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Testimony on “*Wilderness and Roadless Area Release Act of 2011.*”
July 26, 2011

By January 2001, inventoried roadless areas had been evaluated for potential wilderness in the planning process for the development or revision of land management plans for all units of the National Forest System. The inventoried roadless areas were evaluated for potential recommendation as wilderness in the plan development and revision processes. Based on site-specific analyses during the planning process and public involvement, management direction was developed for inventoried roadless areas during the planning process that included: (1) protection of wilderness values in relation to an administrative recommendation to Congress that the area be designated wilderness; (2) total or partial restriction of certain uses and development activities such as road construction or timber management; or (3) minimal restrictions to resource management and development actions and other allowable uses.

However, in 2001, via a legally infirm rulemaking, the Clinton Administration fundamentally changed the Forest Service’s longstanding approach to management of inventoried roadless areas by establishing nationwide prohibitions generally limiting, with some exceptions, timber harvest, road construction, and road reconstruction within these areas of the National Forest System. These nationally-applied prohibitions superseded the management prescriptions for inventoried roadless areas applied through the development of individual land management plans as described above, and would not have been able to be revisited through subsequent plan amendments or revisions.

Since the 2001 Roadless Rule’s promulgation, there have been nine lawsuits filed in United States District Courts in Idaho, Utah, North Dakota, Alaska, the District of Columbia, and Wyoming. In fact, Wyoming is still currently involved in active litigation over the 2001 Roadless Rule.

Notably, on July 14, 2003, the U.S. District Court for the District of Wyoming issued a permanent injunction and set aside the 2001 Roadless Rule. The District Court held that the Roadless Rule was both procedurally and substantively unlawful under the National Environmental Policy Act and the Wilderness Act of 1964, in part because the timber harvest and road construction prohibitions constituted the establishment of *de facto* wilderness, and pursuant to the Wilderness Act, only Congress can designate wilderness areas.

In response to the Wyoming District Court's holding, then-Agriculture Secretary Ann M. Veneman proposed a new rule that would establish a process for individual governors to work with the Forest Service to develop locally-supported rules for conserving roadless areas in their respective states. After a lengthy comment period during which 1.8 million comments were received, on May 5, 2005, the State Petitions Rule was issued, replacing the 2001 Roadless Rule.

Some of the key features of the State Petitions Rule include: (1) Governors had until November 13, 2006, to submit a petition to the Secretary of Agriculture for rulemaking; (2) The process was voluntary. If a Governor did not want to propose changes to the existing management requirements for inventoried roadless areas contained in currently approved land management plans, then no petition need be submitted; (3) the Secretary would then establish a national advisory committee to assist with the implementation of this rule. Members of this committee would be representatives of national organizations interested in conservation and management of inventoried roadless areas; (4) the advisory committee members have 90 days to review each petition submitted and provide the Secretary with advice and recommendations, with a response due from the Secretary within 180 days to the state petitioner.

After the State Petitions Rule was promulgated, several states and environmental groups challenged its propriety in the U.S. District Court for the Northern District of California. *See California ex rel. Lockyer v. USDA*, 450 F. Supp. 2d 874 (N.D. Cal 2006). The *Lockyer* District Court held that the State Petitions Rule was also unlawfully promulgated and set it aside. In the meantime, the District of Wyoming's order setting aside the 2001 Roadless Rule was vacated on appeal by the Tenth Circuit Court of Appeals. As a result, the *Lockyer* District Court reinstated the 2001 Roadless Rule. In light of the reinstatement of the Roadless Rule and the vacatur of the State Petitions Rule, on January 12, 2007, the State of Wyoming renewed its challenges to the 2001 Roadless Rule in the U.S. District Court for the District of Wyoming. On August 12, 2008, the District Court once again held that the 2001 Roadless Rule violated the National Environmental Policy Act and the Wilderness Act, and again set aside the 2001 Roadless Rule. After the second District of Wyoming judgment was entered, the Forest Service appealed that decision to the Tenth Circuit Court of Appeals. The case has been fully briefed and argued, and the State of Wyoming has been awaiting a decision from the Tenth Circuit for more than sixteen months.

In 2009, the Secretary of Agriculture withheld final approval of all decisions affecting inventoried roadless areas, even though the Wyoming District Court held that the 2001 Roadless Rule was unlawful. The Secretary has delegated this approval authority to the Chief of the Forest Service. The effective result is that local and regional Forest Service officials cannot approve any forest management activity, such as logging or vegetation treatments, that involves road construction or reconstruction without approval from the Chief and the Secretary of Agriculture. This approval has not been given, despite meetings with the Under Secretary.

The legal wrangling which has ensued has caused substantial impairment to local and state policymakers in addition to local federal land managers, leaving them unable to make sound, responsible decisions related to active forest management. Until the case is decided by the Tenth Circuit Court of Appeals, the Wyoming District Court's setting aside of the 2001 Roadless Rule is the current "law of the land" within Wyoming. However, the question that policy makers and land managers struggle with is how to actively engage in management practices on lands that are designated as inventoried roadless areas. This legal no man's land and the tremendous confusion in Wyoming about the legal authority to take action have resulted in many Forest Service managers electing to take no action, leaving the National Forests effectively unmanaged. As a consequence, and despite the the Wyoming District Court's order holding the Rule unlawful, inventoried roadless areas continue to be treated as *de facto* wilderness areas. As it now stands, for any action to be taken by the Forest Service in an inventoried roadless area, the Forest Service must embark on a lengthy and costly process yielding a document similar to an environmental impact statement, and then ask the Secretary of Agriculture, through the Chief of the Forest Service for final approval. This adds additional layers of unnecessary governmental "red tape," meanwhile, our already stressed forests continue to degrade.

The enacting of the Wilderness and Roadless Area Release Act of 2011 will enable Forest System lands to be freed from the bureaucratic trap in which they are undeniably held. There are hundreds of thousands of acres of Forest System lands designated as inventoried roadless areas that have not been designated as wilderness and were not recommended for designation as wilderness. Yet, these lands continue to be treated as *de facto* wilderness areas with burdensome restrictions placed on development in order to protect the areas' "roadless characteristics." The economic, social, and health consequences to the State of Wyoming are incalculable as our beautiful forests continue to be ravaged by drought, overcrowding, wildfire, and bark beetle epidemics.

Locally, inventoried roadless areas in Lincoln and Sublette Counties total more than 1.4 million acres, or about one-third of the inventoried roadless areas in the State of Wyoming, specifically: (1) the Grey Back Ridge roadless area encompasses 301,136 acres, (2) Gannett Hills Spring Creek encompasses 45,460 acres, (3) South Wyoming Range includes 85,774 acres, (4) Salt River Range encompasses 241,494, (5) Riley Ridge encompasses 4,765 acres, (6) Nugent Park Ham's Fork Ridge encompasses 21,241 acres, (7) North Mountain encompasses 9,798 acres, (8) Munger Mountain encompasses 12,826 acres, (9) Little Cottonwood encompasses 5,468 acres, (10) Lake Alice Commissary Ridge encompasses 166,705 acres, and (11) the West Slope area encompasses 143,248 acres. Further, there are another 30,000 acres of lands classified as roadless on the Ashley National Forest in the Flaming Gorge National Recreation Area. These lands are located in Uinta and Sweetwater Counties to the south of Lincoln County and are used widely by Lincoln County residents.

Local Effects of Current “Roadless” Management:

Critically important to Lincoln County is the Bridger-Teton National Forest (BTNF). This Forest encompasses over 3.4 million acres of some of Wyoming’s most scenic landscape. The Forest is located in western Wyoming in close proximity to Grand Teton and Yellowstone National Parks. In fact, the BTNF is a major component of the Great Yellowstone Ecosystem and is a repository for some of the Nation’s most important natural assets. In 2001, the Secretary of Agriculture identified more than 3.2 million acres of inventoried roadless conservation areas in Wyoming of which 1.4 million acres are in the Bridger-Teton National Forest. Of the 872,739 acres encompassed by the Bridger-Teton National Forest, 80% or 702,594 acres are classified as inventoried roadless areas.

The Bridger-Teton National Forest straddles five Wyoming Counties: Fremont, Lincoln, Park, Sublette, and Teton. In four of these counties (Park County is excluded in the analysis due to its geographic location) over 80,000 residents are employed in more than 60,000 jobs. These workers earn over \$1.75 billion per year with a mean annual wage of about \$29,000. According to a 2004 estimate, personal income in the region totaled approximately \$3.18 billion. This figure includes government transfer payments and investment income as well as labor earnings to residents.

Due to its natural amenities, Lincoln County draws a significant number of outdoor recreation enthusiasts of all types. The County’s economy reflects this, with its high levels of travel and tourism and second home development. Additionally, mineral development has become significantly more important to the region with the discovery of large deposits of natural gas. Moreover, agriculture remains an important part of the regional economy and lifestyle.

In the absence of the clear ability to manage National Forest System lands, Wyoming, and specifically Lincoln County, is losing valuable resources every day.

Wood Products:

A total of 2.8 million board feet (MMBF) of timber was commercially harvested in the five BTNF Counties in 2005. Of this total 1.8 MMBF (62.4%) was harvested in Fremont County, 1.0 MMBF (35.0%) was harvested in Lincoln County, 42,000 board feet (1.5%) was harvested in Teton County, and 23,000 board feet (0.8%) was harvested in Sublette County. These figures represent harvest from all types of land, not just the BTNF.

There were a total of 15 wood product facilities in four of the BTNF Counties in 2005: 6 sawmills, 5 log home operations, 3 log furniture operations, and 1 post and pole operation. With the decline of access to a stable supply of timber, the labor earnings from the lumber and wood products industry declined steadily from approximately \$19.1 million in 1978 to just \$2.0 million in 2000.

Permitted Livestock Grazing:

Data from the U.S. Department of Commerce's Bureau of Economic Analysis indicate that the gross revenue for agricultural operations in the five BTNF Counties was \$153.4 million in 2004. Of this total \$121.2 million (79%) came from livestock operations, \$19.1 million (13%) came from crop production, and \$13.1 million (9%) came from other sources. Clearly, livestock production is critically important to these Counties.

Between 1970 and 2006 the beef cow inventory for the BTNF Counties averaged nearly 120,000 head. During the same time period, 1970 to 2006, the sheep inventory of the BTNF Counties declined substantially. In 1970, the total breeding sheep inventory in the four county area was nearly 200,000 head.

Currently, there are approximately 122 permits to graze cattle and 12 permits for sheep grazing on the BTNF. These grazing permits currently support approximately 39,000 head of cattle and 51,370 head of sheep.

Wildlife and Big Game:

According to the Wyoming Game and Fish Department, the BTNF provides 32 percent of the total seasonal range, 40 percent of the spring/summer/fall seasonal range and 76 percent of the migration corridors for elk in the four county area. Elk, deer, and pronghorn hunting resulted in over 300,000 hunter days annually in the region. This hunting generated \$57.7 million in revenue. The non-local portion of these revenues supported 1,828 jobs and \$26.7 million in labor earnings. The average earnings per job for this employment were \$14,610. Accordingly, the BTNF plays a significant role in supporting this economic activity in Lincoln County.

Fishing is estimated to represent about 4.3 percent of the 2.8 million annual visits to the BTNF. This represents approximately 120,000 annual fishing related visits. Of these visits, 84,000 (70%) were estimated to be by non-local visitors, supporting 100 jobs in the local economy and generating \$2.2 million in labor earnings.

Revenue Impacts:

Revenue impacts felt in Lincoln County include: (1) foregone energy development, yielding less sales and use tax revenues and fewer local jobs; (2) a truly glacial pace of vegetation treatments and logging, again yielding fewer sales and use tax revenues and fewer local jobs; (3) decreased tourism, and its attendant decrease in local economic activity, due to reduced access; and (4) severe economic impacts should catastrophic wildfire destroy large areas of the County and force people from their homes and displace wildlife.

These are the concrete impacts from the current Forest Service management of inventoried roadless areas that Lincoln County faces each year the Forest Service fails to follow the law and

address the serious resource issues after being asked time and time again by local elected officials.

Minerals:

In 2006, in four of the five Counties in the BTNF area, the total mineral assessed valuation was \$5.9 billion. Of that total, natural gas production represented more than 90% of the mineral assessed valuation, crude oil represented nearly 7%, coal represented slightly more than 1%, and sand and gravel represented slightly less than 1%.

The only non-energy mineral production operations occurring in the BTNF are sand and gravel operations and landscape rock production. These commodities are important to two sectors of Wyoming's economy: transportation, where these common varieties are necessary for road maintenance and winter sanding; and the construction sector, where concrete and landscaping stone are employed. Indeed, almost 1.8 million tons of sand and gravel was produced in the region in 2005, employing 232 people.

Energy Resources:

The assessed valuation of natural gas in the BTNF Counties has increased more than 17 times, from \$273.4 million in 1990 to \$4.7 billion in 2006. Currently, 150,587 acres of the BTNF are leased for energy development and the leases for 44,600 additional acres are under appeal. In the BTNF, at least 14 gas wells are currently in production. In 2004, those wells produced 131.0 billion cubic feet, up from 81.5 billion cubic feet in 1987. It is estimated that the 2005 natural gas production on the BTNF had a value of \$822.1 million. Moreover, it is estimated that BTNF natural gas production supported 248 jobs (direct and secondary) throughout the economies of Lincoln, Sublette, and Sweetwater Counties. Labor earnings associated with that employment were estimated to be nearly \$13 million. Tax revenues collected in 2005 from natural gas generated in the BTNF were \$35.7 million in *ad valorem* taxes, \$34.3 million in severance taxes and \$30.8 million in federal mineral royalties for Wyoming. The total tax revenue to Wyoming from the 2005 production was estimated to be \$100.9 million.

Energy Projects:

Energy projects, which hold promise for jobs and revenues in the communities of Lincoln County, have been canceled, put on hold or otherwise reversed, in large part due to the impacts on these inventoried roadless areas. While the Forest Service has repeatedly stated that the 2001 Roadless Rule does not preclude mineral leasing, the process to offer a lease has been delayed time and again without a decision and with the outcome that energy development in Lincoln County has been stymied. Examples of this delay to development include: (1) an environmental impact statement (EIS) supporting a 44,720 acre lease was appealed, reversed, and its analysis revised. Despite that, no decision is slated until December 2012 (Lincoln County does not expect that deadline to be met); (2) a 2008 Geothermal programmatic EIS was approved but the project

was then cancelled in 2010; (3) True Oil's master development plan has been placed on hold; (4) Noble and Plains' exploration development plan has also been placed on hold; and (5) rights-of-way for wind electricity or natural gas are continuously directed away from National Forest System lands.

Visitor Amenities:

In 2005, the estimate for visitor spending in four of the five BTNF Counties was \$682.5 million. These expenditures represent overnight trips to the area that were not of a local commuting nature. Direct employment from travel spending in the four County region was calculated in 2005 to be 8,690 jobs. What these figures demonstrate is that that BTNF is a cornerstone of the local economies. Lincoln County has suffered significant impacts due to the continued implementation of the 2001 Roadless Rule.

Local Access Issues:

Inventoried roadless areas in the BTNF actually contain many roads that provide critical access to homes, recreation, hunting, and livestock grazing permittees. Access to and through the National Forest is essential to the citizens of Lincoln County and other surrounding counties. We have large areas of Forest that are within the "roadless" boundary where there are contour ditches, previous timber harvests, and engineered roads. These areas should not have been classified as "roadless," yet continue to be classified as such. Please refer to Exhibit 1 for a map depicting the Lincoln County areas described.

The limits on land uses in roadless areas are felt throughout Lincoln County. The Lincoln Board of County Commissioners is repeatedly faced with these limits. For example, the Forest Service has undertaken unannounced road closures in the roadless areas, without notifying the county governments, permittees, or the public. In one sadly comical case in the summer of 2008, the Forest Service landlocked a sheep permittee by placing trees across the road. The road closure prevented him from driving out with his sheep after grazing on the National Forest during the summer. In fact, the Forest Service has unilaterally closed many popular forest roads in Lincoln County in the BTNF. Again we find this most often occurs in the inventoried roadless areas, with the effect of denying access to hunters and recreationists as well as ranchers who have grazing permits.

Catastrophic Fire Danger:

Catastrophic wildfire in the BTNF is imminent. At this point, it could be any day when hundreds of thousands of acres of Forest System lands erupt in conflagration. Though direly needed, hazardous fuels reduction projects simply are not conducted in inventoried roadless areas. Moreover, Lincoln County estimates that between 40 and 50 percent of the lands on its National Forests are composed of diseased timber, trees infested with pine beetle, or both. Statewide, by 2010, Wyoming has experienced 3.1 million acres of tree mortality due to bark beetle since the

mid-1990s. Clearly, this is a ticking time bomb that will result in western Wyoming looking like the gates of hell, much like northeastern Arizona did earlier this summer when uncontrollable flames erupted.

The Forest Service has recognized this situation for more than seven years but has not exhibited either the will or the ability to address the threats of catastrophic wildfire. Lincoln County at one point has had to rescind its memorandum of cooperation with Forest Service fire agencies due to the high risk of fire and the agency's unwillingness to conduct fuel management that might mitigate or prevent wildfire.

Had Lincoln County not seen a high snowfall during the winter and a wet spring, there could have been extensive, devastating wildfires already this year. And we are not in the clear just because the moisture levels have increased in the local trees, shrubs, and grasses. Indeed, heavy winter and spring precipitation have increased the amount of on-the-ground vegetation, which, once dried in the summer and fall months, will yield even higher fuel loads that will readily support a wildfire. At the same time, western Wyoming has long suffered from drought, contributing to the current epidemic of pine beetles and related pine diseases. These effected trees are dead or rapidly dying.

As another justification for denying wildfire mitigation projects, the Forest Service points to a perceived need to conserve habitat for Canada lynx. Apparently little or no thought is given to the significant loss of Canada lynx habitat that will occur if western Wyoming suffers the catastrophic wildfire that it is sure to result unless fuel mitigation projects are allowed to go forward. The Forest Service rarely acknowledges the other environmental impacts of wildfires, like soil erosion, noxious weed invasions, and the direct mortality of wildlife, not to mention air quality degradation.

Moreover, the stream degradation that will surely result from wildfire will significantly impact local water supplies. In Lincoln County, the Hams Fork Drainage is the major municipal water supply for five Wyoming towns. When the Forest burns and the watershed is destroyed, where will these municipal residents find domestic water? How will the livestock and wildlife drink? These are issues that remain in the forefront of discussion of which there does not seem to be no satisfactory answers from the Forest Service.

Vegetation Management:

Vegetation management projects that are proposed and actually implemented are very small in comparison to the size of the problem. The salvage and vegetation treatments that are approved involve a scant few hundred acres each, despite that more than a million acres are at risk. It is more alarming that these projects often have been delayed or abandoned altogether. Included is a specific list of local efforts which have been stymied: (1) the LaBarge Aspen treatment was put on hold, revised, and now may be implemented in September 2012; (2) the Pine Creek vegetation treatment has also been put on hold; (3) the Hams Fork vegetation treatment has now

entered a scoping period; (4) the Star Valley vegetation treatment environmental assessment was scoped in 2011 but has resulted in no further movement; (5) the Hobble Creek treatment has been canceled; and, (6) the Pole Creek project was started in 2010 and took more than a year to complete.

Without proper vegetation management, flooding and redirection of stream flow is of crucial concern in many Wyoming Counties. This year, Carbon County experienced an unprecedented amount of water flow causing serious and catastrophic flood levels. It cannot be ignored that much of the Medicine Bow National Forest's timber is dead and those stands that would have mitigated runoff are no longer functioning. Four people have died as a result of the flooding. It is time that the Forest Service take proactive steps regarding vegetation management instead of waiting for more people to lose their lives in unnatural flood events.

Conclusion

With 2,619,816 acres of federal lands in Lincoln County, the local economy depends on multiple use principles that support our existing customs and culture. People do not live and work in Wyoming to go to the opera. We are here because we love to hunt, fish, ride our horses, hike, camp and use our four-wheelers. Certainly most of our photo albums contain pictures of the wide open spaces and breathtaking views, but nearly every picture also contains us. We are hunting. We are fishing. We are hiking. We are moving cows. We are drilling. We are out there. This is truly our custom and our culture, in addition to being a mainstay of our way of life and our way of making a living.

If Teddy Roosevelt and Gifford Pinchot were alive today, they would be appalled at the forest conditions in Wyoming. Consider the following statement from Theodore Roosevelt to the Society of American Foresters in 1903:

“And now, first and foremost, you can never afford to forget for one moment what is the object of our forest policy. That object is not to preserve the forests because they are beautiful, though that is good in itself, nor because they are refuges for wild creatures of wilderness, though that, too, is good in itself, but the primary object of our forest policy, as the land policy of the United States, is the making of prosperous homes. . . Every other consideration comes as secondary.”

“You yourselves have got to keep this practical object before your minds; to remember that a forest which contributes nothing to wealth, progress or safety of the country is of no interest to the Government, and should be of little interest to the forester. Your attention must be directed to the preservation of forests, not as an end in itself, but as a means of preserving and increasing the prosperity of the nation.” (Evergreen Magazine, Winter 1994–1995 Edition).

To close, in the absence of clear statutory authorization to release these areas of land that we call “roadless” that are stuck in federal governmental purgatory, Wyoming County Commissioners continue to be placed in a position with their constituents that defies all reason or common sense. Almost daily, County Commissioners are asked by citizens, “Why can’t we just cut them down and put them to a good use, instead of seeing our beautiful sea of green turn to a dismal black?” Another frequent question is, “What do you mean this area is ‘roadless’ there are several roads already in the forest?”

My fellow County Commissioners and I are asked to answer these questions daily; we are without the ability to give an answer because of inconsistent federal practices and layer upon layer of governmental process. Our Forests are part of our identity in Wyoming, and the wildlife that resides there embodies the spirit of our State. As inventoried roadless areas are being lost simply because of a lack of active forest management, the United States government is doing irreparable harm to our environment, our economy, but more importantly, our state and local customs and culture. This waste is reprehensible and cannot be permitted to continue. The examples provided in this testimony are real and the economics associated with this ill-thought policy are real for working Wyoming citizens determined to make a living and remain in the place where they love.

Only Congress can designate a wilderness area, and with the proposed legislation, we will once again return to the Congressional intent of the Wilderness Act, not the poorly conceived agency rules or the political pressures placed by environmentalists that forever change the Wyoming landscape, and not for the better.