

December 5, 2000

Dan Glickman
Secretary of Agriculture
200-A Whitten Bldg
1400 Independence Ave., SW
Washington, D.C. 20250

Michael P. Dombeck
Chief, U.S. Forest Service
201 14th Street, S.W.
Washington D.C., 20250

Re: Roadless Area Conservation Rules

Dear Secretary Glickman and Mr. Dombeck:

The undersigned members of the Idaho State Board of Land Commissioners are responsible for management of Idaho's school endowment lands. We are writing to you as the officials responsible for preparation and publication of the Roadless Area Conservation Rules. Under the recently-enacted Planning Regulations governing land management planning on the National Forests, the "responsible official must provide early and frequent opportunities for state and local governments to participate in the planning process." 36 C.F.R. § 219.44. The responsible official also "must invite and encourage others to engage in the collaborative development of landscape goals." 36 C.F.R. § 219.12. In that spirit, we are writing to express our concerns with the proposed Roadless Area Conservation Rules, with the expectation of starting a collaborative dialogue that may ultimately lead to workable rules that meet the goals of both the federal and state governments. We are concerned that the current, inflexible approach embodied in the proposed rules will ultimately work to the detriment of both the national forests and the states. Before issuing the Record of Decision and publishing the Final Roadless Area Conservation Rules, we request that you respect our concerns and modify the Final Rules accordingly.

A primary concern of the undersigned state officials is the need for explicit assurance that road construction or reconstruction will be allowed across roadless areas when necessary for access to state lands. While the final environmental impact statement (FEIS) contains language recognizing that access across roadless areas is guaranteed by the Alaska National Interest Lands Conservation Act (ANILCA), there is no corresponding reference in the proposed rules. In addition to reflecting the fact that

access to intermingled state lands is guaranteed by statute, the Final Rule should recognize that the granting of permits for construction of access roads is a non-discretionary function that does not require preparation of an environmental assessment or environmental impact statement.

The health of our national forests is another primary concern, since fire, disease, and insect outbreaks on national forest lands can have devastating effects on intermingled and adjacent state lands. The FEIS recognizes that a prohibition on the construction and reconstruction of roads within roadless areas will increase the likelihood of large fires in some high priority areas, and substantially reduce the Forest Service's ability to treat insect and disease problems. FEIS at 3-120, 3-368. We submit that the benefits you seek to derive from a total ban on road construction do not justify the damage that will result from fire, disease, and insect infestations. We urge you to consider modification of the final rule to allow exceptions for road construction when local conditions require the construction or reconstruction of a road to restore and maintain desired ecological conditions. This could be easily done by a simple addition to the exceptions allowing responsible officials to authorize road construction under certain conditions.

The undersigned officials are also concerned about the process the Forest Service has employed in its preparation of the Roadless Area Conservation Rules. Although the Forest Service has committed itself to collaborate with state and local agencies in land management planning, that commitment has not expressed itself in the Roadless Area Conservation Rules. From the beginning, the agency has dictated what was, from our perspective, a pre-determined outcome driven by political concerns. The states were left to submit comments that were ultimately ignored. The result was the very antithesis of a collaborative process, and it led to a very questionable analysis of potential environmental impacts in the FEIS. This failure to pay heed to state and local concerns raises great concerns. When Idaho challenged the scoping process in federal district court, the trial judge dismissed the suit for lack of final action, but warned the Forest Service that it was obligated to give parties an opportunity for meaningful participation. He stated: "[a]n argument suggesting the Court is required to give due deference to agency action and expertise is likely to ring hollow unless the Forest Service does what it says it will do and that is give due consideration to new comments and issues that may be raised both during the draft EIS comment period as well as at the time the final EIS is issued." *Idaho v. United States Forest Service*, Case No. CV99-611 (Feb. 18, 2000).

By ignoring state comments urging a more open process, the Forest Service failed to examine a broad range of alternatives, as required by the National Environmental Policy Act (NEPA). Rather, the Forest Service limited itself to action alternatives that each contained an identical prohibition on the construction and reconstruction of roads within roadless areas. The result of the Forest Service's narrow focus on a particular outcome

was that potential alternatives that would protect roadless areas while allowing access for addressing forest health and other concerns were ignored. We submit that this deficiency should be addressed through a supplemental EIS (SEIS) that includes additional alternatives drafted through collaboration with state and local agencies.

Another concern that could potentially be addressed through collaboration is the fact that the nation-wide scope of the FEIS, combined with the expedition of its preparation, did not allow sufficient time to study and analyze localized impacts that will result from the proposed prohibition on road construction and reconstruction within roadless areas. While on a broad, national scale some of the adverse impacts identified in the FEIS may be acceptable, the same impacts, when examined on a local scale and balanced against potential benefits, may be unacceptable. Since the proposed Roadless Area Conservation Rule purports to impose a permanent land management decision on each roadless area, we submit that the Forest Service is obligated to examine environmental impacts as they relate to each individual roadless area. Otherwise, unacceptable environmental impacts to individual roadless areas are either overlooked or obscured by the broad brush with which the FEIS is painted.

A final concern relates to what were described as "procedural alternatives" in the draft EIS. These procedural alternatives called for additional protections for unroaded areas within the national forests. As noted in the FEIS, the states and others expressed concerns and confusion about the extent and location of such lands. There were also concerns about the environmental impacts that may result from restricting access to such lands, especially when viewed in combination with the restrictions on access to inventoried roadless areas. Rather than address these environmental impacts in a straight-forward manner in the FEIS, the Forest Service essentially ducked the issue by sliding the procedural alternatives over to the Planning Regulations, for which an environmental assessment had already been completed. The result was that the procedural alternatives were enacted as final regulations without an accompanying analysis of their environmental impacts. This was a facial violation of NEPA, and must be addressed.

Although the Forest Service has indicated its intent to issue the Record of Decision and Final Rules by mid-December, 2000, we request that you will consider the benefits to be gained by further consultation, and meet with us to address the concerns raised in this letter. We appreciate your attention to these issues, and look forward to hearing from you in the near future.

