



## **Testimony of the Bears Ears Inter-Tribal Coalition**

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

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

**January 9, 2018**

#### **Introduction**

Chairman McClintock, Ranking Member Hanabusa and Members of the Subcommittee, thank you for the opportunity to testify on H.R. 4532, the Shash Jáa National Monument and Indian Creek National Monument Act. My name is Shaun Chapoose. I am an elected member of the Ute Indian Tribe's Business Committee. I also serve as a member of the Bears Ears Commission. Accompanying me today is Davis Filfred, Navajo Nation Delegate, who is also a member of the Bears Ears Commission.

The Bears Ears Commission was formed to assist the Federal government in managing the Bears Ears National Monument. The Commission's five members represent the five Tribes who sought the establishment of the Monument through the Bears Ears Inter-Tribal Coalition (Coalition). The 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. I am honored to testify today on behalf of the five Tribes of the Bears Ears Inter-Tribal Coalition.

At the outset we ask that the Subcommittee recognize the number of Tribes that were cut out of this hearing. Each of the Tribes making up the Bears Ears Inter-Tribal Coalition is its own sovereign government. Each of us have our own unique and negotiated relationship with the United States. This relationship is highlighted in the United States Constitution and began long before Utah became a state.

Yet, at this hearing, our five Tribes are forced to share one seat, while every level of the State of Utah is represented, including: the state government, county government and a Utah stakeholder lobbying group. We ask that the Subcommittee recognize its government-to-government relationship with each of our Tribes and provide a full hearing of the impacts H.R. 4532 will have on our cultural, natural and sacred resources. Each of our Tribes have our own unique concerns and perspectives on H.R. 4532.

The Bears Ears Inter-Tribal Coalition adamantly opposes H.R. 4532 and its attempt to legislatively confirm President Trump's unlawful action revoking, replacing and dismantling the Bear Ears National Monument. Of course, we appreciate Congressman Curtis' recognition of the significance of the cultural, natural and sacred resources included within the Shash Jáa and Indian Creek areas in his bill, H.R. 4532. However, in this context, the bill pours salt on the wound caused by the President's unlawful action.

Instead of H.R. 4532, the Subcommittee should be holding a hearing on H.R. 4518, the Bears Ears National Monument Expansion Act. H.R. 4518 was introduced by Congressman Gallego on December 1, 2017 and referred to the Subcommittee on December 7, 2017. Despite being before the Subcommittee for a longer period of time than H.R. 4532, no hearing has been scheduled on H.R. 4518. In addition, H.R. 4518 has the broad support of 98 co-sponsors, while H.R. 4532 has only garnered the support of three co-sponsors. If the Subcommittee were following regular order, there appears to be no basis for holding a hearing on H.R. 4532 and not H.R. 4518. At a minimum, today's hearing should have provided equal time for consideration of both bills.

H.R. 4518 would address the President's unlawful action by expanding the Bear Ears National Monument to the 1.9 million acres originally proposed by the Coalition. The Coalition and Utah Diné Bikéyah, a local, nonprofit Utah Navajo organization, worked for almost a decade to conduct an extensive ethnographic study documenting a vast array of "historic landmarks, historic and prehistoric structures, and other objects of historic and scientific interest" that have special significance to our Tribal Nations and our ancestors. As required by the Antiquities Act, that study showed that 1.9 million acres was the "smallest area compatible with the proper care and management of the objects to be protected" and that protection was needed under the Antiquities Act. H.R. 4518, developed in consultation with tribal governments, would expand the size of the Monument to its originally proposed 1.9 million acres to ensure that all of its vital and sacred resources are protected in accordance with the law.

In contrast, H.R. 4532 was developed without any tribal consultation and includes a variety of serious problems that violate basic tenants of federal Indian law and the United States' treaty, trust and government-to-government relationship with Indian tribes. Problems include:

- creating a tribal management council that is not governed by tribes and is composed of many of the strongest opponents to the Bears Ears National Monument;
- imposing an inappropriate barrier between the Tribes and our Federal trustee by requiring the comments of the Bears Ears Commission to be filtered through management councils consisting of non-federal and non-tribal representatives;
- elevating the views of state and country governments above the Tribes, and ignoring and undermining the government-to-government relationship between tribes and the Federal government by treating tribes as mere interest groups;
- creating and imposing false divisions within our Tribes; and
- including land exchange provisions that could affect Indian reservation lands.

Under most circumstances we would be eager to work with Congressman Curtis and the Subcommittee to address and resolve these problems with H.R. 4532. However, we cannot work in support of a bill that would legislatively confirm the President's unlawful action dismantling a decade of collaborative work to establish the Bears Ears National Monument.

### **The Bears Ears National Monument**

Establishment of the Bears Ears National Monument was a decade long collaborative effort to encompass and protect hundreds of thousands of cultural, historic, and spiritual sites and features. As noted above, the Coalition and Utah Diné Bikéyah worked for almost a decade to conduct an extensive ethnographic study documenting sites and objects across southeastern Utah. The 1.9 million acres originally proposed by the Coalition was reduced by about 30 percent by Presidential Proclamation No. 9558 to establish the 1.35 million acre Bears Ears National Monument.

In this reduced area, there are no unimportant areas. In fact, the Bears Ears National Monument is so rich, and the resources there are so densely situated, that one cannot go more than one-eighth of a mile without encountering the next site or "object." If you remove any part of the Monument from protection, it will necessarily damage cultural, spiritual, archaeological and paleontological sites of paramount significance.

In addition to vast "historic landmarks, historic and prehistoric structures, and other objects of historic and scientific interest" contained within the Monument, Bears Ears is a homeland to us. It always has been and remains so. We continue to use Bears Ears to: collect plants, minerals, objects and water for religious and cultural ceremonies and medicinal purposes; hunt, fish and gather; provide offerings at archaeological sites; and conduct ceremonies on the land. In fact, Bears Ears is so culturally and spiritually significant that some ceremonial use items can only be harvested within Bears Ears. Moreover, some members of the Coalition's Tribes continue to hold grazing permits and allotments in the area.

Our cultures are everywhere within Bears Ears. The canyons and forests hold many of our stories. Family gatherings, dances, and ceremonies are held at special places within Bears Ears. Our tribal members go to Bears Ears to gather roots, berries, piñon nuts, weaving materials, and medicines. We go for healing. Stone cliff-dwellings, rock art and trails, testaments to the Old People, have survived thousands of years of wear and weather. Our ancestors are buried there, and we can hear their songs and prayers on every mesa and in each canyon.

The Bears Ears National Monument enjoys overwhelming popularity nationally, extensive and passionate support in the State of Utah, and support from locals who view the Monument as an economic development opportunity. Businesses based on tourism, recreation and respect for the Monument's cultural resources provide long-term sustainable jobs and local economic resources. This is in contrast to uranium and fossil-fuel mining on federal lands that provide temporary, dangerous jobs that fund far off corporations, often destabilize local economies, and leave behind pollution and a scarred landscape.

The President's attempt to eliminate or reduce the boundaries of the Bears Ears National Monument is wrong on every count. Such action is illegal, beyond the reach of presidential authority, and should not be confirmed by H.R. 4532. Despite provisions of H.R. 4532 purporting to withdraw portions of the Monument's lands from entry for mining purposes, the Monument would still be subject to and affected by existing claims and leases, potential expanded mining, and mining related activities. In addition, grazing interests would be given priority and damaging motorized vehicle use would be permitted. Finally, ghastly looting and grave robbing continues to this day throughout Bears Ears and would not be deterred by H.R. 4532.

Preventing and addressing these impacts were the primary reason that the Tribes sought monument status for this area. 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.

### **The President's Unlawful Action and H.R. 4532**

Despite its provisions purporting to protect important cultural, natural and sacred resources, H.R. 4532 can only be understood in the context of the President's unlawful action revoking, replacing and dismantling the Bear Ears National Monument. On December 4, 2017, the President issued Presidential Proclamation No. 9681 purporting to "modify" the Bears Ears National Monument and designating two different, smaller and isolated units called the Shash Jáa and Indian Creek units. This drastic change actually revokes and dismantles the Monument and replaces it with two new monuments. These two different monuments consist of 201,397 acres, an 85 percent reduction in land when compared to the original Monument, and leave hundreds of thousands of priceless and significant cultural, natural and sacred objects unprotected.

President Trump's unprecedented proclamation revoking Bears Ears and replacing it with two new monuments 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. H.R. 4532 would legislatively confirm this unlawful action.

H.R. 4532 would leave 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. A few examples of objects and sites that would be unprotected are included in Exhibits 1, 2 and 3 attached to our testimony.

Exhibit 1 shows an example of a dwelling and related rock art that H.R. 4532 would leave unprotected. It shows the handprints and dwellings of our ancestors whose burial sites and funerary objects have been looted. Bears Ears includes a variety of dwellings and granaries showing different construction methods and eras of building. The area is unusual in that it shows contact between Mesa Verde and Chacoan Ancestral Puebloans, including differences in construction of religious structures. These “objects of historic and scientific interest” should be protected as a part of the Bears Ears National Monument under the Antiquities Act.

Exhibit 2 shows rock art representing a cradleboard of Ute origin that H.R. 4532 would leave unprotected. The artwork is unusual and rare. It is located on a horizontal surface. Again, this is an “object of historic and scientific interest” that should be protected as a part of the Bears Ears National Monument under the Antiquities Act.

Finally, Exhibit 3 shows Basketmaker or Ancestral Puebloan pictographs painted on a rock surface that would be left unprotected by H.R. 4532. Bears Ears includes a wide variety of rock art of different styles and from different time periods. Again, these are “objects of historic and scientific interest” that should be protected as a part of the Bears Ears National Monument under the Antiquities Act.

These are just a few of the “objects of historic and scientific interest” that should still be protected under the Antiquities Act and any legislation covering these resources. There is absolutely no rational basis to exclude these sites and objects while including the sites and objects that are within the Shash Jáa and Indian Creek areas designated by President Trump and H.R. 4532.

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 President Trump’s Proclamation No. 9681 or H.R. 4532. Instead, these claims merely expose political decision-making behind Proclamation No. 9681 and H.R. 4532. Unfortunately, it is clear that Proclamation No. 9681 and H.R. 4532 were not based on scientific and ethnographic assessments of the resources that would be impacted.

### **Specific Problems with H.R. 4532**

Most important, H.R. 4532 was not developed in consultation with the Indian tribes who hold these lands sacred and would be most impacted. Misleading statements by some in Congress and the Administration require us to emphasize that discussions with individual tribal members are not government-to-government consultation. Let us be clear, none of the elected tribal leaders making up the Bears Ears Inter-Tribal Coalition was contacted to advise, consult or assist in the development of H.R. 4532. In fact, not a single federally recognized tribal government was consulted on the proposals in H.R. 4532. Specific problems with the bill demonstrate this lack of consultation.

Time after time, H.R. 4532 undermines and violates the United States’ treaty, trust and government-to-government relationship with our Tribes. For example, we were shocked by the

name of Shash Jáa Tribal Management Council. Nothing about this Council reflects true tribal management. First, the Council consists of three representatives who are not required to have any ties whatsoever to tribal governments. Second, the tribal members on the Council are not required to be duly elected or appointed representatives of tribal governments, which means they will not be authorized tribal government representatives. Further to that point, the President will appoint all of the members of the Council as opposed to tribal governments. Third, the tribal members must all be from only two of the five tribes with an interest in Bears Ears whereas the five Coalition Tribes have already acknowledged our shared and local interest in Bears Ears. Fourth, the Council is required to consult with state and local governments, and the public, but are not required to consult with the tribes who hold these lands sacred.

Finally, the most shameful aspect of the bill, is that it improperly predetermines the tribal representatives who would serve on the Council. It is not up to the United States or Congress to select who will represent our tribes. This is an inappropriate return to the failed policies of the 1800's when the United States would divide tribes and pursue its own objectives by designating for itself which tribal representatives the United States would negotiate. It is up to sovereign tribal governments, not the United States, to select our own representatives.

These factors are even worse for the Indian Creek Management Council where a single tribal representative serves with four representatives from federal, state and county governments. Again, the tribal representative would be appointed by the President and not the tribe, and would have to consider and incorporate the comments of state and local governments and the public as opposed to the tribal governments most affected. For both the Shash Jáa and Indian Creek areas, the Bears Ears Commission, including the five Tribes is reduced to an advisory group.

These provisions attempt to treat Indian tribes as merely public stakeholders and not as governments, and most certainly not as governments with a direct sovereign-to-sovereign relationship with the federal government. This violates fundamental principles of federal Indian law. The United States has a treaty, trust and government-to-government relationship with Indian tribes. As specified in the United States Constitution, this relationship is exclusive and does not include state governments. H.R. 4532 must be revised to reflect these important principles of federal law.

Title III of H.R. 4532 also needs revision. Title III allows the State of Utah to exchange its school trust lands located inside the Shash Jáa and Indian Creek areas for other lands within the state to provide for resource development in support of public schools. However, this provision must be revised to exclude lands within Indian reservations to prevent impacts to on-reservation Indian resources.

Our cultural, natural and sacred resources within our Indian reservations are just as important as the resources within the Bears Ears National Monument. Our reservation lands were reserved in treaties and other agreements to provide a homeland for our tribes. In another return to the failed policies of the 1800's, Title III of H.R. 4532 would allow another Indian land grab where federal lands lie within our reservations. The United States and Congress rejected these policies long ago in favor of protecting and restoring Indian reservation lands. H.R. 4532 and this extreme proposal should be soundly rejected.

### **Conclusion**

The Bears Ears Inter-Tribal Coalition adamantly opposes H.R. 4532 which would legislatively confirm the President's unlawful action in violation of the Antiquities Act. H.R. 4532 would dramatically affect some of our most important cultural, natural and sacred resources. We ask that the Subcommittee provide a full hearing of H.R. 4532 and hear from each of the five Tribes who make up the Bears Ears Inter-Tribal Coalition. We also ask that the Subcommittee hold a hearing on H.R. 4518 which has broad support and would resolve many of the problems raised today.

Thank you for your consideration of our testimony.

Exhibit 1



Exhibit 2



Exhibit 3

