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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 January 18, 2011, President Obama signed an Executive Order entitled "Improving Regulation and Regulatory Review." Section 1(a) of the Order states that,

> Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

Not one month earlier, Secretary Ken Salazar signed Secretarial Order 3310 (SO 3310),a document which, even if read in the most favorable light, casts a long shadow across much of our nation's public lands.

To those of us in the West, the paradox of Washington, D.C. is only perpetuated in the schizophrenic, contemporary existence of SO 3310 and the President's order aimed at curbing the very abuses furthered through SO 3310. To us, SO 3310 is typecast for scrutiny under President Obama's January 18, 2011 Executive Order. It risks billions of dollars of private, local, state and federal revenue, threatens much-needed job growth and disregards the custom and culture of our families, communities, states and nation – and does so without even a passing glance at those principles of robust scientific review, public participation and predictability outlined in the President's Executive Order. But such scrutiny does not seem forthcoming.

Certainly, the President should be allowed to hear from his agencies within the timeframes outlined in his Executive Order before we pass final judgment on the sincerity of his effort. Unfortunately, the early rhetoric and recently released guidance

handbooks from the Department of the Interior only underscore a stubborn resolve to defend SO 3310. Thus, those of us that are reliant on Bureau of Land Management lands for our livelihoods and for their multiple-uses must be proactive to underscore our concerns with SO 3310 and the guidance handbooks that go with it and direct both the policymaker and federal bureaucracy to a more thoughtful course.

At its core, the legal justification for SO 3310 and the guidance that goes with it enlist a healthy dose of bootstrapping. In the absence of legal authority to justify the Secretary's Order, general provisions of the Federal Land Policy and Management Act (FLPMA), the Wilderness Act of 1964 and the National Environmental Policy Act (NEPA) were offered to suggest Congress has endorsed the actions that have been taken. These same references, in particular references to FLPMA's general call to maintain lands in their "natural condition" (43 U.S.C. 1701(a)(8)) and requirements to develop inventories and engage in land use planning (Sections 102(a)(2), 201(a), and 202(c)(4) and (9) and Section 202), were cited to suggest that the BLM's newly minted handbooks (6301, 6302 and 6303) are in accordance with our nation's land use laws. The handbooks also cite to the existence of SO 3310 as added legal justification, essentially completing the circular legal argument.

Such an overly generalized and bootstrapped legal theory does not hold water, however. To begin, the Department of the Interior's use of FLPMA is misplaced and does not tell the whole story, even within the specifically cited provision found at 43 U.S.C. 1701(a)(8). Certainly, there is a discussion of protecting "natural condition," but it is noted in a string of other protections that include managing the public lands to protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values, providing food and habitat for fish and wildlife and domestic animals and providing for outdoor recreation and human occupancy and use. The conjunctive word "and" denotes that each of these considerations must be overlaid on the landscape to determine proper resource allocations.

The use of the inventory and land use planning citations is, in my view, a lawyerly effort at "perfuming of the pig." The public and others can be awed by legal citations, but the offered provisions do nothing more than reiterate a common practice of knowing what you have and making a plan to make the best use of it. The citations in no way justify protections for "lands with wilderness characteristics" or LWCs. Good planners inventory everything before they allocate use. Unfortunately, BLM has not been funded nor has it prioritized the maintenance of baseline data – for any purpose, much less LWCs. To this end, it seems quite peculiar that the Department of the Interior would prioritize what functionally equates to the development of baseline data for "wilderness characteristics" and not even mention the need for baseline information for any other use. To the outside observer, it would seem that "wilderness" will soon be trumping nearly every other consideration, both in terms of funding and protection, when the very

provision cited by the Department to justify LWC inventories and land use planning tied to their protection, clearly requires an understanding (inventory and plan) of all potential uses.

But the bootstrapping by the Department of the Interior is more insidious than simply being overly general. It neglects statutes and long-standing legal precedent that are clearly at odds with SO 3310 and its implementing handbooks, as was clearly outlined in the Wyoming County Commissioners Association comments on SO 3310 dated January 28, 2011 (attached hereto as Attachment A). To put these detailed comments in a somewhat condensed version, only Section 603 of FLPMA allows BLM to manage lands so as to ensure that wilderness characteristics are not impaired. Non-impairment only applies in Wilderness Study Areas (WSAs) – every other tract of BLM land is to be managed so as to not unduly or unnecessarily degrade the resources on those lands.

One might then simply suggest that you merely need to designate new WSAs. That would seemingly be an answer, but the ability to designate new WSAs ended on October 21, 1993, when Congress received the wilderness suitability recommendations required under Section 603 of FLPMA. Clearly, when read together with the Wilderness Act of 1964, Congress wanted to reserve to itself – and only to itself - the authority to create wilderness and WSAs, and this makes sense when one considers the functional effect of a wilderness designation of any sort: it shuts things down.

It also makes sense when you consider the practical reality that "new wilderness" is, in most cases, a fallacy. Little has changed, in terms of the environmental landscape, that would change the inventories completed pursuant to FLPMA prior to 1993. Where the environment has changed, it has most likely moved away from a wilderness condition. Simply put, Mother Nature does not "create" new wilderness in the span of 20 years. She does so either very abruptly with eruptions, earthquakes and floods or very gradually, over hundreds of years. Thus, this present day call to arms to protect wilderness lands is merely an excuse to loop in hundreds of thousands of acres of public land into an overly prescriptive management regime, when in fact, the land in question is no more wilderness than it was in 1964 following the passage of the Wilderness Act or at the conclusion of the FLPMA inventory in 1993. It seems that after 20 years of effort to control land use in other ways, the radical fringe of the environmental movement has once again returned to its old and trusted friend, the wilderness designation, even if it no longer fits in the legal and physical plane of public land management.

Regarding NEPA, I anticipate that the Administration's argument will be that no areas will be declared "wildlands" except through the Resource Management Plan(RMP) planning process, which necessarily includes NEPA. However, this ignores the reality that the required wilderness inventories will immediately and dramatically affect activity on the land even without reaching the point of consideration under the planning process.

Thus, the only way to meet the intent of NEPA is to conduct NEPA analysis on the mandate of SO 3310. As a corollary, BLM deems it necessary to comply with NEPA in the issuance of a grazing permit under the same terms and conditions as an expiring permit, even though that action clearly has no resource impacts. There are undoubtedly numerous other examples, but the clear and proper course is for SO 3310 to undergo prompt and thorough NEPA analysis through a full-fledged Environmental Impact Statement.

A skeptical and calloused view might be that the Department of the Interior is attempting an end-run on Congress by repackaging what we once knew to be a WSA and simply calling it something different. But looking at the guidance used to implement SO 3310, it seems that an end-run is exactly what is being attempted. In fact, the Department has referred to the guidance manuals for SO 3310 as "new wilderness guidance." With wilderness designations being the sole province of Congress and existing WSAs already being protected by a non-impairment standard, what new "wilderness guidance" is truly required and why is BLM issuing it? Further, why do BLM and the Department go out of their way to say that SO 3310 does not create WSAs when the manuals that implement the Secretary's Order use the exact same criteria that were used in 1978 to identify WSAs? The manuals even go so far as to say that the LWCs will be managed under the same legal criteria as WSAs. At some point, if it walks like a duck, talks like a duck and looks like a duck – it is a duck, even if you want to call it a chicken.

Ultimately, SO 3310 is not supported by anything other than itself. Disregarding the clear weight of the law for purposes of argument, one might suggest that, if properly identified, there is no harm in protecting these lands with wilderness characteristics. Such a suggestion ignores two serious problems. First, initial, good-faith efforts at "proper identification" of LWCs by the BLM have been fraught with examples of misidentification. Second, the harm in protecting lands with wilderness characteristics, especially when they are protected under the same legal criteria as WSAs as required in the implementing manuals, is severe and real.

While it would be most instructive to give actual evidence of misidentification of LWCs in specific BLM resource management plan revisions, as cooperating agencies, counties and other cooperators are not permitted to share such "pre-decisional" information. However, speaking in general terms, it has become very apparent during the inventory process that misidentification is real. In specific cases, BLM came to the conclusion that a certain area possessed "wilderness characteristics." In the same, exact geographical area, the county cooperators identified almost 60 miles of two-track roads, almost 11 miles of ATV trails, nearly 2 miles of graded soil, existing oil and gas fields containing 14 oil and gas wells, over 40 miles of fence, 1 mile of water pipeline, 36 reservoirs, 6 water wells, 2 cattleguards and 1 corral chute. Seven, large tracts of state school trust land are interspersed in the area as well, which cannot be made subject to anything but

the management prescriptions set forth by the State Land Board or Legislature, unless the BLM wants to take on the obligation of funding Wyoming's schools going forward.

On a more broad scale, in a specific RMP planning area, almost 20% of the BLM lands were erroneously identified as having wilderness characteristics. In this area, the BLM has identified 56 areas comprising a total of 571,000 acres. Within this area there are 634 miles of roads, of which 518 miles are two track, 442 reservoirs, 296 miles of fence, 569,273 acres of active allotments, 154 range improvements, 10 miles of water pipeline, 17 water wells, 8 oil fields, 68 miles of oil and gas pipeline, 8 active oil and gas wells, 59 plugged and abandoned oil and gas wells, and 248,315 acres (43%) have oil and gas leases.

While the new implementing manuals for SO 3310 might add clarity to the specific planning effort in question, the identification of oil fields, roads and fences is not exactly an exercise in discretion. They either exist or they don't and if they do exist, the word "wilderness" is not an appropriate descriptor.

But assume, again for sake of argument only, that the LWCs in the RMP planning area described previously were properly identified, the question then becomes: what is [t]he Impact of the Administration's Wild Lands Order on Jobs and Economic Growth?

As an initial matter, it is important to understand what SO 3310 actually requires. First, it requires the BLM to protect potential LWCs during the planning process so as to not foreclose the option of actually designating them in the final plan. Even with a conservative approach, the temporary "setting aside" of possible LWCs could lead to hundreds of thousands of acres being rendered functionally useless for at least three years and likely much longer. Where groups and individuals are motivated to use the process for abuse during the interim phases of plan development, millions of acres could be set aside as de facto wilderness for 3-7 years. Even where the LWCs are not carried forward in planning, they are usually kept as part of the analysis no matter how ridiculous they might be in terms of the actual state of the landscape, either as one of the alternatives or simply in the inventory. Of itself, this would seem a benign proposition. But in field offices that experience rampant turnover with very little institutional memory retained, the risk of having a new staffer dust off an old plan and resurrect either interim or long-term protections is real and part of our recent history.

But beyond these sorts of interim protections, lies the ultimate reality that actually designated lands are made subject to a non-impairment standard. As we have learned with roadless areas and other wilderness lands, this standard figuratively and, in most cases, literally places a stop sign at the edge of the protected landscape. The protective bubble of wilderness and roadless is seldom pierced by human disturbance, ending even the thought of a new nature trail, no less a drilling rig. It shuts things down.

Using the very model used by the BLM in its planning efforts, the local cooperators were able to quantify the answer to this Committee's basic inquiry. Within the areas that have been identified as potential LWCs, the reasonable foreseeable development scenario pegs the total number of wells that could be drilled during the 20 year life of the Resource Management Plan at 569 wells. According to the model, 569 wells would generate 258.4 jobs per year for drilling and up to 614.5 jobs for production by the year 2025. This would generate $13,760,344 in labor income per year for drilling. The average wages for those workers engaged in drilling is $53,252.00 per year, a fairly substantial sum considering the current state of the economy.

Beyond the drilling phase, though, there is the production side of oil and gas development. Again, using the same model employed by the BLM in the same planning area that has previously been discussed and even then, only within the LWCs, the counties project that the production phase could result in up to 614.5 new jobs during the life of the plan. With an average salary of $83,660.00 per year, the yearly production phase labor income could total over $51 million per year.

In addition to jobs, the total revenue generated in the economy, in terms of oil and gas production from within the potentially designated LWCs would exceed $2.1 billion over the 20 year life of the resource management plan. More than $523 million in local, state and federal tax revenue would result over the same period of time within the same potentially designated LWCs, with the federal share reaching nearly $140 million. Please understand that this particular BLM planning area contains only a fraction of the federal land in Wyoming. If the same percentage (18%) of LWCs were introduced on other BLM lands within Wyoming, and the assumptions in the model were carried forward, the revenues that could be derived from potentially designated LWCs would be nearly $12 billion and the potential local, state and federal tax revenue generated from these same lands would top nearly $3 billion over a twenty-year period.

Even with a significant discount factor, the impact is astounding, especially in a corner of Wyoming that is depressed economically. Given the current economic and employment conditions in our nation, even the creation of one job is significant, especially to the family that is lucky enough to find it. But oil and gas development is not the only industry that would feel the effects from the designation and restrictive management of LWCs.

According to the draft policy, grazing may be consistent with wilderness characteristics however; grazing management practices (range improvement projects, vegetation manipulation, and motorized access) "could conflict with protection of wilderness characteristics". Reservoirs, stock water tanks, pipelines and fences have all been installed (often at permittee expense) to distribute livestock across the allotments and improve the range resources (water, wildlife, soil, vegetation). These projects and their

maintenance are vital to the economic viability of the ranching unit. Treating grazing and grazing management practices differently under this policy would have significant cumulative impacts on the grazing industry.

Restrictions on the placement, construction, or maintenance of range improvement projects would have a significant financial impact on both the individual operator and local economy, most notably tied to increased labor cost associated with potential restrictions on motorized use within LWCs. Further, the loss of vital water sources (used heavily by wildlife as well as livestock), tied to maintenance and water development restrictions, would likely cause livestock to concentrate around remaining water sources making it difficult or impossible to achieve the Wyoming Standards for Healthy Rangelands (a permit requirement). In addition, the loss of range improvements would likely result in a reduction in stocking rates (AUMs). Finally, predator control would be severely limited due to motorized use restrictions, which in turn would increase predation on livestock as well as wildlife.

Within the planning area that was previously mentioned, there are 687 grazing allotments and of those, 203 have all or a portion of LWCs identified within their boundaries. These inventoried LWCs cover 569,277 acres or approximately 27% of the acres in the allotments. The permitted AUMs on these allotments are approximately 138,508. In addition there are 154 range improvements (wells, guzzlers, cattle guards, stockwater tanks), 296 miles of fence, 442 reservoirs and 10 miles of pipelines located throughout the LWCs in the allotments. There are also 634 miles of two track trails and graded dirt roads within these LWCs. This information does not appear to include roads adjacent to fences that are used for maintenance or roads used to maintain stockwater tanks or reservoirs. Therefore, the miles of road within the LWCs could be considerably more.

Assuming that the AUMs within the potentially designated LWCs are necessary for the viability of the ranches that are dependent on them, which is a very safe assumption in the West, the economic impact of a change in management tied to grazing could be quite significant. Using the BLM's model, the AUMs within the LWCs have an economic value to local communities within the planning area or $26,900,000 in livestock production, $12,400,000 in employment earnings, and 382 annual jobs.

But Wyoming and the West are not simply dependent on oil and gas and agriculture for their well-being. From coal to trona to uranium production and the many jobs that are made possible in the grocery stores, service stations, schools, cafes and feed stores in our small towns because of mineral extraction and agriculture, we are highly dependent on the multiple-use mandate of FLPMA for our survival. With the burgeoning potential of wind development and value added processes tied to coal and natural gas, "de facto" wilderness designations could literally mark the end of these emerging industries, especially as these LWCs would likely preclude transmission line and pipeline siting in

large swaths of the West. Absent the ability to use our public lands, in accord with the thoughtful designs of Congress, the West will suffer irreparable harm – but not only in terms of economic hardship.

People do not live and work in Wyoming to go to the opera. We are here because we love to hunt, fish, hike, camp and ride our 4-wheelers. There are certainly some that want complete solitude – whatever that really means – when they head into the backcountry. Frankly, they are perfectly suited for the WSAs and wilderness areas. Certainly most of our photo albums contain pictures of the wide open spaces and breath-taking views, but nearly every picture also contains us. We are hunting. We are fishing. We are hiking. We are moving cows. We are drilling. We are there. While the implementing handbooks for SO 3310 might pay some heed to such a concept, we are generally adverse to even the slightest thought that we might be precluded from engaging our surroundings in one way or another. This is truly our custom and our culture, in addition to most of our way of life and way of making a living.

Had we been engaged by the Department of the Interior in a truly public process, the comments might be a bit less harsh. As it stands, SO 3310 and its implementing guidance is a playground for the environmentalists. Had we encountered past implementation of land use restrictions that was thoughtful and narrowly tailored, perhaps the seemingly extensive intrusions of SO 3310 would not be viewed with such skepticism. As it stands, we watch the BLM label land as "containing wilderness characteristics," when we know that same land is permeated with oil wells, roads, fences and man-made reservoirs. Had the Department of the Interior shown flexibility and a commitment to innovation in its past endeavors, we might not fear the intractable bureaucrats we have come to know in our BLM field offices, national parks, refuges and national forests. As it stands, we are left to watch our trees turn red as the beetles ravage our forests after years of inaction by federal officials. We are left to watch wild horse numbers skyrocket, affecting both livestock and other wildlife populations, only to be controlled when the state steps in and sue. We are left to watch wolves and grizzly bears decimate our big game herds and kill our livestock, pets, and, as of last summer, our neighbors.

We do not cast doubt on SO 3310 without good reason. Our recent experience with a similar sort of "de facto" wilderness designation, coming in the form President Clinton's Roadless Rule, lends credence to our worst fears. During the pendency of the Roadless Rule, states and local governments clamored for access to the process, were promised it, and it was never forthcoming. While the maps and inventories were being developed for the Roadless Rule, states and local governments suggested that the inventory was flawed and that hundreds of millions of acres of the forest were being improperly set aside. Today, even a cursory glance at a Forest Service map underscores the points we attempted to make in 2000, with supposed "roadless" areas lined with old clear-cuts and a

spider web of roads that would make the federal and state highway departments envious. Finally, states and local governments commented and testified that the Roadless Rule would put a halt to nearly any human activity, even in areas that were heavily roaded already. We were called paranoid and promised revisions once time permitted. No revisions have been made and even the slightest intrusion into these so-called roadless areas to manage pine beetle killed swaths of our dying forests – through the existing road network, mind you – has been met with years of delay and a bureaucratic two-step only befitting a dance hall. Our fears were well-founded then, and history will no doubt reveal that our fears today, relative to SO 3310, are equally justified.

From the other side of the Potomac River, President Obama's Executive Order to trigger regulatory reform is about 50 years past due. Most certainly, it came about a month late relative to the issuance of SO 3310. We can do better than a half-baked, one-sided and likely illegal concoction to manage our public lands and the jobs and revenues we derive from them. Too much is at stake to leave the decision to a faction of our country who can barely stand the thought that we would even walk on certain lands. For too long the pendulum of public discourse relative to the public's lands has been allowed to swing wildly from side to side, never resting in the thoughtful middle. We owe the next generation a better discourse and a shot at a good job and stable community, state and country. Secretarial Order 3310 is no prescription for that sort of future. We can and must do better.

As an elected official, I easily tire of those that appear at commission meetings and rail against a proposal but never offer a thought as to how to fix a problem. Clearly, SO 3310 should be rescinded, along with the guidance to implement the Order. It is not supported by the law and is contrary to thoughtful public policy. New wilderness designations are and should remain the province of Congress.

Should the Department of the Interior re-engage a process to set aside millions of acres from FLPMA's multiple-use mandate, it will and should meet a very skeptical reception. But, in the event that the Department does proceed on such a course, it should only do so after offering meaningful notice to and full consultation and coordination with city, county and state governments – not just the select few in the environmental community that were privileged enough to be invited to the process with SO 3310. Then, the Department must be funded to complete the required inventories in a thoughtful and science-based manner.

The inventories should include all potential uses and should not be conducted with an eye towards finding "lands with wilderness characteristics." These inventories must be blind to motive and ultimate management and, instead, focus on the reality of our present circumstance and the actual baseline scenario from which the planning effort should emanate. This has been a constant refrain of every local cooperating agency in every

BLM plan revision to date in Wyoming, which has universally been met with admonitions from the BLM that the development of such "Analysis of the Management Situation" data is not and will not be a priority in the revision.

In the narrow event that some new protection is required, where it impacts private property rights – the affected rights should be fully and fairly compensated, but only after the protection is very narrowly tailored and made to fit within our public land laws, a tough task to be sure, given the nature of those laws. These protections should never be drawn to impede the full use of school trust lands and other state and local land, either through direct proscriptions tied to the land itself or as a function of reduced or discontinued access to the parcel.

To close, the law is clear to preclude even a partial implementation of SO 3310. Where the Administration cites to overly generalized legal theories to support the Secretarial Order, the law is rife with specific prohibitions to not proceed on the course outlined in SO 3310 and its implementing regulations. Even in the quietest corner of Wyoming, hundreds of jobs and billions of dollars are at stake – all to offer the environmental movement another bite at an apple that they didn't think to take or were not allowed to take before 1993. But almost more importantly, our custom and culture are at stake. From the family ranch that has been in production for over 100 years to our ability to grab hold of and actively engage our land, SO 3310 requires that we elevate so-called "wilderness use" above every other use. Even if this intrusion into our nation's multiple use mandate is for the briefest time – during the pendency of an inventory or otherwise – it is an unlawful step on a very slippery slope toward longer and even permanent limitations being placed on the landscape. Such efforts, being contrary to our laws and the weight of other public laws and expectation, must be stopped in their tracks and erased from the public discourse, lest they be allowed to lay dormant, germinate and take root at a later date. They have no place on our landscape, absent Congressional direction to the contrary.