

Alaska Dispatch News

Alaska challenge to Tongass 'roadless rule' gets shot down by 9th Circuit

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JUNEAU -- The 9th U.S. Circuit Court of Appeals decided Wednesday to keep roads out of roadless areas of the Tongass National Forest over the objections of the state and timber industry, which had challenged the "roadless rule" and its restrictions on logging.

The Alaskans who had challenged the rule are calling it a major defeat in their attempt

Timber harvests in the Tongass, the nation's largest national forest, once supported two huge pulp mills, along with sawmills and exports. Now the only major timber mill remaining is Viking Lumber on Prince of Wales Island.

The Alaska Forest Association says the roadless rule, adopted during the Clinton administration, shouldn't have ever applied to Alaska. The second Bush administration agreed and exempted the Tongass from the nationwide rule.

Environmental groups and their allies challenged that exemption in court, and U.S. District Court Judge John Sedwick agreed with them and overturned the exemption.

The state of Alaska took up the defense of the exemption when the Obama administration chose not to, and the Alaska Department of Law won a short-lived victory in the 9th Circuit.

There, a three-judge panel sided with the state on a 2-1 vote, but last August the court vacated that victory and decided that a full 11-judge panel would hear the case.

On Wednesday, that panel reinstated the roadless rule on the Tongass on a 6-5 vote.

Now the timber industry is wondering where its supply of logs will come from and if the U.S. Forest Service can provide enough to keep Viking afloat.

"They could provide enough timber to keep that one mill going if they really worked on it," said Owen Graham, executive director of the Alaska Forest Association, one of the participants in the case.

"With the roadless rule once again in effect on the Tongass, it makes it absolutely impossible for the U.S. Forest Service to meet the demand for timber," agreed Thomas Lenhart, assistant attorney general for the Department of Law.

But one of the plaintiffs in the case, the Southeast Alaska Conservation Council, said the state's biggest mill and its focus on old growth timber is no longer needed in Alaska, and the 9th Circuit ruling reinforces that.

"This is consistent, largely, with the pivot that the region has already made away from relying on the clear-cut and export business model on the Tongass," said Malena Marvin, executive director of SEACC.

The national forest should be used to support more important industries, she said.

"What we see reflected in the numbers and the economics is that communities have already turned toward the tourism industry, the fishing industry, small-scale wood products -- that's really the present and future of the Tongass," she said.

Logging in the Tongass has dropped dramatically in recent years, but the most recent and controversial large sale, Big Thorne, will not be affected by the Wednesday decision. Even while the Tongass was exempted from the roadless rule, the Forest Service focused its timber sales on areas not covered by the rule.

Viking Lumber won the rights to that sale, which is expected to keep the mill operating for several years.

Company executives declined comment Wednesday, but Graham said Viking is an important member of the AFA and voted to intervene in the case in support of the Alaska Department of Law.

"They're in the fight; they want the roadless rule to go away because they realize that it ties up so much timber and makes it difficult for everybody in the industry," Graham said.

Marvin said that if Viking switched from an "old-growth harvest and export model" there would be wide support in the region.

The 9th Circuit decision is "great news" for the Tongass, said Eric Jorgensen, managing attorney for Earthjustice's Alaska office. Earthjustice is the environmental law firm that represented the plaintiffs.

"There hasn't been a proposal to log on a roadless area of the Tongass National Forest for years, but it's important because it ensures the continuing protection of these areas," he said.

Lenhart said with the loss in the 9th Circuit, the only possibility for appeal would be the U.S. Supreme Court. No decision on whether to attempt an appeal has been made, he said.

Graham said the closeness of the earlier decisions, first by the 2-1 vote of the small panel and then by Wednesday's 6-5 vote, gives him hope that the Supreme Court would overturn the case -- if it agreed to hear it.

But the exemption case isn't the state's only challenge to the roadless rule. When the rule was first imposed nationally in 2001, then-Gov. Tony Knowles challenged it in court. That challenge was dismissed in 2003 when the Tongass was exempted.

When the roadless rule exemption was lifted that challenge was renewed in the district court in Washington, D.C.

Graham said he's hopeful that court will overturn the rule entirely, as it never should have been applied to a national forest in Alaska because the Alaska National Interest Lands Conservation Act prohibited locking up additional land.

"I think the state has a good chance of prevailing, but I'm a forester and not a lawyer," Graham said.

Jorgensen, of Earthjustice, said several environmental groups have intervened in that case to support the roadless rule.

"We're hoping that case will be dismissed by the district court later this year," he said.

Department of Law's Lenhart had a different take.

"We're still very hopeful there that we'll actually be able to invalidate the roadless rule, or at least its application to Alaska," he said.

<http://www.adn.com/article/20150729/alaska-challenge-tongass-roadless-rule-gets-shot-down-9th-circuit-0>