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PETITION TO SECRETARY BRUCE BABBITT TO PROTECT
THE WILDERNESS CHARACTER OF BLM ROADLESS LANDS
AND FOR RULEMAKING UNDER THE ADMINISTRATIVE PROCEDURE ACT

MAY 3, 2000
WASHINGTON, D.C.

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I. INTRODUCTION AND REQUESTED ACTION

One hundred groups concerned about the preservation of America's wilderness heritage hereby submit this petition seeking the immediate protection of all lands under the jurisdiction of the Bureau of Land Management which qualify as wilderness under the Wilderness Act of 1964. The Secretary of Interior has a duty to protect these lands, but his ability to do so is undermined by the lack of accurate inventories of wilderness resources on BLM lands and outdated land management plans. As a result, the BLM regularly makes decisions and permits developments, including mining and oil and gas fields, that foreclose future protection of these unique and scenic lands.

Americans wholeheartedly support protecting the remaining BLM roadless lands, which are every bit as pristine and scenic as those lands already designated as wilderness. Two-thirds of all Americans support protecting the estimated 60 million acres of BLM lands that still qualify as wilderness. This broad-based support crosses gender, age, partisan and geographic lines.¹

¹ According to the latest citizen inventories and mapping of BLM roadless areas, there are about 60 million acres of unprotected BLM wilderness in the lower 48 states.

The poll results are as follows:

Nationwide: 66% of Americans support President Clinton protecting 60 million acres of BLM wilderness. Mellman Group Poll, 1/28/2000, n=1000.

California: 69% support the 60 million acre proposal. Mellman Group Poll, 2/7/2000, n= 800.

The Federal Land Policy and Management Act ("FLPMA"), together with other federal environmental laws such as the National Environmental Policy Act ("NEPA"), give the Secretary ample authority to meet his responsibilities. We request that the Secretary use his authority to immediately protect wilderness quality lands. Specifically, we request that the Secretary:

1) initiate wilderness reinventories and amend existing plans to protect the areas found to qualify as wilderness.

Pending completion of this process, and in compliance with NEPA and Section 302 of FLPMA (prohibiting the undue and unnecessary degradation of public lands), the Secretary should freeze action on development proposals for BLM roadless areas;

2) withdraw the lands from entry under Section 204 of FLPMA from sale, location or entry under some or all of the general land laws, with a corresponding moratorium on oil and gas leasing, pending completion of wilderness reinventories and plan revisions;

3) implement Executive Orders 11898 and 11644 so that off-road vehicles do not further damage wilderness-quality lands pending reinventories and plan revisions;

4) lastly, initiate a rulemaking process that would require all BLM plans and inventories to be updated at least every ten

Colorado: 69% support the 60 million acre proposal. Ridder/Braden Poll, 3/6/2000, n=501.

Oregon: 65% support the 60 million acre proposal. Mellman Group Poll, 2/3/2000, n=502.

years.

Each of these actions is necessary to ensure that America's wilderness heritage is not lost to mining, oil and gas development, road construction, off-road vehicles, and other damaging uses of the public lands. These actions are firmly grounded in sound policy goals -- the protection of scenic and biologically important public lands, and decision making based on a full understanding of the wilderness resources available to meet increasing demand for open space, recreation, and solitude.

**II. BLM LANDS HOLD VALUABLE PUBLIC TREASURES INCLUDING
ARCHEOLOGICAL SITES, INCOMPARABLE SCENERY AND IMPORTANT
WILDLIFE HABITAT, ALL THREATENED BY DEVELOPMENT**

BLM lands represent the last of the untouched, native west, some of our nation's roughest and wildest country. They include rugged mountains, canyons, mesas, redrock deserts, and river ecosystems rich with wildlife. Incredibly, only five million acres of the approximately 264 million acres of BLM lands in the United States have been protected from development by Congressional wilderness designation -- a paltry 1.8 percent. But there are an estimated additional 60 million acres of lands under BLM jurisdiction in the lower 48 states which qualify for wilderness protection, and an estimated 50 million acres that qualify in Alaska. Roughly two-thirds of BLM's wilderness legacy in the lower 48 states has already been lost to developments like

roads, mines, and oil rigs.

The BLM manages more than 170 million acres in the contiguous western United States, and an additional 90 million acres in Alaska. These unique lands hold the greatest diversity of ecosystems found within any state or federal land management agency. They include 14,000 foot peaks in Colorado, the serpentine redrock canyons of Utah, the desolate Basin and Range country of Nevada, the high desert Owyhee Canyons in Oregon and Idaho, the north rim of the Grand Canyon, and the striking mesas of northern New Mexico, immortalized in the vibrant paintings of Georgia O'Keeffe.

Once disregarded as deserts that were only valuable for hardscrabble ranching and mining, BLM lands are now recognized as repositories of our nation's most valued ecological and cultural treasures. According to agency estimates,² the BLM oversees 4 to 4.5 million archeological sites, comprising the "largest, most varied, and scientifically most important body of cultural resources" in the United States. These lands also harbor 228 plant and animal species listed under the Endangered Species Act, and over 1,500 "sensitive species." Antelope, bison, bighorn sheep and elk utilize 90 million acres of key habitat in the lower 48 states and 400 species of song birds rely on all 170 million acres. An estimated 65 percent of the west's wildlife

² These statistics were obtained from the BLM's web site, <http://www.BLM.gov/nhp/index.htm>.

depends on riparian areas for their survival; the BLM administers 180,000 miles of riparian-lined streams and 16 million acres of wetlands.

We have attached to this petition a report entitled "Importance of Bureau of Land Management Roadless Areas in the Western U.S.A." See Exhibit 1, attached hereto. It demonstrates the tremendous biological and ecological value of BLM lands, discusses the current threats to these areas, and concludes that these lands lack the necessary protection to maintain their native biodiversity. For this reason, on March 24, 2000, sixty five scientists signed a letter urging the Secretary of the Interior to conduct an accurate inventory of, and to provide protection to, BLM roadless areas. (The letter is attached to the Roadless Area report.)

BLM lands also serve as a readily accessible, spacious backyard for many westerners and as a vast vacationland for the nation. The BLM estimates that nearly two-thirds of its lands are located within an hour's drive of urban areas in the contiguous western states. However, the public's enjoyment of this land is diminished by industrial development like mines and oil and gas fields. Increasing conflicts are also created by exploding levels of off-road vehicle use: according to figures compiled by The Wilderness Society, only about 5 percent of BLM lands in the lower 48 states is now off-limits to ORVs. As a result, it is becoming increasingly difficult to find the peace

and solitude Americans expect from their public lands.

**III. THE SECRETARY HAS ALREADY USED HIS AUTHORITY
TO PRESERVE THE STATUS QUO PENDING WILDERNESS REINVENTORY
AND RESOURCE MANAGEMENT PLAN REVISION IN UTAH AND COLORADO**

This petition does not request the Secretary to create new policy or implement a novel administrative approach. In fact, the Secretary has already acknowledged, and acted upon, his authority to order the initiation of new inventories, followed by plan revisions. Specifically, the Secretary has, by directing the BLM in Utah and Colorado to remedy erroneous wilderness inventories and revise Resource Management Plans (RMPs) accordingly, recognized the importance of preserving the status quo on wilderness quality lands until the inventory and planning process is completed. In accordance with this policy, **this petition requests that the Secretary extend this protective approach, discussed fully below, to all BLM roadless lands.**

In a September 6, 1996 memorandum to the Utah BLM State Director, the national BLM Director explained the need for new wilderness inventories in Utah:

Changes in land ownership patterns, present usage of the land, and the simple passage of time since earlier reviews, may effect [sic] the findings regarding which lands have wilderness character.

In the specific procedures outlined in the memo, he further explained that:

Authority for additional inventories is provided by FLPMA in Sections 102(a)(2) and (8), 201(a), and 202(c)(4) & (9), and

land use planning in Sections 202(a), (b), and 205(c). Among other things, these sections direct BLM to 'preserve and protect certain public lands in their natural condition' and to 'prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern.'

Instruction Memorandum No. 96-176 (Sept. 6, 1996).

Moreover, the BLM has admitted that non-wilderness study areas that are proposed for wilderness by citizens are not receiving adequate protection under existing land management plans.

Thus, the BLM wisely exercised its discretion to stop the mineral leasing of congressionally proposed wilderness in Utah in the early 1990s. Subsequently, the Secretary announced what became known as the "take care" policy, pursuant to which the BLM accorded special attention to the management of congressionally proposed lands in Utah. In a November 1, 1993 memorandum to the Director of the BLM, the Secretary stated:

I am generally aware of the debate that had, for well over a decade, swirled around the adequacy of the Bureau of Land Management's [BLM] inventory of wilderness study areas [WSA] in Utah under the Federal Land Policy and Management Act. I want you to make sure that any BLM management decisions affecting potential wilderness on BLM lands in Utah, whether within formally designated WSA's [sic] or not, are given your careful attention.

Further, in an April 22, 1994 letter to Congressman Jim Hansen (R-Utah), Assistant Secretary Bob Armstrong explained that the "take care" policy was firmly grounded in Section 302 of FLPMA, which prohibits the unnecessary and undue degradation of

the public lands, including their wilderness values. He further explained that the purpose of the policy was to ensure that "particular care be taken to review proposals that might prevent the Congress from designating them as wilderness in the future," thus confirming the importance of accurately identifying wilderness quality lands and preserving the status quo pending congressional action.

In Colorado as in Utah, the BLM has acknowledged the flawed nature of its own wilderness inventories. In Colorado, the BLM established a policy of reviewing areas encompassed by pending wilderness legislation when actions are proposed that may have irretrievable or irreparable consequences. As support for this action, the BLM's Colorado State Director explained:

In light of [the Colorado Environmental Coalition's wilderness proposal] and evolving changes in public land use patterns and on the ground condition, CEC's presentation raises legitimate issues that deserve further inquiry by BLM regarding appropriate management of these areas. Accordingly, BLM intends to review those lands covered by the CEC proposal to determine whether there are wilderness values within such lands and whether such values require further protection.

Where there is substantial public concern that an action could harm a resource value that may not have been sufficiently analyzed in the plan, the BLM has authority to postpone approving that action for a reasonable period of time to allow the issue to be resolved primarily through the planning process.

Instruction Memorandum No. CO 97-044 (May 19, 1997). The Colorado BLM is currently completing a wilderness inventory of 200,000 acres.

On July 8, 1996, the Assistant Secretary for Land and

Minerals Management announced that the BLM would not approve oil and gas leasing in congressionally-proposed wilderness areas in Colorado. That decision was upheld by the U.S. District Court for the District of Colorado in Marathon Oil Co. v. Babbitt, Civ. No. 97-AP-266 (D. Colo. 1997)(unpublished decision)(recognizing that the Secretary had the authority to freeze oil and gas leasing activity pending review of the wilderness qualities of the land). The United States Court of Appeals upheld the dismissal on January 6, 1999. Moreover, in response to Marathon's request for a stay of the BLM's decision, the Interior Board of Land Appeals held that the Secretary could refuse to issue leases even when the resource management plan designated the area as generally suitable for leasing. Marathon Oil Company, 139 IBLA 347 (1997).

Utah and Colorado are not, however, isolated cases. Every western state contains wilderness-quality BLM lands that were overlooked in the initial FLPMA Section 603 review.³ In Oregon, citizens found over 6 million acres of BLM lands that qualified as wilderness, when the BLM claimed less than 2.5 million acres existed. In Wyoming, wilderness supporters have documented over twice the amount of wilderness quality land as the BLM. Spurred on by the need to protect these de facto wilderness areas and by

³ Section 603 directs the BLM to identify lands under its jurisdiction which qualify for wilderness protection, and to "manage such lands . . . so as not to impair the suitability of such areas for preservation as wilderness." 43 U.S.C. § 1782(c).

the BLM's demonstrated unwillingness to acknowledge the full extent of these unique lands, citizen inventories are now underway in Arizona, California, Colorado, Idaho, Montana, Nevada and New Mexico.⁴

Importantly, the BLM has recognized, albeit in a piecemeal fashion, that plans now in effect and the inventories upon which they are based are outdated. Accordingly, the Agency has embarked on, and in some instances completed, inventories and plans that account for wilderness-quality areas that the Agency had overlooked in the past. Specifically, the BLM has adopted this approach in the Redfield Canyon and Aravaipa Canyon areas of Arizona; on the South Fork of the Eel River in California; in the White River area of Colorado; in the Shoshone and Big Butte areas of Idaho; in the Jumbo Springs, Evergreen, Nellis and Logandale areas of Nevada; in the Mimbres Resource Area in New Mexico; in the Sutton Mountain area of Oregon; and in the Sid's Cabin, Scott's Basin and in the 1996-era citizens' wilderness proposal in Utah.

To the credit of this Administration, the BLM has taken positive steps towards rectifying past mismanagement and disregard for wilderness lands in Utah and Colorado, but these and the remaining western states all still contain wilderness

⁴ The attached map shows the enormous disparity between the amount of BLM land protected as wilderness or wilderness study areas, and the amount of BLM land that remains roadless in the lower 48 states.

quality lands that are not receiving the attention or the protection they deserve. **Therefore, the Secretary should exercise his authority under FLPMA Section 302, the Mineral Leasing Act, and Marathon Oil to ensure that wilderness quality lands throughout the west are protected, by freezing all proposals within BLM roadless areas, pending agency reinventory, planning and, ultimately, congressional action.**

Without immediate protection for the BLM lands that still qualify for wilderness protection, they are vulnerable to mining, oil and gas development, road construction and myriad other developments that gradually spell the loss of wilderness.⁵ These fragile lands simply cannot wait for the BLM to complete the task of updating its inventories and resource management plans.⁶

⁵ These protective policies would not protect the lands from the increasing threat posed by off-road vehicles, or the failure of the BLM to implement and enforce Executive Orders 11644 and 11898. We request that the Secretary take specific steps to ensure that the BLM follows these orders and preserves wilderness quality lands pending plan revision. See Section VIII, *infra*.

⁶ Petitioners are aware that by memorandum dated March 12, 1981, Secretary James Watt announced that he would not exercise his discretion to review the wilderness character of lands in Alaska. Secretary Watt's decision has no binding effect on subsequent administrations, and Secretary Babbitt is free to exercise the discretion granted by Section 1320 of the Alaska National Interest Lands Conservation Act to inventory wilderness lands. We understand that the Department of Interior holds the same view.

IV. THE BLM HAS FAILED TO KEEP ACCURATE INVENTORIES OF THE PUBLIC LANDS AND TO MAINTAIN UP-TO-DATE RESOURCE MANAGEMENT PLANS; AS A RESULT, THE AGENCY IS OPERATING WITHOUT A COMPASS AND THE ENVIRONMENT IS SUFFERING

Because the BLM is basing its management of the public lands on outdated, inaccurate information regarding their wilderness character, Petitioners request that the Secretary immediately initiate wilderness reinventories and RMPs. The BLM is managing some of the most breathtaking and diverse country in the world using inadequate and inaccurate inventories and RMPs. It is, in effect, managing the land blindfolded by approving countless development projects without basic information about how such projects affect America's finite wilderness heritage. Even the BLM acknowledges that "existing land-use plans are out of date," and as a result the agency is "identifying for disposal land now prized for recreation and open space."⁷ Not only does this fly in the face of common sense, it also violates federal law.

Millions of acres of BLM lands qualify for protection under the Wilderness Act of 1964. That law specifies that lands set aside and protected as wilderness be:

administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and

⁷ BLM's web site at <http://www.BLM.gov/nhp/info/index.htm>.

dissemination of information regarding their use and enjoyment as wilderness.

16 U.S.C. Section 1131(a).

Wilderness is defined as:

undeveloped Federal land retaining its primeval character and influence, without permanent improvement or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable . . .

16 U.S.C. Section 1131(c).

A. BLM's Inventories do not Accurately Reflect Existing Wilderness Quality Lands

In 1976, with the passage of the Federal Land Policy Management Act, Congress ordered the BLM to inventory its lands and protect those lands that qualify for wilderness designation until they are congressionally designated. Specifically, Section 201 of FLPMA provides:

The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.

43 U.S.C. Sec. 1711(a)(emphasis added).⁸

In many areas, the BLM has not lived up to its statutory obligations. Two and a half decades after Congress instructed the BLM to conduct and maintain accurate inventories, tens of

⁸ These inventories were to serve as the basis for designating Wilderness Study Areas under Section 603 of FLPMA. As discussed herein, these original inventories and WSA designations ignored

millions of acres of deserving and vulnerable BLM lands across the west are without protection simply because the agency lacks current information about the extent of wilderness present on the public lands.

B. RMPs are Inaccurate as a Result of Flawed Inventories

Inaccurate inventories have caused a ripple effect that undermines the validity of BLM's resource management plans, the document which in large part determines what activities the BLM will permit on the public lands. Attached as Exhibit 2 to this petition is a summary of the BLM RMPs with dates of their completion. Over 50 percent of the BLM's RMPs are now over 15 years old; 75 percent of the plans are ten or more years old. The BLM's reliance on outdated and inaccurate RMPs contravenes congressional intent, expressed in FLPMA Section 202. That provision requires the Secretary to "develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands." 43 U.S.C. § 1712(a). The revisions, in turn, shall be based on current inventories developed in accordance with Section 201. 43 U.S.C. § 1712(c)(4)

The obsolescence of the RMPs is compounded by the fact that they did not accurately inventory wilderness areas to begin with. Much of the BLM's current management of roadless areas is based on inventories that were conducted in the late 1970s pursuant to FLPMA Section 603, which required the Secretary to review all

vast quantities of wilderness quality lands.

roadless areas identified by the Section 201 inventories, and then to protect these as wilderness study areas until Congress make a final decision on the fate of these lands. Those initial wilderness inventories were notorious for overlooking vast areas of wilderness lands.

In the vacuum left by BLM's neglect, private citizens across the west have funded and performed their own inventories which time and again demonstrate the inadequacies of past BLM wilderness inventories. For example, in Utah the BLM determined, based on its superficial Section 603 review, that only 3.2 million acres -- out of a total of 22 million acres -- qualified for wilderness protection. Utah's woefully inadequate wilderness inventory gave birth to the Utah Wilderness Coalition, which conducted its own detailed inventory. It concluded, after years of fieldwork, photography, and other documentation, that 9.1 million acres of BLM lands deserved wilderness protection in Utah. Eventually, based on the Coalition's inventory, Secretary Babbitt repudiated the agency's initial inventory and ordered the BLM to review its earlier work, focusing a portion of the lands now included in the Coalition's wilderness proposal.⁹

⁹ For example, based on the faulty inventory begun in the 1970s, the BLM claimed that only 3.2 million acres qualified for wilderness. In 1999, however, the results of the BLM's reinventory demonstrated that at least 5.8 million acres of BLM lands in Utah qualified for wilderness. This result mirrored the scope of the Utah Wilderness Coalition's proposal in 1996, which was the extent of the BLM reinventory. Thus, it became clear that in its initial inventory, the BLM had ignored at least 2.6 million acres that qualified for wilderness. We are confident that when the BLM

The first step in protecting BLM roadless areas is immediately initiating a process to reinventory wilderness lands pursuant to Section 201 of FLPMA. Upon completion of the reinventories, the BLM must then revise its existing, but inaccurate, resource management plans to reflect the current extent of wilderness lands.

V. TO ENSURE THAT PLANNING OCCURS IN A TIMELY FASHION, THE SECRETARY SHOULD REQUIRE THE BLM TO UPDATE ITS RESOURCE MANAGEMENT PLANS WITHIN TEN YEARS

In conjunction with the request to preserve the status quo on wilderness-quality BLM lands while RMPs are amended, we also request that the Secretary issue a rule to require public land inventories and resource management plans to be updated every ten years so that BLM will have the current information it needs to maintain management plans that will protect roadless areas most effectively.

This request is consistent with and facilitates discharge of the Secretary's obligations under FLPMA Section 302 to prevent unnecessary and undue degradation of BLM lands, 43 U.S.C. Sec. 1782(c), and to issue regulations "necessary to implement the provisions of [FLPMA] with respect to the management, use, and protection of the public lands" 43 U.S.C. Sec. 1733(a). A rule requiring 10 year updates of inventories and RMPs would

reviews the completed 9.1 million acre proposal, it will find that the full proposal qualifies for wilderness designation.

also ensure that the inventory and planning process is completed expeditiously. We make this request pursuant to the Administrative Procedure Act, 5 U.S.C. Sec. 551(4) and 553.

Text of the proposed rule: The Secretary is required to maintain on a continuing basis an inventory of all BLM lands and their resources and other values. A full inventory of all public lands shall be completed at least once every ten years. When conducting the inventory, the Secretary shall utilize information and data available from other Federal, State, and private organizations. In response to information gathered during the inventory process, resource management plans shall be updated at least once every ten years.

This rule would promote the goals that originally motivated Congress to enact FLPMA, including Section 201's requirement to maintain current inventories.

The legislative history of this section demonstrates that Congress meant it to require the Secretary to complete full inventories of the public lands at least once every ten years. FLPMA section 202 states that "[t]he Secretary shall . . . develop, maintain, and, when appropriate, revise land use plans which provide . . . for the use of the public lands." 43 U.S.C. § 1712(a). The legislative history of section 202 reveals that Congress intended that the information from these inventories be used to keep resource management plans as current as possible, and that BLM update those plans periodically.

A. Congress intended inventories to be updated at least once every ten years.

The House Report on FLPMA states that section 201 "re-enacts the Forest Service inventory provisions of the Humphrey-Rarick

Act of 1974." H.R. Rep. No. 94-1163 (1976), reprinted in 1976 U.S.C.C.A.N. 6175, 6179.¹⁰ The RPA required the Secretary of Agriculture to prepare a "Renewable Resource Assessment" of "the forest, range, and other associated lands" and to update that resource assessment every ten years. Forest and Rangeland Renewable Resources Planning Act of 1974, Pub. L. No. 93-378, reprinted in 1974 U.S.C.C.A.N. 531, 531. The resource assessment was to include an inventory of the "present and potential renewable resources" on those lands. Id. Because the inventory provisions that Congress intended to "re-enact" by passing section 201 of FLPMA required inventories to be updated every ten years, section 201 should also be interpreted as requiring inventories every ten years.

B. Congress intended that inventories be used to determine management policies.

Congress intended for inventories to inform FLPMA section 202 RMPs. FLPMA itself directs the BLM to utilize the inventory in the creation or revision of RMPs: "In the development and revision of land use plans, the Secretary shall . . . rely, to the extent it is available, on the inventory of the public lands, their resources, and other values. . . ." 43 U.S.C. § 1712(c)(4). Congress also links together inventories and

¹⁰ The name "Humphrey-Rarick Act" refers to the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), Public Law 93-378, which Senator Humphrey and Congressman Rarick sponsored. See 120 Cong. Rec. 3805 (1974), 120 Cong. Rec. 21872 (1974).

management plans in FLPMA's Congressional Declaration of Policy. There, Congress states, "the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process." 43 U.S.C. 1701(a)(2).

FLPMA's legislative history also reveals Congress' intent that BLM use inventories in managing the public lands. The Senate Report accompanying FLPMA explained the inventory provision as follows:

This section directs the Secretary to prepare and maintain a continuing inventory of the national resource lands and all their resources and values, giving priority to areas of critical environmental concern. . . . [A]ll levels of government -- Federal, State, and local -- have experienced the painful failure of land use plans which were drawn up in the absence of basic information about the land. Before adequate planning of a resource can be conducted, the planner must possess basic knowledge about the entire resource and all the demands -- economic, social, and environmental -- for its use. The purpose of section [201] is to require that knowledge necessary for proper planning under section [202] be obtained.

S. Rep. No. 94-583 (1975), reprinted in Legislative History of the Federal Land Policy and Management Act of 1976, at 108 (1978) (emphasis added).

Other sections of this Report also tied inventories to management. For example, the Report stated that the bill "directs the Secretary of the Interior to prepare and maintain an inventory of the national resource lands and their resources. Congressional recognition of the importance of such authority to

proper management of the BLM lands has been long-standing." Id. at 100. When the bill was debated on floor of the House of Representatives, Representative Jackson, who sponsored the bill, also tied inventories to management, emphasizing the importance of inventories to "proper management of the national resource lands." 121 Cong. Rec. 1242 (1975), reprinted in Legislative History of the Federal Land Policy and Management Act of 1976, at 64 (1978).

Similarly, the legislative history of the inventory provisions of the Forest and Rangeland Renewable Resources Planning Act of 1974, upon which FLPMA Section 201 was based, demonstrates that Congress intended for the inventories to be used to keep management plans current. Representative Rarick, who sponsored the RPA, stated that the law "would assure that Congress, and through it, the whole nation, would have at hand the necessary and essential facts upon which to base wise decisions to direct policy for the national forests. In this way, Congress will . . . [provide] for an orderly process for more careful planning for the national forests and related resources." 120 Cong. Rec. 21872 (1974).

C. Congress intended for BLM to revise resource management plans periodically.

FLPMA requires BLM to revise RMPs: "The Secretary shall, . . . when appropriate, revise land use plans." 43 U.S.C. § 1712(a). Although the statute does not provide a time schedule,

FLPMA's legislative history demonstrates Congress' intent that RMPs be revised periodically so that management decisions and planning are based on a current assessment of the resources available. The House Report accompanying FLPMA stated that Congress recognized "land use planning as dynamic and subject to change with changing conditions and values." H.R. Rep. No. 94-1163 (1976), reprinted in 1976 U.S.C.C.A.N. 6175, 6179. At that time, the RPA governed the Forest Service's land use planning practices and required the Forest Service to update its Renewable Resource Program (which included forest plans) every five years.

16 U.S.C. §§ 1602, 1604. The Ninth Circuit, in a case concerning a NEPA challenge to the management of roadless areas, also interpreted the RPA to require the Forest Service to update forest plans every five years: "The [Renewable Resource] 'Program' includes 'land and resource management plans. . . ." [T]he Program must be updated every 5 years." State of Cal. v. Block, 690 F.2d 753, 757 (9th Cir. 1982).

- D. Requiring inventories and resource management plans to be updated every ten years would simply be good policy.

In addition to accurately embodying Congress' intent, this proposed rule would be wise policy. Our public lands, and particularly the roadless areas within them, are too precious to be managed under outdated information. Current management practices, whereby BLM does not update its inventories or its RMPs on a regular basis, damage the public lands in severe and

sometimes irreversible ways. For example, as mentioned above, the BLM admits that now-prized lands are targeted for disposal by outdated plans. Requiring inventories and resource management plans to be updated every ten years would ensure that the Secretary had the information necessary to manage BLM public lands for their protection and use.

The BLM is alone among federal land management agencies in its failure to revise its inventories and land management plans periodically. The National Forest Service and the National Park Service require revision on a scheduled basis. Both agencies recognize that public lands and their uses change significantly, and that inventories and land use plans must be updated periodically to manage those lands effectively.

The National Park Service (NPS) - by its own initiative, not due to a statutory requirement - requires periodic revision of its management plans. "General management plans will be reviewed and revised as necessary to keep them current. It is anticipated that such reviews will be needed every 10-15 years or sooner if conditions change more rapidly." National Park Service, Director's Order #2: Park Planning § 3.3.1.9., Robert Stanton, National Park Service Director (May 27, 1998), available at <http://www.nps.gov/refdesk/DOrders/DOrder2.html> (visited Mar. 29, 2000).

The National Forest Management Act (NFMA) requires the Forest Service to update its forest plans at least every fifteen

years. 16 U.S.C. § 1604(f)(5). However, the Forest Service chose to promulgate regulations that direct it, "ordinarily," to revise forest plans even more frequently - every ten years. 36 C.F.R. § 219.10(g). Moreover, the plans "may be revised whenever the Forest Supervisor determines that conditions or demands in the area covered by the plan have changed significantly," and "[t]he Forest Supervisor shall review the conditions on the land covered by the plan at least every 5 years to determine whether conditions or demands of the public have changed significantly."

Id. Finally, NFMA also requires the Forest Service to re-inventory its lands periodically. The inventory is a part of its Renewable Resources Assessment, which must be updated every ten years. 16 U.S.C. §§ 1601(a), 1603.

In conducting the inventories and plans, the BLM should use data gathered by citizen groups in conducting inventories. The Forest and Rangeland Renewable Resources Planning Act of 1974, upon which FLPMA Section 201 was based, stated that in carrying out that Act (one of the requirements of which was to conduct resource inventories), "the Secretary of Agriculture shall utilize information and data available from other Federal, State, and private organizations." Forest and Rangeland Renewable Resources Planning Act of 1974, Pub. L. No. 93-378 § 11, reprinted in 1974 U.S.C.C.A.N. 531, 536.

Given that FLPMA section 201 was designed to re-enact the inventory provisions of RPA, the Secretary should use information

and data from private organizations when carrying out his inventory duties under section 201 as well. Such use of information and data from private organizations would also be consistent with the regulations already promulgated under FLPMA. The current regulations regarding inventories indicate that "[t]he District or Area Manager shall arrange for . . . data and information to be collected, or assembled if already available." 43 C.F.R. § 1610.4-3. Using information that has already been assembled by private organizations would also save the Department of the Interior significant time and expense.

**VI. BLM LANDS WITH WILDERNESS CHARACTER SHOULD BE WITHDRAWN
WHILE THE AGENCY CONDUCTS INVENTORIES AND REVISES
MANAGEMENT PLANS ACCORDINGLY**

In the event the Secretary decides not to exercise his authority to protect BLM roadless areas lands under the authorities set forth above, **we request the Secretary to withdraw, to the full extent permitted by Section 204, all BLM roadless areas greater than 5,000 acres in size until the inventory and planning processes mandated by FLPMA are completed.**¹¹ We propose as a model to identify these roadless

¹¹ Because a withdrawal would not protect these wilderness quality lands from damage due to off-road vehicles, Petitioners request that the Secretary take specific steps to enforce Executive Orders 11644 and 11898. See Section VIII, *infra*.

lands the map attached as Exhibit 3, and the accompanying explanation of how this information was collected.¹²

Preserving the status quo on BLM lands through the withdrawal process authorized by Section 204 while the agency conducts planning and environmental analysis is not a novel approach. In fact, the Department of Interior has completed thousands of withdrawals since FLPMA was enacted. Most were implemented to protect various natural resources; many were implemented to maintain the status quo while plans were developed. Moreover, relatively large tracts of federal lands have been protected through withdrawals. Some individual withdrawals in Alaska have exceeded one million acres. Recently, Secretary Babbitt segregated nearly one-half million acres of Forest Service lands in Montana's Rocky Mountains to protect the area from mining. See 64 Fed. Reg. 5311 (Feb. 3, 1999). The Secretary also withdrew 605,361 acres of BLM lands on the north rim of the Grand Canyon to preclude new mining claims pending designation of the area as a national monument. 63 Fed. Reg. 68788 (Dec. 14, 1998).

The FLPMA Withdrawal Framework

Section 204(b) provides that the Secretary may formally withdraw lands "whenever he proposes a withdrawal on his own

¹² We also request that the Secretary withdraw areas less than 5,000 acres in size and adjacent to roadless areas under non-BLM management.

motion," which he may do based on this petition.¹³ If the Secretary adopts the recommendations of this petition, notice must be published in the Federal Register. As of that date, the lands are segregated¹⁴ and treated as if withdrawn to the extent specified in the notice. FLPMA, 43 U.S.C. Sec. 1714(b)(1).

The segregation terminates when: 1) the Secretary withdraws the land; or 2) two years after the date of the notice. 43 U.S.C. Sec. 1714(b); 43 C.F.R. Sec. 2310.2, 2310.2-1(a). During the two year segregation process, the Secretary must develop an evaluation of the effect of the proposed withdrawal pursuant to Congress. FLPMA Section 204(c).¹⁵ The required evaluation must include "a clear explanation of the proposed use of the land involved which led to the withdrawal;" an inventory of current uses and how they will be affected by the withdrawal; an analysis of how present uses are incompatible with proposed uses; public involvement opportunities; and a statement of how the withdrawal will affect state and local governmental interests and the

¹³ The Secretary may also withdraw lands based on the application of any federal department, agency or office. 43 C.F.R. Sec. 2300.0-5(1), 2310.1-2.

¹⁴ BLM regulations define segregation as "the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws, pursuant to the exercise by the Secretary of regulatory authority to allow for the orderly administration of the public lands." 43 C.F.R. 2300.0-5(m).

¹⁵ See discussion of the Department's interpretation of Section 204(c) in light of Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983) and the unconstitutionality of FLPMA's legislative veto provision, infra.

regional economy. Section 204(c)(2), 43 U.S.C. § 1714(c)(2) (listing twelve items).¹⁶

Section 204(h) requires public hearings for all new withdrawals, 43 U.S.C. Sec. 1714(h), and NEPA compliance is

¹⁶ Specifically, the Secretary shall provide Congress with:

- 1) a clear explanation of the proposed use of the land involved which led to the withdrawal;
- 2) an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation;
- 3) an identification of present users of the land involved, and how they will be affected by the proposed use;
- 4) an analysis of the manner in which existing and potential resource uses are incompatible with or in conflict with the proposed use, together with a statement of the provisions to be made for continuation or termination of existing uses, including an economic analysis of such continuation or termination;
- 5) an analysis of the manner in which such lands will be used in relations to the specific requirements for the proposed use;
- 6) a statement as to whether any suitable alternative sites are available (including cost estimates) for the proposed use or for uses such a withdrawal would replace;
- 7) a statement of the consultation which has been or will be had with other Federal departments and agencies, with regional, State, and local government bodies, and with other appropriate individuals and groups;
- 8) a statement indicating the effect of the proposed uses, if any, on State and local government interests and the regional economy;
- 9) a statement of the expected length of time needed for the withdrawal;
- 10) the time and place of hearings and of other public involvement concerning such withdrawal;
- 11) the place where the records on the withdrawal can be examined by interest parties;
- 12) a report prepared by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present and potential market demands.

required. Upon the Secretary's approval, lands can be withdrawn under this provision for up to twenty years.

The report required by Section 204(c) was intended to provide a basis for Congress to determine whether to disapprove of the withdrawal. FLPMA provides that Congress then has ninety days from the date the notice of the withdrawal was submitted to Congress to adopt a concurrent resolution of nonapproval. A number of legal experts have questioned the constitutionality of the legislative veto provisions of FLPMA, however, in the wake of Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983).¹⁷ In Chadha, the Court struck down an INS law which allowed the House of Representatives to disapprove deportation waivers granted to individuals who were in the country illegally. The court reasoned that the House's ability under the statute to overturn an administrative finding was an unconstitutional legislative veto because all legislation must be passed by both the House and the Senate and then be presented to the President for veto or signature.

Because the FLMPA legislative veto provisions do not require presentment to the President, a court would also likely hold them unconstitutional. The Department of Interior treats the legislative veto provisions as unconstitutional, but holds the

¹⁷ See Glicksman, *Severability and the Realignment of the Balance of Power over the Public Lands: The Federal Land Policy and Management Act after the Legislative Veto Decisions*, 36 Hastings L.J. 1 (1984) (concluding that FLPMA's legislative veto provisions are invalid after Chadha).

opinion that the report described in Section 204(c) must nonetheless be submitted to Congress.¹⁸

**VII. ONLY THE PROTECTION OF EXISTING WILDERNESS QUALITY
LANDS ENSURES BLM COMPLIANCE WITH ITS NEPA OBLIGATIONS**

Every resource management plan developed under FLPMA must be supported by an environmental impact statement conducted pursuant to NEPA, 42 U.S.C. Sec. 4332 et seq. Resource Management Plan EISs must accurately describe the environment affected by the plans, and describe how the uses and activities permitted by the plans would affect that environment. 42 U.S.C. Section 4332(C). Current, accurate information is the cornerstone of NEPA.

NEPA sets forth a process which ensures that federal actions will not be undertaken without a full review of their impact on the environment. It goes without saying that without a complete understanding of the environment, and of the resources that would be affected by a particular development project, NEPA's requirements cannot be met. To facilitate NEPA's goals and specific mandates, the Secretary should protect roadless lands immediately.

The guiding tool for all BLM activities is the resource management plan. FLPMA Section 202, 43 U.S.C. § 1712. Plans are to be developed based on, among other things: 1) principles of

¹⁸ Statement of the Honorable Bruce Babbitt, Secretary of the Interior, Joint Oversight Hearing Before House Committee on Resources, Subcommittee on National Parks and Public Lands and Subcommittee on Energy and Mineral Resources, March 23, 1999.

multiple use and sustained yield; 2) a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences; 3) priority to areas of critical environmental concern; 4) to the extent it is available, the inventory of the public lands, their resources, and other values; and 5) present and potential uses of the public lands. 43 U.S.C. Section 1712(c). In the course of developing management plans, the BLM is to involve the public and local governments. Id.

Congress recognized that the identification and consideration of "presently unquantified environmental amenities and values" should be given consideration along with economic and technical considerations. Id. at 4332(B). NEPA's regulations also state that information gathered in fulfillment of NEPA must be of "high quality," and further explain that "accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." 43 C.F.R. Section 1500.1(b).

Additionally, agencies shall prepare supplements to environmental impact statements if:

[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

40 C.F.R. § 1502.9(c)(i)(ii).

Where an agency bases a decision on a set of circumstances which are no longer valid due to, for example, changed

conditions, the agency must conduct further NEPA analysis to support its course of action, or to illuminate the need for a changed course of action. See Alaska Wilderness Recreation and Tourism Assoc. v. Morrison, 67 F.3d 723 (9th Cir. 1995)(holding that EISs for logging were no longer valid due to unexpected cancellation of timber contract).

In this context, the BLM has made, and continues to make land management decisions based on an inaccurate and incomplete inventory of the available wilderness resource. It is, in effect, making decisions adversely affecting wilderness resources without an understanding of the wilderness resources present. Where the BLM's informational foundation of its management is incomplete, it must "reassess management alternatives in light of [that] fact. See 67 F.3d at 728.¹⁹

Because existing resource management plans ignore wilderness resources, they cannot legitimately guide decisions without updated NEPA review.

¹⁹ Protecting the wilderness quality of these lands would also promote compliance with NEPA's mandate that federal agencies not foreclose alternative courses of action until a full environmental review is completed. See 40 C.F.R. § 1502.2(f) ("agencies shall not commit resources prejudicing selection of alternatives before making a final decision"). In other words, once information is presented to the BLM which demonstrates the existence of wilderness quality lands that the agency has not yet developed or recognized, it may not authorize new activities that would damage those lands without a full review of how those actions would impair the wilderness qualities of the land.

**VIII. THE SECRETARY SHOULD PROTECT ROADLESS
AREAS FROM DESTRUCTIVE OFF ROAD VEHICLE USE UNTIL INVENTORIES
AND LAND MANAGEMENT PLANS ARE COMPLETED**

BLM wilderness quality lands must be provided protection from widespread Off-road vehicle (ORV) abuse. **Petitioners request that the Secretary utilize existing executive orders, together with his authority under FLPMA Section 302 to prevent unnecessary and undue degradation to BLM lands, to remedy the damage from ORVs immediately.** Off-road vehicle use on BLM lands throughout the west has become rampant, with little or no management or enforcement by BLM personnel.

According to a survey conducted by The Wilderness Society, only five percent of BLM lands are closed to ORVs. Further, the BLM has "failed to map and manage its network of roads and trails" even in the areas it has designated as "limited" to ORVs. Id.²⁰ Not surprisingly, the destructive effects of ORVs are becoming ubiquitous on BLM lands. Effects include water pollution and sedimentation, loss of broad expanses of

²⁰ The BLM's ORV regulations define "limited" as "an area restricted at certain times, in certain areas, and/or to certain vehicular use. These [include] . . . [n]umbers of vehicles; types of vehicles; time or season of vehicle use permitted or licensed use only; use on existing roads and trails, use on designated roads and trails and other restrictions." The Executive Orders on ORV use on public lands do not provide for use on "existing" roads and trails, which in practice tend to be trails that are continually pioneered by ORV users.

vegetation, soil erosion, disruption of wildlife populations and damage to their habitat, and loss of healthy riparian ecosystems due to the use of stream bottoms and washes as ORV routes.

Additionally, the Roadless Area Report prepared by the Conservation Biology Institute found that there was a ninety percent reduction of breeding bird species in areas utilized by ORVs, and that other animals suffer from the effects of heavy and moderate ORV use. Report at 36-37 (Exhibit 1). In California's Mojave desert, scientists estimate that it will take hundreds of years for the environment to recover from ORV impacts. Id. at 36.

In addition to widespread ecological damage, ORVs are making it increasingly difficult to enjoy the peace and solitude of the public lands sought by hikers and sightseers who want to get away from the noise and congestion of their urban and suburban environment.

In most areas, the BLM has never complied with executive orders and BLM regulations which require it to designate ORV trails, and evaluate the impacts of ORVs both on the environment and on the expectations of non-motorized visitors to the public lands. Likewise, the BLM has largely ignored NEPA's mandate to conduct a thorough environmental review of activities permitted by the federal government. Further, there has been no public process to decide where and whether ORV use will occur. The result of the agency's neglect has been that ORV users have, for

all practical purposes and with little restraint, decided on their own where ORV use will take place on the public lands.

In 1972, President Nixon issued Executive Order 11644, which requires the Secretary to control and to minimize the effects of ORV use. The Executive Order requires the Secretary to classify all BLM lands as either "open," "limited" or closed to ORV travel; designate trails for ORV use in "limited" areas; mark areas and trails and provide the public with maps depicting such designations; "minimize" the effects of ORV use on specifically identified resources; and monitor ORV impacts on BLM lands.

Six years later, President Carter issued Executive Order 11989, supplementing the Nixon order. It gave federal agencies the authority to control ORV use, and specifically empowered agencies to adopt a "closed unless signed open" policy. It also gave the agencies authority to close immediately public lands suffering from ORV damage.

These executive orders were the foundation for the BLM's off-road vehicle regulations which implement and largely restate, the planning, informational, and monitoring requirements of the Nixon and Carter executive orders. See 43 C.F.R. Sec. 8340-42.

BLM roadless areas, including those depicted on the attached map, see Exhibit 3, are under enormous pressure from ORV riders who are expanding the reach of their activities exponentially in the face of agency neglect. Without immediate and strong direction from the Secretary these lands will meet with the same

fate that has befallen much of the BLM lands throughout the west where rampant ORV use has left scars on the landscape that will last for years.

Because of the immediate threat of ORVs -- a threat that grows every year as ORVs become more popular and engineering advances allow these machines to access heretofore inaccessible terrain, **we request that the Secretary, as set forth in the executive orders, declare that all BLM roadless lands are hereby closed to ORV use unless areas or routes that have been formally designated and posted "open" pursuant to a public process, the applicable executive orders, and full NEPA review.** This will require a review of all decisions that left such areas or routes open. Any such routes or areas should be closed if the review does not find compliance with the necessary process. While these reasonable safeguards are required by the executive orders, as described above, the BLM has not implemented them. The Secretary should make it clear the BLM must follow the letter of the law and ensure that there is no misunderstanding about what the orders -- and sound public lands management -- require.

IX. CONCLUSION

Pristine, undeveloped BLM lands represent the last of a rapidly vanishing western heritage. They provide unparalleled opportunities for non-motorized recreation and solitude, and a haven for wildlife increasingly pressured by human development. To ensure that these lands will be protected and that past agency

neglect will be remedied, the Secretary should exercise his authority to initiate wilderness inventories for all BLM Roadless areas and amend existing land management plans to protect the areas found to qualify as wilderness. To preserve the character of these lands until the process is complete, the Secretary should temporarily freeze decision making on proposals that would affect the roadless areas to be inventoried and withdraw these lands from mineral entry, with a corresponding moratorium on oil and gas leasing. In furtherance of timely revision of BLM's land management plans, the Secretary should begin a rulemaking process that will ensure completion of these plans within ten years, and also exercise his authority under Executive Orders 11989 and 11644, and FLPMA Section 302, to protect these lands from ORV damage.

Sincerely,

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