

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

THE WILDERNESS SOCIETY, <i>et al.</i> ,	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:17-cv-02587 (TSC)
	)	
DONALD J. TRUMP, in his official capacity as	)	
President of the United States, <i>et al.</i> ,	)	
_____ Defendants.	)	
	)	
GRAND STAIRCASE ESCALANTE	)	
PARTNERS, <i>et al.</i> ,	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:17-cv-02591 (TSC)
	)	
DONALD J. TRUMP, in his official capacity as	)	
President of the United States, <i>et al.</i> ,	)	<b>CONSOLIDATED CASES</b>
_____ Defendants.	)	

**AMICUS BRIEF OF LOCAL ELECTED OFFICIALS  
IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS**

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## STATEMENT OF INTEREST OF *AMICI CURIAE*

*Amici* are local elected officials from cities, towns, and counties in the state of Utah.<sup>1</sup> As individuals invested in the future of their communities and state, they have a strong interest in the continued protection of the objects and lands in the Grand Staircase-Escalante National Monument (“Grand Staircase” or “the Monument”). For the last twenty-two years, *amici* have helped shape a Utah that embraces its public lands. They have watched as tourists and new residents have surged into the small towns near the Monument, helping to promote strong, stable rural economies. For their communities, the Monument has produced enormous benefits from increases and improvements in tourism, recreation, and quality of life.

When Secretary of the Interior Ryan Zinke (“Secretary Zinke”) began to review the status of Grand Staircase and other national monuments in the spring of 2017, *amici* attempted to make their voices heard. However, they saw their input and the concerns of their communities overlooked as Secretary Zinke conducted his fleeting review of the status of the Monument. Shut out of key meetings as Secretary Zinke spoke with groups hostile to Grand Staircase, *amici* witnessed firsthand how the review process was biased and one-sided.

Most of all, *amici* are deeply concerned that the Trump Administration’s decision to revoke monument status and protections from approximately half of Grand Staircase will harm their communities and the state of Utah. The reduced size of the Monument will undermine the economic benefits that it has provided for gateway communities. The opening up of the newly unprotected lands to fossil fuel extraction could permanently destroy the recreational value of those lands and puts at risk *amici*’s public commitments to promoting a more sustainable economy.

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<sup>1</sup> *Amici* submit this brief in their individual, rather than official, capacities.



*Amicus* Jackie Biskupski is Mayor of Salt Lake City. *Amicus* Erin Mendenhall is Chair of the Salt Lake City Council; *amicus* Christopher Wharton is Vice-Chair of the Salt Lake City Council; and *amici* Derek Kitchen, Amy Fowler, and Charlie Luke are members of the Salt Lake City Council. *Amici* Jim Bradley, Arlyn Bradshaw, Jenny Wilson, and Ann Granato are members of the Salt Lake County Council.

Salt Lake City and County benefit enormously from public lands-focused tourism, as tourists hoping to explore the Monument often pass through Salt Lake City and the Salt Lake City International Airport. In addition, the City has made public commitments to environmental sustainability, including most recently the City Council’s adoption of a Joint Resolution proposed by Mayor Biskupski that commits the City to using 100% renewable energy for its community electricity supply by 2032, as well as to reducing community-wide greenhouse gas emissions by 80% (compared to a 2009 baseline) by 2040.<sup>2</sup> The decision to revoke the Monument destabilizes such efforts to build a twenty-first economy and undermines the City’s ability to meet its clean energy commitments.

*Amicus* Steven Cox is Mayor of Boulder, Utah. Boulder, population 226, sits at the gateway to the Monument on Highway 12. In the two decades since the creation of the Monument, many people have moved to Boulder to start new businesses tied to the Monument and the local economy has thrived. The Utah Office of Tourism describes the town as a “refreshing seep in a vast wilderness landscape, creating an oasis of rustic and sophisticated rural life,” and references the “nearby” Monument as offering “outdoor adventure and star-filled night

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<sup>2</sup> Salt Lake City Corporation, A Joint Resolution of the Salt Lake City Council and Mayor Establishing Renewable Energy and Carbon Emissions Reductions Goals for Salt Lake City (Nov. 1, 2016), <http://www.slcdocs.com/slcgreen/JointResolution.pdf>.

skies.”<sup>3</sup> The revocation of protections from lands and objects previously included in the Monument impairs Boulder’s ability to rely on the appeal of this large, unspoiled space. During the seven years that Cox has been either mayor or a town council member, no county commissioner, Representative, Senator, or State Official came to him seeking his input on any issues involving the Monument.

*Amici* Roger Armstrong, Kim Carson, Doug Clyde, Chris Robinson and Glenn Wright are members of the Summit County Council. Summit County has a population of 41,000 and is the size of the state of Delaware. A significant portion of the County is comprised of public lands, in particular the Uinta-Wasatch-Cache National Forest. Summit County is also home of two world class ski resorts and the Sundance Film Festival. The County derives vital economic benefits from visitors drawn to the County by recreational opportunities on public lands. Many visitors spend time in Summit County while on a national monument tour. The decision to remove protections from the Monument will significantly threaten the county’s economy by decreasing visitors who seek to explore the remarkable variety and locations of Utah’s wild spaces.

*Amicus* Randy Aton is a member of the Springdale Town Council. *Amici* Rani Derasary and Kalen Jones are members of the Moab City Council. *Amici* Cliff Curry and Margaret Bourke are members of the Alta Town Council. Springdale, Moab, and Alta are all gateway communities to public lands with ample recreational opportunities. Springdale is located at the entrance to Zion National Park, which was originally protected under the Antiquities Act as a National Monument in 1909. Moab is a gateway to Arches National Park (which was also

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<sup>3</sup> See *Boulder Utah*, UTAH OFFICE OF TOURISM, <https://www.visitutah.com/places-to-go/cities-and-towns/boulder/> (last visited Nov. 18, 2018).

originally a National Monument) and to Canyonlands National Park. Alta is surrounded by national forest land in the Wasatch Mountains. All three communities have experienced firsthand how public land protections can drive a stable, vibrant economy.

### **SUMMARY OF ARGUMENT**

In the twenty-two years since President Clinton designated the Monument in 1996, *amici*'s communities have developed tourism- and recreation-based economies. In the counties closest to the Monument, rural economies have grown to welcome almost one million visitors each year. Both the state and these communities have used the Monument in their advertising to encourage tourism. Service jobs in the counties bordering the Monument have grown by over forty percent. The Monument has also drawn new residents to the region because of its beauty and recreational opportunities.

President Trump's decision to revoke protections for half of the Monument will undermine the new economies these communities have built. It sends a message that Utah is not receptive to the protection of public lands, which harms the state's reputation with tourists and the outdoor recreation industry. In addition, it opens the door to coal mining and other forms of resource extraction in the areas removed from the Monument, which will permanently scar the land, hurting the beautiful vistas and recreational opportunities that now form the backbone of local economies and exposing local communities to dangerous boom-and-bust cycles.

Moreover, the administration's refusal to engage with *amici* demonstrates that the decision does not reflect the views of local communities. Instead, the proclamation represented a predetermined outcome to open the Monument to mining and fossil fuel extraction. *Amici* and others living near the Monument were denied a meaningful opportunity make their views known.

For the last two decades, *amici* and their communities have reasonably believed that the Monument would stand as it was designated in 1996 absent congressional action. With the

stroke of a pen, President Trump upset that balance and put at risk decades of careful planning that have created thriving economies based on the protected status of these lands.

## **ARGUMENT**

### **I. COMMUNITIES IN UTAH HAVE BUILT STRONG ECONOMIES IN RELIANCE ON THE PROTECTED STATUS OF THE MONUMENT**

On September 18, 1996, President Clinton issued a proclamation (the “1996 Proclamation”) creating the Grand Staircase-Escalante National Monument.<sup>4</sup> In the more than twenty years since that announcement, many communities in Utah have heavily invested in and embraced economies reliant on the Monument’s protected status. During that time, these cities, counties, and towns have thrived because of the growth of tourism and recreation, and they have made decisive shifts toward economies compatible with the Monument. President Trump’s decision to revoke protections from roughly half of the Monument (the “2017 Proclamation”)<sup>5</sup> will harm these communities and undermine the investments they have made to develop tourism- and recreation-based economies.

#### **A. The Designation of the Monument Has Driven Job Growth and Provided Significant Economic Benefits for Gateway Communities**

The Monument is in one of the most remote and inaccessible regions in the contiguous United States. It is a rugged area of spectacular cliffs and ravines. Kane and Garfield counties, which surround and include the Monument, have a total population of only 12,000 people. Most residents of these counties live in small towns such as Escalante (population 797) and Boulder

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<sup>4</sup> Establishment of Grand Staircase-Escalante National Monument, Proclamation No. 6920, 61 Fed. Reg. 50,223 (Sept. 18, 1996) [hereinafter “1996 Proclamation”].

<sup>5</sup> Modifying the Grand Staircase-Escalante National Monument, Proclamation No. 9682, 82 Fed. Reg. 58,089 (Dec. 8, 2017) [hereinafter “2017 Proclamation”].

(population 226), each of which is located on Highway 12 near an entrance to the Monument. The first road allowing vehicle access to Boulder was not completed until 1935.<sup>6</sup>

Before the establishment of the Monument, this remoteness kept visitors away; now it draws them to the doors of these towns' businesses. Visitation to the Monument has increased steadily over the last two decades.<sup>7</sup> In recent years, almost one million tourists have traveled to the Monument each year<sup>8</sup> and most of them use these gateway communities as the jumping-off points for their visits.

This influx of tourism has driven job creation and economic growth. Before the designation of the Monument, the unemployment rate in Garfield County was twelve percent and its per-capita income was fourteen percent lower than the state average.<sup>9</sup> From 2001 to 2015, total employment in Kane and Garfield counties grew by 24 percent.<sup>10</sup> Service jobs in the region have grown by 42 percent.<sup>11</sup> By 2015, travel and tourism jobs in the region made up 44 percent of total private employment.<sup>12</sup> This job growth translates into higher incomes for residents of

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<sup>6</sup> *About Us: History*, ESCALANTE & BOULDER UTAH CHAMBER OF COMMERCE, <http://www.escalanteut.com/about-us/history/> (last visited Nov. 18, 2018).

<sup>7</sup> See BUREAU OF LAND MGMT., U.S. DEP'T OF THE INTERIOR, GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT: ECONOMIC VALUES AND ECONOMIC CONTRIBUTIONS, at DOI-2018-06 00280 (2017) ("Visitation has increased since designation, rising from an estimated 456,369 visits in 1997 to 926,236 visits in 2016") (attached as Exhibit A).

<sup>8</sup> See BUREAU OF LAND MGMT., U.S. DEP'T OF THE INTERIOR, GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT MANAGER'S ANNUAL REPORT FY 2014, at 9 (2015), [https://www.blm.gov/sites/blm.gov/files/GSENM\\_Manager\\_Annual\\_Report\\_FY2014.pdf](https://www.blm.gov/sites/blm.gov/files/GSENM_Manager_Annual_Report_FY2014.pdf).

<sup>9</sup> Kathryn Schulz, *Food Fight*, NEW YORKER, Oct. 1, 2018, at 44, 51.

<sup>10</sup> HEADWATERS ECONOMICS, GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT: A SUMMARY OF ECONOMIC PERFORMANCE IN THE SURROUNDING COMMUNITIES (Spring 2017), <https://headwaterseconomics.org/wp-content/uploads/Escalante.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

these counties. Over the same period, the region experienced an increase in real personal income of 32 percent and in real per capita income of 17 percent.<sup>13</sup>

B. Gateway Communities Have Developed Diverse Economies

Tourism is not the only driver of economic growth arising from the existence of the Monument. Diverse economies spring out of areas with protected public lands such as national monuments. Second-home owners, retirees, and entrepreneurs who have the flexibility to telecommute are often attracted to regions around national monuments.<sup>14</sup> Macroeconomic trends in the twenty-first century allow for greater population mobility, meaning businesses are increasingly considering or actually moving to areas with significant aesthetic draws and recreational opportunities.<sup>15</sup> Studies have shown that the economy in the western United States is moving away from a “jobs first, then migration” model to one in which people choose their location first and jobs follow.<sup>16</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> See, e.g., Kurt Repanscheck, *Is There Economic Value to that National Monument in Your Backyard*, NAT’L PARKS TRAVELER (Mar. 17, 2010), <https://www.nationalparkstraveler.org/2010/03/there-economic-value-national-monument-your-backyard5531>.

<sup>15</sup> See PUBLIC LAND SOLUTIONS, ECONOMIC DEVELOPMENT PLANNING FOR CULTURAL TOURISM IN BEARS EARS NATIONAL MONUMENT, SAN JUAN COUNTY, UTAH 4 (Apr. 2017), [http://publiclandsolutions.org/wp-content/uploads/2017/04/PLS\\_Bears-Ears-Report-20pgs-vfinal\\_online.pdf](http://publiclandsolutions.org/wp-content/uploads/2017/04/PLS_Bears-Ears-Report-20pgs-vfinal_online.pdf); DAVID MCGRANAHAN, U.S. DEP’T OF AGRICULTURE, ECONOMIC RESEARCH SERVICE, NATURAL AMENITIES DRIVE POPULATION CHANGE 781 (1999); Hannah Gosnell & Jesse Abrams, *Amenity Migration: Diverse Conceptualizations of Drivers, Socioeconomic Dimensions, and Emerging Challenges*, 2009 GEOJOURNAL 1; Paul Lorah & Rob Southwick, *Environmental Protection, Population Change, and Economic Development in the Rural Western United States*, 24 POPULATION & ENV’T 255 (2003).

<sup>16</sup> See, e.g., William B. Beyers & David P. Lindahl, *Lone Eagles and High Fliers in Rural Producer Services*, 11 RURAL DEV. PERSPECTIVES 2, 2–10 (1996); Thomas A. Knapp & Philip E. Gravest, *On the Role of Amenities in Models of Migration and Regional Development*, 29 J. REGIONAL SCI. 71, 71–87 (1989).

In addition, the Monument has not undermined traditional land uses. For example, in creating the management plan for the Monument, the Bureau of Land Management (“BLM”) recognized grazing and ranching permits that existed prior to the 1996 designation. At the time of the 2017 Proclamation, approximately 96% of the Monument’s land was open to grazing.<sup>17</sup> In fact, according to a Department of the Interior (“DOI”) staff report, “no reductions in permitted livestock grazing use have been made as a result of the Monument designation.”<sup>18</sup> Similarly, agriculture and timber harvesting remain parts of the economies near the Monument.<sup>19</sup> This careful compromise between pre-Monument economic interests and newer tourism- and recreation-based economic opportunities is threatened by the President’s decision.

The economic benefits that gateway communities have derived from the Monument reflect a larger trend of communities benefitting from their proximity to protected public lands. Counties in the western states that have at least 100,000 acres of protected public lands—those lands that are specifically designated as protected by the National Park Service, the Forest Service, the Bureau of Land Management, or the Fish & Wildlife Service<sup>20</sup>—have an average

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<sup>17</sup> Jodi Peterson, *A Recent History of Land Management in the Escalante Region: A Monumental Tug of War*, HIGH COUNTRY NEWS (Feb. 16, 2015), <https://www.hcn.org/issues/47.3/chainsaw-diplomacy/a-recent-history-of-land-management-in-the-escalante-region>.

<sup>18</sup> Jonathan Thompson, *At Bears Ears, Trump and Zinke Ignored Everyone but Industry*, HIGH COUNTRY NEWS (Mar. 13, 2018), <https://www.hcn.org/articles/bears-ears-national-monument-trump-and-zinke-ignored-everyone-but-industry>.

<sup>19</sup> HEADWATERS ECONOMICS, *supra* note 10.

<sup>20</sup> These land designations are (with the overseeing agency in parentheses): Areas of Critical Environmental Concern (BLM), National Conservation Areas (BLM), National Monuments (NPS, FS, BLM), National Parks and Preserves (NPS), National Recreation Areas (NPS, FS, BLM), National Wild and Scenic Rivers (NPS, FS, BLM), National Wildlife Refuges (FWS), Research Natural Areas (FS, BLM), Waterfowl Production Areas (FWS), Wilderness (NPS, FWS, FS, BLM), and Wildlife Management Areas (FWS). See Ray Rasker, *An Exploration Into the Economic Impact of Industrial Development Versus Conservation on Western Pub Lands, Society and Natural Resources*, 19 SOC’Y & NAT. RESOURCES 191, 199 (2006).

per capita income that is \$4,360 higher than counties without such land.<sup>21</sup> With respect to national monuments in particular, a study of the “17 national monuments in the 11 western continental states that are larger than 10,000 acres and were created between 1982 and 2001” found that the economies of all adjacent communities expanded after the creation of the monuments—13 out of 17 faster than similar counties elsewhere in their respective states.<sup>22</sup>

Business owners in the communities surrounding national monuments recognize these benefits and have made clear through op-eds, statements in the press, and requests to meet with DOI how much national monument designations have provided economic benefits to their communities.<sup>23</sup> A recent poll of small business owners in the West reflects the strong impact national monuments can have on their bottom lines: 90 percent of small business owners believed that such areas can boost business for local restaurants, hotels, grocery stores, and other

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<sup>21</sup> Ray Rasker, Patricia H. Gude & Mark Delorey, *The Effect of Protected Federal Lands on Economic Prosperity in the Non-Metropolitan West*, 43 J. REGIONAL ANALYSIS & POL’Y 110, 119 (2013).

<sup>22</sup> HEADWATERS ECONOMICS, UPDATED SUMMARY: THE ECONOMIC IMPORTANCE OF NATIONAL MONUMENTS TO LOCAL COMMUNITIES (Spring 2017), <https://headwaterseconomics.org/wp-content/uploads/monuments-summary.pdf>.

<sup>23</sup> See, e.g., John Gilroy, *Businesses Ask Trump Administration to Leave National Monuments Intact*, PEW CHARITABLE TRUSTS (Nov. 17, 2017), <http://www.pewtrusts.org/en/research-and-analysis/blogs/compass-points/2017/11/17/businesses-ask-trump-administration-to-leave-national-monuments-intact>; Kris Waggoner, *Opinion, America’s National Monuments Contribute to Economy, Support Small Businesses*, MORNING CONSULT (Apr. 27, 2017), <https://morningconsult.com/opinions/americas-national-monuments-contribute-economy-support-small-businesses/>; Kevin Miller, *Katahdin-Area National Monument Already Paying Off for Locals*, PORTLAND PRESS HERALD (Jan. 8, 2017), <https://www.pressherald.com/2017/01/08/katahdin-area-monument-already-paying-small-dividends/>.



local businesses, and a majority believed that private development of such lands would limit public enjoyment of them.<sup>24</sup>

Protected public lands benefit not only those communities in the immediate vicinity of the Monument, but the rest of the state as well. A 2016 study by the National Park Service found that in one year alone, 14.4 million people visited national parks, monuments, and other sites within the national park system in Utah.<sup>25</sup> In total, these visits provided approximately \$1.1 billion in direct expenditures in the regions around Utah public lands.<sup>26</sup> This tourist spending in the state created 17,596 jobs and \$547.1 million in labor income.<sup>27</sup> More broadly, consumers spend approximately \$12.3 billion annually on outdoor recreation in Utah.<sup>28</sup> This spending results in 110,000 direct jobs, \$3.9 billion in wages paid within the state, and \$737 million in state and local tax revenue.<sup>29</sup>

It is therefore not surprising that over the past two decades, public opinion in Utah has shifted such that the once-controversial Monument now enjoys strong support. A July 2016 survey for the Pew Charitable Trusts of 600 registered voters in Utah found that 52 percent believed that the designation of the Monument was a good thing for the state, while only 23

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<sup>24</sup> See SMALL BUSINESS MAJORITY, ECONOMIC REPORT: A SMALL BUSINESS VOICE FOR PUBLIC LANDS IN THE WEST (2014), <https://www.smallbusinessmajority.org/sites/default/files/research-reports/041615-public-lands-report-west.pdf>.

<sup>25</sup> NATIONAL PARK SERVICE, 2017 NATIONAL PARK VISITOR SPENDING EFFECTS: ECONOMIC CONTRIBUTIONS TO LOCAL COMMUNITIES, STATES, AND THE NATION 42 (2018), <https://www.nps.gov/subjects/socialscience/vse.htm>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> OUTDOOR INDUSTRY ASS'N, UTAH FACT SHEET, [https://outdoorindustry.org/wp-content/uploads/2017/07/OIA\\_RecEcoState\\_UT.pdf](https://outdoorindustry.org/wp-content/uploads/2017/07/OIA_RecEcoState_UT.pdf).

<sup>29</sup> *Id.*

percent believed that it was a bad thing.<sup>30</sup> Similarly, in an October 2017 poll of 605 registered voters in Utah commissioned by the Salt Lake Tribune and the University of Utah’s Hinckley Institute of Politics, 53 percent of respondents said that the Monument should not be broken up, compared to 27 percent who said it should be.<sup>31</sup>

## II. THE PROCLAMATION HARMS GATEWAY COMMUNITIES IN UTAH

On December 4, 2017, President Trump issued the 2017 Proclamation, which revokes the Monument and replaces it with three separate units, referred to as the Grand Staircase Unit, the Kaiparowits Unit, and the Escalante Unit.<sup>32</sup> The total area of these three disconnected units is 1,003,863 acres, approximately half the size of the pre-existing Grand Staircase-Escalante Monument.<sup>33</sup> The areas removed from the Monument are now “open to: (1) entry, location, selection, sale or other disposition under the public land laws; (2) disposition under all laws

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<sup>30</sup> Benenson Strategy Group, *Utah: Grand Staircase-Escalante National Monument Survey 4* (Aug. 2016), <https://www.pewtrusts.org/~media/assets/2016/08/3935-pew-utah-grand-staircaseescalante-topline-final.pdf>.

<sup>31</sup> See Brian Maffly, *Majority of Utahns Favors Trimming Bears Ears, But Most Oppose Breaking Up Grand Staircase, Poll Says*, SALT LAKE TRIB. (Oct. 24, 2017), <https://www.sltrib.com/news/environment/2017/10/24/majority-of-utahns-favor-trimming-bears-ears-but-most-oppose-breaking-up-grand-staircase-poll-says/>. This pattern of initial controversy giving way to later support has occurred repeatedly after the designation of national monuments. For example, President Franklin D. Roosevelt’s 1943 designation of Jackson Hole National Monument was met with lawsuits and a bill that would have abolished the monument. The area was eventually added to Grand Teton National Park, and outspoken critics of the land’s protection came to be vocal supporters. Former Wyoming Governor Cliff Hansen, for example, stated in 1967 that he was happy to have lost in his fight against expanded protection because “Grand Teton National Park is one of the greatest natural heritages of Wyoming and the nation and one of our great assets.” Jeremy Pelzer, *“I’m Glad I Lost”: Hansen at First Fought Grand Teton Expansion*, BILLINGS GAZETTE (Oct. 22, 2009), [https://billingsgazette.com/news/state-and-regional/wyoming/i-m-glad-i-lost-hansen-at-first-fought-grand/article\\_f8d23214-bec7-11de-9f07-001cc4c03286.html](https://billingsgazette.com/news/state-and-regional/wyoming/i-m-glad-i-lost-hansen-at-first-fought-grand/article_f8d23214-bec7-11de-9f07-001cc4c03286.html).

<sup>32</sup> 2017 Proclamation, 82 Fed. Reg. at 58,089, 58,093.

<sup>33</sup> *Id.* at 58,093.

relating to mineral and geothermal leasing; and (3) location, entry, and patent under the mining laws.”<sup>34</sup>

The President’s decision to revoke protections from the Monument will hurt Utah communities in multiple ways. First, it will directly reduce the benefits described above, as a smaller and fractured Monument draws fewer tourists and less recreation spending. The many businesses that directly rely on the Monument will be harmed as a result.<sup>35</sup>

Second, it sends a broader message that Utah is not receptive to the protection of public lands. Because of the involvement of Senator Orrin Hatch and other federal and statewide elected officials in Utah in the revocation decision, this message harms the state’s reputation with tourists and the outdoor recreation industry. After decades of Salt Lake City hosting the annual Outdoor Retailer show—which is estimated to generate \$45 million in annual direct spending—organizers announced in 2017 that they were moving the show to Colorado due to Utah officials’ push to revoke protections from Grand Staircase and the Bears Ears National Monument.<sup>36</sup>

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<sup>34</sup> *Id.* at 58,093-94.

<sup>35</sup> *See, e.g.*, Schulz, *supra* note 9 (describing the Hell’s Backbone Grill, an acclaimed restaurant in Boulder that is now one of the largest employers in the Garfield County); *Tours of the Grand Staircase-Escalante N.M.*, DREAMLAND SAFARI TOURS, <http://www.dreamlandtours.net/day-tours/grand-staircase-escalante-national-monument/> (last visited Nov. 18, 2018) (describing tours of the Monument provided by an area business); *Grand Staircase Tours*, GRAND CIRCLE TOURS, <http://www.vermilioncliffs.net/guided-tours/grand-staircase-escalante-tours> (last visited Nov. 18, 2018) (same); *Grand Staircase ATV Tours*, GRAND STAIRCASE ATV, <https://www.grandstaircaseatv.com/> (last visited Nov. 18, 2018) (same); *Bryce & Escalante Basecamp*, WILDLAND TREKKING, <https://www.wildlandtrekking.com/zion-bryce-escalante/camping-tours/escalante-hiking-tour.html> (last visited Nov. 18, 2018) (same); *Grand Staircase*, SLOT CANYONS INN BED & BREAKFAST, <https://www.slotcanyonsinn.com/grand-staircase/> (last visited Nov. 18, 2018) (describing the Monument as an attraction).

<sup>36</sup> *See, e.g.*, Brady McCombs, *Ahead of Outdoor Retailer Show’s Move to Denver, Industry Rallies in Utah for Public Land Protections*, DENVER POST (July 27, 2017),

More generally, the decision hurts Utah communities' ability to brand themselves as welcoming of outdoor recreation. As explained above, outdoor recreation is a vital part of the state's economy.<sup>37</sup> In Utah today, outdoor recreation jobs outstrip mining and energy jobs by more than two to one.<sup>38</sup> Executives at the fifty fastest growing businesses in Utah gave outdoor recreation and Utah's outdoor lifestyle as two of the most frequently cited factors for locating in Utah.<sup>39</sup> If the 2017 Proclamation stands, Utah risks driving away both tourists and people interested in moving to the state to take advantage of its outdoor recreation opportunities.

Third, the removal of vast areas from national monument protection will expose them to activities, especially fossil fuel extraction, that are incompatible with the outdoor recreation-focused tourism on which the region's economy is based. Because of the remarkable paleontological, archeological, and biodiversity resources contained within the Monument, the BLM has managed Grand Staircase to maintain its remote and undeveloped character and thus preserve opportunities for the scientific study of these resources.<sup>40</sup> The tourism and recreation economy of the region has therefore emphasized the primitive state of the Monument. As a result, this economy is particularly sensitive to management changes that will allow development and activities that scar the landscape.

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<https://www.denverpost.com/2017/07/27/outdoor-retailer-show-utah-public-lands-protections-rally/>.

<sup>37</sup> See *supra* notes 25–29 and accompanying text.

<sup>38</sup> See, e.g., OUTDOOR INDUSTRY ASS'N, *supra* note 28.

<sup>39</sup> See MARIN CHRISTENSEN & SAMANTHA BALL, KEN C. GARDINER POLICY INSTITUTE, UNIVERSITY OF UTAH, UTAH OUTDOOR PARTNERS SURVEY OF BUSINESS 1 (2018), <http://gardner.utah.edu/wp-content/uploads/2018-Outdoor-Partners-Report-FINAL.pdf>.

<sup>40</sup> BUREAU OF LAND MGMT., GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT APPROVED MANAGEMENT PLAN – RECORD OF DECISION iv, 5 (1999), <https://ia800202.us.archive.org/11/items/grandstaircasees00unit/grandstaircasees00unit.pdf>.

The 2017 Proclamation has now opened vast areas of the Monument to mining. The areas removed from national monument status contain 11 billion tons of recoverable coal deposits, as well as up to 10.5 trillion cubic feet of coalbed methane and 550 million barrels of oil shale deposits.<sup>41</sup> In fact, as described in more detail below, it is now clear that DOI specifically and impermissibly designed the revised boundaries based on the lands' mineral extraction potential.<sup>42</sup>

The risk of mining activities occurring on these lands is not merely hypothetical. Before the designation of Grand Staircase in 1996, there were active oil, gas, and coal leases in the areas that became the Monument and Andalex Resources, a Dutch company, was preparing to develop a large coal mine on the Kaiparowits Plateau.<sup>43</sup> Earlier this year, a Canadian mining company announced that it was beginning operations at a copper and cobalt mine on lands removed from the Monument.<sup>44</sup>

The physical impacts of coal mining and other forms of mineral extraction will irreparably reduce the value of those lands for outdoor recreation-based tourism. Coal mining

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<sup>41</sup> Thompson, *supra* note 18.

<sup>42</sup> See Eric Lipton & Lisa Friedman, *Oil Was Central in Decision to Shrink Bears Ears Monument, Emails Show*, N.Y. TIMES (Mar. 2, 2018), <https://nyti.ms/2FJYEUY>; see also Brian Maffly, *Oil and Coal Drove Trump's Call to Shrink Bears Ears and Grand Staircase, According to Insider Emails Released by Court Order*, SALT LAKE TRIB. (Mar. 2, 2018), <https://www.sltrib.com/news/environment/2018/03/02/interior-department-emails-show-oil-and-coal-played-a-big-role-in-bears-ears-grand-staircase-monument-redraws/>.

<sup>43</sup> See James R. Rasband, *Utah's Grand Staircase: The Right Path to Wilderness Preservation?*, 70 U. COLO. L. REV. 483, 509–10 (1999); see also M. LEE ALLISON, UTAH GEOLOGICAL SURVEY, A PRELIMINARY ASSESSMENT OF ENERGY AND MINERAL RESOURCES WITHIN THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT 8–10, 22–23, 25–32, D-1 to D-2 (Jan. 1997), <https://ugspub.nr.utah.gov/publications/circular/c-93.pdf>.

<sup>44</sup> Brian Maffly, *A Canadian Firm Wants to Start Mining on Utah Lands that Used to be Part of Grand Staircase-Escalante National Monument*, SALT LAKE TRIB., June 21, 2018, <https://www.sltrib.com/news/environment/2018/06/21/a-canadian-firm-wants-to-start-mining-on-utah-lands-that-used-to-be-part-of-grand-staircase-escalante-national-monument/>.

not only scars the land through excavation and the building of infrastructure, but also removes surface flora, releases air and water pollution, and increases heavy vehicle traffic.<sup>45</sup> These changes drive away tourists because they threaten the unique character of the land. The natural wonders that have until now drawn visitors to the communities surrounding the Monument—native vegetation, wildlife, exotic species, and beautiful vistas—will be imperiled.

The 2017 Proclamation also allows other activities incompatible with outdoor recreation-based tourism even on lands that remain in the Monument. It authorizes increased motorized vehicle use within the Monument and allows the Secretary of the Interior to “maintain roads and trails for such use.”<sup>46</sup> The DOI itself has extensively catalogued the negative and often long-term effects that vehicles can have on the environments and appearances of protected lands.<sup>47</sup> In addition, the 2017 Proclamation reverses the 1996 Proclamation by allowing more intensive vegetation management within the Monument.<sup>48</sup>

More fundamentally, a fossil fuel-based economy will not be an adequate replacement for the weakened tourism- and recreation-based economy. The role of coal in American electricity production is declining precipitously; while coal-fired power plants accounted for approximately 50% of electricity generation in 2008, as a result of the surge in domestic natural gas production,

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<sup>45</sup> See Courtney B. Kramer, *Reclaiming Reclamation: The Benefits and Costs of Hardrock Mining*, COLO. J. INT’L ENVTL. L. & POL’Y 293, 297–302 (2008); BUREAU OF LAND MGMT., ALTON COAL TRACT LEASE BY APPLICATION FINAL ENVIRONMENTAL IMPACT STATEMENT, CHAPTER 4: ENVIRONMENTAL IMPACTS (July 2018), available at [https://eplanning.blm.gov/epl-front-office/projects/nepa/79446/150899/185115/10\\_Alton\\_FEIS\\_Chapter\\_4\\_Environmental\\_Impacts\\_20180711.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/79446/150899/185115/10_Alton_FEIS_Chapter_4_Environmental_Impacts_20180711.pdf).

<sup>46</sup> 2017 Proclamation, 82 Fed. Reg. at 58,094.

<sup>47</sup> See, e.g., U.S. GEOLOGICAL SURVEY, U.S. DEP’T OF THE INTERIOR, ENVIRONMENTAL EFFECTS OF OFF-HIGHWAY VEHICLES ON BUREAU OF LAND MANAGEMENT LANDS xii–iii (2007).

<sup>48</sup> 2017 Proclamation, 82 Fed. Reg. at 58,094.

this share had dropped to 30% by 2016.<sup>49</sup> Coal consumption in the United States declined by 13% in 2015 alone and by another 8.4% in 2016.<sup>50</sup> Coal extraction is thus an unreliable peg on which to hang local communities' economies.

In addition, whereas tourism and recreation employ large numbers of service workers, the coal industry is trending toward automation. Even before demand for coal declined, automation—particularly in the mining practices that predominate in the western United States—reduced the number of jobs in the industry even as the productivity of mines increased.<sup>51</sup> It is therefore unlikely that coal mining will produce a significant number of jobs in the Monument region.

Moreover, even if mining did create some jobs in the short term, returning to an extraction-based economy would bring back a boom-and-bust cycle to regions that have found stable economic growth through Monument-related industries. Although a natural resource-based economy may provide short-term benefits, long-term reliance on natural resources can result in a phenomenon known as the “‘resource curse’—the empirical observation that resource dependence depresses long-term GDP growth relative to diversified economies.”<sup>52</sup> Multiple

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<sup>49</sup> John Muyskens, Dan Keating & Samuel Granados, *Mapping How the United States Generates Its Electricity*, WASH. POST (Mar. 28, 2017), [https://www.washingtonpost.com/graphics/national/power-plants/?utm\\_term=.2c4e90087def](https://www.washingtonpost.com/graphics/national/power-plants/?utm_term=.2c4e90087def).

<sup>50</sup> U.S. ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, ANNUAL COAL REPORT 2016, at 44 (Nov. 2017), <https://www.eia.gov/coal/annual/archive/05842016.pdf>; U.S. ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, ANNUAL COAL REPORT 2015, at 44 (Nov. 2016), <https://www.eia.gov/coal/annual/archive/05842015.pdf>.

<sup>51</sup> See Devashree Saha & Sifan Liu, *Increased Automation Guarantees a Bleak Outlook for Trump's Promises to Coal Miners*, BROOKINGS INSTITUTION (Jan. 25, 2017), <https://www.brookings.edu/blog/the-avenue/2017/01/25/automation-guarantees-a-bleak-outlook-for-trumps-promises-to-coal-miners/>.

<sup>52</sup> Julia Haggerty et al., *Long-term Effects of Income Specialization in Oil and Gas Extraction: The U.S. West, 1980-2011*, 45 ENERGY ECON. 186, 187 (2014).

phenomena contribute to the resource curse, including “the ‘crowding out’ effect that resource extraction dominance can have on other economic sectors, the price volatility of commodities being extracted, the transiency of an extractive industry workforce, some localized inflation, and a tendency for communities to overestimate the need for and overspend on expansion of local infrastructure.”<sup>53</sup>

Communities in the western United States have already seen this disruptive cycle. While fossil-fuel extraction brought new workers and money to small towns during the 1970s and 1980s, once the booms ended, those economic benefits disappeared and often left the communities worse off than they were before.<sup>54</sup> For example, one study found that over the long term, boom counties saw lower per capita income and higher unemployment compensation payments compared to non-boom counties.<sup>55</sup> Another study found that long-term specialization in the oil and gas sector was associated with lower per capita income and increased crime rates.<sup>56</sup> The Monument, therefore, presents a better means for sustainable growth for Utah and its rural communities than the familiar and dangerous cycle of boom and bust.

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<sup>53</sup> ENVTL. LAW INSTITUTE & WASH. & JEFFERSON COLLEGE CTR. FOR ENERGY POL’Y & MGMT., GETTING BOOM WITHOUT THE BUST: GUIDING SOUTHWESTERN PENNSYLVANIA THROUGH SHALE GAS DEVELOPMENT 8 (2014), <https://www.eli.org/sites/default/files/eli-pubs/getting-boom-final-paper-exec-summary-2014-07-28.pdf>.

<sup>54</sup> See THOMAS MICHAEL POWER & RICHARD N. BARRETT, POST-COWBOY ECONOMICS: PAY AND PROSPERITY IN THE NEW AMERICAN WEST (2001); Steven C. Deller, et al., *The Role of Amenities and Quality of Life in Rural Economic Growth*, 83 AM. J. AGRICULTURAL ECON. 352 (2001) (showing that resource booms can hurt the ecology of areas such that amenity-driven economic activity is repelled).

<sup>55</sup> Grand D. Jacobsen & Dominic P. Parker, *The Economic Aftermath of Resource Booms: Evidence from Boomtowns in the Economic West*, 126 ECON. J. 1092, 1092–93 (2014).

<sup>56</sup> Haggerty et al., *supra* note 52.



### III. THE MONUMENT REVIEW PROCESS IGNORED LOCAL VOICES AND RESULTED IN A PROCLAMATION THAT WAS BASED ON A CONSIDERATION OF IMPERMISSIBLE FACTORS

#### A. The Review Process Favored Fossil Fuel Extraction and Ignored Local Voices that Supported the Monument

On April 26, 2017, President Trump ordered the Secretary of the Interior to review the status of all national monuments created or expanded since 1996.<sup>57</sup> Under the schedule created by the executive order, Secretary Zinke had to send his report to the White House after 120 days.<sup>58</sup> This timeline gave him only four months for a survey of twenty-seven national monuments.<sup>59</sup>

Internal DOI documents reveal the central role that fossil fuel resources played in the review process for the Monument. From the beginning, senior agency officials instructed staff to quantify the coal, oil, and natural gas deposits that were currently off-limits to extraction in all of the monuments under review.<sup>60</sup> A follow-up email in June reminded staff to look at how the creation of Grand Staircase and the Bears Ears National Monument may have harmed mining in those regions.<sup>61</sup> With regard to Grand Staircase in particular, DOI staff produced a series of estimates of the amount of coal that could be produced from the Kaiparowits plateau portion of

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<sup>57</sup> Review of Designations under the Antiquities Act, Exec. Order No. 13,792, 82 Fed. Reg. 20,429, 20,429–30 (May 1, 2017).

<sup>58</sup> *Id.* at 20,429.

<sup>59</sup> See *Secretary Zinke Sends Monument Report to the White House*, U.S. DEP'T OF INTERIOR (Aug. 24, 2017), <https://www.doi.gov/pressreleases/secretary-zinke-sends-monument-report-white-house>.

<sup>60</sup> Lipton & Friedman, *supra* note 42; see also E-mail from Randal Bowman to James Cason, Acting Deputy Secretary of the DOI, at DOI-2018-07 00908 (May 9, 2017, 4:12 PM) (attached as Exhibit B).

<sup>61</sup> Email from Kenneth Mahoney to Sheldon (Mark) Wimmer, et al., “Fwd: Additional Potential Questions for Monument Review,” (Jun. 1, 2017, 12:31 PM), <http://www.documentcloud.org/documents/4391967-National-Monuments-a-Look-at-the-Debate-From.html#document/p110/a407706>.

the Monument.<sup>62</sup> Secretary Zinke’s final report emphasized as a central finding that “[a]reas encompassed within [the Monument] contain an estimated several billion tons of coal.”<sup>63</sup> The boundaries created by the 2017 Proclamation carefully excluded from protection billions of tons of coal reserves.<sup>64</sup>

During the review process, Secretary Zinke spent only four days visiting the Monument and interacting with a select handful of fossil fuel industry supporters.<sup>65</sup> *Amici* and other local people supportive of the Monument tried to make their voices heard, but were ignored. For example, DOI turned down a meeting with members of the Escalante & Boulder Utah Chamber of Commerce.<sup>66</sup> The chamber subsequently sent a delegation to Washington, D.C., where Secretary Zinke again refused to meet with them.<sup>67</sup> Instead, Secretary Zinke held private meetings during his visit with the Garfield, San Juan, and Kane county commissions—all of

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<sup>62</sup> See BUREAU OF LAND MGMT., *supra* note 7, at DOI-2018-06 00281 to DOI-2018-06 00282 (2017) (attached as Exhibit A).

<sup>63</sup> Ryan K. Zinke, Final Report Summarizing Findings of the Review of Designations under the Antiquities Act 13 (undated, officially released Dec. 5, 2017), [https://www.doi.gov/sites/doi.gov/files/uploads/revised\\_final\\_report.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/revised_final_report.pdf).

<sup>64</sup> See Brian Maffly, *Scientists Decry Trump’s Move to Strip Fossil Treasures from Utah’s Grand Staircase Monument*, SALT LAKE TRIB. (Dec. 11, 2017), <https://www.sltrib.com/news/environment/2017/12/10/scientists-decry-trumps-move-to-strip-fossil-treasures-from-utahs-grand-staircase-monument/>; BUREAU OF LAND MGMT., U.S. DEP’T OF THE INTERIOR, GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT, MINERAL POTENTIAL REPORT FOR THE LANDS NOW EXCLUDED FROM GRAND-STAIRCASE ESCALANTE NATIONAL MONUMENT, at 37–43 (2018) (describing coal deposits in areas carved out of Monument), [https://eplanning.blm.gov/epl-front-office/projects/lup/94706/154275/188892/GSKRMP\\_Mineral\\_Potential\\_Report\\_508.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/94706/154275/188892/GSKRMP_Mineral_Potential_Report_508.pdf).

<sup>65</sup> *Secretary Zinke’s Visit to Bears National Monument*, U.S. DEP’T OF THE INTERIOR (May 10, 2017), <https://www.doi.gov/pressreleases/secretary-zinkes-visit-bears-ears-national-monument>.

<sup>66</sup> See Jack Fitzpatrick, *Interior Turns Down Meetings with 2 Groups Supporting Utah Monuments*, MORNING CONSULT (May 8, 2017), <https://morningconsult.com/2017/05/08/interior-turns-meetings-2-groups-supporting-utah-monuments/>.

<sup>67</sup> Schulz, *supra* note 9.

which were at that time hostile to the Monument—and declined to disclose any records from those meetings.<sup>68</sup>

Even had Secretary Zinke spent the majority of the four-month-long review period meeting with local groups, the sheer number of monuments under review combined with the short period of time necessarily made it impossible for him to truly engage with local concerns or consider each monument’s protections for objects of historic or scientific value. Contrast this process with the designation of Bears Ears National Monument, before which former Interior Secretary Sally Jewell held more than 1,000 meetings with local people and interest groups over four years.<sup>69</sup> Under Secretary Zinke’s review, those who lived closest to the Monument were denied a meaningful opportunity to make their views known.

Because of the emphasis on fossil fuel extraction, the decision to shrink the Monument was a foreordained conclusion to the review process. As noted above, DOI staff were asked to prepare multiple estimates of coal reserves within the Monument and the 2017 Proclamation revoked monument status for most areas with coal reserves. Unredacted documents released by DOI in the summer of 2018 clearly demonstrate that these analyses drove the agency’s recommendations. For example, a July 3, 2017, email from Nikki Moore, Division Chief for National Conservation Lands at the BLM, highlighted that five draft economic reports on national monuments under review contained information on “our ability to estimate the value of energy and/or minerals forgone as a result of the designations.”<sup>70</sup> A Freedom of Information Act

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<sup>68</sup> Fitzpatrick, *supra* note 66.

<sup>69</sup> See Brian Calvert, *Sally Jewell Defends Interior Department Legacy*, HIGH COUNTRY NEWS (Sept. 12, 2017), <http://www.hcn.org/issues/49.17/departments-of-the-interior-an-exit-interview-with-sally-jewell>.

<sup>70</sup> Juliet Eilperin, *Trump Administration Officials Dismissed Benefits of National Monuments*, WASH. POST (July 23, 2018), <https://www.washingtonpost.com/national/health-science/trump->

officer originally redacted this statement on the basis that it could “reveal strategy about the [national monument] review process,”<sup>71</sup> which demonstrates that the administration’s goal was to open the Monument to fossil fuel extraction from the beginning. Another document revealed that Randal Bowman, the lead staff member on the review, told his colleagues in a May 2017 webcast that “barring a surprise, there is no new information that’s going to be submitted” during the public comment process.<sup>72</sup> This statement shows that the agency’s mind was closed and that the public process was a sham.

B. The Monument Review Process Was Based on a Consideration of Factors that are Irrelevant under the Antiquities Act

Under the Antiquities Act, the President must make only two determinations. First, when designating a new monument, he must identify the objects of scientific or historic value.<sup>73</sup> Second, he must identify the smallest area necessary to protect the objects.<sup>74</sup> In 2004, a federal court in Utah concluded that President Clinton’s 1996 Proclamation satisfied these requirements.<sup>75</sup>

By contrast, President Trump’s executive order initiating the review process directed the Secretary to consider the Monument’s effects “on the available uses of [the] designated Federal lands;” the effects of the Monument “on the use and enjoyment of non-federal lands;” “concerns of State, tribal, and local governments affected by a designation, including [] economic

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[administration-officials-dismissed-benefits-of-national-monuments/2018/07/23/5b8b1666-8b9a-11e8-a345-a1bf7847b375\\_story.html](https://www.washingtonpost.com/news/energy-environment/wp/2018/07/23/administration-officials-dismissed-benefits-of-national-monuments/2018/07/23/5b8b1666-8b9a-11e8-a345-a1bf7847b375_story.html).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* Video archived at <http://www.screencast.com/t/JdV0uoruZ> (last visited Nov. 18, 2018).

<sup>73</sup> 54 U.S.C. § 320301(a).

<sup>74</sup> *Id.* § 320301(b).

<sup>75</sup> *Utah Ass’n of Counties v. Bush*, 316 F. Supp. 2d 1172, 1183 (D. Utah 2004).

development;” the federal resources available to manage the Monument; and “other such factors as the Secretary deems appropriate.”<sup>76</sup> None of these factors are mentioned in the Antiquities Act.

Moreover, the President clearly intended that the “other factors” that the Secretary was to consider in his review should include fossil fuel reserves and extraction potential. President Trump had in a prior executive order directed DOI, along with other federal agencies, to “review existing regulations that potentially burden the development or use of domestically produced energy resources.”<sup>77</sup> This executive order expressed a clear preference for non-renewable resources, requiring “particular attention to oil, natural gas, coal, and nuclear resources.”<sup>78</sup> As described above, fossil fuel potential was the key factor driving DOI’s ultimate recommendation. Both the executive order and the course of DOI’s deliberations demonstrate that the new boundaries established by the 2017 Proclamation were not based on a consideration of whether the Monument represented the smallest area compatible with the proper care and management of the objects to be protected, but were instead designed to allow the extraction of fossil fuels and other mineral resources.

#### **IV. INTERPRETING THE ANTIQUITIES ACT TO ALLOW PRESIDENTS TO REVOKE NATIONAL MONUMENTS WILL DESTABILIZE THE NATIONAL MONUMENT SYSTEM THAT HAS EXISTED SINCE 1906**

Communities in Utah reasonably relied on the existence of the Monument as a basis for their economic development. For decades, the federal government has understood the President’s authority under the Antiquities Act to act as a one-way ratchet: the President may

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<sup>76</sup> Exec. Order No. 13,792, 82 Fed. Reg. at 20,429–30.

<sup>77</sup> Promoting Energy Independence and Economic Growth, Exec. Order No. 13,783, 82 Fed. Reg. 16,093 (Mar. 28, 2017).

<sup>78</sup> *Id.* at 16,093.

designate a national monument, but may not shrink or revoke it.<sup>79</sup> Moreover, in the case of the Monument, this reliance was based not only on President Clinton’s proclamation, but on subsequent congressional acts that recognized the boundaries of and protections afforded by the Monument.<sup>80</sup> In addition, in a 2009 law, Congress demonstrated an intent to preserve national monuments managed by BLM, including Grand Staircase, when it established the National Landscape Conservation System to manage these areas with a purpose “to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations.”<sup>81</sup> The reference to “future generations,” in particular, demonstrates that Congress intended monument protections to be permanent.<sup>82</sup>

Interpreting the Antiquities Act to provide the President—rather than Congress exclusively—the power to remove lands from a national monument would harm the reliance interests founded on this long history. Congress retains the authority to shrink or eliminate entirely national monuments. If it chooses to do so, gateway communities can participate in the political process to influence these decisions. But to read into the Antiquities Act presidential

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<sup>79</sup> See UDB Plaintiffs’ Memorandum of Points and Authorities in Opposition to Federal Defendants’ Motion to Dismiss at 36-43, No. 17-cv-02605-TSC (D.D.C. Nov. 15, 2018).

<sup>80</sup> See Utah Schools and Land Exchange Act of 1998, Pub. L. No. 105-335, § 2(14), 112 Stat. 3139, 3141; Automobile National Heritage Area Act of 1998, Pub. L. No. 105-355, §§ 201–202 112 Stat. 3247, 3252-53; Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, § 2604(c), 123 Stat. 991, 1120.

<sup>81</sup> Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, § 2002(a), 123 Stat. 991, 1095.

<sup>82</sup> This intent is confirmed by the legislative history, in which the Chairman of the Subcommittee on National Parks, Forests, and Public Lands explained that “the primary motivation of this legislation” was to ensure that “in the future, one of the permanencies that we would like to establish is that no President or administration with the stroke of a pen can destroy what has been set aside.” *H.R. 2016, National Landscape Conservation System Act: Legislative Hearing Before the Subcommittee on National Parks, Forests and Public Lands of the Committee on Natural Resources, H.R., 110th Congress* 47 (June 7, 2007) (statement of Rep. Grijalva) (attached as Exhibit C).

power to revoke national monument protections unilaterally goes against this long-recognized balance between presidential designation—including the ability to act quickly to protect an area from potential threats—and congressional modification, which is more time-consuming and deliberate. Interpreting the Antiquities Act to allow the President to revoke existing monument protections will upset these reliance interests and make the economic future of gateway communities less secure, not only in Utah but around all national monuments across the country.

### CONCLUSION

For the foregoing reasons, *amici* respectfully request that that the Court deny Defendants' motion to dismiss.

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Respectfully submitted,

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