



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
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December 16, 2021

MEMORANDUM

TO: BLM Utah State Director

FROM: Director, Bureau of Land Management

SUBJECT: Interim Management of the Bears Ears National Monument

On October 8, 2021, the President issued Proclamation 10285 (“the Proclamation”), which restored the boundaries of the Bears Ears National Monument (“Bears Ears”) that were in place in January 2017 and retained the approximately 11,200 acres added to the monument in December 2017. Proclamation 10285 identified a number of additional monument objects in reserving more than 1.1 million acres of land in San Juan County as part of the national monument. This memorandum: (a) provides interim guidance for managing the monument while the agency develops a monument management plan; and (b) directs you to begin preparing a monument management plan, with a goal of finalizing that plan no later than March 1, 2024. As implementation of the Proclamation proceeds, additional, resource specific guidance will be provided as necessary.

Proclamation 10285 discusses the original designation of the monument and incorporates by reference the monument objects identified in Proclamation 9558. The Proclamation then explains that preservation efforts of the Bears Ears region have been ongoing for more than 100 years and concludes that “[f]ew national monuments more clearly meet the Antiquities Act’s criteria for protection than the Bears Ears Buttes and surrounding areas.” The Proclamation explains that the entire Bears Ears landscape is an object of historic and scientific interest as well as sacred land of spiritual significance, a historic homeland, and a place of belonging for Indigenous Peoples from the Southwest. The sacred landscape is comprised of unique regions, that are themselves objects in need of protection, which are in turn filled with innumerable objects of historic or scientific interest. The Proclamation describes evidence from millennia of human habitation, including evidence of more recent non-native migrants, such as Latter-day Saints and famous outlaws. It also describes striking landscapes that hold important paleontological resources, geologic marvels, and habitat for rare and sensitive species. Notably, the importance of the area to Tribal Nations who trace their ancestry to the region is emphasized throughout the Proclamation.

Proclamation 10285 also specifically directs the Secretary of the Interior and the Secretary of Agriculture to prepare a new joint management plan for the entire monument for purposes of protecting and restoring the objects identified in the Proclamation, including the objects and values in Proclamation 9558, which are incorporated by reference. This interim management provides specific direction to ensure that, until the new plan is prepared, the BLM will manage the Bears Ears National Monument in a manner consistent with Proclamation 10285.

Prior to initiating the planning process, BLM-UT should finalize and make available to the public an updated map and current spatial data for the monument.

I. Interim Management Direction

Proclamation 10285 not only restored the previously excluded Bears Ears lands to monument status, but it also identified a number of additional objects of historic and scientific interest within the monument boundaries. In particular, the proclamation identified landscapes within the monument as objects and specifically identified a number of new objects within the monument boundary. The proclamation also provided specific direction for management of the monument, including the direction to prepare a monument management plan. While BLM-UT is in the process of preparing that monument management plan, the State and Field Office staff will ensure that management of the monument conserves, protects, and restores the objects and values of historic and scientific interest within the monument boundary for the benefit of current and future generations, consistent with the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7202). Additionally, the BLM's policies for interim management of lands reserved as part of a national monument are generally outlined in Section 1.6 of BLM Manual 6220.

A. Mining and Mineral Leasing Activity

Proclamation 10285 provides that, subject to valid existing rights,

All Federal lands and interests in lands within the boundaries of the monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws or laws applicable to the United States Forest Service (USFS), from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument.

Therefore, no new mining claims may be located, and no new mineral leases may be issued, on lands within the monument. Before approving a plan of operations¹ within the monument on claims located before the lands were withdrawn, BLM-UT must, in accordance with 43 CFR 3809.100(a), prepare a mineral examination report to determine whether the mining claim was valid *before* the withdrawal, and to determine whether the mining claim remains valid. The

¹ There are no "notice-level" operations in national monuments, meaning that operators must submit a plan of operations for any surface disturbance greater than casual use. *See* 43 CFR 3809.11(c)(7).

operator will be responsible for the costs of the mineral examination, as required by 43 CFR 3800.5(b). During the period that BLM-UT is completing the examination, the activity that may be allowed on the claim is limited to taking samples to confirm or corroborate mineral exposures that are physically disclosed and existing on the mining claim prior to the withdrawal,² or to complete minimum necessary annual assessment work. If BLM-UT concludes that a mining claim is invalid, BLM-UT should not approve operations on the claim, but instead promptly initiate contest proceedings.

If mining or mineral leasing activities that BLM-UT determines are valid existing rights are allowed to proceed, the agency must—to the greatest extent possible, and in accordance with applicable law—manage the activity in a manner that protects and mitigates impacts to the monument objects and values.

B. Discretionary Activities

1. In General

Section 302 of the Federal Land Policy and Management Act (FLPMA) states that public lands should be managed under the principles of multiple use and sustained yield “except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.”³ Proclamation 10285 dedicates the lands within the Bears Ears to a specific use, therefore the lands reserved within the monument boundary must be managed in a manner that protects the objects and values for which the monument has been designated. In other words, within Bears Ears National Monument, typical multiple use management is superseded by the direction in Proclamation 10285 to protect monument objects. Multiple uses are allowed only to the extent they are consistent with the protection of the objects and values within the monument.

Proclamation 10285 incorporates by reference the objects and management direction identified in Proclamation 9558, identifies additional objects, and—in some circumstances— updates management direction that, as applicable, must be addressed when considering new proposals within the restored monument boundary. Specifically, Proclamation 10285 states that, “the unique nature of the Bears Ears landscape, and the collection of objects and resources therein, make the entire landscape within the boundaries reserved by this proclamation an object of historic and scientific interest in need of protection under 54 U.S.C. 320301.”

Proclamation 10285 also retains and identifies objects within the approximately 11,200 acres added to Bears Ears by Proclamation 9681. For any project or activity proposed within the boundaries of the monument or with the potential to affect objects and values for which the monument has been designated, BLM-UT must undertake a two-part analysis before issuing an authorization. First, the authorized officer must verify that the proposal conforms to the applicable monument management plan or resource management plan. Second, the authorized

² For lands restored to the monument in Proclamation 10285, the effective date of the withdrawal is October 8, 2021. For lands that were not excluded from the monument, the effective date of the withdrawal is date that they were reserved, either through Proclamation 9558 (December 28, 2016) or Proclamation 9681 (December 4, 2017).

³ 43 U.S.C. 1732.

officer must determine that the proposal is also consistent with the protection of the monument objects and values. Because the currently approved monument management plans as well as the 2008 Monticello resource management plan were developed before the issuance of Proclamation 10285, a finding that a proposed project or activity conforms to the monument management plans or resource management plan does not necessarily ensure that the proposal is consistent with the protection of objects and values for which the monument has been designated. The authorized officer should ensure that the decision document and associated record provides adequate documentation of both the conformity to the monument management plan or resource management plan and compliance with Proclamation 10285. Documentation of this analysis is required for all proposals that were not approved prior to October 8, 2021.

In summary, for discretionary decisions before new monument management plans are adopted, the BLM may allow activities only if it determines that: (1) the decision conforms to the applicable 2020 Monument Management Plan and applicable resource management plan; and (2) the decision is consistent with the protection of monument objects. Finally, BLM-UT should ensure that the NEPA analysis for the decision adequately addresses potential impacts to monument objects and document the basis for its determinations and, if not, undertake additional environmental analysis as necessary. BLM-UT's determination for each of the considerations detailed above should be explained in the decision document for the proposed action.

Note that this analysis does not usually create a conflict between the resource management plan and the protection of objects, since resource management plans—while they may impose conditions or make certain uses off limits—do not typically *mandate* that particular uses occur. For example, while a resource management plan may *allow* the BLM to grant FLPMA Title V rights-of-way in a particular area, it does not mandate that the agency do so. Thus, if the BLM denies, or places conditions on, a particular right-of-way grant in order to protect objects, that decision would still conform to the governing resource management plan. That said, in the rare event that there is a conflict between the Proclamation and the governing resource management plan, the Proclamation controls.

BLM-UT should also expeditiously (by January 31, 2022) identify for review existing discretionary uses and activities within the monument to determine whether their impacts are consistent with the protection of the monument objects and values. Subject to valid existing rights and consistent with applicable law and regulations, BLM-UT should consider taking appropriate action with regard to any such activities and uses that it has determined to be incompatible with the protection of objects and values for which the monument has been designated, pending the completion of a new monument management plan to implement Proclamation 10285.⁴ Routes designated as open under the existing travel management plan that may have an adverse impact on monument objects and plan-level decisions for casual collection of paleontological resources are two prominent examples of activities that should be reviewed for consistency with the terms of the Proclamation.

⁴ The BLM's ability to suspend or take other appropriate action with regard to previously authorized activities and uses could depend on the nature and type of authorization at issue. For third-party authorizations, please consult with the Solicitor's Office prior to issuing a suspension.

Finally, effective on-the-ground management of monument objects and values requires monitoring and surveillance to ensure that they are being adequately protected on an ongoing basis. BLM-UT should review its existing monitoring plans and, where necessary and appropriate, update them to provide for proactive monitoring within the restored monument boundary to ensure protection of monument objects and values. Beyond resource monitoring, the plan should include compliance checks for existing facilities within the monument. The agency should also ensure that any activity or use that it approves includes adequate monitoring to ensure protection of monument objects and values.

More specific guidance regarding particular types of uses and activities follows. Note, however, that this guidance is not intended to be comprehensive; additional, detailed direction may be provided as particular issues are identified, including through the decision making and public involvement processes.

2. Recreation Management

Proclamation 10285 makes clear that while the monument area is replete with diverse opportunities for recreation, including “rock climbing, hunting, hiking, backpacking, canyoneering, whitewater rafting, mountain biking, and horseback riding,” that support the travel and tourism sector of the local economy, those activities are not themselves objects of historic and scientific interest designated for protection. Therefore, the agency must ensure that any proposed recreation use or activity is evaluated for monument management plan or resource management plan conformance and consistency with the proclamation prior to being authorized. Note that this requirement applies to special recreation permits that may come up for renewal, notwithstanding whether an event or activity has been permitted in the past.

3. Grazing Management

BLM Manual 6220, section 1.6.I, provides the general policy guidance for managing grazing in national monuments. Proclamation 10285 clarifies that grazing practices are not objects of historic and scientific interest designated for protection and further explains that, while BLM-UT should manage livestock grazing as currently authorized, and subject to appropriate terms and conditions, grazing activities must be consistent with the care and management of the objects and values in the Bears Ears National Monument. Therefore, if the agency is considering a grazing permit or lease for renewal, the agency must ensure that the decision will both be consistent with the existing plan and ensure protection of the monument objects as described above.

4. Vegetation Management

Vegetation management is another type of activity that regularly occurs within the monument that must conform to the applicable monument management plan or resource management plan and be consistent with the protection of monument objects. While Proclamation 10285 does not specifically limit the types of vegetation treatment that the BLM can use within the monument, certain treatment methods allowed under the applicable monument management plans or resource management plan may not be consistent with the protection of the objects. Thus, agency staff should review such projects with particular care to ensure such consistency.

C. Consultation, Coordination and Consistency

1. In General

Proclamation 10285 directs the Secretary of the Interior and the Secretary of Agriculture to ensure maximum public involvement in the development of the monument management plan, in particular, consultation with federally recognized Tribal Nations and coordination with State and local governments. The BLM, in coordination with the U.S. Forest Service, will maximize opportunities for consultation and to seek cooperation and consistency while carrying out this interim management direction.

2. The Bears Ears Commission

In recognition of the importance of knowledge of Tribal Nations about the lands and objects within the restored boundaries of the Bears Ears National Monument, and to ensure that management decisions affecting the monument reflect expertise and traditional and historical knowledge of Tribal Nations, Proclamation 10285 reestablished the Bears Ears Commission in accordance with the terms, conditions, and obligations set forth in Proclamation 9558. As a result, the Commission will once again be comprised entirely of Tribal government representatives and will be relied upon for recommendations on the development and implementation of management plans and on management of the entire monument.

Consistent with Proclamation 10285 and Proclamation 9558, the Commission must consist of one elected officer each from the Hopi Tribe, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of the Uintah and Ouray Reservation, and Zuni Tribe, designated by the officers' respective tribes. BLM-UT—in coordination with the U.S. Forest Service—will meaningfully engage the Commission⁵ in the development of the monument management plan and in the future on matters related to the management of the monument, including implementation of the monument management plan.

In order to ensure meaningful engagement with the Bears Ears Commission, BLM-UT should promptly contact the five Tribal Nations identified in Proclamation 10285—either individually or through the Bears Ears Inter-Tribal Coalition, as appropriate—to request nominations of elected officers from each of the Tribal Nations and to schedule a meeting to discuss how the BLM and U.S. Forest Service will begin to engage with the Commission.

As part of the monument management plan development process, BLM-UT should work with the U.S. Forest Service to develop a Memorandum of Understanding with the Commission that will set forth parameters for meaningful engagement on the development and implementation of the monument management plan. In particular, the MOU should address how the agencies will work with the Commission to integrate the traditional and historical knowledge and special expertise of that body into the monument management plan and the future management of the

⁵ Proclamation 9558 provides that should the Commission not exist for some reason, the tribal governments may engage with the BLM through a comparable entity composed of elected tribal government officers.

Bears Ears and how management disagreements will be resolved. BLM should complete this MOU before beginning the planning process.

D. Other Priorities

As discussed above, Proclamation 10285 provided much more detail about the objects and values within the monument boundary than Proclamation 9558, including a number of landscapes, cultural resources, and other sites. Further, the Proclamation made clear that because some of the objects are sacred to Tribal Nations, rare, fragile, or vulnerable to vandalism and theft, or are dangerous to visit, they were not specifically identified in the proclamation. To be able to adequately address whether existing or proposed activities and uses are consistent with the protection of objects, as discussed above, BLM-UT should complete an initial inventory within one year from the date of this guidance that catalogs all of the objects and values in the monument and can be incorporated into the management plan.

Proclamation 10285 does not change the management direction in Proclamation 9558 that directed the BLM to establish a monument advisory committee comprised of State and local governments, Tribal Nations, recreational users, local business owners, and private landowners to provide information and advice regarding the development of the management plan and, as appropriate, management of the monument. The BLM established the Bears Ears Advisory Committee in 2018.⁶ Currently, the MAC only has 9 members, which has created difficulties with achieving quorum and five of those seats will expire in April 2022, which will leave the MAC without a quorum. I have instructed BLM HQ-600 to review the current Bears Ears Advisory Committee charter to ensure that the membership is fair and balanced as directed by Proclamation 9558, and update it as appropriate. HQ-600 will then work with BLM-UT to ensure that the Monument Advisory Committee has enough members to satisfy the quorum requirements necessary to provide advice and recommendations in the upcoming land use planning process.

Finally, in accordance with BLM Manual 6220 section 1.6.D.6, BLM-UT should prioritize the development and installation of entrance signs at key access points to Bears Ears as soon as practicable but no later than 6 months from issuance of this guidance. While some signs were installed in recent years, to ensure protection of monument objects, particularly on lands recently restored to the monument, BLM-UT should install both entrance signs and other informational and educational signs at strategic points within or adjacent to the monument.

II. Completion of a Monument Management Plan

Proclamation 10285 directs the BLM and U.S. Forest Service to jointly prepare a management plan for all lands within the 1.36-million-acre boundaries of the Bears Ears for the purposes of protecting and restoring the monument objects and values. The existing monument management plans that were approved in February 2020 and the portions of the 2008 Monticello Resource Management Plan that is applicable to the restored monument boundaries will remain in effect until the BLM approves a new management plan for the entire monument.

⁶ 83 Fed. Reg. 44302 (Aug. 30, 2018).

In preparing the monument management plan, BLM-UT will prioritize consultation with Tribal Nations. The planning process should also include opportunities for consultation with other Federal land management agencies and provide for maximum public involvement, including consultation with State and local governments, community members, and other interested stakeholders.

Within 45 days, the BLM will finalize and submit a preparation plan (including budget, staffing needs, and a schedule) and statement(s) of work for contracting needs, that ensures issuance of a Record of Decision approving the monument management plan before March 1, 2024. The preparation plan should also include a discussion of how BLM-UT will engage with the U.S. Forest Service to coordinate the joint planning process.

Attachments:

Proclamation 10285

Proclamation 9558