

Dale N. Bosworth, Chief  
USDA Forest Service - C.A.T.  
Attention: Roadless State Petitions  
PO Box 221090  
Salt Lake City, UT 84122

Dear Chief Bosworth:

On July 16, 2004, the U.S. Department of Agriculture (USDA) Forest Service (FS) published an Advanced Notice of Proposed Rulemaking - Request for Comments regarding changes to Subpart B of Title 36, CRF Part 294, Protection of Inventoried Roadless Areas (the Roadless Rule). The proposed rule would replace the existing rule with a petition process, providing States, through their Governors, the opportunity to request approval from the Secretary of Agriculture to establish management measures for inventoried roadless areas (IRAs) on National Forest System lands.

Under the proposed rule, States with IRAs can choose to use the petition process established by the rule within 18 months of a final rule. If a petition is accepted and approved by the Secretary of Agriculture, the FS would initiate subsequent State-specific rulemaking for the management of IRAs in cooperation with the State involved in the petition process and in consultation with stakeholders and experts. The U.S. Environmental Protection Agency (EPA) is pleased to offer a summary of our comments below with detailed comments enclosed for your consideration.

National Forests are some of the few remaining lands where roadless values are protected. The FS and others have compiled a large body of information supporting the importance of protecting roadless areas. This body of information is well represented by the statement, "lakes, streams and rivers within IRAs function as biological strongholds for many fish species, provide clean, fresh water to millions of people and serve as important habitat to numerous fish and wildlife species. Also, roads have unavoidable effects on streams regardless of how well they are located designed, or maintained" (USFS, 2000). We outline additional detailed support of the importance of IRAs to water quality and aquatic resources in our detailed comments.

Because IRAs are characterized by high quality or undisturbed soil, water, and air; sources of public drinking water; and diversity of plant and animal communities, EPA has a strong and continuing interest in the management of these lands. The proliferation of roads within the NFS over the last fifty years has been a major contributor to degraded water quality. The impacts of improperly placed, designed, and maintained roads are well documented and a major contributor to identified impaired waters on National Forest System lands ( i.e., impaired water bodies that have been specifically identified by the states under section 303(d) of the Clean Water Act).

Another concern related to water quality and this rule is the management of IRAs and the existing shortfall which exceeds \$8.4 billion for road repair and maintenance of existing roads on NFS lands and the potential impacts for the proposed rule to set the stage for

adding more roads to an already strained road repair and maintenance budget. It is unclear how this rule will impact the FS's ability to repair and maintain existing roads, and ensure that new roads do not lead to further degradation of water quality.

There is great public interest in the qualities that characterize roadless areas that can be adversely impacted not only by poorly placed, designed, and maintained roads, but also by the unrestrained access from those roads. EPA supports planning at various scales, from individual watersheds to ecoregions, depending upon the resources in question. Consistent with the national goal of protecting water quality we believe that it is appropriate for the FS to consider a national policy to address these concerns. In particular, EPA advocates the development of regulations to provide appropriate long-term protection for roadless areas while accommodating state, local, and tribal needs. A national rule for IRA management must have a framework strong enough to ensure its consistent application while allowing the flexibility necessary to meet unanticipated situations and local conditions.

EPA does not believe the proposed rule will resolve the existing controversy about IRA's, or provide the certainty that is needed to protect these areas. Specifically, EPA is concerned about the potential adverse impacts to water quality, aquatic habitat, and aquatic resources should fiscal or time constraints prevent states from using the petition process. Many states are facing extremely serious budget shortfalls and may find it difficult to allocate resources to prepare and submit a petition and implement management measures upon approval. We recommend that the FS undertake an analysis to determine whether states with the majority of IRAs will be able to fund the costs associated with the petition process and implementation of management measures prior to issuing the final rule.

The proposed rule requests comments on the sufficiency of the proposed 18 months for states to submit petitions for management of IRAs. We are concerned that the proposed 18 month time frame may not be sufficient for states to submit management petitions for IRAs. Historically, documents of this type take 2-4 years for data gathering and plan development, and to receive public review and final approval. Proposed state petitions will have to account for complete inventories within the state, input from interested parties and how the lands will be managed. Management of IRAs is often controversial and the FS should consider extending the time allowed for filing a petition to at least 24 months for the development of the petition and for public participation.

As proposed, the rule allows only governors to initiate protections for IRAs; it does not provide a role for federally recognized tribes to participate in, or initiate, the petition process. Pursuant to federal policy, and Section 5(a) of Executive Order 13175 of November 6, 2000, the rule should include provisions for consulting with Native American tribes who face potentially significant impacts from implementation of the rule. This should be addressed in the final rule.

Finally, as requested in the Advanced Notice of Proposed Rulemaking Request for Comments, we have enclosed our detailed responses to the specific questions identified

by the FS. We offer these comments for your consideration as the FS determines the next steps in addressing the long-term protection and management of roadless values within the NFS. We appreciate the opportunity to submit comments and welcome the chance to continue working with the FS as it revises the rule for the management of IRAs on NFS lands. If I can provide additional explanation of our comments please contact me at (202) 564-5400 or Elaine Suriano of my staff at (202) 564-7162.

Sincerely,

Anne Norton Miller  
Director  
Office of Federal Activities