

# **EXHIBIT A**

MEMORANDUM

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

**BRIEF OF AMICUS CURIAE  
OUTDOOR ALLIANCE IN SUPPORT OF PLAINTIFFS**

Tommy P. Beaudreau (DC Bar #474313)  
LATHAM & WATKINS LLP  
555 Eleventh Street NW  
Suite 1000  
Washington, DC 20004-1304  
(202) 637-3374

Nikki Buffa (DC Bar #502362)  
LATHAM & WATKINS LLP  
650 Town Center Drive  
20th Floor  
Costa Mesa, CA 92626-1925  
(714) 755-8058

*Counsel for Outdoor Alliance*

**TABLE OF CONTENTS**

I. INTEREST OF AMICUS CURIAE .....1

II. LEGAL AND FACTUAL BACKGROUND .....2

III. ARGUMENT .....5

    A. THE TRUMP PROCLAMATION HAS CAUSED SUBSTANTIAL RISK  
    OF INJURY .....6

        1. The Trump Proclamation Subjects Land Within the Original  
        BENM Boundary to “Multiple Use” .....7

        2. ACEC Designations Do Not Properly Protect Places Such As the  
        San Juan River or Valley of the Gods .....10

            a. *Impacts to the San Juan River* .....11

            b. *Impacts to the Valley of the Gods* .....13

        3. The Trump Proclamation Leaves Many Areas of BENM Entirely  
        Unprotected .....14

    B. PLAINTIFFS’ CHALLENGE IS RIPE .....15

        1. The Trump Proclamation Fulfills the Trump Administration’s  
        Promises to Its Political Allies to Curtail Public Access to BENM .....15

        2. The Outdoor Community Values Its Stewardship Role with BENM .....16

III. CONCLUSION .....17

**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

*Attias v. Carefirst, Inc.*,  
865 F.3d 620 .....5

*Cameron v. United States*,  
252 U.S. 450 (1920).....3

*Clapper v. Amnesty International USA*,  
568 U.S. 398 (2013).....8

*California, ex rel. Lockyer v. U.S. Forest Serv.*,  
465 F. Supp. 2d 942 (N.D. Cal. 2006) .....9

*Parker v. U.S.*,  
448 F.2d 793 (10th Cir. 1971) .....8

*Sprint PCS Assets LLC v. City of Palos Verdes Estates*,  
583 F.3d 716 (9th Cir. 2009) .....13

*Susan B. Anthony list v. Dreihaus*,  
134 S. Ct. 2334 (2014).....5

*Tulare County v. Bush*,  
306 F.3d 1138 (D.C. Cir. 2002).....3, 8

*In re Zappos.com*,  
888 F.3d 1020 (9th Cir. 2018) .....7

**STATUTES**

43 U.S.C.  
§ 1701(a)(7) (2012 & Supp. 5 2017) .....7  
§ 1712(c) .....8  
§ 1714(j) (2012 & Supp. 5 2017).....10  
§ 1782(a).....8

54 U.S.C.  
§ 320301.....3, 10  
§§ 320301–320303 (2012 & Supp. 4 2016) .....2  
§ 320301(b).....17

FLPMA  
§ 103(j).....10  
§ 203.....10

**REGULATIONS**

82 Fed. Reg. 58,081 ..... *passim*  
 82 Fed. Reg. 58,082 ..... 10  
 82 Fed. Reg. 58,085 ..... 6, 7  
 82 Fed. Reg. 1139 ..... *passim*  
 82 Fed. Reg. 1141 ..... 2  
 82 Fed. Reg. 1143 ..... 2, 4  
 82 Fed. Reg. 58058 ..... 4

**OTHER AUTHORITIES**

BLM, MANUAL H-8410-1 - VISUAL RESOURCE INVENTORY(V)(B) (1986)..... 13  
 DOI, Giant Sequoia Nat’l Monument, FINAL ENVTL. IMPACT STATEMENT Vol. 1,  
 77 (Aug. 2012),  
[www.fs.usda.gov/detail/sequoia/landmanagement/planning/?cid=stelprdb5398848](http://www.fs.usda.gov/detail/sequoia/landmanagement/planning/?cid=stelprdb5398848)..... 9  
 DRAFT MONUMENT MGMT. PLANS AND ENVTL. IMPACT STATEMENT, SHASH JÁA  
 AND INDIAN CREEK UNITS (Aug. 2018), *available at:*  
<https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrPprojectSite&projectId=94460> ..... 9, 14, 17  
 EDGAR L. HEWITT, DOI, CIRCULAR RELATING TO HISTORIC AND PREHISTORIC  
 RUINS OF THE SOUTHWEST AND THEIR PRESERVATION 3 (1904) ..... 2  
 The National Resource Land Management Act of 1971, S. 2401, 92nd Cong. §9  
 (1971), *reprinted in* FLPMA LEGIS. HISTORY 1111 ..... 10  
 Patagonia, *Defined by the Line*, YOUTUBE (Apr. 27, 2015),  
[https://www.youtube.com/watch?time\\_continue=3&v=pZar1V5GnYs](https://www.youtube.com/watch?time_continue=3&v=pZar1V5GnYs) ..... 17  
 Press Release, DOI, Secretary Jewell, Under Secretary Bonnie Join Utah Local  
 Leaders at Public Meeting to Hear Community Visions for Public Lands  
 Conservation (Jul. 28, 2016), <https://www.doi.gov/pressreleases/secretary-jewell-under-secretary-bonnie-join-utah-local-leaders-public-meeting-hear> ..... 1

## GLOSSARY OF TERMS

ACEC	Areas of Critical Environmental Concern
BENM	Bears Ears National Monument
BLM	Bureau of Land Management
DOI	Department of the Interior
EIS	Environmental Impact Study
FLPMA	Federal Land Policy and Management Act
MMP	Monument Management Plan
NEPA	National Environmental Protection Act
OA	Outdoor Alliance
RMP	Resource Management Plan
SRMA	Special Recreation Management Area
USGS	United States Geological Service
WSA	Wilderness Study Areas
WA	Wilderness Areas

## I. INTEREST OF AMICUS CURIAE

*Amicus Curiae*, Outdoor Alliance, (“OA”), is a 501(c)(3) non-profit organization that represents millions of outdoor enthusiasts who experience the ecological wealth of this nation by engaging in human-powered recreational activities, such as, climbing, backcountry skiing, mountain biking, paddling, mountaineering, bouldering, hiking and surfing. The Bears Ears National Monument (BENM), as designated by President Obama in December 2016, offered OA supporters the opportunity to explore their passions, maintain physical, mental and spiritual health, practice both vocations and avocations, and forge social connections with friends, family, and the community. As Caroline Gleich, a professional outdoor athlete and OA supporter, eloquently testified during a public meeting about the BENM proposal:

Like many people here, I feel a deep emotional connection to the Bears Ears National Monument. It’s not just a place that I go to climb and camp and to hike. It’s a place that stays with me long after I go. It stays with me in my heart. There’s nowhere else like it on the whole planet. The outdoor wilderness experience is so meaningful to me.<sup>1</sup>

OA member organizations include the American Alpine Club, American Whitewater, the International Mountain Biking Association, Access Fund, American Canoe Association, The Mazamas, The Mountaineers, Colorado Mountain Club, Surfrider Foundation, and Winter Wildlands Alliance, which form a collective membership of well over 200,000 individuals and a network that represents half a million outdoor enthusiasts.

OA’s supporters regularly use public lands within the original BENM boundary to enjoy and experience outdoor recreational opportunities, and OA’s activities contribute directly to growing recreation economies associated with the monument. OA advocated in support of the

---

<sup>1</sup> Press Release, Department of the Interior, Secretary Jewell, Under Secretary Bonnie Join Utah Local Leaders at Public Meeting to Hear Community Visions for Public Lands Conservation (Jul. 28, 2016), <https://www.doi.gov/pressreleases/secretary-jewell-under-secretary-bonnie-join-utah-local-leaders-public-meeting-hear>.



original BENM designation, and the interests of outdoor recreation—including economic opportunities for the travel and tourism industries, as well as for local businesses in the region—were expressly recognized in the proclamation establishing BENM:

The area contains numerous objects of historic and of scientific interest, and it provides world class outdoor recreation opportunities, including rock climbing, hunting, hiking, backpacking, canyoneering, whitewater rafting, mountain biking, and horseback riding. Because visitors travel from near and far, these lands support a growing travel and tourism sector that is a source of economic opportunity for the region.

Proclamation No. 9558, 82 Fed. Reg. 1139, 1143 (Dec. 28, 2016) (the “Obama Proclamation”).

The issues presented in this case have far-reaching implications for the proper care and management of, as well as recreational users’ access to, the public lands within the original BENM boundary and for all National Monuments designated under the Antiquities Act. OA respectfully submits this brief to provide the Court with the outdoor recreation community’s unique perspective and interest in ensuring that objects within the original BENM designation are properly cared for and managed and remain accessible to recreational users.

## **II. LEGAL AND FACTUAL BACKGROUND**

The original BENM encompassed public lands “unsurpassed in wonders.” Obama Proclamation, 82 Fed. Reg. at 1141. BENM is renowned for its stunning geology, paleontological richness, and diverse microenvironments among its other rare and arresting qualities. BENM is at the heart of the Bluff District of southeastern Utah that archaeologists and other experts have long considered exemplary and in need of preservation. *See* EDGAR L. HEWETT, DOI, CIRCULAR RELATING TO HISTORIC AND PREHISTORIC RUINS OF THE SOUTHWEST AND THEIR PRESERVATION 3, 8 (1904) (reporting to Congress).

The American Antiquities Act of 1906, ch. 3060, 34 Stat. 225 (current version at 54 U.S.C. §§ 320301–320303 (2012 & Supp. 4 2016)) (“Antiquities 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.” 54 U.S.C. § 320301. Since its passage, federal courts have recognized that “[o]bjects of historic or scientific interest” suitable for protection under the Antiquities Act include not only isolated sites and features, but landscape-scale objects as well. *See Cameron v. United States*, 252 U.S. 450 (1920) (upholding the designation of Grand Canyon National Monument); *Tulare County v. Bush*, 306 F.3d 1138 (D.C. Cir. 2002) (affirming dismissal of challenge to designation of Giant Sequoia National Monument’s “magnificent groves of towering giant sequoias,” “bold granitic domes, spires, and plunging gorges,” “enormous number of habitats,” “limestone caverns” and “unique paleontological resources”).

The original BENM is an example of a monument designated under the Antiquities Act to preserve not only isolated sites and artifacts – which are in abundance throughout the original monument boundary – but also to protect, through clear and consistent land use management in perpetuity, the landscape scale context of this remarkable place. BENM, therefore, is akin to a public museum managed by federal agencies to allow the public to experience its unique features and objects through recreational activities such as rock climbing, hiking, canyoneering, and paddling.

Accordingly, the proclamation designating a National Monument and, in particular, the direction that the proclamation provides to – and limitations it imposes on – federal land management agencies, as to the proper care and management of the objects within the monument boundary, is crucial. Once an area becomes a National Monument, the federal agencies charged with managing the monument no longer simply apply their usual authorities applicable to a patchwork of land use designations. The entire monument must be managed as an integrated unit and in a manner consistent with the purposes of the monument as directed in the proclamation.

The direction in the Obama Proclamation is absolutely clear. The Obama Proclamation commanded that the Secretary of Agriculture and Secretary of the Interior “*shall manage* the monument . . . to implement the purposes of this proclamation” and that “the Secretaries *shall jointly* prepare a management plan for the monument.” Obama Proclamation, 82 Fed. Reg. at 1143 (emphasis added). Moreover, the Obama Proclamation declared, among other things, that “[a]ll federal lands and interests within the boundaries of the monument are hereby *appropriated and withdrawn*” from all forms of mineral and geothermal leasing “under the public land laws and laws applicable to the U.S. Forest Service.” *Id.*

On December 4, 2017, President Trump purported to substantially undo the BENM and the protections it established for public lands within the original monument boundary through Proclamation 9681, entitled “Modifying the Bears Ears National Monument.” 82 Fed. Reg. 58081 (Dec. 4, 2017) (the “Trump Proclamation”). First, and most dramatically, the Trump Proclamation purported to remove 85 percent of the public lands included within the original BENM from National Monument status. The Trump Proclamation also declared that these vast areas – approximately 1,150,860 acres – now excluded from the monument “designation and reservation” would, after 60 days, “be open to: (1) entry, location, selection, sale, or other disposition under the public land laws and laws applicable to the U.S. [F]orest Service; (2) disposition under all laws relating to mineral and geothermal leasing; and location, entry and patent under the mining laws.” *Id.* at 58058. In other words, more than a million acres that once were protected and managed as a single landscape, consistent with the purposes defined in the Obama Proclamation establishing BENM, now were open for sale, lease and use under the kaleidoscope of federal laws and ordinary multiple use mandates and land use designations governing public lands.

Despite the dramatic reversals represented by the Trump Proclamation, the Federal Defendants in their Motion to Dismiss astonishingly claim that the Plaintiffs lack standing because

“the mere issuance of the [Trump] Proclamation” did not cause “them or their members an actual or imminent, concrete and particularized injury” and that the Plaintiffs’ claims are not ripe until “actions are taken pursuant to the to the Proclamation in the future.” Memorandum in Support of Federal Defendants’ Motion to Dismiss (“Federal Defendants’ Memorandum”) at 1. OA, as *Amicus Curiae*, submits this brief in support of the Plaintiffs’ standing to challenge the Trump Proclamation because its undoing of the original BENM both poses a substantial risk of injury to the Plaintiffs, as well as to the millions of outdoor enthusiasts whose interests are represented by OA, fully redressable, and ripe for adjudication.

### III. ARGUMENT

OA joins the Plaintiffs’ arguments in opposition to the Federal Defendants’ Motion to Dismiss. To assist the Court in ruling on Federal Defendants’ Motion to Dismiss, OA offers its perspective on the substantial risk of injury caused by the Trump Declaration’s drastic modification of the boundaries and management of public lands originally included within the BENM. *See Susan B. Anthony list v. Dreihaus*, 134 S. Ct. 2334, 2341 (2014) (injury in fact exists “if the threatened injury is certainly impending[] or there is a substantial risk that the harm will occur”); *Attias v. Carefirst, Inc.*, 865 F.3d 620, 626-27 (“plaintiff can establish standing by satisfying either the ‘certainly impending’ test or the ‘substantial risk’ test”). The Federal Defendants concede that the Trump Proclamation “modifies the management overlay for lands excluded from the monument.” *See* Federal Defendants’ Memorandum at 25. Accordingly, as discussed below, the Trump Proclamation gives rise to a substantial risk of harmful activity within the original boundary of BENM. Moreover, the Plaintiffs’ claims satisfy Article III’s redressability requirement, and are ripe for adjudication, because Plaintiffs seek (1) a declaration that the Trump Proclamation is unlawful, and (2) an injunction against the relevant federal agencies from implementing it, which together would eliminate the substantial risk of harm to the Plaintiffs’

interests (as well as to those of the millions of outdoor recreationists whose interests are represented by OA).

**A. THE TRUMP PROCLAMATION HAS CAUSED SUBSTANTIAL RISK OF INJURY**

The Trump Proclamation attempts to justify the drastic modification of the original BENM boundary on the grounds that objects within the original BENM are “subject to [f]ederal protections under existing laws and agency management designations,” including Areas of Critical Environmental Concern (“ACEC”), Wilderness Study Areas (“WSA”), and Wilderness Areas (“WA”). Proclamation No. 9681, 82 Fed. Reg. 58,081, 58,085 (Dec. 8, 2017) (“Trump Proclamation”). The Federal Defendants argue that mere issuance of the Trump Proclamation, therefore, had no injurious effect and no party has standing to challenge the modification.

OA strongly disagrees. Hikers, climbers, paddlers, backcountry skiers, mountain bikers, and all other varieties of recreationists know from personal experience that the U.S. is home to a wide range of special outdoor places. Because the Trump Proclamation effectively revokes protections and proper management for a vast and unique landscape within the original BENM boundary, there are real and immediate changes to the clear directives that would govern land management decisions and activities within the BENM under the Obama Proclamation. Through the Trump Proclamation, the current administration has made clear its intent to open up mining, oil and gas drilling, and other activities within the original boundaries of BENM, activities which were largely prohibited when the monument was designated. Opening these public lands to mining and mineral development and other activities – including sale and disposal – creates a substantial risk of harm to people who enjoy public lands and to wildlife in ways that impair Plaintiffs’ (and OA supporters’) recreational, social, commercial, and aesthetic interests.

**1. The Trump Proclamation Subjects Land Within the Original BENM Boundary to “Multiple Use”**

The proper care and management of federal lands designated as National Monuments differs from federal management of other types of public lands. For example, the Federal Land Policy and Management Act of 1976 (“FLPMA”), which governs lands managed by the Bureau of Land Management (“BLM”), requires that public lands be managed for “multiple use and sustained yield unless otherwise specified by law” (the “Multiple Use Policy”). Federal Land Policy and Management Act of 1976 §102, 43 U.S.C. § 1701(a)(7) (2012 & Supp. 5 2017). Lands managed pursuant to FLPMA, therefore, must be managed to accommodate and balance a competing host of social, economic, and environmental interests and activities, including uses barred under a monument designation and incompatible with quality outdoor recreation experiences.

Each of the federal land designations cited by the Trump Proclamation arise under FLPMA and other federal land use laws that are subject to the Multiple Use Policy. *See* Defendant-Intervenors Brandon Sulser et al. Mem. of P. & A. In Supp. of Mot. to Dismiss, at 4 (expressing desire to ensure public lands at issue remain open for multiple use). Importantly, multiple use lands are more vulnerable to swings in policy and priorities for the management of public lands, as exemplified by the current administration’s aggressive push for “energy dominance” through mineral and oil and gas development on public lands.

As discussed above, the Trump Proclamation expressly rescinded the mineral withdrawals applicable to 85 percent of the public lands within the original BENM boundary, opening these lands to “entry, location, sale, or other disposition under the public land laws,” as well as “disposition under all laws relating to mineral and geothermal leasing” and “location, entry, and patent under the mining laws.” 82 Fed. Reg. at 58,085. There is no reason to believe anything other than that the Trump administration will promptly open these formerly protected public lands

to mining, oil and gas development and other activities, which both will permanently alter the landscape and deny access to these lands to recreational uses. (*In re Zappos.com*, 888 F.3d 1020, 1026-1027 (9<sup>th</sup> Cir. 2018) (*citing Clapper v. Amnesty International USA*, 568 U.S. 398, 401 (2013)) (finding standing where risk of harm is not speculative and not resting on a “multi-link chain of inferences”)).

The Federal Defendants’ claim, that some of the areas removed from the protections of BENM are within ACECs, provides an example of the harm caused by the Trump Proclamation. ACECs afford much less protections to public lands than the BENM designation because ACECs operate as just one of nine criteria that must be considered during the development and revision of federal land use plans. 43 U.S.C. §1712(c) (requiring the Interior Secretary among other factors to “observe the principles of multiple use and sustained yield” and merely to “give priority to the designation and protection of ACECs”). Similarly, before public lands may be withdrawn for a new Wilderness Area to insulate their “wilderness character,” the Secretary of the Interior must first “cause mineral surveys to be conducted by the [USGS] the U.S. Bureau of Mines to determine the mineral values, if any, that may be present in such areas.” 43 U.S.C. § 1782(a); *see also Parker v. U.S.*, 448 F.2d 793, 795 (10<sup>th</sup> Cir. 1971) (characterizing the Wilderness Act as “a ‘proceed slowly’ order until it can be determined wherein the balance between proper multiple uses of the wilderness lies”).

By contrast, the public interest in our National Monuments is generally non-consumptive and preservationist in nature. The Antiquities Act placed authority for the designation of a National Monument within the exclusive discretion of the President, subject to no precedent requirements to study mineral or other commercial values within monument boundaries or to provide for multiple uses. *Tulare County v. Bush*, 306 F.3d 1138, 1142 (D.C. Cir. 2002) (holding that “the Antiquities Act does not impose upon the President an obligation to make any particular

investigation” before designating a National Monument). Once a President exercises this authority to preserve public lands as a National Monument, the monument proclamation becomes the lodestar for development of an integrated Monument Management Plan (“MMP”). *See, e.g.,* Department of the Interior, Giant Sequoia Nat’l Monument, FINAL ENVTL. IMPACT STATEMENT Vol. 1, 77 (Aug. 2012) (“Alternative B is the proposed action, as developed to identify the changes to current management direction needed to comply with the Clinton proclamation.”)<sup>2</sup>; *California, ex rel. Lockyer v. U.S. Forest Serv.*, 465 F. Supp. 2d 942, 955 (N.D. Cal. 2006) (overturning a prior version of an EIS because “the Forest Service failed to comply with NEPA in preparing a management plan for the Giant Sequoia National Monument *as required by the Presidential Proclamation*”) (emphasis added).

The current administration’s preference to apply the Multiple Use Policy to lands originally designated as within BENM appears even in relation to the small pieces of BENM that the Administration proposed to retain. When the Department of the Interior (“DOI”) published the DRAFT MONUMENT MGMT. PLANS AND ENVTL. IMPACT STATEMENT, SHASH JÁA AND INDIAN CREEK UNITS (Aug. 2018) [hereinafter *Draft MMP/EIS*] for the Shash Jáa and Indian Creek Units in August 2018,<sup>3</sup> it selected Alternative D as the preferred alternative, which states it “would allow for the continuation of multiple uses of public lands and [would] maintain similar recreation management levels [to existing conditions] while protecting Monument objects and values.” DOI, Draft MMP/EIS at 2-1. Although another Alternative would have “prioritize[d] the protection of Monument objects and values over other resource uses” and would have required identification of

---

<sup>2</sup> Available at: <https://www.fs.usda.gov/detail/sequoia/landmanagement/planning/?cid=stelprdb5398848>.

<sup>3</sup> Available at: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=94460>.



“additional long-term protections of resource values” within the Shash Jáa and Indian Creek Units, DOI selected the alternative most aligned with the multiple use policy to provide itself the greatest “flexibility” in implementing the MMP. *Id.* The Draft MMP/EIS reinforces the substantial risk of harm created by the Trump Proclamation not only for the public lands outside of the modified boundary, but those within it.

## **2. ACEC Designations Do Not Properly Protect Places Such As the San Juan River or Valley of the Gods**

Contrary to the Trump Proclamation’s suggestion, an ACEC designation does not provide the same certainty or potency of a National Monument designation. 82 Fed. Reg. at 58,082. ACECs and National Monuments afford much different levels of protection for public lands. For example, National Monument lands cannot be sold, leased, or otherwise administratively disposed. 54 U.S.C. § 320301. Also, the Secretary of the Interior has no authority to “revoke any withdrawal creating national monuments under [the Antiquities Act].” 43 U.S.C. § 1714(j) (2012 & Supp. 5 2017).<sup>4</sup> In contrast, federal land managers can authorize multiple use activities within an ACEC, if the activated can be mitigated through the environmental review process under the National Environmental Policy Act (“NEPA”). Further, FLPMA allows for the sale of federal lands to private parties. A 1971 U.S. Senate Bill, if adopted, would have required the Secretary in a sale of land designated as ACEC to include provisions in the sale document requiring the acquiring party to continue protection of the area. *See* The National Resource Land Management Act of 1971, S. 2401, 92<sup>nd</sup> Cong. §9 (1971), *reprinted in* FLPMA LEGIS. HISTORY 1111. However, the bill was never adopted and as such, nothing in FLPMA restricts the sale of lands that have been designated as ACEC. *See e.g.* FLPMA § 203.

---

<sup>4</sup> “Withdrawal” is defined under FLPMA as “withholding an area of Federal land from settlement, sale, location, or entry . . . for the purpose of limiting activities under [public lands] laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program.” FLPMA § 103(j).

The Trump Proclamation's dramatic revocation of the National Monument protections within the original BENM boundary will lead to the depletion of natural resources within the Valley of the Gods and the San Juan River area due to mining and oil and gas extraction. Similarly, while there are not many trees within the Valley of the Gods or the San Juan River area, timber harvesting may be permitted under the Trump Proclamation. The revocation may serve as a precedential effect to enable timber harvesting in previously protected forested monuments where there is an ACEC overlap.

a. *Impacts to the San Juan River*

Under the Trump Proclamation, a segment of the San Juan River removed from the BENM boundary is covered by an existing ACEC. This ACEC was adopted under the regional Resource Management Plan in 2008, and was designated for its scenic, cultural, wildlife, and natural systems values. BLM, RECORD OF DECISION AND APPROVED RESOURCE MGMT. PLAN (2008) ("RMP"). While the San Juan River has also been designated a National Recreation Area, a Special Recreation Management Area, and a Wild and Scenic Rivers designation, the original BENM boundary included the largest segment of the San Juan River. Accordingly, the BENM MMP, consistent with implementing the Obama Proclamation, would have gone well beyond the management protections under the Resource Management Plan for the ACEC designation. The ACEC RMP indicates that "cultural resources will continue to be protected by existing laws, rules, regulations, and policies," (RMP at p. 31), meaning that the RMP adds no additional or special cultural resource protections for the San Juan River ACEC. Additionally, while the RMP indicates the river segment is "closed to oil and gas leasing," it only "recommends" withdrawal and removal from right-of-ways, whereas the Obama Proclamation imposed a complete mineral withdrawal and protected the San Juan River from oil and gas leasing. *Id.* Under the Trump Proclamation, BLM

retains the discretion to remove this ACEC designation, and given the Trump Administration's policy of "energy dominance" over resource protection, there is substantial risk this may occur.

An OA recreational user relies on the permanence of National Monument designations to plan trips and to share outdoor experiences with future generations, and whitewater rafters, backpackers, and hikers would be substantially harmed if BLM exercised its discretion to rescind the ACEC. An OA supporter planning a river rafting or kayaking trip cannot do so without the confidence that the objects motivating the route choice will not be destroyed or removed. The value of a permanent designation, and subsequent immediate harm from removing the permanent designation cannot be overstated. No member of the outdoor recreation community can plan with adequate peace of mind that their favored locations will not be stripped bare through mineral leasing. Moreover, a unified National Monument designation preserves the resource value enjoyed by the individuals represented by OA member organizations. OA supporters do not experience the San Juan River in piecemeal fashion. For instance, members of the OA community paddle for many miles down the picturesque river, in canyons and valleys, viewing both objects and cultural resources for extended periods of time. The San Juan River paddling experience is fundamentally affected by the monument reduction. Revocation of a permanent designation leaves recreationalists uncertain whether their favorite areas may be available for use, and may impact local businesses relying on visitors and tourists, who may avoid the area due to such uncertainty.

OA supporters hike along the unobstructed San Juan River riverbank, backpack and camp under the stars with no visual blight of manmade structures or oil rigs. Mining, oil and gas leasing, and other activities that were prohibited under the Obama Proclamation now may be authorized in the area, and such an experience would no longer exist as there would no longer be view continuity along the San Juan River. Preservation of the entire fabric of the region is vital for OA member organizations and other outdoor enthusiasts. As federal courts have recognized, it is uncomfortable

and stressful for scenic views to be destroyed. *See e.g. Sprint PCS Assets LLC v. City of Palos Verdes Estates*, 583 F.3d 716, 723 (9th Cir. 2009) (experience of traveling and experiencing a picturesque street is a value that may be protected given the discomfort of traveling on streets blighted by interference from telecommunications company equipment). Moreover, there is a likelihood that cultural resources in the area that OA supporters frequently visit and enjoy will be destroyed.

b. *Impacts to the Valley of the Gods*

Like the San Juan River, the Trump Proclamation correctly notes that the Valley of the Gods is subject to an existing ACEC designation as part of the 2008 Cedar Mesa ACEC. Trump Proclamation at 58,084. However, this ACEC was designated only for its scenic resource value. Moreover, because the Valley of the Gods was already included in the Road Canyon WSA, the ACEC added no additional mitigation beyond the “Visual Resource Class I”<sup>5</sup> protection already in place. The ACEC designation, without the protections that existed under the Obama Proclamation, does not adequately preserve the cultural resources located in the area, or ensure that recreationalists, including individuals involved in OA’s member organizations, are able to continue to enjoy the public land for years to come.

As the draft MMP for the Indian Creek and Shash Jáa Units of BENM notes, the Valley of the Gods is a “high visitation area,” enjoyed by many, including OA supporters who hike, backpack, and camp in the area. *See* Draft MMP/EIS, at ES-1. However, the RMP does not contain requirements regarding signage protection from off-road vehicles. A MMP would provide greater protection and include additional preservation principles, including provisions for

---

<sup>5</sup> The objective for a Class I designation is to “preserve the character of the landscape,” but does not preclude management activity. *See* BLM, MANUAL H-8410-1 - VISUAL RESOURCE INVENTORY(V)(B) (1986).

educational programs or outings to ensure that the area is enjoyed in the most environmentally friendly manner to protect it for generations to come. As the Draft MMP/EIS recognizes, MMPs provide protection and the proper care and management of objects of historic significance. *See* Draft MMP/EIS, at ES-1. The Draft MMP/EIS recognizes that the Obama Proclamation completely “withdrew all Federal lands within the BENM from location and entry under the Mining Law of 1872 and from the disposition of leasable or salable minerals . . . . Therefore, no mineral or development would occur except on valid existing mining claims.” *Id.* at ES-3. By removing the National Monument designation from certain areas, the Trump Proclamation is in effect removing this prohibition and opening up areas for mining activities. The Obama Proclamation provided the necessary protections for Valley of the Gods that the remaining ACEC designation does not and cannot.

### 3. The Trump Proclamation Leaves Many Areas of BENM Entirely Unprotected

Most importantly, many areas of BENM would be left entirely unprotected by any federal land designation if the Trump Proclamation is allowed to stand. Many of these lands may be opened up for oil, gas, and mineral extraction, which may exclude public access to the lands. OA supporters and other recreationists would lose access to special places they have hiked, backpacked, kayaked, or biked to as a result of private leases for oil, gas, and mineral extraction or other industrial or commercial activity. The withdrawal of National Monument designation for BENM by the Trump Administration is contrary to the purpose of the Antiquities Act; to preserve monuments and antiquities for future human experience and study of such natural wonders. Moreover, the contemplated commercial and industrial uses may be environmentally destructive beyond the boundaries of new leaseholds, potentially contaminating the air and water surrounding the leasehold site through emissions resulting from the industrial and commercial activity. Such pollution may irrevocably alter the ability of recreationalists to experience the area in a healthy

manner. For instance, hikers and campers may be exposed to air pollution or poor water quality resulting from industrial uses. Further, landscapes are inevitably impacted through development – trails are widened into roads, dust and particulate matter are released into the air, and noise from construction and operational uses permanently impact the quiet natural environment.

## **B. PLAINTIFFS' CHALLENGE IS RIPE**

For decades, OA's supporters have backpacked through BENM's landscapes, paddled past its petroglyphs, climbed its world-class rock faces, slept under the brilliance of its skies to the sounds of its wildlife, and awoken to rediscover its many wonders. The outdoor community, including OA, spent years campaigning for BENM to be preserved as a National Monument because the users our member organizations represent know personally the breadth of human-powered outdoor experiences it will provide to the public. Unlike the Obama Proclamation, the Trump Proclamation makes no reference to the interest of outdoor recreation or the recreation economy – as with monument protections for more than a million acres of public lands, the Trump Proclamation removes the values of outdoor recreation from the monument. It is clear the Trump Administration has different designs for these areas. Because the threat to these formerly protected public lands are clear, based on the Trump Proclamation, the action to drastically modify BENM is ripe for adjudication.

### **1. The Trump Proclamation Fulfills the Trump Administration's Promises to Its Political Allies to Curtail Public Access to BENM**

The Trump Proclamation removes National Monument status from 85 percent of the previously designated boundary and makes scores of objects, which the Administration acknowledges hold historic and scientific value, open for "sale" and exploitation. Trump Proclamation, 82 Fed. Reg. 58,081. The Trump Proclamation emphasizes that formerly protected lands would become subject to "disposition under all laws relating to mineral and geothermal leasing" and to "patent under the mining laws." *Id.* Trump Administration officials have spoken

plainly about mineral development as a reason for the boundary modification. Within the first few weeks of the Trump presidency, DOI officials produced an internal memorandum discussing “mineral potential and occurrence within the newly designated Bears Ears National Monument.” BLM Information Memo from Larry Garahana, Cursory Review of the Mineral Potential/Occurrence within the Bears Ears NM (Jan. 31, 2017).

OA supporters know the places protected by the BENM intimately. OA supporters have paddled both the San Juan and Upper Missouri Rivers, and find the San Juan equally if not more engaging. They have hiked the rocky peaks of Montana’s Badger-Two Medicine area, and they find hiking the Abajo Mountains no less spectacular. Many climbers have scaled the Valley of the Gods, and Access Fund member Trevor Bowman was the first climber to summit all 30 of the summits within BENM.

A political clique should not determine the fate of BENM. For this reason, Congress delegated to the President the authority under the Antiquities Act only to preserve resources, not to strip protections from public lands. We know from experience that BENM holds much to impart upon the inquisitive public.

## **2. The Outdoor Community Values Its Stewardship Role with BENM**

Responsible visitation is essential to ensure the “proper care and management” of National Monuments. *See* 54 U.S.C. § 320301(b). The outdoor community, including OA, embraces its stewardship roles in information gathering, monument management planning, and public education that help steward the places we hold dear.

Monument status brought greater numbers of Americans to experience BENM for the first time. In the year following designation of BENM, the number of recorded visitor days to BENM rose by 27 percent, and the number of recorded visits rose by 72 percent. *See* Draft MMP/EIS, at Table 2-39. For some outdoor recreationists, access to the Bears Ears area has been life-changing.

*See, e.g., Patagonia, Defined by the Line, YOUTUBE* (Apr. 27, 2015), [https://www.youtube.com/watch?time\\_continue=3&v=pZar1V5GnYs](https://www.youtube.com/watch?time_continue=3&v=pZar1V5GnYs) (describing one climber's story of transformation from a sport climber to a conservationist).

OA knows firsthand that when the public hikes, climbs, paddles, and bikes, it becomes more connected to the outdoors and more committed to its preservation. When our supporters explore places like Cedar Mesa or White Canyon, they are often the first people to identify vandalism to rock art. When they trek through landscapes like the Valley of the Gods, they spot areas that could benefit from improved signage. Like when DOI commissioned surveyors at the USGS in the 1900s to make field expeditions to photograph the southwest, now our supporters carry high-tech cameras and video cameras into places that may never have been documented.

When OA supporters return from the wilderness, the stories they bring home with them help OA promote responsible outdoor recreation and conservation values through outdoor education programs, youth outreach, and public advocacy. Where deterioration has been observed, OA member organizations raise money from the outdoor community to support site restoration projects. At other National Monuments, OA has assisted DOI staff in developing monument management plans that account for recreation uses. The outdoor community has an overwhelming interest in continuing to serve as a steward for BENM.

### **III. CONCLUSION**

For the foregoing reasons, OA respectfully urges the court to deny the Federal Defendants' Motion to Dismiss.

Respectfully submitted this 19 day of November, 2018.

/s/ Tommy P. Beaudreau



Tommy P Beaudreau (DC Bar #474313)  
LATHAM & WATKINS LLP  
555 Eleventh Street NW  
Suite 1000  
Washington, DC 20004-1304  
(202) 637-3374  
tommy.beaudreau@lw.com

Nikki Buffa (DC Bar #502362)  
LATHAM & WATKINS LLP  
650 Town Center Drive  
20th Floor  
Costa Mesa, CA 92626-1925  
(714) 755-8058  
nikki.buffa@lw.com

*Counsel for Amicus Curiae Outdoor Alliance*