# Statement of Garfield County Commission Chairman Maloy Dodds

Presented on Behalf of the Western Counties Alliance at the
House Resources Committee's Forest and Forest Health Subcommittee
Hearing on "The Impacts of Federal Land Ownership on Communities and
Local Governments."

Wednesday, June 15, 2005

Mr. Chairman and members of the subcommittee, my name is Maloy Dodds and I am Chairman of the Garfield County, Utah, County Commission, on which I have served for 11 years.

I am here today representing the Western Counties Alliance, a new organization being formed by rural, mostly western counties. Our mission is to bring greater balance to the federal natural resources policy debate and to advocate for multiple use management of federal lands to the maximum possible extent. We appreciate the opportunity to present our views on the impacts of federal ownership on communities and local governments.

Let me use my county as an example of the kinds of impacts living with the federal government as a neighbor has. Garfield County is a large, rural county located in south central Utah. It is about 3.4 million acres in size with a population of about 4700. To put that into perspective, Garfield County is larger in area than the state of Connecticut. It is two and a half times larger than Delaware and five times larger than Rhode Island.

In some ways my county is not typical of rural public lands counties. About 96% of the land is controlled by the federal or state governments. That breaks down to about 90% federally-controlled and about 6% state-controlled, leaving only about 4% private land in the entire county.

This is one of the highest percentages of federally and state controlled land in any county in the country. We have most of the federal land management agencies represented, including the Park Service, Forest Service, Bureau of Land Management and the Bureau of Reclamation, so we have a wide range of experience with several federal bureaucracies.

In our county, we have Bryce Canyon National Park, part of Canyonlands National Park, part of Capitol Reef National Monument, part of Lake Powell National Recreation Area, a large part of the new Grand Staircase Escalante National Monument, as well as three state parks. Few western counties have both this concentration of federal land ownership and such a variety of management overlays.

Any consideration of the impacts of federal lands in our county generally starts with the presence of national parks and monuments. Certainly, these bring in tourist dollars and we are grateful for that. Indeed, without tourism, we probably could not survive given that we have only 4% private land in our county. But I must point out that most tourist-generated jobs generally are minimal skill, minimum wage jobs-- not the kind that can support a family.

Those areas that legitimately qualify for special designation, such as Bryce Canyon National Park, are an asset. However, they are offset by the restrictions imposed by those that do not qualify and were not legitimately established, such as the Grand Staircase Escalante National Monument. I will discuss that in more detail below.

I would like to focus my testimony on the costs federal land ownership impose on communities and local governments. There are a number of costs that are not obvious and I think that it is important for the committee to understand what a wide range of these costs there are. While the proportion of these costs will vary from county to county in the public lands states of the West, most counties will be incurring all of them to some extent.

While on the subject of tourism, let me focus on some of the costs which are usually overlooked in studies that purport to show the economic benefits of various federal land ownership.

As a result of the increased visitation to our county, we have had to add two more sheriff's deputies at an annual cost of about $150,000. Because of the increased garbage being generated, we now have to upgrade our landfill at an estimated cost of $200,000. Our costs for search and rescue have increased and we have had 3 visitors die in the Grand Staircase National monument in just the last 2 years. Most of the burden of these search and rescue operations falls on the county. To deal with the increased regulation, planning and coordination we now face, we have had to add a county employee dedicated just to this activity at an annual cost of about $45,000.

To again put it in perspective, we have to do all these things on an annual county operating budget of about $3.5 million. So, the presence of these federal destination areas is a mixed blessing at best.

But as I have said, all counties incur these costs to some extent. To illustrate that, I have asked some of my fellow county commissioners to estimate some of the costs they are incurring from the presence of federal lands in their counties and I am attaching them to my statement.

Beyond tourism, our economy is largely based on multiple use of the natural resources largely found on federal land. These are primarily logging, mining, oil development and grazing, none of which are major components of our local economy themselves, but all together forming the basis for it.

Let me make it clear that our economy is not doing well. One indicator is the loss in our population over just the past 5 years. Since the 2000 Census, according to a study done by the Utah Governor's Office of Planning and Budget, we have lost more than 1% of our population. Our school population has shrunk even more, by about 25%, because most of the people moving out of our county are the younger families and young people who are starting families somewhere else because they cannot support a family on the employment they can find in our county.

One of the costs, though difficult to quantify, is the loss of quality of life of our communities as a result of our young people, especially young families, moving away. As with any community, our children are our greatest natural resource. It is a natural resource we would like to keep, but one which, in too many cases, we export. To the extent that federal land management policies negatively affect our local economy, they represent a cost to our communities. As I discuss below, these policies do indeed have that negative impact.

While these costs may be difficult to quantify, there are a number that we can quantify.
Many of these are costs for services that are the legitimate responsibilities and activities of any county. The difference is that in most other counties, they are paid for by taxes, generally the property tax. I can tell you that in a poor county like ours, you cannot tax property on the 4% of private land at a high enough rate to pay for these services generated by visitors and other activities related to federal land ownership. This is true for many rural public lands counties.

Of course, even thought they create these costs, we cannot tax the 90% of our county that is owned by the federal government. This means that unless some transfer of funds was made to counties like ours, our 4,700 residents would be subsidizing the federal government and all of the other people in the United States who come to recreate on the public lands in our county. In fact, we believe we are subsidizing the federal government and all of the rest of the American People who own these lands.

This clearly is unfair. Recognizing the inequity of this situation, Congress in 1976 enacted the Payment in Lieu of Taxes (PILT) program to at least partially pay its fair share of the costs to local government that the presence and use of the public lands create. A set of formulas was established to pay counties based generally on the amount of federal land within their counties.

PILT was a great idea and a just response. The problem, however, is that in the 29 year history of PILT, it has never been fully funded, in fact, it has never been even close to fully funded. In floor action taken just a couple of weeks ago, the House in the Interior Appropriations Bill, appropriated $242 million for FY 2006. This is the closest Congress has ever come to fully funding PILT but it still only amounts to 80% of full funding.

This shortfall represents a real, tangible cost to communities and local governments. In my opinion, even full funding of PILT would not pay the true costs of federal ownership in counties such as mine, but we would take it and not quibble about the difference.

I should like to point out here that because of the large amount of federal land in my county, the population cannot reasonably grow much beyond what it is currently. With population being a determinant of PILT funding under both formulas A and B, my county is one of only three in Utah that gets less than the minimum PILT amount under either formula. There are other counties across the West in this same situation.

As a matter of equity, Western Counties Alliance supports adding a third formula to PILT to deal with counties such as ours with transient populations that have federal destination sites such as national monuments, national parks or national recreation areas. This formula should treat counties around the West, like Garfield, more fairly. These large transient populations certainly demand services and impact our infrastructure, but because they are not permanent, they are not counted in the current formulas for allocating PILT funds.

I would be remiss not to recognize and thank four of the members of the Resources Committee for their leadership in getting the floor amendment passed to increase funding to the 80% level. We very much appreciate Congressman Cannon for his leadership as Chairman of the House Western Caucus, Congressman Rahall, Ranking Member of the full committee, Congresswoman Cubin, who introduced the amendment to increase PILT funding to this level, and Congressman Mark Udall who also co-sponsored it.

I know I speak for all western counties when I express our heartfelt thanks for your historic accomplishment. If this appropriated level can be maintained, it will significantly and measurably improve the quality of life of our people in Garfield County and in counties across the country with significant federal land ownership.

Let me also comment on the Administration's recommended request of only $200 million for PILT for next fiscal year. This would have been a $27 million, or about a 12%, DECREASE in funding from the current year. This requested amount is so irresponsible that it is nothing short of outrageous! The Administration is saying, in effect, that even though the law of the land recognizes that the federal government has an obligation to make payments in lieu of taxes, it refuses to do so. It is proposing to pay even a smaller amount of the very real costs that the presence of federal land and related activities imposes on the citizens of rural western counties.

We hope the conference committee will agree with the House number of $242 million. The amount recommended by the Senate Appropriations Committee of only $235 million does not even keep pace with inflation.

To add insult to this injury, the federal government continues to acquire even more land, making the under funding of PILT that much worse. At the same time the President recommends a 12% reduction in PILT he asked for $212 million for acquiring additional land! The House Appropriations subcommittee wisely and responsibly trimmed that to only $43 million. But it did not put the difference into PILT, recommending to the House funding it at only $230 million, or about 76%, so my fundamental criticism of the Administration also applies to Congress.

To again put this into perspective, based on our current year PILT payment, the difference to Garfield County between getting 66% of what we are due and getting the amount we would get at the 80% House-passed level is about $129,000. The difference between 80% and 100% is about $127,000. In a county operating budget for the current year of about $3.5 million, you can see that this makes a huge difference.

PILT payments are an obligation of the federal government that should NOT be subject to the same budgetary trade offs that true discretionary programs are, yet it always is. It is an obligation that should be fully funded every year. I can tell you that we, in the counties, cannot fund search and rescue at only 66% of what is needed and only try to save 2 out of 3 people who get lost or need help. We cannot only take 80% of the garbage generated by the visitors to the federal lands in our county.

When the federal government does not pay even close to its fair share, we county residents have to pick up the cost of the difference. This means that we are directly subsidizing the federal government and our fellow co-owners of these lands that belong to all the people. It is not right and it must stop. If these lands belonged to private citizens they would have gone to a tax sale years ago.

I know that this is an oversight hearing, not a legislative hearing, but I hope that the committee will move quickly to hearings on H.R. 2337, the bill to phase in permanent full funding of PILT over three years that has been developed by the Western Caucus and the Western Counties Alliance. Again, we want to express our appreciation to Western Caucus Chairman Cannon for his leadership on this issue.

While the under-funding of PILT is the most obvious and easily calculated cost of federal land ownership, it is by no means the only one. Let me touch briefly on some others. They all exhibit at least one of three general characteristics:

• They are costs resulting from the Executive Branch agencies not following the laws passed by Congress.

• They are increased costs associated with having to deal with the federal bureaucracies and federal law and regulation.

• They are costs that result from federal laws, regulations or policies that ignore sound science and sometimes even simple common sense.

Some problems manage to qualify on all three counts.

In all these cases, I want to stress up front, that just as with the shortfall in PILT funding, the solutions lie squarely here

in Congress. Under the Constitution, Congress has exclusive authority over the public lands and resources. This gives Congress the complete power to correct these problems. This also means, however, that Congress has the ultimate and sole responsibility for doing so.

One of the biggest problems most rural western counties face is the continuing conflict over RS 2477 road rights-of-way. For 110 years, until it was repealed with the passage of the Federal Land Policy and Management Act in 1976, these rights-of-way were transferred directly by Congress to counties like mine to provide access to and across the public lands. The Executive Branch agencies were bypassed completely in this transfer mechanism, something that they recognized, for example, in regulations issued in the mid 1930's by the Interior Department.

These rights-of-way represent a transfer of a property right and in several places in FLPMA Congress specifically recognized the validity of these property rights-of-way that had been validly transferred up to that time.

Yet, even though no authority over these roads was delegated by Congress to the federal land management agencies, they have increasingly acted as if they have such authority. I can tell you flatly that in my county and in counties across the public lands states, these federal land management agencies are violating not just the spirit, but the letter of federal law.

The result is a huge cost to counties like mine. If we lose access to and across the public lands because the federal agencies are illegally closing our county roads, it costs us in many ways, such as, less tourism opportunities, loss of access to the use of the natural resources on which our county economy depends and in other ways. The alternative, to go to court to protect our rights, also costs us real dollars. But we have had no choice but to do that.

Over about the last 20 years, Garfield County alone has spent about $2 million dollars trying to protect our property rights-of-way, much of it in litigation over the Burr Trail Road. The state of Utah and other Utah counties have helped us pay much of these costs but a disproportionate share has been borne by our taxpayers.

While some of these costs have been to protect our road rights-of-way from legal attack by environmental extremists, much of it has been to protect them from federal agencies. I wish I could report that we have found justice at the end of some of these legal battles, but our success is either mixed or the cases are still being adjudicated. We are also finding that this is an area, like so many others, that is too often plagued by activist judges.

Congress must step in and resolve this ongoing problem. Until it does, it will continue to cost rural public lands counties millions of dollars in legal fees as well as millions of dollars spent in legal costs to the federal government. This is money that could be better spent by both sides in many other ways.

One other less easily quantifiable cost of this RS 2477 problem, as well as a cost of some of the other problems that I will mention briefly, is that this flagrant disregard for the law by federal agencies increasingly is poisoning the relationship between federal agencies, and local government and local citizens. This results in huge costs to both the federal government and local governments and, among other things, results in less efficient and less effective management of the public's lands and resources.

Intensive oversight by Congress of the RS 2477 problem leading to a legislative correction is long overdue. Western Counties Alliance is working on an initiative on this problem and we will be making recommendations to Congress on how to solve it.

Other cost impacts of federal ownership occur because of federal policies and practices that discourage utilization of the public's natural resources for the public good.

The federal government is an unusual land owner in several ways. For one thing, it does not even know how much land it owns. The acreage numbers appear to fluctuate from year to year even independent of new acquisitions.

It is also clear that it does not need all the land it has. How much land the federal government should own is a topic for another forum, but the agencies own assessment is that at least 5 million acres is surplus. We would certainly like to get some of that land in Garfield County transferred from federal ownership.

If the federal government does not know how much land it has, and how much it doesn't need, it certainly cannot manage it efficiently and effectively. That is why we strongly support Congressman Cannon's federal lands inventory bill, H.R. 1370.

Again, realizing that this is an oversight hearing, we suggest that an additional requirement be added. Unlike most land

owners, the federal government does not know, nor often seem to care, what resources are contained on the public lands.

We had a recent example within the Grand Staircase Escalante National Monument when a resource inventory and evaluation was done as part of trading the isolated school trust land sections out of the monument boundaries. It quickly became apparent that these school trust lands were more valuable than had been originally thought. That means, of course, the adjacent lands within the boundaries of the monument itself are more valuable than had been previously thought.

Clearly, not knowing what natural resources could be responsibly developed on the public land exacts an economic cost on the surrounding communities that might otherwise benefit from this economic activity. We suggest that H.R. 1370 add a requirement for a more thorough resource inventory as well as the acreage inventory now called for.

However, we believe that the general rule should be that federal lands with no national interest for retaining them in federal ownership ought to be disposed of and put on the property tax rolls.

Let me say a few things about the Grand Staircase Escalante National Monument because the creation and subsequent management of this monument demonstrates a great deal about what is wrong with the way the Executive Branch is administering the laws passed by Congress.
Without going into detail, I will tell you flatly that the creation of this monument by President Clinton violated both the spirit and the letter of the Antiquities Act. There was no threat to any object of historic or scientific interest that justified the creation of any national monument, much less one of this size. Ostensibly, it was created to prevent environmental degradation from a proposed underground coal mine in Kane County which borders us to the south.

That mine would have had a surface footprint of no more than 40 acres. Yet, using the discretion Congress gives Presidents under the Antiquities Act, President Clinton determined that the smallest acreage of land required to "protect" supposed objects of historic and scientific interest from that coal mine was about 2 million acres.

We and other counties, along with the State of Utah, challenged the creation of that monument in court and we lost. The reason we lost, simply put, is that Congress allows the President "in his discretion" to decide how much land is required to protect the objects to be designated as national monuments. The courts have said, in effect, that if a President was exceeding his authority, Congress can amend the law or overturn his actions, but we are not going to get in the middle of this debate.

After he got away with creating the Grand Staircase Escalante National Monument, he used the Antiquities Act some 17 more times during his presidency.

Again, the Congress has to take the ultimate blame for this abuse of authority. With all the laws, regulations and procedures that have been adopted since the Antiquities Act was passed in 1906, there is no longer any justification for it. At the very least, Congress should amend it, perhaps along the lines recommended by former Resources Committee Chairman Jim Hansen from Utah, who suggested imposing a maximum acreage limitation and require that Congress act within two years to formally designate the monument or the land a president reserved would return to its previous status.

Special management designations, such as national monument status, clearly have an economic cost that is often, perhaps usually, not offset by any increase in tourism. Certainly that has been the case in Garfield County with respect to the Grand Staircase Escalante National Monument.

On the topic of special land management designations, let me also briefly discuss wilderness. How much land, if any, to designate as wilderness on public land in Utah has been one of the most divisive and heated federal land management debates in the entire country. I think it is getting increasingly strident for a couple of reasons.

Primarily, this is because with the passage of time, more experience with wilderness, and especially the advances of science, it is increasingly clear that wilderness designation almost always is not a responsible or appropriate management designation for the public's lands and resources. Wilderness is a recreation designation that is too often being used supposedly to protect lands and resources. In fact, we now can see that, like any other management scheme, wilderness designation also involves trade offs. Because it permits virtually no active management of the public lands and resources, it can often exact a heavy cost, all to provide a specialized recreation experience for a small number of users.

In the more than 40 years since it was enacted, the Wilderness Act of 1964 has never been given intensive oversight by the Congress. It needs extensive reform to bring it into line with the science and the realities of the 21st Century. The Western Counties Alliance has called on the Resources Committee to conduct such Wilderness Act oversight.

Two other aspects of wilderness must be mentioned, again elements that Congress should deal with. One is the continued existence of formally designated wilderness study areas (WSAs) on BLM land. These were provided for in FLPMA to manage areas which were candidates for formally designated wilderness until Congress could act to either designate them or return them to multiple use management. In Utah, we have 3.2 million acres of formally designated WSAs but the agency has recommended only about 1.9 million acres for wilderness. Of that, only 1.4 million acres meets the true intent of the Wilderness Act according to the BLM.

These WSAs were designated about 20 years ago and Congress still has not acted on any of them. They have become virtual de facto wilderness, with all the restrictions on resource development and many of the restrictions on access that accompany true, legally designated wilderness. Wilderness advocates and those within the federal agencies who oppose multiple use management are happy with this situation, of course. But there is a cost involved in all the many foregone benefits that could be realized from multiple use management of those areas that ultimately will not be designated as formal wilderness. That cost is exacted not just from the people who live in the immediate area but from the American people as a whole.

To move the problem of WSAs remaining as de facto wilderness for an indefinite period into the future, we propose that Congress pass sunset legislation. This would return to multiple use management all WSAs not designated as formal wilderness within a specific time period. We recommend 5 years. If this were enacted, there would be an incentive on the part of all interested parties to resolve the wilderness problem as opposed to the current situation.

The increased use by the BLM of “Areas of Critical Environmental Concern” is a variation on the broader wilderness problem and an illustration of how the BLM appears to be subverting the intent of Congress in FLPMA that most of the lands it manages be managed for multiple uses.

In the closing days, literally, of the Clinton Administration, the BLM issued a “Wilderness Handbook” that allowed the agency to create de facto wilderness study areas virtually anywhere it wanted. This handbook was clearly in violation of law and regulations and about a year after it was issued Western Counties Alliance, working in cooperation with the House Western Caucus, the State of Utah and others, persuaded the agency to withdraw it.

After it was withdrawn, we suddenly started seeing vast areas of ACECs being proposed in BLM management plans. Interestingly, the boundaries of these ACECs corresponded in many cases with areas that the agency wanted to make de facto WSAs. We think that this sudden increase in use of ACECs by the BLM is a violation of the intent of FLPMA and is illegal. It violates the intent of the authority to the BLM to establish ACECs and it is something that Congress should exercise its oversight authority to correct.

One other aspect of FLPMA and the cost of federal ownership bears mention. That is the lack of true consistency review and compliance by the BLM as required by Section 202. There are two types of costs. One is the administrative cost of participation in the federal agency planning process, monitoring it and trying to change it. Increasingly, western counties are having to add staff to deal with these demands and I mentioned that Garfield County has recently done so as well.

The second is the lack of compliance with state, local and tribal land use plans to the maximum extent feasible under federal law as required in Section 202. We, in the counties, develop land management plans that attempt to maximize a whole range of benefits for our county, including economic development. But when there is such an overwhelming federal presence based on land ownership, the success of these plans is heavily dependent on the federal land management polices meshing with our local plans. The net effect of this overwhelming federal ownership is that because these federal plans often create special management zones and buffer zones, they essentially also can plan the activities that take place on adjacent state and federal lands and, in many cases, do so.

Because the agencies routinely ignore the requirement Congress wisely inserted into FLPMA requiring this consistency to the extent feasible, our plans are less effective than they should be. That creates costs to us and also is something Congress should correct.

Finally, I have touched on federal law, like the Wilderness Act being outdated in terms of current scientific understanding. This applies in other areas as well, but also includes the misuse, lack of use, or misinterpretation of science by these federal agencies.

One area of particular concern is with the Endangered Species Act. The costs from this one federal law on local governments and communities is well known from the many examples around the country. It is also increasingly well understood that too often the ESA is used to achieve ulterior goals, such a preventing resource use. We know that Chairman Pombo and the Resources Committee have been working to reform the ESA. It is long overdue and we enthusiastically support this effort.

Another area where this is a problem is federal grazing policy. There is perhaps no other area where federal agency policy so ignores sound science than with grazing, especially grazing policy in arid or semi arid environments such as exists in parts of our county and millions of acres in the West.

Grazing has been a mainstay of many local economies in the West, including ours, and it almost always is dependent on use of federal rangeland for at least part of the year. It is under increased pressure in most places as federal grazing policy results in decreased number of cattle that can be grazed on our allotments. This makes it less economically viable and less profitable, which has direct economic impact on our communities.

Too often these federal grazing policies appear driven by ideology and fly in the face of sound science. To the extent that this is the case, it costs us. The Western Counties Alliance has a project to focus attention on this problem and it is yet another area where congressional oversight is both sorely needed and long overdue.

Mr. Chairman, I have tried to give you from our perspective, the various ways that federal land ownership and policies can impact local governments and our communities in terms of their costs. This is not an exhaustive list by any means, but I hope that it illustrates that the true costs are far greater that merely under-funding PILT and greater than most people appreciate.

I also hope that my comments put any claims of those who say that federal land ownership is an economic benefit to local counties into a more realistic perspective. While that may be true in a few special cases, it certainly is not true, over all, for Garfield County or for most rural counties in public lands states.

I would like those who claim that we benefit so much from federal land ownership to make us an offer to test that assertion. Ask us in Garfield County, or, I am willing to bet, most other rural western counties with heavy federal ownership, if we would like to convert most of the federal land into private land. If you made this offer to us in Garfield County, we would take you up on it in a heartbeat.

I am not talking about the parks, recreation area, or even the monument, but the remaining land managed by the Forest Service and the BLM. The only real benefits we see from these lands remaining in federal ownership is the salaries of the federal land management agency employees living in our county. I would guarantee that tourism would increase if this exchange happened, but that our economic base would be more diverse, stable and viable as well. The parks would still be there, and there is a great deal of scenic land outside the parks that could be made more accessible to the public if the land were not in federal ownership.

In fact, I offer Garfield County as a field laboratory for an experiment to do just that. If the federal government would work with us on a thoughtful and realistic plan to privatize the non-park land in the county, I can guarantee that, if we were to convene here in twenty years, I could report a much different and much more prosperous picture of Garfield County.

Thank you, Mr. Chairman, for this opportunity to testify on this important topic. I will be happy to expand on any of the points I have made in my statement.