

**Written Testimony of Eric Clarke, County Attorney**

**Washington County, Utah**

**Before the**

**House Natural Resources Committee**

**Subcommittee on Federal Lands**

**Hearing on “*Restoring Multiple Use to Revitalize America’s Public Lands and Rural Communities*”**

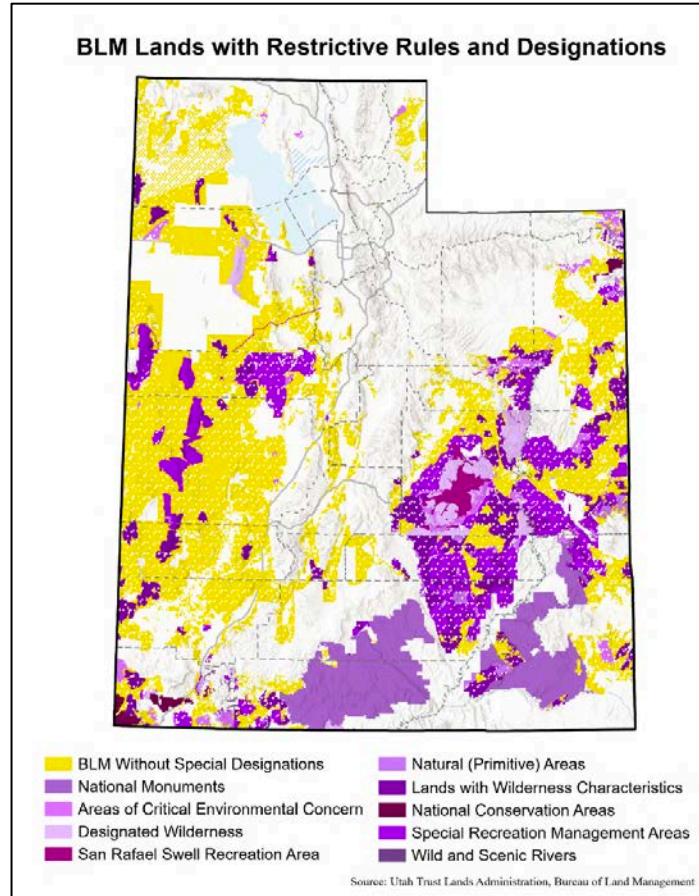
**February 11, 2025**

**Introduction**

Thank you, Chairman Tiffany, Ranking Member Neguse, and members of the subcommittee for giving me the opportunity to discuss the impacts of federal land management when the management ignores the desires of and impacts to communities adjacent to federally managed lands.

My ancestors settled the area near Bryce Canyon National Park and the Grand Staircase-Escalante National Monument. I was in high school in 1996 when President Clinton proclaimed that the federally managed land adjacent to my community was part of the original 1.7-million-acre Grand Staircase-Escalante National Monument designation. Professionally, I have worked in the Washington County Attorney’s office in southwest Utah for 14 years and have served as the elected County Attorney since 2020. Our county contains most of Zion National Park, fifteen congressionally designated wilderness areas, and two congressionally-designated national conservation areas. I regularly work on public land issues involving (1) the fourteen federally protected plants and animals in our county; (2) land exchanges with the Bureau of Land Management (BLM); (3) highway and water development projects; (4) resource and travel management plans; and (5) visitor crowding in Zion National Park. For better or for worse, I am an expert when it comes to the often-dysfunctional public land bureaucracy.

The Federal Land Policy and Management Act of 1976 is a congressional act that mandates BLM to manage public land resources for a variety of uses including livestock grazing, recreation, timber harvesting, energy development while balancing the protection of sensitive lands and species and cultural resources. “Multiple use” is not an esoteric concept. It is an actionable and proven approach to land management. Multiple use encourages actors to co-exist rather than exclude one another. The movement away from multiple-use management of public lands and toward benefiting only one use directly harms local communities. Figure 1, a map of the state of Utah, shows how few BLM lands (in yellow) are eligible for multiple use whereas most BLM lands in Utah are encumbered with special designations.



**Figure 1. Land Rules and Designations in Utah**

I share with this committee direct examples of how multiple use can advance the needs of all stakeholders. Yet, the way federal agencies have chosen to *implement* federal land and environmental policies enacted by Congress is riddled with red-tape, layers of review, and processes that have become an impediment that delays and diminishes the use of federal lands for the public benefit. This is why facilitating multiple uses also enhances the conservation values integral to land management.

### **I. Federal Mismanagement Harmed my Hometown**

After World War II, my grandpa married my grandma, and they bought a small farm in a small community in rural southern Utah where they had both been raised. They raised their six children in that same small community. My grandpa worked full time in the timber industry, sharpening saws in a sawmill in the small town of Escalante. The sawmill where he worked relied on timber harvested from U.S. Forest Service (USFS) managed land. He also ran cattle on BLM-managed lands that are now part of the Grand Staircase-Escalante National Monument. My grandparents' livelihood relied on positive and functional partnerships with federal land management agencies, and they lived long, happy lives.

Unfortunately, after my grandpa retired, the sawmill where he'd spent his career closed. While its owners tried several times to get it up and running again, each time it failed because of legal challenges to timber harvesting permits or bureaucratic red tape. A sawmill cannot operate without a

steady supply of timber, and all the timber was in a federally managed forest where it was tied up by bureaucratic red tape.

Grazing has fared better than logging, but it is still negatively impacted by federal decisions and management plan updates that place further restrictions on monument uses. Much, if not most, of the Grand Staircase-Escalante National Monument was actively grazed at the time of its creation. While the number of cattle allowed was not immediately reduced when the National Monument was created, road closures and other restrictions have made it difficult for owners who rely on historic federal grazing permits to maintain cattle. On top of this, only a small portion of land in the area is private property, so any cattle in the area must graze on federal land. I spoke with a concerned county commissioner two weeks ago who says that grazing is being choked out of existence due to federal mismanagement and restrictions.

No one who visits this area will find evidence of destructive logging or over-grazing. The hard-working people who worked in those industries saw BLM and USFS employees as their partners, partners whom they worked alongside to keep the land healthy because healthy lands were necessary for the local communities' economic survival. The industries suffered not because the local communities were abusing the land, but due to broken bureaucratic processes and never-ending legal challenges from non-governmental entities.

My paternal grandparents had six children, and I am the oldest of my father's seven children. Yet I have only one sister and no paternal cousins living in the community where I grew up. The high school in Escalante is now only a fraction of the size it was at the time of my graduation in 1999. As the local saying goes—the area's largest export is its children. While the state of Utah was the fastest growing state in the nation for the fifteen-year period of 2008-2023, averaging a 21% growth rate, counties in rural Utah made up of mostly federally managed land cannot grow. The Grand Staircase-Escalante National Monument is in Garfield and Kane Counties. The population of Garfield County was 5,172 in 2010 and is now 5,314, representing only a 1.6% increase over 10 years.<sup>1</sup> Kane County has experienced similar trends with an average growth trend of 1% between 2010-2023.<sup>2</sup> As demonstrated by my experience, people move away because it is no longer economically feasible for them to remain. For most people born in these communities, the only employment options include working for a governmental agency or working in the tourism industry (neither option is known to lead to economic prosperity because the hospitality jobs are often seasonal and low paying).

Federal lands should be managed in a way that allows the lands and species to thrive and that promotes long-term economic prosperity for the people invested in the survival of the lands. Instead, land management is choking local economies out of existence.

## **II. Washington County is Vested in Protecting the Local Environment**

After finishing law school and a federal judicial clerkship, I moved to Washington County, Utah. I am currently the elected County Attorney. Washington County is a public lands county, with the federal government managing over 75% of the land in our county. Of our 1.5 million acres, the BLM manages 41% of those, the USFS manages 25%, and the National Parks Service manages 9%. Our county's

<sup>1</sup> Population Data Garfield County: <https://www.census.gov/quickfacts/fact/table/garfieldcountyutah/PST045224>

<sup>2</sup> Population Data Kane County: <https://www.census.gov/quickfacts/fact/table/kanecountyutah/AFN120222>

uniquely beautiful landscape is a result of the junction of the Colorado Plateau, the Mojave Desert, and the Great Basin landforms. Our awe-inspiring vistas, warm climate, and welcoming community make Washington County an ideal place to live and visit.

Washington County continues to experience rapid population growth. In 1960, we had a population of 10,000. Today it is over 207,000.<sup>3</sup> To put that into perspective, our population has at least doubled every twenty years since 1960. With tourism playing such an essential role in our economy, it is unsurprising that estimates place the number of visitors our County receives at between eight and ten million annually. Last year, Zion National Park was the fourth-most-visited national park in the United States, attracting five million visitors.<sup>4</sup>

In addition to being an attractive place for people to live and visit, our unique landscape is also home to fifteen federally protected plant and animal species. For decades, Washington County has successfully implemented the Washington County Habitat Conservation Plan, proving that vibrant communities can participate in successful conservation efforts resulting in thriving lands and species when community members have a seat at the table and when they are allowed to work in partnership with Federal agencies. Our community leaders work diligently to ensure our population growth and tourism industry, along with their associated outdoor recreation, occur in ways that preserve our local environment. Our open space and beautiful views are an essential part of the Washington County experience, and our community leaders are invested in preserving them.

### **III. Broken Bureaucratic Processes are Impeding Our Water Infrastructure Planning**

Washington County exists in an extremely dry desert climate. We have a single, small drainage basin that provides all the water to our area. The region relies on water storage from above-average precipitation years to meet our needs in below-average years. We have proactively planned and developed water systems and storage throughout the time our community has existed. However, the burdensome bureaucracy that has harmed my hometown is also harming my current community. For example, a very small reservoir currently under construction in Washington County required 20 years of a costly bureaucratic tug-of-war to win a permit and begin construction.

An egregious example of a broken bureaucratic system is our county water district's efforts to navigate the BLM's administrative land exchange processes. For background, our county developed a comprehensive water reuse plan that will allow us to meet our population growth by reusing water—a system that would solve many of the problems currently faced by many drought-ridden areas in the Western United States. This water reuse system is a common-sense solution that nearby desert communities like Las Vegas, Nevada have used to great effect. Washington County's regional reuse system will include new treatment facilities, conveyance infrastructure, and water storage facilities that will optimize reuse water. Most of the system intersects with federal lands. Due to local leaders' familiarity with the bureaucratic challenges presented by the federal environmental review processes, they hoped to speed up the process by using a comprehensive environmental impact statement (EIS) for the *entire* reuse project rather than one project component at a time.

The linchpin of this reuse plan requires the development of a large reuse storage reservoir. In

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<sup>3</sup> Population Data Washington County, Utah: <https://worldpopulationreview.com/us-counties/utah/washington-county>

<sup>4</sup> Zion National Park Visitation: <https://www.nps.gov/zion/learn/management/park-visitation-statistics.htm>

accordance with our preservation-minded attitude, we worked to put this site on lands of minimal biological and historical value. Thus, the Washington County Water Conservancy District proposed purchasing valuable and tortoise-occupied Mohave desert tortoise habitat from a private person. Those private lands reside inside the boundary of the Red Cliffs National Conservation Area. This purchase would allow those lands to be immediately incorporated into that NCA when it goes under BLM management. In exchange, the District worked within the BLM Resource Management Plan to identify other lands the District could utilize that are less biologically and economically valuable to enhance water storage capability. Notably, the privately held tortoise land inside the NCA had long been flagged as a priority for BLM acquisition and the reservoir site is listed as a planned reservoir site in the current BLM resource management plan for the area.

This exchange checks every box. It fits the existing BLM planning documents, helps the environment in multiple ways, and directly benefits the local community. When we began working on it, the BLM estimated that it could be completed in 18 months. But eight years have now passed, and the exchange is still not complete. The County has not run into any unforeseen issues like discovery of a new species or a previously unknown antiquity site. The BLM process is simply broken and cannot be completed in a timely manner.

The years-long delay has cost our water district millions of dollars because construction costs have increased dramatically. These costs necessarily come out of the pockets of our citizens and taxpayers. If the administrative land exchange had been completed in two years, the comprehensive environmental impact statement for the regional reuse project would be finished by now. A significant amount of our water reuse system would be under construction. Frustratingly, everything has been delayed because a timely completion of the land exchange has failed.

#### **IV. 2008 Washington County Growth and Conservation Act**

We have worked diligently to preserve open space in our area. Twenty years ago, Utah's then-Governor Olene Walker encouraged local leaders to work with Congress, conservation groups, and others to protect significant swaths of open space in our county while ensuring those protections would not impede future water development, utility access, or road construction. Those efforts resulted in the Washington County Growth and Conservation Act, which was passed as part of the 2009 Omnibus Public Lands Management Act (Public Law 111-11).

On the "conservation" side of the Washington County Growth and Conservation Act, the Act designated 16 wilderness areas, totaling nearly 250,000 acres. It designated 165 miles of the Virgin River and its tributaries in our county as a Wild and Scenic River. The Act also established two national conservation areas protecting, to a lesser degree than wilderness, an additional 110,000 acres. This NCA acreage was expected to grow significantly when the BLM fulfilled its commitment to acquire the lands privately held and the school trust lands inside the Red Cliffs National Conservation Area (Red Cliffs NCA) boundary. The Act even designated uses for the funds that would come as the BLM sold lands that had been listed for disposal year earlier; these funds were to go towards acquiring the NCA inholdings. Thus, the "conservation" side of the Washington County Growth and Conservation Act was significant.

On the "growth" side of the Washington County Growth and Conservation Act, local and state

land-use planners were assured that the creation of the Red Cliffs National Conservation Area would not unduly hinder running utilities or accessing water within the NCA as necessary for future population growth. This assurance was important because the NCA's southern and eastern boundary was adjacent to existing or planned developments, and its western boundary abuts the Shivwits Band of Paiutes Reservation. All parties understood that, to some degree, the NCA land would always have to be utilized for the movement of water, utilities, and traffic.

Bringing together both the “conservation” and “growth” sides of the Act, the Act also gave the BLM three years to develop a comprehensive travel management plan that would ensure appropriate access to all of the BLM-managed land in the county, placing an emphasis on continuing recreational use of the remaining multiple use areas. The contents of the final plan for BLM-managed lands was to include one or more options for the construction of what is known locally as the “Northern Corridor.” As you can see in the map prepared for this testimony, the Red Cliffs NCA boundary dips south near the historic downtown of St. George City (*See Exhibit A*). Traffic planners have identified the need for a northern bypass road since the mid-1980s, which is why it was clearly and unequivocally included in the Act. Forty years later, we are still waiting, and the bypass road is needed now more than ever.

#### V. **BLM's Failure to Follow the 2009 Omnibus Public Lands Management Act**

Inexplicably, the BLM has fully implemented all the *conservation* measures of the Act while largely ignoring the *growth* measures. Here are a few examples:

- A. **Utility and Water Access.** This House Committee held a field hearing in St. George City in 2016 to address utility and water access in the Red Cliffs NCA. The draft Resource Management Plan (RMP) for the Red Cliffs NCA inappropriately restricted utility and water access, not adhering to the agreement reached in the Washington County Growth and Conservation Act. Pressure from the committee, combined with excellent work of then-Deputy Washington County Attorney Celeste Maloy, resulted in most of these concerns being resolved before the finalization of the RMP.
- B. **Travel Management.** Around 2014, the local BLM field office began working with Washington County on the congressionally required travel management plan as passed in PL 111-11. For six months, County and BLM planners identified dispersed campsites, overlooks, and other destinations throughout the county. The draft plan was well written, and the County was largely supportive of the BLM's preferred alternative. However, the plan was never released for public comment, nor was it adopted. It has continued to gather dust on a shelf in the local BLM office for 10 years.
- C. **Northern Corridor.** The BLM's most egregious action has been its open opposition to the Northern Corridor, a road project expressly enabled by the Congress in the Washington County Growth and Management Act (PL 111-11). This open opposition was demonstrated in the BLM's denial of an initial application for the roadway—a decision that was overturned by the Department of Interior Board of Land Appeals. This open opposition was also demonstrated by the BLM's refusal to include a transportation corridor that would meet our area's clear traffic needs in the 2016 Red Cliffs NCA Resource Management Plan.

## VI. Granting a Right-of-Way

Washington County is one of the fastest growing counties in the state of Utah and it is projected to continue growing, doubling its population by 2050.<sup>5</sup> As much as we focus on smart and innovative ways to provide water, housing, and energy for our residents and our millions of visitors each year, our community is equally concerned with transportation and traffic congestion and the consequences to these issues for our local neighborhoods and our air quality.

In 2017, our County gathered numerous federal, state, and local stakeholders to directly address the Northern Corridor issue, given the BLM's lack of action on the travel management plan and our need to address regional transportation issues. Washington County teamed up with the BLM, U.S. Fish and Wildlife Service (USFWS), the State of Utah, Utah's school trust lands administrators (SITLA), local transportation planners, and cities.

While our position remains that no additional biological mitigation should be necessary because the roadway was part of the bargain struck in the 2009 Act, we also acknowledge legitimate concerns about the road's impacts on the Red Cliff's Desert Reserve. The Reserve is the key component of the county's habitat conservation plan and its Mojave desert tortoise incidental take permit. In the process of addressing the Northern Corridor issue, the County and other stakeholders saw an opportunity to protect as open space the heavily recreated area shown as Zone 6 in the attached map—an opportunity that we embraced, further illustrating local leaders' commitment to preserving the beautiful and biologically important local environment (*See Exhibit A*).

From 2017 to 2021, the BLM and the USFWS jointly completed an environmental impact statement (EIS) that analyzed the following:

- (1) an application from Utah for the Northern Corridor Right-of-Way;
- (2) a 25-year renewal of the County's desert tortoise incidental take permit.

The incidental take permit renewal process included amending Washington County's Mohave Desert Tortoise Habitat Conservation Plan so that the plan addressed commitments from the County, the BLM, Utah's school trust lands administration (SITLA), and other parties impacted if the Northern Corridor were approved. The most important biological aspect of those commitments was the County's offer to expand The Red Cliffs Desert Reserve to include Zone 6 in return for the BLM's grant of a right-of-way to the state of Utah for the Northern Corridor. In 2020 and 2021, the USFWS approved the amended habitat conservation plan and renewed the county's incidental take permit. The BLM granted Utah a right-of-way for the Northern Corridor, which then triggered the part of the amended plan that established Zone 6.

Zone 6 contained 6,813 acres, half of which was already BLM-managed land. One-third of Zone 6 was part of the Red Bluff Area of Critical Environmental Concern, an area already managed for conservation of the protected dwarf bear-poppy plant but not yet managed for conservation of the

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<sup>5</sup> Kim C Gardner Total Population Projections by County:  
[https://tableau.dashboard.utah.edu/t/Business/views/20220111\\_Detailed\\_Proj\\_Vis/ProjectionsWorkbook?%3Adisplay\\_count=n&%3Aembed=y&%3AisGuestRedirectFromVizportal=y&%3Aorigin=viz\\_share\\_link&%3AshowAppBanner=false&%3AshowVizHome=n](https://tableau.dashboard.utah.edu/t/Business/views/20220111_Detailed_Proj_Vis/ProjectionsWorkbook?%3Adisplay_count=n&%3Aembed=y&%3AisGuestRedirectFromVizportal=y&%3Aorigin=viz_share_link&%3AshowAppBanner=false&%3AshowVizHome=n)

Mojave desert tortoise. Nearly half of Zone 6 is privately owned by Utah School Trust Lands Administration (formerly SITLA). The remaining acres were owned by private property owners or local governments. The area has a large and healthy desert tortoise population. It is also heavily recreated. Popular trails include Bearclaw Poppy and Zen, using for mountain biking and hiking. Rock climbing areas include the Green Valley Gap and Moe's Valley. To put in perspective how popular the area is, trail counters show that over 100,000 mountain bike rides occur annually on the Bearclaw Poppy Trail alone.

To ensure that all impacts to the desert tortoise from the construction of the Northern Corridor would be fully offset, the County and its partners proposed the following:

- (1) set aside all 6,813 acres in Zone 6 to be managed for the benefit of the tortoise,
- (2) do away with the prior development authorization of 3,341 acres of non-federally managed lands, and
- (3) strategically place tortoise culverts under Cottonwood Road in the portion of the Red Cliffs NCA near the Northern Corridor.

This would result in the County protecting twelve acres of tortoise habitat for every one acre of habitat disturbed for road development. In terms of the tortoise population, eight tortoises would be protected due to the preservation of lands for every one tortoise disturbed due to road development (although new information indicates that the ratio would be closer to 10:1). (*See 2020 Amended and Reinstated Washington County Habitat Conservation Plan Appendix G*).<sup>6</sup> No reasonable refutation can be made that the proposed benefits to the described tortoise recovery efforts far outweigh the harms caused by the construction and ongoing use of the four and half mile-long Northern Corridor.

We were understandably shocked in 2022 when the BLM and non-governmental organizations agreed in an out-of-court settlement to do two things: (1) immediately revoke the Biological Opinion from USFWS supporting the 2020 Northern Corridor Record of Decision and (2) complete a supplemental environmental impact statement allowing for the revocation of the right-of-way. The BLM completed that final revocation in December 2024; the USFWS simultaneously eliminated Zone 6.

These actions made the 3,300 acres of occupied tortoise habitat, which are still privately-owned as school trust lands, immediately developable. Before this decision, I would never have imagined the USFWS would choose to allow for the destruction of high quality and occupied habitat, an action that will translate into the destruction of twelve acres of habitat for every one acre that gained protection. Washington County filed a lawsuit last summer challenging the illegal revocation of the Northern Corridor Biological Opinion. We are currently working with the State of Utah as we explore our options for most effectively challenging the revocation of the state's BLM-issued right-of-way.

## VII. Breaching Trust

In addition to the inexplicable path taken by the Biden Department of Interior, the agency also

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<sup>6</sup> Appendix G, Determining Fully Offset for the Northern Corridor of the 2020 Amended and Restated Washington County Habitat Conservation plan. [https://eplanning.blm.gov/public\\_projects/1502103/200341977/20029421/250035622/Amended%20Washington%20County%20HCP%20-%20Final.pdf](https://eplanning.blm.gov/public_projects/1502103/200341977/20029421/250035622/Amended%20Washington%20County%20HCP%20-%20Final.pdf)



burned bridges built by decades of the federal agencies and community partners working together in good faith. After the Northern Corridor Right-of-Way was issued in January 2021, our county was obligated to fulfill many commitments triggered by the road's approval.

We have spent over \$6 million! We have closed areas to OHV use by constructing fencing and signage and by imposing a regular law enforcement presence. We have already purchased enough acres of land to offset the loss of tortoise habitat acres from the road at a 3:1 ratio. We have purchased grazing permits to be retired. We have built a public outreach center where we educate the public about our area's sensitive animals and plants daily. We have implemented tortoise-conscious development restrictions for utilities crossing Zone 6. We have significantly cleaned up and reduced the amount of trash dumping that had been occurring in the area for decades. We have fulfilled our part of the bargain.

Neither the BLM nor the Fish and Wildlife Service ever indicated that we should hold off on these activities or that our obligations were being put on hold while they engaged in secret backroom negotiations with outside groups for years. They held us to our commitments while possessing a full knowledge that they were going to renege on theirs.

How can we partner with these agencies now? We spent years working to find a solution that satisfied every possible requirement of the Endangered Species Act and the 2009 Omnibus Public Lands Management Act. The County and the state spent millions of taxpayer dollars on studies, plans, and an environmental impact statement. We then spent millions more fulfilling our time-sensitive obligations under the new agreement. The federal agencies knowingly extorted money from us and then took away the right-of-way that we had negotiated, and that Congress had approved in 2009. The Biden Department of the Interior actions have left us with no viable option for meeting our area's transportation needs. We hope that, with a change in Administration, the agencies may renew their commitments to us in a way that will allow us to keep the full benefit of our work and resources. However, the broken bureaucratic process has proven nearly impossible to complete during a single Administration.

## **Conclusion**

For Communities to thrive, we need consistent, multiple use management. I worry that the negative impact of these federal decisions will grow with my children as they grow to adulthood. Employment opportunities in the towns near southern Utah's national monuments are severely limited. Housing prices will increase dramatically if failure to build roads and water infrastructure prevents Washington County from keeping up with housing demand. I had no viable option for staying in my hometown and so I moved from a town of 500 to a community that has grown to 200,000. I worry that the dysfunctionality of federal land management will force not only my children, but children coming of age across Southern Utah, to move away from the area.

As much as this depends on Congressional action in implementing changes that will lead to permitting reform, it also depends on Congressional oversight of how the BLM and other federal agency handbooks and internal policies are utilized and implemented, as they are now utilized and implemented to thwart multiple uses of federal lands. Unfortunately, my personal and professional life have been significantly and negatively impacted by poor federal land management policies and implementation of

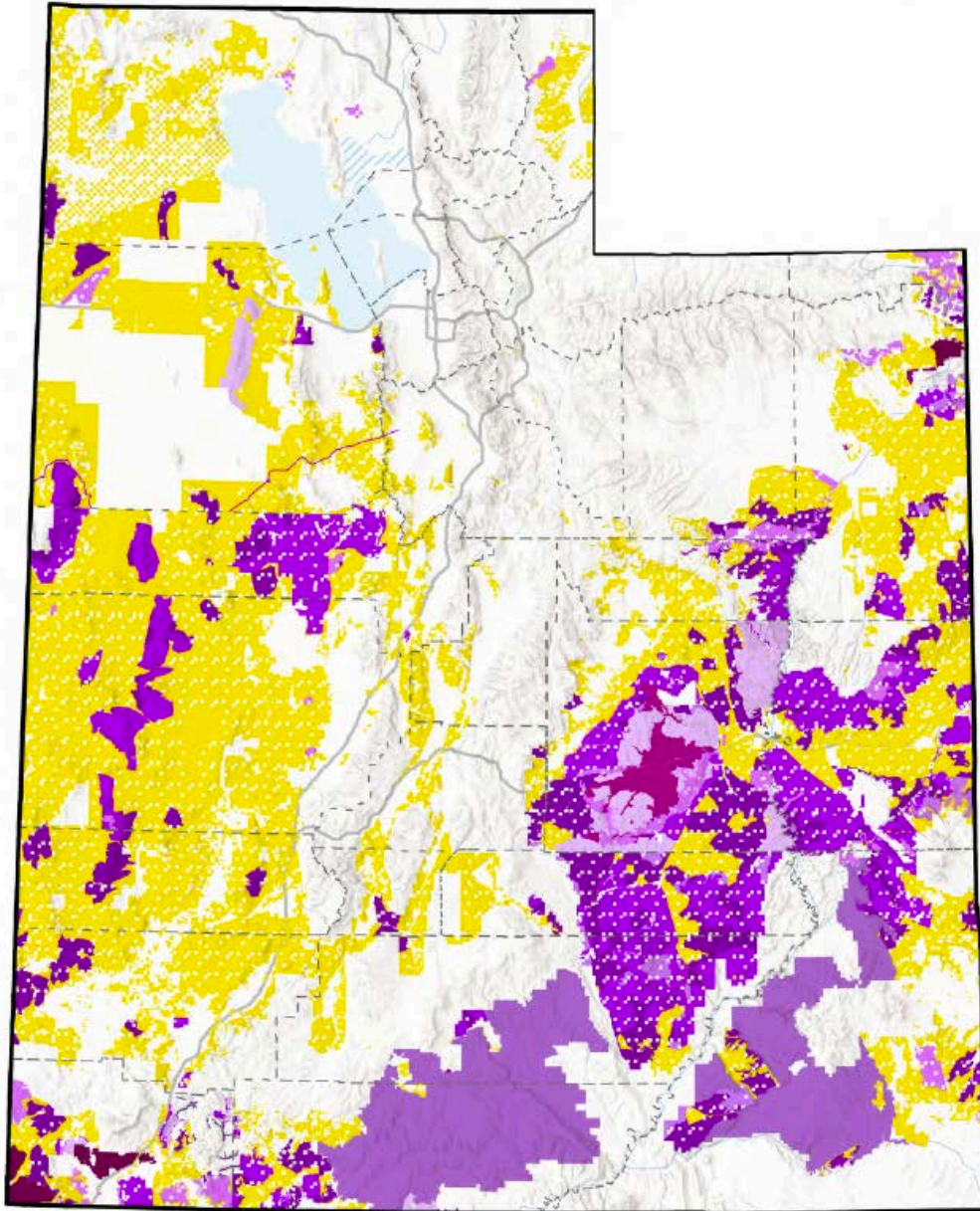
policies that have failed to respond to the needs of my community.

Communities surrounded by federal lands need responsive federal partners. We need *consistency* in land management decisions. We need those decisions to be completed in a timely, cost-effective manner. And we need those decisions to seriously consider our local economies and cultures. My great-great-great grandparents helped settle Southern Utah. I hope that my generation is not the last in my family to have the opportunity to live in our amazing area.

Thank you for holding this important hearing today.

Figure 1. Land Rules and Designations in Utah (Enlarged)

## BLM Lands with Restrictive Rules and Designations



- |   |                                       |
|---|---------------------------------------|
| BLM Without Special Designations        | Natural (Primitive) Areas             |
| National Monuments                      | Lands with Wilderness Characteristics |
| Areas of Critical Environmental Concern | National Conservation Areas           |
| Designated Wilderness                   | Special Recreation Management Areas   |
| San Rafael Swell Recreation Area        | Wild and Scenic Rivers                |

Source: Utah Trust Lands Administration, Bureau of Land Management

### Exhibit A. Map of the Red Cliffs Desert Reserve showing Northern Corridor and Zone 6.

