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House Resources Committee
Subcommittee on Forests & Forest Health

H.R. 5769, Washington County Growth and Conservation Act of 2006

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Thank you for the opportunity to testify on H.R. 5769, the Washington County Growth and Conservation Act of 2006. This bill attempts to resolve a wide range of public land issues in Washington County, Utah. We strongly support the efforts of the Utah delegation to resolve the longstanding issues surrounding Wilderness Study Areas (WSAs) and a number of other public land issues. The Department of the Interior supports the goals of the legislation, but opposes provisions that require lands to be sold, regardless of whether they have been identified for disposal. Furthermore, the Administration believes that all taxpayers should receive some benefit from land sales. We have concerns with the bill's revenue distribution and will work with the Committee during the legislative process to determine an appropriate percentage of proceeds to be returned to the Treasury. The Department views this legislation as a good approach to resolving some of the identified public land issues in Washington County, Utah and wants to continue working with the sponsors and with other interested members of Congress on some aspects of the bill.

Background

Washington County, Utah, located in the southwest corner of the State bordering Nevada and Arizona, covers nearly 2,500 square miles, and has been one of the fastest growing counties in the U.S. With a population of only about 10,000 in the mid-1960s, today Washington County has over 100,000 residents. At the same time, more than 75 percent of the County is Federal land, managed by the Bureau of Land Management (BLM), the U.S. Forest Service (USFS), and the National Park Service (NPS). In addition, the County includes lands held in trust by the Federal government for the Shivwits Indian Tribe and lands owned by the State of Utah. How those lands are managed is a critical issue to the people of Washington County; this bill addresses a wide range of land management policies.

A number of provisions of this legislation have the potential to impact the Shivwits Indian Tribe with their reservation in southwestern Washington County. The Department would urge the sponsors to resolve any remaining issues with the Tribe regarding traditional access and other cultural and religious issues.

The bill as introduced references maps without dates. However, we have been informed by the sponsors of the bill that it is their intention to reference the three regional maps dated July 18, 2006, and created by the BLM at the request of Senator Bennett. Therefore, this testimony is based on those maps.

Title I—Land Disposal

Title I of H.R. 5769 provides for the disposal of nearly 25,000 acres of public lands out of BLM management and into private ownership. The Department supports the general proposition of making some public lands available for community growth where it is necessary and appropriate, but cannot support requirements to dispose of a specific amount of public lands that may not be suitable for disposal.

Under H.R. 5769 the disposal of land would take place in three phases. Disposal for the first two phases is by auction and, for phase three, by auction or through exchange. In the first phase, lands are to be disposed of within the first year after enactment of the bill (described in section 102(h)(1)(A)(i) as "First Directed Sale" lands), and include 1,125 acres of BLM-managed land specifically identified on the map in 15 separate, mostly smaller parcels. The majority of these lands have been preliminarily identified by the BLM for disposal through the 1999 St. George Resource Management Plan (SGRMP). The local BLM had previously reviewed these lands for cultural and historic issues, threatened or endangered (T&E) species conflicts and other potential values that could preclude a conveyance out of federal ownership, and believes that sale of these lands can be accomplished. Surveys and appraisals will be required; therefore an 18-month window, rather than the one year contemplated in the bill, would be more realistic.

In the second phase, the lands to be disposed of within the five years following the first disposal outlined above (described in section 102(b)(1) as "Directed Sale Lands") include approximately 3,262 acres specifically identified in one small and two

large parcels. Most of these lands had been preliminarily identified for disposal through the SGRMP. However, that identification was only preliminary. The local BLM has been made aware of conflicts on these lands, which include cultural resources as well as the presence of T&E species. Section 102(i) of the legislation anticipates these problems by allowing the Secretary of the Interior to place restrictive covenants on lands sold in order to protect either cultural or T&E species. It is unclear how this provision would be implemented and it has the potential to be an administrative burden requiring the United States to enforce land restrictions in perpetuity.

Finally, the third phase includes lands to be disposed of not before 2010 (described in section 102(b)(2) as “Lands Eligible for Consideration Under Section 102 Disposal”). This includes over 372,000 acres from which at least 20,000 acres are to be identified for disposal and sold or exchanged (no upper limit is established by the legislation for disposal lands). The selections of the specific parcels are to be reached jointly by the BLM and the County. The legislation specifically excludes from consideration any lands that are designated as wilderness by this Act, the National Conservation Area designated by this Act, or any areas of critical environmental concern (ACECs).

While compliance with the Federal Land Policy and Management Act (FLPMA) is not required under the bill, BLM would likely look to FLPMA guidelines to determine which parcels would be suitable for disposal. BLM has not identified 20,000 acres as suitable for disposal and believes it will be difficult to identify that many acres within the area designated that are in developable areas. There is a high concentration of listed threatened or endangered species on BLM-managed land within Washington County. Four of the ten listed species are endangered plants that depend on public land habitat to avoid extinction. Similarly the density of unique and special cultural resources in the identified area is exceptionally high. We recognize that the Department has discretion on the selection of lands for disposal, but point out this may conflict with the apparent non-discretionary target stated in Section 102(b)(2). The Department could not support this third phase unless the bill was modified to give BLM the flexibility to establish a discretionary disposal target through a public process.

In addition to these concerns with the disposal language, we also have concerns with language on the use of sales revenues. Section 103 of H.R. 5769 addresses the disposition of the proceeds from the sale of lands directed in section 102. Specifically, it directs that 15 percent of the proceeds be distributed to State and County entities, while 85 percent would be retained by the Federal government. Among the allowed uses of the Federal government’s share are: reimbursement of costs to prepare the lands for sale, acquisition of State and private inholdings within the NCA proposed by Title VI, various conservation projects on Federal land in Washington County, and other costs related to implementation of the Act. Section 103(b) authorizes interest to be earned on amounts deposited into the special account. As stated above, we’d like to work with the Committee to address our concerns with this section.

In addition, the Administration does not support section 103(b), which allows the land sales account to earn interest. The Department of the Treasury strongly opposes such provisions, which effectively require the Treasury to borrow more funds to pay this interest.

We would like the opportunity to address a number of more technical, but nonetheless significant, issues. For example, section 102(g) would withdraw over 375,000 acres in Washington County from not only the public land laws, but also the mining laws, mineral leasing laws, and mineral materials laws. Notably, this would preclude mineral materials sales for items such as sand and gravel—critical for many infrastructure needs on an unnecessarily broad swath of land. We would like to work with the sponsors and interested members of the Committee to narrow this language.

Title II—Wilderness Areas

The bill would designate a number of wilderness areas within Washington County including approximately 123,504 acres of wilderness to be managed by the National Park Service within Zion National Park, approximately 92,937 acres of wilderness to be managed by the BLM in 13 individual areas, and 2,643 acres of Forest Service wilderness. In addition, the bill would release 11,370 acres of BLM-managed lands from Wilderness Study Area status and would return them to the multiple public uses authorized by the Federal Land Policy and Management Act (FLPMA).

The BLM-managed lands that would be designated wilderness by H.R. 5769 include areas of rugged beauty, solitude, and important wildlife habitat. In the northeastern part of the County, the proposed Deep Creek and Deep Creek North wilderness areas consist of sheer canyon walls dropping to dramatic year-round rivers. Hanging gardens with wildflowers compete with a variety of raptors, including bald eagles and giant California condors, for the hiker’s attention. The steep and rugged Hurricane Cliffs form the most outstanding feature of the proposed Blackridge Wilderness. Soaring in elevation by 2,000 feet in under a mile, the area is a magnet for hikers, hunters and photographers.

In the southeast, Canaan Mountain’s rugged topography includes peaks and colorful vermilion cliffs which form the southern gateway to Zion National Park. The scenic vistas available from these peaks increasingly attract recreationists.

Within the Red Cliffs National Conservation Area (NCA) proposed by Title VI of the bill, lie the proposed Cottonwood Canyon Wilderness on the east and Red Mountain Wilderness on the west. The Cottonwood Canyon Wilderness (and the adjoining Forest Service-managed Cottonwood Forest Wilderness) forms the spectacular “front range” between the city of St. George to the south and the Pine Valley Mountains to the north. Within minutes of downtown St. George, this area is prized for its primitive recreational opportunities. It lies within the Red Cliffs Desert Reserve, which has been federally designated as habitat to protect the threatened desert tortoise. It is also home to peregrine falcons and state-listed species such as the Gila Monster. The aptly named Red Mountain Wilderness provides a scenic backdrop to the communities of Ivins and Santa Clara and is a popular destination for local citizens.

The bill also designates the Cougar Canyon Wilderness located in the northwest corner of Washington County. Abutting the Nevada state line, this wilderness area would connect with the Tunnel Spring Wilderness in Lincoln County, Nevada, designated by Public Law 108-424. The area is dominated by wooded canyons and low mountain peaks and its designation would form a more manageable unit across state lines.

We applaud the hard work of the sponsor and other members of the Utah delegation in reaching consensus on BLM wilderness designation and WSA release. Congress has the sole authority to designate lands to be managed permanently as wilderness and we believe these areas are manageable as such. There are some technical issues related to Title II that we would like the opportunity to clarify. We would also like the opportunity to work with the sponsor and the Committee on possible minor boundary adjustments to ensure efficient manageability.

H.R. 5769 would also designate 123,743 acres of Zion National Park as wilderness. The lands proposed for wilderness designation are similar to those that were included in a proposal to recommend wilderness for the park that was originally transmitted to the President on June 5, 1974, by then Secretary of the Interior Rogers CB Morton and in the 2001 General Management Plan (GMP) for the park. The 1974 proposal recommended designation of 120,620 acres of the park as wilderness.

Differences in the acreage figures between the 1974 transmittal and H.R. 5769 are the result of land acquisition in the park that has taken place since 1974, acquisition of water and grazing rights, and termination of non-conforming uses. Additional lands within the park consisting of approximately 9,000 acres, but located in Kane County, have also been recommended for wilderness designation and were included in the 1974 transmittal and the 2001 GMP. Although the Department supports the wilderness designation for the park included in H.R. 5769, we suggest that the bill be amended to include this additional, previously recommended wilderness so that all the lands proposed for wilderness designation within the park are designated.

The four small units surrounding Zion National Park vary in size from 32 to 663 acres. These are logical extensions of the proposed wilderness areas within Zion National Park and are appropriate for wilderness designation. The legislation transfers administrative jurisdiction for the largest of these parcels, Watchman Wilderness, to the National Park Service but leaves the other three isolated pieces of wilderness with the BLM. Transferring all three of these small parcels – Beartrap Canyon Wilderness (40 acres), Goose Creek Wilderness (98 acres), and Taylor Creek Wilderness (32 acres) – to the National Park Service could make land management more efficient and would reduce confusion for the public. Transfer of these lands to Zion will improve their management and enhance the opportunities for visitor enjoyment of these special areas.

Title III—Wild and Scenic River Designation

The legislation amends the Wild and Scenic Rivers Act by adding approximately 170 miles of segments of the Virgin River and its tributaries within and adjacent to Zion National Park to the Wild and Scenic Rivers system. Seven of the segments are partially or wholly on BLM-managed lands while the remaining 32 segments are wholly within Zion National Park. All of the segments of the rivers that are recommended for designation as wild, scenic, or recreational rivers were found eligible and suitable for inclusion within the Wild and Scenic River System through the Zion National Park 2001 GMP and through the BLM St. George Field Office Resource Management Plan completed in March 1999. The Department supports the designation of these segments and recommends that this title be clarified to make clear that it includes segments managed both by the NPS and the BLM.

Title IV—Utility Corridors and Rights-of-Way

Section 401 of the bill addresses a number of issues related to utility corridors, transportation corridors and rights-of-way grants for water-related facilities.

The utility corridors established under section 401(a) total over 900 linear miles at a width of approximately ½ mile in most locations. The corridors are intended to be used for utilities, water infrastructure, and transportation purposes. While

many of the miles of corridors cross BLM-managed public lands and Forest Service-managed lands, large segments also cross private land, Indian tribal land, and land within Zion National Park. The proposal indicates seven segments that cross the Shivwits Indian Reservation. In addition, some of the corridors on the map appear to be duplicative. We believe a close and careful review of these corridors needs to be completed before this legislation proceeds to markup. We note that the Secretary is allowed to collect funds from the users of these corridors for cost-recovery, which we support.

In addition, the Secretary is charged with identifying a transportation corridor either through or around the Red Cliffs NCA designated by Title VI of this bill. Location of a transportation corridor in this type of sensitive area could be problematic or controversial. The Department would comply with NEPA and would proceed in full consultation with all affected Federal, state and local interests on this study. We appreciate the legislative language being clear on this point.

Finally, Title IV establishes ten areas totaling 8,844 acres as rights-of-way for water-related projects including reservoirs, canals, wells, storage and other related facilities. The areas range in size from 39 acres to two large areas of 1,770 and 5,408 acres. We have a few general concerns and one specific concern with these rights-of-way grants.

Under Title V of FLPMA the BLM has the authority to grant rights-of-way for a wide variety of uses including: roads, powerlines, pipelines, communications sites and reservoirs. The applicants for these rights-of-way pay both administrative cost recovery fees as well as rentals. In the case of linear rights-of-way, rent is determined by a published schedule. Rent for aerial rights-of-way is based on appraised value. Municipal utilities are charged rent if their principal source of revenue is customer charges.

In general, the legislation appears to allow the BLM to charge administrative cost recovery for these grants; however it does not allow the BLM to charge rent. We believe it is appropriate that the legislation either allow for the payment of rent, or provide for the outright purchase at appraised value of these lands by the water district. In addition, the grants for use are made in perpetuity. If the rights-of-way are not provided for outright purchase, we believe it would be more appropriate to make these easements dependent on their actual use and approval by any State or Federal agencies and for the life of the facility – so as not to permanently encumber the public lands for projects that may never be developed.

Our greatest specific concern is that one of the areas identified for a reservoir is in the Ft. Pearce area near the Arizona state line. A reservoir or flood control project on this site could inundate historic Ft. Pearce which is a National Historic Register site, as well as parking areas, a well-used designated OHV trail, interpretive displays and other important cultural sites including rock art panels. We believe that there are potential sites for flood control along the Ft. Pearce wash further upstream that would result in far less negative impacts to the resources. We would like to work with the Committee to identify a better site.

Title V—High Desert OHV Trail

Title V directs the Secretary to develop a travel plan within two years of enactment of this legislation to designate an OHV trail in Washington County. The trail is to be established on existing roads and trails. This trail has the potential to be a significant draw for tourism and will allow visitors and residents another way to experience and enjoy their public lands while hopefully minimizing OHV use outside of designated trail networks. We support the development of this trail. We urge the sponsor to extend the time for developing the plan to three years and to combine both the travel and management plan for the trail into a single document. We believe that this will allow us to most efficiently use resources and will allow adequate time for full public participation and involvement with the trail's establishment.

Title VI—Red Cliffs National Conservation Area

The Red Cliffs National Conservation Area (NCA) would be the first NCA in the State of Utah. Each of the NCAs designated by Congress and managed by the BLM is unique. However, for the most part, they have certain critical elements; these include public land, mining and mineral leasing law withdrawal, OHV-use limitations, and language that charges the Secretary to only allow those uses which further the purposes for which the NCA is established. Furthermore, NCA proposals do not diminish the protections that currently apply to the lands. The Red Cliffs NCA proposal honors this spirit and the Department supports its designation.

The proposed Red Cliffs NCA would overlay the existing Red Cliffs Desert Reserve which was designed as a part of the Washington County Desert Tortoise Habitat Conservation Plan (HCP) adopted in 1996. The HCP protects important Desert Tortoise habitat while also allowing continued development in St. George and nearby communities. As directed, the BLM has acquired nearly 8,000 acres of State and private inholdings within the Reserve from willing sellers.

In addition to providing important habitat for the recovery of the desert tortoise and other listed species such as the Shivwits milkvetch and the Woundfin Minnow and Virgin River Chub, the proposed NCA is a popular area for recreationists.

Over 130 miles of trails provide excellent opportunities for hikers, mountain bikers, and equestrians while ensuring compatibility with the species' recovery. The boundaries of the proposed NCA include nearly 44,000 acres of BLM-managed land.

There are significant cultural and historic resources within the NCA as well as the natural resources described in the legislation. We recommend that cultural, historic and paleontological resources protection be added to the purposes for which the NCA is established.

Conclusion

We would like the opportunity to work with the sponsors and the Committee to address the issues we have raised in our testimony along with some technical amendments. We applaud the hard work of the members of the Utah Congressional delegation on this legislation and we look forward to working with you to move the legislation forward.