



April 30, 2026

*Sent via email and Certified USPS First Class Mail*

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**RE: Sixty-Day Notice of Intent to Sue to Remedy Violations of the Endangered Species Act Pertaining to the Gate Canyon/Wells Draw Road Amendment**

Dear Secretary Burgum, Director Groffy, Director Nesvik, Director Heinlein, and Director McConkie:

The Southern Utah Wilderness Alliance (“SUWA”) hereby provides notice in accordance with the citizen suit provision of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g), that the United States Bureau of Land Management (“BLM”), United States Fish and Wildlife Service (“FWS”) and Utah Trust Lands Administration (“TLA”) are in violation of the ESA, 16 U.S.C. § 1531 *et seq.*, and its implementing regulations, 50 C.F.R. § 402 *et seq.*, with regard to BLM’s April 28, 2026 Decision (“Decision”) approving the Wells Draw Road Amendment – Gate Canyon Project, DOI-BLM-UT-G010-2026-0076-EA (“Gate Canyon Project” or “Project”).<sup>1</sup> BLM undertook this action and approved the Project without first conducting any ESA Section 7 consultation and without requiring any necessary protections for Mexican Spotted Owl (“MSO”), which is listed as threatened under the ESA. *See* Endangered and Threatened Wildlife and Plants; Final Rule to List the Mexican Spotted Owl as a Threatened Species, 58 Fed. Reg. 14248 (March 16, 1993).

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<sup>1</sup> Project documents are available at: <https://eplanning.blm.gov/Documents/?id=c3622a22-3822-f111-8341-001dd8029ed0&spid=271a96fa-5443-f111-88b4-001dd803d7d3#>



## I. The Gate Canyon Project

For over a decade now, Duchesne County has proposed to improve and realign the portion of the Wells Draw Road (“the Road”) that traverses through Gate Canyon. *See* Bureau of Land Mgmt., *Wells Draw Road Amendment – Gate Canyon Environmental Assessment*, 1-2 (April 2026) (“EA”). Approximately 3.4 miles of the Road cross TLA-managed land and 2.8 miles traverse BLM-managed land (bookending the TLA segment). In its Decision, BLM’s Vernal Field Office approved Duchesne County’s proposed improvements and realignments. *See generally* Bureau of Land Mgmt., *Wells Draw Road Amendment – Gate Canyon Decision Record* (April 2026) (“DR”).

BLM did not consult with FWS prior to approving the Gate Canyon Project because BLM asserted “[t]here were no [threatened and endangered] issues identified,” EA at 23, despite the fact that a significant portion of the Gate Canyon Project and the surrounding landscape encompasses modeled MSO habitat. *See* S. Utah Wilderness All. Map of Modeled Mexican Spotted Owl Habitat Wells Draw Road Amendment – Gate Canyon Project (April 2026) (“MSO Map”) (attached as Ex. 1).<sup>2</sup> As explained below, BLM must comply with its consultation and species/habitat protection obligations under the ESA, which it has failed to do here.

## II. Section 7 Consultation was Required Before BLM Could Approve the Gate Canyon Project.

The Gate Canyon Project is an agency action under the ESA which triggered BLM’s and FWS’s obligations to consult on impacts to MSO.

### A. ESA Legal Framework

Congress enacted the ESA to provide “a program for the conservation of...endangered species and threatened species.” 16 U.S.C. § 1531(b). All federal agencies, including BLM, “shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of the [ESA].” *Id.* § 1531(c)(1). The ESA defines “conservation” to

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<sup>2</sup> The MSO habitat model used for this map is the 1997 Willey-Spotskey Mexican Spotted Owl Habitat Model. BLM regularly uses this model when evaluating MSO impacts in Utah. *See, e.g.*, Bureau of Land Mgmt., West Tavaputs Plateau Natural Gas Full Field Development Plan Final Environmental Impact Statement, DOI-BLM-UT-G020-2005-0055-EIS, at 3-133 (July 2010) (explaining BLM’s use of the Willey-Spotskey model and specifically identifying “good” MSO habitat to be near the confluence of Sheep Canyon and Gate Canyon); Bureau of Land Mgmt., BLM Utah 2025 Third Quarter Competitive Oil and Gas Lease Sale Environmental Assessment, DOI-BLM-UT-0000-2025-0001-EA, 29 (Sept. 2025) (using this model in BLM’s leasing analysis); Bureau of Land Mgmt., BLM Utah 2025 Fourth Quarter Competitive Oil and Gas Lease Sale Environmental Assessment, DOI-BLM-UT-0000-2025-00003-EA, 46 (Aug 2025) (same); Bureau of Land Mgmt., BLM Utah 2026 First Quarter Competitive Oil and Gas Lease Sale Environmental Assessment, DOI-BLM-UT-0000-2026-0001-EA, at 124 (Dec. 2025) (same). Notably, BLM has never disputed the accuracy of this data.



mean “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which measures provided pursuant to [the ESA] are no longer necessary.” *Id.* § 1532(3).

For each proposed federal action, BLM must request information from FWS to determine whether, “based on the best scientific and commercial data available,” any listed or proposed species may be present in the area of the proposed agency action. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12(c). If such species may be present in the action area, BLM must prepare a “biological assessment” to determine whether the listed species or critical habitat may be affected by the proposed action. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12(c). Notably, “action area” is broadly defined under the ESA as “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” 50 C.F.R. § 402.02 (emphases added).

Among other things, a biological assessment should include a description of the action and action area, identification of any interrelated or interdependent actions, the results of onsite inspections of the action area to determine if species are present or occur seasonally, the views of recognized experts on the species at issue, a literature review, analysis of the effects of the action and any interrelated or interdependent actions on the listed species and habitat, and an analysis of alternatives to the proposed action. *Id.* § 402.12(f); Bureau of Land Mgmt., *Manual 6840 – Special Status Species Management*, § .1F5a(2)(b) (Nov. 2025) (“Manual 6840”). After completing the biological assessment, BLM must submit it to FWS for review and concurrence. 50 C.F.R. § 402.12(j).

If BLM determines that the proposed action may affect the species or critical habitat, it must engage in consultation with FWS. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a). If the action is likely to adversely affect a species, BLM must engage in “formal consultation” with FWS. *See* 50 C.F.R. § 402.14(b)(1). To complete formal consultation, FWS must provide BLM with a “biological opinion” explaining how the proposed action will affect the listed species or its critical habitat. 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14(g)(8) & (h). If FWS concludes that the proposed action “will jeopardize the continued existence” of a listed species, the biological opinion must outline “reasonable and prudent alternatives,” if any, that could be taken by BLM without inflicting these harms. 16 U.S.C. § 1536(b)(3)(A). An action agency may not proceed with an action that would likely jeopardize a listed species. *Id.* § 1536(a)(2).

As explained herein, BLM breached its duties prescribed under 16 U.S.C. § 1531 because it did not prepare a biological assessment to determine whether it needed to consult with FWS, even though the Gate Canyon Project qualifies as a federal action under the ESA and MSO may be present in the action area.

## **B. Approval of the Gate Canyon Project is a Federal Action Triggering Consultation Obligations.**

Under Section 7 of the ESA, BLM shall consult with FWS to “insure that any action authorized, funded, or carried out by [the] agency...is not likely to [1] jeopardize the continued existence of

any endangered species or threatened species or [2] result in the destruction or adverse modification of [the critical habitat] for such species. *Id.* § 1536(a)(2). “Action” is defined broadly under the ESA. It refers to “all activities or programs of any kind authorized, funded or carried out, in whole or in part, by Federal agencies in the United States” including, but not limited to “actions directly or indirectly causing modifications to the land, water, or air.” 50 C.F.R. § 402.02 (emphasis added).

The Gate Canyon Project qualifies as an action under the ESA because it was authorized in part by BLM, *see generally* DR, and will without question directly and indirectly cause modifications to the land, water, and air within the Project area. Among other things, the Project calls for the widening, paving, and realigning of 5.3 miles of road between the Gate Canyon summit and the intersection with Nine Mile Canyon Road, in addition to two designated parking areas. *See* EA at 5-6. A total of 90.2 acres will be affected by the realignment and improvements to the Road. *Id.* at 7. Notably, the proposed realignments involve eliminating several hairpin turns, which require blasting, cutting, digging, or otherwise altering the canyon walls on either side of the existing road. *See* EA at 8. There is thus no scenario where BLM’s authorization and the subsequent development and operation of the Gate Canyon Project does not meet the regulatory definition of “action” under the ESA.

Though the Gate Canyon Project meets the definition of an action for the purposes of the ESA, BLM did not initiate the consultation process with FWS regarding the potential impacts to MSO despite the presence of modeled suitable habitat surrounding portions of the Project. *See* MSO Map. This modeled habitat indicates that MSO may be present in the action area, and thus triggers BLM’s duty to prepare a biological assessment. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12(c). On information and belief, BLM did not prepare the requisite biological assessment. At most, BLM relied on old surveys that found “no suitable habitat nor individuals within 0.5 miles of the project area.” EA at App. A, vi. This one-sentence statement does not suffice. *First*, it does not state that the Gate Canyon Project will not affect MSO. *Second*, the old surveys provide no insight into whether MSO currently may be present in the action area. And *third*, nowhere in the EA is “project area” defined, so there is no explanation of where the surveys were conducted or whether they covered the entire action area for the Gate Canyon Project. *See* 50 C.F.R. § 402.02 (definition of “action area”).

Furthermore, in a previous iteration of this Project, BLM has recognized that MSO may be affected by the widening, improvements, and realignment of the Road through Gate Canyon. *See, e.g.,* Bureau of Land Mgmt., *Gate Canyon Road Improvement Project UTU-81573 Draft Environmental Assessment*, 10, 14, 19-20, 25-26, 119 (2015) (“2015 EA”). The current, approved EA makes no mention of these prior conclusions even though the now-approved action varies little from the previously proposed action. *Compare* EA at 8 *with* 2015 EA App. A Map 1. If anything, the approved action is more impactful because it will result in a larger right-of-way and more surface disturbance. *Compare* EA at 7 (table of proposed right-of-way calculations by landownership) *with* 2015 EA at 5 (table of right-of-way acreage for the proposed action).

BLM’s approval of the Gate Canyon Project is a federal action under the ESA where MSO may be present. BLM’s one sentence statement that prior surveys did not detect any owls does not



equate to a “no effect” determination that the Project will definitively not affect MSO.<sup>3</sup> Accordingly, BLM’s failure to prepare a biological assessment to determine whether formal consultation is necessary before issuing the Decision violates Section 7, 16 U.S.C. § 1536(a)(2).

**C. Approval of the Gate Canyon Project Constitutes an Irretrievable Commitment of Resources in Violation of Section 7(d).**

Until all consultation requirements are met, BLM may not authorize any actions that constitute an “irreversible or irretrievable commitment of resources.” *See* 16 U.S.C. § 1536(d). Specifically, both federal agencies and permit applicants (*e.g.*, Duchesne County) are prohibited under ESA Section 7(d) from making any “irreversible or irretrievable commitment of resources . . . which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures” for avoiding jeopardy. *Id.* The prohibition on irreversible and irretrievable resource commitments applies prior to the beginning of Section 7(a)(2) consultation, *Nat. Res. Def. Council v. Houston*, 146 F.3d 1118, 1128 n.6 (9th Cir. 1998), and applies to both government agencies and private parties. *See Env’tl. Prot. Info. Ctr., Inc. v. Pac. Lumber Co.*, 67 F. Supp. 2d 1090, 1104 (N.D. Cal. 1999).

Here, the Gate Canyon Project constitutes an irretrievable commitment of resources because it permanently amends Duchesne County’s right-of-way such that allows Duchesne County to permanently change the nature and topography of Gate Canyon, necessarily resulting in the destruction of suitable MSO habitat. But because BLM failed to initiate (and certainly complete) consultation, BLM’s approval of the Gate Canyon Project violates Section 7(d).

**III. Conclusion**

By failing to prepare a biological assessment and initiate the consultation process on the Gate Canyon Project’s impacts to MSO and its habitat, BLM and FWS have acted unlawfully and overlooked significant risks to MSO. Accordingly, pursuant to the citizen suit provision of the ESA, 16 U.S.C. § 1540(g)(2), this letter provides you notice that, unless within 60 days of receipt of this letter BLM withdraws its approval of the Gate Canyon Project, we intend to challenge these actions in federal court. Please direct all communications regarding this matter to the undersigned counsel.

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<sup>3</sup> A “no effect” determination is only appropriate if, “after a review of the project and any interrelated or interdependent actions, . . . there is no reasonable likelihood that listed species are in the action area, or . . . there will be no direct or indirect effects to the species in the action area.” Manual 6840 § .1F3. Here, given the modeled suitable habitat, and the fact that Gate Canyon is a rocky canyon with the steep walls and desert shrubs that MSO are known to prefer, it is reasonable to assume that MSO may be in the action area. *See* U.S. Fish and Wildlife Serv., *Mexican Spotted Owl Recovery Plan, First Revision*, 25-26 (Sept. 2012) (describing MSO preferred habitat in Utah).



Sincerely,

A handwritten signature in black ink that reads "Hanna Larsen". The signature is written in a cursive style and is positioned above a horizontal line.

Landon Newell (UT Bar No. 14738)

Laura Peterson (UT Bar No. 16135)

Hanna Larsen (UT Bar No. 18458)

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


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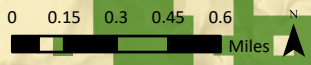
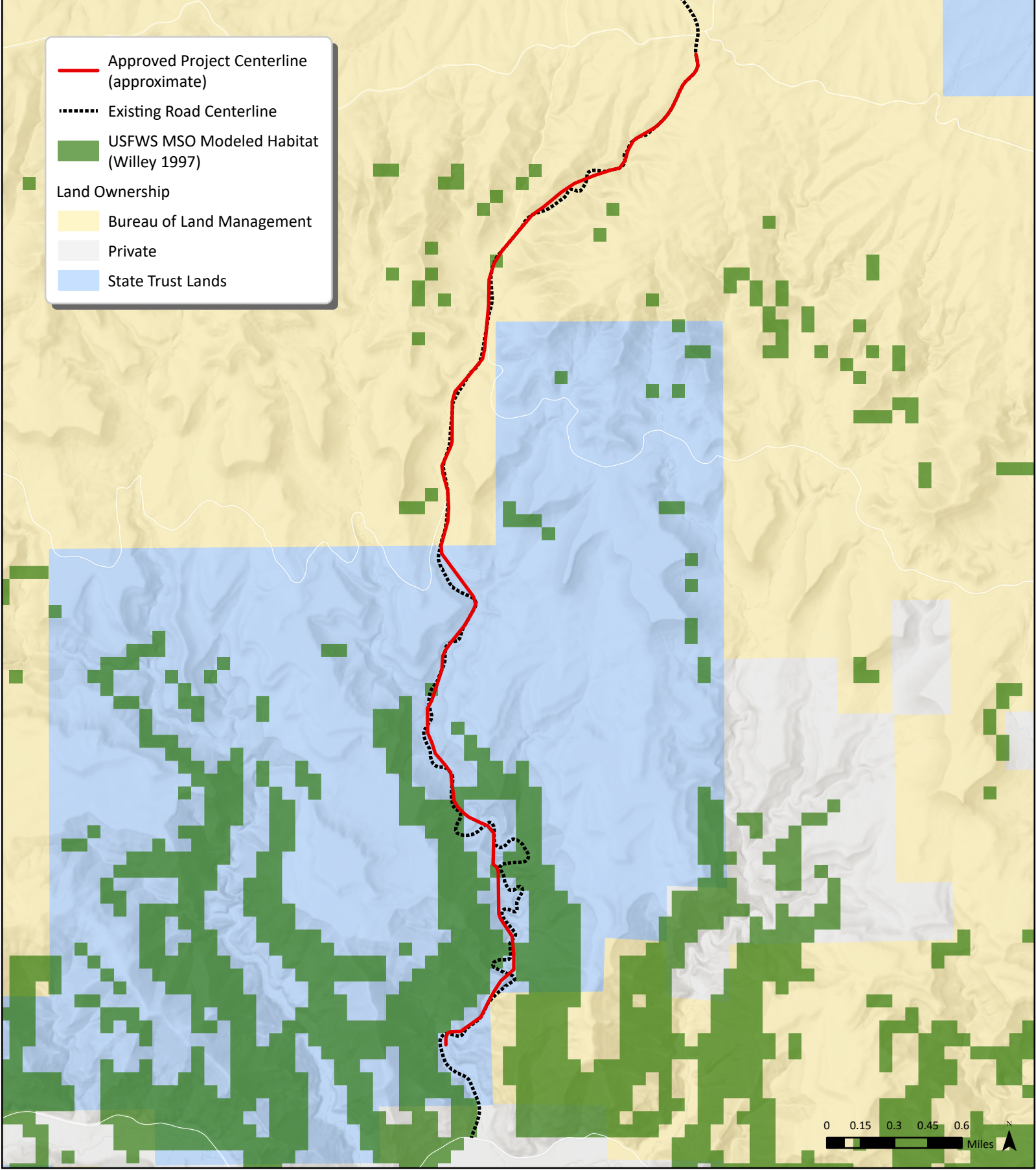
*Counsel for Southern Utah Wilderness Alliance*

# EXHIBIT 1

-  Approved Project Centerline (approximate)
-  Existing Road Centerline
-  USFWS MSO Modeled Habitat (Willey 1997)

Land Ownership

-  Bureau of Land Management
-  Private
-  State Trust Lands



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**Modeled Mexican Spotted Owl Habitat**  
 Wells Draw Road Amendment - Gate Canyon Project

