

New Forest Service Roadless Rule Upheld

The Ninth Circuit Court of Appeals has rejected environmentalists' challenges to a new "roadless rule" governing federal lands in Idaho. In *Jayne v. Sherman*, the court found the U.S. Forest Service followed an inclusive, thorough, and transparent process and that its approval of the new rule did not violate the Endangered Species Act or NEPA.

Background.

In 2001, the Forest Service created a "Roadless Rule" that severely restricted road construction and logging on more than 58 million acres throughout the National Forest system. Some states and communities felt disenfranchised by the 2001 Rule. In response, the Forest Service invited states to petition for management adjustments within their borders. Idaho did so and the Forest Service ultimately approved a program (the Idaho Roadless Rule) that would allow increased road building and logging in some areas.

Caribou and Grizzly Bear.

Environmental groups challenged the U.S. Fish and Wildlife Service's biological opinion that the Idaho Roadless Rule would not jeopardize the continued survival of two ESA-listed species, the mountain caribou and the grizzly bear. The court asked whether future road building that would harm listed species was "reasonably certain to occur" under the new rule. The court reviewed the Forest Service's stated goals and future plans, as well as the Service's past performance in protecting habitat for the two species within the "roadless" areas, and upheld the conclusion that harm to the listed species was not reasonably certain.

Road Construction and Logging Estimates.

Next the plaintiffs claimed the Forest Service violated NEPA by underestimating the amount of road building and logging that would result from the Idaho Roadless Rule. To make these estimates, the Forest Service had assembled its history of road and logging development under the 2001 Rule, its existing plans for further such development, and its expectation that flat Forest Service budgets would allow little future activity beyond maintenance, and submitted all of this information to an "interdisciplinary team of experts" that examined the data and developed the projections. The court deferred to the resulting estimates.

Phosphate Mine.

Finally, the plaintiffs alleged the Forest Service's NEPA analysis should have encompassed the impacts of the phosphate mining the Idaho Roadless Rule would allow. The court rejected this argument, citing the rule that NEPA requires full evaluation of site-specific impacts only when there has been an irreversible and irretrievable commitment of resources to the site-specific activity. No such commitment had occurred because under the Idaho Roadless Rule, the Forest Service remains free to turn down specific projects. Here, the only anticipated phosphate mine was in fact studied in a separate EIS.

Jayne v. Sherman indicates that when it follows "inclusive, thorough, and transparent process," even the U.S. Forest Service can prevail in the Ninth Circuit Court of Appeals.

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