



Our membership and services span the globe

10 N Post St Ste 305 | Spokane WA 99201-0705

Phone: 509.624.1158 | Fax: 509.623.1241

E-mail: nwma_info@nwma.org | Web: www.nwma.org

February 25, 2011

Honorable Doc Hastings
Chairman
House Natural Resources Committee
1203 Longworth HOB
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing on behalf of the Northwest Mining Association (NWMA) to express our strong opposition to Secretarial Order 3310 (“Wild Lands Policy”) directing the Bureau of Land Management (BLM) to designate areas with wilderness characteristics under its jurisdiction as “Wild Lands” and to manage them to protect their wilderness values. The Wild Lands Policy is an assault on the BLM’s multiple-use mandate for managing our federal public lands, violates the Federal Land Policy and Management Act (FLPMA) and fails to recognize statutory rights granted by the General Mining Laws of the United States. It will have a profound impact on the energy and mineral security of the United States, and will stifle economic growth in rural America.

NWMA is a 116 year old, 2,000 member, non-profit, non-partisan trade association based in Spokane, Washington. NWMA members reside in 42 states and are actively involved in exploration and mining operations on public and private lands, especially in the West. Our diverse membership includes every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. NWMA’s broad membership represents a true cross-section of the American mining community from small miners and exploration geologists to both junior and large mining companies. More than 90% of our members are small businesses or work for small businesses that will be greatly harmed by the Wild Lands Policy.

Wild Lands Policy Threatens our Economic Security

This Nation is in the midst of a fragile economic recovery. President Obama acknowledged in his recent Executive Order on Improving Regulation and Regulatory Review that through regulations we at times place “unreasonable burdens on business – burdens that have stifled innovation and have had a chilling effect on growth and jobs.” The president’s Executive Order intends to root out those regulations. It is greatly disappointing to see the Department of the Interior (DOI) release its Wild Lands Policy in direct contradiction to the common sense Executive Order from President Obama.

Unfortunately, it does not come as a surprise. Secretarial Order 3310 is just the latest in a continuing assault on the multiple-use concept of managing our public lands. From emergency withdrawals to the Treasured Landscapes Initiative outlining plans for new national monuments,

wilderness and federal acquisition of private lands, DOI has clearly demonstrated its intent to eliminate productive, economic development of America's public lands.

It is a mistake to further restrict access to public lands for resource development. The U.S. can and should be more self-reliant for the minerals we need. Despite reserves of 78 important mined minerals, the United States currently attracts less than eight percent of worldwide exploration dollars. As a result, our nation is becoming more dependent upon foreign sources to meet our metal and minerals requirements, even for minerals with adequate domestic resources.

America now depends on imports for 100 percent of 18 minerals commodities, and is more than 50 percent import reliant on 43 commodities. This increased import dependency makes our country vulnerable in troubling political times and is not in our national interest. Increased import dependency causes a multitude of negative consequences, including aggravation of the U.S. balance of payments, unpredictable price fluctuations, loss of high paying jobs and vulnerability to possible supply disruptions due to political or military instability.

Policy is Inconsistent with Multiple-Use Mandate

The Wild Lands Policy requires protection of wilderness characteristics unless BLM determines "that impairment of wilderness characteristics is appropriate and consistent with other applicable requirements of law and other resource management considerations." Secretarial Order 3310 therefore creates a presumption that wilderness characteristics trump other values, making it inconsistent with the Interior Department's multiple-use mandate as provided in FLPMA §202 (c)(1).

The Wild Lands designation appears to be a de facto Wilderness designation. The only difference we can detect between the new Wild Lands designation and a WSA or Wilderness designation is that DOI has removed the elected members of Congress from the equation and given authority for setting aside these lands to unelected federal bureaucrats.

The Wild Lands Policy overturns a Bush administration policy grounded in the settlement between former Interior Secretary Norton and the State of Utah that prohibited DOI from adding lands to Wilderness Study Areas (WSAs). The Norton/Utah settlement and Bush administration policy was based on language in FLPMA that provided a 15 year time limit from the passage of FLPMA (1976) for BLM to identify lands with wilderness characteristics and designate those lands Wilderness Study Areas. The time allotted by Congress for this inventory expired in 1991. Under FLPMA, WSA lands are to be managed to preserve their wilderness characteristics until Congress makes a decision to add them to the Wilderness Preservation System or return those lands to multiple-use.

The Wild Lands Policy seeks to circumvent the congressional prohibition to designating new WSA's after 1991 by designating a new category of lands. Under S.O. 3310, "Wild Lands" will be managed to protect wilderness characteristics unless or until such time as a new public planning process modifies the designation. According to DOI, because the "Wild Lands" designation can be made and later modified through a public administrative process, it differs from "Wilderness Areas," which are designated by Congress and cannot be modified except by legislation, and "Wilderness Study Areas," which BLM typically must manage to protect wilderness characteristics until Congress determines whether to permanently protect them as

Wilderness Areas or modify their management. The distinction is hollow. All of us are familiar with the saying, “If it walks like a duck and quacks like a duck, it must be a duck.” Well, if it’s managed like a WSA with a non-impairment standard it must be a WSA regardless of what it is called.

Congress already has designated more than 100 million acres as Wilderness, and the Bureau of Land Management (BLM) currently manages more than 545 WSAs containing nearly 12.7 million acres awaiting final action by Congress. How much wilderness is enough?

Furthermore, we find it disturbing there was no mention of the Mining Law in S.O. 3310. There is a brief mention of “valid existing rights,” but it is evident from the new policy that protecting wilderness characteristics takes precedence over multiple-use of the public lands and the development of critical and strategic mineral resources. S.O. 3310 will make it even more difficult for new mines to open in the United States. In fact, our members are reporting that anti-mining groups are using S.O. 3310 to monkey-wrench and further delay the NEPA process.

S.O. 3310 violates FLPMA in at least four areas:

1. Section 102(a)(12) of FLPMA states: “the public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970...” The Secretarial Order does not say one word about considering the mineral resources and how he is complying with this policy statement in light of his new Secretarial Order. And, I am surprised that he is not more careful in considering the role that minerals, especially those minerals which will contribute to the manufacturing of renewable energy machinery and associated products, will play in our society.
2. Section 202(e)(3) of FLPMA states in part: ...”public lands shall be removed from or restored to the operation of the Mining Law of 1872...only by withdrawal action pursuant to section 204 or other action pursuant to applicable law”. The Secretary appears to be in violation of this mandate by allowing his field managers to designate lands with ‘Wilderness Characteristics’ and to subsequently deny mining operations; thereby, setting up defacto withdrawals. His actions constitute a removal of operations under the 1872 Mining Law, seemingly contrary to this or any other section of FLPMA.
3. Section 603 of FLPMA applies to a wilderness review, suitability, and designation, the last part of which only the Congress can do. BLM completed its responsibility under this section of FLPMA in 1991 and there are millions of acres of BLM classified Suitable and Unsuitable Wilderness Study Areas that the Congress is still deliberating over as to designation. Any further classification of Wilderness Characteristics by the Interior Department is certainly permissible by the Secretary, but, if he wishes to place these areas off limits where rejection of a Plan of Operation under the 1872 Mining Law will be made by the BLM, then he should have to go through the formal Section 204 process.

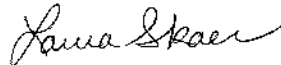
4. Absent a withdrawal, the BLM may only reject an authorization under the 3809 regulations if the mining operator is creating “Unnecessary or Undue Degradation”, per Section 302(b) of FLPMA, and the associated 43 CFR 3809 regulations within which this phrase is defined.

Conclusion

The new Wild Lands Policy outlined in Secretarial Order 3310 violates FLPMA, usurps Congress’ Constitutional and statutory authority provided in the Property Clause and Wilderness Act of 1964, unnecessarily restricts access to our federal public lands and is a job-killing policy that threatens our Nation’s economic security. It will lead to an increased dependency on foreign sources of strategic minerals and metals, threatening our national security and making the goal of energy independence impossible.

We respectfully request that you utilize your congressional oversight authority and support any and all legislative efforts to halt the implementation of DOI’s Wild Lands Policy.

Sincerely,



Laura Skaer
Executive Director