



**BEARS EARS NATIONAL MONUMENT: A CASE STUDY ON THE TRUMP  
ADMINISTRATION'S WRONGFUL ABOLISHMENT OF FEDERAL LAND  
PROTECTIONS**

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**Abstract:**

In 2016, President Barack Obama designated Bears Ears as a 1.35 million acre national monument. In 2017, the Trump administration reduced the monument by 85% into two smaller and non-contiguous tracts of land (*NRDC et al. v. Trump*, 2017). The controversial reduction of Bears Ears has led to three lawsuits against the federal government in violation of the Antiquities Act of 1906, arguing the act does not grant power to the executive branch to revoke national monument designations and is, thereby, an abuse of authority (Blumm, 2017). The repeal of Bears Ears is deemed unconstitutional by the prosecutors because the Trump administration violated the separation of powers as only Congress has the authority to modify a national monument ("American Antiquities Act," n.d.). In February 2020, the Bureau of Land Management finalized management plans, permitting leases for oil, gas, and mineral development, grazing, off-road route construction, and vegetation chaining on the formerly federally protected southern Utah lands (*NRDC et al. v. Trump*, 2017). Regardless of the ongoing cases in court, the federal government is proceeding with development leases including at least twelve permits for drilling submitted by interest groups following the resizing (*NRDC et al. v. Trump*, 2017). However, the Bears Ears reduction and the BLM's finalized management plans are seen as illegal and unconstitutional by the prosecution and any premature action in the Bears Ears area will lead to irreparable damage to significant cultural, environmental, archeological, and recreational public and tribal lands (*NRDC et al. v. Trump*, 2017). For this paper, I will argue that the Bears Ears reduction by the Trump administration is illegal according to the Antiquities Act of 1906 and the U.S. Constitution. Based on this policy analysis, I conclude that the BLM should prohibit the implementation of management plans on U.S. public lands undergoing a change in federal designation until the legality of the act is determined in a court of law.

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### **The Background of Bears Ears National Monument:**

In 2015, the Inter-Tribal Coalition, composed of the Navajo Nation, Hopi Tribe, Ute Indian Tribe, Ute Mountain Ute Tribe, Pueblo of Zuni, proposed the creation of a Bears Ears National Monument to the Obama administration. The policy appeal documented notable historical and scientific sites and objects, justifying protection under the Antiquities Act of 1906, and called for a cooperative tribal and federal management plan (*NRDC et al. v. Trump*, 2017).

President Barack Obama approved the designation in 2016 in the name of geological, paleontological, archaeological, historic, cultural, and ecological significance. The administration set aside 1.35 million acres in accordance with the Antiquities Act of 1906. The President Proclamation prohibited new mining claims and leases for oil and gas development or road construction, explicitly ordering that the monument cannot be settled, appropriated, injured, or destroyed. The Bureau of Land Management (BLM) was called into a management plan, instructing the agency to adhere to “the purposes of this proclamation” and the Inter-Tribal Coalition’s petition for collaboration was fulfilled with the enactment of The Bears Ears Commission, an advisory council of an elected representative of each tribe, to lend guidance and recommendations on management practices (*NRDC et al. v. Trump*, 2017).

The Antiquities Act, the grounds of the 2016 Presidential Proclamation, grants the president the power “to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest” on federal parcels of land to be designated national monuments comprised by the “smallest area compatible with the proper care and management of the objects to be protected” (“American Antiquities Act,” n.d., n.p.).

“Concise in its charge but broad in effect,” Presidents, per the Antiquities Act, have declared by proclamation 157 national monuments in thirty-two states, four territories, two oceans, and the District of Columbia (Ruple, 2020, p. 1). The United States’ most esteemed national parks, including, but not limited to, the Grand Canyon, Olympic, Zion, Bryce Canyon, Capitol Reef, Canyonlands, and Glacier Bay, were appropriated as national monuments and eventually expanded under the Antiquities Act’s lasting and commemorated legacy (Squillace, 2003).

Bears Ears National Monument, proclaimed under the Antiquities Act, encapsulates the significance of scientific and historic sites and objects of interest, legitimizing the importance and necessity of its designation. As former President Obama stressed, Bears Ears holds an “[abundance] of rock art, ancient cliff dwellings, ceremonial sites, and countless other artifacts [that] provide an extraordinary archeological and cultural record that is important to us all.” Most notably, “the land is profoundly sacred to many Native American tribes, including the Ute Mountain Ute Tribe, Navajo Nation, Ute Indian Tribe of the Uintah Ouray, Hope Nation, and Zuni Tribe” (The White House, Office of the Press Secretary, 2016, n.p.). The ancestral homelands of Native American tribes reside within the boundaries of Bears Ears, amounting to thousands of years of spiritual, historic, and cultural significance. Traditional expertise, sacred grounds and relics, and archeological histories endure through “petroglyphs, rock paintings, ancient cliff dwellings, granaries, graves, ceremonial sites, and the remnants of villages” dispersed across millions of acres (*NRDC et al. v. Trump*, 2017, p. 25). Bears Ears National Monument is the paradigm for public lands deserving of national monument designation under the Antiquities Act for the sake of protecting and respecting ancient and modern tribal culture.

With regard to the Antiquities Act’s scientific interests, the Bears Ears region holds many of the United States’ most unique and important environmental, geological, paleontological, and

biological entities. With an unparalleled fossil record in exposed rock dating back to the Ice Age, providing insight into ancient seas and dinosaurs, extraordinary biological diversity and rarity, and critical habitat for over 77 species, Bears Ears has meaningful grounds for scientific-based conservancy (Miller, 2018). For example, the canyons of Grand Gulch, in the western region of Bears Ears, serve as crucial terrain ranges for endangered mammals including the adaptive and characteristic desert bighorn sheep and threatened and sensitive native and local plant species (“Trump's Repeal of Utah Monuments Leaves Millions of Acres in Limbo,” n.d.). Plus, the boundaries of the national monument encompass some of the United States’ most scenic and remote locations, presenting the ideal aesthetic for outdoor recreational activity (*NRDC et al. v. Trump*, 2017). Bordering the Natural Bridges National Monument in the western Bears Ears, the White Canyon complex is notable for backcountry canyoneering with walled stretches of “alcoves, arches, windows, hanging gardens, and grottoes” and over a hundred miles of narrow, serpentine slickrock canyons (“Trump's Repeal of Utah Monuments Leaves Millions of Acres in Limbo,” n.d.).



Fig. 1: Lower Grand Gulch, Bears Ears National Monument. By Robert Fillmore. (“Trump's Repeal of Utah Monuments Leaves Millions of Acres in Limbo,” n.d.).



Fig. 2: White Canyon, Bears Ears National Monument. By Jeff Clay. (“Trump's Repeal of Utah Monuments Leaves Millions of Acres in Limbo,” n.d.).

The Utah delegation, unsupportive of the 2016 designation, lobbied the Trump administration to reduce the monument. In response, President Donald Trump issued Executive Order 13972 82 Fed. Reg. 20429 in April of 2017. This instructed the Secretary of Interior, Ryan Zinke, to “review all monuments designated or expanded since 1996” that became larger than 100,000 acres or believed to have been created or extended without “adequate public outreach.” Secretary Zinke voiced his commitment to “responsible development of coal, oil, gas, and renewable energy on federal and tribal lands,” classifying development on public lands as “missed opportunity” (Miller, 2018, 238). Consequently, Secretary Zinke recommended the monument should be revised using the so-called lawful authority of the president per the Antiquities Act, clearly targeting the natural resources within or around the boundaries (Miller, 2018).

Because of Secretary Zinke’s report, President Trump reduced the Bears Ears National Monument into two smaller and non-contiguous tracts of land renamed “the Indian Creek Unit” and “the Shash Jáa Unit” by means of a Presidential Proclamation in December 2017. President Trump, when issuing his Proclamation, stated “I’m signing a new executive order to end another egregious abuse of federal power,” in reference to previous presidents’ use of the Antiquities Act, “Today we are putting the states back in charge,” hinting at his appeasement of the Utah delegation (*NRDC et al. v. Trump, 2017*).

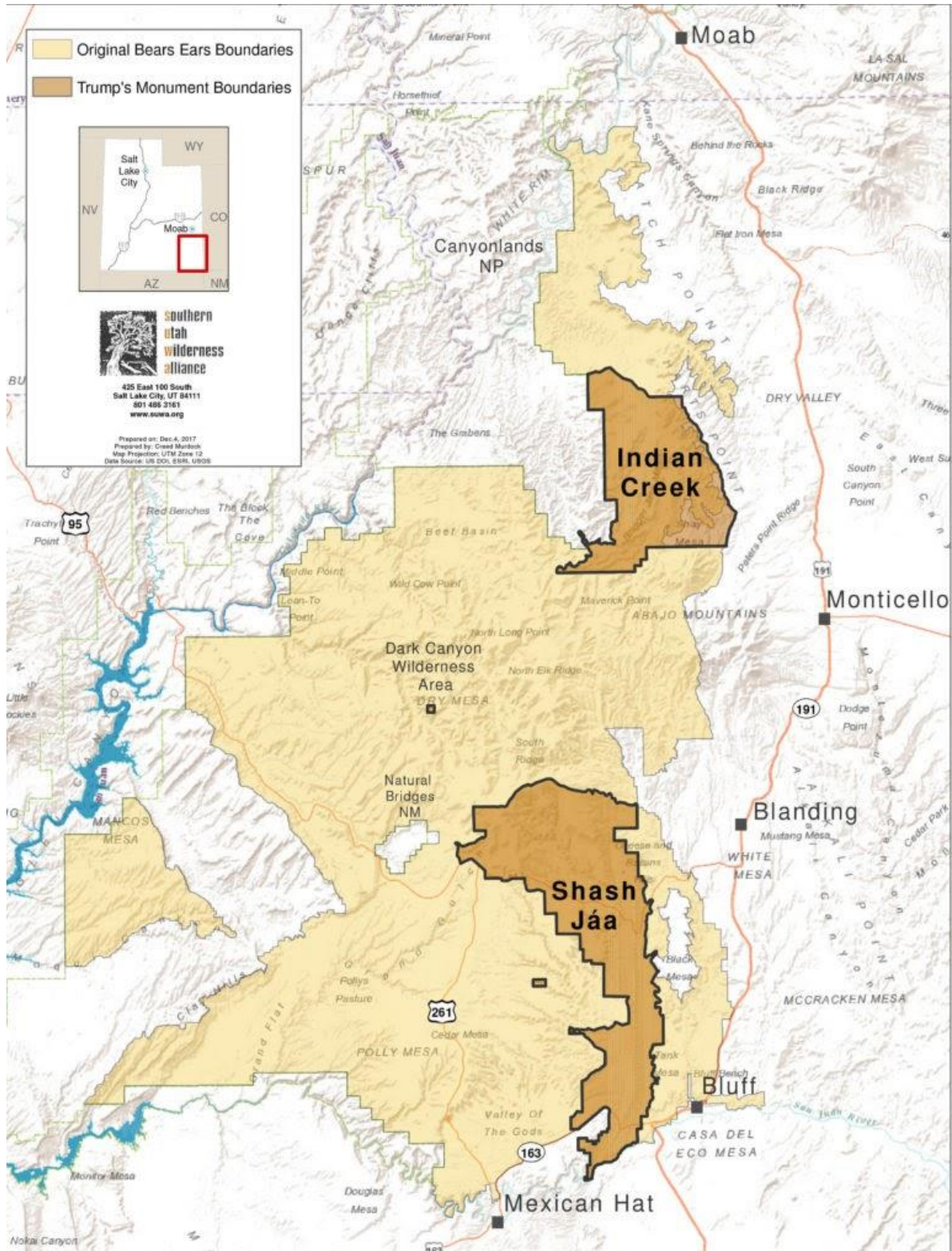


Fig. 3: A map of southeastern Utah marking the former boundaries of Bears Ears National Monument and the newly designated monuments by President Trump, showing the 85% reduction into two non-contiguous units (“Trump’s Repeal of Utah Monuments Leaves Millions of Acres in Limbo,” n.d.).

The Trump administration's alleged modification is, in reality, an abolishment. President Trump's two new units, separated by 20 miles, have significantly decreased status and protections. Combined, these monuments account for only 15% of the original Bears Ears National Monument area. In consequence, the 1,150,860 acres of formerly protected lands in southeastern Utah are now vulnerable to various threats backed by the BLM's management plans. Numerous justified lawsuits have been filed by five Native American tribes, a coalition of environmental groups (the Natural Resources Defense Council, the Southern Utah Wilderness Alliance, the Sierra Club, and Earthjustice), and outdoor retailer Patagonia since the 2017 reduction against the federal government (*NRDC et al. v. Trump*, 2017).

These acts by the Trump administration, I contend, are unconstitutional and illegal pursuant to the U.S. Constitution and the Antiquities Act of 1906 and the BLM's counterpart management plans endanger significant aesthetic, cultural, spiritual, recreational, scientific, and educational sites and objects, as this proposal will argue.

It is important to note that the Trump administration's reduction of Bears Ears National Monument is in violation of numerous environmental laws, internationally-recognized indigenous declarations, public land law, and bureau legislation in addition to the Antiquities Act of 1906 and the U.S. Constitution. However, in order to remain within the parameters and context of this proposal, these breaches of law will not be addressed further (Blumm, 2017).

### **The Illegality and Unconstitutionality of the Bears Ears National Monument Reduction:**

President Trump and his administration have no constitutional authority to shrink Bears Ears National Monument per the Property Clause of the U.S. Constitution. The provision grants Congress exclusive "power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" ("Article IV," n.d.). The Property Clause specifically allows Congress to modify or abolish public lands without any mention of the executive branch. Thus, the president holds no power over public lands as determined by the U.S. Constitution and upheld by the Supreme Court. The president must be delegated authority by an act of Congress. (*NRDC et al. v. Trump*, 2017).

The Antiquities Act of 1906 represents a partial Congressional delegation of the Property Clause. The act granted limited power to the executive over public lands, empowering the president to establish national monuments in the name of scientific and historical significance. However, Congress, under the Antiquities Act, did not explicitly permit a Presidential Proclamation of revocation or reduction of a national monument, upholding President Trump's executive overreach and violation of the U.S. Constitution (Blumm, 2017).

Congress did not sanction the partial or whole abolishment of established national monuments by the president, as indicated by the use of "declare" and the purposeful omission of rhetoric that would indicate that the president is delegated two-way authority ("American Antiquities Act," n.d.). The language justifies that Congress alone holds the power to repeal. President Trump's modification of Bears Ears National Monument is not limited to a declaration, exceeding his granted authority and disregarding the separation of powers and checks provided by the Property Clause.

The intent of the Antiquities Act and Congressional delegation of power is to increase the status and level of protection for sites and objects of significant scientific and historical interest, specifying that the president has an inherent responsibility to preserve and protect national monuments designated by predecessors ("American Antiquities Act," n.d.). Therefore, the withdrawal of lands from Bears Ears National Monument by the Trump administration is constitutionally in violation of the design of the Antiquities Act and the duty and authority associated with it.

Moreover, the justification of President Trump's reduction, regardless of its legality, is entirely unsubstantiated and misrepresents the interests and sentiments of the public. The report produced by BLM Secretary Zinke called for the shrinkage because of the inadequate "public involvement" and "curtail[ed]..economic growth" (Department of the Interior, Press Releases, 2017). Firstly, both arguments are not criteria found in the Antiquities Act regarding national monument designations and, therefore, are irrelevant to the issue at hand. Secondly, these allegations are inconsistent with existing evidence. The public was heavily involved with the creation of Bears Ears National Monument and, most importantly, the tribes not only participated in the designation and management, but were solely responsible for the proposal of a monument in the first place. Also, southeastern Utah's economy experienced a significant boom because of tourism and recreation, negating the assertion that the monument decreased profits (Blumm, 2017).

No court has ruled on a president's authority to modify or abolish a proclaimed and designated national monument. Minor boundary adjustments have occurred on approximately eighteen occasions, but none have been questioned in a court of law until President Trump's reduction of Bears Ears. The case is ongoing and there is no precedent, meaning the issue remains unsolved without a judicial basis and until a court reaches a decision (T. Martin, personal interview, April 27, 2020). However, the legal opinion of former Attorney General Homer Cummins, regarding a proposed 1938 national monument alteration, reinforces that the Antiquities Act does not authorize the president to repeal or modify a national monument, but only, in limited power, declare and designate (Squillace, 2003). Cummins' interpretation will likely be reflected in the courts' decision resolving the cases against President Trump and his administration as the 1938 conclusion aligns with constitutional law. Be that as it may, the courts have not yet reached a decision as of June 2020.

### **The Adverse Consequences of the BLM's Finalized Management Plans:**

Regardless of the ongoing cases in court, the federal government is moving forward in Bears Ears or, as the newly formed national monuments are termed, "the Indian Creek Unit" and "the Shash Jáa Unit." In February 2020, the BLM finalized management plans, permitting leases for oil, gas, and mineral exploration and development, grazing, off-road route construction, and vegetation chaining on the formerly federally protected southern Utah lands. Considering the Bears Ears reduction is illegal and will more than likely be seen in the eyes of the courts as unconstitutional, any premature action in the Bears Ears area will lead to irreparable damage to significant public and tribal lands.

The BLM's management plans, a follow-up to the Trump administration's reduction of Bears Ears and subsequent series of executive orders in favor of indiscriminate energy on public lands, are equally as illegal as President Trump's violations. Any BLM action done on the former Bears Ears land that was previously prohibited under the U.S. Constitution, Antiquities Act, and former President Obama's Presidential Proclamation will be considered illegal when the shrinkage of the national monument is declared unconstitutional.

The consequences of hasty BLM actions on the grounds of President Trump's energy agenda, consenting on invasive infrastructure development, destructive oil, gas, and mineral dominance on public lands, and lesser federal protections, among other degradations, are irrevocable. Valued aesthetic, cultural, spiritual, recreational, scientific, and educational objects and sites on lands excluded from monument status will be subject to deregulated devastation, essentially signing their death warrants.

Only three harmful practices of the BLM will be addressed in the interest of the parameters of this proposal: trail and road construction, oil and gas leasing, and vandalism.

Nevertheless, it is important to note that numerous other threats endanger the former Bears Ears lands under the influence of President Trump and current BLM leadership without the protection of monument status.

The Trump administration's Presidential Proclamation effectively abolishing Bears Ears also promoted the construction of off-road vehicle (ORV) trails and roads in the excluded lands. The increased traffic generates noise and air pollution in the previously untouched, wilderness-quality monument and surrounding area. Uncontrolled ORV's have been proven to devastate cryptobiotic soil leading to ecological instability and soil infertility that take hundreds of years to recover, if at all. The designation of Bears Ears by former President Obama forbade any new construction with the expectation of trails and roads essential "for the purposes of public safety or protection of [the Monument's] objects" (The White House, Office of the Press Secretary, 2016). The proclamation accommodated by permitting the continued use of established trails and roads as long as it was "consistent with the care and management of [the protected] objects" (The White House, Office of the Press Secretary, 2016). The trails and roads to be constructed under the orders of President Trump would not have been legal if the area was still included in the original 2016 designation (*NRDC et al. v. Trump*, 2017).

President Trump's executive order included a specification that the 1.15 million acres excluded from monument status will be subject to the Mineral Leasing Act of 1920 with minimal restrictions. Unchecked oil and gas exploration and development has permanent repercussions, including the eradication of surface vegetation caused by drilling equipment and facilities and pipeline and road construction causing traffic, emissions, and debris. Prior to President Obama's declaration, leases and permits in the boundaries of the monument were highly and frequently sought after and unfortunately approved by the BLM, proving the agency's disregard for public lands and complicity in destroying the United States' natural places lastingly (*NRDC et al. v. Trump*, 2017).

Looting is prohibited and punishable on public lands designated as national monuments and the original proclamation banned such actions by warning "all unauthorized persons not...remove any feature of the monument" (The White House, Office of the Press Secretary, 2016). The former lands included in Bears Ears will be threatened by rampant looting and vandalism because of their lack of monument status. The BLM consents to collecting common rocks, minerals, gemstones, fossils, and organisms - a blatant negligence of significant historical and scientific objects and sites (*NRDC et al. v. Trump*, 2017).

The BLM's management plans, challenging the 2016 Presidential Proclamation and accommodating the Trump administration's energy agenda, will be proved illegal, traceable to and in connection with a series of unconstitutional acts enforced and executed by President Trump. BLM leadership will be implicated. But, more importantly, the BLM will be recognized as the predominant source of irreversible damage to the lands excluded from the abolished Bears Ears National Monument and the significant scientific and historical objects and sites housed within the former boundaries.

### **Proposed Solution:**

I hereby appeal to the BLM to prohibit the implementation of management plans on U.S. public lands undergoing a change in federal designation until its legality is determined in a court of law.

Regarding the particular case of the repealed Bears Ears National Monument, I call on the BLM to not proceed in implementing the management plans finalized in February of 2020. The litigation is ongoing and will continue to be into the foreseeable future. However, action must happen now, erring on the side of caution. To prevent disruption and destruction to



aesthetic, cultural, spiritual, recreational, scientific, and educational sites, undisputed in their significance, the BLM must suspend all permit leasing in mineral, oil, and gas exploration and development, the construction of roads, hiking and off-road vehicles trails, vegetative treatments, livestock grazing, and any other damaging practices on federal public and tribal lands pending the decision of the courts. The BLM, as a precautionary measure, must adhere to the protective regulations ratified by former President Obama for Bears Ears in preparation of its reinstatement as a national monument and prohibit any degrading and extractive industries and activities.

Despite the fact that the Bears Ears management plans have been developed and released while the monument boundaries remain disputed in the courts, the BLM should not implement said plans. Forging ahead and executing the plans for 201,876 acres of monument lands, rather than the original 1.35 million acres that will likely be restored, will simply be a misuse and waste of taxpayer dollars and agency resources towards BLM managerial costs. Moreover, the \$2.3 billion plans will have to be abandoned and rewritten to accommodate for the significant increase in acreage and entities to protect and the complete lack of inclusion of indigenous representation (Podmore, 2019).

Therefore, the BLM should postpone the enactment and enforcement of the management plans, observing the 2016 Presidential Proclamation and halting all formerly banned and restricted practices within the original boundaries of Bears Ears, until the judge presiding over the lawsuits has reached a decision. The BLM must continue to properly manage federal lands caught up in a legal and policy state of uncertainty.

#### **Major Obstacles and Implementation Challenges:**

The leadership staff of the agency has failed to challenge President Trump's policy on public lands and economic development regardless of their responsibilities as the steward for the United States' public lands. Considering current Secretary of Interior David Bernhardt was nominated by President Trump, along with numerous other officials within the DOI and BLM including Deputy Director William Perry Pendley, political positioning, loyalty, and backing becomes clear.

The BLM's practices and ideologies are known to align with the current administration's politics, openly prioritizing the development of energy and natural resources, multi-use, maximizing commercial opportunities, and sustaining the productivity of public lands - all included on President Trump's energy dominance agenda ("About: Our Mission," 2020). The BLM, and more broadly the DOI, has served the Trump administration, furthering his political platform by rolling back environmental protections, including the Endangered Species Act, and opening up other monuments to degrading practices, such as building the U.S. - Mexico border wall directly through the Organ Pipe Cactus National Monument. The partisanship and political allegiance at play within the BLM will present a monumental obstacle for the suspension of the finalized management plans (Robbins, 2019).



Fig. 4: The U.S. border wall construction in Organ Pipe Cactus National Monument as authorized by President Trump and the Department of Interior (Hatcher, 2019).

This politicization similarly applies to the Congressional representatives, Senators, and the state government of Utah considering it is well-known that the delegation specifically requested the reduction from the Trump administration. Back in 2017, Representative Rob Bishop (R-UT), chairing the House Natural Resources Committee, among the other three Congressmen and two Senators, admitted that the delegation sought for President Trump to overturn the former Obama administration's designation, criticizing the Antiquities Act (Siegler, 2017). It is evident that the Utah politicians, predominantly sympathetic to the energy and multiple-use platform of President Trump, are adamantly opposed to Bears Ears as a national monument. The BLM may have difficulties continuing to manage Bears Ears based on President Obama's Proclamation because of the opposition from the officeholders in the very state that the old national monument resides in.

There is little to no support in the state government towards upholding the Antiquities Act and U.S. Constitution, reinstating Bears Ears National Monument, and deferring the implementation of the BLM's management plans regardless of the overwhelming public consensus in support. Despite the short 15-day window for public commentary on the Bears Ears National Monument reduction, Utah residents and citizens voted at a nine to one margin favoring the original designation (Miller). The considerable preference in support of Bears Ears was even acknowledged by former Secretary Zinke in his report to President Trump ("Department of the Interior, Press Releases," 2017).

The capacity to postpone the finalized management plans in place may prove difficult considering the hundreds of thousands of acres already available for and pending leasing. The influence of corporate stakeholders in the interest of minerals, gases, and oils dominates and determines the actions of the Trump administration and DIO and BLM agencies.

For example, major hardrock mining enterprises lobbied for the reduction in the interest of removing restrictions and inaccessibility to uranium, among other minerals, deposits within the boundaries of the original Bears Ears. Former Secretary Zinke appeased corporations, recommending the boundary adjustment almost immediately after meeting with company

officials (*NRDC Plaintiffs' Memorandum In Support of Their Motion For Partial Summary Judgment*, 2020).

Numerous auctions have occurred since the reduction in 2017 and any opposition to President Trump's abolishment and the BLM's mismanagement of Bears Ears will face adversity in contending against previously granted leases and the alliance with high-profile, multi-million and -billion dollar corporations. Attempting to implement an indefinite delay of the BLM's plans and revoke or suspend hundreds of leases that have already been sold will prove to be a problematic hindrance to overcome, especially with an antecedent of public government-private industry cooperation.

### **Conclusion:**

This proposal clearly outlines the appropriate ethical actions for the BLM to take until the constitutionality of the national monument abolishment is determined in a court of law (which should be in favor of reinstating Bears Ears, according to the aforementioned legislative and legal interpretations of the U.S. Constitution and Antiquities Act).

In response to the agency's trajectory towards implementing harmful management plans for the southeastern Utah region, the solution asks the BLM to observe absolute truths in law and policy rather than politicized interests. By adhering to the proposal, the BLM assumes a neutral and impartial position as an unbiased federal agency, separate from private corporations and state governments. In overcoming the influence of industry stakeholders and partisan political leadership, the BLM will be acting in accordance with their purpose as stewards, rather than aggressors, of the United States' public lands and protecting the significant sites and objects that were entrusted by the American people.

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