

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Div.
BARCLAY T. SAMFORD, NM Bar No. 12323
Trial Attorney
U.S. Department of Justice
Environment & Natural Resources Div.
1961 Stout Street, 8th Floor
Denver, CO 80294
Tel: 303-844-1475
Fax: 303-844-1350
Email: Clay.Samford@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ORGANIZED VILLAGE OF KAKE, *et al.*,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES DEPARTMENT OF)
AGRICULTURE, *et al.*,)
)
Defendants,)
)
and)
)
STATE OF ALASKA and ALASKA)
FOREST ASSOCIATION,)
)
Intervenor-Defendants.)
_____)

Case No. 1:09-cv-00023-JWS

NOTICE OF FILING OF PROPOSED JUDGMENT

On March 4, 2011, this Court granted Plaintiffs’ motion for summary judgment insofar as it sought to vacate the Tongass Exemption to the Roadless Area Conservation Rule and reinstate the rule’s application to the Tongass National Forest. Docket No. 68. The Court directed the parties to confer and if possible submit an agreed upon form of the judgment. Docket No. 69. In

accordance with the Court's order, the parties have conferred over the form of the judgment.

The attached proposed judgment has been agreed to by the Plaintiffs and Federal Defendants. While the proposed judgment includes some terms suggested by the Intervenor-Defendants, they are not parties to this filing. Counsel for Intervenor-Defendant the State of Alaska advises that the State does not object to any of the provisions in the attached proposed judgment, but believes additional provisions should be included and will therefore file a separate judgment for the Court's consideration. Counsel for Defendant-Intervenor the Alaska Forest Association ("AFA") advises that the AFA takes no position on the attached proposed judgment. The AFA does not oppose the provisions in the proposed judgment but believes additional provisions should have been included therein. Plaintiffs and Federal Defendants respectfully submit that the attached proposed judgment fully and fairly addresses the violations found by the Court while accommodating equitable considerations, and ask that it be entered by the Court.

The proposed judgment provides that Federal Defendants' decision to adopt the Tongass Exemption, 68 Fed. Reg. 75,136, 75,146 (Dec. 30, 2003) is vacated, and the Roadless Area Conservation Rule, 66 Fed. Reg. 3244, 3272-73 (Jan. 12, 2001) ("Roadless Rule"), is reinstated in the Tongass.

In addition to providing for vacatur of the Tongass Exemption and reinstatement of the Roadless Rule, the proposed judgment specifies that it does not prohibit a list of projects or activities in inventoried roadless areas. Most of these projects are not prohibited under the terms of the Roadless Rule. For others, the parties agree that investments by participants in ongoing planning processes or completed decisions make it equitable for the judgment to exclude these projects. The proposed judgment also addresses a circumstance unique to the Tongass—where roads were constructed after 2001 consistent with a grandfather clause in the rule, 36 C.F.R. §

294.14(d) (2001), 66 Fed. Reg. at 3273—by allowing ongoing programs for “microsales” and commercial firewood permits to continue along these roads. The proposed judgment makes clear that the list of projects is not intended to suggest that they, or any other projects, would otherwise be prohibited by the Roadless Rule. The parties believe it is appropriate to include these projects in the judgment to eliminate any uncertainty about whether certain land management activities on the Tongass will be prohibited by this Court’s judgment.

The proposed judgment also provides that its terms are not to be construed to prohibit any person or entity from seeking, or the U.S. Department of Agriculture from approving, otherwise lawful road construction, road reconstruction, or the cutting or removal of timber for hydroelectric development in a manner consistent with the standards and procedures set forth in the Federal Power Act, 16 U.S.C. §§ 791-823d. This provision is intended to clarify that the judgment does not abrogate the existing statutory process governing approval of hydroelectric projects.

The proposed judgment fully and fairly addresses the violations found by the Court while recognizing certain equitable considerations. The Federal Defendants and Plaintiffs therefore respectfully request that the Court enter the proposed judgment as the judgment of the Court. Respectfully submitted May 11, 2011.

IGNACIA S. MORENO
Assistant Attorney General

s/ Barclay Samford
BARCLAY SAMFORD
United States Department of Justice
Environment & Natural Resources Division
1961 Stout Street
Denver, CO 80294
Tel: 303-844-1475
Fax: 303-844-1350
Email: clay.samford@usdoj.gov

Attorneys for Defendants

s/ Thomas S. Waldo

Thomas S. Waldo (ABA # 9007047)

Eric P. Jorgensen (ABA #8904010)

EARTH JUSTICE

325 Fourth St.

Juneau, AK 99801

T: 907-586-2751

F: 907-463-5891

E: twaldo@earthjustice.org

Attorneys for Plaintiffs