Congress of the United States
House of Representatives
Washington, D.C. 20515

July 14, 2003

The Honorable Gale A. Norton
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Norton:

We write to you today as Congressional members of the U.S. Migratory Bird Commission regarding the recent publication of regulations by the Bureau of Land Management (BLM) regarding the "disclaimer of property interests" by the Department of the Interior. We are troubled over the possible application of these regulations to the National Wildlife Refuge System and are concerned that you have received bad legal advice, bad policy advice, or both from your senior staff on this matter. Some background regarding the Commission's work will help put our particular concerns into perspective.

As the Congressional members of the Commission, we have collectively worked for decades with the United States Fish and Wildlife Service in expanding the National Wildlife Refuge System through the acquisition of critical wetland and waterfowl habitat. We have taken our work with the Commission very seriously since it fulfills a long-standing commitment to the waterfowl hunters of this country to apply Duck Stamp revenues for the conservation of wetlands and the expansion of the Refuge System.

Our Commission responsibilities have required us to work closely with the Service's Division of Realty and we have been consistently impressed with the professionalism, the thoroughness and the competency of the Service's realty officials. Our work with the Service has also confirmed our strong belief that within the Federal Government, the paramount authority for the acquisition or disposal of lands within the Refuge System must remain in the hands of the Director of the Fish and Wildlife Service. It is this latter point which is at odds with the new BLM disclaimer regulations.

The new disclaimer regulations rely upon Section 315 of the Federal Land Management and Policy Act (FLPMA), 43 U.S.C. 1745, as their primary source of authority. Section 315 authorizes the Secretary of the Interior to issue documents of disclaimers and states that such documents shall have the same force and effect as a quit-claim deed from the United States. Thus, by issuing a disclaimer, the Federal government washes its hands of having any remaining property interests in a given piece of land.

Under the disclaimer regulations, BLM has asserted that *it* has the exclusive power to disclaim Federal property interests, and not just for public lands under its jurisdiction, but for lands within the National Wildlife Refuge and National Park Systems as well. While we acknowledge the utility of disclaimer authority in general, we are particularly dismayed at BLM's assertion that it is now supplanting the authority of the Director of the Fish and Wildlife Service for issuing disclaimers for land within a national wildlife refuge. This is not only an inappropriate policy decision, it is unauthorized under Federal wildlife refuge law as well.

Madame Secretary, we fear that your advisors did not tell you that one of your predecessors, Secretary Rogers Morton, went down a similar road in 1975 when he tried to re-delegate the decision-making authority of FWS over certain Game Range Units of the National Wildlife Refuge System to the Director of BLM. The response of Congress nullifying this decision was swift and unambiguous, resulting in the enactment of the so-called Game Range Amendments of 1976 (Act of February 27, 1976, 16 U.S.C. 668dd(a)). The Game Range Amendments overturned Secretary Morton's attempt to transfer to BLM the plenary authority of the Director of FWS over decisions affecting land within the Refuge System. While the Amendments allowed other Federal agencies to offer their technical assistance or expertise to FWS to address a given problem within the Refuge System, all such assistance had to be subject to the ultimate paramount authority of the Director of FWS.

To reaffirm this point ever further, when Congress enacted FLPMA eight months later, it expressly stated in Section 204(j) of that Act (43 U.S.C. 1714) that none of the provisions of FLPMA should be interpreted as amending or modifying the provisions of the earlier Game Range Amendments of 1976. Thus, the savings clause in Section 204(j) made it abundantly clear that the paramount authority of the Fish and Wildlife Service Director over land within the Refuge System survived the enactment of FLPMA, including the enactment of disclaimer authority in Section 315 of that Act. The fact that BLM asserts in the new Disclaimer regulations that it, alone, will make the final decision on the validity of a disclaimer claim within the Wildlife Refuge System, ostensibly even over the objections of the Director of FWS, simply flies in the face of Federal law.

This is not an idle concern on our part for the future health and wellbeing of the Refuge System. The preamble to BLM's Disclaimer regulation makes it abundantly clear that the agency intends to process RS 2477 claims under the new disclaimer process, including RS 2477 claims involving lands within the Refuge System. Ultimately repealed by FLPMA, RS 2477 was an antiquated 1866 law designed to grant rights-of-way across Federal land *that was not otherwise reserved for other public purposes*. BLM has now established itself as the final arbiter of the validity of RS 2477 claims affecting land within a wildlife refuge.

The Migratory Bird Commission has acquired wetland habitat in various western national wildlife refuges that could be severely impacted by BLM granting disclaimers for otherwise invalid RS 2477 claims. Browns Park National Wildlife Refuge in northwestern Colorado is a case in point. Over the course of many decades, the Commission has expended hundreds of thousands of Duck Stamp dollars to acquire critical wetland inholdings within the refuge. Yet, in response to the new BLM disclaimer regulations, Moffat County is now blanketing the refuge with RS 2477 claims, leaving virtually no part of the refuge unaffected. With the stroke of a pen, BLM could nullify years worth of effort to consolidate refuge lands and avoid the fragmentation of waterfowl habitat. This would be a terrible waste of Duck Stamp dollars.

The professionalism and competency of the FWS Division of Realty makes this present situation all the more unnecessary. The Service's Realty Manual states that since 1969, the Realty Division has assumed the responsibility for granting rights-of-way across refuge land and for recognizing valid existing property rights within the Refuge System, including claims under RS 2477. The FWS Realty Division is quite capable of assessing the validity of, and processing, valid rights-of-way claims across refuge lands and has no need for BLM to usurp this responsibility.

Madame Secretary, we are not calling into question your commitment to a strong and vibrant National Wildlife Refuge System. We do believe, however, that you have been poorly served in this matter by others within your Department and urge you to withdraw BLM's disclaimer authority as applied to the National Wildlife Refuge System. This would be one of the best gifts that you could give to the Refuge System on the eve of its one hundredth anniversary.

Sincerely yours,

Curt Weldon
Member of Congress

John D. Dingell
Member of Congress