



Protect America's Climbing

July 10, 2017

The Honorable Ryan Zinke
Secretary, Department of the Interior,
1849 C Street NW
Washington, DC 20240

RE: Interim Report Pursuant to Executive Order 13792

Dear Secretary Zinke:

The Access Fund writes today to comment on the National Monument Review initiated by Executive Order (EO) 13792. This letter supplements Access Fund's May 25, 2017, comment letter to the U.S. Department of the Interior concerning the Department's review of the Bears Ears National Monument. Our May 25 comment letter expressed Access Fund's confidence that the process leading to the Bears Ears National Monument (BENM) designation appropriately incorporated public outreach and coordination with relevant stakeholders, and that the designation conforms to the requirements of the Antiquities Act of 1906 (the Act). We urged the administration to preserve BENM as is and to provide adequate funding for a monument management plan.

We have significant concerns about the recommendations outlined in your June 10 Interim Report on BENM ("the Interim Report"), in particular:

- The assumption that the President has the authority to abolish or diminish national monuments,
- The application of EO 13792's arbitrary 100,000-acre standard for a valid monument,
- The failure to acknowledge the comprehensive process through which BENM was designated.

The Access Fund

The Access Fund is a national advocacy organization whose mission is to keep climbing areas open and conserve the climbing environment. A 501(c)(3) non-profit and accredited land trust representing millions of climbers nationwide in all forms of climbing—rock climbing, ice climbing, mountaineering, and bouldering—the Access Fund is the largest US climbing advocacy organization, with over 15,000 members and 100 local affiliates. Access Fund has active Memoranda of Understanding (MOUs) with the Bureau of Land Management (BLM) and the National Park Service. Access Fund membership in Utah is one of our largest in the country. Access Fund supports the December 28, 2016, Proclamation establishing Bear Ears National Monument.

Bears Ears National Monument

As noted in our comment letter dated May 25, 2017, Access Fund members from Utah and across the country regularly climb in the Bears Ears National Monument. For nearly twenty years, Access Fund's policy program engaged land management issues within the State of Utah, including participation as a leading stakeholder in several BLM planning initiatives and various legislative proposals affecting the area. Access Fund has been working in the Indian Creek area—a world famous climbing area in the northern portion of Bears Ears National Monument—since the late 1990s. We have also participated in several regional public land initiatives, including a BLM 2004 Indian Creek activity plan, the BLM's 2008 Resource Management Plan, the Moab Master Leasing Plan, and three years working on the Utah Public Land Initiative (PLI).

While providing critical input on the PLI as well as engaging the Department of Interior on a proposed Bears Ears National Monument, our specific interest was to obtain much-needed comprehensive planning for the region, and to protect climbing access and the climbing environment. On October 7, 2016, Access Fund issued a letter to the Department of Interior noting that, while Access Fund would rather support legislation to protect Indian Creek and the Bears Ears region, if Congressional action was not possible the next best outcome would be a national monument established under the Antiquities Act. A national monument should be accompanied by landscape-level planning and management as well as increased resources such as funding, staff and expertise.

Problems with the Interim Report Pursuant to Executive Order 13792

The President lacks the authority to abolish or diminish national monuments

The Access Fund's primary concern with your Interim Report is the recommendation that the existing boundary of BENM be modified "to be consistent with the [Antiquities] Act." According to the Interim Report, potential remedies include "Presidential actions, legislative proposals, or other actions consistent with law." However, this statement incorrectly assumes that the President has the authority to revoke or reduce the size of existing national monuments. In fact, only Congress can rescind and reduce a national monument (see "Presidents Lack the Authority to Abolish or Diminish National Monuments," by Mark Squillace, Eric Biber, Nicholas S. Bryner, and Sean B. Hecht).

Assumptions Regarding National Monument Size

EO 13792 specifically identifies monuments greater than 100,000 acres for review. The Antiquities Act is clear that the relevant areas needed to protect objects of interest should be included within a national monument. Sometimes the relevant area, such as at Bears Ears National Monument, is a large landscape that includes a wealth of objects in need of protection. Landscape-scale protection is critical for preserving the essential connection between ecology, antiquities and tradition. That connection is extremely valuable to future generations and should not be dismissed because a particular landscape is larger than an arbitrary acreage. America's heritage includes landscapes both very large and very small. The authority to protect wide landscapes, when necessary, using the Antiquities Act is well established, in law and in practice.

In addition, the Interim Report incorrectly assumes that designated Wilderness or Wilderness Study Areas within a national monument are redundant. This dynamic successfully exists in other national monuments and is addressed by comprehensive plans that contemplate a wide range of allowed activities.

Given the current political dynamic in both Utah and Congress, with even more significant gridlock blocking collaborative public land legislation for Utah, it is politically unrealistic for the Interim Report to recommend that Congress legislate alternatives (such as NRAs and NCAs) to protect the Bears Ears region. Rather than forfeit the current protections for BENM and its potential for future congressional support (financial and otherwise), we believe a more promising approach is to support the existing national monument. Access Fund urges you to maintain the current boundaries of BENM and support future initiatives for infrastructure funding and other management needs for the monument.

The Process that Established Bears Ears National Monument was Extensive, Inclusive and Appropriate

As stated in our May 25, 2017 comment letter, Access Fund believes that the process leading to the Proclamation establishing Bears Ears National Monument was thorough and proper. During the course of our 2016 interactions with the Department of Interior, it was clear that the administration strongly preferred legislation for southeast Utah; however, if legislation was not possible, then many thousands of objects of historic and scientific interest in need of immediate protection undoubtedly qualified the region for a national monument. Accordingly, the previous administration painstakingly mapped out where these objects are located while also ensuring that traditional uses such as grazing, hunting, and wood gathering would remain protected. Indeed, the Proclamation ensures these established uses are protected in the BENM.

Furthermore, documents obtained by the House Committee on Oversight and Government Reform reveal years of communication and coordination between the Obama administration and local Utah stakeholders and elected officials prior to the BENM Proclamation (see “Documents Obtained by Oversight Committee Refute Republican Claims That Obama Administration Did Not Consult on Bears Ears Monument Designation,” House Committee on Oversight and Government Reform, April 13, 2017). These documents show frequent, recurring discussions over four years with Senator Hatch and Representatives Bishop and Chaffetz on ways to improve the PLI while stating the need for a national monument if the PLI legislation failed.

Following (and during) years of effort on the PLI, Access Fund worked for nearly a year supporting national monument protections for Bears Ears that included the recognition of rock climbing as a highly valued use of the area and an appropriate activity through which to experience the protected objects of historic and scientific interest. Rock climbing is acknowledged in the Proclamation, which in large part is due to Access Fund staff dedicating hundreds of hours meeting with administration officials and stakeholders to ensure that the monument boundary was the correct size and location.

While Secretary Sally Jewell worked for years on a compromise solution—only to have legislation fail and necessitate the monument designation—the monument review conducted by the current administration is far shorter and much less thorough. Your recent tour of southeast Utah was selective in its meetings and reportedly included statements to local officials that a decision to reduce BENM had been predetermined before the close of the comment period (see “Bears Ears critics say Zinke told them he’ll recommend repeal, E&E News, May 19, 2017).

Additionally, Tribal interests have been sidelined during the national monument review process despite several direct statements from each sovereign nation in the Intertribal Bears Ears Coalition expressing strong support for the monument and concern about the legitimacy of the monuments review (see “Zinke says tribes are ‘happy’ to have Bears Ears modifications; tribes disagree,” Navajo-Hopi Observer, June 20, 2017).

Moreover, independent analyses show public support of BENM dominates by a ratio of 9 to 1 in the estimated 685,000 comments submitted during the short two-week comment period (“New analysis shows national monument support dominates public comment period: More than 99% of comments gathered back Bears Ears and other national monuments,” Center for Western Priorities, Medium.com, May 25, 2017).

In sum, the law, public opinion, politics, economics and good policy dictate that you should keep BENM intact. The President and the Department of Interior should embrace the new monument as an economic driver that provides much-needed protections for cultural resources. While there are many thousands of objects of historic and scientific interest that serve as the legal basis for BENM under the Antiquities Act, recreation interests will also greatly benefit from comprehensive landscape-level planning and the potential for more management resources that can protect the world-class BENM landscape.

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It is clear to Access Fund that the Department of Interior’s recent review of the BENM was incomplete and ignored public opinion and comment. The recommendations in the Interim Report propose unlawful actions that will result in years of litigation and discord in Utah. We urge you to revisit these recommendations, embrace the wishes of the Tribal community and the overwhelming majority of Americans to preserve the BENM intact, and support robust funding for a monument management plan. We also urge you to increase BLM’s budget, especially elements that would bring much needed funding, staff and expertise to the Bears Ears region.

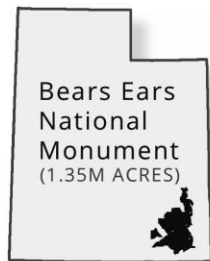
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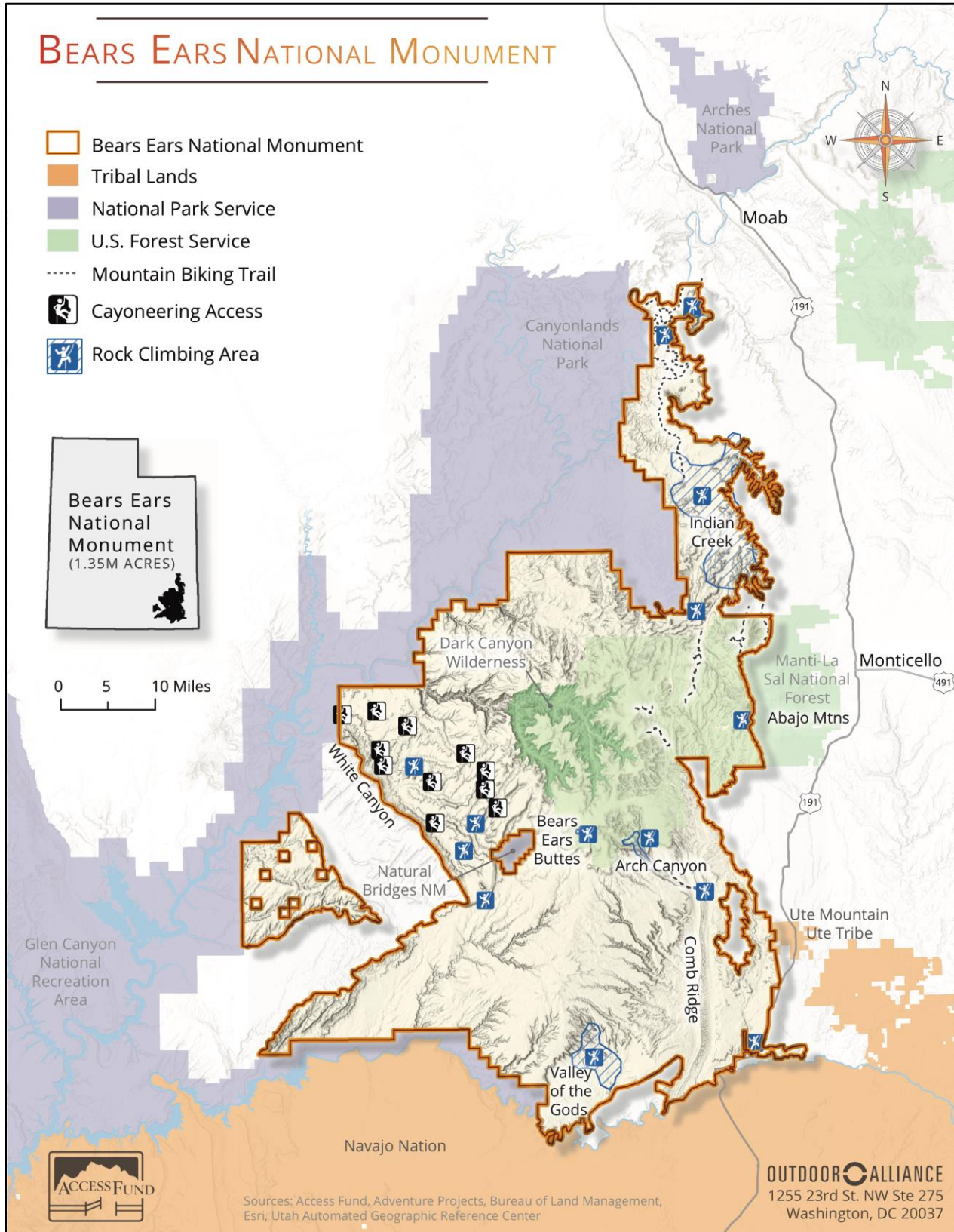
Brady Robinson
Executive Director
Access Fund

BEARS EARS NATIONAL MONUMENT

-  Bears Ears National Monument
-  Tribal Lands
-  National Park Service
-  U.S. Forest Service
-  Mountain Biking Trail
-  Canyoneering Access
-  Rock Climbing Area



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Sources: Access Fund, Adventure Projects, Bureau of Land Management, Esri, Utah Automated Geographic Reference Center

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