

Committee on Resources

Testimony

TESTIMONY OF WASHINGTON COUNTY, UTAH COMMISSIONER

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BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS

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The first portion of this paper deals with the history of the appraisal negotiations for the Washington County Habitat Conservation Plan. It was taken from work done by Dallin Gardner, (no relation) a consultant for another property owner.

In late 1993 and early 1994, much time and effort was spent by members of the Habitat Conservation Plan Steering Committee and Federal Officials (Bureau of Land Management - U.S. Fish and Wildlife Service - Justice Department and others) to find an equitable means of valuing the private lands within the proposed HCP preserve. Agreement was not reached until a major public "summit" meeting was held in St. George, Utah sometime in March or April of 1994.

Prior to this meeting and because of serious conflicts which arose concerning the use of Utah based BLM appraisers, BLM management offered a list of approved appraisers from outside Utah from which James Doyle, representing the private landowners involved with the HCP process could make a selection. BLM also selected Mr. Don Duskin (Chief, Branch of ATROW and Appraisal, Oregon/Washington) to be the review appraiser for the appraisal work to be done on the Washington County HCP private lands.

The public meeting was attended by BLM, FWS, Washington County, HCP Steering Committee and Utah Congressional Delegation representative. Private landowners also attended, **ALONG WITH (3) OF THE BLM RECOMMENDED APPRAISERS**, Mr. Duskin, Jerry Kinghorn, legal counsel for Mr. Doyle and numerous other people. Representatives of the Justice Department were standing by in Denver to respond to any questions or problems which might arise out of the meeting. The meeting was chaired by Russell Gallian, representing the Washington County Commission.

The valuation issue was paramount at this meeting. Agreement seemed difficult with regard to the latest of several "Draft Appraisal Guidelines" issued by the Justice Department. The morning session of the meeting failed to produce any tangible results. Following an early lunch recess, the meeting reconvened and upon explanation being made by Mr. Donald Duskin about how the appraisal process might proceed, agreement was reached and the process labeled "PRELIMINARY VALUE ESTIMATE" was launched.

An "AGREEMENT TO OBTAIN PRELIMINARY VALUE ESTIMATE" (PVE) was entered into between BLM and James Doyle, representing the Washington County private landowners, recognizing that landowners (both under and not under contract to participate in a proposed Interstate Land Exchange) would be universally impacted by this process. The PVE was a joint venture between BLM and Doyle with each

obligated to pay ½ of the \$42,500.00 bid price.

Note: It is important to consider here, a quotation from the "AGREEMENT TO OBTAIN PRELIMINARY VALUE ESTIMATE":

"...The Preliminary value estimate to be performed by the appraiser will be a preliminary value estimate in accordance with the provisions of this Agreement, and will not be a final appraisal; rather it is contemplated that if a transaction is later negotiated between the parties, the preliminary value estimate will be updated to a final appraisal at that time.

(Underlining added).

Over a month was spent by BLM, Mr. Kinghorn, and Dallin Gardner preparing and reviewing the "Preliminary Valuation Solicitation" for mailing to the BLM recommended appraisers (and others) on May 25, 1994.

Subsequently, bids were received and reviewed. Sell-Huish and Associates, Inc., represented by Jan Sell was selected to do the work in accordance with the agreements already in place.

On July 11, 1994, a pre-appraisal review meeting was held in the BLM offices in Salt Lake City. This meeting was attended by Mr. Kinghorn; Ted Stephenson (BLM); Don Duskin, Review Appraiser; Jan Sell, selected appraiser; and Dallin Gardner, representing the interests of certain landowners whose property was proposed to be involved in the Interstate Land Exchange. The purpose of the meeting was to answer questions and review the "PRELIMINARY VALUATION SOLICITATION", including the "DRAFT APPRAISAL GUIDELINES". Open discussion was welcomed on any and all points of clarification and concern prior to Sell-Huish beginning the appraisal process.

The contract with the landowners and the Purchase Order from BLM were then issued, authorizing Sell-Huish to perform the appraisal. Work was started on July 14, 1994.

During the following (3+) months, the appraisers completed their work, which consists of a "COMMON DATA BOOK" and a separate "SELF CONTAINED APPRAISAL REPORT" for each of the (35) parcels included in their contract.

In addition to the work done by Sell-Huish, Mr. Duskin, the Review Appraiser, made site visits to inspect the (35) parcels and all of the comparable properties identified and used by Sell-Huish.

On October 20, 1994, nearly (5) months after the "Solicitation" for bids had been released, Sell-Huish completed their work and sent final information to Mr. Duskin, Mr. Doyle and landowner representatives.

Mr. Duskin completed his review over an additional period of (5 ½) months from the completion of work by Sell-Huish. During this time he performed independent verification of information and recommended technical and analytical corrections to Sell-Huish and, in cooperation with Sell-Huish, made some value adjustments.

On April 5, 1995 (10 ½) months after the "Solicitation" for bids was issued, Mr. Duskin released his own

final review comments in the form of a Memorandum to the Utah State Director of BLM. This memorandum explained that "...The appraisers have corrected all of the technical and analytical deficiencies, previously noted." Mr. Duskin then presented his own independent list of "approved market values" by Property Owner, Size and market Value for each of the subject (35) parcels. There was a total of 6,803.83 acres involved with a total "approved market value" of \$83,820,000.00.

Any appraisal is intimately related to the history, background and special conditions or circumstances affecting the property, its ownership or other special situations. It would be impossible for a new entrant into the appraisal environment of the PVE properties to understand and/or duplicate all of the discussions, instructions and interpretations which had already been jointly agreed to by the parties with respect to obtaining estimates of value for these lands.

When the time came to have a final appraisal, property that was homesteaded by my grandfather, Erastus Gardner, about 60 years ago (still in possession of the Gardner family), and in the center of the HCP Reserve, was selected by the BLM as one of the first pieces to be exchanged.

Instead of upgrading the previous appraiser's PVE as was called for in the agreement, a new appraiser, who had no background on any of the previous discussions, was brought in without any input from us. I showed the appraiser, Paul Meiling, our property and reminded him that the tortoise was not to be considered in the appraisal process, as was agreed to. To this he replied that he had no knowledge of any agreement to delete the tortoise in his evaluation, and that his work would reflect the tortoise presence on the land. In his appraisal, (see Exhibit One) Mr. Meiling states that he didn't get comparables for our property, because of the "heavy and severe impact" of the tortoise. He placed a value on our property of less than 15% of the PVE on the same land. As it turned out, Mr. Meiling was sent out under contract from the Utah State office of the BLM, who by prior agreement was to have no involvement. Because of this low ball appraisal, all exchanges came to a complete stop. Ten months later our family agreed to bargain for a price on our property with the BLM. The BLM team consisted of Jerry Meredith; District Manager for BLM, Dave McIlnay; Chief of the Lands Branch in the BLM California State Office, and Dick Young; Chief of Land Resources for the National Parks Service Intermountain Field Area. My brother, Larry Gardner, and I represented our family. After discussions over several days, and inspecting the subject property and comparable sales; we agreed upon a price that included a mitigation deduction of \$239,000. (\$1,000. per acre). This was the estimated cost for a Section 10 Permit if we were to develop the land ourselves.

An inflation factor was added back on because of the age of the appraisals. Then Fish and Wildlife Service mandated additional mitigation of fencing costs, because if we were to develop the property it would have to be fenced (15,800 feet). Fish and Wildlife wanted the price of a block wall, but we agreed on wire fencing, similar to some around St. George at \$4.00 a foot. That was an additional deduction of \$63,360., or \$260. an acre for a total of \$302,360.; in mitigation costs (Exhibit Two). BLM also agreed that the appraised value of any BLM land would be tied to the date the agreement was signed, March 20, 1996. Our family had looked extensively at lands to exchange for. We selected an appraiser, Eric Johnson, from the approved list supplied to us by BLM. He was extremely slow (six and ½ months) in completing his appraisal. After it was turned in and corrections made, we were told his work had been accepted by John Widdoss, the selected BLM Review Appraiser (Exhibit Three). A month or more later we were told it had been rejected by Dave Cavanaugh, BLM's Chief Appraiser in Washington, DC because it had too many problems (an appraisal he did for St. George City was also rejected). At this point, we made a selection of an additional parcel,

because mining claims and archeological sites had restricted available acreage in the first parcels selected (Exhibit Four). We selected a different appraiser from the BLM's approved list. He is reappraising the original acreage, plus he has appraised the added parcel. We were then informed that this second appraisal was rejected because the land was of a higher value today (than our agreed upon date of March 20, 1996), and had possibilities of higher value in the future. We realize BLM has had problems in the Las Vegas Exchange, but we feel they are going overboard the other direction in Washington County, Utah. It is as if the deal, on the surface, has to appear like the BLM got the best end of the bargain, rather than making it fair to both parties.

I would like to address two other issues I think are unjust. The majority of the acreage inside the Reserve was not for sale. Property owners, forced to give up land have accommodated the BLM by exchanging for other property outside the Reserve, yet they have had to bear the cost of the appraisals on something they were forced into. If surveys are required they have to pay for government surveys also, even though they could be done cheaper by private companies. Not only have we had mitigation costs to pay we have also suffered severe opportunity costs because BLM has not been able to perform on a timely basis.

Many families have been forced to bear an inordinate burden for the broader public interest declared by Congress under federal law reflected in efforts to preserve the desert tortoise. Not only were we forced to sell our private property, we were also forced to assume the costs of an elaborate federal process and pay for tortoise impacts which should be borne by the public as a whole.

Another problem has been conflicts with archeological sites. Every exchange so far has been impacted by archeological sites. These are very expensive to mitigate. As a result, most exchanges have had the sites carved out, sometimes leaving pockets of BLM land or peninsulas into private land (Exhibit Five). In some cases mitigation is required including some sites on one of our exchange parcels. The Washington County Water Conservancy District, in negotiations with Zion National Park and BLM agreed to exchange a reservoir site on private land above the Park, for a location below Zion that would not impact the flow of the Virgin River through the Park. The new location had archeological sites that had to be mitigated. It cost the District around \$150,000. in archeological surveys and clearance and an additional \$700,000. in mitigation. Of this amount, \$65,000. was paid by BLM because some sites overlapped on BLM ground. These mitigation costs should be deducted from the appraised value like BLM deducted mitigation for a Section 10 permit and fencing in our agreement. Instead they add significant costs to the exchanged property above the appraised value.

Appraisals of other private property within the HCP have improved since Public Law 104-333/110 Statute 4093 has passed, which deals with the exchanges in Washington County, Utah. Also, Bill Lamb, Utah State BLM Director, has assigned more local BLM personnel to assist in land exchanges. Mr. Cavanaugh has been to St. George many times assisting. More emphasis needs to be continued at the local level and compensation needs to be timely and at fair market value. With these changes, things have gone smoother and several exchanges have occurred. But, questions of fairness, such as those presented in this testimony, still exist. I am concerned that many other private property owners will be forced into unfavorable compromises when faced with the burdens created by the process involved in these land exchanges.

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