

**TESTIMONY OF
JIM HUGHES, DEPUTY DIRECTOR
BUREAU OF LAND MANAGEMENT AND
JEFFERY LOMAN
ACTING DEPUTY DIRECTOR, TRUST SERVICES
BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE HOUSE RESOURCES COMMITTEE
SUBCOMMITTEE ON PARKS, RECREATION AND PUBLIC LANDS
H.R. 2909, UTAH TEST AND TRAINING RANGE PROTECTION ACT
OCTOBER 16, 2003**

Thank you for the opportunity to testify today on behalf of the Department of the Interior on H.R. 2909, the Utah Test and Training Range Protection Act. The Administration shares the goals of the sponsors of the legislation to support the continued operation of the Utah Test and Training Range (UTTR) and to protect public lands with special values. However, the Department has concerns with H.R. 2909 for two reasons. First, the bill is not specific as to the lands that will be designated as wilderness, and, according to studies performed by the BLM, much of the area may not be suitable for wilderness designation. Second, the bill would frustrate an ongoing administrative review process that began in 1997 with the conditional approval of a 20-year license to receive, transfer, and store spent nuclear fuel on the Skull Valley Indian Reservation.

Background

The UTTR is located in northwestern Utah and eastern Nevada within the Great Salt Lake Desert. Operated by the United States Air Force, the UTTR provides air training and test services, large force training exercises and large footprint weapons testing. A unique facility, it has the largest overland block of protected airspace in the continental United States.

The Cedar Mountains Wilderness Study Area (WSA) is located in Tooele County, Utah, and covers approximately 50,500 acres of BLM-managed lands. On June 26, 1992, President George H. W. Bush submitted his Administration's recommendations to Congress on wilderness suitability for BLM WSAs in Utah, including a recommendation that the entire Cedar Mountains WSA was not suitable for wilderness designation.

The Skull Valley Reservation is located in Tooele County, Utah, approximately 45 miles southwest of Salt Lake City. In 1996, the Skull Valley Band of Goshute Indians (Tribe) entered into a business lease with Private Fuel Storage, L.L.C. (PFS), a consortium of major utility companies, to provide a temporary storage facility for spent nuclear fuel on the Tribe's reservation.

In May 1997, the Department approved the lease subject to certain conditions, including a complete National Environmental Policy Act (NEPA) review, and the Nuclear Regulatory Commission's (NRC's) issuance of a license. Shortly thereafter, PFS filed its license application. In January 2002, the NRC issued a final Environmental Impact Statement (EIS) on the proposed storage project. The Bureau of Indian Affairs (BIA), the Bureau of Land Management, and the Surface Transportation Board serve as cooperating agencies with the NRC on the project.

In April 2002, the NRC Atomic Safety and Licensing Board (ASLB) began a series of local and statewide hearings that concluded on July 3, 2002. The major outstanding point of contention (environmental justice) was dismissed on October 1, 2002.

The ASLB issued three Partial Initial Decisions on three issues. First, on March 10, 2003, the ASLB ruled that the probability of an aircraft crash into the proposed facility would be high enough that PFS must analyze the potential consequences of such a crash. On May 22, 2003, the ASLB determined that an

earthquake would have no impact on the proposed facility. The NRC upheld this decision on August 15, 2003. On May 27, 2003, the ASLB ruled that PFS is financially qualified to construct, operate, and decommission the proposed facility.

H.R. 2909

Major provisions of this legislation include the designation of the Cedar Mountains Wilderness Area, protection of military operations in and around the UTTR, and the prohibition on the granting of certain transportation rights-of-way in Tooele County, Utah.

Section 5 of the bill proposes to designate the Cedar Mountains Wilderness Area. The bill does not provide reference to a specific map or the acreage of the proposed wilderness. Based on information provided to BLM's Salt Lake City Field Office, we understand that the legislation may contemplate an area substantially larger than the existing WSA. While some of this area may have the wilderness characteristics appropriate for wilderness designation, in the opinion of the local BLM land managers, many portions lack wilderness characteristics. Areas to the north of the existing WSA, in particular, lack wilderness qualities.

The Administration has stated that only Congress has the authority to designate wilderness or new wilderness study areas. The Department of the Interior was delegated the authority to review and recommend wilderness in Section 603 of the Federal Land Policy and Management Act (FLPMA). That authority expired in 1993. During this review, the BLM identified over 20 million acres of lands with wilderness characteristics, but ultimately found many of those lands were not suitable for wilderness designation. As stated before, the BLM submitted its recommendations regarding suitability to President George H.W. Bush who, in turn, submitted them to Congress. These lands are now designated wilderness or have been released from WSA status by the Congress, or remain in wilderness study area status containing a combination of "suitable" and "unsuitable" acres. The lands encompassed in this bill contain acreage that was either found to be unsuitable for wilderness during that review, or was never identified as having wilderness characteristics in the first place.

In general, the Department supports the designation of wilderness areas in Utah, but we would like the Committee to consider the impacts of designating wilderness areas where there may be ongoing incompatible uses. During the original WSA inventory process, and now when updating a land use plan and considering wilderness characteristics, the BLM generally looks at size, naturalness, opportunities for solitude and primitive (non-motorized) recreation, and other special features. The Wilderness Act of 1964 specifically prohibits motorized equipment in wilderness areas.

The Department wants the Committee to know that there is motorized recreational use within parts of the areas proposed for wilderness in this bill. While Section 3 of the bill specifically authorizes certain military activities to continue notwithstanding any potential wilderness status, it does not do so for other uses. All other non-wilderness uses in the designated areas, including existing motorized recreational uses, would be prohibited by this bill upon enactment.

Sections 2, 3, and 6 directly relate to the UTTR. We believe these sections need modification. The BLM will work with the Air Force in a cooperative fashion to meet military mission requirements. However, proposed exceptions to wilderness and WSA management raise concerns. It is possible that through discussions with the Committee and the sponsors of the legislation many of these concerns could be addressed. In addition, many of the issues raised could be worked out cooperatively between the BLM and the Air Force through the use of Memoranda of Understanding (MOUs).

Planning for the public lands within the area surrounding the UTTR has been precluded by legislation for many years. We believe the goal of the legislation is to lift those prohibitions and to move forward on planning in a collaborative fashion in consultation with the Air Force. However, we believe that the language in the bill is confusing on this point and needs clarification. While section 4(a) appears to provide direction to proceed with land use planning, section 6(b) may contradict that by only lifting certain

planning prohibitions on the proposed Cedar Mountains Wilderness Area but not on the rest of the BLM-managed lands in the area. Likewise, section 6(a) is confusing and could be construed as negating other legislative language within the bill.

Section 4(b) of the legislation prohibits the issuance of transportation rights-of-way under section 501(a)(6) of the Federal Land Policy and Management Act of 1976 (FLPMA) in certain areas of Utah until at least 2015. There are currently two pending applications for transportation rights-of-way in the approximately 250,000 acres covered by the prohibition. Those applications are from Private Fuel Storage LLC for a 30 mile railroad line on public land and from Broken Arrow Corporation for a 2 mile access road, 100 feet on public land. There are also 12 existing 501(a)(6) rights-of-way in the proposed prohibition area. The Department has concerns about the direct impact H.R. 2909 will have on the pending applications for rights-of-way, as well as potential amendments and renewals of existing authorized rights-of-way.

The chronology of administrative actions illustrates the nature and scope of the administrative processes that have been completed to date. Likewise, the administrative processes that are pending would be dispositive regarding the proposed temporary storage facility. If, for example, the NRC does not issue a license, the project will not operate. Continuation of the ongoing administrative processes resulting from the Tribe's business lease with PFS would provide the cooperating agencies with an opportunity to determine whether the proposed project is viable as an administrative matter only. Should Congress choose to enact H.R. 2909, the administrative process would come to a halt. However, if H.R. 2909 is not enacted, in the Spring of 2004, the ASLB is expected to render a decision and make a recommendation to the NRC regarding the dispositive administrative licensing issue. The NRC will then issue a Record of Decision and issue or deny the license. If the NRC grants a license, both the BLM and the Surface Transportation Board would issue Records of Decision regarding the pending railroad right-of-way application. The Department has worked closely with the Tribe to support them in their efforts to achieve some form of viable economic development on their reservation.

Conclusion

The Department of the Interior would be happy to work with the Committee and the sponsors of H.R. 2909 to protect both the important mission of the UTTR and the conservation values of BLM-managed lands in its vicinity. We encourage Congress to move forward on designation of wilderness and release of WSAs, and as always, we would like to provide the sponsors and the Committee with information on the status of these lands and their current uses. We would welcome the opportunity to propose changes to the bill to address our concerns regarding the suitability of certain areas for wilderness designation, to increase the manageability of the designated wilderness, and to ensure that we are not inadvertently affecting important current uses or public expectations.