Subcommittee on Federal Lands

Tom McClintock, Chairman
Hearing Memo

January 19, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff -- Spencer Kimball (x6-7736)
Subcommittee on Federal Lands

Hearing: Oversight field hearing titled *"Ensuring Local Input, Legal Consistency and Multiple-Use Resource Management in St. George BLM Planning"*

The Subcommittee on Federal Lands will hold an oversight field hearing titled *"Ensuring Local Input, Legal Consistency and Multiple-Use Resource Management in St. George BLM Planning"* on **Friday, January 22, 2016 at 10:00 a.m. (MST) at the Dixie Convention Center (Entrada Room B/C) in St. George, Utah.**

The Subcommittee will receive testimony on the Bureau of Land Management's (BLM) Draft Resource Management Plans (RMP) for the Beaver Dam Wash and Red Cliffs National Conservation Areas (NCA), St. George Field Office RMP, and associated Environmental Impact Statement (EIS), as well as the agency's interpretation of Washington County, Utah provisions in the *Omnibus Public Land Management Act of 2009* (OPLMA) in the draft planning documents. Maps of the St. George Field Office, Red Cliffs NCA, and Beaver Dam Wash NCA can be found at the end of this memo.

Policy Overview

- The draft RMPs for the Beaver Dam Wash and Red Cliffs NCAs, St. George Field Office RMP, and associated EIS ("draft RMPs") were prepared by BLM's St. George Field Office and released publically in July 2015. Many local officials and members of the public are concerned that:

  - land use restrictions in the draft plans are unduly restrictive on grazing, recreation, and other multiple-uses of federal lands in the county;
  - there are inconsistencies between the plans and the OPLMA; and
  - BLM did not adequately coordinate with and incorporate feedback from Washington County and other members of the community in the development of the planning documents.

Witnesses (listed in alphabetical order)

Ms. Kathleen Clarke
Director
State of Utah Public Lands Policy Coordinating Office
(Former Director of the BLM under the George W. Bush Administration)
Salt Lake City, Utah

Chairman Alan Gardner
Washington County, Utah Commission
St. George, Utah

Mayor Jon Pike
City of St. George, Utah
St. George, Utah

Mr. Paul Van Dam
Former Executive Director, Citizens for Dixie's Future
Former Attorney General, State of Utah
Ivins, Utah

Ms. Jenna Whitlock
Acting State Director, Utah State Office
Bureau of Land Management
Salt Lake City, Utah

Concerns Regarding BLM's Resource Management Plans

The OPLMA, which became law in March 2009, created the Beaver Dam Wash and Red Cliffs NCAs, which are located in Washington County, Utah, and directed BLM to develop comprehensive management plans for those areas. According to BLM, the purpose of its planning process is to "satisfy specific mandates from the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11, at Title 1, Subtitle O) that directed the Secretary of the Interior, through the BLM, to develop comprehensive management plans for the Beaver Dam Wash National Conservation Area…and the Red Cliffs National Conservation Area."[1]

The Washington County public lands provisions, which lay out the framework for the future management of much of the federal lands in the County, were included in OPLMA only after extensive negotiations between members of the community, elected officials, and a variety of diverse land use interests. The bill comprised a number of provisions specific to federal land within the County, including but not limited to:

- designation of 14 new Wilderness areas and release of Wilderness Study Areas
- development of a comprehensive travel management plan, including the identification of a northern transportation route
- designation of two National Conservation Areas
- designation of 19 miles of rivers and streams under the *Wild and Scenic Rivers Act*

When the law was signed, it was widely regarded as a unique compromise that brought together a disparate array of agricultural, wilderness, recreational, and other interests. Many

[1] *80 Fed. Reg. 42597* (July 17, 2015).

believed the law could serve as a template in other counties or regions with large amounts of federal land.

The BLM's draft RMPs for the NCAs should be crafted in a manner that balances the recreational, wilderness, agricultural, and other needs in the planning area and adhere to all applicable federal laws, including the OPLMA. Many in the local community, however, feel that the plans do not strike this balance and that BLM has ignored elements of the law, thereby jeopardizing the time, effort, and resources invested into crafting a unique legislative compromise at the local level. Without the assurance that federal agencies will correctly interpret site-specific laws, like Washington County's, in the development of federal planning documents, local communities in other areas will have little incentive to build consensus and work with Congress to develop bills that prescribe specific management of federal land.

Local citizens and landowners are primarily concerned about the following:

Northern Transportation Route

The OPLMA requires BLM to identify one or more alternatives for such a northern transportation route: "the Secretary shall…in consultation with appropriate Federal agencies, State, tribal, and local governmental entities (including the County and St. George City, Utah), and the public, identify 1 or more alternatives for a northern transportation route in the County."[2] For several years, the County has envisioned a transportation corridor north of the City of St. George to ease cross-town traffic and accommodate projected growth in the area.

The BLM's preferred alternative in the draft RMPs does not include a northern transportation route and would actually *exclude rights of way* in the area where the county has proposed the corridor route.[3] While BLM identifies a transportation and utility corridor in Alternative D, the absence of a route in the preferred alternative demonstrates that BLM may be unwilling to consider a northern transportation route that would meet the needs of the community in the final planning documents.

The U.S. Fish & Wildlife Service opposes the County's proposed route, based on purported impacts to desert tortoise in the area.[4] County officials, however, believe that BLM has ignored a study demonstrating that a mitigation plan associated with the County's preferred corridor would adequately protect habitat and allow for adequate species movement in and around the corridor.[5]

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[2] P.L. 111-11.

[3] Bureau of Land Management. Draft Resource Management Plans for the Beaver Dam Wash and Red Cliffs National Conservation Areas, St. George Field Office Resource Management Plan, and Environmental Impact Statement. July 2015. Page 281.

[4] U.S. Fish & Wildlife Service comments on Bureau of Land Management Resource Management Plans for the Red Cliffs and Beaver Dam Wash National Conservation Areas and Proposed Amendments to the St. George Field Office Resource Management Plan. November 16, 2015. Page B-15.

[5] Washington County comments on the Bureau of Land Management Resource Management Plans for the Red Cliffs and Beaver Dam Wash National Conservation Areas and Proposed Amendments to the St. George Field Office Resource Management Plan and Draft Environmental Impact Statement. November 16, 2015. Addendum 1. Pages 6-7.

Reductions in Livestock Grazing

If implemented, the BLM's preferred alternative could reduce grazing in certain areas. The preferred alternative would establish "grazing utilization levels at 40% of current year's growth on allotments in designated critical habitat for the desert tortoise"[6] and provide "1,861 initial Animal Unit Months (AUMs) of livestock forage through a reduction of permitted use to the 20 year average of actual use in the NCA."[7]

BLM is also encouraging the voluntary retirement of grazing permits: "[w]hen grazing permits and preference are voluntarily relinquished, the allotment or portion of the allotment associated with the permits within the NCA would no longer be available for livestock grazing over the life of the RMP."[8] Many worry that this language is contrary to direction in the OPLMA that grazing of livestock in NCAs "shall be permitted to continue subject to such reasonable regulations, policies, and practices as the Secretary considers necessary."[9]

Wilderness Characteristics

In the draft planning documents, BLM evaluates wilderness characteristics in the NCAs in order to comply with Section 201 of the Federal Land Policy and Management Act (FLPMA), which requires BLM to maintain inventories of all resources, including lands with wilderness characteristics. According to BLM, the NCAs contain approximately 18,000 acres of lands with wilderness characteristics that were not designated as wilderness in the OPLMA.[10]

While the preferred alternative states that BLM will "not identify management prescriptions to specifically maintain lands with wilderness characteristics,"[11] it includes several specific management provisions for the management of lands with wilderness characteristics in both NCAs, including right-of-way avoidance areas, limitation of OHV activities, and a prohibition of commercial and non-commercial fuelwood harvesting and seed and plant material collection.[12] These restrictions may run counter to the OPLMA, which states that any public lands in the County administered that have been adequately studied for wilderness designation and are not designated as wilderness are no longer subject to section 603(c) of the FLPMA and shall be managed in accordance with applicable law and the land management plans adopted under section 202 of that Act (43 U.S.C. 1712).[13]

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[6] Bureau of Land Management. Draft Resource Management Plans for the Beaver Dam Wash and Red Cliffs National Conservation Areas, St. George Field Office Resource Management Plan, and Environmental Impact Statement. July 2015. Page 84.
[7] *Id.* Page 81.
[8] *Id.* Page 84.
[9] P.L. 111-11.
[10] Bureau of Land Management Frequently Asked Questions. Draft Resource Management Plans for the Beaver Dam Wash and Red Cliffs National Conservation Areas/Environmental Impact Statement Available at: http://www.blm.gov/ut/st/en/fo/st__george/planning2/nca_resource_management/FrequentlyAskedQuestions.html
[11] Bureau of Land Management. Draft Resource Management Plans for the Beaver Dam Wash and Red Cliffs National Conservation Areas, St. George Field Office Resource Management Plan, and Environmental Impact Statement. July 2015. Page 137 and 255.
[12] *Id.* Page 175 and 291.
[13] P.L. 111-11.

Other Concerns

Many believe the draft RMP will severely curtail a number of recreational activities in the NCAs, particularly through the designation of three Areas of Critical Environmental Concern in the preferred alternative.[14] Off-highway vehicle access may be limited or precluded in the NCAs, particularly in the Bull Mountain area, where BLM has proposed to designate a priority biological area.[15] In addition, BLM proposes to designate a Special Recreation Management Area within the Beaver Dam Wash NCA[16], which could significantly restrict recreational uses in an area that is currently managed as an Extensive Special Recreation Management Area.

Members of the community are also very concerned about the potential introduction of California Condors, which are listed as endangered under the Endangered Species Act, within the planning area. The draft RMP allows for the "reintroduction, translocation, and supplemental releases of California condors into historic habitats in coordination with USFWS."[17]

Since the Red Cliffs NCA directly abuts the most highly-populated areas in the County, members of the community also worry about language in the preferred alternative that would prohibit the authorization of land uses that would export water from the NCA, as well as BLM's intent to obtain water rights on all inventoried point water for authorized beneficial uses of water within the NCA.[18]

Lack of Meaningful Consultation

The OPLMA required BLM to coordinate with local governments and with the public as it prepared the plan: "the Secretary shall consult with…appropriate State, tribal, and local governmental entities and members of the public."[19] According to County officials and others, BLM did not sufficiently coordinate with and address concerns offered by local governments and other affected parties. While BLM held required scoping meetings and public listening sessions, as well as nine formal cooperating agency meetings and many informal meetings "to discuss topics of importance,"[20] many members of the community feel that this engagement resulted in little substantive changes to the planning documents.

While BLM indicated that the final RMPs and EIS will be "developed as a result of public comment on the Draft RMP, may include objectives and actions analyzed in the other alternatives and reflect changes or adjustments based on new information or changes in BLM

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[14] Bureau of Land Management. Draft Resource Management Plans for the Beaver Dam Wash and Red Cliffs National Conservation Areas, St. George Field Office Resource Management Plan, and Environmental Impact Statement. July 2015. Page 296.
[15] *Id.* Page 314.
[16] *Id.* Page 142.
[17] *Id.* Page 94.
[18] *Id.* Page 57.
[19] P.L. 111-11.
[20] Letter from Bureau of Land Management Director Neil Kornze to Chairman Bishop regarding BLM Draft Resource Management Plans for the Beaver Dam Wash and Red Cliffs National Conservation Areas. November 10, 2015.

policies or priorities,"[21] many are concerned that BLM may not fully address and ameliorate concerns raised by members of the community in the final plans and associated record of decision (ROD).

Background of Utah Provisions of Omnibus Public Land Management Act

Washington County, Utah Provisions in the Omnibus Public Land Management Act of 2009

On March 30, 2009, the OPLMA, a package of several public lands bills, was signed into law. The package designated over two million acres of new Wilderness, established the National Landscape Conservation System, added thousands of miles of rivers and streams to the National Wild and Scenic Rivers System, added land to the National Park System, and included a number of other miscellaneous public land provisions.

Section O of the law addressed public lands in Washington County, Utah managed by multiple federal agencies. Specifically, Section O provided for the following in the County[22]:

- Required development of a comprehensive Washington County travel management plan for the land managed by the BLM in the county, including the identification a northern transportation route in the county;
- Designated the Beaver Dam Wash National Conservation Area (63,500 acres) and Red Cliffs National Conservation Area (45,000 acres);
- Designated 14 new Wilderness areas (129,300 acres) and determined specific requirements for the administration of the designated wilderness areas;
- Released certain wilderness study areas from further study for designation as wilderness;
- Added the Watchman Wilderness to Zion National Park;
- Designated 19 miles of rivers and streams under the *Wild and Scenic Rivers Act;*
- Conveyed 640 acres to the Shivwits Band of the Paiute Indian Tribe of Utah and 353 acres to local municipalities for public purposes;
- Directed the Department of Interior (DOI) to designate the "High Desert Off-Highway Vehicle Trail";
- Authorized DOI to sell public land identified for disposal in appropriate resource management plans;
- Authorized the U.S. Department of Agriculture to sell land in Dixie National Forest to a private landowner at fair market value.

Future Management of the Beaver Dam Wash and Red Cliffs NCAs

The OPLMA states that the Beaver Dam Wash and Red Cliffs NCAs were created to "conserve, protect, and enhance…the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources" of the land.[23] In order to meet this requirement, the law also required BLM to develop and implement Resource Management Plans

[21] *80 Fed. Reg. 42597* (July 17, 2015).
[22] P.L. 111-11.
[23] *Id.*

and an associated Environmental Impact Statement for the NCAs within three years of enactment of the law. In these plans, BLM is required to do the following[24]:

- Develop requirements regarding motorized vehicles, livestock grazing, and wildland fire operations;
- Allow for continued livestock grazing that existed prior to enactment of the law, subject to applicable laws and reasonable regulations, policies, and practices considered necessary by the Secretary;
- Protect certain water rights;
- Determine desired future conditions for the special values and manage the areas to conserve, protect, and enhance the resources of these areas;
- Allow motorized vehicle activities only on roads designated by the management plan for the use of motorized vehicles and modify area designations for motorized vehicle travel, including areas that will be open, limited, or closed;
- Consult with appropriate State, tribal, and local governmental entities; and members of the public;
- Develop a Washington County comprehensive travel and transportation management plan that identify one or more alternatives for a northern transportation route in the County and designate a system of areas, roads, and trails for mechanical and motorized use in consultation with appropriate Federal agencies, State, tribal, and local governmental entities, specifically including the County and St. George City, Utah, and the public;

Draft RMPs for Beaver Dam Wash National Conservation Area and Red Cliffs National Conservation Area and Draft Amendment to the St. George Field Office RMP/EIS

Under the OPLMA, the St. George Field Office was directed to develop comprehensive management plans for the two NCAs and also take actions on other public lands in Washington County that amends the St. George Field Office RMP.[25] BLM began working on these RMPs in 2010, shortly after the enactment of the OPLMA. BLM performed public scoping in 2010, released draft planning documents in July 2015, and accepted public comments on those documents through November 2015. BLM anticipates the RMPs and EIS will be finalized through a ROD in the winter of 2016 and will be implemented for 10-15 years thereafter. In the draft planning document, BLM analyzes four alternatives for the long term management of resource values and land uses in the NCAs:[26]

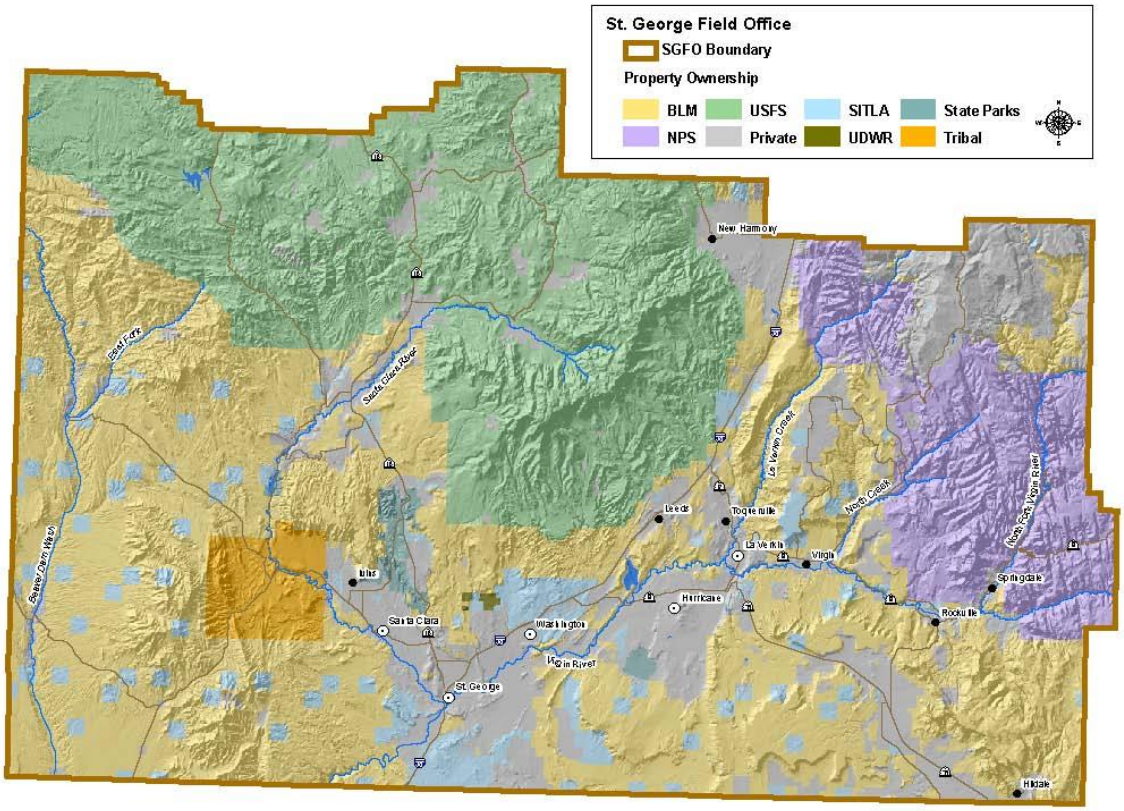
- Alternative A is the No Action alternative and "would continue management of the public lands under current goals, objectives, and management decisions from the 1999 St. George Field Office RMP."[27]

[24] *Id.*
[25] *Id.*
[26] *80 Fed. Reg. 42597* (July 17, 2015).
[27] *Id.*

- Alternative B, the BLM's preferred alternative, emphasizes "resource protection while allowing land uses and developments that are consistent with the NCA purposes, current laws, regulations, and policies."[28]

- Alternative C emphasizes the "conservation and protection of resource values and the restoration of damaged lands… [and] would also implement higher levels of restrictions on land uses and developments to achieve conservation objectives."[29]

- Alternative D emphasizes a "broader array and higher level of public use and access, while still meeting the congressionally-defined purpose of conservation and protection of resource values and scenic qualities in the two NCAs. This alternative would provide the greatest management flexibility relating to land uses and authorizations."[30]



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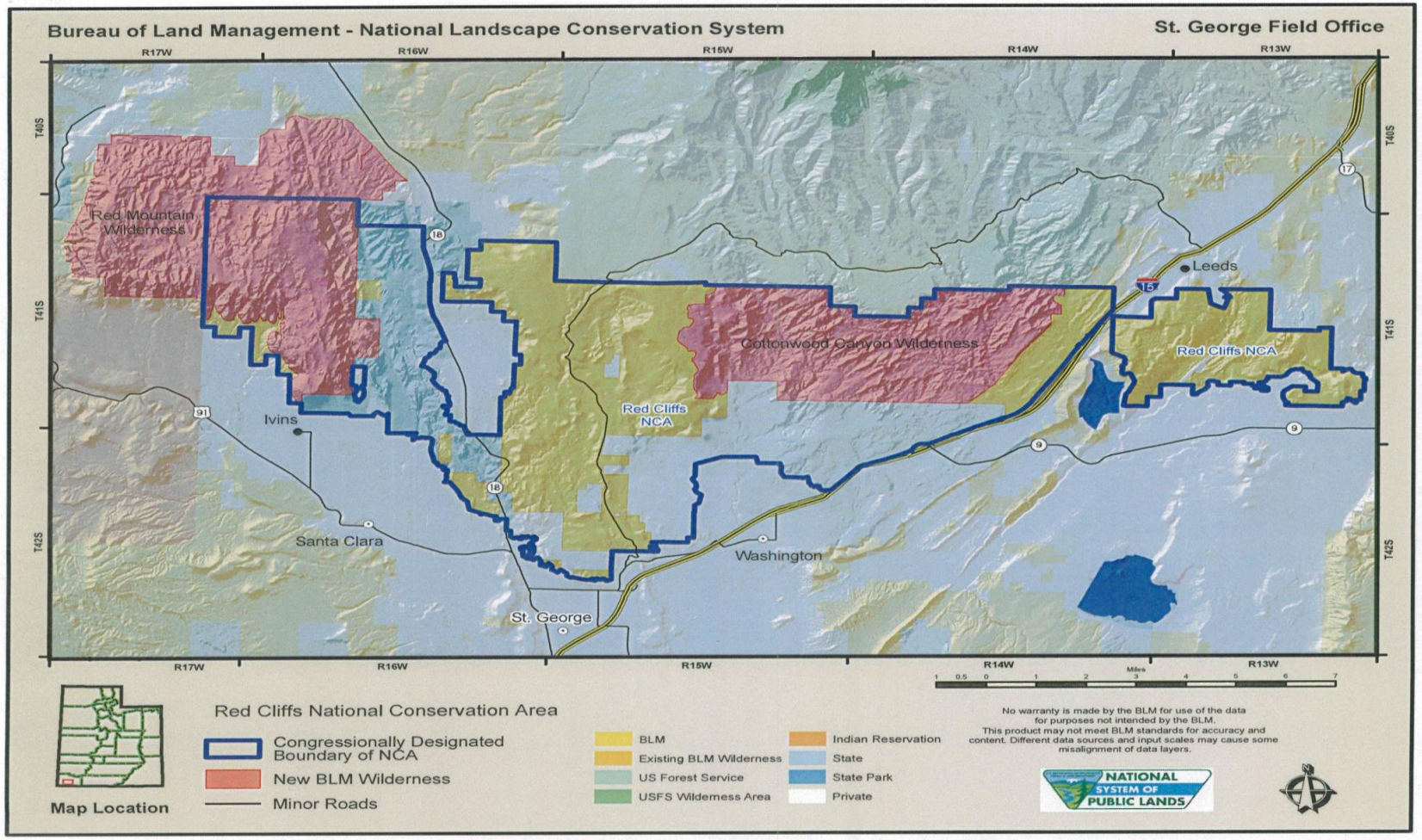
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] St. George Field Office, http://www.blm.gov/style/medialib/blm/ut/st__george_fo/overview.Par.24933.File.dat/SGFO.pdf



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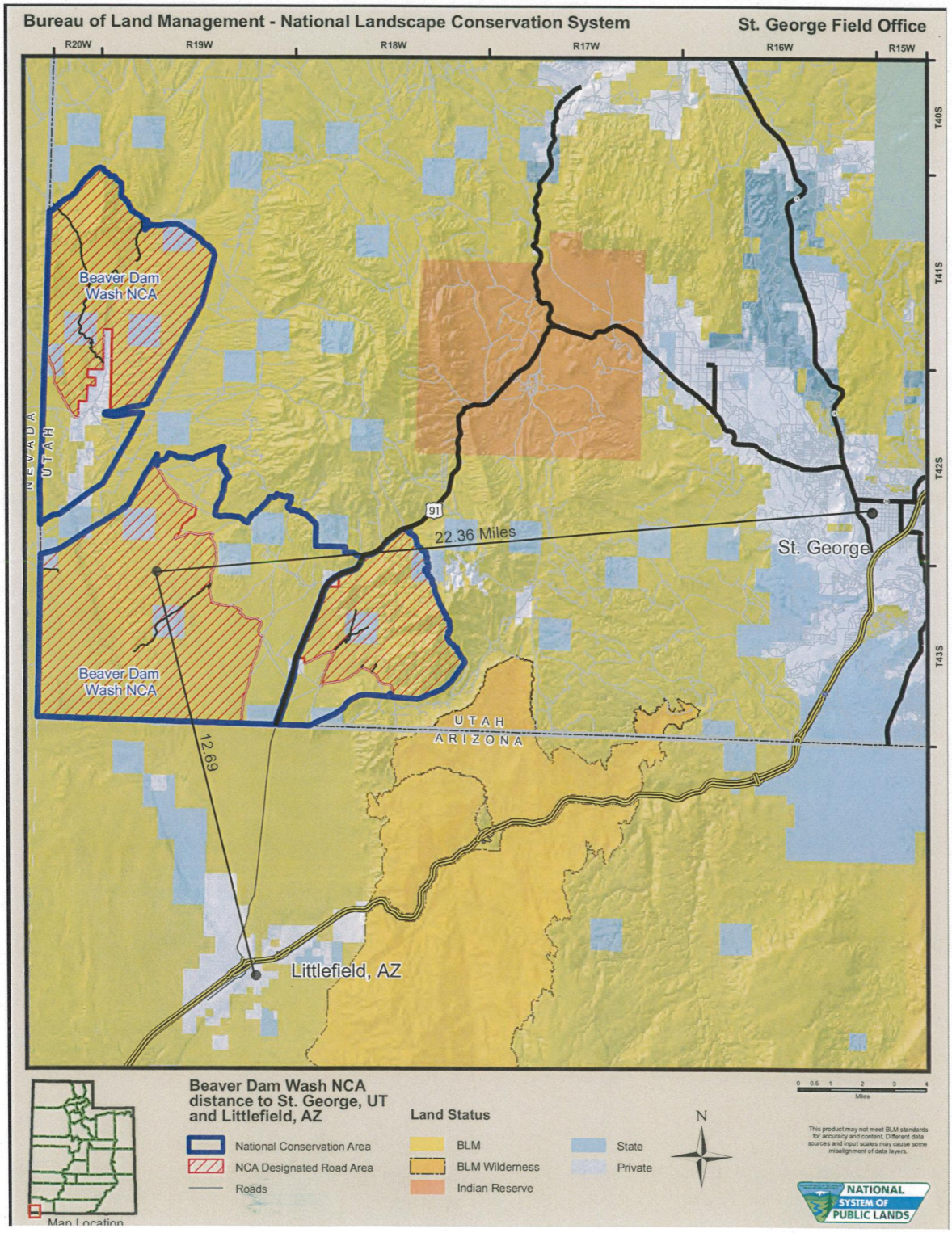
[32] Red Cliffs NCA, http://www.blm.gov/style/medialib/blm/ut/st__george_fo/nlcs/ncas.Par.78880.File.dat/Red%20Cliffs%20NCA%20fact%20sheet.pdf



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[33] Beaver Dam Wash NCA, http://www.blm.gov/style/medialib/blm/ut/st__george_fo/nlcs/ncas.Par.54694.File.dat/Beaver%20Dam%20Wash%20NCA%20Fact%20Sheet.pdf