

Settlement Agreement in
Southern Utah Wilderness Alliance, et al. v. U.S. Department of the Interior, et al.,
U.S. District Court (D. Utah) Consolidated Case No. 2:12-cv-257 DAK
U.S. Court of Appeals for the Tenth Circuit Nos. 15-4151, 15-4152, 15-4153, 15-4155, 15-4158

This Settlement Agreement is entered into between: (1) Plaintiffs Southern Utah Wilderness Alliance (“SUWA”), Natural Resources Defense Council, Wilderness Society, National Parks Conservation Association, Grand Canyon Trust, Sierra Club, National Trust for Historic Preservation, Utah Rivers Council, Great Old Broads for Wilderness, and Rocky Mountain Wild; (2) Federal Defendants U.S. Department of the Interior, S.M.R. Jewell, in her official capacity as Secretary of the Department of the Interior, the U.S. Bureau of Land Management, and Janice Schneider, in her official capacity as Assistant Secretary for Land and Minerals Management of the U.S. Department of the Interior (collectively, “Federal Defendants”); and (3) Defendant-Intervenors BlueRibbon Coalition, Colorado Off-Highway Vehicle Coalition, and Trails Preservation Alliance. Plaintiffs, Federal Defendants, and Defendant-Intervenors who have signed this Settlement Agreement will be collectively referred to herein as “the parties,” and individually as a “party,” unless specifically identified otherwise. In addition to the above-named parties, the above-captioned cases include Defendant-Intervenors State of Utah, Carbon County, Duchesne County, Daggett County, Emery County, Grand County, Kane County, San Juan County, Uintah County, Utah School And Institutional Trust Lands Administration (“SITLA”), Badlands Energy, Crescent Point Energy US Corp., EOG Resources, and XTO Energy. Defendants-Intervenors sought, and were granted, intervention shortly after each complaint was filed.

WHEREAS, in 2008, the U.S. Bureau of Land Management (“BLM”) issued six Resource Management Plans (“RMPs”) and associated Travel Management Plans (“TMPs”) for the Kanab, Moab, Monticello, Price, Richfield, and Vernal Field Offices, which are all administered by the Utah State Office of BLM (“BLM-Utah”).

WHEREAS, Plaintiffs subsequently filed two complaints challenging each of the RMPs and TMPs, alleging, among other things, that BLM violated the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2)(A), the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701 *et seq.*, the National Historic Preservation Act (“NHPA”), 54 U.S.C. §§ 300101 *et seq.*, the National Wild and Scenic Rivers Act (“WSRA”), 16 U.S.C. § 1271, the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, and BLM’s off-road vehicle (“ORV”) designation criteria regulation, 43 C.F.R. § 8342.1.

WHEREAS the district court consolidated the two cases and, based upon the parties’ agreement to litigate the matter in stages, proceeded to adjudicate the claims challenging the Richfield RMP and TMP.

WHEREAS, on November 4, 2013, the district court issued a merits ruling that was partially adverse to Federal Defendants. The court found that “[i]n designating 4,277 miles of routes in this case, BLM did not discuss the minimization criteria in the ROD, RMP, or any other travel planning documents,” and “therefore, there [was] no evidence in the ROD that the minimization criteria was applied or applied correctly.” The court also found that BLM violated the NHPA in adopting the Richfield TMP. Specifically, the court found that BLM did not make a good-faith effort to identify cultural resources along designated routes in light of its instruction memorandum (“IM”) 2007-030, which the court interpreted to require BLM to conduct intensive “Class III” surveys along all 4,277 miles of designated routes in the Richfield Field Office. The court also found that BLM did not adequately explain its RMP decisions not to designate the potential Henry Mountains Area of Critical Environmental Concern (“ACEC”) as an ACEC and that BLM’s eligibility decision regarding certain river segments in Happy, Buck, and Pasture Canyons under the WSRA was arbitrary. The court ruled in favor of BLM on Plaintiffs’ remaining claims.

WHEREAS, on May 22, 2015 the district court issued its remedy order requiring BLM to resolve these legal infirmities in a phased manner within three years.

WHEREAS, in October 2015, BLM and several Defendant-Intervenors timely appealed the district court's merits decision and the remedy order.

WHEREAS, on February 17, 2016, Plaintiffs amended their complaint adding site-specific allegations stemming from BLM's November 2014 Oil and Gas Lease Sale in BLM's Price and Vernal Field Offices, and the district court has approved a briefing schedule for Plaintiffs' claims relating to BLM's Price and Vernal Field Offices, which has been extended pending settlement efforts.

WHEREAS, since 2013, BLM has worked with numerous consulting parties, including Plaintiff SUWA and Defendant-Intervenors State of Utah, SITLA, and Duchesne, Emery, San Juan, and Uintah Counties, and the BlueRibbon Coalition, to develop a comprehensive travel and transportation planning programmatic agreement, pursuant to 36 C.F.R. § 800.14(b), that guides how BLM accounts for cultural resources when designating routes. BLM anticipates that this programmatic agreement, to be titled "Programmatic Agreement for Travel Management Activities," will be completed in early 2017.

WHEREAS, the parties, without any admissions relating to Plaintiffs' claims, believe that it is in the interests of the public, the parties, and judicial economy to resolve these claims without further litigation.

WHEREAS, Defendant-Intervenors SITLA, Badlands Energy, Crescent Point Energy US Corp., EOG Resources, and XTO Energy do not oppose or object to the parties entering into this Settlement Agreement.

NOW, THEREFORE, the parties hereby stipulate and agree to the following:

A. GENERAL PROVISIONS

1. In exchange for the consideration set forth herein, Plaintiffs release Federal Defendants, all other federal agencies, the United States, and all of their employees and officials from, and Plaintiffs covenant not to sue on, all claims, causes of action, obligations, or liabilities that they alleged or could have alleged in the above-captioned cases based on facts that existed as of the date the Settlement Agreement is signed by the last party to sign to the Settlement Agreement. The parties do not waive any claims or defenses that they may have in any subsequent litigation or administrative proceedings initiated after that date, except as expressly stated herein.

2. This Settlement Agreement in no way affects or relieves any party of its responsibility to comply with the United States Constitution or with any applicable federal law or regulation, including the APA, NEPA, FLPMA, and NHPA. Nothing in this Settlement Agreement shall be construed to limit or modify the discretion accorded to Federal Defendants by any applicable federal law or regulation, including the APA, NEPA, FLPMA, and NHPA, or general principles of administrative law with respect to either the procedures to be followed in making any determination required herein or the substance of any determination.

3. This Settlement Agreement is for the purpose of settling the above-captioned litigation. Nothing in this Settlement Agreement shall be deemed as precedent in this or any other proceeding or shall constitute an admission or concession by any party as to the validity of any fact or legal position concerning the claims or defenses in this or any other proceeding. Nothing in this Settlement Agreement shall be construed to be an admission or shall constitute evidence that the commitments made by BLM in this Settlement Agreement are necessary to satisfy any requirement under any applicable law.

4. Though any party may use this Settlement Agreement to document the fact that one or more claims were disposed of pursuant to the terms and conditions herein, the discussions leading to the Settlement Agreement are confidential under 10th Circuit Rule 33.1.

5. It is hereby expressly understood and agreed that this Settlement Agreement was negotiated at arm's-length with each party receiving advice from legal counsel. The parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Settlement Agreement. Unless the context clearly requires otherwise, all of the following apply to the interpretation of this Settlement Agreement: (a) the masculine, feminine, and neuter genders each include the others; (b) the words "includes" and "including" and "such as" are not limiting; (c) "days" refers to calendar days unless otherwise specified; and (d) headings are included for convenience and do not affect the construction or interpretation of any provision of, or the rights or obligations of a party under, this Settlement Agreement. This Settlement Agreement shall be governed by and construed under federal law.

6. Nothing in this Settlement Agreement shall be construed to make any other person or entity not executing this Settlement Agreement a third-party beneficiary to this Settlement Agreement.

7. This Settlement Agreement in no way affects the rights of any party as against any person or entity not a party hereto. Nothing in this Settlement Agreement shall be interpreted as imposing obligations on any federal agency or other non-federal entity that is not a signatory to this Settlement Agreement.

8. This Settlement Agreement contains all of the agreements between the parties, and is intended to be and is the final and sole agreement between the parties concerning the complete and final resolution of Plaintiffs' causes of action in the above-captioned cases. The parties agree that any other prior or contemporaneous representations or understanding not explicitly contained in this Settlement Agreement, whether written or oral, are of no legal or equitable force or effect.

9. The provisions of this Settlement Agreement shall apply to and be binding upon each of the parties.

10. The undersigned warrant that they have full authority to enter into this Settlement Agreement and by their signatures bind to the terms of this Settlement Agreement the party or persons on whose behalf they have signed.

11. The obligations imposed upon Federal Defendants under this Settlement Agreement can only be undertaken using appropriated funds. No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that Federal Defendants obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law.

12. Any subsequent modifications, supplements, or amendments to this Settlement Agreement must be in writing, and must be signed and executed by or on behalf of the affected parties, or their successors in interest, as necessary.

B. SPECIFIC PROVISIONS

New Travel Management Plans in Certain Travel Management Areas

13. **New Travel Management Plans subject to this Settlement Agreement.** BLM will issue a new TMP for each of the following travel management areas (“TMA”) within the Richfield, Vernal, Price, Moab, and Kanab Field Offices according to the deadlines set forth below, which will start to run on the effective date of this Settlement Agreement established in Paragraph 37. Each TMP will be considered issued upon the date the authorized officer signs the decision document approving the TMP. The geographic scope of each TMA is included in the Attachments A1-5 (Maps 1 through 5), which are hereby incorporated into this Settlement Agreement:

- a. Richfield Field Office (Attachment A1: Map 1)
 - i. Henry Mountains and Fremont Gorge: 2.5 years
- b. Vernal Field Office (Attachment A2: Map 2)
 - i. Dinosaur (North): 3.5 years
 - ii. Book Cliffs: 5.5 years
 - iii. Nine Mile Canyon: 7 years
- c. Price Field Office (Attachment A3: Map 3)

- i. San Rafael Desert: 2.5 years
 - ii. San Rafael Swell (including part of the former Forest Planning Unit in the Richfield Field Office): 4.5 years
 - iii. Nine Mile Canyon: 7 years
- d. Moab Field Office (Attachment A4: Map 4)
 - i. Indian Creek: 4 years
 - ii. Book Cliffs: 5.5 years
 - iii. Labyrinth/Gemini Bridges: 6 years
 - iv. Dolores River: 8 years
- e. Kanab Field Office (Attachment A5: Map 5)
 - i. Trail Canyon: 4 years
 - ii. Paunsaugunt: 6 years

14. **Travel planning outside of TMAs.** The TMPs for the Richfield, Vernal, Price, Moab, and Kanab Field Offices that are in effect as of the effective date of this Settlement Agreement will remain in effect until BLM issues new TMPs for the TMAs identified in paragraph 13; those new TMPs will supersede the corresponding portions of the TMPs. However, subject to valid existing rights, nothing herein restricts BLM's discretion to revise or amend the 2008 TMPs, to impose limitations or closures, as provided by 43 C.F.R. §§ 8341.2 and 8364.1, to open, close, modify, or add new routes, or otherwise consider or institute temporary management prescriptions in accordance with applicable law and regulations. Any remaining public lands in Utah that fall outside of the geographic scope of the TMAs identified in paragraph 13, including the remainder of the public lands in the Richfield, Price, Vernal, Moab, and Kanab Field Offices, are not subject to the provisions outlined in paragraphs 15-24 of this Settlement Agreement.

Process for Completing TMPs

15. **Applicable law and agency guidance.** BLM will prepare the new TMPs for each of the TMAs identified in paragraph 13 pursuant to applicable statutes, regulations, BLM-Utah

Instruction Memorandum No. 2012-066 (“BLM-Utah IM 2012-066”), and the terms identified in paragraphs 16-24 of the Settlement Agreement. In addition to BLM-Utah IM 2012-066, relevant existing guidance includes, but is not limited to: BLM-Utah Guidance for the Lands with Wilderness Characteristics Resource, Instruction Memorandum No. UT 2016-027 (September 30, 2016); BLM National Environmental Policy Act Handbook H-1790-1 (January 2008); BLM-Utah Handbook 8110, *Guidelines for Identifying Cultural Resources* (2002); BLM Handbook H-8342, Travel and Transportation (March 16, 2012); BLM Manual 1613, *Areas of Critical Environmental Concern* (September 29, 1988); BLM Manual 1626, *Travel and Transportation* (July 14, 2011); BLM Manual 6320, *Considering Lands with Wilderness Characteristics in BLM Land Use Planning* (March 15, 2012); BLM Manual 6330, *Management of BLM Wilderness Study Areas* (July 13, 2012), 6340, *Management of BLM Wilderness* (July 13, 2012); and BLM Manual 8110, *Identifying and Evaluating Cultural Resources on Public Lands* (December 3, 2004). Nothing in the Settlement Agreement makes binding the aforementioned guidance. Nothing in this Settlement Agreement shall be construed as limiting BLM’s discretion to promulgate new manuals, handbooks, or instruction memoranda consistent with relevant law and regulations. The parties may agree to modify the Settlement Agreement to reflect updated regulations or guidance, consistent with paragraph 12.

16. **Procedural requirements.** BLM will follow the procedure set forth below when conducting its travel planning for the TMPs for the TMAs identified in paragraph 13, except as provided in paragraphs 18 and 19 for the Henry Mountains and Fremont Gorge TMA and the San Rafael Desert TMA.

a. **Cooperating agencies.** Prior to initiation of public scoping for a new TMP, BLM will invite eligible federal, tribal, state, and local government agencies to participate in the development of the TMPs as cooperating agencies. Cooperating agency agreements will be established in accordance with law and regulations, including 43 C.F.R. § 46.225.

b. **Public scoping.** At the initiation of the travel planning scoping period for a new TMP, BLM will make available to the public and stakeholders maps of all BLM-inventoried routes

being considered for designation under 43 C.F.R. § 8342.1. Such route inventory maps will include spur routes leading to Utah State Institutional Trust lands, facilities, campsites, and other points of interest, which may include overlooks and natural and historic features. The maps will provide a unique identifier, including any state or county identifying number or common name known to BLM, for each individual route and be of sufficient detail that the public can provide meaningful input on each individual route's purpose and need, as well as potential resource and user conflicts. The maps and their underlying GIS data will be made available on the internet and BLM will make a reasonable effort to make paper copies available in each respective field office. BLM will provide a reasonable period for the public and stakeholders to provide information regarding the maps or any routes being considered for designation within the TMA, which may include evidence of valid existing rights and route maintenance agreements, prior to BLM's preliminary route evaluation.

c. **Preliminary route evaluations.** A BLM interdisciplinary team ("ID Team") will conduct a preliminary evaluation of each route being considered for designation in the TMP. The preliminary evaluation will include (1) assessing how each potential route designation within the TMA is consistent with 43 C.F.R. § 8342.1; (2) consideration of the goals and objectives for resource values and uses established in the applicable RMP; (3) consideration and documentation of any purpose and need of the route, including but not limited to activities relating to existing motorized and non-motorized uses for recreation, hunting, law enforcement, search and rescue, fire suppression, access to private or Utah State Institutional Trust lands, exploration and development, administrative, and authorized motorized travel; and (4) consideration and documentation of any known or asserted resource or user conflict. BLM will also consider designating spur routes leading to Utah State Institutional Trust lands, facilities, campsites, and other points of interest, which may include overlooks and natural and historic features. When considering routes for designation, BLM will consider whether there are multiple routes leading to the same location. The ID Teams may consider designating routes in any manner consistent with BLM's authority under 43 C.F.R.

§ 8340.0-5(g), which includes, but is not limited to, designating routes for motorized, non-motorized, and administrative travel.

d. **Public and stakeholder review of preliminary route evaluations.** At the conclusion of the ID Team's preliminary evaluation of all the routes being considered for designation in the TMP, BLM will prepare (1) a Travel Management Plan Scoping Report, including an appendix with copies of all public and stakeholder correspondence received to date, unless prohibited by law; (2) preliminary alternatives maps; and (3) draft route reports. BLM will make these documents available to the public and stakeholders upon completion. Commensurate with the level of public and stakeholder interest, BLM may seek further public and stakeholder input as to the preliminary alternatives maps and draft route reports and/or hold a public meeting to further engage the public in the travel planning process. All written input received from the public and stakeholders will be made available to the public as provided by law.

e. **NEPA compliance.** BLM will consider all substantive and timely input received as a result of its public and stakeholder engagement efforts in updating the draft route reports and developing a draft TMP NEPA document. BLM will make the updated route reports and the draft TMP NEPA document simultaneously available for public review and comment for a 30-day period (or longer, at BLM's sole discretion). In providing for public review and comment, BLM will follow applicable NEPA regulations.

f. **Final decision.** BLM will consider the information obtained during the public review and comment period to develop final route reports, its final NEPA document, and its decision document approving each new TMP. Decision records or records of decisions approving TMPs will be appealable to the Interior Board of Land Appeals as provided in 43 C.F.R. Part 4.

g. **Responses to public and stakeholder comments.** BLM will respond to substantive and timely public and stakeholder comments in accordance with all cooperating agency agreements and applicable NEPA regulations. BLM may occasionally receive, outside of a specified

comment period, submissions from the public or stakeholders; BLM may consider such submissions at its sole discretion.

17. **Documentation requirements.** BLM will adhere to the following documentation requirements when conducting its travel planning for the new TMPs for the TMAs identified in paragraph 13:

a. **Purpose and need.** BLM will identify and document in each route report the purpose and need for the route. BLM will identify all known current motorized and non-motorized use that occurs on the route. In considering if a route has a purpose and need, BLM will take into account information indicating if a route is no longer used by motorized vehicles, is revegetating or reclaiming, and/or is impassable to motorized vehicles. A route without an identified purpose and need will not be proposed as part of the dedicated route network in any action alternatives in the NEPA document.

b. **Affected resources.** For each route for which BLM has identified a purpose and need, BLM will document in the route report any public land resources, as set forth in 43 C.F.R. § 8342.1(a), that may be affected by motorized vehicle use of the route. Public land resources include, but are not limited to, identified cultural resources and public lands with BLM-inventoried wilderness characteristics, regardless of whether BLM administers or manages the subject public lands to maintain or enhance those resources.

c. **Resource impact.** BLM will identify and document in each route report all direct and indirect impacts to “soil, watershed, vegetation, or other resources of the public lands,” 43 C.F.R. § 8342.1(a), including identified cultural resources and public lands with BLM-inventoried wilderness characteristics, that are caused by motorized vehicle use.

d. **Route-specific minimization alternatives.** BLM will document in the route report how each alternative route designation will “minimize damage” to affected “soil, watershed, vegetation, or other resources of the public lands,” 43 C.F.R. § 8342.1(a), including identified cultural resources and public lands with BLM-inventoried wilderness characteristics. In each route

report, BLM will include a brief narrative summary of how it has applied the designation criteria to the route for each alternative route designation.

e. **Travel network minimization alternatives.** BLM will explain in the NEPA document for each TMP how each proposed alternative route network will “minimize damage” to “resources of the public lands,” 43 C.F.R. § 8342.1(a), including identified cultural resources and public lands with BLM-inventoried wilderness characteristics. For purposes of minimizing damage to public lands with BLM-inventoried wilderness characteristics, BLM will consider the potential damage to any constituent element of wilderness characteristics, including naturalness, outstanding opportunities for solitude, and outstanding opportunities for primitive and unconfined recreation, for each alternative route network. BLM will consider in the NEPA document at least one proposed alternative route network that would not designate for ORV use any route where BLM has determined that such use may “damage,” 43 C.F.R. § 8342.1(a), BLM-inventoried wilderness characteristics; however, BLM need not consider closing such a route to ORV use to the extent the use is authorized by an existing right-of-way or other BLM authorization or by law, including *State of Utah v. Andrus*, 486 F. Supp. 995 (D. Utah 1979), which will be documented in the final route report.

f. **Alternative route networks within WSAs and Natural Areas.** For routes or portions thereof that are located on public land within wilderness study areas (“WSAs”) and Natural Areas, BLM will analyze in the NEPA document at least one alternative route network that would enhance BLM-inventoried wilderness characteristics by designating the routes or the relevant portions thereof as closed to ORV use, unless ORV use of the route is authorized by an existing right-of-way or other BLM authorization or by law. To the extent ORV use of a route is authorized, this alternative route network will include measures limiting ORV use to enhance BLM-inventoried wilderness characteristics to the greatest extent possible consistent with applicable laws, regulations, or existing right-of-way authorizations.

g. **Alternatives proposed by parties.** Any party to this Settlement Agreement may propose a route network alternative during public scoping and BLM will consider any such

alternative, as appropriate, in its NEPA document. This does not foreclose BLM from determining that such an alternative will not be analyzed in detail.

h. **R.S. 2477 assertions.** Route designations do not signify a recognition or rejection of R.S. 2477 assertions.

i. **Preservation of discretion.** Nothing in this Settlement Agreement shall be construed to require BLM to adopt any particular alternative or portion thereof presented in a route report or NEPA document or to limit in any way BLM's discretion to make route designations or adopt a final TMP, consistent with paragraph 2. Nothing in this Settlement Agreement shall be construed to limit in any way BLM's discretion to open, close, or modify use on routes.

18. **Henry Mountains and Fremont Gorge TMA.** Because BLM has already initiated some components of travel planning for the Henry Mountains and Fremont Gorge TMA to comply with the district court's 2015 remedy order, this paragraph, rather than paragraph 16, applies to BLM's travel planning process there. BLM will invite eligible federal, tribal, state, and local government agencies to be cooperating agencies as outlined in paragraph 16.a, so that cooperating agencies may participate in the remainder of the travel-planning process for the Henry Mountains and Fremont Gorge TMA. BLM will not be required to undertake any of the actions identified in paragraphs 16.b or 16.d other than as specified below: no later than completion of its interdisciplinary evaluation of routes within the TMA, including its consideration of Class III cultural resource survey data, BLM will make available to the public and stakeholders: (1) maps and GIS data of the inventoried routes being considered for designation; (2) preliminary alternatives maps; and (3) draft route reports. The maps will provide a unique identifier for each individual route and be of sufficient detail that the public can provide meaningful input on each individual route's purpose and need, as well as potential resource and user conflicts. In addition, BLM will hold at least one public meeting during this period. BLM will comply with all requirements of paragraphs 16.c, 16.e, 16.f, and 16.g.

19. **San Rafael Desert TMA.** Because BLM has already initiated travel planning for the San Rafael Desert TMA, this paragraph, rather than paragraph 16, applies to BLM's travel planning process there. BLM will invite eligible federal, tribal, state, and local government agencies to be cooperating agencies as outlined in paragraph 16.a, so that cooperating agencies may participate in the remainder of the travel planning process for the San Rafael Desert TMA. However, because BLM already provided a 30-day public travel planning scoping period and has undertaken its preliminary interdisciplinary evaluation of the inventoried routes in this TMA, BLM will not be required to undertake any actions set forth in paragraph 16.b. BLM will also not be required to create new preliminary route evaluation forms. However, BLM will update its preliminary route evaluations to include the information listed in paragraph 16.c. BLM will comply with all requirements of paragraphs 16.d, 16.e, 16.f, and 16.g.

Monitoring During and After Travel Planning

20. **Monitoring in the Vernal, Price, Moab, and Kanab TMAs.**

a. **Baseline Monitoring Report.** Except for the Henry Mountains and Fremont Gorge TMA, for each TMA identified in paragraph 13, BLM will complete a baseline monitoring report that will document visually-apparent unauthorized surface disturbances off routes as well as visually-apparent damage to public lands resources caused by motorized vehicle use within WSAs, Natural Areas, and/or lands with BLM-inventoried wilderness characteristics. To create the baseline monitoring report, BLM will physically inspect those portions of routes within the TMA that are within or constitute a boundary to a WSA, Natural Area, and/or lands with BLM-inventoried wilderness characteristics. For those portions of routes, BLM will document by site photography and written narrative each disturbance and damage site. At a minimum, BLM will document the following information: (1) the geospatial coordinate of the site of disturbance or damage; (2) the route number or other identifier where the disturbance or damage was observed, the date of the physical inspection, the TMA in which the inspection took place, and the name of the inspector; (3)

the observed usage intensity (i.e., none, light, medium, or heavy); (4) the apparent geographic extent of the disturbance or damage; and (5), if possible, (a) the apparent type of motorized vehicle(s) that caused the disturbance or damage, (b) the apparent purpose of the disturbance (e.g., short spur, dispersed camping, play area, or inadvertent travel), and (c) the type of public land resource damaged by motorized vehicle use. The baseline monitoring report will include the information gathered and recorded during the physical inspection, as well as maps showing the location and nature of any documented disturbance or damage sites. BLM will make its baseline monitoring report available for public review at the same time as the preliminary route evaluation documents identified in paragraph 16.d. BLM need not complete the baseline monitoring report prior to that time, but may do so at its discretion. Baseline monitoring reports described in this paragraph may be used to explain or support any BLM final agency action, but do not themselves constitute final agency action.

b. **Monitoring during planning.** After BLM completes the baseline monitoring report required by paragraph 20.a, BLM will, at least one time per year, inspect all sites where BLM's baseline monitoring report previously identified disturbance and damage. If BLM receives credible information that any new visually-apparent unauthorized surface disturbances off routes or visually-apparent damage to public lands resources caused by motorized vehicle use (1) has occurred along those portions of routes within the TMA that are within or constitute a boundary to a WSA, Natural Area, and/or lands with BLM-inventoried wilderness characteristics and (2) is adversely affecting public land resources, then BLM will inspect the portion of that route, subject to available personnel and passable route conditions. BLM will document its inspection and monitoring of these sites during planning by site photography and written narrative describing each disturbance and damage site. BLM's documentation will include, at a minimum, the following information: (1) the geospatial coordinate of the site of disturbance or damage; (2) the route number or other identifier where the disturbance or damage was observed, the date of the physical inspection, the TMA in which the

inspection took place, and the name of the inspector; (3) the observed usage intensity (i.e., none, light, medium, or heavy); (4) the apparent geographic extent of the disturbance or damage; and (5), if possible, (a) the apparent type of motorized vehicle(s) that caused the disturbance or damage, (b) the apparent purpose of the disturbance (e.g., short spur, dispersed camping, play area, or inadvertent travel), and (c) the type of public land resource damaged by motorized vehicle use. BLM's documentation and/or reports described in this paragraph may be used to explain or support any BLM final agency action, but do not themselves constitute final agency action. BLM will undertake monitoring more frequently if it determines additional monitoring is warranted. BLM's monitoring obligation identified in this paragraph for the TMAs identified in paragraph 13 will terminate when BLM issues the new TMP for that TMA, regardless of whether administrative or judicial review is sought.

21. **Monitoring in the Henry Mountains and Fremont Gorge TMA.** BLM will prepare a summary monitoring report for the Henry Mountains and Fremont Gorge TMA that will include: (a) all off-highway vehicle observation reports and other route monitoring data collected in the TMA since the May 22, 2015 remedy order; (b) all additional route monitoring data that has been collected in the TMA in conformance with the Richfield 2008 Resource Management Plan and Record of Decision; and (c) all BLM-generated monitoring data related to the 129 routes within the TMA identified by Plaintiffs in an April 18, 2016 submission to BLM. Starting on the effective date of this Settlement Agreement, BLM will begin documenting all of its route monitoring data that it will collect pursuant to this paragraph in the Henry Mountains and Fremont Gorge TMA using site photography and written narrative in a manner that describes all visually-apparent unauthorized surface disturbance off routes and visually-apparent damage to public lands resources caused by motorized vehicle use. BLM's documentation will include, at a minimum, the following information: (1) the geospatial coordinate of the site of disturbance or damage; (2) the route number or other

identifier where the disturbance or damage was observed, the date of the physical inspection, the TMA in which the inspection took place, and the name of the inspector; (3) the observed usage intensity (i.e., none, light, medium, or heavy); (4) the apparent geographic extent of the disturbance or damage; and (5), if possible, (a) the apparent type of motorized vehicle(s) that caused the disturbance or damage, (b) the apparent purpose of the disturbance (e.g., short spur, dispersed camping, play area, or inadvertent travel), and (c) the type of public land resource damaged by motorized vehicle use. The summary monitoring report will include the information gathered and recorded during the physical inspection, as well as maps showing the location and nature of any disturbance or damage site. BLM will make the summary monitoring report for the Henry Mountains and Fremont Gorge TMA available to the public within 180 days of the effective date of this Settlement Agreement, but, regardless of the effective date of the Settlement Agreement, no sooner than October 15, 2017.

22. Consideration of Considerable Adverse Effects.

a. Any party to the agreement may provide BLM with evidence that (1) motorized vehicle use is causing or will cause considerable adverse effects as set forth in 43 C.F.R. § 8341.2(a) or (2) that action is required to protect persons, property, and public lands and resources pursuant to 43 C.F.R. § 8364.1. When BLM receives such information, it will promptly make such information available to all other parties to the Settlement Agreement. BLM will provide a written response assessing whether action pursuant to § 8341.2(a) or § 8364.1 is necessary to the party submitting such information as well as all other parties to the agreement within 90 days of receiving the information.

b. BLM will consider the information collected during monitoring identified in paragraphs 20-21 of this Settlement Agreement and any other relevant information to determine whether motorized vehicle use is causing or will cause considerable adverse effects as set forth in 43

C.F.R. § 8341.2(a) or requires action to protect persons, property, and public lands and resources pursuant to 43 C.F.R. § 8364.1. If so, BLM will take appropriate management action.

c. The obligations outlined in this paragraph start on the effective date of this Settlement Agreement and end eight years after this Settlement Agreement becomes effective, provided that nothing in this Settlement Agreement exempts or absolves BLM from compliance with applicable regulations, including 43 C.F.R. subparts 8341 and 8364.

23. **Monitoring after TMPs are issued.** BLM will develop a long-term motorized vehicle monitoring protocol as part of each new TMP prepared for the TMAs identified in paragraph 13. BLM's proposed long-term monitoring protocol will be outlined in the draft and final NEPA document for each TMP, and the public, cooperating agencies, and other stakeholders will have an opportunity to provide input on each TMP's long-term monitoring protocol during the relevant public comment period. Each TMP's long-term monitoring protocol will become effective as provided in the applicable TMP. Once each TMP is issued, the long-term monitoring protocol specific to that TMP will apply and not the terms of this Settlement Agreement.

NHPA Identification Efforts for Travel Planning

24. **Applicability and limitation.** BLM will complete the following NHPA identification efforts prior to issuing a TMP for the TMAs identified in paragraph 13 of this Settlement Agreement. To the extent that an existing BLM-authorized Class III cultural resource survey exists for the route(s) subject to this Settlement Agreement, BLM in its discretion may choose to rely on the existing Class III survey to meet its obligations under this Settlement Agreement.

a. **Henry Mountains and Fremont Gorge TMA.** Before issuing a TMP for the Henry Mountains and Fremont Gorge TMA identified in paragraph 13, BLM will ensure Class III cultural resource surveys have been conducted for 100% of all routes that will be designated as open

in the Henry Mountains and Fremont Gorge TMP, except for the Fremont Gorge portion of the TMA identified in Attachment A1 (Map 1).

b. **Class III surveys in certain ACECs.** Before issuing TMPs for the Vernal, Price, Moab, and Kanab TMAs identified in paragraph 13, BLM will ensure Class III surveys have been conducted along all routes or portions of routes that are designated as open within the following designated ACECs, which are currently protecting identified relevant and important cultural, archaeological, or historic resources and/or properties. These designated ACECs are identified in Attachment A6 (Map 6), which is hereby incorporated into this Settlement Agreement, and are specifically identified below:

i. Vernal Field Office: Browns Park and Nine Mile Canyon.

ii. Price: Big Hole, Copper Globe, Cottonwood Canyon, Dry Lake Archeological District, Dry Wash, Grassy Trail, Hidden Splendor, Hunt Cabin, King's Crown, Little Susan Mine, Lucky Strike, Molen Seep, Muddy Creek, Muddy-Creek-Tomsich Butte, North Salt Wash, Pictographs, Sand Cove, Shepard's End, Short Creek, Smith Cabin, Swasey's Cabin, Temple Mountain, Tidwell Draw, and Wild Horse Canyon.

iii. Moab: Highway 279, Long Canyon, Shafer Basin, and Ten Mile Wash.

iv. Kanab: Cottonwood Canyon.

c. **Class III surveys in high potential areas.** In addition to the requirements set forth in paragraphs 24.b above, before issuing TMPs for the Vernal, Price, Moab, and Kanab TMAs identified in paragraph 13, BLM will ensure Class III cultural resources surveys have been conducted along all routes or portions of routes that are designated as open in the TMAs identified in paragraph 13 and that are located in areas that BLM has identified in a Class I cultural resource inventory as having a high potential for cultural resources.

Areas of Critical Environmental Concern

25. **Evaluation of nominated ACECs related to special status species.** The parties acknowledge that, in the Vernal RMP protest decision response, BLM committed to “consider[] at the earliest opportunity as part of the next planning process in the [Vernal] Field Office” the potential ACECs nominated to protect the special status species Graham’s penstemon and Pariette cactus. For these two nominated ACECs, BLM will evaluate whether the relevance and importance criteria are met in accordance with BLM Manual 1613, *Areas of Critical Environmental Concern* (September 29, 1988). If the relevance and importance criteria are met, BLM will establish any necessary temporary management prescriptions to protect the relevant and important resource values, as required by Manual 1613. In considering these potential ACECs, BLM may consider, among other things, any protection provided by existing management prescriptions, conservation agreements, or conservation strategies, when determining whether temporary management prescriptions may be necessary.

26. **Reevaluation of nominated ACEC with new visual resources information.** The parties acknowledge that BLM has updated its visual resources inventory for the area included in the Vermilion Cliffs nominated ACEC that was considered, but not designated, in the 2008 Kanab RMP. This ACEC is identified on Attachment A7 (Map 7). BLM will re-evaluate this nominated ACEC and consider whether additional management prescriptions may be warranted to protect any unprotected relevant and important resource values in the potential ACEC. This reevaluation will be based on the updated visual resources inventory, and any other relevant new information that may be available. If BLM determines that any relevant and important resource values in the potential ACEC are unprotected, BLM will establish any necessary temporary management prescriptions to protect those resource values, as required by BLM Manual 1613, *Areas of Critical Environmental Concern* (September 29, 1988).

27. **Process.** At the commencement of each evaluation required by paragraphs 25-26 of this Settlement Agreement, BLM will post a notice on the internet and provide an opportunity for interested parties to submit updated information regarding the potential ACEC. Within 30 days of the completion of an evaluation conducted pursuant to paragraphs 25-26, BLM will notify the parties to this Settlement Agreement that it has completed its evaluation and provide the parties with a written summary of the results of its evaluation. BLM will complete the reevaluations before the deadlines specified below as consistent with applicable law, with the time commencing on the effective date of the Settlement Agreement outlined in paragraph 37:

- a. Vernal Field Office
 - i. Pariette cactus potential ACEC – 2 years.
 - ii. Graham’s penstemon potential ACEC – 5 years.
- b. Kanab Field Office
 - i. Vermilion Cliffs potential ACEC – 2 years.

28. **Limitations.** Nothing in this Settlement Agreement affects or limits BLM’s discretion in conducting the evaluations, or in deciding whether to initiate a land use plan amendment that would designate an ACEC as a result of the evaluations. The parties agree not to seek administrative or judicial review of BLM’s notification, summary, or evaluation outlined in paragraphs 25-26, or to assist in any way any person or entity that attempts to do so. However, to the extent that BLM makes and issues a land use plan amendment decision subsequent to its evaluation that constitutes final agency action within the meaning of 5 U.S.C. § 704, nothing herein limits the parties from seeking administrative or judicial review of BLM’s subsequent land use plan amendment decision.

Oil and Gas

29. BLM will continue to use the Utah Air Resource Management Strategy (July 2011) (“2011 ARMS”) and the Memorandum of Understanding Among the U.S. Department of Agriculture, U.S. Department of the Interior, and U.S. Environmental Protection Agency, Regarding Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions Through the National Environmental Policy Act Process (“2011 National MOU”) to inform and guide BLM’s analyses of air-quality impacts for any lease sales and land use plan amendments/revisions, including master leasing plans, that occur on public lands subject to the 2008 Moab, Monticello, Price, Vernal, Richfield and Kanab RMPs, unless those documents are amended or superseded. Nothing in this Settlement Agreement makes binding the provisions of the 2011 ARMS or 2011 National MOU.

a. BLM will update the 2011 ARMS within 1 year from the effective date of the Settlement Agreement. Prior to updating the 2011 ARMS, BLM will provide an opportunity for public comment and BLM will provide a written response to any substantive and timely comments that are submitted. When updating the 2011 ARMs, BLM will:

- i. Ensure that the update to the 2011 ARMS is consistent with relevant existing guidance and provides updated guidance on current air quality management issues;
- ii. Describe how BLM will use the Intermountain West Data Warehouse, consistent with current BLM guidance;
- iii. Describe how BLM will, in future NEPA processes, identify reasonable mitigation and control measures and design features to address adverse impacts to air quality or air quality related values (“AQRVs”) on all affected public lands and reduce greenhouse gas emissions when those measures are

reasonable and consistent with relevant BLM statutory authorities and policies and lease rights and obligations.

Nothing in this Settlement Agreement precludes BLM from continuing to make final decisions relating to oil and gas on public lands before completing the updated ARMS.

b. Subject to available funding, within 2 years of the update of the 2011 ARMS, BLM will update the 2013 ARMS photochemical modeling analysis. The analysis will include an updated emissions inventory for both the Vernal and Price Field Offices that will include an estimation of greenhouse gases in addition to criteria and other regulated air pollutants. BLM will conduct photochemical modeling where the updated emissions inventory indicates that modeling is appropriate. The photochemical modeling will examine cumulative impacts to air quality and AQRVs based on existing and reasonably foreseeable development in the planning areas. The modeling will also disclose the contribution of reasonably foreseeable oil and gas development and other activities on BLM land to such cumulative impacts. This process will be consistent with any applicable federal regulations (including those of other federal agencies). Nothing in this Settlement Agreement precludes BLM from continuing to make final decisions relating to oil and gas on public lands before completing the updated photochemical modeling analysis.

c. Consistent with the 2011 ARMS (pgs. 15-16), BLM-Utah will compile an Annual Air Resource Report that will include: (1) BLM air monitoring activities during the year; (2) a summary of air monitoring data collected; (3) trend analysis on air quality issues of concern; (4) topical reports on air quality issues of interest or concern; (5) air resource management plans; and (6) issues for the coming year. The first Annual Air Resource Report will cover the time period between adoption of the ARMS and the date of the report. The yearly reports will be made publically available on the internet. BLM-Utah's obligation to

prepare an Annual Air Resource Report expires after BLM-Utah has prepared eight Annual Air Resource Reports. Annual Air Resource Reports described in this paragraph may be used to explain or support BLM final agency action, but do not themselves constitute final agency action. Nothing in this Settlement Agreement precludes BLM from continuing to make final decisions relating to oil and gas on public lands before completing the Annual Air Resource Reports.

30. For any future lease sales or land use plan amendments/revisions, including master leasing plans, that BLM commences during the eight years after the effective date of this settlement and that BLM determines is covered by the 2011 National MOU that occurs in areas on public lands subject to the 2008 Moab, Monticello, Price, Vernal, Richfield and Kanab RMPs, BLM will determine through the NEPA process whether it may incorporate into lease stipulations and lease sale notices any reasonable and available air quality mitigation measures to address the formation of ozone and the emission of greenhouse gases. When BLM incorporates air quality mitigation measures into lease stipulations and lease sale notices to address the formation of ozone and the emission of greenhouse gases, BLM will explain in its NEPA documentation why BLM has incorporated such mitigation measures.

31. Nothing in this Settlement Agreement shall be construed as limiting BLM's discretion to promulgate new regulations or modify the 2011 ARMs, or any updated version of the ARMS, or the 2011 National MOU, or issue program guidance to comply with new statutes, regulations, or updated air quality or AQRVs regulations issued by the State of Utah or EPA.

Vacatur of District Court Decisions and Dismissal of Third Amended Complaint

32. Plaintiffs agree to dismiss with prejudice their original complaint, amended complaints, and supplemental complaint (ECF Nos. 1, 65, 86, 465, and *SUWA v. U.S. Dep't of the*

Interior, No. 1:10-cv-1930 (D.D.C.) ECF No. 1) in the above-captioned litigation in their entirety.

The parties agree that the district court's November 4, 2013 decision (ECF No. 329), May 22, 2015 remedy order (ECF No. 388), and October 16, 2015 judgment (ECF No. 419) should be vacated in their entirety.

33. Within 7 calendar days of the complete execution of this Settlement Agreement, the parties shall jointly file a motion under Fed. R. Civ. P. 62.1 in the district court for an indicative ruling requesting the district court to indicate whether it would grant a motion to (1) vacate its November 4, 2013 decision (ECF No. 329), May 22, 2015 remedy order (ECF No. 388), and October 16, 2015 judgment (ECF No. 419) in their entirety; (2) dismiss with prejudice Plaintiffs' original complaint, amended complaints, and supplemental complaint (ECF Nos. 1, 65, 86, 465, and *SUWA v. U.S. Dep't of the Interior*, No. 1:10-cv-1930 (D.D.C.) ECF No. 1) in the above-captioned litigation in their entirety; and (3) retain limited jurisdiction to enforce the terms of this Settlement Agreement as outlined in paragraph 40. The parties shall also jointly file a motion requesting that the district court stay all proceedings in the district court (2:12-cv-257), including the entirety of its May 22, 2015 remedy order, as amended (ECF Nos. 388, 506, 508, 510, 512), until the district court rules on the parties' joint motion to vacate as outlined in paragraph 35. If the district court does not indicate that it would grant the motion in full or if the district court does not subsequently grant the joint motion to vacate, dismiss, and retain jurisdiction, the parties agree to jointly file a motion seeking to extend all remaining deadlines for BLM to comply with the district court's May 22, 2015 remedy order, as amended, from their current deadlines by the number of months commensurate with the time elapsed between the filing of the motion for an indicative ruling and motion for a stay until the date the district court rules either on the motion for an indicative ruling or on the joint motion to vacate, dismiss, and retain jurisdiction, plus an additional three months. The parties shall also ask the Tenth Circuit Court of Appeals to stay proceedings in 10th Circuit Case Nos. 15-4151,

15-4152, 15-4153, 15-4155, and 15-4158 until the district court issues its order on the motion for an indicative ruling.

34. Should the district court indicate that it will grant the motion, the parties will file a joint motion in the Court of Appeals under Fed. R. App. P. 12.1 asking the Court of Appeals for a limited remand of the matter for further proceedings in the district court as outlined in paragraph 35. The parties shall also ask the Court of Appeals to retain jurisdiction over the appeals in 10th Circuit Case Nos. 15-4151, 15-4152, 15-4153, 15-4155, and 15-4158 until the district court issues its ruling in response to the joint motion to vacate outlined in paragraph 35, so as not to prejudice BLM's ability to pursue its appeal if the terms of paragraphs 35 and 36 of this Settlement Agreement are not satisfied.

35. Should the Court of Appeals remand the matter to the district court while retaining jurisdiction as outlined in paragraph 34, the parties shall jointly move the district court to (1) vacate its November 4, 2013 decision (ECF No. 329), May 22, 2015 remedy order (ECF No. 388), and October 16, 2015 judgment (ECF No. 419) in their entirety; (2) dismiss with prejudice Plaintiffs' original complaint, amended complaints, and supplemental complaint (ECF Nos. 1, 65, 86, 465, and *SUWA v. U.S. Dep't of the Interior*, No. 1:10-cv-1930 (D.D.C.) ECF No. 1) in the above-captioned litigation in their entirety; and (3) retain limited jurisdiction to enforce the terms of this Settlement Agreement as outlined in paragraph 40.

36. Should the district court (1) vacate its November 4, 2013 decision (ECF No. 329), May 22, 2015 remedy order (ECF No. 388), and October 16, 2015 judgment (ECF No. 419) in their entirety; (2) dismiss with prejudice Plaintiffs' original complaint, amended complaints, and supplemental complaint (ECF Nos. 1, 65, 86, 465, and *SUWA v. U.S. Dep't of the Interior*, No. 1:10-cv-1930 (D.D.C.) ECF No. 1) in the above-captioned litigation in their entirety; and (3) retain limited jurisdiction to enforce the terms of this Settlement Agreement as outlined in paragraph 40,

the parties to this Settlement Agreement will move to dismiss the appeals in 10th Circuit Case Nos. 15-4151, 15-4152, 15-4153, 15-4155, and 15-4158 within 7 days of the District Court's vacatur, dismissal, and retention order, with each party bearing its own costs on appeal.

C. EFFECTIVE DATE, REINSTATEMENT, ATTORNEYS' FEES

37. The terms and agreements contained in paragraphs 1-31, and 37-42 of this Settlement Agreement go into effect only when (1) the district court enters an order (a) vacating its November 4, 2013 and May 22, 2015 orders and October 16, 2015 judgment (ECF Nos. 329, 388, 419), (b) dismisses with prejudice Plaintiffs' original complaint, amended complaints, and supplemental complaint (ECF Nos. 1, 65, 86, 465) in the above-captioned litigation in their entirety, and (c) retains limited jurisdiction to enforce the terms of this Settlement Agreement as outlined in paragraph 40; and (2) the Tenth Circuit dismisses the appeals of the parties to this Settlement Agreement.

38. If the district court does not (1) vacate its November 4, 2013 decision (ECF No. 329), May 22, 2015 remedy order (ECF No. 388), and October 16, 2015 judgment (ECF No. 419) in their entirety; (2) dismiss with prejudice Plaintiffs' original complaint, amended complaints, and supplemental complaint (ECF Nos. 1, 65, 86, 465) in the above-captioned litigation in their entirety; and (3) retain limited jurisdiction to enforce the terms of this Settlement Agreement as outlined in paragraph 40, this Settlement Agreement will be void and the parties will have no further obligations under this Settlement Agreement. In this circumstance, Federal Defendants and the Defendant-Intervenors reserve their rights to pursue their appeals in 10th Cir. Nos. 15-4151, 15-4152, 15-4153, 15-4155, 15-4158 and Plaintiffs reserve their rights to pursue their claims in district court.

39. **Deadline limitations.** BLM is not obligated to meet any of the deadlines identified herein if it is prevented from doing so due to an event beyond the reasonable control of BLM that prevents BLM from fulfilling any obligation required by this Settlement Agreement despite the

exercise of due diligence. Such events may include, but are not limited to, situations where BLM does not receive adequate appropriations (including due to sequestration), where BLM-Utah does not receive adequate funds from the Department of the Interior or BLM's national office, delays in the consultation process under Section 106 of the NHPA that are beyond BLM's control, natural disasters, as well as all unavoidable legal impediments or prohibitions. In the case of such an event, BLM shall be relieved of those specific obligations directly precluded by the event, as well as those other obligations whose performance is precluded by the inability to perform, or delay in performing, the directly precluded obligations, and only for the duration of such event, as provided herein. Where BLM cannot comply with any deadlines identified herein due to such an event, it shall provide notice to the parties and, should the deadlines be one of those over which the district court has continuing jurisdiction, shall also notify the district court. Such notice shall include a new estimated date by which BLM will comply with the deadline and a description, to the extent then known by BLM, of the steps taken or proposed to be taken to prevent or minimize the event's interference with BLM's performance of any affected obligations under this Settlement Agreement. BLM will provide status reports to the parties at regular intervals not to exceed 90-days notifying the parties and the district court, if applicable, of BLM's efforts to address and resolve the event. If any party disputes BLM's claim that it cannot comply with any of the deadlines identified herein due to an event, or the adequacy of BLM's efforts to address and resolve such event, such party shall proceed in the manner specified in paragraph 40.

40. **Enforcement.** The exclusive remedies for any alleged breach or noncompliance with the Settlement Agreement are provided for solely in this paragraph.

a. The district court shall retain jurisdiction over this Settlement Agreement for the purpose of judicial resolution of disputes that may arise among the parties to this Settlement Agreement concerning compliance with the TMP and ACEC deadlines specified

in paragraphs 13 and 27, respectively, as well as the one-year deadline to update the ARMS identified in paragraph 29.a. Disputes over BLM's alleged failure to meet any of these deadlines shall be resolved through the process set forth in paragraphs 40.a-c. The district court's continuing jurisdiction to resolve such disputes will be triggered only by BLM's failure to meet a deadline identified in paragraphs 13, 27, and 29.a; it shall not extend to resolve disputes concerning any other issues, including but not limited to questions of whether BLM complied with (i) any other provisions of this Settlement Agreement, (ii) any statutory or regulatory requirements, or (iii) any guidance or policy documents. The district court's jurisdiction shall continue no later than BLM's issuance of the last TMP for the TMAs identified in paragraph 13 or BLM's completion of its evaluation of the last potential ACEC identified in paragraph 27, whichever is later.

b. The parties agree that they will first attempt to resolve any disputes related to compliance with the deadlines in paragraphs 13, 27, and 29.a informally among themselves before invoking the jurisdiction of a court to resolve compliance disputes. If such a dispute arises, the complaining party shall notify the other parties in writing of the dispute. The parties shall meet and confer in an attempt to resolve the dispute within 30 days of the written notice. If the parties do not reach a resolution within 60 days of the written notice of the dispute, the complaining party may invoke the jurisdiction of the court to resolve the dispute, as set forth in paragraph 40.c.

c. In the event the parties are unable to resolve a dispute regarding compliance with the deadlines in paragraphs 13, 27, and 29.a through informal means, any party may thereafter immediately invoke the jurisdiction of this Court to resolve such a dispute, in accordance with the procedures set forth below. The sole remedy for any alleged violation

by BLM of the deadlines specified in paragraphs 13, 27, and 29.a of this Settlement

Agreement shall be as follows:

- (i) The complaining party shall file a motion, in accordance with the Local Rules of this Court, requesting judicial resolution of the dispute. The parties may, by stipulation approved by the Court, alter the time table for briefing the motion; otherwise, briefing shall proceed as set forth in the Local Rules.
- (ii) In exercising the retained jurisdiction to resolve disputes brought before the Court by the parties, the Court shall award only such relief as is provided for in 5 U.S.C. § 706(1), namely, to “compel agency action unlawfully withheld or unreasonably delayed.” The Court’s decision as to whether relief is appropriate should be guided by the following non-exhaustive list of considerations: (1) the time agencies take to make decisions must be governed by a rule of reason; (2) the Court should consider BLM’s reasons for the delay, taking into account that BLM is a land-management agency with numerous competing priorities and limited resources; (3) the Court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (4) the Court should also take into account the nature and extent of the interests prejudiced by delay.

d. Any party to this Settlement Agreement may meet and confer with BLM to resolve any disputes related to compliance with the obligations outlined in this Settlement Agreement other than the deadlines specified in paragraphs 13, 27, and 29.a.

- (i) The complaining party shall initiate the meet and confer process by sending a letter to the applicable BLM-Utah Field Office, BLM-Utah State Director, and the other parties to the Settlement Agreement. The initiation letter shall identify the terms of the Settlement Agreement at issue, include a detailed explanation of the

dispute, and provide all supporting evidence of the alleged noncompliance with the terms of the Settlement Agreement. The BLM-Utah State Director may notify other intervenors of the dispute and, if so, will also notify the parties to the Settlement Agreement that other intervenors have been notified.

(ii) If, within 30 days, BLM-Utah does not respond in writing or does not provide a response that the complaining party deems adequate to resolve the dispute, the complaining party shall notify the other parties to the Settlement Agreement, in writing, that the dispute is unresolved. The BLM-Utah State Director or Associate State Director shall, within 30 days of receipt of the second letter from the complaining party, meet with no more than three representatives of the complaining party. If both the BLM-Utah State Director and Associate State Director are unavailable, the meeting shall be attended by the BLM-Utah State Director's representative with his/her delegated authority related to the issue involved. Other parties to this Settlement Agreement may participate in the meeting at their discretion with no more than three representatives. The BLM-Utah State Director or Associate State Director may notify the other intervenors of the continued dispute and provide them with a separate opportunity to meet, and, if so, will also notify the other parties to the Settlement Agreement. A complaining party may request up to one meeting with BLM-Utah per quarter and a single meeting may address multiple issues.

(iii) BLM-Utah will memorialize the outcome of the meeting and will provide a copy to the parties to the Settlement Agreement within 30 days of the meeting. If BLM-Utah cannot meet the 30 day deadline due to the nature of the issues or other exigent circumstances, BLM will notify the complaining party within 25 days of the meeting

and will provide a response as expeditiously as possible, but no later than 60 days after the meeting. After providing a copy to the parties, BLM's obligations under this subparagraph are complete. The parties agree not to seek administrative or judicial review of BLM's resolution of the dispute, or to assist in any way any person or entity that attempts to do so.

(iv) The meet and confer process set forth in paragraph 40.d is not a prerequisite to the filing of a lawsuit challenging BLM's final agency actions pursuant to paragraph 40.e. The meet and confer process shall remain in effect until BLM's issuance of the last TMP for the TMAs identified in paragraph 13 or BLM's completion of its evaluation of the last potential ACEC identified in paragraph 27, whichever is later.

e. The parties' sole remedy for any alleged violation of paragraphs 15-24, 29 (except for the deadline identified in 29.a), and 30 of this Settlement Agreement shall be to seek administrative review or to file a new civil action seeking judicial review of BLM's final agency action under the APA, 5 U.S.C. §§ 701-06. In no event shall any term of this Settlement Agreement be construed as limiting any claims or defenses that BLM or any party may raise in any such subsequent proceedings. No term of this Settlement Agreement turns BLM's actions into administratively or judicially-reviewable final agency action if they would not otherwise qualify for review under applicable agency rules or as final agency action within the meaning of the APA. Any judicial review of any alleged violation of this Settlement Agreement shall be limited to the administrative record and subject to the APA's standard of review, 5 U.S.C. § 706(2).

f. The parties agree that contempt of court is not available as a remedy for any alleged violation of any portion of this Settlement Agreement. The parties therefore knowingly waive any right that they might have to seek an order for contempt for any such

violation. The parties also agree that a suit for money damages against BLM or any Federal Defendant is not available as a remedy for any alleged violation of any portion of this Settlement Agreement.

41. **Attorneys' fees.** Plaintiffs agree to accept payment of four hundred thousand dollars (\$400,000.00) in satisfaction of any and all claims that have been or could be sought for attorneys' fees, costs, and expenses related to the above-captioned litigation against any part of the United States government for all district court and appellate proceedings, including attorneys' fees and costs for any and all settlement negotiations related to the above-captioned litigation. Federal Defendants' payment shall be accomplished by an electronic payment to a bank account. Federal Defendants agree to submit all necessary paperwork to federal funding authorities within twenty-one (21) days of the effective date of the Settlement Agreement. Plaintiffs agree that receipt of this payment from the Federal Defendants shall operate as a release of Plaintiffs' claims for attorneys' fees, costs, and expenses in this matter. Plaintiffs shall send written confirmation of the receipt of the payment to the Federal Defendants within seven (7) days of receiving the payment.

42. **Notices.** Any notices regarding this Settlement Agreement shall be in writing, effective upon receipt, and sent to the following:

For the plaintiffs:

Steve Bloch
Attorney, Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, Utah 84111
801-428-3981
steve@suwa.org

Robin Cooley
Staff Attorney, Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202-3625
303-623-9466
rcooley@earthjustice.org

Nada Culver
Senior Counsel and Director, BLM Action Center, The Wilderness Society
1660 Wynkoop, #850
Denver, CO 80202
303-650-5818
nada_culver@twc.org

For BLM:

Edwin L. Roberson
Utah State Director
Bureau of Land Management
440 West 200 South, Suite 500
Salt Lake City, Utah 84101-1345
801-539-4001

John Steiger
Regional Solicitor, Intermountain Region
Office of the Solicitor
U.S. Department of the Interior
125 South State Street, Suite 6201
Salt Lake City, Utah 84138
801-239-0548

Thekla Hansen-Young
U.S. Department of Justice
Appellate Section, Environment and Natural
Resources Division
PO Box 7415
Ben Franklin Station
Washington, DC 20044
202-307-2710
thekla.hansen-young@usdoj.gov

Luther L. Hajek
U.S. Department of Justice
Natural Resources Section, Environment and
Natural Resources Division
999 18th St. - South Terrace, Suite 370
Denver, CO 80202
303-807-1376
Luke.Hajek@usdoj.gov

For Defendant-Intervenors BlueRibbon Coalition, Colorado Off-Highway Vehicle Coalition,
Trails Preservation Alliance.

Paul Turcke
MSBT Law
950 W. Bannock Street, Suite 520
Boise, ID 83702
208-331-1800
pat@msbtlaw.com

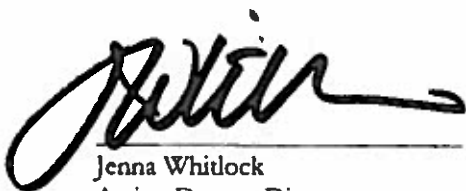
BlueRibbon Coalition/Sharetrails
c/o Clif Koontz, Ride with Respect
395 McGill Avenue
Moab, UT 84532
435-259-8334
clif@ridewithrespect.org

Colorado Off-Highway Vehicle Coalition
Trails Preservation Alliance
c/o Don Riggle
P.O Box 38093
Colorado Springs, CO 80937
719-338-4106
info@coloradotpa.org

Any party to this Settlement Agreement may change the contacts or contact information identified for that party in this paragraph by notice in writing to all other parties.

D. SIGNATURE OF PARTIES

43. The undersigned representatives of each party certify that they are fully authorized to consent to the terms and conditions of this Settlement Agreement. Signature on a counterpart shall constitute a valid signature.



Jenna Whitlock
Acting Deputy Director,
Bureau of Land Management

Dated: 1/13/17



Steve Bloch
Legal Director, Southern Utah Wilderness Alliance
Counsel for Plaintiffs Southern Utah Wilderness Alliance et al.

Dated: 1/13/17



Robin Cooley
Staff Attorney, Earthjustice
Counsel for Plaintiffs Southern Utah Wilderness Alliance et al.

Dated: 1/13/17



Paul Turcke
Counsel for Defendant-Intervenors BlueRibbon Coalition, Colorado Off-Highway Vehicle
Coalition, Trails Preservation Alliance

Dated: 13 JAN 2017



Attachment A1: Map 1

Legend

- TMA Boundary

Field Office Bdry

US Highways

State Highways
- Bureau of Land Management (BLM)

BLM Wilderness Area

Wilderness Study Area

Indian Reservation (IR)
- Military Reservations and Corps of Engineers

National Park Service (NPS)

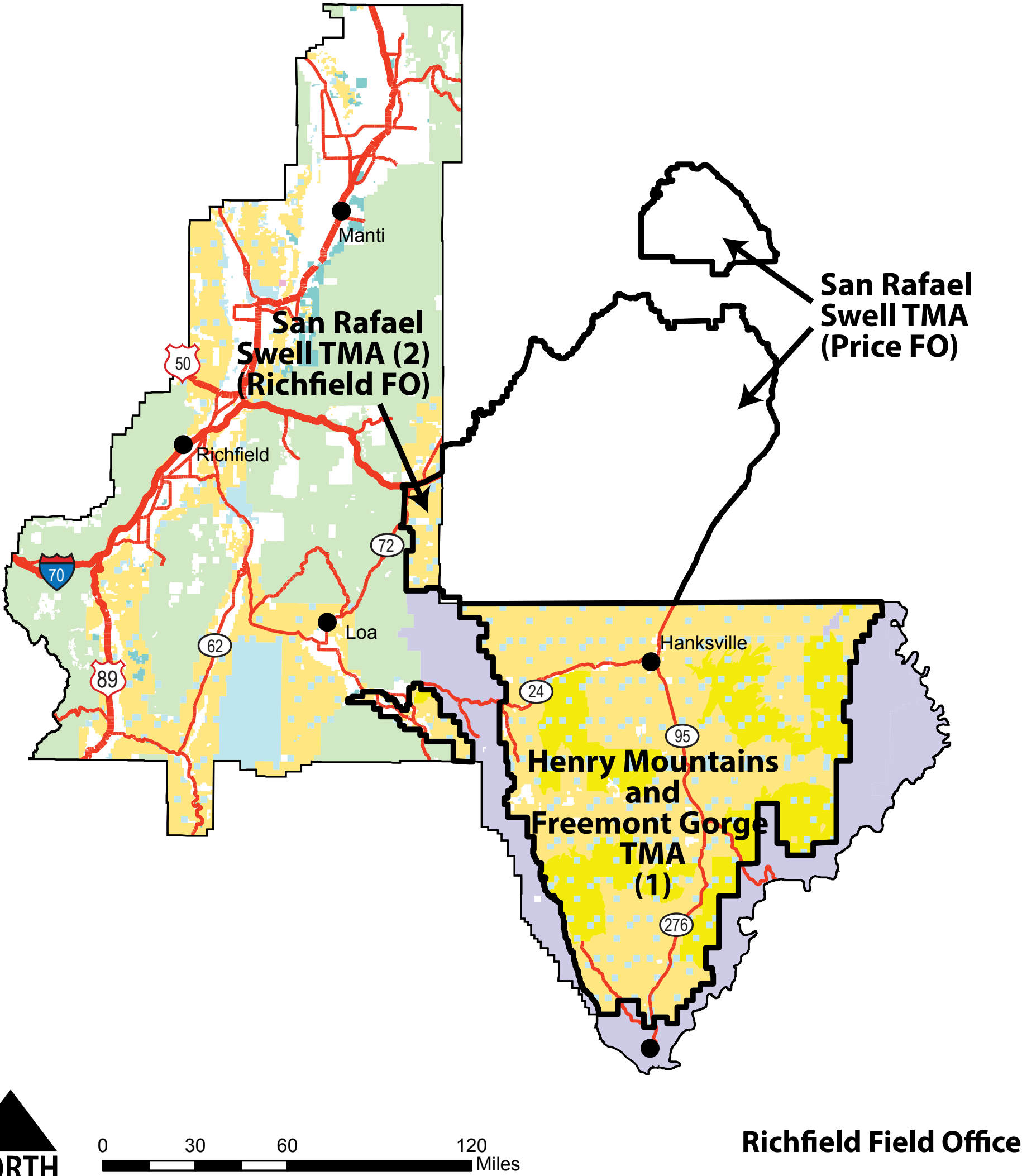
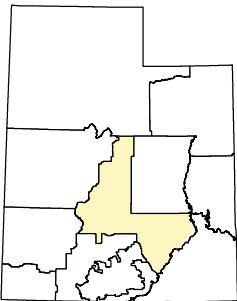
Private

State
- State Parks and Recreation

State Wildlife Reserve/Management Area

USFW National Wildlife Refuge

USFS Wilderness Area





Attachment A2: Map 2

Legend

- TMA Boundary

Field Office Bdry

US Highways

State Highways
- Bureau of Land Management (BLM)

BLM Wilderness Area

Wilderness Study Area

Indian Reservation (IR)
- Military Reservations and Corps of Engineers

National Park Service (NPS)

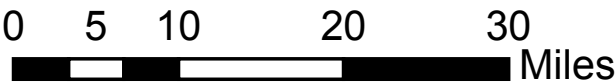
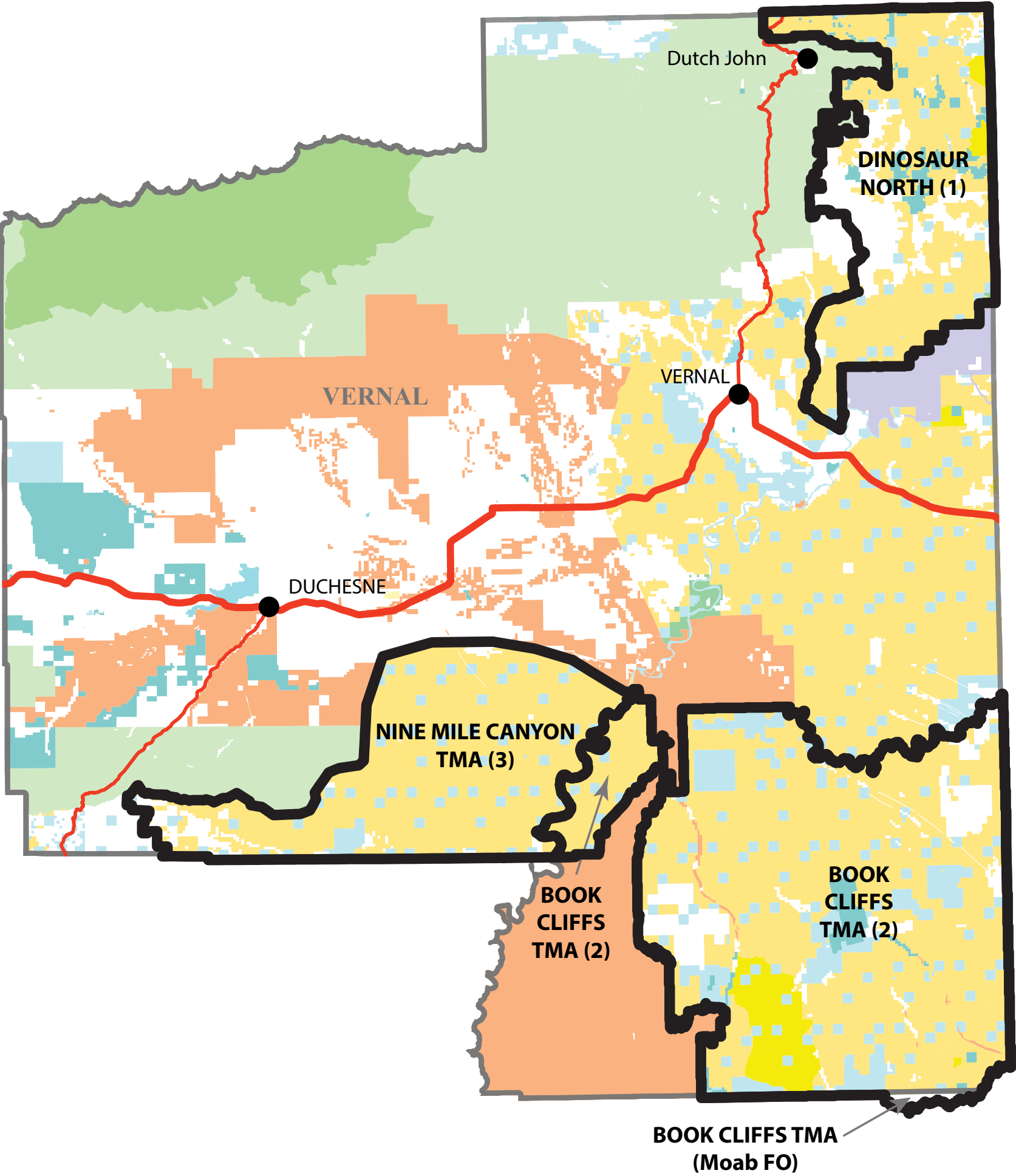
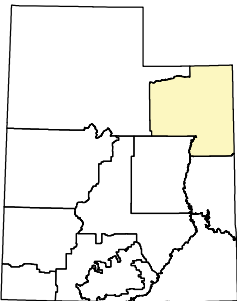
Private

State
- State Parks and Recreation

State Wildlife Reserve/Management Area

USFW National Wildlife Refuge

USFS Wilderness Area



Vernal Field Office

JANUARY 13, 2017



Attachment A3: Map 3

Legend

- US Highways

State Highways

TMA Boundary
- Bureau of Land Management (BLM)

BLM Wilderness Area

Wilderness Study Area

Indian Reservation (IR)
- Military Reservations and Corps of Engineers

National Park Service (NPS)

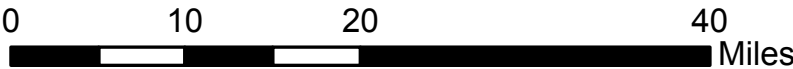
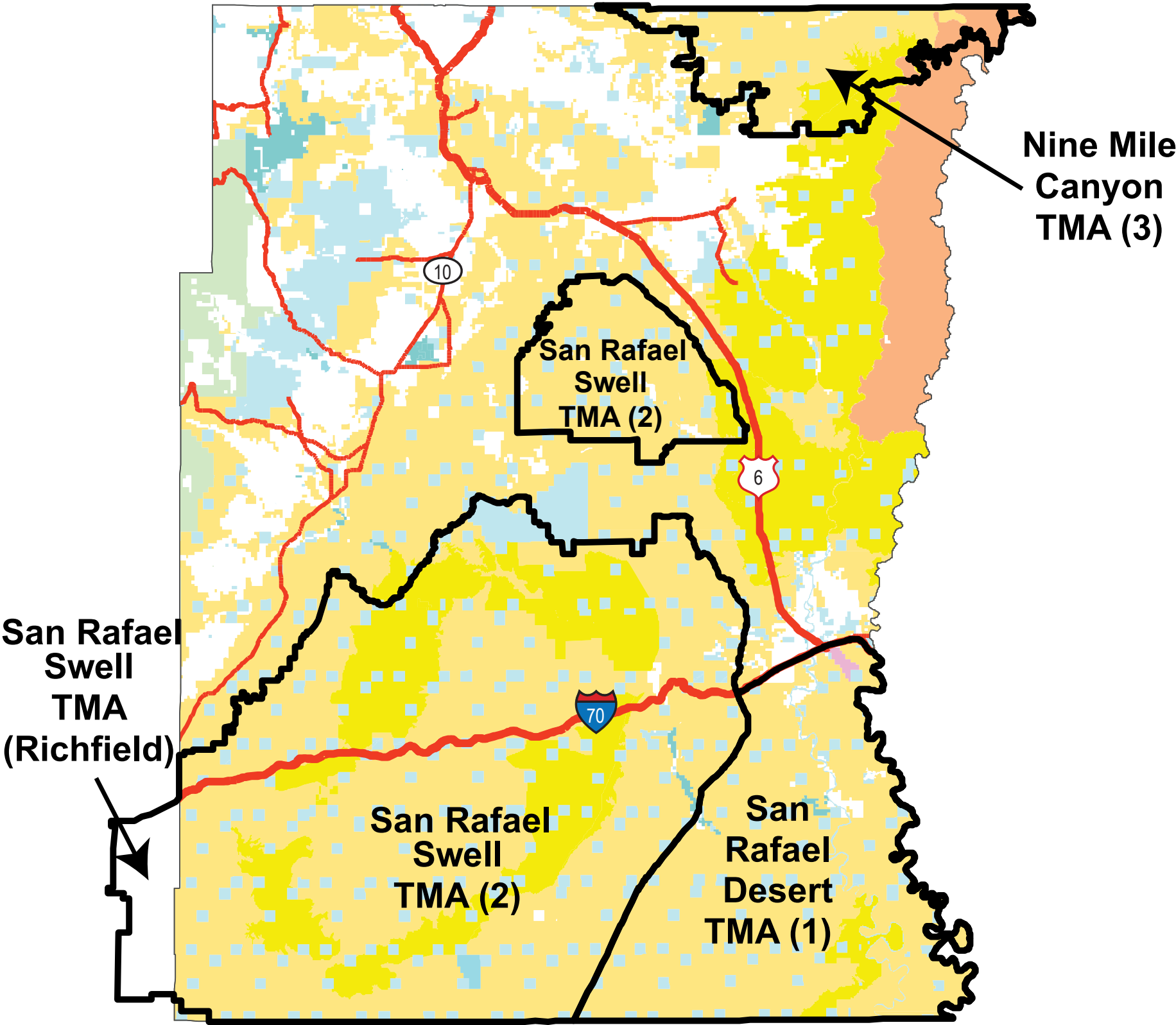
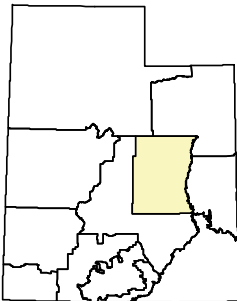
Private

State
- State Parks and Recreation

State Wildlife Reserve/Management Area

USFW National Wildlife Refuge

USFS Wilderness Area



Price Field Office

JANUARY 13, 2017



Attachment A4: Map 4

Legend

- US Highways

State Highways
- Bureau of Land Management (BLM)

BLM Wilderness Area

Wilderness Study Area

Indian Reservation (IR)
- Military Reservations and Corps of Engineers

National Park Service (NPS)

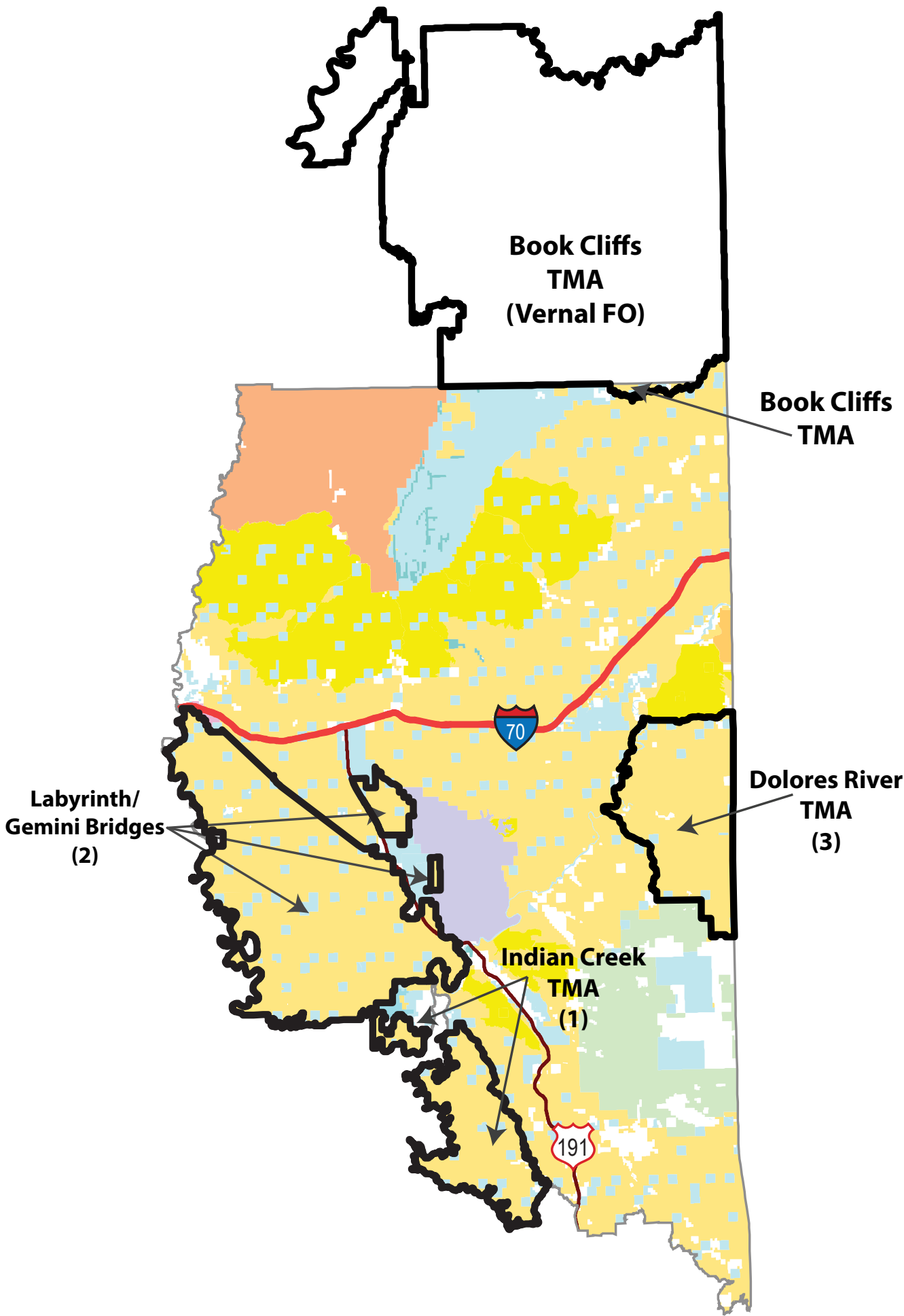
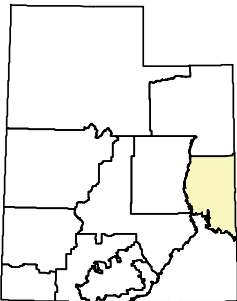
Private

State
- State Parks and Recreation

State Wildlife Reserve/Management Area

USFW National Wildlife Refuge

USFS Wilderness Area



0 10 20 30 Miles

Moab Field Office

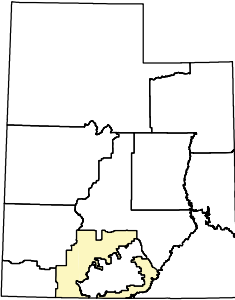
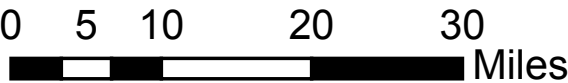
JANUARY 13, 2017



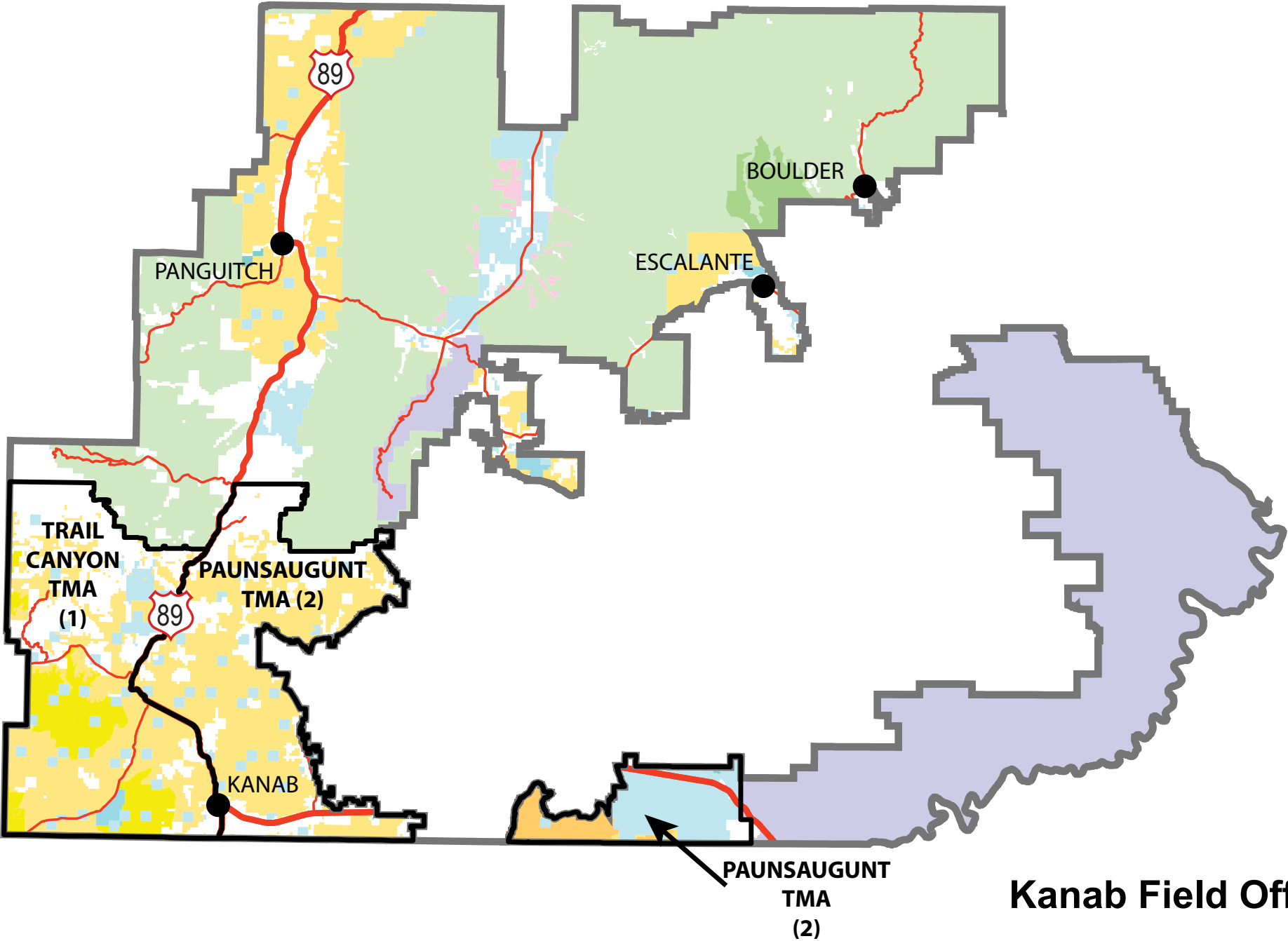
Attachment A5: Map 5

Legend

- US Highways
- State Highways
- Field Office Boundary
- TMA Boundary
- Kanab Field Office Boundary
- Bureau of Land Management (BLM)
- BLM Wilderness Area
- Wilderness Study Area
- Indian Reservation (IR)
- Military Reservations and Corps of Engineers
- National Park Service (NPS)
- Private
- State
- State Parks and Recreation
- State Wildlife Reserve/Management Area
- USFW National Wildlife Refuge
- USFS Wilderness Area



JANUARY 13, 2017





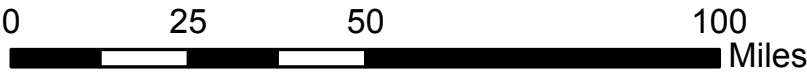
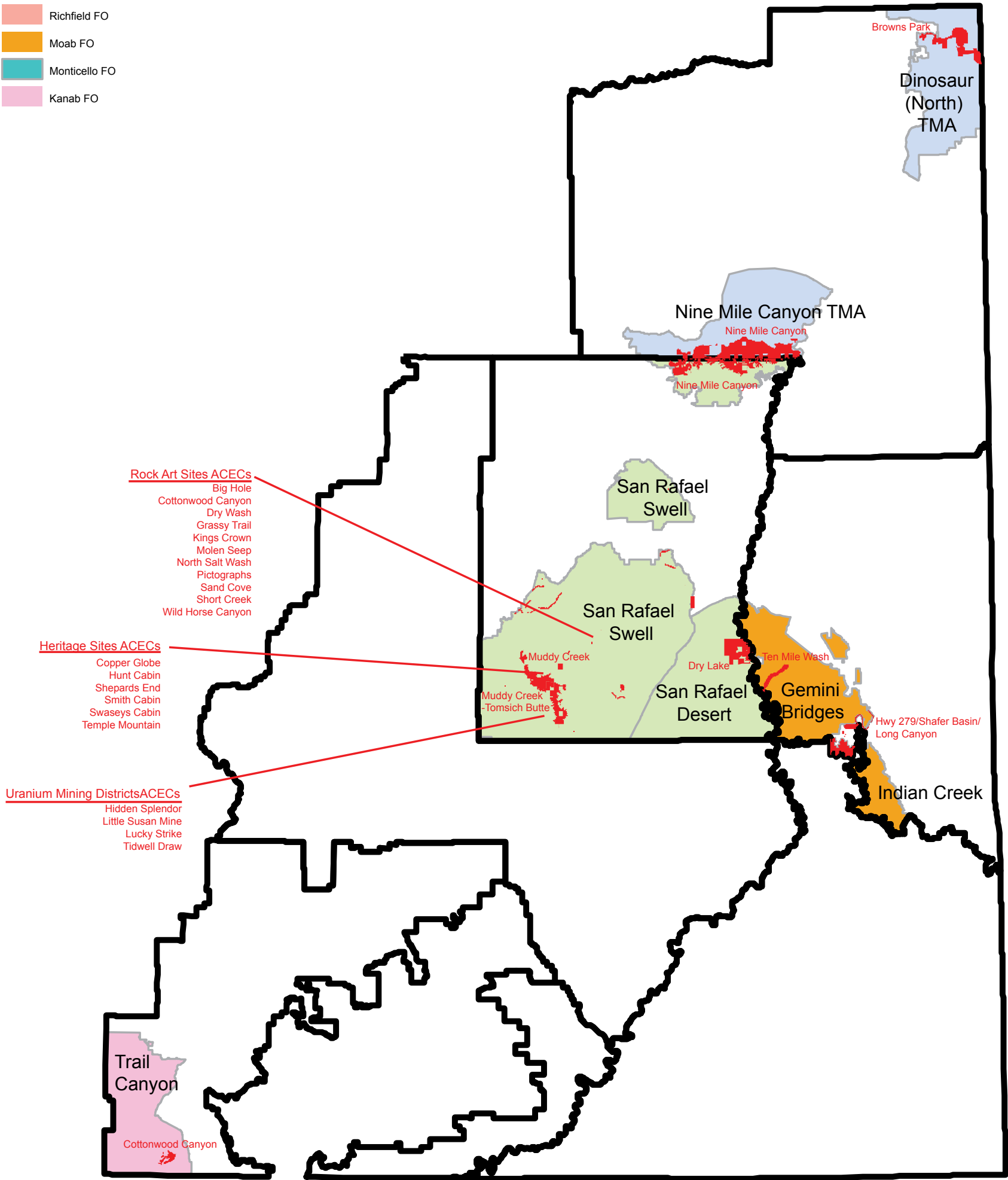
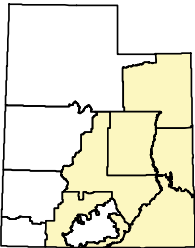
Attachment A6 (Map 6)

Legend

-  Field Office Boundary
-  ACEC with Relevant and Important Cultural Resource Values

TMA's Containing ACEC

-  Vernal FO
-  Price FO
-  Richfield FO
-  Moab FO
-  Monticello FO
-  Kanab FO





Attachment A7 (Map 7)

Legend

 Field Office Boundary

Potential ACECs Re-Evaluations

 Vermilion Cliffs

