

November 26, 2008

Mr. David J. Hayes
President-Elect Barack Obama
Energy and Natural Resources Transition Team
Washington, DC

RE: 100-Day Priorities for Department of Agriculture Forest Service, Department of Interior Bureau of Land Management, and U.S. Fish and Wildlife Service

Dear David,

On behalf of the undersigned 98 organizations representing over 1.5 million members and citizen activists, we are writing to ask that you consider the following requests for early action for the U.S. Forest Service, Bureau of Land Management, and U.S. Fish and Wildlife Service that have jurisdiction over public lands and fish and wildlife resources. These organizations represent grassroots citizen activists who work at the local, regional and national levels on public forest issues. We greatly appreciate the opportunity to submit our recommendations to you for your team's consideration.

We strongly agree with President-elect Obama's fact sheet on "Promoting A Healthy Environment," which states that "we need a new vision for conservation that both protects our existing publicly-owned lands while dramatically expanding investments in protecting and restoring forests, grasslands, and wetlands across America for generations to come." We stand ready to work with the new President to make that vision a reality.

Often federal land and resource management agencies operate under conflicting policy mandates, with timber, mining, motorized recreation, and grazing allowed to exploit resources at both the environment's and taxpayer's expense. Increasing pressure on public lands from energy as well as urban and suburban development add to these stressors. Climate change also presents a significant challenge to protecting these natural resources. In light of these pressures, and the importance of public lands for protecting and maintaining biodiversity and functioning ecosystems, federal land management agencies should prioritize managing public lands for ecological sustainability to protect the irreplaceable benefits and ecosystem services provided by public lands, including clean drinking water and air, reservoirs for biodiversity, core refugia for wildlife and fish, flood control, carbon sequestration and storage, and appropriate recreation. Importantly, the budgets for these agencies should reflect these new priorities.

Just as you have identified the opportunity to create a Clean Energy Economy that will create green jobs, a similar opportunity exists to create an Environmental Restoration Economy that will create family-wage jobs to help restore our public lands and watersheds while helping to significantly contribute to rural economies. These rural, green jobs would be directly complementary to those in the Clean Energy Economy. In addition, forest and watershed restoration will help ensure that our natural ecosystems, both terrestrial and aquatic, are as resilient as possible to the consequences of

climate change, and provide critical linkages that allow species to disperse to new areas in response to changing temperatures and conditions.

While these proactive opportunities create both long and short-term priorities, the nation cannot implement them without first reversing the Bush administration's damaging environmental legacy. Those actions and regulations dramatically reduced existing protections for federal forests, watersheds and wildlife, public participation, and scientific integrity. The hallmark of the Bush administration has been political interference in science to pave the way for extractive uses on public lands that puts numerous species at risk, and cuts the public out of the decision-making process on federal forests at the planning, project, and accountability levels.

The list below identifies what we have determined are high-priority issues for early action that would both reverse damaging policies promulgated by the Bush administration and begin to promote the type of positive change that President-elect Obama envisions. We ask that the policy transition team begin to address these in the first 100 days of the new administration. The list also contains actions for your consideration for the second 100 days. In addition, we ask that any last minute Bush administration rule-makings be reviewed and considered for rescinding.

We greatly appreciate your consideration of our requests and look forward to working with you.

Sincerely,

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Forest Conservation Community
National Forest Priorities for the New Administration

First 100 Days – Begin to Reverse Bush's Damaging Legacy

Department of Agriculture: U.S. Forest Service

1. Forest Climate Policy: Protect large, mature, and old-growth forests and trees on federal lands; develop comprehensive climate policy for forests

- Through Executive Order or directive, prohibit logging of mature and old-growth forests and large and old trees recognizing the significant role they play in maintaining and increasing forest resiliency against natural disturbances, providing critical habitat and core refugia, regulating water quality and flows, providing crucial genetic diversity, and significantly contributing to carbon sequestration and storage.
- Develop comprehensive climate policy for federal forests that shifts management to ecological sustainability¹. This includes maintaining and restoring intact ecosystems including older forests, and natural processes as appropriate, reducing ecosystem stressors, and protecting the ecosystem services that forests provide such as clean water and air, fish and wildlife habitat, flood protection, carbon storage and sequestration, and appropriate recreation opportunities.
- Begin planning for a late 2009 science summit to develop appropriate climate policy and foster interagency cooperation.

Rationale: Only a fraction of older forests remain today compared to their historic range by forest type. Most are in the west, especially in the Pacific Northwest and Alaska, but important older forests are also found in lower levels around the nation. The urgency to protect these forests, including the mature class— which is tomorrow's old growth, is even more important given the threats of climate change to natural forest systems. While logging older forests on federal lands has abated in recent years, the practice continues on many national forests with ensuing conflicts. Many individual or regional forest plans allow cutting of older trees and stands, which may now be in jeopardy of being logged as a result of weakened regulations such as the 2008 National Forest Management Act Regulations. There are several approaches that can be used for defining older forests. Importantly, an Executive Order or directive would not preclude legitimate hazardous fuels reduction projects from moving forward.

While the science is very clear on the importance of protecting remaining older forests, comprehensive climate change policy for federal forests is needed. Policies to date have largely focused on thinning strategies and have not adequately addressed critical adaptation issues, such as reducing habitat fragmentation, identifying wildlife migration corridors, improving flood control

¹ As defined by Committee of Scientists in 1999

and hydrological functions, and reducing ecosystem stressors to terrestrial and aquatic systems including logging, road building, grazing, off-road vehicles, and mining. Public forests will also come under increasing pressure from development and as sources for energy. Federal planning for climate change has been slow; poorly coordinated among regions, agencies, and jurisdictions; and has yet to embrace the latest science on climate change adaptation strategies. Calling national attention to this overarching issue through a summit, linking climate change preparation to energy policy, and issuing new direction to agencies should be a top priority.

2. Restore Protections for America's Roadless Wild Forests

- Affirm and vigorously defend the 2001 Roadless Area Conservation Rule (36 CFR Part 294), the most popular federal regulation in U.S. history, nationwide.
- Suspend Bush administration proposals that would allow logging and road construction in violation of the rule.
- Save the wildlands of America's last great rainforest by announcing the expiration of the Bush administration's "temporary" exemption of the Tongass National Forest from the 2001 Roadless Rule.

Rationale: Using a range of tactics, the Bush administration has attempted to dismantle the roadless rule since taking office. In December 2003, Bush officials "temporarily" exempted Alaska's Tongass rainforest—our largest national forest—from roadless protections. The decision removes some 9 million acres of the Tongass from protection under the Clinton era regulation. We greatly appreciate President-elect Obama's pledge to uphold roadless area protections on 58.5 million acres. In order to accomplish this, protections must be reinstated to the Tongass National Forest.

3. Reinstate Strong Ecosystem Protections - Forest Planning Regulations

a. National Policy:

- Publish a proposed rule to rescind the 2008 NFMA regulations and the categorical exclusion (CE) for forest plans, and reinstate the 1982 NFMA regulations (as amended in 1983) for forest plan revisions, forest plan amendments, and site-specific projects.
- Issue a moratorium on the use of the Bush administration's 2008 National Forest Management Act (NFMA) regulations (36 CFR Part 219) and indicate that until the proposed rule is finalized, national forests may proceed with forest plan revisions, forest plan amendments, and site-specific projects pursuant to the 1982 NFMA regulations (as amended in 1983).

Rationale: The 2008 Bush administration's forest planning rule epitomizes their aggressive campaign to limit public involvement and scrutiny, scientific accountability, and fresh thinking required by the National Environmental Policy Act (NEPA) for management decisions on public lands. Claiming that long-term forest management plans do not have significant environmental impacts, the 2008 regulations, found illegal by the court, allow forest plan amendments and revisions to be categorically excluded under NEPA. Categorical exclusions (CEs), used properly, allow agencies to dispense with NEPA review for classes of actions known not to have significant environmental impacts. These regulations also eliminated the requirement for agencies to maintain

viable populations of species. Reverting to the 1982 regulations would provide strong standards and accountability.

b. Regional Policy:

- Reinstate protections for mature and old-growth habitat and associated species.

(i) Northwest Forest Plan (24.5 million acres)

- Suspend implementation of all changes to the Northwest Forest Plan that occurred under the Bush administration.
- Issue a revised Environmental Impact Statement and Record of Decision for Survey and Manage provisions of the Northwest Forest Plan that also addresses annual species reviews.

(ii) Sierra Nevada 2004 Framework (10.9 million acres)

- Through forest plan amendments, incorporate the best available science for mature and old-growth forests and dependent species (e.g. Pacific fisher, American marten, and California spotted owl) into the Sierra Nevada Framework, as well as correct NEPA shortcomings of the 2004 Framework, including those identified by the U.S. Court of Appeals for the Ninth Circuit.

Rationale: The regional plans for California and the Pacific Northwest have both been targets for weakening protections for mature and old-growth forests and the wildlife and fish species that depend on them in order to facilitate logging of these forests. The result has been increased public controversy, damage to habitat, and siphoning limited agency resources away from legitimate restoration efforts. We urge the administration to reinstate appropriate protections as recommended.

4. Stop Projects that Damage the Environment, Exempt Environmental Analysis, and Block or Diminish Public Participation (Forest Service and Bureau of Land Management (BLM))

- Issue a temporary moratorium on the use of Bush administration and selected other categorical exclusions (CE) by both the Forest Service and the BLM (Appendix attached) until this review has been completed and specific CEs have been repealed through a rule-making process. In the interim, projects can move forward with an EA or EIS.
- Issue a new rule to repeal the June 2003 Forest Service Hazardous Fuels CE (36 CFR 220.6(e)(10)) that permits up to 4,500 acres of prescribed burning or up to 1,000 acres of mechanical treatments as well as the June 2003 BLM's Hazardous Fuels CE. The Ninth Circuit Court of Appeals has ruled that both CEs are illegal (*Sierra Club and Sierra Nevada Forest Protection Campaign v. Bosworth et. al.*, 510 F.3d 1016 (9th Cir. 2007)).
- Begin a rule-making process to reinstate the Forest Service's former NEPA procedures.
- Recognize that permitting and/or authorizing access and surface occupancy for the exercise of private mineral rights in the Allegheny National Forest is a federal action and must be analyzed to determine potential environmental consequences pursuant to NEPA.

Rationale: As part of their rationale for revising the NFMA forest planning rules, the Bush administration claimed that NEPA analysis would be conducted at the project level. But in a classic “bait and switch” move, the Bush administration issued a suite of CEs for numerous project level categories of management, also claiming that these actions would not have a significant impact on the environment. Issuing a moratorium while a review is conducted to determine which categories of actions should be repealed or revised is a reasonable way to proceed. The Hazardous Fuels CE noted above and ruled illegal by the courts should be immediately repealed.

Approximately 93% of the mineral rights underlying the Allegheny National Forest are privately owned. As a result, the Allegheny has the dubious honor of having approximately 12,000 oil and gas wells and over 2,000 miles of oil and gas roads. The Allegheny National Forest claims that NEPA does not apply to its approval of development plans submitted by oil and gas operators for new drilling and road construction. As a result, the Forest Service does not prepare an Environmental Assessment to determine potential environmental consequences of proposed drilling, and the public is not afforded the opportunity to comment. Requiring NEPA analysis for proposed oil and gas drilling projects in the Allegheny will not deny mineral owners access to their property - it will just ensure that sound environmental decisions are made as to how that access occurs and that the public has an opportunity to comment.

U.S. Forest Service Budget FY 2010

1. Fire Spending

- Create a reliable emergency fund for wildfire suppression activities that is separate from the Forest Service discretionary fund to address increasing costs to fight large-scale fires that routinely exceed the annually appropriated base line budget.

Rationale: The US Forest Service has spent over \$1 billion per year in five of the last seven years on fire suppression. These activities now account for almost half of the Forest Service budget. To cover costs, the Forest Service routinely raids other critical Forest Service programs—many of which are already severely underfunded including ironically, programs to help local governments fight and prevent fires. As a result, the Forest Service is unable to adequately protect and restore forests, fish and wildlife habitat, clean water, and provide appropriate recreation opportunities. There are other important reforms needed to the fire program, but the most critical is to immediately provide for reliable emergency fire suppression funds.

2. Increased Funding for Watershed Restoration

- Fund the Legacy Roads and Trails Remediation Initiative created in the FY 2008 Interior, Environmental, and Related Agencies Division of Fiscal Consolidation Appropriations bill (\$125 million). These funds are for watersheds in urgent need of repair by road decommissioning, road and trail repair and maintenance, and removal of fish passage barriers that pose an active threat to clean water, threatened and endangered fish and wildlife, and the safety of recreational users of forest roads.
- Increase funding for restoration activities, especially fish and wildlife habitat restoration, in order to restore watershed integrity and increase adaptability and resilience to mitigate the impacts of climate change and create local jobs.

Rationale: Chronic underfunding for protecting and restoring irreplaceable environmental services including clean water, biodiversity, wildlife habitat, erosion and flood control, nutrient cycling, and soil formation, has severely impeded the abilities of the Forest Service to effectively carry out their mission. Adequate funding for these activities is especially critical to undertake wildlife adaptation strategies in the face of climate change. Road decommissioning and other remediation activities will significantly improve water quality and fish habitat, reduce fragmentation of wildlife habitat, and aid in restoring stability and resilience to watersheds and large tracts of forests. There is at least \$220 million in other programs that can be reallocated to fund restoration activities. These programs include Timber Roads, Forest Products and the KV Fund.

Department of Interior: U.S. Fish and Wildlife Service (USFWS), Bureau of Land Management (BLM)

1. End Rule-Making to Revise Endangered Species Act (ESA)

- Pull the Department of Interior’s proposal to revise ESA Section 7 Rule.

Rationale: Interior Secretary Dirk Kempthorne’s proposed regulations would eliminate one of the ESA’s most fundamental provisions; the requirement for independent scientific review of any project that could harm an endangered species living on federal land. Under current rules, federal agencies are required to submit their plans to either the USFWS or the National Marine Fisheries Service, giving scientists at those agencies the right to say no to any project or, as is most often the case, to require modifications if the project threatens an endangered species. This proposal would effectively remove these agencies, whose job is to oversee the ESA, from the process.

2. Reinstate Protections for Mature and Old-Growth Habitat and Water and Salmon Under the Northwest Forest Plan (NWFP)

- Issue a supplemental Final Environment Impact Statement and Record of Decision, rescinding the BLM’s Western Oregon Plan Revision (WOPR) and reaffirming implementation of the Northwest Forest Plan to ensure compliance with the ESA, the Clean Water Act, and other applicable federal laws.
- Stop implementation of the Final Northern Spotted Owl Critical Habitat designation and related final Northern Spotted Owl Recovery Plan and revise them in response to the scientific peer review ignored by the USFWS, particularly direct USFWS to use the NWFP late-successional reserves as a habitat baseline for owl recovery as recommended by peer review. During this process, continue to implement the NWFP and Northern Spotted Owl Recovery Action 32 to maintain all older and structurally complex conifer forests on federal lands in the range of the northern spotted owl as well as barred owl science efforts.
- Use the best available science for the marbled murrelet in the status review and delisting process.

Rationale: Beginning in late 2001, the timber industry mounted an aggressive campaign to increase the amount of timber cut from Northwest federal forests by weakening protections for salmon, clean

water, and old-growth forest ecosystems under the Northwest Forest Plan. The Bush administration agreed to the timber industry's 5-point plan to unravel environmental safeguards, including eliminating critical habitat in the matrix lands where logging may occur to "significantly expedite timber sales throughout the region." The Administration also agreed to amend the NWFP to make timber production the dominant use of BLM O&C lands, and to eliminate most old-growth and riparian reserves on such lands. The Northern Spotted Owl Recovery Plan, which failed independent scientific peer review, provides up to 56% less habitat in Managed Owl Conservation Areas compared to the Northwest Forest Plan's Late-Successional Reserves (LSRs) because many of the LSRs were excluded from recovery goals and are therefore vulnerable to logging. The BLM WOPR would increase logging of old growth by 436%, build over 1000 miles of roads, and release 180 million tons more carbon to the atmosphere compared to no logging. ***This is equivalent to the greenhouse gas emissions from 1 million cars driven for 132 years.***

3. Protect Grand Canyon from Uranium Mining from BLM and Forest Service Proposals

- Direct the Secretary of Interior to comply with the U.S. House of Representatives Committee on Natural Resources' Emergency Resolution compelling the Secretary of the Interior (pursuant to Section 204(e) of FLPMA, 43 U.S.C. § 1714(e) and 43 C.F.R. § 2310.5) to immediately withdraw the approximately 1 million acres of federal land near Grand Canyon National Park in order to protect these lands from uranium mining. The emergency withdrawal is temporary, and can last no more than 3 years.
- Reverse Department of Interior's proposed elimination of its regulation, which required the agency to comply with emergency withdrawal resolutions, (43 CFR Part 2300, with a proposed rule issued at 73 Fed. Reg. 60212, Oct. 10, 2008).

Rationale: The government must consider the danger of uranium leaching into the Colorado River, which could poison a source of drinking water for Phoenix, Las Vegas, and Los Angeles. In June, the House Natural Resources Committee issued a withdrawal order, which is allowed under the Federal Land Policy and Management Act (FLPMA) for about 1 million acres near the Grand Canyon, including land where claims had been filed. Now the Department of Interior has proposed scrapping its own rule that puts withdrawal orders from the congressional committees into practice. Arizona Governor Janet Napolitano in March urged Secretary Kempthorne to halt new claims and order a study of uranium mining near the canyon.

4. Bring Back Law at the Border

- Immediately reinstate laws, evaluate alternatives to mitigate damage from completed and ongoing construction of the border wall along our border with Mexico, and halt construction pending a comprehensive review of impacts.

Rationale: Secretary of Homeland Security, Michael Chertoff, has waived all environmental laws for construction of walls and roads for 550 miles of the southern border, including wilderness areas, national wildlife refuges, national forests, and national monuments. Construction of roads and barriers along lands managed by the National Park Service and BLM are being built without any environmental laws; damage to resources has already occurred.

5. Strengthen Protections on Bureau of Land Management (BLM) Lands

- Through Executive Order or directive, prohibit logging of mature and old-growth forests and large and old trees on BLM lands recognizing the significant role they play in maintaining and increasing forest resiliency against natural disturbances, providing critical habitat and core refugia, regulating water quality and flows, providing crucial genetic diversity, and significantly contributing to carbon sequestration and storage.
- Develop comprehensive climate policy for BLM land that shifts management to ecological sustainability². This includes maintaining and restoring intact ecosystems, including older forests, and natural processes as appropriate, reducing ecosystem stressors (e.g. logging, grazing, road building, off-road vehicles and mining), and protecting the ecosystem services that these lands provide such as clean water and air, fish and wildlife habitat, flood protection, carbon storage and sequestration, and appropriate recreation opportunities.
- Through Executive Order or rule-making, strengthen the Federal Land Policy and Management Act (FLPMA) by adding strong wildlife protection standards consistent with the 1982 NFMA viability regulations.

Rationale: The BLM has jurisdiction over 258 million acres of forests, grasslands, sagebrush steppe, deserts, and wetlands. The BLM also manages 700 million acres of federal subsurface mineral estate³ of which most of the acreage is located in the National Forest System, National Wildlife Refuge System, and National Park System. The BLM manages its lands primarily for resource extraction. The Bureau's guiding statute, FLPMA, has less protection for wildlife than other federal land management agencies. The mismanagement of these lands has earned the Bureau nicknames such as "The Bureau of Livestock and Mining." The BLM's proposal to increase logging of old-growth forests by over 400% in the Western Oregon Plan Revision is just one example of the Bureau's mismanagement of its land holdings. In addition, BLM lands will be increasingly under pressure from energy development as well as providing sites for alternative forms of energy. As such, basic protection standards for wildlife in these ecosystems need to be established for the BLM.

Additional Action Items to Begin During the Second 100 Days

1. Protect Public Lands from Off-Road Vehicle (ORV) Damage

Issue a directive to ensure the Travel Planning Process (36 CFR 212):

- Prohibits designation of motorized routes in roadless or wilderness study areas during any travel planning processes.
- Determines the minimum road system needed for each national forest by completing part A of travel planning, which requires that national forests assess their entire road system and identify which roads should be decommissioned and which roads should be retained. In order to meet the projected goals in the agency's 2001 long-term transportation policy and as implementation of part A, ensure that all forests reduce their road systems by at least 25-

² As defined by Committee of Scientists in 1999

³ Public Land Statistics (2006): 1.

50%.

- Expands enforcement, monitoring, and maintenance capacity of the agency to effectively implement new travel plans.

Rationale: Irresponsible motorized off-road vehicle travel on national forests poses some of the greatest threats to these lands harming streams, disturbing wildlife, and damaging cultural sites – especially roadless areas. Recognizing the threat, the 2001 long-term transportation policy envisions the eventual removal of between 140,000-186,000 miles of roads once the minimum road system has been identified for each national forest. In addition, the 2005 travel planning rule mandates an end to almost all cross-country travel by off-road vehicles and requires that all national forests identify which routes are open to motorized use. Prohibiting the designation of ORV routes in roadless areas through a travel management plan directive would add important protection that is not addressed in the current roadless policy. In addition, while the travel planning process is underway, very few national forests have analyzed their road system, which is required under part A, nor are most addressing snowmobile use, as required under part C. Identifying the minimum road system needed would enable each national forest to comprehensively plan travel needs, and to restore watershed health and integrity by more effectively implementing the Legacy Roads and Trails Remediation Initiative. Decommissioning roads also creates skilled, high-wage jobs in rural communities, reduces habitat fragmentation, and helps to build resiliency into the ecosystem.

2. Repeal Regulations that Exclude the Public from Participating in National Forest Management Decisions

Direct the Forest Service to:

- Begin a new rule-making process to repeal the 2003 NCA regulations and develop new regulations that ensure public participation and fully implement the Appeals Reform Act (ARA) (322, Pub. L. No. 102-381, 106 Stat. 1419 (1992)).
- Issue a temporary moratorium on: (i) the ability of the Forest Service to use a narrow consideration of the potential loss of "economic value" to declare an "emergency situation" as allowed in the 2003 Bush administration Notice, Comment, and Appeal Procedures for the National Forest System Projects and Activities (NCA regulations), 36 CFR § 215.2; and (ii) the authority in NCA regulations, 36 CFR § 215.10, for the Forest Service Chief to delegate the authority to determine "emergency situations."
- Promptly post on the internet: (i) (a) a copy of the legal notice of the decision; b) indication of the date the notice was published; and c) directions to determine when the comments or appeals are due; (ii) indicate in the notice of decision or request for comments that this information will be posted on the Forest Service's web site; and (iii) if a timely appeal is received and an investigation reveals either (i) or (ii) was not complied with, the decision must be withdrawn and proper notice given.

Rationale: The Bush administration's 2003 Notice, Comment and Appeal regulations (NCA regulations, 36 CFR Part 215) to implement the ARA undermine effective public participation and allow the Forest Service to exclude the public from participating in management decisions of

national forests. For example by: 1) prohibiting citizens from appealing CEs; and 2) making it extremely difficult for citizens to comment and appeal because the only way a citizen can determine when comments and appeals are due is to obtain a copy of the legal notice published in a local newspaper. These regulations also added the ability for an "emergency situation" determination to be based in whole or in part on "economic value." The proposed moratorium would allow only the Forest Service Chief to determine if an emergency situation exists and reinstate the former practice of only considering "hazards threatening human health and safety or natural resources on those National Forest System or adjacent lands."

Courts have ruled that various provisions of these regulations violate the ARA. On October 8, 2008, the Supreme Court heard the case *Summers v Earth Island Institute*, No. 07-463. The Supreme Court is considering procedural aspects (standing, ripeness, and appropriateness of a nationwide injunction) of a Ninth Circuit ruling that held that parts of the regulations violate the ARA. As the court is addressing procedural issues, the ruling will not negate the need for new regulations.

3. Forest Climate Policy: Require that Climate Change be Considered in National Forest and BLM Management Plans

- Require that national forest management plans assess the impacts of climate change on wildlife and forest ecosystems and incorporate science-based strategies to restore natural processes, help wildlife and fish adapt, increase forest resiliency, protect biodiversity, and provide flood control, carbon storage and sequestration functions, and appropriate recreation.

Rationale: Anticipating the impacts and developing appropriate strategies to address climate change should be incorporated into forest plans. Policies to date have largely focused on thinning strategies to reduce hazardous fuels, but have not adequately addressed critical adaptation issues, such as reducing habitat fragmentation, identifying wildlife migration corridors, improving flood control and hydrological functions, and removing stressors to forests, aquatic, and riparian zones.

4. Reverse Weakening of Hardrock Mining Regulations and Policy

- Reinstate BLM's hardrock mining regulations (43 CFR Subpart 3809) that were significantly weakened by the Bush administration in 2001 (*See* 66 Fed. Reg. 54834, Oct. 30, 2001) by issuing a Solicitor/Secretarial legal opinion as the basis for a new regulation.
- Reinstate Interior Solicitor and Secretarial Decisions regarding the proper interpretation of the 1872 Mining Law that were overturned by the Bush administration in October 2003 (*See* 68 Fed. Reg. 61046, Oct. 24, 2003) by issuing Solicitor/Secretarial legal opinions as the basis for new regulations.
- Suspend the BLM's proposed rule (72 Fed. Reg. 8139, Feb. 23, 2007) that would circumvent the federal court order in *Mineral Policy Center v. Norton* (292 F.Supp.2d 30, D.D.C. 2003) requiring the BLM to obtain "fair market value" for mining operations conducted on public lands for which the validity of mining claims had not been verified.

Rationale: In the West, more than 40% of all headwater streams are impacted, in one fashion or another, by abandoned mine runoff. Sadly, mining is still conducted on public lands today and

governed by the archaic 1872 Mining Act, which gives the mining industry priority status among public land users, requires mining interests to pay nothing in royalties on the commodities they pull from the ground. The Act does not do enough to require mining companies to clean up their messes, which are poisoning streams, driving big game away, and impacting downstream water users. In October 2001, the Bush administration substantially weakened the BLM's ability to prevent significant environmental harm from mining operations. In a series of Solicitor and Secretarial decisions, Secretary Babbitt and Solicitor John Leshy, under the Clinton administration, had corrected long-standing BLM misinterpretations of the Mining Law, most notably regarding the limitations on the use of "millsite" claims (*See* M-36988, Nov. 7, 1997). On October 7, 2003, Interior Secretary Norton rescinded the Babbitt Memorandum, reinterpreting the Mining Law to allow the claiming of essentially unlimited lands for waste dumps and processing facilities as millsites (*See* 68 Fed. Reg. 61046, Oct. 24, 2003).

Additionally, the Interior Department interpreted other provisions of the Mining Law to strengthen the "rights" of mining claimants at the expense of public resources. On November 14, 2005 (M-37011), Secretary Norton rescinded the January 18, 2001 Decision that had recognized the BLM's responsibilities to inquire into the validity of mining claims prior to the approval of mining operations ("Ancillary Use Opinion", M-37004, Jan. 18, 2001). Secretary Norton issued her own decision stating that BLM and the Forest Service were not to inquire into claim validity when reviewing mining proposals on non-withdrawn lands across the West (M-37012, Nov. 14, 2005). Lastly, BLM has issued a proposed rule (72 Fed. Reg. 8139, Feb. 23, 2007), which attempts to circumvent the federal court order in *Mineral Policy Center v. Norton* (292 F.Supp.2d 30, D.D.C. 2003), which had required BLM to obtain "fair market value" for mining operations conducted on public lands for which the validity of mining claims had not been verified. The final rule has yet to be promulgated.

5. Certification of National Forests

- Do not pursue certification of National Forest System lands or any portion of the system.

Rationale: Forest certification is ill-suited to our nation's federal forest lands. National forests (and similar lands managed by the BLM) belong to all Americans and are held in trust by the federal government for the benefit of the public. These lands should be managed first to provide for those values and resources not adequately secured in the private market place and on the rest of the forest landscape. Clean and plentiful drinking water, habitat for wildlife and fish, and a haven for world-class recreation opportunities should take precedence over commodity extraction opportunities. Because of the scale of development these lands have experienced, with more than half already open to extractive industries, it is essential that conservation of their residual natural values be considered first priority. Forest certification, however, reverses this priority, limiting conservation values to what is commercially viable. Certification is a system that promotes conservation on private and state lands, which are already primarily dedicated to logging and whose managers have chosen to participate in certification. Applying certification to federal forests would undermine conservation efforts on those public forests where no such commercial imperative exists, to the detriment of efforts to give greater preference to biological diversity, ecological restoration, and appropriate recreation.

6. Wilderness

- Rescind the directives by the Eastern and Southern Regional Foresters on how to conduct forest plan Wilderness Evaluations and require that all Wilderness Evaluations done under these directives be redone.
- Rescind the USFWS recently approved Wilderness Stewardship Policy and provide an opportunity for public comment on the proposed changes.

Rationale: The Southern and Eastern Regional Foresters issued guidance on how to conduct evaluations of roadless lands to determine which areas would be recommended for Wilderness in the forest planning process. The guidance letters added several requirements that violate the Wilderness Act and resulted in most areas being designated as not eligible for Wilderness. These areas clearly meet the minimum requirements of the Wilderness Act. As a result most areas in the Eastern U.S. were not considered in the Wilderness Recommendations and some are being managed for other purposes such as logging. These areas need to be reconsidered with guidance that complies with the Wilderness Act.

The Bush administration, on November 17, 2008, hastily released a flawed Wilderness Stewardship Policy for the National Wildlife Refuge System (73 Fed. Reg. 67876, November 17, 2008). It affects more than 20 million acres of existing Wilderness on national wildlife refuges, as well as tens of million of acres of potential Wilderness. The new policy was issued without an opportunity for public comment. Major shortcomings of the new policy include: 1) it fails to protect the physical, psychological, and intrinsic qualities of Wilderness, while allowing degradation of each area's wilderness character; 2) it fails to take into account the issue of climate change in planning for and managing Wilderness; and 3) it exempts all refuge lands in Alaska from requirements for future Wilderness reviews.

APPENDIX

Categorical Exclusions Issued Under the Bush Administration:

1. Post-Fire Rehabilitation Activities CE - Approved by the Forest Service (36 CFR 220.6(e)(11)) and BLM in June 2003, it permits post-fire rehabilitation activities on up to 4,200 acres.
2. Live Tree Harvest CE - Approved by the Forest Service in July 2004 (36 CFR 220.6(e)(12)), it permits up to 70 acres of logging and incidental live tree removal for landings, skid trails, roads, and up to one-half mile of temporary road construction and no clearcutting.

Status: This CE is being challenged in the Ninth Circuit Court of Appeals as part of the Camp Salvage Project litigation against the Lolo National Forest (The Ecology Center, Inc. and Alliance for the Wild Rockies v. U.S. Forest Service). The argument is scheduled for November 2008.

3. Salvage Logging CE - Approved by the Forest Service in July 2004 (36 CFR 220.6(e)(13)) and by the BLM in August 2007, it permits up to 250 acres of post-fire logging of dead or dying trees and incidental live tree removal for landings, skid trails, roads, and construction of up to one-half mile of temporary road.

Status: This CE is being challenged in the Ninth Circuit Court of Appeals as part of the Camp Salvage Project litigation against the Lolo National Forest (The Ecology Center, Inc. and Alliance for the Wild Rockies v. U.S. Forest Service). The argument is scheduled for November 2008.

4. Sanitation Harvest CE - Approved by the Forest Service in July 2004 (36 CFR 220.6(e)(14)), it permits up to 250 acres of commercial and non-commercial sanitation logging to control insects and disease and incidental live tree removal for landings, skid trails, roads, and construction of up to one-half mile of temporary road.

Status: This CE is being challenged in the Ninth Circuit Court of Appeals as part of the Camp Salvage Project litigation against the Lolo National Forest (The Ecology Center, Inc. and Alliance for the Wild Rockies v. U.S. Forest Service). Oral arguments are scheduled for November 2008.

5. Timber Stand and Wildlife Habitat Improvement Activities CE - Approved by the Forest Service in 1992 (36 CFR 220.6 (e)(6)), it allows timber stand and/or wildlife habitat improvement activities (including girdling trees, thinning, brush control, prescribed burning), which do not include the use of herbicides or do not require more than one mile of low standard road construction.

Status: WildLaw has petitioned the Secretary of Agriculture under the Administrative Procedures Act to amend this CE and issue guidance on how this CE should be used. The petition is still pending.

6. Oil and Gas CEs – Two CEs were approved by the Forest Service in December 2005 (36 CFR 220.6(e)(8) and 220.6(e)(17)) and BLM in August 2007, that allows oil and gas exploration in areas under federal leases. One allows short-term (1 year or less) mineral, energy, or geophysical investigations and activities that require cross-country travel (vehicles or equipment), construction of less than 1 mile of low standard road, or use and minor repair of existing roads. And another allows oil and natural gas exploration and initial development activities with specific requirements for roads, pipeline disturbance and drill sites.
7. Seismic Technology CE - Approved by the BLM in 2006, it allows seismic technology to search for oil, gas, or geothermal resources.

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