

SENIOR COUNSEL
C. D. MICHEL*

SPECIAL COUNSEL
JOSHUA R. DALE
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
MICHELLE BIGLARIAN
SEAN A. BRADY
SCOTT M. FRANKLIN
BEN A. MACHIDA
THOMAS E. MACIEJEWSKI
CLINT B. MONFORT
JOSEPH A. SILVOSO, III
LOS ANGELES, CA

* ALSO ADMITTED IN TEXAS AND THE
DISTRICT OF COLUMBIA

WRITER'S DIRECT CONTACT:
562-216-4444
TMACIEJEWSKI@MICHELLAWYERS.COM



OF COUNSEL
DON B. KATES
BATTLEGROUND, WA

RUTH P. HARING
MATTHEW M. HORECZKO
LOS ANGELES, CA

GLENN S. MCROBERTS
SAN DIEGO, CA

AFFILIATE COUNSEL
JOHN F. MACHTINGER
JEFFREY M. COHON
LOS ANGELES, CA

DAVID T. HARDY
TUCSON, AZ

January 28, 2015

Via FedEx Overnight Delivery, Email to protest@blm.gov.com

Director (210)
Attn: Protest Coordinator
20 M Street SE, Room 2134LM
Washington, D.C. 20003

**Re: Protest of Prehistoric Trackways National Monument Proposed
Regional Management Plan & Final Environmental Impact
Statement**

Dear Director:

On behalf of the below-referenced non-governmental organizations (the "NGOs"), and in accordance with the governing regulations, 43 C.F.R. § 1610-5-2, we hereby submit the NGOs' protest of the Bureau of the Land Management's Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS) for the Prehistoric Trackways National Monument (the "PTNM").

Interest of the NGOs in Filing the Protest

This protest is being filed on behalf of the NGOs listed below by Michel & Associates, P.C., 180 E. Ocean Blvd., Suite 200, Long Beach, CA 90802. The phone number for Michel & Associates is (562) 216-4444.

Archery Trade Association
Boone and Crockett Club
Campfire Club of America
Catch-A-Dream Foundation
Congressional Sportsmen's Foundation
Masters of Foxhounds Association
National Rifle Association
National Shooting Sports Foundation
North American Bear Foundation
Orion, The Hunter's Institute

Pope and Young Club
Rocky Mountain Elk Foundation
Wildlife Forever
Wildlife Management Institute

The NGOs support the traditional and historic use of the PTNM for recreational target shooting in addition to other forms of recreation on Federal public lands.

Documents Previously Submitted by the NGOs

Attached to this protest as Exhibit 1 is the comment letter submitted by the NGOs on May 31, 2013 regarding the Draft RMP/EIS for the Prehistoric Trackways National Monument.

Statement of Issues Being Protested

The issue being protested is the categorical prohibition of recreational target shooting within the PTNM under the PRMP/FEIS.

Statement of the Parts of the Plan Being Protested

The NGOs protest the following portions of the PRMP/FEIS:

- Chapter 2 Alternatives Analysis: prohibiting recreational target shooting in Alternative C, the preferred alternative, and analysis of industry standards for predictable projectile safety areas in Alternative A
- Appendix G - "Safety Zones for Recreational Shooting Analysis"

Statement Explaining why the State Director's Decision is Wrong

In the PRMP/FEIS, the BLM sets out four alternatives:

- Alternative A, or the "No Action Alternative"
- Alternative B, which purportedly represents a relatively "passive" approach in which "human interventions with the resources are minimal and natural processes would continue at the current rate"
- Alternative C, which purportedly represents a "moderate public use and resource management method of the Monument"
- Alternative D, which purportedly represents "a maximum use approach to management of the Monument and the widest range of public uses of the resources while still following the constraints of the designating Legislation"

There are no prohibitions on recreational target shooting in Alternatives A and B. Alternatives C and D contain a categorical prohibition on recreational target shooting. The BLM has chosen to completely ban recreational target shooting under its preferred Alternative C.

BLM's Bias Toward Banning Recreational Shooting at the PTNM

Among the four alternatives considered by the BLM, two alternatives proposed included no restrictions on target shooting within the PTNM and two alternatives, including the alternative adopted by the BLM, proposed a categorical ban on target shooting. This all-or-nothing approach suggests an intention on the part of the BLM to close the PTNM to recreational shooting, regardless of public comment. Although the BLM did consider a proposal to allow target shooting within 356 acres near the southern boundary of the PTNM (PRMP/FEIS Section 2.2.2.2), that proposal was “not analyzed in detail” (Section 2.2.2). The BLM’s dismissal of this proposal as “not feasible” due to baldly-asserted difficulties in enforcing the boundary of the area in which target shooting would be permitted is further evidence of the BLM’s prejudicial treatment of recreational target shooting at the PTNM.

Moreover, the overall presentation of the alternatives considered by the BLM suggests that the prohibition of target shooting was a foregone conclusion on the part of the BLM. Although Alternative B is described as a “more restrictive approach to the use of the [PTNM] that emphasizes resource protection[,]” that alternative has no prohibition on recreational target shooting whatsoever. (PRMP/FEIS at p. ES-4.) In contrast, Alternative C, which purports to take a balanced approach to resource preservation, and Alternative D, which is described as the “maximum use approach[,]” both contain a categorical prohibition on recreational target shooting. The only apparent explanation for excluding target shooting from the alternatives that purport to allow greater recreational use of the PTNM while allowing it in the most restrictive alternative is that the BLM was intent on ensuring that its preferred alternative contained a prohibition of recreational target shooting.

Target Shooting is Arbitrarily Singled Out Among Recreational Uses

Despite the fact that among recreational activities recreational target shooting has one of the lowest accidental injury and death rates, the PRMP/FEIS holds recreational target shooting to a more burdensome standard than other recreational activities.

The PRMP/FEIS provides little rationale for singling out target shooting for a categorical ban, when other uses, such as extreme off-roading and “rock crawling” by off-highway vehicles (“OHVs”), mountain biking, horseback riding, picnicking, camping, hunting, and sightseeing would still be permitted under the plan. In response to the NGOs’ concern, the BLM indicated that “[t]he PTNM was designated primarily to protect significant paleontological resources while continuing to support recreation that supports or does not damage paleontological resources.” (PRMP/EIS at p. H-92.) To that end, the BLM notes that “[m]otorized trail systems, as well as non-motorized trail systems, provide access for continuing education, interpretation, and research associated with fossil resources.” (*Id.*)

The authorizing statute for the PTNM requires the BLM to manage the PTNM in a manner that “conserve[s], protect[s], and enhance[s]” the “paleontological, scientific, educational, scenic, and recreational resources and values” of the Monument. (Omnibus Public Lands Management Act, Section 2013.) It does not value certain recreational activities over others. To the extent that the trail systems are necessary to provide access for activities related to “education, interpretation, and research associated with fossil resources,” the continued presence of recreational activities such as “rock crawling” by OHVs, hunting, hiking, dispersed camping, or mountain biking for purposes other than

accessing the PTNM's paleontological resources does nothing to support that goal. Limiting visitor activities to those that are related to educational, as opposed to recreational, pursuits would achieve the goal of promoting research associated with fossil resources with a lower impact on paleontological resources. These recreational off-roading activities, therefore, should have been evaluated by the BLM in precisely the same manner as continued recreational target shooting, i.e., as activities that do not expressly support paleontological resources. The BLM's proposal to ban recreational target shooting yet continue to allow other recreational activities without applying the same level of scrutiny to those activities is arbitrary and capricious.

Beyond the fact that recreational target shooting is evaluated under more-burdensome standard of resource impact than other recreational activities, the PRMP/EIS fails to balance the needs of recreational target shooters against the needs of other recreational users. Noting that the PTNM includes "32 miles of designated off-highway vehicle (OHV) trails[,]” the PRMP/EIS applies a 0.5 mile buffer around the recreational routes. (PRMP/EIS at p. 4-17.) This buffer alone leaves only one-percent of the PTNM for consideration for recreational target shooting. As the authorizing statute for the PTNM does not favor one recreational activity over another, the BLM should have considered the feasibility of management alternatives that could accommodate target shooting use by limiting other managed uses of the PTNM in specified areas.

The PRMP/EIS's permissive treatment of camping in comparison to recreational target shooting further suggests a bias on the part of the BLM against the possibility of continued recreational target shooting at the PTNM. Notably, the PRMP/EIS acknowledges the potential of damages to paleontological resources caused by camping at the PTNM in that it states that “[i]n order to deter resource damage, the BLM would sign sensitive areas as ‘no camping,’ reduce evidence of inappropriate camping and educate visitors to use Leave No Trace principles.”¹ (PRMP/EIS at p. 2-14.) Moreover, in cases where camping does demonstrate damage to PTNM resources, the BLM has agreed to create a “more developed campground” in order to mitigate those impacts. (*Id.*) The BLM is willing not only to continue to allow camping after a demonstrated impact on paleontological resources, but also to expend resources in order to allow such continued recreational use. In contrast, the BLM would not even evaluate the feasibility of providing recreational target shooters access to the area on the southern boundary of the PTNM outside the BLM's buffer zone, even without any demonstrated impact on resources.

The PRMP/EIS Fails to Take Affirmative Steps to Preserve Recreational Target Shooting

Again, the authorizing statute for the PTNM requires the BLM to manage the PTNM in a manner that “conserve[s], protect[s], and enhance[s]” the “paleontological, scientific, educational, scenic, and recreational resources and values” of the Monument. (Omnibus Public Lands Management Act, Section 2013.) The PRMP/EIS makes no effort to take affirmative steps to preserve recreational target shooting at the PTNM.

¹It should be noted that five years ago the recreational target shooting community launched with the BLM the “Respected Access is Open Access” outdoor ethics campaign in order to minimize the impact of recreational target shooting on Federal lands.

For example, the PRMP/FEIS dismisses, without detailed analysis, the possibility of allowing target shooting in the southern area of the PTNM that lies outside areas affected by a safety buffer. (PRMP/FEIS at Section 2.2.2.2 (pages 2-4).) The BLM asserts that allowing target shooting in this area would be infeasible because there are no access roads on this side of the PTNM and the boundaries of this area are not distinct and would need to be marked by signs. But the BLM fails to consider even the most obvious of potential solutions to this conundrum, such as building an access road to the intended recreational shooting area and limiting target shooting to the south side of that access road.

Further, the PRMP/FEIS does not consider designating areas, either inside or outside the buffer zone, and including a minimum amount of infrastructure to allay safety concerns. For example, the provision of backstops and target holders could provide a safe shooting venue that would resolve much of the BLM's concerns over user conflicts, but the PRMP/FEIS does not give any consideration to such actions. In response to the NGOs' concerns raised at the Draft RMP stage, the BLM indicated that providing backstops and target holders for target shooting would not achieve its management objective conserving, protecting, and enhancing fossil resources. (PRMP/FEIS at p. H-92.) But it would also not hinder this objective any more than continuing allow other recreational activities, such as "rock crawling" by off-road vehicles hinders this objective. Moreover, as noted above, the PTNM's enacting statute directs the BLM to protect recreational activities, including recreational target shooting, at the Monument.

Similarly, the PRMP/FEIS attempts to justify a categorical ban on recreational target shooting by noting that such a prohibition would "eliminate the litter left by target shooters[.]" increase the safety of visitors and BLM staff, and reduce the possibility of conflicts with other users of the PTNM. (PRMP/FEIS at p. 4-23.) But these problems could all be reduced without the BLM's resorting to the extreme measure of a categorical ban on recreational target shooting. As it does with camping, hiking, and OHV use, the BLM should manage recreational target shooting to reduce its impacts on the environment and other users. The BLM's failure to consider doing so is indicative of its unwillingness to treat recreational target shooting as a legitimate recreational activity on the PTNM.

The PRMP/FEIS Contains Insufficient Evidence for the Soundness of its Buffer Zones

In order to support the closing of the PTNM to recreational target shooting, the BLM applies industry tables on travel distances of bullets to create a 0.5 mile buffer from target shooting around OHV trails or palentological resources. The BLM provides no evidence that such a buffer is supported by law, regulation, agency policy, or sound science. Arbitrarily imposing such a buffer, irrespective of circumstances, would set a dangerous precedent for future RMPs and potentially have a crippling effect on the availability of recreational target shooting locations throughout federal lands.

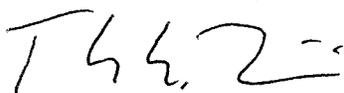
Director (210)
January 28, 2015
Page 6 of 6

Conclusion: The NGOs Requests that the BLM Revise and Recirculate the PRMP/FEIS

Because of these defects in the PRMP/FEIS, the NGOs request that the defects be remedied and the PRMP/FEIS be recirculated for further public comment.

Sincerely,

Michel & Associates, P.C.

A handwritten signature in black ink, appearing to read 'T. Maciejewski', with a horizontal line underneath.

Thomas E. Maciejewski

TEM/cs

Exhibit 1



Fwd: Temporary Closure of Prehistoric Trackways National Monument to target shooting

Phillips, Thomas <tphillip@bim.gov>
To: Rena Gutierrez <rgutier@bim.gov>

Wed, Nov 6, 2013 at 11:27 AM

----- Forwarded message -----

From: **Reece, Susan** <SReece@mrnhq.org>
Date: Fri, May 31, 2013 at 3:20 PM
Subject: RE: Temporary Closure of Prehistoric Trackways National Monument to target shooting
To: "Wallace, David" <dwallace@bim.gov>
Cc: Bill Childress <wchildre@bim.gov>, Tom Phillips <tphillip@bim.gov>

Attached are the comments as revised with the addition of the Association of Fish and Wildlife Agencies.

Thanks,

Susan

From: Wallace, David [mailto:dwallace@bim.gov]
Sent: Friday, May 31, 2013 12:47 PM
To: Reece, Susan
Cc: Bill Childress; Tom Phillips
Subject: Temporary Closure of Prehistoric Trackways National Monument to target shooting

Susan,

As we discussed on the teleconference, please find the Environmental Assessment for the temporary target shooting closure to the PTNM previous to the RMP decision. Given the similarity in analysis between the PTNM RMP and the Temporary closure EA, I would assume that you comments would be very similar, as well. However, this is another opportunity for you and the other NGOs to provide feedback. Thanks for your efforts and have a great weekend.

Dave Wallace
Assistant District Manager-Multiple Resources
Las Cruces District Office
1800 Marquess Street

COMMENTS ON BLM RMP/EIS for Prehistoric Trackways National Monument

May 31, 2013

1. The RMP identifies shooting as a popular recreational activity in the Prehistoric Trackways National Monument (PTNM) and yet the preferred alternative closes the entire monument to recreational shooting.

2. The RMP is an "all-or-nothing" approach for recreational shooting. Under Alternatives A and B, there are "no restrictions on the discharge of firearms" and under Alternatives C and D "target shooting would be prohibited." The RMP implies a pre-decision by the agency on the outcome of recreational shooting. Logically, recreational shooting would not be permitted throughout the monument, but the RMP provides no other option except closure. There is no middle ground where certain currently used sites by shooters would remain opened.

3. The BLM accommodates OHV users, particularly those engaged in extreme off-roading and rock crawling, with a special trail system. At the same time, the BLM abrogates any duty or responsibility to accommodate a traditional and equally popular recreational activity like recreational shooting.

4. The BLM has created a method to "scientifically" support closing the PTNM to shooting by applying industry tables on travel distance of bullets to create a 1/2 mile buffer around paleontological resources and OHV trails. The buffer application conveniently concludes that "there are no areas in the Monument that are more than 1/2-mile from areas of high public use where recreational shooting could take place safely."

The RMP does not state that this standard of applying a buffer is supported by law or agency regulation or policy. It sets a dangerous precedent for future RMPs by implying that shooting is unsafe and inappropriate within 1/2 mile of OHV trails or paleontological resources, irrespective of unique or even common circumstances.

Implying that it is impossible to safely and responsibly shoot within 1/2 mile of existing trails would significantly impact shooting opportunities not only on the PTNM, but throughout federal lands managed by the BLM and other agencies. It is also unclear whether this standard is being applied because the PTNM is part of the National Landscape Conservation System or whether any site within the projected ammunition capabilities listed in Appendix G from a trail is candidate for closure.

5. The RMP did not consider designating some area(s) for shooting which could include a minimum amount of infrastructure to provide a safe shooting venue (backstops, target holders) that would also resolve the concern over user conflicts. The lack of proactive management for recreational shooting can be compared with the 32 miles of designated OHV trails in the PTNM.

The enacting statute for the PTNM states that the Secretary shall manage the monument in a manner that conserves protects and enhances the resources, including recreational resources, and values of the designated public land. By declaring in the RMP that "the area is known and used frequently for target shooting" and that the "Monument is often used by locals for recreational target practice", the BLM acknowledges that shooting is an important recreational activity and that the recreational resources of the PTNM provide a value that should be conserved, protected and

45-1 Alternatives were developed for target shooting based on a safety analysis. The results of the analysis, described in detail in Appendix G and Map 4-1, illustrate that public safety is at risk from target shooting throughout the Monument, with the exception of one small inaccessible location at the southern edge.

45-2 The PTNM was designated primarily to protect significant paleontological resources while continuing to support recreation that also supports or does not damage paleontological resources. Motorized trail systems, as well as non-motorized trail systems, provide access for continuing education, interpretation, and research associated with the fossil resources. The PTNM designation does not direct the BLM to provide opportunities for target shooting.

45-3 The conclusions of the shooting analysis are unique to the unusual terrain associated with the PTNM. The *Draft RMP* clearly describes the dissected nature of the canyons and ridges and the safety risks associated with that particular landscape. The safety analysis was performed after several "near misses" where target shooting has taken place concurrent with school field trips. The safety analysis confirmed what the BLM has experienced in the field- that the terrain conditions in the PTNM are unsuitable for safely furthering the legislative goals of research, education and interpretation.

45-4 The BLM would like to emphasize that within the 5.5 million acres the Las Cruces District manages, the Prehistoric Trackways constitutes just 0.1 percent of the whole. In this southwestern landscape, the 5,000 acres of the PTNM is dwarfed by the remaining lands available. The PTNM has offered a convenient, accessible spot for local target shooters. The *Proposed RMP/EIS* discusses the availability of other similar sites within a 10-mile radius of the Monument, in Chapter 4, impacts of Recreation and Visitor Services on Recreation and Visitor Services Alternative C.

The BLM must manage the PTNM in a manner that "conserves, protects, and enhances" fossil resources and other uses that also conserve, protect, and enhance fossil resources. Providing backstops and target holders for target shooting would not achieve this management objective (See *Final RMP/EIS*, Chapter 2, Paleontological Resources Goals and Objectives).

The BLM has initiated dialogue with local shooting clubs and the New Mexico Department of Game and Fish to explore the possibility of providing recreational target shooting sites outside the boundary of PTNM, but in the vicinity.

enhanced. Conversely, the BLM's preferred alternative proposes to completely close the PTNM to this legitimate and traditional activity. This is at odds with Congress' declared intent to preserve and conserve recreational resources and values within the PTNM's identified boundaries. Further, enhancing recreational shooting by building backstops and installing target holders would be consistent with the legislative intent of the designating Act.

6. There is no consideration in the RMP for setting aside an area of current OHV use for recreational shooting. The RMP could suggest, as it did for recreational shooters, that there are over a million acres outside of the NM for OHV users who might be displaced because of accommodation to shooters. The point here is not to create an argument with OHV users, but rather to underscore how seemingly easy it is to write off one class of recreation use by suggesting that millions of acres remain open outside the planning area for that use.

Recreational shooting while recognized as a popular recreational activity in the NM is evidentially not recognized by the BLM as a legitimate and traditional activity in the planned area, and thus must yield to OHV users.

7. The Federal Lands Hunting, Fishing and Shooting Sports Roundtable Memorandum of Understanding (MOU) signed by the BLM, FWS, and USFS in 2006 pledges a partnership with hunting, wildlife conservation and shooting sports organizations to address issues and opportunities associated with hunting, fishing and recreational shooting on Federal Lands. The Roundtable, in partnership with Tread Lightly! Inc., launched an education outreach campaign "Respected Access is Open Access" to address issues of debris, vandalism, and other negative behaviors. While these issues are identified as a reason to close the NM to shooting, there is no indication that the BLM ever reached out to the local shooters and organizations or to its MOU partners to assist in resolving problems.

8. In every instance, the BLM justifies closing areas by saying there are millions of surrounding public land that remains open to shooters. But, there is no discussion of whether this land has access, how far displaced shooters will have to travel, and whether the displaced shooters will create new impacts by concentrating use in these other areas. The reality is that concentrated recreational shooting, by definition, is site specific and cannot be picked up and placed just anywhere on the millions of acres that BLM manages.

9. The RMP includes several inflammatory statements about recreational shooting that could be interpreted as setting the stage for the BLM to slowly, but steadily close public lands, and not just monuments, to shooters. One notable example is the opening sentence in Appendix G which states that "recreational target shooting contains many hazards based on predictable projectile physics and unpredictable human behavior." This speaks to an agency mindset about recreational shooting, irrespective of BLM statements to the contrary. Millions of acres of public land outside of national monuments may be open to shooting today, but it appears that it is only a matter of time before closures catch up to them.

The BLM through this RMP is holding recreational shooting to a different standard than other recreational activities in spite of the fact that shooting has one of the lowest accidental injury and death statistics of recreational activities. One can certainly claim that OHV use and mountain biking, for example, have "predictable projectile physics and unpredictable human behavior" which can result in human injuries and death and destruction of resources. Yet, the BLM encourages and even sets aside areas for these uses, charging user fees in some cases.

45-5 Chapter 4, Impacts to Recreation and Visitor Services from Travel and Transportation Alternative A, has been updated to reflect the availability of off-highway vehicle routes and challenging terrain outside of the PTNM boundary.

45-6 The Proposed RMP/EIS includes a stronger discussion of target shooting in Chapter 4, Recreation and Visitor Services Impacts to the Alternatives. Since the publication of the Draft RMP/EIS, BLM has conducted further outreach to shooting sports organizations relating to the proposed closure to target shooting. This outreach is described in Section 5.4

45-7 The Draft RMP/EIS describes other target shooting opportunities in Section 4.4.3.3.

45-8

10. The RMP justifies monument closure by stating that: "Prohibiting target shooting would eliminate trash and litter left by target shooters, reduce the opportunity for user conflicts and increase visitor and BLM staff safety by reducing risks associated with stray bullets." Further in the same paragraph, the RMP states that: "Closing the Monument to target practice shooting would create a safer environment for researchers, visitors, and BLM staff and volunteers."

The problems that the RMP identifies fall squarely at the feet of the BLM for not managing recreational shooting, as it does OHV use, camping, hiking and other pursuits, as a legitimate recreational activity in a national monument. The BLM can take these statements and overlay them on any public land and draw its conclusion that the lands should be closed. And, as noted in #7, the BLM evidences no effort to work with shooters and local, state, or national organizations to resolve issues.

11. In summary, the RMP for the PTNM is as alarming as have been the RMPs for Ironwood Forest NM and the Sonoran Desert NM where no effort on the part of the BLM was made to continue opportunities for an activity that has had a legitimate and historic use of the land. The opportunities for recreational shooting under these RMPs are illusory.

12. The undersigned organizations appreciate the opportunity to comment on the RMP and are open to continued discussion with the BLM, under the umbrella of our MDU, on how we as partners can work together to promote and enhance safe and responsible recreational shooting on our federal public lands.

Archery Trade Association
 Association of Fish and Wildlife Agencies
 Boone and Crockett Club
 Campfire Club of America
 Catch-A-Dream Foundation
 Congressional Sportsmen's Foundation
 Dallas Safari Club
 Masters of Foxhounds Association
 Mule Deer Foundation
 National Rifle Association
 National Shooting Sports Foundation
 North American Bear Foundation
 Orion, The Hunter's Institute
 Pope and Young Club
 Quality Deer Management Association
 Rocky Mountain Elk Foundation
 Ruffed Grouse Society
 Theodore Roosevelt Conservation Partnership
 Wildlife Forever
 Wildlife Management Institute

45-8 Please see response to Comment 45-2.