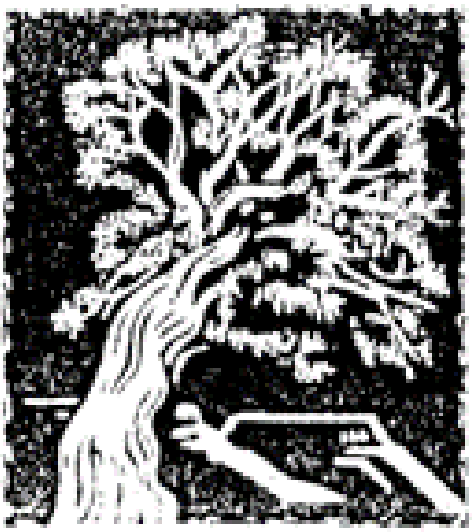
Opposition to the 2003 Norton – Leavitt Settlement

Southern Utah Wilderness Alliance Information Packet



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Opposition to the 2003 Norton – Leavitt Settlement

Congress of the United States

Washington, DC 20515

May 23, 2003

The Honorable Gale Norton
Secretary
U.S. Department of the Interior
1849 C St., NW - 6156
Washington, DC 20240

Dear Secretary Norton:

We are writing in strong opposition to several recent decisions that undermine the protection of wilderness on our nation's public lands. These decisions appear designed to limit Congressional options and to preclude action by future Secretaries to protect millions of acres of some of our most magnificent public lands as Wilderness or as Wilderness Study Areas (WSAs).

Specifically, we are referring to the April 11 settlement agreement between the Department of the Interior (DOI) and the State of Utah that prohibits the designation of new Wilderness Study Areas on the public lands, the Memorandum of Understanding (MOU) between the Department and the Governor of Utah regarding road right-of-way claims across public lands, and the policy changes you have instituted regarding wilderness reviews of public lands in Alaska.

The April 11 settlement of an old lawsuit with the State of Utah has implications for all BLM lands. It seems intended to effectively prohibit BLM from ever again reviewing lands under its jurisdiction for wilderness suitability and WSA status, unless the lands have already been identified as having wilderness characteristics in a 1991 BLM inventory. Furthermore, the settlement seems aimed at prohibiting BLM from providing interim protection to more than 2.5 million acres in Utah that have already been inventoried by the BLM and identified as having wilderness qualities. Millions of additional acres that should be inventoried and possibly designated as WSAs now will not be reviewed-despite the fact that the public has already been invited to share information on the suitability of these lands for potential WSA designation.

By preventing the inventory and establishment of future WSAs - which are required by law to be managed in a way that does not impair their suitability for wilderness designation - and prematurely approving non-wilderness uses of BLM lands, the Department has effectively and inappropriately taken away a key management tool to preserve Congress' prerogative to designate Wilderness Areas on the public lands. Because these areas now will be opened to a variety of development activities, such as road construction, mining, and oil and gas exploration, the wilderness qualities of such areas likely will be destroyed, precluding their future designation as Wilderness by Congress.

The April 9, 2003 MOU is being touted as a resolution to the longstanding controversy over the validity of road right-of-way claims - often referred to as RS 2477 claims - on public lands throughout Utah. Given the ambiguity of the MOU and the potential for misinterpretation, it especially concerns us that the Department is promoting it as a model for "resolving" RS 2477 claims in other states. While as part of the MOU the State of Utah agreed not to assert claims in National Parks, National Wildlife Refuges, and designated Wilderness areas (counties and other entities would still be able to make claims in these areas), both the Grand Staircase-Escalante National Monument and approximately 10 million acres of other Federal lands that are potentially eligible for wilderness designation would be open to road right-of-way claims. We are very concerned that these claims will be handled in a way that effectively precludes public involvement and that could lead to further restricting Congressional options to protect affected lands.

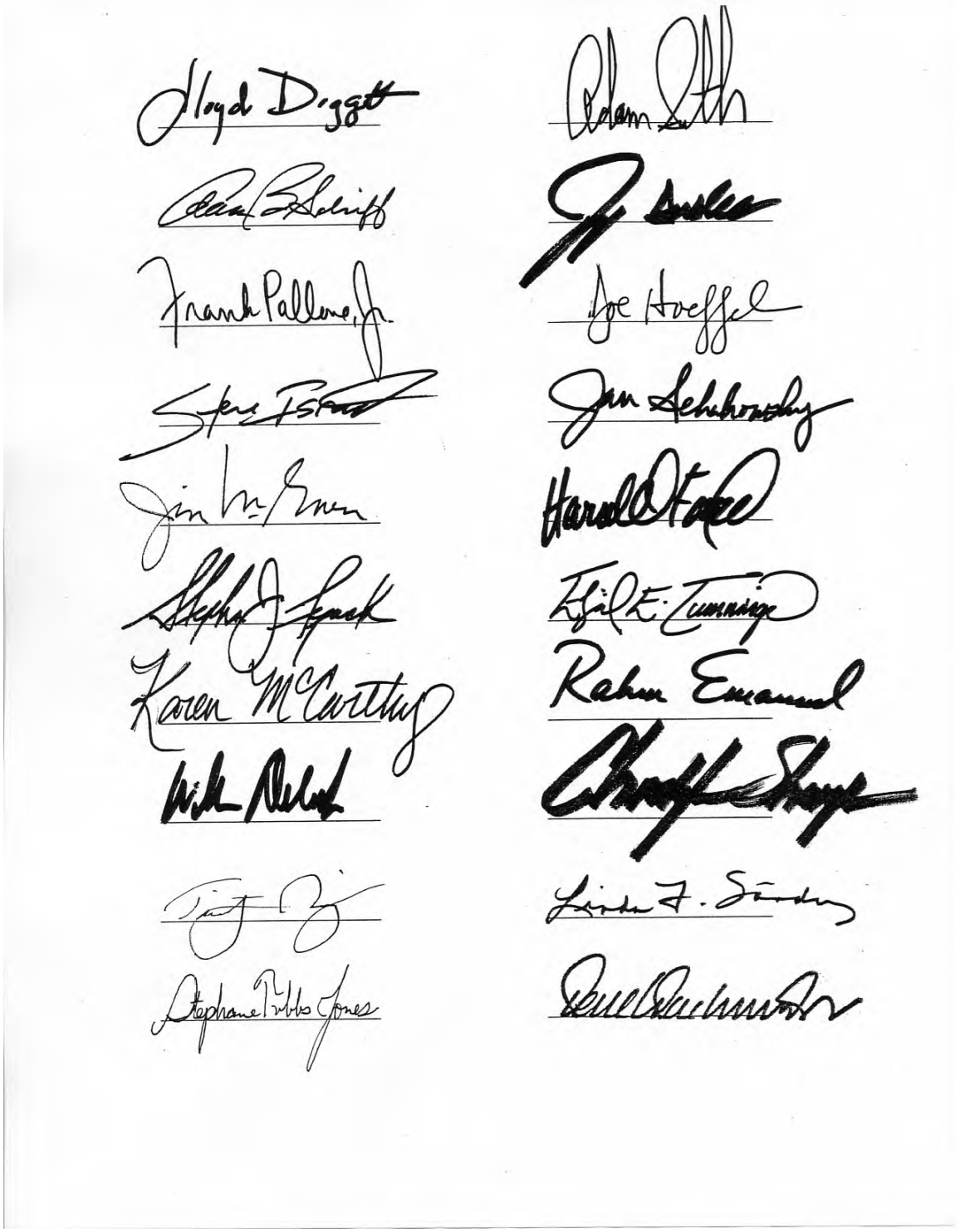
Finally, on April 11, you stated in a letter to Alaska elected officials that, in effect, unless there was "broad support" among Alaska officials, the BLM would never again study the public lands under its stewardship in that State for potential wilderness designation. This decision inexplicably excludes the American public from any input in the protection of these nationally significant, publicly-owned lands as wilderness.

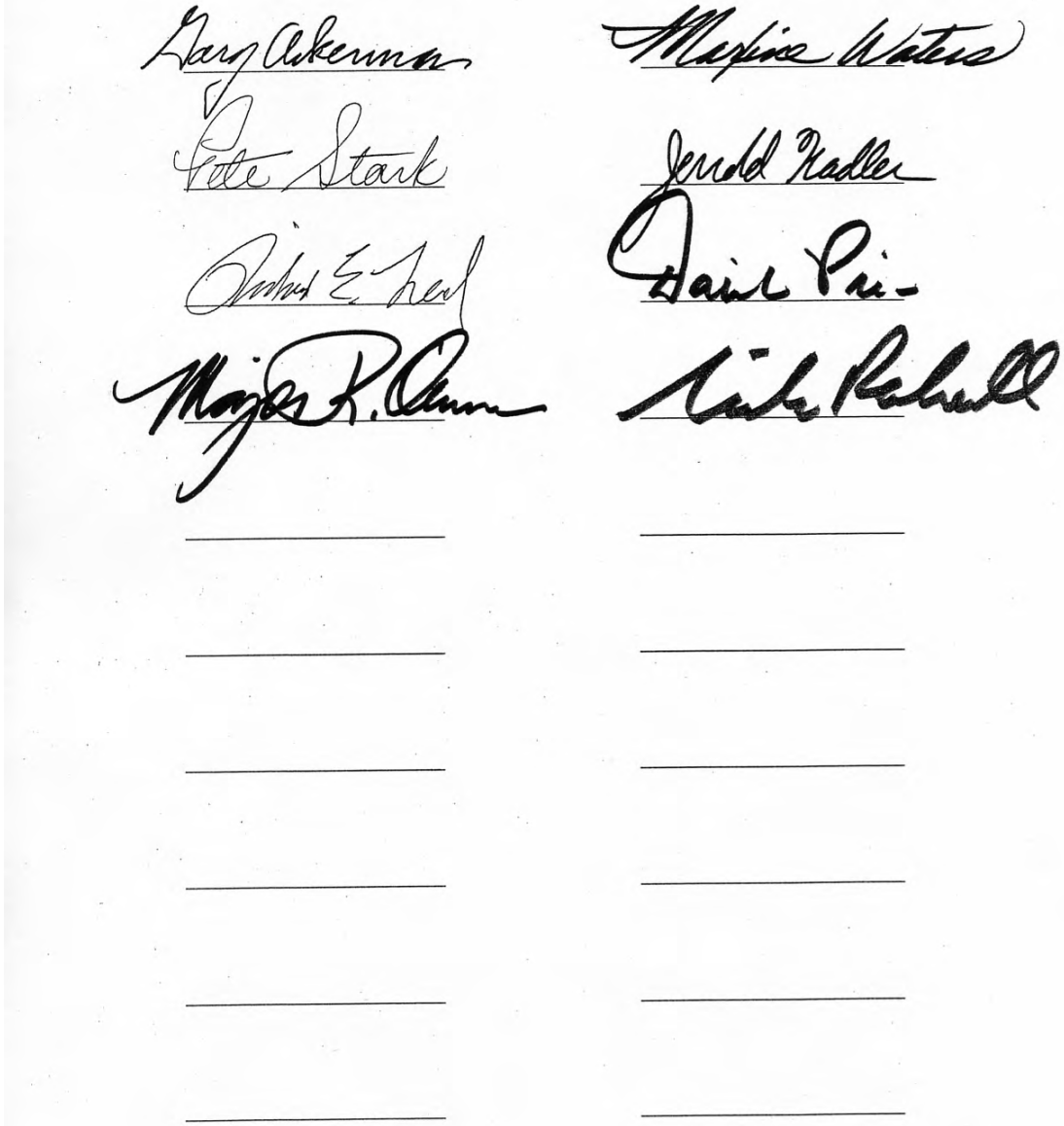
With these three decisions you seem to be trying to limit Congress' future opportunities to exercise its exclusive authority to designate qualifying public lands as wilderness. You have effectively taken away an important management tool for the BLM to protect some of the finest remaining wild lands in America from environmental harm. And you have limited the public's ability to be fully informed and to participate in a meaningful way in the planning process for our public lands.

As chief steward for our nation's Federal lands, you have a responsibility to ensure that all potential uses of public lands are considered, including wilderness. We urge you to fulfill your duty by reconsidering these recent decisions and replacing them with policies that more fully meet that important responsibility.

Sincerely,


Jim Cooper
Grace F. Napolitano
Brad Ellsworth
Edward J. Markey
Dale E. Kildee
William O. Lipinski
Hoyer
Donald M. Payne
Lane Evans
Howard L. Berman
Norm Dicks





Signers of May 23, 2003 Wilderness Letter to Secretary Gale Norton

1. Rep. Maurice D. Hinchey
2. Rep. Mark Udall
3. Rep. Earl Blumenauer
4. Rep. Zoe Lofgren
5. Rep. James R. Langevin
6. Rep. Mike Thompson
7. Rep. John Tierney
8. Rep. Anibal Acevedo-Vila
9. Rep. Chris Bell
10. Rep. William Lacy Clay
11. Rep. Robert Wexler
12. Rep. Anna G. Eshoo
13. Rep. Brian Baird
14. Rep. Grace F. Napolitano
15. Rep. Jim Cooper
16. Rep. Brad Miller
17. Rep. Steven R. Rothman
18. Rep. Edward J. Markey
19. Rep. Dale E. Kildee
20. Rep. Peter A. DeFazio
21. Rep. Eleanor Holmes Norton
22. Rep. William O. Lipinski
23. Rep. James A. Leach
24. Rep. Henry A. Waxman
25. Rep. George Miller
26. Rep. Donald M. Payne
27. Rep. Michael R. McNulty
28. Rep. Lane Evans
29. Rep. Jose E. Serrano
30. Rep. Howard L. Berman
31. Rep. Jerry F. Costello
32. Rep. Norman D. Dicks
33. Rep. Lloyd Doggett
34. Rep. Adam Smith
35. Rep. Adam B. Schiff
36. Rep. Jay Inslee
37. Rep. Frank Pallone, Jr.
38. Rep. Joseph M. Hoeffel
39. Rep. Steve Israel
40. Rep. Janice Schakowsky
41. Rep. James P. McGovern
42. Rep. Harold E. Ford, Jr.
43. Rep. Stephen F. Lynch
44. Rep. Elijah E. Cummings
45. Rep. Karen McCarthy
46. Rep. Rahm Emanuel
47. Rep. William D. Delahunt
48. Rep. Christopher Shays
49. Rep. Timothy H. Bishop
50. Rep. Linda T. Sanchez
51. Rep. Stephanie Tubbs Jones
52. Rep. Jesse L. Jackson, Jr.
53. Rep. Bobby L. Rush
54. Rep. Tom Lantos
55. Rep. Jane Harman
56. Rep. Sheila Jackson-Lee
57. Rep. Charles B. Rangel
58. Rep. Nita M. Lowey
59. Rep. Carolyn B. Maloney
60. Rep. Sander M. Levin
61. Rep. Luis V. Gutierrez
62. Rep. Rosa L. DeLauro
63. Rep. Lynn C. Woolsey
64. Rep. Eliot L. Engel
65. Rep. Martin Frost
66. Rep. Barney Frank
67. Rep. James P. Moran
68. Rep. Robert Menendez
69. Rep. Edolphus Towns
70. Rep. Peter Deutsch
71. Rep. Corrine Brown
72. Rep. Bob Filner
73. Rep. Rush D. Holt
74. Rep. Tammy Baldwin
75. Rep. David Wu
76. Rep. John W. Olver
77. Rep. Betty McCollum
78. Rep. Ellen O. Tauscher
79. Rep. Jim McDermott
80. Rep. Anthony D. Weiner
81. Rep. Sam Farr
82. Rep. Susan Davis
83. Rep. Timothy V. Johnson
84. Rep. Raul M. Grijalva
85. Rep. John M. Spratt
86. Rep. Tom Udall
87. Rep. Chris Van Hollen
88. Rep. Julia Carson
89. Rep. Dennis J. Kucinich
90. Rep. Barbara Lee
91. Rep. Michael M. Honda
92. Rep. Lois Capps
93. Rep. Gary L. Ackerman
94. Rep. Maxine Waters
95. Rep. Pete Stark
96. Rep. Jerrold Nadler
97. Rep. Richard E. Neal
98. Rep. David E. Price
99. Rep. Major R. Owens
100. Rep. Nick J. Rahall II

The Salt Lake Tribune

Assaulting Wilderness

April 20, 2003

Leavitt and Norton have cut two deals simultaneously that attack wilderness designation. One would settle a lawsuit between the state and the Interior Department in a way that would erase millions of acres of wilderness study areas from the map. The second agreement is supposed to make it easier for the state and federal governments to resolve disputes over old rights of way for state and county roads on federal land, but it, too, would undermine wilderness designation.

-- Two-pronged assaults seem to be in fashion these days. First, the U.S. Army and Marines launched one against Baghdad. Then, Mike Leavitt and Gale Norton mounted another against wilderness in Utah.

But while Utahns rejoice in the success of their troops in Iraq, they should not celebrate the double-barreled attack on wilderness undertaken by their governor and the U.S. Secretary of the Interior. Most Utahns recognize that the jewels of the magnificent federal lands in this state -- the towering red rock fins and canyons, the alpine fastnesses and the stark Great Basin vistas -- should be protected. Any maneuvers that undermine that protection should be viewed with alarm.

Leavitt and Norton have cut two deals simultaneously that attack wilderness designation. One would settle a lawsuit between the state and the Interior Department in a way that would erase millions of acres of wilderness study areas from the map. The second agreement is supposed to make it easier for the state and federal governments to resolve disputes over old rights of way for state and county roads on federal land, but it, too, would undermine wilderness designation.

The first attack is fairly simple. In 1976, the Federal Land Policy and Management Act set up a 15-year process for federal agencies to identify federal lands eligible for Congress to protect as wilderness. The Bureau of Land Management totted up a list of 3.2 million acres of wilderness study areas in Utah. After that 15-year period expired, the BLM added another 2.6 million acres to its inventory of wilderness study areas, relying on a different section of the law.

In the 1990s, Utah sued Interior, arguing that the designation of the 2.6 million acres was illegal and that it damaged the state's ability to raise revenues from things like oil and gas leases on its adjoining school trust lands.

This month, attorneys for Leavitt and Norton announced a settlement of the lawsuit in which the state and federal governments agree that the designation of the 2.6 million in study areas was illegal. If that settlement stands, it will eliminate those lands from congressional consideration for wilderness designation.

The second attack on wilderness, the agreement between Leavitt and Norton on roads, is supposed to simplify the resolution of disputes over old rights of way for state and county roads on federal land. According to Leavitt and Norton, the agreement should clear away legal clouds that threaten state and federal land management.

But there's a catch. Any new agreement that makes it easier for the state and counties to assert local ownership of rights of way on thousands of dirt roads and trails on federal land also will make it easier for local interests to block wilderness designation.

The reason is that under federal law, wilderness must be roadless. And since wilderness must be designated in 5,000-acre chunks of contiguous land, real estate that is carved into smaller pieces by dirt roads is not eligible.

Leavitt says the agreement simply sets up a procedure so that the federal government can more easily acknowledge county rights of way that are well established and that any fair-minded person would concede are maintained roads.

Though the governor's argument makes good sense, the secrecy that shrouded the state-federal negotiations has raised suspicions. The governor is not willing to disclose what rights of way in which counties will be the subjects of the new process, although the state has established an elaborate computer database to document them.

The agreement does not apply to roads that lie within existing wilderness areas set aside by Congress, or the 3.2 million acres of wilderness study areas that were designated before October 1993. However, wilderness advocacy groups have pushed Congress to set aside about three times that much wilderness in

Utah, and county rights of way within those lands outside the 3.2 million acres would put wilderness designation at risk.

We suspect that the political strategy underlying Leavitt's and Norton's tactics is this: Mike Leavitt wants to make peace with constituents and county commissioners in rural Utah, many of whom oppose wilderness designations. In the Bush administration, he has found a willing partner in Secretary Norton.

But the outcome of Utah's wilderness debate is too important to be pre-empted piecemeal by county rights of way to hundreds of dusty roads.

Ultimately, only Congress can decide which federal lands will be included in the National Wilderness Preservation System, and until that political impasse is resolved, lands under study for wilderness designation should be protected.

The New York Times

The End of Wilderness

Published: Sunday, May 4, 2003

From the beginning, President Bush has been far more interested in exploiting the public lands for commercial purposes than in protecting their environmental values. On matters ranging from snowmobiles in Yellowstone to roadless areas in the national forests, his administration has tried steadily to chip away at safeguards put in place by the Clinton administration -- largely in an effort to help the oil, gas, timber and mining industries, and often in cavalier disregard for environmental reviews mandated by law. Now comes another devastating blow: The revelation that his Department of the Interior is no longer interested in recommending any of the millions of acres under its jurisdiction for permanent wilderness protection.

The new policy has still not caused much of a stir. Like most of the bad environmental news emanating from this administration, it emerged from the shadows late on a Friday evening. There was no formal announcement -- just a few letters to interested senators from Gale Norton describing a legal settlement she had reached earlier that day with the state of Utah. But a close reading of that deal showed it to be a blockbuster -- a fundamental reinterpretation of environmental law, and a reversal of four decades of federal wilderness policy.

At issue in the settlement were 2.6 million acres of federal land in Utah that were inventoried by former Interior Secretary Bruce Babbitt and designated as de facto wilderness -- that is, land deserving of protection from commercial activity until such time as Congress, which has sole power to designate permanent wilderness, can decide whether to add it to the nation's 107 million wilderness acres. Mr. Babbitt's actions infuriated Utah, which had commercial designs on the land. But the state's efforts to stop Mr. Babbitt in court failed.

About six weeks ago, however, Utah quietly filed an amended complaint, to which the administration quickly acceded. Under the settlement, Ms. Norton not only agreed to withdraw the 2.6 million acres from wilderness consideration but renounced the department's authority to conduct wilderness reviews anywhere in the country. In one stroke, Ms. Norton yanked more than 250 million acres off the table. Not all of those acres, of course, are worthy of permanent wilderness protection. But under the new policy settlement, those that are will no longer be placed in the pipeline for Congressional consideration. Ms. Norton's associates rushed to assure critics that they be will mindful of "wilderness" values in the lands they manage. But the days when interior secretaries aggressively pushed Congress to add to the federal domain are clearly over.

Ms. Norton insists that she is right to rescind the Babbitt designation -- and that Mr. Babbitt was wrong to make it in the first place -- because the government's authority to identify and manage potential wilderness under the 1976 Federal Land Policy and Management Act has long since expired. That is an extraordinarily cramped interpretation of the law. One key part of the act did in fact expire. But other provisions conferring upon the secretary the right to provide interim wilderness protections remain very much alive, and these are the ones Mr. Babbitt properly invoked.

There is no doubt that the law gives the secretary of the interior the right to identify potential wilderness areas and manage them accordingly. The only question is whether he or she wants to use that authority. And Ms. Norton, to our great dismay, clearly does not.

The New York Times

Gale Norton Rouses Congress

Published: Saturday, June 21, 2003

The Bush administration, in particular its interior secretary, Gale Norton, has always wanted to transfer more control of America's public lands to state and local governments and to open them to a wider range of commercial and recreational uses. But Congressional Democrats and some moderate Republicans are only now realizing that what Ms. Norton is trying to engineer is not just a rebalancing of the scales but a revolution in public policy deeply at odds with a long bipartisan tradition of environmental stewardship and more threatening than anything attempted by James Watt, Ronald Reagan's reactionary interior secretary and Ms. Norton's onetime mentor.

Their displeasure, however, has gone largely unnoticed. The Democrats do not control the committee chairmanships, which in turn means that they have no real power to summon cabinet members like Ms. Norton for cross-examination. The two conservative committee chairmen who do have oversight authority, Pete Domenici in the Senate and Richard Pombo in the House, think Ms. Norton can do no wrong. Still, the discontent is growing, in angry letters and speeches. It has several major sources, two involving back-room deals Ms. Norton recently negotiated with the State of Utah with broad implications for public lands everywhere.

In one deal, discussed at length in this space last month, Ms. Norton removed interim protections for 2.6 million acres of federal land in Utah designated as potential wilderness by her predecessor Bruce Babbitt. At the same time, in a novel and astonishingly cramped interpretation of federal law, she renounced her indisputable authority to seek and recommend to Congress additional lands for wilderness protection. In effect, the interior secretary was saying: There will be no new wilderness on my watch.

The second deal was more complicated, but it, too, involved a retreat from responsibility. At issue were longstanding disputes about who has authority, Utah or the federal government, over thousands of miles of primitive rights of way that cross federal land -- old mining and livestock trails, footpaths, even streambeds. Western states have long wanted to turn these ancient pathways into real roads in order to promote development and, effectively, pre-empt future wilderness designation.

Ms. Norton insists that the agreement involves only "process" and does not resolve specific claims, in Utah or anywhere else. But Democrats argue that it tilts the rules in favor of the states while denying the public and Congress any meaningful say in the outcomes. The states themselves seem to see things going their way. Colorado recently wrote Ms. Norton asking for immediate jurisdiction over "roads" crisscrossing huge swaths of public land, including wildlife refuges and national parkland.

The latest provocation is Ms. Norton's apparent decision to challenge a ruling by the United States Court of Appeals for the 10th Circuit that she had failed to protect three million acres of public land in Utah threatened by off-road vehicles. The administration conceded in court that the vehicles were tearing up the land. But it took the bizarre position that the public, and in effect the courts, had no real standing in the matter, that when and how to protect wilderness were questions best left to the department itself.

It will be interesting to see what the Supreme Court makes of this line of reasoning. To us the implications are pretty clear. It says that Ms. Norton is indifferent not only to new wilderness but also to protecting what she already has. It also tells us that her Congressional critics cannot rest.

San Francisco Chronicle

No limit on wilderness

Friday, April 25, 2003

WILDERNESS has lost a key battle. With one April 11 announcement, U.S. Interior Secretary Gale Norton has rolled back wilderness protection for 2.87 million acres of public land in the West, including 35,000 acres in California.

The decision effectively limits wilderness lands forever to 23 million acres nationwide.

Californians know wilderness is irreplaceable. That's why Rep. Sam Farr, D- Carmel, successfully pushed legislation last year to protect federal lands in Central California from development. That's why Rep. Mike Thompson, D-Napa, and U.S. Sen. Barbara Boxer, a Democrat, introduced the "Northern California Coastal Wild Heritage Wilderness Act of 2003" last month to protect another 303,000 acres of federal land in California as wilderness.

By law, only Congress can designate lands as wilderness. But when citizens complained that Congress was unaware of all the lands deserving wilderness protection, the Interior Department listed them, concluding the inventory in 1991. Conservationists disputed the list and recruited volunteers to survey, on foot if necessary, potential wilderness areas. Under the Clinton administration, many of those lands were set aside administratively as wilderness study areas, pending congressional action to designate them permanently as wilderness.

Without study status, the federal government is free to lease timber, mineral or grazing rights on public lands, effectively disqualifying them from consideration as wilderness.

Norton's policy switch is the result of a legal settlement with the state of Utah. Utah had sued the Interior Department when then-Secretary Bruce Babbitt included 3 million acres of federal land in Utah wilderness study areas. The suit, inactive for five years, was amended last month.

Gov. Gray Davis needs to join with other Western governors to ask the Department of the Interior to restore the study area safeguards before these lands are lost.

THE ALBUQUERQUE TRIBUNE

Blind Eye to Wild Lands must not be Condoned

May 9, 2003

Using the same black-and-white mind-set that brought us “You're either with us or against us,” the Bush administration last week failed the nation, its people and this magnificent country.

In typical all-or-nothing fashion last week, the administration chose “nothing,” slamming the door on even administrative inventory and study of future wilderness areas … let alone their actual designation and protection for unborn generations of Americans.

The nation deserves far better.

The announcement, made late Friday night by Secretary of the Interior Gale Norton, must not stand. It already is being criticized by conservationists across the country and should be universally rebuked.

It should be renounced by members of Congress, state governors and the people, not just as shortsighted, but as absolutely wrong.

We can only hope that right-minded Republican leaders, who have watched their party's proud conservation heritage be hijacked, will take the lead and tell Norton and the Oval Office to back off. Otherwise, it is open season in the public realm for oil, gas or mineral extraction, without due regard for the character of many still-roadless public lands.

It is one thing to drag one's feet, as this administration has been doing in all areas of conservation and environmental policy. But it is quite another to throw out the baby with the bath water, the tools with the debris or the wild land with the policy.

Wilderness study designation is but the first in a typically long but orderly process toward having a public tract considered by Congress for addition to the National Wilderness Preservation System.

But what obviously chafes this administration and those waiting in its wings to resume plundering of the public purse, is that wilderness designation provides the highest degree of protection from development.

The political landscape has shifted over the years and decades since the American people first decided that examining remaining public lands for preservation of their wild and distinctive qualities not only is a job worth doing but also is essential to preserving the wild character of America.

As a nation and people, we agreed to discipline ourselves and continue to tread carefully across what is left of meager wild public lands, until proper review and assessment and due congressional consideration can be done. As the Wilderness Society has properly warned, “Once lost, wilderness can never be restored.”

To do otherwise is to condone plundering treasured public lands for temporary private gain, and now, without so much as an assessment or public comment on the wisdom of those most fundamental decisions, the nation is doing so.

Threatened are tens of millions of acres of potential wildernesses (mostly in the West), including some prized tracts in New Mexico, such as Otero Mesa south of Albuquerque, upon which the oil and gas industries have serious designs.

From Idaho's Owyhee Canyons to the Vermilion Cliffs National Monument in Arizona, the stakes couldn't be higher. In Utah alone, the spectacular red country of the Grand Staircase Excalante National Monument now is on the chopping block, as are at least 1.7 million acres in various national monuments that already have been identified by the U.S. Bureau of Land Management and citizens as warranting wilderness designation and protection.

These lands might be in Idaho or New Mexico or Wyoming, but they belong to all Americans from coast to coast, and, perhaps as important, to future Americans who will rightly ask us: “What did you do to our country? And for what?”

Arizona Daily Star

Wilderness Imperiled

Monday, 21 April 2003

Interior Secretary Gale Norton's new policies undermine proposed wilderness areas. An agreement between the state of Utah and the dense bureaucracy that manages federal lands evidently will throw a monkey wrench into the creation of new wilderness areas. The agreement is the handiwork of Interior Secretary Gale Norton, the nation's chief steward of federal lands, who evidently never encountered a wilderness area that wasn't worth exploiting and developing (The Arctic National Wildlife Refuge is the most recent case in point).

About a week ago, the Interior Department signed a memorandum of understanding which opens a process enabling counties in Utah to make claims to very old, obscure road rights-of-way. The agreement creates the potential for road construction in nearly 6 million acres of Bureau of Land Management lands that are now roadless, as well as some 4 million acres of lands in national forests.

The nucleus of the issue is an obscure section of the nation's first general mining law, the Mining Act of 1866. That law, and its replacement in 1870 and 1872, contained a section saying "The right of way for construction of highways across public lands not otherwise reserved for public purposes is granted."

As we noted in an editorial in January, the law was designed to encourage miners to go out and look for minerals and in the process settle the West. They needed roads to do that, and built them, though these early routes were typically nothing more elaborate than burro paths or wagon routes. In more recent times, debates arose between states and the federal government over access to these old, and sometimes difficult to identify, mining routes. The resolution of these disputed road claims has, for nearly 30 years, been a political and ideological football.

The Wilderness Society and conservation-minded members of Congress have steadfastly advocated that access to these old routes, some of which may now be in national forests and national parks, remain tightly in federal control. The new agreement with Utah uses the Bush administration's controversial "disclaimer of interest rule" as the basis for conveying a right-of-way to the state. The "disclaimer of interest" is a document that essentially says to an applicant that the government makes no claim to the property in question. At present, the state of Utah alone has an estimated 10,000 to 15,000 claims saying that routes through federal lands - old mining roads, washes that may have been wagon routes - were "constructed roads" before they became federal lands and therefore are not subject to federal closure.

The Utah roadless agreement, along with recent policy shifts at Interior, are likely to have an impact on proposed wilderness areas throughout Arizona. The Arizona Wilderness Coalition has been urging the BLM to create wilderness areas in Ironwood Forest National Monument in Marana, Sonoran Desert National Monument near Gila Bend, and a 950,000-acre wilderness area proposed in the Arizona Strip along the Arizona-Utah border. Norton, however, strongly implies that the BLM is getting out of the wilderness business.

In a letter to Utah Sen. Robert Bennett, written April 11, Norton engages in some rhetorical gymnastics to make a distinction between designating an area a national wilderness as opposed to deciding that a portion of a large tract of land is an area of "environment concern" that "can be managed for wilderness characteristics." Norton says, in effect, that this distinction was blurred in the so-called Wilderness Handbook, a policy document approved in the waning days of the Clinton administration. The management practices contained in that document evidently were acceptable until earlier this month, when Norton decided otherwise.

Norton's policies statements will grease the track for companies in the oil and mineral extraction industries. The short-sighted shift away from wilderness is a shift toward commercial exploitation of public national resources.

It's a policy shift that is sure to warm the hearts of the energy companies that invested so heavily in the political fortunes of the Republicans who now dominate the national agenda.

The New York Times

Bah, Wilderness! Reopening a Frontier to Development

By Timothy Egan
Published: Sunday, May 4, 2003

MORE than a century after historians declared an end to the American Frontier, the Interior Department made a somewhat similar announcement last month, with no fanfare. On a Friday night, just after Congress had left for spring break, the government said it would no longer consider huge swaths of public land to be wilderness.

The administration declared that it would end reviews of Western landholdings for new wilderness protection. As long as the lands had been under consideration for the American wilderness system, they had temporary protection from development.

With a single order, the Bush administration removed more than 200 million acres from further wilderness study, including caribou stamping ground in Alaska, the red rock canyons and mesas of southern Utah, Case Mountain with its sequoia forests in California and a wall of rainbow-colored rock known as Vermillion Basin in Colorado.

By declaring an end to wild land surveys, the administration ruled out protection of these areas as formal wilderness -- which, by law, are supposed to be places people can visit but not stay. Now, these areas, managed by the Bureau of Land Management, could be opened to mining, drilling, logging or road-building.

The idea of designating an area as wilderness -- wild land left as is, for its own sake -- is an American construct. Artists and writers in the mid-19th century led the charge for wilderness, with Henry David Thoreau arguing from his pond-side home in Concord, Mass., that wilderness sanctuaries were a necessary complement to civilization.

In setting aside the first wildlife refuge in 1903, on Pelican Island in Florida, President Theodore Roosevelt protected a patch of America that is now the smallest of the formally protected lands -- a mere five acres. And since passage of the Wilderness Act of 1964, 106 million acres have been given the wild lands designation, with more than half of that total in Alaska.

Over the years, the Bureau of Land Management, the nation's biggest landlord, with 262 million acres under its control, has continued to survey its vast holdings, trying to determine whether more land is suitable for wilderness. But the Bush administration says wilderness reviews should have ended 13 years ago, at the close of a study period mandated by Congress. This interpretation is challenged by conservationists who plan to appeal the Bush order in court.

If the Friday night declaration represents the beginning of a broad new land management policy, the Interior Department has not said so. There was not even an announcement of the end of the wilderness reviews on the department's Web site.

Instead, the change came about in a settlement of a 1996 lawsuit filed by the State of Utah against the Interior Department over a reinventory of three million acres conducted by Bruce Babbitt, the interior secretary at the time. Most of the lawsuit had been dismissed and sat dormant until the state amended its complaint in March.

"This does not mean that someday down the road we may still manage some of these lands as wilderness," said Patricia Lynn Scarlett, an assistant interior secretary.

The move follows a consistent pattern in the president's environmental policy: to change the way the land is managed, without changing the law. Whether the issue is allowing snowmobiles in Yellowstone National Park or logging in the Pacific Northwest, the course has been to settle lawsuits by opponents of wild land protection, opening up the areas to wide use, without going to Congress to rewrite the rules.

Oil and gas developers and others point out that the Clinton administration did the same thing -- making broad changes of policy by administrative order -- but on behalf of an environmental constituency. In their view, wilderness protection amounts to a land grab, putting potential timber or mining areas off limits. They say citizen groups were abusing the law by bringing land surveys to the government, which then managed the land as de facto wilderness. Leaders of some Western states have long complained that

wilderness study essentially eliminates the chance to gain any economic value from the land, money that is needed for state coffers.

To many conservationists, the announcement was more than another setback. Wilderness, in the oft-quoted line of the writer Wallace Stegner, is "the geography of hope." To have that geography capped, they argue, has had the same effect on some outdoor lovers as the fencing of the public range had on open-country cattle ranchers. "They are trying to declare, by fiat, that wilderness does not exist," said Heidi McIntosh of the Southern Utah Wilderness Alliance.

The interior secretary, Gale A. Norton, said that the policy reflected the administration's attempt to cooperate with local officials and heed concerns of industries that rely on public lands' resources. "The Department of the Interior believes that we should manage these lands in a way that provides the greatest benefit to the public," Ms. Norton wrote in a letter to Senator Robert F. Bennett, Republican of Utah.

In another letter, Ms. Norton said it seemed senseless to consider declaring any more wilderness areas in Alaska because its elected officials are against expanding this protection. But critics say that in California, a majority of elected officials favor more wilderness. And in New Mexico, Gov. Bill Richardson, a Democrat, has asked the government to prevent drilling in 1.8 million acres of the Otero Mesa, an area that has all the qualities of wilderness.

The New Mexico land is the largest contiguous piece of Chihuahuan Desert grassland left in North America, Governor Richardson said. It may be wild, but for now, it can no longer be Wilderness.

Wilderness Policy takes U-turn

By Tom Kenworthy

SAN RAFAEL SWELL, Utah — From atop a cliff in an area of southeastern Utah known as the San Rafael Swell, Scott Groene looks out over thousands of acres of public land that the federal government once concluded deserved the greatest legal protection from development that the land could get.

At all points of the compass, the swell flaunts its gaudy geology: soaring rock castles, multihued sandstone cliffs, deep canyons, all shaped by a volcanic upheaval during the Jurassic Period.

Prodded by activists like Groene, who works for the Southern Utah Wilderness Alliance, the Clinton administration spent several years in the 1990s reassessing potential wilderness areas like this one from among federal Bureau of Land Management (BLM) holdings in Utah.

The bureau decided that vast areas — 2.6 million acres, including much of the swell — had mistakenly been overlooked and should receive interim protection from development pending a decision by Congress on whether they should be added to the national wilderness system.

But last month, with a few strokes of the pen, Interior Secretary Gale Norton removed the protection. In doing so, she opened the land to development, including oil and gas wells, mining and off-road vehicle trails. She also declared that the BLM will no longer continue to assess whether more than 200 million acres it manages in the West and Alaska should be wilderness shielded from development.

Norton's action, which she took April 11 in quietly settling a lawsuit and in letters to Republican lawmakers, is the latest move the Bush administration has made to open public land to energy development, mining, logging and motor vehicles. In earlier directives, Norton and her department invited local and state officials in the West to claim thousands of road rights of way across federal lands. That policy shift could open even more pristine areas — possibly even national parks and wildlife refuges — to traffic and development.

Taken together, these initiatives represent far-reaching change in federal land management. The initiatives also are a dramatic departure from the direction taken by the Clinton administration and from the path that began in 1964 when Congress established the wilderness system.

Environmentalists are aghast at the latest move. Outdoor industry leaders are threatening to take their annual $24 million trade show out of Utah to punish Gov. Mike Leavitt, a Republican, for his supporting role in Norton's efforts.

"It's a breathtaking step backwards," says Dave Alberswerth, a public lands analyst at The Wilderness Society.

Norton's actions also make it harder for future administrations to reverse the policy. Once land has had roads built on it and developed, it is unlikely to be seen as sufficiently pristine to qualify as wilderness.

"You can't put the genie back in the bottle," says Heidi McIntosh, conservation director for the Southern Utah Wilderness Alliance.

But Interior Department officials say they are just complying with the law and returning balance to federal land policy.

And advocates of opening the land to greater commercial use and motorized activity salute the changes. They argue that too much land has been locked up in violation of laws that say that federal land should be available for "multiple use."

"A good move, and a legal move," says Drew Sitterud, a county commissioner for the region that includes the San Rafael Swell. "We want to see the land used, but not abused. We can manage the land through managing people and not just locking it up."

Norton's shift on wilderness policy, taken while the nationwas consumed with the war in Iraq, received little attention at first. It came in the context of settling a lawsuit that was brought by the state of Utah against the Clinton administration's taking a new inventory of land suitable for wilderness designation.

A federal appeals court had ruled against Utah on all but one count of the complaint, and the issue had been essentially moribund since 1998. But in March, Utah amended its complaint, which gave the Bush administration an opening to settle.

To some extent, Norton's reversal reflects changing attitudes in the West on the issue of wilderness. Defined by a pioneering act of Congress in 1964, wilderness areas are 5,000 acres and larger that offer "outstanding opportunities" for solitude and primitive recreation. They can be used by people to hike, camp, fish, hunt, ride horses and even graze livestock. But motorized transportation and man-made structures are prohibited, which rules out industrial activity and use by off-road vehicles.

The law was passed with only one dissenting vote, which was cast in the House of Representatives. Since then, Congress has added about 106 million acres to the national wilderness system, about half of it in Alaska.

But elected officials in the West have grown increasingly hostile to creating more wilderness. They complain that it limits opportunities for economic development and keeps out those who want to use off-road vehicles.

To side with wilderness opponents, Norton used a strict interpretation of the 1976 law that governs management of BLM lands, which total 262 million acres.

That law gave the executive branch a one-time opportunity, until 1993, to recommend wilderness areas to Congress. Until Congress added them to the wilderness system or released them for other use, the areas would be protected as wilderness study areas. Through that process, Congress eventually designated 6.5 million BLM acres as wilderness, and the executive branch protected 15.5 million more acres as wilderness study areas.

A second section of the law sets no deadline and gives the BLM discretion through its regular process of land management planning to conduct inventories of its land and recommend interim wilderness protection to the Interior secretary.

The Bush administration is saying essentially that the first section of the law takes precedence and that no more wilderness study areas can be created under the second section.

"What we are trying to do is bring BLM practice into conformity with the law," Assistant Interior Secretary Lynne Scarlett says.

Interior officials note that if Congress wants new wilderness areas, it still has the authority to create them from BLM holdings. And they say that the BLM can protect some land and make it like wilderness areas through its regular procedures for determining how land is used.

But environmentalists and conservationists such as Groene characterize it as a raid on some of the West's most precious land for the benefit of the administration's commercial allies. They have filed suit to challenge Norton's wilderness action,

"We are looking at the wilderness future of the West squarely in the cross hairs of a road-building, oil and gas-drilling juggernaut," says Ted Zukoski, an attorney with Earthjustice, the environmental movement's legal arm.

The New York Times

U.S. Plans to Limit Protected Wilderness to 23 Million Acres

Published: Sunday, April 13, 2003

The Interior Department wants to limit Bureau of Land Management lands eligible for wilderness protection to 23 million acres nationwide, a figure environmental groups say leaves millions of acres vulnerable to development.

The department told Congress on Friday that it intended to halt all reviews of its Western land holdings for new wilderness protection and to withdraw that protected status from about three million acres in Utah. Suspending wilderness reviews would limit the amount of land held by the bureau eligible for wilderness protection at 22.8 million acres. Congress could order additional areas protected.

Interior Secretary Gale A. Norton said her department remained committed to wilderness protection.

"The Department stands firmly committed to the idea that we can and should manage our public lands to provide for multiple use, including protection of those areas that have wilderness characteristics," she said in a letter sent late Friday to members of Congress.

Ms. Norton said Congress had given the Interior Department 15 years in 1976 to inventory wilderness areas, and only those areas identified by 1991 as having wilderness characteristics qualified for protection.

Environmental groups said the suspension of wilderness reviews would leave millions of undeveloped acres vulnerable to oil and gas development and off-road vehicle use.

"What they're saying is these wilderness-quality lands throughout the West will continue to be degraded and continue to lose their eligibility for wilderness," said Jim Angell of EarthJustice. "It's just appalling."

The policy changes come as part of a settlement filed in federal court in Salt Lake City. Utah had sued the Interior Department in 1996 over a reinventory of three million acres conducted by the Interior Secretary at the time, Bruce Babbitt.

Most of the lawsuit was dismissed, and it sat dormant for years until the state amended its complaint last month.

Ms. Norton's announcement means that the department will disregard the results of Mr. Babbitt's 1996 reinventory. That inventory identified 5.9 million acres of Utah land that qualified for wilderness protection, 3 million acres more than found in the original inventory in the Reagan administration.

Sizable parts of the additional three million protected acres are red rock canyons and rock formations in southeastern Utah.

The settlement is subject to approval by a federal judge in Utah, who also has yet to rule on efforts by environmentalists to intervene in the case.

Wilderness areas, as defined by the 1964 Wilderness Act, are those "untrammeled by man" and are protected from oil and gas development, off-road use, and various types of construction.

The bureau had been managing the land to preserve its wilderness characteristics. Now the land can be used according to the land-use plans that had been prepared previously by the bureau. The plans could include mining and recreation.

"It looks like Interior agrees with me and my Western colleagues that the B.L.M. does not have the authority to designate new wilderness study areas," said Senator Orrin G. Hatch, a Utah Republican. "Secretary Norton's actions will bring resolution to the illegal activities of the past administration."

The New York Times

Utah Land Accord Incites Unlikely Critics

By Michael Janofsky
Published: Friday, May 23, 2003

SALT LAKE CITY, May 22 Two recent agreements between Utah and the federal government, making the state the latest template for the Bush administration's public lands policy, drew a rapid and predictable response from environmental groups around the country.

They zeroed in on Gov. Michael O. Leavitt, a third-term Republican. They accused him of opening more pristine backcountry to off-road vehicles, economic development and natural resource exploration and of positioning himself for a cabinet-level job after the 2004 elections.

Mr. Leavitt said he had expected all of that. What he did not anticipate was a frontal attack from a trade group with a long history of friendly relations with the state.

The Outdoor Industry Association, a coalition of 1,100 retailers that holds Utah's biggest conventions, pumping $24 million into the state economy each year, has threatened to take its business elsewhere, to a state more sensitive to wilderness protections.

"Our biggest concern is that the outdoor recreation industry has become second-class for policy makers," said Frank Hugelmeyer, president of the association, whose members are part of an $18 billion industry. "We passionately believe that has to change. In Utah, recreation is one of the state's biggest economic drivers, particularly around public lands. But public policy does not recognize that, and it's a bit perplexing, to the point we're annoyed."

The turn of events stems from the fact that within two days last month, a pair of longstanding disputes between Utah and the federal government ended with negotiated settlements.

One agreement, which ended a bitter dispute over who has jurisdiction over historic rural roads, created a process to identify whether the state or federal government actually owns those roads. In effect, the agreement preserves the state's control over roads that were used for more than a century through 1976, a period before proof of ownership was needed for road maintenance and improvement.

The second agreement ended a 1996 lawsuit brought by Utah against the Clinton administration after the president unilaterally identified an additional 2.6 million acres in Utah to be designated as wilderness, putting the land off limits to vehicles and development. At the time Utah already had 3.2 million acres set aside.

The new agreement underscores Utah's legal argument that only Congress and not the executive branch can make such designations. As a result the acres will now be open for wider use.

The two efforts reflect the strong desire of the Bush administration? and of Western Republicans? to place more control of public lands in the hands of states and counties and to make federal lands outside of parks and monuments more accessible for a wider range of uses.

"These are attempts to bring common sense to contentious issues that have languished for far too long," said Eric Ruff, a spokesman for the Interior secretary, Gale A. Norton. Interior Department officials call the deals with Utah models for other states.

But here, the deals have caused Mr. Leavitt a bigger political headache than he expected. He had known he faced a balancing act between those in his party who want the federal government out of Utah and liberal Democrats who would prefer larger areas of the state be declared off limits to development.

But he had not anticipated a struggle with an important business group. Like other states, Utah is fighting the national economic slowdown. Business development has been a hallmark of Mr. Leavitt's administration.

To lose the outdoor retailers, who gather in Salt Lake City twice a year, would be a severe blow, and Mr. Hugelmeyer insisted he needed to see evidence of the governor's willingness to create new wilderness protections or the group would consider moving. Already, Denver is waiting in the wings.

"He's been more active in relaxing protections," Mr. Hugelmeyer said of the governor, emphasizing the importance of wilderness areas to customers of his members. "Our goal is to get him to understand that

when it comes to wilderness, you can be negative, passive, a steward or a champion. At the moment, we've only seen negative and passive from Governor Leavitt. We've yet to see him act like a steward."

Mr. Leavitt, currently the nation's longest-serving governor, is to meet with the trade group on June 4. He said in an interview that the agreements with the Bush administration had been misunderstood. He said he had been a strong supporter of wilderness areas and would ask Mr. Hugelmeyer to help him get a bill through Congress to win permanent wilderness status for the 3.2 million acres that are still set aside.

The state's lawsuit was filed, Mr. Leavitt said, because he believed that the Clinton administration, which angered many in Utah by circumventing Congress and declaring the Grand Staircase-Escalante a national monument in 1996, had acted improperly in setting aside more Utah land for wilderness protection.

"We were saying to the federal government, `You can't do that,' " Mr. Leavitt said. "Only Congress can authorize an inventory of lands if they are to be managed as wilderness. So I'm saying now, let's get down to business and start with these 3.2 million acres."

Mr. Leavitt also said the roads agreement was vital for the state to maintain a transportation system that would serve, among others, outbackers eager to get closer to wilderness areas they cherish. And that is what he intends to tell the outdoor group, he said.

It might not be enough. Mr. Hugelmeyer said a recent poll of his members found that 92 percent favored protections for existing areas designated as wilderness and 80 percent favored creating new wilderness areas.

"There's no doubt where our members are on this issue," he said. "Within our industry, this has gone to a national debate."

Los Angeles Times

Wilderness Protections Rolled Back

By Elizabeth Shogren
April 12, 2003

The Bush administration on Friday threw out the handbook used by federal land managers to decide which areas deserve to be protected as wilderness and held that many wilderness areas proposed after 1993 were invalid.

The new policy represents a reversal of the practice, established by the Clinton administration, of encouraging the Bureau of Land Management to assess land for its wilderness qualities before allowing it to be developed for other uses.

The changes could significantly alter how millions of acres of land are treated by land managers across the West and could increase the likelihood that land managers will allow mining, drilling and road building.

The Bush administration made the changes in response to a suit filed last month by the state of Utah. Land managers, according to the suit, had been illegally rejecting projects to drill and mine federal land that had been proposed as wilderness areas under the Clinton administration but never designated for protection by Congress.

Utah Gov. Mike Leavitt said the departments of Interior and Justice approached him to settle the lawsuit because "it was their view that the regulations in question, promulgated by the previous administration, exceeded the law."

Leavitt said the changes agreed to by the Bush administration would take the process of designating wilderness out of the hands of the Bureau of Land Management, where it did not belong, and back into the hands of Congress, where it does. No longer, he said, will parcels of federal land be "managed as de facto wilderness" by the BLM.

Neither Interior Department nor Justice Department officials returned calls to explain the policy changes. But conservationists were outraged that the Interior Department would make such sweeping changes without seeking public comment.

"What it means is that vast amounts of wilderness-quality lands -- millions and millions of acres worth -- are likely to be degraded by extractive industries, and the BLM is going to allow that to happen," said Jim Angell, an attorney for EarthJustice, an environmental law firm.

"It's a real blow to the wide-open spaces of the West," said Heidi McIntosh, conservation director for the Southern Utah Wilderness Alliance, an environmental group. "These are landscapes that Americans really cherish.

"It's going to force the BLM to pretend there is no wilderness out there," McIntosh added. "It will force them to act like what they see with their own eyes doesn't exist."

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Bush Public Lands Policy Under Fire

By J.R. Pegg

WASHINGTON, DC, April 24, 2003 (ENS) - Recent policy decisions by the Bush administration's Interior Department represent the greatest threat to America's public lands in decades, conservationists told reporters at a press briefing Thursday.

Interior Department Secretary Gale Norton is conducting a broad assault on the protection of wilderness under the management of the U.S. Bureau of Land Management (BLM), conservationists say, and rather than protecting America's natural resources, wild places and biodiversity, Norton is actively working to open up public lands to more drilling, mining and road construction.

"It is as if suddenly the word 'wilderness' does not exist any more," said Mike Matz, executive director of the Campaign for America's Wilderness. "This amounts to colluding with corporations for control of every American's birthright."

The three specific decisions that have drawn such ire from conservationists directly involve the states of Utah and Alaska, but have important precedent for BLM lands across the United States.

BLM, which is under the authority of the Interior Department, manages some 260 million surface acres in 12 Western states, including Alaska. BLM oversees more land than any other federal agency.

The decisions include the use of an 1866 law to establish rights of way across BLM lands and agreements that eliminate any further wilderness designation of BLM lands by the Interior Department.

Conservationists blasted the administration for not involving the public in its decisions, a complaint that has become a frequent criticism of the Bush administration's Interior Department.

"These are irresponsible decisions, but not surprising ones from this administration," said Dave Alberswerth, director of the Bureau of Land Management program for The Wilderness Society. "The decisions are a disservice to the majority of Americans and contrary to public law."

The announcement on April 11 that Norton had reached a settlement with Utah over wilderness designation the conservationists say effectively removes wilderness protection from lands managed by the BLM.

The settlement stems back to a suit by Utah against the Interior Department in 1996 over a BLM reinventory that identified three million more acres in the state that qualified for wilderness protection that the agency's inventory in the 1980s had identified.

Although their legal case was largely rejected by the courts, the state renewed its challenge last month and the Bush administration brokered a settlement that revokes BLM's authority to conduct wilderness inventories in any state or to establish new Wilderness Study Areas in any state.

The settlement also revokes the Wilderness Inventory Handbook, which is a set of guidelines for BLM managers to assess wilderness protections for federal lands affected by proposed resource development, and it disallows the use of a 1999 comprehensive statewide BLM reinventory of Utah's public lands.

"The settlement eliminates wilderness as one of the multiple uses agencies are required to look at," Matz said. "The Bush administration simply met behind closed doors and settled the complaint in favor of development interests."

The Bush administration's settlement limits the amount of BLM land eligible for wilderness protection to some 23 million acres unless Congress orders otherwise. Less than three percent of BLM land is currently protected as wilderness.

"Under the settlement, the BLM is never again going to look for wilderness quality land or protect wilderness quality land," said Ted Zukowski, an attorney with Earthjustice.

In addition to the Utah settlement, Norton pushed forth another major policy shift for BLM on April 11, instructing the agency to cease wilderness reviews in its resource management planning in Alaska and consider wilderness only where it is broadly supported by elected Alaska officials.

In a letter to Alaska Senator Ted Stevens, Norton explains the decision as part of a belief that local officials are better suited to wilderness legislation.

"Pursuing wilderness designation is not an exclusive option for identifying and protecting important environmental values," she wrote.

Conservationists sharply disagree, and say Norton has failed on her responsibility to balance the uses on federal lands managed by the Interior Department.

"Secretary Norton's decision is incredibly shortsighted and in direct conflict with her own promises during her confirmation hearings," said Eleanor Huffines, Alaska Regional Director with The Wilderness Society. It is inappropriate for BLM not to review its lands for wilderness designation, she said, because the agency has never done a comprehensive review of the 70 million acres in Alaska under its authority.

"We do not even know what is out there," Huffines said. "The administration is denying the American public any input into the long term protection of these public lands."

The wilderness decisions are illegal, the conservationists say, because the 1976 Federal Land Policy and Management Act requires the Interior Department to maintain current, continual inventories of BLM lands and to establish and revise resource management plans for public lands.

The BLM is required to present these inventories to Congress so members can identify what to do with these lands, explained Alberswerth, and Norton is "abdicating that responsibility."

Conservationists are also questioning the legality of the Bush administration's interpretation of a right of way law that they believe could allow private interests, and state and local governments to bulldoze through federal lands.

On April 8, Norton signed a memorandum of understanding with the state of Utah to establish a process to use an 1866 law known as RS2477 to recognized rights of way across BLM lands. The law intended to serve grant the right to construct and use highways across public lands that were not otherwise reserved or protected for other public use.

Although repealed in 1976, claims on right of ways prior to the repeal can still be made. When announcing the settlement, both Norton and Utah Governor Mike Leavitt said it only applies to existing publicly traveled and regularly maintained roads.

It does not apply to environmentally sensitive areas, Interior Department officials say, but conservationists believe this is untrue.

Conservationists say this is an example of a road that could be claimed under RS2477 as interpreted by the Bush administration.

The actual language of the agreement rolls back existing law, according to Heidi MacIntosh, conservation director of the Southern Utah Wilderness Alliance, and does not place the limits conveyed by Bush administration officials.

"They are trying to put the best possible face on this," MacIntosh said. "If the only thing at issue here were the real constructed roads, we would not be arguing about this."

There was no environmental review of what these claims could do, MacIntosh said, and it will allow Utah to pursue "bogus RS2477 claims" such as dirt roads, paths made by offroad vehicles, and even stream beds.

The legal action that resulted in this memorandum of understanding was brought by the state of Utah and the National Association of Counties, which urged Norton to adopt a policy approach to RS2477.

"Counties have seized on this as their get out of wilderness free card," MacIntosh said., adding that some six million acres of BLM could be affected by RS2477 claims under the memorandum issued by Norton. Estimates range from 15,000 to 20,000 claims, which could "wreck havoc" with wilderness protection plans, MacIntosh said.

The concern is not just for Utah, explained Pam Eaton, Four Corners regional director of The Wilderness Society, because the agreement sets a precedent for other states to seek similar memorandums of understanding with the Interior Department.

Conservationists say they will look to Congress and possibly the courts to remedy these decisions. Several Congressional Democrats have voiced concern about the Interior Department's policies and have requested explanations from Norton.

High Country News
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Wilderness Takes a Massive Hit

By Matt Jenkins
April 28, 2003

The door closes on new BLM wilderness proposals

For years, wilderness groups have been hounding the Bureau of Land Management (BLM) to continue to identify lands worthy of formal protection as wilderness. An initial round of wilderness inventories, completed in 1991, led to protection of 6.5 million acres of BLM wilderness. But citizens' wilderness groups argued that substantial areas of potential wilderness were overlooked. In Utah, for instance, the original BLM inventory identified 3.2 million acres which met Wilderness Act criteria - areas larger than 5,000 acres with "outstanding opportunities for solitude or a primitive and unconfined type of recreation." But the Utah Wilderness Coalition argued that the true number was closer to 9 million acres and - under the direction of Clinton-era Secretary of the Interior Bruce Babbitt - the BLM re-inventoried its Utah lands, ultimately identifying an additional 2.6 million acres eligible for protection.

But on April 11, the BLM stepped back in time. The Department of the Interior settled a lawsuit with the state of Utah, eliminating the 2.6 million acres of potential wilderness identified during the 1990s. Not only that, but Interior also agreed to prohibit the BLM from conducting further wilderness inventories or designating new "wilderness study areas" without explicit congressional direction - a policy the Interior Department intends to extend across the West.

Interior Secretary Gale Norton outlined the new policy in letters sent the same day to Sen. Pete Domenici, R-N.M., and Sen. Bob Bennett, R-Utah. It effectively knocks tens of millions of acres out of the running for wilderness protection - and it will likely open up wildlands to development just as the BLM implements a new industry-friendly policy for oil and gas drilling on its lands.

"You have to understand just how radical a proposition this is," says Jim Angell, an attorney for Earthjustice, the nonprofit law firm that represents several wilderness groups. "What they're saying is: Those wilderness inventories that got done, for the most part, under Reagan - and were deeply flawed and highly political back then - are what we're stuck with. BLM can't even re-inventory its own lands to see if they're eligible for wilderness. They have to turn a blind eye to those lands and continue to develop them."

A long battle

The 1964 Wilderness Act directed the U.S. Forest Service to identify forestlands that might qualify for protection as wilderness. But it wasn't until 1976, with the passage of the Federal Land Policy and Management Act (FLPMA), that the same mandate was extended to the BLM. FLPMA required BLM to complete a one-shot, nationwide inventory of eligible wilderness by 1991. As a result, Congress formally protected 6.5 million acres of BLM land as wilderness, while another 15.5 million acres were protected as wilderness study areas for future consideration.

But the BLM's responsibility didn't end there. Federal law requires the agency to maintain an ongoing inventory of potential wilderness. That opened a window of opportunity to wilderness groups, which argued the agency's initial surveys were far from complete. After years of on-the-ground surveys by citizens, the groups took their findings to the BLM and urged the agency to consider more areas for protection.

"It's been very common practice for the BLM to recognize that the first inventories that were done in the mid- to late-'80s, were not entirely accurate," says Heidi McIntosh of the Southern Utah Wilderness Alliance. Interior Secretary Babbitt recognized this and in 1996, he called for the re-inventory of BLM land in Utah, which ultimately identified 2.6 million more acres of potential wilderness.

The agency did a similar thing in Colorado. In 1996, the Colorado Environmental Coalition pushed the BLM to re-evaluate the Vermillion Basin, an oil-and-gas hotspot in the far northwest corner of the state that

was being eyed for development by the Marathon Oil Company
"We were making the case that BLM shouldn't allow any wilderness-damaging activities until (it) has a chance to take a second look," says Jeff Widen of the Colorado Environmental Coalition. And the BLM agreed, identifying some 600,000 acres of land - not only in the Vermillion Basin, but around the state - to protect as wilderness study areas until Congress could consider them for formal wilderness designation.
These re-evaluations were not without controversy. In 1996, the state of Utah sued Interior to invalidate Babbitt's new survey. The state abandoned the suit after an appeals court upheld the BLM's authority to re-inventory wilderness. But this March, Utah refiled, and just two weeks later - on April 11 - the state and the Interior Department announced that they had reached a settlement.
"The timing of the suit is incredible," says Widen. "A number of state-based wilderness groups tried to intervene, and before the judge ever even ruled, Interior just came out of the blue and settled this thing."
The settlement follows a Bush administration pattern of inviting lawsuits that could weaken environmental protection and then settling them out of court (HCN, 10/14/02: Wildlife Service bows to home builders).

The end of wilderness?
The new policy could demolish efforts for more wilderness protection - and it is likely to spread quickly region-wide.
The Utah settlement came on the heels of two March letters to Norton from Republican senators and congressmen in Utah, Colorado, Idaho, New Mexico, Nevada, Arizona, California and Montana, asking that "the Bureau of Land Management immediately suspend any new wilderness reviews of public lands other than reviews specifically directed by an Act of Congress." In her April 11 letters to Senators Bennett and Domenici, Secretary Norton made it clear that the invalidation of wilderness proposed after 1991 would extend across the West.
"It's pretty clear that what we're going to see BLM start doing pretty quick is start leasing lands (for oil and gas development) that are in citizens' wilderness inventories," says Ken Rait of the Campaign for America's Wilderness. In Colorado, the first land on the block could be the Vermillion Basin and the energy-rich Roan Plateau near Rifle. In Utah, it's the area around Moab as well as the Book Cliffs outside of Green River, which have long been eyed by oil and gas companies.
The Arizona Wilderness Coalition's just-released, million-acre wilderness proposal for the remote Arizona Strip, north of the Grand Canyon, is also on the rocks, and the new policy affects wilderness efforts in California, New Mexico, Nevada, Oregon and Idaho, as well.
Wilderness groups are still pondering their response to the move, but a lawsuit seems likely. Says Widen, "BLM didn't say to the oil and gas industry, 'You applied for drilling permits back in 1980-whatever, so you had your chance.' "
"This is a major issue for the future of the BLM and how it will manage its lands in the 21st century," says The Wilderness Society's Dave Alberswerth. "It's wrong for the administration to say, 'We're never going to do wilderness again.' "