Environmentalists and Policymakers Divided on Roadless Rule Changes

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Hispanics and Asians were also virtually unrepresentative in that [building] industry," Sanghavi said.

In defending its ordinance, the City focused on Moran's statement that "statistical evidence of disparities respecting Asians that could support an inference of discrimination is thin." However, Asian organizations believe that the City has overlooked other parts of the opinion supporting a program to include Asians. For instance, Moran likened Asian difficulties to those of Hispanics, stating, "For both groups there remains the question whether they are victims of discrimination or whether they, like countless others before them, face language and cultural barriers..." Moran wrote that although Asians were an insignificant factor in the industry when the City affirmative action program was initially promulgated in 1990, immigration has swelled the Hispanic and Asian populations. If Hispanics will be included in the revised program, though, Asians deserve the same right, Asian community leaders say.

"The consequences are severe" if Asians are not allowed to compete for contracts on par with other minorities, said Perry Nakachi, president of the Association of Asian Construction Enterprises. "Most Asian firms will lose significant portions of their business and some will go bankrupt."

Many similar programs across the country, in places such as Atlanta, Michigan, and Philadelphia, have been rejected by the courts. In California, residents supported a measure to cut minority contract awards from 20 percent to 10 percent.

Asian businesses and organizations in Chicago are still hopeful. The new ordinance will only be eliminated after five years if the City fails to show a compelling interest in remedying identified discrimination. The City says the program will be revised as necessary based upon new data, including regular disparity and availability studies.

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In response to continuing controversy, policy concerns, and legal uncertainty surrounding the implementation of the 2001 Roadless Area Conservation Rule, the U.S. Dept. of Agriculture Forest Service proposed changes to the rule in July 2004.

The original rule established nationwide prohibitions on timber harvest, road construction, and road reconstruction within inventoried roadless areas on National Forest Service lands. After its finalization, this rule was targeted for litigation by the timber industry and states nine times. Plaintiffs argued that giving the authority to designate roadless lands to the National Forest Service prevented them from enacting forest management plans that required road construction and/or timber harvesting that were critical to restoring and maintaining forest health, and which could reduce the risk of potentially catastrophic wildfires.

In 2003, the District Court of Wyoming struck down the roadless rule. Wyoming v. U.S. Dept. of Agric., 277 F. Supp. 2d 1197 (D. Wyo. 2003). The court held that the rule violates the National Environmental Policy Act and the Wilderness Act. The Forest Service then worked to amend the rule to address state concerns.

The most significant proposed change is the establishment of a petitioning process, in which governors, in conjunction with local governments, stakeholders, and other interested parties would have the opportunity to propose and develop plans for the conservation of the roadless areas within their state. Under the petitioning process, according to the USDA, states would have occasion to determine areas for inclusion, as well as ways to protect public health and safety, reduce wildfire risks to communities and critical wildlife habitat, maintain critical infrastructure such as dams and utilities, and assure citizens' access to private property. If a state's petition is accepted by the Secretary of Agriculture, the Forest Service would initiate state-specific rulemaking for the management of inventoried roadless areas. State petitions are only accepted if they are submitted within 18 months of the...
finalization of the proposed rule.

However, some, such as Prof. Patrick Parentrau, counsel for Forest Service Employees for Environmental Ethics in an ongoing case in Idaho, *Kootenai Tribe v. Veneman*, and director of the Environmental and Natural Resources Law Clinic at the Vermont School of Law, disagrees with the proposed changes.

The proposed rules would "lead to more logging, road building and mineral extraction in roadless areas," Parentrau said. Such changes, he said, make it easier for commercial interests to obtain exemptions under the petitioning process because industry often has considerable influence in state governments.

The National Resource Defense Council agrees and believes that this is especially true in pro-logging states such as Idaho, Wyoming, and Utah. Moreover, the NRDC contends that these changes are unnecessary to preserve state autonomy. Under the original rule, states retain much authority over aspects such as grazing, off-road vehicle use, emergency roads, and logging of small-diameter trees.

The Bush administration, meanwhile, maintains that the proposed changes would still protect most of the nation's remaining old-growth forests while respecting state sovereignty to decide whether other forest areas should be opened to development.

The finalization of the proposed changes was postponed until after the presidential election and litigation over the existing rule was stayed.

It is "impossible to predict what will happen at this point," Parentrau said.

For more information on the Roadless Area Conservation Rule, visit the USDA Web site: roadless.fs.fed.us