



Clinton Roadless Rule Strikes Out With Federal Judge in Wyoming

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Last month, Judge Clarence Brimmer of the U.S. District Court of Wyoming struck down the 2001 Roadless Areas Conservation Final Rule (the "Roadless Rule") for a third time, adopting and incorporating his findings of fact in *Wyoming v. U.S. Dep't of Agric.*, 277 F. Supp. 2d 1197 (D. Wyo. 2003), vacated and remanded, 414 F.3d 1207 (10th Cir. 2005) (the "2003 Decision"). This is Judge Brimmer's third decision on the Roadless Rule. This most recent decision further enjoins the Clinton-era Roadless Rule and reiterates his conclusions in that case, and in *Wyoming v. U.S. Dep't of Agric.*, 570 F. Supp. 2d 1309 (D. Wyo. 2008) (the "2008 Decision"), that the Roadless Rule violates the National Environmental Policy Act ("NEPA").

The Roadless Rule, adopted near the end of the Clinton administration, prohibits any road construction and timber harvesting on roughly 58.5 million acres of National Forest lands, in order to "provide lasting protection for inventoried roadless areas within the National Forest System in the context of multiple-use management" 66 Fed. Reg. 3244 (January 12, 2001).

Following the 2003 Decision, U. S. Magistrate Judge for the Northern District of California Elizabeth Laporte reinstated the rule in New Mexico and the western states of the Ninth Circuit in *California ex rel. Lockyer v. U.S. Dep't of Agric.*, 459 F.Supp.2d 874 (N.D. Cal. 2006) (the "California Decision"). Subsequently, in the 2008 Decision, Judge Brimmer granted Wyoming's request for a declaratory judgment against the rule, refusing to limit his injunction to Wyoming. In response to these conflicting court decisions, Secretary of Agriculture Tom Vilsack issued an interim directive in May giving the Secretary decision-making authority, for one year, over any proposed road or timber project located on inventoried roadless areas in any national forest. The purpose of the directive is to provide "consistency and clarity that will help protect our national forests until a long-term roadless policy reflecting President Obama's commitment is developed."¹

¹ "Agriculture Secretary Vilsack Announces Interim Directive Covering Roadless Areas In National Forests," USDA Office of Communications News Release No. 0185.09, available at http://fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5065995.pdf.

In his most recent decision, *Wyoming v. U.S. Dep't of Agric.*, No. 07-CV-017-B (D. Wyo. filed June 15, 2009) (the "2009 Decision"), Judge Brimmer found that neither an intervening change in the controlling law had occurred, nor had previously unavailable evidence been presented that would permit him to amend his prior judgment. *Id.* at 3-4. The Defendants nevertheless argued that the Wyoming District Court was clearly in error to rule in conflict with the California Decision and to issue an injunction "broader than necessary to remedy Wyoming's injuries." *Id.* at 4. Judge Brimmer observed that issues of comity had already been addressed in the 2008 Decision, *see* 277 F.Supp.2d at 1351-1352, and that "limiting the scope of the injunction to Wyoming... would be illogical. The [Roadless] Rule was enacted on a nationwide basis.... If the Rule is illegal, as this court has found it to be, then it is illegal nationwide, just as it was enforced nationwide." 2009 Decision at 5. Judge Brimmer reasserted his conclusion that the violation of NEPA by the Roadless Rule "put *our nation's* forests, not just Wyoming's forests, at risk. That risk of harm is not unique to Wyoming, it is apparent throughout the country.... [and] a nationwide injunction remains the appropriate remedy in this case." *Id.* at 6-7.

The 2009 Decision also denied the Wyoming Outdoor Council's ("WOC") motion to stay the injunction pending appeal to the Tenth Circuit. Judge Brimmer concluded that WOC was not likely to succeed on the merits of its argument and would not be irreparably injured absent a stay of the injunction. *Id.* at 8. Judge Brimmer found the injunction to comport with the public interest in light of the numerous other protections in place for our nation's forests in the absence of the Roadless Rule, the presence of which, in fact, places our forests in peril. "NEPA was designed to ensure that administrative agencies have considered the impacts that a new rule would have on the environment. By violating NEPA, the USDA and the Forest Service neglected to consider all of the potentially negative environmental impacts the 2001 Roadless Rule would pose.... There are no rules or regulations that can prevent the savage of our forests from unruly wildfires and/or destructive beetles." *Id.* at 9.

The appeal of the case was stayed pending resolution of the motions discussed herein and will resume in the Tenth Circuit, while the appeal of the California Decision is pending in the Ninth Circuit Court of Appeals.