



May 26, 2017

VIA ELECTRONIC SUBMISSION

The Honorable Ryan Zinke
Secretary, U.S. Department of the Interior
Monument Review, MS-1530
U.S. Department of the Interior
1849 C St. NW
Washington, D.C. 20240

Re: Bears Ears National Monument Review (RIN: DOI-2017-002)

Dear Secretary Zinke:

The U.S. Small Business Administration's Office of Advocacy (Advocacy) applauds the United States Department of the Interior's (DOI) efforts to engage the public on the issue of national monument review, and respectfully submits the following comments on DOI's notice of opportunity for public comment. Advocacy encourages DOI to consider the impacts to small entities when making decisions regarding the Bears Ears National Monument and further asks that DOI extend the public comment period to allow small businesses an opportunity to fully participate in this issue.

The Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.



Background

The Antiquities Act of 1906, recodified in 2014, outlines the procedure for the use, designation, and regulation of historic landmarks to be controlled by the Federal Government.¹ Section 320301 (a) of the Act designates specific powers to the President of the United States, to declare by public proclamation, lands that are to be designated national monuments.² Section 320302 (a) grants the Secretaries of the Interior, Agriculture and Army the authority to review permits for various activities on the land, as well as the authority to publish regulations in order to carry out the provisions of the Act.³ Because monuments are designated through Presidential Proclamation, they are not subject to notice and comment rulemaking, and therefore do not require a public comment period.

On April 26, 2017, President Trump issued Executive Order 13792⁴ directing the Secretary of the Interior to conduct a review of certain national monument designations including the Bears Ears National Monument. On May 11, 2017, DOI published a notice of opportunity for public comment on its review of monument designations under the Antiquities Act of 1906.⁵ While a public comment period is not required for the designation of national monuments under the Antiquities Act, DOI has chosen to accept and consider public input on this issue. The Bears Ears National Monument was given a public comment period of 15 days, whereas all other monuments under review were given a more lengthy comment deadline.

Bears Ears National Monument was established on December 28, 2016 via presidential proclamation.⁶ The area encompasses approximately 1.353 million acres of land in southeastern Utah. According to the proclamation, visitors to Bears Ears enjoy a number of recreational activities, as well as historic sites.⁷ Currently, the Secretaries of Agriculture and Interior manage the monument. Pursuant to the Executive Order, DOI is currently considering whether Bears Ears should remain a national monument.

Advocacy's Comments to the Notice for Public Comment

Advocacy once again applauds DOI's efforts to engage the public in conducting its review of several national monuments including Bears Ears. Advocacy suggests that DOI consider the economic impacts on small entities when evaluating the Bears Ears designation. Altering the designations of national monuments may have both positive and negative effects on different small entities, including both communities and businesses. Advocacy suggests that in order to conduct a thorough review, DOI must consider the economic impacts changing the Bears Ears designation would have on small entities.

¹ 54 U.S.C. §320301 (previously P.L. 59-209, 34 Stat. 225 (1906) (codified at 16 U.S.C. §431) (recodified by P.L. 113- 287, §3, 128 Stat. 3259 (2014)).

² 54 U.S.C. § 320301 (a) (2014).

³ 54 U.S.C. § 320302 (a) (2014).

⁴ Exec. Order No. 13792, 82 Fed. Reg. 20429 (April 26, 2017).

⁵ Review of Certain National Monuments Established Since 1996, 82 Fed. Reg. 22016, (May 11, 2017).

⁶ Proclamation No. 9558, 82 Fed Reg. 1139 (Dec. 28, 2016).

⁷ Id.

In the Agency's evaluation, these impacts should be carefully considered to ensure any negative impact on small entities is minimized. In addition, Advocacy encourages DOI to consider feasible alternatives that may minimize the impact to small entities while still achieving the Agency's mission. Such alternatives may include designating a smaller portion of land.

Advocacy suggests that DOI use the Regulatory Flexibility Act (RFA) as a framework for its small business economic analysis. The RFA,⁸ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),⁹ gives small entities a voice in the rulemaking process. While the RFA does not specifically apply in this instance, the factors set forth in section 603(b) on creating an Initial Regulatory Flexibility Analysis (IRFA) may be a useful tool for DOI to consider when conducting its review.¹⁰ Specifically, DOI may wish to consider the following factors:

1. A description of reasons why action is being considered;
2. The objectives of, and legal basis for the rule;
3. A description of, and estimated number of small entities affected;
4. A description of, and estimate of compliance requirements including differences in cost, if any, for different groups of small entities;
5. Identification of duplication, overlap, and conflict with other rules and regulations; and
6. A description of significant alternatives to the rule.

Performing this analysis may help DOI to reach decisions regarding monument designations that are not overly burdensome to small entities. Advocacy is also available to assist with such analysis.

Finally, Advocacy urges DOI to extend the comment period for the Bears Ears National Monument. This monument covers an expansive area of land, and is thus important to many stakeholders. Adequate time should be given to allow small entities the opportunity to comment meaningfully on the rule. In the alternative, DOI should consider opening a public comment period once a specific recommendation has been made regarding the monument, to allow for public input on the recommendation before it is finalized.

⁸ 5 U.S.C. §601 et seq.

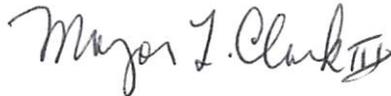
⁹ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

¹⁰ 5 U.S.C. § 603 (b).

Conclusions and Recommendations

Advocacy appreciates the opportunity to comment publically on this issue, and encourages DOI to give full consideration to the above recommendations. If you have any questions or require additional information please contact me or Assistant Chief Counsel Prianka Sharma at (202) 205-6938 or by email at prianka.sharma@sba.gov.

Sincerely,



Major L. Clark, III
Acting Chief Counsel
Office of Advocacy
U.S. Small Business Administration



Prianka P. Sharma
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: Dominic Mancini, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget