

United States Senate

WASHINGTON, DC 20510

April 3, 2012

The Honorable Thomas Vilsack
Secretary
U.S. Department of Agriculture
Office of the Secretary
1400 Independence Avenue, S.W.
Washington, DC 20250-0001

Dear Secretary Vilsack:

I write in regards to a recent Federal Court decision (*Sequoia Forestkeeper v. Tidwell*), which determined that the notice, comment, and appeal process required by the 1992 Forest Service Decision-making and Appeals Reform Act (ARA) applied to decisions for all projects and activities in national forests, including decisions that are categorically excluded from National Environmental Policy Act (NEPA) analysis. The nationwide injunction on categorically excluded activities issued by the court as part of that decision appears to have severe consequences in Alaska.

While this decision affects categorically excluded projects and activities throughout the country, Alaska's short summer work season greatly exacerbates the problem. In particular, several proposed mining exploration projects will be adversely affected due to the lead time necessary to secure and deliver helicopters, drilling rigs and other personnel and equipment to remote parts of Southeast Alaska. I fear this legal issue may effectively rule out exploration this summer for one or more of these projects.

A specific example of how this impacts mining exploration in Alaska involves the Greens Creek Mine near Juneau. In early March, the Forest Service approved a permit for helicopter-supported exploration near the existing mine. Because the actual document authorizing the activity had not been signed as of the docketing date of the court decision, the proposed activity will now be subject to notice, comment and appeal per direction of Forest Service Chief Tom Tidwell. While I understand that the Forest Service has already started work on a proposed notice, it is possible that the company might not be able to start its summer exploration until August; if at all.

As you know, Congress recently changed the Land Resources Management Plan review process from the current post-decision administrative appeal process to a 30-day pre-decisional objection process in the Consolidated Appropriations Act of 2012, P.L. 112-74 §428. By replacing the 1992 ARA process with that found in the Healthy Forests

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Restoration Act of 2003, but applicable only to a narrow set of activities, Congress clearly intended to expedite agency review.

I understand that the Forest Service is in the process of developing regulations to comply with the Consolidated Appropriations Act of 2012. However, according to the changes this act made to existing law, it appears the proposed regulations will not include the decision-making process for activities categorically excluded from NEPA review. Therefore, while good policy, this law and its forthcoming regulations do not appear to be a solution for those affected by the recent court injunction.

Because of the importance of these projects, please give my office an update on the status of these regulations and clarification on whether the regulations apply to categorically excluded activities. Additionally, please describe what additional powers you and the Forest Service have to address this situation. If there is no administrative solution, I stand ready to help you put a legislative solution in place that will allow worthy projects to move forward while maintaining a healthy public process. Mining exploration is a growing contributor to the Southeast Alaska economy. These exploration projects will each spend millions of dollars in an area with high unemployment and potentially bring high-paying, long-term jobs closer to fruition. I urge you to take every necessary step to remedy this problem.

Thank you for your consideration of this letter. Please do not hesitate to contact me directly or have your staff contact Michael Johnson in my office at 202-224-3004 to discuss this issue.

Sincerely,



Mark Begich
United States Senator

cc: Harris Sherman, USDA Under Secretary Natural Resources & Environment
Butch Blazer, USDA Deputy Undersecretary Natural Resources & Environment
Tom Tidwell, Chief, U.S. Forest Service
Beth Pendleton, Regional Forest, U.S. Forest Service- Alaska Region
Forrest Cole, Supervisor, Tongass National Forest