

Tribes are 'willing to go into battle' if Trump makes Utah's Bears Ears monument smaller

With Interior's recommendations on 27 national monuments now in the president's hands, tribes and other advocates say they're ready to defend Bears Ears, Grand Staircase in court.



(Francisco Kjolseth | Tribune file photo) Parts of Arch Canyon within Bears Ears National Monument reveal the vast landscape of the 1.35 million acres in southeastern Utah protected by President Barack Obama on Dec. 28, 2016.



By Brian Maffly • August 25, 2017

Utah tribal leaders are steeling themselves for legal battle should President Donald Trump act on a proposal to shrink Bears Ears National Monument, saying such a move would be an insult to the five tribes that sought the designation.

While details of Interior Secretary Ryan Zinke's report on the 27 big monuments Trump instructed him to "review" remain under wraps, he had previously announced Bears Ears should be significantly reduced.

That conclusion became official Thursday when Zinke submitted his report to the White House after the unprecedented 120-day audit. While silent on specifics, the Interior secretary did say he isn't recommending any monument revocations. But Zinke concluded some are "arbitrary," the result of "politically motivated" abuses of the Antiquities Act, the 1906 law that empowers presidents to act unilaterally to set aside public land to protect "objects of historic and scientific interest."

Local and state political leaders are applauding this finding.

Utah's Rep. Rob Bishop said the monument debate is not about whether to protect ancient Native American artifacts and other resources, but how to protect them.

Unilateral action to set aside entire landscapes is not what Congress intended when it passed the Antiquities Act, Bishop told reporters Thursday.

"What we have seen throughout the monument review process is a concerted effort to give the people of Utah a voice in the protection of Utah lands," Sen. Orrin Hatch added in a statement. "I appreciate Secretary Zinke's thorough and thoughtful review, and the efforts he made to ensure relevant stakeholders, particularly those in San Juan, Kane, and Garfield counties, had an opportunity to be heard."

Tribal representatives and other monument supporters, however, contend Zinke snubbed their input, arguing his criticisms of Bears Ears might be better applied to his own recommendations for shrinking monuments.

The Bears Ears Inter-Tribal Coalition says Zinke’s proposal to trim the 1.3 million-acre Bears Ears monument, named for twin buttes rising above Cedar Mesa, defies the sovereignty of the tribes that persuaded President Barack Obama to proclaim the monument Dec. 28, after several years of study and public discussion.

Zinke “has shown complete disregard for sovereign tribes with ancestral connections to the region, as well as to the hundreds of thousands of people who have expressed support for Bears Ears National Monument,” stated Carleton Bowekaty, Zuni tribal councilman and Bears Ears coalition co-chairman.

The tribal coalition regards any action against the monument — which it wants to see enlarged to include Red Canyon — as a rejection of the tribes’ cultural and spiritual heritage.

“Our tribes stand together and are willing to go into battle in terms of litigation,” said Davis Filfred, Navajo Nation Council delegate, “and we are here to fight for our monument.”

Bears Ears is among a “handful” of undisclosed monuments whose boundaries Zinke, a former Montana congressman and adopted member of two tribes, proposes adjusting. Also in the crosshairs is Utah’s Grand Staircase-Escalante, according to unnamed sources who spoke with The New York Times.

The Utah Legislature has passed resolutions calling for the elimination of Bears Ears and reduction of the Staircase, the latter designated without warning in 1996 by President Bill Clinton.

Though Zinke’s recommendations are not public, the Utah congressional delegation’s praise for the report suggests members have seen it and liked what they saw. What remains unclear is whether Zinke’s proposed monument reductions would be accomplished through unilateral action by the president or enacted by Congress.

“One path is legally impossible and the other politically impossible,” said Matt Lee-Ashley of the left-leaning Center for American Progress.

Many legal scholars agree presidents lack legal authority to alter a monument’s boundaries or management proscriptions, although such moves have yet to be tested in the courts. Past presidents have adjusted boundaries, but those changes addressed

specific needs, such as national security or highway building, according to John Ruple, research professor at the University of Utah's Wallace Stegner Center for Land, Resources, and the Environment.

“They have never been driven by wholesale, naked political disagreement with prior proclamations,” he said. Ruple is also mystified by most of the seven criteria Trump laid out in his executive order guiding the review, ordering Zinke to examine monuments' impact on private in-holdings or economic opportunities or whether they were designated with sufficient local input.

“Two are from the Antiquities Act. I don't know where the other five came from,” Ruple said. “If he acts on criteria that don't come in statute, I don't know what authority he is acting on. It's a head-scratcher.”

The conservative Sutherland Institute disputes Ruple's analysis, saying large monuments defeat the purpose of the Antiquities Act, and presidents can alter predecessors' designations.

“Expansive national monuments undermine our efforts to preserve the things that mean the most — history, culture and economic growth,” said Matt Anderson, Sutherland's federalism policy director. “They threaten our national treasures and impose unnecessarily high economic opportunity costs. The solution, which preserves the original intent of the law, is to involve Congress and state elected officials in the monument designation process.”

But Grand Staircase backers say that monument has helped revive the economic prospects of Utah towns like Escalante and Kanab and they will take action to preserve monument status if Trump orders it reduced.

“It has been a slap in the face of all the people who have built their livelihoods here and invested in the community. We will continue to stand together and plan to keep a close eye on the monument resources to look for new off-road vehicle use and sensitive sites for looting and vandalism,” said Nicole Croft, executive director of Grand Staircase Escalante Partners. She believes the Staircase’s 1.9 million-acre boundary was carefully drawn in consultation with scientific surveys.

“In the 21 years since designation,” Croft said, “the rationale and understating of the antiquities and objects of scientific interest have only strengthened why this place is special and deserves protection.”

Correction: Aug. 25, 6:55 p.m. • An earlier version of this story misstated the canyon that the coalition wants to expand. That canyon is Red Canyon.

Comments256 comments



bmaffly@sltrib.com

 Follow @brianmaffly