

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

HOPI TRIBE, *et al.*,)
) Case No. 17-cv-2590 (TSC)
)
 Plaintiffs,)
)
 v.)
)
 DONALD J. TRUMP, *et al.*,)
)
 Defendants.)

UTAH DINÉ BIKÉYAH, *et al.*,) Case No. 17-cv-2605 (TSC)
)
 Plaintiffs,)
)
 v.)
)
 DONALD J. TRUMP, *et al.*,)
)
 Defendants.)

NATURAL RESOURCES DEFENSE) Case No. 17-cv-2606 (TSC)
 COUNCIL, INC., *et al.*,)
)
 Plaintiffs,)
)
 v.) **CONSOLIDATED CASES**
)
 DONALD J. TRUMP, *et al.*,)
)
 Defendants.)

AMERICAN FARM BUREAU)
 FEDERATION, *et al.*,)
)
 Defendant-Intervenors.)

**NRDC PLAINTIFFS' STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE DISPUTE**

Pursuant to Local Civil Rule 7(h), Plaintiffs submit this statement of material facts as to which there is no genuine dispute.

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”).

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”). Declaration of Nora Rasure ¶ 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.

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”)); Declaration of Edwin Roberson ¶ 8 (ECF No. 49-2).

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)).

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”).

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).

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.”).

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).

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).

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.

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”).

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., Exh. 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).

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.

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)).

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”).

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).

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.”).

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).

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 . . .”).

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).

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).

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.

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).

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.

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").

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).

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).

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.

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.

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”).

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)).

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).

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)).

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.

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).

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).

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).

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.

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).

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.

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).

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).

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.

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.

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.

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).

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”).

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.”).

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).

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).

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).

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).

Dated: January 9, 2020

Respectfully submitted,

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