No. 03-101

In the Supreme Court of the United States

GALE NORTON, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

SOUTHERN UTAH WILDERNESS ALLIANCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: JULY 18, 2003
CERTIORARI GRANTED: NOV. 3, 2003

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UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 01-4009

SOUTHERN UTAH WILDERNESS ALLIANCE, ET AL.

v.

GALE NORTON, SECRETARY, UNITED STATES DEPARTMENT OF THE INTERIOR, ET AL., DEFENDANTS-APPEELLEES

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1/25/01	Civil case docketed. Preliminary record filed. DATE RECEIVED: 1/22/01. Docketing statement due 2/5/01 for Southern Utah Wilderness, et al., transcript order form due 2/5/01 for Rebecca Janke pursuant to r. 42.1. Notice of appearance due 2/5/01 for Anthony Chatterly, Elite Motorcycle, Blue Ribbon, Shared Access, Wayne County, Kane County, Trust Lands Admin., Emergy County, San Juan County, Utah, BLM, Tom Fry, Bruce Babbitt, Friends of the Abajo, American Lands, UT Council of Trout, Wildlands CPR, Old Broads, Sierra Club, Wilderness Society, and Southern Utah. (mt)

DATE	PROCEEDINGS
1/26/01	Notice filed that the transcript is already on file in district court. Notice due that record is complete 2/9/01 for Dale A. Kimball. (sl)
	* * * * *
1/29/01	Docketing statement filed by Wilderness Society, Sierra Club, Great Old Broads, Wildlands CPR, UT Council of Trout, American Lands, Friends of the Abajo, Southern Utah. Original and 4 copies c/s: y. (sl)
	* * * * *
2/5/01	Order filed by PF (ktc) - Briefing on the merits is tolled. Within 30 days counsel must serve and file in this court a district court order either granting Rule 54 (b) certification as to the order appealed, or explicitly adjudicating all remaining claims. Rule 54(b) certification due 3/7/01 for James S. Angell, Robert B. Wiygul, Stephen H.M. Bloch and Heidi J. McIntosh. Parties served by mail. (mt)
	* * * * *
2/6/01	Filed notice record is complete 1/30/01 (dla)

DATE	PROCEEDINGS
2/14/01	Notice of appearance filed by Paul A. Turcke as attorney for Shared Access, Blue Ribbon, Elite Motorcycle, and Anthony Chatterly. CERT. OF INTERESTED PARTIES (y/n): y (dla)
	* * * * *
2/22/01	Rule 54(b) certification filed by Stephen H.M. Bloch, Staff Attorney for Southern Utah Wilderness Alliance. (mt)
3/5/01	Order filed by PF (ktc) referring Rule 54 (b) certification and jurisdictional issue TO PANEL ON THE MERITS. Appellant's brief and appendix due 4/16/01 for Friends of the Abajo, et al. Parties served by mail. (kjs)
	* * * * *
5/14/01	Appellants' brief filed by Southern Utah, Wilderness Society, Sierra Club, Great Old Broads, Wildlands CPR, UT Council of Trout, American Lands, Friends of the Abajo. Original and 7 copies. c/s: y. Served on 5/14/01. Oral argument? y., Appendix filed. Original and 1 appendix copy. Appendix Pages: 903. Appellees brief due 6/18/01 for Anthony Chatterly, for Elite

DATE	PROCEEDINGS
	Motorcycle, for Blue Ribbon, for Shared Access, for Wayne County, for Kane County, for Trust Lands Admin., for Emery County, for San Juan County, for Utah, for BLM, for Nina Rose Hatfield, for Gale Norton. (kjs)
5/14/01	Oversized record filed. Record can be located at Section: T Shelf: 2 (das)
	* * * * *
7/18/01	Appellees' brief by Shared Access, Blue Ribbon, Elite Motorcycle and Anthony Chatterly. Original and 7 copies. c/s: y. Served on 7/17/01. Oral Argument? y. Appendix filed. Original and 1 appendix copy. Appendix Pages: 177. (afw)
7/23/01	Appellees' deficient brief filed by Utah, San Juan County, Emery County, Trust Lands Admin., Kane County, Wayne County. Appellee's corrected brief due 8/3/01 for Wayne County, for Kane County, for Trust Lands Admin., for Emery County, for San Juan County, for Utah. (no oral argument statement on cover, no prior/related appeal statement, green cover) (sl)

DATE	PROCEEDINGS
7/31/01	Appellees' brief filed by Utah, San Juan County, Emery County, Trust Lands Admin., Kane County, Wayne County. Original and 7 copies. c/s: y. Served on 7/30/01. Oral Argument? y. (sl)
8/2/01	Appellees' deficient brief filed by Gale Norton and BLM. Appellee's corrected brief due 8/16/01 for BLM and Gale Norton. (dab)
	* * * * *
8/16/01	[1440421] Appellee's brief filed by Gale Norton, Nina Rose Hatfield and BLM. Original and 7 copies. c/s: y. Served on 8/15/01. Oral Argument? y. Appendix filed. Original and 1 appendix copy. Appendix Pages: 73. Appellants' optional reply brief due 9/4/01 for Friends of the Abajo, for American Lands, for UT Council of Trout, for Wildlands CPR, for Great Old Broads, for Sierra Club, for Wilderness Society and for Southern Utah. (dab)
	* * * * *
9/25/01	Appellants' reply brief filed by Southern Utah, Wilderness Society, Sierra Club, Great Old Broads, Wildlands CPR, UT Council of Trout, American Lands, Friends of the Abajo. Original and 7 copies. c/s: y. (sl)

DATE	PROCEEDINGS
	* * * * *
1/2/02	Appellant's supplemental authority filed by Southern Utah and submitted to court. Original and 7 copies. c/s: y (sl)
1/14/02	Case argued by James S. Angell for the appellant; Susan Pachloski and Paul A. Turcke for the appellees, and submitted to Judges Ebel, McKay, Lucero. (hrs)
2/8/02	Appellant's supplemental authority filed by Southern Utah, et al., and submitted to court. Original and 3 copies. c/s: y (kjs)
2/15/02	Federal Appellees' response filed by Gale Norton, et al., to Appellants' supplemental authority and submitted to court. Original and 3 copies. c/s: y (mt)
2/19/02	Appellees' response to appellants' supplemental authority filed by Shared Access, Blue Ribbon, Elite Motorcycle, Anthony Chatterly and submitted to court. Original and 3 copies. c/s: y. (sl)
2/26/02	Response filed by Intervenors Wayne County, Kane County, Trust Lands Admin., Emery County, San Juan County and Utah to Appellants' supplemental authority filed on 2/8/02. Original and 3 copies. c/s: y (afw)

DATE	PROCEEDINGS
2/27/02	Intervenors' Response to appellants' supplemental authority of 2/8/02 filed by Appellees Wayne County, Kane County, Trust Lands Admin., Emery County, San Juan County and Utah submitted to court. Document (afw)
8/29/02	Terminated on the Merits after Oral Hearing Reversed and Remanded; Written, Signed, Published. Ebel, authoring judge; McKay, concurring in part and dissenting in part; Lucero. [1-4009] (kf)
	* * * * *
10/9/02	Petition for rehearing in banc [01-4009] filed by Shared Access, Blue Ribbon, Elite Motorcycle, Anthony Chatterly. Original and 14 copies. c/s: y. (sl)
10/9/02	Petition for rehearing in banc filed by Appellees Shared Access, Blue Ribbon, Elite Motorcycle, Anthony Chatterly submitted to panel. (sl)
	* * * * *

DATE	PROCEEDINGS
11/26/02	Petition for rehearing in banc filed by Gale Norton and BLM. Original and 14 copies. c/s: y. (kf)
11/27/02	Petition for rehearing in banc file by Appellees Gale Norton and BLM submitted to panel. (kf)
	* * * * *
12/3/02	Order filed by Judges Ebel, McKay and Lucero: Appellants' response to the appellees' two petitions for rehearing due 12/18/02 for friends of the Abajo, for American Lands, for UT Council of Trout, for Wildlands CPR, for Great Old Broads, for Sierra Club, for Wilderness Society and for Southern Utah. Parties served by mail. (kf)
1/24/03	Appellees' supplemental authority filed by Gale Norton, Nina Rose Hatfield, BLM and submitted to court. Original and 15 copies. c/s: y. (sl)
	* * * * *

DATE	PROCEEDINGS
1/31/03	Appellants' response to the petitions for rehearing/rehearing en banc filed by Southern Utah, Wilderness Society, Sierra Club, Great Old Broads, Wildlands CPR, UT Council of Trout, American Lands and Friends of the Abajo. Original and 14 copies. c/s: y (kf)
2/3/03	Appellants' response filed by Southern Utah, Wilderness Society, Sierra Club, Great Old Broads, Wildlands CPR, UT Council of Trout, American Lands, Friends of the Abajo submitted to court. (kf)
2/18/03	Order filed by Judges Ebel, McKay and Lucero denying the two Petitions for rehearing in banc (no poll). (kf)
2/26/03	Mandate issued. Mandate receipt due 3/28/03. (kg)
3/7/03	Mandate receipt filed. (kg)

* * * * *

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH

No. 99-CV-852

SOUTHERN UTAH WILDERNESS ALLIANCE, ET AL.

v.

GALE NORTON, SECRETARY, UNITED STATES
DEPARTMENT OF THE INTERIOR, ET AL.,
DEFENDANTS-APPEELLEES

RELEVANT DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
10/27/98	1	Complaint filed, assigned to Judge Dale A. Kimball Receipt #: 100728 (asb) [Entry date 10/28/99]
	* * * * *	
11/23/99	4	Amended complaint by So UT Wilderness, Wilderness Soc, Sierra Club, Great Old Broads, Wildlands CPR, UT Council Trout, Amer Lands Alliance, Friends of the Abajo added party(ies): Amends [1-1] complaint (alf) [Entry date 11/24/99]

DATE	DOCKET NUMBER	PROCEEDINGS
11/24/99	5	Motion to intervene by UT Shared Access, Blue Ribbon, Elite Motorcycle, Anthony Chatterly (asb) [Entry date 11/29/99]
11/24/99	6	Memorandum by UT Shared Access, Blue Ribbon, Elite Motorcycle, Anthony Chatterly in support of [5-1] motion to intervene by UT Shared Access, Blue Ribbon, Elite Motorcycle, Anthony Chatterly (asb) [Entry date 11/29/99]
11/24/99	7	Declaration of Adena Cook Re: [5-1] motion to intervene by UT Shared Access, Blue Ribbon, Elite Motorcycle, Anthony Chatterly (asb) [Entry date 11/29/99]
11/24/99	8	Declaration of Brian Hawthorne Re: [5-1] motion to intervene by UT Shared Access, Blue Ribbon, Elite Motorcycle, Anthony Chatterly (asb) [Entry date 11/29/99]

DATE	DOCKET NUMBER	PROCEEDINGS
11/24/99	9	Declaration of Brian Hawthorne Re: [5-1] motion to intervene by UT Shared Access, Blue Ribbon, Elite Motorcycle, Anthony Chatterly (asb) [Entry date 11/29/99]
11/24/99	10	Declaration of Dale Parriott Re: [5-1] motion to intervene by UT Shared Access, Blue Ribbon, Elite Motorcylcle, Anthony Chatterly (asb) [Entry date 11/29/99]
11/24/99	—	Proposed document from UT Shared Access, Blue Ribbon, Elite Motorcyle, Anthony Chatterly entitled "Answer" (asb) [Entry date 11/29/99]
	* * * * *	
2/7/00	20	Memorandum by So UT Wilderness, Wilderness Soc, Sierra Club, Great Old Broads, Wildlands CPR, UT Council Trout, Amer Lands Alliance, Friends of the Abajo in opposition to [5-1] motion to intervene by UT Shared Access, Blue Ribbon,

DATE	DOCKET NUMBER	PROCEEDINGS
		Elite Motorcycle, Anthony Chatterley (hom) [Entry date 02/08/00]
	* * * * *	
2/7/00	21	Response by Bruce Babbitt, Tom Fry, BLM to [5-1] motion to intervene by UT Shared Access, Blue Ribbon, Elite Motorcyle, Anthony Chatterly (hom) [Entry date 02/09/00]
	* * * * *	
2/11/00	22	Magistrate Notice of Hearing Initial Pretrial Conference set for 10:00 3/23/00 To be held before Judge Boyce cc: atty (Ntc generated by: IPT Sheet/Chambers RNB) (hom) [Entry date 02/11/00]
2/18/00	23	2nd Declaration of Brian Hawthorne (hom) [Entry date 02/22/00]

DATE	DOCKET NUMBER	PROCEEDINGS
2/18/00	24	Reply by UT Shared Access, Blue Ribbon, Elite Motorcycle, Anthony Chatterley to response to [5-1] motion to intervene by UT Shared Access, Blue Ribbon, Elite Motorcycle, Anthony Chatterly (hom) [Entry date 02/22/00]
3/3/00	25	Notice of Hearing filed: Motion hearing set for 10:00 3/16/00 for [5-1] motion to intervene by UT Shared Access, Blue Ribbon, Elite Motorcycle, Anthony Chatterly To be held before Judge DAK. Cc: atty (Ntc generate by: DAK Courtroom Deputy, KJ) (ce) [Entry date 03/03/00]
3/7/00	26	Report of Attorney Planning Meeting (hom) [Entry date 03/08/00]
3/16/00	27	Minute entry: Motion hearing held for [5-1] motion to intervene by UT Shared Access, Blue Ribbon, Elite Motorcycle, Anthony Chatterly [5-1] motion to intervene by UT Shared Access, Blue Ribbon,

DATE	DOCKET NUMBER	PROCEEDINGS
		Elite Motorcycle, Anthony Chatterly taken under advisement; Judge: DAK Court Reporter: Kelly Hicken Court Deputy: Kim Jones (kj) [Entry date 03/16/00]
3/22/00	28	Order granting [5-1] motion to intervene by UT Shared Access, Blue Ribbon, Elite Motorcycle, Anthony Chatterly signed by Judge Dale A. Kimball, 3/21/00 cc: atty (alf) [Entry date 03/23/00]
3/23/00	29	Scheduling order setting deadline for filing of all motions 4:30 10/2/00; Discovery cutoff 4:30 9/1/00; Final Pretrial Conference for 2:30 4/10/01; Jury Trial for 8:30 4/30/01 Rule 26(f)(1) cnf held. Expert witness disclosure dates set. Not Referred to ADR. Discovery limits set. Signed by Judge Ronald N. Boyce 3/23/00 cc: atty. Settlement Potential: Fair (slh) [Entry date 03/24/00]

DATE	DOCKET NUMBER	PROCEEDINGS
4/4/00	30	Amended Scheduling order Setting Deadline for filing of all motions 4:30 10/2/00; Discovery cutoff 4:30 9/1/00; Final Pretrial Conference for 2:30 4/10/01; 10 day Bench Trial for 8:30 4/30/01 Rule 26(f)(1) cnf held. Expert witness disclosure dates set. Not referred to ADR. Discovery limits set. Signed by Judge Ronald N. Boyce 4/2/00 cc: atty. Settlement Potential: Fair (hom) [Entry date 04/04/00]
4/6/00	31	Answer by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access to 1st amended complaint (asb) [Entry date 04/07/00]
	* * * * *	
5/15/00	37	Unopposed Motion by So UT Wilderness for leave to file 2nd amd cmp (kam) [Entry date 05/15/00] [Edit date 05/15/00]

DATE	DOCKET NUMBER	PROCEEDINGS
5/15/00	38	Memorandum by So UT Wilderness in support of [37-1] unopposed motion for leave to file 2nd amd cmp (kam) [Entry date 05/15/00]
5/15/00	—	Proposed document from So UT Wilderness entitled, "Second Amended Complaint." Lodge until approved by order. (kam) [Entry 05/15/00]
5/16/00	39	Order granting [37-1] motion for leave to file 2nd amd cmp signed by Judge Dale A. Kimball, 5/16/00 cc: atty. (jmo) [Entry date 05/16/00]
5/18/00	40	2nd amended complaint by Friends of the Abajo, Amer Lands Alliance, UT Council Trout, Wildlands CPR, Great Old Broads, Sierra Club, Wilderness Soc, So UT Wilderness added party(ies): None. Amends [4-1] first amended complaint (hom) [Entry 05/19/00]
6/1/00	—	NTC by Friends of the Abajo, Amer Lands Alliance, UT Council Trout, Wildlands

DATE	DOCKET NUMBER	PROCEEDINGS
		CPR, Great Old Broads, Sierra Club, Wilderness Soc, So UT Wilderness hereinafter will be referred to as: All Plaintiffs; party added (hom) [Entry 06/02/00]
6/5/00	42	Expert report of G. Ronald Wright filed by So UT Wilderness (tsi) [Entry date 06/06/00]
6/5/00	44	Expert report of Dr. Howard Wilshire filed by All Plaintiffs (hom) [Entry 06/07/00]
6/5/00	45	Exhibits 1-3 in the form of photographs on compact discs filed by all plaintiffs RE: [44-1] expert rpt of Dr. Howard Wilshire. Compact discs are placed in oversized filed labeled as Volume A & B. (hom) [Entry date 06/07/00] [Edit date 06/07/00]
	* * * * *	
6/14/00	53	Motion by All Plaintiffs for preliminary injunction (ksj) [Entry date 06/15/00]
	* * * * *	

DATE	DOCKET NUMBER	PROCEEDINGS
6/14/00	55	Memorandum by All Plaintiffs in support of [53-1] motion for preliminary injunction (ksj) [Entry date 06/15/00]
6/14/00	56	Exhibits Volume 1 filed by all plaintiffs All Plaintiffs RE: [55-1] support memorandum (ksj) [Entry date 06/15/00]
6/14/00	57	Exhibit Volume 2 filed by All Plaintiffs RE: [55-1] support memorandum (ksj) [Entry date 06/15/00]
	* * * * *	
6/15/00	59	Notice of Hearing filed by All Plaintiffs Motion hearing set for 8:30 7/11/00 for [53-1] motion for preliminary injunction To be held before Judge DAK (Ntc generated by: Plas' Cnsl) (asb) [Entry dated 06/16/00]
	* * * * *	
6/29/00	67	Clarification/Addendum to [55-1] plas' support memorandum re: mot/prelin injunction filed by All Plaintiffs. (hom) [Entry date 06/30/00]

DATE	DOCKET NUMBER	PROCEEDINGS
6/30/00	70	Motion by All Plaintiffs for temporary restraining order to prevent the threat of off-road vehicle damamge (tsi) [Entry date 07/06/00]
	* * * * *	
7/6/00	71	Suppl Expert report of Dr. Howard Wilshire filed by All Plaintiffs. Note: suppl is contained on two digital CD's CD's are in file labeled as Volume B (hom) [Entry date 07/06/00] [Edit date 07/07/00]
	* * * * *	
7/6/00	74	Response to BLM, Tom Fry, Bruce Babbitt to [55-1] plas' memo in support of mot for prelim inj (asb) [Entry date 07/07/00]
7/6/00	75	Memorandum by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access in opposition to [70-1] motion for temporary re-straining order to prevent the threat of off-road vehicle damamge (asb) [Entry date 07/07/00]

DATE	DOCKET NUMBER	PROCEEDINGS
7/6/00	76	Declaration of Norman Carroll RE: [75-1] Memorandum by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access in opposition to [70-1] motion for temporary restraining order to prevent the threat of off-road vehicle damamge (asb) [Entry date 07/07/00]
7/6/00	77	Declaration of Wes Thompson, PG Re: [75-1] Memorandum by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access in opposition to [70-1] motion for temporary restraining order to prevent the threat of off-road vehicle damamge (asb) [Entry date 07/07/00]
7/6/00	78	Declaration of Mark Habbeshaw Re: [75-1] Memorandum by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access in opposition to [70-1] motion for temporary restraining order to prevent the threat

of off-road vehicle damamge (asb) [Entry date 07/07/00]

DATE	DOCKET NUMBER	PROCEEDINGS
7/6/00	79	Declaration of Wes Thompson, PG Re: [75-1] Memorandum by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access in opposition to [70-1] motion for temporary restraining order to prevent the threat of off-road vehicle damamge (asb) [Entry date 07/07/00]
7/6/00	80	Declaration of Margaret Fugate Swasey, Re: [75-1] Memorandum by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access in opposition to [70-1] motion for temporary restraining order to prevent the threat of off-road vehicle damamge (asb) [Entry date 07/07/00]
	* * * * *	
7/10/00	85	Motion by ST UT, San Juan Cnty, Emery Cnty for limited intervention (as dfts) by ST UT, San Juan Cnty, Emery Cnty, and to dismiss

DATE	DOCKET NUMBER	PROCEEDINGS
		for failure to join indispensable parties, and to stay proceedings (hom) [Entry date 07/10/00]
7/10/00	86	Memorandum by ST UT, San Juan Cnty, Emery Cnty in support of [85-1] motion for limited intervention (as dfts) by ST UT, San Juan Cnty, Emery Cnty, [85-2] motion to dismiss for failure to join indispensable parties, [85-3] motion to stay proceedings (hom) [Entry date 07/10/00] [Edit date 07/10/00]
7/10/00	87	Reply by All Plaintiffs to response to [70-1] motion for temporary restraining order to prevent the threat of off-road vehicle damamge (asb) [Entry date 07/11/00]
7/10/00	88	Declaration of Liz Thomas Re: [87-1] response reply to mot for temp restraining order (asb) [Entry date 07/11/00]

DATE	DOCKET NUMBER	PROCEEDINGS
7/10/00	89	Declaration of Herb McHarg Re: [87-1] response reply to mot for temp restraining order (asb) [Entry date 07/11/00]
7/10/00	90	Minute entry: phone cnf held in chambers to decide whether or not to proceed w/ Mot/TRO sched 9:00 7/11/00; after hrg argument of cnsl, Crt ruled that evidence will be heard in the mot/TRO as scheduled; briefing sched set for mot/Intervene; responses due 7/19/00, reply due 7/26/00; Motion hearing set for 3:30 7/31/00 for [85-1] motion for limited intervention (as dfts) by ST UT, San Juan Cnty, Emery Cnty, set for 3:30 7/31/00 for [85-2] motion to dismiss for failure to join indispensable, set for 3:30 7/31/00 for [85-3] motion to stay; Judge: DAK Reporter: Becky Janke Court Deputy: Kim Jones (kj) [Entry date 07/11/00]

DATE	DOCKET NUMBER	PROCEEDINGS
7/11/00	91	Minute entry: Hearing held on motion for TRO; pla invoked the exclusionary rule; dft obj; Crt sustained the obj: opening stmts made; testimony & evidence heard; hrg cont to 9:00 7/12/00; Judge: DAK Court Reporter: Kelly Hicken Court Deputy: Kim Jones (kj) [Entry date 07/13/00]
7/12/00	91	Minute entry: Hrg on Mot/Tro cont; testimony & evidence rec'd; closing arguments heard; Crt took the motion under advisement & will issue ruling on 7/21/00 or advise cnsl that it is inappropriate to rule on this motion prior to hrg on 7/31/00 for mot/intervene; Judge: DAK Court Reporter: Becky Janke Court Deputy: Kim Jones (kj) [Entry date 07/13/00]

DATE	DOCKET NUMBER	PROCEEDINGS
7/12/00	92	Witness and Exhibit list from hrg on Mo/TRO held 7/11/00 and 7/12/00. Exhibits are in custody of law clerk Anne Morgan. (kj) [Entry date 07/13/00]
7/13/00	93	Addendum to [86-1] support memorandum filed by ST UT, San Juan Cnty, Emery Cnty. (tsi) [Entry date 07/14/00]
	* * * * *	
7/19/00	95	Response/Statement of Non-Opposition by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access to [85-1] motion for limited intervention (as dfts) by ST UT, San Juan Cnty, Emery Cnty (asb) [Entry date 07/20/00]
7/19/00	96	Response by BLM, Tom Fry, Bruce Babbitt to [85-1] motion for limited intervention (as dfts) by ST UT, San Juan Cnty, Emery Cnty, [85-2] motion to dismiss for failure to join indispensable parties, [85-3] motion (asb) [Entry date 07/20/00]

DATE	DOCKET NUMBER	PROCEEDINGS
7/19/00	97	Response by All Plaintiffs to [85-1] motion for limited intervention (as dfts) by ST UT, San Juan Cnty, Emery Cnty (asb) [Entry date 07/20/00]
7/19/00	97	Memorandum by All Plaintiffs in opposition to [85-2] motion to dismiss for failure to join indispensable parties (asb) [Entry date 07/20/00]
7/19/00	98	Declaration of Jennifer Korb (asb) [Entry date 07/20/00]
	* * * * *	
7/21/00	101	Order denying [70-1] motion for temporary restraining order to prevent the threat of off-road vehicle damamge signed by Judge Dale A. Kimball, 7/20/00 cc: atty (hom) [Entry date 07/21/00]
	* * * * *	

DATE	DOCKET NUMBER	PROCEEDINGS
7/26/00	103	Reply by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access to response to [85-1] motion for limited intervention (as dfts) by ST UT, San Juan Cnty, Emery Cnty, [85-2] motion to dismiss for failure to join indispensable parties (hom) [Entry date 07/27/00]
	* * * * *	
7/31/00	105	Minute entry: Motion hearing held for [85-1] motion for limited intervention (as dfts) by ST UT, San Juan Cnty, Emery Cnty, held for [85-2] motion to dismiss for failure to join indispensable parties, held for [85-3] motion [85-1] motion for limited intervention (ad dfts) by ST UT, San

DATE	DOCKET NUMBER	PROCEEDINGS
		Juan Cnty, Emery Cnty taken under advisement, [85-2] motion to dismiss for failure to join indispensable parties taken under advisement, [85-3] motion to say taken under advisement; Judge: DAK Court Reporter: Becky Janke Court Deputy: Kim Jones (kj) [Etnry date 07/31/00]
		* * * * *
8/4/00	107	Expert report of Andrew E. Godfrey filed by BLM, Tom Fry, Bruce Babbitt (hom) [Entry date 08/07/00]
8/4/00	108	Order granting [85-1] motion for limited intervention (as dfts) by ST UT, San Juan Cnty, Emery Cnty, Kane Cnty, Wayne Cnty and School and Institutional Trust Lands Admin (note; Wayne & Kane Cnty and School Trust Lands were added in Movant's reply memo) denying [85-2] motion to dismiss for failure to join

DATE	DOCKET NUMBER	PROCEEDINGS
		indispensable mooting/ denying [85-3] motion to stay proceedings. School Trust and counties are hereby joined in this action and subsequent captions should so reflect. State will be allowed to intervene if it chooses to waive its sovereign immunity. Signed by Judge Dale A. Kimball, 8/4/00 cc: atty (hom) [Entry date 08/07/00] [Edit date 08/07/00)
8/7/00	109	Answer by BLM, Tom Fry, Bruce Babbitt to 2nd amended complaint (hom) [Entry date 08/08/00]
	* * * * *	
8/8/00	111	Motion by All Plaintiffs to dismiss plas' 9th cause of action in the 2nd amd cmp (hom) [Entry date 08/09/00]
8/8/00	111	Request for Expedited Ruling by All Plaintiffs RE: [111-1] motion to dismiss plas' 9th cause of action in the 2nd amd cmp (hom) [Entry date 08/09/00]

DATE	DOCKET NUMBER	PROCEEDINGS
8/8/00	112	Memorandum by All Plaintiffs in support of [111-1] expedited ruling requested, [111-1] motion to dismiss plas' 9th cause of action in the 2nd amd cmp (hom) [Entry date 08/09/00]
8/10/00	113	Notice of Hearing filed: Motion hearing set for 9:00 8/28/00 for [53-1] motion to preliminary injunction (4 days) To be held before Judge Kimball cc: atty (Ntc generated by: Courtroom Dep KJ). Changed from 8/28 at 2:00 (hom) [Entry date 08/11/00]
8/10/00	114	Answer by Anthony Chatterley, Elite Motorcycle, Blue Ribbon, UT Shared Access, intervenor dfts, to 2nd amended complaint (hom) [Entry date 08/11/00]
8/15/00	115	Expert report of Wes Thompson, P.G. filed by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access (hom) [Entry date 08/16/00]

DATE	DOCKET NUMBER	PROCEEDINGS
8/16/00	—	Transcript of Proceedings for date(s) of 7/11/00. Court Reporter: Kelly Hicken re: motion for TRO held before Judge Kimball. Volume 1 (hom) [Entry date 08/16/00]
8/17/00	116	Response by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access to [111-1] plas' motion to dismiss plas' 9th cause of action in the 2nd amd cmp (hom) [Entry date 08/17/00]
8/17/00	117	Motion by BLM, Tom Fry, Bruce Babbitt to dismiss plas' ninth cause of action w/prej (alt) [Entry date 08/18/00]
8/17/00	118	Memorandum by BLM, Tom Fry, Bruce Babbitt: in opposition to [111-1] plas' motion to dismiss plas' 9th cause of action in the 2nd amd cmp; in support of [117-1] dfts' motion to dismiss plas' ninth cause of action w/prej (alt) [Entry date 08/18/00]

DATE	DOCKET NUMBER	PROCEEDINGS
8/21/00	119	Reply by All Plaintiffs to response to [111-1] motion to dismiss plas' 9th cause of action in the 2nd amd cmp (hom) [Entry date 08/22/00]
	* * * * *	
8/23/00	121	Suppl Memorandum by All Plaintiffs in support of [111-1] plas' motion to dismiss plas' 9th cause of action in the 2nd amd cmp (hom) [Entry date 08/24/00]
	* * * * *	
8/25/00	123	Motion by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access, intervenor dfts. to dismiss portions of plas' 2nd amd cmp with dismissal, first, fifth, sixth and ninth causes of action (hom) [Entry date 08/28/00]
8/25/00	124	Memorandum by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access in support of [123-1] motion to dismiss portions of

DATE	DOCKET NUMBER	PROCEEDINGS
		plas' 2nd amd cmp with dismissal, first, fifth, sixth and ninth causes of action (hom) [Entry date 08/28/00]
	* * * * *	
8/25/00	125	Declaration of Paul A. Turcke (hom) [Entry date 08/28/00]
8/28/00	127	Motion by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access in limine limiting presentation of evidence & argument to the appl of plas' lst, 5th, & 6th causes of action to the Parunuweap, Moquith Mountain, Behind the Rocks & Sids Mountain Wilderness Study Areas & appl of plas' lst & 5th causes of action to the Factory Buttle Special Monitoring Area (asb) [Entry date 08/28/00]
8/28/00	128	Memorandum by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access in support of [127-1]

DATE	DOCKET NUMBER	PROCEEDINGS
		motion in limine limiting presentation of evidence & argument to the appl of plas' lst, 5th, & 6th causes of action to the Parunuweap, Moquith Mountain, Behind the Rocks & Sids Mountain Wilderness Study Areas & appl of plas' 1st & 5th causes of action to the Factor Butte Special Monitoring Area (asb) [Entry date 08/28/00]
		* * * * *
8/28/00	130	Motion by ST UT, San Juan Cnty, Emery Cnty, Kane Cnty, Wayne Cnty in limine re: pla's attempt to present evidence & req injunctive relief from this Court re: public lands reinventoried for wilderness characteristics in 1996 by Dept. of Interior Secretary Bruce Babbitt (asb) [Entry date 08/28/00]
8/28/00	131	Memorandum by ST UT, San Juan Cnty, Emery Cnty, Kane Cnty, Wayne Cnty in support of [130-1] motion in

DATE	DOCKET NUMBER	PROCEEDINGS
		limine re: pla's attempt to present evidence & req injunctive relief from this Court re: public lands reinventoried for wilderness characteristics in 1996 by Dept. of Interior Secretary Bruce Babbitt (asb) [Entry date 08/28/00]
8/28/00	132	Minute entry: Motion hearing held for [130-1] motion in limine re: pla's attempt to present evidence & req injunctive relief from this Court re: public lands reinventoried for wilderness characteristics in 1996 by Dept. of Interior Secretary Bruce Babbitt, held for [127-1] motion in limine limiting presentation of evidence & argument to the appl of plas' lst, 5th, & 6th causes of action Rocks & Sids Mountain Wilderness Study Areas & appl of plas' 1st & 5th causes of action to the Factory Butte Special Monitoring Area, held for [123-1]

DATE	DOCKET NUMBER	PROCEEDINGS
		motion to dismiss portions of plas' 2nd amd cmp with dismissal, first, fifth, sixth and ninth causes of action, held for [117-1] motion to dismiss plas' ninth causes of action w/prej, held for [111-1] motion to dismiss plas' 9th cause of action in the 2nd amd cmp, held for [53-1] motion to preliminary injunction; Dft St UT allowed to intervene; pla invoked exclusionary rule, dft objected; Crt sustained the obj; pla waived its opening stmt; dfts' opening stmts made; testimony & evidence rec'd; [111-1] motion to dismiss plas' 9th cause of action in the 2nd amd cmp taken under advisement, [117-1] motion to dismiss plas' ninth cause of action w/prej taken under advisement, [123-1] motion to dismiss portions of plas' 2nd amd cmp with dismissal, first, fifth, sixth and ninth

DATE	DOCKET NUMBER	PROCEEDINGS
		causes of action taken under advisement; Crt denied [127-1] motion in limine limiting presentation of evidence & argument to the appl of plas' 1st, 5th & 6th causes of action to the Parunuweap, Moquith Mountain, Behind the Rocks & Sids Mountain Wilderness Study Areas & appl of plas' lst & 5th causes of action to the Factory Butte Special Monitoring Area; denied [130-1] motion in limine re: pla's attempt to present evidence & req injunctive relief from this Court re: public lands reinventoried for wilderness characteristics in 1996 by Dept. of Interior Secretary Bruce Babbitt; Pla rested; dfts' case presented; Crt recessed at 5:15 pm, to resume 9:00 8/29/00; Judge: DAK Court Reporter: Karen Murakami/Laura Robinson Court Deputy: Kim Jones (kj) [Entry 08/29/00]

DATE	DOCKET NUMBER	PROCEEDINGS
8/29/00	—	Motion hearing re: [53-1] motion for preliminary injunction cont w/all parties present. Testimony & evidence rec'd. Crt recessed at 5:15 pm, to resume 9:00 8/30/00. Court Reporter: Laura Robinson Court Deputy: Kim Jones (kj) [Entry date 08/30/00]
8/30/00	—	Motion hearing re: [53-1] motion for preliminary injunction cont w/all parties present. Testimony & evidence rec'd. Dft St UT proffered declaration of Kevin Carter & testimony of other witnesses. Proffer of St UT's claim as would be represented thru testimony of witnesses was accepted; declaration of Kevin Carter will be filed in the morning. Dft St UT offered exhibits 10-108; ech were admitted. Crt recessed at 5:30pm, to resume 9:00 8/31/00. Court Reporter: Kelly Hicken Court Deputy: Kim Jones (kj) [Entry date 8/31/00]

DATE	DOCKET NUMBER	PROCEEDINGS
8/31/00	—	Motion hearing re: [53-1] motion for preliminary injunction Cont w/all parties present. Mr. Andrews adv Crt that declaration of Kevin Carter has been filed & distributed to Cnsl. Cnsl reviewed doc & accepted it. Testimony & evidence rec'd. All parties rested. Crt directed pla to file its 2 briefs by 9/21/00; dft's responses due by 10/12/00; reply due 10/23/00. Closing arguments heard. Crt took mot/prelim inj under advisement. Court Reporter: Kelly Hicken Court Deputy: Kim Jones (kj) [Entry date 08/31/00]
8/31/00	133	Witness and Exhibit list for hrg on Mot/Preliminary Injunction, 8/28/00-8/31/00. (kj) [Entry date 08/31/00]
8/31/00	134	Declaration of Kevin S. Carter (hom) [Entry date 09/06/00]

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
9/29/00	141	Reply by All Plaintiffs to response to [111-1] motion to dismiss plas' 9th cause of action in the 2nd amd cmp, [53-1] motion for preliminary injunction (ce) [Entry date 10/02/00]
9/29/00	141	Memorandum by All Plaintiffs in opposition to [123-1] motion to dismiss portions of plas' 2nd amd cmp with dismissal, first, fifth, sixth and ninth causes of action, [117-1] motion to dismiss plas' ninth cause of action w/prej (ce) [Entry date 10/02/00]
	* * * * *	
11/6/00	158	Response/Memorandum by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access to [117-1] motion to dismiss ninth cause of action w/prej, [111-1] motion to [53-1] motion for preliminary injunction (asb) [Entry date 11/07/00]

DATE	DOCKET NUMBER	PROCEEDINGS
11/6/00	159	Declaration of Forrest Sims Re: [158-1] Response/Memorandum by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access to [117-1] motion to dismiss ninth cause of action w/prej, [111-1] motion to dismiss plas' 9th cause of action in the 2nd amd cmp, [53-1] motion to preliminary injunction (asb) [Entry date 11/07/00]
	* * * * *	
11/6/00	162	State's Response by San Juan Cnty, Emery Cnty, Kane Cnty, Wayne Cnty to [53-1] motion for preliminary injunction and to SUWA's suppl briefing (hom) [Entry date 11/07/00]
11/6/00	163	Response by BLM, Tom Fry, Bruce Babbitt to [111-1] motion to dismiss plas' 9th cause of action in the 2nd amd cmp. [53-1] motion for preliminary injunction (hom) [Entry date 11/07/00]
	* * * * *	

DATE	DOCKET NUMBER	PROCEEDINGS
11/22/00	172	Suppl Briefing/Reply by All Plaintiffs to response to [53-1] motion for preliminary injunction and seventh cause of action - Suppl NEPA (hom) [Entry date 11/27/00]
	* * * * *	
12/13/200	176	Minute entry: Motion hearing held for [123-1] motion to dismiss portions of plas' 2nd amd cmp with dismissal, first, fifth, sixth and ninth causes of action, held for [117-1] motion to dismiss plas' ninth cause of action w/prej, held for [111-1] motion to dismiss plas' 9th cause of action in the 2nd amd cmp, held for supp NEPA claim; [123-1] motion to dismiss portions of plas' 2nd amd cmp dismissal, first, fifth, sixth and ninth causes of action taken under advisement, [117-1] motion to dismiss plas' ninth cause of action w/prej taken under advisement, motion to dismiss plas'

DATE	DOCKET NUMBER	PROCEEDINGS
		9th cause of action in the 2nd amd cmp taken under advisement. [53-1] motion for preliminary injunction taken under advisement; supp NEPA claim taken under advisement; Judge: DAK Court Reporter: Becky Janke Court Deputy: Kim Jones (kj) [Entry date 12/14/00]
		* * * * *
12/22/00	178	Memorandum Decision & Order granting [123-1] Recreationists' motion to dismiss portions of plas' 2nd amd cmp with dismissal, first, fifth, sixth and seventh causes of action to the extent they pertain to the WSAs and 202 areas addressed during the prelim injunction hrg are DISMISSED with prejudice. The ninth causes of action, however, is not dism based upon this motion. Granting [111-1] plas' motion to dismiss plas' 9th cause of

DATE	DOCKET NUMBER	PROCEEDINGS
		action in the 2nd amd cmp, dismissing the 9th cause of action in the 2nd amd cmp without prejudice denying as moot [53-1] plas' motion for preliminary injunction. Mooting [117-1] BLM's motion to dismiss plas' ninth cause of action w/prejudice as BLM has now stated that it does not oppose dismissal w/o prejudice signed by Judge Dale A. Kimball, 12/22/00. Cc: attys cc: atty (hom) [Entry date 12/22/00]
		* * * * *
1/16/01	181	Notice of appeal by So UT Wilderness, Wilderness So, Sierra Club, Great Old Broads, Wildlands CPR, UT Council Trout, Amer Lands Alliance, Friends of the Abajo; Fee Status: Paid, receipt 109977, Appealing the denial of plas motion for prel inj and granting dft-intervenors Utah Shared

DATE	DOCKET NUMBER	PROCEEDINGS
		Access Alliance, et al mot/ dism entered 12/22/00, memo decision no. 178 (ce) [Entry date 01/18/01]
1/18/01	182	Notice of appeal and certified copy of docket to USCA: [181-1] appeal. Appeal packets mailed to counsel of record. (ce) [Entry date 01/18/01]
1/22/01	183	Unopposed Motion by All Plaintiffs to stay proceedings pending 10th circuit disposition of pla's appeal (hom) [Entry date 01/23/01]
1/23/01	184	Order granting [183-1] motion to say proceedings pending 10th circuit's disposition of pla's appeal signed by Judge Dale A. Kimball, 1/23/1 cc: atty (hom) [Entry date 01/24/01]
1/24/01	—	Action STAYED. See Order No. 184 (hom) [Entry date 01/24/01]

DATE	DOCKET NUMBER	PROCEEDINGS
1/29/01	185	Transcript requested by Stephen H.M. Bloch, cnsl for So UT Wilderness for [181-1] appeal - the necessary transcript is already on file in the District Crt (ce) [Entry date 01/29/01]
1/29/01	—	Transcript of Proceedings for date(s) of 12/13/00. Court Reporter: Rebeccs Janke re: various motions heard and preliminary injunction held before Judge Kimball (hom) [Entry date 01/29/01]
1/30/01	186	Record is complete for purposes of appeal. Notice has been mailed to cnsl. (ce) [Entry date 01/30/01]
1/30/01	—	Notice of Docketing Appeal Letter from USCA Re: [181-1] appeal USCA NUMBER: 01-4009 (ce) [Entry date 01/31/01]

DATE	DOCKET NUMBER	PROCEEDINGS
2/7/01	187	Show Cause Order from the Tenth Circuit Court of Appeals signed by Kathleen T. Clifford, Deputy Clerk 2/5/01. Briefing on the merits is tolled pending further order of this court. (jmo) [Entry date 02/907/02]
2/9/01	188	Order. It is hereby Ordered that the Clerk of the Court is directed, purs to rule 54(b), to enter judgment in favor of the dfts and dft-intervenors on plas' first, fifth, sixth and seventh claims for relief to the extent these claims pertain to the WSAs and 202 areas addressed during the prelim injunction hrg signed by Judge Dale A. Kimball, 2/9/1 cc: atty (hom) [Entry date 02/09/01]

DATE	DOCKET NUMBER	PROCEEDINGS
2/12/01	189	Judgment for Anthony Chatterley, Elite Motorcycle, Blue Ribbon, UT Shared Access, BLM, Tom Fry, Bruce Babbitt against All Plaintiffs. Pursuant to the order of the court of 2/9/1, the jgm of the court in favor of the dfts and dft-intervenors on plas' first, fifth, sixth and seventh claims for relief to the extent these claims pertain to the WSAs and 202 Areas addressed during the prelim injunction hrs, is entered as final under Rule 54(b) of the Federal Rules of Civil Procedure. Signed by LSYork, Chief Deputy, 2/9/1, cc: atty [EOD 2/12/01] (hom) [Entry date 02/12/01]
3/12/01	190	Order from the Tenth Circuit Court of Appeals by Kathleen T. Clifford, Deputy Clerk Attorney 3/5/01. The order states: The court reserves jgm on the appellate jurisdictional issue raised in the show cause order. The

DATE	DOCKET NUMBER	PROCEEDINGS
		jurisdictional issue along with the district court's 2/9/01 Order will be submitted to panel to handle this civil appeal. The opening brief and appendix of Plas must be served and filed 40 days after the date of this order. (jmo) [Entry date 03;12/01]
		* * * * *
7/10/02	206	NTC of case reassignment to Judge Paul G. Cassell. cc: atty (alt) [Entry date 07/10/02]
8/16/02	207	Order affirming [148-1] (b)(1)(A) referral order signed by Judge Paul G. Cassell, 8/16/02 cc: atty (alt) [Entry date 08/19/02]
9/12/02	—	Transcript of Proceedings for date(s) of 8/30/00 re: motion hrg held before DAK. Court Reporter: Kelly Brown Hicken (alt) [Entry date 09/12/02] [Edit date 09/12/02]

DATE	DOCKET NUMBER	PROCEEDINGS
9/12/02	—	Transcript of Proceedings for date(s) of 8/31/00 re: motion hrg held before DAK. Court Reporter: Kelly Brown Hicken (alt) [Entry date 09/12/02]
2/28/03	208	Certified copy of mandate from USCA Re: [186-1] complete appeal, [181-1] appeal REVERSED and REMANDED. According to the USCA 10th Circuit the JGM of the USDC for the District of Utah is REVERSED and the case is REMANDED for further proceedings in accordance with the opinion of this court. (asp) [Entry date 03/03/03]
3/3/03	209	Copy of Appeal Mandate Docket Ltr mailed to counsel of record. (asp) [Entry date 03/03/03]
4/14/03	_	STAY lifted. Mandate from the 10th Circuit 02/28/2003 (tl) [Entry date 04/14/2003]

DATE	DOCKET NUMBER	PROCEEDINGS
4/15/03	210	Notice of Hearing filed: status conference set for 3:30 5/22/03. To be held before Judge PGC cc: atty (Ntc generated by: PGC's crtrm dep) (tsh) [Entry date 04/15/03]
5/5/03	211	Order, Ptys to file status memo by 5/19/03, status conference set for 3:30 5/22/03 signed by Judge Paul G. Cassell, 05/05/03 cc: atty (tsh) [Entry date 05/06/03]
5/19/03	212	Memorandum RE: Procedural Status filed by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access (tsh) [Entry date 05/20/03]
5/19/03	213	Memorandum RE: Status/ Scheduling Conference filed by ST UT, San Juan Cnty, Emery Cnty, Sch and Institutional, Kane Cnty, Wayne Cnty (tsh) [Entry date 05/20/03]

DATE	DOCKET NUMBER	PROCEEDINGS
5/19/03	214	Status Report filed by BLM, Tom Fry, Bruce Babbitt (tsh) [Entry date 05/20/03]
5/19/03	215	Memorandum RE: Status Conference filed by All Plaintiffs (tsh) [Entry date 05/20/03]
5/22/03	216	Minute entry: terminated deadlines; Judge: Paul Cassell proposed scheduling order discussed. Court will enter a scheduling order reflecting the dates discussed. If Cert is granted, the court will stay the proceedings. Court Reporter: Karen Murakami Court Deputy: Trisha Little (tl) [Entry date 05/23/03]
5/23/03	217	Scheduling order setting: Deadline for filing of all motions 4/28/04; Discovery cutoff: Fact - 1/14/04, Expert - 4/14/04; Final Pretrial Conference for 3:00 8/30/04; 5-Day Bench Trial for 8:30 9/13/04. See file/image for further details. Signed by

DATE	DOCKET NUMBER	PROCEEDINGS
		Judge Paul G. Cassell 05/22/03 cc: atty. (tsh) [Entry date 05/27/03]
5/29/03	218	Letter from US Supreme Court Re: Notice of Petitions for Writ of Certiorari Re: USCA NUMBER: 02-1703 (asp) [Entry date 05/30/03]
	* * * * *	
7/23/03	221	THIRD Amended complaint by Amer Lands Alliance, UT Council Trout, Wildlands CPR, Great Old Broads, Sierra Club, Wilderness Co, So UT Wilderness, Redrock Forests added party(ies): Redrock Forests. Removed party Friends of the Abajos. Substituted Gale Norton for Bruce Babbitt and Kathleen Clark for Tom Fry. Amends [40-1] second amended complaint. (tsh) [Entry date 07/29/03]
7/28/03	222	Letter from US Supreme Court Re: Notice of Petition for Writ of Certiorari Re: USCA NUMBER: 03-101 (asp) [Entry date 07/30/03]

DATE	DOCKET NUMBER	PROCEEDINGS
	* * * * *	
8/21/03	224	Answer by ST UT, San Juan Cnty, Emery Cnty, Sch and Institutional, Kane Cnty, Wayne Cntry to THIRD amended complaint (kam) [Entry date 08/22/03]
8/25/03	225	Answer by Anthony Chatterly, Elite Motorcycle, Blue Ribbon, UT Shared Access to third amended complaint (tsh) [Entry date 08/27/03]
	* * * * *	
10/14/03	230	Answer by BLM, Kathleen Clarke, Gale Norton to third amended complaint (tsh) [Entry date 10/15/03]
	* * * * *	

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION

Case No. 2:99CV852K

SOUTHERN UTAH WILDERNESS
ALLIANCE, ET AL., PLAINTIFFS

vs.

BRUCE BABBITT, ET AL., DEFENDANTS

AND

UTAH SHARED ACCESS ALLIANCE, ET AL.,
DEFENDANT-INTERVENORS

AND

SAN JUAN COUNTY, UTAH, ET AL.,
DEFENDANT-INTERVENORS

ORDER

After a six-day evidentiary hearing on Plaintiffs' motions for a temporary restraining order and for a preliminary injunction, and after a subsequent hearing on Defendant-Intervenors Utah Shared Access Alliance, et al.'s Motion to Dismiss, which pertained to the claims that were the subject of the preliminary injunction hearing, this court, on December 22, 2000, issued a Memorandum Decision and Order (the "December 22 Order"). The December 22 Order, among other things, dismissed with prejudice Plaintiffs' First, Fifth, Six, and Seventh Claims for Relief to the extent they pertain to the wilderness study areas ("WSAs") and the § 202 Areas addressed during the preliminary injunc-

tion hearing. Consequently, the court also denied as moot Plaintiffs' Motion for a Preliminary Injunction.

The court finds that there is no just reason for delay and expressly directs the entry of judgment on these claims pursuant to Rule 54(b) of the Federal Rules of Civil Procedure ("Rule 54(b)").

Accordingly, for good cause appearing, IT IS HEREBY ORDERED that the Clerk of the Court is directed, pursuant to Rule 54(b), to enter judgment in favor of Defendants and Defendant-Intervenors on Plaintiffs' First, Fifth, Six, and Seventh Claims for Relief, to the extent these claims pertain to the WSAs and § 202 Areas addressed during the preliminary injunction hearing.

DATED this 9th day of February, 2001.

BY THE COURT:

/s/ DALE A. KIMBALL
DALE A. KIMBALL
United States District Judge

INTERIM MANAGEMENT POLICY FOR LANDS UNDER WILDERNESS REVIEW

U.S. Department of the Interior
Bureau of Land Management

* * * *

INTRODUCTION

This handbook describes the policies under which the Bureau of Land Management (BLM) will manage lands under wilderness review until Congress either designates these lands as wilderness or releases them for other purposes. This policy is referred to as the "interim" management policy (IMP) because it applies to specific areas of the public lands for a limited amount of time, depending upon various stages and schedules of the review process. The purpose of the policies is to guide BLM staff in the specific decisions that arise every day in the management of lands under wilderness review.

There are three categories of public lands to which this policy applies: (1) Wilderness Study Areas (WSAs) identified by the wilderness review required by Section 603 of the Federal Land Policy and Management Act (FLPMA), (2) legislative WSAs (WSAs established by Congress), and (3) WSAs identified through the land-use planning process in Section 202 of FLPMA. These categories together are referred to as "lands under wilderness review."

Current WSAs include those identified through FLPMA Sections 603 and 202 wilderness study, "instant study areas" (previously designated primitive or natural areas) which FLPMA also required to be

studied, and one wilderness study area in the Central Arctic Management Area of Alaska which was designated for study by the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Additional WSAs will be identified periodically through BLM's land-use planning process.

Future wilderness inventories of public lands administered by the BLM in Alaska will be conducted pursuant to Section 1320 of ANILCA. Special provisions in ANILCA for the interim management of future WSAs in Alaska will be developed at the time wilderness inventories are allowed. Pending further policy guidance from the Secretary of the Interior, wilderness inventories and the identification of WSAs subject to an IMP in Alaska under the provisions of Sections 201 and 202 of FLPMA are not to be undertaken.

Congressionally mandated studies lead to recommendations from the Secretary of the Interior to the President, and from the President to Congress. Those studies conducted through BLM's recurring land-use planning system will lead to recommendations for each area found to be suitable or nonsuitable for wilderness designation. Only Congress can designate an area as wilderness, or release from interim management areas that were placed under wilderness study by Congressional authority.

The IMP is temporary and applies only during the time an area is under wilderness review and until Congress acts on WSAs, or where applicable, by a final decision by the BLM. After Congress acts on the President's recommendations for each WSA, a different policy will apply to the area, depending on whether or not Congress designates the area as wilderness. Areas

designated as wilderness will be managed under BLM Manual 8560—Management of Designated Wilderness Areas and under the regulations at 43 CFR 8560. Areas released from wilderness study will no longer be subject to the IMP, and will be managed under general BLM management policies and applicable land-use plans.

The IMP is not the only policy that governs the management of lands under wilderness review. The BLM has many other laws and policies to carry out which may affect whether and how an activity may take place on lands under wilderness review.

Mandates from Congress

In FLPMA, Congress gave BLM its first unified, comprehensive mandate on how the public lands should be managed. The law established a policy of retaining the public lands in Federal ownership, and it directed the BLM to manage them under principles of multiple use and sustained yield. Management decisions for the public lands are made through land-use planning processes that consider all potential uses of each land area, including wilderness. All public lands are to be managed so as to prevent unnecessary or undue degradation of the lands as required by Section 302(b) of FLPMA.

Under FLPMA, wilderness preservation is part of BLM's multiple-use mandate, and wilderness values are recognized as part of the spectrum of resource values considered in the land-use planning process. Section 603 of FLPMA specifically directed the BLM, for the first time, to carry out a wilderness review of the public lands. Continued evaluation of lands as wilderness can be considered in the future under Section 202 of

FLPMA. (The complete text of Section 603 appears in Appendix A of this document.)

Section 603(c) of FLPMA tells the BLM how to manage lands under wilderness review, in these words:

> During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as *not to impair the suitability of such areas for preservation as wilderness* . . . (emphasis added).

This language is referred to as the "nonimpairment" mandate.

The wilderness review required by Section 603 of FLPMA focused on roadless areas of 5,000 acres or more and on roadless islands. The BLM as a matter of policy used its general management authority under Sections 302 and 202 of FLPMA to include in the wilderness review certain other roadless areas. These included: (1) areas smaller than 5,000 acres that were not islands, (2) areas less than 5,000 acres that had wilderness characteristics in association with contiguous roadless lands managed by another agency, and (3) lands place under BLM administration after the wilderness inventory was conducted in 1978-80. The management mandate in Section 603(c) does not apply to roadless areas being studied under Section 202 of FLPMA. However, as a matter of policy, the BLM will use its management authority under Section 302 of FLPMA to apply a modified form of interim management to these areas, as is explained in Chapter I.A.5.

There are six different practical effects of provisions in FLPMA with respect to "interim management" of lands under wilderness review:

1. The general standard for interim management is that lands under wilderness review must be managed so as not to impair their suitability for preservation as wilderness. We will refer to this as the "nonimpairment" standard. This applies to all uses and activities except those specifically exempted from this standard by FLPMA (such as grandfathered uses).
2. Permitted activities in WSAs (except grandfathered and valid existing rights) are temporary uses that create no new surface disturbance, nor involve permanent placement of structures.
3. Those grazing, mining, and mineral leasing uses that existed on October 21, 1976, (the date FLPMA was approved) may continue in the same manner and degree as on that date, even if this would impair wilderness suitability.
4. Lands under wilderness review may not be closed to appropriation under the mining laws in order to preserve their wilderness character.
5. Valid existing rights must be recognized.
6. All lands must be managed to prevent unnecessary or undue degradation.

Meaning of the Congressional Mandate of Nonimpairment

To determine what is permissible under the general "nonimpairment" standard, we must examine what Congress meant by *impairment* of an area's *suitability for preservation as wilderness*.

The term "suitability . . . for preservation as wilderness" originated in the Wilderness Act of 1964, which directs the Secretary of Agriculture to "review, as to its *suitability* or nonsuitability *for preservation as wilderness*" each of the national forest areas classified as "primitive."

Likewise, the Wilderness Act directs the Secretary of the Interior to review certain roadless areas and islands in the National Park System and in the national wildlife refuges and game ranges and "report to the President his recommendation as to the *suitability* or nonsuitability of each such area or island *for preservation as wilderness*." The term is similarly used in Section 603(a) of FLPMA, which directs the Secretary of the Interior to review certain roadless areas and islands and to "report to the President his recommendation as to the *suitability* or nonsuitability of each such area or island *for preservation as wilderness*." (Emphasis added.)

In the Wilderness Act and FLPMA, the term "suitability" implies two things. First, it implies that, at the minimum, the area satisfies the definition of wilderness in Section 2(c) of the Wilderness Act:

> "A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which (1) generally appears to have been affected

> primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value."

The Department therefore has a responsibility under the nonimpairment standard to ensure that each WSA satisfies this definition at the time Congress makes a decision on the area. As a practical matter, this means that once identified as a WSA the area must meet this definition until designated as wilderness or released for other uses.

The word "suitability" takes on a second meaning in the context of recommendations made by the Secretary and the President to Congress. Congress made it clear in Section 603 of FLPMA that an area with all the necessary wilderness characteristics as defined in Section 2(c) of the Wilderness Act might be found by the Secretary to be either "suitable" or "nonsuitable" for preservation as wilderness. Since each WSA must have wilderness characteristics in order to qualify for wilderness study under the mandate of FLPMA, it seems clear that the Secretary must protect the wilderness values of *each* WSA until Congress makes the final decision regardless of the suitable/nonsuitable recommendation made.

The Department therefore has a responsibility to ensure that the existing wilderness values of *all* WSAs, whether studied pursuant to Section 603 of FLPMA or future suitable WSAs identified through BLM's land-

use planning system, are not degraded so far, compared with the area's values for other purposes, as to significantly constrain the Congress's prerogative to either designate a WSA as wilderness or release it for other uses.

Any conflicts with this Congressional mandate would constitute impairment of the area's suitability for preservation as wilderness.

Management to the Nonimpairment Standard

Management to the nonimpairment standard does not mean that the lands will be managed as though they has already been designated as wilderness. For example, some uses that could not take place in a designated wilderness area may be permitted under the IMP because they are only temporary uses that do not create surface disturbance or involve permanent placement of structures. For example, organized off-road vehicle events or organized contests such as competitive trial rides and endurance/survival exercises that meet the nonimpairment criteria, might be permitted in WSAs, but would not be allowed in designated wilderness. Such temporary uses may be allowed if such use can easily and immediately be terminated upon designation of the lands involved as wilderness.

For the WSAs identified under the requirements of Section 603 of FLPMA, certain activities were allowed during the inventory and study phases if their impacts could be reclaimed by the time the Secretary forwarded recommendations to the President. This reclamation opportunity ended in September 1992 for all WSAs recommended under the requirements of Section 603. This is the date upon which the Secretary sent these final recommendations to the President. Generally, all

activities (except as listed under "Exceptions" in Section I.B.2., such as grandfathered and valid existing rights) permitted in WSAs after a reclamation deadline has passed, *must be temporary uses that create no surface disturbance, nor involve permanent placement of structures.*

Some uses that were explicitly permitted by the Wilderness Act of 1964 in wilderness areas of the national forests (such as mining and mineral leasing, which were allowed to continue until December 31, 1983) have been restricted under the IMP because their impacts clearly would have disqualified the area from satisfying the wilderness definition, and thus would have impaired wilderness suitability. During the wilderness review, and until Congress acts, it is the later and more explicit FLPMA, and not the Wilderness Act of 1964, that dictates what is permissible.

The final decision on permanent wilderness designation for each WSA recommendation forwarded by the Secretary, belongs to Congress. Management under the nonimpairment standard protects Congress' prerogative to make the designation decision by preventing actions that would pre-empt that decision.

* * * *

CHAPTER I. MANAGEMENT POLICY FOR LANDS UNDER WILDERNESS REVIEW

GENERAL POLICY

1. The BLM's management policy is to continue resource uses on lands under wilderness review in a manner that maintains the area's suitability for preservation as wilderness. The IMP will remain in effect on all congressionally mandated WSAs until Congress acts on the Secretary's

recommendations. Areas identified as WSAs under Section 202 of FLPMA will receive interim management protection upon designation as a WSA. Those WSAs studied under Section 202 of FLPMA and subsequently found to be non-suitable for wilderness designation may be released from interim management by the BLM State Director 30 days after approval of the land-use plan. Suitable WSAs studied under Section 202 of FLPMA will be studied using the Bureau's procedures for such areas, remaining under IMP protection until Congress acts. In the interest of consistency with related land-use plans, the State Director also has the option of keeping such areas in wilderness study status, and under interim management, until final decisions have been made on adjacent areas under wilderness review.

2. The law provides for, and the BLM's policy is to allow, continuation of grazing, mining, and mineral leasing uses on lands under wilderness review in the manner and degree in which these uses being conducted on October 21, 1976, as long as they do not cause unnecessary or undue degradation of the lands These are referred to as the "grandfathered" uses.

3. The BLM's policy is to allow appropriate under the mining laws; i.e., these areas, in accordance with the congressional mandate, will not be withdrawn from the operation of the mining laws for the purpose of preserving their wilderness character. Activities involved in appropriation under the mining laws after October 21, 1976,—including location of new claims and the assessment work necessary to hold claims—will be

allowed as long as these activities are carried out in a manner that does not impair the area's wilderness suitability.

4. The BLM's policy is to recognize valid existing rights that existed on October 21, 1976. A further explanation of the policy on valid existing rights appears in Section B.9., below.

5. If a WSA is being studied under Section 202 of FLPMA, existing and new mining operations under the 1872 Mining Law will be regulated under the regulations 43 CFR 3802 only to prevent unnecessary of undue degradation of the lands, not to prevent impairment of wilderness suitability. All other activities will be managed under the IMP. Although FLPMA does not require Section 202 WSAs to be given interim management protection, the Bureau has the authority under Section 302 of FLPMA to manage these lands similarly. The authority to regulate activities to the nonimpairment standard with respect to the mining laws only applies to the areas that meet the criteria of Section 603, either islands or roadless areas of 5,000 acres or more that have wilderness characteristics. Section 302 provides the authority to regulate mining on all public lands to prevent unnecessary or undue degradation.

6. State Directors will assure a level of monitoring and surveillance of each WSA adequate to prevent, detect, and mitigate unauthorized activities and to properly supervise authorized uses and facilities. The level of monitoring and surveillance will reflect the level of ongoing or anticipated activities within each WSA.

7. BLM will take all actions necessary to ensure full compliance with the IMP. Every effort will be made to obtain voluntary compliance with the IMP by public land users. Where such efforts fail, BLM will promptly initiate additional appropriate action to achieve immediate compliance with the IMP. Violations will not be tolerated.
8. The BLM's policy is to attempt to immediately reclaim the impacts caused by any unauthorized action to a level as close as possible to the original condition, or at least to a condition that is substantially unnoticeable.

SPECIFIC POLICY GUIDANCE

This section describes how the BLM will apply the general policies set forth in Section A, above.

An overriding consideration before applying any of the policies below must be that the *preservation of wilderness values within a WSA is paramount and should be the primary consideration when evaluating any proposed action or use* that may conflict with or be adverse to those wilderness values. The concept of considering wilderness values first asserts, with few exceptions (e.g., valid existing rights, grandfathered rights, etc.), that wilderness resource management objectives within a WSA should take precedence over all other resource management program objectives. In other words, the wilderness resource will be dominant in all management decisions where a choice must be made between preservation of wilderness suitability and other competing uses.

Ideally, a decision to construct facilities within a WSA should be deferred until such time as Congress either designates the WSA as wilderness or releases it for

other purposes. If a facility must be constructed within a given geographic area, it would be in the best interest for protecting wilderness values to construct the facility outside the WSA. Other alternatives should always be considered before deciding to allow a use or activity within a WSA.

1. *Lands Under Wilderness Review.* The BLM conducted a wilderness inventory under procedures described in the *Wilderness Inventory Handbook*, issued by BLM on September 27, 1978 (Organic Act Directive No. 78-61). The inventory sorted lands into two categories: (a) WSAs, to which the IMP applies, and (b) lands determined not to have wilderness characteristics and not subject to the IMP. A complete study was conducted on all the identified WSAs and suitable/nonsuitable wilderness recommendations submitted by the Secretary to the President by January 1993. All of these WSAs remain under the IMP (except as noted in A.5 above) until a final decision is made by Congress. Lands being reviewed for wilderness values in future planning efforts are subject to the IMP once identified as a WSA and remain under IMP until either released by the State Director as nonsuitable or until a final decision is made by the Congress on the land's wilderness status.

2. *Nonimpairment.* BLM will review all proposals for uses and/or facilities within WSAs to determine whether the proposal meets the criteria below. Uses and/or facilities found to be nonimpairing may be permitted on lands under wilderness review. Uses and/or facilities found to be impairing will be denied.

The following criteria are referred to hereafter as the "nonimpairment criteria".

a. The use, facility, or activity must temporary. This means a temporary use that does not create surface disturbance or involve permanent placement of facilities *may* be allowed if such use can easily and immediately be terminated upon wilderness designation. "Temporary" means the use or facility may continue until the date the facility must be removed. "Surface disturbance" is any new disruption of the soil or vegetation, including vegetative trampling, which would necessitate reclamation. The term "surface disturbance" is discussed further in Specific Policy Guidance, Section 3 below. Decisions to allow or deny proposed actions based on the nonimpairment criteria will be included in appropriate decision documents.

b. When the use, activity, or facility is terminated, the wilderness values must not have been degraded so far as to significantly constrain the Congress's prerogative regarding the area's suitability for preservation as wilderness. The wilderness values to be considered are those mentioned in Section 2(c) of the Wilderness Act of 1964 (see Introduction, and/or Appendix B).

The only permitted exceptions to the above rules are:

(1) Emergencies such as suppression activities associated with wildfire or search and rescue operations;

(2) Reclamation activities designed to minimize impacts to wilderness values created by IMP violations and emergencies;

(3) Uses and facilities which are considered grandfathered or valid existing rights under the IMP;

(4) Uses and facilities that clearly protect or enhance the land's wilderness values or that are the minimum necessary for public health and safety in the use and enjoyment of the wilderness values; and,

(5) Reclamation of pre-FLPMA impacts.

3. *Surface Disturbance.* Surface disturbance is any new disruption of the soil or vegetation requiring reclamation within a WSA. Uses and facilities necessitating reclamation (i.e., recontouring of the topography, replacement of topsoil, and/or restoration of native plant cover) are definitely surface disturbing and must be denied. Cross-country vehicle use off boundary roads and existing ways is surface disturbing because the tracks created by the vehicle leave depressions or ruts, compact the soils, and trample or compress vegetation. Certain activities recognized as acceptable within a WSA, such as recreational hiking, use of pack stock, or domestic livestock grazing, are allowable within a WSA although in the strictest sense, they cause surface disturbance.

4. *Supporting Activities.* Some activities that in themselves are nonimpairing may require supporting facilities or activities that could impair wilderness suitability. (For example: A boat

launching ramp and associated parking as supporting facilities for boating, or the cross-country use of motor vehicles to retrieve sailplanes or hang gliders.) When this is the case, the supporting activity will be limited as necessary to meet the nonimpairment criteria. If the supporting activity cannot be done in a nonimpairing manner, then the principal activity will not be approved.

5. *Cumulative Impacts*. It is recognized that many minor impacts of nonimpairing uses or facilities could accumulate to a point at which the total impact would impair wilderness suitability either by creating impacts that overall are noticeable, or by degrading the area's wilderness values so far as to significantly constrain Congress's prerogative regarding the area's suitability for preservation as wilderness.

   To prevent such cumulative impacts of ongoing uses from impairing wilderness suitability, the BLM will analyze and monitor the cumulative impacts. If impacts are becoming so great that the area's wilderness suitability could be impaired, the BLM will take steps to control those impacts by adjusting the conditions of use (such as time, place, and quantity), by prohibiting the expansion of the use, or by prohibiting the use altogether.

   Every new proposal for uses or facilities, although individually it may be nonimpairing, will be analyzed in all required documents (i.e., National Environmental Policy Act (NEPA) documents, etc.) for cumulative effects. If the proposal will create an unacceptable additional

increment of impact (as described in the first paragraph of this section above), it will not be approved.

6. *Enhancing Wilderness Values.* Wilderness values were identified in Section 2(c) of the Wilderness Act of 1964. The BLM Wilderness Inventory Handbook (Organic Act Directive No. 78-61, dated 9/19/78) further defined wilderness values as: roadlessness, naturalness, solitude, primitive and unconfined recreation, size, and supplemental values. Actions that clearly benefit a WSA's wilderness values through activities that restore, protect, or maintain these values are allowable. Though they may enhance wilderness values, these allowable actions must still be carried out in a manner which is least disturbing to the site.

   In order to determine whether a proposed action enhances wilderness values within a given WSA, one must refer to the original wilderness inventory for baseline or benchmark data concerning the particular wilderness value(s) being affected. During the wilderness inventory, the Bureau described in detail the state or condition of each wilderness value or characteristic. If the proposed action would result in a positive or beneficial change in the state or condition of the wilderness value(s) as described, assessed, or calculated on the date of approval of the intensive inventory, then the wilderness value would be enhanced by the proposed action. Conversely, if the proposed action would result in a negative or detrimental change in the state or condition of the wilderness value(s) then that wilderness

value would be degraded or impacted and the proposed action must not be allowed.

To illustrate this concept, the following examples are provided:

A mile-long drift fence is proposed in a particular WSA for the purpose of keeping livestock from entering an adjacent allotment. Because the fence did not exist at the time of the intensive wilderness inventory, it would result in a detrimental change in the baseline condition, thereby negatively impacting the wilderness value of "naturalness" and impairing the visitor's perception of the naturalness of the area. Consequently, the drift fence proposal must be denied because in this case wilderness values are not enhanced.

Conversely, if the fence is intended to correct or mitigate a situation which is degrading wilderness values identified in the intensive inventory, the fence construction project may be allowed. For example, domestic livestock and wild horses are altering a hot springs complex, a unique special feature of a WSA, by damaging riparian vegetation, harming an unusual aquatic community, and degrading water quality. Special consideration to design and location of an enclosure fence would be required to reduce impacts to scenic qualities. Any negative impacts to wilderness values created by this fence would be clearly offset by the positive benefits of protecting in a more natural condition a special feature of the wilderness resource.

> There may be some circumstances that warrant a few permanent short gap fences or very small enclosures around springs as long as the benefits to wilderness values of having these structures clearly outweigh any negative impacts to naturalness or primitive recreation opportunities.
>
> A guzzler is proposed within a certain WSA for the purpose of providing water to a resident population of bighorn sheep. It is clear the guzzler will negatively impact the wilderness value of "naturalness" because the guzzler did not exist at the time of the intensive inventory. If the guzzler is approved for construction within the WSA, the quality of "naturalness" is diminished as the immediate area becomes more affected by the forces of man rather than the forces of nature. The imprint of man's work becomes increasingly more noticeable and the WSA loses some of its primeval character. In essence, the WSA is no longer an area where the earth and its community of life are untrammeled (unimpeded or unhindered) by man and his activities. Unless specific circumstances and conditions in Chapter III apply, the guzzler must be denied.

We must ensure, therefore, in our consideration of any proposal to construct a guzzler or any other facility within a WSA, that the guzzler or other facility will not degrade the very wilderness values that initially qualified the area for designation as a WSA. While the proximity of bighorn sheep within a WSA enhances the wilderness experience, the existence of a guzzler within

Consequently, districts must make certain that the facilities or use associated with the supplemental values of ecological, geological, or other features of scientific, educational, scenic, or historical value, which normally add to the primary wilderness values of roadlessness, naturalness, solitude, primitive and unconfined recreation, and size, do not degrade these very values that initially qualified the area for designation as a WSA.

Section 603(c) of FLPMA states, "During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness." In other words, the WSA's wilderness values must not have been degraded so as to constrain or pre-empt Congressional designation authority.

7. *Existing Facilities.* Some lands under wilderness review may contain minor facilities that were found in the wilderness inventory process to be substantially unnoticeable. For example, these may include primitive vehicle routes ("ways") and livestock developments. There is nothing in this IMP that requires such facilities to be removed or discontinued. On the contrary, they may be used and maintained as before, as long as this does not cause new impacts that would impair the area's wilderness suitability.

8. *"Grandfathered" Uses.*

    a. General. Grazing, mining, and mineral leasing uses that existed on the date of approval

of FLPMA (October 21, 1976) may continue on lands under wilderness review in the same manner and degree as on that date, even if this impairs wilderness suitability. These are the "grandfathered" uses, protected by the "manner and degree" clause of Section 603(c) of FLPMA. These uses must be regulated to ensure that they do not cause unnecessary or undue degradation of the lands.

Although activities on mining claims on which a valid mineral discovery was made prior to October 21, 1976, may qualify as "grandfathered" uses, these claims qualify for a more liberal development standard under the policy for valid existing rights (see Section B.9, below).

b. Criteria. To be an "existing" use, the use clearly must have been taking place on the lands as of the date of approval of FLPMA (October 21, 1976). A "grandfathered" mineral use must have created *actual physical impacts* before that date. Existing grazing must have been authorized as of October 21, 1976. However, new grazing (e.g., change in numbers, kind, or class of livestock, or season of use), expanding the area authorized for grazing, or new facilities are not "grandfathered".

If a "grandfathered" use is acquired by a different owner, the new owner may continue the "grandfathered" use in the same place. A "grandfathered" use is not an absolute right or privilege that can be uprooted from one land area and applied to a different land area;

it is based on the place where it was being conducted as of October 21, 1976.

The benchmark for the "manner and degree" of an existing use is the physical and visual impact that use was having on the area or impacts that occurred on October 21, 1976, because it is that impact that would have affected the wilderness review.

* * * *

10. *Appropriation Under the Mining Laws.* A mandate in Section 603(c) of FLPMA, that lands under wilderness review continue to be subject to appropriation under the mining laws, is a prohibition against withdrawal of lands under wilderness review from appropriation under the mining laws for the sole purpose of preserving the land's wilderness character. Lands under wilderness review will therefore remain open to appropriation under the 1872 Mining Law except: (a) lands that had been withdrawn from appropriation prior to the date of approval of FLPMA (October 21, 1976), and (b) lands withdrawn after October 21, 1976, for reasons other than preservation of their wilderness character.

11. *Motor Vehicles, Aircraft and Mechanical Transport.* Motor vehicles and mechanical transport may be allowed off boundary roads and existing ways for these purposes only:

    a. in emergencies and search and rescue operations (as described in Section 12, below);

    b. for official purposes by the BLM and other Federal, State, and local agencies and their agents when necessary and specifically

authorized by the BLM for protection of human life, safety, and property; for protection of the lands and their resources; and,

c. to build or maintain structures and installations authorized in this document, as long as such use of vehicles is determined to satisfy the nonimpairment criteria and is only along routes authorized and specified by the BLM. No grading, blading, or vegetative disturbance will be permitted as this would constitute surface disturbance and thus not meet the nonimpairment criteria.

In emergencies, cross-country travel will not be held to the nonimpairment standard; but in all other cases, cross-country travel is allowed only where it is specifically authorized by BLM and it satisfies the nonimpairment criteria. If impacts threaten to impair the area's wilderness suitability, the BLM may limit or close the affected lands to the uses causing the problem.

Mechanical transport, including all motorized devices as well as trail and mountain bikes, may only be allowed on existing ways and within "open" areas that were designated prior to the passage of FLPMA (October 21, 1976). Use of such devices off existing ways and trails are allowed only for the purposes listed in the paragraph above.

Helicopters may land on existing heliports, helispots, and on unimproved sites as long as the nonimpairement criteria is satisfied. Fixed-wing aircraft may land only on existing

airstrips or established vehicle ways as long as the nonimpairment criteria is satisfied. No new landing facilities may be built. In the case of an emergency, see Section 12 below.

Examples of aircraft landings that first must meet the nonimpairment criteria and be approved by the BLM, include informational gathering, surveys, surveillance or monitoring, placement or maintenance of projects, animal damage control, access, or transport. Examples of aircraft landings for emergency situations include search and rescue, law enforcement and fire suppression (refer to Section 12 below).

12. *Emergencies.* In emergencies such as fire or flood, any action necessary to prevent loss of life or property may be taken, even if the action will impair wilderness suitability. This may include search and rescue operations in cases of lost or injured persons, or removal of the deceased. Emergency actions will be conducted in the manner that least impairs wilderness suitability, and the resulting impacts will be reclaimed as soon as possible after the situation has ended. Within 7 days after the emergency action is completed, a record of the circumstances and the action taken will be placed in the WSA case file and a public notification will be mailed to all interested parties.

13. *Maintenance.* Existing facilities may be maintained to keep them in an effective, usable condition. Maintenance will not be allowed to modify a structure or installation to a condition that would impair the area's suitability for

wilderness designation. Measures required to carry out maintenance work will be allowed if these measures do not in themselves impair wilderness suitability. Maintenance of "grandfathered" livestock developments will be permitted to insure that the usefulness of the project for its intended purposes may be realized, but will not be allowed to modify a facility to exceed the physical and visual impacts existing on October 21, 1976. Modifications exceeding this standard will be evaluated under the nonimpairment standard. Maintenance of a facility that qualifies as a VER should also be held to the nonimpairment standard, unless that would unreasonably interfere with the rights granted under the VER.

14. *Air Quality*. Under the Clean Air Act (as amended, 1977), all BLM-administered lands were given Class II air quality classification, which allows moderate deterioration associated with moderate, well-controlled industrial and population growth. The BLM will continue to manage WSAs as Class II.

    The Department of the Interior will not recommend reclassification to the more strict Class I in connection with future wilderness recommendations resulting from the BLM wilderness review. The two processes are separate and distinct, and are accomplished under two different laws, FLPMA and the Clean Air Act. Recommendations for wilderness designation are made by the BLM through the Secretary of the Interior and the President to Congress. Air quality reclassification is the prerogative of the

States, and it must follow a process mandated by the Clean Air Act Amendments of 1977, involving a study of health, environmental, economic, social, and energy effects, a public hearing, and a report to the Environmental Protection Agency. The Department will not recommend any change in air quality classification as part of wilderness recommendations.

15. *Pre-FLPMA Management.* Some lands under wilderness review, particularly among the instant study areas, were subject to more strict protection prior to approval of FLPMA than the IMP requires. For instance, some areas were withdrawn from mineral entry. In these cases, any use will be controlled by the more strict protection of the wilderness resource, regardless of whether that is provided by the IMP or by a pre-FLPMA withdrawal or regulation that is still in effect.

16. *New Discretionary Uses.* To foster efficient wilderness management, it is BLM's policy to minimize the establishment of new discretionary uses in WSAs that would be incompatible with possible wilderness designation, even when the uses would not in themselves exceed the nonimpairment standard. Some new uses, within or adjacent to WSAs, may create conflicts with management and preservation of wilderness values at a later time. Consideration should be give to the possible effect these uses may have on managing the WSAs as wilderness in the future. For example, the construction of a campground facility adjacent to a WSA would seem to have the potential to create conflicts

with management and preservation of wilderness values at a later time. Another example might be opening up a river or other body of water in a WSA to motorboat use. New uses, if authorized, must be temporary.

17. *Substantially Unnoticeable.* Substantially unnoticeable means that an action must be so insignificant as to be only a very minor feature or is not distinctively recognizable by the average visitor as being human made or human-caused because of age, weathering or biological change. The Bureau's visual contrast rating process (BLM Manual Section 8431, and the Contrast Rating Worksheet, Form 8400-4) may be used as an aid in determining whether the impacts of a proposed action are substantially unnoticeable. Other analysis that could be used, include a viewshed or seen–area analysis and the use of ground and aerial photographs. In all cases a written narrative analyzing the potential visual impacts, both individually and cumulatively, must be provided.

18. *Minimum Tool Concept.* The "minimum tool" concept relates to the management of designated wilderness areas, but the concept can be useful as a guide when applied to the interim management of WSAs. Under the "minimum tool" concept, managers should scrutinize every proposed action to determine if the action is necessary to protect the physical, biological, and cultural resources, as well as the quality of the wilderness experience. If the planned action is deemed necessary, it would be accomplished using methods and equipment that have the

least impact on the quality of an individual or group's wilderness experience, as well as the physical, biological, and cultural resources within the WSA. In a WSA, how one carries out management actions is as important as the end product.

For example, *if* a decision is made to develop a water source for bighorn sheep within a WSA because this would enhance wilderness values, and the preference is for construction of a bighorn sheep guzzler, management should first consider and analyze other "minimum tool" alternatives that would accomplish the same management objectives with less degradation to wilderness values. Some possible minimum tool options in this example might include:

a. Restoration of existing springs and seeps that have been altered by domestic livestock grazing or wild horses and burros;

b. Removal of domestic livestock or wild horses and burros from water sources frequented by bighorn sheep;

c. Designing a very short, substantially unnoticeable fence that would segregate bighorn sheep from livestock and wild horses and burros in order that all may share the same water source;

d. Elimination of salt cedar infestations that may have reduced or eliminated the above-ground flow of water available to bighorn sheep;

e. Constructing one or more small slick rock, concrete and rock catchments or dams; and,

f. Upgrading of potholes for greater water-holding capacity by utilizing native stone and tinted concrete.

19. *Hazardous Materials.* No hazardous wastes, substances, or materials (see Glossary for complete definitions) may be sued, stored, or disposed of in WSAs. In emergency situations (e.g. the cleanup of unauthorized dumping of hazardous materials), any action necessary to protect visitor health and safety and to protect and natural environment may be taken, even if the action will temporarily impair wilderness suitability. Emergency control and cleanup activities will be conducted in accordance with all pertinent laws and regulations, NEPA requirements, and in the manner that least impairs wilderness suitability. Impacts resulting from hazardous materials cleanup will be reclaimed as soon as possible after disposal and/or cleanup operations have ended. Public notification procedures will be followed for all hazardous materials operations in WSAs.

CHAPTER II. IMPLEMENTATION OF THE INTERIM MANAGMENT POLICY

A. USES OR FACILITIES SUBJECT TO THE IMP

To determine whether a proposed use or facility is subject to the IMP, the following question must be considered regarding the affected lands: Does the use or facility involve public lands identified by the BLM as a WSA? If so, the IMP will apply. Proceed with the evaluation described in Section B, below. If the above criteria does not apply, then the use or facility is not subject to the IMP.

B. PROCEDURES FOR EVALUATION OF PROPOSED ACTIONS

1. *Step 1 – Review the Definition of Wilderness.* Before beginning any evaluation of a proposed action within a WSA, review the primary mandates and definitions of wilderness in Section 2 of the Wilderness Act of 1964. There are some key phrases in the definition that will assist in understanding the intent of Congress that guide the IMP:

   — an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. (Note: "untrammeled" means unconfined, unrestrained, or unimpeded.)

   — an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation.

   — protected and managed so as to preserve its natural conditions.

   — generally appears to have been affected primarily by the forces of nature, with the imprints of man's work substantially unnoticeable.

2. *Step 2 – Consider Exceptions and Limitations to the Nonimpairment Standard.* Consider whether the proposal is covered by one of the exceptions or limitations to the "nonimpairment" standard:

   a. Does the proposal qualify as a "grandfathered" mineral or grazing use continu-

ing in the same manner and degree as on October 21, 1976? New proposed range developments, for example, are not grandfathered. (Consult the applicable policies in Chapter I.B.8 and Chapter III.B and D.) If so, the proposal will probably be considered acceptable under the IMP subject to regulation ensuring that the use or facility does not cause unnecessary or undue degradation. In many grandfathered developments that predate the NEPA, no environmental documentation exists. Some mitigation to impacts on wilderness values may be identified during the environmental assessment process.

b. Is the proposal part of the development of a valid existing right (such as a valid mining claim, mineral lease, or right-of-way authorization in effect as of October 21, 1976)? If so, proceed under the applicable policies in Chapter I.B.9, III.A.2 and 4, and III.B. The right will be recognized but it is not absolute. The scope of a valid existing right depends on any conditions, stipulations, or limitations stated in the law or approval document that created the right.

c. In a WSA that is being studied under Section 202 of FLPMA, is the proposal a mining activity under the 1872 Mining Law? If so, the activity will be regulated under 43 CFR 3802 to prevent unneces-

sary or undue degradation of the lands but not the nonimpairment criteria.

The determination that a proposal is not subject to the nonimpairment standard will be documented and recorded in appropriate case files and/or included in any decision documents and authorizations.

3. *Step 3 – Notify the Public.*

   a. All offices must notify interested parties of proposed actions on land within their jurisdiction that are managed under the IMP before such actions can be approved. If appropriate, such notifications should be sent directly to the interested parties. Use of the Federal Register or the "legal notices" section of newspapers is permissible, but such formally published notices by themselves are not enough.

   b. Proposed actions on lands subject to the IMP requiring notification procedure include but are not limited to:

      — requests for approval of mining plans of operations under 43 CFR 3802;

      — gathering information about mineral resources in accordance with 43 CFR 8560.4-5(b);

      — applications for permit to drill;

      — notices of intent to conduct oil and gas exploration operations on existing leases;

— proposed changes in livestock use, including changes in numbers, season of use, or kinds or classes of livestock; and,

— BLM-initiated projects, including implementation of decisions contained in land use and activity plans.

— Public initiated projects such as issuance of a filming permit.

It is not necessary to send notices on extensions of existing mineral leases.

c. Provide notice at least 30 days prior to making a decision on *all* proposals (regardless of the method of analysis or determination), except when it is not possible to do so because of emergency conditions or other regulatory timeframes, e.g., 43 CFR 3802. If public response indicates more time is required, the approval period may be extended, depending upon the situation and at the discretion of the authorized officer. Notifications should be sent early enough to provide recipients sufficient time to inform BLM of their concerns prior to the date we intend to authorize or carry out the proposed action.

d. The notice should include a map and enough information for the recipient to understand the purpose, location, nature, size and expected implementation date of the proposed action. Although not required, it may be helpful to include, a copy

of the Environmental Analysis (EA) or the IMP nonimpairment analysis with the notice.

e. The level of interest expressed and issues raised in scoping the EA or Environmental Impact Statement (EIS) will determine the interpretation of the significance of the project and how widely to circulate notices. States may wish to use a State Office clearinghouse approach in reviewing, summarizing and notifying interested citizens or organizations in addition to direct notifications.

f. Notification of unauthorized actions that have caused surface disturbance in WSAs is also required. Such notices are not intended to delay or impede timely enforcement or reclamation of the area. In order to protect evidence and specific information on an alleged violator, certain information may be withheld pending disposition of any administrative or legal remedies.

4. *Step 4 – Conclude Whether the Use or Facility Will Meet the Nonimpairment Standard.* Conclude and provide written documentation whether the proposal is in compliance with the nonimpairment criteria from Chapter I and what impacts it will have on wilderness values. Written documentation must be recorded in appropriate case files and included in any decision documents and authorizations. The BLM field officials will cooperate with applicants to help identify

ways by which a proposal can be brought into compliance with the nonimpairment criteria through modification of the proposal.

5. *Step 5 – Consult the Guidelines for Specific Activities*. Chapter III of this handbook contains guidelines and special exceptions for many of the specific uses and facilities which may take place or be proposed in Wilderness Study Areas. Consult these guidelines for specific policy guidance covering the use or facility. If specific guidelines do not address the proposal being evaluated, refer to the "nonimpairment criteria" from Chapter I and other applicable policies that may apply in this particular case.

6. *Step 6 – Gather Information; Prepare EA or EIS*. The information needed to reach conclusions on whether the proposal meets the nonimpairment criteria (Step 4) will be recorded in the EA or EIS that is prepared at this stage in the analytical process. The EA or EIS must include the information outlined below in paragraphs a, b, c, and d, most of which is already required by the NEPA Handbook (H-1760-1). The use of categorical exclusion reviews for uses and facilities on lands under wilderness review is not allowed.

   The information required in an EA or EIS must include the following as a minimum, and where required by the Council on Environmental Quality (CEQ) regulations:

a. A precise description of the proposal and its alternatives, including:

- Purpose, need, and/or justification for the action.
- Exact location and proposed time of the action.
- Discussion of all alternative sites both inside and outside the WSA.
- Discussion of all reasonable alternative methods or approaches to accomplishing the same management objectives. Alternatives must be described with the same level of detail as the proposed action.
- Proposed facility design specifications, if applicable, including size, color and materials.
- Construction methods including machinery, equipment or vehicles to be used.
- Miles, square feet, or acres of soil and vegetation disturbance.
- Access required for proposed action and alternatives.
- Maintenance schedules, techniques, procedures, and required access.

b. A description of the affected environment, considering both the specific site and the WSA in its entirety:

— Wilderness characteristics as documented in the intensive inventory report or Wilderness Study Report.

— Meaningful descriptions of soils, erosion potential, vegetation cover and composition, other resources, reclamation potential, topography and climate (including precipitation).

— A description of the natural ecosystem including dominant plants and animals.

— Existing uses and facilities.

— Discussion of scenery characteristics, vistas, key viewing areas, and visitor use areas.

c. Written assessment of anticipated impacts including the following, if applicable:

— Describe the physical, biological, cultural, and environmental impacts to the site or WSA.

— If the project's impacts, including cumulative impacts, had existed at the time of the intensive inventory, would those impacts have disqualified the area, or any portion of the area, from being identified as a WSA or from being included in a WSA?

— Discuss how the proposed project will (or will not) conform to the non-impairment criteria as described in Chapter 1.

— Discuss how the proposed project will (or will not) meet the conditions of being substantially unnoticeable. Consider the impacts of existing, as well as proposed and future projects on the condition of being substantially unnoticeable.

— Will the addition of this proposal produce an aggregate negative effect upon the area's wilderness characteristics and values that would constrain Congress's decision to designate the area as wilderness, considering the condition of the area at the time the Secretary sent the recommendation to the President? The analysis must include, if applicable, the impact of the proposal on the following wilderness and related values:

- soil stability, including erosion impacts.

- condition or trend of the vegetation including plant species composition and vegetal cover.

- natural biological diversity including numbers and species

composition of microbes, invertebrates, fish, reptiles, amphibians, birds, and mammals.

- key visual resource characteristics (form, line, color, and texture) of the landscape.
- naturalness.
- opportunities for solitude.
- opportunities for primitive and unconfined types of recreation, or quality of exiting opportunities for primitive and unconfined types of recreation.
- description of special features.
- quality of surface water including dissolved solids, nutrient levels such as nitrates, and microbial concentrations.
- threatened or endangered plant and animal species.

— Will the addition of this proposal reduce or improve the overall wilderness quality of the WSA or a portion of the WSA? (This is especially important for WSAs or portions of WSAs that are pristine in character.)

d. Analysis of reclamation for unauthorized projects:

— Discussion of what the particular reclamation plan will accomplish.

— How the process will be implemented (type and amounts of hand and equipment work).

— Soils to be replaced and/or recontoured to a natural appearance.

— Vegetation to be reestablished.

— Schedule.

— Probability for success.

— If a reclamation plan is not available or is inadequate, assess what measures would be needed to return the disturbed areas to the required reclamation level.

7. *Step 7 – Decision/Record Keeping.* The determination to allow or deny the proposed action and whether the action complies with the IMP or with the 3802 regulations (for those actions covered under these regulations), must be included in the decision document and recorded in appropriate case files and official WSA files, which are maintained at the appropriate office level. In addition to the required inventory and WSA information, this file or a separate IMP file should contain a summary or cross-reference of other case files of all authorized, unauthorized, and proposed actions, since December 1979, within the WSA, including

all related NEPA documents. The file must contain the following information for any individual proposed use, facility, or unauthorized action:

a. The WSA name and number.

b. A brief description of the proposed use or facility.

c. An accurate map of the proposal.

d. A description of action taken and authorized uses and facilities (i.e. approved, disapproved, pending). A description of uses and facilities believed to be unauthorized.

e. A cross-reference to the pertinent case files, decision rationale, bonding determination, documentation required in Chapter II.B and the name of the staff member handling the case.

f. Comments on problems encountered.

g. Chronology of events.

h. Reclamation schedule.

i. Evaluation of reclamation efforts.

j. Current status of the proposal or investigation.

k. Future planned actions.

All subsequent compliance, noncompliance and follow-up actions must be documented in the file.

C. DECISIONS AND APPEALS

Appeal procedures can be found in 40 CFR Part I and regulations governing program decision in the appropriate CFRs. Appellants and others who are adversely affected by a management decision within lands under wilderness review will be informed of appeal procedures.

D. MONITORING AND SURVEILLANCE

1. All WSAs are to be monitored on a minimum standard of surveillance that will insure compliance with the IMP. A basic monitoring level of at least once per month during the months the area is accessible by the public should be adhered to, or more frequently if necessary because of potential use activities or resource conflicts.

2. Alternative surveillance schedules for any WSA that could more effectively be monitored less frequently than once per month can be used if approved by the State Director. In the absence of an approved alternate surveillance schedule, the minimum standard of surveillance of once per month shall remain in effect.

   Alternate surveillance schedules shall be tailored for the special needs of the WSA based on a consideration of factors including but not limited to: location and proximity to user publics, history of unauthorized activities and violations, weather/seasons of use and access, potential for volunteer assistance,

Adopt-a-WSA efforts, or other staff extensions/outreach opportunities.

At a minimum, the alternate surveillance schedule shall include the frequency of ground and air surveillance, the resources required to sustain the new schedule, and a justification for replacing once a month surveillance with the alternate schedule. The alternate surveillance schedule for each WSA must be approved and maintained in the WSAs permanent documentation file.

3. If possible, BLM District Offices should submit monthly written reports to the State Office, keep patrol logs, and make use of surveillance plans, diaries, and photographs. Unauthorized uses and facilities may be assertively prevented by using such measures as: ranger patrol, cooperative agreements with local law enforcement agencies, surveillance by volunteers, posting signs at key access points, notifying various user and commodity groups of WSA locations, and regular project compliance visits to monitor actions authorized within WSAs.

E. ENFORCEMENT

If unauthorized uses and facilities result in surface disturbance or other degradation of the area's suitability for preservation as wilderness, legal action will be initiated as appropriate to obtain full reclamation of the area. Impacts resulting from unauthorized activities will not disqualify an area from WSA status. All action to achieve compliance with the IMP will be

initiated pursuant to existing regulations governing the noncomplying activity.

In addition to normal enforcement procedures, the following additional steps must be taken whenever a District Manager believes a use is taking place or an unauthorized facility is being constructed on lands under wilderness review that is not in compliance with the IMP or the regulations of 43 CFR 3802:

1. Thoroughly inspect the site and determine whether the use or facility is authorized or unauthorized. Dertemine whether the use or facility is permissible on the basis of "grandfathered" uses or valid existing rights. A trespass operation must stop, even if it qualifies as "grandfathered" or a VER, until NEPA review is complete and proper authorizations are issued.
2. Immediately contact the person responsible for the activity in any manner that can be verified with documentation. Explain the situation and, depending on the situation or activity, seek the responsible person's assistance in bringing the operation into compliance with the IMP. Document the "who, what, where, when, how, and why" of the activities observed.
3. If the responsible person is not willing to comply, and the operation is causing impairment of wilderness values, the BLM will shut down the operation. Notices of noncompliance and citations may be used. When appropriate, the full range of administrative remedies will be used before initiating legal

> action. The State Director will be notified, after coordination and consultation with the responsible person, so that additional appropriate action may be taken immediately to prevent impairment. The BLM will work with the Regional Solicitor and U.S. Attorney's office to initiate appropriate legal action if necessary.
>
> Section 303 of FLPMA provides that the use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary, or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited. Use and facilities contrary to the provisions of the IMP and the regulations 43 CFR 3802 would be unlawful, and criminal provisions of FLPMA [43 USC 1733(a)] may apply. Regulations codified at 43 CFR 8360 provide the basis for criminal prosecution, which is independent of any administrative remedies. Possible violations of criminal law should be referred to the law enforcement ranger or special agent, who will take the appropriate action. Criminal prosecution is pursued regardless of the type of IMP violation if circumstances warrant it.

F. RECLAMATION OF UNAUTHORIZED IMPACTS

The BLM's goal is to immediately reclaim the impacts caused by any unauthorized action to a level as close as possible to the original condition, or at least to a condition that is substantially unnoticeable. The BLM will attempt to collect costs of reclamation from any and all persons responsible for causing impacts. If the

person responsible for the unauthorized impacts is not known, BLM will undertake reclamation and initiate action to locate the person(s) responsible and collect the reclamation costs from these persons. If the person responsible for the unauthorized impacts is known but unwilling to perform the needed reclamation, BLM will undertake reclamation and initiate action to collect the costs from the responsible person(s). If the impacts in a particular case are so severe as to make it impossible or unreasonably costly to meet the requirements of the nonimpairment criteria, or if reclamation efforts would result in greater loss of wilderness values than natural reclamation, the State Director will submit written recommendations to the Director proposing an alternative reclamation strategy.

* * * *

H. RECREATION

Most recreational activities (including fishing, hunting and trapping) are allowed on lands under wilderness review. However, some activities may be prohibited or restricted because they require permanent structures or because they depend upon cross-country use of motor vehicles (for example: pickup vehicles for balloons or sailplanes).

BLM will analyze the magnitude of all recreational activities to ensure that such use will not cause impacts that impair the area's wilderness suitability. An example might be erosion caused by increased vehicle travel within a WSA. To prevent this impairment, the BLM will monitor ongoing recreation uses as well as cumulative impacts, and if necessary, adjust the time, location, or quantity of use or prohibit that use in the impacted area.

To encourage responsible use of WSAs and to promote a proper outdoor ethic, the BLM will promote "Leave No Trace" and "Tread Lightly" program philosophies. The "Leave No Trace" program aims to educate and promote non-impacting use of wildlands by visitors participating in non-motorized recreational activities. "Tread Lightly" programs promote the environmentally responsible use of off-highway vehicles. The BLM will take advantage of both programs when making management decisions and promoting public use and enjoyment of WSAs.

1. No new, permanent recreational ways, trails, structures, or installations will be permitted, except those that are the minimum necessary for public health and safety in the use and enjoyment of the public lands' wilderness values, *and* that are necessary to protect wilderness resource values. No mechanical transport, which includes all motorized vehicles plus trail or mountain bikes, will be allowed on such trails.

   Facilities necessary for visitors' health and safety and to protect wilderness values may be provided in either of two ways:

   a. permanent facilities that are the minimum necessary for public health and safety in the use, enjoyment, and protection of wilderness values; or,

   b. temporary facilities that meet the non-impairment criteria. These facilities will be installed so that they are substantially unnoticeable and minimize surface disturbance. Visual resources management

concepts and techniques and wilderness specific designs will be used in the construction and siting of such facilities.

2. Hobby collecting of mineral specimens (rockhounding) and vegetative specimens may be allowed for personal but not commercial use, as long as the collection activity method meets the nonimpairment criteria.

3. Boating may be allowed with or without motors. The BLM does not have authority over all waters within the public lands; some are under jurisdiction of the States. Therefore the following guidelines apply only to those waters on which the BLM has authority to regulate boating.

   a. No waters will be closed to motorboats solely because they are in areas under wilderness review. However, if increasing impacts of boating (such as shore erosion or water pollution) threaten to impair wilderness suitability, the BLM may close the affected waters to motorboats. In some cases, time or space restrictions or public education may make a total closure unnecessary. The Bureau also has authority under other programs to regulate boating to minimize damage to wildlife and other resource values.

   b. River running, with or without motors, may be permitted. Cumulative impacts on river campsites will be monitored to prevent impairment of wilderness suitability.

c. No permanent launching ramps or boat docks will be built. A "brow log" may be used to reduce erosion at boat landings. Temporary launching ramps and boat docks may be installed only if they satisfy the nonimpairment criteria.

4. Environmental education and interpretive programs may be conducted so long as no permanent facilities are required and the use does not cause surface disturbance.

5. Camping may be allowed. Camping with recreational vehicles may occur on existing ways as long as this use meets the nonimpairment criteria. Primitive campsites for recreational use may be established anywhere in the WSA as long as they meet the nonimpairment criteria. Low impact camping techniques should be encouraged within all WSAs.

6. Cross-country skiing may be allowed. Downhill (alpine) may be permitted only if any support facilities within the WSA satisfy the nonimpairment criteria. Helicopter skiing, if nonimpairing, may be allowed at the discretion of the authorized officer.

7. Aerial activities such as ballooning, sailplaning, hang gliding, and parachuting (sky diving), may be allowed as long as they do not require cross-country use of motorized vehicles or mechanical devices to retrieve equipment, *except* in areas designated as "open" before October 21, 1976.

8. Recreational gold dredging and panning, when conducted without location of a mining claim may be allowed as long as it is done in a manner that satisfies the nonimpairment criteria. If the activity would cause significant damage to fish spawning or rearing areas, it will be considered to impair wilderness suitability, and the activity will be controlled to prevent such impacts.

9. Concessions and actions that require authorization under a special recreation permit will be allowed only if the use and related facilities satisfy the nonimpairment criteria. Examples that may qualify include mobile refreshment stands, river trip outfitters, guides, and providers of pack animals and saddle horses.

10. Rock climbing and caving will be allowed as long as these activities meet the nonimpairment criteria. The use of power driven (i.e. fuel or electric) rock drills or permanent anchors (e.g. bolts) is not allowed. No marring, scarring or defacing resulting in adverse impacts to the wilderness value of naturalness will be permitted, nor will permanent installations be permitted. Exceptions to the above may be allowed for: (a) emergencies, such as search and rescue operations; and (b) authorized actions needed for access travel within WSAs which are the minimum necessary for public health and safety in the use and enjoyment of the wilderness values. Any impacts from emergency actions (a, above), must be reclaimed to a substantially unnotice-

able condition following the emergency situation.

11. Except for emergency situations as defined in Chapter I.B.12, vehicle designations in WSAs are to be handled through the land-use planning process. Until WSAs are designated as wilderness or released from study status, vehicle use within each WSA is governed by the terms and conditions as identified in Chapter I.B.11 and any land-use planning decisions. Open areas may be designated only: (1) as sand dune or snow areas for use by the appropriate sand or snow vehicles, or (2) where an area was designated open prior to October 21, 1976. *No vehicle designation in a WSA may allow vehicles to travel off existing ways and trails, except in these two circumstances.*

12. Organized vehicle events will not be allowed unless they can meet the nonimpairment criteria, and are contained on existing ways and trails or within pre-FLPMA sand dune or snow open areas. (For clarification of definitions of applicable vehicles and designation of areas see guidance contained in 43 CFR 8340 and 1601.)

I. CULTURAL AND PALEONTOLOGICAL RESOURCES

Cultural and paleontological resource inventories, studies, and research involving surface examination may be permitted if they satisfy the nonimpairment criteria. Salvage of archeological and paleontological sites; rehabilitation, stabilization, reconstruction, and

restoration work on historic structures; excavations; and extensive surface collection may be permitted if the specific project satisfies the nonimpairment criteria.

Permanent physical protection, such as fences, will be limited to those measures needed to protect resources eligible for the National Register of Historic Places and will be constructed to be substantially unnoticeable.

J. FIRE MANAGEMENT

The BLM will conduct all prescribed fire and suppression activities in accordance with fire management activity plans and subsequent operational plans (prescribed fire and preattack) for all WSAs, using caution to avoid unnecessary impairment of an area's suitability for preservation as wilderness. "Light-Hand-On-The-Land" fire suppression tactics will be used. Fire is a natural component of many wilderness ecosystems and fire plans need to give serious consideration to this fact before recommending one fire management technique over another. Resource area advisors will use the fire plans in making decisions during emergency fire situations and prescribed ignitions. All uses of earth moving equipment within a WSA require authorization. Priority for placement of large fire camps should be outside WSAs. Use of motorized vehicles and mechanical equipment during mop-up should be minimized.

The fire preattack plan covering a WSA will specify the fire management objectives and special considerations for each WSA, taking into account a number of factors including the existing wilderness characteristics of the area, the need to prevent impairing actions, historic fire occurrence, the natural role of fire, proposed degree of suppression, expected fire behavior, acceptable suppression techniques, adequate buffer zones, smoke

management, effect on private or other agency inholdings and on adjacent landowners, the limits of acceptable fire weather, fire behavior, fire effects, and the access requirements of other agencies. In planning firebreaks, the use of natural firebreaks and existing roads is encouraged. Emergency fire rehabilitation measures will continue to be carried out under guidelines in Handbook H-1742-1 and Manual Section 1742. Efforts should be made to rehabilitate any impacts created by suppression activities prior to releasing fire crews and associated equipment following fire containment.

* * * *

GLOSSARY OF TERMS

Some of [t]he terms used in this handbook have specific meanings and are defined as follows:

- C -

cross-country: refers to travel that is not on existing access routes (ways, trails, boundary roads) and involves surface disturbance caused solely by the passage of vehicles.

cumulative impact: the aggregate impact of existing and proposed activities. Individual intrusions when considered by themselves may not impair wilderness suitability; however, when combined with other existing and proposed substantially unnoticeable impacts, the total effect may be sufficient to impair an area's suitability for preservation as wilderness.

-E -

enhance wilderness values: an action that clearly benefits a wilderness study area's wilderness value through

activities that restore, protect, or maintain these values. Wilderness values are those identified in section 2(c) of the Wilderness Act of 1964, including: roadlessness, naturalness, solitude, primitive and unconfined recreation, and size.

existing way: a way (see definition) existing on the date of the initial wilderness inventory.

- F -

FLPMA: the Federal Land Policy and Management Act of 1976 (Public Law 94-579, 90 Stat. 2743, 43 USC 1701).

- H -

hazardous materials: any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability (CERCLA) Act of 1980, as amended, 41 U.S.C. 9601 et seq., and any related regulations. Hazardous substances includes any hazardous waste as defined in the Resource Conservation and Recovery (RCRA) Act of 1976, as amended, 42 U.S.C. 6901 et seq., and related regulations. Hazardous materials includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. In general, hazardous substance as defined in CERCLA is any substance that the Environmental Protection Agency (EPA) has designated as hazardous, dangerous, or toxic under the Clean Air Act, 42 U.S.C. 7401 et seq., the Clean Water Act, 33 U.S.C. 1251 et seq., or the Toxic Substances Control Act, 15 U.S.C. et seq., as well as any hazardous waste under RCRA.

- I -

impact: the effect, influence, alteration, or imprint of an activity.

impair: to diminish in value or excellence.

impair wilderness suitability: refers to activities that are considered to impair an area's suitability for preservation as wilderness—i.e., that do not satisfy the "nonimpairment criteria" set forth in Chapter I.B.2 of this handbook.

instant study area: one of the 55 primitive and natural areas formally identified by BLM through a final action published in the *Federal Register* before November 1, 1975. FLPMA required an accelerated wilderness review of these areas.

- M -

mining claim: any unpatented mining claim, millsite, or tunnel site authorized by the United States mining laws.

multiple use: ". . . the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife

and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." (From Section 103, FLPMA.)

- N -

negligible: so small or unimportant or of so little consequence as to warrant little or no attention; not exceeding established standard(s).

- P -

pre-FLPMA: before October 21, 1976, the date of approval of the Federal Land Policy and Management Act.

primitive and unconfined recreation: nonmotorized and undeveloped types of outdoor recreational activities.

public lands: for the purpose of the wilderness review program, any lands and interest in lands owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except:

1. Lands where the United States owns the minerals but the surface is not Federally owned.
2. Lands being held for the benefit of Indians, Aleuts, and Eskimos.

3. Lands tentatively approved for State selection in Alaska.
4. Oregon and California (O & C) grant lands that are managed for commercial timber production.

- R -

reclamation: the contouring of the topography to a natural appearance (not necessarily to the original contour), the replacement of topsoil, and the restoration of plant cover, if any, approximating the species composition and cover previously occurring on the disturbed site.

reclamation deadline: the date on which temporary post-FLPMA impacts within WSA's were to be reclaimed to a condition of being substantially unnoticeable before the Secretary was scheduled to send his recommendations on wilderness suitability or nonsuitability to the President. This date has past.

roadless: for the purpose of the wilderness review program, this refers to the absence of roads which have been improved and maintained by mechanical means to ensure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road. Words and phrases used in the above definition of "roadless" are defined as follows:

1. Improved and maintained: Actions taken physically by man to keep the road open to vehicular traffic. "Improved" does not necessarily mean formal construction. "Maintained" does not necessarily mean annual maintenance.
2. Mechanical means: Use of hand or power machinery or tools.

3. Relatively regular and continuous use: Vehicular use which has occurred and will continue to occur on a relatively regular basis. Examples are: Access roads for equipment to maintain a stock water tank or other established water sources; access roads to maintained recreation sites or facilities; or access roads to mining claims.

- S -

Section 202 Wilderness Study Area: a wilderness study area being studied under authority of section 202 of the Federal Land Policy and Management Act of 1976, which requires recurrent land-use planning by the Bureau of Land Management.

Section 603 Wilderness Study Area: a wilderness study area being studied under authority of section 603 of the Federal Land Policy and Management Act of 1976, which requires a wilderness review of the public lands.

solitude: 1. The state of being alone or remote from habitations; 2. A lonely, unfrequented, or secluded place.

substantially unnoticeable: refers to something that either is so insignificant as to be only a very minor feature of the overall area or is not distinctly recognizable by the average visitor as being manmade or man-caused because of age, weathering, or biological change. An example of the first would be a few minor dams or abandoned mine buildings that are widely scattered over a large area, so that they are an inconspicuous part of the scene. Serious intrusions of this kind, or many of them, may preclude inclusion of the land in a wilderness study areas. (See also "cumulative impact," above.) An example of the second would be an old juniper control

project that has grown up to a natural appearance, the old fallen trees largely decomposed.

surface disturbance: any new disruption of the soil or vegetation. Uses and facilities in a WSA necessitating reclamation (i.e., recontouring of the topography, replacement of topsoil, and/or restoration of native plant cover) are surface disturbing. Cross-country vehicle use off existing ways or boundary roads is surface disturbing because the tracks created by the vehicle leave depressions or ruts, compact the soils, and trample or compress vegetation.

- T -

temporary use: a use or activity that does not create any new surface disturbance (including no vegetative trampling), involve permanent placement of structures, and may not continue after the date of wilderness designation.

trail: a pathway usually created and maintained by human foot traffic, beasts-of-burden, livestock, or wildlife.

- U -

unnecessary or undue degradation: surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and taking into consideration the effects of operations on other resources and land uses, including those resources and uses outside the area of operations. Failure to initiate and complete reasonable mitigation measures, including reclamation of disturbed areas, or creation of a nuisance, may constitute unnecessary or undue degradation. Failure to comply with applicable environmental protection statutes and regulations

thereunder will constitute unnecessary or undue degradation.

- V -

VER: Valid Existing Right.

- W -

way: a trace maintained solely by the passage of vehicles which has not been improved and/or maintained by mechanical means to ensure relatively regular and continuous use.

wilderness: the definition contained in Section 2(c) of the Wilderness Acc of 1964 (78 Stat. 891). (See Appendix B for its full text.)

wilderness area: an area formally designated by Congress as part of the National Wilderness Preservation System.

wilderness characteristics: the definition contained in section 2(c) of the Wilderness Act of 1964 (78 Stat. 891). (See Appendix B for its full text.)

wilderness inventory: an evaluation of the public lands in the form of a written description and map showing those lands that meet the wilderness criteria as established under Section 603(a) of FLPMA and Section 2(c) of the Wilderness Act, which will be referred to as wilderness study areas (WSA'S). (See *Wilderness Inventory Handbook*, dated September 27, 1978, Organic Act Directive No. 78-61.

Wilderness Review Program: the term used to cover the entire process of wilderness inventory, study, and reporting or the wilderness resource, culminating in recommendations submitted through the Secretary of the Interior and the President to Congress as to the

suitability or nonsuitability of each wilderness study area for inclusion in the National Wilderness Preservation System. (For a summary of the program, see Appendix C.)

Wilderness Study Area (WSA): a roadless area or island that has been inventoried and found to have wilderness characteristics as described in Section 603 of FLPMA and Section 2(c) of the Wilderness Act of 1964 (78 Stat. 891).

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
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July 13, 1999

In Reply Refer To:
8560 (240) N

EMS TRANSMISSION 07/13/99

Information Bulletin No. 99-181

To: All Field Officials

From: Director

Subject: Off Highway Vehicle Use in Wilderness Study Areas

In the Federal Land Policy and Management Act, Congress has given the Bureau of Land Management (BLM) a clear mandate regarding the protection of lands under wilderness review. Section 603 (c) states "During the period of review such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness . . ." (Emphasis added). This language is referred to as the "nonimpairment" mandate. To comply with this mandate, the BLM must monitor and regulate the activities of off-highway vehicles in the Wilderness Study Area (WSAs) to assure that their use in the WSAs does not compromise these areas by impairing their suitability for designation as wilderness.

The BLM's Off Road Vehicle Regulations, 43 CFR 8342.1, require that the BLM establish offroad designations of areas and trails that meet the non-impairment mandate. It is the BLM's policy that cross-country vehicle use in the WSAs does cause the impairment of wilderness suitability. The BLM policy establishing what is necessary to prevent such impairment is set forth in BLM Manual Handbook H-8550-1, Interim Management Policy and Guidelines for Lands Under Wilderness Review. In Chapter 1, Paragraph 2.B.a., nonimpairing use is ". . . a temporary use that does not create surface disturbance . . .". Uses that cause surface disturbance are, therefore, impairing uses. In the same chapter in Paragraph 3, under the heading Surface Disturbance, it states "Cross-country vehicle use off boundary roads and existing ways is surface disturbing because the tracks created by the vehicle leave depressions or ruts, compact the soils and trample or compress vegetation."

Except for a very narrow range of exceptions, primarily involving emergencies or search and rescue operations, the BLM should establish off-road vehicle designations in WSAs that limit vehicular access to boundary roads or ways existing inside a WSA, which were identified during the inventory phase of the wilderness review.

We will soon instruct all Field Offices to determine whether this requirement has been met and to report this information back to the Washington Office. To prepare for this information request, Field Offices should complete a preliminary review of off-road vehicle designations in WSAs and wilderness inventory records within wilderness study area case files. This

review will facilitate an accurate and expeditious response.

If you have any questions, please contact Rob Hellie on (202) 452-7703 or Robert Hellie@blm.gov.

Signed by:	Authenticated by
Nina Rose Hatfield	Robert M. Williams
Deputy Director	Directives, Records & Internet Group, WO540

EA NUMBER UT-050-089-084-EA

OFF-ROAD VEHICLE IMPLEMENTATION
Henry Mountains Planning Area

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Recommended By:

/s/	Aug. 2, 1990
Resource Area Manager	Date

Reviewed By:

/s/	Aug. 2, 1990
Area Coordinator	Date
/s/	Sept. 14, 1990
Asst. DM for Resources	Date
/s/	Sept. 14, 1990
Environmental Coordinator	Date
/s/	Oct. 9, 1990
Assistant DM for PEA	Date

Approved By:

/s/	Oct. 9, 1990
District Manager	Date

A. PURPOSE AND NEED

Executive Order 11644 (37 CFR 2877 as amended by Executive Order 11989) requires Federal land management agencies to designate specific areas and trails under their jurisdiction where Off-Road Vehicle (ORV) use will be permitted, and areas and trails where such use will not be allowed.

A plan has been prepared which identifies specific actions needed to implement the off-road vehicle decisions in the Henry Mountains Management Framework Plan (MFP) and Wilderness Interim Management Policy (WIMP). The MFP considered the extent and type of ORV use and identified conflicts that needed to be resolved. The designations resulted from an interdisciplinary analysis and public review.

B. DESCRIPTION OF THE PROPOSED ACTION AND ALTERNATIVES

Proposed Action

The proposed action will implement ORV management decisions contained in the Henry Mountains Framework Plan and Wilderness Interim Management Policy. The Henry Mountains Planning Area ORV designations, with associated travel restrictions, involve a total of 1,413,490 public land acres.

The location of the open, limited and closed areas are shown on Map 1 in the map section of this Environmental Assessment (EA). In addition to the ORV designations established by the Henry Mountains MFP, the recently revised Interim Management Policy and Guidelines for Lands Under Wilderness Review, update document (H-8550-1) states that within Wilderness Study Areas (WSAs):

> "Recreational use of mechanical transport, including all motorized devices as well as trail and mountain bikes, may only be allowed on existing ways and trails and within open areas that were designated prior to the passage of FLPMA (October 21, 1976)".

If limiting travel to existing ways and trails is more restrictive than what was identified in the MFP, this restriction will apply until the WSAs are designated as wilderness or are otherwise released from study status. WSAs are shown on Map 2, in the map section.

Off road vehicle designations are summarized below:

Designations

a.		Open Vehicle Use Area	942,926 acres
b.		Limited Vehicle Use Areas	312,639 acres
	1.	Use Limited to Existing Maintained Roads	3,120 acres
	2.	Use Limited to Existing Roads and Trails	4,960 acres
	3.	Use Limited to Designated Roads and Trails	4,880 acres
	4.	Use Limited to Existing Ways and Trails	266,079 acres
	5.	Seasonal Closure	33,600 acres
c.		Closed Vehicle Use Areas	157,925 acres
d.		Hiking Trails Closed to Vehicle Use	7 miles

The MFP identified other ORV management actions.

a. Thirteen-thousand sixty acres have been identified for intensive monitoring where ORV use may cause significant damage. This area is shown on Map 3, in the map section.

b. Roads in the Dirty Devil area and Little Rockies area will be studied for possible physical closure and rehabilitation.

c. Two intensive use areas have been designated in order to concentrate ORV use and discourage indiscriminate cross country travel. These areas are shown on Map 1.

A plan has been prepared which identifies actions required to implement the ORV designations. The emphasis in the plan is on informing the public land user of the necessity for the designations in order to gain voluntary compliance. On-the-ground observation through use supervision and monitoring will be relied upon to amend the plan as circumstance warrants. A copy of the plan is contained in the Appendix.

Alternatives

Since BLM is required to designate public lands, a no action alternative is not feasible. Changes in the ORV designations identified in the MFP can only be accomplished through a planning amendment. Therefore, the only alternative to be analyzed will be that of closing all WSAs.

C. AFFECTED ENVIRONMENT

The following description of the affected environment is based on the final Henry Mountains Grazing Environmental Impact Statement, Richfield District, May 1983.

WATER RESOURCES

The Henry Mountains planning area is located in the Upper Colorado River Sub-basin of the Colorado Hydrologic Region and contains 113 streams (many are intermittent). The planning area is divided into four drainage subareas: the Lower Fremont River, the Lower Muddy River, the Dirty Devil River, and direct drainage into the Colorado River.

* * * *

D. ENVIRONMENTAL CONSEQUENCES

1. Proposed Action

a. Environmental Impacts

It is assumed that use would continue at approximately its present rate on all areas in the resource area not proposed for limited use or closure. Restrictive designations involve areas that are generally inaccessible or undesirable for ORV use. Therefore, use is low, meaning few if any users will be displaced into open areas from restricted areas.

Water Resources

Water quality is highly variable in the resource area, depending on time of year, flow, and physical location. Stream water quality is primarily limited by high sediment load and dissolved solids concentrations.

Runoff from public lands tends to accumulate salts and sediment and transports them into the main drainages during storms, adding salt to the Green and Colorado Rivers.

Ground water quality is highly variable, depending on the formation in which the aquifer is located.

Impacts to water can be measured by change of the quality of surface and ground water. Surface water quality is generally a tertiary impact governed by soil loss resulting from surface disturbance. Sediment and salts are added to the water systems with surface-disturbing activities.

ORV use will contribute sediments and salts to the river systems and therefore degrade the water quality due to, but not limited by, some of the following causes:

1. ORVs often establish a major network of rills and gullies which concentrate and channel runoff, increasing erosion on and off the site. Soil is often lost in these newly created and unvegetated channels.
2. On steep slopes, ORVs make deep grooves which are then deepened by runoff energies, thus transporting more soil particles. Erosion becomes more severe if slopes exceed 20 percent, but slope does not limit the machines until it exceeds 40 percent.
3. ORVs can compact and disrupt the soil surface which 1) reduces the infiltration capacity, causing more water to run off and allowing more soil transport; 2) reduces the soil's capability to absorb water, leaving less water available to the plants; 3) allows more soil particles to be available for transport by disrupting the soils crust; and 4) results in a loss of plant cover, which opens areas to wind erosion onsite and offsite. Soil particles, particularly sands, can spread downward, burying and killing vegetation that was not directly damaged by ORVs.

4. The quality of water at the ORV site is reduced by increased runoff that results from the removal of vegetation cover and soil compaction. ORV tracks become partly sealed to infiltration and act as channels for the overland flow, again increasing runoff.
5. ORV use can greatly increase erosion, and thus salinity, from Mancos-derived soils. The BLM salinity team recommends that ORV use should be severely curtailed on this soil type. The sparse vegetation and easily compacted soil are not capable of absorbing the impacts of repeated compaction from vehicles. Once rilling is started, gully erosion occurs very rapidly.
6. Increased runoff and decreased plant cover can cause an increase in the frequency and magnitude of flooding.
7. Much of the soil that is eroded from the and by ORV use ultimately enters surface waters, where it contributes to the sediment and salt load and accelerates siltation of the streams.
8. ORV users can add biological and chemical contaminants to the soils, and hence, to the surface or ground water, with small quantities of gas or oil spilled or leaked from their machines.

Therefore areas open to ORV use may experience a continued increase in sediment and salt, because of increased surface disturbance (destruction of vegetation, soil compaction, disruption of the soil surface, destruction of surface stabilizer, reduction of infiltration capacity, increased frequency and intensity of runoff and concentration and channeling of runoff) caused by ORV traffic.

Erosion from areas left open to designated roads and trails should be minimal, as most of the disturbance has already occurred. However, continued use of these roads and trails may cause small amounts of sediment movement and increased runoff.

Recreation

Designation of open areas would be viewed as beneficial by people who favor unrestricted ORV use for hunting access, recreation, and mineral exploration/development. The proposed designations will represent only a slight change from existing unrestricted use. Adverse impacts are anticipated for people who favor restriction of cross country vehicle travel to protect other resource values and uses. These negative impacts would occur to members of the public that favor protection of vegetation for wildlife and livestock use, cultural resource values, and existing scenic values.

Designations which prohibit or limit vehicle use to existing roads and trails would be perceived as beneficial by members of the public that favor vehicle restrictions. ORV users would view these designations as restrictions on their freedom.

The impact of ORV noise on people engaged in non-mechanized recreation can be significant. Annoyance with ORV noise is not solely a function of the level, it also depends on listener attitude.

Designations will preserve areas of scenic grandeur and prevent damage to important recreation resources. Two areas have been identified for intensive ORV use. Providing areas specifically established for off road riding will reduce indiscriminate cross country travel in the remaining open area. The result is less impact to vegetation, soils, scenic features, and wildlife. Designa-

tion of two-thirds of the planning area as open will benefit people who favor unrestricted ORV use. A wide variety of terrain types and challenge is available in the open area.

Wilderness

Every WSA has been designated as either limited or closed. These designations will prevent impairment of wilderness character resulting from unregulated vehicle use. Continued travel on existing ways and trails in limited areas will increase the visibility and permanence of these features. This will adversely effect rehabilitation of these ways and trails if the area is included in the National Wilderness Preservation System. See "Impact to Wilderness Values Evaluation under the Non-Impairment Standard" in the Clerk List and Staff Report Section.

Vegetation

Direct impacts to vegetation caused by ORV use are attributed to removal of vegetative cover and tracking. Plants run over are directly impacted by crushing, breakage, or uprooting. Such traumatized plants, if not killed outright, are susceptible to death through desiccation and invasion by parasites and pathogens. Indirect impacts to vegetation arise from impacts to the growing medium. Removal of cover exposes the soil to erosive forces of wind and water. Tracking on other than sandy soils increases the bulk density of the surface soil. This usually results in decreased infiltration of water into the soil and increased runoff. With removal of cover and reduction of organic matter, the soil warms more rapidly in the spring. Ruts and gullies created through tracking channel moisture from the site. This, combined with decreased infiltration, creates

a drier microclimate for the vegetation. Over large areas, this and related processes are known as desertification.

Removal of cover including cryptograms on sandy soils exposes the sand to higher wind velocities at the soil surface. The vegetation also provides a place for deposition to occur. Cover loss can cause the dune to "blow out." Vegetated sand dunes concentrate and cycle nutrients in the top foot of sand. A blow out exposes a more barren substrate that is difficult to revegetate.

In any case, the impact of ORVs on vegetation is density dependant. The greater the use of ORVs, the greater the impact. Adverse impacts to vegetation are expected to continue at the present rate on areas designated as open.

The restrictive designations will protect important riparian areas and will have no adverse affect on threatened, endangered or sensitive plant species. Eliminating ORV use in some areas could have beneficial impacts to threatened, endangered and sensitive plant habitat. See "Threatened, Endangered, and Sensitive Plant Clearance" in the Check List and Staff Report Section.

Soils

Off-road vehicle use on the moderate to strongly saline hills and pediments often results in severe impacts because these soils are highly erodible and compatible and also because revegetation is very difficult with disturbance. The tracks from light use are enough to create rills which are self-perpetuating even on the more gentle slopes. These rills greatly increase runoff and erosion and leave the soils with significantly less

moisture for plant growth. Since most of these soils are shallow, any significant loss of soil is critical. Increased runoff will aggravate the gullying problem on the alluvial lands below. Most soil erosion problem areas are either closed or restricted.

Dirt bikes have been able to climb directly up slopes of 70 percent. Four-and three-wheelers have been observed taking 50 percent slopes. Use on the steeper slopes will leave permanent scars which will continue to erode.

Off-road vehicle use on the slightly saline soils of the hills and pediments will produce negative impacts with concentrated use. These soils, however, can tolerate light, infrequent ORV use on slopes less than 10 percent because they are less erodible and better able to revegetate. In many areas, these soils are associated with the more saline soils and badlands making separate ORV designation impractical.

The very deep alluvial soils can also tolerate light, infrequent off-road use without significant erosion. However, vehicle use in and around gullies can create severe compaction and channeling which can accelerate gully headcutting. Protective surface crusts become pulverized into powder with ORV disturbance. Areas of concentrated use can experience blowouts of this pulverized soil by wind action. Repeated use and blowouts over time can severely degrade the quality of the surface soil. With wetting, disturbed surfaces usually compress into a thick, nonporous crust which inhibits seedling emergence. Poor physical properties, relatively high salinity and low precipitation cause revegetation to be slow and difficult.

In general, the alluvial outwash soils of the bench and mesa tops can tolerate the most off-road abuse with the least erosion. With light, infrequent use, recovery and revegetation is relatively quick. However, the topsoil is thin and where significant erosion does occur, productivity of the soil can be severely affected.

Threatened and Endangered Species

While restrictions on cross country vehicle travel will benefit threatened and endangered species generally, there may be adverse impacts in open areas since not all threatened and endangered species habitat is included in limited or closed designations. The potential for adverse impacts increases with the growth in use and spread of ORV activity into previously unused areas.

Wildlife

ORV use can significantly impact wildlife populations. Some of the more significant effects include displacement of wildlife from preferred habitats, increased stress to wildlife, destruction of wildlife, habitat alteration, etc.

Wildlife displaced from preferred habitats are subjected to increased predation and less suitable habitat conditions. ORV use generally increases stress to wildlife populations such as bison, mule deer, antelope, and desert bighorn, due to the ability to approach these species closer. Ground-nesting birds, small mammals and other low-mobility wildlife species (reptiles and amphibians) are actually destroyed by ORV use. Specifically, vegetative production and cover is sacrificed in high-use areas.

The designations will cause no known conflicts with threatened, endangered or sensitive animal species. See

"Wildlife (T&E and Sensitive) Clearance for ORV Implementation Plan" in the Check List and Staff Report Section.

Cultural Resources

ORV use is expected to impact cultural resources by providing easy access to archaeological sites which might otherwise remain unvisited. This may lead to increase direct impacts:

-Surface disturbance of archaeological and historic sites ranging from slight damage to total destruction.

-Mixing of occupational layers.

-Artifact collection.

-Erosion of archaeological site features.

-Alternation of internal site configuration by selective destruction of specific feature types.

-Desecration of burials and sacred areas.

-Introduction of visual elements which detract from a site's setting or purpose.

Closure or limiting of vehicles to existing roads and trails could prevent or reduce some of this impact.

Because of the general (nonsite specific) natural of this proposed action and the resulting ORV use, specific impacts to individual cultural resources cannot be identified at this time.

* * * *

OFF-ROAD VEHICLE IMPLEMENTATION PLAN

Henry Mountain Resource Area
Henry Mountain Planning Area

U.S. Department of the Interior
Bureau of Land Management
Richfield District, Utah
September 1988

Prepared by: /s/
Bill Boolan

Approved by: /s/
Glenn T. Patterson

* * * *

I. PURPOSE

The purpose of this plan is to implement Executive Order 11644 (37 CFR 2877 as amended by Executive Order 11989) by identifying actions required to manage off-road vehicle (ORV) use on public lands in the Henry Mountains Planning Area. The ORV designations, with associated travel restrictions, are identified in the Management Framework Plan (MFP) and involve a total of 1,413,490 public land acres.

The emphasis in this plan is on informing the public land user of the necessity for the designations in order to gain voluntary compliance. On-the-ground observation through use supervision and monitoring will be relied upon to amend the plan as circumstance warrants.

II. DESIGNATION CRITERIA

Off-road vehicle designations were determined, along with other land use management decisions, as part of the BLM planning process. The designations discussed in this implementation plan are taken from the Henry Mountains MFP which was revised in 1982. Designations, shown on Map 1, are based on the principle that

ORV recreation is an acceptable use of the public land if it is managed to achieve the objectives of resource protection and minimizing conflicts among various public land users.

* * * *

III. DEFINITIONS

All public land in the planning area has been designated as either open, limited, or closed. The meaning of these designations, as well as other terms associated with off-road vehicle management are found in 43 CFR 8340. The following is a selection of definitions which clarify the meaning of the designations.

A. "Off-road vehicle" means any motorized vehicle capable of or designed for travel on or immediately over land, water, or other natural terrain, excluding:

   1. Any nonamphibious registered motor boat:
   2. Any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes;
   3. Any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved;
   4. Vehicles in official use; and
   5. Any combat or combat support vehicle when used in times of national defense emergencies.

B. "Public lands" means any lands the surface of which is administered by the Bureau of Land Management.

C. "Official use" means use by an employee, agency or designated representative of the Federal government or one of its contractors, in the course of his employment, agency, or representation.

D. "Open area" means an area where all types of vehicles use is permitted at all times, anywhere in the area subject to the operating regulations and vehicle standards set forth in 43 CFR 8341 and 8342.

E. "Limited area" means an area restricted at certain times, in certain areas, and/or certain vehicular use. These restrictions may be of any type, but can generally be accommodated within the following type of categories: Numbers of vehicles; types of vehicles; time or season of vehicle use; permitted or licensed use only; use on existing roads and trails; use on designated roads and trails; and other restrictions.

F. "Closed area" means an area where off-road vehicle use is prohibited. Use of off-road vehicles in closed areas may be allowed for certain reasons; however, such use shall be made only with the approval of the authorized officer.

IV. DESIGNATED AREAS

Off-road vehicle recreation, like other recreation in the planning area, is extensive in nature. There have been no authorized ORV events in the planning area, and there is no demand for such events. Two areas have been identified for intensive ORV use in order to discourage indiscriminate cross country travel.

The ORV designations outlined in this plan only apply to public lands and have no effect on state

or private lands. The location of the open, limited and closed areas are show on Map 1. In addition to the ORV designations established by the Henry Mountains MFP, the recently revised Interim Management Policy and Guidelines for Lands Under Wilderness Review, update document (H-8550-1) states:

"Recreational use of mechanical transport, including all motorized devices as well as trail and mountain bikes, may only be allowed on existing ways and trails and within open areas that were designated prior to the passage of FLPMA (October 21, 1976)".

If limiting travel to existing ways and trails is more restrictive than what was identified in the MFP, this restriction will apply until the WSAs are designated as wilderness or are otherwise released from study status. WSAs are shown on Map 2.

* * * *

Travel restrictions associated with ORV designations discussed in this plan apply to trail and mountain bikes. The following letter prefixes are used to denote the type of designation on maps and in the narrative below:

			Acreage
A.		Open Vehicle Use Area	942,926
	1.	ORV Activity Areas	1,280
	2.	Special Monitoring Area	13,060
B.		Limited Vehicle Use Areas	312,639

1.	Use Limited to Existing Maintained Roads	3,120
2	Use Limited to Existing Roads and Trails	4,960
3.	Use Limited to Designated Roads and Trails	4,880
4.	Use Limited to Existing Ways and Trails	266,079
5.	Seasonal Closure	33,600
C.	Closed Vehicle Use Areas	157,925
D.	Road Closures	

A. Open Vehicle Use Area

The Henry Mountains Planning Area contains 1,413,490 acres of public land. Approximately 942,926 acres (67%) of public land remains open to ORV use subject to the operating regulations and vehicle standards set forth in 43 CFR 8341 and 8343.

The MFP identified a need to designate two intensive use areas and one special monitoring area.

1. ORV Activity Areas

a. Blue Valley (640 acres)

ORV use occurring in this general area may spread and impact sensitive resources. Guiding ORV use to this site will provide a play area for ORV users while providing needed protection of other resources.

b. Ticaboo (640 acres)

ORV use occurring in this general area may spread and impact sensitive resources. Guiding ORV use to this site will provide a play area for ORV users while providing needed protection of other resources.

2. Special Monitoring Area

   a. Factory Butte (13,060 acres)

There is a concern about resource damage from ORV use occurring in and around Neilson Wash, between North Caineville Mesa an Factory Butte. The extent of damage to scenic values and watershed is unknown. The area will be monitored and closed if warranted.

B. Limited Vehicle use Areas

Approximately 312,639 acres (22%) of public land within the Henry Mountains Planning Area has been placed in the limited use category. These areas, their limitations, and the rationale for their designation are identified below.

1. Use Limited to Existing Maintained Roads

   a. Nasty Flat (1,885 acres)

ORV use has been restricted in support of efforts to rehabilitate damaged portions of the Nasty Flat watershed.

   b. Bull Creek (1,235 acres)

ORV use has been restricted in support of efforts to rehabilitate damaged portions of the Bull Creek watershed.

2. Use Limited to Existing Roads and Trails

   a. Little Rockies National Natural Landmark (4,960 acres)

The Little Rockies were designated a National Natural Landmark in 1975. This area is significant as a type locality displaying the geological processes for which the Henry Mountains are famous. Unregulated ORV use in this area would diminished the recreational, scenic, and scientific values of the area. This designation applies to the National Natural Landmark outside the Little Rockies WSA.

3. Use Limited to Designated Roads and Trails

   a. Bull Creek Archaeological District (4,880 acres)

This area has significant cultural features which are highly sensitive to ORV disturbance. ORV use has been increasing and many new paths and trails in the areas are developing. Restricting vehicle use to designated roads and trails is needed to protect the cultural resources.

4. Use Limited to Existing Ways and Trails

Specific guidelines for ORV use are contained in the Interim Management Policy and Guidelines for Lands Under Wilderness Review. The 1987 update of the IMP allows for "recreational use of mechanical transport, including all motorized devices as well as trail and mountain bikes, only on existing ways and trails . . ." within Wilderness Study Areas.

Five WSAs have acreage wholly within this category:

		WSA Acreage
a.	Fremont Gorge	2,540
b.	French Spring-Happy Canyon	25,000
c.	Horseshoe Canyon	38,800
d.	Bull Mountain	11,800
e.	Mt. Pennell*	74,300

In addition, five WSAs have acreage partially or totally within more restrictive designations.

		WSA Acreage	WSA Acreage Limited to existing Ways & Trails
f.	Fiddler Butte	73,100	71,110
g.	Mt. Ellen-Blue Hills	81,726	33,387
h.	Dirty Devil	61,000	23,489
i.	Mt. Hillers	20,000	18,240
j.	Little Rockies	38,700	-0-

* A portion of Mt. Pennell is also subject to a seasonal closure.

5. Season Closure

   a. Swap Mesa and Cave Flat, closed from December 21 to March 20, (33,600 acres)

This closure is necessary to prevent human activity from disturbing bison and deer during a time when they are under stress from winter temperatures or from calving or fawning.

C. Closed Vehicle Use Areas

Approximately 157,925 acres (11%) of public land within the Henry Mountains Planning Area have been placed in the closed category. These acres are identified below.

1. Pink Cliffs Interpretive Site (1,760 acres)

   The Pink Cliffs offer an excellent opportunity to provide interpretation of the geologic features of the Henry Mountains. The area is adjacent to Star Spring Campground, the most popular developed recreation sites in the Resource Area.

2. Little Rockies Wilderness Study Area (38,700 acres)

   The Little Rockies were designated as a National Natural Landmark in 1975. This area is significant as a type locality displaying the geological processes for which the Henry Mountains are famous. Unregulated ORV use in this area, especially on the steep, loose soils of the upper slopes would diminish the recreational, scenic, and scientific values of the area.

3. North Caineville Mesa ACEC (2,200 acres)

   This mesa represents one of the last natural areas of cold-desert shrubland in the planning area. This resource would be lost if surface disturbing

activities were to occur. Public lands are being subjected to increased land use pressures and lack of activity on the mesas in the past cannot be assumed in the future.

4. South Caineville Mesa ACEC (4,200 acres)

   This mesa represents one of the last natural areas of cold-desert shrubland in the planning area. This resource would be lost if surface disturbing activities were to occur. Public lands are being subjected to increased land use pressures and lack of activity on the mesas in the past cannot be assumed in the future.

5. Blue Hills (44,908 acres)

   This closure will assist in protecting an area with unstable soils, significant scenery, and scientific values that are subjected to increasing ORV use. Closing this area will help contain ORV use to established concentration areas and identify to the public the restricted areas before unwanted user patterns evolve.

6. Dirty Devil (57,677 acres)

   The canyons of the Dirty Devil River have long been identified as having high scenic, geological, historical, cultural, and recreational values. Any ORV use in this area conflicts with these values. Although ORV use is currently low, it is preferable to guide ORV use away from this area by a management actions before user patterns become established.

7. Beaver Canyon ACEC (4,800 acres)

   Beaver Canyon has important biological values which would be lost or diminished if ORV use

occurred. Beaver Canyon is the cold-desert riparian ecosystem classified as being in good condition.

8. Gilbert Baldlands Research Natural Area (3,680 acres)

   This is an areas of important studies of geomorphic processes. The Upper Blue Hills have been a classic area of landform study since Gilbert worked here more than one hundred years ago. This lengthy period of investigation has allowed analysis of land form changes that are long-term on a human scale. Studies are still in progress today.

9. Hiking Trails

   The following hiking trails are closed:

   a. Mt. Ellen Summit
   b. Angel (both sides)
   c. Panorama Point
   d. Hog Spring
   e. Dandelion Flat
   f. North Caineville Mesa
   g. South Caineville Mesa

D. Road Closures

   1. Little Rockies

      Roads and ways on the west and south sides of the Little Rockies National Natural Landmark where access is no longer necessary for mining or ranching operations will be closed. The necessity and feasibility of rehabilitation will be determined.

2. Dirty Devil

Roads north of Happy Canyon within the Dirty Devil Canyon will be studied to determine the necessity and feasibility of rehabilitation.

3. Garfield and Wayne Counties

The Utah Off-Highway Vehicle Act of 1987 provides:

> "Off-highway vehicles may be operated on public lands, streets and highways that are posted by sign or designated by map by the controlling federal, state, county or city agency as open to off-highway vehicle use."

Public land as not identified as "limited" or "closed " are designated open to off-highway vehicles. County roads are closed for ORV use unless designated open by the county. An official position regarding county roads will be obtained from Garfield and Wayne Counties in order to ORV users to know which county roads on BLM administered public lands are available for their use.

V. PREDESIGNATION ACTIONS

The objective of predesignation actions is to develop procedures for advising the public of ORV designations, their purpose, and to identify requirements for on-the-ground implementation of travel restrictions. The purpose of this plan is to specify the minimum actions required for implementation.

A. Public Announcements and Participation

1. BLM will meet with Garfield and Wayne Counties to inform the Commissioners of the

designations, discuss the Utah Off-Highway Vehicle Act of 1987, and solicit support for enforcement.

2. Copies of the implementation plan will be sent to the State Resources Development Coordination Council, Division of State Parks, and National Park Service.

3. Notice of the designations will be published in the local and state newspapers. The articles will discuss the designations and their purpose emphasizing the volunteer compliance with the designations.

VI. DESIGNATION ACTIONS

A. Brochures and User Maps

Brochures and maps will be the primary source of public information for ORV designations.

1. ORV user maps (travel guides) will be prepared. The maps will be in accordance with adopted USO graphics standards and be $^1/_4$ inch to the mile scale. The maps will show land status and identify a number of recreation attractions located in the area and include the following:

   a. Reference to execution orders mandating ORV management designation.

   b. An explanation of the designations and their purposes.

   c. Restrictions applicable to the roads and trails in the closed and limited category.

   d. Messages on safety, environmental awareness, and outdoor manners.

e. Explanation of ORV signs and their meaning.

f. Land status will be shown in color to help the public identify the location of public, private and other agency lands.

2. Large scale maps of the designated areas will be prepared which show the location of designations; existing roads, trails, and ways; restrictions; and sign locations. These maps will become part of the use supervision files.

B. Signs

Identification of travel restrictions will be accomplished by use of signs. Signs will generally be installed only in problem areas or where there are high resource values which could be impacted by indiscriminant ORV use.

Standard BLM signs will be utilized along with standard decals and fiberglass sign units. A sign identifying the seasonal closure on Swap Mesa and Cave Flat will be ordered.

C. Use Supervision and Monitoring

Executive Order 1644 and 43 CFR 8342.3 require that the effects of ORV use be monitored on public lands and authorizes the amendment of designations when appropriate. Executive Order 11989 further provides that amendments shall be made whenever it is determined "that the use of ORVs will cause or is causing consideration adverse effects on soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources of particular areas of trails."

Use supervision and monitoring is a prerequisite to accomplishing the protection objectives associated with the various ORV designations. Increased work will be

required in supervising areas designated as "limited" and especially in the more sensitive areas designated "closed". The emphasis on use supervision will be placed on these areas.

Resource damage will be documented and recommendations made for corrective action. An ORV use supervision file will be established for each of the designated areas. All observations regarding the areas will be placed in the supervision files. Reports should identify, among other things, resource damage, the need for additional signing, sign maintenance, etc. Use supervision and monitoring will primarily be the responsibility of the HMRA Outdoor Recreation Planner.

Monitoring in open areas will focus on determining damage which may necessitate a change in designation. Visitor safety will be the responsibility of the user since operational hazards are inherent to this type of recreational activity. Careful vehicle operations and adherence to safety provisions of the ORV regulations will foster public safety. Speed limits have not been established for open or limited areas except in developed campgrounds. Terrain characteristics dictate a prudent speed.

Areas designated as limited or closed should, if accessible, be checked at least once per month from March through October. Inaccessible areas should be checked no less than twice annually, once early in the spring and once in the fall. Adjustments in this schedule can be made as experience is accumulated.

D. Special Monitoring: Lands Under Wilderness Review

The Interim-Management Policy and Guidelines for Lands Under Wilderness Review provides that ORV activity will be managed to prevent impairment of wilderness suitability. Continuing or increasing ORV use will result in increased adverse impacts and may require more restrictive management action. Lands under wilderness review will be shown on the maps and brochures. The restriction limiting ORV use to existing ways and trails will be monitored as part of the monthly wilderness study area surveillance patrols.

E. Maintenance

Maintenance inspections of signs in designated areas will be conducted at a minimum of two times per year and more often in sensitive areas. Patrols should be used to routinely identify sign maintenance needs.

F. Physical Constraints

The road into Bull Pasture, constructed by Cotter, will be physically closed.* While no other physical constraints have been identified they may be employed if signing is not successful in deterring ORV use in closed or limited areas.

VIII. ADMINSITRATIVE ACTIONS

A. Enforcement

Use supervision in open areas will concentrate on compliance with "regulations governing use" 43 CFR

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* Required by stipulation number 10, Cotter Corporation's Proposed Uranium Exploration Drilling Program in the Dirty Devil River Proposed Wilderness Study Area. (Environmental Assessment Record No. UT-050-0-102)

8341.1 and Rules of Conduct in 43 CFR 8365.1-4. In limited and closed areas, use supervision will focus on compliance with the ORV designations.

While use supervision efforts will primarily be directed towards promoting voluntary compliance with the ORV regulations and designations, legal action may become necessary to halt violations.

Enforcement of violations under trespass procedures will be accomplished by area and district personnel. Criminal violations must be referred to local law enforcement authorities or BLM special agents. District or area personnel should thoroughly document violations which have been knowingly and willfully committed prior to requesting outside assistance.

B. Nonrecreational Access

An exclusion is provided in the ORV regulations to allow for vehicular access in closed or limited areas. Other land owners and resource users that are affected by closed or limited designations should be contacted and requested to apply for specific access authorization. Case-by-case authorizations should be approved on the basis of demonstrated need or previous access requirements. Special conditions should be attached to each specific authorization to protect the resource values that necessitated a restrictive ORV designation.

C. Competitive/Commercial/Group Events

ORV events which are subject to provisions of the permit and fee system regulations (43 CFR 8372) will be restricted to designated open areas, particularly the ORV activity area.

San Rafael

Final Resource Management Plan
U.S. Department of the Interior
Bureau of Land Management
Utah State Office
Moab District
San Rafael Resource Area May 1991

* * * *

GENERAL MANAGEMENT GUIDANCE

Two public land areas, San Rafael Swell and Labyrinth Canyon, are managed as SRMAs in recognition of their intensive use or special recreation values. The remaining public lands are managed as an extensive recreation management area (RMA). An SRMA serves as the basis for preparing an activity plan. A recreation management plan will be developed for each SRMA in the planning area.

Dispersed recreation use will be allowed throughout the planning area, with permits required for commercial use. If demand increases, BLM may require permits for use in other areas where needed to protect resource values; this will not require a plan amendment.

Recreational rockhounding occurs throughout the planning area. No part of the planning area will be designated closed to rockhounding. However, fossils of scientific interest, including dinosaur bone, may not be collected on public land; Public Law 209 prohibits excavation or collection of fossils without a permit.

SRRA will continue to manage recreation use of the Green River in cooperation with the Grand Resource

Area, Moab District, BLM, and with the Utah State Division of Parks and Recreation.

Emery County and the town of Green River propose to establish a scenic loop road along existing vehicle routes in the San Rafael Swell and Desert. Alternatives or improvements to the existing road will be authorized on a case-by-case basis.

In the Nationwide Rivers Inventory (NRI) [NPS, 1982], NPS lists the Green and San Rafael Rivers as potential additions to the National Wild and Scenic Rivers System under the Wild and Scenic Rivers Act. BLM has identified a portion of Muddy Creek in SRRA as having potential for wild and scenic designation. Designation to the National Wild and Scenic Rivers System would be made by Congress and would amend this plan.

Interim management of the three rivers will serve to protect the identified values until Congress acts. NEPA documents prepared for any proposals for use of the study segments will take these values into account and provide mitigation for potentially adverse impacts. Actions allowed under interim management will be subject to the special conditions developed in the RMP (see Potential Wild and Scenic River Interim Management Prescriptions, chapter 3). Table 16 shows the potential classification of the several river segments (see map 16). Segment 5 of the San Rafael River was determined ineligible and thus not classified.

The three rivers identified above were the only rivers considered in the RMP process for eligibility for wild and scenic rivers. Additional planning will be needed to evaluate other rivers for eligibility under the Wild and Scenic Rivers Act. Suitability for designation as a wild

and scenic river will be determined in a future plan amendment for the three original rivers and any additional rivers or streams determined to be eligible.

ROS classes have been identified based on inventory work. Classes are based on five setting factors, which are reviewed periodically. A change in conditions could result in a change in ROS class. However, RMP special conditions (if any) developed to protect specific ROS class areas reflect conditions present when the RMP was prepared and may be changed only through a plan amendment.

Management restrictions are not necessary to maintain ROS class areas toward the urban end of the spectrum, including roaded natural (RN), rural (R) and urban (U). Therefore, no attempt will be made to manage for these specific ROS class areas.

ORV use designations developed in the RMP will be made following completion of an ORV implementation plan. Criteria will be developed to determine the specific course of action needed to implement the ORV allocation decision—ORV designations do not apply to state, county or BLM system roads, or to private or state inholdings. An assessment will be made to determine a

TABLE 16
Wild and Scenic River Study Segments
and Potential Classifications

River Name	Wild	Scenic
Green River	Segment 2: Ruby Ranch (mile 96) to Hey Joe Canyon (mile 76)	Segment 1: Green River State Park (mile 120) to Ruby Ranch (mile 96)
		Segment 3: Hay Joe Canyon (mile 76) to Canyonlands NP (mile 47)
San Rafael River	Segment 2: Lower Fuller Bottom (mile 103.7) to Johansen Cabin (mile 89.3)	Segment 1: Ferron/ Cottonwood confluence (mile 111) to Lower Fuller Bottom (mile 103.7)
	Segment 4: Lockhart Wash (mile 77.2) to Tidwell Bottom (mile 50.6)	Segment 3: Johansen Cabin (mile 89.3) to Lockhart Wash (mile 77.2)
Muddy Creek	Segment 1: Highway I-70 (mile 76.6) to gauging station above Lone Tree Crossing (mile 66.6)	Segment 2: Gauging station above Lone Tree Crossing (mile 65.6) to South Salt Wash (mile 53.6)

River Name	Wild	Scenic
	Segment 3: South Salt Wash (mile 63.5) to the north end of Tomsich Butte (mile 46)	Segment 4: Tomsich Butte (mile 46) to Penitentiary Canyon (mile 42.4)
	Segment 5: Penitentiary Canyon (mile 42.4) to Hidden Splendor Mine (mile 30)	Segment 6: Hidden Splendor Mine (mile 30) to Emery County boundary (mile 18.5)

NOTE: Segment 5 of the San Rafael River was determined ineligible and therefore not classified.

* * * *

purpose and need for public land non-system roads. Public participation will be encouraged to assist BLM in identifying which non-system roads should be designated as open. The implementation plan (map 17) will become effective following publication of a *Federal Register* notice after the RMP is complete.

The ORV designations do not distinguish between recreational and nonrecreational use; ORV use in an area designated closed or limited may be allowed under an authorized permit. ORV designations can be changed only through a plan amendment.

In 1986, a cooperative management agreement between BLM and Pathfinders Motorcycle Club, Inc. of Price, Utah provided for joint development and management of a system of motorcycle trails within the San Rafael Swell in the Temple Mountain vicinity. The agreement will remain in effect.

Current Recreation Management Areas	Acres
Special Recreation Management Areas	
- San Rafael Swell	846,340
- Labyrinth Canyon	49,220
TOTAL	895,560
Extensive Recreation Management Area	
- Remainder of SRRA	568,180
Developed Recreation Sites	
- San Rafael Campground	10
- Buckhorn Pictographs	10
- Cattleguard Pictographs	10
- Swasey Cabin Historic Site	10
- Wedge Overlook	20
- Tomsich Butte Campground	20
- Justasen Flats Campground	20
TOTAL	100
SPECIFIC MANAGEMENT AREAS	Acres
- Manage to preserve ROS P-class areas	117,720
- Manage to protect ROS SPMM-class areas outside ACECs	152,950
- Develop 2 SRM management plans	895,560
Developed Recreation Sites	*Acres*
- Intensify management of 7 developed recreation sites to protect facilities; develop or improve 3 of those recreation sites	100
ORV Use Designations	Acres
- Open to ORV use	[a]281,820
- Open with seasonal restrictions	[a] 11,600
- Limited to existing roads and trails	0
- Limited to designated roads and trails	1,018,650
- Closed to ORV use	151,770

[a] Subject to change, pending antelope fawning range inventory.

The following areas will be open to ORV use with seasonal restrictions:

- deer and elk crucial winter ranges (12/01 to 04/16)
- antelope crucial habitat (05/15 to 06/16)

ORV use in the following areas will be limited to designated roads and trails:

- Copper Globe, Dry Lake Archaeological District, Pictographs, and Swasey Cabin ACECs; and portions of Highway I-70 Scenic Corridor, Muddy Creek, Middle San Raf Canyon, San Rafael Reef, Segers Hole, and Sids Mountain ACECs
- existing land leases
- San Rafael Swell SRMA
- developed recreation sites
- critical soils
- riparian and aquatic habitat
- bighorn sheep crucial habitat

The following areas will be closed to ORV use:

- Big Flat Tops, Bowknot Bend, and Lower and Upper San Rafael Canyon ACECs; and portions of Muddy Creek, Highway I-70 Scenic Corridor, Middle San Rafael Canyon, Sids Mountain, Segers Hole, and San Rafael Reef ACECs
- ROS P-Class areas

VISUAL RESOURCE MANAGEMENT

MANAGEMENT OBJECTIVE

+ To provide design standards that protect or enhance designated VRM classes.

* * * *

TABLE 19

Anticipated Implementation and Monitoring of Plan Decisions, by Management Program

Program	Implementation	Schedule	Monitoring Objectives[a]
Oil and Gas Management	Issue leases with proper stipulations and special conditions (by USO).	Immediate upon approval of RMP	Ensure that plats are correct and leases are issued with proper conditions.
	Apply RMP stipulations and special conditions to applications for permit to drill (APDs) and other projects through NEPA documentation.	Ongoing.	Ensure compliance with NEPA; [a] determine if RMP objectives are valid.
	Apply RMP stipulations and special conditions to geophysical activities.	Ongoing.	Ensure compliance with FLPMA.[b]

Program	Implementation	Schedule	Monitoring Objectives[a]
Geothermal Management	Issue leases with proper stipulations and special conditions (by USA).	Undetermined	If leased, ensure that plats are correct and leases issued with proper conditions; fieldcheck for presence or absence of geothermal resources.
	Apply RMP stipulations and special conditions to licenses and plans of operation and other projects through NEPA documentation. Amend RMP if necessary.	Undetermined	Ensure compliance with NEPA; [a] determine if RMP objectives are valid.

Program	Implementation	Schedule	Monitoring Objectives[a]
Coal Management	Apply RMP and unsuitability stipulations and special conditions for leasing, exploration and mining operations on public land inside the Emery coal field.	Ongoing.	Ensure compliance with existing laws; determine if RMP and unsuitability objectives are valid. Ensure that plants are correct and leases are issued with proper conditions.
	Continue administering operations on coal leases.	Ongoing.	Ensure lease compliance.
Mineral Materials Management	Apply RMP stipulations and special conditions to applications for disposal through NEPA documentation.	Ongoing.	Ensure compliance with NEPA; [a] determine if RMP objectives are valid.

Program	Implementation	Schedule	Monitoring Objectives[a]
Cultural Resource Management (Concluded)	Prepare CRMPs; apply RMP stipulations and special conditions through NEPA documentation. Prioritize as follows: area CRMP (site managed for public values).	Area CRMP within 3 years; then one site-specific CRMP per year.	Ensure compliance with NEPA; [a] determine if RMP objectives are being met; see if RMP objectives are valid.
Wilderness Management	Reserved[c]	Reserved	Reserved
Recreation/ Visual Resource Management	Apply ORV designations; document through ORV implementation plan; apply RMP objectives through NEPA documentation.	Within 1 year after approval of RMP.	Ensure compliance with NEPA; [a] determine if RMP objectives are valid.
	Apply VRM classes in designated areas.	Immediate upon approval of RMP.	Watch for cumulative impacts; see if RMP objectives are met; determine if objectives are valid.

Program	Implementation	Schedule	Monitoring Objectives[a]
	Conduct suitability studies for wild and scenic river designations; coordinate with other agencies involved in joint studies and in preparing legislative EIS. Prioritize as follows: - Green River - San Rafael River - Muddy Creek	Within 5 years after approval of RMP.	Ensure studies are completed; determine followup actions; determine if RMP objectives are valid.
	Analyze all rivers in the resource area as to eligibility and classification for wild and scenic river designations and develop interim management prescriptions to protect classification.	Within 5 years after approval of RMP.	Ensure analysis is completed; determine followup actions; determine if interim management prescriptions and RMP objectives are appropriate.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

Case No. 2:99-CV-852K

SOUTHERN UTAH WILDERNESS ALLIANCE,
A UTAH NON-PROFIT CORPORATION, ET AL.,
PLAINTIFFS

v.

BRUCE BABBITT, UNITED STATES DEPARTMENT OF
INTERIOR IN HIS CAPACITY AS SECRETARY OF
INTERIOR, DEFENDANTS

AND

UTAH SHARED ACCESS ALLIANCE, A UTAH NON-PROFIT
CORPORATION, ET AL., DEFENDANTS-INTERVENORS

DEFENDANTS' RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSIONS

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* * * *

Request No. 8: The BLM has not prepared and/or distributed an ORV designation brochure, as that item is utilized on page 4 in the Price River Resource Area Off-Road Vehicle Implementation Plan.

Response: Admitted.

Request No. 9: The BLM has not prepared or established "ORV designations," with corresponding notices in the Federal Register, as that term is utilized on page

7 in the Price River Resource Area Off-Road Vehicle Implementation Plan.

Response: Admitted.

Request No. 10: The BLM has not prepared and/or implemented an "ORV implementation plan," as that term is utilized on page 99 in the San Rafael Resource Management Plan.

Response: Denied. The BLM has prepared a proposed San Rafael Off-Highway Vehicle Travel Plan, dated October 6, 1997. The plan has gone through the public scooping process, and the recent San Rafael closures constitute a partial implementation of the plan.

* * * *

Request No. 16: The BLM has not closed "Trugh Hollow" to ORV use as required on page 2 in the Forest Planning Unit Off-Road Vehicle Implementation Plan.

Response: Admitted.

Request No. 17: The BLM has not implemented the monitoring duties described as "post-designations" on pages 3-4 in the Forest Planning Unit Off-Road Vehicle Implementation Plan.

Response: Admitted.

Request No. 18: The BLM has not prepared a map or brochure illustrating the ORV designations in the Mountain Valley Planning Unit, as that obligation is stated on page 3 of the Mountain Valley Planning Area Off-Road Vehicle Implementation Plan.

Response: Admitted.

Request No. 19: The BLM has not implemented and/or documented the monitoring detailed as a "miti-

gating measure []" on page 35 in the Henry Mountains Planning Area ORV Implementation Plan EA and as detailed as "post designation actions" in section VI of the Henry Mountain Resource Area Off-Road Vehicle Implementation Plan.

Response: Admitted.

Request No. 20: The BLM has not engaged in "special monitoring" of "Factory Butte," as those terms as utilized in section IV.A.2 of the Henry Mountain Resource Area Off-Road Vehicle Implementation Plan.

Response: Admitted.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

Case No. 2:99-CV-852K

SOUTHERN UTAH WILDERNESS ALLIANCE,
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v.

BRUCE BABBITT, UNITED STATES DEPARTMENT OF
INTERIOR IN HIS CAPACITY AS SECRETARY OF
INTERIOR, DEFENDANTS

UTAH SHARED ACCESS ALLIANCE, A UTAH NON-PROFIT
CORPORATION, ET AL., BLUE RIBBON COALITION, AN
IDAHO NONPROFIT CORPORATION, ELITE MOTOR-CYCLE
TOURS, A UTAH CORPORATION, AND ANTHONY
CHATTERLY, DEFENDANTS-INTERVENORS

Transcript of Hearing on Motion
for Preliminary Injunction

[Aug. 28, 2000]

Volume I

BEFORE THE HONORABLE DALE A. KIMBALL

Reported By: Karen Murakami, CSR, RPR,
Laura Robinson, RPR

[Argument of Paul A. Torke for Intervenors]

[29]

* * * *

that standard. I think where we end up in this analysis in this case is that there must be a showing that the degradation which has occurred impairs the entire areas of suitability for possible wilderness designation.

To state that standard exposes the fact that that is the kind of determination that can't be made in an APA 706(1)case.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

Case No. 2:99-CV-852K

SOUTHERN UTAH WILDERNESS ALLIANCE,
A UTAH NON-PROFIT CORPORATION, ET AL., PLAINTIFFS

v.

BRUCE BABBITT, UNITED STATES DEPARTMENT OF
INTERIOR IN HIS CAPACITY AS SECRETARY OF
INTERIOR, DEFENDANTS

UTAH SHARED ACCESS ALLIANCE, A UTAH NON-PROFIT
CORPORATION, ET AL., BLUE RIBBON COALITION, AN
IDAHO NONPROFIT CORPORATION, ELITE MOTOR-CYCLE
TOURS, A UTAH CORPORATION, AND ANTHONY
CHATTERLY, DEFENDANTS-INTERVENORS

Reporters' Transcript of Proceedings

[Aug. 29, 2000]

Volume II

BEFORE THE HONORABLE DALE A. KIMBALL

[Testimony of Bill Stringer, BLM]

* * * *

Q. Sorry. Are you under the impression that 200 acres–200 acres of damage is not in violation of the IMP?

A. I guess I am, yes.

Q. Thank you. I'm sorry, the second question—

[306]

THE COURT: Wait a minute, he is entitled to finish his answer. Don't interrupt.

THE WITNESS: The way the 200 acres is, it is not a large block of land in the middle or it is not a consolidated piece, it is a very small piece along an edge.

And altogether, even if it were a block on the southeastern end, it constitutes less than I think it is eight-tenths of a percent of the overall area. And that I would say in my capacity if we were asked again to supply that information to the president for recommendation to congress we would not not change that recommendation.

* * * *

[Testimony of Ronald Bolander, BLM]

[378]

* * * *

Q. Let me try to get this a different way. What kind of change in ORV use and impacts would bring about a change In your management plans or would cause you to initiate a change in your management plans?

A. In general or for Factory Butte?

Q. For Factory Butte?

A. Oh, I would think if we had data to indicate over a period of years that conflicts were occurring and we were, you know, we were able to quantify those data in some manner do some kind of analysis on it through NEPA through some kind of scoping process to look in trying to decide exactly what the issues involved were, and then be able to make an informed defendable decision that is probably the process we would take.

Q. Now you have to have monitoring to get that kind of data, wouldn't you?

A. I would think so, yes.

Q. And you have not had any kind of formal monitoring in that kind of area in the last 10 years or so have you?

A. Up until this spring well, to answer your question it is no we have not.

Q. And this spring you hired Mr. Finger and he has stated monitoring; is that correct?

A. He has. But we're even to that extent if we were [379] to take the data that we have accumulated over the last 10 years or so and the data that—that Mr. Finger has gathered for us in these recent years, I still don't believe—excuse me, in the last few months. We're still not to the point, I don't think, where we would have something that you could really get your teeth into.

Q. Well let me ask you this. You don't know, do youwhat the ORV use was like in this area back in 1990, do you?

A. Personally?

Q. Yes?

A. Personally I don't. As an agency we do.

Q. Where would that information be?

A. There are still some folks around that worked in that area in 1990 that, you know, would be able to and even in our office that I have talked to that have a sense for what kind of use was occurring at that time.

Q. I see. That would be word of mouth knowledge?

A. That is true.

Q. No documentation?

A. Very little.

Q. Nothing over 10 years you would call a data site?

A. That is true.

Q. Started in March?

A. That is true.

Q. Started in response to this lawsuit?

[380]

A. That is not true.

Q. Um, let me—do you remember your deposition, Mr. Henderson?

A. Very well. It was only last Monday.

Q. Okay. May I approach the witness, Your Honor?

THE COURT: Yes you may.

Q. (By Mr. Wiygul) This is a transcript of your deposition. Could I ask you to read this question answer that are highlighted here? I'll just mark that for you?

A. The question is what prompted the initiation of the monitoring effort Tim Finger arrived in Richfield? The answer well, you know I would be lying if I said it

wasn't a pretty high priority on our plate just because of this action.

Q. Now, would you agree with that again today?

A. Yes, but that is not the question you asked me.

Q. Okay. All right. I appreciate that. That monitoring, Mr. Finger started is going to give you the kind of information that you actually need to make those management decisions our there; isn't that correct?

A. I think ultimately it will, yes.

* * * *

IN THE UNITED STATES DISTRICT COURT
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Case No. 2:99-CV-852K

SOUTHERN UTAH WILDERNESS ALLIANCE,
A UTAH NON-PROFIT CORPORATION, ET AL., PLAINTIFFS

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BRUCE BABBITT, UNITED STATES DEPARTMENT OF
INTERIOR IN HIS CAPACITY AS SECRETARY OF
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UTAH SHARED ACCESS ALLIANCE, A UTAH NON-PROFIT
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TOURS, A UTAH CORPORATION, AND ANTHONY
CHATTERLY, DEFENDANTS-INTERVENORS

Reporter's Transcript of Proceedings
Motion Hearing

[Aug. 30, 2000]

Volume I

BEFORE THE HONORABLE DALE A. KIMBALL

[Testimony of Ronald Bolander]

[508]

* * * *

Q. Okay. And you said that you obtained some guidance from Mr. Smith about the temporary aspect of plan—I'm sorry—the temporary aspects of the IMP rule?

A. That was discussion held with several of the team members.

Q. Okay. Was— what was your understanding about the temporary aspect of the IMP rule and how did you apply t?

[509]

A. The way it was applied was that any disturbances or anything like that, if there was a reasonable chance of reclamation occurring, natural reclamation which would not require assistance such as seeding or re-contouring or that sort of thing, I forget what the third one is, that if the area were able to heal itself, then that would be temporary. IMP to my understanding does not put a time frame on it.

Q. Okay. So it could be two year, five years, years? Did you have a time period in mind that it would be a temporary aspect of the rule?

A. No, we did not.

Q. So you didn't know what temporary meant?

A. Yes, we did.

Q. Tell me how long is temporary?

A. Temporary means that the effects will eventually —that the affects of some action will eventually dis-appear.

Q. In geologic time or can you put a year on it?

A. No. I mean, it depends on the action.

Q. Okay. Because all actions will presumably eventually disappear given a sufficient amount time; right?

A. Yeah, that's correct.

* * * *

[Testimony of Verlin Smith, BLM]

[605]

* * * *

Q. And you're aware of the nonimpairment standards of FLPMA; correct?

A. Yes.

Q. Is it your understanding that creation of new trails by off-road vehicle use would be an impairment or violation of the impairment standards of FLPMA if they were created after 1980?

A. Not necessarily of the impairment standards. We apply the impairment on a whole WSA basis. It would be inconsistent with the IMP where we try to keep authorized use just on inventoried routes.

* * * *

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

Case No. 2:99-CV-852K

SOUTHERN UTAH WILDERNESS ALLIANCE, A UTAH NON-PROFIT CORPORATION, THE SIERRA CLUB, A CALIFORNIA NON-PROFIT CORPORATION, THE GREAT OLD BROADS FOR WILDERNESS, A UTAH NON-PROFIT CORPORATION, WILDLANDS CPR, A MONTANA NON-PROFIT CORPORATION, UTAH COUNCIL OF TROUT UNLIMITED, A UTAH NON-PROFIT ORGANIZATION, AMERICAN LANDS ALLIANCE, A NATIONAL NON-PROFIT CORPORATION, THE FRIENDS OF THE ABAJOS, A UTAH NON-PROFIT CORPORATON, PLAINTIFFS

v.

BRUCE BABBITT, UNITED STATES DEPARTMENT OF INTERIOR IN HIS CAPACITY AS SECRETARY OF INTERIOR, TOM FRY, DIRECTOR, BUREAU OF LAND MANAGEMENT, AND THE BUREAU OF LAND MANAGEMENT, DEFENDANTS AND

UTAH SHARED ACCESS ALLIANCE, A UTAH NON-PROFIT CORPORATION, ET AL., DEFENDANTS-INTERVENORS

UNITED STATES RESPONSE
TO PLAINTIFFS' SUPPLEMENTAL BRIEFING RE:
SEVENTH CAUSE OF ACTION

"An agency's failure to prepare an SEIS is reviewed under § 706(1) of the APA, which requires the court to "compel agency action unlawfully withheld or unreasonably delayed. To prevail, plaintiff must show that defendants have refused to prepare an SEIS despite a clear legal duty to do so." *Oregon Natural*

Resources Defense Council Action v. United States Forest Service, 59 F. Supp.2d 1085, 1095 (W.D. Wash. 1999), citing *ONRC Action*, 150 F.3d at 1137.

BLM has recognized that OHV use on public lands generally has increased over the past few years and is taking significant steps to deal with the implications and effects on a national basis and within Utah. *See* US Memorandum at 15-19. Up to this point the agency has not yet made any formal determination as to whether any Utah land use plan or travel plan requires amendment or revision or the preparation of a supplemental EIS or EA; rather, it is taking broad planning steps and localized actions on the ground to deal with the immediate and long-term issues, while continuing to gather information.

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Attorneys for the United States of America

EARTHJUSTICE

February 8, 2002

United States Court of Appeals
for the Tenth Circuit
Office of the Clerk
Byron White United States Courthouse
Denver, CO 80257

Re: Notice of Supplemental Authority for *Southern Utah Wilderness Alliance v. Norton*, No. 01-4009

Dear Clerk:

Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, I am writing to notify this Court of two pertinent and significant authorities that have come to my attention since the January 14 oral argument in this appeal.

The first authority is a February 13, 1998 order issued by the District of Montana in *Montana Wilderness Association v. United States Forest Service*, a copy of which is attached as Exhibit 1. In its reply brief in this Court, Southern Utah Wilderness Alliance (SUWA) pointed out that the District of Montana had used its power under 5 U.S.C. § 706(1) to address the Forest Service's failure to comply with the Montana Wilderness Study Area Act of 1977, which imposes a legal duty that is nearly identical to the non-impairment duty at issue in this appeal. *See* Appellants' Reply Brief at 5 (citing *Montana Wilderness Association v. United States Forest Service*, 146 F. Supp.2d

1118 (D. Mont. 2001), *appeal pending*). Exhibit A is an earlier order from *Montana Wilderness Association* in which the court denied a motion to dismiss in which the defendant-intervenors argued, just as does BLM in this appeal, that the court lacked jurisdiction to hear plaintiffs' claim. *See* Exh. at 3-5; Brief for Federal Appellees Gale Norton and Bureau of Land Management at 35-40. In rejecting the motion the Montana court held that it had jurisdiction to hear plaintiffs' non-impairment claim under 5 U.S.C. § 706(1). *Id.* at 4-5.

The second authority is related to a question that Judge Ebel asked at the January 14, 2002 oral argument. In discussing SUWA's supplemental NEPA, Judge Ebel asked about the magnitude of the increase in the number of ORV users in Utah. Counsel for SUWA were unable to answer at the time. Exhibit 2, which is a table showing the number of registered ORV users in Utah, responds to Judge Ebel's question to some degree. That table indicates that the number of registered ORV users (motorcycle and ATVs (all-terrain vehicles) in Utah was 83,054 in 2000, whereas the number of registered users was: (1) just over 9,000 in 1980 when the most recent NEPA analysis was done for the Parunaweap area; (2) 24,344 in 1985 when the most recent NEPA analysis was carried out for the Grand Resource Area; and (3) was 43,582 when the most recent NEPA analyses were prepared for the Indian Creek and San Rafael Swell areas. *See* Appellants' Opening Brief at 23-25 (describing most recent NEPA analyses for the areas addressed by SUWA's supplemental NEPA claim). While this table, which was provided by State of Utah, depicts the increase in the number of registered ORV users in the State, it does not account for the increase in the number of ORV

users who come to Utah from out-of-state. Nor does it account for ORV use by Utah citizens who choose not to register their vehicle with the State.

Respectfully,

James S. Angell
Attorney for Southern Utah Wilderness Alliance, et al.

* * * *

EXHIBIT 2

STEPHEN BLOCH, declares, as follows:

1. I am an attorney for Southern Utah Wilderness Alliance ("SUWA") and have held this position for three years. I have personal knowledge of each of the facts set forth below, and if called upon to do so, could and would testify regarding the following. This Declaration is filed in support of SUWA's Supplemental Authority in the above-captioned matter.

2. On January 31, 2002, I left a telephone message for Mr. Bill Thompson, the State of Utah, Department of Natural Resources, Division of State Parks and Recreation, Assistant off-highway vehicle coordinator, asking Mr. Thompson for a copy of the most current information regarding State of Utah off-highway vehicle registration figures.

3. Later on January 31, 2002, Mr. Thompson faxed me a copy of the document titled "ORV Registration

Numbers," and identified as Exhibit 1 to this Declaration.

4. On February 5, 2002, I spoke with Mr. Thompson and confirmed that Exhibit 1 indicates the number of motorcycles and ATVs (an identified sub-set of OHVs) registered in the State of Utah from 1972 to 2000. Mr. Thompson stated that the information displayed in Exhibit 1 was provided by the Utah State Tax Commission, the state governmental entity responsible for collecting OHV registration fees.

I DECLARE, under penalty of perjury, that the foregoing is true and correct.

/s/ Feb. 5, 2002
Stephen Bloch Date

OHV REGISTRATION NUMBERS			
YEAR	SNOWMOBILES	MOTORCYCLES/ ARVs	TOTAL
1972	8,195	2,048	10,243
1973	11,881	4,620	16,501
1974	12,067	6,477	18,544
1975	13,964	7,534	21,498
1976	16,207	8,065	24,272
1977	11,729	8,257	19,988
1978	16,207	9,262	25,469
1979	17,211	9,428	26,639
1980	16,612	9,094	25,706
1981	14,984	9,564	24,548
1982	17,016	10,986	28,002
1983	16,355	14,781	31,136
1984	16,439	20,901	37,340

1985	13,480	24,344	37,824
1986	13,091	27,565	40,656
1987	12,664	27,774	40,428
1988	12,654	26,898	39,552
1989	13,667	30,926	44,593
1990	12,776	34,010	46,786
1991	18,602	43,592	62,194
1992	14,092	48,582	62,674
1993	18,956	44,015	62,971
1994	18,833	47,509	66,342
1995	21,215	50,194	71,409
1996	22,593	56,839	79,432
1997	24,498	62,980	87,478
1998	26,912	51,744	77,656
1999	22,543	68,694	91,237
2000	27,894	83,054	110,948

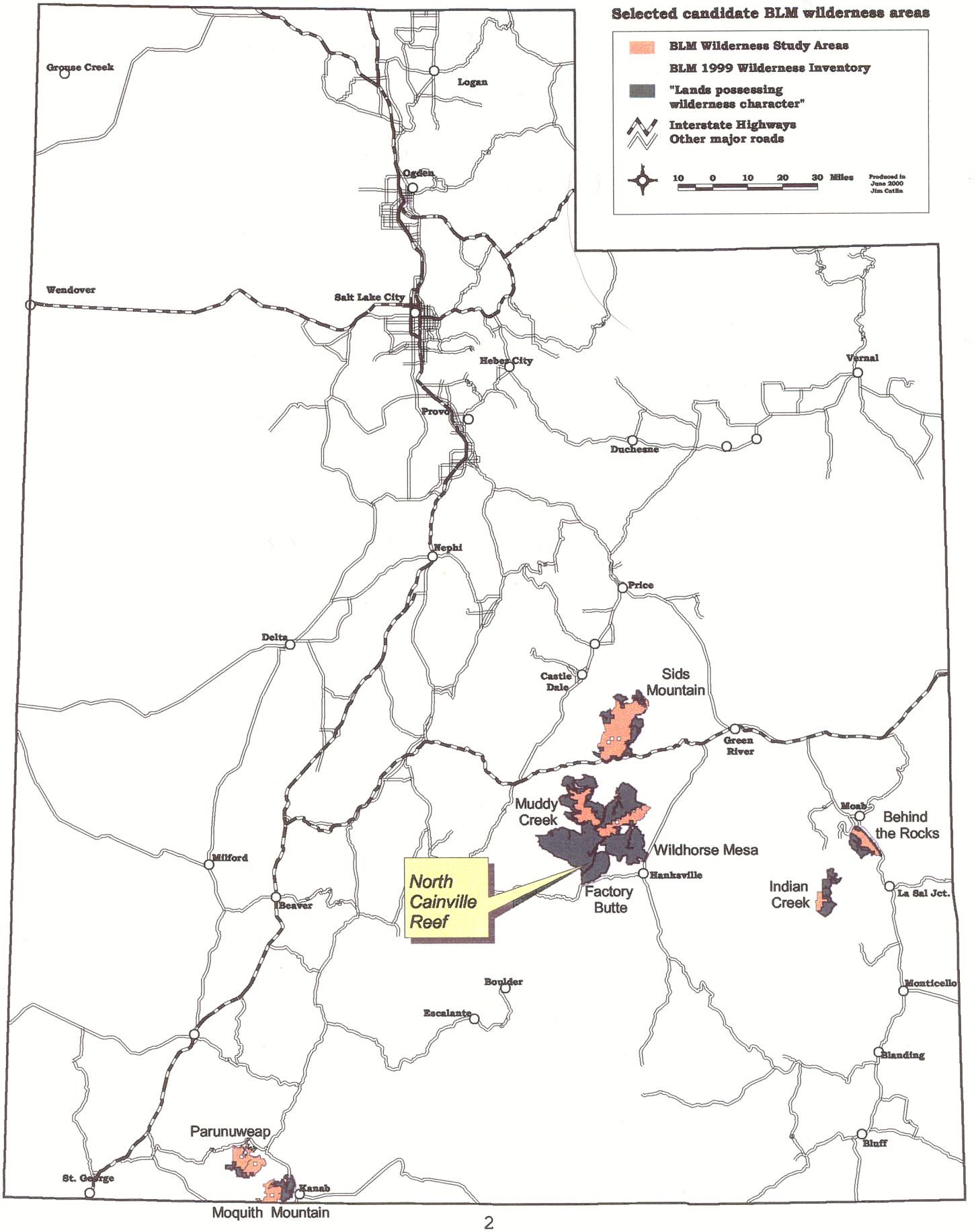
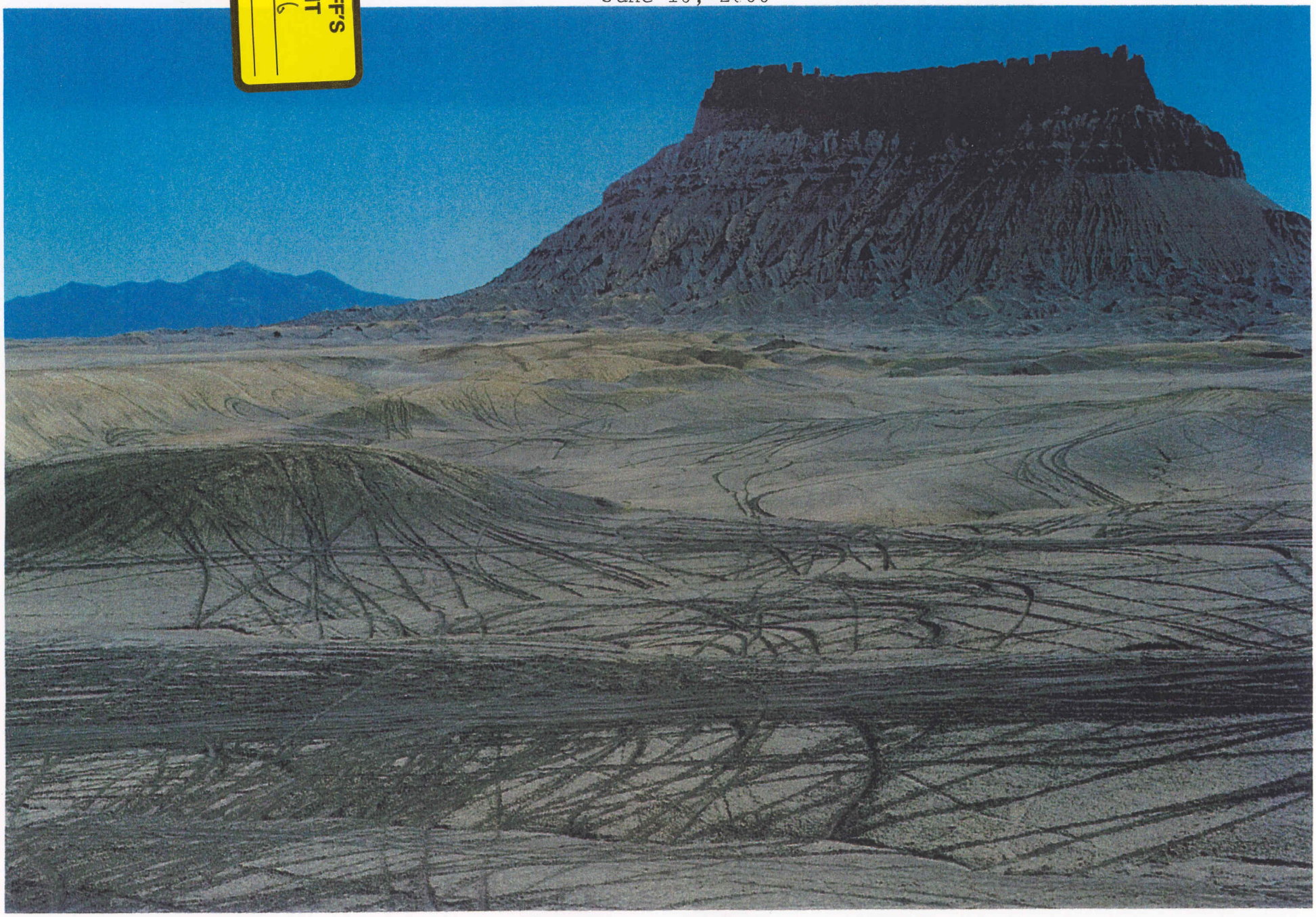
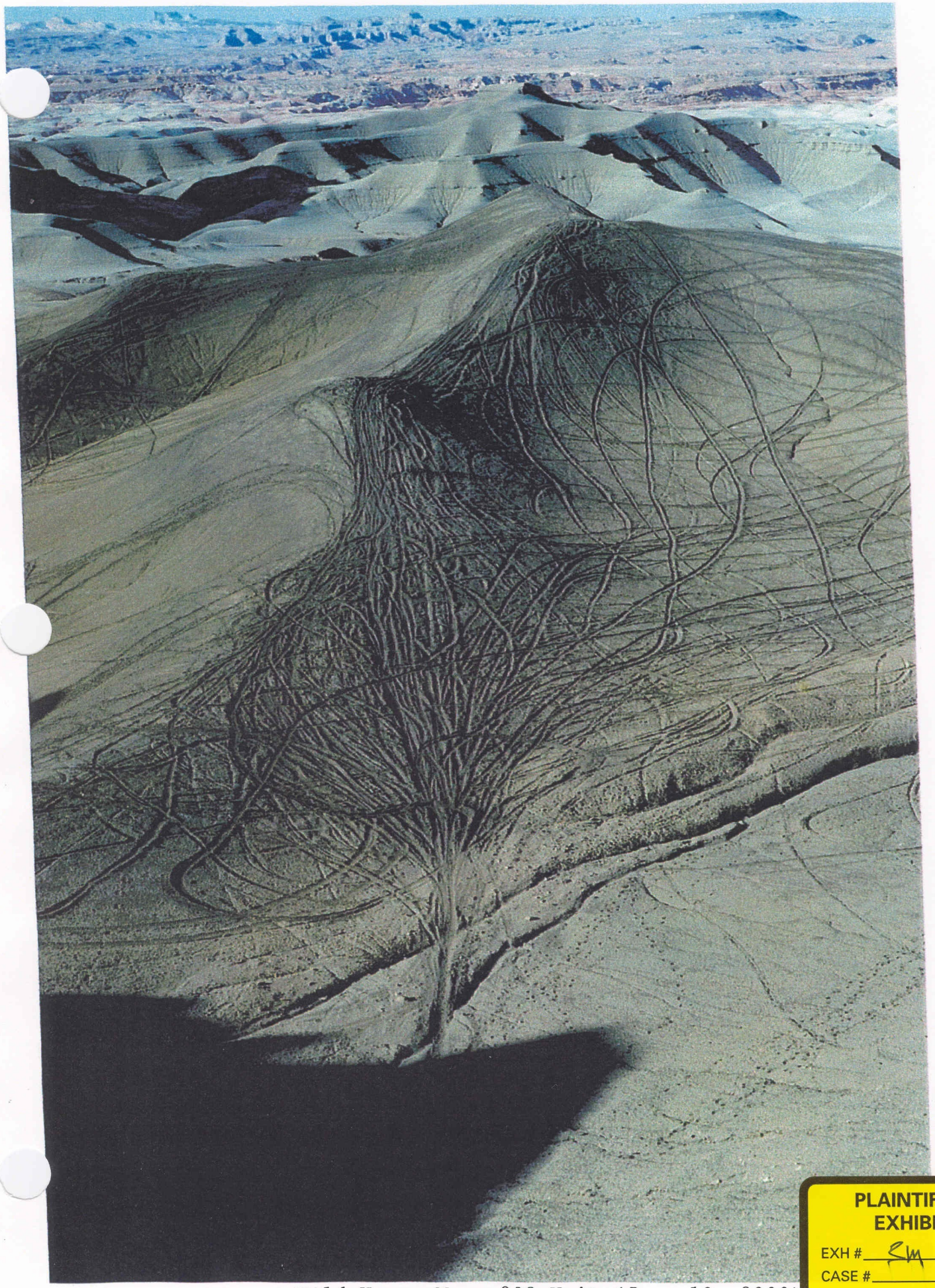

Selected candidate BLM wilderness areas
BLM Wilderness Study Areas
BLM 1999 Wilderness Inventory
"Lands possessing wilderness character"
Interstate Highways
Other major roads
10 0 10 20 30 Miles
Produced in June 2000 Jim Catlin
Grouse Creek
Logan
Ogden
Wendover
Salt Lake City
Heber City
Vernal
Provo
Duchesne
Nephi
Price
Delta
Castle Dale
Sids Mountain
Green River
Muddy Creek
Moab
Behind the Rocks
Wildhorse Mesa
Milford
Hanksville
North Cainville Reef
Factory Butte
Indian Creek
La Sal Jct.
Beaver
Boulder
Monticello
Escalante
Blanding
Parunuweap
Bluff
St. George
Kanab
Moquith Mountain

Figure 1

PLAINTIFF'S EXHIBIT
EXH # 36
CASE #

Muddy Creek-Crack Canyon 202 Unit
Factory Butte
June 10, 2000





Wild Horse Mesa 202 Unit (June 10, 2000)

PLAINTIFF'S EXHIBIT
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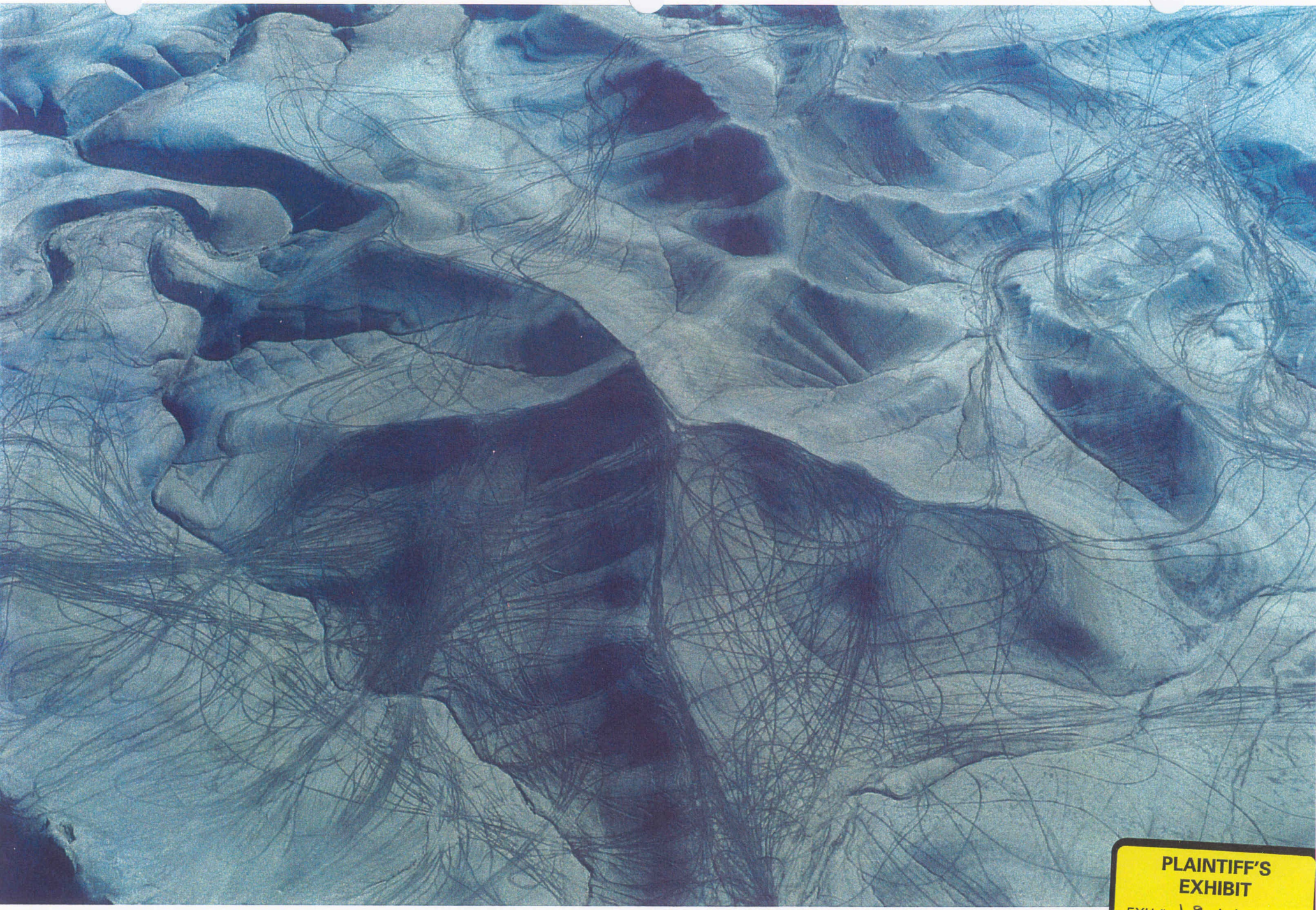
CASE #

PLAINTIFF'S EXHIBIT

EXH # 1944

CASE #



PLAINTIFF'S EXHIBIT

EXH # 1900

CASE #