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# ENSURING LOCAL INPUT, LEGAL CONSISTENCY AND MULTI-USE RESOURCE MANAGEMENT IN ST. GEORGE BLM PLANNING

# OVERSIGHT FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL LANDS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

Friday, January 22, 2016 in St. George, Utah

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# OVERSIGHT FIELD HEARING ON ENSURING LOCAL INPUT, LEGAL CONSISTENCY AND MULTI-USE RESOURCE MANAGEMENT IN ST. GEORGE BLM PLANNING

**Friday, January 22, 2016**
**U.S. House of Representatives**
**Subcommittee on Federal Lands**
**Committee on Natural Resources**
**St. George, Utah**

The subcommittee met, pursuant to call, at 10:05 a.m., in the Entrada Room B/C, Dixie Convention Center, 1835 South Convention Center Drive, St. George, Utah, Hon. Tom McClintock [Chairman of the Subcommittee] presiding.

Present: Representatives McClintock, Bishop, Westerman, Hardy, and Lowenthal.

Also Present: Representatives Stewart and Chaffetz.

Mr. MCCLINTOCK. The hearing will come to order. The Subcommittee on Federal Lands of the House Natural Resources Committee meets today to hear testimony on "Ensuring Local Input, Legal Consistency, and Multi-Use Resource Management in St. George BLM Planning."

By way of introduction, I am Congressman Tom McClintock. I chair the Subcommittee on Federal Lands and represent the 4th District of California.

Also joining us today is the Chairman of the Natural Resources Committee, Congressman Rob Bishop, and also Congressman Alan Lowenthal, who will be the acting Democrat for the subcommittee today—that is the acting ranking Democrat, he is an actual Democrat.

Also with us are Subcommittee Members Bruce Westerman of Arkansas and Congressman Cresent Hardy of Nevada.

We are joined also today by Congressman Chris Stewart, whose district is the subject of today's hearing, and Congressman Jason Chaffetz.

I would ask unanimous consent that they be allowed to sit with the subcommittee and participate in today's hearing. With no objection, so ordered.

I will now begin the proceedings with a prayer, the Presentation of Colors, and the Pledge of Allegiance.

To lead us in prayer, the Chair recognizes County Commissioner Victor Iverson.

[Prayer.]

Mr. MCCLINTOCK. The Chair will now ask the Washington County Sheriff's Office Honor Guard to do the Presentation of Colors. All rise.

[Presentation of Colors.]

[Pledge of Allegiance.]

Mr. MCCLINTOCK. Thank you. You may all be seated.

We would like to welcome you all here today. The Chair would like to begin, as is customary at these field hearings, to recognize the Congressman from this district, Chris Stewart, for a few introductory remarks.

Mr. STEWART. Thank you, Chairman. I wanted to just take this opportunity to thank Chairman Bishop, Chairman McClintock, Ranking Member Lowenthal, and other Members who have traveled here today. It was a difficult thing for me to ask for your time and take you away from your family and your own districts.

Thank you Congressman Chaffetz, who is with us as well.

This is an important issue. Again, thank you all for joining us. As a representative of the district, we just want you to know that the citizens are grateful for your participation, grateful for the opportunity to address these issues, and we look forward to a valuable and, we hope, a fruitful hearing. So, thank you.

Mr. Chairman, I yield back.

Mr. MCCLINTOCK. Great, thank you.

All of you with signs, why don't you hold them up right now and make as much noise as you want.

[Audience cheers.]

Mr. MCCLINTOCK. OK. Now, that's it.

I have to remind you that this is a formal hearing of the House of Representatives. We are under Congressional Rules. No further demonstrations would be appropriate in this hearing, so I would ask you to respect that and to respect the solemnity of these hearings. So, all the signs need to go down now. Thank you.

We will now begin with the 5-minute opening statements of myself; Representative Lowenthal; the Chairman of the Full Committee, Mr. Bishop; and Representative Stewart.

**STATEMENT OF THE HON. TOM MCCLINTOCK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. MCCLINTOCK. Today the Subcommittee on Federal Lands has come to St. George to hold an oversight hearing on the Bureau of Land Management's draft Resource Management Plan pursuant to the Omnibus Public Land Management Act of 2009. We are here because Congress is hearing a crescendo of complaints about BLM tactics and policies across the country, and St. George seems to be a poster child of BLM bad behavior. We are here to get to the bottom of it.

During this congressional session, the Federal Lands Subcommittee has sought to reinstate three fundamental principles for our stewardship over the Federal lands.

First, to restore the public's right to use and enjoy public lands. Preserving our lands for future generations does not mean closing them to this generation.

Second, to restore principles of sound management to the public lands. That was Gifford Pinchot's maxim for the Forest Service, to manage the lands for the greatest good for the greatest number in the long run.

Third, to restore the Federal Government as a good neighbor to those communities that are impacted by Federal land ownership.

That means we do not run roughshod over the wishes of local communities.

We are concerned that a corporate culture has taken root within BLM that is antithetical to these principles.

In 2009, Congress adopted and the President signed the Omnibus Public Land package that reflected years of good-faith discussions and concessions made by the elected representatives of the communities directly impacted by these policies. For many years, members of this community, from grazers to recreationists to environmentalists, worked together to craft a bill that would shape the future management of Federal lands in this county. Local officials reluctantly agreed to designate over 100,000 acres of new wilderness in exchange for the promise of multiple-use activities on the remaining Federal lands, which are the lifeblood of this community.

As a result, the bill was hailed as a unique compromise among extremely disparate parties and a successful model for future collaborative agreements. It then fell to BLM to write regulatory plans in good faith to carry out this unique compromise.

Instead, we are informed that the local communities, who trusted this process, now believe the BLM was bargaining in bad faith and that its current proposal makes a mockery of the promises both implicit and explicit in that law. The overwhelming consensus of these local representatives today is that what was painstakingly agreed to in the legislation that they negotiated and that Congress ratified has since been distorted by unelected BLM bureaucrats to fit a narrow ideological agenda.

What we are hearing, loud and clear, is that these draft plans would dramatically restrict the public's right to the full range of uses that they were promised, including a local transportation corridor, motorized recreation, grazing, and other activities.

We are also hearing that the draft plans are inconsistent with the law that includes several provisions specific to the future of Federal land management in this county.

Finally, the subcommittee is very concerned with reports that BLM bureaucrats have deliberately ignored these concerns when local governments and concerned citizens have repeatedly raised them.

This subcommittee normally does not hold hearings on individual land use plans, but it appears that the BLM, which administers nearly half of the land area of Washington County, has ignored the will of Congress and thumbed its nose at the people whose taxes support this government and whose livelihoods and quality of life are now directly threatened by it.

When one of Darth Vader's victims protests, "But that's not our agreement," Darth Vader sneers, "I am altering the agreement; pray I do not alter it further." If bad faith and empty promises become the coin of the Federal realm, it is highly unlikely anyone will enter into land use negotiations with it again or trust it in the future.

Instead, St. George will be used as a cautionary tale that Ronald Reagan was right when he said if you get in bed with the Federal Government, you had better be prepared for something more than a good night's sleep.

We are here because Congress will not allow that to become the story of St. George and the BLM, and I would remind the BLM that in the original story of St. George and the dragon, St. George won.

[The prepared statement of Mr. McClintock follows:]

PREPARED STATEMENT OF THE HON. TOM MCCLINTOCK, CHAIRMAN, SUBCOMMITTEE ON FEDERAL LANDS

Good morning. Today, the Subcommittee on Federal Lands meets in beautiful St. George to hold an oversight hearing on the Bureau of Land Management's draft Resource Management Plans for the Beaver Dam Wash and Red Cliffs National Conservation Areas and St. George Field Office, which were publicly released in July 2015.

The hearing will cover an all-to-typical problem: the BLM has produced a plan that is unnecessarily restrictive, does not adequately reflect concerns raised by locals, and represents the latest in myriad Federal land use plans from this Administration that favor locking up Federal land over responsible multiple-use.

Local officials and members of the community are very concerned that these draft plans, if implemented, would unduly restrict multiple-uses in the area, including motorized recreation, grazing, and other activities. There are also concerns that the draft plans are inconsistent with the 2009 Omnibus Public Land package, which included several provisions specific to the future of Federal land management in the county. Finally, it appears that BLM did not sufficiently coordinate with and incorporate feedback from local governments and members of the community in the development of the draft plans.

If we held a hearing on every Federal land use plan in the West, we wouldn't have time to do anything else. But this circumstance is unique. First, BLM administers approximately 629,000 surface acres of Federal lands in Washington County, which is nearly half of the entire county. This RMP guides the management of those lands, and therefore directly impacts the livelihood of the citizens of St. George and across the county.

Second, for many years members of this community—from grazers to recreationists to environmentalists—worked together to craft a bill that would shape the future management of Federal lands in the county. In the bill, locals agreed to the designation of over hundred thousand acres of new wilderness in exchange for the reasonable continuation of the multiple-use activities on Federal lands—motorized recreation, grazing, and other activities—which are the lifeblood of this community. As a result, the bill was widely regarded as a unique compromise among extremely disparate parties and a potential template for other counties or regions with large amounts of Federal land.

After that bill was signed into law in 2009, it was up to BLM to write regulatory plans that upheld that unique, hard-sought compromise. Since the release of the draft plans last summer, many members of the community have decried them as unduly restrictive, particularly with regard to grazing and motorized recreation, inconsistent with the 2009 law, and devoid of many of the most important provisions to the community, including a transportation corridor north of St. George. In essence, many felt that BLM didn't hold up their end of the bargain.

This public outcry, which has been overwhelming, leads me to believe that additional investigation is needed to understand how we got here and how we can assure that BLM writes and implements a plan that it, members of the local community, grazers, recreationists, environmentalists, and others can be proud of. Such a plan must comply with the spirit and letter of the Washington County public lands law and be designed in tandem with those that will be directly impacted by it.

This hearing should not have been necessary. If BLM had done a better job genuinely addressing concerns from local officials and members of the public on this land use plan, I highly doubt we would be sitting before you today. Nonetheless, I hope this hearing will compel BLM to recognize and address those concerns in the final plans.

Following the hearing, Congressman Stewart will host a public listening session to hear thoughts from members of the public on this and other important issues facing southwestern Utah.

With that, I look forward to hearing testimony from today's witnesses. I now recognize the Ranking Member for his statement.

Thank you.

Mr. MCCLINTOCK. I now recognize the Ranking Member for his opening statement.

Congressman Lowenthal.

**STATEMENT OF THE HON. ALAN S. LOWENTHAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. LOWENTHAL. Thank you, Chairman McClintock, Chairman Bishop, Member Stewart. Thank you for hosting us, and I really appreciate the opportunity to be here. I am Congressman Alan Lowenthal, a member of the Natural Resources Committee and Ranking Member on Energy and Mineral Resources. I appreciate the opportunity to be able to fill in for Ranking Member Tsongas on the Federal Lands Subcommittee. She wanted to attend today's hearing, but a previously scheduled commitment made it impossible for her to make the trip.

It is not every day that we get to meet outside the confines of Washington, DC; so, I would like to thank again Chairman Bishop and Representative Stewart for hosting us here in Utah. It is a welcome opportunity. It is now beginning to snow there, and I anticipate 30 inches by the time the day is over.

Our country is blessed to have many special places from coast to coast, from Maine to my home state of California. But one place that consistently arises on the committee as a topic is Utah, and southern Utah specifically. That is because the Red Rock Country is a treasure that all Americans are proud of, unique to the world and replete with natural archeological and cultural wonders. Many of my constituents come to Red Rock Country for hiking, for adventure, for solitude, and, from what I hear, they want this experience to be protected for future generations.

I also hear that there are many here in Utah who are concerned about the wild and pristine nature of Utah's Red Rock Country that it is being eroded by short-sighted greed and improper development. That is why I am the sponsor of America's Red Rock Wilderness Act, and that is why I am here to talk about the importance of Red Cliffs National Conservation Area, an area that has already gained protection and is enjoyed by tens of thousands of Americans every year.

This land is not only a lifesaver for the desert tortoise, its popularity is an economic driver for Washington County. The Omnibus Public Land Management Act of 2009 contains several provisions related to the management of public lands here in Washington County, including the establishment of Red Cliffs and Beaver Dam Wash National Conservation Areas. With significant input from the Utah delegation at the time, Congress established these National Conservation Areas for the purpose of protecting and enhancing their scenic and natural resources, including protecting habitat for endangered and threatened species, like the desert tortoise.

BLM management of public lands within these National Conservation Areas (NCAs) has to be consistent with this legislative mandate from Congress. BLM's current planning process underway in Washington County has caused some commotion, and while I understand there is some disagreement about the agency's objectives in Washington County, I hope we can have a construc-

tive conversation that enables everyone to tell their side of the story and opens up a channel for constructive collaboration. Finger-pointing will not get us anywhere.

Today's hearing should be an opportunity to listen, to ask questions and clear up confusion, not to spread rumors or to create animosity. BLM has put years of work into producing the thousand-plus page planning document for the public lands that are administered by the St. George Field Office. They have received hundreds, if not thousands, of comments and, in an open and transparent fashion, are making decisions that are consistent with the law and reflective of congressional intent.

I can tell you, after just arriving here, that St. George is a growing community. Putting disagreements aside, we have to recognize the complexity of developing a management plan that prioritizes conservation, as Congress intended, and satisfies regional development needs.

In conclusion, I recognize that many people in this community see the construction of a highway through Red Cliffs National Conservation as a viable transportation solution for the region. However, like any community anywhere in the world, there is not one set of opinions or visions for the future. That is why we have invited Paul Van Dam to be the Democratic witness. Mr. Van Dam is a former Utah Attorney General and the former Executive Director of Citizens for Dixie's Future. He is a long-time resident of Washington County and is deeply committed to its future. He brings a welcome perspective to the panel, and I look forward to hearing his testimony.

This hearing is a great opportunity to discuss the range of different perspectives, and I hope that we can have a constructive and meaningful conversation.

With that, Mr. Chairman, I yield back.

[The prepared statement of Mr. Lowenthal follows:]

PREPARED STATEMENT OF THE HON. ALAN S. LOWENTHAL, RANKING MEMBER, SUBCOMMITTEE ON FEDERAL LANDS

Thank you, Chairman McClintock, it is a pleasure to be here in St. George today.

I appreciate the opportunity to fill in for Ranking Member Tsongas on the Federal Lands Subcommittee today. She really wanted to attend today's event, but a previously scheduled commitment made it impossible for her to make the trip to St. George.

It's not every day that we get to meet outside the confines of the Longworth House Office Building in Washington, DC, so I would also like to thank Chairman Bishop and Representative Stewart for hosting us here in Utah. This is a welcome opportunity to get a close-up look at an important set of issues in Washington County.

Our country is blessed to have many special places from coast to coast, from Maine to my home state of California; but one place that consistently arises on this committee as a topic is Utah, and southern Utah specifically. That's because the Red Rock Country is a treasure that all Americans are proud of, unique to the world and replete with natural, archeological and cultural wonders. My constituents flock to Red Rock Country for hiking, for adventure, for solitude, and what I hear from them is that they want this experience protected for future generations.

And I hear also from so many Utahns, who are concerned that the wild and pristine nature of Utah's Red Rock Country is being eroded by short-sighted greed and improper development. That is why I am the sponsor of America's Red Rock Wilderness Act, and why I'm here today to talk about the importance of the Red Cliffs NCA, an area that has already gained protection and is enjoyed by tens of thousands of Americans every year.

This land is not only a lifesaver for the desert tortoise, its popularity is an economic driver for Washington County.

The Omnibus Public Land Management Act of 2009 contained several provisions related to the management of public lands here in Washington County, including the establishment of Red Cliffs and Beaver Dam Wash National Conversation Areas. With significant input from the Utah delegation at the time, Congress established these National Conservation Areas for the purposes of protecting and enhancing their scenic and natural resources, including protecting habitat for endangered and threatened species like the desert tortoise. BLM management of public land within these NCAs has to be consistent with this legislative mandate from Congress.

BLM's current planning process underway in Washington County has caused a lot of commotion, and while I understand that there is some disagreement about the agency's objectives in Washington County, I hope we can have a constructive conversation that enables everyone to tell their side of the story and opens up a channel for constructive collaboration.

Finger-pointing will not get us anywhere. Today's hearing should be an opportunity to listen, ask questions, and clear up confusion, not spread rumors or create animosity.

BLM has put years of work into producing the thousand-plus page planning document for the public lands administered by the St. George Field Office. They have received hundreds, if not thousands, of comments and, in an open, transparent fashion, are making decisions that are consistent with the law and reflective of congressional intent.

I just arrived here today, but I can tell that St. George is a growing community. Putting disagreements aside, we have to recognize the complexity of developing a management plan that prioritizes conservation, as Congress intended, and satisfies regional development goals.

I recognize that many people in this community see the construction of a highway through Red Cliffs National Conservation Area as a viable transportation solution for the region. However, like any community, anywhere in the world, there is not one set of opinions or vision for the future. That's why we have invited Paul Van Dam to be the Democratic witness. Mr. Van Dam is a former Utah Attorney General and the former Executive Director of Citizens for Dixie's Future. He is a long-time resident of Washington County and is deeply committed to its future. He brings a welcome perspective to the panel and I look forward to hearing his testimony.

Like I said before, this hearing is an opportunity to discuss a range of different perspectives and I hope we can have a constructive and meaningful conversation.

With that, Mr. Chairman, I yield back.

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Mr. MCCLINTOCK. Thank you very much.

The Chairman of the Full Committee, Mr. Bishop, has asked to defer his remarks until the end of the hearing.

Mr. BISHOP. I would like to say one thing.

Mr. MCCLINTOCK. The Chairman is recognized.

Mr. BISHOP. I do want to defer my remarks until the end. I appreciate that. But, I have to re-emphasize the rules of the House. Everyone who is here is on a time limit. If you applaud because you like something or do any other demonstration because you don't, you cut into their time. Applause is not allowed; so please, whether you like it or not, don't do anything. Those are the rules, and we have to do this. So, thank you for being here.

This is not a town hall meeting. This is a congressional hearing. You have to obey the Congressional Rules whether you like it or not. So, no applause, no signs, those are the rules. Please abide by that, because if you don't, you cut into the testimony.

I don't want to make a statement now, I want to get to the testimony. I appreciate that. I will say something later on.

So, thank you, Mr. Chairman.

[The prepared statement of Mr. Bishop follows:]

PREPARED STATEMENT OF THE HON. ROB BISHOP, CHAIRMAN, COMMITTEE ON NATURAL RESOURCES

I'm happy to be in my home state and Representative Stewart's district to participate in an oversight hearing on the BLM's draft Resource Management Plans for the Beaver Dam Wash and Red Cliffs National Conservation Areas.

We're here today to examine what seems to be overly restrictive draft land use plans for Washington County and inconsistencies between those plans and the Washington County law that passed Congress and became law in 2009.

BLM has been working on these plans since 2010, shortly after the 2009 Omnibus Public Land bill was signed into law. Among other things, that law created 14 new Wilderness Areas and 2 National Conservation Areas in the county.

That bill was signed into law due to the hard work of this community. It took a lot compromise to get there; the county agreed to the designation of much more wilderness than it was comfortable with in exchange for continued opportunities for grazing, motorized recreation, and other multiple-use activities on the lands outside of wilderness. Unfortunately, the spirit of that compromise, and the good faith negotiations that went into crafting it, appear to have been at best ignored, and at worst forgotten, by BLM.

As we hear almost daily in front of my committee, good people negotiate in good faith with the Federal Government only to find out later that a deal is not a deal.

I've heard from my friend and colleague Rep. Stewart and the local community that the draft plan, if implemented, would greatly reduce livestock grazing, dampen recreational opportunities, preclude the export of water to local municipalities, and even result in the potential introduction of the ESA-listed California Condor in the area, which also has grave land-use complications beyond what this community has already faced.

These actions hurt people and the very livelihoods of this community. For example, BLM's preferred alternative does not include a northern transportation route—which has been an extremely high priority for this community for years. The transportation corridor is necessary to ease cross-town traffic and address projected growth in the area, yet it appears that BLM is unwilling to consider a proposed corridor that has been in the works for decades.

What's worse, I have learned that BLM did not meaningfully consult with and engage members of this community, including local governments who are recognized as official cooperating agencies. NEPA, as well as language in the Washington County law, requires BLM to coordinate with local governments and the public as it prepares these plans. While BLM held several public listening sessions and meetings, this isn't reflected in BLM's draft plans.

BLM has said that the final plans will reflect public comments, but based on BLM's track record up to this point we need more information, which is why we are here today.

Federal land management agencies must be responsible to the needs of local communities across the United States, but this is even more important in places like St. George where the city is nearly surrounded by Federal land and the future of the county is so dependent on Federal land management.

When a local government works so hard on legislation directing Federal land management, succinct and clear regulatory interpretation of the law by the Federal Government is critical. (After all, it is the law!)

Unfortunately, prior to this hearing, this draft plan appeared symptomatic of this Administration's view of Federal lands in the West: Let's lock up as many acres as possible and use any means necessary to limit or end grazing, energy development, recreational access, and other multiple-uses. I have to stress that word "multiple" since I often have to remind the world and my colleagues (those not from the West), that Federal law (FLPMA) requires that BLM manage Federal lands under the principles of multiple-use and sustained yield.

I look forward to hearing from today's witnesses and hope this hearing brings us a step closer to ensuring that BLM writes a plan that complies with both the spirit and letter of the Washington County public lands law, truly addresses the concerns of members of this community, and recognizes the importance that grazing, recreation and other multiple-use activities play in your economy and way of life.

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Mr. MCCLINTOCK. Without objection, I now recognize Congressman Stewart for 5 minutes.

**STATEMENT OF THE HON. CHRIS STEWART, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH**

Mr. STEWART. I would like to say, Chairman, that I applaud your comments.

And to Chairman Bishop, Chairman McClintock, and Ranking Member Lowenthal, again, thank you. Mr. Lowenthal, you said you had 30 inches of snow back home. We would invite you to winter here in St. George.

Mr. LOWENTHAL. Thank you.

Mr. STEWART. But we are afraid that you would stay, and we want to keep this a secret.

Mr. LOWENTHAL. No longer a secret.

Mr. STEWART. No longer a secret, you are exactly right.

I welcome you all to the jewel of my district. In fact, I would say that this is in many ways one of the true jewels of the entire United States. My district here is home to Zion National Park, Dixie National Forest, Snow Canyon National Park, and many other beautiful, beautiful red rock cliffs and sand dunes.

It is also home to the Red Cliffs National Conservation Area and the Beaver Dam Wash National Conservation Area, two conservation areas created by Congress, as has been alluded to earlier, in 2009 by the Omnibus Public Land Management Act. Congress' intent in passing that legislation and the BLM's implementation of that legislation is why we are here today.

If I could divert from my comments and make a personal observation, I would say if there are two words that describe the process, I would say those two words are "broken trust," because we had an agreement, and many of us feel as if that agreement has been violated.

If you want to understand why so many people distrust the Federal Government, this is a good example of it, when they feel like they are not listened to, when they feel like their concerns are not addressed, when the process is tilted against them, and when they feel like there is no process for re-dress.

The presumption is that I am a Republican, therefore I hate the environment and I want to destroy it. I think that is absurd. There is a reason that I choose to live in Utah. It is because I love Utah and I want to preserve it for my children, as well. Once again, there are so many who look at me and say you are a Republican and you want to destroy the land. I think it is nuts to start with that point of view.

Washington County is an extraordinarily beautiful area. It is made up of over 1.5 million acres. Almost 84 percent of that is land that is in some form or fashion Federal or state owned. Nearly half of the county is under a form of restricted management. Compare that with the population that at one time was one of the fastest-growing populations in the entire country, 24 percent growth over 4 years, and you understand why we have to have a long-term planning document. The need for that becomes very clear.

Because of that, 10 years ago Vision Dixie was created. It was a locally-driven project with state and Federal guidance, and it produced a comprehensive planning document for the county. In 2008, after 5 years of working and multiple edits, the Washington County Growth and Conservation Act became law.

Now, part of that law required the BLM to develop a comprehensive plan for long-term management of the National Conservation Areas, and Congress gave specific instructions as to how that should be carried out. The proposals made in BLM's draft RMP constitute a departure from plain and clear language. It was so clear this law's intention, and frankly it is insulting the way this is being proposed.

The law required the BLM to collaborate with state and local governments on a number of issues, and as the witnesses will demonstrate today, every one of their suggestions were put aside and not considered. As the local government leaders will tell you, every one of them were excluded from this process, and here are a few of the highlights of that outcome because they were excluded.

The law prohibits the BLM from creating any new wilderness area. Yet, Alternative C calls for an inventory of wilderness, and the northern transportation route identified by the BLM in Alternative D seems to be written to maximize the impacts to the environment, clearing through 25 to 30 miles of the county. The county's preferred alternative, which impacts only 4 miles of the NCA, is not even included in any of the draft alternatives. This cannot possibly be the BLM's good-faith effort to present to the Secretary of the Interior for approval.

Alternatives B, C, and D invent a Federal Multiple Species Management Area. First, there is no such thing as a Federal Multi-Species Management Area. Second, there are no known protected species in this area. The BLM acknowledges in the draft RMP that this area will be to protect critical habitat and migration corridors for mule deer, but the BLM has no jurisdiction over this game animal.

And finally, this point: The preferred alternative appears to significantly reduce grazing allotments, despite a clear requirement that they must not be changed. As a kid who grew up farming and ranching, this one is particularly troubling to me, and I would emphasize that any attempt to encourage ranchers to surrender their grazing allotments or any allotments that are retired or withheld is in violation of the law.

These are the things we are considering today.

Thank you, Mr. Chairman, for your participation, and for those who are here as well. We look forward to a positive meeting. I yield back.

Mr. MCCLINTOCK. Thank you.

That concludes the opening statements. We will now move to our testimony.

We are under the House 5-minute rule. Written testimony will appear in full in the hearing record, but we would ask the witnesses to keep their oral statement to 5 minutes, as outlined in Committee Rule 4(a).

We have some helpful timing lights to keep you within those parameters. The yellow light indicates that you have 1 minute remaining; the red light indicates you should stop. Why 5 minutes? I think it is because studies have shown that is the maximum attention span of an average Member of Congress. But for whatever reason, we would ask you to keep within those parameters.

With that, I now recognize Ms. Jenna Whitlock, the Acting State Director of the Utah Office, Bureau of Land Management, for 5 minutes.

**STATEMENT OF JENNA WHITLOCK, ACTING STATE DIRECTOR, UTAH OFFICE, BUREAU OF LAND MANAGEMENT, SALT LAKE CITY, UTAH**

Ms. WHITLOCK. Good morning, Chairman McClintock, Chairman Bishop, members of the subcommittee, and Utah delegation. Thank you for the opportunity to discuss the BLM's planning process for the Beaver Dam Wash and Red Cliffs National Conservation Areas, and for the St. George Field Office, as called for by the Omnibus Public Land Management Act of 2009, also known as OPLMA.

The BLM is committed to hearing from the public and engaging with cooperating governments and agencies as part of this planning process. I greatly appreciate the subcommittee's efforts to hold this hearing in St. George. As a Utahan whose family was among the earliest settlers of Sanpete County, just down the road, and having lived in the state for six generations, these land management issues are of great personal importance to me.

Washington County, Utah, covers nearly 2,500 square miles and has been among the fastest growing counties in the country. This population increase has had direct impacts on public lands within the county and poses management challenges for a variety of reasons.

For over 20 years, the BLM has worked closely with local, state, and Federal stakeholders to manage sensitive resources in a way that prevents conflicts and facilitates continued growth within the county.

In passing OPLMA, Congress incorporated a number of public land bills, one of which established the Beaver Dam Wash and Red Cliffs NCA and included other major provisions affecting future land management in Washington County.

According to the Act, the purpose of the Red Cliffs NCA is to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the NCA, and to protect each threatened or endangered species located in the area.

The Act further provides that the Secretary shall only allow uses in the NCA that would further the conservation purposes for which it was designated.

My remarks today focus on the portions of OPLMA requiring the BLM to complete a comprehensive management plan for the Red Cliffs and Beaver Dam Wash NCAs, and to consider alternatives for a northern transportation corridor in the county. Other provisions of OPLMA are discussed in my written statement.

As you well know, the BLM is preparing plans for the Beaver Dam Wash and Red Cliffs NCAs, and an amendment for the St. George Field Office plan. These three draft plans released on July 17, 2015 outlined a range of alternatives and offer a variety of proposed management objectives and actions for the public to review and provide input to the BLM.

As I previously mentioned, OPLMA requires the BLM, in consultation with Washington County, the city of St. George, and other local governments, to identify one or more alternatives for a northern transportation route in the county as part of a comprehensive travel management plan. The BLM has included an alternative that would designate a new utility and transportation corridor within the Red Cliffs NCA, accommodating all of the potential alignments for a multi-lane road that Washington County provided to the BLM for the northern transportation route.

During public scoping, the BLM received many written comments that suggested possible conflicts associated with the construction of a new multi-lane road through the Red Cliffs NCA. Others have urged the BLM to approve or otherwise establish a transportation route through the same conservation area.

The BLM appreciates the input from all stakeholders and is in the process of reviewing all comments received.

Thank you again for the opportunity to be here today to discuss the Red Cliffs, Beaver Dam Wash, and St. George planning process. The BLM looks forward to working with the subcommittee, state, tribal, and local partners on these important land management issues.

As part of the planning process, the BLM is considering a broad range of potential resource management scenarios and provisions. No final decisions have been made, and the BLM will carefully consider all public comments and engage further with cooperating agencies before issuing final plans and amendments.

I would be glad to answer any questions you may have.

[The prepared statement of Ms. Whitlock follows:]

PREPARED STATEMENT OF JENNA WHITLOCK, ACTING STATE DIRECTOR, UTAH OFFICE, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to discuss the Bureau of Land Management's (BLM's) development of Resource Management Plans (RMPs) for the Beaver Dam Wash and Red Cliffs National Conservation Areas and an RMP Amendment for the St. George Field Office, as called for by the Omnibus Public Land Management Act of 2009. The BLM is committed to hearing from the public and engaging with cooperating governments and agencies as part of this planning process. Consistent with this commitment, the BLM has held numerous formal cooperating agency meetings and many informal meetings to discuss topics of importance with the state of Utah, local counties and municipalities, area tribes, stakeholders, and Federal partners, and has sought to maximize opportunities for public input into the plans. Under the Federal Land Policy and Management Act and the National Environmental Policy Act (NEPA), the BLM has an obligation to consider a broad range of potential resource scenarios and management approaches—referred to as "alternatives"—under the principles of multiple use and sustained yield, recognizing that other provisions of law may set forth specific management requirements. No final decisions have been made, and the BLM will engage further with cooperating agencies and carefully consider all public comments on the draft plans before issuing final plans.

BACKGROUND

Washington County, Utah, covers nearly 2,500 square miles, and has been among the fastest growing counties in the country, with a population increase of 52 percent between 2000 and 2010. Population growth has direct impacts on public lands within the county and poses management challenges for a variety of resources. For over 20 years, the BLM has worked closely with Washington County, the state of Utah, area tribes, and Federal agency partners to manage sensitive resources in a way that prevents conflicts and facilitates continued growth. As part of this effort, Washington County and the U.S. Fish and Wildlife Service (USFWS) undertook a collaborative public process, including meetings between private landowners and

state and Federal land managers, to develop a Habitat Conservation Plan (HCP) that allowed for continued growth while ensuring protection of the threatened Mojave desert tortoise. This effort mirrored similar conservation efforts across the Mojave Desert, including the successful Clark County Multiple Species HCP that has facilitated sustainable growth in the Las Vegas Valley.

The HCP Implementation Agreement, signed by Washington County, the state of Utah, the city of Ivins, the BLM, and the USFWS in February 1996, established the Red Cliffs Desert Reserve, a multi-jurisdictional wildlife reserve of 61,022 acres largely composed of Federal and state lands. According to the HCP, uses within the Reserve are to be managed in a way that "will place the desert tortoise as the highest priority," while allowing continued development of desert tortoise habitat outside of the Reserve. The HCP and associated Implementation Agreement provide a comprehensive approach to preserving and protecting desert tortoise habitat in Washington County, while at the same time allowing controlled growth and development in those areas of the county that are less essential to species recovery.

OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009

In early 2009, Congress passed H.R. 146, the Omnibus Public Land Management Act (Public Law 111–11, hereafter referred to as "OPLMA" or "the Act"), which included major provisions affecting future land management in Washington County, Utah. The Act established the Beaver Dam Wash and Red Cliffs National Conservation Areas (NCAs) to be managed by the BLM, and designated new wilderness areas to be managed by the BLM, Forest Service, and National Park Service. The Act directed the Secretary of the Interior (Secretary) to develop comprehensive management plans for both of the NCAs, including direction for the Secretary, through the BLM, to "identify areas located in the County where biological conservation is a priority; and undertake activities to conserve and restore plant and animal species and natural communities within such areas."

The congressionally-designated boundary of the Red Cliffs NCA encompasses approximately 44,859 acres of public land managed by the BLM, including about 70 percent of the Red Cliffs Desert Reserve. The Act states that the purposes of the Red Cliffs NCA are "to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources" of the NCA and to protect each threatened or endangered species located in the NCA. The Act further provides that the Secretary shall only allow uses of the NCA that would further the purposes for which it was designated.

The Act also directed the BLM to execute a number of land actions, including the transfer of land into trust for the Shivwits Band of Paiute Indians and the conveyance of land for a variety of public purposes and uses, both of which the BLM completed in 2010.

ST. GEORGE RESOURCE MANAGEMENT PLANS

Based on the congressional direction in OPLMA, the BLM is preparing RMPs and an associated Environmental Impact Statement (EIS) as required under NEPA for the Beaver Dam Wash and Red Cliffs NCAs. As required by OPLMA, the BLM is also preparing an amendment to the St. George Field Office RMP to identify and manage priority biological conservation areas and to facilitate the development of a comprehensive travel management plan. The BLM is currently under a Federal Court order to have final RMPs by June 30, 2016. On January 8, 2016, at the BLM's request, the United States Attorney's Office filed a motion with the court to extend the deadline for the final RMPs to December 31, 2016, to allow for additional time to complete further outreach and analysis. As of the date of this testimony, the court has not acted on the motion.

On July 17, 2015, the BLM released the draft plans for a 90-day public review and comment period. The BLM later extended the comment period by an additional 30 days to ensure full public opportunity to comment. As required by statute, the draft plans outline a range of alternatives and offer a variety of proposed management objectives and actions. During the planning process, the BLM held nine formal cooperating agency meetings and many informal meetings to discuss topics of importance with the state of Utah, local counties, interested tribes, and partnering Federal agencies, and has allowed for maximum public input into the plan.

Section 1977(b)(2) of OPLMA also requires the BLM to identify one or more alternatives for a "northern transportation route in the County" as part of a comprehensive travel management plan and in consultation with Washington County, the city of St. George, and other local governments. During the planning process for the

NCAs and the amendment to the St. George RMP, the BLM received a formal request from Washington County to evaluate proposed alignments for a multi-lane road through the Red Cliffs NCA that could serve as this northern transportation route. Accordingly, the BLM has included an alternative that would designate a new utility and transportation corridor within the Red Cliffs NCA, accommodating all of the potential alignments that Washington County provided to the BLM for the northern transportation route.

During public scoping, the BLM received many written comments that suggested possible conflicts associated with the construction of a new multi-lane road through the Red Cliffs NCA, including the risk of undermining the 1996 HCP Implementation Agreement and the possible invalidation of Washington County's associated incidental take permit, which could negatively affect future growth in the county. In light of these potentially significant conflicts, the BLM's preferred alternative would retain existing designated right-of-way corridors along State Route 18 and Interstate 15, but would not designate a new utility and transportation corridor within the Red Cliffs NCA. This preferred alternative is consistent with the HCP and with the direction expressed by Congress in its establishment of the Red Cliffs NCA.

Since release of the draft plan, the BLM has heard from some stakeholders who believe that the Washington County Growth and Conservation Act, which was passed as part of OPLMA, requires the BLM to approve or otherwise establish a transportation route through the Red Cliffs NCA. However, a plain reading of the statute (OPLMA section 1977[b][2]) does not direct the BLM to do this. Instead, the Act prohibits such a route through the NCA unless it furthers one of the purposes for which the NCA was established.

*Comprehensive Travel & Transportation Management Plan*

OPLMA also requires the BLM, in consultation with appropriate Federal agencies and state, tribal, and local governments and after opportunity for public comment, to develop a comprehensive travel management plan for BLM-administered land in Washington County. In addition, the BLM must also ensure that the travel management plan contains a map that depicts the "High Desert Off-Highway Vehicle Trail" and must designate a system of areas, roads, and trails for mechanical and motorized use.

BLM off-highway vehicle (OHV) area designations provide the framework within which individual route designations are made. The OHV area designations in the 1999 St. George Field Office RMP are inconsistent with current BLM Travel and Transportation Management policy. Each of the proposed alternatives in the draft plans (other than the "no action" alternative) would update OHV area designations and provide options to facilitate development of the required travel management plan.

Following final approval of the two NCA RMPs and the amendment to the St. George Field Office RMP, the BLM will prepare a Washington County Comprehensive Travel and Transportation Management Plan and a supporting Environmental Assessment in cooperation with the state of Utah and Washington County, and with full public participation and review. In addition to addressing OHV use and the High Desert OHV Trail, the travel management plan will include consideration of a northern transportation route within Washington County, as required by OPLMA.

*Lands with Wilderness Characteristics*

The BLM remains subject to the requirement of section 201 of FLPMA to "maintain on a continuing basis an inventory of all public lands and their resource and other values." Just as wildlife habitat, visual resources, conventional and renewable energy production, grazing, mining, OHV use, hunting, and myriad other land uses and resources are considered in the development of an RMP, lands with wilderness characteristics must also be considered during the planning process. In order to fulfill our statutory commitments, the BLM has inventoried lands with wilderness characteristics within the planning areas and is analyzing the impact of the various alternatives in the EIS on these lands, and one alternative includes proposed prescriptions that would protect lands with wilderness characteristics. Consideration of these alternatives allows the BLM to complete a comprehensive plan under section 202 of FLPMA, and to address the interests and concerns of the wide array of public land users.

CONCLUSION

The BLM is committed to working with state, tribal, and local partners as we consider land management plan provisions for the Beaver Dam Wash and Red Cliffs NCAs and our St. George Field Office. As discussed above, the BLM is considering a broad range of potential resource management scenarios and provisions. No final decisions have been made, and the BLM will carefully consider all public comments and engage further with cooperating agencies before issuing final plans and amendments. Thank you for the opportunity to provide this testimony, and I am happy to answer any questions.

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Mr. MCCLINTOCK. Thank you.

Our next witness, Ms. Kathleen Clarke, the Director of the Utah Public Lands Policy Coordinating Office, is recognized for 5 minutes.

**STATEMENT OF KATHLEEN CLARKE, DIRECTOR, STATE OF UTAH PUBLIC LANDS POLICY COORDINATING OFFICE, SALT LAKE CITY, UTAH**

Ms. CLARKE. Chairman McClintock, Chairman Bishop, and members of the subcommittee, thank you. I am honored to be here today and appreciate this opportunity.

I have been involved in public land and natural resource management for about 35 years. Five of those years I had the privilege of serving as the Director of the BLM in Washington, DC. One of the primary objectives that I pursued was to encourage our BLM folks at all levels to engage with their partners, their neighbors, and local communities.

BLM is a checkerboard kind of a landscape, and often you are surrounded on four sides by someone who may own that property. It is essential that this agency work together with them, and I encourage that because I am a firm believer that that kind of interaction and negotiation brings about rigorous conversations, debate, delicate negotiations, and arrives at a balance point that is based on trust, not something that everyone is thrilled with, but something that gets the best of what you both want.

I believe that that is exactly what the Washington County lands bill did, and it was an honest effort.

I was at the BLM when this bill was passed, and I have to tell you it was not uncommon that I would get a phone call from someone saying, "I don't know what Washington County is doing, they are giving everything away." And I said, "It is not my decision, I am not in charge of this action. This is a legislative action being driven by the legislature, by our Congressmen, and it will not succeed unless it gets enough votes to pass the entire House, the Senate, and gets the President's signature." And this bill did that.

That ought to be end of the story. What is a law for if it isn't to be honored, respected, and obeyed? What are agreements for if there is no honor behind them and no real commitment behind them?

The provisions in the bill are designed to enhance the quality of life in the St. George area. This quality of life emanates from the pristine environment, absolutely, but also from the dynamic and growing economy, both of which are addressed by provisions in the lands bill.

This bill protected thousands of acres of wilderness in 15 different wilderness areas. It established two new conservation areas, but it committed the remaining BLM land in the county to other public uses, and it made sure that planning could move forward for the ever-important northern transportation route. This trust, these trade-offs, that is the backbone of this special legislation.

I want to just speak for a moment about the northern transportation corridor. It was a key part of the compromise that allowed this land bill to come into being. The city of St. George, the county, and other local interests wanted to plan for a northern transportation corridor, and it is part of the reason why they were willing to support the creation of new wilderness areas and new conservation areas, because they felt comfortable that they were going to get something in return that they needed. And again, that is what the law says.

To me, at this point the debate should be over. The bill has been signed and put into law, and the time for negotiations about so much of this has passed. Those were hard-fought negotiations, and as I suggested, not everyone got everything they wanted.

I think as the witnesses testify, they will speak to numerous other concerns they have with this bill. But my major one is the integrity, and it is of an agency bothering to read the law. I think sometimes they default to their handbooks and their policy guidelines or to the way they have already done things. Maybe they were just sent to Utah from Virginia and they don't know anything about this law. Maybe they don't bother to check it out. They just know what the wilderness manual says and that is where they are going.

My encouragement is for the agency to dig back in, to take a look at the law, and to respect the agreements that were made in that law and honor them. Thank you.

[The prepared statement of Ms. Clarke follows:]

PREPARED STATEMENT OF KATHLEEN CLARKE, DIRECTOR, UTAH PUBLIC LANDS POLICY COORDINATING OFFICE

INTRODUCTION

Chairman, members of the committee; I am honored to be here and thank you for this opportunity.

In my experience, the best public land conservation always happens at the ground level with many stakeholders coming together to identify issues and solve problems. Only through a process of inclusion and transparency can resource plans be crafted that achieve a true balance between conservation, recreation, and responsible development of natural resources and that produce durable results.

Subtitle O of the 2009 Omnibus Public Land Management Act, also known as the Washington County lands bill (hereinafter "lands bill") is a true example of such an effort. The lands bill brought people together from across the political spectrum: environmentalists, ranchers, private landowners, developers, recreationists, Republicans, and Democrats. Ultimately the compromise won bipartisan support in a divided Congress and was signed by President Obama.

The provisions in the lands bill are designed to enhance the enviable quality of life found in the St. George area. This quality of life stems from the pristine environment and the dynamic economy, both of which are enriched by provisions in the lands bill. The lands bill protected thousands of acres of wilderness in 15 different wilderness areas. It established two National Conservation Areas. It committed the remaining BLM land in the county to other public uses. It protected historical uses such as grazing in the Beaver Dam Wash. And it made sure that planning for the critically important northern transportation route could proceed to the next stage.

The backbone of special land management legislation such as the lands bill is formed through compromise, the negotiation, the balancing and the mutual trust that brings such an agreement together.

When a piece of special legislation is passed by the Congress, it may direct an agency to do something outside of the ordinary, something different than what is stated in their policies and guidance documents. Examples of this arise in the lands bill we are considering at this hearing.

The Draft Resource Management Plan for Beaver Dam Wash National Conservation Area and Red Cliffs National Conservation Area (hereinafter "Draft RMP") now under review by the BLM fails to honor key provisions of the lands bill—provisions that were foundational to passage of the bill and are crucially important to Washington County today.

Both the state and the county signed up early to be cooperating agencies and also requested full coordination as mandated by law in the development of the Draft RMP's alternatives. Regrettably, they were left out of critical deliberations and were not invited to the table to discuss the challenges the BLM wrestled with or the decisions that followed. When the alternatives in the Draft RMP were released, the county was stunned, finding that many of the promises in the lands bill had no place in Alternative B, the BLM's "Preferred Alternative."

In its official comments, the state sought to have the BLM initiate a Supplemental Environmental Impact Statement to allow the state and the county to have their full rights to participation and partnership with the BLM. Although the BLM appears to not be headed in that direction, they did grant an extension of time for comments, and more importantly began a series of in-depth meetings with county and state officials to consider their many issues and concerns with the Draft RMP. These meetings have been productive and thanks are due to Field Office Manager Brian Tritle for his hard work in facilitating essential dialog and cooperation between the parties.

NORTHERN TRANSPORTATION ROUTE

Of major concern is the matter of the northern transportation route. The northern transportation route is a key part of the compromise that allowed the lands bill to exist. The city of St. George, the county, and other local interests wanted to plan for a northern transportation route, and were willing to make compromises to get there. It's part of why local interests supported the creation of 15 different wilderness areas and two NCAs. The idea was to balance conservation in some areas so that planning for the route could proceed.

The lands bill clearly states that the BLM must identify one or more potential routes for a northern transportation route in the county's travel management plan. The RMP should therefore include a right-of-way corridor within which the BLM can identify a specific route in the upcoming travel management plan, because the travel management plan will be constrained by the RMP. Unfortunately, there is significant disparity between what the lands bill says and what the BLM has proposed.

Alternative B, the "Preferred Alternative," and Alternative C in the Draft RMP do not designate any right-of-way corridors within which a northern transportation route could be built. Only Alternative D designates a right-of-way corridor for a northern transportation route.

Notwithstanding, the lands bill states that a route must be identified in the travel management plan. If BLM selects Alternative B or Alternative C from the Draft RMP, there will not be any right-of-way corridors available for the route in the travel management plan. The Draft RMP should have included a right-of-way corridor under every alternative so that planning for the route can proceed as directed by law.

We have heard from the BLM that a travel management plan is not the right planning document to identify a route for a highway; that BLM regulations do not provide for route identification in travel management planning. We have even heard from the BLM that Congress made a mistake by calling for the identification of the route in the travel management plan.

But BLM regulations can and must be adjusted to follow the will of Congress because Federal law trumps agency regulations. If route identification does not usually happen during travel management planning, the BLM must make a one-time adjustment to their travel management planning process.

Designating a right-of-way corridor in the RMP will not authorize construction of a highway. It will not jeopardize any endangered species. The designation will only involve drawing lines on a map so that planning for the northern transportation route can proceed to the travel management plan stage. The northern transpor-

tation route itself will require its own approval process and its own NEPA documentation. But at this point BLM is required by law to allow the planning process move to the next level.

WILDERNESS STUDY AREAS

The BLM has also disregarded the express intent of Congress with regard to wilderness study areas. The lands bill, which designated over 250,000 acres of the county as wilderness, clearly says that all remaining BLM land in the county has been adequately studied for wilderness designation and should be released from wilderness consideration under FLPMA Section 603(c). This was another important compromise made by local interest groups in Washington County when agreeing to 15 new wilderness areas under the lands bill.

Despite this direct statement in the statute, under Alternative C the BLM proposed to manage over 18,000 acres as lands with wilderness characteristics.

Proposals like this, even when they are only found in one alternative, foster distrust in the Federal Government and dismay among local residents.

INSUFFICIENT RANGE OF ALTERNATIVES

The purpose of a Draft RMP is for the BLM to provide the public and cooperating agencies with a range of management alternatives, and to then solicit feedback on which alternatives are preferable. However, there are many instances in the Draft RMP where there is no range of alternatives; where all three alternatives contain identical proposals. This is not how NEPA is supposed to work, and it renders local input meaningless if there is only one option presented in a Draft RMP.

One example is the BLM's proposal for California Condors. Alternatives B, C, and D all proposed to "authorize the reintroduction, translocation, and supplemental releases of California condors." There is no variety in the alternatives for this very significant management action, nothing from which cooperating agencies or BLM decisionmakers can make a selection. The Draft RMP should have included three distinct proposals for each alternative, with meaningful differences between each.

Another example is from the water resources section of the Draft RMP. Every alternative states that the BLM will "not authorize land uses that would export water from the NCA." Again the BLM proposes a management action with serious consequences for the public and cooperating agencies, but does not provide any range of alternatives. Provisions such as this ignore the role of cooperating agencies, as if a decision has already been made. Other examples of proposals without a sufficient range of alternatives are found throughout the Draft RMP. Cooperation with state and local government requires real alternatives for each management action and substantive discussions between parties over which alternatives are best.

REMOVAL OF "COOPERATION AND COORDINATION" LANGUAGE

Let me mention briefly an issue I find both troubling and perplexing. The existing RMP for the St. George Field Office frequently says that the BLM should cooperate, collaborate, or coordinate with local governments.

This language about has been removed from Alternatives B, C, and D of the Draft RMP. Cooperation with state and local government is fundamental to good stewardship and conservation. While laws and regulations directing the BLM to cooperate with state and local government will still be valid regardless of the text of the RMP, we request that the BLM include language about cooperation, collaboration, and coordination in the new RMP.

CONCLUSION

I appreciate the efforts of the people of Washington County to work together toward good stewardship of their public lands, and for the efforts of Congress to craft balanced and individualized land conservation laws in Utah. I urge continuing cooperation between the BLM and local government officials as the BLM moves to finalize these important land management plans.

Thank you.

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Mr. MCCLINTOCK. Thank you very much.

Our next witness, Mr. Paul Van Dam, the former Executive Director of Citizens for Dixie's Future, and a former Utah Attorney General from Ivins, Utah, is recognized for 5 minutes.

**STATEMENT OF PAUL VAN DAM, FORMER EXECUTIVE DIRECTOR, CITIZENS FOR DIXIE'S FUTURE; FORMER ATTORNEY GENERAL, STATE OF UTAH, IVINS, UTAH**

Mr. VAN DAM. Thank you, Mr. Chairman. Chairman Bishop, it is a pleasure to be here today, and it is particularly a pleasure for me to look out into this room and see my kind of people. Thank you for coming. I know you cannot applaud, but I can hear it.

I have been involved with Utah my whole life, born here, raised here, bought property in this county in the 1970s; I love the state, and I love this land.

But we have a unique situation in Utah that many do not want to accept, and that is the majority of it belongs to all Americans, not just Utahans.

I had a unique opportunity as the Attorney General of the state to see how government runs on the state level and how it meshes with the Federal Government, and there are real discrepancies, real differences between the attitudes of Utahans and the attitudes of other people in this country.

This state was born back in the 1840s from people running from other people, and other states driving them out. When Congress finally got a nose full of what the Mormons were doing with their polygamy, they sent an army out. And what did Utah do? It sent a counter group back to waylay that army, and they had to change a lot of things. There have been hard feelings among these people in the state of Utah and the Federal Government for as long as this state has existed, and they have now come forward even more today.

We have a state that has just spent $14 million to hire a law firm to see if they can get their land back, land which never belonged to anybody but all the people of the country. So, when this BLM thing came up I thought, well, this is so strange. And when I hear the Chairman in his introductory remarks basically dissing and being disrespectful of the BLM and believing everything that he has heard from one side and not the other side, I want to tell you, Mr. Chairman, I have dealt with the BLM for a long time. My experiences are positive.

They have accommodated me. They have met with me. They have answered my questions. I have been to many, many of their presentations, and I can tell you that they are engaged and they have no desire to thwart the people of this county.

We had a sagebrush rebellion some years ago, and now we are doing it again. I see some of those here who are very much involved in trying to get Utahans worked up about the fact that we are entitled to the land in our state.

Well, if those were the facts, I might join them, but they are not. Most of this state, 67 percent of it, belongs to everybody in the United States, and the BLM has the very difficult job of preserving it in a way that is meaningful.

Having grown up in Salt Lake City, I can tell you that that area, when I was born, which was 78 years ago, was pretty pristine. We had open foothills. We had trails. We had open ground. And we still had an air problem. But everything is now full, and everything is now polluted, and I simply do not want to see this county follow suit.

There are those who would simply do that. Businesses would like to fill every nook and cranny in this county with a house, with a business, with something. I am not against growth, but I think smart growth is something that is very important.

A few years ago we had a process called Vision Dixie, which I assume many of you were involved in. Vision Dixie cost the county half a million dollars and took a year and a half or more. It came out with a plan, and the plan was to grow within the confines of our city. The plan was to keep our natural wild places open and usable. The plan, Vision Dixie, has kind of gone away, and I am sorry.

Now, we talk about the northern transportation corridor, and I have very few seconds left, but I can tell you, having talked to Bill Mader, who was the Administrator back in the 1990s and who drafted the actual document, says no highway was contemplated or allowed. Then it was made into a national area for our tortoises, and we want to run a six-lane highway through there that dumps out on Red Hills Parkway, the small road that now exists up there. To what advantage? So I can get over to Ivins in about 3 minutes less time than before, and in the process essentially wipe out what is an amazing area and a tortoise reserve?

My time is up. I have not had time to talk about most of the things in detail I would like you to know. But let me just say in closing that there is a difficulty in understanding one another, and those of you who are here know what I am talking about. I ran for County Commission a couple of years ago and I found out I am not going to be elected here. I am a Democrat.

Thank you very much, and hold on to your hats.

[The prepared statement of Mr. Van Dam follows:]

PREPARED STATEMENT OF R. PAUL VAN DAM, FORMER ATTORNEY GENERAL, STATE OF UTAH

As a life-long Utah resident, property owner in and current resident of Washington County, Utah, former Utah Attorney General and an American, public lands are of great importance to me. I appreciate being able to provide testimony at this public hearing convened by the House Natural Resource Committee's Subcommittee on Federal Lands and be given time to speak on behalf of those in our county and others who support our public lands and value their preservation now and into the future for generations to come.

Given my legal career and having served as executive director for Washington County's only local grassroots conservation organization, Citizens for Dixie's Future (CDF), I am familiar with laws dealing with our county's public land. I was heavily involved in the 2006 Washington County Growth and Conservation Bills offered by Utah's Senator Robert Bennett and Congressman Jim Matheson. When I became CDF's executive director in 2008, the effort by Senator Bennett and Congressman Matheson had been met with vigorous opposition by local citizens, resulting in the formation of CDF and ultimately the initiation of the Vision Dixie process by Washington County Commissioners to deal with the unrest created by the legislation. To their surprise, the Vision Dixie process revealed great support in this county for our public lands and reluctance to spin off large portions to Washington County or build a Northern Corridor through the Red Cliffs Desert Reserve, now part of which is an NCA.

The 2006 bill version was soundly rejected and resulted in a revised version being included in the 2009 Omnibus Land Act. In 2008, I was directly involved in conversations with Congressman Matheson's office leading up to the final version for the 2009 legislation. They were unwilling to completely relinquish the idea of their preferred Northern Corridor but language was revised in the 2009 legislation to provide leeway in that regard. We now are dealing with the results of that and arguing whether the BLM has lived up to the letter of the law described in the 2009 Omnibus Public Land Management Act (OPLMA), Subtitle O. I believe they have.

Much of the disagreement pertaining to this contentious road deals with what has been on the county and city transportation plans for decades according to county leaders. That may be the case, but according to my conversation with Dr. William Mader who served as the first administrator of the Red Cliffs Desert Reserve (Reserve), established in 1996, and administered the Habitat Conservation Plan (HCP), there was no plan for a road, and it was clear to county and city officials involved in the process and BLM, U.S. Fish and Wildlife Service and Utah's Division of Wildlife Resources that was the case. Straightening of Skyline Drive (also known as City Creek by some) was discussed to deal with traffic, but certainly no road through the heart of the Reserve. There was some early discussion but it was made clear that if they wanted the HCP that would allow development to ensue in over 300,000 acres of Washington County, there would be no road. Dr. Mader was part of all official discussions, meetings and decisions in this regard. If side conversations occurred implying something different, they were not part of the official decisionmaking process or record.

When Dr. Mader and I spoke, I asked him about the Washington Parkway Study done in 2012 in which a biologist working with Utah's Department of Transportation and the Dixie Metropolitan Planning Organization, our local transportation planning organization, was contracted to review the proposed Northern Corridor preferred route, also called the Washington Parkway, and show how, if at all, a road could be constructed to help the tortoise population. Dr. Mader, being a trained biologist himself and former head of the Reserve, stated unequivocally that the road would not help the situation. The tunnels suggested by UDOT/DixieMPO's biologist would not provide the necessary access needed. The additional traffic, along with the noise and pollution that would result, would not be conducive to helping the tortoise population which has declined by around 50 percent since 2005's summer fire season.

To substantiate Dr. Mader's concerns, I offer the following from a December 19, 2012 letter from the Desert Tortoise Council pertaining to the Washington Parkway Study (Study) conducted by UDOT and DixieMPO:

> "But for" this project, none of the threats listed in the table in the executive summary (pages iii and iv of the Study) would affect the Reserve. Therefore, the best way to eliminate the following threats is to prohibit the construction of a new highway through the Reserve: Direct mortality, construction activities, habitat fragmentation, habitat loss, small reserve/population size, disturbance, spread of exotic and invasive plants, increased risk of fire, increased predation, disease, increased access to remote areas, and cumulative threats. In Section 7.9 on page 51, the Study fails to indicate that a new roadway through the Reserve would be a new source of road-killed animals that would serve to subsidize ravens and coyotes.
>
> The Council takes exception to the following statement: "This study illustrates that a comprehensive approach to roadway design and associated management can ameliorate many existing threats, contribute to improving conditions, and provide future management options for the tortoise on the Reserve." First of all, there are no "improving conditions" in a population that has declined by almost half since the HCP was implemented and the Reserve established. It is extremely misleading to claim that the project itself, which is probably immitigable, will somehow benefit tortoise conservation elsewhere; such statements redirect the readers' attention away from the impacts associated with the proposed project by promising conservation elsewhere. Since this conservation is already guaranteed by an HCP with its adaptive management contingency plans, there is no need for the "additional" conservation proposed by this new project.

Dr. Mader's concerns and those of the Desert Tortoise Council are not the only reasons for rejecting the Northern Corridor route preferred by our county and city leaders. The county's own 2015 Regional Transportation Plan clearly states that roads will not solve this county's traffic problems. The report also points out that the majority of this county's growth will be in the southern and southeastern areas of this county meaning that a Northern Corridor would support a very small population of this county at an expense of around $100 million. The transportation plan also shows that we have a deficiency in funding for others roads that are more essential to more populated areas and shows that the road would save a mere 1.7 minutes from travel time.

As a resident of Ivins, a town in the northwestern part of Washington County, conceivably I could benefit from a Northern Corridor, but to have 1.7 minutes shaved from my travel time while turning our backs on an obligation made in good faith in the 1990s and challenging to the Red Cliffs Desert Reserve and Red Cliffs NCA, an area that citizens and visitors have come to love and cherish, makes no sense to me.

The argument is made that traffic on St. George Boulevard and Red Hills Parkway will not be able to handle the coming traffic, but then the transportation report shows that congestion will not be eliminated on these roads even with a Northern Corridor. And, amazingly, the preferred Northern Corridor (aka Washington Parkway) is designed to move traffic onto Red Hills Parkway near the Highway 18 intersection, which seems to completely undermine the purpose for a road. In fact, even now, if I desire to avoid St. George Boulevard and other mid-town traffic, I can take I-15 to Dixie Drive and Dixie Drive to Snow Canyon Parkway and home.

While local leaders attest to the need for a road to move traffic, a 2007 UDOT study concerning a proposed Northern Corridor dealt with the county's preferred route (Red Hills Parkway to I-15 at MP 13 in a chapter titled: "Alternatives Considered but Eliminated from Further Consideration." Here are excerpts from that report:

> Under this alternative, traffic conditions would also slightly improve on St. George Boulevard but would slightly deteriorate on Bluff Street.
>
> However, traffic demand along St. George Boulevard would still exceed the road's capacity, so the effect may be minimal.
>
> The Northern Corridor Alternative would not meet the objective of minimizing impacts to the reserve.
>
> According to a letter from USFWS, "*such a road would compromise the commitments on which the Washington County Habitat Conservation Plan was based, is likely to compromise the biological integrity of the Upper Virgin Recovery Unit (already the smallest recovery unit), and may result in an adverse modification of designated critical habitat*."

While others may not take heed to what Dr. Mader and biologists from the Desert Tortoise Council say about the effects of the proposed, preferred Northern Corridor route, or consider the admonitions provided in transportation studies, perhaps this official statement by Senator Bob Bennett will carry more weight from the U.S. Senate hearing record of April 22, 2008 on S. 2834:

> "Congressman Matheson and I have made significant changes to the previous proposal. We have permanently protected large amounts of biologically significant public land in Washington County, including additional wilderness and a new National Conservation Area. We have removed the corridor designations for the Lake Powell Pipeline Corridor and the Northern Corridor that bisected the Red Cliffs Desert Reserve" p. 8 (emphasis added)

What's needed is for our transportation planners to go back to the drawing board and devise ways to deal with our projected traffic needs without undermining agreements that were made at an earlier time. County-wide coordination of all general plan updates and major rezoning approvals would improve transportation planning. All signatories to the HCP need to uphold the agreement and do their general plan updates and transportation planning with the Northern Corridor off the table.

Although the proposed Northern Corridor (aka Washington Parkway) is a major sticking point in the BLM's 2015 RMP, other issues are pertinent to this discussion and bear mentioning. Of critical concern by our leaders at all government levels is their contention that the BLM has failed to live up to the actions designated in the 2009 OPLMA. Given my reading of the OPLMA language and my legal career, I disagree. The following is the direction given to the BLM—representatives for the Secretary of Interior—by the OPLMA:

(2) USES.—The Secretary shall only allow uses of the National Conservation Area that the Secretary determines would further a purpose described in subsection (a), which provides:

(a) PURPOSES.—The purposes of this section are—

(1) to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the National Conservation Area; and

(2) to protect each species that is—

(A) located in the National Conservation Area; and

(B) listed as a threatened or endangered species on the list of threatened species or the list of endangered species published under section 4(c)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)(1)).

Pertaining to the Northern Corridor issue the 2009 bill states:

(A) 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 or more alternatives for a northern transportation route in the County.

The BLM has identified four options for a road in their Alternative D of the RMP. What they have not done is support Alternative D as their preferred alternative because it conflicts with the directive of protecting the species within the NCA. OPLMA does not direct them to "prefer" an alternative; it only directs that they "identify" alternatives.

For leaders such as Utah's Senator Orrin Hatch to assert that the BLM has gone against the "intent" of OPLMA is without merit given what Senator Bob Bennett's 2008 official comments show. If we are to legislate by back room deals and not by what is in official testimony and in legislation itself, we will surely be arguing over this forever.

My personal experience with the BLM has shown them to be open and willing to work with citizens at all levels, if those citizens take the time and make the effort to approach them in a collaborative manner. I am not here to assert that BLM does everything perfectly or that some review of their systems is not warranted. But I believe they have lived up to OPLMA's requirements perhaps as well as is humanly possible. They have been asked to include the HCP and other relevant laws and agreements in their decisions, laws and agreements that often don't sit well with political leaders.

Given the requirements of the HCP to protect the Red Cliffs Desert Reserve's flora and fauna while they've had pressure for a road that would go against that has placed them in a very difficult position. Also, the requirements of FLPMA have presented challenges, and yet, these are laws and agreements that have been enacted and agreed to by previous congressional actions and local leaders. Are we to completely upend the apple cart and challenge all decisions made by those who came before us?

Local leaders, county and city, assert they have not been included in the decision-making process leading up to the RMP and yet they have known, or should have known, since 2009 that this plan was in progress. They have had every opportunity to be involved, and in fact, I believe they have been involved but simply have not achieved what they want; hence this hearing has been convened to help force their issues.

Washington County leaders have complained that the RMP was too extensive for proper review. However, the BLM initiated their planning process by publicizing a Notice of Intent in 2010, which began a 60-day scoping period for the public to assist BLM, and that included local officials, too. Meeting dates, times and locations for four public meetings were announced and details for public comments provided. The information was also published in newspapers in the planning area at the same time. This gave the public, which includes local leaders, time to participate and communicate their needs to the BLM. If local leaders feel they should have been paid deference and been given special attention, that is not borne out in the OPLMA.

The RMP was issued for the initial 90-day comment period in July 2015, and the BLM held open house meetings to answer citizens' questions. Additionally, the regional BLM office is always open to receive citizens and interested persons, including the mayors if they are truly interested in getting information and having a two-way conversation.

Had local leaders truly wanted to be involved in the RMP planning process, they had plenty of opportunity. They had access to OPLMA details and what issues the BLM would address. Had officials been concerned, they could have begun reviewing those needs and identified areas that would be particularly problematic for their citizens and started developing preferred plans to communicate to the BLM.

Additionally, city and county leaders have monthly access to Federal agency representatives through the Habitat Conservation Advisory Committee (HCAC) that oversees the Reserve/NCA. Two mayors sit on the committee, St. George city manager is on the committee, which also includes representatives from the BLM, USFWS and Utah's Division of Wildlife Resources, and Washington County Commissioner Alan Gardner attends monthly meetings which are preceded by lunch for committee members and any citizens who might want to participate. There are

also ad hoc work meetings and field trips during which leaders and Federal/state agency representative interact.

So, where does the public stand in this process? How do they feel about our public lands and the efforts underway to wrest control from the Federal Government and place under state control where leaders such as those who are challenging the BLM's RMP can have their way? A nationwide poll done by the CREDO wireless network challenging Senator Hatch's S. 1783 that would force the preferred Northern Corridor through Red Cliffs NCA has garnered over 126,000 signatures by those across America who challenge the idea of politicians making decisions that should be left to those with more biological background. Even informal local online polls have shown that 64 percent of participating Washington County residents oppose the idea of this controversial road.

On a more general level regarding America's public lands, a recent poll by the Colorado College State of the Rockies Project "Conservation in the West Poll" showed support for keeping America's public land under Federal control rather than relinquishing to the states. The college's Web site states:

> Despite an uptick in anti-public lands rhetoric from militant extremists, Colorado College's recently released State of the Rockies Project Conservation in the West Poll shows strong public support for efforts to protect and maintain national public lands.
>
> https://www.coloradocollege.edu/newsevents/newsroom/2016-conservation-poll-finds-support-for-public-lands#.Vp_OtZorLGg

From the college's January 2016 press release about the poll, key findings from the poll include:

- Ahead of the 2016 elections, 75 percent of respondents say issues involving public lands, waters, and wildlife are an important factor in deciding whether to support an elected public official, compared to other issues like health care and education.
- 83 percent of respondents believe the drought is a serious issue and in Colorado River Basin states (CO, NV, NM & UT) strong majorities favor using the current water supply more wisely over diverting more water from rivers in less populated areas.
- 75 percent of respondents support the renewal of the Land and Water Conservation Fund.
- 80 percent of respondents believe the U.S. Forest Service should be allowed to treat the largest and most expensive wildfires as natural disasters in order to have access to emergency disaster funding.
- 72 percent of respondents say national public lands, such as national forests, national monuments, or wildlife refuges help their state economy.

Many of our local county and city leaders assert that growth will be hampered by BLM's RMP decisions. Few details have been presented to uphold this assertion. The BLM's St. George Field Office and the county, through the Habitat Conservation Advisory Committee (HCAC), have been managing these lands for many years. The HCP administered by the HCAC is currently up for renewal after its 20-year life. Washington County was considered the fastest growing county in the Nation leading up to the Great Recession in spite of these public lands. In fact, these public lands draw visitors from around the world to enjoy this area and provide recreational opportunities to residents. To assert that decisions by the BLM regarding introduction of the California Condor, restrictions on some grazing and OHV opportunities, along with the myriad other concerns will challenge this area's growth seems foolish.

Although some citizens and leaders believe they know a great deal about public lands, the BLM and forest service inspect them, evaluate them, report on them and are in a position to have a fully developed factual base for their opinions. These activities are accomplished by trained, qualified personnel. Much of my testimony has concentrated on the Red Cliffs NCA and the proposed road through the Reserve and NCA because of the challenges that area faces. Tortoise population presence and decline is well documented. As noted in the RMP, the animals have been studied since the 1930 as confirmed by the RMP's reference on page 399 pertaining to the Beaver Dam Wash NCA:

> Woodbury and Hardy (1948, 187) described their study area between 1930 and 1935 as consisting of 1,200 acres that represented the "home area of a semi-isolated colony of approximately 300 tortoises." From these data, they concluded there were 2,000 or more tortoises in the estimated 70

square mile area of the Slope, and described the area as being potentially good habitat but for the impacts to the native vegetation communities as a direct result of overgrazing by sheep and other livestock.

So, populations in the Red Cliffs NCA, Reserve and Beaver Dam Wash NCA are and have been at risk for some time. Social trails through the Red Cliffs NCA have increased as our population has increased. Providing additional access via a road will not help this situation. So far the Mojave desert tortoise's listing has not been elevated from threatened to endangered. However, with the decline in population any other efforts to undermine those numbers could be seen as reason to elevate that listing, there providing additional demands on management, which I'm sure our local leaders would not want.

There is much more that can be addressed given the extensive nature of the BLM's RMP and the many obligations they have regarding management. I've hit on what I consider the high points that have resulted in this hearing being called. I appreciate having the opportunity to participate and share my thoughts and information on this important topic not only to our area but nationally, as well.

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Mr. MCCLINTOCK. Thank you.

We will now hear from our next witness, the Mayor of St. George, Utah, Mr. Jon Pike, for 5 minutes.

**STATEMENT OF JON PIKE, MAYOR, CITY OF ST. GEORGE, UTAH**

Mr. PIKE. Mr. Chairman and other Members of Congress, thank you for being here.

I wish to explain four major problems with the draft management plans.

First, the city of St. George was not invited to participate in the planning process.

Second, the northern transportation route that Congress provided for in the Public Lands Management Act is being excluded from any serious consideration in the current plan.

Third, language in the current draft calls for the BLM to obtain water rights and restrict the exportation of water from the National Conservation Areas.

Fourth, utility development protocols that were crafted for the desert tortoise habitat conservation plan are not being included in the NCA management in the current draft.

Please let me elaborate on these points one at a time so I can explain why these four points are so concerning to me as the mayor of the largest city in Washington County.

I not only represent my city today, but I believe I also represent the mayors and city councils of other municipalities in the county who would be affected by these RMPs.

First, the planning process. BLM's local office spent 6 years right here in St. George drafting a Resource Management Plan that will affect the resources of St. George City and other local municipalities that we will depend on in the future, without consulting the governments of these local municipalities.

During that planning process, the city government was never invited to help form alternatives or to comment on the alternatives that were being drafted until they were released for public comment.

Second, water rights. The easiest problem on this list to fix would have been the water rights language. Any threat to water rights is a huge problem for St. George. Thirty-seven percent of the

city's water is either directly or indirectly affected by these two National Conservation Areas. A simple conversation could have resulted in a better understanding of the status of water in the NCAs, but BLM proposes in their current draft that they, first, pursue acquisition of ground and surface water rights; second, do not authorize uses that would export water from the NCAs; and third, ensure that the BLM obtains water rights on all inventory point water sources.

All three of these goals are troublesome when water is a scarce resource, and all three are probably contrary to Utah water law. All water in the area is allocated, so obtaining water rights on inventory point sources would require a purchase of water rights from an existing user. Water rights include the right to access water. So, BLM cannot refuse to authorize the export of water from the NCAs by those who legally hold rights to the water.

The BLM cannot hold water rights without putting them to beneficial use, as defined by Utah water law. A few conversations could have prevented water goals that are unwise and illegal.

Next, utility development protocols (UDPs). Importing the UDPs would also be simple. The UDPs were developed cooperatively between Federal and local governments, as well as utility companies. During the planning for the desert tortoise management, a balance was struck between the need to protect the species and the need to provide basic utilities for residents. When Congress included language in the Land Act that existing protocols were not prohibited in the NCAs, the BLM should have imported the UDPs directly into the Resource Management Plans. Instead, they made a declaration in Chapter 1 that the UDPs were inadequate and created an immediate conflict between managing the NCAs and survival of the local economy.

Last, the BLM did not take seriously the directive from Congress to study one or more alternatives for a northern transportation route. St. George needs a northern route to move cars from east to west without forcing all traffic onto city surface streets that are not designed for the volume and that would be crippled by the year 2040. The city and the county have been planning for a route for decades. A route through the NCA would serve 3,000 driving hours in the city and carry 32,000 cars per day, and could be built in an environmentally sensitive way.

Congress recognized the need for a northern route in the Land Act. Rather than faithfully execute the Land Act as it was passed by Congress and signed by the President, the BLM tried to get around studying a route. Several possible routes that had been studied by local governments were considered in Alternative D, not the preferred alternative.

Alternative D studied the impacts of the routes in aggregate, not individually, which greatly exaggerated the possible impacts of a road. Since Congress directed the Secretary of the Interior to study one or more routes in the travel management plan, all alternatives in the RMPs should have contained a corridor for a northern route. No honest effort was made to study realistic routes.

For these reasons, I feel that the BLM has failed in its duty to faithfully execute the laws enacted by Congress. Instead, the BLM has placed ideology above responsibility to work with local govern-

ment and the will of Congress. Local governments cannot plan for the future if they are unable to rely on Federal land managers to be good partners. Thank you.

[The prepared statement of Mr. Pike follows:]

PREPARED STATEMENT OF MAYOR JON PIKE, CITY OF ST. GEORGE, UTAH

From the perspective of the city of St. George, the draft Resource Management Plans (RMPs) the BLM released for public comment in 2015 were unacceptable for several reasons that all boil down to a lack of concern for the local economy and local residents. Had the writers of the document made a good faith effort to coordinate with local governments, the draft RMPs could have been planning tools that helped guide resource management in the county. As they were written, without any local input, they are horribly faulty and pose a possible threat to the local economy.

Being the mayor of the largest city in Washington County, I would like to have a friendly working relationship with the local Federal land managers. Had I been invited to give input before the draft was released to the general public, I could have explained why some of the decisions in the draft RMPs would kill the growth of my city. Instead, I am left to fight to change the draft that is the product of 6 years of work. For 6 years, BLM planners worked on this draft in an office in St. George without ever talking to me or the previous mayor about the management of the National Conservation Area (NCA) that borders my city.

The laundry list of complaints is long, but the major problems from the city's perspective are:

1. The city of St George was excluded (along with all other municipalities in the county) from participating in the formulation of alternatives in the RMPs.
2. The northern transportation route that was provided for in the Omnibus Public Lands Management Act of 2009[1] (OPLMA) is obviously being handled in a way that ensures it will not be built. St. George and surrounding areas need the transportation route for future growth, and the route was specifically bargained for in the negotiations that led to OPLMA.
3. Utility Development Protocols that were worked out for the desert tortoise habitat conservation plan (HCP) that would allow the tortoise and the economy to thrive side-by-side were left out of the RMP.[2] St. George utilities need to be allowed to run through the NCA and maintenance on existing utilities has to be allowed because of the topography of the area.
4. The water rights language in the RMPs threatens growth and development in two ways. First it calls for the BLM obtaining water rights, and second it says the BLM will not authorize land uses that transfer water from the NCAs.[3] All of the water in the area is allocated. BLM cannot obtain water rights without getting them from someone who currently holds them. St. George has major water supplies under the Red Cliffs NCA and plans to move water across NCA land to supply parts of the city that need additional water.

*1. Cooperation*

When the desert tortoise was listed as a threatened species, St. George worked with the county, other municipalities, and Federal partners to find solutions that would allow the economy to continue to grow while the tortoise also continued to thrive in the area. As a result of that process, the Red Cliffs Desert Reserve was created, the HCP adopted by the interested parties, and eventually, the Red Cliffs NCA was designated. In light of the history of mutual respect and cooperation that went in to the management of the reserve before the creation of the reserve, the city of St. George expected to be treated like a full partner in the creation of the management plan. It came as a shock when the RMPs were released for public comment and seemed to take a stance that was adversarial to the best interests of the local economy. After all of the negotiation and buy-in from stakeholders that led to OPLMA, the city was operating under the assumption that the law would be followed in a way that reflected the intent of Congress in passing OPLMA: to settle land use questions in a cooperative way.

[1] OPLMA Sec 1977 (2).
[2] See HCP management plan and incidental take permit.
[3] Page 54 DOI–BLM–UT–C030–2015–1–EIS.

Had the city, or any of the other municipalities, been invited to participate in the planning process, certain misunderstandings could have been avoided. For example, city attorneys could have helped BLM see that the water rights language included in the RMPs was contrary to Utah water law. As another example, if the language from the RMPs proposing introduction of California Condors under the full protection of the Endangered Species Act had been shown to the city during the planning process, the BLM could have been informed that an existing agreement between the USFWS and the local governments would prevent any such introduction. Undoubtedly, several other objectionable points could have been sorted out through communication and inclusion prior to finishing the draft. As it is, the city is left to comment with the public on issues that Congress already spoke to in OPLMA.

*2. Northern Corridor*

The northern transportation route was specifically called for in OPLMA. Congress said: "In developing the travel management plan, the secretary shall[,] in consultation with appropriate Federal agencies, state, tribal and local governmental entities (including the County and City of St. George City, Utah), and the public, identify one or more alternatives for a northern transportation route in the county."[4] Not only was St. George City not consulted, as required by law, but the northern transportation route was only allowed for in Alternative D of the RMP.[5]

Alternative B, the preferred alternative had no allowance for a northern transportation route of any kind. Alternative D, the only alternative with any consideration of a route, was written in such a way that in exaggerated the impact of the route and made selecting that alternative virtually impossible. Impacts of a route were analyzed as if six different routes would all be built simultaneously and as if all six routes would be multi-lane highways with amenities. Furthermore, the route impacts were combined with possible utility corridors which added to the exaggeration of the potential impacts. Alternative formulation made it clear that BLM was not trying to be true to Congress' directive to study route for a northern corridor. Instead, BLM was trying to kill the idea of a route through tortoise habitat.

St. George is geographically bound by the spectacular rock formations that make the area attractive to visitors and by the rivers that helped shape the landscape. Transportation planning in St. George requires creatively finding routes that serve the needs of the public within the confines of the geography that makes it such a wonderful place to live. Current surface streets will be inadequate to keep up with future population growth. A northern route is needed to move traffic between the municipalities east and west of St. George. Without a northern route, all traffic will be forced to drive through the city of St. George on downtown streets that were not designed to be parkways. Not only would the traffic be too heavy for the existing streets, but it would require more idling of vehicles and more pollution-causing congestion.

As a solution to the traffic problems the city will face in the future, the northern route has been in the planning stages for more than 20 years. During the HCP process, the city was clear that even if the area that is now the Red Cliffs NCA became a reserve, the city would still need a route from east to west. The NCA is currently bisected form north to south by a fenced road. The county is willing to decommission the north/south road to mitigate the impacts of an east/west northern route. The existing road is old and was not designed to be tortoise friendly. The northern route could be designed to allow tortoises to cross underneath it and keep tortoises off the pavement. The northern route would also have a shorter span through the NCA than the current road has. Biologically it would be a net gain for tortoises.

Although St. George and county partners have been willing to meet, plan, and negotiate with Federal land managers and wildlife officials, the draft RMP was written without any input from the city. In light of the cooperation that led to the HCP and the clear mandate from Congress to work with the city of St. George, both the lack of cooperation that went into the draft and the slanted alternatives in the draft were an unpleasant to city officials. If an alternative is selected in the final RMP and the subsequent record of decision that does not allow for a northern route, then in a year when the local BLM office is working on a travel management plan, they will be in violation of OPLMA. Congress stated in OPLMA that the Secretary of Interior was to consider one or more routes for a northern corridor *at the travel management stage*.[6]

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[4] OPLMA Sec 1977 (2).
[5] Pages 278–285 DOI–BLM–UT–C030–2015–1–EIS.
[6] OPLMA Sec 1977 (2).

So far, the local BLM office has held fast to their refusal to soften their stance on the northern corridor. As an explanation for their refusal to include a corridor, the local BLM office keeps telling the city, county, and state that a plan that includes a corridor will get a negative biological opinion from the USFWS. The USFWS is under the same obligation from Congress to find one or more alternatives for a northern route. Congress didn't direct *the BLM* to study a route, Congress directed *the Secretary of Interior* to study one or more route. The USFWS is also under the Secretary of Interior. By pointing fingers at each other, they are both avoiding following through on the statute that Congress passed and the President signed. No amount of finger pointing will change the plain language of the law that requires the Secretary of Interior to study one or more route.

*3. Water Rights*

Any attempt by a Federal agency to obtain water rights in a basin that is fully allocated [7] looks like a Federal over-reach to locals. In this arid region, water is our lifeblood and the limiting factor to growth and development. Water planning is serious business in southern Utah. When language in the BLM draft RMPs suggests that they will be filing on all point sources within the NCA boundaries, buying up water rights, and disallowing land uses that export water from the NCAs, the city of St. George sits up and takes notice.[8] Water rights and the allocation of water are the purview of the state of Utah. Federal land management agencies should have no part in determining how water is allocated or in obtaining an already scarce resource.

Under the Red Cliffs NCA is a Navajo sandstone aquifer that provides about 10 percent of the city of St. George's municipal water supply. If that water is not allowed to leave to the NCA, the city will be seriously short of water. Existing water lines that cross the NCAs will need to be maintained over the life of the NCA. Additionally, the city owns water rights north of the NCA that require water to be piped across the NCA to supply residents with clean drinking water. If activities that move water across the NCAs to get them from point of diversion to point of use are disallowed, as much as 37 percent of the city's water supply will be affected. The Washington County Water Conservancy District partners with municipalities to supply water, and Federal land has to be part of that system. We are surrounded and inundated with Federal land. State law requires access to water rights. The only way for the residents of St. George to adequately access municipal water is to include public land in the process. In the past, St. George has been able to work with BLM to ensure a stable water supply for our residents. We would like to see that relationship continue and improve.

The local office has stated that the intention of the language in the draft RMP was never to make a big water grab. If this is true, it is another argument for bringing the cities and other local governments into the planning process early, as required by Federal law. If those who depend so heavily on the water supply had been asked to offer opinions on the water language before the draft came out, the BLM would have known how upsetting the water language was. Local governments and the Washington County Water Conservancy District could have advised BLM on the conflicts between their plan and state water law. The problem could have been solved before it was released to the public.

*4. Utility Development Protocols*

Similarly to the water and transportation issues, utility corridors are limited by the geography of the area, but utilities are necessary for the growth and economy of the city. Because those involved in creating the HCP understood that, utility development protocols (UDPs) were worked out and included in the HCP agreement. The agreed upon protocols were intended to be included in the NCAs. Without the ability to maintain existing utilities and to get new ones to the city, growth will be stunted and the economy will suffer.

Protecting tortoise habitat does not have to stifle the local economy. Balance can be found between the need to protect species and the need to bring utilities in to the residents of St. George. The UDPs in the HCP strike that balance. During the process of drafting OPLMA, locals asked for the UDPs to be included in the law, so language was inserted that allowed for UDPs to be imported into NCA management. The draft RMPs dismiss the UDPs because they don't adequately address

[7] According to the Utah Division of Water Rights Web site, area 81, which covers nearly all of Washington County is considered fully allocated.

[8] Page 54 DOI–BLM–UT–C030–2015–1–EIS.

mitigation of impacts to other values in the NCAs besides desert tortoises.[9] With one paragraph, the RMPs dismiss the work that went into making plans for protecting both the tortoises and the local residents.

St. George City would like to see the local BLM office comply with: (1) Federal laws requiring consistency with local plans, (2) OPLMAs directive to cooperate with the city in finding a northern transportation route, and (3) OPLMAs spirit of cooperative management. From the city's perspective, Congress' intent was largely ignored in favor of a conservation ideology that disfavors population growth and economy.

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Mr. MCCLINTOCK. Thank you very much, Mr. Mayor.

Our next witness, the Chairman of the Washington County Commission, Mr. Alan Gardner, is recognized for 5 minutes.

**STATEMENT OF ALAN GARDNER, COMMISSIONER, WASHINGTON COUNTY, UTAH**

Mr. GARDNER. Thank you, Mr. Chairman. My name is Alan Gardner. I am in my 20th year as a Washington County Commissioner and a fifth-generation resident of Washington County.

Today I want to focus on one key issue, the breakdown of the RMP process. Because of flaws in the process, Washington County has invested considerable time and resources into fixing a problem that never should have occurred. Washington County was held up by the Department of the Interior as the poster child for cooperating with Federal agencies and special interest groups because of our work on the 2009 Lands Bill. Secretary Salazar even flew to Washington County to celebrate our success.

I personally participated in meetings and negotiations between local governments and special interest groups, including SUWA, the Wilderness Society, and the Sierra Club, to determine how we could live together and manage our resources cooperatively.

In exchange for reassurances that certain activities would be continued, we agreed to twice the amount of wilderness that BLM recommended, and that much area again in NCAs, over 165 miles of wild and scenic rivers, and we gave up a critical reservoir site.

That is why I was surprised when the draft came out and did not honor those negotiations. Even though we signed an MOU to be a cooperating agency, we were invited only three times to help write a plan that BLM worked on for 6 years. In that same 6-year period, we were updated a handful of times but never allowed to really participate, despite our repeated requests.

Our comments on the administrative draft were ignored. Once the current draft was released, we realized our comments would not guide the plans. So, we started using whatever resources we had to try to change the alternatives. During that period, we spent hundreds of hours reading and analyzing the 1,100-page draft. We strategized with the County Attorney's office. We met with the mayors, county departments, and the Water Conservancy District. We involved the Governor's Public Lands Office. We solicited substantive comments from the municipalities. We appealed to the public to comment through a form on the county's Web site. We held a press conference. We met with BLM Director Neil Kornze.

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[9] Page 32 DOI–BLM–UT–C030–2015–1–EIS.

We contacted our congressional delegation, and we started meeting regularly with local BLM staff to hash out concerns.

The resources the county has spent on this process are costly in both time and money. Luckily, Washington County had the resources to use; most counties do not. Counties should not have to go through the time and expense we went through just to get a Federal agency to follow the laws passed by Congress.

The substantive problems with the draft RMPs appear to be a result of an ideology within BLM that includes these six attitudes:

Error one, Congress should have read BLM's manual before drafting legislation;

Error two, conservation lands should be treated like national parks;

Error three, BLM knows better than locals how resources should be managed;

Error four, state resources like water and wildlife can better be managed by BLM;

Error five, the purpose of the NCA—to conserve, protect, and enhance habitat—outweighs all other language from the same statute;

And last, Error six, fear of lawsuits from special interest groups outweighs the will and plain language of Congress.

Somewhere between the passage of the Lands Bill and the draft RMPs, the BLM forgot why Secretary Salazar praised our cooperative efforts. When local governments, special interest groups, and Federal partners come together to solve resource problems and then Congress embodies those agreements in statute, Federal agencies should faithfully enact those agreements.

Through our recent regular meetings with the local BLM office, they have signaled a willingness to work with the county to solve most major issues, except the northern transportation corridor. In the future, Washington County would like to see more counties work out resource problems without having to fight to get them implemented. Cooperation makes more sense than costly litigation, but it only works if all parties honor that bargain.

Thank you for the opportunity to testify today.

[The prepared statement of Mr. Gardner follows:]

PREPARED STATEMENT OF COMMISSIONER ALAN GARDNER, WASHINGTON COUNTY, 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 Land 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 6-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 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 2 years. More than 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 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 lawsuits. 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 that 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.

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Mr. MCCLINTOCK. Thank you very much.

That concludes our oral testimony.

The Chair would ask unanimous consent that a statement by the Utah Farm Bureau be entered in the Committee Record. Without objection, so ordered.

[The prepared statement submitted for the record by the Utah Farm Bureau follows:]

PREPARED STATEMENT OF RANDY N. PARKER, CHIEF EXECUTIVE OFFICER, ON BEHALF OF THE UTAH FARM BUREAU FEDERATION

The Utah Farm Bureau Federation, representing more than 28,000 member families located in each of Utah's 29 counties, appreciates the opportunity to submit comments to the House Subcommittee on Federal Lands regarding local input, legal consistency, multiple use and the Bureau of Land Management (BLM) Resource Management Plan (RPM) as relates to proposed amendments to the St. George RMP. According to the BLM, the proposed revisions in planning plans and amendments layout a range of alternatives and offer a variety of proposed management objectives and actions, "providing a reasonable range of alternatives."

As Utah's largest general farm and ranch organization, we represent a significant number of livestock producers who use public lands for grazing sheep and cattle,

including in Washington County, Utah. Livestock ranching is an important part of the history, culture and economic fabric of the state of Utah and is a major contributor to the state's economy.

Utah food and agriculture contributes to the state's economic health and provides jobs to thousands of our citizens. Utah farm gate sales in 2014 exceeded $2.4 billion according to the just released 2016 Economic Report to the Governor. Utah State University analyzed the forward and backward linkages to industries like transportation, processing, packaging and determined food and agriculture are the catalyst for $17.5 billion in economic activity, or about 14 percent of the state GDP, and provides employment for nearly 80,000 Utahns with a payroll of more than $2.7 billion.

During the multi-year negotiations and discussions that pre-dated the Omnibus Public Land Management Act of 2009, including the Washington County Lands Bill, a number of difficult issues were hammered out through often contentious discussions and negotiations. The bi-partisan measure was brought forward by Senator Bob Bennett (R-UT) and Representative Jim Matheson (D-UT). It contained a number of provisions that elected Washington County Commissioners, elected Washington County Farm Bureau leaders and the Utah Farm Bureau were concerned about. But as the "compromise" moved forward, our understanding was it settled a number of long-standing conflicts and land issues including continued grazing, water development and wilderness.

As the debate and negotiations concluded, Utah Farm Bureau appreciated that the process recognized the social and economic contributions livestock ranching makes in Washington County. We supported local efforts to provide grazing regulations and agency structure that embraced historic grazing rights and economic contributions important to Utah's rural communities, while balancing the resource needs. Through prudent application of multiple-use principles, renewable and abundant resources can be wisely used while protecting the many unique and sensitive parts of Utah. The Taylor Grazing Act establishes a congressional commitment to preference grazing rights that protects the historic rights of these Utah family ranchers, ultimately the foundation for economic stability in many of our rural communities.

The St. George Draft RMP appears to be an attempt to unravel this historic local agreement contained in the Washington County Lands Bill as well as ignoring other state laws and congressional mandates. The renewed efforts to adversely impact family ranches, re-establishing a wilderness inventory processes and proposing to acquire Federal water rights in arid Washington County is in clear violation of state water law and is at the expense of Washington County's future. This is of concern to the Utah Farm Bureau.

THE AMERICAN WEST

**Family Ranching—An American Subculture**

When Federal and state agencies make decisions about historic public lands grazing rights, ranching should be considered a cultural resource and not just an economic activity. Family ranching in the American West, including Washington County, Utah, should be considered an American subculture with a unique cultural heritage that is increasingly threatened—including by adverse Federal agency actions. Less than 2 percent of U.S. citizens belong to this family farming and ranching class with a growing set of challenges headlined by Federal regulations and agency actions.

Rather than looking at family ranches as only stakeholders with an economic interest, land management agencies should consider them as environmental and cultural resources. Our western ranching heritage is part of an integrated system that ensures knowledge is passed on from generation to generation. This is vastly different from the government employees who are assigned for a short time to an area and quickly moved from place to place—often due to management philosophies or conflicts detrimental to local relationships and local residents.

So long as this family ranching system remains intact, families will continue to contribute to the local environmental needs, economy and culture. If they face too many challenges, including those manufactured through the politics of the day and Federal land management agency changing philosophies. These multi-generational ranching families will ultimately fail. This is a threat to the entire Washington County system and its environmental landscape, history, culture and economy.

**Public Land Grazing**

Farm Bureau believed that in the Washington County Lands Bill, one of the preconditions agreed to by the parties, was that livestock grazing would not be reduced. This agreement underscored the importance of historic and productive family ranching and livestock grazing as a major contributor to the history, culture and economy of Washington County. Ranchers, in this harsh environment, have taken pride in being good stewards. Federal land managers have historically recognized their knowledge, good stewardship practices and valued understanding of the lands and grazing resources.

St. George Draft RMP
Table 2–11: Livestock Grazing/Page 84

References to livestock grazing in the draft are troubling, based on the prior understanding the Washington County Commissioners and Farm Bureau had contained in the Washington County Lands Bill.

*Alternative A:* "No action" is the only alternative that will not be adverse to the future of family livestock ranching in Washington County. However, Alternative A provides a limitation on the kinds of livestock that will be allowed and that conversion from cattle to sheep "will not be allowed" in consideration of existing herds of desert big horn sheep, which may jeopardize the health or viability of the herds. It should be pointed out there is no definitive, independent scientific research that attributes pneumonia in big horns to domestic sheep grazing. The science does note pneumonia in big horn herds is more likely due to stress. In addition, it should be noted that wildlife, including big horn sheep, fall under the legal purview of the state of Utah and is not a Federal responsibility.

*Alternative B:* Establish grazing utilization levels at 40 percent of current year's growth on allotments in designated critical habitat for desert tortoise. The 40 percent utilization means either a reduction in animal numbers on the allotment or a reduction in the days spent on the allotment. The 40 percent utilization rate would require leaving forage that was harvested under prior year's conditions, allowing more dead and decadent forage, increasing the probability for wildfire obviously detrimental to the tortoise. It should be noted, the Beaver Dam Allotment is used for winter grazing. The forage has already matured and dried. Livestock will harvest the dried out forage allowing for more vibrant, new growth to occur. Wildlife biologists recognize new, tender plant growth is preferred by elk and other species, including the desert tortoise.

Voluntary relinquishment and the BLM retiring livestock grazing rights violates Federal law (Taylor Grazing Act) and should be removed from the list of potential grazing actions under Alternative B. Under the law, if a rancher voluntarily relinquishes or abandons livestock grazing rights, after 3 years of non-use, the agency is required to reissue the grazing permits.

*Alternative C:* The "no use" grazing scenario should be immediately removed from consideration due to agreement in the Washington County Lands Bill. Its adverse impact on the environment including the increased potential for catastrophic wildfires and assault on family ranching that is an important part of the history, culture and economy of Washington County has to be recognized.

*Alternative D:* Alternative D and the 45 percent utilization follows the same logic and associated grazing cuts and impacts as Alternative B, but at an increased adverse consequence.

**Utah Farm Bureau Position of Grazing Alternatives**

Utah Farm Bureau supports Alternative A, the "No Action" alternative which allows ranching to continue to be a viable part of the local economy recognizing this unique western subculture and its valuable resource knowledge base.

Utah Farm Bureau opposes the actions outlined in Alternatives B, C and D based on the adverse impacts on family ranches; adverse ecological impacts; and the commitments and agreements made in the Washington County Lands Bill.

**Economics**

Livestock production is the backbone of Utah's agriculture industry, contributing more than 70 percent of our state's $2.4 billion in farm gate sales. With a $17 billion dollar contribution to the state's economy and more than 80,000 jobs, it is without debate this impact it is of greater significance to rural communities.

Congressionally mandated multiple-use of the public lands is critical to the economic well-being of rural Utah, including Washington County. The mix of private and public lands ranching for generations has created new wealth through the harvest of annually renewable forage that drives our rural economies. In addition, livestock grazing on the public lands provides a benefit to all Americans, not just those physically and financially able to visit the public lands states. Access to public lands, including the Beaver Dam Slope, is critical to the culture and economy of Washington County!

Utah Farm Bureau Federation delegates reaffirmed support of "multiple use concepts in management of natural resources on public lands by local, state and Federal land management agencies" as mandated by Congress.

In addition, policy adopted by the delegates at the 2016 annual convention of the American Farm Bureau recognized the "public benefits provided by science-based grazing management including thriving, sustainable rangelands; quality watersheds; productive wildlife habitat; viable rural economies; reduction of wildfire hazards; and tax base support for critical public services" coming from the multiple use of the federally-managed public lands.

Nearly 6 million American Farm Bureau members and leaders located in all 50 states across America continue their long standing policy supporting "livestock grazing as an integral part of multiple-use and management of the natural resources on the public lands." Policy further stated that "grazing should be continued by legitimate ranching interests with permits being awarded to livestock owners with base property and water rights."

The Taylor Grazing Act provides for the allocation of grazing resources to livestock and recognizes the economic contribution it makes to rural communities in the American West. Grazing rights should not be transferred. retired or abandoned by agency actions hurting ranching families and curtailing grazing activities.

The existing Management Framework Plans (MFPs) identify grazing allotments as being open for livestock grazing and within the authority of the 1934 Taylor Grazing Act, the Federal Land Policy and Management Act and the Grazing Administration regulations under Title 43 CFR 4100. This is the same historic reference used in many EAs completed by BLM Field Offices across Utah, which applies to the St. George Draft RMP. As such, the Secretary of the Interior has determined these allotments, including in the St. George Draft RMP, to be "chiefly valuable for grazing."

From a macro-economic standpoint, legitimate, locally based ranching interests are critical to Utah's rural communities and infrastructure. The agriculture and food processing sectors, coupled with related industries, contribute $17 billion to the Utah economy, are the catalyst for more than 80,000 Utah jobs and provide $2.7 billion in wages according to the 2016 Economic Report to the Governor.

From a micro-economic standpoint and significant to Washington County, it is important to recognize the impact of displacing even one single average-sized cattle ranching operation. Consider the following:

- Utah is a cow-calf cattle production state with cattle and calves contributing more than one-third of the state's agricultural commodity sales. According to the Salina Livestock Auction, feeder cattle arriving from Washington County in recent months for auction generally averaged between 500–600 pounds and were valued at about $1.85 per pound or $1,000 average per head. An average cow-calf ranching operation with 500 mother cows and a 95-percent calf survival rate adds nearly $500,000 in direct cattle sales to the local economy. Based on the economic ripple effect as those dollars are spent in the local economy, that single family ranching business is the catalyst for more than three-quarters of million dollars in the Washington County economy!
- According to the 2014 Annual Utah Agriculture Statistics Report, there are currently approximately 6,500 beef cows in Washington County. With only 18 percent of Washington County privately held, it must be assumed nearly all mother cows and their calves spend time grazing on public lands.
- The current price for feeder steers averaging 500–600 pounds coming off Utah rangelands for sale at the Salina Market is around $1.85–$1.95 per pound. Assuming 6,000 feeder calves averaging 550 pounds per head are marketed from cattle grazing Washington County public lands, local cattle ranchers produce and market approximately 3.5 million pounds of beef on the hoof with a farm gate sales value of nearly $6,000,000. In addition, economists estimate the cattle industry's ripple effect on the economy for fuel, equipment, vehicles,

trucking and so on is 1.5 to 2 times sales in the local economy. **Beef cattle raised utilizing the annually renewing forage on public lands in Washington County generates between $10,000,000 and $12,000,000. And this contribution is reoccurring in the Washington County economy every year!**

This is an annual economic contribution to the local, state and national economy that provides meat protein to feed Americans. As these livestock generated dollars ripple through the local economy, they are paying taxes for roads, hospitals, law enforcement and search and rescue—of growing importance to those who recreate across the landscape of southern Utah.

REDEFINING "MULTIPLE USE"

Federal land management agencies seem to be working to redefine the multiple use concept as intended by Congress. Adverse agency actions, including but not limited to, dramatic cuts in Utah livestock grazing AUMs, restrictions in access including closures of historic RS 2477 roads critical to sustaining ranching operations, claims of ownership of water rights on Federal lands challenging state sovereignty and private property seizures without due process and just compensation creating uncertainty for hard working ranching families.

**A Systematic Dismantling of Livestock Ranching**

An analysis of Federal management and dramatic cuts in livestock grazing has had major adverse impacts on the ranching industry, families and rural communities on Utah. Historically, grazing AUMs in Utah hit a high point in the late 1940s at more than 5.5 million administered by the BLM and Forest Service. An AUM is the amount of forage required to feed one cow and calf or five sheep grazing on rangeland for 30 days. There were 3,467 ranching families grazing sheep and cattle on Utah BLM administered public lands in 1949 supporting businesses and their rural communities. At its peak, Utah rangelands supported more than 3 million sheep. Today there are only about 295,000 sheep and lambs—a 90 percent drop!

The FS reports in 2012, approximately 840,000 active AUMs, of which 225,000 are in non-use status. BLM reports in 2012, around 1,190,000 active AUMs with 340,000 in suspended use (non-use) status. Of the more than 5.5 million AUMs originally managed by Federal agencies, only 2,028,000 AUMs remain today. However, it is important to note there are more than 550,000 of those so-called "active" AUMs that are in non-use or suspended use status in Utah.

Utah livestock ranching families have seen a whopping 3.5 million AUMs cut across the landscape—or a shocking 74 percent cut! These actions, cuts and suspended use, are solely at discretion of the Federal land managers including actions like proposed in current St. George Draft RMP Alternatives B, C and D.

The livestock grazing industry has been heavily impacted by BLM AUM cuts. In 1949 there were 3,467 ranching families grazing livestock on BLM managed lands. Of the 3,467 ranching families in 1949, **only 1,445 ranching families remain today** producing beef and lamb and harvesting the forage that renews each year on the public lands. That means more than 2,000 ranching families have given up or have been forced from (58 percent) Utah's vast rangelands. Last year alone, even with beef prices at historic highs, Utah ranchers cut 30,000 head of cattle from the Utah cattle herd—with Federal regulatory actions and associated uncertainty a major cause of the liquidation.

The loss of 30,000 beef cattle in Utah and the corresponding smaller Utah cattle herd means that rural communities had an economic loss exceeding $70 million—a loss every year until we rebuild the Utah cattle herd.

**Costs to Consumers and the Environment**

The outcome of these dramatic Federal grazing cuts hits every American in the pocketbook through higher beef and lamb prices. As for the western landscape, reduced grazing has ushered in an era of expanding acreages of noxious weeds and unharvested grass, decadent and dying forage and unmanaged landscapes leading to a growing number of catastrophic wildfires.

WATER RIGHTS

**Livestock Water Rights**

Water was developed historically for the production of food and fiber to meet man's most basic need. According to water rights experts, farmers, ranchers and agriculture interests currently own and control as much as 81 percent of Utah's water rights.

Scarcity of water in the Great Basin and much of the western United States led to the development of a system of water allocation and water rights that is very different from how water is allocated in regions graced with abundant moisture. Rights to water are based on actual use of the water and its continued use for beneficial purposes as determined by state laws. Water rights across the West are treated similar to property rights, even though the water is the property of the citizens of the states. Water rights can be, and often are, used as collateral on mortgages as well as improvements to land and infrastructure.

The principles of western water law are very different from an eastern riparian interest in water. Western water law determines water rights based on the Doctrine of Prior Appropriation (first in time, first in right) and beneficial use, not a property relationship with the waterway. However, under either style of appropriation if the Federal land management agency asserts control of private water rights, it violates constitutional protections against government takings without due process and just compensation.

Livestock water rights are critical to the success and well-being of ranchers across the western public lands states. Water for livestock has been developed across the vast western rangelands since pioneer settlement and before the establishment of the BLM or the FS.

Growth and opportunity in the public lands states continues to be adversely impacted by Federal control of the lands coupled with the aggressive actions of Federal agencies on the region's water resources. Legal actions and Federal water claims create uncertainty and imperil historic state water laws and private property rights.

**Doctrine of Prior Appropriation**

The Doctrine of Prior Appropriation, or "first-in-time, first-in-right," establishes that water rights are obtained by diverting water for "beneficial use" as determined by state law. Those uses include irrigation, livestock watering (including water developed and used for livestock watering on the federally-owned land), domestic use, municipal use, manufacturing, mining, oil and gas development, power generation and in some cases fish, wildlife and recreation based on state law. The amount of the water right is the amount of water diverted and put to beneficial use. Western states adopted the doctrine of prior appropriation and beneficial use to manage the development and to make sure of the judicious use of the state's precious waters.

St. George Draft RMP
Table 2–37: Water Resource/Page 178–179

*Alternative A:* The "No Action" alternative recognizes "Federalism" and the long-standing state/local partnership in Washington County protecting the water resources, community water sheds and culinary water, improve water quality, ensure availability and meet essential community needs.

*Alternatives B, C and D:* Collectively the B, C, and D Alternatives offer an open-ended assault on Washington County's future and more specifically on livestock water rights and the state's water sovereignty. As stated, the collective Alternatives provide for a broadly-defined mechanism establishing Federal control over Washington County water resources through UFBF-St. George Draft RMP Page 8 language stating; "fulfill the purposes of the NCA and sustain ecosystem resiliency under changing climatic conditions."

As Draft RMP guidance to this set of common Alternatives, management actions would include pursuing "the acquisition of non-Federal lands from willing sellers in the NCA." This action violates Utah Law mandating "no net loss of private lands."

Included in Alternative B, C and D, Farm Bureau is concerned with guidance to pursue the "acquisition of surface and groundwater rights from willing sellers to benefit the conservation and protection of wild life and aquatic habitats and riparian resources." In Utah, and more specifically in Washington County, water is the limiting factor to population growth, economic opportunity and historic farming and ranching. The Federal Government should not be in competition with the priorities and policies of Washington County and local governments.

In addition, the "Do not authorize land uses that would export water from the NCA" action contained in the common Alternative is an egregious Federal overreach that would put Washington County's future in jeopardy. Access to the state's sovereign water rights, both surface and underground, is a historic right granted by the United States Congress.

Finally, contained within the common Alternative is a guidance stating "BLM will work with the state of Utah to ensure that BLM obtains rights on all inventories point sources (springs, seeps, wells, reservoirs, etc.) for authorized beneficial uses within the NCA, including wildlife, recreation, domestic use within visitor facilities, and the improvement of habitats and riparian resources."

Much of what the BLM identifies (springs, seeps, wells, etc.) as targeted point water sources are already established livestock water rights belonging to ranching families. Utah Law (The Livestock Water Rights Act) defines who can hold livestock water rights as they exist across the Utah landscape. Livestock water is specifically defined as a beneficial use of the state's sovereign waters. Also explicitly defined in the Act, is language that expressly prohibits ownership of livestock water rights by the Federal Government.

As defined, the Federal Government cannot put Utah livestock water rights to beneficial use, therefore cannot hold livestock water rights. All other water rights the BLM or other Federal agencies would seek, would have to be applied for like any other water user to the State Engineer based on the state's definition of beneficial us. Utah water law recognizes and provides:

> *"A livestock water right is appurtenant to the allotment on which the livestock is watered."*

**Joyce Livestock Company vs United States (2007)**

In *Joyce Livestock Company vs. United States*, the Owyhee County based cattle operation had ownership dating back to 1898 including in-stream stock water rights. The United States over-filed on the Joyce water rights based on a priority date of June 24, 1934—the date of passage of the Taylor Grazing Act. The United States could not show that Joyce or any of its predecessors were acting as its agents when they claimed to have acquired the water rights. In 2007 the Idaho Supreme Court denied the United States claim and defined the standard of beneficial use.

The Idaho Supreme Court found:

> *"The District Court held that such conduct did not constitute application of the water to beneficial use under the constitutional method of appropriation, and denied the claimed rights. The Idaho Supreme Court concurred holding that because the United States did not actually apply the water to a beneficial use the District Court did not err in denying its claimed water rights."*

**Hage vs. United States (2012)**

In *Hage vs. United States* the courts recognized that Federal land management agencies cannot gain de facto water rights through denial of access to Federal lands or through reductions in grazing AUMs. Following protracted legal battles, Nevada Chief Federal Judge Robert Jones and the U.S. Appeals Court for Washington, DC provided an important legal ruling, agreeing that livestock ranchers with recognized state livestock water rights have "a right of access" to put their state sanctioned livestock water rights to beneficial use on Federal lands. According to Chief Judge Jones, access to beneficially use livestock water includes a forage right on Federal lands.

CONGRESS GRANTS WATER TO THE STATES

To effectively and efficiently deal with water issues, settlers in the arid West developed their own customs, laws and judicial determinations to deal with mining, agriculture, domestic and other competing uses recognizing the Doctrine of Prior Appropriation or first in time, first in right. Out of this grew a fairly uniform body of laws and rights across the western states. The Federal Government was the original sovereign and owner of the land and water. Congressional actions ultimately granted water ownership to the sovereign states and acquiesced to the states on all matters of adjudication. Congress was clear on who controlled, managed and allocated water through a series of actions recognizing local laws, customs and judicial decisions.

**Act of July 26, 1866**

The U.S. Congress passed the Act of July 26, 1866 [subsequently referred to as the Mining Act or Ditch Act of 1866] that became the foundation for what today is referred to as "Western Water Law." The Act recognized the common-law practices that were already in place as settlers made their way to the western territories including Utah. Congress declared:

> *"Whenever, by priority of possession, rights to the use of water for mining, agriculture, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws and decisions of courts, the possessors and owners of such vested rights shall be maintained and protected" (43 USC Section 661)*

This Act of Congress obligated the Federal Government to recognize the rights of the individual possessors of water. But as important, the Act recognized "local customs, laws and the decisions of the state courts."

**The Desert Land Act of 1877**

> *"All surplus water over and above such actual appropriation and use . . . shall remain and be held free for appropriation and use of the public for irrigation, mining and manufacturing . . ."*

**The Taylor Grazing Act of 1934**

> *"nothing in this Act shall be construed or administered in a way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacturing and other purposes . . ."*

**The McCarran Amendment of 1952**

Congress established a unified method to allocate the use of water between Federal and non-Federal users in the McCarran Amendment. (43 USC Section 666) The McCarran Amendment waives the sovereign immunity of the United States for adjudications for all rights to use water.

> "waives the sovereign immunity of the United States for adjudications for all rights to use water."

**The 1976 Federal Land Policy Management Act**

> *"All actions by the Secretary concerned under this act shall be subject to valid existing rights."*

Congress has granted and continues to recognize the sovereign rights of the states to regulate, manage and adjudicate its waters and is explicit in the limits it places land management agencies.

**United States Supreme Court**

In *Tarrant Regional Water District vs. Hermann* (2013) the U.S. Supreme Court (SCOTUS) concurred with Congress on the matter water and the sovereign rights of the states. SCOTUS said:

> *"The power to control public uses of water is an essential attribute of [state] authority."*

**Utah Farm Bureau Position on Water Resources Alternatives**

Utah Farm Bureau supports Alternative A, the "No Action" alternative, providing a framework for continued collaboration with Washington County and its future needs, meeting the needs of the ecosystem, recognizing state and Federal law and protecting current existing privately held water rights.

Utah Farm Bureau opposes the common alternative as identified in Alternatives B, C and D due to the impact on Washington County, its future, encroachment on private property rights, violation of Federal and state laws and lack of authority under the congressionally mandated Omnibus Public Land Management Act containing the Washington County Lands Bill.

CONCLUSION

Washington County and Farm Bureau ultimately supported the Washington County Lands Bill based on assurances related to livestock grazing rights being honored and that the wilderness inventory and review process was complete. The Draft RMP provides alternatives that likely will undermine this historic collaboration and agreement and future efforts in Utah and across the West. Of major concern is the open attack on the state's sovereign waters and recognized property rights as prescribed by Congress and the courts. Utah Farm Bureau supports the "No Action" alternatives for both livestock grazing and water resources fundamental to federalism, state law and the Omnibus Public Land Management Act of 2009.

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Mr. MCCLINTOCK. We will now proceed to the panel of questions, which are also governed by the 5-minute rule. I will begin.

Commissioner Gardner, let me pick up on your last point. This was supposed to be a model for collaborative agreements, where all sides could sit down to work out their differences and settle on a compromise that all sides could live with. You just discussed in great detail the lengths you went to during those discussions and the major concessions that were made in anticipation that this was an agreement that would be honored.

What would you advise other communities that are invited to participate in such give-and-take negotiations in the future?

Mr. GARDNER. Well, I think you need strong language in the bill to start with. But as you go into the process, I think it is very important that BLM honor the cooperating agency——

Mr. MCCLINTOCK. If I could interrupt right there, was there strong language in the legislation, and has the BLM honored the agreement?

Mr. GARDNER. Some of it was a little bit squishy. But, no, they have not honored the agreement to be a cooperating agency. As I mentioned, we had three different opportunities given to us to meet with the BLM when they were actually working on the materials for that. Two of those opportunities, we were there. The other one, we were not able to be there at that time. We had five or six opportunities where they kind of came in and gave us an update. But a lot of these surprises that we saw in the draft were never mentioned.

Mr. MCCLINTOCK. There is a disagreement over the northern corridor road, which seems to be clearly spelled out in the law. "The Secretary of the Interior shall identify a route." It does not say "study" or "consider," and it does not say "may." It says "shall identify a route."

What was the nature of the discussions at that time?

Mr. GARDNER. It also specifically said that Washington County and St. George City were to be involved in those discussions. We had some limited discussions on that. The county did give a potential spot for a road where we would like to see it.

Mr. MCCLINTOCK. Was it the consensus at the time that a northern corridor road would be identified as part of this agreement and would be constructed?

Mr. GARDNER. That was the consensus, that this road would be identified.

Mr. MCCLINTOCK. Mayor Pike, was that your understanding as well?

Mr. PIKE. Yes, although I was not there at the time. From the records that we have, yes, it was absolutely identified.

Mr. MCCLINTOCK. Let me ask you this. There also seems to be a disagreement on who represents the people of this community. Mr. Van Dam admits that by election he does not represent the people of this community. He says the northern route is not needed. The BLM has obviously come down on that side by preferring an alternative without the promised route.

So, let me ask Commissioner Gardner or Mayor Pike, who is responsible for meeting the transportation needs of the local community?

Mr. GARDNER. The county and the city.

Mr. MCCLINTOCK. So not a self-appointed pressure group, and not unelected bureaucrats, but the elected representatives of the city and county whose people pay the taxes and whose livelihoods and quality of life depend upon these projects?

Mr. GARDNER. Correct.

Mr. MCCLINTOCK. Mayor Pike, one pattern I have seen in my own district that seems to be repeated here is that Federal land agencies identify very narrow special-interest ideological groups of like mind to what these agencies want to do. They coordinate closely with them, and then they claim to have consulted the community's representatives. The problem is the only actual bona fide representatives of the community are the representatives the community has elected. Everyone else is self-appointed, and the elected representatives are either ignored or marginalized in the process. That was reflected in Mr. Van Dam's testimony. "Well, the BLM is doing a great job; they listened to me." Well, Mr. Van Dam does not speak for the community. The elected officials of the community speak for it, and I would like you to comment on what extent you were involved in the process compared with these pressure groups.

Mr. PIKE. Again, I have been the mayor of the city for a little over 2 years, and on the City Council for 6 years prior. Neither the former mayor, nor I, the City Council, city manager, water, energy, or public infrastructure departments, were consulted at any time regarding these plans.

Mr. MCCLINTOCK. Let me just get one final yes or no answer. If a community, say, in my district were invited to participate in this process, to make concessions, with the expectation that they would be ratified into law and carried out, would you advise the people of my community to participate in such a process as you have been through? Just yes or no.

Mr. GARDNER. No.

Mr. PIKE. No.

Mr. MCCLINTOCK. Thank you.

Mr. Lowenthal.

Mr. LOWENTHAL. Thank you.

My first question is for Ms. Whitlock. We have just heard in the previous questions much about the northern transportation corridor or the lack thereof of BLM addressing it. Did BLM address this issue in the preferred alternative in the RMP planning process for the Red Cliffs National Conservation Act?

Ms. WHITLOCK. Yes. The Act, OPLMA, requires the BLM to identify one or more alternatives in the county as part of our travel management plan. Now, these draft EISs that were issued last year in July were not those travel management plans. But we will consider a northern transportation route in Washington County, as required by OPLMA. And Alternative D of our draft EIS accommodates all of the alignments that the county provided to BLM, including their preferred alternative. So, Alternative D.

Mr. LOWENTHAL. You are familiar with the portion of the Omnibus Public Land Management Act that deals with the corridor, yes?

Ms. WHITLOCK. Yes.

Mr. LOWENTHAL. And as you pointed out, does it require your agency to designate the corridor in the travel plan?

Ms. WHITLOCK. No. It directs us to identify one or more alternatives for a northern transportation route in our travel management plan.

Mr. LOWENTHAL. Thank you. Could you give us an overview of why the agency-preferred alternative is one without the corridor? Why did they do this?

Ms. WHITLOCK. OPLMA includes some very specific management criteria for the Red Cliffs NCA. It requires that we only permit uses in the NCA that further the purposes of the NCA, which are to conserve, protect, and enhance resources; and second, to protect any listed species, any threatened or endangered species.

Mr. LOWENTHAL. I have before me Senator Bennet's written testimony to his Senate colleagues about the Washington County Growth and Conservation Act of 2008, which became the part of the 2009 Omnibus Public Land Management Act that we are talking about. I would like to read this one part of Senator Bennet's testimony.

"Congressman Matheson and I have made significant changes to the previous proposal. We have permanently protected large amounts of biologically significant public land in Washington County, including additional wilderness and a new National Conservation Area. We have removed the corridor designations for the Lake Powell Pipeline Corridor and the Northern Corridor that bisected the Red Cliffs Desert Reserve."

So, there is certainly an intention of not requiring the northern transportation corridor to be there from the Senator's own testimony before the Senate Subcommittee on Public Lands and Forests.

A question now for Mr. Van Dam. Mr. Van Dam, as a St. George resident, tell me why you live in this area. Is it because of the beautiful protected lands?

Mr. VAN DAM. Of course, that is a huge part of it, because you can go anywhere in this county and appreciate the qualities that have existed for so long and continue to exist because we protect them.

Mr. LOWENTHAL. What would the impact of this highway corridor be on the integrity of those protected species?

Mr. VAN DAM. We have gotten statements from those who really know about this, including Dr. Mader and the Desert Tortoise Association in California, who say that putting a road like this

through the heart of this NCA would not only be detrimental but impossible to coordinate for protection of these tortoises; it just simply cannot be done.

Mr. LOWENTHAL. You live in one of the towns that is purported to benefit by this highway. Do you know how much time would be shaved off your drive if it was built?

Mr. VAN DAM. There have been a couple of different studies made, but for my purposes, living in Ivins, it says that I am going to conserve 1.7 minutes. That does not seem like much to me. But even if it is more than that, if it is 5 minutes, the problem with this road, Representative, is that it is going to bring a tremendous amount of traffic, and then it comes back into the road that already exists, the Red Hills Parkway, at about a mile and a half from the time it hooks up to Highway 18, completely negating the effect that you might have for the movement of traffic, which I don't understand.

Mr. LOWENTHAL. Thank you.

Mr. MCCLINTOCK. The gentleman's time has expired.

The Chair now recognizes the Chairman of the Natural Resources Committee.

Mr. LOWENTHAL. May I just enter one thing into the record?

Mr. MCCLINTOCK. All right.

Mr. LOWENTHAL. I have the written testimony of Mr. Neal Clark, the Supervising Field Attorney for the Southern Utah Wilderness Alliance, on behalf of the Utah Wilderness Coalition.

Mr. MCCLINTOCK. Without objection.

Mr. LOWENTHAL. Thank you.

[The prepared statement submitted for the record by the Utah Wilderness Coalition follows:]

PREPARED STATEMENT OF NEAL CLARK, SUPERVISING FIELD ATTORNEY, SOUTHERN UTAH WILDERNESS ALLIANCE ON BEHALF OF THE UTAH WILDERNESS COALITION

INTRODUCTION

Mr. Chairman and members of the committee, thank you for providing the Utah Wilderness Coalition with the opportunity to present our views on the National Conservation Area (NCA) Resource Management Plan (RMP) process currently underway in the Bureau of Land Management's (BLM) St. George Field Office.

The Utah Wilderness Coalition (UWC) is a coalition of conservation organizations committed to protecting wilderness-quality lands in Utah as wilderness. Since 1989, UWC has advocated for the passage of America's Red Rock Wilderness Act, legislation that would protect approximately 9.4 million acres of BLM-managed public lands in Utah as designated wilderness.[1] The UWC includes the Southern Utah Wilderness Alliance, the Natural Resources Defense Council, and the Sierra Club.

The Southern Utah Wilderness Alliance (SUWA) is a Utah-based non-profit organization dedicated to the preservation of the outstanding wilderness at the heart of the Colorado Plateau, and the management of these lands in their natural state for the benefit of all Americans. Since 1983, SUWA has promoted local and national recognition of the region's unique character through research and public education; has supported both administrative and legislative initiatives to permanently protect the Colorado Plateau's wild places within the National Park and National Wilderness Preservation Systems, or by other protective designations where appropriate; has built support for such initiatives on both the local and national level; and has provided leadership within the conservation community through uncompromising advocacy for wilderness preservation.

The Natural Resources Defense Council (NRDC) is an international non-profit environmental organization with more than 2 million members and online activists.

[1] America's Red Rock Wilderness Act, S. 1375, H.R. 2430, 114th Cong. (2015).

Since 1970, NRDC's lawyers, scientists, and other environmental specialists have worked to protect the world's natural resources, public health, and the environment.

The mission of the Sierra Club is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and, to educate and enlist humanity to protect and restore the quality of the natural and human environment. The Sierra Club has over 2 million members and supporters across the United States. Since 1892, the Sierra Club has worked to protect wilderness-quality lands across the United States. In 1985, the Sierra Club was one of the founding members of the UWC whose goal is the permanent protection of all BLM wilderness-quality lands in Utah as wilderness.

The UWC submits this testimony in order to clarify the historical record surrounding the 2009 Omnibus Public Land Management Act (hereafter "Washington County lands bill") that, in part, designated the Beaver Dam Wash and Red Cliffs NCAs, and to counter recent misinformation regarding the public process that led to ultimate passage of the 2009 legislation.[2] In doing so, we fully support the ongoing efforts of the St. George BLM in developing a conservation-focused management plan for the two designated NCAs, as required by the 2009 legislation.

In 2004, the UWC began discussions with then-Utah Governor Olene Walker regarding a public lands bill in Washington County, Utah. These initial conversations led to a 5-year process, promoted by then-Utah Senator Bob Bennett, which included myriad field tours and meetings between the congressional delegation and a variety of stakeholders. Although imperfect, the process led to the creation and ultimate passage of the 2009 legislation, which was introduced by Senator Bennett and supported by the entire Utah congressional delegation and Washington County Commission.

The 2009 Washington County lands bill—which designated the 63,478-acre Beaver Dam Wash NCA and the 44,859-acre Red Cliffs NCA—required the BLM to "develop a comprehensive plan for the long-term management of the National Conservation Area[s]."[3] On July 17, 2015, BLM released its draft RMP for the Beaver Dam Wash and Red Cliffs NCAs. The draft RMP is the result of a 6-year planning process by the St. George BLM. The process has been consistent with the legislative language in the 2009 Washington County lands bill, while also ensuring compliance with the BLM's ongoing obligations under the Federal Land Policy and Management Act (FLPMA).[4]

Since public release of the draft RMP, those opposed to the plan have attempted to revise the historical record regarding the development and passage of the Washington County lands bill. Most concerning are efforts to mandate a northern transportation corridor through the Red Cliffs NCA and to prohibit the BLM from meeting its obligation under FLPMA to maintain an inventory of wilderness-quality lands.[5]

NORTHERN TRANSPORTATION CORRIDOR

The Red Cliffs NCA was established "[t]o conserve, protect and enhance for the benefit and enjoyment of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources" of the protected lands.[6] The Red Cliffs NCA includes the Red Cliffs Desert Reserve, a reserve established in 1995 as part of the Washington County Habitat Conservation Plan (HCP) for the purpose of protecting and aiding in the recovery of the Mojave desert tortoise, a threatened species under the Endangered Species Act. The 1995 HCP, developed between Washington County and the U.S. Fish and Wildlife Service (USFWS), allowed USFWS to issue an incidental take permit to Washington County for the incidental take of approximately 1,169 desert tortoises. The ITP, issued in 1996, allowed Washington County to develop 12,264 acres of non-Federal land within critical Mojave desert tortoise habitat, resulting in the incidental mortality of 1,169 threatened tortoises. Notably, the 1995 HCP intentionally did not include plans to develop a transportation corridor through the Red Cliffs Desert Reserve.[7]

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[2] Omnibus Public Land Management Act (OPLMA), Public Law 111–11, Title I, Subtitle O—Washington County, Utah (2009).

[3] OPLMA, Section 1974–1975.

[4] Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701–1785.

[5] *Id.* at § 1711.

[6] OPLMA, Section 1975(a).

[7] *See* The Spectrum, *The truth: A highway wasn't part of the plan* (January 18, 2016) (a statement by the first administrator of the Washington County HCP that "[t]he HCP was signed by the Washington County Commission on the clear basis that there would be no highway through it," and that "[t]he HCP was based on a fundamentally simple premise that development would

The current controversy stems from a belief that the Washington County lands bill obligated the BLM to approve a transportation corridor through the Red Cliffs NCA. A review of the plain text of the 2009 legislation, supported by ample legislative history and public record, clearly indicates that the final Washington County lands bill purposefully omitted any requirement that BLM approve a northern transportation corridor. Furthermore, based on previous analyses conducted by both the USFWS and the BLM, the northern transportation corridor is incompatible with the purpose of the Red Cliffs NCA, the Red Cliffs Desert Reserve, and the Washington County HCP.

On its face, the Washington County lands bill does not require that the BLM designate a northern transportation corridor through the Red Cliffs NCA. With regard to the proposed corridor, the legislation states only that in developing a travel management plan for the NCA, the BLM must "identify one or more alternatives for a northern transportation route in the county."[8] The legislation expressly omits any requirement or mandate that the BLM designate such a corridor (the BLM must only "identify" an alternative), and further does not limit BLM's identification of an alternative route to one that is located within the Red Cliffs NCA (BLM must only consider a route "in the county"). The legislative history and public record fully supports the plain text of the legislation.

Early versions of the legislation included mandatory language for the northern transportation corridor but, in response to public opposition, Senator Bennett and then-Utah Congressman Jim Matheson removed this requirement from the legislation in 2008. As stated by Senator Bennett in a 2008 Senate hearing on the legislation, "Congressman Matheson and I have made significant changes to the previous proposal. . . . We have removed the corridor designations for . . . the Northern Corridor."[9] Furthermore, the public record evidences the fact that this change to the legislative language was widely known.[10]

Senator Bennett's removal of mandatory language for a northern transportation corridor is also consistent with the BLM's own determination that the corridor is inconsistent with the purpose of the Red Cliffs NCA, Red Cliffs Desert Reserve, and the Washington County HCP. As the BLM clearly stated in its analysis, a northern transportation corridor "would not meet the Congressional mandate that the BLM 'conserve, protect, and enhance' the resource values of the NCA, and in particular, all species listed under the protection of the ESA that occur in the NCA."[11] Furthermore, developing Washington County's proposed northern transportation corridor would "potentially jeopardize the continued existence of the threatened Mojave desert tortoise . . . and reduce populations and habitats for other at-risk species."[12]

The text and intent of the legislation is clear—the BLM is under no obligation to develop a northern transportation corridor through the Red Cliffs NCA and, in fact, cannot do so if it intends to protect the fundamental conservation purpose of the NCA. Importantly, the lands within the Red Cliffs NCA were protected as a preserve for the threatened Mojave desert tortoise in exchange for allowing Washington County to develop land in critical tortoise habitat and, in turn, cause the mortality of 1,169 threatened tortoises. To date, Washington County has received its benefit under the HCP, yet it no longer wants to hold up its end of the bargain.

LANDS WITH WILDERNESS CHARACTERISTICS

In developing the draft NCA RMP, the BLM properly inventoried public lands in the planning area for the presence or absence of wilderness characteristics. Under Section 201 of FLPMA, the BLM is required to maintain an inventory of all public

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be allowed in tortoise habitat *outside* the reserve (now NCA) in exchange for no development—including a highway—*inside* the reserve.") (emphasis in original).

[8] OPLMA, Section 1977(b)(2)(A).

[9] S. Hrg. 110–493 (April 22, 2008).

[10] *See, e.g.*, Deseret News, *Wilds bill may please many* (April 10, 2008) (stating that the highlights of the bill include that "a northern transportation corridor are not included"); Salt Lake Tribune, *Washington County land bill is pushed hard in D.C.* (November 16, 2006) (stating that "[i]n a statement Tuesday, Bennett explained that . . . the so-called northern corridor highway could pass through tortoise habitat areas only after study and approval by the Secretary of Interior"); Salt Lake Tribune, *A bad plan: Bennett's bill would encourage St. George sprawl* (July 13, 2006) (stating that the bill "postpones a transportation artery through a preserve for protected desert tortoises"); KSL News, *Bennett Matheson Revise Washington County Lands Bill* (July 12, 2006) (stating that the revised bill postpones "for further study the designation of a specific highway route through a protected reserve for desert tortoises").

[11] Draft NCA RMP, 790.

[12] *Id.*

land resources, including areas that possess wilderness characteristics.[13] The BLM's wilderness characteristics inventory, undertaken as part of the NCA RMP process, was required as part of the agency's ongoing obligations under FLPMA.

An argument has been forwarded that the Washington County lands bill removed the BLM's authority to inventory for lands with wilderness characteristics, and therefore the BLM's recent inventory is invalid. This argument stems from a misreading of Section 1972(c)(2)(A) of the 2009 legislation, which states that Wilderness Study Areas (WSAs) not designated wilderness under the legislation are no longer to be managed as WSAs under Section 603(c) of FLPMA. The provision also prohibits the BLM from identifying or recommending new WSAs in Washington County. Section 1972, though, only pertains to WSAs and does not relieve BLM of its obligation under FLPMA Section 201 to maintain an inventory of other non-WSA lands with wilderness characteristics.[14] Section 1972 is limited to releasing the BLM from identifying, recommending, and managing WSAs under Section 603(c) of FLPMA and has no effect on the BLM's ongoing inventory mandate under FLPMA Section 201.

It is important to note that, although much is being made of the BLM's wilderness characteristics inventory, BLM's preferred alternative in the draft NCA RMP merely identifies public lands in Washington County that possess wilderness characteristics. Much to the UWC's displeasure, the BLM's proposed alternative does not manage any of the identified wilderness-quality lands for protection of those wilderness characteristics. Although the UWC opposes the BLM's preferred alternative as it relates to management of identified wilderness characteristic lands, we fully support the BLM in upholding its mandate under FLPMA Section 201 to keep an updated inventory of lands with wilderness characteristics that it manages.

CONCLUSION

Thank you for the opportunity to submit testimony on the BLM's NCA RMP planning process. We encourage the committee to take a hard look at the language, intent, and context of the Washington County lands bill, as was explicitly understood by all stakeholders at the time of passage, and to support the BLM's 6-year process to develop a conservation-focused management plan for the Beaver Dam Wash and Red Cliffs NCAs.

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Mr. MCCLINTOCK. Chairman Bishop defers to the end of the panel, so the Chair is pleased to recognize Congressman Bruce Westerman of Arkansas.

Mr. WESTERMAN. Thank you, Mr. Chairman. It is a pleasure to be here today. It takes a while to get here from Arkansas, but these issues are not only important to Utah, they are important to the whole country. We do not have BLM lands in Arkansas, but we do have a lot of Federal lands. As a matter of fact, if you take out the states that have only one Congressman, my district has more Federal lands than any other congressional district in the country.

I also wanted to come out and see the Dixie National Forest, which should probably be in my district with a name like that.

There are some unique similarities to what is going on here and what I think is happening across the country. My district actually has the first national scenic river. One hundred and thirty-five miles of the Buffalo National River is located partially in my district, and I notice that there are 19 miles of national and scenic rivers that would be designated in this project.

That happened in 1972, over 40 years ago, and there were a lot of negotiations, a lot of hard feelings; but the project was put in place, and it is a treasure that we have there in the state, and my family and I personally enjoy spending time on that river. Thousands of visitors come to it.

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[13] FLPMA, 43 U.S.C. § 1711.
[14] *Id.*

Still, there are agreements that were put in place that may not have made everybody happy at the time, but they are still in place and they are adhered to. That is one of the things that intrigued me about this, the rule of law and community involvement.

When I, from 1,000 miles away, read about this situation in newspaper reports and documents from the committee, it appears to me that the law is being ignored, a law passed by Congress. This seems to be a pattern with the BLM. I know we have had committee hearings where down in Louisiana there is a dispute over surveys that were part of the Louisiana Purchase, land that had been in families for over 100 years and now BLM is saying they do not have clear title to the land. It is creating hassle for the taxpayers and the citizens of our country.

We actually have a pretty good relationship with the Federal agencies in my district, with the Park Service, with the Forest Service, with U.S. Fish and Wildlife, but I see there are a lot of issues, especially with BLM, across the country, and it is creating a bad environment for what a non-personal observer like me sees from a long way away.

My question to Ms. Whitlock is, do you as a BLM employee recognize that you are creating some very bad publicity for BLM across the country?

Ms. WHITLOCK. I guess to that I would say that I think some of what is going on in other parts of the West is, in my experience, isolated. The BLM works closely with our stakeholders, our public land users, our neighbors, and I think for the most part it is very well supported in the West.

Mr. WESTERMAN. This law was passed under a Democratic Congress and a Democratic President, but it had been worked on with bipartisan support over the years, and this law is not being enforced. That causes me great concern, because that is much bigger than any one project that is being taken on. Dwight Eisenhower said, "The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law."

Whether we like what is in it or dislike what is in it, or have our own interpretation, I think it is important that we have to abide by the law.

The second issue is local input. This law was developed with local input, and it is almost like the Charlie Brown and Lucy scenario where the football gets pulled away. At some point in time, we will not tolerate or we will not have the trust anymore that we need. But I have always believed, from serving on a school board and in my state legislature, that government is most effective when it is closest to the people. But it appears that that has been bypassed in this process.

Mayor Pike, you talked about this a little bit, but do you believe there has been sufficient public input? Do you believe the public here in St. George has bought into this plan and feel like they have been a part of what BLM put together?

Mr. MCCLINTOCK. And this would need to be a yes or no answer.

Mr. PIKE. No.

Mr. MCCLINTOCK. Thank you.

The gentleman's time has expired.

The Chair is now pleased to recognize Congressman Cresent Hardy of Nevada.

Mr. HARDY. Thank you, Mr. Chairman.

Ms. Whitlock, as a Member of Congress, we constantly hear from our constituents that they are not sufficiently being heard, that BLM is not coordinating with their public agencies and the individuals involved, that most of the time the response is we have already had these listening sessions, we have had these meetings, as though it is a check-off-the-list type of situation.

When you hear that the state and the county were stunned to find that many of the promises in the land bill were left out of alternatives in the draft RMP, what goes through your mind? Director Clarke is here today and says that, "they were left out of critical deliberations and were not invited to the table." Is she incorrect?

Ms. WHITLOCK. We really feel like we have a good record of meeting with not only our cooperating agencies and stakeholders but members of the public.

Mr. HARDY. Is she incorrect?

Ms. WHITLOCK. The state of Utah is a cooperating agency with us on this RMP, and we have met with them.

Mr. HARDY. Is she incorrect or not? Yes or no?

Ms. WHITLOCK. We believe we have made a very good-faith effort to listen to not only——

Mr. HARDY. So you are basically calling her a liar.

Commissioner Gardner says that the county submitted a written comment outlining concerns but received no response from the BLM. Is it standard practice to not respond to comments from the cooperating agencies?

Ms. WHITLOCK. No, that is not standard. We are carefully considering the 14,000 comments that we received from the public, and the feedback that we have gotten from our cooperating agencies, as well as other government entities.

Mr. HARDY. Thank you.

According to Director Clarke, the BLM stated that the travel management plan is not the right planning document to identify a route and a highway, and the Congress made a mistake by calling the identification of the route the travel management plan.

Commissioner Gardner also stated that the local BLM office has asserted that Congress should have read the BLM manuals before passing the land bill, and that Congress screwed up. They also stated that the local employees cited BLM manuals with respect to the releasing of wilderness study areas, saying a release by Congress will give a strong consideration.

Strong consideration? Where does BLM get off by saying that the Congress is right or wrong?

Ms. WHITLOCK. I, and the 900-some employees that work for me, come to work every day to do one thing, and that is to carry out the law. We are very committed to sincerely engaging with stakeholders and our cooperating agencies. We think we have a very good track record of implementing these public land bills in the West, and we believe in them and are doing our best to implement the law.

Mr. HARDY. I would just like to emphasize one strong issue, that in our National Archives in our national capital, you will not find BLM manuals proudly displayed, and the last time I checked Article 1, Section 1 of the Constitution vests all legislative powers in Congress of the United States. The last time I checked Article 1, Section 8 of the Constitution vests the power to make laws with Congress of the United States, and nowhere in the Constitution is there any mention of the Bureau of Land Management, let alone any authority to rule on what Congress can or cannot do. The Federal agencies get their limited authority that they currently have from Congress. And according to Article 2, Section 3, faithfully execute the laws passed down, to the word and punctuation, not selectively interpret them.

I believe that through this process, that there was an omnibus that was written, it was passed by Congress. We should make sure we follow all of them. Mr. Gardner has stated there are six violations. I want to make sure that we continue to follow that omnibus as it was written and work with the local entities, because they are the ones that represent the people in this area.

Mr. Stewart represents his constituents of this area, and he is the one voted here to work with his constituents. I believe you should also be involving Congressman Stewart in these discussions.

Thank you.

Mr. MCCLINTOCK. Thank you very much.

The Chair is now pleased to recognize the Chairman of the House Natural Resources Committee, Congressman Rob Bishop, for 5 minutes.

Mr. BISHOP. I want to thank everyone who has come here today, especially my friends from the committee. We have two Californians who have come up here; nicer weather here. We have Cresent, who came from Nevada; not much of a trip for you. And our good friend from Arkansas; this was a trip for you. It is snowing back where you are, and even though you are in Utah's Dixie, you at least brought the right accent for it. So, thank you.

And also to my two colleagues from Utah, you obviously had to be here.

I just want you to know that Congresswoman Love would have liked to have joined us here, but she is covering for us back up in Salt Lake right now. Otherwise, she would have joined us at the same time.

Ms. Clarke, can I start off with you? In Alternative B and C, there is no mention of the corridor, the transportation route. If B or C were to go forward, do you believe there is any reasonable right-of-way corridor that would be available in any subsequent travel management plan?

Ms. CLARKE. Not by my understanding. I think that precludes them.

Mr. BISHOP. So, if it is not going to be in the management plan, it is kind of disingenuous to say we will do it later?

Ms. CLARKE. Yes.

Mr. BISHOP. If it is not in the management plan, there is no way it is going to be in the transportation plan.

Mayor, can I ask you a question? It has been alluded to that there is no way to actually make this kind of road, it is impossible to do it. Have there been studies on the potential of doing a road?

Mr. PIKE. Yes, there have been.

Mr. BISHOP. Is it viable?

Mr. PIKE. We believe it is, through the local transportation committee that is formed here in the county. We have studied viable alternatives.

Mr. BISHOP. Commissioner Gardner, I have to admit, the language in the 2009 bill that we are talking about here is pretty squishy on grazing. It is pretty lousy language. I think BLM can probably get away with what they are trying to do there. But can I ask you what would happen if you actually did reduce the grazing to 40 percent? What would be the impact on grazing here in the county?

Mr. GARDNER. Well, grazing has already been reduced out there to start with, because of the desert tortoise when it was listed 20 years ago or more. So, we are already managing it for the tortoise. And the winter grazing is a critical part of an individual's permit. If he loses his winter grazing rights, that often cuts into what he is allowed in the summertime as well. So, it is an important part to make a year-round operation.

Mr. BISHOP. Thank you.

Let me make one observation here. Ms. Whitlock, the testimony that was given by BLM I noticed does not come from you. It has to be vetted back in Washington, go through all the hoops. Consequently, the testimony we usually get from BLM is pretty weak. And I was frustrated with the testimony that was written, not your oral testimony, but the written that was sent here, because it was picking and choosing laws, which law from which bill you wish to look at. There are some references to the 2009 law, some to one in the 1990s, some in the 1970s. The 2009 law actually supersedes the rest of the law. If you are going back, FLPMA is not an organic law. It is not part of the Constitution. If it is modified in 2009, that becomes the ruling document.

In that document, it said that there would be one or more transportation plans. That means that, I'm sorry, having four alternatives out there with one of them having a transportation plan does not meet either the spirit or the letter of that law. That means there has to be a transportation alternative in every one going forward. One or more does not mean zero. Having A, B, and C with zero options, that violates not just the intent, but the clear language of the 2009 law. I am sorry, you did it wrong.

That law also says that local governments have to be the coordinating and cooperating agencies. You have not done that.

I am sorry, but if there is any element of integrity right here, what BLM needs to do is throw all four plans out—D comes closest to obeying the law, and that is a crappy plan. Start over again. This time, do it the way the law says to do it. First of all, involve local government as a coordinating agency, as the law told you to do, and have a transportation plan in each of the alternatives, as the law clearly expected you to do.

Doing wilderness inventories in areas the law told you not to do, wilderness inventories that were taken off the list of potential

wilderness, is once again a violation of the 2009 law. Those laws have to be respected in some particular way.

I will yield back.

Mr. MCCLINTOCK. We will give you a 30-second credit.

The Chair is now pleased to recognize the Congressman for this district, the Honorable Chris Stewart, for 5 minutes.

Mr. STEWART. Thank you once again, Mr. Chairman.

I had a list of questions prepared based on the witnesses' provided testimony, and I want to get to that. But, Mr. Van Dam, some of the things you have said, I just feel like I have to pursue. You gave us a brief history of Utah and Mormon persecution. I have to ask if you think the distrust of the Federal Government, or in this case the distrust of citizens of the BLM, is unique to Utah.

Mr. VAN DAM. No, I do not think it is unique to Utah.

Mr. STEWART. It is clearly not unique to Utah, is it?

Mr. VAN DAM. I am not here to represent the BLM, but I am here to tell you that they have certainly served me well. That is my personal experience.

Mr. STEWART. I appreciate that. We understand that some people may have different experiences, but your opening testimony would seem to indicate that this is something that is a problem in Utah, and it is very clearly not.

Mr. VAN DAM. It is a bigger problem in Utah than anywhere else in this country.

Mr. STEWART. I don't think that is true at all, sir. We could take you to other states and they would absolutely disagree with that. But I want to get to my question.

Mr. VAN DAM. Sure.

Mr. STEWART. We have evidence of that here by the fact that we have representatives from as far away as Arkansas who understand that this is a problem. This is not unique to Utah at all. I would argue it has very little to do with Utah history, with Mormon pioneers, or our distrust of the Federal Government.

So, I want to ask you, and I sincerely want to understand if you appreciate this, can you articulate why we distrust the Federal Government? Do you understand that?

Mr. VAN DAM. Well, I understand my feelings about the Federal Government.

Mr. STEWART. No. I am asking if you can understand why there are a lot of people in this room and a lot of people in this county who do not trust the Federal Government.

Mr. VAN DAM. Certainly to some degree I do, but not to the extent that I experience it in this city and in this county.

Mr. STEWART. Then why don't we trust the Federal Government? Can you tell us why we don't?

Mr. VAN DAM. Well, sometimes they do not speak our language. That is true.

Mr. STEWART. What do you mean by that, "they do not speak our language"? We are all speaking English. This is not our people and their people, by the way, coming back to your opening comment as well. We are all Americans. We all speak the same language.

Mr. VAN DAM. Technically we do, but you get a lot of different attitudes in different parts of the country, and I can tell you that

Utah has its own particular attitude, particularly about the government, and it manifests in a much more powerful way than in other states.

Mr. STEWART. Well, again, I completely disagree with that.

Mr. VAN DAM. You are entitled to.

Mr. STEWART. I don't know if you spend enough time in other states because, very clearly, they have as much emotion on this as we do.

One other comment, and I won't ask you to address this; I want to come to my more prepared statements with our elected officials. That is, you indicated you lived in Salt Lake City, and that there was dirty air up there, and you said that there are people here who want to have dirty air here in our county. I think that is a good indication of my opening comment about the presumption that people are ill-willed in this, because they are not. Show me someone, show me anyone who genuinely wants dirty air. I don't think such a person exists.

There are differences of opinion on how we can proceed, but we all want the same outcome. We want to protect this place. We want this place to be as beautiful for our grandchildren as it was for our grandfathers. But there are differences of opinion sincerely held, genuine differences of opinion, on what is the right answer on these issues, and they are controversial, I understand that. But to start from the position that someone wants dirty air I think is an unfair characterization of someone's position.

Mayor Pike, if I could, one of the problems that we have in this is that many of us are willing to accept an outcome if we feel like the process was fair, the rules were followed, and the law was followed. Many of us feel, again, the frustration that that was not the case here.

If you could go back and change one thing in the process and improve that—and, Commissioner Gardner, I would ask you the same question—what would be the one thing you would change to make citizens feel like the process was more open to their concerns?

Mr. PIKE. Again, as I stated in my testimony, I would have expected, under the language of the 2009 law, to have had many discussions with the BLM about all of these issues that have been raised today, and in particular: water rights, power, and water distribution through and across these areas, that would have been huge. The transportation corridor would have been huge. It would have been really nice to talk with Alternative D, that does include a northern corridor, having the different alternatives for the corridor in aggregate and saying that is too bad, we cannot accept that. I think that was disingenuous. I would have liked to have had those conversations before the plan was released.

Mr. STEWART. Thank you. My time has expired. I believe I can see the clock. I believe it has 4 seconds.

Commissioner Gardner?

Mr. MCCLINTOCK. Yes or no.

Mr. GARDNER. As I stated in my testimony, I think the biggest thing, if Washington County could have been a full cooperating agency, like the agreement we signed with BLM with the MOU, the majority of these issues could have been resolved.

Mr. STEWART. Thank you.

Mr. MCCLINTOCK. Thank you. The gentleman's time has expired.

Finally, the Chair is pleased to recognize the Chairman of the House Oversight and Government Reform Committee, the distinguished Representative from Utah, Mr. Chaffetz, for 5 minutes.

Mr. CHAFFETZ. I thank the Chairman, and I thank those who have come a long way to participate with us today. I appreciate those of you who traveled throughout the state and the region to be here as well.

Ms. Whitlock, how many BLM employees do you have in the state of Utah?

Ms. WHITLOCK. Somewhere between 900 and 1,000 employees throughout the state.

Mr. CHAFFETZ. Wow. That has to change. That is ridiculous.

How many worked on this plan?

Ms. WHITLOCK. Gosh, I would be speculating. Maybe a dozen BLM employees.

Mr. CHAFFETZ. A dozen employees. When did they start?

Ms. WHITLOCK. Scoping was kicked off in 2010.

Mr. CHAFFETZ. When in 2010?

Ms. WHITLOCK. I believe it was in the fall of 2010.

Mr. CHAFFETZ. These dozen employees, can you provide the names of those employees that worked on this plan?

Ms. WHITLOCK. Not today. I would be happy to follow up.

Mr. CHAFFETZ. When can you provide us the names of the employees who worked on that plan?

Ms. WHITLOCK. Following this hearing I would be happy to.

Mr. CHAFFETZ. Thank you. That started in 2010. When is the first time you invited the city of St. George to participate?

Ms. WHITLOCK. I'm sorry, I don't know what the date would be. I am happy to follow up with that.

Mr. CHAFFETZ. Mayor, do you happen to know?

Mr. PIKE. There was no invitation.

Mr. CHAFFETZ. How many meetings did you have internally to create and develop this plan, Ms. Whitlock?

Ms. WHITLOCK. I wouldn't want to hazard a guess.

Mr. CHAFFETZ. How many times were you involved?

Ms. WHITLOCK. I have been briefed on it a number of times, and also traveled here to St. George. I met with the County Commission in one of our meetings.

Mr. CHAFFETZ. How many outside groups did you meet with?

Ms. WHITLOCK. Again, I apologize. I believe it is in the draft EIS, those that were involved in the development and with whom we scoped.

Mr. CHAFFETZ. Can you provide that to us as well?

Ms. WHITLOCK. Yes, we would be happy to.

Mr. CHAFFETZ. Mayor, let's go back to you. Explain to me what the process should have been, what your expectations should have been, to make sure that you were included, as required by the law.

Mr. PIKE. We would have liked to have had the opportunity to have elected officials, as well as our key department managers affected by this—water, power, and infrastructure such as transportation—at a table where we could sit around and discuss the key

issues. Again, we cannot have the disruption of potentially 37 percent of our water, as is currently outlined in the draft management plan. So, we would have liked to have had a process not just one time, but multiple times, where we could have sat down as cities, as well as the county, to discuss all the relevant issues.

Mr. CHAFFETZ. And, Commissioner, what should have happened? What was the reality, and what should have happened?

Mr. GARDNER. We started off on the right process. We had a signed agreement with the BLM that Washington County would be a cooperating agency in the development of our plan. We continually asked the area manager that was here at the time to be involved. He said, "Well, we are just working on it in bits and pieces. It is going to be really hard to schedule to get you in." We had three times that the BLM has in their records that we were invited to participate in an actual meeting developing the plan. Two of those times we were there. The third time we were not able to attend. We were brought in again five or six times to kind of give us an update, but we were never advised of the surprises that we got.

If we had been fully involved as a cooperating agency, I don't think we would be having this hearing here today.

Mr. CHAFFETZ. Ms. Whitlock, this does not sound like it is in accordance with the law. Does it sound like the spirit of cooperation was in place? Is this the way it should operate? Are you proud of the way this has moved forward, or is this a model of something gone awry and askew of the law?

Ms. WHITLOCK. Not that it is an account, but we have met with, either formally or informally, cooperating agencies and other government entities probably 20 times over the course of the planning effort. Since we issued the draft in July, it has been more like a couple of times a month.

I completely get that coordination is in the eye of the beholder. We felt like we made a good-faith effort to coordinate with our partners. Alan, I think you would agree our current field office manager, Brian Tritle, is very sincere in his efforts to reach out to the county, and we are doubling our efforts to meet their needs.

Mr. MCCLINTOCK. Thank you. The gentleman's time has expired.

That concludes the committee's oral questions.

Pursuant to an earlier action of the committee, the Chair is now pleased to recognize the Chairman of the Natural Resources Committee for 5 minutes.

Mr. BISHOP. I just want to make one final statement as we end this particular hearing.

Ms. Whitlock, I appreciate what you are doing as the manager of this. There are a couple of things of which I am critical, though, and therefore I have to hold you responsible for that.

We had invited some of the local BLM officials to be here to answer questions. They were asked not to be here, not even to be in the building. I find that sad and improper. That is why you are on the hot seat here. You are going to be held responsible for all the things that we have to come up with in this process.

As we have gone through this, this process has violated the written law of 2009. But I think there are two shining, bright linings

to the dark cloud over this process that I hope lead us in the future.

One is that we are going to insist they actually have hearings in Washington. The Washington bill had a lot of hearings here, but they did not have any hearings in the House, and it was actually dropped into an omnibus bill with over 100 other bills that no one actually talked about. No one had a hearing. There was never a markup on anything. That process has to go forward. So, as we do bills in the future, at least in our committee, we are going to have hearings and we are going to have markups to do it the proper way.

I think you can see that there is some loose language in here. As we go forward with other bills in the future, I am dedicated to making sure that that loose language is now eliminated. Some of it simply says, "Well, the Department of the Interior shall do whatever they think is the right thing to do." We can see right now that does not work.

What we are doing from now on is when Congress passes a law, I am going to make sure that the law simply says this is what will happen, and we are going to hold the Administration accountable to actually obeying the law. In any bill that we actually produce that comes from our committee, we are going to be looking at the verbiage very carefully so there will not be that kind of loose language.

And, I'm sorry, there is loose language in this bill, but there is also some specific direct language in there that BLM has not actually followed through on. So, we want you to look at the most recent language and obey the language, and I am going to tell you once again, I think you need to start this process over. You have four alternatives, none of which, none of which meet the letter of the law, and you need to do that one more time and do it the right way.

With that, I appreciate my colleagues once again having been here. I appreciate all of you for being here. When we said no applause, you all did it. Thank you. Thank you for being part of keeping the process going here. We appreciate your attendance here.

Mr. Chairman, I will let you send us away.

Mr. MCCLINTOCK. Very well. Thank you.

I would like to thank all of our witnesses for their testimony, and joining the Chairman's thanks to the audience. The decorum you have displayed here has been exemplary of a democracy in action, despite very passionate views on both sides. This is the best of our country, and I do thank you very much for your participation today.

Members of the subcommittee may have additional questions for witnesses. We would ask that they respond in writing, and the hearing record will be kept open for 10 business days to receive those responses.

If there is no further business, without objection, the subcommittee stands adjourned.

[Whereupon, at 11:39 a.m., the subcommittee was adjourned.]

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE'S OFFICIAL FILES]

—Prepared Statement of The Wilderness Society

—Comments submitted for the record from attendees at the field hearing

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