

Questions and Answers Related to the Settlement of Longstanding Land Use Plan Litigation in Utah

GENERAL QUESTIONS

What litigation does this settlement address?

If approved by the district court, the agreement will settle a longstanding legal challenge originally filed in December 2008 in federal district court for the District of Columbia and later transferred to the District of Utah in 2012. The litigation involves challenges to the land use and travel management plans for the BLM-Utah Richfield, Moab, Price, Monticello, Kanab, and Vernal Field Offices, as well as challenges to the November 2014 oil and gas lease sale.

In 2015, the Utah district court gave the BLM three years to correct errors it identified in BLM-Utah Richfield's land use and travel planning relating to the National Historic Preservation Act (NHPA) and the Wild & Scenic Rivers Act, and the Federal Land Policy and Management Act (FLPMA) initially identified by the court in 2013. The court further required the BLM to undertake on-the-ground archaeological surveys along the entirety of every route designated as open; the BLM appealed the district court's rulings related to the NHPA and its requirement for archaeological surveys to the Tenth Circuit.

This settlement would resolve all of plaintiffs' claims in the district court and the pending appeals. It will not be effective, however, unless the Tenth Circuit agrees to dismiss the appeals and the district court agrees to dismiss plaintiffs' case and vacate its earlier rulings.

What area would be covered by the settlement?

If approved by the district court, the settlement will resolve litigation affecting all of the lands in the BLM-Utah Richfield, Moab, Price, Monticello, Kanab, and Vernal Field Offices, which is approximately 10 million acres. Most of the BLM's obligations under the settlement would pertain to approximately half of the area managed by the Richfield, Moab, Price, Kanab, and Vernal Field Offices and significantly less than half of the area included in the plaintiffs' lawsuit. Certain air quality commitments would pertain to the Price and Vernal Offices while others apply to all six field offices.

Who are the parties to the settlement?

The parties to the settlement include a consortium of ten conservation groups (Southern Utah Wilderness Alliance, The Wilderness Society, Natural Resources Defense Council, Sierra Club, National Parks Conservation Association, National Trust for Historic Preservation, Utah Rivers Council, Great Old Broads for Wilderness, Rocky Mountain Wild, Grand Canyon Trust), three off-road vehicle (ORV) organizations (Blue Ribbon Coalition, Colorado Off-Highway Vehicle Coalition, Trails Preservation Alliance), and federal defendants (including the BLM and the Interior Department).

Although they are not parties to the agreement, several entities who intervened on behalf of the United States in the litigation have reviewed the agreement and agreed not to oppose it in the federal district court. These include the Utah School and Institutional Trust Lands Administration, EOG Resources, XTO Energy, Crescent Point Energy US Corp., and Badlands Energy.

Other entities who intervened on behalf of the United States have indicated that they will oppose the settlement. These include the State of Utah, and Carbon, Duchesne, Daggett, Emery, Grand, Kane, San Juan, and Uintah Counties.

What is required for the settlement to go into effect?

The settlement has been signed by the plaintiffs, defendants, and certain intervenors, but it will only go into effect if the Tenth Circuit dismisses the appeals of the federal defendants and intervenors supporting the federal defendants and the district court agrees to dismiss the plaintiffs' lawsuit and vacate two prior orders. Intervenors who so choose will have an opportunity to oppose those actions by the district court and Tenth Circuit.

What would be the BLM's primary travel management commitments under the settlement?

If the district court approves the settlement, the BLM will commit to do the following:

- During the next eight years, the BLM would prepare 13 new travel management plans for parts of the BLM-Utah Richfield, Moab, Price, Kanab, and Vernal Field Offices. State and local governments, federal agencies, tribal governments, and the public would be invited to participate in each of these individual travel management planning processes.
- In preparing the new travel management plans, the BLM would conduct on-the-ground archaeological surveys along routes proposed for designation where each field office determines through state-of-the-art predictive modelling that there is a high potential for cultural resources. The BLM would also conduct these surveys along routes in areas of critical environmental concern (ACECs) that are designated to protect cultural resources. The BLM would develop its exact survey commitments for each travel management plan in consultation with Native American tribes, the State of Utah, cultural resource experts, and other consulting parties.
- The BLM would conduct additional monitoring of motorized vehicle use off of designated routes in Wilderness Study Areas, Natural Areas, and lands with BLM-inventoried wilderness characteristics in those areas where it is creating new travel management plans under the settlement. This additional monitoring would take place in conjunction with the BLM's ongoing obligation to monitor motorized vehicle use on all designated routes. If the BLM determines that motorized vehicle use is causing certain types of harm on any route, regardless of its location, the BLM will take appropriate management action as required by regulation.
- Over the course of five years, the BLM would evaluate three previously proposed ACECs that were not designated in the 2008 land use plans. As part of this re-evaluation, the BLM would determine whether further action is necessary to protect any relevant and important values.

What are the BLM's primary oil and gas commitments under the settlement?

If the district court approves the settlement, the BLM will commit to do the following:

- The BLM would update its 2011 Utah Air Resource Management Strategy (ARMS) and 2013 photochemical modeling analysis in the Price and Vernal Field Offices to take account for the most up-to-date information. The ARMS and photochemical modeling analysis are tools that the BLM can use to ensure that certain decisions related to oil and gas development are consistent with federal air quality standards. These tools are non-binding, meaning that the BLM would not need to use the ARMS or photochemical modeling analysis for any oil and gas development decision.
- For any lease sales or land use plan changes related to oil and gas development undertaken in the next eight years in the Richfield, Moab, Price, Monticello, Kanab, and Vernal Field Offices, the BLM would determine through the NEPA process whether air quality mitigation measures can be incorporated into lease stipulations and notices.

What are the plaintiffs' commitments under this settlement?

The settlement requires the plaintiffs to move to dismiss all of their claims against the six land use plans and travel management plans, as well as the November 2014 oil and gas lease sale. In addition, the plaintiffs will request that the district court vacate its prior rulings in the litigation.

How does this settlement benefit BLM?

If approved by the district court, the settlement agreement will have a number of significant benefits for the BLM:

- The settlement would resolve eight years of contentious litigation that has consumed substantial BLM, Department of Justice (DOJ), and other federal government resources and has required the BLM to divert funds from other BLM state budgets. The settlement would allow the BLM to appropriately focus its time and resources on other agency priorities.
- The settlement would preserve the 2008 land use plans in the Richfield, Moab, Price, Monticello, Kanab, and Vernal Field Offices. Preserving the 2008 land use plans would provide the BLM and the public certainty regarding thousands of land management decisions in all program areas across much of the eastern and southern portions of Utah.
- The settlement primarily would commit the BLM to travel management planning in less than half of the geographic area covered by the plaintiffs' lawsuit. It also would commit the BLM to undertaking archeological surveys only along routes in areas with a high potential for cultural resources.
- The settlement encourages robust public participation in the travel planning process, which will allow BLM to hear and consider concerns from local communities about travel management plans and route designations.
- The settlement would save the Department of the Interior and DOJ considerable litigation costs that would be required to continue to litigate the plaintiffs' claims. Litigating would require completing the BLM's current appeal and then litigating in trial court the plaintiffs' claims related to the other five land use plans, travel management plans, and the 2014 oil and gas lease sale in the Moab, Price, Monticello, Kanab, and Vernal Field Offices. The settlement will only go into effect if the district court vacates its adverse decisions against BLM and in particular its burdensome order requiring the BLM to conduct archeological surveys on every mile of route designated for use by the public.

QUESTIONS ABOUT TRAVEL MANAGEMENT PLANNING

Would the settlement agreement reverse or otherwise modify the decisions made in the 2008 land use plans or in existing travel management plans?

No. Those decisions would remain in place. The settlement agreement would not modify, supersede or otherwise affect the 2008 land use plans; the plaintiffs' lawsuit challenging those plans would be dismissed, ending longstanding litigation over the plans.

Under the settlement, the BLM would prepare new travel management plans for route designation in certain areas. Until those planning processes are complete, existing travel management plans would remain in effect. Areas not covered by the new travel management plans would continue to be governed by existing travel management plans.

Where would the BLM be engaging in new travel management planning?

The settlement includes maps that identify where BLM would engage in new travel management planning. These areas include roughly half of the area within the Richfield, Moab, Price, Kanab, and

Vernal Field Offices. The settlement does not commit BLM to engaging in new travel management planning within the Monticello Field Office.

Would I be able to participate in BLM’s travel management planning process?

Yes. Public involvement is an important part of BLM’s travel management planning process.

Would the settlement require the BLM to close roads or restrict OHV use?

No. The settlement does not identify roads that the BLM would have to close and it also would not impose any new restrictions on ORV use. The BLM has an existing legal obligation to take appropriate management action—which could potentially involve road closures—if motorized vehicle use is causing certain types of harms. The settlement would not change that existing legal obligation.

Would the settlement affect Revised Statute 2477 (RS 2477) claims?

No. Neither the settlement nor the BLM’s development or adoption of new travel management plans would affect RS 2477 claims that have been, or may be, asserted by the State of Utah or local governments within the state.

Would the settlement create new wilderness study areas or natural areas or require BLM to inventory lands for wilderness characteristics?

No. The settlement makes no designations or management decisions of any kind, including designating new wilderness study areas or natural areas, and does not otherwise affect the BLM’s obligations to maintain inventories under existing law. As provided by the BLM’s regulations, the BLM will consider whether ORV use is damaging public land resources, including BLM-inventoried wilderness characteristics, and if damage is found, will take appropriate action to minimize the damage through the travel management process.

Would the settlement create new travel planning regulations?

No. The settlement would require the BLM to follow travel planning procedures and documentation requirements that are compliant with existing regulations, within the agency’s discretion, and designed for transparency and public involvement that are consistent with current BLM policy.

Which travel management plans would govern areas for which the BLM is not preparing new plans?

The new travel management plans that would be required by the settlement cover approximately half of each of the Utah BLM’s Richfield, Moab, Price, Kanab, and Vernal Field Offices. The route designations in existing travel management plans would continue to apply in those portions of all six field offices not covered by the new travel management plans required by the settlement.

QUESTIONS ABOUT OIL AND GAS

Why is the BLM including oil and gas commitments in the settlement agreement?

In addition to their oil and gas related challenges to the land use plans, Plaintiffs added a challenge to the November 2014 oil and gas lease sale to their complaint. This settlement would resolve all of those claims.

Would the settlement undo the November 2014 oil and gas lease sale?

No. The settlement agreement would not affect completed lease sales.

Would the settlement prohibit the BLM from approving new oil and gas projects?

No. The settlement agreement would not limit the BLM's authority to approve new oil and gas projects consistent with existing law and regulations.

Would the settlement require the BLM to impose mitigation measures when approving new oil and gas projects?

No. The settlement would require the BLM to analyze potential mitigation measures during the environmental review process required by NEPA. The BLM would make decisions about new projects based on existing laws, regulations, and policies, which would not be affected by the settlement.

OTHER QUESTIONS

What happens next?

The parties to the settlement will file a motion with the district court requesting that it vacate its prior rulings in the case. If the court agrees, and the plaintiffs successfully dismiss their claims, the BLM will ask the Tenth Circuit to dismiss its appeal, the settlement will become effective, and the BLM will begin the process of implementing the settlement consistent with the existing regulatory framework. If the court does not agree to vacate its prior rulings in the case, the parties will have no further obligations under the settlement agreement and the BLM will continue to litigate in the district court and in the Tenth Circuit.

Does the settlement affect the recent Bears Ears monument designation?

No. The Bears Ears monument designation does not affect the BLM's travel planning commitments it would assume under the settlement, and the BLM's obligations under the settlement would not affect the Bears Ears monument designation.