



U.S. Forest Service National Forest System DRAFT Briefing Paper

Date: December 5, 2013

Topic: Relationship between the Federal Power Act and the 2001 Roadless Area Conservation Rule (Roadless Rule)

Summary/Key Points:

- The Roadless Rule prohibits road construction and reconstruction and the cutting, sale, or removal of timber in inventoried road-less areas, except under limited circumstances. For example, and potentially relevant in this context:
 - The Rule permits timber cutting where it is incidental to the implementation of a management activity not otherwise prohibited.
 - The Rule also permits road construction where a road is needed as provided for by statute.
 - The prohibitions in the Roadless Rule may not be changed via project or land and resource management plan decisions.
- The Alaska District Court's judgment in Organized Village of Kake v. U.S. Department of Agriculture, vacating the Tongass Exemption and reinstating the Roadless Rule, states: Nothing in this judgment shall be construed to prohibit any person or entity from seeking, or the USDA from approving, otherwise lawful road construction, road reconstruction, or the cutting or removal of timber for hydroelectric development pursuant to the standards and procedures set forth in the Federal Power Act. The Court's order also states that it is not a judgment that any hydropower projects or activities do or do not violate the terms of the Roadless Rule.
- USDA regards the Kake-Petersburg Intertie Project, like all projects identified in the Final Judgment for OVK v. USDA, as exempt from the prohibitions of the 2001 Roadless Rule under the terms of the Final Judgment. Several hydroelectric projects are identified in the Final Judgment.
- The Federal Power Act (FPA) grants the Federal Energy Regulatory Commission (FERC) the authority to issue and administer licenses for hydropower projects. For projects located on National Forest System lands, section 4(e) of the FPA requires FERC to determine whether the project is consistent with the purposes of the forest reservation. Section 4(e) also gives the Forest Service authority to impose mandatory conditions in the FERC license to ensure the adequate protection and utilization of a forest reservation.
- There are 15 active project proceedings in Alaska. 14 of these projects are located in Inventoried Roadless Areas.

Background: FERC is responsible for issuing licenses under the FPA, but the Forest Service can significantly influence how a project is sited, constructed, and operated. The purpose of the Roadless Rule is to provide lasting protection for inventoried road-less areas within the National Forest System in the context of multiple-use management.