

D.C. Circuit skeptical of Alaska challenge to roadless rule

By Pamela King , Marc Heller

09/10/2021 01:40 PM EDT

Judges on a powerful federal appeals court today grilled the state of Alaska on its efforts to do away with prohibitions on timber cutting and road building in its national forests.

During oral arguments this morning, the U.S. Court of Appeals for the District of Columbia Circuit questioned whether attorneys for the state had made an adequate case that it had been harmed by the 2001 Roadless Area Conservation Rule.

“We’re struggling with the question of harm and also the question of whether it’s caused by the roadless rule or by other factors and would be addressed were the state to prevail in this challenge,” Judge Cornelia Pillard said to a lawyer representing the Last Frontier.

Today’s arguments were the latest volley in a legal fight over Alaska’s federal forests that’s been brewing ever since the roadless rule was enacted in 2001, setting limits on road construction and timber harvesting on 59 million acres of National Forest System lands, including Alaska’s Tongass National Forest.

Alaska’s objections to the rule appeared to be a tough sell, especially regarding the smaller Chugach National Forest, which generates little timber compared with the Tongass, and about 98 percent of which remains subject to the roadless rule.

Mary Gramling, the Alaska attorney, said the state views its standing in the case as “self-evident” and argued that a lack of roads in the Chugach has led to less active management of the forest, allowing wildfires and pests to proliferate in the area.

The roughly 5.5-million-acre Chugach is the most northerly national forest and is about 30 percent covered in ice, according to the Forest Service.

The Tongass, a temperate rainforest, totals nearly 17 million acres.

Although the state receives money from the federal government tied to timber harvesting in national forests, legislation enacted by Congress ensures that revenue continues to flow regardless of timber harvest levels — a provision lawmakers passed to compensate for declining timber production. Yet there’s no guarantee Congress will continue to do so indefinitely, the state told the court.

The Chugach generated 277,000 board feet of timber sales last year, and no new timber was cut, the Forest Service reported. In the Tongass, the agency sold 4.2 million board feet and cut about 15 million board feet, according to the agency.

Gramling argued that the D.C. Circuit should toss out the roadless rule — even after the Trump administration last year ushered in exemptions to once again allow road building and logging.

The Trump administration didn’t include the Chugach in last year’s exemption from the roadless rule, and officials discarded an earlier proposal to adjust roadless-area boundaries within that forest as part of the rulemaking.

Roadless-area restrictions have stymied the more active forest management approach that would benefit the Chugach, in addition to protecting nearby state forest, Gramling told the court today.

While the roadless rule prohibits road construction for timber harvesting, it allows for small projects to prevent wildfire, in certain cases.

Legal tussles continue even as the Biden administration moves to reinstate the restrictions and end old-growth commercial logging in parts of the Tongass where the timber program remains. The new roadless-area measure will follow a new rulemaking procedure, the administration said ([Greenwire](#), July 15).

John Smeltzer, a Justice Department attorney representing the Agriculture Department, said the Trump-era rollbacks invalidated Alaska's case.

"The roadless rule is not presently applicable to the Tongass, and for that reason, we believe the challenges here are mostly moot," he said. "And the other challenges that aren't moot have the standing problem."

Pillard, an Obama appointee, pushed back on the mootness argument, noting the Biden administration's plans to undo the Trump-era exemptions.

Senior Judge A. Raymond Randolph also took aim at Alaska for failing to raise specific claims about the Chugach in its initial briefs in the case, which has been before the court since late 2017.

"I don't see a single argument in the state's blue brief that was filed in 2018 that deals solely with the Chugach," said the judge, who was appointed during the George H.W. Bush administration. "It's all Tongass."

Natural Resources Defense Council attorney Ian Fein argued on behalf of environmental groups in support of the federal government.

Alaska groups supporting the roadless rule said they'll continue to press for it on the state's two national forests. Protecting those areas is important for sequestering carbon, and the state needs to move beyond an economic past so grounded in timber, the Alaska Wilderness League said.

"With Alaska experiencing climate impacts more acutely than most, we shouldn't be discussing the continued clearcutting of a natural climate solution that exists right in our own backyard," the Alaska Wilderness League said in a statement. "Alaskans love their old-growth forests and the timber industry in Southeast is a relic of the past, and the Biden administration should be commended for looking forward to what kind of world we want to leave to our kids."

D.C. Circuit Chief Judge Sri Srinivasan, an Obama appointee, also participated in today's arguments.