

Testimony of Washington County Attorney Eric Clarke
Before the
House Natural Resources Subcommittee on Federal Lands
Oversight Field Hearing on “Empowering Local Voices and Stopping Federal Overreach to
Improve the Management of Utah’s Public Lands”
April 22, 2024

Mr. Chairman Curtis, Representatives Maloy and Moore, and other distinguished members of the Committee, thank you for the opportunity to address you today. I have worked in the Washington County Attorney’s Office for thirteen years and served as the County Attorney since 2020. I spent much of the last nine years working on issues regarding the county’s Incidental Take Permit and related Habitat Conservation Plan for the federally protected Mojave desert tortoise and the planned Northern Corridor that will cross the southern portion of the Red Cliffs National Conservation Area. Unfortunately, in an election year the Biden Administration is moving at a reckless pace to undo our work. Their actions will increase traffic congestion, significantly harm our area’s Mojave desert tortoise population, make popular recreation areas on public lands immediately subject to development, and worsen our air quality. It is an example of politically-driven decisions leading to harmful results.

Washington County Background

We are a public lands county, with the federal government managing over 75% of our county. Of our 1.5 million acres, the Bureau of Land Management (BLM) manages 41%, the U.S. Forest Service manages 25%, and the National Parks Service manages 9%. Our county’s uniquely beautiful landscape is due to the junction of the Colorado Plateau, Mojave Desert, and Great Basin landforms. Our vistas, warm climate, and friendly community make Washington County an ideal place to live, and we continue to experience rapid population growth. In 1960 we had 10,000 residents. Today we have 200,000. To put that in perspective, our population has

at least doubled every twenty years since 1960. Tourism is also an important part of our economy, and we estimate that our area receives between eight and ten million visitors annually.

In addition to being an attractive place for people, our unique landscape is also home to fifteen federally protected plant and animal species. Our community leaders work diligently to ensure our population growth and outdoor recreation occurs in ways that preserves our local environment. Our open space and beautiful views are extremely important to residents and visitors.

2008 Washington County Growth and Conservation Act

We have worked diligently to preserve open space in our area. Twenty years ago, Governor Olene Walker encouraged our local leaders to work with Congress, conservation groups, and others to protect significant swaths of open space in our county while ensuring those protections would not impede water development, utility access, or our transportation needs. Those efforts resulted in the Washington County Growth and Conservation Act, which was passed as part of the 2009 Omnibus Public Lands Management Act (Public Law 111-11). That Act designated sixteen wilderness areas, totaling over 250,000 acres. It designated 165 miles of the Virgin River and its tributaries in our county as a Wild and Scenic River. Lastly, the Act established two national conservation areas protecting, to a lesser degree than wilderness, an additional 100,000 acres. This NCA acreage was expected to grow significantly when BLM fulfilled its commitment to acquire the privately held and school trust lands inside the Red Cliffs National Conservation Area (Red Cliffs NCA) boundary. The Act even designated that funds from BLM selling lands that had been listed for disposal years earlier would go towards acquiring the NCA inholdings. Truly, the “conservation” side of the Growth and Conservation Act was significant.

On the “growth” side, local and state land-use planners were given assurance that the Red Cliffs National Conservation Area’s creation would not unduly hinder running utilities across or accessing water that would be necessary for future population growth. This was important because the NCA’s southern and eastern boundary was adjacent to existing or planned developments, and its western boundary abuts the Shivwits Band of Paiutes Reservation. So to some degree, the NCA land must be utilized for the movement of water, utilities, and traffic.

The Act also gave BLM three years to develop a comprehensive travel management plan that would ensure appropriate access to all of the BLM managed land in the county. The contents of the final plan for BLM managed lands were to include one or more options for the construction of the Northern Corridor. As you can see in the map prepared for this testimony, the Red Cliffs NCA boundary dips south near the historic downtown of St. George City (*See Exhibit A*). Traffic planners have identified the need for a northern bypass road since the mid-1980s, and that is why it was included in the Act.

BLM’s Failure to Follow the Law

Inexplicably, the BLM has fully implemented all of the conservation measures of the Act while largely ignoring the growth measures.

Utility and Water Access. This Committee held a field hearing in St. George City several years ago to address utility and water access in the Red Cliffs NCA. The draft Resource Management Plan (RMP) for the Red Cliffs NCA inappropriately restricted utility and water access. Pressure from the committee combined with excellent work of then Deputy County Attorney Celeste Maloy resulted in most of these concerns being resolved before the finalization of the RMP.

Travel Management. Around 2014, the local BLM field office began working with the County on the required travel management plan. For six months county and BLM planners identified dispersed campsites, overlooks, and other destinations throughout the county. The draft plan was well written, and the county was largely supportive of BLM's preferred alternative. However, the plan was never released for public comment or adopted. It has sat on a shelf in the BLM office for ten years. We have even heard rumors that BLM plans to abandon the draft plan that was written with the 2009 Act in mind and instead craft a more restrictive transportation plan.

Northern Corridor. BLM's most egregious action was its open opposition to the Northern Corridor. This was demonstrated by the denial of an initial application for the roadway—which was overturned by the Department of Interior Board of Land Appeals, and the refusal to include a corridor in the Red Cliffs NCA RMP that would meet our area's traffic needs.

Granting a Right-of-Way

In order to directly address the Northern Corridor issue, in 2017, our county teamed up with the U.S. Fish and Wildlife Service, the State of Utah, the state's school trust lands administrators, local transportation planners and cities, and even the BLM. While our position remains that no additional biological mitigation should be necessary because the roadway was part of the bargain struck in the 2009 Act, we acknowledge there are legitimate concerns about the road's impacts on the Red Cliff's Desert Reserve, which is the basis for the county's Mojave desert tortoise incidental take permit. We also saw an opportunity to protect as open space the heavily recreated area shown as Zone 6 in the map before you (*See Exhibit A*). So, from 2017 to 2021, the BLM and Fish and Wildlife Service jointly completed an environmental impact statement that analyzed (1) an application from Utah for the Northern Corridor Right-of-Way

and (2) a twenty-five-year renewal of the County's desert tortoise incidental take permit. The ITP renewal process included amending the County's Habitat Conservation Plan so that the plan addressed commitments from the County, BLM, school trust lands administration, and others that would only be triggered if the Northern Corridor were approved. The most important aspect of those commitments was expanding The Red Cliffs Desert Reserve to include Zone 6.

Zone 6 contains 6,813 acres, half of which is BLM managed land. One-third of Zone 6 is part of the Red Bluff Area of Critical Environmental Concern which was already managed for conservation of the protected dwarf bear-poppy plant but not for the Mojave desert tortoise. Nearly half of Zone 6 is owned by Utah school trust lands administration, and the remaining acres are owned by private property owners or local governments. The area has a large and healthy desert tortoise population. It is also heavily recreated. Popular trails include Bearclaw Poppy and Zen. Rock climbing areas include Green Valley Gap and Moe's Valley. To put in perspective how popular the area is, trail counters show that over 100,000 mountain bike rides occur annually on Bearclaw Poppy Trail alone.

In order to ensure that all impacts to the desert tortoise from the construction of the Northern Corridor would be fully offset, the county and its partners proposed that all 6,813 acres in Zone 6 be managed for the benefit of the tortoise, that the prior development authorization of 3,341 acres of non-federally managed lands be done away, and that tortoise culverts be strategically placed under Cottonwood Road in the portion of the Red Cliffs NCA near the Northern Corridor. In acres this created a 12:1 gain to loss ratio; in actual tortoises that would be disturbed, the ratio was 8:1 (but with new information we believe it is closer to 10:1), and in fragmentation of tortoise habitat the ratio is also 8:1. (See appendix G, Determining Fully Offset for the Northern Corridor of the 2020 Amended and Restated Washington County Habitat

Conservation Plan.) No one can reasonably refute that the proposed benefits to the tortoise recovery efforts far outweigh the harms caused by the construction and ongoing use of the four and half mile-long Northern Corridor.

It is shocking that in order to prevent the construction of a roadway expressly allowed by law, President Biden's Department of Interior is going to remove protections on thousands of acres of occupied desert tortoise habitat! At most, fifty tortoises will be temporarily removed from the right-of-way and have their movements impeded until the road is finished and they can cross under its bridges or culverts. But at least 350 tortoises will be relocated out of Zone 6 and into the Red Cliffs NCA—a significant distance where they will lose access to all of their prior burrows—when the trust lands and private property in Zone 6 are developed.

Breaching Trust

In addition to the horrible biological path the Biden Department of Interior is taking, they are also burning the bridges built by decades of working together in good faith. Since the Northern Corridor Right-of-Way was issued in January 2021, our county has been obligated to fulfill many commitments in connection with the road's approval. We have spent over \$6 million! We have closed down areas to OHV use with fencing, signage, and regular law enforcement presence. We purchased enough acres of land to offset the loss of acres from the road at a 3:1 ratio. We purchased grazing permits to be retired. We built a public outreach center and educated the public about our area's sensitive animals and plants daily. We have implemented tortoise conscious development restrictions for utilities crossing Zone 6. And we have significantly cleaned up and reduced the amount of trash dumping that had occurred in the area for decades. We fulfilled our part of the bargain.

But neither the BLM nor the Fish and Wildlife Service ever indicated that we should hold off on these activities or that our obligations were being put on hold while they negotiated for years with environmental groups. It is clear they intend to eliminate the corridor and not compensate the county in any way for the taxpayer dollars we spent under our Northern Corridor obligation. It is unclear how we can work with these agencies in the future if they are going to go back on their commitments and keep the full benefit of our work and resources.

Conclusion

We are very grateful for the constant support and assistance of the Utah Congressional delegation and their staff. We have made significant progress on these issues over the last ten years. While we will likely suffer a setback this year due to President Biden's reelection-geared decisions, I am confident that with the facts on our side and the broad support we receive from our local, state, and federal partners, we will get this fixed and continue to appropriately balance growth and conservation in our community. Thank you for holding this important hearing today.

Exhibit A. Map of the Red Cliffs Desert Reserve showing Northern Corridor and Zone 6 referenced in Eric Clarke's testimony.

