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Delivered via email to utknmail@blm.gov

DOI – BLM
Kanab Field Office
669 S. Highway 89 A
Kanab, UT 84741

RE: Public Input on ACEC Evaluation – Vermillion Cliffs

Dear ACEC Evaluation Team:

Please accept the following input to the above-described agency analysis. This input is provided on behalf of our clients the BlueRibbon Coalition/Sharetrails.org (“BRC”), Trails Preservation Alliance (“TPA”), and Colorado Off Highway Vehicle Coalition (“COHVCO”), who are parties to the Settlement Agreement in *SUWA v. U.S. DOI*, Case No. 2:12-cv-257 DAK (D. Utah). We additionally note this input is provided on behalf of Ride with Respect, who is listed as a BlueRibbon member point of contact in the Settlement Agreement. Please direct any questions regarding this input to Paul Turcke at pat@msbtlaw.com.

I. Interest of the Organizations

Our clients have a unique perspective and longstanding interest in management of BLM Utah lands. Aside from member and stakeholder participation in the full array of planning processes, we have played a central role on behalf of recreation interests in litigation, stretching from the recent Settlement to bringing successful jurisdictional challenges in *SUWA v. Babbitt*, 2000 U.S. Dist. LEXIS 22170 (D. Utah 2000), *rev'd*, 301 F.3d 1217 (10th Cir. 2002), *rev'd and remanded*, *Norton v. SUWA*, 542 U.S. 55 (2004). We remain committed to this presence in ongoing management of Utah BLM lands.

BRC is a nonprofit corporation that champions responsible recreation and encourages individual environmental stewardship. BRC has members in all 50 states, including Utah. BRC members use various motorized and nonmotorized means to access BLM and other public lands, specifically including the Vermillion Cliffs potential ACEC. BlueRibbon has a long-standing

interest in the protection of the values and natural resources addressed in this evaluation, and regularly works with land managers to provide recreation opportunities, preserve resources, and promote cooperation between public land visitors.

TPA is a Colorado nonprofit corporation. TPA's mission is to protect the sport of motorized trail riding, educating all user groups and the public on the value of sharing public lands for multiuse recreation, while protecting public lands for future generations. TPA is a grassroots, 100 percent volunteer group composed primarily of Colorado trail riders, but including members in Utah. TPA members have used, and hope in the future to use, motorized and nonmotorized means, including off-highway vehicles, horses, mountain bikes, and hiking, to access federal lands throughout the United States, including Utah BLM lands.

COHVCO is a Colorado nonprofit corporation. COHVCO's member enthusiasts, organizations, and businesses collectively comprise over 200,000 Coloradans and regular visitors to Colorado who contribute millions of dollars and hundreds of hours annually to off-highway vehicle ("OHV") recreation through registration fees, retail expenditures, project participation and related support. Since 1987, the mission of COHVCO has been to represent, assist, educate, and empower OHV recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and recreational qualities for future generations. Like the other organizations, COHVCO includes members who use motorized and non-motorized means to gain access to and recreate upon Utah BLM lands.

II. Evaluation Criteria and Background

BLM should properly consider the procedural context in conducting this evaluation. The Settlement Agreement does not require any particular outcome, but outlines only procedural requirements. Settlement Agreement at ¶¶ at 25-28. The Settlement Agreement explicitly makes clear that "[n]othing in [the Agreement] affects or limits BLM's discretion in conducting the evaluations, or in deciding whether to initiate a land use plan amendment that would designate an ACEC as a result of the evaluations." *Id.* at ¶ 28.

FLPMA and the BLM Manual outline applicable guidance in conducting this evaluation. FLPMA briefly provides that "areas of critical environmental concern" are among the checklist of items to be addressed in a land use plan, and that BLM shall "give priority" to their "designation and protection." 43 U.S.C. § 1712(c)(3). The statutory direction is further discussed in at 43 CFR section 1610.7-2 and BLM Manual 1613. The analysis focuses on evaluating "relevance" and "importance" – both of which "shall be met" for ACEC status. 43 CFR § 1610.7-2(a). ACEC designation and management are not suitable as a prophylactic overlay but are only proper "where special management attention is needed" or "required" to protect qualifying attributes. BLM Manual 1613.02 (objectives); 1613.06 (policy).

This last point bears further emphasis and suggests a diminishing need for ACEC designation as BLM becomes ever more active and attentive as a resource manager. ACEC status

is intended as a basis to prescribe specific and unique management measures, “[t]hat is, they would not be prescribed in the absence of the designation.” *Id.* at 1613.12. Thus, an ACEC is not appropriate when unique ACEC management “is not required” or “the same management prescriptions would have been provided for the area in the absence of the important and relevant values.” *Id.* at 1613.33.E.1. “Special” management is not meant here in a colloquial sense, but rather to mean unique management that cannot be formulated without an ACEC designation. To whatever extent such a need existed upon FLPMA’s passage, it has diminished greatly in an increasingly complex world attuned to “environmental” scrutiny. Resources across the spectrum of BLM lands are “special” to engaged stakeholders and carefully balanced through analytical tools and management factors not available in 1976. In today’s world, an ACEC will, in many instances, complicate and constrain an effective BLM management effort.

If Utah BLM considers how this process might trigger its next litigation, such litigation can only occur following a decision to designate a new ACEC through an RMP amendment. *Western Org. of Resource Councils v. BLM*, 591 F.Supp.2d 1206, 1224-1225 (D. Wyo. 2008); Settlement Agreement at ¶ 28 (limiting administrative or judicial review to “a land use plan amendment decision...that constitutes final agency action”). BLM’s effort to use the Settlement to focus and increase the efficiency of its effort would be disserved by an unjustified ACEC designation.

BLM’s 2015 evaluation of the Henry Mountains Potential ACEC should particularly inform the Vermillion Cliffs analysis. The Henry Mountains analysis was ordered through the same litigation underlying the Settlement Agreement, and represents the agency’s state of the art approach to ACEC evaluation. There are parallels between many of the resource issues in the two areas. The procedure and determinations of the Henry Mountains approach make clear that ACEC status is not appropriate for the Vermillion Cliffs area.

III. Area Specific Analysis

A primary, if not singular, basis for conducting the present evaluation is to consider 2011 Visual Resource Inventory data for the Vermillion Cliffs area. See, Settlement Agreement at ¶ 26. That data is summarized in the project materials, with three of the units rated as “Class B” scenery and the remaining unit rated as “Class C” scenery. Questions and Answers at 2. BLM has most recently concluded that “[o]nly the areas within the potential ACEC identified as Class A scenery...meet the relevance criteria.” Henry Mountains Supplemental Report at 6. Roughly 40 percent of the Henry Mountains area was rated Class A scenery, which BLM relied upon in establishing temporary management and initiating a plan amendment process. *Id.* at 36. No Class A scenery exists in Vermillion Cliffs. Visual resources cannot constitute a rational basis for finding relevance in the Vermillion Cliffs potential ACEC.

Nor do any of the other resource criteria compel creation of an ACEC. Wildlife and botanical resources are outlined in the 2008 Kanab Evaluation Report. Ungulate issues are similar to, but less compelling, than in the Henry Mountains. Mule deer are closely and amply addressed by state wildlife managers, and Vermillion Cliffs is within the other Premium Limited Entry management unit (in addition to Henry Mountains) compelling a similar finding that mule deer do

not meet ACEC importance criteria in Vermillion Cliffs. Other remaining species of interest include raptors, bats, and plants, who are either not present in the area, or who are addressed by existing, focused management prescriptions. See, e.g., Kanab RMP at A14-12 through -15; at 4-114 (species of concern are addressed by disturbance/disruption caps, buffers, and/or seasonal restrictions); Henry Mountains Supplemental Report at 34 (concluding that “RMP and existing laws and policies adequately protect” special status wildlife and plant species).

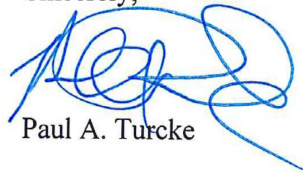
We wish to further emphasize our clients’ particular interest and knowledge in trail-based recreation and emphasize that the Vermillion Cliffs area is actively and effectively managed, and increasingly so since 2008. The area includes noteworthy and highly desirable routes systems reflecting substantial investment by our clients and engaged interests, particularly including the Hog Canyon trail system. The 2008 Kanab Office Travel Management Plan instituted route reductions and broadscale elimination of “cross country” vehicle travel. Additionally, the Vermillion Cliffs area is within the Paunsaugunt Travel Management Area, in which BLM will conduct an updated public analysis and issue a new travel management plan. See, Settlement Agreement at ¶ 13. BLM is further empowered to address vehicle management concerns, and further ACEC designations would only create unhelpful complication or confusion. See, *id.* at ¶¶ 20, 22; 43 CFR § 8341. ACEC will detract from, not aid, these efforts.

Our clients do not disparage, and in fact applaud, the recognition that this area labelled as Vermillion Cliffs is a special area for many public land resources and visitors. This should not be confused with ACEC status. Vermillion Cliffs does not meet the relevance and importance criteria for a sufficient resource(s) and its management needs are best addressed through continuation and refinement of existing management prescriptions.

IV. Conclusion

The Vermillion Cliffs area does not qualify for ACEC designation. In fact, ACEC status is less justified now than in the 2008 evaluation, and would only reduce the implementation and effectiveness of current and anticipated management efforts. We appreciate this opportunity to provide input, and look forward to continuing to participate and collaborate alongside other stakeholders in ongoing BLM management efforts.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul A. Turcke", with a long horizontal flourish extending to the right.

Paul A. Turcke