

Conserve Southwest Utah
Thomas J. Butine
321 North Mall Drive, B202
Saint George, Utah 84790
425-893-9781
tom@conserveswu.org

Richard A. Spotts
255 North 2790 East
Saint George, Utah 84790
435-669-0206
raspotts2@gmail.com

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

CONSERVE SOUTHWEST UTAH)	
AND RICHARD A. SPOTTS	)	IBLA No. 2021-0121
)	
	)	Re: Saint George Field
Appellants,	)	Office’s Finding of No
v.	)	Significant Impact and
	)	Decision Record for the
BUREAU OF LAND MANAGEMENT,	)	Long Valley Road Extension
	)	Right-of-Way Project
Respondent.)	
	)	DOI-BLM-UT-C030-
	)	2020-0004 EA
	)	BLM File: UTU-94658

REPLY TO SOLICITOR’S ANSWER TO STATEMENT OF REASONS

1. Focus of the Appeal

In its Answer to the Statement of Reasons (SOR), BLM claims that the appeal should be dismissed because the reasons reflect the appellants’ “disagreement with BLM’s decision reflects dissatisfaction with the agency’s policy decisions rather than a violation of law” (page 2). While the Appellants are clearly dissatisfied with BLM’s policy decisions, the appeal is based on violations of relevant laws under this set of specific facts. The SOR raises many legal violations, but the primary focus of this Reply is on what we consider to be the most egregious issues with the decision to allow the Long Valley Road Extension through

Warner Ridge/Fort Pearce Area of Critical Environmental Concern (ACEC): BLM's failure to adequately analyze reasonable alternatives and cumulative effects as required by the National Environmental Policy Act, as noted in the SOR. Our response to other elements of BLM's Answer to the SOR are addressed in comments made directly in the context of BLM's Answer (see Attachment 1).

2. Appellants' Standing

Three declarations of standing were submitted: (1) Conserve Southwest Utah (CSU), an organization, (2) Thomas J. Butine, an individual and board president of CSU, and (3) Richard Spotts, an individual and member of CSU (originally submitted as item 4 in the SOR). Declarations (1) and (2) were submitted as a single document, attached to the SOR. BLM criticizes the two individual statements but makes no mention of CSU's organizational standing. We therefore consider the CSU standing was accepted as submitted. It has been updated to further explain its members' expectations that the CSU mission is supported by this appeal. CSU's members share and support the organization's mission to conserve public lands, most especially those that are designated with special protections such as ACECs. Butine's Declaration of Standing has been updated to clarify his past and future use of the specific ACEC subject to this appeal. See Attachment 2 for the updated CSU/Butine Declaration of Standing.

3. BLM Failure to Adequately Analyze Reasonable Alternatives

BLM contends there is no valid “action alternative” other than the proposed action described in the Environmental Assessment (EA). Appellants contend there is, and provided one, which BLM rejected for invalid reasons, described as follows:

- a. BLM contends the only alternative that will meet the applicant’s purpose and need is to extend the Long Valley Road through the ACEC to connect to a planned interchange at approximately milepost 12.3 on SR-7/Southern Parkway as defined in the Environmental Assessment, claiming that “No additional alternatives were considered. Due to the topographical features of the area and the location of the Southern Parkway, including the planned 3650 South Interchange, no other alternative would reasonably meet the purpose and need of the project; therefore, the only alternatives considered in this EA are the Proposed Action and the No Action Alternative.” ([Final EA](#), section 2.4, page 17/20)
- b. CSU contested this claim in its Comments on the Draft EA (Attachment 3, item 1), suggesting an alternative location for the connection of Long Valley Road with the SR-7/Southern Parkway that would avoid the ACEC, resulting in much less environmental damage and significantly shortening the length of new road construction required, and submitted evidence that topography was not an issue.
- c. In the Final EA, BLM rejected that alternative, stating that “The BLM evaluated potential reasonable alternatives. It was determined that none were available that would result in fewer adverse environmental impacts and still meet the purpose and need of the Proposed Action.” (See Appendix E, table E-2 on page E-2 (107) of the [Final EA](#)).

- d. BLM cannot properly argue both that (1) no additional alternatives need to be analyzed (item (a) above) and that (2) it evaluated potential reasonable alternatives (item (c) above). If other alternatives were evaluated, they, and the reasons for rejecting them, should have been described in the EA.
- e. Appellants' SOR reiterated the alternative described in item (b) above, and BLM's Answer listed three reasons for rejecting that alternative:
- i. Topography: "The BLM *identified* the topographical features around the Project Area, the location of the existing Southern Parkway, and the planned location of the future 3650 South Interchange as factors that prevented other alternatives from warranting further consideration."¹ (emphasis added)

This statement is false. BLM *did not identify* any topographical features that prevented considering other alternatives, *but rather just said there were such features*, offering no evidence. CSU, in its Draft EA Comments, submitted several points of evidence, which are refined in Attachment 4, Long Valley Road Extension Issues, offering maps, including topographical maps, as well as photos and drone video, showing there are no significant topographical differences between the BLM-preferred location in the ACEC and the CSU-proposed alternative outside the ACEC.
 - ii. Jurisdiction: BLM claims that since the appellants proposed alternative does not align with UDOT's plans for the Southern Parkway, BLM is powerless to consider it².

¹ BLM Answer to SOR, copied as the basis for Attachment 1, page 5

² BLM Answer to SOR, copied as the basis for Attachment 1, page 11

This statement appears to be false from our experience with the Northern Corridor Environmental Impact Statement³, where several alternatives outside of BLM jurisdiction were considered and two were analyzed in detail. In addition, despite potential harm to the ACEC and listed species, BLM failed to identify an agency purpose and need that would balance the applicant's purpose in order to avoid or minimize adverse impacts. Therefore, precedent indicates BLM can consider alternatives not completely within its jurisdiction. In the case of the Long Valley Road, the land involved is completely within BLM's jurisdiction, outside of the ACEC but still inside BLM-managed land. The only aspect outside BLM jurisdiction is requesting the applicant initiate a discussion with UDOT to consider moving the planned interchange a distance of approximately 0.7-mile north on SR-7. Apparently neither the BLM nor the applicant initiated this discussion with UDOT, and there is no evidence of any attempt to consider or request the relocation. We conclude that it was just easier for BLM to violate the purpose of the ACEC than it was to contact UDOT.

- iii. Cost: Appellants must “demonstrate, with objective proof, that the alternative not only would achieve the intended purposes of the proposed action at less *cost to the environment, but also [is] technically and economically feasible in the particular circumstances of the case.*” “As BLM explained, a change to the currently planned interchange “*would require an application from a qualified proponent who would then plan and pay for the interchange.*” *Id.* Those changes would also “need to meet UDOT standards and the Southern Parkway Standards for spacing and obtain a permit from UDOT to construct the interchange.” *Id.* “While Appellants may be technically correct that a change in the location of the proposed 3650 South Interchange would require a

³https://www.fws.gov/utahfieldoffice/Library/FEIS_Vol1_ExecSummary_NorthernCorridor_WashingtonCtyITP.pdf see section ES 4.1, page ES-6, alternatives 5 and 6.

shorter ROW across BLM lands, their desires do not reflect the reality on the ground. BLM does not have any authority to unilaterally make those changes. Further, it is unreasonable to expect BLM will consider such an alternative when it is inconsistent with the governing jurisdiction's controlling management plan."⁴

CSU's proposal does not require a new interchange, but rather adjusting the pre-existing plan to build an interchange 0.7-mile north of the current proposed location. There is no evidence that the planned interchange is designed or that moving it 0.7-mile would cause an increase in its design or construction costs. Logic indicates it would not increase those costs because the topography and approach are similar. BLM has at least an equal responsibility to protect its specifically designated environmental areas as it does to accommodate the management plans of governing jurisdictions, especially if there are no significant cost issues. Again, it appears that neither the BLM nor the applicant wanted to bother with negotiating a change in the plan for this interchange. The ACEC was deemed expendable.

4. BLM Failure to Adequately Analyze Cumulative Effects

BLM claims that the impact of the Long Valley Road Extension to Endangered Species Act (ESA)-listed species is minimal. Appellants find it to be an on-going irony that BLM continues to argue that an action is inconsequential when it causes only additional incremental impact. Such actions inflict impacts on species listed as endangered or threatened due to the cumulative incremental human actions in an area specifically designated to protect them from such

⁴ BLM Answer to SOR, copied as the basis for Attachment 1, pages 11-12.

incremental actions. The habitat for the two species that would be impacted by this road has continuously been impacted by cumulatively incremental yet continuous degradation.

BLM's Answer cited the U.S. Fish and Wildlife Service's (FWS) acceptance of BLM's biological assessment to defend BLM's cumulative effects EA analysis for these ESA-listed species. However, the FWS was limited to evaluating what BLM and the ROW applicant proposed. FWS did not conduct an independent evaluation of whether another feasible alternative would have been better. FWS was also limited in its evaluation to whether the proposed action would "jeopardize" the continued existence of the ESA-listed species. This is a very high bar, and much different than the question of whether BLM adequately acknowledged and analyzed a feasible alternative under the National Environmental Policy Act (NEPA). For example, FWS has a long history of issuing "no jeopardy" ESA determinations for a variety of proposed projects that would harm threatened Mojave desert tortoises, while at the same time acknowledging that after three decades of ESA protection, most Mojave desert tortoise populations have rapidly declined, some to the point of likely no longer being viable. Appellants know that BLM ESA compliance is much different from NEPA compliance. One does not necessarily equal the other. Appellants did not raise any ESA claims in this appeal because of this difference and the fact that the IBLA does not have jurisdiction over the FWS.

Conclusion

Appellants stand by their SOR and the specific claims therein. We believe that these claims, along with the photos, drone video, and other factual evidence submitted, demonstrate that BLM was arbitrary and capricious in largely ignoring our EA comments, and that the EA analysis was clearly biased and inadequate. We respectfully request that the Board set aside this BLM decision and remand the EA to BLM to correct the specified inadequacies.

Respectfully submitted this 7th day of April, 2021.

/s/ Thomas J. Butine
Signed by Thomas J. Butine
for Conserve Southwest Utah

/s/ Richard Spotts
Signed by Richard Spotts

Attachments:

1. Long Valley Road Extension – BLM’s Answers to SOR, with Appellants’ Detailed Comments
2. CSU/Butine Declaration of Standing
3. Appellants’ Comments on the Draft Environmental Assessment
4. Long Valley Road Extension Issues Paper

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2021, I sent this REPLY TO THE SOLICITOR’S ANSWER TO THE STATEMENT OF REASONS via email as agreed to by the Interior Board of Land Appeals, Respondent BLM and its SOL attorney, Washington City, and with copies sent to Appellants as follows:

Interior Board of Land Appeals
801 N. Quincy St., MS-300-QC
Arlington, Virginia 22203
ibla@oha.doi.gov

Bureau of Land Management
Keith Rigrup
345 East Riverside Drive
St. George, Utah 84790
krigrup@blm.gov

Cameron B. Johnson
Office of the Regional Solicitor
Intermountain Region
25 South State Street, Suite 6201
Salt Lake City, Utah 84138
cameron.johnson@sol.doi.gov

Erik Petersen
Regional Solicitor
Intermountain Region
25 South State Street, Suite 6201
Salt Lake City, Utah 84138
erik.petersen@sol.doi.gov

Washington City
Washington City Manager Jeremy Redd
1305 East Washington Dam Road
Washington, Utah 84780
jredd@washingtonty.org

With copies to:

Conserve Southwest Utah
c/o Thomas J. Butine
321 North Mall Drive, B202
St. George, UT 84790
(425)893.9781
tom@conserve.wu.org

Richard A. Spotts
255 North 2790 East
St. George, UT 84790
(435) 669.0206
raspotts2@gmail.com

/s/ Thomas J. Butine
Conserve Southwest Utah
c/o Thomas J. Butine
321 North Mall Drive, B202
St. George, UT 84790
(425)893.9781, tom@conserve.wu.org

END OF REPLY TO BLM ANSWER TO STATEMENT OF REASONS