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"Agriculture" (/full-blog/category=%22Agriculture%22), "Colorado" (/full-blog/category=%22Colorado%22), "Endangered Species Act" (/full-blog/category=%22Endangered+Species+Act%22), "Forestry" (/full-blog/category=%22Forestry%22), "National Environmental Policy Act" (/full-blog/category=%22National+Environmental+Policy+Act%22)

(http://i281.photobucket.com/albums/kk238/starChapter390/IMG_1440.jpg) This post was written by Assistant Online Editor Zach Becker.

On August 3, 2009, the State of Colorado proposed a petition to send to the USDA as to the management of the national forest “roadless areas” within the State of Colorado. On that same day, began a 60 day public comment period as to the proposed petition, which has provided an opportunity for the general public to critique and/or praise the proposals by Colorado before the state forwards its roadless rule petition to the USDA for approval. As one can imagine, this 60 day period has been filled with emotional pleas from environmental groups and surprisingly opponents. Pleas that point out legitimate and critical flaws in the proposed plan’s ability to effectively protect some of the majestic, and largely untouched natural forests of Colorado and the fish and wildlife that call these habitats home. One of the areas of highest concern is the Currant Creek area, located of the North Fork of the Gunnison River, which is of interest for its coal
mining potential. This area of undisturbed and pristine aspen and oak forests is a key location for elk and mule deer rearing, migration and hunting and would be immensely impacted by an allowance of mining in this pristine and remote habitat, high in the Colorado Rockies.

The U.S. National Forest Service divides each of its "management area" into different units. Each unit is provided with a different "forest plan" in order to achieve desired objectives, goals and management prescriptions for that unit. "Activities proposed to occur within a management area must be consistent with the management-area prescriptions as well as with the prescriptions applicable to the entire forest unit." Cal. ex rel. Lockyer v. USDA, 2009 U.S. App. LEXIS 19219 at *6 (9th Cir. 2009). One such national forest unit distinction is the "roadless area." The roadless areas are largely undeveloped areas of wilderness, generally without roads. Before the promulgation of the "Roadless Rule" in 2001, "most forest plans provided for the extraction uses, including logging, mining, oil and gas development and construction of off-road vehicle routes, on at least some portion of what are classified as inventoried roadless areas." Id at *7-8. In 1999, President Clinton asked the National Forest Service to devise a rule that would provide permanent protection to roadless areas in the national forests. Within a week, the Forest Service had begun work on the "Roadless Rule" and the rule was promulgated on January 5, 2001, just prior to Clinton leaving office, and went into effect on May 12, 2001. This provided the requested protection to all of the nation's roadless areas, other than select areas in Alaska and Idaho. The "Roadless Rule" was met almost immediately with opposition, with several cases calling into question the validity of such a blank rule throughout the US with little concern for state economies and objectives.

In response to this opposition and now within the Bush era, the National Forest Service devised and announced in 2005, the "State Petition Rule", which was thought to replace the "Roadless Rule." The "State Petition Rule" provided that a state could petition the Forest Service to make state-specific considerations for projects and treatment schemes for the roadless areas within that state's borders.

On August 25, 2009, The Ninth Circuit Court of Appeals ruled that the "State Petition Rule", was promulgated incorrectly, having violated the statutory requirements for promulgation of both the National Environmental Policy Act and the Endangered Species Act. Cal. ex rel. Lockyer v. USDA, 2009 U.S. App. LEXIS 19219 (9th Cir. 2009). The Court then reinstated the Clinton era "Roadless Rule", which provides greater protection to the wildlife and environment found within the roadless areas of the nation's federal forests, and permanently enjoined the "State Petition Rule".

The state petition that may be forwarded by Colorado depending on the public comment period's reaction, is a petition as would be compliant with the "State Petition Rule", which would not be possible under the "Roadless Rule." There have been U.S. District Court decisions that have come to the opposite conclusion of the Ninth Circuit as to the validity of the two rules in question, in fact actually permanently enjoining the "Roadless Rule" throughout the U.S. Wyoming v. United States Dept of Agric., 570 F. Supp. 2d 1309 (D. Wyo. 2008). Nevertheless, the Ninth Circuit opinion followed in 2009. The situation in Colorado presents a fork in the road for both the State of Colorado and the USDA: If the state chooses to forward its petition for consideration as allowed by the "State Petition Rule", then the USDA will have to directly address the question that has provided a split within authorities throughout the U.S. Without such action by the USDA, the only way for the roadless areas to be totally protected is by express action of President Obama to uphold the 2001 national rule, asking for the USDA to reinstate the "Roadless Rule", so as to pursue the same direction and objective as Clinton had in mind when he first asked for the rule to be created in...
1999. With such explicit action, the roadless areas of our nation's forests can once again be guaranteed permanent and effective protection, thus ensuring that these areas and the wildlife that are contained within them, may be present for future generations within this country.