

**Statement of  
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U.S. Department of the Interior  
Senate Energy & Natural Resources Committee  
Subcommittee on Public Lands and Forests  
S. 2834, Washington County Growth and Conservation Act of 2008  
April 22, 2008**

Thank you for inviting me to testify on S. 2834, the Washington County Growth and Conservation Act of 2008. This legislation is the result of years of exhaustive efforts by the Utah Congressional delegation, in particular Senator Bennett. Working with local governments and the public in the spirit of cooperative conservation they have reached consensus on difficult issues on a wide range of public land management issues in Washington County, Utah. The Administration commends the resolution of land use conflicts in this manner, and supports the bill with modifications to the formula for distributing the proceeds from any land sales to ensure that an appropriate share of the proceeds is returned to the Federal taxpayers. While we note several areas of concern below, we are pleased with a number of significant improvements in this bill relative to the measure considered last Congress.

Background

Washington County, Utah, located in the southwest corner of the State bordering Nevada and Arizona, covers nearly 2,500 square miles, and has been one of the fastest-growing counties in the United States. With a population of only about 10,000 in the mid-1960s, today Washington County has over 130,000 residents. At the same time, more than 75 percent of the County is Federal land, managed by the Bureau of Land Management (BLM), the U.S. Forest Service (USFS), and the National Park Service (NPS). In addition, the County includes lands held in trust by the Federal government for the Shivwits Indian Tribe and lands owned by the State of Utah. How those lands are managed is a critical issue for the people of Washington County.

The Administration recognizes that the Sponsor has included a number of improvements from the earlier bill in the 109<sup>th</sup> Congress. In particular, we appreciate that the bill no longer directs BLM to dispose of lands, regardless of whether or not they had been identified for disposal.

Wilderness Designations

The bill would designate a number of wilderness areas within Washington County, including approximately 123,743 acres of wilderness to be managed by the NPS within Zion National Park, approximately 138,008 acres of wilderness to be managed by the BLM in 16 individual areas, and 2,643 acres of USFS wilderness. In addition, the bill would release 5,074 acres of BLM-managed lands from wilderness study area (WSA) status and would return them to the full range of multiple public uses authorized by the Federal Land Policy and Management Act (FLPMA.)

The BLM-managed lands that would be designated wilderness by S. 2834 include areas of rugged beauty, solitude, and important wildlife habitat. In the northeastern part of the County,

the proposed Deep Creek and Deep Creek North wilderness areas consist of sheer canyon walls dropping to dramatic year-round rivers. Hanging gardens with wildflowers compete with a variety of raptors, including bald eagles and giant California condors, for the hiker's attention. The steep and rugged Hurricane Cliffs, which soar 2,000 vertical feet in under a mile, form the most outstanding feature of the proposed Blackridge Wilderness. The area is a magnet for hikers, hunters and photographers.

In the southeast, Canaan Mountain's rugged topography includes peaks and colorful vermilion cliffs that form the southern gateway to Zion National Park. The scenic vistas available from these peaks increasingly attract recreationists.

Within the Red Cliffs National Conservation Area (NCA) proposed by Title III of the bill lie the proposed Cottonwood Wilderness on the east and Red Mountain Wilderness on the west. The Cottonwood Wilderness and the adjoining Forest Service-managed Cottonwood Forest Wilderness form the spectacular "front range" between the City of St. George to the south and the Pine Valley Mountains to the north. Within minutes of downtown St. George, this area is prized for its primitive recreational opportunities. It lies within the Red Cliffs Desert Reserve, which has been Federally-designated as habitat to protect the threatened desert tortoise. It is also home to peregrine falcons and State-listed species such as the Gila Monster. The aptly named Red Mountain Wilderness provides a scenic backdrop to the communities of Ivins and Santa Clara and is a popular destination for local citizens.

The bill also designates the Cougar Canyon and Slaughter Creek wildernesses located in the northwest corner of Washington County. Abutting the Nevada State line, these wilderness areas connect with the Tunnel Spring Wilderness in Lincoln County, Nevada, designated by Public Law 108-424. The area is dominated by rough terrain of wooded canyons and low mountain peaks. Just to the south of Cougar Canyon and Slaughter Creek the bill also designates Docs Pass Wilderness, which includes five miles of a perennial, free flowing stream within Beaver Dam Wash providing habitat to a wide range of native fish and large mammals. The Bull Valley Mountains within the proposed Docs Pass Wilderness are rugged pinyon-juniper woodlands.

Wilderness resolution has been particularly challenging in the State of Utah, and we applaud the hard work of the sponsor and other members of the Utah delegation in reaching consensus on BLM wilderness designation and WSA release. Congress has the sole authority to designate lands to be managed permanently as wilderness, and we believe these areas are manageable as such. We would like the opportunity to work with the sponsor and the Committee on possible minor boundary adjustments to ensure efficient manageability.

S. 2834 would also designate 123,743 acres of Zion National Park as wilderness. The lands proposed for wilderness designation are similar to those that were included in a proposal to recommend wilderness for the park that was originally transmitted to the President on June 5, 1974, by then Secretary of the Interior Morton, and in the 2001 General Management Plan (GMP) for the park. The 1974 proposal recommended designation of 120,620 acres of the park as wilderness.

Differences in the acreage figures between the 1974 transmittal and S. 2834 are the result of land acquisition in the park that has taken place since 1974, acquisition of water and grazing rights, and termination of non-conforming uses. Additional lands within the park consisting of approximately 9,000 acres, but located in Kane County, have also been recommended for wilderness designation and were included in the 1974 transmittal and the 2001 GMP. Although the Department supports the wilderness designation for the park included in S. 2834, we suggest that the bill be amended to include this additional, previously recommended wilderness so that all the lands proposed for wilderness designation within the park are designated.

The bill designates as wilderness five small units of BLM-managed lands surrounding Zion National Park that vary in size from 32 to 663 acres. These are logical extensions of the proposed wilderness areas within Zion National Park and are appropriate for wilderness designation. We recommend transferring all five of these small parcels – Beartrap Canyon Wilderness (40 acres), Goose Creek Wilderness (98 acres), Laverkin Creek (445 acres), Taylor Creek Wilderness (32 acres) and Watchman Wilderness (663 acres) – to the National Park Service. Transfer of these lands to the park will improve management, reduce confusion for the public, and enhance the opportunities for visitor enjoyment.

#### National Conservation Areas

Titles III and IV of S. 2834 establish the 44,695 acre Red Cliffs National Conservation Area (NCA) and the 68,083 acre Beaver Dam Wash NCA respectively. These would be the first NCAs in the State of Utah. Each of the NCAs designated by Congress and managed by the BLM is unique. For the most part, however, they have certain critical elements, which include withdrawal from the public land, mining and mineral leasing laws; OHV-use limitations; and language that charges the Secretary to allow only those uses that further the purposes for which the NCA is established. Furthermore, NCA proposals do not diminish the protections that currently apply to the lands. The Red Cliffs NCA and Beaver Dam Wash NCA proposals honor this spirit and the Department supports their designation.

The proposed Red Cliffs NCA would overlay the existing Red Cliffs Desert Reserve which was designed as a part of the Washington County Desert Tortoise Habitat Conservation Plan (HCP) adopted in 1996. The HCP protects important desert tortoise habitat while also allowing continued development in St. George and nearby communities. As directed, the BLM has acquired nearly 8,000 acres of State and private inholdings within the Reserve from willing sellers.

In addition to providing important habitat for the recovery of the desert tortoise and other listed species such as the Shivwits milkvetch and the Woundfin Minnow and Virgin River Chub, the proposed NCA is a popular area for recreationists. Over 130 miles of trails provide excellent opportunities for hikers, mountain bikers and equestrians while ensuring compatibility with the species' recovery. The boundaries of the proposed NCA include over 44,000 acres of BLM-managed land.

The proposed Beaver Dam Wash NCA is nestled in the southwestern corner of Washington County which is a transition zone between three major ecosystems: the Colorado Plateau, the Great Basin, and the Mojave Desert. Such zones are characterized by diverse vegetative

communities supporting a rich array of wildlife. Riparian species are found along the deeply incised channel of Beaver Dam Wash, which traverses the length of the proposed NCA to its confluence with the Virgin River. At higher elevations in the Beaver Dam Mountains, pinyon-juniper woodlands cover the slopes of steep-sided canyons. A forest of Joshua trees, the signature species of the Mojave Desert, dots the bajadas and valley floors. The lower elevations provide designated critical habitat for the threatened Mojave Desert Tortoise and other native species, such as Desert Bighorn Sheep, Gila Monsters, and Mojave Rattlesnakes. Current recreational uses within the area include technical rock climbing, hiking, horseback riding, wildlife viewing, and nature study, all of which are compatible with the designation.

#### Wild and Scenic River Designation

The legislation amends the Wild and Scenic Rivers Act by adding approximately 165 miles of segments of the Virgin River and its tributaries within and adjacent to Zion National Park to the Wild and Scenic Rivers system. Seven of the segments are partially or wholly on BLM-managed lands while the remaining 32 segments are wholly within Zion National Park. All of the segments of the rivers that are recommended for designation as wild, scenic, or recreational rivers were found eligible and suitable for inclusion within the Wild and Scenic River System through the Zion National Park 2001 GMP and through the BLM St. George Field Office Resource Management Plan (SGRMP) completed in March 1999. The Department supports the designation of these segments.

#### Washington County Travel Management Plan

Title VI directs the Secretary to develop a comprehensive travel management plan within three years of enactment of this legislation to include the designation of an OHV trail (the High Desert Off-Highway Vehicle Trail) in Washington County. The trail is to be established on existing roads and trails. This trail has the potential to be a significant draw for tourism and will allow visitors and residents to experience and enjoy their public lands while minimizing OHV use outside of designated trail networks. We support the development of both the trail and a comprehensive travel and transportation management plan for the County.

#### Land Disposal

Title VII of S. 2834 provides for the disposal through sale at auction of up to 9,052 acres of public lands out of BLM management and into private ownership. The Department supports the general proposition of making some public lands available for community growth where it is necessary and appropriate. The land disposal process in S. 2834 is consistent with this objective and we support its inclusion.

Under section 702 of S. 2834 the disposal of land would take place in three tiers. In the first tier, lands are to be disposed of within the first eighteen months after enactment of the bill, and include 906 acres of BLM-managed land specifically identified on the map in 14 separate, primarily small, parcels. These lands have been preliminarily identified by the BLM for disposal through the SGRMP. The local BLM had previously reviewed these lands for cultural and historic issues, threatened or endangered (T&E) species conflicts and other potential values that could preclude a conveyance out of Federal ownership, and believes that sale of these lands can be accomplished.

In the second tier, the lands are to be sold at auction within a year of the completion of the sale of the tier one lands and completed by January 1, 2013. The tier two lands include approximately 3,146 acres specifically identified in one small and two larger parcels. These lands have been preliminarily identified for disposal through the SGRMP. However, that identification was only preliminary. The local BLM has been made aware of conflicts on these lands, which include cultural resources as well as the presence of T&E species. Section 702(h) of the legislation anticipates these problems by allowing the Secretary of the Interior to place restrictive covenants on lands sold in order to protect the interests of the United States, including cultural or T&E species. It is unclear how this provision would be implemented, and it has the potential to be an administrative burden requiring the United States to enforce land restrictions in perpetuity.

Finally, the bill provides for not more than an additional 5,000 acres of BLM-managed land in the county to be sold. These lands must be identified for disposal by the BLM through its land use planning process and be in accordance with the Vision Dixie Land and Transportation plan. The Secretary and the County are to jointly select lands to be offered for sale and there is no specific timetable for their sale.

Section 703 directs that 15 percent of the proceeds from the sales directed in section 702 be distributed to State and County entities, while 85 percent would be retained by the Federal government and deposited in a special account. Up to 9 percent of that account (or \$15 million whichever is less) is to be used for implementing the many provisions of the bill including planning and implementation of special designations as well as costs associated with the directed sales of lands. The remainder of the account is to be used to acquire from willing sellers non-Federal lands within Washington County that are within one of the special areas designated by the bill, or other environmentally sensitive land within the county.

The manner in which the proceeds from land sales are distributed requires significant modifications. As noted above, we will work with the sponsors to ensure that this bill returns an appropriate share of these proceeds to the Federal taxpayer, consistent with the Administration's proposed changes to the Federal Land Transaction Facilitation Act (FLTFA). Our proposal would provide for a consistent approach to the distribution of land sales proceeds, at the National level.

The Administration also does not support section 703(b), which allows the land sales account to earn interest. The Department of the Treasury strongly opposes such provisions, which effectively require the Treasury to borrow more funds to pay this interest.

#### Additional Provisions

Title VIII establishes two parcels totaling 932 acres as aerial rights-of-way for reservoirs. Both of these parcels have been identified as potential reservoir sites through the BLM's land use planning process. Under Title V of FLPMA the BLM has the authority to grant rights-of-way for a wide variety of uses, including roads, powerlines, pipelines, communications sites and reservoirs. The applicants for these rights-of-way pay both administrative cost recovery fees as well as rentals. In the case of linear rights-of-way, rent is determined by a published schedule. Rent for aerial rights-of-way is based on appraised value. Municipal utilities are charged rent if their principal source of revenue is customer charges.

In general, the legislation appears to allow the BLM to charge administrative cost recovery for these grants; however it does not allow the BLM to charge rent. We believe it is appropriate that the legislation either allow for the payment of rent or provide for the outright purchase at appraised fair market value of these lands by the water district. In addition, the grants for use are made in perpetuity. If the rights-of-way are not provided for outright purchase, we believe it would be more appropriate to make these easements dependent on their actual use and approval by any State or Federal agencies and for the life of the facility so as to not permanently encumber the public lands for projects in the event they are never developed.

Finally, Title IX of the bill requires the Secretary to carry out the management of plant and animal species so as to restore native rangelands within the County in each “priority biological area.” The bill further provides the Secretary with authority to make grants or enter into cooperative agreements to carry out and develop research relating to the restoration of these areas. The full intent of this Title is unclear, as is the definition of “priority biological areas.” We would like the opportunity to work with the sponsor and the Committee to further define this Title. We also have concerns that this new grant authority for one county could duplicate or conflict with existing DOI nationwide programs or activities.

Thank you for the opportunity to testify on the Washington County Growth and Conservation Act. While there are a few provisions that cause us concern and that we believe should be modified (as well as some technical amendments), we support the cooperative conservation efforts of Senator Bennett and so many others in Utah to arrive at this point. I will be happy to answer any questions that you may have.