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Testimony on behalf of the Utah Wilderness Coalition
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United States House of Representatives

Hearing on H.R. 5769, the Washington County Growth and Conservation Act
September 14, 2006

Thank you for the opportunity to testify before the House Resources Subcommittee on Forests and Forest Health on public lands legislation H.R. 5769, the Washington County Growth and Conservation Act. My name is Suzanne Jones. I am the Regional Director for The Wilderness Society's Four Corner States Office out of Denver. I am here today representing the Utah Wilderness Coalition, an alliance led by The Wilderness Society, Sierra Club, Southern Utah Wilderness Alliance, and the Wasatch Mountain Club and representing over 220 groups who together work to protect Utah Wilderness. We have a common interest in preserving our nation's public lands and natural legacy, including the Zion-Mojave proposed wilderness in Southwestern Utah. We welcome the opportunity to work towards a solution to address the challenges facing the residents of Washington County, local communities, and public lands in Utah.

Overview

We oppose the Washington County Growth and Conservation Act as it has been introduced because it is bad for Washington County, bad for Utah wilderness, unfair to the American public, and unsound public policy. And we are not alone in our opposition; thousands of citizens—locally, statewide and nationally—have voiced their concerns, as have numerous hiking, outdoor recreation, outdoor retail, equestrian, wildlife, archeological, scientific, and historic preservation interests.

This legislation would irrevocably impact communities and public lands throughout the region by enacting very specific new laws without any predetermined plan for the region's future. Additionally, the legislation would deprive all Americans of an irreplaceable natural asset by selling off and developing our public lands and failing to protect much of the region's deserving wilderness adjacent to Zion National Park and in the Mojave Desert. We hope that today the committee can better understand the serious flaws in this legislation and why so many Washington County residents, local and national grassroots organizations, and citizens across the country oppose this bill.

The situation in Washington County deserves attention. Rapid population growth is straining the region's water supplies, transportation infrastructure, housing supply, and natural landscape. There is widespread agreement that unless Washington County changes the way it is growing and/or how it responds to growth, the existing problems will continue to worsen. For this reason we believe it is important to seek solutions to the problems facing this region. We, however, strongly disagree that the answer to these challenges requires the sweeping federal land law changes proposed in H.R. 5769; we also believe that this legislation will exacerbate, not solve, the rampant sprawl and growth that the region is currently facing.

The legislation before the committee would give away and sell public lands to finance local development. The bill requires the Bureau of Land Management (BLM) to sell public land and appropriate proceeds from the sale of public land to local entities and various projects within the county. It also creates new roads, new utility corridors, a new off-road vehicle trail system, and new rights-of-way for water development. The conservation side of this bill is meager in comparison to the scope of developments encouraged by the legislation. It fails to protect over 70 percent of citizen proposed BLM wilderness, risks important historical and cultural resources, and undermines endangered species protection.

The bill is not a product of compromise. Although three conservation groups from the UWC were invited to participate in initial discussions in St. George, this process was abruptly ended in December 2004 and a legislative proposal appeared in March 2006 with little input from participants. Though we wish the resultant legislation before us represented a middle ground, we are dismayed that it differs little from the initial March 22 nd proposal endorsed by the Washington County Commissioners. Since then many diverse interests have expressed concerns and objections to the legislation, including many citizens who attended our hearing in Salt Lake City to voice their opposition, and over 100,000 concerned citizens who have contacted Congress in opposition to the proposal. This bill fails to reflect these concerns and sentiments.

Local, State-wide, and National Opposition

On all levels-- locally, state-wide, and nationally-- there is strong and visible opposition to this legislation. The local citizen planning organization, scientists, tribes, outdoor retailers, national editorial boards and thousands of public citizens

have all raised serious concerns with the legislation as drafted.

1. Local Concerns

Opposition to the legislation in Washington County includes: The Town of Springdale, which passed a resolution opposing the bill; Citizens for Dixie's Future, a local citizens' organization; The Shivwits Band of the Paiutes, located west of the city of St. George; The Director of Paleontology at Dixie State College; and Backcountry Horsemen of Southwest Utah.

Opposition is also visible through the citizen comments in the local paper, the *St. George Spectrum*. Since the release of the draft legislation on March 22 nd, 2006, 37 letters-to-the-editor have been printed in the *St. George Spectrum* against the legislation. [See Attachment 1 for selected quotations.] Concern from the public comes from all corners of Washington County. The authors of the aforementioned LTE's in the *Spectrum* live throughout communities in Washington County, including: St. George, Hurricane, Springdale, Ivins, LaVerkin, New Harmony, Brookside, Washington City, Toquerville, and Santa Clara.

2. Statewide Concerns

Across Utah, citizens have expressed widespread concern with the Washington County Growth and Conservation Act. The Utah Wilderness Coalition hosted a hearing in Salt Lake City in which approximately 200 concerned citizens attended, 33 individuals spoke, and 60 individuals submitted written testimony. The comments amounted to 85 pages of transcribed oral testimony plus 76 pages of submitted written testimony. At least 1,775 Utahns contacted their Member of Congress to oppose the legislation.

Concern shared by Utahns is also expressed in the *Salt Lake Tribune's* three editorials opposing the Washington County Growth and Conservation Act. [See Attachment 2 for selected quotes of the editorials.] In a July 13 th editorial entitled "A bad plan: Bennett's bill would encourage St. George sprawl," The *Salt Lake Tribune* said:

"What Washington County needs is a plan to control its fast-paced growth and protect its fragile natural resources. Unfortunately, Sen. Bob Bennett's Washington County Growth and Conservation Act doesn't offer one. It's a plan, instead, for even more urban sprawl and consumption."

Many Utah public interest organizations oppose the Washington County Growth and Conservation Act. These include: Colorado Riverkeepers, Glen Canyon Institute, Living Rivers, Redrock Forest, River Runners for Wilderness, Save Our Canyons, Southern Utah Wilderness Alliance, Utah Environmental Congress, Utah Native Plant, Wasatch Mountain Club, Western Wildlife Conservancy, and Wild Utah Project.

3. Widespread National Concern

Concern with the Washington County Growth and Conservation Act is as strong nationally as it is locally and state-wide. Over 100,000 citizen comments have been sent to Senators and Members of Congress in opposition to the Washington County Growth and Conservation Act.

Nearly 80 national and state-based conservation organizations oppose the bill. [See Attachment 3 for list of organizations.] Similarly, the Outdoor Industry Association recently issued a statement on the bill saying:

"Outdoor Industry Association opposes the Washington County Growth and Conservation Act of 2006 (S. 3636). While OIA appreciates the efforts of many to craft protection for this deserving area, we are concerned that the bill falls short of the true protection needed and in the end does more harm than good."

A September 8 th letter opposing the Washington County Growth and Conservation Act was signed by 32 outdoor retailers:

American Alpine Institute, Ltd. • Adventure 16 • Black Diamond Equipment Ltd • Broudy/Donohue Photography • Cascade Designs • Chaco, Inc. • Champaign Surplus Store, Inc. • Cloudveil Mountain Works, Inc. • Earth Games • Great Outdoor Provision Co. • Hi-Tec Sports USA, Inc. • HOWADESIGN • Keen Footwear • Kelty • Mercury Advertising • MoonFoto • OnTarget Public Relations LLC • Outdoor Industry Conservation Alliance • Pack Rat Outdoor Center • Patagonia • Pineneedle Mountaineering • Retailers of the Outdoor Industry • SNEWS LLC • Travel Country Outdoors • The Base Camp • The Elephant's Perch • The Forest Group • Tibetan Trader Inc. • Ute Mountaineer • Wild River Outfitters • Wilderness Sports

The outdoor retailers' letter stated, "S. 3636 would substantially rewrite federal laws controlling southwestern Utah 's public

lands in ways that could harm the public's ability to climb, hike, camp, watch wildlife, hunt, fish, and sightsee in these special places."

National news papers, including the *New York Times*, *Boston Globe*, and *Los Angeles Times*, have editorialized in opposition to the Washington County Growth and Conservation Act. The *New York Times* described the bill as "a raid on national resources aimed at helping private developers. It is the worst sort of Congressional earmarking. And it gives true wilderness bills a reputation they do not deserve."

Federal Land Disposal

We have many serious concerns with the bill's provision to dispose of as much as 24,300 acres of BLM land within Washington County. First, the legislation directly conflicts with existing public lands policy that provides for the retention of our public lands. Second, Washington County has an abundant amount of developable private land, according to the St. George Chamber of Commerce. Third, the BLM already has authority, which it has successfully exercised, to sell and exchange public lands. Fourth, according to the St. George field office, BLM has already disposed of 20,000 acres of BLM public land in the last 10 years. Fifth, there are roughly 85,000 acres of state-owned lands in the county that could be traded for developable public lands. Sixth, although a local planning process called "Vision Dixie" has just been initiated for Washington County, the land sales called for in the bill are not explicitly tied legislatively to this long-term, growth planning process. Finally, section 102 fails to ensure many sensitive and wild lands that are proposed for wilderness will not be sold for private development.

The sale of public lands in H.R. 5769 fundamentally shifts land management policy in southwestern Utah away from retention and public management of our public lands towards privatization and development of these national assets. Existing land policy, as articulated in the Federal Land Policy and Management Act (FLPMA), states that public lands "be retained in Federal ownership" except where disposal will serve the national interest. (FLPMA, Sec. 102(a)(1)). This policy is a cornerstone of our nation's view of federal lands. When the Administration proposed this spring to sell public lands to fund the Rural Schools Program, there was widespread and fervent bipartisan opposition. In March, 54 Members of Congress led by Rep. Chandler and Rep. Keller wrote to the House Budget Committee opposing the Administration's land sale proposal and saying, "Congress should not develop the habit of selling treasured public lands to the highest bidder as a means of temporarily plugging gaps in the budget." Our county's public lands provide unparalleled benefits to the American people and local communities surrounding those lands, and existing law provides a fair and balanced approach to public land sales.

It is unclear why the BLM should be mandated to dispose of thousands of acres of public land when there is plenty of private land already developable. According to the St. George Chamber of Commerce's website about economic development opportunities in the county, "It is estimated that only about 9% of the potentially developable private land (225,000 acres) in the county has already been developed.

We must also examine why H.R. 5769 should mandate the sale of over 20,000 acres when the agency has already disposed of significant amounts of public lands in the past ten years. According to the BLM St. George field office, the BLM has disposed of 11,486 acres of BLM land since 1999 alone. If the maximum acreage were sold through H.R. 5769, the total amount of land sales in Washington County would be in excess of 40,000 acres. In other words, roughly one of every 15 acres of BLM lands in the county will have left federal ownership.

Given that the BLM already has the authority to dispose of public lands and has successfully used that authority to dispose of 20,000 acres in the past 20 years, it is unclear why a new mandate should seek to override this existing authority. BLM's existing land sales approach ensures maximum public participation, review, and comment. The process is abundantly transparent. Without the benefit of prior public input, H.R. 5769 would require the BLM to meet various deadlines and use certain maps to define areas eligible for sales. The legislation would also appear to greatly diminish public involvement by providing in Sec. 102(d) that the Secretary and County "shall jointly select" parcels to be offered for sale or exchange. This is a clear departure from FLPMA sec. 202 which uses the public planning process to identify lands for disposal.

Though the legislation mandates the disposal of public land, H.R. 5769 does little to account for the 85,000 acres of state-owned land that could be traded for developable public lands to help the county meet its demand for more private land. According to the State Institutional Trust Lands Administration (SITLA), there are roughly 85,000 acres of state-owned land in Washington County. SITLA's mandate is to maximize the economic development potential of its lands to serve the state's school children. Purchasing or exchanging SITLA land would equally serve both SITLA's mandate and the county's demand for land.

Further, it is unclear how the land sales in the bill are tied to the long-term growth planning process recently initiated for Washington County called "Vision Dixie." Although we have been told that future lands sales will incorporate the results of

the Vision Dixie planning process, the legislation contains no explicit reference to this planning process, nor does it contain any provision should the multi-year planning process fail or not reach completion before the second tier of land sales is slated to begin in 2010. For the land sales to be effectively integrated into any long-term growth plan for the county, the legislation should specifically tie those sales to a pre-existing plan, otherwise recommendations of the planning process could be rendered moot by land sales in H.R. 5769.

Finally, section 102 inadequately protects sensitive public lands, culturally or historically valuable lands, and areas proposed for wilderness not designated in the bill. As currently written, the only lands expressly prohibited from land sales are areas “designated as wilderness... an area of critical environmental concern... and [land] in the Red Cliffs National Conservation Area,” and the bill directs the BLM to design restrictive covenants as necessary to protect other resources. This is insufficient because restrictive covenants require ongoing oversight and monitoring to ensure that protective stipulations are implemented. A cash-strapped, resource-constrained agency such as BLM will likely not have the ability or means to oversee dozens of complicated covenant provisions that may be needed to protect sensitive lands.

Disposition of Federal Land Sale Proceeds

H.R. 5769 would distort the land-sales process by earmarking land-sales proceeds for specific uses in Washington County. Normally proceeds from public land sales would be reinvested in land conservation under the Federal Lands Transaction Facilitation Act (FLTFA). We are concerned that this legislation creates a loophole that diverts funds normally for conservation towards a host of locally earmarked projects. Second, we find the specific earmarks dangerously ambiguous. Third, we fear that this legislation creates the expectation that public lands can be used to make up for budget shortfalls and pay for local projects.

Under existing law, funds generated from public lands sales are reinvested in conservation land acquisition, but the Washington County legislation largely rejects this current practice by directing funds from public land sales to local, private development interests. Currently, the Federal Land Transfer Facilitation Act (FLTFA) directs proceeds from federal land disposal towards acquiring “inholdings” and lands “adjacent to federally designated areas [which] contain exceptional resources” and directs that at least 80% of proceeds must be expended within the State in which the funds were generated.

The Washington County Growth and Conservation Act departs markedly from this equation by diverting all but 5% of the funding to entities or purposes within Washington County. While some of these earmarks may have conservation value, others clearly do not (e.g., directives to finance agency administrative costs for selling public land, construction of off-road vehicle routes, and unspecified “projects relating to parks, trails and natural areas”). More concerning, however, is the bill’s precedent of liquidating national assets to fund local projects, be they meritorious or not.

Further, in addition to directing 85% of the funds from public lands disposal to projects within Washington County, the bill would also authorize 10% of this public money to be directly paid to the County government and the Washington County Water Conservancy District: specifically, the County government would receive two percent of the land sales proceeds and the Washington County Water Conservancy District would receive eight percent of the land sales proceeds. We understand that Washington County, like virtually every county and state government, has spending needs that may not be fully funded. However, we are deeply concerned that this bill creates expectations and demands among local governments in Utah for selling off public lands in order to fund local projects and ongoing administration expenses. Our groups are also concerned that the new formula for the disposition of land sale proceeds created by S.3636 serves as a de facto appropriations process for Utah. We urge you to refrain from creating a mandate that would sell public lands to subsidize local projects and government budgets.

In addition to selling off public lands, the Washington County legislation would also impact public lands by giving the Washington County Water Conservancy District rights to develop nearly 9,000 acres of BLM public land. H.R. 5769 broadly grants the Water Conservancy rights-of-ways for development of “any reservoirs, canals, channels... pipes... pipelines... and other facilities...” related to water infrastructure in the county. In a departure from current policy, these rights-of-ways would be granted for free and in perpetuity. It is important that the legislation be much more specific about the precise uses of transfer lands, and require that any such lands would revert to public management when and if the original use expired. Further, federal land should not be granted for free or in perpetuity to the water conservancy district – millions of dollars taxpayer dollars in rental fees would be surrendered.

Finally, H.R. 5769 would establish roughly 900 miles of half-mile-wide utility corridors across public, private, and tribal lands. This is done outside the checks and balances required by sections 202 and 503 of FLPMA. The authors of the legislation have yet to disclose for what specific purposes such a large swath of utility corridors, some of which are duplicative or controversial, need be granted over previously undisturbed public lands outside of the normal planning process.

Wilderness Designation

The bill's protections for wildlands are woefully inadequate and dwarfed by the scale of development envisioned by other titles of the bill. As measured against America's Red Rock Wilderness Act, H.R. 5769 fails to protect nearly two-thirds of the wild BLM lands in the county that deserve protection. Almost none of the landscape in the Mojave Desert in the western side of the County is protected and the bill leaves behind over 200,000 acres of wilderness identified by citizen inventories and proposed for protection in America's Red Rock Wilderness Act.

The Zion-Mojave wilderness in the western half of the county is a unique and rare environment. It is the only place in Utah where the endangered desert tortoise and iconic Joshua Tree are found. Amid explosive suburban development, habit fragmentation, population growth, increasing water scarcity, and damaging off-road vehicle (ORV) use, a meaningful Zion-Mojave wilderness promises refuge for the region's fragile plant and wildlife and would be a haven for outdoor enthusiasts, families, naturalists, and hikers.

The greater Zion region marks the terminus of the massive sandstone expanse of the Colorado Plateau. The greater Zion region not only surrounds Zion National Park, but encompasses many features such as the redrock temples, deep river gorges, and ponderosa-studded plateaus that are a geologic extension of the Park itself. The region also marks the headwaters of the Virgin River, the home of one of the last vestiges of native fish in the American Southwest. Water is the linchpin of all life here, and the greater Zion region provides for the majority of the southwestern Utah's wildlands and its growing population. Like the Virgin River, two smaller tributaries known as the LaVerkin Creek and Orderville drainage, carve a vibrant and lush corridor of life through an otherwise arid land as the waters join with the Virgin River's southwestern descent to the Mojave Desert. This corridor links the Mojave Desert and the Greater Zion to provide one of the most visually and biologically compelling landscapes in the state. But with its proximity to the city of St. George, amid the thirstiest, fastest-growing county in Utah, this landscape is also one of the state's most endangered.

The Utah Wilderness Coalition and citizens of Utah have identified approximately 300,000 acres of BLM public lands that qualify for wilderness designation within Washington County. These proposed wilderness areas include Colorado Plateau wildlands adjacent to Zion National Park as well as portions of the Mojave Desert. Nearly 70 percent of the citizen proposal for Utah wilderness, including lands identified as potential wilderness by BLM officials, is left unprotected in this legislation. Furthermore, the legislation would release roughly 9,500 acres of currently protected BLM Wilderness Study Areas.

Of particular concern, almost none of the landscape in the Mojave Desert in the western side of the County would be preserved. The Mojave Desert in western Washington County encompasses a vast area of largely undeveloped public lands important both as habitat for the endangered desert tortoise and as a source of archeological and culturally significant resources. The desert tortoise is highly susceptible to ORV use; individual animals are sometimes literally crushed to death under the wheels of larger ORVs, and the vehicles also destroy underground burrows that provide refuge for tortoise and the young. Yet, only a fraction of this critical tortoise habitat is protected against irresponsible ORV use.

The bill ignores nearly 70,000 acres of the lands identified by the BLM in 1999 as potentially qualifying wilderness. In 1999, the BLM finalized a survey of lands proposed for wilderness designation in America's Red Rock Wilderness Act, including areas of Washington County, and found many tens of thousands of acres of qualifying lands. In Washington County, the BLM documented qualifying wilderness (not already designated as WSAs) in Cougar Canyon, the Narrows, Joshua Tree, Beaver Dam Wash, Red Mountain, Orderville Canyon, Deep Creek, the Watchman, Goose Creek, Spring Creek Canyon, Black Ridge, Canaan Mountain, Parunuweap Canyon, Moquith Mountain, and Upper Kanab Creek. Unfortunately, H.R. 5769 protects very few of these areas.

Forest Service lands are virtually ignored in this bill. H.R. 5769 designates just 2,642 acres of Forest Service land adjacent to the Cottonwood Canyon unit. H.R. 5769 designates just 2,642 acres of Forest Service land which is adjacent to the Cottonwood Canyon unit. Washington County holds 425,285 acres of Forest Service lands. Because the bill designates just 0.6 % of that area as wilderness, we are concerned that many Forest Service areas have been left out. The Utah Forest Network has proposed wilderness designation for over 300,000 acres of Forest Service Land within the Pine Valley Ranger District of the Dixie National Forest in Washington County, including the Bull Valley-Cave Canyon Roadless Area and the Racer Canyon/Mogutsu Roadless Area. We would recommend a much more thorough review of Forest Service lands if this legislation proposes to make wilderness designation.

More than one-half of the lands proposed for wilderness designation in this bill are within Zion National Park. Though worthy as designated wilderness, the lands in Zion National Park already enjoy significant protection pursuant to the Park's Service preservation mandate. H.R. 5769 provides little added protection for public lands.

Now more than ever, as the pressures of growth mount in Washington County, the special places of the wild Zion-Mojave need and deserve to be protected.

Other Impacts on Federal Land Management

H.R. 5769 appears to require the BLM to examine the option of placing a “transportation” corridor in the Red Cliff Desert Reserve, meaning that the bill could result in the authorization of a freeway through the Reserve even as the bill permanently sets aside the reserve as a National Conservation Area. Any consideration of authorizing a freeway within the reserve would run counter to the fundamental purpose for which the Reserve was established, and represents a renegeing of the original agreement that established the Reserve. Proposals that could affect habitat or the desert tortoise should be subject to laws such as NEPA and review by the Red Cliffs Desert Reserve Advisory Committee and technical committee. Language should make clear that such proposals cannot be approved if they would harm the tortoise or its habitat.

H.R. 5769 would require the BLM to establish a new system of ORV routes – that would likely result in increased motorized recreation, especially given the county’s growing population and proximity to Las Vegas – despite the BLM’s inability to manage existing use levels and before the completion of a long-overdue, district-wide travel plan. The BLM is seven years behind in adopting a comprehensive travel management plan for the St. George Resource Area and must address current enforcement issues concerning ORV use before actively encouraging more use. BLM should complete a comprehensive travel plan (including route designations) for the entire St. George Field Office before legislatively designating an ORV route system.

Conclusion

In conclusion, we stress our deep concern with this legislation. The bill would cause lasting impacts to the landscape and communities in Washington County before a plan for the future of this area has determined what is needed for the region. Local, state-wide, and national opposition highlight the dangers of selling off massive amounts of public lands to fund local development. We believe our public lands, the public, and local communities will be worse off should this legislation pass.