

Congressional Testimony
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As a life-long Utah resident, property owner in and current resident of Washington County, Utah, former Utah Attorney General and an American, public lands are of great importance to me. I appreciate being able to provide testimony at this public hearing convened by the House Natural Resource Committee's Subcommittee on Federal Lands and be given time to speak on behalf of those in our county and others who support our public lands and value their preservation now and into the future for generations to come.

Given my legal career and having served as executive director for Washington County's only local grassroots conservation organization, Citizens for Dixie's Future (CDF), I am familiar with laws dealing with our county's public land. I was heavily involved in the 2006 Washington County Growth and Conservation Bills offered by Utah's Senator Robert Bennett and Congressman Jim Matheson. When I became CDF's executive director in 2008, the effort by Senator Bennett and Congressman Matheson had been met with vigorous opposition by local citizens, resulting in the formation of CDF and ultimately the initiation of the Vision Dixie process by Washington County Commissioners to deal with the unrest created by the legislation. To their surprise, the Vision Dixie process revealed great support in this county for our public lands and reluctance to spin off large portions to Washington County or build a Northern Corridor through the Red Cliffs Desert Reserve, now part of which is an NCA.

The 2006 bill version was soundly rejected and resulted in a revised version being included in the 2009 Omnibus Land Act. In 2008 I was directly involved in conversations with Congressman Matheson's office leading up to the final version for the 2009 legislation. They were unwilling to completely relinquish the idea of their preferred Northern Corridor but language was revised in the 2009 legislation to provide leeway in that regard. We now are dealing with the results of that and arguing whether the BLM has lived up to the letter of the law described in the 2009 Omnibus Public Land Management Act (OPLMA), Subtitle O. I believe they have.

Much of the disagreement pertaining to this contentious road deals with what has been on the county and city transportation plans for decades according to county leaders. That may be the case, but according to my conversation with Dr. William Mader who served as the first administrator of the Red Cliffs Desert Reserve (Reserve), established in 1996, and administered the Habitat Conservation Plan (HCP), there was no plan for a road, and it was clear to county and city officials involved in the process and BLM, US Fish and Wildlife Service and Utah's Division of Wildlife Resources that was the case. Straightening of Skyline Drive (also known as City Creek by some) was discussed to deal with traffic, but certainly no road through the heart of the Reserve. There was some early discussion but it was made clear that if they wanted the HCP that would allow development to ensue in over 300,000 acres of Washington County, there would be no road. Dr. Mader was part of all official discussions, meetings and decisions in this regard. If side conversations occurred implying something different, they were not part of the official decision-making process or record.

When Dr. Mader and I spoke, I asked him about the Washington Parkway Study done in 2012 in which a biologist working with Utah's Department of Transportation and the Dixie Metropolitan Planning Organization, our local transportation planning organization, was contracted to review the proposed Northern Corridor preferred route, also called the Washington Parkway, and show how, if at all, a road could be constructed to help the tortoise population. Dr. Mader, being a trained biologist himself and former head of the Reserve, stated unequivocally that the road would not help the situation. The tunnels suggested by UDOT/DixieMPO's biologist would not provide the necessary access needed. The additional traffic, along with the noise and pollution that would result, would not be conducive to helping the tortoise population which has declined by around 50% since 2005's summer fire season.

To substantiate Dr. Mader's concerns, I offer the following from a December 19, 2012 letter from the Desert Tortoise Council pertaining to the Washington Parkway Study (Study) conducted by UDOT and DixieMPO:

"But for" this project, none of the threats listed in the table in the executive summary (pages iii and iv of the Study) would affect the Reserve. Therefore, the best way to eliminate the following threats is to prohibit the construction of a new highway through the Reserve: Direct mortality, construction activities, habitat fragmentation, habitat loss, small reserve/population

size, disturbance, spread of exotic and invasive plants, increased risk of fire, increased predation, disease, increased access to remote areas, and cumulative threats. In Section 7.9 on page 51, the Study fails to indicate that a new roadway through the Reserve would be a new source of road-killed animals that would serve to subsidize ravens and coyotes.

The Council takes exception to the following statement: "This study illustrates that a comprehensive approach to roadway design and associated management can ameliorate many existing threats, contribute to improving conditions, and provide future management options for the tortoise on the Reserve." First of all, there are no "improving conditions" in a population that has declined by almost half since the HCP was implemented and the Reserve established. It is extremely misleading to claim that the project itself, which is probably immitigable, will somehow benefit tortoise conservation elsewhere; such statements redirect the readers' attention away from the impacts associated with the proposed project by promising conservation elsewhere. Since this conservation is already guaranteed by an HCP with its adaptive management contingency plans, there is no need for the "additional" conservation proposed by this new project.

Dr. Mader's concerns and those of the Desert Tortoise Council are not the only reasons for rejecting the Northern Corridor route preferred by our county and city leaders. The county's own 2015 Regional Transportation Plan clearly states that roads will not solve this county's traffic problems. The report also points out that the majority of this county's growth will be in the southern and southeastern areas of this county meaning that a Northern Corridor would support a very small population of this county at an expense of around \$100 million. The transportation plan also shows that we have a deficiency in funding for others roads that are more essential to more populated areas and shows that the road would save a mere 1.7 minutes from travel time.

As a resident of Ivins, a town in the northwestern part of Washington County, conceivably I could benefit from a Northern Corridor, but to have 1.7 minutes shaved from my travel time while turning our backs on an obligation made in good faith in the 90s and challenging to the Red Cliffs Desert Reserve and Red Cliffs NCA, an area that citizens and visitors have come to love and cherish, makes no sense to me.

The argument is made that traffic on St. George Boulevard and Red Hills Parkway will not be able to handle the coming traffic, but then the transportation report shows that congestion will not be eliminated on these roads even with a Northern Corridor. And, amazingly, the preferred Northern Corridor (aka Washington Parkway) is designed to move traffic onto Red Hills Parkway near the Highway 18 intersection, which seems to completely undermine the purpose for a

road. In fact, even now, if I desire to avoid St. George Boulevard and other mid-town traffic, I can take I-15 to Dixie Drive and Dixie Drive to Snow Canyon Parkway and home.

While local leaders attest to the need for a road to move traffic, a 2007 UDOT study concerning a proposed Northern Corridor dealt with the county's preferred route (Red Hills Parkway to I-15 at MP 13 in a chapter titled: "Alternatives Considered but Eliminated from Further Consideration."

Here are excerpts from that report:

Under this alternative, traffic conditions would also slightly improve on St. George Boulevard but would slightly deteriorate on Bluff Street.

However, traffic demand along St. George Boulevard would still exceed the road's capacity, so the effect may be minimal.

The Northern Corridor Alternative would not meet the objective of minimizing impacts to the reserve.

According to a letter from USFWS, "*such a road would compromise the commitments on which the Washington County Habitat Conservation Plan was based, is likely to compromise the biological integrity of the Upper Virgin Recovery Unit (already the smallest recovery unit), and may result in an adverse modification of designated critical habitat.*"

While others may not take heed to what Dr. Mader and biologists from the Desert Tortoise Council say about the effects of the proposed, preferred Northern Corridor route, or consider the admonitions provided in transportation studies, perhaps this official statement by Senator Bob Bennett will carry more weight from the U.S. Senate hearing record of April 22, 2008 on S.2834:

"Congressman Matheson and I have made significant changes to the previous proposal. We have permanently protected large amounts of biologically significant public land in Washington County, including additional wilderness and a new national conservation area. We have removed the corridor designations for the Lake Powell Pipeline Corridor and the Northern Corridor that bisected the Red Cliffs Desert Reserve" p.8 (emphasis added)

What's needed is for our transportation planners to go back to the drawing board and devise ways to deal with our projected traffic needs without undermining agreements that were made at an earlier time. County-wide coordination of all general plan updates and major rezoning approvals would improve transportation planning. All signatories to the HCP need to uphold

the agreement and do their general plan updates and transportation planning with the Northern Corridor off the table.

Although the proposed Northern Corridor (aka Washington Parkway) is a major sticking point in the BLM's 2015 RMP, other issues are pertinent to this discussion and bear mentioning. Of critical concern by our leaders at all government levels is their contention that the BLM has failed to live up to the actions designated in the 2009 OPLMA. Given my reading of the OPLMA language and my legal career, I disagree. The following is the direction given to the BLM – representatives for the Secretary of Interior – by the OPLMA:

(2) USES.—The Secretary shall only allow uses of the National Conservation Area that the Secretary determines would further a purpose described in subsection (a), which provides:

(a) PURPOSES.—The purposes of this section are—

(1) to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the National Conservation Area; and

(2) to protect each species that is—

(A) located in the National Conservation Area; and

(B) listed as a threatened or endangered species on the list of threatened species or the list of endangered species published under section 4(c)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)(1)).

Pertaining to the Northern Corridor issue the 2009 bill states:

(A) in consultation with appropriate Federal agencies, State, tribal, and local governmental entities (including the County and St. George City, Utah), and the public, identify 1 or more alternatives for a northern transportation route in the County.

The BLM has identified four options for a road in their Alternative D of the RMP. What they have not done is support Alternative D as their preferred alternative because it conflicts with the directive of protecting the species within the NCA. OPLMA does not direct them to “prefer” an alternative; it only directs that they “identify” alternatives.

For leaders such as Utah's Senator Orrin Hatch to assert that the BLM has gone against the “intent” of OPLMA is without merit given what Senator Bob Bennett's 2008 official comments

show. If we are to legislate by back room deals and not by what is in official testimony and in legislation itself, we will surely be arguing over this forever.

My personal experience with the BLM has shown them to be open and willing to work with citizens at all levels, if those citizens take the time and make the effort to approach them in a collaborative manner. I am not here to assert that BLM does everything perfectly or that some review of their systems is not warranted. But I believe they have lived up to OPLMA's requirements perhaps as well as is humanly possible. They have been asked to include the HCP and other relevant laws and agreements in their decisions, laws and agreements that often don't sit well with political leaders.

Given the requirements of the HCP to protect the Red Cliffs Desert Reserve's flora and fauna while they've had pressure for a road that would go against that has placed them in a very difficult position. Also, the requirements of FLPMA have presented challenges, and yet, these are laws and agreements that have been enacted and agreed to by previous congressional actions and local leaders. Are we to completely upend the apple cart and challenge all decisions made by those who came before us?

Local leaders, county and city, assert they have not been included in the decision making process leading up to the RMP and yet they have known, or should have known, since 2009 that this plan was in progress. They have had every opportunity to be involved, and in fact, I believe they have been involved but simply have not achieved what they want; hence this hearing has been convened to help force their issues.

Washington County leaders have complained that the RMP was too extensive for proper review. However, the BLM initiated their planning process by publicizing a Notice of Intent in 2010, which began a 60-day scoping period for the public to assist BLM, and that included local officials, too. Meeting dates, times and locations for four public meetings were announced and details for public comments provided. The information was also published in newspapers in the planning area at the same time. This gave the public, which includes local leaders, time to

participate and communicate their needs to the BLM. If local leaders feel they should have been paid deference and been given special attention, that is not borne out in the OPLMA.

The RMP was issued for the initial 90-day comment period in July 2015, and the BLM held open house meetings to answer citizens' questions. Additionally, the regional BLM office is always open to receive citizens and interested persons, including the mayors if they are truly interested in getting information and having a two-way conversation.

Had local leaders truly wanted to be involved in the RMP planning process, they had plenty of opportunity. They had access to OPLMA details and what issues the BLM would address. Had officials been concerned, they could have begun reviewing those needs and identified areas that would be particularly problematic for their citizens and started developing preferred plans to communicate to the BLM.

Additionally, city and county leaders have monthly access to federal agency representative through the Habitat Conservation Advisory Committee (HCAC) that oversees the Reserve/NCA. Two mayors sit on the committee, St. George city manager is on the committee, which also includes representatives from the BLM, USFWS and Utah's Division of Wildlife Resources, and Washington County Commissioner Alan Gardner attends monthly meetings which are preceded by lunch for committee members and any citizens who might want to participate. There are also ad hoc work meetings and field trips during which leaders and federal/state agency representative interact.

So, where does the public stand in this process? How do they feel about our public lands and the efforts underway to wrest control from the federal government and place under state control where leaders such as those who are challenging the BLM's RMP can have their way? A nationwide poll done by the CREDO wireless network challenging Senator Hatch's S.1783 that would force the preferred Northern Corridor through Red Cliffs NCA has garnered over 126,000 signatures by those across America who challenge the idea of politicians making decisions that should be left to those with more biological background. Even informal local online polls have shown that 64% of participating Washington County residents oppose the idea of this controversial road.

On a more general level regarding America's public lands, a recent poll by the Colorado College State of the Rockies Project "Conservation in the West Poll" showed support for keeping America's public land under federal control rather than relinquishing to the states. The college's website states:

Despite an uptick in anti-public lands rhetoric from militant extremists, Colorado College's recently released State of the Rockies Project Conservation in the West Poll shows strong public support for efforts to protect and maintain national public lands.

https://www.coloradocollege.edu/newsevents/newsroom/2016-conservation-poll-finds-support-for-public-lands#.Vp_OtZorLGg

From the college's January 2016 press release about the poll, key findings from the poll include:

- Ahead of the 2016 elections, 75 percent of respondents say issues involving public lands, waters, and wildlife are an important factor in deciding whether to support an elected public official, compared to other issues like health care and education.
- 83 percent of respondents believe the drought is a serious issue and in Colorado River Basin states (CO, NV, NM & UT) strong majorities favor using the current water supply more wisely over diverting more water from rivers in less populated areas.
- 75 percent of respondents support the renewal of the Land and Water Conservation Fund.
- 80 percent of respondents believe the U.S. Forest Service should be allowed to treat the largest and most expensive wildfires as natural disasters in order to have access to emergency disaster funding.
- 72 percent of respondents say national public lands, such as national forests, national monuments, or wildlife refuges help their state economy

Many of our local county and city leaders assert that growth will be hampered by BLM's RMP decisions. Few details have been presented to uphold this assertion. The BLM's St. George Field Office and the county, through the Habitat Conservation Advisory Committee (HCAC), have been managing these lands for many years. The HCP administered by the HCAC is currently up for renewal after its twenty-year life. Washington County was considered the fastest growing county in the nation leading up to the Great Recession in spite of these public lands. In fact, these public lands draw visitors from around the world to enjoy this area and provide recreational opportunities to residents. To assert that decisions by the BLM regarding

introduction of the California Condor, restrictions on some grazing and OHV opportunities, along with the myriad other concerns will challenge this area's growth seems foolish.

Although some citizens and leaders believe they know a great deal about public lands, the BLM and forest service inspect them, evaluate them, report on them and are in a position to have a fully developed factual base for their opinions. These activities are accomplished by trained, qualified personnel. Much of my testimony has concentrated on the Red Cliffs NCA and the proposed road through the Reserve and NCA because of the challenges that area faces.

Tortoise population presence and decline is well documented. As noted in the RMP, the animals have been studied since the 1930 as confirmed by the RMP's reference on page 399 pertaining to the Beaver Dam Wash NCA:

Woodbury and Hardy (1948, 187) described their study area between 1930 and 1935 as consisting of 1,200 acres that represented the "home area of a semi-isolated colony of approximately 300 tortoises". From these data, they concluded there were 2,000 or more tortoises in the estimated 70 square mile area of the Slope, and described the area as being potentially good habitat but for the impacts to the native vegetation communities as a direct result of overgrazing by sheep and other livestock.

So, populations in the Red Cliffs NCA, Reserve and Beaver Dam Wash NCA are and have been at risk for some time. Social trails through the Red Cliffs NCA have increased as our population has increased. Providing additional access via a road will not help this situation. So far the Mojave desert tortoise's listing has not been elevated from threatened to endangered. However, with the decline in population any other efforts to undermine those numbers could be seen as reason to elevate that listing, there providing additional demands on management, which I'm sure our local leaders would not want.

There is much more that can be addressed given the extensive nature of the BLM's RMP and the many obligations they have regarding management. I've hit on what I consider the high points that have resulted in this hearing being called. I appreciate having the opportunity to participate and share my thoughts and information on this important topic not only to our area but nationally, as well.