

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

[PROPOSED] JUDGMENT IN A CIVIL CASE

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. Docket No. 68. In accordance with that decision, it is hereby ORDERED, DECLARED, and ADJUDGED 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), is reinstated as to the Tongass National Forest.

Nothing in this judgment shall be construed to prohibit otherwise lawful road construction, road reconstruction, or cutting or removal of timber if and when approved by the U.S. Forest Service to effectuate the following projects:

- (1) The Whitman Lake Hydroelectric Project, as licensed by the Federal Energy Regulatory Commission on March 17, 2009;
- (2) The Kake-Petersburg Intertie, as described in the Notice of Intent to prepare an Environmental Impact Statement published in the Federal Register on May 7, 2010;
- (3) Rainforest Aerial Tram, as described in the Decision Notice and Finding of No Significant Impact issued by the U.S. Forest Service on December 14, 2010;
- (4) Greens Creek Exploratory Drilling, as described in the Decision Memo “2011 Surface Exploration Annual Work Plan” issued by the U.S. Forest Service on April 8, 2011;
- (5) Greens Creek Geotechnical, as described in the Decision Memo “Geotechnical and Hydrologic Drilling Investigations” issued by the U.S. Forest Service on April 8, 2011;
- (6) Greens Creek Tailings Expansion, as described in the Notice of Intent to prepare an Environmental Impact Statement for the project published in the Federal Register on October 5, 2010;
- (7) Cascade Point Road/Glacier Highway Extension, as described in the U.S. Forest Service Record of Decision issued on December 22, 1998;
- (8) Blue Lake Hydroelectric Expansion, as described in the Federal Energy Regulatory Commission Notice of Application Accepted for Filing, Project No. 2230-044, April 8, 2011;
- (9) Little Port Walter hydropower project, as described in the application dated April 2, 2008, from the National Marine Fisheries Service to the U.S. Forest Service for a special use authorization;

(10) Swan Tyee Intertie, as described in the U.S. Forest Service Record of Decision issued in August 1997 and the Secretary of Agriculture's August 11, 2010, redelegation memorandum;

(11) Bokan Mountain Exploration Plan, as described in the proposed Plan of Operations dated March 15, 2011, submitted by Rare Earth One, LLC, to the U.S. Forest Service; and

(12) Niblack Mine Exploratory Drilling, as described in the Decision Memorandum issued by the U.S. Forest Service on September 25, 2009.

Nothing in this judgment shall be construed to prohibit otherwise lawful cutting or removal of timber authorized by the U.S. Forest Service in Inventoried Roadless Areas as follows:

- (1) Timber for personal use but not for sale, pursuant to 36 C.F.R. § 223.10 (2010);
- (2) Dead and/or down wood for sale as firewood, from within 400 yards of roads now existing and constructed consistent with the Roadless Area Conservation Rule, including roads described in 36 C.F.R. §§ 294.13(b)(4) and 294.14(d) (2001), 66 Fed. Reg. at 3273; and
- (3) Dead and/or down wood in microsalses of no more than 50,000 board feet, from within 400 yards of roads now existing and constructed consistent with the Roadless Area Conservation Rule, including roads described in 36 C.F.R. §§ 294.13(b)(4) and 294.14(d) (2001), 66 Fed. Reg. at 3273.

Nothing in this judgment shall 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 pursuant to the standards and procedures set forth in the Federal Power Act, 16 U.S.C. §§ 791-823d. Such developments include, but are not limited to:

(1) Takatz Lake Hydroelectric Project, Federal Energy Regulatory Commission No. P-13234;

(2) Schubee Lake Hydroelectric Project, Federal Energy Regulatory Commission Preliminary Permit No. P-13645;

(3) Lake Shelokum Hydroelectric Project, Federal Energy Regulatory Commission Preliminary Permit No. P-13281;

(4) Soule River Hydroelectric Project, Federal Energy Regulatory Commission Nos. P-12615 and P-13528;

(5) Port Frederick Tidal, Federal Energy Regulatory Commission Preliminary Permit No. P-13512; and

(6) Cascade Creek Hydroelectric Project, Federal Energy Regulatory Commission No. P-12495.

The list of projects and activities herein is not a judgment that they, or any other projects or activities in the Tongass National Forest, would otherwise violate the terms of the Roadless Area Conservation Rule. Nothing herein shall be construed as a judgment about whether projects and activities not listed herein do or do not violate the Roadless Area Conservation Rule.

DATE: _____

JOHN W. SEDWICK
United States District Judge