

Federal Court Rules Against Western Road Building Ban

18 August 2008

Natural Gas Intelligence

Copyright 2008 Intelligence Press, Inc. All Rights Reserved.

the weekly gas market newsletter

A federal judge has ruled against the Clinton administration-era Roadless Area Conservation Rule (RACR) and issued a permanent injunction against it, saying RACR violated national environmental laws. The decision could open millions of acres of western land to development.

In a 102-page opinion filed Tuesday in U.S. District Court for the District of Wyoming, Judge Clarence A. Brimmer wrote that the U.S. Forest Service promulgated RACR "in violation of the National Environmental Policy Act (NEPA) and the Wilderness Act. "As a result, [RACR] must be set aside," he said.

In January the State of Wyoming challenged the Forest Service's 2001 adoption of RACR, a nationwide prohibition on road construction and timber harvesting in federal roadless areas. Brimmer agreed with the state's argument that RACR would increase the risk of environmental harm to thousands of acres of state forest land adjacent to or intermingled with federal lands protected by RACR. A previous decision already determined that "harm to the environment may be presumed when the agency fails to comply with the required NEPA procedure," and the Forest Service failed to comply with NEPA in promulgating RACR, Brimmer said. The possible end of Forest Service management of land in RACR-covered areas could also present "a real and substantial possibility that forest disease, insect infestation and wildfires from the nonmanaged national forests in Wyoming will spread into Wyoming's state forests that are contiguous to those national forests," according to Brimmer.

It was Wyoming's second successful court challenge to the adoption of RACR. The state filed a similar complaint in the same court in May 2001; two years later the court ruled that RACR was promulgated in violation of NEPA and the Wilderness Act, and ordered RACR permanently enjoined. An appeals court later held that case moot because the Forest Service had adopted the State Petitions Rule, which superseded RACR. In October 2006 the U.S. District Court for the Northern District of California found the State Petitions Rule was itself in violation of NEPA and the Administrative Procedure Act and "surreptitiously reinstated" RACR, Brimmer wrote in his opinion.

A group of environmental organizations quickly filed an appeal challenging Brimmer's ruling, saying they do not believe RACR was illegally promulgated. In an appeal in the U.S. 10th Circuit Court of Appeals in Denver, the Wyoming Outdoor Council, The Wilderness Society, Sierra Club, Biodiversity Conservation Alliance, Pacific Rivers Council, Natural Resources Defense Council, National Audubon Society and Defenders

of Wildlife asked for a prohibition on road building and other development in RACR-covered areas while the issue works its way through the courts.

"The American people have spoken again and again in favor of protecting roadless areas," said Kristen Boyles, an attorney with Earthjustice, which represents environmental groups in the Wyoming case and in a related case in California. "We'll keep working to win permanent protection for these last wild areas of our national forests."

"This ruling may create a legal quagmire for our last pristine forests," said Taylor McKinnon, public lands director with the Center for Biological Diversity, one of the plaintiffs in the Colorado case. "Opening these areas for development would mire our nation's last best wildlife habitat, recreational lands and watersheds that provide clean water to millions of Americans...[RACR] reflects the most extensive federal rulemaking process in history. It, more than any previous Forest Service rule, reflects the will of the people, which is to protect these pristine lands for future generations."

To protect Forest Service roadless areas and restrict great swaths of land from development, the Clinton administration enacted the RACR, which created de facto wilderness by prohibiting road building, logging and other development activities -- such as oil and natural gas drilling -- on about one-third of Forest Service lands. The rule was enacted in 66 Code of Federal Regulations 3244 in early 2001.

In 2005 the Bush administration finalized the RACR, adding language that allowed individual states to petition the Forest Service regarding the nature of development to occur on inventoried roadless areas, a necessary prerequisite for energy development and other commercial activities. That move faced a barrage of legal challenges. In response to one lawsuit filed by four states and about 20 groups, a federal judge in San Francisco in 2006 voided the Bush administration's petition process and restored the Clinton-era RACR (see NGI, Sept. 25, 2006).

In June a federal appeals court issued a temporary injunction to halt construction of the 25.5-mile Bull Mountain Pipeline in western Colorado by SG Interests after a coalition of conservation groups challenged the pipeline and the Bureau of Land Management's (BLM) decision to allow it -- a decision the coalition said violated RACR (see NGI, June 16; March 10). Later that month the same court lifted the injunction (see NGI, June 23).

In the lawsuit the conservation groups challenged the federal regulators' authorization in January of the pipeline, contending that construction of the pipeline would include a 100-foot-wide "construction corridor" for use by heavy trucks and equipment in violation of the RACR. In the Bull Mountain decision the Forest Service and BLM said the "construction corridor" was not a road and therefore could be built without violating the RACR. The U.S. District Court for the District of Colorado in Denver is still expected to rule on the coalition's lawsuit.