

FY 2015 UPDATED PLAN FOR R.S. 2477 RIGHTS-OF-WAY

Introduction

The State of Utah (the "State") and its respective Counties own a joint, undivided interest in R.S. 2477 rights-of-way. This document outlines the broad framework of a working relationship between the State and each participating county for the purpose of working together in identifying, evaluating, recognizing, recording, defending, negotiating, lobbying, or litigating State and local government rights-of-way established pursuant to R.S. 2477. The R.S. 2477 rights-of-way claimed by the State and the respective Counties are sometimes also referred to as "roads" in this Updated Plan for 2016 ("Updated Plan").

In its 2009 General Session, the Utah Legislature enacted H.B. 169, which restructured the Constitutional Defense Council (CDC). H.B.169 further provided that the Public Lands Policy Coordinating Office (PLPCO) will submit various reports and an annual update to this Plan for R.S. 2477 Rights-of-Way to the CDC and others. This Updated Plan is in response to the statutory requirement.

The main focus of this working relationship between the State of Utah and the Counties is to obtain federal recognition of state and county R.S. 2477 rights-of-way. In the past, this effort involved lobbying, negotiation, and recording R.S. 2477 right-of-way claims against the United States. In addition, Utah filed actions in federal courts against the United States over closed rights-of-way. Beginning in 2010, the State and Counties commenced a comprehensive game plan to bring the R.S. 2477 issue to a head and an eventual conclusion. In 2012, the State and Counties filed lawsuits over rights-of-way in 22 counties. The total number of rights-of-way sued upon was over 12,000. In 2013, the State and Counties entered into an agreement with the United States to file a Joint Consolidated Case Management Order (CMO). This CMO governed how the R.S. 2477 cases would proceed through February of 2015. The CMO was amended in all cases to extend the deposition period through and including May 31, 2015.

Pursuant to Section 63C-4a-403 of the Utah Code, this Updated Plan is subject to approval by the Constitutional Defense Council as established under Title 63C, Chapter 4a of the Utah Code. Unless a county indicates otherwise, each county that has already approved the original and prior amended R.S. 2477 Plans will be deemed to have approved this Updated Plan without the necessity of additional ratification, and all aforementioned agreements regarding disclosure and confidentiality are deemed to be still in force and part of this Updated Plan. This Updated Plan is to be submitted to the Legislature's Natural Resources, Agriculture, and Environment Interim Committee by July 1 of each calendar year, after providing the R.S. 2477 Plan to the committee at least seven days before the presentation. Utah Code Ann. § 63C-4a-403(4)(c)(i).

Good Faith, Cooperation and Equal Partnership

This Updated Plan provides for a good faith, cooperative effort and an equal partnership between the State and each participating County in determining litigation strategy, negotiation strategy, strategy regarding legislation, and the expenditure of resources with respect to that County's rights under R.S. 2477. This equal partnership is implemented through a government-to-government relationship, the attorney-client relationship, the contractual commitments of full disclosure and confidentiality, and coordination through the R.S. 2477 Client Committee (Client Committee). The State and a participating County are equal partners in determining litigation strategy and the expenditure of resources with respect to that county's rights under R.S. 2477.

The Public Lands Policy Coordinator and Legal Counsel

PLPCO is responsible for coordinating all R.S. 2477 efforts and providing general direction to legal counsel of the Attorney General's Office. Legal counsel in this effort have traditional professional responsibilities to their clients, including those duties and responsibilities in Section 67-5-17 of the Utah Code, in addition to which, by agreement of their clients, they endeavor to maintain cooperation and unity of interest of all participants. PLPCO and counsel will keep the CDC, Governor's Office, the Attorney General, School and Institutional Trust Lands Administration, and the individual Counties (normally through a designated contact) reasonably informed about the status of a matter and promptly comply with reasonable requests for information; explain a matter to the extent reasonably necessary to enable informed decisions regarding the effort and representation; and follow the joint decisions concerning the objectives of the representation and the means by which they are to be pursued.

The Public Lands Policy Coordinator and legal counsel will coordinate and carry out the Updated Plan's implementation through regular coordination with the Client Committee and will pursue additional updates to the Updated Plan and related documents as they may be called for by unfolding events. The Public Lands Policy Coordinator will review expenditures and other resource allocations with the State Planning Coordinator, the Client Committee, and the CDC on a regular basis. The Public Lands Policy Coordinator and legal counsel will gather, organize, and maintain data pertaining to rights-of ways; manage expert and other witnesses; conduct settlement negotiations (in concert with others who may be designated to do so by the R.S. 2477 Client Committee); plan and conduct litigation in state and federal courts and administrative tribunals as called for; manage negotiations with the Federal Government for the issuance of recordable disclaimers of interest or other remedies, relief, or action in settlement of R.S. 2477 claims or litigation; plan and conduct efforts and activities to pursue relevant federal and state legislation; carry out other duties and responsibilities as may be requested from time to time by the R.S. 2477 Client Committee; and generally conduct those kinds of activities normally expected of counsel in a matter being prepared for potential or intended litigation. Counsel will maintain files in an office that is not open to the general public and that is designated as the central office for the R.S. 2477 efforts and will take all lawful actions necessary to maintain the confidentiality of records. Counsel will provide expertise with regard to general issues and to keep the Counties informed of the progress of the case as well as other duties as assigned by the

Public Lands Policy Coordinator, Client Committee, or CDC.

Counsel will consist of attorneys employed in the Office of the Utah Attorney General and the Public Lands Policy Coordination Office, the number and identity of which will be determined by the Attorney General in consultation with the PLPCO Director, and as budget allows, possible additional attorneys not employed by the Office of the Attorney General, as determined by the PLPCO Director. Attorneys not working full-time for the Office of the Attorney General have been, and may continue to be, designated special assistant attorneys general in behalf of part or all of the clients as determined by the PLPCO Director, and under the direction of the Attorney General or his designee.

The Attorney General represents the State and participating Counties as counsel. A participating County may, using its own resources or resources granted by the CDC in accordance with its directives, designate additional counsel to represent its interests as part of the collective effort, so long as such counsel, together with counsel for the State, are subject to all the constraints of full mutual disclosure, confidentiality, cooperation, and preservation of the parties' unity of interest. Paralegal and other legal support staff will be hired as budget allows.

Pending R.S. 2477 Litigation

2013-2015 Case Management Order

In 2013, the Utah District Courts approved a CMO to govern all but two of the pending cases. The CMO provided that only the cases in *Kane Co. v. U.S. ("Kane 2")* and *Garfield Co. v. U.S. ("Garfield Co.")* would be pursued as active litigation; all other pending R.S. 2477 cases were stayed except as allowed under the CMO, including the taking of preservation witness depositions. The CMO was initially to expire on February 28, 2015; the parties agreed to an extension of the final block through May 31, 2015.

During the two year period of the CMO, through May 31, 2015, the State and Counties took, or participated in, 254 preservation depositions of elderly (individuals over the age of 70) and/or infirm witnesses in all 22 counties with pending cases as follows:

County	Depositions Taken
Beaver	11
Box Elder	5
Carbon	12
Daggett	9
Duchesne	4
Emery	8
Garfield	28
Grand	8
Iron	17
Juab	9

Kane	29
Millard	11
Piute	6
Rich	11
San Juan	17
Sanpete	7
Sevier	10
Tooele	9
Uintah	20
Utah	5
Washington	10
Wayne	8
TOTAL:	254

No more than 25 such depositions were allowed to be taken in any one county. The depositions were limited to 75 roads each day and had certain disclosure obligations under the CMO. In the active cases, not stayed by the CMO [the *Garfield Co.* and *Kane 2* cases], the United States moved to dismiss by asserting certain legal defenses, including statute of limitations defenses and a jurisdictional defense that asserts that the United States has not contested the title of the State and, accordingly, there is no case or controversy to be decided by the court as required under Article III of the United States Constitution.

Intervention by SUWA

During the course of 2013, Southern Utah Wilderness Alliance (SUWA) moved to intervene in the pending cases in all Counties except Rich, Sanpete and Utah Counties. The Court granted permissive intervention on a limited basis. SUWA was allowed to participate in depositions and ask a limited number of questions within a specific time allotment. SUWA was specifically "prohibited from asserting new claims, cross-claims, counterclaims, or defenses in the Road Cases." Further, SUWA "may not, without leave of court, file any motion not expressly allowed" by the Court's Order. SUWA is not allowed to present any argument not made by the United States without the consent of the United States. Finally, the Court Order specifically excluded SUWA from participating in settlement negotiations: "SUWA is not granted the right to participate in such [settlement] negotiations unless the parties mutually agree to SUWA's participation."

Kane County v. United States ("Bald Knoll Case")

On March 13, 2013, Judge Waddoups issued his decision in the case of *Kane County v. United States*, 2013 WL 1180387 (D. Utah 2013). The case had been tried to Judge Waddoups in a 9-day bench trial covering 15 claimed R.S. 2477 rights-of-way in Kane County consisting of various types (e.g., B and D roads, graded and two-track roads in Wilderness Study Areas ("WSAs") and other areas of contention) and covering various legal issues the parties agreed should be appealed to the Tenth Circuit to obtain legal standards by which to settle or litigate the

other pending R.S. 2477 claims. Judge Waddoups issued two orders. In the reported decision, he concluded that he the State and Kane County had established a "dispute as to title" sufficient to establish a "case or controversy" under Article III and that Kane County had filed within the 12 year statute of limitations period. Significant in the court's assessment of a "dispute as to title" was his finding that "significant disputes exist as to the scope of each of these roads." *Id.* at *14. Accordingly, the Court had court subject matter jurisdiction under the QTA as to all 15 roads at issue. In the second order, the Court found that the State and Kane County had proven the historic use and existence of 12 of the 15 claimed roads and made findings of fact and conclusions of law as to the scope of the rights-of-way. The Court also found that the standard of proof for establishing a right-of-way was "clear and convincing" evidence and that Public Water Reserve ("PWR") 107 was a reservation by the United States that precluded the establishment of an R.S. 2477 right-of-way across the land reserved. Contrary to the understanding of the parties that all issues should be appealed, so as use the resulting rulings to resolve and determine other pending claims for R.S. 2477 rights-of-way in Utah, the United States appealed only the "dispute as to title" issue. SUWA appealed the statute of limitations issue and the State and Counties appealed the standard of proof and PWR issues.

Arguments on appeal were heard before the Tenth Circuit on September 29, 2014. On December 2, 2014, the decision of the Tenth Circuit was issued in the Bald Knoll Case. In *Kane County v. United States*, 772 F.3d 1205 (10th Cir. 2014), a three judge panel affirmed the title of the State and Kane County to six of twelve rights-of-way at issue in the case, and held that there was no "dispute as to title" to the remaining six claimed rights-of-way. The Tenth Circuit held, in order for a court to have jurisdiction over a QTA claim, the plaintiff must show that (1) the United States "claims an interest" in the property at issue, and (2) title to the property is "disputed." The Ninth Circuit Court of Appeals previously has held that the disputed title element was satisfied if a "cloud on title" was established. In what the Court termed a "matter of first impression," the Tenth Circuit rejected the "cloud on title" standard and reversed the district court on that issue. The Tenth Circuit held that "to satisfy the 'disputed title' element of the QTA, a plaintiff must show that the United States has either expressly disputed title or taken action that implicitly disputes it...[A]ctions of the United States that merely produce some ambiguity regarding a plaintiff's title are insufficient to constitute 'disputed title.'" *Id.* The Tenth Circuit did not clarify what factors must be proved to show an action that "implicitly disputes" title.

On the other issues appealed, the Tenth Circuit affirmed the district court's ruling rejecting SUWA's statute of limitations argument - that the State and County's R.S. 2477 right-of-way claims were barred by the statute of limitations contained in the federal Quiet Title Act (the "QTA"). Additionally, the Tenth Circuit agreed with the State that the existence of water reserves (the "PWR") do not bar road claims and reversed Judge Waddoups on that issue. The Bald Knoll Case was remanded for further determinations on the issues of scope of the rights-of-way affirmed by the Court. Because the Tenth Circuit ruled that there was no subject matter jurisdiction (e.g. no "case or controversy"), it did not rule on the standard of proof issue.

A Petition for Rehearing by the State and Kane County was denied and on April 22, 2015, the State and the County, seeking review of the Tenth Circuit's reversals on the "dispute as

to title" issue, each filed Petitions for a Writ of *Certiorari* to the United States Supreme Court. Kane County filed its brief on June 18, 2015. The State filed its brief on July 2, 2015. The Supreme Court likely will make a decision on whether to accept *cert.* and review the case sometime during the next 2015-2016. SCOTUSblog, a web service that provides commentary on cases and petitions pending before the U.S. Supreme Court, requested a copy of the State's Petition for *Certiorari*, for inclusion in its "Petitions We're Watching" pages for the upcoming Supreme Court term.

Abdo v. Reyes/Tooele County v. United States

In a separate action, *Abdo v. Reyes*, SUWA filed a complaint in the Third Judicial District Court for Tooele County [Utah state court] seeking a declaration that a separate state statute of limitations, Section 78B-2-201 of the Utah Code, bars the State, the Counties and their authorized officers (here, collectively the "State") from bringing and maintaining any R.S. 2477 claims. The statute of limitations contained in Section 78B-2-201, and on which SUWA relies, provides that the State may not bring an action with respect to any real property unless "the right or title to the property accrued within seven years before any action or other proceeding is commenced..." *Id.*¹ The State removed the action to federal court where a Temporary Restraining Order (TRO) was granted by Judge Waddoups on 4/6/2015 staying any action in State Court pending his ruling on a preliminary injunction. SUWA appealed his ruling to 10th Circuit Court of Appeals. SUWA filed its opening Appellants' Brief on August 3, 2015. The State/County Appellees' Brief is due on September 8, 2015. The amendment to the statute of limitations by the 2015 legislature will be one of the arguments presented in the Appellee Brief of the State.

Certification of State Statute of Limitations Issue to Utah Supreme Court

Meanwhile, in the active *Kane 2* and *Garfield Co.* cases, and in connection with the activity in *Abdo v. Reyes*, Judges Waddoups, Nuffer and Shelby certified a question for review to the Utah Supreme Court asking whether the Utah state statute of limitations set forth in Section 78B-2-201 of the Utah Code - asserted as a defense by the United States in the *Garfield Co.* and *Kane 2* cases and, as set forth above, the primary issue in *Abdo v. Reyes* - is a statute of limitations or a statute of repose.² SUWA has claimed that the statute is a statute of repose which would bar all of the R.S. 2477 actions because the State and the Counties' claims must have accrued within seven (7) years of October 21, 1976, the date FLPMA was passed. The

¹ The statute of limitations was amended by the 2015 Utah Legislature to provide: "Actions against the federal government regarding real property and that are subject to the federal Quiet Title Act, 28 U.S.C. Sec. 2409a, do not expire under this chapter." Utah Code Ann. §78B-2-118.

² SUWA filed a Motion to add an additional question for certification as to whether the statute precludes any action by the State. On May 4, 2015, Judges Waddoups, Nuffer and Shelby, *sua sponte*, denied the motion and admonished SUWA against filing any more motions in violation of the court Order(s) granting SUWA permissive intervention. The Intervention Order(s) expressly prohibited SUWA from filing any additional claims or motions without prior court permission.

determination of whether the statute is a statute of limitations or one of repose is critical in that, in general, case law has held that a statute of repose cannot be retroactively amended (as the 2015 Utah Legislature did here, see footnote 1) to revive a cause of action; a statute of limitations can be retroactively amended, if the legislation specifically so provides. The amendment to the statute of limitations by the 2015 legislature also has been raised by the State to counter the arguments of the United States and SUWA in both the federal district court litigation and the certification question brief filed with the Utah Supreme Court.

The Utah Supreme Court has acknowledged the certification question and simultaneous briefs from the parties were filed in the Utah Supreme Court on August 14, 2014. Simultaneous reply briefs are due September 14, 2014. Additionally, a number of third party environmental groups have filed motions for leave to file briefs as *amici*. The Supreme Court has not yet acted on those third party motions.

Bellwether Litigation Ordered by District Courts

On May 22, 2015, Judges Nuffer, Shelby and Waddoups issued an order in the *Kane Co.* and the *Garfield Co.* cases, referenced as ORDER IN RE: JOINTLY MANAGED R.S. 2477 ROAD CASES LITIGATION (the "Status Order"). In accordance with the Status Order, all parties, together with clients or their representatives, met with the three judges in the District Court Chamber Conference room on May 26, 2015 (the "Status Conference") to discuss the judges proposal that the R.S. 2477 Litigation be handled through the litigation of and trial conducted by a Special Master on certain limited "bellwether roads." The judges proposed that the parties select a certain number of bellwether roads representative of the various types of roads claimed and encompassing the critical legal issues in the pending cases in order "to provide guidance leading to the ultimate resolution of all roads that remain at issue." The judges proposed that two (2) roads be selected by the United States, two (2) roads by the State/Counties and one (1) road by SUWA. The State and Counties specifically objected to the number of roads to be selected and, particularly, to a grant of any road selection opportunity to SUWA. Tom Snodgrass, the attorney for the United States, declined to comment on the proposal during the Status Conference, claiming that he would have to get approval to consent to such a proposal, but also stating that he did not believe the Court had the authority to require the United States to participate in a proceeding conducted by a Special Master. The three judges disagreed with the position asserted by Mr. Snodgrass.

On July 31, 2015, the District Court Judges collectively entered an "Order Appointing Special Master and Case Management Order for Bellwether Cases" (the "Bellwether Order") in the Jointly Managed R.S. 2477 Road Cases Litigation. In the Bellwether Order, the Judges stated:

All parties acknowledge that resolution of the R.S. 2477 issues in the traditional manner is both impractical and unrealistic. The limitation on both court and parties' resources requires a different approach. To that end, the court is entering this Order to appoint a United States Magistrate Judge to act as a Special Master to receive evidence and prepare a Report and Recommendation containing findings of fact and proposed conclusions of law for a series of bellwether roads selected from the two active cases [*Kane* and *Garfield*

Co. cases]. Once completed, the Report and Recommendation will be submitted to the presiding judge in the respective cases to accept or reject and enter judgment. The objective is that the findings and judgments will then become the bases for a global resolution of all of the pending road cases.

The Bellwether Order ordered that twelve (12) roads will be selected by the Case Management Judge (Judge Waddoups) from the 17 nominated by the parties. The plaintiffs in the *Kane 2* case [the State and Kane County] are to file a memorandum on or before September 28, 2015 outlining the proposed legal issues they believe require additional clarification and resolution for the remaining R.S. 2477 Road Cases. The United States and Intervenors [represented by counsel for SUWA] may file a response on or before October 12, 2015, outlining the issues they believe should be resolved. Oral argument will then be set before Judge Waddoups.

No later than 21 days after Judge Waddoups renders a decision on the issues given preference in the selection of the bellwether roads, the parties are to nominate roads to be included for determination in the initial bellwether trial. The Plaintiffs [Kane Co. and the State, collectively] and the United States each will nominate seven (7) roads; SUWA will nominate three (3) roads. Objections to any nominated road must be filed no later than 21 days after the nominations for the bellwether roads are filed. The Case Management Judge (currently Judge Waddoups) will rule on any objections and will select twelve (12) bellwether roads for the first trial before the Special Master.

A second round of selection, using the same procedure and time frames will be conducted in the *Garfield Co.* case, with the dates for trial in the *Garfield Co.* case will be set by the Special Master after the trial in the *Kane 2* trial has concluded.

The Special Master will hear all evidence and try all issues related to the bellwether roads in both the *Garfield Co.* and *Kane 2* cases. The State and Kane County requested, and the Court has so ordered, that *Kane 2* proceed first to trial, and that the hearings be held in the federal district court in St. George, or other location conducive to the efficient, timely and just resolution of the issues. The Bellwether Order specifically charges the Special Master to travel each of the bellwether roads to observe the condition, scope and nature of each road.

The District Court Judges appointed T. Lane Wilson, a magistrate judge from the Northern District of Oklahoma, to act as Special Master in the case. After the parties have presented all evidence in a trial before the Special Master, he is to finalize a Report and Recommendation with proposed Findings of Fact and Conclusions of Law for submission to the presiding judge in each particular case. Upon receipt of the Special Master's Report and Recommendation, and after briefing and argument by the parties, the presiding judge will enter judgment on the bellwether roads, based on a *de novo* review. The decision of the presiding judge will become final 30 days after it is entered and then, subject to appeal.

Compensation to be paid to the Special Master and the costs for the courtroom in St. George will be borne by the Utah District Court. Other costs attendant to the proceedings are to be born equally by the parties. The parties are responsible for their own costs and expenses,

provided, that, upon the entry of judgment, the Court may award costs as allowed by the Federal Rules of Civil Procedure or other applicable law.

Extended CMO

In the interim, the CMO expired May 31, 2015. In order to keep preservation depositions moving forward, the parties entered into an extension of the CMO for an additional Block 5, which commenced July 1, 2015 and will conclude on January 31, 2016. The extension of the CMO provides for the taking of the depositions of 50 witnesses, age 65 and older, or witnesses with serious health concerns, in six of the pending R.S. 2477 cases. We have selected the following counties for Block 5 preservation depositions: Carbon, Daggett/Duchesne (proposed to be treated as one county for purposes of the CMO), Emery, Grand, San Juan and Uintah.³

Negotiations with the United States⁴ will continue for the implementation of a new CMO to allow the taking of depositions in all stayed cases of witnesses 60 years of age and up. It is the intent of the State, in negotiating a new CMO, to continue to provide for preservation depositions of not only older and infirm witnesses statewide, but also those in a younger pool (55 or older), while obtaining evidence of disputed title and further clarification of legal issues at the trial court level and on appeal. We are proposing that the depositions again be divided into four blocks of six counties each, with the opportunity to take depositions out of order if the need arises. We have notified the United States that if we are unable to reach agreement with the United States prior to September 30, 2015 for a new CMO to commence immediately upon the expiration of Block 5, we then will file a motion for the implementation of a case management plan with Judge Waddoups, who is managing all discovery related motions for all pending cases, active or inactive, and request that the Court enter an Order containing the case management provisions as proposed by the State above.

Facilities, Funding and Administration

Funds appropriated by the Legislature for this effort are for the legal and support expenses of the combined effort. PLPCO will provide office space, equipment, and other necessary facilities for legal counsel as well as their salaries or hourly rates; expert and other witness fees; and other necessary legal expenditures consistent with this Updated Plan and within available budget.

The Public Lands Policy Coordinator will review expenditures and resource allocations with the State and the Counties on a regular basis. All participating Counties and the State will have access to financial and other records of the effort, subject to the constraints of maintaining confidentiality. Each participating county will provide personnel and resources as necessary and

³ These counties were selected to complement the efforts being undertaken for the Bishop Public Lands Initiative.

⁴ It is the position of the State that, although SUWA has been granted limited intervention in the pending cases, it is entitled only to participate in depositions as specified in the intervention order and has no say in other discovery issues, scheduling matters, or any substantive matters affecting the general litigation.

available to gather evidence and data for this effort. Each individual County is ultimately responsible for gathering the evidence and data concerning rights-of-way in its own County and does not have claim upon the State for funds appropriated for the collective effort.

PLPCO retains responsibility to account for funds appropriated by the Legislature, along with the responsibility of the Office of the Attorney General to account for funds appropriated to it for the effort. All participating parties will have access to financial and other records of the effort, subject to the constraints of maintaining confidentiality. The PLPCO Director has authority to pay all necessary expenses of litigation, including deposition costs, filing fees, expert witness fees, travel expenses, CLE expenses deemed by the PLPCO Director to benefit the effort, and other daily expenses without approval of the CDC or Client Committee, though a summary of these expenses will be given to both on a regular basis. Decisions regarding hiring of outside counsel will be made after consultation with the Client Committee. The use of discretionary funds will be made after consultation with the CDC, unless it delegates this authority to the R.S. 2477 Client Committee.

Quarterly financial reports will be provided to the CDC unless the CDC elects to meet less than 4 times per year, at which point semi-annual or annual reports will be provided depending on the length of time between meetings.

Dispute Resolution Process

Any disagreements, including those regarding plan implementation, litigation strategy, and resource allocations, are subject to joint discussion of counsel and their clients, in an effort to resolve differences before resorting to the dispute resolution process outlined in Section 63C-4-104 of the Utah Code, which is hereby incorporated by reference.

R.S. 2477 Client Committee

Advice to PLPCO and legal counsel in all matters herein shall be given by the CDC or R.S. 2477 Client Committee, subject to review and oversight by the CDC upon the request by any member of the CDC, the State, or any County affected by any decision of the Client Committee. Because all R.S. 2477 rights-of-way claimed by State of Utah and its Counties are now in litigation in the United States District Court for the District of Utah, the Client Committee's role will be limited to focus on road closures on BLM and other federally owned and managed lands, as well as review of settlement proposals. All Client Committee meetings are confidential and are protected by the attorney-client privilege and attorney work product privilege.

The Governor shall select five persons, including one from SITLA, to represent the State and the Executive Director of the Utah Association of Counties shall select five persons to represent the Counties on the Client Committee. The five committee members representing the State shall select a co-chair from one of their own, and the five committee members representing the Counties shall select another co-chair from one of their own. The Client Committee shall

meet as needed to discuss and determine matters of general legal strategy, information gathering, and other matters relating to the objectives and scope of this amended plan. The Public Lands Policy Coordinator shall inform the Governor and the Counties with respect to their discussions with legal counsel subject to restraints of confidentiality.

Approved this ____ of August, 2015.

Constitutional Defense Council

By: _____
Chair