

Statement of Mark Rey
Under Secretary, Natural Resources and Environment
United States Department of Agriculture
Before the Committee on Agriculture
Subcommittee on Department Operations, Oversight, Nutrition, and Forestry
United States House of Representative
Concerning
The Status of the Roadless Area Conservation Rule
June 27, 2002

MR. CHAIRMAN AND MEMBERS OF THE SUB-COMMITTEE:

Thank you for the opportunity to meet with you today to address the status of the Roadless Area Conservation Rule.

This Administration recognizes that inventoried roadless areas contain important environmental values that warrant protection. Appropriate protection and management should be crafted through an open and fair process that addresses the legitimate concerns of states, tribes, local communities, and all others effected by the rule. After a thorough review of the rule that was published in the Federal Register January 12, 2001, and the concerns that had been raised about it, Secretary Ann Veneman announced on May 4,

2001, that USDA would implement the Roadless Area Conservation Rule, but would take actions that would ensure implementation in a responsible, common sense manner consistent with the following principles:

1. Informed decision-making, using reliable information and accurate mapping, and drawing on local expertise and experience through the local forest planning process;
2. Working together, by collaborating with States, tribes, local governments, organizations and individuals through a process that is fair, open, and responsive to local input and information;
3. Protecting forests from the negative effects of severe wildfire, insect and disease outbreaks;
4. Protecting communities, homes, and property from the risk of severe wildfire or other risks existing on adjacent federal lands; and
5. Protecting access to property, by ensuring that States, tribes, and citizens owning property within inventoried roadless areas have access to that property as required by existing law.

On May 10, 2001, the District Court of Idaho preliminarily enjoined implementation of the rule. Based in part on its preliminary April 5, 2001, order, the Court indicated that plaintiff groups were likely to prevail on at least four separate claims under the National Environmental Policy Act including the public review and comment process. This decision has been appealed and is now pending before the Ninth Circuit Court of Appeals. In total, the roadless rule is now the subject of nine lawsuits in six federal district courts and four federal circuits. While several district courts have stayed proceedings pending a decision by the Ninth Circuit, the Administration continues to vigorously defend the rule in the three cases that are proceeding in North Dakota and Wyoming.

Five of these lawsuits have been filed by states (Alaska, Idaho, North Dakota, Utah, and Wyoming), and two other states (Colorado and Montana) have submitted filings in the Idaho litigation. Among the several issues raised, these lawsuits share a common allegation that there was inadequate opportunity for meaningful public review and comment on the roadless rule. In addition to state governments, plaintiffs include the Kootenai Tribe of Idaho, county governments, corporations and a number of organizations representing citizens who use national forests. The plaintiffs also assert that mandated processes for evaluating inventoried roadless area protection and management were ignored, specifically, the forest land management planning process governed by the National Forest Management Act of 1976 and its implementing regulations at 36 CFR 219. The complete list of filed cases including plaintiffs and claims made against the federal government is attached to this statement.

Following the Secretary's stated intention on May 4, 2001, to implement the rule, the Forest Service published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register on July 10, 2001, requesting comments from the public on key issues that have been raised regarding the protection and management of roadless areas. A content analysis report of these comments has just been released. The analysis tries to give a fair representation of the wide range of views submitted, but makes no attempt to treat input as if it were a vote. While the Forest Service will consider relevant comments, the agency did not tally the comments in "for" or "against" categories. Total number of responses is not a required factor for the agency to consider in rulemaking. In fact, when courts have reviewed a final rule, they have focused on whether the rule is a rational exercise of agency discretion, and not on the number of comments for or against the rule.

The content analysis is a catalog of public concerns organized around the questions concerning roadless area management posed by the Department in the ANPR. The analysis of the responses reflects two predominant views of natural resource management and perspectives on decision-making. One view supports environmental protection and preservation with roadless decisions imposed at the national level. Other respondents support responsible resource management of natural resources with decisions made at the local level. Most respondents care deeply about the management of the National Forests and Grasslands, some advocate a hard stance for their positions while others believe a degree of compromise is necessary. The Forest Service will use the ANPR responses in a

measured and responsible way to determine how best to proceed with protecting roadless values.

After the Idaho District Court preliminarily enjoined implementation of the rule, USDA has taken a number of proactive steps to protect roadless values. On June 7, 2001, in order to bring some stability to roadless area management, Forest Service Chief Dale Bosworth informed agency top officials that he would issue interim direction to protect and sustain roadless values until they can be appropriately considered through the forest planning process. These interim directives reserve to the Chief, except in circumstances that are comparable to the exceptions described in the Roadless Area Conservation Rule, the authority to make decisions regarding (a) road construction or road reconstruction until a forest-scale roads analysis is completed and incorporated into a forest plan, and (b) timber harvest until a revision of a forest plan or adoption of a plan amendment that has considered the protection and management of inventoried roadless areas. Originally issued on July 27, 2001, and updated on December 14, 2001, these interim directives are fully consistent with the Secretary's principles identified on May 4, 2001, and responsive to the concerns raised about the rule by local communities, tribes, states, and others.

To date, no road construction, road reconstruction, or timber harvest proposals in inventoried roadless areas have been submitted to the Chief for his approval, nor to the best of my knowledge have any inventoried roadless area entries taken place that would not have been allowed under the Roadless Area Conservation Rule. Newly proposed or approved road construction, road reconstruction or timber harvest projects in inventoried

roadless areas will be fully consistent with the policy direction and delegation of authority contained in the interim directives.

On November 7, 2001, the Forest Roads Working Group (FRWG), an ad hoc coalition of non-governmental organizations representing conservationists and sportsmen, approached the Forest Service and offered to assist in resolving issues related to roadless area management by initiating a good-faith dialogue among a group of interested stakeholders. Chief Bosworth has agreed to provide useful information to the FRWG, ensure Forest Service participation in such a dialogue, and to consider any substantive outcome in any future rulemaking process or policy development that addresses the inventoried roadless area issue.

As you know, Mr. Chairman, through the National Forest Management Act, Congress created a legislative mandate that the Secretary of Agriculture would develop, maintain and revise Land and Resource Management Plans for the management of National Forest System lands. The forest planning process is highly collaborative; involves local, regional, and national interests; and uses the best available forest-level information and maps. National Forests across America have completed plans using this process and fourteen forests have now gone through a second planning iteration and revised their plans. Roadless values are fully analyzed during the land management planning process for future land use allocation. Nationally, there are nearly 24 million acres of Inventoried Roadless Areas allocated to management prescriptions that prohibit road construction and

reconstruction. Of that 24 million acres, four million acres have been recommended for wilderness designation through the land management planning process.

The latest example of a working forest planning process is the Chugach National Forest Plan Revision and Record of Decision (ROD) in Alaska. The revision process, which included widespread public involvement, resulted in a recommendation that approximately 1.4 million acres of the 1.6 million acre (recommendation from the 1984 Forest Plan) Nellie Juan-College Fiord Wilderness Study Area, be allocated by Congress to Wilderness designation. This recommendation is currently pending. Approximately 175,000 acres of the area was not recommended for designation, but the Regional Forester's recommendation was the result of a thorough, collaborative forest planning process.

The Department and the Forest Service are committed to evaluating and appropriately protecting and managing inventoried roadless areas as components of the National Forest System. We fully intend to proceed with the re-evaluation of the Roadless Area Conservation Rule and the protection and management of inventoried roadless areas.

This concludes my statement Mr. Chairman. I would be happy to answer any questions you and the members of the subcommittee may have.