

To: Bowman, Randal[randal_bowman@ios.doi.gov]
From: Cash, Marcia
Sent: 2017-06-05T09:32:18-04:00
Importance: Normal
Subject: Re: Easier question
Received: 2017-06-05T09:32:45-04:00
[Document Metadata-DOI-2017-0002-6081-06_05_2017-09_29_AM.pdf](#)
[STS Monument Review Package 051417.pdf](#)

Here are the two files for that comment.
One is the metadata, and the other is the attachment the commenter uploaded.

I'm sure we'll have a lot to talk about when this is over!

Marcia Cash

eERDMS - eRecords - BPHC Representative

eRulemaking / FDMS Administrator

U.S. Fish and Wildlife Service

Division of Policy, Performance, and Management Programs (PPM)

(Formerly Division of Policy and Directives Management - PDM)

5275 Leesburg Pike, MS: BPHC
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On Mon, Jun 5, 2017 at 9:27 AM, Bowman, Randal <randal_bowman@ios.doi.gov> wrote:

OK, thanks - and when things calm down a bit, please let me know how to do that.

On Mon, Jun 5, 2017 at 9:26 AM, Cash, Marcia <marcia_cash@fws.gov> wrote:

I'll get it for you. I'll get it now.

Marcia Cash

eERDMS - eRecords - BPHC Representative

eRulemaking / FDMS Administrator

U.S. Fish and Wildlife Service

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On Mon, Jun 5, 2017 at 9:24 AM, Bowman, Randal <randal_bowman@ios.doi.gov> wrote:

For right now, this is more important - do you know how to download it?

----- Forwarded message -----

From: **Bowman, Randal** <randal_bowman@ios.doi.gov>

Date: Sun, Jun 4, 2017 at 7:34 PM

Subject: Easier question

To: "Shulman, Stu" <stu@texifter.com>

Cc: Marcia Cash <marcia_cash@fws.gov>

There is an attachment with one of the comments - perhaps the only substantial new information submitted on Bears Ears. How do I download it? its a pdf

The comment is DOI-2017-0002 2017-05-27 02-00-40 docs/DOI-2017-0002-6081.html

Stillwater Technical Solutions

"Complex Problems Solved Well"



May 13, 2017

Mr. Ryan Zinke
Secretary of the Interior
1849 "C" Street, MS 7328
Washington, DC 20240

Re: Transmittal - Docket DOI-2017-0002: *Review of Certain National Monuments Established Since 1996*; FR Vol. 82, No. 90 Thursday, May 11, 2017.

Dear Honorable Secretary Zinke:

Attached please find an electronic copy of an analysis my company prepared for San Juan County, Utah entitled "*The Advisability of Designating the Bears Ears as a Monument Under the Antiquities Act.*"

The attached report was prepared with the expectation that President Obama was going to designate 1.9 M acres within San Juan County irrespective of state or local remonstrations. Using that as a backdrop, we detail the history of the Antiquities Act, provided an analysis of applicable statutory authorities, identified crucial land inholdings, and outline a clear exposition of the spilt estate issues in a pointed, ex·po·sé of prolific problems with the monument proposal.

Written in the context of local government prerogatives and with an objective toward balancing of private property, economics, local culture, and appropriate protection for the natural environment, we designed a statutory analysis can be *very* useful for DOI, CEQ, the president or the courts when evaluating monument designations and sizing.

The attached document also provides substantive land-use planning recommendations drawn from the congressional acts, judicial review, and our experience with affecting agency decisions and policy.

I hope this document will be of use to you as you review the expansive monument designations that have been made over the past 20 or so years.

Several in our group are subject matter and administrative policy experts, so if I may be of assistance, please feel free to contact us.

Regards,

J.R. Carlson
Managing Partner
Stillwater Technical Solutions
STS@wbsnet.org
(620) 260-9169

Four Renewal of Projects Exempted From OMHAR, Option Five Renewal of Portfolio Reengineering Demonstration or Preservation Projects, and Option Six Opt Outs. Owners should select one of six options which are applicable to their project and should submit contract renewal on an annual basis to renew contract.

The Section 8 Renewal Guide sets forth six renewal options from which a project owner may choose when renewing their expiring Section 8 contracts.

Option One (Mark Up To Market)

Option Two (Other Contract Renewals with Current Rents at or Below Comparable Market Rents Option Three (Referral to the Office of Multifamily Housing Assistant Restructuring OHAP) Option Four (Renewal of Projects Exempted from OHAP)

Option Five (Renewal of Portfolio Reengineering Demonstration or Preservation Projects)

Option Six (Opt Outs)

Respondents: Business or other for profit and non profit.

Estimated Number of Respondents: 25,439.

Estimated Number of Responses: 25,439.

Frequency of Response: On occasion.

Average Hours per Response: 1 hour.

Total Estimated Burden: 24,680.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 4, 2017.

Genger Charles,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2017-09507 Filed 5-10-17; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. DOI 2017 0002]

Review of Certain National Monuments Established Since 1996; Notice of Opportunity for Public Comment

AGENCY: Office of the Secretary, Interior.

ACTION: Notice; Request for comments.

SUMMARY: The U.S. Department of the Interior is conducting a review of certain National Monuments designated or expanded since 1996 under the Antiquities Act of 1906 in order to implement Executive Order 13792 of April 26, 2017. The Secretary of the Interior will use the review to determine whether each designation or expansion conforms to the policy stated in the Executive Order and to formulate recommendations for Presidential actions, legislative proposals, or other appropriate actions to carry out that policy. This Notice identifies twenty seven National Monuments under review and invites comments to inform the review.

DATES: To ensure consideration, written comments relating to the Bears Ears National Monument must be submitted before May 26, 2017. Written comments relating to all other National Monuments must be submitted before July 10, 2017.

ADDRESSES: You may submit written comments online at <http://www.regulations.gov> by entering "DOI 2017 0002" in the Search bar and clicking "Search," or by mail to Monument Review, MS 1530, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Randal Bowman, 202 208 1906, RR.Bowman@ios.doi.gov.

SUPPLEMENTARY INFORMATION: Executive Order 13792 of April 26, 2017 (82 FR 20429, May 1, 2017), directs the Secretary of the Interior to review certain National Monuments designated or expanded under the Antiquities Act of 1906, 54 U.S.C. 320301-320303 (Act). Specifically, Section 2 of the Executive Order directs the Secretary to conduct a

review of all Presidential designations or expansions of designations under the Antiquities Act made since January 1, 1996, where the designation covers more than 100,000 acres, where the designation after expansion covers more than 100,000 acres, or where the Secretary determines that the designation or expansion was made without adequate public outreach and coordination with relevant stakeholders, to determine whether each designation or expansion conforms to the policy set forth in section 1 of the order. Among other provisions, Section 1 states that designations should reflect the Act's "requirements and original objectives" and "appropriately balance the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities." 82 FR 20429 (May 1, 2017).

In making the requisite determinations, the Secretary is directed to consider:

(i) The requirements and original objectives of the Act, including the Act's requirement that reservations of land not exceed "the smallest area compatible with the proper care and management of the objects to be protected";

(ii) whether designated lands are appropriately classified under the Act as "historic landmarks, historic and prehistoric structures, [or] other objects of historic or scientific interest";

(iii) the effects of a designation on the available uses of designated Federal lands, including consideration of the multiple use policy of section 102(a)(7) of the Federal Land Policy and Management Act (43 U.S.C. 1701(a)(7)), as well as the effects on the available uses of Federal lands beyond the monument boundaries;

(iv) the effects of a designation on the use and enjoyment of non Federal lands within or beyond monument boundaries;

(v) concerns of State, tribal, and local governments affected by a designation, including the economic development and fiscal condition of affected States, tribes, and localities;

(vi) the availability of Federal resources to properly manage designated areas; and

(vii) such other factors as the Secretary deems appropriate. 82 FR 20429 20430 (May 1, 2017).

The National Monuments being initially reviewed are listed in the following tables.

NATIONAL MONUMENTS BEING INITIALLY REVIEWED PURSUANT TO CRITERIA IN EXECUTIVE ORDER 13792

Monument	Location	Year(s)	Acreage
Basin and Range	Nevada	2015	703,585
Bears Ears	Utah	2016	1,353,000
Berryessa Snow Mountain	California	2015	330,780
Canyons of the Ancients	Colorado	2000	175,160
Carrizo Plain	California	2001	204,107
Cascade Siskiyou	Oregon	2000/2017	100,000
Craters of the Moon	Idaho	1924/2000	737,525
Giant Sequoia	California	2000	327,760
Gold Butte	Nevada	2016	296,937
Grand Canyon Parashant	Arizona	2000	1,014,000
Grand Staircase Escalante	Utah	1996	1,700,000
Hanford Reach	Washington	2000	194,450.93
Ironwood Forest	Arizona	2000	128,917
Mojave Trails	California	2016	1,600,000
Organ Mountains Desert Peaks	New Mexico	2014	496,330
Rio Grande del Norte	New Mexico	2013	242,555
Sand to Snow	California	2016	154,000
San Gabriel Mountains	California	2014	346,177
Sonoran Desert	Arizona	2001	486,149
Upper Missouri River Breaks	Montana	2001	377,346
Vermilion Cliffs	Arizona	2000	279,568

NATIONAL MONUMENTS BEING REVIEWED TO DETERMINE WHETHER THE DESIGNATION OR EXPANSION WAS MADE WITHOUT ADEQUATE PUBLIC OUTREACH AND COORDINATION WITH RELEVANT STAKEHOLDERS

Katahdin Woods and Waters	Maine	2016	87,563
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The Department of the Interior seeks public comments related to: (1) Whether national monuments in addition to those listed above should be reviewed because they were designated or expanded after January 1, 1996 “without adequate public outreach and coordination with relevant stakeholders;” and (2) the application of factors (i) through (vii) to the listed national monuments or to other Presidential designations or expansions

of designations meeting the criteria of the Executive Order. With respect to factor (vii), comments should address other factors the Secretary might consider for this review.

In a separate but related process, certain Marine National Monuments will also be reviewed. As directed by section 4 of Executive Order 13795 of April 28, 2017, “Implementing an America First Offshore Energy Strategy” (82 FR 20815, May 3, 2017), the

Department of Commerce will lead the review of the Marine National Monuments in consultation with the Secretary of the Interior. To assist in that consultation, the Secretary will accept comments related to the application of factors (i) through (vii) in Executive Order 13792 as set forth above to the following Marine National Monuments:

MARINE NATIONAL MONUMENTS BEING REVIEWED PURSUANT TO EXECUTIVE ORDERS 13795 AND 13792

Marianas Trench	CNMI/Pacific Ocean	2009	60,938,240
Northeast Canyons and Seamounts	Atlantic Ocean	2016	3,114,320
Pacific Remote Islands	Pacific Ocean	2009	55,608,320
Papahānaumokuākea	Hawaii	2006/2016	89,600,000
Rose Atoll	American Samoa	2009	8,609,045

Before including your name, address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: E.O. 13792, 82 FR 20429 (May 1, 2017).

James Cason,
Special Assistant, Delegated the Functions, Duties, and Responsibilities of the Deputy Secretary.

[FR Doc. 2017–09490 Filed 5–10–17; 8:45 am]

BILLING CODE 4334–64–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701 TA 558 and 731 TA 1316 (Final)]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid (“HEDP”) From China; Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission

¹ The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

**The Advisability
of
Designating the Bears Ears
as a
Monument Under the Antiquities Act**

Procedural Requirements, Governmental Prerogatives,
and
a Required Statutory Process

Prepared for:
County Commission
San Juan County, Utah
117 South Main Street
Monticello, Utah

October, 2016



"Complex Problems Solved Well"

Stillwater Technical Solutions
PO Box 93
Garden City, KS 67846

Principal Author: J.R. Carlson

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EXECUTIVE SUMMARY

Over the past twenty years, the quantity and area proposed for monuments in the United States has increased dramatically. Withdrawal of what are supposed to be “public lands” from productive use has kindled scrutiny of the President’s discretionary authority, raised questions about the procedural responsibilities of administrative agencies, and focused review on the Federal government’s responsibility to inventory and safeguard property inholdings that have valid existing rights.

Upon bringing the Antiquities Act under Title 54 of the United States Code in the National Park Service body of statutory law, the Congress eliminated potential for the Antiquities Act to be considered a stand-alone privilege enjoyed by the President. The 2014, *in para materia* adoption of the Antiquities Act into the National Park Service Statutes now requires the Secretaries of Interior and Agriculture to implement the procedural, due-diligence obligations that balance human and natural environments, preserve valid existing rights, and which demonstrate deference for State and local jurisdictional prerogatives.

The methodological language of the Antiquities Act presupposes an inventory of private inholdings has been conducted, that those interests have been distinguished from lands owned and controlled by the Federal government, and that inholding owners have been given opportunity to relinquish their properties prior to the designation process. Similarly, the logic of the Antiquities Act requires advance understanding of the areal extent of the tract, knowledge of the nature and care required for the objects, and a minimum, scientific understanding of the occurrence and relationship of the objects to non-Federal inholdings.

A non-governmental organization (NGO) of Native American tribes has proposed designation of a 1.9 million acre national monument in San Juan County, Utah. We reviewed that proposal in a procedural, statutory context using the historical definition of “public lands,” congressionally-mandated land use planning prerogatives, and a county inventory of valid existing rights that occur in the proposed monument area.

The proposal by the Coalition - though well intended - is severely deficient, requesting actions by the Secretaries and the President that are clearly contrary to law. As an NGO, the Coalition lacks jurisdiction to make the request, and the proposal itself disregards no less than 18 land use planning efforts. If carried forward, the Coalition’s plan would preempt agreements between San Juan County and the Navajo Nation and circumvent the role and jurisdiction of State and local governments in land use planning. With respect to documentation, the proposal asserts an urgency disproved by governmental reports, and the 1.9 million acre area proposed for the monument incorporates vast areas of public, private and patented properties that enjoy longstanding, valid existing rights.

This survey demonstrates that for purposes of a monument designation, grazing allotments (districts) are a limited-fee, surface title property, and as a result such lands are not owned or controlled by the Federal government. As a consequence, grazing allotments in San Juan County are property having valid existing rights, are subject to State and local jurisdiction, and should be inventoried and managed in the San Juan County Master Plan.

Our finding that grazing allotments do not constitute lands owned or controlled by the Federal government has implications that reach far beyond presidential designation of monuments. Federal land management agencies should be required by Congress, State and local governments to review and revise their resource, land use, and land management programs to accommodate historical statutory definitions and accept grazing allotments as real property with valid existing rights.

1.0 Introduction

1.1 Background -

San Juan County is the largest county in Utah, occupying an area of approximately 7,933 square miles (5,077,120 acres). San Juan County is characterized by an interspersed patchwork of grazing districts, wilderness lands, state and national recreation areas, state parks, two national monuments, national conservation areas, and the Manti-La Sal National Forest. For its part, the Manti-La Sal National Forest contains the watershed that the cities of Monticello and Blanding depend upon to meet their entire culinary water needs.

A 1.9 million acre region within San Juan County's jurisdictional boundaries has been proposed for designation as a national monument under the Antiquities Act by the Bears Ears Inter-Tribal Coalition¹ (Coalition), a regional consortium of five Native American tribes. The proposed monument contains approximately 1,411,000 acres of Bureau of Land Management (BLM) lands, 155,000 acres of National Park Service (NPS) holdings, 366,000 acres of US Forest Service (USFS) administrated lands, and 151,000 acres of Utah *School and Institutional Trust Lands Administration* (SITLA) lands.² (Exhibit 1)

Government-managed lands within the proposed monument are interspersed with vast areas of private inholdings, including forty-three (43) grazing allotments, no less than 661 appropriated water-right diversion points, the sole operating uranium mill in the United States, multiple oil and gas production areas, and approximately 18,000 acres of patented property. (Exhibit 2)

Right-of-way access within the proposed monument boundary includes a network of State Highways, State-classified "B" and "D" roads, and RS-2477 roads. Of the 3,542 combined road-miles within the proposed monument area, some roads possess in-perpetuity rights-of-way, others have permanent easements or pending easement-applications, and still others maintain rights-of-way predating Utah statehood in January, 1896.³

Demographically, San Juan County contains a near-equal distribution of Native American (51%) and Anglo (45%) populations, with the remaining percentage split among other ethnicities. Economically, San Juan County ranks 29th out of 29 Utah counties with a per-capita, annual income of approximately \$23,244. Approximately 29% of San Juan County residents reportedly fall below the Federal poverty line.⁴

¹ *Proposal to President Barak Obama for the Creation of Bears Ears National Monument*. The Bears Ears Inter-Tribal Coalition. October 15, 2015.

² *List of Federal, State, Private and Tribal Holdings Data*. San Juan County, Utah Surveyor's Office. August 25, 2016.

³ *ibid*. Utah County Surveyor.

⁴ 2016 Economic Report to the Governor. The Utah Economic Council.

35 *1.2 Land Management and Land Use Planning -*

36 Land use management and planning within San Juan County is characterized by a
37 multi-layered, diverse collection of Federal, State and local land planning interests
38 with each having its own discreet area of responsibility. San Juan County has
39 identified no less than eighteen (18) separate land use, land management, and
40 wildlife management plans within its jurisdiction. (Exhibit 3)

41 San Juan County maintains a comprehensive, land use Master Plan (MP) and the
42 County is actively engaged in land use planning with Federal and State agencies
43 and the Navajo Nation.⁵ The Navajo Nation and San Juan County have an ongoing
44 Memorandum of Agreement (MOA) for joint land use planning and land
45 management throughout the County. The San Juan County/Navajo MOA
46 specifically addresses collaborative management of cultural resources, land use
47 planning of recreational areas, and joint participation in SITLA and Federal land
48 exchanges and transfers⁶ (Exhibit 4).

49 San Juan County is currently revising its land use and management MP. With this
50 revision, San Juan County is considering alternatives for integrating the BLM's
51 2008 Resource Management Plan (RMP) and planned revisions to the USFS
52 Manti-La Sal National Forest Plan with County planning processes through the
53 “*assure consideration*,” “*assist-in-resolving*” and “*attempt consistency*” mandates
54 of the Federal Land Policy and Management Act (FLPMA).⁷

55 The sheer volume, overlap and layering of multiple land use planning efforts in
56 San Juan County raises questions as to the effectiveness of any one effort. Even
57 though natural systems do not accommodate manmade political boundaries, the
58 United State Federal code - through a collective, statutory body of law - requires
59 Federal agencies to respect, defer to and defend State and local jurisdictional
60 boundaries.

61 *1.3 Situation Appraisal; Issue Identification -*

62 Native American ruins, artifacts and other sites may be located within the
63 jurisdictional boundaries of San Juan County. Governmental reports have referred
64 to objects in the vicinities of Cedar Mesa, Red Knobs, Indian Creek, Alkali Ridge,
65 Montezuma Creek, Long Canyon Point and other areas, with the actual number of
66 sites varying considerably.

⁵ San Juan County Master Plan. San Juan County, Utah. March, 2008.

⁶ Memorandum of Agreement Between San Juan County, Utah and Navajo Nation. May 5, 2015.

⁷ 43 USC §1712(c)(9).

Despite the reported, significant quantity of objects and artifacts in San Juan County, over a six-year period Federal investigators have identified two (2) criminal-level excavations, four (4) incidents of funerary excavations, four (4) thefts of archeological resources, and eleven (11) reports of vandalism.⁸ Of these macabre activities, some are thought to be historical in nature, occurring well before discovery and reporting (Exhibit 5).

Discrepancies between claims of "*rampant looting*" made to government agencies by environmental groups and facts documented by local BLM investigators began to emerge in May, 2015, when San Juan County law enforcement wrote a letter to a local newspaper (Exhibit 7). The availability, reliability, and quality of documentation supporting claims is further explored in section 3.1.

In October, 2015, representatives from five (5) regional Native American tribes proposed that the President of the United States (POTUS) withdraw 1.9 million acres⁹ of lands within San Juan County's boundaries under the authority of the Antiquities Act of 1906¹⁰ and Title 54 of the National Park Service Preservation Statutes.¹¹ Of the five tribes comprising the Coalition, only two possess lands within the proposed national monument boundaries for a total of 4,818 acres.¹² The Coalition's proposal to withdraw 37% of the surface area of San Juan County from current uses raises national-level policy, technical, procedural, jurisdictional, property, health and safety, and local-sovereignty related questions. We explore these questions in context of Federal statutory requirements.

In its proposal, the Coalition recommends that the POTUS create a new *Federal Entity* - a quasi-governmental agency - whose existence has no precedent and the authority for which cannot be traced to Federal statutes. The new entity is proposed to be managed by a salaried, eight-member commission - one member from each tribe - and three participants from Federal agencies. No participation from State or local governments is contemplated, either during the designation process or in subsequent operations, land-management, or decision-making.

With respect to funding, the Coalition points to the "interest" of unnamed philanthropic foundations before transitioning into a request that the POTUS "*direct agencies to use their best efforts to provide funding under the Indian Self-Determination Statutes and other authorities for collaborative management at Bears Ears.*"¹³ The proposal is silent on the Congressional land withdrawal and appropriations process associated with land transactions of the magnitude contemplated by the Coalition, and no budgetary or cost estimates were included in the proposal.

⁸ Briefing Paper. US Department of Interior, Bureau of Land Management. Office of Law Enforcement and Security, Region 3.

⁹ Proposal to President Barak Obama for the Creation of Bears Ears National Monument. The Bears Ears Inter-Tribal Coalition. October 15, 2015.

¹⁰ 16 USC§ 431-433.

¹¹ 54 USC Sec.§§ 300101-320303; (Pub.L. 113-287, S3, December 19, 2014. 128 Stat. 3187.)

¹² Navajo Nation has 18 acres and the Ute Mountain Ute tribe has 4,800 acres in the proposed boundary. SJC, Utah Surveyors Office.

¹³ Ibid. Proposal to President Barak Obama. Page 30.

103 Historically, a proposal of the quality of that submitted by the Coalition would not
104 be significant enough to merit Presidential attention. In the context of elevated
105 jurisdictional tensions, prerogative incursions, and even proposed Federal rules that
106 are contrary to Federal statutes, a deeper, more organic problem exists.¹⁴

107 *1.4 Purpose and Approach -*

108 Our approach examines the Coalition's proposal in the context of ongoing
109 encroachment by Federal land management agencies and the Executive Branch on
110 the prerogatives of State and local governments. In seeking solutions to a complex,
111 emotionally-charged situation, we avoid assigning blame or ascribing intent. Our
112 objective is to survey the Coalition's urgent claim for artifact protection in the
113 historical, jurisdictional, and statutory context of rightful Federal, State, and local
114 land use planning prerogatives.

115 Following review of the Coalition's proposal we apply the statutory, procedural
116 framework required of Federal agencies during the designation process and that are
117 protective of human health and the environment. Finally, we conclude with
118 solutions that utilize the existing, jurisdictional, San Juan County land use planning
119 and management system.

120

¹⁴ Comments, Statutory Analysis and Recommendations on BLM's 2.0 Planning Rule. Stillwater Technical Solutions. May, 2016.

121 **2.0 Statutory Backdrop**

122 *2.1 The Federal Land Policy and Management Act -*

123 Through the 1976 Federal Land Policy and Management Act (FLPMA), Congress
 124 consolidated a century of land-management statutes into one comprehensive body
 125 of law to be implemented by the Secretaries of the Departments of Interior and
 126 Agriculture. FLPMA is the controlling statutory mandate governing Federal land
 127 use planning, land withdrawals, range allotment permitting, minerals management,
 128 land set-asides, prior existing rights, and protected rights-of-way on or over public
 129 lands.

130 Public lands and antiquities proposed for withdrawal by the POTUS are to be
 131 “*reviewed in accordance with the provisions of this [FLPMA] Act*”¹⁵ and managed
 132 according to the mandates of FLPMA, the Archeological Resources Protection
 133 Act,¹⁶ the National Historic Preservation Act (NHPA),^{17,18} and Title 54 of the
 134 National Park Service Preservation statutes.¹⁹ At the state level, the lead authority
 135 for artifacts management is the State Historic Preservation Office (SHPO).

136 Prior to initiating Major Federal (withdrawal) Action,^{20,21} the Secretary(s) are to
 137 implement the Environmental Assessment (EA) mandates of the National
 138 Environmental Policy Act (NEPA),²² codified in rule by the Council of
 139 Environmental Quality (CEQ).²³ All statutory responsibilities surrounding
 140 monument designations are to be undertaken in the context of minimum data
 141 quality and scientific standards of the Data Quality Act and Department of Interior
 142 policies. The NEPA requirement is more fully applied throughout this survey.

143 After five years of deliberation and in response to the conclusions of the Public
 144 Land Law Review Commission,²⁴ the 94th Congress changed the definition of what
 145 constitutes “public land.” This change - central to implementation of the doctrine
 146 of multiple use and its list of limited, principal uses - was necessary because
 147 Congress determined that most lands and minerals throughout the west had been
 148 allocated, and as a result, significant portions of the public lands now exist in split
 149 estate ownership.

150 Following promulgation of FLPMA, it is the property doctrine of split-estates that
 151 determines which governmental entity has controlling, jurisdictional authority over
 152 surface land. Federal land management agencies are limited to commercial timber
 153 and subsurface mineral estate, whereas State and their political subdivisions have

¹⁵ 43 USC §1701(a)(3).

¹⁶ 16 USC §470aa-mm.

¹⁷ Pub. L. 89-665; 80 STAT.915; 16 USC §470.

¹⁸ Executive Order 11593. Protection And Enhancement Of The Cultural Environment. May 13, 1971.

¹⁹ Pub. L. 113 287, §3, Dec. 19, 2014, 128 Stat. 3188.

²⁰ 40 CFR §1501.2.

²¹ 40 CFR §1508.18.

²² 42 USC §§4321-4347.

²³ 40 CFR §§1500-1508.

²⁴ *One Third of the Nations Land*. A Report to the President and to the Congress by the Public Land Law Review Commission. June, 1970.

154 jurisdiction over private property interests, including grazing allotments. It is only
 155 within National Parks, where private inholdings have been acquired thorough
 156 relinquishment, condemnation or purchase - or where the State has ceded its
 157 authority - that Federal land management agencies possess exclusive jurisdiction
 158 over surface lands.

159 Over time, Federal agencies have lost sight of their limited, statutory authority to
 160 regulate the surface portion of split-estate lands, resulting in encroachments.
 161 Encroachments have taken place through a variety of mechanisms, including
 162 administrative orders, errant regulations and unchecked policy directives, with a
 163 corresponding lack of resistance at the State and local level.

164 Jurisdictional confusion can be traced to a non-understanding of the origin and
 165 longstanding history of the definition of "public lands" in Federal statutes and case
 166 law. The relationship of public lands to split estates, reservations, and other land
 167 appropriations was defined in the Federal Water Power Act of 1920 and since has
 168 been abundantly adjudicated in case law:

169 *"most enduringly public lands have been defined as*
 170 *those lands subject to sale and other disposal under*
 171 *the general land laws"*²⁵

172 and,

173 *"Public lands" means such lands and interests in*
 174 *lands owned by the United States as are subject to*
 175 *private appropriations and disposal under public*
 176 *land laws. It shall not include "reservations" as*
 177 *hereinafter defined. "Reservations" means national*
 178 *monuments, national parks, national forests, tribal*
 179 *lands embraced within Indian reservations, military*
 180 *reservations, and other lands and interests in land*
 181 *owned by the United States and withdrawn, reserved*
 182 *or withheld from private appropriation and disposal*
 183 *under the public land laws...."*²⁶

184 When the 94th Congress revised the definition of "public lands" it had in view that
 185 split-estate conditions, reservations for National Monuments and Parks - including
 186 grazing allotments - not be included in the definition of what constitutes "public
 187 lands."²⁷ This led to the current FLPMA definition:

²⁵ Utah Div. Of State Lands v. United States, 482 US 193 (1987).

²⁶ 41 Stat 1063.

²⁷ Agricultural Entry of Mineral Lands Act 1914; Stock-Raising Homestead Act 1916; Mineral Leasing Act 1920; Federal Power Act 1920. [See Kinney Coastal Oil v Kieffer, 277 US 488 (1928); Watt v Western Nuclear, 462 US 36 (1983)]

188 *The term “public lands” means any land and*
 189 *interest in land owned by the United States within*
 190 *the several States and administered by the Secretary*
 191 *of the Interior through the Bureau of Land*
 192 *Management, without regard to how the United*
 193 *States acquired ownership....*²⁸

194 The addition of “*interest in land*” and removal of “*subject to appropriation and*
 195 *disposal*” language reflected the need for comprehensive land use planning that
 196 respects the split estate nature of pre-existing mining claims, land interests,
 197 property rights, and land uses that had been granted throughout 200 years of
 198 history.

199 In promulgating FLPMA, the Congress moved Federal land planning closer to
 200 State and local jurisdictions, intending co-planning with Federal agencies to be
 201 carried out on an equal-footing basis. FLPMA places Department of Interior as a
 202 partner for the overall process; e.g., to be reviewer and coordinator of land use
 203 plans, including Federal plans. Complications have arisen because county
 204 governments have not adequately understood the responsibilities, technical
 205 requirements, or limits of Federal control in land use management and planning.

206 The combination of unrestrained growth of administrative government and a
 207 wholesale, shallow understanding of the bright-line limits of Federal, State and
 208 local prerogatives has led to confusion in land use planning. This situation can be
 209 restored through a clear understanding of history and firm, ground-up assertion of
 210 rightful prerogatives.

211 Recognizing the intermingled, pre-existing status of water rights, easements,
 212 grazing allotments, mining claims, timber operations and various private
 213 inholdings, the 94th Congress established a hierarchal system that provides for the
 214 diverse land use interests around a central philosophy of productivity²⁹ - not
 215 sequestration. To that end, the limited FLPMA doctrine of principal use³⁰
 216 establishes a first-among-multiple-use hierarchy for land use planning within the
 217 grazing districts of San Juan County:

- 218 1. *Domestic livestock grazing;*
- 219 2. *Fish and wildlife development and utilization;*
- 220 3. *Mineral exploration and production;*
- 221 4. *Rights-of-way;*
- 222 5. *Outdoor recreation; and,*
- 223 6. *Timber production.*

224 The first in the hierarchy of FLPMA principal uses is domestic livestock grazing.
 225 Federal courts have determined allotments for livestock grazing to be limited-fee
 226 titles that constitute a property right.³¹ As a FLPMA-protected, pre-existing

²⁸ 43 USC §1702 (e).

²⁹ 43 USC §1702 (e).

³⁰ 43 USC §1702 (l).

³¹ US v. Estate of Hage, No 2:07-CV-01154-RCJ P. 41 D Nev. May 24, 2013.

227 property right, grazing allotments and range improvements in San Juan County are
 228 surface-right entitlements that enjoy legal and regulatory safeguards so long as
 229 they are exercised.^{32,33}

230 Because the 43 grazing allotments in San Juan County are limited-fee title, surface-
 231 estate entitlements that do not meet the definition of “public lands,” those surface
 232 allotment lands, absent Federal purchase, condemnation or due process, are
 233 excluded from a monument designation as they are not lands fully “*owned or*
 234 *controlled by the Federal Government.*”

235 From a land management perspective, further investigation is needed to identify
 236 and segregate surface timber interests and Federally-owned minerals from water
 237 rights, grazing allotments and other private holdings that occur in split estate. This
 238 inventory will vastly reduce the management claim of Federal agencies to surface
 239 lands in San Juan County and ideally take place during revision of the San Juan
 240 County MP.

241 2.2 *The Data Quality Act -*

242 The Data Quality Act (DQA)^{34,35} requires administrative agencies to establish and
 243 maintain minimum standards and internal policies that afford local government and
 244 the public a process through which information can traced, corrected and verified.
 245 Information which could inform major Federal actions or executive decisions -
 246 such as the proposed Bears Ears National Monument designation - must be of high
 247 quality, reliability, transparency and veracity:

248 *“The more important the information, the higher the*
 249 *quality standards to which it should be held, for*
 250 *example, in those situations involving influential*
 251 *scientific or statistical information.”³⁶*

252 Congress has established a minimum, DQA threshold consisting of four
 253 components:

- 254 1) Quality;
- 255 2) Utility;
- 256 3) Objectivity; and,
- 257 4) Integrity.

³² Pub. L. 94-579 Sec. 701 (a).

³³ Pub. L. 94-579 Sec. 701 (h).

³⁴ Section 515(a) US Treasury and General Government Appropriations Act. Pub. L. 106-554.

³⁵ H.R. 5658; 66 FR 49718. September 28, 2001.

³⁶ Ibid. Federal Reg. Vol. 66, No. 189.

258 The “*Objectivity*” component requires information used in natural resource
 259 planning to identify all sources of information, standards for models, data,
 260 financial information; information in statistical contexts are to be specifically
 261 documented “*so the public can assess for itself whether there may be some reason*
 262 *to question the objectivity of the sources.*” Objectivity means information must be
 263 clear, complete, and unbiased with sources being identified. To be reviewable,
 264 information must first be made available.

265 The “*Reproducibility*” requirement states that information must be “*capable of*
 266 *being substantially reproduced subject to an acceptable degree of imprecision.*”
 267 This DQA requirement means that information for a proposed monument, such as
 268 inventory of property inholdings and studies for proper care and management -
 269 must be available from common and readily-available sources and such
 270 information must be replicable. An example of the “reproducibility” standard
 271 includes information-sourcing of the scientific basis used to determine the
 272 monument boundary.

273 The “*Utility*” requirement pertains to usefulness. Information from Federal
 274 agencies - and by extension the POTUS - “*needs to consider the uses of the*
 275 *information not only from the perspective of the agency, but also from the*
 276 *perspective of the public.*” An example of the utility component is that information
 277 must be specific for the purpose, not random, unrelated citations or references.

278 The “*Integrity*” component pertains to security of information such that it is not
 279 subject to compromise.

280 In his Federal Register notification for the proposed P2R Planning Rule, the BLM
 281 director proposed diluting and altering existing Federal standards for information
 282 dissemination under the Data Quality Act. Specifically, the Director cites the
 283 example of Traditional Ecological Knowledge (TEK) - knowledge from a specific
 284 location acquired by indigenous and local people who have had direct contact with
 285 the environment - as a type of information that constitutes “high quality”
 286 information. TEK falls well short of the Federal definition of what constitutes
 287 “science” and it does not meet the Quality, Utility, Objectivity, and Integrity
 288 standards in DQA.³⁷

289 2.3 *The Antiquities Act -*

290 The Antiquities Act (AA) was promulgated by the Congress in 1906 and amended
 291 in 1950 to exclude extensions to existing or designations of new national
 292 monuments in Wyoming without Congressional authorization.³⁸ In 2014, the AA
 293 was reauthorized by Congress and brought under Title 54³⁹ code of the National
 294 Park Service Preservation statutes.⁴⁰ In placing the AA under Title 54, Congress
 295 removed any potential for the AA to be considered a stand-alone, executive

³⁷ *Comments, Statutory Analysis and Recommendations on BLMs Planning 2.0 Rule*. Stillwater Technical Solutions. May, 2016. pps 6.

³⁸ 54 USC §320301 (d).

³⁹ 54 USC Sec. §320301.

⁴⁰ 128 STAT 3094. Public Law 113-287-December 19,2014. "National Park Service and Related Programs." 54 USC 320301.

296 prerogative; the AA is now a *corpus juris* part of the National Park Service
 297 statutes, and all monument designations are subject to the standards, procedures,
 298 human protections, and regulatory processes - *in para materia* - as all other
 299 Department of Interior National Park Service programs.

300 The purpose of the AA is to set aside *objects, landmarks, and structures* for care
 301 and management that have been identified in small, discreet tracts of Federal lands.
 302 The scope of protection offered by the AA is limited to objects, items and
 303 structures; withdrawal of public lands, natural resources or lands beneath
 304 landmarks is to take place in full compliance with FLPMA mandates.^{41,42}

305 The statutory construction and semantics of the AA are methodological in
 306 imposing procedural and technical obligations upon the POTUS - and by extension
 307 the Secretaries of Interior and Agriculture. The simple AA language presupposes
 308 up-front, due diligence has been accomplished *prior* to proclaiming the
 309 designation; as example, it is not possible to minimize a parcel size without first
 310 understanding the relationship of public lands to State and private inholdings.
 311 Likewise, "*proper care and management*" needs cannot adequately be determined
 312 without first assessing the occurrence, nature, and best management practices for
 313 the object(s) to be protected. Finally, in order to properly exercise their right of
 314 relinquishment, inholders have a fundamental right to notification while their
 315 property interests have full market value - a right that is impossible to exercise
 316 without an accurate, pre-inventory⁴³ of objects, Federal lands, and State and private
 317 holdings.

318 The specific language of AA clearly precludes designate-then-investigate actions.

319 In support of the monument designation process and statutorily provided, local
 320 land use planning role, we have developed a 6-part test. The test applies the core
 321 procedural tenets of the AA that must be undertaken prior to the designation being
 322 made, and can be applied to any monument proposal in the United States, its
 323 territories, and possessions. While the details of each situation vary, the objective
 324 behind the test is to illuminate the principles required of the Secretaries of Interior
 325 and Agriculture - and by extension, the POTUS. These statutory requirements
 326 balance safeguards of valid exiting rights, inholdings, private property,
 327 notification, and local land use planning prerogatives with the cultural and
 328 secondary value protections any AA designation might have.

⁴¹ 43 USC §1702(j).

⁴² 43 USC §1714(a)-(l).

⁴³ 43 USC §1701(a)(2)

329 **The Antiquities Act⁴⁴ -**

330 (a) *PRESIDENTIAL DECLARATION* - *The President*
 331 *may, in the President's discretion, declare by public*
 332 *proclamation historic landmarks, historic and*
 333 *prehistoric structures, and other objects of historic or*
 334 *scientific interest that are situated on land owned or*
 335 *controlled by the Federal Government to be national*
 336 *monuments.*

337 (b) *RESERVATION OF LAND* - *The President may*
 338 *reserve parcels of land as a part of the national*
 339 *monuments. The limits of the parcels shall be confined*
 340 *to the smallest area compatible with the proper care*
 341 *and management of the objects to be protected.*

342 (c) *RELINQUISHMENT TO FEDERAL GOVERNMENT* -
 343 *When an object is situated on a parcel covered by a*
 344 *bona fide unperfected claim or held in private*
 345 *ownership, the parcel, or so much of the parcel as may*
 346 *be necessary for the proper care and management of*
 347 *the object, may be relinquished to the Federal*
 348 *Government and the Secretary may accept the*
 349 *relinquishment of the parcel on behalf of the Federal*
 350 *Government.*

351 **Antiquities Act: Procedural Requirements Test -**

352 a. What credible, reliable, replicable and readily-available scientific studies have
 353 been performed to assess the range, occurrence and proper care of objects in
 354 the area proposed for designation?

355 b. Through what means has the Secretary(s) created and published inventories
 356 that distinguish public land from inholdings of reserved water right(s), mining
 357 or mineral claims, State and private property inholdings, grazing allotments,
 358 pre-1976, in-perpetuity easements, and/or rights-of-way?

359 c. How have parcels of public land been delineated such that the relationship of
 360 inholdings can reasonably be understood and the smallest area compatible
 361 with proper care and management of the objects responsibly be determined?

362 d. By what means, measures and timing did the Secretary notify government,
 363 corporate and/or private property in-holders of their right to participate in or
 364 opt out of the relinquishment process?

365 e. What local input has been sought to document what constitutes proper
 366 management of the objects for the protections being sought?

367 f. What State and local political subdivision inholdings have been identified that
 368 could experience tax, impaired right-of-way, affected water right, safety, or
 369 other derogation as a result of a premature or inappropriate designation?⁴⁵

⁴⁴ 54 USC Subtitle III: National Preservation Programs. Sec. §320301

370 2.4 The National Environmental Policy Act -

371 The National Environmental Policy Act of 1969 (NEPA)⁴⁶ and implementing
 372 regulations from the Council on Environmental Quality (CEQ)⁴⁷ mandate
 373 balancing of human and natural environments during decision making by Federal
 374 agencies. The policy of the United States, mandated through NEPA, is to assure
 375 protection and productivity of the human and natural systems in the context of
 376 general human welfare and harmony with existing social, economic, and cultural
 377 systems.

378 *“it is the continuing policy of the Federal*
 379 *Government, in cooperation with State and local*
 380 *governments, and other concerned public and*
 381 *private organizations, to use all practicable means*
 382 *and measures, including financial and technical*
 383 *assistance, in a manner calculated to foster and*
 384 *promote the general welfare, to create and maintain*
 385 *conditions under which man and nature can exist in*
 386 *productive harmony, and fulfill the social, economic,*
 387 *and other requirements of present and future*
 388 *generations of Americans.”*⁴⁸

389 and,

390 *“ . . . to use all practicable means, consistent with*
 391 *other essential considerations of national policy, to*
 392 *improve and coordinate Federal plans, functions,*
 393 *programs, and resources*⁴⁹ . . .”

394 The POTUS, by definition, is not a Federal agency and is exempt from NEPA
 395 mandates⁵⁰ during the routine exercise of his office. For their part, the Secretaries
 396 of Interior and Agriculture are *not* exempt from NEPA requirements when carrying
 397 out their responsibilities under Title 54,⁵¹ and this includes monument
 398 designations.

399 A simple-to-ask but complex-to-answer question is whether the POTUS, by virtue
 400 of his office, has the Constitutional or Congressional latitude to override or negate
 401 the statutory mandates required of the Secretaries of Federal agencies.....put
 402 another way, can the POTUS circumvent specific activities that Congress
 403 mandated Federal agencies to implement?

404 We believe the POTUS *is* constrained by the statutory mandates governing the
 405 Federal agencies who act on his authority and in his stead. Once a statutory bright
 406 line has been breached, there remains no objective limits by which local
 407 government, Congress or the courts can measure his actions, decisions or behavior.

⁴⁵ Pub.L. 94-579 Sec. 701 (a).

⁴⁶ 42 USC. §§4321 - 4347.

⁴⁷ 40 CFR §§1500-1508.

⁴⁸ 42 USC §4331(a).

⁴⁹ 42 USC §4331(b).

⁵⁰ 40 CFR §1508.12.

⁵¹ 54 USC Sec. §300101 et.seq.

408 Should the POTUS fail to comply with procedural mandates binding subordinate
409 Secretaries, such an example lends tacit approval for subordinates to disregard
410 laws, which in turn leads to the degradation at all levels of government.

411 As the planning process for the Manti-La Sal National Forest proceeds - and if the
412 Coalition's proposal gains consideration - the procedural requirements of NEPA
413 apply to the Secretaries of Interior and Agriculture at the earliest possible
414 opportunity.⁵² As result, we recommend San Juan County consider requesting Co-
415 Lead Agency status during the EA/EIS and include the process and results, as
416 appropriate, in revision of the MP.

⁵² 40 CFR §1501.2.

417 **3.0 Discussion**

418 *3.1 Proposal by The Bears Ears Inter-Tribal Coalition -*

419 3.1.1 Jurisdiction

420 On October 15, 2015, representatives from the Hopi Tribal Council, Navajo
421 Nation, Ute Indian Tribe Business Committee, Ute Mountain Ute Tribal Council,
422 and Pueblo of Zuni tribes submitted to President Obama and the Departments of
423 Interior and Agriculture a proposal⁵³ to withdraw 1.9 million acres of land
424 currently within the jurisdictional boundaries of San Juan County.

425 The proposal was clearly prepared with a heart of genuine concern for the history
426 and safeguarding of the objects and artifacts contained within discreet areas of the
427 proposed Bears Ears Monument area. STS does not question the spirit or
428 authenticity of the concerns exhibited in that proposal; however, the purpose of our
429 analysis is to apply Federal statutory requirements that bind the Secretaries of
430 Interior and Agriculture - and therefore the POTUS - to the procedural processes
431 and jurisdictional deference in land use planning.

432 In requesting adoption of its collaborative management concept, the Coalition
433 proposes an additional, quasi-governmental layer of land use planning that would
434 preempt at *least* 19 existing land use plans - including ten plans of four Federal
435 agencies. The Coalition's proposal would preempt an existing Memorandum of
436 Agreement (MOA) between the Navajo Nation and San Juan County whose
437 express purpose is to include objects of historical value in the land use and
438 planning process. Further, the proposal provides no role for statutorily mandated
439 participation from existing political subdivisions of the State of Utah, San Juan
440 County, or other qualified local government entities.

441 3.1.2 Damage to Antiquities

442 The factual basis for the Coalition's "*more than a dozen serious looting cases were*
443 *reported between May, 2014 and April 2015*" was not included or referenced in the
444 proposal. The assertion of "rampant looting" contrasts greatly with reports from
445 local law enforcement (Exhibit 8) and a US Department of Interior briefing paper
446 on looting and pillaging activities (Exhibit 5).

447 When the cases documented by law enforcement are weighed against the varying,
448 reported quantity of sites, the magnitude of the Coalition's urgency claim pales,
449 particularly against the backdrop of foreseeable, adverse impacts to the human
450 environment that could result from reactionary-based decision-making. Indeed, the
451 negative experiences documented by Garfield County should lead Federal agencies
452 to exercise caution and full procedural compliance to ensure adequate human
453 protections (Exhibit 8).

⁵³ *Proposal to President Barak Obama for the Creation of Bears Ears National Monument.* The Bears Ears Inter-Tribal Coalition. October 15, 2015.

With respect to the monument boundary proposed by the Coalition, neither the map by Grand Canyon Trust nor the proposal itself provides data, replicable details, or calculations as to how the boundary limits were determined or how the proposed 1.9 million acres could possibly meet the smallest-possible-area and land-controlled-by-Federal-government requirements for monument designations. In glaring contrast, we conclude the interspersed grazing allotments, SITLA lands, water rights, and valid, pre-existing rights-of-way pose significant additional complexities to the designation process - one that must be examined through scientific and procedural means.

3.1.3 Legislative Considerations

Significant land use legislative activities have been taking place at both the Utah State and national levels. In 2015, Utah passed H.B. 393, a statute that created energy zones within San Juan County and amended the Utah resource management plan. At the national level, Congressman Rob Bishop has introduced into the House Natural Resources Subcommittee H.R. 5780, the Utah Public Lands Initiative (PLI) and that legislation is progressing through the House of Representatives.

H.R. 5780, if passed, would establish eleven new national conservation areas (NCAs), six special management areas, designate forty-one new wilderness areas, add land to Arches National Park, create a new national monument, and establish a new national recreation area.

The product of a large, multi-group effort, the PLI is astonishingly detailed in scope, offering much to many stakeholders responsible for its development. For their part, environmental groups and the Department of Interior oppose specific language in the PLI that would transfer authority for energy permitting to the State, limit BLM's ability to manage some grazing activities, and grant RS 2477 roads and rights-of-way. Also drawing ire are provisions that allow limited motorized access in wilderness areas and limit BLM's ability to close roads, trails, and corridors.

San Juan County, through its Lands Council, has contributed positively to development of the PLI (Exhibit 6). Specific contributions to the PLI include designation of two NCAs, several wilderness areas, and identification of productive energy zones consistent with newly enacted State statutes.

The San Juan County Council and Commission has expressed particular interest in the transfer of the McCracken mesa mineral rights from the Federal government to the Utah Navajo Nation Trust Fund (UNTF), continuation of livestock grazing allotments during future land transfers, inclusion of setbacks (positive buffer zones) from rights-of-way, transfer of infrastructure and other interests.

Other initiatives identified by the San Juan County Commission include interests that would revise how mineral royalties are allocated within the State, protection of cultural sites such as the White Mesa and the Allen County Burial Grounds, and allocation of some SITLA land to the Southern San Juan Paiute Tribe. These

496 important, local, cultural items must not be lost in the fervor of legislative
497 negotiations, language adjustments or changes that accommodate special interest
498 groups.

499 In our brief exposure to the history of San Juan County's Native Americans, we
500 observed several economic injustices and multi-generational, cultural injuries -
501 wounds we believe would be exacerbated if the Coalition's proposal results in a
502 national monument.

503 We do believe San Juan County should convene a subcommittee within its
504 management planning process to collect, assess, recommend and oversee cultural
505 protections consistent with the purpose and objectives of land use planning.

506 3.2 *Valid Existing Rights* -

507 3.2.1 Grazing Allotments

508 The *Agricultural Entry of Mineral Land Act of 1914*,⁵⁴ the *Mineral Leasing Act of*
509 *1920*, and the *Stock-Raising Homestead Act of 1916* created a split-estate condition
510 that segregated mineral rights from the surface-estate on public lands. The
511 legislative philosophy behind these acts, carried forward in the Congressional
512 record and codified in FLPMA, granted the surface-fee title to agriculture and
513 ranching, while reserving "merchantable timber" and the mineral estate to the
514 United States.^{55,56}

515 The intent of Congress in severing "*Limited Surface fee title for Agriculture and*
516 *Ranching*" while reserving to the United States the mineral estate and commercial
517 timber was to recognize, through allocation of limited surface ownership interests,
518 ranching and livestock grazing as having a longstanding history, priority, and value
519 in American culture.

520 Grazing allotments are a limited-fee, surface title property interest that enjoys
521 substantive and procedural property rights.⁵⁷ In areas where grazing allotments
522 occur as surface estate, such as throughout San Juan County, those grazing
523 allotments constitute valid, pre-existing, property rights not under the ownership or
524 control of Federal agencies or the United States. As a result, grazing rights may not
525 be encumbered or revoked without procedural or due-process actions,
526 adjudications, or compensation.⁵⁸

527 If a monument is to be proposed,⁵⁹ surface-estate grazing allotments must first be
528 inventoried and the ownership characteristics of each allotment determined. If, as
529 part of procedural due diligence, the POTUS elects to proceed with monument
530 designation, owners of grazing allotments are to be notified of their opportunity to
531 relinquish as would be the case with any other property right.

⁵⁴ 37 Stat 267, 38 Stat 609, 38 Stat 712.

⁵⁵ *Kinney Coastal Oil v. Kieffer*, 277 US 488 (1928).

⁵⁶ *Watt v. Western Nuclear*, 462 US 36 (1983).

⁵⁷ *US v. Estate of Hage*, No 2:07-CV-01154-RCJ P. 41 D Nev. May 24, 2013.

⁵⁸ 43 USC §1702 (f); 43 USC §1769 (a).

⁵⁹ USC Sec. §32030.

The prolific confusion surrounding the history of grazing districts and the property rights of grazing allotments lends to the need for San Juan County to establish the occurrence and scope of grazing-allotment holdings throughout the county, including within the Manti-La Sal National Forest. We recommend inclusion of a grazing allotment inventory in the San Juan County Land Use and Management Plan as well as notification of Federal and State agencies of County policies, mapping, and management ordinances, such that those entities may attempt consistency through inclusion of grazing allotment in their planning process.

3.2.2 SITLA Lands

The Utah *School and Institutional Trust Lands Administration* (SITLA) is an independent, revenue-generating State agency established to manage lands granted to Utah by Congress. SITLA manages 3.4 million acres of state trust lands, and an additional 1 million acres of mineral estate. Taxable activities on SITLA lands support twelve state institutions and include real estate development and sales; oil, gas, and mineral lease rents and royalties; renewable energy projects and surface-estate sales, leases, and easements.

There are approximately 151,000 acres of revenue-generating, SITLA lands interspersed throughout the monument area proposed by the Coalition (Exhibits 1 and 2; Map 3). SITLA parcels - being State owned - do not constitute “*land owned or controlled by the Federal Government*,” and cannot be legitimately withdrawn for a monument without an inventory, notification-for-relinquishment, due-process or tax compensation review.⁶⁰

In requesting the POTUS withdraw 1.9 million acres of lands containing 151,000 acres of interspersed SITLA inholdings, the Coalition is indirectly asking the Secretaries of Interior and Agriculture to violate Federal procedural land use and human-protection statutes without the benefit of study, notification, due process, or compensation.

Because monuments - over time - have been demonstrated to eliminate revenue-producing activities, the impacts to human health, the human environment and the state economy must - prior to *proposing* a monument - be investigated through the NEPA Environmental Assessment (EA) or Environmental Impact Statement (EIS) process. (It seems unconscionable to us that any Federal agency would take the position that NEPA does not apply, particularly in the context of SITLA, tax-related impacts on the State economy.)

The Coalition's “*major objective to keep most of the [1.9 million acres] of the Bears Ears roadless and pristine*”⁶¹ is contrary to established law as it advocates the POTUS - through the Secretaries of Interior and Agriculture - to arbitrarily encumber or close legitimate access corridors, including 79 miles of easement-holding, SITLA roadways. Granting the Coalition's broad, unsubstantiated request

⁶⁰ 43 USC §1701(a)(13).

⁶¹ *Proposal to President Barak Obama for the Creation of Bears Ears National Monument*. The Bears Ears Inter-Tribal Coalition. October 15, 2015.p. 35.

571 for a 1.9 million acre Bears Ears monument would result in clear derogation⁶² of
 572 Utah State authority by terminating - over time - valid SITLA leases, lands, and
 573 rights-of-way.

574 3.2.3 Implied Reservation of Water

575 Located within the Manti-La Sal National Forest is the surface water collection,
 576 storage and distribution system for the Cities of Monticello and Blanding. With the
 577 exception of a few intermittent wells, both cities are *entirely* dependent upon the
 578 watershed of the Manti-La Sal National Forest.

579 Water captured in impoundments within the Manti-La Sal National Forest is
 580 delivered through a series of conveyances, pipelines and tunnels; water delivery
 581 and conveyance infrastructure that resides within easements and rights-of-way
 582 have been set aside for that purpose.⁶³

583 Within the area proposed for the Bears Ears Monument, the United States has
 584 limited, appropriated water rights. Water reserved to the United States in the
 585 Manti-La Sal National Forest and the BLM Resource Areas includes set asides for
 586 firefighting purposes, culinary use at administrative sites, reservations for a few
 587 head of pack stock, and limited-use appropriations at discreet sites as determined
 588 by the State of Utah.

589 Historically, surface and ground water rights in San Juan County were severed
 590 from the public lands and water appropriation prerogatives are now under the
 591 jurisdiction of the State of Utah.⁶⁴ In *US v. New Mexico* (1978) the SCOTUS ruled
 592 ranchers in national forests own stock watering rights;⁶⁵ in other related case law,
 593 ranchers have been determined to own stock watering rights and improvements
 594 located on Grazing Allotments.⁶⁶

595 Under the Implied Reservation of Water Doctrine, the *Multiple Use and Sustained*
 596 *Yield Act of 1960*, and rulings from the Supreme Court of the United States
 597 (SCOTUS), the Federal government does not have the prerogative to appropriate
 598 water from national forests for recreation, range, fish or environmental uses outside
 599 of the State water appropriation framework.

600 In *U.S. v. New Mexico*, the SCOTUS found it is the intent of Congress to reserve
 601 enough water to meet specific uses and no more; that the Federal government is to
 602 utilize the State water appropriations process as others, and even pay to purchase
 603 water rights under state systems, including monuments.⁶⁷

⁶² Sec.701 Pub.L.94-579 (g)(6).

⁶³ Personal interview: Blanding City Manger Jeremy Redd and City Engineer Terry Ekker, PE. August 8, 2016.

⁶⁴ *California v. United States*, 438 US 645 (1978).

⁶⁵ *United States v. New Mexico*, 438 US 696 (1978).

⁶⁶ *Fallini v. Hodel*, 725 F. Supp 1113 (D. Nev 1989) *affm* 963 F2d 275 (9th Cir 1992).

⁶⁷ 438 U.S. 696, 702.

604 Superimposition of a monument over the Manti-La Sal National Forest, as
 605 contemplated by Coalition and drawn by *Grand Canyon Trust* environmental
 606 group,⁶⁸ would have foreseeable, indirect and long-term adverse effects on
 607 Monticello and Blanding's water conveyance system and water rights by
 608 inappropriately superseding state water appropriations,⁶⁹ derogation of ditch and
 609 conveyance rights-of-way,^{70,71} and preemption of state jurisdiction^{72,73} over water
 610 appropriations and programs.

611 Because Blanding's rights-of-way and Manti-La Sal National Forest watershed
 612 conveyance systems do not constitute "*land owned or controlled by the Federal*
 613 *government*," those systems are only eligible for Federal acquisition through
 614 relinquishment, procedural actions, due process and/or adjudication.

615 3.2.4 Rights-of-Way

616 Ongoing and unencumbered right-of-way access is essential to inholder property
 617 rights, civic duties of law enforcement, and the day-to-day operational aspects of
 618 managing livestock grazing allotments. Pre-FLPMA, in-perpetuity easements,
 619 prescriptive RS 2477 roads, ditches, water conduits, utility routes, and first-
 620 responder corridors across public lands constitute valid, pre-existing, rights not
 621 under the ownership or control of Federal agencies or the United States.^{74,75,76}

622 Pre-FLPMA right-of-way corridors are real property interests and regulation of
 623 those corridors across Federal land resides within the purview and prerogative of
 624 State and local jurisdictions. In circumstances where rights-of-way are to be
 625 relinquished to the United States, such reversionary actions are subject to normal
 626 land transaction, adjudicatory, or compensatory processes.

627 Federal agencies have statutory authority to issue term-limited, *revocable* FLPMA
 628 Title V rights-of-way to control mining activities, commercial timber activities,
 629 transportation, mineral transport, communication and similar utilities. We believe
 630 it is important, as part of local land use planning, to survey, distinguish, and
 631 document rights-of-way in local land use and management plans. As part of the
 632 right-of-way process, we recommend San Juan County insist its right-of-way
 633 prerogatives be included in Federal land plans through the FLPMA consistency
 634 doctrine.

⁶⁸ *Proposal to President Barak Obama for the Creation of Bears Ears National Monument*. The Bears Ears Inter-Tribal Coalition. October 15, 2015. pg 43.

⁶⁹ *United States v. Krall*, 174 US 385 (1899).

⁷⁰ Pub.L.94-579(a).

⁷¹ *San Jose L.&W. Co. v. San Jose Ranch*, 189 US 177 (1903).

⁷² Sec.701 Pub.L.94-579 (g)(6).

⁷³ Sec.701 Pub.L.94-579 (g)(7).

⁷⁴ *Curtin v. Benson*, 222 US 78 (1911).

⁷⁵ *Colorado v. Toll*, 268 US 228 (1925).

⁷⁶ *United States v. 9,947.71 Acres*, 220 F Supp 328 (1963).

635 3.2.5 Uranium

636 Uranium is a strategic mineral that has both civilian and military uses. In civilian
637 applications, uranium can be processed to facilitate generation of electricity in
638 nuclear power plants; in military applications, uranium has a productive use as a
639 high-density, projectile penetrator.

640 The sole, remaining mill capable of producing conventional uranium is owned by
641 Energy Fuels, Inc. and is located on Highway 191, between Bluff and Blanding -
642 well within boundary proposed by the Coalition for a monument.

643 Because of the strategic importance of uranium to the United States and the
644 economic contribution of productive, life-wage industrial activities to San Juan
645 County, the potential impact of plant closure on the human environment would
646 need to be reviewed thorough the NEPA EA/EIS process if the Coalitions
647 monument proposal were to gain acceptance.

648 *3.3 Other Considerations -*

649 3.3.1 Human Health, Safety and Welfare -

650 The 10th Amendment to the Constitution and State law vests local sheriffs as the
651 final authority for local law enforcement, including ensuring the health, safety and
652 welfare of citizenry under their charge. We approached two county sheriffs - one
653 having recent experience with a monument and the other from San Juan County -
654 to gain their views on the Coalition's desire to close access routes and rights-of-
655 way corridors.

656 Sheriff Rick Eldridge of San Juan County expressed considerable concern that the
657 combination of more visitors and reduced access resulting from road closures
658 would have detrimental impact on his ability to perform search and rescue
659 activities (Exhibit 8). Sheriff Eldridge then recounted a rescue event where a
660 National Park Service employee - in the midst of an actual rescue effort -
661 displayed more concern for protecting plants and dirt than with timely evacuation
662 of a severely injured woman. (In our opinion, someone has a skewed sense of
663 priorities).

664 This view was corroborated and extended by Garfield County Sheriff James
665 Perkins, who is responsible for law enforcement over the Grand Staircase-
666 Escalante National Monument. Sheriff Perkins minced no words in recounting his
667 experience that national monuments lead to civil unrest, economic impacts,
668 employment disparities, degradation of infrastructure, and higher costs due to
669 increasing search and rescue efforts.

670 In his correspondence testifying to the social and economic consequence of
671 monument designations, Sheriff Perkins recounts his department's experience with
672 increasing alcohol and drug use, domestic violence, increased juvenile
673 delinquency, and a 66% drop in high school enrollment (Exhibit 8).

674 It is the statutory policy of the United States for Federal agencies to use all
 675 practicable means in land use planning to ensure Federal decisions do not degrade,
 676 risk, or have unintended consequences:

677 *(b) In order to carry out the policy set forth in this*
 678 *chapter, it is the continuing responsibility of the*
 679 *Federal Government to use all practicable means,*
 680 *consistent with other essential considerations of*
 681 *national policy, to improve and coordinate Federal*
 682 *plans, functions, programs, and resources to the end*
 683 *that the Nation may....-*

684 *(3) attain the widest range of beneficial uses of the*
 685 *environment without degradation, risk to health or*
 686 *safety, or other undesirable and unintended*
 687 *consequences;⁷⁷*

688 In light of the Sheriff Perkins' testimony of impacts to human health, cultural and
 689 social systems from the Grand Staircase-Escalante National Monument, if the
 690 Coalition's proposal gains consideration, performance of an Environmental
 691 Assessment (EA) or Environmental Impact Statement (EIS) for the Bears Ears is
 692 not only mandatory but now necessary.

693 3.3.2 NPS Backlog; Interagency Cultural Issues

694 The Coalition's proposal for creation of a 1.9 million acre monument in San Juan
 695 County, along with their attendant request for funding, led to the question if the
 696 National Park Service has the funding to create, operate or maintain a monument
 697 of that size and complexity. Investigative work on this question unearthed a more
 698 disquieting and serious discovery, the question as to whether NPS has a culture
 699 which is protective of the quality of artifacts and sites found in San Juan County.

700 The National Park Service has been accumulating a staggering and increasing
 701 deferred maintenance backlog for years. In 2014, NPS reported an ongoing
 702 national backlog of deferred maintenance of \$11,493,168,812 - including
 703 \$278,094,606 for Utah alone (Exhibit 8).

704 For FY 2017, the Obama Administration has requested \$3.101 billion in
 705 discretionary appropriations for NPS, an increase of \$250.2 million (8.8%) over
 706 FY 2016 funding of \$2.851 billion. In addition to the discretionary funding
 707 increase, the Administration proposed \$1.238 billion in *mandatory* appropriations
 708 for NPS, a growth of 135.6% over the FY 2016 funding of \$525.4 million.

⁷⁷ 42 USC §4331 (b)(3).

709 We were astonished to find that a 2,526 acre monument under the protection of
710 NPS - Effigy Mounds - was the subject of a serious, wholesale and long-term
711 breakdown in NPS chain-of-command that resulted in over a decade of criminal
712 mismanagement. Even the US Attorney General's office, upon investigation,
713 refused to prosecute for concern that the "*weak and inappropriate initial response*
714 *by the Agency*"⁷⁸ would lead to non-conviction (Exhibit 8).

715 The combination of increased spending, tangled bureaucracy, and serious
716 mismanagement of a modest sized, 2,526 acre monument lends serious question as
717 to the ability of NPS, BLM or Department of Agriculture to protect the sites,
718 artifacts and interests found in the Bears Ears region.

719 If the Departments of Interior and Agriculture are unable to provide even the basic
720 level of infrastructure protection and maintenance for resources entrusted to their
721 care, how could San Juan County - or the Coalition expect that they are in any
722 position to protect antiquities within the boundaries of the proposed Bears Ears
723 National Monument?

⁷⁸ Serious Mismanagement Report. Effigy Mounds National Monument. David Barland-Liles, Chief Investigator. April, 2014.

724 4.0 Conclusions

725 The request by the Coalition for the POTUS to designate 1.9 million acres of a
 726 sovereign, political subdivision of the State of Utah raises a significant question as
 727 to the limit of the POTUS's discretionary authority under Title 54 of the US Code.
 728 If the POTUS has authority to designate a monument of any size, shape, or area -
 729 for any reason - then what is to stop POTUS from withdrawing large swaths,
 730 regions, or even entire States under the cover of the Antiquities Act?

731 We believe the congressional mandate granting the POTUS authority to designate
 732 monuments are neither unrestrained nor unlimited, and that in its FLPMA Title I
 733 Policy statement, Congress addressed that topic. By subordinating executive
 734 withdrawals to review in accordance with FLPMA statutes, Congress ensured a
 735 uniform land use and land management policy across the executive branch and the
 736 entire administrative government.

737 Following review of the Coalitions proposal in the context of FLPMA, NEPA,
 738 DQA, Federal statutes, and relevant case law, we conclude:

- 739 • It is the Policy of the United States that land
 740 withdrawals by the POTUS under the Antiquities Act
 741 are subject to review in accordance with the provisions
 742 of the Federal Land Policy and Management Act.
- 743 • By placing the Antiquities Act under Title 54 of the
 744 United States Code, the Congress has created a nexus
 745 that now requires the Secretaries of Interior and
 746 Agriculture to perform procedural due-diligence under
 747 the National Environmental Policy Act and the Federal
 748 Land Policy and the Management Act. NEPA is not
 749 optional.
- 750 • The Coalition is Non-Government Organization that
 751 does not possess government land use planning
 752 jurisdictional prerogatives.
- 753 • The Coalition proposes to circumvent State and local
 754 land use planning prerogatives by advocating a
 755 relationship with Federal agencies that neither the
 756 POTUS nor the Secretaries of Interior or Agriculture
 757 have the authority to grant.
- 758 • The Coalition's proposal advocates pre-emption of no
 759 less than 18 established Federal and State land use
 760 planning efforts, including an agreement between San
 761 Juan County and the Navajo Nation.
- 762 • Only two of the five Native American signatories to
 763 the Coalition's proposal possess land within the
 764 boundary, for a total land area of 4,818 acres.

- 765 • The ratio of land owned by two members of the
766 Coalition to land requested for the monument is
767 0.0025%.
- 768 • The 1.9 million acre parcel was arbitrarily determined
769 and contains vast, intermingled and un-inventoried
770 inholdings of private lands, water-right diversion
771 points, state tax generating lands, pre-existing rights-
772 of-way, and patented properties rendering it
773 impossible for the POTUS to meet the Antiquities Act
774 condition that lands must be owned or controlled by
775 United States.
- 776 • The basis for the looting and pillaging claim purported
777 by the Coalition cannot be substantiated and is
778 contradicted by internal Bureau of Land Management
779 reports.
- 780 • The proposal by the Coalition does not contain data,
781 scientific information or references that allow local
782 government, property inholders or Native Americans
783 to replicate how the 1.9 million acre parcel was
784 concluded to be the smallest possible area.
- 785 • There is no evidence the Coalition or the Secretaries of
786 Interior and Agriculture have undertaken to understand
787 the implications, impacts or ramifications that
788 designation of a national monument would have on
789 valid existing rights in San Juan County.
- 790 • There is no evidence the Coalition or the Secretaries of
791 Interior and Agriculture have conducted an inventory
792 of inholdings such that notifications can be made.
- 793 • Valid existing rights known to occur within the tract
794 proposed by the Coalition include:
 - 795 a. 151,000 acres of SITLA lands accessed by 79
796 miles of inperpetuity easements;
 - 797 b. 43 grazing allotments;
 - 798 c. 18,000 acres of patented property;
 - 799 d. No less than 661 state-appropriated water
800 diversion points;
 - 801 e. 3,542 miles of roadway;
 - 802 f. 161 miles of State highway;
 - 803 g. 949 miles of Utah Class "B" Roads;
 - 804 h. 2,401 miles of Utah Class "D" Roads; and,
 - 805 i. 1,730 acres of State Parks, Recreation and other
806 sovereign state lands.

807

808

- 809 • The POTUS and Secretaries of Interior and Agriculture
810 do not have authority to appropriate water rights,
811 diminish local prerogatives, encumber pre 1976 rights-
812 of-way, or indirectly take patented properties or grazing
813 allotments without due process, adjudication and/or
814 compensatory procedures.
- 815 • Existing San Juan County land use planning processes,
816 the Heritage Council, and Utah State archeological
817 programs are the appropriate mechanisms to facilitate
818 investigation, planning, and derivation of any necessary
819 protections of structures, artifacts, and cultural items of
820 interest in the County.
- 821 • Title II, Section 202(c)(9) of the Federal Land Policy
822 and Management Act gives first-among-equals
823 authority to local governments in land use planning by
824 requiring Federal Agencies to *assure consideration*,
825 *“assist-in-resolving”* and *“attempt consistency”* in
826 planning efforts. The structure of this language is no
827 accident, placing federal agencies, their plans, and
828 planning-efforts in the role of reconciliation.
- 829 • Conflicts, tensions and struggles between Federal land
830 planning agencies and State/local governments can be
831 traced to non-understanding/application of historic,
832 organic, statutory law governing land use planning and
833 prerogatives.
- 834 • Application of the historical definition of “public lands”
835 would appropriately transition jurisdictional oversight
836 of vast areas of surface, San Juan County lands holding
837 surface grazing allotments (grazing districts) to State
838 and local oversight. Programs facilitating this shift
839 should be explored.
- 840

841 5.0 Recommendations

842 We recommend San Juan County consider the following actions and programs in
843 response to the conclusions in this survey:

- 844 1. Conduct a county-wide inventory of valid, existing,
845 Federal, State and County split-estate holdings in the
846 context historical definition of public lands. This
847 inventory should include easements, grazing allotments,⁷⁹
848 mining claims, rights-of-way, commercial timber
849 interests and various private inholdings;
- 850 2. Prepare a comprehensive map of Federal, State and
851 county wide split-estate holdings to facilitate the
852 Coordination process with Federal, land management
853 agencies, and include the map in revision of the San Juan
854 County MP;
- 855 3. Cultivate corroborative relationships with State and
856 county governments to facilitate information exchange,
857 participate in regional negotiations with Federal land
858 management agencies, procure funding, and further
859 county-based policies. While utilization of existing
860 organizations may be beneficial, we recommend creation
861 of a non-risk adverse start-up whose mission focuses on
862 historical application of federal statutory mandates in
863 land use planning;
- 864 3. Establish a regionally-funded, web-based archive,
865 database and information center. The purpose of the
866 website would be to archive split-estate information,
867 track land use activities/decision-making and centralize
868 communications for local government.
- 869 4. Develop an Implementation Plan (IP). The IP would be a
870 living, road-map style document to be used member
871 governments. The IP would document organizational
872 specifics, vision, purpose and mission statements, and
873 contain development, funding and strategic plans.

⁷⁹ Incorporation of the ranching, farming and Native American communities would be highly beneficial toward obtaining historical maps, contracts and grazing allotment information.

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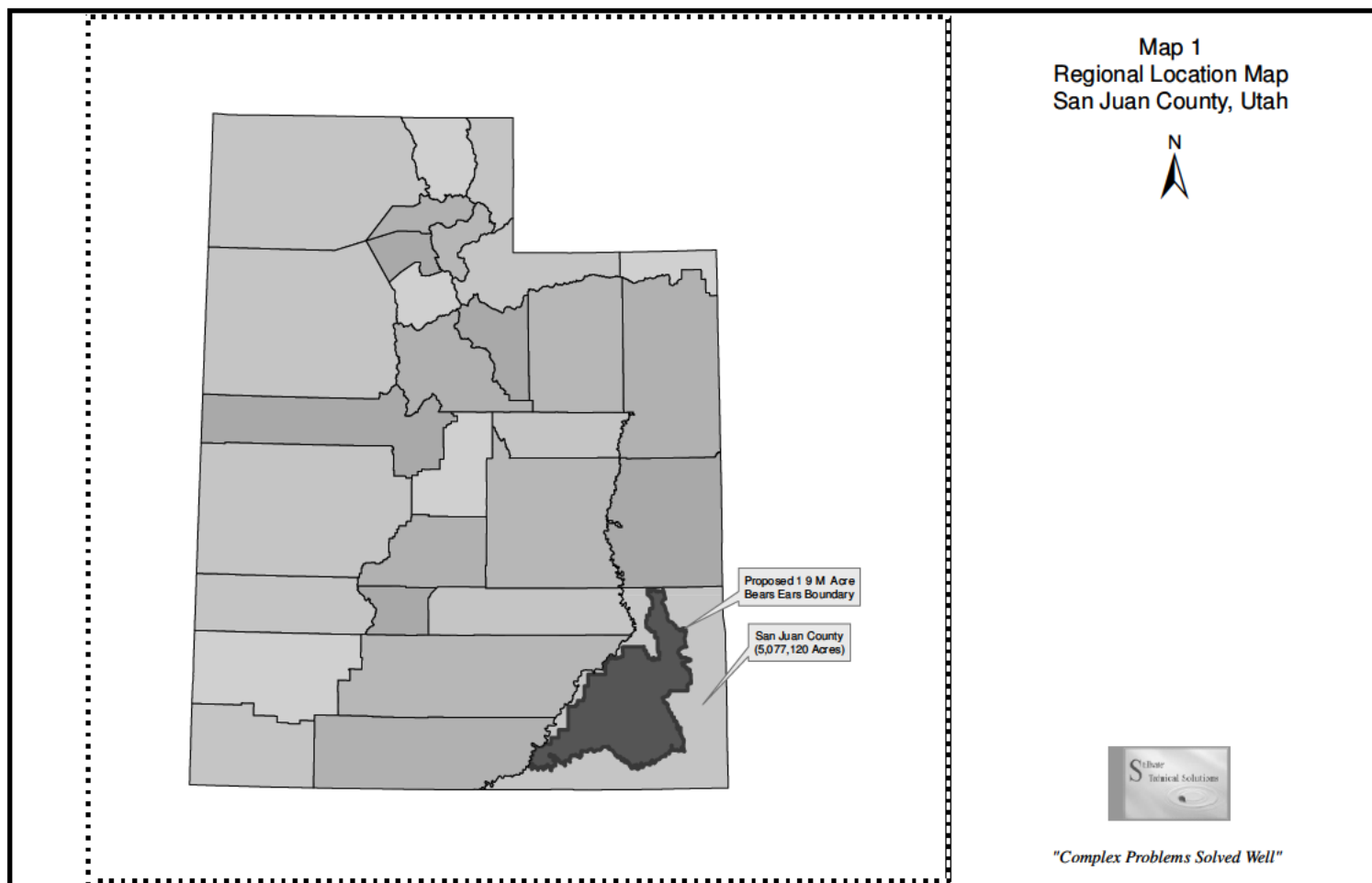
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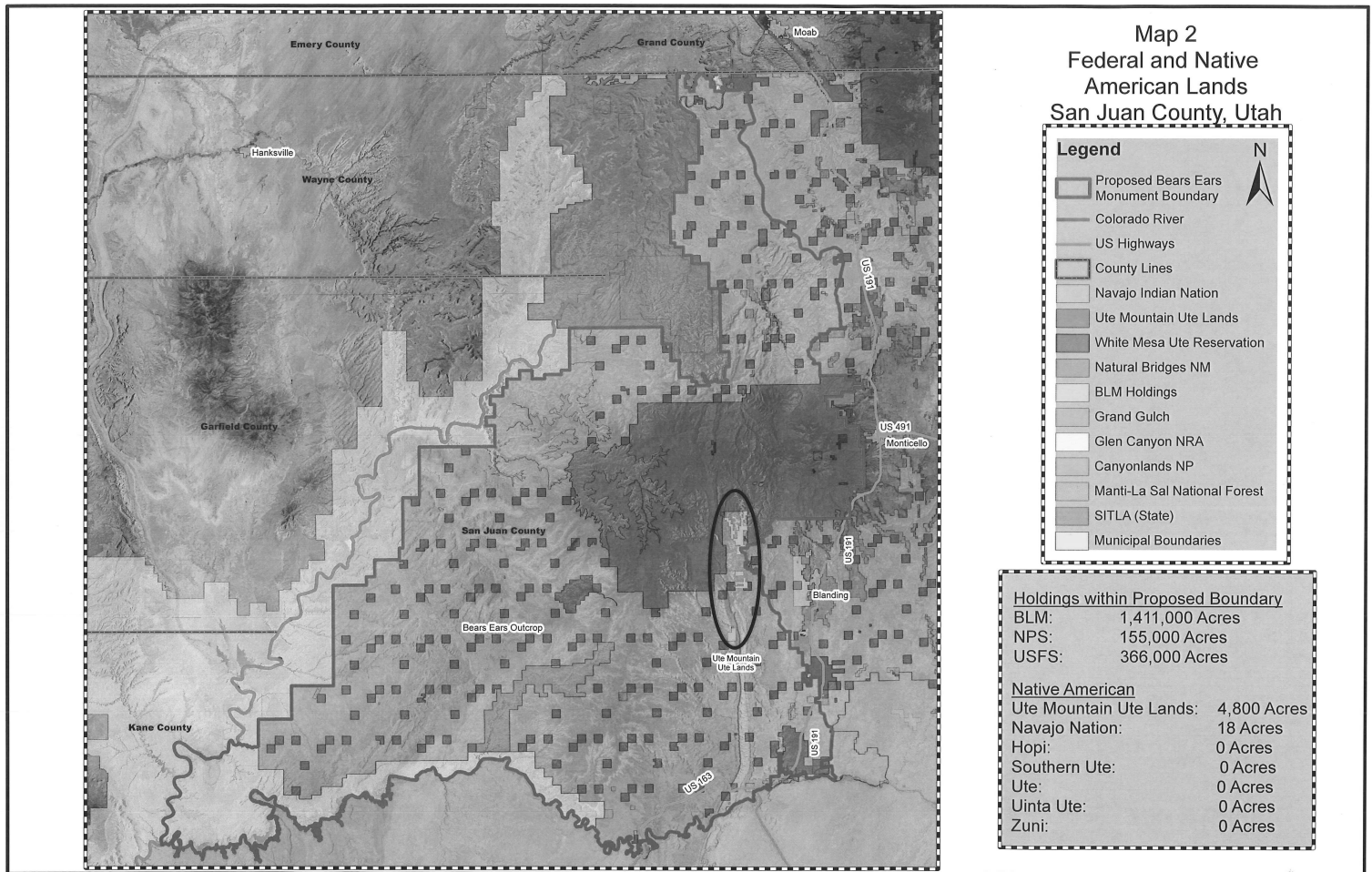
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EXHIBIT 1

- Map 1: Regional Location Map
- Map 2: Federal & Native American Lands Map
- Map 3: Federal Lands; Ste and Private Inholdings Map





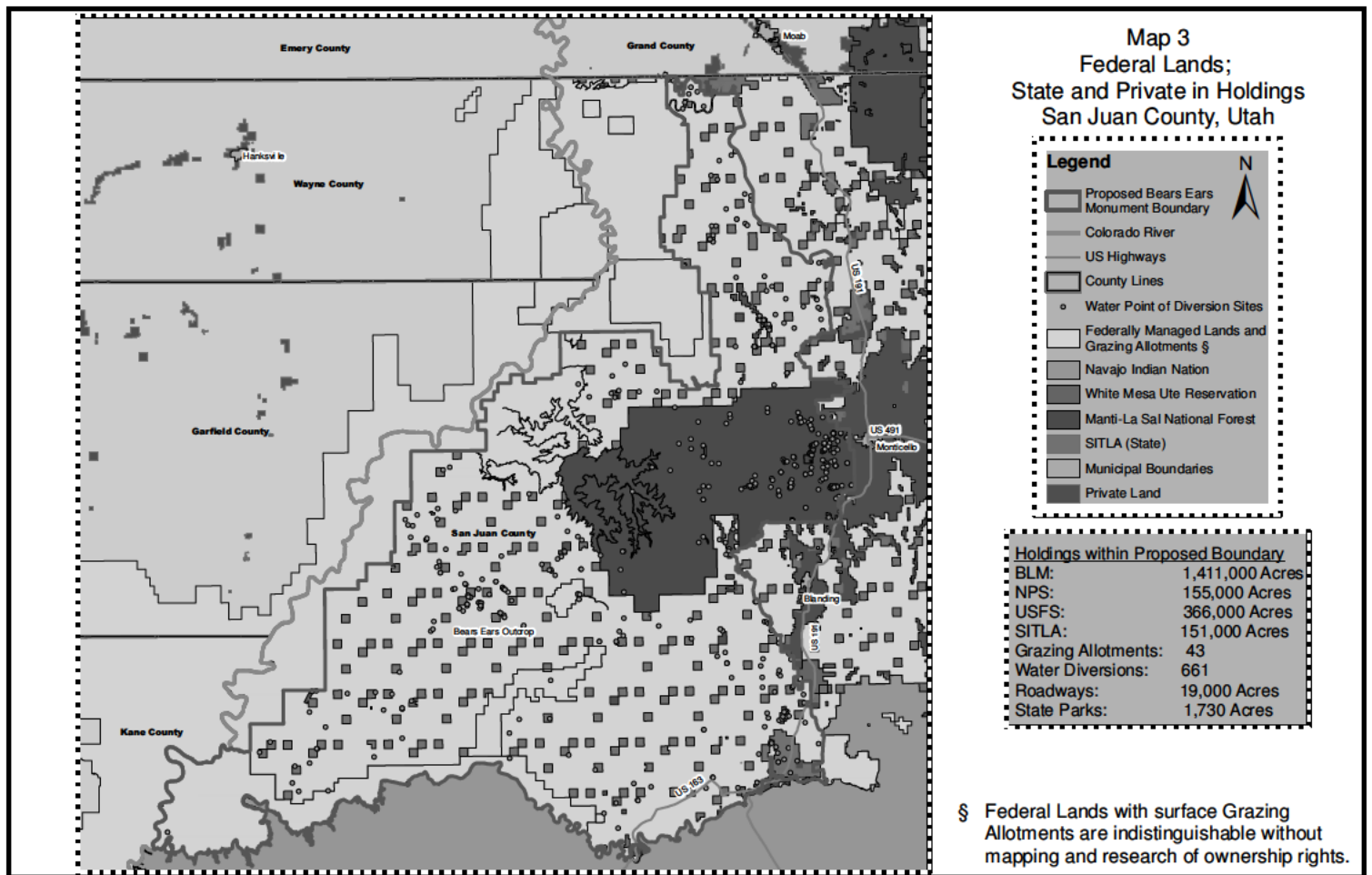


EXHIBIT 2

- List of Federal, State & Private Inholdings

The following data was compiled and examined from existing San Juan County and State of Utah Geographic Information Data bases.

It consists of various data categories as they pertain to the proposed Bears Ears Inter-Tribal Coalition Monument boundary designation in San Juan County, Utah.

Data is inclusive to that proposed boundary area and relates to boundary, cadastre, energy, farming, transportation, utilities and water resources.

Federal Holdings Data:

- The Bureau of Land Management has holdings approximating **1,411,000 acres** within the boundary.
- The National Park Service has holdings approximating **155,000 acres** within the boundary.
- The United States Forest Service has holdings approximating **366,000 acres** within the boundary.

State of Utah Property Holdings Data:

- The State of Utah Institutional Trust lands Administration has title to approximately **151,000 acres** within the boundary.
- The Utah Department of Transportation holds easements and rights of way to all of the highway system within the boundary.
- The State in addition has approximately **1,730 acres** in Sovereign land holdings and State Parks and Recreation areas.

Private Property Holdings Data:

- There are approximately **18,000 acres** of private property holdings within the boundary.
- Owners vary from private citizens to corporations to governmental agencies.

Tribal Government Holdings Data:

- The Ute Mountain Ute Tribe holds title or trust to approximately **4,800 acres**.
- The Navajo Tribe has holdings of approximately **18 acres** near the community of Bluff that are within the boundary area.
- There are no records of Hopi Tribe holdings within the boundary area.
- There are no records of Southern Ute Tribe holdings within the boundary area.
- There are no records of Ute Tribe holdings within the boundary area.
- There are no records of Uinta Ute Tribe holdings within the boundary area.
- There are no records of Zuni Tribe holdings within the boundary area.

Grazing Allotment Data:

- A total of **43** named grazing allotments under 3 land managers occur within the boundary area.
- The 3 land managers are the Bureau of Land Management, United States Forest Service and the Utah State Institutional Trust Lands Administration.

Water Rights Data:

- There are **661** water right locations* under various status designations found within the boundary.
*Water right data obtained from Utah Division of Water Rights:
<http://www.waterrights.utah.gov/>

Power Transmission Data:

- There are approximately **34 miles** of major electrical power transmission lines located within the boundary

Road Data:

- There are approximately **3,542 miles of combined roads** in 3,243 segments within the boundary.

Of which:

- There are approximately **949 miles of Class “B” roads*** in 418 segments.
* Class “B” roads are defined in: [\(Utah Code 72-3-103\)](#)
- There are approximately **2401 miles of Class “D” roads*** in 2,815 segments.
* Class “D” roads are defined in: [\(Utah Code 72-3-105\)](#)
- There are approximately **161 miles of Utah State Highway roads*** in 7 segments.
* Utah State Highway roads are defined in: [\(Utah Code 72-3-102\)](#) and [\(Utah Code 72-4\)](#)
- There are approximately **31 miles of United States Federal Highway roads*** in 2 segments.
* Utah State Highway roads are defined in: [\(United States Code Title 23\)](#)

Of the **949 miles** of **Class “B”** roads within the boundary:

- There are approximately **79 miles** in 119 segments that cross State Institutional Trust Lands Administration lands.

- All have existing or active application for recorded easements.
- Funding for the acquisition of **1.8 remaining miles** of SITLA "B" road easements will be in place in October of 2016.

Of the **2,401 miles** of **Class "D"** roads within the boundary:

- There are approximately **157 miles** in 371 segments that cross State Institutional Trust Lands Administration lands.
- All have active application for easements.
- Funding for the acquisition of these SITLA "D" road easements will be in place in October of 2016.

San Juan County holds recorded Right of Ways, Easements or Title-V ROW's on **15 miles** of Class "B" and "D" roads.

In addition San Juan County claims RS 2477 rights or prescriptive rights to **the remaining 3099 miles of Class "B" and "D" roads** within the boundary that do not already have an existing recorded easement or right of way.

Road and easement widths vary. A rough estimate using an average 45 feet width would put the area occupied by the combined roads within the boundary area at approximately **19,000 acres**.

Surveyor's Certificate:

I Kent B. Cantrell do hereby certify that I am a Professional Land Surveyor as prescribed by the laws of the State of Utah and that I hold Utah License number 6437505-2201. I further certify that the information contained herein represents a data compilation made by me in the discharge of my duties as the San Juan County, Utah Surveyor and was compiled using data that to the best of my knowledge is true and correct.

Date: August 25, 2016

Kent B. Cantrell
Kent B. Cantrell
Utah License Number: 6437505-2201



EXHIBIT 3

- Partial List of Land Use Plans in San Juan County

9-2-1016

PARTIAL LIST OF LAND USE PLANS IN SAN JUAN COUNTY, UTAH

STATE OF UTAH PLANS

Regional plans of the Utah Department of Transportation (UDOT)
State of Utah plans relating to water quality and management, nonpoint-source pollution, watershed management, and air quality
Utah's State Comprehensive Outdoor Recreation Plan (SCORP)
Utah's Bighorn Sheep Statewide Management Plan
San Juan Elk Management Plan
San Juan Deer Management Plan 2015

COUNTY LAND-USE PLANS

San Juan County, Utah: San Juan County Master Plan (2008)
Grand County, Utah: Grand County General Plan Update (2004)

FEDERAL PLANS

Canyonlands National Park General Management Plan (1974)
Canyonlands National Park Backcountry Management Plan (1984, 1995)
Canyonlands National Park Natural Resource Management Plan (1994)

Manti-La Sal National Forest Land and Resource Management Plan (1986)

Glen Canyon National Recreation Area General Management Plan 1979
Strategic Plans for Glen Canyon National Recreation Area and Rainbow Bridge National Monument (2005, 2007)

Natural Bridges National Monument General Management Plan 1997

Hovenweep National Monument General Management Plan 2011

BLM Monticello Field Office Resource Management Plan 2008

BLM Moab Field Office Resource Management Plan 2008

EXHIBIT 4

- Memorandum of Agreement between
San Juan County and the Navajo Nation

0211

MEMORANDUM OF AGREEMENT

Between

SAN JUAN COUNTY, UTAH

(Hereafter "THE COUNTY")

as represented by the San Juan County Commissioners

And

NAVAJO NATION

(Hereafter "THE NAVAJO")

as represented by the President, Navajo Nation

(collectively "the Parties")

WHEREAS:

- A. The Navajo have deep connections to their ancestral lands and continue to exercise their sustenance, social, ceremonial and spiritual traditions across San Juan County;
- B. Likewise many residents of San Juan County, many from early pioneer days, have similarly strong attachments to the land and their way of life;
- C. The mountains, mesas and red rock canyons of San Juan County are landscapes of national and global significance for their archaeological, cultural, recreational, scenic, wildlife and wilderness values;
- D. Other natural resources of significance to the County include: minerals, vegetation, timber, water resources, etc;
- E. These landscapes have been the subject of debate and uncertainty over their use and management;
- F. San Juan County is a political subdivision of the State of Utah legally responsible for all planning decisions made in the County on behalf of its residents;
- G. San Juan County recognizes the interest that the Navajo Nation, as a Government with jurisdiction on the Navajo Portion of San Juan County, has on behalf of the Utah Navajo;
- H. The Parties acknowledge that they have strong mutual interests in promoting sustainable management of public lands, and in the wellbeing of current and future San Juan County residents.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1 Objectives and Desired Outcomes

1.1 The Parties agree to work together in the spirit of mutual respect and cooperation to recognize and consider how to effectively manage the outstanding natural, cultural and recreational resources on state and federal lands in San Juan County, as well as the socio-economic conditions for the enhancement of the quality of life for all San Juan County residents.

1.2 To promote the vision in section 1.1, the Parties wish to collaborate to further the following specific outcomes:

- 1.2.a Enhanced management of cultural and natural resources of importance to the Navajo, the County, and the general public;
- 1.2.b Enhanced opportunities for economic development on lands within San Juan County;
- 1.2.c Reduced conflict and increased certainty over land and resource management, including wilderness and access issues on public lands;
- 1.2.d Improved communication and collaboration between the Navajo and the County in the management of federal and state lands within the County;
- 1.2.e Enhanced access to financial resources to support long-term achievement of the above objectives and desired outcomes.

2 Scope of Collaboration

2.1 The Parties will periodically meet as needed to coordinate and collaborate in furtherance of the above objectives and on current issues and land planning efforts within or affecting the County. Each party will support these meetings with attendance appropriate to the agenda for each meeting. Issues may include:

- 2.1.a Development of options for federal policy and Congressional land use legislation to enhance conservation and sustainable development of San Juan County public lands;
- 2.1.b Review of County, state, federal and other planning efforts;
- 2.1.c Discussion of possible SITLA/BLM land exchanges;
- 2.1.d Collaborative management arrangements to improve communication and coordination with federal and state agencies; and,
- 2.1.d Opportunities to collaborate on community development projects within San Juan County and on the Navajo Reservation in Utah.

3 General Provisions

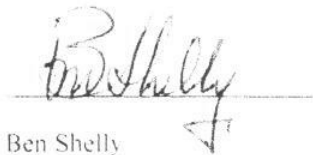
3.1 Other than as expressly provided in this Memorandum of Agreement and any agreement reached pursuant to it, this Memorandum of Agreement does not create, recognize, define, deny, limit or amend any of the legal rights and responsibilities of the Parties.

3.2 This Memorandum of Agreement may be amended or renewed by written agreement of the Parties.

3.3 This Memorandum of Agreement will remain in effect indefinitely or until terminated by either or both of the Parties by written notice to the other, and such notice shall state the reason(s) for termination. Subject to available appropriations, both Parties shall honor funding commitments made prior to the date of termination.

IN WITNESS WHEREOF the Parties have executed this Memorandum of Agreement on the 5TH day of MAY, 2015.

SIGNED on behalf of the Navajo Nation

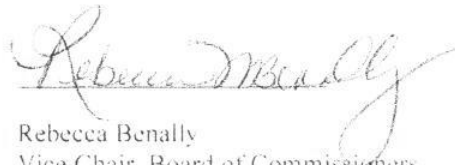


Ben Shelly
President
Navajo Nation

SIGNED on the behalf of the San Juan County Commission



Phil Lyman
Chairman, Board of Commissioners



Rebecca Benally
Vice Chair, Board of Commissioners



Bruce Adams
Commissioner

EXHIBIT 5

- Briefing Paper: Department of Interior
BLM Office of Law Enforcement & Security



U.S. Department of the Interior Bureau of Land Management

Office of Law Enforcement and Security
Region 3 -- Utah/Nevada



BRIEFING PAPER

Cedar Mesa Law Enforcement Strategy

SUBJECT:

Law Enforcement's overview, ongoing law enforcement efforts and future strategy to combat the illegal excavation and desecration of cultural resources in and around Cedar Mesa in San Juan County, Utah.

BACKGROUND:

The Monticello Field Office manages approximately 1.8 million acres of public land located in San Juan County and a small portion of Grand County. Cedar Mesa comprises 407,000 acres within the boundaries of the Monticello FO and contains three WSAs, an ACEC and a SRMA. BLM Law Enforcement Rangers are tasked with handling a multitude of law enforcement issues in Cedar Mesa to include wood cutting, special recreation permit compliance checks/violations, off highway vehicle restrictions and the protection of the thousands of cultural sites located within Cedar Mesa. It is a priority among BLM law enforcement, from the Special Agent in Charge to the Field Staff Law Enforcement Rangers, to proactively patrol Cedar Mesa in order to deter and detect crimes related to the aforementioned issues. The following is a summary of the coordinated efforts BLM law enforcement is making in order to provide for greater protection of the significant cultural resources found on Cedar Mesa.

LAW ENFORCEMENT PATROLS:

At present, there is one (1) uniformed law enforcement ranger stationed in the Monticello Field Office and one (1) vacant law enforcement position, which we anticipate to be encumbered within the next 120 days. BLM Rangers proactively patrol public land on Cedar Mesa; however, they often end up responding to reports of vandalism or damage to cultural sites, which were not deterred by their proactive patrols. During the period from 2011 through present, rangers conducted over 400 patrols of cultural sites throughout the field office, to include Cedar Mesa. Of this, there were four (4) incidents of human remains/funerary objects being found; four (4) documented thefts of archaeological resources and eleven (11) reports of vandalism to cultural sites.

Currently BLM LE in Utah has identified two (2) criminal cases involving the excavation and/or removal of archaeological resources, which occurred at Red Knobs (immediately adjacent to Cedar Mesa) and Long Canyon Point (east of Hwy 191 between Blanding and Monticello). The criminal activity and illegal excavation at Red Knobs appears to be ongoing. This case is an open and active investigation being worked by BLM Rangers and Agents. Currently, there are no known suspects

or leads in the Long Point case; however, the investigation is open and the site is being monitored on a regular basis.

Canyon Country Supervisory Ranger Lloyd will develop a comprehensive patrol strategy for Cedar Mesa as well as nearby Indian Creek, Alkali Ridge, and Montezuma Creek, including conducting future surge patrols. The surge patrols will include overnight patrols of Grand Gulch, with efforts focused on contacting and educating the public to reinforce BLM's commitment to maintain, preserve, and protect our cultural resources for current and future generations.

Although patrols of Cedar Mesa are deemed important, there are other high use areas which also contain a vast number of cultural sites in danger of being vandalized. Indian Creek, Alkali Ridge, and Montezuma Creek are popular areas for off road enthusiasts and contain high use recreational areas as well as a great number of wood cutting permits. These areas have vast cultural sites which also have been vulnerable to the illegal excavation and theft of archeological resources. Rangers in the Canyon Country District will need to continue to patrol these areas in an attempt to deter and preserve our treasured cultural past on public lands managed by the BLM.

REMOTE MONITORING EQUIPMENT:

The Friends of Cedar Mesa group has donated ten (10) cameras to the BLM Monticello Field Office Archaeology program in order to assist in the monitoring of cultural sites on Cedar Mesa. It is the position of the Region 3 OLES that these cameras will not be used for law enforcement purposes. However, the archaeology program can use them as they see fit. This recommendation is being made for the following reasons:

- 1.) The installation and monitoring of these cameras is labor and time intensive. Protection of cultural resources is a priority for OLES and the Canyon Country law enforcement staff but a realistic number of cultural sites to be monitored utilizing these cameras would be four (4) to five (5). OLES has requested Canyon Country Supervisory Ranger Lloyd order three (3) high resolution cameras (capable of reading license plates on vehicles). Lloyd will also purchase six (6) trail cameras to be used if necessary. OLES will provide funding for these purchases. Canyon Country Rangers will develop a local strategy to monitor the cameras and replace batteries and SD cards on a regular basis. Due to evidence and chain of custody protocols, archaeologists and site stewards are not allowed to recover photographs from these cameras and turn them over to law enforcement to be used in a criminal investigation.
- 2.) Should BLM law enforcement ever need to investigate Friends of Cedar Mesa or any of its members in relation to crimes occurring on public land, the donation of these cameras may be viewed negatively and the public may perceive this as favoritism to the group.

COMMUNITY OUTREACH

Rangers will be available to speak with special interest groups on the importance of protecting cultural resources. These groups include the Boy Scouts of America, Great Old Broads for Wilderness, San Juan Public Entry and Access Rights (SPEAR), various tribal groups and local school groups in southeastern Utah.

TIP LINE and REWARD MONEY

Friends of Cedar Mesa is currently working with the OLES in order to establish a looting tip line with protocols by which rewards can be offered for information leading to the conviction of those who vandalize and/or loot cultural sites located on public land in and around Cedar Mesa. Executive Director Josh Ewing and an OLES special agent are currently finalizing those protocols.

The OLES will host the looting tip line and screen all incoming calls for legitimacy and potential criminal violations. In the event a tip leads to federal criminal prosecution, reward money will be provided to the reporting party by Friends of Cedar Mesa. No BLM funds will be utilized for this program and the OLES will not instruct Friends of Cedar Mesa how to distribute reward payments. The rewards will be dispersed at the sole discretion of the Friends of Cedar Mesa. As stated above, the OLES is evaluating potential conflict of interest perceptions related to this program.

SUMMARY

In southeastern Utah, there are generations of families who have looted cultural sites and removed precious archaeological resources from public land. For many of these individuals, these activities were part of a typical weekend outing. Difficulty in detecting and enforcing violations of ARPA, and a lack of education, led many to believe there was nothing illegal about their actions. However, in recent years, the BLM has taken an increased initiative in educating the public on the importance of the cultural resources located on public land and how these precious artifacts from the past should be left in place for all to enjoy.

The Utah law enforcement program is committed to working with BLM management staff and the community in order to protect the cultural resources located on public land. Cedar Mesa contains thousands of archaeological sites that provide a glimpse into the area's unique past. These resources should be protected for future generations in accordance with the BLM's mission. However, given the vast expanse of the area inhabited by the Ancestral Puebloans and the limited resources available to patrol this region, it is a difficult and sometimes impossible task to patrol and monitor all of these sites. The path forward, as outlined above, will require a layered approach involving law enforcement and community education. The law enforcement program is committed to utilizing all available resources, strategically planning future surge patrols, coordinating with local law enforcement, and working with the cultural staff to minimize future looting.

EXHIBIT 6

- San Juan County Lands Bill Items for Public Lands Initiative Legislation

August 31, 2015

SAN JUAN COUNTY UTAH LANDS BILL PROPOSAL

San Juan County has endorsed a lands bill proposal that includes the June 15, 2015, proposal developed by the County Lands Council with the addition of other items of importance to the County.

LANDS COUNCIL PROPOSAL

The Lands Council Proposal includes designation of 2 National Conservation Areas (NCAs), several wilderness areas and designation of an Energy Zone. Designations are as shown below: (all acres are not additive due to overlap of designations)

NCAs (including Wilderness)	703,047 acres *
Cedar Mesa	557,880 acres
Indian Creek	145,167 acres
Wilderness within NCAs	294,545 acres
Wilderness outside NCAs	242,351 acres
Total Wilderness proposed	538,896 acres
Grand Total Designations (NCAs and Wilderness outside of NCAs)	945,398 acres
Indian Creek Recreation Area	10,470 acres

Energy Zone: Area of high energy and or mineral development potential where permitting for exploration and development of energy and minerals would be expedited. (The Utah Legislature designated Energy and Mineral Zones in San Juan County by H.B. 393 signed March 23, 2015).

* Acreages predominantly include BLM administered lands but also include areas within Glen Canyon National Recreation Area (66,180 ac.) and Manti-LaSal National Forest (16,270 ac.)

ADDITIONAL ITEMS

- Expand the meaning of “cooperating agency” to mean invited participation of the State of Utah, San Juan County, the Navajo Nation and the Ute Mountain Ute Tribe in all Federal agency decisions subject to NEPA compliance
- Implement co-management (Federal, State, County and Tribes) of Cedar Mesa NCA
- Federal recognition and prioritization to San Juan County Energy Zone

- Adoption of Federal Agency Travel Plans with the addition of other roads/trails requested by San Juan County.
- Recognition of San Juan County RS2477 claims on County "B" roads
- Recognition of the importance of motorized access on roads/trails to the County's economy and lifestyle such that road/trail closure would be the action of last resort when access/resource conflicts or damage cannot be mitigated in any other way
- Release of all WSAs and wilderness character areas not designated as wilderness from further consideration for wilderness designation
- Exclusion of San Juan County from Presidential authority to designate national monuments under the Antiquities Act
- Transfer of mineral rights currently held by the Federal government on the McCracken Extension of the Navajo Reservation to the Utah Navajo Trust Fund
- Transfer title of the Cal Black Airport and selected adjoining lands to San Juan County
- Transfer title of the Bluff Airport to San Juan County
- Transfer title to certain selected lands south and southeast of Bluff along the north bank of the San Juan River to San Juan County
- Transfer title to San Juan County of lands in a corridor(s) along the historic Hole-In-The-Rock Trail and current conventional access known as the Hole-In-The-Rock Trail (HITRT) in San Juan County
- Transfer title of lands occupied by Monticello Municipal Water Storage and Treatment Plant to Monticello City
- Issue an R&PP lease to Blanding City for approximately 8000 acres currently within the annexation area west of Blanding
- Transfer title of the Blanding Shooting Range to San Juan County
- NPS recognize Lockhart Basin North Road within Park or exclude road from Park
- Continuation of livestock grazing on federal and state lands that may be transferred (land ownership) or placed under special designations such as National Conservation Area or Wilderness Area.
- Designate sufficient setback of wilderness boundaries from recognized roads to provide for multiple use activities (vegetation harvest, camping, parking etc.)
- No buffer zones around National Conservation or Wilderness Areas.

EXHIBIT 7

- Sheriff Eldridge May, 2015 News Article of Record
- August 26, 2016 letter from SJC Sheriff Rick Eldridge
- September 13, 2016 Letter from Garfield Sheriff James Perkins

Thank you to friends and neighbors

Dear Editor:

I would like to thank all our friends and neighbors for bringing food and condolences after the passing of my sister, Eloise Walker Herron. The family card of thanks acknowledged the Second Ward Relief Society, but it was also the Third Ward Relief Society that brought food for the family dinner. We are very fortunate to live in such a special place where everyone pitches in to help and show compassion.

Jeanette Walker Christensen

Ongoing problem of skewing the facts

Dear Editor:

In May of 2015, I was contacted by the BLM's investigation office concerning reports of looting within San Juan County which had been relayed to Washington D.C. The investigator stated that an environmental special interest group had contacted Washington D.C. reporting that there were nearly 20 cultural sites that were currently being looted and investigated by BLM Rangers. In turn, Washington contacted the BLM Investigation Office in Utah, frantic, wanting to verify the claim in San Juan County. After verifying the cases with local BLM Rangers, a report was generated and sent back to Washington with a much different set of facts. The BLM Investigator stated that the information given by the environmental special interest group to Washington was grossly inaccurate.

The factual report stated that between 2011 and May of 2015, BLM law enforcement in San Juan County Utah had identified two (2) criminal cases involving the excavation and/or removal of archaeological resources in San Juan County. I recently contacted the BLM and as of today, amongst the tens of thousands of cultural sites in our county, there are still only two sites that are being investigated for looting since 2011. Not twenty (20).

That being said, two (2) criminal cases involving the looting of archaeological resources on public land are two too many and I would hope that looting goes down to zero. But here's my point: most people are unaware of the alarming and ongoing problem of environmental special interest groups skewing the facts to push their agenda. This misrepresentation of the truth appears to paint San Juan County as being full of looters, which is simply not true!

Sheriff Rick Eldredge
San Juan County

"What we need is a radical departure"

Dear Editor:

Having noticed my Ron Paul for President 2008 and Ron Paul for President 2012 bumper stickers an otherwise highly intelligent friend quite hopefully asked if I wouldn't be voting for Trump in 2016. This is akin to asking if since I can't have Su-

San Juan County Sheriff



08/26/2016

Mr. Kendall Laws
San Juan County, Utah Prosecuting Attorney
117 South Main Street
Monticello, UT 84535

Opinion Letter - Safety Aspects for Designation of The Bear's Ears National Monument

Dear Mr. Laws,

I write in my capacity as Sheriff of San Juan County, Utah to offer an opinion on the impact that designation of the Bears Ears National Monument would have on public safety, human health, and first-responder access. It is a well-established fact, monuments that have been designated by federal agencies move toward decreasing maintenance, reducing access, and ultimately closing roads and trails.

Experience of County governments has also taught that once land withdrawals have been made, access constrictions imposed by federal agencies lead to termination of right-of-ways and ultimately extinguishment of private in-holdings for want of access. Such road closures were mentioned by the Bear's Ears Intertribal Coalition in their request to President Obama, and so we in San Juan County understand that at least one objective is to relocate people from the land.

As Sheriff of San Juan County, I am statutorily responsible for search-and-rescue efforts within this county. Because the State of Utah is proprietary in nature, all federally-managed lands fall within the purview of my jurisdiction and sphere of authority.

The 1.9 Million acres proposed for designation of Bears Ears contain vast, rural and extremely rugged terrain. Although some roads have been established, much of the terrain remains inaccessible except by foot or horseback. The monument designation would bring additional people to the region and the combination of increased visitors and fewer road/trails will unavoidably lead to a greater public safety risk – it's just simple math: the more people hiking and the fewer routes enabling access, the greater the risk to individual health and safety.

In San Juan County, the majority of our departmental search and rescue responses take place on federally-managed lands, so I will recount one of those incidents as an example. In 2013 our search-and-rescue team was dispatched to the Needles District of San Juan County at the request of the National Park Service (NPS). As it turns out, a female hiker had injured her back and was not able to make the trip out of the park. The hiker, in extreme pain and requiring immediate medical attention, was in a deeply inaccessible area several miles from normal routes. Due to gravity of the situation and with the knowledge that the trip could present grave personal risk to the individual; I dispatched a helicopter to expedite the evacuation process. Upon arrival, an on-scene National Park Service employee began to argue with our team about the location of a landing zone. I had instructed the pilot to execute a landing in the safest possible manner, both for him and access to the hiker; for his part, the NPS employee contended the helicopter needed to land on a remote rock outcrop to avoid the disturbance of the local flora and fauna.

Notwithstanding the misplaced sense of priority, I remain saddened by the glaring lack of respect for human health and safety.

Sheriff Rick Eldredge


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(435) 587-2237 * (435) 587-2013 Fax

DOI-2020-02 03890

It is clear to me that closure of legitimate access routes will not only inhibit search and rescue activities, but it will also reduce my department's ability to levy response actions to private property and many other easily foreseeable scenarios.

While it is difficult to measure the extent of impact that reduced access might ultimately have, I can say that even the loss of one human life is too many.

Sheriff Rick Eldredge



San Juan County, Utah



Garfield County Sheriff's Office

James D. Perkins Jr.

Sheriff

September 13, 2016

Mr. Kendall Laws
San Juan County Attorney
117 South Main St.
Monticello, UT 84535

Dear Mr. Laws:

In response to a request by Mr. Norman McLeod requesting information regarding my experience with large tracts of land that have been taken out of the public domain by federal reservation. Garfield County has vast experience with these areas. I believe we are the only county in the country that contains portions of three national parks within its boundaries. In addition we manage 40% of the Dixie National Forest and a significant portion of the Glen Canyon National Recreation Area. Pertinent to this request I have jurisdictional responsibility for approximately 40% of the Grand Staircase Escalante National Monument. The monument was established by presidential proclamation in 1996 and I have been the County Sheriff for 10 years of its 20 year life. I'm very aware of the impacts the monument has caused in Garfield County and I offer and provide this correspondence to give you a general idea of what you can anticipate.

I intend to focus these remarks on the Grand Staircase Escalante National Monument, but I believe they are also applicable to Glen Canyon National Recreation Area, Canyonlands National Park and Capital Reef National Park. All of these areas are large remote designations which attract tourists and recreationists simply by using the name national monument, national recreation area, or national Park. I believe the staircase exhibits characteristics that are similar to those identified in the proposed Bears Ears National Monument.

First and foremost I want to express my concern regarding creation of national monuments in remote areas of southern Utah. The creation of the national monument in Garfield County created a civil unrest and dissatisfaction among our local residents that

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DOI-2020-02 03892

I have never before experienced. Not only were local residents upset, angry and on the verge of rebellion because of the designation of the monument, they also continue to feel expanded civil unrest because of planning actions that threaten their custom culture and heritage. Livestock grazing has been threatened, and this greatly upsets multigenerational ranchers. Access has been limited, and this greatly upsets tourists, families and people who have cared for the land for generations. Infrastructure maintenance on fences, water lines, ponds, roads and other facilities has been hampered which frustrates those citizens that help developed those same facilities and are now forced to watch them fall into disrepair.

The monument has also created a whole new series of environmental documents which seem to be of great interest to those that live outside of the area. Our residents feel like they are not heard and the federal agency is catering to individuals who never have been to Garfield County and who will never be in Garfield County. This exacerbates their frustration and causes unrest between the local citizens and federal employees.

The civil unrest may not be able to be quantitatively measured, but I can assure you as the chief law enforcement officer I have had to resolve numerous incidents that fall back to this very problem.

I can also site direct impacts associated with my responsibilities. From January 2016 to the present my Search and Rescue crews have expended approximately 426 hours in addition to the volunteer man-hours which impacts my residents, my citizens and employees. My department has expended an additional 50 hours of flight time for Utah Department of Transportation Search and Rescue helicopters and medical service helicopters to rescue individuals from the monument. These numbers apply only to that portion of the Grand Staircase Escalante National Monument in Garfield County. Similar numbers are likely to have been accrued in Kane County. This is no small burden to be carried by a Sheriff's Department that is funded by less than 5000 permanent residents and has a service area greater than the size of Connecticut. Inasmuch as all of our Search and Rescue forces are volunteer, it also places a significant burden on those kind souls that are willing to give up their time and means in order to help others. It causes me to authorize purchase of thousands of dollars' worth of equipment and more importantly, puts my staff and volunteers at risk as they often work in the dark in steep canyons and in dangerous weather.

Unfortunately we have received little if any assistance from the monument and from the federal government in dealing with these issues. Token amount, to offset the initial costs from monument designation. However those federal funds soon dried up and we are now left to manage all the problems created by the monument on our own.

Perhaps greater impact on our County and our law enforcement services relates to indirect impacts. Shortly after creation of the monument the local economy shifted from natural resource-based activities to one-dimensional tourism. The tourism dollars do not raise families. They are lower wages; they are seasonal wages; and they often bring individuals into our area that have no long-term commitment to our morals, values, and

safety. As a result high school enrollment in communities adjacent to the monument dropped significantly over 20 years. In Escalante, a community that borders the monument, enrollment dropped from 150 in 1996 to approximately 50 in 2016. The indirect impacts from unemployment and difficulties in earning a living are felt by my department. We've noticed an increase in alcohol and drug use. We've noticed an increase in domestic violence. We've noticed an increase in juvenile delinquency. These issues are never discussed and are only noticed after a monument has its negative impacts. The coincidence of timing is undeniable.

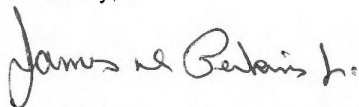
Previously I briefly mentioned the reduction of public access. That indirectly complicates my job as the Sheriff. More and more individuals seek remote experiences and in order to do my job I have to spread my deputies out to more remote locations. There have been times when we have been spread so thin that we have not been able to cover all of our responsibilities given our large land base, our limited population, are limited tax base because 93% of the ground in our County is federally owned and the increasing number of visitors attracted to the monument we have found it increasingly difficult to meet basic services.

I have often wondered what Garfield County would look like if the monument had been declared but had not locked up our vast oil and gas, coal and other natural resources. Over my 30 years of law enforcement experience I have found that the more remote an area is the more likely people are to violate basic principles of law and order and safety.

Another major issue is people who visit a national monument expect certain services and often enter into areas and activities for which they are totally unprepared. We have experienced numerous injuries and deaths as a result of individuals lured to this area by the mystique of the national monument without recognizing that they are at the mercy of the elements.

Given sufficient time, I could provide numerous details and specifics regarding the issues I have raised. I could also raise other issues that at times seemed equally important. In summary just let me say I have experienced very few if any benefits as a result of monument designation. I would be happy to answer any questions you have concerning this correspondence. Please contact me at (435) 616-3054 if you need to do so.

Sincerely,



Sheriff James D. Perkins Jr.

EXHIBIT 8

- Demonstration of Cultural & Fiscal Problems in National Park Service

- Effigy Mounds Monument: Serious Mismanagement Report
- 2017 Congressional Research Report on Escalating NPS Expenditures

SERIOUS MISMANAGEMENT REPORT

EFFIGY MOUNDS NATIONAL MONUMENT



Nazekaw Terrace Boardwalk, constructed without completing SHPO or tribal consultation in 2008-09 (construction terminated by the NPS in 2009, boardwalk removed in 2010). NPS Photo.

**SERIOUS MISMANAGEMENT REPORT
EFFIGY MOUNDS NATIONAL MONUMENT 1999-2010**

David Barland-Liles
Team Leader / Chief Investigator
NPS Special Agent

Bob Palmer
Chief Ranger EFMO (2012 Present)

Jim Nepstad
Superintendent EFMO (2011 Present)

Caven Clark PhD
Archeologist - BUFF

SERIOUS MISMANAGEMENT REPORT

EFFIGY MOUNDS NATIONAL MONUMENT



April 2014

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Findings	8
Matters For Consideration	13
Conclusion	15

The team members of this Serious Mismanagement Report were originally assembled as subject matter experts by the investigating Special Agent during the criminal investigation. The criminal investigation used portions of the findings of a 2009 Operations Evaluation of EFMO created by the Midwest Regional Office as a starting point. Methodical searches of available EFMO records were eventually carried out by Midwest Region Cultural Resources staff and the Superintendent who replaced the Principal.



Hanging Rock Bridge under construction (2004). A simple hiking trail footbridge was replaced with a five ton vehicle bridge. A quarter mile long access road was blazed through mature forest to accommodate construction equipment used at the site. Despite the fact that extensive ground disturbance would be taking place in an archeological park, this work was done in the absence of any NHPA, ARPA, or NEPA compliance. NPS Photo.

DOI-2020-02 03897

SERIOUS MISMANAGEMENT REPORT**EFMO NHPA/ARPA/NEPA VIOLATIONS****Preface**

3

The purpose of this Serious Mismanagement Report (SMR) is to present pertinent data and facts related to violations of the National Historic Preservation Act, the Archeological Resources Protection Act, and the National Environmental Policy Act by employees of Effigy Mounds National Monument (EFMO).

The SMR Team respectfully presents these facts in an effort to inform concerned National Park Service employees of the causes and contributing factors of these incidents so they may assist the agency in preventing similar occurrences. **As with a Serious Accident Report, the intent is not to defame individuals or assign blame, but rather to provide an opportunity for employees across the NPS to reflect on the lessons learned from these unfortunate actions.**

Consequently, this SMR avoids the use of names and avoids any discussion of administrative actions that may or may not have resulted from these events.

This SMR includes numerous position titles. It is important to note current NPS employees in those positions are most likely not associated with the events of this report.

**Effigy Mounds National Monument Est. October 25, 1949**

Effigy Mounds National Monument was established in 1949 by Presidential Proclamation (President Truman) to preserve excellent examples of nationally significant archeological resources which include earthen American Indian mound groups. At least 206 visible mounds are within the monument. Of these, 31 are in the shape of animals or birds, representing a cultural phenomenon unique to the Upper Midwest. Some of these mounds were built as early as 500 BCE. The monument is sacred to the descendants of the mound builders. Currently, there are nearly twenty tribes who have either a cultural or treaty association with EFMO.

The 2,526 acres of the monument are located in northeast Iowa adjacent to the Mississippi River. EFMO is one of two NPS units in Iowa.

SERIOUS MISMANAGEMENT REPORT**EFMO NHPA/ARPA/NEPA VIOLATIONS****Incident Overview**

4



Nazekaw Terrace Boardwalk construction terminus (linear mounds visible in left background). NPS Photo.

Background

In 1999 the Principal became Superintendent of Effigy Mounds National Monument after successfully completing the Midwest Region's Superintendent Development Program. Prior to becoming Superintendent at EFMO, the Principal had been on a relatively fast track within the NPS, having accepted their first permanent position in 1991. Only three years after becoming a permanent employee, the Principal was appointed as Acting Superintendent at Martin Van Buren National Historic Site (in 1994), and only three years after that became Superintendent at Perry's Victory and International Peace Memorial (in 1997). Throughout the Principal's career, they attended multiple training events focusing on the Section 106 review process. Additionally, the Principal served as the Section 106 Coordinator at Martin Van Buren NHS, and through the years had numerous cultural resource professionals providing – often at the Principal's request - detailed written summaries of the steps involved in the Section 106 review process.

Despite all this, during the Principal's tenure (1999–2010), park staff failed to comply with the National Historic Preservation Act (NHPA) and/or the National Environmental Policy Act (NEPA) on at least 78 projects using \$3,368,704 in federal funds. In 2009, during an Operations Evaluation at the park, a Midwest Regional Office team of subject matter experts learned of a boardwalk under construction to a mound group that had been rerouted and extended without proper NHPA and NEPA compliance. Many other non-compliant projects were also discovered.

In August of 2010, the Department of the Interior Office of Inspector General (OIG) received a complaint from a concerned citizen. The citizen alleged incidents of waste, fraud, and abuse by EFMO employees related to the non-compliant projects and an alleged cover-up by regional officials.

At the direction of the OIG, a criminal investigation was conducted by the Investigative Services Branch (ISB) of the National Park Service. At the conclusion of the investigation, ISB requested

SERIOUS MISMANAGEMENT REPORT**EFMO NHPA/ARPA/NEPA VIOLATIONS****Incident Overview**

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consideration for prosecution by the U.S. Attorney's Office of the Principal and the EFMO Chief of Maintenance for violations of the Archeological Resources Protection Act (ARPA). Due to the constraints imposed by the statute of limitations the investigation focused on two construction projects; the Nazekaw Terrace Boardwalk (2009) and the North Unit Maintenance Shed (2007). An archeological damage assessment revealed the two projects resulted in \$188,128 of damage (Archeological Value + Cost of Restoration and Repair) to park resources.



Storage shed constructed in 2007 without NHPA and NEPA compliance and without archeological clearance. Later studies revealed that it may have disturbed a remnant mound. NPS Photo.

In October of 2012, after intense review, the U.S. Attorney's Office reluctantly declined to prosecute primarily due to a belief that it would be difficult to overcome potential jury sympathy for the defendants. Prosecutors perceived an inability on the part of senior NPS officials to recognize that violations of NHPA may in fact be violations of ARPA in a park such as EFMO. In the opinion of the U.S. Attorney's Office, this led to a weak and inappropriate initial response by the Agency, which treated it as an administrative matter rather than a criminal matter. Prosecutors felt the Agency's failure to take swift, appropriate action fatally encumbered the criminal case, creating a threshold of doubt that the U.S. Attorney's Office did not believe could be overcome in a jury trial.

The declination enabled the NPS to perform an internal investigation.

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Reservoir waterline project (2005). Although an Assessment of Effects form was completed and approved by regional office officials, it was based on the premise that disturbance would be limited to the original trench. The majority of the lawn area in this photo was severely impacted during later stages of this project. NPS Photo.

Although the criminal investigation focused on two projects, dozens of projects requiring extensive ground disturbances occurred at EFMO from 1999-2009. Associated with these projects were major project review deficiencies and in many cases a complete lack of compliance. Photos and descriptions of some of these projects are included within this report in an effort to broaden the reader's perspective of the totality of circumstances.

The National Historic Preservation Act (NHPA - 1966) – 16 U.S.C. § 470 *et seq.*

This act is considered the most comprehensive preservation legislation in the United States. The act created the State Historic Preservation Offices, the National Register of Historic Places and National Historic Landmarks. The act requires all federal agencies to evaluate the impacts of federally funded or permitted projects on historic properties. This evaluation process is known as *Section 106 Review*, named for the section in the NHPA that outlines how this process is to occur. In addition to the requirement to evaluate the impacts of federal actions, NHPA further stipulates that federal agencies are to actively preserve historic properties (Section 110).

Programmatic Agreement Among the National Park Service (U.S. Department of the Interior), The Advisory Council On Historic Preservation, and the National Conference of State Historic Preservation Officers (July 17, 1995 and November 14, 2008).

These programmatic agreements specify how the NPS established and formalized policies and operating procedures (NPS/DO-28) designed to ensure compliance with the NHPA.

Both the 1995 and 2008 programmatic agreements delegate Superintendents as the responsible agency officials as defined in 36 CFR Part 800.1(c)(1)(i) for the purposes of Section 106 compliance. Superintendents are to assign Section 106 Coordinators, and are further responsible for ensuring staff are adequately trained to carry out their responsibilities.

SERIOUS MISMANAGEMENT REPORT**EFMO NHPA/ARPA/NEPA VIOLATIONS****Incident Overview**

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The Archeological Resources Protection Act (ARPA – 1979) – 16 U.S.C. §§ 470aa.

ARPA prohibits the unauthorized excavation, removal, damage, alteration, or defacement of archeological resources. In addition to other segments of the public, ARPA explicitly specifies that "...any officer, employee, agent, department, or instrumentality of the United States..." is subject to the prohibitions of the Act.

The National Environmental Policy Act (NEPA – 1969) - 42 U.S.C. § 4321

Just as NHPA requires federal agencies to carefully consider the potential effects of federal undertakings on historic properties, NEPA requires federal managers to take the potential environmental impacts of undertakings into consideration as well – again, in advance of initiating work on those undertakings.

The National Park Service Organic Act (1916)

The Service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.



Reservoir waterline project (2005). The lower portions of this project took place on the Nazekaw Terrace, a site known to have had more than 60 burial and ceremonial mounds in the past. NPS Photo.

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Three Mounds repatriation/reburial preparation (2004). Archeologists and SHPO were not properly consulted about the use of this location; an existing burial mound adjacent to the visitor center. Excavation of the mound was performed by maintenance personnel. NPS Photo.

FINDINGS

This section presents the Investigation Team's findings. The most rudimentary elements that contributed to this period of serious mismanagement are identified. These findings are supported by discussions with co-workers, supervisors, witnesses and subject matter experts. Motivational determinations for these activities are inferred based upon the available witness and subject testimony which may have been impacted by minimized levels of cooperation or appreciation of potential culpability.

DIRECT CAUSE

Permanent archeological damage was caused by NPS employees within Effigy Mounds National Monument as a result of ground disturbing projects affecting historic properties and archeological sites in violation of the National Historic Preservation Act, The Archeological Resources Protection Act, The NPS Organic Act, NPS Directors Orders, policies, and programmatic agreements.

CONTRIBUTING FACTORS

1. Willful Blindness: The Principal has asserted a lack of understanding of the level of wrong doing related to these actions. Statements made by the Principal clearly illustrate a lack of basic knowledge related to Section 106 Compliance and ARPA despite years of training and professional exposure. Statements made also describe a complete reliance upon the assumed expertise of a selected few, despite blatant contrary indicators, coupled with a willful lack of associated oversight. As the federal land manager, the Principal was the legal approving authority of all actions and was expected to have, and should have had knowledge of the laws

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EFMO NHPA/ARPA/NEPA VIOLATIONS

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established to protect those resources. The Principal failed to learn or become aware of the laws designed to protect places like EFMO, and approved projects that damaged and/or destroyed cultural resources without taking those resources into consideration. In 2003, EFMO's Senior Law Enforcement Officer carefully outlined his concerns about non-compliant projects in a detailed 5-page memo, which the Principal chose to ignore. Remaining "blind" to the requirements of the law, despite repeated training and repeated warnings from staff, can lead to behavior that results in criminal recklessness and negligence.

2. Lack of Oversight:

EFMO:

- **Marginalization of EFMO employees by the Principal removed internal program oversight:**
 - **Cultural Resource Specialist/Archeologist:** Prior to the arrival of the Principal, EFMO's Cultural Resources Specialist/Archeologist began accepting Section 106 compliance duties. This was reversed shortly after the Principal's arrival and the employee's skills and abilities were devalued and restricted to curatorial duties. Terminating funding of this position and transferring it to other divisions was openly discussed with the employee. Citing a poor work environment enhanced by these factors the employee left EFMO for another NPS assignment. The position was not refilled, despite the dominance of cultural resources within the park.
 - **Chief of Natural Resources:** The contributions of this position and division were systematically reduced in importance by the Principal regarding the operation of EFMO and meaningful management team inclusion. Differing opinions were treated like acts of insubordination by the Principal.
 - **Chief Ranger (non-commissioned):** The contributions of this position and division were systematically reduced in importance by the Principal regarding the operation of EFMO and meaningful management team inclusion. Subsequent declining morale affected proper work/life balance forcing this talented and committed employee, at great personal cost, to leave the NPS while seeking a better quality of family/work life.
 - **Senior Law Enforcement Ranger:** This position was systematically devalued by the Principal. Furloughs were maximized, employee expertise was ignored, necessary equipment was not provided, "security patrols" of EFMO were performed by maintenance employees, and at times defensive equipment was not permitted to be worn. The Principal stated to a colleague a fear of this employee's authority to confront friends, family, neighbors, acquaintances and employees if/when they violated laws within EFMO. This employee was trapped within a corrupt chain of command and was forced to seek out-of-park assignments, greatly disrupting normal family life, to remain professionally and financially viable. Ironically, this employee's education

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(MA in Archeology) and expertise related to cultural resources are highly valued by the Department of the Interior as a nationwide educator/trainer, scholar, and Native American Graves Protection and Repatriation Act civil penalties investigator.

- **Administrative Officer:** Perspective and expertise from this employee related to budget allocation, proper project development, and the requirement to maintain an administrative record were ignored by the Principal.
- **Chief of Maintenance/Section 106 Compliance Coordinator:** An inherent conflict of interest emerges when responsibility for both project compliance and project completion is vested in one employee.
- **Management misalignment from the mission of the NPS and the purpose of EFMO:** Despite long NPS careers, excellent training, and a professed desire to be stewards of EFMO, management team contributors were unable or unwilling to recognize the divergence of their personal goals from the mission of the NPS and the rule of law. The management team contributors also had an inexcusable lack of understanding of the fundamental importance of the archeological resource they were assigned to protect, along with its complexity, pervasiveness, landscape qualities, and history, which enabled them to discount concerns and justify gross physical and ethical violations of a site held sacred by many.

Regional Office:

- **Supporting unit operations without adequate oversight:** The Midwest Regional Office has an infrastructure designed to provide support services to sixty NPS units with little emphasis on oversight in some program areas. Land managers are trusted to lawfully perform their duties and are often directed to create their own performance standards and draft their own performance reviews. There was no meaningful mechanism to detect violations of policy or law. In this instance Regional program managers were routinely misinformed by EFMO with cavalier confidence. Sometimes the regional office was even *informed* of non-compliance, as occurred when the Principal wrote in a 2005 Operations Formulation System (OFS) request that the park needed a base increase for cultural resource management purposes because Section 106 compliance "...has been ignored at EFMO due to lack of staff." When oversight was finally provided, a decade of dysfunction was uncovered.
- **Cultural Resource Section 106 Reviewers:** These employees perform this critical function as a collateral duty and are often removed from each other and the NPS units they serve. Regional Cultural Resource Section 106 reviewers were slow to adopt the Planning, Environment, and Public Comment System (PEPC) to facilitate their reviews. This enabled potentially deceptive NPS managers to avoid transparency, since no one at the regional level could see the sum total of a park's Section 106 efforts (or lack thereof). The end result was sharply reduced opportunities for

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EFMO NHPA/ARPA/NEPA VIOLATIONS

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objective and informed perspectives on the potential impacts of projects upon historic resources.

- **Inability to react appropriately to mismanagement warning signs:** Numerous EFMO employees on multiple occasions, both formally and informally, attempted to find a sympathetic reception from regional officials to evidence of mismanagement by the Principal – all without success. When efforts with immediate supervisors failed, employees resorted to parallel chains of command without success. Blatant clues of mismanagement presented to regional officials by the Principal and EFMO employees were not noticed, misinterpreted, or inappropriately reacted to.
- **Rewarding progress instead of preservation:** Projects and alleged improvements to NPS infrastructure are tangible and easily reference an obtained goal. Choosing to *not* build within NPS units in order to preserve the qualities articulated within the unit's enabling legislation are often unnoticed, unappreciated and unrewarded by NPS officials.

3. Perceived Conflicting Priorities:

- **Budget Allocation:** From 1999 to 2009 the annual operational budget for EFMO steadily increased from \$588,000 to \$1,117,000 (the latter figure is \$864,413 in constant 1999 dollars). Allocations increased for the maintenance division in unison with base funding increases (1999 - \$121,000, 2009 - \$366,000 (\$284,220 in constant 1999 dollars)). Allocation for the cultural resources division dramatically decreased, peaking in 2001 at \$29,000 and reducing to an annual average of just under \$3,000 for the remaining eight years. EFMO also received generous (\$4,366,000) specific project funds during this period. It is clear that while the cultural resources program was being dismantled due to a professed lack of funding, the maintenance program was rapidly growing, acquiring approximately 60% of EFMO's base funding increases.
- **Project Completion vs. Compliance:** Seasonal work forces, the federal fiscal cycle and special project funds availability may encourage managers to seek shortcuts related to compliance. Excess year-end funds can contribute to non-compliance as they did with EFMO's North Unit Storage Shed, because by definition they need to be spent quickly. EFMO repeatedly received project funds for "shovel-ready" projects that had not been reviewed by the compliance system.
- **Americans with Disabilities Act (ADA) vs. Cultural Resource Preservation:** One of the Principal's personal goals was to dramatically increase access to mound groups for wheelchair-bound visitors. This resulted in several projects including weaving a boardwalk, requiring 216 excavations, onto the landscape of an archeological site

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(13AM82) and dominating an ancient sacred location with a modern structure. Tens of thousands of additional linear feet of boardwalk were referred to as preferred alternatives within the unit's 2009 Draft General Management Plan. Section 106 consultation is an excellent tool designed to assist managers with overcoming potential legislative and user group conflicts. Tribal members associated with EFMO stated the Principal led them to believe the ADA *requires* the NPS to provide accessibility via boardwalks at the expense of cultural resource integrity.

- **Protection of Equipment vs. Protection of the Resource:** EFMO purchased several pieces of expensive equipment including backhoes, tractors, and riding lawnmowers but lacked sufficient facilities to protect them from inclement weather. Their solution was to build a shed within an archeological site (13AM189) which required 22 excavations. This shed structure dominated a sacred landscape in view of linear mounds and an associated hiking trail. The location of this project site was justified by claiming it was "previously disturbed." Ground penetrating radar later revealed the shed was built upon a remnant mound. Proper consultation could have steered EFMO toward a more suitable location for this structure, or a better space utilization plan for existing facilities.
- **Employee Efficiency vs. Resource Preservation and Visitor Experience:** Despite a long history of maintaining the park with very little use of motorized vehicles, park staff became increasingly reliant on the use of tractors, ATV's and UTV's to get to work sites they formerly would have walked to. Over time, simple hiking trails widened to the width of roads, and rustic footbridges were replaced with 5 ton vehicle bridges. Gradually, the park's charming and rustic hiking trails were converted to maintenance roads that visitors were allowed to hike along. While employee efficiency increased as a result of this effort, resources were damaged and the visitor experience of the park was seriously degraded.

SERIOUS MISMANAGEMENT REPORT**EFMO NHPA/ARPA/NEPA VIOLATIONS****Matters For Consideration**

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MATTERS FOR CONSIDERATION

Span of Control: The Midwest Region Deputy Regional Director is responsible for the supervision of over fifty Superintendents. A sign of this overwhelming burden is the routine use of what amounts to self-evaluations for Superintendents. While this is the only way it can reasonably be accomplished given the magnitude of the task, it nonetheless forces senior regional management to believe what they are being told by the Superintendent is true. The end result is a lack of objective oversight, meaningless performance benchmarks, and a skewed vision of park conditions that may sharply diverge from reality.

Warning Signs: As expressed by the U.S. Attorney, regional officials lacked the ability or willingness to comprehensively analyze incidents warning of endemic mismanagement during the Principal's tenure at the park. Some of the signs missed include: valued employees leaving the NPS for other agencies or leaving the park/region for new positions; complaints and evidence of division marginalization; signs of extreme cronyism; a Chief of Maintenance assigned as a Section 106 Coordinator; a cultural resources management review team that rarely hears from a park despite \$4.3 million in project funding; concerns expressed from an alienated State Historic Preservation Office; memorandums detailing incidents of violations; OFS requests with *admissions* of non-compliance; and language within a Draft General Management Plan concerning nebulous and ill-advised future boardwalk construction projects that would dominate sacred landscapes. Regional law enforcement officials and cultural resource experts were also unable to recognize a connection between violations of the NHPA and ARPA.

Checks and Balances: Regional funding approval of EFMO projects required no assurances related to the proper completion of compliance.

Use of Inappropriate Administrative Tools: The use of the Operations Evaluation by the Midwest Regional Office was too broad for fully investigating the alleged violations. The most germane component of the evaluation is buried (pg. 40 of 52) within analysis of *all* of EFMO's operational and administrative functions. Although the Regional Chief Ranger was an Operations Evaluation Team Member, inexplicably the need for a NPS instigated criminal investigation never materialized which resulted in an under-informed and weak response. An objective fact finding cadre of law enforcement professionals and subject matter experts should have followed in the wake of the Operations Evaluation.

Advisory Council on Historic Preservation (ACHP): Continued Section 106 compliance failures by the NPS could result in the termination of the nationwide programmatic agreement by the ACHP, which would devastate current project development and completion procedures service-wide.

Paraprofessional Archeologists: The Midwest Archeological Center developed this innovative program with the intention of educating field employees so they could assist with the oversight of projects affecting historic properties. This program was abused by EFMO employees, who

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used the paraprofessional designation as a means of circumventing proper archeological site investigations.

Misapplication of the “previously disturbed” concept: The EFMO management team consistently self-proclaimed compliance exemption due to previous disturbances caused by historic farming practices or the construction of the monument’s infrastructure. For instance, multiple projects adjacent to EFMO’s headquarters were completed without Section 106 review because the area had been farmed. It was common knowledge amongst the management team and general park staff that the headquarters location was the site of a mound group of approximately 60 burial and ceremonial mounds. Geophysical studies later determined that while the mounds were not visible on the surface, they still exist and are in need of preservation and protection. Although the above-ground manifestations of these mounds had been mostly obliterated by 20th century agricultural and landscaping practices, geophysical studies have proven recognizable remnants of many of these mounds remain intact below the plow zone, potentially including burials. The protection of these mounds is the primary reason for the monument’s existence. A history of previous disturbance at any given site cannot and should not be used to justify further disturbance without careful consideration and consultation.



Maintenance road constructed in the absence of any Section 106 review. An unused and reforested historic farming trail was converted into an access road which connected the maintenance facilities with hiking trails in the North Unit. An over reliance on the use of vehicles led to the road’s construction and the widening of “hiking trails,” which in effect became roads for park staff. NPS Photo.

SERIOUS MISMANAGEMENT REPORT

EFMO NHPA/ARPA/NEPA VIOLATIONS

Conclusion



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Conclusion: The explication of events, actions, and decisions contained in this report are not, we believe, unique to EFMO in that time and place, or with that constellation of actors. The challenges of effective use of Section 106 review for its intended purpose exist in many parks for many reasons, not all of them by intent or design. We understand improvements are being made for more critical review of parks' participation in the compliance process at all levels. For instance, the awarding of project money is now linked to compliance completion, and accountability for overseeing proper compliance is more strongly articulated in supervisory performance standards. While these are positive and appropriate steps, it is still possible to subvert the process in the interest of "economizing" and "streamlining".

The wake-up call this SMR provides should be the impetus for critical evaluation by all employees at all levels involved with the compliance review process. Traditionally viewed as an obstacle or bottleneck, Section 106 offers the opportunity (legal requirement notwithstanding) to take stock of the potential impacts of a proposed project, and to carefully consider whether or not it meets the needs of the park, the stakeholders, and the public in a manner most suited to the agency mission and principles.



Park headquarters drainage improvements (2000) performed without completing Section 106 review. Geophysical evidence now shows many mound remnants potentially with intact burials in the headquarters vicinity. NPS photo.



National Park Service: FY2017 Appropriations and Recent Trends

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Summary

The National Park Service (NPS) receives appropriations in the annual Interior, Environment, and Related Agencies appropriations bill. For FY2017, the Obama Administration requested \$3.101 billion in discretionary appropriations for NPS, an increase of \$250.2 million (8.8%) over the

It is likely the 135 % growth in "Mandatory" Budget Requests reflects Monument additions

appropriations would require changes in authorizing law. The discretionary and mandatory requests brought the Administration's total request for NPS for FY2017 to \$4.339 billion, an increase of \$962.5 million (or 28.5%) over the FY2016 total of \$3.376 billion. NPS stated that much of the increased funding would be used to address the agency's backlog of deferred maintenance, in connection with NPS's centennial anniversary this year and its expected future infrastructure needs.

On July 14, 2016, the House passed H.R. 5538, the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2017. The House bill recommended discretionary appropriations of \$2.930 billion for NPS, an increase of \$78.8 million (2.8%) over the FY2016 enacted amount but a decrease of \$171.4 million from the agency request.

On June 16, 2016, the Senate Appropriations Committee reported its version of the bill, S. 3068. The Senate committee bill recommended \$2.914 billion in discretionary funds for NPS, an increase of \$62.7 million (2.2%) over the FY2015 appropriation and a decrease of \$187.5 million from the NPS request.

This report discusses NPS's FY2017 appropriations and examines trends in the agency's discretionary appropriations over the past decade (FY2007-FY2016). NPS appropriations varied during that time period and increased overall in real terms. The enacted discretionary appropriation for FY2016 represented an increase of 24.0% in nominal dollars and 7.5% in inflation-adjusted dollars compared with a decade earlier (FY2007).

For most of this time, the NPS discretionary appropriation included five accounts. The largest by far is the Operation of the National Park System (ONPS) account, which supports the activities, programs, and services that form the day-to-day operations of the park system. The majority of ONPS funds are provided directly to managers of individual park units. This account grew over

8.4% to 43.7% in inflation-adjusted dollars. A sixth account, the Centennial Challenge account, was funded only in certain years.

The funding changes took place in the context of relative stability in the size of the National Park System, which grew slightly (by 0.4%) from 84.3 million to 84.6 million acres over the past 10 years. NPS staffing levels fluctuated around 20,000 and grew overall. Visits to the parks also increased over the decade, peaking at approximately 307 million visits in 2015.

Facility Management Software System

Data as of September 30, 2014

State	Park	Deferred Maintenance
	Big Bend National Park (BIBE)	\$ 87,753,585
	Big Thicket National Preserve (BITH)	\$ 3,312,840
	Chamizal National Memorial (CHAM)	\$ 852,377
	Fort Davis National Historic Site (FODA)	\$ 1,139,056
	Guadalupe Mountains National Park (GUMO)	\$ 5,532,425
	Lake Meredith National Recreation Area (LAMR)	\$ 13,461,361
	Lyndon B Johnson National Historic Park (LYJO)	\$ 3,484,143
	Padre Island National Seashore (PAIS)	\$ 17,487,463
	Palo Alto Battlefield National Historic Site (PAAL)	\$ 834,457
	San Antonio Missions National Historical Park (SAAN)	\$ 8,003,853
UT Utah	Total ►	\$ 148,748,484
	Arches National Park (ARCH)	\$ 32,965,042
	Bryce Canyon National Park (BRCA)	\$ 37,671,477
	Canyonlands National Park (CANY)	\$ 40,030,662
	Capitol Reef National Park (CARE)	\$ 4,221,050
	Cedar Breaks National Monument (CEBR)	\$ 5,507,965
	Dinosaur National Monument (DINO)	\$ 12,261,940
	Glen Canyon National Recreation Area (GLCA)	\$ 65,115,023
	Golden Spike National Historic Site (GOSP)	\$ 3,331,147
	Hovenweep National Monument (HOVE)	\$ 1,803,354
VA Virginia	Natural Bridges National Monument (NABR)	\$ 8,591,055
	Parashant National Monument (PARA)	\$ 1,165,041
	Timpanogos Cave National Monument (TICA)	\$ 3,319,003
	Zion National Park (ZION)	\$ 62,111,847
	Appomattox Court House National Historical Park (APCO)	\$ 2,460,895
	Assateague Island NS (ASIS)	\$ 5,566,317
	Blue Ridge Parkway (BLRI)	\$ 231,003,500
	Booker T Washington National Monument (BOWA)	\$ 1,137,192
	Cedar Creek and Belle Grove NHP (CEBE)	\$ 698,217
	Colonial National Historical Park (COLO)	\$ 168,330,159
	Cumberland Gap National Historical Park (CUGA)	\$ 2,527,509
	Fort Monroe National Historic Park (FOMR)	\$ 1,470,028
	Fredericksburg and Spotsylvania Battlefields Mem NMP (FRSP)	\$ 11,231,568
	George Washington Birthplace National Monument (GEWA)	\$ 444,539
	George Washington Memorial Parkway (GWMP)	\$ 92,693,793
	Harpers Ferry National Historical Park (HAFE)	\$ 261,009
	Maggie L Walker National Historic Site (MAWA)	\$ 73,739
	Manassas National Battlefield Park (MANA)	\$ 3,809,713
	Petersburg National Battlefield (PETE)	\$ 8,754,049
	Prince William Forest Park (PRWI)	\$ 16,698,420
	Richmond National Battlefield Park (RICH)	\$ 13,509,632

Facility Management Software System

Data as of September 30, 2014

State	Park	Deferred Maintenance
	Shenandoah National Park (SHEN)	\$ 93,411,478
	Wolf Trap National Park for the Performing Arts (WOTR)	\$ 11,411,742
	Total ►	\$ 665,493,499
VT Vermont	Marsh Billings Rockefeller National Historic Park (MABI)	\$ 1,860,396
	Total ►	\$ 1,860,396
WA Washington	Ebeys Landing National Historic Reserve (EBLA)	\$ 6,038,608
	Fort Vancouver National Historic Site (FOVA)	\$ 21,363,446
	Klondike Gold Rush National Historical Park (KLGO)	\$
	Lake Roosevelt National Recreation Area (LARO)	\$ 28,679,818
	Mount Rainier National Park (MORA)	\$ 298,372,137
	Nez Perce National Historic Park (NEPE)	\$
	North Cascades National Park (NOCA)	\$ 14,825,749
	Olympic National Park (OLYM)	\$ 133,246,385
	San Juan Island National Historical Park (SAJH)	\$ 4,176,037
	Whitman Mission National Historic Site (WHMI)	\$ 493,372
	Total ►	\$ 507,195,553
WI Wisconsin	Apostle Islands National Lakeshore (APIS)	\$ 7,991,772
	Saint Croix National Scenic Riverway (SACN)	\$ 1,245,286
	Total ►	\$ 9,237,058
WV West Virginia	Appalachian National Scenic Trail (APPA)	\$ 16,408,894
	Bluestone National Scenic River (BLUE)	\$ 60,247
	Gauley River National Recreation Area (GARI)	\$ 1,878,773
	Harper's Ferry Center (HAFC)	\$ 12,350,553
	Harpers Ferry National Historical Park (HAFE)	\$ 13,348,293
	Historic Preservation Training Center (HPTC)	\$ 374,082
	New River Gorge National River (NERI)	\$ 15,757,232
	Stephen T. Mather Training Center (STMA)	\$ 2,926,463
	Total ►	\$ 63,104,538
WY Wyoming	Bighorn Canyon National Recreation Area (BICA)	\$ 5,178,349
	Devils Tower National Monument (DETO)	\$ 3,959,288
	Fort Laramie National Historic Site (FOLA)	\$ 3,260,185
	Fossil Butte National Monument (FOBU)	\$ 4,113,238
	Grand Teton National Park (GRTE)	\$ 201,840,685
	John D Rockefeller Jr Memorial Parkway (JODR)	\$ 14,427,654
	Yellowstone National Park (YELL)	\$ 633,635,140
	Total ►	\$ 866,414,539

Territories:

State	Park	Deferred Maintenance
AS American Samoa	National Park of American Samoa (NPSA)	\$ 894,829
	Total ►	\$ 894,829

Figures in the table above represent a snapshot of the NPS Facility Management Software System (FMSS) data as of the end of the fiscal year.

State	Park	Deferred Maintenance
GM Guam	War in the Pacific National Historic Park (WAPA)	\$ 4,789,427
	Total ►	\$ 4,789,427
MP Northern Mariana Islands	American Memorial Park (AMME)	\$ 9,356,686
	Total ►	\$ 9,356,686
PR Puerto Rico	San Juan National Historic Site (SAJU)	\$ 327,488,706
	Total ►	\$ 327,488,706
VI Virgin Islands	Buck Island Reef National Monument (BUIS)	\$ 233,106
	Christiansted National Historic Site (CHRI)	\$ 3,531,798
	Salt River Bay National Hist and Ecological Preserve (SARI)	\$ 434,046
	Virgin Islands National Park (VIIS)	\$ 15,153,520
	Total ►	\$ 19,352,470
		Total ► \$ 11,493,168,812

Deferred Maintenance The cost of maintenance that was not performed when it should have been or was scheduled to be and which, therefore, is put off or delayed.

column) are included as a sub set of the larger parks (right column).

Arlington House (ARHO)	George Washington Memorial Parkway (GWMP)
Cape Krusenstern National Monument (CAKR)	Western Arctic National Parklands (WEAR)
Carter G. Woodson Home National Historic Site (CAWO)	National Capital Parks-East (NACE)
Clara Barton National Historic Site (CLBA)	George Washington Memorial Parkway (GWMP)
Constitution Gardens (COGA)	National Mall & Memorial Parks (NAMA)
Fort Caroline National Memorial (FOCA)	Timucuan Ecological and Historic Preserve (TMU)
Fort Matanzas National Monument (FOMA)	Castillo de San Marcos National Monument (CASA)
Fort Raleigh National Historic Site (FORA)	Canyon de Chelly National Monument (CACH)
Fort Washington Park (FOWA)	National Capital Parks-East (NACE)
Franklin D. Roosevelt Memorial (FDRM)	National Mall & Memorial Parks (NAMA)
Frederick Douglass National Historic Site (FRDO)	National Capital Parks-East (NACE)
Greenbelt Park (GREE)	National Capital Parks-East (NACE)
Hohokam Pima National Monument (PIMA)	Casa Grande Ruins National Monument (CAGR)
Kobuk Valley National Park (KOVA)	Western Arctic National Parklands (WEAR)
Korean War Veterans Memorial (KWVM)	National Mall & Memorial Parks (NAMA)
Lincoln Memorial (LINC)	National Mall & Memorial Parks (NAMA)
Lyndon Baines Johnson Memorial Grove on the Potomac (LYBA)	George Washington Memorial Parkway (GWMP)
Martin Luther King, Jr. Memorial (MLKM)	National Mall & Memorial Parks (NAMA)
Mary McLeod Bethune Council House National Historic Site (MAMC)	National Capital Parks-East (NACE)
Natchez Trace National Scenic Trail (NATT)	Natchez Trace Parkway (NATR)
National Capital Parks (NACC)	National Mall & Memorial Parks (NAMA)
Noatak National Preserve (NOAT)	Western Arctic National Parklands (WEAR)
Pennsylvania Avenue National Historic Site (PAAV)	National Mall & Memorial Parks (NAMA)
Piscataway Park (PISC)	National Capital Parks-East (NACE)
Potomac Heritage National Scenic Trail (POHE)	George Washington Memorial Parkway (GWMP)
Rio Grande Wild and Scenic River (RIGR)	Big Bend National Park (BIBE)
Theodore Roosevelt Island (THIS)	George Washington Memorial Parkway (GWMP)
Thomas Jefferson Memorial (THJE)	National Mall & Memorial Parks (NAMA)
Tupelo National Battlefield (TUPE)	Natchez Trace Parkway (NATR)
Vietnam Veterans Memorial (VIVE)	National Mall & Memorial Parks (NAMA)
Washington Monument (WAMO)	National Mall & Memorial Parks (NAMA)
World War II Memorial (WWII)	National Mall & Memorial Parks (NAMA)
Wright Brothers National Memorial (WRBR)	Cape Hatteras National Seashore (CAHA)

EXHIBIT 9

- San Juan County Resolution

RESOLUTION NO. 2016-08

A RESOLUTION OF SAN JUAN COUNTY, UTAH:

DEFICIENCIES OF A PROPOSAL BY A NON-GOVERNMENTAL ORGANIZATION FOR ESTABLISHMENT OF A NATIONAL MONUMENT IN SAN JUAN COUNTY; NOTIFICATION OF COUNTY PREROGATIVES AND INTENT FOR LAND USE PLANNING

WHEREAS, we, the Commission of San Juan County, Utah, are locally-elected government officials responsible for the security, health, welfare, taxation, customs, culture, economic stability, and land-use planning for the county;

WHEREAS, San Juan County is a sovereign political subdivision of the State of Utah that contains Federal, State, and county managed lands;

WHEREAS, the Bears-Ears Inter-Tribal Coalition (hereafter the Coalition), a Non-Governmental Organization having no governmental jurisdiction over San Juan County land-use planning activities, has made a proposal to the President of the United States and the Secretaries of Interior and Agriculture requesting the establishment of a national monument under Title 54 of the National Park Service Preservation Statutes, Title 43 of the Federal Land Policy and Management Act, and other statutes;

WHEREAS, the proposal by the Coalition advocates pre-emption of no less than 18 established Federal, State and local land use and planning efforts, including an agreement between San Juan County and the Navajo Nation;

WHEREAS, the Coalition's assertion of "rampant looting" of artifacts conflicts with reports from local and Federal law enforcement, the boundary proposed by the Coalition is arbitrary, and the proposal is deficient of the Quality, Utility, Objectivity and Integrity standards required of Federal Agencies for decision-making;

WHEREAS, the 1.9 million acre area proposed for a national monument contains 151,000 acres of revenue-generating, School and Institutional Trust Lands Administration lands owned by the State of Utah that are valid existing property interests not meeting the definition of "public lands;"

WHEREAS, the area proposed for a national monument contains 43 grazing allotments that are limited-fee title, surface-estate lands that are valid existing property interests not meeting the definition of "public lands;"

WHEREAS the area proposed for a national monument contains no less than 661 state-appropriated water-right diversion points that are valid existing property interests not meeting the definition of "public lands;"

WHEREAS the area proposed for a national monument contains approximately 18,000 acres of patented property that are valid existing property interests not meeting the definition of "public lands;"

WHEREAS, pre-1976 in perpetuity easements, prescriptive RS 2477 roadways, ditches, water conduits, utility routes, and first-responder rights-of-way across public lands do not meet the statutory, historical definition of "public lands" and are valid, pre-existing property interests not under ownership or control of Federal Agencies;

WHEREAS, the Manti-La Sal National Forest contains the entire watershed, water storage and water-transfer infrastructure that the cities of Blanding and Monticello are entirely dependent upon for their culinary water needs;

WHEREAS, the United States has no authority to appropriate water rights from, in, or to the Manti-Sal National Forest, such authority being vested with the State of Utah;

WHEREAS, ongoing and unencumbered right-of-way access is essential to the exercise of property interests, rights, civic duties for law enforcement and day-to-day operational aspects of livestock grazing allotments;

WHEREAS, the 1.9 million acre tract, having been demonstrated to contain vast private interests and areas of valid existing inholdings;

THE AFOREMENTIONED FACTS BEING PRESENTED, QUESTIONS HAVING BEEN RAISED, OR CONCLUSIONS HAVING BEEN MADE, THE GOVERNING BODY OF THE COUNTY OF SAN JUAN CONCLUDES AND AFFIRMS:

- I. The 43 surface grazing allotments occurring as split estate throughout the area proposed for a national monument do not meet the definition of "public lands," those lands being under the jurisdiction of State of Utah and San Juan County.
- II. The Antiquities Act gives the POTUS authority to withdrawal only Federally-owned or controlled public lands for national monuments; the presence, location and/or extent of public lands, if any, within the 1.9 million acre boundary proposed by the Coalition has not been inventoried by the POTUS, the Departments of Interior or Agriculture.
- III. The Coalition's proposal would preempt State and local jurisdictions and a Memorandum of Agreement with the Navajo Nation for land use planning;
- IV. The Coalition's proposal violates protocols, has minimal basis in statutory law, and requests actions neither the POTUS nor the Secretaries of Interior or Agriculture have authority to grant;

- V. The Coalition's proposal effectively requests the POTUS and Secretaries of Interior or Agriculture to re-appropriate water rights, take public and private rights-of-way, encumber or extinguish grazing allotments, and take State-owned tax revenue lands - all without procedural due-diligence, inholder notification, or opportunity for adjudication or compensation.
- VI. Title II, Section 202(c)(9) of the Federal Land Policy and Management Act affirms San Juan County as having a first-among-equals authority in land use planning, requiring the Secretaries of Interior and Agriculture to attempt consistency with the land-use plans and planning efforts of San Juan County.
- VII. Establishment of a national monument, as proposed by the Coalition, has not been sufficiently investigated, has not been demonstrated as warranted, and, as proposed, will have foreseeable, negative consequences and impacts to the human environment.

THEREFORE, BE IT RESOLVED THAT THE GOVERNING BODY OF THE COUNTY OF SAN JUAN, UTAH HEREBY PROPOSES AND DIRECTS:

- 1) Revise and update San Juan County Land Use Master Plan, review, consider and incorporate, as appropriate, all County-wide State and Federal land-use plans and planning efforts;
- 2) Lead the updating of a San Juan County Master Plan using the FLPMA doctrine of Coordination and a historical understanding of the definition of "public lands;"
- 3) Survey, distinguish and publish in the updated County Master Plan, Federally-owned minerals and timber from valid existing surface rights, grazing allotments, water rights;
- 4) Furnish advice to the Secretaries of Interior and Agriculture on timber harvesting, allocation and permitting in the Manti-La Sal National Forest such as will balance the environment and economic interests of all citizens and populations of San Juan County.
- 5) Review - using established San Juan County Heritage Council or other County programs - the concerns of the Coalition for veracity and potential inclusion in the land-use planning process.

ADOPTED AND APPROVED by the Governing Body this 4th day of October 2016.



Phil Lyman Chair, San Juan County Commissioner



Bruce Adams, San Juan County Commissioner



Rebecca Benally, San Juan County Commissioner

ATTEST:



John David Nielson, San Juan County Clerk



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Comment:

Dear Honorable Secretary Zinke: Attached please find an electronic copy of an analysis my company prepared for San Juan County, Utah entitled "The Advisability of Designating the Bears Ears as a Monument Under the Antiquities Act." The attached report was prepared with the expectation that President Obama was going to designate 1.9 M acres within San Juan County irrespective of state or local remonstrations. Using that as a backdrop, we detail the history of the Antiquities Act, provided an analysis of applicable statutory authorities, identified crucial land inholdings, and outline a clear exposition of the spilt estate issues in a pointed, expos of prolific problems with the monument proposal. Written in the context of local government prerogatives and with an objective toward balancing of private property, economics, local culture, and appropriate protection for the natural environment, we designed a statutory analysis can be very useful for DOI, CEQ, the president or the courts when evaluating monument designations and sizing. The attached document also provides substantive land-use planning recommendations drawn from the congressional acts, judicial review, and our experience with affecting agency decisions and policy. I hope this document will be of use to you as you review the expansive monument designations that have been made over the past 20 or so years. Several in our group are subject matter and administrative policy experts, so if I may be of assistance, please feel free to contact us. Regards, J.R. Carlson Managing Partner Stillwater Technical Solutions STS@wbsnet.org *📧

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