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February 26, 2018

Via Fax: 202-219-3856

Mary L. Kendall
Deputy Inspector General
U.S. Department of the Interior
1849 C Street NW - Mail Stop 4428
Washington, D.C. 20240

RE: Conflicts of Interest Involved in Grand Staircase Escalante National Monument Boundary Reduction Process

Dear Ms. Kendall:

Western Values Project (“WVP”) respectfully requests that your office open an investigation into whether the boundaries of the Grand Staircase Escalante National Monument (GSENM), were redrawn, at least in part, for the personal financial benefit of Utah State Representative Mike Noel.

Background

On April 26, 2017, President Donald J. Trump issued an executive order instructing Department of Interior (“DOI”) Secretary Ryan Zinke to conduct a review of national monuments designated or expanded after January 1, 1996.¹ In response, on May 5, 2017, Sec. Zinke issued a list of monuments to be reviewed, including GSENM.² On August 24, 2017, Sec.

¹ Press Release, Interior Department Releases List of Monuments Under Review, Announces First-Ever Formal Public Comment Period for Antiquities Act Monuments, Department of the Interior, May 5, 2017, *available at* <https://www.doi.gov/pressreleases/interior-department-releases-list-monuments-under-review-announces-first-ever-formal>.

² *Id.*

Zinke recommended President Trump reduce the size of GSENM and two other monuments.³ In making the announcement, DOI noted Sec. Zinke's extensive consultation with state, regional, and local authorities, stating:

The extensive 120-day review included more than 60 meetings with hundreds of advocates and opponents of monument designations, tours of monuments conducted over air, foot, car, and horseback (including a virtual tour of a marine monument), and a thorough review of more than 2.4 million public comments submitted to the Department on regulations.gov. Additionally, countless more meetings and conversations between senior Interior officials and local, state, Tribal, and non-government stakeholders including multiple Tribal listening sessions.⁴ (*sic*)

Indeed, in November, Sec. Zinke told the *Salt Lake Tribune*:

The president understands that I have become the resident expert in this area and I have dedicated an enormous amount of time and staff to make sure the local state voice was heard in the confines of following the law and making sure we protect the objects.⁵

On November 14, 2017, the *Tribune* reported that Sec. Zinke was planning to recommend reducing the size of GSENM, in line "with what state and local leaders requested."⁶ Specifically, the report stated:

Proposals for a redrawn Grand Staircase were left to Kane County leaders. They presented their map while meeting with Zinke on May 10, during the secretary's multi-day swing through Utah, according to County Attorney Robert Van Dyke. Yet the county has rejected The Tribune's public records request for that and many other maps it prepared in its push to reduce the 1.9-million-acre monument Clinton proclaimed as he was running for re-election in 1996.⁷

³ Press Release, Secretary Zinke Sends Monument Report to the White House, Bureau of Land Management, August 24, 2017, available at <https://www.blm.gov/press-release/share-secretary-zinke-sends-monument-report-white-house>; Juliet Eilperin and Darryl Fears, Interior Secretary Recommends Trump Alter at Least Three National Monuments, Including Bears Ears, *Washington Post*, August 24, 2017, available at <https://www.washingtonpost.com/news/energy-environment/wp/2017/08/24/interior-secretary-recommends-trump-alter-a-handful-of-national-monuments-but-declines-to-reveal-which-ones/>.

⁴ Press Release, Bureau of Land Management, Aug. 24, 2017.

⁵ Thomas Burr, After Trump Shrinks Bears Ears, it Will Still be Larger than Zion and Bryce Combined, says Interior Secretary, *Salt Lake Tribune*, November 13, 2017, available at <https://www.sltrib.com/news/politics/2017/11/13/after-trump-shrinks-bears-ears-it-will-still-be-larger-than-zion-and-bryce-combined-says-interior-secretary/>.

⁶ Brian Maffly, Grand Staircase-Escalante Monument Will be Pruned by Half, Hatch Official Says, *Salt Lake Tribune*, November 14, 2017, available at <https://www.sltrib.com/news/environment/2017/11/14/grand-staircase-escalante-monument-will-be-pruned-by-half-hatch-official-says/>.

⁷ *Id.*

Rep. Mike Noel is an important figure in Kane County, Utah. In addition to serving in the State Legislature representing Kane County and much of GSENM,⁸ Rep. Noel is also the executive director of the Kane County Water Conservancy District (“KCWCD”), organized in 1992 as a political subdivision to conserve and develop water plans for multiple uses.⁹

Rep. Noel has been campaigning to limit the size of GSENM since its inception. In 1996, he resigned from his position at the Bureau of Land Management (BLM) after President Clinton created GSENM.¹⁰ Rep. Noel was elected to the legislature after BLM moved to close the existing roads within the monument, and he formed a group to fight the closures.¹¹ He has continued to battle GSENM in the legislature and as the head of the KCWCD.¹²

On May 10, 2017, Sec. Zinke began the day by having breakfast at KCWCD’s offices, hosted by Rep. Noel.¹³ After the breakfast, Sec. Zinke toured GSENM with local officials, including Rep. Noel, before departing for Salt Lake City.¹⁴ Sec. Zinke also met with Rep. Noel on three other occasions between May 7 and May 10.¹⁵

On December 4, 2017, President Trump, “acting upon the recommendation” of Sec. Zinke, signed a proclamation reducing the boundaries of GSENM.¹⁶ Utah officials praised Sec. Zinke for listening to them during the review process. One Utah county commissioner said, “Thank you Secretary Zinke, for coming to San Juan, Kane, and Garfield counties and listening to the local grassroots people. Your boots on the ground approach was unexpected, but well received and appreciated.”¹⁷ BLM issued a press release that included maps with the proposed new boundaries.¹⁸

⁸ <https://le.utah.gov/GIS/findDistrict.jsp>.

⁹ <http://www.kcwcd.com/about-us/staff/>.

¹⁰ Colby Frazier, *The Herd Bull of the House*, *Salt Lake City Weekly*, May 13, 2015, available at <https://www.cityweekly.net/utah/the-herd-bull-of-the-house/Content?oid=2811227&showFullText=true>.

¹¹ *Id.*

¹² *Id.*

¹³ *Official Travel Schedule of the Secretary*, United States Department of the Interior, May 5, 2017 – May 13, 2017, available at <https://www.doi.gov/sites/doi.gov/files/uploads/17-001059ca.pdf>; <https://www.facebook.com/photo.php?fbid=10210941161539265&set=a.10207417105560068.1073741828.1060145681&type=3&theater>.

¹⁴ *Official Travel Schedule of the Secretary*, United States Department of the Interior, May 5, 2017 – May 13, 2017.

¹⁵ *Id.*

¹⁶ Press Release, *President Trump and Secretary Zinke Announce Modification to Utah Monuments, Resulting in 5 Unique National Monument Units Totaling More than 1.2 Million Acres*, Bureau of Land Management, December 4, 2017, available at <https://www.blm.gov/press-release/president-trump-and-secretary-zinke-announce-modification-utah-monuments-resulting-5>.

¹⁷ *Id.*

¹⁸ *Id.*

The following day, Sec. Zinke released the final report outlining his recommendations regarding national monument designations.¹⁹ The BLM is now accepting public comments regarding the appropriate use of the land removed from GSENM.²⁰

Rep. Noel's Conflicts of Interest

Rep. Noel will receive a personal financial benefit from the reduction of GSENM's boundaries. Rep. Noel's property includes several hundred acres of irrigated farmland in the Johnson Canyon area of Southern Utah.²¹ Of Noel's holdings, he owns \$1.3 million worth of land in the Johnson Canyon area through an LLC that he has not disclosed to the Utah State Legislature or to KCWCD,²² despite a Utah law requiring state representatives to disclose property ownership on public financial disclosure statements.²³

Before Sec. Zinke proposed new boundaries, some of Rep. Noel's land was located completely within the monument, and surrounded by GSENM land.²⁴ Under the new map, this portion of his property is conveniently excluded from the monument area.²⁵

Lake Powell Pipeline

Rep. Noel has been a steadfast supporter of the Lake Powell Pipeline ("LPP"), which, if built, would benefit him financially. As the executive director of KCWCD, Rep. Noel has continually advocated for a proposal to develop the LPP,²⁶ perhaps because Johnson Canyon, where Rep. Noel owns a significant portion of the irrigated farmland, will uniquely benefit. Rep. Noel

¹⁹ Press Release, Secretary Zinke Recommends Keeping Federal Lands in Federal Ownership, Adding Three New Monuments, Bureau of Land Management, December 5, available at <https://www.blm.gov/press-release/secretary-zinke-recommends-keeping-federal-lands-federal-ownership-adding-three-new>.

²⁰ Press Release, BLM Seeks Public Input in Planning Process for Grand Staircase-Escalante Region, Bureau of Land Management, January 12, 2018, available at <https://www.blm.gov/press-release/blm-seeks-public-input-planning-Grand-Staircase-Escalante>.

²¹ Rep. Mike Noel, Conflict of Interest & Financial Disclosure Form for Calendar Year 2017, filed January 16, 2018, available at <https://le.utah.gov/house2/CofI/COFINOELME1.pdf>; Property Summaries for Parcels 3-4.5-19-1, 3-4.5-30-3, and 3-5-24-4, Kane County, Utah, available at <https://eagleweb.kane.utah.gov/eaglesoftware/web/login.jsp>.

²² Rep. Mike Noel, Conflict of Interest & Financial Disclosure Form for Calendar Year 2017, filed January 16, 2018; Property Summaries for Parcels 3-4.5-18-1; 3-4.5-20-1; 3-5-24-5; 4-5-6-2; K-16-22-ANNEX; 4-6-12-1; 3-5-13-7, Kane County, Utah, available at <https://eagleweb.kane.utah.gov/eaglesoftware/web/login.jsp>.

²³ Utah Code Ann. § 20a-11-1604(3)(b) and (d).

²⁴ Grand Staircase Escalante National Monument Travel Map, Bureau of Land Management, April 2016, available at <http://www.npshistory.com/publications/blm/grand-staircase-escalante/travel-map-2016.pdf>; Property Summaries for Parcel 3-4.5-18-1, Kane County, Utah, available at <https://eagleweb.kane.utah.gov/eaglesoftware/web/login.jsp>.

²⁵ *Id.*; Grand Staircase-Escalante National Monument-Modification, Bureau of Land Management, December 2017, available at https://www.doi.gov/sites/doi.gov/files/uploads/gsenm_12022017.pdf.

²⁶ Julie Applegate, Noel Tells Republican Women Thoughts on Lake Powell Pipeline, Monument Designations, *St. George News*, January 6, 2017, available at <http://www.stgeorgeutah.com/news/archive/2017/01/06/jla-noel-favors-pipeline-for-massive-growth-opposes-monument-designations/>.

shepherded bills through the legislature promoting the LPP, including the LPP Development Act²⁷ and he is a member of the LPP Management Committee, which oversees development of the LPP.²⁸

While Rep. Noel has advocated for the LPP in his role as KCWCD's executive director, an assessment prepared for the Utah Board of Water Resources in 2011 determined that KCWCD does not need the LPP, finding existing and new groundwater supplies sufficient to meet all of KCWCD's water needs through 2060.²⁹ After he reviewed the water needs report, Rep. Noel asked its authors to amend it to project greater water needs.³⁰ Notably, the assessment determined that one of the few areas within KCWCD's jurisdiction that might benefit from the LPP was the "lower portions" of Johnson Canyon,³¹ exactly where Rep. Noel's land is located.³²

By redrawing the boundaries of GSENM, Sec. Zinke cleared away some of the hurdles previously preventing construction of the LPP. In 2006, the Utah Legislature passed the LPP Development Act, which authorized building the LPP. The agreed upon path for the pipeline passed directly through GSENM, requiring BLM input about the effects of the pipeline on the monument.³³ In 2010, BLM officials expressed concern about "visual impacts" within GSENM and about the location of a tank for regulating the high point of the pipeline.³⁴ During the LPP Management Committee's meeting in March 2010, the committee indicated it would need to study the BLM's proposed alternate location for the tank.³⁵ It is unclear whether and how this may have been resolved.

On December 12, 2017, the Federal Energy Regulatory Commission (FERC) formally accepted the LPP's application to build the pipeline, which opened a 60-day comment period for the

²⁷ Utah House Natural Resources, Agriculture, and Environment Standing Committee, Meeting Minutes, January 25, 2006, available at <https://le.utah.gov/~2006/minutes/HNAE0125.htm>.

²⁸ See <https://water.utah.gov/lakepowellpipeline/managementcommittee/default.asp>; <http://lpputah.org/lpp-management-committee/>.

²⁹ Utah Department of Natural Resources, Utah Division of Water Resources, Lake Powell Pipeline Study Water Needs Assessment, Draft, prepared by MWH, March 2011, available at <http://www.riversimulator.org/Resources/Purveyors/LPPipeline/19DraftWaterNeedsAssessmentReport.pdf> "LPP Water Study", pg. ES-24.

³⁰ KCWCD Board of Trustees, Meeting Minutes, October 11, 2007, available at <https://www.documentcloud.org/documents/4378332-CfA-Noel-Complaint-Oct-11-2007-Meeting-Minutes.html>.

³¹ LPP Water Study at 4-93.

³² Preliminary Licensing Proposal, Lake Powell Pipeline, Utah Board of Water Resources, Federal Energy Regulatory Commission, Docket P-12966, Accession Number 20151203-4007, EZ_Fig_5_4_Major_Water_Uses_Map_11x17_Landsc_10_13_15.PDF, available at https://elibrary.ferc.gov/idmws/File_list.asp?document_id=14405464; *Supra* fn.3.

³³ Toddy Glasenapp, Proposed Lake Powell Pipeline to Utah Moves Forward Without Page, *Arizona Daily Sun*, August 24, 2008, available at http://azdailysun.com/news/local/proposed-lake-powell-pipeline-to-utah-moves-forward-without-page/article_fd4807ce-7e85-5b5f-b832-5c651412f2d1.html.

³⁴ LPP Management Committee, Meeting Minutes, March 19, 2010, available at <https://water.utah.gov/lakepowellpipeline/ManagementCommittee/Approved%20Minutes/MINUTES%20LPP%20-19-10.final.pdf>.

³⁵ *Id.*

proposed pipeline.³⁶ In its notice, however, FERC explained that it may not be the only federal agency with jurisdiction over the proposed pipeline, and it may require input from BLM. The state of Utah then asked for, and FERC granted, approval to pause the comment period to evaluate the jurisdiction claims of other federal agencies.³⁷ Now that the pipeline's path through BLM land is no longer covered by national monument protections, the redrawn boundaries may make it easier for BLM to approve the pipeline.³⁸

Legal Analysis

The American Antiquities Act authorizes the president to declare monuments, the limits of which “shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.”³⁹

The plain language of the act suggests that in determining the boundaries, a president may consider only whether they are “compatible with the proper care and management of the objects to be protected.” The impact of the designation on other landowners is not a factor to be considered.

In addition, the basic code of conduct for federal service states “Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain.”⁴⁰ One of the principles that applies to every employee is that they “shall act impartially and not give preferential treatment to any private organization or individual.”⁴¹ They also “shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards” set out.⁴²

Here, it appears President Trump amended the boundaries of a national monument – in part and perhaps unknowingly – to financially benefit one person: Rep. Noel. As a result, the Office of the Inspector General should investigate this matter to determine: 1) the extent of Rep. Noel's influence on the proposal to revise the boundaries of GSENM, including whether and to what

³⁶ Regulators Give Go-Ahead for Study of Lake Powell Pipeline, *Associated Press*, December 13, 2017, available at <https://www.usnews.com/news/best-states/utah/articles/2017-12-13/regulators-give-go-ahead-for-study-of-lake-powell-pipeline>.

³⁷ David DeMille, Federal Regulators Hit Pause on Lake Powell Pipeline, at Utah's Request, *The Spectrum*, January 13, 2018, available at <http://www.thespectrum.com/story/news/2018/01/13/federal-regulators-hit-pause-lake-powell-pipeline-utahs-request/1031341001/>.

³⁸ Utah Board of Water Resources, Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions, *Federal Register*, December 18, 2017, available at <https://www.federalregister.gov/documents/2017/12/18/2017-27173/utah-board-of-water-resources-notice-of-application-accepted-for-filing-soliciting-motions-to>.

³⁹ 54 U.S.C. § 320301(b).

⁴⁰ 5 C.F.R. § 2635.101(a).

⁴¹ 5 C.F.R. § 2635.101(b)(8).

⁴² 5 C.F.R. § 2635.101(b)(14).

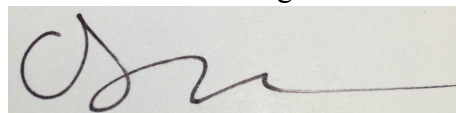
extent the boundaries included in the proposal submitted to the president reflected changes suggested by Rep. Noel; 2) whether and to what extent Sec. Zinke was aware of Rep. Noel's financial interest in revised boundaries⁴³; 3) whether Sec. Zinke improperly granted Rep. Noel any preferential treatment in allowing him to influence the process and in the resulting proposed boundaries; and 4) whether, by allowing an individual with a financial stake in the outcome of the revision process, Secretary Zinke improperly created at least the appearance of a conflict of interest.

Conclusion

Reducing the size of GSENM was a controversial and significant decision. Presidents have made minor adjustments to the size of national monuments very few times in our nation's history, and not at all since 1964. Perhaps for this reason, the Antiquities Act offers no procedures to guide a monument reduction. Nevertheless, general ethical precepts make clear that government officials may not make decisions for the improper purpose of bestowing preferential treatment or a financial benefit on any private individual. Yet this appears to be exactly what has taken place here. To ensure public confidence that the consequential decision to shrink GSENM boundaries was made without any corrupt influence, it is incumbent that the Office of the Inspector General investigate this matter.

Sincerely,

Chris Saeger

A handwritten signature in dark ink, appearing to read 'Chris Saeger', is written over a light-colored rectangular background.

Executive Director

⁴³ Rep. Noel claims that because he files taxes on the land, "the property's disclosed." Taylor W. Anderson, Rep. Mike Noel's Company Owned Land Inside Grand Staircase-Escalante While He Fought Against the Monument, *Salt Lake Tribune*, February 13, 2018, available at <https://www.sltrib.com/news/politics/2018/02/14/it-looks-as-if-rep-mike-noels-company-owned-land-inside-grand-staircase-escalante-while-he-fought-against-the-monument/>.