



MOFFAT COUNTY

July 12, 2001

Honorable Gale Norton
Office of the Secretary
Department of the Interior
1849 C Street N.W.
Washington D.C. 20240

Dear Madam Secretary,

On behalf of the County Commissioners of Moffat County, Colorado we request that you do not publish the proposed notice of intent from the Bureau of Land Management (BLM) to prepare an Environmental Impact Statement (EIS) to amend the Little Snake Resource Management Plan in Northwest Colorado. Moffat County understands that the BLM plans to amend the Little Snake Resource Management Plan to classify the Vermillion Basin of Moffat County, Colorado as having wilderness character (virtually identical to a wilderness study area) and to manage it to protect its "wilderness character" (again similar to if not identical to BLM's nonimpairment policy). This proposal is controversial and circumvents the national issues of R.S. 2477-rights-of-way, the national energy policy, county economic benefits from energy revenues, lack of local support, and does not address the BLM's lack of authority to manage these public lands for wilderness criteria when they were not found to qualify for wilderness consideration during BLM's extensive wilderness study process that ended on October 21, 1991.

Lack of BLM Authority to Proceed with Amending its Resource Management Plan for the Management of Vermillion Basin for Wilderness Character:

Section 603 of the Federal Land Policy and Management Act (FLPMA) gave the Department of the Interior (DOI) 15 years to inventory and study the public lands, and to make final recommendations for wilderness designation to Congress. The binding deadline for completing the wilderness inventory and final recommendations to the Congress was October 21, 1991. Congress chose not to give the BLM unlimited or repeating authority to study public lands for wilderness.

Section 603 is the sole source of authority for BLM to study and make wilderness recommendations for public lands. Now, however, BLM claims it can study and manage public lands for wilderness under its general land use planning authority in Section 202 of FLPMA. However, the general land use planning authority and implementing regulations do not mention wilderness or authorize wilderness study or management. Only Section 603 of FLPMA authorizes BLM to identify public lands for wilderness prior to October 21, 1991. Therefore, the expiration of authority in Section 603 makes the process adopted by former Interior Secretary Babbitt to re-inventory and amend a BLM land management plan to establish new wilderness study areas or some renamed wilderness management area based on the re-inventory of Vermillion Basin in Moffat County Colorado, or any

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other area, illegal. Moffat County urges DOI to stop the implementation of this controversial and unlawful process.

BLM's proposal for the Vermillion Basin is part of a national policy adopted by Secretary Babbitt to reopen the long-final wilderness recommendations. This policy was developed largely out of the public eye. For instance, the Colorado wilderness reinventory arose out of a secret memorandum of understanding between Colorado's BLM Director and the Colorado Environmental Coalition (CEC) to not issue mineral leases in areas identified by CEC as having wilderness character. Even though the case brought by Marathon Oil Company challenging this policy was dismissed on jurisdictional grounds, the litigation between DOI and Marathon Oil Company produced extensive documentation of these secret decisions that closed almost one million acres of public land in Colorado to mineral leasing. By the BLM not allowing lease development in the Vermillion Basin, untold losses to Moffat County's economy exist due to lost potential revenue.

In the final two weeks of the Babbitt Administration, the BLM Director adopted a revised Wilderness Inventory Handbook, which had not been amended since 1980, and directed all State BLM Directors to consider establishing new wilderness study areas as part of all land use planning revisions. The Vermillion Basin plan amendment is pursuant to this direction. It is important to appreciate that neither the change in the handbook nor the formal adoption of this policy had any public notice or comment, even though it reverses BLM direction that was adopted with extensive public involvement.

R.S. 2477 Issues:

For an area to qualify as wilderness, it must contain greater than 5,000 acres of roadless areas, and be untrammelled by man, or have opportunities for solitude or primitive and unconfined type of recreation, and be primarily influenced by the forces of nature. What defines a road has been the source of much debate. Nationally, BLM adopted a relatively narrow definition of a road, which excludes many two-tracks on the basis that they have not been maintained by mechanical equipment. Under Colorado law, many of these roads and trails are public rights of way. *Health v. Parker*, 2000 WL 1732345 (Colo. App. 2000); (a public highway includes roads created by the passage of wagons, etc., and may include a footpath) *see also Brown v. Jolley*, 387 P.2d 278 (1963), *Simon v. Pettit*, 687 P.2d 1299 (Colo. 1984), *Central Pacific Ry. v. Alameda County*, 284 U.S. 463 (1932). Moffat County, Colorado has explicitly claimed all R.S. 2477 rights of way within the boundaries of Vermillion Basin and other areas of the County (Moffat County Resolution no. 2000-34). Despite these existing R.S. 2477 rights of way the BLM has refused to recognize them and address BLM road definition inconsistencies with Moffat County's R.S. 2477 claim. These inconsistencies must be addressed prior to amending the Vermillion RMP.

BLM's limited definition of a road was and is controversial because it circumvents R.S. 2477 public rights-of-way, which were expressly recognized in FLPMA (43 U.S.C. §1701 n.701(a) & (h)). Whether existing R.S. 2477 rights are defined as a road or not, they exhibit the presence of man and reduce solitude and naturalness opportunities to levels that disqualify many areas from wilderness.

More than 20 years ago, the BLM concluded after an exhaustive wilderness inventory that the lands in the Vermillion Basin did not have wilderness character. The decision that Vermillion Basin lacked wilderness character was based on the number of man-made structures and roads due to recreation

and agricultural activity that relies upon R.S. 2477 rights-of-way. As use of these rights-of-way have changed with evolving management practices; areas that were not considered for wilderness in the 1980's are now being re-considered. The possibility of managing this land to maintain wilderness character may in itself cause land degradation. Land users who have managed and recreated in Vermillion Basin, and similar areas of the west, are responsible for the current high quality status of the land. Yet, with the threat of managing the land for wilderness character, these same land managers and recreation groups have discussed reinstating 20 year old land use practices to prevent the land they use from being withdrawn from multiple use status. For example, in the last year, a private landowner has exercised rights under R.S. 2477 to bulldoze a two-track road between Willow Creek and Skull Creek Wilderness Study Areas in Moffat County, Colorado. The threat of removing multiple use management in exchange for managing for wilderness character can leave people feeling punished for caring for the land, thus encouraging rehabilitation of low priority roads. Demonstrations, such as the one cited above, will become more common to remove all possibilities of establishing wilderness in areas where good land management is mistaken for land "untrammelled by man."

In many areas across the west, the BLM has attempted to reclassify R.S. 2477 rights. Under the Babbitt R.S. 2477 policy and moratorium, the BLM has refused to entertain claims or evidence of R.S. 2477 public roads, preventing Moffat County and other counties from making the clear case that much of the public land under consideration for wilderness is not roadless.

Therefore, Moffat County requests no further action to adopt wilderness management should be undertaken in Vermillion Basin, until BLM has entertained Moffat County's and other county's claims to recognize R.S. 2477 rights-of-way.

Energy/County Economy Issues:

Federal land management policy directly affects the County. More than half of Moffat County is owned and managed by federal agencies, including the National Park Service which manages the Dinosaur National Monument and the BLM which controls 1.4 million acres of land in the county. Moffat County is a direct beneficiary of all mineral lease development, because it receives 25% of the gross revenues from federal leases. The year 2000 Top Ten Taxpayers of Moffat County, Colorado are comprised entirely of mineral and energy companies. In 2000, \$20,214,930 in revenue was received and, as in all years, the taxes from the Top Ten Taxpayers are 69% of the annual County tax revenue. Several of the Top Ten Taxpayers directly depend on federal lands in Moffat County to generate their revenue. Reducing opportunity for these companies to conduct business on federal lands proportionally reduces County revenue.

The link between public lands and the Top Ten Taxpayers impacts the local economy in several ways. For example, the County school system receives 55.80% of the annual County tax revenue. Thus, the education and activities in our local school system depend on revenues from federal lands, used primarily for mineral development. While mineral development is often criticized as being temporary, experience on the western slope of Colorado has shown this type of development will provide dependable economic benefits that allow the rural counties and small communities to diversify their economies. Managing Vermillion Basin and other areas not identified prior to October 21, 1991, for wilderness characteristics interferes with energy development and is in direct conflict with the Moffat County Land Use Plan.

The lands in Moffat County have high natural gas potential. If Vermillion Basin is managed for wilderness character, it will be difficult, if not impossible, to develop these resources. The recent Marathon Oil Company litigation produced documentation of BLM's policy of not issuing any mineral leases in these areas, despite the current Resource Management Plan identifying these lands as open for leasing. This "mineral leasing abeyance policy" is found in a 1995 revision of the management policy for wilderness study areas (called the Implementation Management Plan or "IMP"). The mineral leasing abeyance policy is really a *de facto* withdrawal, which closed almost a million acres of public land to energy development in Colorado over the last eight years. Even if this policy were no longer in effect, the nonimpairment policy has required a stipulation in the lease that informs the lessees that they may never be able to develop the lease. These two factors alone have prevented energy development.

Therefore, Moffat County requests no further action to adopt wilderness management be undertaken in Vermillion Basin until BLM has identified the potential economic impact to the County's economic base where management has been proposed as well as the impacts on national energy policy.

Pending issue of Jack Morrow Hills:

The Secretary's office currently has been asked to reconsider the BLM's wilderness study initiative in the Jack Morrow Hills area in the Red Desert of Wyoming with respect to the merit of the case and national direction issued by Secretary Babbitt in the last week of the Clinton Administration. Moffat County's northern boundary is adjacent to the Jack Morrow Hills area and is considered to be in its "sphere of influence." Thus, the proposed amendment to the Little Snake RMP and the Jack Morrow Hills involve very similar land management issues and identical legal and policy issues. In light of the pending petition and the implications for national energy policy, Moffat County requests the BLM delay any amendment process until these overriding policy issues are addressed.

Lack of Local Support:

In addition to the above-mentioned issues, there is relatively little public support for Vermillion Basin being managed for wilderness character. As part of Moffat County's year-long land use planning effort, Moffat County conducted nine (9) public hearings and tours and one survey in the County within the last year to specifically address wilderness issues and management options for special areas of public land. Vermillion Basin is used for Off-Highway-Vehicle recreation and agricultural practices and these uses depend on motorized transportation. In addition, the Vermillion Basin has been the site of extensive oil and gas exploration. Old seismograph roads and drill pads have been converted to recreation and agricultural uses. Due to the public's desire to maintain multiple use practices, there is very little public support for managing Vermillion Basin for wilderness criteria, but tremendous support for continuing existing multiple use management. Throughout the public process conducted by Moffat County, there was a consistent feeling among the citizens that areas that are now found to meet wilderness criteria, when they did not 20 years ago, misinterprets good land management for areas untouched by man.

Conclusion:

Moffat County requests the DOI Secretary's office not publish the proposed notice of intent from the Bureau of Land Management to prepare an Environmental Impact Statement to amend the Little Snake Resource Management Plan for the Vermillion Basin in Northwest Colorado. The following issues recap this request:

- 1) BLM has no legal authority to amend its RMP based on re-inventory of Vermillion Basin for wilderness character
- 2) BLM refuses to address Moffat County's claim to R.S. 2477 rights of way in the Vermillion Basin
- 3) Moffat County is being denied revenue opportunity from mineral extraction in the Vermillion Basin
- 4) Results from the Jack Morrow Hills wilderness initiative in Wyoming are undecided
- 5) Lack of local support for the RMP amendment exists as identified through Moffat County's public scoping process

Moffat County requests that the Secretary's office consider the above listed cumulative impacts in its decision to not publish the proposed notice of intent to amend the Vermillion Basin section of the Little Snake Resource Management Plan in northwest Colorado.

Thank you for considering Moffat County's request.

Please do not hesitate to contact me or the Moffat County Commissioners at (970) 826-3400, or the address listed above, for more information.

Sincerely,



Jeff Comstock
Natural Resource Policy Analyst
Moffat County Natural Resources Department

Cc: Congressman Scott McInnis
Senator Ben Nighthorse Campbell
Senator Wayne Allard
Ann Morgan
John Husband