

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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| HOPI TRIBE, <i>et al.</i> , |) | |
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| Plaintiffs, |) | Case No.17-cv-2590 (TSC) |
| |) | |
| v. |) | |
| |) | |
| Defendants. |) | |
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| UTAH DINÉ BIKÉYAH, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | Case No. 17-cv-2605 (TSC) |
| |) | |
| v. |) | |
| |) | |
| DONALD J. TRUMP, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
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| NATURAL RESOURCES DEFENSE |) | |
| COUNCIL, INC., <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | Case No. 17-cv-2606 (TSC) |
| |) | |
| v. |) | |
| |) | |
| DONALD J. TRUMP, <i>et al.</i> , |) | |
| |) | CONSOLIDATED CASES |
| Defendants. |) | |
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**TRIBAL PLAINTIFFS’ AMENDED AND SUPPLEMENTAL COMPLAINT FOR
INJUNCTIVE AND DECLARATORY RELIEF**

INTRODUCTION

1. This case arises from President Trump’s unlawful attempt to revoke and replace the Bears Ears National Monument (“the Monument or “Bears Ears”) a national monument of major cultural, historic and scientific importance to the Plaintiff Tribes in violation of the United States Constitution and the Antiquities Act of 1906. Beginning with Theodore Roosevelt, Presidents have designated more than one hundred monuments throughout our country. However, no President has ever previously sought to abolish one by Proclamation because the Antiquities Act does not authorize a President to do so. In attempting to, in effect, abolish the Bears Ears National Monument (“Bears Ears” or the “Monument”), the President has exceeded the limited authority delegated to his office, in violation of the Antiquities Act and the separation of powers established in the Constitution. Further, the President was plainly aware that he lacked the authority to revoke the Monument, and is transparently attempting to evade that strict limitation by purporting to reduce it versus abolishing it all together. However, for the reasons set forth herein, the President’s action must be viewed as a revocation, particularly with respect to all objects not included in the two “new” monuments.

2. President Barack Obama, in recognition of the historic trust obligation the United States owes to Native Nations, established Bears Ears by Proclamation on December 28, 2016 (the “Proclamation” or “Bears Ears Proclamation”). Proclamation No. 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016). President Obama proclaimed the Monument pursuant to his authority under the Antiquities Act, just as many previous Presidents have established national monuments. *Id.* at 1143.

3. President Obama’s decision to issue the Proclamation came after years of extensive outreach and coordination with Plaintiff Tribes (defined below), state and local officials, and other

stakeholders. To ensure that all voices were heard, the Department of the Interior and the Department of Agriculture also visited the Bears Ears region and heard directly from all sides regarding the unique resources at risk and the importance of the area.

4. Bears Ears has been home to Native peoples since time immemorial, and is still cherished by Native peoples for its cultural, spiritual, and archaeological importance. Bears Ears contains hundreds of thousands of objects of historic and scientific importance, many traditional cultural properties, and many sacred sites. The Plaintiff Tribes, in particular, continue to regularly use Bears Ears to: collect plants, minerals, objects and water for religious and cultural ceremonies and medicinal purposes; hunt, fish and gather; provide offerings at archaeological sites; and conduct ceremonies on the land. In fact, Bears Ears is so culturally and spiritually significant that some ceremonies use items that can *only* be harvested from Bears Ears. Moreover, some members of Plaintiff Tribes also continue to hold grazing permits and allotments in the area. In short, Bears Ears is, both historically and currently, a vital component of the Plaintiff Tribes' existence.

5. Because of its critical contemporary and historical importance, the Bears Ears Inter-Tribal Coalition (the "Coalition"), which consists of the five Plaintiff Tribes, proposed turning the Bears Ears area into a national monument. The Coalition and its allies collected information and advocated for the creation of the Monument. Plaintiff Tribes have also already begun to assume their responsibilities under the Proclamation as each Tribe has designated a representative to sit on the Bears Ears Commission ("Commission"), the entity that is intended to provide guidance and recommendations on the management of Bears Ears. This Commission has already formed and held several meetings to establish its bylaws and begin coordinating with the local Bureau of Land Management and Forest Service offices.

6. On April 26, 2017, President Trump called for an arbitrary and unprecedented review of national monument designations made since January 1, 1996, for designations that cover more than 100,000 acres or “where the Secretary determines that the designation or expansion was made without adequate public outreach and coordination with relevant stakeholders[.]” Exec. Order No. 13792, 82 Fed. Reg. 20429 (Apr. 26, 2017). The review was purportedly to determine whether the designations conform to the objectives of the Antiquities Act. *Id.*

7. On December 4, 2017, President Trump signed a Proclamation (“Trump Proclamation”) purporting to “modify” the Bears Ears National Monument and designate instead two different, much smaller units called the Indian Creek unit and the Shash Jáa unit. In reality, this drastic reduction is tantamount to a revocation of Bears Ears and a replacement of it with two much smaller monuments. The Trump Proclamation eliminates numerous objects designated for protection in the Bears Ears Proclamation from the two new “units.” These two new monuments consist of 201,397 acres combined and represent only 15 percent of the original 1.35 million acres protected by the Bears Ears National Monument. Furthermore, the revocation removes federal monument protection from all the objects in over 1.1 million acres. While the Proclamation purports to reduce or modify Bears Ears, this action constitutes a revocation.

8. The Antiquities Act authorizes Presidents to designate federal public lands, such as Bears Ears, as national monuments to safeguard and preserve landmarks, structures, and objects of historic or scientific importance. The Antiquities Act, however, does not authorize Presidents to rescind or modify national monuments created by their predecessors, and certainly not to revoke and replace them with smaller ones as has been done here. That power is reserved to Congress alone.

9. President Trump's unprecedented Proclamation revoking Bears Ears and replacing it with two new monuments violated the Antiquities Act, seized an authority that the Constitution vests in Congress, exceeded the power delegated to the President by Congress, and should be declared unlawful and enjoined to prevent its implementation.

10. If this unprecedented and unlawful action is allowed to stand, the 129 national monuments across the United States will be at risk. The historic and cherished national monument system will be destabilized. Congress clearly did not intend for that result. It enacted the Antiquities Act to preserve America's historic and scientific heritage for the benefit of current and future generations. Congress reserved to itself the authority to revoke or modify those monuments, and granted the President only the power to create them.

11. In addition, if this unprecedented and unlawful action is allowed to stand, the Bears Ears area and its unique cultural resources will immediately be – indeed already is – subject to devastating damage from oil and gas drilling, uranium and potash mining, mineral exploration, off-road vehicle use, vandalism and looting, and grave robbing. Mining has begun and oil and gas leasing is imminent. Furthermore, invaluable archaeological, paleontological and faunal information will be forever lost to science and history. This unlawful and unprecedented action also caused immediate harm to the Plaintiff Tribes by eliminating their ability and authority to collaboratively manage with federal agencies approximately 90% of the lands in the Bears Ears landscape, including their ability to manage 100% of the objects in all the excised lands.

JURISDICTION AND VENUE

12. This action arises under the Antiquities Act, and Articles I, II and IV of the Constitution of the United States. This action also arises under sections 701 through 706 of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706. The APA waives Defendants'

sovereign immunity in this action. 5 U.S.C. § 702. Jurisdiction is therefore proper pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).

13. This court also has jurisdiction pursuant to 28 U.S.C. § 1362, which provides that “district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.”

14. This court has authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202 and its inherent authority to issue equitable relief. Injunctive relief is also authorized for claims under sections 705 through 706 of the APA.

15. Venue is proper pursuant to 28 U.S.C. § 1391 because the Defendants reside in this judicial district, and because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

PLAINTIFFS

16. Plaintiff HOPI TRIBE is a sovereign Indian Tribe, recognized by the United States, with lands located in Arizona. 82 Fed. Reg. 4915, 4916 (Jan. 17, 2017). The Hopi Tribe maintains a government-to-government relationship with the United States. The Hopi reservation was created by executive order in 1882. As a sovereign, the Hopi Tribe may sue on its own behalf for injury to the Tribe itself, and is entitled to the special solicitude owed to sovereigns. *See Mashantucket Pequot Tribe v. Town of Ledyard*, 722 F.3d 457, 463 (2d Cir. 2013) (*quoting Massachusetts v. EPA*, 549 U.S. 497, 520 (2007), which held in part that, in protecting its “quasi-sovereign interests,” the state is “entitled to special solicitude in our standing analysis”).

17. Plaintiff NAVAJO NATION is a sovereign Indian Nation, recognized by the United States, with lands located in Utah, Arizona, and New Mexico. 82 Fed. Reg. 4915, 4917. The

Navajo Nation maintains a government-to-government relationship with the United States. The Navajo Nation signed two treaties with the United States in 1849 and 1868. As a sovereign, the Navajo Nation may sue on its own behalf for injury to the Nation itself, and is entitled to the special solicitude owed to sovereigns. *See Mashantucket Pequot Tribe*, 722 F.3d at 463.

18. Plaintiff UTE INDIAN TRIBE is a sovereign Indian Tribe, recognized by the United States, with lands located in Utah. 82 Fed. Reg. 4915, 4919. The Ute Indian Tribe maintains a government-to-government relationship with the United States. The Ute tribes signed treaties with the United States in 1849, 1863, and 1868. As a sovereign, the Ute Indian Tribe may sue on its own behalf for injury to the Tribe itself, and is entitled to the special solicitude owed to sovereigns. *See Mashantucket Pequot Tribe*, 722 F.3d at 463.

19. Plaintiff UTE MOUNTAIN UTE TRIBE is a sovereign Indian Tribe, recognized by the United States, with lands located in Utah, Colorado, and New Mexico. 82 Fed. Reg. 4915, 4919. The Ute Mountain Ute Tribe maintains a government-to-government relationship with the United States. The Ute tribes signed treaties with the United States in 1849, 1863, and 1868, and the Ute Mountain Ute signed another treaty establishing their reservation in 1878. As a sovereign, the Ute Mountain Ute Tribe may sue on its own behalf for injury to the Tribe itself, and is entitled to the special solicitude owed to sovereigns. *See Mashantucket Pequot Tribe*, 722 F.3d at 463.

20. Plaintiff ZUNI TRIBE is a sovereign Indian Tribe, recognized by the United States, with lands located in Arizona and New Mexico. 82 Fed. Reg. 4915, 4919. The Zuni Tribe maintains a government-to-government relationship with the United States. The Zuni Tribe became part of the United States when the Treaty of Guadalupe Hidalgo was signed in 1848. The Zuni signed treaties with the United States in 1850 and 1851. The Zuni reservation was established by executive order in 1877. As a sovereign, the Zuni Tribe may sue on its own behalf for injury

to the Tribe itself, and is entitled to the special solicitude owed to sovereigns. *See Mashantucket Pequot Tribe*, 722 F.3d at 463.

21. Collectively, Hopi Tribe, Navajo Nation, Ute Indian Tribe, Ute Mountain Ute Tribe, and Zuni Tribe are “Plaintiff Tribes” or “Plaintiffs.”

22. The Plaintiff Tribes sue in their capacities as sovereigns, for harms caused to the Tribes themselves by the revocation of the Bears Ears National Monument. The revocation of the Monument has harmed each of the Plaintiff Tribes by subjecting their ancestral lands, cultural resources, natural resources, sacred places and hunting and gathering locations to harms and damage as described herein, and by also eliminating their collaborative management authority over the Monument and its objects. The new mines and imminent lease sales are in areas that will damage these interests.

23. Plaintiff Tribes also sue in their organizational capacity, as the revocation of the Bears Ears National Monument has harmed the Plaintiff Tribes and their members by subjecting their ancestral lands, cultural resources, natural resources, sacred places and hunting and gathering locations to harm and damage as described herein, and by eliminating their collaborative management role. *See, e.g., S. Fork Band v. U.S. Dep’t of Interior*, 643 F. Supp. 2d 1192, 1200 (D.Nev. 2009) (tribal standing can be viewed as analogous to organizational standing) *aff’d in part, rev’d in part* on other grounds, 588 F.3d 718 (9th Cir. 2009). The new mines and imminent lease sales are in areas that will damage these interests.

24. Plaintiff Tribes also sue in their associational capacity, as the revocation of the Bears Ears National Monument has harmed specific, identifiable tribal members who use and rely on lands and resources within the Monument for cultural, spiritual and/or religious purposes. Each Tribe can identify a member who has visited Bears Ears to either: (1) conduct ceremonies; (2)

hunt, fish or gather; (3) take care of cultural resources; (4) pray; (5) visit their ancestors; and (6) bring students from the Tribe to teach them about their own past and present, among other activities to protect their cultural and natural resources. Some Plaintiff Tribes and tribal members still hold allotments and grazing permits with the Monument. All of these uses would be negatively impacted by oil and gas development, uranium mining, hard rock mining, off-road vehicle use, as all of those activities are destructive to varying degrees, and bring noise and pollution to Bears Ears. The new mines and imminent lease sales are in areas that will damage these interests. Protection of these rights and uses are germane to each Tribe's purpose as described below.

25. Plaintiff HOPI TRIBE's Constitution provides in Article VI, Section 1 that among the powers of the Tribal Council, are: "(k) to protect the arts, crafts, traditions, and ceremonies of the Hopi Indians." Their Constitution recognizes the Hopi government's obligation to protect the culture. A resolution from the Hopi Tribe further explaining this purpose and obligation specifically with regard to Bears Ears is attached as Exhibit A.

26. Plaintiff NAVAJO NATION has established an entire division of its tribal government devoted to the protection of cultural resources. The Navajo Division of Natural Resources was created:

A. To provide for the protection, restoration, conservation, management and sustainable development of all Navajo natural, cultural and historic resources, under the guidance and direction of the people of the Navajo Nation and the Navajo Nation Council.

B. To ensure that the highest quality of natural, cultural and historic resources are available for the enjoyment and use of present and future generations of Navajo People.

2 N.N.C. § 1902 (2005). A resolution from the Navajo Nation further explaining this purpose and obligation specifically with regard to Bears Ears is attached as Exhibit B.

27. Plaintiff UTE INDIAN TRIBE has a specific provision in their Constitution providing that their governing body, called the Tribal Business Committee, is responsible for protecting both their tribal culture and ceremonial practices. Constitution and Bylaws of the Ute Indian Tribe of the Uintah and Ouray Reservation, Constitution Art. 6, Section 1 (q). Further, the Ute Tribe has passed resolutions of support for BENM and sent letters explaining the purpose and obligation to protect cultural resources. Exhibit C.

28. Plaintiff UTE MOUNTAIN UTE TRIBE has passed numerous resolutions stating that “The Tribal Council is responsible for protecting and promoting the natural, cultural, traditional and archaeological resources of the Tribe and the health and welfare of its members.” A resolution from the Ute Mountain Ute Tribes further explaining this purpose and obligation specifically with regard to Bears Ears is attached as Exhibit D.

29. Plaintiff ZUNI TRIBE has a lengthy and detailed section of their Constitution that describes the Tribe’s obligation to protect their culture:

ARTICLE XVIII – CULTURAL AND HISTORIC PRESERVATION

Section 1. The Zuni Tribe values its cultural resources as priceless because of the importance to the Zuni culture and heritage, traditional knowledge and traditional cultural practices. The Zuni Tribe asserts and maintains collective property rights in tribal cultural objects and sites, wherever they are located. The Zuni Tribe asserts the collective right to maintain, control, protect and preserve its cultural resources on behalf of its people and culture.

Section 2. Zuni cultural resources include all objects created by tribal members and ancestors used in traditional cultural practices, whether portable or embedded in the ground, or painted, drawn or carved on to any surface; all sites and places used for traditional cultural practices or that hold cultural significance to the Zuni Tribe; and all intellectual property such as dances and songs.

Section 3. Such Zuni cultural resources are not individually owned but are held in trust for the Zuni people by an authorized caretaker or caretakers according to Zuni culture and tradition. No such traditional caretaker, or any other person, has, or has

ever had, the individual property right or authority under Zuni law, culture or tradition to sell or dispose of cultural resources within their care or possession. No person has the authority to misuse or destroy Zuni cultural resources.

Section 4. The Zuni Tribe shall have the rights of replevin and repatriation and the right to seek injunctive and declaratory relief or take any other action under the civil and criminal laws of the Zuni Tribe in the Zuni tribal court or in any court of competent jurisdiction to protect and recover Zuni cultural resources. This includes the right to seek civil and criminal penalties against any tribal member, Indian or non-Indian who violates this Article.

A resolution of the Zuni Tribe further explaining this purpose and obligation to protect the Tribe's culture specifically with regard to Bears Ears is attached as Exhibit E.

DEFENDANTS

30. Defendant DONALD J. TRUMP is sued in his official capacity as President of the United States. He currently resides and conducts his duties in Washington, D.C.

31. Defendant DAVID BERHARDT is sued in his official capacity as the Secretary of the Interior of the United States. In that capacity, he is responsible for ensuring that the Department of the Interior and its constituent agencies, including the Bureau of Land Management, comply with the Proclamation's direction and requirements regarding the management of Bears Ears. The Secretary of the Interior resides and conducts his duties in Washington, D.C.

32. Defendant WILLIAM PERRY PENDLEY is sued in his official capacity as the Acting Director of the Bureau of Land Management within the U.S. Department of the Interior. In that capacity, he is responsible for ensuring that the Bureau of Land Management complies with the Proclamation's direction and requirements regarding the management of Bears Ears. The Director of the Bureau of Land Management (and currently, the Acting Director of the Bureau of Land Management) resides and conducts his duties in Washington, D.C.

33. Defendant SONNY PERDUE is sued in his official capacity as the U.S. Secretary of Agriculture. In that capacity, he is responsible for ensuring that the Department of Agriculture and its constituent agencies, including the U.S. Forest Service, comply with the Proclamation's direction and requirements regarding the management of Bears Ears. The Secretary of Agriculture resides and conducts his duties in Washington, D.C.

34. Defendant VICKI CHRISTIANSEN is sued in her official capacity as Chief of the U.S. Forest Service within the U.S. Department of Agriculture. In that capacity, she is responsible for ensuring that the U.S. Forest Service complies with the Proclamation's direction and requirements regarding the management of Bears Ears. The Chief of the U.S. Forest Service resides and conducts her duties in Washington, D.C.

35. Collectively, Donald J. Trump, David Bernhardt, William Perry Pendley, Sonny Perdue, and Vicki Christiansen are "Defendants."

36. Defendants have the authority, ability, and obligation to remedy the harms alleged to Plaintiff Tribes' interests.

BACKGROUND

I. The Antiquities Act

37. The U.S. Constitution gives Congress the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States[.]" U.S. Const. art. IV, § 3, cl. 2. The U.S. Constitution does not vest the President or the Executive Branch with any authority over federal land.

38. The President and the Executive Branch may therefore only exercise authority over federal land delegated by a statute enacted by Congress.

39. Congress delegated such authority to the President in the Antiquities Act.

40. In the late 19th Century and early 20th Century, Congress began to reconsider its policy that had favored disposal of federal lands and began to enact laws to keep public lands in federal ownership.

41. An early example of this shift was creation of the national forests. The President was authorized to reserve public lands to create forest reserves in the General Revision Act of 1891, which was subsequently amended by the Forest Service Organic Act in 1897. Among other things, the Forest Service Organic Act also provided that the “President is hereby authorized at any time to modify any Executive order that has been or may hereafter be made establishing any forest reserve, and by such modification may reduce the area or change the boundary lines of such reserve, or may vacate altogether any order creating such reserve.” Act of June 4, 1897, 30 Stat. 11, 36.

42. Representative Lacey of Iowa was chairman of House Committee on Public Lands and introduced the legislation in the U.S. House of Representatives that authorized the President to modify forest reserves. 29 Cong. Rec. 2680 (1897).

43. At the turn of the twentieth century, pot hunters began collecting artifacts from public lands and threatened noted archeological sites, like those at Chaco Canyon and Mesa Verde, as well as at dozens of other sites. Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 Ga. L. Rev. 473, 477 (2003). This led to a groundswell of support for legislation to protect public resources.

44. For example, in 1899, the American Association for the Advancement of Science established the Committee on the Protection and Preservation of Objects of Archeological Interest. Ronald Lee, *The Antiquities Act of 1906* 47 (1970). The committee’s purpose was to lobby Congress to draft a bill to protect objects of antiquity. Between 1900 and 1905, Congress

considered numerous bills to safeguard the culture, scientific importance, and history of the American West, ultimately enacting the Antiquities Act in 1906.

45. One of the earliest of such bills was one proposed by the Department of the Interior in 1900, which would have vested the President with broad discretionary authority to reserve public lands as national parks in order to protect “scenic beauty, natural wonders or curiosities, ancient ruins or relics, or other objects of scientific or historic interest, or springs of medicinal or other properties[.]” H.R. 11021, 56th Cong. (1900). The Department’s bill would also have subjected unlawful intrusion of such parks to penalties. *Id.* § 6. Other bills were introduced that same year that would have provided the President with varying degrees of authority to reserve public lands to protect antiquities. *E.g.*, H.R. 10451, 56th Cong. (1900); H.R. 9245, 56th Cong. (1900).

46. In 1904, Congress again considered legislation to protect antiquities. H.R. 13349 provided that the Secretary of the Interior would maintain custody of antiquities on public lands. H.R. 13349, 58th Cong. (1904). The bill also charged the Secretary with recommending to Congress areas to be set aside as national reservations and, pending action by Congress to reserve identified lands, to appoint custodians to take protective measures. *Id.*

47. That same year, the Senate considered S. 4127, a bill drafted by the Smithsonian Institution, that would have authorized the President to issue proclamations to set apart and reserve from sale, settlement, or occupancy public lands on which were located aboriginal monuments, ruins, and other antiquities that the President believed of sufficient public interest to warrant preservation. S. 4127, 58th Cong. (1904); Robert Claus, *Reference Service Report: Information About the Background of the Antiquities Act of 1906* 6-7 (1945).

48. The Commissioner of the General Land Office reviewed those and other related bills and expressed the view that the President should be given broad power to reserve and set apart as national parks public lands because of scenic beauty, natural wonders, ancient ruins and relics, or other objects of scientific or historic interest, or springs of medicinal or other properties. Claus, *supra*, at 7.

49. Later that year, Edgar Lee Hewett, a leading expert on ruins in the Southwest, was commissioned to write a report on the archeological ruins in the Southwest. H.R. Rep. No. 58-3704, at 2 (1904). Hewett's report called for permanent protection of some sites and temporary protection of others. *Id.* at 6.

50. In 1905, the American Anthropological Association appointed Edgar Lee Hewett as secretary of a committee charged with preparing draft legislation to protect antiquities. Scott Y. Nishimoto, *President Clinton's Designation of the Grand Canyon-Parashant National Monument: Using Statutory Interpretation Models to Determine the Proper Application of the Antiquities Act*, 17 J. Envtl. L. & Litig. 51, 59 (2002). Hewett drafted a bill that represented a compromise among the approaches taken by the various competing bills.

51. On January 9, 1906, Representative Lacey of Iowa introduced Hewett's bill as H.R. 11016, which would become the Antiquities Act. 40 Cong. Rec. 843, at 883 (1906); H.R. 11016, 59th Cong. (1906).

52. Unlike some earlier bills, H.R. 11016 authorized the president to declare monuments to protect more than just objects of historic or prehistoric value, but also to include "other objects of historic or scientific interest." Lee, *supra*, at 74. Such inclusion accounted for the Department of the Interior's request for legislation to authorize preservation of "scenic beauties and natural wonders and curiosities, by Executive Proclamation." *Id.* at 52. Notably, unlike the

Forest Service Organic Act, the Antiquities Act did not provide the President with authority to modify or revoke reservations once established by proclamation.

53. On June 8, 1906, President Theodore Roosevelt signed the Antiquities Act of 1906 into law. 40 Cong. Rec. 8042 (1906); 54 U.S.C. §§ 320301-320303; *see generally* Nishimoto, *supra*, at 60.

54. The Antiquities Act provides that “[t]he President may, in the President’s discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.” 54 U.S.C. § 320301(a). It further authorizes the President to “reserve parcels of land as a part of the national monuments” that comprise the smallest area “compatible with the proper care and management of the objects to be protected.” *Id.* § 320301(b).

55. Pursuant to Congress’ express delegation of authority in the Antiquities Act, Presidents have reserved over 150 national monuments, ranging from the Grand Canyon in Arizona, to the Statue of Liberty in New York, to Glacier Bay in Alaska. In many instances, lands that were initially protected as national monuments became, pursuant to subsequent Congressional action, some of America’s most popular national parks, including Zion National Park, Acadia National Park, and Grand Teton National Park. The Antiquities Act is a cornerstone of America’s world-renowned system of federal conservation lands.

56. Through the Antiquities Act, Congress granted the President authority to protect “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest” on federal lands. *Id.* § 320301(a). As a result, the Act vests the President with broad “discretion” to “*declare* . . . national monuments” and “*reserve* parcels of land as a part of the

national monuments.” *Id.* § 320301(a)-(b) (emphases added). However, Congress did not authorize the President to *revoke* or *abolish* national monuments, nor did it authorize the President to *modify* or *diminish* national monuments.

57. Until now, no President in the Antiquities Act’s 111-year history has ever purported to revoke or significantly modify a national monument and replace it with different, and much smaller, “units.” Indeed, the official position of the Executive Branch has been that Presidents lack such authority. That position has been articulated in formal legal opinions, including a 1938 Attorney General’s Opinion authored by Attorney General Homer Cummings. *See Proposed Abolishment of Castle Pinckey Nat’l Monument*, 39 Op. Att’y Gen. 185 (1938).

58. Congress confirmed that the President has no authority, implied or otherwise, to revoke or modify national monuments once they have been established when it enacted the Federal Land Policy and Management Act of 1976 (“FLPMA”). 43 U.S.C. § 1714(j).

59. The House Committee Report on FLPMA states that FLPMA “would also specifically reserve to the Congress the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act.” H.R. Rep. No. 94-1163, at 9 (1976).

60. This understanding was reaffirmed by the United States in a brief before the United States Supreme Court as recently as 2004. Reply Brief for the United States in Response to Exceptions of the State of Alaska at 32 n.20, *Alaska v. United States*, 545 U.S. 75 (2005) (No. 128, Orig.) (“Congress intended that national monuments would be permanent; they can be abolished only by Act of Congress.”). Indeed, at oral argument in that case, which addressed Alaska’s claim for submerged lands within the boundary of Glacier Bay National Park (formerly a national monument), an assistant solicitor general explained to the Court that “under the Antiquities Act, the President is given authority to create national monuments, but they cannot be disestablished

except by act of Congress. Now, Congress could have disestablished this monument . . . It could have disestablished some part of it, and it chose not to do so.” Oral Argument at 46.

61. Members of Congress who have expressed their support for President Trump’s unlawful Proclamation recently confirmed the general understanding that the President lacks authority to modify or revoke national monuments when they introduced the National Monument Creation and Protection Act. H.R. 3990, 115th Cong. § 2(j) (2017). The bill would authorize the President to reduce the size of national monuments. *Id.*

62. National monument designations confer enhanced protection for the historic landmarks, historic and prehistoric structures, and objects of scientific and historic interest within their boundaries. 54 U.S.C. § 320301(a). For example, under the Antiquities Act, only a narrow category of persons may be authorized to remove features of a monument. 54 U.S.C. § 320302(a) (authorizing “properly qualified” institutions). The implementing regulations likewise require that once any permitted excavation is complete, the affected lands must be restored to their “customary condition.” 43 C.F.R. § 3.11. The regulations also authorize the arrest of any unauthorized persons who seek to “appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity[.]” *Id.* § 3.15.

II. The Push for Bears Ears and the Bears Ears Inter-Tribal Coalition

63. The push for Bears Ears accelerated in 2010 with the creation of the grassroots non-profit organization, Utah Diné Bikéyah (“UDB”). UDB was formed with a primary objective of protecting Bears Ears. The formation of UDB was an important step on the road to the Bears Ears National Monument. People were already discussing the possibility of creating a wilderness area, national park, national monument, or other appropriate classification. UDB defined its goal as

establishing the proper boundaries—defined scientifically, culturally, and historically—necessary to protect the Bears Ears homeland.

64. To achieve its goal, UDB began a process to culturally map the Bears Ears region. *See generally* Bears Ears Inter-Tribal Coal., *Protecting the Whole Bears Ears Landscape: A Call to Honor the Full Cultural and Ecological Boundaries* (2016). More than seventy cultural interviews were conducted by a Navajo traditionalist fluent in English and the Diné languages. The resulting ethnographic data was captured and organized on a fine scale. Maps were then prepared using that information to show why Bears Ears should be set aside as a cultural, historical, and scientific landscape.

65. This ethnographic mapping process benefited from Traditional Knowledge, which is increasingly recognized by western sciences and scholarship and used by federal agencies in land management and planning. Traditional Knowledge is derived from keen observation carried out and passed down over hundreds or thousands of years. It represents another way of knowing the social and ecological landscape. It is invaluable to scientists in places where it remains intact—places such as Bears Ears. The Bears Ears Proclamation rightly refers to Traditional Knowledge several times and emphasizes its critical place in future management of the Monument.

66. This intensive work began in 2010 and continued for several years. UDB's work shows that the Bears Ears landscape is one discrete unit, bound together in numerous ways, and it blends perfectly with other protected lands around it.

67. UDB released its Bears Ears proposal in April 2013. The Proposal called for a 1.9 million acre protected area that could be designated as a national monument, wilderness area, national recreation area, or other classification under federal law.

68. In 2013, the Utah Congressional delegation was also developing the so-called Public Lands Initiative (“PLI”). This was an initiative, led by Congressmen Rob Bishop and Jason Chaffetz, with the professed goal of reaching a consensus agreement among all stakeholders over the public lands of Eastern and Southern Utah, an area of great cultural value, beauty, and mineral potential. The general idea was that an agreement would lead to congressional legislation putting some federal lands in wilderness and other protected status, and allowing multiple-use development to proceed on most of the other lands. The Tribes wanted to develop an agreement through the PLI process, but also wanted to ensure that Bears Ears was properly protected. As a result, the Tribes analyzed the options of PLI and national monument status, among others.

69. The Tribes were very apprehensive about the PLI process. Up to that time, the Utah Congressional leaders had never taken the Tribes or their proposal seriously. This was in spite of the fact that the Tribes worked tirelessly on the PLI process, putting in as much or more effort than any party involved in the process. The Tribes made at least 25 presentations at PLI meetings, complete with maps, a two-page summary of the UDB proposal (the precursor to the later and more comprehensive Coalition Proposal), and substantial oral presentations.

70. Congressional staff were present at approximately a dozen of these meetings. The Tribes also made four separate trips to Washington, D.C. to meet with the Utah delegation. At each of those meetings, the Tribes made extensive statements complete with maps and a summary of the Proposal. And at all of these meetings, both in the field and in Washington, D.C., the Tribes asked for comments on their proposal. It was to no avail.

71. In spite of the Tribes’ extensive and unwavering efforts, in no instance did anyone from the Utah delegation or the PLI make a single substantive comment, positively or negatively, on the Tribes’ proposal. Although the proponents of the PLI described the process as “open” and

“ground-up,” PLI leaders said that they were relying heavily on the San Juan County Commission for direction. Indeed, the Tribes were told to present their proposal *to* the San Juan County Commission.

72. As part of the PLI process, the San Juan County Commission conducted a public comment survey on PLI in 2014 to gauge support for various land use proposals for Bears Ears. The UDB proposal was initially identified as “Alternative D” and the County Commission staff agreed to include Alternative D in the list of alternatives on the survey. Then, the staff broke that promise and refused to include Alternative D on the list for the formal comment process.

73. Supporters of Alternative D (Bears Ears) waged a write-in campaign. Despite being omitted from the list, the Bears Ears proposal received 300 positive comments, 64% of the 467 total comments received in the County. The Commission then completely rejected the results of its own survey and selected the heavy-development, low conservation “Alternative B” to become the basis for the PLI. Alternative B received just two comments, or one half of 1% of the total.

74. Despite the extraordinary unfairness of this proceeding, at no time has the San Juan County Commission, the PLI, or the Utah delegation ever seen fit to acknowledge it, much less apologize and disown it.

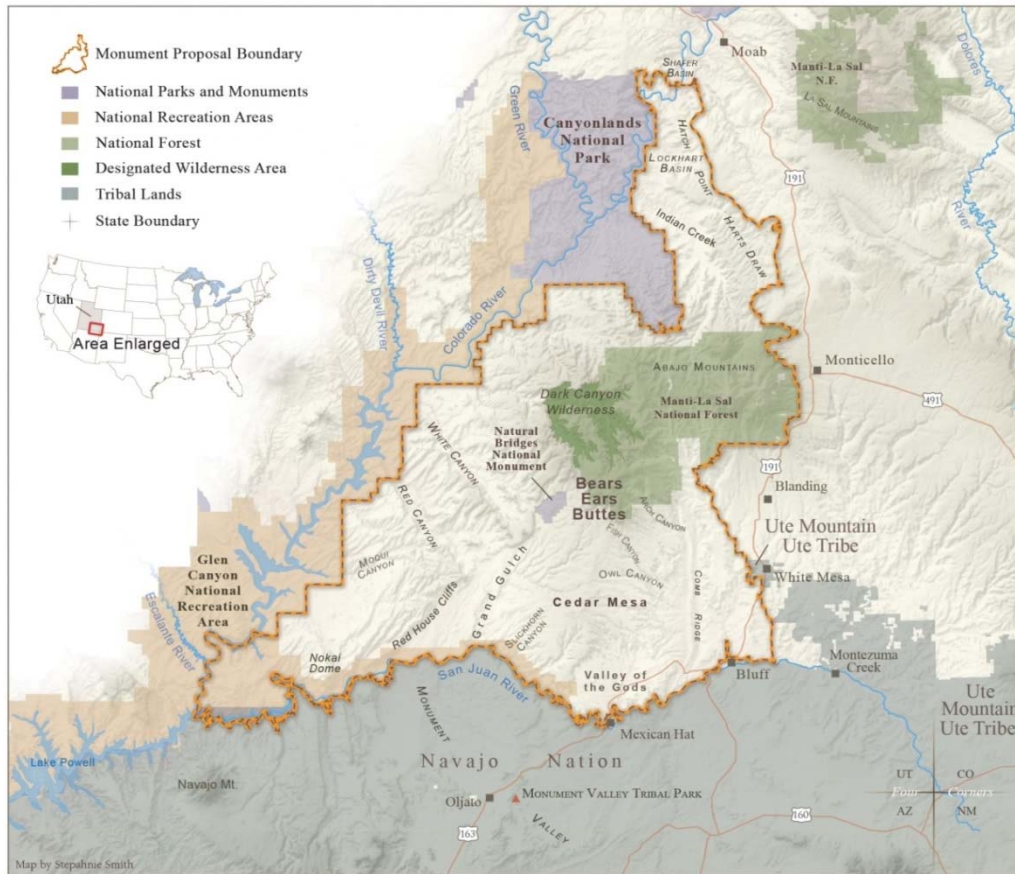
75. As a result, in 2015 Tribal leaders from the Hopi Tribe, Navajo Nation, Ute Indian Tribe, Ute Mountain Ute Tribe, and Zuni Tribe created the Bears Ears Inter-Tribal Coalition (the “Coalition”) and submitted their own proposal for the creation of a national monument. Bears Ears Inter-Tribal Coal., *Proposal to President Barack Obama for the Creation of Bears Ears National Monument* 18 (Oct. 15, 2015), <http://www.bearscoalition.org/wp-content/uploads/2015/10/Bears-Ears-Inter-Tribal-Coalition-Proposal-10-15-15.pdf> (the “Bears Ears Proposal”). The Coalition sought to protect and preserve the homeland area that Plaintiffs all

care so deeply about by urging the President to exercise the powers delegated to him under the Antiquities Act. *Id.* All of the Plaintiff Tribes passed resolutions in support of the Coalition detailing the importance of Bears Ears. *Id.*

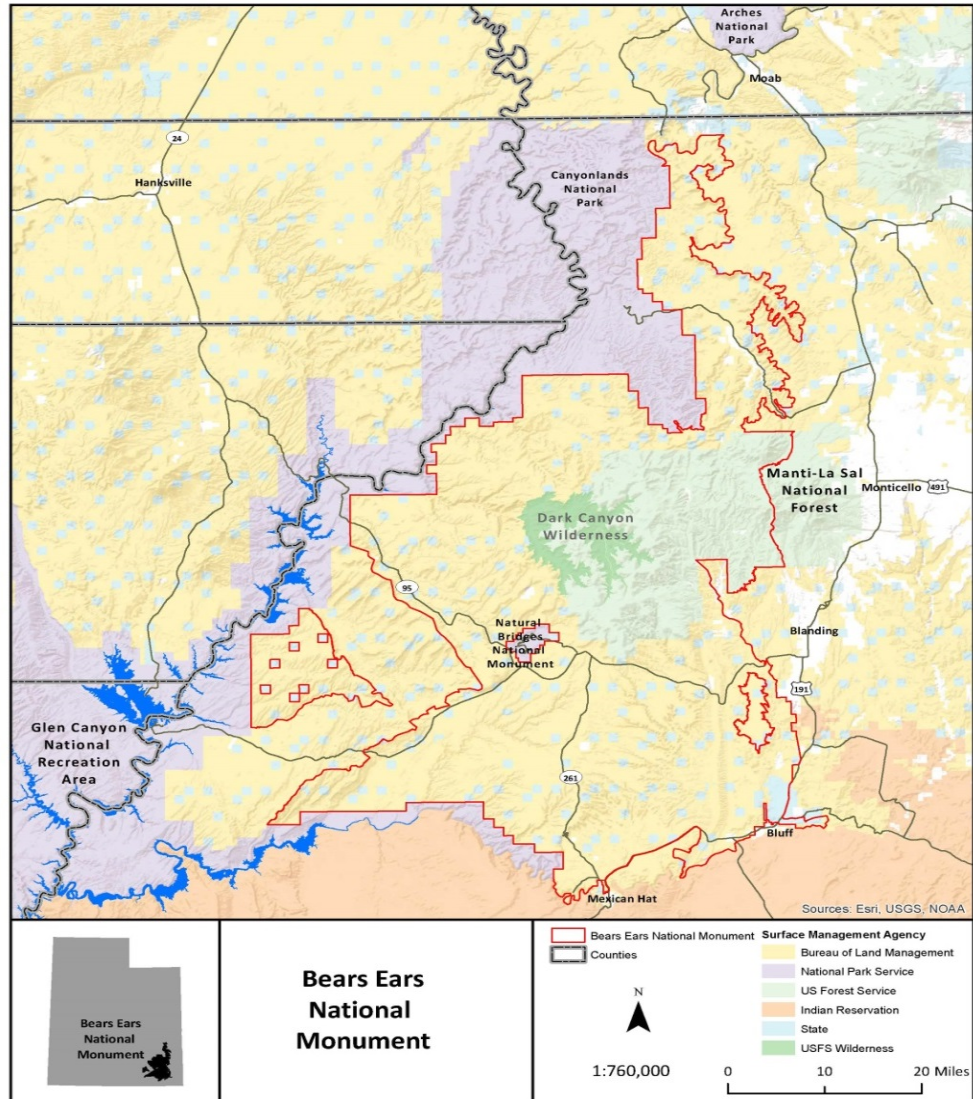
76. The newly-formed Coalition created the Bears Ears Proposal, a comprehensive proposal for a Bears Ears National Monument that they submitted to President Obama on October 15, 2015. *Id.* at 19. Submission by this date would allow the President ample time to consider, and hopefully sign, a proclamation under the Antiquities Act, before the end of his term. This would also allow time for the PLI sponsors, Congressmen Rob Bishop and Jason Chaffetz, to review the Tribal proposal and include all or part of it in their proposed legislation, if so inclined.

77. The Bears Ears Proposal called for 1.9 million acres of ancestral land within Bears Ears to be protected (President Obama's Proclamation ultimately included 1.35 million acres of this 1.9 million acre area). *Id.* at 20. On October 18, 2016, the Coalition submitted a supplemental report calling on President Obama to protect the entire landscape as proposed by the Coalition. *See generally Protecting the Whole Bears Ears Landscape, supra.* The supplemental report detailed the importance of the various regions within Bears Ears and why the entire 1.9 million acres should be protected. *Id.*

78. Below is a map the Coalition included in its proposal. Bears Ears Proposal, *supra*, at 6. The map depicts a larger area than the final monument because the President ultimately chose a smaller area than Plaintiffs requested.



79. Below is the final Bears Ears boundary map, from the Bureau of Land Management. Proclamation at 1147; *see also*, *Bears Ears Nat'l Monument Map*, Bureau of Land Mgmt. (Dec. 28, 2016), <https://www.blm.gov/programs/national-conservation-lands/national-monuments/utah/bears-ears/map> (Bears Ears boundary map reproduced here in color).



80. Because the Bears Ears Monument is a product of Plaintiffs' own history, efforts, and advocacy, and because it protected the Plaintiff Tribes' ancient and modern cultural resources, sacred places, and modern gathering, hunting and fishing areas as described herein and gave the Plaintiff Tribes a role in the management of the Monument, the current President's repudiation of it has caused and will continue to cause direct, immediate, and irreparable harm to Plaintiffs and their tribal members.

III. Overview of Historic Native American Connections to Bears Ears

81. “Rising from the center of the southeastern Utah landscape and visible from every direction are twin buttes so distinctive that in each of the native languages of the region their name is the same: Hoon'Naqvut, Shash Jáa, Kwiyaqatu Nukavachi, Ansh An Lashokdiwe, or ‘Bears Ears.’” Proclamation at 1139. Below is a picture of the Bears Ears formation.



82. Many Native Americans and Native Nations, including Plaintiffs and their members, have profound historic, cultural, and spiritual ties to Bears Ears and the more than 100,000 historic landmarks, structures, and historic and scientific objects located within Bears Ears. Bears Ears Proposal, *supra*, at 9; Bureau of Land Mgmt., BLM-UT-PL07-0074-1610, *Draft Resource Management Plan and Environmental Impact Statement* 3-9-3-20 (2007) (the “BLM EIS”); *see also* Robert S. McPherson, *A History of San Juan County: In the Palm of Time* (1995).

83. Plaintiffs trace their ancestry back millennia to the ancient peoples who have populated the region since time immemorial. Their presence is manifested in the migration routes, ancient roads, great houses, villages, granaries, hogans, wikiups, sweat lodges, corrals, tipi rings,

shade houses, pueblos, kivas, rock paintings, petroglyphs, pictographs, and cliff dwellings that continue to dominate the Bears Ears landscape today. *Native American Connections*, Bears Ears Inter-Tribal Coal., <http://bearscoalition.org/proposal-overview/ancestral-and-modern-day-land-users/> (last visited Dec. 4, 2017). These historic markers connect Plaintiffs to their ancestors, who lived, hunted, gathered, prayed and built communities on these lands. *Id.* Today, Plaintiffs continue these activities and, with the protections of a national monument, hope to do so into the future.

84. Below is a map depicting the region as it appears to the Native eye, and it shows even today how close Plaintiffs' reservations are to one another and to Bears Ears itself:



85. For millennia, Plaintiffs' ancestors lived in Southeastern Utah and the Four Corners area, including within Bears Ears. Most of the Ancient Puebloans who populated the region moved to other lands to the south and east beginning approximately seven hundred years ago. Bears Ears

Proposal, *supra*, at 9. However, Native people today, including Plaintiff Tribes, continue to use the Bears Ears area and view it as part of their ancestral and modern homeland. *Id.*

86. “Cedar Mesa is a part of our footprints, a path that tells a story. History is crucial to man because it tells us of who we are. Those who lived before us have never left. Their voices are part of the rhythm or heartbeat of the universe and will echo through eternity.” *Id.* at 10 (quoting Alfred Lomahquahu, Hopi).

87. “The importance of Bears Ears for our people is through our ancestral sites that were left behind eons ago by our ancestors. They documented the sites by using oral history, pictographs, and by leaving their belongings. When we visit Bears Ears, we connect with our migration history immediately without doubt.” *Id.* (quoting Phillip Vicenti, Zuni).

88. Native American connections to Bears Ears are not just about protecting the past. Plaintiffs and their members still regularly visit the area to hunt, collect herbs and medicines, perform or attend ceremonies, and connect with their ancestors.

89. The depth of the connection that many Native people have to Bears Ears is highly sensitive, and it is considered inappropriate to write down much of this important cultural information. *E.g.*, BLM EIS, *supra*, at 13-14–3-16, 3-18–3-20 (briefly explaining the Tribes’ historical, cultural and spiritual connection to the Bears Ears area). But the Native perspective on the historic and cultural importance of this area is critical to understanding why the objects and geographical features within Bears Ears deserve the protection of a national monument.

IV. Contemporary and Historical Importance of Bears Ears to Hopi and Zuni Peoples

90. The Zuni Tribe is tied to the Bears Ears region because it “holds immense importance for all Pueblo people[s] identity and history.” Zuni Tribal Council, Permanent Protection of Bears Ears Region through National Monument Designation, Res. No. M70-2016-

P014, at 1 (Mar. 7, 2016), <http://www.bearscoalition.org/wp-content/uploads/2016/03/M70-2016-P014-Bears-Ears-Designation-7MAR2016.pdf>. Just as with the Hopi, described below, the “villages, shrines, burials, rock inscriptions, dwellings, and ancient transportation routes” are immensely important to the Zuni Tribe’s identity and history, and the natural resources located within Bears Ears are still “necessary for traditional and spiritual practice.” *Id.*

91. The well-maintained kivas from the *Hisatsinom* - the People of Long Ago - exemplify the important cultural and spiritual connection that specific objects within Bears Ears provide to the Hopi and Zuni, among others. *See* BLM EIS, *supra*, at 3-15, 3-84. Ancestral kivas, like those of today, were entered by a ladder stretching from the roof down to the center of the floor. *See The Museum Collections of Chaco Culture: Kivas*, National Park Service, <https://www.nps.gov/museum/exhibits/chcu/slideshow/kivas/kivasintro.html> (last visited Dec. 4, 2017). Below is a picture of a kiva in the Cedar Mesa region of Bears Ears. *Bears Ears Monument Timeline*, Durango Herald (Dec. 28, 2016), https://durangoherald.com/articles/124458-bears-ears-monument-timeline?wallit_nosession=1.



92. Kivas are still used in Pueblo ceremonies today. See *The Museum Collections of Chaco Culture, supra*. During ceremonies, “the ritual emergence of participants from the kiva into the plaza above represents the original emergence by Puebloan groups from the underworld into the current world.” *Id.* Thus, maintaining and preserving the ancestral kivas in Bears Ears is of utmost importance to the Hopi and Zuni, as well as other descendants of the Ancestral Pueblos.

93. As one Zuni elder explains, “[t]he cultural resources here, the petroglyphs, the structures, all of this, is evidence of the Native people who lived in and passed through the Bears Ears. It provides a link to our ancestors, from long ago. This cultural information is important for all Native people.” *Bears Ears: A Native Perspective on America’s Most Significant Unprotected Cultural Landscape*, Bears Ears Inter-Tribal Coalition 7 (2016), http://www.bearscoalition.org/wp-content/uploads/2016/03/Bears-Ears-bro.sm_.pdf (quoting Octavius Seowtewa, Zuni Elder).

94. The Zuni still regularly go to Bears Ears to gather items for use in ceremonies. They collect plants and minerals from Cedar Mesa, Indian Creek, and other areas. They also collect spring water there, for they view water as similar to the blood of their mother, and they believe that being able to harvest that water and bring it to the Zuni people ensures that there will be water in the future. When collecting items and water, the Zuni always offer prayers and do not take more than they need.

95. The Hopi and Zuni, who are among the descendants of the Ancestral Puebloans described above, maintain traditional knowledge about these places that is critical to understanding them. *Protecting the Whole Bears Ears Landscape, supra*, at 23. By approximately 2100 years ago, these Ancestral Puebloans had established settlements that would be their homes for many generations. Numerous cliff dwellings and other ancient sites are still found within the Bears Ears region.

96. Within Bears Ears, Comb Ridge and Cedar Mesa typify the Ancestral Puebloan connection to the area and contain “some of the most precious stores of prehistoric structures in the world.” *Protecting the Whole Bears Ears Landscape, supra*, at 22. Comb Ridge hosts “side-canyons rich with the ancient structures and art of the Ancestral Puebloans” as well as a dense collection of intact Ancestral Puebloan dwellings. *Id.* Cedar Mesa possesses an archaeological site dating from the last ice age nearly 12,000 years ago and is “the best example of a site dating to this period in the state and region.” *Id.* at 22-23.

97. A prolonged drought sometime during the 1200’s, however, forced the Ancient Puebloans to spread out in all directions from the Bears Ears Region. BLM EIS, *supra*, at 3-15. Some descendants of the Ancestral Puebloans eventually settled in northeastern Arizona, where Hopi clans live to this day. *Id.* Oral traditions of the Hopi recount that ancestral Hopi clans

migrated through and settled on lands in southern Utah and the Southwest during their long migration to their current location. Hopi Tribal Council, Approval to Support Proposal for a Presidential Proclamation Designating Bears Ears National Monument, Res. No. H-035-2016, at 3 (Mar. 25, 2016), <http://www.bearscoalition.org/wp-content/uploads/2016/03/042-2016-Memo-Approval-to-support-proposal-for-a-presidential-proclamation-designating-Bears-Ears-National-Monument.pdf> (the “Hopi Resolution”); BLM EIS, *supra*, at 3-15. To the Hopi, these ancestors were the *Hisatsinom* - the People of Long Ago. Hopi Resolution, *supra*, at 3; BLM EIS, *supra*, at 3-15; Bears Ears Proposal, *supra*, at 35-36.

98. The Pueblo of Zuni settled in the western part of central New Mexico around 700 to 800 A.D. *See* BLM EIS, *supra*, at 3-15. The Zuni still reside in western New Mexico to this day. *Id.* The Pueblo of Zuni claims stewardship over all lands upon which their ancestors “hunted, collected materials such as plants and minerals, or traveled regularly to trade.” *Id.* Like the Hopi, the Zuni consider all Ancestral Puebloan sites within Bears Ears places of traditional importance. *Id.*

99. Because the Hopi and Zuni trace their origins to the Bears Ears region, their cultural affiliation with the objects found there and the people that created them is longstanding and still very much alive. *Id.* (describing “habitation sites, pictograph sites, and petroglyph sites”).

100. The Ancestral Puebloans’ migration is intimately associated with the Hopi and Zuni covenant to protect the Earth that is still honored today. *See* Hopi Resolution, *supra*. The Hopi view the objects that their ancestors left behind in and around Bears Ears – “ancient villages, sacred springs, migration routes, pilgrimage trails, artifacts, petroglyphs, and the physical remains of buried *Hisatsinom*” – as footprints testifying of continual Hopi land stewardship. *Id.* at 3. To the Hopi, the ancestors intentionally left these objects behind “to mark the land as proof that the Hopi

have fulfilled their Covenant [to protect the land]” and as proof that “the Hopi ancestors buried in the area continue to inhabit the land.” *Id.* Because these ancestors still reside there, Bears Ears is considered a “spiritually occupied landscape.”

101. These objects, the terrain, and the clouds together create a physical landscape that nourishes and sustains modern Hopi and Pueblo identity, “maintained through oral traditions, songs, ceremonial dances, pilgrimages, and stewardship.” *Id.* The Bears Ears landscape “situates the Hopi people in time and space, providing a geographical conception of history and religion that connects the past, present and future.” *Id.*

102. Bears Ears is so densely populated with tens of thousands of historic and cultural sites that it has been said that you cannot go an eighth of a mile without encountering another important scientific or historic object within Bears Ears. Even in the new mini-monument of Shash Jáa, which comprises less than 10% of the original Monument, BLM admits there are at least 12,000 sites. *See infra*, ¶238-9. This astounding saturation of archaeological material does not simply stop at the border of Shash Jáa – it obviously goes beyond and is testament to the fact that what the Plaintiff Tribes say about their extensive and long term use of Bears Ears is true.

103. Despite the fact that Bears Ears is densely populated with cultural resources, sacred places and archaeological artifacts, the Trump Proclamation removed from protection landmarks, structures, and objects within the Bears Ears’ landscape that are critically important to the Hopi and Zuni.

104. One critically important site that is no longer protected by monument status is called “the Perfect Kiva.” As its name implies, it is an ancient ceremonial kiva that remains in excellent condition. Exhibit G. The Hopi Tribe cited this as one example of an incredibly important location that was inexplicably stripped of protection, leaving it vulnerable to all the damaging uses now

permitted in this area: “casual collecting” (aka looting), industrial development, and increased motorized and recreational access, including all-terrain vehicle use.

105. In fact, due to the harmful impacts of looting, industrial development, and increased motorized and recreational access on the Bears Ears landscape, the Hopi Tribe sent a letter to President Obama in 2014 advocating that Cedar Mesa be declared a national monument, and this area was later included in the Bears Ears National Monument.

106. Both the Hopi and Zuni Tribes recognized these ongoing threats to the cultural resources and sacred places within Bears Ears, and for this reason actively participated in the Coalition’s efforts advocating for the creation of the Bears Ears National Monument.

V. Contemporary and Historical Importance of Bears Ears to the Navajo People

107. Plaintiff Navajo Nation is the largest Indian Nation in the United States with a population of over 300,000 citizens. Its jurisdiction spans a land base of over 27,000 square miles in the states of Arizona, New Mexico, and Utah. All 1.3 million acres of Navajo Nation lands located in Utah fall entirely within the County; these lands constitute 20 percent of the County’s land base and the almost 7,000 Navajo citizens living there make up roughly half of the County’s population. Bears Ears lies immediately north of the Nation.

108. The lands protected by the Monument hold special cultural and historical significance for the Navajo people, who believe that the towering spires in the Valley of the Gods are ancient Navajo warriors frozen in stone, and that the Bears Ears peaks are the top of the dismembered head of a bear that stands guard to culturally important Changing Bear Woman. Many traditional Navajo ceremonies, practiced since time immemorial, continue to take place in the Monument, and draw on plants, soils, and other items that can only be harvested from the Monument. For example, certain soils from the Bears Ears region possess special protection and

empowering qualities when harvested and administered in the proper way. The Bears Ears landscape also has seminal importance in Navajo songs, prayers, and healing ceremonies that have unique and close ties to the Bears Ears region, its flora and fauna, and its historical and spiritual qualities, including the *Anaaji* (Enemy Way), the *Dine'ee* (Wild Game Way), the *Dzilk'iji* (Mountain Top Way), and the *Hozhooji* (Blessingway), which seeks to restore and revitalize *hózhó* (harmony, beauty, and balance) for the individual for whom the ceremony is performed.

109. In addition to its current spiritual significance, Bears Ears has great historical significance to the Navajo people. The White Canyon region, known as “*Nahoniti'ino*” (hiding place) to the Navajo people, is revered because it was a place of refuge in the summer of 1864, when Colonel Kit Carson marched over 9,000 Navajos at gunpoint 350 miles to Fort Sumner in east central New Mexico as part of his scorched earth campaign against the Navajo. Hundreds of Navajos died of hunger, exhaustion, or abuse along the journey. Those who survived were held as prisoners of war at Bosque Redondo until 1868 when Navajo leaders negotiated the release and return of their people to their homelands pursuant to a treaty. Many Navajos escaped this removal by hiding in what is now the Monument. Bears Ears is also home to important figures in Navajo history, including Headman *K'aayélie* (who was born near the twin Bears Ears buttes), whose band eluded capture from the U.S. army by hiding in the canyons of the Monument, and Navajo Chief Manuelito (born in the Headwaters Region of Bears Ears, north of Cedar Mesa), a key figure in the resistance against the Long Walk and signatory to the Treaty of 1868.

110. Navajo ties to the region extend from “pre-historic” times to the present. Ethnographic studies and oral traditions describe the Navajo ethno-genesis as an assimilation of various ethnic groups, including the Anasazi and Puebloan peoples from Canyon de Chelly, who the Navajo acknowledge as their relatives by referring to them as *Nihinaazázi'* (the ancestors who

lived around us). Today the Navajo people continue to make offerings and prayers to these relatives in the Bears Ears region. Until recently, the Navajo people resided in areas now within the Monument's boundaries. They lived there in hogans (traditional homes made out of wooden logs, tree bark and mud, the doorway of which always faces east to allow for greeting of the rising sun, or Father Sun, a revered deity who provides good blessings) and wikiups, herded sheep, and hunted on the land. They also foraged, created rock art, and buried ancestors there. Many hogans remain in the region today, standing as a tribute to the deep cultural and historical ties the Navajo people retain to the Monument lands.



LaVerne Tate #40
Hogan in Upper Cottonwood, July 2002
Bernal Bradford photo

111. Indeed, Navajo people continue to make extensive use of the Monument lands. For example, they camp there and continue to hunt for wild game—including elk, mule deer, wild turkeys, and rabbits—as they have done since time immemorial. Other Navajo people access the Monument lands to forage for native plants such as piñon nuts, wild potatoes, wild onions, spinach,

turnips, and sumac berries. Navajo people also continue to gather firewood, grasses for traditional basket-weaving, and logs for traditional structures. Navajo medicine people also continue to harvest soils and medicinal plants such as sage, juniper and mountain tobacco, all of which are all important in numerous Navajo ceremonial practices.

112. As a people whose culture is derived from a deep connection to the Monument lands, and to the animals that share that land, the Navajo people have remained dedicated participants in the creation of the Monument. The Navajo citizens group Utah Diné Bikéyah spent six and a half years researching and analyzing the specific lands in the region to identify the lands with the strongest cultural ties to the Navajo and other Coalition tribes. *Protecting the Whole Bears Ears Landscape, supra*, at 2, 10. Their ethnographic research and data analysis was used by the Coalition in making its recommendation for a monument designation to the President. This research demonstrates that all lands within the Monument boundary are necessary for the proper care and management of important cultural and historic resources. The Navajo people have a demonstrated, enduring, and strong interest in the preservation of the Monument as designated by President Obama because this specific designation provides significant protection for the preservation of Navajo culture and traditions into the future.

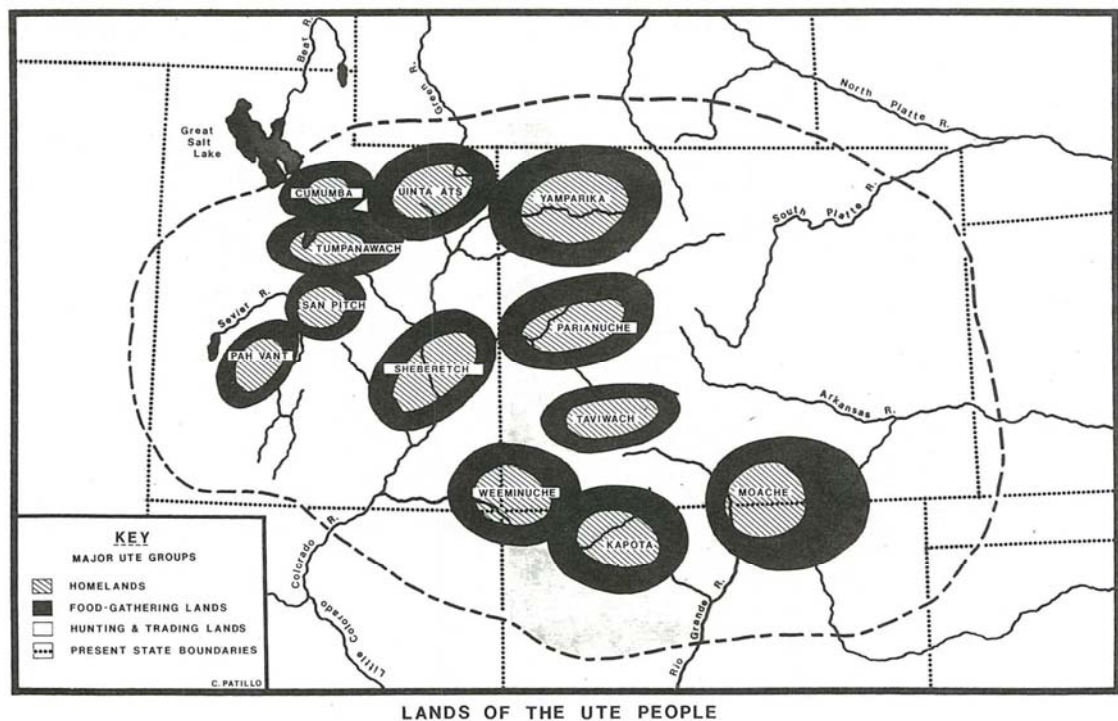
113. Now, the towering spires in the Valley of the Gods that the Navajo believe are ancient Navajo warriors frozen in stone are no longer protected as part of the Bears Ears National Monument. This irreplaceable area is instead now under direct threat from the harmful impacts of looting, industrial development, and increased motorized and recreational access.

114. The Navajo Nation recognized these ongoing threats and damage and participated in the Coalition advocating for the creation of the Bears Ears National Monument. The Nation also joined the Hopi, Zuni, Ute, and Ute Mountain Ute Tribes in opposing the Trump Proclamation,

and testifying in Congress for the restoration of the original Monument in January 2018. Exhibit F.

VI. Contemporary and Historical Importance of Bears Ears to Ute Peoples

115. The Ute also have deep ties to Bears Ears. The aboriginal territory of the Ute covered an extensive area of land in what are now the states of Colorado, Utah, New Mexico, and Arizona. BLM EIS, *supra*, at 3-14. This included much of Bears Ears. *Id.*; *see also* McPherson, *supra*, at 50-53. The map below represents the original Ute domain. *See* Fred A. Conetah, *A History of the Northern Ute People* (1982).



116. Many of the current Ute Tribes continue to have a strong connection to Bears Ears. The Weeminuche band in particular occupied the San Juan River Valley, parts of northwestern New Mexico, and southeastern Utah. Charles S. Marsh, *People of the Shining Mountains: The*

Utes of Colorado 19-20 (1982). The Weeminuche comprise most of the present members of Plaintiff Ute Mountain Ute Tribe. *Id.* at 20.

117. Utes place religious and traditional importance on many areas in Bears Ears, including: “Water Canyon or River-Flowing-From the Sunrise (San Juan River), Sagebrush Canyon or Crows Canyon (Montezuma Canyon), Slick Rock Mound (Comb Ridge), [and] Two Rocks Canyon (Cow Canyon),” among others. BLM EIS, *supra*, at 3-14.

118. Historically and to this day, the Ute Bear Dance, which is a spring ceremony symbolic of nature’s awakening, is performed in areas in and around Bears Ears. BLM EIS, *supra*, at 3-14. Utes derive Traditional Knowledge from certain petroglyph panels within Bears Ears for their Bear Dances, thus necessitating the protection of those petroglyphs. *Id.* at 3-19.

119. “Native People relate to rock art with our hearts. I regularly visit one rock art site that is a holy site. It provides us knowledge of our past and future. We do not view these panels as just art, but almost like a coded message that exists to help us understand. This knowledge informs our life and reality as humans.” *A Native Perspective*, *supra*, at 9 (quoting Malcolm Lehi, former Ute Mountain Ute Council Member). Below are pictures of rock art within Bears Ears.





120. The Ute still use the Bears Ears area for hunting and fishing and to gather materials for medicinal, spiritual, and other uses. They also value the region's preservation of sacred places and the economic development it provides. Tri-Ute Council, Support for Presidential Designation of the Bears Ears National Monument to Protect Cultural, Historical, and Natural Resources on Federal Lands in San Juan County, UT, Joint Inter-Tribal Resolution No. 16-001, at 1 (June 14, 2016), <http://www.bearscoalition.org/wpcontent/uploads/2016/06/TriUteReso6132016-1.pdf>.

121. The Ute people still call the Headwaters region of the Bears Ears National Monument home. *Protecting the Whole Bears Ears Landscape, supra*, at 21. They hold public lands grazing permits and allotment lands there, and use the lands to commune with their ancestors. *Id.*

122. Ute locations within the Headwaters region such as “Arch Canyon, Hammond Canyon, Allen Canyon, Dark Canyon, and Elk Ridge are revered for the important role they have played in shaping Ute culture in the past and for their importance to future generations.” *Id.* The Headwaters region is “central to provisioning, sustaining, and perpetuating human lives and culture.” *Id.* “For these reasons, the Headwaters house the shreds and patches of past lives that

preserve the knowledge of those who lived before.” *Id.* “Archaeological sites are abundant and significant numbers [are located] in all environmental zones of the Headwaters region.” *Id.*

123. Ute people also still frequent the area to collect herbs and medicine, forage for food, gather firewood for heating and ceremonial use, and to hunt game. *Native American Connections, supra.*

124. The Utes also have several treaties with the United States, the first of which was entered into in 1849. It was a peace treaty signed between the United States and the Utes at Abiquiu, New Mexico. *History of the Southern Ute*, Southern Ute Tribe, <https://www.southernute-nsn.gov/history/> (last visited Dec. 4, 2017); Marsh, *supra*, at 43. The treaty acknowledged that the Utes were under the “protection and guardianship” of the United States, recognizing the important government-to-government relationship and the solemn trust obligation of the United States.

125. In 1868, the Utes entered into another treaty. Marsh, *supra*, at 67-68. While the Utes ceded other lands in this treaty, including portions of Utah and Bears Ears, they reserved most of western Colorado and parts of northeastern Utah (Uintah and Ouray reservation). *Id.* The Weeminuche (Ute Mountain Ute), who had resided in southeastern Utah, vehemently objected to being pushed into Colorado. *Id.* at 68. Many eventually moved to Colorado, but some remained in southern Utah, *id.*, and the Ute Mountain Ute now have reservation land in Utah near Bears Ears. See Bureau of Indian Affairs, *Ute Mountain Indian Ute Reservation* 1, <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ieed/ieed/pdf/idc1-022550.pdf> (last visited Dec. 4, 2017) (describing Ute Mountain Ute Reservation).

126. The Weeminuche eventually relocated on a dry piece of arid land now known as Towaoc in southwestern Colorado where the Ute Mountain Ute tribal headquarters is located today.

Id.; see also *Ute Mountain Ute Tribe*, Colo. Comm'n of Indian Affairs, <https://www.colorado.gov/pacific/ccia/ute-mountain-ute-tribe> (last visited Dec. 4, 2017).

127. Because the limitations on mineral withdrawal were lifted by the Trump Proclamation, two new mines have been located near the sacred place of Dark Canyon. These two mines, Hammond and RWH, would not have been possible under the Obama Proclamation but now pose a threat to Ute cultural, spiritual and religious uses of Dark Canyon in particular.

128. The Ute and Ute Mountain Ute Tribes recognized the damage that had been done to Bears Ears, and the threat of further damage, and participated in the Coalition advocating for the creation of Monument. They also joined the Hopi, Zuni, Ute, and Navajo Nation in opposing the Trump Proclamation, and testifying in Congress for the restoration of the original Monument in January 2018. Exhibit G.

VII. General Historic and Scientific Importance

129. In addition to its incomparable value to Plaintiff Tribes, Bears Ears is also incredibly valuable for historic and scientific study. As a coalition of paleontologists explained in a letter to the President in October 2016, the landscape's fossil-bearing rocks offer "an unparalleled record of ancient seas that covered the continent, the rise of vertebrate life on land, the ascendancy of the dinosaurs, and even the remains of Ice Age animals who once roamed the high plateaus and deep canyons that make the landscape of the Bears Ears area so visually stunning today." Letter from 40+ Paleontologists on Bears Ears Support to President Obama, 1 (Oct. 31, 2016), http://utahdinebikeyah.org/wp-content/uploads/2016/11/UDB_PaleontologistLetter_11-7-16.pdf. The landscape's many canyons and exposed layers of sedimentary rock offer geologists a view of our continent that stretches back millions of years. *Id.* at 1-2.

130. Bears Ears is also extremely valuable to the field of archaeology as there are more than 100,000 archeological sites within Bears Ears. *Archaeologists Push for Bears Ears National Monument*, Crow Canyon Archaeological Ctr. , http://www.crowcanyon.org/e-newsletter/2016/June/2016_June_Bears_Ears.html (last visited Dec. 4, 2017).

131. The Bears Ears National Monument is also home to unique flora and fauna found nowhere else in the world. Proclamation, *supra*, at 1141-43. It is also rich in a diverse range of other wildlife, including bighorn sheep, mule deer, elk, mountain lion, bear, bobcats, foxes, eagles, birds, bats, and lizards. *Id* at 1139.

VIII. The Obama Administration's Extensive Public Outreach and Coordination

132. The Obama Administration invested an inordinate amount of time and expertise in conducting research, reaching out to the public, and developing its position on Bears Ears. From top to bottom, the administration developed and analyzed a tremendous amount of scientific, historical, economic, cultural, and legal material.

133. The Obama Administration welcomed and received the views of the public. The Antiquities Act does not require any specific procedures, other than the issuance of a proclamation by the President. But President Obama directed that the evaluation and public comment process be an open one. The administration received all manner of written opinions by letters and email. Meetings were arranged with countless organizations and individuals. Utah public officials, for example, had ongoing meetings and communications with the President, high White House officials, the Secretaries of Interior and Agriculture, heads of agencies, and career staff. As late as December 21, 2016, just one week before the Proclamation was signed, the Governor of Utah's office complimented Interior Department staff on the time and attention that they devoted to this issue. Memorandum from Democratic Staff refuting Republican Claims that Obama

Administration failed to consult on Bears Ears to Democratic Members of Comm. on Oversight and Gov't Reform 3 (Apr. 13, 2017), <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-04-13.Bears%20Ears%20Monument%20Democratic%20Memo.pdf> (“House Staff Memorandum”).

134. Secretary Sally Jewell, accompanied by top Interior and Agriculture officials, traveled to Bluff, Utah and held a day-long open public hearing in which more than one hundred citizens, drawn by lot, made two-minute statements. *See* Amanda Nichols, *Secretary Jewell to Discuss Protection of Bears Ears at Public Meeting*, Bluff Utah Blog (July 11, 2016), <http://bluffutah.org/secretary-jewell-to-discuss-protection-of-bears-ears-at-public-meeting/>. Every perspective was represented. The overflow crowd was estimated at approximately 2,000; the largest gathering ever held in Bluff. Comment Letter from the Hopi Tribe, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe and Zuni Pueblo to National Monument Review of the Dep't of Interior 13 (May 25, 2017) <http://bearscoalition.org/wp-content/uploads/2017/05/Bears-Ears-Comments-5.25.pdf>.

135. The House Committee on Oversight and Government Reform documented the timeline of events that led up to the Bears Ears Proclamation. The timeline and the documentation reveal repeated contacts, meetings, coordination, and outreach by the Obama Administration with the Utah delegation, governor, and local communities prior to the Monument Proclamation. *See* House Staff Memorandum, *supra*.

IX. The Proclamation Designating Bears Ears National Monument

136. President Obama exercised the authority vested in him under the Antiquities Act to protect Bears Ears as a national monument pursuant to a Proclamation issued on December 28, 2016. President Obama made this decision because of the historic and scientific objects the

Monument contains, their importance to Plaintiffs, and because of near constant threats of exploitation and damage to those objects. *See generally* Bears Ears Proclamation, *supra*.

137. The Bears Ears Proclamation describes in detail the geological, paleontological, archaeological, historical, cultural, and ecological significance of Bears Ears and the landmarks and objects to be protected therein. *Id.* at 1139-43. The Bears Ears Proclamation, rather than including the 1.9 million acres requested from the Coalition, reserves 1.35 million acres of land that the President determined was necessary for the proper care and management of the objects of historic and scientific interest to be protected. *Id.* at 1143.

138. The Bears Ears Proclamation recognizes the “[a]bundant rock art, ancient cliff dwellings, ceremonial sites, and countless other artifacts [that] provide an extraordinary archaeological and cultural record.” *Id.* at 1139. While the area is important to all Americans, the proclamation specifically recognizes that “the land is profoundly sacred to many Native American tribes, including the Ute Mountain Ute Tribe, Navajo Nation, Ute Indian Tribe of the Uintah Ouray, Hopi Nation, and Zuni Tribe.” *Id.*

139. The Bears Ears Proclamation notes that the earliest Native people – from the Clovis to the Ancestral Puebloans – utilized the Bears Ears region for millennia. *Id.* “The remains of single family dwellings, granaries, kivas, towers, and large villages and roads linking them together reveal a complex cultural history. ‘Moki steps,’ hand and toe holds carved into steep canyon walls by the Ancestral Puebloans, illustrate the early people's ingenuity and perseverance and are still used today to access dwellings along cliff walls.” *Id.*

140. The “petroglyphs and pictographs capture the imagination with images dating back at least 5,000 years and spanning a range of styles and traditions. From life-size ghostlike figures

that defy categorization, to the more literal depictions of bighorn sheep, birds, and lizards, these drawings enable us to feel the humanity of these ancient artists.” *Id.*

141. The Bears Ears Proclamation also describes rock art left by the Ute, Navajo, and Paiute peoples. “It is the less visible sites, however—those that supported the food gathering, subsistence and ceremony of daily life—that tell the story of the people who lived [within Bears Ears]. Historic remnants of Plaintiff Tribes’ sheep-herding and farming activities are scattered throughout the area, and pottery and Navajo hogans record the lifeways of Native peoples in the 19th and 20th centuries.” *Id.* at 1140.

142. The Bears Ears Proclamation recognizes that the area’s cultural importance to Native Nations continues to this day, acknowledging that Plaintiff Tribes and their members still go to Bears Ears for ceremonies, and to hunt, fish, and gather “medicinal and ceremonial plants, edible herbs, and materials for crafting items like baskets and footwear.” *Id.*

143. The Bears Ears Proclamation acknowledges that “traditional ecological knowledge” amassed by Plaintiffs and other Native Nations is, “itself, a resource to be protected and used in understanding and managing this landscape sustainably for generations to come.” *Id.*

144. The Bears Ears Proclamation includes specific provisions that are essential to the protection of Bears Ears and Plaintiffs’ cultural and spiritual connection to the many historic and scientific objects within Bears Ears. *Id.* at 1143-44.

145. For example, the Bears Ears Proclamation withdraws the lands “from all forms of entry, location, selection, sale, or other disposition . . . [;] from location, entry, and patent under the mining laws[;] and from disposition under all laws relating to mineral and geothermal leasing.” *Id.* at 1143. Thus, while valid existing rights were unaffected by the designation of the Monument, the Bears Ears Proclamation immediately prohibited all new mining claims and all new leases for

oil and gas development, which is critical to protecting the scientific and historic objects within Bears Ears. *Id.* at 1145.

146. Prohibiting these mining and other claims is also critical for reducing the burdens the United States imposed on Plaintiffs' religious and spiritual beliefs through past management decisions and historical dealings.

147. The Bears Ears Proclamation also protects against looting, giving warning "to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of the monument and not to locate or settle upon any of the lands thereof." *Id.* As noted above, looting and vandalism of many of the sites and objects within Bears Ears was one of the main reasons Plaintiffs advocated for its protection.

148. The Bears Ears Proclamation requires the Forest Service and the Bureau of Land Management to "manage the monument" consistent with "the purposes of this proclamation," and designated the Bureau of Land Management's lands within the Monument as part of the National Landscape Conservation System. *Id.* at 1143.

149. Congress established the National Landscape Conservation System "to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values." 16 U.S.C. § 7202(a).

150. Pursuant to an order by the Secretary of the Interior, the Bureau of Land Management must not only manage a national monument in a manner that protects the values for which it was designated, but must also, where appropriate, prohibit "uses that are in conflict with those values." Sec'y of Interior Order No. 3308 (Nov. 15, 2010) (regarding management of the National Landscape Conservation System).

151. The Bears Ears Proclamation also requires the Secretaries of the Interior and Agriculture to prepare a transportation plan. Motorized and non-motorized mechanized travel is only authorized on designated roads and trails, and such designations must be consistent with the care, management, and protection of the objects identified in the Bears Ears Proclamation, including irreplaceable cultural sites. Proclamation, *supra*, at 1143, 1145. Where motorized or non-motorized mechanized travel threatens historic or scientific objects, the Bureau of Land Management and the U.S. Forest Service may close roads or trails to such uses. *Id.* at 1145.

152. The Bears Ears Proclamation preserves public access to the lands contained in the Monument, including access for hunting and fishing, which are activities that shall continue to be managed by the State of Utah and that are still practiced by Plaintiffs' members. *Id.*; *see also*, *Bears Ears National Monument: Questions & Answers*, U.S. Forest Service 3-4, <https://www.fs.fed.us/sites/default/files/bear-ears-fact-sheet.pdf> (last visited Dec. 4, 2017) The Bears Ears Proclamation also preserves Plaintiffs and their members' right to collect plants, firewood, and other traditional materials within the Monument. Bears Ears Proclamation at 1145.

153. In recognition "of the importance of tribal participation to the care and management of the objects [in Bears Ears], and to ensure that management decisions affecting the monument reflect tribal expertise and traditional and historical knowledge," the Bears Ears Proclamation establishes the "Bears Ears Commission" to "provide guidance and recommendations on the development and implementation of management plans and on management of the monument." *Id.* at 1144. The Commission consists of "one elected officer each from the Hopi Nation, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of the Uintah Ouray, and Zuni Tribe." *Id.*

154. The Bears Ears Proclamation directs the Secretaries to "meaningfully engage" the Commission in the development of the management plan and subsequent management of the

monument, and to “carefully and fully consider integrating the traditional and historical knowledge and special expertise of the Commission.” *Id.* If the Secretaries “decide not to incorporate specific recommendations” of the Commission, they must “provide the Commission . . . with a written explanation of their reasoning.” *Id.*

155. The Commission gives Plaintiffs a government-to-government seat at the table to provide substantial, meaningful and continuous input on management of the Monument and how to more effectively protect the immensely important historic, scientific, and cultural objects within Bears Ears. Overall, the Bears Ears Proclamation directs the Secretaries to work with the tribally based Commission “to *ensure* that management decisions affecting the monument reflect tribal expertise and traditional and historical knowledge.” *Id.* at 1144 (emphasis added.)

156. The Bears Ears Proclamation also establishes a mechanism for the participation of other stakeholders in the management of the Monument through the establishment of an advisory committee. *Id.* The advisory committee consists of “interested stakeholders, including State and local governments, [T]ribes, recreational users, local business owners, and private landowners.” *Id.* The purpose of the advisory committee is to contribute “information and advice regarding the development of the management plan and, as appropriate, management of the monument.” *Id.*

X. President Trump’s attempt to revoke the National Monument and replace it with different monuments.

157. While campaigning, President Trump stated he would consider abolishing national monuments, including the Katahdin Woods and Waters National Monument in Maine. *Could Donald Trump Undo the Katahdin Woods and Waters National Monument?*, New Hampshire Public Radio (Nov. 18, 2016), <http://nhpr.org/post/could-donald-trump-undo-katahdin-woods-and-waters-national-monument#stream/0>.

158. On January 20, 2017, President Trump was sworn in as President of the United States. Peter Baker & Michael D. Shear, *Donald Trump Is Sworn In as President, Capping His Swift Ascent*, N.Y. Times (Jan. 20, 2017), https://www.nytimes.com/2017/01/20/us/politics/trump-inauguration-day.html?_r=0.

159. After Secretary Zinke was nominated to be the Secretary of the Interior, but before he was confirmed by the United States Senate, the Commission members sent him letters requesting a meeting to discuss the role of the Commission. Letter from Co-Chairs of Bears Ears Inter-Tribal Coalition to Ryan Zinke (Jan. 26, 2017), http://bearscoalition.org/wp-content/uploads/2017/01/BEITC_Letter_to_Zinke.pdf. The Navajo, Hopi and Zuni tribes also sent Secretary Zinke letters requesting to meet about Bears Ears.

160. On March 17, 2017, in accordance with the Bears Ears Proclamation, Plaintiffs formally named their representatives for the Commission. The same day, the Commission sent another letter to Secretary of the Interior Zinke requesting to meet to discuss management priorities and reminding him of his obligation to work with the Commission. *Bears Ears Commissions Selected Focus on the Future of the National Monument*, Bears Ears Inter-Tribal Coal. (Mar. 17, 2017), <http://bearscoalition.org/bears-ears-commissioners-selected-focus-on-the-future-of-the-national-monument/>.

161. On April 26, 2017, President Trump called for an unprecedented “review” of national monument designations made since January 1, 1996, where the designation covers more than 100,000 acres or “where the Secretary of the Interior determines that the designation or expansion was made without adequate public outreach or coordination with relevant stakeholders.” Exec. Order No. 13792, 82 Fed. Reg. 20429. The review was purportedly to determine whether the designations conform to the objectives of the Antiquities Act. *Id.*

162. Nearly three million comments were submitted in response to the review. Review of Certain National Monuments Established Since 1996; Notice of Opportunity for Public Comment, 82 Fed. Reg. 22016 (May 11, 2017) <https://www.regulations.gov/document?D=DOI-2017-0002-0001>.

163. The overwhelming majority of comments nationwide, including a majority of those in San Juan County itself, supported maintaining the Bears Ears National Monument.

164. Nonetheless, in an unprecedented executive action, President Trump purported to modify the Bears Ears National Monument and replace it with two new, much smaller “units” called the Indian Creek National unit and the Shash Jáa unit. Given the magnitude of the change, reducing the area protected from 1.35 million acres to 201,397 acres, President Trump’s action, if upheld, would effectively abolish Bears Ears and replace it with two disconnected, smaller monuments. In this revocation and replacement, President Trump purported to create new boundaries for these separate new monuments and issued new maps delineating them.

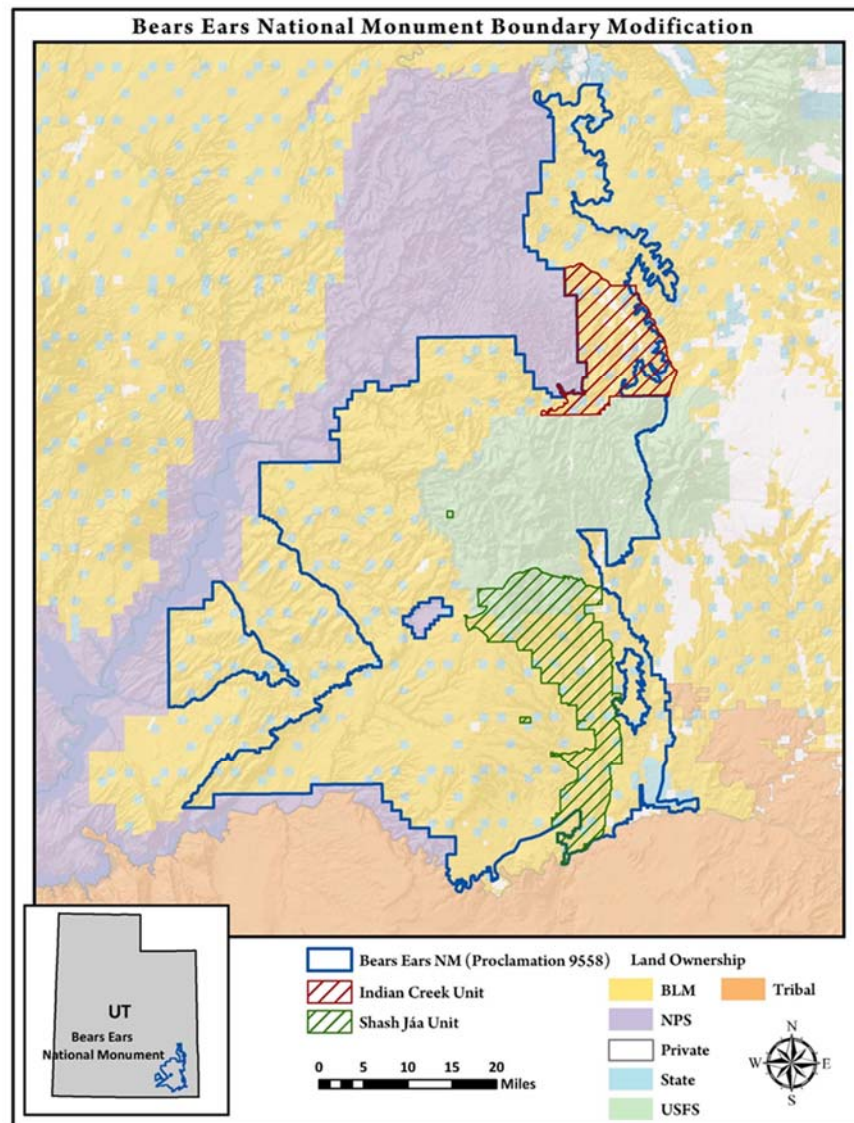
165. In so doing, President Trump has attempted to remove protection from the tens of thousands of cultural and archaeological sites and objects of historic and scientific interest within some 1.1 million contiguous acres. As to objects within this area, the Bears Ears National Monument has been fully revoked.

166. In deciding to revoke the Bears Ears National Monument, the President stated that revocation of the Bears Ears Monument will not “leave tribal artifacts or fossils unprotected.” *1600 Daily: Everything White House 12/4/2017*, The White House (Dec. 4, 2017), <https://www.whitehouse.gov/1600daily>.

167. The President’s statement is factually erroneous. The President’s revocation of the National Monument removes substantial protection from numerous known tribal artifacts.

168. The President's statement provides substantial proof that he made his decision based upon a substantial misunderstanding of the facts that had led to the area being designated as the Bears Ears National Monument.

169. Below is a map that shows, approximately, the purported new "units."



XI. The Harms Caused by the President's Revocation of the Bears Ears National Monument

170. Since President Trump has taken this action, Defendants Secretary of the Interior, Acting Director of the Bureau of Land Management, Secretary of Agriculture, and Chief for the

U.S. Forest Service have refused to take any steps to carry out their mandatory duties under the Bears Ears Proclamation, unless and until the court declares the President's action unlawful and sets it aside.

171. Mandatory duties under the Bears Ears Proclamation include, but are not limited to, further consulting with Plaintiffs on the establishment of the Commission as it was originally created (without inclusion of the wholly improper local government official on par with federally recognized tribes) and convening meetings with the Commission to assist in beginning its work. Moreover, the Proclamation went further and specified that if the Commission no longer existed, the Secretaries were still required to meaningfully engage "the tribal governments though some other entity composed of elected tribal government officers."

172. The Bears Ears Proclamation protected the Bears Ears landscape from the disruptive and damaging effects of oil and gas exploration and development, hard rock mineral location, uncontrolled off-road vehicle use, and the widespread vandalism and looting of archaeological and paleontological sites. *See generally*, Bears Ears Proclamation, *supra*.

173. President Trump's action purports to sweep those protections away, and it opens Bears Ears up to new oil and gas leasing and to new claims for hard rock minerals like uranium, thereby inviting significant and irreversible damage to this culturally important landscape.

174. For example, lands that were protected under the Bears Ears Proclamation are now open for location, entry, and patent under the Act of May 10, 1872, 30 U.S.C. § 22 (Mining Law of 1872). Revocation of the monument status for Bears Ears allows such activities to resume immediately because, under the General Mining Law, prospectors do not need permits or other prior authorization from the Bureau of Land Management or any other government agency to commence with location and entry. Any claimant may undertake "notice-level" activities, which

is defined as “causing surface disturbance” for up to five acres, simply if they send BLM notice of its planned activities. 43 C.F.R. §§ 3809.10(b), 3809.21(a). BLM has fifteen days in which to request more information or object but if they do not, the claimant can begin ground-disturbing activities in fifteen days.

175. The fear that this accelerated and minimal process would lead to more mining claims in Bears Ears has now been realized. Since the date of the Proclamation, there are approximately six new mining claims in the now unprotected area of the Bears Ears National Monument. They are, from north to south: the RWH Mine, Hammond Mine, Lucky Lady 2, Pretty Girl, Cute Girl and Cedar 4. This is just the claims of which Plaintiffs are aware at this time pursuant to the Court order; there may be others and new ones can be made at any time. All of these claims would have been prohibited in the Bears Ears National Monument, as it only grandfathered in existing claims but did not allow for new claims. The harm caused by each one of these is a direct result of the Trump Proclamation.

176. The Trump Proclamation also made it significantly easier to for claimants to develop and expand existing claims in a way that would have been prohibited under the Obama Proclamation. One example of this is the Easy Peasy mine, which was claimed in 2005 but not developed until approximately June or July 2018 after the Trump Proclamation. BLM would have been required to produce a “validity determination” on this claim as well as a “mineral report” in the BENM, but BLM did neither because the Trump Proclamation lifted restrictions on mineral withdrawal. The same has occurred with the Royal Flush Mine, which is an expanded use on an existing claim.

177. The six new and two expanded mines are in areas that pose threats to Plaintiff Tribes’ cultural resources and natural resource and spiritual uses of the landscape.

178. Prospectors may also engage in “casual use” and “notice use” activities on these lands without prior approval or any other affirmative action from the Bureau of Land Management or any other government agency. 43 C.F.R. §§ 3809.10(a), 3809.605(b) (casual use), §§ 3809.21, 3809.312(a) (notice use). The resumption of these activities will disturb surface soils in Bears Ears; will cause imminent harm to its natural, archaeological, and paleontological resources; and will encourage criminal looting and defacement.

179. Mineral development, including uranium mining, has destructive impacts not only on the claimed land itself, but also on the surrounding area. Mineral development poses an imminent threat to Bears Ears’ unique character, as the Proclamation described it, as “one of the most intact and least roaded areas in the contiguous United States.” Bears Ears Proclamation, *supra*, at 1141.

180. Mineral development under the General Mining Law of 1872 is particularly concerning to Plaintiffs. Uranium mining has had a particularly negative impact for the Ute Mountain Ute and Navajo. *See, e.g., Navajo Nation: Cleaning Up Abandoned Uranium Mines*, EPA, <https://www.epa.gov/navajo-nation-uranium-cleanup> (last visited Dec. 4, 2017); Jon Kovash, *The Ute Mountain Utes Cite Continuing Violations at the White Mesa Uranium Mill*, Utah Public Radio (May 24, 2016), <http://upr.org/post/ute-mountain-utes-cite-continuing-violations-white-mesa-uranium-mill>.

181. Since the Trump Proclamation, lands excided from the Monument are now available for mineral exploration and have been since February 2, 2018 and mine operators have already begun work in various locations.

182. There are over 500 abandoned uranium mines on the Navajo reservation that need remediation and cleanup and that have rendered local flora and fauna unsafe to access or use. *See*

Cleaning Up Abandoned Uranium Mines, EPA, <https://www.epa.gov/navajo-nation-uranium-cleanup/cleaning-abandoned-uranium-mines> (last updated Nov. 30, 2017).

183. Plaintiffs wish to protect Bears Ears and its flora and fauna from similar uranium contaminations and mining disasters in the future.

184. Without the Bears Ears Proclamation's protections, uranium mining activities will occur and impede Plaintiffs' use and enjoyment of the lands and resources in Bears Ears.

185. Approximately nine months after the revocation, an article revealed that Bears Ears National Monument was revoked in part due to specific requests for uranium mining. *See Hiroko Tabuchi, Uranium Miners Pushed Hard for a Comeback. They Got Their Wish*, New York Times (Jan. 13, 2018), <https://www.nytimes.com/2018/01/13/climate/trump-uranium-bears-ears.html>. This article details how a uranium producer accompanied then-Secretary Zinke on his trip to Bears Ears before the boundaries for the two other monuments were set and then sent a letter to the Administration two weeks later noting that the land could produce valuable uranium and mineral resources.

186. Before the Bears Ears Proclamation, oil and gas companies were consistently and intensely pushing for new drilling sites in many regions of Bears Ears, including Cedar Mesa, Tank Mesa, Lockhart Basin, Hatch Point, and Harts Point. Bears Ears Proposal, *supra*, at 34.

187. Before the Bears Ears Proclamation, some areas within Bears Ears were designated for oil and gas development under the Moab Master Leasing Plan. Large potash mines were also proposed.

188. Without the Bears Ears Proclamation's protections, oil and gas development and potash mining activities are imminent and injure Plaintiffs' use and enjoyment of the lands and resources within the monument.

189. In fact, since the date of the Trump Proclamation, companies have expressed an interest in new lease sites within the Bears Ears National Monument. One of these that likely will go forward is in lands now excised from BENM, near Hatch Point and the Canyonlands Overlook in the north. The draft lease sale including this site is expected to be released in December 3, 2019. This will be followed by a 30-day comment period. The lease sale is currently scheduled for March 9-13, 2020, according to the BLM's own website: <https://www.blm.gov/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/utah>. The oil and gas sales that Plaintiff Tribes feared would be offered in BENM have now begun.

190. These new lease sales are in areas that pose threats to Plaintiff Tribes' cultural resources and natural resource and spiritual uses of the landscape.

191. The harm caused by each lease sale and subsequent development is a direct result of the Trump Proclamation.

192. Mining and oil and gas production can have many adverse impacts to Native people. Adverse impacts include the following:

- direct damage, disturbance, or destruction of places, resulting from exploration, construction, operation, transportation, and reclamation activities;
- disturbance of graves, human remains, or other materials protected under the Native American Graves Protection and Repatriation Act;
- visual, audible, or atmospheric elements that adversely affect the integrity and values of resources;
- impediments to traditional practices or land uses;
- restricted access to traditional use areas or sacred sites;

- disruption of a place's setting or its association with other important places, resulting from visual or auditory impacts;
- loss of springs or declines in quantity or quality of important water sources; and
- social impacts such as distress or anxiety caused by effects on cultural values and sense of place, or fears of loss, illness, or resource contamination.

193. Mitigation under these circumstances is often impossible, as alterations or damage to the values of significant, connected places is irreversible and irreparable, regardless of reclamation.

194. Any disturbance or damage to Bears Ears from mining, regardless of size, is significant to Plaintiffs because it will disrupt the function of these particular places and affect Plaintiffs' and their members' use and enjoyment of these resources.

195. In addition, by designating Bears Ears as a national monument and including it in the National Landscape Conservation System, the Proclamation gave the Bureau of Land Management the authority and the duty to immediately regulate off-road vehicle usage to protect natural, archaeological, and paleontological resources within the Monument's boundaries.

196. President Trump's action removes these protections, renders all the removed areas in the Bears Ears landscape (over 1,000,000 acres), and all the objects within them, vulnerable and subject to immediate danger and irreparable harm.

197. Off-road vehicle use has wrought decades-long havoc on the Bears Ears landscape and treasured archaeological sites. Bears Ears Proposal, *supra*, at 35.

198. Monument-status protection for Bears Ears improves management of off-road vehicle use and the recreational experience for all visitors, including off-roaders. *Id.*

199. The operation of off-road vehicles that can continue to occur in the absence of a monument designation harms Plaintiffs' cultural, spiritual, recreational, scientific, and educational interests through noise, air pollution, increased looting and grave robbing, and other physical impacts on the land and environment that Plaintiffs and their members enjoy and regularly use.

200. Of all the degradations to Bears Ears, none are worse than looting and grave robbing.

201. There were more than a dozen reports of serious looting cases between May 2014 and April 2015, ranging from "small-scale theft to ancestral remains being tossed around when graves are plundered." *Id.*

202. "[T]hese deplorable acts defile the past and wound the present," which for Plaintiff Tribes "is so directly connected to the past." *Id.*

203. President Trump's action removes urgently needed protections for archaeological and paleontological resources in Bears Ears.

204. While federal regulations generally allow the "casual collecting" of common invertebrate and plant fossils for non-commercial personal use on land managed by the Forest Service, 36 C.F.R. §§ 291.5, 291.10, that same casual collecting is absolutely prohibited in national monuments, *id.* § 291.12. Violations may be punished by a fine or imprisonment, thereby providing greater protections against looting and grave robbing. *Id.* § 1.3(b).

205. Due to President Trump's action, casual collection of archaeological and paleontological resources will resume and likely destroy the valuable information those resources contain.

206. Plaintiffs themselves will lose the ability to enjoy the scientific, cultural, and educational value of those resources.

207. Further, countless places important to Native Americans are often not identified because many feel that they should not share sacred and traditional knowledge with outsiders.

208. Thus, the resources important to Plaintiffs within Bears Ears that are identified likely represent a fraction of the total number of Native American resources within Bears Ears, and any mining or other activity has the potential to affect resources that have not been publicly identified.

209. Among that important areas now excluded from the Monument are Farm House Ruin, Tower Ruin, Fry Canyon Ruin, Raven House Ruin, Dry Wash Ruin. BLM has recognized these areas as having a high potential for cultural and historic sites, yet they are all now at high risk from damage caused by motorized vehicles, mining, and looting.

210. Plaintiffs and their members use and enjoy the lands and the historic and scientific resources contained within Bears Ears.

211. The revocation and replacement of Bears Ears will adversely affect Plaintiffs and their members' interests by removing protections against looting, grave robbing, vandalism, mining, oil exploration, construction, and other activities that will disturb the spirituality, tranquility, and scenic beauty of the area.

212. The revocation and replacement will also destroy artifacts that should continue to capture and preserve the histories and knowledge of Plaintiffs and their ancestors, thereby further adversely affecting Plaintiffs' interests.

213. Without the protections afforded by the Bears Ears Proclamation, these activities are certain to occur, and Plaintiffs will lose their use and enjoyment of the resources negatively affected or destroyed.

214. President Trump’s attempt to revoke the Bears Ears designation and replace it with two smaller, new monuments renders one of the country’s most pristine, unique landscapes vulnerable to immediate harm, and thus deprives Plaintiffs and their members of the cultural, spiritual, historic, recreational, scientific, and educational benefits they derive from Bears Ears.

XII. The Trump Proclamation Caused Particular Harms to the Tribes as Sovereigns

215. Due to President Trump’s action, Plaintiffs will have lost their opportunity to participate on the Commission or to provide input on the creation and implementation of the Monument management plan.

216. The Obama Proclamation created the Bears Ears Commission, a body formed “to provide guidance and recommendations on the development and implementation of management plans and on management of the monument.” Proclamation at 9-10. The goal of this was to “ensure that management decisions affecting the monument reflect tribal expertise and traditional and historical knowledge.” Proclamation at 9.

217. The Bears Ears Commission was to “consist of one elected officer each from the [Plaintiff Tribes] designated by the officers’ respective tribes.” Proclamation at 10. The Secretaries were directed to “meaningfully engage the Commission” or, if the Commission no longer existed, the tribal governments “though some other entity composed of elected tribal government officers ... in the development of the management plan.” Proclamation at 10. The key feature of both the Commission and its alternative is that both were comprised *entirely* of elected tribal government officials.

218. The Commission and its alternative allowed the Tribes and federal agencies to meaningfully participate in the management of Bears Ears.

219. The Commission and its alternative were created this way in recognition of the government-to-government relationship between the United States and Indian tribes. That relationship is based on the fact that Tribes are referenced three times in the U.S. Constitution, many federal statutes (including all of Title 25 of the United States Code), executive orders, treaties, and a whole body of common law recognizing that Indian Tribes hold a unique place in American law. They are not “stakeholders” or members of the public, but sovereign nations within a nation.

220. The Obama Proclamation created a distinct “advisory committee ... to provide information and advice” on the development of the management plan. This separate advisory committee would consist of other stakeholders, state and local governments, and private landowners.

221. One crucial piece of the Obama Proclamation is the section providing that the Secretaries could decide not to include written recommendations from the Bears Ears Commission only if the Secretaries provided a “written explanation of their reasoning.”

222. Immediately upon signing, the Trump Proclamation eliminated the right of the Plaintiff Tribes to meaningfully participate in the management of Bears Ears.

223. The Trump Proclamation “revised” the Obama Proclamation by turning the Bears Ears Commission into the Shash Jáa Commission, limiting it to just the area of the new Shash Jáa mini monument, and also adding to this Commission a sixth member: the District 3 representative from the San Juan County Commission.

224. While the original Monument contained approximately 1.35 million acres of Forest Service and BLM lands, the two new smaller monuments of Indian Creek and Shash Jáa are only

201,876 acres combined. Protection was revoked for 85% of the lands in the original Monument. This revocation has caused immediate harm to the Plaintiffs.

225. The Trump Proclamation reduced the actual management authority of the Commission to just the Shash Jáa monument, which is only 129,980 acres. This is a 90% reduction in the lands the Plaintiffs were given a specific role in helping to manage and protect. Therefore, immediately upon signing, the Trump Proclamation eliminated the right of Plaintiff Tribes to co-manage almost 1.2 million acres of their ancestral lands – lands which contain their cultural history, sacred places, and ceremonial locations. This loss caused immediate harm to the Plaintiffs.

226. Immediately upon signing, Plaintiffs lost their ability to meaningfully assist in the collaborative management of 90% of the lands in Bears Ears on those lands. This loss has caused immediate harm to the Plaintiffs.

227. As to the remaining 10% of the lands in the Shash Jáa monument, Plaintiffs' role in co-managing these lands, on a government-to-government basis, was effectively diminished by the addition of a non-tribal, local government representative to the Shash Jáa Commission. Local county representatives are not entitled to benefit from the status of federally recognized Indian Tribes who maintain government-to-government relationships with the United States. The addition of a non-tribal, local government representative creates a harmful precedent and reduces the role of federally recognized tribes. Treating the two on par, as equals, diminishes the legal status of federally recognized tribes and the federal government's unique responsibilities towards tribes. Furthermore, it subverts the original purpose of the Commission as based on cultural and historical expertise. This has caused immediate harm to the Plaintiffs.

228. Although the BLM and USFS had begun discussions about meeting with the Bears Ears Commission, immediately upon signing the Trump Proclamation, those discussions stopped.

The progress that had been made by the creation of the Commission was lost. This has caused immediate harm to the Plaintiffs.

229. The Plaintiffs had already chosen their delegates for the Bears Ears Commission, had met at least two times, and had created bylaws and organizing documents. Immediately upon signing, the Trump Proclamation stopped this work and the progress that had been made by the creation of the Commission was lost. This has caused immediate harm to the Plaintiffs.

230. By removing the Commission's powers to manage 90% of the lands in BENM, diluting their power by including a local official not entitled to the same status under the law, and by disrupting their nascent work and specific powers that had been assigned to them under the Proclamation, Defendants caused immediate harm to Plaintiffs. *Cf. State by & through Tennessee Gen. Assembly v. United States Dep't of State*, 931 F.3d 499, 511–12 (6th Cir. 2019).

231. By revoking the Bears Ears Proclamation and replacing the Monument with two different, smaller monuments, President Trump has deprived Plaintiffs of their government-to-government relationship, through the Commission, and the opportunity to provide meaningful guidance and recommendations for protecting the entire Bears Ears landscape they have utilized and maintained since time immemorial.

232. By failing to carry out their duties under the Bears Ears Proclamation, Defendants Secretary of the Interior, Acting Director of the Bureau of Land Management, Secretary of Agriculture, and Chief for the U.S. Forest Service (“Agency Defendants”) have deprived Plaintiffs of their government-to-government relationship, through the Commission, and the opportunity to provide meaningful guidance and recommendations for protecting the entire Bears Ears landscape they have utilized and maintained since time immemorial.

233. As the Bears Ears Coalition recognized, “[r]uining the integrity of these lands forever compromises our ability to heal The continuity of indigenous traditional medicine is in peril, as long as lands like the Bears Ears are not protected.” *Proposal Overview*, Bears Ears Inter-Tribal Coal., <http://bearssearscoalition.org/proposal-overview/> (last visited Dec. 4, 2017).

234. Because of the above-described harms, Plaintiffs were compelled to establish their own comparable entity to monitor developments related to Bears Ears and to express tribal views. That entity is called the Bears Ears Inter-Tribal Coalition. The Plaintiffs have each dedicated, largely at their own expense, tribal staff, to do work that was supposed to have been performed by the Commission. Plaintiffs have had to divert staff from other work in order to perform work that was supposed to have been performed by the Commission. This has caused immediate and ongoing harm as the Plaintiffs endeavor to fill some of the void left by the loss of Bears Ears and its Tribal Commission. This has caused immediate harm to the Plaintiffs.

235. In July 2019, Defendant DOI published the Proposed Management Plans and Final Environmental Impact Statement, Shash Jáa and Indian Creek Units (PMP/FEIS).

236. The PMP/FEIS inaccurately describes any contacts with Plaintiffs as “consultation and coordination.” Plaintiffs sent letters to BLM and USFS objecting to the planning process, which they asserted was improper given this pending litigation. Any planning, Plaintiffs asserted, should have waited until this lawsuit was over. As it stands, BLM and USFS conducted a truncated planning process for a monument that is the subject of significant legal challenges. The Plaintiffs also sent letters and made comments objecting to the unreasonably accelerated planning process that undermined the Plaintiffs’ meaningful participation. This has caused immediate harm to the Plaintiffs.

237. The PMP/FEIS was not undertaken as prescribed by the Obama Proclamation – in a collaborative management way with the Bears Ears Commission or comparable entity.

238. The PMP/FEIS noted that only 8.2% of the BLM-administered lands in the Shash Jáa unit had been surveyed for cultural resources. These limited surveys located 991 archaeological sites – a site density of one every 8.1 acres. *Id.* at 3-6. The PMP/FEIS indicated that if this site density is projected across the entire unit, “there could be an estimated 12,023 sites on BLM-administered lands in the Shash Jáa unit.” *Id.* 3-6. Similarly, the PMP/FEIS predicted “there could be an estimated 700 sites on BLM-administered lands in the Indian Creek Unit.” *Id.* at 3-7.

239. In other words, the PMP/FEIS predicts that approximately 12,700 sites are located on just 15% of the original Bears Ears National Monument. This is an astounding density of archaeological information. BLM’s own map shows what that looks like: https://eplanning.blm.gov/epl-front-office/projects/lup/94460/138922/170937/BENM_24Xx36_Portrait_CulturalResourcesShashJaaUnit_3.12.2018.pdf

240. The PMP/FEIS selected Alternative E as the preferred alternative. Alternative E is not protective of cultural and archaeological resources. The PMP/FEIS specifies that if there are impacts to cultural resources, management actions could include “educating visitors” and relying on visitor “self-regulation to avoid impacting these resources.” *Id.* at Table 2-1, section 2.4.1.3.

241. Alternative E applies “fewer land and resource use restrictions and allow[s] for more discretion for multiple uses.” Alternative E “would be less prescriptive regarding how uses and activities are managed at the site-specific implementation level.” *Id.* at 2-2, section 2.2.5.

242. Despite the astonishing number of archaeological sites in just the Shash Jáa and Indian Creek mini monuments, the BLM and USFS chose the Alternative with the fewest use restrictions and chose instead to rely on visitors to self-regulate and “tread lightly.” This complete lack of protection constitutes immediate and ongoing harm to Plaintiffs.

243. Accordingly, Plaintiffs filed a formal protest to the PMP/FEIS detailing these and other concerns on August 26, 2019. Exhibit H.

244. The Advisory Council on Historic Preservation (ACHP), the federal agency charged with implementation of the National Historic Preservation Act (NHPA), filed an objection to the agencies’ finding that the PMP/FEIS would not adversely affect the historic properties in the mini monuments. The ACHP stated, “[B]ased on the incomplete information regarding historic properties likely located within the [Area of Potential Effect], how the land use allocations might affect those properties, and conditions that would ensure that adverse effects would be avoided at the implementation-level stage, the ACHP believes that the finding of no adverse effect for this undertaking is not adequately supported at this time.” Exhibit H.

245. Therefore, after removing 85% of the Bears Ears landscape from national monument protections, and removing 100% of protections for the objects located on those lands, Defendants then damaged the centuries-old government-to-government relationship between tribes and the United States, and exposed to imminent harm the more than 12,000 archaeological sites in just the Shash Jáa and Indian Creek Units alone by choosing the least protective alternative, and just asking tourists to “tread lightly.” This is no substitute for a real management plan. These harms are on top of the fact that Defendants have allowed at least six mining sites and likely new lease sales in areas formerly protected by the original Monument. All of these actions constitute both immediate and imminent harms to Plaintiffs.

246. Plaintiffs and their members' interests are being, and will continue to be, adversely affected and irreparably injured by Defendants' actions unless the relief sought herein is granted. Their injuries would be redressed by the relief sought herein.

247. Plaintiffs have no adequate remedy at law.

FIRST CLAIM FOR RELIEF

Antiquities Act, 54 U.S.C. § 320301 (All Defendants)

248. Plaintiffs re-allege and incorporate by reference all the allegations set forth in this Complaint as if set forth in full.

249. The Antiquities Act only empowers the President to declare national monuments. It does not delegate or authorize the power to revoke, replace, or diminish them once designated. More specifically, the President lacks authority to undesignate "historic landmarks, historic and prehistoric structures, and other objects of scientific or historic interest" once they have been lawfully proclaimed a national monument, and lacks the further authority to remove lands from a national monument once they have been reserved for the "proper care and management of the objects to be protected" at the discretion of the establishing President. 54 U.S.C. § 320301.

250. In issuing his Proclamation, President Trump acted in contravention of the authority delegated to the President under the Antiquities Act. 54 U.S.C. § 320301. That action, in effect, revokes the lawful establishment of Bears Ears National Monument and replaces it with two different, much smaller ones, and thereby reduces the public lands reserved as part of the Monument. It also purports to lift monument protections for tens of thousands of objects identified in 1.1 million acres of the Bears Ears National Monument. Moreover, that action revokes the

national monument protection of numerous objects declared a national monument in the Bears Ears Proclamation.

251. As a result, the Trump Proclamation is *ultra vires*, unlawful, and subject to non-statutory review.

252. In implementing the Trump Proclamation, the actions of the Agency Defendants are *ultra vires*, unlawful and subject to non-statutory review.

253. In issuing and implementing the Proclamation, Defendants have caused immediate and ongoing harm to Plaintiff Tribes and their members.

SECOND CLAIM FOR RELIEF

U.S. Constitution, Article I, Sections 1 and 7 — Separation of Powers (All Defendants)

254. Plaintiffs re-allege and incorporate by reference all the allegations set forth in this Complaint as if set forth in full.

255. Article I, Section 1 of the U.S. Constitution provides that “all legislative powers are vested in the Congress,” and therefore only Congress may create law.

256. Article I, Section 7 of the U.S. Constitution, also called the Presentment Clause, provides that after a bill has passed 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.

257. Based on these provisions, and those enumerated in Article 2 of the Constitution, the President has specific executive powers to initiate and influence legislative proposals, or to veto in total any legislative procedures, but “[t]here is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes.” *Clinton v. N.Y.C.*, 524 U.S. 417, 438 (1998).

258. The Antiquities Act only provides that the President may declare national monuments and reserve public lands; it does not delegate or authorize the power to revoke, abolish, diminish, or replace them, as has been done here. 54 U.S.C. § 320301. Only Congress can revoke or diminish a national monument after it has been created.

259. In issuing the Proclamation, President Trump has effectively attempted to amend the Antiquities Act by engrafting on it a new provision of the law that would authorize him to revoke, diminish, and replace monuments. This action is without statutory authority and violates the limits of the President's Constitutional authority under Article 1, Sections 1 and 7.

260. Because the President Trump's Proclamation is unlawful, his actions and those of the Agency Defendants to implement his Proclamation are unlawful and constitute an attempt to create law or to amend an existing statute in violation of the limits of Constitutional authority of the Executive Branch under Article 1, Sections 1 and 7.

261. In issuing and implementing the Proclamation, Defendants have caused immediate and ongoing harm to Plaintiff Tribes and their members.

THIRD CLAIM FOR RELIEF

U.S. Constitution, Article IV, Section 3 — the Property Clause (All Defendants)

262. Plaintiffs re-allege and incorporate by reference all the allegations set forth in this Complaint.

263. The Property Clause of the U.S. Constitution, Article IV, section 3, clause 2, 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 President has the

authority to dispose of such property, or to make rules and regulations concerning such property, only to the extent that Congress has delegated that authority to the President.

264. The Antiquities Act only provides that the President may declare national monuments; it does not delegate or authorize the power to revoke, abolish, diminish, or replace them as has been done here. 54 U.S.C. § 320301.

265. In issuing his Proclamation, President Trump acted without authority and encroached upon Congress's power under the Property Clause in Article IV of the Constitution.

266. In implementing the Trump Proclamation, the Agency Defendants have acted without authority by implementing a presidential decision that encroached upon Congress's power under the Property Clause in Article IV of the Constitution.

267. In issuing and implementing the Proclamation, Defendants have caused immediate and ongoing harm to Plaintiff Tribes and their members.

FOURTH CLAIM FOR RELIEF

Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.* (All Agency Defendants)

268. Plaintiffs re-allege and incorporate by reference all the allegations set forth in this Complaint.

269. The Administrative Procedure Act (the "APA") confers a right of action on any person adversely affected by final agency action or failure to act. 5 U.S.C. §§ 701-706.

270. The APA directs the court to "compel agency action [that has been] unlawfully withheld." 5 U.S.C. § 706(1).

271. The Bears Ears Proclamation directs the Secretaries, through the Forest Service and the Bureau of Land Management, to undertake specific, mandatory duties to protect the special values of the Bears Ears National Monument, including:

- a) managing the Monument lands to implement the protective purposes of the Proclamation, including preventing new mining and mineral claims and oil and gas leases;
- b) administering the lands under the Bureau of Land Management's jurisdiction as part of the National Landscape Conservation System;
- c) jointly preparing a management plan for the Monument that will protect and restore the objects identified in the Proclamation and provide for maximum public involvement in that process;
- d) establishing an advisory committee to inform the development of the management plan;
- e) establishing a Bears Ears Commission, comprised of elected officers from five Tribal nations, and meaningfully engaging the Commission in the Monument's management, after "carefully and fully consider[ing] integrating the traditional and historical knowledge and special expertise of the Commission."

272. Because President Trump had no lawful authority to revoke Bears Ears National Monument and replace it with two different, smaller monuments, the Secretaries of the Interior and Agriculture remain subject to the Proclamation's direction to undertake specific, mandatory duties to protect the special values of the full, 1.35 million acre Bears Ears National Monument.

273. Agency Defendants have failed to carry out their mandatory duties under the Proclamation.

274. On information and belief, Agency Defendants have no intention of carrying out those duties as long as the Trump Proclamation remains in place.

275. Agency Defendants' failure to act constitutes an agency action "unlawfully withheld" under section 706 of the APA.

276. In implementing the Proclamation, Agency Defendants have caused immediate and ongoing harm to Plaintiff Tribes and their members.

PRAYER FOR RELIEF

WHEREFORE plaintiffs request that the Court:

277. Declare that the Trump Proclamation, and the Agency Defendants' implementation thereof, is *ultra vires* and exceeds the authority delegated to the President under the Antiquities Act;

278. Declare that the Trump Proclamation, and the Agency Defendants' implementation thereof, violates the U.S. Constitution, Article I, Sections 1 and 7, the Separation of Powers doctrine;

279. Declare that the Trump Proclamation, and the Agency Defendants' implementation thereof, violates the U.S. Constitution, Article IV, Section 3, the Property Clause;

280. Issue injunctive relief requiring President Trump to rescind his Proclamation, or prohibiting him from enforcing or implementing it in any way;

281. Issue injunctive relief against the Agency Defendants, prohibiting them from implementing the unlawful Proclamation, including any management or other plans based on the Trump Proclamation, and directing them to carry out the mandatory duties imposed in the 2016 Proclamation;

282. Declare that any mining claims, mineral leases, or other permits or authorizations premised on the validity of the Trump Proclamation are void *ab initio*;

283. Award Plaintiff fees and costs pursuant to 28 U.S.C. § 2412 ; and

284. Grant such other relief as the Court deems just and proper.

Dated: November 7, 2019

Respectfully submitted,

By:

/s/ Natalie Landreth

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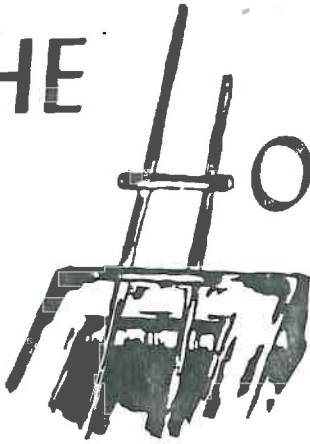
CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November 2019, I filed the above pleading with the Court's CM/ECF system, which provided notice of this filing by e-mail to all counsel of record.

/s/ Natalie A. Landreth

Natalie A. Landreth

THE



HOPI TRIBE

Herman G. Honanie
CHAIRMAN

Alfred Lomahquahu, Jr.
VICE-CHAIRMAN

MEMORANDUM

TO: Leigh Kuwanwisiwma, Director
Hopi Cultural Preservation Office

FROM: *Maxine Wadsworth*
Maxine Wadsworth, Tribal Secretary
Hopi Tribal Council

DATE: March 25, 2016

SUBJECT: APPROVAL TO SUPPORT PROPOSAL FOR A PRESIDENTIAL
PROCLAMATION DESIGNATING BEARS EARS NATIONAL
MONUMENT – A.I. #042-2016/H-035-2016



The Hopi Tribal Council on March 22, 2016, by motion and majority vote, approved the above mentioned Action Item and Resolution.

By passage of this Resolution, the Hopi Tribal Council hereby supports the permanent long term protection of cultural and natural resources and sacred sites on these public lands through a proposal for a Presidential Proclamation designating BEARS EARS NATIONAL MONUMENT.

Offices of the Chairman, Vice Chairman and the Hopi Cultural Preservation Office are hereby authorized to continue consultations with the Bears Ears Inter-Tribal Coalition for the purpose of developing a proposal for the Presidential Proclamation.

Should you have any questions, you may contact me at 928 734-3131. Thank you

c: Office of Chairman
Office of Vice Chairman
Office of the Treasurer
Office of Financial Management
Office of Executive Director
Office of General Counsel
Department of Natural Resources
File

HOPI TRIBAL COUNCIL
RESOLUTION
H-035-2016

WHEREAS, the Hopi Tribe is a federally recognized Indian Tribe pursuant to the Indian Reorganization Act of 1934, and the Hopi Tribal Council is empowered by the Constitution and By-laws of the Hopi Tribe, ARTICLE VI-POWERS OF THE TRIBAL COUNCIL, SECTION 1 (a), (d), and (k), respectively: “To represent and speak for the Hopi Tribe in all matters for the welfare of the Tribe . . .”; “To advise with the Secretary of the Interior and other governmental agencies. . .”; and “To protect the arts, crafts, traditions, and ceremonies . . .”; and

WHEREAS, ARTICLE IV-EAGLE HUNTING TERRITORIES AND SHRINES, of the Constitution and By-laws of the Hopi Tribe provides that the Tribal Council shall negotiate with the United States Government agencies concerned, and with other tribes and other persons concerned, in order to secure protection of the right of the Hopi Tribe to “...secure adequate protection for its outlying, established shrines . . .”; and

WHEREAS, pursuant to Resolution H-098-2011, the Hopi Tribal Council adopted the 2011 revised Hopit Pötskwaniat, the Hopi Tribal Consolidated Strategic Plan, which established Hopi Tribal goals “Towards Preservation & Protection of Cultural Resources”, “to fulfill the constitutional responsibilities in the protection and preservation . . .” and to “continue the preservation and protection of cultural resources including archeological sites, traditional cultural properties and other historical properties.”; and

HOPI TRIBAL COUNCIL
RESOLUTION
H-035-2016

WHEREAS, Hopi migration is intimately associated with a sacred Covenant between the Hopi people and the Earth Guardian, in which the Hopi people made a solemn promise to protect the land by serving as stewards of the Earth, and in accordance with this Covenant, ancestral Hopi clans traveled through and settled on the lands in and around southeastern Utah during their long migration to *Tuuwanasavi*, the Earth Center on the Hopi Mesas; and

WHEREAS, the land is a testament of Hopi stewardship through thousands of years, manifested by the “footprints” of ancient villages, sacred springs, migration routes, pilgrimage trails, artifacts, petroglyphs, and the physical remains of buried *Hisatsinom*, the “People of Long Ago,” all of which were intentionally left to mark the land as proof that the Hopi people have fulfilled their Covenant, and the Hopi ancestors buried in the area continue to inhabit the land, and they are intimately associated with the clouds that travel out across the countryside to release the moisture that sustains all life; and

WHEREAS, the Hopi footprints and clouds are part of a living, sacred landscape that nourishes and sustains Hopi identity, and this landscape is steeped in cultural values and maintained through oral traditions, songs, ceremonial dances, pilgrimages, and stewardship, and as a cultural landscape, the archaeological sites and physical terrain situates the Hopi people in time and space, providing a geographical conception of history and religion that connects the past, present and future; and

HOPI TRIBAL COUNCIL
RESOLUTION
H-035-2016

WHEREAS, these lands are part of our ancestral lands and Hopi history and cultural values associated with ancestral sites and landscapes are deep and abiding, and pursuant to Hopi Tribal Council Resolution H-70-94, the Hopi Tribe claims cultural affiliation to Ancestral Puebloan cultural groups in the greater Cedar Mesa area, and the Hopi Tribe supports the identification and avoidance of prehistoric archaeological sites and Traditional Cultural Properties, and we consider the prehistoric archaeological sites of our ancestors to be “footprints” and Traditional Cultural Properties; and

WHEREAS, in the attached letter from Chairman Herman Honanie dated September 30, 2014 to President Barack Obama, Senator Orin Hatch, Senator Mike Lee, Congressman Rob Bishop, Congressman Jason Chaffetz, Congressman Jim Matheson, and Congressman Chris Stewart, the Hopi Tribe supported the designation of the greater Cedar Mesa area in southeastern Utah as a National Conservation Area or National Monument; and

WHEREAS, the Hopi Tribe is fully aware that over the last few decades the archaeological, natural and geographic resources in the region have been severely impacted by looting, federal management inadequacies, industrial development, and rampant visitation including increased motorized and recreational access and inappropriate all-terrain vehicle use, and the Tribe has encouraged the Bureau of Land Management to enforce the laws protecting cultural and natural resources on public land in San Juan County and not to acquiesce to local political and illegal

HOPI TRIBAL COUNCIL
RESOLUTION
H-035-2016

actions by proposing to make illegal motorized trails into legal motorized roads on public lands that contain irreplaceable cultural resources that have been looted for over a century and continue to be looted today; and

WHEREAS, the Hopi, Zuni, Ute, Ute Mountain Ute, and Navajo Tribes, composing the Bears Ears Inter-Tribal Coalition, have developed a proposal for a Presidential Proclamation designating BEARS EARS NATIONAL MONUMENT that will enhance the protection of cultural landscapes and the sites within them.

NOW THEREFORE BE IT RESOLVED that the Hopi Tribe hereby supports the permanent long term protection of cultural and natural resources and sacred sites on these public lands through a proposal for a Presidential Proclamation designating BEARS EARS NATIONAL MONUMENT.

BE IT FURTHER RESOLVED that the Hopi Tribal Council supports the proposal that BEARS EARS NATIONAL MONUMENT will be co-managed with stakeholder decision making by the Hopi, Zuni, Ute, Ute Mountain Ute, and Navajo Tribes, composing the Bears Ears Inter-Tribal Coalition, since such a designation and co-management could accomplish the goal of prioritizing protection of cultural resources while also allowing flexibility in management of traditional Native American uses including wood, plants, medicine, ancestral sites, shrines, and hunting.

BE IT FURTHER RESOLVED that based on over century of looting and grave robbing in San Juan County, Utah, the Hopi Tribe hereby supports a provision in the proposal for

HOPI TRIBAL COUNCIL
RESOLUTION
H-035-2016

the BEARS EARS NATIONAL MONUMENT that provides for protection, preservation, and avoidance of our ancestor's human remains and associated funerary objects.

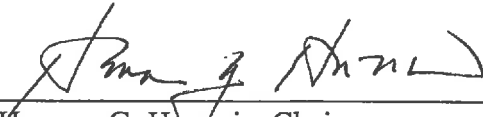
BE IT FINALLY RESOLVED that the Offices of the Chairman and Vice Chairman and the Hopi Cultural Preservation Office are hereby authorized to continue consultations with the Bears Ears Inter-Tribal Coalition for the purpose of developing and supporting a proposal for a Presidential Proclamation designating BEARS EARS NATIONAL MONUMENT, which recognizes these lands as Hopi ancestral lands and requires Bears Ears Inter-Tribal Coalition co-management in policy formulation, management, and evaluation of results.

EXHIBIT A

HOPi TRIBAL COUNCIL
RESOLUTION
H-035-2016


CERTIFICATION

The Hopi Tribal Council duly adopted the foregoing Resolution on March 22, 2016 at a meeting at which a quorum was present with a vote of 13 in favor, 3 opposed, 1 abstaining (Chairman presiding and not voting) pursuant to the authority vested in the Hopi Tribal Council by ARTICLE VI-POWERS OF THE TRIBAL COUNCIL, SECTION 1 (a), (d), and (k) of the Hopi Tribal Constitution and By-Laws of the Hopi Tribe of Arizona, as ratified by the Tribe on October 24, 1936, and approved by the Secretary of Interior on December 19, 1936, pursuant to Section 16 of the Act of June 18, 1934. Said Resolution is effective as of the date of adoption and does not require Secretarial approval.

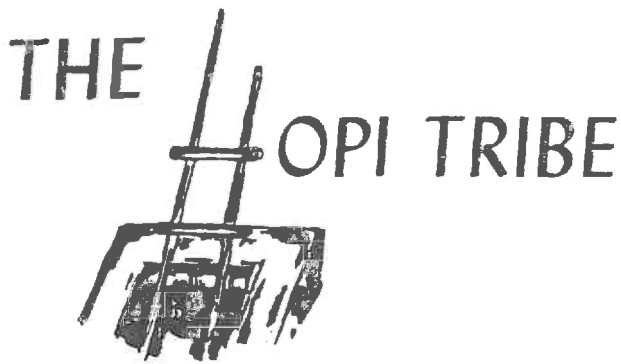


Herman G. Honanie, Chairman
Hopi Tribal Council

ATTEST:



Maxine Wadsworth, Tribal Secretary
Hopi Tribal Council



Herman G. Honanie
CHAIRMAN

Alfred Lomahquahu Jr.
VICE-CHAIRMAN

September 30, 2014

President Barack Obama
The White House
1600 Pennsylvania Ave., NW
Washington, D.C.

Senator Orin Hatch
104 Hart Senate Office Building
Washington, D.C. 20510

Congressman Rob Bishop
123 Cannon Building
Washington, D.C. 20515

Congressman Jim Matheson
2211 Rayburn House Office Building
Washington, D.C. 20515

Senator Mike Lee
316 Hart Senate Office Building
Washington, D.C. 20510

Congressman Jason Chaffetz
2464 Rayburn House Office Building
Washington, D.C. 20515

Congressman Chris Stewart
323 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. President, Senators and Congressmen,

On behalf of Hopi people, Hopisenom, I have the honor of providing the Hopi Tribe's support for the designation of the greater Cedar Mesa area including Alkali Ridge and Montezuma Canyon in southeastern Utah as a National Conservation Area or National Monument.

Pursuant to the enclosed Hopi Tribal Council Resolution H-70-94, the Hopi Tribe claims cultural affiliation to ancestral puebloan cultural groups in the greater Cedar Mesa area. The Hopi Cultural Preservation Office supports the identification and avoidance of prehistoric archaeological sites and Traditional Cultural Properties, and we consider the prehistoric archaeological sites of our ancestors to be "footprints" and Traditional Cultural Properties. Therefore, we appreciate your solicitation of our input and your efforts to address our concerns.

Hopi migration is intimately associated with a sacred Covenant between the Hopi people and *Màasaw*, the Earth Guardian, in which the Hopi people made a solemn promise to protect the land by serving as stewards of the Earth. In accordance with this Covenant, ancestral Hopi clans

traveled through and settled on the lands in and around southeastern Utah during their long migration to *Tuuwanasavi*, the Earth Center on the Hopi Mesas.

The land is a testament of Hopi stewardship through thousands of years, manifested by the "footprints" of ancient villages, sacred springs, migration routes, pilgrimage trails, artifacts, petroglyphs, and the physical remains of buried *Hisatsinom*, the "People of Long Ago," all of which were intentionally left to mark the land as proof that the Hopi people have fulfilled their Covenant. The Hopi ancestors buried in the area continue to inhabit the land, and they are intimately associated with the clouds that travel out across the countryside to release the moisture that sustains all life.

The Hopi footprints and clouds are part of a living, sacred landscape that nourishes and sustains Hopi identity. This landscape is steeped in cultural values and maintained through oral traditions, songs, ceremonial dances, pilgrimages, and stewardship. As a cultural landscape, the archaeological sites and physical terrain situates the Hopi people in time and space, providing a geographical conception of history and religion that connects the past, present and future. These lands are part of our ancestral lands. Hopi history and cultural values associated with ancestral sites and landscapes are deep and abiding.

We are fully aware that over the last few decades the archaeological, natural and geographic resources in the region have been severely impacted by looting, federal management inadequacies, industrial development, and rampant visitation including increased motorized and recreational access and inappropriate all terrain vehicle use. We have encouraged the BLM to enforce the laws protecting cultural and natural resources on public land in San Juan County and not to acquiesce to local political and illegal actions by proposing to make illegal motorized trails into legal motorized roads on public lands that contain irreplaceable cultural resources that have been looted for over a Century and continue to be looted today.


We appreciate the Friends of Cedar Mesa and National Trust for Historic Preservation for working with the Hopi Tribe and other tribes culturally associated to the area to develop proposals that will enhance the protection of cultural landscapes and the sites within them in San Juan County.

And therefore, the Hopi Tribe and Hopi Cultural Preservation Office supports Congressional action to designate the greater Cedar Mesa area as a National Conservation Area. Based on over century of looting and grave robbing, we also support a provision in the designation that provides for protection and preservation and avoidance of our ancestor's human remains. Such a designation could accomplish the goal of prioritizing protection of cultural resources while also allowing flexibility in management of traditional Native American uses.

However, if Congress fails to act quickly to protect this landscape, we urge the President to be ready to preserve this imperiled resource as a National Monument before the end of this term.

Should you have any questions or need additional information, please contact Leigh Kuwanwisiwma, Director, Hopi Cultural Preservation Office at lkuwanwisiwma@hopi.nsn.us or 928-734-3611. Thank again you for your consideration.

Respectfully,


Herman G. Honanie, Chairman
THE HOPI TRIBE

PROPOSED BEARS EARS NATIONAL MONUMENT

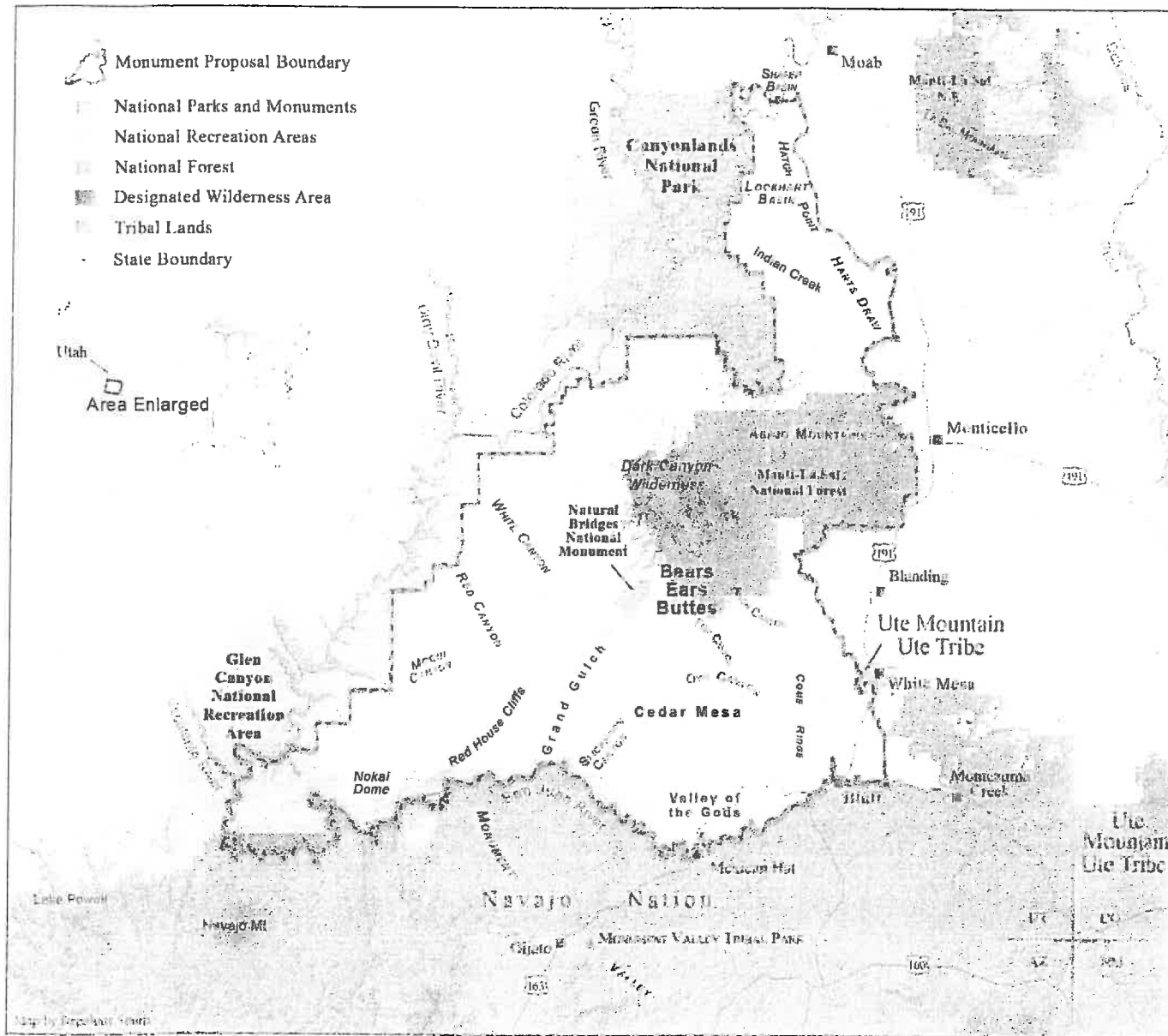


EXHIBIT A

NABIMA-13-15

RESOLUTION OF THE
NAABIK'ÍYÁTI' COMMITTEE OF THE
NAVJAO NATION COUNCIL

23RD Navajo Nation Council---First Year 2015

AN ACTION

RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE AND THE
NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING THE UTAH DINÉ BIKEYAH
CONSERVATION PROPOSAL FOR THE FEDERAL DESIGNATION OF BEAR'S EARS
NATIONAL CONSERVATION AREA/NATIONAL MONUMENT IN SAN JUAN COUNTY,
UTAH, TO PROTECT NATIVE RIGHTS AND INTERESTS ON FEDERAL LANDS FOR
FUTURE GENERATIONS

WHEREAS:

1. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102(A). All powers not delegated are reserved to the Navajo Nation Council. 2 N.N.C. §102(B). The Navajo Nation Council shall supervise all powers delegated. 2 N.N.C. §102(C).
2. The Naabik'íyáti' Committee is one of five standing committees of the Navajo Nation Council and is comprised of all twenty-four members of the Navajo Nation Council. The Committee is authorized to assist and coordinate all requests for information, appearances and testimony relating to proposed county, state and federal legislation impacting the Navajo Nation. 2 N.N.C. §§ 180 and 701(A)(6).
3. The Navajo Nation includes communities in San Juan County, Utah; these communities depend on federal lands and resources within San Juan County, Utah; a copy of a Memorandum of Understanding between the Utah Dine Bikeyah, A Utah Non-Profit Corporation and the Navajo Nation Division of Natural Resources is attached as Exhibit B; and
4. The Navajo Nation members occupy a special status as both U.S. citizens and members of the Navajo Nation whose ancestral lands encompass all of San Juan County; and

NABIMA-13-15

5. Bear's Ears area within San Juan County, Utah, is part of the proposed National Conservation Area/National Monument to consist of 1.9 million acres and would include additional Wilderness units within and outside of its boundary. This region is the ancestral home of many Southwestern Native American Tribes, including the Navajo, Hopi, Zuni, Acoma, Zia, and Jemez Pueblos along with the Ute Mountain, Southern, and Uintah Ouray Utes, the San Juan, Kaibab, and Utah Paiute Tribes and the Jicarilla Apache Tribes which assert their affiliation, occupation and enduring use of these lands. The Bear's Ears region is also the birthplace of Navajo Headman Manuelito; and
6. The proposed National Conservation Area/National Monument is bordered on the west by the Colorado River and on the south by the San Juan River and the Navajo Nation; the proposed National Conservation Area/National Monument is characterized by prodigious topographic diversity and striking landforms containing intricately rich ecological systems; the Navajo and other Tribes depend upon the land within the proposed National Conservation Area/National Monument to sustain their traditional livelihoods and cultural practices. Cedar Mesa, the proposed National Conservation Area/National Monument's centerpiece, offers sprawling vistas of Comb and Butler Washes, and extends beyond to Moki, Red, Dark, Grand Gulch, and White canyons that each support verdant ribbons of riparian habitat. Desert bighorn sheep grace the lower desert lands while the 11,000 foot Abajo Mountains host forests of ponderosa pine, spruce, fir and aspen, providing a home to mule deer, elk, black bear and mountain lion, sacred icons of the mesa's original peoples. Paramount for the Navajo, the majority of the regions inhabitants, is the proper management of the proposed National Conservation Area/National Monument's native plants and wildlife that are food, shelter and medicine and its cultural sites that are central to their spiritual practices; and
7. This region contains unsurpassed cultural and paleontological resources; the proposed National Conservation Area/National Monument is world renowned for the integrity and abundance of its archaeological resources. Six cultural special management areas are within the proposed National Conservation Area/National Monument boundaries: Alkali Ridge National Historic Landmark, the Hole-in-the-Rock Historical Trail and the Grand Gulch, Big Westwater Ruin, Dance Hall Rock, Sand

NABIMA-13-15

Island Petroglyph Panel, the Newspaper Rock Petroglyph Panel, and the Butler Wash Archaeological District National Register site. Also occurring in the proposed National Conservation Area/National Monument's 19 distinct geologic units are scientifically significant vertebrate and non-vertebrate paleontological resources that are particularly abundant in the Cedar Mountain, Burro Canyon, Morrison, and Chinle Formations; and

8. The proposed National Conservation Area/National Monument has been inhabited for more than 12,000 years by multiple indigenous cultures, which crossed, and built civilizations on these lands. At the Lime Ridge Clovis site is evidence of Paleoindian occupation and the archaeological record indicates widespread use between 6000 B.C. and A.D. 100 by Archaic Peoples. Possessing numerous Archaic Period sites of varying size and complexity are Cedar Mesa, Elk Ridge, and Montezuma Canyon. While other notable sites include Alkali Ridge, Cowboy Cave, Old Man Cave, and Dust Devil Cave. The heaviest occupation of the proposed National Conservation Area/National Monument lands was perhaps by the Formative Period Peoples (AD 100-AD 1300) who left very large numbers of archaeological sites ranging from small lithic scatters to large highly complex village sites; and
9. The proposed National Conservation Area/National Monument includes Bureau of Land Management Wilderness Study Areas and lands with Wilderness Characteristics and U.S. Forest Service Roadless Areas. Vast, remote desert mesas cut by sheer walled serpentine canyons provide unparalleled solitude and scenic quality that is comparable to or exceeds those found in nearby national parks and monuments, such as Canyonlands, Arches, Grand Staircase, Natural Bridges, Hovenweep, and Mesa Verde; and
10. Priority Management values to protect within the proposed National Conservation Area/National Monument are: archaeological, wildlife, natural and scenic resources. An essential aspect of the proposed National Conservation Area/National Monument's management is to better protect these resources and to ensure their ongoing and sustainable use; and
11. Native Americans have unique and important cultural and historical ties to the land, its wildlife and other natural resources; and the Navajo people have traditional ties to this particular landscape for hunting, medicinal herbs, food gathering, firewood gathering and the grazing of livestock; and

NABIMA-13-15

12. Native Americans have shown quality and excellence in managing lands and natural resources to protect the cultural integrity of the homeland of Native peoples; and
13. These areas are under constant threat of cultural vandalism, looting of Native cultural sites, indiscriminate off road vehicle use that damages areas sacred to Native peoples, energy development footprints that negatively impact lands of historic and cultural importance, and general degradation of wildlife and plant habitats of importance to Native traditional practices; and
14. To prevent this rapid destruction of lands in the San Juan County region important to Native peoples, formal protection as a national conservation area or national monument is required; and
15. Formal protection of the area as a National Conservation Area/National Monument will provide important consistency and quality to management of these lands, and define principles of management that will positively affect Native values on these lands in the following ways:
 - A. Protection will be permanent, part of a national system of protected lands that carry strong and clear legal definitions of the primacy of conservation of cultural, historical and ecological values that define Native connections to these lands.
 - B. Protection as a national conservation area or national monument creates important opportunities for Native American co-management of these resources and increased funding for protection with an emphasis on conservation and preservation of the region's cultural and natural resources.
 - C. Protection should be at the largest landscape level possible, providing connectivity of wildlife and plant habitats, ecological integrity of the region and be comprehensive in its protection of Native sacred sites, which cannot be considered out of the context of the larger landscape.
 - D. Protection of the region as a national conservation area or national monument will be a top priority for concerned federal agencies, with public involvement and prioritization of staffing, resources and cooperation with Native peoples.

NABIMA-13-15

16. It is in the best interest of the Navajo Nation to support the federal designation of 1.9 million acres in San Juan County, Utah, as the Bear's Ears National Conservation Area/National Monument. Resolutions in support of the federal designation are attached as Exhibit A.

THEREFORE BE IT RESOLVED, THAT THE NAVAJO NATION COUNCIL'S NAABIK'ÍYÁTI' COMMITTEE EXTENDS ITS SUPPORT FOR:

1. The designation of the 1.9 million acres in San Juan County, Utah, as the Bear's Ears National Conservation Area/National Monument.
2. The designation of identified roadless areas as wilderness under the Wilderness Act.
3. Establishment of Collaborative Management Agreement(s) between the Navajo Nation, other Tribes and the federal government to improve management and elevate the Native American voice in the long-term sustainable management of the region.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 15 in favor, 0 oppose, 0 Abstain this 12th Day of March, 2015.



Honorable Lorenzo C. Bates, Chairperson
Naabik'íyáti' Committee

Motion: Honorable Alton Joe Shepherd
Second: Honorable Jonathan Nez



Utah Diné Bikéyah

Bear's Ears

A Proposed National Conservation Area/ National Monument



An Initiative of the Navajo Nation and Utah Diné Bikéyah

In February 2010 former Utah Senator Bob Bennett invited Utah Navajo residents to develop a proposal on issues such as wilderness, conservation, and development of public lands in San Juan County, Utah. An assessment was carried out under the authority of all seven Navajo Chapter Houses in Utah that built on interviews with dozens of elders and medicine men. The initial result of this work was the creation of a "Navajo Lands of Interest" map that was widely circulated among Navajo communities and elected officials on and off reservation. This map was the basis of subsequent discussions between the Navajo Nation and San Juan County aimed at developing a shared legislative proposal to advance to Congressman Bishop. Today, more than two years after formal discussions began, and eighteen months after submitting the Bear's Ears proposal, the Navajo Nation is still waiting for a San Juan County response.

In April 2013, the Navajo Nation and the Utah Diné Bikéyah organization proposed the creation of the 1.9 million acre Bear's Ears National Conservation Area and wilderness designations. This approach provides the best management for a diversity of uses, while directing resources towards priority cultural and biological resource protection. To honor our deep history in this region, we are also proposing that the Navajo Nation, other Tribes, and Utah Diné Bikéyah have a formal role in planning and managing the Bear's Ears National Conservation Area/ National Monument.

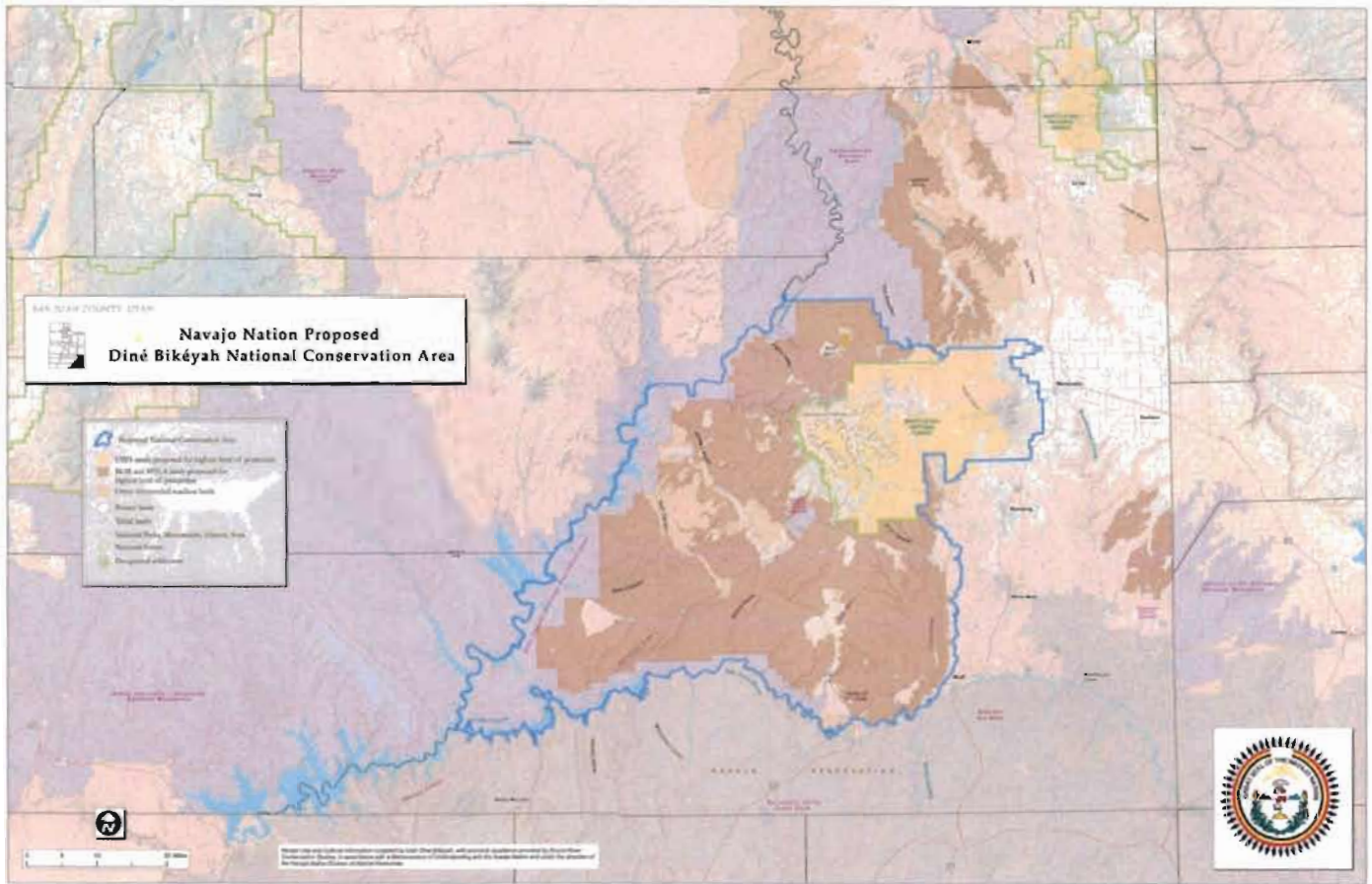
This region has been used by Native People for millennia, contains some of our country's richest archaeological sites and continues to serve as a pilgrimage site for many tribal members due to its historical significance. It is significant as the birthplace of Navajo Headman Manuelito and as the former center of civilization for many modern day Pueblo

Nations, including the Hopi. The Navajo Nation and Utah Diné Bikéyah organization have proposed this conservation region be set aside to protect traditional activities and sacred places to include Cedar Mesa, White Canyon, Dark Canyon, Comb Ridge, Nokai Dome, Abajo Peak, Ruin Park, the San Juan River, and Comb Ridge.

As part of Congressman Bishop's Eastern Utah Land-Use Initiative several Tribal Nations and Navajo Chapter Houses have been adopting resolutions of support for the Bear's Ears proposal. The Hopi Tribe and All Pueblo Council of Governors have endorsed protection for the region, and all seven Navajo Chapter Houses in Utah have taken supportive action. Most recently Utah Navajo communities have come together at eight Town Hall meetings where they discussed the proposal and hand-wrote nearly 400 public comments that were submitted to San Juan County on November 30th. 64% of the total responses during the public process that ended requested designation of the Bear's Ears NCA/NM and wilderness.

Utah Navajo People have been actively advancing protection for this region for nearly five years and continue to educate and involve all US citizens who hold interests in these lands. Native American Tribes have seldom had their voices heard in the debate over public lands and it is time to recognize the depth of history and intergenerational stewardship exhibited by Tribes across these landscapes. Protection is welcome whether through Congressional or administrative action. Local people are determined to take action to make this happen and we hold out hope that one day soon our voices will finally be heard.

Ahyéhé- Thank you.



Utah Diné Bikéyah, 501(c)3 non-profit organization
utahdinebikeyah@gmail.com
 Phone: (801) 521-7398

EXHIBIT C



UTE INDIAN TRIBE
P. O. Box 190
Fort Duchesne, Utah 84026
Phone (435) 722-5141 • Fax (435) 722-5072

July 14, 2015

Via Email and Hand Delivery

Re: Ute Indian Tribe's Support for Preserving the Bears Ears Region

Dear Messrs. Manual Heart and Kenneth Maryboy:

The Tribal Business Committee ("Business Committee") of the Ute Indian Tribe ("Tribe") supports the permanent protection of the Bears Ears region in the form of a National Conservation Area, or alternatively, as a new National Monument. Providing better stewardship and stronger protections preserves Native American heritage for current and future generations.

Native American traditional and cultural sites need protection from outside threats such as mineral development, indiscriminate off-road vehicle use, and looting. Not only is the Bears Ears region a natural wonder, it is a cultural landscape that contains archaeological and sacred sites, and has been traditionally used for collecting traditional medicines and for ceremonies. With the increase in recreational use, this region deserves status as a National Conservation Area.

Without federal protection, this extraordinary landscape that is culturally significant to so many Native American groups faces the likelihood of destruction. Therefore, the Ute Indian Tribe joins the Native American tribes and Pueblos that have already publically expressed their support to protect the Bears Ears region. Native American heritage cannot be ignored. It is time for the Bears Ears region to finally have the federal protection it deserves.

Sincerely,

Shaun Chapoose
Chairman, Ute Tribal Business Committee

Cc: Malcolm Lehi, Council Member, Ute Mountain Ute Tribal Council

Date: March 9, 2016



RESOLUTION No. 2016-028

**RESOLUTION OF THE UTE MOUNTAIN UTE TRIBAL COUNCIL
REFERENCE: SUPPORT FOR THE PROTECTION OF BEARS EARS AS A
NATIONAL MONUMENT UTILIZING THE ANTIQUITIES ACT OF 1906
TO FORMALLY PROTECT 1.9 MILLION ACRES THROUGH TRIBAL
COLLABORATIVE MANAGEMENT**

WHEREAS, the Constitution and By-Laws of the Ute Mountain Ute Tribe, approved June 6, 1940, and subsequently amended, provides in Article III that the governing body of the Ute Mountain Ute Tribe ("Tribe") is the Ute Mountain Ute Tribal Council and sets forth in Article V the powers of the Tribal Council exercised in this Resolution;

WHEREAS, the Tribal Council has the duty to promote programs that serve the best interests of the Tribe and its members;

WHEREAS, the Ute Mountain Ute Tribe recognizes the historic and ongoing ties to the lands, animals, plants, resources of southeastern Utah, including San Juan County, by Native American people; and

WHEREAS, the proposed *Bears Ears National Monument* area is the ancestral home of many additional Southwestern Native American Tribes, including the Navajo, accompanied by the Hopi, Zuni, Acoma, Zia, and Jemez Pueblos along with the Ute Mountain, Southern, and Uintah Ouray Utes, the San Juan, Kaibab, and Utah Paiute Tribes and the Jicarilla Apache Tribe; and

WHEREAS, the proposed Bears Ears National Monument area is bordered on the west by the Colorado River and on the south by the San Juan River and Navajo Nation reservation, the proposed Bears Ears National Monument area is characterized by prodigious topographic diversity and striking landforms. Containing an intricately rich ecological system, the Ute Mountain Ute and other Tribes depend upon the proposed Bears Ears National Monument area to sustain their traditional livelihoods and cultural practices. Cedar Mesa, the proposed Bears Ears National Monument area's centerpiece offers sprawling vistas while Comb and Butler Washes, as well as Moki, Red, Dark, Grand Gulch, and White canyons support verdant ribbons of riparian habitat. Desert Bighorn Sheep grace the lower desert lands while the 11,000 foot Abajo Mountains host forests of Ponderosa Pine, Spruce, Fir and Aspen, providing a home to Mule Deer, Elk, Black Bear and Mountain Lion, sacred icons of the mesa's original peoples. Paramount for the Ute Mountain Ute Tribe is the proper management of the proposed Bears Ears National Monument area's native plants and wildlife that are food, shelter and medicine and its cultural sites that are central to their spiritual practices.

WHEREAS, the proposed Bears Ears National Monument area includes towering cliffs and mesas bisected by sheer canyons exposing sedimentary layers revealing a geologic history stretching back to when a sea covered this landscape. Containing unsurpassed cultural and paleontological resources; the proposed Bears Ears National Monument area is world renowned for the integrity and abundance

Resolution Number 2016-028

Re: SUPPORT FOR THE PROTECTION OF BEARS EARS AS A NATIONAL MONUMENT THAT INCLUDES
TRIBAL COLLABORATIVE MANAGEMENT IN UTILIZING THE ANTIQUITIES ACT OF 1906

Page 1 of 4

of its archaeological resources. Six cultural special management areas are within the proposed Bears Ears National Monument boundaries; Alkali Ridge National Historic Landmark, the Hole-in-the-Rock Historical Trail and the Grand Gulch, Big Westwater Ruin, Dance Hall Rock, Sand Island Petroglyph Panel, the Newspaper Rock Petroglyph Panel, and the Butler Wash Archaeological District National Register site. Also occurring in the proposed Bears Ears National Monument area is 19 distinct geologic units that are scientifically significant vertebrate and non-vertebrate paleontological resources that are particularly abundant in the Cedar Mountain, Burro Canyon, Morrison and Chinle Formations.

WHEREAS, the proposed Bears Ears National Monument area has been inhabited for greater than 12,000 years by multiple indigenous cultures, who crossed, and built civilizations on these lands. At the Lime Ridge Clovis site is evidence of Paleoindian occupation and the archaeological record indicates widespread use between 6000 B.C. and A.D. 100 by Archaic Peoples. Possessing numerous Archaic Period sites of varying size and complexity are Cedar Mesa, Elk Ridge, and Montezuma Canyon. While other notable sites include Alkali Ridge, Cowboy Cave, Old Man Cave, and Dust Devil Cave. The heaviest occupation of the proposed Bears Ears National Monument lands was perhaps by the Formative Period Peoples, (AD 100-AD 1300) who left very large numbers of archaeological sites ranging from small lithic scatters to large highly complex village sites.

WHEREAS, the proposed Bear's Ears National Monument area is comprised of primarily Bureau of Land Management Wilderness Study Areas and lands with Wilderness Characteristics and U.S. Forest Service Roadless Areas. Vast, remote desert mesas cut by sheer walled serpentine canyons provide unparalleled solitude and scenic quality that is comparable to or exceeds those found in nearby national parks and monuments, such as Canyonlands, Arches, Grand Staircase, Natural Bridges, Hovenweep and Mesa Verde.

WHEREAS, priority management values deserving of protection within the proposed Bears Ears National Monument are: cultural, archaeological, wildlife, natural and scenic resources. An essential aspect of the proposed Bears Ears National Monument's management is to better protect these resources and to ensure their ongoing and sustainable use.

WHEREAS, Native Americans have unique and important cultural and historical ties to the land and its wildlife and other natural resources; and

WHEREAS, Native Americans' connections to the land support Native life and culture in important, life sustaining ways, including: subsistence hunting, fishing and gathering of nature's materials for medicinal, spiritual and other uses, preservation of tribal sacred places and as sources of economic development; and

WHEREAS, Native Americans' have shown quality and excellence in managing lands and natural resources to protect the cultural integrity of the homeland of Native peoples; and

WHEREAS, southeastern Utah includes many areas of vital importance to Native peoples' identity and history;

Resolution Number 2016-028

Re: SUPPORT FOR THE PROTECTION OF BEARS EARS AS A NATIONAL MONUMENT THAT INCLUDES TRIBAL COLLABORATIVE MANAGEMENT IN UTILIZING THE ANTIQUITIES ACT OF 1906

Page 2 of 4

WHEREAS, these areas are under constant threat of cultural vandalism, looting of Native cultural sites, indiscriminate off road vehicle use that damages areas sacred to Native peoples, energy development footprints that negatively impact lands of historic and cultural importance, and general degradation of wildlife and plant habitats of importance to Native traditional practices;

WHEREAS, to prevent this rapid destruction of lands in southeastern Utah that are important to Native peoples, formal protection of 1.9 million acres as a Bears Ears National Monument is required utilizing the Antiquities Act of 1906;

WHEREAS, formal protection of southeastern Utah lands as a Bears Ears National Monument will provide important consistency and quality to manage these lands, and to define principles of collaborative management that will positively affect Native values on these lands in the following ways:

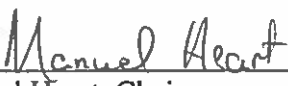
- Protection will be a permanent part of a national system of protected lands that carry strong and clear legal definitions of the primacy of conservation of cultural, historical and ecological values that define Native connections to these lands.
- Protection under a National Monument designation creates important opportunities for consultation of Native Americans and participation in management of these resources and increased funding for the protection of these resources with an emphasis on conservation and preservation of the region's cultural and natural resources.
- Protection should be at the largest landscape level possible, providing connectivity of wildlife and plant habitats, ecological integrity of the region and be comprehensive in its protection of Native sacred sites, which cannot be considered out of the context of the larger landscape.
- Protection of lands in southeastern Utah as a Bears Ears National Monument will be a top priority for concerned federal agencies, with public involvement and a prioritization of staffing, resources and cooperation with Native peoples.

WHEREAS, the Tribal Council has reviewed the proposal and believes the action taken by this resolution is in the best interests of the Tribe.

NOW THEREFORE BE IT RESOLVED, that the Ute Mountain Ute Tribe asserts its interest in supporting the utilization of the Antiquities Act of 1906 to protect the Bears Ears landscape, comprised of 1.9 million acres, as a National Monument designation with principles of tribal collaborative management in place to reflect the will and the values of Native peoples whose identities, histories, cultures and futures are inextricably tied to these lands; and

BE IT FINALLY RESOLVED that the Ute Mountain Tribal Council authorizes the Chairman to sign this Resolution and further authorizes him to take such action as may be necessary to carry out the intent of this Resolution.

The foregoing Resolution was duly adopted this 9th day of March, 2016.


Manuel Heart, Chairman
Ute Mountain Tribal Council

Resolution Number 2016-028

Re: SUPPORT FOR THE PROTECTION OF BEARS EARS AS A NATIONAL MONUMENT THAT INCLUDES
TRIBAL COLLABORATIVE MANAGEMENT IN UTILIZING THE ANTIQUITIES ACT OF 1906

CERTIFICATION

This is to certify that there was a quorum of 6 Tribal Council members present at a regular meeting of the Ute Mountain Ute Tribal Council held on March 9, 2016, that 5 voted for and 0 opposed this resolution and that this resolution was duly adopted.



Michela Alire, Recording Secretary
Ute Mountain Tribal Council

EXHIBIT E



**ZUNI TRIBAL COUNCIL
ZUNI, NEW MEXICO**

March 7, 2016

RESOLUTION NO. M70-2016-P014

Permanent Protection of Bears Ears Region through National Monument Designation

WHEREAS, the Zuni Tribal Council, consisting of the Governor, Lieutenant Governor, and six Tenientes is declared to be the legislative authority of the Pueblo of Zuni by Article V, Section 1, of the Constitution of the Zuni Tribe; and

WHEREAS, the Zuni Tribal Council, Pursuant to Article VI, Section 1(d) of the Constitution of the Zuni Tribe, to represent the tribe, and to act in all matters that concern the welfare of the tribe; and

WHEREAS, the Zuni Tribe, Also known as the Pueblo of Zuni, is a Federally Recognized Indian Tribe; and

WHEREAS, to protect the traditional cultural properties and sacred sites of ancestral Pueblo people is paramount to all and each Pueblo's cultural preservation now and in the future, and

WHEREAS, the Bears Ears region of Southeastern Utah is historically, culturally, and spiritually tied to Native American tribes, including but not limited to, the Navajo, Hopi, Ute, and Zuni people; and

WHEREAS, the Bears Ears region of Southeastern Utah holds immense importance for all the Pueblo people's identity and history, including and but not limited to, villages, shrines, burials, rock inscriptions, dwellings, and ancient transportation routes, as well as natural resources necessary for traditional and spiritual practice; and

WHEREAS, archaeological and cultural sites in the Bears Ears region face destruction, desecration, and violation from irresponsible motorized travel, energy development, mining, uneducated visitors, and looting of ancestral sites and burials; and

Resolution No. M70-2016-P014
Page 2

WHEREAS, to prevent harm and mitigate existing damage to the Bears Ears region the Pueblo of Zuni is seeking permanent protection; and

WHEREAS, the Antiquities Act of 1906 is an invaluable and essential tool in protecting Native American sacred and cultural sites in perpetuity; and

WHEREAS, the Pueblo of Zuni is a member of the Bears Ears Inter-Tribal Coalition, a partnership with Hopi, Navajo, Ute Mountain Ute, and Uintah & Ouray Ute which is supported by the National Congress of American Indians and a total of 26 tribes; and

WHEREAS, the Bears Ears Inter-Tribal Coalition is asking for a national monument designation using presidential authority for the Bears Ears region under the 1906 Antiquities Act; and

WHEREAS, the Pueblo of Zuni supports collaborative management of the Bears Ears region between tribes and the federal government, and the government to government relationship shall ensure proper protection, preservation and management of the sacred ancestral sites and regions for all Pueblo people and Native Americans as whole; and

THEREFORE NOW, BE IT RESOLVED, that the Pueblo of Zuni, along with the other nineteen Pueblos, as well as Ute Mountain, Uintah & Ouray Ute, Navajo, and Hopi Nations stand together as one unified Native American coalition dedicated to the permanent protection of the Bears Ears region and its cultural and natural resources through a national monument designation

ZUNI TRIBAL COUNCIL:

Absent-Gx
Val R. Panteah, Sr., Governor

Head Councilmember - VACANT

Carleton R. Bowekaty
Carleton R. Bowekaty, Councilman

Councilmember - VACANT

Birdena Sanchez
Birdena Sanchez, Lt. Governor

Virginia R. Chavez
Virginia R. Chavez, Councilwoman

Audrey A. Simplicio
Audrey A. Simplicio, Councilwoman

Eric Bobelu
Eric Bobelu, Councilman

Resolution No. M70-2016-P014
Page 3

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Zuni Tribal Council at a duly called meeting at Zuni, New Mexico, at which a quorum was present and the same was approved by a vote of 5 in favor, 0 opposed, 0 abstaining on March 7, 2016.



Audrey A. Simplicio, Tribal Council Secretary
Pueblo of Zuni

APPROVED / DISAPPROVED



for Val R. Panteah, Sr., Governor

3/7/16

Date

EXHIBIT F



Testimony of the Navajo Nation
Submitted by President Russell Begaye
Before the U.S. House of Representatives
Committee on Natural Resources
Subcommittee on Federal Lands

January 30, 2018

The Navajo Nation appreciates the courtesy of the Committee members and staff in providing Navajo leadership and the leadership of the other tribes of the Bears Ears Inter-Tribal Coalition (the “Coalition”) the opportunity to speak on H.R. 4532, the Shash Jáa National Monument and Indian Creek National Monument Act. We stand united with the other tribes of the Coalition on the subject of this hearing.

The Navajo Nation was never consulted on H.R. 4532, but the bill nevertheless uses the Navajo language in its title. In addition to providing a misleading bill name to suggest that the Navajo Nation supports the bill, H.R. 4532 also misleadingly states that its purpose is to “create the first Tribally-managed national monument.” In fact, the miniature monuments created by the bill would be managed by appointees of President Trump made in consultation with the Utah Congressional delegation, and would be composed of only a fraction of tribal members. Incredibly, no tribe would have any input on the tribal members appointed to the management councils and those individuals would not be required to be elected or appointed representatives of the five tribes’ governments. In essence, this bill’s “Tribal-management” is tribal in name only.

For years, our nation, along with the other Coalition tribes, advocated strongly for the protection of the Bears Ears region and its unmatched cultural and archaeological resources. The original monument the tribes advocated for that was designated by President Obama (the “Original

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Monument”) accomplished much of what we sought. It was therefore very disappointing to see and hear the representations made at the previous hearing without being provided the chance to address them directly to the Committee. So again, thank you for this opportunity.

The Navajo Nation opposes H.R. 4532. On January 18, the Naabik’íyáti’ Committee (the Navajo Nation Council committee of the whole) unanimously passed Legislation No. 0015-18, “*An Action Relating to Resources and Development Committee and Naabik’íyáti’ Committee Opposing H.R. 4532 Titled ‘Shash Jáa National Monument and Indian Creek National Monument Act.’*” (**Attached as Exhibit A**). Legislation No. 0015-18 formally sets forth the Nation’s official policy position in opposition to H.R. 4532. The legislation specifically objects to H.R. 4532 for six reasons:

1. The bill would codify President Trump’s illegal attempt to revoke and replace the original Bears Ears National Monument;
2. The reduction in size of the monuments by over 1.1 million acres will leave unprotected countless cultural, natural, and sacred objects;
3. The composition of the proposed two management councils may create difficulty in monument management;
4. The role of the State of Utah in the monument management will eliminate meaningful government-to-government relations between the federal government and the Navajo Nation facilitated previously by the current collaborative management relationship between the Bears Ears Commission and the federal agencies facilitated by the original proclamation;
5. The bill divides the five tribes by not including members of each nation in the management councils and by naming the Shash Jáa monument in only one tribal language;
6. The bill includes a federal-state land exchange provision that could affect tribal reservation lands and only allows for tribal consultation as an avenue for objection to land exchanges.

The Navajo Nation’s Interest in the Bears Ears Region

The Bears Ears region holds special cultural and historical significance for the Navajo people. We believe that the towering spires in the Valley of the Gods are ancient Navajo warriors frozen in stone, and that the Bears Ears peaks are the top of the dismembered head of a bear that stands guard to culturally important Changing Bear Woman. Many traditional Navajo ceremonies, practiced since time immemorial, continue to take place in the Bears Ears region protected in President Obama’s Monument. These ceremonies draw on the plants, soils, and other items that can be harvested only from the area. For example, certain soils from the region possess special protection and empowering qualities when harvested and administered in the proper way. The Bears Ears landscape also has seminal importance in Navajo songs, prayers, and healing ceremonies that have unique and close ties to the Bears Ears region, its flora and fauna, and its historical and spiritual qualities, including the *Hozhooji* (Blessingway), which seeks to restore and revitalize *hózhó* (harmony, beauty, and balance) for the individual for whom the ceremony is performed.

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In addition to its current spiritual significance, Bears Ears has great historical significance to the Navajo people. For example, the White Canyon region, known as “*Nahoniti’ino*” (hiding place) to the Navajo people, is revered because it was a place of refuge in the summer of 1864, when Colonel Kit Carson marched over 9,000 Navajos at gunpoint 350 miles to Fort Sumner in east central New Mexico as part of his scorched earth campaign against the Navajo. Hundreds of Navajos died of hunger, exhaustion, or abuse along the journey. Those who survived were held as prisoners of war at Bosque Redondo until 1868 when Navajo leaders negotiated the release and return of their people to their homelands pursuant to a treaty. Many Navajos evaded removal and conquest by hiding in the Bears Ears region.

Bears Ears is also home to important figures in Navajo history, including Chief Manuelito, (born in the Headwaters Region of Bears Ears, north of Cedar Mesa) who was a key figure in the resistance against the Long Walk and signatory to the Treaty of 1868. Many Navajos, including myself, are also proud to be descended of Navajo bands who eluded capture from the U.S. army by hiding in the canyons of the Original Monument.

Navajo people continue to camp in the area and continue to hunt for wild game—including elk, mule deer, wild turkeys, and rabbits—as they have done since time immemorial. Other Navajo people access the lands to forage for native plants such as piñon nuts, wild potatoes, wild onions, spinach, turnips, and sumac berries. Navajo people also continue to gather firewood, grasses for traditional basket-weaving, and logs for traditional structures. Navajo medicine people also harvest soils and medicinal plants such as sage, juniper and mountain tobacco, all of which are important in numerous Navajo ceremonial practices. These uses create a connected, living landscape. The many uses of the Bears Ears region support the traditional Navajo way of life, not only for those that came before us, but also for Navajos today while we strive to protect the land for our future generations.

We know the Hopi Tribe, Ute Mountain Ute Tribe, Zuni Tribe, and the Ute Indian Tribe similarly revere the Bears Ears. We have fought together to protect this landscape because within it lives our peoples’ histories and our futures.

The original President Obama designation of the Bears Ears region as a National Monument reflected the many hours our five nations spent working with Executive Branch staff to explain the significance and extent of tribal resources in the Bears Ears region. The Original Monument assured us that many of our cultural and historic sites and objects would finally receive proper protection. While the monument boundaries were not as large as we had advocated for, the Bears Ears landscape remained largely intact despite the compromise the Obama administration made between what we sought and what the Utah delegation sought in the failed Public Lands Initiative (“PLI”). Indeed, the Utah delegation and the San Juan County Commissioners received most of what they sought in their advocacy for the PLI as can be seen in the final map for the Monument, which reflects almost exactly the map the Utah delegation proposed in the PLI (**maps attached as Exhibit B**). Why Utah and County officials now disclaim any ownership of the Original Monument design is mystifying.

We were also encouraged that the Navajo Nation and the other Coalition tribes would obtain a meaningful role in managing the Original Monument, thus restoring our connection to those

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lands. We were extremely disappointed when Secretary Zinke provided his lop-sided inquiry into the Monument (granting unfettered access to the Utah delegation and County officials, and providing little over an hour to the tribes, in sharp contrast to a four-day excursion the Secretary had with the San Juan County Commissioners). We were even more disappointed when President Trump ignored our requests to meet with him regarding Bears Ears to explain its significance to the Navajo people, and barreled forward with a proclamation to shrink Bears Ears National Monument to an appalling fifteen percent of its original size—all while being aware that the Navajo Nation opposed any reduction in the size of the Monument. This was an act of great disrespect to the importance of the Bears Ears region to the Navajo Nation and the Navajo people.

H.R. 4532

The bill being considered today, H.R. 4532, is a threat to the Bears Ears landscape equivalent to President Trump's proclamation. This is not a bill designed to help protect the lands for the tribes; it is a bill that provides near-exclusive control of these federal lands in the state and local counties' hands and gives only lip service to tribal interests. This bill appears to be an opportunity for the state to control natural resources on federal lands rather than a sincere effort to include tribes in land management. Indeed, it was a bill developed with no consultation from our tribal governments, yet, it is being touted as providing tribal co-management.

During the first hearing on H.R. 4532 and while Chairman Bishop was speaking, several images were put up on the screen to suggest tribes were consulted during the drafting of the bill. One of the images was a picture of former Representative Jason Chaffetz with Navajo Nation President Russell Begaye and Vice President Jonathan Nez. This picture was not taken during any consultation or meeting on H.R. 4532, and Navajo Nation leadership was not asked to provide any input on the bill prior to its introduction. Representative Curtis, the sponsor for H.R. 4532, was not even in office when the picture of Representative Chaffetz and the Navajo leadership was taken.

Also during the first hearing on this bill, two other misrepresentations were raised that must be refuted. First, one non-Navajo individual stated unilaterally that the Navajo Nation was not consulted prior to the original proclamation. This is false. The Navajo Nation was consulted, I was consulted, and our Navajo Nation Council unanimously supported the Original Monument designation even prior to the issuance of the original proclamation. In fact, the Navajo Nation, along with the other four tribes advocated for an even larger monument designation prior to designation.

Second, that individual stated that the original designation was pushed by “special interests” and was therefore not an initiative of the Navajo people. Again, this is not the case. The Navajo Nation elected leadership and our grassroots community fully supported and advocated for the original designation. Attached to this testimony are resolutions in support of the Original Monument from the Navajo Nation Council, the Naabik'iyáti' Committee, and the Navajo Utah Commission. (**Exhibit C**). The Original Monument designation was supported by the Navajo Nation and our Utah chapters.

Broadly, H.R. 4532 retains the same failing as the Trump proclamation: it does not protect the Bears Ears landscape in a way that is meaningful and lasting, and it leaves the landscape as a disconnected web of management parcels. For example, the Original Monument designation protected the Valley of the Gods area from extractive development – H.R. 4532 does not for the period between the Trump Proclamation and passage of the bill. H.R. 4532 allows for extensive uses and development of land between the small, protected areas, greatly increasing the risk to cultural sites, traditional use areas, and, more generally, a healthy Bears Ears ecosystem, from the activities that may occur between these areas. It is no defense that some of these lands that fall outside of the protections of H.R. 4532 may remain in protected status because these protections are limited in area and in scope. Just as it was critical to protect the greater Yellowstone area to retain the character of that landscape—not just the individual geysers or hot springs—the Bears Ears region should be protected as a whole landscape or we risk losing the character and spiritual significance of it.

Further, the legislation gives only passive attention to the interests of the Navajo Nation and the other Coalition tribes in monument management. The Original Proclamation established the Bears Ears Commission, a group made up of representatives from and chosen by the five tribes, charged with assisting directly the secretaries of interior and agriculture with management recommendations for the monument. But rather than utilize the Bears Ears Commission's expertise in a similar capacity, H.R. 4532 would subordinate the Bears Ears Commission input below new management councils chosen without any tribal government input. These councils would be made up of individuals appointed by the President, including one federal agency official, two members of the San Juan County Commission of Utah, and hand-picked tribal members (not tribal officials). The four tribal representatives on the Shash Jáa Tribal Management Council would be limited to only two tribes, not the five represented on the Commission, and would make up just over half of the Council. The one tribal representative on the Indian Creek Management Council would not have to be from any of the five tribes represented on the Commission, and would be only 1/5 of the Indian Creek Management Council. Importantly, the tribes would not have a say in who was appointed to the management councils to speak on behalf of the tribes. To call these Councils “tribal,” and the monuments they would manage “the first tribally managed national monuments,” is an affront to tribal sovereignty and an insult to the intelligence of anyone who has read the bill. The Navajo Nation hoped that modern federal Indian policy would have rejected, not endorsed, such practices.

To be very clear, H.R. 4532 is not a tribal co-management bill because none of the tribes with cultural and historic ties to the Bear Ears region support the bill nor is there a mechanism for their participation in the monuments' management councils. The management structure of this bill buries the input of the Bears Ears Commission—the true voices of the five tribes, chosen by the five tribes—under a monument management council likely chosen to be hostile to the Commission's interests. The original Bears Ears framework honored tribal sovereignty by providing the Commission direct government-to-government communication with the secretaries of interior and agriculture, the tribal trustees, to effectuate monument management. Here, H.R. 4532 would charge not cabinet-level government officials with this important duty, but hand-selected county commissioners, non-specific federal officials, and non-specific individual tribal citizens. This does not reflect a true commitment to tribal sovereignty and it concerns the Navajo

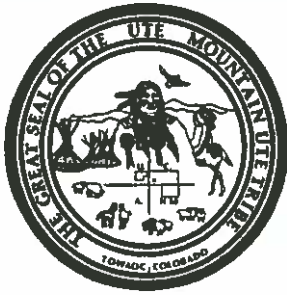
Navajo Nation Testimony for Jan. 30 Hearing– H.R. 4532

Nation that this Congress is willing to even consider an abdication of the trust relationship in this bill to a primarily non-tribal and non-federal council.

Although H.R. 4532 relies on the original Obama Proclamation to provide important consultation rights to tribes—such as “regularly and meaningfully engaging” with the Bears Ears Commission, in “carefully and fully” considering the Commission’s expertise, and soliciting information and proposals from tribes “to integrate Native American traditional and historical knowledge and special expertise into the management plan”—implementation of the tribes’ recommendations relies on the discretion of the monument management council appointed by the President in coordination with the Utah congressional delegation, both fierce opponents of the monument’s designation.

Conclusion

The Navajo Nation respectfully opposes H.R. 4532 because it fails to honor the five tribes that worked to establish the Bears Ears National Monument. Additionally, the bill fails to reflect a fundamental understanding of tribal sovereignty and instead reflects a disregard for the cultural, historical, and religious patrimony we seek to protect in the Bears Ears region.



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Testimony of the Ute Mountain Ute Tribe

Before the U.S. House of Representatives
Committee on Natural Resources
Subcommittee on Federal Lands

January 30, 2018

Introduction

Chairman McClintock, Ranking Member Hanabusa, and Members of the Subcommittee, thank you for the opportunity to testify on H.R. 4532, the Shash Jáa National Monument and Indian Creek National Monument Act. My name is Regina Lopez-Whiteskunk. I am a former councilwoman for the Ute Mountain Ute Tribe and the former co-chair of the Bears Ears Inter-Tribal Coalition. I am duly authorized and appointed by official tribal resolution to speak on behalf of the Ute Mountain Ute Tribe.

The Ute Mountain Ute Tribe is a federally-recognized Indian tribe with reservation lands in Utah, New Mexico, and Colorado. Tribal lands in Utah include the White Mesa community and various trust allotment lands along Allen Canyon. Bordering these tribal lands are the ancestral homelands of the Ute Mountain Ute Tribe that extends far into the Bears Ears region. Historically, during the winter months various bands of Utes would descend from the mountains into the warmer regions of the Bears Ears landscape. Traces of our ancestors remain in those sacred spaces and are deserving of protection from looting, off-road vehicle use, and on-going efforts to expand uranium mining.

Protection for the thousands of cultural and natural resources is warranted and one of many reasons why the Ute Mountain Ute Tribe, along with the Hopi Tribe, Navajo Nation, Ute Indian Tribe, and the Pueblo of Zuni, joined in forming the Bears Ears Inter-Tribal Coalition. For the Ute Mountain Ute Tribe, uranium mining within or near the Bears Ears region poses a unique and particular threat, causing concern for the health and well-being of tribal members, water and air resources, plants, wildlife, and other natural and cultural resources. We, therefore, sought and achieved protection of the Bear Ears landscape, including the withdrawal of future mineral leasing and entry under the mining laws, through a national monument designation, as afforded by Presidential Proclamation 9558.

Each Indian nation knowing well that mere consultation, as provided by the National Historic Preservation Act, National Environmental Policy Act, Archeological Resources Protection Act and numerous other federal laws, was inadequate for managing the cultural landscape and protecting our ancestors, we therefore sought collaborative management of the national monument by crafting the Bears Ears Commission. Through countless meetings between the tribes and numerous trips to meet with federal staff, we labored meticulously in arranging for how the Bears Ears Commission would contribute to managing the monument. We were successful in acquiring what we strived toward. Each tribe, as sovereign entities, appropriately had the opportunity to designate an official of their choosing to sit on the Bears Ears Commission to provide traditional knowledge and expertise on how to best manage the lands.

Despite the Bears Ears Commission's efforts to effectively structure and govern its activities, including hiring staff, creating by-laws and developing working relationships with federal staff, accomplishments were disrupted by the President's unlawful action in purporting to modify the Bears Ears National Monument by instituting Presidential Proclamation 9681. Consequently, the Ute Mountain Ute Tribe, along with other Indian nations, is engaged in active litigation to justly restore protections to over one million acres of our ancestral homelands.

Introduced in tandem with Presidential Proclamation 9681, H.R. 4532 legislatively confirms President Trump's improper reduction of the Bears Ears National Monument boundaries by 85 percent. The Ute Mountain Ute Tribe was not consulted in the drafting of H.R. 4532, nor was the Ute Mountain Ute Tribe afforded an opportunity to testify at the January 9, 2018, hearing on H.R. 4532. Instead of allowing testimony from each of the sovereign tribal governments comprising the Bears Ears Inter-tribal Coalition, an individual tribal member that supported the views of the Utah delegation was handpicked to give the impression that "local tribes" support the bill. That display is actually far from the truth. The Ute Mountain Ute Tribe vehemently opposes H.R. 4532.

Among the numerous reasons the Ute Mountain Ute Tribe opposes H.R. 4532, we are especially concerned with the conception of the Tribal Management Council. Nothing about the Tribal Management Council would reflect the needs, interests, and expertise of the federally-recognized Indian tribes holding close cultural ties to the Bears Ears landscape. In place of officials duly appointed by Indian nations, the "Tribal" Management Council would consist of federal and state officials, and handpicked individual tribal members. The Ute Mountain Ute Tribe would be precluded from designating an official, or a traditional leader, or a knowledgeable practitioner of Ute Mountain Ute customs and culture, of its own choosing. Rather, the task of appointing an individual Ute Mountain Ute tribal member to serve on the Tribal Management Council would fall on the President, after "consultation with the Congressional delegation from the State of Utah." Such legislation prevents the Ute Mountain Ute Tribe and other Indian nations to self-determine their own destinies and amounts to an egregious return to the failed federal Indian policies of the 1800s.

Under H.R. 4532, the duties of the Bears Ears Commission, along with "affected Indian Tribes" that are excluded from participation on the Tribal Management Council, would be merely advisory to federal and state interests. Instead of the Bears Ears Commissioners working

**Ute Mountain Ute Tribe
Testimony on H.R. 4532**

**January 30, 2018
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with the Secretary of the Interior and the Secretary of Agriculture “on the development and implementation of management plans and on management of the monument,” as prescribed in Presidential Proclamation 9558, the Bears Ears Commission, under H.R. 4532, would inappropriately have to engage with state interests, namely San Juan County Commissioners, in regards to tribal concerns and expertise on managing federal lands. This arrangement runs afoul of the unique legal and political relationship between Indian nations and the federal government.

Contrary to statements by Utah Representative John Curtis that his bill empowers tribes, H.R. 4532 does the opposite. We cannot stress the importance of affording Indian nations the opportunity to collaboratively manage the lands where our ancestors rest and where ceremonies are conducted. H.R. 4532 would effectively deprive Indian nations of that opportunity by vesting that authority with a management council that specifically lacks involvement of tribal officials duly appointed by their respective sovereign tribal governments. H.R. 4532 would also remove protections for over one million acres of the Bears Ears cultural landscape. The Ute Mountain Ute Tribe cannot support a bill that would legislatively confirm the President’s unlawful action. Accordingly, the Ute Mountain Ute Tribe opposes H.R. 4532.

Thank you for your consideration of our testimony. The Ute Mountain Ute Tribe is especially appreciative of the Democratic members of the Committee in providing this opportunity to state our position.

EXHIBIT G



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TESTIMONY
OF
THE ZUNI TRIBE

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON NATURAL RESOURCES,
SUBCOMMITTEE ON FEDERAL LANDS

LEGISLATIVE HEARING ON
H.R. 4532, THE SHAH JÁA NATIONAL MONUMENT AND INDIAN CREEK NATIONAL MONUMENT ACT

JANUARY 30, 2018

Chairman McClintock, Ranking Member Hanabusa, and respected members of the Subcommittee. I am Carleton Bowekaty, an elected member of Zuni Tribal Council and the Zuni Tribe's appointed representative on the Bears Ears Commission. On behalf of the people of the Zuni Tribe, I want to thank you for holding this second hearing on H.R. 4532 and for inviting me to testify.

The Zuni Tribe has almost 13,000 members, the vast majority of which live on tribal lands in far western New Mexico. Our reservation contains 600,000 acres. However, our aboriginal lands, as well as those of our 18 sister Pueblos in New Mexico, encompass a far greater area. In addition to the lands that we aboriginally exercised control over, there are other lands that are part of our history and culture, and that even today play an integral role in our traditions and religious ceremonies. Bears Ears is one such area, and a very important one. It, along with neighboring Mesa Verde, is part of the Colorado Plateau, the region that our ancestors lived before migrating southward into present-day New Mexico.

The Bears Ears Inter-Tribal Coalition and
the Bears Ears National Monument and H.R. 4532

Zuni has been actively involved in the Bears Ears Inter-Tribal Coalition since its inception. It is a unique Coalition, one that has remained focused on our mutual interest in ensuring that the remarkable cultural and natural resources found on these formerly tribal lands are protected and preserved. It was therefore entirely appropriate for the Presidential Proclamation creating the Bears Ears National

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Monument (the “Obama Proclamation”) to have established the Bears Ears Commission, with representation from each of the five tribes, so that they can “provide guidance and recommendations on the development and implementation of management plans and on management of the monument.” In contrast to the Obama Proclamation’s respect for the tribes’ historic and strong connections to Bears Ears, and the balance it provides to ensure that other interested parties have a voice in management issues, H.R. 4532 contains what we view as a radical provision giving local politicians effective control of management and use decisions. The Bears Ears lands, though once controlled and used exclusively by tribes in the southwest, are now federal lands, owned by all Americans. While no disrespect is intended toward local governmental officials, most of whom work hard to better their communities, we recently saw in Oregon and Nevada what happens when local residents think they should control federal land for their own benefit in disregard of federal laws.

I want to avoid repeating the testimony of the tribal leaders from the other four Coalition tribes, but I do want this Subcommittee to know that we stand united, and that Zuni supports their substantive testimony. We also note that the tribal witnesses here today are the duly designated representatives for the five tribes, unlike the handful of individuals who have been portrayed as representing one or more of the Coalition tribes. Differences of opinion on major issues like this are inevitable, but let’s be honest about our differences and not misrepresent the issues, the positions of affected tribes, or who speaks for those tribes.

We are, of course, well aware of the fact that H.R. 4532 was introduced by Representative Curtis because not everyone agrees with the Obama Proclamation designating the 1.35 million acres of federal lands as the Bears Ears National Monument. But I encourage all to carefully read the Obama Proclamation, as it presents a thorough, accurate and compelling justification for the establishment of the Monument, and provides a balanced approach for its future use and management. Zuni and the other tribes that are a part of the Inter-Tribal Coalition had frankly hoped for the protection of a significantly larger area (1.9 million acres), but accepted the reduced area as a reasonable compromise. However, we cannot support a further Congressional reduction in the area of the monument, much less the drastic reduction proposed by H.R. 4532, nor can we support legislation that fails to adequately recognize the strong historical and cultural interests of tribes in the Bears Ears National Monument. Any legislation to modify the Bears Ears National Monument should not reduce its acreage or diminish the management and policy role of the Bears Ears Commission.

Conclusion

Zuni is not a wealthy tribe and we do not come to Washington often. I am here today at the direction of our Governor and Tribal Council, and at the Tribe’s sole expense. I am here because our people care enormously about the Bears Ears National Monument and stand united with the tribes represented before you today, along with our sister Pueblos in New Mexico and throughout our country, to express our adamant opposition to executive or legislative efforts to abolish or reduce Bears Ears. I also understand that the organization known as the All Pueblo Council of Governors, which includes Governors from all nineteen of New Mexico’s Pueblos, will be providing the Committee with a resolution supporting the Bears Ears National Monument, opposing President Trump’s Proclamation purporting to rescind the Obama Proclamation, and opposing H.R. 4532.

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Finally, while the Zuni Tribe is appreciative of this opportunity to testify on H.R. 4532, we also respectfully urge Subcommittee members to schedule a hearing on a much different bill concerning Bears Ears—H.R. 4518.

Thank you for inviting me to testify, and for your consideration of my testimony on behalf of the people of Zuni.

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Testimony of the Hopi Tribe

**Before the U.S. House of Representatives
Committee on Natural Resources
Subcommittee on Federal Lands**

**Legislative Hearing on
H.R. 4532, the Shash Jáa National Monument and Indian Creek National Monument Act**

January 30, 2018

Introduction

Chairman McClintock, Ranking Member Hanabusa and Members of the Subcommittee, thank you for the opportunity to testify on H.R. 4532, the Shash Jáa National Monument and Indian Creek National Monument Act. I am Clark W. Tenakhongva, the elected Vice-Chairman of the Hopi Tribe and the Hopi Tribe's Commissioner for the Bears Ears Commission. The Hopi Tribe appreciates this opportunity to testify to provide the Committee with an understanding of our undisputable connection to the Bears Ears National Monument, and to object to the new proposed management of the Bears Ears National Monument through the December Presidential Proclamation and H.R. 4532.

The Hopi Tribe is a sovereign nation, recognized as such by the United States, located in northeastern Arizona. The Hopi reservation occupies part of Coconino and Navajo counties in Arizona, encompasses more than 1.5 million acres, and is made up of 12 villages on three mesas. Our ancestral lands, cultural resources, and sacred sites extend into central and southern Utah and western Colorado. We became a member of the Bears Ears Inter-Tribal Coalition to help protect these lands and resources through the establishment of the Bears Ears National Monument.

The Bears Ears Inter-Tribal Coalition includes: the Hopi Tribe, Pueblo of Zuni, Ute Indian Tribe, the Navajo Nation, and the Ute Mountain Ute Tribe. The Coalition worked with a

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grass roots tribal organization for nearly a decade for the designation of the Bears Ears National Monument and the protection of its sacred and priceless cultural and natural resources. We proposed that a 1.9 million acre monument be established. Ultimately, a 1.35 million acre Bears Ears National Monument was designated by President Obama on December 28, 2016, through Presidential Proclamation No. 9558.

The Hopi Tribe opposes H.R. 4532. A representative of the Bears Ears Inter-Tribal Coalition first testified on H.R. 4532 at a Subcommittee hearing on January 9, 2018. As noted at that hearing, H.R. 4532 would diminish tribal voices in the management of these important places. Further, H.R. 4532 emphasizes multi-use management including increased motorized vehicle use and increased grazing that would put these sensitive places at risk. The Bears Ears Inter-Tribal Coalition's January 9, 2018, testimony provided a discussion of the problems with H.R. 4532 and why the Subcommittee and Committee should not approve it. The Hopi Tribe agrees with that testimony.

Hopi Connection to Bears Ears

To Hopi people, the Bears Ears National Monument is a spiritually occupied landscape. For example, the two spires near Bluff are *Pokanghoyat*, "War Twins." This land is a testament of Hopi stewardship through thousands of years, manifested by the "footprints" of ancient villages, sacred springs, migration routes, pilgrimage trails, artifacts, petroglyphs, and the physical remains of buried *Hisatsinom*, the "People of Long Ago," all of which were intentionally left to mark the land as proof that the Hopi people have fulfilled their Covenant.

Hopi migration is intimately associated with a sacred Covenant between the Hopi people and *Màasaw*, the Earth Guardian, in which the Hopi people made a solemn promise to protect the land by serving as stewards of the Earth. In accordance with this Covenant, the Hopi Katsina, Badger, Flute, Parrot, Bow, Greasewood, Bearstrap, Snake, Tobacco, Rabbit and Deer Clans traveled through and settled on lands in and around southeastern Utah during their long migration to *Tuuwanasavi*, the Earth Center on the Hopi Mesas. The people of these clans still reside at Hopi today.

The Hopi Tribe claims cultural affiliation to ancestral Puebloan cultural groups in the Bears Ears National Monument and the Hopi Tribe has continually supported the identification and avoidance of prehistoric archaeological sites. We consider the prehistoric archaeological sites of our ancestors to be "footprints" and Traditional Cultural Properties. Attached to this testimony are pictures of some of the places in the Bears Ears Region that are immensely important to us. For instance, the first two pictures are pictures of what is known as the "Perfect Kiva." The well maintained kivas from the Hisatsinom - the People of Long Ago - exemplify the important cultural and spiritual connection that specific objects within Bears Ears provide to the Hopi, among others. Ancestral kivas, like those of today, were entered by a ladder stretching from the roof down to the center of the floor. Kivas are still used in ceremonies today, and one

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merely has to compare our Tribal Seal to these two pictures to understand that we are connected to this place. It is our understanding that the “Perfect Kiva” will no longer be included within the new monument boundaries as proposed by H.R. 4532, and thus lose that protection. The other attached pictures are also sites that show our connection to this important region.

The Hopi Tribe is fully aware that over the last few decades the archaeological, natural and geographic resources in the region have been severely impacted by looting, industrial development, and increased motorized and recreational access, including inappropriate all-terrain vehicle use. As a result of that and the importance of this region, in 2014 the Hopi Tribe sent a letter to the President supporting action to designate the greater Cedar Mesa area as a National Monument and the Hopi Tribe participated in the Bears Ears Inter-Tribal Coalition that developed the Bears Ears National Monument Proposal.

The purpose of the Antiquities Act is to set aside and preserve places like the Bears Ears National Monument for generations to come and protect them from destructive exploitation. Through a Hopi Tribal Council Resolution in March, 2016, the Hopi Tribe formally supported the establishment of Bears Ears National Monument and later in that year, the Bears Ears National Monument was established.

Since then, the Hopi Tribe has participated with the Bears Ears Tribal Commission and Federal agencies in the collaborative management of the Monument. The Hopi Tribe’s participation in the management of the Bears Ears National Monument through the Hopi Commissioner is critical to maintaining Hopi culture and tradition, as well as to protecting and managing Hopi cultural resources, our footprints, and our ancestors.

The Proclamation dated December 4, 2017 cut the boundaries of Bears Ears National Monument by 85%, from 1.35 million acres to 201,876 acres, revoking, replacing and dismantling the Bears Ears National Monument. H.R. 4532 seeks to codify this action.

H.R. 4532 creates new management councils that are not composed of tribally elected representatives and excludes the Hopi Tribe altogether. As you heard at the hearing on January 9, to which the Hopi Tribe was not invited and one tribal spokesperson was forced to testify on behalf of five tribes, the Hopi Tribe is a member of the Bears Ears Inter-Tribal Coalition that adamantly opposes H.R. 4532. H.R. 4532 would drastically affect some of our most important cultural resources and leave us out of the newly proposed management councils.

The Hopi Tribe leads the litigation known as *Hopi Tribe et.al. v Trump*, showing the importance of Bears Ears to us. And therefore, we also lead the choir urging you not to legislatively reduce the boundaries in any way, and to move ahead on developing the management plan for the Bears Ears National Monument with the contributions of the Bears Ears Commission of Tribes as originally envisioned by the Hopi Tribe and the Inter-Tribal Coalition. The Hopi Tribe cannot work in support of a bill, H.R. 4532, that would legislatively confirm the

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President's action dismantling a decade of collaborative work to establish Bears Ears National Monument.

We appreciate the Tribal, Congressional, and the Public support to protect Bears Ears National Monument and to maintain the current boundaries. Therefore, the Hopi Tribe supports H.R. 4518, Bears Ears Monument Expansion Act and Durbin/Udall Senate bill that would expand the Bears Ears Monument.

We invite you to come to Hopi to sit down, eat with us, and meet our people. The Hopi people are a people of peace. And so we invite you to Hopi to come in and eat, and we can explain to you in more than five minutes the responsibilities of being Hopi and why this place is so important to us.

Conclusion

The Bears Ears region is immensely important to the Hopi Tribe. It is a part of our history and who we are as a people. We have worked since time immemorial to uphold our sacred covenant to protect the land by serving as stewards of the Earth, and continue to do so today in opposing any efforts to abolish and reduce the Bears Ears National Monument. We stand united with the tribes represented before you today, to express our adamant opposition to this effort to abolish or reduce Bears Ears.

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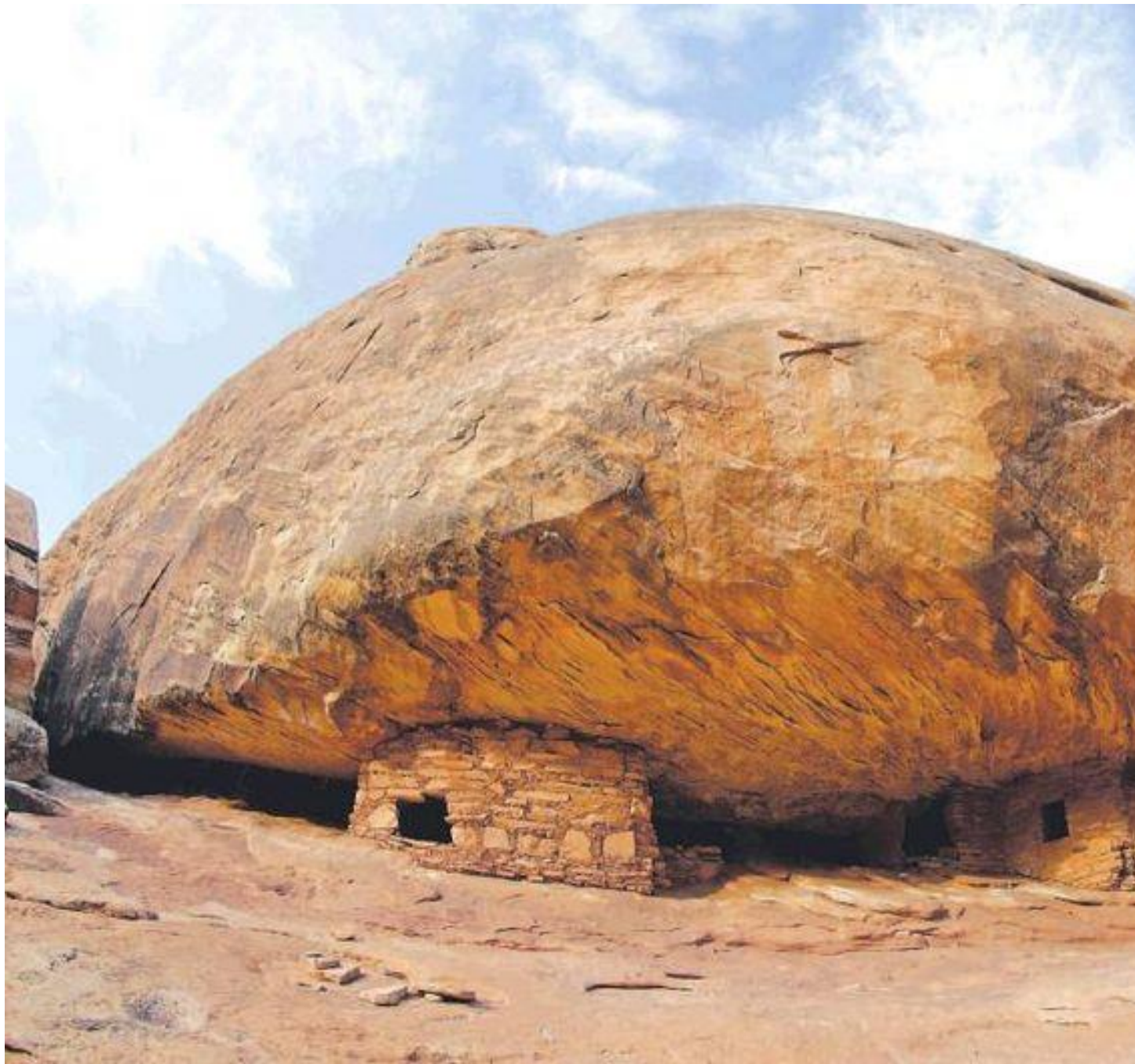


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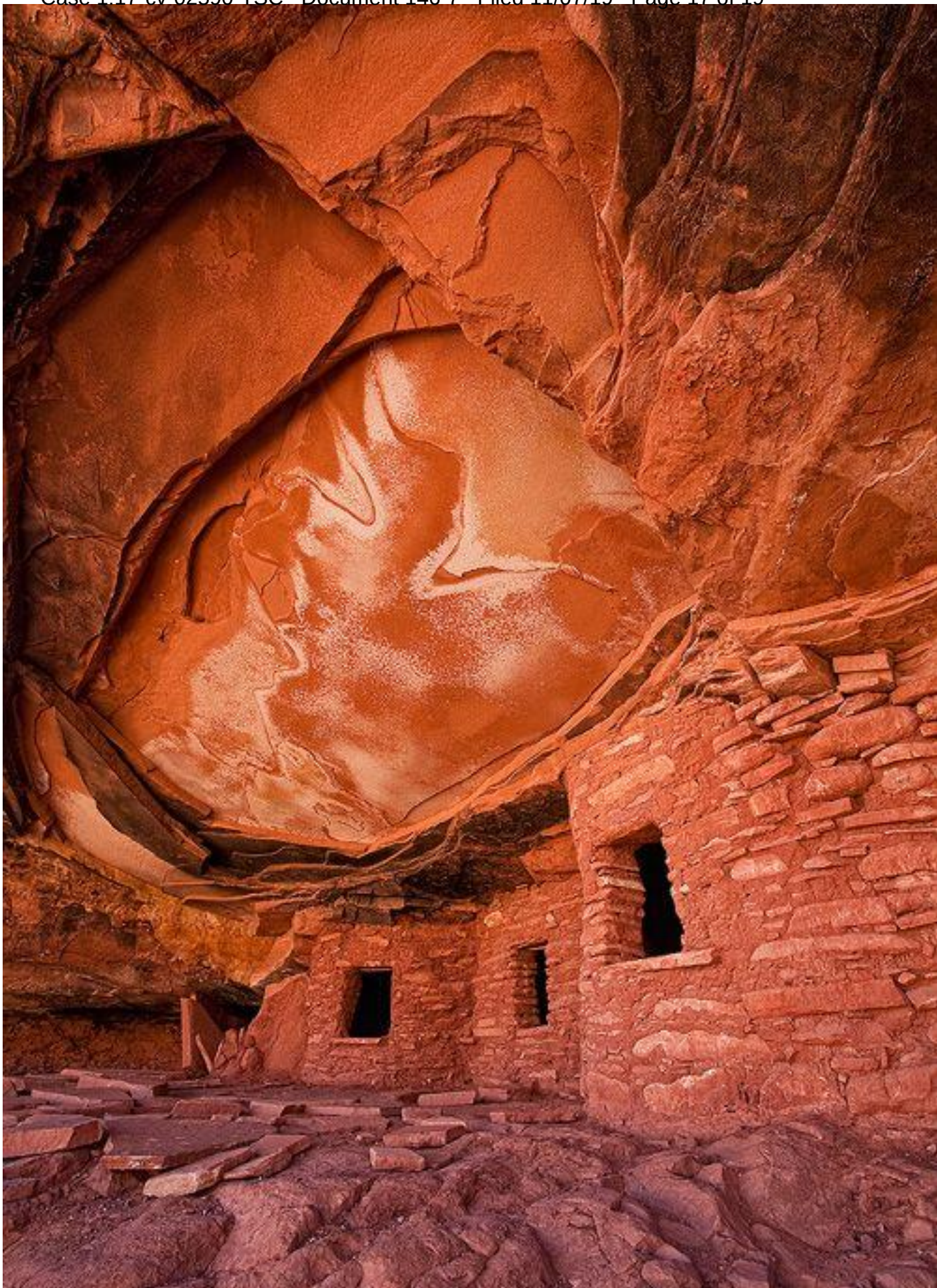


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