



ATTORNEYS AND COUNSELORS AT LAW

950 W. BANNOCK STREET, SUITE 520
BOISE, ID 83702
TELEPHONE: (208) 331-1800
FACSIMILE: (208) 331-1202
WWW.MSBTLAW.COM

STEPHANIE J. BONNEY≈
PAUL J. FITZER
JILL S. HOLINKA
CHERESE D. MCLAIN

LYNDON P. NGUYEN
ANTHONY M. PANTERA, IV
FRANCES R. STERN
PAUL A. TURCKE

MICHAEL C. MOORE,* *of Counsel*
DENNIS L. RADOCHA, *of Counsel*
≈ Also admitted in Utah
*Also admitted in Washington

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Delivered via email to blm_ut_vernal_comments@blm.gov

DOI – BLM
Vernal Field Office
170 South 500 East
Vernal, UT 84078

RE: Public Input on ACEC Evaluation – Pariette Cactus

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 BRC 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 Pariette cactus 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. In formulating these comments, we have specifically consulted and utilized input from Ride with Respect as well as Uintah Riders All Terrain, who are familiar with the potential ACEC area and specifically utilize for off-highway vehicle recreation various routes, including Class D roads, in the vicinity of Randlett and areas managed for Pariette's cactus.

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 use, 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 further inform this evaluation. 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. The discussion and rationale for sensitive status plants in the Henry Mountains approach make clear that ACEC status is not appropriate for any Pariette cactus area in the Vernal Field Office.

III. Area Specific Analysis

Our clients recognize the importance of Pariette cactus conservation alongside other recognized uses of public lands. The importance of a commitment to managing for Pariette cactus should not be confused with ACEC status. Under applicable guidance, Pariette cactus are best addressed through continuation and refinement of existing management prescriptions.

BLM and other entities are closely monitoring Pariette cactus and implementing appropriate management prescriptions to ensure its conservation. This attention is reflected in the map attached to the October 27, 2017 evaluation announcement, which details known cactus populations and habitat on Tribal, Federal and State lands. BLM appropriately noted under similar circumstances involving sensitive plants in the Henry Mountains that the “RMP and existing laws and policies adequately protect these resources....” Henry Mountains Supplemental Analysis at 34. In particular, known populations are monitored/inventoried, specific measures are taken to mitigate any impacts from surface disturbance, and Section 7 consultation is initiated upon proposed surface disturbance within 300 feet of inventoried plants. See, Questions and Answers

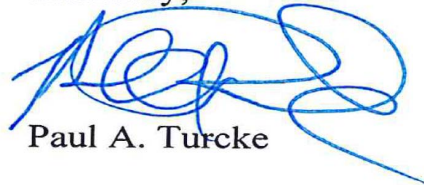
at 3. The Fish and Wildlife Service implementation of the Endangered Species Act has greatly intensified since FLPMA's passage in 1976, and ACEC designation will not add anything to conservation efforts for the Pariette cactus.

ACEC could actually complicate these management efforts, and would have likely adverse effects on other resources/values, particularly including our clients' public access and recreation interests. Pariette cactus habitat is not necessarily an iconic Utah destination for trail-based recreation, but it does provide appropriate and meaningful recreation opportunities. The agency should provide a diversity of recreation opportunities, distributed between multiple factors including vehicle type, access, challenge, and geographical distribution. Our members include riders within or near the Vernal Field Office who enjoy recreational access to areas potentially affected by Pariette cactus habitat, including Class D roads near Ouray and south of Randlett. There is no basis to restrict these activities, and engaged publics offer an additional means by which BLM can monitor conditions and receive new information that may aid its management efforts.

IV. Conclusion

BLM should decline to designate any Pariette cactus ACEC. There is no defensible basis or need for ACEC designation or special management efforts. The particular needs of the cactus can be addressed, and are being addressed, by existing regulatory mechanisms and 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,



Paul A. Turcke