA
WILLIAM J. JANKLOW, GOVERNOR

July 14, 2000

USDA Forest Service-Content Analysis Enterprise Team (CAET)
Attention: Roadless Areas Proposed Rule
PO Box 221090
Salt Lake City, Utah 84122

Via Fax to: (877) 703-2494

SUBJECT: Comments on the Roadless Area Conservation Proposed Rule and Draft Environmental Impact Statement

The State of South Dakota appreciates the opportunity to comment on the Roadless Area Proposed Rule and accompanying Draft Environmental Impact Statement (DEIS). We acknowledge the fact that preparation of such documents is a tremendous and time-consuming undertaking and, therefore, we appreciate the Forest Service for putting forth the effort. Our comments will focus on the issues and concerns of roadless areas and timber harvest. This rule has the potential of affecting 54.3 million acres of National Forest System (NFS) land across the United States and 120,000 acres in South Dakota. While this proposal recognizes the importance of roadless areas, it applies a national direction that contains several serious shortcomings when applied on a local level and several flaws in its justification, analysis, and national application.

While we do not necessarily subscribe to permanent prohibition of road construction, reconstruction, or timber harvest in roadless areas, when such decisions are made, they should be implemented for multiple-use and sound resource management that meet the basic standards of land stewardship. The principles of land stewardship should be applied to all public lands on both roadless areas and throughout the National Forests. Proper constraints must be placed on all forest service activities to insure benefits for all publics over time.

The Forest Service has two ongoing efforts related to the proposed Roadless Area Conservation Rule, namely, the proposed National Forest System Land and Resource Management Planning Rule and the proposed National Forest System Road Management and Transportation System Rule. The Management Planning Rule would provide for the long-term sustainability of national forest and grasslands, ensure public involvement, and integrate science more effectively into the planning process. The National Forest Transportation System regulations and associated Road Management Policy addresses existing roads and how the road system is developed, used, and maintained. The three rules must be carefully thought out, written, and the efforts closely coordinated for clear understanding to avoid confusion among the documents.

We believe that the few roadless areas remaining should be managed for their inherent values, including clean water, biological diversity, dispersed recreational opportunities, wildlife habitats, forest health, timber production, and other public benefits. We are uncertain with the

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definition of "forest health" and how it might be interpreted and applied versus land stewardship, multiple-use management, and ecological sustainability. While we acknowledge that every acre cannot be managed for all uses, proper functioning of the ecosystem must prevail across the landscape and forest. Forest health should entail more than timber diseases.

The purpose of the action was to stop activities that degrade characteristics of Roadless Areas and to identify and evaluate, through the plan revision process, the merits of how the areas should be managed. The State supports national direction, in part, for management of roadless areas. RARE I started nearly 30 years ago and RARE II over 20 years ago. National direction is often required to overcome local controversy and politics and to provide impetus and consistency across National Forest System (NFS) lands. Site specific decisions should be made on the local level.

The Forest Service does not adequately establish a need for the proposed rule. The DEIS cites three reasons why this action is needed. 1) Road construction, reconstruction, and timber harvest in inventoried roadless and other unroaded areas can directly threaten their fundamental characteristics through the alteration of natural landscapes and fragmentation of forestlands. While it is true that roads and timber harvest alter landscapes and fragment forestlands, so do natural processes such as fire, insect epidemics, and diseases. Due to the cessation of road construction and reconstruction, costs will prohibit most vegetation management designed to protect the forest from fire, insect, and disease disturbances. Therefore, landscapes will continue to change and fragmentation will continue regardless of this rule. 2) Budget constraints permit only a small portion of the agency road system to be managed effectively. For the last five years, the Forest Service has requested only a fraction of the funds that it needs to maintain the agency road system while Congress has funded 100 percent of the road maintenance budget request. This suggests that the backlog for maintenance is being created by self-imposed budgetary constraints. Discontinuing road construction and reconstruction activities will not eliminate the maintenance backlog. The Forest Service should live up to its management responsibilities and address the backlog, not stop managing the forest. 3) National concern over roadless area management continues to generate controversy, including costly and time-consuming appeals and litigation. The proposed rule allows timber harvest to occur within roadless areas as long as no road construction or reconstruction occurs. Given that certain environmental groups have publicly expressed their goal to stop all commercial timber harvest on National Forest System lands, it is doubtful that this rule will eliminate appeals and litigation.

The proposed rule requires unroaded areas within National Forests to be analyzed for quality and importance of their roadless characteristics. The absence of criteria regarding size, configuration, minimum acreage, etc., makes this a whole new area of potential litigation. Basically, the rule extends the litigation surrounding Forest Service proposed management activities in inventoried roadless areas to other Forest System lands.

Combined with Congressionally designated roadless areas, such as Wilderness, the proposal effectively eliminates road construction and reconstruction from 95.2 million acres, or 50 percent of Forest System lands. The DEIS presents no arguments in support of a need for 95.2 million acres of roadless area.

The following six renewable resources are required by law to be managed for sustainable yield.

OUTDOOR RECREATION: The DEIS projects increased demand for dispersed, developed, and road dependant recreation, but provides no data on numbers of users and types of use. For example, the DEIS does not say what

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percentage of annual forest visitor-use is on Forest Service roads. The proposal will increase reserves for primitive recreation and restrict developed recreation to present locations with more and larger facilities. The rule will apportion half the Forest System land for primitive uses but fails to show the need for such a percentage. In terms of recreation special uses, there is no data to support a need for dispersed recreational opportunities versus developed recreation.

RANGELAND: No roads will be built or repaired for grazing management purposes. About 486 miles of road planned for other purposes will not be built, and, therefore, will not be available to allotment holders. The DEIS fails to address how a ban on road repair might impact future ability to repair fence, treat sick animals, and conduct other range activity.

TIMBER HARVEST: Timber growth in all national forests was about 20.5 billion board feet (BBF) in 1996. Removal by all methods totaled only about 20 percent of that growth. The DEIS fails to explain how this complies with sustainable use. Timber offered for sale has dropped from 11 BBF in 1987 to 2.2 BBF in 1999 and does not meet domestic demand resulting in imports from Canada and other countries. The allowable sale quantity (ASQ) for all forests is approximately 7.6 BBF per year to be harvested from a suitable timber base of 42 million acres. Approximately 8 million acres or 19 percent of suitable timber base are included in inventoried roadless areas that have not been entered for harvesting. Assuming a proportional affect on ASQ would result in a reduction of 1.4 BBF annually. The DEIS claims a projected reduction of 1.1 BBF over the next five years. The DEIS fails to identify the potential harvest available from suitable lands within inventoried roadless areas and the opportunity cost associated with the loss of that potential harvest. The DEIS claims that planned timber sales in inventoried roadless areas will generate \$2.7 million in net revenues, but the associated roads will cost \$1 million per year to maintain. It is arguable that many of these roads could be closed or held to a lower standard of use significantly reducing the \$1,500 per mile per year maintenance cost. In inventoried roadless areas, planned timber sales will decline by 73 percent and harvest will decline 71 percent, affecting about 930 jobs. Again, the DEIS fails to identify potential long-term job losses due to a reduction in the suitable timber base. There is no discussion of the very real possibility that there will be no timber harvesting in the roadless areas due to litigation and because the higher costs associated with roadless harvesting may render it unfeasible.

WATERSHEDS AND WATER FLOWS: The DEIS focuses on the potential erosion and threat to water quality that results from worst case scenarios in roaded areas. There is little mention of the use of best management practices (BMPs) for protecting water quality, the establishment of streamside management zones (SMZs) where manipulation of the vegetation is very limited, or of the success these practices have had in the protection of water quality. The DEIS uses EPA data to claim negative effects of forestry practices on water quality, but the EPA data has been clearly shown to be faulty. Neither is there discussion of the effects of catastrophic fire such as development of hydrophobic soils; overland flow, altered vegetation structure; changes in stream temperature, and increased sediment loads. Timber harvest reduces loss of water due to transpiration making more water available for other uses. The DEIS does not examine potential impacts of reduced timber harvest on other water needs. The DEIS does not address how water quantity will change when the area burns in a catastrophic fire. The DEIS fails to address how the proposed rule will affect public drinking water and claims that issue can wait until 2003.

WILDERNESS: Wilderness values will be enhanced because the buffer zone of roadless area will be used to create areas of fuel reduction, pest control, and vegetative health. The result will be "large tracts of land affected solely by the forces of nature." The DEIS fails to examine whether this use is a defacto addition to the Wilderness System, which must be approved by Congress.

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FISH AND WILDLIFE: Based upon research by the Nature Conservancy and wilderness studies, the DEIS assumes that reducing roads by 75 percent and timber sales by 73 percent will benefit aquatic habitat and have no adverse impacts. The DEIS fails to address the impact of reduced stream flows caused by increasing transpiration by tree density. The DEIS assumes that fewer roads will benefit wildlife by improving isolation from people and reducing fragmentation of habitat caused by roads. The DEIS fails to state how its predictions of increased biodiversity can be reconciled where water production, wildlife habitat, soil productivity, and biodiversity have all been declining inversely proportional to increased tree density caused by underharvesting of the annual growth and 100 years of fire suppression.

Other issues addressed by the DEIS impact the above resources or are impacted by the proposed rule. The following comments relate to some of these other issues.

FOREST HEALTH: The DEIS places 71 percent, or 85,000 acres of inventoried roadless areas in South Dakota at moderate or high risk from catastrophic fire and potentially needing treatment. This is not surprising considering the current mountain pine beetle epidemic affecting the Black Hills is killing thousands of trees each year within the Beaver Park roadless area—a critical watershed for Fort Meade and the community of Sturgis, South Dakota. The DEIS only mentions the South Dakota roadless area forest health condition in table 3-20, but does not address the effects of the alternatives on that roadless area or its condition. The same is true of all other inventoried roadless areas included in the DEIS. The DEIS fails to examine individual roadless areas for the benefits or costs associated with its roadless condition. The reader is left to assume that the generalizations made throughout the DEIS apply uniformly to every roadless area.

The DEIS bases its analysis of the contribution of fuel management to reducing the risk of catastrophic fire on planned sale activities over the next five years. The DEIS fails to examine the impacts of accelerated fuels management in moderate or high-risk areas.

Although the preferred alternative allows harvest for any number of reasons including forest health, the cessation of road construction and reconstruction will make harvesting for any reason so costly that most harvests will require some form of subsidy. The Forest Service has been severely criticized in the past for subsidized harvesting and there is no reason to believe subsidized harvests will not be challenged in the future. The DEIS does not address the cost of subsidized management activities for forest health or other needs that will no longer be economically feasible.

FIRE: Fire suppression during the last 100 years has allowed unnatural fuel loading to develop in forests across the west. Fires within areas of high fuel loading will burn hotter resulting in more environmental damage. The combination of high fuel loading and inaccessibility will cause fires to grow larger ultimately resulting in higher suppression costs. Fuel reduction costs will rise due to the proposal, but the DEIS does not address whether the increasing fuel load will be treated in absence of timber sales. GAO reports that 39 million acres of national forest are at risk to catastrophic, unstoppable fires.

The DEIS uses faulty analysis to project the effects of timber harvest on fire suppression and fuel management. The DEIS states that the no-action alternative will have "negligible" effects on fire suppression, and the "overall effect of the alternative to the fuel management program will be very slight." Yet, the DEIS states that the no-harvest

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alternative 4 will have considerable fire effects on watersheds including long-term damage to soil, water, and air resources on-site and downstream. There would also be an increased likelihood of harm to human safety and property in the expanding wildland-urban interface. The proposed rule will reduce planned timber harvest by 73 percent, and alternative 4 eliminates timber harvest completely. It is inconsistent to assume that the currently planned timber harvests that would be allowed in the no-action alternative will not effect fuels management or fire suppression, but 27 percent difference between the no harvest alternative and the proposed rule will greatly increase the potential ecological damage caused by catastrophic fire.

Given the very real possibility that harvesting allowed under the proposed rule will never take place due to cost constraints or litigation, it is reasonable to assume there will be no difference between the fire effects under the proposed rule and those anticipated under alternative 4.

The DEIS fails to acknowledge the fact that forests that have been thinned and treated for fuel reduction have a much better chance of surviving a catastrophic fire than forests that have accumulated fuel for the last 100 years. William Wade Keye wrote of the fire catastrophe that occurred on the Six Rivers National Forest in 1999. In 1995, a severe windstorm sheared the tops off of trees on 35,000 acres of the Forest in both wilderness and nonwilderness areas. For three years, the Forest Supervisor tried in vain to treat the fuel hazard but was consistently blocked by environmentalists. Only 900 acres of the 35,000-acre blowdown was treated before a dry thunderstorm moved through the area igniting many fires in the wilderness. For a month, the fires slowly spread and joined together. When the fire finally reached the blowdown, it made a five-mile run in seven hours. The fire eventually burned 220 square miles of mostly mature timber before being put out by rain. The trees survived in areas where fuels were treated, but areas left untreated were described as "biological killing fields."

AIR QUALITY: The DEIS claims that road construction with inventoried roadless areas "will present a chronic air pollution impact, particularly where inventoried roadless areas are adjacent to Class I areas." This ludicrous claim gives rise to thoughts of Los Angeles-style freeways being built within roadless areas. The DEIS describes atmospheric pollution caused by road construction "at certain levels" presents a human health risk but fails to indicate if these levels will ever be reached under the road construction activities proposed for the roadless areas. The DEIS fails to show any research that documents air quality impairment resulting from forest road construction. The greatest threat to air quality in and adjacent to forest lands comes from smoke generated by wildfire or prescribed fire. Prescribed fire in managed areas can be accomplished under a prescription of good smoke dispersal, and prescribed fires are generally of short duration. When many fires start over a large area, a phenomenon that often occurs with dry thunderstorms, fires within roadless and wilderness areas are often given a low priority for suppression because of their remote inaccessible nature and because of the low values at risk. The DEIS fails to acknowledge that smoke from fires that are allowed to burn have a prolonged impact on air quality.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA): The DEIS fails to consider an adequate range of alternatives given the conflicts concerning potential uses of the inventoried roadless areas as required by NEPA. The proposed rule only considers a no-action alternative (alternative 1) and three alternatives (alternatives 2-4) that prohibit road construction/reconstruction and place varying restrictions on timber harvest.

There is very little difference in the effects of alternatives 2 through 4 on ecological factors, human uses, and social and economic factors. The DEIS analyzes 20 ecological factors: seven of these factors show minor differences in the effects of these alternatives; in eight of these factors, the effects of alternatives 2 through 4 are "indistinguishable," "barely distinguishable," "minimal," or "substantially the same." The effects of the Fuel

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Management factor are unknown. The effects of alternatives 2 through 4 on nine human uses and twelve social and economic factors are so similar that they are discussed together as if they are a single alternative.

The DEIS clearly identifies the potential ecological and human damage that can result from catastrophic fire in the roadless areas. The DEIS also states that the no action alternative will have negligible effects on a fire suppression program that could mitigate the damage caused by catastrophic fire. However, the DEIS does not develop an alternative that the Forest Service believes could mitigate catastrophic fire effects. The DEIS states the no action alternative would treat fuels on only 1 percent of roadless area lands and the overall effect would be very slight. However, the DEIS does not develop an alternative that would lead to accelerated fuels management on a larger percentage of the roadless area. The DEIS needs an alternative that allows a broad spectrum of treatments including silvicultural practices to accomplish accelerated fuel reduction.

Given the limited number of valid alternatives and similarities in the effects of the analyzed alternatives, the DEIS appears deficient.

FOREST PLANNING: National Forests spend years and millions of dollars developing Land and Resource Management Plans. For example, the recently completed Black Hills National Forest Plan took seven years to complete at a cost of about \$7 million. Decisions are based on scientific information, national and local priorities, and public input. A delicate balance is reached that doesn't always satisfy the entire public; however, the public generally accepts the decisions. The proposed rule undermines the process of forest planning by requiring National Forests to abandon well-reasoned decisions that are based on site specific analysis to adopt a rule that is based on a faulty DEIS.

The DEIS claims that the rule will alleviate litigation affecting management and use of the inventoried roadless areas. Some environmental groups have publicly stated their goal to stop commercial timber harvests on all National Forest lands. The proposed rule allows commercial timber harvesting to proceed as long as roads are not constructed. Therefore, it stands to reason that decisions allowing timber harvest within roadless areas will continue to be appealed and probably litigated.

AFFECTED COMMUNITIES: The DEIS demeans and insults members of the logging profession by stating without evidence that, "Many people enter the wood products industry because it provides opportunities to earn high wages without having a high level of education." Many loggers have college degrees in business or other professions and have chosen a career in logging because it offers a way to earn an honest living while working outdoors in the forest that they love. They accept the risks along with the independence and self-reliance that go along with working deep in the forest away from the conveniences of urban life. The DEIS slams timber-dependent communities as being the least prosperous of rural communities and then faults forest workers for taking high paying forestry jobs. The Forest Service needs to accept part of the blame for declining prosperity in timber-dependent communities. Timber harvesting on National Forest lands has declined from 11 BBF in 1987 to 2.2 BBF in 1999. Apparently, the Forest Service has all but abandoned its commitment to community stability. Rather than offering people jobs to help manage a renewable resource, the Forest Service offers short-term owl mitigation funds. Rather than returning revenues to local communities derived from the sale of renewable resources, the Forest Service seeks congressional appropriations.

The DEIS fails to address the impact of alternatives upon carbon sequestration, carbon release, and ozone depletion. Since tree growth sequesters carbon and tree burning releases carbon into the air, the impacts of each

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alternative upon those functions should not be difficult to project. The DEIS does not discuss how an absence of management will impact tree stand density and thereby impact growth rates and sequestration capacity of the forest.

The DEIS fails to address the impact of its management decisions upon long-term carbon sequestration, defined as 100 years or longer.

The DEIS under each alternative fails to address how the Service will comply with legal mandates to manage noxious weeds in the forest, especially for exotic species like Canada thistle, which cannot be managed with fire.

CUMULATIVE EFFECTS: The Forest Service presently has three rules being considered that will have long-term impacts on the way National Forests are managed: the proposed Roadless Area Conservation Rule, the proposed National Forest System Land and Resource Management Planning Rule, and the proposed National Forest System Road Management and Transportation System Rule. The Forest Service intends to "integrate and clarify certain provisions within each rule to ensure consistency, clarity and effectiveness." In other words, the final rules may look significantly different than the proposed rules, and the public will not have an opportunity to comment. The Forest Service fully expects the rules to "have a cumulative impact in final form." The public should have the opportunity to comment on the cumulative impact.

The Black Hills National Forest (BHNF) is one of the heaviest roaded areas of any forest in the US. This, along with even-aged management with timber emphasis, wildfire, disease, and insect depredation have produced, and continue to produce, a monotype forest dominated by a preponderance of Ponderosa Pine at the expense of biodiversity. Logging on public lands should meet the criteria of land stewardship practices for ecological sustainability forest wide. This has not occurred on the BHNF. Many acres of riparian habitat enhancement, meadow and hardwood restorations, and improved vertical and horizontal complexity of conifers are needed. Hopefully, the National Forest Service will improve multiple-use management on all NFS lands, including the BHNF.

Inventoried Roadless Areas comprise 54 million acres, representing 28 percent of NFS lands, and 2 percent of the US. In South Dakota, national grasslands approximate 860,000 acres, the BHNF 1,166,000 acres, and the Custer National Forest 74,000 acres, for a total of 2,100,000 acres. One hundred twenty thousand acres (120,000) are proposed for roadless areas. This amounts to 6 percent. Currently, one wilderness exists on the BHNF (Black Elk Wilderness, 9,800 acres, featuring Harney Peak) and none on national grasslands. National Park Service lands in South Dakota occupy over 272,000 acres that offer roadless recreational opportunities, including the 64,000 acre Badlands Wilderness Area. We believe appropriate designation of areas is warranted to provide multiple-use benefits, including diverse recreational opportunities. With the above in mind, we submit the following general comments for management consideration of roadless areas:

The alternatives are grouped into prohibitions, procedures, and those unique to the Tongass National Forest. Our subsequent comments will focus on prohibitions and procedures as they primarily pertain to South Dakota. Overall, excluding Tongass, four prohibition and four procedural alternatives were presented and analyzed, including one (1) No Action and three (3) Action alternatives under each category. Alternatives 2 and B were selected as the Preferred Prohibition and Procedural Alternatives, respectively.

Currently, roadless does not mean there are no existing roads on proposed areas. Roadless means that existing roads will not be reconstructed or maintained. It also means that new roads will not be constructed except for the following reasons:

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1. To protect public health and safety in cases of an imminent threat of flood, fire, or other catastrophic event,
2. To conduct a response action under CERCLA or to conduct a natural resource restoration action,
3. To provide for rights reserved by statute or treaty, and
4. To prevent irreparable resource damage by an existing road that is deemed essential for access, management, or public health or safety.

On national grasslands, existing roads and trails may still be used, and the lands can still be grazed and must be driven on for fencing and other uses. However, they will not be maintained or reconstructed. We support the above direction and, in addition, encourage off-highway travel management.

The State of South Dakota could support Preferred Prohibition Alternative 2, but only with modifications, namely allowing limited temporary roadwork, stewardship type harvest, and timber harvest. This would approximate Alternative 3, but would allow additional logging for meaningful multiple-use management. As proposed, Preferred Alternative 2 would prohibit road construction and reconstruction within the unroaded portions of inventoried roadless areas. Timber harvest would be restricted to areas currently roaded. Timber volume would be substantially reduced compared to the No Action Alternative that has no road prohibitions. Conceptually, we advocate road construction, reconstruction, and use of temporary roads when done prudently for multiple-use management and natural resource protection.

Alternative 3 would prohibit road construction, reconstruction, and timber harvest except for stewardship purposes in unroaded portions of Inventoried Roadless Areas. Additional restrictions could be placed on timber commodity harvest compared to Alternative 2. However, this would depend upon the density and condition of existing roads and the interpretation of "Stewardship Purposes." Alternative 4 would be most restrictive and prohibit road construction, reconstruction, and logging. On the BHNF where the climax species on most sites is ponderosa pine, this alternative would not serve in the best interest of ecosystem management without disturbance. Disturbance is required to set back succession if varying habitat types and understory forage/browse production are to be maintained or enhanced.

Timber harvest prescriptions allowed in roadless areas could vary from light thinning to clearcuts. Nationally, clearcutting has decreased from 31 percent of total harvested acres in 1989 to 10 percent in 1997. This downward trend is expected to continue. On the BHNF, only 5 percent of the area can be patch clearcut (10 acres or less). This is insufficient and we recommend 10 percent or more in mosaic with cover patches. The increased forage base is needed by both wildlife and livestock.

Many national forests have shifted their timber harvest emphasis from using commodity-purpose timber sales to vegetation management objectives for stewardship purposes. From 1993 to 1997, stewardship projects increased from 24 percent to 40 percent of the harvest and this trend is expected to increase by 5 percent per year. We support the Forest Service to make this transition as rapidly as possible for improved multiple-use management and overall natural resource protection.

Beaver Park (5,000 acres) is the only proposed roadless area on the BHNF in South Dakota. This amounts to less than 0.5 percent of the forest land base. In the Revised Forest Plan, roughly half the area was identified as nonmotorized recreation and the remainder is available for scheduled timber harvest. Unfortunately only 571 acres (11 percent) was prescribed with wildlife emphasis. The entire area is located on low-elevation wildlife winter range.

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We acknowledge the BHNF has very few sites without roads, and the 3.32-Backcountry Nonmotorized Recreation designation may have been appropriate. However, the remainder of the area should have been identified as wildlife emphasis with additional opportunities for wildlife habitat enhancement and multiple-use management. Wintering deer herds simply need to winter at a low elevation with less snow and increased accessibility to understory browse, if available. Prescribed burning and/or prudent logging need to be allowed to benefit the Black Hills deer herd and provide fire protection for the people living in the area. Additional access in strategic locations may be necessary.

The Beaver Park roadless area contributes very little to the overall BHNF scheduled timber harvest. Approximately 75 percent of the volume (4 MMBF) cannot be harvested in Beaver Park without planned roadwork. This equates to slightly less than 0.5 percent of the ASQ planned during forest plan revision. Logging that could be done on existing trails could provide wildlife habitat diversity and help control wild fire and insect damage. Should timber harvest be significantly reduced or stopped on Beaver Park, natural mortality factors will continue to kill selected conifers and produce a mosaic of forage and cover. However, properly planned multiple-use timber sales could be a win-win situation with economic gains.

Eleven areas are proposed for Roadless Areas on national grasslands in South Dakota. Travel by motorized vehicles on and off existing trails and roads is currently allowed, although some have varying types of restrictions in place. Special provisions are provided to users, including permittees, for necessary travel for management purposes. The Northern Great Plains Grasslands Units are proposing to restrict motorized travel to designated roads and trails. Specific designated routes would be identified using a second level of planning that could consider more site-specific needs and conditions. Off-highway vehicle (OHV) use is currently being evaluated on the Grand River National Grasslands under a separate EIS and Plan Amendment and is to be addressed on the Nebraska National Forest within five years. We basically support restricting vehicle use to designated routes and providing some walk-in areas. Overall, we believe change in travel management will increase diverse recreation opportunities and reduce user conflicts. The OHV proposal will improve consistency among state and federal land management agencies and make travel management policy on public lands easier to understand and accept by all user groups.

The issue of road standards and road deposition on the BHNF following timber harvest continues to be a major issue with the South Dakota Department of Game, Fish and Parks. The Department supports a position that roads constructed be of as low a standard as is possible and that work roads (temporary) built be returned to a natural condition following the sales. We support closure and/or decommissioning of new roads and temporary roads. New roads should be located to blend in with the local topography, be environmentally sound, and built only to the standard necessary to remove the timber resource. We recommend decommissioned roads be re-vegetated primarily with browse species and less grasses, particularly those that are aggressive such as slender wheatgrass that out compete other; more desirable plants: Use of more slash for soil and water conservation should be employed.

RARE I addressed roadless areas greater than 5,000 acres for wilderness consideration. Other unroaded areas, often less than 5,000 acres, that have similar roadless characteristics are also included in this proposal and are to be evaluated for their suitability. We support the evaluation of potential roadless areas smaller than 5,000 acres, particularly in areas that are heavily roaded such as the BHNF where it's difficult to find areas of significant acreage without roads. BBNF has several small sites with sensitive plants, unique characteristics, etc., which would benefit from improved transportation planning.

Again, four **procedural** alternatives are considered in the Roadless Area Conservation DEIS with one No Action and three Action alternatives presented. The No Action Alternative would have no procedures established and roadless characteristics would be addressed only if raised as an issue during forest plan revisions or on a project-by-project basis. The Action alternatives would outline the direction local managers must take in evaluating the quality and importance of roadless characteristics as follows: Alternative B (Preferred) would address roadless characteristics during plan revision, Alternative C on a project-by-project basis, and Alternative D on a project-by-project basis until completion of the plan revision. We could support Preferred Alternative B if analysis of unroaded areas for roadless characteristics at the time of forest plan revision imposes a defacto exclusion of future roadless characteristic consideration at the project level. This would provide consistency among national forests, provide the broadest potential for public awareness and comment, and employ the most rigorous analysis. Some areas have had roadwork done following RARE II, and other areas allow road construction as per individual forest plan direction. We support direction to protect and to evaluate areas displaying roadless characteristics until forest plans are revised.

Proposed Roadless Area Conservation Rule

Specific comments on the proposed rule and accompanying information are as follows:

Pg. A-5 Par. 1—We support a framework whereby the Forest Service manages roadless areas partly on the national level and partly on the local level but express some concerns with potential management of other unroaded, noninventoried areas through the local planning process. Because of traditional management emphasis for high road construction and commodity production, meaningful multiple-use of other unroaded noninventoried roadless areas may not be fairly evaluated. Hopefully, the transitional procedures in the proposed Road Management Rule and Policy will be sufficient to protect sensitive roadless and unroaded areas. No size classification is given, although we acknowledge some flexibility is needed. We believe each area should be judged on its own merits for meeting roadless area characteristics and multiple-use benefits. The latter can vary in size but most often will be smaller than 5,000 acres. No specific size limitation is particularly important in the Black Hills where overall it is heavily roaded but with varying densities in specific areas.

Regulatory Initiatives

Pgs. A-5-7-- Several regulatory initiatives are being proposed concurrently with the Roadless Area Conservation Rule. Each has specific direction for travel or resource management on NFS lands. While we believe changes are warranted, caution should be exercised to coordinate changes systematically among the proposed rules and with existing acts, regulations, and laws which will provide consistency and facilitate understanding by all users of public administered lands: We encourage the Forest Service to take sufficient time to prepare meaningful and productive travel management documents that will be long lasting.

Pg. A-6 Par.6—It's stated that this rulemaking is not an attempt to expand the National Wilderness Preservation System. South Dakota has one wilderness, which is located on the BBNF. Little or no wildlife habitat enhancement is being accomplished by logging or prescribed burning. Succession is to dog hair Ponderosa Pine at the expense of biodiversity. One wilderness is recommended on the grasslands, opportunities for wildlife habitat improvement exist as grazing, and other disturbances are allowed and feasible. We support designations for multiple-use management, particularly for wildlife habitat enhancement and oppose designations that limit or prohibit

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opportunities for such. We support your statement "the Forest Service will continue managing inventoried roadless areas and other unroaded areas within the context of multiple-use framework required by law."

Section-by-Section Discussion of the Proposed Rule

Pg. A-7 Par.2—The Forest and Rangeland Renewable Resources Planning Act, as amended, directs the Secretary of Agriculture to install a proper system of transportation that is both economically and environmentally sound. Roads are to be "designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impact on land and resources." We agree with many other publics in South Dakota that some roads in the Black Hills have been overbuilt, are in poor locations, contribute to the degradation of riparian areas, facilitate urban sprawl, and do not serve in the best interest of multiple-use management on the BHNF. Improved transportation planning is needed, including OHV use and increased area closures versus just road closure. Roads may be closed but OHV travel is not restricted which adds to resource problems. Specific status of OHV use is unknown to us but to our knowledge is to be addressed. We support proposals for improved travel management on public lands for improved multiple-use management and resource protection.

Pg. A-8 Definitions-Roads—While we acknowledge that definitions of roads are necessary and flexibility in interpretation is needed, it is critical that the responsible official use discretion on the standard, location, and density of roads to be authorized to be constructed/reconstructed for the purpose intended. Oftentimes, it facilitates other activities on the forest not directly intended and provides for continued increased conflicts, including wildlife solitude. Sustainable use of all natural resources is the bottom line and should be the first priority by the Forest Service across the forest, not just inventoried roadless areas.

Interpretation of road terms such as existing roads, roadless areas, classified roads, and realignment need to be used more discreetly by deciding officers on public lands in South Dakota. Commonly, decisions are biased to accomplish timber health objectives without sufficient regard for other uses. The BHNF is a highly developed roaded forest for logging purposes with secondary outdoor recreation benefits. With increasing conflicts among users, exceeding recreation capacity in some areas and a declining ASQ, transportation planning for multiple-use management must be more carefully considered.

Pg. A-9—The State could support the proposed exceptions in the Conservation Rule, but the State argues that the rule doesn't go far enough and must include thinning to reduce mortality due to insect and disease infestation. Should new roads be necessary, we recommend that they be temporary roads whenever possible and be decommissioned and re-vegetated following the use intended. In addition, we recommend planting of shrub species appropriate for the locale. Use of slash should be used more frequently for soil and water conservation versus dominant, monotype grass species.

Discretion should be used when **realignment** of roads are considered and segments of existing roads not intended for future use should be decommissioned and re-vegetated.

Pg. A-10, Par. 3—Proposed paragraph 294.12 (d) would permit maintenance activities for classified roads included in an inventoried roadless area. However, reconstruction that would expand road size or use beyond the current level would not be permitted; we trust this includes realignment. The responsible officer "is expected" (emphasis added) to apply a science-based roads analysis when determining whether an unclassified road is needed for long-

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term management of NFS lands and should be classified and maintained. We are uncertain exactly what a science-based analysis entails, but historically, decisions were made emphatically that all roads built would be permanent in nature and no temporary roads would be constructed. We welcome an improved system for making critical decisions with regard to road construction.

Pg. A-10 Par. 4—Forest Plan provides direction to ensure coordination of multiple uses. While we acknowledge that it's impossible to manage for all uses on every acre, responsible multiple use needs to be done on a watershed basis, planning unit, or, at least on an individual forest basis, versus NFS lands as a whole. Many forests provide varying and often disproportional levels of commodity outputs. For example, the BHNF contributes about half of the Regional ASQ. We have noted some improvement in multiple use and sustain yield of natural resources on public lands in South Dakota but more consideration is needed. We concur that roadless characteristics of other unroaded areas be considered and that it should be done on the local level to determine the merits based on local criteria of size, shape, location, and characteristics. We caution that this should be done with fair and unbiased openness by the forest service and not just commodity driven. The responsible official must select areas in which the characteristics merit protection. This is particularly needed on some sites or areas where the Best Management Practices may not be known or well understood, for example, bog areas and sites with sensitive plant species.

Pg. A-12 Par.1—Proposed paragraph (e) identifies a special review provision for the Tongass National Forest and whether the prohibitions and provisions should apply. The responsible officer would also have to consider, among other things, section 101 of the Tongass Timber Reform Act, which requires the agency to seek to provide a supply of timber from the Tongass National Forest that meets market demand consistent with providing for the **multiple use and sustained yield of all renewable resources**. This direction is and should be the bottom line for all National Forests. This has not been the case on the BHNF where there are declining sustained yields of various resources, including timber. Hardwoods, deer winter range, big game solitude, and riparian area enhancement continue to be lacking.

Pg. A-12 Par. 3—While we agree that roadless areas provide for various amenities, including diverse and abundant plant communities, disturbances are often required to maintain diversity. Historically, disturbance by fire was common on the BHNF. Prescribed fire, coupled with logging, is needed or conifers will continue to succeed to climax at the expense of diversity without hardwoods and grassforb stage. Disturbances of varying magnitudes and timing are needed forest wide in addition to inventoried roadless areas or road closures if biodiversity, multiple use, and sustained yield of natural resources are to be attained.

Pg. A-12 Par. 4 No. 2—We concur that watershed management is crucial for public drinking water and appropriate management of inventoried roadless areas can contribute substantially. Multiple use management is a common practice in most watersheds that serve as sources of public drinking water. We believe good watershed management is critical **forest-wide** and should be of highest priority. Multiple use would certainly benefit. While the definition of multiple use may be sufficient, interpretation of and application of multiple use is often the problem. Improved balances of meaningful multiple use forest wide for sustainable levels of resources would be most beneficial to all publics.

Pg. A-13 Par. 3 No. (3)—It's stated that unroaded areas are more likely than roaded areas to support greater ecosystem health, including diversity of native and desired nonnative plant and animal communities, due to the absence of disturbances caused by roads and accompanying activities. We certainly concur that healthy ecosystems can be characterized by the degree to which ecological factors and their interactions are reasonably

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complete and functioning for continued resilience, productivity, and renewal of the ecosystem and that roadless areas help conserve biodiversity. We question why current Forest Service practices do not better provide for improved ecosystem management forest wide, including multiple use management required by law.

Pgs. A-13 & A-14 No. 5—We express some concern with OHV use and over-the-snow vehicle use in semi-primitive motorized classes. Long-term management guidelines need to be in place for resource protection as well as overall quality recreational experience. While we acknowledge that demand for motorized and nonmotorized recreation is increasing, so are the demands for essentially all other outdoor recreation. It must be acknowledged that national forests have limitations and appropriate plans made to deal with those limitations. Rules for varying travel experiences need to be closely coordinated to minimize user conflicts. For example, on the BHNH roads on low-elevations, big game winter ranges are closed during winter to provide solitude and to increase habitat effectiveness. However, OHV use is allowed by snowmobiles and ATVs as long as travel is not on established roads. There are a few area closures and more are needed.

Pg. A-14 No. Par. 6 (6a)—We support designation of reference areas to provide for research to understand how to manage healthy diverse ecosystems more effectively. While the objective on NFS lands is to create and maintain sustainable ecosystems that can support human needs indefinitely is admirable, we question the reality of this and limitations on use must be established.

Pg. A-15 Nos. (8) and (9)—While we respect the need to preserve cultural properties, the statement that roadless areas may have traditional cultural properties and sacred sites may offer unique characteristics and values . . . , may indicate the need not to hurry hastily through the rulemaking process without thorough evaluation and coordination of all resources. All of the eight broad characteristics of roadless areas have merit forest-wide.

SUMMARY

Pg. A-17—We concur that it is important to protect the roadless characteristics of unroaded areas within the context of the Forest Service mandate; however, we believe it is even more important to manage for multiple use and sustained yield of all natural resources on all NFS lands.

REGULATORY IMPACT

Summary of the results of the cost-benefit analysis

Pg. A-18, Par. 2—Table 2 refers to the cost benefits of the proposed Rule on 43 million acres. Several different acres are referred to throughout the text. For clarity, it would be beneficial to have a complete summary of the various figures displayed and what each references. We assume this figure does not include Tongass National Forest or the 2.8 million acres already roaded.

It is unfortunate that more quantifiable data are not available. We are confident that additional data on economic benefits of outdoor recreation, including fish and wildlife, are available. We encourage the Forest Service to seek such information actively. This would appear warranted and would strengthen the Proposed Rule.

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Pg. A-19 Par. 7—We support closures of new roads once extraction of resources has been completed. Road standards should be minimal to address the purpose intended. While most current and future roads may be closed, existing travel management on the BHNH still needs to be further evaluated in regard to access and resource impacts and conflicts, including OHV use.

Pg. A-20 Par. 6—The procedural provisions would be applied to the 54 million acres of inventoried roadless areas, as well as up to 95 million acres of other NFS lands. We appreciate the Forest Service for the inclusion of all national forest lands currently subject to roadwork and encourage thorough analysis of all potential areas for their special or unique characteristics. We recommend responsible multiple use management, including minimal road construction and reconstruction, and the use of temporary roads.

Pg. A-23 Par. 3—Input from the public detailing both negative and positive impacts on small business should be encouraged.

FEDERALISM

Pgs. A-24 and 25 Par. 1—We welcome "enhanced consultation with state and local governments officials" as set forth in Executive Order 13132 and look forward to meeting with the Forest Service on the proposed rule and accompanying EIS.

CONCLUSIONS

Should the National Forest Service determine the proposed rules and DEIS warrant implementation, the State of South Dakota could support preferred alternative 2, but only with modification to allow temporary roads to facilitate stewardship-type activities, including timber harvest. South Dakota could also support preferred Alternative B if analysis of unroaded areas for roadless characteristics at the time of forest plan revision imposes a defacto exclusion of future roadless characteristic consideration at the project level.

We advocate responsible multiple use management of natural resources for present and future generations.

Sincerely,



William J. Janklow

WJJ:JC:lg:dh

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MARK BARNETT
ATTORNEY GENERAL

LAWRENCE LONG
CHIEF DEPUTY ATTORNEY GENERAL

July 17, 2000

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

Re: Roadless Areas Proposed Rule

Sir/Madam:

This letter comments on the Roadless Area Conservation Rule and Draft Environmental Impact Statement.

Also, the 2000 South Dakota Legislature passed a resolution recognizing the historic multiple uses in Forest System lands in South Dakota. SCR 5 (attached) The resolution opposes forestry policies that protect roadless areas and at the same time curtail other forest management and grazing programs. The Legislature opposes further analysis of the roadless area issue. The South Dakota Legislature's resolution should also be afforded serious consideration in this matter.

In addition, I am writing to express concern regarding procedural and legal shortcomings in this proposal.

First, the abbreviated scoping period deprived the State of its statutory right to meaningful participation in the scoping process. The project was announced in October 1999 and the Forest Service concluded its scoping period within forty business days. The forty days expired before the Forest Service even identified the specific national forest lands at issue. While scoping meetings were held in this area on December 14 and December 15, the State was still required to respond with its comments on December 20 (only two or three business days later). In an attempt to remedy this problem, this Office joined with Idaho and other state Attorneys General in asking for an additional 120 days to comment. We received no response. Ultimately Idaho filed suit. South Dakota filed an Amicus Brief explaining that the abbreviated scoping period constituted a NEPA violation. Because Idaho District Court Judge Lodge determined

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that the claim was premature while the process was pending, he did not rule on whether the abbreviated scoping period constituted a violation of NEPA. Lest there be any doubt, South Dakota continues to take the position that this hasty scoping process violated NEPA. Please review the comments and legal analysis contained in the Amicus Brief filed in the Idaho proceeding. A copy is attached.

Following the scoping process the Forest Service announced that "those who want a paper or a CD edition of the Draft EIS should submit their orders as soon as possible." This News Advisory (attached) also provided that "faxed orders will be accepted at 800-777-5805." This Office sent its request for a hard copy on April 10, 2000, by facsimile transmission and received confirmation of the transmission. (attached) Although the proposed rule and Draft EIS were issued on May 11, 2000, this Office never received a copy.

When the State Attorney General hasn't received a copy of this document, how many other requests weren't honored? While this Office has access to adequate library resources, there are thousands of people in rural South Dakota who do not have access to a local public library. Considering that the subject of this proposal involves some of the most rural areas in South Dakota, it is especially troublesome that copies of the proposals may not have been sent out to those that lack a local library.

Further, the short comment period is a problem. For this reason, this Office has joined with Idaho Attorney General Lance in requesting an additional 120 days to review the matter and make meaningful comments. Assuming that the Forest Service will ignore this request (as they did the last one), this Office is compelled to make some further comments. These comments do to waive the objection to the short time periods established in the scoping process, the presently pending DEIS review process, or the proposed rule.

First, as the Draft EIS explains, this proposal is based on a presidential initiative. President Clinton announced this project on October 13, 1999, stating that "there are large parcels of land that don't contain roads of any kind, and in most cases, never have. . . . these areas represent some of the last, best, unprotected wildland anywhere in our nation." In other words, this project was explained to the public as applying to areas where roads do not exist or where roads have long been abandoned. Instead the proposal does include roads that are currently being used and maintained. For example, the DEIS notes that "some roadless areas contain these pre-inventory roads." DEIS at 8-6. This statement is a shortcut for explaining that roads that were built as little as 21 years ago and that continue to be maintained by the Forest Service are included in the proposal. Further, the DEIS explains that many inventoried

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roadless areas have allowed road construction since they were inventoried. DEIS S-6 In other words, these areas are "roaded portions" of "roadless areas." Finally, the proposal includes areas that were never inventoried. This category includes, of course, those roads that were not built by the Forest Service or not otherwise classified by the federal government as roads due to their size. Despite the "roadless" label, this proposal clearly includes roads and contemplates different methods of reviewing whether they should continue to be maintained.

Further, although the proposal includes roads that are currently being used and maintained, no attempt is made within the proposal to analyze the impact of any of the proposed alternatives on any single road, let alone the entire system. While it will likely be argued that such analysis is unnecessary in a broad proposal such as the one here, there is a legitimate question as to whether such a broad proposal provides any value at all. Ultimately, the blanket approach to a decision affecting over 54,000,000 acres of land and 28% of the National Forest System lands is unworkable because it does not allow for the kind of specific analysis required under pertinent federal law, including NEPA and the NFMPA. The only possible (but impractical and inappropriate under NEPA) way to analyze the proposal would be to review the most recent planning documents for each part of the forest system (usually several volumes for each forest or grassland) in light of the proposal. NEPA simply does not contemplate developing a summary EIS that contains broad information like this one and that forces the user to review hundreds of other federal documents to guess at the Forest Service intent. This is an extremely time consuming task and not enough time was allowed for comment.

One of the glaring issues involves the actual number of "inventoried acres" involved. In the South Dakota situation, 45% of the acres listed as "inventoried roadless areas" have not truly been inventoried as such by the Forest Service. These lands are over 54,000 acres of grasslands that were proposed by the Sierra Club as "areas for Wilderness potential" but have no real status as such within the Forest Service system. The Forest Service explained this situation in July 1999 in a draft Environmental Impact Statement as part of a joint planning effort for the Dakota Prairie Grasslands, the Nebraska National Forest Units, and Thunder Basin National Grasslands (Grasslands DEIS). According to the Grasslands DEIS, the Sierra Club had suggested these areas, but the areas had a "a fence density greater than that allowed within official Forest Service inventoried roadless areas." Grasslands DEIS at 3-254. That situation was problematic because these acres were not listed in the various alternatives considered and were not mapped in the DEIS. In that proposal, the Forest Service indicated that these proposal areas would "be fully analyzed in the final environmental impact statement."

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Grasslands DEIS at 3-254. In other words, a private evaluation of some type would occur and there would be no opportunity for the public to comment. This contravenes the express language as well as the purpose and intent of statutes and rules pertaining to public participation in federal land resource planning and in the development of the EIS. Several statutes and rules require extensive public participation in forest planning, including, for example, 36 C.F.R. 219.6. Also, extensive public involvement in the EIS process is required by the National Environmental Policy Act, 42 U.S.C.A. 4321, et seq. and rules promulgated thereunder. 40 C.F.R. 1500.1 et seq.

The present proposal compounds the Grasslands DEIS error and assumes (without comment) that over 54,000 acres in the Grasslands in South Dakota are entitled to special status as "inventoried acreages."

This situation also illustrates the problem with the broad definition of "inventoried roadless areas" in proposed rule 294.11. The rule is vague and allows for a great deal of agency discretion without clear standards for interpretation. The definition provides, in part, that inventoried roadless areas are "undeveloped areas typically exceeding 5,000 acres" that were inventoried during the RARE II process or "subsequent assessments or forest planning." A review of the lands in South Dakota shows the problem. The present DEIS lists only the total number of acres for the state. To reach the same total it appears that the Forest Service would need to include two parcels advanced by the Sierra Club (as noted in the Grasslands DEIS) that are less than 4,000 acres. Those areas are in the Buffalo Gap National Grassland. Clearly these parcels don't come squarely within the definition of "inventoried roadless areas." They are not larger than 5,000 acres and are not inventoried in any public process. Yet, the rule allows room for including any number of acres so only as the "typical" parcel is over 5,000 acres and so long as the area is being studied in some manner (regardless of how abbreviated or public the study).

Most of the rest of the "inventoried area" in South Dakota is also in various Grasslands. The use of any Grasslands for the roadless area designation is an anomaly. The idea of a "roadless area" is derived from the Wilderness Act. The Wilderness Act doesn't apply to Grasslands. The Wilderness Act requires roadless review for land (a) in a National Forest and (b) considered primitive as of September 3, 1964. Here the Wilderness Act is inapplicable because the lands involved are neither legally nor factually forests. Forested lands are defined as "land at least ten percent occupied by forest trees of any size or formerly having had such tree cover and not currently developed for non-forest use." 36 C.F.R. 219.3. None of the grasslands in South Dakota meet this criteria. While the Forest Service undeniably administers grasslands, such administration does not, in itself,

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make them "forests." They cannot, under any analysis, be described as forests. As quoted in a Forest Service brochure entitled America's National Grasslands, the grasslands are similar to the lands described by Willa Cather in My Antonia: ". . . the grass was the country, as the water is the sea . . . And, there was so much motion in it: the whole country seemed, somehow to be running." While these miles of flat or undulating prairie lands have grazing, scenic, recreational, and, indeed, poetic values, they certainly are not forests. Far from being forests, many of these were purchased because they were "identified as less than marginal for cultivation." DEIS 3-30 Moreover, most of these lands are not primitive; they are not unmodified natural environment. Many of these lands were cultivated until the 1930's when the weather and financial climate caused the number of farms in South Dakota to decrease dramatically.

There is another legitimate reason that grasslands were not included in the Wilderness Act: roadless area analysis is inappropriate when states have already established roads on the lands involved. Even if the Forest Service asserts that this roadless analysis is based on other federal land laws, the same consideration must be taken into account.

The lands involved were largely acquired during the 1930s. In South Dakota's case, the laws establishing highways had already been in existence for over 60 years. Dak. Terr. Rev. Code ch. 29, § 1 (now codified at SDCL 31-18-1). Section line highways are "located by operation of law, except where some portion of the highway along such section line has been heretofore vacated or relocated by the lawful action of some authorized public officer, board, or tribunal." Id. This law applies to every section line in the state. State v. Peters, 334 N.W.2d 217 (1983). Even if the highway has never been opened, improved, or traveled, the law applies. State v. Tracy, 539 N.W.2d 327 (1995).

Indeed, in 1866 Congress granted the states, including the State of South Dakota, rights-of-way over the public domain. The Territory of Dakota accepted that grant in the Highway Act of 1871. See Bird Bear v. McLean County, 513 F.2d 190, 192 n.3 (8th Cir. 1975). The successor to that law is now codified in South Dakota at SDCL 31-18-1. The grant to the states was "not in the nature of a license, revocable at the pleasure" of the United States, but rather, once the roads were established, "became vested in the public, who had an absolute right to the use thereof which could not be revoked by the government. . . ." Bird Bear (quoting Faxon v. Lallis Civil Township, 163 N.W. 531, 533 (N.D. 1917)).

It follows, under the foregoing analysis, that there can be no right to create a "roadless area" where there was no Indian

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reservation in existence in 1866. See Bennett County v. United States, 394 F.2d 8 (8th Cir. 1968); United States ex rel Cook v. Parkinson, 525 F.2d 120 (8th Cir. 1975) (undermining Bennett County in certain respects). The same is true with respect to areas in which an Indian reservation no longer exists and in which the land has been restored to the public domain. See Calhoun v. Sell, 71 F. Supp. 990, 1000 (D.S.D. 1998). See also Act of March 2, 1889, § 21. In sum, there cannot be a right to create a "roadless area" consistent with the grant made under the 1866 Act.

Analysis of the right of the state to maintain rights-of-way on currently existing reservations requires a somewhat different analysis. First, we submit that the state has the right, under the 1866 Act, to create a right-of-way over any fee land within a reservation. See generally Bird Bear, supra. Second, the state and local units of government have procured numerous rights-of-way over allotted and trust lands from tribes and from individual Indians on reservations utilizing the statutory procedures. See generally Bird Bear, 513 F.2d at 913. Based on review of the DEIS maps and preferred Alternative 3, it appears that the USFS does not claim to create any administrative roadless areas in any current reservation at this time. Future proposals, including the current Sierra Club proposal, may, however, impact these rights-of-way.

Any consideration of whether a particular parcel of land is "roadless" must consider whether unextinguished section line highways are in existence on the parcel involved. This hasn't even been considered in the pending proposal. Instead of looking at whether roads exist as a matter of law, the DEIS analysis here analyzes the extent to which they have been improved in determining whether they are to be classified or unclassified.

In addition to the Grasslands, the roadless area proposal includes 14,000 acres in the Black Hills National Forest. It is unclear how the acres are calculated. Resort to the most recent FEIS for the Black Hills National Forest wasn't helpful. The acreages do not appear to add up to 14,000 acres. It does appear that the calculated acres in South Dakota includes the Beaver Park area, a 5,109-acre parcel in South Dakota. This area is near Sturgis, South Dakota, the site of one of the largest motorcycle events in the world. Also, "Interstate 90 lies less than a mile from the eastern boundary of the area and is visible for all the ridges and traffic is audible." Final Environmental Impact Statement for the 1996 Land and Resource Management Plan, Black Hills National Forest, Appendix C-6 Moreover, the area is intermixed with development on the edge of the Black Hills. In fact, "private land on the east side has been subdivided, so one looks down on houses from any high ground." Id. at C-6. This area also includes an inholding owned by the City of Sturgis.

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The area includes several roads and has, until recent years, been timbered.

At the present time, the Beaver Park area is heavily infested with the Mountain Pine Beetle. Since the beetle thrives in densely forested areas, the only effective way to control the beetle is to decrease its optimal habitat by thinning out the forested areas. A timber sale was planned for the area, but it could not be carried out due to a lawsuit claiming that a timber sale would be detrimental to the "roadless area" status of the area. While the lawsuit has been pending, the Forest Service has not completed the timber sale. Beetles have continued to infest the area and have killed a large number of trees. Due to the number of dead trees in the densely forested parts of the Beaver Park area, the risk of fire is great. The fire danger involves not only the Black Hills National Forest, but also the private lands located in and among the "roadless area," the Sturgis inholding, and state owned parcels. The roadless concept has not worked in this area because the area plainly is not the type of remote pristine land for which such a designation might arguably apply.

Depending on the alternative actually chosen, this proposal could result in thousands of acres with decreased fire protection. Allowing for roads to be built when fire is "imminent" is problematic. Building roads as fires occur is terrible planning by any standard (unless the goal is truly to let the forests and grasslands burn). Since roadless areas in both the Black Hills National Forest and the grasslands are among and next to state owned and private lands, the management alternative chosen could have a significant effect on fire prevention in those areas.

Similarly, decreases in insect and weed protection on federal land results in increased insect and weed problems on state and privately owned lands. The mountain pine beetle experience described above is an example. The beetles know no boundaries. When the infestations occur on federal lands, they also occur on neighboring private, municipal, and state property.

As pointed out above, conducting even a wilderness review is not appropriate for grasslands. Here, the Forest Service proposes to affirmatively treat both grasslands and forested areas as "de facto" Wilderness Areas. This is legally impermissible for two reasons. First, the Wilderness Act itself clearly provides that neither the Forest Service nor the President has the authority to act without the consent of Congress. Second, if the executive branch of the government creates Wilderness Areas in this manner, such action would not only run afoul of the Wilderness Act, it would infringe upon legislative authority in a manner expressly prohibited by the United States constitution. The separation of powers doctrine prohibits the executive branch of government from usurping the functions of the Congress. Congress is the entity

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with authority to make legislative policy decisions: the Executive Branch cannot make the broad-based policy decisions that are proposed here. Indeed, any such action by the Executive Branch to undertake this legislative act would be ultra vires since it would be outside the authority of the branch of government involved.

Please consider the foregoing issues carefully.

Best regards,
Diane Best
Diane Best
Assistant Attorney General

MB/DB/js

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State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

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732D0781

SENATE CONCURRENT RESOLUTION NO. 5

Introduced by: Senators Dunn (Jim), Brown (Arnold), Halverson, Madden, Rounds, Shoener, and Symens and Representatives Apa, Broderick, Crisp, Duenwald, Duniphan, Engbrecht, Fryslie, Garnos, Hagen, Hanson, Heineman, Hennies, Jaspers, Juhnke, Kazmerzak, Koskan, Lintz, McCoy, Napoli, Pummel, Sutton (Duane), Wilson, and Young

1 A CONCURRENT RESOLUTION, Expressing opposition to certain federal forestry policies
2 and urging support of the Black Hills timber industry.

3 WHEREAS, the State of South Dakota has 1,145,000 acres of national forests and 867,000
4 acres of national grasslands; and

5 WHEREAS, the national forests and national grasslands are vitally important to the culture,
6 economy, and enjoyment of the people of South Dakota; and

7 WHEREAS, the United States Forest Service is currently developing a revision of the Land
8 and Resource Management Plans for the national grasslands, a plan to "protect" all roadless and
9 unroaded areas in the National Forest System, a plan to prohibit off-highway vehicle travel on
10 the Custer National Forest, a new Strategic Plan for the National Forest System, and a revision
11 of the forest planning regulations; and

12 WHEREAS, all of these plans are designed to reduce commodity outputs and motorized
13 recreation on the national forests and grasslands and to promote management for "pre-European"
14 conditions; and

15 WHEREAS, the supervisor of the Black Hills National Forest has requested assistance from

500 copies of this document were printed by the South Dakota
Legislative Research Council at a cost of \$.021 per page.



Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

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1 the chief of the Forest Service in streamlining the analysis and implementation of a project to
2 control the mountain pine beetle epidemic west of Sturgis, and the chief has denied that request;
3 and

4 WHEREAS, a federal district court in Illinois, ruling on a case brought by an environmental
5 special interest group in Indiana, issued an injunction in September of 1999 halting small timber
6 sales offered nationwide since September 16, 1998, that used categorical exclusions, and halting
7 the further use of categorical exclusions for small timber sales designed to salvage small areas
8 of dead and dying trees; and

9 WHEREAS, the chief of the Forest Service's decision on an appeal of the revised forest plan
10 for the Black Hills National Forest will severely curtail the forest management and grazing
11 programs and will delay a decision on the mountain pine beetle Environmental Impact Statement;
12 and

13 WHEREAS, adequate funding is critical to ensure the implementation of forest plans for
14 national forests and national grasslands in South Dakota:

15 NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Seventy-fifth Legislature
16 of the State of South Dakota, the House of Representatives concurring therein, that the
17 Legislature of the State of South Dakota strongly supports the concept of multiple use and
18 strongly opposes a policy of managing the national forests and grasslands for "pre-European"
19 conditions; and

20 BE IT FURTHER RESOLVED, that the Legislature of the State of South Dakota strongly
21 opposes national initiatives that undermine the role of the people who are directly affected by
22 decisions about the management of the national forests and grasslands; and

23 BE IT FURTHER RESOLVED, that the Legislature of the State of South Dakota opposes
24 further analysis of roadless or unroaded areas in the national forests and grasslands of South
25 Dakota; and

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1 BE IT FURTHER RESOLVED, that the Legislature of the State of South Dakota supports
 2 all possible and necessary steps to allow the projects to control the mountain pine beetle
 3 epidemic in the Black Hills National Forest to proceed immediately; and
 4 BE IT FURTHER RESOLVED, that the Legislature of the State of South Dakota opposes
 5 the proposed change in travel management from "open unless closed" to "closed unless open";
 6 and
 7 BE IT FURTHER RESOLVED, that the Legislature of the State of South Dakota supports
 8 whatever actions are necessary to eliminate the adverse effects of the chief of the Forest Service's
 9 October 29, 1999, decision on the appeal of the forest plan revision; and
 10 BE IT FURTHER RESOLVED, that the Legislature of the State of South Dakota strongly
 11 encourages the Congress of the United States to expeditiously pass legislation amending the
 12 "National Environmental Protection Act" to allow small timber sales of the scale previously
 13 allowed by the Forest Service under categorical exclusion to be exempted from environmental
 14 assessment and impact statements to which larger timber sales are subjected; and
 15 BE IT FURTHER RESOLVED, that the Legislature of the State of South Dakota supports
 16 full funding for the forest plans for the national forests and national grasslands within the State
 17 of South Dakota.

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 South Dakota Assistant Attorney General
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Attorney for Amicus State of South Dakota

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF IDAHO

STATE OF IDAHO, ex rel.; DIRK)
 KEMPTHORNE, Governor; PETE T.) Case No. CIV99-0611-N-EJL
 CENARRUSA, Secretary of State; ALAN)
 G. LANCE, Attorney General; J.D.)
 WILLIAMS, State Controller; MARILYN)
 HOWARD, Superintendent of Public) BRIEF OF THE STATE OF
 Instruction, as the State Board of) SOUTH DAKOTA AS AMICUS
 Land Commissioners; and STANLEY F.) CURIAE IN SUPPORT OF THE
 HAMILTON, Director, Idaho Department) STATE OF IDAHO'S MOTION
 of Lands,) FOR PRELIMINARY
) INJUNCTION
 and,)
)
 GOVERNOR DIRK KEMPTHORNE, in his)
 Capacity as Chief Executive of the)
 State of Idaho and President of the)
 Idaho Board of Land Commissioners,)
)
 Plaintiffs,)
)
 vs.)
)
 UNITED STATES FOREST SERVICE,)
)
 Defendant.

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I. INTEREST OF AMICI

Although the facts alleged in Idaho's complaint are specific to Idaho, the potential scope of this case affects the State of South Dakota. South Dakota has been injured by the Forest Service's arbitrary and capricious action in cutting off submission of scoping comments on the agency's "roadless initiative" before the information necessary to provide meaningful scoping comments was made available or developed. The State of South Dakota, through its Attorney General, joined Idaho in seeking to resolve this issue administratively by requesting 120 additional days in which to prepare and submit scoping comments. No response was ever received. South Dakota also had an experience similar to that described in Idaho's brief: the full extent of the roadless and unroaded areas potentially subject to the proposed rules were not been identified. The forest-by-forest scoping meetings for South Dakota forests and grasslands were held on December 14 and December 15, only days before scoping comments were due on December 20.

Like Idaho, South Dakota possesses numerous sections of school endowment lands that are potentially adversely affected by the proposed rules. A decision to prohibit future roadbuilding may deny or severely restrict access to school endowment lands. Additionally, any adverse impact on forest health and grassland health resulting from management restrictions necessarily impacts adjacent endowment lands. Further, since South Dakota has

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regulatory authority over weed and pest management in adjacent private lands, the State will be impacted if the Forest Service declines to control pests such as grasshopper infestations on grasslands or pine beetles in forested areas. In addition, the State's fire suppression efforts are hampered when fires spread in roadless areas.

Finally, South Dakota has a statutory right to meaningful participation in national forest land management decisions. The National Forest Management Act (NFMA) requires the Forest Service to "give the Federal, State and local governments . . . opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs." 16 U.S.C. § 1612(a). The National Environmental Policy Act mandates "cooperation with State and local governments," 42 U.S.C. § 4331, and requires consultation with "State . . . agencies . . . which are authorized to develop and enforce environmental standards . . ." 42 U.S.C. § 4332(2)(C). Regulations promulgated by the Council on Environmental Quality (CEQ) require that the scoping process provide for the participation of affected federal, state, and local agencies. 40 C.F.R. § 1501.7.

Proposed revisions to the National Forest System Land and Resource Management Planning rules also recognize the need for state participation in national forest planning. The comments to the proposed rules recognize that "better interaction with state

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and local governments is needed." 64 Fed. Reg. 54,074, 54,085 ²⁷¹⁸⁹
 (October 5, 1999). The comments suggest that forest service
 officers must "recognize the unique jurisdiction, expertise, and
 role that these governments play on lands both affected by and
 effecting the national forests and grasslands." *Id.* The
 comments also state that forest service decision-makers must
 provide the States "opportunities for early, open, and frequent
 meaningful participation in planning." *Id.* at 54,084.

In short, South Dakota has a particular and federally
 protected interest in early and meaningful participation in the
 EIS scoping process. As further described below, South Dakota
 was denied any meaningful opportunity for participation and will
 suffer irreparable injury unless the EIS process is enjoined for
 the period necessary to identify affected lands and develop and
 submit scoping comments. Thus, South Dakota adds its voice to
 Idaho's and urges the court to grant the preliminary injunction.

II. ARGUMENT

South Dakota joins Idaho in reiterating the very narrow
 scope of relief sought. Like Idaho, South Dakota does not
 believe substantive review of the Forest Service's actions is
 warranted at this stage of the proceedings. The only relief
 sought is to enjoin the agency's action to allow sufficient time
 for 1) the agency to complete its identification of the lands
 potentially subject to the proposed rules; and 2) the states to
 identify issues and submit scoping comments regarding the
 identified lands. This is precisely the situation addressed in

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Alaska v. Hodel, 806 F.2d 1378 (9th Cir. 1986) (a preliminary ²⁷¹⁸⁹
 injunction was granted in that case).

The Forest Service's decision to proceed with issuance of
 the NOI and to conclude an abbreviated scoping period (less than
 forty business days) before identifying the specific national
 forest lands at issue is indefensible. Actions that propose to
 impose permanent management decisions on public lands must, at a
 minimum, specifically identify and describe each parcel of
 affected land. *California v. Block*, 690 F.2d 753 (9th Cir.
 1982). This principle is embodied in the Forest Service's own
 planning regulations governing the preparation of environmental
 impact statements. The regulations require that maps be prepared
 and provided at the beginning of the scoping process: "[f]ormal
 public participation activities will begin with a notice to the
 news media and other sources which includes, as appropriate, the
 following information . . . [a] description and map of the
 geographic area affected." 36 C.F.R. § 219.6(c) (emphasis
 added).

By initiating and concluding the scoping process before such
 information was available, the Forest Service arbitrarily ignored
 NEPA requirements as well as its own regulations. The Forest
 Service's action denied South Dakota an opportunity to identify
 issues that should be addressed in the draft EIS. Once such
 opportunity is lost, it can never be regained. The only
 conceivable remedy for an agency action that arbitrarily denies
 opportunities for meaningful participation in the scoping process
 is the reopening of the process prior to preparation of the draft

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EIS. If the Forest Service proceeds to issue a draft EIS before the injury is redressed, irreparable harm will be done to the States.

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III. CONCLUSION

A preliminary injunction is clearly required. Absent such an injunction, the states will suffer irreparable injury, and, given the narrow relief sought and the arbitrary and unjustified nature of the Forest Service's action, success on the merits is assured. See Topanga Press, Inc. v. City of Los Angeles, 989 F.2d 1524, 1528 (9th Cir. 1993) (preliminary injunction should issue if the movant shows either: "(1) probable success on the merits and irreparable injury; or (2) sufficiently serious questions to make the case a fair ground for litigation and a balance of hardships tipping decidedly in favor of the party requesting relief"). Moreover, the only hardship imposed on the Forest Service is a temporary delay in issuance of the draft EIS. Given the Forest Service's history of routinely granting requests for extension, and given the fact that the schedule originally proposed by the Forest Service was greatly accelerated, the delay can cause no conceivable harm. Indeed, a 120-day delay will still enable the Forest Service to complete the proposed EIS well short of the time normally occupied by the NEPA process, especially given the enormous scope of the undertaking. In short, granting the requested relief will assure compliance with NEPA's goals of cooperation with state agencies and complete

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identification of issues, while preserving the federal interest in timely completion of the EIS.

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Dated this 7th day of February, 2000.

Respectfully submitted,

MARK BARNETT
ATTORNEY GENERAL

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BRIEF OF AMICI CURIAE IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION - 7

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TOTAL P.21

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Black Hills Council of Local Governments

1602 Mt. View Road, Suite 104 · P.O. Box 9686 · Rapid City, South Dakota 57709-9686

July 14, 2000

USDA, Forest Service, CAET
Post Office Box 221090
Attention: Roadless Areas Proposed Rule
Salt Lake City, Utah, 84122

RE: Roadless Areas Proposed Rule

To Whom it May Concern:

The Black Hills Council of Local Governments is a multi-county organization that serves all of the area contained within that portion of the Black Hills National Forest (BHNF) located in South Dakota. Our organization is comprised of both cities and counties located in the Black Hills Council service area. Discussed at our Board of Directors meeting held on July 13, 2000, was the subject proposed "Roadless Area" rule and the impact such a rule would have on the management and use of BHNF lands.

Our organization participated in, and commented on, the development of the revised BHNF Management Plan that was completed over a seven year period at a cost of \$7 million. This was a very lengthy process that included a thorough analysis of the specific and unique aspects of the forest. A tremendous investment of time and energy was made by thousands of people who live, work and play in the BHNF. As part of the plan revision process, the BHNF analyzed the Beaver Park and Sand Creek roadless areas and made decisions regarding how to best manage those areas in the future. Further, both the analysis and the decisions made in the revised plan were upheld by the Chief of the Forest Service.

We are very troubled by what is now being proposed: a Washington, D.C. top-down decision that would replace the existing locally-based forest decision on how roadless areas in the BHNF should be managed. Additionally, this Washington, D.C. decision is being proposed for implementation without even doing any local sensitivity analysis, including the risk of mountain pine beetles or the effects of fire on adjacent national forest or private lands.

Given the relative speed of the process and limited amount of time available for concerned parties to receive the proposed rules and make comments, we would respectfully request that the comment period for the Draft Environmental Impact Statement and Proposed Rules be extended for a period of 120-days to allow more time for public input on this matter. Absent such an action, we would strongly recommend that the proposal be either withdrawn or that the **no action alternative** be chosen.

Thank you for your consideration in this important matter that impacts our member units of local government and the citizens that we represent. Enclosed please find a copy of the Resolution adopted by our Board of Directors on July 13, 2000.

Sincerely,



Van A. Lindquist
Executive Director

enclosure

Phone (605) 394-2681 · Fax (605) 394-2684
SERVING LOCAL GOVERNMENTS IN THE BLACK HILLS AREA

16181

Black Hills Council of Local Governments

1602 Mt. View Road, Suite 104 · P.O. Box 9686 · Rapid City, South Dakota 57709-9686

RESOLUTION

PROPOSED FOREST SERVICE ROADLESS AREA PROTECTION PLAN

Whereas, significant amounts of US Forest Service lands are contained within the boundaries of the Black Hills Council of Local Governments, and these lands are an important social and economic resource of the area; and

Whereas, the Black Hills National Forest is currently being managed under a recently revised Forest Management plan that cost over \$7 million and took seven years for final approval after examining both logging and environmental issues in the Black Hills National Forest; and

Whereas, the Federal Government, through action by Administrative fiat through the United States Forest Service, has proposed a fast-tracked broad expansion of "Roadless Areas" on public lands across the nation, including certain areas within the Black Hills National Forest; and

Whereas, initial information indicated that the Black Hills National Forest would be exempt from this initiative given that the revised Forest Management Plan was recently implemented; and

Whereas, the 60 day public comment period regarding this "Roadless Area" proposal is nearing completion, and many individuals and organizations have either not had time to adequately review the proposal or have raised legitimate questions and concerns about the methodology, assumptions and findings of the Draft Environmental Impact Statement; and

Whereas, identified flaws in the analysis include aspects of socioeconomic factors that are highly important to the region, including the generalized demeaning of timber and mill workers and the communities in which they work and live, the lack of consideration of a reasonable range of alternatives to the "roadless area" recommendations, and the apparent disregard for other important issues such as the current escalating fire hazard that is associated with the mountain pine beetle infestation taking place in the Black Hills National Forest; and

Whereas, the "fast track" nature of this proposal appears to be at odds with the time consuming, local input/need sensitive process that occurred in the preparation of the recently completed Revised Forest Management Plan for the Black Hills; and

Whereas, our membership feels that the current proposal for the Black Hills National Forest is ill-founded and lacks both scientific basis and ethical merit for the area, and that a preferable process would seriously and specifically address the local forest planning level of the subject area, including a realistic and factual examination of the costs and benefits as well as the needs of the lands and desires of the people that would be impacted by such a proposal,

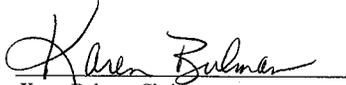
Phone (605) 394-2681 · Fax (605) 394-2684
SERVING LOCAL GOVERNMENTS IN THE BLACK HILLS AREA

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Now, therefore, be it resolved, that the Board of Directors of the Black Hills Council of Local Governments does hereby recommend that the comment period for the Draft Environmental Impact Statement and Proposed Rules be extended for a period of 120-days to allow more time for public input on this matter. Absent such an action, the body strongly recommends that the proposal be either withdrawn or that the no action alternative be chosen.

Be it further resolved, that a copy of this resolution be immediately transmitted to the designated official responsible for receiving comments on the proposal, and that additional copies of this resolution be forwarded to the South Dakota Congressional Delegation, along with a letter expressing both displeasure with this proposal and the process employed as well as a request for their strong support for any and all legislative remedies under consideration for the reversal of this ill conceived, top-down decision making process that will replace locally-based forest service decisions on how roadless areas in the Black Hills National Forest should be managed.

Adopted July 13, 2000


Karen Bulman, Chairman

ATTEST:

