

# Committee on Resources

## Subcommittee on Forests & Forest Health

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### Witness Testimony

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Statement of Amelia Jenkins

Director of Governmental Affairs

Forest Service Employees for Environmental Ethics

Before the U.S. House of Representatives

Committee on Resources

Subcommittee on Forest and Forest Health

### **Summary of Statement**

Forest Service Employees for Environmental Ethics finds that the Forest Roads-Community Right-To-Know-Act duplicates existing environmental law and Forest Service direction. Road closures are considered a federal action and subject to the National Environmental Policy Act. It is unnecessary to create an additional administrative process to address road closures. Further, current law affords specific notification and public input solicitation from local and state officials.

Madam Chairman and members of this Committee, thank you for the opportunity to appear before you today to discuss the issue of forest roads generally and more specifically the "Forest Roads - Community Right to Know Act." Forest Service Employees for Environmental Ethics is a partnership of resource professionals, agency employees and concerned citizens working together to safeguard National Forests. Our position on policy issues is educated by our memberships extensive knowledge of public land management and their experience on-the-ground.

FSEEE believes that the Forest Roads-Community Right to Know Act duplicates existing environmental laws by prescribing an additional administrative process and public input requirement.

Permanent road closures through any means constitutes a federal action subject to the National Environmental Policy Act (NEPA). By law a decision to close roads requires the same administrative process and public input as a timber sale proposal, grazing permit renewals, or road construction. While existing laws apply to most forest management activities, the proposed legislation creates a special process exclusive to road closures. Road closures would be subject to more hurdles than a proposal to open a uranium mine.

Second, the draft bill seeks to ensure "local public participation in the decision making process" of road closures. The language goes on to prescribe an additional public input process exclusive to state and local elected officials. Elected officials, through the nature of democracy, automatically enjoy a certain level of

influence in any decision-making process. Current law guiding public land management decisions recognizes this status. For the record, I have included with my testimony relevant citations to illustrate the special status current law and regulation affords state and local interests.

While the legal implications of the legislation are interesting, what is most important to my organization and its membership is how this bill will affect local land management decisions. Recently, a local land manager found that the supports for a Forest Service bridge were hollow and subject to fail at any time. In order to protect the safety of forest users, the land manager immediately closed the bridge to vehicular traffic. The duration of the closure was contingent on the Forest Service's ability to pay for the needed repairs. Since there is no assurance that the bridge would be opened within a year, this legislation would prevent the Forest Service from closing the bridge to protect the traveling public. Some might think this situation is an exception not the rule. However, the condition of the existing road network tells a different story. According to the Forest Service, only 40% of Forest Service system roads are fully maintained to safety and environmental standards. The real problem is not lack of a public input process but a decaying road network.

As members of this committee are well aware over 380,000 miles of Forest Service system roads criss-cross National Forests. In addition, over time, motorized forest users have created an additional 50,000 miles of travel ways that exist on the land but are not part of the Forest Service's road system.

Recent Forest Service figures indicate the annual road maintenance cost per mile is, on average, \$1,500. Some simple math tells us that given an annual maintenance requirement per mile of \$1,500, the Forest Service would need an annual maintenance fund in excess of \$570 million. For Fiscal Year 1999, Congress appropriated just under \$100 million for road maintenance. Given the discrepancy between the on-the-ground needs and Congressional appropriations, we can understand why the agency has a deferred maintenance backlog of \$8.4 billion. For Fiscal Year 1999, the Forest Service estimates that it will decommission or remove 3,000 miles of road. This amounts to less than 1% of the existing system.

In summary, the Forest Road-Community Right to Know Act duplicates existing laws and regulation. The National Environmental Policy Act clearly provides for early notification and input of local and state officials. We hope to work with this committee and the appropriators to find ways to manage a road network that provides access without compromising safety or environmental quality.

### **Relevant Citations Regarding Forest Service Public Input Process**

[Code of Federal Regulations]

[ **Title 40**, Volume 23, Parts 790 to end]

[Revised as of July 1, 1998]

From the U.S. Government Printing Office via GPO Access

[CITE: 40CFR1502]

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**TITLE 40--PROTECTION OF ENVIRONMENT**

## CHAPTER V--COUNCIL ON ENVIRONMENTAL QUALITY

### **Sec. 1502.19 Circulation of the environmental impact statement.**

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in **Sec. 1502.18(d)** and unchanged statements as provided in **Sec. 1503.4(c)**.

However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

**(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.**

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

## TITLE 40--PROTECTION OF ENVIRONMENT

## CHAPTER V--COUNCIL ON ENVIRONMENTAL QUALITY

### PART 1501--NEPA AND AGENCY PLANNING

#### **Sec. 1501.1 Purpose.**

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.

**(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.**

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

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Sec. 1501.2 Apply NEPA early in the process.

**Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:**

(a) Comply with the mandate of section 102(2)(A) to ``utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by Sec. 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

**(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.**

(3) The Federal agency commences its NEPA process at the earliest possible time.

Sec. 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

**(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (Sec. 1506.2).**

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

- (1) Magnitude of agency's involvement.
- (2) Project approval/disapproval authority.
- (3) Expertise concerning the action's environmental effects.
- (4) Duration of agency's involvement.
- (5) Sequence of agency's involvement.

**(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.**

#### Sec. 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (Sec. 1508.22) in the Federal Register except as provided in Sec. 1507.3(e).

(a) As part of the scoping process the lead agency shall:

**(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under Sec. 1507.3(c). An agency may give notice in accordance with Sec. 1506.6.**

### **Forest Service Manual and Handbook**

1950 Page 1 of 6 FOREST SERVICE MANUAL WASHINGTON TITLE 1900 -

1950.1 - Authority. 1. The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321-4346).

Fully integrate National Environmental Policy Act requirements into agency planning and decisionmaking.

Fully consider the impacts of Forest Service proposed actions on the physical, biological, social, and economic aspects of the human environment (40 CFR 1508.14).

**Involve interested and affected agencies, State and local governments, organizations, and individuals in planning and decisionmaking.**

1950.3 - Policy. Compliance with NEPA is fundamental to managing all Forest Service resource, research, and cooperative forestry programs and must be integrated into the management processes of those programs.

Procedures of this chapter apply to the fullest extent practicable to analyses and documentation of Forest Service actions. However, work completed under previous policy and guidelines need not be revised.

It is Forest Service policy to:

Give early notice of upcoming proposals to interested and affected persons (FSH 1909.15, sec. 07).

**Give timely notice to interested and affected persons, Federal agencies, State and local governments, and organizations of the availability of environmental and accompanying decision documents**

**FOREST SERVICE MANUAL WASHINGTON TITLE 7700 - TRANSPORTATION SYSTEM**

7710.4 - Responsibility. 7710.41 - Regional Forester. It is the responsibility of the Regional Forester to:

**Coordinate State and Federal transportation involvement in land and resource management planning to ensure that their plans are included in land management policy development and that their policy development has the benefit of Forest plans.**

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