Hearing before the House Committee on Natural Resources, Subcommittee on Federal Lands, re: H.R. 7695 (Rep. Hageman), *To provide that the final rule titled "Special Areas; Roadless Area Conservation" and issued on January 12, 2001 (66 Fed. Reg. 3244) shall have no force or effect and require the Secretary of Agriculture to construct certain roads on National Forest System lands, and for other purposes* (May 21, 2026)

Testimony of Mark Miller
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Chairman Tiffany, Ranking Member Neguse, and members of the Subcommittee, thank you for the opportunity to testify today. My name is Mark Miller, and I am the Director of Environment and Natural Resources Litigation at Pacific Legal Foundation (PLF).

Introduction

In the final days of the Clinton administration, the Secretary of Agriculture issued the Roadless Area Conservation Rule, which generally prohibited the construction and maintenance of roads across more than 58 million acres of national forests—an area twice the size of California.[1] Indeed, the Roadless Rule immediately cut off access to, and eliminated potential productive use of, "two percent of the United States land mass" for road-dependent projects.[2] As the Secretary later acknowledged, this near-categorical ban on road construction "fundamentally changed" the federal government's "longstanding approach to" managing the national forests.[3]

The Roadless Rule permits a few limited exceptions for road construction.[4] But there is no allowance for economically important and socially beneficial projects, such as energy development. For this reason, energy providers like the Inside Passage Electric Cooperative, which PLF represents in ongoing litigation challenging the Roadless Rule as it applies to Alaska's Tongass National Forest (which alone contains over nine million acres of inventoried roadless areas),[5] have found it enormously difficult to develop energy infrastructure.

In the Roadless Rule, the Secretary not only designated some 60 million acres of forestland as roadless, he also claimed the extraordinary power to impose sweeping restrictions in whatever manner he deemed best for any of the additional 140 million acres of national forests. Neither the Roadless Rule nor the Secretary's asserted authority can be sustained under a fair reading of the

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[1] Special Areas; Roadless Area Conservation, 66 Fed. Reg. 3244 (Jan. 12, 2001) (codified at 36 C.F.R. §§ 294.10–294.14 (2001)). As Judge Brimmer of the District of Wyoming tartly observed, the Roadless Rule was "rush[ed] to give President Clinton lasting notoriety in the annals of environmentalism." Wyoming v. U.S. Dep't of Ag., 277 F. Supp. 2d 1197, 1232 (D. Wyo. 2003), *rev'd* 661 F.3d 1209 (10th Cir. 2011).

[2] Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1104 (9th Cir. 2002).

[3] Special Areas; State Petitions for Inventoried Roadless Area Management Rule, 70 Fed. Reg. 25,654, 25,654 (May 13, 2005).

[4] *See* 36 C.F.R. § 294.12(b) (2001).

[5] *See* Special Areas; Roadless Area Conservation; National Forest System Lands, 90 Fed. Reg. 42,179, 42,180 (Aug. 29, 2025).

laws governing federal forest management. Although those statutes contemplate that the national forests can and should be used for a variety of purposes, they presuppose that the forests will be used principally for *productive* activities.[6] That presupposition should come as no surprise. Throughout America's history, Congress has pursued a policy of enabling reasonable public access to and use of public lands—with a guiding principle of multiple use and sustained yield.[7] And Congress has demonstrated that it will speak clearly—for example, in the Wilderness Act[8]—when it wishes to depart from this default policy to cordon off public lands from productive use. This straightforward interpretation of federal law and congressional legislative practice is confirmed by the major questions doctrine, which teaches that Congress speaks clearly when it wishes to delegate to the Executive Branch the power to decide issues of economic and political significance[9]—such as the imposition of roadlessness on tens of millions of acres of public lands.[10] No provision in the U.S. Code contains anything approaching such a clear statement of congressional abdication.

Even if there were such a statement clearly giving the Secretary the unbridled discretion to decide whether to declare tens of millions of acres to be roadless and thus off-limits to productive use, it could not save the Roadless Rule, because the delegation would be unconstitutional. The Constitution charges Congress, not the Secretary, with "mak[ing] all needful Rules and Regulations respecting the . . . Property" of the United States.[11] "All the public lands of the nation are held in trust for the people of the whole country"; and, as to how those lands are to be administered, "[t]hat is for Congress to determine."[12] Although Congress may delegate limited rulemaking authority to the Executive Branch, the Constitution prohibits Congress from delegating a blank check. Congress must instead provide a governing "intelligible principle" to cabin and channel the exercise of executive authority over the public lands.[13] Through the Roadless Rule, the Secretary asserted unilateral power to cut off meaningful access to vast swaths of public land, claiming that it is within his "fundamental discretion" to weigh "competing interests"[14] in deciding

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[6] Such activities typically concern the surface (such as timber harvesting), but subsurface development is also an important value of the national forests, one that the Roadless Rule has threatened. *See* Morgan E. Pettit & Elizabeth Orvis, *What Rescinding the Roadless Rule Entails for the Mining Industry*, 40 Nat. Resources & Env't 56, 57 (2026). Although the Roadless Rule excepts roads "needed" for certain mineral leases, 36 C.F.R. § 294.12(b)(7) (2001), it provides no exception for mining exploration on lands not already subject to a claim or lease. *See* 66 Fed. Reg. at 3268.

[7] *See* Pettit & Orvis, *supra* note 6, at 58 (noting the "bedrock principle of public land law" as "balancing resource protection with multiple-use access").

[8] 16 U.S.C. §§ 1131–1136.

[9] *See* West Virginia v. EPA, 597 U.S. 697, 721–24 (2022).

[10] *See* Luke A. Wake & Damien Schiff, *Practical Applications of the Major Questions Doctrine*, 2024 Harv. J.L. & Pub. Pol'y Per Curiam 1, 12–13.

[11] U.S. Const. art. IV, § 3.

[12] Light v. United States, 220 U.S. 523, 537 (1911).

[13] *See* United States v. Pheasant, 129 F.4th 576, 579–80 (9th Cir. 2025).

[14] Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska, 88 Fed. Reg. 5252, 5257 (Jan. 27, 2023) (cleaned up).

whether and how national forests should be used. This claim finds no support in the Constitution, which assigns such "fundamental discretion" to Congress, not the Executive Branch.

The current administration correctly recognizes that the Roadless Rule is bad policy and therefore has announced that it intends to administratively rescind the rule.[15] This is a step in the right direction, but it won't definitively resolve the problem of the Secretary and the Forest Service's entrenched misinterpretation of federal forestry law. Whether it's the Clinton, Bush, Biden, or Trump administration—*all* have asserted that the Executive Branch has the discretion to decide whether to impose a Roadless Rule on the national forests. Thus, although the current administration might free the Tongass next year from the scourge of roadlessness, what about five years from now? Or ten? Lamentably, administrative flip-flopping on roadlessness is the norm, especially in Alaska[16]; this has produced the predictable, and very undesirable, result that regulated entities like the Cooperative cannot make needed, long-term plans for infrastructure development, even during an energy-friendly administration.

Congressional action is needed to make clear not just to this administration but also to future administrations, as well as to the courts, that the national forests are designed principally for *productive use*; and that policies, like the Roadless Rule, designed to stymie such use, merit no role in federal public lands law. PLF therefore strongly supports passage of H.R. 7695.

Practical harms from the Roadless Rule—Alaska as a case in point

The Inside Passage Electric Cooperative is a nonprofit, consumer-owned electric utility that seeks to provide affordable and dependable utility services to the dispersed Alaska Native communities of Hoonah, Kake, Chilkat Valley, Angoon, and Klukwan. These communities pay some of the highest electricity costs in Alaska,[17] with utility rates in the Cooperative's coverage area being nearly six times those in Juneau.[18] The reason for this gross disparity is the Cooperative's heavy dependence on diesel oil, which is often subject to dramatic price fluctuations.[19] Given these economic challenges, along with the obvious environmental concerns of burning diesel oil for electricity, the Cooperative has prioritized efforts to make its existing generation facilities more efficient and to develop renewable energy sources. Because the remote communities the Cooperative serves are bordered by the Pacific Ocean and the Tongass National Forest, road access through the Tongass is indispensable to the Cooperative's energy modernization efforts.[20] But the Roadless Rule—and its ban on virtually all road construction in over half of the Tongass—has rendered economically infeasible many projects the Cooperative wishes to pursue.

For example, in partnership with the Southeast Alaska Power Agency (SEAPA), the Cooperative sought to develop a project "to connect the grids serving Kake and Petersburg on

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[15] *See* 90 Fed. Reg. at 42,181–82.
[16] *See infra* text accompanying notes 85–87.
[17] *See* Inside Passage Elec. Coop. v. U.S. Dep't of Ag., No. 3:23-cv-00204-SLG (D. Alaska filed Sept. 8, 2023), Doc. 1-1, Exhibit A to Complaint, Declaration of Jodi Mitchell ¶¶ 3–4.
[18] *Id*. ¶ 5 ("[I]n 2022 the average cost/kWh for Juneau was 12¢ whereas IPEC's average cost/kWh was 65¢.").
[19] *Id*. ¶¶ 7–8.
[20] *See id*. ¶¶ 11–15.

Kupreanof Island."[21] This project, known as an "intertie," would have provided reliable and cost-effective utility service to the Village of Kake.[22] The project was financially viable as originally planned, with a road connecting Kake and Petersburg through the Tongass.[23] However, due to the Roadless Rule's prohibition on road construction, SEAPA had no choice but to propose that any transmission lines be constructed using helicopters.[24] Although the Forest Service approved the project on paper, the constraints imposed by the Roadless Rule—such as requiring heavy construction equipment and materials to be brought in by helicopter—destroyed the project's economic viability by causing its estimated cost to balloon from around $17.5 million (with roads) to $65 million (without roads).[25] The project did not move forward.[26]

As another example, studies have confirmed the potential for generating geothermal electricity from hot springs located near Hoonah.[27] The Cooperative therefore wants to pursue a geothermal project in this area.[28] But it "cannot justify devoting resources to hiring consultants and engineers to draw plans, or to otherwise explore potential projects, knowing that the Roadless Rule precludes road access through the Tongass."[29] Because of the Roadless Rule's restrictions, the Cooperative will inevitably confront the same regulatory barrier that thwarted the Kake-Petersburg Intertie—its geothermal project is simply not viable without roads.[30]

The harms caused by the Roadless Rule are by no means limited to the Cooperative. The Alaska Power Association—a statewide trade association representing electric utilities such as the Cooperative—has documented how the Roadless Rule "presents formidable barriers to harnessing renewable energy sources or otherwise developing infrastructure."[31] In fact, "some Association members have held off taking even preliminary steps to develop project ideas in these areas because they cannot justify expending resources to pursue projects that are effectively foreclosed by the Roadless Rule."[32] The inability to develop projects will inevitably hurt the Association members' customers. For example, "one Association member anticipates a need for developing a hydroelectric project in the Tongass within the next ten years because it has reached maximum generating capacity for peak loads," but a hydroelectric project—which "studies confirm is their only viable option"—is "infeasible without road access."[33] Moreover, the Roadless Rule imposes costs even on existing energy infrastructure. "One Association member has had increased maintenance costs in recent years—which have been passed on to consumers—because it has been

[21] *Id*. ¶ 15.
[22] *Id*.
[23] *Id*. ¶ 17.
[24] *See id.* ¶ 16.
[25] *Id*. ¶ 17.
[26] *Id*.
[27] *Id*. ¶ 14.
[28] *Id*.
[29] *Id*. ¶ 13.
[30] *Id*. ¶¶ 12–14.
[31] Declaration of Crystal Enkvist ¶ 8, Doc. 1-2, filed in Inside Passage Elec. Coop. v. U.S. Dep't of Ag., *supra* note 17.
[32] *Id*. ¶ 9.
[33] *Id*. ¶ 12.

limited to accessing many miles of existing transmission lines mostly by helicopter."[34] Other members have confirmed that "the Roadless Rule is a problem because it impedes development of new roads near existing transmission lines."[35]

Contrast these examples with what is possible when roads *are* allowed. Association member Cordova Electric Cooperative is a nonprofit, consumer-owned electric utility operating a microgrid for the remote community of Cordova, Alaska. Several years ago, Cordova needed to rebuild a hydroelectric project that had been destroyed by flooding. The repair project required construction of a road through land owned by a native village, which agreed to a lease allowing road access. Cordova was able to construct the road for $500,000. Had roadless construction been required, the project would have cost an additional $4 million.[36]

The Roadless Rule should be nullified

As noted above, PLF has challenged the Roadless Rule in litigation in federal district court in Alaska, representing the Cooperative and the Alaska Power Association.[37] The case is stayed pending the current administration's anticipated proposal to administratively repeal the Roadless Rule. Although such a repeal would provide relief to the Cooperative and others, it would not provide a lasting solution—a future administration could invoke the same purported administrative discretion to reimpose the Roadless Rule. What is needed is a definitive congressional rejection of the concept of roadlessness on the national forests. PLF therefore supports the legislative nullification of the Roadless Rule. This would provide enduring relief. And it would be consistent with Congress's intent in passing the statutes establishing the national forest system, as well as the Constitution's exclusive assignment of all power over public lands to Congress.

In defending the Roadless Rule in litigation, the Secretary has relied upon the Organic Act of 1897,[38] establishing the national forest system, and the 1960 Multiple Use Sustained Yield Act.[39] Neither law, however, provides authority for the Secretary, as a matter of policy discretion, to effectively prohibit the productive use and development of tens of millions of acres of public lands. This conclusion follows for several reasons.

First, the text and historical context of both statutes indicate that the national forests are to be used for mainly productive purposes. The Organic Act provides that the Secretary may make rules and regulations concerning the "occupancy and use" of national forestlands, and "to preserve the forests thereon from destruction."[40] Given the traditional legal understanding of what

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[34] *Id*. ¶ 14.

[35] *Id*. ¶ 13. Another member has noted how roadlessness has spread over time beyond formally inventoried roadless areas, despite the presence of roads. This incursion typically occurs as follows. The Forest Service will install water bars on an existing road, supposedly with the intent to reduce erosion but with the actual result of rendering the road largely unusable. Then, the agency will claim that the area qualifies as roadless, despite the continuing presence of the (now water-barred) road, on the ground that the area is "being managed for roadless characteristics."

[36] Declaration of Clay Koplin Decl. ¶ 11, Doc. 1-3, filed in Inside Passage Elec. Coop. v. U.S. Dep't of Ag., *supra* note 17.

[37] The State of Alaska and Alaska industry groups have also sued.

[38] 16 U.S.C. §§ 473–482, 551.

[39] *Id*. §§ 528–531.

[40] *Id.* § 551.

constitutes "destruction" of timberland, the Organic Act's authorization for rules to protect forestlands from "destruction" is best construed to be limited to rules targeted at conduct that threatens to lay waste to public resources.[41] This same understanding applies as well to "occupancy and use." That phrase occurs in a section entitled "Protection of national forests; rules and regulations," under which the obvious focus—as set out in the section's first clause—is the directive for the Secretary to "make provisions for the protection against destruction by fire and depredations upon the public forests and national forests."[42] This statutory context demonstrates that the authority to "regulate . . . occupancy and use" on the national forests is for the purpose of avoiding forest destruction, *not* for imposing a near-categorical prohibition on roads across vast swaths of federal land.

To read the Organic Act as the Secretary did in promulgating the Roadless Rule essentially deletes other provisions of the statute intended to facilitate development of the national forests. For example, the Act guarantees that settlers are to be allowed to continue to enjoy "egress and ingress" through the national forests.[43] Likewise, the Act authorizes reasonable access to, and use of, national forestlands to further the policy of "furnish[ing] a continuous supply of timber for the use[s] and necessities of [the] citizens of the United States."[44] And more generally, the Act ensures that these lands will remain open to "any person . . . for all proper and lawful purposes . . . ."[45] Given these statutory guarantees to productive access to the national forests, the Organic Act's grant of authority to prohibit "destruction" and to regulate "occupancy and use" cannot be stretched so far as to allow for rules that would effectively prohibit any productive use of tens of millions of acres of public lands.[46]

For its part, the Multiple Use Act authorizes the Secretary to "administer the renewable surface resources of the national forests for multiple use and sustained yield," including for the purposes of "outdoor recreation, range, timber, watershed, and wildlife and fish purposes."[47] On its face, this text requires that the national forests should remain open for many uses—subject to the qualification that permissible uses be limited to those that ensure "sustained yield" of "renewable surface resources." "Sustained yield" "means [needed for] the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land."[48] This definition ought to foreclose regulations like the Roadless Rule that broadly prohibit road

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[41] Historically, "destruction" of timberland meant laying waste to the land or woods. Black's Law Dictionary (4th ed. 1968). A road intended to facilitate the productive use of a forest, and designed in a manner that minimizes environmental impacts, cannot reasonably be understood to lay waste to landscapes or ecosystems.

[42] 16 U.S.C. § 551.

[43] *Id.* § 478.

[44] *Id.* § 475.

[45] *Id.* § 478.

[46] There are as well several Alaska-specific federal statutes which the Roadless Rule violates, as Alaska argues in its challenge to the Biden administration's reimposition of the Roadless Rule on the Tongass. *See* State of Alaska v. U.S. Dep't of Ag., No. 3:23-cv-00203-HRH (D. Alaska filed Sept. 8, 2023).

[47] 16 U.S.C. §§ 528–529.

[48] *Id.* § 531(b).

construction and road-dependent projects across vast areas because such regulations invariably interfere with the achievement of high-level output of renewable resources.[49] That the requirement of "sustained yield" hasn't, in practice, prevented prior administrations from thwarting productive use of millions of acres of national forests through the device of roadlessness, provides a strong reason for congressional action now to nullify this longstanding misuse of the Multiple Use Act. To be sure, the sustainable yield mandate is not necessarily inconsistent with some recreational or so-called passive use; but nothing in the Multiple Use Act permits the Secretary to privilege such non-productive use on the scale that the Roadless Rule contemplates.[50] And it is no defense to the Roadless Rule's twisting of the multiple-use mandate that it leaves in place the roads that already exist on the national forests[51]; the imperative of productive use of public lands is, like the statutes which embody that imperative, universal in application.

This reading of the Organic Act and Multiple Use Act is consistent with Congress's longstanding and overarching policy to promote the reasonable and profitable use of public lands.[52] It is also consistent specifically with the origins of the national forest system. As Secretary James Wilson explained in his famed letter to Gifford Pinchot, first Chief of the Forest Service, on the occasion of Congress's transfer of the forest reserves from the Department of the Interior to the Department of Agriculture, "all [national forest] land is to be devoted to its most productive *use* . . . under such restrictions only as will insure the permanence of these resources.[53] Indeed, Pinchot—who "consistently favored managed resource development over preservation"[54]—sharply criticized the New York State Constitution's provision prohibiting timber harvesting within the Adirondack State Forestry Preserve as "indefensible,"[55] and more generally held firm to the view that "[c]onservation means the wise *use* of the earth and its resources for the lasting good of

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[49] *Id.*

[50] *See* Michael J. Mortimer, *The Delegation of Law-Making Authority to the United States Forest Service: Implications in the Struggle for National Forest Management*, 54 Admin. L. Rev. 907, 961 (2002) ("[I]t is creative indeed to read the [Multiple Use Act] as authorizing the designation of 58.5 million acres as wilderness, replete with the exclusion of other resource users.").

[51] *See* Wyoming v. U.S. Dep't of Ag., 661 F.3d 1209, 1268 (10th Cir. 2011).

[52] *See* 30 U.S.C. § 21a ("[I]t is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in . . . the development of economically sound and stable domestic mining . . . ."); *id.* § 22 ("Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States . . . shall be free and open to exploration and purchase . . . .").

[53] *Available at* https://foresthistory.org/research-explore/us-forest-service-history/policy-and-law/agency-organization/wilson-letter/ (emphasis added).

[54] Alison S. Hoyt, Comment, *Roadless Area Conservation: How the "Roadless Rule" Affects America's Forestland*, 14 Tul. Env't L.J. 525, 532 (2001).

[55] Gifford Pinchot, *Breaking New Ground* 27 (Island Press 1987) (1947).

men."[56] Granted that some degree of preservation is not inconsistent with the history of public lands management,[57] the national forests' essential purpose was and remains productive use.[58]

Second, this development-friendly reading of federal forestry law is confirmed by the major questions doctrine, which instructs courts to expect Congress to speak clearly if the latter wishes to delegate rulemaking authority on issues of "vast economic and political significance."[59] Courts will not be quick to infer a grant of such power from "oblique" statutory language.[60] This reluctance will be especially great when an agency claims authority to promulgate regulations on politically charged subjects over which Congress has a history of careful deliberation.[61]

Whether to cut off nearly all road-dependent access and use across nearly 60 million acres of public land is unquestionable as a matter of "vast economic and political importance." The Roadless Rule directly forecloses access to significant portions of the nation's material wealth by effectively prohibiting the development of lands that, aggregated, are greater in extent than the territories of Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, and New Hampshire, combined. Nothing in the Organic Act or the Multiple Use Act clearly gives to the Secretary the power to make such momentous federal land policy.[62]

Third, when Congress wants to give the Executive Branch the power to prevent reasonable development of the public lands in favor of passive uses, it does so expressly, not through oblique

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[56] *Id*. at 505 (emphasis added).

[57] In the first half of the twentieth century, the Forest Service designated portions of certain national forests as "primitive areas" (later subdivided into "wilderness," "wild," and "recreation" areas) in which road construction was generally not allowed. *See* Robert L. Glicksman, *Wilderness Management by the Multiple Use Agencies: What Makes the Forest Service and the Bureau of Land Management Different?*, 44 Envtl. L. 447, 461–62 (2014). Congress would ultimately designate many of these areas as wilderness under the Wilderness Act. *See* 16 U.S.C. § 1132(a). The precedent of primitive areas does not, however, support the Roadless Rule, partly because the acreage so designated by the Forest Service represents only a fraction of what the Roadless Rule today covers, and partly because the administrative designation of primitive areas has been supplanted by Congress's current practice of legislatively designating wilderness areas.

[58] The failure to recognize the priority of productive use explains the principal error committed by the courts of appeals that upheld the Roadless Rule. They mistakenly presumed that a multiple-use regime means that one allowable use is necessarily just as good as another allowable use. *See Wyoming*, 661 F.3d at 1234–35; Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1117 n.20 (9th Cir. 2002). These decisions are even less persuasive today, given the intervening developments of the Supreme Court's strengthening of the major questions doctrine and its abrogation of *Chevron* deference. *See generally* Mem. for the Heads of Exec. Dep'ts & Ags., Directing the Repeal of Unlawful Regulations (Apr. 9, 2025), *available at* https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/ ("In recent years, the Supreme Court has issued a series of decisions that recognize appropriate constitutional boundaries on the power of unelected bureaucrats and that restore checks on unlawful agency actions.").

[59] Utility Air Regulatory Group v. EPA, 573 U.S. 302, 324 (2014).

[60] *See* Gonzales v. Oregon, 546 U.S. 243, 267 (2006); Sackett v. EPA, 598 U.S. 651, 677 (2023).

[61] *See* FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 159 (2000) (emphasizing tobacco's "political history").

[62] *See* Pettit & Orvis, *supra* note 6, at 57.

reference or suggestion. For example, the Wilderness Act expressly designated certain lands as "wilderness areas" and prohibits the Executive Branch from designating other lands as wilderness areas without congressional approval.[63] Likewise, the Antiquities Act expressly authorizes the President to designate national monuments and to impose restrictions on access and use.[64] Of particular relevance to Alaskan entities like the Cooperative, the Alaska National Interest Lands Conservation Act[65] (ANILCA) explicitly designated certain areas within the Tongass National Forest as national forest monuments,[66] while expressly allowing "[m]ultiple use activities" for other areas added to the Tongass by the Act.[67] In the Roadless Rule, the Secretary inverted the inference to be drawn from this statutory practice: those areas that the Secretary had identified as candidates for wilderness designation *by Congress* were transformed, by administrative fiat, into de facto wilderness.[68] This inversion is particularly outrageous for regulated entities in Alaska, given that ANILCA declared that Alaskan inventoried roadless areas "need not be managed for the purpose of protecting their suitability for wilderness designation pending revision of the initial [renewable resource] plans," while also directing that the Secretary "shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Alaska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System."[69] Defenders of the Roadless Rule have argued that the rule does not create de facto wilderness areas because it, unlike the Wilderness Act, recognizes some exceptions to the road prohibition and does not expressly prohibit all commercial enterprises.[70] This defense misses the forest for the trees—imposing roadlessness on national forests indisputably results in a de facto ban on productive use, a ban which is qualitatively equivalent to that found within formally designated wilderness areas.[71]

Fourth, interpreting the Organic Act and Multiple Use Act to justify the Roadless Rule would violate the non-delegation doctrine, and thus any ambiguities in these statutes should be construed against the grant of roadless-designation authority, pursuant to the canon of constitutional avoidance.[72] The Constitution vests Congress, and Congress alone, with the legislative power, as well as the power to regulate the nation's public lands.[73] Hence, Congress

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[63] 16 U.S.C. §§ 1131–1136.
[64] 54 U.S.C. § 320301.
[65] Pub. L. No. 96-487, 16 U.S.C. § 3101 note.
[66] ANICLA § 503.
[67] *Id*. § 501(b).
[68] Murray Feldman & Amelia Yowell, *Roadless Rule Revocation: Lost in the Wilderness?*, 40 Nat. Resources & Env't 50, 51 (2026) ("These past inventory efforts informed the 'Inventoried Roadless Areas' addressed in the 2001 Roadless Rule.").
[69] ANILCA § 708(b)(3)–(4).
[70] *Wyoming*, 661 F.3d at 1230–33.
[71] *See* Brandon Dalling, Comment, *Administrative Wilderness: Protecting Our National Forestlands in Contravention of Congressional Intent and Public Policy*, 42 Nat. Resources J. 385, 408 (2002) ("The Wilderness Act and [the Roadless Rule] both contain strikingly similar prohibitions on road building and commercial activities.").
[72] *See, e.g.*, Clark v. Martinez, 543 U.S. 371, 381 (2005) ("It is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts.").
[73] *See* U.S. Const. art. I, § 1; art. IV, § 3, cl. 2.

may not delegate these powers.[74] This nondelegation rule requires that Congress must provide an "intelligible principle" to cabin and guide the exercise of administrative discretion.[75] Such principle entails the legislative articulation of a "general policy to be achieved, the principles and standards the [the agency] must use in pursuing that policy, and the boundaries [the agency] may not cross."[76] Of course, Congress can authorize executive officers and agencies to determine facts and can delegate "the duty to carry out [a] declared policy."[77] But Congress cannot "[leave] the matter to the [executive] without standard or rule, to be dealt with as he please[s]."[78]

If the authority to prohibit the "destruction" of national forests, or to regulate their "occupancy and use," includes the power to prohibit roads over large portions of public timberland, thereby rendering such land largely unproductive, then the Secretary wields unchecked discretion to decide what level of environmental harm is tolerable. It is true that, in *United States v. Grimaud*, the Supreme Court rejected a non-delegation challenge to that portion of the Organic Act criminalizing the violation of rules issued by the Secretary for preventing "destruction" of the national forests.[79] But in so holding, the Court merely affirmed the uncontroversial proposition that Congress may delegate fact-finding authority to the Executive Branch—specifically in *Grimaud*, the facts constituting "destruction" on a given national forest (there, excessive or unpermitted livestock grazing). Indeed, the Court expressly allowed that the Secretary "could not make rules and regulations for any and every purpose."[80] With the Roadless Rule, however, the Executive Branch contends that it has not just fact-finding authority, but also quasi-legislative power to decide what use, if any, should be permitted over millions of acres of public lands. That is a substantially more ambitious assertion of power than what the Court reviewed in *Grimaud* and thus raises a significant constitutional question not answered in that decision.

The same non-delegation concerns arise with respect to reliance on the Multiple Use Act to sustain the Roadless Rule. Under the Secretary's interpretation, nothing in that statute limits the Secretary's exercise of land-use authority over the national forests; the Forest Service is free to impose any restrictions on access or use that it may deem appropriate—based on the agency's own policy judgments.[81] Nothing in the statutory text, as construed by the Secretary in the Roadless Rule, provides direction as to when and to what extent any given area should be preserved in a natural state, or how large that preserved area should be; rather, the statute simply acknowledges that "some land will be used for less than all of the resources."[82] Although the statute requires that

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[74] *See* Whitman v. Am. Trucking Ass'ns, Inc., 531 U.S. 457, 472 (2001) (the Constitution's Legislative Vesting Clause prohibits any "delegation of [legislative] powers").
[75] *See* Panama Refining Co. v. Ryan, 293 U.S. 388, 430 (1935) ("As to the transportation of [hot oil] . . . Congress ha[d] declared no policy, [] established no standard, [] laid down no rule.").
[76] FCC v. Consumers' Research, 606 U.S. 656, 698 (2025) (cleaned up).
[77] *Panama Refining*, 293 U.S. at 426.
[78] *Id*. at 418. *Accord* Wayman v. Southard, 23 U.S. (10 Wheat.) 1, 43 (1825) (emphasizing that Congress must decide the "important subjects").
[79] 220 U.S. 506, 520–23 (1911).
[80] *Id*. at 522.
[81] *See* Martin Nie, *Administrative Rulemaking and Public Lands Conflict: The Forest Service's Roadless Rule*, 44 Nat. Resources J. 687, 690 (2004) ("[T]here is relatively little in [the Multiple Use Act] directing or constraining forest managers.").
[82] 16 U.S.C. § 531(a).

the Secretary pursue "harmonious and coordinated management of [] various resources . . . without impairment of the productivity of the land," it provides no concrete guidance as to whether any given activity or development should be allowed, other than in directing that the Secretary must give due "consideration . . . to the relative values of the various resources" in particular areas.[83] What is "due consideration" is, in the Secretary's reading, left entirely to the Secretary's discretion.

The extreme elasticity of the statutory text is reflected in successive administrations' radically different exercises of the power supposedly granted in the Multiple Use Act. For example, in 2020, the Trump administration exempted the Tongass from the Roadless Rule, explaining that "a policy change for the Tongass National Forest can be made without major adverse impacts to the recreation, tourism, and fishing industries, while providing benefits to the timber and mining industries, increasing opportunities for community infrastructure, and eliminating unnecessary regulations"—but at the same time acknowledging that "[r]oadless area management, like all multiple-use land management, is fundamentally an exercise in discretion and policy judgment."[84] In 2023, the Biden administration reversed course, concluding that "the adverse consequences of exempting the Tongass from the 2001 Roadless Rule, particularly the increase in acreage available for timber production, the increase in road construction, and the lack of consideration for the views of Tribal Nations, outweigh the benefits of 'decreasing federal regulation' and the other advantages cited in the 2020 Alaska Roadless Rule."[85] A similar about-face occurred in the early 2000s when the Bush administration attempted, ultimately unsuccessfully, to exempt the Tongass.[86]

These flip-flopping decisions on roadlessness are partly attributable to the Multiple Use Act's lack of an obvious textual signal for when to prioritize either environmental or competing economic or social values when deciding whether to impose restrictions. The statute admonishes the Secretary should "not necessarily" prefer "the combination of uses that will give the greatest dollar return or the greatest output."[87] But this arguably gives a Secretary who is keen on aggressive readings of federal forestry statutes the discretion to prioritize ecological or economic concerns, or not, based entirely on personal judgment.[88] Nor does the statutory text, as construed by the Roadless Rule, provide any clear substantive direction to channel the exercise of discretion in charging the Secretary to "mak[e] the most judicious use of the land . . . ."[89] Once again, the Roadless Rule's interpretation of the Multiple Use Act results in an open-ended choice for the Secretary between prohibiting any activity that may leave even the faintest trace of human presence and allowing any range of activities—including activities that may significantly change the landscape and ecology of the forest. Such unfettered discretion is the hallmark of a nondelegation violation. The only way to save the Multiple Use Act is to reject the limitless reading upon which the Roadless Rule is founded and instead to read the statute consistent with the Organic Act and

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[83] *Id*.
[84] Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska, 85 Fed. Reg. 68,688, 68,691 (Oct. 29, 2020).
[85] Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska, 88 Fed. Reg. 5252, 5255 (Jan. 27, 2023).
[86] *See* Organized Village of Kake v. U.S. Dep't of Ag., 795 F.3d 956 (9th Cir. 2015) (en banc).
[87] 16 U.S.C. § 531(a).
[88] *But see Panama Refining*, 293 U.S. at 416–19 (rejecting the notion that there was an intelligible principle in the implicit expectation that the President would act prudently in public interest).
[89] 16 U.S.C. § 531(a).

the underlying purpose of Congress in enacting both laws—namely, to facilitate the orderly and productive *use* of the national forests. That saving construction can readily be implemented through Congress's passage of H.R. 7695, which, by nullifying the Roadless Rule and prohibiting the adoption of any analogous rules, will make plain to the Executive Branch, as well as to the courts, that the national forests are, first and foremost, meant to be used productively for the benefit of the American people.

Finally, to the extent that Congress believes that limited areas of roadlessness are desirable, such a policy would be best achieved through the individualized forest planning process required by the National Forest Management Act.[90] Indeed, even supporters of the Roadless Rule's aims have recognized that a more equitable balance between productive and passive use can be achieved under the National Forest Management Act because of the latter's emphasis on decentralized planning, its encouragement of public participation and consultation with local governments, and the proven durability of approved land management plans.[91]

Conclusion

The Roadless Rule is contrary to congressional intent and statutory text. The national forests were established to benefit the American people. The Roadless Rule defeats this purpose by effectively prohibiting the development of nearly 60 million acres of national forest, on a theory that could potentially wall off every acre of federal timberland from productive use. One would expect such an awesome grant of land-use authority to have been expressly provided by Congress. But the Organic Act and Multiple Use Act contain no such language; rather, both statutes evince a preference for facilitating the productive use of public lands. The Secretary may prohibit the destruction of national forestland, and the Secretary may encourage multiple uses of the same; but the Secretary has no authority to convert millions of acres of timberland into de facto wilderness.

The Roadless Rule should be legislatively nullified. Doing so would provide much-needed planning certainty to regulated parties like the Cooperative, which currently cannot justify expending resources on developing energy projects that might find favor in the current administration (with its well-justified aversion to roadlessness) but which would be rejected out of hand by a future, anti-road administration.

Therefore, I thank Representative Hageman for her leadership in introducing H.R. 7695 and urge the Subcommittee to favorably report this bill out of the Federal Lands Subcommittee. Thank you, and I welcome any questions.

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[90] This is the rationale of the current administration's anticipated administrative rescission of the Roadless Rule. *See* 90 Fed. Reg. at 42,181.

[91] *See* Heather S. Fredriksen, Comment, *The Roadless Rule That Never Was: Why Roadless Areas Should Be Protected Through National Forest Planning Instead of Agency Rulemaking*, 77 U. Colo. L. Rev. 457, 459 (2006).