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Court: Tongass land plan is in need of fixing

Ruling axes earlier dismissal of suit brought by six environmental groups

JUNEAU - A federal appeals court on Friday ruled that errors in the U.S. Forest Service's land management plan for the Tongass National Forest make it "arbitrary and capricious," and kept a temporary ban on building a logging road near Ketchikan.

The three-judge panel from the 9th U.S. Circuit Court of Appeals ruled that mistakes by the Forest Service in timber demand projections seriously impaired the plan for the Tongass and must be corrected.

"The Forest Service's error in assessing market demand fatally infected its balance of economic and environmental considerations, rendering the plan for the Tongass arbitrary and capricious ... ," the opinion by Judge Ronald Gould says.

The ruling reverses a district judge's dismissal of a lawsuit challenging the Tongass timber program brought by six environmental groups. The panel of judges sent the case back to the lower court to decide where logging can occur pending corrections to the management plan.

Gov. Frank Murkwoski's spokeswoman Becky Hultberg said: "We're very disappointed by the ruling. This is an outcome that's bad for Alaska and bad for the hardworking men and women in the timber industry."

The decision could affect potential timber sales near Tenakee Inlet, Kake, Port Houghton and other contested lands in Southeast Alaska, according to the Southeast Alaska Conservation Council's staff attorney Buck Lindekugel.

"There are still a lot of unknowns" about the final outcome of the decision, Lindekugel said.

Tom Waldo, the Earthjustice attorney from Juneau representing the environmental groups, said the ruling gives the Forest Service an opportunity to create a management plan that doesn't include logging millions of acres of roadless forest.

"The Forest Service has been losing tens of millions of dollars every year by building roads and preparing timber sales that nobody wants," Waldo said. "There's more than enough timber on the existing road system to supply the mills without building roads."

Alaska Forest Association executive director Owen Graham, like Waldo, said he believes the decision means the Forest Service will have to revise its management plan. Graham said an accurate revision would raise timber sales up to 360 million board feet per year.

That is what the industry can handle and what it has asked for, Graham said. Instead, the industry has logged about 50 million board feet a year for the past three years and lost 85 percent of its work force, he said.

"We're losing employees every day and we need the timber supply," he said.

The Tongass is the United States' largest national forest and is the largest temperate rainforest in the world. It contains nearly 17 million acres and covers most of the Southeast Alaska archipelago.

At issue is a 1997 revision of the Tongass' management plan that allocated 3.9 million acres as logging areas, 2.4 million acres of which are in roadless parts of the forest.

That plan was adopted after the Forest Service made a mistake in evaluating a report by two economists projecting demand for Tongass timber.

The economists estimated between 68 million and 154 million board feet per year would be required. Forest Service officials misinterpreted those numbers and instead projected demand to be between 130 million and 296 million board feet per year.

Forest Service spokesman Dennis Neill said the agency and the Department of Justice are reviewing the decision and have reached no conclusions on what changes will be necessary.

"This is not like a forest fire where you have to cut line right now," Neill said. "Until we have ... counsel and Department of Justice direction, we're not going to make any kind of assumption."

The environmental groups who filed the lawsuit - the Natural Resources Defense Council, the Southeast Alaska Conservation Council, the Wilderness Society, the Sierra Club, the National Audubon Society and the Center for Biological Diversity - said the mistake made the entire management plan arbitrary and the accompanying environmental impact statement misleading.

The Forest Service acknowledged the error but argued it made no difference in the management plan.

U.S. District Judge James Singleton in September dismissed the suit and denied a request for an injunction on the Orion North timber sale on Revillagigedo Island near Ketchikan.

The 9th Circuit less than a month later granted a temporary injunction against the road project. Friday's ruling kept the injunction in place while the district court considers a permanent injunction, and what the scope of that injunction should be.