

## **Wild Utah Podcast, Episode 30: What's Next for Monuments**

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### **Dave Pacheco:**

Welcome to Wild Utah, the podcast of the Southern Utah Wilderness Alliance. I'm Dave Pacheco.

Now that we've collectively taken a month or so to deeply breathe in full restoration of bears, ears, and grand staircase, Escalante national monuments to their original boundaries. We've invited Sue as legal director, Steve block to explain what's next.

Steve has guided SUWA's work through legal and administrative challenges on both monuments over the years. And he's here to bring us up to date on the process and what you can do to reinforce protections for these outstanding places. Steve, thanks for coming on the show.

### **Steve Bloch:**

Oh, you're welcome, Dave. It's great to be here.

### **Dave Pacheco:**

So describe for everyone the relationship between the proclamation, uh, president uses to create national monuments versus the management planning process that follows, you know, now that the monuments are back to their original size.

Briefly, as you can explain what management planning is, who does it, what are the immediate next steps for both bears, ears and grand Staircase-Escalante and what suicides is a priority focus area that needs to be included in these management plans?

### **Steve Bloch:**

Okay, well, so we all are operating from the same set of facts, when the president re-established the Bears Ears in the Grand Staircase-Escalante national monuments on October 8th, he used the authority that Congress had. Granted under the federal antiquities act. So a piece of legislation that was passed in 1906 that authorizes the president at his or her discretion to establish national monuments, to protect certain objects, sacred sites or fossils or ecosystems, things like that to conserve the smallest land necessary for the protection of those objects.

And so in the case of Grand Staircase, It's a 1.9 million acre national monument. And in the case of Bears Ears, it's a roughly 1.3 million acre monument in the proclamations that restored those monuments. The president explained that the preservation of the objects in the monuments is the paramount management goal.

That that's why those are national monuments. The preservation of the objects is. Precedence over everything else. How that matters is now in the next step, the bureau of land management, the federal agency within the interior department, who's charged with managing these places. The proclamation told the bureau to prepare management plans that would oversee the day to day management of these monuments.

Those plans are to be guided by the proclamation and. In the meantime, while the BLM is working on the new management plans, it looks back to the proclamations and it's supposed to decide whether activities that would occur over the next 12 to 24 months while new management plans are being prepared, whether those activities are consistent with the terms of the proximity.

It is going to take, unfortunately that long for the BLM to come up with new and defensible plans. It's not like they can simply flip a switch and, you know, Sue, his job is really, uh, through the legal team here in Salt Lake City, through the Wildlands team. And Moab is to make sure that how BLM is managing the lands and those objects meets the terms of the proclamation.

And that's the work that SUWA's staff do on a day in, day out basis.

**Dave Pacheco:**

In terms of what we think is important, you know, what we're watching for? Well, the president said that the bureau is to make sure it involves the public and native American tribes to the maximum extent feasible. So we're

expecting really robust opportunities for tribes or local stakeholders and for the American public to have multiple opportunities for them to express their views, their hopes for how these lands and objects are going to be managed.

**Steve Bloch:**

You know, we're looking to make sure that that certainly on the Bears Ears side, that the tribes have that opportunity at every turn and that the decisions that the BLM is making in the new management plan really prioritize the protection of the sacred sites and objects inside of that monument. And for the most part, it's the same thing on the Grand Staircase side, making sure that, of course the staircase is known as the science monument with the really abundant opportunities for scientific exploration and discovery, to make sure that the lands, the objects are receiving the sorts of protections on the ground that they need from things like offered vehicles from vegetation removal projects, from the citing of new power lines or things like. So in a nutshell, over the next few months, we're going to see those opportunities coming.

**Dave Pacheco:**

And people like SUWA members, people who support protection of these places can get involved through the official Bureau of Land Management planning process. And so SUWA will announce those opportunities and we'll let you all know when those comments can be submitted. But Steve, I want to next talk about some of the roles going to dive into the details specifically of the Native American role, especially with respect to Bears Ears-- what role will they play in providing input into the management plans and carrying out those plans on the ground? Now that the proclamations have laid out the basic framework, explain what the Bears Ears commission is and does and how it advances Native interests on those lands.

**Steve Bloch:**

Well, I mean, a lot of this is going to have to be fleshed out over the coming months. The Biden proclamation, like the Obama one that proceeded, it established a Bears Ears commission with members from all five tribes of the

Bears Ears, inner tribal coalition. So that's the Zuni Tribe, the Hopi Tribe, the Ute Mountain Ute Tribe, Ute Indian Tribe, and the Navajo Nation.

So the commission will have membership from each of the tribes and then the proclamation calls on the commission. A really significant role in guiding how BLM will manage the monument moving forward. You know, one term people may have heard or read is home management, and that's not something that's written into the proclamation, but I do think that there will be really opportunities at every turn for native American tribes to weigh in on how the lands and resources and objects should be managed.

To make sure, for example, that people understand how to respectfully appreciate and steward these irreplaceable sites. I mean, one of the reasons that the tribes called for the establishment and the monuments in the first instance was the increased visitation. And at the same time, a real significant increase in vandalism and.

That's a really big opportunity with the new management plan is a way to come up with protocols for how the public can respectfully appreciate these sites.

**Dave Pacheco:**

So let's go to another subject here, uh, regarding what. Generally no as land swaps, you know, people who follow these issues know that there are one mile square parcels of state institutional trust, lands, or state school lands scattered across Utah's public lands. And while all of Utah school lands within Grand Staircase-Escalante were traded out in the late nineties for lands elsewhere and for a healthy \$50 million cash consideration land transfer within Bears Ears has yet to happen. Can you explain the process or mechanism by which land transfers happen? Will it happen for bears, ears and why these exchanges are a win-win for both the resources and for the school trust? Sure. So there's roughly 113,000 acres of school trust land within the exterior boundaries of Bears Ears National Monument.

**Steve Bloch:**

You know, when the president established the Bears Ears, monument that. Proclamation only extends to the federal lands within the exterior boundaries. So the 113,000 acres of state school trust land are not automatically swept in

the proclamation called on the secretary of the interior to investigate a memorandum of understanding with the Utah state school trust land program to work towards a land exchange.

There may be a piece of legislation, for example, that follows. On the proclamation that calls for a land exchange. That's what happened on the Grand Staircase side. But the short of it is that as you indicated, the state school trust land administration wants to exchange out of its lands within the monument that are effectively landlocked now.

And it wants to exchange them either for cash or for other more prospective lands that are outside those boundaries. And we're supportive. Making sure that those state school trust lands are managed not by the state of Utah to maximize short-term profit, but instead are managed by the bureau of land management in accordance with the terms of the proclamation really matters on the ground.

You see, state school trust land sometimes can be the camel's nose under the tent. School trust lands may lease lands for mineral development or for other activities that are just income. With monument status and protection. So in the next zero to 12 months, I expect we'll see some kind of agreement reached where school trust lands is able to move ahead.

Working with the interior department to exchange out of their 113,000 acres in the Bears Ears. There may be cash and land, similar to what happened on the Grand Staircase. State school trust lands is a source of income for Utah's school children. So making sure that the school kids are made whole by the exchange of their lands that are within the monument is important, important, I think essentially to do right by Utah.

And I expect that that's going to happen. I would imagine we'll see Senator Romney, Senator Lee and the Utah house members all unified in doing that. And the president has said as much that he's interested in seeing that as. And let's change the subject. Let's talk about some of the legal questions surrounding national monuments.

**Dave Pacheco:**

What happens to the tribes and the conservation communities lawsuit challenging presidential authority to dismantle monuments? Explain the interpretation that these antiquities act proclamations are meant to be a one way ratchet, I've heard you say, to protect objects, not unprepared. Sure. Well,

as I think Sue members know the same day that president Trump came to Salt Lake City to announce that he was undoing significant parts of the Grand Staircase and, you know, effectively dismantling almost all of Bears Ears.

**Steve Bloch:**

So. Native American tribes and others sued in federal district court alleging that those decisions were unlawful. And one of the core arguments that we raised was that the antiquities act of 1906 was a grant by Congress to the president to establish national monuments full stop. It was not at the same time, the grant of authority to undo that.

And no president in modern times had tried to do what Trump accomplished here with the dismantling of the Grand Staircase in Bears Ears. Unfortunately, even though these legal issues were fully in front of the district court, the judge never issued a ruling on the merits. So we don't know what her take was on SUWA's arguments about the antiquities act, essentially being a one-way wrap.

And now the question that she and the parties are all wrestling with is, well, what happens with these cases that are still out there and for the moment they're stayed, which means they're just sort of sitting in limbo. There were a number of hard rock mining claims that were located in both monuments over the past three and a half years.

And we don't know yet how the Interior Department is going to resolve those claims. If they're going to say the claims are invalid because Trump never had the authority to undo monuments in the first place, and so the claims are essentially void-- or if they're going to say the claims are allowed to exist.

And that's one example of an issue that the court, the parties are circling around to figure out is the case moot. We don't think it is. We think the fact that there are still unresolved issues about things like mining claims, about how the monuments are going to be managed in the next 12 to 24 months means the cases are still live and should stay in the district court for now.

**Dave Pacheco:**

So we've also heard that the Utah political establishment is seeking bids for legal representation to argue their case. That the monuments are too big, that they don't conform to the smallest area and necessary criteria to protect the

objects named in Biden's proclamations. Haven't we been down this road before with grand Staircase-Escalante and what, and when are the next steps on this particular legal question about the size? And if you would speculate on the outcome, will it take a Supreme Court?

**Steve Bloch:**

So longtime SUWA members will remember that in 1996, when President Clinton established the Grand Staircase-Escalante National Monument, the state of Utah and others sued and raised exactly that argument, that the monument was too large, along with a host of other meritless claims and a federal district court judge here in Utah said, "No, the monument is the right size. The president has expressly stated that that 1.9 million acre size was the smallest size necessary for the protection of the objects." And that was the end of the inquiry.

No court-- in fact, in the 115 year history of the Antiquities Act-- has said that a president has abused his or her authority under the act when they've established national monuments of all sorts of sizes ranging from 30 or 40 acres to 2 million acres or more. And really if you stop and think about it, it's hard to imagine landscapes and objects more worthy of national monument status than a place like bears, ears or Grand Staircase Escalante. So if that's really the argument that the state or somebody else is going to raise in federal court, that the monument is too large or that the objects, the sacred sites, the fossil resources in the monuments aren't worthy of monument status. I feel very confident that they're not going to prevail.

There is this outstanding issue that came up in another case that involved an Obama-era monuments in the north Atlantic-- so, a marine monument-- where a fishing association challenged the establishment of what's called the Northeast Canyon Sea Mounts National Monument that went all the way to the Supreme Court with it and it would not disturb the lower courts rulings that the monument was legitimate was not an abuse of the president's authority under the Antiquities Act.

However, the Chief Justice made a short statement following the Supreme Court's decision, not to review that case and speculated whether some national monuments were getting to be too large. And while he said they weren't going to review it in the Sea Mounts case, there might be a future case where that question is more appropriate. So it was a really unfortunate statement by the Chief Justice: you know, somebody who said that, his role on

the Supreme Court would only be to effectively serve as an umpire and call balls and strikes and, you know, really seem to step outside of that self-described role to do something else.

The state of Utah's well-aware that statement. It's lawyers are well aware of that. They're obviously making some kind of a play, or think they're going to make a, kind of a play, for the Supreme Court to review these monuments here at Grand Staircase in the Bears Ears. I think it's hard to predict with this court, but the 115 years of precedent shows that Congresses grants authority to presidents to establish national monument.

When the president says it's the smallest size when the president identifies the objects with some specificity, that those decisions are going to be upheld. So that's the end of the line is that I think there will be more litigation. It's unfortunate. I think the decision will be upheld. I also, I mean, you know, I think Sue members have probably heard the catchphrase, you know, the ping pong back and forth.

We can't have monuments that ping pong back and forth, and, you know, we need a legislative solution. I really think that's a false narrative. I think that gives too much credence to what Trump tried to do. His decision was unlawful. So I said, no president in modern times had tried to do what he set out to accomplish by undoing these significant national monuments.

So I don't think it's ping pong as much as there was sort of a one-off aberration by a fairly radical president. And now we're back much more in the mainstream for how the antiquities act has been used. So realistically is legislation to make national monuments a possibility that that can be done.

**Dave Pacheco:**

Right. How has the Utah delegation suddenly become amenable to reasonable protections, or is this narrative that you speak of more of a smoke screen to delay or obfuscate meaningful protections on the ground?

**Steve Bloch:**

Well, I mean, we're incredibly grateful, right? I think SUWA the organization and SUWA members I expect are all incredibly grateful that the president really saw through the smoke screen.

And as you, I think, correctly described it and that the president wasn't going to sit around and wait for the delegation to come up with some legislation. I mean, there's a couple points here. One is nothing was stopping the delegation from moving forward with new legislation shortly after Trump undid these monuments.

And I think they're failures. To do that. And in fact, in some instances they're introduced legislation to cement. The changes that Trump had wrought, you know, really showed their true colors, right. That they're not interested in serious conservation for these lands. If they had been nothing was stopping them when the Republicans had the white house and full control of the Congress.

Having said that, I think so would welcome an opportunity for discussion with the delegation or. Is ratification of the monuments appropriate. Are there additional protections or management options that they want to bring to the table? I think that's fully appropriate, but that's not really what we've heard.

It's more hand-wringing that they really wish the precedent had. Probably until his last day in office. So there would be somewhat of a cloud over these monuments, similar to what happened, where Bears Ears. I mean, we all, I think regretted that president Obama waited so long to establish his monument. I mean, to be clear that doesn't matter.

It shouldn't matter in the eyes of the law, but I think it casts some kind of how over the decision, certainly in some people's eyes. And so we're really grateful that president. Followed through, on his commitments, on the campaign trail and fully restored the monuments. And we expect that he and secretary Holland are going to bring the time and attention and resources now to bear, to make sure that the sacred sites and the objects in these monuments are really managed the way they need.

**Dave Pacheco:**

You know, I find it really interesting as you retold the story about how president Obama waited until the end of his term to create Bears Ears National Monument. Many people remember the history that preceded that. And essentially the Utah delegation was given opportunities to press legislation forward, to create legislative solutions that are more long lasting.

And the Utah delegation acted like it always had. This time through the public lands initiative, showing that they really didn't want meaningful protections on

the ground in the first place. And I think it just goes to show it kind of begs the question. When would the legislative solution happen? It looks like that had plenty of opportunity.

Obama waited until the very end gave the delegation every opportunity they could and then acted when they didn't succeed with their plan.

**Steve Bloch:**

I mean, that's exactly right. And I think, I mean, the takeaway for members. That they should rightly be questioning the statements they're hearing from the governor, from the delegation, from other state legislative leaders saying that a legislative fix was right around the corner if only the president had waited.

And the fact of the matter is that, you know, time and time again, Utah's elected leaders, whether at the state or the federal level, you know, have failed us and it's taken, I mean, these are federal lands, which is something I think. Leaders here conveniently forget that these are federal lands managed on behalf of all Americans by the interior department, in this instance.

And it's entirely appropriate for the president to take steps that he or she thinks are appropriate to manage and conserve the lands and objects. And in this instance, it was the president simply using the authority that he'd been granted by the Congress, following the footsteps of most of the presidents since 1906 to establish national monuments.

**Dave Pacheco:**

Well, Steve, we really appreciate you joining us today and giving us some more detailed background on monuments and what's next for these monuments and we'll be waiting for those management planning process to start. So folks can get involved. I appreciate your time.

**Steve Bloch:**

Yes, you bet.

**Dave Pacheco:**

Wild Utah is recorded at SUWA's main office in Salt Lake City on equipment purchased through the generosity of our members. SUWA is primarily member funded. Over 90% of our revenue comes directly from people who care about protecting southern Utah's redrock country. We're proud of that because it keeps our voice independent. If you'd like to help protect wild Utah today, please head to [suwa dot org](http://suwa.org) and click the Donate button. We appreciate your support.

Wild Utah's theme music, "What's Worth?" is composed by Moab singer-songwriter Haley Noel Austin. Our interlude music, "Chuck's Guitar" is by Larry Pattis. Post-studio editing and production is by Laura Borichevsky.

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On behalf of SUWA, I'm Dave Pacheco. Thanks for taking the time to listen. We hope you can join us for the next episode of Wild Utah.