

**TESTIMONY OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE SUBCOMMITTEE
PUBLIC LANDS AND FORESTS
S. 1209, WASHINGTON COUNTY DESERT TORTOISE HCP ACQUISITIONS
AND
S. 1467, RIO GRANDE OUTSTANDING NATURAL AREA ACT
NOVEMBER 18, 2003**

Thank you for the opportunity to testify on S. 1209, to provide for the acquisition of land in Washington County, Utah, and S. 1467, the Rio Grande Outstanding Natural Area Act. Both bills are currently being discussed by the Administration. The Administration supports the purposes and goals of S. 1209 and S. 1467. While the Administration supports acquisition of the lands identified in S. 1209, it does not support some of the specific provisions in this legislation. Regarding S. 1467, the Administration could support the legislation with a number of modifications.

S. 1209

The Washington County, Utah Desert Tortoise Habitat Conservation Plan (HCP) was adopted in 1996 in order to protect important desert tortoise habitat, while also allowing continued development in the fast growing St. George, Utah area. The establishment of the 62,000 acre Red Cliffs Desert Reserve was a critical element of the HCP. Since 1996, the BLM, as a Federal partner to the HCP, has coordinated the acquisition of 7,955 acres within the reserve from willing sellers through donation, exchange, purchase and conservation easements. Among those willing sellers has been Environmental Land Technology (ELT). To date, the BLM has acquired a total of 527 acres of land from ELT. Of that total, some 157 acres have been acquired through three separate land exchanges valued at approximately \$2.72 million, and the remaining 370 acres have been purchased through four different transactions using over \$6 million of Land and Water Conservation Fund (LWCF) monies appropriated by Congress.

Approximately 1,412 acres of private land remain to be acquired within the Red Cliffs Desert Reserve. Of those lands, 1,365 are controlled by ELT. The Department of the Interior and Related Agencies Appropriations Act of 2004 (Public Law 108-108) includes \$500,000 in LWCF funds for Washington County HCP acquisitions. While we will certainly move forward to complete an ELT acquisition using these funds, with lands most recently appraising at approximately \$23,000 an acre, we would only be able to acquire a very small portion of the remaining ELT acreage in the Reserve.

The BLM's most recent appraisal of the remaining ELT inholding was valued at approximately \$28 million when it was completed in 2001. The BLM's overall land acquisition project budget under the LWCF for FY2004 is \$13.6 million, and those dollars are designated by Congress for a variety of other specific projects.

The BLM continues to look for other solutions to completing the acquisition of ELT's lands within the Red Cliffs Desert Reserve. We are exploring the possibility of a competitive land sale under the Federal Land Transaction Facilitation Act of 2000 (Public Law 106-248), using the proceeds potentially to acquire the remaining ELT lands at appraised value. This is would take over a year to complete.

S. 1209 is similar to a bill considered in the 107th Congress, H.R. 880. On May 10, 2001, the BLM testified before this subcommittee on H.R. 880 expressing views similar to those I will share with you today.

S. 1209 provides that, 30 days after the date of enactment, the United States would acquire the remaining ELT lands within the Reserve and 34 acres adjacent to the Reserve, and would make an initial payment

of \$15 million within 60 days of enactment. The bill further provides that just compensation for the property would be reached either through a negotiated settlement between the property owner and the Secretary, plus interest from the date of enactment, or through a judgment obtained in a civil action brought by the Secretary in Federal Court. If a negotiated settlement cannot be reached, then compensation would be based on the valuation of the property determined by the court, plus interest from the date of enactment, reasonable costs and expenses of holding the property from February 1990 to the date of final payment, including possible damages, and reasonable costs and attorney's fees.

As stated before, the Department supports acquisition of these remaining acres within the Reserve. This legislation would affect a Federal taking of private property and require payment of compensation, which is within congressional prerogative. However, the Department does not support the specific mechanisms provided in the bill to decide and pay ELT the compensation for these lands.

As written, the \$15 million "initial payment" would likely come from existing programs because no other source is specified in the bill. Additionally, it is unclear whether the Department would avoid having to make this payment if a negotiated agreement is reached within two months from the date of enactment. It is also unclear what latitude the Secretary would have in "negotiating" a price outside litigation. The BLM is subject to the Uniform Appraisal Standards for Federal Land Acquisitions, which requires that land be purchased for the appraised value, not a higher "negotiated" amount. The bill does not exempt the BLM from following its existing land acquisition standards.

We believe the bill should include a mechanism that specifically directs the source of funds. The judgment fund may not be the most appropriate source of funds to pay for a directed taking. Moreover, the Department would be unable to complete a time-consuming exchange or acquisition of land subject to all existing laws, including the Federal Land Transaction Facilitation Act, within the mandatory timelines in the bill. The Committee should address these issues before the bill passes.

The Administration objects to those provisions of S. 1209 that deviate from standard land acquisition practices and substitute procedures that provide compensation beyond that received by other landowners in previous acquisitions in this area. However, the Administration supports the goal of acquiring this property for the Federal government, and would like the opportunity to work with the sponsor and the Committee to improve this legislation to make it consistent with BLM, Department of the Interior, and Department of Justice standards and to find the best and most direct way to resolve this matter.

S. 1467

From its headwaters in Colorado's San Juan Mountains, the Rio Grande flows south through Colorado, bisecting New Mexico, then crossing into Texas where it forms the U.S./Mexico border until emptying into the Gulf of Mexico. At 1,885 miles long, the Rio Grande is the fifth longest river in North America (and among the 20 longest in the world). Its flowing waters have been essential to survival for prehistoric, historic, and present day populations.

North from the New Mexico border into Colorado is a 33-mile stretch of the Rio Grande River that is outstanding for many reasons. Natural and undeveloped, this free flowing river is home to extensive wildlife. Significant for its recreational, scientific and educational uses, the area is dominated by sweeping views and a long history. Through multiple land acquisitions from willing sellers, the BLM has acquired a continuous 20-mile stretch of lands along the western bank of the Rio Grande now designated as the Rio Grande Corridor Area of Critical Environmental Concern.

The people who live in the San Luis Valley have come together in a collaborative fashion to find ways to further protect and enhance this stretch of this historic river. Discussions about protection of the corridor began following completion of the BLM's 1991 San Luis Resource Management Plan. As part of the plan, BLM conducted a wild and scenic rivers eligibility and suitability analysis and ultimately recommended that stakeholders interested in the river create "some enduring form of protection." The legislation being considered today is a result of that stakeholder process.

S. 1467, the Rio Grande Outstanding Natural Area Act, was introduced on July 28th of this year. The bill's stated purpose is to conserve, restore, and protect this special resource. It does this by establishing the Rio Grande Outstanding Natural Area along a 33.3 mile segment of the Rio Grande from the New Mexico border north to the Alamosa National Wildlife Refuge in a corridor about ¼ mile wide on either side of the river. The overall area includes over 10,000 acres, approximately 35% of which is BLM-managed public land. The remainder is private land.

The bill establishes a commission whose purpose is to work with Federal, State and local authorities to develop an integrated resource management plan for the area. We support this type of collaborative effort. The Secretary's 4Cs envision just this type of endeavor. However, as currently drafted, we have concerns about the bill's use of a commission as a means of advising the Secretary on land management decisions affecting this area. Specifically, the bill does not address the funding source for the commission, does not make clear the nature of the commission's advisory role, or its impact on affected private property interests. Given these concerns, we believe an advisory council is a more appropriate vehicle for this collaboration. Chartered under the Federal Advisory Committee Act (FACA), an advisory council would be able to fill many of the same roles as the proposed commission. The BLM currently works with 39 advisory councils. They range from our 23 Resource Advisory Councils (RACs), which provide advice on multiple use management of public lands within a state or region of a state, to area-specific advisory councils, such as the Steens Mountain Advisory Council or the Canyons of the Ancients National Monument Advisory Committee in southwestern Colorado. All recommendations by advisory councils are considered by the BLM's State/field offices and by the Washington office when making decisions about the management of public lands.

In addition, we would like to work on clarifications to this section to ensure that the BLM continues to have final responsibility for planning for the Federal lands. A single plan covering the entire river corridor is still viable, provided it is clear that the BLM has ultimate planning authority for the Federal lands. It is our understanding that the focus of this process would be restoration of the historic riparian community along the river. Specifically, issues of livestock movement through the largely unfenced river corridor, designation of vehicle access routes to minimize impact on riparian vegetation, and management of riparian habitat on BLM lands are likely to be addressed.

Undertaking a management plan is a time-consuming task requiring extensive resources and expertise. We believe the time deadlines and other specifics of the planning sections established in the bill may be overly optimistic. In order to ensure a fully cooperative, collaborative, and consultative process that is consistent with the National Environmental Protection Act (NEPA) and other laws and regulations, we would urge longer timeframes. We would be pleased to work with the sponsor and the Committee to address this concern.

While the southern Colorado stretch of the Rio Grande is truly outstanding, we would recommend that the sponsor of the bill consider whether a different designation for this area might be preferred. Currently, the BLM manages only one "Outstanding Natural Area" (ONA), the Yaquina Head ONA, located on the Oregon coast. Yaquina Head ONA is a tourist destination with an emphasis on visitation. Because visitation is not a stated goal in this area, we are concerned that using the same terminology could result in confusion. Possible alternatives would be a "cooperative management and protection area," such as exists in eastern Oregon in the Steens Mountains, or "cooperative river management area." We would be pleased to work with the sponsor and the Committee to resolve this concern.

There are additional technical issues we would like to work on as well. For example, we would like the opportunity to work with the sponsor and the Committee on an accurate map of the proposed area.

Additionally, Section 11(a) of the bill calls for the revocation of any existing reservations on the public lands within the area. There are two such reservations. The first is a 1949 administrative withdrawal of approximately 2,700 acres for the purpose of future hydroelectric development (this withdrawal covers lands both in southern Colorado and northern New Mexico.) The second is a 1939 Executive Order creating public water reserves for the purpose of livestock and domestic access. These reservations are

no longer necessary, because in the former case, hydroelectric development has been rejected as a viable option for this section of the river and in the later case because access to the Rio Grande now exists due to subsequent BLM land acquisitions. As written, the language only revokes the portion of the reservation within the ¼ mile river corridor, and could result in unnecessary management confusion. As all of these reservations are river- based, we advocate a complete revocation of the reservations in lieu of a partial revocation.

Section 11(c) of the bill withdraws the public lands within the newly designated area from a host of public laws and provisions. To avoid confusion, we would recommend a standard withdrawal from location, entry, appropriation and/or patent under the public land laws and mining laws as well as from operations of the mineral leasing, mineral materials, and geothermal leasing laws. Such a standard withdrawal will foster clear understanding and, we believe, reflects the intent of the sponsor.

The Administration supports sections 9(c), 13, and 14 regarding water rights. This language makes clear that the designations in this Act shall not be construed to constitute an express or implied water right.

Mr. Chairman, we believe the goals of this legislation are worthy and we support them wholeheartedly. The local support for this proposal is just the kind of effort that this Department and this Administration encourages. We believe that by working together cooperatively, this area of the Rio Grande can be a model for responsible stewardship of the land.

Thank you for the opportunity to testify, I would be happy to answer any questions.