

CACFA Meeting on Federal Overreach

August 12-13, 2013

Dena'ina Center, Anchorage, Alaska

Good afternoon, Mr. Chairman, and Members of the Commission. My name is Kyle Moselle, and I am a Large Project Coordinator for the Alaska Department of Natural Resources, Office of Project Management and Permitting. I am here on behalf of Chris Maisch, Alaska's State Forester and Director of the Division of Forestry. Mr. Maisch apologizes for not being here today. He is chairing the Alaska Board of Forestry meeting in Kenai.

Thank you for the opportunity to speak with the Commission today and participate in the roundtable discussion tomorrow regarding land and resource management issues and the effects of federal statutes, regulations, and policies on the State and its citizens.

I would like to begin by discussing the concept of a Working Forest, which the State of Alaska embraces and believes is essential for considering forest resource management issues. The Working Forest concept utilizes forest resources to create jobs and healthy communities through active forest management. A healthy environment should support a strong social structure, which will in turn support a robust economy. The State of Alaska and others use the phrase "Triple Bottom Line" to refer to this relationship, which is also described as sustainability¹. When any one of these elements is emphasized disproportionately, the other elements suffer in measures of quantity and quality.

Unfortunately, in Alaska and other parts of the Nation, an unbalanced relationship between the three "bottom lines" (environment, society, and economy) is causing major challenges for state and local governments and communities. Federal policy on National Forest System lands has shifted away from the Working Forest concept to disproportionately embrace a preservation-oriented approach, as illustrated by federal management of our two National Forests in Alaska; the Tongass and Chugach.

The Tongass is our largest national forest and encompasses about 17 million acres of land. Roughly 10 million acres of the Tongass is forested, and through a series of legislative withdrawals and administrative allocations the forested land base available for commercial timber harvest, the most common form of development activity, is restricted to approximately 663 thousand acres; about four percent of the Tongass, or seven percent of its forested land base².

¹ USDA, 2011. National Report on Sustainable Forests-2010, United States Department of Agriculture, Forest Service, FS-979.

²U.S. Forest Service, 2008, Tongass National Forest Land and Resource Management Plan, Appendix A, R10-MB-603b

The legislative withdrawals were the combined result of the Alaska National Interest Lands Conservation Act (ANILCA) and the Tongass Timber Reform Act (TTRA), while the administrative land allocations are defined by the current Tongass Forest Plan.

The State of Alaska was a cooperating agency in all phases of the 2008 Tongass Forest Plan Amendment, and we have maintained that role with the U.S. Forest Service (at the forest-level) during the past five years of implementation through a series of Memorandums of Understanding (MOUs).

The two most significant changes since approval of the 2008 Tongass Forest Plan Amendment are the reapplication of the U.S. Department of Agriculture's 2001 Roadless Area Conservation Rule and the implementation of the U.S. Forest Service's Transition Strategy policy.

2001 Roadless Area Conservation Rule

The US Forest Service – under the US Department of Agriculture (USDA) – considered exempting the Tongass from the Roadless Rule in 1999 but declined to do so in the final rule published January 12, 2001. Alaska sued the federal government on the grounds that it had violated ANILCA and other laws (*State of Alaska v. USDA*, Case No. 1:11-cv-01122) by applying the Roadless Rule to the Tongass and Chugach National Forests in Alaska. The Forest Service agreed to exempt the Tongass from the Roadless Rule, effective January 29, 2004. However, on March 4, 2011, the U.S. District Court for the District of Alaska vacated that exemption, and the Forest Service reinstated the 2001 Roadless Rule on the Tongass rather than revise the rule or the exemption. The State of Alaska has appealed to the Ninth Circuit Court of Appeals, and we are currently awaiting a decision.

The Forest Service's decision to reapply the 2001 Roadless Rule presents a host of concerns, but I will highlight two specifically. First, the 2008 Tongass Forest Plan Amendment was approved while the Tongass Exemption was in effect. Therefore, major components of the current Forest Plan, such as its Land Use Designations (LUDs), Old-growth Conservation Strategy, and management goals and objectives, which were designed specifically to address the management challenges of the Tongass, are effectively superseded by the 2001 Roadless Rule.

The 663 thousand acres known as the suitable and available land base is where timber harvest and other development activities are allowed under the Tongass Forest Plan. This is the only land base from which the U.S. Forest Service may meet its obligations under ANILCA, as amended by the TTRA,³ to seek to provide a supply of timber from the forest that meets the annual and planning cycle

³ Section 101 of the Tongass Timber Reform Act (TTRA) states that, "*the Secretary shall, to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources, seek to provide a supply of timber from*

market demands for timber. By reapplying the 2001 Roadless Rule to the Tongass, this land base is significantly reduced, and is likely incapable of supplying timber that meets market demands on an even-flow, sustained yield basis.

Setting timber aside for a moment, roads are also important for providing access for traditional and cultural, recreation, and commercial uses. With 91 percent of the Tongass in a roadless condition (as either Inventoried Roadless or Wilderness), and less than 100 total road miles existing in the 5.4 million acres of the Chugach, it is clear that our National Forests in Alaska are outliers for a national rule that was developed to preserve the remaining roadless areas, which are limited in the rest of the National Forest System.

Moreover, through ANILCA, Congress found “*sufficient protection for the national interest in the scenic, natural and cultural and environmental values*” and “*adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its peoples.*” Congress also found that ANILCA represents the proper balance between lands set aside in national conservation system units with those public lands available for more intensive use and disposition (16 U.S.C. § 3101(d)). Further, Congress prohibited administrative agencies from withdrawing more than 5,000 acres of additional Alaska land without Congressional approval (16 U.S.C. § 3213(a)). The State considers the 2001 Roadless Rule a withdrawal in violation of ANILCA, and the State continues to pursue its legal challenge to the validity of the 2001 Roadless Rule on this and other grounds in the Court of Appeals for the District of Columbia (*State of Alaska v. USDA*, case number 13-5147).

Second, The U.S. Forest Service’s decision to revert back to the 2001 Roadless Rule rather than revising the rule disregards the fact that authorized road building occurred in Inventoried Roadless Areas on the Tongass during the seven years under the Tongass Exemption. This produced what is known as “roaded roadless.” Operating under provisions of the 2001 Roadless Rule, the Forest Service is unable to authorize commercial timber harvest or additional road building from these “roaded roadless” areas, even though they may be zoned for such development activities under the current Forest Plan, and previous harvest may have occurred there.

An example that underscores both of these concerns is the Tonka Timber Sale on the Petersburg Ranger District in the Tongass. Approved in April 2012, the planning and environmental review for this timber sale straddled the District Court decision vacating the Tongass Exemption, and Inventoried Roadless Areas were identified as a significant issue during scoping. Initial planning identified a

the Tongass National Forest which (1) meets the annual market demand for timber from the forest and (2) meets the annual market demand from such forest for each planning cycle.”

maximum harvest opportunity from the roughly 62 thousand acre project area of approximately 120 million board feet (MMBF) of timber. Although not all of that timber would have been economical to harvest under current industry conditions, it represented the total timber opportunity in the project area under the management framework of the current Forest Plan. The 2001 Roadless Rule reduced the available planning area by more than 50 percent; thereby taking a significant amount of suitable and available timber lands off the planning table before NEPA even started.

With the loss of the Tongass Exemption during planning for the Tonka Timber Sale, most of the alternatives developed avoided inventoried roadless areas completely, but the Draft and Final Environmental Impact Statements both evaluated an alternative that proposed timber harvest in “roaded roadless” areas within the project area. Unfortunately, reinstatement of the 2001 Roadless Rule precluded the Forest Supervisor from selecting any of the proposed harvest units accessible from these “roaded roadless” areas, which contained an additional 11 MMBF of timber available for harvest under provisions of the current Forest Plan. That additional timber volume is roughly 44 percent of the current annual volume for the Viking Lumber Company in Klawock, who was the successful bidder on the sale.

In his decision, the Forest Supervisor selected an alternative that avoided all roadless areas and approved the harvest of 38.5 MMBF of timber; only 32 percent of the 120 MMBF volume identified as the maximum harvest opportunity for the project area.

At the forest level, the Forest Service’s decision to preserve roadless areas by reinstating the 2001 Roadless Rule on the Tongass preempts the more balanced management framework of the current Forest Plan, while at the project level it results in loss of development opportunities for the region.

As a solution, the State has requested, through our comments during the five-year review of the Tongass Forest Plan, that the Forest Service comply with the Congressional directives in ANILCA and the TTRA by administratively reinstating the Tongass Exemption through a new rulemaking or amending the original 2001 Roadless Rule by exempting Alaska lands. Without taking steps to address reinstatement of the 2001 Roadless Rule in Alaska, it may not be possible for the U.S. Forest Service to produce any forest plan that complies with federal law.

Transition Strategy Policy

In May 2010, the Forest Service announced development of a “Transition Framework” program for the Tongass National Forest that included facilitating “*a transition of the forest sector to young growth*”

management.”⁴ More recently, the Forest Service released a Leader’s Intent paper to “clarify [the Forest Service leadership’s] intent for the transition to young growth in Southeast Alaska.”⁵ The State is concerned that the Forest Service is implementing a strategy that directly affects project-level planning on the Tongass National Forest as part of a broader agency policy that has not been formally adopted through a public process.

The Tongass Forest Plan is essentially old-growth centric, but with respect to young-growth, it includes the following management objective on lands designated for Timber Production (page 3-116): “Plan a transportation network of roads and helicopter access that will eventually access most of the suitable forest lands for standard logging or helicopter yarding systems and transition to young-growth management.” Yet, the Leader’s Intent states that the U.S. Forest Service’s long term goal “is that the majority of active forest management on the Tongass will be comprised of ecological restoration, precommercial thinning, small and microsale old growth timber sales focused on niche markets, and young growth forest management.” The State is concerned that policy direction from the Washington Offices of the U.S. Forest Service and U.S. Department of Agriculture is trumping the Tongass Forest Plan, which underwent rigorous public and scientific review.

The Final Environmental Impact Statement for the 2008 Forest Plan Amendment lacks a specific discussion or evaluation of a transition away from conventional old-growth harvest and towards a timber sale program that emphasizes restoration activities and a timber sale program dominated by young-growth timber harvesting. As such, the public and resource specialists have not had an opportunity to critically evaluate the impacts to the human environment that may result from implementing such a shift in forest management policy on the Tongass.

As a solution, and again through our comments during the five-year review of the Tongass Forest Plan, the State has recommended that the U.S. Forest Service develop forest-wide standards and guidelines for young-growth management on the Tongass. Such an addition to the Forest Plan would allow the U.S. Forest Service to identify goals, objectives, and desired conditions compatible with managing the suitable and available land base of the Tongass in perpetuity for a variety of wood products, on a sustained yield basis, to both domestic and foreign markets. This approach to formalizing what is

⁴ Pendleton, Beth G., 2010, Letter to Tongass Futures Roundtable regarding “Transition Framework.” Dated May 24, 2010, File code: 2400

⁵ USDA, 2013, Leader’s Intent: Forest Stewardship and Young Growth Management on the Tongass National Forest, January 2013, R10-MB-777.

currently an internal policy would also allow the public the opportunity to evaluate and comment on the Transition Strategy policy through the NEPA review process.

State/U.S. Forest Service Coordination

I would like to end by acknowledging the generally productive working relationship the State of Alaska has with the U.S. Forest Service at the forest and regional levels in Alaska. We don't agree on everything, but we have adequate lines of communications in place to daylight issues and resolve them. However, national regulations and policies developed from the Washington Office of the U.S. Department of Agriculture and U.S. Forest Service, like those I've discussed here today, present a greater challenge for resolution because they tend to diminish the importance of federal laws that are specific to Alaska; they also tend to supersede the individual forest plans that are the product of extensive public and scientific review; and they usurp the decision making authorities from forest and regional decision makers.

Again, thank you for the invitation and opportunity to present to the Commission today. In addition to my talking points, I have provided the Commission with the Final Report of the Governor's Timber Jobs Task Force (2012) and the State of Alaska's recent consolidated comments on the five-year review of the Tongass Forest Plan. Both documents provide more details surrounding the issues I've discussed here, and everything should be posted on CACFA's website for the Summit.