**Utah vs Public Lands**

Conserve Southwest Utah (CSU) questions the validity of the *Transfer of Public Lands Act* (TPLA). TPLA demands that the United States give title to 30 million acres of Forest Service and Bureau of Land Management (BLM) lands and the energy resources they contain to the State of Utah by December 31, 2014. The bill is without merit and it is a waste of taxpayer dollars to pursue litigation. The Utah legislature also passed House Bill 219 that directs the county to develop a Resource Management Plan (RMP) for federal lands to be incorporated in a state-wide RMP to use in future litigation. CSU questions the logic and timing of doing an RMP for public lands if it is not likely Utah will be successful at taking over ownership of these public lands. We outline our concerns about the TPLA and RMP below.

CSU is troubled by the Washington County Commission giving $25,000 in tax revenues annually to the American Lands Council. Because it is a national nonprofit with high paid lobbyists whose mission is to force the United States to transfer public lands to state control. It is increasing tensions by spreading false information that Utah could take over ownership of public lands confusing the public and policy makers. They claim the government should give back the public land to Utah.

**But, Utah never owned the land.**

Legal scholars explain that the original owners of these lands were the American Indian Tribes, followed by the Mexicans, followed by the U.S. Government, which took possession of them after the Mexican American War by treaty and placed them in federally designated territories. Federal ownership of the land came before Utah’s ownership. The State of Utah’s ownership came later because it wasn’t allocated its share of land until it became a state in 1896. Thus, the chain of title is clear. There is no merit in the argument that the federal government has a legal obligation to give “back” something Utah never owned.

In addition, all Western states have similar language that give up any claim to federal land as a submission to the union. Utah’s enabling act for statehood, reads:

*“forever disclaimed all right and title to the unappropriated public lands lying within the boundaries thereof.”*  This language is also in the Utah Constitution.

Also, the TPLA conflicts with the property clause of U.S. Constitution. The TPLA is built primarily on political ideology without regard to constitutional and historical facts.

**What is the Management cost of Public lands?**

The cost of public lands management of is not included in the county’s RMP. The management of these lands is complex and costly. Currently all Americans are paying for the management costs of our surrounding public lands and we reap the benefits of clean water, clean air, access to world class recreation, scenic and wildlife protections just to name a few benefits. The State of Utah’s claims that it can pay the costs of management and take over the task of protecting these values we enjoy is questionable. How Utah plans to accomplish protection of these values and how they will be managed are not reflected in the county’s RMP sections.

In our research the State of Utah will not be a better manager of public lands than the United States. The county’s proposed sections in the RMP increase our concern that the environmental values of public lands would not be protected.

BLM and National Forest lands are managed under a multiple use mandate, meaning federal land managers are required by law to balance the needs of wildlife, recreational users, and resource extractors. They have to balance uses by using science, the Federal Land Policy and Management Act of 1978 (FLPMA) and the National Environmental Policy Act (NEPA) of 1969, that allows for public input. Utah’s state trust lands are managed for maximum profit and do not have to comply with NEPA, or FLPMA and do not have a process where the public can participate in the decision making. House Bill 291 that created the RMP process will also not have public input.

Further, how is the county going to fund the scientific analysis required to make land use determinations? Scientific evidence is the basis for existing designations of land use restrictions and protections. How will the county obtain the scientific evidence and how will it be used in the RMP?

Utah taxpayers would face increased taxes to pay for the management of public lands. A 2014, report commissioned by the state found that just to maintain federal land in Utah it will cost $280 million annually. The report claims the state can pay for management of the land by increasing oil and gas leasing and by keeping all the royalties from the United States. But, currently federal oil and gas development revenues are split 50/50 with the state. The state also shares the revenues with other state agencies that will have to be made up if they lose funding. It is unlikely Utah will be able to convince the United States to give up 50% of its oil and gas royalties. Then how will Utah make up the caps in revenues?

Utah would have to generate more money from public lands to pay the bills by ramping up energy development. But, the coal industry is in steep decline and oil prices have dropped putting anticipated revenues at risk. The state report shows Utah could pay for management only if the price of a barrel oil is $90; but a barrel of oil costs $50 today. Also, the Trump administration wants to increase fracking so this will continue to keep the prices of oil low. Oil and gas revenues are not sufficient to cover the state’s total land management costs for at least two years after the transfer even if oil and natural gas prices were high. At the lower price forecast, without a change in the royalty revenue share, oil and gas royalties would never be sufficient to cover the state’s costs.

Utah will also lose $150 million in federal payroll and federal equipment to fight wildfires: like airplanes. The cost of wildfires would likely increase spending by $78 million, about six times current state expenditures. Further, state and local economies would take another serious loss of federal funding from the loss of $37 million in federal payments in Lieu of Taxes. These annual payment compensate for a lack of state revenues from property taxes on federal lands. Washington County would lose $3 million annually and it would have to be made up in its budget. Then how will Washington County make up the budget shortfall?

Utah’s analysis that claim it can pay for management of public lands uses unrealistic and idealized scenarios.

**Utah School Funding**

Another one of Utah’s claims to takeover public lands is that it needs public lands to fund schools. But, Utah’s management of state school trust lands to benefit schools tells a story of questionable management.

At statehood Utah was given four sections of land per township to support public schools; that was about 7.5 million acres. These lands are managed by the state School and Institutional Trust Lands Administration (SITLA). In 2015, Utah ranked 51st on per-pupil spending for education. SITLA has sold about half the land and has $2 billion; yet only gives $29 million annually to the state’s $4 billion education budget. The director’s annual salary has ranged from $800,000 to $553,450 in 2012; one of the highest state agency director salaries in the state. The President of United States gets an annual salary of $400,000. When the legislators look for funds to support education they should look to SITLA to raise its annual contribution. Selling off public lands is not the answer to funding education because a provision in HB 148 that allocates only 5% of the net revenue from public land sales will go to the State School Fund and 95% to the United States.

**Recreation**

Recreation, a very important land use, is not a planning issue for the RMP. Keeping lands open for our growing world class recreation and tourism economy is key to Utah’s sustainable economic future. According to a 2015 report on *The State of Utah’s Travel and Tourism Industry*, by Jennifer Leaver, in 2014 travelers spent more than $12 billion in consumer spending. Tourism provided revenues of $1 billion in state and local taxes, 137,000 jobs, and an additional $3.9 billion per year in wages and salaries.

In contrast, according to Bonneville Research the continued financial impact on Utah of low oil and gas prices and declining coal demand show severance taxes were down by -109 % and corporate taxes were down -24% in four months FY 2016. Since the market for fossil fuels is declining and visitor use of our national parks and recreational lands is growing the state should put more emphases on preserving our recreational lands.

**Washington County Habitat Conservation Plan (HCP) 1996**

It is not clear how the Habitat Conservation Plan (HCP) will be managed in RMP. The county signed the Habitat Conservation Plan to preserve habitat for the tortoise. It was a trade, the county agreed to preserve the HCP to protect tortoise habitat and then 300,000 acres of lands would be released for development. This agreement never had a provision for a highway through the protected habitat. The county is working on renewing the HCP so development can continue. But, the county commission is going back on its pledge to protect the reserve. It supports a new highway though the heart of Red Cliffs National Conservation Area, which is a protected tortoise reserve, by claiming a highway will not harm the tortoises. In addition, over $100 million of public funds have been spent on buying land to preserve it for tortoise habitat, not to make it easy to build a highway.

CSU argues against further consideration of building a highway in desert tortoise habitat. The proposed highway crosses an important high quality drinking water aquifer in the reserve that would be polluted from a highway. This proposed highway has been studied and rejected repeatedly. UDOT and the Federal Highway Department considered a highway through the Red Cliffs Desert Reserve in the 2009 Environmental Assessment for the Red Hills Parkway, and it was eliminated due to concerns of the U.S. Fish and Wildlife Service where they stated that:

*“a road would compromise the commitments on which the Washington County Habitat Conservation Plan (HCP) was based, is likely to compromise the biological integrity of the Upper Virgin Recovery Unit (already the smallest recovery unit), and may result in an adverse modification of designated critical habitat. We believe that building a northern corridor through the Red Cliffs Reserve and particularly the NCA severely undermines the purpose of the HCP which was established as a mitigation measure to offset harmful effects on the desert tortoise population and habitat due to development in Washington County.”*

In the RMP, CSU urges the county to honor its commitment to protect the tortoise reserve. It is unfortunate that local officials and senators are being lead to believe a highway was always included in the HCP agreement, and it wasn’t. We encourage the county to be more fact-based going forward on explaining the benefit of HCP agreement that allows lands outside the reserve to be developed.

**Red Cliffs and Beaver Dam Wash National Conservation Areas (NCAs), National Conservation Lands**

It is not clear how the NCAs will be managed in the county’s RMP. The county supported the creation of two National Conservation Areas (NCA). BLMs existing RMPs should not be brushed aside in the county’s RMP. The Red Cliffs National Conservation Area has been a recreation destination for decades. With over 130 miles of non-motorized trails, the NCA is where many residents take their morning walk or weekly hike. Because of easy accessibility and high visitor use it’s the most known of the National Conservation Lands here in Washington County. Lesser known is that it’s also incredibly important habitat for wildlife and plants and is full of historic sites. This is why it’s so important to our community to preserve these areas in the county’s RMP.

**Utah is suing the federal government for ownership of roads.**

Another example of why Utah would not be a good manager of the federal land is because of its past history. Utah is suing the federal government to claim access to over 19,000 miles of dirt track roads in our National Parks, Wilderness areas and monuments. The state supports a coal strip mine near Bryce Canyon National Park. A state study also looked at increasing revenues from uranium, tar sands, oil shale, and coal in places like Desolation Canyon, the San Rafael Swell, and Grand Staircase Escalante National Monument. These landscapes are jewels for recreation and we want to see them protected from energy development. Utah should be pursuing clean energy jobs instead.

**Summary**

In summary, there is no viable legal evidence that the United States Government will give its land and its resources to the State of Utah. At a conference on July 19, 2016, the Western Attorneys General, of 11 western states released their legal analysis on states gaining control of federal land, and based on their two year study concluded that Utah’s legal case had little chance of succeeding.

Utah Attorney General Sean Reyes has not made a decision to file a case. Also, we question the logic behind HB 219 and why a new RMP would add any legal leverage to the case based on a series of constitutional questions. Therefore, putting a burden on counties to come up with RMPs for litigation is uncalled for.

We are fortunate to have the Wilderness process of deciding what lands should be permanently protected finally settled in Washington County by establishing Wilderness Areas and our Beaver Dam Wash and Red Cliffs National Conservation Areas. Our challenge is to explain all the benefits that these areas provide us and encourage all entities to work together on their management.