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May 25, 2017

Via electronic submission

Secretary Ryan Zinke
United States Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Zinke,

The California Indian Law Association ("CILA") is a non-profit corporation formed for the purpose of representing Indian law in the legal profession in California. CILA strives to promote the sound administration of justice to advance the status of Indian tribes and American Indian people in the law. CILA is dedicated to helping Indian tribes in California achieve self-determination, self-sufficiency and to protect tribal sovereignty.

With these guiding principles, it is the position of CILA that the Department of the Interior should:

1. Recommend that the President maintain, rather than abolish or diminish, the Bears Ears National Monument due to the significance of the Monument to the legal recognition and protection of the tribal cultural resources, natural cultural resources, and viewscape cultural resources of the Native Nations with cultural and ancestral ties to the Bears Ears region;
2. Recommend that the President conduct formal, proper, and adequate consultation and coordination with the Native Nations who might attach religious and cultural significance to the following national monuments located within the State of California: the Berryessa Snow Mountain National Monument, the Carrizo Plain National Monument, the Giant Sequoia National Monument, the Mojave Trails National Monument, the Sand to Snow National Monument, and the San Gabriel Mountains National Monument; and
3. Recommend that the President to conduct formal, proper, and adequate consultation and coordination with the Native Nations who might attach religious and cultural significance to any national monument under review.

Through colonialization, displacement, and genocide, Native Nations have been stripped of control over most of their ancestral homelands and cultural resources. Presidential proclamations designating national monuments under the Antiquities Act are therefore an *essential* element of the legal recognition and protection of many Native Nations' ancestral homelands and cultural resources found on



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federal public lands.¹ National monument designation also ensures the protection of sacred cultural resource sites, traditional cultural properties, and access by Native Nations' citizens for traditional, cultural, and customary uses, consistent with the American Indian Religious Freedom Act² and Executive Order 13007.³ Moreover, the designation of national monuments follows the international legal norms established in the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), which recognizes and respects Indigenous peoples' "right to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" and requires "[s]tates [] give legal recognition and protection to these lands, territories and resources" with ". . . due respect to the customs, traditions and land tenure systems of the [I]ndigenous peoples concerned."⁴

Before any decision is made regarding the national monuments under review, formal, proper, and adequate consultation with Native Nations who "might attach religious and cultural significance to historic properties in the area of potential effects" must be performed as required by the National Historic Preservation Act ("NHPA").⁵ Formal, proper, and adequate consultation with Native Nations is also an international legal norm under UNDRIP "to ensure that [I]ndigenous sacred places, including burial sites, be preserved, respected and protected."⁶ The 15-day comment period for the Bears Ears National Monument is not and cannot be considered formal, proper, and adequate consultation with Native Nations under the NHPA and UNDRIP. Further, the 60-day comment period for the other national monuments under review is not and cannot be considered formal, proper, and adequate consultation with Native Nations under the NHPA and UNDRIP.

¹ 54 U.S.C. § 320301–320303; *see also* Squillace, Mark Stephen and Biber, Eric and Bryner, Nicholas S. and Hecht, Sean B., *Presidents Lack the Authority to Abolish or Diminish National Monuments*, UC BERKELEY PUBLIC LAW RESEARCH PAPER (May 13, 2017), available at SSRN: <https://ssrn.com/abstract=2967807> (determining that the Antiquities Act, also reiterated in Federal Land Policy and Management Act of 1976, only granted a one-way designation authority to the President to create national monument and reserved the power to diminish or abolish national monuments for Congress.)

² 42 U.S.C. 1996.

³ Executive Order 13007, 61 FR 26771 (1996) (directing federal agencies to allow Native Americans to worship at sacred sites located on federal property and to avoid adversely affecting the physical integrity of such sites.)

⁴ Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/47/1, Article 26, (Sept. 13, 2007) [hereinafter UNDRIP]; *See* STATE DEPARTMENT, ANNOUNCEMENT OF U.S. SUPPORT FOR THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: INITIATIVES TO PROMOTE THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP & IMPROVE THE LIVES OF INDIGENOUS PEOPLES (2010) available at <https://web.archive.org/web/20150714042417/http://www.state.gov/documents/organization/184099.pdf> (the current administration has removed the statement from the State Department Website, but the page is archived at this address) ("United States today proudly lends its support to the United Nations Declaration on the Rights of Indigenous Peoples"); *Gonzalez v. Ocwen Home Loan Servicing*, 74 F. Supp. 3d 504, fn. 9 (2016) (stating that UN declarations "represent [] dynamic development of international legal norms and reflect the commitment of states to move in certain directions, abiding by certain principles.")

⁵ 36 C.F.R. § 800.3(f)(2).

⁶ UNDRIP, *supra* 3 at Article 13.



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Abolishing or diminishing the Bears Ears National Monument would open up Native Nations' ancestral homelands to more ecological degradation and would put cultural resources at risk of destruction, looting, vandalism, and harassment.⁷ It would also be in violation of federal law, including the Antiquities Act, the American Indian Religious Freedom Act, and the NHPA, and would be contrary to the international legal norms established by UNDRIP. Further, before any action is taken with regard to the other national monuments under review, the federal government is *required* to conduct formal, proper, and adequate consultation with Native Nations who “might attach religious and cultural significance to historic properties in the area of potential effects.”⁸

For these reasons, CILA requests that the Department of the Interior recommend that the President refrain from abolishing or diminishing the Bears Ears National Monument. CILA further recommends that formal, proper, and adequate consultation be taken before a decision is made on any of the national monuments currently under review, as required by federal law.

Sincerely,

The California Indian Law Association Board of Directors

⁷ The New York Times, *available at* https://www.nytimes.com/2017/04/26/climate/antiquities-act-federal-lands-donald-trump.html?_r=1 (discussing how national monument designation ensures the existence of issued leases and use of the land prior to designation, but also prevention of any new leases, especially for oil and gas extraction.)

⁸ NHPA, *supra* at 5.