

August 15, 2003

The Honorable Gale Norton
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Norton:

I am writing regarding the actions taken by Department of the Interior (DOI) since April 11, 2003, when it signed a settlement agreement with the State of Utah prohibiting the Bureau of Land Management (BLM) from designating wilderness study areas on millions of acres of public lands throughout the West.¹ DOI and BLM officials have made statements suggesting that although such areas could not be designated as wilderness study areas, they could and would be protected. However, to date there has been no visible evidence of efforts by the Administration to insure protection of these valuable areas, suggesting that these statements were little more than illusory promises.

The agreement was highly controversial, not only because of its effect on the public's lands, but because of the secrecy surrounding its negotiation and because it repudiated longstanding legal positions taken by previous administrations – Republican and Democratic alike. In the wake of such a dramatic policy reversal, accomplished in secret, I am highly skeptical regarding the administration's commitment to protecting these important areas.

Wilderness areas are undeveloped lands, owned by the American public, which retain their primeval character, and are valued for their solitude. They contain ecological, geological, or other features of scientific, educational, scenic, or historical value. They help support life on this earth, sustaining and protecting natural resources, watersheds, biodiversity, and endangered species, and they provide "ecological services," such as carbon sequestration, natural pest control, nutrient cycling, and pollution absorption.² They are valuable to science, providing natural benchmarks for studying the effects of human development on natural systems, the knowledge of which "has the potential to avoid costly natural resource management mistakes."³ They provide opportunities for non-motorized recreation, including hiking, horseback riding, backpacking, camping, wildlife viewing, fishing, and hunting, and as a result, also provide significant economic benefits to the areas in which they are located. If successfully

¹ *State of Utah v. Norton*, 2:96CV0870 B (D. Utah April 11, 2003)(Stipulation and Joint Motion to Enter Order Approving Settlement and to Dismiss the Third Amended and Supplemented Complaint)(hereinafter "settlement agreement").

² Robert B. Richardson, *The Economic Benefits of Wildlands in the Eastern Sierra Nevada Region of California*, Prepared for The Wilderness Society, April 2002, at 31.

³ *Id.*, at 21.

protected, they are not available for oil and gas production, timbering, mining, and other forms of development.

The April 11 agreement with the State of Utah acknowledged the Secretary's authority to manage the public's lands in accordance with resource management plans and to take action to prevent unnecessary or undue degradation of public lands.⁴ At the time, DOI also issued a statement suggesting the possibility of protecting the wilderness areas through the planning process:

Interior plans to consider wilderness inventories and recommendations from wilderness advocates in its planning process, and fully anticipates that many areas will be managed in their natural state to preserve wilderness characteristics.

. . . .

Under this settlement the Department would continue to review through its planning process its holdings for areas that may possess remote or primitive characteristics. The Secretary has authority, other than the FLPMA Section 603 process for creating congressionally designated wilderness, including the administrative designation of Areas of Critical Environmental Concern. The Department will continue such designations as a component of the land use planning process.⁵

Unfortunately, this course of action has serious limitations. As Departmental officials have noted, in many cases resource management plans will have to be revised so as to protect the land's primitive characteristics. But rewriting or revising the plans is a slow and cumbersome process – often spanning years, not months.⁶ Such a process would also appear to require significant funding. Furthermore, BLM has been ill-equipped to undertake the task of making necessary changes in its many plans. For years, BLM has lacked the staff and resources necessary to insure that the more than 160 plans for managing 264 million acres of public lands are kept up to date. In a report to Congress, BLM stated:

The BLM downsized its planning and environmental staff capability in the mid 1980's. . . the BLM no longer has the infrastructure of trained staff needed to revise older plans or to develop new plans that address these emerging issues.⁷

With the addition of this new workload, it is not at all clear where the necessary resources will come from, nor what, if anything the Department will do to insure BLM's ability to revise plans to protect these sensitive lands.

⁴ *Supra*, note 1, at 12 and 13.

⁵ U.S. Department of Interior, *Summary of Department of the Interior's Wilderness Settlement Proposal*, undated. (hereinafter "summary").

⁶ By contrast, Section 603(c) of the Federal Land Policy and Management Act (FLPMA) specifies wilderness study areas are to be managed "so as not to impair the suitability" of the areas for wilderness designation.

⁷ U.S. Department of the Interior, Bureau of Land Management, *Report to the Congress: Land Use Planning for Sustainable Resource Decisions*, February 2000, at 11-12. Among the "emerging issues" identified in the report were "special areas," oil and gas, coal, special status species management, off highway vehicle designations, and invasion by non-native plant species.

There are other factors which raise serious questions about the DOI's level of commitment to utilizing available alternative means for protecting these resources. For example, the agreement with Utah required the Department to withdraw several existing policies designed to protect wilderness areas, and BLM has done so.⁸ But despite promises that new policies would be forthcoming, neither DOI nor the BLM has issued new policies regarding the protection of areas with wilderness characteristics. As a result, field staff lack direction regarding the priority for and the manner of protecting these lands.

This inaction contrasts starkly with the clear direction and priority BLM's Washington Office has provided regarding the integration of energy development into the planning process. For example, within weeks of the publication of an inventory of oil and gas resources in five western basins, BLM's Washington Office issued an Instruction Memorandum (IM) to its Field Offices containing detailed instructions on integrating the inventory into land use plans and energy use authorizations along with principles for the "successful and timely implementation of this effort."⁹ The previous year, BLM's Washington Office had issued an IM detailing the importance of rights-of-way to the President's National Energy Policy and containing instructions for their inclusion in land use plans: "[t]he need for ROW corridors, ROW Use Areas and the effects of land use plan decisions on energy related ROWs must be factored into all of the steps of the land use planning process."¹⁰ But, to date, despite assurances by Departmental officials¹¹ and indeed your own statements regarding the availability of tools "for land managers to protect natural qualities and wilderness characteristics,"¹² there is no indication that either Departmental officials, or the BLM's Washington Office, have provided official direction to the field regarding the protection of these areas.

I am also concerned about the actions taken with regard to the management of 2,606,990 acres of public land identified in the 1999 Utah Wilderness Inventory as lands for which preservation would be "practicable."¹³ Shortly after the settlement agreement was signed, BLM announced that during the currently ongoing process to revise three resource management plans in Utah, it "will not consider establishing additional Wilderness Study areas."¹⁴ While excluding the possibility of designating Wilderness Study Areas, the BLM has made no further announcements regarding the specific action that it will take (or consider taking) to protect these inventoried lands and the time frame for doing so.

⁸ Settlement agreement at 13; U.S. Department of the Interior, Bureau of Land Management, *Instruction Memorandum No. 2003-195, Subject: Rescission of National Level Policy Guidance on Wilderness Review and Land Use Planning*, June 20, 2003.

⁹ U.S. Department of the Interior, Bureau of Land Management, *Instruction Memorandum No. 2003-137, Subject: Integration of the EPCA Inventory Results into Land Use Planning and Energy Use Authorizations*, April 3, 2003.

¹⁰ U.S. Department of the Interior, Bureau of Land Management, *Instruction Memorandum No. 2002-196, Subject: Right of Way (ROW) Management-Land Use Planning*, June 25, 2002 at 1&2.

¹¹ Departmental officials advised Senate staff in May that the Bureau of Land Management would follow the land use planning process to address the management of these lands.

¹² Wharton, "Norton Defends Settlement to Roll Back Land Protection," *The Salt Lake Tribune*, June 18, 2003.

¹³ U.S. Department of the Interior, *Utah Wilderness Inventory*, 1999 at xv and A-1.

¹⁴ 68 *Fed. Reg.* 33528 (June 4, 2003).

So that we may better understand what DOI is actually doing to protect these valuable lands, please respond to the following questions:

Resource management plans

1. In light of the settlement with Utah, what instructions have you provided to BLM Field Offices about how to proceed with revisions of resource management plans to protect areas with wilderness characteristics? Please submit copies of all such instructions.
2. How many resource protection plans must now be revised to address the protection of areas with primitive/wilderness values?
 - (A) Identify specifically the plans which are affected.
 - (B) For each plan, when will the revision/amendment process be completed?
3. As DOI announced in its summary of the settlement, areas can be designated as areas of critical environmental concern (ACEC). The Federal Land Policy and Management Act (FLPMA) specifically provides that in the development and revision of land use plans, the Secretary shall “give priority to the designation and protection of areas of critical environmental concern.”¹⁵ Please explain what you have done since April 11 to insure that BLM is giving priority to the designation of ACEC’s in the development and revision of land use plans, in particular with regard to those acres which DOI has specifically excluded from designation as Wilderness Study Areas.
4. For this fiscal year, and each of the succeeding two years, do you believe that additional resources (FTE’s and funding) are necessary to insure BLM’s ability to quickly revise resource management plans to address the protection of areas with “primitive” values? If so, please identify the amount of additional resources required. If not, please describe how the tasks will be accomplished with current resources.
5. At the time the settlement agreement was announced, some plans were already undergoing revision, and the management of lands found to have wilderness character after 1993 was an important aspect of those revisions. How will the wilderness settlement affect these ongoing planning efforts? Will BLM reopen the scoping phase of the planning process to allow the public to provide comments that address the newly limited scope of the resource management plans?
6.
 - (A) In Utah, how will the acres with wilderness characteristics which were identified in the 1999 Utah Wilderness Inventory be addressed in the planning process? Please be specific, identifying the relevant plans, their current status, the manner in which wilderness areas are being addressed, and the information which has been made available to the public regarding these actions.
 - (B)
 - (1) Identify all currently pending requests for approval of actions in the acres identified with wilderness characteristics that may degrade or compromise their wilderness character. Please detail the status of each request.

¹⁵ 43 U.S.C. Sec. 1712(c)(3).

(2) Have any requests for approval of actions in the identified wilderness acres been approved since April 2000, and, if not, when do you expect to begin approving such actions?

7. What changes, if any, have been made in the priorities for revising and amending resource management plans since April 11, 2003? Please be specific, identifying all changes which were made to address the preservation of areas with wilderness characteristics.

8. Last week, according to news reports, the Administration announced that it was directing government land managers to remove environmental and procedural obstacles that are slowing development of oil and gas resources in several areas in the West (specifically in Montana's Rocky Mountain Front, Wyoming's Power River and Green River Basins, Utah's Uinta Basin, Colorado's Piceance Basin, and New Mexico's San Juan Basin).¹⁶

(A) Explain how the planning process for each of these areas is affected by this directive.

(B) Please submit a copy of the directive.

9. The U.S. recently filed a petition for *writ of certiorari* requesting the U.S. Supreme Court to review a case involving, among other things, BLM's failure to implement the provisions of its resource management plans relating to the management of off road vehicles. DOI is objecting to a decision from the Tenth Circuit Court of Appeals allowing citizens to challenge in court BLM's failure to complete certain activities which were specified in its plans applicable to Wilderness Study Areas and the public lands adjacent to them.¹⁷ If DOI succeeds in having the Supreme Court overturn the 10th Circuit ruling, and if the BLM ultimately provides protections for "primitive" areas in certain of its resource management plans, please explain what recourse will be available to members of the public if BLM fails to comply with a plan's requirement to protect those areas.

10. BLM recently made extensive use of contractors to rewrite certain time sensitive resource management plans. However, an internal BLM program evaluation describes the problems encountered by BLM which was ill prepared to manage this contracting effort. These include: failures in planning for and overseeing the contracts; managing the planning efforts; and the high costs associated with the contracts.¹⁸

(A) With regard to revisions/amendments of resource management plans that are required to insure protection of "primitive" values, which planning efforts will be undertaken by

¹⁶ Shogren, "Bush Team Makes Federal Lands More Open to Oil, Gas Drilling," *Los Angeles Times*, August 8, 2003, at 19.

¹⁷ *Southern Utah Wilderness Alliance v. Norton*, 301 F. 3d 1217(10th Cir. 2003), *petition for certiorari filed* (U.S. July 18, 2003)(No. 03-101).

¹⁸ Prepared for Assistant Director, Renewable Resources and Planning, *Contracting for Land Use Planning Evaluation, June 2002 to October 2002*.

contractors?

(B) For all BLM planning efforts, what actions are you taking to insure that the contractor's work is not adversely affected by potential conflicts of interest if contractors who also serve clients interested in using the public lands for private gain – for example, for oil and gas, coal, and timber production – are granted planning contracts?

(C) Describe specifically the changes which have been made by BLM to address the problems identified in the internal contracting evaluation.

11. According to a report of the White House Task Force on Energy Project Streamlining, the Task Force is a “member of the BLM’s Land Use Planning Board of Directors,” and “[t]he Task Force worked closely with BLM to ensure that unwarranted impediments to energy development were avoided. . . .”¹⁹ Please describe the BLM’s Land Use Planning Board of Directors, identifying its membership, responsibilities, its role in the planning process, and its statutory basis. Please submit a copy of its charter.

Status of areas with wilderness characteristics protected in accordance with Section 202 of the Federal Land Policy and Management Act

12. In the settlement agreement, DOI agreed with the State of Utah that it does not have authority to establish public lands “identified in the 1999 Utah Wilderness Inventory Report . . . and other BLM public lands identified by the public or BLM after October 21, 1993 for wilderness study, classification, or management”²⁰ and further, that it will not “establish, manage or otherwise treat public lands . . . as [wilderness study areas] or as wilderness pursuant to the Section 202 process absent congressional authorization.”²¹ I understand that there are some areas which have been protected in reliance on the authorities contained in Section 202 of FLPMA.²²

(A) Will BLM now “undo” protection for places which have been managed as so called “Section 202 WSA’s?” If so, how will BLM proceed to do so?

¹⁹ White House Task Force on Energy Project Streamlining, *Proceedings of the First Year White House Task Force on Energy Project Streamlining*, December 2002, at 12. <http://www.etf.energy.gov>

²⁰ Settlement agreement, at 13. According to data compiled by the California Wilderness Coalition, in the State of California, the effect of this agreement is to strip 34,910 acres throughout the state of existing protections, and to preclude the study of 113,164 acres that were, at the time, being considered for protection of their wilderness characteristics as part of an ongoing planning process.

²¹ Settlement agreement, at 14.

²² Using its authorities in Sections 201 and 202 of the FLPMA, BLM has established protections in its land use plans for wilderness areas. (Section 201 of FLPMA directs BLM to “. . . prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values. . . giving priority to areas of critical environmental concern” This inventory is to “reflect changes in conditions and to identify new and emerging resources and other values. . . .” Section 202 directed BLM 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. Sec. 1711 and 1712.)

- (B) (1) How many areas are affected?
(2) Where are they?

Unnecessary and undue degradation

13. FLPMA provides that “[i]n managing the public lands, the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.”²³ How do you intend to exercise this authority with regard to the areas that have wilderness characteristics?

DOI’s summary of the April 11 agreement described it as a settlement which “ensures protection of important environmental, cultural and historical values, while fulfilling our responsibility under the law.”²⁴ But, the agreement itself does not insure such protections; in fact, as a result of the agreement, DOI and BLM must take affirmative steps to protect these valuable areas. As noted above, areas with wilderness characteristics are more than beautiful places providing solitude and recreational opportunities – they support life itself on earth. DOI’s actions to date suggest the lack of commitment to protecting these invaluable areas, therefore, I look forward to receiving your answers which will provide information regarding the status of DOI’s efforts to protect these lands.

Sincerely yours,

Joseph I. Lieberman
Ranking Member

JIL:kjs

²³ 43 U.S.C. Sec. 1732(b).

²⁴ *Summary* at 2.