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LAWYERS

October 11, 2012 *By Overnight Mail*

BLM Director
Attn: Brenda Hudgens-Williams
20 M. Street SE., Room 2134LM
Washington, DC 20003

Re: "Protest" Letter: Imperial Sand Dunes Recreation Management Plan and Final EIS

Dear Ms. Hudgens-Williams:

This firm represents EcoLogic Partners, Inc. ("EcoLogic"), a non-profit consortium of recreation groups dedicated to preserving public access to public lands in the United States. EcoLogic's members include the American Sand Association (the "ASA"), which, for more than a decade, has been actively engaged in providing input to BLM regarding management of the Imperial Sand Dunes Recreation Area (the "ISDRA").

With assistance from ASA members and experts in the field of desert botany, we prepared and submitted a comment letter on the Draft Recreation Area Management Plan (RAMP) and Draft Environmental Impact Statement (EIS) for the ISDRA. This letter identified certain shortcomings in the Plan and in the environmental analysis set forth in the EIS. We are happy to report that BLM's responses to our comments addressed most of these concerns adequately.[1]

The purpose of this "protest" letter, however, is to object to BLM's proposal to close Patton Valley Road as part of the preferred RAMP alternative (Alternative 8). EcoLogic believes that the adverse environmental effects of the closure – which were not disclosed or analyzed in the Draft or Final EIS – could be significant. EcoLogic also believes that to the extent continued public use of Patton Valley Road poses a threat to designated critical habitat for the Peirson's milk-vetch ("PMV"), that threat can be readily mitigated through the establishment of a habitat preserve at a location that supports the species.

Patton Valley Road – Background

Patton Valley Road is an unpaved, drivable thoroughfare in the southern dune complex of the ISDRA. It runs generally east-west and connects the designated camping areas at Dune Buggy Flats with the popular duning/recreation areas at Patton Valley.[2] The road is approximately two

[1] We are disappointed, however, that BLM chose not to respond to the material contained in the DVD that the ASA produced and submitted as part of its "comment" package.

[2] The Patton Valley Road has a series of landmarks. The Coachella Canal as it travels north makes a bend at a location called 5-Mile Drop. There is a bridge at this location that allows access across the canal. Riding eastward

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(2) miles long and 200 feet wide and is the only existing travel corridor through designated critical habitat for the PMV.

When the 1987 ISDRA RAMP was challenged in district court in 2000 and found to be inadequate for failing to account for possible impacts to the federally-threatened PMV, the parties (including the plaintiffs and BLM) and the Court agreed that Patton Valley Road should remain open to public use due to its importance as a long-standing, east-west thoroughfare. The Court reasoned that the road, if allowed to remain open, would prevent members of the public from straying into the "interim" closure areas established by court-order for the benefit of the PMV. The road has ably served in this capacity since the interim closures went into effect in 2001. In fact, court-ordered air and ground compliance checks found no evidence of ISDRA visitors driving off Patton Valley Road into the protective closures. The critical PMV habitat on either side of the road continues to be in excellent condition.

Proposed Closure of Patton Valley Road and Potential Displacement Impacts

The proposed RAMP, including preferred Alternative 8, does not expressly call for the closure of Patton Valley Road. The maps of Alternatives 2 through 8 appear to show that a travel corridor in the general location of Patton Valley Road will be retained, even as it crosses through designated PMV critical habitat. However, in recent conversations with ASA directors, BLM staff emphasized that the road *will be* closed to avoid any finding by the U.S. Fish and Wildlife Service ("USFWS") that the RAMP could result in "adverse modification" of PMV critical habitat in the southern dunes.

If BLM does plan to close or remove Patton Valley Road from the RAMP, it should have disclosed this fact in the EIS, especially since the proposed closure will result in potentially significant effects, including (1) loss of recreational connectivity between camping areas in the west to duning areas in the east, (2) life-safety impacts associated with requiring visitors to travel farther around or into remote areas of the dunes to return to camping areas, (3) impacts on PMV associated with inadvertent incursions into critical habitat, and (4) displacement impacts resulting from duners choosing to camp and recreate in areas *other* than the southern dunes due to inconvenience caused by closure of Patton Valley Road. The Final EIS includes no assessment of these potential impacts.

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from that location, the route intersects the Sand Highway and visible from that location is the large west-facing mouth of Patton Valley. The road proceeds to the floor of Patton Valley and exits to a location known as "the pole" on the eastern edge of the large dunes and on to Ogilby. North/south sand travel is accomplished along the Sand Highway on the western edge of the dunes. The intersection with Patton Valley Road is, for dune travelers, equal to the junction of any interstate.

Keeping Patton Valley Road Open Not Likely to Result In Adverse Modification of Critical Habitat

ASA and EcoLogic understand that BLM does not want to risk an "adverse modification" finding by USFWS; and one obvious way to avoid such a finding is to eliminate all vehicular access into or through the designated critical habitat areas. Despite the surface appeal of this approach, however, it actually creates more problems for the species than it solves. As stated above, Patton Valley Road has been in constant use for decades and its importance as a popular east-west travel corridor was recognized – and preserved – in the Court-approved Consent Decree that established the interim closures in 2001. Although the road traverses through designated critical habitat for the PMV, the road itself does not support the species. It does, however, discourage dune travelers from straying into those critical habitat areas where the species is found. In other words, Patton Valley Road serves an important conservation purpose in safeguarding PMV critical habitat. Given that the road itself does not support PMV, and given that the road actually operates to discourage incursions into critical habitat, there is no scientific basis for an "adverse modification" finding should BLM elect to keep the road open. If BLM were to close the road as planned, however, the benefits of the road will be lost, and some ISDRA visitors looking to find a convenient east-west path through the southern dunes may cut across critical habitat, causing real if unintended damage. Keeping the road open would prevent this from happening.

We also would point out that BLM has not included in the RAMP any other east-west corridor through PMV critical habitat. And while we recognize that such corridors should be minimal in number and in size, the absence of any corridors creates safety and compliance problems that have not been adequately addressed in either the RAMP or the EIS. EcoLogic and the ASA take the position that such corridors can be established and maintained with little if any disturbance to critical PMV habitat.

Mitigation Concept for Keeping Patton Valley Road Open

As indicated above, Patton Valley Road has been used by ISDRA visitors for decades and provides the primary east-west travel corridor in the southern dunes. Its continued use will not have an appreciable effect on the continued viability or recovery of the PMV. Nevertheless, it does run through designated critical habitat. Therefore, it is appropriate that its continued use be mitigated by some compensatory benefit for the species. The same is true of any other travel corridor that might be established through critical PMV habitat. To this end, the ASA and EcoLogic propose a two-part mitigation strategy that should be relatively simple to implement and enforce.

The first part consists of creating a "no-travel" zone of approximately 200 acres to the north of the southern critical habitat area. This no-travel zone would include medium to high value

habitat for the PMV, as determined by plant surveys conducted over the last 15 years; however, this area is not and shall not be considered "critical" habitat for the species. The size of the no-travel zone would be at least three times the acreage of that portion of Patton Valley Road located within critical habitat, resulting in a 3 to 1 mitigation ratio. Note, however, that the no-travel zone must be separated from the northern edge of the southern critical habitat area to provide an adequate east-west travel corridor, so as not to replicate the problems associated with closing Patton Valley Road in the south.

The second part of the mitigation strategy involves creating "flared" openings at the eastern mouth of each of travel corridor adjacent to critical habitat, including Patton Valley Road. Each "flared" opening would be configured by adding a triangle shape extension to the critical habitat on each side of the mouth into the open riding area. These triangle buffers would extend at a 45 degree angle from the northern and southern intersections of the critical habitat's eastern boundary for approximately one-quarter mile. The buffer extensions would then return at a 90 degree angle to the existing eastern boundary. If the eastern boundary of critical habitat were a straight line, this intersection would come 1866 feet north or south of the corridor in question. Cumulatively, the triangle shapes would consist of approximately 160 acres. Note that these "flared" or triangle buffers are intended primarily to increase compliance near the travel corridors and enforce their use; the buffers are not meant to create large no-travel zones.

If the proposed two-part strategy, described above, were adopted, the effects of leaving Patton Valley Road (and/or other corridors) open to public use would be amply mitigated. More PMV habitat would be protected, compliance with protective boundaries would be enhanced, recreational travel between camping zones and duning areas would be maintained, and potential life-safety impacts would be avoided. For these reasons, EcoLogic and the ASA respectfully request the BLM consider this proposal to maintain modest travel corridors through the PMV critical habitat area.

Conclusion

EcoLogic and the ASA thank BLM for the opportunity to comment on the RAMP and EIS, and to raise the issue of preserving Patton Valley Road. This is truly the one missing component in an otherwise excellent plan. If you have any questions regarding the content of this letter, please feel free to contact me.

Very truly yours,

David P. Hubbard
of
Gatzke Dillon & Ballance LLP