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IMPACT OF THE ADMINISTRATION'S WILD LANDS ORDER ON JOBS AND ECONOMIC GROWTH

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

Tuesday, March 1, 2011

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OVERSIGHT HEARING TITLED "THE IMPACT OF THE ADMINISTRATION'S WILD LANDS ORDER ON JOBS AND ECONOMIC GROWTH."

Tuesday, March 1, 2011
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.

The Committee met, pursuant to call, at 2:14 p.m. in Room 1324, Longworth House Office Building, Hon. Doc Hastings [Chairman of the Committee] presiding.

Present: Representatives Hastings, Young, Bishop, Lamborn, Fleming, Coffman, McClintock, Thompson, Denham, Duncan, Tipton, Gosar, Labrador, Noem, Flores, Harris, Landry, Fleischmann, Runyan, Johnson, Markey, Kildee, Holt, Grijalva, Costa, Heinrich, Garamendi, and Hanabusa.

Also Present: Representatives Walden and Pearce.

The CHAIRMAN. The Chair notes the presence of a quorum. The Committee on Natural Resources is meeting today to hear testimony on "The Impact of the Administration's Wild Lands Order on Jobs and Economic Growth." Under Committee Rule 4(f), opening statements are limited to the Chairman and Ranking Member of the Committee, so we can hear from our witnesses more quickly.

However, I do ask unanimous consent to include any other Member's opening statements in the hearing if submitted to the clerk by close of business today. Without objection, so ordered.

STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

The CHAIRMAN. Last year, just two days before Christmas, Secretary of the Interior Ken Salazar issued a Secretarial Order implementing a sweeping new wilderness policy for the Bureau of Land Management, or BLM. This order directed BLM to designate areas with wilderness characteristics as, quote, "wild lands."

The term "wild lands" may be new, but the Administration's motives are not. This order is a clear attempt to allow the Administration to create de facto wilderness areas without congressional approval. I have repeatedly stated that oversight of the Obama Administration's actions will be a top priority of this Committee. It is decisions such as this that make our oversight role a necessity.

Today's hearing will allow us to closely examine the impacts of the Wild Lands Order and hear directly from Governors and local officials on its effect upon jobs and the economies of the communities across the West. The Administration chose not to consult or listen to these elected leaders or their communities before the Secretarial Order was dictated.

This hearing provides then the first forum and opportunity for them to be heard by their elected government. That is not, in my view, how our system is supposed to work. Again, that is why the specific purpose of this hearing was to hear from the State and local leaders. Additional hearings are planned. I want to mention that again. Additional hearings are planned, including one featuring Department officials, and allowing them a full forum to discuss and defend the Secretarial Order.

The Administration was eager, however, to also participate in today's hearing and requested an opportunity for BLM Director Abbey to testify. As Chairman, I honored this request from the Administration, with the understanding that previously invited citizens traveling here to Washington, D.C., to appear as witnesses were not to be displaced. So to accommodate Director Abbey, the hearing has been restructured to condense all of the local witnesses on one second panel, which I know is going to be a tight squeeze.

Director Abbey will appear on our final panel, and I intend to move the hearing along as quickly as we can so we all get a fair hearing on this.

Before examining the widespread impacts of this order, the Administration's lack of legal authority to impose such a policy deserves emphasis. The Wilderness Act of 1964 very clearly gives Congress and only Congress the statutory authority to create new wilderness areas. It is absurd for the Obama Administration to claim that giving wilderness a different label of wild lands will somehow pass legal muster. Clever semantics cannot circumvent the law. I will ask specifically where this authority comes from.

Under this Wild Lands Order, approximately 220 million acres of BLM land, the majority of which is in the West, is under threat of being treated as de facto wilderness. Designating land as wilderness imposes the most restrictive land use policies. Lands that are currently used for multiple purpose, including recreation activities, agriculture, ranching, American energy production, and other activities are in danger of being placed off limits.

This Secretarial Order will disproportionately impact rural communities which depend on public lands for their livelihoods. These communities have already been hit hard by onerous existing Federal restrictions and by the current economic crisis. They suffer from some of the highest unemployment rates in the country. The Wild Lands Order threatens to inflict further economic pain.

This is just one more example of the onslaught of harmful actions that the Obama Administration is imposing on rural America. The Administration claims that this order will be good for jobs. How does preventing public access to public lands result in new jobs? If this was such a boon to local jobs, then why did they bury this order's announcement on December 23rd, just two days before Christmas?

More job loss is what this order threatens, in my view. I am eager to hear from the western Governors and local officials who can tell us firsthand how it will impact jobs in their states. And I am also eager to hear the opposite view.

This Secretarial Order is a clear invitation for lawsuits and will lead to further divisions among groups and communities over the use of public lands. This order will tie the hands of BLM land managers, who may fear that any decision will land them in court and delay the reasonable and responsible use of our public lands.

I believe in responsible stewardship. There is a need to care for our most treasured national lands. Yet, multiple purpose public lands must remain open to public enjoyment and available to help build our economy and create jobs. The local communities that depend on this land must be a part of the process, not after the fact, not once the Secretary has issued his order, but from the beginning.

This Administration should be on notice that unilateral decisions and orders to impose restrictive, job-destroying policies will be met with firm resistance. And with that, I look forward to hearing testimony. But before that, I will recognize the distinguished Ranking Member, the gentleman from Massachusetts.

[The prepared statement of Chairman Hastings follows:]

Statement of The Honorable Doc Hastings, Chairman, Committee on Natural Resources

Late last year, just two days before Christmas, Secretary of the Interior Ken Salazar issued a Secretarial Order implementing sweeping new wilderness policy for the Bureau of Land Management (BLM). This order directed BLM to designate areas with wilderness characteristics as "wild lands."

The term "wild lands" may be new, but the Administration's motives are not. This order is a clear attempt to allow the Administration to create *de facto* Wilderness areas without Congressional approval.

I've repeatedly stated that oversight of the Obama Administration's actions will be a top priority of this Committee. It's decisions such as this that make our oversight role a necessity.

Today's hearing will allow us to closely examine the impacts of the "wild lands" order and hear directly from governors and local officials on its effect upon jobs and the economies of communities across the West. The Administration chose not to consult or listen to these elected leaders or their communities before the Secretarial Order was dictated. This hearing provides the first forum and opportunity for them to be heard by their elected government. That is not how our system is supposed to work.

Again, that is why the specific purpose of this first hearing was to hear from these state and local leaders. Additional hearings are planned, including one featuring Department officials and allowing them a full forum to discuss and defend this Secretarial Order.

The Administration was eager, however, to also participate at today's hearing and requested an opportunity for BLM Director Abbey to testify. As Chairman, I honored this request from the Administration with the understanding that previously invited citizens traveling here to Washington, DC to appear as witnesses were not displaced.

To accommodate Director Abbey, the hearing has been restructured to condense all of the local witnesses to one second panel, which is going to be a tight squeeze. Director Abbey will appear on our final panel, in deference to these witnesses.

Before examining the widespread impacts of this order, the Administration's lack of legal authority to impose such a policy deserves emphasis. The Wilderness Act of 1964 very clearly gives Congress, and only Congress, the statutory authority to create new Wilderness areas.

It's absurd for the Obama Administration to claim that giving wilderness a different label of "wild lands" will somehow pass legal muster. Clever semantics cannot circumvent the law.

We will ask specifically where this authority comes from.

Under this "wild lands" order, approximately 220 million acres of BLM land, the majority of which is in the West, is under threat of being treated as *de facto* Wilderness. Designating land as Wilderness imposes the most restrictive land-use policies. Lands that are currently used for multiple-use—including recreation activities, agriculture, ranching, American energy production and other economic activities—are in danger of being placed off-limits.

This Secretarial Order will disproportionately impact rural communities, who depend on public lands for their livelihoods. These communities have already been hit hard by onerous existing federal restrictions and by the current economic crisis. They suffer from some of the highest unemployment rates in the country. The "wild lands" order threatens to inflict further economic pain. This is just one more example of the onslaught of harmful actions that the Obama Administration is imposing on rural America.

The Administration claims that this order will be good for jobs. How does preventing public access to public's land result in new jobs?

If this was such a boon to local jobs, then why did they bury the order's announcement on December 23rd, just two days before Christmas.

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I believe in responsible stewardship. There is a need to care for our most treasured national lands. Yet, multi-use public lands must remain open to public enjoyment and available to help build our economy and create jobs.

The local communities who depend on this land must be part of the process—not after the fact, not once the Secretary has issued his order, but from the beginning.

This Administration should be on notice that unilateral decisions and orders to impose restrictive, job-destroying policies will be met with firm resistance.

STATEMENT OF THE HON. EDWARD MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MARKEY. I thank the gentleman very much. No issue has been more hotly debated in this Committee than wilderness, and no issue is more misunderstood. Criticism of Secretary Salazar's Wild Lands Order is based on misconceptions that have plagued this debate for decades.

For example, some see wilderness inventories as attempts to transform multiple-use lands into wilderness. This is a fundamental misunderstanding of the purpose of the Wilderness Act, which is, quote, "to secure for the American people the benefits of an enduring resource of wilderness."

Properly understood, wilderness is a resource, just like timber or natural gas. The Wilderness Act could no more create wilderness than the mining law could create gold. The Act directs land managers to find wilderness so that Congress can preserve it for future generations.

The Bush Administration did not want Congress to preserve wilderness, so they volunteered to stop looking for it. Secretarial Order 3310 directs BLM to rejoin the hunt for wilderness, as required by the Act. In other words, Secretarial Order 3310 is an announcement that Secretary Salazar, unlike several of his predecessors, is ready to do his job. And just in time, because the Bush no-more-wilderness policy was having the desired effect. The Bureau of Land Management has leased five times as much public land to oil and gas companies as it has set aside for wilderness.

Over the last five years, the BLM found more than 18,000 new sites for oil and gas wells, but not a single new site for potential wilderness. The BLM has been approving drilling permits so fast that energy companies can't keep up. They are only producing on about one-third of the acres already leased. Among the drilling rigs and the mining sites and the off-road vehicle areas on our public lands, there is plenty of room to at least look for any wilderness that may remain.

Another misconception is that wilderness is somehow bad for local economies. While the Nation and even the world are currently suffering through a difficult recession, the story of most communities in the West since the Wilderness Act was enacted in 1964 has been one of explosive growth and prosperity, much of it driven by tourism, recreation, and a rich quality of life, all based on an abundance of beautiful open space.

Secretarial Order 3310 does not designate a single acre of wilderness. It will not impede oil and gas production. It does not burden local communities, and it is fully consistent with congressional intent, something that cannot be said about the policy it overturns.

I thank you, Mr. Chairman, and I look forward to the testimony of our witnesses.

The CHAIRMAN. I thank the gentleman for his statement, and I want to welcome our first panel, Governor Otter and Governor Herbert. And I will yield for purposes of introduction to our colleagues on the Committee, first of all the new member of our Committee, Congressman Labrador, to introduce Governor Otter, and Congressman Bishop to introduce his Governor, Governor Herbert. Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman. It is indeed an honor to be able to introduce Idaho's 32nd Governor to this Committee. I say introduce, but the truth is that Butch Otter is no stranger to this Committee, having been an active member of it during his time in Congress. I am privileged to list my name alongside his as representatives of Idaho's First Congressional District, where he served until he became Governor in 2006.

Mr. Otter served with distinction in the Idaho Legislature, and served as Lieutenant Governor and President of the Senate from 1986 until 2001, when he was elected to the seat I now hold. His time in Congress was marked by a focus on conservative principles and outspoken advocacy for a limited Federal Government.

Mr. Otter comes to us today as not just an expert in western land use issues, and I am looking forward to hearing your misconceptions about western land use issues, since you apparently don't know enough about it. But also as an expert in economic development. Much of his early career was spent engaging in the types of activities politicians today hope to achieve: increasing exports of domestic products, making Idaho a competitive place to do business, and creating jobs for Americans.

And also I would like to recognize his wife, the First Lady, Laurie Otter. Please join me in welcoming Mr. Otter back to this Committee.

[Applause]

The CHAIRMAN. Mr. Bishop, for purposes of introduction.

Mr. BISHOP. Thank you. I am pleased to welcome Gary Herbert, who is the Governor of the State of Utah, recently elected to fulfill the term of his predecessor. And I am appreciative of him being here, as well as his lovely wife, who is sitting behind him. Even though he comes from Utah County, which is some place down in some other district, I don't know, in the State of Utah.

What is significant, though, for Governor Herbert is he spent a significant amount of time first in local government as a county commissioner, which is in our hybrid Galveston system both a legislative and executive function. And he clearly understands the distinction between those two. And then having a wide background, which made him extremely popular, especially with all the local elected officials in Utah, he became a Governor, first as Lieutenant Governor, in which these issues were one of his primary focuses—he was assigned to that area—and now as Governor, in which once again the Federal-State relationship, as well as what public lands means to the State of Utah, is still a prime focus.

So I am very proud of what you do for the State of Utah and our citizens. We welcome and are happy to have you here.

[Applause]

The CHAIRMAN. I yield to the Ranking Member, just for a moment.

Mr. MARKEY. I thank the gentleman. We are here at an historic time, and that time is to recognize our colleague, Rush Holt from New Jersey, who last night defeated in a game of Jeopardy the IBM super computer Watson. And Rush is a five-time Jeopardy winner in real life, and a nuclear physicist. But I think beating the super computer Watson, when all hope had failed for humanity to prevail over technology, I think is something we should recognize.

[Applause]

The CHAIRMAN. Well, since there is that much wisdom, there is hope in the future as we debate these issues then. Welcome.

I want to thank you, and I want to welcome Governor Otter and Governor Herbert. Like all of our witnesses, your written testimony will appear in full in the record. So I ask that you keep your oral statements to five minutes.

The microphones in front of you are not automatic, so before you start, press the button. And the timing lights, let me explain. I know Governor Otter knows this. But when you start, the green light will come on. After four minutes, the yellow light comes on, signifying you have one minute, and when the red light comes on, you know, wrap it up as quickly as you possibly can.

So with that, Governor Otter, you may begin.

STATEMENT OF THE HON. C.L. "BUTCH" OTTER, GOVERNOR OF THE STATE OF IDAHO

Governor OTTER. Well, thank you, Mr. Chairman, and it is my pleasure to be here on behalf of the State of Idaho. I want to thank you, Chairman Hastings, and also Ranking Member Markey, for the opportunity to come before this Committee and explain the concerns that Idahoans have surrounding Interior Secretary Salazar's Secretarial Order No. 3310.

Since Secretary Salazar's order was released, there have been numerous interest groups, Members of Congress, and several

Governors, including myself and my colleague to my left, who have conveyed great frustration and deep concern over this designation. The Secretary's Wild Lands Policy has placed a higher priority on protection of wilderness characteristics and relegated multiple use to a position of lesser importance.

This drastic change in public policy for public lands was done without public input. With land use decisions shifted to Washington, D.C., the legitimate rights of states and the peoples of those states to have input on activities within their borders has been disregarded.

Once lands are designated as wild lands by the BLM, multiple use becomes greatly restricted. These restrictions were signified and have the impact on the construction of new infrastructure, for example, critical transmission corridors and the operation and maintenance of existing facilities on these very lands.

Every project will require a new NEPA analysis. These new steps offer opponents of ongoing projects and new adventures to delay them all. The order potentially makes the process for citing new energy-related projects even more difficult. Essentially, it represents an even greater chilling effect on developers who already view access to BLM managed property as a daunting task.

More importantly, the implementation of this order could impact energy projects that have already begun, and spent millions of dollars on projects in the current permitting process. In Idaho, several significant energy-related projects—and might I add totally green energy projects, such as China Mountain Wind, Gateway West Transmission, Boardman to Hemingway Transmission—are already fully engaged in the right-of-way signing process.

There is no indication that these projects would be spared from the potential impacts of this order. The BLM has a history of being paralyzed by the mere threat of lawsuits, and any pending decisions are likely to be delayed for months, if not years. The order provides several new avenues for the anti-progress groups to challenge BLM's decisions, which eventually will lead to endless litigation.

There is a concern about funding and manpower to complete projects currently in progress, while BLM's manpower is redirected to re-inventorying lands for wilderness characteristics. How does the BLM implement such a vast undertaking without undermining projects already underway?

Congress has indicated that they will not fund the BLM to conduct these new wilderness inventories. There is a speculation among us already that BLM will require anyone seeking a permit to pay for the wilderness inventory on the footprint of the project in the surrounding areas. The impact to energy projects and grazers and present multiple use could be horrendous.

The BLM contends in its own talking points that this new policy will have no effect on lands that are not under BLM's jurisdictions. Simple look at the map over here to far left, and the yellow area are the BLM lands. And these lands of the Western States, as you look at it, you will see that the State and private lands are intermingled with endowment lands of the states.

Issues of access and management have not been addressed. The Secretarial Order has the potential to economically impact the

State endowment lands, which are the benefits primarily for our school children. The Omnibus Public Lands Management Act of 2009 designated a new wilderness of 117,000 acres of Owyhee County in Idaho, in Southwest Idaho, as wilderness. Area acres were released to be managed for multiple use. This collaborative effort championed by Senator Mike Crapo for years and now approved by Congress is now in jeopardy.

The partners in this endeavor are concerned that whether or not the parcel is released as a result of that agreement and the de facto wilderness designation of the wilderness study areas will now be re-inventoried as lands with wilderness characteristics and could be recognized as wild lands.

Under the planning rules outline by BLM directive, it only follows that lands previously deemed wilderness study areas would become wild lands. If this happens as BLM follows the Secretary's planning procedures, any future State and local collaborative effort, such as the Owyhee Canyon lands, with the Federal agencies will be jeopardized.

The public will have no confidence in the Federal Government's process. Secretary Salazar has circumvented the authority not only of Congress in the process of designated wilderness areas, but the input of the public and the effect on Western States and states' rights. This reflects the same type of tow-down, one-size-fits-all management approach that Idaho was subjected to during the waning hours of the Clinton Administration during the Forest Service roadless rule.

In closing, Mr. Chairman, I urge Congress to take back its authority and prevent further development and implementation of Secretary Salazar's order. This order exempts stakeholders, threatens the spirit of collaboration and cooperation, weakens the process, discounts state sovereignty, and sends the message to the citizens of Idaho and every state in the West the Federal Government will continue to treat the valuable and diverse open spaces of the West not as lands of many uses, but rather as lands of no use, and no access for the people who live and work in Idaho and other Western States.

Mr. Chairman and Members of the Committee, thank you very much for your attention.

[The prepared statement of Governor Otter follows:]

Statement of The Honorable C.L. "Butch" Otter, Governor, State of Idaho

On behalf of the State of Idaho, I want to thank Chairman Hastings and the Committee for this opportunity to communicate Idaho's concerns about Interior Secretary Ken Salazar's "Wild Lands" directive, Secretarial Order No. 3310 (Order). It is an honor and a privilege to be here today.

The Bureau of Land Management (BLM) oversees approximately 245 million acres in the West. In Idaho, BLM's management responsibility includes more than 12 million acres—nearly one-fourth of the state's total area. As you can see, the BLM has a marked presence in our state.

Secretary Salazar's Order directing the BLM to protect wilderness characteristics through land use planning decisions "unless the BLM determines, in accordance with this Order, that impairment of wilderness characteristics is appropriate and consistent with other applicable requirements of law and other resource management considerations," and requiring the BLM to internally develop policy guidance within 60 days after the Order was issued, reflects the "top-down," "one-size fits all" management approach to which Idaho was subjected during the waning hours of the Clinton administration with the Forest Service Roadless Rule. Without any state or

public input, the Interior Department has circumvented the sovereignty of states and the will of the public by shifting from the normal planning processes of the Federal Lands Policy and Management Act (FLPMA) to one that places significant and sweeping authority in the hands of unelected federal bureaucrats.

The BLM's multiple-use mission is "to sustain the health and productivity of the public lands for the use and enjoyment of present and future generations." The agency has carried out its mission by managing such diverse activities as outdoor recreation, mineral development, livestock grazing and energy production while at the same time protecting the resource. State and local governments were treated as partners in those activities. However, Secretarial Order No. 3310 discounted that partnership and unilaterally refocused BLM's management objectives. The Order redirected BLM's primary focus in its land use planning efforts and placed a higher priority on protection of "wilderness characteristics" than other multiple uses. This drastic change in "public" policy for "public" lands was done without "public" input. With this new direction, any input from state governments on activities within their states is severely limited.

In addition, the Secretary of Interior circumvented the legislative process by creating a new land management designation outside of Congressional oversight and approval. It is Congress' role and responsibility to establish new land use designations. The Order was issued with pre-developed draft departmental manuals and handbooks which were reviewed internally by BLM. The lack of transparency with which this Order was issued and is being implemented is deeply disconcerting and is not consistent with the proper role of government.

The BLM's website asserts, "Livestock grazing is a major activity on Idaho's public lands." Indeed, 800,000 AUMs of livestock forage are authorized annually in Idaho under BLM management. Livestock grazing is outlined in FLPMA and the Taylor Grazing Act as being among authorized multiple-uses. There are concerns about the effects that BLM's new "Wild Lands" management direction will have on grazing and the subsequent economic consequences to the ranchers who have BLM leases and who have been good stewards of public lands. If the BLM had developed its new designation in a public forum and provided for congressional approval, these concerns would have been addressed.

The BLM guidance document also provides direction that new proposed actions will be limited to minor surface disturbance and for the protection of other sensitive areas. This guidance limits the management actions/projects that would improve multiple-use management and improvement to the land. If BLM uses its existing Wilderness Study Area (WSA) interim management guidance to designate "Wild Land" areas, they will be managed as wilderness areas, which will result in long-term restrictions on other multiple-use management and restrict access to designated "Wild Lands." The management and control of source populations of crickets, grasshoppers, invasive plants and animals, noxious weeds and fire also will be restricted. All of the above events will have a negative impact on uses of public lands and will affect the conditions of the rangelands, crop lands and livestock on adjacent private lands, thus reducing the economic sustainability of local farms and ranches.

BLM's website goes on to say, "The BLM has a key role in developing and delivering energy to meet the needs of America's homes, businesses, and communities. Promoting dependable and environmentally sound energy production on Federal public lands can help the U.S. achieve energy independence." With the vast stretches of public lands in Idaho, the ability to site energy developments on BLM-managed acres is crucial to the economic future of our state. The BLM also has projected that wind energy production in Idaho could provide enough electricity to power 150,000 homes by 2015, and geothermal development could generate enough electricity to supply power to 204,000 homes by 2015.

The Order potentially makes the process for siting energy-related projects to achieve these objectives even more difficult. Essentially, it represents an even greater chilling effect on developers who already view access to BLM-managed property as a daunting task. More importantly, the implementation of this Order could impact energy projects on which developers already have spent millions of dollars on permitting processes.

In Idaho, several significant energy-related projects (China Mountain, Gateway West, Mountain State Transmission Intertie, and Boardman to Hemingway) already are fully engaged in the Right-of-Way siting process. There is no indication that these projects would be spared from the potential impacts of this Order.

Specifically, the Order directs BLM to maintain wilderness characteristics of non-Wilderness Study Areas, as appropriate, considering the manageability and the context of competing resource demands. The key phrase in this goal is "as appropriate." This appears to create a great deal of discretion and could become a blunt instru-

ment to thwart future energy-related projects on federal land. For example, the most "appropriate" and easiest way to manage BLM land under this Order could be simply to reject energy-related projects on lands impacted by this Order.

The Order requires BLM to determine whether "lands with wilderness characteristics" (LWCs) should be designated as "Wild Lands" and managed to protect their wilderness characteristics or, alternatively, managed for other uses that may be incompatible with the protection of wilderness characteristics. While this appears to leave open the option of development on lands determined to have wilderness characteristics, it more likely will send a message to energy developers that the land is off limits.

Another concern related to a wilderness characteristic designation is the potential that view-shed considerations will emerge. If so, the impact on future development could extend miles outside of acres that receive a wilderness characteristic designation, which could further restrict energy resource development on BLM land.

Approximately 21.5 million acres or 10 percent of the land managed by BLM has been designated as Wilderness and Wilderness Studies Areas (WSA). WSAs are lands that meet the *minimum criteria* for wilderness designation under the Wilderness Act of 1972, and as you know, only Congress has the authority to designate wilderness. However, once an area is designated a WSA, BLM is required to manage it to prevent impairment of the area's suitability for wilderness designation. The new "Wild Lands" designation also will take on the restrictions of Wilderness and WSAs.

The Omnibus Public Lands Management Act of 2009 designated 517,000 acres of Owyhee County in southwestern Idaho as wilderness. During this process, 199,000 WSA acres were released to be managed for multiple-use. This collaborative effort, championed by Senator Mike Crapo and approved by Congress, now is in jeopardy. The partners in this endeavor are concerned about whether the parcels released from the quasi-wilderness designation of the WSA now will be inventoried as lands with wilderness characteristics and be re-categorized as "Wild Lands." Under the planning rules outlined by the BLM directive, it only follows that lands previously deemed WSAs would become "Wild Lands." If this happens as BLM follows the Secretary's planning procedures, any future state and local collaborative efforts with the federal agencies will be jeopardized. The public will have no confidence in the federal government's promises. In Idaho, trust in the federal government already is on shaky ground.

Included within the Owyhee Wilderness are state endowment parcels. These lands and parcels throughout the state were ceded to Idaho by the federal government at statehood. These endowment lands were expressly for the purpose of benefitting public schools and eight other public institutions. Now these endowment lands are "trapped" within the Owyhee Wilderness. During the collaborative process on the Owyhee Initiative, the federal government was directed to develop land exchanges for those endowment lands. These exchanges have not taken place.

One of my duties as Idaho's Governor is to act as Chairman of the State Board of Land Commissioners (Land Board), which oversees management of Idaho's endowment lands. I join my fellow Land Board members in concern about the implementation of the directives of the Owyhee Initiative to exchange endowment lands for lands outside of the wilderness area. I question whether BLM has the financial resources or personnel to complete the directives contained in the congressionally approved Owyhee Wilderness designation while at the same time completing the inventories of all BLM lands for wilderness characteristics as directed by the Secretarial Order. The Order has become a priority for the Department of Interior, and ongoing BLM projects will suffer as a result. In addition to the Owyhee lands, many other acres of state endowment land will be surrounded by "Wild Lands," thus affecting property values and their ability to generate income for beneficiaries.

Tourism and motorized recreation are important industries in Idaho. Cross-country, off-highway vehicle (OHV) travel is not allowed in WSAs and, most assuredly, will not be allowed in "Wild Lands." Due to repeated closures of roads and trails on federal lands, experience tells us that existing trails will be closed and no new trails for OHV travel with be authorized in LWCs and areas designated "Wild Lands." The impact to motorized recreation in southern Idaho will be dramatic and in turn will impact Idaho's economy.

The complete inventory of BLM lands for LWCs is an exhaustive and expensive undertaking. Congress has indicated that it will not fund the "Wild Lands" inventory. Signals from within the agency itself warn that any entity seeking a permit will be required to pay for the inventory within the footprint of the project, such as an energy development or a grazing allotment. The inventory costs will become part of the National Environmental Policy Act (NEPA) process and will be billed to the entity seeking a permit as "cost reimbursement of actual costs." It is likely that

BLM's "actual costs" will be exorbitant for new and ongoing projects and prohibitive for grazing permittees. The inventory costs of energy development projects surely will be passed on to consumers.

In BLM's new draft wilderness inventory planning document, the criteria for evaluating "Naturalness" are outlined for agency personnel to, "Determine if the area appears to be in a natural condition." "Naturalness" is one factor for analyzing wilderness characteristics—along with size, solitude and supplemental values. Under this heading is a list of examples of human-made features that may be considered unnoticeable in designating LWCs. These features include, but are not limited to, trails, signs, bridges, fire towers, fisheries enhancement facilities, hitching posts, radio repeater sites, fencing, and small reservoirs. This list of items that BLM personnel may consider "substantially unnoticeable" in determining if an area qualifies for LWCs will result in thousands of acres, which would not normally meet the congressional requirements for a wilderness designation, being selected for "Wild Lands." This entire evaluation process is very subjective and is quite likely to attract litigation.

Many questions come to mind with the Secretary's pronouncement. Does BLM's "Wild Lands" planning process constitute a rulemaking that requires public notice and comment? Does the policy warrant a programmatic environmental impact statement under NEPA? Since the BLM "Wild Lands" planning manual state that bridges, trails, fencing, radio repeater sites and other human-made structures are "substantially unnoticeable" in determining LWCs, does it follow that those structures can be built in WSAs and Wilderness Areas without violating the "non-impairment" standard?

Secretary Salazar touted his "Wild Lands" directive as a means to "restore balance in the management of public lands for a variety of uses and values." This new policy will do exactly the opposite. Under the new directive, BLM's management focus shifts from multiple-use to "de facto" wilderness. If the Order is allowed to stand, the default position for land use planning will be the protection of the wilderness character, which is contrary to the principles of multiple use as outlined in FLPMA.

More importantly, if the Order is allowed to stand, BLM and other federal agencies will have license to circumvent congressional authority in making these types of decisions. The BLM and other federal agencies will have license to circumvent the public process and consultation with states affected by their management decisions. The BLM and other federal agencies will have license to ignore or to skew existing land management laws established to provide for transparency of policy formulation.

In closing, I urge Congress to take back its authority and prevent further development and implementation of Secretary Salazar's Order. This Order exempts stakeholders, threatens the spirit of collaboration and cooperation, weakens the process, discounts state sovereignty, and sends the message to the citizens of Idaho that the federal government will continue to treat the valuable and diverse open spaces of the West not as lands of many uses, but rather as lands of no use and no access for the people who live and work in Idaho and other western states.

The CHAIRMAN. Thank you very much, Governor Otter. Governor Herbert.

STATEMENT OF THE HON. GARY R. HERBERT, GOVERNOR, STATE OF UTAH

Governor HERBERT. Thank you, Mr. Chairman. And thanks to all of you for this opportunity to share my concerns about this bureaucratically established policy that dramatically impacts our way of life in the West and is, I believe, detrimental to our entire nation.

I recognize that the relationship between the states and the Federal Government is a partnership. But unfortunately, we are here today because the partnership between the states and the Federal Government was recently ignored by an action of the United States Department of the Interior. This decision just casually casts aside an agreement that was entered into more than a decade ago between the Governor of the State of Utah and the Secretary of the U.S. Department of the Interior.

That agreement was reached in order to avoid litigation and to provide certainty for those who rely on consistent, clear management policies of the BLM lands. Instead, this new order will likely lead to renewed litigation while slamming the door shut on citizens and communities that are seeking certainty in the public lands management process.

I urge you as representatives and as our partners to undo the damage that is being done by Secretarial Order 3310, and reaffirm a congressionally established process that established clarity and certainty in the management of our public lands.

In my state, we have beautiful and resource-rich lands that support both a strong energy development industry and a vibrant outdoor recreation industry. There are some who will tell you that you can only have one or the other, that it is somehow a zero sum game. I am here to tell you that is simply and particularly not true in Utah.

With new innovative technology, we can protect the environment, while at the same time developing our natural resources in ways that were never imagined a few years ago. We have millions of acres of open land, more than enough for development and more than enough for recreation. We have worked for years to bring varying groups and opinions together for the mutual benefit of our entire state economy, and that also of the nation.

Mr. Chairman, this Secretarial Order has undone years of this collaborative and costly work between county officials, environmental organizations, natural resource industries, citizens, and our local Bureau of Land Management people, as they have worked together to craft BLM resource management plans throughout our state.

This order changed the rules right at the end of the game, the results of which are having a profoundly negative impact on public lands protection and natural resource development in Utah. It is harming numerous rural communities throughout Utah whose economies do rely on sound and consistent public lands management practices.

Due to this order, the economies in places like Roosevelt, Vernal, Price, Kanab, Castle Dale, Blanding and Panguitch are going to be harmed. We are being told by oil and gas exploration companies that due to regulatory uncertainty that they will now curb their activities in Utah. They will not invest the time nor the capital necessary to prepare new bids on new exploration until the regulatory situation is steadied.

The lack of this new investment means not only a loss of jobs for Utah residents, but also the loss of natural resources that only increase our nation's dependence on fuel from foreign countries. I don't know if you checked the price of a gallon of gas lately, but this Secretarial Order isn't going to help out one little bit at the pump.

Taking an inventory is an important for our public lands. But how many times do we need to inventory and re-inventory the same land? We have already been through this inventory process in Utah, and the only reason to ask for yet another inventory is to establish a wilderness designation through a de facto bureaucratic process.

The continual re-inventorying a Federal lands as required by Secretary Order 3310 is wasteful and, I believe, wrong. It is justifiable only by politics, and not by good policy. This order also directly impacts in Utah our school children. Like most other Western States, Utah was granted land at statehood for the financial support of K through 12 public education and other state institutions.

Utah owns 3.3 million acres of school state trust lands interspersed amongst the BLM land. It is safe to say that the long-term effect of this policy will be the loss of billions of dollars to the permanent school fund and ongoing losses and endowment income for each public and charter school in Utah.

This order also hinders our state's ability to develop a long-term sound energy plan. It hinders the ability of all public land states to develop their own natural resources. And this action serves not to benefit any one group, but to endanger the safety and economic well-being of our entire nation.

In closing, this body and your colleagues ought to be just as offended as the people of Utah are by this order. This action simply usurps the authority of Congress, and for the first time ever creates a favored category for multiple use management, creates new levels of centralized bureaucratic review, contains vague, inconsistent, and overly broad definitions of wild lands, and lacks clarity as to what is wilderness and what is subject to multiple use and development.

By bureaucratic fiat, one branch of the government has overstepped and overreached, and has devalued the rights of the states and of its citizens. I urge you on behalf of the people of Utah and for the benefit of the people of our entire nation to exercise the congressional oversight that you have to correct this grave error and to return reason, certainty, and balance to the management of our public lands.

I thank you for your time, and look forward to your questions.

[The prepared statement of Governor Herbert follows:]

Statement of The Honorable Gary R. Herbert, Governor, State of Utah

Thank you Mr. Chairman for holding this hearing.

Thank you for inviting me and Governor Otter to speak today—to share with you and members of this committee our concerns about a bureaucratically-established policy that dramatically impact our way of life in the West...and is detrimental to our entire nation.

I express my appreciation to you for listening to us first before taking any congressional action. We recognize that the relationship between the states and the federal government is a partnership. Our Founding Fathers never meant it to be a top down, one-size-fits-all system of government. That is what the Tenth Amendment is all about.

But unfortunately, we are here today because the partnership between the states and federal government was recently ignored by an action of the United States Department of the Interior.

This decision cavalierly casts aside an agreement that was entered into more than a decade ago between the Governor of the State of Utah and the Secretary of the U.S. Department of the Interior.

That agreement was reached in order to avoid litigation and to provide certainty for those who rely on consistent, clear management policies for BLM lands. Instead, this new Order will likely lead to renewed litigation while slamming the door shut on citizens and communities that are simply seeking certainty in the public lands management process.

We urge you...as our representatives and as our partners....to undue the damage that is being done by Secretarial Order 3310 and help re-establish and reaffirm a

congressionally-established process, that though often time consuming, established clarity and certainty when it came to resolving management issues on our public lands.

We call upon you to help us right a very real and very damaging wrong.

Mr. Chairman, this Secretarial Order has undone years of collaborative and costly work between county officials, environmental organizations, natural resource industries, citizens and our local Bureau of Land Management offices as they have worked together to craft BLM Resource Management Plans.

It changed the rules right at the end of the game, the results of which are having a profoundly negative impact on public lands protection and natural resource development in Utah.

It is harming numerous rural communities throughout Utah whose economies rely on sound and consistent public lands management practices.

Due to this order, the economy in places like Roosevelt, Vernal, Price, Kanab, Castle Dale, Blanding, and Panquitch is going to be harmed.

That impacts people...real people like Chad Mead from Ferron who drives a coal truck to support his family, or Kevin Dunn, who makes his living as a plumbing and heating contractor in Carbon County, or Natalie Perkins, a teacher in Garfield County whose salary is derived from the income tax generated by people who work the land.

We're being told by oil and gas exploration companies that, due to regulatory uncertainty, they'll likely be curbing their activities in Utah. They are telling us that they will not invest the time and capital necessary to prepare new bids on new exploration, until the regulatory situation is steadied.

The lack of this new investment means not only a loss of jobs for Utah residents but also the loss of natural resources that only increases our nation's dependence on fuel from foreign, often hostile countries. Have you checked the price of a gallon of gas lately? This Secretarial Order isn't going to help out one bit at the pump.

The continual re-inventorying of federal lands as required by Secretarial Order 3310 is wasteful and wrong. It is justifiable only by politics...not by policy.

This Order also directly impacts our school children.

Like most other western states, Utah was granted land at statehood for the financial support of K–12 public education and other state institutions. Utah owns 3.3 million acres of state trust lands, mostly in the form of "checkerboard" parcels located within federal public land managed by the Bureau of Land Management.

Revenue from school trust lands is deposited in the Utah Permanent School Fund, a perpetual endowment supporting K–12 public schools.

Mineral development is the largest single source of revenue from Utah's school trust lands. Hundreds of thousands of acres of trust lands may be captured by the proposed Wild Lands designations. This dramatically impacts future mineral development, especially natural gas.

It is safe to say that the long-term effect of this policy will be the loss of billions of dollars to the Permanent School Fund, and ongoing losses in endowment income for each public and charter school.

This Order hinders rural economic development and hurts key funding sources for Utah's school children. It also hinders our State's ability to develop a long-term, sound energy plan. It hinders the ability of all public lands states to develop their natural resources. And this action serves not to benefit any one group, but to endanger the safety and economic well-being of our entire nation and we are forced to depend upon foreign sources for our fuel.

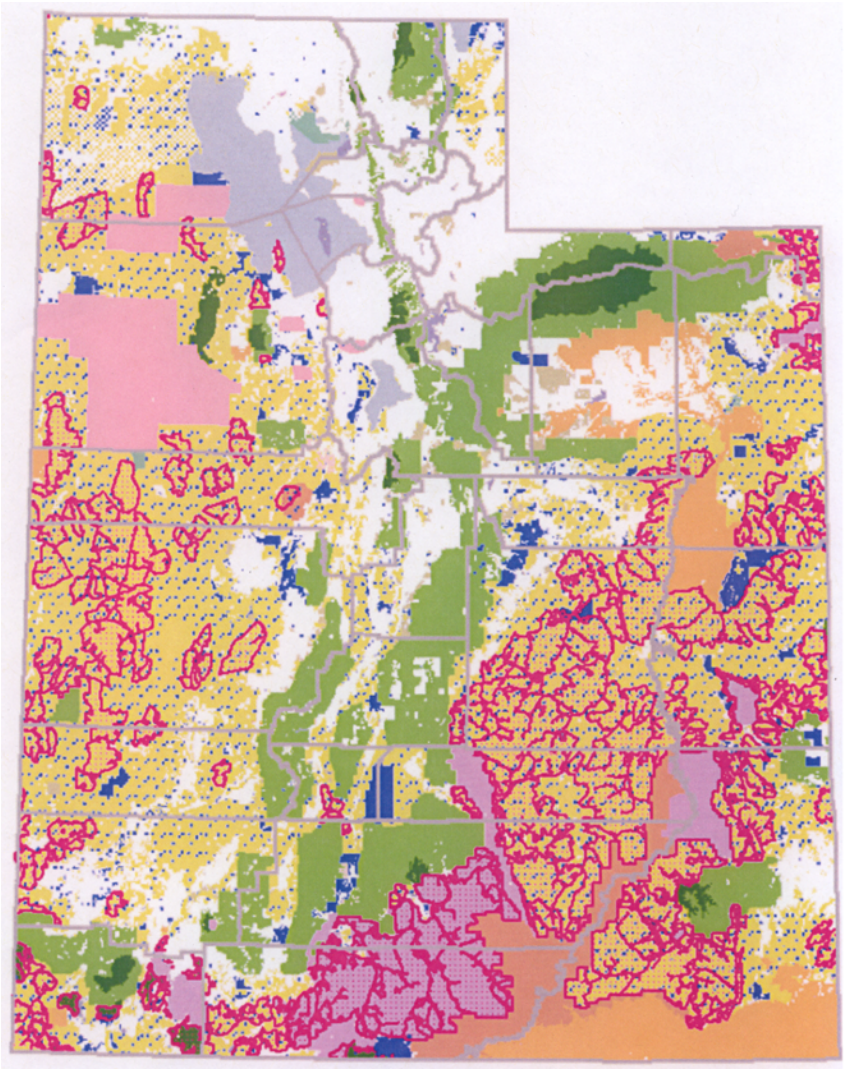
In closing, this body and your colleagues ought to be as offended as the people of Utah are by this order...

This action usurps the authority of Congress, and for the first time ever, creates a favored category for multiple use management, creates new levels of centralized bureaucratic review, contains vague, inconsistent and overly broad definitions of Wild Lands, and lacks clarity as to what is wilderness and what is subject to multiple use and development.

By bureaucratic fiat, one branch of the government has overstepped and overreached and has devalued the rights of the states and the citizens.

I urge you, on behalf of the people of Utah and for the benefit of the people of our entire nation, to exercise the congressional oversight you have to correct this grave error and return reason and certainly to the management of our public lands.

I thank you for your time and am happy to answer any questions.



The CHAIRMAN. I thank both of you for your testimony, and this hearing is a start of what you requested, Governor Herbert. We will now start the questioning, and each Member will have five minutes for the question-and-answer session, and I will start. And this is a question for both of you.

Idaho has over 11 million acres of BLM land, and Utah double that, 22 million acres. So you are clearly heavily impacted by this order. But we hear assertions, at least coming from this Administration and here today, that this is a good way to bring jobs to your area.

So let me just ask both of you very specifically, in your state, do families have better job opportunities in multiple-use areas or in

areas subject to wilderness restrictions? And I will start with you, Governor Otter.

Governor OTTER. The answer to that, Mr. Chairman, is No. The multiple-use characteristics that we have enjoyed for years in Idaho has created a lot of jobs. The promise, if we can continue under the multiple-use characteristics of these lands, has a great opportunity for many more jobs.

As I explained in my testimony, we now have four different power lines that are trying to get across Southern Idaho, mostly through the 14-1/2 million acres of BLM land in Idaho, from where it is produced, from where the power is produced, on wind farms in Idaho, geothermal, and solar farms to the southern markets in Las Vegas and in Los Angeles.

In order to get that power from where it is produced to where it is going, we have to create these power corridors, so we have to construct power lines. And then we have to maintain them. We have to have access to be able to maintain them.

So I see it as a job killer.

The CHAIRMAN. Governor Herbert.

Governor HERBERT. Well, thank you. I don't see it having any advantage to improving the economy of Utah. I think it does in fact have a depressing effect. We have good outdoor recreation. We have good tourism. Our tourism has increased the last few years. This order doesn't do anything but reevaluate what we already have. I don't think it will at the end of the day change the categorization of wilderness and this non-wilderness in one little bit.

We will still have multiple use of the public lands in the same fashion we have now. All this does is bring uncertainty to the marketplace, and it hurts our industry folks that want to invest millions of dollars in natural resource development, which we certainly need to have in Utah, particularly our rural parts of Utah, which also enhances the opportunity to have some energy sustainability in the country.

So this does not help my economy one bit.

The CHAIRMAN. Good. Thank you. And I have one more question. To what extent were both of you consulted in December before this order was promulgated on December 23rd? And, Governor Herbert, I would like to start with you since this order, as you mentioned in your testimony, ended a settlement agreement of 2003. So to what extent were you consulted in this matter?

Governor HERBERT. Well, maybe that is one of the great disappointments to me in this whole thing because I, as a Republican Governor, reached out in a significant way to Secretary of the Interior Salazar. And we have worked very diligently together to come together with a balanced approach in Utah on this issue.

I have the leading Democrat in Utah, who heads up my Balanced Resource Council, trying to bring people together and trying to find a balanced approach to manage our public lands. And so when I was called just two days before Christmas as I was going out to pass out some turkeys to the homeless folks as part of our traditional Christmas effort, I was surprised for him to tell me, oh, by the way, in a couple of hours, we are going to have a press conference in Colorado. You ought to be aware of what we are going

to do. We are going to designate this new category called wild lands.

That was the total amount of my input before I heard about. I said, can you postpone the news conference so I can understand what you are talking about? And, of course, the answer was no.

To Bob Abbey's credit, he came out and visited with our folks a few weeks later. But we had no opportunity to give input, no consultation, no by the way, what is your opinion.

The CHAIRMAN. Real quickly, Governor Otter.

Governor OTTER. Same story, Mr. Chairman. We did not find out about it until after the press conference, and it was disappointing. And it was disappointing on a couple of fronts, as Governor Herbert has already alluded to, because we were in negotiations on trying to solve the wolf problem in Idaho, and I had met personally with the Secretary and many of his staff members in early December, and then I was on the phone in conversations with them again in the second week of December. And nothing was mentioned about this.

Naturally, we were talking about the wold situation, but I would have thought that a courtesy with such a tremendous economic impact on the State of Idaho that I would have at least gotten the courtesy of a heads-up. I got no such heads-up, no such courtesy.

The CHAIRMAN. Good. Listen, thank you very much for your testimony. My time has expired, and I recognize the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. I thank the Chair. Good to see you again, Butch. Welcome back.

Governor OTTER. Thank you.

Mr. MARKEY. How would you suggest that good, collaborative wilderness proposals should be developed if no wilderness inventories can be conducted, and if the areas that are identified aren't preserved until Congress can act or not act? How would you propose that the inventory ever be established?

Governor OTTER. Well, I guess what concerns us most, Mr. Markey, is the process. And a courtesy not unlike what was warranted when I was in the Congress, when there were some wind farms going to go up in, let's say, a place like Martha's Vineyard or Nantucket, that in both cases at least the Federal agency that had oversight and could have—would have approached those people that were concerned about it, that concern was offered to them at that time.

Now, there was no wilderness study out there in the bay. But I would tell you that just the courtesy of these agencies, and especially this agency, which can have such a tremendous impact on our economies, of letting us know that this was something that was going to come forward, I think that we could have probably showed them one of a stack quite high that would have said, well, here are all the wilderness studies that were areas that we did on roadless rule, when we finally came to an agreement. And I would remind you that Idaho's roadless rule is the only rule that has been accepted because we worked together on it. We were notified ahead of time.

And so I think there are plenty of studies on wilderness. If there is something else—and by the way, in your opening statement,

Ranking Member, you indicate that this is not wilderness—these are wild lands. I would refer you to the very wording in that Secretarial Order, lands with wilderness characteristics. If it walks like a duck in the West and it quacks like a duck in the West, we figure it is a duck.

Mr. MARKEY. OK. But once they find a potential area, then full NEPA protections are in place.

Governor OTTER. Yes.

Mr. MARKEY. And so there is a process. And that process is something that they have to go through in a public way before anything, you know, happens. And so whether it be Nantucket Sound or it be, you know, in this area as well, those are the rules. That is the law. And that process is in place as part of this Secretarial Order.

Governor OTTER. I understand that. But the very uncertainty that my colleague talked about—you know, I don't know what happened with the land values in Nantucket Sound when all of a sudden it was announced that there might be a huge wind farm out there in the area of an otherwise place that a viewscape that was more desirable than perhaps the one that the wind farm would have offered. But I can tell you that it has created just the very question of whether or not we are once again changing the rules, and more importantly we are changing the rules, I repeat, without public input, without congressional approval, without a process that should be second nature to this country.

Mr. MARKEY. Let me go to Governor Herbert. Good to see you again.

Governor HERBERT. Thank you. Yes, twice in the same day, my lucky day.

Mr. MARKEY. We are going to spend the whole day together. Less than 2 percent of BLM land in Utah is wilderness, and 22 percent of BLM land in Utah is for oil and gas drilling. So that is the balance. It is 11 to 1, oil and gas drilling as opposed to wilderness area. So that is something, I think, that is quite clear.

But at the same time, your state has a $6.2 billion a year tourism industry that is related to kind of the sense that we have back in the East that it is a beautiful area of the country with all of this wonderful wilderness. So you have a balance that is struck that your state is a financial beneficiary of it, so that even though you have a $6.2 billion tourism industry, you also have the billions of dollars that come in from the oil and gas on the 22 percent of the land which is leased for that.

So it seems to me that is something that is already factored in, and that there is a process, as I said with Governor Otter, you know, for NEPA to be invoked and for all of those protections from a public participation perspective to have to be finished before anything permanent is ever completed.

Governor HERBERT. Well, again I don't know if it is a matter of just keeping score. If that is the case, you can see by looking at the map that Governor Otter has brought here that at least the West has a disproportionate share of wilderness as opposed to the East Coast. And so it is not a matter of just keeping score. It is a matter of it is in fact wilderness based on the law.

I don't have a problem with wilderness. I am not anti-wilderness. We started inventorying in Utah—finished the first one in 1993

and turned the report into this body here. We started again in 1997 and re-inventoried again. I guess the question is going to be how many times do you inventory. If we go to the closet and I say, hey, how many suits have I got in the closet, and I have seven, I can come back a week later and count them again. I still got seven.

There has got to be a time when we finish the process and say, OK, this is really it and move ahead with some certainty and predictability. We have in the State of Utah as part of this process RMPs, resource management plans. We have spent six, seven, eight years in bringing people together, environmental groups, industry groups, local community leaders, and others saying this is how we will manage these lands. And now with this new wild lands designation, those resource management plans are essentially—we don't know what they mean now.

Again, we are bringing uncertainty. Again, I am just saying we ought to inventory once and get it done.

Mr. MARKEY. Let me just say, that is not now for the wilderness areas. That is now for all BLM lands.

Governor HERBERT. That is right.

Mr. MARKEY. Which in Utah only 2 percent is wilderness, and 22 percent is oil and gas, and much of the rest is grazing and other purposes.

The CHAIRMAN. The time of the gentleman has expired.

Governor OTTER. If I might, Mr. Chairman, I would just point out that that is right. If we had the wilderness area in there, that map would have much more color in it. You are right, Mr. Markey.

The CHAIRMAN. Yes. If it had national parks, it would be even more larger than that. I am advised we may have a vote around 3:15 or thereabouts. So at this time, I would recognize the gentleman from Utah, Mr. Bishop.

Mr. BISHOP. Mr. Chairman, I understand there are going to be a couple of rounds here at least. I do have questions for both of them.

But I would be remiss if I didn't yield to my colleague from Idaho to at least ask his Governor a couple of questions first. So I would like to yield to him first. I do have questions when we come back at some other point.

The CHAIRMAN. The gentleman is recognized.

Mr. LABRADOR. Thank you, Mr. Chairman. I just have a couple of questions, Governor Otter. One of the issues that we are struggling with in Idaho is how to deal with the invasive plant species. And while this wild lands program is supposed to help keep areas natural, I am worried that it could actually have the opposite effect and allow invasive species like Cheatgrass to choke out native species. Do you think that is a legitimate concern?

Governor OTTER. Well, thank you very much, Mr. Labrador, for that question. My first year as Governor of the State of Idaho we had a wild lands fire which lasted about two and a half weeks and burnt over 700,000 acres, 700,000 acres of land that we used for multiple use. But also more importantly it was critical habitat for the sage grouse, for slickspot peppergrass and for bull trout, just to name three species. It ruined not only the watersheds, but it ruined the habitat.

Now, what happens after a wildfire is always an invasive species, which we call Cheatgrass, recovers quicker than the rest of the native grasses, and in fact squeezes those out. As a result of that, we are constantly susceptible to more wildfires because nothing eats the Cheatgrass. Nothing habitats in it, and it only becomes fine fuels for one of the 1,400 lightening strikes that we get during our storm season in Idaho every summer.

So it becomes very detrimental and very expensive to the state. That first year, my fire bill alone was $23 million.

Mr. LABRADOR. Now, it seems like we already have plenty of rules to create wilderness. Why do you think that the Interior Secretary is trying to create a new process that goes beyond the existing rules?

Governor OTTER. Well, we have had an awful lot of experience, Mr. Labrador and Mr. Chairman. We have had an awful lot of experience in Idaho with wilderness because we have the largest contiguous wilderness in the lower 48 states. And I would tell you that it is a surprise to me because when the original wilderness bill was passed, the river of not return, statements were made, statements were advanced and purported in the U.S. Senate, in the House of Representatives, when that bill was—which is now referred to as the Frank Church River of No Return Wilderness, is that this is the last acre that we will ever ask for wilderness again.

And so it is always a surprise. I wish that I could answer that question. I wish somebody would have asked us, do you agree that there should be more wilderness in Idaho, and if so, where. I say again in 2009 we created 517,000 acres of more wilderness in the State of Idaho at the request of Senator Crapo, and the Congress passed that bill.

We constantly are asked about additional wilderness, and our congressmen here representing the State of Idaho and our senators are the ones that advanced that. So we have plenty of input. Do I agree with all of them? Absolutely not. But I would at least like to have the opportunity for the Chief Executive of the 43rd star in that American flag to say yes or not.

Mr. LABRADOR. Thank you. I yield back the balance of my time.

Mr. BISHOP. You yield back to me? Thank you. Let me do a couple of things here. Governor Herbert, very quickly. I have no idea how much time I have left here. I will never get through this. It is right we have 2 percent of the BLM land that is wilderness. And, of course, that doesn't include Forest Service wilderness, national parks, the rest of it. The reality is Utah has 10 percent private property. So congratulations for being Governor over 10 percent of Utah. The rest, you are the regional administrator for Mr. Abbey.

What I would like to ask, though, is your concern about the continuity of jobs—and like I said, there will probably be another round here. I have only got a couple of seconds there. Are we losing jobs to other areas of the United States because of these provisions, realizing the West has the highest unemployment of any region in the nation?

Governor HERBERT. Yes. Again, with the changes and the uncertainty that has been caused by the throwing out of the RMP process and withdrawal of 77 oil and gas leases, a lot of the people in the industry now are concerned about are we going to spend six,

seven years going through this process, investing millions of dollars, and then have the rug pulled out from underneath us at the end of the process.

And so they are going to be looking at more private land states where they don't have to go through this process. There is more certainty to it, more predictability. And I think you will hear later on from some of the local government people it is impacting their backyards dramatically.

But again, it is intuitive to understand. If you don't understand if I invest and I have some potential for a good outcome, that you are going to invest someplace else where the outcome is more certain.

The CHAIRMAN. The time of the gentleman has expired. I ask unanimous consent that the gentleman from New Mexico, Mr. Pearce, be allowed to sit on the Committee and participate in the hearing. Without objection, so ordered. You have a lot of friends, Steve.

Mr. Grijalva is recognized for five minutes.

Mr. GRIJALVA.—that some oil and gas activities—oil and gas companies will likely curb their activities in your state because of the Wild Lands Policy. There are almost 5 million acres of land in the state that is open right now to oil and gas drilling. Only 22 percent of that land is actively being leased and is in production.

So the question for me is isn't it true there are millions of acres of land open for more drilling, and it is not being utilized and in production at this point?

Governor HERBERT. Well, that probably is true. And probably that question would be better directed to industry that can tell you why it is available. I can tell you that my belief is that it is not viable economically, or they would be drilling it. Some of it is isolated land that is in a remote location, and you need to combine acreage in the aggregate so that it becomes economically viable to do it.

So again, that is part and parcel of the process. Now, you might have the right to go to some place and drill, but you might not have any resource there to drill. I mean, it may be a dry hole kind of a location. So there are a lot of factors that go into industry drills where they drill. But the problem is, given the certainty of if we drill, at least we have an—or if we play the game. And in some instances, this has been six, seven, eight years, and then to say, oh, by the way, we are going to change the rules. They are going to say, you know what, I don't think I want to play here anymore. I will go to where it is a private land state, where we don't have so many hoops to go through and we have a better chance of success.

Mr. GRIJALVA. If I may again, a follow-up, Governor. The 2008 census indicated that 13 percent of the jobs in your state were around travel and tourism; 1 percent was in the oil, gas, and mining industries. Tourism and other industries. So my question is, is one industry more important than the other in terms of this job creation issue, given the disparity in terms of job creation?

Governor HERBERT. I don't think one job is more important than another job, or that one industry is more important than another industry. Again, I reject the notion that is going to be perpetuated here, which I think is false, that somehow tourism and develop-

ment of our natural resources is somehow mutually exclusive. That is not true. And I can prove the point.

We have worked very hard with our Balanced Resource Council to bring industry together, our environmental community, and a place called the West Tavaputs in Nine Mile Canyon and a centralized county called Carbon County in the middle of Utah. They had original proposals for around 800 natural gas wells to be drilled. By negotiation, by working together and find the compromise point, we have cut down 200 of those wells, less service interruption, more lateral drilling, protected the rock art, and other environmental issues have been addressed there, with an agreement.

Now, that location, they will have—each one of those natural gas wells is about $700,000, $800,000. An oil gas well is about a million dollars. But over the next 10 to 15 years, there will be over a billion dollars invested in that part of our state. That is a significant amount of money and economic development for a rural part of Utah.

Mr. GRIJALVA. OK.

Governor HERBERT. So again, it is not one or the other. They both can exist harmoniously.

Mr. GRIJALVA. And I appreciate that, Governor. My question was not about the qualitative nature of what is going on in your state in terms of the balance of natural resource use. Mine was a quantitative question about number of jobs per industry and acreage available for oil and gas and mining exploration that are not being utilized.

Mr. Chairman, I yield back.

The CHAIRMAN. I thank the gentleman. The gentleman from Louisiana, Mr. Fleming.

Mr. FLEMING. I thank you, Mr. Chairman, and, Governors, thank you for coming today. I am from Louisiana, and we are not directly impacted by this. But I will have empathy for the issues that you are dealing with.

Here is my question, or my first question. Hopefully, I can get to my second one. The impact of the Administration's Wild Lands Order 3310 has serious ramifications for our domestic energy supply and distribution. Today, AAA cited the national average cost of regular gasoline as $3.34. This summer, oil prices are expected to skyrocket. With more and more turmoil in the Middle East, it is imperative that we seek to domestically meet our energy concerns as a matter of national security, not to mention our economy.

Utah and Idaho are home to a vast array of potential energy sources on and across public lands, from renewable energy sources like wind and geothermal to natural gas reserves, and both conventional oil reserves as well as shale oil. Specifically, how will Order 3310 affect current and future energy development on the land designated as wilderness characteristics? Let's start with Governor Otter, please.

Governor OTTER. Idaho does not have a lot of gas and oil. We recently, as late as the last three or four months, we actually hit a gas well in Idaho, and it is the first natural gas well. It is sweet gas. We have to demoisturize it a little bit. But other than that, 4.2 million cubic feet of natural gas, and that is a first for Idaho.

We haven't had oil. We haven't had gas before. But we expect to have that.

Now, in answering your question, 35 million acres, or roughly 65 percent of the State of Idaho, is quote unquote, "Federal land." It comes under Federal designation. Obviously, getting that gas from where it is, we are going to have to end up going across some Federal ground someplace. But getting that gas from where it is being produced to where it can be consumed, or at least utilized into a gas line that is going to take it someplace else, we are going to have to have certainty that we can get across those lands.

Simply asking the question, what are we going to designate as wilderness areas has put everything on hold, and will continue to put everything on hold in Idaho.

One of the things that we have been concerned about is the upward mobility of our citizens. We know, in answer to a previous question, we know right now we have experienced, even with only that one gas well, that people that work on gas and oil production, gas and oil development, laying of pipelines, in that industry make a whole lot more money than somebody that makes a bed or serves a tourist someplace.

So we are concerned about our workforce. We are concerned about our citizenry and their upward mobility. I don't want to relegate any of them forever to making beds or saving ham and eggs for breakfast to a tourist.

Mr. FLEMING. OK. Governor Herbert.

Governor HERBERT. Yes, thank you. Just to give you an example, in the Uintah Basin, which is kind of the eastern border between Utah and Colorado, that Uintah Basin, 60 percent of our oil and gas income—or oil and gas development represents 60 percent of the income in that part of our state. So a rather large amount of economic development is tied to that opportunity.

I think all of us understand the laws of supply and demand. And so we have a demand for energy right now that is going up, and our supplies are somewhat limited. So the prices of anything related to energy are going to go up, up, and up, including the price at the pump.

I know you have had the tragedy in the Gulf there with the oil spill. I don't think any of us are insensitive to that. But it would certainly be a lot easier to clean up if the oil was in the middle of Utah. We just discovered some new oil in the central part of Utah, in an area called Sevier County, maybe up to a billion barrels of oil, opportunities to go out there and explore and have risk and reward, and increase the supply of oil and natural gas that is going to help this economy of ours recover. It is going to help keep the cost of energy down, and clearly gives us competitive advantage in the marketplace and the world.

So more supply is going to help us, and we can do it today with new technology in environmentally sensitive ways so they don't have to be a mutually exclusive approach.

Mr. FLEMING. Would you agree—just short answers here; I am running out of time. Would you both agree that this is an amazing overreach by the Administration, substituting itself for the powers of the Congress and the United States as well as the states themselves?

Governor OTTER. Yes. That is short.

Governor HERBERT. Yeah. I don't know if I am amazed, but it is certainly a concern. It is an overreach, and we ought to be working a little better together on this to come up with this approach. That is the disappointing part.

The CHAIRMAN. The time of the gentleman has expired. The gentleman from New Mexico, Mr. Heinrich.

Mr. HEINRICH. Thank you, Mr. Chairman. I want to start out by saying as a former wilderness guide, it didn't relegate me to anything. I seem to have done fairly well since then. And one of the things that I think has been at the heart of this, of your testimony up to now, both of you, Governors, has been the issue around process and consultation.

And certainly with NEPA, with FLPMA, with all of these Federal planning processes that we have, the RMP process, that is important, asking people their opinions, asking Governors their opinions, and citizens their opinions.

What I wanted to ask both of you is when the Bush Administration overturned the process, the Federal 202 process, which is very similar in nature to this wild lands process, it was in existence throughout the 1990s. It was ended by the Bush Administration. They did that with no formal consultation to local elected officials, no formal consultation to the public. Did you register the same objections when they unilaterally ended the 202 process that you are registering now?

Governor OTTER. No, I did not because I agreed with it.

Mr. HEINRICH. So what you are saying, Governor Otter, is not that you care about the process, but the outcome.

Governor OTTER. Well, of course, I care about the outcome, and, of course, I care about the process. But the reason I am here today is because we were totally ignored in that process. You know, it is evidenced by what is going on around the United States today, that if you disagree with something, you show up at the state capital and you let folks know exactly how you feel.

Mr. HEINRICH. Well, Governor, my point is that the process is important no matter which side you are on. And I think we should hold that up as an example. The Bush Administration got rid of the 202 process, and they did it without asking local elected officials, city councilors like myself at the time, what they thought about that.

I want to move on real quickly to the point that you bring up about certainty, which I also think is very important. And I think, Governor Herbert, you articulated that very well. To really create certainty for these lands, wouldn't the best way to do that would be to actually pass legislation that looked at these lands and either designated them as wilderness or released them to other multiple uses?

Governor HERBERT. Well, again I guess I thought we had done that. And I know that we completed the process in 1993. It was then re-inventoried by a good Democrat, Bruce Babbitt, and that completed that process, started in 1997 and completed in 1999. It spurred litigation, which we ended up having a stipulation and a settlement that led to that years later.

But again, I won't defend the indefensible. I think we need to have a process. But again, I think, you know, how many times are we going to inventory and inventory? It is like we are trying to inventory until we get the conclusion that one side agrees with. And OK, that is good now.

Mr. HEINRICH. Well, Governor, the inventory process was done. The designation and release process was never done for Utah. My point is, the process isn't done because no legislation was—there hasn't been a statewide wilderness bill for the State of Utah. So it is hard to have certainty if you don't finish the process.

Governor HERBERT. Again, I won't defend the indefensible. We have come up and tried to bring people together for many years. Utah has been ground zero on this fight, unfortunately. We brought a new temperament to the issue here. We have tried in fact to bring people together and say, let's go through the process as it currently is outlined. This was a shot out of left field, though.

We have legislation. We created the Washington County Lands Bill, which I think was a good one that this body helped pass. I would like to do that in every county in the state.

Mr. HEINRICH. Thank you, Governor. Chairman, how much time do I have left?

The CHAIRMAN. You have 58 seconds.

Mr. HEINRICH. OK. I will keep this short. Governor Otter used the phrase "lands of no use." And as I close, I just want to make the point, as a former wilderness guide whose livelihood was tied to these very kinds of lands, including the Gila Wilderness, which was literally the birthplace of wilderness in the American West, the very first wilderness protected under an administrative rule before it was designated in 1964, that these are not lands of no uses. They are lands where hunting and fishing is allowed. They are lands where commercial guiding is allowed, and in states like Utah and New Mexico and Idaho generate enormous sums of income for people who have very real jobs and provide well for their families.

So thank you both for testifying today.

The CHAIRMAN. The time of the gentleman has expired. Mr. Labrador, Idaho.

Mr. LABRADOR. Mr. Chairman, I would like to yield my time to the good gentleman from Utah.

The CHAIRMAN. The gentleman from Utah, Mr. Bishop, is recognized.

Mr. BISHOP. It was the good gentleman, by the way.

The CHAIRMAN. Oh, wait. Do you want me to make that determination?

Mr. BISHOP. And in the ecumenical spirit that we have here, I am going to yield one minute to Mr. Pearce first.

Mr. PEARCE. Thank you. I appreciate seeing you both here. And I would like to follow up. I guess us New Mexico guys are all going to ask about process. Last year, the field funds were cut by about 15 percent by the majority. Did anyone come out to you in the process and ask you what you felt about those decreases to your funds?

Governor OTTER. No.

Governor HERBERT. No.

Mr. PEARCE. Well, I just want to make that one point about process, and I would yield the rest of my time back to the gentleman.

Mr. BISHOP. I do appreciate your efforts on talking about process because FLPMA does demand that there be coordination. And the fact that there was no coordination with State and local governments, despite that is what is in the statute, is somewhat troubling here, and especially because, as you said, the so-called Leavitt-Norton agreement was a direct result of having the process gone through, and then lawsuit after lawsuit over the process. So there was a lot of talk that went with that.

I do want to ask two specific questions, though, to each of you. Actually, the same question. And because I am old schoolteacher, it deals with education. I want you just to very quickly tell me the significance of education, the difficulty you have in funding education, and then for the State of Utah, school trust lands and how difficult they are. And as well for Idaho, you have I think school endowment lands, seven or eight different kinds or categories of those.

And once again, as we go through this process, if we create a new wild lands designation where we don't know how long it will take to finalize that process or designation—I am assuming that not all of that land is going to be Federally owned. There will be SITLA lands. There will be private property and holdings. What does that do to your efforts to try and fund education in your states?

Governor OTTER. Mr. Bishop, you are absolutely right. At statehood, the State of Idaho was given section 16 and 36 out of every township. Those lands ended up being about a little over 3 million acres. Those lands were then required by article 9, section 8 of the Idaho constitution to be managed for the long-term financial best interest of the endowment.

The major endowment is the public school children of Idaho. And roughly $32 million a year goes into the public school fund from our management, whether it is grazing—and this also includes forest. Whenever we have an action such as this, and whenever we have a wild lands designation or some kind of a restriction on those lands, those Federal lands, that surround those sections 16 and 36, it automatically restricts what we can do on those endowment lands.

And so, therefore, we can't fulfill our constitutional responsibility for the school children of the State of Idaho. You know, there seems to be—and this is part of the push on the wild lands. There seemed to be some urgency that if we don't do this immediately, and if we don't protect this immediately, the outfitters and guides, those people that want to enjoy wilderness and do that on a tourism or a for-profit base, that all those qualities are going to be immediately lost.

Idaho became a state in 1890. We have been living and working and dying and raising families on those same lands that now you look at and say, look at these wonderful wilderness qualities. Do you think that we are going to run right out and ruin them immediately? Not for our school children, and not for the future citizens of the State of Idaho.

Mr. BISHOP. Butch, yes, obviously I think that because, obviously, wisdom in Washington, and you people out in the hinterlands can't handle it. That is why you are there, and I am here. Can I ask Gary for the same answer there?

Governor HERBERT. Well, Congressman Bishop, we don't see it quite the same way that you do, on either count. But clearly, when you have a state that has less than 25 percent of our land mass that is privately owned property, it inhibits our ability to develop commercially. And where you have payments in lieu of taxes as opposed to a property tax, which is like getting five cents on the dollar, it inhibits our ability to raise revenue to fund anything, particularly education.

I happen to be uniquely in a state that has a fast-growing student population. So I have driving economic expense on the education side, and limitations on what I can raise property tax-wise because so much of my state is owned by the Federal Government. So it definitely is a problem.

Again, the uncertainty that is brought here, I can tell you, we have had our own attorneys, who I think are pretty bright people, review all this wild lands designation and what does it mean, and we are confused even with the attorneys. Now, maybe that is a common status for attorneys. But we are confused as far as what does it mean, and what is the impact going to be on our ability to move forward.

So it is not just the Governor saying this. It is a lot of people, in industry, in the legal field, and saying we are not certain what this is going to do going forward, and certainly not helping us economically.

Mr. BISHOP. Thank you, Governor.

The CHAIRMAN. The time of the gentleman has expired. The gentleman from New Jersey, Mr. Holt. Or should I say Mr. Watson? Whichever is appropriate.

Mr. HOLT. I thank the Chairman, and I thank the Ranking Member for the shout out in favor of neutron-based thinking—neuron-based thinking as opposed to semiconductor-based thinking.

There has been several questions asked that I wish I had time to pursue, including how we preserve the kinds of jobs that Mr. Heinrich was talking about, since the them of today is jobs, which clearly are valuable and large in number comparatively in your states. And second, if there were time, I would want to pursue the question of why we are paying so much attention to other lands that might be drilled and dug, when there are so many more acres that have been locked up by companies paying good money for the rights to drill there that are unused, so many more of those than there are that are being used.

But what I wanted to get to is the more central question, which is Mr. Markey's first question, and I am not sure I really heard your answer. If you are unhappy with this process of designating wilderness areas and getting to wilderness areas, what process would you propose specifically? Let's hypothesize, and this might be a difficult hypothesis for you, that there would be further designation of wilderness areas. How would we get there if this process is so unacceptable? Let me start with you, Governor Herbert?

Governor HERBERT. Well, again I will reiterate that I thought we had a process in place. And whether we got to the end game yet or not I guess is debatable. But we have been working on this in Utah since the early nineties. I guess I am trying to see what is

the added value of what has come up with this new wild lands designation. All we have done is confused the process.

So I agree we ought to have a process that brings us a conclusion, some certainty. Let's go through it. What does this do that adds to it? We have already had the ability to reevaluate. We have FLPMA that gives us some guidance from 1976. We know that by definition wilderness is roadless. We are in the process of going through our states, at least my state, and finding out where there are areas that are roadless and where there are roads, which again by definition help us identify where are the wilderness areas that we ought to set aside.

I don't think people in Utah are anti-wilderness. We are just saying that how many times are we going to go through the process. Let's just do it once. Why do we add this extra kind of wrench in the gears that causes us to have some concern.

Mr. HOLT. Before Secretary Salazar's policy, I mean, walk me through, please, how the policy that existed before and the procedure that existed before could actually result in designation.

Governor HERBERT. Well, again, part of the problem we have had in the past is that we get proposals out there on the table. You gentlemen and ladies are the ones that in fact make the designation. You are the ones that have the responsibility to say this is in fact wilderness.

So it is brought to you, but we have differing facts that they are arguing back and forth. We come up with something that we think is probably a reasonable conclusion, and somebody files a lawsuit. We have litigation ad nauseam over year after year after year. So we in Utah have said, you know what, let's not come up with a number, whether it is 5.4 or 9.5. Let's just go county by county through it, bring it to this August body and say declare this the wilderness lands bill of Washington County or any of the other 29 counties that I have in my state, and you guys declare it. That process is working.

Mr. HOLT. But Governor, this is after the wilderness character is already irrevocably lost. That is the point.

Governor HERBERT. Why?

Mr. HOLT. Well, Governor Otter, I am sorry. I have cut you off, and we have only a few seconds. But if you care to try to answer that, I would appreciate it.

Governor OTTER. Well, I am sorry, too, Rush. It is good to see you again.

Mr. HOLT. It is good to see you.

Governor OTTER. What has been lost? Last year, we created—or two years ago, we created 517,000 acres of the canyon lands. That was not lost. People have lived in those canyons forever. People have recreated in those canyons forever. They lived and died and farmed in those canyons forever. And yet those qualities are all still there.

The process, as Governor Herbert has said, the process is what we were dependent on. We went through a values process when we did the roadless bill. I say roadless agreement. I say again, Idaho is the only State in the Union that now has a roadless agreement that was defended by Secretary Vilsack and the Forest Service as an adequate plan to protect those areas, the roadless areas.

And so we were going through that process until December 23rd, when all of a sudden, it was announced that maybe that process wasn't going to work anymore.

Mr. HOLT. My time has expired. I look forward to continuing the discussion. Thank you.

The CHAIRMAN. The time of the gentleman has expired. The gentlelady from South Dakota, Mrs. Noem.

Mrs. NOEM. Thank you, Mr. Chairman. I want to thank the Governors for coming today, too, as well. And you basically just gave my speech, Governor Otter, because that is exactly what has been going on in South Dakota. You know, last year in Congress a bill was proposed that would make about 48,000 acres of the Buffalo Gap National Grassland near the Badlands in my home state into a wilderness area. It would have changed the designation from multiple use into a wilderness area, which essentially would change the entire function of that area. And it was very concerning.

During my meetings with all of the local stakeholders, the local officials, they were alarmed by this proposal because they recognized would it would do to economic development in there, how it would change the usage of that land. You know, and a lot of times, the conversation would come up that this land was in pristine condition and that it needed to be protected by the Federal Government so that they could step in and continue to protect it for generations.

And that was exactly the point that I brought up to them in many of these meetings, is who do you think kept it in pristine condition all these years. It was the farmers and the ranchers and the people who are utilizing the land now. Why do we think the Federal Government can step in and protect it better than they have all of these years.

So, you know, that is essentially the same argument that we have going on in South Dakota. I met with ranchers who have permits to graze their livestock out in those Federal grasslands. They were concerned with this change in designation that could restrict or even end their use of Federal land for livestock, and then also limit access by motorized vehicles for ranch management.

So I guess the question that I have for you, it specifically means that once one of these designations changes, do you know of any decisions that can be appealed to the Interior Board of Land Appeals, or what exactly is the appeal process once a decision has been made? Can it be appealed to the Federal courts? Or what are our options as people that are utilizing that land?

Governor OTTER. Well, I thank you very much for that question, and for that statement relative to the fact that we have been taking pretty good care of it. You know, I would just say, and it is too bad that the Congressman has already left, but my outfitters and guides are going out of business. They are going out of business because of another great Interior plan called reintroduction of Canadian gray wolves. All the elk and the other—not all of them, but a lot of them have been decimated.

But I would say in answer, that is what we are doing here today. This is our first appeal for reason. This is our first appeal for following a process that however very difficult has been frustrated by all of a sudden a Secretarial edict that says this is the way it is

going to be, casting uncertainty into the capital markets, casting uncertainty into the land use of every county, all 44 counties in the state.

Where do we go to surrender? And that is why I am here today, is to make a first appeal for Congress and for this Committee to take back your rightful place under your duties, under Article 1 of the Constitution that says Congress should be in charge of this.

Governor HERBERT. And let me just add to what Governor Otter just said. Really, it is the congressional responsibility. It is not wilderness unless you say it is say wilderness. Nobody else can do that. The concern many have is that because of delay and distraction that this just takes a long time. It just seems to be eternal in nature, and that is why particularly those in industry are saying, you know, we will go someplace else. We have to get some resolution here. You know, BLM right now is issuing any permits on our BLM lands. So our energy folks are saying, hey, we are going to go someplace else.

I believe that we need to have a consensus-based approach that is done with a locally based bill. So we can't, if you are in Utah, to have comprehensive omnibus bill. It doesn't seem to be practical anymore. But we can take it and eat this elephant piecemeal, one county at a time or two counties at a time, and bring consensus, rather than say we have to start with a number and then work backwards, like I think there are going to be 10 million acres of wilderness in Utah.

Maybe there is, maybe there isn't. Let's just take a county-by-county approach, bring consensus, have you guys pass it and bless it and say it is now wilderness. We will total it up at the end of the day when this is all done, my 29 counties, and say, hey, it was 6 million acres of wilderness. Who knew?

But that is the approach we ought to take. There is a process that works. All this has done is throw a monkey wrench into the gears, and there is for us no gain.

Mrs. NOEM. Thank you. I appreciate that. And, Mr. Chairman, I would like to yield the balance of my time to Mr. Labrador from Idaho.

The CHAIRMAN. Mr. Labrador has 30 seconds.

Mr. LABRADOR. Thank you, Mr. Chairman. Just a quick question, and maybe you can educate me because I keep listening to the other side asking about—it is almost like they believe it is mutually exclusive, that if you have wilderness areas, then you can't have—you know, if you have these oil designations, you can't have outfitters through those areas.

Is that what happens? Do we close it off completely so outfitters can't go out there if all of a sudden there is oil exploration in those areas?

Governor HERBERT. Not at all. Again, we have a lot of outdoor recreations occurring that is not on wilderness lands. And one of the challenges we face, have rather, in some parts of our natural resource development is we don't fence—we have to fence around the drilling rigs to keep the animals from coming in, not to keep them out—or to keep them out rather then getting them inside.

So again, we have the ability to be environmentally sensitive. And so there is no reason why you can't have hunting, fishing, ex-

ploring, hiking at the same time you have some natural resource development going on, certainly in areas that wouldn't have not visual acuity, but would be within some kind of reasonable distance.

We can balance this and have an approach that makes everybody happy. It is those that have hidden agendas out there that say, well, I don't want any development, or I want it all outdoor recreation. No. There has got to be a balance here.

The CHAIRMAN. The time of the gentleman has expired. The gentlelady from Hawaii, Ms. Hanabusa.

Ms. HANABUSA. Thank you, Mr. Chair. Governors, thank you for being here.

Governor OTTER. Thank you.

Ms. HANABUSA. As you can imagine, you are far away from where I am from and what I am accustomed to. If you could provide me with some background, the Governor from Idaho and the Governor from Utah, what percentage of your lands are we talking about that you feel are directly affected by Order No. 3310? Either one.

Governor HERBERT. I can tell you that the BLM land in Utah is approximately 68, 69 percent of our land mass. So if we are going to have to re-inventory that, then that is about the percentage.

Governor OTTER. Both BLM and Forest Service is 35 million acres in Idaho, which is right at 65 percent of our land mass.

Ms. HANABUSA. Now, when we talk about inventory—because we have had a similar issue in Hawaii—we originally had what were called crown lands. We have always had this issue about inventory and, of course, part of the lands are mountains and areas and, you know, there is just no way you can come up with an inventory or something like that.

So I am curious about of the lands that you are talking about, how many do you feel are really the ones at issue? Is there like a priority of lands that are at issue, or are you just saying that all of those lands are going to be in controversy here?

Governor HERBERT. Well, we have some wilderness, and we have some wilderness study areas that are just again becoming de facto wilderness because we did study, study, study, study, and nothing ever happens. There is no reconciliation, no end to that study.

So again, that is why we have tried to move in the direction of county by county. Let's bring people together. We will study it, and we will bring environmental groups and industry and the community together, and hopefully come up with a bill that will be brought to you, and we have consensus, and you will pass it. That will set that side now once and for all.

Ms. HANABUSA. So you are not opposed necessarily to an inventory. You just don't like the fact that it has to be done all at once? If you are willing to do it by county by county——

Governor HERBERT. Yeah. I guess my point is we were doing it. We actually had had some momentum in getting it done, and then all of a sudden this new thing comes up that causes again uncertainty, confusion, and is going to hurt us economically because of it. We were doing it and working, I thought, successfully in bringing people together.

Ms. HANABUSA. So how many of the lands that you felt that you were already doing, what percentage of that are we talking about?

Governor HERBERT. You know, there are proposals on the table for anywhere from, you know, 3.3 million acres of wilderness to 10 million acres of wilderness. And what the truth is, I don't know that anybody knows. People just advocate from different points of view, and it doesn't matter what the reality is.

Again, by definition, wilderness is roadless. We have a lot of roads throughout our rural parts of Utah on these BLM lands. And now part of the argument is, well, that is not a road. Well, this is a road. Well, that is not a road. And so we are going through some pilot programs to see if we can identify what are the roadless areas. And at least we know that has potential now to become wilderness. So we are doing the inventory.

Ms. HANABUSA. Governor, how long will it take you to do it your way? I am just curious. We haven't been able to do ours, and that is the reason why when I hear inventory of public lands, I go, well, let's see how long. I mean, we have had it since, you know, a long time.

Governor HERBERT. You know, I will tell you——

Ms. HANABUSA. And we still haven't done ours. But doing it your way, how long do you think it is going to take?

Governor HERBERT. Who knows? My crystal ball is as foggy as anybody's. I just know we have had this fight going on for a dozen years in Utah. I have been the Governor of Utah for about two years. We have done more on wilderness designation and trying to resolve the public land issues in two years that I have been Governor than the other 12 years combined.

Ms. HANABUSA. I understand that, Governor. I guess my thing is I want us to talk about the same thing. Inventorying seems to be the issue. I just want to get an idea of how long you think the inventory is going to take if we do it your way.

Governor HERBERT. Well, it took us two years to get through the Congress our one county. Now, we think we have found a process that works, and so let's hope we can speed it up. And with your help, we can speed it up.

Again, you guys should be taking some interest here in saying let's get it done. Let's not let it go out on ad nauseam. Why there has been a lack of, I guess, urgency, and why we have allowed this fighting to go on for so many years, I am uncertain. But I guess if we could do it in the next decade, I think we can at least clear up Utah's issue on wilderness.

Ms. HANABUSA. Ten years?

Governor HERBERT. Ten years.

Ms. HANABUSA. Ten years to do your——

Governor OTTER. If I might respond to that as well, and how that concerns Idaho. We started round one roadless studies in the sixties. We finally submitted our plan in 2001.

The CHAIRMAN. The time of the gentlelady has expired.

Ms. HANABUSA. Thank you very much.

The CHAIRMAN. The Chair would advise Members that the vote is imminent at any time, and I understand that prior both Governors had to leave about this time period. If I could ask their indulgence to stay at least until you hear the two bells—that means

we have to vote. And then we will go vote, come back, and seat the second panel. So if that is acceptable to both of you, I would appreciate that.

The gentleman from Tennessee is recognized.

Mr. FLEISCHMANN. Thank you, Mr. Chairman. Governors, thank you very much for being here today. I have enjoyed this testimony very much, very helpful.

Governor Herbert, while I was not a Member of Congress in the mid 1990s, I recall that then President Clinton unilaterally declared a large area of southern Utah to be a national monument called the Grand Staircase Escalante under the Antiquities Act. I was recently told that the area in between the Grand Staircase and Escalante is called the Kapirowitz Plateau and contains over 50 billion tons of coal and significant oil and gas reserves.

Wouldn't the current policy of the Secretary essentially be doing the same thing with his wild lands declaration, sir?

Governor HERBERT. Well, there are some similarities in the fact that when President Clinton did the exercise, his right under the Antiquities Act to declare that a national monument, we were not told about it. In fact, our congressional delegation the day before had asked him, because there had been rumors about it, including the Democrat from Utah at the time, and they said no.

So we were surprised and blindsided and disappointed because of that lack of I guess honesty. And for us in Utah again there was a significant core of really good coal. It is some of North America's best coal. It is high BTU. It burns hot. It is low sulphur content. It burns clean for coal. And that has been taken off the table, and probably in hindsight I am not sure that is America's best interest, nor Utah's.

So the fact that this kind of came out of the blue is similar. But I don't want to overstate the point because I think that was much more egregious with the Grand Staircase Escalante than this issue is here.

Mr. FLEISCHMANN. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. The gentleman yields back his time. The gentleman from California, Mr. Garamendi.

Mr. GARAMENDI. Thank you very much, Mr. Chairman. Governors, thank you very much for your testimony, your participation here today. It is extremely important that we hear from you and that we pay attention to these issues.

I happen to have been in the Department of the Interior in the mid nineties as the Deputy Secretary and have some familiarity with some of these issues, particularly the history of the Wilderness Act and the Federal Land Management Act.

What seems to me to be in this order that Secretary Salazar has put out is a continuation of the previous policies prior to Secretary Norton's decision to not move forward at all with the wilderness study areas. And also, in looking at the details of the way in which this particular order has been drafted, it appears to me to be, one, consistent with the mandate of the law for the BLM to study, to make proposals; and also to involve the public in the process.

It seems that—I don't know if they have done any of the things as a result of this, done any process as a result of this order. Are you aware of any activity in your areas as a result of this new

order coming in over the last two and a half, almost three months now?

Governor OTTER. I only know that in Idaho's case, our local BLM office was given 60 days to reply. Whether or not they respond, they didn't ask any of my state agencies, my lands, or any of the state agencies, for any input.

Mr. GARAMENDI. It seems to me that the reply is probably having to do with the procedures that would be put in place, how they would proceed. And I am glad they just took 60 days to answer that question. Hopefully they did. That then establishes a set of procedures that would then lead to the designation of study areas.

But apparently, at least in your area—I don't know about Utah. Has any action, has any new study area been determined as a result of this?

Governor HERBERT. Not that I am aware of.

Mr. GARAMENDI. Well, in looking at the actual language of the order, there is a process in that language for involvement of the public after a study has been done of an area and making the determination that it has the wilderness characteristics. And furthermore, there appears to be a way out here.

You were talking about gas lines cross study areas. There is a very specific paragraph that deals with that potential, that certain study areas may inhibit development in other areas. There is a whole process to deal with that. I would assume that has also not been put in place since most of this is now less than three months—less than four months old.

So I guess what I am looking at here is that what the Secretary has done is to re-establish what existed prior to Secretary Norton's decision, which I would argue from my experience is contrary to the underlying laws, the two, the Federal Land Management Policy Act and the Wilderness Act.

Would you agree or disagree with my assessment of what this thing actually does, that is, to re-establish the procedures that existed prior to Secretary Norton's?

Governor HERBERT. Well, let me give you my observation because I have asked the question point blank to the BLM. Does this overturn the Leavitt-Norton Agreement? And the answer that has come back to me is "No." Now, we have others out there that say, oh, this overturns Norton-Leavitt. So there is confusion in that regard, even amongst the agency itself, what does it do.

Some are saying it is silent on the issue, and so we don't know. And that Leavitt-Norton Agreement, what came out of that was a stipulation of setting aside $2.6 million and not in fact using it in order to settle a lawsuit. Putting this back on the table actually opens us up to more litigation and puts us back to square one that we had back in the Leavitt-Babbitt days into Leavitt-Norton days.

So this is a step backwards and not a step forward, and it doesn't get us back to where we were before, in my opinion.

Mr. GARAMENDI. I think at least part I would agree with it. It is unclear how this addresses the Leavitt-Norton. The Leavitt-Norton was specific to the State of Utah and what took place in that state.

However, it appears as though Secretary Norton's order went way beyond Utah and affected every other state, and literally re-

moved from the Department of the Interior the opportunity for the Department—and I think it is way beyond the Bureau of Land Management. I think it probably goes to other Federal agencies also that may have land—that may have responsibilities within the Department of the Interior, and affects other states, whereas the lawsuit was specific to Utah; hence, the new order re-establishing what existed without modifying the lawsuit as it applies to Utah. I think that is the way it will work out.

The CHAIRMAN. The time of the gentleman has expired. A vote has just been called, but we have time for one final round of questioning, and then we will break, dismiss this panel, and thank you very much for coming, and seat the second panel. We will break for approximately 45 minutes and come back for the second panel.

Mr. Flores, you are recognized for five minutes.

Mr. FLORES. Thank you, Mr. Chairman. Governors, thank you for joining us today. I will try to keep this quick in light of the vote that is coming up.

I am from Texas. Like my friends from Louisiana on either side of me, I am from a state that has been unilaterally damaged by actions of the Department of the Interior. And I am also glad that Mr. Labrador asked his question about the mutual exclusivity of oil and gas operations and recreation because I think each of you disabused those people here inside the Beltway from that notion because everybody that works in the real world outside the Beltway understands that they can coexist peacefully.

My question is this. Both of you raised the question of uncertainty. And almost every American gets what has happened. The last few years of uncertainty have cost us 7 million jobs in this country. And so we have clear evidence as to what uncertainty does to the economy.

Now, you have new uncertainty facing each of your states. Can you individually answer for me what—I know it hasn't been that long since this new order came out. But can you tell me what the expected impact is in real terms on jobs, the finances of your states, and your ability to continue to invest in education? Thank you.

Governor HERBERT. Do you want me to go——

Mr. FLORES. Let's go with Utah first.

Governor HERBERT. OK, thank you. It is hard to predict. You know, my crystal ball is probably as foggy as anybody's. But clearly—and you will hear later on from local government officials that this happens in their backyard, where 60 percent of their income is derived from oil and gas mining in their own backyards and their own valleys. And so the fact that we are not getting permits anymore, you know, which is maybe even outside of this wild lands Secretarial Order, is clearly a concern for them.

If we can't go out there and develop the economic opportunities of their natural resources, it is going to cause to have loss of jobs. It is not only loss of jobs, but in our state, it is loss of income tax. And that income tax in Utah is all designated, earmarked, for nothing but education. It doesn't go into cops on the streets. It doesn't go into building roads or buildings. It goes directly into education. That is the way it is done in Utah.

So this loss of jobs and the creation of income tax hurts my education significantly.

Governor OTTER. Not only is there a major difference in the quality of the job and the return on the job between what we are talking about and the management of our resources for multiple—and the apparent idea that we are going to create a bunch of tourism jobs within these same areas, I can tell you this, that there are more people in one day probably that play golf on the floating green in Coeur d'Alene, Idaho than visit the Frank Church No River of Return in a year. And we make more money.

So when you are matching tourism dollars, tell me how many people go buy a backpack, and tell me how many people put in some granola and go into the Frank Church River of No Return wilderness area, and what that dollar impact is on me as opposed to those that are tourists and qualify for tourism dollar designation that play golf on the floating green. And it is only a par three.

Governor HERBERT. Let me just add, too. I mentioned this earlier, that each natural gas, that is a $700,000 or $800,000 investment each time you drill one of those things. And when you do 600 down in Carbon County, you can figure that out. And that ripples through the economy. So it is a significant impact. And I don't want to diminish the tourism and travel trade, but my goodness. When you spend a million bucks for an oil well, and you do 1,000 of those, that is a lot of money.

Mr. FLORES. Thank you. But the bottom line is the impact on each of your states is expected to be significant because of the uncertainty that this order is generating. Is that correct?

Governor HERBERT. Absolutely.

Governor OTTER. That is right.

Mr. FLORES. OK. And with all due respect to Mr. Heinrich, who is not here to defend himself, I can tell you from experience the typical oil and gas employee makes about three times what the typical outfitter would. So thank you. I will yield back.

The CHAIRMAN. I thank the gentleman. And we will end this debate. Not all Members had an opportunity to ask questions, I am sure. And if there are Members that want to ask you, I would ask you to respond back, and the record will be open for 10 days.

So we have two votes or three votes. So what we will do, we will dismiss this panel, and we will reconvene at approximately 4:30, and we can have the second panel seated, and then we can proceed right away. And with that, the Committee will stand in recess until approximately 4:30.

[Recess.]

The CHAIRMAN. The Committee will reconvene. I know we said 4:30, but we have some Members up here that are anxious, and I know the second panel has been waiting, and I appreciate your waiting.

We have on the second panel Joel Bousman, from Sublette Commission in Pinedale Wyoming. I hope I said that correctly. Did I say that correctly?

Mr. BOUSMAN. Mr. Chairman, it is Bousman, but that is close enough.

The CHAIRMAN. All right. Well, you could have been in Montana, and I would have, you know, said Bozeman. I would have been cor-

rect. So Mike McKee from Uintah County Commissioner in Vernal Utah; Lesley Robinson, Phillips County Commissioner in Malta, Montana; Dennis C.W. Smith, Jackson County Commissioner in Jackson County, Oregon; William G. Myers III, a Partner in Holland and Hart and a former Solicitor of the Interior Department; Peter Metcalf, CEO and President of Black Diamond Equipment; And Mark Squillace—did I say that correct?

Mr. SQUILLACE. Squillace.

The CHAIRMAN. Squillace, OK. Well, you told me when I introduced myself, and I thought I might blow it. I just want to remind all witnesses, and I mentioned to the first panel, that your full written statement will appear in the record, and you have the five-minute lights there. The green light will signify four minutes, the yellow light meaning one more minute, and of course the red light, you are done.

So if you could hold it to five minutes, I would appreciate it. At this time, I would like to ask unanimous consent that Mr. Walden from Oregon be able to participate in the panel. Without objection, so ordered. I recognize Mr. Walden for the purpose of an introduction.

Mr. WALDEN. Thank you very much, Mr. Chairman, for that. And to my colleagues on the Committee, thank you for letting me sit with you. It is good to be home. This is a Committee I served on for many years and enjoyed the work, very important to especially the rural West.

I am honored today to introduce the Jackson County Commissioner C.W. Smith. C.W. has been on the Jackson County Commission in Oregon since 2005, and is current Chairman of the commission. He was a sheriff before that from 1983 to 1995, and was voted Oregon's Sheriff of the Year for 1989 to 1990.

He also served as Jackson County's Sheriff's Administrative Service Division captain from 2003 to 2004. He is a Vietnam veteran in the Air Force. He was interim City Manager in Lakeview and Police Chief for the City of Talent. And most importantly, Mr. Chairman, he is a former radio talk show host. Some of us really admire that quality in a person. Private insurance business owner and manager of a large farming organization.

C.W. represents the largest by population county in my district. And where we have had to deal with Presidential designations of monuments and things in the past, where the work wasn't done on the ground, but we got to clean up the mess afterwards. And so I think you will find he has a great perspective for many ways, both law enforcement and county management on these issues. And I appreciate you letting me introduce him and his ability to testify.

The CHAIRMAN. Thank you very much, Mr. Walden, and I look forward to Mr. Smith's testimony.

We will start on my left side and move down. So, Mr. Bousman, you are recognized for five minutes. And if you would press the on button on the microphone, I would appreciate it.

STATEMENT OF JOEL BOUSMAN, SUBLETTE COUNTY COMMISSIONER, PINEDALE, WYOMING

Mr. BOUSMAN. Thank you, Mr. Chairman. I am Joel Bousman, Chairman of the Sublette County, Wyoming Commission, and I am also President of the Wyoming County Commissioners Association.

I am opposed to Secretarial Order 3310, and I ask Secretary Salazar to withdraw the order. I request that my written testimony and attachments be submitted for the record.

On January 18th, 2011, President Obama signed an Executive Order stating that our regulatory system must protect the environment while promoting economic growth and job creation. Only a month earlier, Secretary Ken Salazar signed Secretarial Order 3310, which will have the opposite effect. This order will eliminate jobs and wreak havoc with the Western States' economies.

The legal authority to establish wilderness study areas ended many years ago. The new implementation documents set for the Secretarial Order say that lands with wilderness characteristics will be managed under the same legal criteria as the original wilderness study area. It is clear that BLM is attempting an end run on congressional authority by simply changing the name to wild lands. At some point, if it walks like a duck and talks like a duck, it is a duck, even if the Secretary chooses to call it a chicken.

Now, let me give an example of the real impact Secretarial Order 3310 would have on one specific RMP area in Wyoming. The BLM incorrectly identified 20 percent of this area as having wild land wilderness characteristics. In this area, BLM identified 56 land with wilderness characteristics, LWCs, comprising 571,000 acres. Just within this area, there are over 600 miles of roads, more than 400 reservoirs, 300 miles of fence, 154 range improvements, 10 miles of water pipeline, 17 water wells, 68 miles of oil and gas pipeline, 8 active oil and gas wells, 59 plugged and abandoned wells, and almost 250,000 acres under active oil and gas lease.

Does this sound like wild lands to you? The identification of all of these structures and improvements is not an exercise in discretion. They are there. And the term wild lands is not appropriate. If BLM chooses to designate this small portion of Wyoming as wild lands, what would be the impact on jobs and the economy? Understand that BLM is required to protect potential LWCs during the planning process so as to not lose the option of designating them in the final plan.

Using the same economic model used by BLM in its planning efforts, these LWCs would generate 258 drilling jobs, up to 614 production jobs by 2025. This would equate to almost $14 million in labor income per year during the drilling phase, and over $51 million in the production phase per year. Using the same percentage as an example of LWCs throughout BLM in Wyoming, the potential revenue to Wyoming would be nearly $12 billion. That is billion, not million. And the local, State, and Federal tax revenue would be about $3 billion over 20 years. We cannot afford this loss to our state.

Livestock grazing in the proposed LWCs will be impacted. Grazing may still be allowed, but grazing management practices and the ability of permitees to maintain and install improvements necessary for livestock distribution will be severely restricted. Preda-

tory control efforts will be restricted, resulting in more loss to both livestock and wildlife.

Using the same BLM area and economic model as earlier described, grazing AUMs within LWCs have an economic value to local communities of about $27 million in livestock production, over $12 million in employment earnings, and 380 annual jobs. Again, this is only one small area of Wyoming.

We do not live in Wyoming to go to the opera. We live in Wyoming because we love to ranch, hunt, fish, hike, camp, ride our four wheelers and our snowmobiles. Some of us want true wilderness, and we have an abundance of that as well. This is our custom and our culture, our way of life, our way of making a living.

Secretarial Order 3310 should be rescinded. It is not supported by a law and amounts to de facto creation of wilderness. It is contrary to thoughtful public policy, and implementation of this order will result in negative economic impact and loss of jobs in all our Western States. We can and must do better.

Thank you for the opportunity, Mr. Chairman. I would be glad to answer questions.

[The prepared statement of Mr. Bousman follows:]

Statement of Joel Bousman, County Commissioner, Sublette County, Wyoming, and President, Wyoming County Commissioners Association

On January 18, 2011, President Obama signed an Executive Order entitled "Improving Regulation and Regulatory Review." Section 1(a) of the Order states that,

> Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

Not one month earlier, Secretary Ken Salazar signed Secretarial Order 3310 (SO 3310), a document which, even if read in the most favorable light, casts a long shadow across much of our nation's public lands.

To those of us in the West, the paradox of Washington, D.C., is only perpetuated in the schizophrenic, contemporary existence of SO 3310 and the President's order aimed at curbing the very abuses furthered through SO 3310. To us, SO 3310 is typecast for scrutiny under President Obama's January 18, 2011 Executive Order. It risks billions of dollars of private, local, state and federal revenue, threatens much-needed job growth and disregards the custom and culture of our families, communities, states and nation—and does so without even a passing glance at those principles of robust scientific review, public participation and predictability outlined in the President's Executive Order. But such scrutiny does not seem forthcoming.

Certainly, the President should be allowed to hear from his agencies within the timeframes outlined in his Executive Order before we pass final judgment on the sincerity of his effort. Unfortunately, the early rhetoric and recently released guidance handbooks from the Department of the Interior only underscore a stubborn resolve to defend SO 3310. Thus, those of us that are reliant on Bureau of Land Management lands for our livelihoods and for their multiple-uses must be proactive to underscore our concerns with SO 3310 and the guidance handbooks that go with it and direct both the policymaker and federal bureaucracy to a more thoughtful course.

At its core, the legal justification for SO 3310 and the guidance that goes with it enlist a healthy dose of bootstrapping. In the absence of legal authority to justify the Secretary's Order, general provisions of the Federal Land Policy and Management Act (FLPMA), the Wilderness Act of 1964 and the National Environmental Policy Act (NEPA) were offered to suggest Congress has endorsed the actions that have been taken. These same references, in particular references to FLPMA's gen-

eral call to maintain lands in their "natural condition" (43 U.S.C. 1701(a)(8)) and requirements to develop inventories and engage in land use planning (Sections 102(a)(2), 201(a), and 202(c)(4) and (9) and Section 202), were cited to suggest that the BLM's newly minted handbooks (6301, 6302 and 6303) are in accordance with our nation's land use laws. The handbooks also cite to the existence of SO 3310 as added legal justification, essentially completing the circular legal argument.

Such an overly generalized and bootstrapped legal theory does not hold water, however. To begin, the Department of the Interior's use of FLPMA is misplaced and does not tell the whole story, even within the specifically cited provision found at 43 U.S.C. 1701(a)(8). Certainly, there is a discussion of protecting "natural condition," but it is noted in a string of other protections that include managing the public lands to protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values, providing food and habitat for fish and wildlife and domestic animals and providing for outdoor recreation and human occupancy and use. The conjunctive word "and" denotes that each of these considerations must be overlaid on the landscape to determine proper resource allocations.

The use of the inventory and land use planning citations is, in my view, a lawyerly effort at "perfuming of the pig." The public and others can be awed by legal citations, but the offered provisions do nothing more than reiterate a common practice of knowing what you have and making a plan to make the best use of it. The citations in no way justify protections for "lands with wilderness characteristics" or LWCs. Good planners inventory everything before they allocate use. Unfortunately, BLM has not been funded nor has it prioritized the maintenance of baseline data—for any purpose, much less LWCs. To this end, it seems quite peculiar that the Department of the Interior would prioritize what functionally equates to the development of baseline data for "wilderness characteristics" and not even mention the need for baseline information for any other use. To the outside observer, it would seem that "wilderness" will soon be trumping nearly every other consideration, both in terms of funding and protection, when the very provision cited by the Department to justify LWC inventories and land use planning tied to their protection, clearly requires an understanding (inventory and plan) of all potential uses.

But the bootstrapping by the Department of the Interior is more insidious than simply being overly general. It neglects statutes and long-standing legal precedent that are clearly at odds with SO 3310 and its implementing handbooks, as was clearly outlined in the Wyoming County Commissioners Association comments on SO 3310 dated January 28, 2011 (attached hereto as Attachment A). To put these detailed comments in a somewhat condensed version, only Section 603 of FLPMA allows BLM to manage lands so as to ensure that wilderness characteristics are not impaired. Non-impairment only applies in Wilderness Study Areas (WSAs)—every other tract of BLM land is to be managed so as to not unduly or unnecessarily degrade the resources on those lands.

One might then simply suggest that you merely need to designate new WSAs. That would seemingly be an answer, but the ability to designate new WSAs ended on October 21, 1993, when Congress received the wilderness suitability recommendations required under Section 603 of FLPMA. Clearly, when read together with the Wilderness Act of 1964, Congress wanted to reserve to itself—and only to itself—the authority to create wilderness and WSAs, and this makes sense when one considers the functional effect of a wilderness designation of any sort: it shuts things down.

It also makes sense when you consider the practical reality that "new wilderness" is, in most cases, a fallacy. Little has changed, in terms of the environmental landscape, that would change the inventories completed pursuant to FLPMA prior to 1993. Where the environment has changed, it has most likely moved away from a wilderness condition. Simply put, Mother Nature does not "create" new wilderness in the span of 20 years. She does so either very abruptly with eruptions, earthquakes and floods or very gradually, over hundreds of years. Thus, this present day call to arms to protect wilderness lands is merely an excuse to loop in hundreds of thousands of acres of public land into an overly prescriptive management regime, when in fact, the land in question is no more wilderness than it was in 1964 following the passage of the Wilderness Act or at the conclusion of the FLPMA inventory in 1993. It seems that after 20 years of effort to control land use in other ways, the radical fringe of the environmental movement has once again returned to its old and trusted friend, the wilderness designation, even if it no longer fits in the legal and physical plane of public land management.

Regarding NEPA, I anticipate that the Administration's argument will be that no areas will be declared "wildlands" except through the Resource Management Plan (RMP) planning process, which necessarily includes NEPA. However, this ignores

the reality that the required wilderness inventories will immediately and dramatically affect activity on the land even without reaching the point of consideration under the planning process. Thus, the only way to meet the intent of NEPA is to conduct NEPA analysis on the mandate of SO 3310. As a corollary, BLM deems it necessary to comply with NEPA in the issuance of a grazing permit under the same terms and conditions as an expiring permit, even though that action clearly has no resource impacts. There are undoubtedly numerous other examples, but the clear and proper course is for SO 3310 to undergo prompt and thorough NEPA analysis through a full-fledged Environmental Impact Statement.

A skeptical and calloused view might be that the Department of the Interior is attempting an end-run on Congress by repackaging what we once knew to be a WSA and simply calling it something different. But looking at the guidance used to implement SO 3310, it seems that an end-run is exactly what is being attempted. In fact, the Department has referred to the guidance manuals for SO 3310 as "new wilderness guidance." With wilderness designations being the sole province of Congress and existing WSAs already being protected by a non-impairment standard, what new "wilderness guidance" is truly required and why is BLM issuing it? Further, why do BLM and the Department go out of their way to say that SO 3310 does not create WSAs when the manuals that implement the Secretary's Order use the exact same criteria that were used in 1978 to identify WSAs? The manuals even go so far as to say that the LWCs will be managed under the same legal criteria as WSAs. At some point, if it walks like a duck, talks like a duck and looks like a duck—it is a duck, even if you want to call it a chicken.

Ultimately, SO 3310 is not supported by anything other than itself. Disregarding the clear weight of the law for purposes of argument, one might suggest that, if properly identified, there is no harm in protecting these lands with wilderness characteristics. Such a suggestion ignores two serious problems. First, initial, good-faith efforts at "proper identification" of LWCs by the BLM have been fraught with examples of misidentification. Second, the harm in protecting lands with wilderness characteristics, especially when they are protected under the same legal criteria as WSAs as required in the implementing manuals, is severe and real.

While it would be most instructive to give actual evidence of misidentification of LWCs in specific BLM resource management plan revisions, as cooperating agencies, counties and other cooperators are not permitted to share such "pre-decisional" information. However, speaking in general terms, it has become very apparent during the inventory process that misidentification is real. In specific cases, BLM came to the conclusion that a certain area possessed "wilderness characteristics." In the same, exact geographical area, the county cooperators identified almost 60 miles of two-track roads, almost 11 miles of ATV trails, nearly 2 miles of graded soil, existing oil and gas fields containing 14 oil and gas wells, over 40 miles of fence, 1 mile of water pipeline, 36 reservoirs, 6 water wells, 2 cattleguards and 1 corral chute. Seven, large tracts of state school trust land are interspersed in the area as well, which cannot be made subject to anything but the management prescriptions set forth by the State Land Board or Legislature, unless the BLM wants to take on the obligation of funding Wyoming's schools going forward.

On a more broad scale, in a specific RMP planning area, almost 20% of the BLM lands were erroneously identified as having wilderness characteristics. In this area, the BLM has identified 56 areas comprising a total of 571,000 acres. Within this area there are 634 miles of roads, of which 518 miles are two track, 442 reservoirs, 296 miles of fence, 569,273 acres of active allotments, 154 range improvements, 10 miles of water pipeline, 17 water wells, 8 oil fields, 68 miles of oil and gas pipeline, 8 active oil and gas wells, 59 plugged and abandoned oil and gas wells, and 248,315 acres (43%) have oil and gas leases.

While the new implementing manuals for SO 3310 might add clarity to the specific planning effort in question, the identification of oil fields, roads and fences is not exactly an exercise in discretion. They either exist or they don't and if they do exist, the word "wilderness" is not an appropriate descriptor.

But assume, again for sake of argument only, that the LWCs in the RMP planning area described previously were properly identified, the question then becomes: what is [t]he Impact of the Administration's Wild Lands Order on Jobs and Economic Growth?

As an initial matter, it is important to understand what SO 3310 actually requires. First, it requires the BLM to protect potential LWCs during the planning process so as to not foreclose the option of actually designating them in the final plan. Even with a conservative approach, the temporary "setting aside" of possible LWCs could lead to hundreds of thousands of acres being rendered functionally useless for at least three years and likely much longer. Where groups and individuals are motivated to use the process for abuse during the interim phases of plan devel-

opment, millions of acres could be set aside as de facto wilderness for 3–7 years. Even where the LWCs are not carried forward in planning, they are usually kept as part of the analysis no matter how ridiculous they might be in terms of the actual state of the landscape, either as one of the alternatives or simply in the inventory. Of itself, this would seem a benign proposition. But in field offices that experience rampant turnover with very little institutional memory retained, the risk of having a new staffer dust off an old plan and resurrect either interim or long-term protections is real and part of our recent history.

But beyond these sorts of interim protections, lies the ultimate reality that actually designated lands are made subject to a non-impairment standard. As we have learned with roadless areas and other wilderness lands, this standard figuratively and, in most cases, literally places a stop sign at the edge of the protected landscape. The protective bubble of wilderness and roadless is seldom pierced by human disturbance, ending even the thought of a new nature trail, no less a drilling rig. It shuts things down.

Using the very model used by the BLM in its planning efforts, the local cooperators were able to quantify the answer to this Committee's basic inquiry. Within the areas that have been identified as potential LWCs, the reasonable foreseeable development scenario pegs the total number of wells that could be drilled during the 20 year life of the Resource Management Plan at 569 wells. According to the model, 569 wells would generate 258.4 jobs per year for drilling and up to 614.5 jobs for production by the year 2025. This would generate $13,760,344 in labor income per year for drilling. The average wages for those workers engaged in drilling is $53,252.00 per year, a fairly substantial sum considering the current state of the economy.

Beyond the drilling phase, though, there is the production side of oil and gas development. Again, using the same model employed by the BLM in the same planning area that has previously been discussed and even then, only within the LWCs, the counties project that the production phase could result in up to 614.5 new jobs during the life of the plan. With an average salary of $83,660.00 per year, the yearly production phase labor income could total over $51 million per year.

In addition to jobs, the total revenue generated in the economy, in terms of oil and gas production from within the potentially designated LWCs would exceed $2.1 billion over the 20 year life of the resource management plan. More than $523 million in local, state and federal tax revenue would result over the same period of time within the same potentially designated LWCs, with the federal share reaching nearly $140 million. Please understand that this particular BLM planning area contains only a fraction of the federal land in Wyoming. If the same percentage (18%) of LWCs were introduced on other BLM lands within Wyoming, and the assumptions in the model were carried forward, the revenues that could be derived from potentially designated LWCs would be nearly $12 billion and the potential local, state and federal tax revenue generated from these same lands would top nearly $3 billion over a twenty-year period.

Even with a significant discount factor, the impact is astounding, especially in a corner of Wyoming that is depressed economically. Given the current economic and employment conditions in our nation, even the creation of one job is significant, especially to the family that is lucky enough to find it. But oil and gas development is not the only industry that would feel the effects from the designation and restrictive management of LWCs.

According to the draft policy, grazing may be consistent with wilderness characteristics however; grazing management practices (range improvement projects, vegetation manipulation, and motorized access) "could conflict with protection of wilderness characteristics". Reservoirs, stock water tanks, pipelines and fences have all been installed (often at permittee expense) to distribute livestock across the allotments and improve the range resources (water, wildlife, soil, vegetation). These projects and their maintenance are vital to the economic viability of the ranching unit. Treating grazing and grazing management practices differently under this policy would have significant cumulative impacts on the grazing industry.

Restrictions on the placement, construction, or maintenance of range improvement projects would have a significant financial impact on both the individual operator and local economy, most notably tied to increased labor cost associated with potential restrictions on motorized use within LWCs. Further, the loss of vital water sources (used heavily by wildlife as well as livestock), tied to maintenance and water development restrictions, would likely cause livestock to concentrate around remaining water sources making it difficult or impossible to achieve the Wyoming Standards for Healthy Rangelands (a permit requirement). In addition, the loss of range improvements would likely result in a reduction in stocking rates (AUMs). Fi-

nally, predator control would be severely limited due to motorized use restrictions, which in turn would increase predation on livestock as well as wildlife.

Within the planning area that was previously mentioned, there are 687 grazing allotments and of those, 203 have all or a portion of LWCs identified within their boundaries. These inventoried LWCs cover 569,277 acres or approximately 27% of the acres in the allotments. The permitted AUMs on these allotments are approximately 138,508. In addition there are 154 range improvements (wells, guzzlers, cattle guards, stockwater tanks), 296 miles of fence, 442 reservoirs and 10 miles of pipelines located throughout the LWCs in the allotments. There are also 634 miles of two track trails and graded dirt roads within these LWCs. This information does not appear to include roads adjacent to fences that are used for maintenance or roads used to maintain stockwater tanks or reservoirs. Therefore, the miles of road within the LWCs could be considerably more.

Assuming that the AUMs within the potentially designated LWCs are necessary for the viability of the ranches that are dependent on them, which is a very safe assumption in the West, the economic impact of a change in management tied to grazing could be quite significant. Using the BLM's model, the AUMs within the LWCs have an economic value to local communities within the planning area or $26,900,000 in livestock production, $12,400,000 in employment earnings, and 382 annual jobs.

But Wyoming and the West are not simply dependent on oil and gas and agriculture for their well-being. From coal to trona to uranium production and the many jobs that are made possible in the grocery stores, service stations, schools, cafes and feed stores in our small towns because of mineral extraction and agriculture, we are highly dependent on the multiple-use mandate of FLPMA for our survival. With the burgeoning potential of wind development and value added processes tied to coal and natural gas, "de facto" wilderness designations could literally mark the end of these emerging industries, especially as these LWCs would likely preclude transmission line and pipeline siting in large swaths of the West. Absent the ability to use our public lands, in accord with the thoughtful designs of Congress, the West will suffer irreparable harm—but not only in terms of economic hardship.

People do not live and work in Wyoming to go to the opera. We are here because we love to hunt, fish, hike, camp and ride our 4-wheelers. There are certainly some that want complete solitude—whatever that really means—when they head into the backcountry. Frankly, they are perfectly suited for the WSAs and wilderness areas. Certainly most of our photo albums contain pictures of the wide open spaces and breath-taking views, but nearly every picture also contains us. We are hunting. We are fishing. We are hiking. We are moving cows. We are drilling. We are there. While the implementing handbooks for SO 3310 might pay some heed to such a concept, we are generally adverse to even the slightest thought that we might be precluded from engaging our surroundings in one way or another. This is truly our custom and our culture, in addition to most of our way of life and way of making a living.

Had we been engaged by the Department of the Interior in a truly public process, the comments might be a bit less harsh. As it stands, SO 3310 and its implementing guidance is a playground for the environmentalists. Had we encountered past implementation of land use restrictions that was thoughtful and narrowly tailored, perhaps the seemingly extensive intrusions of SO 3310 would not be viewed with such skepticism. As it stands, we watch the BLM label land as "containing wilderness characteristics," when we know that same land is permeated with oil wells, roads, fences and man-made reservoirs. Had the Department of the Interior shown flexibility and a commitment to innovation in its past endeavors, we might not fear the intractable bureaucrats we have come to know in our BLM field offices, national parks, refuges and national forests. As it stands, we are left to watch our trees turn red as the beetles ravage our forests after years of inaction by federal officials. We are left to watch wild horse numbers skyrocket, affecting both livestock and other wildlife populations, only to be controlled when the state steps in and sue. We are left to watch wolves and grizzly bears decimate our big game herds and kill our livestock, pets, and, as of last summer, our neighbors.

We do not cast doubt on SO 3310 without good reason. Our recent experience with a similar sort of "de facto" wilderness designation, coming in the form President Clinton's Roadless Rule, lends credence to our worst fears. During the pendency of the Roadless Rule, states and local governments clamored for access to the process, were promised it, and it was never forthcoming. While the maps and inventories were being developed for the Roadless Rule, states and local governments suggested that the inventory was flawed and that hundreds of millions of acres of the forest were being improperly set aside. Today, even a cursory glance at a Forest Service map underscores the points we attempted to make in 2000, with supposed "roadless"

areas lined with old clear-cuts and a spider web of roads that would make the federal and state highway departments envious. Finally, states and local governments commented and testified that the Roadless Rule would put a halt to nearly any human activity, even in areas that were heavily roaded already. We were called paranoid and promised revisions once time permitted. No revisions have been made and even the slightest intrusion into these so-called roadless areas to manage pine beetle killed swaths of our dying forests—through the existing road network, mind you—has been met with years of delay and a bureaucratic two-step only befitting a dance hall. Our fears were well-founded then, and history will no doubt reveal that our fears today, relative to SO 3310, are equally justified.

From the other side of the Potomac River, President Obama's Executive Order to trigger regulatory reform is about 50 years past due. Most certainly, it came about a month late relative to the issuance of SO 3310. We can do better than a half-baked, one-sided and likely illegal concoction to manage our public lands and the jobs and revenues we derive from them. Too much is at stake to leave the decision to a faction of our country who can barely stand the thought that we would even walk on certain lands. For too long the pendulum of public discourse relative to the public's lands has been allowed to swing wildly from side to side, never resting in the thoughtful middle. We owe the next generation a better discourse and a shot at a good job and stable community, state and country. Secretarial Order 3310 is no prescription for that sort of future. We can and must do better.

As an elected official, I easily tire of those that appear at commission meetings and rail against a proposal but never offer a thought as to how to fix a problem. Clearly, SO 3310 should be rescinded, along with the guidance to implement the Order. It is not supported by the law and is contrary to thoughtful public policy. New wilderness designations are and should remain the province of Congress.

Should the Department of the Interior re-engage a process to set aside millions of acres from FLPMA's multiple-use mandate, it will and should meet a very skeptical reception. But, in the event that the Department does proceed on such a course, it should only do so after offering meaningful notice to and full consultation and coordination with city, county and state governments—not just the select few in the environmental community that were privileged enough to be invited to the process with SO 3310. Then, the Department must be funded to complete the required inventories in a thoughtful and science-based manner.

The inventories should include all potential uses and should not be conducted with an eye towards finding "lands with wilderness characteristics." These inventories must be blind to motive and ultimate management and, instead, focus on the reality of our present circumstance and the actual baseline scenario from which the planning effort should emanate. This has been a constant refrain of every local cooperating agency in every BLM plan revision to date in Wyoming, which has universally been met with admonitions from the BLM that the development of such "Analysis of the Management Situation" data is not and will not be a priority in the revision.

In the narrow event that some new protection is required, where it impacts private property rights—the affected rights should be fully and fairly compensated, but only after the protection is very narrowly tailored and made to fit within our public land laws, a tough task to be sure, given the nature of those laws. These protections should never be drawn to impede the full use of school trust lands and other state and local land, either through direct proscriptions tied to the land itself or as a function of reduced or discontinued access to the parcel.

To close, the law is clear to preclude even a partial implementation of SO 3310. Where the Administration cites to overly generalized legal theories to support the Secretarial Order, the law is rife with specific prohibitions to not proceed on the course outlined in SO 3310 and its implementing regulations. Even in the quietest corner of Wyoming, hundreds of jobs and billions of dollars are at stake—all to offer the environmental movement another bite at an apple that they didn't think to take or were not allowed to take before 1993. But almost more importantly, our custom and culture are at stake. From the family ranch that has been in production for over 100 years to our ability to grab hold of and actively engage our land, SO 3310 requires that we elevate so-called "wilderness use" above every other use. Even if this intrusion into our nation's multiple use mandate is for the briefest time—during the pendency of an inventory or otherwise—it is an unlawful step on a very slippery slope toward longer and even permanent limitations being placed on the landscape. Such efforts, being contrary to our laws and the weight of other public laws and expectation, must be stopped in their tracks and erased from the public discourse, lest they be allowed to lay dormant, germinate and take root at a later date. They have no place on our landscape, absent Congressional direction to the contrary.

ATTACHMENT "A" SUBMITTED BY COMMISSIONER JOEL BOUSMAN for *"The Impact of the Administration's Wild Lands Order on Jobs and Economic Growth"* MARCH 1, 2011

January 28, 2011

Robert V. Abbey, Director
Bureau of Land Management (BLM)
1849 C Street N.W. Room 5655
Washington, DC 20240

Re: Comments on Wild Lands Policy Manuals

Dear Director Abbey:

The Wyoming County Commissioners (hereinafter WCCA) submits the following comments on the draft Manuals that are said to implement the Wild Lands Policy. While the Bureau of Land Management (BLM) notice does not specifically invite public comment or prescribe a deadline, the WCCA believes that public comment is legally required. In addition, BLM is legally required to coordinate with the local governments in both the development and implementation. The WCCA hopes that instead of implementing the Secretarial Order and the Manuals, the BLM will proceed to honor its coordination mandate and withdraw both Manuals in order to reassess the Wild Lands Policy and the adverse impacts on rural communities throughout the West.

The WCCA is a nonprofit organization formed to strengthen the role and communicate the needs of county government. The WCCA members include county commissioners from all twenty three (23) counties in Wyoming. The use of public lands is an extremely important issue to Wyoming counties.

1. SUMMARY OF COMMENTS
   - The Secretary lacks the legal authority to create Wild Lands, because Congress reserved the creation of wilderness to itself and the Wild Lands Policy contradicts the statutory mandates found in the Federal Land Policy and Management Act (FLPMA).
   - The Wild Lands are the same as wilderness study areas (WSAs), only the name is changed. Any authority to create new WSAs expired October 21, 1993.
   - The Wild Lands Policy contradicts the commitments made to the State of Utah, the U.S. Congress and the public by the Secretary to honor the Settlement Agreement that he made to Senator Bennett in his letter of May 20, 2009. (Answering Yes to the question from Senator Bennett "Do you agree that currently the Department has no authority to establish new WSAs (Post-603 WSAs) under any provision of law, such as the Wilderness Act of [sic] Section 202 of FLPMA?" The Secretary also stated BLM had no authority to impose nonimpairment management on non-WSA lands. The adoption of the Wild Lands Policy also makes a mockery of the Secretary's pledge to collaborate and cooperate on public land controversies with the Utah Governor and the Utah local governments in the summer of 2010.
   - The Wild Lands Policy violates the Settlement Agreement between the State of Utah, School and Institutional Trust Lands Administration (SITLA) and the Utah Association of Counties (UAC) and the Department of the Interior signed in 2003. The repudiation occurred without the apparent approval of the Department of Justice and without the courtesy of notifying the State of Utah, other than a phone call a few minutes before a press conference.
   - Even assuming that the Interior Secretary had the authority to adopt the Wild Lands Policy, BLM has failed to follow following rulemaking procedures that are mandated by FLPMA.
   - The Wild Lands Policy will have significant environmental impacts, including increased risk of catastrophic wildfire, which will destroy wildlife habitat, increase soil erosion, increase noxious weed infestations and air pollution. BLM WSA policies also demonstrate that there will be the diminished ability to treat noxious weeds, gather wild horses, and to build range improvements to enhance vegetation and rangeland resources. Ironically, the Wild Lands Policy will deal the hardest blow to the 'fast track' clean energy projects that will suffer delays and additional costs due to the need for a wilderness inventory and evaluation, and assuming the affected area is deemed to have wilderness character, the additional

measures to avoid impairment or the decision process to proceed regardless of the wilderness character finding.

2. NO DIFFERENCE BETWEEN WSAS AND WILD LANDS

Interior is calling the newly-inventoried lands "Lands with Wilderness Characteristics (LWCs)"" that will be managed as "Wild Lands." The only difference between WSAs or wilderness and Wild Lands is the name. Interior admits the lack of difference where the DOI Q&A published on December 23, 2010, referred to the Wild Lands Manuals as 'new wilderness guidance. ("Why is it necessary for the BLM to issue ***new wilderness guidance***?") (emphasis added).

Elsewhere BLM states that the Wild Lands Policy this does not create new WSAs. [Wild Lands Inventory and Planning Guidance Questions and Answers, p.2] Its own statements are contradicted by the Manuals, where BLM employs the same criteria as it used to identify WSAs in 1978. DM6300–1.13 ¶¶A. B. The Manuals also provide that BLM will manage the Wild Lands under the same legal criteria as it currently manages the WSAs. DM6300–1.13.B.(2); DM6300–2.06 ("The BLM shall protect LWCs when undertaking land use planning and when making project-level decisions by avoiding impairment of their wilderness characteristics"); *Id.* .22, .24. There is no substantive difference between Wild Lands and WSAs, except Interior's use of a different name.

3. WILD LANDS POLICY FAILS TO ADDRESS OR RESOLVE DIFFICULT LEGAL ISSUES THAT SUPPORT THE CONCLUSION THAT SECRETARIAL ORDER 3310 AND THE RESPECTIVE DRAFT MANUALS ARE WITHOUT LEGAL AUTHORITY

a. No Legal Authority to Implement Secretarial Order 3310

Only Section 603 of FLPMA authorizes BLM to manage lands so as to not impair their wilderness character and that nonimpairment standard was and is reserved for WSAs. *Tri-County Cattleman's Association Idaho Cattlemen's Association,* 60 IBLA 305, 314 (1981). There is no other statutory authority and FLPMA, elsewhere, states that all other public lands are to be managed so as to not unduly and unnecessarily degrade the resources. 43 U.S.C. § 1732(b) [nondegradation standard].

Given the lack of authority, the Secretarial Order 3310 is a usurpation of authority that Congress expressly reserved to itself in FLPMA and in the 1964 Wilderness Act to designate wilderness. It also directly conflicts with the management standard for public lands established in FLPMA.

BLM proposes to adopt the Wild Lands Policy and implement it through two Manuals, based on its discretion in FLPMA. We assume that BLM is relying on its authority in Sections 202 and 302 of FLPMA. Those provisions do not support BLM's claimed authority to create new WSAs under the guise of Wild Lands or to manage them as if they were designated WSAs for nonimpairment of the wilderness character.

Section 202 of FLPMA provides for the development and revision of land use plans. 43 U.S.C. § 1712. Land use planning must have coordination with state and local governments, public involvement, and be consistent with FLPMA. 43 U.S.C. § 1712(a). The criteria for developing and revising land use plans, includes (1) using and observing the principles of multiple use and sustained yield set forth in FLPMA and other applicable laws, 43 U.S.C. § 1712(c)(1); (2) interdisciplinary approach, § 1712(c)(2); (3) priority to designate ACECs, § 1712(c)(3), and (4) "to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located;"§ 1712(c)(9). FLPMA further states: "Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." *Id.*

Unlike the definition of multiple use for National Forests, 16 U.S.C. § 529, FLPMA does not include wilderness as one of the statutory multiple uses. 43 U.S.C. § 1702(c). Wilderness has its own definition, which is limited to Section 603. ("(i) The term 'wilderness' as used in section 1782 of this title shall have the same meaning as it does in section 1131(c) of Title 16." § 1702(i). A word search of FLPMA shows that the term 'wilderness' is found only in the definition section, 43 U.S.C. §§ 1702(i) and the wilderness review provisions of Section 603, 43 U.S.C. § 1782; 43 C.F.R. § 1601.0–5(i).

When BLM developed the rules governing land use plans, it originally defined a resource management plan as including "the initial determination of whether a wilderness study area shall be recommended to the President for recommendation to the Congress as suitable or unsuitable as an addition to the National Wilderness Preservation System." 43 Fed. Reg. 58764, 58768–69 (1978) *draft* 43 C.F.R. § 1601.0–5(p)(2). The definition of a resource management plan was revised to delete

reference to wilderness study area recommendations. 44 Fed. Reg. 46386 (1979). Thus, BLM has no regulations such as in the land use planning chapter authorizing establishment of wilderness type areas or authorizing nonimpairment management for such lands other than designated WSAs.

b. Conflicts with the Settlement Agreement between the Department of the Interior and the State of Utah, SITLA and UAC

In 2003, the United States and the State of Utah resolved litigation that was filed in 1996 to challenge the wilderness reinventory of certain public lands that were determined to lack wilderness character in BLM's initial wilderness evaluation and redetermination of WSAs between the years of 1980 and 1985. Throughout that litigation, BLM maintained that the 1996 Utah wilderness reinventory was limited to gathering data for only the State of Utah due to unusual controversy regarding the original wilderness inventory done in the 1980s. *State of Utah v. Babbitt,* 137 F. 3d 1193, 1199 (10th Cir. 1998). At that time and hence, BLM has admitted that the Utah wilderness inventory and study authority expired in October of 1993 with the final deadline to submit public land wilderness recommendations to the Congress. *State of Utah v. Babbitt,* 137 F. 3d at 1206 n.17 (referring to letter written by former Interior Secretary Babbitt ""I also agree with you that FLPMA's section 603 no longer provides authority to inventory BLM land in Utah for wilderness values.").

The litigation was resolved in 2003 with a Settlement Agreement that was based on facts developed in the case showing that BLM had managed the new inventory areas as if they were WSAs, thereby harming the local economies and state revenues. The Settlement Agreement was challenged by the numerous environmental organizations and affirmed by the Utah District Court and the Tenth Circuit Court of Appeals. *State of Utah v. Norton,* no. 96–365B (D. Utah 2006), *aff'd* 535 F.3d 1184 (10th Cir. 2008).

The Utah Settlement Agreement provides that "Defendants [DOI] will not establish, manage or otherwise treat public lands, other than section 603 WSAs and Congressionally designated wilderness, as WSAs or as wilderness pursuant to the Section 202 process absent congressional authorization."" ¶5, *Utah v. Norton,* Settlement Agreement Sept. 2005. This provision was based on the plain language of both the Wilderness Act that only Congress can designate wilderness, 16 U.S.C. § 1131(c), and the provision providing for a 15-year wilderness study and nonimpairment management in FLPMA, 43 U.S.C. § 1782.

c. Other Conflicts with *Utah v. Norton Settlement Agreement*

The first paragraph of the Settlement Agreement provides:

1. The authority of Defendants to conduct wilderness reviews, including the establishment of new WSAs, expired no later than October 21, 1993, with submission of the wilderness suitability recommendations to Congress pursuant to Section 603. ***As a result, Defendants are without authority to establish Post-603 WSAs,*** recognizing that nothing herein shall be construed to diminish the Secretary's authority under FLPMA to:
   a. manage a tract of land that has been dedicated to a specific use according to any other provision of law (Section 302(a)),
   b. utilize the criteria in Section 202(c) to develop and revise land use plans, including giving priority to the designation and protection of areas of critical environmental concern (Section 202(c)(3)), or
   c. take any action necessary, by regulation or otherwise, to prevent unnecessary or undue degradation of public lands (Section 302(b)).

Secretarial Order 3310 relies on FLPMA, while excluding Section 603, without identifying which section of FLPMA authorizes the creation of new wilderness areas under the new name of Wild Lands. But as noted above in the subparagraphs a through c, FLPMA does not in fact authorize Wild Lands. They are not ACECs and are not identified in accordance with the procedures and criteria for ACECs. 43 C.F.R. § 1610.7–2.

The Wild Lands are to be managed to not impair wilderness characteristics, *e.g.* DM6300–1.13.B. (2); DM6300–2.06. All public lands that are not WSAs are to be managed to avoid unnecessary or undue degradation. 43 U.S.C. § 1732(b). Finally, no other law authorizes the Secretary to create Wild Lands. Perhaps due to the lack of authority, Secretarial Order 3310 does not cite to a specific law.

Paragraph 2 of the Settlement Agreement also provides

> The 1999 Utah Wilderness Inventory shall not be used to create additional WSAs or manage public lands as if they are or may become WSAs, and the inventory information will be evaluated for its validity and utility at such time as changes are made to the appropriate land use plan.

The Wild Lands designation appears to apply to the Utah wilderness reinventory areas and any other area currently pending before Congress, because they are citizen proposed wilderness. DM6300–2.04.C. The Manuals do not address what BLM should do in Utah, where BLM analyzed all of the citizen proposed wilderness in a supplemental EIS.

Paragraph 5 of the Utah Settlement Agreement states that "Defendants will not establish, manage or otherwise treat public lands, other than Section 603 WSAs and Congressionally designated wilderness, as WSAs or as wilderness pursuant to the Section 202 process absent congressional authorization."

The Wild Lands Policy directly contradicts this provision. No law has authorized the Interior Secretary to treat public lands as WSAs [Wild Lands] or as wilderness, except for the WSAs established pursuant to the Section 603 wilderness review program or the areas designated by Congress. The Secretary, nevertheless, has taken it upon himself to do so.

In Paragraph 6 of the Utah Settlement Agreement, the Secretary agreed that "Defendants will refrain from applying the IMP, H–8550–1, to BLM lands other than the WSAs established during the Wilderness Review pursuant to § 603." The Wild Lands Policy Manuals specifically apply nonimpairment management to the identified Wild Lands. DM 6300–2.24. There is no question these are 'lands other than the WSAs established during the Section 603 wilderness review.'

The Interior Secretary misrepresented his commitments to the law. Notably, when the current Deputy Secretary of the Interior testified before Congress on this issue (in order to be confirmed); he assured Congress that "BLM does not have authority to apply the non-impairment standard to non-WSAs." Less than two years later, the Interior Department has adopted a "Wild Lands" policy that mandates nonimpairment management for the new Wild Lands that are not WSAs. See draft H–6300–2.24. This policy has been adopted without any stated basis for the 180-degree change in the interpretation of the law regarding the authority of the agency.

d. Wild Lands Policy Making Wilderness Management a Priority Contradicts FLPMA

The Wild Lands Policy establishes a presumption in favor of wilderness or Wild Lands while excluding the statutory principal or major multiple uses established in FLPMA. 43 U.S.C. §§ 1702(l); 1712(e). This presumption in favor of wilderness management may only be overcome by a specific evidentiary demonstration that the proposed use should proceed despite impairment of alleged wilderness. H–6300–2.24. It also makes wilderness a priority for public land management, Sec. Order 3310, § 1; H–6300–2.06, again contrary to FLPMA's direction dedicating the public lands to primary uses that do not include wilderness.

FLPMA does not authorize wilderness as a priority for public land management. In fact, FLPMA does not include wilderness in its definition of multiple use. 43 U.S.C. § 1702(c). FLPMA creates, however, priority multiple uses, for timber, domestic livestock grazing, mining and mineral development, outdoor recreation, fish and wildlife habitat, and rights-of-way. 43 U.S.C. § 1702(l). Of these principal multiple uses, timber, post-1976 mining and mineral development, and rights-of-way are prohibited in WSAs. H–8550–1, Introduction. Fire suppression are limited due to likely impairment of wilderness character and policy favoring using fire for resource benefits. H–8550–1, ¶12 (emergency only). While the IMP permits snowmobiles and motorized vehicles on existing roads, BLM RMPs closed WSAs to motorized travel. *See e.g.* Kemmerer RMP 2–32; Rawlins RMP 2–32, 2–39. Other multiple uses are permitted only on a limited basis, i.e. grazing without increases in forage and without any new structures or range improvements. H–8550–1, ¶13 (permitting maintenance only of range improvements that existed as of October 21, 1976). The WSA management Manual also limited motorized outdoor recreation to a few specific exceptions, although it does allow bicycles, *Id.* ¶11. Thus, it is apparent that the Wild Lands Policy seeks to rewrite FLPMA without the benefit of any change in the law by Congress.

e. Contradictions with BLM Policy

The Wild Lands Policy requires that BLM implement "non-impairment" management for all public lands that BLM identifies as having wilderness character. H–6300–2.24. The nonimpairment standard by law applies only to congressionally designated Wilderness or WSAs, 43 U.S.C. § 1782(a), H–8550 (1997). The extension of the nonimpairment management to other lands violates the FLPMA direction that all other lands be managed to avoid undue and unnecessary degradation or non-degradation standard. 43 U.S.C. § 1732(b); 43 C.F.R. § 3809.1(a).

BLM concluded, consistent with earlier decisions of the Interior Board of Land Appeals, that BLM does not have the authority to manage new lands based on the non-impairment standard. *See* Director's Instruction Memorandum No 2003–274

(September 2003), ("Following the expiration of the Section 603(a) process [in 1993], there is no general legal authority for the BLM to designate lands as WSAs for management pursuant to the non-impairment standard prescribed by Congress for Section 603 WSAs. FLPMA land use plans completed after April 14, 2003 will not designate any new WSAs, nor manage any additional lands under the Section 603 non-impairment standard." (emphasis and bracket added)). *See also Colorado Environmental Coalition,* 386 IBLA 386, 391–396 (2004); *Southern Utah Wilderness Alliance,* 166 IBLA 270, 290 (2005).

4. WILD LANDS POLICY UNNECESSARY EXCEPT TO LIMIT MULTIPLE USES AND HARM ECONOMIES OF WESTERN COMMUNITIES

FLPMA allows BLM to protect individual resources independent of the concept of wilderness. Wilderness is defined as:

> A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

16 U.S.C. § 1131(a).

BLM has authority to protect public land resources for scenic quality, special recreation management, historical resources, ecological resources or special or unique wildlife habitat as ACECs. *See* H–1601, ¶5.f.3, p. 21 (2005). When BLM uses its authority to specifically protect certain scenic or historic resources, it achieves the specific protection without wilderness management under the nonimpairment standard. Scientific, ecological or historical resources are listed in only one category of the wilderness definition, 16 U.S.C. § 1131(c)(4); 43 U.S.C. § 1702(i). Elements 1 through 3 of the wilderness definition, 16 U.S.C. § 1131(a) (1)-(3) are unique to the concept of wilderness. A wilderness area must be natural and without permanent structures, such as roads, transmission lines, or water reservoirs. It must feature outstanding recreation or solitude, and it must be greater than 5000 acres. Each of these elements must be met to fit the definition of wilderness.

As part of each land use plan, BLM assigns a visual resource management (VRM) class, based on the inventory and adjusted by the land use allocation. H–8410–1. BLM also designates areas for special management, H–1601–1, ¶5.f.3, p. 21, including wildlife habitat or recreation. BLM manages cultural resources pursuant to National Historic Preservation Act (NHPA), 16 U.S.C. § 470, National Historic Trails Act, 16 U.S.C. § 1241, and the Archaeological Resources Protection Act (ARPA), 16 U.S.C. § 469, 470aa; H–8110–1, H–8130–1, H–8140–1.

For areas that are subject to irreparable harm and which have unique resource or process values, BLM can designate them as ACECs. 43 C.F.R. § 1610.7–5. H–1601–1, I.A.3., V.B.5. ACECs undergo additional analysis to document their regional or national significance, the threats, and the proposed boundaries. There is also a separate 60-day comment period in the Federal Register. 43 C.F.R. § 1610.7–5(b).

It is unclear what the Wild Lands Policy will add, except to remove more public land from the FLPMA's principal multiple uses, for rights-of-way and mining and mineral development, popular forms of outdoor recreation, such as snowmobiles and ATVs, and imposing additional restrictions on rangeland projects that are needed to meet rangeland health standards and to address sagebrush habitat. The Wild Lands Policy is less about protecting resources and more about stopping economic uses of the public lands.

5. AUTHORITY CITED IN SECRETARIAL ORDER 3310 DOES NOT AUTHORIZE THE SECRETARY TO EFFECT SIGNIFICANT CHANGES IN PUBLIC LAND MANAGEMENT WITHOUT RULEMAKING PROCEDURES

Secretarial Order 3310 is purportedly issued in accordance with the 'housekeeping' authority (5 U.S.C. § 301), but that statute only authorizes the head of a department to issue 'regulations.' The term regulations refers to rules issued in accordance with the Administrative Procedure Act (APA), 5 U.S.C. § 551, 553–556. Secretarial Order 3310, however, does not contain direction to issue regulations. Instead, it directs BLM to issue as go final two draft Manuals, which are merely inter-

nal guidance to BLM staff. *Arizona Silica Sand Co.,* 148 IBLA 236, 243 (1999) ("The provisions of the BLM Manual do not have the force and effect of law; nevertheless, as this Board has held on numerous occasions, they are binding on BLM."); *Howard B. Keck, Jr.,* 124 IBLA 44, 55 (1992). The Manuals implementing Secretarial Order 3310 are being adopted without compliance with rulemaking procedures, because there is no notice of public comment and no compliance with other procedures that govern APA rulemaking.

The Draft Manuals were not issued by way of a proper APA process, in violation of FLPMA, with proper notice and comment. 43 U.S.C. § 1740, 1712(a). FLPMA provides that its provisions shall be implemented through rulemaking. 43 U.S.C. § 1740 ("The Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands.").

The Order purports to implement the Secretary's authority under FLPMA, with the exception of Section 603, 43 U.S.C. § 1782. It would appear that Secretarial Order 3310's reliance on Manuals is a deliberate effort to avoid complying with the law.

Rulemaking procedures would also require review by the Office of Management and Budget, review by the Small Business Administration to evaluate the impacts on small businesses and rural local governments, 5 U.S.C. §§ 601–611, compliance with the Paperwork Reduction Act, 44 U.S.C. § 3501, as well as notice and public comment. 5 U.S.C. § 552.

6. SIGNIFICANT IMPACTS ON THE HUMAN ENVIRONMENT IGNORED

Secretarial Order 3310 also significantly affects the human environment under the National Environmental Policy Act (NEPA), which requires that the Secretary prepare an environmental impact statement (EIS), including an analysis of the economic impacts of the action, before undertaking the action. 42 U.S.C. § 4332(2) (C); 40 C.F.R. § 1508.27; H–1790–1, ¶3.2.1.

The BLM draft Wild Lands Manuals provide that all public land projects must be delayed for an inventory and study of wilderness character on the affected public lands. H–6300–1. Thus, current energy projects, including 'clean energy projects' must be halted or delayed until the inventory and study are completed. It is likely that transmission lines and wind turbines will impair wilderness character, thus conflicting with the Wild Lands Policy. If these projects are to go forward, BLM must decide to impair the alleged wilderness characteristics. H–6300–2, ¶.24. The additional time for a wilderness inventory and study with public comment will add years to the approval process for these supposedly 'fast track' projects. The clean energy industry is already suffering due to project delays, government delays in distribution of funds and loans, and reallocation of funds to other programs. [WSJ Dec. 22, 2010 editorial regarding need for additional tax incentives to maintain wind and solar energy industry which has lost jobs]. The Wild Lands Policy will add to delays and cost, thus making 'clean energy' even more expensive than it already is.

Clean energy projects will adversely affect the alleged wilderness characteristics. BLM must decide whether to deny the project, revise it to reduce the impacts, or to allow it even though it will impair wilderness character. Wind energy will require permanent installation of turbines and transmission lines, both of which are inconsistent with nonimpairment. Moreover, wind turbines kill birds and permanently alter the visual resources. This is equally true for solar projects that require permanent installations on large areas of land.

The additional transmission lines necessary for wind and solar energy are also permanent structures that change the views. They must be located outside of existing natural gas pipeline rights-of-way for safety reasons and thus require separate environmental review.

Requiring these projects to bury transmission lines across thousands of miles would also impair the economics of clean energy that currently relies on tax incentives and government funding.

The Order will have additional environmental impacts. Wild horse management would be restricted. H–8550–1, III.E (limiting gathers to fixed wing or helicopters). Fire management will also be impaired due to policies that restrict fire suppression in WSAs to emergencies and other policies that favor wildfire in wilderness. Postburn areas typically are infested with noxious weeds. Sage brush habitat lost to wildfire could take more than 50 to 60 years to recover due to soils and arid climates typical of Wyoming public lands.

NEPA requires that BLM assess the environmental impacts as well as the impacts on the western communities.

7. CONCLUSION

The Wyoming County Commissioners Association members urge the Secretary and BLM to withdraw the misguided and unlawful order. It will have significant adverse environmental and economic impacts in the rural western states. The rush to implement the order regardless of the impacts is both misguided and poor public policy. The harm to western communities is out of proportion to any benefits.

Sincerely,

/s/

Joel Bousman
WCCA President, Commissioner, Sublette County, Wyoming

cc: Mr. Don Simpson, Director, Wyoming Bureau of Land Management

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The CHAIRMAN. Mr. Bousman, thank you very much. I appreciate that. Commissioner McKee, you are now recognized for five minutes.

STATEMENT OF MIKE McKEE, UINTAH COUNTY COMMISSIONER, VERNAL, UTAH

Mr. MCKEE. Thank you, Mr. Chairman and Members of the Committee. Again, I am Mike McKee, County Commissioner of Uintah County, Utah. I represent the Utah Association of Counties. I also co-chair the Western Homestead Legacy Alliance, representing counties and multiple user groups from across the West who are deeply concerned about Secretarial Order 3310, the Wild Lands Policy.

In Uintah County, only 15 percent of our land mass is privately owned. This fact underscores the importance of having sound policy and procedure on our public lands. Policy changes during the past two years have had a chilling effect on the economy of our county. Many of our citizens have had to leave and relocate, hoping that the jobs will return and many times leaving family members behind.

The combination of regressive gas leasing policies and the new Wild Lands Policy will result in even further job loss and negative impact to our area. Several years ago, the BLM was processing 1,000 to 1,300 permits to drill per year. Recently, State Director of the BLM in the State of Utah told us that they anticipated to process 100 permits for the coming year. We are deeply alarmed.

Our community is suffering, and this suffering can be directly tied to the policies of the Department of the interior. In Uintah County—this comes from a University of Utah study—50 percent of our jobs, 60 percent of our economy, is directly tied to the extractive industry. Our county's surveyor recently told us that he had six survey crews. Today he has one.

I recently visited with a CEO who has a business with a cutting edge technology in the natural gas industry. Yet he can see the handwriting on the wall. One year ago, 40 percent of his business was local. Today, it is just 5 percent. He will likely move his headquarters, having just returned from Dubai as an option.

Why would a business owner even consider such an option with all the unrest in the Middle East? What is wrong with this picture? Is the business environment better in the Middle East than our own public lands?

There are numerous problems with this new order. The proposed wild lands designations do not meet the actual definitions of wil-

derness, but are being managed as wilderness, even with dirt roads, livestock, development, drilling rigs, pipelines, transmission lines. I had pictures that I was going to present that would roll through as we were doing this today, but apparently the system is down. But I would like to present that as part of the record.

The CHAIRMAN. They will be part of the record.

Mr. MCKEE. OK. Thank you.

[NOTE: The photographs submitted for the record by Mr. McKee have been retained in the Committee's official files.]

Mr. MCKEE. Let me be more specific. Over the last close to a decade, starting in 2001, BLM began a revision of the resource management plans for Utah in the Uintah Basin where I live. This process was governed by NEPA, was open to the public, and Uintah County participated as a cooperating agency. Thousands of hours were spent. Well over a million dollars of our county funds, if you include the time, was put into this. Many other entities, including environmental groups, participated to bring to fruition a management plan that takes a comprehensive look at all the public land uses in Uintah County.

Although long, sometimes painful, and playing to no one group as a favorite, the process worked according to the law. Concessions were made on all sides, and nobody got everything that they wanted. There is more, though. Toward the end of the Vernal RMP, an additional process was added, which was called Alternative E. This took an additional two years. And the idea here was to look at wilderness quality. To do the full evaluation of wilderness quality issues, two years were added to that process, and that became part of the decision, part of the ROD, record of decision, in the RMP.

The Wild Lands Policy also directly repudiates the Utah Wilderness Settlement Agreement of 2003. In 2003, the Wilderness Settlement Agreement essentially said—I am having to hurry here—but essentially, outside of the section 603, Wilderness Study Areas, these lands were not to be managed as wilderness, although they become wilderness. Obviously, with this order, you can see that has been turned upside down.

Let me just mention real quickly, Mr. Chairman, Utah is a treasure chest of natural resource. Uintah County has a great opportunity to help America become energy independent. Utah has 6.7 trillion cubic feet of proven natural gas reserves, conventional oil reserves of 286 million barrels. We also have, according to the Rand report, a staggering 56 billion to 321 billion barrels of reserves there as well.

Companies are ready to invest large sums of money in our county. All told, these investments could exceed well over $15 billion over a ten-year period. However, the regulatory uncertainty and the adverse policies—and this is in my area, this $15 billion. The regulatory uncertainty and the adverse policies of the Department of the Interior is preventing these companies from investing, and may drive the investments overseas. Once this investment is gone, it is very difficult to bring it back.

Our natural resources should be responsibly developed pursuant to the laws of the land. We have the responsibility to carefully develop our resources for America for energy security, for our economy, for jobs, and for our citizens. The role of Congress is clear in

the terms of wilderness policy, and I urge this Congress to preserve its authority and reverse this policy to save my county and our country from further economic harm.

We urge this Committee to take every possible action to repeal the Wild Lands Policy. Thank you very much.

[The prepared statement of Mr. McKee follows:]

Statement of Mike McKee, Commissioner, Uintah County Utah

Mr. Chairman and Members of the Committee,

I am Mike McKee, County Commissioner of Uintah County, Utah where I represent over 30,000 citizens. I also represent the Utah Association of Counties from the State of Utah, who recently joined Uintah County in a legal challenge to the Wild Lands Policy Executive order 3310 (Wild Lands Policy). I co-chair The Western Legacy Homestead Alliance, which represents counties and multiple user groups from the west, including Wyoming, Colorado, Idaho, Nevada and Arizona, who are deeply concerned about Wild Lands Policy. Today I will more specifically speak of Uintah County and counties in Utah.

Thank you for holding this hearing on the Wild Lands Policy and its negative impacts on my constituents. In Uintah County we are proud of our history, our heritage, and the multiple uses on our public lands from recreation to development of our natural resources.

Uintah County is the largest producer of natural gas in the state of Utah, with 63% of the State's natural gas coming from our County. Oil and gas have been produced in Uintah County since the early 1900's. We remain committed to responsible development of our public lands in an environmentally safe manner.

In Uintah County, only 15% of our land is privately owned. Policy changes during the past two years have had a chilling and detrimental effect on the economy of our County. In 2009, Uintah County lost 3,200 jobs in the mining and extraction industry. Many of our citizens are relocating to other states in order to retain employment and family members are left behind with the hope that the jobs will return. Jobs and the economy are not the only consequences of this administration's policy actions. Uintah County is concerned about homelessness, drug abuse, domestic violence, crime, and other social impacts. Jobs and economy are important to the citizens of Utah and Uintah County. In Uintah County, 50% of our jobs and 60% of our economy are tied to the extractive industry. This fact underscores the importance of sound policy and procedure on our public lands. The Wild Lands Policy issued by the Secretary will make all of these lands off limits in the predictable future for natural gas production, oil production, and shale oil, which are in such rich abundance.

Our community is suffering, and this suffering can be directly tied to policies of the Department of Interior.

Wild Lands Policy which the Interior Secretary signed on December 23, 2010 directly repudiates a Settlement Agreement signed by the State of Utah, the Utah School and the Institutional Trust Lands Administration (SITLA), the Utah Association of Counties and Department of the Interior. The Interior Department incorrectly describes Wild Lands Policy as a revocation of the Norton no-more wilderness policy. The fact is that BLM adopted an instruction memorandum to implement an out-of-court settlement that resolved litigation between the state of Utah and the Department of the Interior.

Interior officials continue to say that there is no violation of this Settlement Agreement, presumably based on the incorrect premise that "Wild Lands" are different from "Wilderness Study Areas" or WSAs. But aside from the name, they are identical and are treated the same.

In the Settlement Agreement, the Department of the Interior committed to not manage public lands outside of WSAs as if they were WSAs. The Wild Lands Policy in fact manages non-WSA public lands under the same protective framework that DOI has applied to WSAs for more than 30 years. The Wild Lands Policy clearly violates the Utah Wilderness Settlement Agreement.

In the Settlement Agreement, the Department of the Interior also pledged not to create new WSAs. The Wild Lands Policy does just exactly that and changing the name does not make it any less of a violation.

No federal law gives the Interior Secretary the authority to implement Secretarial Order 3310, the Wild Lands Policy.

In addition to being poor policy, the Wild Lands Policy is illegal. Under the U.S. Constitution, Congress has the sole authority to regulate federal lands. For public lands, Congress delegates that authority to the Interior Secretary in a series of fed-

eral laws, including the Bureau of Land Management Organic Act or the Federal Land Policy and Management Act (FLPMA). For wilderness designation, Congress chose to retain the sole power to designate wilderness. 16 U.S.C. § 1131(a).

The Wild Lands Policy attempts to override the laws that apply to public lands in several key respects:

- The Wild Lands Policy declares protection of lands with wilderness character a management priority. SO 3310 ¶1.
- FLPMA dedicates the public lands to multiple use, with principal emphasis on six multiple uses: including domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way [including transmission lines and pipelines], outdoor recreation, and timber production. 43 U.S.C. § 1702(l).

FLPMA does not include the word 'wilderness' in its definition of multiple use. 43 U.S.C. § 1702(c). It defines 'wilderness' only with respect to the now-expired wilderness review program in Section 603.

The Wild Lands Policy attempts to revise federal law by changing land management priorities to promote wilderness protection over all of the other uses that, by federal law, apply to public lands. This contradicts FLPMA, which dedicates the public lands to other uses, several of which, like mineral exploration and development, conflict with wilderness management. It also contradicts the Wilderness Act, which reserves to the sole authority to designate wilderness only by Congress.

The Wild Lands Policy assumes that the Secretary can manage public lands to protect wilderness, although FLPMA provided for a single and limited wilderness review program. FLPMA defines wilderness solely in terms of Section 603, which prescribed a 15-year wilderness review period. It is widely accepted that the authority to study public lands for wilderness expired in 1991, 15 years after FLPMA was enacted. There is no new authority to manage public lands for wilderness protection without attempting to rewrite FLPMA, and only Congress can do so.

It is also worth pointing out that federal agencies must involve the public and local governments when making a significant public land management change. These procedures ensure that there is a robust discussion of the effects of a proposal, and in the case of federal lands, there is coordination with state and local governments. In his haste to issue this policy right before the Christmas holiday, the Interior Secretary ignored these procedural steps.

The Interior Department also ignored the significant adverse environmental impacts that will come from the Wild Lands Policy. Proponents of this policy forget that the Wild Lands Policy will also prohibit wind turbines and transmission lines that are necessary for the green energy promoted by the Interior Secretary. For two years we have heard how the Administration will fund and subsidize green energy for wind turbines, solar energy farms, and the transmission lines necessary to put these alternative energy projects into the electrical power grid. Many energy projects are proposed for public lands, without considering the fact that these structures will violate the Wild Lands Policy. The structures associated with wind and solar energy are prohibited as permanent development and cannot be said to conform to the visual standards applied to wild lands. These important impacts are entirely ignored in the discussion by the Interior Department. It also appears that the Energy Department, which is issuing millions of dollars in incentive grants and loans, is not coordinating with the Interior Department which has adopted a policy that will prohibit or certainly delay implementation of any project.

Since early 2009, DOI has imposed a *de facto* moratorium on drilling and leasing on these lands. Uintah County initiated litigation in October of 2010 because the management policies violated the Settlement Agreement, contradicted the approved land use plans for public lands, and also were harming the local economy.

The Wild Lands Policy could potentially close millions of acres to oil and gas leasing in the State of Utah. BLM previously studied the lands that were said to have wilderness character when it revised the land use plans between 2000 and 2008, so we know the scope of the lands which may be impacted in Utah. These lands do not meet the actual definition of wilderness but are being called wilderness even with dirt roads, livestock developments, oil and gas rigs, pipelines and transmission lines.

We are concerned that the Wild Lands Policy now creates defacto wilderness. In our County, this policy is already negatively affecting areas that were open for multiple use activity. Recently signed Resource Management Plans are being turned upside down by this policy. For example, current road improvement requests, oil and gas leases, and permits to drill are being affected based on Wild Lands Policy.

Historically, Uintah County, on behalf of its citizens, has fully participated in federal land management forums in numerous land management issues, including resource management plans, oil and gas leasing decisions, transportation corridors on

Federal lands, and wilderness issues. The County has expended a tremendous amount of resources over the past 20 years to engage in these processes in a responsible manner and representing our constituents. When Secretary Salazar announced the Wild Lands Policy just two days before Christmas in 2010, it was not only a shock to our constituents but was clearly an effort to circumvent established public processes that have governed our federal lands. In an economy and energy situation that is already at rock bottom, this action is further proof that Secretary Salazar has little regard for jobs or energy security in the West.

Over the past decade, the BLM began a revision of the Resource Management Plan for Utah and the Uintah Basin. This process, governed by NEPA, was open to the public and Uintah County participated as a cooperating agency. Thousands of hours and well over a million dollars of tax payer funds were expended by Uintah County. Other entities participated to bring to fruition a management plan that takes a comprehensive look at all uses of public lands in Uintah County. Although long, sometimes painful, and certainly no one group liked everything in the plan; this is what NEPA contemplated. Concessions were made on all sides. Uintah County supports open, public processes where all views are heard and considered, and then the hard working professionals of the BLM make informed decisions. All of the issues the Secretary claims to address under the new Wild Lands Policy are addressed in the Resource Management Plan—the only difference is that the Secretary clearly disagrees with the outcome of this Plan. Instead of attempting to short circuit the NEPA process, we urge the Secretary to vigilantly defend the BLM's Resource Management Plans. We need to end the practice of settling claims with litigants for the sole purpose of setting new policy outside the bright light of public input. Simply, the Wild Lands Policy undermines the Resource Management Plans.

We also note that toward the conclusion of the Vernal Resource Management Plan process, alternative "E" was added. This alternative's sole purpose was to evaluate the full spectrum of potential wilderness and the management thereof. This process required an additional two years to complete. Director Bob Abbey, in a meeting recently held in Salt Lake City, Utah, stated that the reason for reanalyzing work that was already complete was because not enough wilderness was found. This continual upheaval, unrest, change of direction, and philosophy, is discouraging. Either the land has wilderness quality or it does not. Why, with the huge deficits of spending that the Government is going through, do we have the BLM redo that which they have already completed?

In real terms, this policy will make it economically less viable for natural resource developers to operate on federal lands in the West. The State of Utah processes applications for permit to drill (APD's) in 35 days, while BLM takes an average of one and a half years. The Wild Lands Policy will add years to the permitting process and effectively further reduce access to natural resource production. It will yet create another layer of unnecessary bureaucracy that will only result in the further loss of jobs in my County and in other public lands counties throughout the West. Moreover, Uintah County will be forced to spend precious tax payer dollars to fight our own government to try to force the Department of Interior to live by the law of the land.

The combination of regressive gas leasing policies and the new Wild Lands Policy will result in further job losses and economic impact in Uintah County and throughout the west. Recently, I visited with a local CEO whose business has a cutting edge technology in the natural gas industry, yet, he can see the writing on the wall with the current policies. He will likely move his headquarters. He just returned from Dhabi as an option. Why would a business owner even consider such an option with all the unrest in the Middle East? What is wrong with this picture? Is the business environment better in the Middle East than on our own public lands in Uintah County? Planned and balanced development of these resources takes years to move into production. Driving these companies overseas is detrimental to our economy and to our energy security.

Unfortunately, today's policies are stopping responsible development and endangering America's energy security. This is not a spigot you can simply turn on and off on a whim.

Many companies stand ready to invest large sums of money in our County over the next ten years. All told, these investments would exceed two billion dollars over a ten year period. However, the regulatory uncertainty and the adverse policies of the Department of Interior is keeping these companies from investing, and in many cases, driving them overseas where U.S. dollars are being invested in foreign economies.

Eastern Utah is a treasure chest of natural resources. Uintah County has a great opportunity to help America become energy independent. Utah has 6.7 trillion cubic feet of proven natural gas reserves, conventional oil reserves of 286 million barrels,

much of these are found in Uintah County. According to a Rand Report, the Uintah Basin has a staggering amount of shale oil ranging from 56 billion barrels to 321 billion barrels.

Each morning our newspapers carry disturbing pictures of governmental unrest in the Middle East and news of more and larger oil supply disruptions. In less than a month, previously stable countries in northern Africa and the Middle East have erupted in violent demonstrations. The governmental overthrow of Tunisia and Egypt has gone viral in Yemen, Libya, Saudi Arabia, and Bahrain with new calls for changes in the governments of the region. These shifts in power will have profound changes for the future, especially for the United States that produces and transports oil from those regions to the United States.

The Wild Lands Policy threatens national security by sharply reducing the nation's energy independence. It applies equally to all sources of energy from public lands such that the country is made weaker at a time when it needs to be stronger and more self-sufficient.

In addition to this, the Wild Lands Policy will impact the education of our children. The State of Utah was granted upon statehood, school trust lands, which by State Constitution are mandated to generate income to fund schools in the State of Utah. These lands are interspersed with federal lands throughout the State of Utah and Uintah County. It is commercially unviable to develop these lands for natural resources without access to the surrounding lands. If the federal lands become off limits to development, State lands go undeveloped as well, and education suffers directly from the Federal policies.

To sum it up, the Wild Lands Policy is a short-sighted initiative that undermines the interests of this Country and its people. The Wild Lands Policy overreaches by revising federal law when only Congress can do so. We urge this Committee to take every action possible to repeal it.

Our natural resources should be responsibly developed pursuant to the laws of the land. We have a responsibility to carefully develop our resources for America, for energy security, for our economy, and jobs for our citizens. I commend the House for choosing to de-fund the Wild Lands Policy for this current fiscal year and I urge the Senate to follow your lead. The role of Congress is clear in terms of wilderness policy, and I urge this Congress to preserve its authority and reverse this policy to save my County and our Country from further economic harm.

Thank you for your time and I would be pleased to answer any questions you might have.

The CHAIRMAN. Thank you very much, Commissioner. Commissioner Robinson, you are now recognized for five minutes.

STATEMENT OF LESLEY ROBINSON, PHILLIPS COUNTY COMMISSIONER, MALTA, MONTANA

Ms. ROBINSON. Thank you, Chairman Hastings and Members of the Committee. I appreciate you letting me testify today. I am Lesley Robinson. I am the Chairman of the Montana Association of Counties' Public Lands Committee, and a Commissioner from Phillips County. I also serve as the Chairman of the National Association of Counties' Federal Land Management Subcommittee, and serve on the NACO Western Interstate Region Board.

Phillips County spans 5,213 square miles. We have approximately 4,000 people, about 51,000 cattle in our county. Ninety-eight percent of Phillips County's 3.2 million acres is classified as agriculture land. Approximately 1.1 million acres of that is BLM, and 1.5 million is private land.

Phillips County's economy is dependent on agriculture and natural gas production. 2008 Montana agriculture statistics state that cash sales of agriculture commodities for Phillips County was $87 million, and that is excluding government payments. These raw agriculture commodities are further processed and transported to other regions of the U.S. and the world, generating $434 million in commerce. That is just from our county.

Based on annual consumption levels, Phillips County produces enough beef to feel 280,000 people, and enough wheat to feed 1.4 million people. Four of the top 15 taxpayers in Phillips County are natural gas companies. The direct employment from gas production in Phillips County results in 100 full-time jobs. The natural gas produced in Phillips County is enough gas to heat 48,000 homes.

The active management of public lands is essential to the economy of our community. We strongly oppose Federal Land Management Agency actions that limit access and multiple use of lands that would be available to the public. As the economy continues to recover, access to public lands is necessary to provide food and fuel to the American people.

Phillips County is in the heart of the 2.5 million acres referred to in the Department of the Interior's leaked memo as possible national monument designation under the Antiquities Act. We are referred to as some of the largest unplowed areas of grassland in the world, and some of the best wildlife habitat regions in the Great Plains.

I am a fourth generation Phillips County rancher, and the people of Phillips County have protected these lands and the wildlife for over 100 years. We found a way to stimulate the economy and our community. We invited BLM Director Robert Abbey, the author of the leaked memo, to Malta to hear concerns.

The local gymnasium had close to 2,000 people from all over the State of Montana there to listen and voice their concerns. And even though the land that was referred to in the leaked memo only affected two counties, there were people from all over the State of Montana that understood the impacts to everyone if this land was designated as a monument. And I could put in, or wild land.

We support the national Monument Designation Transparency and Accountability Act, which recognizes the role of local county governments in the designation of national monuments and ensures review by local elected officials.

Last November, I was invited to participate in the BLM's National Landscape Conservation System Summit. We spent two days, as mostly BLM people and others, but we spent two days discussing the BLM's land management with no discussion of wild lands. And only one month later, Secretary Salazar and Director Abbey announced the wild lands directive.

Special designations such as wild lands will create more restrictions on the land. And even if we lose one family from the county due to increased restrictions, it will have a noticeable negative impact to our economy. I have real concern with the growing trend of the current Administration toward land designations developed in D.C.

Local economies suffer from top-down land use decisions. Only Congress has the authority to designate land as wilderness, but yet wild lands is a designation not subject to congressional approval, and undermines the established process for land use planning.

The first stop should be at the local level. And I am not referring to the local BLM office. Counties should be fully involved in the drafting and the development of any proposal impacting lands within the county's jurisdiction. There is a push to substantially increase funding for Federal land acquisitions. Phillips County has

over a million acres of BLM land that we receive PLP payments for.

These payments don't fully replace tax revenues collected by private landowners. Increased ownership of land by Federal Government would put a burden on the county and the country.

In conclusion, I would like to reiterate that any decisions to change uses on public lands impacts local economies and the economy of the United States. Thank you again for giving me the opportunity to testify.

[The prepared statement of Ms. Robinson follows:]

Statement of Lesley Robinson, County Commissioner, Phillips County, Montana

Chairman Hastings, Ranking Member Markey and members of the Committee. I appreciate the opportunity to testify on behalf of the Montana Association of Counties and Phillips County Montana on "The Impacts of the Administration's Wild Lands Order on Jobs and Economic Growth'.

I am Lesley Robinson, Chairman of the Montana Association of Counties Public Lands Committee and a Commissioner from Phillips County. I also serve as Chairman of the National Association of Counties (NACo) Federal Land Management subcommittee and serve on the NACo Western Interstate Region Board.

Phillips County spans 5,213 square miles. We have approximately 4,000 people and 51,000 cattle in our county. 98% of Phillips County's 3.2 million acres is classified as agriculture land. Approximately 1.1 million acres is BLM and 1.5 million is private land. Phillips County's economy is dependent on Agriculture and Natural Gas production. 2008 Montana Agricultural Statistics state cash sales of agricultural commodities for Phillips County was eighty seven million dollars excluding government payments. These raw agricultural commodities are further processed and transported to other regions of the US and world generating four hundred and thirty four million dollars in commerce. Based on annual consumption levels Phillips County produces enough beef to feed two hundred and eighty thousand people and enough wheat to feed 1.4 million people.

Four of the top fifteen taxpayers in Phillips County are gas companies. Direct employment from gas production in Phillips County results in 100 full time jobs. The natural gas produced annually is enough gas to heat forty eight thousand homes. The active management of Public Lands is essential to the economy of our community. We strongly oppose federal land management agency actions that limit access and multiple use of lands that would be available to the public. As the US economy continues to recover, access to public lands is necessary to provide food and fuel to the American people.

Phillips County is in the heart of the 2.5 million acres referred to in the Department of Interior's leaked memo as possible National Monument Designations under the Antiquities Act. We are referred to as some of the largest unplowed areas of the grasslands in the world and some of the best wildlife habitat regions in all the Great Plains. I am a fourth generation Phillips County rancher. The people of Phillips County have protected these lands and the wildlife for over 100 years.

We found a way to stimulate the economy in our community. We invited BLM director Robert Abbey, author of the leaked memo to Malta to hear our concerns. The local gymnasium had close to 2,000 people from all over the state of Montana there to listen and voice their concerns opposing designating a monument The meeting broadcasted live on our local radio station and the radios website. If the committee is interested in a DVD or CD of the meeting it is available. Even though the land referred to in the leaked memo only affected two counties the rest of the state understood the impacts to everyone if this land was designated a monument.

Special designation such as Wild Lands historically creates more restrictions on the land. This leads to the loss of families in our community. If even one ranch or gas company family leaves the county due to increased restrictions it will have a noticeable negative impact to our economy due to loss of income and fewer volunteers. Our ambulance, fire departments and several other local services are run by volunteers.

I have a real concern with the growing trend of the current administration toward land designations developed in DC. Local economies suffer from top down land use decisions. Only Congress has the authority to designate lands as wilderness but yet Wild Lands is a designation not subject to Congressional approval. The first stop should be at the local level. I'm not referring to the local BLM office. Counties

should be fully involved in the drafting and development of any proposal impacting lands within the counties jurisdiction. The leaked memo does not mention once coordinating or cooperating with local governments. Secretarial Order 3310 undermines the established public process for land use planning.

Last November I was invited by the BLM to participate in the National Landscape Conservation Summit in Las Vegas, Nevada. We spent two days discussing the BLM's land management. Secretary Salazar and BLM Director Robert Abbey both spoke to us at the conference. I do not remember once hearing Wild Lands mentioned. One month later Secretary Salazar and Director Abbey announced the Wild Lands directive.

There is a push to substantially increase funding for federal land acquisitions. Phillips County has over a million acres of BLM land that we receive PILT payments for. These payments don't fully replace tax revenues collected by private land owners. Increased ownership of land by the Federal Government would put a burden on the county and the country.

We support the National Monument Designation Transparency and Accountability Act, which recognizes the role of local county governments in the designation of national monuments and ensures review by local elected officials.

In conclusion I would just like to reiterate that any decisions to change uses on public land impacts local economies and the economy of the United States.

The CHAIRMAN. Thank you very much, Commissioner Robinson, for your testimony. Commissioner Smith, you are now recognized for five minutes.

STATEMENT OF DENNIS C.W. SMITH, JACKSON COUNTY COMMISSIONER, MEDFORD, OREGON

Mr. SMITH. Thank you, Chairman Hastings and Congressmen of the Committee. I am a Commissioner in Jackson County, in Southwest Oregon. I am here to oppose Secretarial Order 3310 and express extreme disappointment concerning the Federal Government's failed forest management.

The Federal Government owns more than half of Oregon, so Federal land policies have a profound effect on my state. Fifty-two percent of Jackson County are Federal lands. In my county lie a national monument, a national park, three national forests, and the BLM Medford District Office.

These Federal lands once supported a thriving timber and wood products industry. Not anymore. Federal policies have pulled the rug out from underneath us in Southwestern Oregon. Jackson County once had 35 lumber mills employing thousands of men and women. But the last of these mills closed within the last two years.

This tremendous loss is largely due to the Federal decision to prevent timber harvest to safe forests from even the most sustainable timber harvest practices. As a result, my county routinely has unemployment rates 50 percent higher than the national average, as do the surrounding counties.

Secretarial Order 3310 promises to make the situation worse by locking up even more BLM land, creating de facto wilderness areas without congressional action or oversight, and without local support. Order 3310 will not only prevent consideration of normal forestry, it will eliminate recreational uses such as snowmobiling, trail biking, motorcycling, and other motorized access. The elderly and the handicapped will be shut out as well.

More withdrawn land means more economic misery. Sadly, experts agree that abandoning management is resulting in forests that are unhealthy, insect ridden, and increasingly prone to cata-

strophic wildfires. Order 3310 should be reversed in its entirety. Or at a minimum, BLM lands in Western Oregon should be exempted.

The Department of the Interior Solicitor has already concluded that most of the BLM lands in Western Oregon are not legally eligible for wilderness consideration. Order 3310 overlooks that Solicitor's opinion, and I ask this Committee to remind Secretary Salazar of his legal obligations. Let me explain.

The BLM manages about 2.1 million acres in scattered small parcels in 18 counties in Western Oregon. Those lands are governed by a unique statute, the O&C Act, applicable nowhere else. The unusual history of the lands, which were once in private ownership, is described in more detail in my written testimony before you.

The O&C Act requires that all O&C lands suitable for growing timber must be managed for that purpose, and the timber sold, cut, and removed in conformity with the principles of sustained yield. The O&C Act requires 50 percent of the revenues generated from timber sales be paid to the 18 O&C counties. The Ninth Circuit Court of Appeals has stated that the O&C Act is a dominant use statute giving timber production priority over all other possible uses.

The O&C lands are not governed by FLPMA's multiple use directive. Section 701(b) of FLPMA specifically recognizes the dominance of the O&C Act's mandate and defers to it. Virtually all of the O&C lands are capable of growing timber and therefore must be used for sustained yield timber production, and should be exempted.

There are those that will try to tell you that economic benefits of land withdrawals outweigh the benefits of developed economic activity. First, show us the money. How are counties going to pay for sheriffs' patrols, search and rescue, and provide the expected services for the users of public lands.

Second, how do we replace the family wage jobs with seasonal, low-wage employment in tourist related businesses? We already have millions of acres of lands in Western Oregon reserved from timber harvests. Locking up more lands under Order 3310 will produce no tourist industry benefits. If the O&C lands are now to be used for ecosystem services instead of timber production, it will be necessary to value those non-consumptive uses and compensate the counties accordingly.

I am here to ask you to bring rationality back to the Federal forest management. The current legal structure is badly snarled, a Gordian knot. And those of us who live in forested communities are desperate for some sign that the Federal Government can be a capable land manager. Rolling back Order 3310 should be a meaningful first step.

In closing, Mr. Salazar, take down this order.

[The prepared statement of Mr. Smith follows:]

Statement of Commissioner Dennis C.W. Smith,
Chair, Jackson County, Oregon

Thank you for the opportunity to comment on Secretarial Order 3310. I am a Commissioner in Jackson County, located in Southwest Oregon. I am here to express opposition to Order 3310, and disappointment, even anger, concerning the federal government's failed forest management.

The federal government owns more than half of the land in Oregon, so federal land policies have a profound effect on my State. Jackson County has an even greater proportion of federal lands. In my County lie the Cascade-Siskiyou National Monument and large parts of Crater Lake National Park, the Klamath National Forest, Rogue-Siskiyou National Forest, and Umpqua National Forest. Most importantly for my comments today, Jackson County also contains most of the BLM's Medford District. Nearly all of these federal lands are heavily forested, and, except for Crater Lake Park, they once supported a thriving timber and wood products industry. Not any more.

Federal policies have pulled the rug out from under us in Southwestern Oregon by shutting virtually all productive economic activity out of the woods. Jackson County once had 35 mills employing thousands of men and women. The last of the mills operating in my county closed within the last two years. This tremendous loss is largely due to the federal government's decision to prevent timber harvests, to "save" the forest from even the most benign, sustainable, well planned management activities. This federally caused economic loss in Southwest Oregon is part of the reason my county routinely has unemployment rates 50 percent higher than the national average. Currently Jackson and surrounding Counties have unemployment in the 15 to 20 percent range.

Secretarial Order 3310 promises to make an intolerable situation even worse, by locking up even more BLM land, creating de facto wilderness areas without Congressional action or oversight, and without the support of local communities that will be adversely impacted. This Order will not only prevent consideration of normal forestry, it will eliminate recreational uses such as snowmobiling, trail biking, motorcycling and other motorized access. The elderly and handicapped will be shut out entirely. Order 3310 is elitist and exclusive, rather than inclusive.

This can only lead to more unemployment, and more economic misery where we already have more than our share. The saddest of all, these federal land lockups do not benefit the forest. The experts are nearly unanimous that abdication of management responsibility by the federal government is resulting in forests that are unhealthy, insect ridden, and increasingly subject to catastrophic wildfires.

Secretarial Order 3310 should be reversed in its entirety. If not reversed altogether, then most of the lands managed by the BLM in Western Oregon should be exempted from it. The Department of Interior's solicitor has already concluded that most of the BLM lands in 18 Counties in Western Oregon are not legally eligible for wilderness consideration. Order 3310 overlooks that Solicitor's opinion, and I ask this Committee to remind Secretary Salazar of his legal obligations. Let me explain:

The BLM manages about 2.1 million acres in Western Oregon under a unique statute applicable to no other lands in the United States. The "O&C lands" are located in a checkerboard pattern of mostly small parcels spread across 18 counties in Western Oregon. The O&C Act requires that, on all O&C lands suitable for growing timber, the timber shall be "sold cut and removed" in conformity with the principle of sustained yield. The O&C Act requires 50% of revenues generated from timber sales be paid to the 18 O&C counties. The 9th Circuit Court of Appeals in the Headwaters v. BLM case recognized that the O&C Act is a "dominant use" statute, giving timber production priority over all other possible uses.

The O&C lands were transferred to private ownership in exchange for construction of a railroad in the late 1800's, but the lands reverted back to federal ownership in 1915 because the railroad violated the grant terms. In 1916 and again in 1926 Congress attempted to make things right with local communities for the adverse financial impacts that resulted from having taken the lands out of private ownership and off the tax rolls. In its third attempt to correct the injury, Congress passed the O&C Act of 1937, dedicating the O&C lands to permanent forest production to provide revenue for county government services.

The O&C lands are not governed by FLPMA's multiple use directive. Section 701(b) of FLPMA specifically recognizes the dominance of the O&C Act's timber production mandate with the following "savings" clause:

> "Notwithstanding any provision of this Act [FLPMA], in the event of conflict or inconsistency between this Act [FLPMA] and the Act's of August 28, 1937 [O&C Act]...and May 24, 1939...insofar as they relate to management of timber resources, and disposition of revenues from lands and resources, the latter Acts shall prevail."

O&C lands that are suitable for growing timber are not eligible for wilderness designation and should be excluded from further consideration under Secretarial Order 3310. Such lands were excluded from the wilderness review process under FLPMA, and should be excluded again. An Interior Solicitor's Opinion dated September 5, 1978, recognized that the dominant use mandate of the O&C Act requires timber production where the lands are capable of growing crops of timber, thus pre-

venting preservation of such lands as wilderness. The Solicitor's Opinion (p. 11) states that the only O&C lands that can be considered further for wilderness preservation are "roadless areas unsuitable for commercial forest management," if, in fact, there are any such parcels of O&C land. Virtually all of the O&C lands are capable of growing timber and therefore must be used for sustained yield timber production.

There are those who will try to tell you that the economic benefits of land withdrawals under Order 3310 outweigh the benefits of developed economic activity on our public lands. To those who make such arguments, I say two things: First, show us the money. How are Counties to pay for sheriff patrols, search and rescue, prosecute and incarcerate criminals and provide the expected services for the users of the public lands? Second how do we replace the family wage jobs with the seasonal, low wage employment in tourist-related businesses? Some say tourist businesses contribute hundreds of billions of dollars annually to our economies, but I assure you we do not see anything like these claimed values. We are awash with literally millions of acres of lands in Western Oregon already reserved from timber management and other economic uses. Our tourist industry does not suffer from lack reserved public lands. Locking up even more lands under Order 3310 will produce no tourist industry benefits at all. If we are to benefit economically from these land lockups, it will be necessary for Congress to review policies regarding sharing of receipts from the public lands. If the O&C lands are now to be used for "ecosystem services" instead of timber production, it will be necessary to monetize those nonconsumptive uses and compensate the Counties accordingly. For your consideration we are enclosing a copy of a paper by Professor Norman Johnson of Oregon State University, arguing that the O&C Counties should be compensated for "ecosystem services" produced by the O&C lands.

I am here to ask you to bring rationality back to federal forest management. The current legal structure is badly broken—a Gordian knot, if you will—and those of us who live in forested communities are desperate for some sign that the federal government can be a capable land manager. Rolling back Order 3310 would be a small but meaningful first step.

Monetizing Ecosystem Services from BLM O&C Forests

2/14/2011

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Executive Summary

In legislation passed in 1937, management of the BLM O&C lands was directed, in part, to provide economic benefits to the counties in which they reside through sustained timber production. Historically this economic contribution occurred largely through in lieu payments and employment associated with timber harvest. In recent years, harvest has been sharply curtailed due to mandates to protect endangered species and other fish and wildlife. These lands, though, continue to provide many ecosystem services, including clean water, outdoor recreation, carbon sequestration, and old growth. In this paper, we describe the results of our work with the OSU senior forest management class in monetizing (estimating the monetary value of) two of these services—carbon sequestration and outdoor recreation—from which the counties receive little or no revenue through in lieu payments. In this assessment, we used 72,000 acres of O&C forests southwest of Corvallis. To monetize carbon benefits, we first estimated a "baseline" from which to measure increased carbon sequestration. We argue that a fair baseline for carbon analysis would be continuance of the O&C sustained yield management that would have occurred without adoption of the Northwest Forest Plan (NWFP)—the Plan that was adopted in 1994 to address biodiversity concerns. We then estimated the carbon that has been sequestered, and will be sequestered, under the NWFP. We also estimated the carbon that would be sequestered under a plausible alternative to current management—an ecological forestry strategy based on the Western Oregon Plan Revision land allocations (WOPR–EF). We monetized the difference in the carbon that has been and will be

sequestered under these two plans compared to continuation of historical O&C management. We found that tens of millions of dollars of additional carbon benefits have accrued and will continue to accrue under either of these two plans, with slightly more under the NWFP than WOPR–EF because of a higher harvest level associated with the latter plan. To monetize recreation, we used recent recreation use levels for different types of recreation activities in the study area, and willingness-to-pay values from various studies across the West for these activities. We found that more than ten million dollars of annual recreation benefits were associated with use of these lands by the public. We argue that the value of these ecosystem services from the O&C lands should enter into the discussion about how to compensate the counties for the inability of these lands to achieve fully the goals of the 1937 Act.

Introduction

In Spring, 2010, Dr. K. Norman Johnson taught the senior forest management "capstone" course with the assistance of Debbie Johnson. In that course, students developed management options for approximately 72,000 acres of BLM O&C lands located about 25 miles southwest of Corvallis (Figure A1 found in the Appendix). Most of the acreage is less than 100 years of age (Figure A2). These lands have been managed under the Northwest Forest Plan since 1994. As part of their assignment, the students estimated the monetary value of two ecosystem services associated with these lands: 1) carbon sequestration and 2) outdoor recreation. We summarize the results from these analyses in this paper.

Monetizing Carbon Sequestration

Monetizing carbon sequestration from forest management generally involves three steps:

1. Estimating the amount of carbon that would be stored over time under a "base-line" management strategy. Often this baseline is called "business as usual." This baseline represents the idea that people in carbon markets will pay for carbon storage over that which would occur anyway—they pay for the "extra" carbon stored.
2. Estimating the amount of carbon stored under an approach to forest management that increases the amount of carbon sequestered. We consider two options here: 1) Continued implementation of the Northwest Forest Plan and 2) A sustainable forestry option based on the Western Oregon Plan Revision allocations.
3. Multiplying the difference in carbon storage between the two approaches in each time period by the value/unit stored. The value/unit generally comes from domestic or foreign carbon markets.

The Baseline: O&C Sustained Yield Management

We argue that the baseline for comparison should reflect the carbon storage that would occur if the BLM had continued the management approach it had historically used before the Northwest Forest Plan was adopted. O&C management was set up to benefit the 18 counties within which the lands lie through the income to the counties and associated employment in the timber industry from timber harvest. The 1937 "Organic" Act states that the O&C lands "...shall be managed...for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, contributing to the economic stability of local communities and industries, and providing recreational facilities." Toward that end, the O&C forests were devoted to sustained timber production for many decades.

National biodiversity and related environmental concerns have greatly reduced the ability of these lands to meet this goal. Issues surrounding conservation of species associated with late successional forests, especially the Northern Spotted Owl, and habitat for salmonids led to protests, lawsuits, and eventually the creation of the Northwest Forest Plan (NWFP) in 1994 utilizing the authorities in more recent laws such as the National Environmental Policy Act, Endangered Species Act, and the National Forest Management Act. This Plan applies to national forests and BLM-administered Oregon and California Railroad (O&C) forests of western Oregon, along with other federal lands, within the range of the northern spotted owl. It shifted the overarching objective of these lands from sustained timber production to protection of biodiversity focused on species associated with late successional forests and aquatic systems, especially species listed as threatened and endangered. In the process, the allowable cut for the O&C lands were reduced by over 75%. In 2008, the BLM proposed an alternative plan for the O&C lands in the Western Oregon Plan Revision that would significantly increase harvest, but that plan was sub-

sequently withdrawn by the Obama Administration, leaving management of these lands under the Northwest Forest Plan.

The 1937 O&C Act, though, is still on the books and still applies, although its meaning in the context of these other laws remains unsettled. We argue that a fair baseline for carbon analysis would be continuance of the O&C sustained yield management that would have occurred without adoption of the Northwest Forest Plan. To meet emerging environmental concerns, the O&C lands have had their management redirected to other purposes which often provide little direct economic benefit to the counties in which they reside, thus preventing management of these lands from meeting one of the key goals of the 1937 Act. To be equitable, the counties should be credited with the increase in carbon sequestration associated with that redirection. Thus, we argue for continuance of historical O&C management as the baseline for measuring an increase in carbon sequestration.

To meet the goal stated in the1937 Act of permanent timber production under sustained yield, we made the following assumptions: 1) 85% of the forest available for timber production, with some of the forest withdrawn for unstable slopes and areas near streams; 2) an 80-year rotation—a rotation near culmination of mean annual increment; 3) yields associated with a moderate level of management; and 4) acres and volume harvested each decade equivalent to that from a regulated forest on an 80-year rotation.

Increased Carbon Sequestration Option 1: The Northwest Forest Plan

We assumed that implementation of the Northwest Forest Plan would follow the current approach that focuses on thinning in plantations. Most of that thinning occurs in reserves, as they dominate the landscape (Figure A3). Over time that thinning will gradually decline as will harvest. While regeneration harvest has been allowed under the Northwest Forest Plan in the Matrix, little has occurred due to protest and litigation, and little is forecast. Beyond initial thinning, the stands most likely will be allowed to mature without intervention except to suppress fire. Even if some regeneration harvest were to occur in the Matrix, it would not alter this analysis significantly as the Matrix acreage is relatively small.

Increased Carbon Sequestration Option 2: A Sustainable Forestry Model based on the Western Oregon Plan Revision

While the WOPR has been withdrawn, it still provides a valuable data set for carbon analysis. The land allocation in the WOPR proposed plan would approximately double the acreage in the Matrix in the study area by shrinking the Riparian Reserves (Figure A4). An approach to long-term forest management using the principles of ecological forestry (Franklin et al. 2007) was applied to this Matrix landbase, augmenting the thinning that would occur in the Reserves. No stands over 150 years of age were considered for harvest. This option would sequester somewhat less carbon than the first option due to the continued harvest over time in the Matrix.

Carbon Calculation Methodology

In forested areas, carbon is stored in many"pools." We recognize three pools here: 1) live trees, 2) other forest carbon (snags, downed wood, slash, soil organic matter and other), and 3) residue from harvests. Carbon sequestered in live trees was derived by using standing tree volumes from forest inventory data and site specific growth and yield curves. See USDI BLM 2008 Appendix C for more detail. Estimates of other forest carbon also came from this source. We made the calculations of carbon effects of logging debris. Total carbon was estimated as the sum of the three pools in metric tons (tonnes) that weigh 2200 pounds

Results[1]

Difference in carbon sequestered between the two alternatives

The NWFP shows a higher level of carbon storage than the baseline in each period. The difference in period 1 of 3.7 million tonnes in the first period reflects the effects of divergent management strategies for the last 20 years and the difference in periods 2–5 reflects the continuing effects of this divergence (Table 1 and Figure 1).

[1] This analysis draws most heavily on the work of one student group composed of Amber Craig, Rachael Heath, Jeremy Karby, William Pollack, and Jeremy Sudgen.

Table 1. Tonnes of carbon sequestered in each of the first five ten-year periods under the two alternatives on the 72,000 acre study area.

	Carbon Sequestered (Million Tonnes)				Additio Carbo (Million T
Period	Baseline	Option 1: NWFP	Option 2: WOPR+EF	Option 1: NWFP	Optio WOPR
1	14.1	17.8	17.7	3.7	
2	14.5	19.4	19.2	4.9	
3	14.9	21.1	20.4	6.2	
4	15.2	22.7	22.0	7.5	
5	15.5	24.2	23.0	8.7	

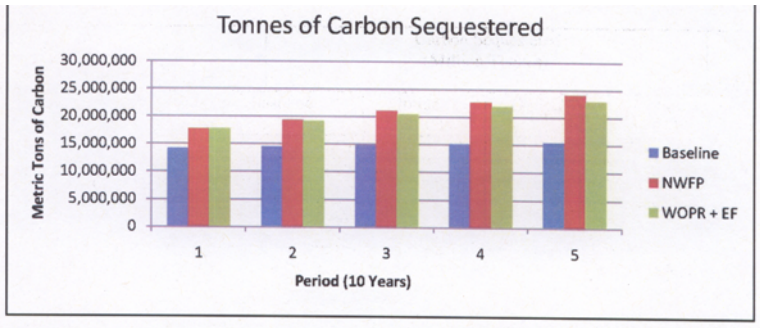

Figure 1. Tonnes of carbon sequestered in each of the first ten-year five periods under the baseline and NWFP in the 72,000 acre study area.

Value of the added carbon sequestration

Carbon markets generally buy and sell metric tons (tonnes) of carbon dioxide. To convert carbon to carbon dioxide, we multiplied total carbon by 44/12 (the ratio of the molecular weight of carbon dioxide to carbon). Total carbon was thus multiplied by 3.67 and then multiplied by the sale price of CO2 to arrive at each value (Cathcart and Delaney 2006).

We calculated the value of the additional carbon storage as follows:

1. The value of the initial difference in carbon stored between the two management scenarios was calculated as a lump sum payment which would occur in period one.
2. The value of the additional carbon stored in periods two-five was calculated as the extra carbon that would accumulated over the initial difference.
3. The amount of added CO2 was multiplied by either a "low" value of $ 2.75/tonne or "high" value of $15.00/tonne. This range of values was reflective of prices found in different carbon markets in spring, 2010. For comparison, California plans to use a minimum of $10/tonne in its climate registry (Wilent 2011).

Total monetized value of the increased carbon storage for the first five 10-year periods from the 72,000 acre study area is approximately $87 million at the "low" value per tonne and $475 million at the "high" value per tonne for the NWFP and slightly less for WOPR–EF (Tables 2 and 3). Approximately one-third of the value accrues in the first period reflecting the initial difference in carbon storage. Other assumptions about the management strategy in historical O&C management and the two options presented here would yield different monetized values but the general conclusions would not change*: Significant carbon value has accrued and will continue to accrue on O&C forests due to their redirection to be managed under the Northwest Forest Plan.*

Table 2. Value of increased carbon storage under Option 1 (NWFP)

Period	Additional Tonnes of carbon stored (millions)	Tonnes of CO2 (millions)	Total Value $2.75/tonne (millions)	Total Value $15.00/tonne (millions)
1 (Lump Sum Payment)	3.7	13.4	$36.8	$200.5
2	1.3	4.6	$12.6	$69.0
3	1.3	4.9	$13.4	$73.3
4	1.3	4.7	$13.0	$70.7
5	1.1	4.1	$11.4	$62.2
Total	**8.7**	**31.7**	**$87.2**	**$475.8**

Table 3. Value of increased carbon storage under Option 2 (WOPR + EF)

Period	Additional Tonnes of carbon stored (millions)	Tonnes of CO2 (millions)	Total value $2.75/tonne (millions)	Total Value $15.00/tonne (millions)
1 (Lump Sum Payment)	3.6	13.1	$36.0	$196.5
2	1.1	4.1	$11.2	$61.3
3	0.9	3.3	$9.1	$49.4
4	1.2	4.5	$12.4	$67.8
5	0.7	2.6	$7.0	$38.3
Total	**7.5**	**27.5**	**$75.7**	**$413.2**

Discussion

Much discussion has occurred about the development of carbon markets in the United States, but relatively few have emerged. One prominent exception is California which just recently solidified the operation of its carbon markets, including the allowance of carbon offsets from forestry projects (Wilent 2011).

Our argument here is not focused on entering the O&C lands into a market like California's in which there would be an attempt to sell the carbon sequestration that has occurred on the O&C lands since their management was redirected toward conservation of endangered species and related biodiversity goals. Rather, we argue that the value of this sequestration should enter into the discussion about how to compensate the counties for the current inability of these lands to achieve fully the goals of the 1937 Act.

Willingness-To-Pay for Recreation Activities on BLM O&C Lands[2]

We live, work, and play in the context of a market economy. Value is understood in terms of dollars exchanged. This system makes it difficult to measure the value of opportunities, experiences, and other things that are not traded in a market. Many outdoor recreation opportunities fall into that category. Fortunately, over the last several decades, several systems have emerged to help measure and understand the value of "products" for which no cash is exchanged, such as recreation opportunities and experiences.

Researchers like John Loomis, Colorado State University, and Randal Rosenberger, Oregon State University, have developed and refined methods for determining the dollar value of outdoor recreation activities. They essentially created hypothetical markets that act as a proxy for the processes and outputs of traditional

[2] This analysis draws most heavily on the work of one student group composed of Amber Craig, Rachael Heath, Jeremy Karby, William Pollack, and Jeremy Sudgen.

markets. Using another important economic concept, willingness-to-pay (WTP), Loomis and many others have created equations that help capture the value of these activities using consumer surplus. This method is well established and has been used all over the world to help determine the market value of a range of recreation opportunities, from snorkeling in Australia to riding off-highway vehicles (OHVs) in Colorado. Surveys are conducted to determine individuals' WTP at specific sites. When direct measurements are not available, researchers use a method called *benefit transfer* instead. Values for similar sites and activities are used to estimate values for the study site.

Methods

To determine use levels, we utilized the number of visitor days for each activity that were provided by the Salem District BLM for the Marys Peak Resource Area. For willingness-to-pay values, we relied on Loomis (2005) in which values were compiled from various studies across the country. They were broken down by region and most were also separated into individual activities. We averaged the values for hiking, biking, and horseback riding and also for camping and picnicking because the use levels for these activities were reported by the BLM in aggregate. When possible we used the values provided for Oregon and Washington but several of the values were from regional studies that also included California. This may lead to slight inflation of some of the values but we thought they were better estimates than the values from completely different regions.

Results

We estimated the total value of the major recreation opportunities that are provided in this area to be about $15 million annually (Table 4). This represents an average of $52.25 per activity day (twelve hours). Compare this to the cost of attending a movie which is about $8 for two hours. An activity day of attending a movie would have a use value of $48. Consider the situation: you are sitting at the edge of Alsea falls having a picnic with your family. The sky is blue (for once), the trees are green and the flowers are fragrant. We anticipate that an experience like that would actually be worth far more to many people than sitting inside a movie theater for a few hours. We propose that $52.25 a day is not at all an unreasonable value for the recreation opportunities provided on the O&C lands. Other assumptions about willingness-to pay will yield different levels of monetary benefits but the general conclusions are clear: *significant monetary value is being provided through recreation services on the O&C lands.*

Table 4. Activity levels, use values, and total annual value for the study area. (Note: An activity day represents twelve hours of participation in that activity and may represent a number of individual users.)

Recreation Activity	Activity Days/year	Use Values (WTP)	Total Annual Value
Nonmotorized boating	487	$32.07	$15,618.09
Motorized off-highway vehicle travel	24,086	$46.51	$1,120,239.86
Fishing	29,342	$48.37	$1,419,272.54
Hunting (big game, upland game, and migratory game birds)	74,302	$40.63	$3,018,890.26
Nonmotorized travel (hiking, biking, and horseback riding)	12,348	$34.96	$431,686.08
Camping and picnicking	91,136	$73.42	$6,691,205.12
Driving for pleasure (along designated BLM roadways)	51,135	$42.01	$2,148,181.35
Wildlife viewing, interpretation, and nature study	5,529	$40.32	$222,929.28
Totals	**288,365**		**$15,068,022.58**

Discussion

WTP is a valid measure for recreation benefits. The validity has been demonstrated by Loomis and Walsh (1997) in numerous empirical studies. It is also the preferred valuation method for the U.S. Department of the Interior. The WTP model is based on the economic principles of the demand curve and consumer surplus. The value to society of the total consumer surplus, as modeled by the WTP method, adds up quickly. Our estimate of total value of recreation opportunities provided by the

BLM on the Marys Peak Resource Area may seem high but it is justified by this demand curve model and the well-established concept of willingness-to-pay.

We do not argue here that the people should be charged for recreation use of the O&C lands. Rather, we argue that the value of this recreation use should enter into the discussion about how to compensate the counties for the current inability of these lands to achieve fully the goals of the 1937 Act.

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Wilent, Steve. 2011. CA approves greenhouse cap-and-trade regulations: program includes protocols for forestry, urban forestry offsets. The Forestry Source, 16:2 pp. 1–3.

Appendix A. Background maps and tables about stud

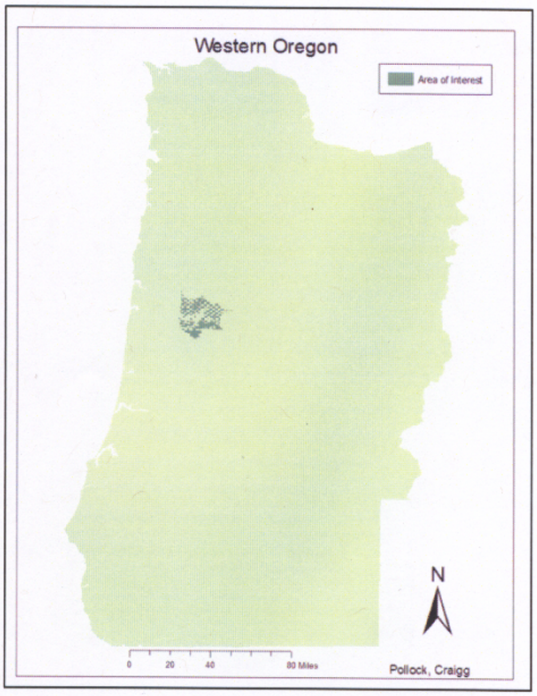

Figure A1. Study area location

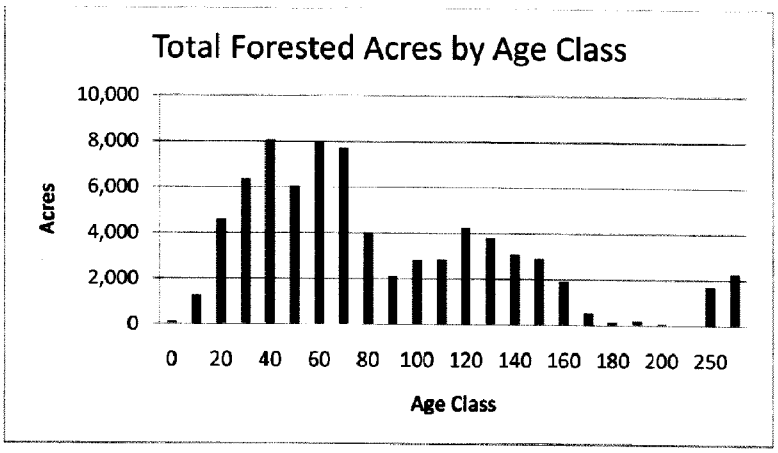

Figure A2. Forested acres by age class in the study area

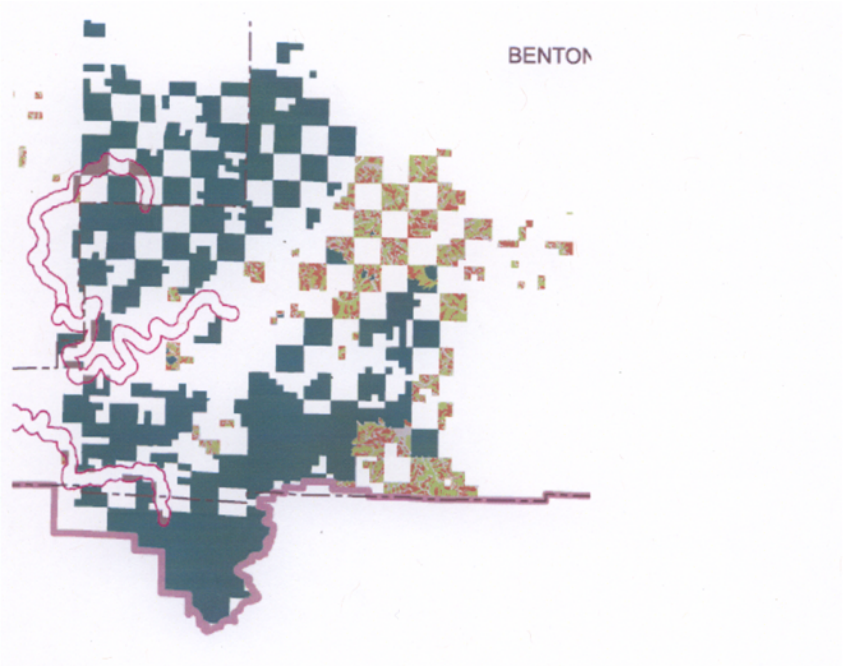

Figure A3. Land allocations in the study area under the Northwest Forest Plan (Dark green= Late Successional Reserves, Light green = Riparian Reserves, Red/brown = Matrix

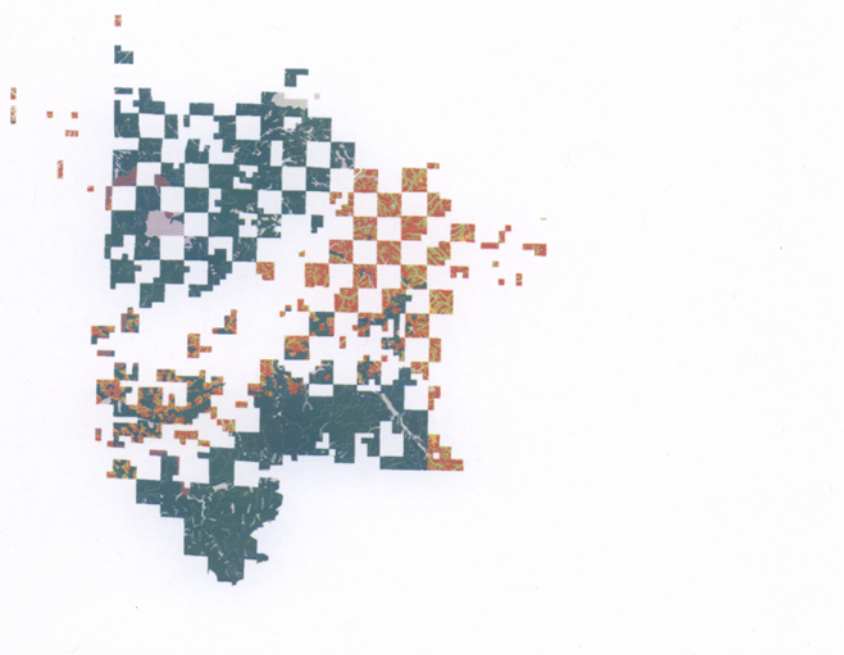

Figure A4. Land allocations in the study area under the Western Oregon Plan Revision ((Dark green= Late Successional Reserves. Light green = Riparian Reserves. Red/brown = Matrix)

The CHAIRMAN. To quote a famous phrase. Thank you very much, Commissioner. Mr. Myers, you are now recognized for five minutes.

STATEMENT OF WILLIAM G. MYERS, III, PARTNER, HOLLAND AND HART

Mr. MYERS. Thank you, Chairman Hastings and Members of the Committee. I appreciate the opportunity to be here, and it is good to see Congressman Labrador from my home state of Idaho. Good to see you again, Congressman.

I am going to avoid the temptation to read excerpts of my written statement and try to talk a little bit more extemporaneously. That necessarily means I will be less eloquent than my predecessors on the panel, but it may also mean that I will take less time, which I suspect you would appreciate. But with an exception that I will read a couple of quotes.

The first quote I want to read is from the Supreme Court decision in 2005, *Norton v. Southern Utah Wilderness Alliance*, in which the unanimous Supreme Court said, "Multiple use management is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put."

The question for this Committee is whether the Wild Lands Policy announced by the Secretary is an appropriate balance well struck by the Department. You have heard already today from

those who think that the answer to that question is No. I will provide you with some insights on the legal issues which tend to be more mundane, perhaps less interesting than the policy considerations, but nonetheless something I hope you are interested in.

Of course, the basis for the BLM's action in this Administration and previously is the Federal Land Policy and Management Act, which calls primarily for multiple use and sustained yield. I have had an opportunity to read the BLM's new manuals that were issued last Friday, although with some haste because I was preparing to come here and traveling. So I have not had a chance to read them word for word.

But from what I have read, I would like to comment on a few passages. Manual 6301 is the Duty to Inventory. I would like to dispatch with one misconception that I think is swirling in this discussion. The duty to inventory is not new with Secretary Salazar. It was not new with Secretary Norton. The Norton-Leavitt Agreement specifically disclaimed any undoing of the duty to inventory. In other words, it maintained that duty.

Judge Dee Benson, Federal district judge in Utah, reviewed the Norton-Leavitt settlement because it was challenged by some environmental groups. In ruling on that challenge, Judge Benson said that the Norton-Leavitt Agreement preserved the duty to inventory. The Tenth Circuit, in reviewing Judge Benson's decision and upholding it, likewise said the Department has an ongoing duty to inventory public lands for all the multiple uses and resources that exist there.

The Ninth Circuit has said the same thing. So I think we can put aside for the moment, and perhaps for a while, the question of whether the Department has an ongoing duty to inventory the public lands. It does. That is not the question. The question here is whether the inventorying of one of those values or resources, namely, wilderness, perhaps to the exclusion of others, is the proper balance.

Now, Secretary Salazar, to be fair, did not disclaim the duty to inventory for other resources. But the fact that he was silent on all other resources and focused his efforts and energy only on one naturally gives rise to questions as to whether he understands the coequal duty of the BLM to inventory for all BLM resources and values.

Manual 6302 deals with RMP production and basically says that an RMP can be created and should be created to sustain wild lands if wilderness characteristics exist. In Secretary Salazar's order and the manuals, there is no statement that says that that designation can be undone in the future by an amendment to a resource management plan. Of course, it can be undone because that is what FLPMA says. And in reading Director Abbey's testimony, I was pleased to see that he said as much. These designations can be changed. But the fact that the Secretary's order did not say so again has given rise to concern and skepticism.

The question of wilderness characteristics is crucial. What are they? Well, size is one of them, but not really because it starts out with 5,000 acres or more, but then it is really less than 5,000 if you can manage it practicably for less amount of acreage. And then

it is even less than that. It is islands of public land. I don't know the definition of that phrase.

Outstanding opportunities for solitude, those can be cabinet of one portion of an area with wilderness characteristics and do not have to apply to the entire area. Primitive and unconfined recreation exists, not really, because under the order you can include ATV use and mountain biking. So that one seems to be out of the way.

The only criterion that is left is naturalness. And there it is the apparent naturalness in the view of the, quote, "average visitor." I don't know where the mythical average visitor lives. I suspect that visitor would have a different view if they were from the District of Columbia as if they were from Ada County. But that is nonetheless where we are.

So the three criteria used in the Wilderness Act seem to be whittled away and dissolved to a certain extent by the order.

There are concerns about what the Secretary will do in managing these lands, which he deems as chiefly valuable for wilderness in the light of the Taylor Grazing Act, which sets up grazing districts, which the Secretary has to designate, and establishes those grazing districts as chiefly viable for grazing.

The Tenth Circuit said, quote, "Congress intended that once the Secretary established a grazing district under the Taylor Grazing Act, the primary use of that land should be grazing," closed quote. So I don't know how the Secretary is going to balance the designation of an area that is already chiefly valuable for grazing as now chiefly valuable for wilderness. It is silent in the order, again giving rise to concerns.

There are other concerns that arise in the context of the APA and whether the process really is a regulation or rulemaking that requires APA compliance with public notice and comment. There are also concerns or issues related to NEPA. Why didn't this order go through a programmatic EIS like the wind energy order of the Secretary and the geothermal program of the Secretary? Both of those actually dealt with less BLM acres than this order does, and yet those both were able to go through the public process of a programmatic EIS.

The failure to apply it in this case could lead to some questions.

The CHAIRMAN. The gentleman's full statement is in the record, and I appreciate that.

Mr. MYERS. I appreciate your time, Mr. Chairman.

[The prepared statement of Mr. Myers follows:]

Statement of William G. Myers III, Partner, Holland & Hart LLP

Thank you, Mr. Chairman and the members of the House Committee on Natural Resources, for your invitation to appear today to address the impact of the Administration's Wild Lands policy. I am a partner in the law firm of Holland & Hart LLP. The firm has 15 offices in seven western states and the District of Columbia. My office is in Boise, Idaho.

In an effort to advance the Committee's understanding of the Order, the manuals that have accompanied the Order, and their potential impacts, I would like to discuss some of the legal ramifications as I currently perceive them. It is important to note that the Order is only two months old and the three BLM manuals that accompany the Order were published last Friday. I expect that my opinions will evolve once I have had the opportunity to spend more time reviewing the documents.

The U.S. Supreme Court stated in its unanimous decision in *Norton v. Southern Utah Wilderness Alliance,* 542 U.S. 55, 58 (2004), that multiple use management "is

a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put." The question before this Committee is whether Secretary Salazar struck the proper balance with his Secretarial Order that focused exclusively on wilderness values and uses among the many competing uses to which BLM land can be put.

Regardless of your perspective on this question, we can all agree that the current debate validates the Supreme Court's statement that multiple use management is an enormously complicated task. These complications have given rise to unending discussion, debate, policy pronouncements, and litigation.

Prior to discussing the issues in detail, some historical perspective is useful. For a history of federal land policy related to wilderness, I refer the Committee to an article I co-authored last summer and attach to this written testimony. That article, entitled *Along the Trammeled Road to Wilderness Policy on Federal Lands,* provides an overview of the wilderness debate since the passage of the Wilderness Act in 1964.[1] As noted in the article, the Wilderness Act did not directly address BLM's duties with respect to designation or management of lands with wilderness characteristics ("LWCs"). The Federal Land Policy and Management Act, 43 U.S.C. §§ 1701–83, ("FLPMA") changed that by creating a two-step inventory and management process applicable to all federal lands. Section 603 of FLPMA contained BLM's wilderness study obligations, § 201 contains the Secretary's all-encompassing inventorying responsibilities, and § 202 requires the Secretary to undertake land use planning. Since nearly the moment that FLPMA was signed into law, the debate has raged as to what these primary duties of the BLM are with regard to wilderness, how the three sections relate to each other, and the latitude of the Secretary to interpret the provisions as he or she deems best.

Two years after passage of FLPMA, the BLM published a Wilderness Inventory Handbook dated December 27, 1978. Proving that the past is prologue, the preface to that Handbook noted four major issues of significance in the wilderness inventory process that were revealed to the BLM through a series of more than 60 meetings held throughout the western United States, in the lake states, and in Washington, D.C. This extensive public process was used by BLM in 1978 to review its duties under FLPMA regarding wilderness policy. Among the four most significant issues was that of public involvement. Many people expressed their concern that public participation in the wilderness review process was not adequate, particularly because the inventory process dealt with such subjective judgments as what is a road, what is solitude or naturalness, and even what is meant by the word "outstanding." The current wilderness policy announcement has generated a number of comments among those who would have welcomed a public participation opportunity similar to that initiated by former Secretary Cecil Andrus in devising the Wilderness Inventory Handbook of 1978.

In his public remarks announcing the Order, Secretary Salazar stated that the BLM was compelled to produce this initiative because its wilderness management guidance was revoked in 2003 as a result of a settlement between the Department, under the guidance of then-Secretary Gale Norton, and the State of Utah in litigation captioned as *Utah, et al. v. Norton, et al.,* 2006 WL 2711798 (D. Utah 2006). The court reviewed the obligations of the Department in the context of wilderness management.

It should be noted, however, that the case focuses on the Department of the Interior's ability to continue to designate Wilderness Study Areas under § 603 of FLPMA after 1991 as opposed to Interior's authority under §§ 201 and 202. In a written set of questions and answers provided with the Secretary's public announcement, he stated that the so-called Norton-[Utah Governor] Leavitt Settlement does not apply to the FLPMA sections supporting his Wild Lands policy. The Secretary's Order and accompanying manuals nowhere refer to Wilderness Study Areas which are the result of the BLM's 15-year initial inventory process after the passage of FLPMA § 603. Secretary Salazar separates the § 603 process for WSAs from his current initiative.

In *Utah v. Norton,* Federal District Court Judge Dee Benson dismissed the environmental groups' claims for lack of standing to challenge the settlement, lack of ripeness for adjudication, and lack of final agency action with respect to the settlement. The judge did not stop there, however. In the event that an appellate court might disagree with his dismissal, the judge analyzed the merits of the challenge and found that the settlement complied with both FLPMA and the National Environmental Policy Act ("NEPA"). The environmental groups appealed to the Tenth Circuit Court of Appeals which ruled that the case was properly dismissed for lack

[1] William G. Myers III & Jennifer D. Hill, "Along the Trammeled Road to Wilderness Policy on Federal Lands," 56 *Rocky Mt. Min. L. Inst.* 15–1 (2010).

of jurisdiction on ripeness grounds. *Utah v. United States Department of the Interior,* 535 F.3d 1184, 1186 (10th Cir. 2008).

In a prescient passage, the district court stated that the relief sought by the environmental groups might ultimately come through the political process. *Utah v. Norton,* 2006 WL 2711798 at *17. That political process began in part through a document produced by 28 environmental groups entitled "Transition to Green: Leading the Way to a Healthy Environment, a Green Economy, and a Sustainable Future" and presented to the Obama Administration transition team in November 2008. The document catalogued the groups' most urgent requests of the incoming Administration. Three top issues were catalogued for the BLM including the preservation of lands with wilderness characteristics and the reversal of the "sweetheart 'no wilderness' court settlements and policies" of the previous Administration. Secretarial Order 3310 seems to be the Administration's response to that request.

In reviewing the statutory background for his discussion of wilderness issues, Judge Benson stated that FLPMA § 102 established Congress' policy that, unless otherwise specified by law, the planning and management of inventoried lands must be on the basis of multiple use and sustained yield. *Utah v. Norton,* 2006 WL 2711798 at *7, citing 43 U.S.C. § 1701(a)(2). The court also noted that "multiple use" is defined by FLPMA as management of public lands and their various resources and values so that they are utilized in the combination that will best meet the present and future needs of the American people. *Id.* "Sustained yield" is defined by FLPMA as the achievement and maintenance in perpetuity of a high-level, annual or regular periodic, output of the various renewable resources of the public lands consistent with multiple use. *Id.* Secretarial Order No. 3310 focuses on one value among the multiple uses protected by FLPMA—wilderness characteristics—and in doing so elevates that value above all others. It is interesting to note that FLPMA, when discussing that particular value, places a caveat that management for wilderness values will be undertaken "where appropriate." This caveat is not placed before the other resources or values listed in the same section. *See* 43 U.S.C. § 1701(a)(8). Secretarial Order No. 3310 seems to move the modifier preceding wilderness preservation and protection and place it in front of all other uses.

BLM Manual 6301: The Duty to Inventory

Prior to Secretary Salazar's announcement, the courts had confirmed that the BLM had an ongoing duty under FLPMA § 201 to inventory for all multiple use values on BLM lands including wilderness characteristics. According to Judge Benson, the Norton-Leavitt Settlement recognized this ongoing duty that requires BLM to "prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values...." 43 U.S.C. § 1711(a). Neither Secretary Norton nor Governor Leavitt disputed that duty in their settlement agreement. *Utah v. Norton,* 2006 WL 2711798 at *20.

The Tenth Circuit, in affirming Judge Benson's decision, reiterated that duty. *Utah v. United States Department of the Interior,* 535 F.3d at 1187. The Tenth Circuit cited FLPMA § 201 for its provision that such inventories do not automatically change BLM's actual management practices. *See* 43 U.S.C. § 1711(a) ("The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.") The Ninth Circuit likewise reviewed the Norton-Leavitt Settlement and concluded that it did not preclude an inventory or management to protect wilderness values, assuming that there was no automatic application of the non-impairment standard. *Oregon Natural Desert Ass'n v. BLM,* 531 F.3d 1114, 1135–36 (9th Cir. 2008). Consequently, there is no debate on whether BLM has an ongoing duty to inventory for wilderness values. It does, just as it has an ongoing duty to inventory for all other values on BLM lands.

Secretary's Salazar's focus on wilderness values only, to the exclusion of any other values, raises questions as to whether the Secretary places an equal emphasis on BLM's co-equal duty to inventory for other resources and values including food and habitat for domestic animals, human occupancy and use, range, timber, minerals, watersheds, and all other values on the public lands. Additionally, I have been unable to locate anywhere within the Secretarial Order or the accompanying BLM manuals any statement that LWCs, when designated as "Wild Lands" in the land use planning process, can lose that designation through a subsequent land use planning process. The Ninth Circuit's interpretation of land use planning duties under § 202 of FLPMA confirms that possibility. Secretary Salazar did not disclaim that responsibility; he simply did not state it in the documents. As Judge Benson put it, managing land under § 202 to protect wilderness characteristics or any other values differs from WSAs under § 603 of FLPMA because a WSA is a *de facto* wilderness until Congress acts to release it back to multiple use whereas under § 202 the

lands will be subject to possible changes in management plans. *Utah v. Norton,* 2006 WL 2711798 at *23.

Wilderness Characteristics

BLM Manual 6301 provides BLM staff with policy, direction, procedures, and guidance for conducting wilderness characteristics inventories under FLPMA § 201. Section .14 guides BLM staff in the search for wilderness characteristics. The manual correctly defines an LWC as containing three specific criteria taken from the Wilderness Act, 15 U.S.C. § 1131(c). Those criteria are size, naturalness, and outstanding opportunities for either solitude or primitive and unconfined recreation.

- **Size**—Persons generally familiar with the wilderness debate think that wilderness must be at least 5,000 contiguous acres. This is the first definition of size in the Wilderness Act itself. There is, however, a significant exception in the Act which allows wilderness to be less than 5,000 acres if its preservation and use in an unimpaired condition is "practicable." *Id.* FLPMA § 603 references the Wilderness Act when describing the BLM's duty to conduct the first wilderness inventory and adopted the 5,000 acre limitation but avoided the notion of practicable management of smaller areas and adopted the phrase "roadless islands of the public lands." 43 U.S.C. § 1782(a). BLM Manual 6301 interprets this phrase as a separate size criterion in addition to the Wilderness Act's two size criteria. In doing so, § .14 states that an LWC's size may consist of 5,000 acres or more, smaller areas that are practicable, or any roadless island of the public lands. The manual does not define the phrase "roadless island." Consequently, one could perceive a small island of BLM land in a remote area bounded by roads that, due to its remoteness, meets the other criteria and thus is capable of designation as an LWC. The size criterion begins to lose any significance. Additional legal research may further define this concept of a roadless island. The Tenth Circuit's decision in *Utah v. United States Department of the Interior* interpreted FLPMA § 603 as requiring a minimum of 5,000 acres including the roadless islands (535 F.3d at 1187–88). In interpreting a 1985 federal court decision, Utah Federal District Judge Benson read that case to interpret FLPMA § 603, including its roadless island concept, as not authorizing wilderness reviews of lands of less than 5,000 acres. *See Utah v. Norton,* 2006 WL 2711798 at *25–26, citing *Sierra Club v. Watt,* 608 F. Supp. 305, 313. (E.D. Cal. 1985.)
- **Naturalness**—Under the Wilderness Act, wilderness does not need to be entirely natural, rather it may be "primarily" natural, "with the imprint of man's work substantially unnoticeable." 16 U.S.C. § 1131(c). The BLM manual provides a list of examples of "man's work" that would not detract from the definition of naturalness for purposes of defining an LWC. They include such things as trail signs, bridges, fire towers, radio repeater sites, fencing, and the like. BLM staff is instructed to "avoid an overly strict approach to assessing naturalness." Manual at 6301.14.B.2.b(2). In Form 2 at the back of the Manual for documentation of wilderness characteristics, BLM staff is asked to answer a simple question: Does the area appear to be natural? If, in the opinion of the BLM staff completing the form, the answer is yes, then the area passes this test for an LWC. "Apparent naturalness" is defined as an area that "looks natural to the average visitor...." *Id.* at .2(b)(1)(b).
- **Outstanding Opportunities for Solitude or a Primitive and Unconfined Type of Recreation**—This criterion is disjunctive, requiring solitude or primitive and unconfined recreation. BLM staff is directed not to disqualify an area based on the finding that outstanding opportunities exist in only a portion of the area. *Id* at .14.B.3. Consequently, once the malleable size criterion is met, an area may partially contain outstanding opportunities while the rest of the area lacks this mandatory requirement. This criterion must also be read in conjunction with the second BLM Manual 6302, § .13.D, and the third BLM Manual 6303, § .11.A. Under Manual 6302, for land use planning, an LWC's apparent naturalness may remain under a number of impacts. For example, mountain biking or motorized access may be allowed to impact naturalness, even though such uses are expressly prohibited in Wilderness Areas and wilderness is defined the same in both the Wilderness Act and the BLM manuals. Thus, BLM distinguishes between impacts to LWCs and impairment of LWCs. "Apparent naturalness" is apparently something less than Wilderness Act naturalness. Under Manual 6303, the BLM describes which lands may be defined as clearly lacking wilderness characteristics when considering project-level decisions. They are lands that do not meet the size criterion or its exceptions and/or the naturalness criterion. Oddly, this manual then states, "Documentation of a clear lack of wilderness charac-

> teristics should not be based on the solitude or primitive and unconfined recreation criteria." Manual 6303 leaves BLM staff and the public uninformed as to why the absence of one of the three mandatory criteria for an LWC is insufficient to remove lands from LWC status. A logical conclusion is that while BLM Manual 6301 states that outstanding opportunities are a necessary element for definition of an LWC, that mandatory requirement is vitiated by both Manual 6302 that eliminates the primitive nature of recreation and Manual 6303 that discounts the criterion altogether—leaving only naturalness and size as criteria. As noted, these manuals at once adopt the Wilderness Act definition of wilderness and depart from it. Additionally, because "size" is liberally defined to mean any island of public lands regardless of size, the only meaningful criterion seems to be apparent naturalness as defined by the "average" visitor.

As stated in the 1978 Wilderness Inventory Handbook, each element of the definition of an LWC requires subjective judgments such as, what is a road?; what is solitude?; what is outstanding?; what is natural? Add to this list, what does the average visitor perceive? Although it is clear that BLM must make a series of discretionary decisions in defining an LWC, it is not clear whether these decisions are subject to public review and, if a party is adversely affected by the decision, whether that party may appeal the decision through the Department's Interior Board of Land Appeals or to a federal district court. The BLM has previously taken the position on its forms documenting wilderness characteristics that such decisions are not appealable.

BLM Manual 6302: Consideration of LWCs in the Land Use Planning Process

Chiefly Valuable for Wilderness

BLM Manual 6302 § .06 reiterates the policy announced in Secretarial Order No. 3310 that management of the wilderness resource by BLM is a "high priority" and that the natural state of such lands should be protected to the extent possible in the land use planning process by avoiding impairment of those wilderness characteristics. This policy might be paraphrased as a determination that LWCs are chiefly valuable for wilderness. The Manual discusses uses of such lands that might conflict with the LWC designation. Livestock grazing is "ordinarily" consistent with LWCs. Manual 6302 § .13.D.6. The Manual then notes, however, that some grazing management practices including new range improvement projects, vegetation manipulation or needs for motorized access could impact the overarching duty to protect the wilderness characteristics. *Id.* This restriction on possible grazing use seems to be more restrictive than the restrictions that apply to that use in FLPMA § 603. Under FLPMA § 603(c), the Secretary is directed to manage lands with wilderness characteristics designated as WSAs so as to not impair their suitability for preservation as wilderness "subject, however to the continuation of existing...grazing uses...in a manner and degree in which the same was being conducted [in 1976 and the passage of FLPMA]." The BLM manual fails to recognize this exception within § 603 that grandfathers existing grazing uses in existence in 1976. The Wilderness Act itself provides for so-called "non-conforming uses," one of which is livestock grazing established prior to the effective date of the Act. 16 U.S.C. § 1133(d)(4)(2).

The Manual calls into question the compatibility of grazing on lands that were not included in the FLPMA § 603 inventory process and that are under existing land use planning authorizations. The Manual's policy preference that LWCs are chiefly valuable for wilderness seems to conflict with the Secretary's obligations to manage those lands as chiefly valuable for grazing. Whenever the BLM considers a proposal to cease livestock grazing on public rangelands and those lands are within a designated grazing district, as the vast majority of BLM grazing lands are, the BLM must analyze whether the lands are still "chiefly valuable for grazing and raising of other forage crops" under the Taylor Grazing Act, 43 U.S.C. § 315.

The Tenth Circuit Court of Appeals analyzed this issue in *Public Lands Council v. Babbitt,* 167 F.3d 1287 (10th Cir. 1999), *aff'd on other grounds,* 529 U.S. 728 (2000). The Tenth Circuit's interpretation of the Taylor Grazing Act was that grazing districts are to be grazed unless range conditions require grazing reductions on a temporary basis. The court stated that the presumption is that if and when those range conditions improve and more forage becomes available, permissible grazing levels would rise. The court criticized the BLM's grazing regulations that would have allowed for the placement of grazing districts into non-use status for the entire duration of a grazing permit. The court found that:

> This is an impermissible exercise of the Secretary's authority under section three of the [Taylor Grazing Act] because land that he has designated as 'chiefly valuable for grazing livestock' will be completely excluded from

> grazing even through range conditions could be good enough to support grazing. Congress intended that once the Secretary established a grazing district under the TGA, the primary use of that land should be grazing.

Id. at 1308.

Neither the Secretary's Wild Lands Order nor the implementing BLM manuals explain how the Secretary reconciles the use of BLM grazing districts as chiefly valuable for grazing when those lands also contain wilderness characteristics. In the absence of an explanation, the BLM is directed to elevate wilderness protection above grazing use in seeming contradiction to the Taylor Grazing Act. Perhaps the Secretary could weave this course through the land use planning process designated in FLPMA but any such determination that would change a grazing district boundary requires a secretarial decision through the FLPMA process. None of these procedural steps is discussed in the Manuals.

BLM Manual 6303: Impact to and Impairment of LWCs at the Project Level

The only section within the Order or the three manuals that clearly defines when an LWC may be "impacted" or "impaired" is at Manual 6303, §.14. This section lists five circumstances that would allow BLM to issue a project decision that would impact an LWC not yet designated as Wild Lands through the land use planning process. It is unclear what, if any, projects are allowed to impair Wild Lands designated under Manual 6302.

For areas not analyzed under Manual 6302, the enumerated exceptions are:

- For the exercise of valid existing rights
- For renewal of grazing permits (not including range projects)
- If the proposed action will create no more than minor disturbance or minor impacts to the LWCs
- For temporary facilities for wild horse and burrow gatherings, and
- If the proposed action will control expansion of invasive exotic species.

If the proposed project does not meet one of these five criteria, the project may not proceed without concurrence of the BLM State Director. In cases where a project would preclude BLM from exercising its discretion to designate an LWC as Wild Lands in the future, the field staff must forward the decision to the Washington, D.C. office of the BLM and the National Landscape Conservation System staff for review and permission to allow the project to proceed.

APA Compliance

It is reasonable to ask whether the Secretarial Order and the BLM manuals implementing that Order constitute regulations that should be promulgated pursuant to the Administrative Procedure Act with its requirements for public notice and comment. As noted in an important decision by the United States Court of Appeals for the District of Columbia Circuit, a familiar pattern occurs when Congress passes a broadly-worded statute, here the Wilderness Act. "The agency follows with regulations containing broad language, open-ended phrases, ambiguous standards and the like. Then, as years pass, the agency issues circulars or guidance or memoranda, explaining, interpreting, defining and often expanding the commands in the regulations....Law is made, without notice and comment, without public participation, and without publication in the Federal Register or the Code of Federal Regulations." *Appalachian Power Co. v. EPA,* 208 F.3d 1015, 1020 (D.C. Cir. 2000).

This pattern occurs in other settings and is seemingly applicable to the current Wild Lands policy. As recently as last month, the Federal District Court for the District of Columbia ruled against the EPA once again, citing *Appalachian Power, id.,* for issuing a pronouncement that was actually a legislative rule with the force and effect of law. The court cited another D.C. Circuit decision in 2005 to the effect that "new rules that work substantive changes...or major substantive legal additions...to prior regulations are subject to the APA's procedures." *National Mining Ass'n v. Jackson,* 2011 WL 124194 at *8, citing *U.S. Telecom Ass'n v. FCC,* 400 F.3d 29, 34–35 (D.C. Cir. 2005).

Secretary Salazar's Order was not shared with the public prior to announcement nor did the public have a formal opportunity to comment on the Order or BLM's manuals. Further research could be undertaken to determine whether the Order and BLM manuals constitutes a legislative rule with the force and effect of law that would necessitate compliance with the APA.

NEPA Compliance

Recently, when BLM has announced major policy initiatives, it has performed NEPA analysis. BLM has fulfilled its responsibilities under NEPA through the preparation of programmatic environmental impact statements to assess the environmental, social, and economic impacts associated with the policy or program and to evaluate alternatives to address the question of whether the proposed action

presents the best management approach for the BLM to adopt. *See, e.g.,* Final Programmatic Environmental Impact Statement on Wind Energy Development on BLM–Administered Lands in the Western United States, at ES–1 (June 2005), amending 52 land use plans; *see also* Final Programmatic Environmental Impact Statement for Geothermal Leasing in the Western United States, October 2008, proposing to allocate 118 million acres of BLM lands as open to geothermal leasing. In contrast, the Secretary's Wild Lands policy, which will apply to over 90% of BLM's 245 million acres that are not already managed as Wilderness Areas or WSAs, has no accompanying NEPA analysis.

NEPA declares that the federal government's continuing policy is to cooperate with state and local governments and other concerned public and private organizations "to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. § 4331(a). BLM has adopted FLPMA's mission statement as fully compatible with its own as described in BLM's National Environmental Policy Act Handbook H–1790–1, § 1.1 (Jan. 30, 2008). An explication of NEPA's requirements as they relate to Secretarial Order No. 3310 and the BLM manuals is beyond the scope of this testimony. It seems logical, however, that the Secretary intends that his Order will significantly affect the environment by protecting wilderness characteristics through land use planning and project-level decisions. Secretarial Order No. 3310, § 4.

Undoubtedly, the BLM would respond that NEPA will be fully complied with at such point in time that land use plans are amended pursuant to the policy or project-level decisions and that the Order itself brings about no environmental impact, significant or otherwise. *See* Manual 6302 .13.D. Yet, BLM has recently seen its obligations under NEPA as requiring programmatic EISs for other large-scale programs and policies including geothermal and wind energy. Additionally, BLM's NEPA regulations require BLM, "whenever practicable," to use a consensus-based management approach for the NEPA process. 43 C.F.R. § 46.110(e). This process assures that input from persons, organizations, or committees affected by the proposed action will be considered. *Id.* at (a). Persons, organizations, or committees that oppose an LWC or Wild Lands alternative may wonder how consensus can be achieved in light of the Secretary's order to protect LWCs whenever possible.

A specific issue that arose in the context of NEPA in the legal challenge to the Norton-Leavitt Settlement gives rise to interesting legal questions in the context of Secretary Salazar's Order. The regulation at 40 C.F.R. § 1506.1(a)(2) interprets NEPA and states that BLM may not limit the choice of reasonable alternatives that it considers when a NEPA process is underway. Query whether the Secretarial Order would cause BLM to violate this regulation by limiting its choices among reasonable alternatives for a proposed action because of the required protection of wilderness values in the land use plan following designation as Wild Lands.

In other words, if the land use plan follows the Secretary's Order and elevates Wild Lands above all other uses and a project proponent seeks to use BLM lands for a purpose that would conflict with Wild Lands designation, will the BLM be able to consider such conflicting uses or alternatives in the face of Secretary Salazar's Order? The Order states repeatedly that exceptions to Wild Lands protection may be made so as to impair wilderness characteristics but the BLM manuals are not clear as to the method for doing so except in the context of the very narrow exceptions for certain projects. If those exceptions do not provide BLM with a realistic opportunity to consider reasonable alternatives other than wilderness protection, the result may be a violation of the NEPA process. As noted, this legal theory needs further development.

Thank you, Mr. Chairman and members of the Committee, for inviting me to appear today. I would be pleased to answer any questions.

Attachment

[NOTE: The attachment has been retained in the Committee's official files.]

The CHAIRMAN. Thank you very much, Mr. Myers. Mr. Metcalf, you are now recognized for five minutes.

STATEMENT OF PETER METCALF, CEO/PRESIDENT, BLACK DIAMOND EQUIPMENT

Mr. METCALF. Mr. Chairman and Members of the Committee, thank you for this opportunity. I am Peter Metcalf, CEO and Co-Founder of Black Diamond Equipment, a publicly traded company,

and Vice Chair of the Outdoor Industry Association of America. I am here in support of Secretarial Order 3310 requiring the inventory of BLM lands.

I am concerned this policy is being framed as a jobs killer initiative. On the contrary, I connect the inventory and protection of wilderness characteristics to three core points: one, job creation and sustainable economies across the American West; two, adherence to multiple-use principles on BLM lands; and third, the balanced use of the natural and economic resources these lands provide.

With 125 million a year in revenue and a NASDAQ listing, Black Diamond manufactures and globally distributes human-powered outdoor recreational equipment. We employ over 475 employees worldwide and 250 at our Salt Lake City headquarters.

We began in the late 1980s with a commitment to create innovative gear and to champion the access to and preservation of back-country environments where our customers go to recreate. In this month's issue of the Harvard Business Review, Michael Porter's cover piece is entitled, quote, "How to Fix Capitalism and Unleash a New Wave of Growth." And I quote: "Companies must take the lead in bringing business and society back together. They must reconnect company success with social progress and not from a philanthropic way. They must recognize that optimizing short-term financial gain while overlooking the needs of their customers and the depletion of natural resources vital to their business is not sustainable," end quote.

The outdoor recreation industry is dependent upon healthy, diverse public lands. The American people need quality places to play, to hunt, to fish, including well-managed back-country wild lands and wilderness. These lands and waters in their natural state have economic value.

Together, we can replace the jobs versus conservation debate with a jobs versus jobs discussion, one that recognizes first the vast natural and economic resources for our public lands, and second the spectrum of jobs that build and sustain communities.

For too long, the active outdoor industry's economic clout has been overlooked. Annually, active outdoor recreation contributes over 730 billion to our country's economy, generates 88 billion in taxes, and supports 6.5 million American jobs. This isn't pocket change.

Americans spend 46 billion each year on active outdoor gear, apparel, and services. Additionally, they spend approximately 243 billion on active outdoor excursions totaling 289 million in direct expenditures. The 441 billion in indirect expenditures are a result of a ripple effect.

Hunters and anglers are an important segment of our industry. Over 13 million Americans hunt and 33 million fish. This supports over 900,000 jobs and over 6 billion in taxes. Sportsmen are dependent on public lands. In the wild back country, fish and wildlife can thrive. The conservation of these areas is vital to the economic future of hunting and fishing.

Our industry hosts out to retail and trade shows in Salt Lake City. These two annual shows bring over 2,000 companies, 40,000 people, and 40 million in direct spending to the city. Yet in the

summer of 2003, when then Governor Leavitt walked the show with me in the sold-out Salt Palace, he commented, quote, "I had no idea that such an industry existed."

Well, we do exist, and we do need to be heard. We ask that the natural landscapes we depend upon for the success of our businesses are sustained. Order 3310 properly places preservation and stewardship of outdoor recreation venues on equal footing with other uses of public lands. It puts our industry, with its need for the protection of wilderness characteristics, back in the multiple-use mix, along with other important economic drivers like oil and gas, mining, and coal.

Order 3310 is not about designating wilderness. Only Congress has that authority. The policy will inventory and provide them with current data, and will require that wilderness quality to be considered in planning appropriate uses of Federal lands. If wilderness qualities are altered now, the American people may lose options and resources.

In our quest to create a vital society, we learned that zoning communities keeps them vibrant. In zoning for manufacturing, commercial, residential, we understand that a vibrant community needs these facets in specific areas. The same is true for our public lands. They are lands of multiple use, but a civilized and vibrant culture understands that you achieve that through thoughtful zoning and not by allowing all uses of all lands.

There is room for all of us. Utah has 22.9 million acres of BLM lands. Only 260,000 are designated wilderness, and 3.2 million are wilderness study areas. Five million acres are under lease to the oil gas industry. Only 1 million of these leased lands are actually under production.

For generations, our public lands have helped define us as a people, and they provide a platform for one of America's most vibrant and sustainable economic sectors, the outdoor industry. Well-known futurist Stewart Brand, and I quote, "Natural systems are priceless in value and nearly impossible to replace, but their cheap to maintain. All you have to do is defend them." BLM's policy will do just that, restore a balanced and economically smart approach to the management of our uniquely American natural landscapes. Thank you.

[The prepared statement of Mr. Metcalf follows:]

Statement of Peter Metcalf, CEO/President and Co-Founder, Black Diamond Equipment

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear today. My name is Peter Metcalf and I am an entrepreneur and capitalist, the CEO/President and co-founder of Black Diamond Equipment, as well as the Vice Chair of the Outdoor Industry Association (OIA) which represents the country's leading outdoor gear, apparel, and footwear companies in the active, outdoor industry. I ask that my written testimony be included in the hearing record.

I am here today to speak in support of Secretarial Order 3310, that would require the Bureau of Land Management (BLM) to inventory lands under its jurisdiction. I'm concerned this policy is being framed by opponents as a jobs killing initiative. On the contrary, I believe the BLM policy has the potential to produce more jobs and sustainable local economies across the West.

Black Diamond Equipment develops, manufactures, and distributes outdoor recreation equipment worldwide. Our products include rock and ice climbing equipment, mountaineering and backpacking/travel gear, free-ride ski equipment, technical and high-end day packs, tents, trekking poles, and gloves. We are a 125 million dollar/

year, publicly traded, NASDAQ–100-listed company. We employ 475 people worldwide, including approximately 250 in Salt Lake City, UT.

Started in 1989, our founding idea was simple: "If we did good for the community, we would be rewarded by doing well as a business." Our commitment was and remains to create innovative gear, champion the access to and preservation of outdoor environments where our customers go to recreate, and do all this in a highly ethical manner.

We are now 22 years later, and in this month's issue of the Harvard Business Review, is a thought-provoking piece authored by the guru of Competitive Strategy, Michael Porter. In his cover story entitled "How to fix capitalism and unleash a new wave of growth," he writes, "...that companies must take the lead in bringing business and society back together; they must reconnect company success with social progress and not from a philanthropic way. They must recognize that optimizing short term financial gain while overlooking the needs of their customers and the depletion of natural resources vital to their business is not sustainable."

The outdoor recreation industry is dependent on the health of our public lands. Natural resources are what our customer's need—access to well preserved and stewarded outdoor landscapes including Wilderness and wild lands and waters. These lands, in their natural undeveloped state, have economic value.

We need to replace the "jobs vs. conservation" debate of today, with a "jobs vs. jobs" discussion—one that is about the type of jobs; the long-term sustainability of those jobs; their contributions to the health of a community and society; economic balance; and about what sort of economic, natural, and societal legacies we want to leave our children.

I'd like to start that discussion today. For too long, the outdoor industry's contribution to the health and vibrancy of the American economy has been overlooked. Our industry in highly recession resistant; contributes over $730 billion to the American economy each year; and generates $88 billion in annual state and federal tax revenue. 6.5 million Americans jobs are supported by the active outdoor recreation economy. This ain't pocket change.

The outdoor sector is a truly major part of the U.S. economy; one that America still dominates globally; and one that represents opportunities for sustained economic growth in communities, rural and urban, across America; The outdoor industry's global brand is built upon America's iconic and unique wild lands and wilderness—natural resources that are recognized and respected around the globe. There is a reason why Utah's license plates feature Delicate Arch and not an oil rig. You cannot copy in China what we, the American people, have had the wisdom to preserve here, nor can you do it more cheaply in Bangladesh.

The direct and indirect impacts of the industry can be broken down as follows: Americans spend $46 billion each year on active, outdoor equipment, apparel, footwear, accessories, and services. Additionally, they spend approximately $243 billion on outdoor excursions within our sector every year. This adds up to $289 billion in direct expenditures. The indirect expenditures, totaling $441 billion, are the result of a ripple effect—the sum total of economic interactions that impact and benefit each other. This ripple effect encompasses manufacturing, transportation and warehousing, real estate and rentals, accommodations and food services, financing and insurance, professional services (such as technical and scientific).

Many rural towns that border BLM lands have experienced both the boom and the bust that come with resource extraction. In Moab, Utah, uranium exploration and mining put the town on the map. When the bust came unemployment was rampant. Today, recreation drives nearly 65 percent of the town's economy.*(2)*. Moab attracts climbers, mountain bikers, hikers, and boaters from around the world. It has been a beacon for similar rural towns near BLM lands throughout the country. In 1995, the town of Fruita, Colorado was suffering. At that time there were some 50 miles of trail on BLM lands and a single bike shop in town that did about $200,000 in annual revenues.*(3)* By 1998 volunteers had worked with the BLM to increase the miles of trail to 300 and the bike shop's sales went to over $1,000,000. Now there are several bike and outdoor shops in Fruita, in addition to dozens of restaurants and related businesses. If you look you can find examples like Fruita and Moab in every state in the West. Time and time again we have seen that outdoor industry jobs from retailers to outfitters and guides endure and remain stable despite fluctuations in resource extractive industries. As finite natural resources decrease and alternatives are developed, these booms and busts will continue. Whereas, the popularity and demand for opportunities to visit land in its natural state will only increase as population grows and these natural places increase in esthetic and economic value.

While we all recognize that motorized recreation such as snowmobiling brings money into communities, we cannot overlook the economic power of active outdoor

recreation. 2007 figures provided by the USDA Forest Service show that, in the White River National Forest in Colorado—the most heavily visited national forest in the nation—four times as many visitors said that cross-country skiing was the primary purpose of their visit than said snowmobiling was the primary purpose. Using modeling from the Forest Service's National Visitor Use Monitoring Program, it's estimated that cross country skiers outspent snowmobilers $3.45 to $1.00 during their visits. That is, for every dollar spent by snowmobilers in the local economy on gas, food, lodging, souvenirs and incidental purchases, cross country skiers spent an estimated $3.45 that year. *(4)*

Hunters and anglers represent an important segment of our industry—over 13 million Americans hunt and 33 million fish. They collectively support over 900,000 jobs nationwide and over $6 billion in federal and state taxes. U.S. Fish and Wildlife Service estimates there were 375,000 anglers in Utah in 2006, fishing some 3.5 million days, and 166,000 hunters compiling 1.7 million days of hunting.

Successful sportsmen need wild, unroaded backcountry for hunting and angling, for habitat, and as breeding grounds. These lands have long been recognized as places where fish and wildlife can thrive and hunters and anglers can experience the outdoors in a wild, natural state. In addition to their social and recreational importance, backcountry lands contribute to biodiversity and watershed health. The conservation of these areas is vital to the economic future of hunting and fishing on our public lands.

I would like to submit for the hearing record a letter from 20 hunting and angling organizations in support of the Secretarial Order 3310. These organizations, representing hundreds of thousands of sportsmen, recognize the Order creates an open and transparent public process for protecting the prized places in our country that remain wild and unroaded.

Our industry hosts the Outdoor Retailer tradeshow in Salt Lake City. The two annual shows bring over 2,000 companies, 40,000 people from all over the world, and $40 million in direct spending to the city. Yet, in the summer of 2003, when Governor Leavitt walked the floor of the tradeshow with me, in the sold-out Salt Palace convention center, he commented, "I had no idea that such an industry existed."

We are critical to Utah and, with national contributions of $730 billion annually, we need to be heard. We just request that the natural environment and landscapes we depend upon for the success of our businesses are sustained. Protecting natural areas is proving good for quality of life, business and local communities as noted by Paul Lorah, Ph.D, in his study entitled, *Environmental Protection, Population Change and Economic Development in the Western United States:*

"In counties where the shift to services is most advanced, the relationship between the environment and local economic security has fundamentally changed. Economic security no longer depends on exporting raw materials. Instead, the presence of natural amenities—pristine mountains, clean air, wildlife, and scenic vistas—stimulates employment, income growth and economic diversification by attracting tourists (and their credit cards), small business owners (and their employees), and retirees (and their stock portfolios). Because of this, previous research (Ullman 1954, Williams and Sofranko 1979, Rasker 1993, 1994, 1995, Power 1991, 1995, Loomis and Walsh 1997, Rudzitis 1993) suggests that natural amenities are an increasingly important component of economic development in rural regions of the western United States, and are likely to be associated with relatively diversified economies, rapidly growing service sectors, and population growth." *(5)*

Secretarial Order 3310 properly places preservation and wise stewardship of outdoor recreation venues and wildlife habitat on equal footing with other uses of public lands. It puts our industry, with its need for the protection of wilderness characteristics, back in the multiple-use mix, along with activities such as oil and gas leasing, hard rock mineral claims, coal leasing, and timber sales.

The policy requires the agency to inventory its lands and compile information on whether the lands have wilderness qualities, which Congress mandates BLM to do under FLPMA. Any good business owner takes routine inventories of existing stock to know what products are available, what they're low on, what needs to be managed better. Assessments by experts in land resource management can lead to a more efficiently run agency.

Secretarial Order 3310 is NOT about Wilderness—only Congress has the authority to designate land as part of the National Wilderness Preservation System. Rather, the Order aims to provide Congress the most up-to-date and comprehensive information possible, so Members of Congress are able to make the best and most-informed decisions possible IF they choose to consider BLM lands for Wilderness designation. By protecting lands with wilderness characteristics, it preserves the prerogative of Congress to determine whether or not these lands warrant formal

Wilderness designation at some future date. If wilderness quality lands are damaged, Congress loses this option. We, as a civilized culture, in our quest to create a vital society, long ago learned that we must zone our communities to make them vibrant. We have areas zoned for manufacturing, commercial, residential, and recreational uses. We do so understanding that a community needs all of these facets but that a healthy, vibrant, community needs these facets in specific, well thought out, areas. It is mutually incompatible to have manufacturing in residential areas or heavy commercial near schools or churches.

The same is true for our public lands—they are lands of multiple-use, but a civilized and vibrant culture understands that you achieve that through thoughtful zoning and not by allowing all uses on all lands.

I believe there is room for all of us. Utah has 22.9 million acres of BLM lands. Of these lands, approximately 260,000 are designated Wilderness and 3.2 million are Wilderness Study Areas. Five million acres of BLM lands are under lease to the oil and gas industry; only one million of these leased lands are under production.

For generations, our public lands have helped define us as a people. They have played an integral role in forging our uniquely American culture of self-reliance and independence. And they provide the platform for my industry—one of America's fastest growing, vibrant, entrepreneurial, recession resistant, and sustainable economic ecosystems. Human-powered outdoor recreation also helps to keep our populations active, exercising, and healthy.

Well known futurist, Stuart Brand, stated, "Natural systems are priceless in value and nearly impossible to replace, but they are cheap to maintain. All you have to do is defend them." BLM's policy will do just that—restore a balanced and economically smart approach to the management of our uniquely American natural landscapes.

Thank you. I ask that the attached letter from over 25 businesses supporting the BLM wild lands policy be submitted as part of the hearing record, along with the aforementioned sportsmen's letter.

Sources

1. Outdoor Industry Foundation, The Active Outdoor Recreation Economy, Fall 2006 report
2. Moab BLM Resource Management Plan
3. Source—Over the Edge Bike Shop
4.. Data from 2007 Forest Service National Visitor Use Monitoring results; compiled by Michelle Haefele, Ph.D, resource economist with The Wilderness Society.
5. *Environmental Protection, Population Change and Economic Development in the Western United States;* Paul Lorah, Ph.D., Assistant Professor, Department of Geography,University of St. Thomas.

Attachments—submitted for hearing record

1. Conservation Alliance/Outdoor Industry Association Wild Lands Letter
2. Sportsmen's Wild Lands Letter

Theodore Roosevelt Conservation Partnership * National Wildlife Federation * Association of Northwest Steelheaders * Backcountry Hunters & Anglers * Bull Moose Sportsmen's Alliance * Colorado Backcountry Hunters & Anglers * Colorado Wildlife Federation * Idaho Backcountry Hunters & Anglers * Idaho State Bowhunters * Idaho Traditional Bowhunters * Idaho Wildlife Federation * Montana Backcountry Hunters & Anglers * Montana Wildlife Federation * New Mexico Wildlife Federation * New Mexico Backcountry Hunters & Anglers * Renewable Resources Coalition * Southwest Consolidated Sportsmen * Utah Backcountry Hunters & Anglers * Washington Backcountry Hunters & Anglers * Washington Wildlife Federation

February 24, 2011

Dear Senator:

We the undersigned organizations represent hundreds of thousands of hunters and anglers with a stake in public lands management that sustains productive habitat for fish and wildlife. We support the Department of the Interior's Secretarial Order 3310, which provides for public input on the management of backcountry fish and game habitat on Bureau of Land Management lands and restores the decision-making ability of local land managers. To that end, we request you oppose any effort

that would prohibit the Bureau of Land Management from implementing Secretary Salazar's Wild Lands policy in the Senate Continuing Resolution Appropriations Bill for FY 2011.

Issued by Interior Secretary Ken Salazar in December 2010, this order amends a Department of the Interior policy adopted in 2003 when then-Interior Secretary Gale Norton determined the BLM would no longer consider new lands for "wilderness study area" designation. The 9th U.S. Circuit Court in Oregon confirmed that the BLM is required to consider lands with wilderness characteristics as specified in the Federal Lands Policy Management Act. The recent order restores federal law and creates new opportunities for the public to be involved in the conservation of valuable fish and wildlife habitat.

America's wild, unroaded backcountry is a great natural asset. These lands long have been recognized as places where fish and wildlife can thrive and hunters, anglers and others can experience the outdoors in a wild, natural state. In addition to their social and recreational importance, backcountry lands contribute to biodiversity and watershed health. These areas offer refuge to native trout and salmon, provide secure habitat for big-game animals such as mule deer, elk and wild sheep and may be carefully managed to maintain their habitat values. The conservation of these areas is vital to the future of hunting and fishing on public lands.

Our organizations strongly support cooperative efforts to determine how prized backcountry areas are to be managed, and Secretarial Order 3310 creates an open and transparent public process for doing so. This order affirms the value of backcountry areas, the importance of public participation and the decision-making authority of local land managers.

We ask that you strongly oppose any efforts to undermine this order in the budget so we can ensure that BLM lands are managed in ways that sustain healthy fish and wildlife habitat, support quality hunting and fishing and meet the needs of local communities.

Sincerely,

Theodore Roosevelt Conservation Partnership
National Wildlife Federation
Association of Northwest Steelheaders
Backcountry Hunters & Anglers
Bull Moose Sportsmen's Alliance
Colorado Backcountry Hunters & Anglers
Colorado Wildlife Federation
Idaho Backcountry Hunters & Anglers
Idaho State Bowhunters
Idaho Traditional Bowhunters
Idaho Wildlife Federation
Montana Backcountry Hunters & Anglers
Montana Wildlife Federation
New Mexico Wildlife Federation
New Mexico Backcountry Hunters & Anglers
Renewable Resources Coalition
Southwest Consolidated Sportsmen
Utah Backcountry Hunters & Anglers
Washington Backcountry Hunters & Anglers
Washington Wildlife Federation

cc: Ken Salazar, Secretary of the Interior
Wilma Lewis, Assistant Secretary, Land and Minerals Management
Will Shafroth, Deputy Assistant Secretary for Fish and Wildlife and Parks
Bob Abbey, Director, Bureau of Land Management
Steve Black, Counselor to the Secretary

February 14, 2011

The Honorable Doc Hastings
Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
Washington DC 20515

The Honorable Edward Markey
Ranking Member
House Committee on Natural Resources
1324 Longworth House Office Building
Washington DC 20515

Dear Chairman Hastings and Ranking Member Markey,

On behalf of outdoor industry companies, employees and customers who depend on our public lands for recreation and wildlife habitat, we write in support of the Department of Interior's Secretarial Order 3310. Collectively our organizations represent 1,200 suppliers, manufacturers, retailers and associations in the outdoor recreation industry. This order commits the Bureau of Land Management to maintaining an ongoing inventory of wilderness-quality lands and to protecting those characteristics until management protocols are implemented through agency planning processes or congressional action. Proper management of wilderness-quality lands and congressionally-designated Wilderness signals our national commitment to conservation of our public lands, clean waters, healthy wildlife, and cultural and historical landscapes.

The outdoor industry depends on a full spectrum of public lands and waters to provide places for our customers to use the products we make and sell. Outdoor recreation contributes $730 billion annually to the U.S. economy, and supports nearly 6.5 million jobs across our country. Ensuring that some of our BLM lands are preserved for recreation and habitat is an investment in our economic future and the quality of life in communities.

Secretarial Order 3310 reverses the decision by former Secretary Norton and the state of Utah that affected millions of acres of public land and directly undermined the outdoor industry's commitment to ensure that federal lands valuable for outdoor recreation remain intact. By issuing this Order, the Obama administration recognizes its legal requirement to comply with existing law regarding the identification and protection of wilderness-quality lands. Furthermore, it restores the voice of our customers and employees, who may now participate in a process to express their support for preserving wilderness on our public lands.

This Order also preserves the exclusive role that Congress plays in the decision to designate new Wilderness areas. The Order acknowledges congressional intent and merely requires that the BLM conduct periodic assessments of our public lands to determine their suitability for protection as wilderness.

Our companies believe the Order gives BLM the tools necessary to preserve special wild lands that help drive our business. We encourage Congress to show its support for public processes to determine appropriate uses of our federal lands, including those Congress should consider for Wilderness designation.

Sincerely,

Please see following for signatures

cc: House Natural Resources Committee Members
Senator Jeff Bingaman
Senator Lisa Murkowski

John Sterling
Executive Director
The Conservation Alliance
Bend, OR

Lisa Pike
Director of Environmental Programs
Patagonia, Inc.
Ventura, CA

Sally McCoy
CEO
CamelBak Products, LLC
Petaluma, CA

Peter Metcalf
Co-Founder, CEO
Black Diamond Equipment Ltd.
Salt Lake City, UT

Topher Gaylord
President
Mountain Hardwear
Richmond, CA

Gareth Martins
Director of Marketing
Osprey Packs
Cortez, CO

Casey Hofmann
CFO
Sierra Designs
Boulder, CO

Darren Bush
President
Rutabaga Paddlesports
Monona, WI

Kim Walker
Founder
outdoor DIVAS
Boulder, CO

Zohar Ziv
Chief Operating Officer
Deckers Outdoor Corporation
Goleta, CA

Nathan Pund
Managing Director
Silver Steep Partners
Seattle, WA

Frank Hugelmeyer
President
Outdoor Industry Association
Boulder, CO

Dan Templin
VP & CFP
VF Outdoor Americas
San Leandro, CA

Brian Unmacht
Executive Vice President
Recreational Equipment, Inc.
Kent, WA

Linda Tom
Marketing Manager
KEEN, Inc.
Portland, OR

Will Manzer
Chief Executive Officer
Eastern Mountain Sports
Peterborough, NH

Casey Hofmann
CFO
Kelty, Inc
Boulder, CO

Sue Rechner
President
Confluence Water Sports
Easley, SC

Gordon Seabury
CEO
Horny Toad / NAU
Santa Barbara, CA

Adam Forest
Principal
The Forest Group
Lotus, CA

David Kulow
Owner
All Terrian, a division of Rosemont Venture
Waltham, MA

March 4, 2011

The Honorable Rob Bishop
Member
Committee On Natural Resources
United States House of Representatives
Washington, DC 20515

Dear Mr. Bishop:

On March 1, 2011, I testified during the full committee hearing on *the Impact of the Administration's Wild Lands Order on Jobs and Economic Growth.*

During this hearing you requested I submit, in writing, detail on when and by whom I was contacted concerning my participation in Secretary of the Interior Ken Salazar's December 23, 2010 press conference announcing the release of Secretarial Order 3310.

I was contacted the afternoon of Friday, December 17, 2010 in a telephone call from Frank Hugelmeyer, President and CEO of the Outdoor Industry Association. Frank asked if I would like to participate in the announcement and speak to the economic impacts of outdoor recreation and the use of public lands and Wilderness by Black Diamond's customers.

Please let me know if I can answer additional questions.

Sincerely,

Peter Metcalf
Black Diamond Equipment
2084 East 3900 South
Salt Lake City, Ut. 84124
801–278–5551
Peter.Metcalf@bdel.com

cc: James Streeter, Majority Staff
David Watkins, Minority Staff

The CHAIRMAN. Thank you very much, Mr. Metcalf. And Mr. Squillace, you are now recognized for five minutes.

STATEMENT OF PROFESSOR MARK SQUILLACE, DIRECTOR, NATURAL RESOURCES LAW CENTER, UNIVERSITY OF COLORADO LAW SCHOOL

Mr. SQUILLACE. Thank you, Mr. Chairman. I will try to be brief. I know that it is getting late and that we still have one more witness and one more panel.

My name is Mark Squillace. I am a Professor of Law and the Director of the Natural Resources Law Center at the University of Colorado Law School. It is my pleasure to appear before the Committee today in support of Secretarial Order 3310, which promotes the protection of wilderness characteristics for lands managed by the BLM.

I offer this support because I believe that this order is grounded in the law and is good policy. And I would like to briefly explain why. As I said, I am going to depart from my prepared remarks, and I want to talk about two issues that appear to be of major concern to the Committee. They are the question of whether or not the Secretarial Order effectively allows the designation of de facto wilderness; and second, whether the process that the Secretary used in promulgating this order was appropriate.

So first, let me turn to this question about whether or not the order somehow leads to de facto wilderness. I don't think you can say that it does, and I say this because under the Secretarial Order, we are simply going to be following the land use planning process that is outlined in FLPMA. Wilderness, as we have heard many times today, is designated by Congress. Land use designations are, of course, designated by the agency, in this case the BLM, and those decisions are to some extent ephemeral. They can be changed by the agency once they follow the land use planning process. Indeed, under the order, the initial decision to determine that land is wild land is not required, even if that land has wilderness characteristics.

I hope that we can all agree that lands that have wilderness characteristics do have some special value for that purpose. So the question becomes how do we deal with lands that may have those

wilderness characteristics. And I think in this situation, the Secretarial Order does a very good job.

As we have talked about today and as Mr. Myers just noted in his testimony, the first step in the process is to inventory the lands, and to identify the lands that have wilderness characteristics. I would point out that that specific requirement, that is, to inventory the lands with wilderness characteristics, was specifically required by the Ninth Circuit Court of Appeals in the case *Oregon Natural Desert Association v. The BLM* in August of last year.

But then there is a second step, of course, and that is the decision as to whether or not to designate the lands as wild lands. And as I noted, that decision is discretionary. I want to just read briefly from the language in the Secretarial Order, and this is from section 4, which is entitled Policy. This is really the heart of the Secretarial Order.

It states that, "All BLM offices shall protect these inventoried wilderness characteristics when undertaking land use planning, unless the BLM determines that impairment of wilderness characteristics is appropriate." Note that the language is imbued with the discretion on the part of the agency, and this decision as to whether or not designating these lands as wild lands, whether that is appropriate, is going to be done through the public land use planning process.

So I think what you would have to conclude from this is that what the BLM has done with this order is simply good policy. They identify what they have, they inventory what they have, and then they make a considered judgment as to whether or not it makes sense to protect the wild lands that are there.

Let me turn briefly to the issue of process. There are I think two aspects to this process issue, one policy and one legal. I want to touch briefly on both of them. The policy question I suppose basically is whether or not this was unfair, whether or not the states and the parties who were affected by the policy somehow had no understanding that this might in fact be the way that BLM lands would be governed.

I would point out, as I noted in my written testimony, that the policy embodied in the Secretarial Order is a policy that goes back literally to the time that FLPMA was passed in 1976. And every administration since that time, until 2003 and the second Bush Administration, followed this policy.

I included in my testimony a legal opinion that was written by the Solicitor's Office to the Director of the BLM during the Reagan Administration pointing out that section 202, the land use planning provisions of FLPMA, specifically allow the designation or the recognition of wilderness characteristics of land under that process even if those lands weren't protected under the wilderness study area provision of FLPMA, that is, section 603.

So this is something that has been around for a long time. The change that really occurred was in 2003 in the private out-of-court settlement that I believe is not enforceable.

I want to talk briefly about the legal issue as well, because there is a question about whether or not the agency should have followed a notice and comment process, as might be required by the APA.

I see I am out of time. I think I will just wrap up briefly by noting that the process that was used here was adequate under the law, that it did not really change the law in any significant way. It was always there. There was no process used during the previous administrations that followed this policy. And so it seems appropriate to recognize that this policy should be upheld and should be endorsed by this Committee. Thank you very much.

[The prepared statement of Mr. Squillace follows:]

Statement of Professor Mark Squillace, Director, Natural Resources Law Center, University of Colorado Law School

My name is Mark Squillace. I am a professor of law and the Director of the Natural Resources Law Center at the University of Colorado Law School. I am pleased to appear today before the House Committee on Natural Resources to offer my support for Secretarial Order No. 3310, signed by Secretary of the Interior Ken Salazar, which addresses the issue of protecting the wilderness characteristics of lands managed by the Bureau of Land Management. Before getting to the merits of the Order itself, let me briefly review the legal context in which this Order was issued.

Section 201(a) of the Federal Land Policy and Management Act requires the Secretary of the Interior to "prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values...." The Secretary is required to use this inventory in the development and revision of the land use plans that are required by Section 202 of FLPMA. A separate requirement in FLPMA—Section 603—required the Secretary to identify roadless areas of at least 5,000 acres with wilderness characteristics, and to report to the President by October 21, 1991, on the suitability of such areas for wilderness. Pending congressional action on these lands, the Secretary must manage them so as not to impair their suitability for wilderness.

At the heart of this controversy is a question about whether Congress intended this 15-year review to be static or whether the Secretary should revise this report as new or better information became available, or alternatively, whether the Secretary should simply identify other areas with wilderness characteristics in accordance with the multiple use and land-use planning provisions of FLPMA. The language of FLPMA plainly suggests that Congress intended an ongoing, dynamic process where new information would be used to correct erroneous findings from the initial inventory. In particular, the inventory requirement of Section 201 is supposed to be "maintain[ed] on a continuing basis" and to be "kept current." Furthermore, while FLPMA imposes a general mandate to manage public lands "under principles of multiple use and sustained yield," FLPMA, Section 302(a), it defines "multiple use" explicitly to recognize that some lands should be managed "for less than all of the resources." FLPMA, Section 103(c).

Given this language it is not surprising that successive Presidents from Carter to Reagan to George H.W. Bush to Clinton all recognized a continuing responsibility under Section 202 of FLPMA to identify and set aside new areas with wilderness characteristics that might have been missed during the initial Section 603 inventory. (See, for example, the attached *Memorandum from the Associate Solicitor for Energy and Minerals to the Bob Burford, the Director of the Bureau of Land Management* during the Reagan Administration.) More than 100 additional wilderness study areas, beyond those designated under Section 603, have been set aside under Section 202. This policy is not only consistent with the letter and spirit of the law; it also makes good practical sense. Our BLM public lands encompass 240 million acres of land. No effort to catalog and identify roadless areas from among all of these lands could possibly be perfect or complete. When Congress required the Secretary of the Interior to identify and protect areas with wilderness characteristics it surely did not intend that such areas should be sacrificed simply because they might have been inadvertently or mistakenly missed during the initial inventory.

In 2003, however, in response to a lawsuit filed by the State of Utah, the Department of the Interior abandoned its longstanding interpretation of FLPMA and entered a private settlement disavowing its authority to designate new wilderness study areas beyond those included in the recommendations submitted to Congress in 1993. This private, out-of-court settlement agreement is neither enforceable nor binding on the current Administration. Nonetheless, in May, 2009, the Interior Department sent a letter to former Utah Senator Bennett indicating that the Department did not intend to claim the authority to designate new wilderness study areas

or apply the non-impairment standard to any new areas, as previous Administrations had done under Section 202 of FLPMA.

This brings us to Secretarial Order No. 3310. Since sending the May, 2009 letter to Senator Bennett, the Department has been under substantial pressure to return to the long-standing policy that successive Administrations had followed until the George W. Bush Administration entered the private, out-of-court settlement in 2003. That pressure included a letter sent to Secretary Salazar by 55 law professors from around the country, including me.

Under this new Secretarial Order, the BLM is required to identify lands with wilderness characteristics that are outside of those areas previously designated under Section 603 of FLPMA. The Order then requires the BLM to protect these areas from impairment unless the BLM determines that impairment of these lands is appropriate, documents the reasons for these decisions, and takes measures to minimize the impacts to wilderness characteristics. If the BLM determines that protecting the wilderness characteristics of these lands is appropriate then it will designate these lands as "wild lands."

Secretarial Order No. 3310 is simply and unequivocally a good government measure. Lands with wilderness characteristics are a diminishing resource. Their destruction is irrevocable and it would be irresponsible for the BLM to allow their destruction either because it was ignorant of their wilderness characteristics or because it had failed to make a considered judgment regarding the relative value of other uses. That is all that this new Secretarial Order requires.

As our population grows, the wild lands that remain a part of our public lands grow ever more precious. Future generations will rightly praise us for those wild lands that we have chosen to protect. I am skeptical that they will be so grateful for a decision to open these lands for private mineral development that primarily benefits a few members of the present generation. For all of these reasons, I am pleased to endorse Secretarial Order No. 3310, and I urge this Committee to recognize that it is well grounded in the law, and worthy of their support.

Attachments:

1. *Law Teacher's Letter to Secretary Salazar, September 30, 2009.*
2. *Memorandum from the Associate Solicitor for Energy and Minerals to Bob Burford, Director of the Bureau of Land Management.*

September 30, 2009

The Honorable Ken Salazar
Secretary of the Interior
1849 C Street, NW
Washington, DC 20240

Re: Authority of the Department of the Interior to Designate and Manage Wilderness Study Areas and Other Potential Wilderness Areas

Dear Secretary Salazar:

We, 55 teachers of natural resources law and related subjects at law schools across the United States, write to express our deep concern about legal positions stated in an attachment to a May 20, 2009, letter from Christopher J. Mansour, Director of your Office of Congressional and Legislative Affairs, to Utah Senator Robert F. Bennett of the Committee on Energy and Natural Resources. That attachment sets forth, on your behalf, answers to questions posed in an April 30, 2009, letter from Senator Bennett to you. The attachment states that the Department of the Interior is without authority either (a) to designate any new Wilderness Study Areas (WSAs) after October 21, 1993, or (b) to manage any areas that are not designated as WSAs under the same "non-impairment" standard under which WSAs are managed.

We believe that these positions are contrary to legal precedent and to the Federal Land Policy and Management Act (FLPMA), are contrary to past administrations' interpretation and application of FLPMA, unnecessarily hinder the Department's ability to manage lands with wilderness characteristics, and could result in the irreversible degradation of some areas that would otherwise be excellent and worthy additions to the National Wilderness Preservation System. We therefore urge you to reconsider these positions.

Background

Section 201(a) FLPMA, 43 U.S.C. § 1711(a), requires the Secretary of the Interior to prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited

to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resources and other values.

Section 202(c)(4) of FLPMA, 43 U.S.C. § 1712(c)(4), requires the Secretary to rely on the inventory in the development and revision of land use plans.

The inventory prepared and maintained pursuant to section 201(a) is also the basis for the wilderness review required by section 603 of FLPMA, 43 U.S.C. § 1782. Section 603(a), 43 U.S.C. § 1782(a) required the Secretary, by October 21, 1991, to review roadless areas larger than five thousand acres identified by the inventory as having wilderness characteristics and to report to the President his recommendations as to the suitability or unsuitability of each such area for preservation as wilderness. Section 603(b), 43 U.S.C. § 1782(b), required the President, within two years thereafter, to advise Congress of his recommendations with respect to the designation as wilderness of each area identified in the Secretary's review. Section 603(c), 43 U.S.C. § 1782(c), requires the Secretary to manage such areas "in a manner so as not to impair the suitability of such areas for preservation as wilderness" unless and until Congress directs otherwise.

In effect, section 603 set a deadline for the Secretary to take a snapshot of the section 201 inventory and to ensure that the wilderness characteristics of areas identified in that snapshot were protected so as not to limit Congress' future options for legislative wilderness designations. Nothing in section 603, however, suggests that the inventory itself was to be frozen in time. Specifically, nothing in section 603 contravenes section 201(a)'s mandate that the Secretary "maintain [the inventory] on a continuing basis" and that "[t]his inventory shall be kept current...."

Areas identified in the section 201 inventory as having wilderness characteristics have become known as "wilderness study areas" (WSAs). "Wilderness study area" is not a statutory term, but rather is defined in the BLM's Manual as "a roadless area or island that has been inventoried and found to have wilderness characteristics as described in Section 603 of FLPMA and Section 2(c) of the Wilderness Act of 1964." BLM Manual H–8550–1, Interim Management Policy for Lands Under Wilderness Review, Glossary, page 5. The Manual states the BLM's policy "to continue resource uses on lands designated as WSAs in a manner that does not impair the area's suitability for preservation as wilderness." BLM Manual 8550.06.A. The Manual also includes a Handbook with detailed guidance for implementing that policy. BLM Manual H–8550–1.

Given the enormous extent of the lands inventoried pursuant to section 201 (over 200 million acres), it was inevitable that the inventory was imperfect and that the resultant snapshot under section 603 missed some areas that were subsequently identified as having wilderness characteristics. *See, e.g., Utah Wilderness Ass'n,* 72 IBLA 125 (1983) (setting aside, as inadequately supported, BLM determinations that twenty-one units, totaling over 800,000 acres, lacked wilderness characteristics). Fortunately, Congress' mandates to maintain the inventory on a continuing basis and keep it current (section 201(a)), and to "maintain, and, when appropriate, revise" land use plans that rely on the inventory (section 202(a), 43 U.S.C. § 1712(a)) have provided the mechanism for ensuring that Congress' options with regard to the preservation of such areas as wilderness are kept open. The Carter administration, which came into office just three months after the passage of FLPMA, and all succeeding administrations—Democratic and Republican alike—until 2003 recognized that the BLM's continuing land use planning authority under section 202 includes the authority to designate WSAs and to protect those WSAs from development pending decisions by Congress whether or not to legislatively protect them as wilderness. See John D. Leshy, *Contemporary Politics of Wilderness Preservation,* 25 J. Land Resources & Envtl. L. 1, 10—11. *See also* U.S. GENERAL ACCOUNTING OFFICE, FEDERAL LAND MANAGEMENT: STATUS AND USES OF WILDERNESS STUDY AREAS 3 (GAO/RCED 93–151) (1993) ("Under section 202(c) of the act, the Secretary of the Interior may identify candidate wilderness areas through its land use planning process; .... As required by FLPMA, BLM's studies and recommendations for section 603 and 202 study areas have been sent to the President and he has sent these recommendations to the Congress.") Such "section 202 WSAs" include areas smaller than section 603's 5,000-acre threshold as well as additional areas identified when updates to the section 201 inventory reveal lands with wilderness characteristics that were not included in the section 603 review. By 1993, the BLM had already identified 97 such section 202 WSAs as well as 51 other WSAs that had been identified in the section 603 review but, after further study in the section 202 land use planning process, were expanded. *Id.* at 16.

In 1995, just two years after the end of the statutorily-mandated wilderness review period under section 603, the BLM issued guidance in its Manual reaffirming

that WSAs include not only those lands identified in the section 603 review but also "WSAs identified through the land-use planning process in Section 202 of FLPMA." BLM Manual 8550.02.A(3).[1] The Manual provides that both categories of WSAs are to be managed so as not to impair their suitability for preservation as wilderness.

In 2001, the BLM issued its Handbook on Wilderness Inventory and Study Procedures, which again reaffirmed the BLM's authority to designate new WSAs as part of its land use planning under section 202 and to manage them under the non-impairment standard. The Handbook instructed State BLM Directors to, among other things, "determine whether an inventory area should be designated as a WSA under the land use planning provisions of Section 202 of the FLPMA" and to "[p]rotect areas designated as Section 202 WSAs under the provisions of H–8550–1, Interim Management Policy for Lands Under Wilderness Review." BLM Manual H–6310–1, Wilderness Inventory and Study Procedures 2—3 (2001).

Until 2003, the BLM continued to use its inventory and land use planning authority to identify additional areas with wilderness characteristics that had been omitted from the section 603 review. Over 50,000 acres of land that were placed in section 202 WSAs during this period have been legislatively designated as wilderness by Congress, whereas only about 2,000 acres of such WSAs have been released from WSA status by Congress. There remain over 100 Section 202 WSAs, comprising approximately 270,000 acres in nine western states, awaiting congressional action. These parcels vary in size from as few as ten acres to almost 30,000 acres. Of these areas, about 35, totaling approximately 43,000 acres, have been recommended by the BLM as being suitable for future designation by Congress as wilderness.

The 2003 Reversal

In 2003, in response to a lawsuit filed by the State of Utah, the Interior Department abruptly reversed the legal interpretation that had been followed by all previous administrations and which had led to the designation and protection of over 100 WSAs under the land-use planning authority of section 202 of FLPMA. On April 11, 2003, the Department filed a stipulation in the United States District Court for the District of Utah. In the stipulation, the Department disavowed any authority to designate any new WSAs after the submission of the wilderness suitability recommendations to Congress pursuant to FLPMA section 603, which had been required to occur by October 21, 1993. The stipulation also stated that the Department "will not establish, manage or otherwise treat public lands, other than Section 603 WSAs and Congressionally designated wilderness, as WSAs or as wilderness pursuant to the Section 202 process absent congressional authorization." *See Utah v. U.S. Dep't of the Interior,* 535 F.3d 1184, 1190.

The district court initially approved the stipulation as a consent decree. After the Southern Utah Wilderness Alliance and nine other conservation organizations (collectively, SUWA) intervened in the lawsuit and objected, the district court vacated the consent decree. The State of Utah and the Interior Department then refiled the stipulation in the form of a private settlement which, they claimed, did not require court approval. The district court then granted their joint motion to dismiss the original lawsuit, but allowed SUWA to file cross-claims challenging the settlement. Ultimately, the district court dismissed the cross-claims on standing and ripeness grounds.

SUWA appealed to the Court of Appeals for the Tenth Circuit, arguing that the settlement was unlawful, that SUWA had standing to challenge it, and that the case was ripe for judicial review. Twenty professors of natural resources law from law schools across the United States, including many of the signatories of this letter, filed a brief of *amici curiae* in support of SUWA's argument that the settlement was unlawful. The Tenth Circuit, however, affirmed the district court's dismissal of SUWA's claims on ripeness grounds and therefore did not reach the merits of the legality of the settlement. *Id.* at 1198.

The May 20 Answers to Senator Bennett's Questions

The 2003 agreement between the Department of the Interior and the State of Utah is an unpublished and unenforceable out-of-court settlement, whose legal effect was nothing more than to terminate the litigation that it purported to settle. It did not bind the new administration brought in by the 2008 election, and the new administration is free to adopt the same interpretation of FLPMA that was followed by all previous administrations from the passage of FLPMA in 1976 until 2003, namely, that the BLM has continuing authority under section 202 of FLPMA to des-

[1] The Manual also identifies a third category of WSAs not relevant here, namely, those specifically established by Congress.

ignate WSAs and to manage them so as not to impair their suitability for preservation by Congress as wilderness.

However, this May the Interior Department unnecessarily and, in our opinion, imprudently, issued a written statement endorsing and adopting the same restrictions on its own authority that were expressed in the 2003 settlement. The statement was in the form of an attachment to a May 20, 2009, letter from Christopher J. Mansour, Director of your Office of Congressional and Legislative Affairs, to Utah Senator Robert F. Bennett of the Committee on Energy and Natural Resources. According to the letter, the attachment was prepared "[o]n behalf of Secretary Salazar" and contained supplemental responses to questions attached to an April 30, 2009, letter from Senator Bennett to Secretary Salazar. Among other things, the attachment

- answered "Yes" to the question "Do you agree that the Department currently has no authority to establish new WSAs (post-603 WSAs) under any provision of federal law such as the Wilderness Act [or] Section 202 of FLPMA?", and
- answered "No" to the question "Does the BLM have authority to apply the non-impairment standard, as enumerated in the Interim Management Plan [sic; should be Policy] for wilderness study areas to lands that are not designated as WSAs under section 603?"

These answers directly contradict not only the 2001 Wilderness Inventory Handbook but also the 1995 Interim Management Policy for Lands Under Wilderness Review which, as discussed above, explicitly applies the non-impairment standard to "WSAs identified through the land-use planning process in Section 202 of FLPMA." BLM Manual 8550.02.A(3). As discussed above, they also are contrary to the interpretation of FLPMA that was followed by all previous administrations from the passage of FLPMA in 1976 until 2003

The Implications of the May 20 Answers

Standing alone, the May 20 letter's disavowal of continuing authority to designate new WSAs might be viewed as merely a matter of semantics. As explained above, "Wilderness Study Area" (WSA) is a non-statutory term that is given meaning only by the BLM Manual's Interim Management Policy for Lands Under Wilderness Review, which defines it to mean an area "that has been inventoried and found to have wilderness characteristics as described in Section 603 of FLPMA and Section 2(c) of the Wilderness Act of 1964." So long as an area is managed according to the non-impairment standard, it arguably does not matter whether the area is labeled a WSA.

However, the additional statement in the May 20 letter, to the effect that the BLM lacks authority to apply the non-impairment standard to lands that are not designated as WSAs under section 603 of FLPMA, could have very serious consequences for the future of hundreds of thousands, if not millions, of acres of potential wilderness. On its face, this statement not only disavows the Department's authority to extend the non-impairment standard to lands where it is not currently being applied, but also denies the Department's authority to continue to manage nearly 300,000 acres of *existing* section 202 WSAs under the non-impairment standard. This statement throws the current and future management of these areas of potential wilderness into great doubt. While we hope that the Department did not intend to announce that these areas are now open to wilderness-impairing activities, such is the implication of the May 20 letter. The letter leaves both the public and BLM staff uncertain as to how these areas are being managed, or how they will be managed, now that the Department has stated that it lacks authority to apply the non-impairment standard that, until May 20, was applied to them.

The May 20 Letter Is Contrary to FLPMA and to Precedent

All administrations from the passage of FLPMA in 1976 until the abrupt change of course in 2003 concluded that sections 201 and 202 of FLPMA provide ample authority for the Department to designate WSAs and to manage those WSAs so as not to impair their suitability for preservation as wilderness. Section 201 requires the BLM to update and maintain its inventory of the public lands on a continuing basis and section 202 requires the BLM to rely on that inventory to develop, maintain, and, when appropriate, revise its land use plans. Such land use plans are required to follow the principle of "multiple use," and multiple use includes the preservation of some land, including potential wilderness areas, in a natural condition. *See* 43 U.S.C. §§ 1712(c)(1), 1702(c) (requiring that multiple use management take into account the needs of future generations for "natural scenic, scientific, and historical values"); *see also id.* § 1701(a)(8) (declaring congressional policy to "preserve and protect certain public lands in their natural condition"), 16 U.S.C. § 529 (stating that "[t]he establishment and maintenance of areas of wilderness are consistent with"

multiple use).[2] Therefore, a designation that protects the natural condition of certain public lands is well within the authority conferred by section 202. *See Sierra Club v. Watt,* 608 F. Supp. 305, 340—41 (E.D. Cal. 1985) (holding that, under sections 202 and 302 of FLPMA, the Secretary of the Interior "clearly had" discretion to study lands for possible wilderness designation and to protect them as WSAs in the interim, even if they did not qualify as WSAs under section 603 because they were smaller than 5,000 acres); *accord, Tri-County Cattlemen's Ass'n,* 60 IBLA 305, 314 (1981) ("Although an area of less than 5,000 contiguous acres would not qualify as a WSA under section 603(a), BLM is not precluded from managing such an area in a manner consistent with wilderness objectives, nor is it prohibited from recommending such an area as wilderness."); *The Wilderness Society,* 81 IBLA 181, 184 (1984); *New Mexico Natural History Institute,* 78 IBLA 133, 135 (1983).

The office of the Solicitor of the Interior in both the Reagan administration (1985) and the Clinton administration (2000) concluded that the Department has continuing authority under section 202 to designate WSAs and to manage them under the non-impairment standard. *See* Memorandum from Solicitor to Secretary Re: Jack Morrow Hills Coordinated Activity Plan (December 22, 2000) ("[T]he BLM may designate new WSAs in accordance with section 202. ... [T]he BLM may not refuse to consider credible new information which suggests that the WSA boundaries identified in the late 1970s do not include all public lands within the planning area that have wilderness characteristics and are suitable for management as wilderness."); Memorandum from Associate Solicitor, Energy and Resources, to Director, Bureau of Land Management, Re: Wilderness Review of Lands Placed Under Bureau of Land Management Administration After October 21, 1976 (August 30, 1985) ("[T]he fact that wilderness review of certain categories of public lands is not mandated by section 603(a) does not preclude the Secretary from choosing to do so. Section 302 of FLPMA [requiring multiple use management], as underscored by section 202 of the statute, gives the Secretary that choice.")

Section 603 of FLPMA set a deadline to force BLM to act to ensure that potential wilderness areas would not be developed before Congress decided whether to extend them permanent legislative protection. But nothing in section 603 suggests that that deadline was meant to preclude protection under section 202 of areas that were missed by the initial inventory. To disallow the designation and protection of additional WSAs after the passage of the deadline would turn section 603 on its head, making it a bar, rather than a spur, to protection of potential wilderness areas.

Disallowing the designation and protection of additional WSAs is also contrary to Congress' expressed intent to keep for itself the ultimate authority to decide whether an area should be preserved as wilderness. If an area is protected as a WSA, then Congress can decide whether to designate it as a wilderness or to release it from WSA status. But if an area is denied WSA protection and developed, its wilderness character may be irreversibly degraded before Congress acts.

Conclusion

We believe that the statements in the May 20, 2009, letter to Senator Bennett, to the effect that the Department lacks authority under section 202 of FLPMA to designate Wilderness Study Areas and to manage them under the non-impairment standard, are incorrect. We are also concerned that the Department has, in the private settlement of a lawsuit, reversed a longstanding interpretation of an important statutory provision, and then confirmed that reversal in a letter. We believe that the adoption of such a new, and controversial, legal interpretation should be undertaken in a more considered, public, and transparent process. Finally, we fear that this interpretation of FLPMA could result in the needless loss of worthy additions to the National Wilderness Preservation System, including numerous areas that have already been designated as section 202 WSAs by previous administrations. On its face, the May 20 letter seems to require the immediate lifting of the non-impairment standard from these existing section 202 WSAs, a result that we hope you did not intend. We therefore urge you to reconsider the positions stated in the May 20 letter and to conclude, as did every previous administration from 1976 to 2003, that section 202 of FLPMA provides the Department with ample authority to designate new WSAs and to manage them so as not to impair their suitability for future preservation by Congress as wilderness.

Sincerely,

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[2] 16 U.S.C. § 529 is from the Multiple Use, Sustained Yield Act (MUSYA), which applies to National Forests. However, FLPMA's definition of multiple use for the BLM (43 U.S.C. § 1702(c)) is virtually identical to MUSYA's definition for the National Forests (16 U.S.C. § 531(a)).

(Institutions are listed for identification only. The opinions expressed herein are those of the authors and not necessarily those of the institutions with which the authors are affiliated.)

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The CHAIRMAN. Thank you very much, Mr. Squillace. I appreciate it very much. And I appreciate all of you for your testimony. We will now begin with a round of questioning. Each Member will have five minutes, and I will begin with myself.

And I had a question for Solicitor Myers. We have seen that there is a lot of discussion from a lot of different people on the process. So let me try to be as specific here as I can. In justifying the Wild Lands Order, the Administration cites section 102, 201, and 603 of the Federal Land Policy and Management Act to argue that they are compelled to impose this Wild Lands Order.

Do these sections compel this order?

Mr. MYERS. Mr. Chairman, I think I need to answer your question in two parts. The first part is I think that section 603 of FLPMA, which has set up a 15-year window in which the BLM would conduct its initial inventory for wilderness, is really separate and apart from today's issue. Today's issue is the question of whether section 201 and 202 give the agency the authority to what it does.

Secretary Salazar himself has said that he is not relying on section 603 and that he doesn't believe that his policy is undoing the Norton-Leavitt settlement. I will take him at his word. But the question that you raise is whether these give the authority—my understanding from again reading the testimony of the BLM and others is that they thought that the duty to do this was compelled not by these sections of FLPMA, but by the fact that the BLM was without a current wilderness inventory handbook, and so that because they had no existing authority that was clearly distributed to all of the BLM staff westwide, they had to undertake this effort to create one. And that is what the three manuals are that they have published.

So I don't see it as a question of statutory compulsion. I see it as a question of the BLM deciding they needed to put some direction, or they wanted to put out some direction, to their staff, and this is how they did it.

The CHAIRMAN. So they are not compelled by the Wilderness Act, in your view, by your testimony, to do this?

Mr. MYERS. No, sir, I don't think so. Judge Benson, when he reviewed the Norton-Leavitt settlement, said that the settlement was legal under both NEPA and FLPMA.

The CHAIRMAN. OK. And so NEPA is out, too, from our—nothing in NEPA compels this then.

Mr. MYERS. Well, at least according to that Federal district judge who is the one who looked most specifically.

The CHAIRMAN. Well, then let's get right down there. Is there any court order that compels this to happen for this order?

Mr. MYERS. Not that I know of.

The CHAIRMAN. OK, good. Thank you very much. I will end mine, and we will go—Mr. Holt is recognized.

Mr. HOLT. Thank you, Mr. Chairman. And I thank the witnesses. Mr. Metcalf, much of the call from the other witnesses for jobs seems to focus on extraction industry type jobs. You seem to be saying that there is job creation from conservation. It is not a jobs versus conservation approach. How would you characterize kind of short-term, mid-term, and long-term the job prospects?

Mr. METCALF. For the active outdoor industry? Is that what you are referring to?

Mr. HOLT. Yes, yes.

Mr. METCALF. Very promising, so long as we work to maintain the integrity and health and vibrancy of our public lands, of which we include wilderness within that. The outdoor industry in America was one of the industries least impacted by the big, great recession of 2008-2009, rebounded more quickly than any other industry, continues to grow and employ people. And if you just look at visitation in places like Utah at the national parks in 2010, it was at just about an all-time high.

Mr. HOLT. And mid-term and longer-term?

Mr. METCALF. So long as we work to maintain the integrity of the lands that this industry is predicated upon, the prospects are very good. It is a great competitive advantage this industry has. This industry is the global leader in part because our brands are dependent upon these iconic landscapes we have here in the West. They are a magnetic draw to people from all over the world. You can't copy these in Bangladesh, and you can't do them more cheaply in China. People come here for these amazing landscapes.

And, you know, that is probably the reason why we have on the Utah license plate Delicate Arch and not an oil drilling rig.

Mr. HOLT. No. I hope there is time to pursue that further because it is curious to me that the other witnesses aren't saying that. And I am genuinely trying to figure out why because for so many of us, that is what Utah is. That is what Idaho is. That is what—anyway.

So, Professor Squillace, let me make sure that we state it clearly and simply. Your view is that Secretary Norton's interpretation was an aberration, that it was a departure from what had existed for, well, decades before, and that what is before us now is a return to or a restoration of what existed before. Is that a clear statement, and accurate?

Mr. SQUILLACE. That is correct. I would just add one brief point about that, which is that the issue of whether or not it was lawful, that Secretary Norton's settlement was lawful, was never tested in the courts because once the settlement went through and it was basically challenged in the courts, the plaintiffs were deemed not to have standing to pursue the issue further. And so it never really came up on the merits.

Mr. HOLT. Now, you also spoke about the consistency with the previous law. Several of the witnesses have suggested or even stated that this usurps congressional authority regarding wilderness

designations. Do you think that there is anything inconsistent with congressional intent or congressional prerogative?

Mr. SQUILLACE. I would say there is clearly nothing inconsistent with the Wilderness Act or any other legislation that I am familiar with in this order. I mean, you can go back to well before the Wilderness Act and see how the agency has protected lands as primitive areas and as other kind of protected classes of lands, and it has continued to happen since FLPMA was enacted, since the Wilderness Act was enacted. You know, there are over 100 wilderness study areas that have been designated under section 202 of FLPMA already.

So we already have a longstanding record, history, practice of designating these sort of protected lands for a host of good reasons that aren't part of this sort of classic wilderness study area provision in section 603 of FLPMA. So I think the record is clear on that.

Mr. HOLT. OK, thank you. And which interpretation, the—let's for simplicity call them the Norton interpretation or Salazar interpretation—is more consistent with the anticipated role of the public participation in the designation?

Mr. SQUILLACE. Well, again I want to emphasize here that all we are doing is putting this issue of whether we should protect lands with wilderness characteristics on the table. And if people disagree with that decision, if they think that there are better uses for the lands that have wilderness characteristics, then the public participation is allowed to work around that and help the agency in making the best decision that they can make.

So I think absolutely keeping this question on the table of this important resource that we know by definition is a diminishing resource—they are not making lands with wilderness characteristics anymore. So we really ought to be focused on this as part of the public process.

If the judgment is we shouldn't protect these roadless wilderness characteristics lands, then the agency is free to make that decision, but only after they have made this through a considered process.

Mr. HOLT. Thank you. I thank the witnesses. And thank you, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Colorado, Mr. Coffman.

Mr. COFFMAN. Thank you, Mr. Chairman. Boy, I tell you, growing up in Colorado, my father retired from the Army, and my family made a living from outdoor recreation. So, what I love about having a significant part of your economy engaged in outdoor tourism is that it forces you to maintain the environment.

But at the same time, I got to tell you, I got a concern. And my concern, I guess, is having my own military career, having spent five assignments outside the United States, four of which took me to the Middle East, and understanding the instability of that region and the fact that whether we like it or not, America probably very likely may have an energy crisis that may cause a double dip recession in this very fragile economic recovery.

And so the question is, where is the balance? And it does seem to me that we are not in balance, and that, you know, Americans ought to be able to responsibly develop American energy. And we

don't seem to be able to do that. And I guess my question about the Wild Lands Order is, from the Commissioners and also from anybody that wants to answer this, will this hurt oil and gas development in the United States at a time when families in my district who are already hurting—and, you know, and we got gas at the pump going north of three dollars a gallon, and I think we are going to see it go north of four dollars a gallon, and I think it is going to stay there for awhile.

And so I would like anybody to comment on that who would like to. Commissioner?

Mr. MCKEE. Yes, thank you. In my county, we have the Western Energy Alliance, which is a group of small producers. They have done a survey among their members, and they have shown that there is about $1.8 billion of investment that has left over the last two years because of policies that we have had over the past two years, and that investment that has already left.

We are very concerned with this new Wild Lands Policy because what we see happening from here and in the directive that was just sent out two or three days ago, it talks about that if there is any project that is going to be moving forward outside of emergency provision, that it will be measured. It needs to go to the Washington office for review. So this is taking out the local field manager. It is taking out the state office. Everything has to come here to Washington. There will be further delays, and also the opportunity to say no. And we have already seen this in our area, where these projects and other issues come to Washington and gets buried.

Mr. COFFMAN. Commissioner?

Mr. BOUSMAN. Yes, Congressman and Mr. Chairman. I would like to give an example in my county and in Wyoming. Many of you may have heard of the Jonah Field. It is considered about the third largest gas field in the nation. The Jonah Field has about two to four more years of level production, and it is going to start tapering off. In order to continue the flow of gas and the production of gas to the country, that company, EnCana, has instigated the start of another planning process close to the existing Jonah Field. In other words, they need to expand.

Part of that expansion is NEPA with BLM. Our county is the cooperating agency with BLM in that process. The problem, as I see it—now that we have introduced the wild lands discussion—part of that NEPA process in designating even potential wild lands—as we amend our RMPs, that will likely forestall that planning process for energy development until such time as a decision is made. Should this be wild lands or should it not be wild lands? That decision can take anywhere from three to five years.

The planning process for an energy development process, another separate EIS, environmental impact statement, could take—some of these that we have been participating in have been taking five to seven years to get through the process. The red tape, the bureaucratic process is so cumbersome, and this is adding another layer onto that. And we are very concerned that gas flow could very likely stop under this scenario, and a huge impact on the economy.

Mr. COFFMAN. Thank you very much.

The CHAIRMAN. The time of the gentleman has expired. The gentlelady from Hawaii, Ms. Hanabusa.

Ms. HANABUSA. Thank you very much, Mr. Chairman. My question is for—I am sorry, Professor. How do you pronounce your name?

Mr. SQUILLACE. Squillace.

Ms. HANABUSA. Squillace?

Mr. SQUILLACE. Yes.

Ms. HANABUSA. It is for Professor Squillace. First, in reading both your statements as well as the statement by Mr. Myers there, one of the things that if you would just bear with me and walk me through this. It seems to me that the first misperception we have even from this morning's testimony, that somehow the inventory in and of itself would then determine wilderness, that somehow you get classified as this wilderness characteristic, that that will then make you a de facto wilderness area.

Is that correct? Is that our misperception in what we are seeing here?

Mr. SQUILLACE. Yes. I think it is clear that under the policy, the inventory is just that. It is just a judgment about what kinds of resources exist. Wild lands are not. But it is not a judgment as to whether or not they will be protected in that way.

Ms. HANABUSA. And what was interesting to me was the reference to the word "characteristic" that everyone seems to be glossing over. So then, the next question is—because there are references—and I think it was your letter to the Secretary, which was signed by 50-some other professors——

Mr. SQUILLACE. Right.

Ms. HANABUSA. There was a discussion of the APA, the Administrative Procedures Act. That leads me to believe that somewhere in that that person who may have an interest, whether there be in natural gas or whatever else, that may somehow have leases that may become then affected, I would assume that there would be some kind of a contested case process or administrative proceeding which they then could avail themselves if they disagree with that.

Am I wrong? I notice that the rules just came out.

Mr. SQUILLACE. I am glad you brought that up. I mean, I was hoping to get to that, and I didn't have time in my opening testimony. But the point is that in making a decision on land use planning for an individual district of the BLM, there will be a full public process. And so if the judgment is made or if there is a proposal made to protect or not protect certain parts of that district as wild lands, that will be open for full discussion with the public and debate, and presumably a decision will then be made that would be fully appealable by somebody who objected.

So there is a full public process with that decision.

Ms. HANABUSA. And I assume that whenever anyone is using Federal lands, that there is probably a lease in place, so they would have some sort of a vested right of some sort. But it doesn't give one an inherent right into the future to the use of all public lands. So that would also be something that I would assume would also be calculated into this process.

Mr. SQUILLACE. That is exactly right. Typically, we protect what we call valid existing rights. And so if someone had a valid existing right within one of these areas, presumably it would be protected or perhaps grandfathered in the process in a way that would assure that those rights were not unduly trampled on.

Ms. HANABUSA. So would it be correct to say—what it seems to me is that the Norton case kind of sent a whole bunch of things kind of off-track. So this is an attempt to put it back into a process. And it looks like the fundamental choices that we are discussing here is really a process to preserve lands into the future, which may or may not be used for different purposes now. But if it is affected by this characteristic, whatever that characteristic may become, whoever is an affected or an injured party at that point will have the opportunity to contest it and to make their case. Would that be a correct statement?

Mr. SQUILLACE. I think that is correct. It arguably is not even that strong, so it is not necessarily a process to reserve lands, but a process to preserve options. A choice can be made about whether or not you want to preserve lands in the process.

Ms. HANABUSA. And just so that we are clear, in the process of a designation in the inventory, they would have the opportunity to challenge even that inventory in that characteristic category of wilderness.

Mr. SQUILLACE. Absolutely.

Ms. HANABUSA. Thank you very much. Thank you, Mr. Chair. I yield back.

The CHAIRMAN. I thank the gentlelady. The gentleman from Colorado, Mr. Tipton, is recognized for five minutes.

Mr. TIPTON. Thank you, Mr. Chairman, and thank you, panel, for being here. I have a couple of questions, and I think I would like to start first maybe with our county commissioners. You deal with this on a very intimate basis. I come out of Colorado, and we currently in my district 20 million acres of Federal land, 20 million; 7.2 million of that happens to be BLM land. I have had extensive interaction through my office and then living there.

Has the BLM in your districts, have they ever requested any land to be taken out of a study area that you are aware of?

Mr. MCKEE. If I might, in 1991—and this again is in my county. This is an area that is known as the Winter Ridge area. That area was recommended by Secretary Luján at the time not to be a wilderness study area. However, that continues to be on the books today as a wilderness study area.

Mr. TIPTON. Since 1991?

Mr. MCKEE. Since 1991, yes.

Mr. TIPTON. Any other——

Mr. MCKEE. That is the one that I am familiar with because it is in my county.

Mr. TIPTON. OK, great. Any others? OK. That is interesting. We have talked about full public process a lot. How many of you had public meetings when it came to wild lands that were held prior to this designation?

Mr. SMITH. We had a series of public meetings, but it was over the Siskiyou Monument designation under Secretary Babbitt.

Mr. TIPTON. So nothing over wild lands?

Mr. SMITH. Nothing over wild lands.

Mr. TIPTON. That just came into being. And, Professor, I had kind of a question. This was based a little bit off of your statement in the last questioning period here, and your comment was that inventory is not a judgment. I just left my district after being out in the Third Congressional District of Colorado. I met with the BLM, and they said under the wild lands that they were going to be inhibiting lateral drilling, which would not impact the surface areas at all.

But that seems to be inhibiting the inventory process. It does seem to be inhibiting and driving and basically classifying it as a wilderness area. Would you comment on that?

Mr. SQUILLACE. Yeah. I am not familiar with that particular situation. What I meant by my comment was simply that the purpose of the inventory is simply factual, to determine what is out there. You may be suggesting that maybe we don't know exactly what is out there, even after we have done an inventory.

There may be some debate at least about what is out there, and that is fair. And I think as the previous questioning suggested, I think that is open for discussion and debate, and that is part of the public process that we would have in land use planning.

Mr. TIPTON. OK. Thank you. And a lot of this hearing is really about jobs, jobs and the economy. I come from rural Colorado. We have a lot of outdoor recreation. We have a lot of oil and gas development as well. And it seems to be actually living harmoniously.

You can speak for your counties, but I grew up in mine, and I have lived there my entire life. We value our public lands. We want to be able to protect them. And, Ms. Robinson, I think that you had mentioned in some of your testimony that you were some of the best custodians on that.

Do you see these—when we really need to be able to get America back to work, to reference back to Congress Coffman's comments about being able to provide energy for this country to be able to keep the lights on and reasonable prices for struggling families that are out there, can you see these two elements actually working in harmony?

Ms. ROBINSON. Well, they have been working, and thank you for giving me the opportunity to address this because we have been working in harmony, multiple uses in our county, and we do have recreation. We have plenty of recreation. We have tons of hunters come hunting season in the fall on our ranch and everywhere in the county. And everybody is using public lands together. And it has been protected for over 100 years, and we are the center of focus because we have been protecting it, and it has been working in harmony.

Mr. TIPTON. You know, I have done—and I would love your comment on this because I think we often seem to make a mistake. It is either one way or the other. And it is a lot of my purpose, actually, I think, to try and develop win-wins to where we can work in harmony. We can achieve both goals in a responsible way.

I want to be able to protect our land. I want clean water. I want clean air. And I bet if we asked everyone in this room, everybody would raise their hand in accordance with that.

But has it been your experience—and maybe even from the outdoor end of the world as well. We have made the observation in the Third Congressional District of Colorado that where there has been some development of natural resources, that it hasn't actually impacted wildlife negatively. Has that been your experience?

Mr. SMITH. It has actually enhanced wildlife and wildlife habitat by creating a varied landscape rather than a mono-landscape. We have a heavy overcast timber area. By opening up certain areas, the landscape and herds, birds of prey seem to flourish in that kind of environment. And I think that is what is coming out now with the latest scientific information regarding forest practices and multiple-use issues.

You know, this isn't exclusionary of recreational. Right now, we have lots of backpacking. We have wilderness area to the north of us, to the east of us, to the south of us, and to the west of us that have people hiking and enjoying it, and the beauty is maintained. But the point is that these additional takings by the Federal Government and BLM is not an old process. By their own representation, it is new. And this means that it is an exclusionary, not inclusionary. It excludes a whole segment of people from economic purpose.

The CHAIRMAN. The time of the gentleman has expired. The gentleman from Arizona, Dr. Gosar.

Dr. GOSAR. Mr. Squillace, can you tell me that the definition of wild lands is the same as a wilderness study area?

Mr. SQUILLACE. It is not the same as a wilderness study area in this respect. A wilderness study area, that term is actually not used in section 603, but it is those areas that were designated under section 603 of the statute. And those areas must be managed so as not to impair their suitability for wilderness until Congress releases them. That is not true of wild lands. Wild lands are managed to protect their wilderness characteristics only so long as the BLM land use plan requires that they do so, and that can be changed at any time.

Dr. GOSAR. So it goes through a holding process.

Mr. SQUILLACE. The wild lands——

Dr. GOSAR. Yes.

Mr. SQUILLACE.—designation? I wouldn't call it a holding process. It is a designation of what the BLM has determined on that particular tract of land to be the highest and best use for that particular tract of land. It is a judgment call that some may disagree with. But it is a judgment call that is being made by the land use managers.

Dr. GOSAR. It actually takes into account minimal standards, does it not?

Mr. SQUILLACE. I am not sure what you mean by minimal standards.

Dr. GOSAR. Well, it doesn't have to go through the wilderness study requirements. It has minimal requirements, not the 5,000, but also it only has to have one characteristic of a wilderness area, does it not?

Mr. SQUILLACE. Well, what I would say is it has to go through whatever process the BLM decides is sufficient to protect the land, to protect the characteristics that it thinks are important. But

again, I would emphasize that through the public process, the BLM has the discretion, wide discretion, to decide whether or not particular lands should be protected, or whether or not particular wilderness characteristics should be protected.

So there is nothing in any way automatic under the policy. It is simply a way in which we look at that issue and make a considered judgment as to whether or not protecting those wilderness characteristics is a good idea.

Dr. GOSAR. I just see minimal standards being evaluated down, not carrying it—you know, I have seen that we are reverting back, and we are trying to carry a past law forward, and it really isn't.

Mr. Metcalf, you know, I enjoy the wilderness as well, and jobs in regards to that, and their resources drive our economy. We have to a diversified economy, do we not?

Mr. METCALF. We certainly do.

Dr. GOSAR. And so in order to utilize our resources right, it allows to enjoy nature, does it not?

Mr. METCALF. That is——

Dr. GOSAR. If we have no oil and gas, we are not going to get to the wilderness areas, are we not?

Mr. METCALF. Neither are mutually exclusive of one another.

Dr. GOSAR. But if we don't have means for utilizing our resources in a proper manner, we are not going to be enjoying the outdoors, particularly wilderness areas, because they take some traveling to.

Mr. METCALF. There is no question.

Dr. GOSAR. Thank you.

Mr. METCALF. But, look, could I just add to that? You know, there is a question here relative to what the outdoor industry is advocating. Let's take an area like the Vernal Basin that Mr. McKee was referring to. You know, I had the great pleasure of getting up in Governor Olene Walker's plane, the King Air, to fly over that area because she was of the belief that perhaps should be protected. So we flew over the Vernal Basin. It is a huge area.

It is in oil and gas development. We are very supportive of that. But what the outdoor industry is really seeking is that the area Deso-Gray, one of the great wild rivers still in America that you have to get in a lottery to run that river—people come down there. I have been through it. It provides a great deal of economic generation for the area. And what we are advocating is that that is one of these areas that deserves protection. I believe under this action it will temporarily get protection.

So the real question is, is it all or nothing? Or is there some lands, some things like the Grand Canyon, the Tetons, that deserve protection. Are they deserving—are they as important as drilling every oil well or every gas well? And it is the industry's belief that we as Americans, as a civilized society, do believe that some of these iconic landscapes really do deserve protection and preservation because they generate so much income from active outdoor recreation.

Dr. GOSAR. I understand, and I think that—I live in Flagstaff, Arizona, that had a wilderness area that went through some mismanagement.

Mr. METCALF. Yeah.

Dr. GOSAR. And we are suffering some consequences of that. And I think that is the caution that we have here, is that we didn't have some common sense in that adjudication. And when we are talking about wilderness areas, we are taking things to a point where there is no return. We want to make sure that we are doing it fairly, and make sure that we have some ways of compensation on that because, frankly, the Schultz Pass fire is an atrocity that should have never occurred.

Mr. METCALF. You know, I am not familiar with that area. But I will say that we are talking about multiple use. And I think this is what this action of Secretary Salazar does do. It protects multiple use because currently we have multiple use, and we are at risk of losing multiple use because these lands that we are talking currently protecting and inventorying are currently in a wilderness state, or they would not be up for this potential inventory.

So what we are trying to do is maintain the integrity of this country's multiple-use philosophy and approach. If we don't do this, we do lose multiple use because there are certain types of incompatible use, just as I referred to. In a civilized society, we do not put a big factory by a school. We do not put residential by other areas.

The CHAIRMAN. The time of the gentleman has expired. The gentleman from Alaska.

Mr. YOUNG. Mr. Chairman, this is more of a statement in the sense that if I thought that the BLM and its professionals were able to make decisions, I might say this has some merit. But I have been through this for 40 years. And I have watched the interest groups that say, OK, you let this lease, but you didn't take into consideration before you let the lease we will file a lawsuit. And that professor knows that.

The lawsuits have been used and manipulated the laws that we pass to the benefit of taking away the rights of other people, and usually out of New York or Miami or San Francisco. And they don't really care about these counties, these small countries. I saw countries. These should have been countries. That is what I wanted to Alaska to be, and I got voted out.

The fact of the matter is I have watched this wilderness battle in Alaska. And I have watched how it has been subverted by the interest groups that can file lawsuits, great, big lobbyist interest of the greenies that do not want this country to survive, and don't care about those people that work for a living.

So, Mr. Chairman, that is a statement. So I don't have a great deal of faith in the Secretary, the Administration, or those agencies that say we are going to save more wilderness when there is so much wilderness already. Millions of acres of it set aside. Now they are going to take the one agency, that BLM lands, that was multiple use, and say, oh, now we have to consider it as wild lands. What is the difference between wild lands and wilderness? Nothing, Mr. Chairman. It is semantical words.

And so that is back door approach, doing what Congress said we will do not anymore. We will have this body of land for resources and development for the good of this nation. Mr. Chairman, I am going to tell you, we are not going to tolerate it in this Congress as far as I am concerned. I will cut all of their funding off. Every

nickel that is being used that they can subvert the Congress's, our intent. Right in this hall, right in this room.

We put millions of acres aside. And enough is enough. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Young. Appreciate that. The gentleman from Utah, Mr. Bishop.

Mr. BISHOP. You want me to follow that? Before you start counting my time, I would like to ask unanimous consent for the Utah Association of Counties, Utah Multiple Use Coalition USA, All-Western Business Roundtable, American Motorcyclists Association, Western Energy Alliance, who have requested a hearing and have submitted letters or documents on this topic opposing the Wild Lands Policy. I would like that to be presented for the record.

The CHAIRMAN. Without objection, it will be part of the record.

[NOTE: The letters and documents submitted for the record by Mr. Bishop have been retained in the Committee's official files. A list of those documents can be found on page 137.]

The CHAIRMAN. The gentleman is recognized.

Mr. BISHOP. Thank you very much. I have a lot of questions for everyone here, and I apologize. I will get as many as I can through here.

Mr. McKee, you are Commission from my state. Let me start with you, if I could, and just walk through the process. I think what Mr. Markey, Mr. Holt, and the gentlelady from Hawaii asked were some significant questions in the land, and were not quite answered properly. So let me talk about the RMP, the resource management plan.

Every area for BLM has to have an RMP, how they are going to handle the land. Now, the one in your area, how long did it take the most recent one? How long did it take to develop that?

Mr. MCKEE. Thank you. The Federal Register was sent out—I believe it was April 11th, 2001. It was signed the end of October 2008. So it was a seven and a half year process.

Mr. BISHOP. Was there public comment in that process?

Mr. MCKEE. Absolutely.

Mr. BISHOP. OK. So the professionals on the ground, for whom I have very little disregard—they are great people—on the BLM, they conducted it. They did the inventory. That is why we are talking about how the inventory has already been done. They did the inventory, took seven to eight years, depending on where you were in that process. This is the process that Secretary Salazar said was a rush to judgment. And in that, they looked at the land for wilderness characteristics.

Now, I understand in Utah, they came up with 2.8 million acres of land that had wilderness characteristics. But since the concept is wilderness is not all or nothing, they developed kind of scale of those. And those professionals on the ground said 400,000 of that 2.8 million had wilderness characteristics to the point that they should be managed for their wilderness characteristics.

The 2.4 million acres had some characteristics, but were not to be managed because there were other issues that were available. Now, is that correct so far?

Mr. MCKEE. That is correct. And if I could just add, in my area, there was over 400,000 acres, to my recollection, that was ana-

lyzed. There was a separate alternative that was looked at, alternative E, to look at wilderness character, specifically to look at that very issue. We spent two——

Mr. BISHOP. How long?

Mr. MCKEE. Two extra years to go through that process. Now we have done that. That was fully done. BLM, it was their professionals on the ground that went through and did this. We just get through with that. We have a signed resource management plan. And now we are turning it upside to do it all over again.

Mr. BISHOP. So this is the issue at hand that the commissioners are talking about, the Governors were talking about. What Secretary Salazar's order did arbitrarily was taking the resource management plan that went through the law, obeyed the law, and had the input, and he is saying, I don't like the answer. We are going to start all over again.

Mr. MCKEE. Absolutely.

Mr. BISHOP. Without a reason, rationale, or justification of why they don't like the answer.

Mr. MCKEE. Absolutely. And that is why we are standing up for the resource management plans. We might not have agreed with everything in there. But at the end of the day, that was the public process, and we are standing behind them.

Mr. BISHOP. Let me shift gears here if I could for just a second. Mr. Myers, I am going to see how far I can go. Mr. Myers, if I could, I do appreciate your response and your questions in here. I like the fact that you emphasize how the so-called Norton agreement, which has been vilified by a lot of people, has been upheld by the court system, and also was upheld by this Administration, who said they weren't going to change it at any time.

Now, am I right, though, in saying if you go back to FLPMA, and section 102, that the policy is unless otherwise specified by law, the planning and management of inventoried lands must be on the basis of multiple use and sustained yield?

Mr. MYERS. That was the decision of Judge Benson in the litigation challenging the Norton-Leavitt agreement. And I should I guess clarify. Of course, the best thing to do is read the decision itself. It speaks for itself.

Professor Squillace is correct that Judge Benson dismissed the case on procedural grounds. But then he went on to say, if an appellate court should deem my decision on procedural grounds to be incorrect, I am going to go ahead and opine on the merits of the agreement under FLPMA and NEPA. And in that context, he said it was legal under both.

Mr. BISHOP. So the circuit court looked at that. They did not overturn what Judge Benson.

Mr. MYERS. They affirmed him on procedural grounds.

Mr. BISHOP. OK. Can I ask your opinion? Because one of the things that was said by the judge in the district court—stated that if relief from this process should be sought by environmental groups, they might ultimately come through the political process. How would you interpret what he meant by that?

Mr. MYERS. That they weren't going to get what they wanted in this courtroom, so their option was to go to the legislative branch or the administrative branch.

Mr. BISHOP. We could flip that side around here, that if indeed the Administration wanted to have a Wild Lands Policy, they could also use the political process. They could come up to Congress and simply say to us, this is our idea, make it statutory. Is that process not available to them?

Mr. MYERS. Well, of course, it is, Congressman.

I21Mr. BISHOP. You mentioned in your report the transition to green. I am assuming you know what I am talking about.

Mr. MYERS. Yes, sir.

Mr. BISHOP. And that the transition to green had an idea similar to what we are hearing back in 2008 when it was presented to the Department of the Interior.

Mr. MYERS. This was a document put together by I think 28 environmental groups providing their basically wish list to the new Obama Administration on what they ought to do on environmental issues across the Administration. They identified three priorities for BLM. This was one of the three.

Mr. BISHOP. So on page 187, 191-194, what is here before us now as a decree by the Secretary was exactly specifically mentioned almost verbatim by these special interest groups?

Mr. MYERS. It is more nuanced than that, Congressman. What they wanted was——

Mr. BISHOP. I have never been nuanced. What are you talking about here?

Mr. MYERS. They wanted to come in, I think, and simply say that the Norton-Leavitt settlement was no longer enforceable within the Administration. Secretary Salazar did not say that. He said he was going to not stand by it, but he was not going to overturn it. So what they have done is find another route to achieve basically the same goal.

Mr. BISHOP. OK. How much time do I have, sir?

The CHAIRMAN. You have minus one minute and 25 seconds.

Mr. BISHOP. Oh, I am sorry.

The CHAIRMAN. Yes.

Mr. BISHOP. I run through those red things all the time, too. That is one of my problems. I apologize.

The CHAIRMAN. I mean, in deference, I don't see anybody on the other side who is timed, so I am being a little bit—I mean, Mr. Labrador is next, and he is recognized for five minutes. If he would like to yield, I am sure you would be appreciative of that. Mr. Labrador?

Mr. LABRADOR. Mr. Chairman, I will yield two minutes to the good gentleman from Utah.

Mr. BISHOP. If you have questions, go ahead.

Mr. LABRADOR. OK.

Mr. BISHOP. Go ahead.

Mr. LABRADOR. I just have a few questions, Mr. Chairman. Mr. Metcalf, I don't represent Utah, but I actually lived in Utah some of the happiest years of my life. I met my wife there, and I have a son in Utah right now who is going to college. And I appreciate the work you are doing. It sounds like you have a very successful business.

I don't know if you were here when the Ranking Member spoke, gave his opening statements. He was very upset because over the

last few years, we have had no wilderness designation, yet we have allowed gas and oil companies to take some of public lands.

Over that same year period, it sounds like you said your industry has been the least impacted by the recession. So I am having a hard time with your testimony because I really appreciate what you have done with your private business, and I really appreciate that you have been very successful. But yet without having to find any new wilderness areas in the United States, you and your industry have actually done very, very well. Can you explain that to me?

Mr. METCALF. Sure. I would be glad to, and thank you for the question. First off, it is a global industry, and we benefit immensely from the brand that is Western America. That is number one.

Number two is that there are groups, outfitters, wilderness schools that have been hurt by some of this. You take some of the oil and gas development post-Norton-Leavitt, out by Deso and the White River and that area, people quit operations there. I mean, I know that for a fact. So there were people, outfitters, schools that were hurt from this.

At the same time, on a larger scale, until you actually start to manage the lands differently and begin to auction off the bids for oil or gas development, or coal, or whatever, the lands are still in a pristine state and still usable by people. I think the point here is that once you begin to lose those lands, they are lost forever. But it takes a while for them to be lost. And a case in point is when we are talking about the oil industry.

Utah has 5 million acres under lease, but only 1 million are developed at this point in time. So it takes, obviously, a while for the oil industry to develop those, and they have quite a bit of inventory to do. But my point is the lands are still in—many of them are still in a pristine state and are still usable as pristine wilderness, wild land recreation venues.

Mr. LABRADOR. But my point is, under the current plan that we have, it is not mutually exclusive. We don't have one industry hurting the other one. It sounds like both industries can thrive, and we can actually allow industry to actually do better and help us be more energy independent.

Mr. METCALF. Yes. I think the point that we are trying to make is that this is not—and I think it is the same point you are trying to make. This is not a winner take all battle. It is one about how do we find a thoughtful approach to managing the lands. And the point of the industry is that within that thoughtful management approach some of the lands do need to be preserved.

And since I spoke about Deso-Gray, this is a great one. You have a vast area of a lot of oil and gas development, but there is this one wild river, which has the potential to be the longest wild river in the lower 48. It is still possible. But wells are going in. It is beginning to change. And the question is, will we have the backbone and the guts for the industry, for the preservation of a great draw to Utah, be able to preserve that corridor, that sight and sound, to make this one of the great wild rivers in North America.

Mr. LABRADOR. OK. Mr. Myers, he just mentioned a thoughtful management approach. Do we not have a thoughtful management approach right now to preserve the areas that are pristine?

Mr. MYERS. Yes, Congressman, we do. And in fact, under the NEPA process, the BLM has a regulation that has a stated preference in the regulations for a consensus-based approach to management.

Mr. LABRADOR. Now, I am also a lawyer, and I think about, you know, in my career and the law—I was always looking for that new angle that would give me the ability to maybe file a new lawsuit or do something different than what was being done before. What kind of havoc is this new process going to create for the future?

Mr. MYERS. Well, I think what has happened is that the Secretary had stated repeatedly in his order and in the manuals that wilderness characteristics are now a high priority for the BLM. By definition, if one thing is a high priority, something else must be a low priority. FLPMA does not distinguish on that basis. It states a number of uses and values and resources, but doesn't elevate one over the other.

By elevating one over the other in this process, those who are now in the lower end of the priorities are going to feel as though their rights and opportunities are being transgressed. That usually leads to litigation.

Mr. LABRADOR. And OK.

The CHAIRMAN. The time of the gentleman has expired. The gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Very briefly, Professor Squillace——

Mr. SQUILLACE. yes.

Mr. MARKEY. Could you just give us the one minute you want the Committee to remember? Can you give us that one——

Mr. SQUILLACE. Yeah. I will try. I know this feels contentious, and I know that both sides feel very strongly about what they are saying. But I hope that we can all agree that good management requires that we know something about the resource, we know as much as we can about the resource. And if we know that land has wilderness characteristics, then we need to use that information to make a judgment about whether or not protecting those lands is a good idea or not.

To my mind, that is all this debate is about. The Secretarial Order does not require that we protect lands that have wilderness characteristics. It requires that we do our best to know what is there and to make a reasoned judgment, a considered judgment about what the best use. If we decide that oil and gas development is more important on a particular tract of land that has wilderness characteristics, that is allowed under the policy.

So I hope that we can come away with this notion that this is just good policy. This is good management of our public lands, and it deserves our support.

Mr. MARKEY. Thank you. Mr. Metcalf, can you give us the one minute you want us to remember on the Committee?

Mr. METCALF. OK. Thank you. You know, I think the most important point I want to make, because we just were talking about it, is that we are talking about good, thoughtful management. Is that occurring now or is it not? And relative to this question about

is that happening, especially, for example, by the BLM—if you look at the BLM's Vernal research and management plan, it is a one-inch thick document primarily on oil and gas. There is not a single mention of the potential impact of that on recreation, hunting, angling, and tourism.

So what this is really about is attempting to come up with truly a thoughtful approach to managing our public lands in a balanced way between recreation and the jobs that that brings on pristine wild lands, as well as the extractive industries.

Mr. MARKEY. Great. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Flores recognized for five minutes.

Mr. FLORES. Thank you, Mr. Chairman. Thank you for testifying today. It is interesting. I can identify with you, Mr. Metcalf. I was CEO of a $150 million company until I decided to do this. And, Commissioner Robinson, I am part of a multi-generational family that grew up in a small county with 5,000 people and about quarter million cattle. So I know what you are dealing with.

I was glad to hear that, Mr. Metcalf, all of you, that you and each of the commissioners agree that you can have coexistence, peaceful coexistence, between good land management and recreational activity and extractive activities.

Mr. Metcalf, I have a question for you. You talked about you are part of a $46 billion industry. Where does that money come from that people spend in your industry?

Mr. METCALF. Where does it go or where does it come from?

Mr. FLORES. Where did it come from?

Mr. METCALF. It comes from the jobs that they themselves have. That could be in the outdoor industry, that could be as bankers or investment bankers. It could be as——

Mr. FLORES. It comes from the economy, the national economy, right?

Mr. METCALF. Yes.

Mr. FLORES. Right, from a robust national economy. This policy interjects a new level of uncertainty into our land management process or land inventorying process. Uncertainty hurts businesses. Is that correct?

Mr. METCALF. It can.

Mr. FLORES. OK.

Mr. METCALF. It is a dynamic world out there, let's face it.

Mr. FLORES. Right. Every one dollar change in the price of—increase in the price of gasoline reduces discretionary income by about $120 billion. What sort of impact is that going to have on the recreational industry if gas prices go up to four dollars or five dollars? What is that going to do to your industry? And we have seen what it has done in the past.

Mr. METCALF. You know, I am challenged by your question, sir, because we have 4 million acres that are leased for drilling development right now in Utah, and they are not developed. We have 11,000 permits for drilling rigs, of which 4,400 aren't even in use. So I don't understand where the issue is relative to lack of lands available to drill on or the lack of permits that have been given out.

Mr. FLORES. Well, what we are trying to do—what we are saying is that an arbitrary redlining of—first of all, just because you lease

an acre of land doesn't mean that there is some sort of resource under it. The way the leasing rules work, you sometimes have to lease big footprints so that you can try to extract the resources on a small postage stamp of that footprint.

I would further like to say that even if you drill on property that is in a pristine state, it doesn't mean that it is not pristine after you have concluded those operations and after the resources have helped our economy.

Where I am trying to go with this is what is the impact of when we arbitrarily reduce our ability to have access to resources, and we raise the cost of doing business on our economy, and lower discretionary income, what does that do to your business?

Mr. METCALF. Let me begin by responding to the first part of your question, though, which was about being able to return the land to its pristine state. I spent two winters as a roughneck throwing chain on oil rigs in Red Desert, Long Sutter, Bangs, Camera, Echo Canyon, Utah. So I am familiar with the industry and what it does and doesn't do. And, no, some of these sites can never be returned to any kind of pristine state. So I just want to clarify that.

I think the question is for the amount of land that we are asking to be protected here in Utah in the West, is that really meaningful in the price of oil? And I think if you really brought an oil expert into this room and talked to him, they would tell you absolutely not. It is not a meaningful amount of oil.

Mr. FLORES. Let me help you out a little bit. I was in the oil and gas business.

Mr. METCALF. OK.

Mr. FLORES. And I know what the regulations require, and they require us to put the property back in its original state. And I can tell you that I have some experience with this. I understand about drilling for oil and gas. So I don't think you are going to win that argument with me. So I ask you again, what impact are higher oil and gas prices going to have on your business?

Mr. METCALF. When you—if there is a relationship to what we are talking about, I don't see it. But higher oil prices affect all of us in the economy, of course.

Mr. FLORES. Thank you. I yield back.

The CHAIRMAN. There has been a request for another round, and I will recognize myself and immediately yield to the gentleman from Utah, Mr. Bishop.

Mr. BISHOP. All right. Let me try something. Mr. Metcalf——

Mr. MARKEY. May I ask if it is OK for Mr. Abbey to take a bathroom break at this point waiting? Would that be OK?

The CHAIRMAN. Mr. Abbey can, if he can do it within four minutes.

Mr. MARKEY. Oh, there will only be one round of questions? Oh, OK. No problem.

Mr. BISHOP. Am I free to go? All right. Like I say, there are so many other questions I wanted to ask. But, Mr. Metcalf, the last time you were here, I gave you a pass. I can't do it this time around here. I would like you to provide for the record one answer. So you don't have to do it right now. You apparently were at the presentation, the unveiling of this new regulation in Colorado. I

would like you for the record, in written form, to tell us how you knew about it, who gave you the invitation, when you received the invitation, how you were prepared to be there at this particular moment, and a whole lot of other people weren't.

But this is where I wanted to talk to you because your testimony here has sounded very good when you talk about the ability—it is not an either/or situation. We should all live together, and that what we should have is an equal footing for all of those multiple uses.

The problem is, that is the status quo. That is what the RMPs were doing. What this proposal for wild land does is shift that status quo to give one of the multiple uses an advantage over the other multiple uses. And so, yes, it is the Federal Government picking winners and losers.

Now, I am very grateful that you are a successful entrepreneur, and you are making lots of money in this. I think that is wonderful. There is no reason that should happen. But here is the question I want to go with, which goes to something that the two Governors were saying. I am assuming you know what the WPU is in Utah. It is the weighted pupil unit for education. This is—OK. Then I will show you. The minimum amount of money for educating one kid through a year. And in certain areas like necessarily small and distant schools, they add to that.

Utah equalizes, and they have always equalized in maintenance and operation before I got to the Legislature—and I was 26, so you know that was a long time ago. And they are equalizing capital outlay right now, which means if a local school district can generate enough revenue from their local sources to meet that WPU, they don't have to get anything more from the state. And if they overcome that, they supercede that limit, then that is recaptured and spread around the districts that cannot meet that basic level from the state.

When I was in the Legislature, we had a recapture program. To your memory, is there any recapture program that has happened in any school district that has been directly related to your industry?

Mr. METCALF. I am unaware if there is or not. It is not my area of expertise. I apologize.

Mr. BISHOP. Well, that is OK, because the answer is No. It has not happened. I am not trying to denigrate tourism in Utah. But I want it very clear because that was not the focus of your written testimony, which was much harsher than your oral testimony here, as jobs versus jobs. Tourism is an important component, but it is not a component that can bypass the other elements we have, which is manufacturing and mining. Those are the elements that drive our education budget. That is where the money comes, and the only place we have had recapture is from those industries. And when we now come up with new policies that restrict the ability to do that, that is the problem, and that is why it hurts—this proposal hurts kids in Utah.

Now, I want Mr. McKee simply to tell me what happened in the amount of—the unemployment issues that took place in your county the last time Secretary Salazar decided there had been a rush to judgment, so he decided to fix it with an arbitrary situation,

which by the way, the Inspector General said what Secretary Salazar said was actually arbitrary and capricious and a rush to judgment.

What is the impact in your county from these types of decisions?

Mr. MCKEE. Thank you, Congressman Bishop. What happened, we lost 30—we only have 30,000 people in the county to begin with. We lost 3,200 jobs. I will tell you at the end of 2008, because we are an extractive economy, there was a recession going on nationwide. We didn't feel it. But immediately with those change of policies, we lost 3,200 jobs that fast.

Mr. BISHOP. OK. Let me interrupt you because I am about to run out of time, and I won't go over this time. Mr. Metcalf, you criticized boom and bust policies. I am sorry. This policy will create a bust and bust policy, which is exactly what has happened to these counties, and neither what is happening in Uintah County or secure rural school funding can compensate for that, or over-compensate for that. I yield back.

The CHAIRMAN. The time of the gentleman has expired. Does any other Member wish to have a follow-up on this? If not, then I want to thank the panel very, very much for, number one, waiting when we had this series of votes, and I want to thank you all for your very good testimony.

If there is a follow-up by any Member, we would like to have, as was requested by Mr. Bishop and Mr. Metcalf, a written response back in a timely manner, a timely manner meaning within 10 days. I think that would be in order. And so if you could all do that, if there are follow-ups, I would appreciate it. And with that, this panel is dismissed.

[Pause]

The CHAIRMAN. While you are getting the next panel settled, may I ask unanimous consent that the following documents be added to the record? From the Governor of Alaska, the Western States Land Commissioners Association, the Association of O&C Counties, the Alaska Miners Association, the Resource Development Council, the Northwest Mining Association, EP Minerals, Fronteergold, and letters to the Secretary from the Governors of Alaska, Idaho, North Dakota, Wyoming, Arizona, New Mexico, and Utah.

The CHAIRMAN. Without objection, so ordered.

[NOTE: The documents submitted for the record have been retained in the Committee's official files. A list of these documents can be found on page 137.]

The CHAIRMAN. Mr. Young.

Mr. YOUNG. Thank you, Mr. Chairman. I would also like to have the testimony from Alaska State Senator John Coghill submitted, along with the Alaska Miners Association testimony, and a resolution from the Fairbanks Chamber of Commerce in the Southeast Conference. And you already mentioned the Alaska Governor, did you not? OK.

The CHAIRMAN. Without objection, so ordered.

[NOTE: The documents submitted for the record by Mr. Young have been retained in the Committee's official files. A list of these documents can be found on page 137.]

The CHAIRMAN. I want to call in our last panel, and I see that Mr. Abbey is seated, and I appreciate your taking the time. I know you have been here, but this is a very, very serious issue. And as you can tell, there is a lot of passion on all sides.

You are reminded that your complete testimony, as I have reminded the other panels, will be submitted for the record. You have five minutes for your oral testimony. And with that, you know how the lights work. I don't need to go through that again. So with that, Mr. Abbey, you are recognized now for five minutes.

STATEMENT OF ROBERT ABBEY, DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Mr. ABBEY. Well, thank you, Mr. Chairman and Members of the Committee. I know it has been a long day for everyone, so I will keep my remarks brief.

I do appreciate the opportunity to discuss Secretarial Order 3310 regarding wilderness characteristics on lands administered by the Bureau of Land Management. The Wild Lands Policy established under that order directs the Bureau of Land Management to work collaboratively with the public to determine how best to manage their public lands, taking into account all of their potential uses.

This is not only our obligation to today's generation, but our responsibility to future generations as well. I might add, it is also required by law. Lands with wilderness characteristics are valued for their outstanding recreational opportunities, as well as for their important scientific, cultural, and historic contributions. Failing to consider protecting these wild places would undermine the careful balance of management mandated by law, a balance that we need for our public lands.

I worked for over 30 years in public service. Twenty-five of those years has been as a BLM career employee. I believe in, and I am dedicated to, the BLM's multiple-use mission. The BLM has over 41 million acres leased for oil and gas development. Over 6 million acres were offered for lease in 2009 and 2010. Millions of more acres have been permitted or leased for other mineral and energy products, including transmission lines.

We also have over 18,000 grazing permits and leases encumbering 157 million acres. Over 375,000 mining claims have been staked on public lands, and an estimated 190 million board feet of timber will be offered for sale this year.

However, multiple use does not mean every use on every acre. The BLM strives to be a good neighbor and a vital part of communities across America. Public lands contribute significantly to the nation's economy that in turn have a positive impact on nearby communities.

In 2010, the BLM's management of public lands contributed more than $112 billion to the national economy and supported more than a half a million jobs.

On December 23rd, 2010, I joined Secretary Salazar in announcing clear direction for implementing the BLM's mandate under the Federal Land Policy and Management Act to conduct wilderness characteristics inventory and decide how best to manage the public's land.

There has been a great deal of confusion about what this new policy is and is not. Be assured that this new policy itself does not immediately change the management or status of the public lands. The BLM's new manuals set out a two-step process for inventorying and managing lands that may have wilderness characteristics.

The first step is to maintain an inventory of lands with wilderness characteristics as required by section 201 of the Federal Land Policy and Management Act. It simply documents the current state of the land.

Step two, deciding how lands with wilderness characteristics should be managed, is an open, public process undertaken through BLM's land use planning. A decision may be made to protect lands with wilderness characteristics as wild lands, or to manage them for other uses.

For example, the BLM may determine the impairment of land with wilderness characteristics is appropriate for some other areas due to other resource considerations. I have heard concerns that the new Wild Lands Policy has put a halt to new projects and will prevent important economic activity in local communities. This claim is false.

Recently, a potash lease proposal in Utah was approved by the Bureau of Land Management through our new process. Using NEPA, the BLM has undertaken a review of a proposal to offer a competitive lease sale for potash on Sevier Lake, a dry lake bed in Southwestern Utah. Following the issuance of the Secretarial Order just two months ago, the BLM completed an inventory of the lands involved and determined that the area does not meet criteria for lands with wilderness characteristics.

Secretary Salazar and I are personally committed to working with Congress and key stakeholders to ensure that the Wild Lands Policy that we have proposed and are implementing will work. This policy provides the public with a strong voice in the decisions affecting their nation's public lands. Working cooperatively with our stakeholders and being sensitive to local needs, we will ensure that all of the potential uses of the public lands—and let me repeat that—all of the potential uses of the public lands and the BLM's multiple-use mission are taken into account when determining how best to manage those lands.

[The prepared statement of Mr. Abbey follows:]

Statement of The Honorable Robert Abbey, Director, Bureau of Land Management, U.S. Department of the Interior

Thank you for inviting me to discuss Secretarial Order 3310 regarding wilderness characteristics on lands administered by the Bureau of Land Management (BLM). The Wild Lands policy, established by Secretarial Order 3310, restores balance and clarity to the management of our public lands and follows clear legal direction. This order directs the BLM to work collaboratively with the public and local communities to determine how best to manage the public lands, taking into account all of their potential uses, including uses associated with the wilderness characteristics of certain public lands. It does not dictate the results of that planning process.

Section 102 of the Federal Land Policy and Management Act (FLPMA) declares that preservation and protection of public lands in their natural condition are part of the BLM's mission. Just as conventional and renewable energy production, grazing, mining, off-highway vehicle use, and hunting are considered in the development of the BLM's Resource Management Plans (RMPs), so too must the protection of wilderness characteristics be considered in the agency's land use plans.

Lands with wilderness characteristics are valued for their outstanding recreational opportunities (such as hunting, fishing, hiking, photography, or just getting outdoors) as well as for their important scientific, cultural, and historic contributions. Failing to consider protecting these wild places would undermine the careful balance in management mandated by law, a balance that we need on our public lands. Public lands provide billions of dollars in local economic benefits and they should be managed for multiple uses and many values, including energy production, recreation, and conservation.

The BLM's Multiple-Use Mission/Economic Contributions

I have worked for over 30 years in public service, 25 of those years as a career BLMer. I believe in, and am dedicated to, the BLM's multiple-use mission. This multiple-use mission is what makes the agency unique among Federal land management agencies, and it is what makes us welcome members of every community in which we work and live. However, multiple-use does not mean every use on every acre.

The BLM strives to be a good neighbor and a vital part of communities across America. Public lands managed by the BLM contribute significantly to the nation's economy and, in turn, often have a positive impact on nearby communities. The BLM's management of public lands contributes more than $100 billion annually to the national economy, and supports more than 500,000 American jobs.

A key component of these economic benefits is the BLM's contribution to America's energy portfolio. The BLM expects its onshore mineral leasing activities to contribute $4.3 billion to the Treasury in Fiscal Year 2012. The BLM currently manages more than 41 million acres of oil and gas leases, although less than 30 percent of that acreage is currently in production. More than 114 million barrels of oil were produced from BLM-managed mineral estate in Fiscal Year 2010 (the most since Fiscal Year 1997), and the almost 3 billion MCF (thousand cubic feet) of natural gas produced made 2010 the second-most productive year of natural gas production on record. The coal produced from nearly a half million acres of federal leases powers more than one-fifth of all electricity generated in the United States.

The BLM is also leading the nation toward the new energy frontier with active solar, wind, and geothermal energy programs. The BLM has proposed 24 Solar Energy Zones within 22 million acres of public lands identified for solar development, and in 2010 approved nine large-scale solar energy projects. These projects will generate more than 3,600 megawatts of electricity, enough to power close to 1 million homes, and could create thousands of construction and operations jobs. Development of wind power is also a key part of our nation's energy strategy for the future. The BLM manages 20 million acres of public lands with wind potential; currently, there is 437 MW of installed wind power capacity on the public lands. Geothermal energy development on the public lands, meanwhile, accounts for nearly half of U.S. geothermal energy capacity and supplies the electrical needs of about 1.2 million homes.

Energy production is not the only way in which the BLM contributes to local communities and the national economy. The combined economic impacts of timber-related activities on BLM-managed lands, grazing-related activities, and activity attributable to non-energy mineral production from BLM-managed mineral estate total more than $5 billion each year.

Recreation on public lands also provides major economic benefits to local economies and communities. In 2010, more than 58 million recreational visits took place on BLM-managed lands and waters, contributing billions of dollars to the U.S. economy. The diverse recreational opportunities on BLM-managed lands draw crowds of backpackers, hunters, off-road vehicle enthusiasts, mountain bikers, anglers, and photographers. In an increasingly urbanized West, these recreational opportunities are vital to the quality of life enjoyed by residents of western states, as well as national and international visitors. It should be noted that many of these recreationists are seeking the primitive experience available in BLM's wilder places.

The BLM's multiple-use mission is all about balancing public land management, and balancing all of the myriad resource values of this nation's great public lands. Wilderness character is one of these many resource values, and the BLM's new Wild Lands policy is a rational approach to ensuring that balance.

Secretarial Order 3310—Wild Lands Policy

The BLM's authority to designate new Wilderness Study Areas (WSAs) under section 603 of the FLPMA expired after President George H.W. Bush completed his recommendations for wilderness designation to Congress in January 1993. However, the BLM was still required to inventory and consider wilderness characteristics in the land use planning process.

Secretary of the Interior Gale Norton and the State of Utah entered into an out-of-court settlement agreement (the "Norton-Leavitt settlement") in 2003 that resulted in BLM rescinding the agency's then existing guidance on wilderness inventory. Since that time, the BLM has been without long-term national guidance on how to meet the FLPMA requirements to inventory and manage lands with wilderness characteristics. In 2008, the Ninth Circuit Court of Appeals in *Oregon Natural Desert Association v. BLM* stated that FLPMA's requirement that BLM maintain an inventory of public lands and their resources and other values includes inventory of wilderness values and that BLM must consider those values in its land use planning when they are present in the planning area. Secretarial Order 3310 and the related BLM manuals address that previous lack of direction on inventorying and managing lands with wilderness characteristics.

On December 23, 2010, I joined Secretary Salazar in announcing clear direction for implementing the BLM's mandate under FLPMA to conduct wilderness characteristics inventories and decide how best to manage those lands. The BLM also issued draft manuals that were recently finalized. This Wild Lands policy restores balance to the BLM's multiple-use management of the public lands in accordance with applicable law. It also provides the field with clear guidance on how to comply with FLPMA and more specifically how to take into account wilderness characteristics in the agency's planning process.

With this consistent guidance, we believe that the BLM will enhance its ability to sustain its land use plan and project level decisions. In the past, some of these decisions have been invalidated because the courts in the Ninth and Tenth Circuits have found the analysis of wilderness characteristics lacking.

Policy Implementation/BLM's Manuals

There has been a great deal of confusion about what this new policy does, and perhaps more importantly, what it does not do. Be assured that the new policy itself does not immediately change the management or status of the public lands. I would like to outline for you the facts about the new policy and its implementation. The BLM's new manuals set out a two-step process for inventorying and managing lands that may have wilderness characteristics. The first step is to maintain an inventory of Lands with Wilderness Characteristics (LWCs) as required by section 201 of FLPMA. The BLM's new manual on Wilderness Characteristics Inventory provides guidance on both updating existing inventory information and inventorying lands not previously assessed.

The manual carefully spells out the process for making these determinations, based on size, naturalness, and outstanding opportunities for solitude or a primitive and unconfined type of recreation—using the same Wilderness Act criteria the agency has always used. This process makes no determination about how the lands should be managed; it simply documents the current state of the lands.

Step two of the process, deciding how LWCs should be managed, is an open, public process undertaken through the BLM's land use planning process. Through this public process, a decision may be made to protect LWCs as "Wild Lands" or to manage them for other uses. For example, the BLM may determine that impairment of LWCs is appropriate for some areas due to other resource considerations, such as energy development. Other areas may be managed as Wild Lands with restrictions on surface disturbance and the construction of new structures. In addition, Wild Lands designations must be consistent with other applicable requirements of law. The BLM must consider these additional statutory requirements, where appropriate, in determining whether LWCs can be managed to protect their wilderness characteristics.

It is important to emphasize that if lands are designated as Wild Lands they are not wilderness and they are not WSAs. First, Wild Lands may only be designated administratively through an open, public planning process. The designation of Wild Lands may be revisited, as the need arises, through a subsequent public planning process. Second, allowed uses in Wild Lands may include some forms of motorized and mechanized travel. Allowed uses in each specific Wild Land will be determined by the land use plan governing those lands and will be accomplished through a process that allows the public and local communities full access to that decision-making. These decisions will be made locally, not in Washington, D.C. This policy doesn't change the delegation of authority for land use planning decisions. The BLM's state and field offices will continue to be responsible for those planning decisions.

The BLM regularly makes project-level decisions for activities on public lands. These decisions can involve a wide range of proposals such as locating roads and power lines, filming commercials and movies, and permitting mineral extraction activities. When considering these proposals, the BLM relies on existing land use plans, as well as any new information, to make a determination of how and if these

projects can be accommodated within the BLM's multiple-use mission. This determination is necessarily a balancing act, taking into account all of the resources for which the BLM is responsible—including wilderness characteristics—as mandated by FLPMA.

A Wild Lands designation will be made and modified through an open public process, and therefore these designations differ from designated wilderness areas and WSAs. Wilderness areas can only be designated through an act of Congress and modified through subsequent legislation. The BLM manages WSAs to protect their wilderness characteristics until Congress designates them as wilderness or releases them from WSA status.

I have heard concerns that the new Wild Lands policy has put a halt to new projects and will prevent important economic activity in local communities. This claim is, simply put, false. A recent example involves a potash lease proposal in Utah that the BLM has approved through this new process. Through the NEPA process, the BLM has undertaken a review of a proposal to offer a competitive lease sale for potash on Sevier Lake, a dry lake bed in southwestern Utah. Following the issuance of the Secretarial Order roughly two months ago, the BLM completed an inventory of the lands involved and determined that the area does not meet the criteria for LWCs. The project is moving forward and it has been reported that it may result in as many as 300 permanent jobs in the local community.

Conclusion

The BLM is committed, and I am personally committed, to working with Congress and other key stakeholders to ensure that the Wild Lands policy works. My staff and I have spoken with many of you directly about the policy. In January, I traveled to Utah at the request of Governor Herbert, and participated in several meetings and forums on the policy. We have heard your concerns, and we are listening.

The BLM's Wild Lands policy affirms the agency's responsibility to take into account all of the public land resources for which the BLM is responsible. The policy provides local communities and the public with a strong voice in the decisions affecting the nation's public lands. Working cooperatively with our stakeholders, and being sensitive to local needs, we will ensure that all of the potential uses of the public lands and the BLM's multiple-use mission are taken into account when determining how best to manage the nation's public lands.

The CHAIRMAN. That was right on time. Thank you very much, Mr. Abbey. I appreciate that.

Mr. ABBEY. I have had a lot of practice.

The CHAIRMAN. Well, in that case, Mr. Abbey, we might call you back here many times to continue that practice. We will start with a round of questioning, and I will recognize myself.

In the discussion and the testimony that I have heard from the Governors and certainly from the commissioners, is that this order adds an area of uncertainty into how these lands will be managed. So my question is pretty specific. What guarantee can you give to us that if Congress legislatively releases WSAs, that that legislation would not in fact be nullified by adding that legislative released land to the wild lands category? What guarantee can you give us that that wouldn't happen?

Mr. ABBEY. Well, let me say this, Mr. Chairman. We respect the congressional process, and have included in our planning manuals, which we just released last Friday, a provision requiring that congressional action be taken into account in all of our planning decisions on how we would manage lands with wilderness characteristics in the future.

The CHAIRMAN. Well, you recognize that. But I just laid out a scenario where we release lands, and then that means that this order would be in effect. I am asking you how can you guarantee that that would not be affected by this order. That is a specific question.

Mr. ABBEY. Again, we would defer to your release language that you would include in your wilderness legislation.

The CHAIRMAN. So what you are saying is that you are imposing another step on us legislatively to do something that you are doing administratively.

Mr. ABBEY. No, I am not saying that at all. What I am saying is that we respect the actions that the Congress takes as far as designating areas as wilderness, and designating other areas as not.

The CHAIRMAN. Listen, I appreciate that, and you respect the actions that Congress has taken. If I heard testimony once, I heard it a number of times today that there is a process for designating wilderness areas. And in the minds of those that were testifying, they were suggesting that this usurps that or clouds it up. Now, is that respect for what the law is that has been in effect for some 40 years?

Mr. ABBEY. Our policy, our initiative, does not designate areas as wilderness. It identifies areas with wilderness characteristics, and using our very public land use process, we will make a determination on whether or not those lands should be protected to protect those wilderness characteristics, or we will make a decision to allow other uses that might——

The CHAIRMAN. All right. Director Abbey, I want to ask you again, going back—and I would like you to respond to me, not only here orally, but in writing specifically. Can you guarantee, and how that guarantee would be, that this order would not nullify that order of taking land out of WSAs. Could you respond to me in writing to that question?

Mr. ABBEY. We will.

The CHAIRMAN. OK. I would like to yield to the gentleman from Utah the balance of my time, which is two minutes.

Mr. BISHOP. Chairman, let me just ask then a couple of—can I also add some other written requests then, the following?

Mr. ABBEY. Give us your list.

Mr. BISHOP. To what extent was the Wild Lands Order—you already answered this. The Wild Lands Order was not initiated or developed in our office in BLM. Is that correct?

Mr. ABBEY. We did propose the wild land policy. We wrote the policy.

Mr. BISHOP. OK. Then to what extent was it initiated and developed in the BLM office? And these I want for written reply. Who were the key people in the Department who led that effort? I also want to know what group or individual outside the Department were involved in developing the wild lands policies. So those are three things. We will give you obviously this stuff written down again.

Mr. ABBEY. OK.

Mr. BISHOP. I would actually like also you to define one other term that you used with the Chairman, which is congressional actions. For indeed, the Secretary has justified some of his decisions in the past by potential actions that may happen, justified some decisions because Congress would have done something that would be stronger than what he did. I want to know specifically if when you talk about your respect for congressional actions that means some-

thing that actually took place in Congress or what was introduced as a bill or might possibly come from here. I want to see how that phrasing is defined.

I also want to say that I took from heart your concepts that you want to work with Congress. I am sorry. The actions so far of introducing this the day after we got done with the lame duck session, just before Christmas, to come up with the third of your guidance manuals last Friday, just before this, does not give us a whole lot of comfort level that you really are wishing to work with us.

Had the Department come to us with a proposal for legislation to create a new Wild Lands Policy, that is working with Congress. We don't have a great deal of warm and fuzzies that you really want to work with Congress. It looks as if you want to circumvent that process. You haven't built that relationship, and the Department desperately needs to do that.

Can I—time is up.

The CHAIRMAN. My time has expired. I think you get the sense, and we may have time for a second round. The Chair recognizes the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you. Mr. Abbey, as I read your testimony, 2010 saw the highest level of oil production on BLM lands since 1997, and the second highest level of gas production ever? Is that correct?

Mr. ABBEY. Yes, it is, Congressman Markey. Production of oil and natural gas shows an increase above what was produced on public lands since 2009. As far as oil production, we have had four years of successive increases from production on public lands.

Mr. MARKEY. So you are putting the drill into "Drill, Baby, Drill" on public lands. Now, in your written testimony, you state that energy companies are producing on less than one-third of the acres that they have under lease. If that is true, could we double or even triple the oil and gas production on public lands without even issuing a new lease?

Mr. ABBEY. I wouldn't go that far, you know, because each lease doesn't necessarily have equal production. But I would say that we are quite pleased with the actions that have been taken by the industry to move forward to develop their leases. That hasn't always been the case over the past several years. But because of the market, because of the price of oil and gas at this point in time, we are seeing more activity on public lands.

Mr. MARKEY. OK. So what impact would the Wild Lands Order have on oil and gas production on public lands?

Mr. ABBEY. It would have no impact on existing leases.

Mr. MARKEY. None whatsoever? Now, please describe the public process required by Secretarial Order 3310 to determine how areas with wilderness characteristics are to be managed?

Mr. ABBEY. Well, first, what we are asking our offices to do is part of the review of specific projects or as part of their routine land use planning, to inventory public lands and identify those public lands that might possess wilderness characteristics using the mandatory criteria as defined in the 1964 Wilderness Act.

At that point in time, if we identified lands with wilderness characteristics, it doesn't change the status of those lands until we go through a very public land use planning process. That includes all

kinds of input from members of the local communities, elected officials, members of the public, all stakeholders, to help us analyze the various alternatives that are under consideration through that land use plan process to reach a common sense decision.

Mr. MARKEY. OK. And critics of this policy assert that it will create a de facto wilderness wherever you move, and the order itself clearly allows uses of some area with wilderness characteristics that might impair those characteristics. Can you provide some examples of how that might work? How is that different from management of designated wilderness, that is, what you would do in this wild lands process?

Mr. ABBEY. Well, we certainly have much more flexibility relative to land with wilderness characteristics are designated wild lands than what we would have in areas that have been designated by Congress as wilderness. For example, if we identify public lands that are managed by BLM as lands with wilderness characteristics, and through our planning process determine that the highest and better use of those particular parcels would be to allow a right of way, a transmission corridor, to go through those lands, then we could make a decision to allow that corridor to go forward. Under a designated wilderness, that would not be the case.

Mr. MARKEY. So you have much more latitude, discretion.

Mr. ABBEY. Much more.

Mr. MARKEY. And that allows you then to make distinctions that if something was already designated wilderness, it would be illegal for you to do so.

Mr. ABBEY. It would. You know, again we purposely wrote into our manual sections in the Secretarial Order the discretion that we sought and need in order to best serve the American public. There are a lot of things that may occur in the future that we don't have good information today, and that as we go forward and address future uses, we will have the discretion, using our land use planning process, to amend those land use plans if areas had been designated as wild lands, and to do something different than protect those existing wilderness characteristics.

Mr. MARKEY. OK. Well, I think the Secretary has acted within his discretion, and I think that you are acting in a way that reflects the fact that this is not wilderness, and that you have to as a result make a lot of tough decisions, which I think you are doing right now, and I appreciate that. And I yield back the balance of my time.

Mr. ABBEY. Thank you.

The CHAIRMAN. The gentleman did again a very good job on that, and I appreciate the gentleman from Massachusetts. The Chair recognizes the gentleman from Alaska for five minutes.

Mr. YOUNG. Thank you, Mr. Chairman. Mr. Abbey, my concern is this whole process, especially in Alaska. Under the Alaska National Interest Land Clams Act, ANILCA—you are aware of that act, aren't you?

Mr. ABBEY. Yes, I am.

Mr. YOUNG. OK. You know, this Act provides sufficient protection—this is section 101—for the national interests and the scenic natural culture and environmental values on public lands in Alaska. At the same time, it provides adequate opportunity for satisfac-

tion of the economic and social needs of the State of Alaska, its people accordingly. The designation and disposition of public lands in Alaska pursuant to this Act are found to represent a proper balance between the preservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition. And thus Congress believes the need for future legislation designating new conservation system units, new national conservation areas, or new national recreational areas have been abbreviated thereby.

Would you agree with that?

Mr. ABBEY. I would say, Congressman, that the ANILCA also recognizes the Secretary may identify areas in Alaska which he determines is suitable for wilderness.

Mr. YOUNG. No. Section 1326, no future executive branch action which withdraws more than 5,000 acres from public lands within the State of Alaska shall be effective. In fact, the wild lands designation is an administrative withdrawal, and that is against the law. My Governor is going to sue you, and I think he will win. You are trying to circumvent the law.

Mr. ABBEY. There is nothing——

Mr. YOUNG. You have 86 million acres of land. Fifty-six million acres in Alaska have been set aside already. There is enough, as I said before, of wild lands in Alaska. And what you are trying to do now is stir up the pot to make sure that you can have another opportunity with your Administration to take away the rights of Alaskans and this nation to develop resources on those lands because you took the rest away from them, right in this room. You are trying to circumvent. There is no difference between wild and wilderness. None.

And I have listened to you talk, and your Administration. I have listened to that lawyer on that end. And if I had thought you could work—if you work one on one without interference from outside interests—because you will be sued. You will not have any development on BLM lands. Whatever you say, it will happen. You will be sued. I watch it time and time again because you are circumventing this law. And when we get done with you, hopefully, and section 1320, not with any standing provisions of 603, the Federal Land Policy Act of shall not apply to any lands in Alaska. That is the law. Do you agree or disagree?

Mr. ABBEY. I disagree.

Mr. YOUNG. You disagree? And you are a lawyer?

Mr. ABBEY. I am not a lawyer.

Mr. YOUNG. You are not a lawyer. What did your lawyer say about that?

Mr. ABBEY. They disagree with you.

Mr. YOUNG. Well, that is fine. That is the Administration. And I agree with Mr. Rob right here. I want to find out who instigated this program. You didn't instigate it. You would take credit for it?

Mr. ABBEY. I will take credit for it.

Mr. YOUNG. You take credit for it. And did you consult your lawyers?

Mr. ABBEY. We did.

Mr. YOUNG. And they disagree with what I have to say?

Mr. ABBEY. They did.

Mr. YOUNG. And, Mr. Chairman, I suggest one thing. I would like to say this Committee ought to file a lawsuit, too, because this is against the law. This is the law, and you circumvented it, thumbed your nose at the Congress. That is what you did. That is what you are doing right now, thumbing your nose at the Congress, because that is the law right here, written. I was here when this law was written. This is what Ted Stevens wrote. This is what I wrote. And this is what the Congress agreed to. And your Administration stinks right now because you are going against the law. Follow the law once in awhile, and you get a lot more done.

Thank you, Mr. Chairman.

The CHAIRMAN. The time of the gentleman had not expired, but he yields back. The gentleman from New Jersey. Or no—yes, the gentleman from New Jersey, and then the gentlelady from Hawaii.

Mr. HOLT. I thank you, Mr. Chairman, mild-mannered Chairman. I thank you for coming. And I apologize for the long wait that you have been subjected to. It really is good of you to come.

We did talk with a lawyer who was a witness a few minutes ago, and he stated that what I might call the Salazar Wild Lands Policy is very consistent with the policy that existed prior to the Norton land policy, for many years before that. Do you agree with that characterization?

Mr. ABBEY. I do. The process is very similar. Actually, the Secretarial Order that Secretary Salazar issued provides us greater flexibility than what we had in the previous process.

Mr. HOLT. OK. Now, it has been claimed that the policy is unprecedented, and you are just saying not really. It is return to what existed before. But to expand on this thought a little further, is it the case that this policy is substantially similar to the policies of the Forest Service, the Parks Service, the Fish and Wildlife Service, and the policies that they have had for decades?

Mr. ABBEY. Well, the policies are similar from the standpoint of the need to inventory lands that are managed by those bureaus or agencies. They take that same information and use it through their land use planning process to reach decisions. Areas that are recommended from the agencies themselves for possible wilderness designations are then forwarded to Members of Congress for you to make a determination of whether or not to actually designate those areas as wilderness.

Mr. HOLT. And I would like to, at risk of asking you to repeat yourself, I would like to revisit the question that Mr. Markey asked about public participation. How would you characterize the degree of public participation under the policy before December and the policy since then?

Mr. ABBEY. Well, the dilemma that we faced prior to the Secretary's initiative is that we did not have a process since 2003 and the settlement agreement that was entered into by then-Secretary Norton and Governor Leavitt from Utah. There was no emphasis given at all to inventorying public lands to determine which of those public lands might have wilderness characteristics, much less given to how best to manage any of those lands with wilderness characteristics as part of our land use planning process.

As a result, our offices were doing their own thing. There was no consistency in how they were dealing with similar issues across the

administrative boundaries. One of the first issues that was raised to my attention when I was brought in as the Director of the Bureau of Land Management from BLM employees themselves is that we need a wilderness policy to direct us on how to deal with the issues that are coming before them every day, every opportunity that they are conducting land use plans.

We have been working on this policy since 2009, since the fall of 2009. And we finally came up to something that the Department of the Interior would support, and that is what you see that was issued as part of the Secretarial Order.

Mr. HOLT. Well, thank you. That is a very clear answer. I appreciate that. Changing the subject from policy just to a factual question, you comment that there is nearly half a gigawatt of wind power installed on public lands. There are tens of millions of acres of public lands with wind potential. What is your projection of what will be installed, and on what sort of time line? Are you prepared to answer that at this point?

Mr. ABBEY. We could certainly get you some background information and a list of projects that we are reviewing this Fiscal year 2011. And we have some other projects that have been proposed, but we haven't started the NEPA process at this point in time. We are——

Mr. HOLT. Are there under consideration as much as already is installed, or more?

Mr. ABBEY. The potential is for much greater than what has been approved. The same holds true with solar and geothermal. We are very committed to helping this nation diversify our nation's energy portfolio, which is very, very important, not underestimating the need for continued conventional energy sources. We understand that we need to continue to make appropriate public lands available for the development of oil, natural gas, and coal.

Mr. HOLT. Thank you. And thank you, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HOLT. Thank you very much.

The CHAIRMAN. The gentleman from Utah. It is your turn, and then——

Mr. BISHOP. I am going to try and go through six questions, if I could, to you, very quickly.

Mr. ABBEY. OK.

Mr. BISHOP. You have offered the third guideline on Friday, as I understand, right?

Mr. ABBEY. I am sorry. What was that?

Mr. BISHOP. You offered your guideline on this issue on Friday. Is that correct?

Mr. ABBEY. We issued three manuals on Friday.

Mr. BISHOP. OK. Now, is there any precedent for that? I know in the past, you have done on one particular issue two different memos. Is there any precedent for having that many manuals, guidelines, et cetera?

Mr. ABBEY. They were all related to the Secretary's initiative.

Mr. BISHOP. Is there any other program where you have done that many guidelines, of which you are aware?

Mr. ABBEY. Not recently.

Mr. BISHOP. OK.

Mr. ABBEY. I am sure that that is not the exception, but not recently.

Mr. BISHOP. You have already had resource management plans that have been placed into effect. Is the decision of the Secretary voiding all of those resource management plans?

Mr. ABBEY. No, they are not.

Mr. BISHOP. If it doesn't void that, that means you have to amend those resource management plans.

Mr. ABBEY. Not necessarily.

Mr. BISHOP. So you are claiming you don't have to go through the APA process to amend a resource management plan under this provision?

Mr. ABBEY. What I am suggesting is that our manuals and the Secretarial Order requires us to ask our field offices to review their existing land use plans to determine whether or not they are consistent and in compliance with the Secretarial Order. Based upon that review, they will come back to us and let us know what amendments might be necessary.

Mr. BISHOP. Until that is—oh, so then you will go through the amendment process.

Mr. ABBEY. Not necessarily. If they come back, Congressman Bishop, and let us know that their land use plans are consistent with the Secretarial Order, then we don't necessarily have to amend any land use plan.

Mr. BISHOP. All right. And you are not requiring a non-impairment standard until that time takes place?

Mr. ABBEY. We are reviewing specific projects, undertaking inventories as a result of any specific project that would come before us to determine whether or not those projects are being proposed on lands that we have determined to have wilderness characteristics. And as part of that NEPA process, will make a determination of whether or not to approve that project.

Mr. BISHOP. Thank you. I appreciate that. The Energy Policy and Conservation Act, which I think was done actually at the end of the Clinton Administration, required an inventory of all Federal lands an estimate of oil and gas resources, and was required to be part—or utilized as part of the BLM plan to identify areas in that. And that was part of the resource management plans that you have used in the past. Is that still part of your process under your new guidelines, your new manual?

Mr. ABBEY. Information relating to mineral potential is part of our land use planning.

Mr. BISHOP. So it is still—OK. Let me ask the hypothetical that you were trying to get to. Let's say that after three years the BLM decides that those wilderness characteristics on certain land do not need the extra protection that one may save. Does that mean you would have to do another re-inventory before you would change the management plan for those parcels?

Mr. ABBEY. No, it doesn't require us to re-inventory, especially in that type of time line. It would require us to go back and amend that land use plan decision.

Mr. BISHOP. You will not have as much money in the next upcoming years as you had in the past. That is probably a given. Are you really sitting there and wanting to tell me that you would rath-

er spend money on this proposal than you would on wild boroughs, wild lands, fire suppression issues? You are going to have to make those decisions. Is this the priority that is going to take money away from those other entities?

Mr. ABBEY. The priority for the Bureau of Land Management is to manage public lands for multiple uses. We believe conservation is part of those multiple use.

Mr. BISHOP. I am asking for prioritization. Are you willing to do that?

Mr. ABBEY. We do that through our budget appropriation process.

Mr. BISHOP. And if you have less money, are you will take it from borough management, wild horse management, to do this?

Mr. ABBEY. We are looking at actions to reduce the costs associated with wild horses and boroughs every day.

Mr. BISHOP. Sir, I appreciate everything you said. Your answers to Representative Markey were spot on accurate. But what you said was, as has been said by others, is that this new proposal gives you a great deal of flexibility. I hope you realize that is what has us concerned. It is totally possible that there may never be a conflict. We may never get on your case with this land possibility. But when you have elements in there as talking about what congressional actions may be or what the average visitor may view or islands of whatever the noun is you put on that prepositional phrase, there are problems.

So I am going to ask you the last question here, and I won't extend the pain any longer. When you are in my office, I asked you this question. I still haven't gotten an answer from it. The professionals on the ground that did the RMPs, you don't criticize their work at all. Is that correct?

Mr. ABBEY. I have not criticized their work.

Mr. BISHOP. And that is consistent with what you said. What is it then about the RMP plans that were done after those years and years of study that would impel the Secretary to say we don't like the answer; we need to redo it again. And I want to be very specific. What about their work product was wrong?

Mr. ABBEY. No one has said that their work product is wrong.

Mr. BISHOP. Then why aren't you just going forward with their work product?

Mr. ABBEY. Because we want them to go back and review their land use plan to see if it is consistent with the Secretary's initiative.

Mr. BISHOP. For what? What is the smoking gun that makes you want to redo this?

Mr. ABBEY. We would like to know that in the six resource management plans that were completed in Utah, the most recent planning that was completed in Utah—there were 4.8 million acres identified through BLM's inventory process as possessing wilderness characteristics. As a result of that land use plan, there was 400,000 acres that were identified to protect as natural areas. We are just looking to determine what criteria was used by the district offices to make that determination.

Mr. BISHOP. There is the problem. If they are smart, if they did it the right way, their decision should be able to go forward, unless

there is something that gives you pause to think that they were wrong. Is there one specific thing that gives you pause to think they were wrong?

Mr. ABBEY. Not at this point.

The CHAIRMAN. Quickly.

Mr. BISHOP. I am done. I am done. Sorry.

The CHAIRMAN. We may have another round. So the gentlelady from Hawaii.

Ms. HANABUSA. Thank you. Thank you, Mr. Chair. Thank you, Director Abbey. I would like for you to bear with me. I don't have the years as my colleagues do, so they use all these different acronyms that mean nothing to me. So can you tell me, what is the difference between wilderness characteristics and how that interplays with—I think I heard the Chair use it—WSA, which I believe are wilderness study areas. Is there a relationship between the two?

Mr. ABBEY. The similarity is that wilderness characteristics and areas that were identified as wilderness study areas were all based upon possessing mandatory wilderness values. Those would be size, naturalness, and opportunities for outstanding—or opportunities for solitude or outstanding recreation.

Ms. HANABUSA. You mentioned I think in one of your testimonies that only Congress can do a wilderness designation.

Mr. ABBEY. That is true.

Ms. HANABUSA. So wilderness study area, does that have any basis in law? Does it have any statutory authority? Is it equal to a wilderness designation?

Mr. ABBEY. The Federal Land Policy and Management Act directed the Bureau of Land Management to conduct inventories of all public lands when it was passed in 1976. The Bureau of Land Management went out and identified those lands with mandatory wilderness characteristics.

Under the Federal Land Policy and Management Act, we identified those lands as wilderness study areas, which included not only protecting those wilderness values that existed, but also to do further analysis and studies, and then make recommendations to Members of Congress on which of those areas that had been identified as wilderness study areas the agency recommends for designation by Congress.

The agency completed that work in the early 1990s. Since that time, there has been 8.6 million acres of lands managed by the Bureau of Land Management that has been designated as wilderness by Congress. There are a little over 13 million acres that are being managed as wilderness study areas, which means we are protecting those wilderness values and not allowing any actions that would impair those wilderness values until Congress releases those areas for wilderness study status.

Ms. HANABUSA. So do I understand this correctly? Congress can then disagree with you as to whether it is a wilderness study area? Is that correct? I mean that the wilderness study area could then be a wilderness designation.

Mr. ABBEY. Congress would have to pass legislation to release areas from the wilderness study area status.

Ms. HANABUSA. Right.

Mr. ABBEY. They would also have to pass legislation to designate areas as wilderness.

Ms. HANABUSA. Is there anything that reverses the wilderness to something else? In other words, if lands are designated wilderness, can Congress then designate or undesignate it? Or is the designation out of the wilderness study area? Do you understand what I am saying?

Mr. ABBEY. Well, Congress always has the discretion to go back and revisit areas that they have designated as wilderness. I am not aware of any time they have done that, but they certainly have that discretion. Usually through legislation, when they designate areas as wilderness, more times than not, they will release areas that have been identified as wilderness study areas that they chose not to designate as wilderness for other purposes.

Ms. HANABUSA. And my last question is this 15-year study that we hear so much about. Now, the 15-year study, is that tied to what we are calling the regional plans? Or is that a separate thing that there is the requirement that, in 15 years, all these areas are studied, and you either include them in wilderness study areas, or you do whatever with it. What is the secret behind this 15 years?

Mr. ABBEY. Well, we normally believe that the life of a land use plan is around 10 to 15 years. Now, that hasn't been the case because the West has been changing so rapidly that we see a need to amend land use plans routinely for purposes like renewable energy development, where we have done programmatic EISs for wind energy or solar energy, that we will then go forward once we have the analysis completed as part of the programmatic EIS, and if necessary we will amend that land use plan to accommodate those type of projects in certain areas.

Ms. HANABUSA. So absent that, is there a requirement to at least review every 15 years, the maximum outside date?

Mr. ABBEY. There is a requirement through policy for us to routinely review our land use plans to see if there is a need for updating it.

Ms. HANABUSA. Thank you. Thank you.

The CHAIRMAN. I thank the gentlelady. At the risk of doing one more, I have some questions. And, Director Abbey, you have been very patient. I hope your wife will understand that patience because you are going to probably get home much later, and I hope the food will be warm when you get home. So my wife is in Washington, so I know my won't be.

Mr. ABBEY. My wife is in Mississippi, so I am not sure she is holding the meal.

The CHAIRMAN. So we are both in the same place then. All right. I just have one observation, and with the line of questioning that we have heard from a variety of people—and this is kind of what I heard. Nobody disputes, and the court has affirmed, that BLM has the authority to inventory lands on a regular basis. That doesn't seem to be the issue here. But the sticking point seems to be—and I would like you to be specific with what I am going to say, where you get the authority to make this distinction. BLM is used for multiple purpose. And it appears that the dispute is one of the uses is given a higher authority than other uses, and that may be where the sticking point is.

So I would like you, if you can, to tell me specifically where you have the authority under BLM, under land inventory, or however that is characterized, to give higher authority over other uses. And in this case, of course, the fear is, from what the testimony we have heard, that wilderness or wild lands, i.e., wilderness—at least one of the Members here felt there was no difference—is a higher authority. So could you give me that?

Mr. ABBEY. Mr. Chairman, I think the challenge that we face in dealing with lands with wilderness characteristics is the sensitivity of those characteristics, the wilderness values themselves. If we allowed certain uses to go forward to impact those wilderness characteristics, it may be that those values are lost forever.

The CHAIRMAN. But wait, listen. That is a judgment call.

Mr. ABBEY. That is a judgment.

The CHAIRMAN. There is no question. I am asking where you get the authority, where you get the authority, under statute, to make that determination, because that for the first part is a judgment call. I recognize that.

Mr. ABBEY. As we go forward with our land use plan, Mr. Chairman, all uses are on the table.

The CHAIRMAN. Right, right.

Mr. ABBEY. We look at the alternatives.

The CHAIRMAN. I know. And the dispute here, as I pointed out, it appears from the testimony that all of the uses, higher authority has been given to this wild lands. And again, I am asking again. Where do you get the authority to make that determination of which is a higher priority? It could be another one. You happen to make in this case wild lands. Where do you get that authority statutorily?

Mr. ABBEY. I am not sure it exists statutorily.

The CHAIRMAN. Well, then that begs the question of why did you do it?

Mr. ABBEY. Because we wanted to demonstrate the values that we are placing on wilderness characteristics to make sure it does not get lost as part of our inventory——

The CHAIRMAN. But that is a judgment call that Congress makes under the Wilderness Act of 1964. We heard ample testimony on that earlier today, that we had that authority. And now you are saying you don't have the authority to do that, and yet you are doing that.

Mr. ABBEY. We have the administrative authority to go forward and do land use planning based upon our policies that we ourselves enact.

The CHAIRMAN. Right. I am asking you again—I mean, you have answered that you have no authority to give higher authority to multiple uses. You just answered that. And yet that is what you are doing.

Mr. ABBEY. We are using the authorities under 201 and 202. Again, it is not elevating any single resources higher than anything else.

The CHAIRMAN. Well, maybe I am missing something, but I thought I heard very specifically that you don't have the authority to do this, to make this determination of which multiple use is higher than the other. You were just doing it. And that is the fear

that we hear from those that are impacted by this, the uncertainty that I spoke about earlier. I have to say, Director, that disturbs me when I hear you say that you don't have that authority.

Mr. ABBEY. The point being, Mr. Chairman, is that we want to make sure that lands with wilderness characteristics that we ourselves identify through our inventory process consistent across the Western United States are given due consideration as part of our land use plan.

The CHAIRMAN. But you have no statutory authority to weigh one over the other, as you just said a moment ago.

Mr. ABBEY. I am not aware of one.

The CHAIRMAN. All right. Mr. Bishop.

Mr. BISHOP. One last question to try and clarify something Representative Hastings earlier said. He asked about WSAs, whether they would be eligible for this. Let me just ask specifically. If a WSA were released by Congress, would it then be eligible for wild land designation?

Mr. ABBEY. It would qualify as lands with wilderness characteristics, or it would have never been a wilderness study area.

Mr. BISHOP. So it would be eligible then unless Congress passes another law to specifically say you cannot do.

Mr. ABBEY. Congress provides direction to the Bureau of Land Management every day through their release language with wilderness legislation.

Mr. BISHOP. OK. But it would be eligible then for wild lands if it were released from WSA status.

Mr. ABBEY. It could be, but let me repeat myself. We would defer to the language that would be in the wilderness bill that was passed by Congress to provide us with direction on how to treat these lands.

Mr. BISHOP. I know. But we are giving you flexibility. Let me just say at the very end, I do appreciate you being here and staying this late. We apologize for keeping you here this long. This is an important issue for a whole lot of people. This hearing, I am sure, is about to conclude. But this will be not the last time we are talking about this particular issue again.

But I do appreciate your willingness to stay here and answer these questions to the best of your ability, and I thank you for doing that, sir.

Mr. ABBEY. Well, I appreciate those remarks. And let me say we do know the importance of the Secretarial Order. We would have never issued the Secretarial Order if we did not think it was important, and to have this type of discussion, to be able to defend the actions that we have taken.

Mr. BISHOP. Maybe it would have been better if we had this discussion before you issued the order. Never mind.

The CHAIRMAN. The gentleman yields back. And I apologize to the gentlelady from Hawaii. So OK. You have no questions then? Well, I too want to thank you, Director Abbey, for being here. This was a long day. And as I said at the outset, I know that you will be asked back here. And, of course, we welcome you. And I do want to say, as you can tell by the testimony, sometimes passions ride pretty hard on these issues. That is not something that you are not aware of. But the best way to have a logical discussion on this

would be to respond to what our requests are of you, as we did when we asked you to write.

If you could do that, that helps. There has been times when we have Secretary Salazar up here on Thursday—there are some times we weren't afforded that opportunity. And we just don't think that is the proper way to do business in a transparent way because this is a government of the people, as you well know.

Mr. ABBEY. You bet.

The CHAIRMAN. So with that, I want to thank you very, very much for being here and for your patience. And I see some of the other witnesses in the audience, and I want to thank you also for your traveling here and coming to this meeting.

With that, the hearing is adjourned.

[Whereupon, at 6:55 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

[The prepared statement of Mr. Flores follows:]

Statement of The Honorable Bill Flores, a Representative in Congress from the State of Texas

Mr. Chairman, thank you for holding today's important hearing on the impact of the Administration's Wild Lands Order on American jobs and our economy. Last month, the House of Representatives passed a resolution instructing the committees to review existing and proposed regulations from Federal agencies, and I am pleased that our committee will be discussing the impacts of this inappropriate unilateral regulation from BLM today.

We can all agree that our Nation's public lands should be protected, however this designation of "wild lands" can be highly restrictive and have serious effects on our economic well-being, our conservation goals, and national security needs. I find it puzzling that the Obama Administration, at a time of 9+ percent unemployment and gas prices at the highest ever for this time of year, would recklessly make the decision to lock up domestic energy sources and recreational opportunities that have the potential to provide much-needed jobs and contribute to the economies of local surrounding communities. This rule also circumvents Congress, our federal rulemaking process and any local stakeholders by allowing a federal agency to designate millions of acres of publicly owned lands as de facto Wilderness areas.

I look forward to hearing from our witnesses today on how they see the impact of the Secretary's decision and to working with my colleagues on the committee to ensure we have a balanced policy approach so that our public lands meet both our environmental and economic needs.

[The prepared statement of Mr. Matheson follows:]

Statement submitted for the record by The Honorable Jim Matheson, a Representative in Congress from the State of Utah

Mr. Chairman, I appreciate the opportunity to submit this statement for the record.

Secretary Salazar's December announcement of a new "Wild Lands" policy was unexpected and another example of a top-down, Washington-driven approach to public lands issues that fails to recognize the importance of local input and what is best for states and communities. This is not the first time this approach has been taken. In fact, the history of public lands discussions in Utah has been dominated by highly charged rhetoric with all-or-none attitudes toward the issues. Though it's easier to address complex issues with simple rhetoric and polarized points of view, it results in little real progress and many unresolved concerns.

There is a better way to approach stewardship of public lands. An inclusive approach where all stakeholders participate offers a path forward to resolve these many-sided topics. A bottom-up, stakeholder-driven process works best whether in implementation of an administrative proposal or development of legislation. This approach may take significant time and effort, but it allows the complexity of public

lands issues to be addressed in a way that builds consensus and receives broad local support.

Administratively, this approach is supposed to be adopted and implemented under the Federal Land Policy and Management Act of 1976 (FLPMA). Under FLPMA, the Bureau of Land Management (BLM) is required to develop a comprehensive land use plan for multiple uses commonly referred to as a Resource Management Plan (RMP). The RMP serves as a roadmap for potential energy development, OHV usage, preservation of sensitive areas, protection of endangered species, harvesting of timber, grazing and wildlife protection. As the BLM develops its RMP, many different interest groups are encouraged to participate and provide feedback on the proposals.

A stakeholder-driven process can also create successful legislative actions regarding public lands. Senator Bob Bennett and I worked for over five years to develop and eventually enact the Washington County Growth and Conservation Act of 2008. This legislation resolved several critical public lands issues in Washington County, Utah including the identification of utility corridors and transportation routes, the disposal of surplus federal lands, the designation of wilderness and a Wild and Scenic River. This legislation provided a greater degree of certainty for all of the local interest groups so that their vision of the future recreational and economic landscape could be realized.

Prior to Secretary Salazar's announcement of Order No 3310., the Administration made several public statements that appeared to support such a locally-driven stakeholder approach to public lands issues. Specifically, on October 1, 2009, when BLM Director Bob Abbey testified before the House Natural Resources Committee, he voiced support for legislation that is "home-grown" and "geographically-focused" as was consistent with the Washington County Growth and Conservation Act. In particular, Director Abbey mentioned the legislation as a milestone in Utah regarding public lands issues. In addition, in February of 2010, a draft list of monument designations was leaked from the Department of Interior, including several in Utah. I wrote to Secretary Salazar condemning any discussions that did not involve stakeholders in local communities. I referenced the lingering anger in our state from a 1996 monument designation in Utah. Secretary Salazar responded on February 22, 2010, stating, "I also believe that any new designations and conservation initiatives work best when they build on local efforts to better manage places that are important to nearby communities."

The announcement of the Secretary's most recent order calls into question the substance of RMPs that were recently completed in Utah after several years of work. In fact, the Order seems to ignore all of the work that was done on these RMPs and creates renewed uncertainty for all stakeholders. Going forward, I believe it both fair and imperative that we resolve discrepancies between the words and actions of Secretary Salazar and Director Abbey regarding public lands issues in Utah and throughout the country. I feel strongly that any plan for land use in Utah must be developed through a collaborative process, involve local stakeholders, and seek consensus on future use of our shared resources. Additionally, it is critical for the economic prosperity of cities and counties in my district and throughout the state that we resolve inconsistencies in a timely manner so that they are able to adequately plan for the future and seize economic opportunities.

Mr. Chairman, I believe that this Secretarial Order undermines local efforts in Utah, is a heavy-handed decision by the Secretary, and creates economic uncertainty for our communities. On numerous occasions, we have been told that a locally-driven, collaborative approach is the right course to pursue in land use plans. This is a radical departure from those discussions. I look forward to a response from the Department of Interior as well as future dialogue with federal land managers regarding how local stakeholders can engage in the process.

Thank You.

[The prepared statement of Mrs. McMorris Rodgers follows:]

Statement of The Honorable Cathy McMorris Rodgers, a Representative in Congress from the State of Washington

Thank you, Chairman Hastings for convening this hearing. This is a critical issue in our home state of Washington and for all Americans who are concerned about the impact that yet another land designation will have on jobs and economic growth in this country.

What many of my colleagues may not know is that over 30% of Washington State is owned by the Federal government—and in Eastern Washington the percentage

is even higher, with some counties, such as Okanogan at 80% owned by the Federal government. When the Federal government controls such large segments of land, whether through a Wilderness or Wild Land designation, it effectively limits, if not eliminates, all economic vitality.

Let me give you an example, it has been brought to my attention that the United States Department of Fish and Wildlife Service, in coordination with the State of Washington, has allocated 10% of the entire Department of Fish and Wildlife Cooperative Endangered Species Conservation Fund toward the purchase of additional land in Okanogan County. Collectively, these purchases have left approximately 18% of Okanogan County land in private ownership. Unfortunately, this is yet another example of the Federal government ignoring the impact that its bureaucratic decisions will have on our local communities. Moreover, I am concerned that the Fish and Wildlife Service has yet to conduct environmental impact studies to assess the economic impact that these purchases will have in Okanogan County, as required under the National Environmental Policy Act.

When looked at collectively, the land acquisitions in Okanogan County and elsewhere have had and will have significant economic implications, not to mention national security implications as well. By removing lands from private ownership and thus from the local municipal tax rolls—the Federal government is stifling locally driven development and making rural communities more dependent on the Federal government. The Administration proposal to designate land as Wild Land, similar to its push for more Wilderness, will slow true economic growth and prolong lasting job creation.

The documents listed below were submitted for the record and have been retained in the Committee's official files.

- Alaska Miners Association, Inc., Letter to Chairman Hastings and Ranking Member Markey
- American Motorcyclist Association, Letter to Chairman Hastings
- Arctic Slope Regional Corporation, Statement for the record
- Consolidated Goldfields Corp., Letter to Chairman Hastings
- Dail, Christopher, Spokane, Washington, Letter to Chairman Hastings
- Fox, Fred, Letter to Chairman Hastings
- Johnson, Dr. K. Norman, Professor, Oregon State University, and Debora Johnson, Applegate Forestry, Corvallis, Oregon, "Monetizing Ecosystem Services from BLM O&C Forests"
- Kaufman, M.A., Letter to Chairman Hastings
- Kinsell, Sheldon, Letter to Chairman Hastings
- Markey, Hon. Edward, Ranking Member, Committee on Natural Resources, along with various House Members, Letter to Secretary Salazar
- Mauck, Tim, Commissioner, Clear Creek County, Colorado, and other Colorado County Commissioners, Letter to Secretary Salazar
- Olivas, John, and other outfitter groups, Letter to Chairman Hastings and Ranking Member Markey
- Outdoor Alliance, Letter to Chairman Hastings and Ranking Member Markey
- Outdoor Industry Association and The Conservation Alliance, Letter to Chairman Hastings and Ranking Member Markey
- Parker, Doug, Missoula, Montana, Letter to Chairman Hastings
- Parnell, Hon. Sean, Governor, State of Alaska, Letter to Chairman Hastings with attachments
- Parnell, Hon. Sean, Governor, State of Alaska, and Governors of Arizona, Idaho, New Mexico, North Dakota, Utah, and Wyoming, Letter to Secretary Salazar
- Petzel America, Letter to CongressmanBishop
- PEW Campaign for America's Wilderness, Letter to Congressman Mike Simpson
- Public Lands Advocacy, Letter from Commissioner Doug Robertson, President, to Secretary Salazar
- Ranchers-Cattlemen Action Legal Fund (R-CALF), United Stockgrowers of America, Statement submitted for the record
- Resolution by the Association of O&C Counties in Opposition to Order No. 3310 Issued by the Secretary of the Interior
- Resource Development Council, Letter from Carl Portman, Deputy Director, to Chairman Hastings
- Roberts, Mac, Spokane, Washington, Letter to Chairman Hastings
- Schenk, Robert, San Francisco, California, Letter to Chairman Hastings

- Schultz, Thomas M., Jr., President, Western States Land Commissioners Association, Letter to Secretary Salazar
- Skaer, Laura, Executive Director, Northwest Mining Association, Letter to Chairman Hastings
- "Small and Temporary—Assessing the Impact of 100 Years of Oil and Natural Gas Development in Western Colorado"—Background information submitted for the record
- Spalding, Vance, Production Manager, Fronteergold, Letter to Chairman Hastings
- Thomas, Randy, Vice President, Operations, EP Minerals LLC, Letter to Chairman Hastings
- Weldin, Robert D., Letter to Chairman Hastings
- Western Energy Alliance, Kathleen Sgamma, Director of Government and Public Affairs, Denver, Colorado, Position Paper and Background Information
- White River WC Field Photos
- "Wilderness Characteristics Insert"—Background Information
- The Wilderness Society and Outdoor Industry Association, Letter to Chairman Hastings and Ranking Member Markey

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