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Before the Committee on Natural Resources,
Subcommittee on Water and Power
Oversight Hearing on *"A Washington, DC-Based Bureaucratic Invention with Potential Water Conservation and Property Rights Impacts: The National Blueways Order."*
July 17, 2013

My name is Karen Budd Falen. I am a fifth generation rancher and have an ownership interest in a family owned ranch in Wyoming. I am also an attorney specializing in protecting private property rights, rural counties and communities and multiple use on the federal lands. In my opinion, the National Blueways Initiative, created by Interior Secretarial Order 3321 dated May 24, 2012, has no basis in federal statute, thus is an *ultra virus* action by the Department of the Interior "(DOI") and should be withdrawn in its entirely. See Interior Order No. 3321, Establishment of a National Blueways System. Additionally, I would urge this Committee to carefully examine this and other programs and initiatives set forth in President Obama's America's Great Outdoors Initiative in 2010. As with the National Blueways Program, many of these related initiatives have no basis in federal statute and will significantly hurt many rural communities, local governments, local businesses and landowners.

Despite the claims in Secretarial Order 3321, local governments such as counties and conservation districts, believe that this Washington D.C. "collaboration" with absolutely no sideboards guaranteeing general public participation, general public notice and comment or the specific involvement of ALL impacted local governments will actually impede protection and conservation of local watersheds, not enhance it. Neither the America's Great Outdoors Initiative nor National Blueways Order No. 3321 have been published and available for public comment in the *Federal Register*, nor has there been any compliance for either document with the National Environmental Policy Act ("NEPA") or the rulemaking requirements in the Administrative Procedure Act ("APA"). Thus, in addition to the fact that the National Blueways System has no Congressional authorization, it has not been through the scrutiny of a public comment period. In and of itself, that is an additional reason for withdrawal of Secretarial Order 3321.

In addition to requesting that the Subcommittee seek the withdrawal of the National Blueways Order, I would also draw the Committee's attention to "Section 9: Expiration Date" within Order 3321 which allows the Order to be published in Interior manuals and handbooks. This is concerning because the policies and direction in this Order can easily survive action taken by this Committee, by the DOI simply placing the provisions of Order 3321 in a Departmental Manual. That is exactly what happened with Secretarial Order 3310, the "Wildlands Policy." Although Congress was successful in getting that Order withdrawn, its effects continue to be felt because the policy itself was simply placed in Bureau of Land Management ("BLM") manuals and handbooks. Thus, I would caution the Committee that withdrawal of the National Blueways Order is not enough; I recommend that the Committee further ensure that after Order 3321 is

withdrawn or revoked, the policy does not continue to be implemented through agency or department manuals and handbooks or Memorandums of Understanding (MOUs").

I. Impacts of Single Focus Land Designations on Private Property, Federal Land Multiple Use, Local Governments and American Citizens

There is no mistake that whether it is a Congressionally designated area, such as a wilderness or wild and scenic rivers designation, or a bureaucratically designated area, such as a national monument, land designations have real, personal, social and economic impacts on landowners, rural communities, small businesses and local governments. Although it may sound good to proclaim that these designations are only to "focus and coordinate federal resources," or "that existing uses will be protected," that is simply not the case. Designations like National Blueways, Lands with Wilderness Characteristics, Water Trails, National Monuments and others will impact the local citizens and local economy, yet local communities and citizens rarely have a voice in the designation or management.

For example, Tim Lequerica has a ranch in Oregon through which the Owyhee Wild and Scenic River designation runs. Mr. Lequerica's ancestors were Basque immigrants to the Owyhee River area in 1900, and his family has worked in the livestock industry since that time. The Lequerica private land is surrounded by BLM managed land within the Owyhee wild river canyon. He holds a permit to graze 444 cattle in the Saddle Butte BLM Allotment from November 1 to February 15.

The cattle in this allotment used to depend entirely on drinking water from the Owyhee River. Although the Owyhee River was named as a wild and scenic river by Congress in 1984, the legislation promised that local ranches would be protected. Since ranching use of the River has existed since the 1900s, this use could not have been harming the river if Congress thought the river was pristine enough to still be "wild and scenic."

In 1998, environmental groups sued the BLM to eliminate the use of these ranches along the Owyhee River. The litigation was not centered on specific ranching use of the Owyhee River *per se*, but on whether the BLM had jumped through the correct procedural hoops in writing a management plan for the Owyhee Wild and Scenic River. The ranchers intervened in this litigation because these groups were trying to stop access to the River[1] by livestock while the BLM prepared a new management plan.

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[1] As an aside, although the Plaintiffs claimed in the litigation to be concerned about the management of the Owyhee Wild and Scenic River, their true goal was to eliminate the ranchers' use of these lands. Because of the devastating impacts of eliminating the use of the River for water for livestock, the ranchers agreed that they would stop using the River if there were alternative sources of livestock water. The Federal District Court granted the ranchers' request to develop alternative water, over the strong objection of the Plaintiffs. The environmentalists wanted no water use anywhere at all, which would mean that the ranches in this area would have been

If these ranchers had lost their access to water, grazing would have been eliminated despite the protection given to these ranchers by Congress. Collectively, the impacted families paid $42,000 just to participate in the litigation.

Ranchers and local governments are impacted in the same way by Presidential National Monument designations. For example, Brian Gasvoda resides in Chouteau County, Montana. He is the 4th generation to raise a family on this land. In 2001, President Clinton designated the Upper Missouri Breaks National Monument which included his unfenced private lands and his BLM grazing allotments.

Although the Monument's Presidential Proclamation "protects" current land uses on National Monument land, the BLM management plan for the Monument, pushed by litigation by environmental groups, has caused significant changes. After the BLM finished its management plan, in 2010, an environmental group sued the BLM seeking further restrictions and requesting an injunction on road use and livestock grazing within the Monument. Mr. Gasovda calculated that if grazing had been enjoined within the Monument, his ranch would need approximately 651 tons of hay to feed the displaced livestock for 155 days. At that time, hay cost approximately $110 per ton hauled into his area, therefore it would have cost $71,610 to keep his livestock alive.

Additionally harming was the proposal to close many of the roads within the Monument. Many of these roads are historic and/or public roads. This rancher, like the others within the area, needed to keep these roads open, in order to access, maintain and keep his private and leased ground operational. Again, these ranchers had to retain legal counsel to intervene in the litigation to ensure that the promise in the Presidential Proclamation was honored. Thus, far from simply bringing national recognition and assisting to focus federal resources, this designation brought legal battles and unwanted attention to those who had already been protecting these lands for generations.

The County Commissions impacted by the Grande Staircase-Escalante National Monument tell of the same harms. The Grande Staircase-Escalante National Monument was created by Presidential Proclamation 6920, dated September 18, 1996. According to that Proclamation, "All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from entry, location, selection, sale, leasing, or other disposition under the public land laws, other than by exchange that furthers the protective purposes of the monument." However the Proclamation also stated, "The establishment of this monument is subject to valid existing rights . . . . Nothing in this proclamation shall be deemed to affect existing permits or leases for, or levels of, livestock grazing on Federal lands within the monument."

Despite this lofty language, Kane and Garfield Counties in Utah have suffered severe economic damage as approximately 10,000 animal–unit months (AUMs) of livestock grazing within the Monument have been lost, resulting in a multi–million dollar annual loss to these local economies. Some of these reductions occurred because

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eliminated.

with the new land designation, local ranchers have a more difficult time constructing and/or maintaining range improvements because of the restrictions on or closing of roads. Additionally, livestock grazing permits that are renewed have been appealed by environmental groups seeking to eliminate economic use of the National Monument.

In 2004, in order to assess the economic impacts due to the permanent or temporary non-use of five grazing allotments on the Grand Staircase-Escalante National Monument, Kane and Garfield Counties hired Dr. John D. Groesbeck, a professor of economics at Southern Utah University's School of Business, to conduct an economic analysis. His report concluded that the loss of grazing animal units within the national monument clearly left a void in the economies of the Counties, contributing to a reduction in taxable income generated by each County. His report specifically concluded that the loss of approximately 4000 grazing "AUMs" meant (1) a loss of taxable property values for both Kane and Garfield Counties of approximately $745,200; and (2) the loss of annual sales revenue for both Kane and Garfield Counties of $165,763. He also opined that the dollars generated from sales revenue affiliated with the range–fed cattle industry that would have typically provided direct funding for each county and their related municipalities in the forms of sales taxes and business property taxes would also be lost, including an estimated $24,185 in direct government–related funding during 2004 alone, and an estimated $264,819 during the ten–year grazing permit term.

These are real impacts to private landowners and rural local governments from "well-intentioned" land use designations by federal agencies or the Congress. Even those continuing uses which are to be protected and respected eventually come under attack. It is simply not correct to say that designations such as "National Blueways" "headwaters to mouth" have no real impact on local landowners and local governments. Simply ask the local landowners and governments who live with a federal designation.

II. Overview of Secretarial Order 3321

Secretary's Order No. 3321 establishes the National Blueways System, a program designed to "recognize river systems conserved through diverse stakeholder partnerships that use a comprehensive watershed approach to resource stewardship." The system is intended to provide a new national emphasis on the unique value and significance of a "headwaters to mouth" approach to river management, while encouraging stakeholders to integrate their land and water stewardship efforts by adopting a watershed approach. To oversee the effort, Order No. 3321 establishes an intra-agency National Blueways Committee. There are no State governments, local governments or private citizens appointed to or represented on the Committee.

Furthermore, Order No. 3321 designated the Connecticut River and Watershed as the first National Blueway to serve "as a model for future designations." The designation included 7.2 million acres. Less than a year later, the Department designated the White River and Watershed (Arkansas and Missouri) as the second National Blueway. The White River National Blueway encompassed 17.8 million acres, 700 river miles, 30 to 40 Arkansas counties and 1.2 million people. Yet even with this impact and while Interior claimed that there were 31 supporting organizations, there were only two listed local

government sponsors and two business sponsors, along with 11 federal agency sponsors. There was not one County listed as supporting this designation. Once the local public learned of and understood the designation, strong objections were issued to the Department. The Designation of the White River National Blueway was withdrawn on July 3, 2013.

Following those designations, the DOI published notice of its Proposed Information Collection: National Blueways System Application, See 78 Fed. Reg. 26062–26063 (May 3, 2013), announcing the collection of public information necessary to nominate a river and associated watershed for National Blueway Recognition. Despite the fact that 7.2 million acres across four states and 17.8 million acres across two additional states had already been designated as Blueways, the May 3, 2013 *Federal Register* notice was the very first opportunity for public comment on any aspect of the National Blueways program.

A. There is No Statutory Authority Supporting the National Blueways Initiative

Although it may not be "politically correct," it remains a fact that the federal administrative agencies are created by the federal Constitution and the U.S. Congress and that they are to only act as directed by the legislative body. Article I, Section 1, of the U.S. Constitution plainly states that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States." Even the "necessary-and-proper" clause in the eighth section of Article I recognizes that only Congress has the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers."

Additionally, to ensure that the federal government would not completely subsume the other branches of government and tip the scales of the "checks and balances" created by the Founding Fathers, James Madison presented to the first United States Congress a series of ten Amendments (the Bill of Rights) to the United States Constitution. After enumerating specific rights retained by the people in the first eight Amendments, the Ninth and Tenth Amendments again spelled out the principle of limited federal bureaucracy. In light of that principle, the question before this Subcommittee should be whether Congress has enacted a statute which would grant to the DOI the authority to create the National Blueways Initiative. A review of the statutes cited in Executive Order 3321 shows that the answer is "No."

Section 3 of Order No. 3321 notes that "[t]his Order is issued in accordance with authority provided under the Take Pride in America Act, Public Law 101-628; the Outdoor Recreation Act, Public Law 87-714; and the Cooperative Watershed Management Program of the Omnibus Public Land Management Act of 2009, Public Law 111-11." See Ken Salazar, Order No. 3321 at 2, sec. 3. The same section states further that, "bureaus within the Interior have a broad panoply of legal authority to carry out their respective missions that support enhancing river recreation, undertaking river restoration, and pursuing river protection initiatives to pass on healthy rivers to future generations." While this testimony is not an attempt to assail the "broad panoply of

legal authority" for individual program activities provided to the Department, the specific authorities cited in Order No. 3321 do not provide broad authority for the designation of a "headwaters to mouth" management program that includes private, state and federal land.

1. Take Pride in America Act

The Take Pride in America Act, Pub. L. 101-628, 104 Stat. 4502 (1990), *codified* at 16 U.S.C. §§ 4601–4605, states a purpose and intent:

> [t]o establish and maintain a public awareness campaign in cooperation with public and private organizations and individuals—
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> > (A) to instill in the public the importance of the appropriate use of, and appreciation for Federal, State, and local lands, facilities, and natural and cultural resources;
> >
> > (B) to encourage an attitude of stewardship and responsibility toward these lands, facilities, and resources; and
> >
> > (C) to promote participation by individuals, organizations, and communities of a conservation ethic in caring for these lands, facilities, and resources.

See 16 U.S.C. § 4601(b)(1). Even assuming a reading most favorable to the Department, the statute falls well short of providing any authority to specifically "designate" an entire watershed covering vast amounts of private land. In fact, the statute does little more than authorize the Department to instill, encourage, and/or promote public involvement in the stewardship of our Nations's resources. To argue that the statute provides authority for the designation of watersheds concurrent with the Department's independent Bureaus endeavoring to "align the execution of agency plans and implementation of agency programs to protect, restore, and enhance the natural cultural, and/or recreation resources associated with designated National Blueways" is a significant overreach. See Order No. 3321, at 3, sec 6(d).

2. Outdoor Recreation Act

The Department also cites to the Outdoor Recreation Act, Pub. L. No. 87-714, 76 Stat. 653 (1962), *codified* at 16 U.S.C. §§ 460k–460k-4. That statute authorizes the Secretary of the Interior to "to administer such areas [i.e.–areas within the National Wildlife Refuge System, national fish hatcheries, and other conservation areas administered by the Secretary of the Interior for fish and wildlife purposes] or parts thereof for public recreation when in his judgment public recreation can be an appropriate incidental or secondary use." See id. § 460k. Because designated Blueways

do not constitute the areas outlined by the statute,[2] the Outdoor Recreation Act does not provide the statutory authority for the National Blueways Initiative. Additionally the Outdoor Recreation Act only applies to lands within the jurisdiction of certain Interior bureaus and agencies, not to private land.

3. Cooperative Watershed Management Program of the Omnibus Public Land Management Act of 2009

The DOI also rests its authority on the Cooperative Watershed Management Program of the Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, 123 Stat. 1165 (2009), *codified* at 16 U.S.C. §§ 1015–1015b. While this statute provides authority for Interior to create and establish a watershed program that emphasizes many of the same goals as the National Blueways System, it remains that the program authorized by this particular statute is a specific, separate, and distinct program that is currently operated by specific Bureaus within the Department. See U.S. Dep't. of the Interior, Bureau of Reclamation, Cooperative Watershed Management Program, *available at* http://www.usbr.gov/WaterSMART/cwmp/index.html (last visited June 25, 2013). Simply, this statute does not apply to the millions of acres of state and private lands included with a Blueway's designation.

4. America's Great Outdoors Initiative

The most disturbing "authority" for the National Blueways Initiative is its undeniable connection to a document entitled "America's Great Outdoors: A Promise to Future Generations" (hereinafter "AGO Initiative"). The AGO Initiative was based upon a Presidential Memorandum signed by President Obama on April 16, 2010. The Presidential Order and its resulting AGO Initiative clearly defines the Administration's view towards using federal agency fiat, rather than Congressional authorization, to support the goals of the Presidency regarding federal (and private) land and resource management. The Memorandum required the Secretaries of the Interior and Agriculture, the Chair of the Council of Environmental Quality and the Administrator of the Environmental Protection Agency to conduct "listening sessions" throughout the United States and to prepare recommendations on "reigniting our historic commitment to conserving and enjoying the magnificent natural heritage that has shaped our nation and its citizens." Although public "listening and learning sessions" were held, there was no public comment opportunity pursuant to the APA prior to the issuance of the final

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[2] Pursuant to sections 460k-1 and 460k-2 of the Outdoor Recreation Act, the Secretary is also authorized to "acquire areas of land, or interests therein," when such areas meet certain criteria, and he may "cooperate with public and private agencies, organizations, and individuals," including accepting donations of real property. The designation of a Blueway should not be used as an excuse for the federal government to "acquire" private land.

report in February, 2011[3]. That report contained 111 pages and hundreds of recommendations to "begin implementation of this 21st - century conservation agenda." These recommendations are now being implemented through administrative agency guidance documents (including Secretarial Orders, such as Order 3321). The AGO Initiative is also the source for other, equally concerning programs impacting private property and federal multiple use lands. These programs include:

a. Secretarial Order 3323: Establishment of the America's Great Outdoors Program

On September 12, 2012, then-Interior Secretary Salazar signed Secretarial Order ("SO") 3323: Establishment of the America's Great Outdoors Program to "formalize[] the Department's America's Great Outdoors Program with a vision of connecting Americans to the outdoors and conserving and restoring America's land, water and wildlife." My concern with the SO is not with its list of lofty goals "promoting conservation" but with the fact that the SO designates 20 specific "Landscapes of National Significance;" 28 different "Landscapes of Regional Significance; 58 different "Rivers and Water Trails" and 19 different "Great Urban Parks and Wildlife Areas." The question with the SO is not whether these areas should be protected and conserved, but rather whether the private landowners and state and local governments included in these designations even have knowledge regarding these designations, let alone support them. It is one thing to conduct public listening sessions at the Nation's college campuses as was done to develop the AGO Initiative, but it is quite another to make a wish list of 125 on-the-ground designations without public input, including the input of affected state and local governments and private property owners.

b. Secretarial Order 3289: Landscape Conservation Cooperatives

Another Interior SO is entitled "Order No. 3289: Addressing the Impacts of Climate Change on America's Water, Land and Other Natural and Cultural Resources." The only authority given for this SO is Section 2 of the Reorganization Plan No. 3 of 1950 (64. Stat. 1262), as amended. This SO suggests strategies to address sea level rise, including the acquisition of upland habitat and creation of wetlands, investment in new wildlife corridors, and consideration of ways to reduce the Department's carbon footprint. The SO also grants additional authority to the USGS' regional science centers, whose original mission was to "develop[] regional science centers to provide climate change impact data and analysis in response to the needs of fish and wildlife managers as they develop adaptation strategies in response to climate change." The SO now has expanded that mission to "synthesize and integrate climate change impact data and develop tools that the Department's managers and partners can use when managing the Department's land, water, fish and wildlife, and cultural heritage resources." This

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[3] Sally Jewell, the current Secretary of the Interior, provided the introduction for the President at his press conference announcing the completion of the AGO Initiative in 2011.

mission creep is concerning considering that with a few exceptions, the jurisdiction for fish and wildlife management resides with the individual states and, again with a few exceptions, water is owned and managed by the individual states.

SO 3289 also created a program called "*Landscape Conservation Cooperatives*" ("LCC"). Among other things, LCCs direct the BLM to focus its land use planning efforts on "conservation and restoration" to make "all lands" more resilient to climate change and protect wildlife corridors that cross federal lands." There are 22 designated landscapes in America, the boundaries of which did not include any input from State or local governments. See Exhibit 1. In this SO, there is also no mention of the Taylor Grazing Act or the Multiple Use Sustained Yield Act, which actually set forth Congress' direction to the BLM for management of the public lands.

c. New National Monument/Antiquities Act Designations

On February 14, 2010, the public learned that the Obama Administration was considering limiting the multiple use on over 10 million acres of federal/public land, by possibly designating 14 new National Monuments under the Antiquities Act[4]. While the designation of National Monuments is technically to only include the minimum amount of land necessary to preserve America's "antiquities," in recent years, these designations have been significantly larger and have had a severe negative impact on the tax base in many Western communities and counties. But because National Monuments are designated under the Antiquities Act pursuant to a Presidential Executive Order, there is limited legal recourse in opposing the designations in federal court.

d. Secretarial Order 3310: Interior's Wild Lands Policy

Another change from the multiple use mandate that was implemented in response to the AGO Initiative was Interior's Wild Lands policy. That policy required the BLM, as part of its land use planning duties, to inventory and map lands with wilderness characteristics outside existing designated Wilderness or wilderness study areas. These inventories were to be "integrated into [BLM's] land management decisions. This policy was strongly criticized throughout the West and was "de-funded" by Congress. On or about June 11, 2011, Secretary Salazar withdrew the Secretarial Order.

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[4] At the end of the Bush II Administration, there were 100 National Monuments, located in 27 states, totaling 12,091,930 acres. President Teddy Roosevelt established the first National Monument, Devils Tower, in Wyoming in 1906. President Bill Clinton created the most National Monuments, 19 plus the expansion of three existing monuments. Only Richard Nixon, Ronald Reagan and George H.W. Bush did not create any new monuments under the Antiquities Act. Should the Obama plans come to fruition, the amount of land within the National Monument system would almost double under one Administration.

However, although the SO was withdrawn, the BLM handbook and manual requirements were not changed and the BLM is still complying with the Wild Lands SO by complying with the agency's manuals and handbooks and mapping "Lands With Wilderness Characteristics ("LWC"). As a specific Wyoming example, the BLM, as part of the Big Horn Basin resource management plan, included a layer of BLM inventoried LWCs. So while the requirement to "manage" those inventoried lands under a specific heading called "Wild Lands" has been withdrawn, the inventories of these lands as LWCs are still noted and included in BLM's land use plans as an information layer, which will inform future agency management decisions.

B. Assuming *Arguendo* there is Appropriate Statutory Authority for Order 3321, There are Significant Flaws with the Order Itself

Assuming *arguendo* that the Department possesses the necessary authority for the National Blueways Program, there are significant flaws in the program's implementation. First, the Department's materials, specifically the "Draft Application Instructions," note that for "multi-state watersheds," only one state sponsor is required, in addition to the Federal Sponsor. Since Blueways consists of multiple states and are "nationally and regionally significant rivers and their watersheds," it is probable that most, if not all, designated systems will be comprised of "multi-state watersheds." Given the significant impact of these designations to State and local citizens, economies and local governments, any proposed designation should receive a state sponsorship from each and every state, as well as the support of a majority of the impacted local governments. Similarly, before any National Blueway is designated, Interior should specifically inform and allow adequate time for the entire Congressional delegation of the impacted State(s) to respond.

Second, the DOI is not required to review relevant local land use and management plans from impacted local governments. Many rural counties and conservation districts have officially adopted land use or natural resources management plans that reflect the local entities' position on federal and/or state land management decisions. Furthermore, federal statutes, including the NEPA and the Federal Land Policy and Management Act, require federal agencies making land management decisions to review and discuss any inconsistency of the proposed federal action with local government plans. Where inconsistencies exists, the federal agency should take steps to reconcile its actions with local plans. See e.g. 40 C.F.R. §§ 1506.2 and 1506.2(d); see also, e.g. 43 U.S.C. § 1712(c)(9) and 16 U.S.C. § 1604(a). As established by the current SO, National Blueways designations violate these statutes.

Third, the Department's materials repeatedly note a commitment to address and coordinate with local stakeholders. However, the Department's materials do not define or elaborate on who or what constitutes an applicable stakeholder. In contrast, the statute authorizing the Cooperative Watershed Management Programs[5] specifically

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[5] The Cooperative Watershed Management Program should not be confused with the December 2012 MOU creating "large-scale landscape and watershed

identifies stakeholders and requires, where appropriate, their participation. Example stakeholders in that case include, but are not limited to, representatives of: hydroelectric production; livestock grazing; timber production; land development; recreation or tourism; irrigated agricultural production; the environment; potable water purveyors and industrial water users; private property owners; and local agencies with authority within the watershed. At a minimum these same stakeholders should also be notified and included in a decision to designate a Blueway. Additionally, the Blueways application instructions require the identification of "member organizations, municipalities, agencies, and other stakeholders . . . *supporting the proposed recognition as a National Blueway.*" While broad, the application requirements do not include the identification of organizations, municipalities, agencies, and other stakeholders *not supporting the proposed recognition as a National Blueway.* This is unfortunate given that the Department does not provide notice and opportunity for comment to the public at large.

Fourth, is the lack of specificity for designation. The Department's responses to questions submitted by the Senate Energy & Natural Resources Staff following a January 28, 2013 briefing by Interior's Senior Advisor Rebecca Wodder state that "the diversity of the partnership, having a shared vision, goals and objectives, the condition of the river and watershed, and having a strategy to integrate land and water management actions to achieve shared outcomes *are the key elements* of the evaluation, rather than the mix of public and private land." The concern here is that none of the key elements are defined, explained, or measured by any quantifiable factors. For example, when evaluating the "condition of the river," what types of conditions make it more or less likely that a proposed Blueway will be designated? Explanations of these key elements, including quantifiable factors, standards, or thresholds for the evaluation of a Blueway's nomination, must be defined prior to this program moving forward.

Fifth, following the Secretary's Order, the DOI entered into a Memorandum of Understanding ("MOU") with the Department of Agriculture and the Department of the Army to "establish a framework for collaborative efforts to identify and create opportunities to work together as partners to accomplish shared, compatible, and priority conservation, restoration, outdoor recreation, environmental education, and sustainable economic objectives in support of the National Blueways System as a whole, and specific designated National Blueways." The MOU established several objectives, including: (1) Conserving, protecting, and enhancing the natural diversity and abundance of fish and wildlife species, and the ecosystems upon which these species depend; (2) restoring and maintaining the chemical, physical, and biological integrity of

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conservation demonstration areas." This MOU cites as its authority, "This agreement is based on existing authorities including the President's Memorandum of April 16, 2010: A 21st Century Strategy for America's Great Outdoors, 75 Fed. Reg. 20767 (April 20, 2010), and various authorities within the context of the laws or regulations governing specific programs administered by the agencies." The MOU directs the nine "Federal family" members to coordinate the already established watershed teams on specific "landscapes and watersheds across the Country."

the Nation's waters; and (3) Integrating and adaptively managing the land and water resources, including agricultural and working lands and waters, within the National Blueways System consistent with applicable laws.

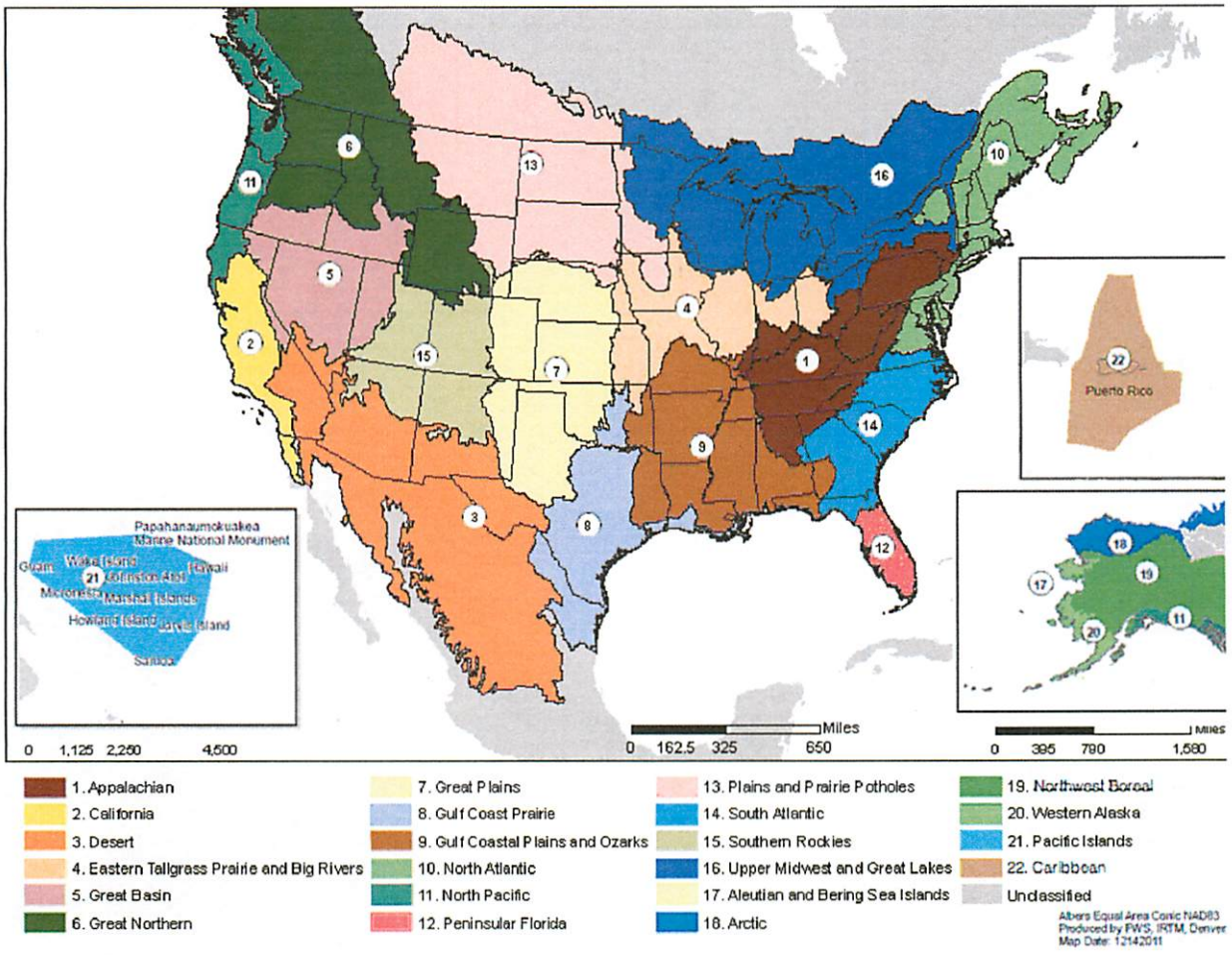
According to the MOU, compliance is to be voluntary and non-regulatory. What is concerning is that one MOU objective is taken directly from the Clean Water Act. See Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. § 1251 (stating the Congressional declaration of goals and policy as the "restoration and maintenance of chemical, physical and biological integrity of the Nation's waters."). It is hard to understand how the objectives in an MOU implementing the AGO Initiative and National Blueways can be voluntary and mandatory at the same time.

Finally, the designation of huge watershed systems buttressed by lofty objectives such as: "restoring and maintaining the chemical, physical, and biological integrity of the Nation's water" or "conserving, protecting, and enhancing the natural diversity and abundance of fish and wildlife species, and the ecosystems upon which these species depend," will in fact increase the regulatory burden and scrutiny in local areas while at the same time removing local control and autonomy. Section 5(d) of Order No. 3321 states that "Bureaus within Interior, to the extent permitted by law and consistent with their missions, policies, and resources, shall endeavor to *align the execution of agency plans and implementation of agency programs to protect, restore, and enhance the natural, cultural, and/or recreational resources associated with designated National Blueways.*" This statement is reinforced in the Joint "Memorandum of Understanding," which states that the Secretary's Order "directs Interior to *align the implementation of all plans and programs in Interior with the National Blueways System.*" This "realignment" of the missions of Interior's bureaus and agencies will likely have the unintended consequence of focusing regulatory scrutiny and burden, largely from established statutes and regulations, into the designated Blueway area, if not by the bureau, but by litigation from radical environmental interests. As a result, the non-regulatory program may bring a heavier regulatory hand. Relatedly, this may serve to undermine and replace local governmental control and administration of resource conservation and management, with federal agency mandates and edicts. The Department's use of designated National Blueways, either independently or in conjunction with other programs created by the AGO Initiative, such as Landscape Conservation Cooperatives, should not be used to expand the federal government's power into areas currently managed by local governmental entities and beyond the federal government's control.

I appreciate the opportunity to present this testimony to you. I would be happy to respond to any questions by the Committee. Thank you.

Landscape Conservation Cooperatives

Secretarial Order No. 3289 establishes Landscape Conservation Cooperatives (LCCs), a network of public-private partnerships that provide shared science to ensure the sustainability of America's land, water, wildlife and cultural resources.



Protecting the nation's natural and cultural resources and landscapes is essential to sustaining our quality of life and economy. Native fish and wildlife species depend on healthy rivers, streams, wetlands, forests, grasslands and coastal areas in order to thrive. Managing these natural and cultural resources and landscapes, however, has become increasingly complex. Land use changes and impacts such as drought, wildfire, habitat fragmentation, contaminants, pollution, invasive species, disease and a rapidly changing climate can threaten human populations as well as native species and their habitats.

Landscape Conservation Cooperatives (LCCs) recognize that these challenges transcend political and jurisdictional boundaries and require a more networked approach to conservation—holistic, collaborative, adaptive and grounded in science to ensure the sustainability of America's land, water, wildlife and cultural resources.

As a collaborative, LCCs seek to identify best practices, connect efforts, identify gaps, and avoid duplication through improved conservation planning and design. Partner agencies and organizations coordinate with each other while working within their existing authorities and jurisdictions.

The 22 LCCs collectively form a national network of land, water, wildlife, and cultural resource managers, scientists, and interested public and private organizations—within the U.S. and across our international borders—that share a common need for scientific information and interest in conservation.

- Download Secretarial Order No. 3289 Establishing Interior's Climate-Change Response Strategy
- Download Interior's Plan for a Coordinated, Science-Based Response to Climate Change Impacts on Our Lands, Water, and Wildlife Resources (PDF)
- LCC Frequently Asked Questions (PDF)
- Contact: Doug Austen, National LCC Coordinator

EXHIBIT 1