

JUDGE BRIMMER'S DECISION ON ROADLESS RULE – A VICTORY  
FOR WYOMING

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On July 14, 2003 Judge Brimmer entered a permanent nationwide injunction against the Roadless Rule, finding that the Forest Service (USFS) violated two federal laws: the National Environmental Policy Act (NEPA) and the Wilderness Act. Judge Brimmer concluded that the USFS violated those laws in 6 separate ways.

First, Wyoming was prevented from participating in Environmental Impact Statement (EIS) process because inadequate information was provided. The USFS admitted that its data was incomplete, outdated, and inaccurate.

Second, the USFS improperly denied Wyoming, and the 9 other most affected States (accounting for over 53 million acres at issue) “cooperating agency” status. Judge Brimmer concluded that the USFS’s process was a “mad dash” to complete the Roadless Initiative before President Clinton left office: “The Forest Service dared not let any of the ten most affected states have cooperating agency status, lest its ‘mad dash’ would be slowed to a walk.”

Third, the USFS violated NEPA by considering only two alternatives. “The number of alternatives an agency must consider, and the requisite level of detail it must give to those alternatives, are directly proportional to the scope and nature of the proposed action.” Judge Brimmer said that the USFS will not be allowed to promulgate a rule of national scope affecting 58.5 million acres and then eliminate alternatives because it finds them “unmanageable.”

Fourth, the Final EIS did not adequately describe the “cumulative impacts” of the Roadless Rule and the USFS’s comprehensive strategy for managing the National Forests.

The USFS’s fifth violation related to its refusal to issue a Supplemental EIS, despite making four major changes between the Draft and Final EIS: all “procedural aspects” of the Roadless Rule were eliminated; the USFS broadened the scope of the Roadless Rule to include “roaded” roadless areas (totaling 2.8 million acres); the USFS added 4.2 million acres to the Roadless Rule; and the USFS substantially narrowed timber harvesting. Judge Brimmer found that the USFS had new information, but intentionally waited to update its twenty-year-old roadless inventories, because “it did not have time” to consider the new information. “This ‘mad rush’ turned the NEPA process on its head.”

Judge Brimmer concluded his NEPA analysis by observing: “In its rush to give President Clinton lasting notoriety in the annals of environmentalism, the Forest Service’s shortcuts and bypassing of the procedural requirements of NEPA has done lasting damage to our very laws designed to protect the environment.”

Finally, Judge Brimmer found that the Roadless Rule was an illegal attempt by the USFS to designate 58.5 million acres of National Forest land as de facto wilderness area, while only Congress may designate wilderness areas.

The environmental intervenors in *State of Wyoming v. USDA et al.*, are appealing the decision, arguing that the Roadless Rule should be upheld because the sheer number of comments outweigh the USFS's illegal actions. Judge Brimmer found that the form post-cards, e-mails and letters submitted by those groups (95% of the total) were unhelpful to the process. The intervenors' post-card campaign was part of a well-organized crusade to push through the Roadless Rule before President Clinton left office. These groups worked closely with high level Clinton Administration officials to formulate the Roadless Rule and to develop a sophisticated public relations campaign to manipulate the process. In contrast, everyone else, including Wyoming, was left scrambling, with inadequate notice, to gather basic information, such as a description of the affected lands.

Several groups have referenced a 9<sup>th</sup> Circuit opinion on the Roadless Rule. The 9<sup>th</sup> Circuit addressed the narrow issue of whether the Rule should be "preliminarily" enjoined, not whether a permanent injunction was appropriate. The 9<sup>th</sup> Circuit did not review the Administrative Record. Judge Brimmer did, and, based on that review, concluded that the USFS violated NEPA and the Wilderness Act.

Hageman & Brighton represented Wyoming in challenging the Roadless Rule, as co-counsel with Tom Davidson, the former Deputy Attorney General of the Water and Natural Resources Division in charge of handling the case. Hageman & Brighton is a water and natural resources law firm located in Cheyenne, Wyoming.