

From: Bowman, Randal
To: [Aaron Moody](#)
Subject: BLM response to 2nd data request, Bears Ears
Date: Thursday, June 01, 2017 1:06:53 PM
Attachments: [Additional Information Requested on Bears Ears NM 5-19-17 revised.docx](#)

a version of this that includes followup questions and answers, and keyed to the briefing book I provided Downey last Friday, of which this was a part, is attached. Will bring paper copy for Kathy, and an extra for you, to the meeting.

**Additional Information Requested on Executive Order on the Review
of Designations Under the Antiquities Act**

BLM-Utah Responses to Additional Questions

- a) Any legislative language, including legislation in appropriations bills

The boundary of Bears Ears National Monument (BENM) is largely congruent with similar designations proposed in the Utah Public Lands Initiative (UPLI) (H.R. 5780). [See map, Tab 5]

- b) alternative options available for protection of resources applicable at each monument, such as Native American Graves Protection and Repatriation Act, Paleontological Resources Preservation Act, Archaeological Resources Protection Act, Historic Preservation Act and agency-specific laws and regulations.

The following options could provide some options to protect specific resources found in BENM. Protection would likely occur on a site-by-site or resource-by-resource basis and also would take a significant amount of time to accomplish under these various laws. These laws may not provide a mechanism to protect all cultural or tribal resources in BENM. For example, there are no statutory protections for cultural landscapes, but such resources could be protected under the Antiquities Act. See also the attached *Stegner Center NM vs NCA.pdf*. [Tab 9]

National Historic Preservation Act, (NHPA)

Native American Graves Protection and Repatriation Act, (NAGPRA)

Paleontological Resources Preservation Act, (PRPA)

Archaeological Resources Protection Act, (ARPA)

American Indian Religious Freedom Act (AIRFA)

- c) Designated wilderness areas (name, acreage), Wilderness Study Areas (name if there is one, acreage, type), and/or areas managed to preserve wilderness or roadless characteristics that are not WSAs.

1. There is no BLM-administered designated wilderness within BENM. The US Forest Service manages the Dark Canyon Wilderness.
2. BLM manages 11 WSAs totaling 380,759 acres within BENM. [see map, Tab 4]
 - Bridger Jack Mesa – 6,333 acres
 - Butler Wash – 24,277 acres
 - Cheesebox Canyon – 14,831 acres
 - Dark Canyon – 67,825 acres

- Fish Creek Canyon – 46,102 acres
- Grand Gulch – 105,213 acres
- Indian Creek – 6,554 acres
- Mancos Mesa – 50,889 acres
- Mule Canyon – 6,171 acres
- Road Canyon – 52,404 acres
- South Needles – 160 acres
 - *WSA/ISA acres listed are the total BLM-administered surface acres from the Utah Statewide Wilderness Study Report, October 1991. GIS calculations would vary.*

RB Q - does BLM have more than one process for designating wilderness study areas, or were all done by administrative review, recommendation to the President and transmittal to Congress? I've tried to find this on your web site with no luck.

Answer: The BLM designated nearly all its WSAs under the authority of either sections 202 or 603 of FLPMA (a handful were also designated by Congress). Sec. 603 of FLPMA directed the BLM to inventory its lands and, within 15 years of the law's enactment, identify parcels that met the definition of "wilderness" as described in the Wilderness Act of 1964. In carrying out Sec. 603, the BLM broke the process into three phases: inventory, study, and reporting. The BLM completed the wilderness inventory phase by 1980. Between 1980 and 1991, BLM performed the study phase, which consisted of Bureau staff comparing a WSA's wilderness values to other land uses and coming up with a recommendation as to whether a given WSA was suitable to be managed as wilderness. Per Section 603, the study phase included the U.S. Geological Survey and U.S. Bureau of Mines conducting surveys to determine the mineral values (if any) present in the WSA's. The recommendation phase consisted of BLM submitting its recommendations to the President, which it did by sending statewide wilderness reports to the President in 1991. The President, in turn, sent recommendations to Congress in 1993. Settlement of the lawsuit, *Utah v. Norton*, clarified that BLM will not designate new WSAs. The BLM WSA's are managed to protect wilderness characteristics until Congress decides whether or not they should be added to the National Wilderness Preservation System as wilderness areas.

Q - Could you have someone check on which of those sections were used for those in Bears Ears and Grand Staircase areas, and then have that shown on the future reports? TO BE PROVIDED

3. There are ~48,800 acres within 4 areas (Dark Canyon, Mancos Mesa, Nokai Dome East and Grand Gulch) that are carried forward in the 2008 Monticello Approved RMP for protection of their wilderness characteristics. Mancos Mesa, Nokai Dome East and Grand Gulch are unavailable for oil and gas leasing. Dark Canyon is available subject to a no surface occupancy stipulation that cannot be waived, excepted or modified. All 48,400 acres are managed as avoidance areas for

rights-of-way (ROW). Q - Why are some areas unavailable for leasing, and why is the "no surface occupancy" stipulation unchangeable?

Answer:

The answer in that question is regarding lands with wilderness characteristics that are managed as "natural areas" (i.e., for protection of wilderness characteristics). These are not WSAs (even though most are adjacent to WSAs and have similar names).

These decisions were made in the Monticello RMP, with substantial public input into the selected alternative. [See tab 4]

d) Outstanding R.S. 2477 claims within a monument – type of road claimed and history

There are 1,703 roads claimed in San Juan county under R.S. 2477. This figure also includes lands outside of BENM managed by the Monticello Field Office. [see Tab 8]

Note: Between 2005 and 2012, the State of Utah and 22 counties filed 30 lawsuits seeking quiet title to over 12,000 claimed R.S. 2477 rights-of-way. The vast majority of these claims are on BLM-administered lands, but claims are pending on lands administered by the National Park Service and U.S. Forest Service. To date, only one case, involving three roads, has been settled (Juab 1). Under a case management order, six cases involving 1,500 claims are currently being litigated —Kane (1), Kane (2), (3), and (4), and Garfield (1) and (2); these cases do not include lands within BENM. The remaining cases have been stayed, although preservation depositions have been allowed to continue. BLM-Utah maintains thousands of records related to R.S. 2477 claims and active or pending litigation, but some of the information is attorney-client privileged.

e) Maps –

BENM provided several maps in the initial data response. There are also numerous maps contained within the Monticello Management Plan. We are attaching several maps of cultural and paleontological resources, which may also assist WO 410 in responding to other questions within this document. [See tabs 2, 3 and 4]

f) Cultural or historical resources, particularly Tribal, located near a monument but not within the boundary that might benefit from inclusion in the monument

Please refer to the *2.g.Bears-Ears-Inter-Tribal-Coalition-Proposal* [other date request] in Drive, which describes the Coalitions' proposed boundaries and significance of areas in San Juan county. The Executive Summary for the Bears Ears Inter-Tribal Coalition is attached [Tab 6] and is significantly larger than the area designated as BENM. The attached *BENM Boundary Comparison Map* [tab 5] shows the extent of the Inter-tribal Coalition proposal as well as the Proclamation boundary (and the Utah Public Land Initiative designations). See also *TribalLettersPostDesignation* [Tab 7]

g) Other – general questions or comments

1. **Discuss the full range of Proclamation objects.** The initial DOI data call focuses almost exclusively on cultural objects, but the Proclamation identifies many objects of antiquity or historical or scientific interest to be protected, such as paleontological resources.
2. **Minor boundary modifications:** There are a few locations where a very small boundary modification would improve manageability of resources without causing any impacts to the objects identified in the Proclamation. For example, a portion of the Bluff Airport is included within the BENM. BLM-Utah can provide additional information on request.