

## Magnifying Your Advocacy Impact: How to Successfully Advocate With Executive Branch Agencies

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Good afternoon. I'm pleased to be on this panel with my friends Diana, Gwen, Pete. I'll continue the theme of how to maximize the impact of your wilderness advocacy by explaining why administrative lobbying must be a part of your action plan.

I think Gwen and Pete had the easier job on this panel. Everyone is familiar with the civics textbook description of "how a bill becomes a law." Organizations interested in a bill either try to kill it, change it, or get it passed. The "tricks of the trade" of legislative lobbying by pressure groups are the stuff of news media coverage every day. Gwen and Pete gave us examples of good and bad lobbying.

My assignment is to cover administrative lobbying, that is, how to influence rules and regulations. That behind-the-scenes, out-of-view process isn't covered by the news media, but it is as important as the out-front work with Congress.

But I don't want to make the transition from legislative branch to executive branch lobbying without telling you a couple of stories from my legislative lobbying days:

OK, the year is 1965. The Wilderness Act required the Forest Service to look at all of its primitive areas and tell Congress if they should become wilderness. The first area to reach Congress was the San Rafael near Santa Barbara. The Forest Service stood pat with the primitive area boundary. Local conservationists wanted to double its size. My Wilderness Society job was to get House Interior Committee Ranking Member John P. Saylor of Pennsylvania to support the conservationists' boundaries. I brought large aerial photos to his office and we got down on our hands and knees on the floor of his office together to compare the proposals in detail. That was pretty cool. He decided to actively support the conservationists' version, and that version passed Congress. Later,

in Mr. Saylor's office celebrating passage of the bill, I shouted, "Thank God!" And without missing a beat, Mr. Saylor countered, "Don't thank God, thank John P. Saylor!" I stood corrected.

A few days after the San Rafael Wilderness bill had passed Congress, the next primitive area up for review, Mount Jefferson in Oregon, was scheduled for a hearing by the House Interior Committee. I'll never forget rounding the corner in the Longworth House Office Building to come upon Committee Chairman Wayne Aspinall sticking his index finger into the chest of Forest Service lobbyist Reynolds Florence and shouting "...and I don't want another San Rafael!" What the chairman was referring to was all the politicking the Forest Service had done to stop the Santa Barbara citizens' boundary plan from being adopted by Congress. The Forest Service knew that if it was adopted, their proposals for making wilderness from primitive areas would not be taken "as Gospel" but have no more weight than those coming in from the people who lived near the areas. Aspinall was telling Florence to "cool it." He didn't like that much controversy, especially when it was being created by an executive branch agency which under the Hatch Act had no business lobbying Congress anyway.

Now let's explore administrative or executive branch lobbying.

Getting your bill passed and signed by the President is an essential first step. But prepare to buckle down for what happens next.

That next step in the policy-making process takes place behind closed doors, in the USDI Office of the Solicitor or the USDA Office of the General Counsel. Lawyers there will draft regulations that determine how your law will be interpreted and enforced. Perpetual monitoring of how the executive branch chooses to read and enforce that law should keep you on your toes. As we have seen "in spades" recently, regulations can be changed drastically from one administration to the next, even though the underlying statute has not been amended. It's called administrative discretion. So you need to keep an eye on administrative interpretation to keep the enforcement of your law going

in the right direction. Proposed rule changes and notices of public hearings on them must be posted in the daily Federal Register.

When you have a chance, go to [federalregister.gov/documents](https://www.federalregister.gov/documents) on your phone and see how that online posting of proposed rule changes works. Here's a current example.

The headline states:

Proposed Rule

**Endangered and Threatened Wildlife and Plants; Revision to the Nonessential Experimental Population of the Mexican Wolf**

A Proposed Rule by the [Fish and Wildlife Service](#) on [10/29/2021](#)

- This document has a comment period that ends in 74 days. (01/27/2022)

**SUMMARY:**

We, the U.S. Fish and Wildlife Service (USFWS), propose new revisions to the existing experimental population designation of the Mexican wolf ( *Canis lupus baileyi* ) in the Mexican Wolf Experimental Population Area (MWEPA) in Arizona and New Mexico under section 10(j) of the Endangered Species Act of 1973, as amended (ESA). We are taking this action in response to a court-ordered remand of our January 16, 2015, final rule revising the regulations for the nonessential experimental population of the Mexican wolf. We are holding three public information session and two public hearings, as follows:

You get the idea. It's easy to use the online Federal Register. It tells you how to get your comments in for the record.

Rule changes can set back the progress we think we've made and still pass muster in court as being within the administrative discretion of the agencies. Recall that the Trump Administration rolled back more than 100 environmental rules such as those that weakened an Obama-era rule to reduce air pollution in national parks and wilderness areas, made significant cuts to the borders of two national monuments in Utah, weakened the National Environmental Policy Act to expedite the approval of public infrastructure projects such as roads and pipelines, and changed the way the Endangered Species Act is applied, making it more difficult to protect wildlife from

long-term threats posed by climate change. Those setbacks were the result of effective administrative lobbying by “the other side” which had President Trump’s ear.

Agencies have a lot of administrative discretion. No one above my pay grade in the Carter Administration signed off on RARE II, for example. During my testimony at a House committee hearing on the Endangered American Wilderness bill, as members of Congress we’re criticizing the agency’s lack of information on the candidate wilderness areas in the bill, I had a “sidebar” conversation with Forest Service Chief John McGuire. I said, “John, this is embarrassing” and he said “Mr. Secretary, we’ll review every roadless area in the National Forest System and have better data for you next time,” and RARE II was under way. No further approvals necessary; we just did it.

Randy and Diana asked me to use some of my personal experiences as examples. It’s fun to look back on them, and I will do that.

I’ve always thought that conservation groups should hire staff members with serious scientific expertise to give their policy recommendations weight, but decisions often turn on who you know. If I can make one point stick today, it’s this: As best you can, establish good, ideally first-name, relationships with the decision-makers who hold the fate of your wilderness or roadless area in their hands. This might include forest supervisors, regional foresters, park superintendents, BLM administrators, but most importantly, politically appointed “top dogs” such as under secretaries and agency chiefs. Unfortunately, agency professional staff recommendations made by nonpartisan scientists will always give way to the policy goals of their politically appointed bosses who owe their jobs to the President or the governor. Gaining access to these officials and “getting their ear” may not be easy, but it’s worth the effort.

When I was a USDA assistant secretary I met with every conceivable interest group to hear their concerns and recommendations, and there’s no reason my successors and their counterparts in other departments will turn you down if you ask to see them. They

work for you. When it's "crunch time" and a critical policy decision is being made, your personal input may make an important difference. At least I'd like to think so.

Sometimes it doesn't. Remember "Agent Orange," the defoliant our country dumped all over Vietnam? When I was assistant secretary, the constituents of Agent Orange, 2,4,5-T and its dioxin contaminant, were being sprayed from helicopters onto national forest Douglas fir plantations to kill competing vegetation. Carcinogenic dioxin was washed downhill into Asea, Oregon's drinking water supply reservoir and causing birth defects and other serious problems among the citizens there. I put a stop to its use on the national forests by requiring my sign-off on Forest Service plans to use it which I refused to sign. Soon, I was surrounded in my USDA office by a large group of angry agricultural chemical and agricultural aviation representatives who made money manufacturing and applying that poison. They threatened to "have my job" if I didn't retract my decision to stop its use on national forests. I turned them down, and Secretary of Agriculture Bob Bergland backed me up when they appealed to him. So that use of administrative lobbying by agribusiness didn't work.

But sometimes personal contacts and grassroots organizing do pay off. Today I won't get into the heroic multi-organizational campaigns to prevent construction of the Echo Park Dam in Dinosaur National Monument "back in the day" or, on my watch in the Carter Administration, to pass the wonderful Alaska National Interest Lands Conservation Act. But here's how the writing of the regulations defining the intent of the National Forest Management Act of 1976, that created the multi-disciplinary national forest planning process, went:

The law required creation of a Committee of Scientists to draft the regulation. I chose botanist Art Cooper of North Carolina State University to chair the committee. It held several field hearings and wrote a draft regulation. We held a hearing in Washington on that draft, heard a lot of suggestions for changes, went back to work and improved it, and held another public hearing that went well. The input of conservationists at the field and Washington hearings was taken into account, and they improved the final product.

Here are some examples on administrative lobbying from my “days of yore”:

In 1965, Wilderness Society Executive Director Steward Brandborg and I met with the Interior Department lawyer drafting a regulation to interpret this part of the 1964 Wilderness Act: “Within ten years after the effective date of this Act the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more in the national parks, monuments, and other units of the national park system and every such area of, and every roadless island within, the national wildlife refuges and game ranges, under his jurisdiction on the effective date of this Act and shall report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.”

The draft we focused on said a wilderness suitability recommendation must be made for every national park and wildlife refuge roadless area of 5,000 acres and suitable to be managed as wilderness. We asked for just one change, that the word or be substituted for the word and. Our request was agreed to, and that change eliminated a minimum-size-of-wilderness requirement on USDI lands. Because of that little administrative lobbying trip to the USDI solicitor’s office, the Great Swamp National Wildlife Refuge and other small roadless areas under the Secretary of the Interior’s control became eligible for statutory wilderness protection...and eventually became wilderness. Huzzah!

Perhaps the fact that I gave John Gottschalk, the director of the Fish and Wildlife Service, a beautiful ceramic whiskey jug labeled Gottschalk Whisky with the image of a pointer dog on it for Christmas one year helped gain his strong support for creating the Great Swamp National Wildlife Refuge Wilderness! You never know!

Sometimes Brandy’s and my administrative lobbying efforts fell flat. We paid a fruitless call on Forest Service wilderness program manager Bill Worf—yes, the same Bill Worf who later created the organization Wilderness Watch in Missoula—about the

boundaries of the proposed San Rafael Wilderness Area, an expansion of a primitive area, on the Los Padres National Forest. We showed him the Citizens' Proposal for the wilderness developed by Sierra Club and Wilderness Society activists in Santa Barbara that doubled the size of the primitive area to include critical California condor habitat. Worf pounded on his desk with his fist and shouted, "Your proposal is as phony as a three-dollar bill!" As it turned out, Congress adopted the Citizens Proposal, thanks to effective lobbying of the California Congressional delegation by local advocates and a national media campaign by The Wilderness Society. That "win" by local citizens' groups set a precedent for Congress not rubber-stamping the agencies' wilderness boundary recommendations but giving serious consideration to the position of the people who lived there.

I will conclude by tipping my hat to Mike Dombeck who, as Chief of the Forest Service in the Clinton Administration, used his administrative discretion to write and implement the important "roadless rule" which protected 58 million acres of the most remote national forest lands. Dombeck 's action provided the groundwork for enhancing and increasing Americans' experiences in the nation's forests by protecting the remaining wildest places in the National Forest System for outdoor recreation and protecting the health and quality of watersheds and ecosystems. Big things can be done by the executive branch of government if there is the will to do them.

Lobbying is looked upon by the public in a negative way, I think, because well-paid lobbyists for large corporate interests such as big oil, big chemical, and big pharma are so visible and often so successful in getting their way with Congress. But we have the latent support of the American people in our goal of protecting the nation's and the world's natural environments. It's our job to activate and rally that support in the most effective ways possible to protect the diverse ecological systems on our planet and the people who depend on them for their homes and livelihoods.

Go get 'em, and thank you.