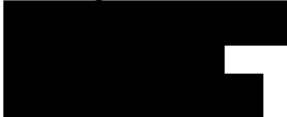


November 3, 2024

Brittany Zale



Via ePlanning Filing Only

Director
Attention: Protest Coordinator (HQ210)
Bureau of Land Management
Denver Federal Center
Bldg. 40
Lakewood, CO 80215

Re: DOI-BLM-UT-Y020-2022-0030-RMP-EIS; *Bears Ears Nat'l Monument Proposed Resource Management Plan and Environmental Impact Statement* – Protest of Britt Zale

Dear Director:

Pursuant to 43 C.F.R. 1610.5-2, this document serves as my formal protest of the Bears Ears Nat'l Monument Proposed Resource Management Plan/Final Environmental Impact Statement dated October 3, 2024 (the “Proposed RMP”). I request that BLM withhold from public review my personal identifying information contained herein. I am a Moab-based climber, BASE jumper, highliner, and dirt biker. I own and operate Climb Moab, the local climbing gym, and serve as Secretary of the Moab BASE Association. My interest in filing this protest concerns the sudden, arbitrary, and capricious revocation of my ability to continue participating in highlining and BASE jumping within the boundaries of the Bears Ears Nat'l Monument as I and thousands of others have long enjoyed. This protest is supported by over one thousand petitioners affected unjustly by this management plan. *See Petition*, appended hereto as Exhibit A.

The Proposed RMP, adopting Alternative E of the Draft Resource Management Plan dated March 2024 (the “Draft RMP”), prohibits, amongst other activities: “[l]aunching or landing of paragliders, hang gliders, base [*sic*] jumpers, and wing-suit flyers [*sic*]; [and] highlining[.]” *Proposed RMP*, at 3-217. The Proposed RMP further posits, incorrectly and without evidence or investigation, that these limitations on recreational opportunities for participants of those activities

would be minimal, based upon BLM's incorrect bald conclusion that "[v]ery few visitors to the BENM region participate in most of these activities except for stacking rocks[.]" *Id.*, at 3-218. This is the language against which this Protest is taken.

The decision to ban these activities would be arbitrary and capricious

BLM's adoption of the Proposed RMP with respect to the Banned Activities would be arbitrary and capricious. The March 2024 Draft RMP failed to propose a ban of highlining at all. BLM did not propose to ban this activity until its appearance in the October, 2024 Proposed RMP, thus depriving public stakeholders of the opportunity for public comment or engagement with the agency at all, contrary to the requirements of 43 C.F.R. 1610.2(A) and the Administrative Procedures Act, 5 U.S.C. 706(2) (the "APA"). Further, the agency failed to develop evidence of, and the Proposed RMP fails to articulate a reason why paragliding, hang gliding, BASE jumping, wingsuiting, and highlining (the "Banned Activities") are "inconsistent with the protection of BENM objects and the Bears Ears cultural landscape" *Proposed RMP*, at 2-103. Each Banned Activity has a long history in the Bears Ears National Monument ("Bears Ears"), notably in the Indian Creek Recreation Area and Valley of the Gods. The Banned Activities are derivative offshoots of the climbing community itself, which under the Proposed RMP enjoys continuing access to recreation in Bears Ears. The Banned Activities have little to no impact on the land, since they are primarily a means of descending from already-climbed objects without the environmental impact of climbing down. In addition, by the BLM's own estimation, these activities are of low environmental impact since they represent a small fraction of the recreational activity taking place within Bears Ears. As a substitute for investigation and evidence supporting these bans, the BLM has instead found each of the Banned Activities "inconsistent with the protection of Monument objects and the Bears Ears cultural landscape" based solely on unspecified "Traditional Indigenous Knowledge" and without engaging with other stakeholders as required. *See Draft RMP*, at 2-115, *Proposed RMP*, at 2-103.

While "[i]ncorporating traditional Indigenous knowledge into management helps ensure that decisions are culturally sensitive," [*Final Environmental Impact Statement*, Vol 3, at Appendix U] such incorporation cannot operate as a wholesale substitute for the entire panoply of other regulations, law, and internal agency policy guiding management decisions, and cannot foreclose consideration of other factors.

I respectfully request that BLM cull the Proposed RMP of the arbitrary and capricious prohibitions on paragliding, hang gliding, BASE jumping, wingsuit flying, and highlining which were proposed absent an evidentiary record of environmental or cultural degradation or opportunity for the public to comment in order to correct BLM's violation of 5 U.S.C. 706(2). "The reviewing court shall . . . hold unlawful and set aside agency actions found to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." *Id.* The Proposed RMP contravenes the APA's mandate that agency decisions (here, enacting a prohibition of the

Banned Activities) rest upon a clearly articulated reason and facts—none of which are present in the Draft RMP or Proposed RMP. An agency action is arbitrary and capricious if the agency relied on factors which the legislature had not intended it to consider, if it entirely failed to consider an important aspect of the problem, if it offered an explanation for the decision that runs counter to the evidence, or if the decision is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *See In re Space Ctr. Transp.*, 444 N.W.2d 575, 581 (*Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29,43 (1983)).

Because BLM failed to engage participants of the Banned Activities, the Proposed RMP in the case of prohibiting paraglider and hang glider launching or landing presents direct legal conflicts with federal aviation regulations (notably 14 C.F.R. 91.3(a) and Title 14, Part 103) granting pilots suffering a flight emergency discretion to land wherever is practicable.

These activities received little or, in the case of highlining, no mention in the March 2024 Draft RMP. *Draft RMP*, at 2-115. BLM further failed to notify our known public communities of proposed prohibitions consistent with 43 C.F.R. 1610.2(d), depriving affected stakeholders of the opportunity to engage with and educate the commission, and depriving them of the opportunity to comment on these uninformed management decisions. My comments on the draft plan reflect the absence of notice to the highlining community. The recreating public expects equal treatment for all similarly situated groups. While the Bears Ears Commission worked closely with the climbing community and offered several alternatives to managing climbers within the Monument, there was no similar effort extended to the BASE community, which counts Moab, Utah and its surrounding areas (including Bears Ears) as the center of its universe.

Description of Banned Activities in Bears Ears National Monument

Though they can appear to be extreme activities, the Banned Activities are most often performed by experts with reverence for the landscape and other user groups. These activities are quiet and peaceful, with limited to no impact, with its participants undertaking risks in a calculated, informed, and experienced manner.

“Paragliders” and “hang gliders” are used to describe both the equipment (the parachute or fixed wing) and the practitioner (its pilot.) Though you can launch a paraglider from a cliff, both paragliders and hang gliders are typically launched with a downhill running start. Paragliding and hang gliding are both quiet and not disturbing to those around them and can be used to descend but also use lift to stay in flight for long periods of time. The pilot is in control of their wing and can easily land on existing trails or roads. Paragliding and hang gliding have little to no impact on the land, as these users are effectively one-way hikers.

BASE is spelled in all-caps because it is an acronym for Building Antenna Span and Earth; this describes the type of fixed objects from which one jumps, which we call an exit. “Earth” represents cliffs, the only type of exit available in Bears Ears. A BASE jumper can hike to some

exits, but most exits in Bears Ears require advanced climbing skills and gear. Jumpers use already-established hiking trails and rock climbs to reach the top of towers. Once at the top, jumpers put all their climbing gear and ropes in a bag which hangs in front of them. BASE jumpers then jump off the cliff, typically near or above the climb used to ascend, and deploy a parachute. BASE parachutes only descend, and so jumpers have a short and limited parachute flight, typically less than two minutes. Jumpers are in control of their parachutes, and can land them on nearby existing trails, roads, or campsites. BASE jumping is an advanced parachute sport and most participants only join the sport after advanced skydiving or paragliding certifications. Wingsuit BASE is a discipline of BASE jumping, in which the jumper wears a wingsuit to maximize glide during the freefall portion of the BASE jump, wingsuiters then deploy a controllable parachute and can also land their parachute on a trail or road. Wingsuit BASE jumping requires a significant height and there are no known exits in Bears Ears to accommodate wingsuit BASE jumping. While the parachutes make a sound when opening, this activity is quiet and lasts, at max, a couple of minutes. It minimally disturbs other user groups and is rarely seen from the highway. BASE jumping has little to no impact on the land, as these users are effectively one-way hikers and climbers.

Highlining, a unique discipline of slacklining at heights, is an activity in which participants walk between two fixed points on 1-inch wide webbing. Participants commonly spend upwards of a decade training for these short-lasting walks in the sky. This activity was started by climbers in Yosemite, looking for a rest day activity. Like climbers, highliners use bolted or natural anchors on the top of cliffs or towers to attach the webbing on each side. Highliners then attach themselves to the line using a safety leash and ring that surrounds both the main and backup 1-inch webbing. Highliners ascend to the top of the cliff using pre-existing climbing routes or hiking trails. Since highlines are so thin, they are barely noticeable from the ground and are not left rigged for long periods of time. Because these lines are barely perceivable, highliners are sometimes required to file notice with the FAA. This activity leaves little to no impact, commonly far less than climbing, is silent, and does not disturb one's view of the landscape.

The Banned Activities have little to no impact in the Monument

Following the introduction of the ban, the Proposed RMP immediately states: "Very few visitors to the BENM region participate in most of these activities except for stacking rocks, otherwise known as "cairning," limiting the extent of impacts to recreational opportunities allowed in BENM." *Proposed RMP*, at 3-218-219. This is the only explanation given in response to any comments raising the issue. It is true that as a percentage of the visitors in Bears Ears, our numbers are small. Most of the Banned Activities require years of specific training, in addition to the advanced rock climbing skills needed to ascend towers and walls. This means that our user group and our impact on the Monument will remain limited to a small number of qualified individuals.

The paragraph describing this ban starts with a concern for users staying on trails, see *Proposed RMP*, at 3-218. When participating in these activities, we use the same trails and routes

as climbers to get to the top. All of our parachutes are controllable and we are able to land on those trails if needed. We would also be amenable to working with BLM and the BEC to choose landing areas for BASE jumpers, paragliders, and hang gliders, just as we have in the Moab area. However, no one from the BEC reached out to our local communities to discuss our impact and designate landing areas for jumps.

There is no evidence or history of the Banned Activities disturbing Monument objects. No known launches, exits, or highlines are close to archaeological sites. Paragliding, hang gliding, and highlining are all silent activities and while BASE jumping parachutes make a short sound while opening, it is also otherwise a silent activity. While viewing from the highway, most highlines are a mere inch wide and up for a limited period. Most parachutes are only in the air for a maximum of two minutes before landing. Our activities do not disturb other users' experiences and only for a moment are in view as part of the visual landscape.

This decision is a result of unequal treatment of different user groups

The BEC and federal decision makers met closely with rock climbers and even visited Supercrack Butte to see the sport in action before making a decision regarding new climbing route development. But when considering an outright ban of our activities on public land, no one reached out for information regarding the Banned Activities. Because our activities received just one or no mention in the March Draft RMP (unlike rock climbing, mentioned over 100 times), we didn't know to reach out to the BLM or BEC to establish that conversation. With the ban's awkward wording (BASE jumpers and wingsuiters aren't launched or landed) and concern for off-trail use, it's clear that there was little understanding of our activities and how important places like Indian Creek are to us.

Alternative A (No Action)	Alternative B	Alternative C	Alternative D	Alternative E	Proposed Plan
	closures. Additional restrictions may apply where covered elsewhere in management actions. This prohibition does not apply to the use of firearms in the lawful pursuit of game.				
272 No similar management.	No similar management.	No similar management.	No similar management.	Activities inconsistent with the protection of BENM objects and the Bears Ears cultural landscape, as determined in collaboration with the BEC and in accordance with Tribal expertise and Traditional Indigenous Knowledge would be prohibited in BENM. Prohibited activities include, but are not limited to paragliding, hang gliding, base jumping, wing-suit flying, geocaching, and rock stacking. These are inappropriate activities in the Bears Ears cultural landscape according to Tribal expertise and Traditional Indigenous Knowledge.	Activities inconsistent with the protection of BENM objects and the Bears Ears cultural landscape, as determined in collaboration with the BEC and in accordance with Tribal expertise and Traditional Indigenous Knowledge would be prohibited in BENM. The public would be prohibited from engaging in the following activities: launching or landing of paragliders, hang gliders, base jumpers, and wing-suit flyers, highlining, geocaching, and rock stacking.

Table, Proposed RMP, at 2-103.

In both the Draft and Proposed RMPs, each of the five alternatives weigh options to manage climbing, OHV access, camping, and hiking. But in only one table row (above) has “no similar management” listed in Alternatives A through D, and then Alternative E proposes a full ban of the Banned Activities, and did not even name highlining in the Draft RMP. There is no middle ground or negotiation presented in the table above throughout the alternatives. This is a feeble attempt of user group management and confirms that our user groups were not given the proper consideration before recommending their prohibition.

Like rock climbing, the Banned Activities have been historically practiced in Bears Ears and access should be preserved. Nearly 20 years ago, when BASE jumping was still in its infancy, Tom Dancs climbed the North Sixth Shooter and BASE jumped off the summit. BASE jumping gear had just recently been developed to handle such low heights as those in Southeast Utah, and at the time, a jump from just 270 feet was considered new ground. Likewise, in 2014, while highlining was still new, Timmy O'Neil walked the Bridger Jacks highline, connecting King of Pain the tallest tower in the formation with the nearby butte. This highline became a classic of the area. Since these first instances, experts in the Banned Activities have established new highlines, one of which was record-breaking. Additionally, participants have BASE jumped and paraglided off several towers and climbing walls. Aerial activities and highlining have a rich history in the Monument, and this outright prohibition of our activities is clearly unequal treatment of our user groups, especially compared to rock climbers.

Conclusion

Please consider this Protest of the prohibition of paragliding, hang gliding, BASE jumping, and highlining when approving the Proposed RMP. It is a dangerous precedent for the federal government to prohibit low impact activities on public land, especially without concern for user input and without evidence to support its decision. This decision to prohibit aerial activities and highlining in the Proposed RMP for Bears Ears National Monument was arbitrary and capricious, and fares poorly when compared to the administrative standard that agencies must undergo before making decisions that impact user groups on public land.

The only explanations offered for this proposed ban is that “very few visitors to the BENM region participate in most of these activities” *See Final RMP Vol 3, at Appendix U*. But this protest is supported by over one thousand individuals in the included Petition, Exhibit A.

Highliners, BASE jumpers, and paragliders have seen a recent decline in our access to public land in the Moab area. By establishing small special use areas for BASE jumping, banning aerial activities and highlining in BLM areas such as Hell Roaring Canyon, Mineral Bottom, and now Bears Ears National Monument, the impact is not felt by the masses who visit but the few who dare to stray from the beaten path. Taking the road less traveled is not only in the spirit of our sports, but in the spirit of the West and of public land. Access to that road less traveled should be preserved, not closed.

Sincerely,

Brittany Zale
Protester