

DESERT TORTOISE HABITAT CONSERVATION PLAN
EXPANSION ACT, WASHINGTON COUNTY, UTAH

AUGUST 10, 2018.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5597]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5597) to provide for the expansion of the Desert Tortoise Habitat Conservation Plan, Washington County, Utah, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Desert Tortoise Habitat Conservation Plan Expansion Act, Washington County, Utah”.

SEC. 2. DEFINITIONS.

In this Act:

(1) BEAVER DAM WASH NATIONAL CONSERVATION AREA.—The term “Beaver Dam Wash National Conservation Area” means the Beaver Dam Wash National Conservation Area as established by the Omnibus Public Lands Management Act of 2009 (Public Law 111–11).

(2) DESERT TORTOISE HABITAT CONSERVATION PLAN.—The term “Desert Tortoise Habitat Conservation Plan, Washington County, Utah” means the Washington County Habitat Conservation Plan signed February 23, 1996, by the United States Fish and Wildlife Service, Bureau of Land Management, the State of Utah, Washington County, Utah, and Ivins City, Utah.

(3) RED CLIFFS NATIONAL CONSERVATION AREA.—The term “Red Cliffs National Conservation Area” means the Red Cliffs National Conservation Area as estab-

lished by the Omnibus Public Lands Management Act of 2009 (Public Law 111-11).

(4) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(5) **UNIT OF LOCAL GOVERNMENT.**—The term “unit of local government” means Washington County, St. George City, and other political subdivisions of the State of Utah, including municipalities of the State of Utah within the geographical boundaries of Washington County with authority over local planning and zoning and the Washington County Water Conservancy District.

(6) **UTILITY.**—The term “utility” means existing or new sites, rights-of-way, permits, grants, infrastructure, edifices, facilities, and any other components that provide public services including, but not limited to, water, electricity, gas, sewage, and communications.

(7) **UTILITY DEVELOPMENT PROTOCOLS.**—The term “utility development protocols” means the Red Cliffs Desert Reserve Development Protocols for Projects agreement approved by Washington County, Bureau of Land Management, and United States Fish and Wildlife Service for the construction, operation, maintenance, and replacement of utilities within the Red Cliffs Desert Reserve and/or Incidental Take Areas dated August 1, 2006, as amended.

SEC. 3. AMENDMENT AND RENEWAL OF THE DESERT TORTOISE HABITAT CONSERVATION PLAN, WASHINGTON COUNTY, UTAH.

(a) **IN GENERAL.**—Upon receipt from Washington County, Utah, of a proposal to amend and renew the Desert Tortoise Habitat Conservation Plan, Washington County, Utah that includes an additional 6,865 acre desert tortoise reserve zone named the Red Cliffs Desert Reserve, Zone 6, as generally depicted on a map entitled “Red Cliffs Desert Reserve, Zone 6” and dated February 23, 2018, the Secretary shall, after coordination with units of local government and in accordance with the provisions of this Act and with applicable laws, approve such amendment and renew such plan and the permit under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) that was issued for such plan, for a period of 25 years.

(b) **MAP AND LEGAL DESCRIPTION.**—

(1) As soon as practical after the date of enactment of this Act, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate an official map and legal description of the parcel described in subsection (a).

(2) The map and legal description submitted under this paragraph shall have the same force and effect as if included in this Act, except that the Secretary may make minor modifications of any clerical or typographical errors in the map or the legal description.

(3) A copy of the map and the legal description shall be on file and available for public inspection in the appropriate field offices of the Bureau of Land Management.

(c) **MANAGEMENT OF RED CLIFFS DESERT RESERVE, ZONE 6.**—Management of the Red Cliffs Desert Reserve, Zone 6 shall be facilitated by Washington County as part of and in conformity with the provisions of the Desert Tortoise Habitat Conservation Plan, Washington County, Utah.

(d) **MANAGEMENT OF FEDERAL LANDS.**—

(1) **IN GENERAL.**—The Secretary shall manage Federal lands within Zone 6 of the Desert Tortoise Habitat Conservation Plan, Washington County, Utah, in a manner consistent with the purposes of the Red Cliffs Desert Tortoise Reserve and to enhance the natural values of such lands, including wildlife habitat, and recreational, cultural, educational, and scientific values of such lands.

(2) **ACQUISITION OF NON-FEDERAL LAND.**—The Secretary, at the request of the owner of the non-Federal lands located in the Beaver Dam Wash National Conservation Area, the Red Cliffs National Conservation Area, and the Red Cliffs Desert Reserve, Zone 6, shall seek to acquire through exchange under the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104-333; 110 Stat. 4137 et seq.) or by purchase or donation, those non-Federal lands as soon as practicable.

(e) **AMENDMENT OF ST. GEORGE FIELD OFFICE RESOURCE MANAGEMENT PLAN.**—

(1) **IN GENERAL.**—The Secretary, in consultation with units of local government including Washington County, shall amend the St. George Field Office Resource Management Plan to provide for management of Federal lands within the Red Cliffs Desert Reserve, Zone 6 area.

(2) **AMENDMENT REQUIREMENTS.**—The amendment shall include—

(A) management of species in accordance with the Desert Tortoise Habitat Conservation Plan, Washington County, Utah;

(B) the utility development protocols as outlined for the Red Cliffs Desert Reserve and/or Incidental Take Areas dated August 1, 2006, as amended; and

(C) management of recreational activities in conformance with the Desert Tortoise Habitat Conservation Plan, Washington County, Utah for other zones in the Red Cliffs Desert Reserve including rock climbing, organized events, hiking, biking, horseback riding, and off-highway vehicle use on designated trails and roads.

(f) **PROVISION OF MITIGATION CREDITS.**—The Secretary shall manage the Red Cliffs Desert Reserve, Zone 6 as a land bank to provide mitigation credits for future disturbances of the Red Cliffs Desert Reserve, including utility disturbances and the construction of the Northern Transportation Corridor identified in section 5.

(g) **MITIGATION CREDITS IN RENEWED TAKE PERMIT.**—In the permit extended under subsection (a), the Secretary shall credit Washington County as follows:

(1) Washington County shall receive mitigation credit for the tortoises protected on non-Federal lands in Zone 6; and

(2) Washington County shall receive mitigation credit, in yearly installments, for those tortoises successfully translocated and surviving, based on survivorship and juvenile recruitment estimates as determined by the United States Fish and Wildlife Service.

(h) **ADOPTION OF AMENDMENT.**—The Secretary shall adopt the amendment to the St. George Field Office Resource Management Plan within two years after receipt of Washington County's proposal to amend and renew the Habitat Conservation Plan including the Red Cliffs Desert Reserve, Zone 6.

(i) **HABITAT CONSERVATION PLAN NOT OTHERWISE AFFECTED.**—Except as provided in this section, nothing in this Act otherwise limits, alters, modifies, or amends the Desert Tortoise Habitat Conservation Plan, Washington County, Utah.

SEC. 4. ADJUSTMENT TO RESOURCE MANAGEMENT PLANS AND CONSERVATION AREAS.

Not later than one year after the date of enactment of this Act, the Secretary shall amend the resource management plans for the Beaver Dam Wash National Conservation Area, the Red Cliffs National Conservation Area, and the St. George Field Office Resource Management Plan—

(1) in accordance with section 202(c)(9) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712(c)(9));

(2) in coordination and cooperation with units of local government in the State of Utah including Washington County, St. George City, and other political subdivisions, including municipalities of the State of Utah within the geographical boundaries of Washington County with authority over local planning and zoning, and the Washington County Water Conservancy District; and

(3) consistent with the provisions of this Act.

SEC. 5. RED CLIFFS NATIONAL CONSERVATION AREA.

(a) **BOUNDARIES AND PUBLIC ACCESS.**—

(1) **IN GENERAL.**—The Red Cliffs National Conservation Area shall consist of approximately 45,000 acres of public and non-Federal land in Washington County, Utah, identified on the Red Cliffs National Conservation Area Management Map dated February 23, 2018.

(2) **MAP AND LEGAL DESCRIPTION.**—

(A) As soon as practical after the date of enactment of this Act, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate an official map and legal description of the parcel described in paragraph (1).

(B) The map and legal description submitted under this paragraph shall have the same force and effect as if included in this Act, except that the Secretary may make minor modifications of any clerical or typographical errors in the map or the legal description.

(C) A copy of the map and the legal description shall be on file and available for public inspection in the appropriate field offices of the Bureau of Land Management.

(b) **PRESERVATION OF EXISTING UTILITY CORRIDOR.**—The Secretary shall recognize on federally managed lands a 150-foot-wide transportation utility corridor in each direction from the centerline of SR 18 through the Red Cliffs National Conservation Area.

(c) **UTILITY DEVELOPMENT PROTOCOLS FOR HABITAT CONSERVATION PLAN.**—The Secretary shall adhere to the Utility Development Protocols dated August 1, 2006, as amended, within the Red Cliffs National Conservation Area and/or Incidental Take Area as the suitable mechanism for new and existing utility management within the Red Cliffs National Conservation Area.

(d) **WATER RIGHTS ASSOCIATED WITH ACQUIRED LAND AND INTERESTS FOR RED CLIFFS NATIONAL CONSERVATION AREA.**—The Secretary may only acquire water rights in the Red Cliffs National Conservation Area if permitted by State law, to

ensure adequate management of the designated areas for campgrounds, visitor facilities, and for other recreational uses.

(e) NORTHERN TRANSPORTATION AND UTILITY CORRIDOR.—The Secretary of the Interior shall grant to the State of Utah or to one or more units of local government a 300 foot wide right-of-way for the northern transportation and utility route pursuant to section 1977(b)(2)(A) of Public Law 111–11 identified on the Red Cliffs National Conservation Area Management Map dated February 23, 2018.

SEC. 6. BEAVER DAM WASH NATIONAL CONSERVATION AREA.

(a) Preservation of Existing Utility Corridor.—The Secretary shall recognize on federally managed lands a 150-foot-wide transportation and utility corridor in each direction from the centerline of old US 91 through the Beaver Dam Wash National Conservation Area.

(b) WATER RIGHTS ASSOCIATED WITH ACQUIRED LAND AND INTERESTS FOR BEAVER DAM WASH NATIONAL CONSERVATION AREA.—The Secretary may only acquire water rights in the Beaver Dam Wash National Conservation Area if permitted by State law, to ensure adequate management of the designated areas for campgrounds, visitor facilities, and for other recreational uses.

(c) UTILITY DEVELOPMENT PROTOCOLS.—The Secretary shall adopt utility development protocols for the construction, operation, maintenance, and replacement of utilities within the Beaver Dam Wash National Conservation Area that are no more restrictive than the Red Cliffs Desert Reserve Utility Development Protocols dated August 1, 2006, as amended. The Beaver Dam Wash Utility Development Protocols shall comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including the identification and consideration of potential impacts to fish and wildlife resources and habitat.

(d) PRESERVATION OF EXISTING UTILITIES AND GRAZING PERMITS.—Access to utilities and grazing permits and maintenance of utilities that are located in Beaver Dam National Wash National Conservation Area, shall be preserved.

PURPOSE OF THE BILL

The purpose of H.R. 5597 is to provide for the expansion of the Desert Tortoise Habitat Conservation Plan, Washington County, Utah.

BACKGROUND AND NEED FOR LEGISLATION

In 2009, President Obama signed Public Law 111–11, which established the 45,000-acre Red Cliffs National Conservation Area (NCA) in southwestern Utah, and directed the Bureau of Land Management (BLM) to identify a transportation and utility corridor across the NCA. The need to establish such a corridor for the rapidly growing Washington County, Utah, area was identified as essential in reducing traffic congestion and improving air quality.¹ As originally proposed, the corridor alignment would have fragmented approximately 2,900 acres of the NCA.

In response to concerns about the original proposal, Washington County, BLM, U.S. Fish and Wildlife Service, Utah Division of Wildlife Services, the Utah State School and Institutional Trust Lands Administration, the Dixie Metropolitan Planning Organization, and other stakeholders worked with State and federal biologists to identify a revised alignment that would minimize impacts on the NCA and desert tortoise habitat. The new alignment established in this bill fragments only 1,400 acres and requires that the corridor be constructed with two long bridge spans to allow tortoise connectivity with the larger portion of the NCA. This 300-foot wide corridor would be 4.4 miles long, covering only 147 acres of the NCA. In exchange for the corridor, this bill would expand the

¹ Testimony of Dean Cox, Washington County Commission, before the Subcommittee on Federal Lands, May 22, 2018, p 4.

Desert Tortoise Habitat Conservation Plan by adding 6,835 acres of new high-quality tortoise habitat called Zone 6 as mitigation.

COMMITTEE ACTION

H.R. 5597 was introduced on April 24, 2018, by Congressman Chris Stewart (R-UT). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Federal Lands. On May 22, 2018, the Subcommittee held a hearing on the legislation. On June 6, 2018, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Rob Bishop (R-UT) offered an amendment designated #1; it was adopted by voice vote. No further amendments were offered and the bill, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 21 yeas and 14 nays, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 06.06.18

Recorded Vote #:3

Meeting on / Amendment on: FC Markup Favorably Report HR 5597 (Rep. Chris Stewart)

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. McEachin, VA</i>		X	
Mr. Young, AK, Chairman Emeritus				Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>				<i>Mr. Brown, MD</i>		X	
Mr. Gohmert, TX, Vice Chairman	X			Mr. Graves, LA	X		
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. Clay, MO</i>			
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>		X		<i>Mr. Gomez, CA</i>			
Mr. Wittman, VA	X			Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>		X		<i>Ms. Velázquez, NY</i>			
Mr. McClintock, CA	X			Mr. Webster, FL	X		
<i>Ms. Tsongas, MA</i>		X		Mr. Bergman, MI	X		
Mr. Pearce, NM				Ms. Cheney, WY	X		
<i>Mr. Huffman, CA</i>		X		Mr. Johnson, LA	X		
Mr. Thompson, PA	X			Ms. González-Colón, PR	X		
<i>Mr. Lowenthal, CA</i>		X		Mr. Gianforte, MT	X		
Mr. Gosar, AZ	X			Mr. Curtis, UT			
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID	X						
<i>Mr. Gallego, AZ</i>		X					
Mr. Tipton, CO	X						
<i>Ms. Hanabusa, HI</i>		X					
Mr. LaMalfa, CA	X						
<i>Ms. Barragán, CA</i>		X					
Mr. Denham, CA	X						
<i>Mr. Soto, FL</i>		X		TOTAL:	21	14	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 9, 2018.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5597, the Desert Tortoise Habitat Conservation Plan Expansion Act, Washington County, Utah.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

MARK P. HADLEY
(For Keith Hall, Director).

Enclosure.

H.R. 5597—Desert Tortoise Habitat Conservation Plan Expansion Act, Washington County, Utah

H.R. 5597 would require the Department of the Interior (DOI) to amend resource management plans for several areas located near St. George, Utah, that are managed for conservation purposes. Those amendments would be necessary to incorporate changes to those areas that would be required under the bill, including the addition of 6,800 acres to a habitat conservation plan (HCP) for the desert tortoise and the establishment of a transportation and utility corridor within the Red Cliffs National Conservation Area (NCA).

Using information provided by DOI, CBO estimates that amending the resource management plans as required under the bill would cost about \$400,000 over the 2019–2020 period; such spending would be subject to the availability of appropriated funds. CBO also estimates that expanding the area covered by the habitat conservation plan and establishing a transportation and utility corridor in the NCA would not affect the federal budget because those actions would not significantly change the way the lands under federal jurisdiction would be managed.

Enacting H.R. 5597 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 5597 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5597 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was reviewed by Theresa Gullo, Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of Rule XIII, the general performance goal or objective of this bill is to provide for the expansion of the Desert Tortoise Habitat Conservation Plan, Washington County, Utah.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of Rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

DISSENTING VIEWS

H.R. 5597 amends and renews the Washington County Desert Tortoise Habitat Conservation Plan (HCP) to expand the Red Cliffs Desert Reserve by 6,865 acres and to authorize a transportation corridor through the Reserve. Sponsors of the bill claim this expansion is a suitable offset for allowing the construction of a road through the Red Cliffs National Conservation Area, an area established by Congress in 2009 that has been cornerstone of the HCP since it was adopted in 1995.

We are concerned that the bill pushes forward a proposal without an objective scientific analysis, evaluation of feasible alternatives, or meaningful public involvement. The bill states that this northern corridor was directed in the Omnibus Public Lands Bill of 2009, however the law simply directed the Secretary of the Interior to identify alternatives for a northern transportation route in Washington County.¹ This proposal would divide valuable tortoise habitat while setting a dangerous precedent for counties to supersede HCPs when local development conflicts with the needs of endangered or threatened species.

The bill would go further than just authorizing a highway in prime habitat for an endangered species in the face of a prior agreement to protect the area. It would also usurp federal authority by requiring the Secretary to approve the county's HCP and renew the "take" permit for 25 years under the Endangered Species Act without further review.

This legislation is clearly intended to circumvent important bedrock environmental laws. Washington County is already negotiating with U.S. Fish and Wildlife Service (FWS) to renew the HCP, and the county can submit a right-of-way application to BLM, which can be considered through the normal environmental review and public involvement process.

RAÚL M. GRIJALVA,
*Ranking Member, Committee
on Natural Resources.*

ALAN LOWENTHAL.
DONALD S. BEYER, JR.

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¹Section 1977(b)(2)(A) of Public Law 111-11.