

**To:** Nikki Moore[nmoore@blm.gov]  
**From:** McAlear, Christopher  
**Sent:** 2017-05-25T12:55:39-04:00  
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**Subject:** Fwd: Less urgent request from Downey  
**Received:** 2017-05-25T12:55:56-04:00  
[13b. Bears-Ears-Inter-Tribal-Coalition-Proposal-10-15-15.pdf](#)  
[13a.ExecutiveSummaryBearsEarsProposal\(BEITwebsite\).pdf](#)

FYI

----- Forwarded message -----

**From:** Ginn, Allison <aginn@blm.gov>  
**Date:** Thu, May 25, 2017 at 11:54 AM  
**Subject:** Re: Less urgent request from Downey  
**To:** "Bowman, Randal" <randal\_bowman@ios.doi.gov>  
**Cc:** "Moore, Nikki" <nmoore@blm.gov>, Kathleen Benedetto <kathleen\_benedetto@ios.doi.gov>, Sally Butts <sbutts@blm.gov>, "Fisher, Timothy" <tjfisher@blm.gov>, "McAlear, Christopher" <cmcalear@blm.gov>, Edwin Roberson <eroberso@blm.gov>, salt <abilbao@blm.gov>, Peter Mali <pmali@blm.gov>

Please see the proposal, attached. It's also in the Drive folder. Thanks!

Regards,

Allison Ginn  
National Conservation Lands Program Lead  
BLM Utah State Office  
801-539-4053

On Thu, May 25, 2017 at 9:50 AM, Bowman, Randal <randal\_bowman@ios.doi.gov> wrote:

OK, thought that might be a possibility. Do you have a copy of the detailed proposal? If not, will see if Jim can ask the Coalition for it this afternoon.

On Thu, May 25, 2017 at 11:29 AM, Moore, Nikki <nmoore@blm.gov> wrote:

Hi Randy,

I checked with the Utah state office and tribal cultural properties information would be included in the tribal proposal and not typically something the BLM would provide on behalf of the tribes. The BLM did initiate a cultural landscape assessment that would include geospatial data that identifies areas that may be of cultural importance to each tribe, but the report/product will not be available for at least a year.

Nikki

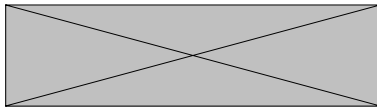
Nikki Moore  
Acting Deputy Assistant Director, National Conservation Lands and Community Partnerships  
Bureau of Land Management, Washington D.C.

202.219.3180 (office)  
202.740.0835 (cell)

On Thu, May 25, 2017 at 10:52 AM, Bowman, Randal <[randal\\_bowman@ios.doi.gov](mailto:randal_bowman@ios.doi.gov)> wrote:

Would you check on whether your staff in Utah can have the necessary information and produce, or already have, a map showing areas in and around Bears Ears Monument that are used for Tribal cultural (including gathering) and religious practices, and sacred sites? If so, she would like the map by June 2.

--



Christopher McAlear  
Assistant Director  
National Conservation Lands  
and Community Partnerships  
(W) 202-208-4731  
(C) 775-722-9539

**PROPOSAL TO PRESIDENT BARACK OBAMA  
FOR THE CREATION OF  
BEARS EARS NATIONAL MONUMENT**

**Submitted by**

**THE BEARS EARS INTER-TRIBAL COALITION**

**A partnership of the Hopi, Navajo, Uintah and Ouray Ute, Ute Mountain Ute, and Zuni  
Governments**

October 15, 2015

## TABLE OF CONTENTS

|              |  |    |
|--------------|--|----|
| I.           | INTRODUCTION.....  | 1  |
| II.          | THE BEARS EARS LANDSCAPE.....  | 4  |
|              | A. Physical Characteristics.....   | 5  |
|              | B. The Long Native American Presence.....  | 8  |
|              | C. The Tribes are Forced Off the Land.....   | 10 |
| III.         | THE INTER-TRIBAL COALITION AND THE PREPARATION OF THIS PROPOSAL.....   | 14 |
| IV.          | MONUMENT BOUNDARIES.....   | 20 |
| V.           | COLLABORATIVE MANAGEMENT: THE LEGAL BASIS.....   | 21 |
|              | A. Definition of Collaborative Management for the Bears Ears National Monument.....  | 21 |
|              | B. Presidential Authority to Proclaim Collaborative Management for Bears Ears...23   |    |
|              | C. The Lawful Delegation to the Tribes.....  | 26 |
| VI.          | COLLABORATIVE MANAGEMENT: IMPLEMENTATION.....  | 28 |
|              | A. The Bears Ears Management Commission and the Monument Manager.....  | 29 |
|              | B. Monument Planning and Operations.....   | 30 |
|              | C. The Fruits of Collaborative Management.....   | 31 |
|              | D. Federal-Tribal Agreements Supplemental to the Proclamation.....   | 34 |
| VII.         | MONUMENT USES.....   | 34 |
|              | A. Threats to the Bears Ears Landscape.....  | 34 |
|              | B. Uses to be Resolved by the Proclamation.....  | 36 |
|              | C. Uses to be Resolved in the Management Plan.....   | 38 |
| VIII.        | CONCLUSION.....  | 39 |
|              | Bibliography.....  | 41 |
| Exhibit One: | A Timeline: The Relationship of the Public Land Initiative with the Tribes and Their Members   |    |
| Exhibit Two: | Resolution No. EC-15-002: National Congress of American Indians Supporting the Presidential Proclamation of Bears Ears National Monument & Collaborative Management between Tribal Nations and the Federal Agencies. |    |

## **I. INTRODUCTION**

This is a Tribal proposal for a Presidential proclamation under the Antiquities Act of 1906 to protect historical and scientific objects in an area of 1.9 million acres of ancestral land on the Colorado Plateau. We propose that the most appropriate and effective management regime is Collaborative Management by the Tribes and Federal agencies.

This proposal has been a long time in the making. For six years, grassroots people and Tribal leaders have worked intensively to get to this point. The true origins, however, go back much farther. The need for protecting the Bears Ears landscape has been broad and heartfelt for well over a century. The rampant looting and destruction of the villages, structures, rock markings, and gravesites within the Bears Ears landscape saddened and sickened our ancestors, and that sense of loss and outrage continues today. The depth of our spiritual connection to these places is not widely understood, but it is true that these desecrations to our homeland, structures, implements, and gravesites—insults to the dignity of our societies and Traditional Knowledge as well-wound us physically. By visiting Bears Ears, giving our prayers, and conducting our ceremonies, we heal our bodies and help heal the land itself.

For long generations, we did not know how to petition the government for redress of the wrongs committed against the land, our societies, our traditions, and our health. But now we do know how to bring our aspirations forward and take this opportunity to do so. President Obama, Secretary Jewell, Secretary Vilsack, Director Kornze, Assistant Secretary Washburn, Director Jarvis, Deputy under Secretary Blazer, and many other officials have been very responsive, and we deeply appreciate that.

This proposal is unique and wholly unprecedented. While historians, conservationists, scientists, archaeologists, and others have sponsored many requests for protection under the

Antiquities Act, Tribes have never before petitioned for a presidentially-declared national monument, much less one of the size and scope we propose here. As a result, the differences between earlier monuments and this one are many and deep. The government is acting as trustee for these five Tribes. The Tribes are sovereign governments and possess solid land management capabilities. This petition can be addressed through the Federal-Tribal government-to-government relationship, so that deliberation over the merits of this proposal can take place in open, collegial discussions between the Tribes and Federal officials. And this proposal touches the heart of the Antiquities Act of 1906, designed to honor and protect the physical evidence of our ancestors' long possession.

Importantly, this proposal also requests that the President proclaim the Bears Ears National Monument to honor the worldviews of our ancestors, and Tribes today, and their relationships with this landscape. It is not a matter of romanticism or political correctness. Native people always have, and do now, conceive of and relate to the natural world in a different way than does the larger society. This subject, as personified and enriched by the Native experience at Bears Ears, has every opportunity to lead to excellent public programs and outreach as well as outstanding opportunities for scientific, historical, and philosophical research by both Native and non-Native scholars and experts.

Significant Tribal involvement in the workings of this monument, then, can produce many benefits to the public at large. For example, as shown by numerous testimonials from grassroots Native people that will accompany this proposal, large numbers of contemporary Indian people visit Bears Ears regularly to gather medicines, herbs, and vegetative materials. These ancient cultural activities are based on elaborate information held by Native Americans, and are now commonly referred to as Traditional Knowledge, a subject that is drawing

considerable interest among scientists, land managers, and the general public. “My grandmother told me the story about how my grandfather took them hunting for deer around Bears Ears. My family members still hunt the area near Bears Ears and I was taught the different medicinal plants; this was my classroom, I am now a Navajo traditional herbalist.”(Ruby Ross, Navajo)

The depth, richness, and variety of the Native connection to Bears Ears, coupled with the on-the-ground practices developed in joint Federal-Tribal land management at this national monument, can lead to the creation of a world-class institute on systems of land management that accounts for both western science and Traditional Knowledge. This center, as discussed below, would be located at the proposed monument.

Similarly, honoring the Native worldview through this monument will cause citizens to understand and assess the worth of traditional Native views of humans and the land. A byword among Tribal natural resource members is that “We don’t manage land. The land manages us.” And Native people, too, feel and experience the weight of history in unique ways. “We can still hear the songs and prayers of our ancestors on every mesa and in every canyon.”(Malcolm Lehi, Ute Mountain Ute)

In long, focused, and well-attended deliberations over this proposal, we have concluded that this new monument must be managed under a sensible, entirely workable regime of true Federal-Tribal Collaborative Management. We know that this has never been done before. But most great breakthroughs in public policy have no direct precedent. We want to work with you on this. We have reflected long and hard to come up with the right words to install Collaborative Management in this particular place and circumstance, and believe in our suggested approach, but we welcome your thoughts on how to improve our formulation. Like you, we want to make the Bears Ears National Monument the shining example of the trust, the government-to-

government relationship, and innovative, cutting-edge land management. But whatever the specific words might be, for the Bears Ears National Monument to be all it can be, the Tribes must be full partners with the United States in charting the vision for the monument and implementing that vision.

In this proposal, developed by five unified Tribes, we will put forth a comprehensive set of recommendations on the many matters to be considered in the creation of the Bears Ears National Monument. We look forward to our meetings with you as we work together to address the issues raised in the following pages. In addition, we have provided Congressmen Bishop and Chaffetz with copies of this proposal at the same time we have submitted the proposal to you. We remain committed to exploring with them how this proposal can be accomplished through legislation. We welcome conversations with them on how to reach that result.

## **II. THE BEARS EARS LANDSCAPE**

The wonder is that Bears Ears has not already received some sort of special Federal protection as a park, monument, or wilderness. The area is located in the magnificent Colorado Plateau that is world famous for its parks and monuments—Arches, Canyonlands, Zion, Mesa Verde, and many others—and the quality of the Bears Ears landscape is equal to them all. It is perhaps the most ecologically intact region in the Lower 48 states, making it difficult for most Americans to reach and know. Speaking of the wild west side of the Bears Ears, Wallace Stegner wrote that “to start a trip at Mexican Hat, Utah, is to start off into empty space from the end of the world.” Wallace Stegner, *The Sound of Mountain Water*, 102 (1969). He added that there is good reason to go there, for a trip into the redrock expanses of Bears Ears country will “fill up the eye and overflow the soul.” *Id.* at 18.

Now the time has come to protect Bears Ears. Our discussion here is not intended to catalogue all the many ways that this area holds significant geological, paleontological,

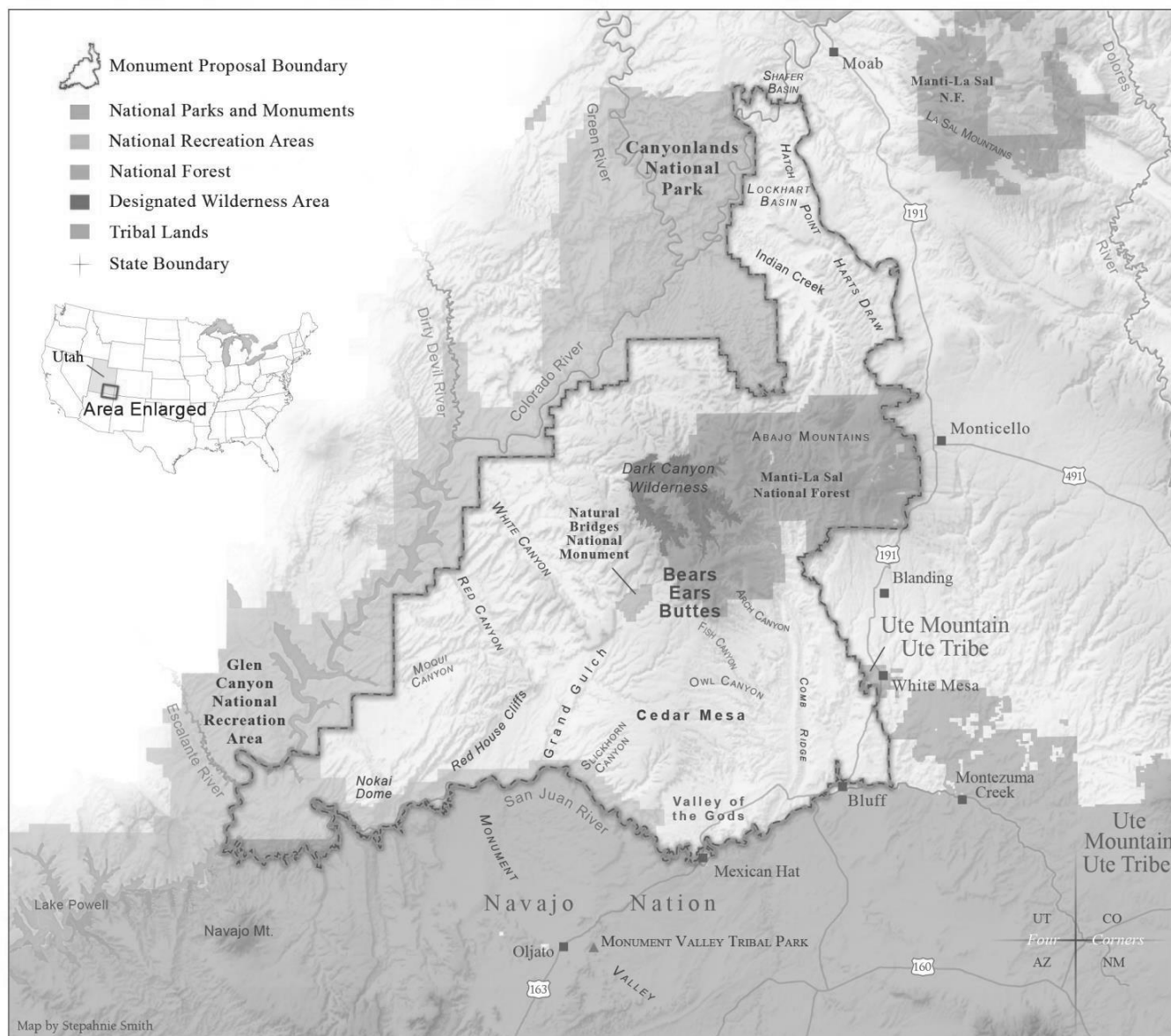


archaeological, historical, cultural, and biological “objects” within the meaning of the Antiquities Act; that more detailed statement is properly developed by the Administration’s drafters of the presidential proclamation. Instead, we offer this section to highlight some of the main considerations that justify monument status for Bears Ears. This includes the inspiring natural features of the area and, critically, the multifaceted relationship between Native American people and this landscape that has developed over the course of eons.

**A. The Physical Landscape**

Bears Ears is bounded on the west by the Colorado River and by the San Juan River and, to the South, by the Navajo Reservation. On the east and north, the boundary is marked by low bluffs and high mesas and plateaus from White Mesa up to the Colorado River near Moab, Utah. The Bears Ears proposal is mostly made up of BLM lands, but it meshes with National Park and National Forest lands. Long stretches of the monument’s south border, and part of the west as well, are contiguous with or overlie the Glen Canyon National Recreation Area. The southwest corner of the monument, of ceremonial importance to Tribes, includes National Recreation Area land. Canyonlands National Park runs adjacent to the proposed monument for a lengthy portion of Bears Ears’ western boundary. Natural Bridges National Monument is located within the proposed monument. The Abajo Mountains, Dark Canyon, Elk Ridge, and surrounding terrain lie within the Manti-La Sal National Forest.

## PROPOSED BEARS EARS NATIONAL MONUMENT



This vast, mountain-mesa-and-canyon country offers carved, rugged, soaring beauty. The most exposed part of 800-foot-high Comb Ridge, with its many sweeping vistas and hidden side-canyons, runs south to north through the area for 40 miles. On the east, Dark Canyon (an official wilderness area) and the Abajo Mountains, which climb above 11,000 feet, are both within the National Forest system.

In the northeast, the proposed monument abuts the entire east and south sides of Canyonlands National Park. The Colorado River cuts a gorge through a formation named the Anticline between Lockhart Basin and Shafer Basin, both once considered for inclusion in Canyonlands. Verdant Indian Creek, a perennial stream lined with cottonwood trees, with headwaters in the peaks of the Abajo Mountains, runs past Newspaper Rock, one of the largest and most varied rock art panels in the Southwest. Rock climbers cherish some of the formations along Indian Creek. Much of this region is bracingly wild. The lofty mesas of Hatch Point and Harts Point are home to mountain lions and antelope. Cottonwood Creek flows past Bridger Jack Mesa, a place so inaccessible that it has never been grazed by livestock. Protecting this part of Bears Ears is lastingly valuable in itself, but it also provides extraordinary benefits to Canyonlands National Park: Because of the way that Bears Ears would wrap around all of the east and west borders of Canyonlands, it will provide a sturdy buffer zone that has been needed ever since Canyonlands was founded in 1964.

The little-visited western reaches of Bears Ears allow citizens to adventure into some of the nation's most untouched places: White Canyon, Red Canyon, Red House Cliffs, Nokai Dome, and many others. In 1880, intrepid Mormon pioneers came through this rugged, slickrock country on the historic Hole-in-the-Rock Trail in their horse-drawn wagons and then travelled

down Cedar Mesa to reach Bluff, where they established the first Mormon settlement in the region.

In the central part of the proposed monument, the stately, arresting natural formation named Bears Ears rises high above the piñon-juniper forests of broad and long Cedar Mesa, a grand plateau that offers long vistas, most notably from storied Muley Point. Cedar Mesa also is the origin of no fewer than twelve exquisite canyons that drape off the sides of this mesa, including Arch, Slickhorn, Fish, Owl, and Grand Gulch. On Cedar Mesa and in its canyons and throughout Bears Ears, visitors should be on alert for an arch, natural bridge, unexpected side-canyon, bighorn sheep, black bear, or eagle or hawk on the wing.

#### **B. The Long Native American Presence**

Wondrous though the natural formations are, the most profound aspect of Bears Ears is the Native presence that has blended into every cliff and corner. This spirit is the beating heart of Bears Ears.

The creation stories of our individual Tribes--the Hopi, Navajo, Uintah & Ouray Ute, Ute Mountain Ute, and Zuni--tell us that our Tribes came to the Bears Ears country at different times. Some of us have been there forever, and some of us came later, during our travels. All of us know, however, that we have inhabited this Earth, not just for thousands of years, but since time immemorial, since time began. We know that some respected scholars believe that we came more recently. Which view is correct? Perhaps both are.

Our ancestors variously inhabited, crossed, hunted, gathered, prayed, and built civilizations on these lands. Their presence is manifested in migration routes, ancient roads, great houses, villages, granaries, hogans, wikiups, sweat lodges, corrals, petroglyphs and pictographs, tipi rings, and shade houses. Hopi and Zuni people moved from foraging to farming

some 3,500 years ago and constructed their stone villages, many of which remain in place today. Beginning approximately seven hundred years ago, most of the Ancient Puebloans moved to other lands to the east. When the Utes obtained the horse from the Mexicans in the early 1600s, they quickly became master riders and extended their domain to a large part of the Central Rocky Mountains. Their hunting expeditions made their way to the Bears Ears region and they established many trails, including one that led to the hunting grounds of the Henry Mountains. Navajos hunted and lived in Bears Ears and built hogans and other structures until they were removed against their will to the reservation in the 19<sup>th</sup> Century. Many other Tribes, (virtually all of whom have formally supported this proposal) also have significant historical contacts with Bears Ears, including the Southern Ute; White Mountain and Jicarilla Apache; San Juan, Kaibab, and Utah Paiute; Hualapai; Havasupai; and the twenty Pueblos of the All Pueblo Council of Governors.

Today's Tribal people continue to view the Bears Ears country as part of their ancestral homeland and currently use the area. "We go with offerings to our sites. We knock on that wall and say our names—just like you should—you make your entry properly, and address those that reside there as grandmothers and grandfathers as they are. There is no dimension of time in the spirit world. It's good to come here to the sites, to your grandmothers' homes, you remember how it was to be there. With an offering, perhaps some corn meal, you identify yourself, you sing a song and the children dance, and we just speak our language. Your name, your clan, your kiva."(Joseph Suina, Cochiti Pueblo)

Bears Ears is home to more than 100,000 Native American cultural sites, ranging from lithic scatter to granaries to complex villages. Some are in faraway backcountry. Others require a day hike. Still others are easily accessible. This is one of the world's premier areas for

reflection on the work of long-ago societies. These sites are treasured by anyone who visits them, and members of all Tribes are deeply moved by them. “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.”(Alfred Lomahquahu, Hopi) “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. With that, we must preserve, manage and educate our future generations.” (Phillip Vicenti, Zuni)

We have been here the longest, but the appreciation of the life ways of our ancestors is universal. Parents from other cultures cannot receive a greater reward than to watch their boisterous girls and boys go silent and reflective as they come upon an ancient stone village with panels of petroglyphs nearby. It both calms and challenges them. They ask their parents question after question. How long ago was this done? How many people lived here? Did they have friends down the canyon in the village we saw this morning? You say they probably hunted and grew crops up on the mesa above. But how could they possibly have climbed up those sheer canyon walls? How did they get water? And, of course, the parents are calmed and challenged themselves. For these places call out to all people, young and old, from this continent and every other, Native and non-Native.

### **C. The Tribes Are Forced Off the Land**

The United States’ “Manifest Destiny” movement, with its aim of settling the West for American homesteaders, reached the Bears Ears region in the early 1850s. The Tribes dug in,

trying to save their homelands. In 1864, the cavalry rounded up 8,000 Navajos and force-marched them on the Long Walk to brutal confinement at Bosque Redondo in New Mexico. After four years, the Navajo Nation and United States signed the 1868 Treaty and the prisoners were marched to the new reservation. In the years that followed, the Cavalry then kept the Navajos and the other Southwestern tribes on their reservations, which did not include the Bears Ears landscape. Chief Manuelito objected to his treatment: “The whites have many things we Navajos need. But we cannot get them. It is as though the whites were in a grassy canyon and there they have wagons, plows, and plenty of food. We Navajos are up on the dry mesa. We can hear them talking but we cannot get to them.” Mariette Wetherill, *Life with the Navajos in Chaco Canyon*, p. 9 (1992). Stella Eyetoo, a 93-year old Ute Mountain Ute elder from White Mesa, voices a similar lament: “I don’t know how come they put us on this island? They know there is good stuff up there. [Down here] it is hard to get good water and stuff. Nothing really grows, just these weeds I was trying to cut.”

Despite pressure from the military and, later, the Bureau of Indian Affairs, Utes, Navajos, and other Tribal members found ways to cross the deep San Juan River and travel to the homeland at Bears Ears. These trips often included deer and elk hunting—some families hunted for two or three months at a time to lay away jerky for the winters—but gathering of herbs and medicines was common and most if not all of these journeys included ceremonies, offerings, and healing.

At first, the American settlers were not a detriment. The small town of Bluff, first settled in 1880 by the historic Mormon Hole-in-the-Rocks expedition, and other early settlements and ranches were generally friendly toward the Native Americans and often traded with our people. Over time, though, the settlers of southern Utah became more and more aggressive toward the

Tribes, whom they saw as outsiders. The towns of Bluff, Blanding, and Monticello, for example, were all important winter camps for the Utes due to the reliability of water, warmer winter temperatures, and the abundance of mule deer and other wildlife. The settlers forced the Utes to relocate out of the area to less favorable locations. To these Americans, they had gone to great lengths to settle a harsh and difficult land in order to make it productive for farming and ranching; in their minds, they had earned the right to occupy it. Native people were required, in their view, to stay on the reservations and that is where they should remain.

Increasingly, beginning in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, these attitudes were enforced at the point of a gun. Some American Indians were shot and killed, spreading fear among all of the Tribes. Native people grazing sheep, cattle, and horses were forced off meadows, though by law and policy these were open public lands. Corrals, shade houses, and hogans were burned to the ground. Not all the abuse was physical: Natives visiting Bears Ears or the towns regularly had to endure shouts of “go back to the reservation.” Our people continued to visit their homeland, but the harsh, unwelcoming atmosphere caused the number of visits to decline.

Over the past generation, the atmosphere has lightened, but the tensions have not gone away. Some hogans, corrals, and sweat lodges have been burned. The insult of “go back to the reservation” is still heard. At a recent gathering of this Coalition, a local rancher tore down the signs for the meeting. The gruesome, deeply painful robbery and vandalism of graves and villages continues.

Still, Tribal people return to Bears Ears. How could they not? The ties are so strong. “Our ancestors left their footprints here, our medicine society came up this way and we still have medicine here that were taken over and impeded by land owners. This area is very important to



us as well. They are standing in front of us, listening to us. How we are going to protect Mother Earth from destruction? I hope our spirits listen and grant us protection.”(Ronnie Cachini, Zuni)

As Eric Descheenie, Navajo, explains, “Some people say that we haven’t been at Bears Ears in recent times. Others say that some of us aren’t from Utah and don’t belong there. All of that is so definitely wrong. We were there before any of the states and live nearby. *We don’t see Bears Ears in terms of state lines:*”



### **III. THE INTER-TRIBAL COALITION AND THE PREPARATION OF THIS PROPOSAL**

During the 19<sup>th</sup> Century and much of the 20<sup>th</sup>, we were kept down, treated by the BIA as if we were children. All those years we grieved over the grave robbing and industrial development that was tearing up our land and wounding our rivers, but did not have the resources to seek relief. Then veterans began coming back from World War II and the Korean War. They showed what they could do and they were respected by Indians, and by the white people as well, for their bravery and service. Those veterans made some progress and we Indian people began to get organized. Then came the Civil Rights Movement and the War on Poverty, which allowed us to form Community Action Programs. Vine Deloria, Jr., inspired us with his writings. We became more and more active. “I started working on this in 1964. Bobby Kennedy [running for President in 1968] came to Bluff and met with Navajos. The elders were talking about Cedar Mesa, Anasazi ruins. They told Bobby Kennedy that you have to protect this land.”(Mark Maryboy, Navajo)

Our Tribes did get more active and took action on numerous subjects involving Tribal sovereignty, natural resources, and social and economic matters. We worked with the National Park Service to address archaeological concerns in several parks and monuments. Bears Ears remained of grave concern to us but for many years we did not address it comprehensively. That was probably due to its remoteness and the power of the San Juan County Commission, governing the country where Bears Ears is located, which has always been in favor of big, rapid development and indifferent at best to Indian and environmental concerns.

In February 2010, former Senator Bob Bennett initiated a promising legislative process to resolve the debate over public lands and wilderness protection in San Juan County. At the time, Kenneth Maryboy was one of three San Juan County Commissioners as well as a Delegate to the

Navajo Council. Working closely with Tribal elders, he helped lead an effort in which Native Americans would work with San Juan County to develop a shared legislative proposal. At the same time, because it was unclear what the legislative process would produce, the Navajo Nation decided to pursue a parallel process—requesting a presidential proclamation under the Antiquities Act. In 2011, Navajo President Ben Shelley met with Interior Secretary Ken Salazar and requested a national monument proclamation.

After Senator Bennett was not re-elected, U.S. Congressman Rob Bishop, later joined by Congressman Jason Chaffetz, instituted in 2013 a similar process in the House of Representatives called the Public Land Initiative, or PLI. By then, the non-profit organization, Utah Diné Bikéyah (UDB) with Willie Grayeyes as Board Chairman, had formed to work with the Navajo Nation to represent the Navajo and Ute people in the congressional attempt to resolve the long-standing debate over wilderness and other forms of protecting public lands in Utah. UDB has done a prodigious amount of work. It has interviewed and surveyed thousands of people; held eight Town Hall meetings; obtained over 15,000 statements of support; held five annual gatherings of Tribes at Bears Ears to discuss land protection strategies; interviewed dozens of elders and medicine men; developed sophisticated GIS data and many maps displaying that data; and obtained 24 resolutions of support from many Navajo chapter houses and Tribes.

Importantly, the PLI is oriented to solutions on a county-by-county basis, and Bears Ears is located in San Juan County. In April 2013, the Navajo Nation and UDB made its submission to the county, proposing, with extensive research and detailed mapping, the creation of a Bears Ears National Conservation Area, to be co-managed by Tribes. The County never responded. In 2014, the County completed an eighteen-month public land planning process that essentially ignored the Native Americans. This in spite of the fact that Native people, by 2014 U.S. Census

Bureau statistic, comprise almost half of the County's population. Toward the end of the process, the county put up various proposals for public comment but refused to include the Navajo-UDB proposal on the survey. Despite not even being on the survey, the Native American proposal received 64% of the vote.

The well-stated views of the county's Native American citizenry continued to be of no matter to the County. In July 2015, the San Juan County Commission recommended a national conservation area that was much smaller than the Navajo-UDB proposal; designated large swaths of Bears Ears as an "Energy Zone;" and was inconsistent with the proposal in several other important respects. That recommendation was proposed to the PLI, but Congressmen Bishop and Chaffetz have yet to finalize their proposal for San Juan County public lands.

In addition to San Juan County processes, we have also been unable to make any headway at the PLI level. The Navajo Nation and UDB made more than two dozen presentations at meetings attended by federal, state, and local officials involving PLI issues. At each one, with Congressional staff attending about half of them, we made an oral presentation and handed out summaries and maps putting forth a proposal similar in concept to this Coalition proposal. Further, between 2013–2015, we made four visits to Washington DC, met with the two Congressmen and their staffs, and made presentations as just described. We have never received a single substantive response.

Over all, at no time has either the PLI or the County visited the Tribal headquarter of any Tribe or engaged the Navajo Nation, UDB, or the other Tribes in any substantive discussions. These events involving the PLI process are recounted in more detail in the timeline contained in Exhibit One of this proposal.

The gathering of Tribes in 2014 reaffirmed the critical need to achieve protection for Bears Ears; it examined the alternatives of pursuing the legislative routes through the Bishop-Chaffetz process, and the possibility of achieving a presidential proclamation under the Antiquities Act. The 2015 Tribal gathering, held in Bluff, with visits to, and over flights above, the nearby Bears Ears area, sharpened the issues even more. The PLI effort had not yet led to anything, and the deadline for a presidential proclamation loomed ever closer. Native people have learned from long, bitter experience that they cannot be pushed and rushed into making decisions too quickly. At the same time, conditions may make it impossible to avoid taking action because of the need to meet deadlines inherent in the Federal system. “We must have a vision to build trust among the Tribes, share and learn from each other, and establish a base or foundation to pursue the designation. Working together we can climb this mountain successfully. We know there is a short window of opportunity at this time. If we do not agree, the project proposal will place us years before another opportunity will occur.”(Willie Grayeyes, Navajo) “This is historic. It is a chance for us, Tribes or indigenous people, to have a say in what happens to this area. A lot of people might call this a landmark decision.”(Ben Nuvamsa, Hopi)

The group decided to hold a special meeting to decide what the strategy should be. The meeting was held in Towaoc on the Ute Mountain Ute Reservation on July 15-17. The third day, Friday, was reserved for a meeting with senior Federal officials from Washington, D.C. That meeting was held in the ultimately appropriate and inspiring place, within the proposed monument, in a clearing in a sunny ponderosa pine forest directly below the majestic natural formation, the Bears Ears.

The day before, at the Thursday meeting in Towaoc, Tribal leaders had made a series of critical decisions that energized the already enthusiastic Bears Ears Movement. UDB, as a non-profit organization, and the Navajo Nation had always wanted this effort to be headed up by a multi-Tribal organization comprised of Tribes with strong connections to the Bears Ears. Thus, at Towaoc, to formally unite in furtherance of protecting the sacred Bears Ears landscape, Tribal leaders from Hopi, Navajo, Uintah and Ouray Ute, Ute Mountain, and Zuni agreed to create the Bears Ears Inter-Tribal Coalition to protect and preserve the homeland area they all care so deeply about. All of the Tribes passed resolutions on the subject before the meeting or shortly after it. The five Tribes then adopted an MOU setting forth the mission, function, and procedures for the Coalition. “I know that if we all can go through this together and fight this together, we’re going to make a stronger union than if we go alone. I think we’re going to be a great model for everyone else out there. We can make a really big footprint.” (Alfred Lomahquahu, Hopi) “We decided this group is an important group because you’re working on something that excites people that has a magnetism, something that’s worth our while, preserving a sacred place that Indian people will always have, where they are doing their prayers and other cultural practices.” (Peterson Zah, Navajo)

This July 2015 meeting was a major milestone. Federal Indian policy, including the trust relationship, is based on the bilateral relationships between recognized sovereign Tribes and the United States. Indian Tribes each have their own individual histories, cultures, and concerns. It is rare that Tribes work together in this fashion, but all the circumstances were right in the case of Bears Ears. “The idea of being a family, all together, one direction, is stronger than individual efforts. The unity of the group fuses all Tribes in the future. Our lifestyle, our food, our way of

life seems to be the cornerstone for our position, and I'd like to express my support for that.”(Willie Grayeyes, Navajo)

The newly-formed Bears Ears Inter-Tribal Coalition, recognizing the significance of the creation and management of a Bears Ears National Monument, decided that they themselves should craft a comprehensive, detailed proposal, to be submitted to the President by a self-imposed deadline of October 15, 2015. Submission by this date would allow the President ample time to consider, and hopefully sign, a proclamation under the Antiquities Act. This would also allow time for the Bishop-Chaffetz process to review our proposal and present their own, if so inclined. In the meantime, during the late summer of 2015, the Tribes held three more intensive meetings hosted at the tribal lands of the Coalition members.

Over the five years of preparation for this proposal, meetings were uniformly well attended. Speakers always felt comfortable to express their true beliefs and feelings. The discussions were always far-ranging. The six meetings in 2015 were especially productive in terms of honing a specific proposal. These meetings were long, coupled with numerous phone calls, emails, and conference calls to discuss drafts. We discussed Collaborative Management often and in depth, and unanimously supported a strong version of Collaborative Management. In all, this proposal represents the true voice of these Tribes and our determination to present to the United States a program that is workable in the real world of land management. This program will add even more luster to the proud American system of conservation lands, and bring justice to worthy Tribes and individuals and a sacred landscape. “We hope to go to Bears Ears to learn. Our history lies within the landscape and when we go there we find missing chapters of our book.”(Jim Enote, Zuni)

#### **IV. MONUMENT BOUNDARIES**

Over the past five years, we have given extensive attention to determining the objects of protection and the appropriate boundaries for the Bears Ears National Monument. We had many discussions with elders who are familiar with traditional use areas. Many of those people continue to use the area. We also interviewed younger grassroots people who use the area regularly. We have included this topic at our community meetings and obtained valuable information in those forums.

We created a map encompassing 1.9 million acres, page 6 above, which conforms to the large amount of information we have obtained and analyzed. This map reflects extensive on-the-ground organizing, GIS data work, and community outreach that allowed us to determine and locate Tribal uses of the Bears Ears landscape. These uses include land valued by Tribal members for gathering of medicines and herbs, worshipping at sacred areas, holding ceremonies, protecting archaeological sites, gathering firewood, hunting, protecting wildlife habitat for deer, elk, and bighorn sheep, and maintaining natural beauty and solitude. We also determined the areas where the threats to land health are the highest. While we wish we could protect more of this ancestral landscape, what we are left with—and now propose—is what we believe is the smallest area compatible with the proper care and management of the objects we believe should be protected by this monument designation.

As for the monument boundaries, we propose this next step. We will meet with departmental officials and, working from a large-size map, grassroots people with extensive knowledge will explain how the proposed boundaries conform to protected historical and scientific objects in the region and to substantial Tribal and public interests. We also will provide GIS data that displays the information we have gathered showing the areas of high Tribal interest. We look forward to these discussions with you so that you can fully assess the



appropriateness of these boundaries. For our part, we know that we have identified a landscape that fully and fairly reflects our long and deep connection with this important part of our ancestral homeland and that it presents an outstanding opportunity for protection under the Antiquities Act.

## **V. COLLABORATIVE MANAGEMENT: THE LEGAL BASIS**

### **A. Definition of Collaborative Management**

Importantly, and as reflected in this proposal, the effort to preserve Bears Ears has always been premised on Collaborative Management between the Tribes and the Federal government. Only then will we Native people have real influence on how this sacred land is managed. At the outset, we emphasize that we do not claim direct precedent for the kind of Collaborative Management that we propose. In the Pacific Northwest, the Tribes, the United States, and the State of Washington do co-manage salmon and other marine resources. That system, however, arose out of specific treaty provisions and a sweeping 1974 court decision supplemented by four decades of statutes, appropriations, intergovernmental agreements, informal relationships, and other factors. Alaska Natives also have co-management responsibilities over some marine animals arising from various statutes and regulations involving circumstances not at work here. In the context of national monuments, presidents have often referred in monument proclamations to Tribal participation but they have accorded Tribes only the right to be consulted, not to collaboratively manage. Perhaps the strongest presidential declaration language to date is in the 2001 Kasha-Katuwe National Monument proclamation, which required "close cooperation" with the Cochiti Pueblo.

At the same time, the idea of strong Tribal management authority on public lands is taking hold. Modern Tribes now possess substantial land management capability. A serious

proposal to provide for expansive management authority by the Pine Ridge Sioux Tribe on the South Unit of Badlands National Park is now before Congress. At the National Bison Range in Montana, the U.S. Fish & Wildlife Service has issued a draft environmental assessment in which the preferred alternative would provide for true collaborative management between the Service and the Confederated Salish and Kootenai Tribes. The land management and legal literature now includes considerable attention to this brand of collaborative management.

At Bears Ears, as at the Badlands and the Bison Range, the tribes have no legal right to expansive management responsibility. It is a matter of discretion. Here, as we will discuss, the President has the authority under the Antiquities Act to provide for collaborative management at Bears Ears. The question is whether, as a matter of good public policy, he should exercise it. Certainly, as we will discuss, these Coalition Tribes present compelling circumstances.

We propose Collaborative Management in this fashion:

1. The Agencies and the Tribes shall, from the beginning to the conclusion of all plans and projects, collaborate jointly on all procedures, decisions, and other activities except as otherwise provided in the Proclamation.
2. In the case of impasse, undue delay, or other extraordinary circumstances, the Agencies and the Tribes shall proceed to appropriate mediation. If such mediation fails, the Secretary of Interior or the Secretary of Agriculture, as appropriate, shall in a written opinion explaining the reasons, make the relevant decisions.

## **B. Presidential Authority to Proclaim Collaborative Management**

The Property Clause of the Constitution vests Congress with primary authority over the Federal public lands. U.S. Const. art. IV, § 3, cl. 2. Through the Antiquities Act of 1906, Congress lawfully delegated a part of this authority to the President, enabling him to declare national monuments through proclamations. Because of the sweeping language of the Act, allowing him to protect prehistoric, historic and scientific "objects" "in his discretion," this delegation is recognized as one of the broadest delegations of presidential authority found anywhere. For the many decisions on the subject, see generally *Cameron v. United States*, 252 U.S. 450, 455-56 (1920); *Mountain States Legal Foundation*, 306 F.3d at 1133 (D.C. Cir. 2002); *Utah Ass'n of Counties v. Bush*, 316 F.Supp.2d 1172 (D. Utah. 2004) *appeal dismissed*, 455 F.3d 1094 (10th Cir. 2006). Indeed, no action under the Antiquities Act has ever been overturned by the courts.

Under the Antiquities Act, presidents possess broad discretion to determine by proclamation what practices constitute “proper care and management.” In recent times, presidents have used their authority under the Act to govern management in the monuments:

“Although many of the early proclamations were quite terse and did not contain much if any guidance on how the monuments were to be managed, the Carter and particularly the Clinton proclamations contained quite a bit of detail on area management; *e.g.* defining the extent to which water was reserved as a matter of Federal law, and the extent to which grazing, off-road vehicle travel, hunting and fishing, and other activities might be allowed.”) George Coggins, Charles Wilkinson, John Leshy & Robert Fischman, *Federal Public Lands and Resources Law*, 400 (7<sup>th</sup> ed. 2014).

Presidential authority to determine proper care and management is evident from many proclamations. President Clinton’s proclamations included monument management directives for the purpose of protecting monument objects. Examples include:

The Secretary of the Interior shall study the impacts of livestock grazing on the objects of biological interest in the monument with specific attention to sustaining the natural

ecosystem dynamics. Existing authorized permits or leases may continue with appropriate terms and conditions under existing laws and regulations. Should grazing be found incompatible with protecting the objects of biological interest, the Secretary shall retire the grazing allotments pursuant to the processes of applicable law. Should grazing permits or leases be relinquished by existing holders, the Secretary shall not reallocate the forage available under such permits or for livestock grazing purposes unless the Secretary specifically finds, pending the outcome of the study, that such reallocation will advance the purposes of the proclamation. Presidential Proclamation 7318 (Establishment of the Cascade-Siskiyou National Monument June 9, 2000)

The commercial harvest of timber or other vegetative material is prohibited, except when part of an authorized science-based ecological restoration project aimed at meeting protection and old growth enhancement objectives. Any such project must be consistent with the purposes of this proclamation. No portion of the monument shall be considered to be suited for timber production, and no part of the monument shall be used in a calculation or provision of a sustained yield of timber. Removal of trees from within the monument area may take place only if clearly needed for ecological restoration and maintenance or public safety. Presidential Proclamation 7318 (Establishment of the Cascade-Siskiyou National Monument June 9, 2000)

Because most of the Federal lands have already been leased for oil and gas, which includes carbon dioxide, and development is already occurring, the monument shall remain open to oil and gas leasing and development; provided, the Secretary of the Interior shall manage the development, subject to valid existing rights, so as not to create any new impacts that interfere with the proper care and management of the objects protected by this proclamation; and provided further, the Secretary may issue new leases only for the purpose of promoting conservation of oil and gas resources in any common reservoir now being produced under existing leases, or to protect against drainage. Presidential Proclamation 7317 (Establishment of the Canyons of the Ancients National Monument June 9, 2000)

[G]razing permits on Federal lands within the monument south of Interstate Highway 8 shall not be renewed at the end of their current term; and provided further, that grazing on Federal lands north of Interstate 8 shall be allowed to continue only to the extent that the Bureau of Land Management determines that grazing is compatible with the paramount purpose of protecting the objects identified in this proclamation. Presidential Proclamation 7397 (Establishment of the Sonoran Desert National Monument, January 17, 2001).

The Clinton monuments were tested by several court cases but the proclamations were uniformly upheld. This included attacks on provisions relating to management. See, e.g., *Tulare County v. Bush*, 306 F.3d 1138, 1142 (D.C Circuit, 2002), *cert. denied*, 540 U.S. 813, where the District of Columbia Circuit Court of Appeals upheld the establishment of the Giant Sequoia

National Monument and the inclusion of specific management directives on ecological restoration of monument objects within the proclamation.

President George W. Bush's Proclamation establishing the Northwestern Hawaiian Islands Marine National Monument includes highly specific management directives, perhaps the most far-reaching declared for any monument. Presidential Proclamation 8031, 71 Fed. Reg. 51134. Among other things, President Bush imposed detailed restrictions on commercial fishing within the monument, set forth elaborate requirements governing access and vessel monitoring systems, and imposed provisions defining traditional Native Hawaiian practices within the monument:

2. Additional Findings for Native Hawaiian Practice Permits. In addition to the findings listed above, the Secretaries shall not issue a permit to allow Native Hawaiian practices unless the Secretaries find:

- a. The activity is non-commercial and will not involve the sale of any organism or material collected;
- b. The purpose and intent of the activity are appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (pono), and demonstrate an understanding of, and background in, the traditional practice, and its associated values and protocols;
- c. The activity benefits the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community;
- d. The activity supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the Northwestern Hawaiian Islands; and

e. Any monument resource harvested from the monument will be consumed in the monument.

The Obama Administration has continued the trend of including management directives within National Monument Proclamations. For example, the proclamation establishing Browns Canyon National Monument contains provisions on recreation designed to protect monument objects:

“Except for emergency or authorized administrative purposes, motorized and mechanized vehicle use in the monument shall be allowed only on roads and trails designated for such use, consistent with the care and management of the objects identified above. After the date of this proclamation, new roads or trails may only be designated for motorized vehicle use in areas west of the Arkansas River and at the Ruby Mountain Recreation Site and then only as necessary to provide reasonable river or campground access, consistent with the applicable management plan. Forest Road 184 may be realigned or improved only if for the care and management of the objects identified above or as necessary for public safety. Proclamation 9232 (Establishment of Browns Canyon National Monument, February 19, 2015).

The President's exact authority to provide for Collaborative Management with Tribes under his power to determine proper care and management has not been tested because no president has yet provided for it, but every sign is that the courts would uphold it. There are limits, however. As the next section discusses, the delegation to the Tribes cannot go too far.

### **C. The Lawful Delegation to the Tribes**

Collaborative Management does mean that President Obama is delegating some authority over the public lands to the Tribes, but it is not a delegation of complete authority: the Tribes and agency officials will be working together as equals to make joint decisions. The unlawful delegation doctrine addresses cooperative efforts between Federal agencies and non-Federal entities. In a case where the National Park Service delegated essentially all decision making over the Niobrara National Scenic River, the court found that "NPS cannot, under the unlawful

delegation doctrine, completely shift its responsibility to administer the Niobrara to a private actor." *National Parks and Conservation Association v. Stanton*, 54 F.Supp.2d 7, 18 (D.D.C.1999). The court made it clear, however, that such delegations are unlawful only if they attempt to transfer full and complete authority: "Delegations by Federal agencies to private parties are, however, valid so long as the Federal agency or official retains final reviewing authority." See also, *Riverbend Farms v. Madigan*, 958 F.2d 1479, 1488 (9th Cir.), cert. denied, 506 U.S. 999 (1992); *Ocean Conservancy v. Evans*, 260 F.Supp.2d 1162, 1183 (M.D. Fla. 2003). See generally Department of the Interior, Office of the Solicitor, *Partnership Legal Primer* (2004).

In our request for Collaborative Management, we have designed a system that fully complies with concerns of unlawful delegation. The starting point is that delegations to non-Federal entities can be made. They cannot, though, be total—or, let us say, nearly so. Here, the Federal and Tribal teams are directed to work together to reach joint decisions. Up to that point, the system does not violate the unlawful delegation doctrine because, by definition, the Federal agency will have approved these decisions. But, if the collaborators cannot agree, the dispute will go to mediation. If all that fails, then the Secretary of Interior or Agriculture makes the final decision. The Departments, therefore, have three final decision-making mechanisms and the requirements of the unlawful delegation doctrine have been met.

In putting this system forward, we have been guided in part by the experience at the Montana Bison Range, referred to above. Our approach is not identical, but we have adopted several aspects of the Bison Range approach, including the important idea of having the appropriate Secretary have final say if there are disagreements. That principle is key to full and proper compliance with the unlawful delegation doctrine.

Obviously, there are complexities here relating to matters other than legal sufficiency, and the next two sections explain our system further and suggest ways to make it work smoothly, which it absolutely can. In working through these issues, we hope that Federal officials keep in mind how unique and compelling these circumstances are. This monument, owned though it now is by the United States, will consist of our treasured ancestral lands. Those lands and our physical legacy in them have been treated badly—horridly, in many instances. The United States has a trust relationship with our sovereign governments. The Tribes, through their deep knowledge of this land, their scientists, their land managers, and their artists and poets and songs, will help present this sacred area to the world in a way that cannot possibly be done without their partnership. Those facts should pervade the decision-making that will follow this proposal. They will give President Obama special impetus to proclaim true Federal-Tribal Collaborative Management for the first time in the nation’s history and provide a sound basis for an express presidential finding in the proclamation that Collaborative Management will enrich and improve the proper care and management of the monument. Those facts will give added protection to the proclamation and serve as essential context as we work with you to adopt the right system of Collaborative Management.

## **VI. COLLABORATIVE MANAGEMENT: IMPLEMENTATION**

Collaborative Management at Bears Ears needs to be more than just legally sufficient. It must work on the ground—efficient and smooth-running in the real world of land management. We have discussed these issues with many Federal and Tribal land managers and present this formulation as an effective, workable way to bring the Traditional Knowledge, scientific expertise, management experience, and commitment of the Tribes to the Bears Ears National Monument in concert with the Federal agencies. The matter of having five Tribes and three Federal agencies, while potentially unwieldy at first blush, can be resolved effectively



**A. The Bears Ears Management Commission and the Monument Manager**

This Commission would be the policy making and planning body for the monument and would have supervisory authority over the Monument Manager. It would be a federally-created entity but not a federal agency. It would have eight members, one from each Tribe and one from each Federal agency. The Tribal members would receive salaries. The Commission members would choose a chairperson. The Commission would report to the Secretaries annually on the success of administering the monument in accordance with the terms of the proclamation and on plans and needs for the upcoming year.

The Manager would be hired, and could be fired, by the Commission. Indian preference would be followed in accordance with existing law. The Commission will set policy within the bounds of the proclamation, the management plan, and MOUs or MOAs, discussed below, adopted in connection with the proclamation. The Commission will set performance standards for the Manager and conduct annual performance reviews. The Commission chairperson, on behalf of the Commission, will have the direct supervisory relationship with the Manager. The Manager would report directly to the Commission.

Senior staff, perhaps including a Deputy Manager and division chiefs, will be hired by the Manager with policy guidance from the Commission. The Manager will have responsibility for hiring operational staff. Ideally, staff will be deep in both traditional Native American values and knowledge and western science as well as public land management. We request that these critical hires will be made in full consideration of the special needs of this national monument and that the monument offices be located in the best location for visitors to the monument.

The work of the Bears Ears Inter-Tribal Coalition has received a great deal of enthusiasm among the public, the media, non-profits, foundations, and corporations. One of many

encouraging developments took place in August 2015. Two major foundations have advised us that they have strong philanthropic interest in Bears Ears and will provide substantial funding for Tribal planning and management at the proposed Bears Ears National Monument. This generosity would assure a solid start-up capability for the Tribes' Collaborative Management work.

Of course, stable, long-term funding will be necessary for Bears Ears. It is now quite commonplace for the Federal land management agencies to provide funding to Tribes for work (though it has not been as extensive as Collaborative Management) on Federal land units. We request that the Bears Ears presidential proclamation direct agencies to use their best efforts to provide funding under the Indian Self-Determination statutes and other authorities for collaborative Management at Bears Ears. The Intergovernmental Personnel Act will be of use here.

The BLM, Forest Service, and Park Service all have lands within the proposed monument. The Tribes have strong connections with each of those areas, often developed long before the Federal agency boundaries were drawn. This is one large cultural landscape with extraordinary scientific and historical objects that should be managed as one, with, for example, the management plan and operations generally applying throughout the monument.

#### **B. Monument Planning and Operations**

The joint decision-making will begin with the management plan called for by the proclamation. This key document, second in importance only to the proclamation, would be developed by Monument staff, with the Commission providing specific direction to staff regarding plan design and content, as well as review throughout the process of plan development. Members of the public and other key stakeholders would have ample opportunity

to contribute to the development of the plan through normal NEPA processes. Presumably, the proclamation would direct that this plan be completed within the customary three years. As for the day-to-day operations, Commission members will develop procedures (some may already have been agreed to in the supplemental MOAs or MOUs, discussed below) and begin work on tackling the many issues to be determined in the management plan.

Operationally, it is essential that matters be carried out by a single leader, hopefully the kind of top-flight person who can serve for many years. The Manager, under policy direction from the Commission, will be responsible for day-to-day operations and designing an organization that accounts for basic functional areas such as budgeting, procurement, human relations, maintenance, cultural resources, and natural resources. This proposed monument will be open to all members of the public and the Tribes fully accept and honor their obligation to administer this area fairly and equally for all persons.

### **C. The Fruits of Collaborative Management**

Those are some comments on the procedural aspects of Collaborative Management. But the ultimate goal is to achieve substantive results, hopefully—and realistically—ones that qualify as groundbreaking and enduring. Earlier, we referred to the opportunity to develop a world-class program or institute in Traditional Knowledge at the proposed monument. In accomplishing that, the Commission and staff will possess solid expertise. The effort could quickly develop the kind of energy and quality that would pull in outstanding outside practitioners and scholars interested in Traditional Knowledge.

To demonstrate this, Phillip Vicenti and Octavius Seowtewa offered, for this proposal, an example of how Traditional Knowledge can combine with western science to unlock secrets of the past. "With our oral history from generation to generations, the Zunis (A:shiwi) emerged

from the fourth world. They emerged from the lower depths inside Grand Canyon. The place of our emergence in the Grand Canyon is a place called 'Ribbon Falls.' As our people journeyed, starting below the Grand Canyon, searching for the middle place of the world, our ancestors traveled in different directions. Some of our people went south, some went north, some went west, and some continued toward the east. The ones who continued north were the medicine people. Using our oral history with the scientific archeology findings, it is evident that our ancestors did indeed inhabit the surrounding Bears Ears area at one point in time. To exemplify the scientific finding, our migration history, our songs and prayers that we practice today do reference that area." (An article recounting this collaborative effort crossing cultural and scientific lines is "Native American Oral Tradition and Archeology, Issues of Structure, Relevance, and Respect," with Roger Anyon, Loretta Jackson, Lillie Lane, and Phillip Vicenti in *Native Americans and Archaeologists: Stepping Stones to Common Ground*, ed. Nina Swidler, Kurt Dongoske, Roger Anyon, and Alan Dower. Walnut Creek, Calif., Alta Mira Press 1977, 77-87.).

Another area for exciting collaboration is map art, which is a natural medium for creating both influential research and programs and other outreach to the public. The leader in this area of creative Traditional Knowledge, art, and expression of the natural world is the A:shiwi A:wan Museum and Heritage Center, located at the Zuni Nation, which currently is presenting a map art exhibition at the Fowler Museum at UCLA. "The Zuni community is arguably one of the world's great centers of art. At least one person in practically every household is actively and consistently creating art. In what some might consider a dry and dreary environment, we embellish and embroider the simplest things. We enjoy the sound, look, and feel of beautiful things; and try to look our best, especially during the many social and ceremonial events that

occur throughout the year.”(Jim Enote, *A:shiwi A:wan Ulohanne: The Zuni World* (Enote and McLarran, Eds.) P.5 (2011))

The notion of traditional map art, in which artists portray natural landscapes in colorful images that evoke their own visions and feelings, resonates with other Tribes. Map art is a natural for public displays and programs. The new monument will be a promising place for extensive collaboration in this engaging and creative fusion of culture, art, the natural world, and geography.

Then there is traditional land management itself. Collaborative Management at Bears Ears offers a first-ever opportunity to truly infuse Native values into public lands administration by pulling upon both indigenous knowledge and Western science. Both have great value. The enterprise of honoring and using both bodies of thought and experience, and thus mediating across knowledge systems, can be a unique contribution of this monument. As such, their work can both enrich on-the-ground conditions and produce cutting-edge research for land managers everywhere.

Our Tribes are already doing this. The Ute Mountain Ute have offered a good example of how effective use of both western and Traditional Knowledge can combine to achieve significant collaborative results. During excavation for the Animas-La Plata Water Project, a number of distinct communities and burial sites were uncovered at the present location of Ridges Basin Reservoir. Together, with funding provided by the Bureau of Reclamation, the project team consulted with over twenty Tribes and Pueblos in the southwest region on how to proceed with handling the remains and other uncovered objects. Ernie Vaillo, an Acoma Pueblo medicine man, was the lead consultant on behalf of the Tribes. The process was completed with a ceremony that respected the cultural practices of each Tribe. The Ute Mountain people

emphasize that this is not an isolated example; rather, this project represents a number of good, cooperative working relationships that our Tribes have built up with federal, state, and local bodies in recent years.

#### **D. Federal-Tribal Agreements Supplemental to the Proclamation**

The robust Collaborative Management envisioned by this proposal will involve details that are too specific to be covered in the proclamation. The Commission and Manager would benefit from MOAs or MOUs, created before or shortly after the proclamation, to chart out the nuts and bolts of their relationship. There are also substantive issues that would benefit from attention in this fashion, including the nature of the mediation process called for in the case of impasses; the use of the Intergovernmental Personnel Act; and the ability of both the Commission Chair and Monument Manager to speak with “one voice.” Further, while it could be left to the Commission, it might be worthwhile to consider in advance the coverage of the management plan, i.e., the issues that are included within it.

Also, as noted, to secure funding for the Commission over the long term, the proclamation should encourage contracting and compacting under the Tribal Self-Governance Acts and other statutes. It might be wise to get a head start on that process through agreements, or even actual applications for funding, in advance of the proclamation.

### **VII. MONUMENT USES**

#### **A. Threats to the Bears Ears Landscape**

Oil and gas companies are making a major push for new drilling on Cedar Mesa, Tank Mesa, and the breathtaking reaches of Lockhart Basin, Hatch Point and Harts Point near Canyonlands National Park in the northern part of the proposed monument. Large potash mining has also been proposed. All of our Tribes remember the uranium boom after World War II and the many illnesses and deaths of Indian people caused by reckless mining companies and the

indifference of the United States. Bears Ears holds uranium deposits that could be quickly accessed under the General Mining Law if market conditions change.

All existing mineral rights should be honored, but future mining should be prohibited in Bears Ears. Some of this area's greatest values are the long-distance Southwestern views; pure, stunning quiet; and the gift to visitors of taking time away from the workaday world, slowing down, and healing. A major objective of the proclamation should be to keep most of Bears Ears roadless and pristine. We should heed more than ever Teddy Roosevelt's wisdom when he turned to the Antiquities Act to protect the Grand Canyon: "Leave it as it is. You cannot improve upon it."

Responsible off-road vehicle use has a place in Bears Ears, but not irresponsible off-road vehicle use. Whether thoughtless or blatantly illegal, these riders can wreak significant impacts to both the natural landscape and our treasured archaeological sites. There has been a heavy toll on the land and our cultural legacy from decades of irresponsible use. Monument status for Bears Ears will lead to better management of off-road vehicle use and will improve the recreational experience for everyone who visits, including off-roaders.

Perhaps the worst of all is the looting and grave robbing. More than a dozen serious looting cases were reported between May 2014 and April 2015. From small-scale theft to ancestral remains being tossed around when graves are plundered, these deplorable acts defile the past and wound the present, which for us is so directly connected to the past. The loss has many dimensions. "The Hopi people made a solemn covenant to Maasaw to protect the land by serving as stewards of the Earth. The land is a testament of Hopi stewardship through thousands of years, manifested by 'footprints' of ancient villages, migration routes, pilgrimage trails, artifacts, petroglyphs, and the buried *hisatsinom*, 'the People of Long Ago,' all of which were

intentionally left to mark the land as proof that the Hopi have fulfilled their covenant. The Hopi ancestors buried in this area continue to inhabit the land, and they are intimately associated with the clouds that travel out across the countryside to release the moisture that sustains all life.”(Herman Honanie, Hopi)

**B. Uses to be Resolved in the Proclamation**

Some uses in the monument will be addressed directly in the presidential proclamation while others will be taken up in the management plan ordered in the proclamation. Based on what we have presented in this proposal, we recommend that these provisions be included in the proclamation itself:

- A permanent withdrawal from the mining laws, for both location and leasing, of all lands within the monument.
- A permanent withdrawal from all other forms of leasing, selections, sales, exchange, and other forms of disposition under the public land laws, other than those exchanges that further the purposes of the monument.
- Motorized vehicle use should be permitted only on designated roads. Non-motorized mechanized vehicle use should be permitted only on roads and trails designated for their use consistent with the purposes of the monument. The management plan directed by the proclamation should include a transportation plan designating the roads and trails available for motorized or non-motorized vehicle uses.
- State of Utah and Ute Mountain Ute hunting and fishing laws should continue to apply within the monument.
- The Secretaries should be directed, upon request of the State of Utah, to negotiate with the state for an exchange of the state inholdings within the monument.



- The Secretaries should be authorized to draft regulations specifically governing matters related to the monument.
- The proclamation should provide for Collaborative Management, hopefully in the fashion that we have recommended in this proposal.
- The Secretaries should, working jointly with the Bears Ears Inter-Tribal Management Commission, be directed, within three years, to complete a management plan setting forth requirements for the proper care and management so that all monument uses will proceed in a manner fully consistent with the purposes of the monument. The management plan should, to the maximum extent permitted by law, ensure the protection of Native American sacred and cultural sites in the monument and provide access to the sites by members of Indian tribes for traditional and cultural uses, including gathering of minerals, medicines, berries and other vegetation, forest products, and firewood.
- Grazing under existing permits or leases should continue under existing law.
- Firewood gathering should continue under current management proscriptions and then be subject to such provisions as adopted in the management plan.
- The monument should be added to the National Landscape Conservation System.
- There will also be several standard proclamation provisions, mostly relating to protecting existing rights, generally and specifically protecting Tribal rights, Federal withdrawals, rights of inholders, and existing water rights.

**C. Uses to be addressed in the Management Plan**

We view the proclamation as delegating broad authority to the Secretaries and the Commission, working jointly, to adopt, in the management plan, provisions to regulate uses of monument lands so that those uses are consistent with the proper care and management of the monument lands and the objects protected by the proclamation. With those management standards in place, the Secretaries and the Commission will collaboratively administer and enforce the standards in the management plan. The management plan would also address non-regulatory matters such as scientific studies, including archaeology.

In our many Tribal discussions of collaborative management, we saw differences in the way Federal and Tribal agencies view “land management.” Federal laws, and often state laws as well, generally call for regulating logging, grazing, mining, hunting and fishing, water diversions, and activities that cause air and water pollution.

At our meetings, when Tribal land managers and Tribal members discussed land management, they invariably used fundamentally different categories. These categories included: sacred sites, springs, ancient roads, medicines and herbs, deer and elk, ancient remains, beauty, grasses, animals, and others.

We think of it this way. It’s not a matter of deciding which approach toward cataloguing is better or worse. What we believe is that there will be a powerful, constructive vitality and sense of searching for the right answers when the two groups work together in Collaborative Management, beginning with the management plan. We think it will result in as good a monument as there has ever been. And that’s consistent with our fondest goal in this proposal.

## VIII. CONCLUSION

If President Obama adopts the thrust of this proposal, he would be calling upon some of the truest currents of both Federal Public Land policy and Federal Indian policy. In 1906 President Roosevelt signed into law, and immediately began to execute, a recognition of the enduring power and dignity emanating from the earliest societies on this continent. Now President Obama, who already must be counted among the greatest Indian presidents, has built his Indian policy on the footing of the proud, strong sovereignty of contemporary Indian Tribes.

President Roosevelt stood determined to honor the worth of ancient civilizations by using a new and untried policy, that of using the public lands to protect those cultural treasures. Now President Obama can decide whether to meet a current opportunity to extend still more protection and honor to those civilizations and their modern successors. And as was the case during President Roosevelt's era, the best way, although it is legally available and consistent with his commitment to Tribes, is one that has not been utilized before.

Now the time and place to try it are at hand. Historically, our Coalition Tribes have shown remarkable staying power through our long, forced wait, unable to marshal the resources to address the many wrongs inflicted on our sacred homeland. We Coalition Tribes have shown, through our five years of diligence leading up to this proposal and our actions in many other arenas, that we are, in every regard, fit for this challenge: we are ready and able to work constructively and respectfully with the Federal agencies to elevate the protection and meaning of the Bears Ears landscape to a new and higher level. Yes: now is the time, and Bears Ears is the place to do it.

We thank you again for your willingness to entertain this proposal.

Respectfully submitted,

THE BEARS EARS INTER-TRIBAL COALITION

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Chairman, Herman G. Honanie  
Hopi Tribal Council

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Date

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President, Russell Begaye,  
Navajo Nation

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Date

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Chairman, Shaun Chapoose,  
Ute Indian Tribe Business Committee

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Date

---

Chairman, Manuel Heart  
Ute Mountain Ute Tribal Council

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Date

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Governor, Val Panteah  
Pueblo of Zuni

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Date

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**EXHIBIT ONE**  
**A TIMELINE: THE RELATIONSHIP OF THE PUBLIC LANDS INITIATIVE WITH THE**  
**TRIBES AND THEIR MEMBERS**

**I. Summary of Timeline**

The timeline that follows this summary catalogues the extensive efforts of Native Americans to have their Bears Ears proposal considered in the Public Lands Initiative (PLI) process. The timeline also reflects the thousands of hours of time, more than one thousand Native American voices, and more than 225,000 of vehicle miles driven by Bears Ears Board Members and staff to develop and communicate the contents of this proposal. This proposal was perhaps the most well-researched, most grassroots, and most broadly supported initiative of any stakeholder or government group in the Public Lands Initiative. It was also the first proposal to be put on the table by a local government in this process, but frustratingly it seems to be the last to be recognized by elected officials in Utah. The timeline below is designed to detail these developments. Documents referenced in this Exhibit are available by visiting; <http://www.bearscoalition.org>.

Native Nations, including the Hopi, Navajo, Uintah and Ouray Ute, Ute Mountain Ute, and Zuni and Native Americans representing the Utah Diné Bikéyah (UDB) organization have been working respectfully and collaboratively with all parties to protect the Bears Ears landscape for more than five years. During that time, we have made this matter a top priority and, as catalogued in our proposal, have dedicated an extraordinary amount of productive time on public land issues in eastern Utah.

In 2010, Senator Robert Bennett initiated a process to resolve issues of conservation and development of public lands in eastern Utah. We pledged to participate in that effort, but it died when Senator Bennett was not returned to office. In 2013, Congressman Rob Bishop, later joined by Congressman Jason Chaffetz, began a

similar process, called the Public Land Initiative, which was described as an "open, collaborative," and "ground-up" effort.

But the PLI was designed to rely heavily on the county commissions. The Bears Ears area is in San Juan County. The Native American population of San Juan County, mostly Navajo, is 46.6% of the citizenry according to 2014 U.S. Census Bureau statistics. However, despite our deep interest and years of efforts, Native American communities and governments have never been included in any substantive discussions with respect to the Public Land Initiative process in San Juan County.

Throughout the last six years, San Juan County and the Utah congressional delegation has demonstrated that they either do not understand how to reach Native American Tribes and individuals, or they are unwilling to do so. First and foremost, contrary to the tradition usually followed in implementing the government-to-government relationship, to our knowledge neither Congressman Bishop nor Congressman Chaffetz, or their staff, ever visited the Tribal headquarters of any Tribes concerning Bears Ears.

In addition, for example, San Juan County did not announce its open houses on the Navajo radio station or send public mailers to Utah residents who collect their mail in Arizona, even though hundreds of Utah residents living on the reservation must travel to Arizona to retrieve their mail. In spite of the fact that the results of the PLI are intended to become federal law, there has been little effort to substantively engage the federally-recognized, sovereign Tribes in Utah, and no effort to engage Tribes outside of Utah with whom the United States has a trust relationship.

The unfairness of forcing Native Americans to work through San Juan County is

shown by the County's key decision-making processes. Native American Tribes and local communities attempted to engage at every stage in the process. Then, during the public comment opportunity afforded by San Juan County in 2014, the Navajo Nation and UDB were assured that the Bears Ears proposal would be included as “Alternative D” on the list of County identified alternatives. One week before the first open house, San Juan County broke this agreement and excluded Alternative D from the county list of alternatives, even though it represented the views of half of the San Juan County population.

Despite this action of not listing the Bears Ears proposal as an alternative, county residents overwhelmingly endorsed the UDB-Navajo proposal on Bears Ears, which received 64% of the total local comments of support. San Juan County's own documents show that the low-conservation, heavy-development “Alternative B” received just two comments of support--less than 1%. (See San Juan County Public Comments Nov. /Dec, 10140, attached to this Exhibit). This Alternative B was eventually endorsed by the San Juan County Commissioners as their preferred alternative in August, 2015.

Native American efforts to engage directly with Representatives Bishop and Chaffetz have been met with similar results. We attended more than two dozen meetings involving PLI with federal, state, and local officials. At the first meeting, called by Congressman Bishop, we made a full presentation, approximately an hour in length, on our four-prong proposal, which is similar in concept to this Coalition proposal. We handed out two-page summaries of our proposal along with a map of the proposed boundaries. We then made similar presentations at approximately 25 additional meetings, about half of which were attended by staff of Congressman Bishop and Chaffetz. We have received no substantive responses from the

Congressmen or their staff concerning any of these presentations. During 2013-2015, we made four trips to Washington DC and visited personally with Congressman Bishop and Chaffetz in their offices, with staff attending. Each time, we made presentations and handed out summaries of our four-pronged proposal and the map of the proposed boundaries. We have received no substantive responses from the Congressmen or their staff with respect to these meetings. Most recently, the Bears Ears Inter-tribal Coalition requested a meeting in August 2015 to discuss its proposal. There has been no substantive response.

In stark contrast to the PLI, the Administration has been responsive to our recent requests to consult on a government-to-government basis about our interests in protecting the Native values of the Bears Ears landscape. For example, the Bears Ears Inter-Tribal Coalition invited Administration officials to join Tribal members to hear Native American interests across this landscape. Leaders from each of the five tribes expressed their deep spiritual and physical connections to this place and expressed their unwavering commitment to see it preserved whether it be through a National Conservation Area or National Monument.

With these circumstances in mind, the Bears Ears Inter-Tribal Coalition is formally submitting its proposal to the President and, at the same time, to Congress through Congressmen Bishop and Chaffetz. We continue to appreciate the engagement of the Administration, and would welcome the sincere interest of the Utah delegation. If the delegation is willing to pursue our proposal through legislation, we would welcome discussions leading to that result. However, in either case, the Tribal antiquities continue to be damaged and our cultural values continue to be threatened across the Bears Ears landscape. We therefore urge prompt action on our proposal.

## II. Timeline

### 2009

- March: President Obama signs Senator Bennett's Washington County Lands Bill. Many counties throughout Utah request inclusion in the next bill.
- March: Utah Tribal Leaders Association begins regular discussions on how best to engage in future land-use negotiations to advance Native American interests on public lands. (UTL Agenda-6-25-09, 8-6-09, 11-12-09)

### 2010

- February: Senator Bennett initiates land-use planning initiative in San Juan and seven other counties in Utah. An intensive and collaborative land-use negotiation process ensues that involves dozens of organizations that meet every few weeks for six months.
- May: Kenneth Maryboy invites Mark Maryboy and Gavin Noyes, Utah Program Director for Round River, to help develop a plan to represent Utah Navajo interests in the Bennett process. Mark serves as a consultant and community liaison to a small team of land planning experts and prioritizes the opinions of grassroots people, elders and the inclusion of all Tribes throughout the region.
- May: June-August: All seven Navajo Chapter Houses in Utah approve resolutions of support for Mark and other leaders to carry out ancestral mapping of lands and development of the Bears Ears proposal in San Juan County.
- June: Utah Navajo leaders initiate a 2 ½ year-long cultural mapping effort including Navajo elder interviews, data collection, and policy research, studying co-management, as well as local state, and federal policies.
- August: Utah Navajo leaders approve a draft proposal in advance of Senator Bennett's deadline. This proposal was not released or made public because Senator Bennett's time in office expired before the bill could be introduced (Bennett was defeated at his state Republican convention)
- October: Second round of elder interviews initiate to collect more detailed information about Native American cultural uses in San Juan County.

### 2011

- March: Utah Navajo cultural interviews are complete.
- April: The "Navajo Lands of Interest" (NLOI) pre-proposal map is widely distributed throughout Utah and in Washington DC. Leaders from all sides express strong support for Utah Navajos in advancing interests regarding their ancestral lands.

- July: UDB releases a book describing Native American interests to the public; 8,000 copies are distributed throughout Utah and in Washington DC. (Copies are available by emailing [utahdinebikeyah@gmail.com](mailto:utahdinebikeyah@gmail.com)) Major press events are held in Bluff and Salt Lake City and the President of the Navajo Nation weighs in with his office's support. The book helps generate significant recognition that Native Americans have a right to engage in conservation of this region, a concept with which most Utahns seem unfamiliar.
- July: Navajo Nation President Ben Shelley asks Secretary Salazar in a letter to protect Bears Ears as a National Monument because it is one of our country's "Crown Jewels."
- September: Formal land planning initiates for the Bears Ears region by the leadership of Navajo Nation Division of Natural Resources.
- October: UDB signs an MOU with the Navajo Nation to formalize development of the Bears Ears proposal.

## 2012

- January: Utah Dine Bikeyah Board of Directors is set and organization launches to provide guidance on proposal development, conducts regular ceremonies and holds community/ house meetings to discuss the Bears Ears project with their communities.
- February: Navajo Nation President and UDB present UDB book and NLOI map to the Utah State Legislature. Many Utah officials express support for the Native American effort to protect spiritual sites on public lands within the Bears Ears landscape.
- March-December: Navajo Nation and UDB engage San Juan County Commissioners in discussions to pursue a collaborative County-wide Joint Planning process, assuming that Congressional leaders would initiate a new planning process.
- July: Congressman Bishop begins informal meetings with governments and stakeholders. Neither Tribes nor UDB are listed as early participants.
- August: During several meetings, UDB tells San Juan County Commissioners Phil Lyman and Bruce Adams of its goal to seek protection for Bears Ears area either as a NCA through the legislative process, or as a NM through the Antiquities Act. They express a desire to participate in developing a joint legislative position spanning Native and non-Native interests.
- October: San Juan County Commissioner Phil Lyman invites UDB Board Members to his office and tells them that Native Americans "lost the war" and shouldn't be commenting on public lands issues, much like he doesn't tell the Scottish government what to do after his ancestors left Scotland. UDB carries out



its own research and leans that Native Americans have every right to engage in public land planning.

- December: The Navajo Nation and San Juan County sign a Memorandum of Agreement to undertake Joint Planning for all public lands in San Juan County. The identified purpose of Joint Planning is to create a shared vision supported by commissioners and the Navajo Nation.

## 2013

- January: The Navajo Nations and UDB complete Bears Ears data collection and analysis. Navajo Nation decision-makers utilize this data to make policy decisions.
- January: Navajo/San Juan County Economic Development Committee forms under Joint Planning agreement.
- February: Bishop Public Lands Initiative launches and the Navajo Nation and UDB is invited to participate. Congressman Bishop does not list the Ute Mountain Ute, San Juan Paiute, or Tribes outside of Utah as early participants. (See Letter from Congressman Bishop to Utah Dine Bikeyah, 2/15/13, launching Public Lands Initiative).
- April: UDB and the Navajo Nation spoke to the entire group at length and gave a one hour presentation on the proposal origins. We walked through the four prongs of the proposal including; NCA boundaries, wilderness proposal, regions proposed for co-management, and access needs (including firewood, herb collection, hunting, and ceremonial-use) We made a proposal like this to local, state, federal officials and the public at approximately 25 subsequent meetings. Congressmen Bishop and Chaffetz had staff at approximately half of these meetings. The Navajo Nation proposal did not result in any response from the Utah congressional delegation or substantive discussions.
- April 17th: The Navajo Nation presents its proposal to San Juan County, State of Utah officials, and Utah Congressional delegation at Monument Valley. Discussion of Bears Ears proposal lasts for over two hours. (See SJC NCA Supporting Maps 3/28/13, and Navajo Nation Press Release and UDB Press Release, 8/9/13) The Navajo Nation proposal did not result in any response from the Utah congressional delegation or substantive discussions.
- May 2013- March 2015: UDB and the Navajo Nation made a total of four trips to Washington DC. We always met with the Utah Congressmen, including Representatives Bishop, Chaffetz, and Senator Hatch. When we visited, we always delivered a two page description of the proposal and offered a large map of the Bears Ears proposal. We always discussed the four prongs of the proposal including; NCA boundaries, wilderness proposal, regions proposed for co-management, and access needs (including firewood, herb collection, hunting, and ceremonial-use) We did not receive any substantive responses.

- May: Joint Planning meetings are put on hold while San Juan County develops its internal proposal. San Juan County questions the legitimacy of the Navajo Nation proposal. (See letter from UDB to SJC on 5/21/13)
- July: Navajo Nation submits the Bears Ears proposal for Bishop's August, 2013 deadline. San Juan County does not respond to the Navajo proposal prior to this deadline and does not publicly submit a position to Congressman Bishop.
- August: Congressional leaders organize field trips including one led by UDB and hold public hearings in San Juan County. At the public hearing, San Juan County residents sling racist insults at Native American attendees. The Utah delegation does not intervene and subsequently, Native Americans stop attending public meetings in northern communities of San Juan County. (Letter from UDB to Congressman Bishop sent on 8/12/15 details this event and the negative impact it had on race relations in SJC.)
- September: Bishop's legislative deadline passes without Congressional action.

## 2014

- January: Commissioner Lyman selects individuals to join the San Juan County Citizen Lands Committee.
- May: Commissioner Lyman leads an armed militia on an all-terrain vehicle ride into sacred Recapture Canyon trespassing into an area closed to motorized vehicles.
- June: Joint Planning agreement between Navajo Nation and San Juan County expires and San Juan County is unresponsive to UDB letters regarding Joint Planning agreement.
- July: UDB formally asks SJC and its newly formed Citizens Lands Council to respond to the Bears Ears proposal by August 15 so that parties can understand the likelihood of creating a shared proposal, or determine if a National Monument request should be made (See UDB to SJC letter 7/9/14). San Juan County does not respond, except by phone to communicate that they will engage with the Bears Ears proposal on their own timeline once SJC's proposal is complete.
- August: Navajo Utah Commission unanimously adopts a resolution of support (Resolution NUCAUG-616-14) endorsing the permanent protection of lands in San Juan County, UT as a National Conservation Area or National Monument. Copies are provided to the UT Congressional Delegation and relevant members of the Obama Administration.
- September: UDB conducts outreach to new Navajo Nation officials and Tribes throughout southwest.
- September: Hopi Tribal Chairman Herman Honanie sends a letter of support for the permanent protection of the Bears Ears landscape to the Utah

## 2014 continued

## Congressional Delegation.

- September: Ute Mountain Ute request renaming of proposal. UDB drops the proposal name “Utah Diné Bikéyah” and replaces it with “Bears Ears.”
- September: UDB reports to Secretary Jewell on the inability of Native Americans in SJC to obtain any kind of response to its conservation proposal, even after 18 months of diligent effort. (See UDB letter to Secretary Jewell 9/19/14)
- September: Six of seven Navajo Chapter Houses in Utah adopt resolutions of support for Bears Ears
- September: Utah Congressional delegation asks San Juan County to include the Navajo Nation in its legislative proposal development process and to deliver one or more positions by the end of the year.
- October: San Juan County confirms its July agreement to include Bears Ears proposal in SJC list of alternatives for its public process.
- October: San Juan County proposes five Open Houses in Oljato, Bluff, Blanding, Monticello, and LaSal to hear local preferences for land-use alternatives. Only one meeting is scheduled in a Native community. UDB offers to convene additional meetings on reservation, provide translation skills, and create radio ads to ensure people hear about event. SJC agrees and asks UDB to partner on Open Houses. SJC also asked UDB to run the open house at the Navajo Mountain community without representation from SJC due to the travel cost, and provides UDB chairman, Willie Grayeyes, with copies of maps of alternatives.
- October: UDB delivers Bears Ears GIS layer package of the Bears Ears proposal to San Juan County. On March 4th, 2015 this same layer package is sent to Casey Snyder and Cody Stewart from Congressman Bishop and Governor Herbert’s offices.
- October: UDB delivers Bears Ears GIS layer package of the Bears Ears proposal to San Juan County. On March 4th, 2015 this same layer package is sent to Casey Snyder and Cody Stewart from Congressman Bishop and Governor Herbert’s offices.
- October: San Juan County excludes Bears Ears proposal from its list of land-use alternatives for its public process. UDB asks why the County has asked it to partner on Native outreach if the County is not including the Native proposal for Bears Ears.
- October: SJC adds one Open House in the Aneth community (on-reservation), but fails to run radio ads, send flyers to Chapter Houses, or even obtain the

**2014 continued**

mailing addresses for hundreds of San Juan County residents who retrieve their mail at PO Boxes in Arizona. Consequently, Native American turn-out was low at San Juan County Open Houses (25-35 people total).

- November: UDB organizes seven Town Hall Meetings to ensure that all Native American communities in Utah have the ability to submit comments to the PLI process. UDB conducts outreach by running radio ads and posting flyers at Chapter House. 250-350 Native community members attend discussions.
- November: All Pueblo Council of Governors unanimously adopts a resolution of support (Resolution No. 2014-17) endorsing the protection of the Greater Cedar Mesa Landscape in San Juan County, UT. Copies are provided to the UT Congressional Delegation and relevant members of the Obama Administration.
- December: Bears Ears proposal wins 64% of support from San Juan County residents during public process. Alternative B that San Juan County eventually adopts receives two comments of support, or less than 1% of total.
- December: Navajo Nation and UDB representatives go to Washington, DC and report again to the Utah congressional delegation that San Juan County is not responsive to the Native American proposal in the legislative process.
- December: UDB is told by SJC that it may no longer participate in Bishop's PLI. (See letter from UDB to SJC on 12/13/14)
- December: Bishop's informal legislative deadline passes without Congressional action.

**2015**

- January: San Juan County Commissioner Rebecca Benally replaces Commissioner Kenneth Maryboy as County representative for the majority Navajo district.
- January: Phil Lyman tells UDB that it has no standing in San Juan County and rejects UDB's request to participate in Citizens Lands Council. Lyman says he represents Utah Navajos as Chairman of the San Juan County Commission and challenges UDB's ability to represent Navajo people. UDB explains that its MOU with the Navajo Nation and resolutions of support from Utah Chapter Houses gives it the authority to represent local land-use desires. UDB sends a letter to Congressmen Bishop and Chaffetz asking to work.
- January: Navajo Nation seeks guidance from Congressman Bishop on how to engage in the PLI. No substantive response is received. (See NN letter on 1/30/15, also see UDB handout to SJC on 2/3/15)
- February: The entire Utah Congressional delegation sends a letter to stakeholders and Tribes announcing the upcoming release of a map and legislative language for

**2015 continued**

PLI on March 27. Areas of “collaborative agreement” are listed as priority designations. (See letter sent on 2/4/15)

- February: Hualapai Tribal Council unanimously adopts a resolution of support (Resolution No. 06-2015) endorsing the Bears Ears Conservation Proposal. Copies are provided to the UT Congressional Delegation and relevant members of the Obama Administration.
- February: Navajo Nation President Ben Shelley asks Utah Governor Herbert to support Tribes in protecting the Bears Ears landscape. Governor responds that the Nation needs to get its proposal to Congressman Bishop and Chaffetz “as soon as possible.” (See UDB letter on 2/9/15)
- February: UDB informs Congressmen Bishop and Chaffetz that it has tried and failed to re-engage with San Juan County and its Citizens Lands Council and wants to be included in PLI. UDB requests a meeting directly with Congressional staff to discuss critical issues that need to be detailed prior to the March 27 release of draft legislative language. (See UDB letter on 2/9/15) No substantive response is received from the Congressional offices, but assurances are given by phone that UDB and Native American interests will be included.
- February: Due to Congressional pressure, San Juan County invites the Navajo Nation, Ute Mountain Ute, and UDB to try to negotiate a shared position through a series of future meetings. A new legislative deadline is set for March 27. (PLI letter from Utah Congressional delegation 2/4/15)
- February: White Mesa Community of the Ute Mountain Ute joins UDB and appoints Mary Jane Yazzie as a Board Member to include Ute perspective in Bears Ears proposal.
- March: At the urging of San Juan County Commissioners, and without consulting Tribes or informing UDB, the Utah State Legislature passes HB 393<sup>1</sup>, which undermines major portions of the Bears Ears proposal by designating it as an “Energy Zone.” This bill aims to streamline development and declares grazing, energy and mineral development to be the “highest and best use” of public lands.

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<sup>1</sup> Legislative language can be found at: <http://le.utah.gov/~2015/bills/static/HB0393.html>. Utah Code section 63J 8 105.8 lists “grazing agricultural commodity zones.” According to the state, grazing is the highest priority in these zones, and the historic level of livestock grazing in these zones has been unreasonably, arbitrarily, and unlawfully restricted by federal land managers. In San Juan County, the “Grand Gulch Region Grazing Zone,” (63J 8 105.8(2)(dd)), the “Cedar Mesa East Region Grazing Zone, (63J 8 105.8(2)(ee)), the “Dark Canyon/Hammond Canyon Region Grazing Zone, (63J-8-105.8(2)(ii)), and the “Chippean/Indian Creek Regional Grazing Zone,” (63J-8-105.8(2)(jj)), are included.

## 2015 continued

- March: Navajo Nation Council unanimously adopts a resolution of support endorsing the designation of Bears Ears as a National Conservation Area or National Monument. Copies are provided to the UT Congressional Delegation and relevant members of the Obama Administration.
- UDB travels to Washington D.C. and details negotiation process options with Congressman Chaffetz staff by drawing on maps with markers.
- UDB presents a revised Bears Ears wilderness proposal to Congressman Chaffetz staff and San Juan County during negotiation meeting that better accommodates for firewood collection.
- April: Bishop imposed legislative deadline passes without Congressional action.
- March, April, & May: Four negotiation meetings are held between San Juan County, Tribes and stakeholder groups. These meetings have strong representation from Native American leaders and residents, but meetings are poorly run. For example agendas are never prepared, a neutral facilitator is not provided (SJC always leads), and parties are not asked to bring anything new to the table (See UDB letter to Congressman Bishop/ Chaffetz 7/8/15)
- April: Commissioner Lyman convicted of illegal trespass in his 2014 ATV ride. (See SL Tribune 5/1/15)
- April-May: The Wall Street Journal, New York Times, Salt Lake Tribune and others feature the Bears Ears proposal and the PLI.
- May: UDB and supporting organizations send letter to Representative Bishop and Chaffetz indicating what they will support/ oppose in a legislative proposal.
- May: The Bears Ears website surpasses its goal of 10,000 petition signatures of support only four weeks after launching.
- May: Congressman Chaffetz staff inform the Navajo Nation that legislation will be introduced in July, 2015.
- June: All Pueblo Council of Governors sends a letter to the UT Congressional Delegation and the Obama Administration clarifying that their earlier resolution of support (Resolution No. 2014-17) endorsing the protection of the Greater Cedar Mesa Landscape should be considered support for the Bears Ears Conservation Proposal.
- June: Negotiations between the SJC Citizen Lands Council, UDB, and the Navajo Nation fail to produce any results. Furthermore, at the final meeting, neither UDB nor the Tribes are invited to attend. They are told that the SJC Commissioners did

**2015 continued**

not require any further information to make its final decision. (Letter from UDB to Chaffetz 7/9/15)

- June: SJC Citizens Lands Council votes on a final proposal to SJC Commissioners without input or participation from Ute, Navajo, San Juan Paiute Tribes or UDB.
- July: Congressman Chaffetz' office assures UDB Board Members that Native American interests will be heard by Congressman Bishop prior to release of Draft language. Chaffetz agrees to "consider" including Tribes outside of San Juan County. UDB asks know the degree to which Chaffetz will support Bears Ears by early Sept. (Letter from UDB to Chaffetz 7/9/15)
- July: Chairman Chappoose of the Uintah and Ouray Ute Indian Reservation Tribal Business Committee sends a letter of support for the Bears Ears conservation proposal. Copies are provided to the UT Congressional Delegation and relevant members of the Obama Administration.
- July: Bears Ears Inter-Tribal Coalition formalizes its leadership to advance the Bears Ears Proposal and meets with federal officials from Washington DC at Bears Ears.
- July: With the addition of the Hopi, Zuni, Ute Mountain Ute, and Ute Indian Tribes; 25 tribal governments now endorse designating Bears Ears as either a National Conservation Area or National Monument through official letters and resolutions of support.
- July: Bishop imposed legislative deadline passes without Congressional action.
- July: UDB organizes a Bears Ears panel discussion with Ute Mountain Ute, Congressman Chaffetz and Governor Herbert's PLI representatives at Utah's Annual Native American Summit in Provo, Utah. Sixty people attend. At this conference, Navajo Nation President Russell Begaye also asks conference attendees to support Tribes in protecting Bears Ears. No substantive follow-up discussions occur with Utah officials after this conference.
- August: Chairman Heart of the Ute Mountain Ute Tribe sends a letter of support for the Bears Ears Conservation Initiative. Copies are provided to the UT Congressional Delegation and relevant members of the Obama Administration.
- August: San Juan County Commissioners unanimously adopt Citizens Lands Council recommendations.
- August: Five Tribes of the Bears Ears Inter-tribal Coalition requests a formal meeting with Congressman Chaffetz and Bishop and inclusion prior to the release of draft language. (See letter sent on 8/5/15)

**2015 continued**

- August: Congressman Chaffetz, Utah officials, and San Juan County Commissioners meet with the Navajo Nation President Begaye and suggests that Native American interests are well represented by San Juan County officials. The President points to the tally of local comments received in 2014 and asks how this could be the case. Commissioner Benally offers no explanation.
- August: UDB meets with Congressman Chaffetz's staff and informs them that the opportunity to negotiate with UDB has ended and that Tribes are now in charge. Staff agrees to reach out to the Bears Ears Inter-tribal Coalition to set up a meeting.
- August: On August, 5, 2005, Alfred Lomahquahu and Eric Descheenie, Co-Chairs of the Bears Ears Inter-Tribal Coalition, write Congressmen Bishop and Chaffetz a three-page letter. The letter details the current situation and requests a meeting in order to discuss the Tribe's proposal and to "work with you towards meaningful conservation legislation on an accelerated time line." This does result in any substantive discussions. (See letter sent on 8/5/15)



**LANDS BILL PUBLIC COMMENTS** (Nov./Dec. 2014)

12-8-14

| Comments | <u>Alternative or Proposal</u>   |
|----------|--|
| 33       | Lands Council Alternative A  |
| 2        | Lands Council Alternative B  |
| 93       | Lands Council Alternative C (some proposed additional protected areas)   |
| 24       | San Juan Alliance Proposal (includes some who noted Alt. A as second choice)   |
| 300      | Dine Bikeyah Proposal - includes petition of 246 signatures (21 with comments; 194 SJC residents, 52 likely non-SJC residents w/out-of-county/state mailing addresses); 97 comment letters+ 7 likely non-SJC resident comments + 2 unsigned/unaddressed comments; and 9 verbal comment transcripts |
|          | Greater Canyonlands NCA (The Nature Conservancy)   |
|          | Red Rock Wilderness  |
|          | All Share and Get Along  |
|          | No preference until details of legislative narrative worked out  |
|          | Any proposal should be as limited as possible and no road closures   |
| 10       | No Bill [continue current management; or Alt. A if pushed (2); no road closures]   |
| 467      | Total (may include some duplicate comments from same commenter)  |
|          | Three resolutions supporting Dine Bikeyah efforts (Navajo Utah Commission, Navajo Mountain Chapter, and Oljato Chapter)  |
| 5        | Additional non-resident comments supporting various alternatives or proposal   |

**EXHIBIT 2**

**The National Congress of American Indians Resolution #EC-15-002**



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #EC-15-002

### TITLE: Supporting the Presidential Proclamation of the Bears Ears National Monument, Including Collaborative Management Between Tribal Nations and the Federal Agencies

#### EXECUTIVE COMMITTEE

PRESIDENT  
**Brian Claudio**  
*Swinomish Tribe*

FIRST VICE-PRESIDENT  
**Randy Noka**  
*Narragansett Tribe*

RECORDING SECRETARY  
**Aaron Payment**  
*Sault Ste. Marie Tribe of Chippewa Indians of Michigan*

TREASURER  
**Arian Melendez**  
*Reno Sparks Indian Colony*

#### REGIONAL VICE-PRESIDENTS

ALASKA  
**Jerry Isaac**  
*Native Village of Tanacross*

EASTERN OKLAHOMA  
**S. Joe Crittenden**  
*Cherokee Nation*

GREAT PLAINS  
**Leander McDonald**  
*Spirit Lake Nation*

#### MIDWEST

**Roger Rader**  
*Pokagon Band of Potawatomi*

NORTHEAST  
**Lance Gumbs**  
*Shinnecock Indian Nation*

NORTHWEST  
**Fawn Sharp**  
*Quinalt Indian Nation*

PACIFIC  
**Rosemary Morillo**  
*Soboba Band of Luiseno Indians*

ROCKY MOUNTAIN  
**Ivan Posey**  
*Shoshone Tribe*

SOUTHEAST  
**Ron Richardson**  
*Haliwa-Saponi Indian Tribe*

SOUTHERN PLAINS  
**Stephen Smith**  
*Kiowa Tribe*

SOUTHWEST  
**Manuel Heart**  
*Ute Mountain Ute Tribe*

WESTERN  
**Len George**  
*Fallon Paiute Shoshone Tribe*

EXECUTIVE DIRECTOR  
**Jacqueline Johnson Pata**  
*Tlingit*

#### NCAI HEADQUARTERS

1516 P Street NW  
Washington DC 20005  
202 466 7767  
202 466 7797 fax  
[www.ncai.org](http://www.ncai.org)

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, since time immemorial, the Bears Ears and surrounding land in Southeastern Utah have been a homeland and place of spiritual and cultural significance to tribal people. This living landscape continues to nurture, strengthen, and sustain tribal people, and tribal people remain dependent on these public lands to maintain our traditional livelihoods and cultural practices, such as hunting, gathering, and ceremonial uses.

**WHEREAS**, for the last century, tribal nations and tribal members have experienced removal from these ancestral homelands, and afterward, limited access to the land. Tribal nations and tribal members have also witnessed the looting of graves and sacred sites, and threats from more modern land uses such as off-road vehicle use and energy development.

**WHEREAS**, tribal leaders from Hopi, Navajo, Ute Mountain Ute, Zuni and Uintah & Ouray Ute formed the Bears Ears Inter-Tribal Coalition with the goal of protecting and preserving the homeland area of the Bears Ears region.

**WHEREAS**, the Bears Ears Inter-Tribal Coalition's chosen outcome is for President Obama to use his powers under the Antiquities Act to declare the Bears Ears National Monument, and secure permanent protection for these lands.

**WHEREAS**, the Bears Ears Inter-Tribal Coalition requests that President Obama proclaim the 1.9 million Bears Ears National Monument to honor the worldviews of our ancestors and Tribes today.

NCAI 2015 Executive Committee Resolution EC-15-002

**WHEREAS**, the Bears Ears Inter-Tribal Coalition proposal asks that the new monument be managed under a path-breaking, comprehensive, and entirely workable regime of true Federal-Tribal Collaborative Management.

**WHEREAS**, the Bears Ears National Monument has every opportunity to serve as the shining example of the trust, the government-to-government relationship, and innovative, cutting-edge land management.

**NOW THEREFORE BE IT RESOLVED**, that NCAI does hereby urge President Obama to use his powers under the Antiquities Act to declare the Bears Ears National Monument and, by doing so, provide permanent protection for these lands.

**BE IT FURTHER RESOLVED**, that NCAI does hereby support the Navajo, Hopi, Zuni, Utah & Ouray Ute, and Ute Mountain Tribes that comprise the Bears Ears Inter-Tribal Coalition and their shared goal of permanently protecting the Bears Ears region.

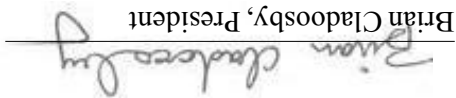
**BE IT FURTHER RESOLVED**, that NCAI does hereby support the Bears Ears National Monument being meaningfully co-managed between the Bears Ears Inter-Tribal Coalition Tribes and federal management agencies for the purpose of honoring the trust relationship, protecting tribal sacred homelands, and preserving traditional and cultural ways of life.

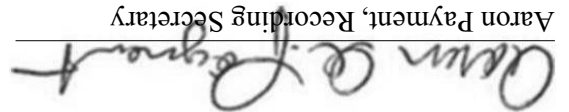
**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

## CERTIFICATION

The foregoing resolution was adopted by the Executive Committee of the National Congress of American Indians, held via a poll of Board Members, September 20, 2015 in Washington, D.C. with a quorum present.

ATTEST:

  
Brian Cladoosby, President

  
Aaron Payment, Recording Secretary



## BEARS EARS INTER-TRIBAL COALITION

A Partnership of the Hopi, Navajo, Uintah & Ouray Ute, Ute Mountain Ute, and Zuni Governments

# THE TRIBAL PROPOSAL TO PRESIDENT OBAMA FOR THE BEARS EARS NATIONAL MONUMENT

## OVERVIEW

The proposed Bears Ears National Monument is a place rich in history and culture. It is a place to connect, a place to heal, and a place where Native American Traditional Knowledge can be explored and nurtured so that it continues to inform and illuminate modern life. The Bears Ears Inter-Tribal Coalition, a consortium of five sovereign Indian nations—the Hopi, Navajo, Uintah & Ouray Ute, Ute Mountain Ute, and Zuni—has formally petitioned President Barack Obama to proclaim the Bears Ears National Monument in order to protect this extraordinary area for our Tribes, all Native people, and the nation.

The proposed 1.9 million acre monument is a landscape of deep, carved canyons, long mesas, inspiring arches, and arresting red rock formations. The monument's namesake, *the Bears Ears*, are twin buttes in the heart of the landscape that rise high above the piñon-juniper forests and canyons that adorn the renowned and majestic Cedar Mesa. It lies in Southern Utah, north of the Navajo Nation and the San Juan River, east of the Colorado River, and west of the Ute Mountain Ute Reservation. Bears Ears is adjacent to Canyonlands National Park and is every bit the equal of Canyonlands and the other great parks and monuments of the Colorado Plateau.

Ever since time immemorial, the Bears Ears area has been important to Native American people as a homeland. In the mid-1800s, Native Americans were forced fully and violently removed from the area and marched to reservations. But the Native bond to Bears Ears is strong and today is a place that embodies that history. Modern Native American people continue to use the Bears Ears area as a place for healing, ceremonies, and the gathering of firewood, plants, and medicinal herbs.

When they return to Bears Ears today, Native American people feel the presence of their ancestors everywhere. This landscape records their ancestors' migration routes, ancient roads, great houses, villages, granaries, hogans, wikiups, sweat lodges, corrals, petroglyphs and pictographs, tipi rings, shade houses, and burial grounds. Our people are surrounded by the spirits of the ancestors, and embraced by the ongoing evolution of their culture and traditions. For Native American people, Bears Ears is a place for healing. It is

also a place for teaching children Native American children and the world's children about meaningful and lasting connections with sacred and storied lands.

All of this is threatened by destructive land uses, such as mining and irresponsible off-road vehicle use and by the rampant looting and destruction of the villages, structures, rock markings, and gravesites within the Bears Ears landscape. The Bears Ears National Monument proposal is a bold and inspired plan to stem the tide of this erosion and protect Bears Ears for the benefit of all.

## **THE PROPOSAL**

<http://www.bearscoalition.org/wp-content/uploads/2015/10/Bears-Ears-Inter-Tribal-Coalition-Proposal-10-15-15.pdf>

### **Mission Statement**

The mission of this National Monument shall be:

To assure that the Bears Ears area will be managed forever with the greatest environmental sensitivity and healing of the land to make it fully a place where we can be among our ancestors and their songs and wisdom and our deepest values, where the traumas of the past can be alleviated, where we can connect with the land and be healed;

To make this National Monument the most deeply and truly “Native” of all federal public land units by honoring the historical and contemporary relationship between Native Americans and the natural world of Bears Ears;

To protect and preserve, for future generations of all Americans, the natural features, beauty, and inspiration found in the extraordinary Bears Ears landscape;

To bring to light, through research, public outreach, and actual practice, the many aspects and values of Indigenous Traditional Knowledge in its fullest sense as a philosophy, a cultural tradition, and a useful tool for enriching modern land management;

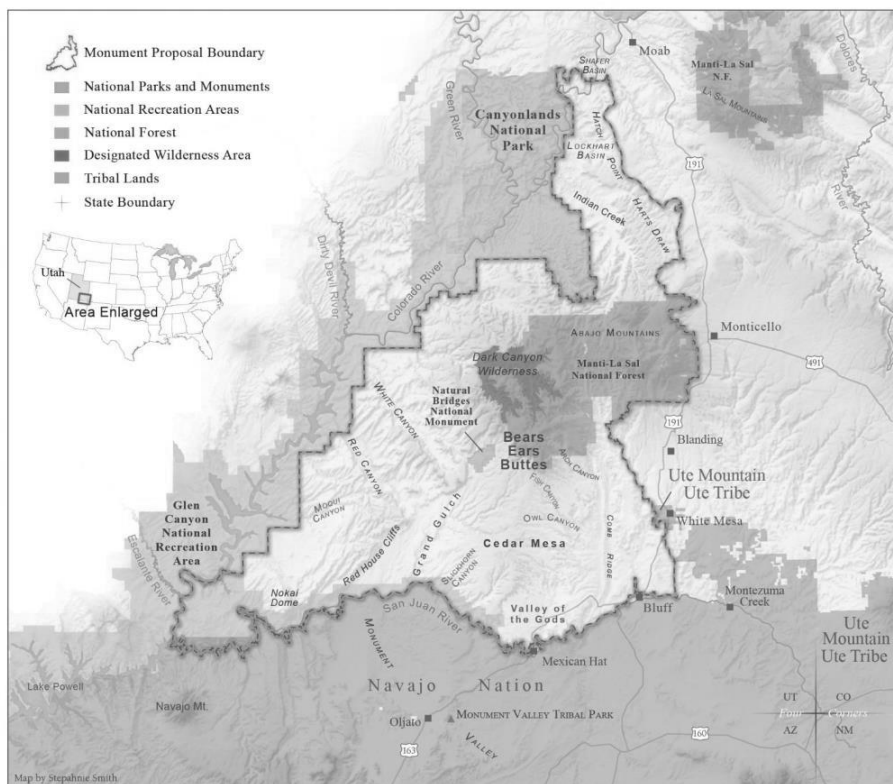
A monument to all of these values will speak to the finest dreams of our people and those of the people of the nation and the world as well.

## Objectives

In keeping with this mission, the Coalition advances the following objectives:

- (1) True collaborative management through the federally created Bears Ears Commission, to include representatives from each of the five Coalition Tribes as well as from three federal land management agencies, who will cooperatively develop a culturally and environmentally sensitive comprehensive management plan consistent with President Obama's proclamation and then carry out the monument's management;
- (2) The integration of Traditional Knowledge into the monument's land management practices and the creation of a world-class Bears Ears Traditional Knowledge Institute, where experts and lay people alike can learn from the rich intersection of Western and traditional Native world views;
- (3) Expanded law enforcement capacity to safeguard tribal antiquities, finally putting an end to the inexcusable, centuries-long grave-robbing, looting, and destruction of some of the most precious archaeological sites in the world;
- (4) A permanent withdrawal from mining covering all lands within the monument, and withdrawal from all other forms of leasing, selections, sales, exchange, and disposition, other than those exchanges that further the purposes of the monument;
- (5) Restriction of motorized vehicle use to existing and designated roads and trails, consistent with the purposes of the monument and with a transportation plan that prioritizes pristine and roadless areas within the monument;
- (6) The continuation of existing, compatible local uses such as climbing, firewood gathering, grazing, hunting according to state and tribal law, and the Native American collection of medicines, herbs, and ceremonial plants;
- (7) Boundaries encompassing 1.9 million acres to protect the area's unparalleled cultural antiquities as well as the ecological integrity of the greater Canyonlands Basin;
- (8) Management of recreational activities and other uses to allow for the continued enjoyment of the Bears Ears landscape in ways that honor and preserve its legacy for the public forever.

## PROPOSED BEARS EARS NATIONAL MONUMENT





# DOI Sued For Docs On National Monuments It Might Ax

Share us on: By **Christine Powell**

Law360, New York (May 24, 2017, 9:06 PM EDT) -- A conservation group accused the U.S. Department of the Interior on Wednesday of ignoring its request for information about the Obama administration's deliberations over five national monuments, including the Bears Ears National Monument — documents it hopes will shed light onto what it called Interior Secretary Ryan Zinke's "sham review" of their designations.

The Western Values Project sued the DOI in D.C. federal court, alleging it has flouted the Freedom of Information Act by not responding to its January request for records "used or compiled to inform the development of five national monument proclamations" issued by former President Barack Obama under the Antiquities Act: the Bears Ears, Gold Butte, Browns Canyon, Katahdin Woods and Waters, and Cascade-Siskiyou national monuments.

Specifically, its request sought scientific studies, scientific data, agency studies, agency management plans, maps, photos, references, testimony, public comments, congressional input, legal analysis or any other information used to develop the monument designations since Jan. 1, 2014.

In a news release announcing the lawsuit, the Western Values Project said the DOI is considering reversing Obama's December designation of the Bears Ears National Monument and the designation of other monuments at President Donald Trump's direction, "based in part on the false claim that the Obama administration failed to gather public input." The group expects that the records it has asked the agency to cough up will "prove or disprove" that allegation.

"Secretary Zinke and the Trump administration have done everything they can to shut the public out of their sham review, but we're not going to let them get away with withholding basic information that they are required by law to disclose," Chris Saeger, executive director of the group, said in a statement.

President Trump **signed an executive order** in April instructing Zinke to review monuments designated or expanded by presidents going back to Jan. 1, 1996, "where the designation

covers more than 100,000 acres, where the designation after expansion 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,” saying at the time that the Antiquities Act’s use by previous administrations has been “abusive.”

The law, which was passed by Congress and signed into law by former President Theodore Roosevelt in 1906, allows presidents to protect historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.

“In December of last year alone, the federal government asserted this power over 1.35 million acres of land in Utah, known as Bears Ears — I’ve heard a lot about Bears Ears, and I hear it’s beautiful — over the profound objections of the citizens of Utah,” Trump said at a signing ceremony for the executive order. “The Antiquities Act does not give the federal government unlimited power to lock up millions of acres of land and water, and it’s time we ended this abusive practice.”

Earlier this month, the DOI **opened a public comment period** for certain national monument designations, including Bears Ears, with Zinke saying at the time that the process “finally gives a voice to local communities and states when it comes to Antiquities Act monument designations. There is no predetermined outcome on any monument. I look forward to hearing from and engaging with local communities and stakeholders as this process continues.”

The Bears Ears designation has come under fire not only from Trump but from Republican lawmakers, with House Natural Resources Committee Chair Rob Bishop of Utah saying shortly after the designation that the decision was “alien to the desires of the overwhelming number of Native Americans who live in this area, who will use this area, who approached us on how they wanted to function on this land.”

But tribal supporters of the designation, including the Bears Ears Inter-Tribal Coalition — a group representing the Hopi Tribe, Navajo Nation, Ute Indian Tribe, Ute Mountain Ute Tribe and Zuni Tribe — have said that the monument was more than 80 years in the making and that Zinke has “ignored meeting requests from sovereign nations to meet regarding Bears Ears since January.”

Meanwhile, Democrats on the House Committee on Oversight and Government Reform have disputed Republican lawmakers' contention there wasn't enough local input on Bears Ears, saying **documents they obtained** contradict claims that the Obama administration failed to adequately consult with the community or get local support before its designation.

Representatives for the DOI did not respond immediately to requests for comment late Wednesday.

The Western Values Project is represented by Scott A. Hodes.

Counsel information for the DOI was not immediately available.

The case is Western Values Project v. U.S. Department of the Interior, case number 1:17-cv-00996, in the U.S. District Court for the District of Columbia.

--Additional reporting by Andrew Westney and Kat Sieniuc. Editing by Aaron Pelc.

# Feds, Navajo Come To Agreement On Contamination Suit

Share us on: By **Adam Lidgett**

Law360, New York (May 24, 2017, 1:44 PM EDT) -- The El Paso Natural Gas Co. and the Navajo Nation told a D.C. federal judge on Tuesday that they have agreed to drop a suit against the federal government over contamination of a site within the nation's boundaries, saying that the government has agreed to sample groundwater at the site.

The company, the nation and the federal government filed a joint motion for voluntary dismissal of a suit claiming that the government was in violation of the Resource Conservation and Recovery Act at a site in Arizona known as the Highway 160 site, saying that the nation and the government reached an out-of-court settlement in March. The agreement provides that the government will conduct groundwater sampling at the site, which will include installing four groundwater monitoring wells, and in return the nation releases, discharges and covenants not to assert remaining RCRA claims.

Although EPNG and the federal government have not entered into a settlement agreement, EPNG proposed to voluntarily dismiss its remaining claims, which allege similar RCRA violations to those alleged by the Navajo Nation, including a failure to inspect claim against the U.S. Environmental Protection Agency.

"Defendants consent to such voluntary dismissal of EPNG's claims provided that the court's dismissal order preserves defendants' right to reassert their RCRA counterclaim against EPNG should either plaintiff succeed in reinstating its remaining RCRA claims," the filing said.

The motion did, however, say that the Navajo Nation has two conditional rights to seek reinstatement of the claims: if the federal government fails to timely perform the groundwater sampling or if the sampling data identifies concentrations of specified groundwater contaminants at levels above the EPA standard levels that may pose a threat to human health or the environment.

The site in question is located about 2,000 feet north of a U.S. Department of Energy "legacy management" site where a uranium ore mill was operated by a private entity

between 1956 and 1966, the out-of-court agreement said. The mill's operations resulted in contamination of a portion of the Navajo sandstone aquifer beneath the former mill, the agreement said.

The DOE funded the nation to perform soil remediation at the site, and in 2011, the Navajo Nation Environmental Protection Agency removed the radiologically contaminated material believed to have originated from the former mill, the agreement said. The NNEPA has expressed concern that the contaminated material may have resulted in contamination of the groundwater directly beneath the Highway 160 site.

The federal government declined to comment on Wednesday.

"El Paso Natural Gas Company is pleased to join with the United States and the Navajo Nation in the settlement of this lawsuit involving a Cold War-era uranium mill in Tuba City, Arizona, without any financial or remediation obligation imposed upon El Paso Natural Gas Company," the company said in a statement on Wednesday.

Counsel for the Navajo Nation did not immediately respond to a request for comment on Wednesday.

The El Paso Natural Gas Co. is represented by Jerry Stouck of Greenberg Traurig LLP.

The Navajo Nation is represented by Jill E. Grant of Jill Grant & Associates LLC.

The federal government is represented by acting Assistant Attorney General Jeffrey H. Wood and Brian H. Lynk of the U.S. Department of Justice.

The case is El Paso Natural Gas Co. et al. v. United States of America et al., case number 1:07-cv-00905, in the U.S. District Court for the District of Columbia.

--Editing by Stephen Berg.

# Conn. Senate OKs Bill Backing Tribes' Plan For Third Casino

Share us on: By **Christine Powell**

Law360, New York (May 24, 2017, 7:03 PM EDT) -- Connecticut's Senate passed a bill Wednesday that would allow a company co-owned by the tribes behind the Foxwoods Resort and Mohegan Sun to open a proposed \$300 million third casino in the state, but Democratic leaders of the state's House of Representatives quickly said the bill would not get the green light there in its current form.

The bipartisan bill, SB 957, which would designate MMCT Venture LLC, a company jointly held by the Mashantucket Pequot Tribal Nation and the Mohegan Tribe of Indians, to run the proposed third casino in East Windsor, Connecticut, was passed by the state's Senate in a vote of 24-12.

Under the legislation, there would be a 25 percent tax on the proposed third casino's slot machine and table game revenue, according to a news release.

The measure still requires approval from the state's House of Representatives and Connecticut Gov. Dannel Malloy before it becomes final.

To that end, Rep. Joe Aresimowicz, D-Berlin, who is speaker of the house, said at a news conference later in the day that many believe an open bidding process for a third casino is "the way to go" and that "we shouldn't be giving exclusive rights to anyone."

"We believe in the House that the exclusivity aspect of expanded gambling in the state of Connecticut is worth something," Aresimowicz continued. "We believe in the House that expanded gambling in the state of Connecticut is worth something through the bidding process. The Senate didn't think so. We respectfully disagree. We'll work on the bill as it comes down and see what we can do to provide budgetary relief for our residents."

Rep. Matt Ritter, D-Hartford, who is House majority leader, added, "This is not meant to be disrespectful to anybody or presumptuous — but the bill that passed the state Senate cannot pass the House as currently written."

Meanwhile, Kelly Donnelly, a spokeswoman for Malloy, said in a statement that the governor “believes that, on the question of casino expansion, the Legislature should remain focused on maintaining the state’s longstanding partnership with the Mohegan and Mashantucket Pequot tribal nations and protecting jobs.”

“The casinos operated by these tribal nations employ thousands of Connecticut residents and are an integral part of our local economy — the governor will not sign a bill that puts those jobs at risk,” Donnelly continued. “The state Senate provided thoughtful consideration on the question of casino expansion and we applaud them for this effort. We will continue to monitor this legislation as it moves through the House.”

Sens. Cathy Osten, D-Sprague, and Paul Formica, R-East Lyme, co-sponsors of SB 957, released statements praising its passage as a step toward dulling losses to a casino that MGM Resorts International is building in Springfield, Massachusetts, not far from Connecticut’s border.

“When facing the threat of losing ground because of a new casino in Massachusetts, it became our responsibility as lawmakers to assist our community partners in identifying a path to protect jobs and preserve all they have brought to our region,” Formica said. “That’s exactly what this bill does.”

For her part, Osten said that “there are 140 towns in this state that send residents to southeastern Connecticut every day to work at one of the two casinos there. This is a Connecticut jobs bill, one that protects jobs for middle-class workers, our neighbors, our friends and our family.”

MGM Resorts International Senior Vice President and legal counsel Uri Clinton called the Senate’s vote “disappointing” in a statement and expressed hope that the House will pass a bill that allows for a bidding process.

“If the Senate bill were to ultimately become law, numerous national gaming operators — including MGM — would be precluded from offering a competitive bid for consideration,” Clinton added. “To shut down that opportunity would seem to be a disservice to Connecticut’s hardworking taxpayers.”

But Mohegan Tribal Council Chairman Kevin Brown and Mashantucket Pequot Tribal

Council Chairman Rodney Butler celebrated the bill's advancement, with Butler saying in a statement that "the Senate took us one step closer to saving more than 9,000 jobs and millions in state tax revenue."

He went on to emphasize the fact that acting Deputy Interior Secretary James E. Cason **recently stated** that the U.S. Department of the Interior stands by a technical assistance letter issued during the Obama administration expressing the view that proposed changes to the tribes' gaming compacts would not jeopardize their agreements to share casino revenue with the state.

Cason's letter came in response to the tribes' request that the Trump administration weigh in on their possible third casino, after Connecticut Attorney General George Jepsen told Malloy in March that allowing it would **pose risks** that "are not insubstantial and cannot be mitigated with confidence."

The tribes had also **attempted to reassure** the state in early April, telling Malloy, Jepsen and several state legislators that their agreements to share slot machine revenues from their casinos with Connecticut would not be disturbed by the proposed third casino.

MGM, which is concerned that the tribes' proposed third casino in Connecticut would divert customers from its forthcoming casino in Springfield, Massachusetts, is **currently challenging** in the Second Circuit a 2015 law signed by Malloy that kicked off the process of allowing them to open one.

In particular, MGM is hoping that the circuit court will overturn a lower court's ruling that tossed its lawsuit claiming Special Act 15-7 is a "race-based set-aside" that runs afoul of the equal protection clause of the U.S. Constitution and discriminates against out-of-state competitors in violation of the commerce clause.

--Additional reporting by Andrew Westney. Editing by Jack Karp.

*Update: This story has been updated to include a comment from MGM Resorts.*