



HAND DELIVERED

January 25, 2019

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School and Institutional Trust Lands Administration
675 East 500 South – Suite 500
Salt Lake City, Utah 84102

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TRUST LANDS
ADMINISTRATION

Re: *SUWA Protest*
SITLA January 2019 Competitive Lease Offering
Conflicts with Bears Ears National Monument

Greetings:

Southern Utah Wilderness Alliance (SUWA) hereby **protests** the sale of the following twelve leasing units at SITLA's January 2019 competitive mineral lease offering: **Leasing Units 2, 3, 4, 5, 6, 7, 8, 9, 12, 15, 16 and 18**. Each of these parcels is located entirely or in-part within the original boundaries of Bears Ears National Monument as designated by President Obama on December 28, 2016.

President Obama's Bears Ears proclamation begins with an acknowledgment that within the monument's exterior boundaries is a landscape – irrespective of land ownership – “which constitute[s] one of the densest and most significant cultural landscapes in the United States.” 82 Fed. Reg. 1139, 1139 (Dec. 4, 2016). The proclamation continues

Abundant rock art, ancient cliff dwellings, ceremonial sites, and countless other artifacts provide an extraordinary archaeological and cultural record that is important to us all, but most notably the lands is profoundly sacred to many Native American tribes, including the Ute Mountain Ute Tribe, Navajo Nation, Ute Indian Tribe of the Uintah Ouray, Hopi Nation, and Zuni Tribe.

Id. See also id. at 1141 (explaining that “[t]he paleontological resources in the Bears Ears area [irrespective of land ownership] are among the richest and most significant in the United States, and protection of this area will provide important opportunities for further archeological and paleontological study.”).

The proclamation also outlined a process whereby the State of Utah (on behalf of SITLA) and the Secretary of the Interior (on behalf of the United States) would explore a memorandum of understanding to facilitate a land exchange for all SITLA parcels located within the exterior

boundaries of Bears Ears National Monument. *See id.* at 1144. The State declined to enter into such an MOU.

On December 4, 2017 President Trump purported to dismantle Bears Ears National Monument and designate two much smaller monuments, Indian Creek and Shash Jaa. *See* 82 Fed. Reg. 58081 (Dec. 4, 2017). As you may know, there are currently three lawsuits pending in federal district court for the District of Columbia challenging President Trump's unlawful action. *See Hopi Tribe et al. v. Trump*, 1:17cv2590 (D.D.C.); *Natural Resources Defense Council et al. v. Trump*, 1:17cv2606 (D.D.C.); *Utah Dine Bikeyah et al. v. Trump*, 1:17cv2605 (D.D.C.). Each of these lawsuits seeks to have the court declare unlawful and invalidate President Trump's December 4, 2017 proclamation. Such a decision would have significant bearing on the access that may be afforded to any SITLA oil and gas lease sold within the original boundaries of Bears Ears; access which is subject to federal regulation and control.¹

Surprisingly, SITLA failed to advise its potential lessees of the pending litigation and this likely outcome. SITLA's January 2019 Competitive Mineral Lease Offering contains no mention whatsoever of the fact that the twelve Leasing Units that are the subject of this Protest are located entirely or in-part within the original the original boundaries of Bears Ears National Monument. *See* Map, SITLA Competitive Oil and Gas Lease Offerings January 2019 San Juan County, UT: Conflicts with Bears Ears National Monument (attached). Lessees may be unwilling to bid on these parcels because of the significant uncertainty surrounding access, or would adjust their bids downward to reflect this situation. **SITLA must defer the sale of these twelve parcels until it advises potential bidders (or allows current bidders to rescind or revise their bids) of the pending litigation and the restrictions on access to develop any of the parcels that would follow a decision to invalidate President Trump's December 4, 2017 proclamation.** *See* Utah Admin. Code R850-3-400.1(d) (SITLA "may refuse the application [to lease] if it determines . . . proceeding with the proposal would not be in the best interest of the trust land beneficiaries.").

Moreover, leasing these twelve parcels violates SITLA's trustee obligation. This lease sale squarely presents a situation where "it would be unconscionable not to preserve and protect [cultural, paleontological] values . . . when economic exploitation of such lands is not compatible with the noneconomic values, [and] the state may have to consider exchanging public trust lands or other state lands for school lands. Indeed, it might be necessary for the state to buy or lease the school lands from the trust so that unique noneconomic values can be preserved and protected and the full economic value of the school trust lands still realized." *National Parks and Conservation Ass'n v. Bd. of State Lands (NPCA)*, 869 P.2d 909, 920-21 (Utah 1993). As the Supreme Court recognized in *NPCA*, "some school lands have unique, scenic, paleontological, and archeological values," and because the "beneficiaries of the school land trust are a continuing class, the trust must maximize the income from school lands in the long run." *Id.* at 921.² This is just such a case and indeed was the basis for President Obama directing

¹ Access to SITLA parcels across federal public lands is subject to federal agency oversight and regulation. *See, e.g., State of Utah v. Andrus*, 486 F. Supp. 995 (D. Utah 1979).

² *See also* Utah Code Ann. § 9-8-301 ("The Legislature declares that the general public and the beneficiaries of the school and institutional land grants have an interest in the preservation and protection of the state's archaeological

the Secretary of Interior to explore a memorandum of understanding with the State regarding an exchange of all SITLA land within the Bears Ears National Monument “for land of approximately equal value managed by the BLM outside the boundary of the monument.” 82 Fed. Reg. at 1144. *See also* Utah Admin. Code R.850-90-200. **SITLA must defer leasing the twelve parcels that are the subject of this protest until the federal court litigation challenging President Trump’s unlawful action is resolved.**

This protest is brought by and through the undersigned legal counsel on behalf of the Southern Utah Wilderness Alliance. SUWA members and staff work, recreate, or regularly visit the areas to be impacted by the proposed lease sale³ and therefore have an interest in, and will be affected and impacted by, the proposed action.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line.

Stephen Bloch
Legal Director
Southern Utah Wilderness Alliance

and anthropological resources and a right to the knowledge derived and gained from scientific study of those resources.”).

³ SUWA members also are parents of school children currently enrolled and attending Utah public schools.