

The Roadless Area Conservation Rule: Preserving the ecological and economic center of the new American West

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Abstract

On January 12, 2001, the U.S. Forest Service under President Bill Clinton issued the Roadless Area Conservation Rule, 66 FR 3244. The so-called "Roadless Rule" banned most road construction and timber harvest on inventoried National Forest roadless areas. Shortly after President Bush took office the Forest Service postponed and then abandoned the Roadless Rule. The Bush Administration has since proposed a roadless area management strategy that values local input over sensible management of roadless areas. As an alternative approach, I recommend that Congress pass a law requiring that the Forest Service manage roadless areas within the framework of the Clinton Roadless Rule. The Bush strategy is less ecologically and economically palatable than the Clinton Roadless Rule, which recognizes the significance of roadless areas in the new West's recreation economy and the realities of fire management. The Bush strategy is also tremendously unpopular, and promises to continue the troubled legal history of roadless area management. A law based on the Clinton Roadless Rule, passed by Congress, would protect ecological and economic values associated with roadless areas, would have popular support, and would be indisputably lawful.

Introduction

The Roadless Area Conservation Rule arose from a long, complex history of increased protection for lands managed by the U.S. Forest Service. In *Wilderness Management: Stewardship and Protection of Resources and Values*, John C. Hendee and Chad P. Dawson summarize the history of wilderness and roadless area protection in the United States (2002). In 1929 the L-20 Regulation established a precedent for protecting wilderness in national forests. It was the first regulation promulgated by the Forest Service that systematically protected wilderness. However, the L-20 Regulation provided protection in name only so was in 1939 succeeded by the U Regulations, which provided wilderness protections closer to those seen today. The U Regulations eliminated many uses considered non-conforming and protections were considered to be permanent. The U Regulations also created the first roadless area designation.

The Wilderness Act of 1964 directed the Forest Service to inventory all the roadless areas in the National Forest System. The Roadless Area Review and Evaluations (RARE I and RARE II), in 1973 and 1979 respectively, documented the inventoried roadless areas which are in dispute today. RARE II inventoried roadless areas total 58.5 million acres. This is roughly 31% of all USFS lands (USDA FS 2001, Jan 12). According to the Forest Service, approximately 2.8 millions acres of inventoried roadless areas have been roaded since (2001, Jan 12). Montana-based attorney David Stewart helpfully notes in the *Oklahoma City University Law Review* that although very little acreage was scheduled to be roaded between 2000 and 2004, 34.3 million acres are managed under plans that permit road construction (2003).

January 12, 2001, in the last days of the Bill Clinton's presidency, the Forest Service issued the Roadless Area Conservation Rule, commonly referred to in the popular press as the Roadless Rule. I will refer to it here as the Clinton Roadless Rule. The Clinton Roadless Rule banned any further road-building or road reconstruction in inventoried roadless areas. Shortly after taking office the George W. Bush Administration postponed implementation of the rule and has since scrapped it entirely.

The Bush Administration has justified its decision with a small number of claims; primarily that a ban on road-building would cripple timber and other extractive industry, hurt the economy at large, and increase risk of fire and other ecological damage in National Forests. The Bush Administration has also expressed a desire to allow states and localities more influence in forest management while permitting more control and flexibility for forest managers.

The Bush Administration claims, however, are incorrect. The Clinton Roadless Rule would not damage industry or the economy, but instead would very likely prove an economic benefit. Fire is actually more likely in roaded areas than roadless areas. Several states have sued the government to either prevent or force the rule's implementation, creating a legal mess. The American people are strongly in favor of the strong roadless area protections in the Clinton Roadless Rule, and strongly opposed to the Bush policy. I recommend that Congress pass a law to manage roadless areas in the manner described in the Clinton Roadless Rule.

The Clinton Roadless Rule

The Roadless Area Conservation Rule (66 FR 3244), referred to here as the Clinton Roadless Rule, was published January 12, 2001. The rule would have explicitly prohibited two activities in inventoried roadless areas of National Forests: road construction and timber harvest. Exceptions to the rule could be made at the discretion of forest managers, but generally only to serve public safety and forest ecology, or to comply with existing legislation such as the General Mining Law of 1872. All other traditional uses in roadless areas are permitted so long as they do not require new road construction.

Bush Administration Roadless Policy

The Bush Administration repudiated the Clinton Roadless Rule almost immediately upon taking office. The rule was officially postponed February 5, 2001 (see 66 FR 8899) and was replaced by interim directives in June of 2001 until the Forest Service could formulate final rules to manage roadless areas (USDA FS 2001, July 10). Since the Clinton rule was scrapped, the Bush Administration has emphasized forest planning with the Forest Service collaborating with state and local interests (USDA FS 2001, Jul 10). The most famous example of this policy in action is 70 FR 25654, published May 13, 2005; which encourages state governors to petition the Forest Service with their forest management recommendations (USDA FS). The Bush Administration has also stressed flexibility and emphasized the need for roads as part of forest management to prevent catastrophic wildfire and insect infestation. The Administration has also shown great concern over the Clinton Roadless Rule's economic impacts.

The Clinton Roadless Rule is ecologically sound

The Bush Administration has, through its roadless policy, expressed concern that the Clinton Roadless Rule may result in unintended ecological damage to roadless areas. Chiefly they cite concerns that a restriction on road building may prevent fire and insect infestation management necessary to maintain forest health and public safety (USDA FS 2001, July 10). These concerns are entirely unfounded. First, the Clinton Roadless Rule does in fact contain provisions (66 FR 3244; CFR 294.12 subpart b, no. 1 and 294.13 subpart b, no. 1) permitting the construction of roads to prevent fire or insect infestations that may have dire consequences to forest ecology, public safety, or private property. Second, in *Fire Management Today*, fire ecologists stated that risk of forest fire and other disturbance is significantly less in unroaded than roaded areas (DellaSala and Frost 2001). Roads create forest openings that introduce increased sunlight and wind, which combine to make the forest drier and more fire susceptible. Increased wind may also knock down many trees. Those trees may also have been weakened by soil compaction

related to road-building and selective logging. Road construction may also introduce invasive plants to the understory that contribute to increased fire risk.

The Bush Administration view also relies on the popular conceit that logging mitigates fire risk. This conceit is, in general, incorrect. The opposite is more generally true. Profitable logging requires that large, fire resistant trees be cut down along with the ladder fuels that many projects in National Forests aim to remove. In addition logging commonly leaves slash piles that are very susceptible to burning. The Sierra Nevada Ecology Project, in a 1996 report before Congress, stated that, "Timber harvest, through its effects on forest structure, local microclimate, and fuels accumulation, has increased fire severity more than any other recent human activity" (DellaSala and Frost 2001, p. 3).

Roadless areas are also strongholds of biological diversity. According to an article published in the *Journal of Applied Ecology*, inventoried roadless areas are more often found a mid to low elevations than wilderness areas and thus protect a greater range of habitats (Crist, Wilmer, and Aplet 2005). In the northern Rockies for instance, most wilderness areas are of the "rock and ice" archetype. In this region roadless areas protect much more of the scarce communities of aspen, whitebark pine, sagebrush, and grassland than wilderness.

The presence of roads in these areas has tremendous ramifications for wildlife. An article in the journal *Conservation Biology* explored the consequences roads have for ecology (Trombulak and Frissell 2000). Sessile and slow moving animals suffer road mortality and mobile animals change their behaviors to avoid roads. Roads alter soil chemistry and erosion patterns, introduce exotics, and bring more humans into the backcountry. Without these stresses ecosystems have a much greater opportunity to be self-sustaining.

The Clinton Roadless Rule is economically sound

The Bush Administration has also expressed concern that the Clinton Roadless Rule would have a significant negative impact on the economy. These concerns are also unfounded. The Clinton Roadless Rule is economically sound. First, the Clinton Roadless Rule will reduce costs associated with road construction and logging in National Forests. Second, job losses associated with the Clinton Roadless Rule are insignificant in the context of the greater economy and in the context of the affected industries. In addition, new jobs created by the Clinton Roadless Rule will likely outweigh those losses. Finally, the Clinton Roadless Rule will protect the new economic engine of the American West, public lands recreation. Economic activity generated by recreation in roadless areas already far outweighs that generated by extractive uses on those same lands.

Costs associated with roads in National Forests are substantial. At the time the Clinton Roadless Rule was promulgated there was a road maintenance backlog of \$8.4 billion in National Forests, and the size of the National Forest road system was five times that of the interstate highway system (USDA Forest Service 2001, Jan 12). In addition, this road system enables a system of deficit logging at the taxpayers' expense.

The final Clinton rule estimated a total loss of 4545 jobs nationally across the timber, mining, and road construction industries as a result of the road construction and timber harvest ban (USDA FS 2001, Jan 12). In the context of our national economy this is utterly insignificant. Even in the context of those industries it is insignificant. In the

state of Montana, for instance, a report prepared for The Wilderness Society estimated that job losses in the timber sector related to the Clinton rule would be equal to 1/10th of 1% of the total timber jobs in the state, or .002% of the total state jobs (EcoNorthwest 2001, Jan; p. 3). The report also noted that the Montana economy creates two to four times as many jobs in a single day as will be lost in the state timber industry. A similar report shows that the Idaho economy produces five times as many jobs each week as will be lost in the timber industry there (EcoNorthwest 2001, Mar; p. 4). Many more jobs may in fact be created by the Clinton rule, in the form of labor-intensive forest management, than will be lost (EcoNorthwest 2001, Jan; p. 11).

Roadless area recreation actually plays a larger part in the economy than the logging and mineral industries that the Bush Administration prefers to play up. The aforementioned report shows that about ¾ of National Forest contributions to GDP and employment are related to recreation (EcoNorthwest 2001, Jan; p. 15). Recreation is a powerful driving force in the economies of the western states. A report prepared by Environment Colorado shows that Coloradans spend about \$200 million each year on recreation-related equipment (Schlesinger n.d., p. 1). Tourists spend \$1 billion each year in Colorado on recreation. Fishing and hunting, activities partly dependent on roadless areas, contribute \$1.5 billion to Colorado's economy. Roadless area recreation alone contributed \$60 million each year to the state's economy (Schlesinger n.d., p. 1).

Perhaps the most significant economic benefit supplied by roadless areas is ecological services. John B. Loomis, an expert on the economics of wilderness at Colorado State University, prepared reports for the Forest Service and The Wilderness Society investigating in part the value of ecological services to the economy (Loomis 2000, Loomis and Richardson 2000). Ecological services include waste treatment, clean air and water, and carbon sequestration. Loomis estimated the value of carbon sequestration in inventoried roadless areas and found that the value of carbon sequestered was between \$490 million and \$1 billion per year (Loomis and Richardson 2000, p. 24). Waste treatment performed by inventoried roadless areas was valued at \$490 million per year (Loomis and Richardson 2000, p. 24). Constructing roads in these areas would greatly diminish their capacity to produce environmental services. Road building and logging can increase erosion by 100-fold, damaging water-filtration capacity (Loomis and Richardson 2000, p. 24).

The Clinton Roadless Rule has popular support

The Clinton Roadless Rule is widely cited as the most popular administrative rule in American history. The Center for American Progress notes that 1.5 million Americans submitted supportive comments during the original formulation of the rule ("What America is Saying..." 2004, July 27). When the Clinton rule was first postponed and then replaced, the Bush Administration was assailed by 1.7 million public comments, 95% opposing the change (Barron 2006, Mar 23). In addition, the Center for American Progress reports that newspaper editorials across the nation have lambasted the Bush Administration's roadless position ("What America is Saying..." 2004, July 27). It is true that nine states sued the government to enjoin implementation of the Clinton rule (Stewart 2003), but it is equally true that the states of California, Oregon, Washington,

and New Mexico have sued to reinstate the Clinton rule, with Montana and Maine filing amicus briefs in support (Schneider 2006, Feb 24).

Congress should pass the Clinton Roadless Rule into law

In its previous incarnation the Clinton Roadless Rule was the product of administrative rulemaking. There are obvious problems with administrative environmental protection which have been illustrated well in this instance. An administrative rule can be re-written by subsequent Administrations with little difficulty. This is exactly what the Bush Administration has done. Administrative rules are also especially susceptible to court challenges. That has also happened in this instance. In *Kootenai Tribe of Idaho v. Veneman*, the Kootenai Indian Tribe and the state of Idaho (among others) challenged the legality of the relatively short comment periods (60 days) permitted by the Forest Service in the rulemaking process, and the Forest Service's refusal to extend the comment period (2002, Dec 12). The District Court ruled in the plaintiffs' favor, but was overruled by the Court of Appeals for the Ninth Circuit.

A more substantial challenge was brought in *Wyoming v. USDA* (2003, July 14). The state of Wyoming argued that in promulgating the Roadless Area Conservation Rule the Forest Service violated the National Environmental Policy Act (NEPA) and the Wilderness Act of 1964. District Court Judge Clarence A. Brimmer reasoned that the Forest Service violated NEPA by its refusal to extend comment and accept the state of Wyoming's offer to serve as a collaborating agency. As this is a violation of procedure and not a problem in the regulation itself, I will consider it no further.

More troublesome is Brimmer's agreement that the Clinton rule violates the Wilderness Act. Brimmer reasoned that by banning road construction and timber harvest in roadless areas the Forest Service was creating *de facto* wilderness, a power the Wilderness Act reserves exclusively for Congress. Brimmer rightly notes that motorized, mineral and gas, and grazing uses are permissible under the Clinton rule but impermissible in wilderness, but argues that the lack of roads would effectively rule out these activities. But in truth only mineral and gas uses are made effectively impossible by a lack of roads. Motorized recreation, for example, does not require roads, merely trails. The "dirt-bike" style of motorcycle could very easily negotiate many if not most trails in wilderness if allowed. Off highway vehicles (OHVs) could do much the same. Yet in wilderness these uses are banned; they are not in roadless areas. Grazing does not necessarily require roads either, though in modern practice most often does.

These legal troubles, however, are costly and undesirable. The problem can be avoided entirely if Congress passes a law duplicating the Clinton rule's protections for inventoried roadless areas. This is an elegant solution because laws passed by Congress are inherently difficult to repeal and because requirements of The Wilderness Act would clearly be satisfied. Via such a law, roadless areas would receive near-permanent protection that would be practically immune from legal challenge. Conveniently enough, there are at present bills in the both the U.S. House of Representatives and the U.S. Senate that would adopt the Clinton Roadless Rule as statute law. I urge that the respective bills, H.R.3563 and S. 2364 be passed by the respective chambers of Congress

as soon as possible. It is the appropriate policy to preserve the ecological integrity of roadless areas in National Forests. It is the more economically sound policy. It is the policy that the American people are demanding of their government.

Works Cited

- Barcott, B. (2005). "As a Matter of Fact, Money Does Grow on Trees" *Outside*. Retrieved 12 Mar 2006 from http://outside.away.com/outide/features/200503/money-and-the-environment_2.html
- Barron, T.A. (2006, Mar 23). "Where the Roads End" *Salt Lake Tribune*. Retrieved 25 Mar 2006 from http://www.sltrib.com/opinion/ci_3632440
- DellaSala, D.A. and Frost, E.J. (2001). An Ecologically Based Strategy for Fire and Fuels Management in National Forest Roadless Areas. *Fire Management Today*. **61**:2, 1-20.
- Clinton, B. (2004, Aug 8). "Nation's Forests might be on a road to ruin." *Los Angeles Times*. Retrieved 12 Mar 2006 from http://www.traditionalmountaineering.org/News_WildernessRoads.htm
- Crist, M.R.; Wilmer, B.; and Aplet, H.G. (2005). Assessing the value of roadless areas in a conservation reserve strategy: biodiversity and landscape connectivity in the northern Rockies. *Journal of Applied Ecology*. **42**: 181-191
- EcoNorthwest. (2001, Jan). Protecting Roadless Areas and Montana's Economy. *The Wilderness Society*. Retrieved 12 Mar 2006 from <http://www.wilderness.org/Library/Documents/upload/Protecting-Roadless-Areas-And-Montana-s-Economy.pdf>
- EcoNorthwest. (2001, Mar). Protecting Roadless Areas and Idaho's Economy. *The Wilderness Society*. Retrieved 12 Mar 2006 from <http://www.wilderness.org/Library/Documents/upload/Protecting-Roadless-Areas-And-Idaho-s-Economy.pdf>
- Hendee, J.C. and Dawson, C.P. (2002). *Wilderness Management: Stewardship and Protection of Resources and Values*. Third Edition. Fulcrum Publishing, Golden, CO.
- H.R. 3563. "National Forest Roadless Area Conservation Act" (2005, Jul 28) *U.S. House of Representatives*. Retrieved 16 Mar 2006 from Lexis Nexis Congressional.

- Kootenai Tribe of Idaho v. Veneman*. (2002, Dec 12). United States Court of Appeals for the Ninth Circuit. Nos. 01-35472, 01-35539, No. 01-35476 Retrieved 10 Mar 2006 from Lexis Nexis Academic.
- Loomis, J.B. (2000). Economic Values of Wilderness Recreation and Passive Use: What We Think We Know at the Beginning of the 21st Century. *USDA Forest Service Proceedings* **15**:2, 5-13. Retrieved 12 Mar 2006 from http://www.fs.fed.us/rm/pubs/rmrs_p015_2/rmrs_p015_2_005_013.pdf
- Loomis, J.B. and Richardson, R. (2000). Economic Values of Protecting Roadless Areas in the United States. *The Wilderness Society and Heritage Forests Campaign*. Retrieved 12 Mar 2006 from <http://65.110.78.8/Library/Documents/upload/Economic-Values-of-Protecting-Roadless-Areas-in-the-U-S-Loomis.pdf>
- Odion, D.C.; Frost, E.J.; Strittholt, J.R.; Jiang, H.; DellaSala, D.A.; and Moritz, M.A. (2004) Patterns of Fire Severity and Forest Conditions in the Western Klamath Mountains, California. *Conservation Biology*. **18**:4. 927-936.
- S. 2364. "Roadless Area Conservation Act of 2006" (2006, Mar 2) *Senate of the United States*. Retrieved 16 Mar 2006 from Lexis Nexis Congressional.
- Schlesinger, J. (n.d.) Economic and Environmental Impacts of Proposed Changes to the Roadless Rule in Colorado. *Environment Colorado*. Retrieved 12 Mar 2006 from http://www.environmentcolorado.org/reports/roadlessrule_impact.pdf
- Schnieder, B. (2006, Feb 24). "Montana Joins Roadless Repeal Lawsuit" *New West*. Retrieved 25 Mar 2006 from http://www.newwest.net/index.php/main/article/motnana_joins_roadless_repeal_lawsuit/
- Stewart, D. (2003). Creating the New American Wilderness in America's "Untrammelled" Backcountry: The Roadless Area Conservation Rule and the Ninth Circuit. *Oklahoma City University Law Review*. **28**:829 Retrieved 11 Mar 2006 from Lexis Nexis Academic.
- Trombulak, S.C. and Frissell, C.A. (2000). Review of Ecological Effects of Roads on Terrestrial and Aquatic Communities. *Conservation Biology*. **14**:1, 18-30
- USDA Forest Service. (2001, Jan 12). 66 FR 3244. *Federal Register*. **66**:9 Retrieved 10 Mar 2006 from Lexis Nexis Academic.
- USDA Forest Service (2001, Feb 5). 66 FR 8899 *Federal Register*. **66**:132 Retrieved 20 Mar 2006 from Lexis Nexis Academic

USDA Forest Service (2001, July 10). 66 FR 35918. *Federal Register*. 66:132 Retrieved 10 Mar 2006 from Lexis Nexis Academic.

USDA Forest Service (2005, May 13). 70 FR 25654. *Federal Register*. 66:132 Retrieved 20 Mar 2006 from Lexis Nexis Academic.

“What America is Saying... About the Roadless Area Conservation Rule” (2004, Jul 27). *Center for American Progress*. Retrieved 12 Mar 2006 from <http://www.americanprogress.org/site/pp.asp?c=biJRJ8ouF&b=131207>

Wyoming v. USDA. (2003, Jul 14). United States District Court for the District of Wyoming. No. 01-CV-86-B Retrieved 10 Mar 2006 from Lexis Nexis Academic.