

Desert Advisory Council West Mojave Route Network Project Subgroup

Dissenting Report of the Subgroup's Final Report Tom Budlong, June 26, 2013

The Final Report of the WEMO Subgroup was presented to the DAC at the DAC's regular meeting June 8, 2013. At that meeting I presented a verbal dissenting report, and promised a written report at a later time.

Following are my objections to the report.

1. The title "Subgroup Report of Findings and Recommendations" implies the full subgroup approved the report. It did not.

The implied approval is misleading and incorrect since the full group did not approve the report, and nothing in the report indicates otherwise. I do not approve of many parts of the report, my draft report comments were ignored and not acknowledged, and I was not asked for approval or disapproval. I object to my name being attached to the report without qualification.

Subgroup members Mark Algazy and Ed Waldheim presented their objections in their 'Minority Reports' at the DAC meeting.

2. The "WEMO Subgroup Mission" on page 10 of the Report has little resemblance to the DAC's Mission Statement to the Subgroup.

The discussion on Report page 10 describes the DAC's Mission Statement as 'hastily developed', and 'unrealistic' The subgroup mission statement was then unilaterally redefined without approval of the DAC. The DAC's Mission Statement remains on the BLM/DAC website.

The two Mission Statements are reproduced in Appendix A of this Dissenting Report.

3. The Subgroup ignored the fundamental minimization problem.

The Court's Jan 28, 2011 Remedy Order (p.2, line 13) states:

On Remand, the parties agree that the BLM will need to (1) prepare a revised OHV route network that complies with the minimization criteria...

The DAC's Mission Statement to the Subgroup recognized this:

The report shall include adequate strategies that meet the minimization criteria as ordered by the Federal Court Judgment of 2009 and Remedy of 2011

Minimization in accordance with the relevant regulation, 43 CFR 8342.1 was one of the bases for involving the DAC and the Subgroup. The regulation requires minimization of harm to the landscape, plants and animals, and minimization of conflict among users.

The Final Report is silent on minimization. The Subgroup's unilateral Mission Statement change excluded minimization.

4. The Final Report prescribes "Conditional Limited Access" (meaning motorized access), that would result in more open roads.

Excerpts under the Report section 'Recognized uses of routes in WEMO' appear to be attempted justification of more open routes disguised as a suggestion to use volunteers to assist management.

- *The subgroup recommends that the category of Conditional Limited Access be reviewed and expanded to encourage volunteer resource management under conditions of Limited/Seasonal/Special Use permits. (Report page 2, bottom)*
- *Criteria for expanding “limited” access: provide access for resource management by permits and field work authorizations, including mining, guzzlers, wind energy, private property, biologic and geologic studies and nonrenewable resources. (p.3, top)*
- *A4. Provide and maintain route access to resource areas including: sensitive areas, guzzlers, mining claims, for resource inventory, monitoring maintenance, or other studies.*
- *B5. Permit systems should be considered as a general management tool. Permitting systems should encourage resource management through Special Use permits,*

5. The Subgroup amended the Mission Statement from the DAC to include identification of WEMO uses and user groups. The Report’s user identifications are unsupported opinion.

One of the three self-identified Subgroup missions, stated on page 10 of the Final Report and not included in the DAC’s Mission Statement is:

Identify the range of users and user groups of the West Mojave Planning Area

With no supporting data, pages 2 and 17 of the report state:

Much of the public, and even lead agencies, consistently fail to recognize that most of the public conduct professional and recreational activities where motorized vehicles are used as secondary support...

and

The subgroup finds that the high profile OHV activities generally associated with motorized recreation in the desert do not properly reflect how the vast majority of people use the desert.

Lacking supporting data, these statements appear as unjustifiable personal opinion.

6. The report advocates roads in wilderness, illegal according to the Wilderness act of 1964, and in clear violation of 8342.1(d).

Regulation:

p.14 | • 8342.1(d) Areas and trails shall not be located in officially designated wilderness areas...

Yet the report states:

p.18 | • These activities include vehicle assisted botanic, zoologic, paleontologic, geologic and mineral resource studies, and terrain and slope preservation/stabilization, **motorized access** to wilderness...

p.26 | • Nonrenewable resources within Wilderness ...need inventory and management. Limited access for management must be provided ...

p.34 | • Not only would lands become more accessible for recreation under Alternative A, but also for ...wilderness studies that cannot currently be properly conducted because of poor access.

Clearly advocating illegal activity is a major reason for this dissenting report.

7. The report treats desert washes as if visual character is their only property of value. Biological values are not considered.

p.38 | • Washes are “**self-healing**” with each rainy season and if travel is restricted to the wash road, slope and riparian degradation is minimal.

p.19 | • ...accomplished along **self-healing** wash bottoms.

p.22 | • Limited access to remote areas...needs to be retained with stipulation that ... access will be along **self-restoring** drainages...

- p.30 • Single routes along **self-repairing** drainages, as opposed to cutting slopes, will reduce erosion and landscape degradation.

These excerpts imply that the shape / morphology of washes is the only characteristic of importance. The concept that washes are often biological islands is absent. The excerpts completely disregard 8342.1 (a) and (b), which require ‘trails shall be located to minimize damage to soil, watershed, vegetation...’, and ‘to minimize harassment of wildlife or significant disruption of wildlife habitats.’ Instead, these statements promote the exact opposite.

This opposition to the mandates of the Court and the DAC is another major reason for this dissenting report. It is as if the Subgroup is in open defiance.

8. The report falsely claims ‘sustenance roads’ are immune from regulation.

Under the false conclusion that regulation 8342.1 does not apply to ‘sustenance roads’, the report concludes that this class of road is not subject to minimization.

Page 27, in the Recommendations for Resource Management section, the Final Report states:

A9. Maintain roads created for sustenance living (mining, farming or grazing). Roads established for economic activity should not be subjected to analysis under recreational criteria (i.e. 43CFR 8342.1)

The only mention of recreation in 8342.1 is in subsection (c) which talks of minimizing conflicts between OHV and other recreational uses. Nowhere does 8342.1 excuse roads established for economic activity, or any other purpose, from minimization criteria.

This misinterpretation is repeated on Final Report p. 34:

43 C.F.R.8342.1 has to do with the designation of trails for recreation.

9. The report recommends roads to mining claims. The recommendation is without justification, and with no consideration of consequences.

Some report quotes:

- p.3 • A4. Provide and maintain route access to resource areas including ... mining claims...

- p.23 • The BLM needs to revise criteria describing whether a Plan Of Operations is needed to develop vehicular access routes to recently located mining claims.
- BLM policies regarding access to claims must be brought into accord with those of the State of California, the latter requiring that claims be visited annually.
 - Without access across Federal land, claim visitation and maintenance becomes a financial burden to the claimant.
 - If BLM cannot guarantee vehicular assisted access to claims, but demands annual assessment work, the concept of "CDCA Multiple Use" is meaningless.

- p.6 • Areas under mining claim are, by definition, resource areas and are required to be maintained annually in California.

- p.28 • In general, access to active mining claims should be maintained as "Open," even if on a limited or permit basis. Areas that are under mining claim are, by definition, resource areas, and are required to be maintained annually by the State of California.

The report does not provide support for these recommendations. Unexplained are:

- Purported deficiencies in BLM’s regulations concerning mining Plans of Operation.
- Purported differences between California and BLM mining regulations, and why BLM’s regulations must be brought into compliance with California’s.
- Purported federal obligation to consider financial burden of visiting and holding a mining claim.
- Why lack of roads to claims renders the concept of CDCA Multiple Use meaningless.
- California’s annual maintenance requirements, and why they require motorized access.

- California's requirement for motorized access to mining claims.

Nor does the report consider, or even mention, that making a new road could be the sole reason to file a mining claim, and that this motivation could result in a proliferation of roads.

10. Public input with views in opposition are omitted in Appendix 4, Public Input General Comments.

In the Final Report's Appendix 4, I counted 19 emails and letters to Edy, to others associated with the Subgroup, and unaddressed. Many are requests for open routes and/or are paleontology related.

On my computer I have 12 other letters to Edy, Dinah and the Subgroup that do not appear in Appendix 4. Most deal with environmental concerns.

This almost complete imbalance gives the strong impression of unintentional or intentional selective inclusion and omission of data from the Appendix, based on content.

A compilation of letters included and omitted is included as Appendix B with this report.

11. The Final Report recommends 30,000 miles of routes (p.34 bottom, p.35 top)

Alternative A. 30,000 miles of routes (pre-1980 CDCA) (p.34)

The subgroup's preferred alternative is Alternative A. (p. 35).

The first paragraph under Alternative A on page 34 includes cites some reasoning:

- Dispersion of impact: More route miles means less impact per route. There is no discussion of management to control impact.
- The 'The tragedy of the commons': This citation again assumes absence of management, and, ignores that the concept is more accurately 'The tragedy of the **unregulated** commons'.
- Enhancement of historic research, rock and mineral collection activities. This presumes these activities have priority over impact minimization.
- 'Wilderness studies that cannot currently be properly conducted because of poor access.' That driving in wilderness is illegal is not mentioned.

No attempt is made to validate these reasons with data or analysis.

The second paragraph under Alternative A attempts what looks like a legal argument claiming 'valid existing rights', and the definition of 'locating' [located] in 43 CFR8342.1.

Not only is the 30,000 mile recommendation an outrageous expansion, the justifications are simplistic and even illegal.

I strenuously object to the implication I approve 'The subgroup's preferred alternative'.

In summary, the Final Report is extremely slanted toward motorized access. I believe the basis for this is the makeup of the Subgroup membership, which is approximately 80% biased toward motorized access.

Tom Budlong

June 26, 2013

Dissenting Report to the Wemo Subgroup Final Report

Appendix A: Mission Statements

Mission Statement from the DAC to the WEMO Subgroup

Mission Statement:
Desert Advisory Council
WEMO Route Network Project Subgroup (WRNPS)

- ⤴ Identify a range of alternatives for the 8 Travel Management Areas (TMAs) within the West Mojave Planning Area (WEMO).
- ⤴ Prepare a report that will include all appropriate documentation supporting the range of alternatives. The report shall include adequate strategies that meet the minimization criteria as ordered by the Federal Court Judgment of 2009 and Remedy of 2011.
- ⤴ Coordinate activities with the BLM WEMO Core Team.
- ⤴ Appoint 2 task groups, one for each field office, to assist in collecting motorized route data as well as important non-motorized route data, set priorities and standards for use of route data in WEMO, and identify routes not already included in the current BLM route inventory.
- ⤴ The Final report will be submitted to the BLM in April-2013.
- ⤴ The Subgroup will be disbanded when the Final report is submitted.

This Mission Statement is on the BLM website at:

http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/cdd/west_mojave_plan_updates.Par.36910.File.dat/WEMOMissionStmnt_fnl.pdf

Mission Statement the Subgroup set for itself

- A. Identify the range of uses and user groups of the West Mojave Planning Area.
- B. Identify the route network requirements for the identified uses.
- C. Present recommendations for policy and management of the WEMO route network that are consistent with the data gathered by the subgroup.

Dissenting Report to the Wemo Subgroup Final Report Appendix B

Public Input Letters and Emails Included and Omitted from Final Report, Appendix 4, Public Input General Comments

Letters and comments included in Appendix 4, Public Input General Comments

PDF Page	Date	From	To	Content, Subjects
2	None	Tom Sweich	None	Decline in plants ranked 1B
3	None	Patrick William	None	FTLs in Afton Canyon area
3	None	Jeffrey Lovich	None	Actinemys [pond turtles] in Afton Canyon area
4	None	Dr. Mike Woodburne	Bob [Reynolds]?	Quote from a file re fossil discovery in various locations.
5	None	None	None	Early mineral and fossil observations and recordings.
6	2012-05-31	Marith Rehien	Shumway	Afton canyon area road closure – writer supports maintain as open.
7	2012-01-25	Bob Reynolds	Edy	Request to retain as open routes in approx 50 sections
37	2012-03-20	David Whistler	Edy	Agrees with Bob Reynold’s Feb 18 letter supporting open routes. Retain as open routes in Sierra Sub Region
38	2012-02-29	Don Buchanan	Edy	Support for retaining open routes he has long used for education in Darwin and North Searles subregions.
39	2012-02-18	Bob Reynolds	Edy	Support retaining as open routes approx 30 SE prefix roads.
91	2012-03-10	Bob Reynolds	Edy	Retain as open, routes in Juniper Flats, Rattlesnake Canyon and Joshua Tree subregions.
93	2012-03-12	Don Buchanan	Edy	Retain as open routes in Juniper Flats, Rattlesnake Canyon and Joshua Tree subregions.
117, 118	None	None	None	Discussion of Dove Springs Formation, request the area remain accessible for research, and list of routes. Discussion of paleontology of several areas, and list of approx 5 sections and UTM coordinates of six points.

PDF Page	Date	From	To	Content, Subjects
120	2012-04-06	Scott Spencer With Chris Horgan Richard Gauthier	Charlee Christe BLM CDD	Jawbone Canyon Trail System proposal. [Omitted from this letter in Appendix 4 are about 40 pages of suggested route descriptions, route diagrams, and photos of routes with users. These are in the copy of the letter in my (Tom Budlong) files.]
144	None	Ian Browne	Shumway and Banis	Supports retaining as open routes in the Mud Hills area, and list of about 20 route IDs.
145	2012-09-04	Michael Woodburne	Dina[h]	Supports retaining as open routes in the Mud Hills area, and list of about 7 route IDs.
147	2012-09-03	Eric Scott	Shumway, Banis	Supports retaining as open routes in the Barstow Fossil Beds, Mud Hills area, and list of about 12 route IDs.
148	None	Darrin Pagnac	Chairs	Please don't close several WEMO routes, potentially to be closed. Retain as open routes in the Mud Hills area, and list of about 7 route IDs.
149	None	Bob Reynolds?	None	Retain as open routes in the Barstow Formation and others, and list of about 60+ locations
181	None	Mark Algazy	Michael Reiland	Re: CAPA process; discussion of need and source for related data.

Known letters not included in Appendix 4.

These are letters that I have written, and have collected from others. That these did not appear in Appendix 4 implies that other letters that I have not seen have been omitted.

Date	From	To	Content, Subjects
2012-04-05	Mesonika Piecuch	Edy	Illegal routes in checkerboard areas. Must have accurate maps. Need accurate baseline information:– impacts to critical habitat, washes and waterways, air quality, cultural resources. Accident frequency. Law enforcement costs, activities and capacities. End-of-route signage. Information kiosks and large format signage. Bean Canyon and PCT out-of-compliance areas.
2012-04-06	Scott Spencer	None	Jawbone Canyon Trail System proposal: ("Spencer Plan") from a group associated with the Jawbone Canyon Store that advocates expanding the single track trail system in the area. Includes all maps with proposed routes, none of which are included in the Spencer letter included in Appendix 4.
2012-04-12	Doug Parham	Edy	Edwards Bowl
2012-04-12	CBD / Ileene Anderson	Edy	Vegetation mapping, wildlife connectivity, climate change, Solar PEIS, DRECP, Route Analysis, Low density alternative.

Date	From	To	Content, Subjects
2012-04-13	Jenny Wilder	Edy	(13 pp) Inadequate maps. Compliance with minimization criteria. Balance of motorized and non-motorized activity. CTTM (Comprehensive Travel and Transportation Management) Target shooting Riparian areas and UPAs (Unusual Plant Assemblages), wildlife habitat. Special use trails – touring – single tracks. Street legal vehicles. Monitoring Closed route signs Soil, water, air resources, as identified as important in 1980 plan. Cumulative impacts Non-motorized recreation. Visual resources Maps, signage, route numbers on maps, place names, grid lines, routes on adjacent jurisdictions, topography, wildlife harassment, mines on maps, grazing allotments, ACECs, ROWs, kiosk locations, guzzler locations,
2012-06-20	Tom Budlong	Edy	Don't convert foot trails to designated vehicle routes – TMA2. Specifically, the historic foot trail on the ridge of the Slate Range.
2012-07-02	Jill Bays	Wemo Subgroup	Need public education, route signing, BLM presence on the ground, route rehabilitation, marking private-public boundaries. Open and closed route signage. Kiosks. Monitoring, impact thresholds, enforcement strategies
2012-07-04	Tom Budlong	Edy	P68 Escape Trail illegal excursions. Slate Range ridge hiking trail use by dirtbikes.
2012-12-19	Tom Budlong	Edy	Slate Range ridge trail, Slate Range Crossing to the communication facility. Used by dirtbikes.
2013-01	Jim Kenney	Dinah	Response to Tom Budlong's 2013-01-16 comments.
2013-01-20	Jill Bays	WEMO Subgroup	Additional to 2012-07-02 letter: TMA5 Cuddeback Lake kiosks and signage. BLM collaboration.
2013-01-31	Jim Kenney	Tom Laymon, and Subgroup members.	Permit system (opposed), maps, routes, management.