

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Conserve Southwest Utah)
321 North Mall Dr., B202)
St. George, UT 84790)

Case No. 21-CV-1506

)
Conservation Lands Foundation)
835 E. 2nd Ave. #314)
Durango, CO 81301)

)
Center for Biological Diversity)
378 N Main Ave.)
Tucson, AZ 85701)

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

)
Defenders of Wildlife)
1130 17th Street NW)
Washington, DC 20036)

)
Southern Utah Wilderness Alliance)
425 East 100 South)
Salt Lake City, UT 84111)

)
The Wilderness Society)
1801 Pennsylvania Ave. NW)
Suite 200)
Washington, DC 20006)

)
WildEarth Guardians)
301 N. Guadalupe St. #201)
Santa Fe, NM 87501)

Plaintiffs,)

v.)

)
U.S. Department of the Interior)
1849 C St., NW)
Washington, DC 20240)

)
Bureau of Land Management)
760 Horizon Drive)
Grand Junction, CO 81506)

Defendants.)
_____)

INTRODUCTION

1. This case challenges the decision of the Defendants U.S. Department of the Interior and Bureau of Land Management granting a right-of-way for a new four-lane highway—the so-called Northern Corridor Highway—through the Red Cliffs National Conservation Area and Mojave desert tortoise critical habitat, together with related decisions to modify and amend two governing land use plans.

2. In 2009, Congress created the 45,000-acre Red Cliffs National Conservation Area (Red Cliffs NCA) to protect its world-class ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources. 42 U.S.C. §460www (“Omnibus Public Land Management Act” or “Omnibus Act”). Congress required that Bureau of Land Management (BLM) “shall” limit uses in the Red Cliffs NCA only to those uses that would “conserve, protect, and enhance” these resources. *Id.* at § 460www(e).

3. On January 15, 2021, then Secretary of the Interior David Bernhardt approved the issuance of a right-of-way to allow the Utah Department of Transportation to construct, operate, and maintain the Northern Corridor Highway across 2.37 miles of federal public lands within the Red Cliffs NCA, including public lands containing the densest concentration of Mojave desert tortoise—a species protected under the Endangered Species Act (ESA)—in the entire region. At the same time, Secretary Bernhardt also approved two land use plan amendments to allow the Northern Corridor Highway on federal public lands.

4. Secretary Bernhardt’s approvals run headlong into the management mandates of Omnibus Act, together with our Nation’s bedrock environmental and cultural resource laws, including the Land and Water Conservation Act of 1964, National Environmental Policy Act (NEPA), and National Historic Preservation Act (NHPA). Indeed, Defendants acknowledge that

the Northern Corridor Highway will adversely impact the conservation, cultural, and recreational resources within the Red Cliffs NCA.

5. In addition, the Northern Corridor Highway right-of-way is sited immediately over, through, and adjacent to numerous land parcels that BLM acquired with almost \$20 million from the Land and Water Conservation Fund for conservation, endangered species habitat protection, and recreation purposes. Yet, Defendants never examined the impacts of the Northern Corridor Highway on many of these parcels; and Utah Department of Transportation's planned highway violates the express conservation purposes informing these acquisitions. As a court recently held, when lands are acquired using monies from the Land and Water Conservation Fund, they must be managed according to the purposes for which they were acquired, and an agency cannot permit a use inconsistent with the acquisition purposes. *Gifford Pinchot Task Force v. Perez*, 2014 WL 3019165, *10 (D. Ore. July 3, 2014).

6. Defendants similarly ignored the direct, indirect, and cumulative impacts of the Northern Corridor Highway on local population growth, noise and other factors; and they never considered the overlapping and cumulative impacts on desert tortoise populations and habitat together with recent fires and other anticipated development in the Red Cliffs NCA.

7. Secretary Bernhardt approved these actions over the objections of the Hopi Tribe and local, regional, and national conservation groups, which repeatedly raised concerns regarding the inadequacy of BLM's consultation over the adverse impacts of the Northern Corridor Highway on cultural and historic properties, and inadequate environmental analysis. Indeed, in his haste to approve the Northern Corridor Highway, Secretary Bernhardt violated the NHPA by approving the Northern Corridor right-of-way without first minimizing and mitigating the acknowledged adverse impacts on cultural and historic resources. In fact, the federal

Advisory Council on Historic Preservation—the federal agency charged with implementing the NHPA—concluded BLM’s NHPA compliance was “flaw[ed].”

8. Secretary Bernhardt’s hasty approval of the Northern Corridor right-of-way and associated actions threatens irreparable environmental and other harms by Defendants’ unlawful actions, and Plaintiffs seek such emergency, preliminary, or permanent injunctive relief as necessary to forestall such irreparable harms and protect the public interest pending adjudication of their claims.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question). This Court also can provide relief under 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief), and the Administrative Procedure Act, 5 U.S.C. §§ 553, 702, and 706 (APA).

10. The challenged agency actions are final and subject to judicial review pursuant to 5 U.S.C. §§ 702, 704, and 706.

11. Plaintiffs have exhausted all required administrative remedies prior to filing this lawsuit.

12. Venue in the District of Columbia is appropriate under 28 U.S.C. § 1391(e)(1) because Defendant U.S. Department of Interior is an agency of the United States with its primary offices located in Washington, D.C.; two Plaintiffs are headquartered in this District, and three other Plaintiffs have offices here; and a substantial part of the events and omissions at issue occurred in this District, including Secretary Bernhardt’s approval of the right-of-way and issuance of the amended land use plans.

PARTIES

13. Plaintiff CONSERVE SOUTHWEST UTAH (CSU) is non-profit organization based in St. George, Utah, working to protect the natural resources and quality of life in Washington County, Utah through direct advocacy of conservation and of Smart Growth policies that enable conservation, for the benefit of present and future generations. CSU promotes a vision of vibrant, compact communities, anchored in high-tech, tourism, and outdoor recreation industries, which prioritize conservation and stewardship of land, air and water resources for the long-term sustainability of both these natural resources and the communities. CSU has about 2,500 members and supporters, many of whom live near and recreate in Red Cliffs NCA on a regular basis. Since its inception in 2006, CSU has been a leader in engagement on public lands conservation in southwest Utah, especially in the Red Cliffs NCA. In addition to advocacy, CSU staff has spent thousands of hours and organized thousands of volunteer hours to benefit Red Cliffs NCA on the ground, including invasive species removal, litter pick-up, trail maintenance, habitat restoration, and archaeological site stewardship.

14. Plaintiff CONSERVATION LANDS FOUNDATION, Inc. (CLF) is a non-profit organization headquartered in Durango, Colorado. CLF's organizational purpose is to promote environmental conservancy through assisting the National Landscape Conservation System (also known as the National Conservation Lands) and preserving open space and wilderness. Upon information and belief, CLF is the only non-profit in the country specifically dedicated to establishing and safeguarding National Conservation Lands under the care of the BLM. To fulfill its purpose, CLF works to protect, restore, and expand the National Conservation Lands—including the Red Cliffs NCA—through education, advocacy, and partnership. CLF maintains regional offices in the District of Columbia and five states.

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