

TESTIMONY
of
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BEFORE THE HOUSE SUBCOMMITTEE ON
NATIONAL PARKS, FORESTS AND PUBLIC LANDS

RE: HR 644, GRAND CANYON WATERSHEDS PROTECTION ACT

JULY 21, 2009

Mr. Chairman, it is a great pleasure to be back in this historic room, albeit on the opposite side of the witness table, where I was privileged to work for more than 15 years. From 1979 until 1991, I had the great honor of serving Mo Udall and, from 1991 to 1995, George Miller, as the full committee's staffer responsible for its jurisdiction over public lands, wilderness and national parks.

I am here today, representing myself only and not affiliated with any interest group, to address certain assertions made in two separate letters by four current or retired members of the other body in which they point to the Arizona Wilderness Act of 1984 as their basis for opposing the bill before you today. Their theory is that the Act was a final disposition of the status of all lands on the Arizona Strip and that to tinker with that formula not only violates that agreement but also the entire spirit of Mo Udall's work. I am intimately familiar with that Act because Chairman Udall made me responsible for managing it, including gathering information, negotiating with all interested parties, and drafting bill and committee report language. I know of nothing, either implicit or explicit, in the Arizona Wilderness Act, Mr. Udall's sponsorship of it, or the events leading to its passage, that would support opposition to HR 644. Moreover, it is simply perverse to suggest that Mr. Udall would have found it inappropriate that others would seek to add to his conservation legacy. In fact, he hoped for nothing less.

Let me briefly describe the relevant legislative history of the Arizona Wilderness Act. In 1983, Mr. Udall began the process of preparing legislation to resolve the Forest Service RARE II wilderness issue across Arizona. Simultaneously, but entirely independently of that process, negotiations were initiated by a mining company, Energy Fuels Nuclear, with other stakeholders to address wilderness questions specifically on

the Arizona Strip. These negotiations considered the wilderness suitability not only of Forest Service lands on the Strip, but also BLM lands. The company believed it had identified valuable uranium deposits and that their development might be impaired by future wilderness designations. This was especially problematic on the BLM lands because that agency, unlike the Forest Service, had not completed review of its wilderness study areas, and was years away from formulating wilderness recommendations to the President and the Congress.

Those private negotiations were conducted without any direct Congressional involvement at all. They eventually resulted in stakeholder agreement about which Strip lands would be designated wilderness and which would not. The package was introduced as separate legislation by then-Rep. Bob Stump, but was incorporated by Chairman Udall into the Arizona Wilderness Act at markup as Title III.

Neither the history nor the provisions of Arizona Wilderness Act support the idea expressed in the Senate letters that these events settled issues raised by HR 644. On the contrary, the two acts are entirely different in scope and purpose. The Arizona Wilderness Act is a wilderness act. It considered whether certain lands met the conditions set forth in the 1964 Wilderness Act for inclusion in the wilderness system. Mr. Grijalva's bill addresses the hydrology of the Grand Canyon ecosystem and the impact of one particular activity, uranium mining, on water quality. It is simply incorrect to state, as one letter does, that the Arizona Wilderness Act was designed to 'ensure that the Grand Canyon watershed was fully protected'. It was designed to ensure that wilderness resources and values were protected. Watershed issues were never considered or addressed anywhere in the process leading to passage of the Arizona Wilderness Act and are beyond the scope of the wilderness process.

The 1984 law and HR 644 do not even cover the same inventory of lands. The Arizona Wilderness Act considered only those lands in BLM and Forest Service wilderness study areas. It never examined at all vast tracts affected by HR 644 because those lands did not meet the criteria required to receive interim protection while they were studied for their wilderness suitability. While it is true that some of those lands that were studied and not designated wilderness in 1984 are included in Mr. Grijalva's bill, many were not. The majority of lands covered in the current bill were never reviewed at all, for anything, not even for wilderness, in 1984.

Even if Mr. Grijalva were proposing to designate more wilderness, which he is not, the bill would not violate what the Senate letters call 'the understanding' of the Arizona Wilderness Act. That act, by its own language, is not the final disposition even of the wilderness question on the Strip, much less land use questions of entirely different

scope and impact. The statute's release language clearly requires the Forest Service to reconsider in subsequent planning cycles, which are supposed to be every ten years, the wilderness suitability of all lands not already designated. This is no accident. Release language was an extremely contentious issue that held up the passage of several statewide wilderness bills for a considerable time. Opponents argued persistently that lands not designated wilderness should be barred from future wilderness consideration. Some went even further with proposals that amounted to a Congressional directive that multiple use lands be free of any conservation protections. Mr. Udall was the prime advocate of the position that such lands could and should be reconsidered for wilderness at some future time. The bill as enacted adopted his position, as did all other RARE II wilderness bills.

BLM lands are not subject to the same statutory cyclical planning process as Forest Service lands. Therefore, they did not require any comparable release language. Had it been necessary, however, Mr. Udall obviously would have taken the same position, that future reviews of land status are necessary and proper and that no Act of Congress, either implicitly or explicitly, ought to foreclose the possibility that future citizens, future agencies and future Congresses might propose additional protections on these lands. To see that defeated argument of so many years ago returning in the form of the rewritten history of the Senate letters is, to say the least, discouraging, especially when it has been stretched to argue against a bill that is not a wilderness bill, that addresses lands not even considered in the formulation of the Arizona wilderness bill and that protects those lands to an entirely different object and in an entirely different way.

It is true, of course, that lands in wilderness study areas not designated wilderness by the Act lost their interim protections, to be managed for multiple use under applicable law. It is also true that the committee report accompanying the Arizona Wilderness Act contains rather detailed and extensive language laying out how uranium mining might proceed with respect to lands outside BLM's Grand Wash Cliffs Wilderness and the Forest Service's Kanab Creek Wilderness. But that language reflects an understanding of specific facts related to specific actors 25 years ago that no longer apply.

In any event, Congress did not direct that such development must actually occur. To release lands back to multiple use, as the Arizona Wilderness Act did, only meant that development might, or might not, take place as determined by the relevant agencies acting in accordance with applicable law. In fact, only one of the mines discussed by the report language – the Hack Canyon mine – was ever developed. Energy Fuels Nuclear went bankrupt not long after passage of the Act. One would have to say that the Act's release language requires the Forest Service to consider anew the possibility of extending wilderness protections to the very lands adjacent to the Kanab Creek

Wilderness that were the subject of that report language, where development did not occur and wilderness resources remain intact. Even if Mr. Grijalva were proposing wilderness on lands already considered by the Arizona Wilderness Act, he would not be violating either its language or its spirit. He is not, and the plain language of the Act clearly belies the notion that the Arizona Wilderness Act was intended to be some kind of barrier against new protections, freezing lands use decisions made in 1984 for all time. It should go without saying that nothing in the Arizona Wilderness Act precludes the Congress from imposing additional protections of any kind, based on new facts and new evidence or new values.

And the plain facts are that land status on the Arizona Strip already has changed, and profoundly so, since passage of the Arizona Wilderness Act. ACEC's have been designated and large national monuments proclaimed, and implicitly if not explicitly ratified by Congress, all without any objections that 'heavy-handed government interference' from Washington violated a generation-old 'understanding' that nothing more would ever change. (In one sense there is irony in this argument, because in the case of the BLM lands on the Strip the Arizona Wilderness Act was itself Congressional interference in BLM's uncompleted administrative wilderness review process under Section 603 of FLPMA.) I am utterly confident that this is exactly what Mr. Udall would have hoped would happen, that the Arizona Wilderness Act would be the catalyst for continuing concern and attention to protection of the Grand Canyon ecosystem, not less.

If there is an 'understanding' implicit in the Arizona Wilderness Act that Mr. Udall's work would be the final word on the Arizona Strip not to be rewritten by those who came after him, which is the underlying thesis of the Senate letters, I am quite certain Mr. Udall did not share it. In fact, I can think of no idea more contrary to Mo's most fundamental beliefs about the work he cared about so deeply.

Mr. Chairman, Mo Udall was my hero and my mentor. I worked with him daily for 12 years crafting legislation that set a new standard for stewardship of the lands and resources that sustain us all. It is highly distressing to me to see Mo's name invoked in support of a position I know to an absolute certainty he never would have taken. It is contrary to his core values, the values he taught me, the values he expected me to bring to every piece of legislation I was honored to staff for him, the values that made him the most remarkable man I have ever known and one of the most remarkable legislators this Congress has ever known.

Mo was rightly proud of his legacy as the greatest conservation legislator in American history. Thanks to his leadership, the national park system, the national wildlife refuge

system, and the national wilderness preservation system were all more than doubled in size. The Alaska Lands Act, which was forged in this very room that bears his name, was the single greatest stroke of conservation in the history of man. At every step of assembling that legacy, Mo's work was informed by what he often referred to as his 'love of the land'. He believed it was the duty of every generation to exercise its own love of the land to meet future challenges he could never anticipate. The suggestion that he would have thought that any citizen or group of citizens or the Congress of the United States was precluded by some deal or some judgment he had made a generation earlier from taking new action to express that love, on the basis of new information and new evidence in an entirely different context, is just utterly antithetical to everything he believed.

Mo wouldn't have gone as far as Thomas Jefferson, who believed all laws should expire every 25 years because no generation has the right to impose its rules on the next. But he was very Jeffersonian in his belief that every generation has the right and the duty to create its own world. He saw conservation as a *dynamic* process across time, an ongoing story to be written and rewritten every generation. Mo often talked about how as a younger man the mountains that ring Tucson were distant things, and that the city limits didn't even reach a ring of parks and wilderness areas that nearly surround it. But in his lifetime, Tucson had grown up to and beyond those mountains. The natural areas that used to be so distant are now islands in an urban sea. Mo talked about this often because he felt so strongly that you could never be visionary enough when it came to the land and you could never deny to any generation its opportunity and its responsibility to take care of it. It is more than a little appropriate that today you, Mr. Chairman, represent much the same community that he did, that you occupy the chairmanship of a vital subcommittee that Mo entrusted only to his most valued partners, John Seiberling and Bruce Vento, and that you share his love of the land.

I don't know what position Mo would have taken on the bill before the subcommittee and I have no worthwhile opinion on its substantive merits. But I do know the charge Mo would have given me. He would have wanted to know two things – is there credible evidence of a problem that requires Congress to act, and is the solution proposed reasonable and effective. In the matter before you today those are the questions members of this subcommittee and this Congress, in the House and the Senate, should address. No false fealty to a man or his work should serve as the premise for refusing to do so.

Mo's legacy is and always will be an enduring one. But Mo did not legislate on stone tablets. And he did not protect lands to *prevent* others from loving the land but to

inspire them to carry on the great work. In the end, that is his true legacy, and if his name is to be invoked, let that be the cause it serves.

Mr. Chairman, I am grateful for the opportunity to defend that legacy before you today.