

# U.S. House of Representatives

## Committee on Natural Resources

Washington, DC 20515

November 18, 2019

The Honorable David Bernhardt  
Secretary  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, DC 20240

Dear Secretary Bernhardt,

We write to express our significant concerns with the recently published Proposed Resource Management Plans (RMPs) and Final Environmental Impact Statement (FEIS) for the Grand Staircase-Escalante National Monument (GSENM) and Kanab-Escalante Planning Area (KEPA). Given the ongoing litigation regarding the legality of Presidential Proclamation No. 9682,<sup>1</sup> the current U.S. Government Accountability Office (GAO) investigation into potential violations of appropriations law by the U.S. Department of the Interior (DOI) during the management planning process,<sup>2</sup> as well as the numerous concerns expressed by affected stakeholders and local communities, the administration's rush to push through these controversial plans is highly inappropriate and represents a significant waste of taxpayer dollars and agency resources.

Even as the Trump administration has created management uncertainty on the ground with these illegal reductions and planning activities, the selected preferred alternatives would be the least protective of lands and resources, opening hundreds of thousands of acres to new destructive uses. Therefore, we strongly encourage the agency pursue the no-action alternative, Alternative A, for the final RMPs.

As you know, on October 18, 2019, the Bureau of Land Management (BLM) published the FEIS on four distinct proposed RMPs for GSENM and KEPA as directed by Presidential Proclamation No. 9682 (82 Fed. Reg. 58089). However, the underlying Presidential Proclamation is still being litigated in the courts, and 118 current and former Congresspeople and Senators have filed an amicus brief arguing that the President's act amounts to an unconstitutional violation of Congress'

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<sup>1</sup> *The Wilderness Society, et al., v. Donald J. Trump, in his official capacity as President of the United States, et al.*, No. 1:17-cv-02587 (2018)

<sup>2</sup> Senator Tom Udall. (2019, June 17). Udall, McCollum Announce GAO Opening Investigation into Whether Trump Interior Dept. Violated Law with National Monument Leasing Activities [Press Release]. Retrieved from <https://www.tomudall.senate.gov/news/press-releases/udall-mccollum-announce-gao-opening-investigation-into-whether-trump-interior-dept-violated-law-with-national-monument-leasing-activities>

authorities, as dictated under the Antiquities Act of 1906.<sup>3,4</sup> Therefore, changes to monument management amount to a waste of taxpayer funds pursuant to an illegal order from the President that will irreparably damage lands within GSENM and KEPA.

Furthermore, there is reason to believe that at least two of the proposed alternatives, and potentially significant portions of the planning process, are in violation of appropriations law.<sup>5</sup> In sections 408 of the fiscal year 2017 Interior Appropriations Act (P.L. 115-31), fiscal year 2018 Interior Appropriations Act (P.L. 114-151), and the fiscal year 2019 Interior Appropriations Act (P.L. 116-6), Congress explicitly stated:

*No funds provided in this Act may be expended to conduct preleasing, leasing and related activities under the Mineral Leasing Act (30 U.S.C. 181 et seq.) or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) within the boundaries of a National Monument established pursuant to the Act of June 8, 1906 (16 U.S.C. 431 et seq.) as such boundary existed on January 20, 2001, except where such activities are allowed under the Presidential proclamation establishing such monument.*

Yet multiple proposed alternatives, including the preferred alternative, would open hundreds of thousands of acres to mineral leasing, in seemingly clear violation of appropriations law. This matter is the subject of an ongoing investigation by the GAO, and it is highly concerning that BLM would consider finalizing an RMP that was potentially developed illegally.

In addition to these significant concerns regarding the legality of these proposed RMPs, there are also numerous specific concerns within the proposed plans, particularly the preferred alternative, Alternative D, and the newly developed Alternative E, that make these alternatives untenable on the ground. Even the BLM's own summary documentation acknowledges that Alternatives D and E provide for less conservation, increase the potential for adverse impacts on resources, and are the most likely to increase the potential for management conflicts and associated impacts on the land.<sup>6</sup>

To justify the President's illegal reduction of GSENM, the administration routinely highlighted other laws they claimed would afford the same level of protections to the lands excluded from their revised monument boundaries, even going so far as to highlight these laws in Proclamation 9682.<sup>7</sup>

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<sup>3</sup> Brief of Members of Congress as Amici Curiae In Support of Plaintiffs, *The Wilderness Society, et al., v. Donald J. Trump, in his official capacity as President of the United States, et al.*, No. 1:17-cv-02587 (2018). Retrieved from [https://www.tomudall.senate.gov/imo/media/doc/Udall-Grijalva%20Wilderness%20Society%20Amicus%20Brief%20\(AS%20FILED\).pdf](https://www.tomudall.senate.gov/imo/media/doc/Udall-Grijalva%20Wilderness%20Society%20Amicus%20Brief%20(AS%20FILED).pdf)

<sup>4</sup> Pub. L. No. 59-209 § 2, 34 Stat. 225.

<sup>5</sup> McCollum, B., & Udall, T. (2019, May 22). Letter to The Honorable Eugene Dodaro, Comptroller General of the U.S. Government Accountability Office. Retrieved from <https://www.tomudall.senate.gov/imo/media/doc/DOC052219.pdf>

<sup>6</sup> U.S. Department of the Interior, Bureau of Land Management. (2019, October). Grand Staircase-Escalante National Monument and Kanab-Escalante Planning Area Proposed Resource Management Plans and Final Environmental Impact Statement: Executive Summary. 9. Retrieved from [https://eplanning.blm.gov/epl-front-office/projects/lup/94706/20005728/250006731/01\\_GSENM-KEPA\\_modified\\_Proposed\\_RMPs-Final\\_EIS\\_Executive\\_Summary.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/94706/20005728/250006731/01_GSENM-KEPA_modified_Proposed_RMPs-Final_EIS_Executive_Summary.pdf)

<sup>7</sup> Proclamation No. 9682, 82. F.R. 235 (December 8, 2017). Retrieved from <https://www.govinfo.gov/content/pkg/FR-2017-12-08/pdf/2017-26714.pdf>

Yet, in direct contradiction of these promises, under Alternatives D and E, no lands would be managed to protect wilderness characteristics, Wilderness Study Areas would be opened to motorized uses, no lands would be managed as Areas of Critical Environmental Concern, and paleontological and cultural resources would be directly impacted by limiting restrictions on destructive uses within the monument. All of these impacts, impacts in direct contradiction of the President's justification for these illegal reductions, are acknowledged in planning documentation. They are yet another step in this administration's alarming tendency to roll back protections on our public lands.

Furthermore, the U.S. House Committee on Natural Resources has already demonstrated that these legally binding protections were at times ignored during the monument reduction process. During a Committee hearing, documentation revealed as the result of an ongoing Committee investigation showed that BLM staff were instructed to pull protected resources out of the monument when they conflicted with fossil fuel resources.<sup>8</sup> Proposed Alternatives D and E continue on this worrisome and illegal path, opening more than 500,000 acres to mineral extraction even when the BLM has acknowledged that it does not have a complete inventory of protected resources within the monument.<sup>9</sup> It is unacceptable that BLM employees were pushed to remove protected resources during the President's illegal alteration of our national monuments, and it is deeply concerning that BLM would open these acreages without first demonstrating a detailed knowledge of the resources that might be impacted.

At a time when the impacts of continued climate change are quickly becoming the largest threats facing our nation, the agency's proposed RMPs would open protected public lands to habitat fragmentation and degradation, while increasing greenhouse gas emissions. Alternatives D and E would increase and open new areas to cattle grazing, mineral development, road building, timbering and off highway vehicle (OHV) use. Each of these activities risks disturbing or fragmenting sensitive habitats and, in combination with the proposed limits on soil protections and the expansion of grazing in sensitive habitats like the Escalante River corridor, risks degrading the health of the GSENM and KEPA ecosystem.<sup>10</sup> The best science suggests that protected ecosystems are the most resilient to the impacts of climate change, yet these proposed alternatives would open GSENM and KEPA to new destructive uses and would limit the management of the most resilient ecosystems, including lands with wilderness characteristics and Areas of Critical Environmental Concern.<sup>11,12</sup>

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<sup>8</sup> U.S. House Committee on Natural Resources. (2019, March 13). *Forgotten Voices: The Inadequate Review and Improper Alteration of Our National Monuments*. Hearings before the U.S. House Committee on Natural Resources, 116<sup>th</sup> Cong. (2019). Retrieved from <https://naturalresources.house.gov/hearings/forgotten-voices-the-inadequate-review-and-improper-alteration-of-our-national-monuments>

<sup>9</sup> U.S. Department of the Interior, Bureau of Land Management. (2019, October). Grand Staircase-Escalante National Monument and Kanab-Escalante Planning Area Proposed Resource Management Plans and Final Environmental Impact Statement: Volume I (Chapters 1-4). 3-20. Retrieved from [https://eplanning.blm.gov/epl-front-office/projects/lup/94706/20005729/250006732/02\\_GSENM-KEPA\\_modified\\_Proposed\\_RMPs-Final\\_EIS\\_VolumeI.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/94706/20005729/250006732/02_GSENM-KEPA_modified_Proposed_RMPs-Final_EIS_VolumeI.pdf)

<sup>10</sup> Ref. 9. 2-23 – 2-27, 2-57.

<sup>11</sup> Eigenbrod, F., Gonzalez, P., Dash, J., & Steyl, I. (2015). Vulnerability of ecosystems to climate change moderated by habitat intactness. *Global Change Biology*, 21(1), 275-286. doi:10.1111/gcb.12669

<sup>12</sup> Conservation Biology Institute. (n.d.). Identify and protect climate refugia. Retrieved from [https://yale.databasin.org/pages/objectives\\_5](https://yale.databasin.org/pages/objectives_5)

The Antiquities Act was originally enacted by Congress to provide the President with the authority to quickly protect important resources that were under threat, particularly tribal cultural resources. In GSENM and KEPA, only 7 percent of the planning area has been surveyed for cultural resources, but even those small surveys found more than 3,000 known cultural sites. Nearly half of those sites are in KEPA, which would be opened to new destructive uses, including mining, drilling, and OHV use. Because Alternatives D and E provide significantly fewer protections than currently exist on the ground, they risk increasing impacts on these protected resources.<sup>13</sup>

Another concern that has come up often in discussions with stakeholders is the expansion of grazing within GSENM and KEPA, particularly along the Escalante River. The BLM found more than 2,000,000 acres open to livestock grazing in GSENM and the surrounding area, yet Alternatives D and E would open tens of thousands of acres to new grazing across GSENM and KEPA, including thousands of acres in the Escalante Canyon. The newly opened lands in Escalante Canyon include voluntarily retired acres that have not been grazed in decades in order to protect prime recreational accesses along the Escalante River. In the late 1990s, conservation groups worked with ranchers to voluntarily buyout and retire grazing rights along the Escalante River. This agreement was lauded by ranchers, recreationalists, conservationists, and President Bush's Interior Department as a creative solution to solve resource conflicts. Since that time, the BLM and non-federal partners have spent significant resources, including taxpayer dollars, to restore the Escalante River by removing invasive species. This work was rewarded with a significant uptick in visitation along the river, which now sees hundreds of thousands of recreational visits annually, making it a key driver of the region's outdoor recreation economy. That important and successful work is now threatened by the proposed RMPs, which would open these protected acreages to grazing, wasting taxpayer dollars, and limiting recreational use in the area, thereby damaging the outdoor recreation economy.<sup>14</sup>

In the background of this illegal, rushed, and inconsistent planning process is the ongoing damage to resources on the ground. Recognizing the threat President Trump's illegal proclamation posed to resources on the ground, the Grand Staircase Escalante Partners, a non-profit conservation organization serving the communities of the Grand Staircase-Escalante, developed a citizen monitoring application to track illegal uses within GSENM and KEPA. That application, which relies on photographs and videos sent by local community members, has demonstrated hundreds of instances of illegal activity ranging from vandalism and illegal off-road activity to a fire being set within a Native American archaeological site.<sup>15</sup> These impacts to monument resources are real, they are significant, and they are likely a result of the confusion and inconsistent management created by the President's illegal actions. These impacts to protected resources are unacceptable. We encourage the BLM to proceed under the legally designated protections for the Grand Staircase-Escalante National Monument by finalizing Alternative A, restoring appropriate management to this important site.

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<sup>13</sup> Ref. 9

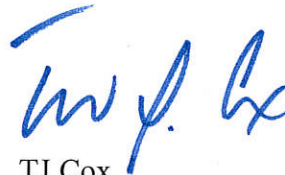
<sup>14</sup> Bruner, T. (2019, September 11). Cows in the Escalante: When a Win-Win Becomes a Lose-Lose. *The Grand Canyon Trust*. Retrieved from <https://www.grandcanyontrust.org/blog/cows-escalante-when-win-win-becomes-lose-lose>

<sup>15</sup> *Forgotten Voices: The Inadequate Review and Improper Alteration of Our National Monuments*. Hearings before the U.S. House Committee on Natural Resources, 116<sup>th</sup> Cong. (2019) (testimony of Nicole Croft). Retrieved from <https://naturalresources.house.gov/imo/media/doc/Croft,%20Nicole%20-%20Testimony.pdf>

Sincerely,



Raúl M. Grijalva  
Chair  
House Committee on Natural Resources



TJ Cox  
Chair  
Subcommittee on Oversight and  
Investigations



Alan Lowenthal  
Chair  
Subcommittee on Energy and Mineral  
Resources



Jared Huffman  
Chair  
Subcommittee on Waters, Oceans, and  
Wildlife



Debra Haaland  
Chair  
Subcommittee on National Parks, Forests,  
and Public Lands



Ruben Gallego  
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United States