

# **Constitutional Defense Council**

## **Public Lands Policy Coordination Office**

Utah State Capitol  
Senate Building, Kletting Room  
Salt Lake City, Utah

**January 26, 2023**

2:00 p.m.

### **Minutes**

#### **Attendees:**

##### **Members:**

Deidre Henderson, Lt. Governor  
Brian L. Tarbet, OAG  
Joel Ferry, Executive Director DNR  
Chris Fausett, Assistant Director SITLA  
Scott Sandall, Utah Senate  
Luz Escamilla, Utah Senate  
Keven Stratton, Utah House  
Phil Lyman, Utah House  
Angela Romero, Utah House  
Leland Pollock, Garfield County Commissioner  
Tammy Pearson, Beaver County Commissioner  
Bob J. Stevenson, Davis County Commissioner

##### **Staff:**

Redge B. Johnson, Director PLPCO  
Jake Garfield, Deputy Director PLPCO  
Kathy Davis, Public Lands Section  
Deputy Director, OAG, PLPCO  
Mark Boshell, Legal Counsel PLPCO  
Sindy Smith, RDCC Coordinator PLPCO  
Nancy Merrill, Executive Assistant  
PLPCO

##### **Guests:**

Melissa Holyoak, Solicitor General AGO  
Dan Burton, General Counsel AGO  
Craig Butters, Commissioner UDAF  
Kelly Pehrson, Deputy Commissioner UDAF  
Laura Ault, Deputy of Operations PLPCO  
Jason DeForest, AGO, PLPCO  
William Wright, Utah State University  
Kim Christy, Utah Land Trust Protection & Advocacy Office  
Taylor Glover, Kane County Commissioner  
Wade, Heaton, Kane County Commissioner  
Celeste Meyeres, Kane County Commissioner  
Jerry Taylor, Garfield County Commissioner  
Rome Aguilar, Legislative Intern  
Will and Lex, Legislative Interns  
Issac Lamoerant, Legislative Intern

Taylor Glover, Kane County Commissioner  
Wade, Heaton, Kane County Commissioner  
Celeste Meyeres, Kane County Commissioner  
Jerry Taylor, Garfield County Commissioner

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## **Welcome and Introductions**

Lt. Governor Deidre Henderson called the meeting to order at 2:00 p.m. and welcomed everyone. Commissioner Tammy Pearson served as presiding officer in the absence of Lt. Governor Henderson.

## **Approval of the October 4, 2021, Minutes**

Council members approved October 4, 2021, minutes by unanimous vote.

## **Decisions**

**Resolution:** The FY 2024 Updated Plan for R.S. 2477 Rights-of-Way is adopted.

**Resolution:** Commissioner Leland Pollock's request for \$500,000 for a livestock grazing study within the Grand Staircase Escalante National Monument is approved contingent upon appropriation.

## **Proposed FY2024 R. S. 2477 Litigation Plan**

Kathy Davis, Deputy Section Director Attorney General, PLPCO, provided council members with a copy of the FY 2024 Updated Plan for R.S. 2477 Rights-of-Way and requested council members adopt the 2024 litigation plan. Kathy Davis also reported on various significant litigation cases.

## **Discussion**

Council members discussed the *FY 2024 Updated Plan for R.S. 2477 Rights-of-Way*.

## **MOTION**

Commissioner Leland Pollock moved to adopt the "*FY 2024 Updated Plan for R.S. 2477 Rights-of-Way*." Commissioner Tammy Pearson seconded the motion. The motion carried unanimously.

## **Update on BLM and USFS Sage-Grouse Management Plans**

Jason Deforest, Office of the Attorney General, PLPCO, provided an update on the BLM's and the Forest Service's sage-grouse management plans. Jason noted the important concerns and updates:

- The BLM is working on the draft alternatives.
- The BLM is evaluating its sage-grouse maps throughout Utah, which is critical for the state. One of the state's objections of BLM's 2015 plan was that BLM's map boundaries were not aligned with the state's drawn boundaries.
- Another concern is the designated perimeters for the Area Critical Environmental Concern (ACEC). There is a proposal to reinitiate some of the 2015 ACECs both for the greater sage-grouse and the Gunnison sage-grouse.

- The state is concerned about the timing issue of the final management plans and would like the BLM to release a draft EIS by mid-2023.

### ***Discussion***

Members discussed the greater sage-grouse management plan.

### **Federal Overreach Discussion**

Representative Phil Lyman reported on federal overreach regarding executive orders.

Representative Lyman provided a handout from the American Fuel and Petroleum Association, various executive orders, and a letter from the Governor. He asked council members to review the executive orders and to determine if the executive orders were constitutional. Representative Lyman stated that the CDC's purpose is to pass executive orders on to the Attorney General's Office for review and final determination. That function Representative Lyman says is not happening, and he asks the Attorney General's Office to evaluate the executive orders and reject those executive orders that are clearly outside the bounds of the U.S. Constitution - Tenth Amendment.

### ***Discussion***

Melissa Holyoak, Solicitor General, Office of the Attorney General, informed council members that executive orders are on the top of the Attorney General's priority list. She reported on the cases and indicated that the Attorney General's Office is monitoring and challenging executive orders that are not being upheld. Council members had a further discussion about executive orders and the evaluation process.

### **H.B. 273 State Trust Lands Administration Amendments**

Representative Phil Lyman discussed H.B. 273, State Trust Lands Administration Amendments. H.B. 273 would modify the administration of state trust lands and hold SITLA responsible for giving deference to county boundaries. Representative Lyman read the mandates of what constitutes SITLA lands and talked about the constraints of H.B. 273 on SITLA land exchanges. He stated that the state owns these lands, not SITLA. Representative Lyman stated that the Legislature must do something to protect county subdivisions.

### ***Discussion***

Chris Fausett, Assistant Director, SITLA, pointed out SITLA's main concerns with H.B. 273. He says SITLA needs flexibility. SITLA's loyalty is to its beneficiaries, beneficiaries on a statewide level. With large land exchanges, SITLA takes advantage of business opportunities; opportunities that exist throughout the state. The parameters of H.B. 273 would restrict SITLA's ability to implement some land exchanges as well as leave some lands trapped and unproductive.

### ***Public Comment***

Kim Christy, Director, of the Utah Land Trust Protection & Advocacy Office, provided a comment memo, delineating concerns. Mr. Christy indicated that the Advocacy Office is in alignment with SITLA and emphasized that it is not practical to keep SITLA land exchanges within the compounds of a given county.

### ***Discussion***

Council members discussed H.B. 273, land exchanges, and the Legislature's role.

Commissioner Leland Pollock moved the meeting into executive session.

### **Executive Session**

Members convened the meeting into executive session.

### **Litigation Update**

#### **Litigation Discussion**

### **Open Session**

### **Livestock Grazing in the National Monuments**

Commissioner Leland Pollock made a request for an appropriation of \$500,000 to study range land health of the land.

#### **Discussion**

Council members asked questions and discussed Commissioner Pollock's fund request.

### **Motion**

Commissioner Leland Pollock made a motion requesting \$500,000 to study livestock grazing within Kane and Garfield counties, contingent upon appropriated funding. Representative Lyman seconded the motion. The motion passed unanimously. Senator Escamilla abstained.

### **Other Business**

No other business.

### **Public Comment**

No public comment.

### **Adjourn**

The meeting adjourned at approximately 3:05 p.m.