

KATHY A.F. DAVIS (UT 4022)
JAKE GARFIELD (UT 15603)
Utah Assistant Attorneys General
KENDALL G. LAWS (UT 14700)
Special Assistant Attorney General
SEAN D. REYES (UT 7969)
Utah Attorney General
1594 West North Temple, Suite 320
Salt Lake City, UT 84116
(801) 918-8440
kathydavis@agutah.gov
jgarfield@agutah.gov
klaws@utah.gov

Attorneys for Appellant the State of Utah

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

<p>STATE OF UTAH,</p> <p>Appellant,</p> <p>vs.</p> <p>U.S. BUREAU OF LAND MANAGEMENT</p> <p>Respondent.</p>	<p>IBLA Appeal No. _____</p> <p>RE: Appeal of the Labyrinth Rims/Gemini Bridges Travel Management Plan Decision Record and Environmental Assessment</p> <p>DOI-BLM-UT-Y010-2020-0097-EA</p>
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PETITION FOR STAY

The State of Utah (the “State”), pursuant to 43 C.F.R. part 4 respectfully submits this timely Petition for a Stay of the Bureau of Land Management’s (BLM) September 28, 2023 Decision Record for the Labyrinth Rims/Gemini Bridges Travel Management Plan (DOI-BLM-UT-G020-2018-0004-EA).

STATEMENT OF FACTS

On September 28, 2023, the BLM released a Final Environmental Assessment, Finding of No Significant Impact, and a Decision Record for the Labyrinth Rims/Gemini Bridges Travel Management Plan (DOI-BLM-UT-G020-2018-0004-EA), located primarily within the boundaries of Grand County, Utah (the “Travel Management Plan”). The Travel Management Plan covers approximately 300,000 acres of public land in southwestern Grand County, which include some of the most popular motorized recreation and dispersed camping areas in Utah. The planning process and draft Environmental Assessment (“EA”) for the Travel Management Plan included four different action alternatives, each of which would close a different number of routes to motorized public use. In the Decision Record, the BLM ultimately selected a hybrid of Alternatives B and C from the draft EA, referred to as the “Selected Network.” The Selected Network in the Decision Record closed 317.2 miles of motorized routes, limited use on 98.4 miles of motorized routes, and maintained public access to 712.1 miles of motorized routes.

Of those 317.2 miles of routes closed in the BLM’s Decision Record, 114 miles are Class D Roads to which the State of Utah, and Grand County, Utah, claim title as R.S. 2477 rights-of-way granted under Section 8 of the Mining Act of 1866, 14 Stat. 251, 253, later codified as Revised Statute 2477 and as 43 U.S.C. § 932 (repealed October 21, 1976, with

savings provisions recognizing the validity of rights-of-way already established) (hereinafter “R.S. 2477”). *See* Exhibit #1, Map of R.S. 2477 Roads Closed by Decision Record. On May 11, 2012, the State of Utah and Grand County, Utah, filed a lawsuit in the U.S. District Court for the District of Utah (the “Utah District Court”) against the U.S. Department of the Interior and the BLM seeking to quiet title to hundreds of miles of Class B and Class D Roads crossing BLM land in Grand County under R.S. 2477. *Grand Cty., et. al. v. U.S.*, Case No. 2:12-cv-00466-DN (D. Utah, filed 2012) (the “Quiet Title Lawsuit”). All 114 miles of the R.S. 2477 Class D roads closed in the BLM’s Decision Record for the Travel Management Plan are included in the Quiet Title Lawsuit. *Id.* Each R.S. 2477 Class D right-of-way is part of the highway and road system established by the State, and both the State and Grand County share “joint undivided interest in the title to all rights-of-way for Class D roads.” UTAH CODE ANN. 72-3-104. *See also* Exhibit #2, Declaration of Redge Johnson.

The Quiet Title Lawsuit is currently stayed (along with R.S. 2477 cases in other Utah counties) while the issues relating to the determination of R.S. 2477 rights-of-way are decided in the case of *Kane Cty v. U.S.*, Case No. 2:10-cv-1073 (D. Utah 2010) (the “Bellwether Case”), also pending in the Utah District Court. It is expected that all decisions in the Bellwether Case will be appealed to the Tenth Circuit Court of Appeals so that precedent will be established and can be applied to making determinations of the many claimed R.S. 2477 rights-of-way in the State of Utah. While these cases (other than the Bellwether Case) have been stayed, the Court has modified the stay in the other counties, including Grand County, to allow the Utah Attorney General’s Office to conduct preservation depositions with members of the public who used Class D roads in Grand County prior to the October 1976 repeal of R.S. 2477. The Utah Attorney General’s Office continues to take preservation depositions in Grand County, and will continue

to take such preservation depositions in 2023-2024. To date, the State has deposited thirty different witnesses in Grand County regarding their use of R.S. 2477 rights-of-way in the County prior to October 1976. Prior to taking preservation depositions, representatives of the Utah Attorney General's Office visit and drive on the Class D roads subject to the Quiet Title Lawsuit, often in the company of the witnesses scheduled to be deposed.

R.S. 2477 provides as follows: "And be it further enacted, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." R.S. 2477. R.S. 2477 was an open congressional grant *in praesenti* of public highway rights-of-way for the benefit of miners, ranchers, homesteaders, and all other members of the public who had need to travel across public lands. Acceptance and vesting of R.S. 2477 rights-of-way "required no administrative formalities: no entry, no application, no license, no patent, and no deed on the federal side; no formal act of public acceptance on the part of the states or localities in whom the right was vested." *See Utah Wilderness v. Bureau of Land Mgmt.*, 425 F.3d 735, 741 (10th Cir. 2005) (hereinafter "*SUWA v. BLM* (10th Cir. 2005)"). R.S. 2477 operated as a standing offer of a right-of-way over the public domain, and the grant could be accepted without formal action by public authorities. *Id.*

R.S. 2477 rights-of-way were accepted by various acts of the local government highway authority or the public, including, but not limited to, (1) designating the road as a general public highway; (2) expending State or County funds to construct or maintain the road for general highway purposes prior to October 21, 1976; and/or (3) continually using the road as a public thoroughfare, as often as the need arose, for a continuous period of 10 years prior to October 21, 1976, or such earlier date as may be applicable to a prior federal reservation. *See, e.g., UTAH CODE ANN. § 72-5-104* (Supp. 2011). *See, e.g., UTAH CODE ANN. § 72-5-104* (Supp. 2011).

The congressional grant of public highway rights-of-way embodied by R.S. 2477 operated on unreserved public lands for 110 years until it was repealed on October 21, 1976, by the Federal Land Policy and Management Act of 1976 (“FLPMA”), 43 U.S.C. § 1701 et seq. 30. In repealing R.S. 2477, Congress preserved vested R.S. 2477 rights-of-way as valid existing rights and expressly directed the United States and its subordinate agencies (including the DOI and the BLM) to manage federal lands subject to these valid existing rights. *Id.* Section 701(h) of FLPMA provides as follows: “All actions by the Secretary concerned under this Act shall be subject to valid existing rights.” *Id.* § 1701, note; see also *id.* §1769(a) (“Nothing in this subchapter shall have the effect of terminating any right-of-way or right of use heretofore issued, granted or permitted.”).

The State’s and Grand County’s R.S. 2477 and public highway rights-of-way, easements, and rights-of-entry (collectively referred to as “rights-of-way”) serve the common good, benefit the public, and implement the congressional intent of facilitating safe and efficient travel across public lands. The R.S. 2477 rights-of-way granted by Congress necessarily include an implied right of access to the rights-of-way so that they may be used as public thoroughfares. Utah law provided that R.S. 2477 rights-of-way could be accepted by various acts of the local government highway authority or by acts of the public, including, but not limited to, (1) designating the road as a general public highway, also known as a Class B county road; See UTAH CODE ANN. § 72-3-103 (prior law in accord); see also *id.* § 27-12-22 (1963);(2) expending State or County funds to construct or maintain a road for general highway purposes prior to October 21, 1976; and/or (3) continually using the road as a public thoroughfare, as often as the need arose, for a continuous period of 10 years prior to October 21, 1976, see *id.* § 72-5-104 (Supp. 2011) (stating that a public highway right-of-way is “dedicated and abandoned to the use of the public when it

has been continuously used as a public thoroughfare for a period of 10 years”). The R.S. 2477 rights-of-way for the Class B and D roads in Grand County were initially accepted as public highways by public use for a continuous period of at least 10 years prior to October 21, 1976. The R.S. 2477 rights-of-way for the Class B and D roads may also have been accepted by Grand County’s designation of these roads as county general highways and/or by Grand County’s expenditure of State and County funds to construct and maintain these roads as public highways prior to October 21, 1976, or such other date as requisite for the acceptance of a particular road and its R.S. 2477 right-of-way.

As the BLM developed its EA for the Travel Management Plan, the State of Utah participated in the planning process as a Cooperating Agency. Throughout the process, representatives from the State continually informed and reminded BLM personnel which routes under consideration were Class B or D R.S. 2477 roads, and that R.S. 2477 rights-of-way had already been congressionally granted to the State and County through the self-effectuating right-of-way process. Representatives of the State also explained the importance of R.S. 2477 roads to the public and why such roads should be designated as open in the BLM’s Decision Record. The State reiterated these points in comment letters submitted as a Cooperating Agency and during the BLM’s public comment periods. The BLM ignored the State’s requests, alleging that R.S. 2477 rights-of-way have no bearing on the BLM’s travel management planning process, and later included the following statement in the Decision Record:

This decision is not intended to provide evidence, bearing on, or address the validity of any R.S. 2477 assertions. R.S. 2477 rights are determined through a process that is entirely independent of the BLM’s planning process. Consequently, in developing this TMP, the BLM did not consider any R.S. 2477-related evidence. The BLM bases travel management planning on purpose and need related to resource uses and associated access to public lands and resources. At

such time as a decision is made on R.S. 2477 assertions, outside of any planning process, the BLM will adjust its travel routes accordingly (BLM Manual 1626).

Decision Record, at 4. While declaring that R.S. 2477 rights are determined through an independent process, the BLM failed to acknowledge that the State spent years seeking to establish an administrative process with the BLM through which R.S. 2477 rights-of-way could be determined. *See SUWA v. BLM* (10th Cir. 2005). The BLM repeatedly declined to acknowledge the State's claims, despite the 10th Circuit's determination that the BLM could indeed make R.S. 2477 rights-of-way determinations "for planning purposes." *Id.* In the face of BLM's refusal to make any administrative determinations, the State found itself compelled to file its May 2012 Quiet Title Lawsuit against the BLM. As R.S. 2477 is a self-effectuating statute, with no applications, patent, or deed necessary for the grant to be accepted, the State's action simply sought to lift any doubt as to the State's title to the R.S. 2477 roads - it was not an application to the BLM for new rights-of-way. *Id.*

The BLM originally started developing a travel management plan for the Labyrinth Rims/Gemini Bridges area due to a settlement agreement between the Southern Utah Wilderness Alliance (hereinafter "SUWA") and the BLM signed on January 13, 2017 (hereinafter "2017 Settlement Agreement"). The 2017 Settlement Agreement stemmed from SUWA's challenge to numerous BLM Resource Management Plans issued in 2008, which included the BLM's Moab Field Office Resource Management Plan. *See SUWA et. al. v. U.S. Department of the Interior, et al.*, U.S. District Court (D. Utah) Consolidated Case No. 2;12-cv-257 DAK. The 2017 Settlement Agreement required the BLM to prepare eleven new travel management plans across southern and eastern Utah and proscribed the boundaries of the travel management areas, including the future boundaries of the Labyrinth Rims/Gemini Bridges Travel Management Plan.

See 2017 Settlement Agreement, at Attachment A4. The 2017 Settlement Agreement clarified that “[r]oute designations do not signify a recognition or rejection of R.S. 2477 assertions.” *Id.*, at 13. But nowhere did the 2017 Settlement Agreement authorize the BLM to unilaterally close access to the State’s R.S. 2477 rights-of-way prior to the resolution of the State’s pending Quiet Title Lawsuit. *Id.*

Notwithstanding the BLM’s assertion that R.S. 2477 determinations are independent of the BLM’s planning process, the BLM did use the State/County R.S. 2477 right-of-way in its rationale to open the class D R.S. 2477 right-of-way designated as County Road D1602.

Decision Record, at A2-54. The Decision Record states that “D1602 is a route on which Grand County has a maintained road ROW *and it is also claimed as a RS2477 right by the state of Utah.*” (emphasis added) *Id.* Because of the State’s R.S. 2477 claimed right-of-way, as well as other reasons, the BLM decided to keep D1602 open. However, all other State/County R.S. 2477 claims within the travel management area were ignored by the BLM.

In the Decision Record, the BLM closed access to two parcels of state trust lands, located at Township 26 South, Range 18 East, Section 36 and Township 25 South, Range 18 East, Section 32. *See* Exhibit #1, Map of R.S. 2477 Closures. Both of these parcels are owned by the State of Utah and administered by the Utah Trust Lands Administration (hereinafter “TLA”), an agency of the Utah State Government, to generate revenue from several public beneficiaries, including Utah’s public schools and state mental hospital. Access to these two trust land parcels will be curtailed by the BLM’s closure of Mineral Canyon Road, D #1026, and Hell Roaring Road, D #1223, respectively. Closure of these routes will impair the TLA’s ability to utilize these parcels to generate revenue for its beneficiaries or provide access to future lessees. Even if revenue-generating activities on these parcels do not currently occur, closure of these roads will

result in natural reclamation of the roads over time, and future construction to re-open routes to TLA parcels will be expensive and environmentally damaging. Ongoing motorized access to both TLA parcels will allow the TLA to better utilize the parcels for its beneficiaries and avoid the need for future expensive road construction activities.

Absent a stay by the Board, the State, and its citizens will lose motorized access to the 114 miles of Class D R.S. 2477 roads currently open to public motorized use.

STANDING

A. The State is a Proper Party to Pursue this Appeal

Under 43 C.F.R. 4.401(a), appellants must meet two requirements in order to appeal BLM's decision to the Board: (1) they must be parties to the case; and (2) they must be adversely affected by the decision being appealed. *W. Watersheds Projects (WWP)* 185 IBLA 293, 298 (2015).

I. The State is a Party to the Case

An Appellant is a "party to a case" if, among other grounds, the appellant "participated in the process leading to the decision under appeal, e.g... by commenting on an environmental document." 43 C.F.R. 4.410(b). The State has been actively involved as a cooperating agency in the TMP planning process since the beginning and has significant interests that may be adversely affected by the BLM's Decision Record.

The State of Utah, through a state agency called the Utah Public Lands Policy Coordinating Office (hereinafter "PLPCO"), entered into a Cooperating Agency relationship with the BLM Moab Field Office through a Memorandum of Understanding dated February 16,

2019. *See Exhibit #3.* The Utah TLA separately signed a Memorandum of Understanding with the BLM and participated as a separate Cooperating Agency. From that point on, the State of Utah, through both PLPCO and the TLA, regularly participated in the BLM's in-person and virtual cooperating agency meetings, including a series of route evaluation meetings to discuss potential alternatives for each route under consideration in the Travel Management Plan. While the State was allowed to participate as a Cooperating Agency, all final decisions as to alternatives were made solely by the BLM.

As the BLM initiated the public scoping process in the spring of 2021, the State submitted scoping comments in a letter dated April 26, 2021. *See Exhibit #4* The State submitted confidential comments to the BLM as a Cooperating Agency in a letter dated December 10, 2021. *See Exhibit #5.* When the BLM released the preliminary Environmental Assessment for the Travel Management Plan, the State submitted comments on October 6, 2022. *See Exhibit #6.* Finally, after the BLM published its final Decision Record, the Governor of Utah submitted the Governor's Consistency Review on October 25, 2023. *See Exhibit #7.* Having "participated in the process leading to the decision under appeal...by commenting on an environmental document" the State is a party to the case. 43 C.F.R. 4.410(b)

II. Appellant is Adversely Affected by the Decision

The State of Utah has an ownership interest in 114 miles of the roads being closed under the BLM's Decision Record under R.S. 2477, an ownership interest that is adversely affected by the BLM's decision. Utah's citizens are now barred from traveling on 114 miles of roads where the State owns the rights-of-way. *See Exhibit #2, Declaration of Redge Johnson.* The BLM has effectively nullified the State's rights-of-way to these roads through its travel management

process, in spite of the constant communication from the State that these roads should be considered differently than the other routes in the travel management area. Public access to public lands on the State's R.S. 2477 rights-of-way is essential for the State's citizens and visitors to enjoy activities such as hunting, camping, exploring, and sightseeing. Livestock grazers utilize these roads to manage their livestock operations. Extractive industries may use these roads to search for fluid or mineral resources. The travel management area, abutting Canyonlands National Park, Arches National Park, and Dead Horse Point State Park, is one of the most heavily visited areas of Utah. The diverse range of activities that occur along the roads crossing BLM compel the State to defend its interest to rights-of-way so that the public may continue using these roads. This interest has been violated by the BLM's decision.

Furthermore, the closure of access to two parcels of Utah TLA trust lands adversely affects the State, including Utah TLA. These two parcels, located at located at Township 26 South, Range 18 East, Section 36 and Township 25 South, Range 18 East, Section 32, and now isolated by the BLM's closure of Mineral Canyon Road, D #1026, and Hell Roaring Road, D #1223, respectively, will impair the ability of Utah TLA to generate revenue for its beneficiaries. Utah TLA will also be adversely affected by the expense and environmental review necessary to reconstruct roads to these parcels for future uses. With current access closed, it will be much more difficult for Utah TLA, or its lessees, to develop revenue-generating activities within these TLA-owned lands.

Due to the Decision Record's adverse effects on the State, the Board should grant the State's Petition for Stay.

ARGUMENT

To stay the BLM's decision, the Board must find sufficient justification of the following standards: (1) the likelihood of immediate and irreparable harm if the stay is not granted; (2) the relative harm to the parties if the stay is granted or denied; (3) the likelihood of the appellant's success on the merits; and (4) the public interest. 43 C.F.R. 4.21. As set forth below, these considerations justify a stay in this matter.

A. Appellant Will Suffer Immediate and Irreparable Harm if the Stay is Not Granted

Absent a stay, the State will suffer immediate and irreparable harm if the Board does not grant a stay. First, if the Decision Record is allowed to go into effect, the natural reclamation of the State's 114 miles of R.S. 2477 Class D roads will begin immediately. Absent the public's ability to use the routes they will soon reclaim through the natural forces of wind, vegetation growth, and erosion. Reopening or rebuilding these roads, if the State ultimately succeeds in their appeal of the Decision Record or the overarching Quiet Title Litigation over the ownership of these R.S. 2477 roads, would be expensive, difficult, and environmentally taxing. While some of that harm from nature may not be immediate, the process will begin immediately and will get worse with time. If the BLM undertakes active reclamation efforts on these routes, the harm to the State will be immediate. Due to the remote locations of these routes, the ability to repair and remedy the immediate reclamation will be difficult or impossible.

Similarly, Utah TLA specifically will suffer immediate economic impacts from the Decision Record. The BLM's closures of Mineral Canyon Road, D #1026, and Hell Roaring Road, D #1223, both routes providing the exclusive access to two TLA parcels, will negatively impact state-owned land that previously had road access but are now entirely cut off and isolated

due to the Decision Record. This will immediately limit access by current lessees of the parcels and will undoubtedly impact TLA's ability to successfully lease these parcels in the future, thereby negatively impacting TLA's trust funds held for the benefit of the public schools and other beneficiaries.

B. The Relative Harm Caused to the Appellant if a Stay is Denied is Far Greater than the Harm to the BLM if a Stay is Granted

The roads and routes closed by the BLM in the Decision Record were open to all motorized traffic as of September 27, 2023, the day before the Decision Record was issued. These roads already exist and already receive a certain amount of travel. A stay of the Decision Record, pending a review of the State's appeal on the merits, will not change the pre-September 27th status quo of motorized travel on the 317.2 miles of closed routes and thus will not harm the BLM. There is no reason that motorized travel or resource damage will see a significant increase beyond common travel patterns prior to the issuance of the Decision Record during the time of a stay. Harms to the environment, landscape, flora, or fauna are unlikely to increase beyond what occurred prior to the Decision Record.

In contrast, harm to the State will be significant if this Petition for Stay is denied. If the stay is denied, the public will lose their ability to access 114 miles of public rights-of-way already granted to the public under R.S. 2477. Roads generally kept open through motorized use will begin to deteriorate through wind, erosion, and the natural growth of vegetation. The State will be impeded from conducting discovery for its R.S. 2477 rights-of-way Quiet Title Lawsuit. Similarly, the Utah TLA's loss of access to two state-owned parcels located at Township 26 South, Range 18 East, Section 36 and Township 25 South, Range 18 East, Section 32 will

significantly harm Utah TLA's ability to lease its lands in order to generate revenue for its beneficiaries. Without access, these lands will become far less valuable to Utah TLA and their potential for lucrative leases will diminish if not disappear entirely.

Implementation of the BLM's Decision Record will cause significant harm to the State including Utah TLA, whereas a stay would merely return the status of the roads in question to the same situation that existed merely four weeks ago. The relative harm to the State far exceeds the harm that a stay would cause thus BLM, therefore a stay of the Decision Record is appropriate.

C. Appellant is Likely to Succeed on the Merits

To show a sufficient likelihood of success on the merits, it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult, and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation. See *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (d Cir. 1953); see also *Wyo. Outdoor Council*, 153 IBLA 379, 388 (2000). Here, the State is likely to prevail.

I. BLM's Closure of R.S. 2477 Rights-of-Way Violates FLPMA

By closing 114 miles of the State's R.S. 2477 rights-of-way that are already the subject of the pending Quiet Title Lawsuit, the BLM has violated Section 701(h) of FLPMA, which states that "All actions by the Secretary concerned under this Act shall be subject to valid existing rights." 43 U.S.C. § 1701. Note, R.S. 2477 rights-of-way in Grand County, which carried no requirement of acceptance by Federal authorities (*see SUWA v. BLM* 10th Cir. 2005), have already been accepted and established through public use, and thus the BLM's Decision Record

infringes on those valid existing rights grandfathered in by Congress. The BLM, which has repeatedly refused the State entreaties to establish an administrative process to determine the validity of R.S. 2477 rights-of-way outside of the legal system, has compelled the State's litigation, despite the 10th Circuit Court of Appeals finding that BLM may make determinations about R.S. 2477 rights-of-way "for planning purposes." *Id.* The State's R.S. 2477 rights-of-way are *de facto* valid existing rights until such time that the State fails to quiet title to any of its R.S. 2477 rights-of-way in Grand County. *Id.* If that were to occur, the BLM and the State would proceed accordingly. But FLPMA does not provide for the BLM's unilateral closure of an R.S. 2477 right-of-way that is the subject of a pending Quiet Title Lawsuit.

Due to the BLM's wanton disregard for the savings provisions of FLPMA § 701(h) (43 C.F.R. § 1701), the State is likely to succeed on the merits.

II. BLM's Closure of Roads Access Utah TLA Lands Violates Federal Case Law

BLM's record of decision closes access to two sections of property owned by the Utah TLA, located at Township 26 South, Range 18 East, Section 36 and Township 25 South, Range 18 East, Section 32. *See Exhibit #1, Map of R.S. 2477 Closures.* Continued access to these sections of land by Utah TLA and its lessees is paramount for fulfilling the intent of the original land grant of trust lands from the United States government. The United States, acting through the BLM, may regulate the method and route of access to state trust lands; however, that regulation cannot prevent the state or its lessee from gaining access to its land, nor may it be so prohibitively restrictive as to render the land incapable of full economic development. *State of Utah v. Andrus*, 486 F. Supp. 995 (D. Utah 1979) (Commonly referred to as the *Cotter* Decision). BLM's Decision Record violates the *Cotter* Decision by cutting off all to both sections of TLA

land. Both parcels had motorized access prior to the issuance of the BLM's Decision Record. With access eliminated, these parcels are unable to provide their full economic value to Utah TLA's beneficiaries, in violation of the *Cotter* decision. *Id.*

BLM may certainly argue that this decision does not impact the Utah TLA parcels to the extent required under the *Cotter* Decision. However, the lack of available roads will substantially impair actual access to those parcels and increase the amount of time and financial capital necessary for future prospective lessees to access those lands. Reconstruction of roads that have been closed, in the event of future development of these parcels will be costly, time-consuming, and environmentally damaging, thus discouraging development on these lands. This will undoubtedly render those parcels "incapable of full economic development." *Id.*

D. Public Interest Favors a Stay

R.S. 2477 rights-of-way were granted to the public, as represented by the public's representative state and local governments. Within the Labyrinth Rims/Gemini Bridges Travel Management Area, members of the public utilize and enjoy these R.S. 2477 rights-of-way in motorized vehicles virtually every day of the year. The public has an interest in continued access to valid rights-of-way to which the BLM has restricted access.

The State's lawsuit to quiet title to its R.S. 2477 roads is progressing, and the State continues to gather strong evidence as to the validity of its rights-of-way claims. If eventually the State fails to successfully quiet title on any of its R.S. 2477 rights-of-way, the BLM could then engage in additional travel management planning for any such roads where the State did not prevail. But the Quiet Title Lawsuit has not yet reached that point, and at the current time the BLM is not authorized to ignore an existing right-of-way outside of the judicial system when a

pending judicial action for the same roads already exists. The public interest thus favors the preservation of the public's own rights-of-way.

CONCLUSION

Appellant the State of Utah respectfully requests that the IBLA grant a stay of the challenged September 28, 2023 Decision Record by the BLM to close motorized access to 317.2 miles of motorized routes, pending a review of the State's appeal on the merits.

Respectfully submitted this 27th day of October 2023.

//s// Kathy A.F. Davis

Kathy A.F. Davis

Jake Garfield

Kendall G. Laws

Sean D. Reyes

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of October 2023, the foregoing PETITION FOR STAY, was served upon the following:

Nicollee Gaddis-Wyatt
District Manager
Canyon County District Office
Bureau of Land Management
82 East Dogwood Ave
Moab, UT 84532
blm_ut_mb_mail@blm.gov

U.S. MAIL AND EMAIL

Leah Peterson
U.S. Department of the Interior
Office of the Regional Solicitor
Intermountain Region
Suite 6201, Federal Building
125 South State Street
Salt Lake City, UT 84138-1180
leah.peterson@sol.doi.gov

U.S. MAIL AND EMAIL

/s/ Jake Garfield
Jake Garfield
Attorney for the State of Utah