



## OFFICE OF THE WASHINGTON COUNTY ATTORNEY

County Attorney Brock R. Belnap

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*Sent via electronic mail: [protest@blm.gov](mailto:protest@blm.gov)*

Regular Mail:  
BLM Director (210)  
Attn: Protest Coordinator  
P.O. Box 71383  
Washington, D.C. 20024-1383

**Protest of Proposed Resource Management Plans for the Beaver Dam Wash and Red Cliffs National Conservation Areas; Proposed Amendment to the St. George Field Office Resource Management Plan; and Abbreviated Final Environmental Impact Statement Submitted by Washington County, Utah**

Protest Coordinator,

Washington County, Utah submits this protest of the Proposed Resource Management Plans for Red Cliffs National Conservation Area and Beaver Dam National Conservation Area, the Proposed Amendment to the St. George Field Office Resource Management Plan, and the Final Environmental Impact Statement (collectively "Proposed RMPs"). Washington County is a cooperating agency on the resource management plans and a co-signatory with the BLM and others to the Washington County Desert Tortoise Habitat Conservation Plan ("HCP") that mirrors the boundaries of the Red Cliffs National Conservation Area. The county commented on the administrative draft and the draft versions of the RMPs, plan amendment, and EIS.

### *I. History of Cooperation*

Washington County has been a model partner in working cooperatively with BLM to manage public land in the county. The two NCAs are the result of a six year negotiation and would not have been created without the county's vocal support. The main incentive for the county to participate so actively in the negotiations was to have several resource issues settled so that planning could move forward. The end result of the herculean negotiation efforts was a part of the Omnibus Public Lands Management Act of 2009 (OPLMA) referred to as the Washington County Lands Bill. (Omnibus Public Lands Management Act of 2009 (Public Law 111-11, Title I, Subtitle O - Washington County, Utah). The lands bill created the NCAs, declared over a quarter of a million acres of Wilderness while releasing the rest of the county from further wilderness study, created 8 new ACECs, designated wild and scenic rivers, and in many other

ways codified the agreements reached through the negotiations in Washington County. The proposed RMPs should accurately reflect those agreements.

## *II. Protest Items*

As the county pointed out in comments on the administrative draft and again in comments on the draft, the management described in the RMPs does not hold true to the bargain struck in the negotiations. Once again, Washington County calls on BLM to modify the language in the RMPs to reflect the intent of the parties to the bargain and the Congress that passed the Washington County Lands Bill as part of OPLMA.

For each issue listed below the County will follow the following format:

1. Topic or Resource
  - a. Introduction of issues
  - b. Draft RMP Language
  - c. County Comment language
  - d. Proposed RMP Language
  - e. Protest Language

### **1. Northern Corridor and Utility Development Protocols**

- a. The Proposed RMP for the Red Cliffs NCA violates both the letter and the spirit of OPLMA's directive to the Secretary of Interior to identify alternatives for a northern transportation route and OPLMA's allowance for the inclusion of the utility development protocols (UDPs). The UDPs were developed cooperatively between the signatories to the HCP to guide management decisions about when roads, power lines, water lines, etc. would be allowed through the Red Cliffs Desert Reserve.
- b. Draft RMP Language
  - i. The Draft that was released in August of 2015 did not reference the utility development protocols that were worked out as part of the HCP.
  - ii. The map on page 283 showed a corridor in Alternative D, not the preferred alternative, which would have allowed all of the alignments the county had studied for a northern transportation route. No other alternative contained any option for a northern transportation route.
- c. Washington County's Comment
  - i. OPLMA specifically contemplates the development of new utilities where necessary throughout the Red Cliffs NCA if developed in compliance with the HCP's Utility Development Protocols. Section 1974(h) states: "Nothing in this section prohibits the authorization of the development of utilities within the National Conservation Area , . . ." The section also specifically references the HCP Utility Development Protocols as mandatory requirements for the development of utilities in the NCA."
  - ii. "The Utility Development Protocols are included as Appendix A of the Habitat Conservation Plan document. The introductory paragraph of the

protocols states that their purpose is to "minimize potential adverse impacts to the Mohave desert tortoise . . . while still enabling utilities to be placed within the preserve." (Page A-1.) Additionally, the paragraph states: "The reserve will be considered an avoidance area for the location of new utilities. This means new utilities will be encouraged to co-locate along existing infrastructure when practical. The HCAC will review other new utilities routes to assure minimum habitat disturbance. It is clear that the possibility of new utilities was contemplated when the county and BLM executed the HCP documents. "It is also the county's position that including routes in one alternative of the RMP does not satisfy OPLMA's mandate to study one or more alternatives in the travel management plan. Although studying routes in the RMP is not the usual planning process, acts of Congress that specify a planning requirement are sufficient to change the normal planning process. Every alternative in the draft RMP should have included ROV/ provisions that would have allowed the consideration of northern corridor routes in the TMP. Currently, only Alternative D, and possibly Alternative A, allow for such consideration. Furthermore, the county is concerned that the environmental analysis for Alternative D does not provide an accurate estimate of a single northern corridor route because it analyzes all of the proposed routes collectively rather than individually. Consequently, it analyzes the possible disturbance of thousands of acres, where the county's preferred alternative would only disturb a few hundred acres."

d. Proposed Final Language

- i. "Nothing in this section prohibits the authorization of the development of utilities within the National Conservation Area if the development is carried out in accordance with—(1) each utility development protocol described in the habitat conservation plan; and (2) any other applicable law (including regulations)" (OPLMA Section 1974 (h)."
- ii. However, the Proposed RMPs also include a map that shows nearly the entire Red Cliffs Reserve as an exclusion area rather than the agreed upon avoidance. " p. 146
- iii. "Avoidance areas: 6,367 acres ► While considering a new proposed ROW application the BLM will: a) consider options for routing or siting the ROW outside of the NCA; b) ensure consistency of the ROW with the established purpose of the NCA, as identified in OPLMA; c) ensure that new ROWs share, parallel, or adjoin existing ROWs; d) apply special stipulations and mitigation measures within avoidance areas consistent with VRM objectives and the purpose of the NCA; e) authorize new ROWs only when the project-specific NEPA analysis indicates that the construction and operation of the facility would not result in the take of federally-listed species; the adverse modification of designated critical

habitats; or adverse effects to NRHP-listed or eligible properties, and the following criteria are met: 1) construction could be accomplished through methods that minimize new surface disturbances and resource impacts; 2) new ROW access roads would not be required for construction, operation, and maintenance; 3) existing ROW access roads would not be permanently widened or upgraded for construction, operation, and maintenance; temporary enlargements or modifications to existing access routes needed during construction would be rehabilitated immediately after construction is completed; and 4) construction, operations, and maintenance would not require off-road travel by motorized vehicles.” P. 147

- e. Protest of Proposed Final Language
  - i. Despite the language change that acknowledges the utility development protocols (UDPs), the Red Cliffs NCA is almost completely designated as exclusion areas. The HCP document calls for the area to be avoidance and sets out protocols for determining when ROWs are appropriate. By managing the land as exclusion instead, BLM is disregarding the UDPs which are part of an agreement to which it is a party.
  - ii. OPLMA requires the Secretary of the Interior to “(A) in consultation with appropriate Federal agencies, State, tribal, and local governmental entities (including the County and St. George City, Utah), and the public, identify 1 or more alternatives for a northern transportation route in the County; (B) ensure that the travel management plan contains a map that depicts the trail; and (C) designate a system of areas, roads, and trails for mechanical and motorized use.” The ROW language in the Proposed RMP would not allow a transportation route to be built along a route that would be useful to ease future traffic congestion.
  - iii. Requiring a no-take route is inconsistent with the habitat conservation plan that the BLM is a signatory to because the HCP resulted in the county having an incidental take permit. Incidental take is part of the agreement. BLM, as a party to the agreement, should not unilaterally change the terms.
  - iv. Congress directed the Secretary of Interior to identify a route. Instead the BLM, an Interior Department agency, without route specific analysis is identifying impediments to an eventual route.
  - v. BLM is using the RMP process to unilaterally change agreements to which it is a party. Actions of this type remove every incentive of local governments to work together with BLM to find solutions to resource issues.

## 2. Voluntary Relinquishment

- a. BLM’s Proposed Final RMP for the Beaver Dam Wash National Conservation Area violates both the spirit and the letter of OPLMA’s direction that grazing be allowed to continue in the NCA subject to reasonable regulation. (OPLMA Sec.

1975 (e)(4)). OPLMA's directive never intended to allow the voluntary relinquishment by a permittee to trigger a review of whether grazing should continue on the allotment

b. Draft RMP Language

- i. "When grazing permits and preference are voluntarily relinquished, the allotment or portion of the allotment associated with the permits within the NCA would no longer be available for livestock grazing over the life of the RMP." P. 84

c. Washington County's Comment

- i. "The proposal to retire any permits that are voluntarily relinquished is a direct violation of the agreement reached prior to the 2009 lands bill. No bargain, resulting in the passage of OPLMA, would have been reached had the county known that the RMP would call for retiring grazing allotments. The commitments from negotiating OPLMA need to be honored. Without evidence of poor range conditions or a downward trend in range health, there is no justifiable resource rationale for eliminating grazing allotments. BLM Manual 6100 -NLCS Management and BLM Manual 6220 – National Monuments, NCAs and Similar Designations both state that livestock grazing is allowed to continue in NCAs when it is consistent with the designating legislation. In the case of the Beaver Dam Wash, the designating legislation is OPLMA. OPLMA calls for permitting grazing to continue. In light of the negotiations that led to OPLMA, cutting grazing in the RMP is a violation of the clear intent of the Beaver Dam Wash NCA's designating legislation."

d. Proposed Final Language

- i. "When a grazing permit or a portion of the grazing preference is voluntarily relinquished, the allotment or portion of the allotment associated with the permits within the NCA would remain available. However, upon relinquishment, the BLM may determine through a site-specific evaluation and associated NEPA analysis that the public lands within a grazing allotment are better used for other purposes" p. 63

e. Protest of Proposed Final Language

- i. Allowing voluntary relinquishment violates OPLMA. The actions of a third party should not trigger a review of and possible retirement of a permit. OPLMA states: "GRAZING.—The grazing of livestock in the [Beaver Dam Wash] National Conservation Area, where established before the date of enactment of this Act, shall be permitted to continue— (A) subject to— (i) such reasonable regulations, policies, and practices as the Secretary considers necessary; and (ii) applicable law; and (B) in a manner consistent with the purposes described in subsection (a)."
- ii. When Congress included in OPLMA a statement that says grazing will continue, subject to reasonable regulations, the BLM should not give itself or permit holders the ability to decide that grazing allotments are better

suited to other purposes. Such a management decision is not supported by any BLM regulation as required by OPLMA.

- iii. BLM should follow the spirit and letter of the negotiations that created the NCA and allow grazing to continue. Grazing should only be discontinued if science shows a resource concern that cannot be addressed under continued grazing.
- iv. Voluntary relinquishment is a management decision based on third-party values or priorities, not on reasonable, science-based regulation, as allowed for under OPLMA.

### **3. Off-trail access in Beaver Dam Wash and Babylon**

- a. BLM's Proposed RMP for the Red Cliffs NCA violates the Washington County Habitat Conservation Plan to which the BLM is a signatory. The HCP has never restricted foot traffic in Zone 4 of the HCP to trails only. In fact, the HCP administration uses the area for field trips to teach school children about tortoises.
- b. BLM, through the RMP process, is going around the HCP to place greater limitations on access to the Red Cliffs NCA. The Red Cliffs area is jointly managed under the HCP by a board with BLM and USFWS representatives. That board is advised on all things biological by a biologist team that includes a BLM biologist.
- c. BLM's Proposed RMP for the Beaver Dam Wash NCA unnecessarily restricts foot traffic to trails in an area where foot traffic is light and the valid scientific reason is cited for the restriction.
- d. Draft RMP Language
  - i. For Red Cliffs NCA p.273
    - 1. FRONTCOUNTRY ZONE
      - Accessed from Old Highway 91 and County roads.
      - Accommodates a large number of visitors.
      - Large number of management controls consisting primarily of directional, educational, and regulatory signs.
      - BLM staff presence is consistent.
      - Law enforcement patrols are irregular and often based on incident or emergency response.
      - Significant amount of infrastructure; includes all roads, parking, and future trailheads.
      - Motorized use is restricted to designated roads and trails.
      - Mechanized use is restricted to designated roads and trails.
      - Majority of zone is within critical tortoise habitat.
      - Outside of Congressionally designated road areas.
      - Varies in size by alternative.
    - 2. BACKCOUNTRY ZONE
      - Accessed from the Rural Zone trailheads or Frontcountry Zone trails.

- Less recreational use than the Frontcountry Zone, but still accommodates a significant number of visitors.
- Fewer management controls consisting primarily of directional and regulatory signs.
- BLM staff presence is infrequent and generally based on project-specific need.
- Law enforcement patrols generally limited to incident and emergency response.
- Motorized use is restricted to administrative purposes and emergency response.
- Mechanized use is restricted to designated trails.
- Portions of zone are within critical desert tortoise habitat.
- Corresponds with Congressionally designated road areas in all Alternative.
- Varies in size by alternative.

### 3. PRIMITIVE ZONE

- Accessed from the Frontcountry or Backcountry Zones.
- Accommodates the fewest number of visitors.
- Limited management controls consisting primarily of directional and regulatory signs.
- BLM staff presence is very low.
- Law enforcement presence limited to emergency response.
- Motorized use prohibited except for emergency response.
- Cross-country travel is allowed. All visitors must be on foot or horseback.
- No constructed or maintained trails.
- Portions of zone are within critical tortoise habitat.
- Corresponds with Congressionally designated road areas in all Alternative.
- Varies in size by alternative.

### ii. For Beaver Dam Wash NCA p.157

#### 1. FRONTCOUNTRY ZONE

- Accessed from Old Highway 91 and County roads.
- Accommodates a large number of visitors.
- Large number of management controls consisting primarily of directional, educational, and regulatory signs.
- BLM staff presence is consistent.
- Law enforcement patrols are irregular and often based on incident or emergency response.
- Significant amount of infrastructure; includes all roads, parking, and future trailheads.
- Motorized use is restricted to designated roads and trails.

- Mechanized use is restricted to designated roads and trails.
- Majority of zone is within critical tortoise habitat.
- Outside of Congressionally designated road areas.
- Varies in size by alternative.

## 2. BACKCOUNTRY ZONE

- Accessed from the Rural Zone trailheads or Frontcountry Zone trails.
- Less recreational use than the Frontcountry Zone, but still accommodates a significant number of visitors.
- Fewer management controls consisting primarily of directional and regulatory signs.
- BLM staff presence is infrequent and generally based on project-specific need.
- Law enforcement patrols generally limited to incident and emergency response.
- Motorized use is restricted to administrative purposes and emergency response.
- Mechanized use is restricted to designated trails.
- Portions of zone are within critical desert tortoise habitat.
- Corresponds with Congressionally designated road areas in all alternatives.
- Varies in size by alternative.

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- Cross-country travel is allowed. All visitors must be on foot or horseback.
- No constructed or maintained trails.
- Portions of zone are within critical tortoise habitat.
- Corresponds with Congressionally designated road areas in all Alternative.
- Varies in size by alternative.

### e. Washington County's Comment

- i. "Primarily the county is concerned that Alternatives B, C, and D for both NCAs would prohibit users from leaving designated trails throughout most of the NCAs despite the fact that several recreational uses that occur off-



trail are currently permitted in all of the Beaver Dam Wash NCA and in the Upland Zone of the Red Cliffs NCA.”

- f. Proposed Final Language
  - i. For Beaver Dam Wash, the language is identical to the draft RMP language except that the final line about sizes varying by alternative is now removed.
  - ii. For Red Cliffs, the language is nearly identical to the language in the draft RMP. The two changes are that the language about size varying by alternatives is taken out and that rural, frontcountry, and backcountry zones require pets to be on leashes.
- g. Protest of Proposed Final Language
  - i. Disallowing off-trail foot traffic in remote parts of the NCAs is unnecessary and contradictory to the HCP.
  - ii. For example, the Babylon area is currently used for field trips to teach elementary school children about desert tortoises. The HCP in other zones say that hiking should be restricted to trails only, but in Zone 5, where the Babylon area is, only says that hiking should be allowed. It is a low traffic area, and the tortoises in the area are translocated tortoises that are counted as taken under the incidental take permit. Allowing cross country foot traffic in the area enables education that protects tortoises into the future. According to page 97 of the HCP agreement, “[e]ducation is an important component of the HCP program.” BLM, a signatory to the HCP, is now restricting this area to trails only without going through the rest of the HCP board.
  - iii. Furthermore, limiting access to trails-only is inconsistent with other allowed uses like hunting. The RMPs specify that game retrieval is limited to non-motorized, but then limits foot traffic to trails as well. It is unrealistic to expect all animals to be downed on trails. Inconsistent policies create a problem for citizens who want to follow the rules but are unclear what is or is not allowed.

#### **4. Cave and Karst Buffers**

- a. BLMs Proposed RMPs for both the Red Cliffs and Beaver Dam Wash NCAs use inapplicable research to unnecessarily restrict access to and around caves and karsts. In an area as dense with rock outcrops as both NCAs are, creating a large, restrictive buffer around rock areas is a gross impediment to access.
- b. Draft RMP Language
  - i. “Do not authorize activities that have the potential to disturb bats within a 0.25 mile radius of maternity roost sites and winter hibernacula, including all entrances to caves, karst features, and abandoned mines.” P. 104
- c. Washington County’s Comment
  - i. The county comment repeatedly objected to a federal land management agency infringing on the responsibility of the state to manage wildlife species, such as bats.

- d. Proposed Final Language
  - i. “Do not authorize activities that have the potential to disturb bats within a 0.25 mile radius of maternity roost sites and winter hibernacula, including all entrances to caves, karst features, and abandoned mines as recommended by Bat Conservation International (Clawson 2000).” P. 57
- e. Protest of Proposed Final Language
  - i. The cave and karst language is justified by the cited Clawson study that states that *construction-type activities like blasting* should not be allowed within .25 miles of hibernacula *during hibernation*. This finding does not support a permanent buffer from non-intrusive recreational activities like climbing and bouldering. Nothing in Clawson speaks to recreation. Nothing akin to blasting is allowed in the NCAs, so restricting recreation within .25 miles of all cave and karst locations is not justified by the study cited. Creating a half-mile buffer around every cave and karst in red rock country makes no sense and is probably unenforceable.
  - ii. Any buffers should be (1) limited to caves and karsts where bats are known to hibernate, and (2) based on studies that involve activities that are allowed in the NCAs and how they might affect those species. A blanket buffer based on an inapplicable study is inappropriate. It would unnecessarily limit rock climbing, hiking, and other appropriate activities that are currently happening in the NCAs.
  - iii. No threatened or endangered bat species are known to occur anywhere in Washington County. Such a broad policy that prohibits popular recreational activities should only be used to protect species that exist in the area and are harmed by the activity.

## 5. Visual Resource Management

- a. BLM’s Proposed RMPs for both the Red Cliffs NCA and the Beaver Dam Wash NCA include highly restrictive visual resource management classes.
- b. Draft RMP Language
  - i. For Beaver Dam Wash the entire NCA is managed as a Class II VRM (“Manage the NCA as follows: VRM Class I: 0 acres VRM Class II: 63,480 acres VRM Class III: 0 acres VRM Class IV: 0 acres” p. 132).
  - ii. For Red Cliffs: “Under Alternative B, the VRM Management would be as follows: VRM Class I: 19,989 acres VRM Class II: 21,034 acres VRM Class III: 3,652 acres VRM Class IV: 184 acres Management under VRM Classes I and II for a majority of the NCA lands would provide a substantially higher level of protection for visual resources, when compared to Alternative A.” p. 290.
  - iii. For the Old Spanish Trail corridor: “Designate the OST National Historic Trail Management Corridor (12,506 acres) as VRM Class II.” P. 121
- c. Washington County’s Comment
  - i. “The proposed visual resource management (VRM) designations would unnecessarily limit land use. Class III designations would be appropriate

for the many purposes for which the NCAs were established, rather than the proposed class I and II designations. . . . As discussed above, in the Old Spanish Trail portion of the comment, the Class II designation could limit many multiple use activities in the NCAs. Both NCAs have been managed as Class III areas since their creation, and the BLM has not supported with any documenting evidence that any benefit that would be obtained from changing the classification. This is especially true in the Red Cliffs NCA where signage has already been developed (See management action for architectural design standards on page 248 of the draft RMP) and efforts to "reduce or prevent impacts to night skies" would be futile because the NCA is surrounded on three sides by urban areas."

d. Proposed Final Language

- i. For Beaver Dam Wash: "Manage the NCA as follows: VRM Class I: 0 acres VRM Class II: 63,480 acres VRM Class III: 0 acres VRM Class IV: 0 acres." P. 86.
- ii. For Red Cliffs: "Manage the NCA as follows: VRM Class I: 19,989 acres VRM Class II: ~~21,034~~ [18,525] acres VRM Class III: ~~3,652~~ [6,160] acres VRM Class IV: ~~184~~ [183] acres." p. 135

e. Protest of Proposed Final Language

- i. The county is uncomfortable with having the majority of both NCAs managed at VRM Class I or II. Local BLM staff insists that all NCA appropriate activities would be allowed in a VRM Class II, however, the description of Class II (*The existing character of the landscape is retained. The level of change to the characteristic landscape should be low. Changes can be seen but should not attract the attention of the casual viewer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape.*) offers no reassurance that all current activities would still be allowed. In fact, the VRM description language allows BLM wide latitude to determine what "attracts the attention of the casual viewer" or when the change to the characteristic landscape is low. If the local BLM intends to continue to allow all current uses, a VRM Class III would be more appropriate. Based on the overall tone of the RMPs, the VRM classes create an expectation of implementation that is overly restrictive.

6. **Wilderness Characteristics**

- a. BLMs Proposed RMPs contain language that violates OPLMA's release of Washington County land from wilderness study. The responses to comments included in Appendix J indicate that although BLM is choosing not to manage any lands with wilderness characteristics to preserve their wild character, they refuse to acknowledge that Congress changed their usual practices by addressing wilderness study in OPLMA, thus reserving to themselves the ability to reverse course in the future.
- b. Draft RMP Language

- i. "Lands with wilderness characteristics in the NCA are managed to conserve, protect, and restore those values."
- c. Washington County's Comment
  - i. "OPLMA was passed primarily to settle contentious issues regarding the designation of Wilderness and management of land as wilderness. OPLMA designates over a quarter of a million acres in Washington County as Wilderness. The county agreed to sweeping Wilderness designations so that all other lands would be released from management aimed at nonimpairment of wilderness characteristics. After decades of uncertainty, the chance to have the wilderness question settled was the main incentive that brought groups together to compromise. Consequently, the county was surprised and extremely disappointed to see prescriptions for managing lands with wilderness characteristics in the draft RMP. Moreover, managing for wilderness characteristics violates the express terms of OPLMA, which states that all land in the county "has been adequately studied for wilderness designation" and that all non-designated land is no longer subject to the section of FLPMA that requires BLM to manage lands with wilderness characteristics. (See OPLMA Section 1972(c).) OPLMA goes on to require that all BLM lands not designated as Wilderness in Washington County "shall be managed" with the section of FLPMA that requires the BLM to "use and observe the principles of multiple use and sustained yield." (See OPLMA Section 1972(c) and FLPMA Section 202 (43 U.S.C. Section 1712).) The goals, objectives, and management actions in the draft RMP clearly violate OPLMA by managing lands with wilderness characteristics as a distinct classification from other lands."
- d. Proposed Final Language
  - i. "Response 64: Under FLPMA Section 201, the BLM is required to maintain an inventory of all resources on public lands, including wilderness characteristics. The existing inventory was incomplete and was updated as part of this planning process. Any future actions that could impact lands with wilderness characteristics would be analyzed using site-specific NEPA."
  - ii. "Response 84: Congress did not release all other lands in the county from wilderness consideration."
  - iii. "Response 85: Congress did not release all other lands in the county from wilderness consideration."
  - iv. "Response 86: All undesignated acres in Washington County were not "released" in the legislation."
- e. Protest of Proposed Final Language
  - i. BLM is agreeing not to manage any lands with wilderness characteristics based on those wilderness characteristics at this time. What the county is concerned about is the insistence that BLM can choose to manage them

for their wilderness characteristics. When Congress specifically finds that land has been adequately studied for wilderness characteristics and releases it from further study, a federal agency does not have the discretion to consider whether further study is warranted. Ignoring Congress in favor of agency interpretation is a violation of the Administrative Procedure Act.

## **7. Old Spanish Trail**

- a. Congress designated the Old Spanish Trail as a national historic trail, under the National Trails System Act. The purpose of that act is to encourage outdoor recreation along historic trails. Instead the BLM in the Proposed RMP for the Beaver Dam Wash NCA uses the designation as a justification to create a viewshed corridor and manage for restoration to trail era conditions. This violates the intent of the National Trails System Act and makes little sense in the context of the Old Spanish Trail.
- b. Draft RMP Language
  - i. "Establish an OST National Historic Trail Management Corridor that provides diverse opportunities for the public to connect with and experience trail history and resources. Manage the OST National Historic Trail Management Corridor to identify, conserve, and protect the historic trail and historic remnants and artifacts for their historic, scientific, educational, interpretative, and recreational values. Manage the OST National Historic Trail Management Corridor to conserve and protect the associated visual setting and natural landscape elements that are evocative of the period of trail significance and contribute to resource protection. Manage the OST National Historic Trail Management Corridor to restore altered natural landscape elements of the associated setting to trail-era condition. Enhance opportunities for shared OST stewardship through partnerships with the Old Spanish Trail Association, American Indian Tribes, state, county, and municipal governments, private landowners, and other groups and organizations." P. 121
- c. Washington County's Comment
  - i. "The Old Spanish Trail portion of the final RMP needs to emphasize recreation in the goal, objectives, and management actions. One of the primary purposes for a national historic trail is "to provide for the ever-increasing outdoor recreation needs of an expanding population." (See 6 U.S. C. 12a1(a) Congressional statement of purpose for National Trails System Act and BLM Manual 6250, National Scenic and Historic Trail Administration at 1-1.) However, the draft RMP focuses almost entirely on conservation and restoration of the trail and its viewshed. Additionally, the VRM Class I or II designation would limit recreational improvements in the area. The Class III viewshed that is currently in place is more conducive to the recreational focus of a national trail."
- d. Proposed Final Language

- i. “Designate the OST National Historic Trail Management Corridor (12,506 acres) as VRM Class II.” P. 82
  - ii. “To improve the naturalness of the setting and the visitor experience of the landscape, all identified social trails and redundant routes within [the] OST National Historic Trail Management Corridor would be closed and rehabilitated with native vegetation to trail-era conditions.” P. 82
- e. Protest of Proposed Final Language
  - i. BLM is insisting on a viewshed designation to protect a historic trail that is not visible on the ground. The exact route of the trail is unknown, and even the administrative strategy says that few artifacts denote the trail. Rather than outline a viewshed and protect it as a natural setting, the BLM should commemorate the trail route designated by Congress with signs, interpretive sites, and recreational opportunities. This would remain within the intent of the National Trails System Act (16 U.S.C.A. § 1241).

## **8. Water Rights**

- 1. Washington County Water Conservancy District is the water rights and water resources expert entity for Washington County. The county incorporates by reference the protest submitted by the Washington County Water Conservancy District.

## **9. Failure to respond to technical comments**

- a. As a cooperating agency, Washington County submitted, as part of the overall comment on the draft RMPs, a list of technical comments. Rather than responding directly to technical comments, BLM lumped technical comments into broad categories with other comments and made general responses. Not only did this mean that very specific comment did not get specific answers, but it resulted in roughly one third of the technical comments being completely ignored.
- b. Washington County’s Comment
  - i. Washington County Submitted, as part of the county comment, 80 technical comments.
- c. Proposed Final Language
  - i. BLM responded to only 52 of Washington County’s 80 technical comments.
- d. Protest of Proposed Final Language
  - i. Not only were some of the technical comments ignored, but the responses were indirect and mixed with general responses. Technical comments that pinpoint specific language that needs to be changed should be responded to in a specific manner. Cooperating agencies shouldn’t have to spend hours painstakingly pouring through 226 pages of general responses to find answers to specific questions posed to federal partners.

This list is in no way intended to waive any other issues that were raised by the county in comment or in numerous cooperating agency meetings. This list is intended to focus BLMs

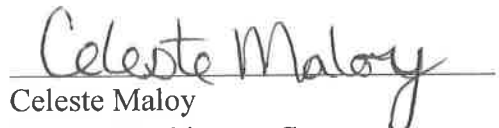
attention on the most blatant violations of its obligations to manage resources in the ways agreed upon through the lands bill in OPLMA, the HCP agreement, and other binding authorities.

### *III. Conclusion*

BLM has failed in its obligation to Washington County as a cooperating agency. The BLM's Field Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners requires BLM to provide a summary of the cooperating agencies views in the draft and final RMPs when the BLM and the cooperating agency cannot reach an agreement on substantive elements of the plan. As demonstrated by the comments on the administrative draft, the comments on the public draft, and this protest, Washington County and the BLM disagree on substantive elements of the plan. For reasons of public accountability, the County would like to see the BLM follow its own rules and summarize the county's views. Neither the draft RMPs nor the proposed RMPs contain a summary of the county's views on the substantive areas. In fact, the county comment is listed by the BLM in the proposed RMPs under the name of a Deputy County Attorney (Eric Clarke) who is not an elected official and is unlikely to be known to residents looking for BLM's response to county comments.

Through this protest, Washington County calls on BLM to mend the mistakes and missteps included in the proposed RMPs. In their current form, the RMPs deviate from the agreements reached with stake holders and passed by Congress and they also deviate from the HCP agreement that BLM is not only a signatory to but also on the technical committee and the advisory committee of. Overall the RMPs take an entirely different tone from the partnership agreements reached in the stakeholder negotiations in that the current plans focus on preservation and restriction when the negotiations focused on defining allowable uses and settling resources questions. The county respectfully demands that BLM honor its partnership agreements and statutory obligations by incorporating the suggestions Washington County included in its comments on the draft RMPs.

Respectfully Submitted on Behalf of Washington County

  
Celeste Maloy  
Deputy Washington County Attorney

Questions, concerns, and follow-up regarding this comment can be directed to the following:

Washington County Commission Chair, Alan Gardner  
197 East Tabernacle Street,  
St. George, Utah 84770  
(435) 634-5700  
[alan.gardner@washco.utah.gov](mailto:alan.gardner@washco.utah.gov)

Washington County Attorney's Office  
Attn: Deputy County Attorneys Eric Clarke and Celeste Maloy  
33 North 100 West, Suite 200  
St. George, Utah 84770  
(435) 634-5723  
[eric.clarke@wcattorney.com](mailto:eric.clarke@wcattorney.com)  
[celeste.maloy@wcattorney.com](mailto:celeste.maloy@wcattorney.com)