

# GREENWIRE

## FORESTS: Bush admin wades into roadless rule legal mess

(08/22/2008)

Noelle Straub, *Greenwire* reporter

Saying the Forest Service faces a "Hobbesian choice" over which of two opposite court rulings to disobey on the roadless area conservation rule, the Bush administration is pleading with two federal judges to at least temporarily lift their conflicting orders.

Attorneys for the Justice Department filed motions this week with both U.S. District Judge Clarence Brimmer in Wyoming and California Magistrate Judge Elizabeth Laporte asking them to suspend their injunctions because the Forest Service faces contempt of court no matter which way it acts.

"The United States Forest Service is confronted with injunctions simultaneously *requiring it to follow* and *prohibiting it from following* the 2001 Roadless Rule, leaving the agency with the Hobbesian choice of which injunction to violate," the administration motions say.

Staying the injunctions would "eliminate the spectre of contempt that now haunts the agency," administration lawyers wrote.

Brimmer ruled Aug. 12 that the roadless rule, which granted blanket protection to about 58 million acres of federal land nationwide, violated federal law and issued a permanent injunction against it, as requested by Wyoming.

Brimmer had first struck down the Clinton rule in 2003. Environmental groups appealed his ruling, but before that dispute was settled, the Bush administration decided to issue its own new policy for roadless areas that allowed states to petition for roadless protections.

That policy also faced legal challenges, and Laporte threw out the Bush plan in 2006 and reinstated the Clinton rule. Wyoming again sought to block the roadless rule, resulting in Brimmer's recent ruling. A separate appeal of Laporte's ruling is pending before the 9th U.S. Circuit Court of Appeals.

An administration motion now asks Brimmer to either stay his injunction nationwide or at least outside of Wyoming pending resolution of the legal issues.

"Defendants respectfully believe that in issuing a nation-wide injunction against the 2001 Roadless Rule, when more limited injunctive relief was adequate to address Wyoming's injury, this Court misapprehended the controlling law and committed clear legal error," the Bush lawyers wrote in that case.

Wyoming and the Colorado Mining Association oppose the Bush request to Brimmer, but the Wilderness Society supports it.

The administration also asked that Laporte's injunction either be lifted entirely, since the Wyoming court "invalidated" the roadless rule, or that it be stayed temporarily while the appeal is resolved. It could be stayed either nationwide, outside the boundaries of the plaintiff states -- California, New Mexico, Oregon and Washington -- or just within the boundaries of Wyoming, the motion said.

A hearing on that motion is scheduled for Sept. 30 before Laporte. The appeal in that case is set for argument Oct. 20 before the 9th Circuit.

The California Association of 4 Wheel Drive Clubs, Silver Creek Timber Co. and related groups generally support the Bush request to Laporte. The Wilderness Society strongly opposes any effort to lift her injunction requiring the Forest Service to comply with the roadless rule.