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These are the complaints filed by the 5 tribes and UDB.

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

HOPI TRIBE  
1 Main Street  
Kykotsmovi, AZ 86039

NAVAJO NATION  
Old BIA Club Building  
Window Rock, AZ 86515

UTE INDIAN TRIBE  
898 S. 7500 E.  
Fort Duchesne, Utah 84026

UTE MOUNTAIN UTE TRIBE  
124 Mike Wash Rd.  
Towaoc, Colorado 81334

ZUNI TRIBE  
1203B State HWY 53  
Zuni, New Mexico 87327,

*Plaintiffs,*

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

RYAN ZINKE, in his official capacity as Secretary  
of the Interior  
1849 C Street NW  
Washington, D.C. 20240

BRIAN STEED, in his official capacity as Acting  
Director of the Bureau of Land Management  
1849 C Street NW  
Washington, D.C. 20240

SONNY PERDUE, in his official capacity as  
Secretary of Agriculture  
1400 Independence Avenue SW  
Washington, D.C. 20250

Case No.

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TONY TOOKE, in his official capacity as Chief of  
the U.S. Forest Service  
1400 Independence Avenue SW  
Washington, D.C. 20250,

*Defendants.*

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## COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

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## INTRODUCTION

1. This case arises from President Trump’s unlawful attempt to revoke and replace a national monument of major historic and scientific importance 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 the 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, and violated 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 a monument and is thus transparently attempting to evade that strict limitation by purporting to reduce it but, as described 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 Interior



and the Department of Agriculture also visited the Bears Ears region and heard directly from all sides regarding the 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. Plaintiff Tribes in particular continue regularly to 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. Bears Ears is in every way a home to Plaintiff Tribes.

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”) 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, where the designation

covers 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, smaller units called the Indian Creek unit and the Shash Jáa unit. In reality, this drastic change is a revocation of Bears Ears and a replacement of it with two new monuments. The Trump Proclamation eliminates specific objects designated for protection in the Bears Ears Proclamation from the two new “units.” These two different monuments consist of 201,397 acres combined. Bears Ears National Monument is 1.35 million acres, and the revocation thus 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 will immediately be subject to the devastating damage of oil and gas drilling, uranium and potash mining, mineral exploration, uncontrolled off-road vehicle use, widespread vandalism and looting, and grave robbing. Furthermore, invaluable archaeological, paleontological and faunal information will be forever lost to science and history.

### **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).

17. Plaintiff NAVAJO NATION is a sovereign Indian Nation, recognized by the United States, with lands located in Utah, Arizona, and New Mexico. *Id.* at 4917.

18. Plaintiff UTE INDIAN TRIBE is a sovereign Indian Tribe, recognized by the United States, with lands located in Utah. *Id.* at 4919.

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. *Id.*

20. Plaintiff ZUNI TRIBE is a sovereign Indian Tribe, recognized by the United States, with lands located in Arizona and New Mexico. *Id.*

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

### **DEFENDANTS**

22. 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.

23. Defendant RYAN ZINKE 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.

24. Defendant BRIAN STEED 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.

25. 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.

26. Defendant TONY TOOKE is sued in his official capacity as Chief of the U.S. Forest Service within the U.S. Department of Agriculture. In that capacity, he 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 his duties in Washington, D.C.

27. Collectively, Donald J. Trump, Ryan Zinke, Brian Steed, Sonny Perdue, and Tony Tooke are "Defendants."

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

## **BACKGROUND**

### **I. The Antiquities Act**

29. 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.

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

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

32. 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.

33. 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.

34. 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).

35. 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.

36. 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.

37. One of the earliest of such bills was one proposed by the Department of 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).

38. In 1904, Congress again considered legislation to protect antiquities. H.R. 13349 provided that the Secretary of 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.*

39. 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).

40. 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.

41. 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.

42. 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.

43. 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).

44. 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 Interior's request for legislation to authorize preservation of "scenic beauties and natural wonders and curiosities, by Executive Proclamation." *Id.* at 52. 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.

45. 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.

46. 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).

47. 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.

48. 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.

49. 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 Pinckney Nat'l Monument*, 39 Op. Att'y Gen. 185 (1938).

50. 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).

51. 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).

52. 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.

53. Congress recently confirmed its understanding that the President lacks authority to modify or revoke national monuments with 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.*

54. 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**

55. 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.

56. 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.

57. 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 Presidential Proclamation rightly refers to Traditional Knowledge several times and emphasizes its critical place in future land management at the Bears Ears National Monument.

58. 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.

59. 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.

60. 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.

61. The Tribes were very apprehensive about the PLI process. Up to that time, the Utah 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.

62. 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. 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.

63. 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. Indeed, the Tribes were told to present their proposal *to* the San Juan County Commission.

64. 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.

65. 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.

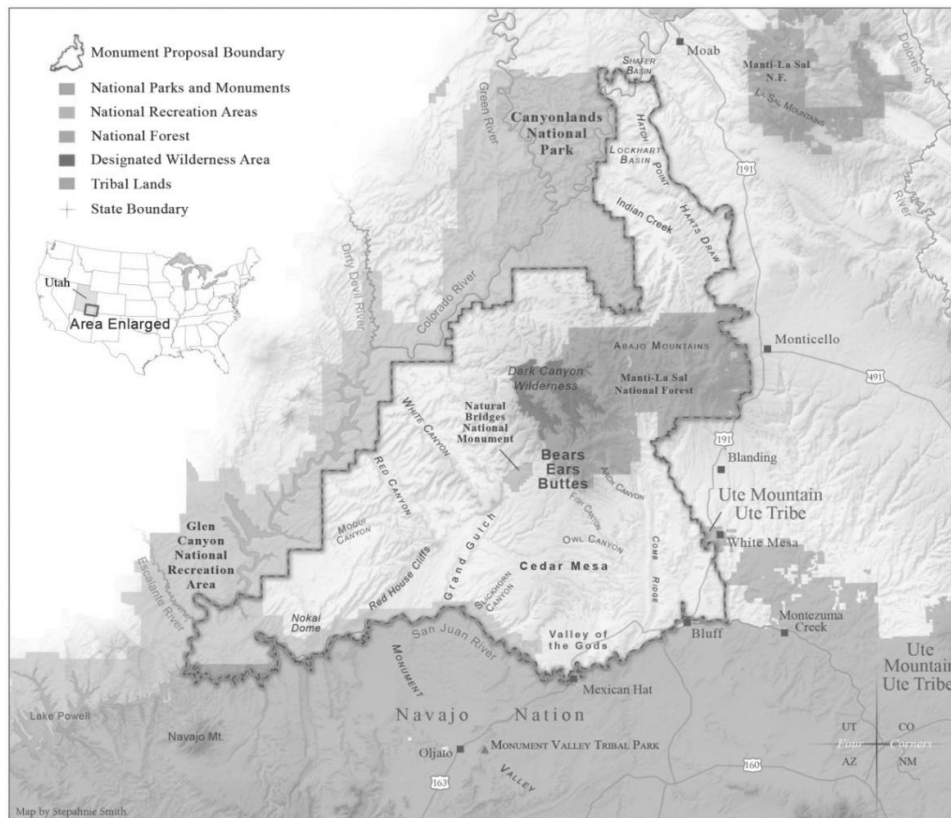
66. Despite the extraordinary unfairness of this proceeding, at no time has the San Juan County Commission, the PLI, or the Utah delegation ever seen fit to acknowledge it, much less apologize and disown it. The Native American citizens of Utah, who comprise roughly half the population of San Juan County (the “County”), deserve better representation.

67. 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”). 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.*

68. 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.

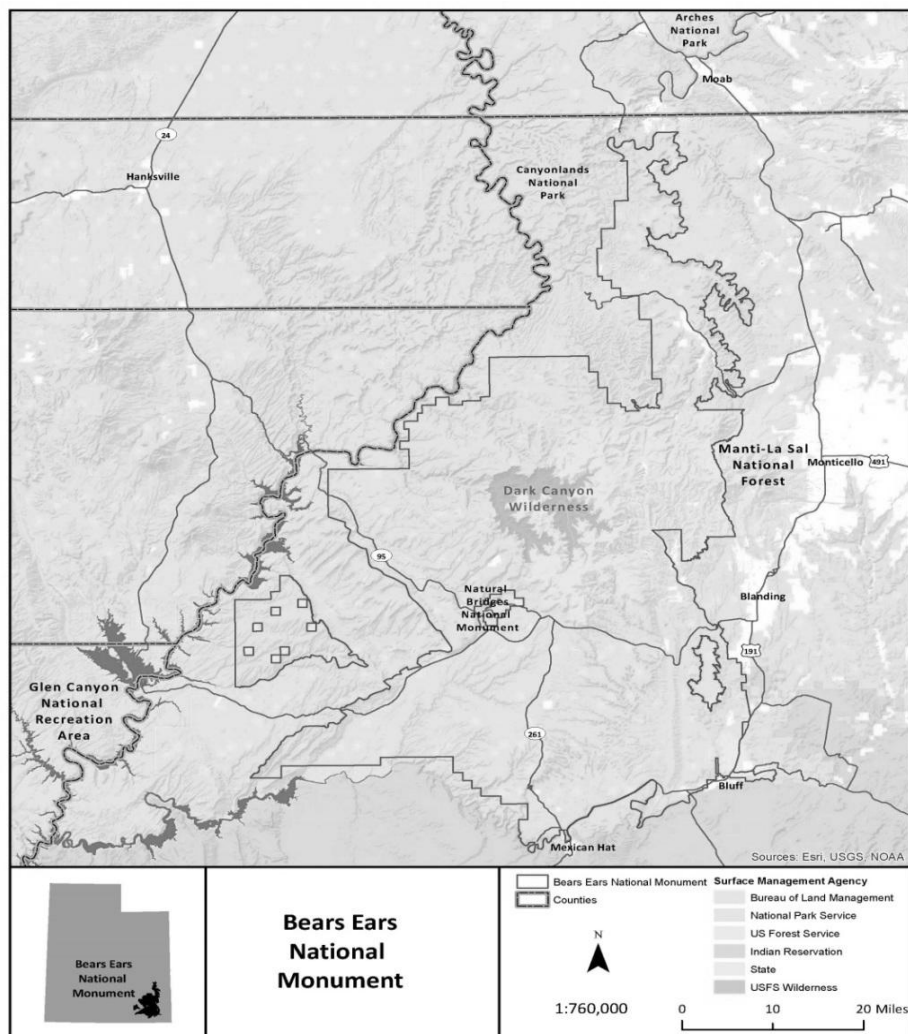
69. The Bears Ears Proposal called for 1.9 million acres of ancestral land within Bears Ears to be protected (but President Obama's Proclamation ultimately included 1.35 million acres). *Id.* at 20. On October 18, 2016, the Coalition submitted a supplemental report calling on President Obama to protect 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.*

70. 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.





71. 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).



72. Because the Bears Ears Monument is a product of Plaintiffs' own history, efforts, and advocacy, the current President's repudiation of it will cause direct, immediate, and irreparable harm to Plaintiffs and their tribal members.

### III. Overview of Historic Native American Connections to Bears Ears

73. “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.



74. 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).

75. 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.

76. 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:



77. 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.*

78. "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).

79. "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).

80. 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.

81. 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

82. The Zuni Tribe is historically, culturally, and spiritually tied to the Bears Ears region because the region “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.*

83. 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](https://durangoherald.com/articles/124458-bears-ears-monument-timeline?wallit_nosession=1).



84. 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.

85. 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](http://www.bearscoalition.org/wp-content/uploads/2016/03/Bears-Ears-bro.sm.pdf) (quoting Octavius Seowtewa, Zuni Elder).

86. 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.

87. 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.

88. 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.

89. 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.

90. 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.*

91. 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”).

92. 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.*

93. 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.*

94. It has been said that you cannot go an eighth of a mile without encountering another important scientific or historic object within Bears Ears.

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

95. 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.

96. 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.

97. 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.

98. 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 *Nihinaazáí'* (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

99. 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,

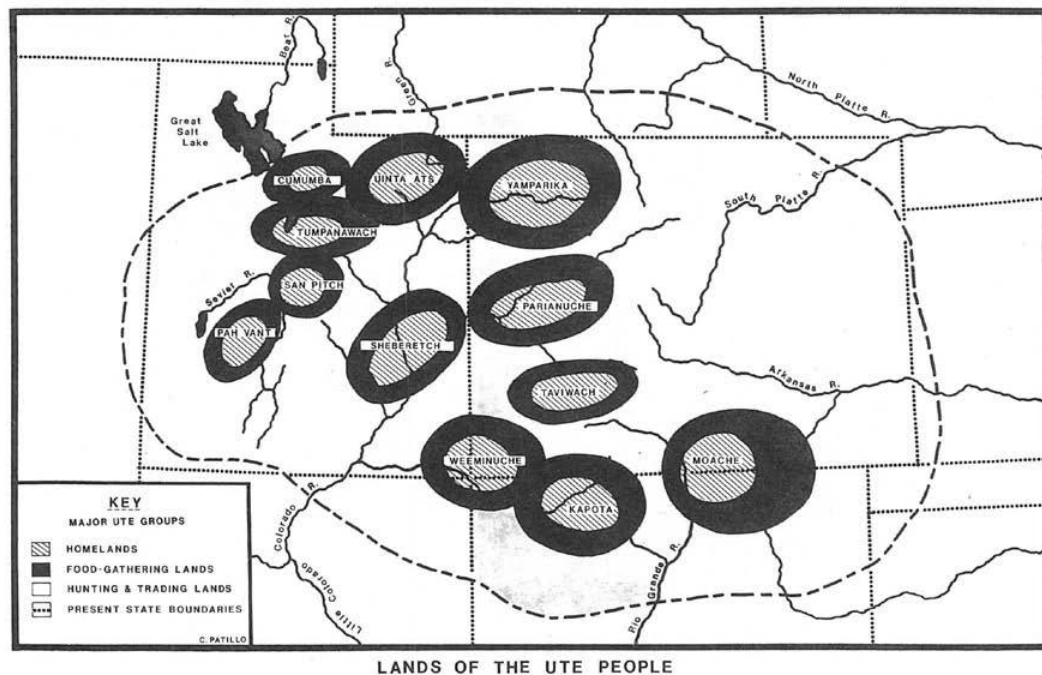
wild turkeys, and rabbits—as they have done since time immemorial. Other Navajo people access the Monument lands to forage for native plants such as piñon nuts, wild potatoes, wild onions, spinach, turnips, and sumac berries. Navajo people also continue to gather firewood, grasses for traditional basket-weaving, 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.

100. 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.

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

101. 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).



102. Many of the current Ute Tribes have a 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.

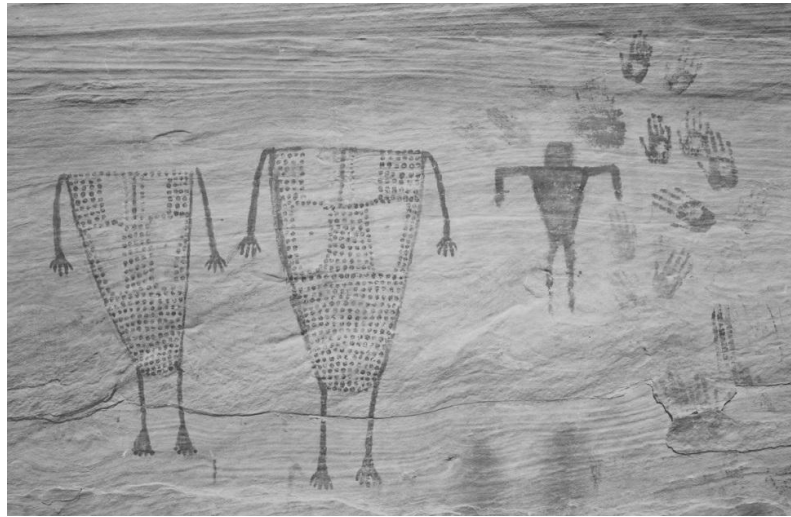
103. Utes place religious and traditional importance on many areas in Bears Ears, including: "Water Canyon or River-Flowing-From the Sunrise (San Juan River), Sagebrush

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.

104. Historically and to this day, the Ute Bear Dance, which is a spring ceremony symbolic of nature’s awakening, is performed in many 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.

105. “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.





106. 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/wp-content/uploads/2016/06/TriUteReso6132016-1.pdf>.

107. 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.*

108. 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.*

109. 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.*

110. 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.

111. 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).



112. 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).

## VII. General Historic and Scientific Importance

113. 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](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.

114. 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](http://www.crowcanyon.org/e-newsletter/2016/June/2016_June_Bears_Ears.html) (last visited Dec. 4, 2017).

115. 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**

116. The Obama Administration put in 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.

117. 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 this be an open process. 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 two secretaries, 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 the staff to the Department of the Interior on the time and attention that they devoted to this issue. Memorandum from Democratic Staff on 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”).

118. 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>.

119. 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**

120. 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*.

121. 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.

122. 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 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.*

123. 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.*

124. 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.*

125. 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.

126. 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.*

127. 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.*

128. 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.

129. 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.

130. 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.

131. 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.

132. 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.

133. 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).

134. 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).

135. 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.

136. 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.

137. 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.*

138. 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.*

139. 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 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.)

140. 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.**

141. 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>.



142. 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](https://www.nytimes.com/2017/01/20/us/politics/trump-inauguration-day.html?_r=0).

143. After Secretary Zinke was nominated to be the Secretary of 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](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.

144. 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/>.

145. 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 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.*

146. 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>.

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

148. Nonetheless, in an unprecedented move 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, this is effectively a revocation of Bears Ears and a replacement of it with two new monuments. In this revocation and replacement, President Trump purported to create new boundaries for these separate new monuments and issued new maps delineating them.

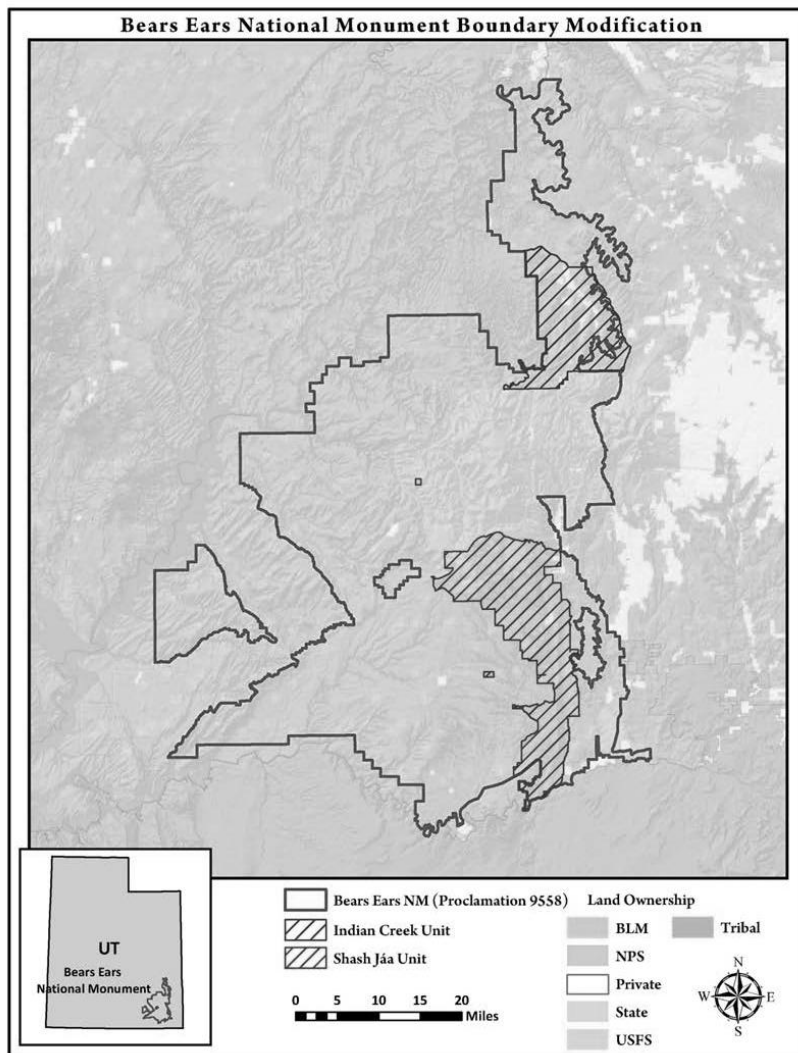
149. In so doing, President Trump has attempted to remove protection from the tens of thousands of cultural and archaeological sites and objects of historic and scientific interest in 1.1 million acres. As to these objects, the Bears Ears National Monument has been fully revoked.

150. 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>.

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

152. 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.

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



154. 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 will not take any further 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.

155. Mandatory duties under the Bears Ears Proclamation include, but are not limited to, further consulting with Plaintiffs on the establishment of the Commission and convening meetings with the Commission to assist in beginning the work of the Commission.

156. 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*.

157. 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.

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

159. 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.

160. 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.

161. 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.

162. 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.

163. 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.

164. 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.

165. 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.

166. 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>.

167. 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).

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

169. 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.

170. 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.

171. 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.

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

173. 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.

174. 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.

175. 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.

176. 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.

177. President Trump's action removes these protections.

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

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

180. 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.

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

182. 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.*



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

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

185. 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).

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

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

188. 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.

189. 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.

190. Due to President Trump’s action, Plaintiffs will have a reduced opportunity to participate on the Commission or to provide input on the creation and implementation of the

Monument management plan as the Trump Proclamation purports to include a local county representative in the Bears Ears Commission with the other sovereign Native delegates.

191. Although the BLM and USFS began discussions about meeting with the Commission, that work will no longer move forward.

192. 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 on the process for protecting the landscape they have utilized and maintained since time immemorial.

193. 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 on the process for protecting the landscape they have utilized and maintained since time immemorial.

194. 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://bearscoalition.org/proposal-overview/> (last visited Dec. 4, 2017).

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

196. Plaintiffs have no adequate remedy at law.

**FIRST CLAIM FOR RELIEF****Antiquities Act, 54 U.S.C. § 320301  
(All Defendants)**

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

198. 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.

199. 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 Bears Ears National Monument and replaces it with two different, 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.

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

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

**SECOND CLAIM FOR RELIEF****U.S. Constitution, Article I, Sections 1 and 7 — Separation of Powers  
(All Defendants)**

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

203. 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.

204. 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.

205. 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).

206. 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.

207. In issuing the Proclamation, President Trump has purported to amend the Antiquities Act by engrafting to 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.

208. Because the President's order is unlawful and he therefore cannot properly direct the agencies to act, in implementing the Trump Proclamation, the Agency Defendants purport to create law, or purport to amend an existing statute in violation of the limits of Constitutional authority of the Executive Branch under Article 1, Sections 1 and 7.

### **THIRD CLAIM FOR RELIEF**

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

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

210. 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.

211. 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.

212. 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.

213. 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.

#### **FOURTH CLAIM FOR RELIEF**

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

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

215. 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.

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

217. 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;
- 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) meaningfully engaging the Commission, comprised of elected officers from five Tribal nations, and “carefully and fully consider[ing] integrating the traditional and historical

knowledge and special expertise of the Commission” into the Monument management or providing a written explanation for their decision not to do so.

218. 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.

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

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

221. Agency Defendants’ failure to act constitutes an agency action “unlawfully withheld” under section 706 of the APA.

### **PRAYER FOR RELIEF**

WHEREFORE plaintiffs request that the Court:

222. 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;

223. 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;

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

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

226. Issue injunctive relief against the Agency Defendants, prohibiting them from implementing the unlawful Proclamation and directing them to carry out the mandatory duties imposed in the Proclamation;

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

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

Dated: December 4, 2017

Respectfully submitted,

By:

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*Attorneys for Plaintiff Ute Indian Tribe*

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

**UTAH DINÉ BIKÉYAH**  
352 S. Denver St. #315,  
Salt Lake City, UT 84111;

**FRIENDS OF CEDAR MESA,**  
P.O. Box 338,  
300 E. Main St.,  
Bluff, UT 84512;

**ARCHAEOLOGY SOUTHWEST,**  
300 North Ash Alley,  
Tucson, AZ 85701;

**CONSERVATION LANDS FOUNDATION, INC.,**  
835 E. 2d Avenue, #314,  
Durango, CO 81301;

**PATAGONIA WORKS,**  
259 W. Santa Clara Street,  
Ventura, CA 93001;

**THE ACCESS FUND,**  
P.O. Box 17010,  
Boulder, CO 80308;

**NATIONAL TRUST FOR HISTORIC  
PRESERVATION,**  
2600 Virginia Avenue, N.W.,  
Suite 1100,  
Washington, DC 20037; and

**SOCIETY OF VERTEBRATE PALEONTOLOGY,**  
9650 Rockville Pike,  
Bethesda, MD 20814;

**Plaintiffs,**

**- v. -**

**CIVIL ACTION NO. \_\_\_\_\_**

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**DONALD J. TRUMP, in his official capacity as  
PRESIDENT OF THE UNITED STATES,  
The White House,  
1600 Pennsylvania Avenue, N.W.,  
Washington, DC 20500;**

**RYAN K. ZINKE, in his official capacity as  
SECRETARY OF THE INTERIOR,  
1849 C Street, N.W.,  
Washington, DC 20240;**

**SONNY PERDUE, in his official capacity as  
SECRETARY OF AGRICULTURE,  
1400 Independence Avenue, S.W.,  
Washington, DC 20250;**

**BRIAN STEED, in his official capacity as DEPUTY  
DIRECTOR OF THE BUREAU OF LAND  
MANAGEMENT EXERCISING THE AUTHORITY  
OF THE DIRECTOR,  
1849 C Street, N.W.,  
Room 5665,  
Washington, DC 20240; and**

**TONY TOOKE, in his official capacity as CHIEF OF  
THE UNITED STATES FOREST SERVICE,  
1400 Independence Avenue, S.W.,  
Washington, DC 20250;**

**Defendants.**

## INTRODUCTION

1. Plaintiffs Utah Diné Bikéyah, Friends of Cedar Mesa, Archaeology Southwest, Conservation Lands Foundation, Inc., Patagonia Works, The Access Fund, the National Trust for Historic Preservation, and the Society of Vertebrate Paleontology, on behalf of themselves, their members, and other affiliates ask this Court to declare unlawful President Trump's December 4, 2017 proclamation that revoked the Bears Ears National Monument and replaced it with two new "units." The President's action exceeded Congress' delegation of authority to him in the Antiquities Act of 1906 ("the Antiquities Act"), 54 U.S.C. §§ 320301, *et seq.*, and violates the Property Clause and Take Care Clause of the Constitution. U.S. Const. art. IV, § 3, cl. 2; *id.* art. II, § 3, cl. 5. In the 111-year history of the Antiquities Act, no president has ever reversed a prior president's monument by wholesale removal of protections for landmarks, structures, and other objects of historic or scientific interest. Plaintiffs request that this Court enjoin implementation of the President's unlawful action and restore the original configuration of the Bears Ears National Monument to ensure fulfillment of Congress' clear intent.

2. The President has limited authority under the Antiquities Act. The Property Clause of the Constitution vests Congress with the sole authority to dispose of and make all needful Rules and Regulations respecting property of the United States, U.S. Const. art. IV, § 3, cl. 2, and Congress has delegated to the President, through the Antiquities Act, only the authority to create national monuments through public proclamation. For as much authority as it gave to the President to create these monuments, Congress gave the President no authority to revoke or modify those monuments or to vacate the protections created for those monuments. Congress is the sole authority that can undertake such changes.

3. Pursuant to his authority under the Antiquities Act, President Barack Obama proclaimed the Bears Ears National Monument in southeastern Utah on December 28, 2016, thereby protecting a landscape named for the distinctive twin buttes rising above geologically diverse terrain that has been sacred to native peoples for hundreds of generations. *See* Proclamation 9558, 82 Fed. Reg. 1139 (Jan. 5, 2017). This new national monument had two components: a wide range of archaeological, paleontological, cultural, geographic, geological, and ecological objects designated for protection under the Antiquities Act, *see id.* at 1139-43, and a reservation of approximately 1.35 million acres of public land to be known as “the Bears Ears National Monument,” *see id.* at 1143. President Obama’s action came after years of public discussions and engagement to gather and consider the full range of views from government, industry, Indian tribes, non-profit representatives, and the American public. His proclamation carried the full force of Congress’ delegated authority.

4. On December 4, 2017, President Donald J. Trump signed a proclamation (the “Revocation Proclamation”) purporting to erase the designation of thousands of objects of historic and scientific interest and over 1 million acres from the Bears Ears National Monument. *See Presidential Proclamation Modifying the Bears Ears National Monument*, WhiteHouse.gov (Dec. 4, 2017), <https://www.whitehouse.gov/the-press-office/2017/12/04/presidential-proclamation-modifying-bears-ears-national-monument>. President Trump’s proclamation is unlawful. It exceeds the limits on the President’s authority under the Antiquities Act and arrogates to the President authority reserved to Congress by the Constitution. The President has acted *ultra vires*.

#### JURISDICTION AND VENUE

5. Plaintiffs’ claims arise under the Antiquities Act, 54 U.S.C. §§ 320301-320303,

the National Landscape Conservation System, 16 U.S.C. §§ 7201-7203, the Property Clause of the United States Constitution, U.S. Const. art. I, § 3, cl. 2, and the Take Care Clause of the United States Constitution, U.S. Const. art. II, § 3, cl. 5. These claims concern the scope of the President's authority to revoke a national monument. As a result, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

6. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(e) because Defendants reside in the District of Columbia and a substantial part of the events or omissions giving rise to this action occurred in the District of Columbia. Upon information and belief, a substantial part of the development of the two Presidential Proclamations at issue in this litigation, as well as the issuance of Proclamation 9558, occurred in the District of Columbia. Advocacy work performed by Plaintiffs in support of President Obama's Proclamation 9558 occurred in the District of Columbia. Plaintiff National Trust for Historic Preservation maintains its headquarters in the District of Columbia, and Plaintiff Conservation Lands Foundation maintains an office in the District of Columbia to assist its advocacy efforts.

7. The requested relief is proper under 28 U.S.C. §§ 2201-2202 and Article III of the Constitution of the United States.

## **PARTIES**

### **I. Plaintiffs**

#### **Conservation Lands Foundation, Inc.**

8. Conservation Lands Foundation, Inc. ("CLF") promotes conservancy of public lands through supporting the National Landscape Conservation System (or the "National Conservation Lands") and preserving the outstanding historic, cultural, and natural resources of those public lands. The National Conservation Lands encompass approximately 36 million acres and 2,400 river miles of National Monuments, National Conservation Areas, Wilderness and

Wilderness Study Areas, Wild and Scenic Rivers, National Scenic and Historic Trails, and other special designations. Congress expressly recognized and codified the existence of the National Conservation Lands in 2009, *see* Omnibus Public Land Management Act of 2009, Pub. L. 111-11, 123 Stat. 991 (2009) (codified as 16 U.S.C. §§ 7201-7203), and mandated that those units be managed in accordance with the statute or proclamation establishing them.

9. CLF is a non-profit organization exempt from taxation under 26 U.S.C. § 501(c)(3), incorporated under the laws of the State of Delaware, and headquartered in Durango, Colorado. CLF maintains regional offices in the District of Columbia and five states. Upon information and belief, CLF is the only non-profit in the country specifically dedicated to establishing and safeguarding National Conservation Lands under the care of the Bureau of Land Management (“BLM”). To fulfill its purpose, CLF works to protect, restore, and expand the National Conservation Lands through education, advocacy, and partnership. The Bears Ears National Monument is now a unit of the National Conservation Lands, and the management of and authority for appropriations to the Bears Ears National Monument are governed in part by the Omnibus Public Land Management Act of 2009.

10. Critical to CLF’s success and mission is CLF’s Friends Grassroots Network. CLF’s founding organizational vision was to combine local grassroots power with a sophisticated national strategy that would include dedicated staff and resources to educate Congress, the Executive Branch, and the public about the National Conservation Lands. CLF provides individual groups with technical advice, mentoring, tools, and training to ensure successful on-the-ground projects; CLF also offers guidance to groups on effective advocacy and community education. CLF’s resources and expertise in government relations, advocacy, communications, and outreach provide local advocates with insights into developments affecting



the National Conservation Lands, including the Bears Ears National Monument, as well as the tools needed to influence those developments powerfully and persuasively.

11. Designation of the Bears Ears National Monument has been a central initiative of CLF's for more than five years. CLF's primary focus has been providing strategic support to the local non-profits, particularly Utah Diné Bikéyah, Archaeology Southwest, and Friends of Cedar Mesa, that played important roles in the designation effort. CLF has devoted thousands of hours of its staff time and significant resources to securing the designation of Bears Ears as a national monument.

12. During the last 5 years, CLF provided strategic support to tribal organizations and others leading the effort to protect the Bears Ears region. CLF also undertook significant advocacy efforts of its own. CLF actively engaged in the creation of the Bears Ears National Monument by supporting and participating in the collection of critical data and information on the natural, cultural, historic, and scientific resources and values supporting the Bears Ears National Monument Proclamation, as well as engaging Department of the Interior officials (including former Secretary Jewell) regarding the significance of the Bears Ears region. CLF's efforts continue to date.

13. CLF will suffer direct and immediate injury from the revocation of the designation of the landmarks, structures, and objects of the Bears Ears National Monument. By virtue of its mission, CLF acts as a representative for preservation of the natural cultural, historic, and scientific values of the Bears Ears National Monument and will therefore suffer immediate and irreparable injury by the revocation of the National Monument and diminution or elimination of the protections provided by the Proclamation 9558. Due to the actions of Defendants, CLF will also have no choice but to divert its limited resources away from its ongoing designation

campaigns in the states of Arizona, California, New Mexico, Colorado, Nevada, and Oregon and towards restoring protection of, and mitigating adverse impacts to, this historically and culturally significant area. CLF and the organizations it supports (*e.g.*, Friends of Cedar Mesa, Archaeology Southwest, and Utah Diné Bikéyah) will also divert resources away from important stewardship projects in the Bears Ears region. CLF will need to reallocate resources to new efforts to fight for federal protection of the Bears Ears National Monument and away from on-the-ground public stewardship projects and public education campaigns devoted to the interpretation and protection of the unique objects of scientific, cultural, and historical interest contained in the Bears Ears region.

14. CLF officers and board members regularly visit the Bears Ears region to hike, camp, and explore in the areas now protected by the Bears Ears National Monument. The objects of historic and scientific interest comprising the Bears Ears National Monument are critical to the officers' and board members' use and enjoyment of the monument.

15. Members of the entities within CLF's Friends Grassroots Network use and enjoy the Bears Ears National Monument regularly. This use includes hiking, rock climbing, rafting, backpacking, canyoneering, river running, and photographing and observing the area's unique archaeology, geology, and habitat. The objects of historic and scientific interest comprising the Bears Ears National Monument are critical to the members' use and enjoyment of the monument.

#### **Utah Diné Bikéyah**

16. Utah Diné Bikéyah ("UDB") is a Native American-led, values-driven organization that recognizes the deep and ongoing spiritual connection between indigenous people and the land. As an organization founded and focused on Native American traditional and cultural principles, UDB operates at the intersection between culture and conservation, by

promoting land protection that honors and includes human societies that have co-existed with ecosystems since time immemorial.

17. UDB is a non-profit organization exempted from taxation under 26 U.S.C. § 501(c)(3), organized under the laws of the State of Utah, and headquartered in Salt Lake City, Utah.

18. UDB is a member of CLF's Friends Grassroots Network, and, like CLF, has long been involved in stewardship and advocacy to protect the historical and natural aspects of the Bears Ears area.

19. UDB began its work in 2010 through another 501(c)(3) non-profit, Round River Conservation Strategies, by gathering traditional cultural knowledge from Navajo elders about the Bears Ears region, information many had previously been afraid to share for fear that it would lead to the desecration and destruction of cultural resources and sacred sites throughout the area, and then sharing that information as part of the conservation initiatives spearheaded by former Senator Robert Bennett. Beginning in 2011, UDB formed itself as a separate non-profit organization. In June 2014, UDB began an effort to work with the Navajo, Hopi, Zuni, Ute Indian, and Ute Mountain Ute tribes (hereinafter collectively referred to as the "Tribes") to improve preservation of the region. By late 2015, UDB and the Tribes focused on creating a new national monument designation to protect the Bears Ears region under the Antiquities Act.

20. As part of this effort to see a monument designation for the Bears Ears region, UDB engaged high ranking officials at the Department of Interior (then-Director of the BLM, Neil Kornze, and then-Secretary Sally Jewell), and worked to facilitate the formation of the Bears Ears Inter-Tribal Coalition, comprised of leaders from the five Tribes. Working with UDB, the Bears Ears Inter-Tribal Coalition soon crafted and presented the Bears Ears National

Monument proposal to federal officials in Washington, D.C. The National Congress of American Indians, representing 270 tribes from across the United States, later endorsed the proposal.

21. President Obama's Proclamation 9558 establishing the Bears Ears National Monument is a significant achievement for UDB and the tribes to which UDB's members belong, in that only through the designation will tribal members (including UDB members) be assured that their traditional way of life can continue undisturbed. The Bears Ears National Monument represents the first national monument designated under the authority of the Antiquities Act for, and at the request of, sovereign tribes. National monument designation provides the Bears Ears area, and its significant cultural, natural, and scientific resources, with much needed protections.

22. Under President Obama's Proclamation 9558, the Tribes have an integral role in developing management plans for the area, and UDB has been poised to provide important institutional and traditional knowledge to the Tribes and the federal government in the development of these plans. That assistance includes the identification of cultural resources in the Bears Ears National Monument, development of programs for traditional use of ecological resources, and promoting sustainable practices based on cultural and historical use of the area. For instance, before the monument designation, UDB provided an exhaustive study to the federal government that analyzed collaborative management practices for protected areas. *See, e.g.,* Utah Diné Bikéyah, Collaborative Management of Protected Areas, with Examples of Collaboration between Native American Tribes and US Federal and State Agencies (Jan. 20, 2012), <http://www.roundriver.org/wp-content/uploads/pubs/navajo/reports/Co-mgt-Backgrounder-Report-1-20-12.pdf>. This study exemplifies the type of organizational expertise UDB offers the Tribes as they help shape management plans. UDB has also conducted an extensive literature

review report, developed a decision support tool that included all publicly available geographic information system (“GIS”) data for the region, and commissioned a gap analysis to identify differences between the desires of the Navajo community and BLM management practices. With sufficient resources, UDB can bring these same skills to the Tribes and the National Monument’s land management planning process.

23. UDB will suffer direct and immediate injury from the revocation of the designation of the landmarks, structures, and objects of the Bears Ears National Monument. As a result of President Trump’s actions, UDB must now re-allocate its limited resources from these essential ethnographic and educational activities to costly, contentious activities to protect the objects and landscapes within the Bears Ears National Monument from resource development efforts, looting, vandalism, and other adverse impacts on the spiritual and aesthetic value of the area that result from President Trump’s actions. These new activities forced upon UDB include re-mobilizing community members to inform decision-makers about the valuable resources within the Bears Ears National Monument, drafting comments and engaging in efforts to restore the Bears Ears National Monument, and composing materials detailing the values and importance of the Bears Ears National Monument.

24. UDB must also divert its limited resources from developing a sustainable economy built upon local artists, entrepreneurs, businesses, and community leaders in San Juan County, Utah. As part of UDB’s mission, UDB directs its resources toward establishing a local economy that supports the Tribes and their members in a manner that strengthens ties to the land, promotes native cultures and languages, and treats others with respect. Because of President Trump’s actions, however, UDB must divert those resources from significant opportunities tied to the existence of the National Monument and toward assistance to local businesses to protect



the area from mining, looting, and other adverse impacts. These are activities that would not be undertaken but for the Revocation Proclamation.

25. The Bears Ears National Monument is home to sacred landscapes and many sacred sites and resources of significant cultural and spiritual value to the Tribes, and the protection of these landscapes is the central mission of UDB. The Navajo people, as well as members of other tribes, have used, and continue to use, the area for traditional medicine and herb gathering, pinyon gathering, and ceremonies.

26. UDB and its members are committed to ensuring that the ancestral lands within the boundary of the Bears Ears National Monument remain protected so that the vital historic record of the native peoples and opportunities for modern, sustainable cultural use are preserved for future generations. The organization will now have to dedicate time, money, and effort to the campaign to protect these now-threatened areas, to support the Tribes in their individual and collective efforts to oversee the management of their ancestral lands, and to educate the public about why these particular lands are significant. Threats to the landscape of the National Monument are also threats to the cultural heritage and identity of the Tribes and their members.

27. UDB members share deep personal ties to the Bears Ears National Monument, having lived their entire lives close to or within the boundaries described by Proclamation 9558. The areas protected by the Bears Ears National Monument are central to their culture, their faith, and their community. UDB members regularly visit the Bears Ears region to gather herbs and firewood, pray, conduct ceremonies, hike, camp, and explore the areas now protected by the Bears Ears National Monument. The Bears Ears National Monument, and the interconnected historical and cultural resources of its landscape, are of significant cultural and spiritual value to UDB members. Thus, President Trump's revocation of the designation of the landmarks,

structures, and objects and reduction of the National Monument's boundaries will allow for uses that have the potential to desecrate this sacred place of worship.

#### **Friends of Cedar Mesa**

28. Friends of Cedar Mesa was founded in 2010 by a former BLM employee to foster stewardship and advocacy for the Cedar Mesa area, with a particular focus on protecting cultural resources. The organization's mission is to ensure that the federal public lands in San Juan County, Utah—with all their cultural, natural, and recreational value—receive appropriate protection and respect. Friends of Cedar Mesa works to achieve its mission in four core areas: policy and advocacy; education and interpretation; stewardship and monitoring; and cultural resource research. Friends of Cedar Mesa also works to create local, regional, and national support for greater protection of Cedar Mesa through education, advocacy for national designations, support for smart local policy-making, and organization of research and volunteer service activities.

29. Friends of Cedar Mesa is a non-profit organization exempted from taxation under 26 U.S.C. § 501(c)(3), incorporated under the laws of the State of Utah, and headquartered in Bluff, Utah. Friends of Cedar Mesa is also a member of CLF's Friends Grassroots Network, and, like CLF, has long been involved in stewardship and advocacy to protect the historical and natural aspects of the Bears Ears area.

30. Friends of Cedar Mesa has a significant interest in the Bears Ears National Monument. The greater Cedar Mesa area is located within the boundaries of the Bears Ears National Monument. Over the past many years, Friends of Cedar Mesa has observed damage to cultural resources in the area caused by looting, inadequate signage or protective barriers, and careless visitors. The damage to the cultural resources in this area resulted primarily from a lack

of resources necessary for conserving the area.

31. Friends of Cedar Mesa was involved in, and committed substantial resources to, protecting the Bears Ears region. In 2013, Friends of Cedar Mesa began focusing its efforts on advocating for protection of Cedar Mesa as a conservation area or national monument as a means to secure additional funding and legal protections for the area. As part of this effort, Friends of Cedar Mesa worked with Utah Diné Bikéyah and Archaeology Southwest to advocate for national monument status and protection for the Bears Ears landscape.

32. Friends of Cedar Mesa devoted significant resources to bringing awareness to and educating the public on the value of designating the Bears Ears region as a national monument. Friends of Cedar Mesa also undertook a landmark project to identify archaeological resources in this area. Friends of Cedar Mesa staff prepared a 300+ page report detailing the archaeological resources within the Bears Ears National Monument. This project required a significant commitment of staff time and resources, taking hundreds of hours to complete, and represented a culmination of the organization's on-the-ground knowledge of cultural resources within the Bears Ears region. For the summer of 2016, this project was the organization's single largest undertaking. Friends of Cedar Mesa staff and board members travelled to Washington, D.C. on multiple occasions to advocate for the permanent protection of the Bears Ears landscape. Friends of Cedar Mesa also created a 179-page report, including a detailed bibliography, entitled "A Cultural Landscape Overview of Archaeological Resources in the Bears Ears National Monument," with the assistance of professional archaeologists and Archaeology Southwest. Both of these reports were provided to the Department of the Interior, BLM, and Secretary Ryan Zinke prior to the Revocation Proclamation.

33. Friends of Cedar Mesa will suffer direct and immediate injury from the revocation



of the designation of the landmarks, structures, and objects of the Bears Ears National Monument. As a result of the Trump Administration's attempt to revoke the national monument designation, Friends of Cedar Mesa will need to divert its limited resources from other preservation efforts to reactivating its activities to protect and restore the objects comprising the Bears Ears National Monument. Friends of Cedar Mesa had decided to campaign against development in the Bluff Bench and Montezuma Canyon areas by organizing public meetings, actions, and advocacy. But because of President Trump's unlawful decision, Friends of Cedar Mesa has redirected staff hours and financial resources away from this campaign to protect the Bears Ears National Monument and the objects constituting that monument. Additionally, Friends of Cedar Mesa set forth a plan to do work inside the National Monument educating visitors, monitoring archaeological sites, catching looters, and building trails and protective fences. Now that national monument status has been illegally revoked, Friends of Cedar Mesa will have to divert resources set aside for those activities to challenging President Trump's unlawful decision.

34. President Trump's actions have also negatively impacted Friends of Cedar Mesa's ability to obtain grants and funding for conservation activities. For example, Friends of Cedar Mesa applied for funding from the Bears Ears National Monument Community Engagement Fund to perform work within the Bears Ears National Monument. This grant is only available, however, if the work is actually performed within a national monument.

35. The board members of Friends of Cedar Mesa use and enjoy the areas designated as the Bears Ears National Monument for several activities, including hiking, rock climbing, rafting, backpacking, canyoneering, river running, photographing, and observing the area's unique archaeology, geology, paleontology, and habitat. The objects of historic and scientific

interest comprising the Bears Ears National Monument are critical to the use and enjoyment of the National Monument by board members. Many of the board members of Friends of Cedar Mesa enjoy clean drinking water from the Navajo aquifer, which lies under land within the Bears Ears National Monument and is thereby protected from the impacts of extractive activities.

### **Archaeology Southwest**

36. Since its inception, Archaeology Southwest's core mission has been to pursue preservation archaeology in the southwestern United States – Arizona, New Mexico, Colorado, and Utah. Preservation archaeology is a holistic, conservation-based approach to exploring the places of the past focused on preserving cultural landscapes, archaeological sites, artifact collections, and archives. Archaeology Southwest undertakes a broad range of preservation initiatives on behalf of these resources. For example, Archaeology Southwest conducts low-impact research, educates the public on archaeological issues, and protects irreplaceable archaeological sites through education, easements, and fee ownership.

37. Archaeology Southwest is a 26 U.S.C. § 501(c)(3) nonprofit organization headquartered in Tucson, Arizona. Archaeology Southwest is also a member of CLF's Friends Grassroots Network.

38. Archaeology Southwest has a specific interest in supporting the designation of landscapes like Bears Ears as national monuments to preserve the land and its resources. In fact, in 2001, Archaeology Southwest published a special issue of its quarterly magazine that highlighted the Antiquities Act and each of the new national monuments in the Southwest designated by President Clinton. As another example, since 2009, Archaeology Southwest has advocated for the establishment of a Great Bend of the Gila National Monument in an 84,000-acre area that follows the Gila River for roughly 80 miles southwest of Phoenix.

39. Archaeology Southwest was involved in, and committed substantial resources to, protecting the Bears Ears area. In 2014, Archaeology Southwest identified the protection of the Bears Ears area as a priority for the organization. As part of this initiative, Archaeology Southwest worked with Friends of Cedar Mesa to propose a national monument or conservation area.

40. Archaeology Southwest devoted significant resources to bringing awareness to and educating the public on the value of the Bears Ears area, including by devoting a double issue of Archaeology Southwest's quarterly magazine to the Bears Ears area. Archaeology Southwest also sent a letter to President Obama explaining the importance of this area. Archaeology Southwest staff visited Washington, D.C. to advocate for the permanent protection of Bears Ears. Additionally, Archaeology Southwest's Executive Director engaged with then-Secretary Jewell regarding the importance of designating the Bears Ears region a national monument.

41. Archaeology Southwest will suffer direct and immediate injury from the revocation of the designation of the landmarks, structures, and objects of the Bears Ears National Monument. As a result of the Trump Administration's efforts to revoke the national monument designation, Archaeology Southwest will need to divert its limited resources from other preservation efforts to continuing support of the Bears Ears National Monument. For example, Archaeology Southwest has organized a team to put together a second magazine issue highlighting the value and importance of the area. In addition, Archaeology Southwest worked with Friends of Cedar Mesa to organize and implement an August 23, 2017 gathering of professional archaeologists who are experts in the Bears Ears region to identify important archaeological resources, important research issues, and important protection priorities for Bears

Ears National Monument. To that end, Archaeology Southwest staff members have devoted extraordinary amounts of effort to planning, implementing, and preparing a public report on this expert gathering. Additional efforts will be necessary.

42. But for President Trump's actions, Archaeology Southwest would focus its resources and quarterly magazine on other areas and projects. Archaeology Southwest has also diverted the time and effort of its staff as well as its financial resources to raising awareness for the Bear Ears National Monument – actions that would be unnecessary if its national monument designation had not been illegally revoked by President Trump. Because it is a small non-profit organization, the diversion of resources has a significant effect on Archaeology Southwest's ability to carry out its mission of preservation archaeology for other areas in need of protection.

#### **Patagonia Works**

43. Patagonia Works ("Patagonia") is an outdoor apparel company with a 40-year history of environmental conservation and activism. Protecting and preserving the environment is a core business tenet as reflected in Patagonia's mission statement: "Build the best product, cause no unnecessary harm, use business to inspire and implement solutions to the environment crisis." The company's specific public benefit purposes of business, conservation and social equity are recognized and mandated by California law because Patagonia is a California benefit corporation. Cal. Corp. Code §§ 14600 *et seq.* See Patagonia Works, Restated Articles of Incorporation (filed with Ca. Sec'y of State, Oct. 10, 2013). Among other things, Patagonia is legally required to: (i) contribute one-percent (1%) of its annual net revenue to non-profit charitable organizations that promote environmental conservation and sustainability; (ii) create a material positive impact on society and the environment, and (iii) consider the impact of any

action on its workforce, customers and the environment. Patagonia's corporate headquarters are located in Ventura, California.

44. Consistent with its statutorily recognized specific public benefit purposes, Patagonia has donated more than \$89 million to thousands of grassroots environmental groups, with more than \$7 million in grants made in 2016 alone. In addition to providing funding to these groups, Patagonia has invested substantial company resources to amplify their message, using its own marketing platforms and employee time to advocate for their shared conservation goals. Patagonia has also provided tactical support for the groups it funds, including hosting a bi-annual "Tools for Grassroots Activists" conference, where it brings together environmental nonprofits with advocacy experts to train nonprofit employees on executing their mission.

45. Many of the groups receiving Patagonia's support over the past forty years have worked to protect threatened wild places and other special public landscapes in their local communities, including through national monument designations. These groups have galvanized local support for the designations that now ensure the protection of the following national monuments: (1) the Basin and Range National Monument in Nevada; (2) the Berryessa Snow Mountain National Monument in California; (3) the Castle Mountains National Monument in California; (4) the Mojave Trails National Monument in California; (5) the Sand to Snow National Monument in California; (6) Gold Butte National Monument in Nevada; and (7) Bears Ears National Monument in Utah.

46. Patagonia has a long history in the Bears Ears area because it provides some of the best rock climbing in North America. Patagonia's employees have visited Bears Ears numerous times for various purposes, including but not limited to, product testing, marketing, professional training, fitness, education, recreation, spiritual and aesthetic enjoyment, and other



purposes. Bears Ears is used for similar purposes by Patagonia's customers and sponsored athletes. Patagonia's workforce and many of its customers intend to visit Bears Ears in the future.

47. In 2013, recognizing the Bears Ears area as one under threat from development that would materially alter the landscape and irreparably harm the cultural objects inexorably linked to the land, Patagonia became directly engaged in the effort to preserve and protect it. Since that time, Patagonia has collaborated with and provided grants to groups supporting the creation and preservation of a Bears Ears national monument.

48. Patagonia also dedicated substantial resources to creating, and now preserving, the national monument designation and educating the public on the unique and unrivaled natural setting of the Bears Ears area, as well as the threats posed to natural and cultural resources the area contains. This effort included the production of the 2015 film "Defined by the Line," which followed Josh Ewing of Friends of Cedar Mesa as he described the unique and threatened features of the region and depicted oil and gas development threats, and the 2017 interactive film allowing viewers to tour Bears Ears and experience the landscape that is preserved within the monument to build awareness of and support for the monument. Patagonia also advocated for creating a national monument at Bears Ears through its marketing channels, including its company website, on its social media platforms that have several million followers, and through its catalogs and company blog.

49. Patagonia's advocacy efforts supporting the protection of Bears Ears also include organizing phone, social media and letter-writing campaigns, and meeting with state and federal government officials, including staff at the U.S. Department of the Interior, BLM, and the White House Council on Environmental Quality, as well as Utah's governor and congressional

representatives. Patagonia's CEO, Rose Marcario, and the Outdoor Industry Alliance brought together industry leaders and companies to present a unified industry position in support of Bears Ears. The company's founder, Yvon Chouinard, penned opinion pieces in the *Los Angeles Times* and *Salt Lake Tribune* supporting Bears Ears' monument designation and the preservation of public lands. Patagonia has had to, and must now continue to, divert resources from ongoing and future strategic priorities that have, and will continue to, impair Patagonia's ability to expand upon its mission and its specific public benefit purposes as a benefit corporation. Patagonia's executives and many others have redirected their time and attention from other corporate goals and priorities to the effort to preserve the Bears Ears National Monument.

50. Patagonia will suffer direct and immediate injury from the revocation of the designation of the landmarks, structures, and objects of the Bears Ears National Monument. By virtue of its long history in the region, its statutory purposes and obligations as a California benefit corporation that require Patagonia to use its business to conserve public lands like Bears Ears, its substantial investment of financial support, and employee time, into the establishment and defense of the Bears Ears National Monument, the revocation of the Bears Ears National Monument and will cause Patagonia to suffer an immediate and irreparable injury. As a result of President Trump's actions, Patagonia will be forced to divert more resources away from other organizational activities in support of conservation and social equity and towards protection and restoration of the objects comprising the Bears Ears National Monument.

51. Patagonia's employees and sponsored athletes regularly visit the region to climb, run, and explore areas now protected by the Bears Ears National Monument. The objects of historic and scientific interest comprising the Bears Ears National Monument are critical to the use and enjoyment of Patagonia's employees and sponsored athletes.

**The Access Fund**

52. The Access Fund (“Access Fund” or “AF”) has a dual mission to create, protect, and enhance access to rock climbing areas nationwide, and to conserve the climbing environment. To achieve its conservation mission, AF encourages and promotes environmental stewardship within the nation’s rock climbing community and also engages in specific land management issues that threaten to affect the environmental quality of the nation’s climbing areas.

53. AF is a non-profit organization exempt from taxation under 26 U.S.C. § 501(c)(3) and an accredited land trust representing the interests of millions of climbers and mountaineers nationwide. AF is headquartered in Boulder, Colorado.

54. AF is the largest U.S. climbing advocacy organization with approximately 15,000 members and 100 local affiliates, including the Friends of Indian Creek, which was established to focus on stewardship projects within the Bears Ears National Monument. AF provides climbing management expertise, stewardship, project-specific funding, and educational outreach. Utah is one of AF’s largest member-states. AF members from the State of Utah and across the country regularly climb in the Bears Ears National Monument.

55. For nearly twenty years, AF’s policy program has engaged in land management issues within the State of Utah. AF’s efforts in Utah include participating as a leading stakeholder in the BLM Monticello Field Office’s Indian Creek Corridor planning process, as well as advocating for climbing interests for three years during attempts to pass Utah Congressman Bishop’s Public Lands Initiative.

56. The Access Fund also employs six professional trail builders and conservation specialists (“AF Conservation Team”) to help local climbing communities assess impacts and



climbing area conservation needs, address general conservation needs, and provide training on stewardship planning and best practices for keeping their climbing areas healthy. The AF Conservation Team has spearheaded and worked on numerous stewardship projects within the Bears Ears National Monument, resulting in camping and parking improvements, the installation of toilets, and the construction and maintenance of climbing access trails.

57. AF staff dedicated hundreds of hours engaging with a wide range of stakeholders, including tribal interests, local government, the conservation community, and recreation groups to advocate for permanent protection for the Bears Ears region through national monument designation. This collaborative process resulted in the Bears Ears Inter-Tribal Coalition submitting a letter to the Secretary of the Interior endorsing the inclusion of climbing as a legitimate use of monument lands in the presidential proclamation. AF later submitted its own letter to the Secretary of the Interior formally endorsing the establishment of a Bears Ears National Monument and advocating for the inclusion of climbing as a legitimate use of monument lands in the presidential proclamation. Ultimately, for the first time in history, President Obama expressly mentioned rock climbing as one of the recreational opportunities to be protected through the establishment of the Bears Ears National Monument.

58. AF members regularly visit the Bears Ears region to climb, hike, camp, canyoneer, and explore in the areas now protected by the Bears Ears National Monument. In addition to the beauty and solitude afforded by the Bears Ears region, AF members enjoy visiting and viewing the vast cultural resources contained in the Bears Ears region, which contribute significantly to their spiritual and aesthetic enjoyment of the area. Thus, the objects of historic and scientific interest comprising the Bears Ears National Monument are critical to AF members' use and enjoyment of the National Monument.

**The National Trust for Historic Preservation**

59. Plaintiff the National Trust for Historic Preservation in the United States (the “National Trust”) is a private charitable, educational, non-profit corporation chartered by Congress in 1949 to protect and defend America’s historic resources, to further the historic preservation policy of the United States, and to facilitate public participation in the preservation of our nation’s heritage. *See* 54 U.S.C. § 312102.

60. The mission of the National Trust is to provide leadership, education, and advocacy to save America’s diverse historic places and revitalize our communities. The statutory powers of the National Trust include the power to bring suit in its corporate name. *Id.* § 312105(c). Consistent with its congressional charter and its statutory powers, the National Trust has participated in numerous actions to enforce federal laws that protect historic and cultural resources, including actions to protect national monuments.

61. The National Trust is headquartered in Washington, D.C., has a number of field offices around the country and twenty-seven Historic Sites that are open to the public across the United States. The National Trust has more than one million members and supporters around the country.

62. For more than a decade, the National Trust has been intensively involved in and has contributed substantial funding to protect cultural resources within Bears Ears and to support the effort to designate the Bears Ears National Monument. For example, the National Trust has made grants totaling approximately \$50,000.00 to support research projects in areas within Bears Ears, including providing funding to BLM that was used for stabilizing Chacoan walls in Arch Canyon. The National Trust helped fund a publication called “*Cliff Dwellers of Cedar Mesa*” intended to increase public awareness and understanding of the history of the Bears Ears area.

63. The National Trust also commissioned additional research within the past decade, including Class I cultural resource surveys for Cedar Mesa, and the National Trust prepared a heritage and eco-tourism report. The National Trust has also provided technical assistance and support to grassroots groups, and has undertaken efforts to educate the public and policymakers about the history and significance of the Bears Ears National Monument and the threats to its preservation. In September 2014, the National Trust designated the area that later became Bears Ears National Monument as a National Treasure, and in September 2016 Bears Ears was named to the National Trust's annual list of "America's 11 Most Endangered Historic Places." These designations helped to build public awareness of the cultural resources at Bears Ears.

64. Members of the National Trust regularly visit the Bears Ears region to hike, camp, and explore in the areas within the Bears Ears National Monument. The objects of historic and scientific interest within the Bears Ears National Monument are critical to the members' use and enjoyment of the monument.

#### **The Society of Vertebrate Paleontology**

65. The Society of Vertebrate Paleontology ("SVP") is the world's largest paleontological organization. SVP's mission is four fold: (1) to promote and advance the science of vertebrate paleontology around the world; (2) to serve the common interest of and facilitate cooperation between all persons concerned with the history, evolution, ecology, comparative anatomy, and taxonomy of vertebrate animals, as well as the field occurrence, collection, and study of fossil vertebrates and the stratigraphy of the beds in which they are found; (3) to support and encourage the discovery, conservation, and preservation of vertebrate fossils and fossil sites; and (4) to foster scientific, educational, and personal appreciation and understanding of vertebrate fossils and fossil sites by its paleontologists and the general public.

66. SVP is a non-profit organization exempt from taxation under 26 U.S.C. § 501(c)(3). It is incorporated under the laws of California and headquartered in Bethesda, Maryland.

67. SVP's membership includes more than 2,200 scientists, students, artists, and other individuals interested in the science of vertebrate paleontology across the United States and abroad.

68. Founded in 1940, SVP has been a leader in the paleontological community for nearly eighty years. It holds an annual scientific conference, publishes journals and a memoir series of vertebrate paleontological research, engages in education and outreach, and participates in activities relating to the preservation of scientifically important vertebrate paleontological resources.

69. SVP has been advocating for decades to conserve public lands as a means of ensuring access to and protection of paleontological resources. Beginning in 1991, SVP successfully argued against bills in the United States Senate that would have permitted commercial collecting on public lands, and SVP continued to work with Congress and executive agencies to increase protections for vertebrate fossils. In 2009, SVP was instrumental in passing the Omnibus Public Land Management Act of 2009.

70. SVP and its members have devoted substantial time and resources to the protection of paleontological resources within the Bears Ears National Monument. SVP especially focused its advocacy efforts on explicit recognition of paleontology as a value to be protected by the monument designation. As the organization learned through its experience with the designation of the Grand Staircase-Escalante National Monument, that recognition prompts federal agencies to prioritize paleontological research over other uses of the land, and it enhances

funding opportunities for research through the National Landscape Conservation System.

71. SVP members regularly visit the Bears Ears National Monument to conduct research on paleontological resources within the boundaries described by Proclamation 9558. SVP members have also published extensively on paleontological research within the area of the Bears Ears National Monument and have done so since at least 1965. In collaboration with the BLM, SVP members have also participated in educational outreach activities about the paleontological research at the Bears Ears National Monument before and after its designation. The objects of historic and scientific interest within the Bears Ears National Monument are critical to the members' present and future research within the National Monument.

## **II. Defendants**

72. Defendant Donald Trump is the President of the United States. In his official capacity, he signed and issued the Revocation Proclamation revoking and replacing the Bears Ears National Monument. The President resides and conducts his duties in Washington, D.C.,

73. Defendant Ryan K. Zinke is the Secretary of the United States Department of the Interior. In his official capacity, he is charged with ensuring that the Department of the Interior and its constituent agencies, including BLM, fulfill their duties. These duties include management of the Bears Ears National Monument in accordance with the mandates of the Omnibus Public Land Management Act of 2009 and Proclamation 9558. The Secretary of the Interior resides and conducts his duties in Washington, D.C.

74. Defendant Sonny Perdue is the Secretary of the United States Department of Agriculture. In his official capacity, he is charged with ensuring that the Department of Agriculture and its constituent agencies, including the U.S. Forest Service, fulfill their duties. These duties include management of areas within the Bears Ears National Monument in accordance with law and Proclamation 9558. The Secretary of Agriculture resides and conducts



his duties in Washington, D.C.

75. Defendant Brian Steed is the Deputy Director, Programs and Policy, of the Bureau of Land Management. In his official capacity, he exercises the authority of the Director of the Bureau of Land Management and is charged with ensuring that BLM fulfills its duties. These duties include management of the Bears Ears National Monument in accordance with the mandates of the Omnibus Public Land Management Act of 2009 and Proclamation 9558. Upon information and belief, the Deputy Director, Programs and Policy, of the Bureau of Land Management resides and conducts his duties in Washington, D.C.

76. Defendant Tony Tooke is the Chief of the United States Forest Service. In his official capacity, he is charged with ensuring that the United States Forest Service fulfills its duties. These duties include the management of areas within the Bears Ears National Monument in accordance with law and Proclamation 9558. The Chief of the United States Forest Service resides and conducts his duties in Washington, D.C.

#### **LEGAL FRAMEWORK**

77. The Property Clause of the United States Constitution states that “[t]he 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[.]” U.S. Const. art. IV, § 3, cl. 2. The United States Constitution thus grants Congress the exclusive authority for regulation of public lands. Absent a congressional delegation under the Property Clause, the President lacks any authority over public lands.

78. The Take Care Clause of the United States Constitution states that the President “shall take Care that the Laws be faithfully executed[.]” U.S. Const. art. II, § 3, cl. 5.

79. 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).

80. The Antiquities Act also states that “[t]he President may reserve parcels of land as a part of the national monuments. The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.” 54 U.S.C. § 320301(b).

81. The Antiquities Act does not authorize the President to revoke the national monument status of landmarks, structures, and objects previously designated as such.

82. The Antiquities Act does not authorize the President to modify the reservation of land for a national monument, *e.g.*, land use restrictions, in such a way as to deprive the landmarks, structures, and objects comprising the monument of proper care and management.

83. The Antiquities Act does not authorize the President to modify the parcels of land reserved for a national monument in such a way as to make the reservation incompatible with the proper care and management of landmarks, structures, and objects comprising the monument.

84. The Omnibus Public Land Management Act of 2009 provides that all lands within national monuments administered by BLM become part of the National Landscape Conservation System. 16 U.S.C. § 7202(b)(1)(A).

85. The Omnibus Public Land Management Act of 2009 commands the Secretary of the Interior to manage all lands within the National Landscape Conservation System in accordance with any applicable law (including regulations) relating to any component of the system and in a manner that protects the values for which the components of the system were designated. *Id.* § 7202(c).

## FACTS

### I. The Creation of the Bears Ears National Monument

86. On December 28, 2016, President Barack Obama signed Proclamation 9558 establishing the Bears Ears National Monument. 82 Fed. Reg. at 1139.

87. The Bears Ears National Monument, which is located in the southeastern corner of Utah, encompasses a wide variety of historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest situated on approximately 1.35 million acres of federal land. This federal land includes parts of the Manti-La Sal National Forest managed by the United States Forest Service and other land managed by the Bureau of Land Management.

88. The area that makes up the Bears Ears National Monument under Proclamation 9558 has played an integral part in the long history of the West. As early as 13,000 years ago, mobile groups known as the Clovis people hunted along the cliffs and in the canyons of the area, leaving tools and projectiles behind. 82 Fed. Reg. at 1139. Hunters and gatherers followed as far back as 8,500 years ago, succeeded by the Ancestral Puebloans 2,500 years ago. Other peoples such as the Fremont, Numic- and Athabaskan-speaking hunter-gatherers, and the Ute, Navajo, and other Native peoples have used and relied on this area. *Id.*

89. The landscape reflects the marks of these peoples, with petroglyphs and pictographs dating back at least 5,000 years. *Id.* And “[t]he area’s cultural importance to Native American tribes continues to this day.” *Id.* at 1140.

90. Proclamation 9558 sets forth a wide variety of objects of historic and scientific interest as a result of the objects’ cultural importance. These objects include “[a]bundant rock art, ancient cliff dwellings, ceremonial sites, and countless other artifacts [that] provide an extraordinary archaeological and culture record[.]” *Id.* at 1139. That record contains, among other items, tools, projectile points and other weapons, baskets, pottery, family dwellings,



granaries, kivas, towers, villages, roads, Moki steps carved into canyon walls, petroglyphs, pictographs, and Navajo hogans. *See id.* at 1139-40.

91. These objects also include unique natural formations that Native American tribes have tied to their stories of creation, of danger, of protection, and of healing. *Id.* at 1140. And the ecological resources of the area provide medicinal and ceremonial plants, edible herbs, and crafts. *Id.* Moreover, Native American knowledge of those ecological resources itself provides a resource for managing the landscape on behalf of future generations. *Id.*

92. Other objects of historic and scientific interest within the Monument played a central role in the Euro-American development of the West. *Id.* Observers of the Mormon faith traced their route through the area, “smooth[ing] sections of the rock surface and construct[ing] dugways and other features still visible along their route.” *Id.* Not to be outdone, outlaws like Butch Cassidy and the Sundance Kid used a complex trail network “to avoid detection.” *Id.*

93. The National Monument also consists of objects that are landscape in scale and beyond the interaction of humans with the landscape: The area offers “stunning geology,” extensive paleontological resources, and innumerable ecological resources. *Id.* at 1140-41. The landscape and geography includes cliffs, canyons, desert, mesas, mountains, meadows, forests, grasslands, rivers, ridges, rock formations, stone spires, hoodoos, and, naturally, the buttes that give the Bears Ears area its name. *Id.* at 1139-42.

94. The designated objects of the Bears Ears National Monument also include habitat supporting plant life of scientific, cultural, and ecological significance, including many species or subspecies of trees, shrubs, yucca, cacti, grasses, and wildflowers. In particular, the area offers a wide diversity of soils and microenvironments that can support a breadth of flora and fauna. *Id.* at 1141-42.

95. The National Monument protects habitat supporting animal life of scientific, cultural, and ecological significance, including mule deer, elk, bighorn sheep, foxes, bobcats, mountain lions, eagles, falcons, hawks, owls, and bats. *Id.* at 1142.

96. Paleontological evidence of past landscapes and life are also preserved in Proclamation 9558. “The paleontological resources in the Bears Ears area are among the richest and most significant in the United States, and protection of this area will provide important opportunities for further archaeological and paleontological study.” *Id.* at 1141. There are a wealth of fossil resources in the following areas of the National Monument: Arch Canyon, Comb Ridge, the Valley of the Gods, Indian Creek, and the Chinle, Wingate, Kayenta, and Navajo Formations. *Id.*

97. The designation of the Bears Ears National Monument preserves critical values connected with these numerous, unique landmarks, structures, and objects of scientific, cultural, and ecological significance, and with culturally important and interconnected landscape across 1.35 million acres of federal land. These values include at least:

- a. preservation and appreciation of an extraordinary archaeological and cultural record, *see* 82 Fed. Reg. at 1139;
- b. the landscape’s sacredness to the Tribes and its continuing cultural importance to their members, *see id.*;
- c. preservation and appreciation of ancient artistry and architecture, *see id.*;
- d. opportunities to study the landscape’s stunning geology, *id.* at 1140;
- e. preservation and appreciation of paleontological resources, *id.* at 1141;
- f. appreciation of the landscape’s visual and auditory aesthetic value, *id.*;

- g. preservation of the landscape's ecological resources and systems, which provide habitat, water-filtering, hunting, pasturing, and other goods, *see id.* at 1141-42;
- h. enjoyment of the landscape through outdoor recreation, *id.* at 1143;
- i. economic opportunity through travel and tourism, *id.*; and
- j. recognition of the importance of tribal participation in the care and management of the objects identified in Proclamation 9558 and a commitment to ensuring that management decisions affecting the Bears Ears National Monument reflect tribal expertise and traditional and historical knowledge, *see id.* at 1144.

98. To protect these values, Proclamation 9558 reserved lands from certain uses and imposed certain conditions and directives in that reservation. *See id.* at 1143.

99. Most notably, President Obama established a Bears Ears Commission composed of one representative from each of the Navajo, Hopi, Zuni, Ute Indian, and Ute Mountain Ute Tribes (the Tribes, as referenced above). *Id.* at 1144. The Secretaries of the Interior and Agriculture must “meaningfully engage the Commission” or its successor entity in the development of management plans for and management of the Bears Ears National Monument. *Id.* The Secretaries must particularly “carefully and fully consider integrating the traditional and historical knowledge and special expertise” of the Commission. *Id.*

100. Proclamation 9558 established a boundary encompassing 1.35 million acres of federal land and withdrew all federal lands within the Bears Ears National Monument from all forms of entry, location, selection, sale, or other disposition under the public land laws, including mining laws, or the laws applicable to the United States Forest Service. *Id.* at 1143.

101. Proclamation 9558 also protected lands within Bears Ears National Monument from oil and gas leasing and development. *Id.* at 1143. The Mineral Leasing Act of 1920,

which governs oil and gas leasing on federal land, excludes from mineral leasing land designated as a national monument. 30 U.S.C. § 181. Applying this authority, Proclamation 9558 mandated that all federal public land within the National Monument was “appropriated and withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws . . . and from disposition under all laws relating to mineral and geothermal leasing.” 82 Fed. Reg. at 1143. As a result, the proclamation protects the entirety of the over 1.35 million-acre designation and permanently withdraws it from future oil and gas leasing and development.

102. Under Proclamation 9558, the Secretary of the Interior and the Secretary of Agriculture are responsible for the management of the Bears Ears National Monument through the Bureau of Land Management and the United States Forest Service, respectively. *Id.*

103. The Secretary of the Interior is responsible for managing those parts of the Bears Ears National Monument not contained within the boundaries of the National Forest System. All such lands within the Secretary’s responsibility are to be managed as part of the National Landscape Conservation System. *Id.*

104. Under Department of the Interior policy, all National Conservation Lands must be managed “to protect the values for which they were designated, including, where appropriate, prohibiting uses that are in conflict with those values.” Ken Salazar, Sec’y of the Interior, Order 3308: Management of the National Landscape Conservation System, ¶ 4a (2010). The same policy directs that National Conservation Lands, including national monuments, “shall be managed as an integral part of the larger landscape[.]” *Id.* ¶ 4b.

105. Under BLM policy, the agency will take a variety of actions to incorporate the values of a national monument designation and implement the commands of the Omnibus Public

Land Management Act of 2009. *See* BLM Manual 6220: National Monuments, National Conservation Areas, and Similar Designations, ¶ 1-1 (Jan. 25, 2017). These actions include:

- a. managing national monuments to conserve, protect, and restore nationally significant landscapes, *see id.* ¶ 1-6.A.1;
- b. managing discretionary uses in a manner consistent with the protection of a monument's values, including prohibiting such uses where necessary, *see id.* ¶ 1-6.A.2;
- c. inventorying and monitoring the objects and values for which a national monument was designated, *see id.* ¶ 1-6.A.3;
- d. managing valid existing rights and other non-discretionary uses in a manner that mitigates, to the greatest extent possible, impacts to the objects and values for which a monument was designated, *see id.* ¶ 1-6.A.4;
- e. engaging the public on monument lands through education, interpretation, partnerships, and volunteer and job opportunities, *see id.* ¶ 1.6.A-5;
- f. fostering active volunteer programs for monuments to enhance a public sense of stewardship and to accomplish high-priority work, *see id.* ¶ 1.6.A.6;
- g. utilizing the best available science to manage monuments, *see id.* ¶ 1.6.A.7;
- h. appointing a manager for each new monument who has decision-making and supervisory authority and whose primary duty is to manage the monument, *see id.* ¶ 1.7.D.3;
- i. clearly identifying objects and values described in the proclamation during land use planning, and, where those objects and values are described in broad

- categories, identifying the specific resources within the monument that fall into those categories, *see id.* ¶ 1.12.G.4.a;
- j. developing and sustaining diverse partnerships dedicated to conserving, protecting, restoring, and interpreting national monuments, *see id.* ¶ 1.14.J.1;
  - k. supporting formalized partnership agreements, such as Friends' Groups, for each monument, *see id.* ¶ 1.14.J.2;
  - l. providing access for recreational opportunities within a national monument, where recreational values are identified in the proclamation, and conserving, protecting, and restoring those values, *see id.* ¶ 1.14.K.1;
  - m. promoting national monuments as sites for scientific research, *see id.* ¶ 1.15.M.2; and
  - n. developing and updating science plans for each monument, with particular attention to organizing scientific reports and compiling and synthesizing prior research, *see id.* ¶ 1.15.M.3.f.

106. The Secretary of Agriculture is responsible for managing those parts of the Bears Ears National Monument contained within the boundaries of the National Forest System. All such lands within the Secretary's responsibility are to be managed as part of the Manti-La Sal National Forest. 82 Fed. Reg. at 1143.

107. As part of their management responsibilities, the Secretary of the Interior and the Secretary of Agriculture must, "to the maximum extent permitted by law and in consultation with Indian tribes, ensure the protection of Indian sacred sites and traditional cultural properties in the monument and provide access by members of Indian tribes for traditional cultural and customary uses[.]" *Id.* at 1145. These traditional uses include "collection of medicines, berries



and other vegetation, forest products, and firewood for personal noncommercial use in a manner consistent with the care and management of the objects” comprising the Monument. *Id.*

108. The Secretaries must together prepare a transportation plan for the Bears Ears National Monument “[f]or the purposes of protecting and restoring” those same objects. *Id.* at 1145. Under this plan, “motorized and non-motorized mechanized vehicle use shall be allowed only on roads and trails designated for such use, consistent with the care and management of such objects.” *Id.* “Any additional roads or trails designated for motor vehicle use must be for the purposes of public safety or protection of such objects.” *Id.*

109. As described in Proclamation 9558, the Bears Ears National Monument contains objects of historic and scientific interest that are integral to our identity as a nation and should, accordingly, be protected for the public good consistent with the authority that the Antiquities Act grants the President to so designate these areas.

## **II. The Process Leading to Creation of the Bears Ears National Monument**

110. The recent designation of the Bears Ears National Monument through Proclamation 9558 is the product of years of public advocacy and engagement by Plaintiffs, tribal nations, and other groups with interests in protecting the cultural, historic, and ecological heritage of southeastern Utah.

111. Members of Native American tribes with ties to the southeastern Utah area began organizing a proposal for protection of the Bears Ears area in 2010. Bears Ears Inter-Tribal Coalition, *Proposal to President Barack Obama for the Creation of Bears Ears National Monument* 3 (2015), <http://utahdinebikeyah.org/wp-content/documents/Bears-Ears-Inter-Tribal-Coalition-Proposal-10-15-15.pdf>.

112. In 2011, the President of the Navajo Nation sent a letter to then-Secretary of the Interior Ken Salazar proposing a new national monument protecting the Bears Ears area. The

Navajo Nation is located in northwestern New Mexico, northern Arizona, and Southeastern Utah.

113. By mid-2013, Utah Diné Bikéyah had conducted more than 70 interviews of Native elders and experts to understand traditional cultural uses in San Juan County, Utah. UDB also carried out research from all seven Utah Chapter Houses (local government entities of the Navajo Nation), held dozens of community meetings on this issue, obtained tens of thousands of statements of support, developed GIS data of the area for its decision support tool, and held several gatherings of the Tribes at Bears Ears to discuss land protection strategies.

114. In 2013, UDB and the Navajo Nation presented a proposal to the San Juan County Commission for a national conservation area to be jointly managed by Tribal Nations. This proposal anticipated the enactment of a federal Public Lands Initiative program in which the County would play a role. Congress never enacted the Public Lands Initiative, and the San Juan County Commission did not respond to the proposal. In fact, the San Juan County Commission later advocated for the creation of an “energy zone” across a vast swathe of the Bears Ears area.

115. In September 2014, the Hopi Tribe, located in Arizona, petitioned President Barack Obama and the Utah congressional delegation for designation of the Bears Ears region as a national conservation area or a national monument. The Hopi Tribe emphasized the cultural importance of the Bears Ears region and explained the need for monument designation since the region’s archaeological, natural, and geographic resources had been degraded by “looting, federal management inadequacies, industrial development,” and “inappropriate all terrain vehicle use.”

116. On November 19, 2014, the All Pueblo Council of Governors, which represents the Pueblo tribes located largely in New Mexico, passed a resolution supporting the “permanent,



long-term protection of cultural resources and sacred sites on public land in the Greater Cedar Mesa region through designation such as a National Conservation Area or a National Monument.”

117. On February 9, 2015, the Hualapai Tribal Council of the Hualapai Tribe in Arizona approved a resolution supporting the designation of the Bears Ears area as a National Conservation Area or a National Monument.

118. In March 2015, the Naabik'í yáti' Committee of the 23rd Navajo Nation Council unanimously approved a resolution supporting UDB's proposal for federal designation of the Bears Ears area as a national conservation area or a national monument. The resolution concluded that designation of the area as a national conservation area or national monument “will provide important consistency and quality to management of these lands,” especially because “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[.]”

119. In April 2015, groups including CLF, Friends of Cedar Mesa, and UDB united their ongoing efforts as a group of supporting organizations to advance and publicize proposals for federal protection of the Bears Ears region.

120. On July 14, 2015, the Tribal Business Committee of the Ute Indian Tribe, located in northeastern Utah, resolved to support the permanent protection of the Bears Ears region. The Committee explained that “Native American traditional and cultural sites need protection from outside threats such as mineral development, indiscriminate off-road vehicle use, and looting.”

121. Also in July 2015, the Assistant Secretary of Indian Affairs for the Department of the Interior, the National Park Service Director, the Deputy Director of the Bureau of Land

Management, and the Deputy Under Secretary for Natural Resources and Environment for the Department of Agriculture attended the 2nd Bears Ears Inter-tribal Gathering. There, the federal officials met with Tribal leaders and representatives from other stakeholders to discuss protection of the Bears Ears area.

122. In October 2015, the Bears Ears Inter-Tribal Coalition released a formal proposal for the designation of the Bears Ears National Monument under the Antiquities Act. This proposal called for a monument encompassing 1.9 million acres, based on the boundaries proposed in the Public Lands Initiative, to be jointly managed by a group of Tribes.

123. On March 7, 2016, the Executive Directors of CLF and Friends of Cedar Mesa, along with their counterparts from five other conservation non-profits, wrote President Barack Obama to express their support for the proposal of the Bears Ears Inter-Tribal Coalition. On the same day, the Zuni Tribal Council passed a resolution supporting “the permanent protection of the Bears Ears region and its cultural and natural resources through a national monument designation[.]”

124. On March 25, 2016, the Hopi Tribal Council approved a resolution supporting “the 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.”

125. On June 9, 2016, members of the Utah Tribal Leaders Association passed a joint resolution calling for protection of the Bears Ears area as a national monument.

126. In June 2016, Archaeology Southwest and Friends of Cedar Mesa issued an open letter to President Barack Obama, signed by several hundred professional archaeologists, calling for the protection of artifacts in the Bears Ears area through the Antiquities Act. The archaeologists explained: “The Bears Ears cultural landscape is full of stunning and remarkably

well preserved cliff dwellings. Countless mesa-top pueblos, shrines and ancient roads attest to the tenacity of ancient inhabitants. Internationally important petroglyph and pictograph panels inspire visitors with the artistry of ancient storytellers. Undisturbed burials still cradle the ancestors of many regional Native American tribes. The preservation and density of these cultural resources rival and perhaps exceed those found within many nearby national parks and monuments. With more than 100,000 archaeological sites, the Bears Ears region is filled with exactly the kinds of ‘objects’ the 1906 Antiquities Act was created to protect.” The archaeologists further explained that vandalism and removal of artifacts “continue at an alarming rate, with several dozen incidents in the last two years. Increasing visitation combined with a severe lack of resources for effective management and enforcement also create newer but no less menacing challenges to archaeology in the region.”

127. On July 16, 2016, then-Secretary of the Interior Sally Jewell, the Directors of the Bureau of Land Management and the National Park Service, the Under Secretary for Natural Resources and Environment for the Department of Agriculture, and other federal officials held a public meeting on community preferences for the federal lands at the Bluff Community Center in Bluff, Utah. Over 1,500 citizens attended this meeting, with most of those who spoke supporting permanent protection for Bears Ears. The majority of nearly 600 written comments also supported further federal protection.

128. In October 2016, SVP members and other paleontologists sent a letter to President Obama explaining that the area holds some of the richest and most significant paleontological resources in the United States, many of which have yet to be scientifically examined. These members urged the President to exercise his authority under the Antiquities Act to protect the known and as-yet-undiscovered paleontological resources from collection or destruction; the

members also sought designation to promote scientific research in the area.

129. In November 2016, SVP sent a letter on behalf of the entire organization urging President Obama to protect the paleontological resources within the Bears Ears area. SVP specifically asked that the President recognize the value of promoting paleontological research, and, to that end, SVP provided draft language on the area's paleontological resources for use in a proclamation. Much of the information in Proclamation 9558 about the paleontological resources within the Bears Ears National Monument draws directly from this letter and the October 2016 letter from SVP members and other paleontologists, as well as from information provided in meetings between representatives of SVP and the Departments of the Interior and Agriculture.

130. On November 30, 2016, Archaeology Southwest, Friends of Cedar Mesa, and sixteen other archaeological or historical preservation groups wrote President Obama to explain the need for national monument status to protect the Bears Ears area from "illegal looting, mismanaged recreational use, and inappropriate energy development."

131. By the time of its creation, representatives from at least ten tribal government bodies, thirty local Utah officials, over 500 members of the scientific community, sixty-five national business leaders, 180 health professionals, sixteen religious leaders, and numerous non-profit organizations wrote federal officials to express their support for protection of the Bears Ears area.

### **III. President Trump's Attempt To Revoke the Bears Ears National Monument Executive Order 13,792**

132. The President has repeatedly attributed his decision to revoke the Bears Ears National Monument to requests from Senator Orrin Hatch. When the President signed Executive

Order 13,792, which commenced the review of existing national monuments this past spring, he stated he was signing the Order to “end another egregious abuse of federal power,” and “this massive federal land grab . . . has gotten worse, and worse, and worse and now we’re going to free it up.” White House Office of the Press Secretary, *Remarks by President Trump at Signing of Executive Order on the Antiquities Act*, WhiteHouse.gov (Apr. 26, 2017), <https://www.whitehouse.gov/the-press-office/2017/04/26/remarks-president-trump-signing-executive-order-antiquities-act>. At the recent signing ceremony for the Revocation Proclamation, Senator Hatch stated that he approached President Trump in January 2017 with a request for aid in “fixing” the Bears Ears National Monument. *See President Trump Remarks in Utah*, C-SPAN.org (Dec. 4, 2017), <https://www.c-span.org/video/?438061-1/president-trump-reverses-obama-administration-utah-monuments>. The President agreed to “fix it” “without hesitation,” according to Senator Hatch.

133. On April 26, 2017, President Trump signed Executive Order 13,792, entitled “Review of Designations Under the Antiquities Act.” 82 Fed. Reg. 20,429 (May 1, 2017).

134. The Executive Order commands the Secretary of the Interior to review all presidential monument designations or expansions since January 1, 1996, where the designation covers more than 100,000 acres, where the monument after expansion covers more than 100,000 acres, or where the Secretary determines that the designation or expansion occurred without adequate public outreach. *Id.* Executive Order 13,792 does not explain the basis for the selection of 1996 or 100,000 acres as criteria for determining the monuments reviewed.

135. The Executive Order required the Secretary of the Interior to assess issues outside the scope of the legal parameters of the Antiquities Act. For instance, the Executive Order instructs the Secretary of the Interior to review whether “designated lands are appropriately

classified under the [Antiquities] Act as ‘historic landmarks, historic and prehistoric structures, [or] other objects of historic or scientific interest[.]’” *Id.* (first alteration in original) (quoting 54 U.S.C. § 320301(a)).

136. The Executive Order directs the Secretary of the Interior to provide, within 45 days, an “interim report” on the findings of his review “with respect to Proclamation 9558 of December 28, 2016 (Establishment of the Bears Ears National Monument), and such other designations as the Secretary determines to be appropriate for inclusion in the interim report.” *Id.* at 20,340. The interim report must include recommendations for executive, legislative, or other action with respect to Bears Ears National Monument and any other monument included.

137. Executive Order 13,792 further directs the Secretary of the Interior to provide a “final report” to the President on his review of all designations and expansions. This final report must include recommendations for executive, legislative, or other action with respect to each monument. *Id.*

#### **Secretary Zinke’s Interim Report**

138. In response to Executive Order 13,792, the Department of the Interior issued a notice in the *Federal Register* inviting public comment for review by the Secretary. *See* Review of Certain National Monuments Established Since 1996, 82 Fed. Reg. 22,016, 22,016 (May 11, 2017). The notice identified twenty-seven National Monuments subject to the review, including the Bears Ears National Monument. *See id.* at 22,017.

139. The Department of the Interior’s notice did not solicit comments on the need to expand any existing national monument.

140. For the twenty-six monuments besides Bears Ears, the notice set the deadline for comments at July 10, 2017. *See id.* at 22,016. But, for the Bears Ears National Monument, the



notice set the comment deadline at May 26, 2017, a mere fifteen days from its publication. *See id.*

141. UDB, Friends of Cedar Mesa, Archaeology Southwest, CLF, Patagonia, Access Fund, the National Trust, and SVP each submitted at least one comment letter in support of the designation as described in Proclamation 9558.

142. UDB organized a comment-writing drive in which many of its members submitted comments to the Department of the Interior urging the continuation of the Bears Ears National Monument and each providing an explanation of the personal and cultural importance of the monument. *See, e.g.*, Docket ID DOI-2017-0002-114138 (May 26, 2017), <https://www.regulations.gov/document?D=DOI-2017-0002-114138>. UDB also filed a separate comment letter requesting an extension of the comment period and explaining that government officials had made little-to-no effort to gather traditional knowledge of the Bears Ears area held by Native Americans that live in and around the land. *See* Letter from Gavin Noyes, Executive Director, Utah Diné Bikéyah, Docket ID DOI-2017-0002-83535, at 1-2 (May 24, 2017), <https://www.regulations.gov/document?D=DOI-2017-0002-83535>. Without engaging these stakeholders, the Secretary of the Interior would lack “critical information that may be harmed if the boundary is shrunk.” *Id.* at 1.

143. Friends of Cedar Mesa submitted a comment letter asking Secretary Zinke to retain the current boundaries and protections of the Bears Ears National Monument. *See* Letter from Josh Ewing, Executive Director, Friends of Cedar Mesa, Docket ID No. DOI-2017-0002-81604 (May 24, 2017), <https://www.regulations.gov/document?D=DOI-2017-0002-81604>. That letter recounted the seven-year involvement of Friends of Cedar Mesa, and many other local community members, in the movement that eventually culminated with Proclamation 9558. *See*

*id.* at 1-2. Friends of Cedar Mesa also stressed the need for national monument status to protect the 100,000 estimated archaeological and cultural sites in the Bears Ears area—more than any other national park or national monument. *Id.* at 2-3. The vastness of these resources necessitated the increased management attention, extra legal protections, inclusion of all designated objects and lands reserved, and prevention of new extractive activities mandated by Proclamation 9558. *Id.* at 3-5.

144. Archaeology Southwest submitted a resolution by its board of directors affirming the obligation to maintain the Bears Ears National Monument. *See* Resolution of Board of Directors for Archaeology Southwest in opposition to any efforts to revoke or diminish Bears Ears National Monument, Docket ID DOI-2017-0002-82235, at 1-2 (May 24, 2017), <https://www.regulations.gov/document?D=DOI-2017-0002-82235>. This resolution rebutted the assumption behind Executive Order 13,792 that Proclamation 9558 did not follow a thorough process of public discussion and stakeholder engagement. *Id.* at 2. Archaeology Southwest also submitted a letter joined by six other non-profit organizations, including Friends of Cedar Mesa, that urged Secretary Zinke to recognize the scientific, cultural, and economic value protected by the boundaries of the Bears Ears National Monument. *See* Letter from Archaeology Southwest, *et al.*, Docket ID DOI-2017-0002-57625, at 1-2 (Mar. 3, 2017), <https://www.regulations.gov/document?D=DOI-2017-0002-57625>.

145. CLF submitted a comment letter explaining the years of local stakeholder engagement that went into the designation of the Bears Ears National Monument. *See* Letter from Edward Norton, Chairman, Conservation Lands Foundation, Inc., Docket ID DOI-2017-0002-90566, at 1-2, 3-4 (May 25, 2017), <https://www.regulations.gov/document?D=DOI-2017-0002-90566>. CLF also detailed the extensive cultural, ecological, geological, paleontological,



and other resources that comprise the monument. *Id.* at 1-3. National monument designation is necessary, CLF explained, to prevent extractive uses that will disrupt or destroy these resources, prevent disposition of the land to non-federal entities, deter looting and vandalism, and generally ensure long-term, landscape-level management planning. *Id.* at 2-3.

146. Patagonia submitted a comment letter explaining that, in sharp contrast to the Secretary's review, "the process to establish a National Monument often takes years, if not decades[.]" and that was exactly the case for Bears Ears National Monument. Letter from Yvon Chouinard, Founder, Patagonia, Inc., and Rose Marcario, President & CEO, Patagonia, Inc., Docket ID DOI-2017-0002-133733, at 1 (May 4, 2017), <https://www.regulations.gov/document?D=DOI-2017-0002-133733>. Patagonia also informed the Department of the Interior of "the enormous economic benefits of protected public lands for nearby communities," as demonstrated by recent empirical research and by job growth near the Grand Staircase-Escalante National Monument. *Id.* at 3. "Rescinding or shrinking the National Monuments under review[.]" including the Bears Ears National Monument, "would significantly impact the strength of the outdoor recreation economy and limit [Patagonia's] ability to create and sustain jobs." *Id.*

147. Access Fund submitted a comment letter explaining that "the process leading to the Bears Ears National Monument designation adequately incorporated public outreach and coordination with relevant stakeholders, and conforms to the requirements of the Antiquities Act of 1906." Letter from Erik Murdock, Policy Director, Access Fund, Docket ID DOI-2017-0002-94640, at 1 (May 25, 2017), <https://www.regulations.gov/document?D=DOI-2017-0002-94640>. In particular, Access Fund explained that its "members from Utah and across the country regularly climb in the Bears Ears National Monument because it is a world-class climbing area

with unique exceptional natural and cultural resource values[,]” and Access Fund provided a map of some of the canyoneering and rock climbing resources most important to its members. *Id.* at 2. Inadequate federal resources and attention, however, endanger these resources. *Id.* Access Fund therefore urged the Department of the Interior to maintain the existing Bears Ears National Monument because “a monument [land management] plan can bring long-overdue landscape-level management to an area threatened by over-use, resource extraction, and a chronic lack of management and agency resources needed to address multiple-use impacts.” *Id.* at 3. Moreover, Access Fund explained the importance of maintaining Proclamation 9558’s explicit recognition of rock climbing as a valued use and the impact of that recognition on the land management process. *Id.* at 3-4.

148. The National Trust submitted a comment letter opposing any reduction or rescission of “protections provided by the existing national monument designation.” Letter from Stephanie K. Meeks, President and CEO, National Trust for Historic Preservation, Docket ID DOI-2017-0002-364407, at 1 (May 25, 2017), <https://www.regulations.gov/document?D=DOI-2017-0002-364407>. The National Trust recounted its history of working hand-in-hand with the Utah congressional delegation to promote conservation initiatives within the state, as well as the National Trust’s efforts in support of the designation of the Bears Ears National Monument. *See id.* at 1-3. Furthermore, the National Trust explained that no reductions in the boundary of the monument could be compatible with the proper care and management of the objects designated by Proclamation 9558. *Id.* at 3. For instance, “archaeologists have overwhelmingly confirmed that there are highly significant prehistoric structures and objects throughout the [Bears Ears National] Monument, along with significant paleontological, geologic, and other scientific resources.” *Id.* at 4. Resources are in fact so numerous, the National Trust explained, that

“[r]ather than being conceived of as a collection of individual or noncontiguous historic sites, the lands within Bears Ears are best treated as a collection of interrelated resources, and their historic significance is best understood in the context of the landscape and setting.” *Id.*

149. SVP submitted a comment letter defending the current boundaries of the Bears Ears National Monument and urging an expansion to protect more paleontological resources. *See* Letter from P. David Polly, President of SVP, *et al.*, Docket ID DOI-2017-0002-100908, at 1 (May 25, 2017), <https://www.regulations.gov/document?D=DOI-2017-0002-100908>. SVP explained that it had provided significant input to the Department of the Interior on paleontological resources protected by the Bears Ears National Monument. *Id.* at 2. SVP further identified the critical role of national monument status, and especially recognition of paleontology in Proclamation 9558, in promoting research and public understand of “scientifically invaluable” fossils within “[a]ll of the areas of Bears Ears[.]”. *Id.* at 2-3; *see also id.* at 10. Along with a bibliography of supporting research, SVP explained the types and importance of fossils within each of area of the Bears Ears National Monument. *Id.* at 3-5.

150. An independent analysis of the comments submitted found the overwhelming majority support the designation of the Bears Ears National Monument as described in Proclamation 9558. *See* A. Weiss, *Utah residents to Ryan Zinke: Hands off Bears Ears!*, (June 9, 2017), <https://medium.com/westwise/utah-residents-to-ryan-zinke-hands-off-bears-ears-e2684046a3b4>; *see also* A. Weiss, *New analysis shows national monument support dominates public comment period*, Medium.com (May 25, 2017), <https://medium.com/westwise/new-analysis-shows-national-monument-support-dominates-public-comment-period-7550888175e>.

151. Before the close of the comment period for Bears Ears National Monument, Secretary Zinke visited the State of Utah to tour part of the Bears Ears area. On May 8, 2017, he

met with representatives of Friends of Cedar Mesa, who provided him with extensive information on the antiquities within the Bears Ears National Monument. Friends of Cedar Mesa also provided the Secretary with an extensive bibliography of archaeological and paleontological research related to areas within the Monument.

152. On the same day, SVP wrote to Secretary Zinke in order to bring his “attention to the scientifically valuable fossil resources found at the Bears Ears National Monument as you tour the area this week.” SVP encouraged him to visit Valley of the Gods, Cedar Mesa, Honaker Trail, Red Canyon and similar formations, Indian Creek, and the Wingate, Kayenta, and Navajo formations. SVP also offered the services of local members to help inform his visit. SVP did not receive a formal reply to its invitation.

153. On June 10, 2017, before the close of the public comment period for all other monuments, Secretary Zinke issued an interim report on the Bears Ears National Monument. *See* Memorandum from Sec’y Ryan Zinke to President Donald Trump, “Interim Report Pursuant to Executive Order 13792,” DOI.gov at 1 (June 10, 2017) [https://www.doi.gov/sites/doi.gov/files/uploads/interim\\_report\\_eo\\_13792.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/interim_report_eo_13792.pdf). In just over one page of analysis, the interim report concludes that the boundary of the Bears Ears National Monument should be reduced. *Id.* at 4-5.

154. The interim report discusses only certain subsets of objects of historic or scientific interest designated under Proclamation 9558 and ignores others. The interim report names, for instance, “archeological sites” as objects of historic or scientific interest, *see id.* at 1, but it nowhere mentions paleontological sites, animal species, plant species, or their habitat.

155. And even for the types of objects it does acknowledge, the interim report does not explain where those objects can be found in the land reserved for the National Monument, which

areas of reserved land should be excluded from the National Monument, what changes, if any, have occurred to the objects designated under Proclamation 9558, or what impacts the removal of national monument status would have on those objects. The interim report offers no analysis or record in support of its conclusion, nor does it address any of the substantive comments provided as part of the truncated public comment period.

156. On the same day that it released Secretary Zinke's interim report, the Department of the Interior issued a press release giving public notice that it would extend the comment period on the Bears Ears National Monument to July 10, 2017, despite the fact that Secretary Zinke had concluded in the interim report that the boundaries of the Bears Ears National Monument should be "modified." *See* Press Release, Dep't of the Interior, at 1 (June 10, 2017), <https://www.regulations.gov/document?D=DOI-2017-0002-153322>.

#### **Secretary Zinke's Final Report**

157. Friends of Cedar Mesa, Archaeology Southwest and Access Fund submitted supplemental comments in response to Secretary Zinke's interim report. These comments reiterated the need to protect the entirety of the landscape and resources within the Bears Ears National Monument.

158. After the issuance of Secretary Zinke's interim report in June, SVP submitted an additional comment defending all non-marine national monuments. *See* Letter from P. David Polly, President of SVP, *et al.*, Docket ID DOI-2017-0002-655559, at 1 (July 9, 2017), <https://www.regulations.gov/document?D=DOI-2017-0002-655559>. In this letter, SVP expanded on the need for national monument status, explaining that such status "allows protection of many sensitive paleontological sites and makes it easier for vertebrate paleontologists to conduct scientific research." *Id.* at 2. As SVP members had learned from the



designation of the Grand Staircase-Escalante National Monument, researchers can more readily obtain permits for access to public lands, and, critically, a monument designation preserves “the geological context” of fossil sites even after collection of the fossils. *Id.* at 3. The preservation of this context allows later replication of studies essential to the scientific method. *Id.* And thanks to their landscape-level scale, national monuments preserve this context across a wide variety of locations and topographies, which allows study of a representative sample of past life in the area. *Id.* In sum, “[n]ational monuments provide an almost ideal level of protection because they are more accessible for research than the more heavily protected national parks and are better protected than undesignated public lands.” *Id.* Rescinding the Bears Ears National Monument, SVP explained, would imperil fossil sites, their geological context, and the future research related to both. *Id.* at 4.

159. The government’s website for the national monument review lists over 2.8 million comments received. *See Review of Certain National Monuments Established Since 1996; Notice of Opportunity for Comment*, Regulations.gov (last visited Dec. 6, 2017), <https://www.regulations.gov/document?D=DOI-2017-0002-0001>. Upon information and belief, the vast majority of comments on the Bears Ears National Monument submitted through July 10, 2017, support the designation of the Monument as described in Proclamation 9558.

160. On August 21, 2017, Friends of Cedar Mesa transmitted to the Department of the Interior an exhaustive expert report compiling the current significant archaeological research of the area comprising the Bears Ears National Monument, the subject of Proclamation 9558. This report conclusively demonstrates that current research has identified significant archaeological and cultural resources throughout each of ten sub-regions of the Bears Ears National Monument, including areas excluded by the Revocation Proclamation. Upon information and belief, the

Department of the Interior had available to it the archaeological research comprising the foundation of the Friends of Cedar Mesa expert report at the time Secretary Zinke issued his interim report, but the Department of the Interior and Secretary Zinke did not address the findings contained therein. The Department of the Interior has not provided any substantive response to the content of the report.

161. Upon information and belief, Secretary Zinke transmitted a “draft” final report to President Trump on or about August 24, 2017. That draft report was not immediately made public by the Department of the Interior; instead, it issued a two-page document that purports to summarize Secretary Zinke’s recommendations to the President. *See generally* Report Summary by U.S. Secretary of the Interior Ryan Zinke, DOI.gov, <https://www.doi.gov/sites/doi.gov/files/uploads/monument-report-summary.pdf>. This public summary gives no details about particular monuments but states that “monument status has a potential economic benefit of increased visitation, particularly to service related industries, outdoor recreation industries, and other businesses dependent on or supported by tourism.” *Id.* at 2. The public summary also states that “[c]omments received were overwhelmingly in favor of maintaining existing monuments[.]” *Id.* Opponents of current monuments, the summary notes, were commonly associated with timber, mining, and motorized recreation industries. *Id.*

162. Upon information and belief, the Department of the Interior did not engage in government-to-government consultations with the Tribes on the content of the final report.

163. The Department of the Interior made Secretary Zinke’s final report public on December 5, 2017, one day after President Trump signed the Revocation Proclamation. *See* Dep’t of the Interior, *Secretary Zinke Recommends Keeping Federal Lands in Federal Ownership, Adding Three New Monuments*, DOI.gov (Dec. 5, 2017),

<https://www.doi.gov/pressreleases/secretary-zinke-recommends-keeping-federal-lands-federal-ownership-adding-three-new>. The final report acknowledges that the Bears Ears National Monument contained “cultural and archaeological sites, unique geologic features, and areas important to the practicing of tribal cultural traditions and ceremonies[,]” as well as “areas . . . home to significant recreational opportunities, including hiking, backpacking, canyoneering, mountain biking, and rock climbing.” *See* Memorandum from Sec’y Ryan K. Zinke to President Donald Trump, “Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act,” at 10 (Dec. 5, 2017), [https://www.doi.gov/sites/doi.gov/files/uploads/revised\\_final\\_report.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/revised_final_report.pdf). But the report also expressly disparages the monument status of objects designated under Proclamation 9558, stating that the Bears Ears National Monument “contains many objects that are common or otherwise not of particular scientific or historic interest.” *Id.* The final report does not identify the areas of the monument where these objects could be found or describe other characteristics of these objects.

164. The final report also rejects the designation of many of the types of objects under Proclamation 9558. For example, without reference to facts or evidence, the report claims that “[a]dherence to the Act’s definition of an ‘object’ . . . on some monuments was either arbitrary or likely politically motivated[.]” *Id.* at 2. The final report also criticizes designation of “geographic areas, viewsheds, and ecosystems” as objects of historic or scientific interest, and the report suggests that objects should not be designated under the Antiquities Act if there other, similar objects that exist on separate parcels. *See id.* The final report particularly criticizes the designation of landscapes as objects of historic or scientific interest, reserving an entire section for that stance. *See id.* at 7. The final report does not refer to any legal precedent, such as an



updated analysis from the Office of Legal Counsel, U.S. Department of Justice, or prior case law, to support its stance on objects designated under Proclamation 9558.

165. The final report appearing in press reports did not address with any specificity the comments submitted by Plaintiffs.

166. On September 18, 2017, Archaeology Southwest submitted to the Department of the Interior a report based on publicly releasable information demonstrating how the more than 100,000 archaeological sites that are present within the Bears Ears National Monument represent a dynamic cultural landscape that conveys 13,000 years of human history. The Department of Interior provided no substantive response to this submission.

#### **The Revocation Proclamation**

167. On December 4, 2017, President Trump signed the Revocation Proclamation. *See Presidential Proclamation Modifying the Bears Ears National Monument*, WhiteHouse.gov (Dec. 4, 2017), <https://www.whitehouse.gov/the-press-office/2017/12/04/presidential-proclamation-modifying-bears-ears-national-monument>.

168. The Revocation Proclamation purports to “modify” the boundaries of the Bears Ears National Monument under Proclamation 9558, leaving two smaller “units” or “areas” to be known as Indian Creek and Shash Jáa. *Id.* Together, these putative units would encompass approximately 201,397 acres, thus removing protections from over 1.1 million acres included in Proclamation 9558 as well as landmarks, structures, and thousands of objects of scientific or historic interest contained on or within those lands. *Id.*

169. The Revocation Proclamation purports to revoke the national monument status of those objects designated by Proclamation 9558 that “are not unique to the monument . . . [or] are not of *significant* scientific or historic interest.” *Id.* (emphasis added). Instead, the

Revocation Proclamation protects only what it considers the “*important* objects of scientific or historic interest” designated as part of the Bears Ears National Monument under Proclamation 9558. *Id.* (emphasis added).

170. The Revocation Proclamation further purports to “modify” the boundaries of the National Monument to be confined to the “smallest area compatible with the proper care and management” of only some, but not all, of the objects designated under Proclamation 9558. The Revocation Proclamation states, for instance, that “[s]ome of the existing monument’s objects, or certain examples of those objects, are not within the monument’s revised boundaries[.]” *Id.* Any lands not contained within the boundaries of the new units will be excluded from the protections of the Antiquities Act.

171. The Revocation Proclamation erroneously asserts that the eliminated areas of the Monument will still be protected under other federal statutes, without any legal analysis as to how these laws provide equivalent, permanent protections akin to national monument status. *Id.*

172. The Revocation Proclamation directs that, within 60 days after December 4, 2017, the excluded areas of the National Monument will be open to “entry, location, selection, sale, or other disposition under the public land laws[.]” “disposition under the laws relating to mineral and geothermal leasing,” and “location, entry, and patent under the mining laws.” *Id.* This directive does not specify how the Bureau of Land Management and the U.S. Forest Service are to implement this directive.

173. The Revocation Proclamation also purports to change the conditions or directives of the land reservation effected under Proclamation 9558. *Id.*

- a. First, the Revocation Proclamation removes the requirement for BLM and USFS to consult the Bears Ears Commission on land management decisions for any

areas not contained within the purported Shash Jáa unit. *Id.*

- b. Second, the Revocation Proclamation adds an additional seat on the Bears Ears Commission for the elected officer of the San Juan County Commission representing District 3, in that officer's official capacity. *Id.*
- c. Third, the Revocation Proclamation authorizes the Secretaries of the Interior and Agriculture to permit motorized and non-mechanized vehicle use on roads and trails designated for such use prior to Proclamation 9558. *Id.*
- d. Fourth, the Revocation Proclamation authorizes the Secretaries of the Interior and Agriculture to permit road and trail maintenance. *Id.*
- e. Fifth, the Revocation Proclamation removes any effect of Proclamation 9558 on livestock grazing. *Id.*
- f. Sixth, the Revocation Proclamation authorizes the Secretaries of the Interior and Agriculture to permit active vegetation management activities in the National Monument. Upon information and belief, these activities can include the use of prescribed burning, wildfire, mechanical equipment, herbicides, or other techniques to destroy or remove naturally occurring vegetation. *Id.*

#### **Impacts of the Revocation Proclamation**

174. Upon information and belief, Plaintiffs and their members, directors, officers, employees, or sponsored athletes will suffer direct and immediate injury from the revocation of the designation of the landmarks, structures, and objects of the Bears Ears National Monument, including the following objects:

- a. tens of thousands of historic and pre-historic structures, cliff dwellings, rock art panels (pictographs and petroglyphs), kivas, open service sites, pueblos, towers,

middens, artifacts, ancient roads, historic trails, and other archaeological resources generally located in the vicinity of:

- i. Cedar Mesa, including Grand Gulch;
  - ii. Valley of the Gods;
  - iii. Tank Mesa, Cottonwood Wash, and the Bluff Bench;
  - iv. Bowdie Canyon, Fable Valley, Ruin Park and the Beef Basin area;
  - v. the Dark Canyon complex;
  - vi. the Abajo Mountains and drainages of Allen, Dark, and Chippean Canyons;
  - vii. White Canyon and its many drainages;
  - viii. Mossback Mesa, Red House Cliffs, and Tables of the Sun;
  - ix. the Mancos Mesa and Moqui Canyon;
  - x. the San Juan River corridor, including the Sand Island petroglyph panels;
  - xi. Harts Draw and Lockhart Basin; and
  - xii. the entirety of the Grand Gulch Archaeological District, which is listed on the National Register of Historic Places;
- b. numerous paleontological resources in the vicinity of:
- i. Indian Head Pass;
  - ii. Beef Basin;
  - iii. House Park Butte;
  - iv. Cathedral Butte;
  - v. Jacobs Chair;
  - vi. the Lockhart Basin;

- vii. Indian Creek;
  - viii. Allen Canyon;
  - ix. White Canyon;
  - x. Fry Canyon;
  - xi. Valley of the Gods; and
  - xii. Red Canyon;
- c. numerous recreational objects and sites, including:
- i. 44 of 120 climbing cliffs (which are discrete and documented rock climbing sites that include one or more established climbing routes that ascend a rock outcrop), as well as all 22 named summits in the Valley of the Gods and hundreds of routes in Harts Draw and Lockhart Basin;
  - ii. undocumented or yet-to-be-climbed climbing cliffs;
  - iii. world-class canyoneering routes in White Canyon, Gravel Canyon, Cheesebox Canyon, Hideout Canyon, Fry Canyon, and other drainages of White Canyon;
  - iv. mountain biking trails;
  - v. whitewater paddling river segments;
  - vi. equestrian trails; and
  - vii. hiking and backpacking trails, in particular the iconic Fable Valley trail and the Dark Canyon trail system, and trails to historic mining and cowboy sites in or around Beef Basin, the Abajos Mountains, and Indian Creek;
- d. numerous geological and ecological objects of cultural, scenic, and scientific

interest, including at least:

- i. Native American hunting and wood- and herb-gathering grounds in the vicinity of Cedar Mesa, Elk Ridge, and the Abajo Mountains;
- ii. the White Canyon complexes;
- iii. towers and sandstone structures in Chimney Park, Hammond Canyon, Dark Canyon, and Lockhart Basin, and especially those in the Valley of the Gods considered spiritually important to the Navajo Nation;
- iv. distinctive arches and natural bridges in many canyons, including Wetherill Arch, Neville's Arch, Polly's Canyon Arch, Bowdie Canyon Window, Causeway Arch, Cliff Dweller's Pasture Arch, and Fable Valley Jug Handle Arch; and
- v. distinctive, endemic subspecies, including mammals, in the Abajo Mountains.

175. Upon information and belief, approximately 73% of documented archaeological sites are found in areas to be removed from the National Monument. (Documented sites are distinct from known sites and existing sites, many of which are unknown to science or management.) For example, the following archaeological sites are excised by the Revocation Proclamation: Two Kiva House, Eight Room Pueblo, Baby Mummy Cave, Baby Mummy Great Road, Bannister Ruin, Battle Panel, BB Ruin, Beam Ruin, Bernheimer Alcove, Best Forgotten Kiva, Big Man Panel, Big Panel, Bird's Nest (also known as Dry Wash Ruin), Cap Rock Ruin, Castle Ruin, Ceiling House, Citadel, Clay Hills Kiva, Collins Cowboy Camp, Cottonwood Falls Great House, Cow Tank, Cradleboard Site, Crawl on Your Belly, Cut-in-Two Cave, Dancing through Time, Dark Horse (also known as Cliff Village), Decker Road, Digging Sticks, Double

Decker Ruin, Et Al Great House, Fable Fortress, Fable Valley Pueblo, Fallen Roof Ruin, Farm House, Flat House, Fortified Mesa, Goat-on-a-Bicycle, Goldbar Panel, Gotta Wear Shades, Granary Row, Green House, Green Mask Site, Grocery Store, Halfway House, Hammond Good House, Harts Horse Panel, High House, large portions of the Hole-in-the-Rock Trail, Horse Panel, Horse Rock Ruin, Jailhouse Ruin, Junction Ruin, Kiva Cave, Knob Ruins, L Pueblo, Ledge Ruin, Lion Track, Little Doll House, Long House, M080 Observatory, Many Hands, Marcia's Stonehenge, Moss Back Rock Art, Mountain Sheep & the Flute Player, Owen's Great House, Owl Kiva, Painted Kiva, Pappy's Pasture, Pass Rock Art Site, Perfect Kiva (Bullet), Perfect Kiva (Slickhorn), Picket Fork, Polly's Island, Polychrome House, Pottery Shine, Rattler Cave, Red and White House, Red Knobbs, Red Lines Panel, Redman, Roof Ruin, Ruin Canyon Tower, Sacred Mesa, Sagsteters Ruin, Sand Dune Site, Sand Island Lower Petroglyph Panel, Sand Island Upper Petroglyph Panel, Scotty's Kiva, Seven Kivas, Shield Cave Ruin, Showstopper, Split Boulder Archaic Panel, Split-Level Ruin, Swallows Nest, Tabernacle Ruin, Tank Mesa Great Road, Telluride Blanket Site, the Hideaway, the Hunting Panel, the Playhouse, the Rincon, Three Fingers, Three Moons Kiva, Tower Ruin, Turkey Pen, Turner's Cabin (historic), Water House, Wetherill Arch Site, Witchy Woman, Wooden Kiva, Wrong-Side Ruin, and Yellow House.

176. The Revocation Proclamation opens areas previously protected by the Bears Ears National Monument to activities in otherwise pristine and undeveloped areas. Upon information and belief, such incompatible uses will result in the destruction and degradation of irreplaceable cultural, historic, and scientific resources from surface disturbance, ecosystem impacts, and waste disposal, among other adverse impacts. While these activities may be subject to certain environmental and wildlife statutes, those statutes will only require procedural reviews,



mitigation and minimization of adverse impacts, and penalties once damage is done, as opposed to monument status which ensures avoidance of all harm. These impacts will threaten current and ongoing use and enjoyment of the objects and land constituting the Bears Ears National Monument, and thus will result in direct injury to the cultural, aesthetic, recreational, spiritual, and scientific interests of the Plaintiffs and to those of the:

- a. officers and board members of Conservation Lands Foundation;
- b. members of CLF's Friends Grassroots Network organizations;
- c. members of Utah Diné Bikéyah;
- d. board members of Friends of Cedar Mesa;
- e. employees of and athletes sponsored by Patagonia;
- f. members of Access Fund;
- g. members of the National Trust; and
- h. members of the Society of Vertebrate Paleontology.

177. In particular, and as a result of President Trump's actions, archaeological and paleontological objects of scientific or historic interest designated as part of the Bears Ears National Monument will receive less legal protection. Upon information and belief, the reduced legal protections will increase looting, vandalism, collection, and "pot hunting" of these archaeological and paleontological objects. Several cases of looting of paleontological sites have been documented over the years. For instance, unknown parties removed the skull of a phytosaur skeleton discovered in Fry Canyon in 2016. Disturbance or removal of such objects directly reduces the scientific, recreational, aesthetic, cultural, and spiritual value of the area to Plaintiffs and their or similar affiliates.

178. Upon information and belief, the Revocation Proclamation will also increase



threats to archaeological, paleontological, and other objects by reducing enforcement resources. Currently, there are only one or two rangers patrolling and monitoring the area. Upon information and belief, monument status for all objects and lands protected or reserved under Proclamation 9558 will increase funding available for the management of the Bears Ears National Monument, which will allow for the hiring of more personnel for monitoring and law enforcement. Thus, the Revocation Proclamation will reduce the amount of funding available to manage the excluded 1.1 million acres, which will reduce the availability of law enforcement personnel, and increase the likelihood that objects within the National Monument will be looted or vandalized.

179. As a result of President Trump's actions, much of the land reserved as part of the Bears Ears National Monument will be open to oil-and-gas leasing. Before Proclamation 9558, areas of the Monument were designated for oil and gas development under the 2016 Moab Master Leasing Plan and the 2008 Monticello Resource Management Plan. Industry has pushed for new drilling sites in many areas of the National Monument. For instance, oil-and-gas developers had already submitted expressions of interest for more than 105,187 acres in or near Bears Ears National Monument since 2013, including 88 requested parcels clustered in and around the northeastern part of the Bears Ears National Monument near Indian Creek. See Center for Biological Diversity, *Analysis of Oil and Gas Industry Interests and Mining Potential on Federal Public Lands within Bears Ears National Monument*, (Aug. 19, 2017), <https://www.documentcloud.org/documents/3985752-Bears-Ears-Oil-Gas-and-Hard-Rock-Mining-Analysis.html>; see also Brian Maffly, "Oil and Gas Industry Will Pounce if Bears Ears Shrinks," *Salt Lake Tribune* (June 19, 2017) <http://archive.sltrib.com/article.php?id=5351997&itype=CMSID>. The Indian Creek area of the

Bears Ears National Monument is widely recognize as a world-class rock climbing area for its sandstone crack climbing. Members or similar affiliates of Plaintiffs' organizations regularly travel to Indian Creek to ascend its cliffs and admire the landscape.

180. The oil-and-gas development allowed by the Revocation Proclamation within the Bears Ears National Monument will harm Plaintiffs and their members or similar affiliates. First, Plaintiffs or their members or similar affiliates must answer efforts by BLM and developers to lease land in Bears Ears National Monument through formal protests to BLM and informal advocacy. Second, oil-and-gas leasing threatens the pristine landscapes of the Bears Ears National Monument. Exploration and development will impair the aesthetic value of the National Monument to Plaintiffs and their members or similar affiliates. Road construction, increased heavy vehicle usage, traffic, drilling, and other energy development activities will corrode the undeveloped areas of the Bears Ears National Monument. Likewise, exploration and development will disturb the soundscape and viewscape in the National Monument. Third, increased private development will diminish the climbing experience for, and recreational value to, Plaintiffs and their members or similar affiliates.

181. As a result of President Trump's actions, and by the very terms of the Revocation Proclamation, areas previously within the boundary of the Bears Ears National Monument will be open to location, entry, and patenting for mining of uranium and other minerals. *See* 30 U.S.C. § 22 (Mining Law of 1872).

182. "Casual use" collection of minerals can immediately begin without any notification to BLM. 43 C.F.R. § 3809.10(a); *see also id.* § 3809.5(1)-(2) (defining "casual use"). More intensive "notice-level" operations may begin within 15 days of submitting notice to BLM. *See id.* § 3809.21(a); *see also id.* § 3809.10(b).

183. The increased exploratory and extractive activities within the boundary of the Bears Ears National Monument will destroy or harm objects of significant scientific or historic interest, including archaeological, paleontological, cultural, and ecological objects. Furthermore, increased mineral development will degrade the scientific, recreational, aesthetic, cultural, and spiritual value of the area through disturbance of the surface soil and ecology, increased noise, harmful impacts to viewsheds, the creation of safety and other conflicts resulting from an increase in industrial traffic and infrastructure development at areas of high aesthetic value and popular recreational use.

184. As a result of President Trump's action, areas within the National Monument's boundary will be open to "casual collection" of common invertebrate and plant paleontological objects designated as part of the Bears Ears National Monument. 36 C.F.R. § 291.12; *see also id.* § 291.5 (defining "casual collecting"). Casual collection can occur immediately as no permit from the United States Forest Service is required. *Id.* § 291.11(a). Disturbance or removal of paleontological objects will directly degrade the National Monument's scientific, recreational, aesthetic, cultural, and spiritual value.

185. Upon information and belief, President Trump's actions will impede paleontological research on the 1.1 million acres excluded from national monument status. First, as those lands will no longer be covered by a proclamation explicitly recognizing the value of paleontology, other uses might receive higher priority in agency planning decisions, with the result that paleontological research permits become more difficult to secure. Second, even if fossils avoid collection or destruction, other uses within the National Monument can harm the geological context critical to scientific replication and understanding. Third, the entirety of the National Monument will no longer be eligible for funding through the National Landscape

Conservation System; for other monuments like Grand Staircase-Escalante, the majority of public funding for paleontology originated with the National Landscape Conservation System. Loss of paleontological research opportunities, and the appreciation for paleontological objects that research provides, directly injures Plaintiffs and their members or similar affiliates.

186. Upon information and belief, President Trump's actions will impede rock climbing and other recreational activities on the 1.1 million acres excluded from national monument status. As those lands will no longer be covered by a proclamation explicitly recognizing the value of rock climbing and other recreational activities, other uses might receive higher priority in agency planning decisions, with the result that access to or other support for these activities becomes more difficult to secure. Loss of or reduction in these activities directly injures Plaintiffs and their members or similar affiliates.

187. As a result of President Trump's actions, areas within the boundary of the Bears Ears National Monument will no longer be managed in a manner that protects the values specified by Proclamation 9558 or be eligible for funding through the National Landscape Conservation System. Moreover, the benefits of Secretarial Order 3308 and BLM Manual 6220 will no longer extend to the 1.1 million acres deprived of national monument status. The loss of these benefits will impair Plaintiffs' organizational interests, as well as the cultural, aesthetic, recreational, or scientific interests of their members or similar affiliates.

188. In particular, excluded lands will no longer be subject to BLM policies to inventory and monitor cultural resources, which in turn result in the development of cultural resource management plans. Completing these plans requires additional cultural resource surveys. Conducting detailed cultural resource surveys in the Bears Ears area is especially important because currently no more than 10 percent of the area has been surveyed for cultural

resources, notwithstanding the extraordinary significance of historic resources in the area. Upon information and belief, monument status for all objects and lands protected or reserved under Proclamation 9558 will increase funding available for the management of the lands within Bears Ears, including surveys to identify, evaluate, and protect cultural resources. Thus, the Revocation Proclamation will reduce the amount of funding available for these activities and will impair Plaintiffs' organizational interests, as well as the cultural, aesthetic, recreational, or scientific interests of their members or similar affiliates.

**COUNT I – VIOLATION OF THE ANTIQUITIES ACT**  
**54 U.S.C. § 320301(a)**  
**[All Plaintiffs against All Defendants]**

189. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1 through Paragraph 188.

190. Plaintiffs have a non-statutory right of action to injunctive and declaratory relief against *ultra vires* actions by Defendants.

191. Section 320301(a) of Title 54 of the United States Code provides that the “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.”

192. The Revocation Proclamation revokes the national monument status of numerous historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest designated by Proclamation 9558.

193. Upon information and belief, Defendants other than President Trump are complying with the directives of the Revocation Proclamation and not implementing, and have not implemented, those of Proclamation 9558.

194. Neither § 320301(a) nor any other section of the Antiquities Act authorizes the President to revoke the national monument status of, or the protections for, objects designated under Proclamation 9558, as determined under the discretion of the establishing President. Congress has not delegated to the President the power to revoke the designation of “historic landmarks, historic and prehistoric structures, and other objects of scientific or historic interest” once they have been lawfully proclaimed national monuments. Such power remains reserved for Congress under Article IV, Section 3, Clause 2 of the U.S. Constitution.

195. The Antiquities Act does not authorize the Revocation Proclamation’s action to revoke the designation of landmarks, structures, and objects comprising the Bears Ears National Monument.

196. Defendants’ attempt to revoke the designation of landmarks, structures, and objects comprising the Bears Ears National Monuments is an *ultra vires* action: The Revocation Proclamation exceeds the limited authority to declare national monuments Congress provided to the Executive under the Antiquities Act.

**COUNT II – VIOLATION OF THE ANTIQUITIES ACT**  
**54 U.S.C. § 320301(b)**  
**[All Plaintiffs against All Defendants]**

197. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1 through 196.

198. Plaintiffs have a non-statutory right of action to injunctive and declaratory relief against *ultra vires* actions by Defendants.

199. Section 320301(b) of Title 54 of the United States Code provides that the “President may reserve parcels of land as a part of the national monuments. The limits of the



parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.”

200. The Revocation Proclamation purports to “modify” the reservation of parcels of land that were made a part of the Bears Ears National Monument. This action excludes from the National Monument’s reservation a land area of approximately 1.1 million acres.

201. By excluding vast land areas from the reservation made pursuant to Proclamation 9558, the Revocation Proclamation excludes from the National Monument reservation the landmarks, structures, and objects on those land areas that had been lawfully designated under Proclamation 9558.

202. As a result, the Revocation Proclamation purports to remove these objects from the protection against entry, location, patent, selection, sale, or other disposition, among other protections established by Proclamation 9558. The Revocation Proclamation directs Defendants other than President Trump not to provide such protection to approximately 1.1 million acres of land. Upon information and belief, Defendants are complying with the directives of the Revocation Proclamation and are not implementing, and have not implemented, those of Proclamation 9558.

203. The two “units” comprising the reservation under the Revocation Proclamation are not sufficient for, and thus not compatible with, the proper care and management of the objects designated as part of the National Monument by Proclamation 9558.

204. The Revocation Proclamation also purports to eliminate beneficial conditions and directives of the reservation established by Proclamation 9558 even for the two new “units.” The Revocation Proclamation changes the scope of consultation with and composition of the Bears Ears Commission, allows motorized and non-mechanized vehicle use on roads and trails

designated for such use prior to Proclamation 9558, allows maintenance of roads and trails for such use, and allows active vegetation management activities.

205. The elimination of the reservation conditions and directives established by Proclamation 9558 is not compatible with the proper care and management of the objects designated as part of the National Monument by Proclamation 9558.

206. Neither section 320301(b) nor any other section of the Antiquities Act authorizes the President to “modify” the reservation directives of land or reduce the parcels of land reserved as part of the Bears Ears National Monument in a manner that precludes the proper care and management of the objects protected by Proclamation 9558. Such power remains reserved for Congress under Article IV, Section 3, Clause 2 of the U.S. Constitution.

207. The Antiquities Act does not authorize the Revocation Proclamation’s actions to exclude vast areas of land from the National Monument’s reservation or to eliminate beneficial conditions of that reservation.

208. Defendants’ attempt to alter the reservation of the Bears Ears National Monuments is an *ultra vires* action: The Revocation Proclamation exceeds the limited authority to declare national monuments and reserve the requisite land area that Congress delegated to the Executive under the Antiquities Act.

**COUNT III – VIOLATION OF THE SEPARATION OF POWERS**  
**U.S. Const. art. IV, § 3, cl. 2**  
**[All Plaintiffs against All Defendants]**

209. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1 through 208.

210. The Constitution vests the power to dispose of and regulate the property of the United States solely in Congress. Specifically, the Property Clause provides that “[t]he 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[.]” U.S. Const. art. IV, § 3, cl. 2.

211. The Antiquities Act only empowers the President to declare national monuments and does not delegate authority to the President to revoke, abolish, diminish, or replace them. 54 U.S.C. § 320301.

212. Defendants, through the Revocation Proclamation, purport to dispose of and regulate federal property, namely, the landmarks, structures, and objects of historic or scientific interest that comprise the Bears Ears National Monument and the land reserved for that monument, without a delegation of such power from Congress.

213. Defendants, through the Revocation Proclamation, have arrogated to themselves Congress’ exclusive power to dispose of and regulate the property of the United States.

**COUNT IV – VIOLATION OF THE TAKE CARE CLAUSE**  
**U.S. Const. art. II, § 3, cl. 5.**  
**[All Plaintiffs against President Trump]**

214. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1 through 213.

215. The Constitution obligates the President and his agents to “take Care that the Laws be faithfully executed[.]” U.S. Const. art. II, § 3, cl. 5.

216. Defendants Secretary Zinke and Deputy Director Steed have statutory duties to manage parts of the Bears Ears National Monument within the National Landscape Conservation System in a manner that protects the values for which the National Monument was designated. 16 U.S.C. § 7202(c)(2).

217. President Trump has acted to compel Secretary Zinke and Deputy Director Steed to violate their duties to manage the entirety of the Bears Ears National Monument in a manner consistent with the values of President Obama's Proclamation 9558.

218. Specifically, the Revocation Proclamation directs Defendants other than President Trump to cease managing all objects and lands excluded from the National Monument in a manner that promotes, and is consistent with, the values of Proclamation 9558.

219. Additionally, the Revocation Proclamation directs Defendants other than President Trump to cease managing all objects and lands within the two new "units" in a manner that promotes, and is consistent with, the values of Proclamation 9558.

220. By compelling other Defendants to violate their legal duties, President Trump has violated his own constitutional duty to take care that the laws of the United States are faithfully executed.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray that this Court:

(a) DECLARE

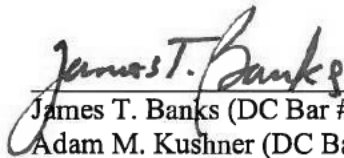
- i. that the Revocation Proclamation is unlawful and an *ultra vires* action to the extent that it purports to revoke the Bears Ears National Monument;
- ii. that, pursuant to the Antiquities Act, the President may not unilaterally revoke the designation of landmarks, structures, or objects, and may not substantially alter the reservation of land, which together comprise a lawfully created national monument;
- iii. that the President's power under the Antiquities Act is limited to:

- A. declaring 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, and
    - B. reserving, as part of a national monument, the smallest parcels of land compatible with the proper care and management of the objects to be protected;
  - iv. that Proclamation 9558 is controlling with respect to the objects comprising the parcels of land reserved as, and the management of the Bears Ears National Monument;
  - v. that all Defendants other than President Donald J. Trump have duties to manage the Bears Ears National Monument to the fullest extent described in, in the manner provided for by, and in a manner that protects the values of Proclamation 9558; must withdraw lands within the Bears Ears National Monument, as described in Proclamation 9558, from all forms of entry, location, selection, sale, or other disposition under the public land laws or laws applicable to the United States Forest Service, from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing; and must not exchange any lands within the Bears Ears National Monument, as described in Proclamation 9558, other than by exchange that furthers the protective purposes of the Monument.
- (b) ORDER Defendants other than President Donald J. Trump to expeditiously comply with all mandates of Proclamation 9558;

- (c) ENJOIN Defendants other than President Donald J. Trump from further actions or inaction inconsistent with Proclamation 9558;
- (d) AWARD qualifying Plaintiffs fees and costs as appropriate under 28 U.S.C. § 2412 or other applicable authority; and
- (e) GRANT Plaintiffs such other and further relief as the Court may deem just and proper.

Dated: December 6, 2017

Respectfully submitted,

  
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