

Southeast Conference and Alaska Forest Association – Intervenor in New Challenge to 2001 Roadless Rule’s Application in Alaska

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**STATE OF ALASKA V. U.S.
DEPARTMENT OF AGRICULTURE, D.C.
DISTRICT COURT CASE NO. 11-1122
(FILED JUNE 17, 2011)**

**PRESENTED BY JULIE WEIS
HAGLUND KELLEY JONES & WILDER LLP**

2001 Roadless Rule: What Is It? Why Care?

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- Roadless Area Conservation Final Rule, 66 Fed. Reg. 3244 (Jan. 12, 2001)
- Issued During the Waning Days of the Clinton Administration
- Designed to End Virtually All Logging, Road Building and Development in Inventoried Roadless Areas
- One-Size-Fits-All Rule
- Led to Extensive Litigation and Spent Much of Its Existence Not in Effect

2001 Roadless Rule Led To Extensive Litigation

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- 2001: Bush Administration Delayed Rule
- 2001: Idaho District Court Preliminarily Enjoined Rule
- 2003: Ninth Circuit Reversed, Rule in Effect April 14, 2003
- 2003: Wyoming District Court Invalidated Rule July 14, 2003
- 2005: Bush Administration Issued Alternative and Voluntary State Petitions Rule
- 2006: California District Court Invalidated State Petitions Rule, Reinstated 2001 Roadless Rule
- 2008: Wyoming District Court Invalidated Rule Again
- 2010: Obama Administration Appealed Wyoming District Court's Decision, Case Argued Before the Tenth Circuit

What About Alaska?

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**2001 ROADLESS RULE AND THE
2003 TONGASS EXEMPTION**

Treatment of the Tongass:

Draft EIS

versus

Final EIS

versus

Final 2001
Roadless Rule

- **2001 Roadless Rule Draft EIS**
 - Four Tongass Alternatives
 - Preferred Alternative: Defer Decision Until Forest Plan 5-Year Review in 2004
- **2001 Roadless Rule Final EIS**
 - Preferred Alternative: Apply Rule to Tongass But Mitigate Hurtful Effects By Waiting Until 2004
- **Final 2001 Roadless Rule**
 - Immediate Application to the Tongass
 - Effective Date March 13, 2001

State of Alaska Sued the Forest Service

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- **Lawsuit Filed February 1, 2001 Challenging Roadless Rule's Application in Alaska**
- **Intervenors Joined the State**
 - Alaska Forest Association, Ketchikan Gateway Borough, City of Wrangell, Chugach Alaska Corp., Two Individuals
- **Alleged Violations of Federal Laws Including ANILCA and the TTRA**
 - ANILCA “No More” Clause: Congress Already Struck the Proper Balance Between Protection and Development
 - TTRA “Seek to Meet Market Demand for Timber” Clause
- **Case Stayed During Ninth Circuit Roadless Rule Litigation**
- **June 2003 Settlement**
 - Led to Interim Rule Exempting the Tongass

June 2003 Settlement

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**“FEDERAL DEFENDANTS HAVE
BECOME CONCERNED ABOUT
APPLICATION OF THE
ROADLESS RULE TO THE
NATIONAL FORESTS IN
ALASKA.”**

2003 Settlement Led to the Tongass Exemption

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- **Tongass Exemption Rule Issued December 30, 2003**
 - Interim Rule
 - Alaska-Specific Rulemaking Was to Follow
- **Tongass Exemption Acknowledged the 2001 Roadless Rule's Hurtful Impacts in Southeast Alaska**

Tongass Exemption

- “The roadless rule significantly limits the ability of communities to develop road and utility connections that almost all other communities in the U.S. take for granted.”
- “Only 4 percent of the Tongass is available for commercial timber harvest About half of this is in inventoried roadless areas. Further reductions in areas available for timber harvest . . . would have unacceptable social, aesthetic, and environmental impacts.”

Tongass Exemption

- “Roadless areas are common, not rare, on the Tongass National Forest, and most Southeast Alaska communities are significantly impacted by the Roadless Rule. The department believes that exempting the Tongass from the prohibitions in the Roadless Rule is consistent with congressional direction and intent in the ANILCA and the TTRA legislation.”
- “There is a need to retain opportunities for the communities of Southeast Alaska regarding basic access and utility infrastructure. This is related primarily to road systems, the State ferry system, electrical utility lines, and hydropower opportunities that are on the horizon.”

Tongass Exemption

- “Roadless values are plentiful on the Tongass and are well protected by the Tongass Forest Plan. The minor risk of the loss of such values is outweighed by the more certain socioeconomic costs of applying the Roadless Rule’s prohibitions to the Tongass. Imposing those costs on the local communities of Southeast Alaska is unwarranted.”

Tongass Exemption Challenged in Court

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**DECEMBER 2009: GREENPEACE
AND OTHER PLAINTIFFS FILED
LAWSUIT ALLEGING THE
TONGASS EXEMPTION
VIOLATED NEPA**

Greenpeace Challenge to the Tongass Exemption

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- **Intervenors Joined the Forest Service in Defending the Tongass Exemption**
 - State of Alaska
 - Alaska Forest Association
- **Greenpeace Alleged:**
 - Forest Service Overestimated the Hurtful Effects to Southeast Alaska from Application of the Roadless Rule
 - Forest Service Should Have Considered Other Alternatives For Managing Tongass Roadless Areas
- **Court Ruled in Favor of Greenpeace March 2011**

Court Vacates Tongass Exemption

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- **Court's Reasons for Vacating Tongass Exemption:**
 - Unreasonable to Rely on Long-Term Job Losses Associated with the 2001 Roadless Rule to Justify an Interim Rule
 - Roadless Rule Was Designed to Ensure a Smooth Transition for Forest Dependent Communities
 - Job Losses Were Attributable to Decline in Market Demand, Not the 2001 Roadless Rule
 - No evidence the 2001 Roadless Rule Would Significantly Limit the Development of Road and Utility Connections
 - Forest Service Did Not Explain Its Reversal of Position on the Adequacy of the Tongass Forest Plan's Protection of Roadless Values
 - Tongass Exemption Not Founded on Forest Service's Concern that Roadless Rule Violated ANILCA and the TTRA

Court Reinstates 2001 Roadless Rule

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- **No Analysis on the Issue of Remedy – Just Reinstated the 2001 Roadless Rule**
- **Instructed Parties to Confer on a Form of Judgment Consistent With Court’s Ruling**
 - Forest Service Conferred with Greenpeace and to Lesser Extent the State and the Alaska Forest Association
- **Proposed Judgment of Forest Service and Greenpeace**
 - Identified Certain Projects Not Prohibited by 2001 Roadless Rule or Not Challenged by Greenpeace
 - Effort by Forest Service to Avoid Project-Specific Challenges to Extent Possible
 - State and Alaska Forest Association Took Position that Not Enough Projects Were Listed
- **Alternative Proposed Judgment Submitted by State**

Court Reinstates 2001 Roadless Rule

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- **State's Alternative Proposed Judgment**
 - State Emphasized It Was Not in a Position to Identify All Projects that Should be on the List
 - Supported by Alaska Forest Association
 - Alaska Forest Association Emphasized It Opposed Any Form of Judgment that Would Essentially End Timber Harvest on the Tongass
- **Judge Sedwick Adopted the Forest Service/Greenpeace Form of Judgment With Minor Changes**
- **State is Appealing Decision to Ninth Circuit**

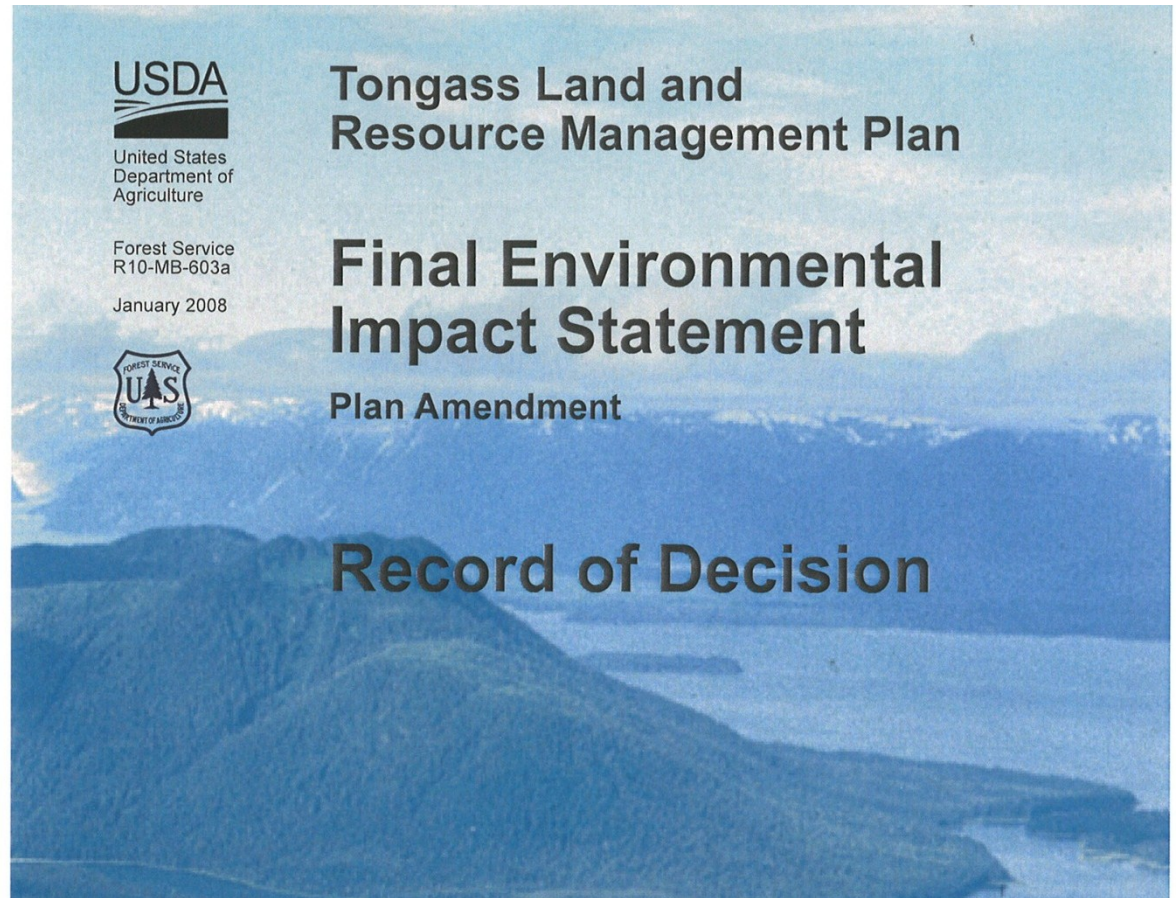
Tongass is the Nation's
Largest National Forest

Its 16.8 Million Acres
Covers About 80% of the
Land Area in Southeast
Alaska

Without Roadless Rule,
at least 90% of the
Tongass Off-Limits to
Resource Management
Activities

With Roadless Rule,
Only About 1% of
Tongass Available for
Timber Harvest Over
Current 100-year
Planning Cycle

Similar Constraints on
Other Economically-
Beneficial Uses



**Tongass is a National Forest, Not a
National Park. It is Unlawful to Set Aside
Any National Forest for Non-Use.**

Déjà Vu – State of Alaska Sues Forest Service

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**SOUTHEAST CONFERENCE AND
ALASKA FOREST ASSOCIATION
ARE INTERVENORS IN NEW
CHALLENGE TO APPLICATION
OF THE 2001 ROADLESS RULE
IN ALASKA**

**FILED JUNE 17, 2011 IN D.C. DISTRICT
COURT**