



May 25, 2017

Secretary of the Department of the Interior
<http://www.regulations.gov>
 DOI-2017-0002

Re: Comments to Bears Ears National Monument Review

The Pueblo of Laguna supports President Obama's designation of Bears Ears National Monument, and strongly opposes review of the designation as irresponsible and illegitimate for three reasons – (1) the designation was lawful and correct on the facts; (2) neither the President nor the Secretary have a legal basis to make any modifications, and (3) the factual basis for this review has been contrived. The Secretary should either withdraw the review, or justly conclude that the designation was appropriate.

The Secretary cannot implement the President's Executive Order 13972 (Order) "consistent with applicable law" as directed. Order at Sec. 3(b). The Order retroactively imposes constraints on prior national monument designations not authorized by the Antiquities Act of 1906 (Antiquities Act), or any other federal law. The Order sets forth a policy for future designations or expansions of national monuments under the Antiquities Act. Order at Sec. 1. The Order aspires that "[d]esignations should . . . appropriately balance the protection of landmarks, structures, and objects against appropriate use of Federal lands and the effects on surrounding lands and communities." Arguably, the President has authority to set policy for how he will treat future national monument designations. However, the President lacks authority to second-guess and modify past designations.

Absent any authority, the Order directs that "[t]he Secretary shall conduct a review" of national monuments designated after 1995 "where the Secretary determines that the designation . . . was made without adequate public outreach and coordination with relevant stakeholders." Order at Sec. 2. The Antiquities Act compelled no such criteria on national monument designations made by previous Presidents. And, the current President lacks authority to require the consideration of superimposed standards on previously-designated national monuments. The Antiquities Act "does not authorize [the President] to abolish [national monuments] after they have been established." 39 Op. Att'y Gen. 185, 185 (1938). Moreover, the Federal Land Policy and Management Act of 1976 (FLPMA) restricts the President's and the Secretary's authority over federal lands in this regard by directing that "[t]he Secretary shall not . . . modify or revoke any withdrawal creating national monuments under [the Antiquities Act]. 43 U.S.C. § 1714(j). Accordingly, the Secretary's review cannot, "consistent with applicable law," proceed as directed by the Order or as interpreted in Docket No. DOI-2017-0002, and should be withdrawn.

Notwithstanding the illegitimacy of the current review, Bears Ears National Monument designation received an enormous amount of careful consideration, including years of listening

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to stakeholders. Dozens of community meetings and public discussions were held throughout 2016, including a well-attended public meeting with then-Secretary of the Interior Sally Jewell in Bluff, Utah. The final monument designation boundaries are very close to what was proposed in the Utah delegation's Public Lands Initiative (PLI), and much smaller (550,000 acres) than the Tribally-led proposal. The record of "public outreach and coordination with relevant stakeholders" amply support Bears Ears National Monument were it left to this administration to designate.

Bears Ears is a sacred landscape with more than 100,000 Native American cultural sites, dozens of which were looted and desecrated between 2014 and 2015 alone. The proposal to establish it was developed by a coalition of five sovereign Tribal Governments (Hopi, Navajo, Ute Mountain Ute, Ute, and Zuni). Perhaps it is because of this unique circumstance that Bears Ears has been singled-out for fast-tracked illegal reconsideration under this administration. However, that alone was not the sole impetus for the designation. Bears Ears is also home to scientific wonders, irreplaceable wildlife and biodiversity, and recreational opportunities that form a vital base to the local economy. That is why Utah citizens, Americans across the country, and many other Indian tribes (like the Pueblo of Laguna) have all agreed it should be protected for future generations.

Most Americans support protection of public lands. According to a 2016 study from Harvard's Kennedy School of Government, more than 93 percent of respondents said that historical sites, public lands, and national parks should be protected for current and future generations. Reducing the size of Bears Ears will primarily benefit the profiteering extractive industries to the detriment of the important qualities intended for protection by the designation. Any change in the monument will benefit abusers who act as though Federal public land is their private domain, or those who neither respect nor appreciate Bears Ears' irreplaceable aspects. Any reduction in protection will cause irreparable harm and not adhere to the will of the majority, but benefit only an insignificant minority. The Pueblo of Laguna joins with a majority of Americans in Western states that support the protection that national monument status affords Bears Ears.

While Pueblo of Laguna is not opposed to sensible energy development, we believe the Bears Ears National Monument area has greater value as protected wildlife, cultural, recreational, and historical resources than any temporary economic gain from mineral resource extraction. Rather than sacrificing this incomparable place for the removal of low-quality energy and mineral resources, which exist in abundance elsewhere, the National Park-quality landscape deserves permanent protection. Thus, the unauthorized review should be withdrawn, or at a minimum should recommend National Park designation by Congress.

Respectfully,


Virgil Siow, Governor