

Welcome to Clean Law from the Environmental and Energy Law Program at Harvard Law School. In this episode, EELP Associate Director Sara Dewey talks to Andy Mergen, clinical professor and faculty director of the Emmett Environmental Law and Policy Clinic here at Harvard Law School and award-winning journalist Ben Goldfarb, author of *Crossings: How Road Ecology is Shaping the Future of the Planet*. They discuss the US Forest Service proposal to rescind the 2001 Roadless Rule, the ecological value of roadless areas in our national forests, and what we can expect if the proposal is finalized. We hope you enjoy this podcast.

Sara Dewey:

Welcome to Clean Law. I'm Sara Dewey, Associate Director of the Environmental and Energy Law Program at Harvard Law School. Today we'll be discussing the Trump administration's proposal to rescind the Roadless Rule, a US Forest Service regulation that's protected almost 45 million acres of our most ecologically important public lands for the last quarter-century. Today, we're fortunate to discuss the implications of the proposal with two people who have deep knowledge of public land law, policy, and ecology. With us is Ben Goldfarb, who's an award-winning journalist and author of *Crossings: How Road Ecology is Shaping the Future of the Planet*. It's a really beautiful and powerful book, which I highly recommend our listeners read if they haven't, and has been influential in shaping how people understand road ecology and the Roadless Rule.

And Andy Mergen, who's a regular on Clean Law, is a Harvard Law School professor and a faculty director of the Emmett Environmental Law and Policy Clinic at Harvard. He's a 30-year veteran of the Environment and Natural Resources Division at the Department of Justice, and he worked on roadless issues in multiple administrations at DOJ. So welcome to you both. Thanks so much for being here.

Last year, the Trump administration announced its intention to roll back the Roadless Rule, and shortly thereafter, Andy and the clinic reached out to Ben and proposed that clinic students put together comments to submit on his behalf on the Roadless Rule rescission. And then this August, the Trump administration published its proposed rollback of the rule, which would remove prohibition on road building and timber harvesting in inventoried roadless areas in national forests across the country, except for in Idaho and Colorado, which have their own Roadless Rules. So to get started, Andy, can you explain why you reached out to Ben to work together on this project?

Andy Mergen:

Yeah, I'm a huge admirer of Ben's journalism and writing. His first book was about beavers, and I love beavers, and I read the book. And then as soon as *Crossings* came out, I read it immediately, and it really struck a chord with me because I had worked on the Roadless Rule for so long at DOJ. And by the time *Crossings* came out, I was at Harvard, and I knew that Harvard had played a role in thinking about road ecology. Richard Foreman, who is an emeritus professor at the Harvard Graduate School of Design, has been thinking about road ecology for a long time. And Bob Marshall, who was one of the founders of the Wilderness Society and one of the people whose advocacy resulted in the Wilderness Act did his graduate work at the Harvard Forest.

So Harvard has a modest connection with thinking about roads and road ecology. And so I thought that it would be exciting to work on this issue and really important for our students to partner with someone like Ben, because journalists like Ben do something very similar to what environmental lawyers do. They have to explain scientific concepts and issues to a generalist audience, people who might not think that they're interested in road ecology, and they have to make it accessible to them. And that's what lawyers do, especially environmental lawyers in their advocacy. They have to explain complex ideas in an engaging way as part of their advocacy to a generalist audience. So it seems like a remarkable opportunity to have our students learn from Ben and to write on an issue that is important to a lot of us and has sort of a history at Harvard.

Sara Dewey:

Before we talk about the rule, let's talk about roads in forests. Ben, in your book, you explain that the Forest Service kind of astoundingly operates the world's largest road network, and you talk about foresters who came to regret a lot of that road building. Can you tell us a little bit about forest roads and the genesis of the Roadless Rule?

Ben Goldfarb:

Certainly. So I think unbeknownst to a lot of people, the Forest Service operates 370,000 miles of road, which for perspective means you could drive to the moon and part way back on Forest Service roads. So how did we get there? How did that happen? And I think that really there are two primary eras, I would say, of Forest Service road building. The first occurred in the early 1900s, and one of the interesting historical ironies or coincidences is that the Forest Service really comes of age starting in 1905 with its founding, which is a period that more or less overlaps with the rise of the personal automobile on American landscapes. So the early Forest Service is trying to give people places to drive to, basically, building all of these roads, largely for recreation as well as forest management and other purposes. And this was really considered this enlightened era of forest stewardship.

If we're going to let Americans experience their public lands in all of their glory, we have to get them back into the woods somehow, and roads are the ways that they're able to drive their Model Ts back there. And then there's this kind of early burst of system road building in national forests. And then there's another eruption of road building, I would say in the mid-1900s, immediately after World War II, as the country's population is growing rapidly and we're building all of these new suburbs, and that wood to fuel this construction boom has to come from somewhere. And some of it certainly came from private forestry lands, but a lot of it came from public lands, from our national forests. And so oftentimes it was actually private timber companies, not the Forest Service itself, building roads in the 1950s, '60s, '70s, intensively logging a lot of these forests.

In the course of working on this book, *Crossings*, I went to Idaho, to the Nez Perce Clearwater National Forest, and the hillsides were just pinstriped with these old logging roads in a forest that in many places has a higher road density than New York City, unfathomably. And one of the biologists I was with said, half joking, that it looked like they drove to basically every tree in the forest. And so that's how we ended up with this unbelievably overbuilt, dense, redundant road system that's causing a lot of ecological damage.

Sara Dewey:

So that leads to my next question, which is, can you spend some time talking about the impact of all of these roads? What has the impact on the national forest system been?

Ben Goldfarb:

Yeah, I think it's been catastrophic in a lot of cases and a lot of respects. And you could think about that in all kinds of different ways, certainly for wildlife. When you look at the variables controlling populations of grizzly bears or wolves or wolverines or even aquatic species like bull trout or cutthroat trout, road density time and time again rises to the top of the list of variables affecting those animals. If you're a grizzly bear, this really wide-ranging animal who needs to move through big connected patches of habitat, and then all of a sudden you've got this road network injecting cars and noise and people with their guns and so on, that's obviously hugely detrimental. And we know from decades of research that road density is the most important variable controlling populations of grizzly bears. Or if you're an endangered trout, like a bull trout or a cutthroat trout, all of those roads are crossing your streams and all of those stream crossings have these little narrow corrugated metal pipes called culverts that prevent you from migrating to your spawning grounds.

And all of those roads are also, because a lot of them are unpaved and unmaintained, they're dumping lots of sediment into streams and smothering fish eggs and amphibian larvae and so on. So roads are harming nature, harming forests, harming wildlife in all kinds of different ways, at all kinds of different scales. And again, we know that thanks to literally decades of ecological research in our national forests.

Sara Dewey:

So on the flip side, the benefits of roadless areas are many, and you talk about a lot of them in your book from habitat for species to water quality to recreational opportunities. So can you talk about some of the most important ecological benefits of roadless areas?

Ben Goldfarb:

Yeah, I think we know that animals require large connected habitats to survive. All of these creatures, whether we're talking about bears or elk or wolverines or lynx, they have to move across large areas to find food and mates and shelter and all the things that every organism needs, and roads fragment those habitats and prevent them from safely navigating the landscape. And going back to the words of Aldo Leopold, who in Sand County Almanac, and I'm sorry to reference a graduate of the Yale School of Forestry on a Harvard podcast.

Sara Dewey:

You couldn't resist.

Ben Goldfarb:

I couldn't resist, that's right, because I'm a Yale Forestry alumnus myself. So I got to bring in the Yalies talking to Harvard people. But in Sand County Almanac, Leopold talks about the fact that our national parks are actually too small for a lot of big wide-ranging creatures who need these connected habitats to wander really long distances. And that's a lot of what roadless areas provide us. They're kind of the stepping stone habitats that allow grizzly bears or elk or other animals to move in and out of protected areas or official national parks like Yellowstone or Glacier. Those roadless areas are basically how animals are able to move out of parks and wander this larger connected landscape.

And then Sara, just because you briefly mentioned recreation, I think that's a really important point as well. I think that people, some in the Trump administration talk about how the lack of roads makes it impossible to access these places, but in fact, these are the lands that you can catch the biggest trout in or hunt the biggest deer or have an incredible whitewater paddling experience. Roadless areas contribute something like \$500 million to our recreational economies every year. So these are places that humans are using, they're just using them in non-motorized ways just as Aldo Leopold intended.

Sara Dewey:

Let's talk specifically about wildfire management for a moment because as we'll get to the Trump administration's rescission uses fire management as a justification for allowing road building in these areas despite clear scientific evidence to the contrary. So Ben, can you talk a little bit about what scientists have found about the relationship between roads and fires in national forests?

Ben Goldfarb:

Yeah, it's a really great point, Sara, because as you say, this is the stated justification for rescinding the rule. Don't we need roads in our national forests to get the firefighters back there to fight fires as they pop up or to clear the brush to do some forest management so that fires don't start in the first place? That's what the Trump

administration talks about. And we know, as you referenced, thanks to many years of research, that logic is basically exactly backward, that in fact, roads start fires in all kinds of ways, mostly because roads inject people into forests and people are sources of ignition. You drive back there, you start your campfire, you forget to put it out at night, and that's how a wildfire starts. And there's, again, just overwhelming research showing that fire ignition sources are much more common near roads. They're much less common in roadless areas and designated wildernesses.

And so if you wanted to reduce the amount of fire that our forests are experiencing as the Trump administration's stated goal is, you would build fewer roads and actually remove a lot of the roads that we already have. And so that stated logic I think is pretty clearly refuted by the evidence.

Sara Dewey:

So now that we have that grounding in road ecology, let's transition to the 2001 Roadless Rule. Andy, can you take us back to the legal history of the Roadless Rule and how it came into being during the Clinton administration?

Andy Mergen:

Yeah, I'm going to start maybe even a little bit earlier because Ben's book, which everyone should rush to their bookstore and library and get right away, and I especially love chapter five, which is really about the Roadless Rule. And he makes a really important point in terms of, as we talk about the rescission a little bit later in the podcast, that in a lot of ways, the idea for a Roadless Rule was organic to the Service. It was the experience of foresters. And maybe just a word about that, Ben does a great job of talking to folks who've come to regret this giant network of roads and see how it fragmented and harmed the resources. And early in the Forest Service history, there were these great people like Aldo Leopold, a Yale graduate and a professor at the University of Wisconsin for many years, which I'm a proud graduate of, so I'll get that in.

And of course he wrote Sand County Almanac in Wisconsin. But moving on, Aldo Leopold and Bob Marshall, who both spent considerable parts of their career in the Forest Service, were really early advocates for the idea that maybe we should have places where the automobile was just not allowed. And so Leopold and Marshall worked really hard on wilderness preservation. In 1964, President Johnson signed the Wilderness Act. So we've had the Wilderness Act for well over 60 years now. And I want to say a little bit about the Wilderness Act and Roadless are very different. The Wilderness Act prohibits a lot of things that are allowed in roadless areas. The act of creating the Wilderness Act caused agencies to inventory what they had, to understand where roads existed, where they weren't, and they started to inventory roadless areas. And so only Congress can create wilderness areas, and Congress has created a lot of stellar wilderness areas.

The Bob Marshall Wilderness in Montana is very famous, Frank Church in Idaho. All of my students, I'm amazed that they know all the wilderness in the White Mountains, which is sort of very accessible to them. These are really important areas, and it's under a different legal structure. So we've had the Wilderness Act since 1964. When Bill Clinton was elected president, it's really remarkable that he had to deal with forest issues right away. He came in at a time where there was a lot of controversy about Timber Harvest and the spotted owl. And I feel like that experience created a good relationship between the president and the Forest Service. They had to work together. They had some difficult issues to sort of work out. And one of the things that the Forest Service brought to the president's attention and to the administration's attention was that they had this enormous backlog of road work that they couldn't possibly afford to do.

Maintaining these roads was incredibly costly. A lot of that was dependent on going to Congress. And Congress, that's a kind of a crapshoot. You don't know whether you're going to get the money. And so that's one impetus for the Roadless Rule within the agency. And the other powerful impetus is the work and publications of people like Leopold and Marshall who had long sort of said, "It's better for the forests if we keep roads out. It's better

for people. It's better for clean water. It's better for wildlife. It's better in terms of wildfire management to keep people out of forested areas." So all of these things coalesced around an administrative proposal, a rule coming from the executive branch, and the Clinton administration got that rule published at the very end of their second term in office. And sometimes it's unfortunate that rulemaking takes a long time and politics is difficult.

And so the rule was immediately sort of challenged in the Bush administration. The Bush administration undertook a different proposal, the State Petitions Rule, that's why we get the Colorado and Idaho rules, which I think most conservationists can live with. That process was pretty thoughtfully constructed. There were some compromises and they reflect certain realities in those landscapes. Colorado has a lot of ski areas and ski areas were interested in a different rule. But the bottom line is it's been contentious as the administration notes in its rescission, but it was upheld by the 10th Circuit and of an incredibly robust opinion around 2011. We can link to that opinion and it rejects a lot of the arguments that are made today. And so we really had the benefit of the rule basically for 25 years. And even though it's been contentious, and we can talk about how contentious it has been in Alaska, for instance, it's really been in effect for a long time, and all of the values that Ben has noted have been preserved by the rule. We've all benefited from the existence of the rule.

Sara Dewey:

Let's talk about Alaska for a moment. It has an especially complex and controversial history with this rule as you note. So can you talk a little bit about the conflicts in the Tongass National Forest and how that's animated broader disputes about the Roadless Rule?

Andy Mergen:

Yeah, and we're going to talk, I think, a little bit later about why the Trump administration says this rescission is necessary. But spoiler alert, I don't think there's any doubt that they want to get more timber off of these lands. That's a difficult prospect in a lot of ways because the 30% of the national forests that are basically covered by the Roadless Rule, those are trees that are hard to get at anyway. There's a reason that those areas really haven't been logged, and that's why the Roadless Rule makes so much sense because there's not necessarily any economic value to be gained by going after those logs.

Now, the Tongass, which is the largest national forest in the United States forest system, and really all forests are unique and singular in their own way, but the Tongass is a temperate rainforest with really big trees and fish factory, no doubt a place where a lot of salmon go to spawn and very important to the salmon industry, to the recreation, and also to the Native people.

This is a place where the relationship between the forest and the Native communities is really profound. But because there's so many big trees and there's a long history of logging in the Tongass, this is sort of the most controversial application of the Roadless Rule because there are a lot of people who see those big trees and want to get at them. And to my mind, it's also the place where the need for the rule is especially profound because of the relationship between this forest and these other industries like the salmon fisheries and recreational businesses that rely on them and what we owe the Indigenous people of this area. And so there's been a lot of litigation around this. In 2015, a case went to the Ninth Circuit and was decided en banc by the whole court. Ninth Circuit doesn't really sit. It's so big that they don't all sit together, so they have a sort of drawing and half of the court decides these cases.

And it was a challenge to a decision regarding by the state of Alaska and industry to the Roadless Rule application in Alaska. And the lead plaintiff in that case is the Organized Village of Kake. It is the Native people saying, "We need this rule." And in that case, the court said that the decision by the administration to rescind that rule was arbitrary and capricious. And I want to come back to that in a second, but I think when we talk about maybe forecasting what's going to happen in litigation around the Trump administration's rescission, but what I really want to drive home here is that this is an area where there has been also a tremendous amount of

litigation and the Tongass is governed by some specific litigation, Tongass Timber Reform Act and things like that. But it's also the place where I think most people agree that the need for the Roadless Rule is most acute because of the incredible importance of this forest to economies in Southeast Alaska.

Sara Dewey:

Ben, do you have anything to add from the ecological perspective on the particular values of the Tongass and its importance in the Roadless Rule?

Ben Goldfarb:

Certainly. I mean, Andy makes some wonderful points there and I loved his description of the Tongass as a salmon factory because it certainly is. And I think one of the important things to note, of course, about salmon is that they go on these incredible journeys, right? They are these amazingly migratory animals, and that means that destroying their habitat in the Tongass through road building and the logging of old growth trees is going to result in fewer salmon in the North Pacific, thousands of miles away. And so I think that's one of the powerful things about inventoried roadless areas is yes, there are these specific places on the landscape, but a lot of the species they help protect travel really long distances. And so in that sense, they're linked to the entire planet in a lot of ways.

And I also think that fish connection is a really big reason that we've seen the sportsman's community advocate so powerfully on behalf of the Roadless Rule. Trout Unlimited is one of the groups right now that's been most outspoken in protecting this rule. And Trout Unlimited's members are certainly not politically homogenous. There are plenty of TU members on both sides of the aisle, but because they care about fish, they care about intact nature, I think this is an issue that really unites a lot of disparate political factions around the shared cause of intact habitat.

Sara Dewey:

Andy, you've given us some of the litigation history for this rule here. Is there anything else you'd like to say about the legal challenges to this rule over time?

Andy Mergen:

There's been a lot of litigation. I think that it's really important for people who are interested in understanding this controversy and the challenges that have been made to the Clinton Roadless Rule before to take a look at the decision out of the 10th Circuit by Judge Holmes. Judge Holmes, a Republican appointee, does a really thorough job of taking apart the arguments that have been made previously challenging the Roadless Rule, including that this is a national rule and that's improper or that this is defacto wilderness and only Congress can create wilderness. And what I want to say about that is that if we put together a chart of what can happen in wilderness and what can happen in roadless areas, you're going to see that there's so much more flexibility in roadless areas. There is the ability to respond to issues relating to public health and fire and certain kinds of timber treatments can be allowed and grazing can be allowed and all of these things.

Whereas the Wilderness Act, which is a really profoundly important act and not one without controversy, it bans bicycles, it bans chainsaws, it bans any sort of mechanical apparatus. The Roadless Rule has a lot more flexibility. And when the challenges to the Clinton rule came through, there were all these challenges that this kind of administrative action was improper and they have all been rejected. And notably when the 10th Circuit reached this decision and upheld the rule, the Clinton rule, the challengers, including the state of Wyoming, went to the Supreme Court and asked the Supreme Court to hear that challenge, and the court rejected it. They didn't think it was worth their time. And at that time, the Obama administration filed a brief that was a very vigorous

defense of the rule. I think we should talk some about the challenges that Trump is making, but I think the past litigation really is going to make it very hard for the Trump administration to rescind this rule.

Sara Dewey:

So let's turn now to the Trump administration's proposal. They propose eliminating the Roadless Rule in its entirety, and they argue that this would relieve regulatory burden and increase local management flexibility. And the proposal tries to argue that local control will enable forest managers to respond to what they say are changed conditions in the national forest system. Fires are one of the major issues that they cite, as we mentioned. Andy, can you talk a little bit about how the Forest Service tries to justify this change in position in this proposed rescission?

Andy Mergen:

Yeah. If you read the rule and the draft EIS that accompanies it, they really focus on the idea that sort of sounds good if you don't really know what's going on. They say, "This seems like a one size fits all thing, and there's a lot has changed since the rule was promulgated in 2001." And what we have sort of giving them the benefit of the doubt, what they're saying is we should respond to local conditions locally, and this big national rule is the wrong way to go. And they really lean into that a lot in their documents.

A couple of important things to know about that. One is just as a legal matter, forests are governed by the National Forest Management Act of 1976, which is a planning statute. And it really does sort of require each forest to inventory its lands, understand where the streams are, what the canopy cover is, where there are steep slopes, where there are minerals, where wildlife are, what the wildlife habitats are. And they're supposed to do this in a planning process. And this process is resource intensive. And so it's very hard. Congress had a really great idea about how we should modernize the management of our public lands, but it is resource intensive. And they're somewhat ironic for the Trump administration to say, "Hey, we should be doing things locally," when they have sort of devastated the Forest Service workforce and the kinds of fine-grained analysis is difficult to do without people, without boots on the ground. And they have eliminated that. And that's why I think this talk about local seems very pretextual to me because there aren't the resources to do the kind of work that they are saying is required.

But more importantly, and this goes back to what we've discussed earlier in the pod, which is that the Forest Service and the expert people on the landscape saw a need for this rule. And the Roadless Rule in 2001 was promulgated with a very sound explanation of why you needed a nationwide rule because we all understood the risks of these roads for fire. We all understood the harms caused by fragmentation, and we all understood that watersheds may be different on the east side of the Sierra and in the Tongass, but roads impact watersheds. So it's this idea that it's about the local. It does not withstand any sort of scrutiny. And also they've talked about the fire and they're leaning into everyone's fear about fire, especially those folks who are in areas that have suffered immensely from wildland fire. But the science is to the contrary. Everyone knows this. And the fact of the matter is that there's just no way, I think, really to argue with a straight face that we need more roads to manage fire. I have a whole list of prescriptions for managing wildland fire.

It's probably a different podcast, Sara, but it does not include building more roads in national forests. So I think they've given these reasons, and I think a lot of us feel like it's really about opening these areas to more timber. And they couch all of this in these nice words about local and regional control and risk of fire, but it really seems like one of the things the Roadless Rule does is make it harder to do commercial timber operations, and it seems like a lot of this is pretextual.

Sara Dewey:

Let's talk about timber harvesting in particular. It seems like the proposed rule is trying to have it both ways. The EIS argues that the impact will be relatively minimal and it won't raise a lot of revenue while it's also the reason for the rule, presumably. So can you talk about how they frame this issue and a little bit more about what you make of it and what you expect the practical impact to be? And Ben, please jump in as well.

Andy Mergen:

Yeah, I'll just sort of say that the fact that you have observed this tension in there is because it is absolutely in there. It seems that at the same time that they're saying the president has issued executive orders on timber, he seems very excited about cutting trees. And on the other hand, I think realistically there are many, many challenges for them to get trees out. A lot of these areas haven't been logged for a reason. They're inventoried roadless areas for a reason. And I think that there will be many challenges, including whether people are interested in these trees at all because of the difficulty. I mean, Tongass stands separate from that, and that's why many of us are worried about Tongass. Even there though, I think that one of the big things that's crazy about Tongass is if you cut trees there, they may just go overseas.

There may not be a market or any sort of milling in the US for those trees, that they may just go to Asia to make boxes for deliveries. That's a big fear. So there's a lot of unknowns here, but it seems like it's a message to signal these lands are open for timber. And whether or not that happens, I have to say that because I want people to understand that they need to be vigilant about what's happening on each of these forests as this rule moves forward, but there are really good reasons there shouldn't be any harvest in any of these lands. I'll turn it over to Ben.

Ben Goldfarb:

Yeah. I think that Andy alluded to some of Trump's executive orders around increasing timber harvest on public lands. And I think it's really important to think about the proposed rescission of the rule in the context of all of these other things the administration is doing to public lands and wildlife. The week that we're talking, the US Fish and Wildlife Service just changed the way that it interprets the Endangered Species Act so that destroying a species' habitat is not a form of harm to the species, which is like saying if I plowed a bulldozer through Andy's house, he would not be harmed by that. And guess what? If you consider habitat destruction not harmful to a species, you can justify building a lot of roads in that species habitat.

And so all of these different actions, the timber EOs, the reinterpretation of the ESA, the rescission of the Roadless Rule, the Forest Service's rewriting of its travel management plan to basically allow off-road vehicles anywhere they want to go, all of these things, they're part of this larger strategy to deprioritize wildlife and conservation on public lands and to prioritize timber harvest and motorized recreation. All of these different interpretations and rescissions and EOs all kind of go hand in glove, unfortunately.

Sara Dewey:

So Ben just situated this action within this broader suite of priorities that the administration is advancing to open public lands, logging, mining, off-road vehicles. Andy, what do you see as the most glaring legal problems with this proposal in particular? And I think it will probably also be echoed in some of these other topics that Ben just raised.

Andy Mergen:

Yeah, just to underscore Ben's point, there's so much going on and these things are all sort of related. When they came out with the Harm Rule, they said, "Oh, this is just the Harm Rule and the other protections of the ESA are going to apply." And then this week we learned about a memo that seems to suggest that really this is a wholesale dismantling of the Endangered Species Act, and this is all really troubling. And I want to talk about

what the litigation landscape is going to look like, and I want to do it by also noting that the folks who are bringing these challenges to the Roadless Rule rescission are also involved in all of these cases. We have a lot of coalitions with states who are taking these issues on. We have the environmental NGOs. We have a lot of Tribal communities that are becoming involved in these issues because they are so close to these resources, these lands, they understand the importance, but it's just exhausting for all of these groups to do this work.

It's very frustrating because a lot of the proposals are just sort of so inadequate, but you have to go through the process of filing a lawsuit and going to court. And I think this is one where there are a lot of infirmities to this challenge. Let's just focus on the fire issue. Lawyers know that decisions are set aside when they are arbitrary and capricious or they fail to consider important aspects of the problem that their action is alleged to address. And here we have the agency sort of saying something that it knows, it's somewhat conflicted as it talks about fire because it has to acknowledge that the bulk of the research by far says putting people and roads into forests increases risk of fire, especially roads. So is it arbitrary and capricious if you don't acknowledge that the weight of the evidence is on the other side?

There's a good argument it is. I mean, I want to go back to this Organized Village of Kake case involving the Roadless Rules application in Alaska. And that case went to the whole Ninth Circuit in the en banc court and the majority of those judges signed on to an opinion that said elections have consequences and the new president can go in a different policy direction. That's what we vote for. But you have to justify your decisions. You have to show your work. You have to acknowledge what the record has demonstrated in the past and you have to respond to it and you have to show why your change in policy is supported by the facts. And one of the things that they say is things have changed over 25 years and that's why we need this more flexible local control. But the things that have changed in the past 25 years, I think the challengers are going to be able to show only double down on the need for this rule. And so I think it's going to be an uphill battle for them in court.

Sara Dewey:

The comment period for the proposed rescission closes on October 6th. Can you talk a bit about why the comment process is so important in this rulemaking?

Andy Mergen:

So I'll start and then I'm going to turn it over to Ben. I mean, comments play a really important role in the legal review. So I've noted that I don't think that the administration can justify the judgments it's made in support of its change in course on the rescission of the rule here. I think it's really important for the public to make clear that they see those flaws as well. I think opposition matters a lot. There are a lot of things to be unhappy about in any particular day, but the fact that we have a system that allows the public to engage on these issues is really an important element of our democracy. The agency gives the public an opportunity to express its views, and I think it's really important for the public to do that. And I would encourage listeners who are to the law students and lawyers in here to make their comments anchored in what they know about the law.

But I think it's also really important to hear from people who may live near national forests or recreate in roadless areas and to make these comments personal and to talk about their own experience. The observed fact that roads damage water quality, that we all depend on water from national forests. When the national forest system was created, it was created out of the recognition that urban areas all over the United States got their water from the headwaters, from the national forest, from way up. And so then the Forest Service Organic Act expressly deals with timber and water, and so I think it's really important for people to sort of say, "This is how this rule is going to affect me and this is why I think the rule is wrong." And I think the public opposition counts for a lot. I'm going to turn it over to Ben.

Ben Goldfarb:

Yeah. Andy, I'm glad you made the point about water because we haven't talked about that much in this conversation, but that's a critically important thing that the Roadless Rule does is it protects our water supply. 25 million people depend on roadless areas for their water supply. Writing about this issue last year, I talked to an ecologist in Montana who said, "If you live in the American West and you look up and you see mountains, those mountains are roadless areas where your water comes from." And I thought that was a really profound way of thinking about it.

I mean, I'll just add to Andy's point about the importance of comments. I think it's really easy right now if you are a person who values public lands and wildlife and conservation to feel like we're losing a lot. And that is certainly true. All of this, in my opinion, terrible stuff is happening and you feel a little bit powerless sometimes in the face of it. But when communities of people who love and value public lands speak up on behalf of those places, we actually win a lot of the time.

I think a really good example of that was the Big Beautiful Bill where Mike Lee, a senator from Utah, wanted to include a provision selling off public lands, both Forest Service lands and Bureau of Land Management around population centers in a whole bunch of Western states. And he faced just an avalanche of opposition, not just from left-leaning tree huggers, but from elk hunters and trout fishermen and all the people who value those places for recreation. A truly bipartisan or maybe I should say non-partisan coalition of public lands lovers rose up and basically forced him to remove that provision, which is just an incredible example of how we can win on these issues when we activate and mobilize diverse groups of people who love and value these lands that we all own in common.

So this is certainly, it's not a hopeless fight. It's not tilting at windmills. This is truly an issue that our comments can influence.

Sara Dewey:

Well, that is a great note to end on. Thank you both so much for this conversation.

Andy Mergen:

Thank you.

Ben Goldfarb:

Thanks, Sara. Thanks, Andy.