

**National Monument Review
Department of the Interior
1849 C St. NW
Washington, DC 20240**

May 25, 2017

Submitted via: Regulations.gov portal

RE: Review of Certain National Monuments Established Since 1996, public comment on Executive Order 13792 of April 26, 2017 (82 FR 20429, May 1, 2017)

COMMENTS OF MARK EMERY UDALL REGARDING BEARS EARS NATIONAL MONUMENT

Dear Secretary Zinke,

My Name is Mark Emery Udall. I was born in Tucson, Arizona in 1950, and I represented Colorado in the U.S. Senate from 2009 to 2015 and in the U.S. House of Representatives from 1999 to 2009. I am a son of the Colorado Plateau. My father grew up on the Little Colorado River, and my mother in the high reaches of Rocky Mountain National Park. John D. Lee, Mormon explorer and founder of Lees Ferry was my paternal great-great-grandfather. Jacob Hamblin, the Mormon “Buckskin Apostle” who spent his life trying to resolve conflicts with Native Americans, was my maternal great-great grandfather.

Throughout your career, you have shown a great respect for our public lands, outdoor recreation, and Native American tribes. Many Americans believe and hope that your respect for and understanding of our public lands heritage and Indian Country coupled with the overwhelming support for Bears Ears National Monument as it has been designated will make your review process straightforward.

Despite what you hear from Utah’s governor, congressional delegation, and local county commissioners, there is no broad consensus to undo, divide, or shrink Bears Ears National Monument. In fact, this small but vocal corner of opposition only underscores how Bears Ears is worthy of a national monument designation and protection alongside Utah’s other parks and monuments.

Former Interior Secretary Stewart Udall — also my uncle — encountered similar comments and resistance while working with President Lyndon Johnson to protect Canyonlands National Park — Bear Ears’ neighbor to the north. Now considered one of Utah’s “Mighty Five,” Canyonlands encountered similar resistance from the Utah congressional delegation that Bears Ears does today. Then-U.S. Senator Wallace Foster Bennett decried the efforts of my uncle and President Johnson, saying Canyonlands would constitute a “colossal empire” that harmed Utah’s economy: “All commercial use and business activity would be forever banned and nearly all of Southern Utah’s growth would be forever stunted.” Quite the opposite has occurred, with outdoor recreation and other uses flourishing and sustaining nearby communities.

It's also worth noting that Bears Ears isn't just a place for outdoor recreation. It's a living cultural landscape spanning thousands of years of history that gives Native Americans and more recent arrivals like the Mormon settlers of my family a chance to better understand each other, and that's important.

As for the physical landscape, Bears Ears National Monument is a place I know well, having walked much of it with a pack on my back for weeks on end, keenly feeling the presence of my own family's history and of the Native American people who for thousands of years have lived in these vast, wondrous lands. This place is important to me, as it is to many of the living descendants of those who came here long before me and my family. Their traditions and cultures hold a deep wisdom that should be shared with the world.

I am aware that Executive Order 13792 of April 26, 2017 (82 FR 20429, May 1, 2017) requires you to make a recommendation regarding the disposition of certain national monuments designated since 1996, including Bears Ears, about which I write you today. In this letter, I will offer my comment on each of the points you have been directed to consider when making your recommendation. I'll address each point as found in the Notice of Opportunity for Public Comment below.

You are directed to consider “the requirements and original objectives of the Act, including the Act's requirement that reservations of land not exceed ‘the smallest area compatible with the proper care and management of the objects to be protected,’ and whether designated lands are appropriately classified under the Act as ‘historic landmarks, historic and prehistoric structures, [or] other objects of historic or scientific interest.’ ”

From the origins of the seed conversations that became the Antiquities Act in the Strater Hotel in Durango, Colorado — very near Bears Ears — to the protection of Mesa Verde as a national park by an act of Congress, to Teddy Roosevelt's signing of the Antiquities Act later in 1906 (after it was passed by Congress), the law has been used to protect some of the best of what remains of the ancient cultures of what is now America. The very idea of the Antiquities Act was born on the Colorado Plateau for places exactly like Bears Ears. The looting and grave robbing of the late 1800s had to be stopped, and reasonable protections had to be put in place. The Act allowed for future presidents to use their judgement to set aside parts of America that remain near to what they were when Europeans settled the continent. Bears Ears is such a place. The Antiquities Act remains one of our most durable and most popular conservation laws. So important is it that when the Federal Land Management and Policy Act (a comprehensive law that examined and overhauled all of our public lands laws) was considered and passed in 1976, Congress left the Antiquities Act untouched.

The question of “minimum size” to protect monument objects under the Antiquities Act is one that has been found to be subject to broad presidential discretion by the courts, time and time again. One of President Roosevelt's monuments — the Grand Canyon — was, like Bears Ears, both large (the initial designation was more than 800,000 acres) and controversial. Yet it is now an iconic part of America and few today would question Roosevelt's decision.

Courts have upheld these presidential decisions. The Supreme Court in 1920 affirmed Teddy Roosevelt's authority to protect Grand Canyon using the Antiquities Act. In 2004, a Utah federal district court affirmed the appropriateness of the 1.8 million acre Grand Staircase – Escalante National Monument in Utah. This is because the language of the Act itself is broad: “The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments ...” Changes to this Act of Congress can only be made by the U.S. Congress, and though many attempts have been made to do so, including carve-outs for Alaska and Wyoming, the Act remains much as it was when passed in 1906. This fact is a powerful testament to the popularity of the Antiquities Act.

I strongly believe the Bears Ears National Monument is fully appropriate and deserving of protection under the Antiquities Act. Bears Ears ticks all the boxes: It is home to documented archaeology from 13,000 years ago at the Lime Ridge Clovis site, through the archaic period, the basketmaker and Ancestral Puebloan periods, right up to modern history, with sites such as the Mormons' Hole-In-The-Rock Trail, and early pioneer and ranching and mining sites. The unbroken record of cultural and historic sites is better preserved here due to the arid climate than anywhere else on Earth.

The remarkable archaeological resources found in Bears Ears are present not just inside, but outside the monument's boundaries as well. In fact, the Navajo, Hopi, Ute, Ute Mountain Ute, and Zuni Tribes originally proposed half a million acres *more* than President Obama designated. Their proposal was backed by cultural resource data, elder interviews, and based on the consultation with the cultural resource preservation offices and cultural and spiritual leaders from all these tribes. Their unique access to stories and traditions passed down from generation to generation has resulted in such reverence for Bears Ears that they set aside their myriad differences to speak as one through their sovereign governments to protect Bears Ears — a powerful and unprecedented position that I hope will carry enormous weight in your upcoming recommendation.

Outside the current monument, but very near the boundaries are countless documented and undocumented cultural sites. In fact, these archaeological sites cover the entire Colorado Plateau. To shrink the boundaries further beyond the half a million acre reduction from the tribes original proposal would leave out important sites that meet the absolute letter of the definitions found in the Antiquities Act, and would greatly harm the ability of the tribes and land managers to care for the irreplaceable resources named in the monument's proclamation.

Beyond archaeological and historic sites, the monument contains nearly as many sites of scientific interest: for example, incomparable geology and rich paleontological areas that are just now being documented. Late last year, the first instance of a dinosaur track being used as a lintel in an Ancestral Puebloan dwelling was found in Bears Ears National Monument near Comb Ridge, blending archaeology and paleontology in a discovery like no other to date. Fascinating discoveries like this one, which has yet to even be published in a scholarly journal, are still being made at Bears Ears. To further reduce its size would no doubt draw out even more important

archaeological sites and objects of interest to science, ones which have only begun to be studied and documented.

You are directed to consider “the effects of a designation on the available uses of designated Federal lands, including consideration of the multiple-use policy of section 102(a)(7) of the Federal Land Policy and Management Act (43 U.S.C. 1701(a)(7)), as well as the effects on the available uses of Federal lands beyond the monument boundaries; and the effects of a designation on the use and enjoyment of non-Federal lands within or beyond monument boundaries, and [the] concerns of State, tribal, and local governments affected by a designation, including the economic development and fiscal condition of affected States, tribes, and localities.”

Under FLPMA, the “multiple use” mandate does not mean every use on every acre. Places with the highest quality and greatest quantity of minerals are generally managed for extraction of those resources - places like the Uintah Basin in northern Utah, and the Aneth oil field just to the east of Bears Ears National Monument, for example. Places rich in cultural resources, or where primitive and undeveloped wild landscapes with ample recreation opportunities exist in abundance are generally managed to preserve those values for the enjoyment of the public and for the sake of their own integrity. This is the essence of multiple use, each kind of place on our public lands used “for the greatest good for the greatest number over time,” in the words of Gifford Pinchot.

Bears Ears is not an area known for its mineral riches. It is an area, outlined above, with strong cultural and historical value.

It is also an area of high recreation value.

And there are certainly many other existing and potential uses as well. As with all national monuments, the Bears Ears proclamation allows for the exercise of valid existing rights, and any lease in place at the time of designation may proceed with development.

The Bears Ears proclamation also continues to allow grazing of livestock and the gathering of firewood and plants, as well as hunting, fishing, off-road vehicle use, climbing, hiking, mountain biking, camping, sightseeing, and river rafting.

According to the Antiquities Act, national monuments can only be designated “upon the lands owned or controlled by the Government of the United States,” and this is the case with Bears Ears. Private and state lands remain unchanged. Private landowners can still access their parcels, and the majority of the private in-holders in Bears Ears like the Nature Conservancy at Dugout Ranch and Will Petty and his partners in Bayles Ranch in Allen Canyon support the monument and wish to see it remain unchanged.

State lands are contained the monument, but the designation cannot and does not apply to them as non-federal lands.

Far from being a drag on jobs, research from Headwaters Economics and others has demonstrated that national monuments can improve local economies. The profile of the Bears Ears area has already grown with designation and the accompanying international media coverage, triggering interest in new investment and new business. Business owners, restaurateurs, guides, outfitters, and tour operators in Blanding, Bluff, Monticello, Mexican Hat, and Moab are all awash in business because of Bears Ears this spring, and the designation is leading to increased, not decreased, economic opportunities. In short, Bears Ears is good for business.

Bears Ears is a net benefit to Utah, and it enjoys overwhelming public support. The monument is supported by 30 regional Native American tribes, the 200+ tribes of the National Congress of American Indians, six of seven local Utah Navajo Chapters, the Democratic Caucus of the Utah Legislature, local elected officials in the neighboring tribes and the communities of Moab and Bluff, and many others nation and world-wide.

Certainty, not review and diminishment, is what is needed to make sure the economic future is bright for local communities around Bears Ears National Monument. You have tremendous power to deliver that certainty — and to ensure economic growth — with a recommendation to leave Bears Ears as it is.

You are directed to consider “the availability of Federal resources to properly manage designated areas.”

As a former member of Congress, I can say with certainty that the responsibility for funding the land management agencies rests with Congress. The worst possible step the administration could take for Bears Ears now would be to remove or reduce its protected status, all but guaranteeing that the record-breaking number of visitors who are already coming will miss the experience they are looking for – one that welcomes them and manages their impact properly.

Local land managers on the ground are already busy taking steps to improve resource protection, and the Department of the Interior should be advocating for increased funding for Bears Ears and all units of the National Conservation Lands from Congress. As you are no doubt finding, national monuments are exceedingly popular.

You are directed to consider “such other factors as [you] deem appropriate.”

I believe among the most important factors you must consider is our society’s legacy and our responsibility to future generations. Though a decision to leave Bears Ears as it is would not be without controversy, bear in mind that all of Utah’s treasured national parks and monuments have faced the same kind of local controversy Bears Ears is now experiencing. Utah politicians railed against the creation of their national monuments at the time, but few today would argue for the undoing, division, or shrinkage of Zion, Bryce Canyon, Capitol Reef, or Arches National Parks, all of which began as presidentially proclaimed national monuments under the Antiquities Act. These “mighty five” have been enlarged and enhanced by subsequent presidents and Congresses, not diminished or eliminated.

The best decisions we make in government are not always the most politically expedient, but in time, the tough calls we make become our legacies.

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In a country as large and diverse as the United States, compromise is how we get things done. It isn't always pretty, but we have to find solutions to our problems that, at the end of the day, most people can live with. Bears Ears National Monument itself is a reasonable solution that most people can live with, and that will only become more and more popular. The Obama administration considered all sides of the debate, took extensive public comment, and made key compromises in their final designation that they heard were important to locals. While opposition remains, it is ideology that continues to drive the opponents of Bears Ears National Monument. To recommend shrinking, dividing, or undoing Bears Ears — as you have seen by the sheer number of public comments supporting Bears Ears — would be deeply unpopular with Americans.

It would also be seen as a betrayal of the Department of Interior's trust responsibility with Native American Tribes. Among those responsibilities is looking out for the interests of tribes, including the protection of their sacred ancestral lands. In a long overdue advancement, the government-to-government and the trust relationships with the previous administration were used by tribes to create this new national monument. The proclamation recognizes Native American Traditional Knowledge as something to be protected by the monument and to be used in its management. The proclamation also guarantees Native American Tribes and locals alike through their own advisory committee a seat at the table when decisions are made. This is the truest path forward — in the crafting of the monument's management plan you will have the power to make sure local and tribal voices are heard and acted upon. Finally, the proclamation assures continued access for traditional uses, plant and firewood gathering, and hunting and fishing.

As to the question of whether the president or Congress should take action, if action is warranted, it is clear that only the U.S. Congress has the power to alter, divide, shrink, or eliminate national monuments. The Antiquities Act grants presidents the explicit power to designate national monuments, but it does not explicitly grant or even imply that presidents may undo or shrink monuments. While some presidents have altered past monuments by proclamation, all of these actions took place before the 1976 passage of FLPMA, they were done on much smaller monuments than Bears Ears, they were done in cases where clear errors in designation were obvious to even a casual observer, and none have been challenged in the courts.

Presidential action to alter Bears Ears will certainly face a variety of serious and substantive legal challenges - immediate, vociferous, and high-profile challenges at that. Sovereign Native American Tribes and conservation and business interests will rush to court, leading the Trump administration into another lengthy and costly court battle.

Finally, you have stated on many occasions your admiration for Teddy Roosevelt - the very same president who signed the Antiquities Act of 1906 into law and used it repeatedly. Presidents of both parties have used the Act more than 150 times, and though some have been controversial, monuments are largely popular and well supported today — even Bears Ears. So what would President Roosevelt have done in a similar situation? Would he have bowed to political pressure from some politicians and special interests in a single state among all in the Union? Or would he

have insisted on protecting our shared cultural and natural heritage for all of America and the world to enjoy?

President Roosevelt would have made the decision I hope that you make – for all Americans, for Native America, for your own legacy, and for future generations – to please leave Bears Ears National Monument intact and whole.

Sincerely,

A handwritten signature in blue ink that reads "Mark Emery Udall". The signature is written in a cursive style with a blue ink color.

Mark Emery Udall