

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

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THE WILDERNESS SOCIETY, <i>et al.</i> ,))	
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Plaintiffs,))	Case No. 1:17-cv-02587 (TSC)
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v.))	
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DONALD J. TRUMP, <i>et al.</i> ,))	
))	
Defendants.))	
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GRAND STAIRCASE ESCALANTE))	
PARTNERS, <i>et al.</i> ,))	
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Plaintiffs,))	Case No. 1:17-cv-02591 (TSC)
))	
v.))	
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DONALD J. TRUMP, <i>et al.</i> ,))	
))	CONSOLIDATED CASES
Defendants.))	
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AMERICAN FARM BUREAU))	
FEDERATION, <i>et al.</i> ,))	
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Defendants-Intervenors.))	
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**TWS PLAINTIFFS' STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE**

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

1. President Clinton established the Grand Staircase-Escalante National Monument (“the Monument”) pursuant to his authority under the Antiquities Act in September 1996. Presidential Proclamation No. 6920, 61 Fed. Reg. 50,223 (Sept. 18, 1996) (“1996 Proclamation”).

2. The 1996 Proclamation “set apart and reserved” “approximately 1.7 million acres” of federal land “for the purpose of protecting the objects identified [in the Proclamation],” explaining that this was “the smallest area compatible with the proper care and management of the objects to be protected.” 61 Fed. Reg. at 50,225.

3. The Monument’s boundaries were subsequently modified and expanded by Congress through a series of legislative acts, bringing the Monument’s total acreage to 1.9 million acres. *See* Declaration of Katherine Desormeau, Exh. A at 2-3 (BLM, Grand Staircase-Escalante National Monument Approved Management Plan and Record of Decision (1999) (hereinafter “1999 Monument Management Plan”).

4. The Bureau of Land Management (“BLM”) has documented an array of archaeological, paleontological, biological, and geological resources within the Monument’s original boundaries. *See* Desormeau Decl., Exh. A at iii-iv (1999 Monument Management Plan) (“This high, rugged, and remote region, where bold plateaus and multi-hued cliffs run for distances that defy human perspective, was the last place in the continental United States to be mapped.”); *id.* at 11-12 (describing the Monument as “provid[ing] unique and relatively undisturbed habitat for wildlife”); *id.* at 25 (describing Monument’s isolated “[r]elict plant communities”); Desormeau Decl., Exh. C at 85, 88 (BLM, Analysis of the Management Situation (2018) (hereinafter “Analysis of Management Situation”)) (describing the Monument

as “one of the most naturally dark outdoor spaces left in the lower 48 States,” with so little development that the “interior . . . is literally as dark as can be measured”); *id.* at 245 (describing the Monument’s archaeological resources as “preserving a record of more than 10,000 years of human presence, adaptation, and exploration”); *id.* at 273 (describing “truly globally unique [fossil] resources” in the Monument); Desormeau Decl., Exh. I at 7 (BLM, Call for Data Related to Review of National Monuments under EO 13792 (April 26, 2017)) (hereinafter “BLM Data Call Responses”) (“The cultural resources discovered so far in the monument are outstanding in their variety of cultural affiliation, type and distribution. Hundreds of recorded sites include rock art panels, occupation sites, campsites and granaries.”).

5. The 1996 Proclamation immediately prohibited the location of any new mining claims for hardrock minerals (e.g. copper, uranium, and alabaster) pursuant to the General Mining Law of 1872, 30 U.S.C. §§ 22 *et seq.*, and withdrew the lands from coal, oil, and gas leasing. 1996 Proclamation, 61 Fed. Reg. at 50,225; *see* Desormeau Decl., Exh. A at 51-52, 84 (1999 Monument Management Plan) (describing mineral withdrawal as prohibiting new mining claims and imposing limitations on the surface disturbing activity including the development of existing valid claims).

6. The 1996 Proclamation required the Secretary of the Interior, acting through the BLM, to “manage the monument” consistently with “the purposes of the proclamation,” and to “prepare . . . a management plan” for the Monument to “implement the purposes of this proclamation”—that is, to ensure the proper care and management of the objects to be protected. 1996 Proclamation, 61 Fed. Reg. at 50,225.

7. In 1998, Congress ratified a land-exchange agreement between the federal government and the State of Utah, which was meant to “resolve many longstanding environmental conflicts and further the interest of . . . the[] [Monument’s] conservation resources.” Utah Schools and Lands Exchange Act of 1998, Pub. L. No. 105-335, § 2(14), 112 Stat. 3139, 3141 (1998); *see* Desormeau Decl., Exh. B at §§ 1(A), 2(E) (Agreement to Exchange Utah School Trust Lands Between the State of Utah and the United States of America).

8. Pursuant to the 1998 agreement, Utah transferred to the United States “all state inholdings within the Monument[’s]” exterior boundaries. Desormeau Decl., Exh. A at iv (1999 Monument Management Plan); *see also id.* at 3; *see also* Declaration of Creed Murdock, Exh. B (map depicting location of acquired state inholdings). Specifically, Utah exchanged “[a]ll [State] lands within the exterior boundaries of the Monument, comprising approximately 176,698.63 acres of land and the mineral interest in approximately an additional 24,000 acres,” for federal lands outside the Monument boundaries. Desormeau Decl., Exh. B at § 2(E) (Agreement to Exchange Utah School Trust Lands Between the State of Utah and the United States of America). The agreement further specified that “[a]ny lands and interests therein acquired by the United States within the exterior boundaries of the Monument . . . shall become a part of the Grand Staircase-Escalante National Monument.” *Id.* § 5(A).

9. In ratifying the agreement, Congress concluded that the state inholdings acquired by the United States contained “scientific, historic, cultural, scenic, recreational, and natural resources, including ancient Native American archaeological sites and rare plant and animal communities,” and that “[d]evelopment of surface and mineral resources” on such lands “could be incompatible with the preservation of these scientific and historic resources for which the

Monument was established.” Pub. L. No. 105-335, § 2(2)-(3), 112 Stat. at 3139. Congress determined that “[f]ederal acquisition of State school trust lands within the Monument would eliminate this potential incompatibility, and would enhance management of the Grand Staircase-Escalante National Monument.” *Id.* § 2(3).

10. Congress authorized the United States to pay the State of Utah \$50 million in furtherance of these and other conveyances of land approved by the Land Exchange Act. Pub. L. No. 105-335, § 7, 112 Stat. at 3142.

11. Also in 1998, Congress passed the Automobile National Heritage Area Act, which adjusted the Monument’s boundaries by adding some lands and removing others along the boundaries of the Monument. Pub. L. No. 105-355, § 201, 112 Stat. 3247, 3252-53 (“Heritage Area Act”). The Heritage Area Act resulted in the addition of approximately 5,500 more acres to the Monument, including a one-mile wide strip along the southern edge of the Monument, north of the town of Big Water, known as East Clark Bench. Desormeau Decl., Exh. A at 3 (1999 Monument Management Plan).

12. Together, these two Acts of Congress—the Lands Exchange Act and the Heritage Area Act—added roughly 180,000 acres of land to the Monument, making its total area approximately 1.9 million acres. Desormeau Decl., Exh. A at 3 (1999 Monument Management Plan); Desormeau Decl., Exh. C at 373 (Analysis of Management Situation).

13. In 2000, Congress appropriated \$19.5 million to buy back preexisting coal leases from Andalex Corporation and PacifiCorp on parcels of land within the Monument. Department of the Interior and Related Agencies Appropriations Act, 2000, Pub. L. No. 106-113, 113 Stat. 1501, 1501A-215; *see also* Desormeau Decl., Exh. A at iv (1999 Monument Management Plan).

According to BLM, purchasing the coal leases “improved [BLM’s] ability to manage the lands within the Monument as an unspoiled natural area.” Desormeau Decl., Exh. A at iv (1999 Monument Management Plan); Murdock Decl., Exh. C (map showing location of lease buy-backs).

14. In 2009, Congress enacted the Omnibus Public Land Management Act of 2009, which “established in the Bureau of Land Management 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.” Pub. L. No. 111-11, § 2002(a), 123 Stat. 991, *codified at* 16 U.S.C. § 7202(a). The 2009 Act specifies that “[t]he system shall include . . . [e]ach area that is designated as . . . a national monument,” which includes Grand Staircase-Escalante. *Id.* § 2002(b)(1)(A), *codified at* 16 U.S.C. § 7202(b)(1)(A).

15. The Omnibus Public Land Management Act of 2009 also made one additional modification to the boundaries of Grand Staircase-Escalante National Monument, authorizing the Secretary of the Interior to convey roughly twenty-five acres within the Monument to a private entity, Turnabout Ranch, in exchange for a payment equal to the land’s appraised value. Pub. L. No. 111-11, § 2604, 123 Stat. 991, 1119-20.

16. Prior to the Monument’s designation in 1996, the BLM managed the lands within the Monument pursuant to the Federal Land Policy and Management Act (“FLPMA”). 43 U.S.C. §§ 1701 *et seq.*

17. Pursuant to FLPMA’s multiple-use management regime, prior to the 1996 Proclamation, many of the federal public lands within the Monument were leased for oil and gas

development and coal mining. Desormeau Decl., Exh. A at 51 (1999 Monument Management Plan) (noting that 85 federal oil and gas leases encompassing about 136,000 acres, and 18 federal coal leases on 52,800 acres, existed in the Monument as of 1999).

18. Prior to the 1996 Proclamation, Monument lands were also open to hardrock mineral location. Desormeau Decl., Exh. A at 51 (1999 Monument Management Plan) (noting that 68 mining claims covering 2,700 acres existed in the Monument as of 1999).

19. There are deposits of hardrock or “locatable” minerals—including uranium, vanadium, alabaster (gypsum), and copper—inside the Monument’s original boundaries. *See* Desormeau Decl., Exh. D, at 5 (BLM, Mineral Potential Report for the Lands Now Excluded from Grand Staircase-Escalante National Monument (2018) (hereinafter “BLM Mineral Potential Report”)) (“Gypsum [alabaster] resources are present in multiple geologic units in the [excluded lands] lands . . . [and] [s]ome development of production of gypsum is possible in the [excluded lands] in the future”); *id.* at 44-47 (reporting uranium, vanadium, and copper deposits near Circle Cliffs); *id.* at 50 (reporting that although gypsum mining for other purposes is unlikely, alabaster in the Carmel Formation “has a reputation for being some of the best in the country for sculpting” and noting alabaster mines previously existed); *see also* 1998 Lands Exchange Act, Pub. L. No. 105-335, § 2(3), 112 Stat 3139 (noting that “[m]any” of the acquired lands “within the monument may contain significant economic quantities of mineral resources, including . . . titanium, uranium, and other energy and metalliferous minerals”).

20. In 1999, after a three-year-long process, BLM issued the Monument Management Plan that details BLM’s management prescriptions for the Monument’s protected resources—

including archaeology, paleontology, fish and wildlife, geology, history, soils, water, and vegetation. *See generally* Desormeau Decl. Exh. A (1999 Monument Management Plan).

21. BLM recognized that the 1996 Proclamation changed the BLM's multiple-use-oriented approach to the management of the lands within the Monument, requiring BLM to "manage the Monument for 'the purpose of protecting the objects identified [in the 1996 Proclamation].' All other considerations are secondary to that edict." Desormeau Decl., Exh. A at 3 (1999 Monument Management Plan).

22. Since the conferral of Monument status and the resulting 1999 Monument Management Plan, research in the Monument has flourished. *See* Desormeau Decl., Exh. C at 30, 245, 273 (Analysis of Management Situation) (describing paleontological and archaeological discoveries in the Monument, including "a record of more than 10,000 years of human presence, adaptation, and exploration," and "[v]ertebrate fossils from Late Cretaceous strata [including] species [that] have been found nowhere else").

23. 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 Grand Staircase-Escalante. Exec. Order No. 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.

24. Removing "barriers" to resource exploitation was one of President Trump's stated considerations in launching his 2017 monuments review. 82 Fed. Reg. at 20,429 (opining that monuments "may . . . create barriers to energy independence" and "curtail economic growth").

25. During the monument “review” process, Interior officials specifically collected information on mineral resources and development potential in the monuments under review, including Grand Staircase. Desormeau Decl., Exh. H (Interior Data Call). Interior officials specifically sought information on past and potential production of coal, oil, gas, and minerals in national monuments. *Id.*

26. In response to the Interior Data Call, BLM reported that hardrock mineral activity occurred in Grand Staircase before the Monument’s designation in 1996, including active alabaster mines that produced 300 tons of alabaster a year. Desormeau Decl., Exh. I at 5 (Data Call Response). BLM found it “likely” that these mining operations would have continued, and that “additional alabaster mining claims may have been filed,” if the Monument had never been designated. *Id.* at 14.

27. In his final report making recommendations to the President, Secretary Zinke acknowledged that public comments were “overwhelmingly in favor of maintaining existing monuments.” Desormeau Decl., Exh. E at 3 (Memorandum from Ryan K. Zinke to the President, Final Report Summarizing Findings of the Review Designations Under the Antiquities Act) (“Zinke Report”). Nevertheless, Secretary Zinke opined that “mining [has been] . . . unnecessarily restricted” in landscape-scale monuments like Grand Staircase, and he noted that “[a]reas encompassed within [the Monument] contain an estimated several billion tons of coal.” *id.* at 7, 13. Secretary Zinke recommended that the Monument’s “boundary should be revised.” *Id.* at 14.

28. On December 4, 2017, President Trump issued a proclamation “modify[ing] and reduc[ing]” the Monument’s boundaries segmenting it into three smaller, fragmented units,

which he named the Grand Staircase, the Kaiparowits, and the Escalante Canyons units. Proclamation No. 9682, 82 Fed. Reg. 58,089, 58,093 (Dec. 8, 2017) (“Trump Proclamation”). The Trump Proclamation “exclude[d] from [the Monument’s] designation and reservation approximately 861,974 acres of land.” *Id.*

29. The three remaining units “cumulatively encompass approximately 1,003,863 acres,” *id.*—i.e., roughly half of the 1.9-million-acre Monument as established by President Clinton and expanded by Congress.

30. Among the lands that President Trump excluded from the Monument are approximately 80,000 acres of land and 16,600 acres of mineral interests that Congress had added to the Monument through the 1998 Lands Exchange Act. Murdock Decl. ¶ 10 & Exh. B (map depicting location of acquired state inholdings).

31. Among the lands excluded from the Monument are some parcels for which Congress appropriated money to buy back coal leases in 2000. Murdock Decl. ¶ 13 & Exh. C (map showing location of bought-back coal leases).

32. The Kaiparowits unit of the diminished Monument includes a small exclave known as East Clark Bench, a narrow rectangular tract of land that Congress added to the Monument in the 1998 Heritage Area Act. East Clark Bench is now isolated from the rest of the Monument, separated from the Kaiparowits unit by a wide swath of excluded lands. *See* Desormeau Decl., Exh. F (BLM map of diminished Monument).

33. President Trump’s re-drawn Monument boundaries exclude lands on which “some of the particular examples of the[] objects” of scientific or historic interest identified in the 1996 Proclamation are located. Trump Proclamation, 82 Fed. Reg. at 58,090; *see also id.* at

58,089-90 (acknowledging that some “habitat types,” certain geologic formations including “serpentine canyons, arches, and natural bridges,” some “high-potential areas for locating new fossil resources,” and “Ancestral Puebloan rock art panels” and other “historic objects” are now “excluded from the monument’s boundaries”).

34. According to BLM, Trump’s re-drawn Monument boundaries exclude numerous archaeological and paleontological resources. Desormeau Decl., Exh. G at 1-3 (BLM, Grand Staircase-Escalante National Monument and Kanab-Escalante Planning Area Proposed Resource Management Plans and Final Environmental Impact Statement (2019) (hereinafter “2019 Final Environmental Impact Statement”)) (noting that “the features, resources, and history of [the excluded lands] are similar to those” for the lands that remain within the Monument); Desormeau Decl., Exh. C at 30 (Analysis of the Management Situation) (noting that “the [excluded] lands . . . contain some of the highest site densities and most important [archaeological] sites in the Planning Area”); *id.* at 215, 219 (BLM maps depicting cultural and fossil resources).

35. The President has asserted no independent constitutional authority to diminish the Monument. See Trump Proclamation, 82 Fed. Reg. at 58,089 (“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 boundary of the Grand Staircase-Escalante National Monument is hereby modified and reduced”); Mem. in Support of Defs.’ Mot. to Dismiss at 41, ECF No. 43-1 (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.”).

36. BLM treated President Trump’s proclamation as having the immediate effect of re-drawing the Monument’s boundaries, without any subsequent agency action. *See* 82 Fed. Reg.

at 58,093 (“Any lands reserved by [the 1996 Proclamation] not within the boundaries identified on the accompanying map are hereby excluded from the monument.”); Desormeau Decl., Exh. F (BLM map of diminished Monument); Desormeau Decl., Exh. C at 123 (Analysis of Management Situation) (“The modified boundaries of GSENM exclude from designation and reservation approximately 861,974 acres of land now known as KEPA lands.”).

37. The Trump Proclamation stated that, as of February 2, 2018 (“60 days after” President Trump’s signature), previously protected Monument lands “shall be open to: (1) entry, location, selection, sale or other disposition under the public land laws; (2) disposition under all laws relating to mineral and geothermal leasing; and (3) location, entry, and patent under the mining laws.” Trump Proclamation, 82 Fed. Reg. at 58,093. The Trump Proclamation thereby reopened the excised lands to the operation of the General Mining Law of 1872, which allows the location and development of hardrock mining claims on non-withdrawn federal law. Trump Proclamation, 82 Fed. Reg. at 58,093.

38. As directed by the President, BLM is no longer observing the 1996 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 it will review and process claimants’ development proposals on claims located on those lands, in accordance with the General Mining Law of 1872 and BLM’s regulations. *See* Declaration of Landon Newell, ¶¶ 3-8 & Exhs. A-F (describing new hardrock mining claims filed with BLM).

39. 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. part 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), 3832.11(c).

40. 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”).

41. 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. 43 C.F.R. § 3809.10(a).

42. 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. 43 C.F.R. §§ 3809.10(b), 3809.11(b), 3809.21(a); *see also* 43 C.F.R. § 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).

43. Notice-level activities may include road construction, the use of mechanized earth-moving equipment, and the use of truck-mounted drilling equipment. 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. BLM conducts no NEPA review, and no affirmative approval from BLM is required. *See* 43 C.F.R. § 3809.301.

44. 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 conducts NEPA review and requires a “plan of operations,” including detailed information about the proposed disturbance and mitigation measures. 43 C.F.R. §§ 3809.10(c), 3809.11, 3809.21(a), 3809.401, 3809.411, 3809.412.

45. Surface-disturbing mining activities can gouge scars into the landscape, produce waste and debris, disturb native vegetation and wildlife habitat, increase erosion, and harm water quality. *See* Declaration of Susan Harrington ¶¶ 12, 15; Supplemental Declaration of Ray Bloxham ¶¶ 2, 14-16; Supplemental Declaration of Kya Marienfeld ¶¶ 12, 16; Desormeau Decl., Exh. C at 56-58 (Analysis of Management Situation) (acknowledging that “human activities” can “disturb soil surfaces, thereby affecting soil surface conditions and biological soil crusts and exposing underlying soils to wind and water erosion,” and that “[s]oil crusts may take decades to recover from disturbance”); *id.* at 221 (map showing “sensitive soils” throughout original Monument); Desormeau Decl., Exh. A at 84 (1999 Monument Management Plan) (describing need for NEPA review of “[a]ll proposed surface-disturbing activities” within the Monument to protect the Monument’s geological, paleontological, cultural, and biological resources).

46. Surface-disturbing mining activities can also harm cultural, archaeological, and paleontological resources, which are widely dispersed throughout the excised lands. Marienfeld Supp. Decl. ¶ 22 (“Cultural resources are now subject to damage and destruction from mineral

development”); Declaration of Steve Allen ¶ 14 (describing appreciation and study of “the Ancestral Native American and historic sites that are located throughout the Monument”); *see also* Desormeau Decl., Exh. C at 30 (Analysis of Management Situation) (noting that “the [excluded] lands . . . contain some of the highest site densities and most important [archaeological] sites in the Planning Area”); *id.* at 215, 219 (BLM maps depicting cultural and fossil resources); Desormeau Decl., Exh. G at 3-19 (2019 Final Environmental Impact Statement) (“mineral development in [the excised lands]” is one of “the primary activities that could result in adverse impacts on cultural resources”); *id.* at 3-47 (surface-disturbing activities, including “mineral exploration and development,” can cause “adverse impacts on paleontological resources”).

47. 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 where there is relatively little vegetation to dampen sound or to obstruct viewsheds. *See* Allen Decl. ¶¶ 22, 27; Bloxham Supp. Decl. ¶¶16-18; Harrington Decl. ¶¶ 13-14; Supplemental Declaration of Ellen Heyn ¶ 14; Marienfeld Supp. Decl. ¶¶ 12, 22; *see also, e.g.*, Supplemental Declaration of Michael Mason ¶¶ 10, 12 & Exhs. A, B (viewshed and sound impact analysis for Creamsicle); *id.* ¶¶ 14, 16 & Exhs. C, D (same, for Berry Patch 4).

48. Even if exploratory activity never leads to more extensive plan-level development, it leaves long-lasting impacts on the land—including mine pits, 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. *See* Harrington Decl. ¶ 12; Marienfeld Supp. Decl. ¶ 10.

49. 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 nineteen new mining claims in the excised lands: “Creamsicle 1-3,” “Mesa 1-10,” “Berry Patch 1 & 4,” “Raspberry 1,” and “Vulcan 1-3.” Newell Decl. ¶¶ 5-8 & Exhs. C-F. Nine of these claims have since been closed. *See* Newell Decl. ¶¶ 4, 8 (listing Mesa 5-10 and Vulcan 1-3 as closed). The rest are listed as “active.” *See id.* ¶¶ 3-7.

50. **Creamsicle:** In September 2018, a company called Penney’s Gemstones staked multiple claims for alabaster mining at the Creamsicle mine site, near Upper Slick Rock and Wiggler Bench, on land carved out of the Monument’s northern boundary. Newell Decl. ¶ 3 & Exhs. A, O. On August 1, 2019, Penney’s Gemstones submitted to BLM a notice of intent to conduct exploration activity (i.e., notice-level activities). *See* Newell Decl., Exh. O at 2 (describing mining operations, including excavation with a “Cat[erpillar] excavator” to remove “up to 125 tons of material per year”). BLM subsequently deemed the notice complete. Newell Decl., Exh. H. No further BLM approval, review, or environmental or archaeological analysis is required before the claimant can proceed with mineral extraction and ground-disturbing activities. *See* Newell Decl., Exh. A (listing site status as active), Exh. I (cultural resources notice), Exh. J (financial guarantee).

51. As of October 2019, surface disturbance on and around the Creamsicle site shows that the claimant has begun exploring for and quarrying alabaster. *See* Second Declaration of Scott Berry ¶¶ 15-21, ECF No. 120-2 (Nov. 7, 2019) (describing site conditions during recent visits, and attaching photographs). This activity has left gouges in the exposed faces of pale pink

and orange cliffs where rock has been removed by mechanized equipment. *Id.* ¶¶ 18-19. There are also visible vehicle tracks leading to the mine site and areas where the ground has been scraped near the mine. *Id.* ¶ 15.

52. Mining activity at Creamsicle impacts neighboring areas, including viewpoints in nearby Bryce Canyon National Park. *See* Mason Supp. Decl. ¶¶ 10, 12 & Exh. B (projecting that mining at Creamsicle will be visible from Bryce Canyon National Park overlooks, including Fairyland, Ponderosa Point, Whiteman Trailhead, Fairview Point, and Rainbow Point).

53. SUWA member Kya Marienfeld enjoys visiting those areas in Bryce Canyon National Park for hiking and photography. Her most recent trip was in November 2019, and she “plan[s] to return there in the spring of 2020.” Marienfeld Supp. Decl. ¶ 12. The sight of mining activity at Creamsicle will “harm my ability to photograph and aesthetically appreciate this part of the Monument from Bryce Canyon National Park and its overlooks.” *Id.* ¶ 12; *see also id.* ¶ 13 (describing plans to “hike, explore and take photographs near Bull Valley Gorge along the Skutumpah Road” in summer 2020, but noting her “appreciation of this area and its sweeping vistas will be diminished by the sight of mining activities at the Creamsicle mine site”); Mason Supp. Decl., Exh. B (projecting that mining at Creamsicle will be visible from parts of the Skutumpah Road).

54. SUWA member Ray Bloxham also recreates in the areas surrounding Creamsicle and enjoys taking photographs of the landscape. Bloxham Supp. Decl. ¶¶ 14, 16. He enjoys visiting Bryce Canyon National Park, which is “west of the Creamsicle mine site and has commanding, uninterrupted views of the areas as it sits several thousand feet above it.” *Id.* ¶ 16.

He “plan[s] to return to this area in the first half of 2020,” but may be deterred from doing so “because of mining impacts from the Creamsicle mine site.” *Id.*

55. Great Old Broads for Wilderness member Steve Allen plans to visit this area to enjoy its “natural beauty and profound quiet” in May 2020, and he will access his trailheads from the Cottonwood Wash Road. Allen Decl. ¶ 21. Mining activities at Creamsicle will be visible from parts of the Cottonwood Canyon Road. *See* Mason Supp. Decl., Exh. B (viewshed map). For Mr. Allen, entering the Monument “from the north” via the Cottonwood Canyon Road, the sight of mining at Creamsicle will be his “introduction to the Monument” and will “detract from [his] ability to recreate in a remote and natural setting and harm my enjoyment of the area’s natural beauty.” Allen Decl. ¶ 22. The “mine-related traffic, and the generation of dust from use of the dirt access routes and mine activity would mar the natural beauty and quiet of the area.” *Id.*

56. **Berry Patch 4:** A claimant called Alpine Gems LLC located the “Berry Patch 4” claim on excluded lands in Butler Valley near Grosvenor Arch, a well-known scenic landmark. *See* Newell Decl., Exh. K at 8 (describing site location, noting proximity to Grosvenor Arch). Alpine’s filings with BLM describe the site as being on or near an old claim not in use. *Id.*; *see also id.* at 3 (describing current “pre-mining land use” as “[g]razing and wildlife”). Alpine located and recorded a new claim with BLM in September 2018, after President Trump removed the land from the Monument. *See* Newell Decl., Exh. H (Notice of Location); *see also* Newell Decl., Exh. I at 7 (“[W]e would like to reopen this mine now that it is not in the Grand Staircase Monument anymore.”).

57. Alpine’s filings with BLM describe its plans to open up a new “pit quarry located on top of the hill,” Newell Decl., Exh. K at 8, and to improve a “[r]oad up the hill to access future pit,” *id.* at 4. Ultimately, Alpine proposes to extract “50-100 ton[s] [of alabaster] per year,” with no specified end date, using a “backhoe or trackhoe” and potentially “low use explosives.” *Id.* BLM deemed Alpine’s proposal “complete” and stated that it would issue a decision on the plan-of-operations proposal after November 2019. Newell Decl., Exh. M.

58. Mining activity at Berry Patch will have far-reaching visual and auditory impacts. *See* Mason Supp. Decl. ¶¶ 14, 16 & Exhs. C, D (viewshed and sound impact maps, projecting that mining activities will be visible and audible from Grosvenor Arch). Mr. Bloxham “plan[s] to return to . . . the southern Cockscomb near Grosvenor Arch to hike, camp and take photos in the spring of 2020 when the weather cooperates.” Bloxham Supp. Decl. ¶ 14. If mining activity is underway, it will impair Mr. Bloxham’s enjoyment of the area. *Id.*; *see also* Declaration of Laura Welp ¶ 17 (similar, stating she visits Grosvenor Arch “annual[ly]” and the mine’s “visual and/or auditory effects are noticeable from several points along the road and from the arch”).

59. **Mesa claims:** In 2018, claimants staked ten new hardrock mining claims, each encompassing roughly 20 acres, at Colt Mesa, near the Circle Cliffs. Newell Decl. ¶ 4 & Exh. B. BLM’s records currently show that six of the claims are closed, while the other four are open. Newell Decl. ¶ 4 & Exh. B. The claimants sent BLM a “notice to hold” all ten of their claims for 2019, indicating their intent to retain the claims for future exploration and possible development. Newell Decl. ¶ 16 & Exh. N.

60. NRDC member Susan Harrington plans to “backpack in and around Chop Rock Canyon—a spectacular and remote canyon” near Colt Mesa to which she returns every few

years—in March or April 2020. Harrington Decl. ¶ 11. The Colt Mesa site “is located just off the Burr Trail, not far down the small dirt spur road that [she] use[s] to access the Chop Rock, Silver Falls, and Moody Canyons,” *Id.* “[T]o get to Chop Rock Canyon, [she] will need to drive or walk near or through the Mesa mining claims.” *Id.* Ms. Harrington returns to this area “to escape from sights and sounds like those, and to experience the rare feeling of being in a peaceful, unspoiled wilderness. Mining activity at the Mesa claims will change the whole character of the place” and impair her enjoyment. *Id.* ¶ 13. The noise, dust, and traffic from mining trucks will also negatively impact Ms. Harrington’s use of the Burr Trail, a small, scenic road that she uses to access the canyons. “Once mining activity begins, the addition of heavy truck traffic will totally change the experience of traveling on that road.” *Id.* at ¶ 14; *see also* Desormeau Decl., Exh. C at 125 (Analysis of Management Situation) (describing the “Burr Trail Scenic Backway” as “one of the most picturesque drives in Utah”).

61. Mr. Allen, a regular visitor to the Circle Cliffs area near Colt Mesa, “will be returning . . . in March 2020 as part of a thirty day backpack trip to thoroughly explore the canyons of the Waterpocket Fold.” Allen Decl. ¶ 25. Mining at Colt Mesa poses an “immediate threat to the peace and equanimity” that he enjoys when hiking in this remote area. *Id.* ¶ 27. Mr. Allen describes: “Standing 700 feet above the surrounding terrain, this small mesa provides a wonderful viewing platform of the surrounding country A mine in this area will radically affect my enjoyment The noise from heavy machinery and truck traffic will echo off the walls of the plethora of canyons in the area” *Id.*; *see also* Bloxham Supp. Decl. ¶ 18 (similar, describing past visits to Colt Mesa and plans to return “in the fall of 2020,” unless mining activity deters him); Heyn Supp. Decl. ¶ 15 (similar, describing her intent to hike nearby

Silver Falls Canyon); Marienfeld Supp. Decl. ¶ 14 (similar, describing plans to “camp[] and hik[e] in the south Colt Mesa area as soon as the weather is warm enough again in the first half of 2020”); Welp Decl. ¶ 15-16 (similar, stating Colt Mesa “lies immediately east of the Wolverine Loop road,” which she plans to visit in the “spring or fall of 2020”).

62. Plaintiffs’ members enjoy visiting and recreating in the Monument—including areas that the Trump Proclamation stripped of monument protection—because of its beauty, remoteness, and largely unspoiled nature. *See* Allen Decl. ¶¶ 20-27; Bloxham Supp. Decl. ¶¶ 14-18; Heyn Supp. Decl. ¶¶ 12, 14-15, 17; Harrington Decl. ¶ 5; Marienfeld Supp. Decl. ¶ 11; Welp Decl. ¶¶ 9, 12-14. They also enjoy viewing and learning from its cultural and paleontological resources. *See* Marienfeld Supp. Decl. ¶ 11 (describing appreciation of “petroglyph panels . . . and the incredible cultural resources located in the Monument”); Allen Decl. ¶ 14; Bloxham Supp. Decl. ¶ 19 (similar).

63. Plaintiffs’ members know the landscape intimately and return to it multiple times each year. *See* Allen Decl. ¶¶ 12-13, 16; Bloxham Supp. Decl. ¶¶ 13-14; Heyn Supp. Decl. ¶¶ 7, 14, 16; Harrington Decl. ¶¶ 3-4, 7; Marienfeld Supp. Decl. ¶ 11; Welp Decl. ¶¶ 9, 11. Many have concrete plans to return in the future, including to areas where mining is visible, but their enjoyment will be diminished by this activity. *See* Allen Decl. ¶¶ 21, 25; Bloxham Supp. Decl. ¶¶ 14, 16-18; Harrington Decl. ¶¶ 8-9; Marienfeld Supp. Decl. ¶¶ 12-14; Welp Decl. ¶¶ 15-16.

64. Safeguarding Grand Staircase from destructive activities like mining is germane to the Plaintiffs’ organizational purposes of protecting public lands and resources. *See* Bloxham Supp. Decl. ¶¶ 4-10 (describing organizational missions of SUWA, TWS, NRDC, CBD, and Sierra Club); Heyn Supp. Decl. ¶¶ 4-6 (describing organizational purpose of Grand Canyon

Trust); Allen Decl. ¶¶ 3-7 (describing organizational purpose of Great Old Broads for Wilderness); Welp Decl. ¶ 8 (describing organizational mission of Western Watersheds Project).

65. In January 2018, BLM issued a notice of its intent to prepare new management plans for the remaining Monument units and the excluded areas. 83 Fed. Reg. 2179 (Jan. 16, 2018). BLM released its final environmental impact statements and proposed management plans in August 2019, *see* 84 Fed. Reg. 44,326 (Aug. 23, 2019), and it could release its final records of decision adopting those plans at any time.

66. The plans propose that the excised lands be opened to significant new development, including new off-road vehicle use, oil and gas leasing, and coal leasing. *See generally* Desormeau Decl., Exh. G at ES-7 to ES-8 (2019 Final Environmental Impact Statement). BLM has acknowledged that its “new [plan] [for the excised lands] will implement the President’s vision that the lands are managed for multiple use.” *Id.* at ES-1; *see also* Desormeau Decl., Exh. C at 3 (Analysis of Management Situation) (noting that “[r]esource conditions have not changed . . . but management objectives . . . have”).

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Respectfully submitted,

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