

GENERAL SESSION

March 9, 2016

Program Topics: Public Lands, Internet Tax

Presented by: Natural Resources & Business/Labor Committees:
Chairs, Kimber Gabryszak and Brandy Farmer

Speakers:

Casey Snider, Legislative Director for US Congressional Rep. Rob Bishop

David Garbett, Staff Attorney, [Southern Utah Wilderness Alliance](#)

Representative Mike McKell (R) Utah House District 66, Utah County

Mark Griffen, Senior Vice President and Of Counsel, Overstock.com

Utah's First District Congressman, Rob Bishop, chairman of the House Natural Resources Committee, has been working on plans for the state's public lands: "The Public Lands Initiative is a locally-driven effort to bring resolution to some of the most challenging land disputes in the state of Utah. The initiative is rooted in the belief that conservation and economic development can coexist and make Utah a better place to live, work, and visit." [From Rep. Bishop's website.]



Casey Snider

There have been many discussions over the past 3 years with stakeholders in Utah's eastern counties, and output of that process is embodied in the recently released Federal bill draft: [Utah Public Lands Initiative Act](#) [Ed.

Note: at the time of this writing, the website [utahpli.com](#) could be accessed only through the Internet Explorer browser)].

Casey Snider participated in many of those discussions, and he talked about how the Act resulted from widespread input and how it would benefit Utah. The state's citizens need assurances that land use policy is fixed for the future so that people can make plans for moving forward.

Hundreds of proposals for land use were received during the 3 year discussion period. There were disparate viewpoints that were worked into a compromise document.

The counties affected by the Act would be Summit, Uintah, Duchesne, Emery, Grand, Carbon, and San Juan. They cover about 18 million acres. Of that 4 million acres are designated as wilderness or

conservation areas. Snider described this as an extensive gain of protected areas.

The plan includes the “wild and scenic” designation for 336 miles of river along the San Juan, Colorado, and Green rivers; it adds 20K acres to Arches National Park; it creates a Bears Ears national conservation area of 1.1M acres – a compromise figure between competing interests.

Some land is transferred to counties for various infrastructure and law enforcement purposes. Those would be restricted for use for public purposes in perpetuity.

About one million acres are guaranteed for oil and gas development.

Snider mentioned that the language that would reduce the requirements for clean air in Arches National Park was an unintentional oversight. Although no new areas would be designated as “Class 1 Airsheds”, the existing Class 1 areas were supposed to retain that designation. Finding these points of contention is what the draft discussion period is for.

He objected to “what you hear in the press” as “people reacting to a draft” and not providing substantive feedback. Instead, there have been attacks on the process. He suggested that there were ulterior motives behind the negative reactions. Expressing some frustration with the commentary that followed release of the draft, he said that the process can be destroyed by “cute little jingles.”

In response to a question, he said he was unfamiliar with Federal land transfers in general. The draft Act does include some land transfers, but it is not the same as the state government's quest to have Federal lands transferred to the state.

Native American tribes were part of the discussions. Snider personally spent 14

hours talking to tribal members about Bears Ears.

Some lands are off the table for development, but outside those areas there may be loss of recreation opportunities.

The draft Act has gotten “everybody worked up”, including conservationists and county commissioners alike.



Dave Garbett

Dave Garbett showed photos of scenic Utah landscapes and Utah maps during his talk.

He told the group that the BLM manages “multiple use” land in Utah. SUWA would like to have more of the BLM land “zoned” for greater protection from development and roads than it has now.

Despite his initial admiration for Bishop's process for listening to a variety of input for the plan, Garbett has been disappointed by the results. His take on the draft is that it is a complete failure with regard to conservation and is instead a fossil fuel development plan. When the process started, all sides seemed to agree that compromise was possible. However, Daggett County reneged on their original approval of a conservation plan for the Green River, and Bishop removed them from the Act. Summit County initially discussed compromise, but then, “the wheels came off.”

He highlighted an area of the San Juan River that SUWA hoped would be a conservation area that is instead an energy development area. He thinks that the Act is intended to further the state's agenda of claiming Federal lands. For examples, road allowances could turn any existing footpath into a road 66 feet wide and owned by the state or county.

Some of areas designated for conservation are actually reserved for logging.

He told the group that the Act used new terminology, like redefining the word “wilderness” in a manner that was inconsistent with the usual meaning when discussing land use. Far from increasing “wilderness” protections, the Act would roll them back.

Garbett feels that Snider's claim that the Act provides 4 million acres of wilderness is greatly inflated. Half of that is in existing national parks, and the Act rolls back protections for those areas. If the airshed language is unintentional, then Garbett would like to see a correction.

Although he agrees that compromise is desirable, he feels that the Act takes away so much from wilderness that it cannot be considered a compromise with conservationists.



Rep. McKell

Taxes on Internet sales are a subject of concern for many states because they feel they are losing revenue, yet the Constitution limit the actions available to them. Out-of-state retailers cannot be compelled to collect state sales tax except under

very narrowly defined conditions. Nonetheless, in-state buyers can be held responsible for paying the tax. Utah has this requirement, but few people actually declare their online purchases to the state tax commission. As more and more commerce moves to the Internet, Utah may see an acceleration of revenue shortfall.

Rep. Kell intended to help the state collect these taxes with [HB 235 Remote Transactions Parity Act](#). The bill would require online retailers to collect state sales tax at the time of purchase and to remit the money to the state tax commission. In general, states cannot impose such a requirement on interstate commerce, but there are Supreme Court rulings that allow it in some circumstances.

In 1992 the Supreme Court decision “Quill vs. North Dakota” upheld a prior decision on interstate commerce (1967, “Bella Hess”) that bases that authority for taxation on “nexus”, i.e, a physical presence of the retailer in the taxing state. If, and only if, a nexus exists, the state can require the retailer to collect tax on *all* sales in the state. Part of the rationale for this is that companies with a physical presence get the benefit of state services --- roads, infrastructure, schools, etc.

Because bloggers who partner with Internet retailers receive a percentage of the revenue from “click throughs” on their websites, they are considered employees of the retailers, making them an in-state nexus. On Monday, Amazon notified McKell that if the bill passed, they would cut off their affiliate relationships with their Utah bloggers, affecting approximately 10,000 people. This would remove the nexus, and Utah could not require Amazon to collect their sales tax.

Upon receiving the notice, Rep. McKell, on his own initiative, withdrew the bill. He said that he had been committed to finding a solution that would not harm the bloggers, and Amazon's intention to disaffiliate them was not something he would risk.

Other states are trying different solutions to the problem. McKell said that the 10th Circuit Court recently upheld a reporting requirement (Direct Marketing Association v. Brohl) imposed by Colorado. Recently that state enacted a law that requires Internet sellers to notify in-state buyers

and the state tax commission about tax owed for an online sale. Because this is merely a notification about the responsibility of the buyer, the provision may be more palatable than tax collection. It also appears avoid the necessity for showing a nexus, and thereby removes the bloggers from the equation.

McKell mentioned that there is certified software that retailers can use for tax computation, and if it is used, Utah will not audit the retailer.

He also said that he might try to run a similar bill next year.



Mark Griffen

In the Quill decision, the court noted that "Congress has the power to protect interstate commerce from intolerable or even undesirable burdens." Both McKell and the opposing speaker expressed a desire for Congress to do

just that by enacting legislation that would permit interstate tax collection without unfairly burdening the sellers.

There are two relevant proposals in now Congress, one sponsored by Utah Rep. Jason Chaffetz.

Speaking in opposition to HB 235 was Mark Griffen. Noting that there are 10,000 taxing authorities in the US, he said that it was difficult for online sellers to comply with all the rules and audits and liabilities.

He noted that if the bloggers in a state established a nexus that would be used to establish a tax collection burden on his company, then buyers that state could well be more likely to buy a product from another online retailer without a nexus. Therefore, it makes business sense to cast aside bloggers in a state that begins requiring sales tax collection. Overstock.com, for example, has software that makes it easy to terminate blogger affiliates on a per state basis.

Griffen emphasized that he would like to see a uniform solution across the board, and Congress is the only entity that has the power (and responsibility) to do this. He said that politicians like sales tax because it is collected piecemeal at the register. But the sudden imposition of online sales tax would be perceived as a new citizen burden (notwithstanding any existing reporting requirements), and it is unlikely to get any traction in an election year.

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