

it. If they had succeeded, the condor would now be extinct.

She fought for the acquisition of land to extend the Appalachian Trail.

She worked on the regulations that banned lead shot for migratory birds, saving millions of birds.

She secured funds for the restoration of Ellis Island and the Statue of Liberty.

And she negotiated the original agreement with Senator McCAIN to restrict overflights in the Grand Canyon.

Again, these are just a few of her accomplishments over the past 15 years, but they paint a clear picture.

They paint a picture of someone who has dedicated her life to public service, to preserving the environment and natural resources, and to enforcing the law.

They paint a picture of an individual who is highly qualified to be the next Secretary of Interior, and the first woman to serve in that position.

I urge my colleagues to consider the facts, not the distortions, in making their decisions about Gale Norton.

I strongly support Ms. Norton's nomination to be Secretary of the Interior, and look forward to working with her on the many challenges that lay ahead.

NOMINATION OF GALE ANN NORTON TO BE SECRETARY OF THE INTERIOR—RESUMED

The PRESIDING OFFICER. The time of the Senator has expired. Under the previous order, the nomination of Governor Whitman is laid aside, and the Senate will now resume consideration of the nomination of Gale Ann Norton, which the clerk will report.

The legislative clerk read the nomination of Gale Ann Norton, of Colorado, to be Secretary of the Interior.

Who yields time? The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the time allotted to Senator FEINGOLD with respect to the Norton nomination be provided to Senator KERRY.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I believe I have 15 minutes to speak on the Norton nomination.

The PRESIDING OFFICER. The Senator is correct.

Mr. WELLSTONE. Mr. President, I say to my colleague from New Hampshire, I think there is a distinction between what I hope will be substantive remarks on my part in opposition to Ms. Norton to be Secretary of the Interior and personal attack.

I am a Senator from Minnesota. I am from a State where we love our lakes and rivers and streams, the environment.

My opposition to Ms. Norton to be Secretary of the Interior does not mean *ipso facto* that what I say represents any kind of personal attack. It is simply a very different assessment of whether or not she should in fact be

the Secretary of the Interior for the United States of America.

I have a lot of policy disagreements with Ms. Norton. I have a lot of policy agreements with any number of the President's nominees to serve in our Cabinet, but almost all of them I will support because there is a presumption that the President should be able to nominate his or her people.

On the environmental front, as long as I have the floor of the Senate—and I hope I am wrong—I say today that I believe the record of this administration will amount to a rather direct assault on environmental protection. I think that would be wrong for the country. This is not a debate about ANWR, the Arctic National Wildlife Refuge, not today. My disagreement with Ms. Norton or the President is not the reason why I oppose her to be Secretary of the Interior.

Part of the debate we will have in this country has to do with this nexus between the way we consume, the way we produce energy, and the environment. I see an administration that is an oil interest administration, and the focus will be more and more on oil, barreling down a hard path energy policy, with fossil fuels, environmental degradation getting lip service but not investments in clean technologies, renewables, safe energy.

The reason I oppose not Gale Norton as a person but Gale Norton to be Secretary of the Interior is because I have doubts about her ability to fairly enforce existing environmental and land use laws. That is why I oppose this nomination.

The Secretary of the Interior is the principal steward of nearly one-third of our Nation's land. The Secretary is the chief trustee of much of our Nation's energy and mineral wealth.

The Secretary of the Interior is the principal guardian of our national parks, our revered historic sites, and our fish and wildlife. It is the job of the Secretary of the Interior to protect this precious legacy and to pass it on to future generations. As Catholic bishops said 15 or 20 years ago in their wonderful pastoral statement, we are strangers in this land. We ought to make that better for our children and our grandchildren.

Ms. Norton has had significant positions—government positions and in the private sector. It is her record in these positions—both in government and private sector roles—that are the most troubling to me. In fact, her record indicates that she may not be able to enforce environmental protections and ensure the preservation of our public lands.

There is no doubt that Ms. Norton did a good job in the confirmation hearings. She pledged her past views, and she is certainly committed to enforcing the laws of the Interior Department. I commend her for her testimony. It is my sincere hope that she will live up to these commitments. However, I think the Senate and Sen-

ators are compelled to view her record not in terms of 2 days of testimony but the totality of her record.

The totality of her record is one that I believe points to her inability to strike the very difficult and the very delicate balance between conservation and development. As a private attorney, Ms. Norton has taken positions that indicate a strong opposition to the very environmental protections which, if confirmed, she would be asked to defend.

For instance, she has argued that all or parts of the Clean Air Act are unconstitutional—taking a State rights view. She has argued that the Surface Mining Act, which is all about protecting workers' coal dust level, which is all about occupational health and safety protection, which is all about the problems of strip-mining and the environmental degradation that it causes many communities in Appalachia, again, unconstitutional.

She has argued that provisions of the Superfund law that require polluting industries to pay for cleanup of waste sites should be eliminated.

Ms. Norton has testified that implementation of the National Environmental Policy Act—NEPA—is something that should be essentially devolved to the State level, that she would prefer not to conduct Federal land environmental reviews.

I am sorry; when it comes to this most precious heritage, when it comes to the land, when it comes to our environment, when it comes to something that is so precious for not just us but our children and grandchildren, it is not just a matter of State options.

We are a national community, and we have made a commitment to environmental protection. I believe the actions Ms. Norton has taken and the positions she has taken in the past would make it impossible for her not only to enforce these laws but to be a strong steward for the environment.

In 1997, Ms. Norton argued that the global warming problem didn't exist. That is, of course, in contradiction to the international science community. I know in her testimony she essentially said she now takes a different position—I appreciate that—as Colorado attorney general.

But I also have questions in my own mind given the position she has taken about what kind of steward for the environment she would be.

As Colorado attorney general, Ms. Norton argued against the Endangered Species Act, saying it was unconstitutional. As attorney general, Ms. Norton supported measures that would relax otherwise applicable environmental safeguards if businesses volunteered to regulate themselves. And regardless of the damage, regardless of the effect on the public, regardless of the effect on people, these companies would be shielded from any liability.

Her position is troubling to me because Ms. Norton might be willing to permit private companies that operate

on or near public lands to regulate themselves. As Colorado attorney general, in the case of one mining company acting under self-regulation, there were violations and massive contamination of the Alamos River. My colleague from New Hampshire said she took action, but it was only after the Federal Government was forced to step in and say you must take action. Indeed, the Federal Government was forced to step in and spend \$150 million in emergency cleanup of the river.

In addition, there is a case of citizens living downwind from a mill that had been emitting pollution for months. Again, the Secretary of the Interior refused to take action, and again the Federal Government was forced to intervene—again resulting in a record \$37 million in fines against the company.

Since leaving her job as AG in 1999, Ms. Norton has been lobbying Congress and the Colorado State Legislature on lead paint issues in behalf of the NL Industries, a Houston company formerly known as the National Lead Company. This company has been named as a defendant involving 75 Superfund or other toxic waste sites in addition to dozens of lawsuits involving children allegedly poisoned by lead paint. The only thing that I can say is I understand Ms. Norton's right to work for whatever company she wants to, but it does not give me very much confidence that she is the right person to be Secretary of the Interior—a major position of environmental leadership in the U.S. Government.

After reviewing her record of 20 years, I believe Ms. Norton has not demonstrated the required balance needed to be a guardian of our national heritage and a trustee of our national lands. Furthermore, she has shown a career pattern of opposing environmental protection, which I think speaks to her ability—or, I say to my colleague from Massachusetts, her inability to carry out the requirements of Secretary of the Interior.

I appreciate her testimony to the Energy Committee, and I take that in good faith. However, I cannot ignore her resistance to prosecute the industry in order to protect Colorado's land and people while serving as attorney general. As Secretary of the Interior, Ms. Norton would be charged with balancing the interests of industry against conservation. In my view, her record strongly indicates she will heavily tilt that balance away from conservation, away from preservation of the environment, away from environmental protection, away from being the trustee for the land, and away from understanding what a sacred duty we have.

It is a value question to make this Earth a better Earth and hand it on to our children and grandchildren. I find all of that unacceptable, and that is why I oppose this nomination. I hope other Senators will oppose this nomination as well.

Might I ask how much time I have remaining?

The PRESIDING OFFICER. Three minutes 43 seconds.

Mr. WELLSTONE. I yield the floor, and I also say to my colleague from Massachusetts that I would be pleased to yield the additional time to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the Senator from Minnesota not just for his graciously yielding me additional time but, most importantly, for the thoughtfulness and sensitivity expressed in his remarks. I associate my remarks very much with his thinking and his approach on this issue.

I think each and every one of us in the Senate feels an automatic pressure to want to support the nominee of the President of the United States. I think it is a national feeling that generally pretty good people, with honest records of taking a position for something they believe in in the course of a lifetime, have found their way to the top of their profession in a sense, and the President of the United States, for one reason or another, makes a decision to entrust them with significant responsibilities.

There is a lot of goodwill here in the initial days of the administration to want to give the President the person that the President chooses. I think through the 16 years I have been here, and the several Presidents I have had the privilege of giving advice and consent to with respect to their nominations, that there are precious few, a small percentage—very small—that I have chosen to cast my vote against the President's choice.

As the Senator from Minnesota said, I think what we are looking for in the person who comes to a job with that kind of responsibility, being a Cabinet Secretary in charge of major responsibilities, is somebody who brings not a series of denials, renunciations, conversions, if you will, from a lifetime of effort, but somebody who brings with them to the job their gut and their heart and their head all linked together in concert with the fundamentals of the job they are being asked to do.

In the case of the nominee Gale Norton, I don't find there is that kind of connection, that there is a continuity of a lifetime of effort that shows me with assurance where the stewardship of this department will go. I regret to say to the Chair and to my colleagues that in the course of the years I have been here and had the opportunity to provide advice and consent on other nominees, we have seen people who came without that connection, with that disconnect, and who subsequently fell short in the job because the gut instinct was not to strike the balance; it was to keep faith with who they were and what brought them to the job.

I don't cast this vote lightly because I know Ms. Norton has a long and even distinguished record of public and private service. I know her friends and

others say she is a decent and a capable professional. Some have, in the course of this debate, labeled her an extremist or even caricatured her as James Watt in a skirt. I think that is unfortunate. I find those labels troubling and improper. They distract from honest differences over principle and policy that have made this nomination troubling for the Senator from Minnesota, for myself, and for others.

I oppose Gale Norton's nomination. For a Cabinet post that demands that its occupant strike a very difficult and a very delicate balance—the same word my colleague from Minnesota used—a balance between conservation and development, President Bush has selected this individual. I suppose one might ask the question, of all the people in the country who have records with respect to the environment and development and striking that balance, of all the attorneys general, of all the people involved in conservation itself, of all the people in the environmental movements of this country, of all the people who have built up records of activism in an effort to try to strike that balance, why is it that we are presented with an individual whose philosophy over the past two decades has been singularly unbalanced?

The Secretary of the Interior is responsible for protecting the almost 500 million acres of public land, including 383 parks, 530 wildlife refuges, and 138 wilderness areas. Among these are some of our Nation's most valued lands: Yosemite, with its waterfalls, meadows, the forests, and the giant Sequoias, the world's oldest living things; the Everglades National Park, with its sea of sawgrass, mangroves, hardwood hemlocks, stork, great blue heron, and egrets; Mount Rainier National Park at Mount Rainier—a 14,410-foot-tall active volcano encased in 35 square miles of snow and ice and flanked with old-growth forests and alpine meadows.

Some are sanguine to suggest, well, those areas will never be threatened. But I know from talking to people in various parts of the country I visit that there are huge movements where people are angry that so much of their State is protected by the Federal Government; where people believe more of these areas ought to be open to development, not less; where people have witnessed, indeed, efforts to try to stop finding that proper balance between mining and grazing, or a host of other interests, and who would rather open the forests and have the U.S. Government build more logging roads, without even commenting on whether our logging practices are good or bad, after fires that we had last year. Sure, we can improve, but these are different movements, these are movements which disagree with these setasides.

I remember what happened on the floor of the Senate just a very few years ago, in 1995, with the House of Representatives and the Senate first term in Republican control, and I remember standing here and by 1 vote

only we managed to stop major destruction to 25 years' of efforts to protect the environment of this country—by 1 vote only.

We happen to be a little stronger in the Senate today, but knowing how close it was and watching how critical the discretion of a Secretary is in what happens in terms of the regulations, what happens in terms of efforts they take to court or don't take to court, or seek to have protected or not protected, there is enormous discretion exercised on a daily basis.

I believe we need to remember the history we have traveled here. There was a period of time where some of the lands I just mentioned, the very ones that are protected today that we think of as national treasures, were not thought of in that way. In 1853, when the U.S. Army's topographical engineers returned from a trip to what we would later call the Grand Canyon, the party reported that it was "the first, and will doubtless be the last, party to visit this profit-less locality."

As each decade has passed since those early forays into the American continent, the country's appreciation for its land has grown—I believe it continues to grow among Americans today—the places to hike, canoe, camp, to play, to learn, and to leave nature, except for a harmless visit now and then. There were 273 million visits to our National Parks alone in 1993, a clear sign of their value to the Nation.

At the same time, the Interior Secretary manages the development of our public lands. Private companies, from multinational conglomerates to small family businesses, use our Nation's water, minerals, timber, oil, gas, and other public resources. Their industry, obviously, contributes to the national economic growth, and it provides thousands of jobs in regional communities. Our public lands have produced all of the needs of this Nation, and the Department of the Interior has managed hundreds of thousands of claims to mine gold, copper, and other valuable metals; 34 million acres of commercial timberland and 164 million acres of rangelands that are open to grazing.

It is the Secretary of the Interior's job to strike the proper balance between conservation and development. It is a tough job. The Secretary is under enormous pressure from those who hope to profit from these natural resources. Once a decision is made to develop land, the impacts are often permanent. You can't turn back the clock and recreate an old-growth forest. You can't return an extinct species of life. You can't return polluted land to absolutely pristine condition.

There are many steps we can take to avoid unnecessary damage and restore land, and nature has shown itself to be resilient, but the rate of destruction today and the levels and the kinds of destruction too often force us to lose natural resources forever. The numbers of brownfields in cities around this country, the numbers of Superfund

sites that have been on the list for years and remain not cleaned up are testimony to that tragedy.

In considering this vote, I have reviewed Ms. Norton's record as a constitutional attorney, an activist, and as Colorado attorney general, and her testimony before the Energy and Natural Resources Committee. It is a record that in my view simply does not reflect the balance I talked about that is necessary to serve as Secretary of the Interior.

I know she will be confirmed. Perhaps in the end we will see a different exercise of that discretion. As a constitutional attorney, Ms. Norton argued that bedrock Federal environmental, public health, and other laws are unconstitutional.

The PRESIDING OFFICER (Mr. ENZI). The Senator has a minute and a half remaining.

Mr. KERRY. Mr. President, Senator BOXER said that she would yield me 5 minutes. I ask unanimous consent I be afforded that time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERRY. Mr. President, based on her legal views, which are, thankfully, outside the opinion of most legal scholars and reflected in decades of court decisions—the Clean Air Act, Endangered Species Act, and Clean Water Act—and many other laws not directly related to the job of Secretary of the Interior but certainly important to this country, such as the Americans With Disabilities Act, Fair Labor Standards Act, and the Violence Against Women Act—violate our Constitution in one way or another. Indeed, if her convictions were the basis for this new administration's actions, it would unravel most of our Nation's environmental safeguards.

In addition to these writings and comments, Ms. Norton has been an active participant in several lawsuits and other efforts to overturn environmental protections. For example, she serves as an attorney to an organization called the Defenders of Property Rights that has advocated against endangered species protections in more than two dozen lawsuits.

Ms. Norton's writing and activism on these issues reaches far beyond the few examples that I have outlined here. To her credit, she has been a capable and dedicated advocate for more than two decades. The problem, simply, is that she has advocated legal and policy positions entirely at odds with the job of Secretary of the Interior.

In her testimony before the Energy and Natural Resources Committee, Ms. Norton distanced herself from her legal and activist record. While I certainly appreciate Ms. Norton's willingness to rethink and revise her views, I remain greatly concerned. Too often absolutist views were cast aside with little or no explanation. Too often the answers were vague and incomplete. Do I expect Ms. Norton to have answers to every issue she may encounter as Secretary?

No. But my standard is higher for a nominee who comes before us with a career's record of fighting the laws the administration has now asked her to enforce.

History warns us to be concerned and cautious.

In 1981, Mr. James Watt was nominated to be the Secretary of the Interior by President Ronald Reagan. Mr. Watt, like Ms. Norton, came to the Senate with a record of anti-environmental legal activism. And like Ms. Norton, Mr. Watt showed a willingness to rethink and revise his views. A passage from the CONGRESSIONAL RECORD from 1981 is enlightening. For example, Mr. Watt was asked how, in light of his record, would he

carry out the Secretary's dual responsibility to permit resource development on the public lands while preserving natural values?

Mr. Watt offered the following answer:

As Secretary of the Interior, I will fully and faithfully execute the public land policy adopted by Congress requiring such a balanced approach.

The record after this is clear. It was opposite to that very answer.

This year, Ms. Norton was asked a similar question in regard to her views on the takings clause of the Constitution and environmental enforcement. Ms. Norton answered that she:

will protect the federal government's interests in its lands and enforce all environmental and land use laws that apply to the lands and interest managed by the Department of the Interior.

Sound familiar? My point is that we have been witness to "confirmation conversions" before, and the result—as in the case of Mr. Watt—is sometimes regrettable. When a nominee's record is overwhelmingly slanted in one direction and falls far outside of the mainstream on a set of issues central to the job they will perform, reversals and revision leave me concerned.

I looked to Ms. Norton's record as Colorado Attorney General to learn how she performed at a job that required her to enforce environmental laws—again she has argued are constitutionally flawed. I found that record to be decidedly mixed and worrisome.

While Ms. Norton pursued two high profile cases against the federal government, environmental organizations, environmental attorneys, and the Denver Post report that in several major cases she failed to enforce environmental law against private companies.

For example, in one case, neighbors of a Louisiana-Pacific mill were forced to abandon their homes because the stench of pollution from the facility was so great. Without assistance from the state of Colorado, they hired attorneys and won a \$2.3 million court against the company. Although that civil trial uncovered criminal wrongdoing by the company, the state still failed to prosecute. Finally, the federal government interceded and assessed \$37 million in fines for fraud and violating

the Clean Air Act against Louisiana-Pacific.

The attorney who represented the citizens in that case, Kevin Hannon, told the Denver Post.

I would have grave concerns about Gale Norton's aggressiveness in enforcing environmental compliance and protecting citizens from environmental damage.

And there are additional similar cases.

In her defense, Ms. Norton claims to have not acted because state agencies did not ask her to prosecute. That answer is inadequate in my view, Mr. President. In several instances Ms. Norton aggressively pursued her legal agenda as attorney general. For example, Ms. Norton proactively wrote state agencies declaring that a program to increase minority enrollment at state schools was unconstitutional. Ms. Norton refused to defend a state program to increase minority contracting from legal challenge because it was unconstitutional. As Colorado Attorney General, Ms. Norton filed a brief in an Endangered Species Act case in Oregon arguing a provision of the law was unconstitutional. Clearly, Ms. Norton was an aggressive and capable advocate when the legal agenda matched her policy agenda. But when it came to enforcing environmental law against polluting companies, she too often failed to act and seems to have been uncharacteristically passive.

Arguably Ms. Norton's performance enforcing environmental law as Colorado's attorney general is the most relevant portion of her resume as she becomes the next Secretary of the Interior. One of her primary responsibilities will be to protect the environment and public land by enforcing the law against private companies. Unfortunately that record is weak on environmental crime.

As I have said, Ms. Norton will not receive my vote today. I do not cast this vote lightly. I believe that President Bush should be given wide discretion in selecting a cabinet to advance his agenda. However, there is a reason that the Constitution calls for the Senate to advise and consent on nominations. I believe that policy, ideas and a nominee's professional record matter. In many ways they matter more than the personal issues that derailed other candidates. Each Senator has the right—indeed an obligation—to vote their concerns and hope and their consciences.

Ms. Norton will be entrusted with protecting our federal lands and finding that difficult balance between conservation and development. Not an easy job. I feel strongly that Ms. Norton can only do that job properly if she sticks with the legal and policy philosophy she set forth in the Energy Committee hearings and not the philosophy she has advocated for 20 years. I feel strongly that Ms. Norton can only do that job properly if she does a better job enforcing environment law than she did in Colorado.

I yield the floor.

Mr. SCHUMER. Mr. President, I ask unanimous consent that 3 minutes of the time allotted to Senator STABENOW with respect to the Norton nomination be provided to the senior Senator from New York.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, first let me say I agree with many of my colleagues that Gale Norton is clearly an experienced, capable public servant with a distinguished record. I know the Senate confirmation process can be an arduous one. I think she has handled herself very well. She has made herself available to questions by those of us on the committee and conducted and presented herself in a very able way.

That said, I am afraid Ms. Norton has not been able to erase all my doubts and the doubts of many New Yorkers about her environmental record and whether or not she will be a strong enough guardian of our Nation's treasured public lands.

Although she is clearly an honorable person, I believe she does not have a balanced enough view on the question of conservation versus development to serve as Secretary of the Interior. To me, the key word is "balance." I reject those on either side.

There are some who say the conservation movement, the conservation of our lands, is really not necessary, or, once you have one place preserved, you have had enough and conservation should hold little weight when we talk about the needs of development. I have always philosophically rejected that view.

I must also tell you that I reject the view of some of my friends in the environmental movement who believe in no development at all, particularly at a time of scarce resources. There has to be a balance, and that is what I think most Americans seek. Obviously, we all differ on where that balance should be. I am worried that Ms. Norton does not have enough of that balance.

She spoke very well at our committee. But if you look at her history in both the public and private sectors, it is not one of balance. It is one, rather, of almost instinctively saying that development should take precedence over conservation. I do not think that is the right person for the Secretary of the Interior, and therefore I must reluctantly—although I generally believe in supporting the President with his nominations and intend to support the President in all but two of his Cabinet level nominees—I must reluctantly vote no on the nomination of Gale Norton.

Mr. President, I yield.

The PRESIDING OFFICER. The Chair recognizes the Senator from Illinois.

Mr. DURBIN. Mr. President, it is my understanding under the allotted time I have 15 minutes to speak on the nomination of Gale Norton as Secretary of the Interior.

The PRESIDING OFFICER. The Senator is correct.

Mr. DURBIN. Mr. President, today we are charged with the important decision of considering Gale Norton for our next Secretary of the Interior. This position is extremely important. As the Secretary of the Interior, Ms. Norton would be the principal steward of nearly a third of our Nation's land; the guardian for our national parks; and the protector of our wildlife refuges.

The process of appointing and approving cabinet members is a curious mix of politics and policy. I believe President Bush has every right to exercise the same prerogative as Presidents before him, of choosing members of his cabinet that share his point of view.

In proposing Ms. Norton, President Bush asks the Senate to entrust her with our environmental heritage.

In sending me to the Senate, the people of Illinois have entrusted me with the duty of deciding whether Ms. Norton will faithfully fulfill the job that she has been asked to do.

Although Ms. Norton conducted herself well throughout the confirmation hearings, I am left with many questions about her vision for the future of our Nation's environment. I have no doubt that Ms. Norton has the professional experience to be a capable Secretary of the Interior. The question is not about her ability to lead, but whether she will be a leader for the preservation of our public lands and natural resources.

This is why I rise in opposition to her nomination today. I am disturbed that not one respected conservation group in our Nation has announced its support for Ms. Norton. Her strongest supporters hail from the mining, drilling, logging, and grazing industries—industries better known for exploiting public land than for protecting it.

My concerns were not allayed during her confirmation hearings. Despite more than 20-years experience in dealing with environmental issues, she often gave vague, uncertain answers to questions on how she would enforce many of our significant environmental laws. Her answers gave me little to reassure Americans who support conserving our natural resources.

Let me be clear. I am not opposing her nomination based on her ideology alone. Her documented public record speaks louder than her words. Her career is filled with stands on environmental law and policy that are incompatible with the Secretary of the Interior's role as steward of our public lands. Her actions reflect her philosophy that property rights are pre-eminent and Federal intervention should be minimized. She has not addressed the concern that this approach will interfere with her duty as Secretary of the Interior to aggressively enforce compliance with Federal environmental laws.

By now, most of us know that Ms. Norton started her career at the Mountain States Legal Foundation under

the guidance of James Watt, the controversial former Secretary of the Interior. During her time with Mr. Watt, she pursued cases opposing the enforcement of the clean Air Act in Colorado and supported drilling and mining in wilderness areas. She followed Mr. Watt to the Department of the Interior in 1985 as an Assistant Solicitor where she worked to open up the Arctic National Wildlife Refuge to oil drilling. But it was in her capacity as attorney general for Colorado from 1991 to 1999 that we find egregious examples of her tendency to side with private, pro-development interests over those of preservation.

As attorney general of Colorado, Ms. Norton was an advocate of the policy of self-auditing: a policy that allows polluting companies to escape fines if they report the problem and correct it. Unfortunately, this policy allowed Summitville mine, a large gold mine, to continue operating even though it had serious environmental problems. It was only after the mine spilled a mixture of cyanide and acidic water into the Alamosa River, killing virtually every living thing for a 17-mile stretch, that her office became involved.

The Summitville mine was considered Colorado's worst environmental disaster and is now the poster child of bad mining practices. To her credit, Ms. Norton vigorously pursued the mining company for repayment to cover the cleanup. However, she sought no criminal charges, and her office was criticized for being slow to act. The Federal Government had to step in to prevent the disaster from worsening and later won felony convictions against many of the corporate owners of the mine. In fact, the Denver Post said: "It's a shame that Colorado must rely on the feds to pursue the case." This happened under the watch of attorney general Gale Norton of Colorado.

As Secretary of the Interior, Ms. Norton will have enormous discretion to unilaterally alter environmental policy. She could block funding or enforcement of rules and regulations proposed by the previous administration. For example, she could prevent a recent proposal to limit snowmobile use in our national parks from taking effect, a proposal that was supported by literally thousands of citizens.

As a strong promoter of wilderness areas, I am concerned that Ms. Norton's pro-development leaning will make it more difficult to inventory areas for wilderness designation. I am concerned that she will open more land to mineral and mining development leaving less for wilderness areas. I am concerned that she won't stand strong and protect existing and proposed wild areas from off-road vehicle damage.

I am especially concerned that the Interior Department headed by Ms. Norton will parallel the Interior Department headed by her early mentor, James Watt. Mr. Watt tried to overturn environmental initiatives imple-

mented by President Carter's administration. Ms. Norton says she wants to review many of President Clinton's environmental initiatives. Mr. Watt wanted to shift public land policy towards development and resource exploration. Ms. Norton has indicated she would like to do the same. Mr. Watt tried to make many of these changes out of the congressional limelight by using budgetary recommendations and administrative and regulatory actions. I am concerned that with strong public support for protecting the environment but an almost evenly divided Congress, Ms. Norton may be tempted to try the same tactics.

The Secretary of the Interior has a significant distinction from that of other Cabinet posts. That distinction is that no other Secretary's decisions have such a long-range impact. Once the earth is disturbed to start a mining operation, that land will never be the same. Once an animal goes extinct, there is no replacing it. Once land has been developed, it loses its character as a wilderness.

Mr. President, I believe that Ms. Norton's nomination sends the wrong signal to the country: a signal that we are moving away from conserving our natural resources and moving toward turning our public lands over to private interests.

As a great Republican President and the father of our Nation's conservation ethic, Theodore Roosevelt, said, "It is not what we have that will make us a great nation; it is the way in which we use it." Mr. James Watt echoed this statement during his nomination process in 1981 when he testified that he would seek balance in managing our Nation's lands. Ms. Norton recently testified that she would also seek to find this balance between using and preserving our natural resources.

Unfortunately, Mr. Watt did not keep his word. If Ms. Norton should be confirmed today, I urge her to learn a lesson from Mr. Watt's experience and uphold her promise "to enforce the laws as they are written."

The Interior Department is responsible for many of our Nation's most valuable treasures—natural resources that belong not only to this generation but also to generations to come. Americans will be counting on Gale Norton, should she be confirmed, to protect these national treasures so they can be handed on as an enduring legacy—to keep them safe from those who would exploit and destroy them.

Mr. President, I ask unanimous consent that the remaining time under the control of Senator STABENOW be allocated to Senator BOXER.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, can you tell me how much time I consumed?

The PRESIDING OFFICER. The Senator has consumed 9½ of minutes of his 15 minutes.

Mr. DURBIN. I reserve the remainder of my time, Mr. President.

At this time, I see Senator BOXER has come to the floor.

Mr. President, I suggest the absence of a quorum until she is prepared to speak.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from California.

Mrs. BOXER. Mr. President, how much time do I have for my presentation this morning?

The PRESIDING OFFICER. Thirty-one minutes.

Mrs. BOXER. Thank you very much.

Mr. President, I rise to explain to my colleagues, and to my constituents, why I will vote no on the nomination of Gale Norton to be Secretary of the Interior.

It is very rare for me to oppose any Cabinet nominee because I approach the whole subject of advise and consent on Cabinet nominations with the presumption that the President has the right to pick his or her own Cabinet. Having said that, you cannot walk away from a constitutional responsibility to advise and consent if you feel that nomination is way outside the mainstream of American thought, and if you feel that nomination could harm our country in one way or another. And I have many questions about this nominee which lead me to the conclusion that it would be far better to have someone more mainstream in this position. I will be explaining it through a series of charts and through my comments.

I have supported all of President Bush's nominees but for two—this one, and John Ashcroft, which we will be speaking about later this week and perhaps into next week.

I will start by discussing why this position is so important. The Secretary of the Interior is the primary steward of our Nation's natural resources. One of the most incredible gifts that we have from God is our natural resources, the beauty of our Nation. It seems to me we have a God-given responsibility to protect those resources for future generations.

Into the hands of the Secretary of the Interior we place a vast amount of control over our parks, over our wildlife refuges, over grasslands, over ranges, and over endangered fish and wildlife.

I will just show you a beautiful photograph. I have a few. This particular one is Death Valley National Park. What you can see from this photograph is the magnificent environment the Secretary of the Interior will be protecting. If a decision is made, for example, to extract minerals from a park such as this, you could certainly endanger this beauty.

She will make decisions regarding grazing, mining, offshore oil and gas

development, habitat protection or habitat destruction, and American Indian tribal concerns that will have far-reaching and long-lasting consequences.

I asked her some questions about some of these areas in my State, and I have to tell you, as I will in greater detail, that I was very saddened; they were really no answers. There was no commitment that I wanted to hear to protect these magnificent areas. I will go into some of her comments that were put in writing.

We give the Secretary of the Interior the discretion, and we trust her to balance the economic development of our rich natural resources with the need to protect and conserve them. We are looking for a balance, and in my view, we have not seen that balance, either in Gale Norton's past or, frankly, in her answers, which I did not find to be terribly believable. And again, I will get into that.

After more than a century of untempered resource extraction, we have learned we must restore some equilibrium to the management of our public lands and wildlife resources. The American people understand this. Poll after poll shows they overwhelmingly support environmental protection and restoration. They understand we are living in the most beautiful place and we have a responsibility to protect it.

They are willing, for example, to conserve a little energy in order to spare pristine areas such as wildlife refuges. How people could say you can drill in a wildlife refuge, to me, just on its face, there is something that does not make sense about that. If it is a wildlife refuge, it is a refuge; it is not oil-drilling land. Why would it be called a refuge if it is not a refuge, a magnificent area where wildlife can live?

So I think in this appointment President Bush, who for the most part I think made good, moderate appointments, has gone off the reservation. I also understand Ms. Norton will be confirmed. I hope she proves me wrong. I hope she listens to this and proves me wrong. But I can say, I am worried. And there is precedent for me to worry.

If her nomination is approved, Ms. Norton will have authority to make decisions that determine the fate of some of California's treasures and America's treasures, places such as Yosemite National Park, the Presidio, Klamath National Wildlife Refuge, the San Diego National Wildlife Refuge, Death Valley National Park—you can see from the picture how beautiful this is—and the California Desert—and believe me, it is a precious environment; I have been there; I have seen—Point Reyes National Seashore—which is in my backyard; a magnificent area that needs to be protected—and the Santa Barbara coastline. I will get into that because there are 39 leases off the Santa Barbara coastline that are under threat of development.

Ms. Norton's answer to that question leaves me very worried about what will happen.

These unique ecological and cultural gems are fragile and vulnerable places. If they are mismanaged, the damage is likely to be irreparable. She will have responsibility for protection and recovery of California's most imperiled wildlife and fish species. Those endangered species, such as the California condor, will depend upon her for their continued survival.

Taken in total, it is an awesome responsibility and one of great importance to my constituents who treasure California's unique environment.

Let me say something about that. Often times, people come to the floor and say: Well, you can't be an environmentalist because it means you don't want economic growth. You can't be an environmentalist because it means you will not have enough energy. We are going to hear this argument over and over and over, particularly about energy. I will talk a little bit about that. That is a false premise.

Our economy depends on our environment in California. People come to our State and spend money to stay there because of our unique environment. They come to our ocean not to look at offshore oil drilling but to enjoy the beauty and the serenity of standing on that shoreline and looking at the vastness God gave us. To say that being an environmentalist is somehow not for a strong economy is a fact that is wrong on its face.

The green industries that grow up around clean air and clean water, a clean environment, are industries we are not exporting across the world.

To the people of this country, take heart. There are many in this body who understand this.

After Ms. Norton's confirmation hearings, her responses to over 200 written questions and an in-depth look at her long and detailed history of work on these environmental issues—unfortunately, on the other side of most of them—it is clear to me that her record is remarkably consistent. One can say that about Ms. Norton; her record is remarkably consistent.

She has spent her lifetime over the past 20 years focused on fighting against our essential Federal environmental laws and fighting for increased resource extraction from our public lands. That is her history. That is her life. Indeed, it is striking how few examples there are where Ms. Norton worked for the protection of the environment, despite the fact that her positions as Associate Solicitor at Interior and attorney general in Colorado required it.

Let us look at some of her statements. On mining she said:

The Surface Mining Control and Reclamation Act is not constitutional.

This is the act that tries to at least repair the damage that is done after there is mining.

On endangered species she said:

The federal government has interpreted its habitat protection duties far too broadly.

In other words, she doesn't think the Federal Government should have much say in habitat protection.

On takings compensation:

Compensation is desirable because it will have a chilling effect on federal environmental regulations.

A chilling effect on Federal environmental regulations?

We have a lot of important Federal environmental regulations: the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act—all Federal regulations—the Surface Mining Control and Reclamation Act, the Endangered Species Act; these are important advances that our country has made. They have strong support. She likes things that give a chilling effect to Federal Government regulation. It gives me the chills to think that someone who feels this way is in charge of a lot of our laws.

We see recurring themes, deeply held philosophies. These include vehement opposition to Federal environmental regulation, an unflagging commitment to the supremacy of property rights even if those rights lead to environmental destruction and harm everyone else.

Ms. Norton has argued that "control of land use and of mining is a traditional State function outside the scope of the commerce power." Thus, they are not activities that should be regulated by Federal land managers. She went so far as to argue that the Surface Mining Control and Reclamation Act is unconstitutional, as I have stated. Given these beliefs, it is doubtful that she will apply this law and implement it and make sure these conservation standards are applied in a meaningful way.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 18 minutes remaining.

Mrs. BOXER. I thank the Chair.

She has raised strong complaints about the Endangered Species Act, another one of our bedrock laws that the Interior Secretary must implement. During her earlier tenure at the Department of the Interior, she complained the courts were providing an overly broad interpretation of the ESA's habitat provisions. She argued that the habitat protection standard should be extremely narrow so that only habitat that was immediately occupied by an endangered species would be protected. This interpretation would have ignored everything we know about the biological needs of species. It would have protected, for example, a bald eagle's nesting tree but allowed the rest of its surrounding habitat to be destroyed. With that kind of thinking, the bald eagle would never have been saved because you save the tree and then right around the tree you don't take any measures to protect the bald eagle.

Let us show a picture of some of our habitat. We are talking about God's creations that we have a responsibility

to protect. This is Mohave National Preserve Joshua trees. We have to move to protect them.

Let us show some other habitat. Let us show the beautiful habitat of Alaska.

Here we can see some of the magnificent caribou up in Alaska. We will be arguing a lot about that issue. We can see, if we are going to protect their habitat, we cannot just protect a small amount. It is as if saying that we are going to protect the air in one State and not in another one. We know the air moves; the animals move. We have to think about their whole habitat if we are going to protect them and not have this narrow view that Ms. Norton has articulated, which is that you should apply it very narrowly.

She submitted an amicus brief in the *Babbit v. Sweet Home* case and argued that the Department of the Interior's protection of habitat on private lands was unconstitutional and constituted a taking. She argued for such a restricted interpretation of the law that it would have severely hindered our ability to protect habitat necessary for the recovery of the Endangered Species Act. On that case, her side lost. She is out of the mainstream of thought.

Is it possible she could forget her lifetime of work against these things and suddenly become a fighter for the environment? I conclude no. Over and over again, Ms. Norton has advocated for "the devolution of authority in the environmental area back to the States." In other words, she doesn't really see the need for Federal laws such as the National Environmental Policy Act, NEPA.

While working in Colorado, she wrote of having "to do battle" with the Federal Government to wrestle control away from Washington and spoke with pride of her challenges to the Environmental Protection Agency regarding its interference in Colorado's air pollution programs. Oddly, she lamented that the end of the Civil War meant that "we lost the idea that states were to stand against the Federal Government gaining too much power over our lives."

There are a lot of things you could bring up to drive home a point, but to raise the Civil War is odd. She said that the end of the Civil War meant that "we lost the idea that states were to stand against the Federal Government gaining too much power over our lives."

She is way out there, in my opinion, because the people whom I represent—I think the vast majority of people—want to have a Clean Water Act, want to have a Safe Drinking Water Act, want to protect the magnificent species from destruction, and believe we have a God-given responsibility to do that. But she is way outside the mainstream. President Bush, for the vast majority, in my opinion—all but a couple—has chosen from the middle ground this time and reached over so far that there isn't much room on the

other side and put this individual in the position where she can do harm.

As a matter of fact, given her statements about the inappropriate role of the Federal Government in all of this protection, it is hard to understand how she would want to be a part of the Interior Department, much less be the head of it. It raises questions to me about her ability to adequately serve as an advocate from the Federal perspective in various environmental decision-making processes. Ms. Norton has a long history of association with organizations that promote ideas such as eliminating the Bureau of Land Management and selling off our national parks. Not surprisingly, these views have sparked strong opposition from the people of our country.

I want to show you some of the groups that have opposed her nomination: the Natural Resources Defense Council, The Wilderness Society, Sierra Club, League of Conservation Voters, Republicans for Environmental Protection, Physicians for Social Responsibility, NAACP, AFL-CIO, Childhood Lead Action Project—I understand why they oppose her—Community Energy Project, the Network for Environmental and Economic Responsibility for the United States Church of Christ.

This is a lightning rod nomination for people who care about protecting the environment. Why do we have to see their kind of nomination? We could have had a nomination for the President to "unify us" and not divide us.

That is the reason I am against this nomination. Her lobbying to dissuade States from holding the lead industry accountable for the continued use of lead-based paint has brought criticism. I showed you that. The Childhood Lead Action Project, why would they get involved in this? Guess what we know. Lead-based paint causes mental retardation in children. This isn't a theory; it is a fact, and she led the charge to get the Federal Government out of regulating lead.

You have to stand up at some point in your life and be held responsible and accountable. I think this is a moment when someone has to be held accountable.

Everyone knows what a strong environmentalist I am and everyone knows how strong I am for a woman's right to choose. They know I have dedicated my life to do these two things. Suppose the laws were changed and suddenly a woman's right to choose was outlawed and I was put up for a position where I had to say enforce that law—put a woman in jail, put a doctor in jail. If this were to happen, people should come down to the floor and say BARBARA BOXER is not the right person for that job; her whole life has been dedicated to making sure that a woman has a right to choose. Why would they give her this position? They would be right. I don't care if I said I will do it; I will enforce it. They know how strongly I feel.

We know how strongly she feels about the interference of the Federal Government, what she considers to be interference in States rights in terms of protecting the environment. Why is this a good appointment? Again, you have to wonder why someone who has dedicated their adult life to opposing the Federal Government's involvement would even take this job. But we saw that happen before. His name was James Watt. We will get down to when someone says they will fully enforce the Nation's laws. Fine. But then when you ask her how she interprets those laws, you have to wonder because it is not the same interpretation as most people have.

When I asked her how she felt about priority issues for California, if she would uphold the Bureau of Land Management's important decision to deny a permit to a gold mine, which everyone agreed would destroy Native American land and destroy the environment in California near the San Diego area, she basically passed on an answer. I asked her about how she felt about the much heralded new management plan for Yosemite National Park. She basically passed on an answer. The Klamath Wildlife Refuge, she passed on an answer. The Trinity River Restoration effort, she passed on an answer. She said she wasn't familiar with the issue; she had not taken a position. This troubles me since she worked at the Department of the Interior before. Yosemite should not be unfamiliar to someone who is to be head of the Department of the Interior and, yet, she passed on an answer on Yosemite.

I would like to submit these answers for the RECORD at this time. I ask unanimous consent to have them printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

QUESTIONS FROM SENATOR DIANNE FEINSTEIN
SUBMITTED ON BEHALF OF SENATOR BARBARA BOXER

Question. There are currently 36 undeveloped oil leases situated on the Outer Continental Shelf off the coast of California. Development of these leases has been strongly opposed by the state of California and the associated local coastal communities. This Administration has signaled its intent to prioritize the development of domestic oil and gas sources. Will you encourage development of offshore leases in states like California where there is strong and persistent opposition to the development of such leases? Past administrations have used their executive authority to place a moratorium on offshore oil and gas drilling in currently undeveloped areas. Would you recommend that such a moratorium be continued under this administration? Would you view such a moratorium, or any other environmental regulation that prevents development of a lease, to be a taking under the Fifth Amendment of the Constitution?

Answer. President Bush pledged to support the existing moratoria on OCS leases. He also committed to working with California and Florida leaders and local affected communities to determine on a case-by-case basis whether or not drilling should occur on existing, but undeveloped leases. If confirmed as Secretary of the Interior, I will

honor these commitments and promise to work with all parties to reach a consensus on how undeveloped leases should be handled and the extension of existing moratoria.

Question. The Interior Department recently announced its denial of a permit for the Glamis Imperial gold mine that was proposed for development in Imperial County, California. This mine was rejected on the grounds that it would have caused undue degradation to the site's environmental and cultural resources. Do you think it is appropriate under current mining law for the Secretary to reject mines like the proposed Glamis Imperial Mine on these grounds?

Answer. I am not familiar with the specifics of the Glamis mine proposal or the basis on which the mine was rejected. I look forward to learning more about the proposed Glamis project and working with Congress to ensure that all new mining projects maintain an appropriate balance between legitimate mineral development activities and preservation of important environmental and cultural resources.

Question. Recently, the National Park Service developed a detailed plan for the future management of Yosemite National Park. This plan was developed after considerable input from all of the affected stakeholders and over 10,000 members of the public submitted comments to the agency. Central to this plan is the notion that visitors to the park should be encouraged to leave their personal vehicles outside the park and travel through the park on a park transit system. As Secretary of Interior, will you actively support implementation of the new Yosemite Valley Management Plan? Will you be aggressive about developing similar management plans for the many other national parks that are suffering environmental degradation because their management practices have not kept pace with the growing numbers of visitors?

Answer. I am not familiar with the details of the Yosemite Valley Management Plan. As a general matter, I support the concept of management plans for our public lands and believe that they represent an important decision-making tool for land managers. For these plans to be successful, I believe it is important that they be developed in consultation with the affected States, local communities, affected stakeholders, and environmental groups.

Question. In 1998, the U.S. Fish and Wildlife Service adopted a policy for Tule Lake and Lower Klamath National Wildlife Refuges in California and Oregon that prevents irrigation on commercial farmland on the refuges unless sufficient water is available to sustain the refuges' marshes. Do you support this policy which gives priority to the refuges' ecological resources over commercial farming? The National Wildlife Refuge System Improvement Act of 1997 set new requirements for the management of refuges. In response, the U.S. Fish and Wildlife Service issued regulations establishing procedures for determining what uses are compatible with the mission of the refuge system and the mission of each individual refuge. Do you believe farming is compatible with the mission of the Tule Lake and Lower Klamath National Wildlife Refuges? What uses would you deem to be incompatible with the mission of the national wildlife refuge system?

Answer. I am not familiar with the details of the Department's 1998 policy.

I have not yet had an opportunity to review the Compatibility Policy, and am not in a position at this time to assess how it might affect the Tule Lake and Lower Klamath National Wildlife Refuges. I am also aware that the Fish and Wildlife Service recently issued a draft Appropriate Uses Policy that may impact activities on refuges such

as Tule Lake or the Lower Klamath. I look forward to learning more about the Fish and Wildlife Service's policies implementing the National Wildlife Refuge Improvement Act and about the 530 Refuges in the National Wildlife Refuge System.

Question. The Department of the Interior, with the concurrence of the Hoopa Valley Tribe, announced on December 19, 2000, a plan to restore the Trinity River in California. The decision is based on 20 years of scientific research and public involvement. It completes a process supported by the Carter, Reagan, Bush and Clinton Administrations and has enjoyed bipartisan support in the Congress. Will you commit your Department to follow through on the decision and implement the Trinity River restoration program?

Answer. I am not familiar enough with this restoration plan to respond to this question at this time. I look forward to working with you to learn more about this plan and the Department of Interior's role in implementing it.

Mrs. BOXER. Mr. President, she had a good answer on the Outer Continental Shelf moratorium where she said she supported the States rights not to drill. When I pressed her on 36 existing leases off Santa Barbara, I didn't get the same answer. She said she would look at them on a case-by-case basis. That is not good enough because the State doesn't want any drilling there. Why wouldn't she just take it off the table? She couldn't do that.

I am very troubled, and we will have a lot of debate over those 36 existing leases. It is one of the most pressing environmental issues in California. We have unwavering opposition to the development of those leases. Since she says she is for States rights, now she can't suddenly say I'm for States rights on this one.

Finally, I want to address the Arctic National Wildlife Refuge. I am not going to spend a lot of time on that. That will come at a later date. I agree with President Bush. It is unfair to criticize her for not wanting to drill in the Arctic. He says, I do; of course, my Secretary would. I have no problem with that. However, Ms. Norton seems to have enthusiasm about drilling there.

If you look at her historical role in pushing to open up the refuge, and her links to the oil and gas industry through the Mountain States Legal Foundation, and the oil companies that hire her current lobbying firm, and the oil and gas interests that gave her significant contributions during her Senate race, I think there are valid questions we could raise about whether she can effectively serve the role that the Secretary must fill in this type of decision-making.

What do I mean by that? Let me show you a picture of the Arctic Wildlife Refuge. You already saw a picture of the caribou there. This is just an open view of the Coastal Plain. By the way, this came from, if Senator MURKOWSKI is listening, the State biologists in Alaska. They wanted us to show this Coastal Plain. Basically, we are going to have a huge debate over whether to open up this refuge to drill-

ing. This is going to be a tough debate. I know that at best there is 6 months' worth of oil there. If you just change the mileage on SUVs a few miles you wouldn't have to do any of this. But we will have that debate. I look forward to it.

But Ms. Norton, in her position, is going to have to be objective about facts such as how much oil lies there, and what is the impact on the caribou and the rest of the environment. I question whether she would be objective given her strong stand in favor of oil drilling.

My State is suffering from energy problems. I want to put something right out here right now. Outside of California, the people are saying it is California's fault because it didn't build enough powerplants. I want to explain something. It was explained very well in the New York Times editorial. Our utilities did not want to build any powerplants because they want to control the supply. The fact is, no new plants were built in the 1990s because prices were low, supplies were plentiful, and producers wanted to wait until they better understood the new era of deregulation.

The State of California recognized back in the 1980s that generation needs might increase, and they tried to move forward with building for new generating plants. It was the utilities, not conservationists, who blocked the efforts. They said we didn't need any new capacity until 2005, and they took their appeal to the State administrative law judge in their efforts to stop the State's push for new generating plants.

The utilities lost that battle. The State said you have to build new generating plants. Do you know what the utilities did? They ran to the Federal Energy Regulatory Commission. And guess what the Federal Energy Regulatory Commission did. They sided with the utilities over the objections of the State, and therefore we did not have these plants go on line. Finally, now they are coming on line, and that, along with long-term contracts and energy conservation, will solve our needs.

I can assure you that rolling back environmental laws and making our air dirty is the last thing my constituents want or need.

In Ms. Norton's testimony before the Energy Committee, she backed away from her life's work. Call me simplistic—and you can, and I don't mind it because I know I am a tough debater in this way. Call me simplistic, but I do not believe that a lifetime commitment to repealing environmental laws can be dissipated by nice, warm, fuzzy statements made in front of a committee.

I was not born yesterday. I watched James Watt. He made nice, warm, fuzzy statements in front of the committee. He said: I will fully and faithfully execute the public land laws adopted by Congress. I believe in balance. He said in his answers: Gee, I am unfamiliar with the details.

That is what Ms. Norton said. As a matter of fact, I find the parallels chilling, looking at her answers and looking at his answers.

We remember Secretary Watt's tenure at the Department of the Interior: Catastrophic impacts on the environment, opening up millions of acres of protected Federal lands, blocking Federal land acquisitions, making substantial changes in strip mining regulations that weakened or directly repealed environmental law, new plans for oil and gas drilling in the Arctic, et cetera.

In closing, let me say I cannot vote for someone for this important position whose life record has been against every single law that she says she will now protect. There is too much at stake for my State. There is too much at stake for the Nation. I have laid out my reasons. I take the Senate's responsibility of advice and consent seriously.

I would like to submit for the RECORD some of Ms. Norton's writing which include the extreme statements I referred to in my comments. I ask unanimous consent they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, DC, January 14, 1987.

Hon. F. Henry Habicht, II,
Assistant Attorney General, Division of Land
and Natural Resources.

Attention: DONALD A. CARR, Esquire,
Chief, Wildlife and Marine Resources Section,
Department of Justice, Washington, DC.

DEAR MR. HABICHT: In *Palila v. Hawaii Department of Land and Natural Resources*, Civ. No. 78-0030 (D. Hawaii, Nov. 21, 1986), the United States District Court for the District of Hawaii recently issued an opinion that interprets the scope of the "taking" prohibition of Section 9 of the Endangered Species Act, 16 U.S.C. §1538 (1982). The Interior Department is concerned that the *Palila* court's discussion of the concept of taking, or "harming," endangered species by habitat degradation is overbroad; therefore, should the *Palila* decision be appealed, the Department requests the opportunity to prepare or review an amicus curiae brief for submission to the Ninth Circuit Court of Appeals.

In determining that the State of Hawaii's maintenance of mouflon sheep on the Mauna Kea Game Management Area (which includes most of the *Palila*'s critical habitat) "harms" the *Palila*, the district court held that: "A finding of 'harm' does not require death to individual members of the species, nor does it require a finding that habitat degradation is presently driving the species further toward extinction. Habitat destruction that prevents the recovery of the species by affecting essential behavioral patterns causes actual injury to the species and effects a taking under section 9 of the Act." *Palila, supra*, slip op. at 9. The district court's analysis appears to improperly blend Section 7 concepts (i.e., the prohibitions against jeopardy and the destruction or adverse modification of critical habitat) into the definition of "harm," and, therefore, needlessly expands that definition to include habitat destruction that does not actually result in death or physical injury to an endangered species, either directly or indirectly in the foreseeable future. In order to

show "harm," there must be proof of a causal connection between the habitat modifying activity and foreseeable death or injury to an endangered species.

The scope of the holding in *Palila* runs counter to the Interior Department's redefinition of the term "harm": Harm in the definition of "take" in the Act means an act which *actually kills or injures* wildlife * * * such act may include significant habitat modification or degradation where it *actually kills or injures* wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." 50 C.F.R. §17.3 (1985) (emphasis added). In short, the department's definition of "harm" quite clearly requires a showing of actual death or injury to wildlife, even in the case of taking by habitat modification.

For those who would develop real estate near or within endangered species habitat, the *Palila* decision could expand their Section 9 liability if essential behavioral patterns of the species are affected to the extent that recovery is prevented. No proof of mortalities or actual physical injury to endangered species would be required to sustain a prosecution or civil injunctive action under the *Palila* ruling. The *Palila* decision poses an equally serious concern to federal land managing agencies.

Please contact Michael Young of my staff at 343-2172 if we can be of assistance on this matter.

Sincerely,

GALE A. NORTON,
Associate Solicitor, Conservation and Wildlife.

TAKINGS ANALYSIS OF REGULATIONS

(By Gale A. Norton)

Because the panel already has discussed why property is both an enemy and an ally of regulation, I will move immediately to a discussion of how to protect property from excessive regulation. How do we restore a regime of property rights? I would like to discuss a few things happening on that front.

This Symposium occurs at an appropriate time: March 15, 1989, is the first anniversary of the issuance of President Reagan's Executive Order 12,630 dealing with takings. It is surprising that the Executive Order has received so little publicity because it is a unique approach to the issue. It asks the federal agencies to move beyond their environmental and regulatory impact analyses, and to perform a takings impact analysis. The agencies are asked to examine their regulations and determine whether the regulations are likely to cause takings of property and, if so, to estimate what effect the regulations will have on the federal budget. As might be expected, the agencies are not wildly enthusiastic about performing takings impact analyses. The agencies tend to believe that they are not taking anything and that they should never have to pay compensation. Nevertheless, it appears that the agencies are beginning to develop plans for performing analyses in accordance with the Order.

Compensation is the key issue in any analysis under the Takings Clause. First, of course, compensation provides fairness to the person who is harmed by the regulation or other government action. The classic rationale for compensation is that, in fairness and justice, one individual should not be forced to bear the burden that ought properly to be borne by society as a whole. Second, compensation tends to limit government action. Even though bureaucrats enjoy the benefit of spending other people's money, their actions are constrained by their agency's budget. If the government must pay compensation when its actions interfere with private property rights, then its regulatory actions must be limited. This constraint also

results in a limitation on transfer activity. If compensation is paid, the political system must take into account some financial costs. Therefore, some brakes are applied on political redistribution as compared with a system that puts everyone's property rights up for grabs.

Finally, the payment of compensation helps encourage the resolution of social problems by private, voluntary contractual arrangements rather than by regulation. It may appear cost-free to work out conflicts by regulation because the costs are off-budget. But when regulations impose burdens on private individuals, the costs are borne by the private sector and are not considered in the democratic decisionmaking process. As those costs are returned to the budget by payment of compensation, we will start looking at alternatives to regulations that may in the long run be more beneficial.

President Reagan's Executive Order on takings has generated significant disapproval from the environmental community, including criticism from Jerry Jackson, a former attorney for the National Wildlife Federation. He said the Executive Order mandates an impossibility because it requires the agencies to determine under the current takings law what actions might be unconstitutional takings. I agree with him on this point. The takings case law is currently such a mess that it is difficult to ascertain what is and is not a taking. The Supreme Court has provided clear guidance in this area.

I, however, disagree strongly with Mr. Jackson about the role of the Constitution in executive agency decisionmaking. He seems to believe that the only way the Constitution figures into an executive agency's decision is that, long after the fact, a court finally addresses the issue and decides that there was indeed a taking. Before a court's decision, the agency should be oblivious to the takings implications. Mr. Jackson says, "Whether a permit denial might be construed by a court to effect a taking is not a relevant factor in an agency's decision to grant or deny the permit absent express legislative authority making it a factor." I would be very interested to see that legislative authority. It would have to say something like, "In this case, the Constitution applies." Mr. Jackson also notes that the Executive Order on takings may have a chilling effect on regulation. I view that as something positive.

I consider next the formulations that might be used in deciding when an environmental regulation is a taking and ought to result in compensation. An exception to the compensation requirement has been recognized when the government acts pursuant to the police power or restrains public nuisances. The exact scope of this exception is not clear. Because we are looking at alternatives. I will act like a good bureaucrat and look at the extreme alternatives.

Let us first assume that there is absolutely no police power or nuisance exception to the takings rule. The government pays whenever it regulates in a way that interferes with private property rights. In a way, this regime would be easy to administer. One would simply look at the property values before and after the regulation is imposed to determine the amount of compensation. But under this regime, the government would have to pay for all types of regulations—even those that halt the worst criminal offenses. (One wonders what the compensation to criminals would be for closing down a crack house—probably mind-boggling.) In such a case, we have little justification for taking money from the taxpayers to pay someone not to engage in socially inappropriate or criminal behavior. Such cases also pose the danger of

someone coming back time and time again with, "Well, last time you paid me to close down a crack house. Now it's time to pay me to close down the bordello, and next week you can pay me to close down whatever I dream up next time." The model is open to exploitation by repeat offenders.

At the other extreme, let us assume that the government does not have to pay at all unless it chooses to label its action condemnation. Again, such a regime would be easy to administer. In fact, it would be facile. The government never would have to worry about what it takes, but individual rights clearly would not be protected.

One formulation that actually has been adopted by the courts is a nuisance exception: No compensation is due if a taking is performed pursuant to the police power in regulating a nuisance. Unfortunately, this is often expressed as a broad police power exception: Compensation need not be paid for government actions undertaken pursuant to the police power. The problem with this approach is defining the police power. The police power may be interpreted very broadly, as it was, for example, in the *License Cases* of 1847: "nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions." This definition covers far too much. No regulatory taking would ever be compensated. Furthermore, there is no textual support in the Constitution for an exception to the takings rule for police powers. A further problem with a broad police-power exception to the compensation requirement is that the public-use requirement in the Takings Clause has been interpreted as being "coextensive" with the police power. Combining a police-power exception to the compensation requirement with a police-power definition of what is a public use leaves an empty box as to when compensation would be awarded. A taking would be appropriate if performed pursuant to the police power and pursuant to public use, but no compensation would be necessary because it falls within the police-power exception.

A much better formulation focuses on the extent of the property rights involved, presumably, there is no actual property right in maintaining a nuisance. Thus, government is not involved in a taking when it halts a nuisance because there is no property right to take. The *Keystone* decision states this rule, but the analysis in the opinion proceeds to ignore it. There was clearly a property right under state law in that case, but the Supreme Court proceeded as if there were no such right.

Another crucial step in the analysis is defining a nuisance, including determining whether a nuisance is to be interpreted by the common law, and deciding whether nuisance is synonymous with a negative externality. If they are synonymous, then aesthetic harms are problematic. Let me give you an example. I am from Denver, I am a Broncos fan—at least I watch about half of every Super Bowl game in which they are involved. A few years ago, when we were in our first Super Bowl, there was a craze to paint one's house Bronco orange. If I lived across the street from one of those houses, I would view the aesthetic harm to myself as an interference with my right to use my property, but I doubt that we want to regulate such aesthetic harm.

A different way of identifying a nuisance is to require a physical invasion of neighboring property. A physical invasion test eliminates the problem of aesthetic harm. But physical invasion standing alone is not necessarily a nuisance. There must be some additional element of harmfulness, undesirability, or inappropriateness.

Another alternative is to consider some kind of reasonable right to use our property.

In the *Nollan* case, Justice Scalia, writing for the Court, noted that the right to build on one's property was an actual right and not a government-granted privilege. Regulation of this right may have very significant repercussions in future land-use litigation. Interestingly, we might even go so far as to recognize a homesteading right to pollute or to make noise in an area. This approach would eliminate some of the theoretical problems with defining a nuisance.

Moving beyond the question of defining the nuisance exception to the just compensation requirement, I would like to summarize a few other key components of current takings analysis. In evaluating regulatory takings, particularly in the land-use context, the Court often employs a diminution in value test. Under this test, if a regulation goes too far, it is a taking. The question, as phrased by the courts, is whether the regulation denies the owner all economically viable use of the property. Under this test, the courts have found that diminutions in value of seventy-five percent of almost ninety percent are not sufficiently severe to constitute takings.

Another question is whether a regulation substantially advances a legitimate state interest. This is similar to the requirement of having a public use for the taking under the Fifth Amendment, and therefore it does not provide us with a satisfactory test of what should and should not be compensated. It focuses on what the government is properly empowered to do, not at what it can do on the condition that it pay compensation. Although this test has been frequently reiterated by the Court, it has seldom been used to strike down an uncompensated taking.

One other approach is the bundle of rights test. An interference with a particularly important strand in the bundle of rights may constitute a taking. This test has not yielded particularly enlightening results. A right to exclude others and a right to pass to one's heirs are significant and denial of these rights will be deemed a taking. On the other hand, ownership of a support estate as part of a mineral interest or the right to sell property, are not considered significant and compensable.

An emerging way of looking at the question is the nexus requirement that is set forth in the *Nollan* decision and that is discussed extensively in Executive Order 12,630. This analysis requires that conditions put on permits have the same health and safety objectives, and substantially advance the same objectives, as the denial of a permit would serve. A good example of such an approach is the case of wetlands dredge and fill permits. The purpose of the wetlands regulatory program is to protect water quality. Its application has been judicially and administratively expanded to protect wetlands values. Frequently, conditions are placed on dredge and fill permits that have no relationship to the overall purpose of the regulatory program, such as providing recreational boat ramps and docks. It will be interesting to watch how these issues are treated as the Executive Order analysis develops.

In this discussion, I have not examined a number of other formulations in the takings context—compensating benefits and so forth—that further complicate the whole analysis. As the preceding discussion indicates, the analysis at this point is very confused and inconsistent. This confusion, however, creates an opportunity for a major shift in takings jurisprudence, toward a greater protection of property rights.

[Panel II]

ECONOMIC RIGHTS PROVISIONS OF THE CONSTITUTION
(By Gale Norton)

I would like to explore some of the means by which I believe the Constitution provides

judges with standards for the protection of economic liberties. Throughout the history of the United States, the protection of economic rights has been attempted through a variety of provisions: the *ex post facto* clause, the contracts clause, the takings clause, the privileges and immunities clause, and through theories of natural rights and due process. While each of these approaches has been largely rejected by the courts, litigants are continually exploring new approaches for the protection of economic rights.

Economic rights are clearly not protected today. Land is owned subject to the whims of one's neighbors on the zoning commission. Prices of goods and services are controlled by a plethora of governmental and regulatory bodies. Selective taxation hampers the growth and innovation of industry, and subsidies enrich some sectors of society at the expense of others.

There are substantial similarities between the takings and contracts clauses. Both clauses limit the powers of government, chiefly the police and eminent domain powers. The eminent domain power is not explicitly provided in the Constitution, but it has been upheld for many years as a necessary and inherent power of government. The police power is exercised by state governments; the federal government exercises similar authority through the commerce power and other delegated powers. The contracts clause applies by its terms only to the states, the takings clause only to the federal government. The requirement of just compensation has, however, been applied to states through the fourteenth amendment. Ellen Frankel Paul has noted the inconsistencies between recognition of the eminent domain power and the Lockean natural rights approach to property rights. An extended discussion of these inconsistencies is beyond the scope of today's discussion; however, I believe it is instructive to explore briefly the character of these governmental powers as they highlight the role and importance of the takings and contracts clauses.

The police power is basically government regulation for the promotion and protection of health, safety, morals, and the general welfare. In a narrow sense, it is the government attempting to enforce the maxim that one should use one's property so as not to injure that of another. This narrow view of the police power firmly prevailed in the early days of the United States, but it has now been broadened to include not only the protection of public safety, health, and morals, but anything rationally related to these broad areas. Indeed, Justice Brennan stated in his dissent in *Nollan v. California Coastal Commission* that a review of the use of the police power "demands only that the state could rationally have decided that the measure might achieve the state's objective." Thus, the only practical limitation on this power comes from specific constitutional provisions such as the contracts and takings clauses.

The contracts clause is one of those provisions that has been virtually written out of the Constitution in current times. Even though James Madison eloquently discussed the contracts clause in *Federalist No. 44* in fairly modern terms, modern jurisprudence has seemingly discarded the clause. Essentially, Madison viewed the contracts clause as discouraging transfer activities, keeping decisions out of the hands of lobbyists, and providing the predictability necessary for business planning.

Despite the soundness of the reasons behind the contracts clause, its erosion began discouragingly early in our history. In *Ogden v. Saunders*, the Supreme Court held that only existing contracts were protected by

the clause. The Court had previously held that the *ex post facto* clause applied only to criminal activities, thereby preventing its use for the protection of contracts. Thus, by 1827 the Court had already moved away from viewing the contracts clause as a broad freedom of contract provision that would protect contracts generally.

Today, the clause is so weakened that in the recent *Keystone Coal* decision the Court stated, “Unlike other provisions in article 1, section 10, it is well settled that the prohibition against impairing the obligation of contracts is not to be read literally.” The chief reason for this view of the contracts clause is that the courts have clearly stated that the clause does not supersede the police power. This puts us in a “catch 22” position because the police power (in the modern broad sense) is exactly what the contracts clause should be limiting. Therefore, we have a limitation that is superseded by the power it is intended to restrain.

The takings clause is somewhat more alive than the contracts clause, but it also suffers from some debilitating restrictions. An encouraging note is the widespread interest in Richard Epstein’s analysis, which expands the takings clause beyond simply eminent domain activities to encompass limitations on the commerce power, taxing power, and so forth. The analysis takes a simple political science approach, i.e., that the takings clause was meant to operate as a check preventing the majority from raiding the assets of the other forty-nine percent of society. Compensation must be paid when the burdens of society fall too heavily on an individual or group, which presumably limits regulatory excesses. The compensation may be monetary or implicit in-kind compensation. Thus, those who are burdened or taxed for the benefit of society are compensated for their special sacrifices.

The current judicial interpretation of the takings clause, however, falls far short of the role discussed by Richard Epstein and intended by the Constitution. For instance, in the public use cases of *Hawaii Housing Authority v. Midkiff and Ruckelshaus v. Monsanto* the Supreme Court held that the public use justification is coterminous with the police powers. This interpretation can work to deprive individuals of their economic rights. The transfer of property from private party to private party, through the compulsion of the state, will now be upheld when any rational basis can be put forth. Moreover, the courts will only step in if the state’s public use determination involves an impossibility and therefore has no rational justification.

In the case of a regulatory taking, the standard approach has been that when regulation goes too far, it is a taking. “Too far” generally means that a regulation, under the guise of the police power, does not advance a legitimate state interest or that an owner has been deprived of all economically viable use of his property. As stated earlier, the courts will uphold any state action that is supported in any fashion by some state interest. Moreover, the courts have held that the loss of only one or several attributes of the “bundle of sticks” of property ownership is not equal to a taking. The courts have often gone to ridiculous extremes to find some remaining viable use. The only relief the courts have granted property owners in this area in recent times has been to hold that a deprivation of property need not be permanent to bring into force the takings clause. This is a minimal breakthrough since the property owner still has the ominous burden of showing that a taking has occurred.

I believe that some changes are desperately needed in the jurisprudence of eco-

nomic liberties. The preceding analysis suggests some specific overall changes. I think one important change should be in the level of scrutiny applied to statutes affecting economic liberties. An extreme proposal would be to place the burden of proof on the government to justify its regulations. Levels of scrutiny below this extreme, but higher than the current minimal scrutiny, are realistic.

I would like to note that there are some grounds for optimism in the recent Supreme Court decisions. Bernard Siegan, in his *Economic Liberties and the Constitution*, states: “A change of one vote on the Supreme Court in *Ogden v. Saunders* would have, in 1827, brought economic due process into being through the contracts clause. One vote likewise separated the majority and minority position on the constitutional status of economic rights in the 1872 *Slaughterhouse* cases. * * * [E]conomic due process was unanimously accepted in 1897 and it fell by one vote in 1937.”

Hopefully in the future these close calls will be resolved in favor of freedom.

THE PRESIDING OFFICER. The Chair recognizes the Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I yield myself such time as I may consume of Senator MURKOWSKI’s time, I believe. I ask for 7 minutes.

THE PRESIDING OFFICER. Without objection, it is so ordered.

Ms. LANDRIEU. Mr. President, that is one of those remarkable things about this body. We can come to the floor and debate vigorously many different issues. In this case, we are making remarks about what I hope will soon be our secretary of the environment, our Secretary of the Department of the Interior, Gale Norton.

I come to the floor to give some words of support for her appointment and with just the greatest amount of respect to my colleague who just spoke, Senator BARBARA BOXER.

Mrs. BOXER. I thank the Senator.

Ms. LANDRIEU. Thank you very much.

With all due respect to my colleague from California—and I have the greatest respect for her as an environmental leader—I have carefully considered the nomination of Gale Norton, former attorney general of Colorado, to be our Secretary of the Interior and arrived at a different conclusion.

Let me begin by saying that since the announcement for this position, there has been much debate about positions she has taken throughout the course of her career. Whether the topic has been protection of private property rights, environmental self-audits, or certain provisions of the Endangered Species Act, she has advocated for limits on Federal power while arguing for more State and local authority.

In its core essence, that is not necessarily a bad thing. We need to be very sensitive to local and State governments as we craft and fashion and design environmental laws for this Nation. Frankly, I think in some instances the Federal Government has gone, you might say, overboard or has not had as much sensitivity to State and local governments as perhaps we should. We are still a work in progress here.

I find her position, actually, for State and local authority, refreshing and necessary, recognizing that one size does not fit all. But I do not question her commitment to clean air, to clean water, and to finding the right ways to pursue those goals.

As Secretary of the Interior, it would be her duty to manage public lands on behalf of the Federal Government and also to represent its interests in any dispute. So some legitimate concerns have been raised as to whether she would fall on the side of State and local government or Federal Government. I think she put those issues to rest clearly and squarely in her testimony before the committee as she said she would represent the interests of the Federal Government, using her sensitivity to State and local governments as an asset, but not as a barrier to fighting vigorously for and enforcing environmental laws that are on the books.

One such example I would like to point out that should be in her favor is her successful advocacy for the Rocky Mountain Arsenal cleanup. When the Federal Government itself was standing in the way of efficient and effective cleanup, Gale Norton challenged the Federal Government to clean up its own hazardous waste sites and led the fight successfully in that area, and that is a project that is still going forward.

In her 2 days of testimony before our committee as well as her answers to a few hundred written questions, I believe she has sufficiently indicated her honest intention to enforce the Federal laws as they are written and as the courts have interpreted them. Policy differences from time to time between Ms. Norton and the Members of this body are unavoidable. However, she has listened attentively to the concerns expressed by members of the committee, and her pledges to work with us seem genuine.

In addition, I am encouraged by her comments that she was willing to give appropriate consideration to the impact of Federal laws on State and local interests, which is something I mentioned before as very important to me and many Members, Democrats and Republicans, in our body. While there are certain instances where national policy on environmental issues is necessary, as I said earlier, sometimes one size does not fit all. We would be wise to recognize that and implement different strategies for different regions and different States.

In fact, Ms. Norton and I had the opportunity to discuss such a matter during her recent visit to my office—my favorite subject, actually—the Conservation and Reinvestment Act, which is a conservation program that will benefit all 50 States. She expressed an interest to learn more about this. She expressed a very keen understanding of the contribution made by coastal States, in terms of the amount of

money that is sent to the Federal Government from offshore oil and gas production, that could be used more wisely to replenish and restore some of our renewable resources while we are, in fact, depleting a nonrenewable resource.

Based on the crisis that we are facing in our Nation today, our energy crisis—as the chairman, Senator MURKOWSKI, from the State of Alaska, has so ably spoken about on this floor so many times—we can really now recognize the value of producing States. Let's make sure the billions of dollars we are sending to the Federal Treasury is used not just for general government purposes but used to invest in our environment to provide parks and recreation, wildlife and conservation, and, yes, to extend help to coastal impact assistance and coastal communities everywhere.

She says she understands it. Although she has not officially endorsed the bill, she will work very closely with us to carry out our work on CARA. Let me be quick to mention, though, that while she has not taken an official position and did not do so in the hearings, President Bush did in fact endorse, during the campaign, the CARA legislation. He did remind us all as Americans that you just can't keep taking; that sometimes you have to give back if you want your children and your grandchildren to enjoy the same benefits of open spaces, wildlife, and fisheries.

Mr. President, I ask unanimous consent for 2 more minutes to close.

Mr. MURKOWSKI. If I may, I dearly want to accommodate my good friend from Louisiana, but Senator LANDRIEU asked for 7 minutes, Senator HUTCHISON for 5, and Senator BAUCUS for a minute and a half. The two Senators from Colorado need time, and we have to finish at 12:30. I encourage colleagues to try to keep within their time limits.

Ms. LANDRIEU. I thank the Chair. I will take 1 minute to close.

President Bush endorsed this bill during the campaign, and I believe with Ms. Norton's leadership, with President Bush's leadership, and with bipartisan leadership in the Senate and House, it is an early bipartisan victory we can achieve for the environment and for our Nation. I look forward to working with her on that and many other issues. I am proud to support her nomination as our new Secretary of the Interior, and I look forward to working with her in the years ahead.

I thank the Chair, and I yield back whatever time I have remaining.

Mr. MURKOWSKI. I thank the Senator from Louisiana.

I believe the Senator from Texas seeks recognition as the next in order on the list, followed by Senator BAUCUS.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I thank the distinguished chairman of the Energy Committee.

Mr. President, I rise today to speak on behalf of my friend Gale Norton to be Secretary of the Interior.

I have watched Gale as the attorney general of Colorado. I worked with her very closely on the lawsuit that the attorneys general of our States filed against the tobacco companies. Gale was one of the key leaders of the States' attorneys general in that effort and successfully negotiated the lawsuit against the tobacco companies. We worked very hard to make sure that that money stayed in the States, that the Federal Government was not able to take part of the tobacco settlement money away from the States. That has certainly helped all of our States use that money mostly for the purpose of better health care for the indigent people in their States and for all citizens who need help with health care.

In my State of Texas, we added it to the CHIP program for children's health insurance. I know this has added to the quality of health care coverage in our country, and Gale Norton was one of those most responsible for it.

As a former State official, she has also shown that she wants to protect the environment, and she also wants balance in our environmental laws. She believes the Federal Government should have the same requirements to keep environmental standards high that our private industries do.

As Colorado attorney general, she was able to get involved in negotiations to make sure the Federal Government cleaned up hazardous waste in the Rocky Mountain arsenal.

She is going to be the person who will improve public health and the environment in an evenhanded and thoughtful way. I can think of no person who would be better for this job as Secretary of the Interior than Gale Norton.

Mr. President, we will also be voting on the nomination of Gov. Christine Todd Whitman to be EPA Administrator, a Cabinet post. I cannot think of a better person for EPA Administrator than this wonderful Governor of New Jersey who has a very strong environmental record and who also believes in balance to make sure that our economy stays strong and we keep the environment clean for future generations.

I am proud to speak for Governor Whitman and for my friend Gale Norton to join the Cabinet of President Bush, hopefully this afternoon, because I think they will add immense experience, quality, intelligence, and integrity to that Cabinet. I am pleased to support them.

I thank Senator MURKOWSKI for giving me this time.

Mr. MURKOWSKI. I thank Senator KAY BAILEY HUTCHISON.

Senator BAUCUS is seeking recognition.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, at the outset, I want to be clear that I have reservations about Ms. Norton's ability

to reconcile her history of passionately battling Federal environmental and public health laws with her duties as Interior Secretary, the public's voice in protecting and managing the Nation's national parks, its endangered wildlife and one-third of the nation's public lands.

Ms. Norton has stated she endorses the goals of our nation's land and wildlife protection laws. She must do more. She must enforce and uphold the spirit of those laws, the very laws she has tried in the past to undermine. She must ensure balance in her and her Department's decisions, listening to the concerns of all interested parties.

Because so many lands in Montana belong to the Federal Government and will fall under Ms. Norton's jurisdiction, Ms. Norton's actions will have an enormous impact on our way of life. Her actions will also impact the many native American tribes in Montana. I hope we can work together to ensure that those impacts are positive, both for Montana and for the Nation. I know I will do my part, and I expect she will do her part.

Despite these reservations, I believe that Ms. Norton is qualified for this position, I believe that she is honest and that she has the utmost integrity and that she will do her best to carry out her many obligations. I believe that Ms. Norton should be confirmed as Secretary of the Interior.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I yield 10 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. CAMPBELL. Mr. President, I take this opportunity to offer my wholehearted support for Gale Norton's nomination.

After all the rhetoric about Ms. Norton for the last month, it only took two appearances before the Energy Committee to get an 18-2 vote. That may not be unanimous, but it is mighty close to it. It is certainly overwhelming. I believe it is evidence that an overwhelming majority of the committee knows she is an outstanding candidate for the job.

She has proven she is knowledgeable, articulate, and capable of enduring round after round of detailed questions while being the object of pretty outrageous charges and mean-spirited ads paid for by her extremist detractors. She handled it, as she does everything, by simply focusing on the job at hand. The more she sat in those hearings, the more she convinced our colleagues that she is the right person for the job.

My Democrat colleagues on the committee saw, as with several other Bush nominees, that getting through this nomination process is not easy. The environmental groups that focused on her simply were wrong. Her management direction and experience have been proven over and over, and I was pleased to hear some very enthusiastic and

commendable words from my colleagues on the other side of the aisle and other side of the dais in our Energy Committee before we voted to send her nomination to the floor.

My friend and colleague from California, Senator DIANNE FEINSTEIN, stated:

Some of the things said about her are simply not correct.

That is absolutely true. Some of the articles in paid-for ads in the Washington Post were simply distorted.

She certainly allayed, through her testimony and her answers to 227 written questions to the committee, the fears my colleagues had. Senator BAUCUS, Senator LANDRIEU, and Senator BINGAMAN, all valued Members of this body, questioned her at length and came away with the same opinion I have: That she is going to be a very good Secretary of the Interior. Directly after the vote, the same people who had attacked her before did so again, and also sent kind of a warning shot to the Senate Democrats on the committee. The President of the Friends of the Earth, a prominent environmental group, said after the vote that Norton is “a wolf in sheep’s clothing” and that “she pulled the wool over the eyes of the Senators.” That paragraph was in the Washington Post on January 24. These are the types of fictional jabs that I believe led to the vote for her overwhelmingly.

Contrary to the Friends of the Earth, she did not pull the wool over anybody’s eyes. In fact, if anything, she opened the eyes of many of the committee members who had some questions about her qualifications before she had a chance to be interviewed.

I have known Gale for many years both in a professional capacity and as a friend, too. Let me state for the RECORD, she has a long and distinguished career of doing the right thing—always. Her consensus-building ability might be best illustrated by her 8 years as Colorado’s attorney general. There she served under a Democrat Governor and still accomplished much for the betterment of Colorado, not the least of which was the cleanup of Superfund sites.

For more than 20 years, she has provided leadership on environmental and public lands and has demonstrated a responsible commonsense approach to preserving our natural heritage.

I listened to some of the comments of her detractors on the floor this morning, and I will tell you that is not the Gale Norton I know. In fact, the Gale Norton I know represents a balanced approach to public lands.

Another significant fact to know about Ms. Norton is she is committed to enforcing the law as it is written. Throughout her questioning in front of the Energy Committee, she repeatedly stated she will enforce the letter of the law with which she is entrusted. I believed her. The majority of the committee also believed her.

I think that is a novel approach. I say to the Presiding Officer, coming

from the West, you, as I, have seen a Secretary of the Interior the last number of years who believes laws are passed by Congress, and they are simply an extension of what the Secretary of the Interior wants to do by rule-making authority. Ms. Norton will follow the rule of law.

She listens to common sense while she searches for common ground. Unlike many in Washington, she understands that real environmental solutions do not just come from beltway professionals or are driven by ideological purists but come by including people whose lives are going to be affected. They come from real people with honest concerns about the land and the water.

She relayed this to all of the Senators she testified before and visited around the time of her confirmation hearing. She proved to 18 of the 20 Senators of the committee that she is the right person for the job. She is up to the task. She will be a very fine Secretary of the Interior.

And probably above all, we have witnessed in the West in the last few years a process which certainly locks out any local input whatsoever. Ms. Norton is concerned about that. She knows that the people whose lives are affected at the local level must also be included when we talk about public lands policy.

Her record as a public servant demonstrates she will work with all parties to craft reasonable solutions. That kind of evenhanded approach to public land management has been missing, and the West is worse off for it. I know she will bring to this office of Interior Secretary decisive action in the land and resource issues where we have recently seen too much photo-op and not enough solid demonstrable decisions.

I believe she should be confirmed by the full Senate quickly, and by a large margin, and certainly would ask my colleagues to do so.

With that, I thank the Chair and yield the floor.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, might I ask, how much time is remaining for debate?

The PRESIDING OFFICER. Seventeen minutes 15 seconds.

Mr. MURKOWSKI. Seventeen minutes. I thank the Chair, and I thank my colleague from Colorado.

Mr. President, virtually every newspaper in Colorado has endorsed Ms. Norton. I cannot think of one that has not. The attorneys general throughout the United States have rallied behind her, those who have worked with her and know her. I cannot think of a greater tribute to her than hearing from those who have worked with her and have respected her over an extended period of time.

Mr. President, I ask unanimous consent that a letter from the International Brotherhood of Teamsters,

dated January 29, 2001, signed by the general president, James P. Hoffa, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

INTERNATIONAL BROTHERHOOD OF

TEAMSTERS.

January 29, 2001.

DEAR SENATOR: On behalf of the 1.5 million members of the International Brotherhood of Teamsters, I urge you to support the nomination of Gale Norton for Secretary of Interior.

As you know, the United States finds itself facing an ever-growing crisis in meeting its energy needs. As skyrocketing gas prices hit the pocketbooks of working Americans and rolling blackouts bring to a grinding halt the economic engine of California, the citizens of this country look to the federal government to address this program now.

Our first step must be to increase the United States’ energy independence. The Arctic National Wildlife Refuge (ANWR) offers a realistic and immediate opportunity for working toward this goal. Tapping the resources of ANWR in an environmentally sensitive manner will provide 10.3 billion gallons of oil, while at the same time creating an estimated 25,000 Teamster jobs and potentially 750,000 jobs nationwide.

Ms. Norton recognizes these facts. Her commitment to finding real solutions, particularly with regard to ANWR, demonstrates that she has the ability to balance the needs of the environment with the needs of working Americans.

Admittedly, during her tenure as Colorado Attorney General, Ms. Norton did oppose the labor community on some issues very important to our members. However, I believe that her commitment to energy independence and job creation portends a welcome shift in priorities at the Department of the Interior that will benefit Teamsters and other working families.

For these reasons, I ask you to vote to confirm Gale Norton as Secretary of Interior.

Sincerely,

JAMES P. HOFFA,
General President.

Mr. MURKOWSKI. Mr. President, I yield myself 7 minutes.

I will take the liberty of referring to the letter:

On behalf of the 1.5 million members of the International Brotherhood of Teamsters, I urge you to support the nomination of Gale Norton for Secretary of Interior.

The next paragraph reads as follows:

As you know, the United States finds itself facing an ever-growing crisis in meeting its energy needs. . . .

Our first step must be to increase the United States’ energy independence. The Arctic National Wildlife Refuge (ANWR) offers a realistic and immediate opportunity for working toward this goal. Tapping the resources of ANWR in an environmentally sensitive manner will provide 10.3 billion gallons of oil, while at the same time creating an estimated 25,000 Teamster jobs and potentially 750,000 jobs nationwide. It would be the largest construction project in the history of North America.

Admittedly, during her tenure as Colorado Attorney General, Ms. Norton did oppose the labor community on some issues very important to our members. However, I believe that her commitment to energy independence and job creation portends a welcome shift in priorities at the Department of the Interior that will benefit . . . working families.

Mr. President, we disagree in this body on a daily basis, and that is

healthy, and it is a part of the process before us. But I think some in the environmental community could learn from that model associated with Ms. Norton's confirmation effort. She represents some of the western values and approaches toward public lands and the environment.

People are free to disagree with her values and approaches; however, in some cases, some have tried to portray her as an extremist. Representatives of some special interests said that she has spent her lifetime trying to undermine the mission of the agency she is nominated to lead; that is, the Department of the Interior.

The disagreeable rhetoric used was never born out in fact. In her entire testimony before the committee, of which I chair, the Energy and Natural Resources Committee, where we have held 2 days of hearings, we had her respond to about 224 questions. We voted her out with a mandate vote of 18-2.

In any event, that rhetoric is without reality and has led to questioning the goals of some in the environmental community. I do question the goals, and I do question the effort to basically characterize assassinate this nominee.

Let me quote from a January 19, 2001, guest editorial in the Chicago Sun Times:

The Norton nomination exposes a growing schism within the national environmental movement. An increasingly radical left wing, funded by a small number of liberal foundations and tens of millions of dollars each year from government grants, will stop at nothing to shut down American manufacturing and to ban all public access to public lands. These are the same groups that rioted in Seattle in November 1999 and are burning down resorts and new homes to protest sprawl.

Mr. President, it goes without saying that the Colorado newspapers have supported Ms. Norton, but they go further than that. How about the Tacoma News Tribune:

Norton has been described, even by some Democrats, as bright, hard-working, highly ethical and willing to at least listen to those with opposing views.

Washington State Attorney General Christine Gregoire said:

The Sierra Club asked me not to say positive things about [Ms. Norton]. I told them to show me why she shouldn't be confirmed. I am still waiting for them to show me the evidence.

Like the Washington State attorney general, I am still waiting to see the evidence that Ms. Norton does not support the Endangered Species Act.

She led the fight to save the California condor. In her appearance before the committee, she repeatedly stated that she would enforce the Endangered Species Act. I have heard television ads run about Ms. Norton's, something they call, "right to pollute." They did not clarify that Ms. Norton used this phrase only in discussing emissions trading, a concept later embodied in the Clean Air Act passed by the Congress. It was a Democratic Congress.

These are two of the egregious misrepresentations of her record made by

special interest groups. I am almost ashamed of some of these groups. I don't think any person in this body should repeat any of the vicious personal attacks made in desperate attempts to derail this nomination. I view some of the attacks as despicable, unworthy of the space it took to print them. Such distortions and name calling really reflect badly on the authors, not on Ms. Norton. I am also ashamed that some of these D.C.-based groups use the word "Alaska" as part of their name. The reputation of several of these environmental interest groups is in tatters after this process. Ms. Norton's stature remains upright and in one piece.

I know we have heard from a number of Senators expressing their views today. The Senators who will close the debate—we have already heard from Senator CAMPBELL; Senator WAYNE ALLARD from Colorado is next—have worked under the tenure of the attorney general, and I commend their statements to the Senate as a true picture of the nominee before us, the nominee who will make an excellent Secretary of the Interior.

Finally, they try to rub out the messenger, but they can't rub out her message; that is, that she will uphold and enforce the law.

I yield the remainder of the time to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. I thank the Senator from Alaska. I compliment him on a fine job on the floor and in committee on the nomination of Gale Norton to be Secretary of the Interior. I also recognize the diligent efforts of my colleague, Senator BEN CAMPBELL of Colorado, in carrying forward, making sure we get a confirmation.

I rise today in strong support of President Bush's nomination of Gale Norton to be the next Secretary of the Interior. I have known Gale Norton for years and know her to be an individual with strong personal convictions and the upmost professional integrity.

This past month, my colleagues in the Senate and our constituents have had a chance to get to know Gale Norton. During that time they learned that Gale was a member of the law school honor society at the University of Denver; after law school she joined her alma mater as the Interim Director of the Transportation Law program at the University of Denver law school. Gale also worked at the U.S. Departments of Agriculture and Interior serving as Associate Solicitor for Conservation and Wildlife. This diverse background gave her a solid foundation to run successfully for Colorado's Attorney General, a position she was overwhelmingly reelected to in 1994. During

her 20 years working on environmental and natural resource issues, Gale Norton has gained a solid reputation defending the role of the State, advocating sensible environmental cleanup and solving problems.

Now, I know that most western Senators support Gale Norton for Secretary of the Interior. But for those of my Senate colleagues who still have doubts, let me tell them some more about Gale and her career and why she deserves their support.

I am a fifth generation Coloradan, and believe me, I know what it means to represent such a beautiful and diverse State. Gale also grew up in Colorado and she knows that Coloradans take environmental issues seriously. Whether it's a farmer or rancher, small businessman, high tech employee or new immigrant to the state, everyone recognizes and appreciates the connection between our economy and our environment. Colorado is not gaining a 7th congressional seat because our environment has been neglected. If anything, Colorado has demonstrated that there can be a balance between environmental protection and economic prosperity. This balanced approach was utilized during Gale's tenure as Attorney General.

Coloradans recognized Gale's ability and qualifications and entrusted her to represent them on complex and diverse issues. As Colorado Attorney General, Gale was committed to enforcing the law. She led efforts to ensure that the federal government cleaned up its hazardous and toxic wastes in Colorado and actively participated in the settlement of complex water rights cases. Gale also testified before Congress on implementation of the National Environmental Policy Act, Superfund and Colorado wilderness legislation. Gale's input on these issues was always based on the premise that we can improve the laws so they protect the environment without imposing unnecessary burdens on society. Contrary to some reports, commenting on the effectiveness of a law does not equate to advocating repeal of the law.

We need to set the record straight on some of the outlandish statements radical environmental groups have been generating. Radical environmental groups are trying to tie Gale Norton to the Summitville mine disaster, an event that didn't even happen on her watch. It happened under former Colorado Governor Roy Romer, a Democrat, his head of Department of Natural Resources Ken Salazar, and the attorney general, also a democrat. No one denies the environmental abuses at Summitville, but unfairly trying to link Gale to this is appalling. Even Ken Salazar, who now serves as Colorado's Attorney General believes she should have the opportunity to serve as Secretary of the Interior.

During Gale's 8 years as attorney general, she never allowed free reign for polluters to come in and destroy our environment.

At this point, I ask unanimous consent to print in the RECORD an editorial entitled "Summitville Gold Mine Is Cast As A Political Boogeyman" by Denver Post columnist and editorial writer Al Knight.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Denver Post, Jan. 30, 2001]

SUMMITVILLE GOLD MINE IS CAST AS A POLITICAL BOOGEYMAN
(By Al Knight)

JANUARY 10, 2001.—The New York Times, for reasons that must be assumed to be political, has attempted to smear Gale Norton, President-elect George W. Bush's choice for Secretary of Interior.

In an article last Sunday, The Times essentially attempted to make Norton, a former Colorado attorney general, responsible for what is headlined as "the death of a river."

The article, which relied on a series of factual misrepresentations regarding the Summitville gold mine, also made a hash of explaining applicable environmental law.

The writer, Timothy Egan, clearly doesn't understand the history of Summitville, nor does he demonstrate any understanding of the ongoing dispute between the Environmental Protection Agency and various states, including Colorado, that have passed environmental self-audit laws.

Egan's thesis was simple. Summitville was an environmental disaster. Norton was attorney general when it happened, thus she was partially responsible for it. Because Norton has supported self-audit laws that allow companies to inventory and report on environmental problems, she therefore must somehow countenance the environmental damage at Summitville.

The problem with this thesis is that it is wrong on almost every count.

Egan misrepresents the so-called death of the Alamosa River. That river has for decades been anything but a prime fishery. The watershed has long been affected by acid mine drainage and by naturally occurring minerals and heavy metals in the soil. It is simply irresponsible of The Times to continue to repeat allegations that discharges from Summitville killed the river.

A high-level EPA memo written in 1995 summarizing "ecological data and risks at Summitville" said there were "uniquely high and variable levels of natural background metals (in the Alamosa River) which can often exceed aquatic lethality benchmarks independently of site contamination."

Translation: Summitville contamination alone cannot account for the absence of fish in the river.

That same memo, by the way, says that drainage from the Summitville site at certain times of the year "could actually improve upstream Alamosa River water quality."

Egan goes on to repeat the falsehood that cyanide releases from the Summitville mine killed fish. It makes for a nice scare story but it did not happen. No fish died of cyanide poisoning.

Norton was attorney general when the state and federal government filed suit in 1996 against financier Robert Friedland—a former owner of the company who ran the mine in the mid- and late 1980s—attempting to recover cleanup costs.

That suit was finally settled last month, with Friedland agreeing to pay \$27.5 million. There is no allegation in The Times or elsewhere that Norton did less than quality work in connection with that case, which was mostly dictated by federal law. It's worth noting that Friedland paid much less than the government originally sought and won some important concessions as part of his settlement, which ends all U.S. claims against him.

For one thing, most of his money will stay in Colorado to help improve conditions in or

near the Alamosa River. Normally, under the Superfund law, recovery of cleanup costs goes directly into the federal treasury. Friedland has long claimed that the federal government wasted millions at Summitville and said that he did not want his money to be used to effectively finance what he believes is EPA waste.

This concession was almost certainly won because the EPA had badly botched its legal case against Friedland. Friedland had an important case pending against the United States before the Canadian Supreme Court, and it is safe to assume the United States was anxious to avoid having that case go forward. Any mishandling of the Summitville litigation can be directly traced to the EPA and to the Justice Department. Norton was certainly not responsible.

Finally, there is the matter of the state's self-audit law. Colorado's law was passed after Summitville went out of business. The self-audit procedure has nothing whatsoever to do with Summitville. What happened under Norton's watch regarding self-audits was quite simple:

The EPA, in effect, declared war on the states that had such a statute, and Norton—as attorney general—defended the state law against what was clearly a federal overreach. Self-audits were never intended to trump or otherwise replace all other federal or state regulation. The truth is that the EPA didn't want to see its power diminished and decided to fight the use of self-audit laws even though there was clear and convincing proof they produced environmental benefits that otherwise would not have been achieved.

The New York Times seems incapable of keeping its clearly liberal political positions out of its news columns. It has achieved something of a temporary new journalistic low in trying to tie Norton to a mythical "death" of a river. The state of Colorado may have made a number of mistakes relative to Summitville, but they pale to insignificance compared with the mistakes made since by the EPA, its waste of millions in tax dollars and the federal government's mishandling of years of litigation. That's the truth, whether The New York Times knows it or not.

Mr. ALLARD. The Denver Post, which describes itself as a newspaper with an active environmentalist agenda, says that "Norton should not be slammed for other politicians' mistakes," also defends Norton as one who tried to fix Summitville under nearly impossible circumstances. I hope my colleagues read these editorials and help set the record straight to end these vicious rumors.

With Gale as the Secretary of the Interior, we can begin the healing process in our rural communities, of regaining their trust. You see, when I was elected to the Senate, I made a commitment to all the residents of Colorado, that I would visit their county every year for a town meeting. I've held more than 250 town meetings, and whether I was in the rural communities of Craig and Lamar or the larger communities of Grand Junction and Pueblo, the message was the same—they were tired of constant threats and assaults on their way of life, they don't trust government.

And how can they? When in the waning days of the Clinton administration, some 2000 pages a day of new rules and regulations were added to the Federal Register. How can this be good for the environment and the economy?

Gale believes there is a role for local input in the public policy process. It's one thing to say that you believe in local involvement, but to actually use their input and listen is different. I know that Gale adheres to this philosophy. I also know that Gale recognizes the role of Congress in protecting our environment. I am confident that she will work with all of us, as elected officials and our constituents to address our complex environmental issues.

With Gale Norton and President Bush, we will restore the premise that the public and Congress have a role in the decision making process, especially as it relates to federal land management. Local input and congressional support ensures that sound public policy prevails. I know the new administration will work to protect the environment and restore integrity to the public process.

Now that you know who Gale Norton is and what she represents, I hope you too will give her your strong support and vote yes for her confirmation.

Again, I thank Senator MURKOWSKI and Senator BEN CAMPBELL for their efforts on Gale Norton's behalf.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I thank my two colleagues from Colorado for their statements in support of the nominee. I ask unanimous consent that I may be allowed to simply recognize a group of supporters who I believe should be entered into the RECORD at this time.

We have letters of support for Gale Norton from Indian tribes: the Navajo Nation, the Nez Perce Tribe, Oneida Indian Nation, United South and Eastern Tribes of Tennessee, Ute Mountain Tribe, the Southern Ute Indian Tribe, and United South and Eastern Tribes.

I ask unanimous consent to print letters of support from those tribes in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

THE NAVAJO NATION,
Window Rock, AZ, January 16, 2001.
Hon. BEN NIGHTHORSE CAMPBELL,
Russell Senate Office Building, Washington,
DC.

DEAR SENATOR CAMPBELL: On behalf of the Navajo Nation, I convey our support for Ms. Gale Norton, nominee for Secretary of the Department of the Interior. The Navajo Nation, in its government-to-government relationships, works with the Department of the Interior on myriad issues affecting the Nation. Although there are times when we disagree with one another we continue to work together for the benefit of the Navajo People. We wish to continue the working relationship with the new administration and we look forward to working with Ms. Norton.

The Navajo Nation's past experience with Gale Norton involved issues with the Southern Ute Tribe during her term as Attorney General for the State of Colorado. During that time Ms. Norton approached the tribes and asked how she could help. She provided testimony to the House (Natural Resources) Committee on the Animas-LaPlata project which benefitted the tribes. Her willingness to support the tribes demonstrates her knowledge of Indian nations and their position within the federal system.

The Navajo Nation does have its concerns with regard to Indian country policies and initiatives. We advise the new administration to follow the basic goals and principles of affirmation of the commitment to tribal sovereignty and self-determination, protecting and sustaining treaty rights and the federal trust responsibilities, and supporting initiatives which promote sustainable economic development in Indian country.

The Navajo Nation supports the nomination of Gale Norton for Secretary of the Interior and we trust she will continue to work with Indian country as she has done in the past. We look forward to working with her in advancing Indian country policies and Indian initiative for the Bush/Cheney Administration.

Sincerely,

KELSEY A. BEGAYE,
President.

RESOLUTION OF THE INTERGOVERNMENTAL RELATIONS COMMITTEE OF THE NAVAJO NATION COUNCIL

SUPPORTING PRESIDENT-ELECT GEORGE W. BUSH'S CABINET NOMINEE FOR UNITED STATES DEPARTMENT OF THE INTERIOR, GALE NORTON

Whereas:

1. Pursuant to 2 N.C. § 821, the Intergovernmental Relations Committee of the Navajo Nation Council is established and continued as a Standing Committee of the Navajo Nation Council; and

2. Pursuant to 2 N.C. § 822(B), the Intergovernmental Relations Committee of the Navajo Nation Council ensures the presence and voice of the Navajo Nation; and

3. Pursuant to 2 N.C. § 824(A), the Intergovernmental Relations Committee of the Navajo Nation Council shall have all the powers necessary and proper to carry out said purposes; and

4. Pursuant to the Treaty of 1868, the Navajo Nation and the United States Government have a government-to-government relationship; and

5. The United States Department of the Interior is charged with maintaining the government-to-government relationship between the United States and the Navajo Nation; and

6. President-Elect George W. Bush has nominated Ms. Gale Norton as the Secretary of the Interior, United States Department of the Interior; and

7. The Navajo Nation previously interacted with Ms. Gale Norton, former Colorado State Attorney General, on issues, which benefited the Southern Ute Nation and the Navajo Nation. Now therefore be it *resolved*, that:

1. The Intergovernmental Relations Committee of the Navajo Nation Council supports President-Elect Bush's Cabinet nominee, Ms. Gale Norton, for Secretary of the Interior, United States Department of the Interior.

2. The Intergovernmental Relations Committee of the Navajo Nation Council authorizes and directs Navajo Nation President Kelsey A. Begaye to deliver a letter of support for Ms. Gale Norton to President-Elect George W. Bush, Senator Jeff Bingaman, Senator Pete Domenici, Senator John McCain, Senator John Kyl, Senator Daniel K. Inouye, Senator Ben Nighthorse Campbell, Senator Orrin G. Hatch, and Senator Robert F. Bennett, on behalf of the Navajo Nation.

NEZ PERCE,
TRIBAL EXECUTIVE COMMITTEE,
Lapwai, ID, January 18, 2001.

Re: Secretary of the Interior Appointment
U.S. Senate:

With the recent George W. Bush election victory, a primary interest of the Nez Perce

Tribe in the transition process is the appointment of Gale Norton as the Secretary of the Interior. As you know, this Secretary's agency, the Bureau of Indian Affairs, has the primary charge of maintaining the federal government's trust relationship with Indian Tribes.

President-Elect Bush, in a letter to the Nez Perce Tribe dated August 18, 2000, stated "I will strengthen Indian self-determination by respecting tribal sovereignty, which has improved the quality of life for many Native Americans. I recognize and reaffirm the unique government-to-government relationship between Native American tribes and the federal government. I will strengthen Indian self-determination by respecting tribal sovereignty, which has improved the quality of life for many Native Americans. I believe the federal government should allow tribes greater control over their lives, land, and destiny." He also stated that he would like to work with Indian tribes to chart a course which "recognizes the unique status of the tribes in our constitutional framework..." We urge you to ensure that when making your decision to support the President-Elect's appointee, Gale Norton, these principles underlie the process.

In addition, the Republican Platform states that "high taxes and unreasonable regulations stifle new and expanded businesses and thwart the creation of job opportunities and prosperity [for Native Americans]. The federal government has a special responsibility, ethical and legal, to make the American dream accessible to Native Americans. We will strengthen Native American self-determination by respecting tribal sovereignty, encouraging economic development on reservations. We uphold the unique government-to-government relationship between the tribes and the United States and honor our nation's trust obligations to them."

We sincerely hope that all the President-Elect's appointees, including Gale Norton, is not only aware of these basic tenets of tribal sovereignty, but that such tenets are upheld and enforced, rather than ignored or legislated out of existence. In upholding these significant maxims, it is essential that the Secretary of the Interior appointee support the rights of Indian people. To Indian Tribes, this position is extremely important so, again, we urge you to take great care in the confirmation process of the appointed Secretary of the Interior.

Thank you. Please give me a call if you have any questions.

Sincerely,

SAMUEL N. PENNEY,
Chairman.

—
ONEIDA INDIAN NATION,
ONEIDA NATION HOMELANDS,
Vernon, NY, January 19, 2001.
Hon. FRANK MURKOWSKI,
Chairman, Senate Committee on Energy and
Natural Resources, Dirksen Senate Office
Building, Washington, DC.

DEAR CHAIRMAN MURKOWSKI: On behalf of the Oneida Indian Nation of New York, I am writing to express support for Gale Norton to be the next Secretary of Interior.

While our tribe does not have first hand experience with Secretary-designate Norton, I am encouraged that she has worked with Indian nations on a government-to-government basis during her tenure as the Attorney General of the State of Colorado. As Attorney General, Ms. Norton repeatedly demonstrated respect for tribal sovereignty. For example, in the wake of Colorado's settlement with the tobacco industry, Ms. Norton worked to ensure that the tribal share of the proceeds went directly to tribal governments rather than be administered through state agencies.

As Secretary of Interior, Ms. Norton would preside over the Bureau of Indian Affairs and help set the agenda for issues that are of vital importance to Native Americans. These issues, which include health care, education, sovereignty, economic development, gaming, and taxation, have been increasingly the subject of debate in Congress. Consequently, we believe that it is imperative that the next Secretary of Interior respect the role of tribal sovereignty, affirm a government-to-government relationship between the federal government and Indian nations, and provide the tools the tribes need to further the goal of tribal self-advancement and economic self-sufficiency.

Because of Ms. Norton's background and record on issues relating to Native Americans, we offer our endorsement of her nomination to become the next Secretary of Interior.

Na ki' wa,

RAY HALBRITTER,
Nation Representative.

UNITED SOUTH AND
EASTERN TRIBES, INC.,

Nashville, TN, January 19, 2001.

Hon. FRANK MURKOWSKI,
Chairman, Senate Committee on Energy and
Natural Resources, Dirksen Senate Office
Building, Washington, DC.

DEAR CHAIRMAN MURKOWSKI: As President of the United South and Eastern Tribes, I am writing to express support for Gale Norton to be the next Secretary of the Interior. USET is an organization made up of 24 Federally recognized tribes that extend from the State of Maine to the tip of Florida and over to Texas.

In my role as President of USET, I have not had first hand experience with Secretary-designate Norton, however, I am encouraged that she has worked with Indian nations on a government-to-government basis during her tenure as the Attorney General of the State of Colorado. As attorney general, Ms. Norton repeatedly demonstrated respect for tribal sovereignty. For example, in the wake of Colorado's settlement with the tobacco industry, Ms. Norton worked to ensure that the tribal share of the proceeds went directly to tribal governments rather than be administered through state agencies.

As Secretary of the Interior, Ms. Norton would preside over the Bureau of Indian Affairs and help set the agenda for issues that are of vital importance to Native Americans. These issues, which include health care, education, sovereignty, economic development, gaming, and taxation, have been increasingly the subjects of debate in Congress. Consequently, we believe that it is imperative that the next Secretary of the Interior respect the role of tribal sovereignty, affirm a government-to-government relationship between the federal government and Indian nations, and provide the tools tribes need to further the goal of tribal self-advancement and economic self-sufficiency.

Because of Ms. Norton's background and record on issues relating to Native Americans, I offer my endorsement of her nomination to become the next Secretary of the Interior.

Sincerely,

KELLER GEORGE,
President of USET.

—
UTE MOUNTAIN UTE TRIBE,
SOUTHERN UTE INDIAN TRIBE,
January 8, 2001.

Hon. FRANK MURKOWSKI,
Senate Energy and Natural Resources Committee,
Dirksen Senate Office Building,
Washington, DC.

DEAR CHAIRMAN MURKOWSKI, We are writing in support of the nomination of Gale

Norton to serve as Secretary of the Interior, and hope you will share our remarks with members of the Committee who will visit with her during her upcoming confirmation hearing.

Our Tribes have enjoyed a strong working relationship with the State of Colorado for many years. As Attorney General, Gale Norton furthered that relationship through her commitment to resolving issues in a fair and thoughtful way. She is an open-minded leader who listens and then works toward a resolution. We were able to agree to a gaming compact with the State of Colorado during her tenure as Attorney General. In addition, her strong and adamant support of the Colorado Ute Indian Water Rights Settlement Act was a major factor in what ultimately became successful legislation to modify the Animas-La Plata Project and still meet the obligation to the Ute people of Colorado.

Ms. Norton is a very capable individual whose public service is not based on a desire for accolade or credit, but on a commitment to resolve issues, no matter how controversial.

We proudly support her nomination and enthusiastically encourage the Senate to approve her nomination.

Sincerely,

ERNEST HOUSE,
Chairman, Ute Mountain Ute Tribe.

VIDA PEABODY,
Acting Chairman, Southern
Ute Indian Tribe.

Mr. MURKOWSKI. I also have letters from the Fraternal Order of Police, United States Park Police Labor Committee endorsing Ms. Norton; the Governor of Guam endorsing Ms. Norton; the Commonwealth of the Northern Mariana Islands endorsing Ms. Norton, signed by Pedro Tenorio, Governor; and a letter of January 17th from 21 State attorneys general supporting the nomination of Ms. Norton.

I ask unanimous consent that these documents be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FRATERNAL ORDER OF POLICE,
U.S. PARK POLICE LABOR COMMITTEE,
Washington, DC, January 15, 2001.

Hon. FRANK MURKOWSKI,
Chairman, Senate Energy and Natural Resources Committee, Senate Dirksen Building, Washington, DC.

DEAR CHAIRMAN MURKOWSKI: On behalf of the Fraternal Order of Police, United States Park Police Labor Committee, we are writing to strongly endorse President-elect Bush's nomination of Gale A. Norton for the office of Secretary of the Interior. We feel Ms. Norton is extremely well qualified for this position and possesses the knowledge, experience, and leadership necessary to be a highly successful Secretary. We urge the Committee to favorably report her nomination to the full Senate as quickly as possible.

The United States Park Police Labor Committee is deeply concerned with the current state of law enforcement within the Department of the Interior. For this reason, we are adding our voices to the many others who are supporting the nomination of Mr. Norton. Our Committee does not customarily write endorsements, but we feel that the importance of confirming Ms. Norton justifies our participation.

During the past two years, three separate studies have been conducted to examine law enforcement operations in the Department. Two of these studies were conducted by outside experts, namely Booz-Allen Hamilton

and the International Association of Chiefs of Police, while a third was an Internal Departmental review mandated by the Senate. All three studies concluded that the effectiveness of law enforcement activities by the U.S. Park Police and the Law Enforcement Rangers has been consistently declining. While both organizations continue to successfully fulfill their mission of protecting our parks and their visitors, a lack of resources and emphasis on law enforcement in the Department threatens our future ability to keep public lands safe. Strong leadership and critical reforms are needed now.

From a law enforcement perspective, Ms. Norton is an outstanding candidate for Secretary. Her background in law enforcement as Attorney General of Colorado, coupled with her previous service within the Department, gives her a unique ability to understand and address the problems faced by its law enforcement agencies. Throughout her career in public service, she has consistently shown strong support for law enforcement officers. Furthermore, she has repeatedly proven her ability to work with diverse individuals and groups to forge consensus and accomplish important tasks. We are confident that Ms. Norton will exert this same vigorous leadership as Secretary of the Interior to enact the reforms necessary to strengthen agency law enforcement efforts and ensure the safety of the visitors to our parks and monuments.

Once again, we strongly urge the Committee to favorably report her nomination to the full Senate at the earliest possible opportunity.

Sincerely,

PETER J. WARD,
Chair.

OFFICE OF THE GOVERNOR,
Guam, January 18, 2001.

Chairman JEFF BINGAMAN,
Senate Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I am writing in support of the nomination of the Honorable Gale Norton as Secretary of the Interior. The people of Guam look forward to Ms. Norton's leadership of the executive department that has direct responsibility for insular affairs. I am confident that as Secretary of the Interior, Ms. Norton will continue progress on the issues of great importance to Guam and that she will be instrumental in resolving the land issues that have been at the forefront of the Guam-United States relationship in the past few years.

Ms. Norton has substantial experience in the Department of the Interior, having previously served in the Solicitor's Office. We believe that she has the necessary familiarity with territorial issues to be an effective Secretary and that she brings a broad understanding of the unique federal land issues on Guam to her office.

Guam has had a contentious relationship with the Department of the Interior in large measure due to the Fish and Wildlife Service's acquisition of 370 acres of excess military lands in 1993 for a wildlife refuge. The 370 acres at Ritidian have become the focal point for Guam's dissatisfaction with federal land policy on our island. Due to the historical context of the military's acquisition of over one-third of Guam's lands after World War II for national security purposes, the Interior action has been harmful to the good relationship between the people of Guam and the United States. We hold the federal government to its commitment that military lands no longer needed for defense purposes should be returned to the people of Guam.

In an effort to resolve these issues, I have been engaged in discussions for the past year

with the previous Secretary and his staff on possible solutions that would enhance the level of environmental protection on Guam while addressing the issue of Interior's acquisition of Ritidian. I was willing to make the necessary compromises that would restore the good relationship between the U.S. and Guam and that would meet the needs of the Interior Department and the Government of Guam. Regretfully, the Fish and Wildlife Service was not.

We believe that Ms. Norton will restore a balance to federal land policy on Guam that has been missing since 1993. There is now an imbalance where the bureaucrats at the Fish and Wildlife Service make policy without adequate regard for local concerns. Environmental policy should not be a zero sum game where the Fish and Wildlife Service wins and the people of Guam lose. Environmental policy should be collaborative process with respect for, and accommodation of, local needs. On Guam, the respect we seek would recognize the patriotism of the people of Guam and our support for the national security interest, even when the national interest requires the use of one-third of our island for military bases. And the accommodation we seek would balance environmental policy with the federal commitment to return excess military lands to our people. We believe that Ms. Norton appreciates our history and our culture, and that she will be fair in dealing with us on these land issues.

We are also encouraged by Ms. Norton's commitment to the devolution of federal power where local governments are more appropriate to formulating public policy in response to local needs. This is a bedrock principle of self-government that Guam supports and encourages. We are confident that Ms. Norton will appoint policy makers and senior staff at the Department of the Interior that will reflect this view. Any increase in local self-governance in the territories is welcome and long overdue. We find Ms. Norton's views on limiting the role of the federal government in our lives both refreshing and promising for the resolution of the Guam's political status issues.

Thank you for considering my support of Ms. Gale Norton as Secretary of the Interior. I hope that the Senate Committee on Energy and Natural Resources votes to recommend Ms. Norton to the full Senate and that she is confirmed quickly. We look forward to her new leadership and her initiatives for the territories.

Sincerely,

CARL T.C. GUTIERREZ,
Governor of Guam.

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,
January 17, 2001.

Hon. FRANK MURKOWSKI,
Senate Committee on Energy and Natural Resources, Hart Senate Office Building, Washington, DC.

DEAR SENATOR MURKOWSKI: This coming week Secretary Designate Gale Norton will proceed through the hearings in connection with consideration or her confirmation. I am writing, on behalf of the people of the Commonwealth of the Northern Mariana Islands, to express our support for her confirmation as Secretary of the Interior.

The Department of the Interior, in particular its Office of Insular Affairs, plays a central role in the relationship of the Commonwealth with the United States Federal Government. We were pleased by the announcement of her nomination to this position. We believe that we could establish a positive and fruitful working relationship with Secretary Designate Norton should she be confirmed and wish her the best of luck.

Respectfully,

PEDRO P. TENORIO.

JANUARY 17, 2001.

Re nomination of Gale Norton for Secretary of the United States Department of Interior.

Senator JEFF BINGAMAN,
*Energy and Natural Resources Committee,
Washington DC.*

Senator FRANK MURKOWSKI,
*Energy and Natural Resources Committee,
Washington, DC.*

DEAR SENATORS: We, the undersigned state Attorneys General, write to provide important information that will help you evaluate Gale Norton's nomination for Secretary of the Interior. These insights are based on our work with Gale during her eight years as Attorney General for the State of Colorado. While Gale provided numerous examples of her leadership and ability as Colorado's Attorney General, there are a few specific instances that truly demonstrate her skill and experience.

First, in the early 1990's, Gale worked with Attorneys General and Governors in an effort to force the United States Department of Energy to comply with federal environmental laws as its facilities around the nation. Gale helped lead the fight to ensure that Energy would be responsive to the states, comply with the law, and refocus on cleaning up Rocky Flats in Colorado and other sites around the nation.

Gale served as the Chair of the Energy and Environment Committee for the National Association of Attorneys General from 1992 to 1994. As Chair of the Committee, Gale worked with Attorneys General from both political parties to achieve results for all states. Gale had the instinctive ability to work for bipartisan solutions and she helped create consensus on a number of sensitive issues.

Finally, Gale's work on the tobacco settlement was significant. Gale was selected by her colleagues to be a member of the settlement negotiating team. Gale's selection was based on the fact that she is very bright, hard working, and has extremely high ethical standards and integrity. She was a valuable member of the team throughout the prolonged and complicated negotiations.

We know that you are receiving extensive comments about Gale's qualifications. We want to provide you with our views, based on our years of experience working with Gale on complex, sensitive issues. We know that Gale will do her best to build coalitions and develop solutions to hard problems in a way that creates broad-based support. It is our hope that this information will be helpful as you consider Gale Norton's nomination for Secretary of the Interior.

Alan G. Lance, Idaho Attorney General; Christine O. Gregoire, Washington Attorney General; Bill Pryor, Alabama Attorney General; Toetagata Albert Mailo, American Samoa Attorney General; Ken Salazar, Colorado Attorney General; Jane Brady, Delaware Attorney General; Jim Ryan, Illinois Attorney General; Steve Carter, Indiana Attorney General; Carla J. Stovall, Kansas Attorney General; Mike Moore, Mississippi Attorney General.

Don Stenberg, Nebraska Attorney General; Frankie Sue Del Papa, Nevada Attorney General; Philip T. McLaughlin, New Hampshire Attorney General; Betty D. Montgomery, Ohio Attorney General; Hardy Myers, Oregon Attorney General; Mike Fisher, Pennsylvania Attorney General; Charlie Condon, South Carolina Attorney General; Mark Barnett, South Dakota Attorney General; John Cornyn, Texas Attorney General; Mark Shurtleff, Utah Attorney General; Mark L.

Earley, Virginia Attorney General; Gay Woodhouse, Wyoming Attorney General.

Mr. MURKOWSKI. I thank all of my colleagues who have spoken on behalf of the nominee. The action out of the committee on a vote of 18-2 is certainly, in my opinion, a mandate for approval by this entire body. I think she will represent our new President in a manner that attempts to balance the delicate issue of concern over the environment and the ecology.

Since there has been a lot of comment about ANWR during this entire process and many pictures, for my colleagues, I show a picture of ANWR as it exists for about 9 months of the year. This is what it looks like. Do not be misinformed; it is a long, dark 9-month winter.

I thank the Chair for its indulgence.

It is my understanding that the vote will be scheduled for 2:45 on two nominations and there will be separate votes. I wonder if the Chair could identify those.

The PRESIDING OFFICER. There will be two separate votes occurring at 2:45. The first will be on the Norton nomination, and the second one will be on the Whitman nomination.

RECESS

The PRESIDING OFFICER. The hour of 12:30 having arrived, the Senate will now stand in recess until the hour of 2:15.

Thereupon, the Senate, at 12:32 p.m., recessed until 2:17 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. CHAFEE).

EXECUTIVE SESSION

NOMINATION OF GALE ANN NORTON TO BE SECRETARY OF THE INTERIOR—Resumed

Mr. CRAIG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. Mr. President, I come before you today to offer my views on the nomination of Ms. Gale Norton to be Secretary of the Department of the Interior. I believe in some basic principles relative to Presidential nominees for the President's Cabinet. I believe they are reviewed for purposes of advise and consent of the Senate with the presumption that the President has a right to choose his or her closest advisers.

I believe our duty as Senators in discharging that constitutional responsi-

bility of advise and consent is to assure those advisers are capable of and committed to doing the jobs for which they have been nominated.

In the past, Ms. Norton has made statements that raise questions in my mind, and in many others, about her appropriateness for the position of Secretary of the Interior. Ms. Norton's explanations of those statements suggested that her views have evolved over time.

Having listened to her responses and evaluated her truthfulness, I take her at her word and trust her sincerity. My own life experience tells me that it is possible—in fact, it is highly desirable—for individuals to evolve in their thinking over their adult years. If a person at 55 has the same views they had at 25, that would raise serious questions as to whether this was an individual who was sufficiently affected by life to be an appropriate holder of a position of major public trust.

I asked Ms. Norton a series of questions during the course of the hearings before the Energy and Natural Resources Committee. I asked Ms. Norton if she would support the current moratorium that exists on offshore oil and gas leases, particularly those in California and my home State of Florida. She answered yes. She echoed President Bush's support for those moratoriums. I take Ms. Norton at her word.

I asked Ms. Norton if she would work with our State and other States to assure that the wishes of the State, with regard to existing leases, are followed. Ms. Norton answered yes, and I take her at her word.

I asked Ms. Norton if she would enter into discussions toward the objective of developing a plan for the buyback of Outer Continental Shelf leases in those States which had expressed opposition to their development for oil and gas purposes. This is much in line with the plan which is currently in effect in Florida for buyback of leases in the area of the Florida Keys that was originally developed by President George Bush. Ms. Norton answered yes, and I look forward to the opportunity to commence that process.

I spoke to Ms. Norton in my office regarding the importance of the Department of the Interior in the restoration of America's Everglades. I consider the passage of that legislation last year to have been one of the signal events of that Congress and one of the most important environmental advances in recent years.

As a steward of four national park units and 16 national wildlife refuges, the Secretary of the Interior has a distinct role in assuring that the natural systems are protected in America's Everglades, particularly protected as we move forward with their restoration.

She clearly understood the importance of the Department of the Interior's role in Everglades restoration, and I take her at her word.

I asked Ms. Norton what her plans were for funding of the Land and Water