



MOFFAT COUNTY

February 8, 2005

Jeremy Casterson
Bureau of Land Management
455 Emerson Street
Craig, CO 81625

Jeremy,

Moffat County appreciates the chance to provide the following comments on the Draft Analysis of the Management Situation (AMS) as a local government, a Cooperating Agency, a member of the community and Northwest Colorado Stewardship (NWCOS).

Moffat County understands the BLM has over 200 specific comments about this document and we hope they overlap with the following comments. Due to the large number of changes that will likely occur due to comments submitted by February 8, 2005 Moffat County requests a chance to review the next version of the AMS before it becomes final.

- 1) **Social and Economic Analysis** - Moffat County requests that the 2004 Economic Development Report (completed by Colorado State University), the 2005-2006 Community Indicators Project, and the regular Northwest Colorado Economic Reviews from the Associated Governments of Northwest Colorado be incorporated in the Socio Economic section of the AMS. We see it vital that cooperating agencies and NWCOS guide additional analysis than is typically performed in traditional RMP's. We request the BLM and its contractors fully engage NWCOS and the Cooperating Agencies in supplementing the traditional types and extent of socio economic analysis performed in RMP's after the immediate data has been included in the AMS.
- 2) **Incorporating 3rd Party Data for Public Lands** - Moffat County is aware the oil and gas industry and consultants who monitor grazing allotments have submitted respective data on geology / gas potential and vegetation / land health data. Moffat County requests this data be included as pertinent to the AMS. If it is "combined" with other BLM data, we request this clarification in each area of the AMS where combining occurs.
- 3) **Valid Existing Rights**- Moffat County requests all known valid existing rights are documented or listed in the AMS. Cooperation with the cooperating agencies can

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identify most known valid existing rights. We also request maps that document the location of these rights. For example Map 28 currently shows many known transportation routes but doesn't appear to include the County's Secondary Road System, which includes many RS 2477 rights of way.

The following discussion on Valid Existing Rights is authored by Brooks and Associates:

Valid existing rights arise on public lands by operation of statute or an act of secretarial discretion. Solicitor's Opinion, 88 Int. Dec. 909 (1981). As such, they are not limited to Moffat County's R.S. 2477 rights-of-way, but may include oil and gas leases, right-of-way authorizations such as utility corridors, pipelines and power lines, valid mining claims, easements, grazing permits and private water rights. *See e.g., Hage v. United States*, 35 Fed. Cl. 147 (1996); Solicitor's Opinion, 88 Int. Dec. at 914; Solicitor's Opinion, 86 Int. Dec. 89, 116 (1979); BLM Land Use Planning Manual 1601, ch.06G; 50 Fed. Reg. 31777, 31778 (1985). Valid existing rights are immune from denial or extinguishment by the exercise of secretarial discretion and may be developed to the extent authorized by the issuance of the approval document. They may not be regulated to the point where the regulation unreasonably interferes with enjoyment of the benefit of the right. 88 Int. Dec. at 914.

One of BLM's key objectives for the Little Snake RMP is to establish an active travel management program with "baseline of data describing the existing transportation routes within the planning area in order to actively manage and gauge travel, access and OHV use within the planning areas for the benefit of the public and the natural resources." Draft Analysis of the Management Situation (AMS), p. 3-103.

While the process will "include consideration" of Moffat County's RS 2477 inventory protocol, maintenance protocol and Resolution 2003-05 (January 2003), BLM claims that "[resolution of RS 2477 assertions is a legal issue beyond the scope of this RMP effort." BLM asserts that it will establish management for the transportation system "in accordance with existing policies and guidelines and with existing available information." *Id.* at 3-105. Existing agency policy, however, requires BLM to recognize and integrate the R.S. 2477 rights-of-way claimed by Moffat County in the planning process.

All decisions made in land use plans must be subject to valid existing rights, which include rights-of-way. Land Use Planning Manual 1601, ch.06G. State law is used to determine whether a public right of way has been established, and under Colorado law, acceptance of the R.S. 2477 right of way is determined by use prior to withdrawal from the public domain, not construction. *Barker v. Board of County Commissioners of the County of La Plata, Colorado*, 49 F. Supp.2d 1203, 1214 (D. Colo. 1999); *Wilkenson v. DOI*, 634 F. Supp. 1265, 1272 (D. Colo. 1986); *Leach v. Manhart*, 77 P.2d 652, 653 (Colo. 1938).

Given the record evidence Moffat County has compiled in demonstrating perfected rights-of-way, the BLM must account for the County's claimed R.S. 2477 rights-of-way in the Little Snake RMP. *See Sierra Club v. Hodel*, 848 F. 2d 1068, 1088 (10th Cir. 1988) (R.S. 2477 rights-of-way are "valid existing rights"). This is not to say that BLM must adjudicate or resolve Moffat County's R.S. 2477 assertions; rather, BLM must identify and recognize the claimed rights-of-way in developing comprehensive travel management.

Otherwise, BLM's objective to "actively manage and gauge travel, access and OHV use" cannot be achieved. Without the recognition of county roads, for example, how else could BLM determine what roads and trails should be designated and added to the official road system, or what roads and trails should be maintained, upgraded, abandoned, or constructed. Preparation Plan Analysis for the Little Snake Field Office RMP Revision, p. 20.

Recognition of Moffat County's claimed R.S. 244 rights-of-way is entirely consistent with BLM travel management policy which recognizes that "most existing roads and trails on public lands were created by use over time, rather than planned and constructed for specific activities or needs." As a result, "BLM is directed to consider a broader range of possibilities for management of individual roads and trails" in the land use planning process. BLM Instruction Memorandum No. 2004-005, *Clarification of OHV Designations and Travel Management in the BLM Land Use Planning Process*, Attachment 2-3 (October 1, 2003).

In this context, "Road and trail access (and OHV management) guidance will be incorporated in every RMP to ensure public and resource needs are met." Thus, BLM must "use road and trail inventory information from all available sources including counties in identifying a transportation network. *Id.* at 1, Attachment 2-3. In Colorado, such transportation planning specifically includes the consideration "all valid, existing rights including RS 2477." Response to Public Comment to the Recreation Management Guidelines to Meet Public Land Health Standards on BLM Lands in Colorado, p.9. (December 11, 2000).

Consequently, Moffat County believes that BLM must incorporate the identified R.S. 2477 rights-of way in the development of comprehensive travel management for the Little Snake Resource Area. To ignore such claims not only contradicts BLM policy but contravenes federal law requiring BLM to assure that its land use plans are consistent with local plans, to the extent they conform to federal law. 43 U.S.C. §1712(c)(9).

In this regard, the congressional moratorium pertaining to the recognition, management or validity of R.S. 2477 rights-of-way is limited to rule or regulation, and does not prohibit BLM from addressing public road issues in the planning process. Moreover, as previously stated, the record developed by Moffat County is based on and consistent with federal law, including Colorado federal case law regarding roads across federal land. To the extent Moffat County's claims may be inconsistent with Secretary Babbitt's 1997 R.S. 2477 direction, it is merely policy, not law.

4) County Land Use Plan and other Local Government Plans-

The AMS describes the need for consistency between the RMP and local plans, however we suggest additional discussion about the following local plans:

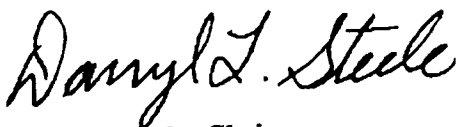
a) Although the AMS highlights the Moffat County Master Plan, the Moffat County Land Use Plan is not included in its entirety in the Moffat County Master Plan. The Master Plan simply highlights portions of the Land Use Plan. The Land Use Plan (Chapter 1 : Public Lands) is not referenced or highlighted and we request it be highlighted. The

Moffat County Land Use Plan, in its entirety, can be found at www.co.moffat.co.us/NaturalResources.

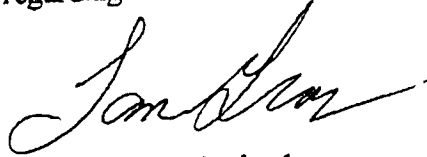
b) On the same website are the three phases of the Moffat County Wildland Fire and Fuel Management Plan and four community specific Pre-Emergency Plans and Fuel Reduction Plans. All three phases have different authors and firms that prepared them, and a fourth author and firm prepared the Pre-Emergency Plans for Bakers Peak, Knez Divide, Wilderness Ranch, and Greystone. We request the referenced authors be corrected and request each plan be incorporated into Tabel 5-1.

c) Moffat County requests you incorporate the 1991 Undesirable Plant Management Plan which can be obtained by contacting Gary Brammon or Jackie Goodnow at (970)824-9180. Or may be picked up at 539 Barclay Street, Craig CO 81625 (the Moffat County Extension Office).

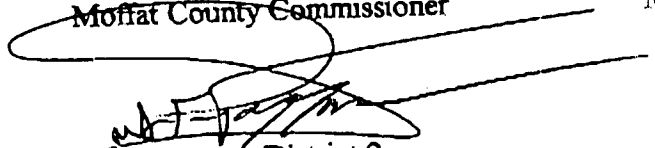
Please contact the Moffat County Commissioners at 970.824.9141 or Jeff Comstock at 970.826.3400 if there are further questions regarding these comments.



Darryl Steele, Chairman
Moffat County Commissioner



Tom Gray, District 1
Moffat County Commissioner



Saed Tayyara, District 2
Moffat County Commissioner