

March 11, 2019

TO: Republican Members, House Committee on Natural Resources
FROM: Republican Committee Staff – Brandon Miller and Terry Camp (x67736)

The Committee on Natural Resources will hold a hearing entitled “Forgotten Voices: The Inadequate Review and Improper Alteration of Our National Monuments” on Wednesday, March 13, 2019, at 10AM in 1324 Longworth House Office Building.

I. WITNESSES

Panel 1

- **The Honorable Carleton Bowekaty**, Lieutenant Governor, Pueblo of Zuni
- **Kathleen Clarke**, Director, Public Lands Coordinating Office, State of Utah (*Republican Witness*)
- **Ed Roberson**, Utah State Director, Bureau of Land Management
- **The Honorable Tony Small**, Vice Chairman, Ute Indian Tribe
- **The Honorable Clark W. Tenakhongva**, Vice Chairman, Hopi Tribe

Panel 2

- **Nicole Croft, Executive Director**, Grand Staircase Escalante Partners
- **Suzette Morris, Member**, Ute Mountain Ute Tribe, White Mesa, Utah (*Republican Witness*)
- **P. David Polly**, Immediate Past President, Society of Vertebrate Paleontology
- **The Honorable Leland Pollock**, Commission Chair, Garfield County, Utah (*Republican Witness*)
- **Dana Waggoner**, Owner, Escalante Outfitters

II. BACKGROUND

The Democrats have convened this hearing to criticize former Interior Secretary’s Zinke’s review of previous national monument designations and to malign President Trump’s redrawing of monuments to appropriate size. They continue to perpetuate the falsehood that recent national monument designations have been locally-driven and done out of genuine concern for the protection of antiquities. The reality is that the Obama and Clinton Administrations, urged on by well-heeled activist groups, abused their executive authority to lock-down massive amounts of land – without public review and irrespective of whether legitimate antiquities were protected in the process. Ranking Republican Bishop will argue that the chief source of controversy over national monument designations is the Antiquities Act itself, an inherently undemocratic statute that allows presidents to dictate significant federal land management decisions without public participation, congressional review, or fulfilling any procedural requirements.

National Monuments Review

As discussed in further detail below, the Antiquities Act of 1906 (54 U.S.C. 320301 et seq.) allows Presidents to unilaterally create national monuments on federal lands where objects of antiquity are at risk.¹ On April 26, 2017, President Trump issued an executive order requiring the Secretary of the Interior to study national monuments established or expanded by Presidents under the Antiquities Act since 1996.² The executive order required review of national monuments where the size at establishment or after expansion exceeded 100,000 acres or where the Secretary determined that the action was taken "without adequate public outreach and coordination."³ The goal of the review was to ensure that monuments established through Presidential proclamation were meeting the spirit and letter of the Antiquities Act. Because of the review, the Interior Secretary recommended boundary adjustments for those units that did not meet the "smallest area compatible with proper care and management" requirement of the Antiquities Act.⁴ Secondary goals included ensuring that monuments did not restrict public access, burden private land, restrict hunting/fishing, or eliminate traditional uses.⁵

On December 4, 2017, following review by the Secretary of the Interior of the 27 monuments established since 1996, President Trump signed a proclamation to reduce the Bears Ears National Monument from 1.35 million to 201,876 acres.⁶ The modification of this Obama-created Monument resulted in two new separate monuments: Shash Jaa (Navajo for "Bears Ears") at 129,980 acres and Indian Creek at 71,896 acres.⁷ On that same day, President Trump signed a proclamation to reduce the Clinton-era Grand Staircase-Escalante National Monument from 1.9 million to 1 million acres. The proclamation replaced the Grand Staircase-Escalante with three smaller monuments: Grand Staircase at about 209,933 acres; Kaiparowits at 551,000 acres; and Escalante Canyons at 243,000 acres.⁸

Antiquities Act of 1906

At the beginning of the 20th century, vandals and robbers began looting sacred Native American burial grounds and archeological sites throughout the territories in the Southwest. The destruction of archeological artifacts prompted Congress to enact the Antiquities Act of 1906, which authorized the President to designate national monuments on federal lands containing "historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest."⁹ The law also required that national monuments "be confined to the smallest area compatible with proper care and management of the objects to be protected."¹⁰ Furthermore, the President could only designate national monuments "upon the lands owned or controlled by the Government of the United States."¹¹

¹ 54 U.S.C. 320301 states: The President may, in the President's discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments... The President may reserve parcels of land as a part of the national monuments. The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

² <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-review-designations-antiquities-act/>

³ Ibid.

⁴ <https://www.doi.gov/sites/doi.gov/files/uploads/monument-report-summary.pdf>

⁵ Ibid.

⁶ <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-modifying-bears-ears-national-monument/>

⁷ Ibid.

⁸ Yachnin, Jennifer, et al. "NATIONAL MONUMENTS: Trump Slashes 2 Utah Sites." *POLITICS: How Do You Shift Republicans on Climate? Be Nice -- Wednesday, September 6, 2017*, www.eenews.net/stories/1060068013/.

⁹ 34 Stat. 225, 54 U.S.C. 320301 et seq.

¹⁰ Ibid.

¹¹ Ibid.

The Act granted Presidents the flexibility to quickly protect small Native American sites in imminent danger from looting and destruction.¹² President Theodore Roosevelt designated the first National Monument, Devils Tower, in 1906. Over time, Presidents have interpreted the Antiquities Act in an increasingly broad manner, expanding both the size and basis of National Monument designations, despite the legislative history of the Act plainly reflecting Congress's clear intent to limit designation size.¹³

Despite the Antiquities Act's original noble intent, Executive overreach has shown the law is susceptible to abuse. Presidents of both parties have increasingly used the Antiquities Act in unprecedented ways. By vesting total authority in one individual, this law sidesteps our American system of checks and balances and has regrettably been used to curry favor with wealthy activist organizations while ignoring stakeholder input and the effects of designations on local communities.

In addition to Presidential overreach, the Antiquities Act is also outdated and fails to live up to modern standards for public input and transparency. Since the enactment of the Antiquities Act, Congress and the Executive branch have enacted over one dozen statutes and regulations governing use and protection of federal lands.¹⁴ Further, the Antiquities Act does not lay out any public process before proclaiming a new national monument, nor are Antiquities Act designations subject to the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.) which normally governs major federal actions affecting the quality of the human environment.

Bears Ears National Monument, Utah

History: Designated by President Obama on December 28, 2016; *Original Size:* 1,351,849 acres.

Despite overwhelming State and local resistance to the designation of a national monument, President Obama designated Bears Ears in Utah during the waning days of his Administration. The Administration ignored the voices of local tribes in the area who opposed the creation of a national monument because of concerns about increased vandalism, foot traffic, lack of access, and potential loss of revenue streams.

The push for a national monument in southeastern Utah began in October 2014 during a meeting of the Conservation Lands Foundation (CLF) in San Francisco, California. During the meeting, CLF discussed the prospects of designating a national monument in southeastern Utah and agreed to call the National Monument Bears Ears, "to move away from a Navajo name."¹⁵ CLF expressed concerns about "hitching [their] success to the Navajo" in the event that local Navajo in San Juan County, Utah,

¹² Benderson, Judith. "The Archaeological Resources Protection Act and The Native American Graves Protection and Repatriation Act." Offices of the United States Attorneys. <https://www.justice.gov/usao/priority-areas/indian-country/native-american-artifacts>

¹³ In their discussions of the bill, Congressmen Lacey and Stephens debated whether Presidents would eventually abuse the Antiquities Act. Congressman Lacey, the bill's sponsor, reassured the bill provides that reservations "shall be the smallest area necessary [sic] for the care and maintenance of the objects to be preserved," Congressional Record, 1906.

https://coast.noaa.gov/data/Documents/OceanLawSearch/Congressional%20Record_House%20&%20Senate%201906.pdf?redirect=301ocm.

¹⁴ Some of the major statutes created to protect archeological resources include: *Historic Sites Act (1935)* – establishing the National Historic Landmarks Program; *National Stolen Property Act (1948)*; *Reservoir Salvage Act (1960)*; *National Historic Preservation Act (1966)*; *Archeological and Historic Preservation Act (1974)*; *Archeological Resources Protection Act (1979)*; *Abandoned Shipwreck Act (1987)*; *Native American Graves Protection and Repatriation Act (1990)*; *National Maritime Heritage Act (1994)*; *American Battlefield Protection Program Act (1996)*; *National Historic Lighthouse Preservation Act (2000)*; *Sunken Military Craft Act (2004)*

¹⁵ Conservation Lands Foundation, Board Meeting Minutes, San Francisco, California, 10/24/14, pg. a6, <http://conservationlands.org/wp-content/uploads/2015/05/Fall-2014-meeting-minutes.pdf>.

disagreed with the group's proposal.¹⁶ The campaign to designate Bears Ears as a national monument received millions of dollars in donations from out-of-State environmentalists, including \$20 million in donations from the Hewlett and Packard foundations and a portion of \$15.6 million in grants from the Leonardo DiCaprio Foundation.¹⁷ Outside organizations also heavily supported the Bears Ears Inter-Tribal Coalition, a group representing five tribes that supported a national monument designation, by creating their website, crafting maps of their Bear Ears National Monument proposal, sending out press releases and contacting the media.¹⁸

The Bears Ears National Monument proposal faced enormous opposition in the State of Utah. In a poll conducted in May 2016, only 17% of Utahns favored the President designating Bears Ears as a national monument.¹⁹ No member of the Utah Congressional delegation, or the Utah Governor, supported the unilateral designation, and they were not meaningfully consulted by the Obama Administration on a national monument proposal prior to the Presidential proclamation. The Obama Administration failed to offer any concrete pre-designation plans or details to members of the Congressional delegation, despite repeated requests on the record to collaborate on the future of these areas.²⁰

As mentioned above, following the thorough National Monuments Review that included significant outreach to the local Utah voices who had been ignored by the Obama Administration, President Trump signed a proclamation reducing the size of the Bears Ears National Monument.²¹ All federal lands removed from the Monument remain under management by the Bureau of Land Management and the U.S. Forest Service, and these lands continue to be managed and protected under multiple use and sustained yield mandates under law. This right-sizing of the Monument released more than 90,000 acres of Utah State land in addition to 6,000 acres of privately-owned land that was locked inside by the Obama Administration.²² In Utah, revenues from State trust lands are used to fund the public-school system.²³ Locking these lands up in National Monuments significantly curtailed the revenue from the land and directly impacts Utah public schools.²⁴

Grand Staircase-Escalante, Utah

History: Designated by President Clinton on September 18, 1996; *Original Size:* 1.88 million acres.

Without warning, President Clinton designated Utah's massive Grand Staircase-Escalante National Monument during the tail end of his first term during a visit to Arizona's Grand Canyon. As uncovered in a 1998 Committee on Resources report, this new Monument was designated despite the proclamation not citing specific antiquities needing protection and was clearly meant to help President Clinton's re-election and boost his support among environmental groups.²⁵ This designation caused a

¹⁶ Ibid. pg. a6.

¹⁷ Amy Joi O'Donoghue, "Big money, environmentalists and the Bears Ears story", *Deseret News*, 08/04/16, <http://www.deseretnews.com/article/865659464/Big-money-environmentalists-and-the-Bears-Ears-story.html>.

¹⁸ Ibid.

¹⁹ <http://utahpolicy.com/index.php/features/today-at-utah-policy/9551-poll-only-17-of-utahns-want-obama-to-designate-bears-ears-as-a-national-monument>

²⁰ Hatch, Orrin G. "It's Time to Undo the Federal Land Grab of Bears Ears." *The Washington Post*, WP Company, 25 Apr. 2017, www.washingtonpost.com/opinions/its-time-to-undo-the-federal-land-grab-of-bears-ears/2017/04/25/1b40ba40-2910-11e7-b605-33413c691853_story.html?noredirect=on&utm_term=.21f55c4e87de.

²¹ <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-modifying-bears-ears-national-monument/>

²² Pearce, Tim. *The Daily Caller*, The Daily Caller, 4 Dec. 2017, dailycaller.com/2017/12/04/trumps-national-monument-decision-by-the-numbers/.

²³ "Trust Lands History." Trust Lands Administration. Accessed March 10, 2019. <https://trustlands.utah.gov/our-agency/trust-lands-history/>.

²⁴ Loyola, Deena. "Education Board Passes Resolution on Trust Lands, National Monuments." Trust Lands Administration. December 4, 2015. Accessed March 10, 2019. <https://trustlands.utah.gov/education-board-passes-resolution-on-trust-lands-national-monuments/>.

²⁵ Committee on Resources, "Monumental Abuse: The Clinton Administration's Campaign of Misinformation in the Establishment of the Grand Staircase-Escalante National Monument", House Report 105-824, <https://www.gpo.gov/fdsys/pkg/CRPT-105hrpt824/html/CRPT-105hrpt824.htm>.

massive uproar in Utah and was not supported by a single member of the bi-partisan Utah Congressional delegation, or Utah's Governor.²⁶ The designation impeded or entirely stopped energy development, recreational access, timber production, and grazing within the boundaries of the National Monument.²⁷

Prior to the designation, the Clinton Administration held no town halls, public meetings, or public comment sessions in Utah and did not receive any input from local stakeholders or land managers. Perhaps most egregiously, the Administration only kept the designation a secret from Utahns and members of Utah's Congressional delegation. The White House Council on Environmental Quality (CEQ) reached out to then-Senator Harry Reid (D-NV), Governor Roy Romer (D-CO), Congressman Bill Richardson (D-NM), and Governor Bob Miller (D-NV) to get feedback on the proposal and even questioned if "there [were] Democratic candidates [they] should alert" about the designation.²⁸ Over a week before the designation, CEQ staff notified reporters at the Washington Post about the designation, while simultaneously representing to the Utah delegation that no decision had been made yet.²⁹

The Clinton Administration clearly established the National Monument for political, not archeological, purposes. According to correspondence obtained by the Natural Resources Committee, former Clinton CEQ Chair, Katie McGinty, expressed hesitation about the designation and said, "*I'm increasingly of the view that we should just drop these Utah ideas. we [sic] do not really know how the enviros will react and I do think there is a danger of 'abuse' of the withdraw/antiquities authorities especially because these lands are not really endangered.*"³⁰ However, she also wrote to the President that the action "*would help overcome the negative views toward the Administration created by the timber rider. Designation of the new monument would create a compelling reason for persons who are now disaffected to come around and enthusiastically support the Administration.*"³¹

The designation of the Grand Staircase Escalante National Monument resulted in devastating consequences for the surrounding communities. In a study conducted by Utah State University, researchers found that reduction in grazing alone resulted in a loss of 81 jobs and \$9,101,801 in economic input yearly in sparsely populated Garfield and Kane Counties.³² However, the largest economic losses came from the reduced potential for energy and minerals development. According to a study from the Utah Geological Survey, the value of potential energy mineral resources in Grand Staircase-Escalante totals between **\$223 billion and \$330 billion**, including \$221-321 billion of coal, \$2 billion-\$17.5 billion of coal-bed gas, \$20 million-\$1.1 billion of petroleum, and at least \$4.5 million of other minerals.³³

One of the most controversial aspects of the designation involved the inclusion of roughly 176,000 acres of Utah's State Institutional Trust Lands Administration (SITLA) land in the boundaries of the National Monument. Incredibly, the White House was not aware of the existence of SITLA land or their

²⁶ DeMille, David. "Grand Staircase-Escalante Debate Flashes Back to Anger over Bill Clinton's Designation." *The Spectrum & Daily News*. December 15, 2017. Accessed March 10, 2019. <https://www.thespectrum.com/story/news/2017/12/15/grand-staircase-escalante-debate-flashes-back-anger-over-bill-clintons-designation/956149001/>.

²⁷ "Op-Ed: Why Southern Utah Went to Court over Grand Staircase-Escalante." *DeseretNews.com*, Deseret News, 20 May 2018, www.deseretnews.com/article/900019107/op-ed-why-southern-utah-went-to-court-over-grand-staircase-escalante.html.

²⁸ Committee on Resources, "Behind Closed Doors: The Abuse of Trust and Discretion in the Establishment of the Grand Staircase-Escalante National Monument", Report 105-s1, 11/07/97, pg. 5.

²⁹ *Ibid.* Pg. 6.

³⁰ Committee on Resources, "Monumental Abuse: The Clinton Administration's Campaign of Misinformation in the Establishment of the Grand Staircase-Escalante National Monument", House Report 105-824.

³¹ *Ibid.* "Behind Closed Doors: The Abuse of Trust and Discretion in the Establishment of the Grand Staircase-Escalante National Monument", pg. 19.

³² American Stewards – analyzing data from Utah State University Extension and Economics Associations of Utah, Inc., "Economic and Cultural Report on Livestock Grazing in The Grand Staircase Escalante National Monument to The Kane County Board of Commissioners." <https://www.americanstewards.us/wp-content/uploads/2015/07/Economic-and-Cultural-Report-on-Grazing-on-The-Grand-Staircase.pdf>

³³ M. Lee Allison et al., "A Preliminary Assessment of Energy and Mineral Resources within the Grand Staircase - Escalante National Monument", Utah Geological Survey, January 1997, <http://files.geology.utah.gov/online/c/c-93/index.htm>.

importance and needed an explanation of their benefits to schoolchildren the day before the National Monument's designation.³⁴ According to the Utah Geological Survey, "the value of the recoverable coal on School Trust lands [was] at least \$17 billion but could [have been] \$25 billion or more" with potential royalties worth \$1.4-\$2 billion.³⁵ Years later, to partially compensate the State of Utah, SITLA received 145,000 acres of land outside the National Monument and a \$50 million cash equalization payment.³⁶

As mentioned above, following the National Monument Review, President Trump reduced the Grand Staircase-Escalante National Monument and separated it into three units.³⁷ ³⁸ Following President Trump's actions, opposing environmental groups charged that the Administration improperly reduced the boundaries of the Grand-Staircase to accommodate energy and political interests. Subsequently, the Interior Department Inspector General conducted an independent investigation, and issued a report exonerating the Administration of any improprieties and reaffirmed the legalities of the National Monument Review process undertaken by then-Interior Secretary Ryan Zinke.³⁹

³⁴ Ibid. "Establishing the Grand Staircase-Escalante National Monument", p. 23.

³⁵ Ibid. "A Preliminary Assessment of Energy and Mineral Resources within the Grand Staircase - Escalante National Monument"

³⁶ Brian Maffly, "Utah not ready to sign off on a Bears Ears lands swap", The Salt Lake Tribune, 01/20/17, <http://www.sltrib.com/home/4835113-155/utah-not-ready-to-sign-off>.

³⁷ Lee Davidson and Thomas Burr, "Trump greeted by cheers and protests as he visits Utah, trims 2 million acres from Bears Ears and Grand Staircase-Escalante national monuments", The Salt Lake Tribune, 02/08/17, <http://www.sltrib.com/news/politics/2017/12/04/trump-is-coming-to-utah-to-perform-dramatic-feat-monday-make-big-national-monuments-mostly-disappear/>

³⁸ Yachnin, Jennifer, et al. "NATIONAL MONUMENTS: Trump Slashes 2 Utah Sites." *POLITICS: How Do You Shift Republicans on Climate? Be Nice -- Wednesday, September 6, 2017*, www.eenews.net/stories/1060068013/.

³⁹ Office of the Inspector General, U.S. Department of Interior, Report 18-0608, January 31, 2019, <https://www.doioig.gov/reports/alleged-preferential-treatment-grand-staircase-escalante-national-monument-boundary-decision>