

Nos. 15-4151, 15-4152, 15-4153, 15-4155, 15-4158

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

SOUTHERN UTAH WILDERNESS ALLIANCE, ET AL.,
Petitioner-Appellees,

-v.-

**JANICE SCHNEIDER, in her official capacity as Assistant Secretary of the
Interior for Land and Minerals, U.S. BUREAU OF LAND MANAGEMENT, U.S.
DEPARTMENT OF THE INTERIOR,**
Federal Respondent-Appellants,
and
STATE OF UTAH, et al.,
Respondent-Intervenor-Appellants.

On Appeal from the U.S. District Court for the District of Utah, No. 2:12-cv-00257 (Hon.
Dale A. Kimball)

**AMICI CURIAE PAIUTE INDIAN TRIBE OF UTAH, INDIAN PEAKS BAND
OF PAIUTE INDIANS, SOUTHERN UTE INDIAN TRIBE, AND MORNING
STAR INSTITUTE'S AMICI BRIEF IN SUPPORT OF PETITIONER-
APPELLEES' RESPONSE IN OPPOSITION TO EMERGENCY MOTION FOR
A PARTIAL STAY**

MATTHEW CAMPBELL
HEATHER WHITEMAN RUNS HIM
Native American Rights Fund
1506 Broadway
Boulder, CO 80020
(303) 447-8760

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned states that *amici curiae*, the Paiute Indian Tribe of Utah, the Indian Peaks Band of Paiute Indians, the Southern Ute Indian Tribe, and the Morning Star Institute are not a corporation that issues stock or has a parent corporation that issues stock.

/s/ Matthew Campbell
Counsel for the *Amici Curiae*

December 14, 2015

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT i
TABLE OF AUTHORITIES iii
STATEMENT OF INTEREST, IDENTITY, AND AUTHORITY OF AMICI CURIAE. 1
ARGUMENT..... 3
 I. Introduction..... 3
 II. The District Court Correctly Denied BLM’s Motion for Partial Stay of Remedy
 Order. 4
 A. Important Cultural Resources Will be Irreparably Damaged or Destroyed if
 the Stay is Granted. 4
 B. The Public Interest is Best Served By Denying the Partial Stay and Ensuring
 that the Extensive Cultural Resources in the Richfield Planning Area Are
 Fully Studied and Effectively Protected from Destruction..... 7
CONCLUSION 11
CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS 12
CERTIFICATE OF DIGITAL SUBMISSION 13
CERTIFICATE OF SERVICE..... 14
APPENDIX..... 15

TABLE OF AUTHORITIES

CASES

Nken v. Holder,
556 U.S. 418 (2009)4

O Centro Espirita Beneficiente Uniao De Vegetal v. Ashcroft,
314 F.3d 463 (10th Cir. 20024,7

Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dep’t of Interior,
755 F. Supp. 2d 1104 (S.D. Cal. 2010)9

South Fork Band Council of Western Shoshone of Nevada v. U.S. Dept. of Interior, 588
F.3d 718 (9th Cir. 2009) (per curiam) 10

Valley Cmty.Pres. Comm’n v. Mineta,
373 F.3d 1078 (10th Cir. 2004)7

STATUTES

American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996 8

Archaeological Resources Protection Act, 16 U.S.C. § 470cc.....8

National Historic Preservation Act, 54 U.S.C. § 3027018

Native American Graves Protection and Repatriation Act,
25 U.S.C. § 3001 et seq.8

RULES and REGULATIONS

Fed. R. App. P. 272

Fed. R. App. P. 292

Tenth Circuit Local Rule 27.12

OTHER AUTHORITIES

Exec. Order No. 13,007, 61 Fed. Reg. 26,771 (May 24, 1996)8

United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, annex, U.N. Doc. A/RES/61/295 (Sept. 13, 2007)9

U.S. Dept. of State, *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*, <http://www.state.gov/documents/organization/184099.pdf> (last visited Dec. 14, 2015).....9

STATEMENT OF INTEREST, IDENTITY, AND AUTHORITY OF AMICI CURIAE

The Paiute Indian Tribe of Utah and the Indian Peaks Band of Paiute Indians are descendants of the Southern Paiute who traditionally occupied the Richfield Planning Area. A784-85.¹ The Southern Ute Indian Tribe likewise has ties to the Richfield Planning area. *Id.* The Southern Paiute and Ute consider this region integral to their culture. *Id.* Because of the importance of the area to the Southern Paiute and Ute people, the Southern Ute Indian Tribe and the Paiute Indian Tribe of Utah, which includes the Indian Peaks Band, along with other Paiute and Ute tribes, participated in government-to-government consultation with the Bureau of Land Management regarding the Resource Management Plan (“RMP”) for the Richfield Planning Area. *See* A785. Thus, Amici tribes have an interest in the outcome of this matter.

The Morning Star Institute is a non-profit Native American rights organization devoted to Native Peoples’ traditional and cultural advocacy, arts promotion, and research. Founded in 1984, the Morning Star Institute is a leader in the areas of Native Peoples’ religious freedom, cultural property rights, and sacred lands protection, including within the Richfield Planning Area.

Native Americans have struggled for centuries to adequately protect religiously and culturally significant sites and landscapes for traditional practices and uses. These

¹ Pages in the appendix to BLM’s stay motion are cited as “A_.” Appellees’ Appendix contains record materials not included in BLM’s appendix and is cited as “SA_.” Appendix for Native American Amici contains additional record materials not included in BLM’s appendix or Appellees’ appendix and is cited as “NativeA_.”

include ceremonial and subsistence gathering of plants or other natural resources, the use of springs and trails, and gathering for ceremonies, among other things. Sacred landscapes that are integral to the exercise of Native cultures and religions are frequently being destroyed or are under threat by development, pollution, recreation, vandalism, or other public and private actions. The fact that some types of physical disturbance may have already occurred under previous management plans within the Richfield Management Area, whether with or without local tribes' consent, does not vitiate the need to fully survey planned off-highway vehicles ("OHV") routes, understand fully the extent of the resources that are impacted, mitigate damage in an informed way, and protect the extensive and important cultural and archaeological resources within the area.

Counsel for amici has attempted to consult with counsel for all parties to this consolidated appeal. Counsel was able to contact all of the parties except for the Defendant-Intervenor State of Utah et al. None of the parties contacted oppose the filing of this brief.² Counsel for the State of Utah et al., did not respond to two email requests and one phone call request for consent. Native American Amici file this amici brief pursuant to Fed. R. App. P. 27 and 29, and Tenth Circuit Local Rule 27.1.³

² Counsel was not opposed as long as the brief is 10 pages or less, only references materials in the administrative or judicial record, and is filed on December 14.

³ Pursuant to Fed. R. App. P. 29(c)(5), no counsel for a party authored this brief in whole or in part, and no party or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae, their members, or its counsel made a monetary contribution to the preparation or submission of this brief.

ARGUMENT

I. Introduction

United States policy recognizes the historical struggle of Native Americans to protect and preserve their cultural and archaeological resources. Because the vast majority of lands once occupied by Native Americans are, today, in federal, state, or private ownership, the ability of Native Americans to protect these important parts of their history and heritage can be a challenge. Working to protect these resources often requires the cooperation actions of other entities. In the western United States, the federal government holds vast expanses of lands that were previously occupied by Native Americans. This history ultimately resulted in the BLM and the U.S. Forest Service asserting authority over the lands in the Richfield Planning Area. These federal landholdings remain an important cultural and archeological resource for the Amici tribes, for Native Americans generally, and for all Americans.

Those cultural resources in the RMP area are part of the public interest, and the District Court correctly denied BLM's motion for a partial stay of the Remedy Order because performing the Class 3 archaeological surveys is not only a legal requirement, it serves the public interest. The actions outlined in the Remedy Order are required to prevent damage to important cultural and archaeological resources, and will provide fuller knowledge of the extent and significance of the many archaeological and cultural resources that exist in the impacted areas. Fully understanding the resources impacted will enable federal agencies to be better stewards of the federal lands in the Richfield Planning Area, and will ultimately serve the public interest.

II. The District Court Correctly Denied BLM's Motion for Partial Stay of Remedy Order.

When a court assesses whether a stay pending appeal is appropriate, it considers:

(1) whether the applicant has made a strong showing that it is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Nken v. Holder*, 556 U.S. 418, 434 (2009); *O Centro Espirita Beneficiente Uniao De Vegetal v. Ashcroft*, 314 F.3d 463, 465-66 (10th Cir. 2002). These factors weigh against a stay here because cultural resources may be irreparably destroyed and protecting these is in the public interest.

A. Important Cultural Resources May be Irreparably Damaged or Destroyed if the Stay is Granted.

The partial stay sought by BLM would postpone or prevent complete and thorough documentation of cultural and archaeological resources in a large area, most of which has not previously been surveyed, but which is known to contain a number of cultural sites. *See* SA91-92, ¶ 26. "Because researchers and the BLM have only surveyed for cultural resources on a small number of these trails, the full impacts of such a decision to cultural resources cannot be determined." *Id.* at SA91-92, 95-113, ¶¶ 26, 35-44 (listing 119 known and documented significant sites that would be impacted directly or indirectly by OHV traffic on the routes designated in the RMP). It is certain that damage will occur to cultural resources, and that disturbance of these resources will compromise or destroy their significance before they can be assessed or documented. *Id.* at SA91-92, ¶ 26.

BLM recognizes the adverse effects of this decision. A167 (“As you mentioned previously, there are roads that go through archaeological sites and sometimes there are site features within the road that are being damaged. Continuing use on those roads *may be an adverse effect* on any sites located there.” (emphasis added)). It is impossible to place a monetary figure on the potential injury resulting from destruction of these resources, as the extent of the archaeological resources in the area has not been documented or studied. *See* SA91-92, ¶ 26.

The Richfield RMP area is home to irreplaceable cultural resources to the Amici tribes. A784-85. Many of the cultural resources are present in areas that will be open to OHV use under the RMP. *See* A506-18. Through consultation, the BLM recognized that this area is vitally important to the Paiute and Ute, as well as the Navajo and Hopi, among other Native nations. A784-85. Despite this recognition, the final RMP states that “Tribal consultation did not result in any changes between the Draft RMP/Draft EIS and the Proposed RMP/Final EIS.” A526. Additionally, culturally important sites were not designated as areas of critical environmental concern (“ACECs”), or wild and scenic river areas (“WSRs”), actions that would have protected the cultural resources and areas and placed them under special management to prevent environmental and cultural damage. *See* A506-518.

The BLM indicated that it considered the presence of cultural resources in its planning process, will adopt a monitoring system to inventory designated class II routes “according to the likelihood of cultural sites being in those areas,” and mitigate damage to cultural resources as it goes. A504. As stated, however, BLM has not completed its

inventory of the cultural resources, and therefore, the specific location and number of resources is unclear. SA91-92, ¶ 26. Even under its “limited” OHV designation, BLM will still permit continued OHV use on designated routes, including in known culturally sensitive areas. *See Id.* at SA91, ¶ 25.

As the BLM has acknowledged, the Quitchupah and Fremont Gorge/Cockscomb areas are particularly important to the Navajo, Ute, Hopi, and Paiute Tribes. *See* A797. For the Paiute Indian Tribe of Utah, the entire Quitchupah area is sacred, a source of Puha, “the energy essence of the universe.” NativeA10; *see also* A785 (“Some of these claims have recently been documented and supported in an ethnographic study conducted by Dr. Richard Stoffle of the University of Arizona (September 2004).”). Representatives from the Paiute Indian Tribe of Utah, who participated in an ethnographic study that the BLM relied on, recommended ACEC or WRS status for the Quitchupah area. NativeA9-10. Despite the Tribe’s recommendation to manage this area as an ACES or WRS, however, BLM continues to permit OHV use in the Quitchupah area despite the sacred nature of the place. A514.

The Fremont Gorge/Cockscomb (a rejected ACEC site) is home to important cultural resources. A795. The BLM has noted that the cultural resources in this area are “dense... particularly in the Fish Creek Cove and Beas Lewis Flat areas.” NativeA5; *see also* A631 (Referencing the Richfield Evaluation Report). They have been “noted nationally and identified as important by the Hopi, [Paiute] and Navajo Tribes.” NativeA4.

Given the magnitude of important cultural resources in these areas, the District Court's Remedy Order appropriately addressed the shortcomings in the RMP, and the areas of that plan that are not in compliance with the law. Granting the Appellant's Emergency Motion for a Partial Stay would result in irreparable damage to incredibly significant cultural and archaeological resources and should be denied.

B. The Public Interest is Best Served By Denying the Partial Stay and Ensuring that the Extensive Cultural Resources in the Richfield Planning Area Are Fully Studied and Effectively Protected from Destruction.

The court must determine whether a stay pending appeal presents “any risk of harm to the public interest,” among other factors. *O Centro Espirita Beneficiente Uniao de Vegetal*, 314 F.3d at 466. In *Valley Comty. Pres. Comm'n v. Mineta*, 373 F.3d 1078, 1087 (10th Cir. 2004), the Tenth Circuit found that the public interest in safety on roads and highways outweighed other public interests. The court, however, recognized that “the public interest is served by strict compliance with environmental laws and the protection of historic and cultural resources.” *Id.* at 1087. Amici have a strong interest in seeing their archaeological and cultural resources protected, particularly if they have yet to be documented and assessed for significance. This includes sites that are eligible or potentially eligible for National Register listing, which the Court ordered survey will help to identify. Ensuring that the agency carefully considers the impacts of its plan on cultural and archaeological resources before implementation is consistent with the law and BLM's own guidelines and is in the public interest.

Federal policy shows that the public interest is served by protecting the ability of Native Americans to maintain cultural and religious practices and resources. For example, the American Indian Religious Freedom Act of 1978 (“AIRFA”) states that it is the policy of the United States to:

protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian . . . including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

AIRFA, 42 U.S.C. § 1996. This policy was expanded by Executive Order 13007, which directs federal land managing agencies to accommodate access to and use of Indian sacred areas for tribal religious practitioners, and to avoid adversely affecting the physical integrity of those areas. Exec. Order No. 13,007, 61 Fed. Reg. 26,771 (May 24, 1996).

Recognizing the importance of Native American cultural and archaeological resources on federal lands, Congress passed several laws that provide protections for these resources, and has also designed processes through which Native Americans can inform the federal government in land management decisions when their resources are impacted. The National Historic Preservation Act (“NHPA”), the Native American Graves Protection and Repatriation Act (“NAGPRA”), and the Archaeological Resources Protection Act (“ARPA”) each contain processes requiring consultation with Native American tribal governments. *See* 54 U.S.C. § 302701; 25 U.S.C. § 3001 et seq.; 16 U.S.C. § 470cc. These provisions, and related regulations, are examples of statutorily established processes underscoring the need to fully understand the impact of federal

action on Native Americans and their archaeological and cultural resources. Fully understanding these impacts is an integral part of federal decision-making with regard to federal lands.

In addition, the United States has endorsed the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”), which provides at Article 25:

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, annex, art. 25, U.N. Doc. A/RES/61/295 (Sept. 13, 2007); *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*, U.S. Dep’t of State, <http://www.state.gov/documents/organization/184099.pdf> (last visited December 14, 2015). Even the BLM has noted that the “protection of cultural resources is a national priority.” NativeA3. It is therefore without question that protecting the cultural heritage of Native Americans, including archaeological and cultural resources, serves the public interest.

In *Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dep’t of Interior*, 755 F.Supp. 2d 1104, 1121 (S.D. Cal. 2010), the court issued a preliminary injunction enjoining a project from moving forward where tribal consultation pursuant to NEPA and NHPA was deemed to have been insufficient. In that case, the court recognized that the project at issue potentially impacted “hundreds of prehistoric sites and other sites whose significance has yet to be completely evaluated.” *Id.* at 1121. In evaluating whether the

preliminary injunction was in the public interest, the court noted that “[t]he Tribe itself is a sovereign, and both it and its members have an interest in protecting their cultural patrimony. The culture and history of the Tribe and its members are also part of the culture and history of the United States more generally.” *Id.* Similarly, in this case, the significance and number of sites has yet to be determined and can only be properly evaluated after the Class 3 Surveys are completed. It is in the public interest to order these surveys so that the agency can effectively consult with tribal governments, including Amici, and then can fully evaluate the best course of action for future OHV traffic in the Richfield Planning Area. *Id.*

Federal agency decision-making should be informed by full and complete knowledge in evaluating impacts on the environment and cultural resources. In *South Fork Band Council of Western Shoshone of Nevada v. U.S. Dept. of Interior*, 588 F.3d 718 (9th Cir. 2009) (per curiam), several tribes brought an action challenging the BLM’s approval of a mining project on federal land because of deficiencies in the Environmental Impact Statement. In that case, the Ninth Circuit stated that “Congress’ determination in enacting NEPA was that the public interest requires careful consideration of environmental impacts before major federal projects may go forward. Suspending a project until that consideration has occurred thus comports with the public interest.” *Id.* at 728. The circumstances in this case are similar, because full analysis of the impacts on important resources has not occurred. The district court’s determination that a stay would not serve the public interest was correct, and should be upheld.

CONCLUSION

For the foregoing reasons, we respectfully request the Court to deny the Emergency Motion for Partial Stay.

Respectfully submitted, December 14, 2015

/s/ Matthew Campbell

Matthew L. Campbell

Heather Whiteman Runs Him

Counsel of Record

Native American Rights Fund

1506 Broadway

Boulder, CO 80302

Telephone: (303) 447-8760

Counsel for Amici Curiae

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE
REQUIREMENTS**

I certify that pursuant to Fed. R. App. 32(a)(7)(A) and the Tenth Circuit Rule 32,
the attached amici brief is proportionally spaced.

December 14, 2015

/s/ Matthew Campbell

Matthew Campbell

Native American Rights Fund

1506 Broadway

Boulder, CO 80302

Telephone: (303) 447-8760

Facsimile: (303) 443-7776

mcampbell@narf.org

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

- (1) all required privacy redactions have been made; and
- (2) The digital submission has been scanned for viruses with the most recent version of a commercial virus scanning program Microsoft Security Essentials Virus Definition 1.211.2186.0 (December 8, 2015), and Malwarebytes Anti-Malware Version 2015.12.09.04 (December 9, 2015) and according to these programs is free from viruses.

December 14, 2015

/s/ Matthew Campbell

Matthew Campbell
Native American Rights Fund
1506 Broadway
Boulder, CO 80302
Telephone: (303) 447-8760
Facsimile: (303) 443-7776
mcampbell@narf.org

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system on December 14, 2015. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system. I also hereby certify that I have transmitted seven (7) hard copies of the foregoing to the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit on December 14, 2015.

December 14, 2015

/s/ Matthew Campbell

Matthew Campbell

Native American Rights Fund

1506 Broadway

Boulder, CO 80302

Telephone: (303) 447-8760

Facsimile: (303) 443-7776

mcampbell@narf.org

Nos. 15-4151, 15-4152, 15-4153, 15-4155, 15-4158

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

SOUTHERN UTAH WILDERNESS ALLIANCE, ET AL.,
Petitioner-Appellees,

-v.-

**JANICE SCHNEIDER, in her official capacity as Assistant Secretary of the
Interior for Land and Minerals, U.S. BUREAU OF LAND MANAGEMENT,
U.S. DEPARTMENT OF THE INTERIOR,**
Federal Respondent-Appellants,
and
STATE OF UTAH, et al.,
Respondent-Intervenor-Appellants.

On Appeal from the U.S. District Court for the District of Utah, No. 2:12-cv-00257
(Hon. Dale A. Kimball)

**APPENDIX TO AMICI CURIAE INDIAN PEAKS BAND OF PAIUTE AND
MORNING STAR INSTITUTE'S MOTION FOR LEAVE TO FILE
LIMITED BRIEF IN SUPPORT OF PETITIONER-APPELLEES'
RESPONSE IN OPPOSITION TO EMERGENCY MOTION FOR A
PARTIAL STAY**

HEATHER WHITE MAN RUNS HIM
MATTHEW CAMPBELL
Native American Rights Fund
1506 Broadway
Boulder, CO 80020
(303) 447-8760

Counsel for Indian Peaks Band of Paiute Indians and Morning Star Institute

Table of Contents for Appendix to Amici Curiae Indian Peaks Band of Paiute and Morning Star Institute’s Motion for Leave to File Limited Brief in Support of Petitioner-Appellee’s Response in Opposition to Emergency Motion for a Partial Stay

Southern Utah Winderness Alliance, et al. v. Schneider, et al.
 10th Cir. Nos. Nos. 15-4151, 15-4152, 15-4153, 15-4155, 15-4158

Volume I of I		
Document	AR Page	Page
EVALUATION REPORT Areas of Critical Environmental Concern Richfield Resource Management Plan –National Priority (January 2005) (excerpts)	RMP3	2
EVALUATION REPORT Areas of Critical Environmental Concern Richfield Resource Management Plan- Fremont Gorge/ Miners Mountain ACEC (January 2005) (excerpts)	RMP28	4
EVALUATION REPORT Areas of Critical Environmental Concern Richfield Resource Management Plan- Fremont Valley Gateway (January 2005) (excerpts)	RMP32	5
EVALUATION REPORT Areas of Critical Environmental Concern Richfield Resource Management Plan- Quitchupah Creek- Trough Hollow (January 2005) (excerpts)	RMP88	6
Quitchupah Creek Ethnographic Study Sketch Major Findings (September 29, 2014) (excerpts)	QUICHXIII	9

EVALUATION REPORT

Areas of Critical Environmental Concern

Richfield Resource Management Plan



Dirty Devil and Henry Mountains Potential ACECs

Richfield Field Office
Bureau of Land Management
January 2005

NativeA1

- Otherwise judged more locally significant as a result of federal laws, regulations, and national BLM policies that mandate consideration and protection of cultural resources.

Scenic—A relevant scenic resource was determined more than locally significant if it was—

- A national, state, or local scenic designations such as state scenic highways, federal scenic highways and All-American Roads and BLM backcountry byways
- Otherwise judged more locally significant by the staff recreation specialist (rationale provided).

Fish, Wildlife, and Plant Resources—A relevant fish, wildlife, or plant resource was determined more than locally significant if it was a species protected under federal law, regulation and BLM national policy that mandate the consideration and protection of species:

- Special status species, including—
 - Federally listed threatened or endangered species
 - BLM-sensitive species
 - State of Utah species of concern
- Endemic to nominated area
- Otherwise judged more than locally significant by staff wildlife biologist (rationale provided).

Riparian Resources—All riparian areas were judged more than locally significant by National BLM policy.

Natural Hazard—A relevant natural hazard was more than locally significant if so determined by staff specialists (rationale provided).

Special Values and Threats

The relevant resource (value, system, process or hazard) was important if it had qualities or circumstances in the nominated area that made it—

- Fragile
- Sensitive
- Rare
- Irreplaceable
- Exemplary
- Unique
- Endangered
- Threatened
- Vulnerable to adverse change.

Determinations of special values, threats, and vulnerability to adverse change were made by staff specialists, case-by-case, based on professional knowledge and supporting documentation.

National Priority

The relevant resource (or value, system, process, or hazard) was determined important if it warranted special protection:

- Satisfy national priority concerns
- Carry out the mandates of FLMPA.

Historic and Cultural—Protection of cultural resources is a national priority; therefore, any cultural resource identified as relevant was also determined to be important.

Scenic—A relevant scenic resource that also carried a national designations such as federal scenic highways and All-American Roads and BLM backcountry byways was determined important.

Fish, Wildlife, and Plants—A relevant federally listed threatened or endangered species was also determined important (because of the Endangered Species Act).

Riparian Resources—All riparian areas are considered more than locally significant by BLM policy; hence, they meet the importance criteria.

Safety and Public Welfare

A relevant resource (or value, system, process, or hazard) was considered important if it had qualities that warranted highlighting it to satisfy public or management concerns about safety and public welfare.

Threat to Life and Property

The resource (or value, system, process, or hazard) poses a significant threat to human life and safety or property.

4) Special Management

Suggested special management was developed to address, mitigate, or prevent identified threats.

5) Mapping Potential ACECs

Values identified as having relevance and importance provided a basis for the potential ACECs. In some cases, the potential ACEC's boundary was the same as the nominated area. In other cases, the boundary of the potential area was somewhat smaller than the nominated area. In yet other cases, an identified relevant and important value (e.g., Class A Scenery or crucial bison or mule deer habitat), crossed the boundaries of several nominated ACECs and the potential ACEC then took a new shape and a new name. The potential ACECs will be carried into Alternative C in the draft DEIS of the RMP. Other alternatives will consider lesser or no acreages for ACEC protection. All will be evaluated in the DEIS.

6) Evaluation of Existing ACECs

Evaluations of the four existing ACECs—Beaver Wash Canyon, Gilbert Badlands, North Caineville Mesa, and South Caineville Mesa—were reconsidered. The relevant and important values of all were determined to still be valid.

Relevance Value	Yes/No	Rationale for Determination
	Yes	Northern goshawk—BLM sensitive; numerous documented sightings.
	Yes	Mule deer—Entire area is crucial habitat.
	Yes	Black bear—High-value habitat on north slopes of Lion Mountain.
	No	Osprey—No documented sightings.
A natural process or system (including endangered, sensitive, or threatened plant species; rare, endemic, or relic plants or plant communities that are terrestrial, aquatic, or riparian; or rare geological features).	Yes	Bicknell milkvetch—Endemic to Sevier, Wayne, Piute, Garfield, and Emery counties; documented occurrence.
	Yes	Last Chance townsendia—Federally listed (threatened), documented occurrence.
	No	Maguire daisy—Federally listed (threatened); no documented occurrence.
	No	Barneby's reed mustard—Federally listed (endangered); no documented occurrence.
	Yes	Rabbit valley gilia—Federally listed (candidate); documented occurrences.
	Yes	There is a pristine riparian ecosystem along the Fremont River flowing through the Fremont Gorge.
Natural hazards (including areas of avalanche, dangerous flooding, landslides, unstable soils, seismic activity, or dangerous if it is determined through the resource management planning process that it has become part of a natural process).	No	Area was not nominated for this value.

Importance

The value, resource, system, process, or hazard described above must have substantial significance and values to satisfy the “importance” criteria. This means that the value, resource, system, process, or hazard is characterized by one or more of the following:

Importance Value	Yes/No	Rationale for Determination
Has more than locally significant qualities that give it special worth, consequence, meaning, distinctiveness, or cause for concern, especially compared with any similar resource.	Yes	Scenic—Fremont Gorge is Class A Scenery with spectacular views. Highway 12, which forms part of the western boundary, is an All-American Road, nationally recognized for its scenic values. State Highway 24, a state scenic byway, forms part of the northwestern boundary. This makes the area more than locally significant.
	Yes	Historic—Cultural resources in the Beas Lewis Flat area has been noted nationally and identified as important by the Hopi, Piute, and Navajo tribes.

FREMONT VALLEY GATEWAY

Nominated by Stephen Trimble and Chuck and Judy Smith

Area Considered	Fremont Valley Gateway ACEC
General Location	Extends east from Redgate area on Fremont River through public lands surrounding Teasdale, Torrey and Grover to Capitol Reef National Park.
General Description	Red gate area, Cockscomb Ridge, Fish Creek Cove, Miners Mountain, Fremont Gorge, Sulphur Creek, and Beas Lewis Flats.
Acreage	34,314 public land acres.
Values Considered	Scenic, preservation of rural landscape; historic, cultural, grazing, recreational, geologic, riparian, and wildlife values.

Identification Criteria

To be considered as a potential ACEC and analyzed in resource management plan alternatives, an area must meet the criteria of relevance and importance, as established and defined in 43 CFR 1610.7-2.

Relevance

An area meets the “relevance” criterion if it contains one or more of the following:

Relevance Value	Yes/No	Rationale for Determination
A significant historic, cultural, or scenic value (including rare or sensitive archeological resources and religious or cultural resources important to Native Americans).	Yes	Scenic—Three areas within the nomination, representing less than a quarter of the total area, were inventoried as Class A Scenery: Fremont Gorge, Fish Creek Cove/Cockscomb, and Miners Mountain. Highway 12 was designated as an All-American Road for nationally significant scenic values.
	Yes	Cultural—Nominated area includes dense cultural resources with Fremont remains, particularly in the Fish Creek Cove and Beas Lewis Flat areas.
A fish and wildlife resource (including habitat for endangered, sensitive or threatened species, or habitat essential for maintaining species diversity).	Yes	Bald eagle—Federally listed (threatened); known occurrence.
	Yes	Southwest willow flycatcher—Federally listed (endangered); documented sighting.
	Yes	Williamson’s sapsucker—Documented sighting.
	No	Lewis woodpecker—BLM sensitive; no documented sighting.
	No	Western toad—BLM sensitive; no documented sightings.
	No	Short-eared owl—BLM sensitive; no documented sighting.
	No	Peregrine falcon—no documented sighting.
No	Bobolink—BLM sensitive; no documented sighting.	

Relevance Value	Yes/No	Rationale for Determination
Natural hazards (including areas of avalanche, dangerous flooding, landslides, unstable soils, seismic activity, or dangerous if it is determined through the resource management planning process that it has become part of a natural process).	No	Area was not nominated for this value.

Importance

The value, resource, system, process, or hazard described above must have substantial significance and values to satisfy the “importance” criteria. This generally means that the value, resource, system, process, or hazard is characterized by one or more of the following:

Importance Value	Yes/No	Rationale for Determination
Has more than locally significant qualities that give it special worth, consequence, meaning, distinctiveness, or cause for concern, especially compared with any similar resource.	Yes	Cultural—Many of the sites are nationally significant and the entire Quitcupah drainage is important to several Indian tribes, including the Paiute, Ute, and Hopi. All these tribes claim sacred values in the drainage. Eleven sites are also eligible for the National Register of Historic Places.
	Yes	Bald eagle—Federally listed (threatened).
	No	Mule deer—Not more than locally significant.
	No	Elk—Not more than locally significant.
	No	Black bear—Not more than locally significant.
	No	Ringtail cat—Not more than locally significant.
	Yes	Creutzfeldt flower—BLM sensitive.
	Yes	Last chance townsendia—Federally listed (threatened).
	No	Ecologic—This ecosystem is not rare in the region.
	Yes	Riparian—Riparian areas are more than locally significant by BLM policy that states “...maintain, improve, or restore all riparian areas located on public lands.”
Has qualities or circumstances that make it fragile, sensitive, rare, irreplaceable, exemplary, unique, endangered, threatened, or vulnerable to adverse change.	Yes	Cultural—Cultural resources could be threatened by proposed road construction, unrestricted OHV use, and vandalism.
	No	Bald eagle—No identified threats.
	No	Mule deer—No identified threats.
	No	Elk—No identified threats.
	No	Black bear—No identified threats.

Quitcupah Creek Ethnographic Study
For
The Proposed Quitcupah Creek Coal Haul Road



Richard W. Stoffle
Kathleen A. Van Vlack
Fletcher Chmara-Huff

Final Report
September 29, 2004



NativeA7

Quitcupah Creek Ethnographic Study
For
The Proposed Quitcupah Creek Coal Haul Road

Prepared for
Bureau of Land Management,
Richfield, Utah Field Office
And
The United States Forest Service
Fishlake National Forest

Prepared by
Richard W. Stoffle
Kathleen A. Van Vlack
Fletcher Chmara-Huff

With assistance from:
Aja Martinez
Nathaniel O'Meara

Bureau of Applied Research in Anthropology
The University of Arizona, Tucson, Arizona

Sketch of Major Findings

The human cultural responses to traditional objects, resources, places and landscapes are complex and require time and study to be fully understood. Thus, it is always problematic to essentialize such responses in an Executive Summary such as this. Nonetheless the formal and open-ended responses of PITU representatives to Quitchupah Canyon and Creek and the Indian places and resources they contain were uniform and culturally consistent; thus, it is with confidence that the following findings are presented.

- The presence and distribution of puha¹ is the most robust explanation in Numic place logic.
- Puha flows like hydrological systems, so at some level it is reflected in watersheds.
- When types of puha are combined, they are synergetic – like the parts of Buckminster Fuller’s² geodesic dome wherein the strength of the whole exceeds the individual strength of the parts.
- Quitchupah Creek contains a combination of puha and connections between puha that caused Indian people to respond to these puha places. These responses include (1) medicine/spiritual places like at the point of confluence of Quitchupah Creek and North Fork of Quitchupah Creek, (2) social and plant gathering areas like at the confluence of Quitchupah Creek and Water Hollow Canyon, and (3) residential farming areas like at lower Quitchupah Creek past the canyon mouth.
- Another case of types of puha being combined at a water/canyon confluence is found at Rochester/Muddy Creek. There, a confluence of puha resulted in the creation of a ceremonial panel on the prominent point. This is a close analog to the one created at Quitchupah Creek and North Fork of Quitchupah Creek

Based on these observations, the PITU representatives recommended that one or more special designations are needed to protect the Canyon and the Creek, which are the central puha features of the study area. In addition, sites as defined by the Indian representatives are culturally important as well as site resources like plants, animals, rock peckings and paintings, and artifacts left by previous generations. The special designation should be discussed in consultation with the PITU government, but representatives believed the special designation could be either (1) an Area of Critical Environmental Concern (2) a Wild and Scenic River designation, (3) a Sacred Sited under E.O. 13007,

¹ Puha is a Numic term for the energy given to all aspects of the world that makes it alive. See Chapter Two for a full discussion of this concept.

² See Buckminster Fuller Institute www.bfi.org

or (4) a Traditional Cultural Property. The representatives suggested that the Sacred Site and TCP nominations should be made even though the other two designations may be selected by the Federal land managers as the primary vehicles for providing culturally appropriate recognition and protection.

No matter which special designation is selected by the involved Federal agencies in consultation with PITU government, it is clear from these interviews that the entire Quitchupah Creek and Canyon are sacred to these people. The sacredness of this area is indicated by the evidence of Puha, the energy essence of the universe, and the ceremonial activities Indian people have conducted in response to the presence of puha.