



THE WILDERNESS SOCIETY

To: Interested Persons
From: Mike Anderson
Re: Final Rule on Roadless Areas and State Petitions
Date: May 5, 2005

Following is a quick analysis of the Bush Administration's final rule to replace the Roadless Area Conservation Rule with a State petition process, which the Administration announced today. This analysis is based on the final rule and Federal Register notice supplementary text posted on the Forest Service website this afternoon. The rule will go into effect as soon as it is published in the Federal Register.

Impact on Roadless Area Conservation Rule

The Bush rule entirely eliminates the protections provided by the Roadless Area Conservation Rule, which was adopted by the Clinton Administration in January 2001. Without the Roadless Rule's restrictions, management of roadless areas will revert to the management direction contained in local forest management plans. Nationwide, forest plans allow road building in 34 million acres of inventoried roadless areas, or about 59 percent of the 58.5 million roadless acres. Thus, most roadless areas will be vulnerable to new road construction for logging, energy development, and other commodity uses under the Bush rule.

State Petition Process

The Bush rule establishes an optional two-step State petition and rulemaking process for roadless area management. First, the Governor of any State with national forest inventoried roadless areas can petition the Secretary of Agriculture to adopt regulations for management of any roadless areas in the State. Petitions have to be submitted within 18 months; after that, petitions could still be submitted through the USDA's general petitioning process. Second, if the Governor's petition is accepted by the Secretary, the Forest Service will initiate a State-specific rulemaking.

The state petition process is stacked against roadless area protection in several respects. First, there is no certainty that the process will result in any protection for roadless areas. Any petition submitted by a Governor will not necessarily be accepted. Even if a petition is accepted, the outcome of the subsequent State-specific rulemaking will still be left up to the federal officials. In its explanation of the final rule, the Administration emphasizes that "there is no guarantee" the State's proposals will be adopted.

Second, the petition process imposes considerable burdens on the State. Petitions will have to address numerous issues that opponents of the Roadless Rule have consistently raised, such as property access, wildlife habitat management, and fire hazards. The

petition will also have to show how the State involved the public, local governments, and resource experts in developing the petition. According to the Federal Register notice, “We envision a Governor involving all interested parties in such a process.” Especially problematic is an open-ended requirement to explain how the State’s proposal complies with “applicable laws and regulations” and compares to “existing State or local land conservation policies and direction.” The Secretary could demand that the State provide additional information before taking action on the petition.

In addition, the State will have to make a commitment to participate as a “cooperating agency” in any environmental analysis of the subsequent State-specific rulemaking. This means that the State will be required to allocate resources such as agency personnel, funds, and equipment to assist the Forest Service in preparing environmental documents required by NEPA. However, even with the State as a cooperating agency, the Forest Service will retain decision-making authority as the lead agency over all key aspects of the environmental analysis.

The Administration’s cost estimate of \$25,000-\$100,000 in State costs per petition seems unrealistically low, given the obligation to share costs of site-specific NEPA evaluation. Since the Administration exempted the Bush rule from NEPA analysis and documentation, the entire burden of NEPA compliance will fall to the individual States and local national forests. The Administration’s estimate also evidently fails to consider potential litigation costs to the States associated with defending against lawsuits that may be filed by both supporters and opponents of roadless area protection.

The only significant change in the July 2004 draft rule is the addition of an advisory committee. Made up of 12 representatives of national organizations, the committee will give advice and recommendations to the Secretary of Agriculture on implementing the State petition process. The committee will review each State petition and make its recommendations within 90 days. Advisory committee members will be selected by the Secretary of Agriculture, and the Secretary is under no obligation to follow the committee’s advice.

In sum, the Bush Administration’s roadless rule opens the door to road-building and logging in roadless areas and creates a voluntary petition process that is stacked against roadless area conservation. Roadless area management will immediately revert back to management direction in local forest plans, which generally allow road-building and logging in most roadless areas. A Governor who wants to protect roadless areas will be faced with meeting burdensome requirements to develop the petition and help prepare the subsequent environmental analysis, with no certainty that the Administration will accept the State’s requests.