

## RELATED CORRESPONDENCE

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USNRCUNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

2002 MAR 27 AM 9:05

BEFORE THE ATOMIC SAFETY AND LICENSING BOARDOFFICE OF THE SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter Of:

Docket No. 72-22-ISFSI

PRIVATE FUEL STORAGE, LLC

ASLBP No. 97-732-02-ISFSI

(Independent Spent Fuel

Storage Installation)

March 18, 2002

**SUWA'S FILINGS IN SUPPORT OF CONTENTION SUWA B**

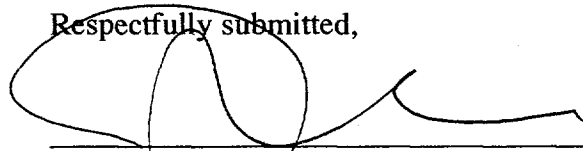
The Southern Utah Wilderness Alliance (SUWA) has one direct case witness for Contention SUWA B: Dr. James C. Catlin. As directed in the Board's Prehearing Memorandum and Order dated December 26, 2001, SUWA has prepared an Outline to preface the pre-filed testimony as well as Key Determinations for Contention SUWA B. Additionally, SUWA submits exhibits in support of Contention SUWA B.

Attached to this filing, please find:

- Pre-filed testimony of Dr. James C. Catlin
- Outline for witness Dr. Catlin
- Key Determinations for Contention SUWA B
- List of exhibits

DATED this 18<sup>th</sup> day of March, 2002.

Respectfully submitted,



Joro Walker, Esq.

Attorney for the Southern Utah Wilderness Alliance

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March 18, 2002

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
Before the Atomic Safety and Licensing Board**

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In the Matter of	)	
	)	
PRIVATE FUEL STORAGE L.L.C.	)	Docket No. 72-22
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

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**TESTIMONY OF JAMES C. CATLIN  
ON THE WILDERNESS CHARACTER OF THE  
NORTH CEDAR MOUNTAINS  
CONTENTION SUWA B**

**I. BACKGROUND--WITNESS**

**Q1.** Please state your full name.

**A1.** James C. Catlin

**Q2.** By whom are you employed and what is your position?

**A2.** I am the project director of the Wild Utah Project, based in Salt Lake City, Utah.

**Q3.** Please summarize your educational and professional qualifications.

**A3.** My professional and educational experience is summarized in the curriculum vitae attached to this testimony. I have a PhD from the University of California, Berkeley in Natural Resource Management and Geographic Information Systems (GIS), and I have been practicing in this field for 20 years. Since 1997, I've provided conservation biology and computer mapping services to the conservation community in Utah through my work for the Wild Utah Project.

**Q4.** What is the purpose of your testimony?

**A4.** The purpose of my testimony is to respond to the allegation in Contention SUWA B that:

The License Application Amendment [and/or Final Environmental Impact Statement] fails to develop and analyze a meaningful range of alternatives to the Low Corridor Rail Spur and associated fire

buffer zone that will preserve the wilderness character and potential wilderness designation of a tract of roadless Bureau of Land Management (BLM) land – the North Cedar Mountains – which it crosses.

**Q5.** To what will you testify?

**A5.** I will testify regarding the wilderness character of the North Cedar Mountains Area, the potential for Congress to designate wilderness in the North Cedar Mountains Area, and the potential effects of the Low Corridor Rail Spur and alternative transportation alignments on the naturalness of the North Cedar Mountains Area.

## **II. NORTH CEDAR MOUNTAINS**

### **A. Wilderness Character of the North Cedar Mountains**

**Q6.** How did you determine that the North Cedar Mountains possess wilderness character?

**A6.** The North Cedar Mountains Area was included in the Utah Wilderness Coalition's (UWC's) 1998 reinventory of Bureau of Land Management (BLM) wilderness lands, of which I was a part. The goal of this reinventory effort was to: 1) obtain thorough, accurate data to establish which BLM lands qualified for wilderness designation; 2) exclude areas that once, but no longer, qualified as wilderness; and 3) insure that any resulting wilderness proposal fully represented Utah's biological richness and geographic diversity. SUWA spearheaded this reinventory process, is a board member of the UWC, and, with other board members, was in charge of the reinventory process.

In determining wilderness characteristics, we used the same policies as established by Congress and federal land management agencies for determining which lands should be designated as wilderness pursuant to the Wilderness Act of 1964. These statutes and regulations provide definitions of "roadlessness," "substantially unnoticeable" impacts, and other criteria necessary for determining the wilderness character of particular lands pursuant to the Wilderness Act. Essentially, large tracts of roadless public lands, where human impacts are substantially unnoticeable, qualify for wilderness designation and must be determined as such by the BLM.

With these criteria as a basis and with guidance from SUWA and the UWC, we conducted our reinventory fieldwork in several stages. Prior to the actual fieldwork, we gathered as much information as possible about each large potential roadless area. On average, we put in at least ten hours of work per potential roadless area, creating maps for use in the field. We modified United States Geological Survey (USGS) 7.5 minute scale maps with land ownership information, cross-checked with BLM's land status plats. We then consulted recent aerial

photographs of the area to locate impacts not already on the USGS maps. Aerial maps proved to be reliable indicators of impacts, which, in a fragile desert environment, are easily identified from above.

Next, carefully screened and trained volunteers and staff conducted fieldwork to verify map information. These volunteers received approximately 2 hours of training in the classroom, in sessions run by me and other staff members. Then, each volunteer was trained by me or by other staff members in the field for approximately one-half day. Next, the volunteers were assigned a potential roadless area and given a packet containing several maps, film, instructions and forms for field notes.

Field workers then traveled the outer boundary of each potential roadless area, taking frequent photographs of impacts to the land. These workers traveled the length of any intrusions (and any branches of intrusions) entering into a roadless area. Any impacts were photographed and these photographs linked to maps. As a result of this work, each roadless area was further documented as such by field notes and photographs (40,000 to 50,000 photographs in all).

Together with other staff members, I reviewed all volunteer work. If we discovered gaps or inconsistencies in the field work, I or other staff members would revisit the site, several times, if necessary, to complete field checks. We also gathered additional information, including off-road vehicle routes, mineral deposits, and grazing uses. On the basis of maps, fieldwork and any additional information, we made a preliminary boundary recommendation. This recommendation was, in turn, reviewed and fine-tuned by a technical review team (TRT), of which I was a member. The four members of the TRT critiqued all preliminary recommendations for consistency and integrity. The TRT actually adopted stricter wilderness identification guidelines than the BLM so that the resulting boundaries would be above challenge. The boundary specifications that resulted from TRT review were then digitized on GIS along with a written detailed description of the boundary, together with rationales for any tough decisions involved.

Because one of the goals of the 1998 inventory process was to use wilderness designation as a means to protect biological diversity, the TRT, in consultation with biologists, gave priority to areas containing large elevation gradients, large complexes on contiguous roadless areas, and riparian areas.

The inventory of the North Cedar Mountains roadless area was conducted according to this standard procedure. Inventory staff spent approximately 10 hours, including review of aerial photographs, preparing maps for field survey work. A volunteer then surveyed the area and took field notes describing each of 24 pictures that were also linked to USGS maps. Then inventory staff members (one of whom was a member of the TRT) revisited the site and took 38 more photographs, described in field notes and linked to maps. Then I, together with other TRT members, used this information to recommend the boundaries of the pro-

posed wilderness area to SUWA and the UWC. The result of this consultation lead to the UWC's North Cedar Mountains proposed wilderness area.

**Q7.** Briefly summarize some of the wilderness characteristics possessed by the North Cedar Mountains.

- A7.** The BLM uses specific criteria for determining whether or not an area qualifies as wilderness. These criteria are described in detail in the BLM's Wilderness Inventory Handbook, but generally speaking, an area must be of sufficient size, it must be largely free of substantial human impacts, it must have opportunities for solitude or primitive recreation, and it might also have additional characteristics of special importance such as a unique geological feature or archaeological site.

Everyone agrees that the North Cedar Mountains meet the size requirement. As I've already discussed, the UWC's North Cedar Mountains proposed wilderness area does not contain substantially noticeable human impacts—on the whole, it remains a natural place where man's impacts are very minor and wouldn't be noticed by the average visitor. As such, it provides important, unfragmented habitat for native flora and fauna. Because the UWC's boundaries were drawn specifically to exclude human impacts, the proposed wilderness meets the conditions described in the BLM's handbook in that regard.

The North Cedar Mountains clearly possesses opportunities for solitude and to practice primitive recreational activities. In fact, in these regards, the North Cedar Mountains area is almost identical to an area just to the south that the BLM has found to possess outstanding opportunities for solitude. In other words, there is very similar terrain and wildlife habitat in the North Cedar Mountains as in the Cedar Mountains Wilderness Study Area to the south, designated by the BLM and found to possess opportunities for solitude and recreation. The two areas share very similar topographic features, vegetation, and incised canyons and ridgetops. If the BLM found outstanding opportunities for solitude and recreation in the Cedar Mountains Wilderness Study Area, it should find those same qualities in the North Cedar Mountains area.

Lastly, the North Cedar Mountains area has supplemental values that contribute to its suitability as a wilderness area. For example, the area is ecologically significant. This is because, as a large, relatively primitive roadless area, the North Cedars provides critical wildlife habitat and is central to maintaining the area's biodiversity. This unfragmented tract of land represent one of the few remaining places where native habitat dominates and where this habitat is likely to stay intact. Places like the North Cedars are cohesive, less vulnerable to invasion by exotic plants and therefore better able to support natural native plant and animal communities that are highly susceptible to weeds, roads and other human intrusions. The unimpeded hydrology of such areas also better suits native plant communities and recharges ground water.

In addition, the North Cedar Mountains lie at the edge of ancient Lake Bonneville, a huge prehistoric freshwater lake. As a result, the area seems to have been utilized by ancient humans. There is known rock art in the region, and certainly there is great potential for archaeological sites to be discovered.

**Q8.** How do the UWC's findings regarding the wilderness character of the North Cedar Mountains square with findings made by the BLM in their intensive inventory conducted in 1980, and with any subsequent inventories performed by the BLM?

**A8.** The BLM performed an intensive inventory of the North Cedar Mountains in 1980 and found that the unit contained substantially noticeable impacts. That was the main reason that the BLM dropped the area from further wilderness consideration. However, it is important to note that the BLM's 1980 inventory was problematic. The BLM's inventory unit—in other words the land it studied in 1980—differs substantially from the UWC proposal. Most notably, the boundaries of the UWC's North Cedar Mountains proposed wilderness differ from those of the BLM's unit, and the area proposed for wilderness designation by the UWC is smaller than the BLM's unit. The UWC boundary changes exclude all significant impacts from the proposed wilderness – one of the very reasons that the BLM dropped the unit from further consideration in 1980. The BLM's own policy requires the agency to consider changing the boundaries of a unit to exclude significant impacts, and then reassess the wilderness values of the area. In 1980, the BLM did not do that and thus violated its own policy.

The BLM's error in 1980 was not an isolated occurrence. For example, the BLM reinventoried some citizen-proposed wilderness areas in Utah in the late 1990s and found that mistakes had been made in the first – the 1980 – inventory process. Lands that rightly qualified for wilderness designation had been left out of the BLM's first inventory. Essentially, for almost all areas that the BLM reinventoried in the late 1990s, the agency found that it had made mistakes twenty years earlier and that there was actually more wilderness-quality land than the agency's previous inventories had found. In fact, the BLM's inventories in the late 1990s largely confirmed and validated the work that the UWC had done in creating its wilderness proposal.

Unfortunately, the North Cedar Mountains area was not one of the regions that was reinventoried by the BLM in the late 1990s, so this area has not had the benefit of a second look. The BLM's Wilderness Inventory Handbook provides a mechanism by which citizens or organizations can petition the BLM to reexamine areas for their wilderness characteristics. Using the provisions in the handbook, SUWA petitioned the BLM to examine the North Cedar Mountains for wilderness characteristics in 2001. However, the agency declined to look at the area again. Therefore, as far as I know, the BLM has not specifically looked at this area to determine its suitability for wilderness designation since their initial inventory in 1980.

**Q9.** The BLM decides whether or not an area is designated a Wilderness Study Area (WSA), and the agency has decided against this area. Does the agency have the final word in the matter?

**A9.** Actually, the agency does not have the final word in the wilderness debate. Congress has been given the authority to actually designate wilderness, so Congress has the final word. It is true that the BLM gets to decide what is a WSA and what is not, but Congress is by no means bound to restrict itself only to those areas that the BLM has named as WSAs when it designates wilderness. In fact, there is currently a statewide wilderness bill for Utah before Congress called America's Redrock Wilderness Act. It contains lands in Utah that the BLM recognizes as having wilderness character as well as lands—like the North Cedar Mountains—that the BLM has not yet recognized as having wilderness character. The bill has substantial support in Congress. At last check, it had 159 cosponsors in the House and 15 in the Senate. If this bill passes and becomes law, it will designate as wilderness lands that the BLM has chosen to ignore with regard to wilderness. Similarly, there have been bills proposed in Congress in the recent past that would have designated wilderness lands in only specific portions of the state of Utah, such as the west desert region, or, even smaller, the Pilot Range. It is entirely possible that the North Cedar Mountains area could be included in one of these less comprehensive bills before Congress, and that it could gain wilderness designation that way. So, just because the BLM has not yet recognized the wilderness character of lands it manages does not mean that those lands are not being considered by Congress for wilderness designation.

## **B. Impacts of Transportation Alternatives**

**Q10.** What impacts to the wilderness character of the North Cedar Mountains area could the proposed Low Corridor Rail Spur cause?

**A10.** The impacts would be many. First and most obviously, the Low Corridor Rail Spur would be a significant human impact cutting through a proposed wilderness. It would sever a portion of land that previously qualified as wilderness from the main body of that wilderness, thus decreasing the size of the wilderness area. This results in greater habitat fragmentation and a separation of lowland habitat from higher-elevation terrain, which could lead to a loss of biodiversity. Of course, the rail line and train would affect the scenic values of the area, as well.

The railroad spur would have a number of less obvious impacts. For one, it could lead to increased access to previously pristine areas, which can have major impacts on naturalness. If a road or other access route accompanies the rail line, it will provide quick, easy access to previously undisturbed areas. This change is likely to lead to increased motor vehicle access to these areas, leading to increases in noise, trails, and visitation. Ease of access can also change grazing patterns, which can negatively affect the vegetation in these areas.

The Low Corridor's rail line, road, and associated fire buffers also have the potential to disrupt the natural fire regime of the area. Although low intensity fires are a part of the natural ecosystem, the fire hazard introduced by the rail line will likely lead to the propagation of exotic species. In other words, the rail line and associated fire buffers could lead to increases in the potential for large, destructive fires that can destroy native vegetation and aid in the spread of exotic, invasive plants.

The rail line also has the potential of disrupting natural runoff patterns. Instead of storm water taking many small meanders, the rail line would force the water through a smaller number of culverts, cutting off the natural surface water flow. Water that normally would flow into an area and bring to life the plants would be diverted and withheld. After storms, the vegetation on the upstream side of the railroad bed may look totally different from the vegetation on the downstream side.

The application of chemicals along the rail line also has the potential to disrupt the vegetation of the area. Although the chemicals are often targeted at specific species, they often impact untargeted species such as native plants. When the native plants are killed, exotics can gain a foothold. Similarly, chemical application has the potential to negatively impact pollinators in the region, which also may affect native vegetation.

Lastly, the rail line has the potential to impact springs and small wetland areas that are not shown on most maps. These areas are often home to unique animals such as frogs and amphibians. Because the west desert is itself a unique environment, it is quite possible that some of the organisms that inhabit the rare springs and wetlands in the area may not be found anywhere else.

**Q11.** What impacts to the wilderness character of the North Cedar Mountains area could a rail spur outside the proposed North Cedar Mountains, such as the proposed West Valley alignment, cause?

**A11.** Rail alternatives that do not traverse the proposed North Cedar Mountain wilderness area have a significant advantage over the Low Corridor alignment. First and foremost, they would not result in a smaller wilderness area because they would not sever a lowland portion of the wilderness area from the main body of the wilderness. This is important because it would result in the preservation of a large, intact roadless area and would avoid habitat fragmentation. It would also preserve as intact a natural area that encompasses the full range of habitat from lowland valleys to upper-elevation mountainous terrain. In the case where an alternative alignment bypasses the North Cedar Mountain area and traverses mud flats, the mud flats themselves may act as a natural fire barrier and as a barrier to the spread of exotic weeds. Therefore, those impacts may be less, if the rail line is located in mud flat areas.



Although alternative alignments, such as the West Valley alignment, would not directly cut through proposed wilderness areas in the North Cedar Mountains, these alignments would have many of the same impacts, including increases in off-road vehicle use and access, changes to vegetation, wetlands, and water flow, and increased chemical use. Again, even though alternatives to the Low Corridor do not bisect proposed wilderness, they can cause changes in fire patterns that affect vegetation and lead to increases in exotic and invasive plants. Roads associated with these alignments can still lead to an increase in the use of off-road vehicles, which could affect the potential wilderness area. Storm water flow would still be disrupted, leading to changes in the natural vegetation communities that can favor the introduction of exotic species.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter Of:	)	Docket No. 72-22-ISFSI
	)	
PRIVATE FUEL STORAGE, LLC	)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel	)	
Storage Installation)	)	March 18, 2002

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**SUWA'S: 1) OUTLINE FOR WITNESS DR. CATLIN  
2) KEY DETERMINATIONS FOR CONTENTION SUWA B  
3) LIST OF EXHIBITS**

**Outline for Witness Dr. Catlin:**

**I. Qualifications of James C. Catlin.**

- PhD from the University of California, Berkeley in Natural Resource Management and Geographic Information Systems (GIS).
- Director, Wild Utah Project.
- 20 years of experience in GIS and computer mapping.
- Provides conservation biology and computer mapping services to conservation organizations in Utah.

**II. Wilderness character of North Cedar Mountains area (NCMA).**

- North Cedar Mountains are part of Utah Wilderness Coalition's (UWC's) 1998 reinventory process.
- In determining wilderness character, reinventory process used same criteria as Bureau of Land Management.
- Careful fieldwork by UWC confirms that NCMA possesses wilderness character: it is of a proper size, is primarily affected by the forces of nature, contains outstanding opportunities for solitude, and has supplemental values consistent with wilderness.
- BLM's 1980 wilderness analysis for the NCMA was flawed
- BLM has not re-assessed the wilderness character of the NCMA since their 1980 inventory.
- NCMA is contained in America's Redrock Wilderness Act, currently before Congress and having 159 House cosponsors and 15 Senate cosponsors.

**III. Impacts to NCMA from Low Corridor Rail Spur**

- Severs the wilderness area, reducing its size and geographic reach.

- Increases habitat fragmentation and decreases biodiversity.
- Increases access and impacts from motor vehicles, including off-road vehicles.
- Increases the spread of exotic and invasive weeds.
- Changes and disrupts storm water flow, leading to adverse vegetation changes.
- Impacts wetland and spring areas, potentially threatening their unique animals.
- Chemical treatments damage native vegetation.

#### **IV. Impacts from alternate transportation routes that do not bisect NCMA**

- Leave potential wilderness area intact.
- Leave intact large roadless areas and avoids habitat fragmentation.
- Preserve full range of habitat from lowland valleys to upper-elevation mountainous terrain.
- Where alternative alignments traverse mud flats, the mud flats themselves deter harmful fires and serve as barrier to the spread of exotic weeds.
- Other impacts much the same as routes through NCMA proposed wilderness.

### **Key Determinations:**

- A.** The North Cedar Mountains area possesses wilderness character and/or qualifies for designation as wilderness pursuant to the 1964 Wilderness Act because it is a large roadless area that contains no significant human impacts, has important wildlife habitat, provides opportunities for primitive recreation and solitude, supports biodiversity, and may have cultural resource values.
- B.** A range of alternatives to the Low Rail Spur will have differing impacts on the wilderness character of the North Cedar Mountains area depending on their location and the configuration of the rail line and associated access roads, road crossings, fire buffer zone size, design, and maintenance, and culverts.
- C.** The License Application Amendment [and/or Final Environmental Impact Statement] fails to develop and analyze a meaningful range of alternatives to the Low Corridor Rail Spur and associated fire buffer zone that will preserve the wilderness character and the potential wilderness designation of a tract of roadless Bureau of Land Management land – the North Cedar Mountains – which it crosses.

### **List of Exhibits:**

- SUWA 1:** Resume of Witness Dr. Jim Catlin
- SUWA 2:** BLM Evaluation of [SUWA's] Externally Generated Proposals That Suggest An Area of Public Land Has Wilderness Characteristics
- SUWA 3:** Selected Pages from Notice of Appeal, Statement of Reasons, and Request for Stay Re: Utah State Director Wisely's Decision Partially Denying Southern Utah Wilderness Alliance's Protest of Inclusion of Certain Parcels in the May 22, 2001, Competitive Oil and Gas Lease Sale.

**March 18, 2001**

UNITED STATES OF AMERICA  
BEFORE THE  
NUCLEAR REGULATORY COMMISSION

Private Fuel Storage, a Limited Liability  
Company;

(Independent Spent Fuel Storage  
Installation).

Docket No. 72-22  
ASLBP No. 97-732-02-  
ISFSI

**CERTIFICATE OF SERVICE**

I hereby certify that I served copies of TESTIMONY OF DR. JAMES C. CATLIN ON THE WILDERNESS CHARACTER OF THE NORTH CEDAR MOUNTAINS, CONTENTION SUWA B, on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this March 18, 2002.

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\* Adjudicatory File  
Atomic Safety and Licensing Board Panel  
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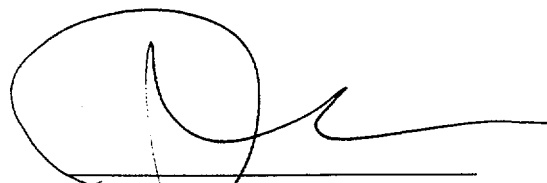
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Joro Walker

# **EXHIBIT SUWA 1**

## **James Catlin**

Wild Utah Project  
68 S. Main Street, Suite 400  
Salt Lake City, Utah 84101  
(801) 328-3550 office  
(801) 363-5887 home  
wup@xmission.com

### Education

Ph.D., University of California at Berkeley, 1996, Department of Environmental Science, Policy, and Management. 1996. My research investigated the influence that the geographic information system brings to natural resource management.

M.S., Civil Engineering, University of Utah, 1980, My dissertation performed sensitivity analysis on urban air pollution forecasting for carbon monoxide in the Salt Lake Valley.

Urban land use planning practicum, University of Utah, Department of Geography, 1977. This practicum produced a land use plan for Clearfield, Utah.

Regional planning courses, 1975, Imperial College, London, England

B.S., Electrical and Electronics Engineering, 1971, Oregon State University,. Area of specialization: analog and digital computer simulation of systems.

Languages      German, Mandinka, Wollof.

Professional Experience      Wild Utah Project Coordinator, fall of 1996 to present. This office, associated with The Wildlands Projects, provides GIS support, scientific analysis, and conservation project management assistance for Utah environmental organizations.

Computer consultant for Techtel Corporation and PinPoint Research, 1994 to 1996. Responsibilities included computer equipment procurement, system installation, training, and technical support. The equipment included a wide range of DOS/Windows/WinNT based computers using LAN, Internet services, computerized telephony.

University of Utah, Department of Geography, visiting lecturer. Developed and taught a graduate course titled Western Water Management, 1991.

Evans & Sutherland Computer Corporation 1977-1990. I supervised a staff of twelve field service engineers which provided worldwide technical support for

image generating computers used in flight simulation. My responsibilities included field service engineering, customer training courses, project management, procurement, and designing maintainability into new products.

International Computers Limited, London, United Kingdom, Field Service Engineer, 1974-76.

Peace Corps, The Gambia, West Africa, volunteer math and science teacher as well as instructor in teacher training, 1971-73.

Published  
Work

"Determining GIS Success in Land Management: the Dilemma Concerning Captivating maps," 1995, Proceedings of the Ninth Annual Symposium on Geographic Information Systems, March 27-30, Vancouver, B.C.

*Utah's Unprotected Wilderness*, Photos by Scott Smith, et al. Peregrine Smith Publisher, 1991, (contributing photographer and assistant editor)

*Wilderness at the Edge, A Citizen Proposal to Protect Utah's Canyons and Deserts*, Utah Wilderness Coalition, 1990 (Co-publisher/editor, cartography, contributing photographer)

*Saving the Solitude*, Sierra Club, 1984, a handbook on the Bureau of Land Management's wilderness review program.

"Carbon Monoxide Pollution in the Salt Lake Valley, Forecast Sensitivity Analysis," M.S. Thesis, 1980

Awards &  
Recognition

John Muir Award, Sierra Club conservation award, 1992

Switzer Fellow, 1992

Sigma Xi Research grant, 1993

Conservation Award, Southern Utah Wilderness Alliance

Listed in the Marquis Who's Who, 48<sup>th</sup>, 49<sup>th</sup>, 49th, 50<sup>th</sup>, and 51<sup>st</sup> editions



**EXHIBIT  
SUWA 2**



IN REPLY REFER TO

**United States Department of the Interior**

**BUREAU OF LAND MANAGEMENT**

Salt Lake Field Office  
2370 South 2300 West  
Salt Lake City, Utah 84119

8510  
(UT-023)

**MAY 8 2001**

Certified Mail Number 7000 1670 0006 2991 2615  
Return Receipt Requested

Stephen Bloch, Staff Attorney  
Southern Utah Wilderness Alliance  
1471 South 1100 East  
Salt Lake City, Utah 84105

Dear Steve:

Thank you for providing the Salt Lake Field Office, BLM with your wilderness proposal and accompanying information for the North Cedar Mountains. I have carefully reviewed the submitted documentation and have determined that the information provided does not significantly differ from the information in prior BLM inventories regarding the wilderness values of the area. Therefore, the conclusion reached for this area in previous BLM inventories remains valid and no further review is warranted at this time.

Please contact me if you have any questions or concerns at (801) 977-4300.

Sincerely,

Glenn A. Carpenter  
Field Office Manager

**BLM EVALUATION OF EXTERNALLY GENERATED PROPOSALS THAT SUGGEST  
AN AREA OF PUBLIC LAND HAS WILDERNESS CHARACTERISTICS**

**Proponent Name:** Southern Utah Wilderness Alliance (SUWA)

**Name of Area Identified By the Proponent:** North Cedar Mountains

**Brief Description of the Location in Relation to Existing WSAs or Areas Found to Have Wilderness Character in the Utah 1999 Wilderness Inventory:** Although the proposal area is not contiguous to a WSA, SUWA claims it is contiguous to the Cedar Mountain WSA (see page 11 and 19, SUWA proposal). The proposal area is approximately one mile north of the Cedar Mountain WSA. The WSA and proposal area are separated by Hastings Pass, a road maintained by Tooele County, and BLM reinventory unit one (see attachment A and B, SUWA proposal).

**BLM Field Office:** Salt Lake Field Office

**Date of Submission:** April 11, 2001

**ANALYSIS OF EXTERNALLY GENERATED PROPOSAL**

1. Does the submission include the required:
  - A. Map which identifies specific boundaries?  
Yes  X  No
  - B. A detailed narrative that describes the suggested wilderness characteristics of the area?  
Yes  X  No
  - C. Photographic documentation?  
Yes  X  No
2. Does the proponent's submission describe how its information significantly differs from the information in prior inventories conducted by BLM regarding the wilderness values of the area?  
Yes   No  X

Explanation: The proponent's submission primarily disagrees with a prior BLM wilderness inventory. The proponent repeatedly suggests that BLM's 1980 intensive inventory was flawed. Rationale given by proponent include: adjectives used in 1980 intensive inventory report (sublime), application of naturalness evaluation, outside sights and sounds evaluation, boundary selection, solitude test, assessment of outstanding opportunities for solitude and/or primitive and unconfined recreation, solitude determination, wording of intensive inventory summary, assessment methodology for outstanding opportunities for solitude, conclusions of outstanding opportunities, recreational qualities comparison, cultural resources discussion, or, virtually every aspect of the 1980 intensive inventory. Primarily, the proponent reinterprets the 1980 intensive inventory results by assuming the inventory should have been conducted according to the 2001 Wilderness Manual, a manual which was developed 21 years after the public comment period closed on the intensive inventory.

The proponent claims four items as new information. These are itemized in the following list, followed by BLM's response.

- 1.) Change of southern boundary from Hastings Pass to Lees Canyon. This is not new information. The BLM inventoried both canyons as part of the intensive inventory and found intrusions along both routes. In fact, the majority of intrusions lie north of Lees Canyon and include quarries, livestock trails, motorcycle paths, heavy sheep grazing, and other minor extensions of "ways" used primarily by 4X4 wheeled vehicles.
- 2.) Supplemental values, wild horses inhabiting the proposal area. This is not new information. In 1971, data was generated describing the distribution of wild horses within the SLFO. The Bureau recognized at that time that wild horses inhabited the North Cedar Mountains. Existence of wild horses within the area was also cited within the North Cedar Mountain intensive inventory file through reference to the Skull Valley-Lakeside Management Framework Plan Summary and Highlights (1976). The Skull Valley-Lakeside Management Framework Plan Summary and Highlights discusses the presence of wild horses on the Cedar Mountains within both the recreation and wild horse sections.
- 3.) Supplemental values, cultural resources within the area. Cultural resource inventories have been conducted after the time of the intensive inventory and sites have been found. The number of archaeological sites found in the area represent a ratio of approximately one site per hundred acres, which is not a high site density for the West Desert as a whole. This is new information, but is not significant.
- 4.) SUWA presents as new information the following paragraph (see page 16): "...because of its proximity to the Wasatch Front and Tooele Valley, the North Cedar Mountains have a particularly high value as an urban-interface non-motorized recreation area. The Wasatch Front and Tooele Valley have witnessed a remarkable explosion in urban population, a level that was not anticipated when the BLM's intensive inventory was completed." Anticipated and/or existing population numbers and proximity to urban centers were not factors used in the analysis of an area's wilderness characteristics. This is not applicable new information. The paragraph continues on to state "The BLM's Salt Lake Field Office has undertaken a role, as apart of its

multiple-use mission, of providing quality non-motorized recreation and wilderness experiences to the Wasatch Front; the reinventory and ultimate decision to designate this unit for wilderness study, would provide an excellent opportunity for BLM to continue this practice. While the SLFO appreciates SUWA's recognition of the Bureau's multiple-use mandate which includes opportunities for non-motorized, motorized and other forms of recreation use, the SLFO has not actively chosen one use which it has been tasked to manage, over another. Further, the SLFO does not cater to one population center, but rather treats all public land users as equals.

The following activities have occurred in the North Cedar Mountains subsequent to the 1980 intensive inventory:

- 1.) T.1S, R.9W. sec. 3 and 4 have been drill seeded as part of an emergency fire rehabilitation project for both the Redlam and Tooele fires (1983, 1984);
- 2.) T.1N., R.9W. sec. 33 was drill seeded as part of an emergency fire rehabilitation project for a wildland fire which occurred in 1983;
- 3.) T.1S, R.10W. sec. 13. Non-native vegetation occurring due to emergency fire rehabilitation project;
- 4.) T.1S., R.9W. sec. 29. Wildlife guzzler and maintenance route; and
- 5.) Several existing mining claims exist within the North Cedar Mountains.

In summary, the proponent has not provided significant new information that would change the 1980 intensive inventory determination. The proponent has not provided information to support a re-evaluation of the area. Aside from the lack of significant new information provided by the proponent, the SLFO has documentation on intrusions and developments within the unit which further supports the intensive inventory's determination.

3. Please describe all of the information, documentation, and evidence on which you relied to determine that the submission does or does not provide significantly different information, including but not limited to, the original inventory from 1979-1980 conducted pursuant to § 603 of the Federal Land Policy and Management Act (FLMPA), the 1996-1999 BLM reinventory, maps generated through planning or GIS data, any field observations, any applicable NEPA documentation, and any other relevant information.

North Cedar Mountain Intensive Inventory Unit, UT-020-087 file (1980);  
1996-1999 BLM re-inventory map of Cedar Mountains;  
Range Improvement Projects database (form 4120-8);  
Skull Valley-Lakeside Management Framework Plan Summary and Highlights (1976);  
Wilderness Inventory and Study Handbook, H-6310-1;  
GIS coverage (map) of 1971 Wild Horse Distribution within the Salt Lake Field Office;

Conversation with Peter Ainsworth, SLFO Archaeologist (05-04-01);  
Conversation with Kyle Hansen, SLFO Wild Horse and Burro Specialist (05-04-01);  
Conversation with Michael G. Nelson, SLFO Acting Assistant Field Manager for Non-renewable Resources (05-03-01);  
Conversation with Dan Washington, SLFO Natural Resources Specialist (05-03-01); and  
Conversation with Kevin Edinger, SLFO Rangeland Management Specialist (05-03-01).

#### DETERMINATION

The material provided \_\_\_\_ does, X does not, constitute significantly different information to warrant further review at this time.

Steve Q. Carpenter  
Field Office Manager

5/7/00  
Date

The determination on this form is part of an interim step in the BLM's internal decision making process and does not constitute an appealable decision.

**EXHIBIT  
SUWA 3**

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Attorney for Appellant Southern Utah Wilderness Alliance

**INTERIOR BOARD OF LAND APPEALS  
OFFICE OF HEARINGS AND APPEALS  
UNITED STATES DEPARTMENT OF THE INTERIOR  
4015 WILSON BLVD.  
ARLINGTON, VA 22203**

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SOUTHERN UTAH WILDERNESS ALLIANCE,	)	
	)	
Appellant,	)	<b>IBLA No.</b>
	)	
v.	)	<b>NOTICE OF APPEAL</b>
	)	<b>STATEMENT OF REASONS</b>
SALLY WISELY, in her official capacity as	)	<b>REQUEST FOR STAY</b>
Utah State Director, Bureau of Land	)	
Management and BUREAU OF LAND	)	Re: Utah State Director Wisely's
MANAGEMENT	)	Decision Partially Denying Southern
	)	Wilderness Alliance's Protest
Respondents.	)	of Inclusion of Certain Parcels in
	)	the May 22, 2001, Competitive Oil
	)	and Gas Lease Sale
	)	

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reasonable to expect that human imprints will return or can be returned to a substantially unnoticeable level either by natural processes or by hand labor

(Emphasis added). Thus, the WIH contemplates that BLM staff will review both the public generated proposal as submitted, or if necessary “a significant portion thereof,” for wilderness characteristics. See id. It is clear, though, that what the BLM cannot do is simply reject a public proposal out of hand, without considering whether “a significant portion” of the proposed wilderness unit “may have” wilderness characteristics.

*d. BLM's Determination That SUWA's North Cedar Mountains Proposal "Does Not Significantly Differ" From Prior BLM Inventories Must Be Set Aside*

1. BLM failed to follow the 2001 WIH guidelines when it determined that SUWA's new and supplemental information did not significantly differ from previous BLM inventories.

In Committee for Idaho's High Desert, 85 IBLA 54, 57 (1985), the Board discussed the standard of review for challenges to factual BLM determinations regarding the wilderness qualities of inventory units (i.e. naturalness, solitude, opportunities for primitive and unconfined recreation).

Suppose an appellant establishes that BLM failed to follow its guidelines, or otherwise creates doubt concerning the adequacy of BLM's assessment, and the record does not adequately support BLM's conclusions. In such a situation the BLM decision must be set aside and the case remanded for reassessment. We must point out that evidence of failure to follow guidelines alone is insufficient to require reassessment. An appellant must also point out how the errors affect the conclusions and show that a different determination might result from reassessment.

Id. (quoting Utah Wilderness Assoc., 72 IBLA 125, 129 (1983)) (internal citations omitted).

Though both the Committee for Idaho's High Desert and Utah Wilderness Association decisions are factually and procedurally distinct from this case -- both those decisions dealt with challenges to BLM decisions to drop lands from further consideration for wilderness after an intensive inventory -- the standard of review is generally appropriate for a challenge to BLM's alleged failure to comply with the WIH. As SUWA will demonstrate below, not only did BLM fail to follow the WIH guidelines in its assessment of SUWA's North Cedar Mountains proposal, but these failures had a real and immediate effect on BLM's decision not to further review and evaluate the North Cedar Mountains for their wilderness qualities.<sup>9</sup> If remanded to BLM, with instructions to follow the WIH, it is likely BLM would determine SUWA's proposal requires a re-evaluation of the North Cedar Mountains' wilderness characteristics.

2. BLM did not determine whether there was a "reasonable probability" that a "significant portion" of SUWA's proposed North Cedar Mountains unit "may have" wilderness characteristics.

WIH 6310-1.06E requires that BLM staff reviewing an externally prepared proposal "make a preliminary determination whether the conclusion reached in previous BLM inventories that the area in question lacked wilderness qualities remains valid, or whether there is a reasonable probability that the area in question (or a significant portion thereof) may have wilderness characteristics." (Emphasis added). A plain reading of this requirement indicates that BLM

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<sup>9</sup>The BLM's determination acknowledged that SUWA's North Cedar Mountains proposal met WIH H-6310-1.06E's requirements: a map which identifies specific boundaries; a detailed narrative that describes the suggested wilderness characteristics; and photographic documentation. See Vol. 2, Exhibit 4, at 2.

reviewers cannot only consider the proposal as presented by SUWA, but must also consider a “significant portion” of the unit, presumably if there are some minor intrusions that can be excluded. See e.g., Vol. 2, Exhibit 2, WIH 6310-1.13C (Boundary Adjustments) (“[w]here substantially noticeable human caused impacts occur within an inventory area, reviewers should consider the opportunity to adjust the area boundary to exclude the human impacts.”) (emphasis added).

There is absolutely nothing in the record demonstrating that BLM considered excluding areas in SUWA’s proposal it believed lacked wilderness character, or that it evaluated a smaller unit. See Vol. 2, Exhibit 4, at 3. For example, though BLM disputed the use of a different southern boundary for the UWC’s North Cedar Mountains unit (the unit uses Lee’s Canyon, rather than Hastings Pass - the original southern boundary to the BLM’s 1980 intensive inventory) as “new information,” there is no reference whatsoever to whether BLM considered if a smaller North Cedar Mountains unit “may have” a “reasonable probability” of containing wilderness characteristics. See id. See also Vol. 2, Exhibit 2, WIH H-6310-1.06E.<sup>10</sup>

Because this error demonstrates that “BLM failed to follow its guidelines, or otherwise creates doubt concerning the adequacy of BLM’s assessment,” and SUWA has demonstrated that a different determination might result on remand, “the BLM’s decision must be set aside and remanded for reassessment.” Utah Wilderness Assoc., 72 IBLA at 129.

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<sup>10</sup>In addition, BLM’s suggestion that disqualifying intrusions north of the unit, including “quarries, livestock trails, motorcycle paths, heavy sheep grazing, and other minor intrusions of ‘ways’ used primarily by 4x4 vehicles,” is simply a cut and paste from the 1980 intensive inventory. See Vol. 2, Exhibit 1, Attachment D, at 3. There is no evidence that BLM re-evaluated the presence or absence of these impacts today, and as noted infra at 34-35, BLM did not respond to SUWA photographs depicting the unnoticeable condition of some of these impacts.

- 3 BLM cannot rely on its 1980 intensive inventory to reject SUWA's North Cedar Mountains proposal when SUWA's proposal demonstrates that its new information significantly differs from prior BLM inventories.

BLM largely dismissed the new information SUWA provided in its North Cedar Mountains Proposal as "disagree[ing] with a prior BLM wilderness inventory," and "repeatedly suggest[ing] that BLM's 1980 intensive inventory was flawed. BLM is wrong. The agency is merely continuing to "defend" its earlier wilderness inventory based on a twenty year old document and the revised WIH directs BLM to do otherwise. SUWA's "new information" is precisely the type of information the WIH anticipates receiving: "D. Other Public Lands That May Require a Wilderness Inventory: This includes . . . lands within externally generated proposals that document new or supplemental information regarding resource uses and condition of the lands not addressed in current land use plans and/or prior wilderness inventories." WIH H-6310-1.06D (emphasis added). See *id.* H-6310-1.06E (new information should "significantly differ[] from the information in prior inventories conducted by BLM regarding the wilderness values of the area").

This Board has recognized for years that "[t]he proper scope of the wilderness inventory conducted under sections 201 and 603 of FLPMA, 43 U.S.C. §§ 1711 and 1782 (1988), involves a determination of whether the land inventoried is possessed of the wilderness characteristics defined by Congress so as to require a designation as a WSA. In conducting the wilderness inventory, BLM has been guided by [the] WIH and its amendments." The Wilderness Soc'y et al., 119 IBLA at 172 (citation omitted). It would be nonsensical for BLM to continue clinging to its 1980 inventory of the North Cedar Mountains as a basis to reject SUWA's proposal without

first evaluating the proposal to determine if it contained significant “new information.”<sup>11</sup>

First and foremost, SUWA provided uncontested photo documentation depicting current conditions of various intrusions that were documented in BLM’s 1980 intensive inventory. In particular, SUWA Photograph 4 (reclaimed vehicle way); Photograph 9 (reclaimed and vegetated dike); Photographs 18&19 (reclaimed and revegetated vehicle way); and Photograph 25 (successful BLM reseeding that appears “natural” to the casual viewer)<sup>12</sup> provide comparative photos to intrusions BLM identified in its 1980 intensive inventory. See Vol. 2, Exhibit 1. BLM’s determination, rejecting SUWA’s proposal, wholly fails to acknowledge or address the on-the-ground changes SUWA’s photographs demonstrate. This is precisely the type of “new information” that an externally generated proposal must provide, and yet BLM ignored or otherwise chose not to respond to evidence of changed (namely rehabilitated) on-the-ground conditions. This failure alone casts considerable doubt on BLM’s determination that SUWA’s proposal does not contain significant new information.

In addition, SUWA’s proposal points out that its proposed North Cedar Mountains unit utilizes Lee’s Canyon as its southern boundary, not Hastings Canyon, the boundary utilized by the BLM’s 1980 intensive inventory. See Vol. 2, Exhibit 1, at 6-8. Though BLM discounts this

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<sup>11</sup>The fact that over twenty years has passed since BLM’s prior intensive inventory took place, and that SUWA’s proposal has been submitted under the 2001 WIH is itself sufficient new information to trigger a re-evaluation of the North Cedar Mountain’s wilderness characteristics.

<sup>12</sup>See Vol. 2, Exhibit 2, WIH H-6310-1.13B.2(b)(1) (“Apparent naturalness refers to whether or not an area looks natural to the average visitor who is not familiar with the biological composition of natural ecosystems versus human-affected ecosystems in a given area. The presence or absence of naturalness (i.e., do the works of humans appear to be substantially unnoticeable to the average visitor?) is the question the Wilderness Act directs the review to assess.”).

information as “not new,” its determination lacks any supportable foundation. Specifically, BLM states that it “inventoried both canyons as part of the intensive inventory and found intrusions along both routes. In fact, the majority of intrusions lie north of Lee’s Canyon and include quarries, livestock trails, motorcycle paths, heavy sheep grazing, and other minor extensions of “ways” used primarily by 4x4 wheeled vehicles.” Vol. 2, Exhibit 4, at 2. The 1980 intensive inventory, however, in no way considered making the Lee’s Canyon “way” the southern boundary of the unit: “Lee’s Canyon ‘way’ follows a drainage and cuts a six mile path through the North Cedar unit. This bisects the unit into a third.” Vol. 2, Exhibit 1, Attachment D, at 3 (emphasis added). Furthermore, there is no support in the 1980 inventory for BLM’s assertion that today “the majority of intrusions lie north of Lee’s Canyon,” and in fact the text of the inventory (along with photographs and maps) suggests that the intrusions BLM identified in 1980 are found primarily “along the access route,” and not north into the unit. See id. Regardless, even if these “intrusions” were located north of Lee’s Canyon, BLM did not consider whether a “significant portion” of SUWA’s proposed unit qualified for a more intensive review. See supra at 31-32.

Finally, SUWA identified the presence of wild horses as a supplemental value and new information that was not considered in BLM’s 1980 intensive inventory. See Vol. 2, Exhibit 1, at 16. In response, BLM claims that, though never mentioned in the intensive inventory, wild horses were noted in an earlier land use plan (the 1976 Skull Valley-Lakeside Management Framework Plan), which was incorporated by reference, in its entirety, in the 1980 intensive inventory. See Vol. 2, Exhibit 4, at 2. Incredibly, BLM is suggesting that it can incorporate a complex document, hundreds of pages long, by vague reference, and without any notation to a specific provision concerning wild horses. BLM is mistaken. The fact of the matter is -- there is not a

single direct reference to wild horses in the 1980 intensive inventory, nor any indication that the presence of wild horses was considered a “supplemental value” or an aspect of “primitive and unconfined recreation.”<sup>13</sup> Moreover, BLM’s own 1999 wilderness inventory of the Cedar Mountains, immediately south of the North Cedar Mountains, specifically identified viewing wild horses as an “outstanding opportunity for primitive and unconfined recreation, that supported BLM’s conclusion that the area has wilderness qualities. See Vol. 2, Exhibit 1, Attachment C. Additionally, while SUWA provided BLM’s own 2001 estimate of the number of wild horses utilizing the North Cedars (350 according to the Salt Lake field office wild horse specialist), BLM’s determination did not mention how many wild horses were present in 1980, and if the current figure is more or less than the historic figure. In short, because there is no evidence, whatsoever, that BLM considered the presence of wild horses in its 1980 intensive inventory, BLM cannot now reject SUWA’s information regarding wild horses as “not new information.”

BLM’s determination identifies several “intrusions and developments” in the North Cedar Mountains that it apparently points to as evidence that the area does not have wilderness characteristics. See Vol. 2, Exhibit 4, at 3. These intrusions include: drill seeding in 1983 and 1984, “[n]on-native vegetation occurring due to emergency fire rehabilitation project,” wildlife guzzler and maintenance route, and several mining claims. Id. What BLM fails to do, however, is point out that the WIH “naturalness” section addresses human impacts, and their effect on overall wilderness qualities: “An area may include some human impacts provided they are substantially

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<sup>13</sup>In particular, the BLM’s 1980 intensive inventory section on the North Cedar Mountains’ opportunities for “primitive and unconfined recreation” mentions, by name, several wildlife species present in the North Cedar Mountains, but does not include wild horses. See Vol. 2, Exhibit. 1 at Attachment D, at 6.



unnoticeable in the area as a whole. Examples of man-made features that may be substantially unnoticeable in certain cases are: . . . wildlife enhancement facilities . . . and spring developments.” Vol. 2, Exhibit 2, WIH H-6310.13.B(2)(a)(2). The naturalness section continues by noting that “[a]pparent naturalness refers to whether or not an area looks to be natural to the average visitor who is not familiar with the biological composition of natural ecosystems versus human-affected ecosystems in a given area.” Id. WIH H-6310.13.B(2)(b)(1). In short, many of the “intrusions” baldly cited by BLM as support for its argument that the North Cedar Mountain’s lack of wilderness character do not necessarily disqualify the area from additional evaluation. See id. These baseless assertions, made without any reference to the WIH, and without any additional documentation, cannot support BLM’s determination that SUWA’s proposal does not offer significant new information.

BLM’s failure to “follow its guidelines” directly affected its faulty conclusion that SUWA did not provide sufficient “new information” to establish a reasonable probability that the North Cedar Mountains may have wilderness characteristics, a low threshold that SUWA has clearly met. See Utah Wilderness Assoc., 72 IBLA at 129. A remand is therefore appropriate because a different result might occur from BLM’s reexamination of SUWA’s proposal.

4. BLM arbitrarily chose not to evaluate SUWA’s proposal using the 2001 WIH and this decision must be remanded.
  - a. SUWA can utilize the 2001 WIH to challenge BLM’s previous inventories.

Even if SUWA’s North Cedar Mountains proposal is cast as a challenge to BLM’s 1980 intensive inventory using the 2001 WIH criteria, this Board has previously recognized this type of

claim.<sup>14</sup> In Sierra Club, 61 IBLA 329,333-34 (1982), appellant Sierra Club challenged BLM decisions to exclude certain parcels from WSA status, arguing, among other things, that the agency's decision making process failed to comply with amendments to the WIH and organic act directives that were made after BLM had completed its review. The Board's Sierra Club opinion discussed the appropriate standard of review for this type of claim:

The mere fact that BLM employees were not sufficiently prescient to anticipate that future actions by the BLM Directorate might prohibit actions they were taking is insufficient, in the absence of an affirmative showing by appellant that a different determination would result if the subsequent directions were implemented, to invalidate an evaluation process which has already occurred.

(Emphasis added). See Wilderness Soc'y et al., 119 IBLA at 173 (reviewing Sierra Club and restating standard of review: "where an appellant establishes that BLM failed to follow its guidelines and also shows affirmatively that such failure caused BLM to reach an incorrect conclusion, reversal of the BLM decision is required."); see also Committee for Idaho's High Desert, 85 IBLA at 57 ("a party challenging [a] decision . . . must show that if the new guidelines were followed, a different determination would result.").

- b. BLM's determination that SUWA failed to provide significant new information must be remanded because it entirely failed to evaluate SUWA's analysis of the current conditions utilizing the 2001 WIH.

In this instance, BLM rejected SUWA's proposal out-of-hand, arguing that it "primarily disagrees with a prior BLM wilderness inventory," and stating that SUWA "reinterprets the 1980

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<sup>14</sup>The 2001 WIH anticipates that externally generated proposals, like SUWA's may provide "new or supplemental information regarding resource uses and condition of the lands not addressed in current land use plans and/or prior inventories." See Vol. 2, Exhibit 1, WIH H-6310-1.06D (emphasis added).

intensive inventory results by assuming the inventory should have been conducted according to the 2001 [WIH], a manual which was developed 21 years after the public comment period closed on the intensive inventory.” Vol. 2, Exhibit 4, at 3. This, however, is exactly the type of situation addressed and analyzed in Sierra Club, and subsequent cases, where appellants argued that revised and amended WIH standards should apply to an earlier BLM decision making process. See e.g., Sierra Club, 61 IBLA at 333.

SUWA’s North Cedar Mountains proposal, attached as Vol. 2, Exhibit 1, includes over 50 pages of text and photographs, as well as numerous attachments, and provides not only significant new information, see supra, at 33-37, but also analyzes current on-the-ground conditions with those in 1980, and applies the new WIH to that analysis. See Vol. 2, Exhibit 1, at 3-20. SUWA’s proposal also addresses the “naturalness” and “outstanding opportunities for solitude or a primitive and unconfined type of recreation” criteria, and provided numerous photographs that highlighted some of the intrusions identified in BLM’s 1980 intensive inventory that are now faded and insignificant human impacts. See id. at 21-32. SUWA’s proposal concludes that the current conditions, when analyzed under the 2001 WIH, indicate there is a reasonable probability that the proposed North Cedar Mountains wilderness unit may have wilderness characteristics, and should be fully re-evaluated by BLM.

BLM, however, refused to consider or address any aspect of SUWA’s proposal, which the agency considered an attempt to revisit the earlier inventory. As highlighted above, such a proposal can be brought under the WIH, and SUWA has done so here. BLM’s cursory dismissal of SUWA’s proposal provides nothing for this Board to defer to or review, while on the other hand SUWA’s proposal demonstrates that a reassessment of the North Cedar Mountains’

where the wilderness issue has been fiercely debated over the past twenty years, the public has a clear and undeniable interest in rigorous agency compliance with the WIH. See also West Virginia Highlands Conservancy v. Island Creek Coal Co., 441 F.2d 232, 236 (4th Cir. 1971) (holding public interest organization interest in protecting wilderness was aligned with public's interest, and preliminary injunction should issue).

On the other hand, the BLM will not and cannot demonstrate that a stay is not in the public interest. To the contrary, BLM compliance with the law “invokes a public interest of the highest order,” and here there is little question that the agency has flaunted NEPA and the WIH. See e.g., Public Serv. Co. of Colorado v. Andrus, 825 F. Supp. 1483, 1509-10 (D. Idaho 1993) (agency's failure to comply with the law “invokes a public interest of the highest order”) (citations omitted); Fund for Animals v. Espy, 814 F. Supp. at 142, 152 (D.D.C. 1993) (basing grant of injunction in part on the “strong public interest in meticulous compliance with the law by public officials”).

### CONCLUSION

SUWA requests that this Board remand BLM's May 22, 2001, decision partially denying SUWA's protest and direct BLM to comply with NEPA and the WIH before re-offering these leases.

In the meantime, SUWA requests that the Board issue a temporary stay against the effect of BLM's May 22, 2001 decision until a final decision is rendered in this matter. If a stay is not issued, substantial and irreparable harm to SUWA's interests and the environment will occur before this Board issues a decision.

For all the reasons set forth above, SUWA is entitled to a stay of oil and gas leasing on these parcels and, ultimately, a remand of BLM's decision. The balance of harms tips decidedly in SUWA's favor. This Stay Petition raises significant and credible questions concerning the legality of BLM's behavior, on which SUWA is likely to succeed on the merits. Only SUWA will suffer irreparable harm if BLM is permitted to continue engaging in irretrievable commitments of resources, and the public interest swings decidedly in SUWA's favor.

Dated this <sup>21</sup>21 day of June, 2001.

SOUTHERN UTAH WILDERNESS ALLIANCE



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Stephen H.M. Bloch  
Attorney  
Southern Utah Wilderness Alliance