

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

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HOPI TRIBE, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Case No. 17-cv-2590 (TSC)
	)	
v.	)	
	)	
DONALD J. TRUMP, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	
UTAH DINÉ BIKÉYAH, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Case No. 17-cv-2605 (TSC)
	)	
v.	)	
	)	
DONALD J. TRUMP, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	
NATURAL RESOURCES DEFENSE	)	
COUNCIL, INC., <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Case No. 17-cv-2606 (TSC)
	)	
v.	)	
	)	
DONALD J. TRUMP, <i>et al.</i> ,	)	
	)	<b>CONSOLIDATED CASES</b>
Defendants.	)	
_____	)	

**NRDC PLAINTIFFS' AMENDED AND SUPPLEMENTAL COMPLAINT  
FOR INJUNCTIVE AND DECLARATORY RELIEF**

## INTRODUCTION

1. Plaintiffs Natural Resources Defense Council *et al.* file this amended and supplemental complaint challenging President Donald J. Trump's dismantling of the Bears Ears National Monument (the Monument). *See* Fed. R. Civ. P. 15; Minute Order, Oct. 16, 2019.

2. President Barack Obama designated the Bears Ears National Monument in 2016 to protect its remarkable archaeological, cultural, and natural values. *See* Proclamation No. 9558, Establishment of the Bears Ears National Monument, 82 Fed. Reg. 1139 (Dec. 28, 2016) (the 2016 Proclamation). To safeguard the innumerable and irreplaceable archaeological sites, and the cultural and ecological integrity of the Monument, President Obama set aside 1.35 million acres for permanent protection pursuant to the Antiquities Act of 1906, 54 U.S.C. §§ 320301 *et seq.* The creation of the Bears Ears National Monument provided needed protection to a pristine redrock landscape full of natural and historic treasures.

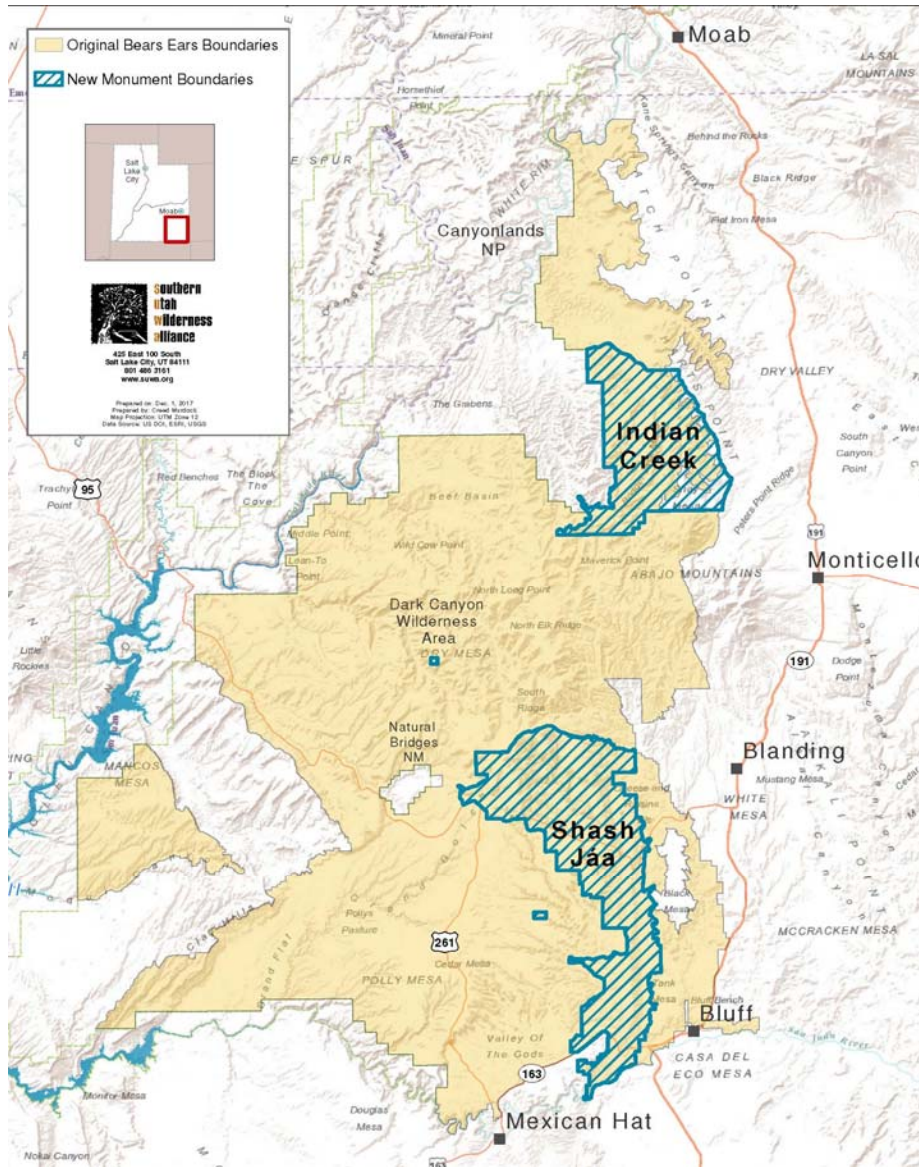
3. The Bears Ears National Monument was the 153rd national monument to be established under the Antiquities Act. Lying south of Canyonlands National Park and northwest Navajo Nation, it encompasses magnificently scenic federal public lands that have been home to Native American tribes for thousands of years. Early inhabitants of these lands left remarkable artifacts—including cliff dwellings, granaries, pottery, and rock art—that have survived for hundreds, and in some cases thousands, of years in the Monument's dry environment. These sites and the surrounding landscape still have profound cultural and religious importance to Native Americans today.

4. The Monument also encompasses a scenic landscape of sinuous canyons and towering sandstone formations. The outstanding opportunities to observe cliff dwellings and other archaeological sites, conduct scientific research, hike, camp, view native animal and plant

life, and engage in other recreational activities have drawn national interest, and thousands of visitors, to Bears Ears.

5. On December 4, 2017, President Donald J. Trump issued an unlawful proclamation that rescinded monument status from 1.15 million acres (a full 85%) of the Monument, immediately stripping these lands of the protection they deserve under the 2016 Proclamation. Proclamation No. 9681, 82 Fed. Reg. 58,081 (Dec. 4, 2017) (the Trump Proclamation). The Trump Proclamation opened these excluded lands to hard-rock mining and oil and gas drilling, which were prohibited under the 2016 Proclamation. The excluded lands and their cultural and natural resources are now at substantial risk from the impacts of those and other damaging activities that were impermissible under the 2016 Proclamation.

6. All that remains of the Monument are two much smaller, non-contiguous units—which President Trump coined Shash Jáa and Indian Creek—that are located approximately twenty miles apart from each other and together comprise just fifteen percent of the original Monument's area. Agency documents also describe the Shash Jáa unit as including two tiny exclaves stranded outside the unit's boundaries: one south of Dark Canyon, and the other near the Doll House ruin west of the Shash Jáa unit's western boundary.



*Fig. 1: The Trump Proclamation’s “Indian Creek” and “Shash Jáa” units, shown against Bears Ears National Monument’s original boundaries. Credit: SUWA*

7. President Trump acted in the absence of statutory authority under the Antiquities Act and violated the separation of powers between Congress and the President. His action threatens the remarkable historic and scientific values that qualified Bears Ears for designation as a national monument. Accordingly, this Court should declare President Trump’s Proclamation to

be unlawful and set it aside. Actions by Agency Defendants in the Department of the Interior, the Department of Agriculture, the Bureau of Land Management (BLM), and the U.S. Forest Service to implement the President's unlawful proclamation are likewise unlawful and should be enjoined.

### **JURISDICTION AND VENUE**

8. This case arises under the Constitution and the laws of the United States. Jurisdiction is therefore proper pursuant to 28 U.S.C. § 1331 (federal question).

9. The Court has authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202 and its inherent authority to issue equitable relief. Injunctive relief is also authorized by 5 U.S.C. § 706.

10. The Court has authority to award costs and attorneys' fees under 28 U.S.C. § 2412.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1), (b)(2), and (e)(1) because all Defendants reside in this judicial district. Additionally, the events giving rise to the action challenged here, including former Interior Secretary Zinke's national monument review and transmittal of the recommendations to the President concerning the Monument, as well as Defendant Bernhardt and other Interior officials' actions in response to that proclamation, took place in this judicial district.

12. Venue is also proper pursuant 28 U.S.C. § 1391(e)(1) because Plaintiffs National Parks Conservation Association, The Wilderness Society, and Defenders of Wildlife reside in Washington, D.C., and Plaintiffs Natural Resources Defense Council, Southern Utah Wilderness Alliance, Sierra Club, and Center for Biological Diversity maintain offices in Washington, D.C.

## PLAINTIFFS

13. Plaintiff NATURAL RESOURCES DEFENSE COUNCIL, INC. (NRDC) is a non-profit environmental membership organization with hundreds of thousands of members nationwide. Part of NRDC's core mission is to preserve the earth's wild places and wildlife, to safeguard the integrity of undeveloped lands, and to prevent the destructive impacts of extractive industry exploration and development on public lands.

14. NRDC has a longstanding commitment to the protection of federal public lands in Utah, and it was actively involved in advocating for the designation of the Bears Ears National Monument.

15. NRDC has individual members, including Moab residents Susan Harrington and Kevin Walker and Salt Lake City resident Ray Bloxham, who use and enjoy the Monument lands for a variety of purposes, including scientific study, hiking and recreation, wildlife viewing, meditation and quiet contemplation, and aesthetic appreciation. These NRDC members intend to continue visiting the Bears Ears National Monument (including lands that have now been stripped of protection) in the future. For example, Ms. Harrington plans to return there for backpacking trips in the future, including in 2020. Mr. Bloxham plans to return to the Monument in the spring of 2020 to camp and hike.

16. Plaintiff NATIONAL PARKS CONSERVATION ASSOCIATION (NPCA) is a non-profit national organization whose primary mission is to address major threats facing the National Park System and other protected federal lands with an ecological, management, or other nexus to National Parks. NPCA is the leading voice of the American people in protecting and enhancing the National Park System and other protected federal lands, and it has more than 1.2 million members and supporters throughout the United States.

17. NPCA plays a crucial role in ensuring that America's national parks and national monuments are protected in perpetuity by undertaking a variety of efforts, including educating decision-makers and the public about the importance of preserving these landscapes, lobbying members of Congress to uphold legal protections for national parks and other protected lands, and assessing the health of national parks and monuments and advocating for their effective management.

18. NPCA has been a strong and consistent advocate for safeguarding the threatened cultural and sacred sites in the Bears Ears National Monument. It has members, including David Nimkin, who regularly visit the Monument (including lands that have now been stripped of protection) to camp, sightsee, view native wildlife and vegetation, hike, and enjoy the many cultural sites that can be found there. Mr. Nimkin and other members also plan to visit the Monument regularly in the future, including in 2019 and 2020.

19. Plaintiff THE WILDERNESS SOCIETY is a non-profit national membership organization founded in 1935, with members who reside throughout the nation, including in Utah.

20. The Wilderness Society works to protect America's wilderness lands through public education, scientific analysis, and advocacy. The Wilderness Society's mission is to protect wilderness and inspire Americans to care about our wild places, so that future generations will enjoy the clean air, water, wildlife, beauty, and opportunities for recreation and renewal that pristine deserts, mountains, forests, and rivers provide. Protecting wilderness quality and other sensitive lands managed by BLM is vital to achieving The Wilderness Society's mission.

21. Prior to the designation of the Bears Ears National Monument, The Wilderness Society had already worked for years to protect BLM wilderness lands and other sensitive lands

located within the Monument. In an effort to protect the threatened wilderness, and cultural and other resources on lands within the Monument, The Wilderness Society has been actively involved in land-use and travel-management planning on public lands there, and has litigated to secure additional protection of these lands from motorized vehicle damage and other harmful activities. The Wilderness Society also engaged intensively in the “Public Lands Initiative” legislative effort, which included lands within the Monument.

22. Many of The Wilderness Society’s members, including Scott Miller, visit the lands within the Bears Ears National Monument (including lands that have been stripped of protection) to experience its remote wilderness quality, view wildlife, camp, hike, and enjoy the natural beauty of the area. Additionally, its members are drawn to the Bears Ears National Monument to view the numerous archaeological sites and rock art found throughout the area and to experience the landscape much as it was when the first Native Americans occupied the area. Mr. Miller and other members of The Wilderness Society plan to visit the area regularly in the future, including in 2019 and 2020.

23. Plaintiff SOUTHERN UTAH WILDERNESS ALLIANCE (SUWA) is a non-profit environmental membership organization with members in all fifty states and offices in Washington, D.C., and Utah. It is dedicated to the sensible management of federal public lands within the State of Utah, the preservation and protection of plant and animal species, the protection of clean air and water found on federal public lands, the preservation and protection of cultural and archeological resources, and the permanent preservation of Utah’s remaining wild lands.



24. SUWA staff and members actively encouraged President Obama to exercise his authority under the Antiquities Act to designate the Bears Ears National Monument and preserve the objects identified in the 2016 Proclamation for current and future generations of Americans.

25. SUWA staff and members have worked for more than thirty years through advocacy and litigation to obtain protection for the Bears Ears area and will continue to work towards this end, including by actively engaging in Monument planning for the lands that remain in the Monument and by advocating for the protection of former Monument lands.

26. SUWA has individual members—including Ray Bloxham and Neal Clark—who often visit the Bears Ears National Monument (including the Cheese and Raisins Hills, Dark Canyon, Harts Point, Hatch Canyon, Comb Wash, Fry Canyon and the San Juan River, all areas that the Trump Proclamation stripped of protection) for a host of reasons, including spiritual renewal, recreation, and appreciation of the area's significant cultural resources, flora and fauna, and geology. SUWA members, including Mr. Bloxham and Mr. Clark, plan to visit the area regularly in the future, including in 2019 and 2020.

27. Plaintiff GRAND CANYON TRUST is a non-profit public lands advocacy organization founded in 1985. The Grand Canyon Trust's members and staff live and work throughout the Colorado Plateau, in Utah, Colorado, Arizona, and New Mexico. The Grand Canyon Trust's mission is to safeguard the wonders of the Grand Canyon and the Colorado Plateau, while supporting the rights of its Native peoples. Through its advocacy, the Grand Canyon Trust ensures that the Colorado Plateau remains characterized by vast open spaces, healthy ecosystems, and communities enjoying a sustaining relationship with the natural environment.

28. The Grand Canyon Trust's Native America program focuses in part on protecting tribally important sacred sites by backing the creation of inter-tribal partnerships to support culturally-guided conservation.

29. The Grand Canyon Trust's members and staff have long advocated for the protection of the 1.35 million acres of federal public lands within the Monument. Grand Canyon Trust staff, its board of trustees, and its members provided support and technical assistance to the Bears Ears Inter-Tribal Coalition, elected tribal officials, and cultural and spiritual leaders. They work to educate the broader public, federal government, and local communities about the need for permanent protection of the Bears Ears National Monument.

30. The Grand Canyon Trust's staff and members will continue to work with the Bears Ears Inter-Tribal Coalition, tribal governments, legal advisors, and conservation partners over the coming months and years to ensure the maximum protection for the Monument.

31. The Grand Canyon Trust's members and staff, including Tim Peterson, regularly visit areas in the Monument, including areas that the Trump Proclamation stripped of protection—such as Elk Ridge, Cedar Mesa, Dark and White Canyons, Comb Wash, Cheese and Raisins Hills, Grand Gulch, Cottonwood Canyon, Valley of the Gods, Blue Creek Canyon, and the Indian Creek corridor—to recreate, find solitude, view pictographs and petroglyphs, experience wilderness, hunt and fish, and monitor and study wildlife and plants. Its members, including Mr. Peterson, will continue to visit the Monument in the future to engage in these activities, including in 2019 and 2020.

32. Plaintiff GREAT OLD BROADS FOR WILDERNESS (Great Old Broads) is a national grassroots non-profit organization, led by elders, that engages in and inspires activism to preserve and protect wilderness and wild lands. Great Old Broads has over 8,000 members and

supporters, many of whom reside and/or engage in recreational activities in Utah. It was formed, in part, to protect the interests of senior populations who value roadless areas, enjoy them without mechanized means of transportation, and want to see these areas protected in their natural state for future generations.

33. Protection of wild federal public lands in southern Utah has been an important focus of Great Old Broads since it began in 1989. Great Old Broads has conducted educational and advocacy activities on the significance of the lands included in the Bears Ears National Monument, including by monitoring illegal motorized use, evaluating rangeland health, working with agencies on stewardship projects, providing comments during public land agency processes, litigating on issues related to land use and cultural resource protection, participating in collaborative public land management efforts, and educating its members and the public about the many values of the region. Great Old Broads has held several multi-day camping events to become intimately knowledgeable of the region, including a sixty-person, five-day educational campout in September 2016.

34. Members of Great Old Broads, including Steve Allen, visit the federal public lands in the Monument (including lands that have now been stripped of protection) to hike, backpack, enjoy the outstanding scenery and fascinating archaeological sites, view native plant and animal life, take photographs, and experience the remoteness and quiet of the area. Mr. Allen and other members regularly visit the Monument lands and will continue to do so, including in 2019 and 2020.

35. Plaintiff WESTERN WATERSHEDS PROJECT (WWP) is a non-profit environmental organization founded in 1993 with the mission of protecting and restoring western watersheds and wildlife through education, advocacy in land management wildlife agencies,

promotion of sound public policy initiatives, and litigation. Headquartered in Hailey, Idaho, WWP has field offices and members throughout the west. WWP works to influence and improve public lands management throughout the West and protect the ecological, biological, cultural, historic, archeological, and scenic resources; wilderness; and other natural values found there.

36. WWP supported the Monument's creation and has worked for many years to protect and restore the federal public lands included in the Bears Ears National Monument. Its staff and members, including Erik Molvar, Laura Welp, and Jonathan Ratner, regularly visit these lands for hiking, camping, enjoyment and appreciation of ancient ruins, nature study, wildlife viewing, and appreciation of its geological wonders and natural beauty; Mr. Molvar, Ms. Welp, Mr. Ratner, and many others have plans to return there in the near future, including in 2019 and 2020.

37. Plaintiff SIERRA CLUB was founded in 1892 and is the nation's oldest grassroots environmental organization. It is a national non-profit organization of over 775,000 members, including a Utah chapter with thousands of members. The Sierra Club's purpose is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Among the Sierra Club's highest priorities is protecting and preserving national monuments. The Sierra Club's concerns encompass all aspects of the Bears Ears National Monument, including the protection of wildlands, wildlife habitat, water resources, air, archaeological sites, public health, and the health of its members, all of which stand to be affected by Defendants' actions as set forth herein.

38. Sierra Club members live near, use, and enjoy the Bears Ears National Monument (including lands that have now been stripped of protection) for outdoor recreation and scientific study of various kinds, including nature study, birdwatching, photography, fishing, canoeing, hunting, backpacking, camping, solitude, and a variety of other activities; they will continue to do so in the future.

39. Sierra Club members' concerns encompass the exploration, enjoyment, and protection of the Monument for themselves and future generations. For example, Sierra Club Utah Chapter member Wayne Hoskisson began hiking there in the mid to late 1980s and has visited the area over one hundred times. Since 1995, he has actively pursued protective legislation for much of the region through volunteer lobbying and public engagement. He plans to continue visiting the lands excluded from the Monument on a regular basis into the future, including in 2019 and 2020.

40. Sierra Club has a longstanding interest in protecting the Monument. Since at least the 1980s, Sierra Club's Utah Chapter has proposed protections for much of the land that is now within the Monument. Sierra Club has worked over the decades with numerous federal, state, and local government officials, environmental organizations, and the local tribes to obtain long overdue protections for this land. Sierra Club has actively supported the Monument by, among other things, organizing meetings and letter writing campaigns, providing public comments, and helping to organize public rallies in support of the Monument designation.

41. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the Center) is a national non-profit organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 61,000 members and is headquartered in Tucson, Arizona.

42. The Center's members and staff, including Taylor McKinnon, have visited the federal public lands within the Bears Ears National Monument (including lands that have now been stripped of protection) and intend to continue to do so for hiking, camping, viewing and studying wildlife, photography, and other vocational and recreational activities. The Center's members and staff derive recreational, spiritual, professional, scientific, educational, and aesthetic benefits from their activities in these areas. The Center's members and staff, including Mr. McKinnon, have specific intentions to continue using and enjoying these areas frequently and on an ongoing basis in the future.

43. The Center has a long history of environmental advocacy within the southwestern United States generally, and in relation to public lands conservation in particular. The Center has worked to protect species and habitats found on federal public lands in Utah, including the Mexican Spotted Owl, northern goshawk, spotted bat, Southwestern willow flycatcher, yellow-billed cuckoo, California condor, Navajo sedge, Colorado pikeminnow, bonytail chub, humpback chub, and razorback sucker (a rare desert fish found in the San Juan River and tributaries to the San Juan and Colorado Rivers within the Monument boundaries). The Center participated in efforts to establish the Bears Ears National Monument that culminated in the 2016 Proclamation.

44. Plaintiff WILDEARTH GUARDIANS (Guardians) is a non-profit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. The protection of the Monument is vital to this work because the Monument preserves large tracts of unrestricted wildlife habitat and migration routes. Thus, Guardians has an interest in the protection of the Monument and the ecological resources contained therein that will be harmed by the removal of the protections afforded by national monument status.

45. Guardians has more than 184,000 members and supporters including many who recreate on federal public lands in Utah, and specifically in the Bears Ears National Monument. Guardians has a long-standing interest in the preservation of the Bears Ears National Monument that will be harmed by the revocation of the protections conferred by national monument status. Over the last decade, Guardians has advocated for prohibitions on oil and gas leases and other development that would harm the natural and cultural values on public lands in the Bears Ears region.

46. Guardians staff and members, including James Martin, regularly visit the Bears Ears National Monument (including lands that have now been stripped of protection) for the purposes of hiking, observing archeological sites including cliff dwellings, bird watching, observing wildlife, spiritual rejuvenation, photography, and other recreational and professional pursuits. Guardians staff and members, including Mr. Martin, have engaged in these activities in the Bears Ears National Monument in the past and have firm plans to participate in these activities in the Monument in the near future.

47. Plaintiff DEFENDERS OF WILDLIFE (Defenders) is a national, non-profit conservation organization founded in 1947, which is dedicated to the protection of all native animals and plants in their natural, undeveloped, native habitats. Headquartered in Washington, D.C., Defenders has more than 1.8 million members and supporters throughout the United States, including in Utah.

48. Defenders works to ensure that the diverse wildlife populations in North America are secure and thriving, sustained by a network of healthy lands and waters. Through education, advocacy, litigation, and other efforts, Defenders works to preserve species and the habitats upon which they depend. The Bears Ears National Monument is vital to this work due to its relatively

intact and functional western landscape and because of its regionally significant connectivity, a crucial factor in the conservation of fish and wildlife populations.

49. Defenders has organizational and membership-based interests in the preservation and conservation of the Monument and the ecological resources contained therein that will be harmed by the removal of the protections afforded by Bears Ears' national monument status. Defenders' members and staff, including Michael Dax, regularly visit the Monument for wildlife observation, recreation, and other uses. These members derive aesthetic, educational, professional, health, and spiritual benefits from their activities within the Monument that will be harmed by the revocation of the Monument's protections. Defenders' members and staff, including Mr. Dax, have specific intentions to continue to use and enjoy these areas frequently and on an ongoing basis in the future.

50. In their effort to support the Bears Ears National Monument's designation, many of the Plaintiff groups submitted comments on the Department of the Interior review of the Monument between May and July 2017, and submitted comments and protests relating to the BLM's management planning process in 2018 and 2019.

#### **DEFENDANTS**

51. Defendant DONALD J. TRUMP is sued in his official capacity as President of the United States. He currently resides and conducts his duties in Washington, D.C.

52. Defendant DAVID BERNHARDT is sued in his official capacity as the Secretary of the Interior of the United States.

53. Secretary Bernhardt is responsible for ensuring that the Department of the Interior and its constituent agencies, including the BLM, comply with the applicable law, including the 2016 Proclamation's direction and requirements for managing the Monument.



54. The Secretary of the Interior resides and conducts his duties in Washington, D.C.

55. Defendant WILLIAM PERRY PENDLEY is sued in his official capacity as the official who is exercising the authority of the Director of BLM, a bureau within the U.S. Department of the Interior.

56. The Director of BLM (and currently Mr. Pendley) is responsible for ensuring that BLM complies with the applicable law, including the 2016 Proclamation's direction and requirements for managing the Monument.

57. Before assuming his current position, Mr. Pendley represented former Defendant-Intervenor San Juan County in this litigation. Therefore, pursuant to federal ethics laws and regulations and Executive Order 13,770 (the "Ethics Pledge"), Mr. Pendley is required to recuse himself from participating personally and substantially in any matters—including litigation or management-planning—that are directly and substantially related to Mountain States Legal Foundation or its clients, absent a waiver under the Ethics Pledge or written authorization from the Interior Department's Ethics Office. Mr. Pendley may have delegated the responsibilities of the Director with respect to this litigation and the Bears Ears National Monument to one of his officers or agents within BLM.

58. The Director of BLM (and currently, Mr. Pendley) resides and conducts his duties in Washington, D.C.

59. Defendant SONNY PERDUE is sued in his official capacity as the Secretary of Agriculture of the United States.

60. Secretary Perdue is responsible for ensuring that the Department of Agriculture and its constituent agencies, including the U.S. Forest Service, comply with the applicable law, including the 2016 Proclamation's direction and requirements for managing the Monument.

61. The Secretary of Agriculture resides and conducts his duties in Washington, D.C.

62. Defendant VICKI CHRISTIANSEN is sued in her official capacity as Chief of the U.S. Forest Service within the U.S. Department of Agriculture.

63. Ms. Christiansen is responsible for ensuring that the U.S. Forest Service complies with the applicable law, including the 2016 Proclamation's direction and requirements for managing the Monument.

64. The Chief of the U.S. Forest Service resides and conducts her duties in Washington, D.C.

65. The above-named Defendants have the authority, ability, and obligation to remedy the harms alleged to Plaintiffs' interests.

## **BACKGROUND**

### **THE ANTIQUITIES ACT**

66. The U.S. Constitution's Property Clause gives Congress the exclusive "[p]ower to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. art. IV, § 3, cl. 2. Exercising this power, Congress may withdraw federal public land from entry or manage it and prescribe limitations on its use. It may also sell, lease, or otherwise convey federal public land to third parties.

67. In 1906, Congress delegated a part of its Property Clause power to the President when it enacted the Antiquities Act. The Act authorizes the President to "declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments," and to "reserve parcels of land as a part of the national monuments"

that comprise the “smallest area compatible with the proper care and management of the objects to be protected.” 54 U.S.C. § 320301(a), (b).

68. Using Congress’s delegation of authority in the Antiquities Act, Presidents have declared by proclamation more than 150 national monuments in thirty-two states, four territories, two oceans, and the District of Columbia. Depending on the nature and location of the objects to be protected, national monument designations have ranged from just a few acres to millions of acres in size.

69. A President’s national monument designation immediately confers enhanced protection for the “objects of historic or scientific interest” and the lands on which they are found. 54 U.S.C. § 320301(a). Once designated as a national monument, those lands must be managed for the purpose of preserving and safeguarding the objects of scientific and historic interest located there. The protection of the identified objects of historic or scientific interest is the paramount purpose for which the land is to be managed.

70. For example, to ensure that objects of historic or scientific interest are effectively protected, Presidents have used their Antiquities Act authority to “withdraw” national monument lands from mineral location under the General Mining Law of 1872, 30 U.S.C. § 21 *et seq.*, and from leasing for oil and gas exploration and development under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et seq.*—as President Obama did in the 2016 Proclamation establishing the Bears Ears National Monument.

71. In addition, to protect objects of historic or scientific interest, Presidents have used their Antiquities Act authority to limit the building of roads and the use of motorized vehicles on national monument lands—as President Obama did in the 2016 Proclamation establishing the Bears Ears National Monument.

72. In the Antiquities Act, Congress granted the President *limited* authority to “*declare . . . national monuments*” and “*reserve parcels of land as a part of the national monuments.*” 54 U.S.C. § 320301(a), (b) (emphases added). Congress did *not* authorize the President to abolish national monuments, in whole or in part, once they have been designated. That power belongs to Congress alone.

## **THE BEARS EARS NATIONAL MONUMENT**

### **The Scientific, Historic, and Cultural Significance of the Bears Ears Landscape**

73. The Bears Ears National Monument lies in the heart of the Colorado Plateau in one of the least developed areas in the contiguous United States.

74. The landscape is a rugged labyrinth of sandstone canyons, cliffs and rock arches, juniper forests, meadows, and desert mesas. Near its center are the iconic twin buttes known as the Bears Ears.

75. For thousands of years, the area has been inhabited by members of Native American tribal groups, including the Navajo Nation, Hopi Tribe, Ute Indian Tribe, Ute Mountain Ute Tribe, and the Pueblo of Zuni, among others. The Bears Ears National Monument is an ancestral homeland for these tribes, and it has deep spiritual, historic, and cultural significance for them. For thousands of years, indigenous people farmed, herded, and hunted wildlife here; they gathered plants for food, medicine, and textiles; they created rock art and built homes and other structures; they developed and maintained deep systems of traditional knowledge about the landscape; and they buried their ancestors.

76. The tribes’ history is written on the landscape today: the Bears Ears area is intensely rich with petroglyphs and rock paintings, ancient cliff dwellings, granaries, graves,

ceremonial sites, and the remnants of carefully planned and constructed villages, some dating back thousands of years.

77. Today, the tribes' members regularly visit the Bears Ears area to honor their ancestors, to connect with the land, to participate in religious and cultural ceremonies, to hunt and to gather food and medicine, and to transmit their traditional knowledge to the next generation.

78. The cultural history, artifacts, and cultural sites in the Bears Ears National Monument have significant value for the American public at large, including Plaintiff organizations and their members. Plaintiffs' members visit this area to learn more about Native American history and to view, appreciate, and study the rock art, cliff dwellings, and other artifacts found throughout the 1.35 million acre Monument.

79. The Bears Ears National Monument also contains rich resources for scientific study. The landscape's many canyons and exposed layers of sedimentary rock found throughout much of the Monument offer geologists a view of our continent that stretches millions of years back in time. Some of the area's fossil resources may be found nowhere else but in the Bears Ears area. As a coalition of paleontologists explained in a letter to President Obama in October 2016, the landscape's fossil-bearing rocks offer "an unparalleled record of ancient seas that covered the continent, the rise of vertebrate life on land, the ascendancy of the dinosaurs, and even the remains of Ice Aged animals who once roamed the high plateaus and deep canyons that make the landscape of the Bears Ears area so visually stunning today."

80. The Bears Ears National Monument contains a diversity of wildlife, including bighorn sheep, mule deer, elk, mountain lions, bear, bobcats, foxes, eagles, spotted owls, willow

flycatchers, and other migratory and endemic birds. The creeks and tributaries support rare desert fishes such as the razorback sucker.

81. The Bears Ears National Monument is remarkably scenic and remote. It has some of the most outstanding dark skies, free from light pollution and providing optimal stargazing, in North America. It offers unique and outstanding opportunities for sight-seeing, hiking, backpacking, rafting, wildlife viewing, spiritual reflection, and other outdoor activities in an awe-inspiring natural setting.

### **Pre-Monument Management of Federal Public Lands Within the Bears Ears Area**

82. The lands that President Obama designated as the Bears Ears National Monument have been federally owned public lands ever since the United States acquired them from Mexico in the Treaty of Guadalupe Hidalgo in 1848. As of 2016, some of these lands were managed by the U.S. Forest Service and some were managed by BLM. The Forest Service managed its parcels pursuant to the National Forest Management Act (NFMA), 16 U.S.C. § 1600 *et seq.*, and BLM managed its parcels pursuant to the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 *et seq.*

83. Both these statutes include a general mandate to manage federal public lands in accordance with the “multiple use, sustained yield” principle, which allows for a range of uses, including oil and gas drilling, mining, and motorized vehicle use, as well as wilderness protection. *See* FLPMA, 43 U.S.C. §§ 1702(c), 1712(c)(1); NFMA, 16 U.S.C. § 1604(e)(1).

84. This multiple-use approach to land management in the Bears Ears region failed to safeguard the unique landscape and the historic and cultural sites situated there.

85. For example, prior to the Monument designation, prospectors in search of uranium deposits routinely “located” or staked new mining claims wherever they wished on the

available federal public lands in the Bears Ears area. In pursuit of their mining activities, they undertook “notice-level” surface-disturbing activities—such as road building and drilling—under the permissive provisions of the General Mining Law of 1872, with damaging and disruptive effects on the surrounding land.

86. Additionally, prior to the Monument designation, BLM and the Forest Service permitted the leasing and exploration of federal lands across hundreds of thousands of acres in Bears Ears for oil and gas development and mining—activities that damaged the unique features of the Bears Ears landscape.

87. This damage has included clearing vegetation, construction of well pads, exploratory drilling, new or expanded road surfaces, increased traffic and dust, impacts to viewsheds, degradation of wildlife habitat, and disturbance to wildlife movement corridors. Emissions from oil and gas drilling has degraded air quality.

88. Ineffective management and poorly regulated motorized vehicle use also led to environmental damage as well as the looting and vandalism of graves, cultural sites, and fossils. Evidence of damaging motorized vehicle use includes repeated stream crossings, trampled vegetation, rutted and broken soil, and unauthorized vehicle trails leading to cultural sites that had been damaged or destroyed.

89. Prior to the Monument designation, BLM regulated motorized vehicle use in the portion of Bears Ears under its jurisdiction according to the agency’s Monticello and Moab Field Office Resource Management Plans and their motorized vehicle travel management plans. In its 2013 review of the Monticello travel plan, BLM acknowledged that “route and travel designations in the [plan] fail to address cultural and paleontological needs and protection.” *See* BLM, Land Use Evaluation Report 5 (2015), *at* <https://eplanning.blm.gov/epl-front->

office/projects/lup/68097/85604/102802/Monticello\_RMP\_Evaluation\_-\_September\_2015.pdf (hereinafter BLM Land Use Evaluation Report)

90. Similarly, prior to the Monument designation, the Forest Service regulated motorized vehicle use in the portion of Bears Ears under its jurisdiction (the Manti-La Sal National Forest) according to the agency's Monticello Ranger District travel plan. This 1986 travel plan, like BLM's plans, failed to protect cultural sites, fossils, or the fragile ecosystem, allowing widespread damage.

91. To address these ongoing harms, a broad range of groups, led by the tribes and including Plaintiffs, spent years advocating for greater protection of the Bears Ears landscape. For example, NRDC, The Wilderness Society, SUWA, Great Old Broads for Wilderness, and the Grand Canyon Trust spent decades advocating for the permanent protection of Bears Ears. To ensure that the lands remained unmarred pending that protection, they watchdogged BLM's proposals to offer oil and gas leases in Bears Ears and challenged many of those plans.

### **The 2016 Proclamation Designating the Bears Ears National Monument**

92. In 2015, tribal leaders from the Navajo Nation, Hopi Tribe, Ute Indian Tribe, Ute Mountain Ute Tribe, and Pueblo of Zuni collectively formed the Bears Ears Inter-Tribal Coalition. The Coalition crafted a comprehensive proposal for the creation and management of a Bears Ears National Monument, and they submitted the plan to President Obama in October 2015.

93. The Coalition's proposal was the first petition ever submitted by Native American tribes seeking the establishment of a national monument. Their proposal laid out a detailed case for conferring monument status on lands within the Bears Ears region, identified numerous sites and objects of historic and scientific interest that merited immediate protection under the



Antiquities Act, and proposed a framework for collaborative management of the Monument by the tribes and the federal government.

94. Plaintiffs actively supported the Coalition's efforts to designate the Monument and provide it with the necessary protection. Among other things, they asked their members to contact President Obama, the Secretary of the Interior, and the Secretary of Agriculture, to urge them to protect the Bears Ears region. Several Plaintiffs also attended meetings with these officials and their staff to explain why protection under the Antiquities Act was warranted.

95. The Coalition's and Plaintiffs' efforts finally led to President Obama's proclamation establishing the Bears Ears National Monument in 2016. The 2016 Proclamation invoked the President's authority under the Antiquities Act and described in detail the geological, paleontological, archaeological, historic, cultural, and ecological significance of the Bears Ears landscape and the landmarks and objects found there, and it set forth provisions and requirements that are essential to their future protection.

96. Many of the cultural sites important to Native American tradition and history that occur throughout the Bears Ears National Monument had been damaged by looting, vandalism, and other impacts prior to 2016. In recognition of the extensive distribution of valuable cultural and archaeological sites and the importance of protecting them, as well as the presence of other objects requiring protection distributed throughout the Bears Ears region, President Obama determined that the boundaries of the Bears Ears National Monument represented the smallest size compatible with the protection of the objects of historic and scientific interest contained therein. 82 Fed. Reg. at 1143.

97. The 2016 Proclamation made clear that the objects of historic or scientific interest were immediately subject to the Antiquities Act's protections, stating: "Warning is hereby given

to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of the monument and not to locate or settle upon any of the lands thereof.” 82 Fed. Reg. at 1145.

98. The 2016 Proclamation spelled out several specific protections and use limitations. It provided that “[a]ll Federal lands . . . within the boundaries of the monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or other disposition[;] . . . from location, entry, and patent under the mining laws[;] and from disposition under all laws relating to mineral and geothermal leasing.” 82 Fed. Reg. at 1143. The 2016 Proclamation thereby immediately prohibited the location of any new mining claims and the offering of any new leases for oil and gas development. In addition, while the 2016 Proclamation allowed “valid existing rights” (such as valid mining claims) to remain in place, 82 Fed. Reg. at 1143, the Monument designation imposed important restrictions on the development of such claims, as described below.

99. Of the Monument’s 1.35 million acres, roughly 1.06 million acres were federal lands under BLM’s management, and 289,000 acres were federal lands under the Forest Service’s management. The 2016 Proclamation directed BLM and the Forest Service to undertake specific actions to protect the Monument. It required the agencies to “manage the [M]onument” consistent with “the purposes of this proclamation”—that is, the protection of the objects of historic and scientific interest that occur throughout the Monument—and to “jointly prepare a management plan for the [M]onument.” 82 Fed. Reg. at 1143.

100. The 2016 Proclamation placed all BLM-managed lands within the Monument into the National Landscape Conservation System, 82 Fed. Reg. at 1143, which requires the BLM to manage existing recreational uses, mining claims, and leasehold activities in the Monument in a

manner that protects the objects of historic and scientific interest described in the 2016 Proclamation, *see* 16 U.S.C. § 7201 *et seq.*

101. The 2016 Proclamation also required that BLM and the Forest Service, consistent with their duty to protect Monument resources, “prepare a transportation plan that designates the roads and trails where motorized and non-motorized mechanized vehicle use will be allowed.” In the interim, the Proclamation itself prohibited the construction or designation of any new roads or trails except those that are “for the purposes of public safety or protection of [the Monument’s] objects.” 82 Fed. Reg. 1145. Further, it specified that use of existing roads or trails already designated for motorized vehicle use could continue pending completion of the plan, but only if such use was “consistent with the care and management of [the protected] objects.” *Id.*

102. The 2016 Proclamation also “established” the “Bears Ears Commission” (the Commission): a unique advisory council consisting of “one elected officer each from the Hopi Nation, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of the Uintah Ouray, and [Pueblo of] Zuni.” 82 Fed. Reg. at 1144. The Commission’s purpose was to “provide guidance and recommendations on the development and implementation of management plans and on management of the [M]onument.” *Id.* In March 2017, the five tribes each formally named one representative to the Commission, thereby constituting it.

#### **PRESIDENT TRUMP’S MONUMENT “REVIEW”**

103. Even before President Trump’s inauguration, Utah politicians, including members of the state’s congressional delegation, began to lobby him to abolish or severely shrink the Monument.

104. On April 26, 2017, President Trump acceded to the Utah politicians’ demands and issued Executive Order 13,792, which directed the Secretary of the Interior to “review” all

monuments designated or expanded since 1996 that (a) were 100,000 acres or larger after the designation or expansion, or (b) were, in the Secretary's view, created or expanded without "adequate public outreach." 82 Fed. Reg. 20,429, 20,429 (May 1, 2017). The Executive Order required the Secretary to provide reports and recommendations to the President concerning possible actions regarding those monuments.

105. As the President prepared to sign the order, Vice President Mike Pence presaged the outcome of the review, explaining that President Trump was about "to undo one of the great Federal overreaches of recent decades: the abuse of the Antiquities Act . . . to grab land and power at the American people's expense." President Trump followed with his own preview of the outcome of the process: "I'm signing a new executive order to end another egregious abuse of federal power," referring to previous Presidents' use of the Antiquities Act. Although the affected monument lands are federal public property, the President declared: "Today we are putting the states back in charge."

106. The President highlighted the lobbying by Senators Orrin Hatch and Mike Lee of Utah to reverse monument designations in Utah, stating, "I'm very proud to be doing it in honor of you guys." Finally, he opined that the Bears Ears National Monument "should never have happened."

107. The Bears Ears National Monument received particular attention in President Trump's April 26 Executive Order. While the Order gave the Secretary of the Interior 120 days to review all other monuments, it required the Secretary to submit an "interim report" on Bears Ears specifically within forty-five days—i.e., by June 10, 2017. 82 Fed. Reg. at 20,430. The Executive Order directed then-Secretary Zinke to provide "recommendations for such Presidential actions, legislative proposals, or such other actions consistent with the law as the

Secretary may consider appropriate” to “balance the protection of . . . objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.” *Id.*

Secretary Zinke explained in a press briefing that his review would focus on whether the monuments should be “rescinded, resized, [or] modified.”

108. On May 11, 2017, the Department of the Interior began accepting public comments on the twenty-seven monuments fitting the criteria described in the Executive Order, including Bears Ears.

109. Initially, the Department of the Interior’s public comment period for Bears Ears was open for just fifteen days. Even in that short time, hundreds of thousands of commenters, including Plaintiffs and their members, submitted comments in support of Bears Ears.

110. Secretary Zinke submitted his interim report on Bears Ears to President Trump on June 10, 2017. Although Secretary Zinke conceded that the Monument “contains unique geologic features and objects of historic or scientific interest,” he opined that “the [Monument] boundary [should] be revised through use of appropriate authority, including lawful exercise of the President’s authority granted by the [Antiquities] Act.” Secretary Zinke “further recommend[ed] that the Department of the Interior conclude the full [120-day] review . . . before more specific recommendations are made regarding the Bears Ears National Monument.” The Department then re-opened the public comment period on Bears Ears until July 10, 2017.

111. On information and belief, the Forest Service submitted comments on the Monument and did not recommend that any lands managed by that agency be removed from the Monument.

112. On August 24, 2017, Secretary Zinke submitted his report to the President. The Secretary’s report acknowledged that the public comments received were “overwhelmingly in

favor of maintaining existing monuments.” Nonetheless, as to Bears Ears, the report recommended that the President eliminate portions of the Monument and revoke associated protections for the excised areas. The Secretary’s report stated that it considered factors such as the Monuments’ effects on private land and on extractive uses such as grazing, mining, and timber production in reaching its conclusions.

113. Based on the Secretary of the Interior’s report and recommendations, President Trump indicated his intention to rescind much of the Bears Ears National Monument. In October 2017, President Trump reportedly told Senator Hatch: “I’m approving the Bears Ears recommendation for you, Orrin.”

**PRESIDENT TRUMP’S UNLAWFUL PROCLAMATION REVOKING MONUMENT STATUS FROM EIGHTY-FIVE PERCENT OF BEARS EARS NATIONAL MONUMENT**

114. On December 4, 2017, President Trump issued his Presidential Proclamation revoking monument status from eighty-five percent of the Bears Ears National Monument and replacing the Monument with two smaller, non-contiguous units that he called “the Indian Creek Unit” and “the Shash Jáa Unit.” Although President Trump’s Proclamation claimed to “modif[y]” Bears Ears, it effectively abolished the Monument and replaced it with two new, much smaller, non-contiguous monuments, separated from one another by roughly twenty miles. 82 Fed. Reg. at 58,081. Together, the two new “units” cover only fifteen percent of the Bears Ears National Monument’s original area.

115. The President has no constitutional or statutory authority to take such action.

116. President Trump’s Proclamation concedes that “[s]ome of the existing monument’s objects [of historic or scientific interest], or certain examples of those objects, are not within the monument’s revised boundaries,” and will therefore be left without monument

protections that the 2016 Proclamation deemed necessary and appropriate. 82 Fed. Reg. at 58,084.

117. For example, there are numerous areas totaling thousands of acres now excluded from the Monument that BLM recognizes as having a high potential for cultural and historic sites. These areas—including Farm House Ruin, Tower Ruin, Fry Canyon Ruin, Raven House Ruin, and Dry Wash Ruin—are now at risk from damage caused by motorized vehicles, mining, looting, and vandalism. Other areas that lost protection include a substantial part of Cedar Mesa, part of Indian Creek, Grand Gulch, Beef Basin, Dark Canyon Plateau, White Canyon, Fry Canyon, Jacob’s Chair, Cheesebox, Polly Mesa, Red House Cliffs, Dry Mesa, and Seven Sisters Buttes—all areas of scenic beauty and significant geological or ecological interest.

118. President Trump’s Proclamation asserts that other laws and existing BLM and Forest Service policies adequately protect these objects, but that is false. For example, BLM itself recognized that its pre-Monument travel plan failed to ensure adequate protection of cultural and paleontological resources, *see* BLM Land Use Evaluation Report, *supra*, at 5, and numerous public comments emphasized the importance of monument protections for the effective preservation of such sites.

119. President Trump’s Proclamation also excludes from monument protection areas the 2016 Proclamation deemed “crucial habitat” for elk and bighorn sheep, with no explanation of how excluding these areas is consistent with the Antiquities Act.

120. The Trump Proclamation stated that “[a]ny lands reserved by [the 2016 Proclamation] not within the boundaries identified on the accompanying map are hereby excluded from the monument.” 82 Fed. Reg. at 58,085. The Trump Proclamation thereby abolished monument status for 1.15 million acres of Monument lands, stranding numerous

objects of scientific or historic interest outside the Monument's boundaries and without monument protections.

121. The Trump Proclamation further provided that “[a]t 9:00 a.m., eastern standard time, on the date that is 60 days after the date of this proclamation”—i.e., February 2, 2018—the “lands excluded from the monument reservation shall be open to: (1) entry, location, selection, sale or other disposition under the public land laws and laws applicable to the U.S. Forest Service; (2) disposition under all laws relating to mineral . . . leasing; and (3) location, entry, and patent under the mining laws.” 82 Fed. Reg. at 58,085.

122. President Trump's re-drawing of the Monument boundaries and lifting of the 2016 Proclamation's mineral withdrawal has had direct and deleterious effects on the ground and on Plaintiffs' members, as discussed below.

123. Because of President Trump's Proclamation, the Agency Defendants will no longer implement the protections required by the 2016 Proclamation at all for the 1.15 million acres of land removed from the Monument. Agency Defendants will no longer comply with the 2016 Proclamation or carry out their duties with respect to these excluded lands unless the Court declares President Trump's action unlawful and sets it aside.

124. Without the protective mandate of the 2016 Proclamation, Agency Defendants have reverted to their pre-Monument land management approach for the lands that President Trump stripped of monument protection. Agency Defendants no longer consider themselves obligated to prioritize the “proper care and management of the objects to be protected” on these lands, 54 U.S.C. § 320301(b), and are instead managing the lands under the more permissive, pro-development, “multiple use” regime that predated the Monument's designation. The Trump



Proclamation has, accordingly, resulted in significantly less protection of the objects of historic and scientific interest identified in the 2016 Proclamation.

125. Specifically, lands that lost monument status have been available for mineral exploration and development as of February 2, 2018, and mine operators have already begun work on those lands. Much of the land formerly within the Monument boundaries is also now open for oil and gas drilling, which poses a serious threat to the wild character and the scientific and cultural resources of the Monument.

126. As directed by President Trump's Proclamation, BLM and the Forest Service have already undertaken—and is nearing completion on—new resource management plans for the Shash Jáa and Indian Creek units. These proposed plans have already undergone public comment, and on July 26, 2019, BLM and the Forest Service released their Final Environmental Impact Statement and proposed final management plans. On information and belief, BLM and the Forest Service will issue a record of decision adopting the final proposed plans before the end of 2019 or shortly thereafter. Additional foreseeable harms will follow when BLM and the Forest Service formally adopt the new management plans, as discussed below.

#### **PRESIDENT TRUMP'S ACTION HARMS PLAINTIFFS' INTERESTS**

127. Each of the Plaintiff organizations has individual members who regularly use and enjoy the Bears Ears National Monument—including the lands that lost monument status—for a variety of purposes, including scientific study, hiking and recreation, wildlife viewing, cultural and spiritual purposes, and aesthetic appreciation. (A sample of illustrative member declarations is attached to this complaint.)

128. Plaintiffs' members value the beauty, remoteness, and largely unspoiled nature of the landscape and the geological, paleontological, archaeological, historic, cultural, and

ecological resources found throughout the Bears Ears National Monument, including in the areas that President Trump's Proclamation excluded from the Monument. Many of these members live in Utah within driving distance of the Monument; they know the landscape intimately and return to it multiple times each year for recreation, exploration, and spiritual renewal. *See, e.g.*, Declaration of Ray Bloxham ¶¶ 12-14 (Ex. 1) (detailing plans in spring of 2020 to camp and hike in the White Canyon area that was excluded from the Monument); Declaration of Neal Clark ¶ 8 (Ex. 2) (stating that he is "planning to return [to the Monument] within the next three months to hike" in the excluded lands). Some also perform field work in the Monument, documenting landscape conditions and wilderness characteristics. *See, e.g.*, Bloxham Decl. ¶ 15.

129. As described in detail below, the Trump Proclamation adversely affects Plaintiffs' members' interests by removing Monument status and protections from 1.15 million acres of federal public lands that those members regularly use, and by allowing activities to commence that will disturb the tranquility and scenic beauty of the area and expose irreplaceable archaeological and cultural sites to a serious and substantially heightened risk of damage.

130. President Trump's action rendered one of the country's most pristine, unique landscapes vulnerable to immediate harm, and thus injures the aesthetic, cultural, spiritual, recreational, scientific, and educational values that Plaintiffs' members derive from the Bears Ears National Monument.

### ***Hard-rock mining***

131. In particular, President Trump's Proclamation revoked the 2016 Proclamation's mineral withdrawal and reopened previously protected Monument lands to hard-rock mining under the General Mining Law of 1872. President Trump's Proclamation, by its terms, allows

prospectors to engage in hard-rock mining activities in areas and in a manner that previously would have been unlawful.

132. There are deposits of hard-rock minerals—primarily uranium, but also copper, placer gold, and limestone—throughout the Monument, including in areas that President Trump stripped of monument status. BLM has identified public lands with likely mineral deposits within the Monument. There is substantial overlap between lands with mineral deposits and lands removed from the Monument.

133. President Trump’s Proclamation directed Agency Defendants, as of February 2, 2018, to disregard the 2016 Proclamation’s ban on mineral entry and location for the lands excised from the Monument. Agency Defendants have complied with the President’s direction and are no longer observing the 2016 Proclamation’s ban on mineral entry and location.

134. Some of the 1.15 million acres excised from the Monument are within wilderness areas or wilderness study areas, but most (over 60%) are not. Now that these lands have been stripped of Monument protection, they are at immediate risk of damage, because mining claimants may engage in some ground-disturbing activities without *any* advance approval or other affirmative action by BLM or the Forest Service. Even wilderness study areas are at risk of hard-rock mining activity; there is no categorical prohibition on hard-rock mining in wilderness study areas. *See* 43 U.S.C. § 1782(c); 43 C.F.R. §§ 3802.0–2(a), 3802.0-6; BLM, *BLM Manual 6330—Management of Wilderness Study Areas*, at 1-24 to -25 (2012).

135. Under the General Mining Law of 1872, prospectors do not need permits or other prior authorization from BLM or any other government agency before locating, recording and conducting casual use and even notice-level operations on hard-rock mining claims on lands

excluded from the Monument. Prospectors may stake hard-rock mining claims and begin mineral exploration without undergoing any National Environmental Protection Act (NEPA) review.

136. The majority of lands carved out of the Monument (roughly 894,000 of the 1.15 million acres) are BLM-managed lands, where BLM regulations govern the location, exploration, and development of hard-rock minerals. *See* 43 C.F.R. Part 3800. (The remaining 256,000 acres of the excluded lands are managed by the Forest Service, and are subject to the Forest Service’s similar regulations. *See* 36 C.F.R. §§ 228.1 *et seq.*)

137. Once a claimant has located a mining claim on non-withdrawn (e.g., non-Monument), she may undertake a variety of mining activities there.

138. First, a claimant may undertake “[c]asual use” activities at any time, and she “need not notify BLM” before doing so. 43 C.F.R. § 3809.10(a). “Casual use” activities are defined as activities that “result[] in no or negligible disturbance,” such as collecting samples without mechanized earth-moving equipment. 43 C.F.R. § 3809.5. Still, casual-use activities can leave telltale signs on the ground, including tracks from motorized vehicles used to access the claim, and flags, posts, and other markers advising others of the claim.

139. Second, a claimant may also undertake more extensive “notice”-level activities—that is, activities “causing surface disturbance” of up to five acres—simply by sending BLM “notice” of planned operations and waiting fifteen calendar days after BLM receives it. *Id.* §§ 3809.10(b), 3809.21(a). Unless BLM requests additional information or takes other specific actions within that fifteen-day window, the claimant may proceed with ground-disturbing work. In other words, notice-level activities may commence as early as fifteen days after the BLM receives a claimant’s notice.

140. The harm associated with notice-level activities can be substantial. Road construction, the use of mechanized earth-moving equipment, and the use of truck-mounted drilling equipment all can be undertaken without affirmative BLM approval or any NEPA analysis. *See* 43 C.F.R. §§ 3809.5, 3809.21(a), 3809.312(a); Clark Decl. ¶¶ 13-14 (explaining that the impacts from development of hard rock mining claims include the generation of waste rock and mining debris, removal of native vegetation and soils, erosion, pollution and visual intrusions).

141. These activities can have long-lasting impacts: polluting the air and soil, producing unsightly waste and debris, scraping lasting scars into the soil, removing native vegetation, disturbing wildlife habitat, increasing erosion, and harming water quality.

142. The auditory and visual effects of these mining activities—including dust, mechanical noise, and light pollution—can extend well beyond the boundaries of the mining claims themselves, broadly impacting large areas that would otherwise be quiet and pristine. Increased noise and vehicle traffic threaten Bears Ears’ unique character, described in the 2016 Proclamation as “one of the most intact and least roaded areas in the contiguous United States.” Visual and auditory disturbances can be seen and heard for miles in this rocky desert landscape, especially on mesas and slickrock expanses where there is relatively little vegetation to dampen sound or to obstruct viewsheds. Clark Decl. ¶ 14; *see also* Declaration of Michael Mason at ¶ 9 (Ex. 3) (mapping the visual impacts and potential noise from mining operations in an area excluded from the Monument).

143. Notice-level activities can also harm fragile archaeological and paleontological resources, which are widely dispersed throughout the excised lands. BLM also does not require

National Historic Preservation Act review or surveys for archaeological resources before notice-level operations proceed. *See, e.g.*, 36 C.F.R. Part 800.

144. Third, a claimant may engage in even more extensive “plan of operations”-level mining activities that involve removing a thousand tons or more of presumed ore, for which BLM requires detailed information about the proposed disturbance, including mitigation measures. *See generally* 43 C.F.R. §§ 3809.11, 3809.400 to .401. Plan-level mining activities can have all the same impacts as notice-level activities described above, but on a larger scale.

145. All these impacts—from casual use, notice-level activities, and plan-level activities—pose substantial harm to Plaintiffs’ members, who enjoy quiet recreation, solitude, education, and aesthetic delight from visiting the areas the Trump Proclamation has now stripped of monument protection.

146. Since the Trump Proclamation’s issuance, claimants have already located at least six new hard-rock mining claims in the excised lands: the so-called “Hammond Mine A,” “RwH Mine B,” “Cute Girl,” “Pretty Girl,” “Lucky Lady 2,” and “Cedar 4” claims.

147. In addition, President Trump’s action will allow exploration and development to proceed on pre-existing mining claims (that is, claims that pre-dated the Monument’s creation in 2016) that would have been prohibited under the 2016 Proclamation. For example, inside certain types of lands, including national monuments, BLM requires claimants to submit plans of operations before undertaking any surface disturbance greater than casual use; mere notice is not sufficient. *See* 43 C.F.R. § 3809.11(c)(7). By revoking monument status from the excised lands, President Trump’s Proclamation removes this heightened level of BLM oversight for surface-disturbing activity involving the removal of up to a thousand tons of ore.

148. Additionally, inside certain lands, including national monuments, BLM may not approve a plan of operations or allow notice-level activities to proceed on any existing mining claim until it has prepared a “mineral examination report” and determined that the claim is indeed valid. 43 C.F.R. § 3809.100(a). The Trump Proclamation eliminated this requirement for the lands it excluded from the Monument. Now, in those excluded lands, claimants may proceed with notice-level activities or a plan of operations *without* first having to obtain a mineral examination report and a determination that their claims are, in fact, valid under the General Mining Law.

149. The Trump Proclamation thus made it substantially easier for claimants to develop existing claims in the excised lands. It allows mining activity to proceed with less BLM oversight and on claims and in a manner that would have been unlawful under the 2016 Proclamation.

150. There is a substantial risk that destructive mining activities will continue and proliferate as a result of the Trump Proclamation, harming Plaintiffs’ members’ aesthetic interests and threatening the natural, paleontological, and archaeological resources in the Monument.

151. There is substantial and longstanding industry interest in exploiting the Monument’s hard-rock resources. Prior to 2016, according to BLM’s Utah office, more than 300 uranium claims had been located in the area that President Obama ultimately designated as Bears Ears National Monument. The vast majority of those pre-existing claims are located in areas that President Trump’s Proclamation has now stripped of monument protection.

*Energy Fuels Inc.*

152. Many of the mining claims in this region belong to Energy Fuels Inc., which owns the Daneros uranium mine (which lies just west of the original Monument) and the White Mesa

Mill (which lies just east of the original Monument). Energy Fuels lobbied the Trump Administration to change Bears Ears' boundaries, in order to increase their access to uranium resources.

153. In May 2017, representatives from Energy Fuels attended an on-site field trip with then Secretary Zinke and presented a map depicting lands then within the Monument that Energy Fuels proposed be removed from protection, including areas near the White Mesa Mill and the Daneros Mine. Two weeks later, Energy Fuels submitted comments to Interior requesting that the Monument be reduced and "that any boundary revision provide an adequate buffer between" Energy Fuels' "existing or future operations." Energy Fuels also highlighted that there are "many other known uranium and vanadium deposits located within [Bears Ears] that could provide valuable energy and mineral resources in the future." In July 2017, representatives from Energy Fuels met with Interior Department officials in Washington, D.C., to continue their discussions about Bears Ears.

154. The lands that Energy Fuels proposed be removed from the Monument were indeed stripped excised from the Monument by President Trump's Proclamation. Energy Fuels' expression of interest in the areas excised from the Monument demonstrates that those lands are at significant risk of harm from uranium development.

*The Easy Peasy Mine and other mining claims*

155. Energy Fuels is not the only operator with an interest in hard-rock mining in the excluded lands. There are now numerous hard-rock mining claims in the excluded lands, including the Coral #9 (Amended) claim that contains the so-called "Easy Peasy" uranium mine, where new mining activities are already underway.





*Fig. 2: The Easy Peasy mine site*  
*Credit: Tim Peterson*

156. The Easy Peasy claim lies near the Cheese and Raisin Hills and Whiskers Draw on land that the Trump Proclamation excised from the Monument. The claim was first recorded in 2005, before the Monument's designation, but the claimant did not develop the mine or submit a notice of operations until June 2018, after the Trump Proclamation had lifted the mineral withdrawal.

157. BLM initially found the notice incomplete, but following corrections to the paperwork and payment of a bond, BLM allowed operations to commence in February 2019. Because of the Trump Proclamation, BLM did not produce a mineral examination report or make a validity determination before allowing the claimant to begin operations (as it would have been required to do under the 2016 Proclamation). In addition, because of President Trump's

Proclamation, the mining claimant has been able to commence notice-level activities—involving the removal of under a thousand tons of ore—*without* providing BLM with the sort of detailed information and plans for remediation that would have been required had the claim still been located within the Monument. *See* 43 C.F.R. § 3809.11(c)(7).

158. Operations at the Easy Peasy mine site currently include the use of heavy equipment to excavate and remove materials and the deposit of waste rock and tailings, discarded bright orange and highly visible fencing, machinery, mining and ventilation equipment, fuel and water tanks, trash and other mining-related detritus. Declaration of Tim Peterson ¶¶ 29-30 (Ex. 4).

159. Some of these activities occur in close proximity to important and sensitive cultural sites. Peterson Decl. ¶ 30; Declaration of Wayne Hoskisson ¶¶ 12-13 (Ex. 5).

160. Plaintiffs' members have recreated in the area around the Easy Peasy mine, including hiking in the Cheese and Raisin Hills. *See* Bloxham Decl. ¶ 16; Clark Decl. ¶ 15; Hoskisson Decl. ¶¶ 11-12; Peterson Decl. ¶ 29. Mining operations are harming Plaintiffs' members' spiritual, professional, and aesthetic interests by marring the landscape and creating audible disturbances. Bloxham Decl. ¶ 16; Clark Decl. ¶¶ 14-16; Hoskisson Decl. ¶ 13; Peterson Decl. ¶ 30. *See also* Mason Decl. ¶ 11 (describing that mining activities at the Easy Peasey mine may be visible as far as 21 miles away).

161. In addition, the location of new hard-rock mining claims near Dark Canyon—the so-called Hammond Mine (A) and RWH Mine (B)—poses similar threats to Plaintiffs' members' interests in visiting the Dark Canyon area for quiet recreation, solitude, education, and aesthetic appreciation. *See* Clark Decl. ¶¶ 7, 15; Peterson Decl. ¶¶ 28, 30.

***Oil and gas leasing***

162. President Trump's Proclamation also revoked the 2016 Proclamation's mineral withdrawal and reopened previously protected Monument lands to oil and gas leasing under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et seq.*

163. There are oil and gas deposits throughout the Bears Ears National Monument, including in the areas now stripped of monument protection.

164. Prior to the 2016 Proclamation, the oil and gas industry commonly sought leases and permits to drill on lands later included in the Monument's boundaries, and in many instances BLM approved the sale of oil and gas leases and applications for permits to drill on those lands. Clark Decl. ¶¶ 17-18. In particular, BLM sold leases in Hatch Point, near the town of Bluff, and above Fish and Owl Creek—all areas that were included within the Monument under the 2016 Proclamation, but which President Trump has stripped of monument protection.

165. Absent the Monument's protections, BLM may now issue new leases and authorize new leaseholders to engage in activities with long-lasting impacts—including the scraping of surface vegetation (for drill pads, tanks, and other facilities associated with drilling) and the construction of new roads and pipelines (resulting in truck traffic, fumes, debris, dust pollution, and other damage)—with few restrictions. *See* Clark Decl. ¶ 21 (describing the impacts of oil and gas development in the Bears Ears National Monument before 2016).

166. These activities threaten to disrupt not only the land on which leases are granted, but also the surrounding areas.

167. BLM will now manage the excised lands pursuant to the resource allocations made in BLM's pre-Monument resource management plans. Many of the BLM-managed lands that were protected by the 2016 Proclamation are identified in these resource management plans

as open for leasing with minimal stipulations. The Trump Proclamation created a substantial risk that these excluded lands will be leased and ultimately developed.

168. Indeed, BLM recently received an expression of interest for a new oil and gas lease on lands that President Trump removed from the Monument near the popular Hatch Point and Canyonlands Overlook. According to BLM's website, this lease could be offered for sale as soon as March 2020. *See* BLM, Utah Oil & Gas Lease Sales, *at*

<https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/utah>.



*Fig. 3: The view from Canyonlands Overlook*  
*Credit: SUWA*

169. Plaintiffs' members visit Hatch Point and the Canyonlands Overlook for quiet recreation and to enjoy the wild, untouched natural scenery. *See* Clark Decl. ¶ 7. Drilling for oil and gas would result in unsightly drilling rigs and other infrastructure, scars in the ground,

pollution, noise and other impacts that would harm Plaintiffs' members' aesthetic and recreational interests. *See* Clark Decl. ¶ 21.

***Roads and motorized vehicle use***

170. In addition, by stripping 1.15 million acres of monument status, President Trump's Proclamation makes it substantially more likely that motorized (including off-highway) vehicle traffic will increase and spread into sensitive areas, damaging the landscape and historic and scientific resources and harming Plaintiffs' members' interests.

171. By designating Bears Ears as a national monument and including it in the National Landscape Conservation System, the 2016 Proclamation required BLM to strictly regulate motorized vehicle use to protect natural, archaeological, cultural, and paleontological resources within the Monument's boundaries. The 2016 Proclamation also specifically prohibited the construction and designation of any new roads or trails except those needed "for the purposes of public safety or protection of [the Monument's] objects," and it specified that use of existing roads or trails already designated for motorized vehicle use could continue pending completion of a new travel management plan, but only if such use was "consistent with the care and management of [the protected] objects." 82 Fed. Reg. at 1145.

172. President Trump's action removes these protections entirely from the 1.15 million acres he excised from the Monument. Those areas are now being managed pursuant to the inadequate terms of BLM and the Forest Service's pre-Monument travel plans, and there is a substantial risk that inadequately regulated and increasing motorized vehicle use on those lands will cause the destruction and loss of Monument objects. BLM itself acknowledged that the "route and travel designations in the [pre-monument plan] fail to address cultural and paleontological needs and protection." *See* BLM Land Use Evaluation Report, *supra*, at 5.

173. Inadequately controlled motorized vehicle traffic destroys a unique and foundational element of the desert ecosystem: cryptobiotic soil. Loss of this crucial assemblage of soil bacteria and other components causes ecological damage, loss of soil fertility, and scars on the landscape that, according to U.S. Geological Survey scientists, can take hundreds of years to recover.

174. Motorized vehicle use on roads and trails designated in BLM's and the Forest Service's pre-Monument travel plans has already damaged archaeological and cultural resources throughout the lands designated in the 2016 Proclamation. Reverting to those pre-Monument travel plans will allow such damage to continue. President Trump's revocation of Monument status and the removal of attendant limitations on motorized vehicles will put cultural sites and artifacts in serious jeopardy.

175. For example, shortly before President Obama issued the 2016 Proclamation, BLM had approved the construction of a new motorized vehicle trail and three parking lots in the Indian Creek area, within the original boundaries of the Monument but outside the so-called "Indian Creek Unit" that the Trump Proclamation left standing. On March 13, 2017, the Interior Board of Land Appeals stayed construction of the trail and parking lots, concluding that "new roads and trails" were prohibited by the 2016 Proclamation, and that appellants (including SUWA, the Grand Canyon Trust, and Great Old Broads) had established that the commencement of construction would cause their members irreparable harm. *See Order, S. Utah Wilderness Alliance et al.*, IBLA 2017-75, \*6-7 (Mar. 13, 2017); Clark Decl. ¶ 24.

176. Auditory and visual disturbances from expanded motorized vehicle use will change the character of the surrounding land, harming the aesthetic and recreational interests of Plaintiffs' members who enjoy the Indian Creek area for quiet recreation. Motorized vehicle use

will likely also damage the archaeological and paleontological resources located in the Indian Creek area and injure Plaintiffs' members who enjoy learning about these discoveries.

177. The revocation of the Monument designation and its limitations on motorized vehicles harm Plaintiffs' members' aesthetic, cultural, spiritual, recreational, scientific, and educational interests because it will lead to increased noise, air pollution, and other physical damage to the land, water, wildlife habitat, scenery, and cultural resources that Plaintiffs' members wish to enjoy as pristine.

***Damage to cultural resources***

178. There is a substantial risk of harm to cultural resources on lands that the Trump Proclamation cut from the Monument.

179. The 2016 Proclamation documented the significant cultural sites that occur throughout the Monument's original 1.35 million acres. As a result of the Trump Proclamation, 85% of these lands lost protections that would have limited or eliminated damage from hard-rock mining, oil and gas drilling, and motorized vehicle use. Instead, they are now managed according to the pre-Monument resource management plans that BLM itself acknowledges are inadequate to protect cultural resources. *See* BLM Land Use Evaluation Report, *supra*, at 5.

180. The Trump Proclamation's revocation of monument status for 1.15 million acres, and its revocation of the 2016 Proclamation's requirement that Agency Defendants prioritize the protection of Monument resources above other uses on those lands, puts cultural resources in harm's way and injures the Plaintiffs' interests in the conservation of these resources and their ability to view and enjoy them in an unimpaired condition. Peterson Decl. ¶ 25; Hoskisson Decl. ¶¶ 12-14.

*“Casual collection” of fossils and damage to paleontological resources*

181. President Trump’s action also removes protections for paleontological resources in the excised lands and exposes them to foreseeable harm, which will injure Plaintiffs’ members who enjoy studying, viewing, and learning about those resources.

182. While federal regulations generally allow the “casual collecting” of common invertebrate and plant fossils for non-commercial personal use on land managed by the Forest Service, 36 C.F.R. §§ 291.5, 291.10, that same casual collecting is absolutely prohibited in national monuments, *id.* § 291.12. Violations may be punished by a fine or imprisonment. *Id.* § 1.3(b).

183. BLM also generally allows the non-commercial collection of “rock and mineral specimens, common invertebrate and common plant fossils, and semiprecious gemstones” on its land. 43 C.F.R. § 8365.1-5(b)(2). The 2016 Proclamation prohibited such collection inside the Monument, however, by giving “warning . . . to all unauthorized persons not to . . . remove any feature of the monument.” 82 Fed. Reg. at 1145. This protection is essential to the proper care and management of these resources in situ, as required by the Antiquities Act.

184. Due to President Trump’s Proclamation, however, casual collection of paleontological resources will no longer be prohibited on the lands excluded from the Monument and BLM acknowledges that this “present[s] a higher risk of damage to paleontological resources. *See* Bears Ears National Monument: Proposed Management Plans and Final Environmental Impact Statement, at 3-33 (July 2019), at [https://eplanning.blm.gov/epl-front-office/projects/lup/94460/20000105/250000108/Volume1\\_Chapters\\_1-4\\_Bears\\_Ears\\_Proposed\\_MMPs-Final\\_EIS.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/94460/20000105/250000108/Volume1_Chapters_1-4_Bears_Ears_Proposed_MMPs-Final_EIS.pdf) (hereinafter Final EIS).



185. Several sites with known Paleozoic vertebrate fossils have been stripped of Monument protection, including areas of Indian Creek, Dark Canyon, Red House Cliffs, John's Canyon, Moqui Dugway, and the Valley of the Gods. The loss of protections against collection and appropriation of paleontological resources in these areas means that Plaintiffs' members will lose the ability to view these resources in situ and enjoy their scientific and educational value in their natural setting. *See, e.g.*, Peterson Decl. ¶¶ 24-25.

**AGENCY DEFENDANTS HAVE DECIDED NOT TO CARRY OUT THEIR DUTIES  
UNDER THE 2016 PROCLAMATION**

186. Due to President Trump's Proclamation, the Secretary of the Interior, the Director of BLM, the official exercising the duties of the Director of BLM with respect to the Monument, the Secretary of Agriculture, and the Chief of the U.S. Forest Service (collectively, the Agency Defendants) have decided not to carry out their duties under the 2016 Proclamation.

187. Because of President Trump's Proclamation, Agency Defendants no longer recognize the lawful boundaries of the Monument as established by the 2016 Proclamation. Instead, Agency Defendants now treat the Monument as consisting of only the two small, non-contiguous monument "units" that the Trump Proclamation left in place.

188. Because of President Trump's Proclamation, Agency Defendants have stopped managing the lands excised from the Monument in accordance with the 2016 Proclamation. For instance, BLM no longer complies with the 2016 Proclamation's mineral withdrawal on the excluded lands, and instead treats those lands as open for mineral location and entry, as evidenced by BLM's acceptance of multiple hard-rock mining claims recorded since President Trump's Proclamation.

189. Because of President Trump’s Proclamation, Agency Defendants will no longer prepare a joint management plan or a motorized vehicle travel plan that covers all the lands and objects protected by the 2016 Proclamation. Instead, BLM and the Forest Service have prepared monument management plans for the Indian Creek and Shash Jáa units only. The Final EIS for the proposed final management plans confirms that the agencies prepared the plans based on the objects “identified in Proclamation 9558, *as modified by Proclamation 9681.*” Final EIS, *supra*, at ch. 1-1 (emphasis added).

190. President Trump (by revoking monument status from the vast majority of the Bears Ears National Monument) and the Agency Defendants (by deciding not to carry out their duties under the 2016 Proclamation) have deprived Plaintiffs of the benefits of the protections for the lands they cherish.

191. Defendants’ actions adversely affect and irreparably injure the Plaintiffs’ and their members’ interests, and those injuries will continue unless the Court grants the relief Plaintiffs seek.

192. Plaintiffs’ injuries would be redressed by the relief sought here.

193. Plaintiffs have no adequate remedy at law.

**FIRST CLAIM FOR RELIEF**  
***Ultra vires* action or violation of the Antiquities Act,**  
**54 U.S.C. § 320301 *et seq.***  
***(All Defendants)***

194. Plaintiffs re-allege and incorporate by reference all the allegations set forth in this Complaint.

195. Judicial review is available to ensure that presidential actions are consistent with constitutional principles and that the President's actions are within the scope of his statutory and constitutional authority.

196. The President has the authority to regulate federal public lands only to the limited extent that Congress has delegated that authority to the President.

197. In issuing his proclamation of December 4, 2017, President Trump acted wholly without authority under the Antiquities Act, 54 U.S.C. § 320301 *et seq.* Under the Act, Congress authorized the President to designate federal public lands as national monuments, but not to rescind national monument status for existing monuments. As a result, President Trump's Proclamation revoking monument status from the vast majority of the Bears Ears National Monument, and stripping monument protection from innumerable objects of scientific and historic importance, lacked any authority and is *ultra vires* and unlawful. The President has no such authority to dismantle a national monument.

**SECOND CLAIM FOR RELIEF**  
**U.S. Constitution, art. II, and separation-of-powers doctrine**  
***(Defendant Trump)***

198. Plaintiffs re-allege and incorporate by reference all the allegations set forth in this Complaint.

199. Judicial review is available to ensure that presidential actions are consistent with constitutional principles and that the President has not unlawfully intruded on Congress's exclusive power over federal public lands under the Property Clause of the Constitution. U.S. Const. art. IV, § 3, cl. 2.

200. The Property Clause provides that “Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . . .” U.S. Const. art. IV, § 3, cl. 2. The President has the authority to regulate such property only to the limited extent that Congress has delegated that authority to the President.

201. Congress has not delegated to the President any authority to rescind or reduce the monument designations of prior Presidents.

202. In issuing his proclamation of December 4, 2017, President Trump exceeded his authority under Article II of the U.S. Constitution and intruded on Congress’s exclusive power to regulate federal property under the Property Clause, in violation of the doctrine of separation of powers.

**THIRD CLAIM FOR RELIEF**  
**Violation of the Antiquities Act,**  
**54 U.S.C. § 320301 *et seq.***  
***(All Defendants)***

203. Plaintiffs re-allege and incorporate by reference all the allegations set forth in this Complaint.

204. Even if President Trump had the authority to reduce or rescind the Bears Ears National Monument—which he does not—he could only do so in a manner consistent with the terms and the purpose of the Antiquities Act.

205. When President Obama issued the 2016 Proclamation designating the Bears Ears National Monument, he described the objects of scientific or historic interest that merited protection under the Antiquities Act. He also determined, based on the scale and the dispersed location of the objects of scientific and historic interest, that the Monument’s boundaries were

“the smallest area compatible with the proper care and management of the objects to be protected.”

206. President Trump’s Proclamation eliminating national monument status and protection from 1.15 million acres of the Monument excludes objects of scientific and historic interest from the protection they enjoyed under the 2016 Proclamation, leaving them vulnerable to the very damage that the 2016 Proclamation sought to avoid. For example, the Trump Proclamation excludes remarkably unique landscapes and sites with profound, documented cultural, aesthetic, and other values. These include, among other areas, Beef Basin, Cheese and Raisins, Ruin Park, Dark Canyon Plateau, White Canyon, Valley of the Gods, Mancos Mesa, Moqui Canyon, Indian Creek, Cedar Mesa, Hart’s Draw, stretches of the San Juan River and adjacent canyons, and Lockhart Basin.

207. The Trump Proclamation’s dismantling of the Monument is based on considerations wholly outside the Antiquities Act—principally, Defendants’ interest in promoting resource extraction—and lacks an adequate legal or factual justification.

208. The Trump Proclamation admits that it strips monument protection from objects of scientific and historic interest, but it attempts to justify their exclusion on the factually unfounded basis that some are not of “significant” or “distinctive” historic or scientific interest. 82 Fed. Reg. at 58,081. Apart from being factually unfounded, the Trump Proclamation’s assertion is legally irrelevant; the Antiquities Act does not require that Monument objects must be “significant” or “distinctive” to merit protection.

209. President Trump’s Proclamation lacks any adequate legal or factual justification, exceeded his statutory authority, and is *ultra vires* and unlawful.

**FOURTH CLAIM FOR RELIEF**  
**Administrative Procedure Act, 5 U.S.C. § 551 *et seq.***  
***(Agency Defendants)***

210. Plaintiffs re-allege and incorporate by reference all the allegations set forth in this Complaint.

211. The Administrative Procedure Act (APA) confers a right of action on any person adversely affected by a final agency action or a failure to act, and it waives the federal government's sovereign immunity. 5 U.S.C. §§ 701-706.

212. Because President Trump had no lawful authority to dismantle the Bears Ears National Monument, the Secretaries of the Interior and of Agriculture and their subordinate officers remain subject to the 2016 Proclamation's direction to undertake specific, mandatory duties to protect the entire Monument.

213. Any action by Agency Defendants contrary to the 2016 Proclamation constitutes arbitrary and capricious action not in accordance with the law.

214. As a result of President Trump's Proclamation, Agency Defendants have made a final decision to adhere to the Trump Proclamation rather than the 2016 Proclamation where the two conflict. Agency Defendants are currently violating the terms of the 2016 Proclamation by, among other things, managing the lands excised from the Monument for mineral exploration and development under the 1872 Mining Law and preparing a monument management plan incorporating President Trump's diminishment of the Monument's boundaries.

215. Agency Defendants will not carry out their duties under the 2016 Proclamation with respect to the excised lands as long as the Trump Proclamation remains in place.

## PRAYER FOR RELIEF

WHEREFORE Plaintiffs request that the Court:

1. Declare that President Trump's Proclamation of December 4, 2017, is *ultra vires* and wholly without authority under the Antiquities Act, and is invalid and void *ab initio*;
2. Declare that President Trump's Proclamation of December 4, 2017, exceeds the scope of his authority under Article II of the U.S. Constitution and is invalid and void *ab initio*;
3. Issue injunctive relief against Agency Defendants, barring their implementation of the Trump Proclamation (including any management plans or subsidiary plans premised on the Trump Proclamation) and directing them to carry out the mandatory duties imposed on them in the 2016 Proclamation;
4. Declare that any mining claims, mineral leases, or other permits or authorizations premised on the validity of the Trump Proclamation are void *ab initio*;
5. Award Plaintiff fees and costs pursuant to 28 U.S.C. § 2412; and
6. Grant such other relief as the Court deems just and proper.

Dated: November 7, 2019

Respectfully submitted,

/s/ James Pew

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of November, 2019, I electronically filed the foregoing **NRDC PLAINTIFFS' AMENDED AND SUPPLEMENTAL COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF INTRODUCTION** with the Clerk of the District Court using the CM/ECF system, which will send notice of this filing by e-mail to all counsel of record.

*/s/ James Pew*  
James Pew