

# Committee on Resources

## Subcommittee on Forests & Forest Health

---

### Statement / Witness Testimony

---

Testimony of Carla Boucher, esq.

United Four Wheel Drive Associations

Before the Subcommittee on Forests and Forest Health

on the Effects of the New Forest Service Rules on National Forest Recreation

April 4, 2000

---

Thank you, Madam Chairman, and members of the Committee. I am honored to have the opportunity to testify before you here today. My name is Carla Boucher. I am the attorney for United Four Wheel Drive Associations (United). United is a group of individual, local, state, and provincial four wheel drive enthusiasts from the United States and Canada to South Africa, Iceland, and New Zealand. Our mission is to promote safe, responsible four wheel drive use and to teach conservation principles on recreation. The Forest Service is embarked on a course to prevent access for motorized recreationists on our national forests. Following are a few examples of current Forest Service policies and their negative effect on motorized access. Please remember one main point; the Forest Service is mandated to protect forest health for the purposes of providing for the production of renewable resources under the multiple-use philosophy. <sup>(1)</sup> Unless and until Congress changes the mandate of the Forest Service, all decisions it makes must be to that end - forest health. Despite the fact that the Forest Service claims that each policy it puts forward is driven by forest health, their own facts and figures tell a much different story.

#### **Roadless Initiative**

On October 19, 1999, the Forest Service issued a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) to propose the protection of roadless areas with the National Forest System. <sup>(2)</sup> The President and the Forest Service claim there are 40 million acres of Roadless areas that need "protection" to prevent a loss of wildlife habitat. <sup>(3)</sup> A Forest Service report shows that of those 40 million acres, 36 million have already been found to be nonwild and/or developed, for the past 22 years! <sup>(4)</sup> The report goes on to say, "There is high confidence in these data...". <sup>(5)</sup>

These 36 million acres are already nonwild or developed for the past 22 years, yet the Forest Service now wants to "protect" them. This can only mean one thing. The Forest Service wants to turn these multiple-use areas into de facto wilderness or wild areas and pretend that they are not developed by defining "development" out of existence. By this method the Forest Service can manage these areas as Wilderness, which means no motorized access and no mechanized access. All this is done in the name of protecting that which has not met the criteria for Wilderness protection under the Wilderness Act of 1964 for over 22 years.

[\(6\)](#)

## Transportation Policy

On March 3, 2000, the Forest Service issued a Notice of Proposed Rulemaking for the administration of the Forest Development Transportation System and use of motor vehicles off Forest Service roads. [\(7\)](#) This rulemaking is often referred to as the "Transportation Policy". The Transportation Policy focuses on the Forest Service's desire to decommission unneeded roads. [\(8\)](#) The Forest Service has stated, "there are existing Forest Development Roads, primarily maintenance level 1 and 2, [that are] no longer needed". [\(9\)](#) By their own numbers, Maintenance Level 1 and 2 roads comprise 287,000 miles. [\(10\)](#) The Forest Service further estimates that there are nearly 60,000 miles of uninventoried roads suggested for decommissioning. [\(11\)](#) **The Forest Service is recommending then that a total of 347,000 miles of roads be decommissioned.** They are proposing 77% of all their roads be decommissioned! The Forest Service has also stated that, "recreational road use will grow by 64% by 2045". [\(12\)](#) Therefore, instead of 1.7 million vehicles recreating on 488,000 miles of roads every day, there will be 2.7 million vehicles recreating on just 86,000 miles of roads everyday. [\(13\)](#) Instead of having 3.93 vehicles per mile of road, there will be 31 vehicles per mile of road. This won't just cause a huge impact upon recreation, it will kill recreation.

Therefore, this is not a "transportation policy, this is a NO transportation policy". Yet by their own numbers every road is desperately needed since driving for pleasure has increased 1000% since 1950. [\(14\)](#) In 1998, the Forest Service stated, "Level 2 roads are the capillaries that feed the forest visitors quest for a natural outdoor experience, peace and personal renewal". [\(15\)](#) Further, "these Level 2 roads are highly valued by local users, and closure proposals will become very contentious". [\(16\)](#) One would think that with such insight into the contentious nature of this transportation policy, the Forest Service would work diligently to work cooperatively with the groups that utilize these roads. Yet, what the Forest Service did in fact is work to the exclusion of motorized recreationists by conducting focus group meetings in the Spring of 1999 to "gather detailed ideas about the development of the agency's revised road policy". [\(17\)](#) United Four Wheel Drive Associations, nor any of my companions in the motorized recreation field, were ever notified about such meetings nor were we ever requested to offer our expertise on road use to "develop the agency's revised road policy".

The Forest Service justifies the need for a nationwide overhaul of its transportation policy for three reasons. The first justification is a lack of money. The agency states, "[The] Forest Service has 20% of the funds necessary to fully maintain all 380,000 miles of roads". [\(18\)](#) This has caused an \$8.4 billion maintenance backlog which has prompted the need for a new road management policy. The Annual Maintenance need for all of the system roads in our National Forests is \$600 million. As stated above, the Forest Service gets just 20% of the funds needed or just \$120 million (20% of \$600,000,000 = \$120,000,000). What the Forest Service does not disclose to the public, is that they only requested \$122 million, coincidentally just over 20% of what they truly need. [\(19\)](#) Therefore, the Forest Service only receives 20% of the funds it needs, because it only requests 20% of the funds it needs, making this justification self-created.

The second justification is the need to depend on new science. The Advanced Notice of Proposed Rulemaking (ANPR) stated, "...the need to ensure that decisions associated with roads are informed by current scientific information lead the Forest Service to conclude that it must thoroughly review its road

management policy and develop a comprehensive science-based policy for the future".<sup>(20)</sup> However, the "science-based policy for the future" is based upon science that is decades old. In the Roads Analysis, the cornerstone of the rulemaking, nearly half of all science cited is over a decade old!<sup>(21)</sup> The Roads Analysis directs staff, in conducting the 6 step analysis, to pose and find answers for a series of questions. When assessing the effects of road management on natural integrity, appearance, opportunities for solitude and for primitive recreation, the "current scientific information" that the Analysis recommends for reference is dated 1925, 1930, 1933, 1937, 1949, 1982, and 1994.<sup>(22)</sup> Over 70% of the references given to staff for answering that question is over half a century old! It is clear from this evidence that "new science" is not a priority for the Forest Service.

That leaves the third justification. The Forest Service alleges that environmental damage justifies this transportation policy. One such example of alleged environmental damage is that "Unwanted or non-native plant species can be transported on vehicles and clothing by users of roads, ultimately displacing native species".<sup>(23)</sup> In fact, unwanted or non-native plant species is being spread by hikers, equestrians, and vehicles. But they are also being spread by insects and animals. Therefore, overhauling the transportation system or restricting access will NOT lead to prevention of the spread of non-native plant species.

Another example of alleged environmental damage is that "Roads promote erosion and landslides, degrading riparian and wetland habitat through sedimentation and changes in streamflow".<sup>(24)</sup> However, the President's Clean Water Action Plan, the newest scientific information to address clean water issues in America, directs 5,000 miles of roads be decommissioned on 800 million acres across the country, in response to sedimentation issues.<sup>(25)</sup> Yet the Forest Service proposes closing 347,000 miles, 69 times what the White House calls for. Either the Clean Water Action Plan is grossly flawed or the Forest Service research is grossly flawed.

Finally, the Forest Service states, "Roads allow people to travel into previously difficult or impossible to access areas...".<sup>(26)</sup> But, one of the four elements of the Chief's Natural Resource Agenda is recreation. The goal of the transportation policy is to prevent access to "impossible to access areas", therefore recreation must not truly be a priority. If areas are impossible to access, then they are certainly impossible to recreate upon.

As stated above, the Forest Service justifies the need for a nationwide overhaul of its transportation policy for three reasons. Yet, each of these justifications has serious flaws which calls into question the motivation of the agency and the true state of affairs regarding our National Forest System's roads. The Transportation Policy proposes a "minimum transportation network". When the increasing recreational demand for roads and the reduction of road mileage is compared, it is clear to see that the Forest Service is proposing to shove more and more Americans into fewer and fewer areas, increasing concerns about roads exponentially instead of finding workable answers to the backlog of maintenance. Instead of massive closures, United is proposing to address the maintenance backlog by having more money appropriated for road maintenance and less money appropriated for land acquisition until the lands the Forest Service manage now can be taken care of. We are also proposing that the Forest Service work in partnership with United Four Wheel Drive Associations and other recreationists through the existing adopt-a-road program. Adopt-a-road is a completely volunteer program in which recreationists and Forest Service employees team up to tackle the maintenance needs of our forest roads, for free!

## Planning Rule

One of the major tenants of the 76 page long proposed planning rule is to affirm "ecological sustainability as [one of] the overall goal[s] for management of National Forest System Lands".<sup>(27)</sup>

The proposed rule suggests that collection and analysis of information is necessary to maintain and restore ecological sustainability to our forests. Information and analysis must include the comparison of "effects of human activities prior to, and after European Settlement", and the comparison of "current conditions to those conditions prior to European Settlement".<sup>(28)</sup> Using a benchmark of pre-European Settlement conditions as an indicator of forest health or ecological sustainability is arbitrary at best, and the death knell for motorized and mechanized recreation at worst.

First, using European settlement as a benchmark is arbitrary because the time period which constitutes European Settlement is unclear. European Settlement can be understood to have occurred between 990 AD when the Norseman landed in North America, to the early 1500's when Ponce de Leon landed in Florida, to 1565 when the Spanish founded the first permanent European town in St. Augustine, Florida.

Second, using European Settlement as a benchmark for land management goals and strategies is arbitrary and would cut off access for motorized or mechanized use on our national forests. European Settlement (assuming the reference is to the year 1565) occurred more than 100 years before the first book was ever printed in the colonies (1640), nearly 200 years before Benjamin Franklin experimented with electricity (1747), nearly 300 years before the first steam engine was invented or the telegraph was invented, **nearly 300 years before the Lewis and Clark expedition explored the West**, and nearly 400 years before the gas engine was invented. Sustaining our forests to some condition assumed to have existed prior to the settlement of the West and before electricity was invented would necessarily mean that no motorized or mechanized travel would be permitted.

One could argue that there is great merit in prohibiting motorized and mechanized travel in our national forests. However, there are no cites as to any authority relied upon by the Forest Service that would indicate there is a correlation between European Settlement, actions after European Settlement, and forest health. Further, the Forest Service failed to indicate the basis for the desirability of forest composition found in pre-European Settlement (let alone the desirability or consequences of **returning** forest composition to that of pre-European settlement). And after all, access is important, but hasn't the Forest Service been entrusted to maintain **forest health**, regardless of when Europeans settled in America? And the proposed rule fails outright to provide any information that supports a notion that forest health is related in any way to European Settlement.

### Special Use Permits

On November 24, 1999 the Forest Service issued a proposed rule for the recovery of costs for processing Special Use Applications.<sup>(29)</sup> The rule proposed to charge fees for processing Special Use Applications based upon categories of time to process these applications, such as those that may be required for four wheel drive clubs when hosting events on Forest Service managed lands. Several problems associated with this proposed rule will have a negative impact upon motorized recreation and access to our national forests.

First, the rule proposes to charge fees based upon 6 categories ranging from \$75.00 to \$750.00 or more. The fee charged is based upon the time required for the Forest Service personnel to process the application.

Applications requiring 8 hours of processing will be charged \$75.00, 8-24 hours will be charged \$230.00, 24-36 hours will be charged \$390.00, 35-50 hours will be charged \$750.00, and 50+ hours will be charged on a case-by-case basis.<sup>(30)</sup> The problem for recreationists is that there is such a large difference between an 8 hour processing fee and a 9 hour processing fee. If the Forest Service personnel takes 9 hours instead of 8 hours to process a Special Use Application, the recreationists will have to pay an additional \$155.00 for that extra hour of processing time. Furthermore, if a recreational event requiring a special use authorization requires the Forest Service to work 9 hours on processing the application, the fee of \$230.00 will be too expensive for most non-profit recreation groups to pay. This would prohibit access by organized recreation groups best equipped for public conservation outreach and education programs such as TreadLightly!. This processing fee is in addition to any Special Use fees that would normally be charged by the Forest Service once the Authorization has been approved. There is no doubt that this policy will have a negative effect upon recreation.

## **Watershed Policy**

On February 22, 2000, the Forest Service published a notice of the proposed Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management.<sup>(31)</sup> This policy proposes to develop a federal policy on watershed management in compliance with the President's Clean Water Action Plan. Specifically, the policy proposes, among other things, to obliterate 5,000 miles of roads per year by the year 2002.<sup>(32)</sup>

This arbitrary figure for obliterating roads will have a negative impact upon motorized recreation. As discussed above, the Forest Service already proposes to reduce the roads system by 77%. Another 5,000 miles of road loss per year will reduce what roads are left by another 10%. Yet recreational road use is expected to continue to increase.<sup>(33)</sup> And since this proposal has been developed as "policy", citizens of the United States have no recourse against the Forest Service or the other participating agencies for arbitrarily picking 5,000 miles as the benchmark for obliteration.<sup>(34)</sup> Therefore, the negative impact upon recreation will go unchallenged and uncorrected.

Unless Congress can help, I am respectfully requesting further Congressional investigation into the negative effect Forest Service policies are having upon recreation. Thank you for the opportunity to testify before you today.

---

1. Multiple-Use Sustained Yield Act, 16 U.S.C. 528-531 (1960); Forest and Rangeland Renewable Resources Planning Act, 16 U.S.C. 1600-1614 (1974); National Forest Management Act, 16 U.S.C. 472 et seq. (1976).

2. Notice of Intent to Prepare an Environmental Impact Statement; National Forest System Roadless Areas. 64 Fed. Reg. 56306 (1999).

3. Id. at 56306.

4. Coghlan, G.; Sowa, R. 1998. National forest road system and use (draft). Engineering Staff, USDA Forest Service., p. 3. [www.fs.fed.us/news/roads/roadsu\\_mmary.pdf](http://www.fs.fed.us/news/roads/roadsu_mmary.pdf) Page 3 of this report indicates that there are 40,244,593 acres of Roadless areas. The Forest Service also states that there are 50 million acres of Roadless areas, see note 12, p. E2. It is unclear how the Forest Service found an additional 9.7 million acres between

the 1998 and the 1999 reports.

5. Id. at 1.

6. National Wilderness Preservation System, Section 1131(c), 16 U.S.C. 1131 et seq. (1964).

7. Notice of Proposed Rulemaking; Administration of the Forest Development Transportation System; Prohibitions; Use of Motor Vehicles Off Forest Service Roads, 65 Fed. Reg. 11680 (2000).

8. Id.

9. GOGHLAN ET AL., supra note 4, at 14.

10. GOGHLAN ET AL., supra note 4, at 9.

11. Notice; overview of proposals, p. 11676. 65 Fed. Reg. 11675 (2000).

12. National Forest System Road Management Strategy, Environmental Assessment, USDA Forest Service, p. 7, (2000).<http://www.fs.fed.us/news/roads/DOCSfinaldraftEA.shtml>

13. Id.

14. Advance notice of proposed rulemaking; Administration of the Forest Development Transportation System, p. 4351. 63 Fed. Reg. 4349 (1998).

15. COGHLAN ET AL., supra note 4, at 23.

16. Id.

17. Notice; supra note 11, at 11677.

18. Notice; supra note 11, at 11678.

19. Interior Detailed Information - spreadsheet presenting Conference Agreement for FY 2000 appropriations. <http://www.house.gov/appropriations/confreport00.xls> . Line item number 29300.

20. Advanced Notice of Proposed Rulemaking; supra note 14, at 4350.

21. Roads Analysis: Informing Decisions About Managing The National Forest Transportation System, USDA Forest Service, (1999).<http://www.fs.fed.us/news/roads/DOCSroad-analysis.shtml>

22. Id. at 116.

23. Notice; supra note 11, at 11676.

24. Id.

25. Clean Water Action Plan, Enhance Natural Resources Stewardship, <http://www.cleanwater.gov/action/c2b.html>

26. Notice, *supra* note 11, at 11676.

27. National Forest System Land and Resource Management Planning; proposed rule, p. 54078. 64 Fed. Reg. 54073 (1999).

28. *Id.* at 54103-104.

29. Proposed Rule: Land Uses; Special Uses; Recovery of Costs for Processing Special Use Applications and Monitoring Compliance with Special Use Authorizations. 64 Fed. Reg. 66341 (1999).

30. *Id.* at 66346.

31. Notice of Proposed Policy; Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management. 65 Fed. Reg. 8833 (2000).

32. Clean Water Action Plan, *supra* note 25.

33. National Forest System Road Management Strategy, *supra* note 12.

34. Notice of Proposed Policy, *supra* note 31 at p. 8839.

###