

441 G St. N.W.
Washington, DC 20548

Decision

Matter of: Department of the Interior—Activities at Grand Staircase-Escalante National Monument

File: B-331089

Date: December 14, 2021

DIGEST

Section 408 of the Department of the Interior, Environment, and Related Agencies Appropriations Acts for fiscal years 2017, 2018, and 2019 (section 408), prohibited the U.S. Department of the Interior (Interior) from using its appropriated funds to conduct certain preleasing, leasing, and related activities under the Mineral Leasing Act of 1920 (MLA) within the boundaries of national monuments. While the provision was in effect, the Bureau of Land Management (BLM), an agency within Interior, used appropriated funds to conduct land management planning activities under the Federal Land Policy and Management Act of 1976 (FLPMA) for the Grand Staircase-Escalante National Monument, a national monument in Utah, and the Kanab-Escalante Planning Area. Because the activities that it performed in both areas were required by FLPMA, and not undertaken pursuant to or authorized under the MLA, Interior did not violate section 408 or the Antideficiency Act.

DECISION

In May 2019, the then-Chair of the U.S. House Appropriations Subcommittee on the Interior, Environment, and Related Agencies and the then-Ranking Member of the Senate Appropriations Subcommittee on the Interior, Environment, and Related Agencies requested a decision as to whether the U.S. Department of the Interior (Interior) violated section 408 of the Department of the Interior, Environment, and Related Agencies Appropriations Acts for fiscal years (FYs) 2017, 2018, and 2019 (collectively referred to as “section 408”), when the Bureau of Land Management (BLM), an agency within Interior, used appropriated funds to undertake certain activities at the Grand Staircase-Escalante National

Monument in Utah.¹ Additionally, the requesters asked whether this use of appropriated funds also violated the Antideficiency Act.² As explained below, we conclude that Interior did not violate section 408 when BLM used appropriated funds to undertake land management planning activities as required by the Federal Land Policy and Management Act of 1976 (FLPMA) at the Grand Staircase-Escalante National Monument and the Kanab-Escalante Planning Area. Accordingly, we also conclude that Interior did not violate the Antideficiency Act.

In accordance with our regular practice, we contacted Interior to seek factual information and its legal views on this matter. Letter from Assistant General Counsel for Appropriations Law, GAO, to Solicitor, Interior (Feb. 18, 2020); GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at <https://www.gao.gov/products/GAO-06-1064SP>. Interior responded with its explanation of the pertinent facts and legal analysis.³ Letter from Deputy Solicitor for General Law, Interior, to Assistant General Counsel for Appropriations Law, GAO (Mar. 20, 2020) (Response Letter).

¹ This letter was initially sent by Betty McCollum, former Chair, Subcommittee on the Interior, Environment, and Related Agencies, United States House of Representatives, and Tom Udall, former Ranking Member, Subcommittee on the Interior, Environment, and Related Agencies, United States Senate, to the Comptroller General (May 22, 2019) (Request Letter). Ms. McCollum and Mr. Udall are no longer serving in the positions they held when they requested our decision. Chellie Pingree, current Chair, Subcommittee on the Interior, Environment, and Related Agencies, United States House of Representatives; and Jeff Merkley, current Chair, Subcommittee on the Interior, Environment, and Related Agencies, United States Senate; confirmed that their subcommittees remain interested in this decision. Accordingly, this decision identifies Chellie Pingree and Jeff Merkley as the requesters.

² *Id.*

³ In July 2021, we contacted Interior for additional information on this matter. Interior responded with a supplemental legal analysis by letter and email. Letter from Principal Deputy Solicitor, Department of the Interior, to Assistant General Counsel for Appropriations Law, GAO (October 13, 2021) (October Letter); Email from Deputy Solicitor for General Law, Interior, to Assistant General Counsel for Appropriations Law, GAO (October 22, 2021) (Email Response).

BACKGROUND

On September 18, 1996, President Clinton invoked the Antiquities Act of 1906 (16 U.S.C. §§ 431–433 (1996))⁴ and issued a Proclamation to establish the Grand Staircase-Escalante National Monument in the state of Utah. Proclamation No. 6920, 61 Fed. Reg. 50223 (Sept. 24, 1996). This proclamation also directed the Secretary of the U.S. Department of the Interior (Interior) to manage the Grand Staircase-Escalante National Monument through the Bureau of Land Management (BLM). *Id.* at 50225.

In the fiscal year (FY) 2002 Department of the Interior and Related Agencies Appropriations Act, Congress included a provision that limited the activities that could be undertaken within the boundaries of the Grand Staircase-Escalante National Monument and other national monuments. This provision prohibited the use of appropriated funds to conduct any “preleasing, leasing and related activities” under the Mineral Leasing Act (MLA) or the Outer Continental Shelf Lands Act within the boundaries of a national monument as it existed on January 20, 2001, except where such activities are permitted by the presidential proclamation establishing the monument. Pub. L. No. 107-63, § 331, 115 Stat. 414, 471 (Nov. 5, 2001). Congress repeated this provision in section 408 of the FY 2017, 2018, and 2019 Department of the Interior, Environment, and Related Agencies Appropriations Acts. Pub. L. No. 116-6, div. E, title IV, 133 Stat. 13, 259–260 (Feb. 15, 2019); Pub. L. No. 115-141, div. G, title IV, 132 Stat. 348, 688 (Mar. 23, 2018); Pub. L. No. 115-31, div. G, title IV, 131 Stat. 135, 495 (May 5, 2017).

While this provision was in effect, President Trump modified the boundaries of the Grand Staircase-Escalante National Monument to exclude the Kanab-Escalante Planning Area—approximately “861,974 acres of land . . . no longer necessary for the proper care and management of the objects to be protected within the monument . . .” Proclamation No. 9682, 82 Fed. Reg. 58089, 58093 (Dec. 8, 2017); see Response Letter, at 3. President Trump’s proclamation opened this land to entry, location, selection, sale, or other disposition under public land laws; disposition under all laws relating to mineral and geothermal leasing; and location, entry, and patent under the mining laws. 82 Fed. Reg. at 58093. President Trump’s proclamation also required the Secretary of Interior to prepare and maintain a management plan for the units of the Grand Staircase-Escalante National Monument, in consultation with interested entities. *Id.* at 58094. On October 8, 2021, President Biden issued a proclamation to

⁴ In 2014, Congress restated and reenacted the provisions in the Antiquities Act of 1906 as positive law in titles 18 and 54 of the United States Code. Pub. L. No. 113-287, §§ 3, 4(a)(1), 128 Stat. 3094, 3259–61 (Dec. 19, 2014). In particular, 16 U.S.C. §§ 431–432 were restated and reenacted at 54 U.S.C. §§ 320301–320303, and 16 U.S.C. § 433 was restated and reenacted at 18 U.S.C. § 1866(b). *Id.*

“restor[e] the Grand Staircase-Escalante National Monument to its size and boundaries as they existed prior to December 4, 2017.” Proclamation No. 10286, 87 Fed. Reg. 57335 (Oct. 8, 2021).

From FY 2017 through FY 2019, BLM performed certain activities in relation to the Grand Staircase-Escalante National Monument and the Kanab-Escalante Planning Area. Response Letter, at 4. Specifically, BLM prepared resource management plans (RMPs) for each of the three units in the Grand Staircase-Escalante National Monument, and an RMP for the Kanab-Escalante Planning Area. Response Letter, at 4. BLM also analyzed each of these RMPs through a single environmental impact statement (EIS). *Id.* BLM did not perform any activities for these areas that were associated with the facilitation of future development of oil, gas, coal, or other minerals. *Id.*

DISCUSSION

At issue here is whether Interior violated section 408 of the Department of the Interior, Environment, and Related Agencies Appropriations Acts for FY 2017, 2018, and 2019, and the Antideficiency Act, when, during those fiscal years, BLM used appropriated funds to perform activities related to the creation of four resource management plans at the Grand Staircase-Escalante National Monument and the Kanab-Escalante Planning Area. For the reasons outlined below, we conclude that Interior did not violate Section 408 or the Antideficiency Act.

To interpret section 408, we begin with the text, giving ordinary meaning to statutory terms unless otherwise defined. *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009); B-331739, Mar. 18, 2021; B-329603, Apr. 16, 2018, at 4; B-329199, Sept. 25, 2018, at 23; B-331892, Nov. 19, 2020, at 3. This is because the “starting point in discerning congressional intent is the existing statutory text.” *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004); B-331739, Mar. 18, 2021.

Section 408 states that “No funds provided in this Act may be expended to conduct preleasing, leasing and related activities under . . . the Mineral Leasing Act (30 U.S.C. 181 *et seq.*) . . . within the boundaries of a National Monument established pursuant to the Act of June 8, 1906 (16 U.S.C. 431 *et seq.*) as such boundary existed on January 20, 2001, except where such activities are allowed under the Presidential proclamation establishing such monument.”⁵ Pub. L.

⁵ The text of section 408 also contained a reference to the Outer Continental Shelf Lands Act (43 U.S.C. §§ 1331 *et seq.*), which governs mineral leasing on the United States’ Outer Continental Shelf. See 43 U.S.C. §§ 1331 *et seq.* That act is not relevant to this decision because neither the Grand Staircase-Escalante National Monument nor the Kanab Escalante Planning Area is situated on any part of the United States’ Outer Continental Shelf.

No. 116-6, div. E, title IV, 133 Stat. 13, 259–260 (Feb. 15, 2019); Pub. L. No. 115-141, div. G, title IV, 132 Stat. 348, 688 (Mar. 23, 2018); Pub. L. No. 115-31, div. G, title IV, 131 Stat. 135, 495 (May 5, 2017).

Here, section 408 prohibited the use of appropriated funds to undertake activities *under* the Mineral Leasing Act, such as holding lease sales and approving geophysical exploration on lands not yet leased. See 30 U.S.C. § 181 *et seq.* The word “under” has numerous definitions and its meaning has to be drawn from its context. See *Kucana v. Holder*, 558 U.S. 233, 245 (2010); *Ardestani v. INS*, 502 U.S. 129, 135 (1991). The most natural reading of the word “under” as it’s used here is that it refers to activities taken “pursuant to” or “authorized under” the MLA.⁶ Therefore, section 408 prohibited the use of appropriated funds to undertake pre-leasing, leasing, and related activities pursuant to or authorized under the MLA.

Interior explained in its original response to us that neither section 408 nor the ADA was violated because BLM did not undertake any actions pursuant to or authorized under the MLA during the fiscal years in question. Response Letter, at 1. Rather, BLM undertook certain activities at the Grand Staircase-Escalante National Monument and the Kanab-Escalante Planning Area that were required by the Federal Land Policy and Management Act of 1976 (FLPMA), the National Environmental Policy Act, and BLM resource management planning regulations. Response Letter, at 2-4. According to Interior, BLM, consistent with its responsibilities under FLPMA,⁷ developed, maintained, and revised land use plans with regard to both areas between FY 2017 and 2019. See Response Letter, at 4. BLM prepared four RMPs for the areas that were analyzed through one environmental impact statement. Response Letter, at 4. The land use planning decisions made in those documents were made in accordance with the procedures in BLM’s planning regulations, FLPMA, the BLM Land Use Planning Handbook, and other resource-specific guidance. BLM, *Grand Staircase-Escalante National Monument and Kanab-Escalante Planning Area*, (Aug. 2018), at 1-5.

⁶ See, e.g., *House Legislative Counsel’s Manual on Drafting Style*, HLC 104-1 (Nov. 1995) (advising that “if the result occurs through action required or permitted by the provision, use ‘under’”).

⁷ See, e.g., 43 U.S.C. §§ 1701(a), 1732. FLPMA requires the Secretary of the Interior to “develop, maintain, and when appropriate, revise land use plans. . .” 43 U.S.C. § 1712(a). BLM’s mission is to “sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations.” BLM, *Our Mission*, available at <https://www.blm.gov/about/our-mission> (last visited July 20, 2021). This mission requires the agency to carry out a dual mandate of managing public lands for multiple uses while also conserving natural, historical, and cultural resources. BLM, *What We Manage*, available at <https://www.blm.gov/about/what-we-manage/national> (last visited July 20 2021).

In addition, BLM stated in planning documents for the areas that their actions were limited by section 408 and did not authorize leasing activities. For example, planning documents recognized that Interior was prohibited from “expending appropriated funds on preleasing and leasing activities under the Mineral Leasing Act on lands excluded from Grand Staircase-Escalante National Monument by Presidential Proclamation 9682.” BLM, *Grand Staircase-Escalante National Monument and Kanab-Escalante Planning Area Proposed Resource Management Plans and Environmental Impact Statement*, Vol. 1, (Aug. 2019) at 3-106. BLM also issued records of decision (RODs) and approved RMPs for both areas,⁸ and the approved RMP for the Kanab-Escalante Planning Area stated that any mineral exploration and development on such land would be subject to site-specific analysis. BLM, *Record of Decision and Approved Resource Management Plan for the Kanab-Escalante Planning Area* (Feb. 2020) at RODs-13; Response Letter, at 4. Additionally, the RODs for the Kanab Escalante Planning Area stated that the management decisions were focused on planning-level decisions; that it did not change BLM’s responsibility to comply with applicable laws, rules, and regulations; and that it did not authorize any site-specific development or surface disturbance. *RODs and Approved RMP*, at RODs-4–RODs-5. None of the plans, statements, or decisions, for the Kanab-Escalante Planning Area authorized site-specific exploration or leasing activities pursuant to the MLA. Response Letter, at 4.

In its supplemental response to us, Interior noted that an argument exists that some land use planning activities could be “sufficiently connected” to the preleasing and leasing activities authorized by MLA to bring those activities within the purview of section 408, although Interior would not take a position on whether BLM violated section 408. October Letter, at 2-3; Email Response. Interior reached this conclusion, in part, because of legislative history noting that section 408 was “intended to discourage . . . president[s] . . . from modifying any monuments. . . to facilitate mineral exploration or development.” October Letter, at 3. However, there is a “strong presumption that the plain language of the statute expresses congressional intent [, which] is rebutted only in rare and exceptional circumstances, when a contrary legislative intent is clearly expressed.” *Ardestani*, 502 U.S. at 135-36. Here, we have found no legislative language to rebut this presumption, and confer the most natural reading to the word “under” as it’s used in section 408. Even if some land use planning activities could be connected to activities authorized by MLA, BLM carried them out pursuant to or as authorized under FLPMA, and thus, the prohibition in section 408 did not reach such activities.

⁸ Although the Kanab-Escalante Planning Area ROD and approved RMPs were finalized in February 2020 (*i.e.* after FY 2019) they are relevant to this decision because BLM was engaged in their preparation in FY 2019, and these documents provide information relevant to the activities that were undertaken by BLM during the FY 2017 through FY 2019 time frame identified in the request letter.

Between FY 2017 and FY 2019, BLM undertook activities at the Grand Staircase-Escalante National Monument and the Kanab-Escalante Planning Area pursuant to FLPMA, the National Environmental Policy Act, and BLM resource management planning regulations, but not pursuant to or authorized under the MLA.⁹ Interior did not violate section 408 because section 408 only prohibited the use of appropriated funds to undertake activities pursuant to or authorized under the MLA.

Further, Interior did not violate the Antideficiency Act. The Antideficiency Act, in pertinent part, prohibits the obligation or expenditure of funds in excess or in advance of an appropriation. 31 U.S.C. § 1341. Where an agency obligates and expends appropriated funds in violation of statutory prohibitions, it also violates the Antideficiency Act, as the agency's appropriations are not available for the prohibited purposes. See B-326944, at 2. Here, Interior did not violate section 408, and so, there is also no violation of the Antideficiency Act.

CONCLUSION

The U.S. Department of the Interior did not violate section 408 of the Department of Interior, Environment, and Related Agencies Appropriations Acts for FYs 2017, 2018, and 2019 or the Antideficiency Act, when the Bureau of Land Management used appropriated funds to carry out land management planning activities for the Grand Staircase-Escalante National Monument.



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⁹ The Supreme Court has also drawn a distinction between planning activities under FLPMA and implementation or use decisions authorized under other statutes. See, e.g., *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 69–72 (2004); see also *Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 733–34 (1998) (drawing a similar distinction, although in the context of opening lands for timber harvesting through a parallel land use planning process that the Forest Service conducts under the National Forest Management Act, not FLPMA).

List of Requesters

The Honorable Chellie Pingree

Chair

Subcommittee on Interior, Environment, and Related Agencies

Committee on Appropriations

House of Representatives

The Honorable Jeff Merkley

Chair

Subcommittee on the Interior, Environment, and Related Agencies

Committee on Appropriations

United States Senate