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From: Gehrke, Andrea - FS
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Hi Sally,

Forwarding this to you... It looks like I had added your email incorrectly to my mailing list.



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"Fostering interagency excellence in wilderness stewardship"

From: Gehrke, Andrea - FS
Sent: Tuesday, December 12, 2017 7:15 AM
To: Butts, Sally <sbutts@blm.com>; Fox, Susan -FS <sfox@fs.fed.us>; Gehrke, Andrea - FS <agehrke@fs.fed.us>; John Dennis <john_dennis@nps.gov>; Mali, Peter <pmali@blm.gov>; Nancy_Roeper@fws.gov; Schuster, Rudy <schusterr@usgs.gov>; Semler, Roger <roger_semmler@nps.gov>; Sippel, James - FS <jsippel@fs.fed.us>; Skrien, Sandra G -FS <sskrien@fs.fed.us>
Subject: Litigation Weekly Dec 8.pdf

I'd like to add one topic to our meeting on Thursday. I'd like to get your thoughts on using a disclaimer similar to what is at the bottom of this newsletter in our toolboxes.

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NFS Litigation Weekly

December 8, 2017

Ecosystem Management Coordination



Court Decisions

1. None to Report

Litigation Update

1. None to Report

New Cases

1. Land Use | Region 4

Environmental groups and Native American Tribes filed three complaints against the Forest Service regarding the President's December 4, 2017, proclamation modifying the Bears Ears National Monument in *Natural Resources Defense Council, et al. v. Trump, et al.*; *Hopi Tribe, et al. v. Trump, et al.*; and *Utah Dine Bikeyah, et al. v. Trump, et al.* Part of the land at issue is located on the Manti-La Sal National Forest.

Claims include:

- Antiquities Act: Plaintiffs claim the President under the Antiquities Act has the authority to designate federal public lands as national monuments, but not the power to revoke, replace, or diminish them. In issuing the modification proclamation, the plaintiffs state the President violated the act;
- U.S. Constitution, art I, Sec. 1 and 7: Section 1 provides "all legislative powers are vested in the Congress" and Section 7, also called the Presentment Clause, provides that after a bill passes both houses of Congress but before it becomes law it "shall be presented to the President" at which time he may sign or veto the bill. According to the Plaintiffs the Antiquities Act only provides the President the power to declare national monuments and reserve public lands; not to "delegate or authorize the power to revoke, abolish, diminish, or replace them..." Plaintiffs state "only Congress can revoke or diminish a national monument after it has been created;"

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- U.S. Constitution, art. II, Sec. 3: Art. II, Sec. 3 of the Constitution, the “Take Care Clause,” requires the President to “take Care that the Laws be faithfully executed.” Plaintiffs state the President violated this clause by violating the Antiquities Act “by attempting to override the 2016 Proclamation [that created the Bears Ears National Monument] and revoke national monument status and protection from 1.15 million acres of the Bears Ears National Monument;
- U.S. Constitution, art. IV, Sec. 3: This section, also known as the Property Clause, provides that “Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.” The Antiquities Act, according to the complaint, only provides the President power to declare not national monuments but does not delegate the authority to diminish them once created;
- Administrative Procedure Act: According to the complaint the proclamation creating the Bears Ears National Monument directed the Forest Service and the Bureau of Land Management “to undertake specific, mandatory duties to protect the specific values of the Bears Ears National Monument...” Since the President as per the complaint did not lawfully modify the monument, the agencies remain subject to the proclamation creating the monument and thus must undertake those duties which the agencies have thus far failed to carry out.

(17-2606, D.D.C.) (17-2590, D.D.C.) (17-2605, D.D.C.)

Notices of Intent

1. None to Report

Natural Resource Management Decisions Involving Other Agencies

1. None to Report

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