5/24/17

Monument Review MS-1530

U.S. Department of the Interior

1849 C Street NW

Washington, DC 202240

Re: Bears Ears National Monument Antiquities Act Review by DOI

Dear Sir:

As a previous County Commissioner in Kane County Utah having to deal with issues and problems related to the Grand Staircase-Escalante National Monument (GSENM) for a period of ten years (2001-2010) I commend the DOI for its review of monument designations, including the GSENM and the Bears Ears National Monument (BENM), both within the state of Utah. The extensive problems I experienced with the GSENM will become equally problematic with the BENM if it is allowed to remain a monument.

The Antiquities Act's original congressional intent has been abused in many instances for political purposes, in part for payback for financial and political support of environmental organizations. The primary abuse of the Antiquities Act relates to congressional intent that the size of monuments shall be limited to the "smallest area compatible with the proper care and management of the objects to be protected." Congressional use of the word "objects" does not support monument designations of large land areas at the request of environmental organizations, wealthy foundations and other individuals or groups in order to create defacto wilderness conditions when Congress does not create Wilderness Areas to their satisfaction.

As a County Commissioner is was necessary to initiate two costly lawsuits against the federal government in order to protect our local interests from monument management abuses.

In the County's federal quiet title lawsuit GSENM management attempted to close approximately 85% of the County's historic public highways across the monument. This action was taken in spite of the fact that the highways were rights-of-way (ROW) easements granted to the County by the U.S. Congress under Revised Statute 2477 of the Mining Act of 1866. After spending hundreds of thousands of dollars in federal quiet title litigation the County secured adjudicated ROWs to six of its county roads. These were the first and only fully adjudicated RS2477 ROWs in the nation. The county still has over 700 roads in quiet title litigation in continually delayed quiet title litigation. The State of Utah also has an extensive number of roads in quiet title litigation because the BLM and other federal land management agencies refuse to recognize congressionally granted highway ROWs. In the meantime, the status of roads monument management has posted closed or restricted and the County claims are open public highways is uncertain and controversial.

In one instance, monument management closed and barricaded the County's historic and most iconic backcountry road – the Paria River road. This action was taken at the request of two environmental groups, the Southern Utah Wilderness Alliance and The Wilderness Society. The two

groups had previously sued the County for managing its roads across the GSENM. Federal Judge Tena Campbell issued a restraining order against the County not to take any action on roads within the GSENM without federal quiet title adjudication. This is when the Paria River road was closed by monument management at the behest of the environmental organizations. Judge Campbell was overturned by the 10th Circuit Court of Appeal but the Paria River road remains barricaded and closed under threat of federal arrest.

In the County's and local ranchers' lawsuit to stop grazing elimination on the GSENM the GSENM attempted to permanently retire (close) several grazing allotments on the GSENM. The grazing closures were attempted even though the GSENM Proclamation allows existing levels of livestock grazing as being consistent with monument purposes. The way it worked was that GSENM staff would bring pressures and restrictions to certain ranchers, making their allotments less viable. Then Bill Hedden of the Grand Canyon Trust (GCT) would buy the allotments. GSENM management then produced several environmental assessments (EAs) taking action to permanently close the allotments to livestock grazing. Because of the public notification requirements, the County and local ranchers tried to work with monument management to avoid permanent grazing allotment retirements. The effort was unsuccessful resulting in the County and the ranchers filing a lawsuit in federal court. The same federal judge in the RS2477 litigation denied the County standing in the grazing litigation, forcing the local ranchers to bear the costs of litigation. The end result of costly litigation was that the GCT and the GSENM could not permanently retire the grazing allotments and that the GCT could keep the allotments but that it must use them for grazing purposes as required by the Taylor Grazing Act. Today, the GCT holds the grazing allotments but runs them with the minimal stocking rates allowed. The wealthy foundations that were funding the GCT's buyouts will no longer provide funding because the allotments cannot be permanently retired. Therefore, Bill Hedden and the GCT are no longer purchasing allotment within the GSENM. However, GSENM management is still trying to formulate a means to permanently retire grazing allotments in the development of recent planning efforts.

The designation of the GSENM stopped development of the Andelex Coal Mine in the area of Smokey Hollow within the GSENM. The mine site is capable of producing high quality coal for the nation for the next thirty years. It could be a tremendous economic benefit to southern Utah and northern Arizona. If the DOI Antiquities Act review results in resending the GSENM's monument status or results in a significant reduction in the size of the GSENM it could free up this valuable coal resource for production. It could also free up significant other valuable natural resources within the GSENM for public benefit.

The designation of monuments, most often managed like national parks (NPs), do not support multiple-use of our public lands for economic and traditional uses important to local rural communities. Monuments have most often been designated without proper coordination with local and state officials and the people living on or by those lands.

Motorized and mechanized access is always severely restricted when compared to public lands managed for multiple-use under the provisions of the Federal Lands Policy and Management Act (FLPMA). These recreational activities are important to local economies and to local residents for their enjoyment of our public lands.

In 1906, the Antiquities Act was passed with the primary purpose of rapidly acting to prevent the looting of archeological sites. Congress never envisioned the abuses of the act we are seeing in more

recent times. The Antiquities Act is antiquated today. There are abundant laws, rules and regulations to protect our resources to the extent necessary. There is no longer the need for speedy action by a President.

Large land mass designations that restrict the principles of multiple-use under FLPMA should properly be made by a deliberative body; i.e., the U.S. Congress.

It would be appropriate in the DOI's review of monuments deemed inconsistent with the Antiquities Act's provisions, without consideration of other federal protective means and without proper and adequate consultation with local people, local and state governments to rescind or severely reduce the size of monuments over 100,000 acres. This would allow future congressional action to decide what, if any, restrictions are necessary regarding large land masses.

The West, because of the history of land status relies on multiple-uses of public lands for economic benefit and for a traditional quality of life. Large, unjustified monuments created without congressional approval are a very serious problem in the American West.

Thank you,

Mark Habbeshaw

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