

**Testimony of Michael Ortega
City Manager for the City of Tucson, Arizona
Before the United States House of Representatives
House Committee on Natural Resources
Subcommittee on Federal Lands**

**Hearing on H.R.1547, Udall Park Land Exchange Completion Act
July 14, 2017**

Chairman McClintock, Ranking Member Hanabusa, Representative McSally, and Members of the Subcommittee, thank you for the opportunity to testify in support of H.R.1547, the Udall Park Land Exchange Completion Act. I appear before you today in my capacity as City Manager of the City of Tucson, Arizona, where the Morris K. Udall Park is located.

H.R.1547 formally completes a historic agreement regarding land previously exchanged between the City of Tucson (City) and the Bureau of Land Management (BLM) in 1989. It eliminates the reverter clause from the City of Tucson's patent for 173 acres at Udall Park, a City-owned regional park in the northeast quadrant of the Tucson metropolitan area. The City received the patent from the BLM and the BLM was compensated for the fair market value of the reverter by the City, with unencumbered title to 297 acres of City owned land adjacent to Saguaro National Park on Freeman Road in Tucson. The Freeman Road parcel had been purchased by the City in 1987 and was valued at \$4.2 million in 1989. The Act directs conveyance of the Federal reversionary interest in Udall Park to the City, as the parties intended when the exchange was made.

This legislation finally resolves an issue that has been unsettled for 28 years. The specific circumstances regarding lifting the reverter are unlike any other request being considered by the BLM or the Congress, since the BLM was actually compensated for the value of the reverter in 1989, when the exchange agreement was executed. Some have labeled this a transfer of Public Lands to the City of Tucson. That is not the case. The City holds legal title to Udall Park, but that title remains under a cloud because of the reverter clause, that all parties agreed in 1989 would be removed in the manner proposed in this legislation.

Background

Udall Park is a highly developed and very popular urban park, used by City and surrounding Pima County residents alike. The City has invested millions of dollars in park facilities, including construction of very large community recreation and senior centers, a large swimming pool, a walking track and multiple athletic fields and picnic areas. In 2011, the Mayor and Council approved a Master Plan Update that calls for plans to enlarge the recreation development footprint in the park. The existence of the reverter has directly impeded the City from taking advantage of commercial opportunities to supplement park funding, approve certain community events or look to other commercial ventures on small portions of the park that would benefit the city in general.

Pursuant to the terms and conditions of the Recreation and Public Purposes Act ("RPPA"), on May 16, 1980, the City of Tucson entered a 25-year land lease of 172.8 acres from the BLM for what would become Udall Park. ¹In 1986, after considerable investment by the City, and at the City's request, the BLM granted an additional 25 years, extending the lease term through at least October 8, 2011, under the terms and conditions of the RPPA.

On June 26, 1989, in furtherance of developing Udall Park and in pursuit of potential settlement of litigation between the BLM and a third party, the Mayor and Council of the City authorized and directed the City Manager by Resolution 1493 to enter negotiations with the BLM and any other necessary parties for the transfer of title to 297 acres of land recently purchased by the City for \$4.2 million dollars, commonly known as the "Freeman Road Property".^{2 3}

On September 5, 1989, as those negotiations were nearing completion, the US Department of the Interior, through the BLM and its State Director, Dean Bibbes, issued a letter to the Assistant City Attorney in regards to the anticipated signing of an "Agreement Between the City of Tucson and the Bureau of Land Management Regarding Udall Park and For Other Purposes", committing to "support legislative efforts [post-closing] to eliminate the reverter clause in the [to-be-issued] patent to the City of Tucson executed pursuant to that agreement."⁴ In reliance on that letter, on October 4, 1989, the aforementioned agreement was approved by Ordinance No. 7289 of the Tucson Mayor and Council, and executed by the parties effective on that date.⁵ Notably, in Section 20 of the Exchange Agreement, page 9, the parties expressly agreed that the terms and conditions of the conveyance, including for example the RPPA reverter in the title patent, would apply to subsequent lessees, assignees, or successors of interest to the Udall Park property, "unless the United States, by written document, releases Tucson from those promises or said promises are rendered inapplicable by the completion of the events described herein or by subsequent legislation." [*emphasis added*]

In addition, at the time of the exchange, the City paid \$135,000 to move a US Geodetic Survey facility from Udall Park to National Park Service lands and, at the request of the BLM, the City committed to resolving a long-standing sand and gravel trespass being committed by a third party on federal minerals adjacent to Udall Park. The trespass was

¹ Aerial photographs of the leased land after it was initially developed by the City and how it generally exists today are attached as Exhibit A.

² Aerial photographs of the Freeman Road Property as it existed in 1989 and as it generally exists today, are attached as Exhibit B.

³ An aerial photograph of the eastern portion of the greater Tucson area showing the locations of both Udall Park and the Freeman Road Property is attached as Exhibit C.

⁴ See, the letter from the State Director attached as Exhibit D.

⁵ The Exchange Agreement, along with an Escrow Closing Statement is attached as Exhibit E.

valued at \$324,000 and was the subject of litigation in US District Court. Execution of this agreement and a subsequent agreement between the City and the third party resolved the litigation, saving all the parties, including the BLM, considerable expense, uncertainty and time.

The nature of the situation, the content of the agreement and the commitments made were known by the Arizona Congressional Delegation and the BLM's Headquarters in Washington, DC at the time. After the agreement was executed and lands were exchanged, the City drafted legislative language as requested to lift the reverter. The City provided this draft to the offices of the Arizona Congressional delegation at the time and the BLM.

Unfortunately, the legislative effort did not proceed due to transitions of key individuals in the offices of the City, the BLM and the Senate. As time passed, the individuals with familiarity of the cloud on the title were no longer involved. It did not come up until recent disputes with the BLM regarding the City's use of and plans for a small commercial lease on the property arose. As a result of the disputes, the City researched the issue and discovered the long-ago agreement that was never fully completed, since the legislative solution was not pursued as promised.

It should be noted that, while the City proceeded to develop Udall Park as intended, the BLM took a different path for the Freeman Road Property. The BLM occupied the house on the 297-acre parcel as its Tucson Office for several years. Then, in October of 1992, the BLM entered into a 3rd party land exchange. In exchange for most of the Freeman Road Property and the house from the BLM, the exchange partners provided the BLM with a unique and sensitive parcel called the Kingman Ranch at the eastern end of Broadway Blvd, adjacent to Saguaro National Park and multiple scattered riparian parcels in the Empirita Ranch, which is now a Conservation Area in Pima County. The BLM occupied the house on the Kingman Ranch as its Tucson Field Office until a few years ago, when a new office was built near the Tucson International Airport. In 1996, the National Park Service built a fire operation center on the Kingman Ranch and moved into the old BLM offices in 2010 when the BLM vacated that property. Those offices are now being used by the Park Service and the US Fish and Wildlife Service as a Desert Research and Environmental Learning Center.

Conclusion

This is a unique situation, unlike any other reverter elimination being proposed anywhere on BLM administered lands. H.R. 1547 is needed to complete what should have been completed almost 28 years ago, and to provide an enhanced recreational and economic future for the citizens of Tucson and its environs.

There is strong evidence that both the BLM and the City intended to eliminate the reverter clause. The City has long ago accomplished everything that BLM requested in the Exchange Agreement. The City transferred unrestricted title to a much larger tract of land worth at least \$4.2 million in 1989 dollars (Freeman Road Property) to the BLM, paid \$135,000 to move the USGS facility from Udall Park and resolved a very costly and

contentious mineral trespass on adjacent federal minerals. It was clearly understood that BLM would work with the City to remove the RPPA reverter in the Patent for Udall Park. The City of Tucson provided the BLM with full, fair consideration through the Exchange Agreement.

The City of Tucson is an urban community with limited resources. It simply cannot be held to pay twice for what it bargained for decades ago. The intent expressed by the parties before, within, and after that 1989 Exchange Agreement is finally given meaning by the Udall Park Land Exchange Completion Act.

The City has every intention of maintaining Udall Park as the vibrant community resource it has become. However, it needs the certainty that clear title provides to find creative and compatible ways to take advantage of economic opportunities that have been heretofore denied by BLM regulation and oversight. Our City is committed to protecting this public asset and making wise choices regarding future management of Udall Park. The Mayor and City Council of Tucson have been very open to community input, soliciting public comment and engagement.

In closing, I want to thank US Representative Martha McSally and the Arizona Congressional Delegation for introducing this important bill that brings resolution to the historic exchange, and provides a way for the City of Tucson to expand the use of Udall Park. I appreciate, Mr. Chairman, your leadership and that of your subcommittee in your consideration of this important issue. Thank you for the opportunity to testify before your subcommittee, I welcome the chance to respond to questions you may have.