No. _____

In The
Supreme Court of the United States

COLORADO MINING ASSOCIATION,

Petitioner,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

PAUL M. SEBY
Counsel of Record
MARIAN C. LARSEN
MOYE WHITE LLP
1400 16th Street, Sixth Floor
Denver, CO 80202
(303) 292-2900
paul.seby@moyewhite.com

Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Under the Wilderness Act of 1964, Congress explicitly retained exclusive authority to designate national forest lands as wilderness. Wilderness areas are roadless areas greater than 5,000 acres "where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain." 16 U.S.C. § 1131(c). In January 2001, the Secretary of Agriculture promulgated the "Roadless Area Conservation Rule." In promulgating the Rule the Forest Service permanently altered multiple forest plans. The Roadless Rule "establish[ed] prohibitions on road construction, road reconstruction, and timber harvesting in inventoried roadless areas on National Forest System lands" so as to prevent the "immediate, long-term loss of roadless area values and characteristics." 66 *Fed. Reg.* 3,244/1, 3,244/3 (Jan. 12, 2001). The prohibitions in the Roadless Rule permanently govern 58.5 million acres of national forest lands, restricting their use to be the functional equivalent of wilderness. The question presented is:

Whether the Tenth Circuit erred in failing to determine that the Secretary of Agriculture's designation of 58.5 million acres of land as Roadless was a *de facto* wilderness designation, which impermissibly intrudes into Congress's exclusive authority under the Wilderness Act to permanently designate National Forest System lands as wilderness.

PARTIES TO THE PROCEEDINGS

Petitioner, the Colorado Mining Association, and the State of Wyoming were the Appellees in the court below.

Respondents, and the Appellants in the court below, are the United States Department of Agriculture; the United States Forest Service; Tom Vilsack, Secretary of the Department of Agriculture; Tom Tidwell, Chief Forester for the United States Forest Service; Biodiversity Conservation Alliance; Defenders of Wildlife; National Audubon Society; Natural Resources Defense Council; Pacific Rivers Council; Sierra Club; Wilderness Society; and Wyoming Outdoor Council.

CORPORATE DISCLOSURE STATEMENT

Petitioner Colorado Mining Association is a not for profit trade association of mining companies, electric utilities and related entities organized to educate the public about their members' interests and activities. The Colorado Mining Association does not have a parent company nor does any public corporation own an equity interest in it.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

STATE OF WYOMING APPENDIX

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

FEDERAL REGULATIONS

TABLE OF AUTHORITIES – Continued

PETITION FOR WRIT OF CERTIORARI

Petitioner the Colorado Mining Association respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit (WY App. 1-127)[1] is published at 661 F.3d 1209. The district court's opinion (WY App. 131-223) is published at 570 F. Supp. 2d 1309. The district court's order denying the motion for reconsideration (CMA App. 1) is unpublished.

JURISDICTION

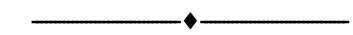
The judgment of the court of appeals was entered on October 21, 2011. The court denied rehearing *En Banc* on February 16, 2012. (WY App. 224-25). This Court has jurisdiction under 28 U.S.C. § 1254(1).

[1] The State of Wyoming is also petitioning this Court for a writ of certiorari to review the Tenth Circuit's decision in this case. The State of Wyoming filed with its Petition for writ of certiorari an appendix to which CMA is citing to in this petition as WY App. ___. CMA's appendix will be cited to as CMA App. ___.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Property Clause of the United States Constitution provides, in pertinent part, that "[t]he Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . . ." U.S. Const. art. IV, § 3, cl. 2.

Relevant provisions of the Forest Service's Organic Administration Act, 16 U.S.C. §§ 472, 475, 529, and 551, the Multiple Use and Sustained Yield Act, 16 U.S.C. §§ 528, 529, and 531, the Wilderness Act of 1964, 16 U.S.C. §§ 1131, 1132, and 1133, the National Forest Management Act, 16 U.S.C. § 1604, and the National Environmental Protection Act, 42 U.S.C. § 4332, are reproduced at WY App. 234-73 and CMA App. 13-14.



STATEMENT OF THE CASE

This case raises important and recurring issues concerning the administration and use of national forest system lands, which comprise almost 190 million acres of land in 42 states and Puerto Rico. At issue is whether the Forest Service is improperly relying on its general rulemaking authority under the 1897 Organic Administration Act, 16 U.S.C. §§ 471-583 ("*Organic Act*"), to make land designations that only Congress can make and when it did not rely on said authority during the rulemaking process.

The Roadless Area Conservation Rule, promulgated by the United States Department of Agriculture ("*USDA*") on January 12, 2011, Special Areas; Roadless Area Conservation, 66 *Fed. Reg.* 3,244 (Jan. 12, 2001) (the "*Roadless Rule*"), is a sweeping usurpation by the Forest Service of the authority vested solely in Congress to designate lands as wilderness. *See* 16 U.S.C. § 1131(a). USDA adopted the Roadless Rule to end logging and related roads, when its statutory authority mandates that the Forest Service manage the timber for sustained yield and left it to Congress to designate the land to be managed as wilderness. With the Roadless Rule, the USDA established a massive 58.5 million acres of land as *de facto* wilderness. That amount of land is equal in size to the states of Connecticut, two Delawares, Hawaii, New Hampshire, New Jersey, Maine, Maryland, Massachusetts, two Rhode Islands and Vermont combined. Such a massive land management decision – affecting 38 states – is by itself an issue of great national importance, as is the environmental, economic and social harm that current and future generations will suffer as a result of the Rule's suspension of all land uses that would change the roadless character, including logging.

The State of Wyoming brought suit against the USDA, alleging that: 1) the Roadless Rule violated the authority granted exclusively to Congress under the Wilderness Act, 16 U.S.C. §§ 1131-36 ("*Wilderness Act*"), to designate lands as wilderness; 2) the

USDA failed to comply with the National Environmental Policy Act, 42 U.S.C. §§ 4321-70 ("*NEPA*"), process during the rulemaking; and 3) the Rule violated the National Forest Management Act, 16 U.S.C. §§ 1600-14 ("*Forest Management Act*"), and the Multiple Use Sustained Yield Act, 16 U.S.C. §§ 528-31 ("*Multiple Use Act*"). The Colorado Mining Association intervened in support of the State of Wyoming. The district court concluded the USDA did indeed violate the Wilderness Act when it promulgated the Roadless Rule by creating *de facto* wilderness and that it also significantly failed to comply with NEPA during the rulemaking process. The district court did not find it necessary to reach the Forest Management Act or Multiple Use Act claims. The district court permanently enjoined the Roadless Rule nationwide.

The Tenth Circuit overturned the district court's decision and ordered the nationwide injunction of the Roadless Rule be removed. In concluding that the Roadless Rule did not result in the *de facto* designation of wilderness lands, the Tenth Circuit relied merely on superficial distinctions between roadless and wilderness areas, ignoring the fundamental reality that the roadless lands designated under the Rule are roadless, generally greater than 5,000 acres and logging and surface land uses including mineral development, are prohibited, just as they are under the Wilderness Act.

Finally, the Tenth Circuit's opinion will have potentially devastating consequences for forest land

users and the environment. The Forest Service's designation of 58.5 million acres of *de facto* wilderness prohibits future mineral development since road construction is effectively prohibited under the Roadless Rule. Without roads mineral development cannot occur. Further, timber harvests have ceased under the Roadless Rule, and with that comes the increased risk of destructive insect infestations and forest fires. For instance, the 2002 Biscuit Fire began in roadless areas and quickly spread to wilderness areas, resulting in the destruction of 500,000 acres of national forest lands and 14 structures at a cost of $150 million to fight. Barry T. Hill, U.S. Gov't Accountability Office, GAO-04-426, Biscuit Fire, Analysis of Fire Response, Resource Availability, and Personnel Certification Standards 1, 8 (2004). The economic and social consequences that will result from the Roadless Rule's road building and timber harvesting prohibitions are significant and affect not just current, but future, generations of forest land users.

In sum, this case presents issues of sweeping importance concerning the administration and use of national forest system lands and the Forest Service's supplanting of the exclusive authority of Congress to designate wilderness areas.

I. STATUTORY AND REGULATORY BACKGROUND.

A. The Organic Act and Multiple Use Sustained Yield Act.

Beginning with the Organic Act and continuing with the Multiple Use Act, Congress set forth the powers that the Secretary of the USDA shall have to establish rules governing the management of national forest lands. In part, the national forests were established to "improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States. . . ." 16 U.S.C. § 475. Further:

> [t]he Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests . . . and . . . to regulate their occupancy and use and to preserve the forests thereon from destruction. . . .

16 U.S.C. § 551. The Multiple Use Act continued the Organic Act's focus on managing the nation's forests for multiple uses, including timber. *See* 16 U.S.C. § 528. Multiple use is broadly defined, recognizing the need to administer the lands in a manner that will best serve the American people. Multiple use is the:

> management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will *best meet the needs of the American*

> *people*; making the most judicious use of the land for some or all of these resources or related services . . . ; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

16 U.S.C. § 531(a) (emphasis added). The Organic Act specifically excepted mineral development from closure. 16 U.S.C. § 475. Thus, the Forest Service through agreement or regulation manages the surface, while the Department of the Interior regulates mineral resource development in accordance with the Mineral Leasing Act, 30 U.S.C. §§ 181-287, the Federal Coal Leasing Amendments Act, *see* 30 U.S.C. § 201, the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201-1328, and the Mining Law of 1872, 30 U.S.C. §§ 22-42.

B. The Wilderness Act.

In 1964, Congress adopted the Wilderness Act, which fundamentally altered the extent of the Forest Service's authority over wilderness. Prior to 1964, the Forest Service identified and managed roadless areas. The Wilderness Act supplemented the Organic Act and Multiple Use Act by adding to the array of

multiple uses already regulated one that was "not contemplated by either the Organic Act or [Multiple Use Act] – preservation of the National Forests for use and enjoyment of present and future generations." *Wyoming v. USDA*, 570 F. Supp. 2d 1309, 1348 (D.Wyo. 2008) (citing 16 U.S.C. §§ 1131(a), 1133(a)). Prior to the adoption of the Wilderness Act in 1964, the Forest Service relied upon the Multiple Use Act to designate wilderness areas.[2] Relying on its management discretion, the Secretary or the Chief of the Forest Service designated areas "as 'wilderness,' 'wild,' or 'canoe' areas." *Sierra Club v. Hardin*, 325 F. Supp. 99, 124 (D. Alaska 1971). These wilderness, wild and canoe areas established through administrative action were later designated as Wilderness Areas under the Wilderness Act. *Sierra Club*, 325 F. Supp. at 124. With the adoption of the Wilderness Act the Forest Service's prior reliance on the Multiple Use Act to establish wilderness areas was repealed.

> In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future

[2] "The establishment and maintenance of areas of wilderness are consistent with the purposes and provisions of sections 528 to 531 of this title." 16 U.S.C. § 529.

> generations the benefits of an enduring resource of wilderness. For this purpose *there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas"*, and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; *and no Federal lands shall be designated as "wilderness areas" except as provided for in this Act or by a subsequent Act*.

16 U.S.C. § 1131(a) (emphasis added). Additionally, with the Wilderness Act, those lands considered "primitive" but not already designated by Congress as wilderness, were to be reviewed by the Secretary for recommendation for designation *by Congress* as wilderness. 16 U.S.C. § 1132(b).

The Wilderness Act requires that in order to preserve the wilderness character or wilderness areas, such areas "shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use." 16 U.S.C. § 1133(b). Under the Wilderness Act, a "Wilderness area" is "an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain;" or "an area of

undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions. . . ." 16 U.S.C. § 1131(c). Once an area is designated as wilderness, no commercial enterprise, permanent and temporary roads, aircraft or other forms of mechanical transportation, and structures or installations within the wilderness area is permitted. *See generally* 16 U.S.C. § 1133(c).

C. The Forest Management Act.

After several courts held that the Organic Act did not authorize logging unless the trees were dead or dying, Congress enacted the Renewable Resources and Planning Act, as amended by the Forest Management Act, to restore the Forest Service's authority to sell timber of all age classes. The Forest Management Act instituted a detailed regulatory structure to assure regeneration and preservation of soil, water, and fish and wildlife habitat. *See generally* 16 U.S.C. § 1604. The Forest Management Act also provided that these measures would be set forth in land use plans and further explicitly provided for public participation and rulemaking. *Id.* Under the Forest Management Act, the Secretary of the USDA was directed to "develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System. . . ." *Id.* at § 1604(a). Because the biological and socio-economic conditions of the nation's forests vary widely, the Forest Management

Act was not intended "to be a national land management prescription." S. Rep. No. 94-893, at 26, 35, *reprinted in* 1976 U.S.C.C.A.N. 6685, 6694. The Forest Management Act further directed that the land and resource management plans will "provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the [Multiple Use Act], and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. . . ." 16 U.S.C. § 1604(e)(1). At the time the Roadless Rule was proposed, the regulations promulgated pursuant to the Forest Management Act also provided that the Forest Service shall evaluate and consider roadless areas for recommendation to Congress for designation as wilderness areas. *See* Evaluation of Roadless Areas, 36 C.F.R. 219.17 (2000) (repealed) (CMA App. 10-12). Importantly, however, nothing in the Forest Management Act gave the Secretary the power to designate or manage lands as *de facto* wilderness. The Forest Management Act only affirmed that Congress has the authority to designate lands as wilderness. *See* 16 U.S.C. § 1604.

D. The Roadless Rule.

On January 12, 2001, a mere 450 days after the Forest Service issued its Notice of Intent to prepare a draft environmental impact statement and rulemaking, the Secretary promulgated the Roadless Rule. *See* 66 *Fed. Reg.* at 3,244. With the Roadless Rule, the Forest Service accomplished what only Congress can

do – designation of forest lands as wilderness. *See Wyoming*, 570 F. Supp. 2d at 1348-49. The stated purpose of the Roadless Rule is to maintain and keep 58.5 million acres of inventoried roadless areas protected from road construction or reconstruction, timber harvests or the permanent or temporary construction of structures, because such activities "have the greatest likelihood of altering and fragmenting landscapes, resulting in immediate, long-term loss of roadless area values and characteristics." 66 *Fed*. *Reg*. at 3244/3. The 58.5 million acres of land subject to the Roadless Rule are lands that were first identified by the Roadless Area Review Evaluation conducted in 1967 ("*RARE I*") and then again in 1977 in a second Roadless Area Review Evaluation ("*RARE II*"). *See generally Wyoming*, 570 F. Supp. 2d at 1320-21. These RARE I and RARE II lands were to be evaluated by the Forest Service for recommendations to Congress for wilderness designations under the Wilderness Act. *Id.* The lands included in the roadless rule were those RARE II lands Congress did not designate as wilderness and released to multiple use management and additional lands that were never classified as roadless or wilderness suitable. *Id.*

When compared with the Wilderness Act prohibitions, the Roadless Rule's prohibitions achieve the functional equivalent to designation of 58.5 million acres of land as *de facto* wilderness. For example, the Wilderness Act defines "wilderness," in part, as an "area of undeveloped Federal land" that "has at least five thousand acres of land." 16 U.S.C. § 1131(c). The

Roadless Rule defines an "inventoried roadless area" as "undeveloped areas typically exceeding 5,000 acres that met the minimum criteria for wilderness conservation under the Wilderness Act. . . ." *Wyoming v. USDA*, 414 F.3d 1207, n.3 (10th Cir. 2005). The Wilderness Act prohibits both permanent and temporary road construction within "wilderness areas" designated by the Act. 16 U.S.C. § 1133(c). The Roadless Rule prohibits road construction and reconstruction on "inventoried roadless areas" in National Forests. 36 C.F.R. § 294.12(a). The Wilderness Act requires that in order to preserve the wilderness character of wilderness areas, such areas "shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use." 16 U.S.C. § 1133(b). The purpose of the Roadless Rule is to conserve and protect desirable characteristics of inventoried roadless areas, including primitive forms of dispersed recreation, scenic quality, cultural properties, and conservation of soil, water, air, wildlife habitat and wildlife diversity. 36 C.F.R. 294.11. Further, the Roadless Rule achieves the Wilderness Act's prohibition on "commercial enterprise", "motorized equipment" or "mechanical transport", 16 U.S.C. § 1133(c), through the prohibition on road building or reconstruction and logging on roadless areas. 36 C.F.R. § 294.12(a).

The wilderness character of the lands subject to the Roadless Rule was proclaimed by the President when he said that the "inventoried roadless areas were generally parcels of 5,000 acres or more and are

some of the last 'unprotected wildlands in America' and the remnants of 'untrammeled wilderness.'" *Wyoming*, 570 F. Supp. 2d at 1349. Additionally, the Ninth Circuit recognized that the lands subject to the Roadless Rule were "pristine wilderness" and some of the "last unspoiled wilderness in our country." *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1106 & 1121 (9th Cir. 2002), *overruled in part on other grounds*, *Wilderness Soc'y v. U.S. Forest Svc.*, 630 F.3d 1173 (9th Cir. 2011). And it is the prohibitions placed on these wilderness lands by the Roadless Rule that ensure that their wilderness character will not change, thereby resulting in a *de facto* designation of wilderness lands. *See Wyoming*, 570 F. Supp. 2d at 1349-50.

II. PROCEDURAL BACKGROUND.

A. Initial Challenges to the Roadless Rule.

Soon after it was promulgated, the Roadless Rule was challenged in Idaho by the Kootenai Tribe of Idaho and the State of Idaho. *See Kootenai Tribe of Idaho v. Veneman*, 142 F. Supp. 2d 1231 (D. Idaho 2001), *overruled in part*, *Wilderness Soc'y v. U.S. Forest Svc.*, 630 F.3d 1173 (9th Cir. 2011); *Idaho v. U.S. Forest Svc.*, 142 F. Supp. 2d 1248 (D. Idaho 2001). Plaintiffs in the Idaho cases sought the entry of a preliminary injunction of the Roadless Rule, which was granted by the district court. *See Kootenai Tribe of Idaho,* 313 F.3d at 1104. The preliminary

injunction of the Roadless Rule was reversed on appeal to the Ninth Circuit Court of Appeals. *See id*. Neither of the Idaho cases proceeded to a determination on the merits.

On May 18, 2001, prior to the Ninth Circuit's decision lifting the preliminary injunction, the State of Wyoming filed suit in the United States District Court for the District of Wyoming challenging the Roadless Rule. Wyoming's Complaint alleged that the Roadless Rule was promulgated in violation of NEPA, the Wilderness Act, the Forest Management Act, and the Multiple Use Act among other statutes. *Wyoming v. USDA*, 277 F. Supp. 2d 1197, 1217 (D. Wyo. 2003), *vacated*, 414 F.3d 1207 (2005). On July 14, 2003, the district court ruled that the Roadless Rule was promulgated in violation of NEPA and the Wilderness Act. *Id.* at 1231-32, 1237.

After an extensive review of the record before it, the district court found that "a comparison of the uses permitted in wilderness areas and those permitted in inventoried roadless areas leads inescapably to the conclusion that the two types of areas are essentially the same," and that "a roadless forest is synonymous with the Wilderness Act's definition of 'wilderness.'" *Id.* at 1236. The district court further found that the manner in which the inventoried roadless areas under the Roadless Rule are to be protected is through the prohibition, in almost all circumstances, of the construction or reconstruction of roads, timber extraction and other activities in these areas. *Id.* at 1235-36; *see generally* 36 C.F.R. § 294.12. Accordingly,

the district court concluded that the Forest Service accomplished with the Roadless Rule only what Congress has the authority to do – designate wilderness. *Wyoming,* 277 F. Supp. 2d at 1236-37. The District Court ordered that the Roadless Rule be set aside. *Id.*

While the district court's decision was appealed to the Tenth Circuit Court of Appeals, the Forest Service promulgated the State Petitions for Inventoried Roadless Area Management Rule ("*State Petitions Rule*"), which superseded the Roadless Rule. *See* Special Areas; State Petitions for Inventoried Roadless Area Management, 70 *Fed. Reg.* 25,654 (May 13, 2005). With the State Petitions Rule, the Tenth Circuit determined that issues related to the Roadless Rule were moot and vacated the district court's judgment. *Wyoming v. USDA*, 414 F.3d 1207, 1210 (10th Cir. 2005).

The State Petitions Rule was subsequently challenged in the United States District Court for the Northern District of California. *See California ex rel. Lockyer v. USDA*, 459 F. Supp. 2d 874 (N.D. Cal. 2006). The State Petitions Rule was set aside by the District Court for the Northern District of California after the court determined the rule was not promulgated in compliance with NEPA. *Id.* at 909. The California court also reinstated that Roadless Rule because the Tenth Circuit had vacated the Wyoming district court judgment that set aside the Roadless Rule. *Id.* at 916. The California district court's decision was affirmed on appeal on August 5, 2009.

California ex rel. Lockyer v. USDA, 575 F.3d 999, 1005 (9th Cir. 2009).

B. The Colorado Mining Association and the State of Wyoming challenge the Roadless Rule.

With the California district court's decision to reinstate the Roadless Rule, Wyoming filed a challenge of the Roadless Rule on January 12, 2007 in the Wyoming district court. *Wyoming*, 570 F. Supp. 2d at 1318. The Colorado Mining Association sought and was granted intervention. *Id.* at 1319. The district court issued its opinion on August 12, 2008, in which it largely reiterated its findings in *Wyoming*, 277 F. Supp. 2d 1197, and again found that the Roadless Rule had been promulgated in violation of NEPA and the Wilderness Act. *Wyoming*, 570 F. Supp. 2d at 1354-55. The district court also permanently enjoined the Roadless Rule for a second time. *Id.* Again, the district court did not reach the Forest Management Act or Multiple Use Act claims. *Id.* at 1350.

The Wyoming district court's 2008 decision was appealed to the Tenth Circuit Court of Appeals. On October 21, 2011 the Court of Appeals issued its opinion, erroneously reversing the district court's decision and rejecting the Forest Management Act and Multiple Use Act claims brought by the State of Wyoming. *Wyoming v. USDA*, 661 F.3d 1209, 1220 (10th Cir. 2011). In its opinion, the court of appeals concluded that the Roadless Rule did not create *de*

facto wilderness areas, because there are certain differences between the Roadless Rule and the Wilderness Act, that when applied, would not technically result in the prohibition of certain uses on roadless lands. *Id.* at 1129-30. The court of appeals reached this erroneous decision despite acknowledging that the Roadless Rule generally prohibits "non-wilderness" uses and that the technical differences between Wilderness Act lands and Roadless Rule lands do nothing to change the fact that the only permissible use of the 58.5 million acres of Roadless Rule lands is wilderness. *Id.* at n.34.

The enormity of the court of appeals error is further accentuated by its opinion that the Forest Service was not required to comply with the Forest Management Act when it promulgated the Roadless Rule. *Id.* at 1269. With the Roadless Rule, many forest plans were permanently changed, but none of these changes were accomplished through the process set forth and required by the Forest Management Act. *See generally* 16 U.S.C. § 1604. The Tenth Circuit accepted the Forest Service's specious argument that because the Roadless Rule was promulgated under the Organic Act it did not have to comply with the Forest Management Act. *Wyoming*, 661 F.3d at 1269. Nothing within the Forest Management Act or the Organic Act supports the Forest Service's contention.

Finally, the Tenth Circuit found that the Forest Service had complied with NEPA. *Id.* at 1266. The Tenth Circuit reversed the decision of the district

court, and remanded the case with instructions to vacate the permanent injunction. *Id.* at 1272.

REASONS FOR GRANTING THE PETITION

The Roadless Rule generally prohibits all road construction, road reconstruction, and logging on national forest lands subject to the rule. These prohibitions effectively create new wilderness areas covering one third of our nation's forests. However, the Forest Service has neither the job (nor authority) to create wilderness lands – as that role (and authority) have been reserved exclusively by Congress. In order to evade the Wilderness Act's explicit statutory reservation of authority to Congress to designate wilderness areas, the Forest Service articulated in the Rulemaking technical (but illusory) "distinctions" between wilderness and roadless areas. Thus, with the Roadless Rule the Forest Service achieved the functional equivalent of wilderness while maintaining a thinly veiled appearance that it was not exercising a power reserved by Congress.

Not only did the Forest Service overreach when it designated forest lands as *de facto* wilderness under the Roadless Rule, it impermissibly elected to pick and choose which elements of forest and environmental planning statutes it would comply with in the course of the rulemaking. The Forest Service admittedly did not follow the forest planning process set forth in the Forest Management Act even though the

allocation of specific lands to particular purposes is the epitome of forest planning. *See generally* 16 U.S.C. § 1604.

The Tenth Circuit's decision that the Roadless Rule did not violate the Wilderness Act establishes a grave precedent that agencies may rely on their general rulemaking authority to duplicate an authority that is clearly vested solely with Congress. Moreover, it permits the Forest Service to pick and choose when and how it applies the Forest Management Act. This Court should grant certiorari to resolve these issues of national importance.

I. THE COURT SHOULD GRANT REVIEW BECAUSE THE DECISION BELOW DEFIES THE WILDERNESS ACT'S CLEAR DIRECTIVE THAT ONLY CONGRESS MAY DESIGNATE LANDS AS WILDERNESS.

A. The Wilderness Act Removed the Forest Service's Authority to Designate Wilderness Lands.

The Tenth Circuit's ruling is based on a fundamentally flawed (and inconsistent) understanding of the practical effects of the Roadless Rule on the 58.5 million acres of national forest lands subject to the Rule. In reality, areas covered by the Roadless Rule are indistinguishable from wilderness lands, since without roads activities specifically prohibited in wilderness areas are effectively prohibited in roadless areas even though the activity may technically be

authorized. As the district court recognized, the plain fact is a roadless forest is a wilderness area. "[I]t is 'reasonable and supportable to equate roadless areas with the concept of wilderness.'" *Wyoming*, 570 F. Supp. 2d at 1348. In the absence of Congress's action to designate the 58.5 million acres of Roadless lands wilderness, the Forest Service proceeded to do so on its own – a clear violation of the Wilderness Act. *See id.* at 1349-50.

The Property Clause in the United States Constitution provides Congress with plenary power to enact all necessary rules and regulations respecting the federal government's property. U.S. Const. art. IV, § 3, cl. 2. The Organic Act authorizes the Forest Service to "regulate [national forests] occupancy and use. . . ." 16 U.S.C. § 551. However, absolute power over federal lands resides in Congress, and the Forest Service's rulemaking must therefore conform to congressional mandates including the Wilderness Act. *See*, *e.g.*, *Amax Land Co. v. Quarterman*, 181 F.3d 1356, 1366-68 (D.C. Cir. 1999). Through passage of the Wilderness Act, Congress retained for itself sole authority to designate wilderness areas. 16 U.S.C. § 1131(a); *see also Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 58-59 (2004).

In accordance with the plain language of the Constitution, this Court has "repeatedly observed" that the "'power over the public land . . . entrusted to Congress is without limitations.'" *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976) (quoting *United States v. San Francisco*, 310 U.S. 16, 29-30 (1940)).

While Congress may delegate this power, or any other legislative power to agencies, Congress must set forth an "intelligible principle to which the person or body authorized to [act] is directed to conform. . . ." *J.W. Hampton, Jr. & Co. v. U.S.*, 276 U.S. 394, 409 (1928). The purpose of the intelligible principle requirement is to ensure that Congress "delegate[s] no more than the authority to make policies and rules that implement its statutes." *Loving v. United States*, 517 U.S. 748, 771 (1996).

Presence of an intelligible principle does not extend to an agency free rein in exercising the authority so delegated, however, as "the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred." *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 475 (2001). The scope of power congressionally conferred is not set forth in "vague terms or ancillary provisions – [Congress] does not, one might say, hide elephants in mouseholes." *Id.* at 468. If Congress had wished to grant the Forest Service the authority to designate and permanently manage lands as wilderness (or the functional equivalent thereof), it would have done so.

When an agency promulgates a regulation "'based on an incorrect view of applicable law, the regulation cannot stand as promulgated. . . .'" *Prill v. National Labor Relations Board*, 755 F.2d 941, 948 (D.C. Cir. 1985) (quoting *Planned Parenthood Fed'n of Am. v. Heckler*, 712 F.2d 650 (D.C. Cir. 1983)). The Wilderness Act fundamentally altered the extent of the Forest Service's authority over land within the

National Forest System. Prior to the adoption of the Wilderness Act the Forest Service relied upon the Organic Act and later the Multiple Use Act to designate wilderness areas.[3] After the adoption of the Wilderness Act, the authority to designate wilderness lands was vested solely with Congress. While the Forest Service retains its authority to conduct rulemakings regarding the occupancy and use of the forests, that authority must be exercised in accordance with the express authority retained by Congress in the Wilderness Act.

As the Tenth Circuit itself acknowledged, the Roadless Rule generally prohibits "nonwilderness" uses and that the areas subject to the Roadless Rule were "pristine wilderness." *Wyoming*, 661 F.3d at 1225 & n.34 (citing *Kootenai Tribe of Idaho*, 313 F.3d 1106). The Tenth Circuit's decision is internally inconsistent. It acknowledges that the Roadless Rule lands are "pristine wilderness" and that the Rule generally prohibits "nonwilderness" uses on these pristine wilderness lands. *Id.* Yet, the court concludes that Forest Service has not designated *de facto* wilderness lands because there are technical differences between the Wilderness Act and the Roadless Rule. *Id.* at 1129-30. However, when one looks closely at these purported technical differences it is clear that the differences are really just alternate means to

[3] "The establishment and maintenance of areas of wilderness are consistent with the purposes and provisions of sections 528 to 531 of this title." *See* 16 U.S.C. § 529.

arrive at the same destination: wilderness. *Wyoming*, 570 F. Supp. 2d at 1349-50.

B. The Forest Service Has No Authority to Designate Wilderness Under the Forest Management Act.

The Tenth Circuit's opinion rests on fundamental misconceptions of the relationship between the Forest Management Act and the Forest Service's general rulemaking authority under the Organic Act. While the Organic Act grants the Forest Service authority to oversee the management of national forest lands that authority has been supplanted by more recent Congressional actions that define, refine and limit the Forest Service's authority.

It is through the Forest Management Act that Congress established the process by which the Forest Service must manage our nation's forest, refining and limiting the general grant of authority the Forest Service held under the Organic Act. *See*, *e.g.*, *Cook County Nat'l Bank v. United States*, 107 U.S. 445, 451 (1883) ("[A] law embracing an entire subject, dealing with it in all its phases, may thus withdraw the subject from the operation of a general law as effectually as though, as to such subject, the general law were in terms repealed."). *Cf. Patterson v. McLean Credit Union*, 491 U.S. 164, 181 (1989) (stating that courts "should be reluctant . . . to read an earlier statute broadly where the result is to circumvent the detailed remedial scheme constructed in a later

statute"). When the Forest Service proposed the Roadless Rule, it proposed that 58.5 million acres of forest lands would be managed differently than they had previously been managed for the last 30 years. *See* National Forest System Land and Resource Management Planning; Special Areas; Roadless Area Conservation, 66 *Fed. Reg.* 35,918, 35,919 (July 10, 2001). With the Roadless Rule, inventoried roadless lands that had been potentially available for multiple uses now were unavailable to permanent or temporary road construction, timber harvests and other activities that would detract from their existing wilderness characteristics, making them *de facto* wilderness. However, at the time the Roadless Rule was promulgated, the Forest Service's own regulations implementing the Forest Management Act provided that the Forest Service may only "evaluate[ ] and consider[ ] for recommendation [roadless areas] as potential wilderness areas during the forest planning process. . . ." 36 C.F.R. § 219.17(a) (2000) (repealed). With the Forest Service's *de facto* designation of wilderness lands through the Roadless Rule, the Forest Service failed to comply with its own regulations mandating that it must recommend to Congress any proposed wilderness designation.

II. THE COURT SHOULD GRANT REVIEW BECAUSE THE IMMEDIATE IMPACT OF THE RULE ON 58.5 MILLION ACRES OF LAND IS OF SIGNIFICANT NATIONAL IMPORTANCE.

The Forest Service's improper use of its rulemaking authority to prohibit citizens from using millions of acres of public land for uses other than wilderness is alone of great national importance. *See*, *e.g.*, *Andrus v. Utah*, 446 U.S. 500, 506 (1980). With the Roadless Rule, the Forest Service has decided that the equivalent of the total acreage of the states of Connecticut, two Delawares, Hawaii, New Hampshire, New Jersey, Maine, Maryland, Massachusetts, two Rhode Islands and Vermont combined cannot be used by humans for any purpose other than *de facto* wilderness. Approximately one-third of all Forest Service land is now managed solely to maintain pristine wilderness conditions at the expense of every other potential use.

The Roadless Rule's road construction ban on 58.5 million acres of land will have devastating consequences on current and future generations of forest users. Without roads, access to remove trees that have died or that are diseased will end, which, as the district court found, will result in the spread of beetle infestation. *Wyoming*, 570 F. Supp. 2d at 1329. Without roads to access these areas to clear these dead and infested trees, the increased risk of catastrophic wildfires grows considerably. *See id*. Moreover, the Rule's road building ban has significant economic and social effects. Banning road building on

these lands prevents the development of mineral reserves, and prevents the installation of necessary safety features to allow the continued operation of mines. For instance in Colorado alone, the Roadless Rule would withdraw more than 4.4 million acres of Forest Service land from managed mineral development, a significant amount of land that would no longer be open to mineral development.

Further, the social impact that the ban on road building would have is great. The people who work at mines on and around national forest lands and their families recreate in the areas that are affected by the Roadless Rule. For these employees and their families, the Roadless Rule results in jeopardizing their economic interests and also deprives them of their ability to enjoy and recreate in the forests. The sheer magnitude of the Roadless Rule and its unprecedented impact on the national forests, the states, and the public warrants the grant of certiorari.

CONCLUSION

The petition should be granted.

Respectfully submitted,

PAUL M. SEBY
Counsel of Record
MARIAN C. LARSEN
MOYE WHITE LLP
1400 16th Street, Sixth Floor
Denver, CO 80202
(303) 292-2900

Counsel for Petitioner

May 16, 2012

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

STATE OF WYOMING, Plaintiff, and the COLORADO MINING ASSOCIATION, Plaintiff-Intervenor vs. UNITED STATES DEPARTMENT OF AGRICULTURE, et al., Defendants, and the WYOMING OUTDOOR COUNCIL, et al., Defendant-Intervenors.	Case No. 07-CV-017-B

ORDER DENYING MOTION FOR RECONSIDERATION AND RULE 62(c) MOTION FOR SUSPENSION OF INJUNCTION PENDING APPEAL

(Filed Jun. 15, 2009)

This matter came before the Court on the Federal Defendants' Motion for Reconsideration [doc. #118] and the Wyoming Outdoor Council's Rule 62(c)

Motion for Suspension of Injunction Pending Appeal [doc. #130]. A hearing was held on this matter on June 3, 2009. Barclay T. Samford and Carol A. Statkus appeared on behalf of the Federal Defendants; James S. Angell appeared on behalf of the Intervenor-Defendants; James Kaste appeared on behalf of the Plaintiff, the State of Wyoming; Marian C. Larsen and Brent R. Kunz appeared on behalf of the Intervenor-Plaintiffs; and Harriet M. Hageman appeared on behalf of various amicus groups. After considering the motions, reviewing the materials on file, and hearing oral arguments, and being fully advised in the premises, this Court FINDS that the motions should be DENIED.

I. BACKGROUND

The background of this case has been extensively discussed in previous decisions by this Court. The Court, therefore, adopts and incorporates its factual findings as set forth in its Order Granting Plaintiff's Motion for Declaratory Judgment and Injunctive Relief and *Wyoming v. United States Department of Agriculture,* 277 F. Supp. 2d 1197 (D. Wyo. 2003).

II. DISCUSSION

Once again, this Court is faced with determining the validity of the 2001 Roadless Rule. On two different occasions this Court has held that the Roadless Rule is invalid as it was promulgated in violation of this nation's environmental laws. Defendants and

Defendant-Intervenors ask this Court to, again, revisit its previous decisions, and request that if the Court determines that the Rule is still invalid to, at the very least, suspend the injunction against the Rule. Because the Court finds that its reasoning, as laid out in two previous, lengthy decisions, more than supports the Court's finding, it denies the requests of the Defendants and the Defendant-Intervenors here.

A. Motion for Reconsideration

Federal Rule of Civil Procedure 59(e) allows a court to alter or amend a judgment under certain, limited circumstances. *See* Fed. R. Civ. P. 59(e). In deciding whether to alter or amend a previous judgment, the motion should only be granted if there exits [sic]: "(1) an intervening change in the controlling law, (2) new evidence previously unavailable, [or] (3) the need to correct clear error or prevent manifest injustice." *Servants of Paraclete v. Does,* 204 F.3d 1005, 1012 (10th Cir. 2000). Because there has been no intervening change in the law, nor has new evidence been presented to the Court, the Federal Defendants must show that the Court committed clear error to succeed on its motion.

The Federal Defendants claim that the Court committed clear error in two ways with its 2008 Order finding the Roadless Rule invalid and enjoining its enforcement. First, the Federal Defendants argue that the Court committed clear error by enjoining the enforcement of the 2001 Roadless Rule in conflict

with an injunction entered by the Northern District of California in *California ex rel. Lockyer v. United States Department of Agriculture,* 459 F. Supp. 2d 874 (N.D. Cal. 2006). Second, the Federal Defendants argue that the Court committed clear error by issuing injunctive relief broader than necessary to remedy Wyoming's injuries. The Court will take each of these in turn.

1. *Conflicting Injunctions*

The Court first turns to the Federal Defendants' claim that to issue an injunction that conflicted with that of the California District Court was clear error. This argument has already been heard and adequately addressed by this Court in its previous order. In its August 12, 2008 Order Granting Plaintiff's Motion for Declaratory Judgment and Injunctive Relief the Court discussed extensively the comity implications of granting an injunction against the 2001 Roadless Rule. (Order Granting Pl.'s Mot. for Declaratory J. and Injunctive Relief at 92-95.) It ultimately found "that issues of comity are not present in the current case." (Order Granting Pl.'s Mot. at 92.) As the Tenth Circuit has stated, "It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing." *Servants of Paraclete,* 204 F.3d at 1012. Because the Court has already addressed this issue, it is inappropriate to revisit it in a Motion for Reconsideration.

2. *Limiting Injunction*

Next, the Court turns to the Federal Defendants' contention that the Court committed clear error when it enjoined enforcement of the 2001 Roadless Rule nationwide rather than simply limiting the injunction to Wyoming. Limiting the scope of the injunction to Wyoming, however, would be illogical. The Rule was enacted and enforced on a nationwide basis. It was not tailored to address the forests of each state as separate entities. It would make little sense, then, to tailor the remedy by limiting the injunction to the State of Wyoming. If the Rule is illegal, as this Court has found it to be, then it is illegal nationwide, just as it was enforced nationwide.

The Federal Defendants claim that, "The only basis for a nation-wide injunction articulated in the Court's August 12, 2008 Opinion is the assertion that the 'Tenth Circuit had notably remarked that harm to the environment *throughout the country may be presumed* when an agency fails to follow NEPA's mandates.'" (Federal Defs.' Mot. for Reconsideration and Mot. for Stay Pending Reconsideration at 7 (citing Order Granting Pl.'s Mot. at 97-98).) Despite the fact that this is not the only reason for issuing a nationwide injunction as explained above, the Court concludes that, in and of itself, this is enough to support the Court's decision to issue a nationwide injunction. In making this statement, the Tenth Circuit clearly stated that NEPA acts "as a means of safeguarding against environmental harms." *Davis v. Mineta,* 302 F.3d 1104, 1114 (10th Cir. 2002). When

the USDA and the Forest Service failed to comply with NEPA in promulgating the 2001 Roadless Rule, it put *our nation's* forests, not just Wyoming's forests, at risk. That risk of harm is not unique to Wyoming, it is apparent throughout the country. As the Court noted at oral argument, destructive beetles do not heed state boundaries, neither do the devastating nature of wildfires.

Finally, the Federal Defendants have requested that the Court limit its injunction so that this Court's ruling can exist in harmony with that of the California District Court.[1] The Federal Defendants urge that to hold otherwise would put forest rangers, on the ground, in the untenable position of choosing between two conflicting injunctions. While the Court appreciates the reality of the situation faced by those working for the forest service, it cannot, in good conscience, limit its injunction. The 2001 Roadless Rule is no more or less legal in Wyoming than it is in the Ninth Circuit or New Mexico. As such, a nationwide injunction remains the appropriate remedy in this case.

[1] This Court has been informed that the California District Court, upon reconsideration, has limited its injunction to the Ninth Circuit and New Mexico.

B. Wyoming Outdoor Council's Rule 62(c) Motion for Suspension of Injunction Pending Appeal

The Wyoming Outdoor Council, *et al.* (WOC) has requested that the Court stay its injunction against the 2001 Roadless Rule pending the outcome of its appeal in the Tenth Circuit. Federal Rule of Civil Procedure Rule 62(c) provides, "While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights," Fed. R. Civ. P. 62(c). In determining whether a stay pending the outcome of an appeal is appropriate, the Court looks to four factors:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Hilton v. Braunskill, 481 U.S. 770, 776 (1987). In looking to these factors, the Court finds that a stay pending appeal is not warranted in this case.

Initially, the Court notes that it has twice decided that the 2001 Roadless Rule was promulgated in contravention of the nation's environmental laws. This Court, therefore, has an ample amount of

experience in dealing with this issue. The Court has been thorough and analyzed the administrative record numerous times, and found that the USDA and the Forest Service failed to perform their duties under NEPA and the Wilderness Act when they promulgated the Rule. WOC has pointed to nothing to convince this Court that it is "likely" to succeed on appeal. WOC is required to make a "strong showing" of its likelihood to succeed, it has failed to do so.

WOC argues that it will be potentially irreparably injured if the injunction is not stayed pending the appeal. In making this argument, WOC avers that numerous oil and gas developments may move from pending to an immediate threat if the Court refuses to stay the injunction. WOC's contention rests on a flawed premise that the forests will not be subject to any protection if the 2001 Roadless Rule is enjoined. Our nations forests, however, are subject to numerous protections absent that of the Roadless Rule. WOC seems to assert that as soon as the Roadless Rule is lifted, a free-for-all will ensue resulting in the obliteration of our nation's forests. This is simply not the case.

Conversely, everyday that the Roadless Rule remains in effect is a day that our forests are at risk. As stated, NEPA was designed to ensure that administrative agencies have considered the impacts that a new rule would have on the environment. By violating NEPA, the USDA and the Forest Service neglected to consider all of the potentially negative environmental impacts the 2001 Roadless Rule would pose.

Although the development of our forests is regulated and carefully scrutinized through the numerous rules and regulations already in place, there are no rules or regulations that can prevent the savage of our forests from unruly wildfires and/or destructive beetles.

Finally, based on the foregoing discussion, it is clear that the public interest lies in preserving our forests. The 2001 Roadless Rule, by violating the law, has failed to do this. Everyday that this Rule remains in effect, our forests are placed in a position of further peril. The Court, therefore, finds that

WOC's motion must be DENIED.

III. CONCLUSION

NOW THEREFORE, IT IS HEREBY ORDERED that:

1. The Federal Defendants' Motion for Reconsideration is DENIED;

2. WOC's Rule 62(c) Motion for Suspension of Injunction Pending Appeal is DENIED.

IT IS SO ORDERED.

Dated this 15th day of June, 2009.

/s/ Clarence A. Brimmer
UNITED STATES
DISTRICT JUDGE

Excerpt of 2000 Forest Service Planning Rules (Repealed)

36 C.F. R. § 219.17 Evaluation of roadless areas.

(a) Unless otherwise provided by law, roadless areas within the National Forest System shall be evaluated and considered for recommendation as potential wilderness areas during the forest planning process, as provided in paragraphs (a)(1) and (2) of this section.

(1) During analysis of the management situation, the following areas shall be subject to evaluation:

(i) Roadless areas including those previously inventoried in the second roadless area review and evaluation (RARE II), in a unit plan, or in a forest plan, which remain essentially roadless and undeveloped, and which have not yet been designated as wilderness or for nowilderness [sic] uses by law. In addition, other essentially roadless areas may be subject to evaluation at the discretion of the Forest Supervisor.

(ii) Areas contiguous to existing wilderness, primitive areas, or administratively proposed wildernesses, regardless of which agency has jurisdiction for the wilderness or proposed wilderness;

(iii) Areas that are contiguous to roadless and undeveloped areas in other Federal ownership that have identified wilderness potential; and

(iv) Areas designated by Congress for wilderness study, administrative proposals pending before Congress, and other legislative proposals pending which have been endorsed by the President.

(2) For each area subject to evaluation under paragraph (a)(1) of this section, the determination of the significant resource issues, which in turn affect the detail and scope of evaluation required by the Forest Service, shall be developed with public participation. As a minimum, the evaluation shall include consideration of:

(i) The values of the area as wilderness;

(ii) The values foregone and effects on management of adjacent lands as a consequence of wilderness designation;

(iii) Feasibility of management as wilderness, in respect to size, nonconforming use, land ownership patterns, and existing contractual agreements or statutory rights;

(iv) Proximity to other designated wilderness and relative contribution to the National Wilderness Preservation System; and

(v) The anticipated long-term changes in plant and animal species diversity, including the diversity of natural plant and animal communities of the forest planning area and the effects of such changes on the values for which wilderness areas were created.

[47 FR 43037, Sept. 30, 1982, as amended at 48 FR 40383, Sept. 7, 1983]

Pertinent Sections from the Forest Service's Organic Administration Act

16 U.S.C. § 472. Laws affecting national forest lands

The Secretary of the Department of Agriculture shall execute or cause to be executed all laws affecting public lands reserved under the provisions of section 471 of this title, or sections supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.

(Feb. 1, 1905. ch. 288, §1, 33 Stat. 628.)

---

16 U.S.C. § 529. Authorization of development and administration consideration to relative values of resources; areas of wilderness

The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom. In the administration of the national forests due consideration shall be given to the relative values of the various resources in particular areas. The establishment and maintenance

of areas of wilderness are consistent with the purposes and provisions of sections 528 to 531 of this title.

(Pub. L. 86-517, §2, June 12, 1960, 74 Stat. 215.)