

Committee on Resources

Subcommittee on Forests & Forest Health

Statement

JOHN AYDLETT
SUMMARY OF TESTIMONY--OVERSIGHT HEARING
COMMITTEE ON RESOURCES
SUBCOMMITTEE ON FORESTS AND FOREST HEALTH
AUGUST 12, 2000

RECREATION

When the road closings are limiting disable young and old who have a disability problem, it is restricting their activities but the proposed plan will completely forbid them from the use of the forests.

FOREST INDUSTRIES

Loggers, sawmills, small businesses even down to the gas stations and grocery stores will seriously be downsized or completely put out of business due to the lack of incoming funds because of the restrictions of 60 million acres banned and off limits for commercial industries.

ADJACENT PRIVATE LANDOWNERS

Landowners will be affected based on the locations of the 60 million acres that is being restricted for proper care--namely a cancer diseased forest that we are experiencing today in this nation. It is a known fact that private land with timber has been completely wiped out from the lack of proper care in adjoining wilderness areas. The cancer has grown from national forests to private land.

Blowdown and bug timber if not checked due to the lack of road access and proper treatment will spread to private land. Also, a fire hazard is created by lack of proper management in these roadless areas and could become dangerous like in California, New Mexico and Arizona. Lots of homes in rural areas are located close to national forests.

LOCAL GOVERNMENT

The downsizing of logging has seriously affected local government where they have had to cut their operations in many avenues such as schools and maintaining roads.

having to operate equipment badly needing repairs, keeping ditches open, having an out-of-date library, not being able to pay employees the needed salaries, and there is no end to this hardship. This is based on 22% wilderness areas out of 192 million acres in the United States. Now you take 22% and add 60 million on top of this, 42 million we already have and it makes 102 million which is almost 55% of our national forests will be taken up as isolated land.

The budget of Montgomery County has been drastically cut. The County started this year with \$32,000. Montgomery County is 21% private land and 75% national forest, 4% Corps of Engineers and Ark. Game and Fish Commission land. The Treasurer of Montgomery County has stated that the 21% private landowners paid in 1999 property tax revenue of \$2,508,724.16 while the 75% forest revenue was \$1,615,834.40. It looks like we need more private landowners in Montgomery County and less national forests.

Look at the differences in revenue.

The Roadless Area Initiative is only one of many massive proposals coming out of Washington--the Road Planning regulations, Forest Planning regulations, a new fangled bookkeeping system, (which someone told us "it was not working"), the Chief's Natural Resource Agenda, (which we haven't even heard of), just to name a few. All of these have been unfunded mandates from the Administration that have come at enormous cost to the National Forests. And they have led to a ballooning of the Forest Service Washington Office.

Since 1991, the Washington Office budget has **increased 149%**, from \$121 million to \$302 million, or a \$180 million increase. In this same period, nearly all Forests' budgets have **decreased**, many of them more than 50%. Not only have budgets decreased, but many District Offices have been downsized, consolidated, and some have been virtually eliminated. With its increased budget, the Washington Office has increased its employees by **150%**, while at the same time more than 5,000 to 8,000 jobs have been eliminated at the Forest and District levels, where it is most needed.

THE LAW

In 1964, the public and Congress modified the multiple use philosophy and set up wilderness areas where there would be no roads, a policy that continues today. The 1964 Wilderness Act makes abundantly clear that Congress and Congress only can designate wilderness areas. The Secretary of Agriculture has only the power to study and recommend areas for designation, thus lacks any power to designate areas administratively. Simply stated, wilderness designation is not within the discretion of the Forest Service. This Roadless Initiative states that unroaded areas are to be managed by roadless criteria.

ATTACHMENTS

Montgomery County Treasurer Alvin Black's Revenue Report

Forest Service Council's 14,000 Forest Employees Comment

Legal Review by Karen Budd-Falen and Gus Redmond Michaels III

(Shortened) (Entire Copy sent to Congressman Jay Dickey)

MONTGOMERY COUNTY
Alvin Black, Treasurer
P. O. Box 1103
Mount Ida, AR 71957

June 29, 2000

John Aydlett
P. O. Box 40
Sims, AR 71969

Dear Mr. Aydlett:

Below is the information you requested:

1999 Forest Revenue (includes Forest Revenue payments and

Payment In Lieu of Taxes) - \$1,615,834.40

1999 Property Tax Revenue - \$2,508,724.16

If you have any further questions you can give me a call at 867-3411.

Sincerely,

Alvin Black

MONTANANS FOR MULTIPLE USE
FOREST SERVICE EMPLOYEES COMMENT ON
ROADLESS INITIATIVE

The Roadless Area Initiative: Politics Makes Poor Policy

The Forest Service Council is the legal and elected representative of 14,000 Forest Service employees contained in 92 local Forest Service unions across the country. This represents about 50% of Forest Service employees. The Forest Service Council is part of the National Federation of Federal Employees, and we have recently affiliated with the International Association of Machinists and Aerospace Workers.

Roadless areas have been important to this agency since the Forest Service began. When the National Forest were originally formed in the early 1900's, the land base was largely unroaded. Administrative, fire access, and recreational roads were gradually added. After WWII, the National Forests started supplying timber to meet consumer demands, and from 1950 to 1993, the National Forests produced 10 to 12 billion board feet of lumber a year to supply industrial and residential needs. Road building was necessary for this timber production--eventually as many as 2,000 miles per year. In 1964, the conservation movement, the public and Congress modified the multiple use philosophy and set up wilderness areas where there would be no roads, a policy that continues today. Wilderness areas, wilderness study areas, and other natural areas are now an important part of National Forest management as authorized by the Wilderness Act and the National Forest Management Act.

The current Administration's recent Roadless Area Initiative would preclude any future road planning in areas that have not been previously roaded or managed for timber. Before we comment on this latest proposal we would like to briefly discuss the existing system as it relates to the proposal.

Current and Proposed Situation

The National Forest system contains 192 millions acres. Of this, 42 million acres, or 22%, are currently preserved in wilderness or natural areas where road building and timber management is not allowed. The Roadless Area Initiative, according to the latest figures, will designate another 54 million acres as permanent roadless areas. This is 28% of the land base of the Forest Service. Both these Roadless areas together would comprise 50% of the National Forest land base, and that amount will be withdrawn from multiple use. The impacts would vary greatly, depending on the part of the country involved. Remote areas far removed from population centers, would be impacted the most.

For example, Alaska's multiple use area would be reduced from the current 62% to 7%.

Idaho's multiple use area would be reduced from the current 76% to 31%.

Nevada's multiple use area would be reduced from the current 81% to 26%.

Montana's multiple use area would be reduced from the current 79% to 45%.

Washington's multiple use area would be reduced from 70% to 50%.

Other areas, near large population centers--mainly in the east where there is a larger demand for wilderness areas--would have minimal, sometimes no, additional roadless areas.

Forest Service employees are very proud of existing Wilderness Areas and the wilderness ethic that we have promoted as part of our multiple use philosophy. But as can be seen by the figures mentioned above, the proposed roadless additions are expansive, more than doubling the amount of acres that will no longer be available for multiple use. Such a significant change in policy for our land use deserves more careful consideration, because it will greatly impact the employees and other citizens living on or near Forest Service lands.

As employees, we have concerns about the impacts of such a large and far reaching proposal.

Centralized planning and the removal of science from decision making

We employees are skeptical of Washington bureaucrats' attitude that they know what is best for the rest of us. We are concerned that the Roadless Area Initiative is not being processed as prescribed in the National Forest Management Act (NFMA) or the Wilderness Act. Many of the National Forests are in the process of revising their Forest Plan. This latest initiative has brought some local Forest planning teams to a halt.

It appears that the Roadless Area Initiative is attempting to usurp the authority of the NFMA planning process. NFMA planning is based on the premise that decision making for local areas should be made with site-specific, scientific information for that particular area. But the Roadless Area Initiative is a "one plan fits all" prescription and lumps 54 million acres together that are obviously quite different, both in physical aspects and in social/cultural dimensions.

This initiative has totally bypassed scientific analysis. Forest Service employees find it ironic the Committee of Scientists just finished making their recommendations, and new planning regulations are out for public comment. Suddenly, out of the blue, the Roadless Area initiative comes from Washington, negating the hard work that has gone into the Forest Planning process (as ponderous and bureaucratic as it is!)

Consolidation to Washington with a deemphasis of local Forest Service offices

This Roadless Area Initiative is only one of many massive proposals coming out of Washington--the Road Planning regulations, Forest Planning regulations, a newfangled bookkeeping system, the Chief's Natural Resource Agenda, just to name a few. All of these have been unfunded mandates from the Administration that have come at enormous cost to the National Forests. And they have led to a ballooning of the Forest Service Washington Office.

Since 1991, the Washington Office budget has **increased 149%**, from \$121 million to \$302 million, or a \$180 million increase. In this same period, nearly all Forests; budgets have **decreased**, many of them more than 50%. Not only have budgets decreased, but many District Offices have been downsized, consolidated, and some have been virtually eliminated. With its increased budget, the Washington Office has increased its employees by **150%**, while at the same time more than 5,000 jobs have been eliminated at the Forest and District levels.

Threats of reprisals against employees that voice opinions.

The Union is very concerned about recent threats of reprisal from the Administration toward Forest Service employees who have voiced their concerns about the Roadless Area initiative. It is totally unacceptable for any employee to be threatened by the Administration with retirement if they voice questions about the Roadless Area Initiative. Nor should they be told that they cannot be talking to certain people. Forest Service employees take pride in their public service and professionalism. Forest Service employees should be treated respectfully--most certainly by Forest Service leadership. All employees should be encouraged to have diverse opinions and to use all their skills to solve problems and facilitate public relationship and debates.

Impact on timber production

The Forest Service's non-wilderness areas currently contain about 50% of the country's softwood timber. The impact of the Roadless Area Initiative has yet to be determined, but its impact on timber production will certainly be significant, because it will lock up another 54 million acres. Thirty-six percent of the remaining non-wilderness areas will be removed from multiple use and possible timber production. This will either lower timber production, or it will force more intensive harvesting in areas that are presently being cut. If cutting back or eliminating timber production is what the Administration is really trying to achieve, it should be honest about its intentions, and that should be the focus of this debate. If it is trying to force more intensive harvesting in areas presently being cut, which may be contrary to sustainable forestry practices, increased opposition to timber harvesting would certainly result. Neither of these two avenues is a sound one.

We are asking that a moratorium be placed on this initiative and that all sides initiate honest communication to diffuse this unpleasant situation. Art Johnston, Legislative Committee Chairperson, Forest Service Council, Nat. Federation of Fed. Employees

Forest Service's Proposed Road Building Moratorium
Legal Review Prepared for the American Sheep Industry Association
Prepared by Karen Budd-Falen and Gus Redmond Michaels III
Date: December 17, 1999

I. Introduction

The January 22, 1998, press release by Mike Dombeck, Chief of the Forest Service in which he proposed "a major overhaul of the forest road system including a proposal to halt all road construction in roadless areas on National Forests" and the subsequent Advance Notice of Proposed Rulemaking published in the Federal Register, Wednesday, January 28, 1998, pp. 4349-51 is a policy designed to cripple multiple-use of the National Forest System. An interim policy that "freezes" road construction on federal forests as well as allows conversion of old roads to trails or the decommissioning of "ghost roads," is sure to have profound consequences on persons, who seek to develop their multiple use rights. In fact, the proposed moratorium would create de facto wilderness in all roadless areas since people are denied access needed in order to utilize private inholdings and develop multiple-use rights. A freeze on road new construction amounts to a freeze on most forest uses within roadless areas. Roadless areas are potentially an enormous amount of land within the National Forest System.

If the moratorium adopts this broad definition of roadless, it has the potential of stopping or preventing the improvement of roads in widespread areas throughout the National Forest System.

The method by which the Forest Service attempts to implement a moratorium policy is questionable in both a legal and constitutional sense. First, the proposed moratorium completely undermines the intended forest policy announced by Congress in enacting the Multiple-Use Sustained Yield Act of 1960(MUSYA), 16 USCA **528-31. Second, the moratorium raises serious questions regarding access rights to private inholdings as previously addressed by R.S. 2477, the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), the Federal Land Policy and Management Act of 1976 (FLPMA) and the National Forest Management Act of 1976 (NFMA). Third, the moratorium will cause possible conflicts concerning vested hardrock mineral rights, mineral leases and timber contracts under the General Mining Law of 1872, the Mineral Leasing Act of 1920 (MLA) and the Federal Roads and Trails Act of 1964 (FRTA). These statutes along with various Code of Regulations and Forest Service policies printed in manuals and hand-books recognize rights of ingress and egress to reach private inholdings or natural resource interests located within the National Forest System. Adoption of a flat moratorium on the building new roads within "roadless" areas or preventing improvements to existing ghost roads under Forest Service jurisdiction will greatly frustrate these rights, possibly constituting a "regulatory taking" in violation of the Fifth Amendment of the United States Constitution.

There are four avenues of challenge against this proposed rule:

- (1)The Forest Service is acting ultra vires beyond the scope of its authority because it lacks the authority to prohibit construction of roads within national forest boundaries.
- (2)Proposed Moratorium Denies Recognized Rights of Access.
- (3)The Moratorium Acts as a De Facto Wilderness Designation of All Roadless Areas.
- (4)Denial of Access May Constitute a "Taking" or Breach of Contract.

(1)The Forest Service lacks the necessary authority to adopt the proposed moratorium until Congress authorizes the administration to enact such a regulation. Article I of the United States Constitution provides that legislative power is to be vested in Congress.

(2)The vast expanse of public lands naturally gives rise to the needs of rights-of-way and access across such land. Access to a public natural resources, whether oil, hardrock minerals, timber rights, grazing allotments, scenery or other, is a precondition to the use or enjoyment of that resource.

For existing roads that pre-date FLPMA (1976), Revised Statute 2477 (RS 2477), which began as Section 8 of the Mining Act of 1866, established authority for implied ROWs and easements across public lands. 43 USC *932. Although FLPMA repealed the Mining Act of 1866, it did not revoke or terminate any ROWs or easements which historically existed and were in public use on October 21, 1976. 43USCA *1769(a).

Enactment of the proposed moratorium would result in a de facto suspension of existing ROWs that contemplate future construction within roadless areas or the improvement of an existing ghost road.

FSM 2730.2 "Provide access across National Forest System land to private land that is adequate to secure the owners thereof a reasonable use and enjoyment of their land.

The wilderness ethic seeks to preclude any type of access other than walking on foot.

Federal wilderness areas are only established by an act of Congress. The Wilderness Act of 1964 designated nearly ten million acres. ANILCA designated 56.4 million acres in Alaska and Congress has many subsequent smaller designations over the past ten years.

The Forest Service has jurisdiction over approximately 90 million acres of potentially harvestable forest land which amounts to 18% of the country's commercial timber land. Federal timber policy is guided by three key statutes. The 1897 Organic Act, 16 USCA *473, that establishes general guidelines for managing national timber resources, the Multiple-Use Sustained Yield Act of 1960 (MUSYA), 16 USCA *528, which sets forth a multiple use philosophy to guide forest management and planning, and the National Forest Management Act of 1976 (NFMA), 16 USCA *1601, that mandates extensive planning as a precondition to Forest Service action and imposes substantive limitations on Forest Service discretion over timber harvesting decisions. The 1897 Organic Act, 16 USCA *473, established that national forests were to be administered primarily for timber harvesting and watershed protection. If timber harvesting is considered a primary or multiple use, the proposed moratorium clearly frustrates the MUSYA mandate.

(3)The Proposed Moratorium is an Illegal Creation of DeFacto Wilderness by Administrative Regulation. De Facto Withdrawal. "Withdrawals" are generally considered generic decisions to rule certain activities off-limits on specific tracts of federal lands. The Forest Service is not authorized to frustrate Congress' intent behind the passage of FLPMA by freezing road construction through administrative procedures and agency discretion. The power of withdrawal is reserved by Congress.

The Secretary of Agriculture shall...review...each area in the national forests classified as "primitive" and report his findings to the President. The President shall advise the United States Senate and House of Representatives of his recommendations with respect to the designation as "wilderness"...Each recommendation of the President for designation as "wilderness" shall become effective only if so provided by an Act of Congress. (Emphasis added)

(4)Remedies and Taking of Private Property Under the Fifth Amendment. No person shall be...be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use, without just compensation. U.S. Constitution, Amendment V.

Conclusion: The proposed moratorium on road building within roadless areas has the potential to cripple intensive multiple uses within the National Forest System. Not only is this contrary to the Congressional declaration behind the MUSYA, the Forest Service may lack the enabling power to promulgate such a regulation. Adoption of such a moratorium will have profound adverse impacts on the right of access enjoyed by all forest users. Various forest users have different levels of property interests that are guaranteed a right of access for reasonable use and enjoyment of their interests. The denial of a right of access may constitute an illegal taking of property with just compensation in violation of the Fifth Amendment of the United States Constitution. In other cases, it will place the federal government in breach of contract or lease, not to mention, a possible denial of procedural due process embodied in FLPMA and the FRTA.

JOHN AYDLETT
CHAIRMAN
MONTGOMERY COUNTY ADVISORY COMMITTEE
PRESIDENT
CONCERNED CITIZENS OF THE OUACHITA NATIONAL FOREST, INC.

JOHN AYDLETT TESTIMONY

OUTLINE

- I. AFFECTS OF PROPOSAL ON RECREATION
- II. AFFECTS ON FOREST INDUSTRIES
- III. AFFECTS ON ADJACENT PRIVATE LANDOWNERS
- IV. AFFECTS OF PROPOSAL ON LOCAL GOVERNMENT
- V. BUDGETS VI. DESIGNATION OF WILDERNESS
- VII. ATTACHMENTS A. MONTGOMERY COUNTY TREASURER'S REPORT
- B. FOREST SERVICE COUNCIL'S COMMENT INFORMATION
- C. LEGAL REVIEW (SHORTEN EXCERPTS FROM REVIEW)
(ENTIRE COPY SENT TO CONGRESSMAN JAY DICKEY)

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