Defenders of Wildlife

National Forests

Reinstatement of 2001 Roadless Rule

BRIEF BACKGROUND: In 1/01 the Clinton administration finalized a rule protecting the 58.5 million of inventoried roadless acres on the 192 million acre National Forest System from roads, timber sales, and new mining and oil and gas claims except under limited emergency circumstances. These are the roughly 30% of the national forests that have not yet been roaded and logged or otherwise exploited (50% of the national forests have been) or protected as wilderness (18%). They are also obviously very important habitat for many species, particularly fish and large, wide-ranging, and reclusive species like grizzlies, wolves, lynx, wolverine, and elk.

This "Roadless Rule" quickly attracted 11 lawsuits by states and industry groups to have it overturned. The Rule was first withdrawn by the Bush Administration upon entering office, then allowed to go into effect, then temporarily prohibited from going into effect by a judge in Idaho, then put back in place by the 9th Circuit Court of Appeals in response to an appeal by environmental groups including Defenders, then prohibited again by a judge in Wyoming, then appealed again (to the 10th Circuit Court of Appeals) by environmental groups including Defenders. Before the 10th Circuit ruled on whether to uphold or overturn the Wyoming Court's ruling, the Bush administration replaced the Roadless Rule with a state petition process allowing states to petition the Forest Service on how to manage roadless areas in the state, including by logging them. The Forest Service could ignore state requests (to protect or log roadless areas), however, and if a state did not petition roadless areas would be managed under individual national forest plans (which were the reason the Roadless Rule was needed in the first place - because they did not provide much protection). 4 states (CA, NM, OR, WA) and 20 environmental groups including Defenders sued. Other states (AK, ID, WY) filed briefs in support of the repeal. Still other states (MT, ME) filed briefs on our behalf. And logging and motorized recreation groups intervened in support of the repeal.

Defenders has been a party to all of these lawsuits - intervening with various other environmental groups in all 11 lawsuits against the original Roadless Rule, and one of the 20 groups challenging the Bush Roadless Repeal.

TODAY'S RULING: U.S. District Judge Elizabeth Laporte, in the U.S. District Court for the Northern District of California, ruled today that the Bush Administration's repeal of the Roadless Rule violated the National Environmental Policy Act and the Endangered Species Act. The Bush administration did not analyze under NEPA the environmental impacts of replacing the firm protections of the Roadless Rule with a petition process offering uncertain future protections, choosing instead to call the changes minor administrative actions with no environmental impacts and "categorically exclude" them from NEPA. Likewise, the Bush administration concluded these changes would have no effect on the many endangered and threatened species that rely on roadless areas and therefore did not consult with the Fish and Wildlife Service and NOAA Fisheries their impacts to ESA-listed species.

Judge Laporte ruled, in summary, that the repeal of mandatory protections for roadless areas, combined with years of less protections followed by very uncertain protections that may or may not result from the state petition process, is a substantive change with at least indirect environmental impacts that must be analyzed under NEPA and, similarly, consulted on under the ESA:

"The rule is not merely procedural. Rather, it substantively effects the environment, both by revoking the far-reaching national protections of the prior rule and by instituting in its place a new hybrid management scheme superimposing a completely new state-by-state overlay upon forest plans that allow far more road construction and timber harvesting than the prior Roadless Rule."

Because of her opinion that these changes were substantive and final, she also found that environmental groups and states were harmed by them and that this was an appropriate time to challenge them, and therefore refused to throw out the lawsuit on "standing" or "ripeness" grounds.

Most significantly, Judge Laporte reinstated the Roadless Rule - the government argued that if they lost the judge should just eliminate the state petition process and let roadless areas be managed under the much less protective individual forest plans. The Judge ruled: "Defendants are enjoined from taking any further action contrary to the Roadless Rule without undertaking environmental analysis consistent with this opinion."

FUTURE: This ruling will likely be appealed, if not by the administration then by timber and motorized recreation groups that intervened in the lawsuit. However, the case law in the 9th Circuit is strongly in support of requiring NEPA and ESA on rules like the Roadless Repeal, meaning the ruling is likely to stand unless it is appealed all the way up to the Supreme Court which would take a long time and still have little certainty of success.

RAMIFICATIONS AND RELEVANCE: This case sets important precedents requiring agencies to consider the environmental and ESA impacts of even broad-scale decisions. It is particularly important and relevant to Defenders' case against the rules for planning national forest management under the National Forest Management Act, because we brought similar claims in the same court, and the government challenged our claims in a similar manner.