

**U.S. Department of the Interior  
Bureau of Land Management  
California Desert District  
Ridgecrest Field Office**

# **Finding of No Significant Impact**

**&**

# **Proposed Plan Amendment**

**for**

# **Furnace Creek Road**

**An Amendment to the California Desert Conservation Plan 1980**

Prepared By:  
U.S. Department of the Interior  
Bureau of Land Management  
Ridgecrest Field Office  
May 2007



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## **Overview/Summary**

The Bureau of Land Management (BLM) designates off-road vehicle routes on public lands as open or closed to motorized vehicle access, or as open on a limited basis. This process is a requirement of federal regulations (43 CFR 8342), BLM policy, and the BLM's California Desert Conservation Area (CDCA) Plan. In 2002 BLM developed the Northern and Eastern Mojave Desert Management Plan (NEMO), which was an amendment to the CDCA plan. Within this plan amendment, the route designation process was completed for the BLM lands within the northern portion of the California Desert planning area, including the routes surrounding Furnace Creek road. However, when the Record of Decision was issued on July 2, 2004, the Furnace Creek Road was not part of this planning process, stating "Routes of travel decisions that are not being made in this plan amendment but will be made in follow-up planning effort include: ... (b) the Furnace Creek route adjacent to the Inyo National Forest." Feedback during public scoping for the NEMO (2002), need for effective public input for this area, and interagency coordination were factors in the decision to handle this route in a separate site specific evaluation.

This document includes a Finding of No Significant Impact (FONSI) pursuant to Title 40 CFR 1500.4 (q) regulations implementing National Environmental Policy Act (NEPA), and the Proposed Land Use Plan amendment for the California Desert Conservation Area Plan, pursuant to Title 43 CFR 1610.5-5. The proposed plan amendment is described in the Environmental Assessment, CA-650-2005-121, under Alternative 4. The proposed action is to designate the 3.75 miles of Furnace Creek Road on BLM administered lands, from the turnoff from Highway 264 to the BLM-Forest Service boundary, as approved for vehicular access for casual public use. (See Proposed Plan Amendment Section, page #4.)

This FONSI recognizes the Environmental Assessment (EA), describes alternatives 3, 4 and 6 as having the same management prescriptions for the portion of Furnace Creek Road crossing BLM administered lands. The differences between these three alternatives are exclusively on the Forest Service portion of the road. Since this FONSI and proposed plan amendment are only for the BLM administered portion of the road, it will not differentiate between the three alternatives. For simplicity, this document will reference actions and impacts identified in Alternative 4 to base my decision on.

## **Background**

### **Project Area**

The Furnace Creek Road originates on (BLM) land off of Highway 264 in Fish Lake Valley, Nevada. Currently, the road is gated and closed to motorized use on BLM land approximately 2.5 miles from Highway 264. The road is a cherry-stemmed route through the entire length of BLM Wilderness Study Area. The Forest Service boundary is 1.25 miles from the gate. Approximately 2.25 miles from the Forest Service/BLM boundary is the Forest Service's Proposed Wilderness boundary (1988 Inyo National Forest Land and Resource Management Plan Prescription #2). The road continues for approximately 5.25 additional miles until its terminus—as indicated in the Forest Service's 1988 OHV Inventory map—in Tres Plumas Flat. The total road distance from Highway 264 to the Tres Plumas Flat is approximately 11.25 miles.

For this project, no actions are proposed in any of the alternatives that would occur in Wilderness Study Area (WSA). The effect of each alternative on the WSA, however, was analyzed in the Environmental Assessment (EA).

## **History**

Although the road's exact history is not certain, it appears as though there is a history of use in the area dating back to the mid-late 1800s. Early uses of the road included support for mining activities. Throughout the 1900s and into the 1980s, the road was used to support grazing activities in the upper portions of the canyon. It is believed that much of the early maintenance of the road was provided by ranchers utilizing the canyon for grazing. During this time, the road was passable at least part of the year with a four-wheel drive vehicle.

In the 1980s and 1990s, grazing activities in the canyon decreased and the road received little or no maintenance (the Tres Plumas grazing allotment was closed in 2000). In particular, portions of the road beyond the Forest Service/BLM boundary were lightly maintained. In the early 1980s, a washout occurred ¼ mile west of the BLM/Forest Service boundary and since then the road has been mostly impassable past that point to full-size vehicles. For at least the last five years, the forest has been receiving reports that vehicles have been leaving the road prism in the vicinity of the washout and driving along and in the Furnace Creek as they travel west. Subsequent monitoring and site visits by the Forest Service confirmed that users were traveling out of the road prism to avoid the washouts on the forest Service lands.

In January 2001, a lawsuit filed against the BLM by the Center for Biological Diversity, Sierra Club, and Public Employees for Environmental Responsibility was settled in the United States District Court, Northern District of California. The settlement agreement clause # 44 stipulated that "within 45 days of the signing of this agreement by the parties, the BLM will consult with the U.S. Forest Service to consider appropriate means to protect riparian and other resource values at Furnace Creek. If the BLM cannot reach an agreement with the U.S. Forest Service on the appropriate course of action to protect riparian and other resource values in the area within 45 days, the BLM will close, via emergency closure, the final mile of Furnace Creek on BLM land. This closure or other protective action agreed to with the Forest Service shall remain in effect until route designation is completed for this area."

In January 2003, in a letter to the BLM, the Forest Service, citing these inconsistencies between the current status of the road and forest plan standards and guidelines, recommended "that the process for closing the Furnace Creek Road on BLM lands begin as soon as possible and as required by the Settlement Agreement." This recommendation for an interim closure was acted on in March 2003 when the BLM closed the Furnace Creek Road to motorized vehicle use. This closure is currently in place pending the outcome of the EA and land use plan amendment. The Forest Service also closed their portion of the Furnace Creek Road in March 2003 via an emergency closure that expired in March 2004.

The BLM has completed an EA, pursuant to Title 40 Code of Federal Regulations (CFR) 1501.3. The EA, (Nov. 2006), analyzed the impacts of the alternatives to improve the riparian condition of the Furnace Creek area, minimize conflicts between the road and the riparian resources in the area, bring Furnace Creek into compliance with BLM's policies and applicable state and federal laws, and comply with the settlement agreement described below. The current project is a joint BLM/Forest Service project. The Forest Service is the lead agency and is providing much of the specialist input and the NEPA guidance. The BLM provided the heritage and cultural resource specialist support and assisted with the environmental documentation for the project.

The EA, Furnace Creek Road, is available to the public at the BLM, Ridgecrest Field Office, at 300 S. Richmond Rd. Ridgecrest, CA 93555.

BLM published a Notice of Intent to consider an amendment to the California Desert Conservation Area Plan on October 30, 2006.

The plan amendment and EA will fulfill the needs and obligations set forth by NEPA, the Federal Land Policy and Management Act (FLPMA), BLM planning regulations, and other BLM management policies.

## **Proposed Amendment/Proposed Action**

BLM proposes to designate the 3.75 miles of Furnace Creek Road from the turnoff from Highway 264 to the BLM-Forest Service boundary, as approved for vehicular access for casual public use. BLM also proposed to improve and realign the section of the Furnace Creek road from the current gate (2.5 miles from Highway 264) to approximately ½ mile from the Forest Service boundary. The realignment and improvements would stabilize the area and minimize the resource impacts that are occurring because of the current condition of the road. This includes the following work, which must be completed prior to allowing vehicular access above the existing closure gate, to reduce adverse impacts:

- Crossing #1 – Stable crossing; no work needed.
- Crossing #2 – Stable crossing; no work needed.
- Between crossings #2 and #3 – side draw crossing. Install rolling dip to keep water in crossing and prevent water from running down the road. Riprap on downhill side of crossing to prevent erosion.
- Crossing #3 – Stable crossing; no work needed.
- Between crossing #3 and #4 – remove rock and slough, break holes in the berm, and add additional water structures for drainage (i.e., rolling dip) to minimize ponding of water.
- Crossing #4 – Riprap 10 feet by 40 feet area with 6 inch to 8 inch sized rock. Filter cloth under rock is optional.
- Crossing #5 – Trim willows back to main trunk (or move willows back) and move a portion of the road in this crossing (approximately 50 feet) as far left as possible to approximately 10 feet south of current alignment and adjacent to cliff. Riprap fill slope and drainage channel. Build check dams in drainage channel to capture sediment. The purpose of this realignment is to separate the road from the streambed channel. With realignment and treatments, the natural flow of the stream will be restored.
- Between crossings #5 and #6 – add additional water structures for drainage (i.e., rolling dip).
- Crossing #6 – Fill in, level, and riprap first 40 feet (10 feet by 40 feet) area. Rock second 10 feet by 50 feet area, rock armor head cut.
- Between crossing #6 and crossing #7 – Add water structures to minimize water on roadway, minor stabilization work on south side of the road.
- Install new gate at BLM/Forest Service boundary.

## **Finding of No Significant Impact**

The BLM Ridgecrest Field Office interdisciplinary review and analysis determined that the proposed action would not trigger significant impacts on the environment based on criteria established by regulations, policy and analysis.

I find, based on the analysis in the EA, that the proposed action that would occur on BLM administered lands would not significantly affect the quality of the human environment; therefore, an Environmental Impact Statement is not required. This finding is based on the significance criteria, as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

The following rationale was used to determine that significant impacts were not present for each criteria mentioned in Title 40 CFR 1508.27:

### **Rationale for Finding of No Significant Impact**

#### **A. Context**

The selected BLM action as described in Alternative 4 is limited in geographic context (40 CFR 1508.27 (a)). The area that is proposed for vehicle access is a relatively small portion of the existing routes of travel throughout the Ridgecrest Field Office area. The six streambed crossings through the ephemeral portion of Furnace creek represents less than one percent of the total streambed reach on BLM lands. The 1.25 miles of Furnace Creek Road on BLM, presently closed beyond the gate, represents approximately 11 percent of the total Furnace Creek Road length. There is not an expectation that significant indirect effects will occur with the implementation of this action described in Alternative 4. Likewise, the cumulative effects are expected to be negligible and are documented in Chapter 3 of the EA.

#### **B. Intensity**

##### **1. Beneficial and adverse impacts.**

Beneficial and adverse impacts associated with Alternative 4 are analyzed in the EA and found to be minor and localized impacts, potentially affecting up to 50 acres.

##### **2. The degree to which the proposed action and alternatives affect public health or safety.**

Adverse effects to public health and safety anticipated to result from implementation of Alternative 4 are minor and unlikely. This road is on relatively flat ground with minimal opportunities for vehicular accidents. Vehicle speeds are extremely slow due to large rocks covering many portions of the road, also contributing to the relative safe nature of the road.

##### **3. Unique characteristics of the geographic area.**

While the proposed project is in close proximity to resources considered to be unique (i.e., wetlands, cultural/heritage resources), the analysis presented in the EA indicates the impacts from implementation of the proposed action to be minor and are geographically local in nature. The resources potentially affected include locally common flora and fauna and affecting up to 50 acres of typical desert scrublands and dry washes, which are not national or regional significant in nature.

**4. The degree to which the effects on the human environment are likely to be highly controversial.**

The nature of potential effects on the human environment from Alternative 4 is well established and not likely to be highly controversial. There is no known scientific controversy over the impacts of the decision.

**5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.**

The effects on the human environment from Alternative 4 are reasonably predictable and do not involve unique or unknown risks. All proposed actions are standard practices that have been previously implemented with known cause and effect relationships, outlined in the EA.

**6. The degree to which the action or alternatives may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.**

Alternative 4 is consistent with adjacent uses for the project area and will not establish a precedent for the future nor does it represent a decision in principle about a future consideration. There are no connected or similar actions proposed or under consideration for this area which are likely to have significant effects either individually or in combination for implementation of the proposed action. This decision will not foreclose options/alternatives on other actions which may be proposed in the future.

**7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.**

The proposed action is not related to other past, present or reasonably foreseeable actions likely to result in any significant impacts, as discussed Sections 3.1-3.8 of the EA.

**8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historical resources.**

The ground disturbing activities associated with Alternative 4 will not directly adversely affect any sites eligible for the National Register of Historic Places. Indirect effects to sites eligible for the National Register are documented in the EA and will be mitigated in a mitigation plan subject to the approval of the California State Historic Preservation Office. A Programmatic Agreement has been signed by the Forest Service, BLM and California and Nevada State Historic Preservation Offices. This agreement will stipulate the measures that need to be taken to mitigate the effects of Alternative 4 on sites eligible for the National Register of Historic Places, thus avoiding any significant impact.

The effects analysis shows that the road's opening or closure has little direct effect on historic sites. The primary impact associated with the decision to improve and reopen the road is indirect: from people potentially driving out of the road prism and over sites, or from people camping directly on sites. The heritage mitigation plan will address the mitigation measures that will be implemented to ensure that there are no adverse effects to site eligible for the National Register of Historic Places.

**9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.**

There are no federally listed threatened or endangered species or their habitat occurring within the BLM reach of the Furnace Creek. Wildlife species frequenting the area are of common species whose habitat requirements are general and are not being adversely impacted by Furnace Creek Road. Except for six ephemeral streambed crossings, Furnace Creek Road lies adjacent to, and



parallels the stream channel at distances from 60 feet to 100 feet and lies uphill, minimizing the disruption to wildlife.

**10. Whether the action threatens a violation of Federal, State, or local law or other requirements imposed for the protection of the environment.**

The action is not expected to violate Federal, State, and local laws or requirements for the protection of the environment. Applicable laws, regulations and policies were considered in the EA. The proposed action does not set a precedent for other projects that may be implemented to meet the goals and objectives of the CDCA Plan.

Based on the analysis of potential environmental impacts contained in the EA, I have determined that the impacts are not expected to be significant and an Environmental Impact Statement is not required. **This determination only applies to the portion of the alternative affecting Bureau of Land Management administered lands.** The Forest Service will issue a separate decision for the Forest Service administered portion of Furnace Creek Road.

\_\_\_\_\_  
Hector A. Villalobos  
Field Manager, Ridgecrest Field Office

\_\_\_\_\_  
Date

## **PROPOSED PLAN AMENDMENT**

### **Rationale for Land Use Plan Amendment**

As stated in Section 1.2 of the EA (Purpose and Need), the purpose and need for the project is to: (1) improve the riparian condition of the Furnace Creek area; (2) minimize conflicts between the road and the riparian resources in the area; (3) bring the Furnace Creek area into conformance with the California Desert Plan, BLM Management policies, and applicable state and federal laws by designating Furnace Creek Road; and (4) comply with the settlement agreement as described in the background section.

### **Other Alternatives Considered**

#### **Alternative 1—No Action**

Alternative 1 would remove the gate and continue the management of Furnace Creek Road as it was before the interim closure of the road. There would be limited maintenance of the road and the alignment would continue to be through the riparian area on National Forest System lands. I did not select this alternative because it would continue the well-documented problem of inconsistency between the road and various forest plan standards and guidelines. This alternative will perpetuate the riparian-related problems related to the alignment of the road. Users of the road would likely continue to leave the road prism and travel in the riparian vegetation to avoid the wash out of the road on the National Forest System lands. The road is, in some places, in need of repair and maintenance. This alternative would not provide the corrections and improvements needed for the road.

#### **Alternative 2— Road Closed to Mechanized/Motorized Vehicles**

Alternative 2 would close the Furnace Creek Road to motorized and mechanized use on both the Forest Service and BLM sections. I did not select this alternative because I believe the resource conflicts between the alignment and condition of the road can be addressed without completely eliminating motorized and mechanized access of the road. This alternative would meet the purpose and need referenced above and in Chapter 1 of the EA. However, the analysis shows that the purpose and need can also be accomplished without closing the road to motorized use. Motorized use of the road has been well established over the years. As mentioned in the Background section of the EA, motorized use of the road has occurred in the canyon from the early 1900s to the road closure in 2003. Subsequent studies, inventories, and plans associated with this canyon have recognized the motorized use of the road. The roadless inventories conducted in the 1970s recognized use of the road and created a corridor with roadless areas surrounding the road. Likewise, the 1988 Inyo National Forest Land and Resource Management Plan acknowledged and maintained motorized use of the road as did the 1988 OHV inventory maps.

It is clear, after reviewing the effects analysis in the EA, the historical use of the road can continue in a manner that minimizes impacts to riparian resources through the implementation measures outlined in Alternative 4.

#### **Alternative 3—BLM Segment, Full-size Vehicle Use; Forest Service Segment, Closed to Mechanized/Motorized Use**

Although this alternative is identical to Alternative 4 for the portion of road on BLM administered lands, this alternative would allow full-size vehicle access on the BLM administered lands while closing the Forest Service segment to motorized and mechanized use. For the Forest Service, the rationale for not selecting this alternative is the same as Alternative 2.

## **Alternative 4 – Preferred Alternative**

### **Alternative 5—BLM and Forest Service, Multiple-Use Trail**

This alternative would allow motorized vehicles fifty inches in width and less on both the BLM and Forest Service sections of the road. For the Forest Service segment of the road, the selected alternative is the same as this alternative (that is, motorized use limited to vehicles fifty inches in width and less). The historic use has been with full size vehicle access. For the BLM portion of the road, there was no evidence that indicated reducing the access to fifty inch wide vehicles would have any measurable benefit to the resources present in the area.

### **Alternative 6—BLM and Forest Service, Full-size Vehicle Access**

Although this alternative is identical to Alternative 4 for the portion of road on BLM administered lands, this alternative would allow full-size vehicle access on both the BLM and Forest Service segments of the road. The prescribed action occurring on BLM administered lands is identical. The EA did however, revealed the impacts to the resources on Forest Service administered lands from alternative 6, are greater than alternative 4 (see Furnace Creek Road EA, Chapter 2, Table 3).

## **Implementation Date**

As per 43 CFR 1610.5-5(a), if no protests are received within 30 days from issuance of public notice of this action taken on the amendment, it may be implemented 30 days after such Notice. Vehicular access to Furnace Creek Road beyond the existing gate will not occur until the repair actions cited in the proposed amendment are completed.

## **Approval of Proposed Land Use Plan Amendment**

Based upon my review of all alternatives, I have determined Alternative 4 – BLM Segment, Full-size Vehicle Use; Forest Service Segment, Multiple-Use Trail - of the Furnace Creek Road Environmental Assessment (EA) on the public land managed by the BLM, is the proposed the Plan Amendment to the California Desert Conservation Area Plan to include Furnace Creek road as an approved route of travel for vehicular access for casual public use. **This proposed decision would only apply to the portion of the alternative affecting Bureau of Land Management administered lands.** This designation would complete the route designation process for the Furnace Creek Road as required by the January 2001 Settlement Agreement. The Forest Service will issue a separate decision for the Forest Service administered portion of Furnace Creek Road.

*Approved:*

\_\_\_\_\_  
Steven Borchard  
District Manager, California Desert District

\_\_\_\_\_  
Date

## **Filing Protest Procedures, Timeframe, and Mailing**

**The elements of a properly prepared protest are described in 43 CFR 1610.5-2**

### Protest Procedures:

(a) Any person who participated in the planning process and has an interest which is or may be adversely affected by the approval of the proposed amendment to the California Desert Conservation Area Plan, may protest this proposed amendment. A protest may raise only those issues which were submitted for the record during the planning process.

1) The protest shall be in writing and shall be filed with the Director. The protest shall be filed within thirty (30) days of the publication of the notice of its effective date.

2) The protest shall contain; i) The name, mailing address, telephone number and interest of the person filing the protest; ii) A statement of the issue or issues being protested; iii) A statement of the part or parts of the plan amendment being protested; iv) A copy of all documents addressing the issue that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and v) A concise statement explaining why the State Director's decision is believed to be wrong.

3. The Director shall promptly render a decision on the protest. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the protesting party by certified mail, return receipt requested.

(b) The decision of the Director shall be the final decision for the Department of the Interior.

### **Mailing address for filing a protest:**

#### Regular Mail

U.S. Department of the Interior  
Director, Bureau of Land Management (210)  
Attn: Brenda Williams  
P.O. Box 66538  
Washington, D.C. 20035

#### Overnight (e.g. Fed ex) mail

U.S. Department of the Interior  
Director, Bureau of Land Management (210)  
Attn: Brenda Williams  
Telephone: (202) 452-5045  
1620 "L" Street, NW, Room 1075  
Washington, D.C. 20036

## **Public Involvement**

The proposal was first listed in the summer 2003 Schedule of Proposed Actions for the Forest Service and BLM, and was provided to the public for comment during scoping which began July 7, 2003. As part of the public involvement process, the agencies conducted two meetings (November 6, 2003, in Bishop, California and December 10, 2003, in Dyer, Nevada) and a field trip (October 23, 2003) to solicit comment on the proposed action. Two additional meetings (June 24, 2004, in Bishop, California and June 26, 2004, in Fish Lake Valley, Nevada) and a field trip (June 26, 2004) were held to gather additional scoping comments.

This initial scoping phase generated nearly 500 comments. Attendance at the June public meetings was relatively high—over 115 people attended the June 24 meeting in Bishop, while nearly 50 people attended the June 26 meeting in Fish Lake Valley.

On July 23, 2004, a draft of the first two chapters (Purpose and Need and Alternatives) of the environmental document was distributed to the public for comment. The intent of the draft distribution was to generate public comment on the range of alternatives displayed in the document. Two additional public meetings were held in Bishop (August 5, 2004) and Fish Lake Valley (August 4, 2004). Again, the public meetings were well attended and approximately 60 comments were received.

The Furnace Creek Road EA was released for a 30-day public comment period on January 15, 2005. Again, two public meetings were held and well attended (February 2, 2005, in Bishop, CA and February 3, 2005, in Fish Lake Valley, NV). Approximately 4,500 public comments were received on the EA, the majority of which were from letters.

The EA was updated to reflect the public comment received.

This revised EA was made available to the public for comments as the foundation to amend the CDCA Plan as it relates to the vehicular access on the Furnace Creek road for casual use by the public. The 30-day comment period, which started November 1, 2006, was extended until January 15, 2007, based on the public's concern the thirty days occurred over the holiday season. BLM received over 7,500 comment letters approximately 7,000 were e-mailed, and the remainder was received via fax and stamped mail. After a thorough review of all the letters it was revealed that most all 7,000 e-mailed letters were reproductions of two unique documents. Approximately 5,000 of the comment letters were reproduced from the first original, and approximately 2,000 of the other e-mails were reproduced from the second original. These reproductions were identical in wording and content of the comments, with only the name and address different for each.

Comments received during the public comment period of the land use plan amendment process focused on concerns over riparian habitat and wildlife issues. Comments concerning the water quality, cultural resources and erosion were also raised, as well as the potential for increased off-road trespass and impacts to the Wilderness Study Area.

## Appendix A:

A Notice of Intent to amend the CDCA Plan was published in the Federal Register on October 30, 2006. BLM received over 7,500 comment letters and e-mails during the comment period. The following comments and BLM responses represent the comments received:

### Comment:

A pervasive shortcoming of the current EA, Notice of Intent and associated analysis is the mischaracterization of this action as simply the designation of the “Furnace Creek Road” as either open, limited or closed. In fact, over much of the length of the project area, the decision to be made is not to “re-open” an existing road, generally understood to be a maintained route of travel intended for motorized vehicle use. Over much of the canyon’s length above the current protective gate, on both BLM and Forest Service land, there is little semblance of a “road.” While traces of an old route still remain in some of the upland (non-riparian) portions of the canyon, much of the route from FS crossing 14 down to BLM crossing 1 has become obscured by both riparian and upland sagebrush vegetation, become covered in erosional alluvium from gullies along the steep and loose canyon walls or has simply fallen away leaving large gaps in the former travel surface. The decision to be made is far beyond opening – it is one of building a new route for recreational off-road vehicle travel in a unique desert oasis.

### Response:

*On BLM lands, the riparian vegetation has encroached into the six stream bed crossing although not to the point of obscuring the road or crossing point. For the vast majority of the road is on the upland sites, it remains open and clearly recognizable. Road maintenance is the only task necessary to make the route passable for most vehicles.*

### Comment:

The CDCA Plan of 1980, as amended, contains management direction for the protection of Unusual Plant Assemblages (UPA), and wetland and riparian areas. Highly sensitive UPAs include riparian habitats, and management objectives are as follows:

- a) To avoid the long-term and short-term impacts associated with the destruction, loss, or degradation of wetland and riparian areas;
- b) To preserve and enhance the natural and beneficial values of wetland and riparian areas which may include constraining or excluding those uses that cause significant long-term ecological damage;
- c) To include practical measures to minimize harm in all actions causing adverse impacts on wetlands and riparian areas.
- d) To the extent possible all actions will be avoided that would result in adverse impacts on wetland and riparian areas; and
- e) Positive programs will be initiated to rehabilitate those areas in a deteriorated condition.

The EA recognizes that Furnace Creek contains riparian habitat which is a highly sensitive UPA, and indicates that the policy is to “preserve the habitat and ensure the continued existence of the plant assemblages.” Any designation for Furnace Creek other than closed to vehicles violates the BLM’s own standards for protection of the UPAs in Furnace Creek.

Further, previous use of the road through the riparian area led to the system being correctly assessed as “*functioning-at-risk*”, using BLM’s own established process for evaluating the health of flowing streams. The closure previously put in place by BLM has since moved streambed health closer to a “*properly functioning*” condition, in compliance with established BLM policy for the management of such riparian areas. Authorizing road reconstruction and/or even limited use of the previously used road through this riparian area would negate the ecosystem health improvement accrued to date, in direct conflict with national BLM direction for the management of such resources.

**Response:**

*The “functioning-at-risk” was put in place because of the channel crossings. The proposal to work on the crossings to harden them will reduce the potential for erosion of the riparian areas up and downstream and is designed to bring the riparian area into proper functioning condition on the BLM portion with the vehicle use anticipated under Alternative 4..*

**Comment:**

FLPMA and its implementing regulations require that the impacts of the designation of public lands for the use of off-road vehicles be thoroughly considered before a designation is made. 43 CFR §8342.2. The regulations require that resources be protected and conflicts minimized. Id.

- (a) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability.
- (b) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats. Special attention will be given to protect endangered or threatened species and their habitats.
- (d) Areas and trails shall not be located in officially designated wilderness areas or primitive areas. Areas and trails shall be located in natural areas only if the authorized officer determines that off-road vehicle use in such locations will not adversely affect their natural, esthetic, scenic, or other values for which such areas are established.

**Response:**

*There are no federally listed threatened or endangered species or their habitat within the BLM reach of the Furnace Creek drainage. On the BLM portion, the road segment lies adjacent to, and parallels the stream channel at distances from 60 to 100’ and lies uphill, minimizing the disruption to other wildlife.*

**Comment:**

43 CFR §8342.1. As detailed below, allowing new road construction, ongoing maintenance and subsequent motorized vehicle use in Furnace Creek Canyon as proposed in Alternatives 3-6 would damage soils, wetlands, riparian vegetation, and impair wilderness suitability. Motorized vehicle use of Furnace Creek Canyon as proposed in Alternatives 3-6 would also lead to the harassment of wildlife and disruption of wildlife habitat including both breeding habitat and migratory habitat for many bird species of concern and listed species. See PRBO, Breeding Bird Assessment of Furnace Creek, 2006, pp. 8-12. Impacts from motorized vehicle use could also impair recovery of listed and special status species that utilize Furnace Creek Canyon. Because the potential impacts to resources and wildlife from the use of these public lands by off-road vehicles would be inconsistent with the Designation Criteria in the BLM regulations, 43 CFR §8342.1, Furnace Creek Canyon should be designated as closed to off-road vehicles.

**Response:**

*The only listed (state) species recorded was the willow flycatcher, which was migrating through the area. Delaying OHV activity until June and July, during the latter part of the breeding season is likely to reduce the potential impacts to breeding birds.*

**Comment:**

The 6840 Manual provides for BLM to implement management plans that conserve candidate and Bureau-sensitive species and their habitats, and to ensure that actions authorized, funded, or carried out by the BLM do not contribute to the need for the species to become listed under the provisions of the Endangered Species Act. Special Status Species occurring in Furnace Creek Canyon were identified in the EA as potentially or hypothetically occurring and not based on adequate surveys<sup>1</sup>. In the absence of systematic surveys for invertebrates, amphibians, reptiles, and especially migratory birds, BLM will not know to what extent these species occur in the canyon, what portions of the canyon they utilize, and how motorized vehicle use as well as necessary new road construction and maintenance, would affect them.

In FLPMA, Congress declared that it is the policy of the United States that the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts; and managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use (See 43 U.S.C. § 1701(a)(7) & (8)). FLPMA also requires that the BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.”

**Response:**

*The Furnace Creek road has been used for more than 100 years, as described in the EA. Field trips and monitoring conducted by BLM indicates the BLM uplands to be meeting rangeland health standards, and expect for the six streambed crossings, the riparian area is in properly functioning condition. With the proposed hardening of these six crossing BLM predicts this will stabilize the crossings and move the condition from Functioning at Risk to Properly Functioning Condition. Therefore, what ever species are observed within this area would not be adversely impacted by the condition of the habitat.*

**Comment:**

In FLPMA, Congress declared that the “CDCA contains historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent to an area of large population; is a total ecosystem that is extremely fragile, easily scarred, and slowly healed; and that its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution,

<sup>1</sup> See comment letter from the Department of Fish & Game dated 16 February 2005: “The statement in the EA that the proposed project will not result in significant adverse impacts to these resources are not supported by data presented in the EA which states that surveys were not conducted to determine if/where these species were present.” The DFG letter also call into question EA’s treatment of mule deer, plants, riparian habitat, Panamint alligator lizards, and endemic spring snails.



inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California; and that its resources can and should be provided for in a multiple use and sustained yield management plan to conserve these resources for future generations, and to provide present and future use and enjoyment, particularly outdoor recreation uses, including the use, where appropriate, of off-road recreational vehicles.”

**Response:**

*Under Alternative 4, BLM is to repair and harden 6 ephemeral streambed crossings. All maintenance of the existing road will be done in previously disturbed sites, thereby having a no net loss of habitat while providing for the overall improvement to the riparian area. These actions benefit all wildlife dependent on this area as well as providing for recreational enjoyment.*

**Comment:**

Furthermore, Congress declared that “it is the purpose of FLPMA and the CDCA to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality.”

FLPMA contains several provisions related to BLM’s planning and management of public lands. It requires that the BLM prepare and maintain a current inventory of all public lands and their resources (*See* 43 U.S.C. §1711(a). Systematic inventory of public lands and their resources forms the basis of the land use planning process (*See* 43 U.S.C. § 1701(a)(2).

Since the establishment of the CDCA in 1976, the BLM has never conducted any systematic inventories of biological resources on public lands in Furnace Creek Canyon. The BLM Biological Evaluation for the Furnace Creek Road Project states “BLM is unaware of any systematic bird surveys for Furnace Creek” and “A formal assessment of the canyon to determine breeding habitat suitability may be needed by qualified biologists, especially if an alternative to allow vehicle use without a seasonal closure is selected.” Such systematic inventories would have provided the agency and the public with a professional-level understanding of the wildlife resources of the canyon, especially those that are inextricably associated with the aquatic and riparian habitats. At a minimum, such surveys should have been conducted for aquatic invertebrates, amphibians, and migratory birds. These broad groups of species are known to include certain species that are listed under the Federal and State endangered species acts, sensitive species, and species of special management concern.

**Response:**

*BLM continues to monitor habitat for both riparian and uplands. The habitats occurring in the BLM portion of the Furnace Creek drainage are in healthy conditions and the riparian area is functioning. BLM’s monitoring demonstrated that the riparian habitat can be improved through the hardening of six ephemeral streambed crossings. Alternative 4 provides for remedial action on the six crossings. The California Department of Fish & Game must take the responsibility to monitor their wildlife communities to determine their condition, health and population trends.*

**Comment:**

The documents BLM prepared in support of the Furnace Creek Road Project (EA, Biological Evaluation) indicate it was aware of the lack of systematic surveys for migratory birds and aquatic

species, but yet BLM finalized the EA and concluded that the effects would not be significant. In the absence of systematic and professionally developed surveys for various classes of wildlife, especially those having Special Status Species or species of high biological importance, the BLM cannot have adequately considered the effects of motorized vehicles and other human activities on biological resources of the affected area. For example, considering that migratory birds are protected through international treaties and conventions; that many migratory bird species are listed as endangered, threatened or sensitive by the California Department of Fish and Game and the U.S. Fish and Wildlife Service; that analyses conducted by the BLM for the initial CDCA Management Plan identified a high impact associated with vehicle use in riparian areas; and that these habitats have incredibly high biological and social value, as reiterated in two executive orders, the BLM should have identified the significant effects of allowing off-road vehicle use in Furnace Creek Canyon and addressed them as such.

The analysis in the EA is limited to general statements of the habitat suitability in Furnace Creek Canyon for some species of birds considered significant, such as the endangered Willow flycatcher (located by PRBO in the canyon in the summer of 2006, see attached report PRBO 2006 included as Attachment 1), and the Yellow Warbler, a species of concern. The analysis suggests that because the riparian habitats do not have the characteristics “preferred” by these species, they are unlikely to occur. The EA states, “There have been no observations or confirmed sightings of Willow Flycatcher within the White Mountains, and thorough surveys would need to be conducted to determine the presence of this species within the project area.” The Center has learned that new information on the occurrence of the Willow Flycatcher in the White Mountains, including Wyman Creek Canyon and Furnace Creek has been obtained by Tom and Jo Heindel and the Point Reyes Bird Observatory, respectively. Some of this information has been previously supplied to the BLM and FS, but was apparently not fully considered in this EA.

**Response:**

*The observation of one individual willow flycatcher migrating through the watershed was noted from the bird survey conducted during the 2006 survey. Under Alternative 4, all proposed actions will maintain or improve the habitat for both the uplands and riparian and because of these actions, the likelihood of the willow flycatchers using the area as occasional migrants is not expected to be reduced.*

**Comment:**

Information contrary to the statements contained in the EA regarding certain Special Status Species of birds was submitted to the USFS for the Furnace Creek Road Project by Mr. and Mrs. Heindel. They are experts in the field of bird observation and identification in the eastern Sierra Nevada, Death Valley and the White Mountains. In their letter they indicated that Furnace Creek has the potential of supporting the Willow Flycatcher (State and federal endangered, depending on subspecies), Least Bell’s Vireo (State and federal endangered, depending on subspecies), and Yellow-billed Cuckoo (State endangered). Furthermore, they include information from the Point Reyes Bird Observatory/Ms. Heath indicating that, based on habitat characteristics, a healthy population of Yellow Warblers would be expected in Furnace Creek Canyon.

**Response:**

*Information collected from the Point Reyes Bird Study indicated that based on habitat characteristics, although no breeding yellow warblers were found, a healthy population of Yellow Warblers would be expected in Furnace Creek Canyon. This statement indicates that the present habitat, in its’ present condition and characteristics, would be of such high quality that a “Healthy*

*population” of this bird species would exist. This information clearly supports BLM’s belief that the habitats occurring on BLM lands are in a healthy condition with a functioning riparian area.*

**Comment:**

The Yellow Warbler is a species of concern because of downward trends in its population and loss of riparian habitat. The Heindels indicate the potential for these species to occur in Furnace Creek is based on observations of these species in riparian habitats in locations very close to Furnace Creek Canyon. They also confirm in their letter that the professional literature contains no information about birds specific to Furnace Creek Canyon, indicating that no biological surveys were conducted there. However, recent bird surveys in Furnace Creek Canyon conducted by the Point Reyes Bird Observatory in 2006, (PRBO, 2006) have added greatly to the knowledge of birds in Furnace Creek, including the documented presence of 56 species including 8 species of special concern and 17 Partners in Flight Focal Species.

The findings of the PRBO report must be taken into account to assure any decision resulting from the Furnace Creek EA is grounded in the best available science. This report is attached to these comments. This report is attached to these comments. Proper assessment of migratory birds in Furnace Creek Canyon is necessary for the BLM to comply with the NEPA, FLPMA, EO 13186 of January 10, 2001: Responsibilities of Federal Agencies to Protect Migratory Birds, and BLM policy such as the 6840 Manual.

If State or federally listed birds occur within the Furnace Creek riparian zone, as is probable based on expert opinion of the Heindels, then the BLM would be remiss in not conducting professional surveys for these species in order to meet its legal, regulatory and policy responsibilities. Furthermore, BLM would not be able to meet its commitments made under the national Neotropical Migratory Bird Management Program, the Unusual Plant Assemblage protection specified in the CDCA Management Plan, or that stated in the Memorandum of Understanding with the California Department of Fish and Game for conservation of State listed species on public lands.

**Response:**

*The question appears to be will the noise from the vehicles using the road affect the birds enough to reduce their chances of survival, or affect breeding birds so that they don’t successfully breed. The small numbers of vehicles using the road on weekends in June/July when breeding birds are present do not seem to present the level of impacts theorized above.*

**Comment:**

Because of their lack of mobility and association with permanent water, aquatic invertebrates are often endemic and restricted to specific geographic locations. Assessment of aquatic benthic macro-invertebrates, using standardized techniques, is an important measure of water quality in California, and is used by the Lahontan Regional Water Quality Control Board (LRWQCB) in assessing water quality for purposes of establishing baseline conditions and monitoring trend.

No substantive coordination with the LRWQCB regarding potential impacts to these aquatic benthic macro-invertebrates is mentioned in the EA. For instance, on p.35 of the EA, the BLM and USFS state: "No intensive studies have been completed within the Furnace Creek drainage area concerning aquatic species." Nor does the EA appear to address any degree of coordination with LRWQCB in compliance with parameters of the Clean Water Act.

While the EA claims the area where the road is located adjacent to the creek was surveyed for potential habitat for spring snails (*Pyrgulopsis* species), salamanders, and fish species by the Forest Fisheries Biologist and accompanied by Dawne Becker, California Department of Fish and Game aquatic biologist, DFG comments make clear that this walk did not constitute a suitable survey – “This statement is misleading, as the occasion was a site visit to determine what surveys would be needed prior to the project” (DFG 2005, p7).

With regard to spring snails, the EA states no areas were identified as potential habitat. This too is refuted by DFG in their comment letter – “In fact, potential habitat for the spring snail was observed, but no sampling gear was available” (DFG 2005, p7)<sup>2</sup>.

**Response:**

*The BLM portion of Furnace Creek is ephemeral in nature. Monitoring has observed this reach of the stream dried up in August of most years. Spring snails and other aquatic invertebrates require good quality, permanent water. Many of the above comments are based on single-visit observations which are not accurate, especially when discussing the BLM portion of Furnace Creek.*

**Comment:**

The statement from the preceding paragraph, that “Areas in this canyon that only have seasonal water influence, such as the area within the BLM portion of the analysis area, is not suitable habitat for macro-invertebrates” is incorrect. The EA (Section 2.7, Table 1) indicates that perennial stream flow occurring on BLM managed land occurs in the form of “small perennial stream crossings, one moderate perennial crossing (#6) and one major perennial crossing (#5). Since no intensive surveys for spring snails, or any other aquatic invertebrates, were performed, other than casual observations, we do not believe that the EA is adequate to address this resource.

**Response:**

*Table 1, page 17 of the Final EA for the Furnace Creek road contains an error where it references BLM’s six streambed crossings as perennial stream crossings. All six streambed crossings occurring on BLM lands cross Furnace Creek where the creek runs ephemeral. Monitoring photographs of each crossing document this ephemeral nature during the annual dry period when there is no water in the streambed.*

**Comment:**

Surveys for the Panamint alligator lizard, a BLM sensitive species, have been conducted in various canyons of the White Mountains containing wetland and riparian habitats with positive results. Based on information in the EA, it appears surveys in Wyman Canyon, located 14 miles from Furnace Creek and facing south, not east like Furnace Creek, as well as draining into an entirely different basin, were used to conclude that Panamint alligator lizards are absent from canyons located on the eastern slope of the White Mountains. The eastern White Mountains is a large geographic area containing numerous canyons with wetland-riparian habitats which could support this species. Absent surveys for this species in Furnace Creek, the analysis is incomplete. The EA states, “Pitfall trapping would be necessary to determine conclusively their presence.

<sup>2</sup> The contradictory statements between the EA and DFG personnel illustrate a strong flaw in the EA as action agencies are required to consider the comments of sister agencies. *League of Wilderness Defenders v. Forsgren*, 309 F.3d 1181, 1192 (9th Cir. 2002) (deeming EIS “inadequate” where Forest Service failed to further analyze or directly respond to sister agency concerns); *Malama Makua v. Rumsfeld*, 163 F.Supp.2d 1202 (D. Haw. 2001)

Impacts to this species include loss of habitat and disturbance from passing vehicles.” This species is classified as “sensitive” by the BLM in the CDCA.

**Response:**

*On the BLM portion there would be no new loss of Panamint alligator lizard habitat and the “disturbance from passing vehicles” impact would need more data to support how a lizard is actually harmed.*

**Comment:**

Amphibians are associated with in aquatic habitats, which are particularly rare and isolated in desert environments, and especially in the CDCA. Amphibians that may occur in Furnace Creek include frogs, toads, and salamanders. In the absence of systematic survey, these species have not been adequately addressed. In desert environments there is a potential for previously undescribed species to occur in aquatic habitats due to their geographic isolation. The EA does not address the subject of amphibians.

As stated above, FLPMA also requires BLM to prepare and maintain a current inventory of all public lands and their resources. 43 U.S.C. § 1711(a). Systematic inventory of public lands and their resources forms the basis of the land use planning process. 43 U.S.C. § 1701(a)(2). BLM has failed to prepare or maintain current inventory data on many resources of these public lands including, for example, the wildlife and plant species, the aquatic species, the functioning condition of the creek and riparian areas on and near the project site as evidenced by the scant treatment of these resources in the 2006 EA.

**Response:**

*See previous response on our feeling that we do need to survey for amphibians, but that the quality of habitat on BLM and the minimal nature of impacts (maintaining the crossings) doesn’t automatically mean there will be any impacts to amphibians.*

**Comment:**

Without a clear understanding of the current status of these public lands BLM cannot make a rational decision regarding the designation of these public lands. See *Center for Biological Diversity v. U.S. Bureau of Land Management, et al.*, 422 F. Supp. 2d 1115, 1166-68 (N.D. Cal. 2006) (holding that it was arbitrary and capricious for BLM to approve a project based on outdated and inaccurate information regarding biological resources found on public lands). BLM cannot approve any action that would change the current *status quo* – closure to motorized vehicles— based on an inadequate inventory and incomplete information regarding the resources these public lands including, but not limited to, the status of soils, special status species, water resources, and riparian vegetation.

**Response:**

*As this road has been open historically for many years, it’s hard to argue that maintaining the crossings is changing the status quo. The question is whether the nature of the action would significantly impact the resources on the BLM portion. The conservation groups disagree with BLM’s opinion that the impacts are not significant.*

**Comment:**

BLM’s failure to maintain a current inventory of these resources violates both the spirit and letter of FLPMA. BLM’s failure to properly identify and analyze impacts to the riparian resources and the species that depend on them also violates the most basic requirements of NEPA and, on that basis as

well, BLM cannot properly approve any action, such as Alternatives 3-6, that would allow new road construction, ongoing maintenance and subsequent motorized vehicle use of the Canyon based on the existing 2006 EA. See *CBD v. BLM*, 422 F. Supp. 2d at 1163-66 (holding that BLM violated NEPA by failing to adequately identify or analyze impacts of the project on the biological resources found on public lands within the CDCA). Based on the existing 2006 EA, approval of the proposed action only (Alternative 2 - continuing the closure of Furnace Creek Canyon to vehicles) would be legally compliant because it would not cause any additional significant adverse impacts to the environment.

The 2006 EA does not provide an analysis of the current proper functioning condition of Furnace Creek. This omission is inexplicable in light of BLM's 2003 findings that "the Furnace Creek fluvial system is not meeting the BLM's standards for a properly functioning riparian system." In 2003, BLM found specifically that:

The BLM has established national standards for the management and protection of riparian and wetland habitat on the Public Lands. Monitoring conducted during November 2002 and February 2003 indicates that the Furnace Creek fluvial system is not meeting the BLM's standards for a properly functioning riparian system. Presently, portions of the Furnace Creek drainage are considered "*functional-at risk*." Riparian-wetland areas are considered "*functional-at risk*" when an existing soil, water, or vegetation condition makes them susceptible to degradation. Presently, there are seven locations in Furnace Creek where the existing vehicle route crosses the stream. Significant erosion and sedimentation of the stream are occurring at two stream crossings. Erosion in both locations is contributing excessive sediment to the adjacent riparian area. Moreover, headcutting is forming at both locations. Headcuts are a fluvial geomorphic feature indicative of unstable conditions. The proposed closure order is consistent with protecting and restoring Furnace Creek to a "*properly functioning*" riparian system.

68 Fed. Reg. 27578. The closure must remain in force at least until the adverse effects that were created and/or exacerbated by motorized vehicle use in Furnace Creek Canyon are eliminated and measures are put in place to prevent a recurrence of such adverse effects. See *id.*

**Response:**

*The work to be done on the crossings, which were the reason for the "functional-at-risk" call are planned to bring the area into proper functioning condition. BLM did the PFC on the BLM portion two or three years ago, following motorized use.*

**Comment:**

In 2003, BLM found that ORV use was adversely impacting Furnace Creek, the wetlands, soils and entire riparian corridor. Since that time, much natural restoration has occurred (in the form of new growth of both upland and riparian trees, shrubs and forbs, as well as extensive erosion that has in many places obscured or completely eliminated any trace of the former route).

**Response:**

*There's no monitoring data to support this statement. On BLM lands, the riparian vegetation has encroached into the six stream bed crossing although not to the point of obscuring the road or crossing point. For the vast majority of the road is on the upland sites, it remains open and clearly recognizable. Some erosion has occurred since the road has been closed however, road minor repairs and maintenance is the only task necessary to make the route passable for most vehicles. It*

*is evident that previously damaged riparian vegetation beyond the BLM/FS boundary has been recovering.*

**Comment:**

BLM and the Forest Service have failed to adequately assess the extent of that restoration and recovery, or conduct respective analyses on the current existing condition. In short, Furnace Creek is a much different place today than in 2003 and 2004 when the majority of the minimal resource evaluations referenced in the EA took place.

Because the causes of the previous degradation of Furnace Creek are largely within BLM's management control, BLM must work towards recovery of this ecosystem and, once proper functioning condition is restored in Furnace Creek, BLM must put in place long-term management policies to ensure that proper functioning condition will be maintained. Until the needed analysis is completed and measures put in place to prevent future harm, BLM cannot lawfully authorize new road construction, maintenance and subsequent use of motorized vehicles in Furnace Creek Canyon.

**Response:**

*The Furnace Creek road has been used for more than 100 years, as described in the EA. Field trips and monitoring conducted by BLM indicates the BLM uplands to be meeting rangeland health standards, and expect for the six streambed crossings, the riparian area is in properly functioning condition. With the proposed hardening of these six crossing BLM predicts this will stabilize the crossings and move the condition from Functioning at Risk to Properly Functioning Condition. Therefore, what ever species are observed within this area would not be adversely impacted by the condition of the habitat.*

**Comment:**

Proposed Action is inconsistent with Wilderness Study Area Policies and current conditions.

**Response:**

*The Furnace Creek road has been cherry-stemmed out of the Wilderness Study Area. This corridor has been designated to provide non-wilderness access to Furnace Creek Canyon. BLM's management of nonimpairment is designed to prevent any activity that would impair the suitability of the area for preservation as wilderness, and to allow existing uses in the manner and degree in which the same was being conducted on the date of approval of the Act. Under Alternative 4, an existing route is being repaired and maintained. There are no proposed new disturbances to occur within this WSA. All repair and maintenance activities are expected to occur outside the WSA and therefore there is no impairment to the WSA.*

**Comment:**

The BLM Has Failed to Comply with NEPA. NEPA requires the BLM to prepare an environmental impact statement "where there are substantial questions about whether a project may cause significant degradation of the human environment."

**Response:**

*BLM has determined, based on the analysis in CA-650-2005-121 that this is not an action that would significantly affect the quality of the human environment; therefore, an Environmental Impact Statement is not required. This determination is based on the rationale that significance criteria, as defined by the Council on Environmental Quality (Title 40 CFR 1508.27) are not being met, or if*

*met will be mitigated to a level that will not be significant. Title 40 CFR 1500.5 (l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (Title 40 CFR 1508.13) and therefore an environmental impact statement is not required.*

**Comment:**

The 2006 EA Fails to Adequately Identify and Analyze Direct and Indirect Impacts to Biological Resources from Alternatives 3-6. Many scientists suggest that motorized recreation is the greatest threat to wildlife on our public lands because it can alter habitat, cause disturbance and lead to the direct death of animals (Luckenbach, 1975, 1978; Bury and Luckenbach, 1983, 2002; Sheridan, 1979; Berry, 1980; Brattstrom and Bondello, 1983; Boyle & Samson, 1985; Havlick, 1999; Joslin and Youmans, 1999; Lovich and Bainbridge, 1999; Lawler, 2000; Belnap, 2003).

**Response:**

*Of the items listed the altered habitat would be the crossings only on the BLM portion, the disturbance would be from June through December, minimizing direct impact to animal mortality. We have numerous observations of animals crossing roads like this and few of animals stopping at a dirt road and refusing to cross. The discussion presented is very general and in no case do they mention specific species or what the impacts might be. They do cite roads as impacting endangered species, of which none are resident in the BLM portion of Furnace Creek. They cite studies in creosote deserts, sand dunes, etc but nothing pertaining to this specific area. With an expected use of 15- 20 vehicles a year, BLM believes impacts to be minimal.*

**Comment:**

The EA fails to mention or attempt to assess the significant impacts associated with the heavy maintenance that will be required to keep a new road through a geologically active desert creek open and compliant with existing regulations. These include, but are not limited to, the cutting and removal or upland and riparian vegetation, the continual sloughing of the erosive granite hillsides of Furnace Creek Canyon, replacement and shoring up of the physical structure (water bars, rolling dips and significant retaining walls) called for in all of the construction alternatives.

**Response:**

*The portion of Furnace Creek road on BLM lands, for the most part, occur on the uplands from 60 feet to 100 feet from and adjacent to the streambed. The proposed repairs and realignment will harden the streambed crossings, reduce water flow over the road bed by more frequently directing the water off the road utilizing “rolling dips”.*

**Comment:**

The 2006 EA Fails to Adequately Identify and Analyze the Cumulative Effects of Alternatives 3-6. This includes the statement that cumulative impacts analysis “...show that any impacts would be magnified many-fold because of the rarity of remaining riparian habitat in the arid regions of California. The remaining riparian habitat in the California is believed to represent far less than 10% of the historic riparian habitat.”



**Response:**

*The impacts on BLM would not contribute to this cumulative loss as only the crossings on BLM would be maintained, not necessarily creating a new impact as this road has been in place for many years.*

**Comment:**

BLM Has Failed to Analyze Impacts to Historic and Cultural Resources

**Response:**

*BLM conducted a systematic survey to identify archaeological and historical properties and to assess potential adverse effects to those resources based on the parameters outlined in each of the six alternatives. This survey identified 11 sites on BLM lands. Mitigation measures have been developed to avoid, minimize, or mitigate adverse effects at furnace creek through the means of a Programmatic Agreement with the State Historic Preservation Officer.*