

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

HOPI TRIBE, <i>et al.</i> , Plaintiffs,	)	
	)	
v.	)	Case No. 1:17-cv-02590 (TSC)
	)	
DONALD J. TRUMP, in his official capacity as President of the United States, <i>et al.</i> ,	)	
Defendants.	)	
<hr/>		
	)	
UTAH DINÉ BIKÉYAH, <i>et al.</i> ,	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:17-cv-02605 (TSC)
	)	
DONALD J. TRUMP, in his official capacity as President of the United States, <i>et al.</i> ,	)	
Defendants.	)	
<hr/>		
	)	
NATURAL RESOURCES DEFENSE COUNCIL, <i>et al.</i> ,	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:17-cv-02606 (TSC)
	)	
DONALD J. TRUMP, in his official capacity as President of the United States, <i>et al.</i> ,	)	<b>CONSOLIDATED CASES</b>
Defendants.	)	
<hr/>		

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

**TABLE OF CONTENTS**

	<b>Page(s)</b>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	ii
STATEMENT OF INTEREST OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	4
ARGUMENT .....	5
I. THE MONUMENT REVIEW PROCESS IGNORED LOCAL VOICES AND RESULTED IN A PROCLAMATION THAT WAS BASED ON A CONSIDERATION OF IMPERMISSIBLE FACTORS .....	5
A. The Review Process Favored Mineral Extraction and Ignored Local Voices that Supported the Monument.....	5
B. The Monument Review Process Was Based on a Consideration of Factors that are Irrelevant under the Antiquities Act .....	10
II. THE PROCLAMATION HARMS GATEWAY COMMUNITIES IN UTAH.....	11
A. Gateway Communities Will Lose much of the Anticipated Economic Benefit of Monument Designation.....	12
B. The Revocation of the Monuments Sends a Message that Utah is Hostile to Outdoor Recreation .....	17
C. Opening Monument Lands to Mining Will Lead to Environmentally-Destructive Development and a Harmful Boom-and-Bust Cycle .....	18
III. INTERPRETING THE ANTIQUITIES ACT TO ALLOW PRESIDENTS TO REVOKE NATIONAL MONUMENTS WILL DESTABILIZE THE NATIONAL MONUMENT SYSTEM THAT HAS EXISTED SINCE 1906.....	22
CONCLUSION.....	23

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Nat’l Mining Ass’n v. Zinke</i> , 877 F.3d 845 (9th Cir. 2017) .....	19
<b>Statutes</b>	
54 U.S.C. § 320301 .....	10
Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, § 2002(a), 123 Stat. 991, 1095.....	22
<b>Presidential Proclamations and Executive Orders</b>	
Establishment of the Bears Ears National Monument, Proclamation No. 9558, 82 Fed. Reg. 1139 (Jan. 5, 2017).....	5, 14
Modifying the Bears Ears National Monument, Proclamation No. 9681, 82 Fed. Reg. 58,081 (Dec. 8, 2017) .....	9, 11, 20
Promoting Energy Independence and Economic Growth, Exec. Order No. 13,783, 82 Fed. Reg. 16,093 (Mar. 28, 2017) .....	11
Review of Designations under the Antiquities Act, Exec. Order No. 13,792, 82 Fed. Reg. 20,429 (May 1, 2017).....	5, 10
<b>Federal Agency Documents</b>	
Email from Mark Austin to Scott Hommel, et al. (Sept. 7, 2017, 2:18 P.M.) .....	8
<i>Bears Ears National Monument: Questions and Answers</i> , U.S. FOREST SERV. & BUREAU OF LAND MGMT. ....	14
Email from Randal Bowman to James Cason, Acting Deputy Secretary of the Department of the Interior (May 9, 2017, 4:12 PM).....	6
BUREAU OF LAND MGMT., U.S. DEP’T OF THE INTERIOR, GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT MANAGER’S ANNUAL REPORT FY 2014 (2015) .....	12
Email from Ed Cox to Downey Magallanes, re: Bears Ears South East Boundary (Mar. 15, 2017, 9:57 AM).....	6
Memorandum from Larry Garahana, Geologist, BLM, re: Cursory Review of the Mineral Potential/Occurrence within the Bears Ears NM (Jan. 31, 2017) .....	6

GOV'T ACCOUNTABILITY OFFICE, URANIUM MINING, OPPORTUNITIES EXIST TO IMPROVE FINANCIAL ASSURANCES (2012) .....	19
Email from Kenneth Mahoney to Sheldon (Mark) Wimmer, et al., "Fwd: Additional Potential Questions for Monument Review," (Jun. 1, 2017, 12:31 PM) .....	6
DAVID MCGRANAHAN, U.S. DEP'T OF AGRICULTURE, ECONOMIC RESEARCH SERVICE NATURAL AMENITIES DRIVE POPULATION CHANGE (1999).....	13
Email and attachments from Nikki Moore to Randal Bowman (May 30, 2017, 1:18 PM).....	7
NATIONAL PARK SERVICE, 2017 NATIONAL PARK VISITOR SPENDING EFFECTS: ECONOMIC CONTRIBUTIONS TO LOCAL COMMUNITIES, STATES, AND THE NATION (2018) .....	16
Email from Edwin Roberson to Laura Brown et al., re: Mineral Assessment (Mar. 13, 2017, 3:33 PM) .....	6
<i>Secretary Zinke Sends Monument Report to the White House</i> , U.S. DEP'T OF INTERIOR (Aug. 24, 2017), <a href="https://www.doi.gov/pressreleases/secretary-zinke-sends-monument-report-white-house">https://www.doi.gov/pressreleases/secretary-zinke-sends-monument-report-white-house</a> .....	5
Email from Heather Swift to Douglas Domenech (Apr. 13, 2017, 7:41 AM).....	7
U.S. ENERGY INFO. ADMIN., 2016 URANIUM MARKETING ANNUAL REPORT (June 2017), <a href="https://www.eia.gov/uranium/marketing/pdf/2016umar.pdf">https://www.eia.gov/uranium/marketing/pdf/2016umar.pdf</a> .....	20
U.S. ENERGY INFO. ADMIN., DOMESTIC URANIUM PRODUCTION REPORT 3RD QUARTER 2018 (Nov. 2018), <a href="https://www.eia.gov/uranium/production/quarterly/pdf/qupd.pdf">https://www.eia.gov/uranium/production/quarterly/pdf/qupd.pdf</a> .....	20
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).....	20
Email and attachment from Kristina Waggoner to Scott Hommel, et al., (Aug. 23, 2017, 3:48 P.M.) .....	8
<b>Other Authorities</b>	
Letter from Kenneth J. Arrow, Professor Emeritus, Stanford Univ., et al., to Barack Obama, President, United States of America (Nov. 30, 2011).....	13
<i>Bears Ears Backcountry Tour 4-Day</i> , RIM TOURS, <a href="https://rimtours.com/tours/bears-ears-backcountry-tour-4-day/">https://rimtours.com/tours/bears-ears-backcountry-tour-4-day/</a> .....	17
<i>Bears Ears Custom &amp; Photography Tours</i> , WILD EXPEDITIONS, <a href="https://www.riversandruins.com/bears-ears-photo-tours.html">https://www.riversandruins.com/bears-ears-photo-tours.html</a> .....	17
<i>Bears Ears Education Center Grand Opening</i> , FRIENDS OF CEDAR MESA, <a href="https://www.friendsofcedarmesa.org/events/bears-ears-education-center-grand-opening/">https://www.friendsofcedarmesa.org/events/bears-ears-education-center-grand-opening/</a> ..	3, 13

<i>Bears Ears Starts Here</i> , BUSINESS OWNERS OF BLUFF, <a href="https://bluffutah.org/">https://bluffutah.org/</a> .....	2
Madelyn Beck, <i>Uranium Companies in the U.S. Are Hoping Demand Will Return</i> , MARKETPLACE (Dec. 26, 2017), <a href="https://www.marketplace.org/2017/12/26/economy/uranium-companies-us-are-hoping-gear-boom">https://www.marketplace.org/2017/12/26/economy/uranium-companies-us-are-hoping-gear-boom</a> .....	20
William B. Beyers & David P. Lindahl, <i>Lone Eagles and High Fliers in Rural Producer Services</i> , 11 RURAL DEV. PERSPECTIVES 2 (1996).....	14
Brian Calvert, <i>Sally Jewell Defends Interior Department Legacy</i> , HIGH COUNTRY NEWS (Sept. 12, 2017), <a href="http://www.hcn.org/issues/49.17/department-of-the-interior-an-exit-interview-with-sally-jewell">http://www.hcn.org/issues/49.17/department-of-the-interior-an-exit-interview-with-sally-jewell</a> .....	8
MARIN CHRISTENSEN & SAMANTHA BALL, KEN C. GARDINER POLICY INSTITUTE, UNIVERSITY OF UTAH, UTAH OUTDOOR PARTNERS SURVEY OF BUSINESS (2018).....	18
Steven C. Deller, et al., <i>The Role of Amenities and Quality of Life in Rural Economic Growth</i> , 83 AM. J. AGRICULTURAL ECON. 352 (2001).....	21
Juliet Eilperin, <i>Trump Administration Officials Dismissed Benefits of National Monuments</i> , WASH. POST (July 23, 2018).....	9
ENVTL. LAW INSTITUTE & WASH. & JEFFERSON COLLEGE CTR. FOR ENERGY POL’Y & MGMT., GETTING BOOM WITHOUT THE BUST: GUIDING SOUTHWESTERN PENNSYLVANIA THROUGH SHALE GAS DEVELOPMENT (2014).....	21
Jack Fitzpatrick, <i>Interior Turns Down Meetings with 2 Groups Supporting Utah Monuments</i> , MORNING CONSULT (May 8, 2017), <a href="https://morningconsult.com/2017/05/08/interior-turns-meetings-2-groups-supporting-utah-monuments/">https://morningconsult.com/2017/05/08/interior-turns-meetings-2-groups-supporting-utah-monuments/</a> .....	8
John Gilroy, <i>Businesses Ask Trump Administration to Leave National Monuments Intact</i> , PEW CHARITABLE TRUSTS (Nov. 17, 2017), <a href="http://www.pewtrusts.org/en/research-and-analysis/blogs/compass-points/2017/11/17/businesses-ask-trump-administration-to-leave-national-monuments-intact">http://www.pewtrusts.org/en/research-and-analysis/blogs/compass-points/2017/11/17/businesses-ask-trump-administration-to-leave-national-monuments-intact</a> .....	16
Hannah Gosnell & Jesse Abrams, <i>Amenity Migration: Diverse Conceptualizations of Drivers, Socioeconomic Dimensions, and Emerging Challenges</i> , 2009 GEOJOURNAL 1.....	13
Julia Haggerty et al., <i>Long-term Effects of Income Specialization in Oil and Gas Extraction: The U.S. West, 1980-2011</i> , 45 ENERGY ECON. 186 (2014).....	21
<i>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</i> (June 7, 2007).....	22
HEADWATERS ECONOMICS, GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT: A SUMMARY OF ECONOMIC PERFORMANCE IN THE SURROUNDING COMMUNITIES (Spring 2017) .....	14

HEADWATERS ECONOMICS, UPDATED SUMMARY: THE ECONOMIC IMPORTANCE OF NATIONAL MONUMENTS TO LOCAL COMMUNITIES (Spring 2017) .....	15
Corbin Hiar, <i>API Hires Former Top Zinke Aide</i> , E&E NEWS (June 8, 2017), <a href="https://www.eenews.net/greenwire/stories/1060055759/climate_digest">https://www.eenews.net/greenwire/stories/1060055759/climate_digest</a> .....	7
Grand D. Jacobsen & Dominic P. Parker, <i>The Economic Aftermath of Resource Booms: Evidence from Boomtowns in the Economic West</i> , 126 ECON. J. 1092 (2014).....	21
Laris Karklis, Bonnie Berkowitz & Tim Meko, <i>Areas Cut Out of Utah Monuments Are Rich in Oil, Coal, Uranium</i> , WASH. POST (Dec. 7, 2017) .....	19, 20
Thomas A. Knapp & Philip E. Gravest, <i>On the Role of Amenities in Models of Migration and Regional Development</i> , 29 J. REGIONAL SCI. 71 (1989) .....	14
Eric Lipton & Lisa Friedman, <i>Oil Was Central in Decision to Shrink Bears Ears Monument, Emails Show</i> , N.Y. TIMES (Mar. 2, 2018) .....	6, 7
Paul Lorah & Rob Southwick, <i>Environmental Protection, Population Change, and Economic Development in the Rural Western United States</i> , 24 POPULATION & ENV'T 255 (2003).....	13
Brian Maffly, <i>Bluff Residents Overwhelmingly Support Becoming Utah's Newest Town</i> , SALT LAKE TRIBUNE (Nov. 8, 2017) .....	2, 12
Brady McCombs, <i>Ahead of Outdoor Retailer Show's Move to Denver, Industry Rallies in Utah for Public Land Protections</i> , DENVER POST (July 27, 2017) .....	17
Kevin Miller, <i>Katahdin-Area National Monument Already Paying Off for Locals</i> , PORTLAND PRESS HERALD (Jan. 8, 2017).....	16
Stephen Nash, <i>At Bears Ears in Utah, Heated Politics and Precious Ruins</i> , N.Y. TIMES (Jul. 25, 2017) .....	17
NAT'L RESEARCH COUNCIL, COMM. ON URANIUM MINING IN VA., URANIUM MINING IN VIRGINIA: SCIENTIFIC, TECHNICAL, ENVIRONMENTAL, HUMAN HEALTH AND SAFETY, AND REGULATORY ASPECTS OF URANIUM MINING AND PROCESSING IN VIRGINIA 215 (2012).....	19
Amy Joi O'Donoghue, <i>Jewell "Shocked" at Lack of Protection for Bears Ears Cultural Resources</i> , KSL.COM (July 15, 2016), <a href="https://www.ksl.com/?sid=40674342&amp;nid=148&amp;title=jewell-shocked-at-lack-of-protection-for-bears-ears-cultural-resources">https://www.ksl.com/?sid=40674342&amp;nid=148&amp;title=jewell-shocked-at-lack-of-protection-for-bears-ears-cultural-resources</a> .....	18
OUTDOOR INDUSTRY ASS'N, UTAH FACT SHEET, <a href="https://outdoorindustry.org/wp-content/uploads/2017/07/OIA_RecEcoState_UT.pdf">https://outdoorindustry.org/wp-content/uploads/2017/07/OIA_RecEcoState_UT.pdf</a> .....	16, 17, 18
Jodi Peterson, <i>A Recent History of Land Management in the Escalante Region: A Monumental Tug of War</i> , HIGH COUNTRY NEWS (Feb. 16, 2015),	

<a href="https://www.hcn.org/issues/47.3/chainsaw-diplomacy/a-recent-history-of-land-management-in-the-escalante-region">https://www.hcn.org/issues/47.3/chainsaw-diplomacy/a-recent-history-of-land-management-in-the-escalante-region</a> .....	14
THOMAS MICHAEL POWER & RICHARD N. BARRETT, POST-COWBOY ECONOMICS: PAY AND PROSPERITY IN THE NEW AMERICAN WEST (2001) .....	21
PUBLIC LAND SOLUTIONS, ECONOMIC DEVELOPMENT PLANNING FOR CULTURAL TOURISM IN BEARS EARS NATIONAL MONUMENT, SAN JUAN COUNTY, UTAH (Apr. 2017) .....	13
Ray Rasker, <i>An Exploration Into the Economic Impact of Industrial Development Versus Conservation on Western Pub Lands, Society and Natural Resources</i> , 19 SOC’Y & NAT. RESOURCES 191 (2006) .....	15
Ray Rasker, Patricia H. Gude & Mark Delorey, <i>The Effect of Protected Federal Lands on Economic Prosperity in the Non-Metropolitan West</i> , J. REGIONAL ANALYSIS & POLICY 110 (2013).....	15
Kurt Repansheck, <i>Is There Economic Value to that National Monument in Your Backyard</i> , NAT’L PARKS TRAVELER (Mar. 17, 2010), <a href="https://www.nationalparkstraveler.org/2010/03/there-economic-value-national-monument-your-backyard5531">https://www.nationalparkstraveler.org/2010/03/there-economic-value-national-monument-your-backyard5531</a> .....	13
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).....	2
<i>Secretary Zinke’s Visit to Bears National Monument</i> , U.S. DEP’T OF THE INTERIOR (May 10, 2017), <a href="https://www.doi.gov/pressreleases/secretary-zinkes-visit-bears-ears-national-monument">https://www.doi.gov/pressreleases/secretary-zinkes-visit-bears-ears-national-monument</a> .....	7
SMALL BUSINESS MAJORITY, ECONOMIC REPORT: A SMALL BUSINESS VOICE FOR PUBLIC LANDS IN THE WEST (Apr. 16, 2015) .....	16
Jonathan Thompson, <i>At Bears Ears, Trump and Zinke Ignored Everyone but Industry</i> , HIGH COUNTRY NEWS (Mar. 13, 2018), <a href="https://www.hcn.org/articles/bears-ears-national-monument-trump-and-zinke-ignored-everyone-but-industry">https://www.hcn.org/articles/bears-ears-national-monument-trump-and-zinke-ignored-everyone-but-industry</a> .....	7, 10, 12
Kris Waggoner, Opinion, <i>America’s National Monuments Contribute to Economy, Support Small Businesses</i> , MORNING CONSULT (Apr. 27, 2017), <a href="https://morningconsult.com/opinions/americas-national-monuments-contribute-economy-support-small-businesses/">https://morningconsult.com/opinions/americas-national-monuments-contribute-economy-support-small-businesses/</a> .....	16
Rebecca Worby, <i>Zinke Went to Bears Ears to Listen, but Supporters Felt Unheard</i> , HIGH COUNTRY NEWS (May 12, 2017), <a href="https://www.hcn.org/issues/49.9/zinke-went-to-bears-ears-to-listen-but-supporters-felt-unheard">https://www.hcn.org/issues/49.9/zinke-went-to-bears-ears-to-listen-but-supporters-felt-unheard</a> .....	8

## 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 deeply invested in the future of their communities and state, they have seen firsthand the enormous benefits that protected public lands provide to gateway communities and the rest of the state, as well as the careful planning that went into the initial creation of the Bears Ears National Monument (“Bears Ears” or “the Monument”).

When Secretary of the Interior Ryan Zinke (“Secretary Zinke”) began to review the status of Bears Ears 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 Bears Ears, *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 85 percent of Bears Ears will harm their communities and the state of Utah. The reduced size of the Monument will undermine the economic benefits that it could have provided for gateway communities. The opening up of the newly unprotected lands to fossil fuel and uranium extraction could permanently destroy the recreational value of those lands and puts at risk *amici*’s public commitments to promoting a more sustainable economy.

*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

---

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



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* Ann Leppanen is the mayor of Bluff, Utah. In November 2017, after a year-long process launched as President Obama was considering the designation of Bears Ears as a national monument, the residents of Bluff voted overwhelmingly to incorporate as a town, in part to benefit from tourism related to the newly created Monument.<sup>3</sup> The business owners of Bluff proudly proclaim that "Bears Ears Starts Here."<sup>4</sup> The recently opened Bears Ears Education

---

<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>.

<sup>3</sup> See Brian Maffly, *Bluff Residents Overwhelmingly Support Becoming Utah's Newest Town*, SALT LAKE TRIBUNE (Nov. 8, 2017), <https://www.sltrib.com/news/2017/11/08/bluff-residents-overwhelmingly-support-becoming-utahs-newest-town/>.

<sup>4</sup> *Bears Ears Starts Here*, BUSINESS OWNERS OF BLUFF, <https://bluffutah.org/> (last visited Nov. 18, 2018).

Center promises to draw visitors to Main Street in Bluff.<sup>5</sup> The decision to reduce the Monument undermines the very reasons the town residents voted to incorporate. Secretary Zinke, in his cursory review, did not heed Bluff residents' sense of the importance of Bears Ears, both to local residents and to the economy they hope to grow.

*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 originally a National Monument) and to Canyonlands National Park. Alta is surrounded by

---

<sup>5</sup> *Bears Ears Education Center Grand Opening*, FRIENDS OF CEDAR MESA, <https://www.friendsofcedarmesa.org/events/bears-ears-education-center-grand-opening/> (last visited Nov. 18, 2018).

national forest land in the Wasatch Mountains. All three communities have experienced first-hand how public land protections can drive a stable, vibrant economy.

### **SUMMARY OF ARGUMENT**

President Trump's decision to revoke protections from 85 percent of the Monument was the result of a sham review process that ignored local voices and was designed to promote mineral extraction. Although the review was not publicly announced until April 2017, the Trump Administration began to seek out reasons to reduce the Monument within its first two weeks in office. During that time period, officials at the Department of the Interior ("DOI") solicited information on minerals within the Monument, maps of potential new boundaries from Monument opponents, and opinion pieces opposing the designation.

Moreover, the administration's refusal to engage with *amici* demonstrates that the decision did not reflect the views of local communities. Despite repeated attempts to make their views known, *amici* and other Monument supporters from Utah communities were denied a meaningful opportunity to communicate with DOI officials.

The revocation of monument protections from the bulk of Bears Ears also denies these gateway communities the opportunity to build sustainable economies based on visitation to the Monument. 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 uranium mining in the areas removed from the Monument, which will permanently scar the land, hurting the beautiful vistas and recreational opportunities that promise to spur burgeoning local economies and exposing these communities to dangerous boom-and-bust cycles.

*Amici* and their communities reasonably anticipated that the 2016 designation of the Monument would lead to sustainable recreation- and tourism-based economic growth. In the

Monument's first year, the growth in visitation and resulting benefits already began to arrive. With the stroke of a pen, President Trump upset those expectations and put at risk newly established and growing economies that were based on the protected status of these lands.

## ARGUMENT

### I. 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 Mineral 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>6</sup> The monuments covered by this process included Bears Ears, which President Obama had designated on December 28, 2016,<sup>7</sup> as the culmination of eighty years of work to provide permanent protection to the objects of historic and scientific interest in the Bears Ears region. Under the schedule created by the executive order, Secretary Zinke had to send his report to the White House after 120 days.<sup>8</sup> This timeline gave him only four months for a survey of twenty-seven national monuments.<sup>9</sup>

Internal DOI documents reveal the central role that mineral resources played in the review process. From the beginning, senior agency officials instructed staff to quantify the coal, oil, and natural gas deposits that were off-limits to extraction in all of the monuments under

---

<sup>6</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>7</sup> Establishment of the Bears Ears National Monument, Proclamation No. 9558, 82 Fed. Reg. 1139 (Jan. 5, 2017) [hereinafter "2016 Proclamation"].

<sup>8</sup> Exec. Order No. 13,792, 82 Fed. Reg. at 20,429.

<sup>9</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>.

review.<sup>10</sup> A follow-up email in June reminded staff to look at how the creation of the Grand Staircase-Escalante National Monument and Bears Ears may have harmed mining in those regions.<sup>11</sup>

With regard to Bears Ears in particular, Bureau of Land Management (“BLM”) staff prepared an assessment of “mineral potential and occurrence” as early as January 31, 2017.<sup>12</sup> The BLM state director in Utah circulated this assessment to senior DOI staff in March 2017.<sup>13</sup> That month, a member of Senator Orrin Hatch’s staff sent a revised map for the Monument to Downey Magallanes, Secretary Zinke’s deputy chief of staff for policy, explaining that it would “resolve all known mineral conflicts,” meaning that it would remove from the Monument those areas with known oil and gas deposits.<sup>14</sup> That map “was incorporated almost exactly into” the redrawn Monument.<sup>15</sup> In addition, in response to an apparent request for “Anti-Bears Ears” material in April 2017, Senior Advisor Doug Domenech emailed op-eds critical of the

---

<sup>10</sup> 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 Email from Randal Bowman to James Cason, Acting Deputy Secretary of the Department of the Interior, at DOI-2018-07 00908 (May 9, 2017, 4:12 PM) (attached as Exhibit A).

<sup>11</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>.

<sup>12</sup> Memorandum from Larry Garahana, Geologist, BLM, re: Cursory Review of the Mineral Potential/Occurrence within the Bears Ears NM (Jan. 31, 2017), <https://www.documentcloud.org/documents/4391967-National-Monuments-a-Look-at-the-Debate-From.html#document/p30/a407693>.

<sup>13</sup> Email from Edwin Roberson to Laura Brown et al., re: Mineral Assessment (Mar. 13, 2017, 3:33 PM), <https://www.documentcloud.org/documents/4391967-National-Monuments-a-Look-at-the-Debate-From.html#document/p61/a407698>.

<sup>14</sup> Email from Ed Cox to Downey Magallanes, re: Bears Ears South East Boundary (Mar. 15, 2017, 9:57 AM), <https://www.documentcloud.org/documents/4391967-National-Monuments-a-Look-at-the-Debate-From.html#document/p55/a407696>.

<sup>15</sup> Lipton & Friedman, *supra* note 10.

Monument to several senior DOI officials, including Press Secretary Heather Swift and Acting Deputy Chief of Staff and Communications Director Megan Bloomgren.<sup>16</sup>

The location of uranium deposits and uranium mining infrastructure also played a key role. In May 2017, an email exchange between BLM officials revealed that Ms. Magallanes had called to ask for information on the Energy Fuels Resources, Inc., uranium mill near the Monument.<sup>17</sup> A portion of the access road to Energy Fuels's Daneros uranium mine was within the Monument and its White Mesa mill was adjacent to the Monument. Subsequently, Ms. Magallanes and Vincent DeVito, Secretary Zinke's counselor for energy policy, met with lobbyists for Energy Fuels.<sup>18</sup> The entire White Canyon uranium district was eventually removed from the Monument.<sup>19</sup>

During the review process, Secretary Zinke spent only two days visiting the Monument and interacting with a select handful of fossil fuel industry supporters.<sup>20</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

---

<sup>16</sup> See Email from Heather Swift to Douglas Domenech, at DOI-2018-10 00265 (Apr. 13, 2017, 7:41 AM) (attached as Exhibit B). Bloomgren subsequently left DOI in June 2017 to become Vice President of Communications at the American Petroleum Institute. See Corbin Hiar, *API Hires Former Top Zinke Aide*, E&E NEWS (June 8, 2017), [https://www.eenews.net/greenwire/stories/1060055759/climate\\_digest](https://www.eenews.net/greenwire/stories/1060055759/climate_digest).

<sup>17</sup> Lipton & Friedman, *supra* note 10.

<sup>18</sup> *Id.*; see also Email and attachments from Nikki Moore to Randal Bowman, at DOI-2018-09 00239 (May 30, 2017, 1:18 PM) (describing Energy Fuels mill) (attached as Exhibit C).

<sup>19</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>20</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>.

of Commerce.<sup>21</sup> In total, Secretary Zinke devoted only an hour and a half of his two-day visit to meetings with supporters of the Monument.<sup>22</sup> He did not hold a public meeting during his visit.<sup>23</sup> Instead, Secretary Zinke held private meetings with opponents of the Monument and declined to disclose any records from those meetings.<sup>24</sup>

Even had Secretary Zinke spent the majority of the four-month-long review of the national monuments 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 the Monument, before which former Interior Secretary Sally Jewell held more than 1,000 meetings with local people and interest groups over four years.<sup>25</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, uranium mining, and extractive industries more generally, the decision to revoke the Monument was a foreordained conclusion

---

<sup>21</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/>. Members of these groups continued to express a desire to meet with Secretary Zinke through the fall of 2017. See Email from Mark Austin to Scott Hommel, et al., at DOI-2018-06 02195 (Sept. 7, 2017, 2:18 P.M.) (attached as Exhibit D); Email and attachment from Kristina Waggoner to Scott Hommel, et al., at DOI-2018-06 02175 (Aug. 23, 2017, 3:48 P.M.) (attached as Exhibit E).

<sup>22</sup> Rebecca Worby, *Zinke Went to Bears Ears to Listen, but Supporters Felt Unheard*, HIGH COUNTRY NEWS (May 12, 2017), <https://www.hcn.org/issues/49.9/zinke-went-to-bears-ears-to-listen-but-supporters-felt-unheard>.

<sup>23</sup> *Id.*

<sup>24</sup> Fitzpatrick, *supra* note 21.

<sup>25</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>.

to the review process. On December 4, 2017, President Trump issued a proclamation revoking protection from 85 percent of the Monument (the “2017 Proclamation”).<sup>26</sup> The 2017 Proclamation incorporated the map changes requested by Senator Hatch’s office to open up areas of potential oil and gas development and excluded the entire White Canyon uranium district from the Monument. 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>27</sup> A Freedom of Information Act officer originally redacted this statement on the basis that it could “reveal strategy about the [national monument] review process,”<sup>28</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>29</sup> This statement shows that the agency’s mind was closed and that the public commenting process was a sham.

---

<sup>26</sup> Modifying the Bears Ears National Monument, Proclamation No. 9681, 82 Fed. Reg. 58,081 (Dec. 8, 2017) [hereinafter “2017 Proclamation”].

<sup>27</sup> Juliet Eilperin, *Trump Administration Officials Dismissed Benefits of National Monuments*, WASH. POST (July 23, 2018), [https://www.washingtonpost.com/national/health-science/trump-administration-officials-dismissed-benefits-of-national-monuments/2018/07/23/5b8b1666-8b9a-11e8-a345-a1bf7847b375\\_story.html](https://www.washingtonpost.com/national/health-science/trump-administration-officials-dismissed-benefits-of-national-monuments/2018/07/23/5b8b1666-8b9a-11e8-a345-a1bf7847b375_story.html).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* The video is archived at <http://www.screencast.com/t/JdV0uoruZ> (last visited Nov. 18, 2018).



In fact, the Trump administration’s resource extraction-driven agenda determined the outcome to such an extent that even opponents of the Monument ended up being ignored, if they were concerned about issues other than mining. Thus the San Juan County Commission sent DOI maps in March 2017, proposing a shrunken Monument that still included Cedar Mesa, an area rich in historic objects, but excluded Comb Ridge and a motorized route up Arch Canyon. The final boundaries exclude Cedar Mesa but include Comb Ridge and Arch Canyon—in effect, the opposite of what the county commissioners requested.<sup>30</sup>

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>31</sup> Second, he must identify the smallest area necessary to protect the objects.<sup>32</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 development;” the federal resources available to manage the Monument; and “other such factors as the Secretary deems appropriate.”<sup>33</sup> None of these factors is mentioned in the Antiquities Act.

Moreover, the President clearly intended that the “other factors” that the Secretary was to consider in his review of the national monuments should include fossil fuel extraction and other

---

<sup>30</sup> Thompson, *supra* note 19.

<sup>31</sup> 54 U.S.C. § 320301(a).

<sup>32</sup> *Id.* § 320301(b).

<sup>33</sup> Exec. Order No. 13,792, 82 Fed. Reg. at 20,429–30.

mining activities. President Trump had in a prior executive order directed the Department, along with other federal agencies, to “review existing regulations that potentially burden the development or use of domestically produced energy resources.”<sup>34</sup> This executive order expressed a clear preference for non-renewable resources, requiring “particular attention to oil, natural gas, coal, and nuclear resources.”<sup>35</sup> As described above, fossil fuel potential and uranium mining were the key factors 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.

## **II. THE PROCLAMATION HARMS GATEWAY COMMUNITIES IN UTAH**

On December 4, 2017, President Trump issued the 2017 Proclamation, which replaces the Monument with two separate units, referred to as the Shash Jáa Unit and Indian Creek Unit.<sup>36</sup> The total area of these two disconnected units is 201,876 acres, an 85% reduction from the size of the pre-existing Bears Ears National Monument.<sup>37</sup> The areas removed from the Monument are now “open to: (1) entry, location, selection, sale or other disposition under the public land laws and laws applicable to the U.S. Forest Service; (2) disposition under all laws relating to mineral and geothermal leasing; and (3) location, entry, and patent under the mining laws.”<sup>38</sup>

---

<sup>34</sup> Promoting Energy Independence and Economic Growth, Exec. Order No. 13,783, 82 Fed. Reg. 16,093 (Mar. 28, 2017).

<sup>35</sup> *Id.* at 16,093.

<sup>36</sup> 2017 Proclamation, 82 Fed. Reg. at 58,082.

<sup>37</sup> *Id.* at 58,085.

<sup>38</sup> *Id.*

A. Gateway Communities Will Lose much of the Anticipated Economic Benefit of Monument Designation

The President's revocation of the Monument will hurt Utah communities in multiple ways. First, it will reduce their ability to benefit from the anticipated tourism and service-economy expansion that the designation of the Monument was expected to bring. The experience of the towns near the entrances to the Grand Staircase-Escalante Monument in Kane and Garfield counties over the past two decades shows what communities near Bears Ears could have expected.<sup>39</sup> Almost one million tourists travel to Grand Staircase each year<sup>40</sup> and most of them use these gateway communities as the jumping-off points for their visits. This influx of tourism since the creation of that monument has driven job creation and economic growth.

Bears Ears was likely to experience similar increases in tourism in the coming years. The number of visitors to the BLM's Kane Gulch Ranger Station on Cedar Mesa increased by 88% between 2013 and 2017, with the largest increase occurring in the last year.<sup>41</sup> Given that this increase occurred even before the creation of a monument headquarters, it likely presaged much greater jumps in tourism in the years to come. In anticipation of increased tourism, the residents of Bluff voted to incorporate as a town in the fall of 2017.<sup>42</sup> Addressing the lack of an official

---

<sup>39</sup> These benefits are discussed in more detail in the brief that *amici* are concurrently filing in *Wilderness Society, et al. v. Trump*, Nos. 1:17-cv-02587 & 1:17-cv-02591.

<sup>40</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).

<sup>41</sup> Thompson, *supra* note 19.

<sup>42</sup> See Maffly, *supra* note 3.

monument headquarters, supporters of the Monument recently opened the Bears Ears Education Center in Bluff to encourage and educate visitors.<sup>43</sup>

Tourism is not the only driver of economic growth arising from the existence of national monuments. When President Obama was considering whether to designate the Monument, a letter from a group of 100 economists, including three Nobel laureates, urged protection for the lands because protected “public lands play a pivotal role in attracting and retaining people and businesses.”<sup>44</sup> 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>45</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>46</sup> Studies have shown that the economy in the western United States

---

<sup>43</sup> *Bears Ears Education Center Grand Opening*, FRIENDS OF CEDAR MESA, <https://www.friendsofcedarmesa.org/events/bears-ears-education-center-grand-opening/> (last visited Nov. 18, 2018).

<sup>44</sup> Letter from Kenneth J. Arrow, Professor Emeritus, Stanford Univ., et al., to Barack Obama, President, United States of America 1 (Nov. 30, 2011), [https://headwaterseconomics.org/wp-content/uploads/Pres\\_Letter\\_Economics\\_Protected\\_Lands.pdf](https://headwaterseconomics.org/wp-content/uploads/Pres_Letter_Economics_Protected_Lands.pdf).

<sup>45</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>46</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).

is moving away from a “jobs first, then migration” model to one in which people choose their location first and jobs follow.<sup>47</sup>

In addition, local communities could reasonably expect that the Monument would allow the development of a new tourism- and recreation-based economy while still preserving other land uses in the region. The example of planning for Grand Staircase set clear expectations. At the time of President Trump’s Proclamation revoking Grand Staircase-Escalante, approximately 96% of that monument’s land was open to grazing.<sup>48</sup> Similarly, agriculture and timber harvesting remain parts of the economies near Grand Staircase.<sup>49</sup>

Bears Ears was moving along a similar path. The proclamation establishing the Monument provided that the “[l]aws, regulations, and policies followed by [the U.S. Forest Service] or BLM in issuing and administering grazing permits or leases on lands under their jurisdiction shall continue to apply with regard to the lands in the monument.”<sup>50</sup> In addition, the Forest Service and BLM stated plainly that the Monument would continue to respect and allow livestock grazing, hunting, and fishing as they had prior to the Monument’s designation.<sup>51</sup>

---

<sup>47</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).

<sup>48</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>49</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>50</sup> 2016 Proclamation, 82 Fed. Reg. at 1145.

<sup>51</sup> *Bears Ears National Monument: Questions and Answers*, U.S. FOREST SERV. & BUREAU OF LAND MGMT. 2, <https://www.fs.fed.us/sites/default/files/bear-ears-fact-sheet.pdf>.

The economic benefits summarized above 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 BLM, or the Fish & Wildlife Service<sup>52</sup>—have an average per capita income that is \$4,360 higher than counties without such land.<sup>53</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>54</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 the Department of the Interior how much national monument designations have provided economic benefits to their communities.<sup>55</sup> A recent poll of small business owners in the West

---

<sup>52</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).

<sup>53</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>54</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>55</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->

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 local businesses, and a majority believed that private development of such lands would limit public enjoyment of them.<sup>56</sup>

Protected public lands benefit not only those communities in the immediate vicinity of a monument, but the rest of the state as well. A 2017 study by the National Park Service found that in one year alone, 15.1 million people visited national parks, monuments, and other sites within the national park system in Utah.<sup>57</sup> In total, these visits provided approximately \$1.1 billion in direct expenditures in the regions around Utah public lands.<sup>58</sup> This tourist spending in the state created 17,596 jobs and \$547.1 million in labor income.<sup>59</sup> More broadly, consumers spend approximately \$12.3 billion annually on outdoor recreation in Utah.<sup>60</sup> This spending

---

[analysis/blogs/compass-points/2017/11/17/businesses-ask-trump-administration-to-leave-national-monuments-intact](https://www.morningconsult.com/opinions/americas-national-monuments-contribute-economy-support-small-businesses/); Kris Waggoner, Opinion, *America's National Monuments Contribute to Economy, Support Small Businesses*, MORNING CONSULT (Apr. 27, 2017), <https://www.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/>.

<sup>56</sup> See SMALL BUSINESS MAJORITY, ECONOMIC REPORT: A SMALL BUSINESS VOICE FOR PUBLIC LANDS IN THE WEST (Apr. 16, 2015), <https://www.smallbusinessmajority.org/sites/default/files/research-reports/041615-public-lands-report-west.pdf>.

<sup>57</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>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</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) (last visited Nov. 18, 2018).

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>61</sup>

The decision to revoke 85% of the Monument will dramatically reduce the economic benefits that communities near Bears Ears will derive from its presence. The many businesses that have planned for the Monument will be harmed as a result.<sup>62</sup>

B. The Revocation of the Monuments Sends a Message that Utah is Hostile to Outdoor Recreation

In addition to economically harming local communities and businesses, the 2017 Proclamation 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 Bears Ears and the Grand Staircase-Escalante National Monument.<sup>63</sup>

---

<sup>61</sup> *Id.*

<sup>62</sup> See, e.g., *Bears Ears Backcountry Tour 4-Day*, RIM TOURS, <https://rimtours.com/tours/bears-ears-backcountry-tour-4-day/> (last visited Nov. 18, 2018) (offering guided trips in the Monument); *Bears Ears Custom & Photography Tours*, WILD EXPEDITIONS, <https://www.riversandruins.com/bears-ears-photo-tours.html> (last visited Nov. 18, 2018) (same); Stephen Nash, *At Bears Ears in Utah, Heated Politics and Precious Ruins*, N.Y. TIMES (Jul. 25, 2017), <https://www.nytimes.com/2017/07/25/travel/bears-ears-utah-politics-trump-national-monument.html> (travel section article describing guide services, lodging, and dining).

<sup>63</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), <https://www.denverpost.com/2017/07/27/outdoor-retailer-show-utah-public-lands-protections-rally/>.



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>64</sup> In Utah today, outdoor recreation jobs outstrip mining and energy jobs by more than two to one.<sup>65</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>66</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.

C. Opening Monument Lands to Mining Will Lead to Environmentally-Destructive Development and a Harmful Boom-and-Bust Cycle

Third, the removal of vast areas from national monument protection will expose them to activities that are incompatible with the outdoor recreation-focused tourism on which the region's economy is based. Before the Monument was designated, the unique landscape that is sacred to many in the region was under threat from the permitting of uranium mining and destruction of historic Native American drawings and holy sites.<sup>67</sup> With the 2017 Proclamation, areas removed from national monument protection are already open to mining, and opponents of

---

<sup>64</sup> See *supra* notes 57–61 and accompanying text.

<sup>65</sup> See, e.g., OUTDOOR INDUSTRY ASS'N, *supra* note 60.

<sup>66</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>67</sup> See Amy Joi O'Donoghue, *Jewell "Shocked" at Lack of Protection for Bears Ears Cultural Resources*, KSL.COM (July 15, 2016), <https://www.ksl.com/?sid=40674342&nid=148&title=jewell-shocked-at-lack-of-protection-for-bears-ears-cultural-resources>.

the Monument have celebrated that the resources in previously protected areas are available for exploitation.<sup>68</sup>

The physical impacts of removing these lands from the Monument will irreparably reduce the value of those lands for recreation and tourism. Without the protections of the 2016 Proclamation, the Forest Service and Bureau of Land Management will face pressure to grant uranium mining leases. Uranium mining not only scars land through excavation and the building of infrastructure to access mines, but also removes surface flora, releases air and water pollution, and increases traffic.<sup>69</sup> These changes drive away tourists because they threaten the unique character of the land that led to its initial protection. The natural wonders that could draw visitors to the communities surrounding the national monuments—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

---

<sup>68</sup> See Laris Karklis, Bonnie Berkowitz & Tim Meko, *Areas Cut Out of Utah Monuments Are Rich in Oil, Coal, Uranium*, WASH. POST (Dec. 7, 2017), <https://wapo.st/2P9WJgl>.

<sup>69</sup> See *Nat'l Mining Ass'n v. Zinke*, 877 F.3d 845, 857 (9th Cir. 2017) (“Uranium mining has been associated with uranium and arsenic contamination in water supplies, which may affect plant and animal growth, survival, and reproduction, and which may increase the incidence of kidney damage and cancer in humans.”) (citing National Primary Drinking Water Regulations, Radionuclides, 65 Fed. Reg. 76,708 (Dec. 7, 2000)); GOV'T ACCOUNTABILITY OFFICE, URANIUM MINING, OPPORTUNITIES EXIST TO IMPROVE FINANCIAL ASSURANCES 6 (2012) (describing “particular concern” from “natural by-products of uranium radioactive decay, most notably radium and the radioactive gas radon, as well as heavy metals, such as arsenic”); NAT'L RESEARCH COUNCIL, COMM. ON URANIUM MINING IN VA., URANIUM MINING IN VIRGINIA: SCIENTIFIC, TECHNICAL, ENVIRONMENTAL, HUMAN HEALTH AND SAFETY, AND REGULATORY ASPECTS OF URANIUM MINING AND PROCESSING IN VIRGINIA 215 (2012) (describing associated traffic impacts).

trails for such use.”<sup>70</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>71</sup> In addition, the 2017 Proclamation reverses the 2016 Proclamation by allowing more intensive vegetation management within the Monument.<sup>72</sup>

More fundamentally, an extraction-based economy will not be an adequate replacement for the weakened tourism- and recreation-based economy. Proponents of the 2017 Proclamation point to the opportunity for uranium mining in land once included in the Monument.<sup>73</sup> This optimism ignores that uranium production is declining throughout the United States,<sup>74</sup> and that demand for uranium has likewise diminished.<sup>75</sup> At least in the short term, it seems unlikely that a significant number of mining jobs could come to the affected regions.

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. 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

---

<sup>70</sup> 2017 Proclamation, 82 Fed. Reg. at 58,086.

<sup>71</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>72</sup> 2017 Proclamation, 82 Fed. Reg. at 58,086.

<sup>73</sup> *See* Karklis et al., *supra* note 68.

<sup>74</sup> U.S. ENERGY INFO. ADMIN., DOMESTIC URANIUM PRODUCTION REPORT 3RD QUARTER 2018, at 3 (Nov. 2018), <https://www.eia.gov/uranium/production/quarterly/pdf/qupd.pdf> (Preliminary U.S. uranium concentrate production totaled 2,442,789 pounds U<sub>3</sub>O<sub>8</sub> in 2017. This amount was 16% lower than the 2,916,558 pounds produced in 2016 and the lowest annual U.S. production since 2,282,406 pounds were produced in 2004.).

<sup>75</sup> *See* Madelyn Beck, *Uranium Companies in the U.S. Are Hoping Demand Will Return*, MARKETPLACE (Dec. 26, 2017), <https://www.marketplace.org/2017/12/26/economy/uranium-companies-us-are-hoping-gear-boom>; *see also* U.S. ENERGY INFO. ADMIN., 2016 URANIUM MARKETING ANNUAL REPORT (June 2017), <https://www.eia.gov/uranium/marketing/pdf/2016umar.pdf>.

that resource dependence depresses long-term GDP growth relative to diversified economies.”<sup>76</sup> Multiple 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>77</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>78</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>79</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>80</sup>

---

<sup>76</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).

<sup>77</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>78</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>79</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>80</sup> Haggerty et al., *supra* note 76.

The Monument, therefore, presents a better means for sustainable growth in Utah and its rural communities than the familiar and dangerous cycle of boom and bust.

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

After decades of work to create the Monument, local communities reasonably expected consistent protection that would lead to stronger tourism- and recreation-based local economies. 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 designate a national monument, but may not shrink or rescind it.<sup>81</sup> In addition, in a 2009 law, Congress demonstrated an intent to preserve national monuments managed by BLM (which would come to include Bears Ears), 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>82</sup> The reference to “future generations,” in particular, demonstrates that Congress intended monument protections to be permanent.<sup>83</sup>

---

<sup>81</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>82</sup> Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, § 2002(a), 123 Stat. 991, 1095.

<sup>83</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 F).

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 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.

DATED: November 19, 2018

Respectfully submitted,

/s/ Shaun A. Goho

Shaun A. Goho (D.D.C. Bar ID MA0013)

Wendy B. Jacobs

Emmett Environmental Law & Policy Clinic

Harvard Law School

6 Everett Street, Suite 4119

Cambridge, MA 02138

Tel: (617) 496-3368

Fax: (617) 384-7633

Email: [sgoho@law.harvard.edu](mailto:sgoho@law.harvard.edu)

Email: [wjacobs@law.harvard.edu](mailto:wjacobs@law.harvard.edu)

*Attorneys for Amici Curiae*

*Local Elected Officials*<sup>84</sup>

---

<sup>84</sup> The Emmett Environmental Law & Policy Clinic would like to acknowledge the contributions to this brief of Caroline Cox and Frank Sturges, students in the Clinic.