



# Interior gone Wild

By: [Bret Sumner](#)

The Department of the Interior's new "Wild Lands" policy has broad implications for valid existing oil and gas leases, planned exploration and development projects, and future leasing on federal lands. On December 22, 2010, Secretary Salazar signed Secretarial Order 3310, *Protecting Wilderness Characteristics on Lands Managed by the Bureau of Land Management*. This new policy is the latest salvo in an on-going legal, regulatory, and policy war that now spans four decades.

Commentary and opposition to Interior's Wild Lands policy is already extensive. This article provides an overview of the potential practical ramifications confronting companies with existing federal leases on lands with inventoried or alleged "wilderness characteristics."

This Order directs BLM to "protect wilderness characteristics through land use planning and **project level decisions**" unless BLM determines impairment is appropriate. As a practical matter, BLM's interpretation of the term "wilderness characteristics" is nebulous; it does not just cover pristine lands with outstanding scenery and opportunities for primitive recreation and solitude. In the Uinta Basin, for example, after conducting new inventories to update a federal land use plan, BLM determined certain lands contained "wilderness characteristics" despite the fact that these lands had all been leased for oil and gas, and already contain 54 miles of access roads, eight well pads with existing production, and related gathering facilities. These existing human imprints are not enough for BLM to preclude the lands from being classified as having "wilderness characteristics."

Although the Order references valid existing rights, the draft BLM manual to implement this Order shows that these rights are given short shrift:

“Undeveloped ROWs and similar undeveloped possessory interests **(e.g., mineral leases) are not treated as an impact to wilderness characteristics.** (Frequently, these rights are never developed; such areas will be further examined during planning for [Lands with Wilderness Characteristics].”

Draft BLM Manual 6300-1-Wilderness Inventory (emphasis added).

Order 3310 impacts project-level decisions for lands that may have wilderness characteristics, even if not designated by BLM as “Wild Lands.” *See* “Interior’s Wild Lands Inventory and Planning Guidance Questions and Answers,” (December 23, 2010). For a project level decision, the Order requires BLM to consider the impacts of the project on wilderness characteristics and additional measures to minimize impacts to those wilderness characteristics.

This direction indicates that BLM may choose to elevate protection of these lands over development of valid existing lease rights. While BLM cannot preclude development of these oil and gas leases, under this Order and new policy, BLM may be able to impose conditions of approval to restrict development and minimize surface impacts (e.g., mandate directional drilling).

With regard to existing oil and gas development projects that are currently in the process of being reviewed under the National Environmental Policy Act, environmental plaintiff organizations, such as the Southern Utah Wilderness Alliance (SUWA), have already submitted comments to BLM urging full compliance with the new Wild Lands Order. Under SUWA’s interpretation of this Order, even if lands with existing oil and gas leases have recently been inventoried for wilderness characteristics as part of a BLM land use planning process, BLM is still required to re-inventory these lands again, prior to authorizing the project. It is not clear whether BLM shares SUWA’s interpretation at this point, but obviously such an interpretation would lead to extensive delays in project authorization pending completion of new inventories, and could result in leased lands being designated as “Wild Lands” with added restrictions against development to avoid impairment of wilderness characteristics.

This Order also directly interplays with BLM’s new Master Leasing Plan (MLP) policy. For future land use planning amendments or MLPs, where BLM has inventoried and identified an area and found it to possess wilderness

characteristics, the Order dictates that BLM's planning decision "shall" designate these lands as "Wild Lands," unless BLM determines that impairment of these wilderness characteristics is appropriate. Interior has not yet indicated what it considers "appropriate" impairment of wilderness characteristics.

Given that BLM plans to develop new Master Leasing Plans to revise many, if not all, of the current Resource Management Plans in the west, it is apparent that wilderness characteristic inventories and Wild Lands designations will be at the forefront of these land use plan updates.

Interior's new Wild Lands Order will not resolve the on-going controversies regarding wilderness characteristics. Rather, this Order opens the door for more litigation, more regulatory uncertainty, and more business risk for companies with valid existing rights on federal lands.

Companies with existing leases on lands with "wilderness characteristics," or lands that environmental advocacy groups claim to have such characteristics, should proactively develop a strategy to ensure development of these lease rights and to avoid potential delays in permitting and project authorization.

For more information, please contact [Bret Sumner](#) or [Bill Sparks](#).

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