

*Director's Protest Resolution Report*

**Prehistoric Trackways  
National Monument  
Resource Management Plan  
And Environmental Impact  
Statement (PTNM  
PRMP/FEIS)**

December 21, 2015



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## Reader's Guide

### *How do I read the Report?*

The Director's Protest Resolution Report is divided into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's (BLM) response to the summary statement.

### **Report Snapshot**

The diagram illustrates the structure of a Report Snapshot. It is divided into several sections, each with a topic heading and associated information:

- Issue Topics and Responses**: Includes the heading "NEPA".
- Topic heading**: A callout box pointing to the heading.
- Submission number**: A callout box pointing to the submission number.
- Issue Number**: PP-CA-ESD-08-0020-10. A callout box labeled "Protest issue number" points to this number.
- Organization**: The Forest Initiative. A callout box labeled "Protesting organization" points to this name.
- Protester**: John Smith. A callout box labeled "Protester's name" points to this name.
- Issue Excerpt Text**: A callout box labeled "Direct quote taken from the submission" points to the excerpt text.
- Summary**: A callout box labeled "General statement summarizing the issue excerpts (optional)." points to the summary text.
- Response**: A callout box labeled "BLM's response to the summary statement or issue excerpt if there is no summary." points to the response text.

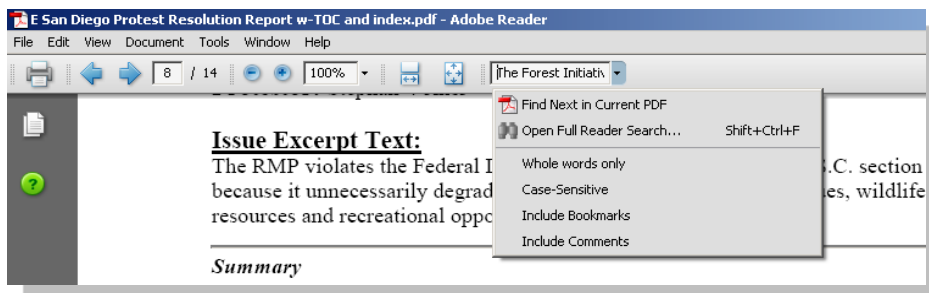
The excerpt text reads: "Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis."

The summary text reads: "There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects."

The response text reads: "Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a

### *How do I find my Protest Issues and Responses?*

1. Find your submission number on the protesting party index which is organized alphabetically by protester's last name.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



### List of Commonly Used Acronyms

<b>ACEC</b>	Area of Critical Environmental Concern	<b>FO</b>	Field Office (BLM)
<b>BA</b>	Biological Assessment	<b>FWS</b>	U.S. Fish and Wildlife Service
<b>BLM</b>	Bureau of Land Management	<b>GIS</b>	Geographic Information Systems
<b>BMP</b>	Best Management Practice	<b>IB</b>	Information Bulletin
<b>BO</b>	Biological Opinion	<b>IM</b>	Instruction Memorandum
<b>CAA</b>	Clean Air Act	<b>KOP</b>	Key Observation Points
<b>CEQ</b>	Council on Environmental Quality	<b>MOU</b>	Memorandum of Understanding
<b>CFR</b>	Code of Federal Regulations	<b>NEPA</b>	National Environmental Policy Act of 1969
<b>COA</b>	Condition of Approval	<b>NHPA</b>	National Historic Preservation Act of 1966, as amended
<b>CSP</b>	Concentrated Solar Power	<b>NOA</b>	Notice of Availability
<b>CSU</b>	Controlled Surface Use	<b>NOI</b>	Notice of Intent
<b>CWA</b>	Clean Water Act	<b>NRHP</b>	National Register of Historic Places
<b>DEIS/DRMPA</b>	Draft Environmental Impact Statement /Draft Resource Management Plan Amendment	<b>NSO</b>	No Surface Occupancy
<b>DM</b>	Departmental Manual (Department of the Interior)	<b>OHV</b>	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
<b>DOI</b>	Department of the Interior	<b>PA</b>	Preliminary Assessment
<b>EA</b>	Environmental Assessment	<b>PPA</b>	Power Purchase Agreement
<b>EIR</b>	Environmental Impact Report	<b>PTNM</b>	Prehistoric Trackways National Monument
<b>EIS</b>	Environmental Impact Statement	<b>RFDS</b>	Reasonably Foreseeable Development Scenario
<b>EO</b>	Executive Order	<b>RMP</b>	Resource Management Plan
<b>EPA</b>	Environmental Protection Agency	<b>ROD</b>	Record of Decision
<b>ESA</b>	Endangered Species Act	<b>ROW</b>	Right-of-Way
<b>FEIS</b>	Final Environmental Impact Statement	<b>SO</b>	State Office (BLM)
<b>FEIS/PRMPA</b>	Final Environmental Impact Statement /Proposed Resource Management Plan Amendment	<b>T&amp;E</b>	Threatened and Endangered
<b>FLPMA</b>	Federal Land Policy and Management Act of 1976	<b>USC</b>	United States Code
		<b>USGS</b>	U.S. Geological Survey
		<b>VRM</b>	Visual Resource Management
		<b>WA</b>	Wilderness Area
		<b>WSA</b>	Wilderness Study Area
		<b>WSR</b>	Wild and Scenic River(s)

**Protesting Party Index**

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
M. Florence Dougherty	Individual	PP-NM-Trackways-15-01	Denied/Issues and Comments
Phil Hanceford/Juli Slivka	The Wilderness Society	PP-NM-Trackways-15-02	Denied/Issues and Comments
Robert N. Mathis	Individual	PP-NM-Trackways-15-03	Denied/Issues and Comments
Thomas E. Maciejewski	Michel & Associates, P.C.	PP-NM-Trackways-15-04	Denied/Issues and Comments
Larry Candelaria	The Paleozoic Trackways Foundation	PP-NM-Trackways-15-05	Denied/Issues and Comments

## Issue Topics and Responses

### NEPA – Insufficient Evidence

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**Issue Number:** PP-NM-Trackways-15-04-12

**Organization:** Michel and Associates, P.C

**Protestor:** Thomas Maciejewski

#### **Issue Excerpt Text:**

The Prehistoric Trackways National Monument Proposed Resource Management Plan and Final Environmental Impact Statement (PTNM PRMP/FEIS) contains Insufficient Evidence for the soundness of its buffer zones. In order to support the

closing of the PTNM to recreational target shooting, the BLM applies industry tables on travel distances of bullets to create a 0.5-mile buffer from target shooting around Off-Highway Vehicle (OHV) trails or paleontological resources. The BLM provides no evidence that such a buffer is supported by law, regulation, agency policy, or sound science. Arbitrarily imposing such a buffer, irrespective of circumstances, would set a dangerous precedent for future RMPs and potentially have a crippling effect on the availability of recreational target shooting locations throughout federal lands.

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#### **Summary:**

The BLM does not provide sufficient reasoning or supporting data to justify the imposition of a 0.5-mile recreational target shooting buffer zone around OHV trails or paleontological resources.

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#### **Response:**

The BLM is required to take a “hard look” at potential environmental impacts of adopting the Prehistoric Trackways National Monument Proposed Resource Management Plan/Final Environmental Impact Statement (PTNM PRMP/FEIS). The National Environmental Policy Act (NEPA) also directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)).

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

In the PTNM PRMP/FEIS, the BLM noted that public safety was a key factor in the analysis for recreational target shooting. While target shooting is a recreational resource, it is not, in the PTNM PRMP/FEIS, considered a Monument object nor an activity that would enhance enjoyment and appreciation of Monument objects.

Using industry standards for predictable projectile safety areas, the BLM determined that it is appropriate for a 0.5-mile buffer zone to be applied where visitors in the Monument would congregate. (PTNM PRMP/FEIS, 4-17 to 4-23).

40 CFR 1500.1(b) and 40 CFR 1502.24 requires the BLM to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements.” The BLM uses high quality information in the analysis for the buffer zone. Appendix G of the PTNM PRMP/FEIS discloses the rationale and basis for applying the buffer zone. The information in the Appendix illustrates industry standards for predictable projectile physics given a single point of weapon discharge, which have been used in the construction of safe shooting ranges. The standards show that, for the most common rifle caliber in use in North America, the .30 caliber or 7.62 has the largest range of potential width (the ricochet area) in which uncontrolled projectiles could place the public in harm. Appendix G also references reports from the Department of Army, Department of Energy, and the United States Marine Corps (PRMP/FEIS, G-1 to G-3). The BLM used this information to determine how safety zones should be applied in its analysis in the planning area; therefore, the 0.5 mile buffer zone is an appropriate safety measure.

The BLM properly analyzed the buffer zone impacts for the PTNM PRMP/FEIS.

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### NEPA – Impacts Analysis

**Issue Number:** PP-NM-Trackways-15-04-5  
**Organization:** Michel and Associates, P.C.  
**Protestor:** Thomas Maciejewski

BLM in precisely the same manner as continued recreational target shooting, i.e., as activities that do not expressly support paleontological resources.

**Issue Excerpt Text:**

These recreational off-roading activities, therefore, should have been evaluated by the

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### **Summary:**

BLM failed to adequately analyze impacts from recreational off-roading activities on monument objects.

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### **Response:**

NEPA requires that the BLM take a “hard look” at potential impacts of adopting the PTNM PRMP/FEIS. NEPA also directs that data and analyses in an EIS be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). A land use planning-level decision is broad in scope. For this reason, analysis

of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

The PTNM PRMP/FEIS states that “The BLM refers to the values described in the PTNM designating legislation as Monument Resources, Objects, and Values (ROVs). The BLM’s management approach must reflect the direction from Congress to conserve, protect, and enhance the Monument ROVs in accordance with FLPMA and other appropriate laws as a component of the National Landscape Conservation System. The PTNM was designated to ‘protect the unique fossil resources for present and future generations’ and Congress directed the BLM to ‘conserve, protect, and enhance the unique and nationally important paleontological, scientific, educational, scenic, and recreational resources and values’” (PTNM PRMP/FEIS, Section 1.9, at 1-15 through 1-16).

While recreation was a part of the authorizing statute, the BLM has interpreted this to mean “recreation supporting the enjoyment and appreciation of fossil resources and their geologic context” (PTNM PRMP/FEIS at 1-16). Non-fossil based recreation uses are allowed if they do not conflict with Monument objects; however, the BLM is not required to develop new opportunities for non-fossil related recreation within the Monument.

The PTNM RMP planning effort did adequately analyze impacts for OHV activities. Comments in the Preister report (2003) expressed concern that motorized and mechanized recreation on public land disturbs ecological health, and reduces the quality of the recreation experience for non-motorized users (PTNM PRMP/FEIS, 4-47). Under the BLM’s Proposed Plan (Alternative C), “...within the Monument boundaries, 100 percent of the Tabasco Twister Trail (2.7 miles), and 100 percent (1.8 miles) of Patzcuaro’s Revenge Trail would be closed to motorized and mechanized vehicle use (PTNM PRMP/FEIS, Map 2-3). In addition, 100 percent (0.4 miles) of the Cayenne Crawler Trail would be closed to motorized and mechanized use to eliminate access from the south to Patzcuaro’s Revenge Trail. Fossils located within these arroyos would be protected from these types of impacts as described in Alternative A” (PTNM PRMP/FEIS, 4-7). In fact, the plan would close all routes known to cross important fossil bearing strata.

The BLM complied with the NEPA requirement to analyze the environmental impacts on monument objects from off-road activities within the Prehistoric Trackways National Monument.

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### *NEPA – Range of Alternatives*

**Issue Number:** PP-NM-Trackways-15-04-10

**Organization:** Michel and Associates, P.C.

**Protestor:** Thomas Maciejewski

**Issue Excerpt Text:**

Further, the PTNM PRMP/FEIS does not consider designating areas, either inside or outside the buffer zone, and including a minimum amount of infrastructure to allay



safety concerns. For example, the provision of backstops and target holders could provide a safe shooting venue that would resolve much of the BLM's concerns over user conflicts, but the plan does not give any consideration to such actions. In response to the NGOs' concerns raised at the Draft RMP stage, the BLM indicated that providing backstops and target holders for target shooting would not achieve its management objective conserving, protecting, and enhancing fossil resources. (PTNM PRMP/FEIS at H-92.) But it would also not hinder this objective any more than continuing [to] allow other recreational activities, such as "rock crawling" by off-road vehicles [which] hinders this objective. Moreover, as noted above, the PTNM's enacting statute directs the BLM to protect recreational activities, including recreational target shooting, at the Monument.

**Organization:** Michel and Associates, P.C.  
**Protestor:** Thomas Maciejewski

**Issue Excerpt Text:**

For example, the PTNM PRMP/FEIS dismisses, without detailed analysis, the possibility of allowing target shooting in the southern area of the PTNM that lies outside areas affected by a safety buffer. (PTNM PRMP/FEIS at Section 2.2.2.2 at 2-4.) The BLM asserts that allowing target shooting in this area would be infeasible because there are no access roads on this side of the Monument and the boundaries of this area are not distinct and would need to be marked by signs. But the BLM fails to consider even the most obvious of potential solutions to this conundrum, such as building an access road to the intended recreational shooting area and limiting target shooting to the south side of that access road.

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**Issue Number:** PP-NM-Trackways-15-04-9

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**Summary:**

The BLM failed to analyze an adequate range of alternatives, in relation to target shooting, as required by NEPA.

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**Response:**

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

The BLM developed a reasonable range of alternatives that meet the purpose and need of the PTNM PRMP/FEIS and that address resource issues identified during the scoping period. It analyzes three management alternatives, plus the no action alternative, which are described in Chapter 2. The alternatives analyzed in the PTNM PRMP/FEIS cover the full spectrum by varying in 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various

geographic areas; and 4) levels and methods for restoration.

“The PTNM was designated primarily to protect significant paleontological resources while continuing to support recreation that also supports or does not damage paleontological resources. Motorized trail systems, as well as non-motorized trail systems, provide access for continuing education, interpretation, and research associated with the fossil resources. The PTNM designation does not direct the BLM to provide opportunities for target shooting” (response to comment 45-2 on PTNM PRMP/FEIS at H-92).

“The BLM must manage the PTNM in a manner that conserves, protects, and enhances fossil resources and other uses that also conserve, protect, and enhance fossil resources” (response to comment 45-4 on PTNM PRMP/FEIS at H-92). The plan also states that “providing backstops and target holders for target shooting would not achieve this management objective” (PTNM PRMP/FEIS Chapter 2, Paleontological Resources Goals and Objectives; and Appendix H-92). The plan states that the construction and use of backstops and target holders is not the main concern. Rather, “the greatest concern for an area used for target shooting would be the 0.5-mile lateral deflection or ricochet area” or “buffer zone”, that is caused by the backstop and target holder (PTNM PRMP/FEIS, Appendix G-3).

In addition, the PTNM PRMP/FEIS states, “The BLM has initiated active dialogue with local shooting clubs and the New Mexico Department of Game and Fish to explore the possibility of providing recreational target shooting sites outside the boundary of PTNM, but in the vicinity.” (See H-92.) The PTNM PRMP/FEIS also discusses alternate public land outside of the Monument that is currently open for recreational target shooting (See 4-23). Public lands outside the Monument continue to be open for target shooting and the BLM has not precluded those opportunities; however, target shooting within the Monument is precluded as it is not consistent with the Monument objects related to fossil understanding and enjoyment.

Regarding the construction of additional roads, the PTNM PRMP/FEIS states, “from a management perspective, allowing recreational target shooting within these 356 acres would be difficult since it would be hard to sign the area and enforce the boundary” (See Section 2.2.2.2, at 2-4); therefore, it was determined not feasible to carry this particular alternative forward for further analysis.

In addition, when utilizing the 0.5 mile safety buffer designated by the analysis in the PTNM PRMP/FEIS, any added access roads would be covered by the buffer zones.

Please note that the question of whether and where to allow new roads is an implementation-level decision outside of the “area” allocation, which is a planning level decision.

The BLM considered a reasonable range of alternatives in the PTNM PRMP/FEIS in compliance with NEPA.

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*Administrative Procedure Act*

**Issue Number:** PP-NM-Trackways-15-04-5

**Organization:** Michel and Associates, P.C.

**Protestor:** Thomas Maciejewski

recreational activities without applying the same level of scrutiny to those activities is arbitrary and capricious.

**Issue Excerpt Text:**

The BLM's proposal to ban recreational target shooting yet continue to allow other

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**Summary:**

The BLM's proposal to ban recreational target shooting yet continue to allow other recreational activities without applying the same level of scrutiny to those activities is arbitrary and capricious [violation of the Administrative Procedure Act].

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**Response:**

As noted in the PTNM PRMP/FEIS, “some activities are no longer compatible with the legislative mandate for Monument management” (PTNM PRMP/FEIS at 1-7).

Visitors, educational groups, and BLM staff have reported safety risks from target shooters (PTNM PRMP/FEIS at 3-8); therefore, the BLM previously conducted extensive impacts analysis for target shooting due to the considerable safety issues that this activity presents compared to other recreational activities such as OHV rock crawling (PTNM PRMP/FEIS at 4-17).

The EIS analysis shows that target shooting impacts constitute a safety risk to the enjoyment of Monument objects. The PTNM PRMP/FEIS analysis cited research demonstrating the impacts from target shooting, and provides such information, which is included in Appendix G – "Safety Zones for Recreational Target Shooting Analysis". This research demonstrated that target shooting is incompatible with the protection of Monument objects, as analyzed in the PTNM PRMP/FEIS at 4-17 on Maps 4-1, 4-2, and 4-3.

The BLM carefully considered recreational target shooting together with other recreational activities, such as off highway vehicle use, in preparing the PTNM PRMP/FEIS, and thus was not acting in an “arbitrary or capricious” manner.

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**Paleontology**

**Issue Number:** PP-NM-Trackways-15-01-5

**Organization:** Paleozoic Trackways Foundation

**Protestor:** M. Florence Dougherty

**Issue Excerpt Text:**

As a resident of the nearby monument and a member of the Paleozoic Trackways Foundation I am deeply aware of the

importance of including the Quarry Pit #1 in the monument boundaries. It is an extremely appropriate environmental issue as well as scientific for the whole purpose of the Trackways National Monument.

**Issue Number:** PP-NM-Trackways-15-02-12

**Organization:** The Wilderness Society

**Protestor:** Phil Hanceford

**Issue Excerpt Text:**

Furthermore, because it is specifically addressed in the enabling legislation, a boundary adjustment is a reasonably foreseeable action that should have been analyzed as part of the cumulative impacts. Augmenting this analysis would enable the Secretary to make an informed decision that tiers to the PTNM PRMP/FEIS. Requested Remedy: The plan should build on the analysis of paleontological resources in Community Pit #I currently included in the PTNM PRMP/FEIS to analyze manageability of those resources in a way that could inform future decision-making on adjusting the boundaries of the monument. If this analysis finds that those resources are important and manageable, the plan should make a formal recommendation to the Secretary to adjust the boundaries to include those resources.

**Issue Number:** PP-NM-Trackways-15-02-7

**Organization:** The Wilderness Society

**Protestor:** Phil Hanceford

**Issue Excerpt Text:**

This would also be consistent with the BLM's current direction for the National Conservation Lands. Secretarial Order 3308 states that the Conservation Lands "shall be managed as an integral part of the larger landscape." S.O. 3308(4)(b). One of the main themes from the BLM's National

Strategy for the Conservation Lands is the management of the System as part of the larger landscape. See, National Conservation Lands Strategy, Theme 2. The BLM has a stated goal of taking a "cross-jurisdictional, community based approach to landscape-level conservation planning and management." *Id* at Goal 2B. Thus, BLM should not ignore the paleontological resources that lie adjacent to the boundary of the monument solely because they are outside of the planning area. Instead, the monument staff should make an effort to coordinate management of resources that occur on shared boundaries to ensure that management is consistent within the context of the larger landscape.

**Issue Number:** PP-NM-Trackways-15-03-8

**Organization:** Private Party

**Protestor:** Robert Mathis

**Issue Excerpt Text:**

The more recently approved Organ Mountains and Desert Peaks National Monument now surrounds the Monument on three sides. Basically, we have a monument within a monument except for the area circled in red which I will now refer to as the "notch" and is not included in either monument. My guess is that the reason this "notch" was not included in either monument is because it contains an old rock quarry (actually a hill, which is also called Community Pit #1) that must be reclaimed according to US government rules. Thus the "notch" was not included in the BLM planning because it was not included within the Monument boundaries.

The BLM cannot include the "notch" in adequate and optimum planning until it is officially made a part of the Monument. Also the BLM, which has responsibility for reclaiming the natural state of the old

quarry, must be released from its responsibility of full reclamation of the old quarry and an official exemption for the full reclamation of this quarry should be granted for the reasons mentioned above.

**Issue Number:** PP-NM-Trackways-15-05-3

**Organization:** Paleozoic Trackways Foundation

**Protestor:** Larry Candelaria

in Monument boundaries. Legislation enacting the Monument in 2009 authorized the Secretary of the Interior to make minor additions to the Monument and we so strongly endorse and recommend the adding of the Community Pit. We feel that this is the most effective and efficient time to incorporate this property, which has thousands of fossil resources at risk to weather and looting, identified in two reports by Jerry MacDonald (the discoverer of the Tracks) for Congressional review and circulation in 2006 and 2007.

**Issue Excerpt Text:**

Neither The PTNM Draft nor the PRMP/FEIS dated December 2014 included the addition of the Community Pit (old quarry) near the entrance to the Monument,

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**Summary:**

The BLM should redraw the boundary of the PTNM to include Community Pit #1 because of its potential paleontological resources.

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**Response:**

In the 2009 Omnibus Public Lands Management Act, the BLM was directed to develop a management plan for the PTNM. The boundary of the Monument was partly defined by an existing area managed by the BLM as the Paleozoic Trackways Research Natural Area (RNA). (PTNM PRMP/FEIS at 1-2). This existing RNA did not include the Community Pit #1 and because of that predefined boundary, the BLM examined only the resources within the planning area.

The response to comments in PRMP/FEIS Appendix H indicated that Community Pit #1 is outside the boundary of the planning area and cannot be incorporated into the planning process (PTNM PRMP/FEIS, H-45). Community Pit #1 is closed to all public use because past mining practices have left it with unsafe vertical high walls. Until major remediation is completed, Community Pit #1 is a public safety hazard. (PTNM PRMP/FEIS at 3-15 and 3-16).

Section 2103(d) in the 2009 Omnibus Act states: “(d) Minor Boundary Adjustments – If additional paleontological resources are discovered on public land adjacent to the Monument after the date of enactment of this Act, the Secretary may make minor boundary adjustments to the Monument to include the resources in the Monument.” The rationale for why Community Pit #1 was considered but not analyzed in the PRMP/FEIS is summarized on Page 2-4, and further elaborated upon in the ROD.

The BLM properly considered the resources within the planning boundary for the PTNM PRMP/FEIS.

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