

Content Analysis Team
Attn: Roadless State Petitions
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Dear Forest Service,

The following are the comments of: Colorado Wild, Southern Rockies Ecosystem Project, Center for Native Ecosystems, American Lands Alliance, Wilderness Workshop, Youth Leaders In Action, San Juan Citizen's Alliance, Backcountry Snowsports Alliance, Colorado Mountain Club, High Country Citizen's Alliance, Environment Colorado, Western Resource Advocates, Rocky Mountain Peace and Justice Center, Biodiversity Conservation Alliance, Quiet Use Coalition, Rock The Earth, The Wilderness Society (Four Corners States Region), San Luis Valley Ecosystem Council, Jackson Hole Conservation Alliance, Upper Arkansas and South Platte Project, Central Colorado Wilderness Coalition, and Sinapu on the Special Areas: State Petitions for Inventoried Roadless Area Management proposed rule published in the July 16, 2004 Federal Register at 69 Fed Reg 42636 et seq., (hereafter "Proposed Rule"). The original Roadless Area Conservation Rule, at 66 Fed Reg 3243 et seq., January 12, 2001 is hereafter referred to as the "Existing Rule".

All of the above-named groups have a significant interest in management of national forests in the Rocky Mountain region, including the roadless areas therein. We are very displeased to see a proposed rule that will ensure absolutely no protection for inventoried roadless areas, and may even lead to *less* protection for these areas. These remaining pristine areas need a high level of protection in the face of threats to their integrity. The proposed New Rule would replace a rule that provides a reasonable level of protection for roadless areas with one that has a very cumbersome process that could only be initiated by states. This is wholly inappropriate, given the importance of roadless areas. The Forest Service must withdraw the Proposed Rule and implement the Existing Rule.

I. ROADLESS AREAS ARE EXTREMELY VALUABLE FOR A VARIETY OF RESOURCES, ESPECIALLY BIOLOGICAL DIVERSITY. There is no question among scientists and others that roadless areas provide extremely valuable benefits to the American people. On the local level, these include, but are not limited to: clean air; clean water (including drinking water for many communities¹); laboratories for scientific experiments (in comparison with other, more developed areas); high quality wildlife habitat; and opportunities for primitive recreation.

On the landscape scale, roadless areas play an even more critical role: that of zones for recovery of threatened, endangered, and sensitive species. Such areas are badly needed to

¹ For example, the Wyoming Department of Environmental Quality has identified 91 public water supplies that at least partially originate in roadless areas.

ensure maintenance of biological diversity in North America. See, e. g., Loucks et al, 2003, which concludes with the following statement:

Based upon our analyses, we conclude that IRAs support many at-risk species and thereby greatly contribute to the conservation of biodiversity throughout the United States. For some species with only a few remaining populations, the strict and permanent protection of IRAs may represent the final, critical refuge.

Loucks et al at 13; emphasis added.

The authors note the importance of roadless areas for conservation of rare species:

In this regard, many IRAs function as biological refugia for terrestrial and aquatic species, including numerous threatened, endangered, and imperiled species.

Loucks et al at 9.

In the final environmental impact statement for the Existing Rule, the Forest Service recognized the value of roadless areas in protecting biological diversity by providing areas where habitat is less fragmented, i. e., more connected:

Habitat in inventoried roadless areas is generally less fragmented and better connected than in roaded areas of similar size. This is important to a number of species including fisher, marten, and lynx populations that have been negatively affected by habitat fragmentation and loss of connectivity due to timber harvest...and [national forest system] roads.

USDA Forest Service, 2000, at 3-131; citations omitted.

The Forest Service further notes that a high percentage of species listed as threatened or endangered, or proposed for such listing, are affected by roadless areas in each Forest Service region. This is estimated to be 100 percent in the Rocky Mountain Region (Region 2); in other words all threatened, endangered, and proposed species found in this Region have habitat in roadless areas. Id. at 3-180. Similarly, a high percentage (83 percent for Region 2) of sensitive species are affected by roadless areas. Ibid.

Most wilderness areas in Colorado and Wyoming encompass higher elevation areas. As Loucks et al note, this may not be sufficient to represent all ecological types in protected areas:

Despite the current levels of perceived protection, the nation's biological diversity may be under-represented in the current system, particularly in the mountainous west

Loucks et al, id. at 9, citation omitted.

However, if roadless areas were protected from road construction, there would be greater protection for lands in all elevations above 1000 feet. USDA Forest Service, 2000, at 3-142.

There are many acres of inventoried roadless areas adjacent to designated wilderness areas, which if protected, would “provide[] a major cumulative benefit for large animals...”. USDA Forest Service, id., at 3-136, 3-137.

In the Southern Rockies², a Wildlands Network Vision (Southern Rockies Ecosystem Project et al., 2003) has been developed to identify a network of key core areas connected by wildlife corridors that are necessary to maintain the ecological health of the native ecosystems in this important region.

Expert workshops were combined with modeling analyses that included roadless areas as the foundation of the resulting network design. The final analyses show that many large intact landscapes necessary for wildlife movement and ecosystem health in the Southern Rockies are roadless. Many of these roadless areas are proposed as key new wilderness areas for the Southern Rockies. Opening these wildlands to disturbance would have irreparable damage to the biological integrity of the Southern Rockies ecoregion as a whole.

In sum, the value of the nation’s roadless areas is inestimably great. Protection of these vital areas is necessary, and in some cases critical, for maintaining biological diversity and recovering threatened and endangered species, especially wide-ranging carnivores. Other benefits also accrue from protecting roadless areas, such as clean air and clean water, and excellent opportunities for primitive, non-motorized recreation.

II. MANY INVENTORIED ROADLESS AREAS IN REGION 2 ARE NOT CURRENTLY PROTECTED FROM DAMAGING ACTIVITIES. Colorado Wild and other endorsers of this letter have reviewed forest management plans for Colorado and Wyoming. It is clear from this review that many roadless areas were assigned management prescriptions that allow, and in some cases encourage, activities, such as logging and road construction, that would damage or destroy the character of the corresponding roadless areas.

According to the FEIS for the Existing Rule, Colorado has approximately 4,433,000 acres of national forest roadless area. Under existing national forest land and resource plans, road construction is allowed on 3,498,000 of these acres. USDA Forest Service, 2000 at A-3. In other words, almost 80 percent of Colorado’s national forest roadless areas are vulnerable to road construction.

² The “Southern Rockies” in this letter refers generally to the area from about Casper, Wyoming south through Colorado to the border with New Mexico.

In the most recently revised land and resource management plan for Colorado, that for the White River National Forest, whose plan was revised in 2002, the approved alternative K recommended only 16 small areas totaling 82,000 acres for wilderness designation (USDA Forest Service 2002a at 19-20) out of 90 roadless areas totaling 640,000 acres (USDA Forest Service 2002b at C-2). Furthermore, 57 percent of the roadless acreage was assigned to management prescriptions that “will have the most intensive development and the potential to result in the most significant impact on the undeveloped character of the roadless areas”. USDA Forest Service 2002b at 3-531, 3-532³.

Wyoming has about 3,257,000 acres of national forest roadless area. Under existing forest plans, road construction is allowed on 3,085,000 of these acres. In other words almost 95% of Wyoming's national forest roadless areas are vulnerable to road construction. Recently, the Bridger-Teton National Forest attempted to lease for oil and gas development very large portions of roadless areas on the eastern half of the Wyoming Range, despite the presence of important wildlife habitat and extraordinary recreation and hunting opportunities. While this leasing is currently on hold, the threat to these roadless areas still exists.

Nationwide, the percentage of national forest roadless areas where road construction is allowed under current management plans is almost 59 percent. USDA Forest Service, 2000, at A-4.

Clearly, most roadless areas on Forest Service land are not being protected under current land and resource management plans. Given the very high value of roadless areas (discussed in section I above), a strongly protective roadless rule is needed. We believe the Existing Rule serves this function very well by generally protecting roadless areas from logging and road construction, while providing for limited exceptions in certain, narrowly defined circumstances, such as emergencies involving public safety.

III. CONSERVATION OF ROADLESS AREAS IS CONSISTENT WITH, AND NECESSARY FOR, FULL REALIZATION OF, THE FOREST SERVICE'S MULTIPLE USE MANDATE. Under the Multiple-Use Sustained Yield Act (16 USC 528), the Forest Service is required to provide for the following resources on the national forests: fish and wildlife, outdoor recreation, timber, watershed protection, and range. Some would argue that restricting ground disturbing activities in the nation's roadless areas would contradict this mandate.

However, a quick look shows otherwise. As demonstrated in section I above, roadless areas are important, if not critical, in landscape-level recovery strategies for rare and imperiled wildlife species, especially large carnivores like grizzly bear. (Again, see

³ Another 11 percent of the White River's roadless acreage is assigned to management prescriptions that “are likely to retain some undeveloped characteristics but also to include some motorized [recreation] opportunities”. Id.

Loucks et al, 2003.) Roadless areas are among the least disturbed areas of national forests, so maximum watershed protection is thus provided by protecting roadless areas. These areas also provide excellent opportunities for non-motorized forms of outdoor recreation. Livestock grazing can also be done in roadless areas. In sum roadless areas provide outstanding quality for two of the multiple uses and good quality for two others.

We argue further that protection of roadless areas is required to fulfill the wildlife and fish multiple use. As is clear from various scientific reports, a few of which are quoted or cited in section I above, roadless areas are essential as the last refuges for some wildlife species. The proposed new rule would provide absolutely no protection for roadless areas, thereby allowing these areas to be roaded, logged, or otherwise desecrated. The Forest Service would risk destroying important refugia and habitat connectivity at the landscape scale, and would thus not fulfill its statutory mission to protect wildlife, including the mandate to “maintain viable populations of existing native...vertebrate species” (Planning Regulations at 36 CFR 219.19).

IV. THE PROPOSED RULE HAS MANY SERIOUS FLAWS.

A. THE PROPOSED RULE WOULD DO NOTHING TO PROTECT ROADLESS AREAS AND WOULD THUS PERPETUATE THE CONTROVERSY OVER THEIR MANAGEMENT. One of the advantages of the Existing Rule is that it addresses the controversy over management of roadless areas by mandating their protection, with a few narrowly tailored exceptions for valid existing rights, threatened and endangered species habitat, public safety, etc.

The opening sentence of the Preamble to the Proposed Rule states that the “Forest Service is proposing changes” to the Existing Rule. 69 Fed Reg 42637. That is an extreme understatement, as the Proposed Rule would abolish the protections in the Existing Rule. We see nothing in the Proposed Rule that would require any protection whatsoever for roadless areas.

This contradicts a previous commitment made by the current Administration:

On May 4, 2001, the Secretary of Agriculture expressed the Administration’s commitment to the objective of conserving inventoried roadless areas in the NFS...

To meet this objective, management of inventoried roadless areas must address those activities having the greatest likelihood of altering, fragmenting, or otherwise degrading roadless area values and characteristics.

Preamble to the Proposed Rule at 69 Fed Reg 42637. Another section of the Preamble states:

USDA is committed to conserving and managing roadless areas and considers roadless areas an important component of the [National Forest System].

69 Fed Reg 42638.

The Proposed Rule totally fails to meet this commitment to protect roadless areas, as another section of the Preamble admits:

The environmental impacts of revising [the Existing Rule] are essentially those disclosed and discussed for the no action alternative displayed in FEIS.

Preamble at 69 Fed Reg 42639. In other words, implementing the Proposed Rule would be the same as having no protection at all for roadless areas.

Indeed, allowing the states to petition the Forest Service concerning management of their respective national forest roadless areas could result in less protection for these vital areas, as there is nothing in the Proposed Rule prohibiting states from requesting removal of even the protections for the small percentage of roadless acreage now protected under existing forest plans. Stated another way, the relatively small percentage of roadless areas in Colorado where road construction is prohibited (see section II above) could shrink even further under the Proposed Rule. This is wholly unacceptable.

Petitioning for reduced roadless area protection is seemingly encouraged by the petition contents listed in the proposed New Rule at 36 CFR 219.12(a)(3). Most of the items listed there require maintaining or allowing actions, such as access to, and maintenance of, public and private facilities, that could harm roadless area values.

Implementation of the Proposed Rule would thus perpetuate the controversy over how best to manage national forest roadless areas. Appeals and lawsuits against destructive projects proposed for roadless areas would continue and probably increase in number. By contrast, the Existing Rule defines protection for these areas, while allowing exceptions in limited, well-defined circumstances.

B. THE PROPOSED RULE IMPROPERLY TRANSFERS RESPONSIBILITY FOR ANALYSIS AND RECOMMENDATIONS FOR MANAGEMENT OF ROADLESS AREAS TO THE STATES. We are concerned that only the states would be allowed to petition the Forest Service to change the existing management of roadless areas. We believe the states must not be given this special privilege. National forests are, as their name implies, *national* in scope and importance. While local input on national forest management is certainly important and should be sought and considered, it must not be allowed to dictate the management of an important national resource such as roadless areas, nor can it be given ultra high priority in determining such management.

The states will have mainly local perspective – how roadless area management affects that particular state or a part of it. The states generally would not advocate management of roadless areas based on their national or continental importance for protecting biological diversity. The Proposed Rule’s goal of “allow[ing] for the recognition of local situations and resolution of unique resource management challenges within a specific State” (69 Fed Reg 42638) cannot be the only consideration or even the prime consideration for determining management of roadless areas because of the overriding importance of these areas, as described in section I of these comments.

If a state’s petition was accepted, the Forest Service would be directed to “coordinate development of the proposed rule with the State”. Proposed Rule at 36 CFR 294.15. Again, this gives the states too big a role in determining management for areas of national importance. The undersigned question whether this would comply with various laws that govern national forest management.

C. THE PROCESS FOR PETITIONING TO PROTECT ROADLESS AREAS WOULD BE CUMBERSOME. Under the Proposed Rule, the states would have to fill in a long list of information items in order to have a chance of having a petition accepted by the Forest Service. The required information would include:

(4) A description of how the recommended management requirements identified in accordance with paragraph (a)(2) of this section differs from existing applicable land management plan(s) or policies related to inventoried roadless area management, while still complying with applicable laws and regulations...

Proposed Rule at 36 CFR 294.13.

In other words, any state submitting a petition would have to become an expert in the laws and regulations applicable to national forest management. The state would also have to describe the possible effects on wildlife from the management change being advocated in the petition. 36 CFR 294.14(a)(6).

Essentially, the states would be asked to do the Forest Service’s work with regard to roadless areas. The Forest Service must not delegate the responsibility for assessing the condition, and proposals for management, of roadless areas to the states.

All of the information required would all have to be submitted in a mere 18 months from the time the new rule becomes effective. Proposed Rule at 36 CFR 294.12. It is unlikely that states, many of whom are extremely short on funds, would have the staff and money to prepare petitions within the next 18 months.

D. THE FOREST SERVICE WOULD HAVE TOTAL DISCRETION TO REJECT ANY PETITION. Even after a state exerted the major effort required to petition the

Forest Service as described above, there is no requirement that the agency accept or rule on the petition in any way. There are also no standards or criteria for how the agency would decide whether to accept or reject a petition. See the Proposed Rule at 36 CFR 294.13.

If a state's petition was accepted, "the Forest Service shall be directed to initiate notice and comment rulemaking to address the petition". 36 CFR 219.15. However, there is no guidance on how this rulemaking process would be conducted. Most Forest Service officials, especially those in ranger district and forest supervisor offices, have little or no experience in rulemaking procedures.

E. THE PROPOSED PETITIONING PROCESS IS UNNECESSARY. States and other members of the public at large can petition the Forest Service under the Administrative Procedures Act (5 USC 552) to modify management of national forest lands. There is thus no need for the process now under consideration.

F. THE EFFECT OF ACCEPTED AND APPROVED PETITIONS ON FOREST PLANS IS NOT DISCUSSED. Any petition that was accepted and approved would change the management of certain areas of one or more national forests within the state filing the petition. Under existing regulation, land and resource management plans prescribe the management of all areas of their respective national forest(s). Would Forest Plans automatically be amended after the Forest Service approved a petition? Would such amendments conform to the existing process for amending forest plans? (See 36 CFR 219.10(f).) How would disclosures required by the National Forest Management Act be provided? (See further discussion in sections V and VI below.) There is no mention of this problem in the Proposed Rule or its Preamble, let alone any direction for addressing it.

V. THE FOREST SERVICE MUST CONDUCT PUBLIC HEARINGS ON THE PROPOSED RULE AND EXTEND THE COMMENT PERIOD. The original Roadless Conservation Rule, issued in 2001, was widely popular. It had overwhelming support across all sectors of American society.⁴ This support was expressed at numerous public hearings held across the country, as well as in a large number of written comments.

With the Proposed Rule, the Forest Service has proposed a radically different outcome for roadless areas. Instead of having a high level of protection, as they do under the Existing Rule, roadless areas would not be protected at all, as discussed above in section IV A. Therefore, the Forest Service must hold public hearings on the Proposed Rule. We

⁴ The Preamble to the Existing Rule states that about 16,000 people attended 187 meetings after the Notice of Intent to prepare a roadless rule was published. It further notes that about 23,000 people attended 430 meetings on the proposed roadless rule, and that there were approximately 1.1 million responses to requests for comments after the draft rule was published. 66 Fed Reg 3248, January 12, 2001. It is our understanding that these comments were overwhelmingly in favor of protecting roadless areas.

recommend conducting at least as many hearings as were held on the Existing Rule. Concomitantly, the comment period for the Proposed Rule should be extended to a date that is at least a few weeks after the last public hearing.

VI. THE FOREST SERVICE MUST UPDATE THE ENVIRONMENTAL IMPACT STATEMENT FOR THE NEW PROPOSED RULE. The 2000 final environmental impact statement for the Existing Rule assumed that some type of protection for roadless areas would be implemented. It did not envision a process even remotely similar to the Proposed Rule. Therefore, the FEIS must be supplemented before the Proposed Rule is finalized. There must also be sufficient time for public review and comment on an updated EIS before a new rule similar to the one proposed is finalized. Failure to do so would constitute a violation of the National Environmental Policy Act.

If the Forest Service continues to pursue the Proposed Rule, the updated EIS must include alternatives to the petition process described therein. These could include, but not necessarily be limited to: A) an alternative that would retain the Roadless Rule but allow individual states to petition for changes to it, an alternative the administration itself has suggested in earlier announcements; B) an alternative that would retain the Roadless Rule but allow individual states to ask that particular areas be deleted from or added to protection under the Rule; C) an alternative that would allow non-governmental organizations and ordinary citizens to petition for changes in roadless area management in any state; D) an alternative that would make the petition process more accessible to any party, and require only that the petition identify clearly the roadless area, the recommended management of it and the rationale for the recommendation.

Failure to update the EIS would likely violate the rational decision-making requirements of the Administrative Procedures Act by failing to articulate a rational basis for reversing the protections provided by the Roadless Rule in light of the well-articulated rationale for those protections set out in the original Roadless Rule EIS.

VII. CONCLUSION. The Proposed Rule is unnecessary and totally inappropriate, and must not be implemented. It would provide absolutely no protection for a critical national resource, and would allow or even encourage reduction of the minimal protections now in force for roadless areas under existing forest management plans. The undersigned believe very, very strongly that the Forest Service should implement and enforce the Existing Rule.

If the agency continues to propose a rule resembling the Proposed Rule, it must hold public hearings across the country, extend the comment period, and supplement the Roadless EIS to comply with NEPA.

Sincerely,

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