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WILDERNESS
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The Roadless Rule: A Tenth Anniversary Assessment

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EXECUTIVE SUMMARY

A decade after it was first adopted by the U.S. Forest Service, the Roadless Area Conservation Rule has proven to be remarkably successful in protecting the 58.5 million acres of national forest roadless areas from road building and logging. Only about 75 miles of road building has occurred in the roadless areas – far less than the Forest Service had predicted a decade ago -- and just a miniscule fraction of the unroaded forests has been logged, mostly in Alaska's Tongass National Forest. However, eight years of unrelenting legal, political, and on-the-ground attacks during the Bush administration have taken their toll on the Roadless Rule, especially in Idaho and Alaska, which together hold more than one-quarter of all national forest roadless areas.

While the Obama administration has generally been very supportive of the Roadless Rule, roadless areas continue to face numerous threats from mining, oil and gas drilling, off-road vehicles, and other harmful activities. In addition, conflicting court decisions have created uncertainty about the Roadless Rule's legality, which could be resolved very soon by the Tenth Circuit Court of Appeals. Public support and involvement will be crucial to ensure that national forest roadless areas continue to provide a multitude of environmental and economic benefits to society.

INTRODUCTION

January 12, 2011 marks the 10-year anniversary of the U.S. Forest Service's Roadless Area Conservation Rule. At stake are 58.5 million acres of national forest roadless areas that provide exceptional recreation, wildlife and fish habitat, clean water, and other important ecosystem services to all Americans, along with significant economic benefits. This paper provides quick background on the issue, an assessment of the effectiveness of the Roadless Rule, and a summary of current threats to roadless area conservation.

The bottom line is that, despite a barrage of legal and political attacks, the Roadless Rule has generally succeeded in protecting national forest roadless areas from destructive energy development, mining, logging, and road building. Roadless areas continue to be havens for wildlife, sources of pure drinking water, scenic backdrops for communities, great places for people to recreate, and an increasingly vital part of our nation's defense against global warming. But a crucial court test of the Roadless Rule remains in doubt, with a decision by the Tenth Circuit Court of Appeals in Denver expected soon. And, regardless of the outcome of that case, millions of acres of roadless land in Idaho, Alaska, and Colorado are at risk due to Bush administration efforts to weaken protection in those states. Thus, continued citizen support and involvement are essential to ensure that the Obama administration follows through on its commitment to protect national forest roadless areas.

National Forests and Roadless Areas

Covering 193 million acres in 44 states, the National Forest System is administered by the U.S. Forest Service under a multiple-use statutory mandate. The national forests contain more than 380,000 miles of roads, mostly built in connection with Forest Service timber sales. This vast road network provides access to about 100 million acres of national forest land. The remaining, unroaded forests consist of 35 million acres designated by Congress as wilderness areas pursuant to the Wilderness Act and another 58 million acres of inventoried roadless areas.

HISTORY OF ROADLESS POLICY

Early Roadless Area Policy

The Forest Service has been inventorying, designating, and managing roadless areas for more than 80 years. The agency officially recognized the importance of roadless areas starting in the 1920s, when it inventoried and designated “primitive areas.” A more detailed inventory and management system was developed in the 1930s, protecting certain roadless lands as Wilderness, Wild, or Recreation areas. But controversy over increased logging and road building in unprotected roadless areas during the 1950s led to calls for permanent legislative designation of wilderness.

Following passage of the Wilderness Act in 1964, the Forest Service initiated a nationwide Roadless Area Review and Evaluation (RARE) process to study the wilderness potential of national forest roadless areas larger than 5,000 acres. In the early 1970s, the Forest Service deferred development activities in roadless areas pending further environmental review in response to a federal court decision. In 1977, the Forest Service began a new nationwide roadless area study, called RARE II, which allocated all roadless areas to three categories -- recommended wilderness, further planning, and nonwilderness. However, the RARE II study was again found legally inadequate by the courts.

Congress sought to resolve the controversy in 1984 by designating 6.8 million acres of wilderness in 20 states and temporarily “releasing” the other roadless areas in those states from further wilderness consideration. Management direction for the remaining roadless areas was to be determined through local Forest Service management plans. However, public and scientific concern over logging and road building in roadless areas continued through the 1990s.

Interim Moratorium and the Roadless Rule

During the second term of the Clinton administration, Mike Dombeck was appointed Chief of the Forest Service. A fisheries biologist by training, Dombeck saw the agency’s vast and poorly maintained road system as a major environmental and fiscal problem. In January 1998, Chief Dombeck proposed a temporary moratorium on road construction in

inventoried roadless areas across most of the National Forest System. The Forest Service adopted an 18-month moratorium in February 1999, pending completion of an overall road management policy. Later that year President Clinton instructed the Forest Service to undertake a rulemaking process to provide long-term administrative protection for roadless areas. Over the next 14 months the Forest Service conducted the most extensive public involvement process in the history of federal rulemaking, producing 1.7 million comments. The vast majority of comments favored a strong national policy protecting roadless areas.

Promulgated on January 12, 2001, the Roadless Area Conservation Rule generally prohibited road building and logging in all 58.5 million acres of national forest roadless areas. Exceptions included road building to access non-federal land inholdings and pre-existing mineral leases, while logging was permitted to reduce fire risk or to improve habitat for endangered species. In Alaska's Tongass National Forest, with its 9.3 million acres of roadless areas, the rule allowed some previously planned logging to continue. The rule did not close any roads or trails, limit off-road vehicles, or affect hardrock mining activities in roadless areas.

Court Challenges

The Roadless Rule quickly became the target of multiple lawsuits, including ones by the State of Idaho and Boise Cascade, then the state's largest logging corporation. The newly-installed Bush administration immediately suspended the Rule and failed to mount a serious legal defense. In May 2001, a federal district judge in Idaho issued a preliminary injunction to block implementation of the rule. The Bush administration elected not to appeal the Idaho decision, but a coalition of environmental groups represented by Earthjustice did appeal to the 9th Circuit Court of Appeals and won a reversal of the Idaho district court in December 2002.

In July 2003, however, a Wyoming federal district court disregarded the 9th Circuit ruling and enjoined implementation of the Roadless Rule. As in the Idaho case, the Bush administration opted not to appeal, but environmental organizations appealed to the 10th Circuit. In December 2003, the Bush administration also exempted the Tongass National Forest's 9.3 million acres of inventoried roadless areas from the Roadless Rule through a litigation settlement with the State of Alaska.

State Petitions Rule

In May 2005, the Bush administration replaced the Roadless Rule with the State Petitions Rule. The Petitions Rule repealed the Roadless Rule and gave governors 18 months to submit petitions to the Secretary of Agriculture requesting adoption of special rules governing roadless area management within their respective states. A national advisory committee was established to review the petitions and make recommendations to the Secretary.

Seven states submitted petitions pursuant to the State Petitions Rule. Five of the states – Virginia, North Carolina, South Carolina, New Mexico, and California – asked the Secretary to follow the Roadless Rule in those states. Idaho’s petition, on the other hand, sought protection for less than one-third of the state’s 9.3 million acres. Colorado submitted petitions in November 2006 and April 2007 that proposed less protection than the Roadless Rule.

Roadless Rule in Legal Limbo

In response to adoption of the State Petitions Rule, the 10th Circuit Court of Appeals in May 2005 dismissed the conservationists’ appeal of the Wyoming district court’s decision invalidating the Roadless Rule. At the same time, the 10th Circuit vacated the Wyoming district court’s decision as moot, setting the stage for renewed litigation.

In August 2005, the states of California, Oregon, and New Mexico (later joined by Washington) sued over the State Petitions Rule, and environmental groups filed a similar lawsuit a month later. In September 2006, a federal district court in California enjoined the State Petitions Rule and reinstated the 2001 Roadless Rule. The Bush administration appealed that ruling, but in August 2009 the 9th Circuit Court of Appeals unanimously affirmed the lower court’s decision.

The California decision required the Forest Service to comply with the Roadless Rule in all national forests except the Tongass National Forest, which the Bush administration had previously exempted from the Rule. However, in April 2007 the Forest Service agreed to temporarily defer timber sales in the Tongass roadless areas through settlement of a lawsuit over the Tongass land management plan. The Tongass logging moratorium continued until the Forest Service completed a revision of its management plan in 2008.

In response to the California district court decision, the State of Wyoming re-filed its lawsuit challenging the legality of the Roadless Rule, seeking to revive the injunction on the Roadless Rule that was issued by the Wyoming district court in 2003 and subsequently vacated by the 10th Circuit. In August 2008, the Wyoming federal district court essentially re-issued its 2003 decision invalidating the Roadless Rule and imposed a nationwide injunction prohibiting the Forest Service from implementing the Rule. Conservationists again appealed – this time joined by the Forest Service – and a decision by the 10th Circuit of Appeals is expected soon. In the meantime, however, the Forest Service has been caught between conflicting court decisions and injunctions by the federal courts in California and Wyoming.

Obama Supports Roadless Rule

Unlike the Bush administration, the Obama administration has strongly supported the Roadless Rule and has taken a number of steps to increase protection of national forest roadless areas. In May 2009 and May 2010, Secretary of Agriculture Tom Vilsack issued one-year directives that effectively barred road construction and logging in roadless areas unless he personally approved the activity. The administration also has vigorously

defended the Roadless Rule in the 10th Circuit appeal of the Wyoming court decision, and it elected not to contest the 9th Circuit's decision invalidating the State Petitions Rule. In addition, as discussed below, the administration has sought to shift the management focus of Alaska's Tongass National Forest away from logging of roadless areas and towards forest restoration activities. On the other hand, the administration has defended the Idaho Roadless Rule, and it is still considering whether to support a similar state-specific rule for Colorado's roadless areas.

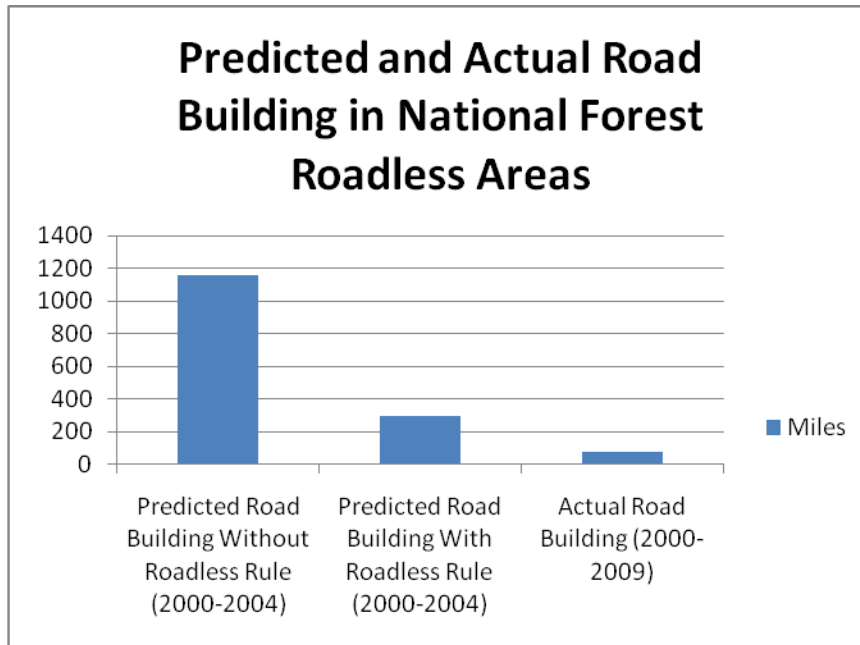
IMPACTS OF ROADLESS POLICY

In the 10 years of its existence, the Roadless Rule has – with some notable exceptions – been very successful in halting the harmful impacts of road building and logging within national forest roadless areas. At the same time, regulatory flexibility built into the Rule has allowed many thinning and other fuels reduction projects to be implemented. The success of the Roadless Rule has had many positive ecological and socio-economic benefits.

Roadless Area Management Since 2001

Road Construction: The Roadless Rule has generally been very effective in preventing new road building within inventoried roadless areas. Since the Rule was adopted ten years ago, only about 75 miles of road construction or reconstruction have occurred.¹ That amounts to an average of seven miles of road per year during the Roadless Rule's decade-long history. In contrast, prior to the Roadless Rule the Forest Service had planned to build 1,160 miles of roads within roadless areas between 2000 and 2004, or more than 230 miles per year. The agency also had estimated that 293 miles of those roads – 58 miles per year – would still be built after the Rule was adopted, due to various exceptions in the Rule such as for access to pre-existing mineral leases.

¹ USDA Forest Service memorandum, "Roads in Roadless Areas – Final Tally, May 31, 2009." Mileage includes 13.3 miles that were approved but not yet constructed as of mid-2009.



The vast majority of the road building was for timber sales or mineral leases that were authorized prior to January 2001 and thus were permitted by the Roadless Rule. Thirty-three miles of roads were built for Tongass National Forest timber sales. Twenty miles were built in Idaho, mostly for phosphate mining in the Caribou-Targhee National Forest. In addition, 26 miles were constructed or reconstructed in Colorado roadless areas, primarily for coal mining. Virtually no road building occurred in roadless areas located in the Pacific Northwest, Southwest, Eastern, or Southern regions of the Forest Service.

Commercial logging: The Roadless Rule has also been effective in stopping commercial logging within inventoried roadless areas. The major exception was in Alaska’s Tongass National Forest, where the Forest Service completed half a dozen timber sales that were “grandfathered” by the Roadless Rule. The Forest Service proposed several additional timber sales in Tongass roadless areas during the past ten years. However, as a result of a 2005 court decision and subsequent settlement of litigation over the Tongass forest plan, the agency agreed to defer most of the proposed logging until the forest plan was revised. Since then, the Obama administration has changed management direction for the Tongass and generally avoided planning new timber sales in roadless areas.

The other notable exception was the Biscuit Fire Recovery Project, which logged 535 acres of inventoried roadless areas in Oregon’s Siskiyou National Forest. The Bush administration initially planned to log 8,173 acres of roadless forest in the Biscuit Project, but public opposition, economics, and other factors caused the Forest Service to scale back the project greatly.

Fuel Reduction: Numerous fuel reduction projects occurred in roadless areas across the country, consistent with the Roadless Rule, to provide community protection by thinning trees, creating fuel breaks, and removing brush. Some projects include commercial logging where thinned trees have economic value, while others combine mechanical

treatment with prescribed fire. Following are some examples of fuels and fire safety projects that occurred in roadless areas throughout the State of Idaho prior to adoption of the state-specific Idaho Roadless Rule in 2008 (see Current Threats and Issues):

- To protect the Bonners Ferry municipal watershed, 420 acres were logged to thin dense mixed conifers at the edge of two roadless forests along Myrtle Creek in the Idaho Panhandle National Forest – without new road construction and with cooperation between the Forest Service, conservationists, the Kootenai Tribe, and local officials.
- A fuel break, ladder fuel thinning, and prescribed fire were used to protect the Silver Creek Plunge private recreation site near Boise. These advance actions gave fire fighters security to do back burns in 2006, at the 42,000-acre Rattlesnake Fire, and to protect all structures.
- The small community of Yellow Pine in central Idaho saw fire at its doorstep in 2006 and again in 2007, when it was surrounded by large fires. A combination of advance thinning and prescribed burning of ponderosa pine lowered fire intensity and provided security to protect all structures.
- The Boise National Forest used prescribed burning at the 1000-acre scale in the Deadwood Roadless Area to restore historic conditions and fire resiliency in ponderosa pine. In contrast, during the mid-1990s a logging project was slated to cut 16,000 acres and to build 11 miles of road into this roadless area.
- Near the community of Salmon, a cooperative group including conservationists, county commissioners, and the Forest Service designed a project to improve fire resiliency in a roadless watershed providing clean drinking water to the city.
- Another fuels project was modified near Stanley, to thin forests adjacent to a community and in between the Hanson Lakes Roadless Area – protecting both roadless values and the community.

All of these projects were developed and implemented pursuant to and consistent with the 2001 Roadless Rule. Ironically, since the Idaho Roadless Rule was adopted in 2008, the Forest Service has implemented substantially fewer fuel reduction projects in roadless areas. While Idaho's 2008 Roadless Rule provides less legal protection of its roadless forests, the management record demonstrates that the Forest Service was better able to implement fuel reduction projects using the 2001 Roadless Rule to provide for community and resource protection in Idaho.

Oil and Gas Development. No road building for oil and gas development has occurred within inventoried roadless areas that were leased after January 2001. The Bush Administration issued 327 oil and gas leases covering approximately 340,000 acres of roadless areas, including 179,000 acres in Utah, 87,000 acres in Colorado, and 55,000 acres in North Dakota. However, none of these "gap leases" had progressed to the point of an approved drilling plan before September 2006, when the California federal court reinstated the Roadless Rule and prohibited the Forest Service from building roads to access the 327 oil and gas leases. While the Rule does not prohibit oil and gas leasing or development, it does require that development activities be done without building new roads.

Prior to 2006, the Forest Service opted not to issue oil and gas leases in some roadless areas due to strong public and political opposition. In September 2004, the Forest Service withdrew leasing proposals in the Wyoming Range of the Bridger-Teton National Forest that included 92,000 acres of roadless land. In California's Los Padres National Forest, the Forest Service considered leasing 523,000 acres of roadless land, but decided in August 2005 to prohibit leasing altogether on 485,000 acres and require no surface occupancy (i.e. slant drilling only) on the remaining 38,000 acres. Overall, the amount of economically recoverable oil and gas in roadless areas only amounts to several weeks or months worth of total U.S. demand.²

However, a notable road building project occurred in Colorado roadless areas as part of the Bull Mountain natural gas pipeline construction project. The Forest Service and Bureau of Land Management authorized eight miles of road building along a right-of-way for the pipeline. Conservationists challenged the project based on violation of the Roadless Rule, but the Forest Service successfully argued that the access road was not technically a road but a "linear construction zone" and therefore was not covered by the Roadless Rule's prohibition.³

Ski Area Development. In Washington State, 21 acres were logged for the purpose of adding a downhill ski slope for the White Pass Ski Area. The Forest Service successfully defended the logging in a lawsuit that alleged violations of the Roadless Rule.⁴ The court deferred to the agency's view that the logging activity was permitted under the Rule's exception for logging that is incidental to an otherwise allowed activity (building a ski slope).

Off-Road Vehicles. The Roadless Rule did not prohibit or otherwise limit use of off-road vehicles (ORVs) in roadless areas. Unmanaged, unplanned, or badly planned ORV use has created a multitude of unauthorized, "user-created" routes throughout the nation's forests, leading to widespread ecosystem impacts and degraded recreational experiences for other recreationists. Former Forest Service Chief Dale Bosworth identified unmanaged recreation as one of the leading threats to the national forests, and in November 2005 the agency initiated a travel planning process aimed at prohibiting cross-country ORV travel and designating specific routes for ORV use.

Since 2005, the Forest Service has eliminated cross-country ORV travel on more than 30 million acres of national forest lands, in both roadless and roaded areas, and has decided not to include more than 30,000 user-created routes in the designated system. However, the travel plans vary widely in their designation of ORV routes within roadless areas; for example, travel plans proposed in Nevada are significantly less protective than those in New Mexico. Moreover, even in national forests that have adopted more restrictive

²Morton, P., C. Weller, and J. Thomson. 2002. Energy and Western Wildlands: A GIS Analysis of Economically Recoverable Oil and Gas. Economic Analysis. Washington, DC, The Wilderness Society. <http://wilderness.org/content/energy-wildlands-economic-analysis>

³ Wilderness Workshop v. United States Bureau of Land Management, 531 F.3d 1220 (10 Cir. 2008).

⁴ Hogback Basin Preservation Ass'n v. U.S. Forest Service, 577 F. Supp. 2d 1139 (D. Wa. 2008).

travel management plans, ORV damage often continues due, in part, to inadequate funding for enforcement.

Social and Economic Impacts

Roadless areas provide social and economic benefits worth billions of dollars each year. An economic study completed in 2000 found that roadless lands nationwide can be expected to generate almost \$600 million annually in recreation benefits -- including activities such as hiking, hunting, fishing, camping, wildlife watching and biking -- and nearly 24,000 jobs. The study also estimated up to \$1 billion in carbon sequestration services and \$490 million in waste treatment benefits.⁵

In 2006, an economic study of New Mexico's 1.6 million acres of roadless areas yielded similarly impressive findings. Annual economic benefits range up to \$42 million for maintenance of water quality, \$24 million for carbon sequestration, and \$26 million for outdoor recreation, along with 938 jobs and \$23 million in personal income.⁶

Another, more recent study by university and Forest Service economists found that New Mexico's roadless lands are a significant and positive determinant of house value. After controlling for the presence of Wilderness Areas and other characteristics, results indicate that, on average, there is a 5.6% gain in the property value of a house from being located in, or adjacent to, a Census tract with roadless areas. In the aggregate, this gain represents 3.5 percent of the value of all owner-occupied units in New Mexico, amounting to \$1.9 **billion** in capitalized value, or an annualized value in perpetuity of \$95 million, assuming a 5 percent interest rate.⁷

In addition, a study in Montana found that roadless area protection would have minimal impact on the state's timber industry, resulting in 10-20 fewer jobs. The Forest Service came to similar conclusions regarding the Roadless Rule's nationwide impact. The Montana study also estimated that shifting management emphasis to forest restoration would produce 705-825 new jobs, or 35 times the potential job reduction in the timber industry.⁸

⁵ Loomis, J.B. and R. Richardson, Economic Values of Protecting Roadless Areas in the United States, June 2000. <http://www.wilderness.org/Library/Documents/upload/Economic-Values-of-Protecting-Roadless-Areas-in-the-U-S-Loomis.pdf>

⁶ Berrens, R., J. Talberth, J. Thacher, M. Hand, Economic and Community Benefits of Protecting New Mexico's Inventoried Roadless Areas, September 2006. <http://www.sustainable-economy.org/uploads/File/Final%20Report.pdf>

⁷ Izon, G., M. Hand, R. Fontela, R. Berrens, The Economic Value of Protecting Inventoried Roadless Areas: A Spatial Hedonic Price Study in New Mexico, Contemporary Economic Policy, October 2010, vol. 28, issue 4, pages 537-553. <http://economics.thacher.us/Home/teaching2/survey-of-environmental-and-natural-resource/papers/hedonic-1/German%20Izon%20Manuscript.pdf>

⁸ ECONorthwest, Protecting Roadless Areas and Montana's Economy: An Assessment of the Forest Service Roadless Initiative, January 2001. <http://www.wilderness.org/Library/Documents/upload/Protecting-Roadless-Areas-and-Montana-s-Economy.pdf>

Ecological Impacts

National forest roadless areas provide many outstanding ecological benefits. For example, according to studies by Trout Unlimited, roadless areas represent most of the last best coldwater fish habitat left in the United States. Undamaged by roads and other development, the headwater streams and rivers that flow through them offer some of the last refuges for many of the West's native fish. As a result of road-related impacts elsewhere, the vast majority of remaining healthy populations of native trout are found on unroaded public lands, including wilderness areas, national parks and roadless areas. For example, over 60 percent of remaining strong populations of westslope, greenback and Colorado River cutthroat trout are found in roadless areas. Over 76 percent of remaining strong bull trout populations are similarly found in roadless areas.⁹

Preserving intact roadless areas is also vitally important for conserving biological diversity because they fill gaps in our reserve system and provide landscape connectivity. Recent scientific studies show roadless areas include lands not already well represented in national park or wilderness protection, such as low-elevation ponderosa pine. Roadless lands connect with other protected lands to establish large, disturbance-resilient habitat blocks and protect rare vegetation communities. These large habitat blocks are relatively abundant in plant and animal species, individuals of a given species, species with large home ranges, species sensitive to human activity, and intact ecosystem processes.¹⁰

Roadless areas play a key role in our nation's defense against the impacts of global climate change. They act as an environmental insurance policy, providing the last best hope to keep ecosystems intact. During the coming decades, wildlife will need intact migration corridors in order to survive climate change. Roadless forests are more naturally resilient to wildfires, which are expected to become more frequent as annual fire seasons lengthen. Roadless watersheds will ease the aquatic impacts of intense storms and rain-on-snow events -- such as increased flooding, landslides, and fish habitat destruction -- that are likely to result from climate change. In addition, the mature and old-growth forests in roadless and other protected areas store relatively large amounts of carbon, thus keeping potential greenhouse gases out of the atmosphere.

CURRENT THREATS AND ISSUES

Idaho

Idaho Roadless Rule. Idaho became the first and only state to adopt a separate regulatory scheme for its roadless areas when the Bush administration promulgated the Idaho Roadless Rule in October 2008. The Idaho Rule consists of five "management themes" that cover all of the state's 9.3 million acres of roadless national forest land: Wild Land

⁹ <http://www.tu.org/site/c.kkLRJ7MSKtH/b.3198207/k.DDAA/Roadless.htm>

¹⁰ Wilmer, B. and M. Crist, Roadless Areas: The Missing Link in Conservation, 2002
<http://www.wilderness.org/Library/Documents/upload/Roadless-Areas-the-missing-link-in-conservation.pdf>.

Recreation, Primitive, Special Areas, Backcountry/Restoration, and General Forest. The least protective theme, General Forest, covers 406,000 acres, primarily located in southeast and northern Idaho. General Forest lands receive no protection from logging and are open to phosphate mining. Most of the state's roadless areas – 5.3 million acres – are allocated to the Backcountry/Restoration theme, where logging and temporary road building are allowed for the purpose of reducing fire risk to communities and water supply systems. The Forest Service estimated that 1,000 acres of roadless areas would be logged per year under the Idaho Rule.

Phosphate Mining. The proposed Smoky Canyon Mine expansion in the Caribou-Targhee National Forest of eastern Idaho would develop 1,100 acres in two roadless areas for phosphate mining. J.R. Simplot Company secured preliminary approval in an October 2007 Final Environmental Impact Statement for road construction and strip mining in the Sage Creek and Meade Peak roadless areas. The mine site is five miles from the Wyoming border and 75 miles south of Grand Teton National Park. Phosphate mining exposes toxic selenium to the air, and 17 mines in the surrounding area, including mines operated by Simplot, are current Superfund sites. The mine construction was prohibited under the 2001 Rule, but is permitted under the development exceptions contained in the Idaho Roadless Rule. In December 2010, the 9th Circuit Court of Appeals rejected a lawsuit that sought to block the Smoky Canyon Mine expansion.¹¹

Colorado

Colorado Petition. Besides Idaho, Colorado is the only state for which the Forest Service has proposed replacing the Roadless Rule with a state-specific roadless area management rule. The Colorado petition was originally submitted by then-Governor Bill Owens in November 2006, based on the recommendations of a task force established by the Colorado state legislature. In April 2007, newly elected governor Bill Ritter submitted a modified petition as an “insurance policy” for roadless area protection in case the federal Roadless Rule was invalidated by the courts. The Bush administration issued a proposed Colorado roadless rule for public comment in June 2008. Colorado officials then made further modifications to the proposal and resubmitted it to the Obama administration in April 2010.

The Colorado plan weakens the protections provided by 2001 Roadless Rule in several ways. First, all roadless land located within ski area permit boundaries or allocated to ski area development in Forest Service management plans would be removed from the roadless area inventory and thus be entirely exempt from the Roadless Rule. Second, in addition to exceptions provided by the Roadless Rule, road construction would be allowed for (1) power and telecommunication lines; (2) oil and gas pipeline connections; (3) fuel reduction treatments in the wildland-urban interface; and (4) coal mining, except in the environmentally sensitive Currant Creek roadless area.

¹¹ Greater Yellowstone Coalition v. Lewis, No. 09-35729 (9th Cir., Dec. 23, 2010), <http://www.ca9.uscourts.gov/datastore/opinions/2010/12/23/0935729.pdf>

Coal Mining. The Forest Service is moving ahead with plans to allow miners to construct 2.3 miles of road on 898 acres within the West Elk Roadless Area in order to build methane drainage wells. The Forest Service argues that the road building is allowed by the Roadless Rule since the adjacent area was leased before the Rule went into effect in 2001. In May 2010, the administration approved a request by the mining company to drill 12 methane wells in the roadless area.

Tongass National Forest

Tongass Transition. The degree of threat to the Tongass National Forest's roadless areas has significantly decreased during the past two years. The Tongass National Forest is our largest national forest and contains by far the most roadless land – 9.3 million acres. The Forest Service has consistently overestimated market demand for federal timber in southeast Alaska, and the agency's current plan revision suffers from the same problem. Due to weak demand, high operating costs, and other factors, the Tongass timber program loses millions of dollars each year.

Recognizing the outstanding ecological values and poor economics of logging and road building in the Tongass, the Obama administration has sought to shift the management direction of the Tongass from timber production to collaborative environmental restoration. The current five-year timber sale program for the Tongass largely avoids logging and road building in roadless areas. The administration is bringing federal economic development experts together with state and local officials and stakeholders to develop an economic transition strategy for southeast Alaska communities and workers who have long relied on Tongass timber sales.

However, the success of the Tongass transition and protection of roadless areas are by no means assured. The Tongass is the only national forest that currently has no regulatory protection of its roadless areas, since the Bush administration excluded the Tongass from the Roadless Rule in 2003. Numerous timber sale proposals are still on the drawing boards if Tongass forest policy shifts back toward commodity production.

Wyoming Litigation

The State of Wyoming lawsuit challenging the legality of the 2001 Roadless Rule continues to pose a serious threat to roadless area protection in Wyoming and across the nation. Despite the 9th Circuit Court of Appeals decision in December 2002 upholding the Rule, the Wyoming district court issued a contrary decision in August 2008 along with a nationwide injunction barring implementation of the Roadless Rule. The nationwide injunction by the Wyoming district court has created a conflict between the federal courts (Wyoming versus California), together with much confusion and uncertainty about roadless area management requirements. The Obama administration and conservation groups have appealed the Wyoming case, and a decision by the Tenth Circuit Court of Appeals is expected soon.

Hardrock Mining

The roadless rule does not protect roadless areas against the potentially devastating impacts of hardrock mining. With the prices of gold and other metals on the rise, the level of threat to roadless areas appears to be increasing. In May 2010, the Obama administration allowed a dozen mining projects in roadless areas to move forward, blaming the 1872 Mining Law for tying the administration's hands. In Nevada's 87,000 acre Table Mountain East roadless area, which is contiguous to the Table Mountain Wilderness, three mineral exploration projects have been proposed. Another project has been approved on the same ranger district in the Northumberland roadless area.

These hardrock mineral exploration efforts should follow the highest level of scrutiny under National Environmental Policy Act (NEPA). Yet, categorical exclusions (CEs) have been proposed for many of these projects. The Forest Service should ensure that NEPA is not circumvented while processing these potentially damaging exploration proposals in sensitive roadless areas. Also, the agency should maintain special oversight during exploration and reclamation to ensure that any scars of passage created by new road building and overland travel are minimized.

Roadless Areas Not Covered by 2001 Rule

In addition to the 58.5 million acres of inventoried roadless areas protected by the 2001 Roadless Rule, many other roadless areas exist in the national forests. As the Forest Service updates and improves its roadless area inventories, some of these previously uninventoried areas are being identified. However, the agency has not always chosen to protect the newly inventoried areas. Most notably, in New Hampshire's White Mountain National Forest, the Forest Service has completed or planned several timber sales for newly inventoried roadless areas. [Agency re-inventory of roadless areas bears watching due to differing direction on the re-inventory process across Forest Service regions as Forests engage in upcoming plan revisions.](#)

CONCLUSION

Roadless areas provide numerous environmental and social benefits and are an increasingly important part of our nation's defense against the impacts of climate change and loss of open space. Despite eight years of the hostile Bush administration and multiple attacks – both in court and on-the-ground -- **the Roadless Area Conservation Rule has been remarkably successful in protecting national forest roadless areas.** The Obama administration has taken a much more positive approach toward the Roadless Rule and roadless area protection. However, roadless areas will continue to face serious threats, including weaker state-specific roadless rules and mining projects in Idaho and Colorado, an uncertain transition in Alaska's Tongass National Forest, litigation in Wyoming, oil and gas drilling, increased hardrock mining, and logging in unprotected roadless areas.