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Testimony on “The Impact of the Administration’s Wild Lands Order

On Jobs and Economic Growth”

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

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

Secretary Salazar’s Order directing the BLM to protect wilderness characteristics through land use planning decisions “unless the BLM determines, in accordance with this Order, that impairment of wilderness characteristics is appropriate and consistent with other applicable requirements of law and other resource management considerations,” and requiring the BLM to internally develop policy guidance within 60 days after the Order was issued, reflects the “top-down,” “one-size fits all” management approach to which Idaho was subjected during the waning hours of the Clinton administration with the Forest Service Roadless Rule. Without any state or public input, the Interior Department has circumvented the sovereignty of states and the will of the public by shifting from the normal planning processes of the Federal Lands Policy and Management Act (FLPMA) to one that places significant and sweeping authority in the hands of unelected federal bureaucrats.

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

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

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

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

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

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

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

Specifically, the Order directs BLM to maintain wilderness characteristics of non-Wilderness Study Areas, as appropriate, considering the manageability and the context of competing resource demands. The key phrase in this goal is "as appropriate." This appears to create a great deal of discretion and could become a blunt instrument to thwart future energy-related projects on federal land. For example, the most "appropriate" and easiest way to manage BLM land under this Order could be simply to reject energy-related projects on lands impacted by this Order.

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

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

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

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

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

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

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

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

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

requirements for a wilderness designation, being selected for "Wild Lands." This entire evaluation process is very subjective and is quite likely to attract litigation.

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

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

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

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