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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

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SOUTHERN UTAH WILDERNESS ALLIANCE)	
and GREAT OLD BROADS)	
FOR WILDERNESS,)	Case No.
)	
Plaintiffs,)	
)	
vs.)	
)	
SELMA SIERRA, in her official capacity as Director)	
of the Bureau of Land Management Utah State Office,)	
the BUREAU OF LAND MANAGEMENT, and the)	
UNITED STATES DEPARTMENT OF THE INTERIOR,)	
)	
Defendants.)	
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This suit challenges the Bureau of Land Management’s (BLM) denial of a Petition filed by the Southern Utah Wilderness Alliance and the Great Old Broads for Wilderness (collectively “SUWA”) to close Arch Canyon, in San Juan County, Utah, to motorized vehicle use. SUWA filed the petition on December 23, 2006. The BLM issued its decision denying the Petition on June 4, 2007, thereby deciding to continue to allow motor vehicle use in the canyon.

2. Arch Canyon is a place of magnificent natural beauty and solitude, and is rich in archaeological sites like rock art and structures, some 2,000 years old. The BLM, which manages the stretch of Arch Canyon at issue in this matter, has allowed jeep and off-road vehicle (ORV) use to occur there, with dramatic, lasting negative impacts including destruction of pre-historic and historic cultural resources, degradation of riparian resources and water quality, loss of native plants and wildlife, and loss of wilderness values and characteristics. Motor vehicles cross the stream approximately 120 times for the round trip in the canyon. New ORV routes are being pioneered along the stream and to archaeological sites, endangering prehistoric middens and other artifacts along the way.

3. The BLM has failed to survey these important cultural resources in Arch Canyon, but surveys conducted on Plaintiffs' behalf show that the Canyon may contain over one-hundred of these remarkable resources in the eight and one-half miles of Arch Canyon managed by the BLM. The preservation of Arch Canyon is likewise important to contemporary Native Americans' cultural and spiritual values. The rocks, plants, and animals are all part of the balance of life to many Native American Tribes.

4. In addition to causing impacts to cultural resources and Native American values, ORV use in Arch Canyon is currently causing and will continue to cause adverse impacts to the rare and extensive riparian and floodplain area, including stream bank erosion, loss of vegetation, increased sedimentation, lowered water tables, and impaired fish habitat.

JURISDICTION AND VENUE

5. This court has jurisdiction over this action pursuant to the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701 *et seq.* and its implementing regulations; the

Declaratory Judgment Act, 28 U.S.C. § 2201; and the Administrative Procedure Act (APA), 5 U.S.C. §§ 551 *et seq.*; and 28 U.S.C. § 1331 (federal question).

6. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure.

7. Venue is proper in the Central Division of the United States District Court for the District of Utah pursuant to 28 U.S.C. § 1391(e) because the statutory violations alleged herein all occurred within the State of Utah.

PARTIES

8. Plaintiff SOUTHERN UTAH WILDERNESS ALLIANCE (SUWA) is a non-profit environmental membership organization dedicated to the sensible management of public lands within the State of Utah, to the preservation and protection of plant and animal species, and to the preservation of Utah's remaining wild lands. SUWA has offices in Utah and in Washington, D.C. and has members in all fifty states. SUWA members use and enjoy public lands in and throughout Utah for a variety of purposes, including scientific study, recreation, hunting, aesthetic appreciation, and financial livelihood. SUWA members frequently visit and recreate (*e.g.*, camp, bird, sightsee, view cultural sites, and enjoy solitude) throughout the lands that are the subject of this complaint, and Arch Canyon in particular. SUWA members have a substantial interest in this matter – they have suffered real and immediate harm by the BLM's decision to allow vehicle use in Arch Canyon. BLM's decision harms the interest of SUWA and its members in Arch Canyon and the resources there. SUWA members also have a substantial interest in seeing that the BLM complies with the terms and requirements of the Federal Land Policy and Management Act and other governing federal statutes and regulations. SUWA brings this action on its own behalf and on behalf of its adversely affected members.

9. Plaintiff GREAT OLD BROADS FOR WILDERNESS (Great Old Broads) is a non-profit corporation with over 1,800 members nation-wide, many of whom reside in Utah. Great Old Broads was formed in part to protect the interests of senior populations who enjoy access to roadless areas without mechanized means of transportation and its associated impacts on the environment. Many of Great Old Broads' members travel to BLM lands in Southern Utah, including Arch Canyon, annually to hike, camp, fish, paint, and photograph. The Great Old Broads is also a member of the Utah Wilderness Coalition, a coalition of 160 local and national organizations dedicated to the passage of America's Redrock Wilderness Bill, which includes Utah BLM lands at issue in this lawsuit. Great Old Broads' members suffer actual and immediate harm by rampant and uncontrolled ORV use in Arch Canyon and other spectacular and fragile Utah public lands. Great Old Broads brings this action on its own behalf and on behalf of its adversely affected members.

10. Defendant SELMA SIERRA is sued in her official capacity as Director of the Utah state office of the Bureau of Land Management. In that capacity she is responsible for overseeing the management of all Utah BLM decision making, including Utah BLM's decision to allow vehicle use in Arch Canyon despite the evidence of considerable damage to the Canyon. Director Sierra is also responsible for ensuring that Utah BLM decisions comply with all applicable laws and regulations, including FLPMA and the Administrative Procedure Act.

11. Defendant BUREAU OF LAND MANAGEMENT is the agency within the United States Department of the Interior directly responsible for carrying out the Department's obligations under statutes and regulations governing protection of, and ORV use and motorized access on, public lands under its jurisdiction.

12. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is the federal agency responsible for managing just under 500 million acres of federal public lands for a variety of competing resources, including ORV use and motorized access to public lands, as well as for the protection of the natural and human environment. The Department of the Interior is required to comply with FLPMA, among other federal statutes.

FACTS GIVING RISE TO PLAINTIFFS' CAUSE OF ACTION

13. Arch Canyon, located in far southeastern Utah, has its origins high in the Abajo Mountains of the Manti LaSal National Forest and continues to carve its way to lower elevations onto BLM lands where it winds eight and a half miles through BLM land before reaching its terminus at Comb Wash. Spectacularly scenic and remote, Arch Canyon provides refuge to a number of native plant and animal species, including a fish species, the flannelmouth sucker, which is listed as a "sensitive species" by the Utah Division of Wildlife Resources. Its perennial water flow supports a ribbon of lush green riparian area, a rarity in an otherwise desert environment. The reliable source of water also attracted groups of ancestral puebloan Indians, who first farmed and lived in the canyon 2,000 years ago and left wondrous artifacts: exceptional adobe and stone cliff dwellings, rock art, corn cobs, pottery shards and other remnants of their life in the canyon.

14. The Forest Service has closed the canyon to motorized use at its boundary with BLM lands to protect the cultural and natural resources under its jurisdiction.

15. By late 2006, when SUWA filed the petition to protect Arch Canyon, it had become clear that jeep and four-wheel drive vehicles, all-terrain vehicles (ATVs), and motorcycle use was causing significant and considerable adverse affects to various resources in Arch Canyon. In particular, SUWA had documented that such use: a) caused loss of vegetation and soil erosion

along the stream banks and in the stream channel in the canyon bottom; b) damaged the stream channel and stream hydrology leading to reduced water quality and degraded fish habitat; 3) exacerbated the powerful effects of storm water runoff and flash flooding by channeling the water into deep tire ruts; and 4) contributed to the damage and looting of numerous archaeological sites, and increased the risk of such damages to other archaeological resources in the Canyon.

16. Detailed information, including archaeological and riparian area studies, which SUWA provided to BLM, shows that there are likely more than 100 archaeological sites in the canyon, many eligible for protection under the National Register of Historic Places. The BLM has not conducted a survey of these archaeological sites to evaluate the impacts of ORVs on their integrity and protection.

17. Although these archaeological sites have significant potential to yield new information important to understanding prehistoric peoples, BLM has not implemented effective strategies or protective management prescriptions for these sites, and they are at continuing risk from intentional and inadvertent damage.

18. The governing management document for Arch Canyon is the BLM's 1991 Resource Management Plan for the San Juan Resource Area (RMP) and the 1988 ORV Route Designation Map. Pursuant to these documents, BLM lands including Arch Canyon are to be managed as "limited to designated roads and trails."

19. The BLM has not completed the trail designations for the area, and BLM never specifically "designated" Arch Canyon as open for ORV use. Accordingly, vehicle use there is inconsistent with the governing RMP.

20. Pursuant to the RMP and BLM's Special Designation Areas Map of 1988 that accompanies the RMP, Arch Canyon is part of the Cedar Mesa Area of Critical Environmental Concern (ACEC). The ACEC is to be managed to "protect the cultural resources, scenic values and natural values associated with primitive recreation. . . Activities within the ACEC would be approved only with special conditions to protect cultural and visual resources and primitive recreation opportunities. . . Cultural properties eligible for the National Register of Historic Places would be surrounded by an avoidance area sufficient to allow permanent protection." RMP Decision Record at 87.

21. Additionally, pursuant to the RMP and the RMP's ORV Designation Map, Arch Canyon is identified as a "Floodplain and Riparian and Aquatic Area" and shall be "managed in accordance with Executive Orders 11988 and 11990 and the Endangered Species Act, the Utah Riparian Area management Policy, and the Utah guidelines for implementing the BLM riparian area management policy." RMP Decision Record at 94. These policies require protection of wetland and riparian areas.

22. SUWA expressed its concerns about ongoing damage to natural and cultural resources in Arch Canyon to the BLM on numerous occasions prior to filing the petition, but to no avail.

23. Despite the evidence of considerable adverse effects (and/or the risk thereof), the BLM continued to allow ORV use in Arch Canyon, and even issued permits for large group events in the Canyon numbering upwards of 25 vehicles, with each vehicle crossing the stream 120 times on the round trip through the canyon.

24. On December 23, 2006, SUWA submitted its Petition to Preserve Arch Canyon's Cultural Heritage to the BLM, citing Executive Orders 11644 and 11989 and BLM regulations 43 C.F.R. §§ 8342.2, 8342 and 8364.1.

25. BLM issued its final decision denying SUWA's Petition on June 4, 2007.

FIRST CAUSE OF ACTION
Violation of 43 C.F.R. § 8341.2(a) and Executive Order 11989

26. Plaintiffs incorporate herein by reference paragraphs 1-25 above.

27. Recognizing the destructive effects of ORV use, President Nixon signed Executive Order No. 11644, 37 Fed. Reg. 2877 (Feb. 8, 1972), which declares that:

The widespread use of [ORVs] on public lands – often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity – has demonstrated the need for a unified Federal policy toward the use of such vehicles on the public lands.

It is the purpose of this order to establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those land, and to minimize conflicts among various users of those lands.

Id. § 1.

28. In 1977, President Carter issued Executive Order 11989, which considerably strengthened Executive Order 11644 by requiring agencies to “immediately close” areas or trails to ORV use whenever the agency determines that “the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources.” Exec. Order No. 11989, 42 Fed. Reg. 26959 (May 24, 1977). The areas or trails must remain closed until the agency makes a specific determination that the “adverse effects have been eliminated and that measures have been implemented to prevent future occurrence.” *Id.*

29. In 1979, BLM incorporated executive Orders 11644 and 11989 in its ORV regulations at 43 C.F.R. Part 8340. *See* 44 Fed. Reg. 34,834 (June 15, 1979) and 53 Fed. Reg. 31,002 (Aug. 17, 1988). BLM's implementing regulations direct agency officials to designate public lands as

open, closed or limited to ORV use, and to generally follow the public participation requirements of the resource management planning process described in 43 C.F.R. §§ 1600 *et seq.* See 43 C.F.R. §§ 8340.0-1 and 8342.2.

30. The regulations also implement Executive Order 11989 by requiring BLM to act immediately to protect resources from ORV damage:

Notwithstanding the consultation provisions in § 8342.2(a), where the authorized officer determines that off-road vehicles are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability, other authorized uses, or other resources, the authorized officer shall immediately close the areas affected to the type(s) of vehicle causing the adverse effect until the adverse effects are eliminated and measures implemented to prevent recurrence.

43 C.F.R. § 8341.2(a).

31. ORVs have caused, continue to cause, and threaten to cause considerable adverse effects to Arch Canyon's cultural resources, riparian resources and special status fish species.

32. BLM made a final decision denying SUWA's petition despite the demonstrated considerable adverse effects of vehicle use on the canyon's riparian area, water quality, soil integrity, native plant, animal and fish species, scenic values, and cultural resources.

33. BLM's decision to deny SUWA's petition in the face of compelling evidence of considerable adverse effects was arbitrary, capricious, and contrary to law in violation of the APA, 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully pray that this Court enter judgment in their favor and against defendants Selma Sierra, the Bureau of Land Management, and the Department of the Interior, and that the Court:

(1) Declare that defendants violated 43 C.F.R. § 8341.2(a) and Executive Order 11989 when BLM issued its decision denying the Plaintiffs' Petition to Preserve Arch Canyon's Natural and Cultural Resources;

(2) Award injunctive relief directing defendants to halt ORV use in Arch Canyon unless and until it can ensure that the natural and archaeological resources there can be adequately protected; and

(3) Retain jurisdiction of this action to ensure compliance with its decree; and

(4) Award plaintiffs the costs they have incurred in pursuing this action, including attorneys' fees, as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and other applicable provisions; and

(5) Grant such other and further relief as is proper.

Dated: March 11, 2008.

Respectfully submitted,

/s/ Stephen Bloch

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