



1055 Wilshire Blvd., Suite 1660 Los Angeles, CA 90017-2499

T: (213)977-1035

F: (213)977-5457

www.cityprojectca.org

July 10, 2017

The Honorable Ryan Zinke
Secretary of the Interior
1849 C Street, N.W.
Washington DC 20240

The Honorable Wilbur Ross
Secretary of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Via <https://www.regulations.gov/comment?D=DOI-2017-0002-0001>

Re: Protect National Monuments and Native American Values

Dear Secretary Zinke and Secretary Ross:

We support national monuments with distinct historic and cultural value to Native Americans and oppose review by this administration under Executive Order 13792 and related actions. The U.S. Department of the Interior has identified 27 monuments that could be scaled back or even eliminated. Secretary Zinke issued an interim report recommending that Bears Ears monument in Utah be reduced. The Department of Commerce is reviewing marine monuments. We stand with our Native American and indigenous sisters and brothers to defend Native American rights, the earth and her people, these monuments, and the Antiquities Act. We oppose any attempt to eliminate or shrink monuments.

We submit these comments on behalf of The City Project, a civil rights and environmental justice non-profit team, and Robert Bracamontes, Bob Black Crow, Yu-va'-tal 'A'lla-mal (Black Crow), Acjachemen Nation, Juaneno Tribe. We have worked together to help protect national monuments with distinct historic and cultural value to Native American and indigenous people, Standing Rock in Utah, and the Acjachemen sacred site of Panhe and San Onofre State Beach in Southern California.

A. Protect Native American Culture, History, and Sacred Sites

The National Congress of American Indians (NCAI), the oldest, largest, and most representative organization of American Indian and Alaska Native tribal governments, passed a resolution and submitted public comments urging the Administration to preserve all National Monument boundaries as they were originally designated and to not limit them in size. NCAI urges the Administration to preserve and protect all National Monuments with distinct historic and cultural value to Tribes. NCAI opposes any attempt to take tribal, federal, state, and county land and sacred landscapes. NCAI urges the Department of Interior to meaningfully consult with Tribal Governments or Tribal Government Coalitions affected by Executive Order 13792. These monuments include, for example, Bears Ears, Gold Butte, and Organ Mountains-Desert Peaks. In California alone, these include Berryessa Snow Mountain, Carrizo Plain, Cascade-Siskiyou, Castle Mountains, Mojave Trails, Sand to Snow, and San Gabriel Mountains National Mountains. See National Congress of American Indians, *Public Comments and Resolution re: Maintain Designations of National Monuments* (July 10, 2017). We agree.

Equal Justice, Democracy, and Livability for All

Board: Chris Burrows Gina Durham Robert García Penelope Glass
Lore Hilburg Robbie LaBelle Lyndon Parker

The City Project is a 501(c)(3) Non-Profit Organization and a Project of Community Partners

The federal district court ruled that the US Army Corps of Engineers violated the rights of the Standing Rock Sioux Tribe when the USACE did not adequately consider their rights under federal environmental and environmental justice laws in reviewing the Dakota Access Pipeline. *Standing Rock Sioux Tribe v. USACE*, Civ. No. 16-1534 (JEB) (D.C.D.C. June 14, 2017), at 47-54 and 66-67. We agree.

Under President George W. Bush, Secretary of Commerce Carlos Gutierrez upheld a decision to stop a proposed toll road that would have devastated the Acjachemen sacred site of Panhe and San Onofre State Beach in Southern California in 2010. The California Coastal Commission stopped the project in part because of the impact on Native Americans. The Secretary of the Navy, and a Major General in the Marine Corps, each wrote a letter against the proposed toll road. We urge you as the Secretaries of Interior and Commerce to preserve and protect all National Monuments with distinct historic and cultural value to Native Americans and indigenous people. *See generally* Save Panhe and San Onofre, www.cityprojectca.org/save-panhe-and-san-onofre.

B. Support the Antiquities Act

No president has ever before sought to reduce or eliminate a national monument designated by a prior president. Congress delegated to the president the authority to create national monuments. There is no doubt that the monuments under review were lawfully designated. Only Congress can change those designations, according to public comments submitted by 121 law professors. We agree.

C. Celebrate the Values at Stake

We incorporate by reference the public comments from Next 100 Coalition, GreenLatinos, International Mayan League, The City Project, and Robert Bracamontes on July 10, 2017.

D. Protect against the History and Pattern of Discrimination against Native Americans

Any attempt to take tribal, federal, state, and county lands and waters and sacred landscapes with distinct historic and cultural value to Native Americans reflects the history and pattern of discrimination against Native Americans from the time of contact in 1492. Recent academic studies document this history and pattern of discrimination. See, for example, Benjamin Madley, *An American Genocide: The United States and the California Indian Catastrophe, 1846–1873* (2016); Peter Cozzens, *The Earth Is Weeping: The Epic Story of the Indian Wars for the American West* (2016); David Grann, *Killers of the Flower Moon: The Osage Murders and the Birth of the F.B.I.* (2016). *See generally* N. Bruce Duthu, *American Indians and the Law* (2008). This administration must protect against all forms of discrimination against Native Americans under equal justice, environmental justice, and Native American laws and principles.

1. Bears Ears and Standing Rock

This administration has especially targeted Bears Ears National Monument for review. Since time immemorial, the Bears Ears and surrounding land in Utah have served as a homeland and place of spiritual and cultural significance to Native Americans. The Bears Ears area contains over 100,000 archaeological sites and holds sacred significance to the region's tribal identities, histories, and traditions. It is important that Bears Ears remains 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, according to NCAI.

“If the Trump administration moves forward with their interests, they are taking us backward 100 years, rupturing trust once again between the federal government and Indian people,” Regina Lopez-Whiteskunk, a former councilwoman from the Ute Mountain Ute Tribe, said according to Terry Tempest Williams. “Bears Ears is all about Indian sovereignty,” said Russell Begaye, the president of the Navajo Nation. Shrinking Bears Ears will be seen as an assault on Native Americans in the Southwest, a disrespect for their ceremonial lives and the traditional knowledge of their ancestors. “We are not just protecting these lands for our people, but all people,” said Jonah Yellowman, a Navajo medicine person and spiritual leader.

Bears Ears could become another Standing Rock, an example of the government bulldozing Native American sovereignty in favor of the oil industry. See Terry Tempest Williams, *Will Bears Ears Be the Next Standing Rock?* N.Y. Times, May 6, 2017.

Indeed, the US Army murdered Sitting Bull at Standing Rock, according to military historian Peter Cozzens in his book *The Earth Is Weeping*.

2. American Genocide: The US against Native Americans in California

NCAI has identified 19 monuments with distinct historic and cultural value to Tribes. These monuments include Bears Ears, Gold Butte, Organ Mountains-Desert Peaks, and others. In California alone, these monuments include Berryessa Snow Mountain, Carrizo Plain, Cascade-Siskiyou, Castle Mountains, Mojave Trails, Sand to Snow, and San Gabriel Mountains National Mountains.

UCLA history professor Benjamin Madley argues that genocide is the only appropriate term for what happened to native peoples in California between 1846 and 1873. Madley documents what Native Americans endured at the hands of US military campaigns, state militia expeditions, impromptu small-town posses, gold miners, and people who hunted natives. Madley relies on the definition in the United Nations Genocide Convention of 1948, which defines genocide as, first, demonstrating an intent to destroy, “in whole or in part, a national, ethnic, racial or religious group,” and, second, committing any of the following acts: killing members of a group; causing them serious bodily or mental harm; inflicting conditions that are intended to cause their destruction in whole or in part; imposing measures to prevent births within the group; and transferring children of the group to another group.

Various factors led to this genocide. Many indigenous communities in California had been defeated during the Spanish and Mexican years. There were two years of lawlessness between the time the US defeated Mexico in 1848 and California joined the union in 1850. US settlers carried over attitudes against Native Americans from the earliest days of the nation. There was pervasive discrimination against the state’s native population. They were denigrated as “Diggers”—a pejorative animal-like term that referred to their food-gathering customs. Striking gold in 1848 led to increased immigration and colonialism against Native Americans. Political, military, journalistic, and civic leaders favored creating a de facto open season on Native Americans.

California’s first legislature passed laws that, according to Madley, “largely shut Indians out of participation in and protection by the state legal system,” and granted “impunity to those who attacked

them.” The legislature funded state vigilantism. Two governors and other officials called for war against Native Americans. California’s first governor under statehood, Peter Burnett, pledged that “a war of extermination will continue to be waged ... until the Indian race becomes extinct.”

At the time of first contact, the native population totaled about 350,000 people. This included over 60 major tribes, small villages, and over a hundred languages. After the epidemics, mission programs, land losses, and peonage of the Spanish domination, about 150,000 Native Americans remained by 1850. By 1870 their were 30,000 and by 1900 fewer than 17,000 people.

US soldiers and militia committed many atrocities and murders against young and old, males and females indiscriminately. Rape was rampant, and natives were starved, tortured, and whipped.

US Army Major John Fremont’s early expedition invaded what was still Mexican territory in 1846. Along the Sacramento River near the present-day city of Redding, Fremont’s troops encountered Wintu people. With the command “to ask no quarter and to give none,” his troops encircled them and fired at everyone in sight. As many as 700 were killed on land and 300 more in the river. “The Sacramento River Massacre may have been one of the least-reported mass killings in US history, and “was the prelude to hundreds of similar massacres” according to Madley,

Of the estimated 80 percent decline in the Native American population during these years, around 40 percent has been attributed to “extermination killings.” At the start of the Gold Rush, the Yuki people who lived in the region had over three thousand members; they were reduced to fewer than two hundred by its end. Similar exterminations occurred against the Tolowa people, and Yahi people were almost completely wiped out.

Under the state Government and Protection of the Indians Act of 1850, any nonworking, publicly drunk, or orphaned and underage Native Americans could become commodities in a forced labor system tantamount to slave auctions. As a result, thousands of children were forced to serve as unpaid servants in white households.

Native Americans lost their lands and natural resources as well as their lives and culture. Lands and waters abundant in acorn groves, fruits, roots, and seeds, game and wildfowl, salmon, and marine life were destroyed by the combination of Spanish, Mexican, and US invasions. Fragile lands were torched and converted into agricultural fields and cattle pastures, streams and rivers were poisoned through mining, and forests were cut for lumber.

See generally Benjamin Madley, An American Genocide: The United States and the California Indian Catastrophe, 1846–1873 (2016); Peter Nabokov, Indians, Slaves, and Mass Murder: The Hidden History, N.Y. Review of Books (Nov. 2016).

3. Killers of the Flower Moon: The Reign of Terror against Osage People

Stealing Osage lands for oil in the 1920s is a prelude for any attempt to shrink or take Bears Ears and other monuments today. Native American people were systematically murdered in order to steal the Osage interests in oil rich properties in Oklahoma. More than two dozen people were murdered in what became known as a reign of terror against the Osage from at least 1920 to 1924, including Osage people and others investigating the crimes. “Among the towering thefts and crimes visited upon the native peoples of the continent, what was done to the Osage must rank among the most depraved and ignoble,”

according to Dave Eggers. Dave Eggers, *Solving a Reign of Terror Against Native Americans*, N.Y. Times Book Review, April 28, 2017.

In 1804, President Thomas Jefferson hosted a delegation of Osage chiefs. The US had recently acquired their lands in the Louisiana Purchase -- from France, not from the Osage. The president promised the Osage people would be treated fairly, according to author Peter Grann in his book *Killers of the Flower Moon*. They were not.

Over the next 20 years, the Osage people were stripped of almost 100 million acres of their land, and forced onto a parcel in southeastern Kansas that measured about four million acres (50 by 125 miles). The US government promised this land would be theirs forever.

The US government broke this promise, too. White settlers squatted on Osage territory. The Osage people were forced to sell their land for \$1.25 an acre. Looking for a new home, they found an area of what was to become Oklahoma that no one else wanted. It was hilly and unsuited to cultivation. The Osage bought the parcel for roughly a million dollars, including the “oil, gas, coal or other minerals.”

The Osage leased the land to prospectors and made a fortune in what turned out to be one of the richest oil fields in the US. “In 1923 alone,” Grann writes, “the tribe took in more than \$30 million, the equivalent today of more than \$400 million. The Osage were considered the wealthiest people per capita in the world.” A magazine writer at the time wrote: “The Osage Indians are becoming so rich that something will have to be done about it.”

The federal government imposed “allotments” and guardians to oversee the Osage people managing their money. The Osage became popular targets for theft, graft, mercenary marriage, and murder.

“This land is saturated with blood,” says Mary Jo Webb, an Osage woman alive today and quoted by Grann.

4. The Earth Is Weeping: the War Against Native Americans

Peter Cozzens frames the war against Native Americans with historical accuracy. During Reconstruction, for example, Native Americans from the East were assigned to Western reservations under the watch of the US Army. Drunken soldiers sometimes burned down villages. The Civil War generals William T. Sherman and Philip Sheridan, tasked with overseeing Native American affairs, battled against Arapaho, Comanche, Cheyenne and Kiowa tribes. Some Army officers, such as Gen. George Crook, were consumed by “outrage” over the Army’s mistreatment of native people, according to Cozzens in *The Earth Is Weeping*.

E. Conclusion

We stand in solidarity and resistance with the people to support national monuments with distinct historic and cultural value to Native Americans, and oppose review by this administration. We stand with our Native American and indigenous sisters and brothers to defend Native American rights, the earth and her people, these monuments, and the Antiquities Act. We oppose any attempt to eliminate or shrink monuments and to undermine the Antiquities Act, the rule of law, and democratic governance by the people.

Secretaries Zinke and Ross
Protect National Monuments and Native American Values
July 10, 2017
Page 6 of 6

Very truly yours,

Robert García
Director-Counsel
The City Project

Robert Bracamontes
Bob Black Crow, Yu-va'-tal 'A'lla-mal
Acjachemen Nation, Juaneno Tribe

Resources

NRDems Forum: *A Monumental Mistake: The Implications of President Trump's Executive Order on National Monuments*, June 8, 2017. democrats-naturalresources.house.gov/hearings/a-monumental-mistake-the-implications-of-president-trumps-executive-order-on-national-monuments.

Public Comments re: Maintain Monuments from Next 100 Coalition, GreenLatinos, International Mayan League, and Robert Bracamontes, July 10, 2017. www.cityprojectca.org/blog/archives/44682.

National Congress of American Indians, *Public Comments and Resolution re: Maintain Designations of National Monuments* (July 10, 2017). www.ncai.org/attachments/PolicyPaper_nPEhdzaQCHkWyYeNfSxQOXqJfOZeuyFoFSvlqpjLoDWbDpCypou_National%20Monuments%20SUBMITTED%20w%20Resolutions.pdf.

Presidential Memorandum, *Promoting Diversity and Inclusion in Our National Parks, National Forests, and other Public Lands and Waters* (Jan. 12, 2017). obamawhitehouse.archives.gov/the-press-office/2017/01/12/presidential-memorandum-promoting-diversity-and-inclusion-our-national.

Public comments from 121 law professors re: *the president does not have power to eliminate or shrink national monuments*, July 6, 2017, and authorities cited. legal-planet.org/wp-content/uploads/2017/07/national-monuments-comment-letter-from-law-professors_as-filed.pdf.

National Academies of Sciences, Engineering, and Medicine, Committee Report, *Communities in Action: Pathways to Health Equity* (2017) (social determinants of health includes access to healthy parks and recreation; Native American values warrant protection). www.nationalacademies.org/promotehealthequity.