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UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BOARD OF LAND APPEALS

| | | |
|----------------------------|---|----------------------------------|
| WASHINGTON COUNTY, UTAH, |) | Ref:# DOI-BLM-UT-C030_2015-1-EIS |
| CITY OF ST. GEORGE, UTAH, |) | |
| WASHINGTON COUNTY WATER |) | |
| CONSERVANCY DISTRICT, |) | |
| |) | |
| Appellants; |) | STATEMENT OF REASONS FOR |
| |) | APPELLANTS, THE COUNTY OF |
| v. |) | WASHINGTON, UTAH, THE |
| |) | WASHINGTON COUNTY WATER |
| BUREAU OF LAND MANAGEMENT, |) | CONSERVANCY DISTRICT AND |
| |) | THE CITY OF ST. GEORGE |
| Respondent. |) | |

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INTRODUCTION

On January 20, 2017, Washington County, Utah (County), the City of St. George, Utah (City), and Washington County Water Conservancy District (WCWCD or District) filed a Notice of Appeal of the Bureau of Land Management's (BLM) Records of Decision (ROD) for Beaver Dam Wash National Conservation Area (Beaver Dam Wash NCA) Resource Management Plan (RMP) and Red Cliffs National Conservation Area (Red Cliffs NCA) Resource Management Plan published in the Federal Register on December 21, 2016. 81 Fed. Reg. 93707 (2016). Pursuant to 43 C.F.R. §4.412 and §4.22(e), the County, City, and District file this Statement of Reasons and Statement of Standing on or before February 21, 2017.

I. ISSUES ON APPEAL

1. Whether the Resource Management Plan (RMP) implementation decisions that close the NCAs to water diversions, and water development are *ultra vires*;
2. Whether RMP closures violate the provisions of the 2009 Omnibus Public Lands Management Act (OPLMA);
3. Whether BLM violated Federal Land Management and Policy Act (FLPMA) and the National Environmental Policy Act (NEPA) by excluding from the FEIS analysis of the impacts associated with implementation decisions in Resource Management Plans (RMPs) for National Conservation Areas (NCAs) and the likely impacts from the postponed Travel Management Plan (TMP); and
4. Whether the BLM violated FLPMA by failing to resolve implementation decisions in RMPs that are inconsistent with local land use plans to the maximum extent permissible under federal law.

II. STATEMENT OF FACTS

A. Development of Habitat Conservation Plan for the Mojave Desert Tortoise

In 1990, the U.S. Fish and Wildlife Service (USFWS) listed the Mojave Desert Tortoise as a threatened species under the Endangered Species Act. 55 Fed. Reg. 12178 (April 2, 1990).

The USFWS designated approximately 74,500 acres as critical habitat on the Beaver Dam Slope and an additional 54,600 acres of the Upper Virgin River in 1994. 59 Fed. Reg. 5820, 5827, 5863-64 (Feb. 8, 1994). As a result of the listing decision and the later designation of critical habitat, the County formed a Steering Committee to develop a Habitat Conservation Plan (HCP) in order to secure an Incidental Take Permit (ITP) from the USFWS. See Ex. 1, Washington County Habitat Conservation Plan (HCP). The purpose of the HCP was to “provide a comprehensive approach to preserving and protecting Mojave desert tortoise habitat in Washington County, while at the same time allowing controlled growth and development in those portions of desert tortoise habitat which are less essential to the species.” *Id.* at vi-vii.

The Steering Committee included the USFWS, BLM, the County, as well as environmental organizations and livestock grazing and industry interests. *Id.* at vii. After 30 meetings, the Steering Committee submitted its *first* HCP to the USFWS. *Id.* at 8. The USFWS requested additional protection measures and, so the Steering Committee, after working closely with the USFWS through the remainder of 1993 and early 1994, presented a *second* version. *Id.* at 9. The Steering Committee concluded that the HCP presented the “best possible compromise.” *Id.* at vii. The central element and primary mitigation measure in the HCP was the establishment and management of the 61,000 acre Red Cliffs Desert Reserve (Reserve) – approximately 38,000 acres of which was occupied desert tortoise habitat. Ex. 2, Red Cliffs Desert Reserve Public Use Plan (PUP) at 9.

The HCP, however, also provided for growth and development while complying with the ESA. *Id.* at 9. Extremely important to the fastest growing county in the nation, was the continued ability to develop utility corridors – water, electric, and transportation corridors. *Id.*

at 31 (describing water wells and electrical lines in Reserve). Consequently, the HCP included an entire appendix entitled Utility Development Protocol (UDP), which enumerates terms and conditions to protect desert tortoise habitat while allowing groundwater development, electric distribution line construction and maintenance, and roadway maintenance and improvement, “*while still enabling utilities to be placed within the Reserve.*” Ex. 1, HCP at A-1 (Emphasis added); *see id.* at A-6, A-8. The Reserve was treated as an *avoidance area* for new utilities, but the BLM, the USFWS, and the local governments provided for such development in the HCP. *Id.* at A-1; *see also* Ex. 3, Nov. 16, 2015 County Comment at 32.

In its subsequent Biological Opinion evaluating the HCP and Red Cliffs Desert Reserve Public Use Plan (PUP)¹, the USFWS found that the collaborative effort between the local governments and the federal agencies would “not likely [] jeopardize the continued existence of the Mojave desert tortoise; nor is it likely to result in destruction or adverse modification of critical habitat designated for the Mojave desert tortoise.” Ex. 4, USFWS Biological Opinion (Bio. Op.) at 2. The USFWS, therefore, issued an Incidental Take Permit (ITP) with terms and conditions that expressly incorporated the HCP in its entirety, as well as the Utility Development Protocol. *Id.* at 25, 28. The HCP and the UDP, therefore, authorized the County, the District, and the City to grow in and around Desert Tortoise habitat.

¹ The PUP “is an extension of the Washington County HCP” and establishes specific restrictions that implement the “spirit and intent” of the HCP. Ex. 4, USFWS Bio. Op. at 5. The PUP went through an equally rigorous planning process from 1998 through 2000 with public comment, direct user presentations, monthly meetings to discuss issues. Ex. 2, PUP at 13. The PUP, however, did not consider utility development within the reserve. Ex. 4, USFWS Bio. Op. at 1.

B. Beaver Dam Wash and Red Cliff National Conservation Areas Created Under the Omnibus Public Land Management Act of 2009

In 2004, after more than 30 years of public land use and wilderness debates among the State, local governments, the BLM, and special interest groups, the County initiated a “final effort to develop a plan for Washington County addressing not only wilderness, but a number of other areas affecting the county such as utility corridors, rights-of-way, community growth, and other concerns of the county.” Ex. 5, Washington County General Plan (General Plan) at 12 (Aug. 2012). The County assembled special interest groups, the BLM, the USFWS, and industry and recreation interests to propose a public land initiative resolving the wilderness debate.² *Id.* at 13. After six years of negotiation, the County, special interest groups and local users reached an agreement on a bill to be enacted by Congress. *Id.*

In March, 2009, Congress passed the OPLMA. *See* Pub. Law 111-11, March 30, 2009, 123 Stat 991. OPLMA designated the Beaver Dam NCA (68,083 acres) and the Red Cliffs NCA (44,725 acres), declared over a quarter of a million acres of Wilderness, released all remaining WSAs and the rest of the county from further wilderness study, created eight new Areas of Critical Environmental Concern (ACECs) and designated new wild and scenic river segments. 16 U.S.C. §§460www(b)(3)(A), 460xxx(b)(2)(A).

The County accepted the NCA designations “in lieu of numerous designated wilderness areas so as to preserve options for compatible uses throughout major numerous designated wilderness areas so as to preserve options for compatible uses throughout major portions of the area.” Ex.

² BLM identified 11 Wilderness Study Areas (WSA) in Washington County and recommended only for designation under the 1964 Wilderness Act. Utah Wilderness Recommendation, Utah Statewide EIS WSAs / Isa’s (1991) at 4-5; 43 U.S.C. §1782. Other groups sought to expand the wilderness areas and the debate resulted in stalemate.

5, General Plan at 34. Designation of the NCAs – rather than wilderness – preserved the provisions in the HCP, including access to and use of public lands and the right to develop roads, utility corridors, and other development. *Id.* at 28, 33, 34. Among other issues, the law identified a “Northern Corridor” or a transportation route between Cedar City and St. George and to larger cities, including Salt Lake and Provo as critical to alleviate gridlock traffic in St. George. *Id.* at 25. Increasing need for electric, gas, fiber optics, or oil transmission facilities were also motivating factors for NCAs rather than wilderness. *Id.* at 28. The County’s economic and ecological well being depends on a continuation of the flexibility built into the HCP for management of the NCAs. *Id.* at 33.

C. Planning Process for Management of the National Conservation Areas

Within three years of its enactment, OPLMA directed BLM to “develop a comprehensive plan for the long-term management of the National Conservation Area[s].” 16 U.S.C. §§460www(d)(1), 460xxx(d)(1). On May 10, 2010, the BLM St. George Field Office (SGFO) published notice in the Federal Register of its intent to prepare RMPs for the Beaver Dam Wash and the Red Cliffs NCAs and an amendment to the St. George Field Office RMP. *See* 75 Fed. Reg. 25876 (May 10, 2010). These amendments would bring the SGFO RMP into compliance with Subtitle O of OPLMA, which designated approximately 68,083 acres as Beaver Dam NCA and 44,725 acres as the Red Cliffs NCA. *Id.*; 16 U.S.C. §§460www(b)(3)(A), 460xxx(b)(2)(A). The scoping notice included a preliminary list of issues: (1) consideration of Open, Closed, or

Limited Use motorized recreation areas; (2) a “northern transportation corridor” as required by OPLMA; and (3) motorized travel routes through the NCAs. 75 Fed. Reg. at 25876-77.³

The District scoping comments on June 10, 2010 noted that the BLM must acknowledge that the Washington County HCP, which formed the basis for the NCAs, and recognized the importance of water and utility development. *See* Ex. 6, June 10, 2010 Comments; Ex. 7, July 19, 2010 Scoping Comments. The HCP preserved all existing utility corridors as well as the option to “construct new utility corridors and flood control projects...” *Id.* The HCP was explicitly incorporated into OPLMA. 16 U.S.C. §§460www(b)(1), (d)(3).

A month later, the District re-emphasized the need to consider the development of essential water projects on Ash Creek, Warner Valley, Lake Powell, and the Navajo Aquifer in the planning process. *See* Ex. 7, July 19, 2010 Scoping Comments. The District also noted that the BLM should include specific route designations to access facilities in the Travel and Transportation Management Plan. *Id.* The District reiterated the need and the right to develop valid existing water rights on the Santa Clara and Virgin Rivers in September 2010.

The City voiced similar concerns since expected population growth meant an increased demand in electrical needs and, therefore, the need for new ROWs to carry power, water, and sewer systems. *See* Ex. 8, Oct. 30, 2015 Comments. Transmission lines from Red Butte to St. George and from “the Ledges Area” to St. George were critical issues. *Id.* The City also noted that the plan precluded new groundwater wells, a pipeline from the Red Cliffs NCA to the Ledges Area in the planned ROW and, thus, development of more than 12,000 acre-feet of

³ The Draft and Final Environmental Impact Statements and other documents are available here: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=90517>.

decreed groundwater due to the plan's treatment of diversions within the NCAs. Ex. 9, Nov. 10, 2015 Letter. The City also emphasized that the City may appropriate another 27,000 acre-feet of groundwater within the Beaver Dam NCA but the Amendment prohibits the diversion of water outside the NCAs. *Id.* The lack of coordination and consultation with the City and the District only underscored BLM's betrayal of the original agreement and the OPLMA terms. *Id.*

The City's Draft RMP Comments exhaustively detailed its concerns. Ex. 10, Nov. 13, 2015 St. George RMP Comments. The Draft RMP eliminated the essential components of the HCP including a utility corridor development process that the City relied on and was expressly incorporated into OPLMA. *Id.* Of equal importance was the complete absence of an east-west transportation route through the NCAs. *Id.* A northern east-west route was studied by the County, included in the HCP, expressly acknowledged in OPLMA, and then entirely ignored in the Draft RMP. *Id.* A lack of coordination and consultation was patent. *Id.*

Finally, the County thoroughly addressed all of these issues, and more, throughout *hundreds* of pages of comments, letters, and analysis. *See* Ex. 3, Nov. 16, 2015 County Comment; Ex. 11, July 19, 2016 Draft RMP Comment. The County also attended numerous cooperating agency meetings *after the draft RMP was released* and provided verbal feedback regarding water resources, recreation, a northern transportation route, and utility development protocols. Ultimately, the County protested the RMP after it became clear that the BLM had no intent whatsoever to work with the County on several major issues and abide by OPLMA and other laws and regulations. Ex. 12, County Protest Letter. BLM predictably denied the protest.

III. THIS BOARD HAS JURISDICTION

A. RMP Decisions Under Appeal Are Implementation Decisions

The Board of Land Appeals has jurisdiction over BLM actions if they may be considered implementation decisions. *Friends of the River, et al.* 146 IBLA 157, 164 (1998). Whether a decision is an implementation decision “depends on the effect of that action.” *Id.* If further action would be required to produce an adverse effect, it is not an implementation decision but a planning decision. *Id.*; see also *The Wilderness Society*, 90 IBLA 221, 224-25 (1986) (BLM’s adoption of a recreation management plan opening an area to off-road vehicle use was an implementation decision because off road vehicles would use and would likely cause impacts to that area). The BLM may “use a single land use planning/NEPA process to make both land use plan and implementation decisions, provided both types of decisions are adequately addressed with the appropriate level of NEPA analysis.” BLM Land Use Planning Handbook 1601-1at 30 (2005).

The RODs designate the NCAs as “exclusion areas” for site-type leases and ROWs despite the fact that the County was required to propose, and did propose, several possibilities for a Northern Transportation Route through the Red Cliffs NCA in order to alleviate the considerable impacts of a growing population. Ex. 5, General Plan at 25; Pub. L. 111-11 at §1977. Indeed the County applied for a Title V ROW with the BLM in 2013 in order to finalize plans – including the necessary NEPA analysis – to develop a transportation route through the Red Cliffs NCA. Ex. 13, 2013 ROW Application. The BLM summarily denied that application, and the IBLA reversed and remanded the BLM decision. *Washington County v. BLM*, 185 IBLA 39, 52 (2014). In 2016, however, BLM eliminated *every route proposed by the County that would cross the*

NCA. See Ex. 14, FEIS at 857 (Alternatives B and C would eliminate Northern Transportation Corridor through Red Cliffs NCA). Thus, the BLM’s decision to exclude ROWs through the NCA immediately impacts the County’s ability to develop an essential east-west travel corridor to alleviate traffic, increase commerce, promote the safety and welfare of its citizens. Ex. 5, General Plan at 25. The City of St. George will be the primary beneficiary of the Northern Transportation Route due to the City’s growing population and need to plan accordingly. Ex. 10, Nov. 15, 2015 St. George RMP Comments. The same decision also precludes the City and the District from being able to develop new and change diversion structures for existing water rights pursuant to state law. See *infra* §IV(A).

Finally, the BLM RODs provide that when considering a new ROW application, the BLM “will . . . ensure that the new ROWs share, parallel, or adjoin existing ROWs.” Ex. 15, Beaver Dam ROD at 69-70; Ex. 16, Red Cliffs ROD at 66. The County’s Northern Transportation Route – even if the BLM had not prevented that possibility in the NCA – therefore, would adjoin or share an existing ROW which would entirely defeat the purpose of the route in mitigating traffic and promoting public safety. The same corridor would be used for any and all utility lines or water pipelines that the City of St. George and WCWCD may need to develop protected existing water sources in the NCAs. Moreover, power lines cannot be located in the same right-of-way as water or gas.

B. Appellants Meet Standing

Appellants are a party adversely affected within the meaning of the Department of the Interior’s (“DOI”) administrative appeal rules. 43 C.F.R. §4.410. In order to have standing to

appeal a BLM decision, an appellant must be both a party to the case and adversely affected by the BLM's decision. *Laramie Energy II, LLC*, 182 IBLA 317, 325 (2012).

1. *The County, District, and City Are Parties to the Case*

Pursuant to 43 C.F.R. § 4.410(b), an appellant is a “party to a case” when that appellant is the “one who has taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal . . .” *Coal. of Concerned Nat’l. Park Retirees*, 165 IBLA 79, 81-82 (2005). The County, the District, and the City all participated in the BLM’s planning of the management of the Beaver Dam Wash NCA and the Red Cliffs NCA – each prepared exhaustive comments. *Supra* §IIV(C). The County was also a cooperating agency and worked diligently in that capacity. *See* Ex. 12, County Protest Letter at 1.

2. *RMP Decisions Adversely Affect Appellants’ Interests*

A party is adversely affected when that party has a “legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.” 43 C.F.R. §4.410(d). “To be adversely affected, . . . the allegation of adverse effect must be colorable, identifying specific facts which give rise to a conclusion regarding the adverse effect.” *Laser, Inc.*, 136 IBLA 271 (Sept. 26, 1996). The use of the land involved or ownership of adjacent property is sufficient. *Id.*

a. BLM Decisions Impair Washington County Interests

Pursuant to Utah state law, “each county shall prepare and adopt a comprehensive, long-range general plan,” which addresses, among other things, the future needs of the county and growth and development of any part of the land within the county. Utah Code §17-27a-401.

BLM's management decisions impair the County's public service needs and development of the land within its boundaries. Ex. 3, Nov. 16, 2015 County Comment at 2-3; Ex. 11, July 19, 2016 Draft RMP Comment at 2.

The BLM designates the Red Cliffs NCA as a ROW exclusion area and therefore eliminates any new travel route contrary to the General Plan, the HCP, and the county's interests. Ex. 15, Beaver Dam ROD at 68, 70; Ex. 16, Red Cliffs ROD at 66, 68. The total loss of a transportation route on lands within the county – an officially planned route – give rise to adverse impact. *California Association of Four Wheel Drive Clubs*, 30 IBLA 383 (1977) (finding that users of the California desert had standing to appeal closure of BLM lands to vehicular use); *see also* *Washington County v. BLM*, 185 IBLA at 40 (county has legal interest in right-of-way).

Similarly, the BLM *will not* “authorize commercial renewable energy (e.g., wind, solar) leases or ROWs in the NCA.” Ex. 15, Beaver Dam ROD at 68; Ex. 16, Red Cliffs ROD at 66. The RODs directly conflict with the County's General Plan to maintain ROWs and utility corridors as well as preserving the ability to designate new corridors or ROWs. Ex. 5, General Plan at 391 (“All existing utility corridors must be maintained and used to support additional capability for electric transmission and flow of oil and gas throughout the state and region.”).

b. BLM Decisions Will Adversely Impact the District

Washington County's water demand is expected to increase to approximately 184,245 acre feet per year by 2060 and there are valuable water sources within the NCAs – such as the Navajo Sandstone Aquifer. Ex. 17, WCWCD Conservation Plan at 25, 27; Ex. 18, Navajo Sandstone Aquifer Map. The District, however, cannot site any facilities within the NCA due to the BLM's discrete decision to “designate the NCA as an Exclusion area for site-type leases and ROWs”

despite the District's statutory charge to conserve, develop and stabilize water supplies and construct drainage works. Ex. 16, Red Cliffs ROD at 68; Utah Code §17B-2a-1002; *see also* Ex. 19, District Capital Facilities Plan at 19. Moreover, the District depends on municipalities' access to their water sources within the Red Cliffs NCA in order for the municipalities to maintain, operate and improve facilities, because the District maintains an all-requirements contract with the municipalities to provide the water they require. Ex. 20, Regional Water Supply Agreement, Sec.'s 4.2, 4.5.3, pp. 15, 17-19. If municipalities lose the ability to maintain, operate and improve facilities within the Red Cliffs NCA, the District is harmed because it would have to provide this water from elsewhere. The District is also harmed by the inability to access diversion points for changed water rights. Utah Code Ann. §§73-3-8(5), 73-3-3(3). Due to the BLM's RMP, the District is precluded from exercising its right to change points of diversion for water rights to lands within the Red Cliffs NCA.

c. BLM Decisions Will Adversely Impact St. George City

BLM land is located within City limits and includes the Red Cliffs NCA. *Compare* Ex. 21, St. George City Plan at 5-5 *with* Ex. 16, Red Cliffs ROD at 67. The BLM's decision to prohibit ROWs, roads, linear structures, and other disturbances *within City limits* is precisely the type of discrete land use decision sufficient to provide standing. *Laser, Inc.*, 136 IBLA 271 (1996). Despite the obvious nexus between St. George and the issues in the RMPs at issue here, and the command of OPLMA, St. George was not offered cooperating agency status. *See infra* §IV(C).

Much of St. George City's water is provided by wells within the Red Cliffs NCA. Ex. 18, Navajo Sandstone Aquifer Map. The City depends on access to its water sources within the Red Cliffs NCA in order to maintain, operate and improve its facilities. And, as with the District, the

City cannot site any new water diversion structures within the NCA due to the BLM's decision "designate the NCA as an Exclusion area for site-type leases and ROWs." Ex. 16, Red Cliffs ROD at 68. This includes the ability to develop new wells or change the diversion infrastructure of existing rights on the Red Cliffs NCA. Thus, the BLM's decision to restrict the District's ability to produce reliable sources of water has already impaired the City's water supply.

The BLM's decision to exclude new roads or ROWs through any portion of the Red Cliffs NCA completely prohibits the possibility of a Northern Transportation Route that would alleviate massive traffic congestion in St. George which directly conflicts with the St. George Master Plan. Ex. 21, St. George City Plan at §6.12.2. Like the County, the total loss of a transportation route – an officially planned route – impairs its governmental interests. *California Association of Four Wheel Drive Clubs*, 30 IBLA 383 (1977) (finding that users of the California desert had standing to appeal closure of BLM lands to vehicular use).

IV. LEGAL ARGUMENT

A. Closures and Restrictions on Water Development Exceed BLM Authority

The BLM may not take any action that violates state water law principles. *John & Shirley Murrer, et al.*, 182 IBLA 343, 353 (2012) (holding that "issues related to the validity of water rights are beyond its authority and must be pursued before the SWRCB or in court and decided under State law" and that action taken by BLM must respect California water law). Neither FLPMA, nor its implementing regulations, grant BLM any authority to administer, regulate, or otherwise manage water resources other than Federal reserved water rights. *See Winters v. United States*, 207 U.S. 568 (1908). BLM reserved water rights and claims of beneficial use must be asserted before the Utah Water Board. BLM Water Rights Manual 7250 at 1-1(2013) ("Protect

Federal reserved water rights and water rights obtained through state-based administrative and judicial systems.”). Thus, any discrete provision that attempts to regulate the development of surface or ground water is *ultra vires*. See *Wyoming v. United States*, 279 F.3d 1214, 1235 (10th Cir. 2002).

Both the District and the City have developed water rights within and adjacent to the Red Cliffs NCA including rights in the Navajo Sandstone Aquifer. See Ex. 18, Navajo Sandstone Aquifer Map; Ex. 17, WCWCD Conservation Plan at 25, 27. Both the City and the District are statutorily authorized to develop *and* permanently change the point of diversion for groundwater and surface water according to Utah law. See Utah Code Ann. §73-3-8(5). The RMPs, however, preclude the District and the City of St. George from any further development of the Navajo Sandstone Aquifer or any water source within any area designated as an “Exclusion area for site-type leases and ROWs” and have further prevented any water right holder – municipal or otherwise – from exercising his rights under Utah law for changing the point of diversion for that water right. Ex. 16, Red Cliffs ROD at 68.

FLPMA does not grant such sweeping authority to BLM to regulate water resources. FLPMA cautions that “[n]othing in this Act shall be construed as . . . affecting in any way any law governing appropriation or use of, or federal right to, water on public lands; (2) as expanding or diminishing federal or state jurisdiction, responsibility, interests, or rights in water resources development or control. . . .” 43 U.S.C. §1701, n. §701(g)(1). The Secretary has specific authority to permit water facilities, see 43 U.S.C. §1761(a)(1), but, BLM may not improperly refuse a permit *without first considering* an applicant’s proposal for designing a project to meet wildlife and other conservation needs. See *Eugene V. Vogel*, 52 IBLA 280, 284-85 (1981).

The problem with the RMP, therefore, becomes apparent when it is clear that BLM has prohibited even the possibility of developing water or changing water rights before any application has been made. *Id.* at 286 (“[e]ach application for a discretionary use deserves to be treated on its own merits”). The City of St. George and the District are now unable to develop the Navajo Sandstone Aquifer, site any pipelines, or change its existing water rights across more than 38,472 acres in the Red Cliffs NCA and 63,352 acres in the Beaver Dam NCA. *See* Ex. 16, Red Cliffs ROD at 66; Ex. 15, Beaver Dam ROD at 68. The BLM’s attempt to claim water rights or prevent the development of future or existing water rights lacks any statutory authority and is patently *ultra vires*. *Wyoming*, 279 F.3d at 1235.

B. BLM Provided No Rationale For Departing From Established Habitat Conservation Plan

The NEPA process is based on “twin aims” – (1) federal agencies must “consider every significant aspect of the environmental impact of a proposed action”; and (2) “inform the public that it has indeed considered environmental concerns in its decisionmaking process.” *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) (quotes and citations omitted). These two aims also include an agency’s “duty to explain its departure from prior norms” so that the public and a reviewing court may understand the basis of the agency’s action...” *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973).

The BLM, USFWS, the County and other stakeholders worked tirelessly to develop a Habitat Conservation Plan that would protect desert tortoise habitat while also allowing growth and

development in Washington County. *See* Ex. 1, HCP at vii. Indeed, the County met with BLM and USFWS more than 30 times for the *first* version of the HCP alone. *Id.* at 8.

By 1996, the BLM, USFWS, and the County agreed on a comprehensive plan that allowed responsible growth and development while complying with the ESA. *Id.* at viii. The HCP included an entire appendix that detailed how and where utilities could be developed as well as the terms and conditions that would be included to protect desert tortoise habitat. *Id.* at A1-A8. To be sure, the HCP “enabl[ed] utilities to be placed within the preserve” – which became the Red Cliffs NCA – and also designated the Red Cliffs area as an avoidance area for utilities. *Id.* at A1; *see also* Ex. 3, Nov. 16, 2015 County Comment at 32. The USFWS approved the HCP and concluded that this approach would “not likely [] jeopardize the continued existence of the Mojave desert tortoise; nor is it likely to result in destruction or adverse modification of critical habitat designated for the Mojave desert tortoise.” Ex. 4, USFWS Bio. Op. at 2.

After two decades of successful implementation of the HCP, the BLM has drastically changed course from the accepted and functioning management system in Washington County. As justification for the change, the BLM offers a conclusory and factually incorrect statement that it complied with policy and OPLMA. *See* Ex. 14, FEIS, Appendix J at 355. Mere assertions of policy, however, do not sufficiently disclose the action or the impacts thereof. *W. Watersheds Project v. Bureau of Land Mgmt.*, 552 F. Supp. 2d 1113, 1129 (D. Nev. 2008) (The BLM may not rely on “conclusory statements” unsupported by “explanatory information.”). The actual impacts of closing an area to site-leases or ROWs are categorically different than the statements of policy BLM uses to choose a course of action. *See* 40 C.F.R. 1508.18 (defining effects and

impacts as resulting from actions and occur to natural resources). Thus, citing to Manual 6220 or the general purpose of OPLMA do little to further the analysis required under NEPA.

The change in direction is made all the more significant due to the USFWS endorsement of the HCP in place for the past two decades. Ex. 4, USFWS Bio. Op. at 2. The HCP does not contain any exclusion areas and neither did OPLMA. *Compare* Ex. 1, HCP at A-1 with 16 U.S.C. §§460www, 460xxx. Thus, the BLM offered a conflicting management position of a sister agency – the USFWS – which demands that BLM make a good faith reasoned analysis of the departure from more than 20 years of successful management. *See Silva v. Lynn*, 482 F.2d 1282, 1285 (1st Cir. 1973) (“There must be a good faith, reasoned analysis in response” to conflicting position of sister agencies). As is evidenced by the BLM’s response to comments, BLM made no attempt to reconcile the previous management strategy with that offered by the RODS. *See* Ex. 14, FEIS, Appendix J at 355. Nor did the BLM communicate any change in facts that would render the HCP an unacceptable management scheme. *See Defenders of Wildlife v. Hall*, 565 F. Supp.2d 1160, 1170 (D. Mont. 2008) (departures from factual findings must be clearly explained). Without a clear explanation for the significant change in management direction, the BLM’s analysis is fatally flawed.

In *Washington County v. BLM*, the BLM argued that the USFWS provided that no new paved roads shall be authorized in a Desert Wildlife Management Area. *See Washington County* 185 IBLA at 52 (citing BLM’s Answer at 8-9). BLM argued, for the first time on appeal, that it was entirely precluded from accepting the ROW for a Northern Transportation Route if it passed through the DWMA. *Id.* This Board, however, determined that

we find nothing in the RMP, as finally promulgated, either designating the DWMA or deeming it to be synonymous or co-extensive with the [Critical Habitat Unit]. Nor are we yet persuaded that, by incorporating the terms and conditions of the August 1998 BiOp, including the ITS, into the RMP, BLM specifically meant to preclude paved roads in a DWMA that may never have been established.

Id. at 52. Thus, there is no indication that USFWS – the agency with primary jurisdiction over desert tortoise recovery – intended BLM to take the action it takes here. Rather, the USFWS has not deviated from the HCP, which was adopted by OPLMA, and it should be implemented accordingly by BLM.

C. The RMP ROW Decisions Contradict OPLMA and Local Land Use Plans in Violation of FLPMA

Pursuant to FLPMA, “land use plans of the Secretary under this section shall be consistent with State and local plans to the *maximum extent he finds consistent with Federal law* and the purposes of this Act.” 43 U.S.C. §1712(c)(9) (emphasis added). BLM must also keep apprised of state and local land use plans, give consideration to such plans, and assist in resolving inconsistencies between Federal plans and local government plans. *Id.*; 43 C.F.R. §§1610.3-1(a)(1)-(3), 1610.3-2(a); *Am. Motorcyclist Ass'n v. Watt*, 534 F. Supp. 923, 936 (D. Cal. 1981) (The regulations require federal agencies to address *how* inconsistencies between a proposed action and local lands use plans are addressed and resolved.). NEPA further requires BLM to discuss any inconsistencies of a proposed action with State and local plans, and the extent to which such inconsistencies could be reconciled. 40 C.F.R. §§1502.16(c), 1506.2(d); *Quechan Tribe of Ft. Yuman Indian Reservation v. U.S. Dep't of the Interior*, 927 F. Supp. 2d 921, 946 (D. Cal. 2013).

1. *The RMPs Are Not Consistent With OPLMA to the Maximum Extent Permissible Under Federal Law*

The 2009 OPLMA imposed several tasks on BLM. First, OPLMA required BLM to consult with appropriate local governments in developing the RMPs for the NCA. 16 U.S.C. §§460www(d)(2), 460xxx(d)(2). Second, OPLMA required that those RMPs be developed within three years. 16 U.S.C. §§460www(d)(1), 460xxx(d)(1). Third, OPLMA required BLM to complete a TMP within three years of its enactment. Pub. L. 111-11 at §1977. During the development of both the RMPs and the TMP, OPLMA required the BLM to (1) consider adding any provision of HCP and the PUP to the Red Cliffs RMP; and (2) identify one or more alternatives for a northern transportation route in the County. *Id.* at 1977(b)(2); 16 U.S.C. §460www(b)(1), (b)(4), (d)(3). The BLM materially failed to follow these commands, even though Congress did not give BLM discretion to delay or not act.

The City of St. George was never offered cooperating agency status and was never given a full and fair opportunity to cooperate and contribute to the planning process. 43 U.S.C. §1712(c)(9); 43 C.F.R. §1610.3-1; Ex. 22, St. George Protest. In response to comments from St. George, the BLM states “[w]hen this planning effort was initiated 2010, it was not common practice for the BLM to extend Cooperating Agency status for Resource Management Plans to municipalities.” Ex. 14, FEIS at 394. Here again BLM errs. The Cooperating Agency Desk Guides recognized that cities should be included as local governments. *BLM Cooperating Agency Desk Guide Revision 12-4-09* at 9; *BLM Desk Guide to Cooperating Agency Relationships and Intergovernmental Cooperation* (BLM 2012) at 33 (“A local government is defined in BLM planning regulations as a general purpose unit of government with resource

management authority or a political subdivision of a State. Counties (boroughs in Alaska) and incorporated cities clearly qualify.”). The City of St. George was *entitled* to be given cooperating agency status because the City had “jurisdiction by law” due to the fact that the boundaries of the NCA overlap the City limits. 40 C.F.R. §1508.15 (“agency authority to approve, veto, or finance all or part of the proposal.”); CEQ Memorandum, *Cooperating Agencies in Implementing the Procedural Requirements of the NEPA*, at 4 (Jan. 30, 2002). Even if the City did not have jurisdiction over lands in the planning area, it has “special expertise” including “statutory responsibility, agency mission, or related program experience.” 40 C.F.R. §1508.26. St. George has unique perspectives on the significant environmental, social, and economic impacts associated with the management of the BLM lands in Washington County and BLM chose to relegate the City to a member of the public.

Similar treatment was given to the longstanding provisions of the HCP and PUP. OPLMA provided that “nothing in this section prohibits the authorization of the development of utilities within the [NCA] if development is carried out in accordance with [] each utility development protocol described in the habitat conservation plan.” 16 U.S.C. §460www(h)(1). BLM, however identified 38,472 acres of the Red Cliffs NCA as an exclusion area for utilities and ROWs and also prohibits commercial renewable energy. *See* Ex. 16, Red Cliffs ROD at 66, 68. Congress clearly contemplated that utility, water, and transportation development would occur within the NCA *if* the protocols in the HCP and PUP were followed. Put another way, the unambiguous intent of Congress through the plain language used in OPLMA is that utility development in the NCAs is allowed consistent with the HCP. *Chevron, U.S.A., Inc. v. Nat. Res. Defense Council*, 467 U.S. 837 (1984). Thus, rather than the RMP being maximally consistent with the HCP, the

BLM completely ignored a tried and true plan and opted for absolute utility exclusion. 43 U.S.C. §1712(c)(9).

OPLMA required BLM to prepare a transportation plan within three years of OPLMA's enactment. Pub. L. 111-11 at §1977(b)(1). Nearly eight years later, the BLM still is trying to postpone the TMP and instead has attempted to satisfy its OPLMA mandate by analyzing a single alternative in the RMPs that includes a Northern Transportation Route. *See id.* at 1977(b)(2). But, as discussed *supra* §IV(D), the BLM *did not evaluate the impacts* of a Northern Transportation Route and stated that such a route was out of the scope of this EIS. BLM essentially paid lip service to the Northern Transportation Route but never fully considered the route as Congress intended.

2. *The RMPs Are Not Consistent With Local Land Use Plans to the Maximum Extent Permissible Under Federal Law*

Washington County has a statutory duty to provide for the public health and welfare of its citizens and to provide for the local transportation system. Utah Code Ann. §§17-50-303(1)(a)(ii), 17-50-305, 17-50-309. Through a long-range plan, the County Plan provides for the present and future needs of the county, the growth and development of the county, a transportation system, and the public health, general welfare, and safety. Utah Code Ann. §17-27a-401(1)-(2).

The BLM, however, failed to grasp that transportation, access, and traffic are critical to the public welfare and safety and the County's legal obligation to provide these services. Ex. 5, General Plan at 21, 24-25. As explained *supra* §IV(C), the County's current General Plan emphasizes the importance of motorized access within the NCA to the public health, safety, and

welfare. *Id.* at 34. Similarly, the Northern Transportation Route is necessary to facilitate traffic movement, minimize congestion, and provide better access for essential public services, such as law enforcement, fire fighting, and search and rescue. *See id.* at 21, 24-25, 34. It would also help provide for ongoing economic activities such as livestock grazing, watershed management, flood control, water developments, communications, recreation and wildlife habitat improvements. *See id.* at 34.

The Red Cliffs and Beaver Dam Wash RODs designate the NCAs as exclusion areas for ROWs (energy and transportation) and then force future proposed ROWs through narrow corridors. *See Ex. 15, Beaver Dam ROD at 68, 69-70; Ex. 16, Red Cliffs ROD at 66, 68.* In response to County, District, and City comments, the BLM stated

[W]here State and local plans conflict with Federal law there will be an inconsistency that cannot be resolved or reconciled. Thus, while County and Federal planning processes, under FLPMA, are required to be as integrated and consistent as practical, the Federal agency planning process is not bound by or subject to County plans, planning processes, or planning stipulations. The BLM has identified these conflicts in the FEIS/Proposed RMPs/Proposed Plan Amendment (see Chapter 3 of the FEIS), so that the State and local governments have a complete understanding of the impacts of the FEIS/Proposed RMPs/Proposed Plan Amendment on State and local management options.

Ex. 14, FEIS, Appendix J at 402. A review of Chapter 3 shows that BLM believed the Northern Transportation Route would compromise the values for which the Red Cliffs NCA would be managed *but never once attempted to resolve inconsistencies* with the County's general plan. *See id.* at Chapter 3, pp.161-64. BLM fails to explain why closure is necessary now when it has not been necessary for the past 22 years to protect the Mohave desert tortoise. Indeed, the BLM focused entirely on the *benefits* to desert tortoise habitat while completely failing to acknowledge that local plans predicted massive population growth, traffic issues, and a general need for access

to manage the NCA. *Id.* Thus, the BLM merely stated that there “will be” inconsistencies, when in fact the County Plan is consistent with the HCP and only BLM claims new conservation measures are necessary. For that matter, in Chapter 3 of the FEIS, BLM never addressed *how* most of the inconsistencies would be resolved. *Am. Motorcyclist Ass'n*, 534 F. Supp. at 936; *Quechan Tribe of Ft. Yuman Indian Reservation*, 927 F. Supp. 2d at 946. The BLM should have discussed its analysis of the traffic, fire fighting, grazing, and other provisions of the local plans that increase the need for access and, among other routes, the Northern Transportation Route.

D. FEIS Violates FLPMA and NEPA by Omitting Connected and Similar Actions

As part of its analysis, the scope of an FEIS must be defined by connected, cumulative and similar actions. 40 C.F.R. 1508.25; *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1304 (9th Cir. 2003).

1. *Travel Management Plans and Resource Management Plans Are Interdependent and Connected Actions*

Actions are “connected” if they: (1) automatically trigger other major actions; (2) cannot or will not proceed unless other actions are taken previously or simultaneously; or (3) “are interdependent parts of a larger action and depend on the larger action for their justification.” 40 C.F.R. 1508.25(a)(1)(i-iii). The Tenth Circuit, like the Ninth, applies an independent utility test – the crux of which is “whether each of two projects would have taken place with or without the other and thus had independent utility.” *Wilderness Workshop v. U.S. Bureau of Land Mgmt.*, 531 F.3d 1220, 1229 (10th Cir. 2008). If the two actions are “dependent on each other,” *id.*, or “inextricably intertwined,” they must be evaluated together. *Thomas v. Peterson*, 753 F.2d 754, 759 (9th Cir. 1985).

The NCA RMPs and the travel management plan for the St. George Field Office are but two links in the same chain. *Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394, 400 (9th Cir. 1989). The NCA RMPs and the SGFO TMP arise out of the same legislation – OPLMA – and give effect to a singular congressional intent. *See* Pub. L. 111-11; *Trout Unlimited v. Morton*, 509 F.2d 1276, 1285 (9th Cir. 1974) (holding that actions were not connected because Congress intended the “First Phase of [a] project would be constructed without regard to whether the Secretary ever submits a finding of ‘feasibility’ with regard to the Second Phase.”). Congress explicitly stated that the TMP and the RMP would be completed at the same time. *Compare* 16 U.S.C. §460www(d)(1) *with* Pub. L. 111-11 at §1977(b)(1). Congress did not intend phased EISs in Washington County and both the RMPs and the TMP depend entirely on OPLMA for their justification. 40 C.F.R. 1508.25(a)(1)(iii).

A simple review of the discrete management actions in the RODs demonstrates that the RMPs and the TMP are interdependent. *See* BLM Handbook 1601-1 App. C at 18-19 (2005) (for implementation level decisions made in an RMP, BLM must “[c]omplete a defined travel management network” and “establish a process to identify specific areas, roads and/or trails that will be available for public use, and specify limitations placed on use.”). The Red Cliffs ROD states that the BLM, when considering a proposed ROW application, “*will . . . ensure* that new ROWs share, parallel, or adjoin existing ROWs.” Ex. 16, Red Cliffs ROD at 66 (LAR-13), 68 (LAR-12). The Red Cliffs ROD closes virtually the entire NCA to new roads and rights-of-way and leaves a small and patently insufficient corridor that all future ROWs must share. *Id.* (Map 8). The Red Cliffs ROD, therefore, adopts an immediate decision to limit all rights-of-way to a single narrow corridor but inexplicably states that evaluating the impacts of that corridor were

beyond the scope of the EIS. *See* Ex. 14, FEIS at 857 (“Estimation of the specific and net impacts of development of the corridor is beyond the scope of this planning-level EIS, and would require specification of exact alignments and design features.”). “Ensuring that new ROWs [will] share” a common corridor is, by its very terms, a travel management decision with impacts that cannot be evaluated independent of the TMP. 40 C.F.R. 1508.25(a)(1)(iii); *see* BLM Handbook 1601-1, App. C at 19 (products from the implementation decision process will include “[d]efinitions and additional limitations for *specific roads* and trails...”) (emphasis added).

Appellants repeatedly emphasized that the BLM was foreclosing alternatives in the TMP by designating the NCA as a ROW exclusion area in the RMP. *See* Ex. 3, Nov. 16, 2015, County Comment (“...if the Red Cliffs NCA is designated an exclusion area for rights of way . . . it is unclear how the BLM could address northern corridor identification in the TMP...”). In determining the scope of the EIS for a TMP, the BLM, however, may not foreclose the opportunity to consider alternatives – precisely what it has done here. *See Utahns for Better Transp. v. U.S. Dep't of Transp.*, 305 F.3d 1152, 1183 (10th Cir. 2002), *as modified on reh'g*, 319 F.3d 1207 (10th Cir. 2003) (discussing proper segmentation of transportation planning). Put simply, the impacts of the implementation decisions in the RMP have not been analyzed according to the BLM’s own policy.

2. *The BLM Failed to Consider the Cumulative Impacts of Designating a Northern Transportation Route*

The BLM must also consider “cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.” 40 C.F.R. § 1508.25(a)(2), (c)(3). “Cumulative impacts” include impacts

of “other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” *Id.* at § 1508.7. If the future actions were announced simultaneously, very reasonably foreseeable, located in the same geographic area, and formed part of the same overall project, the EIS must consider it. *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214–15 (9th Cir.1998).

As discussed above, Congress announced that the RMPs for the NCAs and the TMP for the SGFO would be completed within the same three-year time frame. *See* Pub. L. 111-11 at §1977(b)(1); 16 U.S.C. §460www(d)(1); *Blue Mountains*, 161 F.3d at 1215 (Forest Service identified five logging projects at the same time and were therefore reasonably foreseeable). Congress explicitly directed BLM to prepare the TMP and the RMPs at the same time and within three years. *Compare* 16 U.S.C. §46www(d)(1) *with* Pub. L. 111-11 at §1977(b)(1). Because the TMP and the RMPs arise out of the same law and Congress spoke directly to the issue of when the two projects should occur, the impacts of one cannot be evaluated without *at the same time* considering the impacts of the other. 40 C.F.R. §1508.25(a)(2), (c)(3); *Blue Mountains*, 161 F.3d at 1215 (holding that identical timelines for logging projects made them cumulative actions).

It is also undeniable that the purpose of the NCAs and the travel management decisions to be made in the SGFO is to protect desert tortoise habitat as originally developed through the County’s HCP. Ex. 1, HCP at A-3; BLM M-6220(1.6)(E)(1)(a)-(f), (2)(a)-(c). Indeed, the Red Cliffs NCA includes the original Red Cliffs Reserve *which was managed according to the HCP*. Ex. 2, PUP at 9. The RMPs and the TMP, therefore, are premised on the same “recovery strategy” designed by the County, the USFWS, and the BLM. *Blue Mountains*, 161 F.3d at 1215

(holding that five proposed timber sales produced cumulative impacts because they “were developed as part of a comprehensive forest recovery strategy.”). The cumulative impacts of the RMP and the TMP must be evaluated in the same EIS.

The RMPs and the TMP concern the exact same geographic area. *Blue Mountains*, 161 F.3d at 1215 (cumulative impacts of five timber sales must be considered in EIS because they occurred in the same watershed). About 41 percent of the land in Washington County is under BLM’s jurisdiction. Ex. 5, General Plan at 20-21. The Red Cliffs NCA makes up 44,725 acres and the Beaver Dam NCA makes up 68,083 acres of the County. 16 U.S.C. §§460www(b)(3)(A), 460xxx(b)(2)(A). The TMP, necessarily, would involve the entire County including both existing and proposed routes in and around the NCAs. Pub. L. 111-11 at §1977. The cumulative impacts of the management decisions in the RMPs on the lands in Washington County cannot be evaluated without simultaneously considering the roads on the exact same lands.

The discrete language used in the RMPs shows that cumulative impacts from TMPs are reasonably foreseeable and yet blatantly ignored by the BLM. In Alternative D, the BLM proposed designating a utility and transportation corridor of 6,350 acres. Ex. 23, DEIS at 284. According to the BLM, “the proposed rights-of-way corridor in Alternative D encompasses all of the proposed ‘northern transportation route’ alignments and all of the current utility developments on public lands. It also provides acreage sufficient to accommodate future utility development.” Ex. 14, FEIS at 831.⁴ The FEIS states, however, “[e]stimation of the specific and

⁴ As a factual matter, this statement is patently incorrect by review of Map 2-46. Ex. 23, DEIS at 283. The Alternative D corridor *does not* include Washington County’s preferred route – indicated (continued...)

net impacts of development of the corridor is beyond the scope of this planning-level EIS, and would require specification of exact alignments and design features.” *Id.* at 857.

The BLM has identified a corridor, eliminated the possibility of *all other transportation routes*, and then failed to analyze the impacts of eliminating those routes *or* forcing the County’s Northern Transportation Route into an identified corridor. The County’s current General Plan recognizes that a number of major traffic routes, including the northern transportation route, is essential to the future of the County. Ex. 5, General Plan, at 21, 24-25. It further emphasizes the importance of motorized access within a NCA to the health, safety, and welfare of its citizens. *Id.* at 34. The northern route would help to facilitate traffic movement, minimize congestion, and provide better access for essential citizen needs such as law enforcement, fire fighting, and search and rescue. *See id.* at 21, 24-25, 34. It would also help provide for ongoing economic activities such as livestock grazing, watershed management, flood control, water developments, communications, recreation and wildlife habitat improvements. *See id.* at 34. The BLM, however, literally failed to analyze any of these issues. The BLM may not kick the can down the road – reasonably foreseeable impacts of discrete transportation decisions cannot be foisted upon a later EIS, when the RMP prohibits consideration of a new right-of-way. *Kern v. Bureau of Land Mgmt.*, 284 F.3d 1062, 1074 (9th Cir. 2002) (promise of site-specific analysis to be performed at later date is insufficient in an EIS).

The FEIS also states that “negative impacts on traditional, commodity-based uses of public lands” caused by the designation of the NCAs (and the exclusion areas attendant thereto) are

⁴ (...continued)
in black – or most of the other routes – indicated in yellow.

“essentially moot” because the management of the wilderness areas that overlap the NCA would already prevent the benefits of commodity-based uses. Ex. 14, FEIS at 846. The BLM’s attempt to use existing restrictive management designations (wilderness, etc.) to argue no new impacts ignores a future TMP. OPLMA explicitly requires BLM to prepare a TMP and regardless of whether the TMP is prepared as part of or separate from the NCA RMP, it is still reasonably foreseeable since it is congressionally required. Pub. L. 111-11 at §1977.

V. CONCLUSION

The County, the District and St. George urge the Board to reverse and remand the respective RODs as identified in this Statement of Reasons. The relief sought should include direction to BLM to issue a supplemental EIS to consider the northern transportation route and its impacts in the preferred alternative, revise the RODs to incorporate the 1996 HCP as provided for by law, and to convert the closed ROW areas to avoidance areas, and to reverse all provisions that interfere with the exercise of water rights and diversions and beneficial uses of such water.

Respectfully submitted the 21st of February, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of February, 2017, I caused to be delivered true copies of the foregoing **STATEMENT OF REASONS** and **EXHIBITS** First Class Mail, postage prepaid as follows:

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