



A RECIPE FOR CHANGE

16 RECOMMENDATIONS

TO THE COMMITTEE ON
ENERGY AND ENVIRONMENT POLICY

OF THE TRANSITION TEAM
FOR PRESIDENT-ELECT BARACK OBAMA

**Giving new direction to the protection of
AMERICA'S COMMON GROUND**

November 25, 2008

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Introduction

Each citizen of the United States is part owner of a public estate that encompasses approximately 711 million acres of land, nearly one-third of the nation's entire mass. This land is administered on each American's behalf by three main agencies within the Department of Interior¹ and by the U.S. Forest Service within the Department of Agriculture.² It is an incredibly rich and diverse asset for those who today have the good fortune to enjoy these lands and for those tomorrow to whom we will bequeath this gift. It is the responsibility of the Federal Government to act as a good steward of these lands. For the past eight years, to the dismay of many Americans, the federal government has viewed the public estate more as an endless source of energy supplies, without consideration of the impact on habitat fragmentation, water and air pollution, impact on local communities, and on conservation values of our public lands. This paper offers suggestions on how to refocus the Federal Government back to its stewardship responsibilities for the public estate.

Americans hold these lands in deep regard. Opinion surveys amply demonstrate a majority of Americans prefer to see conferred upon this common ground the strongest protection possible. In one poll this year, 87% of respondents either strongly or somewhat favored including public lands in the National Wilderness Preservation System, while just 12% indicated that this was not important to them. Among the various factors that compelled Americans to vote the ways they did on November 4 – the nation's economic situation, the nation's standing in the international community, the challenges facing the nation on two war fronts – protecting the nation's storehouse of public land was among those factors. Seven in ten likely voters indicated that they base their votes for a presidential candidate on whether or not the candidate supports the strongest protection possible for these lands.³

Manifestation of this broad and deep support for a balanced and bipartisan approach to management of our nation's public lands was evident in the work of the 110th Congress on wilderness bills specifically, compared with the work of previous Congresses. Over the past eight years, Congress has enacted and President George W. Bush signed 13 bills to designate public lands as part of the National Wilderness Preservation System. The 110th Congress alone had under active consideration 16 wilderness bills. Although time ran out prior to final adoption before the election, and other prominent issues intervened in the lame duck, the majority leader of the Senate indicated an omnibus package

¹ The Bureau of Land Management administers by far the largest chunk of this acreage at 262 million acres, with the Fish and Wildlife Service holding 96 million acres, the National Park Service overseeing 85 million, and the Bureau of Reclamation and the Bureau of Indian Affairs also holding lands in trust for a total of 518 million acres.

² National forests and grasslands account for 193 million acres of the nation's landmass.

³ Zogby International, poll of 1039 likely voters conducted July 9-13, 2008; margin of error +/- 3.1%. Interestingly, the poll was conducted at a period when gas prices at the pumps across the nation peaked at \$4.11 per gallon.

containing all 16 of these bills will be acted on in January.⁴ The 110th Congress was poised to enact more wilderness bills than the previous four Congresses combined.

What is so remarkably salient is how protecting landscapes for the benefit of current and future generations of Americans comports with the new direction that the President-elect indicated he intends to take the country. These legislative proposals, and the local negotiations that preceded them, are the embodiment of reaching across the political spectrum, involving people with diverse interests in the decisions made regarding the allocation of public lands to various purposes, and finding solutions for the benefit of all Americans, particularly those in the local communities affected most directly. Providing the strongest protection possible to America's common ground safeguards their quality of life, protects the attributes that drove people to locate in those communities in the first place, and provides benefits to local economies.

On a macro level, protecting public lands using the strongest legislative and administrative tools possible also protects air and water quality, wildlife habitat, recreational opportunities, and natural scientific laboratories. Protected forests act as carbon sinks and undeveloped landscapes enable plant and animal species to adapt to changing climatic conditions more readily than in developed areas. The environmental and economic benefits are myriad and widely acknowledged.

From a policy perspective, this moves past gridlock and stasis. Public lands protection is a positive and proactive arena in which to demonstrate to the American people that the new administration has their best interests in mind. It is a forward-looking issue appealing to people because of the natural legacy we will leave subsequent generations. Proper stewardship of our public-land assets will leave this country a better place for our children and grandchildren.

The White House needs to exert leadership and the Council on Environmental Quality must be actively engaged, for the direction on public lands protection to change over the next few years. The policy and personnel recommendations contained in this paper do not merely suggest an undoing of the past eight years' worth of inimical policies adopted and rules promulgated by the land managing agencies within the Interior and Agricultural Departments. Nor is this a paper chock full of suggestions for actions to take within the first 100 days of the new administration.

The strategy proposed with these 16 recommendations will result in a reversal of the great damage a very unpopular administration has caused and will turn back the assault on our nation's revered natural heritage. What is intended with these strategic recommendations is to restore some semblance of balance to the equation of development and protection, which has been sadly lacking in the policies of the past eight years. From

⁴ "On another matter, Senator Bennett and I have made a decision that rather than move forward [in this lame duck session] on the lands package, which is hundreds of bills that are so important to a lot of people, a lot of senators, and certainly a lot of people around the country, we are better off waiting until we come back in January [2009]." Remarks of Senator Harry Reid, Congressional Record, November 17, 2008, S10536.

the beginning with closed-door meetings of its energy task force, the Bush Administration has tilted unquestionably in favor of extractive industries. While the Interior Department is legally mandated to strike a balance between competing interests for the use and enjoyment of public lands, under the Bush Administration the acreage leased for development averaged 12.7 million acres per year in 12 western states while also stripping some level of protection from more than 45 million acres.⁵

As it exits, the Bush Administration is attempting to issue final resource management plans, notably in Alaska and Utah, in order to open millions more acres to potential leasing. The resource plans in Alaska cover more than 24 million acres, an area equivalent in size to the state of Mississippi's land mass, much of which the agency is intent upon throwing open to oil development and coal mining, even in portions of areas considered to be of environmental concern by the agency's own determinations. Well known to the President-elect is the fact that the oil industry is currently sitting on 68 million acres of leased land it has not endeavored to bring into production. Industry is trying to stockpile the acreage to feed America's addiction to oil, and the Bush Administration is playing the role of enabler.

On the Roan Plateau in Colorado and Otero Mesa in New Mexico the Bush Administration has run headlong into clashes with local communities and fishing and sporting groups, bringing opposition and rebukes from Democratic senators. But the opposition is not limited to Democrats. In Montana's Rocky Mountain Front, former Senator Conrad Burns led the effort to block oil and gas leasing at the behest of local ranchers, and Sen. John Barrasso is currently spearheading an effort to prevent leasing in the Wyoming Range. Both are otherwise ardently conservative Republicans who responded not only to the changing demographics of the West, but also to the exasperation of generally conservative constituencies over how unresponsive and imbalanced government energy and land policies have become under President Bush.

The strategic recommendations contained in this paper call for a sustained and concerted emphasis that will result in restored balance, significant accomplishments, engagement of the electorate, and will win over elected officials from city councils and county commissions on up through state legislatures and governors.⁶

The White House

President-elect Barack Obama and White House staff must provide leadership to implement and sustain a continuing program for protection of public lands, in much the same way the administration rightly intends to exert its leadership in moving the country toward a new energy future. The importance of this leadership is to properly spur and

⁵ Environment Working Group, "Who Owns the West," online investigative publication, at http://www.ewg.org/oil_and_gas/part4.php.

⁶ As a 501(c)(3), the Campaign for America's Wilderness is a non-partisan public interest entity that cannot legally engage in electoral campaigns. To our organizational way of thinking, protection of wilderness is neither a Democratic nor a Republican issue, but solidly bipartisan. That said, candidates who support wilderness tend to do well at the ballot box.

reinforce consistent and coordinated efforts at the department and agency levels to make key policy changes and to accelerate Congressional action. Clear responsibility should be given to White House staff to prepare an initial executive order, craft messages to Congress on specific pieces of legislation, issue specific directives to Secretaries, and use other opportunities to emphasize public land protection as a priority of the new Administration. Energy policy and land protection are part and parcel, inextricably intertwined.

As a means of setting this new direction, a formal executive order signed by President Obama is ideal for underlining administrative policy. It is the strongest, highest-level means to require departmental and agency changes that must then be enforced at all levels of the executive branch. Nothing would be more expeditious and have more impact than an executive order in which the content sets the tone and frames the issue as good for the nation, helpful to local economies, serving diverse constituencies, and a sensible part of a balanced energy program. It clears the path for the Secretaries of Interior and Agriculture; the directors of the Bureau of Land Management, Fish and Wildlife Service, and National Park Service; and, the chief of the Forest Service to be wholly supportive of the strategic initiatives, goals, and timelines outlined by being loyal to the President's own stated policy.

In order to most efficiently execute the strategic initiatives listed below, to be consistent in procedures and therefore establish a standard which members of Congress and the general public can expect and be comfortable with, and to translate quickly into institutional action, we strongly recommend the new administration issue an executive order in relative short order after January 20.

Recommendation #1: The President issues an executive order to emphasize and promote a sustained and balanced program for land protection throughout the executive branch, in order to exert leadership, set the tone, frame the priority, and ensure administrative consistency.⁷

The Department of Interior

This department is especially critical to any sustained program to protect public lands and to balance the scales after eight years of generally unfettered emphasis on oil and gas leasing and other extractive uses. Its three land managing agencies hold all the public estate outside the national forests. Its direction over the past eight years has been woefully imbalanced.

a. Bureau of Land Management

With 262 million acres primarily in the West, the Bureau of Land Management oversees by far the largest holdings of publicly owned land. Unfortunately, this agency has lagged

⁷ Appendix A provides an outline for possible content of an executive order. An excellent linkage for such action by the White House in 2009 is the 45-year-anniversary of President Lyndon Johnson's signing of The Wilderness Act on September 3, 1964.

far behind in pulling itself into the 21st century, taking a perverse pride almost in its 19th century approach to resource allocation decisions. The agency has typically emphasized extractive industries and catered to the oil and gas industry, coal mining companies, grazing interests, off-road vehicle constituencies, and, in the Northwest, logging companies, with little or no concern for environment, wildlife habitat, or wilderness protection. The scales have been tipped historically in favor of exploitation. For BLM, the future is simply finding the appropriate balance.

During the Clinton Administration, great strides were made to inculcate more of a stewardship mandate and see more conservation emphasis placed within this agency. The establishment by proclamation of several national monuments under authority of the Antiquities Act of 1906, starting with the Grand Staircase-Escalante National Monument in southern Utah on September 18, 1996, help to bring the agency a little farther along the development-conservation continuum. Interior Secretary Bruce Babbitt, by administrative fiat, created a National Landscape Conservation System under BLM auspices and wrapped all the national monuments established by President Clinton, all existing national conservation areas created by Congress, and other orphaned conservation units into the NLCS. Former department officials from the Clinton Administration have been conducting an impressive campaign to ensure that the achievement does not fall through the cracks, culminating in an effort to enact an organic act for the National Landscape Conservation System in the 110th Congress. This effort is laudable, and one which should be continued with renewed attention after eight years of ambivalence bordering on disregard or even contempt in the Norton and Kempthorne era.

Recommendation #2: In the forthcoming budget for 2009, include full funding for the operational and planning needs of the National Landscape Conservation System.

Many of these national monuments and national conservation areas constitute broader land areas with their purposes wider in scope, requiring formulation of management plans in order to assure competing uses are responsibly balanced and impacts effectively mitigated. Oil and gas development, for instance, is permitted in many of these newly established national monuments. In these management plans, BLM must conduct reviews of wilderness potential for lands and make recommendations to Congress of those suitable for inclusion in the National Wilderness Preservation System.

Recommendation #3: Direct the Secretary to require BLM to conduct wilderness reviews and recommendations as part of its management planning processes for all units in the National Landscape Conservation System.

As the biggest land holder for the federal government, BLM is the agency with the greatest potential to protect lands with the strongest protection possible by law. Of the 262 million acres under its jurisdiction, less than 3% has been added to the National Wilderness Preservation System. Only eight million acres of BLM lands have been granted such status.

Although The Wilderness Act of 1964 required all federal agencies except BLM to conduct reviews and recommendations, it is not as though these landscapes are undeserving of this type of protection. The Federal Land Policy Management Act of 1976 in Section 603 did require a wilderness assessment for all BLM lands, and in the late 1970s and early 1980s BLM conducted its review. The agency determined that of its 262 million acres, 14 million deserved to be classified as Wilderness Study Areas, an abysmally low figure not reflecting the true attributes of the nation's sagebrush seas, intimate canyons, and marvelous deserts. Citizen-led surveys have determined that wilderness qualities exist on far more of BLM lands. In Utah, as a prime example, citizens have conducted two surveys and found nine million acres in that state alone to qualify for inclusion in the NWPS. Secretary Babbitt also conducted a supplemental review in Utah under his authority in Section 202 of FLPMA and found over five million acres to qualify, two million more than the agency's original Section 603 assessment.

The State of Utah sued the Interior Department over that 1999 Utah Wilderness Inventory and Interior Secretary Gale Norton settled the suit by directing BLM to conduct no more wilderness inventories under Section 202. The settlement also repealed the Wilderness Study Areas established under Section 202 in the 1999 Utah Wilderness Inventory. This misguided policy must be superseded in order to reverse the great damage the most unpopular president in history has imposed upon our natural heritage.

Recommendation #4: Direct the Secretary to transmit to the President all its Wilderness Study Area findings under FLPMA Section 603. In a Message to Congress recommend it exercise its authority under the 1964 Wilderness Act to designate all or some of the recommendations as wilderness.

Recommendation #5: Direct the Secretary to require the Bureau of Land Management to conduct wilderness reviews and recommendations as part of any Resource Management Plan process and to establish wilderness suitable lands as Wilderness Study Areas under FLPMA Section 202.

b. Fish and Wildlife Service

In general, the national wildlife refuges have lines drawn around them and are fairly well protected with purposes specifying primary consideration as habitat for migratory waterfowl and other wildlife.

Recommendation #6: Direct the Secretary to review and submit all pending wilderness recommendations to the President. In a Message to Congress urge

Congress to exercise its authority to designate all or some of the recommendations as wilderness.

Recommendation #7: Direct the Secretary to conduct wilderness reviews and recommendations on any national wildlife refuges established after 1964, and to submit those to the President for transmittal to Congress in an official message.

c. National Parks

The nation's park system, guided by its 1916 organic act, is a model used by other countries from Canada to South Africa to fashion similar systems of protected landscapes. The agency's dual mission of protecting and preserving the resource while allowing for the use and enjoyment sometimes engenders management conflicts. But on the whole, park status provides some of the strongest protection possible for America's public lands. Similar to the national wildlife refuge system, strategic recommendations are fairly general. One of the most glaring needs for our national parks is to increase funding to rehabilitate the fairly universal aging infrastructure.

Recommendation #8: In the forthcoming budget for 2009, include full funding for the capital expenditure needs for the National Park System.

Recommendation #9: Direct the Secretary to review and submit all pending NPS wilderness recommendations to the President. In a Message to Congress urge Congress to exercise its authority to designate all or some of the recommendations as wilderness.

d. Alaska

Alaska is in a category of its own because of the spectacular caliber of its wild lands and wildlife and the incredibly opportunity to do it right the first time. President Jimmy Carter made an incredible first step by championing and then signing into law the Alaska National Interest Lands Conservation Act in 1980, an accomplishment he considers to be one of the top three achievements of his presidency. With one stroke of a presidential pen, 104 million acres of general public domain became national parks or park additions, national wildlife refuges, national conservation areas, and national recreation areas. Over 56 million acres of these new parks, refuges, and other conservation units were overlaid by wilderness designation, effectively doubling the size of the National Wilderness Preservation System at the time.

Yet because of its relatively undeveloped nature, Alaska is also a hotspot for conflicts over resource development. The most notable has raged for more than 20 years now, since the Reagan Administration issued its Section 1002 Report mandated by the Alaska Lands Act in which it was recommended that Congress permit an oil and gas leasing program on the coastal plain of the Arctic National Wildlife Refuge. Through almost three presidential administrations, the conservation community has tenaciously prevented authorization of oil and gas development on the coastal plain, but only through pitched

defensive campaigns. President Clinton vetoed a 1994 omnibus appropriation bill for the entire government in part because the Gingrich-led Congress attached a rider that permitted drilling. Twice, members of the U.S. Senate have waged successful filibusters to keep oil drilling from occurring.

In each generation there is just such an epic battle to protect a place with natural values that transcend its development potential. In John Muir's day, it was the fight to protect an unknown valley, Hetch Hetchy, in the Sierra Nevada Range from inundation by a dam. In David Brower's day, it was another damming of the place no one knew, Glen Canyon. Those places are lost. But America has had leaders with foresight who have stood tall to protect Yellowstone and Yosemite for future generations. During the World War II, the timber industry clamored for access to Olympic National Park to log for lightweight spruce for outfitting military planes. They were denied and the nation survived. In the summer of 2008, however, with public outrage over prices at the pump exceeding \$4.00 per gallon, Congress relented lifted a long-standing moratorium and opened portions of the outercontinental shelf to oil and gas leasing.

Now is the time to take decisive action to end this generation's battle royal over a place with incomparable and unquestioned natural grandeur that must be preserved for future generations.

Recommendation #10: Under authority of the Antiquities Act of 1906, the President should issue a proclamation establishing a national monument for the coastal plain of the Arctic Refuge whose purpose it would be to protect in perpetuity its wilderness characteristics.

This recommendation is one deserving additional discussion because it is the only one the Campaign proposes that would meet with difficult but not insurmountable challenges. Yet, as part of a comprehensive approach to energy policy, to include increasing opportunities for production, greater emphasis on conservation and alternatives, new technologies to spur job growth in retooling consumptive industry such as automobile manufacturers, it is imperative to provide a balance by protecting places such as the Arctic Refuge. It is therefore necessary to act on this recommendation within the first year alongside President-elect Obama's broader energy proposals and programs. But most importantly, it will make this issue no longer an incessant battle to wage. It will enable the next generation to think we did have foresight not to permit the entire north slope of Alaska to become one gigantic oilfield with no consideration for saving a slice of what it once was, with free-roaming grizzlies and wolves, a migratory caribou herd crossing international boundaries, and denning habitat for imperiled polar bears.

Alaska has its own BLM conundrum as well. When Congress passed and President Nixon signed the Alaska Native Claims Settlement Act in 1971, a new chapter in the nation's relationship with Native Americans was opened. Regional and village corporations were established with Alaska Natives as the shareholders of these for-profit entities. As corporation assets, Congress decided to convey federal land, 44 million acres in total, to these corporations and to individual Alaska Natives as well, the latter in the form of allotments. In order to allow for selection of these corporate and allotment lands, in Section 17(d)(1) of ANSCA, Congress withdrew all unreserved federal lands from entry under the nation's mineral and leasing laws.

Scroll forward almost 40 years, and the Native corporate and allotment selections have been made and legally conveyed by the federal government. However, the (d)(1) withdrawals of unreserved federal land are still in effect. The Bureau of Land Management first submitted a report to Congress in June 2006 recommending legislative action to revoke 95% of the existing withdrawals. Congress has rightly demurred. To circumvent Congress and overturn this withdrawal, BLM is now engaged in a planning process to formulate Resource Management Plans, which will administratively enable the Secretary of Interior to open all (d)(1) withdrawals to mineral development, coal leasing, and oil and gas development. Around 50 million acres is at stake.

Recommendation #11: Direct the Secretary to suspend immediately BLM's Alaska RMP process and order a complete evaluation of its purposes and needs.

Recommendation #12: Direct the Secretary to rescind an order issued March 12, 1981, by then-Secretary James Watt, in order to affirm secretarial authority, through the BLM, to conduct wilderness reviews and recommendations in Alaska under Sections 201 and 202 of the Federal Land Management Policy Act.

Secretary Bruce Babbitt did reverse this order in the final days of the Clinton Administration, but that order was vacated by Secretary Gail Norton early in the Bush Administration and the Watt order put back into effect.

U.S. Forest Service

The U.S. Forest Service is a broken agency desperately in need of new direction that can only come about through the leadership that the President-elect can provide. The USFS has 155 national forests and 20 national grasslands under its purview, totaling 193 million acres in 44 states and territories, or about 9% of the country's land mass. Once a proud and vigorous steward of these landscapes because of its history rooted in the era of Theodore Roosevelt and Gifford Pinchot, two giants in our country's conservation past, the agency has in the past eight years largely become a fire responder, whose actual forest management is mired in stagnation and whose decisions on plans and projects routinely draw appeals. It is an agency that pleases none of its constituencies.

The strategic recommendations in this section represent a two-step process that creates synergy between now somewhat disparate strands of policies. It pulls together a more cohesive and comprehensive direction for the agency, but one that will require leadership from the White House in order to coordinate needed actions by the USFS, the Department of Justice, and ultimately Congress.

Recommendation #13: The President issues an executive order to direct a comprehensive review and evaluation of all U.S. Forest Service regulations, policies, directives, and handbooks to assure faithful execution of legal mandates in the National Forest Management Act and The Wilderness Act.

e. 2001 Roadless Area Conservation Rule

Here is epitomized one of the grandest conservation endeavors in the last century and the best attempt to put land conservation on an equal and balanced footing with resource development. The 58 million acres that would have been precluded, with limited exceptions, from both road-building and tree-cutting in portions of our national forests largely affected only by the forces of nature, with the imprint of man substantially unnoticeable, was the boldest move by any administration in recent history to set the USFS down a new and innovative path.

Unfortunately, the Bush Administration initially delayed implementation of the roadless rule while opponents rushed to court. The federal district court of Idaho obliged them by issuing an injunction preventing its implementation, which began an endless succession of lawsuits and legal opinions all the way up so far to the Ninth and Tenth Circuit Courts of Appeals. The result has been endless confusion and uncertainty – first the roadless rule is in effect, then it isn't. Now these inventoried roadless units are subject to forest management plans, then they're not. The USFS tries to move forward with logging projects in inventoried roadless units, and then, no, they can't.

The Bush Administration tried to roll back the roadless rule by devolving to the states the ability to petition the USFS to adopt their own plans for how to manage the roadless lands included 2001 rule.⁸ A number of conservation groups and states legally challenged this petition rule, and won a ruling in California that it violated National Environmental Policy Act. The ruling reinstated the 2001 Roadless Area Conservation Rule nationwide. The State of Wyoming jumped back into court to enjoin the reinstated 2001 rule from taking effect.

The grandest conservation endeavor in a lifetime is proving to be elusive and ephemeral. The critical forest lands included in the 2001 Roadless Area Conservation Rule, including

⁸ Only two states, Colorado and Idaho, opted to proceed under the Bush Administration's 2005 State Petitions Rule (in actuality, under the Administrative Procedures Act, since the 2005 was under legal challenge), with mixed results. Idaho's is nominally viewed as favorable, while Colorado's is a serious step backwards because of various exemptions, exclusions, and definitions for roads, ski areas, and oil and gas leasing.

those in the Tongass National Forest which have subsequently been excluded, need to be provided certainty.

Recommendation #14: The President issues an executive order in which the Roadless Area Conservation Rule is put into full force and effect and the Chief of the Forest Service is directed to permit or approve no activities or projects inconsistent with the original rule.

f. Forest Management Plans

The second step involves the ultimate disposition of the 58 million acres of natural heritage identified in the Roadless Area Conservation Rule of 2001. It will form a resolution which provides certainty and permanence for this remarkable conservation endeavor. The RACR should be viewed not as an end, but as a means to provide these invaluable natural lands with the strongest protection possible, while also giving new meaning to the mission and objectives of the USFS. It is, in essence, a prescription for revitalizing a broken agency through empowering the public to engage in decisions affecting lands they own. The roadless rule, after all, was the most popular rule in history if gauged by the number of comments the agency received. The lands protected again by reinstatement of the RACR are a reservoir of potential wilderness designations through Congressional action.

However, to get there from here requires a sequence of events. The planning process is currently at a standstill, again because of Bush Administration policies designed to skirt NEPA and eliminate public participation in a 2005 planning rule, which was legally challenged. When an injunction prevented implementation of the 2005 rule, the USFS devised a 2008 version to attempt to accomplish the same streamlined process that avoids NEPA compliance and curtails public involvement. That version is, of course, also now in court. The unfortunate consequence of the Bush Administration's policy is that no management plans are moving through the revision process, except for one in the chute for a national grasslands under the 2005 planning rule, and those that were begun prior to promulgation of the 2005 rule. Those revised plans, which include the Beaverhead-Deerlodge NF in Montana (nearing completion), the Monongahela NF in West Virginia (final), and the Superior NF in Minnesota (final), were guided by a 1982 planning rule. The USFS needs to get back to revising its management plans for national forests under that 1982 rule. That's the only way for the process to get moving again without categorical exclusions and with strong standards and proper public involvement.

Recommendation #15: Direct the Attorney General to enter into settlement agreements with the plaintiffs of the legal actions against the 2005 and 2008 planning regulations.

Once those 2005 and 2008 planning regulations are vacated, the path is cleared for the USFS to revive its planning processes under the 1982 planning regulations.

However, to ensure the full promise of the NFMA planning process is realized under the 1982 planning regulations, the USFS must give fair consideration to its legal requirement for evaluating wilderness and for making recommendations to the President for his transmittal to Congress. Half the equation is already completed: the RACR provides the pool of lands to be reviewed. The conservation community acknowledges that all 58 million acres likely does not conform to the definition of wilderness, and is eager to see USFS expertise applied to determining which roadless lands would qualify. Again, though, in order to assure that the emphasis is properly focused, leadership is needed to indicate that conferring the strongest protection possible is a priority. That direction will greatly aid in the objectiveness and scientific rigor of the review process and ultimately result in recommendations in which a great degree of confidence can be placed.

Recommendation #16: The President should issue an executive order directing the Chief of the Forest Service to proceed with forest planning under the 1982 planning rules and to consider wilderness reviews and recommendations to be a high priority of the President, to whom the Chief of the Forest Service should submit its wilderness recommendations, upon completion of each plan, in order that the President may exercise his prerogative to transmit them to Congress.

Conclusion

With our partners in the conservation community, the Campaign for America's Wilderness has an eight-year history of succeeding in a political climate not particularly conducive to making gains in land protection. We have done so by focusing on the basics: local organizing, building community support from the ground up, reaching out to non-traditional stakeholders to forge strong alliances, working with elected officials Republican and Democrat alike, and developing consensus so that citizen proposals evolve into legislative packages with strong backing and enhanced viability. The Campaign for America's Wilderness intends to continue working in the same spirit and with the same methods, which others may view as superfluous because of a political climate far more conducive to protecting public land. However, this is why the pragmatic, incremental, and politically sophisticated approach elaborated upon in the preceding pages appeals to Senator Barbara Boxer and Senator Mike Crapo, Senator Jon Tester and Senator Robert Bennett, members who span the ideological continuum.

The perspective we hold is that the support of local communities is still a requirement in order to provide public servants at the federal level with the ability to champion these legislative proposals enthusiastically, and successfully. There are no shortcuts. Nothing really changed on November 4 in that regard; and everything did, because now we have a President-elect whose intent is to change direction and get the nation on the right course. That opens up a whole new path to help Americans realized their dreams of passing along a natural legacy to those who will follow.

Wilderness proposals are best if not imposed top-down, but are better viewed as bringing people together to conceive of locally-driven solutions to long-standing and very

nettlesome land management conflicts. It's incremental in scope so that, as history has proven, it is not so sweeping that it's hard to swallow because the change is too great at once. It's a win-win strategy that transcends the zero-sum game of the past. There are no losers in this very pragmatic and strategic approach to management and protection of public land. The winners are the American people, whose quality of life is enhanced, whose sense of empowerment is revitalized, and whose economic prospects are vibrant and forward-looking.

Possible Content of an initial Executive Order

1. Soaring and action-oriented presidential rhetoric about our wilderness heritage and its values, to justify this new and highest-level approach

The more technical, legalistic order itself can be accompanied by a statement in which the President explains the goals that the order serves. Useful presidential rhetoric could highlight:

- The urgency of protecting a very generous legacy of additional wilderness for future generations—a call to action
- That statutory wilderness is the “gold standard” for protection (e.g. accept no substitutes)
- That decisions to open potential wilderness are fateful for future generations, therefore deserve better process and higher-level decisions than be left to agency planning decisions alone
- The multiple benefits and services that wilderness areas provides
- The diverse interests served by preserving more wilderness, getting at non-traditional allies and amazing diversity of support
- Any presidential anecdote about experiences with wilderness or encounters with people who care about this heritage
- Rhetoric to set context in which those who seek other uses (e.g. ORVs) have plenty of other places for their uses

2. Perhaps some statement of a presidential “goal” for additional wilderness protection

The advantage of stating a goal in some form is that the President might associate the goal with a deadline, further helping to force agency action.

There are dangers here, however, that need to be carefully thought through. These include avoiding anything that (1) creates a notion that there is thereby some end-point to the process of building the Wilderness System, or (2) suggests that we are filling out some vision for “completing” the System with representations of ecosystems. The latter has a certain seductive attraction, but the danger is that it creates expectations where someone asserts that we now have “enough” Mojave desert ecosystem or sagebrush steppe, or whatever—so we don’t need more.

One presidential goal could be a deadline for completion of specific agency tasks. For example, this could be a departmental-level reconsideration of roadless areas not recommended for wilderness in completed forest plan revisions, applying corrected standards (e.g. purity, expanse of the actual roadless tracts, etc.).

3. Reinstate the flow of agency wilderness recommendations that arise from their planning, so that these are required to flow to the White House within a specific timeframe after each plan is finalized

This would raise these agency wilderness proposals to a higher level than in recent decades and give us a place to get inadequate agency proposals improved. The only recommendation would be that of the President. The executive order could set a specific deadline for each completed agency plan to be subject to this requirement.

This would reinstitute the process that the Wilderness Act mandated for each of the Forest Service primitive areas, national park system units, and wildlife refuges that were required to be studied by subsections 3(b) and 3(c) of the 1964 Act. This would be a major reform, opening a clear role for each wilderness recommendation to be that of the President, which the public could then advocate that the White House to improve if what comes up from the agency/department preparation is inadequate. In this way, agency recommendations arising from their planning (with possible presidential expansions) become part of the legislative program of the President, rather than just getting forgotten in the bowels of the agency as they are now, which leaves no responsibility for anyone to actually press for them on the Hill.

A theme of this can be to better protect presidential (and congressional) prerogatives as the sole source of Executive Branch recommendations. This point was strongly sustained by the courts in the 1970 *Parker* case, which expressly protected the option for presidents and Congress to designate additions beyond the Forest Service recommendation for each of the old primitive areas.

4. Direct the review, improvement, and modernization, and formal re-submittal of all long-pending Executive Branch wilderness recommendations, with reporting deadlines back to the White House

An executive order can direct each departmental secretary to review, improve, and re-submit all pending wilderness recommendations [...“the Secretary of the Interior shall ...”] and set deadlines for this. The improvements would be explained as “modernizing” these proposals to conform to specific standards, such as more expansive, edge-of-roads boundaries, premised on congressional practices (and thus wrapped in presidential rhetoric about the congressional “supremacy” to make these decisions and interpret the Wilderness Act).

These proposals would include –

FOREST SERVICE:

- The long-pending Nixon proposal for the Arizona portion of the Blue Range—the only remaining pre-1964 “primitive area” (including review of all contiguous roadless lands)
- All wilderness recommendations made in records-of-decision during the current cycle of forest plan revisions
- All recommendations, whenever made, for congressionally-established wilderness study areas, of which there are quite a few [e.g. Montana]

BUREAU OF LAND MANAGEMENT:

- The long-pending FLPMA wilderness study areas ... many of which the Secretary back then did not recommend for wilderness

NATIONAL WILDLIFE REFUGES

- The long-pending presidential recommendations made under the Wilderness Act study mandate
- Any refuges they improperly failed to study back then, or that were established after 1964 and not technically subject to the study mandate

NATIONAL PARK SYSTEM

- The long-pending presidential recommendations made under the Wilderness Act study mandate
- Any park system units they improperly failed to study back then, or that were established after 1964 and not technically subject to the study mandate, nor covered (as many of these were) by wilderness study requirements in their establishment legislation

5. Direct each Secretary to institute specific policy changes

By ordering each secretary to institute policy changes, setting a deadline, and specifying the key broad changes to be made, an executive order can galvanize departmental action to get those things done, and on a schedule, in a way not achievable if we seek these policy changes without such higher-level direction and deadlines. The operative word in the examples reviewed is that “the secretary shall...” do such and such.

While an executive order cannot go into much detail, common to the format that can included are sections headed:

1. Policy
2. Implementation
3. Definitions
4. General Provisions

Recent examples of executive orders show that under these sections such an order can utilize references to specific acts of Congress as a way to invoke chosen policy improvements as fulfilling particular congressional direction.

The policy-change mandates would focus on three broad topics:

A. How Wilderness is Treated in Agency Planning

The executive order can direct each secretary to assure that planning procedures are revised to require maximize fair treatment of the wilderness option for each potential wilderness area, applying correct standards (see next item).

- BUREAU OF LAND MANAGEMENT

The order can invoke sections 201 (Inventory and Identification) and section 202 (Land Use Planning) and direct that the secretary assure that wilderness is

properly considered in both functions *on a recurring basis as resource management plans are done and then revised in the future.*

This will have to be drafted in close consultation with an expert on the whole “Norton settlement” argument so as to (1) most effectively establish that BLM roadless inventorying and wilderness review is not a one-time, completed task [the Norton argument] and (2) as deftly as possible try to avoid or channel any legal counter-attack.

Such a broad policy directive, coming from the President, would strengthen the hand of the secretary to reverse the Norton policy.

▪ FOREST SERVICE

The order could reinforce the requirement (already in statutory law) that the wilderness potential of each roadless tract be evaluated in each cycle of forest plan revisions.

An important element of the executive order could, for application to both USFS and BLM, assert that preservation of wilderness is consistent with “multiple use,” as that term is defined by law. It could also freshly assert that preservation of wilderness does, in fact, directly serve a wide array of the traditional multiple uses and others not in that usual list but specified in the Wilderness Act, such as “scenic, scientific, educational and historical use.”

B. Correct Standards for Wilderness Recommendations

An executive order could invoke specific provisions of law to enumerate congressional standards concerning wilderness suitability, directing that each secretary is to promptly “correct” all existing departmental and agency policies to conform to these proper standards, thus reversing various agency adventures in inventing purer standards and rationalizations for big setbacks from nearby roads.

Among the possibilities:

PURITY AND NONCONFORMING USES

The executive order could reference and require application of the fundamental finding by Congress that:

(5) the Wilderness Act establishes that an area is qualified and suitable for designation as wilderness which (i) though man’s works may have been present in the past, has been or may be so restored by natural influences as to generally appear to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable, and (ii) may, upon designation as wilderness, contain certain preexisting, nonconforming uses, improvements, structures, or installations; and Congress has reaffirmed these established policies in the designation of additional areas since enactment of the Wilderness Act, exercising its sole authority to determine the suitability of such areas for designation as wilderness.

EDGE-OF-ROAD BOUNDARIES

The Administration can select the best statutory citation for the executive order to require policy corrections by the agencies to draw boundaries for their wilderness proposals that generally reach to the edge of existing roads and development.

There may be better examples to cite, but the statutory reference here could be something like this 1988 provision:

(2) Boundaries adjacent to paved and unpaved roads shall be drawn as narrowly as is practicable to allow for necessary maintenance and repairs of existing roads. Such boundaries should not, in general, exceed two hundred feet from the centerline of paved roads and one hundred feet from the centerline of unpaved roads: Provided, however, That larger boundaries may be drawn only as the Secretary deems necessary to exclude from the wilderness existing roads, as well as areas needed to maintain and repair existing roads: Provided further, That to the extent practicable, undeveloped areas adjacent to all roads shall be managed as if designated as wilderness.

The wording of the executive order could refer to the “wilderness character” of lands and then formally define this term (which goes undefined in the Wilderness Act, but is specified in its legislative history) in a way that precludes the “sights-and-sounds” excuse for constraining the full extent of areas to be evaluated and recommended. This wording could also invoke the implication of the following portion of the now-standard “no buffer” language in wilderness designation laws to make the same policy clear:

The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

This might be modified into a definition within the executive order along these lines:

As used in this order, ‘wilderness character’ applies to the immediate land involved, not to influences upon it or any part of it from outside areas, such as the sights or sounds of nonwilderness activities and uses, including at its boundaries.

C. Interim protection of recommended lands

The Administration can consider including a presidential requirement that, once recommended to Congress for designation as wilderness by the President, lands are to be protected from incompatible uses “until Congress determines otherwise.” This could also be applied at a lower level, to include nationwide application of the policy that the current Chief of the Forest Service put in place for Region 1 when she was regional forester, immediately barring motorized and bicycle use within areas recommended for wilderness in revised forest plans.

The order might also apply this same interim protection immediately to all congressionally-mandated wilderness study areas, including both Forest Service and BLM areas.

5. Promise Presidential Messages to Congress.

This could become the pattern by which the President would formally send packages of his/her wilderness legislative proposals (per item above) to Congress, which would give these a whole different stature as part of the legislative program of the Administration. This is one element of the larger set of opportunities for a continuing sequence of presidential activity and attention.

Appendix B

By the authority vested in me as President by the Constitution and the laws of the United States of America, to secure for the American people of present and future generations the benefits of an enduring resource of wilderness, and to assist in assuring faithful execution of the Wilderness Act, the National Forest Management Act, and other statutes relating to administration of the National Forests and Grasslands of the United States, it is hereby ordered as follows:

Section 1. Policy. It shall be the policy of the United States that:

(a) Designation of suitable portions of the National Forests and Grasslands as wilderness areas affords the highest security in preserving the wilderness character of those lands by requiring that they be, in the ideal defined in the Wilderness Act, protected as areas where the earth and its community of life are untrammelled by man.

(b) It is the prerogative of the President to recommend to Congress those portions of the National Forests and Grasslands he determines are suitable for preservation as wilderness.

(c) The potential for lands to be recommended by the President for designation as wilderness shall be fully and fairly considered in the planning procedures for the National Forests and Grasslands, and shall not be preempted by any action or decision of the officers of the Executive Branch who are entrusted with the administration of these lands.

(d) Portions of the National Forests and Grasslands inventoried as roadless areas shall be protected as such until otherwise determined by the President or by act of Congress.

Sec. 2. Implementation. To carry out the policy set forth in section 1, the Secretary of Agriculture shall:

(a) Promptly review and revise current policies, regulations, directives, manuals, and handbooks of the U.S. Forest Service to ensure that the potential of lands on the National Forests and Grasslands for designation as wilderness is fully and fairly evaluated during all planning processes undertaken by the U.S. Forest Service.

(b) Ensure that evaluation of lands for possible recommendation by the President to be designated as wilderness fully conforms to the expressed policy of the Congress that—

- (1) an area is qualified and suitable for designation as wilderness which (i) though man's works may have been present in the past, has been or may be so restored by natural influences as to generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable, and (ii) may, upon designation as wilderness, contain certain preexisting, nonconforming uses, improvements, structures, or installations [98 Stat. 253, section 101(a)(5)];
- (2) the fact that nonwilderness activities or uses can be seen or heard from areas within the wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area [94 Stat. 3225, section 105]; and
- (3) in proposing an area as wilderness, boundaries adjacent to paved and unpaved roads shall be drawn as narrowly as is practicable to allow for necessary maintenance and repairs to existing roads [102 Stat. 3967, title V(b)(2)].

(c) Ensure that those portions of the National Forests and Grasslands inventoried as roadless areas shall be protected as such until otherwise determined by the President or by act of Congress.

(d) Recognizing that the wilderness recommendations made in each revised management plan for a National Forests and Grassland that was finalized prior to the date of this order was expressly stated to be preliminary administrative recommendations and would receive further review and possible modification by the Chief of the Forest Service, the Secretary of Agriculture, and the President of the United States, review and reassess those recommendations, both for wilderness and for alternative uses of lands suitable as wilderness, and report his recommendations to the President.

Sec. 3. Definitions. As used in this order:

(a) "_____"; and

(b) "_____".

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any other person.