

# National Congress of American Indians



*NCAI Comments  
for  
Review of Certain National Monuments  
Established Since 1996*

May 26, 2017

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## **Introduction**

On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative organization of American Indian and Alaska Native tribal governments, we write to express our strong support for maintaining the current designation of the Bears Ears National Monument.

Since time immemorial, the Bears Ears and surrounding land in Southeastern Utah have served as a homeland and place of spiritual and cultural significance to tribal people. These homelands nurture, strengthen, and sustain the tribal people of the Bears Ears region. Many tribal people remain dependent on these public lands to maintain their traditional livelihoods and cultural practices, such as hunting, gathering, and ceremonial uses.

The Bears Ears area contains over 100,000 archaeological sites and holds sacred significance to the region's tribal identities, histories, and traditions. Throughout history, tribes across the country were relocated off their traditional homelands to reservations. These relocations resulted in the loss of access to sacred and ceremonial areas. Due to these actions, many sacred tribal places across the country are now located in or around other federal lands. It is important that Bears Ears remains as a national monument to allow tribal peoples access to these spiritual sites.

Tribal leaders from Hopi, Navajo, the Ute Mountain Ute, Zuni, and the Uintah & Ouray Ute formed the Bears Ears Inter-Tribal Coalition with the goal of protecting and preserving their traditional homeland area of the Bears Ears region. The Bears Ears Inter-Tribal Coalition aims to secure permanent protection for these lands. NCAI's membership strongly supports the Bears Ears Inter-Tribal Coalition's intent to permanently secure the Bears Ears National Monument designation. See NCAI Resolution EC-15-002 attached.

The Bears Ears National monument is unique because of its great potential for co-management between land management agencies and the Bears Ears Inter-Tribal Coalition. Under this cooperative management structure, the Monument will remain open to all people and for a wide range of uses, but the tribes will have a seat at the table when management decisions are made. Co-management principles like this are an acknowledgement of the government-to-government relationship that exists between Federal Agencies and sovereign Tribal Nations. This is a great step forward for including tribal values in the National Monuments that protect tribal culture.

The Bears Ears National Monument is a living example of how the Federal Government can promote the multiple uses of the land. For Native people, multiuse means utilizing the lands on a daily basis for hunting, gathering herbs and medicines, and cultural ceremonies. The Bears Ears National Monument is not only about the past, but protecting vital, ancient, living cultures.

## **Bears Ears National Monument**

Bears Ears National Monument is of great cultural and historic importance to many regional Tribes, but chiefly the Navajo, Ute, Paiute, Hopi, Zuni, and the Pueblos along the Rio Grande. A brief synopsis of the importance of Bears Ears by the regional Tribes follows.

**Navajo** – Chief Manuelito was born within the National Forest lands near the present day Bears Ears monument. Chief Manuelito was the key negotiator of the 1868 Treaty of Bosque Redondo that ended the internment of the Navajo people. Chief Manuelito’s clan was Bit’ahnii (*Folded Arms* People) clan. Many contemporary Navajos who reside in Utah identify themselves as Shash Jaa’ Bit’ahnii (Bears Ears Folded Arms People), the descendants of Chief Manuelito.

Hastii K'aayélie is another significant figure who was born in the early 1800s in White Canyon, which is located within in the monument. Hastii K'aayélie and his band evaded Kit Carson and avoided the Long Walk by hiding within the present day monument. These places are known as Náhonidzó - the escaping places. Navajos continued to live on lands within the monument as late as the 1930s, long after white settlement.

In addition to being historically significant, the region contains rare and endemic plants, minerals, and medicines that are found nowhere else on Earth. These plants and minerals are essential to Navajo religious ceremonies and sand painting construction. The Bears Ears are referenced in multiple Navajo ceremonies such as, the Mountain Way and the Upward Moving and Emergence Ways. The monument is rich with places of great power tied to Navajo traditional religious practices. For example, the Buttes themselves are said to be the top of Changing Bear Maiden’s head. Unique Navajo rock art is found in the region, particularly in the southern end near the San Juan River and Bluff.

**Ute/Paiute** – The entire Bears Ears region was the homeland of the Weenuche Band of Utes. They established camps in the lowlands in winter and in the highlands in summer. Several historic Ute camps are contained within the monument. The Avikan Band, a sub-band of Utes and Paiutes, made their homes in the Cottonwood Wash and Allen Canyon areas of the monument. The Avikan Band still have allotment lands today. In the early 20<sup>th</sup> century, a large portion of the monument was proposed as a Ute reservation by the US Government. This proposal did not sit well with white settlers. This led to tension between the settlers and the tribe. The tension resulted in the Chief Posey incident, which was one of America’s last “Indian wars” in 1923.

The Avikan and Weenuche Utes maintain strong ties to Bears Ears despite being relocated their current reservation near White Mesa, south of Blanding, Utah. Today, the Bears Ears region is home to important places of worship to the Utes. The Bears Ears area contains basket making materials, herbs, and medicines that are explicitly tied to this spiritual place, just as these resources are to the Navajo. Rare Ute rock art is also found in the Indian Creek and Harts Draw regions, as well as near the San Juan River at Bluff.

**Zuni and Hopi (Puebloan Peoples)** – The bulk of the highly visible and “attractive” cultural resources in Bears Ears are tied to the ancestral people of the Hopi, Zuni, and other Puebloan

peoples. Cliff dwellings, great houses, granaries, pottery, arrowheads, tools, adornments, and lithics exist throughout the monument in great abundance. A Chacoan road running from Comb Ridge to the Chaco Canyon is found within the monument above Bluff. The northernmost Chacoan great house in Utah is found within the monument in Cottonwood Wash, just north of UT highway 95.

In Zuni creation stories, spiritual Zuni ancestors migrated north in search of the Center Place after emerging into this world through Bears Ears. The Zuni spiritual ancestors found the Center Place at Halona in Zuni. Their ancestors left rock art here detailing their struggle and migration. The Zuni continue to conduct pilgrimages to these sacred shrines.

Hopis have similar stories that are closely guarded by present day clan membership. Concentric circles and spirals are found throughout the monument in rock art are said to be left by Zuni ancestors and the spirals by Hopi ancestors. Maps of migration routes are also found in rock art, as well as instructions left by spiritual beings for further migration. The Hopi gather minerals and herbs for ceremonies from the area around Bears Ears. Puebloan peoples view this place not as “abandoned,” but as still inhabited by ancestors. Offerings and prayers accompany present-day visits. These ties are important to Puebloan youth and tie the present to the past and the future.

**Common to all these Tribes** – The Monument contains burials and final resting places of elders and ancestors of all the 5 Tribes. These burial sites are to be treated with reverence and respect as would a cemetery in a more urban area. In the southern end of the monument where the San Juan River crosses through Comb Ridge is known as the “Cross of the Ancient World,” or as “Coming Together” to Utes. This area contains great kivas, the San Juan Hill portion of the LDS (Mormon) Hole in the Rock Trail, and evidence of late historical Navajo habitation. The Utes have a prophecy that in this place, all the cultures of the world will come together to heal. The Bears Ears National Monument is seen as the fulfillment of this religious prophecy. These and other cultural affiliations tied to Bears Ears brought these Tribes together in a historic way – to set aside their many contemporary differences to see this place protected in perpetuity. The monument has brought great joy to traditional people among these Tribes, and they are strongly committed to its defense.

### **Original Intent of the Antiquities Act: Protecting Tribal Cultural and Historic Properties**

The original purpose of the Antiquities Act was to protect tribal cultural resources on federal lands. In the early 1900s, President Theodore Roosevelt was facing the problem of looters who were ransacking Chaco Canyon and Mesa Verde. These cultural sites are incredible historical examples of pueblo architecture. They stand as evidence of the deep civilization and culture that existed in America for thousands of years before the arrival of Europeans.

Theodore Roosevelt was the first President to recognize that tribal culture is a part of American history and culture, it is worth protecting, and has great value. The original intent of the Antiquities Act<sup>1</sup> was to ensure the protection of Native American sacred sites. Researchers and anthropologists testified before Congress in favor of the Act for the protection and preservation

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<sup>1</sup> 16 U.S. 431-433 (1906).

of “objects of historic or scientific interest.”<sup>2</sup> In the 1904 Senate hearing before the Subcommittee of the Committee on Public Lands, Reverend Dr. Baum actively advocated for the need for the Antiquities Act. In addition to submitting 25 letters of support from fellow researchers and anthropologists, Reverend Dr. Baum stated, “Every ruin that is despoiled is lost forever.”<sup>3</sup> Dr. Charles W. Needham supported Reverend Dr. Baum’s statement and stated these sacred cultural sites are “the only book of history that is not defective because all other knowledge of history depends upon human memory and the coloring that comes from the human mind.”<sup>4</sup> Dr. Needham further stated, if these books of human history are not protected, it would be like “tearing leaves out of the center of the book and leaving it absolutely valueless.”<sup>5</sup> These statements demonstrate the original intent of the Antiquities Act was to serve as a legal instrument that will preserve and protect sacred, cultural sites.

The Antiquities Act is one of the few federal laws that is primarily for the protection historical and cultural areas of significance to Tribal Nations. Previous Presidential administrations utilized the Act to designate historical and cultural areas of interest as National Monuments to protect “objects of historic or scientific interest.” Moreover, the Supreme Court of the United States has consistently upheld presidential proclamations of National Monuments to protect historical and cultural areas as a valid exercise of authority under the Antiquities Act.

In *Cameron v. United States*<sup>6</sup>, the Supreme Court confirmed the broad authority of the President to designate a large land area as a national monument. In 1908, Roosevelt designated 800,000 acres of the Grand Canyon to protect an “object of usual scientific interest.”

In *Cappaert v. United States*<sup>7</sup>, the Supreme Court enjoined the Cappaerts from pumping water from their wells that would adversely affect the water levels near the Devil’s Hole national monument.<sup>8</sup> Devil’s Hole was reserved as a National Monument by Presidential Proclamation under the Antiquities Act in 1952.<sup>9</sup> The Cappaerts argued the Antiquities Act did not extend to water pools; rather the Act was only to protect archeological sites.<sup>10</sup> The Supreme Court held the pool and the pool’s inhabitants in Devil’s Hole are considered “objects of historic or scientific interest.”<sup>11</sup> Because the pool and the pools’ inhabitants fall within this category, the presidential proclamation is valid under the Act. *Cappaert v. United States* further demonstrates the broad deference to a sitting President’s authority when National Monuments are designated under the Antiquities Act.

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<sup>2</sup> Hearing Before the Subcommittee of the Committee on Public Lands of the U.S. Senate on the Bill S.4127 (1904).

<sup>3</sup> *Id.* at 12.

<sup>4</sup> *Id.* at 26.

<sup>5</sup> *Id.* at 27.

<sup>6</sup> *Cameron v. United States*, 252 U.S. 450 (1920).

<sup>7</sup> *Cappaert v. United States*, 426 U.S. 128 (1976).

<sup>8</sup> *Id.* at 128.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 142.

<sup>11</sup> *Id.*

In 1938, when President Franklin Roosevelt was considering abolishing the Castle-Pickney National Monument in South Carolina, Attorney General Homer Cummings affirmed that doing so was outside the scope of the President's authority under the Antiquities Act. He wrote "The statute [The Antiquities Act] does not in terms authorize the President to abolish national monuments, and no other statute containing such authority has been suggested. If the President has such authority, therefore, it exists by implication."<sup>12</sup> President Roosevelt did not abolish the Castle-Pickney National Monument under his Presidential authority. Years later in 1956, Congress did abolish the monument by statute<sup>13</sup> thus confirming that the authority to abolish National Monuments lies with Congress.

Congress has granted presidents the power to declare national monuments on federal land, Congress has not delegated the power to revoke or substantially diminish those monuments. Congress has often declined to limit the President's authority in establishing national monuments regardless of size, duration, or purpose.<sup>14</sup> The only Constitutional authority to revoke or shrink a National Monument lies with Congress.

### **Recommendations**

NCAI urges the Department of Interior to protect the decision made to reserve the Bear Ears National Monument and all Monuments under review as permanent National Monuments for the generations to come.

NCAI requests the Department of Interior to continue co-management efforts. The Bears Ears National Monument is an example of how Inter-Tribal Coalitions and Federal agencies can work together to protect public lands for all Americans. The Inter-Tribal Coalition and the Federal Government should cooperatively develop, on a local level, a culturally and environmentally sensitive comprehensive management plan consistent with the original National Monument proclamation to carry out the monument's management. The integration of Native Traditional Knowledge into the monument's land management practices is the ultimate recognition of the need to protect the living cultures of Tribal Nations.

NCAI requests the Department of Interior to conduct meaningful government-to-government consultation with the impacted tribal governments on the effects of any agency action on National Monument designation. NCAI stands ready to work with the Department of Interior to make the consultation process productive and effective.

NCAI requests the Department of Interior to adopt co-management proposals from Tribal Governments and Inter-Tribal Coalitions to recognize Tribal priorities for preserving and protecting their Treaty rights.

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<sup>12</sup> 39 Op. Att'y Gen. 185, 187 (1938).

<sup>13</sup> P.L. 84-447, 70 Stat. 61 (1956).

<sup>14</sup> *Id.* at 1359.

NCAI requests the Department of Interior to protect traditional practices on all National Monument and public lands. This includes but is not limited to hunting, fishing, and the gathering of firewood, traditional medicines, herbs and ceremonial plants.

NCAI requests the Department of Interior to prioritize the protection of cultural and archeological sites when conducting this review. In doing so, the Department of Interior will be executing the original intent of the Antiquities Act. By working collaboratively, the Department of Interior and Tribal Governments can ensure these sacred sites remain for our future generations.



# 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

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*Swinomish Tribe*

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**Len George**  
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**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.

**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.

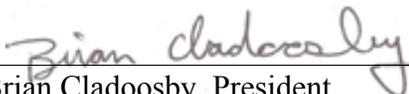
**BE IT FURTHER RESOLVED**, that NCAI does hereby support the Navajo, Hopi, Zuni, Uintah & Ouray Ute, and Ute Mountain Tribes that comprise the Bears Ears Inter-Tribal Coalition and their shared goal of permanently protecting the Bears Ears region.

**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.

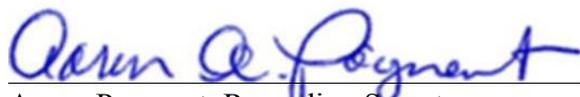
**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

#### 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.

  
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Brian Cladoosby, President

**ATTEST:**

  
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Aaron Payment, Recording Secretary