IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOPI TRIBE, *et al*., Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al*., Defendants.	Case No. 1:17-cv-02590 (TSC)
UTAH DINÉ BIKÉYAH, *et al*., Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al*., Defendants.	Case No. 1:17-cv-02605 (TSC)
NATURAL RESOURCES DEFENSE COUNCIL, *et al*., Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al*., Defendants.	Case No. 1:17-cv-02606 (TSC) **CONSOLIDATED CASES**

FEDERAL DEFENDANTS' RESPONSES TO NRDC PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS AND FEDERAL DEFENDANTS' FURTHER STATEMENT OF MATERIAL FACTS

1. President Obama established Bears Ears National Monument, encompassing "approximately 1.35 million acres" of federal land, to protect a variety of objects of scientific or historic interest (including ecosystems, geological formations, and cultural and archaeological sites). Proclamation No. 9558, 82 Fed. Reg. 1139, 1143 (Dec. 28, 2016) ("2016 Proclamation").

Response:

Federal Defendants dispute that Proclamation No. 9558 expressly stated that the objects of scientific or historic interest that it was protecting included "ecosystems, geological formations, and cultural and archaeological sites." Proclamation No. 9558, 82 Fed. Reg. 1139-46 (Dec. 28, 2016) ("Proclamation 9558").

2. Of the Monument's approximately 1.35 million acres, approximately 289,056 acres were under the management of the U.S. Forest Service ("Forest Service"). Decl. of Nora Rasure ("Rasure Decl.") ¶ 4 (ECF No. 49-3). The remaining 1.06 million acres were under the management of the Bureau of Land Management ("BLM"). 2016 Proclamation, 82 Fed. Reg. at 1142.

Response:

Federal Defendants do not dispute this statement.

3. Prior to the Monument's creation in 2016, BLM managed its parcels pursuant to the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1701 et seq., its 2008 Monticello Field Office Approved Resource Management Plan (as amended) ("2008 Monticello RMP"), and its 2008 Moab Field Office Approved Resource Management Plan ("2008 Moab RMP"). The Forest Service managed its parcels pursuant to the National Forest Management Act ("NFMA"), 16 U.S.C. §§ 1600 et seq., and the 1986 Manti-La Sal National Forest Land and Resource Management Plan (as amended) ("1986 Manti-La Sal LRMP"). Declaration of Katherine Desormeau, Exh. C at ES-1 (Bears Ears National Monument Proposed Resource Management Plans and Final Environmental Impact Statement (2019) ("2019 FEIS")); Decl. of Edwin Roberson ("Roberson Decl.") ¶ 8 (ECF No. 49-2).

Response:

Federal Defendants do not dispute this statement.

4. By BLM's own assessment, the 2008 Monticello RMP—which governed most of the land that President Obama included in the Monument—had failed to "fully protect significant cultural and paleontological resources." Desormeau Decl., Exh. D at 5 (BLM, Land Use Evaluation Report (2015)).

Response:

Federal Defendants object to this statement as selectively quoting a 2015 BLM Land Use Evaluation Report in a manner that does not provide the statement's full context. Without waiving that objection, Federal Defendants state that the relevant portion of the Land Use Evaluation Report provides: "Under the RMP's cultural resource decisions, staff noted that cultural resources have not yet been assigned to appropriate use categories, and that completion of a cultural resource management plan would improve their ability to plan for access to cultural sites, particularly with regard to special recreation permits. As a result, the RMP does not fully protect significant cultural and paleontological resources through special designations." BLM Monticello Field Office Land Use Plan Evaluation Report (September 2015), available at https://eplanning.blm.gov/epl-front-office/projects/lup/68097/85604/102802/Monticello_RMP_Evaluation_-_September_2015.pdf.

5. By establishing Bears Ears National Monument, the 2016 Proclamation ended BLM and the Forest Service's multiple-use approach to the management of these lands, and required the agencies to prioritize preservation and protection of the objects over other uses. See 2016 Proclamation, 82 Fed. Reg. at 1145 ("the Monument shall be the dominant reservation"); see also id. at 1142 (Monument "lands administered by the BLM shall be managed as a unit of the National Landscape Conservation System"); 16 U.S.C. § 7202(a), (c)(2) (establishing the National Landscape Conservation System to "conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations," and directing Interior to manage components of the System "in a manner that protects the values for which the components of the system were designated").

Response:

Federal Defendants object that this statement is a legal conclusion. Without waiving this objection, Federal Defendants dispute that creation of the Monument ended the application of the Federal Land Policy and Management Act's ("FLPMA") multiple use mandate to lands

included within the 2016 boundaries of the monument. In accordance with BLM Manual 6220, the BLM may allow multiple uses within a national monument to the extent they are consistent with the applicable designating authority—in the case of Bears Ears National Monument (BENM), Proclamation 9558, as modified by Proclamation 9681—as well as with other applicable laws and with the applicable land use plan. BLM Manual 6220, p. 1-6, available athttps://www.blm.gov/sites/blm.gov/files/mediacenter_blmpolicymanual6220.pdf. The Forest Service has found its substantive planning requirements at 36 C.F.R. 219.10 regarding integrated resource management for multiple use applicable to a Forest Plan amendment based on the monument management plan for the Shash Jáa Unit. 83 Fed. Reg. 15354, 15355 (Apr, 10, 2018).

6. In addition, the 2016 Proclamation "withdr[e]w" the Monument's lands from "location [and] entry . . . under the mining laws." 2016 Proclamation, 82 Fed. Reg. at 1143. The 2016 Proclamation thereby immediately prohibited the location of any new mining claims for hardrock minerals within the Monument. *See* 30 U.S.C. §§ 22 et seq. (General Mining Law of 1872).

Response:

Federal Defendants object that the second sentence is a legal conclusion. Without waiving this objection, Federal Defendants state that it is not supported by the citation (which is a general citation to the Mining Law of 1872).

7. The 2016 Proclamation allowed "valid," pre-existing hardrock mining claims within the Monument to remain in place, 82 Fed. Reg. at 1143, but the conferral of monument status placed certain limitations on the development of those claims. See 43 C.F.R. § 3809.11(c)(7) (requiring a "plan of operations for any operations causing surface disturbance greater than casual use in the following special status areas . . . National Monuments"); id. § 3809.100(a) ("After the date on which the lands are withdrawn from appropriation under the mining laws, BLM will not approve a plan of operations or allow notice-level operations to proceed until BLM has prepared a mineral examination report to determine whether the mining claim was valid before the withdrawal, and whether it remains valid.").

Response:

Federal Defendants object that the statement that the 2016 Proclamation placed certain

limitations on the development of pre-existing hardrock mining claims is a legal conclusion. Without waiving the objection, the cited regulations do not place limitations on the nature or extent of operations on valid, pre-existing mining claims, but rather change the process by which operations related to such claims can be approved. 43 C.F.R. § 3809.11(c)(7) (requiring a "plan of operations for any operations causing surface disturbance greater than casual use in the following special status areas . . . National Monuments"); *id.* § 3809.100(a) ("After the date on which the lands are withdrawn from appropriation under the mining laws, BLM will not approve a plan of operations or allow notice-level operations to proceed until BLM has prepared a mineral examination report to determine whether the mining claim was valid before the withdrawal, and whether it remains valid.").

8. There are deposits of hardrock or "locatable" minerals—primarily uranium, but also vanadium, copper, placer gold, and limestone—inside the original Monument's boundaries. 43 C.F.R. § 3830.11 (defining locatable, i.e. hardrock, minerals); Desormeau Decl., Exh. E at 5, 21-22, 31-32, 35-37, 38-39 (BLM, Mineral Potential Report for the Monticello Planning Area (2005)); Desormeau Decl., Exh. G at 3-70 to 3-75 (BLM's Monticello Proposed Resource Management Plan and Final Environmental Impact Statement (2008)); Desormeau Decl., Exh. F (BLM Cursory Review of Mineral Potential/Occurrence).

Response:

Federal Defendants do not dispute this statement.

9. Before and after 2016, mining industry groups expressed interest in exploring and exploiting some of these resources. Declaration of Creed Murdock ¶ 5, Exh. A (describing existing mining claims within the Monument as of 2016); Desormeau Decl., Exh. F (BLM map of mining claims within Bears Ears as of September 2016).

Response:

Federal Defendants dispute this statement as unsupported. Plaintiffs' evidence demonstrates only that claims were located by unidentified persons for unidentified minerals on unidentified dates. *See* Declaration of Creed Murdock ("Murdock Decl.") ¶ 5, Ex. A; Declaration of Kate Desormeau ("Desormeau Decl."), Ex. F.

10. In April 2017, President Trump issued an executive order directing the Secretary of the Interior, Ryan Zinke, to "review" certain national monuments that had been designated or expanded since 1996, including Bears Ears. Exec. Order 13,792, 82 Fed. Reg. 20,429 (Apr. 26, 2017). The order directed Secretary Zinke to recommend possible actions regarding those monuments. Id. at 20,430.

Response:

Federal Defendants do not dispute this statement.

11. Removing "barriers" to resource exploitation was one of President Trump's stated considerations in launching his 2017 monuments review. *Id*. at 20,429 (opining that monuments "may . . . create barriers to energy independence" and "curtail economic growth").

Response:

Federal Defendants dispute this statement as unsupported. Executive Order 13792 provided that "[m]onument designations that result from a lack of public outreach and proper coordination with State, tribal, and local officials and other relevant stakeholders may also create barriers to achieving energy independence, restrict public access to and use of Federal lands, burden State, tribal, and local governments, and otherwise curtail economic growth." Exec. Order 13,792, 82 Fed. Reg. 20,429 (Apr. 26, 2017).

12. During the monument "review" process, representatives of Energy Fuels Inc.—which owns the Daneros uranium mine to the west of the Monument and the White Mesa uranium mill to the east of the Monument—lobbied the Trump Administration to change Bears Ears' boundaries and increase their access to uranium resources. Desormeau Decl., Ex. I (BLM map showing Daneros Mine and White Mesa Mill compared to Bears Ears boundaries); Desormeau Decl., Exhs. J & K (Energy Fuels Resources' request for meeting with Interior officials and related calendar invitation).

Response:

Federal Defendants dispute the statement that "representatives of Energy Fuels Inc. lobbied the Trump Administration to change Bears Ears' boundaries and increase their access to uranium resources" as unsupported. The exhibits cited demonstrate only that a meeting between representatives of Energy Fuels Inc. and an Interior official was scheduled for July

17, 2017. Federal Defendants note, as indicated in the next statement (#13), that Energy Fuels sent a May 25, 2017 letter requesting that the monument boundaries be modified. Desormeau Decl., Ex. H at 1-2.

13. In May 2017, Energy Fuels submitted public comments to Interior expressing "concern" that the Monument "could affect existing and future mill operations," requesting that the Administration "reduce the size" of the Monument, and further "request[ing] that any boundary revision provide an adequate buffer between the White Mesa mill, the Daneros mine and all valid existing mineral rights such that there will be no impact to our lawful existing or future operations." Desormeau Decl., Exh. H at 1-2 (Letter from Mark Chalmers, Energy Fuels Resources (USA) Inc., to the U.S. Department of the Interior (May 25, 2017)). Energy Fuels also highlighted that there are "many other known uranium and vanadium deposits located within [the Monument] that could provide valuable energy and mineral resources in the future." Id. at 1.

Response:

Federal Defendants do not dispute this statement. Responding further, Federal Defendants state that the White Mesa mill and Daneros mine are located outside of the original boundaries of the Monument. Desormeau Decl., Ex. I (BLM map showing Daneros Mine and White Mesa Mill compared to the original Bears Ears boundaries).

14. In his final report making recommendations to the President, Secretary Zinke opined that "mining [has been] . . . unnecessarily restricted" in landscape-scale monuments like Bears Ears, and he recommended that the President "revise[]" the Monument's boundary. Desormeau Decl., Exh. B at 7, 10 (Memorandum for the President from Ryan K. Zinke, Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act (2017)).

Response:

Federal Defendants object to this statement as selectively quoting from the cited report such that the statement is misleading. Federal Defendants aver that the report stated more fully that "as a result [of landscape area national monument designations], absent specific assurances, traditional uses of the land such as grazing, timber production, mining, fishing, hunting, recreation, and other cultural uses are unnecessarily restricted" and recommended that the Monument boundaries "should be revised through the use of appropriate authority . . . to

continue to protect objects and ensure the size of the monument reservation is limited to the smallest area compatible with the protection of the objects identified." Desormeau Decl., Ex. B at 7, 10 (Memorandum for the President from Ryan K. Zinke, Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act (2017)).

15. On December 4, 2017, President Trump issued a proclamation "modif[ying] and reduc[ing] the Monument's boundaries," excluding "approximately 1,150,860 million acres" from the Monument. Proclamation No. 9681, 82 Fed. Reg. 58,081, 58,081, 58,085 (Dec. 4, 2017) ("Trump Proclamation").

Response:

Federal Defendants do not dispute this statement.

16. In place of the original Monument, the Trump Proclamation left two much smaller, non-contiguous units—called the Shash Jáa Unit and the Indian Creek Unit—that together comprise "approximately 201,876 acres," i.e., just fifteen percent of the original Monument's area. Id. at 58,085; see Desormeau Decl., Exh. A (BLM map of diminished boundaries). The Shash Jáa Unit includes two exclaves, "the Moon House and Doll House Ruins," which are located outside that unit's boundaries. Trump Proclamation, 82 Fed. Reg. at 58,085; see Desormeau Decl., Exh. A (BLM map of diminished boundaries).

Response:

Federal Defendants do not dispute this statement, except that they object to the use of the term "exclaves." The Moon House Ruin and Doll House Ruin were identified in Proclamation 9681 as "2 non-contiguous parcels of land." 82 Fed. Reg. at 58,083.

17. The President has asserted no independent constitutional authority to diminish the Monument. *See* Trump Proclamation, 82 Fed. Reg. at 58,085 ("I, DONALD J. TRUMP, President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim that the boundaries of the Bears Ears National Monument are hereby modified and reduced "); Mem. in Support of Defs.' Mot. to Dismiss at 41, ECF No. 49-1 (Oct. 1, 2018) ("No authority has been asserted by the President to support the Proclamation in the event the Antiquities Act is held not to authorize it.").

Response:

Federal Defendants do not dispute this statement.

18. The re-drawn Monument boundaries exclude several areas where BLM has

identified potential uranium and other mineral deposits. Compare Murdock Decl., Exh. A (map showing original and diminished boundaries) with Desormeau Decl., Exh. F at unnumbered pages 6-7 (BLM Cursory Review of Mineral Potential/Occurrence, maps of uranium and vanadium).

Response:

Federal Defendants do not dispute this statement.

19. The re-drawn Monument boundaries exclude lands on which "some of the particular examples of the[] objects" of scientific or historic interest identified in the 2016 Proclamation are located. Trump Proclamation, 82 Fed. Reg. at 58,082; see also id. at 58,084 ("Some of the existing monument's objects, or certain examples of those objects, are not within the monument's revised boundaries ").

Response:

Federal Defendants do not dispute this statement.

20. Of the roughly 1.15 million acres excluded from the Monument, approximately 256,469 acres (22%) are managed by the Forest Service. Rasure Decl. ¶ 5 (ECF No. 49-3). The remaining approximately 894,391 acres (78%) are BLM-managed lands. Roberson Decl. ¶ 8 (ECF No. 49-2).

Response:

Federal Defendants do not dispute this statement.

21. BLM and the Forest Service have reverted to managing the lands excluded from the Monument under their pre-Monument management regimes. Desormeau Decl., Exh. C at ES- 1 (2019 FEIS) ("Lands that were excluded from the BENM by Proclamation 9681 will continue to be managed by the BLM and USFS as currently directed under the Monticello RMP and the Manti-La Sal LRMP, respectively."); Roberson Decl. ¶ 8 (ECF No. 49-2); Rasure Decl. ¶¶ 5-7 (ECF No. 49-3).

Response:

Federal Defendants dispute this statement. The BLM and the Forest Service have not reverted to managing lands excluded from Bears Ears under their pre-designation management regimes. The lands excluded from the Monument were managed under the Monticello RMP, Moab RMP, and the Manti-La Sal LRMP before the 2016 Proclamation issued, after the 2016 Proclamation issued, and continue to be so. Roberson Decl. ¶ 8, ECF No. 49-2; Rasure Decl., ¶

7, ECF No. 49-3.

22. The 2016 Proclamation's mineral withdrawal no longer applies on the excluded lands. *See* Trump Proclamation, 82 Fed. Reg. at 58,085. The Trump Proclamation's revocation of the mineral withdrawal became effective on February 2, 2018—i.e., "60 days after" President Trump's signature—with no need for a new management plan or any other implementing agency action. Id. at 58,085.

Response:

Federal Defendants do not dispute this statement.

23. BLM and the Forest Service are no longer observing the 2016 Proclamation's mineral withdrawal on the excluded lands. Instead, since February 2018, BLM has recorded new mining claims located by private parties on those lands, and BLM or the Forest Service will review and process claimants' development proposals on claims located on those lands, in accordance with the General Mining Law of 1872 and the agencies' respective regulations. Roberson Decl. ¶ 33 (ECF No. 49-2); Rasure Decl. ¶ 6 (ECF No. 49-3).

Response:

Federal Defendants object to the phrases "observing the 2016 Proclamation's mineral withdrawal" and "development proposals" as being vague and subject to varying interpretations. Subject to and without waiving this objection, Federal Defendants dispute that the BLM has "recorded new mining claims," as mining claimants, not the BLM, locate and "record" claims. 43 C.F.R. §§ 3833.1, 3833.11.

24. On non-withdrawn (e.g., non-Monument) land under BLM's management, hardrock mining is governed by BLM's regulations implementing the General Mining Law of 1872. See 43 C.F.R. pt. 3800. Pursuant to these regulations, private parties may "locate" and "record" hardrock mining claims without prior authorization from BLM or any other government agency. See 43 C.F.R. §§ 3832.1(a) (defining "location" of a claim as "[e]stablishing the exterior lines of a mining claim or site open to mineral entry to identify the exact land claimed"); *id*. § 3802.0-6.

Response:

Federal Defendants object that this statement is a legal conclusion, and further is overbroad and lacking the context necessary to formulate a response. Without waiving these objections, Federal Defendants state that, as a general matter, BLM regulations implementing the Mining

Law, and other applicable authorities, including FLPMA and its mandate to prevent unnecessary or undue degradation of the lands, govern mining claims and mining operations on federal lands managed by the BLM. 43 C.F.R. Parts 3710-3740, 3800-3870.

25. A claimant who wishes to stake a mining claim on federal land generally must mark the claim with some "conspicuous and substantial" markers, making the claim easily visible to others. Desormeau Decl., Exh. J at 10 (BLM, Mining Claims and Sites on Federal Land (2016)); 43 C.F.R. § 3832.11(c) (describing location requirements and requiring posting of location "in a conspicuous place").

Response:

Federal Defendants object that this statement is a legal conclusion, and further is overbroad and lacking the context necessary to formulate a response. Without waiving these objections, Federal Defendants state that, as a general matter, both state and Federal law govern the manner of location of mining claims on federal lands. 43 C.F.R. § 3832.11.

26. Once a claimant has located a mining claim on non-withdrawn BLM land, she may undertake "[c]asual use" activities at any time, and she "need not notify BLM" before doing so. *Id*. § 3809.10(a).

Response:

Federal Defendants object that this statement is a legal conclusion, and further is vague as to the term "non-withdrawn BLM land." Without waiving these objections, Federal Defendants further explain that, by definition, "casual use" involves "no or negligible disturbance of the public lands or resources." 43 C.F.R. § 3809.5.

27. Further, on non-withdrawn BLM land, a claimant may undertake "notice"-level activities—that is, activities greater than casual use, "causing surface disturbance" of up to five acres and removing up to one thousand tons of presumed ore—by sending BLM a "notice" of planned operations and waiting fifteen calendar days after BLM receives it. Id.§§ 3809.10(b), 3809.11(b), 3809.21(a). See also id. § 3809.11(c)(7) (within national monuments and other protected categories, any surface disturbance greater than casual use requires a plan of operations; proceeding based on a notice of intent is not allowed).

Response:

Federal Defendants object that this statement is a legal conclusion, and further is vague as to the term "non-withdrawn BLM land." Without waiving these objections, Federal Defendants further explain that the type of "'notice'-level activities" that Plaintiffs refer to encompass only exploration operations, and any mine development and extractive mining operations—regardless of acreage—require a plan of operations. *See* 43 C.F.R. § 3809.11.

28. Notice-level activities may include road construction, the use of mechanized earth-moving equipment, and the use of truck-mounted drilling equipment. *See* 43 C.F.R. § 3809.5 (defining what "[c]asual use" generally does and does not include, and defining "[e]xploration" and "[o]perations"); id. § 3809.21(a) ("[Y]ou must submit a complete notice of your operations 15 calendar days before you commence exploration"). Unless BLM requests additional information or takes other specific actions within that fifteen-day window, the claimant may proceed with ground-disturbing work. Id. §§ 3809.312(a), 3809.313.

Response:

Federal Defendants object that this statement is a legal conclusion. Without waiving this objections, Federal Defendants further state that all exploration operations under a notice must prevent unnecessary or undue degradation of the public lands, be conducted in accordance with the performance standards in 43 C.F.R. § 3809.420 and be reclaimed in accordance with the standards in that same section. All notice-level operators must provide the BLM with a financial guarantee covering the full cost of reclaiming the operation before surface disturbance may begin. *See* 43 C.F.R. §§ 3809.500-599; Roberson Decl. ¶¶ 35, 37.

29. For more extensive mining activities on non-withdrawn BLM land—activities that involve, for example, removing a thousand tons or more of presumed ore or disturbing more than five acres—BLM requires a "plan of operations," including detailed information about the proposed disturbance and mitigation measures, and must issue an affirmative approval before operations begin. See id. §§ 3809.10(c), 3809.11, 3809.21(a). See also id. § 3809.401.

Response:

Federal Defendants object that this statement is a legal conclusion, and further is vague as to the term "non-withdrawn BLM land." Federal Defendants further object that the term "more

extensive mining activities" is vague and subject to varying interpretations. Without waiving these objections, Federal Defendants state that all operations under a plan of operations must prevent unnecessary or undue degradation of the public lands, be conducted in accordance with the performance standards in 43 C.F.R. § 3809.420, and be reclaimed in accordance with the standards in that same section. All operators must provide the BLM with a financial guarantee covering the full cost of reclaiming the operation before surface disturbance may begin. *See* 43 C.F.R. §§ 3809.500-599; Roberson Decl. ¶¶ 35, 37.

30. On non-withdrawn (e.g., non-Monument) land under the Forest Service's management, surface disturbance caused by hardrock mining is governed by Forest Service regulations. See 36 C.F.R. §§ 228.1 et seq.; Desormeau Decl., Exh. L at 11-12 (BLM, Mining Claims and Sites on Federal Land (2016)) (explaining that the Forest Service "manages the surface of National Forest System lands," while "BLM is responsible for the subsurface minerals on both its public lands and National Forest System lands").

Response:

Federal Defendants object that this statement is a legal conclusion. Federal Defendants object further that the statement is vague, overbroad, and lacking the context necessary to formulate a response. Subject to and without waiving these objections, Federal Defendants state that, as a general matter, surface disturbance on National Forest System lands caused by mining operations is governed by the United States Mining Laws (30 U.S.C. §§ 21-54), the Organic Administration Act of 1897 (16 U.S.C. §§ 471, et seq.), the Multiple Surface Resources and Multiple Use Act of 1955 (30 U.S.C. §§ 611-612), the Forest Service's regulations governing mining operations (36 C.F.R. §§ 228.1, et seq.), as well as relevant provisions of the Forest Service Manual, and Forest Service Handbook. Pursuant to 36 C.F.R. § 228.8, mining operations on Forest Service land are also subject to numerous other state and federal statutory and regulatory requirements, including, but not limited to, the Clean Air Act (42 U.S.C. §§ 1857, et seq.), and the Federal Water Pollution Control Act (33 U.S.C. §§ 1151, et

seq.).

31. Private parties may locate and record hardrock mining claims on non-withdrawn Forest Service land without prior authorization from the Forest Service, BLM, or any other government agency. BLM maintains mining claim records for claims located on Forest Service-managed land. Desormeau Decl., Exh. L at 29 (BLM, Mining Claims and Sites on Federal Land (2016)); Desormeau Decl., Exh. M at 2 (Forest Service, Mining in National Forests (undated)).

Response:

Federal Defendants object that this statement is a legal conclusion. Federal Defendants object further that the statement is vague, overbroad, and lacking the context necessary to formulate a response. Subject to and without waiving these objections, Federal Defendants state that, as a general matter, mining operations on National Forest System lands, including location of claims and notice requirements, are governed by the United States Mining Laws (30 U.S.C. §§ 21-54), the Organic Administration Act of 1897 (16 U.S.C. §§ 471, et seq.), the Multiple Surface Resources and Multiple Use Act of 1955 (30 U.S.C. §§ 611-612), the Forest Service's regulations governing mining operations (36 C.F.R. §§ 228.1, et seq.), as well as relevant provisions of the Forest Service Manual, and Forest Service Handbook. Pursuant to 36 C.F.R. § 228.8, mining operations on Forest Service land are also subject to numerous other state and federal statutory and regulatory requirements, including, but not limited to, the Clean Air Act (42 U.S.C. §§ 1857, et seq.), and the Federal Water Pollution Control Act (33 U.S.C. §§ 1151, et seq.). Federal Defendants further state that Forest Service regulations contain provisions governing when a notice of intent to conduct operations is required and exceptions to this requirements. 36 C.F.R. § 228.4. Federal Defendants further state that, depending on specific circumstances, BLM regulations may apply, and further state that locators' rights of possession and enjoyment of the surface only apply "so long as [locators] comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with

the laws of the United States governing their possessory title." 30 U.S.C. § 26; 36 C.F.R. § 228.8(h). Federal Defendants do not dispute that the BLM maintains mining claim records for claims located on Forest Service-managed land.

32. On non-withdrawn Forest Service land, prospectors may, without notice, engage in mining activities that "will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study" or that occur only underground. 36 C.F.R. § 228.4(a)(1)(ii), (iv). For other mining activities, claimants must submit a notice of intent. Id. § 228.4(a)(2). If an operation "is causing or will likely cause significant disturbance of surface resources," the Forest Service will require a plan of operations. Id. § 228.4(a)(4). If a plan of operations is required, the Forest Service generally must conduct a NEPA analysis and either approve a proposed plan of operations or notify the claimant of any required changes to the proposal within thirty days. Id. §§ 228.4(f), 228.5(a).

Response:

Federal Defendants object that this statement is a legal conclusion. Federal Defendants object further that the statement is vague, overbroad, and lacking the context necessary to formulate a response. Subject to and without waiving these objections, Federal Defendants state that, as a general matter, mining operations on National Forest System lands, including prospecting on National Forest System land as well as operations conducted pursuant to notices of intent and mining plans of operations, are governed by the United States Mining Laws (30 U.S.C. §§ 21-54), the Organic Administration Act of 1897 (16 U.S.C. §§ 471, et seq.), the Multiple Surface Resources and Multiple Use Act of 1955 (30 U.S.C. §§ 611-612), the Forest Service's regulations governing mining operations (36 C.F.R. §§ 228.1, et seq.), as well as relevant provisions of the Forest Service Manual, and Forest Service Handbook. Pursuant to 36 C.F.R. § 228.8, mining operations on Forest Service land are also subject to numerous other state and federal statutory and regulatory requirements, including, but not limited to, the Clean Air Act (42 U.S.C. §§ 1857, et seq.), and the Federal Water Pollution Control Act (33 U.S.C. §§ 1151, et seq.). USFS regulations may apply to location of claims located on USFS-managed federal

land, and these regulations contain requirements for a notice of intent to conduct operations and exceptions to these requirements. 36 C.F.R. § 228.4. Federal Defendants further state that, depending on specific circumstances, BLM regulations may apply, and further state that locators' rights of possession and enjoyment of the surface only apply "so long as [locators] comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title." 30 U.S.C. § 26; 36 C.F.R. § 228.8(h).

33. The regulations do not define "significant"; instead, the Forest Service makes "a case-by-case evaluation of proposed operations and the kinds of lands and other surface resources involved." Desormeau Decl., Exh. M at 5 (Forest Service, Mining in National Forests (undated)). A claimant "who is unsure if the proposed operations" might qualify as "significant" "should file a 'Notice of Intention to Operate' with the Forest Service, . . . describ[ing] briefly what the operator intends to do The Forest Service will analyze the proposal and within 15 days will notify the operator as to whether or not an operating plan will be necessary." Id. at 4; 36 C.F.R. § 228.4(a)(2). "In most cases, environmental impact statements are not necessary." Desormeau Decl., Exh. M at 5 (Forest Service, Mining in National Forests (undated)).

Response:

Federal Defendants do not dispute that the regulations at 36 C.F.R. Part 228 do not contain a definition of the term "significant." Federal Defendants object that the remainder of this statement consists of a legal conclusion. Federal Defendants further object that this statement is vague, overbroad, and lacking the context necessary to formulate a specific response. Subject to and without waiving these objections, Federal Defendants state that, as a general matter, mining operations on National Forest System lands, including operations that require a notice of intention to operate, are governed by the United States Mining Laws (30 U.S.C. §§ 21-54), the Organic Administration Act of 1897 (16 U.S.C. §§ 471, et seq.), the Multiple Surface Resources and Multiple Use Act of 1955 (30 U.S.C. §§ 611-612), the Forest Service's regulations governing mining operations (36 C.F.R. §§ 228.1, et seq.), as well as relevant

provisions of the Forest Service Manual, and Forest Service Handbook. Pursuant to 36 C.F.R. § 228.8, mining operations on Forest Service land are also subject to numerous other state and federal statutory and regulatory requirements, including, but not limited to, the Clean Air Act (42 U.S.C. §§ 1857, et seq.), and the Federal Water Pollution Control Act (33 U.S.C. §§ 1151, et seq.). Federal Defendants further state that whether an environmental impact statement is required is governed also by the National Environmental Policy Act, (42 U.S.C. §§ 4321, et seq.), and its implementing regulations. Federal Defendants further state that, depending on specific circumstances, BLM regulations may apply, and further state that locators' rights of possession and enjoyment of the surface only apply "so long as [locators] comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title." 30 U.S.C. § 26; 36 C.F.R. § 228.8(h).

34. Surface-disturbing mining activities can scrape scars into the landscape, produce waste and debris, disturb native vegetation and wildlife habitat, increase erosion, and harm water quality. Supplemental Declaration of Ray Bloxham ¶¶ 18, 20; Supplemental Declaration of Neal Clark ¶¶ 14-16; Declaration of Kevin Walker ¶ 8; Declaration of Tim D. Peterson, Jr. ¶¶ 27-29.

Response:

Federal Defendants object to this statement as speculative and lacking the context necessary to form a response. Subject to and without waiving this objection, Federal Defendants do not dispute that, as a general matter, mining activity "can" result in the impacts this statement, but explain further that all exploration and mining operations on federal lands must be conducted in accordance with the applicable performance standards (43 C.F.R. § 3809.420; 36 C.F.R. § 228.8) and reclaimed in accordance with the standards in those sections. Roberson Decl. ¶¶ 35, 37. Moreover, operators on BLM-managed lands must provide the BLM with a financial

guarantee covering the full cost of reclaiming the operation before surface disturbance may begin. *Id.*; *see also* 43 C.F.R. §§ 3809.500-599.

35. Surface-disturbing mining activities can also harm cultural, archaeological, and paleontological resources, which are widely dispersed throughout the excised lands. Supp. Clark Decl. ¶ 15 (describing past "looting and vandalism of cultural resources as mining roads have facilitated motorized access into remote areas"); Peterson Decl. ¶ 30 (describing "ongoing ground-disturbing mining activity in close proximity to important and sensitive cultural sites"); Declaration of Wayne Hoskisson ¶¶ 12-13 (documenting cultural artifacts in proximity to Easy Peasy mine site and along access route).

Response:

Federal Defendants object to this statement as speculative and lacking the context necessary to form a response. Subject to and without waiving this objection, Federal Defendants do not dispute that, as a general matter, mining activity "can" result in the impacts this statement but explain further that all exploration and mining operations on federal lands must be conducted in accordance with the applicable performance standards (43 C.F.R. § 3809.420; 36 C.F.R. § 228.8) and reclaimed in accordance with the standards in those sections. Roberson Decl. ¶¶ 35, 37. Moreover, operators on BLM-managed lands must provide the BLM with a financial guarantee covering the full cost of reclaiming the operation before surface disturbance may begin. *Id.*; *see also* 43 C.F.R. §§ 3809.500-599.

36. The auditory and visual effects of surface-disturbing mining activities—including dust and haze, mechanical noise, and light pollution—can have far-reaching impacts in this rocky desert landscape, especially on mesas and slickrock expanses where there is relatively little vegetation to dampen sound or to obstruct viewsheds. Supp. Bloxham Decl. ¶ 20; Supp. Clark Decl. ¶¶ 14, 16; Walker Decl. ¶ 8; see also Supplemental Declaration of Michael Mason, Exhs. A, B (viewshed and sound impact analysis for Easy Peasy mine).

Response:

Federal Defendants object to this statement as speculative and lacking the context necessary to form a response. Subject to and without waiving this objection, Federal Defendants do not dispute that, as a general matter, mining activity "can" result in the impacts this statement, but

explain further that all exploration and mining operations on federal lands must be conducted in accordance with the applicable performance standards (43 C.F.R. § 3809.420; 36 C.F.R. § 228.8) and reclaimed in accordance with the standards in those sections. Roberson Decl. ¶¶ 35, 37. Moreover, operators on BLM-managed lands must provide the BLM with a financial guarantee covering the full cost of reclaiming the operation before surface disturbance may begin. *Id.*; *see also* 43 C.F.R. §§ 3809.500-599.

37. Even if exploratory activity never leads to more extensive plan-level development, it will leave long-lasting scars on the land—including unsightly pits or adits, discarded fencing, waste piles, disturbed vegetation, and vehicle tracks in the fragile desert soils—that will continue to harm Plaintiffs' aesthetic interests in using these areas for years to come. Walker Decl. ¶ 8 ("Even an exploratory hard-rock mining site that never gets developed can leave a permanent scar on the land, an eyesore that changes the look of the place. It disturbs the native plants and introduces weeds and erosion."); Peterson Decl. ¶ 29 (describing notice-level activity at Easy Peasy mine).

Response:

Federal Defendants object to this statement as speculative and lacking the context necessary to form a response. Subject to and without waiving this objection, Federal Defendants dispute that any "exploratory activity will leave long-lasting scars on the land—including unsightly pits or adits, discarded fencing, waste piles, disturbed vegetation, and vehicle tracks in the fragile desert soil." All exploration and mining operations on federal lands must be conducted in accordance with the applicable performance standards (43 C.F.R. § 3809.420; 36 C.F.R. § 228.8) and reclaimed in accordance with the standards in those sections. Roberson Decl. ¶¶ 35, 37 (ECF No. 49-2). Moreover, operators on BLM-managed lands must provide the BLM with a financial guarantee covering the full cost of reclaiming the operation before surface disturbance may begin. *Id.*; *see* also 43 C.F.R. §§ 3809.500-599. Accordingly, it is not the case that exploratory activity will necessarily result in the type of impacts referred to in this statement. Decl.of Brian Quigley ("Quigley Decl.") ¶ 21.

38. Between February 2, 2018 (the effective date of President Trump's revocation of the mineral withdrawal), and November 7, 2019 (the date of Plaintiffs' amended and supplemental complaint), BLM records show that private prospectors located at least six new mining claims in the excised lands: "Hammond Mine A," "RwH Mine B," "Cute Girl," "Pretty Girl," "Lucky Lady 2," and "Cedar 4." Declaration of Landon Newell, Exhs. A-H (Serial Register Pages); Declaration of Creed Murdock, Exh. A (map of claim locations). Two of these claims have since been closed. See Newell Decl. ¶¶ 9-10. The rest are listed as "active." *See id*. ¶¶ 3-8, 11-12. The Lucky Lady 2 and Cedar 4 claims were located by Kimmerle Mining LLC, the operator of the Easy Peasy mine discussed infra at ¶¶ 41-47. See Newell Decl. ¶¶ 11-12 and Exhs. G & H.

Response:

Federal Defendants dispute this statement. Between February 2, 2018 and November 7, 2019, ten mining claim location notices were recorded with the BLM. Decl. of Matthew Janowiak ¶ 6. Five of these claims have since been closed, and five remain "active" as of February 18, 2020. *Id.* Kimmerle Mining LLC located "Cedar 4", "Easy Peasy 1", and "Luck Lady 2". Furthermore, contrary to Plaintiffs' assertion, Kimmerle Mining LLC does not operate a "mine" at the Easy Peasy site; rather, its operations at that site are limited to exploration. *Id.* Federal Defendants further explain that the status of a mining claim as "active" indicates that a mining claim is in compliance with all recordation and maintenance fee requirements. It does not indicate claim validity (i.e., that the claim is supported by the discovery of a valuable mineral deposit), nor does it indicate that any surface disturbing operations are occurring on the claim. *Id*.

39. For example, two new mining claims near Dark Canyon—Hammond Mine A and RWH Mine B—threaten Plaintiffs' members' interests in visiting the Dark Canyon area for hiking and backpacking, solitude, nature study, and aesthetic appreciation. Declaration of Daniel Kent ¶¶ 15-16. Mr. Kent camps in the vicinity of the mine site every year. Id. at ¶ 16. He describes this as a "glorious area," with "gorgeous aspen glades and ancient scrub oak rings" with habitat for nesting great horned owls and bears. Id. at ¶ 15. He seeks out this area because of its remoteness, silence, uncrowded roads, beautiful forests, prime views, and easy camping. Id. at ¶ 16. Mining here would have leave Mr. Kent "crushed, dispirited, [and] angry" due to the inevitable scarring of the magnificent wild landscapes that he prizes here. Id. at ¶ 22. Because of these kinds of impacts, he avoids landscapes where uranium mining occurs. *Id*. Mr. Peterson has also visited the area of the Hammond mine claim, where he viewed the new uranium claims.

Peterson Decl. ¶¶ 15, 28 (describing the beauty of the lands on which the claims are staked and the harm it poses to his interests, the land, natural resources, and native plants and animals).

Response:

Federal Defendants object to the suggestion that uranium mining will necessarily occur on the Hammond Mine (A) and the RWH Mine (B) mining claims as speculative. Federal Defendants further explain that when a claimant records a notice of location with the BLM, there is no requirement to inform the BLM of the intended mineral. *See* 43 C.F.R. Part 3832. Federal Defendants also dispute that the claims located for Hammond Mine A and RWH Mine B will necessarily threaten Plaintiffs' members' interests in visiting the Dark Canyon area. The location and recordation of a mining claim does not necessarily mean it will be developed. *See* Roberson Decl. ¶ 38. Further, the conduct of all mining operations on BLM land is governed by 43 C.F.R. Part 3800, which implements FLPMA's mandate to prevent unnecessary or undue degradation of the lands (43 U.S.C. § 1732(b)). All exploration and mining operations on federal lands must be conducted in accordance with the applicable performance standards (43 C.F.R. § 3809.420; 36 C.F.R. § 228.8) and reclaimed in accordance with the standards in those sections. Roberson Decl. ¶¶ 35, 37. Moreover, operators on BLM-managed lands must provide the BLM with a financial guarantee covering the full cost of reclaiming the operation before surface disturbance may begin. *Id.*; *see also* 43 C.F.R. §§ 3809.500-599.

40. Additionally, the Lucky Lady 2 mine claim is located at the base of what Mr. Kent calls "the gorgeous, wildly articulated spires of Chimney Park and Notch Canyon, just north of Hammond Canyon." Kent. Decl. ¶ 17. The Lucky Lady 2 mine claim is visible from several "spectacular viewpoints," including East Point, which contains "isolated ponderosa giants, huge thickets of bear-friendly brush, and stunning views of these finest of canyons." Id. Although Mr. Kent enjoys the scenic, natural beauty of the area, if the mine were developed he "would probably not choose to backpack or camp here anymore." Kent Decl. ¶ 18.

Response:

Federal Defendants do not dispute this statement, but further explain that it is speculative that the Lucky Lady 2 mining claim will necessarily be developed, for the reasons discussed in response to SOF #39.

41. Mining activity has recently resumed on the so-called "Easy Peasy" uranium and vanadium mine, with BLM's approval. *See* Newell Decl. ¶ 16 & Exh. L (BLM notice to mine operator that prior order temporarily suspending mine operations was lifted after operator provided required financial assurances); Murdock Decl., Exh. A (map of mining claims); Peterson Decl. ¶ 29 (describing recent visit to Easy Peasy mine site).

Response:

Federal Defendants object to this statement in that the term "with BLM"s approval" is vague and ambiguous, and subject to different interpretations. Without waiving this objection, Federal Defendants state that under 43 C.F.R. subpart 3809, the BLM does not "approve" notices. 43 C.F.R. §§ 3809.311-12. Federal Defendants further explain that the "activity" is, by terms of the claimant's notice, limited to exploration work, not mining. Quigley Decl., Exh. A. Federal Defendants further explain that in a letter dated February 14, 2019, the BLM informed Kimmerle Mining LLC that the Immediate Temporary Suspension Order the BLM issued on December 6, 2018 for failure to provide the required financial guarantee and obtain necessary approval from the Utah Division of Oil, Gas and Mining was terminated. Newell Decl., Ex. L.

42. Easy Peasy is located on BLM-managed lands near the Cheese and Raisins Hills, on land that the Trump Proclamation excluded from the Monument. Newell Decl. ¶ 4 & Exh. B; Murdock Decl., Exh. A (map of mining claims).

Response:

Federal Defendants do not dispute this statement.

43. Easy Peasy is located on a claim called Coral #9, which was originally recorded in 2005, before Bears Ears was designated as a monument. Newell Decl. ¶ 4 & Exh. B. The claimant—Kimmerle Mining LLC—described the site as including a "pre-existing small underground mine site and access road that have been reclaimed," i.e., have returned to a natural

state. Id., ¶ 13 & Exh. I at 5. Although Kimmerle Mining located the claim in 2005, it did not develop the site or submit a notice of operations until June 2018, after the Trump Proclamation lifted the withdrawal. *Id*. ¶ 4 & Exh. B.

Response:

Federal Defendants dispute that the Easy Peasy exploration operations are situated on a mining claim called Coral #9. The operations are situated on the Easy Peasy 1 claim, located by Kyle Kimmerle, in 2018. Quigley Decl. ¶ 18.

44. Kimmerle Mining notified BLM and the Utah Division of Oil, Gas, and Mining in June 2018 of its intention to reopen the Easy Peasy mine site and access road, remove "999 tons of presumed ore," and truck the ore to White Mesa Mill. Newell Decl. ¶ 13 & Exh. I at 5; Supp. Clark Decl. ¶ 16.

Response:

Federal Defendants do not dispute this statement.

45. BLM initially found the notice incomplete and ordered Kimmerle Mining to temporarily halt operations, but after corrections to the paperwork and payment of a bond, BLM allowed operations to resume in February 2019. Newell Decl. ¶ 16 & Exh. L.

Response:

Federal Defendants object to this statement "BLM allowed operations to resume" in that it is vague and ambiguous and subject to different interpretations. Without waiving this objection, Federal Defendants explain that in a letter dated February 14, 2019, the BLM informed Kimmerle Mining LLC that the Immediate Temporary Suspension Order the BLM issued on December 6, 2018 for failure to provide the required financial guarantee and obtain necessary approval from the Utah Division of Oil, Gas and Mining was terminated. Newell Decl., Ex. L.

46. Surface-disturbing operations have now begun at Easy Peasy. They include the use of heavy equipment to excavate and remove materials, and the deposition of waste rock and tailings. Tim Peterson, who is a member of several of the Plaintiff groups, has been dismayed to see machinery, mining and ventilation equipment, fuel and water tanks, trash and discarded orange fencing, and other mining-related detritus on the site. Peterson Decl. ¶¶ 29-30 (including

photos of Easy Peasy site).

Response:

Federal Defendants object to the terms "waste rock" and "tailings" in that they are vague and ambiguous, and subject to different interpretations. Without waiving this objection, Federal Defendants do not dispute the statement.

47. Mining trucks and machinery are visible at a distance from the mine site. Supp. Mason Decl. ¶ 11 (viewshed analysis projecting that "mining activities at the Easy Peasy mine site will be visible as far as 21 miles away, . . . [including from] East Point (near Dark Canyon Wilderness), Twin Peaks (Abajo Mountains), Abajo Peak and Jackson Ridge (Abajo Mountains), South Mountain (Abajo Mountains), and Black Mesa").

Response:

Federal Defendants object to this statement as vague and ambiguous, in that it refers to "at a distance" and further that it is speculative and lacks the context necessary to form a response. Without waiving this objection, Federal Defendants do not dispute this statement, but further explain that actual visibility on the landscape is affected by distance, haziness, the size of the site, the colors of the vehicles, and other factors. Quigley Decl. ¶ 19.

48. Some of Plaintiffs' members live within a short drive of the Monument, and they return to it multiple times each year. Supp. Clark Decl. ¶¶ 7-8 ("Living in Moab, I am a short one and a half to two hour drive from many of the spectacular lands within Bears Ears National Monument. I drive there regularly to hike, camp, and photograph the area."); Walker Decl. ¶¶ 4-5 (describing past visits, and explaining "I can drive from my home to some places inside the Monument in less than two hours."); Hoskisson Decl. ¶ 2 ("I live in Moab, Utah, about 75 miles by highway from the Bears Ears National Monument, and have hiked and camped on the lands included in the Monument more than 100 times – averaging about 3 to 4 times a year since about 1985."); Declaration of Steven D. Allen ¶ 4 (the Monument is less than three hours away from Great Old Broads for Wilderness's headquarters); Supp. Bloxham Decl. ¶¶ 16-17 (describing extensive travels in Bears Ears since 1999); Kent Decl. ¶ 16 (noting that he camps on lands near the Hammond mine "at least once every year.").

Response:

Federal Defendants do not dispute this statement.

49. Plaintiffs' members visit the Monument to enjoy its beauty, remoteness, and

largely unspoiled nature, and to learn from the rock art, cliff dwellings, and other cultural sites and historic objects found throughout the excluded lands. See, e.g., Peterson Decl. ¶ 17 ("[T]he site density, the remarkable preservation of some sites, and the diversity of types, eras and styles make[] this area not just a collection of isolated cultural sites located here and there, but a complete, largely intact and integrated cultural landscape where sites are linked to each other and to the surrounding landscape."); Hoskisson Decl. ¶ 12 (describing a recent hike near Easy Peasy, during which "I found a cliff dwelling—a stacked stone structure tucked into the cliff and sheltered by an overhanging rock—above South Cottonwood Wash. As I ascended the slopes towards the sites, I found three large pot shards within inches of the edge of one of the mining routes."); Kent Decl. ¶¶ 3, 6-7, 13-14 (describing his excursions to the Monument to find remote, wild landscapes and study the widespread cultural resources).

Response:

Federal Defendants do not dispute this statement.

50. Plaintiffs' members have visited the Cheese and Raisins area, which is within view of the Easy Peasy mine, and intend to return this year to hike, explore, view its natural beauty and experience the quiet environment there. Supp. Bloxham Decl. ¶ 20 (explaining that he visits the area to explore, hike, take photographs and enjoy the scenery, and that he plans to return in 2020); Supp. Clark Decl. ¶ 16 (describing his appreciation of the natural quiet and solitude of the Cheese and Raisins area and his intent to return in 2020); Hoskisson Decl. ¶ 11 (describing his travels within a mile of the Easy Peasy site to hike in the area and enjoy the scenic drive, and his plans to return); Allen Decl. ¶¶ 14-15 (explaining that the Easy Peasy mining activities will harm his enjoyment of the hiking opportunities, natural beauty and quiet at Cheese and Raisins and Whiskers Draw, and noting his plans to return in October 2020); Peterson Decl. ¶ 29 (describing harm that ongoing mining at the Easy Peasy site causes to his spiritual and aesthetic interests); Walker Decl. ¶¶ 6-7 (describing his plans to visit the Cheese and Raisins Hills and Comb Ridge in the summer of 2020, and explaining that he drives the Cottonwood Wash Road, a "very lightly traveled" road that passes by the Easy Peasy site and is in its viewshed, to access backpacking destinations in the Cheese and Raisins Hills and beyond).

Response:

Federal Defendants dispute the indication from one of the cited declarations that the Easy Peasy site would harm hiking opportunities, natural beauty, and quiet at Whiskers Draw, because the Easy Peasy site would not be visible from Whiskers Draw or its immediate vicinity due to topographic screening. Quigley Decl. ¶ 20. Federal Defendants do not otherwise dispute the statement.

51. So long as mining activity continues, with its auditory and visual disturbance of the area's scenery and natural quiet and its impact on cultural and other resources, Plaintiffs'

members' enjoyment of the surrounding areas will be diminished, or they will be forced to curtail their use of those areas altogether. Walker Decl. ¶¶ 8, 10 (describing harm from "sight and sound of mining activity" and the additional noise and traffic of mining trucks on the sparsely traveled Cottonwood Wash Road). Mr. Clark plans to return to the Cheese and Raisins area in 2020, but may be deterred due to mining activity at Easy Peasy. Supp. Clark Decl. ¶ 16 ("I plan to return to the Cheese and Raisins area in the spring of 2020 and to continue exploring and photographing the landscape. However, I may be less likely to do so because construction, waste generation, and radioactive radon venting from uranium mining exploration has and will continue to harm my enjoyment in visiting this area."). Mr. Bloxham intends to return to Cheese and Raisins, as well as Comb Ridge, but may not because mining activity will be visible and audible from both locations. Supp. Bloxham Decl. ¶ 20 ("The mining will be visible and audible from the rims of Comb Ridge, the Cheese and Raisins area, and other nearby hiking areas I visit and will and negatively affect my use of that area, interfering with my quiet recreation, quest for solitude in wild lands as well as my aesthetic appreciation of the area."); Kent Decl. ¶¶ 22-23 (citing his desire to avoid uranium mining sites due to their impact on the environment).

Response:

Federal Defendants do not dispute this statement, but further explain that that the "mining activity" is, by terms of the claimant's notice, limited to exploration work. Quigley Decl., Exh. A.

52. Safeguarding Bears Ears from destructive activities like mining is germane to the Plaintiffs' organizational purposes of protecting public lands. See e.g., Supp. Bloxham Decl. ¶¶ 4-11 (describing organizational missions of the Southern Utah Wilderness Alliance ("SUWA"), The Wilderness Society, Natural Resources Defense Council, the Center for Biological Diversity, and National Parks Conservation Association); Supp. Clark Decl. ¶¶ 4-6 (describing organizational mission of SUWA); Allen Decl. ¶ 3, 6 (describing Great Old Broads for Wilderness's conservation mission and advocacy work in the Monument); Peterson Decl. ¶¶ 2-3 (regarding the Grand Canyon Trust's conservation mission on the Monument and surrounding Colorado Plateau); Hoskisson Decl. ¶ 4 (describing Sierra Club mission).

Response:

Federal Defendants do not dispute this statement.

FEDERAL DEFENDANTS' FURTHER STATEMENT OF FACTS IN OPPOSITION TO NRDC PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN SUPPORT OF CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

1. Proclamation 9558 caused an instant controversy—there was significant local and national opposition to the creation of the Monument. *See, e.g.*, James R. Rasband, *Stroke Of The*

Pen, Law Of The Land?, 63 Rocky Mtn. Min. L. Inst. 21, 21-2 - 21-3 (2017) (noting that "President Obama's proclamations drew strong protests from some in public land communities near the monuments and from many in the congressional delegations of the states containing the monuments"); Nora R. Pincus, *Chapter 14 Annual Mining And Public Land Law Update*, 63 63 Rocky Mtn. Min. L. Inst. 14, 14-9 (2017) (noting that "Bears Ears was one of the most controversial of President Obama's new monuments, drawing strong opposition from the State of Utah and numerous elected officials . . .").

2. Proclamation 9558 instructed the Secretaries of Agriculture and the Interior to jointly prepare a land use management plan for the monument and to "promulgate such regulations for its management as they deem appropriate." 82 Fed. Reg. at 1143-44.

3. It further instructed the Secretaries to prepare a transportation plan designating "where motorized and non-motorized, mechanized vehicle use will be allowed." *Id.* at 1145.

4. Proclamation 9558 established the "Bears Ears Commission," consisting of an elected officer from each of the five plaintiff Tribes, to "provide guidance and recommendations on the development and implementation of management plans and on management of the monument." *Id.* at 1144.

5. However, Proclamation 9558 made clear that the Commission's role was limited to providing advice and information: it instructed the Secretaries only to "carefully and fully consider integrating the traditional and historical knowledge and special expertise of the Commission," or, in its absence, some comparable entity, but also expressly authorized the Secretaries to reject any recommendation from the Commission. *Id.*

6. Proclamation 9681 reduces the number of acres that are within the Monument, but noted that those lands that have been excluded from the monument remain in federal ownership,

subject to management and protection under numerous federal statutes. *See* 82 Fed. Reg. at 58,082.

7. Approximately 367,937 acres of the lands that were formerly within the Monument continue to be managed as Wilderness Study Areas ("WSAs"), which the BLM, consistent with the requirements under FLPMA, manages "so as not to impair their suitability for future congressional designation as Wilderness." 43 U.S.C. § 1782(c); Roberson Decl. ¶¶ 6, 12.

8. Approximately 46,326 acres now excluded from the Monument are part of the congressionally designated Dark Canyon Wilderness Area, which the USFS manages to maintain or enhance its wilderness character. Rasure Decl., ¶¶ 8(a) & 10.

9. An additional 77,688 acres of the now-excluded lands are also included in seven inventoried roadless areas (or "IRAs"). *Id.* ¶ 8(b). The USFS manages these IRAs under its 2001 Roadless Rule, which, among other things, generally prevents the creation of new roads. *Id.* ¶ 8(b) & 9.

10. When Proclamation 9681 issued on December 4, 2017, no land use plan for the Monument had yet been created or approved—nor had any specific "regulations for its management" been promulgated—pursuant to the 2016 Proclamation. *See* Proc. 9558, 82 Fed. Reg. at 1144. As a result, both following the Monument's designation in 2016, and from its modification in December 2017 until Records of Decision were signed on February 6, 2020, the BLM continued to manage the monument lands pursuant to the 2008 Monticello RMP and the USFS has continued to manage monument lands pursuant to the 1986 Manti-La Sal LRMP. Roberson Decl. ¶ 8; Rasure Decl. ¶ 7; Quigley Decl. ¶ 8.

11. When the Approved Monument Management Plans issued on February 6, 2020, they did not change the management of lands excluded from the Monument. Quigley Decl. ¶ 10.

12. Proclamation 9681 maintains the Bears Ears Commission (but renames it "Shash Jáa" commission). It continues representation from the five plaintiff Tribes, and also adds a new member—a designee from the San Juan County Board of County Commissioners. 82 Fed. Reg at 58,086.

13. The BLM has attempted to convene the Shash Jáa Commission, however, the representatives declined to attend. Roberson Suppl. Decl. ¶¶ 10-15.

14. As described in the Bears Ears National Monument Management Plan Record of Decision, issued February 6, 2020, the BLM and the U.S. Forest Service prioritized engagement with the Tribes during the planning process. The BLM invited thirty tribes to be cooperating agencies in the planning process, including the five plaintiff tribes, but only the Kaibab Band of Paiute Indians and Pueblo of San Felipe accepted cooperating agency status. The BLM and the USFS also have hosted or attended meetings with the Tribes on at least sixteen occasions about the management of the relevant lands pursuant to their obligation to engage in government-to-government consultation with appropriate tribal officials under federal law and departmental policy. Quigley Decl. ¶ 11.

Respectfully submitted this 19th day of February 2020,

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