

National Park Service

U.S. Department of the Interior

**Curecanti National Recreation Area
Colorado**



Resource Protection Study

Record of Decision

Approved:

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Date

**UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE**

RECORD OF DECISION

**FINAL RESOURCE PROTECTION STUDY / ENVIRONMENTAL IMPACT STATEMENT
Curecanti National Recreation Area, Gunnison & Montrose Counties, Colorado**

The National Park Service (NPS) of the Department of the Interior has prepared this Record of Decision (ROD) on the *Final Resource Protection Study / Environmental Impact Statement* (RPS/EIS) for Curecanti National Recreation Area (NRA). This ROD includes a description of the background of the project, a statement of the decision made, synopses of other alternatives considered, the basis for the decision, findings on impairment of park resources and values, a description of the environmentally preferable alternative, and an overview of public and agency involvement in the decision-making process.

BACKGROUND OF THE PROJECT

The RPS/EIS was prepared in response to Section 11 of the *Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999* (Public Law 106-76). The purpose of this study, as defined by the Act, was to (1) assess the natural, cultural, recreational, and scenic resource value and character of the land within and surrounding Curecanti NRA (including open vistas, wildlife habitat, and other public benefits); (2) identify practicable alternatives that protect the resource value and character of the land within and surrounding Curecanti NRA; (3) recommend a variety of economically feasible and viable tools to achieve the purposes described in paragraphs (1) and (2); and (4) estimate the costs of implementing the approaches recommended by the study.

DECISION (SELECTED ACTION)

Description of the Selected Action

The Selected Action is Alternative 2 (Proposed Action, or Preferred Alternative) from the Curecanti Final RPS/EIS. The National Park Service recommends that Congress legislatively establish Curecanti as a National Recreation Area with a new legislated boundary. The new boundary would include approximately 10,040 additional acres of mutually agreed-upon adjacent public lands, now managed by the Bureau of Land Management, U.S. Forest Service, Bureau of Reclamation, and Colorado Division of Wildlife. We are recommending that the new legislation designate NPS as the agency responsible for managing the natural, cultural, and recreational resources, visitor use and education, and associated facilities. Such management would be pursuant to Bureau of Reclamation (Reclamation) law, NPS law, including the new legislation establishing the NRA, a revised memorandum of agreement between Reclamation and NPS, and other applicable laws and regulations.

It is also recommended that Congress authorize NPS to work in partnership with private landowners in a designated Conservation Opportunity Area (COA) surrounding the NRA to

implement a variety of tools that would enhance the long-term conservation of natural, cultural, recreational, and scenic resources. These tools would include technical assistance and environmental information provided by NPS to landowners; general agreements that could set the stage for short-term and long-term commitments to cooperative assistance; incentive payments related to resource conservation through a variety of government grant programs; acquisition of conservation easements; purchase and retained use and occupancy, such as 25-year leases, or life estates; and fee simple acquisition of property via such means as purchase, land exchange, or donation. All tools would be subject to the cooperation and willingness of the landowner involved. The availability of some of these tools would be subject to congressional authorization and the NPS budget process, in light of competing demands from other NPS units. This study recognizes that the availability of federal funds for acquiring interests in land may be limited. However, some of the goals and objectives of the Selected Action would still be achievable through the application of other tools that could be used to provide incentives to willing landowners for conserving resources.

Reclamation and Western Area Power Administration (Western) would continue their administrative jurisdiction and responsibilities within and adjacent to the NRA, including construction, operation, maintenance, replacements, and additions; and they and their assigns would continue to have unrestricted access to their lands and land interests, water and water interests, and facilities; consistent with Reclamation law and other applicable laws and regulations. Formal establishment of the area as an NRA under the Selected Action would not amend or supplement existing Reclamation law applicable to the Aspinall Unit or the Uncompahgre Project. Reclamation, Western, and NPS would consult with each other, as necessary and appropriate. Thus, there would be no adverse impacts to Reclamation and Western responsibilities under the Selected Action.

Key Actions

The Selected Action would be implemented over a period of many years. The following key actions would be required to fully implement the Selected Action:

- 1) Congress would need to pass legislation to authorize some of the recommendations:
 - Legislatively establish Curecanti as a National Recreation Area, with a designated boundary;
 - Designate the National Park Service as the agency to manage the natural, cultural, and recreational resources, visitor use and education, and associated facilities;
 - Designate a Conservation Opportunity Area, wherein NPS would be authorized to work with willing landowners to employ tools of resource conservation, including acquisition of interests in private property;
 - Provide the Secretary authority to adjust the boundary, after authorized land acquisitions and/or deletions occur; and
 - Appropriate funds to achieve the objectives of the recommendations.
- 2) A new memorandum of agreement between NPS and Reclamation, coauthored by both agencies, would be written to describe, in detail, the responsibilities of the two agencies regarding the administration and management of the NRA.
- 3) NPS would develop a land protection plan to identify priorities and tools to meet resource conservation objectives within the newly designated COA.
- 4) Where willing landowners and funding exist, appraisals and environmental assessments will need to be completed prior to acquisition of identified tracts of land, or interests therein.

- 5) A boundary survey would need to be completed, and the new boundary marked, posted, and fenced, where necessary.
- 6) Additional staff would be hired to accommodate the additional work of the added federal lands and to work with landowners in the COA. This is expected to be the equivalent of two FTEs (full-time equivalencies). This will include a "partnership liaison" position to work extensively with park neighbors.
- 7) NPS would increase its efforts to identify and meet common goals and objectives among agencies and local governments in order to enhance the conservation of resources.
- 8) Planning documents, such as a general management plan or implementation plan, would be developed to address resource management, visitor use, recreation, interpretation, and associated development for the expanded NRA.

Boundary Establishment / Expansion

The newly legislated NRA boundary would encompass 51,830 acres, which would include approximately 10,040 acres of additional adjacent lands that are currently managed by other federal and state agencies. The COA would consist of 24,300 acres of private property outside and adjacent to the new NRA boundary.

Mitigating Measures

Under the Selected Action, there is a potential for an *adverse effect* to historic properties that could occur in future land exchanges involving private parties. (See discussion below under Section 106 Consultation.) These potential land exchanges would involve four tracts of land totaling 363 acres, which were identified for potential exclusion from the NRA boundary, in exchange for private land in the Conservation Opportunity Area. In order to mitigate any potential adverse effects on historic properties that might exist on those lands, the following measures would be taken, as described in the Final RPS/EIS.

"Prior to any exchange using Tracts 4, 5, 6 and 7 for private lands, or any other parcels that may be identified in the future to be used in such an exchange, the lands proposed for exchange would be evaluated under Section 106 of the National Historic Preservation Act [36 CFR 800.4(d)(1)] to determine if they contain any site or sites considered to be eligible for listing on the National Register of Historic Places. If such a determination is made, exchange of such lands would be considered an adverse effect, and a protective action such as the following would need to be taken prior to any such conveyance: (1) the conveyance would be conditioned upon a preservation easement to assure the continued protection of the resource; or (2) the parcel would be subdivided in such a way that any tracts containing eligible cultural resources would remain with NPS, and tracts without such resources could be used in exchange. Otherwise, the effort to exchange such a parcel would be terminated."

Estimated Costs

The one-time cost of implementing the Selected Action is estimated to range from \$3,690,000 to \$14,973,000, including acquiring interests in land, such as through conservation easements and fee simple ownership. The relatively large range is because of the many variables pertaining to acquiring interests in land. These include the results of a required land protection plan, potential changes in fair market value of property, options relating to acquiring conservation easements, the

availability of matching grants and similar cost-sharing opportunities, the participation of partners and third parties to help acquire interests in land, willingness of landowners to cooperate, and negotiations with landowners. In addition to the one-time costs discussed above, there will be a recurring annual cost of \$160,000 for the equivalent of two full-time employees. The employees would be needed: (1) to completely implement and sustain the Selected Action; and (2) for operational requirements pertaining to lands added to the NRA, including resource and visitor management and protection, interpretation, construction and maintenance, and administration.

OTHER ALTERNATIVES CONSIDERED

No Action Alternative

NPS considered and fully evaluated the No Action Alternative, whereas the Bureau of Reclamation, pursuant to its authority under Reclamation law, and in accordance with the 1965 memorandum of agreement with the National Park Service, and other applicable laws and regulations, would continue to operate, maintain, replace, and expand (as necessary) dams, reservoirs, power plants, access roads, and other related facilities associated with two Reclamation projects, and would continue to have unrestricted access to their lands and land interests, water and water interests, and facilities. The National Park Service, pursuant to Reclamation law, NPS law, the 1965 memorandum of agreement, and other applicable laws and regulations, would continue to manage the natural and cultural resources, recreational opportunities, and associated facilities within the existing NRA. There would be no change in the amount of land included within the NRA, other than occasional additions that might occur because of future specific legislative authority. Thus, the NRA would continue to encompass approximately 41,790 acres of land.

Alternatives Considered, but Eliminated from Detailed Assessment

Four other alternatives were initially considered, but were eliminated from detailed assessment, as they did not adequately address the mandate from Congress to "identify practicable alternatives that protect the resource value and character of the land within and surrounding the Curecanti National Recreation Area." A summary of these alternatives, and a more complete explanation of why they were eliminated, are provided in the Final RPR/EIS.

BASIS FOR DECISION

After analysis, it was determined that the Selected Action best meets the requirements of Section 11 of Public Law 106-76. Compared to other alternatives considered, the Selected Action more completely satisfies the objectives of resource protection within and surrounding the NRA, because of the following reasons:

- 1) NPS would be authorized to support landowners in voluntary implementation of resource conservation tools; to seek partnerships with landowners; or to fund acquisitions and additions to the NRA; resulting in enhanced ability to conserve and protect resources within and surrounding the NRA.
- 2) NPS would work more closely with local counties, neighboring land management agencies, and other organizations, to reach the common goals of resource conservation and public recreation.
- 3) The Selected Action would ensure the permanence of an NPS presence at the NRA; would enhance management efficiencies in the area for all federal and state agencies involved; would be more effective in sustaining the economic benefits of the NRA; and would

enhance public recreational opportunities, while better ensuring the preservation of important natural, cultural, and scenic aspects of our national heritage.

FINDINGS ON APPROPRIATE USE, UNACCEPTABLE IMPACTS, AND IMPAIRMENT OF NRA RESOURCES AND VALUES

Section 1.5 of *NPS Management Policies 2006* on Appropriate Use of the Parks underscores the fact that not all uses are allowable or appropriate in units of the national park system. Although there is a detailed discussion of visitor use and activities in the Affected Environment chapter of the Final RPS/EIS, it is not within the scope of this study to identify which recreational opportunities would or would not be provided within the NRA after implementing the Selected Action. That would be done during a future planning process relating to a new general management plan, implementation plan, or other planning effort. At that time, allowable uses would be screened to determine consistency with applicable laws, executive orders, regulations, and policies, including Section 8.2.2 of *NPS Management Policies 2006* on Recreational Activities; consistency with existing plans for public use and resource management; actual and potential effects on NRA resources and visitor enjoyment; appropriateness to the NRA's resources; compatibility with each other; total cost to NPS; and whether or not the public interest would be served.

As previously described under Mitigating Measures, and referenced below under Section 106 Consultation, there is a potential for adverse impacts on historic properties that might exist on lands that have been identified for possible future land exchanges involving private parties. However, the application of mitigating measures is expected to reduce or eliminate those impacts to an extent that the Selected Action would not result in any unacceptable impacts.

NPS management policies require an analysis of potential effects to determine whether or not actions would impair NPS area resources. A determination of impairment, or lack thereof, does not apply to visitor use and recreation, regional economic and social characteristics, or NPS and neighboring agency operations, because for purposes of this analysis, they are not considered to be "resources," such as natural resources, cultural resources, and scenic resources.

Each applicable impact topic evaluated in the Final RPS/EIS included analysis to determine if any resources would be impaired by the Selected Action. Following a review of the impacts, it was determined that the Selected Action will not impair NRA resources or values, and will not violate the NPS Organic Act. This conclusion is further based upon the professional judgment of the Superintendent and the NRA's management team, as guided and informed by such sources as the NRA's 1997 *General Management Plan* and *NPS Management Policies 2006*.

One of the major impacts of Alternative 1 (No Action) would be the continuation of the current pattern of land use changes on private property surrounding the NRA. This would increase the possibility of adverse impacts on resources such as animal and raptor habitat, water quality, and the spectacular natural scenery that surrounds the NRA. In turn, this would be more likely to adversely affect the enjoyment of NRA visitors, and the quality of life for local residents who cherish the natural landscapes in the area.

One of the major impacts of Alternative 2 (the Selected Action) is that neighboring private landowners, in partnership with the National Park Service, would have a greater opportunity, and would be more likely to use, a variety of tools to conserve resources on their property. With congressional authorization, and subject to competing demands from other NPS units, there would be more opportunity for funds to be available for the establishment of conservation easements, or the acquisition of land in fee title, from willing landowners in the COA. Landowners would more likely develop a heightened awareness of how their activities might affect natural, cultural,

recreational, and scenic resources. This would help to directly and indirectly preserve and improve resources, such as wildlife habitat and water quality throughout the area; would better ensure the preservation of the area's spectacular natural scenery, which contributes to the national significance of this special place; and would enhance the enjoyment and recreational opportunities for residents and visitors alike.

ENVIRONMENTALLY PREFERRED ALTERNATIVE

The environmentally preferred alternative is determined by applying the criteria suggested in the National Environmental Policy Act of 1969 (NEPA), which is guided by the Council on Environmental Quality (CEQ). The CEQ provides direction that "the environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's §101: (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; (2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings; (3) attain the widest range of beneficial uses of the environment without degradations, risk to health or safety, or other undesirable and unintended consequences; (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety, of individual choice; (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources."

According to the *"Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations"* (40 CFR 1500-1508), Federal Register Vol. 46, No. 55, 18026-18038, March 23, 1981: Question 6a), "Generally this means the alternative that causes the least damage to the biological and physical environment. It also means the alternative that best protects, preserves, and enhances historic, cultural, and natural resources."

Alternative 1 (No Action) would satisfy to some extent the majority of the six requirements detailed above. However, Alternative 1 would not give NPS the authority or funding to acquire interests in land, or to implement other resource conservation tools with willing landowners. Some private lands surrounding the NRA would likely be developed within the next 5 to 10 years, potentially resulting in impacts to multiple resources or scenic vistas, depending upon the location of the property. Thus, Alternative 1 would not ensure aesthetically pleasing surroundings, prevent degradation of the environment, or achieve a balance between population and resource use that permits a wide sharing of amenities. Alternative 1 would not be the Environmentally Preferred Alternative because of the potential impacts of development on visitor enjoyment; natural, cultural, and scenic resources; and other opportunities in the NRA. For this reason, Alternative 1 is not preferred from an environmental perspective.

Alternative 2 (the Proposed Action, or Preferred Alternative) would more completely satisfy NEPA's six criteria through establishment of the COA. Under this alternative, NPS would be authorized to support landowners in voluntary implementation of resource conservation tools; to seek partnerships with landowners; and to fund acquisitions and additions to the NRA. NPS would work more closely with local counties, neighboring land management agencies, and other organizations, to reach the common goals of resource conservation and public recreation. These efforts, in combination with the COA, would more effectively preserve important natural, cultural, and scenic aspects of our national heritage; would better ensure expanded recreational opportunities in a geologically spectacular setting; and would potentially increase the economic benefits that the NRA contributes to the local economy.

Based on the analysis associated with the RPS at Curecanti NRA, Alternative 2 gives NPS the best ability to fulfill its responsibilities as trustee of sensitive habitat; to ensure safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and to achieve a balance between population and resource use that would permit high standards of living and a wide sharing of life's amenities. Therefore, Alternative 2, which is the Selected Action, is also the Environmentally Preferred Alternative.

PUBLIC AND AGENCY INVOLVEMENT

Scoping

A Notice of Intent (NOI) to prepare this EIS was published in the *Federal Register* on May 3, 2000 (Volume 65, Number 86). Scoping meetings were held as follows:

- March 29, 2000, a meeting with representatives from the Bureau of Land Management, Colorado Division of Wildlife, City of Gunnison, Gunnison County, Montrose County, and U.S. Forest Service;
- Week of May 1, 2000, meetings with representatives from Bureau of Land Management, Gunnison County, and Montrose County; and private landowners;
- May 24, 2000, a public open house in Gunnison; and
- October 31, 2000, a meeting with representatives from the Bureau of Reclamation and Uncompahgre Valley Water Users Association.

Meetings and Outreach

In the spring of 2001 Newsletter #1 was released, providing the public with background on the study and information on Curecanti and its resources, outlining the scoping issues identified to date, explaining the type of data that would be acquired, and summarizing the results of a citizen's photo assessment. Newsletter #1 also sought additional information and ideas from the public. Newsletter #2 was released in winter 2002, to announce upcoming open houses and to encourage participation and input into the study. In the fall of 2003 Newsletter #3 was released, outlining progress to date, identifying preliminary alternatives that had been developed, and seeking input.

Over the course of the study, the project team held over 60 meetings with local, state, and federal elected officials and/or their staffs; neighboring state and federal land management agencies; American Indian Tribes; adjacent private landowners; other stakeholders; and the general public.

The Draft RPS/EIS was distributed in July 2007 for a 90-day review and comment period. After evaluation of substantive written comments, the document was amended and released as the Final RPS/EIS in September 2008.

Throughout the study, the public was updated through press releases in local newspapers, and via newsletters and summary documents sent to a mailing list of over 700. In addition, updates and documents were made available at local libraries, NRA offices, and through the NPS planning website (<http://parkplanning.nps.gov/cure>).

Public Comment on the Draft RPS/EIS

In response to the *Draft Resource Protection Study/Environmental Impact Statement*, a total of 35 letters, faxes, and Internet entries were received. Of these, 63% supported Alternative 2 (Proposed Action); 26% were neutral, not specifying which alternative was favored; and 11% supported Alternative 1 (No Action).

Local agencies affected by the recommendations supported Alternative 2, the Proposed Action. Gunnison and Montrose County Commissioners and the City of Gunnison Council Members also supported the Proposed Action.

In general, landowners with whom the study team has met were interested in the concepts being proposed by the study. Some landowners expressed the sentiment that they appreciated the goals of the RPS, as many of those goals aligned with their own desires of being good caretakers of the land. However, some landowners would not want to open their property for public access (for example, to hikers), and many plan to remain on their property. Several landowners expressed the view that although they would be opposed to any plan that would infringe on private property rights, they would consider working cooperatively with the National Park Service in order to meet mutually agreed upon conservation goals.

Section 7 Consultation

Section 7 requires that federal agencies consult with the U.S. Fish and Wildlife Service (USFWS) to assure that the Proposed Action does not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modifications of critical habitat. A letter was sent by Curecanti NRA staff to the Grand Junction office of USFWS on May 21, 2001 requesting a list of federally threatened and endangered species in the vicinity of the NRA. USFWS responded on June 28, 2001 and subsequently updated this response on March 17, 2005. Potential effects on identified species and candidate species were analyzed by the RPS/EIS.

It was subsequently determined that implementation of the Proposed Action would benefit special status wildlife species and would have no adverse effect on the identified species.

Section 106 Consultation

Section 106 of the National Historic Preservation Act of 1966 (16USC, et seq.) requires that for any action that affects cultural resources either listed in or eligible for listing in the National Register of Historic Places, the associated American Indian tribes, the State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation be given opportunities to comment.

NPS contacted the Colorado Office of Archeology and Preservation (SHPO) to encourage comment pertaining to the Draft RPS/EIS. In response to those comments, NPS provided the SHPO with additional information relating to a potential adverse effect to historic properties that could occur in future land exchanges involving private parties during the implementation of the Proposed Action. In response to that information, the SHPO sent NPS a letter of concurrence dated February 28, 2008, which contained the following statement.

"After review of the provided information, we concur that any transfer of land from federal ownership to private ownership is considered an *adverse effect* under Section 106 [36 CFR 800.5(a)(2)(vii)]. We concur that if the alternative that calls for the land exchange with private land owners is chosen, the potential for an adverse effect under that alternative needs to be fully evaluated. In regards to the resource protection study, we concur with the finding of *no effect* [(36 CFR 800.4(d)(1))."

Based upon the SHPO's comments on the Draft RPS/EIS, NPS amended the document, as now reflected in the Final RPS/EIS, to describe measures that would be taken to mitigate the potential adverse effect to historic properties. Those measures are described above under Mitigating Measures.

Communication with American Indian Tribes

Three American Indian tribes have historically been associated with the Curecanti area—Northern (also known as Uintah & Ouray) Ute, Southern Ute, and Ute Mountain Ute. Contact was initiated between NPS and the three Ute tribes regarding the RPS on March 6, 2001 by a letter from the superintendent to the three Ute tribes, inviting them to a meeting in Montrose, Colorado to discuss the RPS and other issues of mutual interest relating to Curecanti NRA and Black Canyon of the Gunnison National Park.

A number of telephone calls and letters of correspondence ensued, resulting in a meeting between a representative of the Northern Ute Tribe and NPS in Montrose on December 11, 2001; and attendance at a meeting on June 13, 2002 of the Joint Agency Management Effort (JAME) by a representative of the Southern Ute Tribe. (JAME is an effort that grew out of the RPS process, wherein land management agencies and other interested parties meet periodically to try and resolve area-wide resource management problems on an issue-by-issue basis.) This was followed by a presentation by the study team to a joint meeting of the three Ute tribes (Tri-Ute Council) in Grand Junction, Colorado on June 14, 2002. NPS continued to keep the tribes informed of the progress of the RPS and to encourage their participation by such means as project newsletters, invitations to attend additional project meetings, and the opportunity to provide comment on the Draft RPS/EIS.

CONCLUSION

The Selected Action minimizes environmental harm, and best meets the request of Congress to identify practicable alternatives that protect the resource value and character of the land within and surrounding Curecanti NRA. The study recommendations will ensure that the Bureau of Reclamation and Western Area Power Administration will continue their administrative jurisdictions and responsibilities for the construction, operation, maintenance, replacement, and additions required for the Wayne N. Aspinall Unit and the Uncompahgre Project.

The Selected Action recommends that Congress consider legislative establishment of the National Recreation Area and designation of a Conservation Opportunity Area. Together, the recommendations are designed to enhance operational efficiencies among the various land management agencies in the Curecanti area; provide for the continuation and potential expansion of recreational opportunities; and ensure the conservation of the natural and cultural resources, and the preservation of the spectacular scenery which is intrinsic to the Curecanti experience.

Because there would be no major, adverse impacts to a resource or value contained within the NRA, whose conservation is (1) necessary to fulfill specific purposes identified in the establishing legislation for Curecanti NRA; (2) key to the natural or cultural integrity of the NRA, or to opportunities for enjoyment of the NRA; or (3) identified as a goal in the NRA's general management plan or other relevant NPS planning documents, as a result of activities undertaken by NPS, visitors, or concessioners, contractors, or others operating within the NRA, the Selected Action will not impair NRA resources or values; and it will not violate the NPS Organic Act.