

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CONSERVE SOUTHWEST UTAH;
CONSERVATION LANDS FOUNDATION;
CENTER FOR BIOLOGICAL DIVERSITY;
DEFENDERS OF WILDLIFE; SOUTHERN
UTAH WILDERNESS ALLIANCE;
WILDERNESS SOCIETY and WILDEARTH
GUARDIANS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR; UNITED STATES BUREAU OF
LAND MANAGEMENT; and UNITED STATES
FISH AND WILDLIFE SERVICE,

Defendants,

and

UTAH DEPARTMENT OF TRANSPORTATION
and WASHINGTON COUNTY, UTAH,

Intervenor-Defendants.

No. 1:21-CV-01506-ABJ

**DECLARATION OF GREGORY J.
SHEEHAN**

I, Gregory J. Sheehan, declare as follows:

1. I am the State Director of the Bureau of Land Management's (BLM) Utah State Office in Salt Lake City, Utah. I have held this position since August 2, 2020. I oversee the administration and management of approximately 22.9 million acres of public lands in Utah and over 850 employees. This includes the federal public lands within the Red Cliffs National Conversation Area and the St. George Field Office and the employees there. I report directly to the BLM's National Director.

2. On behalf of BLM, I am familiar with the challenged record of decision (ROD) and the Final Environmental Impact Statement (FEIS) underlying the ROD in the above captioned matter. The ROD includes: (1) the January 13, 2021, decision adopting the amendments to the Red Cliffs National Conservation Area (NCA) Resource Management Plan (RMP); (2) the January 13, 2021, decision approving the issuance of a Federal Land Policy and Management Act Title V right-of-way (ROW) grant on BLM-administered lands to the Utah Department of Transportation (UDOT) for a divided four-lane highway through the NCA (the Northern Corridor); and (3) the January 13, 2021, decision approving the amendments to the St. George Field Office (SGFO) RMP. The FEIS also supports the Fish and Wildlife Service's (FWS) January 13, 2021, decision to issue an Incidental Take Permit to Washington County, Utah pursuant to Section 10 of the Endangered Species Act.
3. After reviewing those documents, and as described further below, BLM has concluded that the agency's ROD did not comply with the National Historic Preservation Act (NHPA). BLM also has substantial concerns that the ROD may not have fully complied with the National Environmental Policy Act (NEPA). More specifically, BLM has concluded that it did not complete the NHPA Section 106 process prior to issuance of the ROD and, at a minimum, that the FEIS may not have sufficiently analyzed impacts from wildfires. Were the Court to vacate and remand the ROW and remand the amendments to both the NCA and SGFO RMPs to the agency, BLM would undertake the commitments in Paragraphs 12-14. BLM has additional concerns with the scope of the analysis and the legal issues raised by Plaintiffs that the agency will consider whether to address on remand.

NHPA Compliance

4. In its Notice of Intent to Prepare an Environmental Impact Statement, BLM communicated to the public that it intended to meet its Section 106 obligations through the NEPA process for this project. This included establishing the undertakings, identifying and consulting with interested parties, identifying points in the process to seek input from the public, and notifying the public of proposed actions. The agency identified the undertakings as the ROW and the plan amendments to the NCA and SGFO RMPs.
5. In the FEIS, BLM acknowledged that “construction of the Northern Corridor highway ... would result in adverse effects to historic properties under Section 106 of [the] NHPA and would directly impact cultural resources under NEPA, causing permanent or long-term effects to NRHP-eligible archaeological sites, through physical damage or alteration resulting in the loss of information important in history or prehistory...” AR100125 (FEIS at 3-151 (3.14.2.3)). BLM also acknowledged that adopting the ROW alignment in UDOT’s application “would result in the most direct impacts to eight cultural resources.” *Id.* The UDOT ROW also “would result in a direct impact to a prehistoric petroglyph panel in the [area of potential effects] through the introduction of visual, atmospheric or audible elements that diminish the integrity of the property’s significant historic features by altering the resources setting, feeling, and association.” *Id.* BLM also stated that if it decided to issue a ROW, “American Indian Tribes and other consulting parties would have the opportunity to participate in the development of a Memorandum of Agreement that would address the resolution of adverse effects to historic properties, based on the implementation of approved treatments *prior to* BLM’s issuance of a Notice to Proceed to UDOT for construction.” AR100220 (FEIS at 4-2 (4.2.2) (emphasis added)).

6. While BLM committed to developing “mitigation options designed to resolve the adverse effects to the maximum extent possible,” the agency did not develop those proposed measures in its EIS. *Id.* at AR100125 (FEIS at 3-151). The agency also did not establish a binding commitment to implement such measures in its ROD or in a Memorandum of Agreement.
7. On February 12, 2021, BLM received a letter from the Advisory Council, which raised concerns about BLM’s compliance with Section 106 of the NHPA during the Northern Corridor approval process and recommended four corrective actions.
8. BLM has concluded that further Section 106 consultation is necessary, including additional coordination with the consulting parties to resolve the identified adverse effects to cultural resources. This includes making a binding commitment in either the ROD or a Memorandum of Agreement to avoid, minimize, or mitigate impacts to the cultural resources and documenting the commitment in compliance with 36 C.F.R. § 800.8(c)(4).

NEPA Compliance

9. BLM has substantial concerns that the agency incorrectly concluded in the ROD that the four 2020 wildfires did not represent a significant new circumstance and that further analysis of the impacts associated with the wildfires through supplemental NEPA was unnecessary. As a result, consistent with its authority, on remand BLM will reexamine whether it adequately analyzed the wildfires’ impacts to both the desert tortoise and its habitat in light of the new fire regime and the rise of non-native vegetation in desert tortoise habitat.

10. In particular, BLM is concerned that the FEIS may lack sufficient analysis about (1) the trend in the increasing frequency and extent of wildfires in the Mojave Desert; (2) the rise of non-native/exotic and invasive vegetation in post-burn areas; and (3) the impacts increased fire and new non-native/exotic and invasive vegetation has on desert tortoise.
11. BLM is also concerned that supplemental analysis about the impacts the 2020 wildfires had on the desert tortoise and its habitat may be necessary to better inform the agency's review of UDOT's ROW application.
12. Were the Court to vacate and remand the ROW and remand the amendments to the NCA and SGFO RMPs to the agency in light of the deficiencies in BLM's NHPA compliance and BLM's substantial concerns regarding its NEPA compliance, BLM expects to complete a supplemental environmental impact statement (SEIS) and issue a new record of decision (ROD) for UDOT's ROW application by approximately November 2024, subject to any unforeseen delays. This will require the following steps:
 - a. BLM and FWS will procure funding for and contract with an environmental consultant to assist the agencies with completing the SEIS;
 - b. BLM and FWS will publish a Notice of Intent to supplement the EIS in the Federal Register;
 - c. Next, BLM and FWS will draft a SEIS to consider the four fires that occurred in the NCA in 2020. The BLM and FWS will update any other new information that needs to be considered. This will require extensive coordination between the agencies;
 - d. BLM and FWS will publish the Notice of Availability of the draft SEIS for public review and comment; and

- e. BLM and FWS will address public comments and edit the SEIS before publishing the Notice of Availability of the Final SEIS and publishing and signing the RODs.
13. If BLM ultimately decides to re-issue a ROW to UDOT, the ROD would include a binding commitment to resolve any adverse effects to historic properties as provided under the NHPA and its implementing regulations or provide for alternative compliance with the NHPA as set forth in those regulations.
14. Because Plaintiffs have raised additional NEPA violations and other legal claims related to the NCA RMP, BLM also intends to review the NEPA analysis associated with both RMPs to ensure that the agency remains confident in those decisions.
15. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of May 2023, in Salt Lake City, Utah.



Digitally signed by
GREGORY SHEEHAN
Date: 2023.05.22
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Gregory J. Sheehan