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SUBCOMMITTEE ON FORESTS AND PUBLIC LAND MANAGEMENT

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

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I am very pleased to appear before the Subcommittee today to discuss the role of the Council on Environmental Quality (CEQ) in the development of the U.S. Forest Service's roadless policy for our national forests and to address associated National Environmental Policy Act (NEPA) issues. The President, Secretary Glickman, Undersecretary Lyons and Chief Dombeck have long identified the transportation system on national forests as a major priority for long overdue attention for several reasons. Scientists have identified roads as a major threat to habitat, watershed protection, wildlife and other valuable natural resources on national forests. The Forest Service cannot maintain appropriately and safely the very extensive road system that exists today, and simply does not need a system so large that it could circle the globe eight times. As addressed in the Forest Service proposed transportation policy, when new roads are needed, they must be built carefully, taking into account today's best science and technical information regarding public safety and the environment. And finally, bringing me to the subject of today's hearing, there are places where more roads need not and should not be built.

President Clinton has supported all of the Forest Service's initiatives related to the transportation system. In regards to roadless areas, scientists have long identified retention of roadless areas as critically important to the protection of watersheds and wildlife. Roadless areas also have important social and economic values. As the President stated in November, 1997,

“ . . . These last remaining wild areas are precious to millions of Americans and key to protecting clean water and abundant wildlife habitat, and providing recreation opportunities.”

As you know, an eighteen month moratorium was put in place in February, 1999, suspending new road construction and reconstruction within most roadless areas on the national forest system. Thousands of letters received in response to the proposed moratorium urged that more permanent protection be afforded these areas. This support was reinforced by letters signed by numerous Members of Congress, including Members of this Committee.

The President's announcement on October 13, 1999, launched the beginning of a very public process to

determine how best to protect roadless areas. The President directed the Forest Service to develop and propose for public comments regulations that reflect the best available science and the full range of ecological, economic and social values represented by these lands.

The Forest Service immediately determined to prepare an environmental impact statement (EIS) and published a Notice of Intent (NOI) to do so on October 19, 1999. The NOI in turn initiated the “scoping process”, as set forth in CEQ’s regulations for implementing the procedural provisions of NEPA, 40 C.F.R. , 1501.7. Scoping is a process for determining the scope of the issues to be addressed and for identifying the significant issues related to a proposed action. The scoping process is intended to help the lead agency develop the proposal and the alternatives. The information available at the beginning of scoping is often brief and tentative. Indeed, in the Notice of Intent, an agency need only describe briefly the proposed action and possible alternatives.

The primary purposes of the scoping process are to determine the scope of issues to be addressed and to identify issues of significance that need to be analyzed in the EIS. Both internal and external meetings are often a part of scoping, but the lead agency is not required under CEQ regulations to hold any scoping meetings. For the proposed roadless area rule, the Forest Service’s Notice of Intent provided relevant background information, the proposed action, and possible alternatives to that action. The agency held over 185 public scoping meetings, an unprecedented effort at public outreach at this stage.

I know that concerns were raised about some aspects of some of the meetings including complaints about short notice, inconsistent formats for the meetings from forest to forest, multiple meetings scheduled on the same evening, and inadequate background information about the proposed action. As we began hearing of some concerns, we learned that the Forest Service had given individual forest supervisors broad discretion on how to conduct the meetings on individual forests, while more uniform direction was given for the nine regional meetings. The diversity that resulted from this direction did indeed result in complaints about lack of uniform direction and suspicion that somehow some areas were being treated more favorably than others.

Despite what was less than complete satisfaction on the part of everyone, my evaluation is that the scoping process was not fatally flawed. Many of the meetings were very well attended. Inconsistencies in formats, while clearly, in hindsight, not helpful, were intended to reflect local preferences. Multiple meetings on the same night did not affect anyone’s ability to convey their thoughts to the Forest Service, since all comments went to the same agency team. Finally, while the Notice of Intent did articulate a 60 day comment period, ending on December 20, 1999, the

Forest Service has continued to take comments received and will do so up to the publication of the draft EIS.

Certainly, the Forest Service's efforts at holding public scoping meetings were ambitious and unparalleled in either that agency's experience or, to my knowledge, that of any other government agency, resulting in comments from over half a million people.

The Forest Service, with CEQ's assistance, has given considerable thought to how to best provide quick access, information and opportunities for commenting on the draft EIS, the next stage of the NEPA process. The DEIS will consist of three sections: (1) a summary of ten to fifteen pages; (2) Volume I, the main body of the EIS, and, (3) Volume II, including maps at the national, state and forest level scale. The Forest Service intends to print 100,000 copies of the executive summary of the draft EIS, 50,000 copies of the draft EIS and proposed rule. It will distribute more than 10,000 CD-Roms with the draft EIS and proposed rule. The draft EIS and proposed rule will also be available through the roadless website, and a summary will be printed in the Federal Register. The draft EIS will be distributed to every Member of Congress, every Governor, and every federally recognized tribe. It will be sent to every county and municipal library in the country for review (approximately 13,300 sites) and to each Forest Service district, forest, regional, area and station office for public review, as well as relevant state agencies, and the nine Canadian provinces and six Mexican states bordering the United States. Two weeks ago, the Forest Service provided information on the roadless website, national and regional media outlets, and other mechanisms, including 20,000 offices of USDA's Extension Service, on how to request a copy of the draft EIS and proposed rule in hard copy or a CD.

Shortly after the release of the draft EIS and the proposed rule, the Forest Service will hold a public meeting on every national forest to discuss the alternatives, effects analysis and proposed rule. The focus of this round of meetings will primarily be informational in nature. In a second round of meetings, later in the comment period, the emphasis will be on receiving public comment.

Another NEPA issue which the Subcommittee has asked me to address is that of "cooperating agencies". As the Members know, federal agencies with jurisdiction by law or special expertise with respect to an issue to be addressed in the EIS may be designated as a "cooperating agencies", 40 C.F.R. 1501.6. The CEQ regulations also allow for a state, local or tribal agency with similar qualifications to become a cooperating agency, 40 C.F.R. 1508.5. "Cooperating agencies" generally assume responsibility for preparation of a portion of the EIS, using their own staff support and normally their own funds to do so.

During the 1970's and 1980's, non-federal "cooperating agencies" were very much the exception, not the rule. Often, even federal agencies that qualified as cooperating agencies because of special expertise or jurisdiction by law balked at participating as cooperating agencies because of other priorities or constraints on their resources. CEQ expended much effort in those days in encouraging more use of cooperating agency designations among the federal family.

During the 1990's, we saw a significant increase in interest on the part of some state and local agencies in assuming cooperating agency status. Thus, we have worked hard over the past few years to increase federal agencies' awareness of the need to proactively solicit cooperating agency status in appropriate contexts. As part of that effort, I issued a Memorandum for Heads of Federal Agencies last summer which strongly encouraged federal agencies to routinely solicit state, tribal and local agencies that could qualify as cooperating agencies to determine their interest in assuming those responsibilities.

Obviously, CEQ believes that cooperating agency status for non-federal agencies is useful and appropriate. We have stopped short of supporting an amendment to NEPA that would make this a legal requirement. We believe that federal agencies should be given some flexibility in determining when such arrangements make sense, and when they do not. This is one of the circumstances in which we believe that a "cooperating agency" designation in the strict sense of the word is not feasible or appropriate; indeed, we know of no example of a non-federal cooperating agency for an EIS of national scope. There are potentially hundreds of cooperating agencies, given the number of states, counties and tribal governments in the country. From a management perspective, allocating work assignments among these widespread agencies is not feasible or practical. However, we do very much recognize the importance of communication and consultation with our non-federal partners. Thus, the Forest Service and Department of Agriculture have proposed procedures to maximize cooperation with interested western Governors' office and state agencies, set forth in a letter from Jim Lyons and Mike Dombeck on March 14, 2000. I believe the proposal is a good faith effort to establish workable and meaningful communications with the states during the rulemaking process, and look forward to hearing of the response to this proposal.

I know that the proposed roadless initiative is controversial. Controversy over our national forests has existed since their very inception and will no doubt continue. However, the President strongly believes that is the right direction to go in at this time. We will move forward in a way that is respectful of everyone's views in a fair and open process, including assuring compliance with NEPA.