

**Written Testimony of Kya Marienfeld
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**Before the House Committee on Natural Resources
“Empowering Local Voices and Stopping Federal Overreach to Improve Management of
Utah’s Public Lands”
Field Hearing, Hurricane, Utah
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Introduction

Mr. Chairman and members of the Committee, thank you for providing the Southern Utah Wilderness Alliance with the opportunity to present our views on important ongoing issues affecting public lands in southwestern Utah.

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, Monument, 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.

SUWA submits this testimony in order to address one of the likely topics of today’s field hearing—continued efforts to construct a northern transportation route through the Red Cliffs National Conservation Area (NCA). We also seek to clarify the historical record surrounding the 2009 Omnibus Public Lands Management Act¹ (hereafter “Washington County lands bill”) that, in part, designated the Beaver Dam Wash and Red Cliffs NCAs, as well as update the Committee and members of Congress on the current status of the local and national effort to preserve the integrity of the Red Cliffs NCA and its myriad natural, cultural, and wildlife resources in conformance with federal law. In doing so, we hope to counter common misinformation regarding the public process that led to passage of the 2009 legislation, and provide context for why the St. George Bureau of Land Management (BLM) is currently undergoing a Supplemental Environmental Impact Statement and issuing a new decision on whether or not to approve a right-of-way for a highway through the Red Cliffs NCA this year. We do not support the continued push to construct a four-lane northern corridor highway through the Red Cliffs NCA, and hope BLM and the U.S. Fish and Wildlife Service come to the conclusion, once again, that this use of national conservation lands is incompatible with law, policy, and the agencies’ duty to safeguard these lands and their natural and cultural resources for the benefit of all Americans.

¹ Omnibus Public Lands Management Act (OPLMA), Public Law 111-11, Title I, Subtitle O – Washington County, Utah (2009)

The Washington County Lands Bill

In 2004, SUWA, as part of the Utah Wilderness Coalition, 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. This process ultimately led to the legislation that passed in 2009, 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 BLM to “develop a comprehensive plan for the long-term management of the National Conservation Area[s].”² In 2016, BLM approved a final Resource Management Plan (RMP) for the Beaver Dam Wash and Red Cliffs NCAs, the result of an 8-year planning process. The RMP was consistent with the legislative language in the Washington County lands bill, while also compliant with BLM’s ongoing obligations under the Federal Land Policy and Management Act (FLPMA).³

From the beginning of the RMP process to now, there has been an ongoing effort to revise the historical record regarding the development and passage of the Washington County lands bill as it pertains to a highway transportation corridor within the NCA. Although this “northern transportation route” was rejected in BLM’s final NCA RMP, the controversial proposal has reemerged many times in the near-decade since and is now being reviewed, once again, by BLM.

Northern Transportation Corridor and the Red Cliffs NCA

The Red Cliffs NCA, located at the convergence of the Mojave Desert, Colorado Plateau, and Great Basin ecoregions in southwestern Utah, 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.⁴ 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. Since this time, the U.S. Department of Interior has spent approximately \$21 million dollars from the Land and Water Conservation Fund (LWCF) to acquire 15 parcels—over 857 acres—within the Reserve, for the express purpose of protecting tortoise habitat. The Mojave desert tortoise is on a path to extinction according to leading researchers and its habitat in southwestern Utah is especially vulnerable given rapidly expanding growth in the region.

BLM has determined numerous times since passage of the Washington County lands bill that a northern corridor highway through the NCA and Reserve is inconsistent and incompatible with

² OPLMA, Section 1974-1975.

³ Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701-1785.

⁴ OPLMA, Section 1975(a).

the purpose of the Red Cliffs NCA, the Red Cliffs Desert Reserve, and the Washington County HCP. This is perhaps most notable in BLM’s consideration and rejection of an alternative that would have designated a new highway right-of-way within the NCA in the final NCA RMP.⁵ As BLM clearly stated in its RMP 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.”⁶ Furthermore, developing a 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.”⁷

Despite BLM’s ongoing opposition to designating a highway right-of-way through the NCA, a failed lawsuit in 2017 by Washington County to overturn the final RMP, and three legislative attempts to authorize the highway that never made it out of committee, northern corridor proponents nevertheless reinvigorated a push for a highway across the NCA at the beginning of the last presidential administration. In 2018, the Utah Department of Transportation (UDOT) submitted a formal application to BLM for a right-of-way for the proposed northern corridor highway.⁸ The proposed route was to be located in an area of the NCA and Red Cliffs Reserve called Zone 3—home to the densest population of Mojave desert tortoise in the region and sited directly over several parcels acquired for tortoise habitat protection using LWCF funds. In 2019, BLM and the U.S. Fish and Wildlife Service (FWS) began the process of preparing a joint Environmental Impact Statement to evaluate the highway right-of-way application along with a corresponding permit for increased incidental take and an amended habitat conservation plan for Mojave desert tortoise submitted in tandem by Washington County.

During its initial scoping period, BLM and FWS received over 17,000 comments from members of the public, a vast majority of which requested continued protection for tortoise habitat, recreation resources, and cultural sites that would be impacted by a highway alignment through the NCA. Members of the public also proposed a series of reasonable alternative routes that would serve the purpose and need of the highway proposal without unacceptable impacts to the NCA, without violating the Washington County lands bill, and without running afoul of the LWCF. In 2020, BLM issued a Draft Environmental Impact Statement (EIS) that articulated the proposed action: issuing a 30-year renewable right-of-way grant for the construction, operation, and maintenance of a highway across the Red Cliffs NCA, in dense Mojave desert tortoise critical habitat, as requested by UDOT and Washington County. This proposed action would also require BLM to amend the Red Cliffs NCA RMP, as the right-of-way would directly conflict with the RMP’s directives.

On November 12, 2020—despite receiving another 15,500 public comments on the Draft EIS and a letter from the Office of the Governor of Utah requesting that “the BLM should better analyze the impacts the proposed alternatives will have on private landowners whose properties

⁵ Bureau of Land Mgmt., Beaver Dam Wash Nat’l Conservation Area Record of Decision and Approved Resource Mgmt. Plan, 5 (2016) (Final NCA RMP and ROD).

⁶ Draft NCA RMP, 790.

⁷ *Id.*

⁸ Final NCA RMP and ROD, 1.

will be harmed or impacted by the [highway right-of-way]”⁹—BLM and FWS issued a Final EIS for the proposed northern corridor highway. The Final EIS identified the northern corridor route through the NCA and Reserve as the agency’s preferred alternative, despite also disclosing that the highway would, among other resource impacts: directly impact native vegetation and increase the spread of exotic species while exacerbating wildfire; cause direct loss of 275 acres of desert tortoise critical habitat and bisect “the most important high-density cluster of desert tortoises” within the Reserve; dramatically interrupt recreational experiences within the NCA; adversely affect cultural resources including sites eligible for listing on the National Register of Historic Places; and overall negatively impact each and every natural and ecological resource of the Red Cliffs NCA identified in its establishment under the Washington County lands bill.¹⁰ On January 13, 2021, then-Secretary of the Interior David Bernhardt signed a Record of Decision (ROD) approving BLM’s issuance of a right-of-way for construction of the northern corridor highway along UDOT’s initial preferred route across Zone 3 of the NCA.

In June 2021, Utah-based and national organizations representing members, including local Washington County residents, filed suit in federal court alleging violations of the Omnibus Public Lands Management Act, the Land and Water Conservation Fund Act, the National Environmental Policy Act, the Endangered Species Act, and the National Historic Preservation Act. In April 2022, this Committee sent a letter to Secretary of the Interior Deb Haaland, imploring her to reverse approval for the highway right-of-way.¹¹ In June 2022, a petition opposing the highway corridor that garnered over 35,000 signatures was presented to officials at the Department of Interior.¹²

In May 2023, following initial briefing in the 2021 lawsuit, BLM identified both legal errors and substantial concerns with their 2021 analysis approving the NCA right-of-way, and asked the U.S. District Court to remand their approval of the right-of-way back to BLM and FWS for reconsideration.¹³ In fall of 2023, following BLM and FWS’ motion seeking a voluntary remand of the Final EIS and RODs and amendments to the St. George and NCA RMPs, the U.S. District Court sent the decision back to the federal agencies to conduct these additional reviews and re-issue a new decision based on the findings of the supplemental review process.¹⁴ In October 2023, parties to the case signed a settlement agreement requiring BLM and FWS to complete a supplemental EIS and consultation under the National Historic Preservation Act by fall of 2024.¹⁵

⁹ Plaintiff’s Statement of Facts, *Conserve Southwest Utah et al v. U.S.*, U.S. District Court for the District of Columbia, No. 1:21-CV-01506-ABJ (2021), ¶ 85, [available at https://conserveswu.org/wp-content/uploads/2023/11/230227_SOF_Filed.pdf](https://conserveswu.org/wp-content/uploads/2023/11/230227_SOF_Filed.pdf)

¹⁰ *See. e.g.*, Final NCA RMP and ROD.

¹¹ Letter from U.S. House of Representatives Committee on Natural Resources to U.S. Secretary of the Interior, April 14, 2022, available at <https://democrats-naturalresources.house.gov/imo/media/doc/2022-04-14%20RG%20to%20DOI%20re%20Utah%20Northern%20Corridor%20Highway2.pdf>

¹² Protect Red Cliffs Petition, available at protectedcliffs.com

¹³ *See* “Northern Corridor Highway Court Documents,” available at <https://conserveswu.org/2023/11/01/nch-court-documents/>

¹⁴ *Id.*

¹⁵ *Id.*

In carrying out the terms of the settlement agreement, BLM and FWS are currently in the process of preparing a Supplemental EIS to review its 2020 analysis, further examine the effects of granting a highway right-of-way through the NCA, and reconsider the highway right-of-way application.¹⁶

Conclusion

Thank you for the opportunity to submit testimony on the issues before the Committee today. We continue to oppose any efforts to construct a transportation corridor through conservation lands and critical habitat in the Red Cliffs NCA, and we encourage the Committee to support BLM's current Supplemental EIS process, which will allow the agency to fulfill its statutory mandate to protect the remarkable natural and cultural resource values preserved by Congress in the Red Cliffs NCA for future generations.

¹⁶ U.S. Federal Register. (2023). Notice of availability of the Northern Corridor supplemental environmental impact statement. Federal Register, 88(63), 23456-23459.