



## **UTE INDIAN TRIBE**

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### **Testimony of the Ute Indian Tribe of the Uintah and Ouray Reservation**

#### **Before the U.S. House of Representatives Committee on Natural Resources**

#### **Oversight Hearing on Forgotten Voices: The Inadequate Review and Improper Alteration of Our National Monuments.**

**March 13, 2019**

#### **Introduction**

Chairman Grijalva, Ranking Member Bishop and Members of the Committee, thank you for the opportunity to testify on “Forgotten Voices: The Inadequate Review and Improper Alteration of Our National Monuments.” My name is Tony Small. I am elected member of the Ute Indian Tribe’s Business Committee and serve as Vice Chairman of the Business Committee.

The Ute Indian Tribe is a federally recognized tribe. Our 4.5 million-acre Uintah and Ouray Reservation is in northeastern Utah. Our ancestral lands, cultural resources and sacred sites extend into central and southern Utah and western Colorado. We became a member of the Bears Ears Inter-Tribal Coalition (Coalition) to help protect these lands and resources through the establishment of the Bears Ears National Monument.

The Bears Ears Inter-Tribal Coalition includes: the Ute Indian Tribe, the Navajo Nation, the Ute Mountain Ute Tribe, the Pueblo of Zuni, and the Hopi Tribe. The Coalition represents a historic gathering of our people and our tribal nations in support of the significant and priceless resources making up the Bears Ears National Monument. The Coalition worked with Utah Diné Bikéyah, a grass roots tribal organization, and many others for nearly a decade to seek the designation of the Bears Ears National Monument and the protection of its sacred and priceless cultural and natural resources.

We proposed that a 1.9 million acre monument be established. Ultimately, a 1.35 million acre Bears Ears National Monument was designated by President Obama on December 28, 2016 through Presidential Proclamation No. 9558. However, on December 4, 2017, President Trump issued Presidential Proclamation No. 9681 unlawfully revoking and replacing the Monument

with two small monument units. These two monument units include about 201,397 acres. This is an 85 percent reduction that leaves hundreds of thousands of priceless and significant cultural, natural and sacred objects and resources unprotected.

Congress should pass legislation affirming and expanding the Bears Ears National Monument. The Ute Indian Tribe strongly supports S. 367, H.R. 871 and H.R. 1050. Each of these bills would reaffirm and expand the Monument to include the entire 1.9 million acres originally proposed by the Coalition. These bills have a total of 214 sponsors and co-sponsors and were developed in consultation with the Coalition Tribes.

### **The Bears Ears National Monument Promotes the Government-to-Government Relationship with Indian Tribes**

President Obama's Proclamation establishing the Bears Ears National Monument did more than protect antiquities, sacred sites, cultural resources and tribal uses of the landscape and its resources. Obama's Proclamation also highlighted and promoted the United State's government-to-government relationship with Indian tribes. The Proclamation created a tribally led Bears Ears Commission to help manage the Monument. The Commission is made up of the five Tribes who sought the establishment of the Monument through the Bears Ears Inter-Tribal Coalition.

In creating the Commission and providing the Tribes with a role in management of the Monument, the Proclamation recognized that Indian lands and resources extend far beyond reservation boundaries. The Proclamation recognized that the management of federal lands and resources, which include tribal lands and resources, are best managed through a partnership between the Federal government and Indian tribes. The Proclamation provided:

In recognition of the importance of tribal participation to the care and management of the objects identified above, and to ensure that management decisions affecting the monument reflect tribal expertise and traditional and historical knowledge, a Bears Ears Commission (Commission) is hereby established to provide guidance and recommendations on the development and implementation of management plans and on management of the monument.

Presidential Proclamation No. 9558 at 7. Obama's Proclamation recognized that tribal lands and resources are all around us, and that tribes should be involved in the management of these precious and sacred resources. Creation of the Bears Ears National Monument was the first time that tribal management was included as a part of a National Monument.

Tribal participation in land and resource management is vital at Bears Ears and many other places. We continue to use the lands and resources surrounding Bears Ears to collect plants, minerals, objects and water for religious and cultural ceremonies and medicinal purposes; to hunt, fish and gather; to provide offerings at archaeological sites; and to conduct ceremonies on the land. In fact, Bears Ears is so culturally and spiritually significant that some ceremonial use items can only be harvested within Bears Ears. In addition, some members of the Coalition Tribes continue to hold grazing permits and allotments in the area.

**President Trump's Unlawful Proclamation Violated the Government-to-Government Relationship Between the United States and Indian Tribes**

In contrast, President's Trump's Proclamation fails to recognize this government-to-government relationship and the interests of the Tribes in these lands and resources. First, let's be clear, President Trump's unprecedented proclamation revoking Bears Ears and replacing it with two small monument units violates the Antiquities Act and exceeds the power delegated to the President by Congress. The Antiquities Act authorizes Presidents to designate federal public lands, such as Bears Ears, as national monuments to safeguard and preserve landmarks, structures, and objects of historic or scientific importance. The Antiquities Act does not authorize a President to rescind or modify national monuments created by their predecessors, and certainly does not authorize them to revoke and replace existing monuments with smaller ones as has been attempted here.

Just as important, President Trump's action violates the United States' government-to-government relationship and responsibility to consult with tribal sovereign governments on matters affecting tribal interests. Trump's Proclamation attempts to dismantle the great strides made in the government-to-government relationship discussed above. President Trump's action fails to recognize the tribal interests in the resources of the Bears Ears National Monument and nearly eliminates the Commission. This action fails to recognize the important benefits that would be gained by having the Tribes involved in the management of the Bears Ears National Monument.

President Trump's action to reduce and rescind the Monument and nearly eliminate the Commission violates tribal consultation requirements that are set out in multiple laws, court decisions, Executive Orders and Federal government consultation policies. In particular, long-standing Executive Order No. 13175 on Consultation and Coordination with Indian Tribal Governments requires that "Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments." Exec. Order No. 13175, Sec. 3(a). President Trump's unlawful action does not comply with Executive Order No. 13175.

Former Secretary Zinke also violated the Department of the Interior Policy on Consultation with Indian Tribes (Dec. 2011) (Interior Tribal Consultation Policy) in reviewing and reducing the Bears Ears National Monument. Interior's Tribal Consultation Policy states that that "[e]ach Bureau or Office will consult with Indian Tribes as early as possible when considering a Departmental Action with Tribal Implications." Interior Tribal Consultation Policy at § VII, E, 1. This tribal "[c]onsultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making [and, that] ... [c]onsultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility." Interior Tribal Consultation Policy at § II.

While federal records and email correspondence demonstrate that former Secretary Zinke was closely coordinating with industry, political and non-Indian stakeholders in his review of the

Bears Ears National Monument, Zinke all but turned his back on the sovereign tribal governments who had been entrusted to help manage the Monument. Former Secretary Zinke was only willing to consult with our tribal leaders for one hour. Meanwhile, email correspondence obtained through Freedom of Information Requests shows an extensive back and forth with non-Indian stakeholders and specific reductions of the Monument to benefit speculative commercial mining interests.

Recognizing his deficient consultation, former Secretary Zinke directed one of his Deputies to hold a follow up meeting with tribal representatives in Washington, D.C. During this meeting tribal representatives presented a compelling legal case for maintaining the original Bears Ears National Monument or expanding it to the size proposed by the Coalition Tribes. The Tribe's presentation was based on the legal requirements and standards of the Antiquities Act as well as the United States requirements to work with Indian tribes on a government-to-government basis.

Interior had no response to this extensive presentation by the Tribes. There was no back and forth discussion, not further exchange of proposals, no deliberative process as required by Interior's Tribal Consultation Policy. Interior simply turned its back on the Federal government's treaty and trust responsibilities and on Coalition Tribes themselves. Former Secretary Zinke violated his own Department's Tribal Consultation Policy as well as Executive Order No. 13175.

Tribal consultation is not a trivial issue. Proper tribal consultation is an expression of the unique legal relationship between Indian tribes and the federal government, the federal trust responsibility, and our right to self-government. Tribal consultation also helps the federal government ensure that future federal action is achievable, comprehensive, long lasting, and reflective of tribal input. President Trump's Proclamation violated all of these requirements.

### **There is No Scientific or Reasonable Basis for Eliminating Monument Protections**

President Trump's unlawful action left hundreds of thousands of priceless and significant cultural, natural and sacred objects unprotected. There are too many objects, sites and resources left unprotected to list them all here. Not to mention the cultural practices and traditional tribal intellectual knowledge that would be lost or diminished. There is absolutely no rational basis to exclude these sites and objects while including the sites and objects that are within the two small monument units.

Claims that these objects and sites can be protected under other applicable laws like the National Historic Preservation Act or the Archeological Resources Protection Act of 1979 are a red herring. If these laws provided adequate protections, there would be no need for the protections included in Trump's Proclamation. It is clear that Trump's Proclamation was not based on tribal consultation, or scientific and ethnographic assessments of the resources that would be impacted.

While we recognize there are appropriate places for resource development, including energy development, this is not one of those areas. This is an area that must be preserved and

protected for its cultural, archeological, paleontological and sacred. Without appropriate protection, American citizens and the world would lose the opportunity to enjoy one of the most remote and wondrous landscapes found anywhere. We would also lose the opportunity to highlight, foster and share our traditional knowledge that is tied to Bears Ears.

### **Conclusion**

The Bears Ears National Monument was designated to celebrate and protect our lasting connections and ongoing uses to the lands and resources around Bears Ears. Bears Ears includes our ancestral homelands, resources and spiritual sites that are as important to our culture and identity as they ever were. These are both legal and cultural connections.

President Trump violated the Antiquities Act and the United States government-to-government relationship with Indian tribes when he unlawfully reduced and rescinded the Bears Ears National Monument. The Ute Indian Tribe supports passage of S. 367, H.R. 871 and H.R. 1050 to correct these violations. These bills have broad support in Congress and would restore balance to Bears Ears and its surrounding landscape.

Thank you for your consideration of our testimony.