



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
Subcommittee on Federal Lands**

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

January 30, 2018

Introduction

Chairman McClintock, Ranking Member Hanabusa and Members of the Subcommittee, thank you for the opportunity to testify on H.R. 4532, the Shash Jáa National Monument and Indian Creek National Monument Act. 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 worked with Utah Diné Bikéyah, a grass roots tribal organization, for nearly a decade for the designation of the Bears Ears National Monument and the protection of its sacred and priceless cultural and natural resources. We proposed that a 1.9 million acre monument be established.

Ultimately, a 1.35 million acre Bears Ears National Monument was designated by President Obama on December 28, 2016 through Presidential Proclamation No. 9558. However, on December 4, 2017, President Trump issued Presidential Proclamation No. 9681 unlawfully revoking and dismantling the Monument and replacing it with two new monuments. These two monuments 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.

The Ute Indian Tribe remains adamantly opposed to H.R. 4532 which would legislatively confirm President Trump's unlawful action. We first testified on H.R. 4532 as a part of the Coalition at a Subcommittee hearing on January 9, 2018. As noted at that hearing, H.R. 4532 would also diminish tribal voices in the management of these cultural and natural resources while promoting the voices of Federal agencies, the State of Utah and the San Juan County Board of Commissioners. Most important, H.R. 4532 attempts to take a monument designated to protect and preserve tribal cultural and natural resources and turn it into a multi-use area for uranium mining, increased motorized vehicles and increased grazing that would damage these sensitive resources.

We appreciate the efforts of the Subcommittee's Democratic Members to seek this second hearing on H.R. 4532 to provide an opportunity for all five of the Coalition tribes to testify. The Coalition represents a historic gathering of our tribal nations in support of the significant and priceless resources making up the Bears Ears National Monument. While we are committed to working together, it is important for the Subcommittee to hear and understand the views of the five independent and sovereign tribes making up the Coalition.

At the January 9, 2018, hearing on H.R. 4532, the five Tribes were forced onto one witness seat while every level of the State of Utah was represented, including: the Utah state government, a Utah private citizen and a Utah lobbying group. At today's hearing the State of Utah is well represented again, including Utah's San Juan County Commissioners and another opportunity for the Utah state government. The focus of these hearings on the State of Utah, its government subdivisions, its private citizens and its lobbying groups are a clear indication of the purpose of H.R. 4532—to eliminate tribal voices in the protection of Bears Ears National Monument and its sacred and priceless resources.

The Bears Ears Inter-Tribal Coalition's January 9, 2018 testimony provided a thoughtful and well-reasoned discussion of the problems with H.R. 4532 and why the Subcommittee or Committee should not approve the bill. The Ute Indian Tribe incorporates and adopts that testimony here. In the remainder of our testimony, we will address issues that have arisen since the first hearing.

Claims that H.R. 4532 Empowers Local Tribes are Misleading and False

Chairman Bishop and Congressman Curtis as well as other supporters of H.R. 4532 continually make misleading and false claims that they are supporting "local tribes" or empowering the voices of "local tribes." Congressman Curtis most recently made these claims in a January 20, 2018, Salt Lake Tribune opinion piece. Nothing could be further from the truth. This distortion of the Federal government's treaty, trust and government-to-government relationship with Indian tribes is offensive and damaging.

The "local tribes" Chairman Bishop and Congressman Curtis are referring to are individual tribal members cherry picked by the Congressmen for their support of H.R. 4532.

These “local tribes” are simply private citizens expressing their opinion. They do not represent the views of federally recognized tribal governments—including the Ute Indian Tribe and the other Coalition tribes.

Even worse, Chairman Bishop and Congressman Curtis’ actions are an attempt to disrupt and undermine our tribal governments by negotiating with individual tribal members. This is an attack on our sovereignty, conflicts with the United States’ policy of tribal self-determination, and violates the Federal government’s treaty, trust and government-to-government relationship with federally recognized 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. These short-sided and damaging actions stand in the way of progress that benefits Bears Ears, the region and the State of Utah. We would expect the full Congress to reject these actions and the bill.

During the January 9, 2018 hearing, Chairman Bishop also falsely claimed that a photo from our Ute Bulletin newspaper proved that he had met with us to discuss H.R. 4532 or more generally the Bears Ears National Monument. The date of the Ute Bulletin shown in his photo was July 17, 2015. This was more than two years before H.R. 4532 was introduced and more than two years before President Trump unlawfully rescinded and dismantled the Monument.

On July 17, 2015, Chairman Bishop met with a few members of the Ute Indian Tribe’s Business Committee, not a quorum, to discuss his Utah Public Lands Initiative, not H.R. 4532. While the Public Lands Initiative included a proposal for Bears Ears, the July 2015 meeting focused on our proposal for trust restoration of lands within our Uncompahgre Reservation. Restoration of these lands to trust status would provide for local decision-making and increased energy development in a proven oil field. Unfortunately, Chairman Bishop did not include our proposal in his Public Lands Initiative bill and instead used the bill to seek the first Indian land grab in more than 100 years. The meeting did not include any discussion of H.R. 4532 or legislative proposals for Bears Ears.

Let us be clear, Chairman Bishop and Congressman Curtis never contacted the Ute Indian Tribe’s Business Committee, the Tribe’s governing body, 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. Claiming that they are promoting the voices of “local tribes” is a disgrace. It is up to sovereign tribal governments, not the United States, to select our own representatives.

The Ute Indian Tribe and the Bears Ears Inter-Tribal Coalition are the Local Tribes

During the January 9, 2018 hearing, Chairman Bishop sharply questioned whether the Ute Indian Tribe and the Bears Ears Inter-Tribal Coalition had a strong and ongoing relationship to the lands and resources contained within the Bears Ears National Monument. Chairman Bishop’s line of questioning misunderstands our long-lasting and vital connection to these lands. Our Uintah and Ouray Reservation is in northeastern Utah, but we have lived, worked and prayed in the area around Bears Ears for all time. Today we maintain strong cultural connections to Bears Ears and its surrounding lands including ongoing uses.

Our connection and legal standing to the lands and resources in the area around Bears Ears was long recognized by the Federal government even before the Bears Ears National Monument was designated. In 1899 the Government Printing Office published a schedule of Indian land cessions by Charles C. Royce including 67 maps outlining those land cessions as the second part of the two-part 18th Annual Report of the Bureau of American Ethnology -- 1896-1897, Vol. II. Part two was also printed as House Document No. 736 of the U.S. Serial Set, 56th Congress, 1st Session. This report was part of a series of annual reports on Native American issues produced by the United States Bureau of American Ethnology for the Smithsonian Institution.

Today, the Department of the Interior and other Federal agencies use these “Royce Maps” to legally determine which tribes will be contacted when a site is discovered under the Native American Graves Protection and Repatriation Act (NAGPRA) and for government-to-government consultation on federal actions that may impact Indian resources. The Royce Map for the State of Utah is attached to our testimony as Exhibit A. Bears Ears and its surrounding lands and resources is located in the southeast corner of this map, to the north of the San Juan River, and included within Royce Map 515. Royce and Interior’s National NAGPRA Program identify Royce Map 515 as including the ancestral lands of the Ute Indian Tribe and a number of other tribes.

The Bears Ears National Monument was designated, in part, 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. The Ute Indian Tribe and the Tribes making up the Bears Ears Inter-Tribal Coalition are the local tribes. In designating the Bears Ears National Monument, President Obama recognized this truth.

The Shash Jáa Tribal Management Council does not Promote Tribal Management

We were shocked by the name of Shash Jáa Tribal Management Council. Despite Congressman Curtis’ claims in his January 20, 2018 opinion piece, nothing about this Council reflects actual tribal management. First, the Council does not include the Ute Indian Tribe. Instead, only two of the five Tribes making up the Bears Ears Inter-Tribal Coalition are represented on the Council. Second, the Council consists of three representatives who are not required to have any ties to tribal governments. Third, 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. Fourth, the Council is required to consult with state and local governments, and the public, but is not required to consult with the tribes who hold these lands sacred.

Finally, the most troubling aspect of this “tribal management council,” is that H.R. 4532 attempts to improperly predetermine 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, again, 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.

Curtis also claimed that the original Bears Ears Commission is left intact in his bill. However, H.R. 4532 would bury the Commission under his so-called “tribal” management council that is dominated by federal and state interests. H.R. 4532 would limit and drown out the voice of the Bears Ears Commission.

All of these provisions attempt to treat Indian tribes as merely public stakeholders, 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.

Uranium Mining, Motorized Vehicle Use and Increased Grazing Would Damage Cultural and Natural Resources

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 increased 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 which only protects a very small portion of the cultural and sacred resources in the area.

Preventing and addressing these impacts were the primary reason that the Ute Indian Tribe and the Coalition 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.

There is No Scientific or Reasonable Basis for Eliminating Monument Protections

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. 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.

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 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. 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.

Indian Reservations Must Be Excluded from State Land Exchanges

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 Ute Indian Tribe 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. Instead, the Subcommittee should 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 A

