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**Utah Attorney General Derek Brown written testimony for  
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I appreciate the opportunity to speak with you all today about an issue that is central to my work and critically important for states like Utah, where the federal government controls significant portions of land within their borders. Indeed, the federal government manages 37.4 million acres, or about 68% of Utah's landmass, with 22.8 million of those acres under BLM management. Cooperation with the federal government, especially BLM, is therefore essential for the State of Utah. However, even in states with much less federal land, a functioning system of what we often call "cooperative federalism" is vital for environmental, economic, and social success. This is particularly true in rural counties across the West, where the economy is often driven by multiple uses of public lands.

I am here today to discuss the challenges we face when cooperative federalism breaks down – that is, when the coordination, cooperation, and consistency (often called the “3Cs” of public land management) clauses contemplated by Congress in laws like the Federal Land Policy and Management Act (“FLPMA”) fail to provide the authority needed for the ongoing and effective execution of the multiple use and sustained yield mandates of public land management. The importance of these mandates cannot be overstated, and it is critical for us to collaborate with the federal government to find efficiencies in their implementation. Equally important, however, is ensuring predictability and consistency in the overall management of public lands. I believe we can find bipartisan agreement on the importance of predictability, especially when it comes to permitting.

I would like to begin by providing some brief background on the role of Utah's Public Lands Policy Coordinating Office ("PLPCO"), with which the Office of the Utah Attorney General partners, and the State in managing public land, followed by a few real-world examples of how uncertainty can impact public land management, especially concerning the development of critical infrastructure projects.

As its name suggests, PLPCO's mission is to coordinate with various agencies and counties within the state and to serve as a central, united voice on public land management issues. In this role, PLPCO's staff is deeply involved, often as the lead state agency, in land use planning issues that involve the federal government. At the beginning of each planning process, we explicitly ask the federal government to ensure consistency with local land use plans and to adopt a partnership approach to all agency actions within the state. This request aligns with the mandates of federal public land management statutes, such as FLPMA, but it also acknowledges that federal land use plans can affect issues solely within the State's jurisdiction or expertise.

Utah has taken steps to act as an equal partner in the federal land use planning process. Notably, in a pioneering effort in 2015, the Utah Legislature required all 29 counties to develop County Resource Management Plans ("CRMPs"). These plans then contributed to a comprehensive State Resource Management Plan ("SRMP"), which sets the goals, objectives, and policies for managing 28 different natural resources, fostering coordination with federal agencies, and promoting the multiple use and sustained yield of Utah's public lands. The purpose of both the CRMPs and the SRMP is to ensure that public lands are properly managed for fish, wildlife, livestock, timber, recreation, energy, minerals, water resources, and importantly, the preservation of natural, scenic, scientific, and historical values.

Conceptually, at least, statutes such as FLPMA were designed to recognize and ensure consistency with these plans. In fact, the final language in Section 202 of FLPMA states, in relevant part: "Land use plans of the Secretary . . . shall be consistent with State and local plans to the maximum extent [the agency] finds consistent with Federal law and the purposes of this Act." Additionally, BLM must "provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands..."

To comply with this mandate, BLM regulations give governors sixty days to perform a “consistency review” on proposed land management plans to identify inconsistencies and offer recommendations on how to fix differences to the BLM state director. The BLM director must then “accept the recommendation of the Governor(s) if he/she determines that they provide for a reasonable balance between the national interest and the State’s interest.” FLPMA was therefore drafted to allow the reconciliation of federal land use plans with state and local resource management plans. Additionally, although I do not have time to discuss this in more detail, there are similar provisions in the National Environmental Policy Act (“NEPA”) and the National Forest Management Act (“NFMA”).

However, this language stops well short of giving states and local communities control over federal agencies' actions. In reality, federal agency heads are ultimately responsible for deciding whether federal programs align with state and local priorities and to override regional priorities in the name of achieving federal objectives. The result, unfortunately, is that the extent of cooperation in practice varies depending on the political environment. Despite the language of FLPMA, for much of the past 50 years, U.S. environmental politics and policy have often been characterized by a tug-of-war between federal, state, and sometimes local authority. Indeed, it has been our experience that federal agencies frequently ignore state-specific input to achieve political gains or to accommodate special interest groups.

At a minimum, this creates uncertainty regarding whether and to what extent state and local input is considered in federal land-use planning processes. Additionally, this overlooks input from local communities, which are best equipped to manage public lands, and fails to utilize state-specific resources to drive more efficient planning processes. This is especially problematic in rural counties throughout the State, some of which have as much as 90% of land subject to federal management. Wildlife management provides a particularly salient example of this issue. Federal law is clear – the states have jurisdiction over wildlife species within their border that are not listed under the Endangered Species Act or otherwise protected under federal law. Utah is proud of its wildlife management, and it takes that responsibility very seriously, expending significant resources to ensure wildlife is always managed according to the best available science and to prevent the need for listing under the ESA. Unfortunately, federal planning processes do not always utilize these resources or incorporate state science.

The most notable example of this failure in wildlife management occurred in 2015, when the Obama administration implemented sage-grouse plans based on science that was clearly not applicable to Utah's unique environment. The State provided that science during the planning process, but it was not reflected in the BLM's final decision. This resulted in the imposition of restrictions that were not grounded in the best available science. To be clear, the sage-grouse plans currently considered by this administration have addressed these concerns. In fact, I would argue that the most recent sage-grouse planning process should be recognized as a successful effort to foster cooperation in developing federal resource management plans. That process began under the Biden administration and is set to be finalized under the current one. Furthermore, it addressed the concerns of all states within the species' range—both red and blue. However, it has taken over a decade to fix the shortcomings of the 2015 plans, mainly because the federal government failed to collaborate with the states in finalizing the plans and, in doing so, neglected to consider local and state-specific science.

This is one of many examples where the federal government failed to fully cooperate with the state, but it highlights the larger issue with the current statutory framework – the mere allowance of state-specific consideration does not ensure state involvement and arguably creates an opportunity for outright disregard of the best available science. This is sometimes evident in final decisions, like the 2015 sage grouse plans, but it is also too often evident throughout the decision-making process. This is especially problematic because, while achieving consistency with state and federal plans and policies is required by FLPMA, the main way to achieve this is through substantive coordination throughout the process. For example, in the case of the Northern Corridor, a highway project considered by Congress under the Omnibus Public Lands Management Act of 2009 (“OPLMA”) and meant to reduce traffic concerns in Washington County, Utah, the Biden Administration engaged in behind-the-scenes negotiations with special interest groups to ensure that the right-of-way decision did not fully incorporate the interests of the state, county, and local stakeholders. In this case, the state again provided science and local information showing that developing the Corridor would significantly benefit conservation efforts for the Mojave Desert Tortoise. Instead of collaborating to understand the importance of that information, the Biden Administration shut the state and county out of the planning process and ultimately revoked the right-of-way based on incomplete information.

Similarly, the State was not involved in a meaningful way in developing the Final Resource Management Plan for the Bears Ears National Monument. This contrasts sharply with the level of involvement that federal agencies allowed for the Bears Ears Commission during the planning process, where the commission participated in weekly and biweekly management and planning meetings, provided input on implementing the scoping process, developed alternatives, helped prepare draft documents, reviewed materials, and accepted revisions for final versions. In fact, the agencies outright refused a request for the State to have similar involvement. As a result, the final resource management plan contains numerous inconsistencies between the State SRMP and is clearly at odds with FLPMA's mandates for multiple use and sustained yield. The State advocates for revisions to FLPMA to guarantee equal involvement of states, counties, and tribes in decision-making.

Finally, setting aside the outcomes of these decision-making processes, we must consider the value and efficiency the federal government loses by failing to engage state and local governments early and often in resource management planning. Delays in federal permitting are routinely blamed on lack of agency capacity and available resources, inconsistent application of federal procedures, and litigation delays. These bottlenecks lead to very long planning processes for critical infrastructure across the country. One example is the Transwest Express Transmission line project, which took over 18 years to go from application to construction despite several administrations emphasizing it as a priority for increasing the use of renewable energy. Some of that delay can be attributed to the project's large size and the difficulty of obtaining approvals from multiple states. However, some of the delay also results from a failure to coordinate with state and local governments in developing relevant management plans.

Using sage-grouse planning as an example again, the approval process for the Transwest Express Transmission line involved creating, finalizing, and facing legal challenges to two separate sage-grouse plans. The 2015 sage-grouse plan set the initial requirements for moving the project through sage-grouse habitat. However, this plan was challenged by multiple states because it conflicted with their specific science, as we have discussed. The second version of the sage-grouse plans, signed by the first Trump administration in 2019, was challenged by environmental groups and ultimately blocked. This back-and-forth created a lot of uncertainty in the permitting process for Transwest Express, leading to major delays. This is just one example of many resources

that require federal planning within the Transwest Express corridor. Consistency across different administrations in how the federal government partners with states in these processes can help reduce this planning instability, even if it doesn't completely solve litigation issues. At the very least, it ensures that the best available local science from states is used in every planning effort.

So, what specific actions can be taken? Many issues are involved in this discussion, including how federal land management statutes interact with NEPA. I believe there is room to revise that statute to improve efficiency and certainty, but since this hearing is not meant to address NEPA changes, we will set those issues aside for now. It seems clear that statutory frameworks like FLPMA need to be revised to ensure that state-specific expertise is given substantial deference in developing federal land use plans—regardless of which administration is in power. This is especially important in processes involving resources controlled by the states, such as wildlife, water, law enforcement, and other resources.

These changes will enhance coordination with local agencies and bring more consistency and certainty to the land use planning process. In fact, stakeholders can then be confident that State-specific input, as outlined in established state and/or county resource management plans, will guide local land management decisions. Additionally, as equal partners in the planning process, States are incentivized to bring more resources and expertise to better inform planning efforts and boost efficiency. Ultimately, we can be sure that maintaining the current approach allows federal planning processes to be influenced by political forces and only increases existing uncertainty in planning and permitting.

Management of public lands is fundamentally place-based, with jurisdictional boundaries and neighboring private, tribal, and state entities. As a result, federal agencies involve state and local governments in public land management differently than they do in pollution control. However, this involvement varies widely, ranging from being the primary partner to just a consultant, and it is often influenced by political changes. Sometimes, administrations have excluded states from the planning process entirely, prioritizing input from special interest groups and non-governmental organizations over that of state and local agencies with jurisdiction or expertise. This leads to unclear guidance on state involvement, causing delays, uncertainty, and poor resource management. Ultimately, this complicates

planning processes and hinders the ability of state and federal governments to collaborate effectively on permitting for critical infrastructure development.

The State supports this body's effort to revise federal land management laws to reduce uncertainty and promote full cooperation and coordination with state and local governments. These partnerships will enhance planning and permitting by providing clarity and predictability, while making the most of all available resources.