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TNF 5-YEAR REVIEW
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COMMENTS OF SOUTHEAST ALASKA UTILITIES ON FIVE YEAR REVIEW OF THE 2008 FOREST PLAN

Dear Mr. Cole;

Alaska Electric Light and Power (AEL&P) is the largest investor-owned company that provides regulated electric service in and around Juneau. Alaska Power & Telephone Company is the second largest investor-owned company that provides regulated electric service and communication services to many Cities, Communities and villages throughout rural SE Alaska.

We join the Alaska Miners' Association in requesting that the 2008 Amended Tongass Land and Resource Management Plan (Forest Plan) be amended to include a Renewable Energy Resource Land Use Designation (LUD) and to make other changes. The Renewable Energy Resource LUD that we propose be added to the Forest Plan is attached to this letter.

1. WHY OMISSIONS IN THE FOREST PLAN, AND GOVERNMENT ACTIONS SUBSEQUENT TO PROMULGATION OF THE FOREST PLAN IN JANUARY 2008, REQUIRE THE FOREST PLAN TO BE AMENDED TO INCLUDE A RENEWABLE ENERGY RESOURCE LUD

- a. The 2008 Forest Plan was fatally flawed as prepared, because it did not include a Renewable Energy Resource plan, and, thus, is not consistent with national energy policy and national energy security policy.¹ For

¹ That the 2008 Amended Forest Plan did **NOT** contain a Renewable Energy Plan is seen in a December 11, 2009 e-mail from the Administrative Assistant to then Deputy Undersecretary of Agriculture for Natural Resources, Jay Jensen, to the Forest Supervisor for the Tongass National Forest, Forrest Cole: "Jay wants us to be able to talk about the transition plan at this meeting with RD: where we are with it, and how its synchs up with the joint projects. I also **know a hydro strategy is coming at some point – it might make sense to think about how this all fits together: what is the host of job opportunities coming off of the forest, from traditional timber to energy (biomass and water)** to restoration, recreation and tourism to fish and marine businesses. You're probably already there in your thinking.(Emphasis added). And, a September 23, 2009 e-mail from Cherie Shelley, Director of Ecosystem Planning to Forrest Cole: " In regards to hydro and roadless. As you are aware we are getting some pretty mixed messages from several sources higher than the Forest, One hand says push hydro and on the other

example, the Forest Plan fails to comply with, or mention, Executive Order 13423 that was signed on January 24, 2007 or the Energy Independence and Security Act of 2007 (42 U.S.C.A, 17001 et seq.) (EISA).

Executive Order 13423 requires Federal agencies to reduce energy intensity by 3% each year leading to 30% by the end of FY 2015 compared to a FY 2003 baseline. Federal agencies must also ensure that at least half of all renewable energy required under EPA Act 2005 comes from new renewable sources developed after January 1, 1999. These goals were given the force of law when ratified by EISA.

EISA makes specific findings that clearly demonstrate Congress's intent that federal lands produce renewable energy:

§ 17285. Sense of Congress relating to the use of renewable resources to generate energy

(a) Findings

Congress finds that –

- (1) the United States has a quantity of renewable energy resources that is sufficient to supply a significant portion of the energy needs of the United States;
- (2) the agricultural, **forestry**, and working land of the United States can help ensure a sustainable domestic energy system;
- (3) accelerated development and use of renewable energy technologies provide numerous benefits to the United States, including improved national security, improved balance of payments, **healthier rural economies**, improved environmental quality, and abundant, reliable and affordable energy for all citizens of the United States;
- (4) --
- (5) increased energy production from domestic renewable resources would attract substantial new investments in energy infrastructure, create economic growth, develop new jobs for citizens of the United States,, **and increase the income for farm, ranch, and forestry jobs in rural regions of the United States;**
- (6) increased use of renewable energy is practical and can be cost effective **with the implementation of**

stay out of Roadless. All are new applications as opposed to re-permitting facilities already in place. I need to know where everyone is going to be before the Tongass or a proponent sinks a ton of money in nepa.

supportive policies and proper incentives to stimulate markets and infrastructure; and

(7) –

(b) Sense of Congress

It is the sense of Congress that it is the goal of the United States that , not later than January 1, 2025, the agricultural, **forestry**, and working land of the united States should –

(1) **Provide from renewable resources not less than 25 percent of the total energy consumed in the United States; and**

(2) Continue to produce safe, abundant, and affordable food feed and fiber.²

In addition, Public Law 106-511 enacted on November 13, 2000 establishing the Southeast Alaska Intertie System is not referenced, explained or identified in the 2008 Forest Plan, although every other Public Law affecting the TNF, such as Alaska Statehood Act, ANILCA, ANSCA, Wild and Scenic Rivers Act is referenced.

The foregoing demonstrates that national energy policy then in effect required that a Renewable Energy Resource plan be part of the 2008 Amended Forest Plan.

- b. The Forest Service admitted in a July 20, 2009 letter to Alaska Power & Telephone (AP&T) that a renewable energy project, specifically a hydropower project, sited in a Remote Recreation TUS Avoidance Area could not meet the management direction for that LUD consistent with NEPA, thereby requiring the Forest Plan to be amended:

Management direction states ‘Transportation and utility sites and corridors may be located within this LUD only after an analysis of potential TUS corridors has been completed and no **feasible alternatives exist outside this LUD**. (Emphasis, the Forest Service).

Members of my staff worked together for several months to develop an analysis of feasible alternatives. **Consensus of this group is that an analysis of feasible alternatives cannot be adequately developed for hydropower generation projects.** Some of the reasons staff reached this conclusion are:

² 42 U.S.C. §17285 (Emphasis added).

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We'll never know enough to judge with confidence whether all possible alternative locations for any proposed project are or are not economically feasible. The same is probably true for environmental feasibility, at least before NEPA analysis is conducted which won't be done when the 'feasible alternative' analysis is required.

Many assumptions are required, and there is a great deal of discretion about how to make them. **It is extremely difficult to develop these assumptions with acceptable levels of risks relative to not being arbitrary and capricious.**

The Forest will write a site-specific amendment to the Forest Plan to remove this requirement for evaluation of hydropower proposals in TUS Avoidance LUDs and issue a decision. This process will need to follow National Environmental Act procedures. (Emphasis added).

Notwithstanding that it made its commitment to do so nearly four years ago, the Forest Service has not amended the Forest Plan, thereby precluding hydropower and other renewable energy projects in TUS Avoidance LUDs. The attached Renewable Energy Resource LUD is intended to address and resolve the problem.

- c. A March 4, 2011 Court Order applied the 2001 Roadless Rule, covering 9.6 million acres to the previously exempt TNF. By restricting road access and prohibiting timber harvest within Inventoried Roadless Areas (IRAs), the 2001 Roadless Rule has made renewable energy resource projects impractical to develop under the 2008 Amended Forest Plan.

While the Court is not subject to NEPA, the Forest Service should have recognized that as a result of the March 4, 2011 decision "conditions in a unit [i.e., the entire TNF] have significantly changed" and revised the Forest Plan in accordance with NEPA, as the National Forest Management Act (NFMA) commands. (16 U.S.C. § 1604(f)(5)). That the reinstatement of the 2001 Roadless Rule on the Tongass was a significant amendment is recognized by the example of such given in the Forest Plan itself:

Significant Amendments The following examples indicate circumstances that may cause a significant change to the Plan:

- 1, Changes that would significantly alter the long-term relationship between levels of multiple-use goods and services originally projected (See section 219.10(e) of the

planning regulations in effect before November 9, 2000 [36 C.F.R. parts 200 to 299, revised as of July 1, 2000].)

2, Changes that may have an important effect on the entire Plan, or affect land and resources throughout a large portion of the planning area during the planning period.³

Surely, if the Forest Service determined that it needed a Forest Plan amendment to “remove this requirement for evaluation of hydropower proposals in TUS Avoidance LUDs,” the post January 2008 overlay of 9.6 million acres of IRAs on the Forest Plan was a “significant change” that required the Forest Service to amend or revise the Forest Plan.

2. WHY A RENEWABLE ENERGY RESOURCE PLAN, INCLUDING A RENEWABLE ENERGY LUD, SHOULD BE ADDED TO THE FOREST PLAN.

The Forest Plan Five Year Review presents a splendid opportunity to correct the failure to include a Renewable Energy Resource Plan and Renewable Energy LUD in the 2008 Amended Forest Plan.

The Failure to Consider the Economic Benefits, or the Job Opportunities Related to the Development of Renewable Energy in the 2001 Roadless Rule or the 2008 Amended Forest Plan Was Inconsistent With Government Policy

Neither the 2001 Roadless Rule nor the 2008 Amended Forest Plan considered or analyzed the economic opportunities, or the job opportunities related to the development of renewable energy resources in rural Southeast Alaska communities. Nor did the 2001 Roadless Rule or 2008 Amended Forest Plan consider the direct economic costs to Southeast Alaska residents caused by their inability to access and develop renewable energy resources in rural Southeast Alaska.

It is hard to understand this omission in the 2001 Roadless Rule because Executive Order 12866, promulgated by President Clinton in 1993, required an agency to determine that the benefits of a regulation outweigh its costs. The Final Rule and ROD acknowledge that EO 12866 applies and that the Rule would have an annual effect on the economy of \$100 million or more.⁴ While the agency found that the benefits of the 2001 Roadless Rule outweighed the costs, it recognized that the impact of the Rule on lost business opportunities in the Alaska Region “may be more pronounced” “with effects in Alaska increasing in the longer term.”⁵

³ 2008 Amended Forest Plan at page 5-3.

⁴ 66 Fed. Reg. 3244, January 12, 2001, at page 3267.

⁵ *Ibid.* at page 3270.

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Yet the EO 12866 review failed to include the adverse impacts and costs of application of the Rule to the Tongass on hydroelectric power development and other renewable energy resources such as wind, tidal, wave, geothermal, biomass and the transmission lines needed to transfer power from the sites of these resources to communities. Nor did the EO 12866 review consider the lost opportunity costs of not being able to replace diesel fired generators in rural Southeast Alaska with renewable energy. No consideration was given to the lost opportunity costs of creating a renewable energy industry in Southeast Alaska or to the local jobs that would be associated with such an industry.

By providing a low-carbon energy alternative the development of renewable energy resources would avoid emitting millions of metric tons of carbon emissions into the atmosphere. However, the EO 12866 review placed no value on the benefits to the environment of replacing diesel fired generators in Southeast Alaska with renewable energy. This failure of EO 12866 review to properly analyze the value of renewable energy in Southeast Alaska should be remedied by amending the 2008 Forest Plan to include a Renewable Energy Resources Plan and LUD, the goal of which is to authorize significant renewable energy development on the TNF.

It is hard to understand the omission of an analysis of the value of renewable energy in Southeast Alaska within the 2008 Amended Forest Plan because the Forest Service had previously acknowledged the importance of utility connections among communities in rural Southeast Alaska in its July 15, 2003 rulemaking to exempt the TNF from the 2001 Roadless Rule:

There are thirty two communities within the boundary of the TNF. Most Southeast Alaska communities lack road and utility connections to other communities and to mainland systems. Because most Southeast Alaska communities are surrounded on land by IRAs of the TNF, the roadless rule significantly limits the ability of communities to develop road and utility connections that almost all other communities in the United States take for granted. If the proposed rule [to exempt the TNF from the roadless rule] is adopted, communities in Southeast Alaska would be able to propose road and utility connections across national forest system land that will benefit their communities.⁶

The 2008 Forest Plan should be amended to include a Renewable Energy Resources Plan and LUD, the goal of which is to authorize significant renewable energy development on the TNF.

The Obama Administration's Executive Orders Require A Forest Plan Amendment to Add A Renewable Energy Plan and LUD for the TNF

⁶ 68Fed. Reg. 41865, at 41867 (July 15, 2003).

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In addition to EISA, which pre-dated the 2008 Amended Forest Plan, the current Administration has made its support of renewable energy crystal clear. Specifically, the Obama Administration is seeking to replace fossil fuel use with cleaner, renewable energy resources because of its concern about greenhouse gas (GHG) emissions,

To comply with the spirit of the Obama Administration's policies, rules and regulations encouraging the use of renewable energy resources and the lowering of carbon emissions from the use of fossil fuels (set out below), the 2008 Forest Plan should be amended to include a Renewable Energy Resources Plan and LUD, the goal of which is to authorize significant renewable energy development on the TNF.

- a. At the outset of his presidency President Barack Obama called for the nation to use renewable and clean energy to decrease dependence on foreign oil and the risks of climate change, saying "the ways we use energy strengthen our adversaries and threaten our planet." He continued stating, "[w]e will harness the sun and the winds and the soil to fuel our cars and run our factories;" and
- b. Just over a month later, in an address to a joint session of Congress, President Obama called for an increase in renewable energy production in this country as part of his economic recovery plan. Addressing Congress, he said "the country that harnesses the power of clean, renewable energy will lead the 21st century." President Obama committed to "double this nation's supply of renewable energy in the next three years;" and
- c. A major component of the economic recovery plan, the American Recovery and Reinvestment Act of 2009 (ARRA), an \$800 billion spending bill, included "new national strategies in renewable energy, smart grid, transmission, advanced vehicles, energy efficiency" efforts and other "energy, environment, climate and sustainability" initiatives. President Obama signed the ARRA into law on February 17, 2009. The legislation combined tax incentives, direct spending, and bond and loan programs to increase renewable and clean energy development; and
- d. Soon after taking office, President Obama also signed Executive Order 13514, which expanded on the energy reduction and environmental performance requirements of Executive Order 13423. Executive Order 13423 required federal agencies to reduce energy intensity by 3 percent each year with the goal of 30 percent reduction by the end of FY 2015 compared to a FY 2003 baseline; and

- e. As a continuation of his focus on renewable and clean energy as a part of energy independence for the U.S., the Obama Administration released its Blueprint for a Secure Energy Future on March 30, 2011. The Blueprint noted that as a result of several efforts – including grants under the ARRA, funding for research and development, siting solar power plants on public lands and offshore wind development — the country was already on track to double renewable energy generation by 2012. In March 2012, the White House released a Progress Report on goals set out in the Blueprint. According to the report, the use of renewable energy such as wind and solar had doubled since 2008; and
- f. Consistent with the goals of the Obama Administration, such a Renewable Energy Resource plan and development would allow communities and development projects in Southeast Alaska to significantly decrease the greenhouse gas (GHG) and other emissions in the TNF, reduce the need for shipment and potential spills of diesel and operate these development projects and communities' economies and at a lower cost than diesel. Moreover, it would avoid the need for some, expensive air control devices; and
- g. Consistent with the findings and direction of EISA, such use of renewable energy projects, developed at a lower cost than the rising cost of diesel, would help improve the economic competitiveness of rural Southeast communities and thereby create jobs in high unemployment communities.

Because, neither the 2001 Roadless Rule, nor the EO 12866 review of the 2001 Roadless Rule, nor the 2008 Amended Forest Plan considered or analyzed the economic opportunities, or the job opportunities related to the development of renewable energy resources in rural Southeast Alaska communities or the direct economic costs to Southeast Alaska residents caused by their inability to access and develop renewable energy resources in rural Southeast Alaska, the 2008 Forest Plan should be amended to include a Renewable Energy Resources Plan and LUD, the goal of which is to authorize significant renewable energy development on the TNF.

The Forest Service's Post Promulgation of the 2008 Amended Forest Plan's Recognition of the Importance of Renewable Energy to the Economy and Communities of Southeast Alaska Requires a Forest Plan Amendment to Add a Renewable Energy Plan and LUD to the TNF

Subsequent to the publication of the 2008 Amended Forest Plan, in a March 2011 Region 10 Issue Paper describing the impact on the TNF of the Court's Decision striking down the TNF Exemption, the Forest Service said: "This ruling will affect the Transition Framework for Economic Development in Southeast Alaska. **Moving rural communities off expensive**

fossil fuels to cheaper renewable energy is the basic foundation of for a successful transition.” (Emphasis added.)

Later, in the same Issue Paper the Forest Service strongly emphasized the importance of renewable energy:

Affordable energy is **critical** to the success of the Transition. Southeast Alaska has abundant potential to provide renewable energy in terms of hydroelectric and biomass operations. For hydro development to occur, new projects need to construct roads, cut timber, and build infrastructure in 2001 Inventoried Roadless.

In the Executive Summary of a 2011, Region 10, Forest Service document entitled “Roadmap to Rural Wealth in Southeast Alaska: Restoration and Timber in Context” the Forest Service asserted:

Low-cost energy is critical. The high cost of electric power impedes economic development in the region, yet the region is rich in hydropower potential. The most promising opportunities lie in developing hydroelectric power and building transmission lines to connect Southeast Alaska’s communities to each other and to Canada’s grid, generating electric power for potential export. Such projects would create new jobs through constructing, operating and maintaining hydroelectric and transmission facilities. Previous work by the Forest Service has estimated job creation by this type of work at 10 jobs for every million dollars invested.

In a Briefing Paper generated by the Natural Resources and Environment group in the Washington Office of the Forest Service the agency observed:

Proposals for hydroelectric projects are steadily increasing in the Alaska Region as the high cost of electric power remains one of the most significant factors impeding economic growth in both Southcentral and Southeast Alaska. The cost of energy affects the quality of life for residents, influences economic development in communities, and shapes future opportunities for the whole economy.

Hydroelectric power is Southeast Alaska’s largest source of renewable energy but many communities are still served solely by diesel generation, which is far more expensive. The cost of hydropower ranges from 9 cents to 12 cents per kilowatt hour, with diesel-generated power ranging from 48 cents to 63 cents per kilowatt hour. A larger proportion of the population is Alaska Native in these rural Southeast communities and that segment of the population is more notable affected by the high energy costs.

Along with the high cost of buying diesel fuel, diesel generated power produces hydrocarbon emissions and increased risk of fuel spills resulting from shipping, handling and storing petroleum products in the harsh Alaskan climate and ocean conditions. The higher operation and maintenance costs of diesel generation, along with the potential for interruptions in fuel delivery, the susceptibility of fuel prices to

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wide variation, and resulting noise and air pollution, are all undesirable aspects of diesel power generation.

Accordingly, it follows that –

Not only would amending the Forest Plan to add a Renewable Energy Resource Plan and LUD, as we request, allow the Forest Service to comply with the Obama Administration’s Executive Orders, it would meet the objectives described in the Forest Service documents set out above.

3. WHY THE FOREST SERVICE SHOULD ENGAGE IN RULEMAKING TO EXEMPT THE TNF FROM THE 2001 ROADLESS RULE.

- a. When it entered the Settlement Agreement in 2003 the Forest Service specifically agreed to publish a rule which if adopted, would temporarily exempt the Tongass from the Roadless Rule and to publish a separate advance notice of proposed rulemaking seeking whether to permanently exempt the Tongass and Chugach National forests from the Rule. On July 15, 2003 the Department of Agriculture published for notice and comment, a proposed rule exempting the Tongass from the Roadless Rule. On December 30, 2003 the department of Agriculture issued a final rule exempting the Tongass. On March 4, 2011 the District Court for the District of Alaska found that the Department’s final rule was arbitrary and capricious. Because the 2003 Settlement Agreement contemplated a legally enforceable rule exempting the TNF, the Department is obligated to redo the rule exempting the TNF in a way that satisfies the determinations made by the Court; and
- b. Because the TNF is almost entirely roadless, the formal designation resulting from the Court’s March 4, 2011 Decision simply prevents development, it is not needed to ensure the preservation of roadless provinces within the TNF. In an e-mail dated December 16, 2009 the then Regional Forester, Dennis Bschor, was reported as being “very forceful [in a call with Richard Sowa] about what a bad idea it was to re-impose the roadless rule in SE AK. ” Since then Regional Forester Bschor signed the January 2008 ROD, his statement about what a bad idea it would be to re-impose the roadless rule can only be interpreted to mean that re-imposition would de facto amend/run counter to/undercut the 2008 Amended Forest Plan. New rulemaking would provide an opportunity to resolve the contradictions between the Forest Plan and the application of the 2001 Roadless Rule to the TNF; and
- c. By specifically prohibiting road construction within IRAs to access new Mineral Leases the Roadless Rule prevents the development of geothermal

resources which are covered by the Mineral Leasing Act of 1920.⁷ This is inconsistent with the policy underlying EISA § 17286; and

- d. Given the fact that there are 9.6 million acres of IRAs in the Tongass and 5.6 million acres of Wilderness on the Tongass National Forest, it is highly probable that the new hydropower and other renewable energy projects needed to provide lower cost power for development and communities throughout rural Southeast Alaska will be prohibited, or made more difficult to access and develop, because they are located in IRAs and Wilderness Areas and because the power lines needed to distribute that power will need to cross IRAs and Wilderness Areas; and
- e. The Draft Southeast Integrated Resources Plan (SEIRP) requires access to hydropower sites to promote hydropower development. The Draft SEIRP identified potential hydropower sites in Southeast Alaska. Further, the 1947 Water Powers of Southeast Alaska Report, conducted in part with the Forest Service, identified over 200 such potential sites, many of which lay in the 2008 Forest Plan's Avoidance LUDs. Such access is severely restricted by Remote Recreation Land Use Designations (LUDs)⁸ and the 2001 Roadless Rule; and
- f. The 2001 Roadless Rule is arbitrary and capricious as applied to the TNF because it did not consider "an important aspect of the problem" – namely, how the blanket prohibition on road construction would adversely development in Southeast Alaska. There are many proposed projects that will be affected by the prohibition on road construction and tree cutting. Because Roadless areas cover 57% of the TNF in addition to the 35% that is currently set aside in Monuments and Wilderness areas, 92% of the TNF is set aside from hydropower development. Remote Recreation TUS Avoidance LUDs and Congressionally designated LUD IIs make additional areas of the TNF difficult to access for hydropower and other renewable energy projects; and
- g. There is no mention of the impact that prohibiting road construction will have on hydropower construction, transmission line construction, or the maintenance of each in the portion of the Rule that discusses the TNF.⁹ There is a short discussion in the portion of the Rule concerning exceptions to the Roadless Rule that states the following regarding continued access to *existing* facilities operated by utilities:

⁷ 66 Fed.Reg.3244, at 3256 (January 12, 2001).

⁸ The Forest Service has admitted that the criteria set out in the Forest Plan to apply the TUS LUD to hydropower projects within TUS Avoidance Areas are unworkable and need to be amended. (See above).

⁹ 66 Fed. Reg. *supra.*, at pages 3254-3255.

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The final rule retains all of the provisions that recognize existing rights of access and use. Where access to these facilities is needed to ensure safe operation, a utility company may pursue necessary authorizations pursuant to the terms of the existing permit or contract.¹⁰

Because there is no mention of new utilities, or any mention of hydropower, it is clear that the 2001 Roadless Rule does not allow new roads for such development. This is untenable and “an important aspect of the problem” not considered by the Rule which makes it arbitrary and capricious in its application to the National Forests in Alaska; and

- h. Transmission: The Swan-Tyee Intertie (STI) is an example of a transmission project that, because of no road access, resulted in some very high construction costs. Use of helicopters access to construct the transmission lines resulted in a construction cost of about \$2 million dollars/mile. The STI is 57 miles long and the total construction cost including permitting, design, etc was about \$110 million; and

To provide a comparison, the proposed Kake-Petersburg transmission line, which is nearly as long and has an easement in place on which a road can be constructed, has an estimated cost of around \$45 million; and

- i. The cost to maintain a transmission line that is constructed without road access is also significant. The rights-of way (ROW) for such lines have to be maintained and brushed continually. The structures have to be inspected on a rotating annual basis. With road access, this work can be done by a crew in a truck. Without road access, this work has to be helicopter supported which is very expensive - approaching \$1,000/hour for a small (Hughes 500) ship; and
- j. In addition, transmission lines that do not have road access also have to have helicopter pads near the structures. On the STI alone, there are over 100 helipads yet to be installed at an estimated price of \$35,000/pad. This will cost approximately \$3.5 million. These pads will have to be maintained and brushed every couple years, which also has to be done by helicopter; and
- k. Hydro Projects: Hydro projects are major construction projects that require heavy machinery and equipment. The generators at Tyee, for example, weigh 30 tons. This requires a road for access. A hydro power project cannot be constructed with helicopters alone. Because the 2001 Roadless Rule prohibits road construction as well as tree cutting, no new hydro projects will be built in Roadless areas.

¹⁰ 66 Fed. Reg. *supra.*, at page 3256.

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Because of the State's concerns about the problems described above and the significantly adverse impact that it had on the timber industry, the State of Alaska filed a Complaint against the 2001 Roadless Rule shortly after it was promulgated on January 12, 2001. The State settled the case with the Department of Justice in June 2003.

Consistent with the settlement, the Forest Service promulgated a proposed rule to exempt the Tongass from the 2001 Roadless Rule on July 15, 2003. The Settlement Agreement called for the Federal Government to publish "a temporary regulation that would exempt the TNF from the application of the roadless rule until completion of the rulemaking process for any permanent amendments to the roadless rule."¹¹ The Forest Service recognized that the June 10, 2003 Settlement Agreement imposed an obligation upon it: "This advance notice of proposed rulemaking, and a proposed rule published elsewhere in today's Federal Register to exempt the TNF from the applicability of the roadless rule, fulfill these terms of the settlement agreement."¹² On March 4, 2011 the District Court for District of Alaska found the July 15, 2003 Rulemaking to be legally insufficient. Thus, the terms of the settlement agreement were not fulfilled and the rulemaking needs to be done again to resolve the legal issues raised by the Court.

4. WHY THE FOREST SERVICE SHOULD ACT ON A SPECIAL USE PERMIT APPLICATION FOR A RENEWABLE ENERGY RESOURCE PROJECT IN A MORE TIMELY MANNER

The President has issued a series of Executive Orders and Memoranda calculated to speed the permitting process, none of which have been addressed by the Forest Service in administering the TNF:

- a. Executive Order (EO) 13580 (July 12, 2011) – Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska, which includes the Department of Agriculture, was established as an interagency working group to "coordinate onshore and offshore resources and associated infrastructure in Alaska and to help reduce our dependence on foreign oil" The policy set out in the EO is: "To formalize and promote ongoing interagency coordination, this order establishes a high level interagency working group that will facilitate coordinated and efficient domestic energy development and permitting in Alaska while ensuring that all, applicable standards are fully met."¹³

Among the functions of the Working Group set out in § 4 of the EO are:

¹¹ 68 Fed. Reg. 41865 (July 15, 2003).

¹² *Id.*

¹³ EO 13580, § 1. Policy.

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- i. facilitate orderly and efficient decisionmaking regarding the issuance of permits and conduct of environmental reviews for onshore and offshore energy development of projects in Alaska;
 - ii. ensure that the schedules and progress of agency regulatory and permitting activities are coordinated appropriately, that they operate efficiently and effectively, and that agencies assist one another as appropriate;
 - iii. facilitate the sharing of application and project information among agencies, including information regarding anticipated timelines and milestones;
 - iv. etc.
- b. EO 13604 (March 22, 2012) – Improving Performance of Federal Permitting and Review of Infrastructure Projects,¹⁴ which “expands upon EO 13580.”¹⁵ The goal of EO 13604 was stated as follows:

[I]t is critical that executive departments and agencies (agencies) take all steps within their authority, consistent with available resources, to execute Federal permitting and review processes with maximum efficiency and effectiveness, ensuring the health, safety, and security of communities and the environment while supporting vital economic growth.”

To achieve that objective, our Federal permitting and review processes must provide a transparent, consistent, and predictable path for both project sponsors and affected communities. They must ensure that agencies set and adhere to timelines and schedules for completion of reviews, set clear permitting performance goals, and track progress against those goals.

Section 2 (a) of the EO names “water resource projects, renewable energy generation, electricity transmission, broadband, pipelines” as infrastructure projects for which the Steering Committee established by the EO “shall facilitate improvements in Federal permitting and review processes.” Section 2 (c) of the EO requires the Member Agencies, which includes the Department of Agriculture, to “select, submit to the Chief Performance Officer (CPO) by April 12, 2012, and periodically update thereafter, a list of infrastructure projects of national and regional significance that will have their status tracked on the onlion Federal Infrastructure Projects Dashboard (Dashboard) created by my Memorandum of August 31, 2011.”¹⁶

¹⁴ 77 Fed. Reg. 18887 (March 28, 2012)

¹⁵ See also EO 13563 76 Fed. Reg. 3821 (January 18, 2011). Improving Regulation and Regulatory Review. Among other things, §6 of this EO requires an agency to “periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.

¹⁶ *Ibid.* at 18888.

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Section 3 (a) of the EO required that by May 31, 2012 Member Agencies “develop and publish on the Dashboard a Federal Plan to significantly reduce the aggregate time required to make Federal permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment.”¹⁷

Section 3 (b) of the EO required that by June 30, 2012 the member Agencies submit to the CPO “an Agency Plan identifying those permitting and review processes the Member Agency views as most critical to significantly reducing the aggregate time required to make permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment, and describing specific and measurable actions the agency will take to improve these processes... .”¹⁸

- c. On May 17, 2013 the president issued a Memorandum to the heads of Executive Departments and Agencies entitled: “Modernizing Federal Infrastructure Review and Permitting Regulations, policies, and Procedures.” The purpose of the Memorandum is to achieve modernization of the Federal Government’s review and permitting of infrastructure projects, which the Memorandum asserts will reduce “aggregate timelines for major infrastructure by half.”

Section 1 (a) requires that: “The Steering Committee on Federal Infrastructure Permitting and review Process Improvement (Steering Committee), established by Executive Order 13604, shall work with the Chief Performance Officer (CPO), in coordination with the Office of Information and Regulatory Affairs (OIRA) and the Council of Environmental Quality (CEQ), to modernize Federal infrastructure review and permitting regulations, policies, and procedures to significantly reduce the aggregate time required by the Federal Government to make decisions in the review and permitting of infrastructure projects, while improving environmental and community outcomes.”

Observance of the policies set out in these Presidential EOs and directives could dramatically reduce the time it takes to permit renewable energy projects on the TNF. They should be included in the Renewable Energy Resource LUD.

5. FOREST PLAN AMENDMENTS NEEDED TO ADDRESS OUR ABOVE CONCERNS.

The customers and employees of the undersigned and the Southeast Alaska communities that we serve will be harmed by their inability to develop renewable energy resources to provide potentially less expensive, non-carbon power for development projects in

¹⁷ *Ibid.* at 18889.

¹⁸ *Id.*

Alaska Power Company • Alaska Telephone Company • AP&T Wireless, Inc. • AP&T Long Distance, Inc North Country Telephone, Inc. • Bettles Telephone, Inc. • Goat Lake Hydro, Inc. • BBL Hydro, Inc.

Southeast Alaska. Accordingly, we propose the following amendments be made to the Forest Plan as soon as possible:

- a. A Renewable Energy Resource Plan, including a Renewable Energy Resource Development LUD (See attached) should be added to the Forest Plan to promote and support all forms of renewable energy development (including geothermal) and related transmission lines within the TNF consistent with Public Laws and National Security and National Energy Policies. The Renewable Energy Development LUD would take precedence over any underlying LUD (subject to applicable laws) regardless of whether the underlying LUD is an “Avoidance LUD” or not. As such, it would represent a “window” through the underlying LUD through which renewable resources could be accessed and developed; and
- b. For purposes of the Forest Plan there should be timely (30 day turnaround) issuance of Forest Service Special Use Permits for those that hold a Federal Energy Regulatory Commission (FERC) preliminary permit and for those seeking a Special Use Permit for a Renewable Resource Energy project; and
- c. The current TUS LUD should be amended to change the criteria to allow the TUS LUD to apply to hydropower projects and other renewable energy projects within TUS Avoidance Areas and to allow for public and private hydropower development in all LUDs; and
- d. Consistent with its 2003 settlement agreement with the State of Alaska, the Forest Service should engage in rulemaking to once again exempt the TNF from the 2001 Roadless Rule and to authorize geothermal leasing on the TNF; and
- e. The Chief of the Forest Service re-delegate to the Forest Supervisor and District Rangers on the TNF the authority to make permitting decisions within IRAs; and
- f. The Forest Plan should include a new LUD called the “Tongass Community Economic Development Zone LUD” to promote and support economic development and activities on the TNF for any community that has lower than average State per capita income or pays higher than the national average for electricity to assure that the Plan’s administration and practices promote economic well-being and social justice in all Tongass communities.

Thank you for the opportunity to comment. Please let me know if you have any questions regarding our comments and proposals.

Yours truly,

ROBERT S. GRIMM
Alaska Power & Telephone Company

Timothy D. McLeod
Alaska Electric Light and Power Company

COPIES of this letter are being sent to the Honorable Barack Obama, President of the United States; the Honorable Joseph R. Biden, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable John Boehner, Speaker of the U.S. House of Representatives; the Honorable Tom Vilsack, United States Secretary of Agriculture; the Honorable Sally Jewel, United States Secretary of the Interior; and the Honorable Lisa Murkowski and the Honorable Mark Begich, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska Congressional delegation; the Honorable Sean Parnell, Governor of Alaska; the Honorable mead Treadwell, Lieutenant Governor of Alaska; the Honorable Charlie Huggins, President of the Alaska Senate; and the Honorable Mike Chennault, Speaker of the Alaska House of Representatives.