

Commissioner Alan Gardner's Written Testimony
Washington County
Natural Resources Sub-Committee Hearing
January 22, 2016
Dixie Center, St. George, Utah

The current draft RMP for the National Conservation Areas (NCAs) in Washington County doesn't live up to the expectations set by the Washington County portion of the Omnibus Public Lands Management Act of 2009 (OPLMA or lands bill). From my perspective as a Washington County Commissioner of 20 years, the process of drafting the RMP was deeply flawed. Secretary of Interior Salazar came to St. George to celebrate the fact that Washington County helped set a precedent for cooperation in the process that led to the passage of OPLMA. It is disappointing that the BLM didn't continue in the spirit of cooperation when drafting the alternative management plans necessary due to the bill. Washington County signed an MOU as a cooperating agency with the BLM but was only given three opportunities to meet in planning and a handful of updates over the course of the six year planning effort – even though the county requested involvement in formulating alternatives several times. More importantly, I am not aware of any impact that county input had on the BLM's preferred alternative plan—our concerns were simply ignored in drafting the alternative plans. Through months of effort and a huge investment of county resources since the draft was released, most of the flaws in the draft RMP are likely to be fixed, but the process should have been much different for a cooperating agency.

1. History of Cooperation

I have been involved in the planning and compromise that resulted in the lands bill for years, and I have a deep working knowledge of the intent of the compromises. When the desert tortoise was listed and it became obvious that growth in the county would be impacted, the county started working on an agreement to manage tortoise habitat in a way that allowed the area to grow. I attended all of the desert tortoise habitat conservation plan (HCP) committee meetings as an interested citizen before I was sworn in as a commissioner around the time the implementation agreement was signed. I was also the lead commissioner on OPLMA. In a spirit of cooperation, Washington County brought together a diverse committee of nineteen (19) entities, including the Southern Utah Wilderness Alliance (SUWA), the Wilderness Society, and the Sierra Club. The Vision Dixie planning process (a local effort to plan future development) was completed, which took an additional two (2) years. More than five (5) years of cooperation and compromise were spent preparing the bill that became law in 2009. OPLMA was intended to balance the interests of all the entities who wanted to participate.

In light of all of that background of cooperation and with a legally enacted lands bill, the county fully expected the RMPs to reflect the spirit of that effort and the will of Congress in passing OPLMA. I was disappointed when the administrative draft was released to us in 2014 to

see so many differences between the RMPs and the intent of the lands bill. The county submitted written comments stating its concerns, but received no response from the BLM. In fact, some of the things the county objected to were made even more prominent in the current draft while some new, objectionable ideas were added. With the public release of the draft RMP, it became clear that BLM was not going to cooperate with the county to make the RMPs reflect the spirit of cooperation that led to the creation of the NCAs.

2. *Examples of Problematic Ideas*

To illustrate the tone of the RMPs, here are a few examples:

- The lands bill specifically states that the public land in the County administered by the BLM has been adequately studied for Wilderness designation and is no longer subject to section 603, but the draft RMP called for inventory of wilderness. OPLMA created more wilderness than the BLM originally identified. (88,501 acres of WSAs with 66,178 acres of that proposed for designation resulted in 131,932 acres of designated wilderness on BLM land and additional Wilderness in Zion National Park.) The establishment of Wilderness was balanced with the agreement that no more wilderness would be created.
- The HCP contains a utility management plan that includes corridors for existing electric power lines to be maintained and protocol for new lines to be built. It creates similar protocols for existing water wells and water lines to be maintained and for new development. We were told that these plans couldn't be adopted directly by the bill because there had to be a planning process. However special language was added in the bill so that these plans could be adopted as part of that process. Sec 1974 d3 "the Secretary may incorporate any provision of—(A) the habitat conservation plan; (B) the Resource Management Plan; and (C) the public use plan." Despite that language from Congress, the draft RMP dismissed the protocols with one line on page 32 that says they are inadequate for species habitat.
- Washington County's position, when negotiating the lands bill, was that if there was to be any consideration of reducing grazing, the Lands Bill would not be introduced because the grazers already took a 10 week loss of grazing time to protect tortoises. We were told that the language used in the bill was the standard language and would allow grazing to continue at current levels: "Sec 1975 (4) The grazing of livestock in the National Conservation Area established before the date of enactment of this Act, shall be permitted to continue- (A) subject to—(i) such reasonable regulations, policies, and practices as the; Secretary considers necessary..." Contrary to the negotiations the County understood to be embodied in the lands bill, every alternative in the draft RMP cuts grazing and provides for retirement of grazing permits.
- The Northern Corridor has been on Washington County's master plan for well over twenty (20) years and was identified as necessary by a large majority of the public in the Vision Dixie planning effort. Because of the growing number of people in Washington County and the rugged geography of Washington County, i.e., river and

hill locations, the Northern Corridor is essential for traffic movement in the next decade. With the realization that the exact route of the Northern Corridor would have to be studied in great detail, we agreed to OPLMA stating in Sec 1977 b2A that the Secretary of Interior was to, “in consultation with appropriate Federal agencies, State, tribal and local governmental entities (including the County and St George City, Utah) and the public, identify one (1) or more alternatives for a northern transportation route in the County.” The draft RMP only has a corridor in one alternative, and it is analyzed in a way that makes that alternative highly unlikely to be selected.

- The RMP proposes the introduction of the California Condor under the full protection of the Endangered Species Act (ESA). This violates an agreement between the U.S. Fish and Wildlife Service and the county regarding an experimental condor population in southern Utah. Additionally, the introduction would have an adverse impact on hunting, agriculture and general use of the area if adopted. The last thing we need is a “tortoise with wings.”
- The draft RMP proposed an 80,000 acre multi-species management area to manage mule deer habitat. In the administrative draft, the management area was proposed in Alternative C only, and the county objected to it. In the current draft, it is in Alternatives B, C, and D. BLM says it is required by a line in OPLMA requiring the secretary to identify areas of biological priority. Surely the intent of Congress in a land designation bill was not hint to BLM to make a huge land designation, bigger than either NCA designated by Congress through OPLMA – especially a land designation to manage habitat for a state game species. Nobody has ever heard of a multi-species management area. It is a made up designation that infringes on state jurisdiction over wildlife.
- Throughout all the objectionable sections in the draft RMPs, language that calls for coordination and cooperation with state, county, and local governments has been eliminated (in alternatives B, C, and D). Cooperation and coordination are required by FLPMA and by BLM policy, and should be included in the plan. Cooperation should be especially important because Washington County signed an agreement with the BLM to be a cooperating agency on the RMPs. Washington County has worked long and hard to remain a reasonable partner. We expect to be treated with the same reasonableness by the BLM. These draft plans and the process by which they have come about do not live up to those expectations.

Counties shouldn't have to hire new attorneys, start public campaigns, and write to Congress just to get an RMP that reflects the tone of a duly enacted lands bill. Most counties in Utah don't have the resources to pull off the effort we have expended in this process. In the months since the release of the draft RMPs, the BLM has started cooperating with the county through regular meetings in which we discuss the flaws in the RMPs and possible solutions. I deeply appreciate the efforts that have been made by the local office to fix the plans. What concerns me is the effort we had to go to just to get the plans to reflect the compromises that we

worked on for years. Those compromises were made law by Congress and the President, but the local BLM office did not defer to them when making decisions.

3. Current Status of Cooperation and Problematic Ideas

Even when we started meeting regularly with BLM to discuss the problems with the plan, the attitude we regularly encountered was that one line from OPLMA was being used to outweigh all of the other carefully crafted compromises. In the lands bill, the purpose of the NCAs is “to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the ecological, scenic, wildlife, recreational, cultural, historic, natural, educational, and scientific resources of the National Conservation Area; and to protect each species that is located in the National Conservation Area; and listed as a threatened or endangered species...” That language, “conserve, protect, and enhance”, was used to justify not integrating the utility development protocols from the HCP into the plans, resisting the northern corridor, and reducing cattle grazing. Even though the same act of Congress that created the NCAs and defined their purpose called for implementation of the protocols, cooperatively identifying alternatives for a northern transportation route, and a continuation of grazing, BLM interpreted one clause as an excuse to ignore other sections. Early in the process of our weekly meetings, we were regularly told that conservation lands are different than other BLM lands and should be managed more like national parks than multiple-use lands.

Another troubling attitude that we kept running into when we started talking to the local BLM office about what was in the draft RMPs was that Congress should have read BLM manuals before passing the lands bill. Manuals were repeatedly cited as justification for not following the spirit of the lands bill. In one meeting between the state, county, St. George City, and the local BLM office, BLM employees said they could not follow through on studying routes for a northern corridor because “Congress screwed up” when calling for routes to be studied during BLM’s travel planning process. When the BLM was pushed as to why the draft RMPs call for wilderness inventory when Congress released all undesignated acres in Washington County from wilderness study, local employees cited BLM manuals that say a release by Congress will be given “strong consideration.” BLM policy appears to be that BLM will decide whether Congress makes the right decision by passing a lands bill and then manage accordingly.

Yet another troubling aspect of our otherwise beneficial meetings with the BLM has been the explanations offered for why the range of alternatives are so skewed. The only difference between resources with alternatives and those without a range of alternatives appears to be the threat of special interest law suits. On issues like grazing, where Congress said that grazing was to continue, the range of alternatives offered all reduced grazing. When questioned about the departure from the intent of the lands bill, the local planners told the county that without a range of grazing alternatives, including a no grazing alternative, the BLM would get sued by special interest groups. The threat of suit by special interest groups was more persuasive to the BLM planners than the language Congress passed. On the other hand, when asked why no range existed on other issues the county objected to, such as water rights language, condor

introduction, and the proposed multi-species management unit, the planners said they felt like they were on solid ground with those decisions.

4. Conclusion

In summary, Washington County would like to work cooperatively with BLM to manage resources like we have in the past, but the current draft RMP undermines that effort. Most of the objectionable sections of the current draft RMPs appear to be a result of either ignorance on the part of the BLM planners that could easily have been avoided through early and frequent communication with the local governments or an attitude on the part of the BLM staff that they know better than Congress and local governments, including cooperating agency local governments, how land should be managed. Washington County would like to fix the attitudes and misunderstandings and move forward with implementing the lands bill. In counties, like Washington County, with high percentages of public land, land management agencies and local governments are most effective when we manage resources together.

Washington County is truly grateful for the effort that is currently being put forth by local BLM to work with county officials to fix flaws in the draft RMPs and even hopeful that it will be successful. If that process continues to satisfactorily address the concerns of the county, then Washington County can once again lead the way in displaying how cooperation with federal land managers can be successful.