



United States Senate

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<http://feinstein.senate.gov>

April 17, 2006

The Honorable Lynn Scarlett
Acting Secretary
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Scarlett:

We write to express our deep concern about the Department of the Interior's recently proposed R.S. 2477 policy. This policy is flawed for several reasons.

First, the new policy would risk significant harm to our National Parks, Wildlife Refuges, National Monuments, Wilderness areas, wilderness study areas, proposed wilderness and other special public lands by paving the way for unprecedented road development and damaging off-road vehicle use.

By making it easier for those pressing questionable claims as public highways (such as trails and OHV tracks) the policy could devastate public treasures like the Mojave National Preserve and other sensitive lands protected by the California Desert Protection Act, the Grand Staircase-Escalante National Monument, Denali National Park and Preserve and Dinosaur National Monument, just to name a few.

Second, we strongly disagree with the conclusion that the new policy is required by the Tenth Circuit Court of Appeals' decision in, *SUWA v. BLM*, 425 F.3d 735 (10th Cir. 2005), or that, in any event, the court's decision should be applied on a national level. While that decision stated that the Department could undertake non-binding administrative determinations for internal purposes, the decision in no way requires a wide-reaching new policy for sensitive lands (such as National Parks). Nor should the Department necessarily apply the decision outside of the six States in which it is binding. The Department has broad discretion to protect our

special places from potentially harmful R.S. 2477 claims, and it should not surrender that discretion lightly.

Furthermore, the new policy seems to contradict assurances you made to Congress in 2003 that the Department's R.S. 2477 policies (as expressed in a memorandum of understanding with the State of Utah) would not apply in National Parks, Wildlife Refuges, or Wilderness and Wilderness Study Areas, and that the policy would only allow recognition of rights-of-way of the size and purpose they had in 1976, and would be limited to roads over which four-wheeled vehicles can travel.

Finally, we are concerned that the proposed road maintenance agreement would make it easier for States or counties to perform landscape-changing highway maintenance and construction on public lands, without adequate environmental analysis or protections. It is unclear what role the public will have in providing input and evaluating information used to make administrative determinations and road maintenance agreements that will significantly impact publicly-owned resources.

We strongly urge you to reconsider this ill-advised policy.


Sincerely,


DIANNE FEINSTEIN
United States Senator


KEN SALAZAR
United States Senator


RICHARD DURBIN
United States Senator


MARIA CANTWELL
United States Senator


JEFF BINGAMAN
United States Senator


BARBARA BOXER
United States Senator

CC: Governor Dirk Kempthorne