

Comments by Bill Mader June 7, 2024

Background & Written Agreements

Introduction: My name is Bill Mader. I am a resident of Kanab, Utah. I lived in Washington County for 14 years when I was the first Administrator of the Red Cliffs Desert Reserve. I retired as an Associate Professor at Navajo Technical University in 2019 where I taught the upper division environmental science courses and guided students to advanced degrees (e.g. Arizona State U., Univ. of Georgia, and Harvard to name a few). My experience there gave me the opportunity to enhance my environmental studies by examining illegal processes that had impacted not only Navajos but public lands in general. It also provided the chance to listen to people. I was invited to discuss education at a tropical research station in Costa Rica with fellow educators from around the country. Some of my students and I were invited to UCLA where I spoke with graduate students. I knew two former Chief Justices of the Navajo Nation Supreme Court and met two Navajo Nation Presidents; three of these people came to my classes and spoke. They and my students, along with numerous case studies, provided insight into how federal reviews often rely on commitments that are never kept and information that is false. Thus, this insight from a practical sense is relevant here. History has advice. Indeed, I had friends on the “Res” die from cancers that weren’t supposed to happen. Land mitigation that was supposed to occur, never did. Written agreements became meaningless.

The facts regarding the Northern Corridor Highway, its impacts, and what was promised and what might never exist for future generations have become, what Gandhi would have called – An Experiment With Truth.

My role: I was in the “arena” as Teddy Roosevelt would have said. I personally signed the request for the incidental tortoise take permit to the USFWS in 1995. I helped co-write the original 20-year Habitat Conservation Plan (HCP). I wore out boots and attended countless public meetings. I helped remove tortoises from designated Take areas. I was on the public team that developed the recreation plan. I know what happened. I know what the written commitments were.

So, let’s take a moment and step into a time machine. The time is 1994. It is Washington County. Uncertainty, tension, and chaos reign. The life blood of cities is development and a threatened species – the desert tortoise – was stopping development. The 1995 HCP agreement saved our local cities and Washington County from sinking into chaos. The establishment of the Red Cliffs Desert Reserve (now NCA) brought a much-needed degree of economic certainty by allowing thousands of acres of tortoise habitat to be *destroyed* outside the reserve; invariably, even with our best efforts, some tortoises were surely killed. The deal was simple. It allowed cities to develop land outside the reserve, but not *inside* the reserve.

It is hard for people now to imagine how tense these times were, how failure was knocking at the door. Some people wanted the plan to fail. A reporter asked me why I'd taken a job that wouldn't exist in 6 months. U.S. Senator Robert Bennett called me at home – yes at home – to see how things were going. Some of us here in the County made a trip to Washington D.C. and personally met with the Assistant Secretary of the Interior to tell him that our solution would work but that we needed the Interior Department's help.

The written agreement for the Reserve was not perfect. A great many people worked to make it successful. Some, including key landowners, are gone now. It was all about making the deal happen and seeing things happen on the ground: fixing boundaries, doing surveys and land deals, building miles of fences, closing dirt roads, clearing take areas outside the reserve for tortoises and other action items.

When I walk in the Reserve-NCA now and see wildlife and people enjoying these unique, endangered habitats, I reflect on the tough times that made this opportunity happen, and I take nothing for granted.

Here are the indisputable facts:

- A highway through Red Cliffs was never included in any long-range reserve planning documents because, even in the early 90s, it was understood that a highway (the Northern Corridor Highway or “NCH”) through the reserve would be catastrophic. The 1995 HCP agreement was reached after tough, extensive public processes, interlocal agreements between the County and cities, and signoffs by the USFWS, UDWR and the BLM.
- In recognition of future traffic issues, the 1995 HCP allowed the expansion of the City Creek road (now called Red Hills Parkway) which *removed critical tortoise habitat* from the reserve. I personally helped move tortoises out of harm's way so this traffic solution could be reached. What most people don't understand is that all the other wildlife was bladed under.
- A highway through the reserve was never part of the deal, and in fact, the 1995 HCP disallowed new roads through the reserve, specifically stating:

“The largest block of habitat which will remain roadless is within Zone 3 of the reserve, which is between the Cottonwood Road, Interstate 15, the Dixie National Forest, and Red Cliffs, an area of approximately 28,147 acres. The next largest block is also within Zone 3, and it is between Highway 18 and the Cottonwood Road north of Skyline Drive, an area of approximately 10,155 acres. These two blocks would constitute an almost roadless reserve area if the Cottonwood Road was gated and only local traffic allowed.”

- Since 1997, BLM has spent over \$20 million dollars in taxpayer money under the *Land and Water Conservation Fund (LWC) Act* to acquire parcels in the Red Cliffs Desert Reserve and National Conservation Area to “permanently” protect habitat and recreational values for future generations. I was there when the HCP team purchased

lands with *LWC Funds*. I helped facilitate some of these acquisitions. People made sacrifices to protect biodiversity and recreational trail systems. *These funds were never intended to support freeway infrastructure*. Lastly, I personally bought out the grazing rights with HCP monies in the Reserve to preserve biodiversity. Similarly, these were not bought out to lay pavement and dump car exhaust into the reserve.

- In short, the LWC monies were never spent to make a highway happen. Now that the county and cities have gotten the development they wanted outside the reserve, they want to come after the reserve itself and destroy it with a highway. They want to make a statement. Their ethical reversal reminds me of some Indian Treaties. The County and cities want to throw away what everyone agreed to in the 1990s. They want to toss it away at the detriment of local quality of life and future generations. They are compromising the future. The county commissions were fully aware that it was illegal to use LWC monies for a future highway, yet they pushed the NCH anyway.

Catastrophic impacts from the NC

1. For homeowners in Green Springs, Brio, Warm Springs and Middleton, the NCH would reduce property values, health and safety, and quality of life. This highway would carry an estimated 32-46 thousand vehicles per day by 2040 and would travel less than 1/10 mile from many homes, exposing residents to traffic noise, light and air pollution on a daily basis. The stunning scenery, tranquility, trails and protected habitat for threatened wildlife that homeowners enjoy within the Red Cliffs NCA, would be negatively impacted.
2. Finally, homeowners are especially concerned about the risk of catastrophic wildfire associated with the highway, and reference the 2020 Turkey Farm Road Fire, which caused evacuation of Green Springs residences, as a stark example of this danger (11,700 acres burned, apparently caused by fireworks).

Roads and highways introduce fire. Fire kills ecosystems, animals and people. The western states especially, now live in a world of megafires. We have already seen the catastrophic impact of fires in the reserve. The Northern Corridor will introduce fire and it will not be an effective Fire Break. Over 30% of the reserve has already burned. In these burned areas, the old ecosystem is gone or dying. Invasive grasses are metastasizing everywhere. These plants thrive on fire. Tortoises, biodiversity, and recreation all suffer. According to research by the University of Colorado published by Smithsonian Magazine, at least 84% of the fires in the west are man caused.

Fire is not a theoretical discussion to me over a cup of coffee. I parachuted into fires. I worked my way through college fighting forest fires across six western states, including 3 parachute jumps inside the Arctic circle (that part of the world was burning even then). I saw the fire beast firsthand. I saw consequences and I saw tragedy. I must admit though, that I never imagined that entire ecosystems and cities would burn to the ground. It seemed unfathomable. But that's the real world now. That's what's happening.

Look at Paradise, California in 2018 where a fire burned 240 square miles and killed 85 people, or the Marshall Fire in Boulder Colorado that destroyed over 1,000 homes. Over 100 people died in the tropical paradise we call Maui when fire swept through the city of Lahaina. Ask those people how effective their fire breaks were and if they thought their communities would ever burn to the ground. Survivors are suffering from health issues including those from smoke contamination. Incidentally, regarding the Paradise Fire, Pacific Gas and Electric pleaded guilty in causing the fire and the death of 84 of these people. Pacific Gas and Electric had to declare bankruptcy and will pay out \$13.5 billion dollars. The other fires in Colorado and Hawaii are mired in expensive, endless litigation. Insurers in Maui have paid out more than one billion dollars in claims related to the Lahaina wildfires. Surviving houses adjacent to these calamities cannot now obtain house insurance.

It is reasonable to expect that the reserve and adjacent communities could go down this same reckless trail. I am informing the BLM, USFWS, County and cities that they could be targeted in future litigation and that they were informed of these risks beforehand. I don't just see cities and agencies being sued; I see individuals being sued in a quest for accountability.

Really bad decisions have really bad outcomes. Megafires are here to stay. Extinctions are on the radar screen and so are more lawsuits and bankruptcies. There is already enough fire risk in the reserve without adding another road.

3. In light of the fact that significant cultural artifacts have been documented in the reserve, it is reasonable to conclude that construction of the NCH will destroy artifacts that should be left undisturbed.
4. The NCH would destroy what remains of what I have termed an "Alamo" habitat. That's a habitat that is fighting for its life, sliding into the coffin. It's a living thing. These Alamo habitats are about everything – threatened and endangered species, wildlife, pollinators, animal corridors, genetic pathways. The list goes on. It is not just about tortoises which have declined by over 50%, it's about this thing called biodiversity. If you don't care about biodiversity, you should because science says it is good for you. It extends your life. Many pharmaceuticals come from nature.
5. When families are hiking in the Reserve, they don't want to hear traffic and ingest car fumes that cause cancer and other human ailments. The over whelming science indicates that chemical contamination (pollution) impacts the endocrine and enzymatic systems (among others) in humans and animals. It causes cancer and shortens life spans. That is the new reality. Just look at the recent studies completed on micro-plastics. Most everybody has some form of micro-plastics in their organs. People want to escape from these problems. Mental health studies indicate that one of the best remedies for improved mental health is stepping into nature. The reserve was never intended to be a dumping ground for a city's problems and poor planning. Think of the reserve as the health drug

store down the street. We are tearing it down brick by brick. When it's gone, it's gone. There's no putting it back.

6. And let's not forget that outdoor recreation contributes profoundly to a trillion-dollar national outdoor recreation economy, especially in St. George. A lot of people move to or visit the St. George area because they want to enjoy the Red Cliffs Desert Reserve. They want open space that is undisturbed. It's good for the economy, biodiversity, and the environment.

Zone 6 Mitigation for NCH

1. Executing land deals and agreements is complicated and they sometimes fail— often because one party doesn't deliver what they promised. Credibility and past performance are critical in any analysis because they predict future outcomes. In a past HCAC meeting, Mr. Eric Clarke, the county attorney, admitted that SITLA does not have the authority to set aside its Zone 6 property for permanent tortoise mitigation. It is common knowledge that SITLA must maximize revenues from its lands on behalf of its beneficiaries. Mr. Clarke acknowledged this. In other words, SITLA must sell properties at maximum values. The simple fact is, SITLA could be successfully sued by its beneficiaries if it does not maximize such revenues.

2. BLM and FWS officials – despite these admissions— have previously relied on SITLA's false Zone 6 lands conservation commitment as mitigation for the critical tortoise habitat and animals (mammals, birds, reptiles) that would be destroyed while completing the NCH. It is worth noting that the reserve was in part set up to keep other species (such as the Gila Monster) from being put on the threatened/endangered species list, as well as preserving biodiversity. The Gila Monster has declined and should in fact be listed as threatened and all its habitat left intact. This SITLA commitment to mitigation has no substance and was improperly used in the previous FWS approval of the county's HCP for issuance of the current ITP in the last days of the Trump (a convicted felon) administration. BLM and the USFWS knew then that their process was illegal and federal laws had been violated.

3. Much of the land (Federal - 3,475 acres or 51%) in Zone 6 *is already protected by the ESA*.

4. The county has now reneged on its HCP agreement by pushing the NCH. Indeed, available evidence indicates that the county is working with SITLA to obtain a promise of using SITLA lands in Zone 6 for conservation. The NCH alignment through the Reserve will also increase the land value of SITLA property near Exit 13 by I-15. It is reasonable to conclude that SITLA and/or the county will later renege on any commitment to use the Zone 6 property as mitigation – which incidentally comes with a slew of problems. This for any number of reasons, including that it was not sold to other parties for the greatest value.

5. Past and recent history demonstrates that Washington County has no credibility when it comes to making promises of permanent mitigation and conservation. This is the reality. BLM and FWS officials must accept this fact so alternate traffic options can be implemented that do not impact the reserve (NCA).

A.) When I was the HCP administrator I witnessed similar misleading behavior by the Washington County Commission. For example, the chairman of the commission (Mr. Eardley) unilaterally took \$10,000 from the HCP budget without the required HCAC public process (May 2007, have document). Eardley was fully aware of the written commitments the county had made on how funds were approved and spent. I had to confront him in the county parking lot and insist that his request go through the public process. His action had been signed off by the County Auditor who had no authority to disperse these funds. These monies were HCP mitigation funds.

B.) The commissioners were aware that it would be illegal to build a freeway across properties acquired with LWC funds monies, yet they planned this action anyway and targeted anyone who would not support it. I for example, was repeatedly threatened by the commissioners and retaliated against. Similarly, within months of the HCP agreement being signed in 1995, St. George City officials insisted on taking me into the reserve and showing me where the NCH should go and that I should support it, contrary to all their written and verbal commitments. The city had no intention of living up to their agreements. I refused to cooperate.

C.) On the same note, Confluence Park (adjacent to the reserve on the Virgin river) was purchased and saved for conservation by a group of 9 organizations for a cost of over five million dollars (\$400,000 came from HCP other species funds to benefit biodiversity and other species). After this was completed, then commissioner Gardner made a commitment to the Ash Creek Sewer District (Oct. of 2003) that Washington would arrange to have Ash Creek purchase property in the middle of the new park for a sewage treatment plant (have document). Gardner was fully aware that a team of conservation funds had purchased Confluence Park. I confronted Gardner and told him his actions were illegal. I later attended the Ash Creek Sewer District public meeting to help stop it. The sewage treatment plant in the middle of the park did not happen. This attempt to build a sewage treatment plant inside an area that was saved for conservation and recreation by a team of organizations is a classic example of how Washington County operates. Their written commitments mean nothing. This approach is directly relevant to the County's pledge to include SITLA lands as mitigation. And let's not forget that the County previously pledged in writing to not construct the NCH and now they are insisting that it be built.

This kind of illegitimate, compromised process is made worse when county, state and federal employees are intimidated and rewarded to hide under a porta-poddy and go along with a process devoid of honesty and science. Here's the point, the

reserve/NCA— contrary to its beginning— has evolved into a stage where actors (including biologists) trade favors under the table. I like the term my Navajo friends use – “Shapeshifters.” It has become a world of “spin” wallowing in falsehoods pushed by politicians favoring development that benefits them.

This polluted mentality surfaced again recently when local and state politicians held a phony “Public” meeting on the NCH in Hurricane (April 22) on Earth Day and refused to let anyone speak who opposed the NCH. Typical. Those who showed up opposing the NCH were made to sit in the baking sun.

D.) Here's the bottom line, Washington county and St. George City will commit to do one thing, and then after they get what they want, favors will change hands and they will do another. Further, it is my conclusion, that the over-riding reason the County wants the NCH is to prove that the county is in control of public land and the development revenue that goes with it. And this regardless of the public and federal tax monies (such as LWC monies) that were spent to save the reserve/NCA for the public— a public that includes everyone across the United States. A recent Salt Lake Tribune article (May 20) cited evidence that more than a third of Utah politicians profit from development.

6. BLM should deny the NC Highway ROW because it would violate several federal laws. Indeed, the FWS, consistent with its ESA duties, should decline any plans to give credit for the SITLA Zone 6 land. This is especially so, in light of the continuing tortoise population decline and the worsening invasive grass fire crisis that is killing ecosystems and reducing biodiversity.

Best Alternatives to Mitigate Traffic Issues

The best route to alleviate traffic and preserve the local quality way of life, is not through the Reserve.

Conclusions

- A. The NCH was never legally stipulated to be in the reserve (NCA). Indeed, it was intended to never happen.
- B. Tortoise populations are in decline and are no longer self-sustaining.
- C. Catastrophic fires will continue in the reserve. Highways and roads such as the NCH will dramatically increase fire risk and destroy what biodiversity remains.
- D. These same fires have already threatened nearby communities; this will continue. Serious and costly litigation will likely follow.
- E. The NCH will destroy recreation values.
- F. The NCH will probably destroy protected and unknown indigenous sites inside the NCA. Significant archaeological sites have been documented in the reserve.

- G. Pollution from the NCH will impact animals *and* people.
- H. The SITLA lands in zone 6 are not effective mitigation for the NC.
- I. The best route to alleviate traffic is not through the reserve.

In summary, the NCH will remove living tissue and organs from a reserve-NCA that is already on life support – an “Alamo” reserve fighting for its life.

We will see where this Experiment With Truth goes.

Sincerely,

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cc: Ms. Deb Haaland, Secretary of the Interior