

Subcommittee on Federal Lands

Tom McClintock, Chairman

Hearing Memorandum

January 29, 2018

To: All Subcommittee on Federal Lands Members

From: Majority Committee Staff – Brandon Miller
Subcommittee on Federal Lands (x 6-7736)

Hearing: Legislative hearing on a **H.R. 4532 (Rep. John Curtis)**, To create the first Tribally-managed national monument, and for other purposes.
January 30, 2018 at 10:30 AM; 1324 Longworth House Office Building

H.R. 4532, “Shash Jáa National Monument and Indian Creek National Monument Act”

Bill Summary

Introduced by Rep. John Curtis (R-UT-03), H.R. 4532, the Shash Jáa National Monument and Indian Creek National Monument Act,” establishes two National Monuments in San Juan County, Utah: the Shash Jáa National Monument, the first tribally co-managed National Monument in the nation, and the Indian Creek National Monument. The legislation maintains the existing 1.35-million-acre mineral withdrawal originally included under President Obama’s 2016 Bears Ears National Monument (BENM) designation. The bill also establishes the first-of-its-kind Archaeological Resources Protection Unit, and statutorily dedicates additional law enforcement personnel and federal dollars for the exclusive protection of antiquities within Monument boundaries.

Recap of 1/9/18 Hearing and Rule 11 Request for Additional Hearing

On January 9, 2018, the Subcommittee on Federal Lands held a legislative hearing on H.R. 4532. The Subcommittee heard testimony from the following witnesses:

1. The Honorable John Curtis, *Member of Congress, Utah’s 3rd District*;
2. The Honorable Gary Herbert, *Governor of Utah*;
3. Ms. Suzette Morris, *Vice President of the Stewards of San Juan County and a Ute Mountain Ute Tribal Member*;
4. Mr. Matt Anderson, *Director of the Coalition for Self-Government in the West at the Sutherland Institute*; and
5. The Honorable Shaun Champoos, *Member, Ute Tribal Business Committee*.

At the conclusion of the January 9th hearing, the Chairman recessed the hearing. This hearing constitutes a continuation of the hearing, in accordance with House and Committee Rules, to receive additional testimony from witnesses invited each by the Committee’s majority and minority Members.

Cosponsors

Rep. Rob Bishop [R-UT-01], Rep. Chris Stewart [R-UT-02] and Rep. Mia B. Love [R-UT-04]

Invited Witnesses:

PANEL I

Mr. Jason Chaffetz
Former Member of Congress
Utah's 3rd District
Alpine, Utah

Ms. Regina Lopez-Whiteskunk
Former Ute Mountain Tribe Councilwoman
Former Bears Ears Inter-Tribal Coalition Co-Chair
Ute Mountain Ute Tribal Council
Towaoc, Colorado

The Honorable Tony Small
Vice Chairman, Ute Business Committee
Ute Indian Tribe
Fort Duchesne, Utah

The Honorable Carleton Bowekaty
Councilman, Pueblo of Zuni
Zuni, New Mexico

The Honorable Clark Tenakhongva
Vice Chairman, Hopi Tribal Council
The Hopi Tribe
Kykotsmovi Village, Arizona

The Honorable Russell Begaye
President, Navajo Nation
Window Rock, Arizona

The Honorable Rebecca Benally
Vice Chair, San Juan County Commissioners
Monticello, Utah

PANEL II

The Honorable Sean D. Reyes
Attorney General
State of Utah

Salt Lake City, Utah

Mr. John Tahsuda III
Principal Deputy Assistant Secretary
Indian Affairs
U.S. Department of the Interior
Washington, DC

Mr. Casey Hammond
Deputy Assistant Secretary
Land and Minerals Management
U.S. Department of the Interior
Washington, DC

Background

Antiquities Act

The Antiquities Act of 1906 authorizes the President to proclaim national monuments on federal lands that contain "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest." The President is to reserve "the smallest area compatible with the proper care and management of the objects to be protected." From 1906 to date, Presidents have established monuments and enlarged, diminished, or otherwise modified previously proclaimed monuments.

Originally intended to protect rare, sacred Native American burial grounds and endangered archeological sites, Presidents now routinely use the Act for reasons other than archeological protection. In recent decades, the Act has been used to circumvent Congress' primary role in federal land-use decisions, and other public processes under subsequent land-management statutes, to designate millions of acres of land and water, restrict public access to public lands, and prevent traditional land uses – in exceedance of the Act's intent and size limitations.

National Monument Review

President Trump signed an Executive Order (EO) on April 26, 2017, which required the Secretary of the Interior to review and report on recently designated or expanded national monuments to determine, among other things, whether they are consistent with the "original objectives" of the Antiquities Act. The EO also directed the Secretary to recommend any necessary legislative or administrative changes to those designations.

The Secretary's report, delivered to the President on August 24, 2017 analyzed, among other variables, the size of the designations, types of objects protected, effect on land uses, extent of public access, sufficiency of public consultation, and "overlap" with other federal land designations. In developing the review, the Trump administration received millions of comments from the public and conducted more than 60 meetings with hundreds of advocates, opponents

and other stakeholders. The report made individual recommendations for 10 of the 27 monuments encompassed in the review.

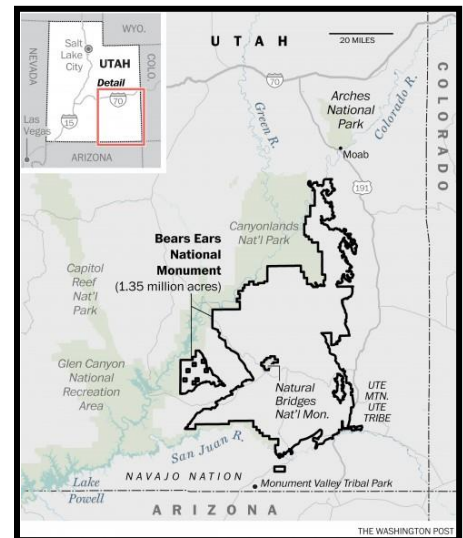
In the case of the BENM, the report concluded the monument's size was not the "smallest area compatible" with care of the objects requiring protection. Among other conclusions, the report asserted that areas within the monument have other congressional or administrative designations, making "unnecessary" their protection under the Antiquities Act; some of the monument's lands would be better managed as other types of designations, such as national recreation areas; and tribes did not have an "adequate role" in managing the monument. The Secretary recommended the BENM boundaries be revised "to protect objects and ensure the size is conducive to [their] effective protection."

The report also included recommendations that the President ask Congress to take certain actions, including providing tribal officials legal authority to co-manage the monument, clarifying the limits of executive authority under the Antiquities Act and the intent of Congress regarding land use in monument areas containing other protective designations.

Bears Ears National Monument

President Obama designated the BENM in San Juan County, Utah, during the final weeks of his administration. The National Monument, totaling 1,351,849 acres, covers an area larger than the State of Delaware.¹

The push for a National Monument in southeastern Utah began in October 2014 during a meeting of the Conservation Lands Foundation (CLF) in San Francisco, California. During the meeting, CLF discussed the prospects of designating a National Monument in southeastern Utah and agreed to call the National Monument "Bears Ears", "to move away from a Navajo name."² CLF expressed concerns about "hitching [their] success to the Navajo" in the event that local Navajo in San Juan County disagreed with the group's proposals.³ The campaign to designate Bears Ears as a National Monument received millions of dollars in donations from out-of-state environmentalists, including \$20 million in donations from the Hewlett and Packard Foundation and a portion of \$15.6 million in grants from the Leonardo DiCaprio Foundation.⁴ Outside organizations also heavily supported the Bears Ears Inter-Tribal Coalition (BEITC), a group representing five tribes that supported a National Monument designation, by creating their website, crafting maps of their National Monument proposal, and sending out their press releases, contacting the media and various other public relations



Map 1: Source: Washington Post

¹ Alexandra DeSanctis, "Reversing Obama's Last-Minute Land Grab", National Review, 01/02/17, <http://www.nationalreview.com/article/443462/trump-gop-aim-reverse-obamas-land-grab-utah-nevada-million-acres>.

² Conservation Lands Foundation, Board Meeting Minutes, San Francisco, California, 10/24/14, pg. a6, <http://conservationlands.org/wp-content/uploads/2015/05/Fall-2014-meeting-minutes.pdf>.

³ Ibid, pg. a6.

⁴ Amy Joi O'Donoghue, "Big money, environmentalists and the Bears Ears story", Deseret News, 08/04/16, <http://www.deseretnews.com/article/865659464/Big-money-environmentalists-and-the-Bears-Ears-story.html>.

activities.⁵ According to Blanding, Utah, City Manager Jeremy Redd in August of 2016, “This is not a grass-roots Native American effort to protect sacred lands. This is an effort by environmental groups to get what they want... People feel like they are being run over by the money and the organization that these special interest groups have. Sadly, local people don't have that kind of money behind them.”⁶

San Juan County Commissioner Rebecca Benally, a Diné and Navajo woman, testified at a Federal Lands Subcommittee hearing in September of 2016 that:

Bears Ears National Monument campaign is a cynical political stunt that, if successful, will deny grass roots Utah Navajos access to their sacred and spiritual grounds. Traditional Utah Navajo people depend on that land for their necessities of life: to gather medicinal plants, fire wood, piñon nuts, as well as to hunt and practice sacred ceremonies. Traditional Utah Navajo people are not conspiring with lawyers in board rooms in Salt Lake City and San Francisco. Traditional Utah Navajo people are not collecting \$20 million from the Hewlett and Packard foundations and Leonardo De Caprio to sponsor this toxic divide-and-conquer campaign. Traditional Utah Navajo people are not magazine environmentalists but are real stewards of the land whose interests will be destroyed by a Bears Ears National Monument. Grassroots Utah Navajo people do not support this effort to convert our sacred lands into a federal designation that will subjugate them to micromanagement by bureaucrats in Washington, DC.

Before its designation in 2016, the BENM proposal faced enormous opposition in the State of Utah. In a poll conducted in May 2016, only 17 percent of Utahans favored the President designating the identified area as a National Monument through executive decree.⁷ No members of the Utah Congressional delegation or the Governor supported the unilateral designation and they were not meaningfully consulted on a National Monument proposal prior to the designation. In a 2016 Subcommittee on Oversight and Investigations hearing, Council on Environmental Quality (CEQ) Chair Christy Goldfuss refused to discuss the Administration's plans for Bears Ears:

CHAIRMAN BISHOP: Is CEQ actively working on a national monument proposal for Bears Ears in San Juan County in my State?

MS. GOLDFUSS. I cannot talk about any specific proposals that we are working on out of CEQ or out of the Administration with regard to national monuments.⁸

In addition, at a Committee on Natural Resources oversight hearing on March 1, 2016, Secretary Jewell stated President Obama had no prior intentions of designating any National Monuments:

⁵ Ibid.

⁶ Ibid.

Alexandra DeSanctis, “Reversing Obama’s Last-Minute Land Grab”, National Review, 01/02/17,

⁸ Subcommittee on Oversight and Investigations, Oversight hearing on The President’s Imposition of New Environmental Mitigation Regulations, 02/24/16, <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=399897>.

DR. GOSAR: How many more new national monuments does this Administration plan to designate this year? What are the names and geographic locations of potential monuments being considered?

SECRETARY JEWELL: That is entirely up to the President of the United States. There are many people that come through the doors saying, "We would like you to look at monuments." There are, you know, assessments that happen from across the country of interest. They go directly to the White House.

DR. GOSAR: So let me stop you there. So, the President hasn't given you any detailed leanings, one way or the other?

SECRETARY JEWELL: The President has not.

DR. GOSAR: Absolutely zippo?

SECRETARY JEWELL: Absolutely zippo.⁹ [emphasis added]

In a written response to a Senator's question, the former Acting Assistant Director of the National Landscape Conservation System and Community Partnerships for the Bureau of Land Management (BLM), denied any knowledge of plans to designate National Monuments, such as Bears Ears.¹⁰

Given the Administration's previous use of the Antiquities Act, this "midnight monument" designation did not come as a surprise to many local residents.¹¹ However, these transcripts point to a clear lack of coordination and consultation between the Administration and members of the affected Congressional delegation on the National Monument and demonstrate the total lack of transparency in the designation process.

Local San Juan County tribes and residents also voiced overwhelming opposition to a National Monument designation under the Antiquities Act. In May 2016, the Blue Mountain Diné Community unanimously passed a resolution against the proposed National Monument, stating they disagreed "that the creation of an Inter-Tribal National Monument will be in the best interests and welfare of not only local Navajo people, but of all locals who love the land of their heritage."¹² The Aneth Chapter of the Navajo Nation, based in San Juan County, also passed a

⁹ Committee on Natural Resources, Oversight hearing on the President's 2017 Budget Proposal with Department of the Interior Secretary Sally Jewell, 03/01/16, <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=399957>.

¹⁰ "Question (Flake) (written) - Please provide a list of any National Monuments that are presently under consideration for designation by the President under the Antiquities Act.

Answer (Murphy) (written) - I am not aware of any list of proposed National Monuments under consideration by the President." Administration statements to Senator Flake on consultation before a national monument designation, https://www.flake.senate.gov/public/_cache/files/3e03f699-a39a-4f5b-b785-ea0a82971eeb/10.03.16-flake-mccain-letter-to-potus-re-national-monuments.pdf.

¹¹ David DeMille, "Utah Republicans voice fears about 'Midnight Monument' at Bears Ears", The Spectrum, 12/15/16, <http://www.thespectrum.com/story/news/2016/12/15/utah-republicans-voicing-fears-midnight-monument-bears-ears/95473834/>.

¹² Blue Mountain Diné' Community, "A Resolution Establishing in Opposition to the Proposed Bears Ears National Monument and in the Alternative, in Support of a National Conservation Area", Resolution No.: 055216.

resolution opposing the unilateral National Monument designation.¹³ One hundred San Juan County residents signed a petition endorsing a National Conservation Area over a National Monument, in part because it offered “the greatest recognition/protection of our sacred sites and cultural resources that are existing in the proposed designated area.”¹⁴

With the election of President Donald Trump, local communities continued to voice their concerns with the BENM. In a letter to Interior Secretary Ryan Zinke on May 27, 2017, a local community organization, Stewards of San Juan County, stated, “The majority of Navajo and Ute residents in San Juan County overwhelmingly oppose the monument designation, in contrast to out-of-county/state tribes who know very little of this area and will simply not be affected by this monument. It is appalling that non-local voices have drowned out those who treasure this land the most.” The group later continued, “This monument was designated in order to appease outside special interest groups. It was done WITHOUT a robust consultation with the stakeholders who actually live in San Juan County. Voices of life-long residents and tribal members have been, and continue to be, blatantly ignored.”¹⁵ After the designation, Suzette Morris, a Ute Mountain Ute member and Vice President of Stewards of San Juan County, stated, “We have cemeteries up there and I don't want our ancestors to be put in museums” and “We all have a fight and we all are going to continue to fight for this to be rescinded.”¹⁶

Tribal Co-Management

According to previous statements on the record, the Obama BENM designation likely fell short of expectations of even the most vocal National Monument supporters. A major point of contention during the debate over a National Monument versus a National Conservation Area revolved around the ability to allow the tribes to co-manage the land. Since its establishment, some supporters of the National Monument falsely claim the designation allowed the first ever tribal co-management of a National Monument. However, the tribes do not currently co-manage the land and the words “co-management” do not appear anywhere in the text of the Obama proclamation.¹⁷ Instead, the proclamation creates the Bears Ears Commission; a standard advisory committee created using authority under the Federal Advisory Committee Act, not the Antiquities Act.¹⁸ The proclamation states that the Commission will “provide guidance and recommendations” on the management of the National Monument, but stops short of actually allowing the tribes to partner with the BLM and Forest Service (FS) to manage BENM.¹⁹

¹³ Resolution of the Aneth Chapter, “Requesting the Naa’bik’iyati Committee of the Navajo Nation Council Rescind Resolution Nabima-13-15, “Supporting the Utah Dine Bikeyah Conservation Proposal for the Federal Designation of Bear’s Ears National Conservation Area/National Monument in San Juan County, Utah, to Protect the Native Rights and Interest on Federal Lands for Future Generations”, ACNOV-16-014.

¹⁴ Residents of San Juan County, Utah, Petition to Support Alternative B, Plan for Designation of Southeastern Utah Public Land As National Conservation Area”, <http://sutherlandinstitute.org/wp-content/uploads/Navajo-Opposition-Packet.pdf>.

¹⁵ Stewards of San Juan County, Letter to DOI Secretary Zinke, 02/21/17, <https://stewardsofsanjuansos.files.wordpress.com/2017/02/letter-to-zinke1.pdf>.

¹⁶ Devon Dewey, “Road to Understanding: Bears Ears still a topic of controversy in San Juan County”, KSL, 03/25/17, <https://www.ksl.com/index.php?sid=43636087&nid=148&title=road-to-understanding-bears-ears-still-a-topic-of-controversy-in-san-juan-county>.

¹⁷ President Barack Obama, Presidential Proclamation – Establishment of the Bears Ears National Monument, 12/28/16, <https://obamawhitehouse.archives.gov/the-press-office/2016/12/28/proclamation-establishment-bears-ears-national-monument>. Instead, the proclamation creates the Bears Ears Commission, a standard advisory committee created using authority under the Federal Advisory Committee Act, not the Antiquities Act.

¹⁸ Ibid.

¹⁹ Ibid.

After the release of a Department of the Interior Secretarial Order promoting the role of tribes in the management of lands²⁰, Willie Grayeyes, Chairman of Utah Dine Bikéyah, stated that, "I would have to read [the Secretarial Order], but *if it is less than co-management, I think it would fall short of our goal.*"²¹ [emphasis added] Additionally, in testimony before the Committee on Natural Resources, Regina Lopez-Whiteskunk, the Co-Chair of the BEITC, stated that a key reason the BEITC supported unilateral executive action over the Public Lands Initiative (PLI), a broader legislative effort being developed at the time that included protections for the same region, was the acreage size for the National Monument. In her written testimony, she stated that BEITC's "call to protect 1.9 million acres is already a conservation request. *Anything less is tantamount to destruction of sacred sites that the identities of native people are affixed to.*"²² [emphasis added] Despite the Obama administration failing to follow through on these core aspects of their proposal, BEITC and Utah Dine Bikéyah supported the National Monument after its creation.

Prior to the unilateral designation of BENM by President Obama, Utah Congressmen Rob Bishop and Jason Chaffetz proposed an alternative approach to protect antiquities in the region that included two National Conservation Areas (NCA). These proposals were included in H.R. 5780, the Utah Public Lands Initiative Act, introduced during the 114th Congress. The proposal, developed through local consultation and over 1,200 meetings with diverse stakeholders over a period of three years, drew widespread support from locals in San Juan County. This solution offered the only permanent protection for the area and the only legal mechanism to allow the tribes to co-manage the land. One NCA, the Bears Ears National Conservation Area, focused on creating the necessary footprint to preserve the archeological resources and objects of antiquity within the area, while also allowing the tribes access to sacred sites and preserving traditional tribal uses of the land. The second NCA, the Indian Creek National Conservation Area, focused on allowing outdoor recreation and preserving traditional uses of the land, such as grazing.

School and Institutional Trust Land

The Obama BENM designation also locked up 109,000 acres of Utah School and Institutional Trust Land Administration (SITLA) land within its boundaries. SITLA lands were set aside by Congress at the time of Utah statehood for the benefit Utah public schoolchildren.²³ Scattered across Utah in a checkerboard pattern, SITLA land derives revenues from activities such as energy and mineral resource development, grazing, and timber production. The funds from these revenues go into the State School Fund, "a permanent income-producing endowment created by Congress in the Utah Enabling Act for the support of the state's K-12 public education system."²⁴ In the past 20 years, revenue from SITLA's lands generated over \$1.7 billion in revenue for Utah's public schoolchildren.²⁵ According to Dave Ure, SITLA's Director,

²⁰ DOI Secretarial Order 3342 (October 21, 2016).

²¹ Amy Joi O'Donoghue, "Native American chairman says Jewell order lacks equality for tribes", Deseret News, 10/21/16, <http://www.deseretnews.com/article/865665388/Bears-Ears-coalition-leader-says-Jewell-order-lacks-equality-for-tribes.html?pg=all>.

²² Regina Lopez-Whiteskunk, Testimony before the House Committee on Natural Resources Subcommittee on Federal Lands, Hearing on H.R. 5780, Utah Public Lands Initiative Act, 09/14/16.

²³ SITLA, "109K ACRES OF SCHOOL TRUST LAND CAPTURED IN BEARS EARS NATIONAL MONUMENT", 01/03/17, <https://trustlands.utah.gov/109k-acres-of-school-trust-land-captured-in-bears-ears-national-monument/>

²⁴ Dave Ure, Testimony before the House Committee on Natural Resources Subcommittee on Federal Lands on H.R. 5780, Utah Public Lands Initiative Act, 09/14/16, pg. 2.

²⁵ Ibid. "109K ACRES OF SCHOOL TRUST LAND CAPTURED IN BEARS EARS NATIONAL MONUMENT".

“approximately 64 percent of our state is federal public land, while only six percent is trust land.”²⁶ This means that any designation that stunts the growth in revenue from SITLA lands will have far-reaching consequences for public schoolchildren across the state. Resolving this situation and freeing up the SITLA land will require “identification of possible exchange lands, negotiations, appraisals, adherence to the National Environmental Policy Act (NEPA), and approval by the Utah Legislature and likely the U.S. Congress.”²⁷ Previous exchanges took up to nine years to complete.²⁸

While proponents of the BENM claim it will bring new economic opportunities to San Juan County, this appears unlikely. San Juan County is already home to a National Park, a National Forest, a National Recreation Area, and three National Monuments.²⁹ Despite this seemingly expansive tourism economy, San Juan County is still the poorest county in Utah, with 28.5% of its population living in poverty--more than double the State average.³⁰ Further, since the National Monument designation, groups have already attempted to limit outdoor recreational access that could otherwise bring additional revenue to the area. For example, a coalition of environmental groups initiated litigation blocking previously-approved recreation access to the National Monument. In March 2017, a judge halted the creation of a 6.4-mile ATV trail the County worked on for over a decade.³¹ The State of Utah, San Juan County, and BLM are fighting the decision.

President Trump, BENM and Current Federal Land Protections

On December 4, 2017, following review by the Department of the Interior of the 27 National Monuments established since 1996, President Trump signed a proclamation to reduce the BENM from 1.35 million acres to 201,876 acres.³² The modification creates two new separate National Monuments: Shash Jáa (Navajo for “Bears Ears”) at 129,980 acres and Indian Creek at 71,896 acres.³³

Following President Trump’s modification of the BENM boundaries, all of the remaining federal lands removed from the BENM designation remain under management control of BLM and FS. There is no “land grab”—the lands remain under federal control and ownership.

Of the FS and BLM-managed lands removed from National Monument designation, approximately one-third remain protected by congressionally-designated wilderness³⁴ or through

²⁶ Utah State Board of Educators, “Utah Leaders Ask President to Address 109,106 Acres of Trust Land Inholdings Captured Within New Monument”, 12/28/16, <https://schoolboard.utah.gov/tag/utah-school-and-institutional-lands-administration>.

²⁷ Ibid. “109k Acres of School Trust Land Captured in Bears Ears National Monument”.

²⁸ Ibid.

²⁹ Matthew Anderson, “10 questions about Bears Ears for the outdoor retail industry”, Sutherland Institute, <http://sutherlandinstitute.org/10-questions-about-the-bears-ears-for-the-outdoor-retail-industry/>.

³⁰ United States Census Bureau, 2015, <https://www.census.gov/quickfacts/table/IPE120215/49037.49,49017,49025>.

³¹ Amy Joi O’Donoghue, “Bears Ears designation upends proposed ATV trail in San Juan County” Deseret News, 03/16/17,

<http://www.deseretnews.com/article/865675786/Bears-Ears-designation-upends-proposed-ATV-trail-in-San-Juan-County.html>.

³² Lee Davidson and Thomas Burr, “Trump greeted by cheers and protests as he visits Utah, trims 2 million acres from Bears Ears and Grand Staircase-Escalante national monuments”, The Salt Lake Tribune, 02/08/17, <http://www.sltrib.com/news/politics/2017/12/04/trump-is-coming-to-utah-to-perform-dramatic-feat-monday-make-big-national-monuments-mostly-disappear/>.

³³ Ibid.

³⁴ The 46,343 acre Dark Canyon Wilderness, managed by the Forest Service.

land use restrictions³⁵ to protect wilderness values within Wilderness Study Areas (WSA). Additionally, more than 25,000 acres are managed by the BLM as areas of critical environmental concern (ACECs), with use limitations in place to protect outstanding scenic values. Outside of wilderness, WSA, and ACECs, substantial portions of the land removed from the BENM designation have some sort of restriction in place on mineral extraction, rights-of-way development, and cross-country vehicle travel—all of which were put in place in 2008 as the result of a thorough and public land use planning process. The process included consultation with the Navajo Nation, Paiute Indian Tribe of Utah, Southern Ute, Hopi and Ute Mountain Ute Tribes.

Following President Trump’s modification of the BENM boundaries, 201,867 acres remain within the BENM. Of the 1,149,973 removed from national monument designation, approximately one-third are protected by congressionally-designated wilderness or the underlying Resource Management Plan (RMP) for their wilderness values. More than 46,000 acres are protected as wilderness and another nearly 340,000 acres are protected as WSA. Under the current RMP for the lands in question, all WSAs are to be managed in a fashion that “Does not impair their suitability for congressional designation” as Wilderness³⁶, subject to valid and existing rights.

Wilderness and WSA Protections within the Former BENM	
Wilderness / WSA	Acreage
Dark Canyon Wilderness	46,343
Cheesebox Canyon WSA	15,410
Dark Canyon ISA WSA	68,030
Fish Creek Canyon	46,440
Grand Gulch Wilderness Study Area	105,520
Indian Creek WSA	6,870
Mancos Mesa Wilderness Study Area	51,440
Road Canyon WSA	Not listed in RMP
South Needles WSA	160
Total Wilderness Protections	46,343 acres
Total WSA Protections	339,943 acres
Total Wilderness and WSA Protections	386,286 acres

Source: Monticello Resource Management Plan

Additionally, several ACECs exist within the former BENM lands. Both Indian Creek and Valley of the Gods ACECs are established to protect scenic values and include land use restrictions such as no surface occupancy for mineral development, no availability of mineral materials, restrictions on Off Highway Vehicle use, and limitations on right-of-way development.

Areas of Critical Environmental Concern (ACEC)	Acreage
Indian Creek	3,908
Valley of the Gods	22,863
Total ACEC Protections	26,771

Source: Monticello Resource Management Plan

Shash Jáa National Monument and Indian Creek National Monument Act:

³⁵ As mandated by the 2008 [Monticello Resource Management Plan](#).

³⁶ Federal Land Policy and Management Act of 1976 (P.L. 94-579), Section 603(c).

Following President Trump’s declaration, Congressman John Curtis, along with the entire Utah congressional delegation, introduced H.R. 4532, which provides statutory clarity for future monument management, creates additional protections for identified antiquities and establishes the first ever tribally co-managed National Monument in the nation. Additionally, the legislation maintains the existing 1.35-million-acre mineral withdrawal originally implemented under President Obama’s 2016 BENM designation. The bill also establishes the first-of-its-kind Archaeological Resources Protection Unit, and statutorily dedicates additional law enforcement personnel and federal dollars for the exclusive protection of antiquities within Monument boundaries.

The Shash Jáa Tribal Management Council created by this legislation will give local tribes unprecedented authority to co-manage the newly established monument. This is a marked difference from the Obama administration BENM designation that only gave the Bears Ears Commission an advisory role “to provide guidance and recommendations,”³⁷ which can be ignored by federal land managers. This bill grants tribes legally binding co-management rights.

This bill also preserves the Obama administration’s mineral withdrawal across the entire region. The debate over this land has never been about energy development and this provision removes that from the equation. There is not economically viable mining potential in the area.³⁸ The Utah Congressional delegation, as well as private industry all support the provisions in this bill that restrict mineral and energy development within the Monument areas.

Section by Section

Section 1. Short Title

Section 2. Table of Contents

Section 3- Withdrawal

Preserves the 1.35-million acre mineral withdrawal declared under President Obama’s Bears Ears proclamation.

Section 4- Proclamation Termination

Declares President Obama’s Bears Ears Presidential Proclamation null and void.

Section 5- Authorization of Appropriations

Authorizes \$1.5 million for each of fiscal years 2018-2024 to carry out this Act.

Title I-Shash Jáa National Monument

Section 101- Establishment and Purpose

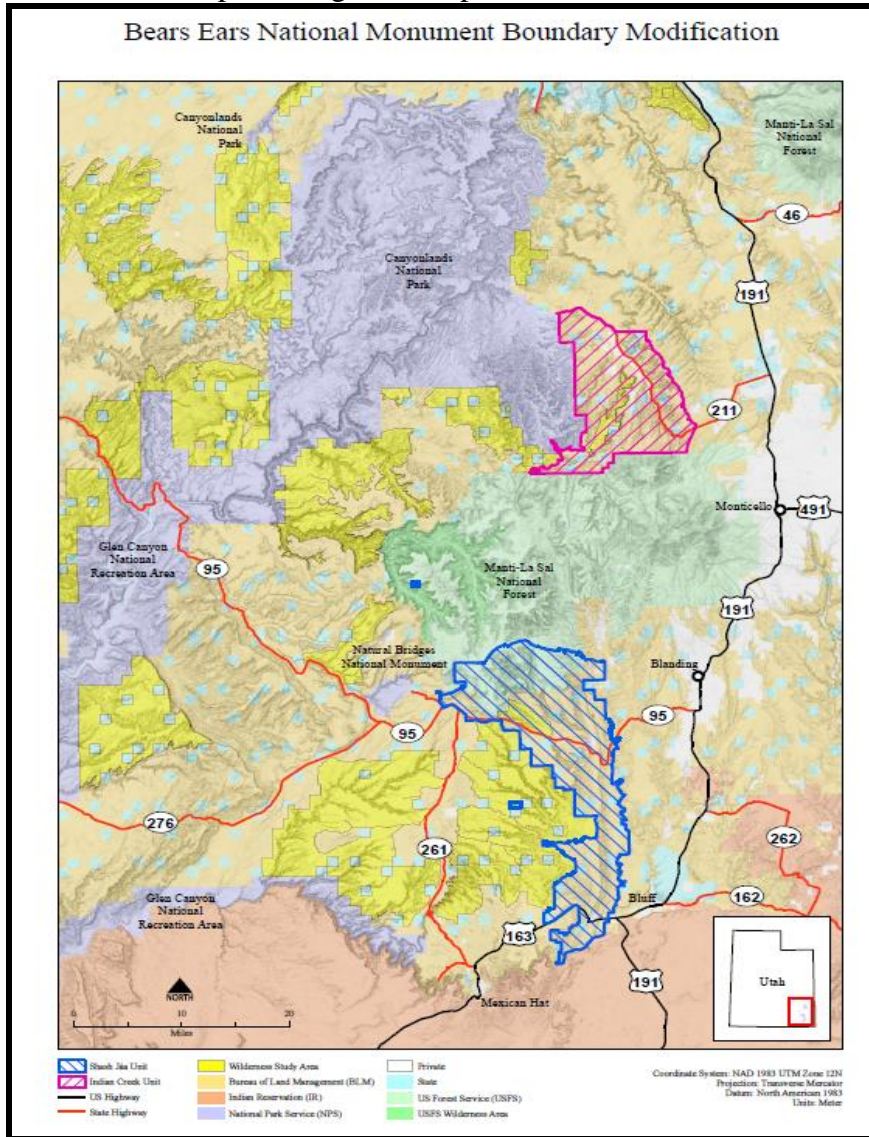
(a) Establishes a new 142,337-acre Shash Jáa National Monument.

³⁷ President Barack Obama, Presidential Proclamation – Establishment of the Bears Ears National Monument, 12/28/16, <https://obamawhitehouse.archives.gov/the-press-office/2016/12/28/proclamation-establishment-bears-ears-national-monument>.

³⁸ Alan Kovski, “National Monuments May Change, But Probably Not for Energy”, Bloomberg BNA, 9/24/17, <https://www.bna.com/national-monuments-may-n73014463620/>

- (b) The purpose of the Monument is to protect, conserve and enhance the Monument’s unique historic, sacred, cultural, scientific, scenic, archaeological, educational and natural resources.

Section 102- Map and Legal Description



Map 2: Bears Ears National Monument Boundary Modification. Department of the Interior

Section 103- Administration of Shash Jaa National Monument

- (a) Establishes the Shash Jaa Tribal Management Council to manage the Monument.
- (b) Management Plan
 - (1) Requires the Shash Jaa Tribal Management Council to develop a comprehensive plan for long-term management of the Monument. Allows for the plan to be updated or amended in response to changing circumstances.

(2) Requires the Tribal Management Council to consult with appropriate State and local entities, the Bears Ears Commission, affected Indian tribes, and the public. Special priority is given to those with special expertise in Native American traditional and historical knowledge.

(3) Requires the Tribal Management Council to submit a written explanation to relevant Congressional committees not less than 30 days before the effective date of the management plan if the Tribal Management Council does not incorporate written recommendations submitted by State or local entities, the Bears Ears Commission, or affected Indian tribes into the management plan.

(4) Relationship with Bears Ears Commission

(A) Requires the Tribal Management Council to fully consider integrating the traditional and historic knowledge and special expertise of the Bears Ears Commission.

(B) Requires the Tribal Management Council to submit a written explanation not less than 45 days before the effective date of the management plan if the Tribal Management Council does not incorporate written recommendations submitted by the Bears Ears Commission.

(5) Elements of Management Plan

(A) Only allows uses of the Monument that are determined by the Tribal Management Council to be consistent with the purposes of the Monument.

(B) Requires compliance with existing laws protecting antiquities and archeological artifacts.

(C) Requires the plan to integrate Native knowledge to improve social, economic and ecological sustainability.

(D) Requires continued use and access for the following:

(i) traditional and cultural ceremonies.

(ii) source of traditional plants and other materials for subsistence and other uses.

(iii) any other activities deemed appropriate in consultation with the Shash Jáa Archaeological Resources Protection Unit.

(E) Allows grazing to continue in places where grazing was established before the date of enactment of this Act.

(F) Allows commercial recreation activities within the Monument.

(G) Allows wildland fire operations to take place within the Monument.

(c) Allows the Tribal Management Council to accept donations to further the purposes of the Monument.

Section 104- General Provisions

(a) Withdraws the land within the Shash Jáa National Monument from entry, appropriation or disposal; mining operations; and mineral or geothermal leasing.

(b) Land Acquisition

(1) Permits the Secretaries of the Interior or Agriculture to acquire lands or interest in lands within the exterior boundaries of the Monument. These lands can be acquired by donation, purchased with donated or appropriated funds, exchanged or transferred from a federal agency only with the approval of the Shash Jáa Tribal Management Council.

(2) Prohibits acquisition using eminent domain or condemnation.

- (3) Clarifies that any land that is acquired within the exterior boundary of the Shash Jáa National Monument shall be added to the Monument.
- (c) Excludes non-federal land from being a part of the Monument.
- (d) Stipulates that this Act shall not affect existing water rights in the area.
- (e) Stipulates that this Act shall not affect State fish and wildlife authority.
- (f) Stipulates that emergency response activities within the Monument shall not be affected by this Act.
- (g) Stipulates that nothing in this Act shall prevent overflights of military aircraft over the Monument.
- (h) Stipulates that nothing in this title shall affect Tribal rights.

Section 105- Shash Jáa Tribal Management Council

- (a) The Tribal Management Council is tasked with developing and implementing the comprehensive management plan required by this title and to regularly and meaningfully engage with the Bears Ears Commission regarding the Shash Jáa National Monument.
- (b) Membership
The Tribal Management Council will consist of seven individuals appointed by the President:
 - (1) One individual from the Department of the Interior or the Department of Agriculture
 - (2) Six individuals appointed in consultation with the Utah Congressional delegation:
 - (A) Three who are members of the Navajo Nation, one of whom must represent the Aneth Chapter
 - (B) One who is a member of the White Mesa Utes of the Ute Mountain Ute Tribe.
 - (C) Two who are members of the San Juan County Board of Commissioners
- (c) Qualifications of Members appointed in consultation with the Utah Congressional delegation
 - (1) No federal employees.
 - (2) All must be residents of Utah.
- (d) Limits non-federal Tribal Management Council members to five year terms and prohibits members from serving more than three consecutive terms.
- (e) Establishes the same process for filling vacancies as was laid out in the initial selection guidelines.
- (f) Establishes that members will serve without pay except for reasonable travel expenses.
- (g) Gives members the authority to select a Chair of the Tribal Management Council from among the non-federal members.
- (h) Requires the Tribal Management Council to post an annual public report by September 30 of each year and requires the report to include a description of the actions taken by the Tribal Management Council to develop or implement the management plan, the recommendations made by certain stakeholders, and its administrative expenses.
- (i) Gives the Tribal Management Council authority to request administrative assistance from the Department of the Interior or Department of Agriculture.
- (j) Requires the Tribal Management Council to meet at least once per year.

Section 106- Bears Ears Commission

- (a) Reestablishes and reaffirms the Bears Ear Commission with the same membership and responsibilities as were established by President Obama's Bears Ears Proclamation.
- (b) Clarifies that the Commission shall also provide guidance and recommendations to the Tribal Management Council and Shash Jáa Archaeological Resources Protection Unit regarding development and implementation of the management plan for the Monument.

Section 107- Archeological Resources Protection

(a) Shash Jáa Archaeological Resources Protection Unit

(1) Requires the Tribal Management Council to establish and maintain a Shash Jáa Archaeological Resources Protections Unit to provide technical assistance to protect and preserve the unique artifacts, antiquities and resources of the Monument.

(2) The Unit shall consist of nine individuals appointed by the Tribal Management Council as follows:

(A) Five individuals with expertise in preserving tribal relics, artifacts and other sacred tribal site and object.

(B) One individual with expertise in preserving archaeological resources.

(C) One individual with expertise in protecting scenic and natural resources.

(D) One individual representing a scientific or educational institution in the State of Utah.

(E) One individual with expertise in historic preservation in the State of Utah.

(3) Duties

(A) Requires the Unit to advise the Tribal Management Council on ways to protect, conserve and enhance the unique resources of the Monument.

(B) Requires the Unit to recommend educational materials and signage to inform visitors of the unique and nationally historic resources in the Monument.

(C) Requires the Unit to recommend educational material or signage to prevent the destruction, vandalism or looting of sites within the Monument.

(D) Requires the Unit to submit a report to the Tribal Management Council within 60 days after its establishment regarding sites that are at a high risk of destruction, degradation, vandalism and looting within the Monument; suggestions for specific actions to minimize these threats within the Monument; and suggestions for additional administrative or other actions to minimize these threats within the Monument.

(4) Terms

(A) After staggered initial appointments, limits Unit members to five year terms.

(B) Establishes the same process for filling vacancies as were laid out in the initial selection guidelines.

(C) Establishes that members will serve without pay except for reasonable travel expenses.

(D) Gives the Unit authority to request administrative assistance from the Department of the Interior or Department of Agriculture.

(E) Requires the Unit to meet at least once per year.

Section 108- Enhanced Resource Protection Capabilities in the Shash Jáa National Monument

(a) Enhanced Enforcement Capability

- (1) Requires the Secretary of the Interior and the Secretary of Agriculture to assign at least 10 law enforcement personnel to protect the resources and antiquities in the Monument.
- (2) Requires the Secretary of the Interior and the Secretary of Agriculture to ensure law enforcement personnel perform their duties consistent with the management plan required by this title.
- (b) Requires the Secretary of the Interior and the Secretary of Agriculture to enter into memoranda of understanding or cooperative agreements with local, State, or Tribal law enforcement entities.

Section 109- Scientific Research To Further Purpose of Shash Jáa National Monument

Authorizes the Secretary of the Interior and the Secretary of Agriculture to enter into memoranda of understanding or cooperative agreements with educational institutions or other relevant entities to conduct scientific research within the Monument.

Section 110- Federal Land Manager Adherence

Requires federal land managers to adhere to the management plan created by the Tribal Management Council.

Title II-Indian Creek National Monument

Section 201- Establishment and Purpose

- (a) Establishes a new 86,447-acre Indian Creek National Monument.
- (b) The purpose of the Monument is to protect, conserve, and enhance the unique and nationally important recreational, historic, sacred, cultural, scientific, scenic, archaeological, natural and educational resources of the Monument.

Section 202- Map and Legal Description

See Map 2 on page 9.

Section 203- Administration of Indian Creek National Monument

- (a) Establishes the Indian Creek Management Council to manage the Monument.
- (b) Management Plan
 - (1) Requires the Management Council to develop a comprehensive plan for long-term management of the Monument. Allows for the plan to be updated or amended in response to changing circumstances.
 - (2) Requires the Management Council to consult with appropriate State and local entities, the Bears Ears Commission, affected Indian Tribes, and the public. Special priority is given to those with special expertise in Native American traditional and historical knowledge.
 - (3) Requires the Management Council to submit a written explanation to relevant Congressional Committees not less than 30 days before the effective date of the management plan if the Management Council does not incorporate written recommendation submitted by State or local entities, the Bears Ears Commission, or affected Indian tribes into the management plan.
 - (4) Relationship with Bears Ears Commission

(A) Requires the Management Council to fully consider integrating the traditional and historic knowledge and special expertise of the Bears Ears Commission.

B) Requires the Management Council to submit a written explanation not less than 45 days before the effective date of the management plan if the Management Council does not incorporate written recommendations submitted by the Bears Ears Commission.

(5) Elements of Management Plan

(A) Only allow uses of the Monument that are determined by the Management Council to be consistent with the purposes of the Monument.

(B) Require compliance with existing laws protecting antiquities and archeological artifacts.

(C) Require the plan to integrate Native knowledge to improve social, economic and ecological sustainability.

(D) Require continued use and access (including motorized access) for the following:

(i) traditional and cultural ceremonies

(ii) source of traditional plants and other materials for subsistence and other uses

(iii) recreational access

(iii) any other activities deemed appropriate in consultation with the Indian Creek Archaeological Resources Protection Unit

(E) Allow grazing to continue in places where grazing was established before the date of enactment of this Act.

(F) Allow commercial recreation activities with the Monument.

(G) Allow wildland fire operations to take place within the Monument.

(c) Allows the Management Council to accept donations to further the purposes of the Monument.

Section 204- General Provisions

(a) Withdraws the land within the Indian Creek National Monument from entry, appropriation or disposal; mining operations; and mineral or geothermal leasing.

(b) Land Acquisition

(1) Permits the Secretary of the Interior or the Secretary of Agriculture to acquire lands or interest in lands within the exterior boundaries of the Monument. These lands can be acquired by donation, purchased with donated or appropriated funds, or exchanged or transferred from a federal agency only with the approval of the Management Council.

(2) Prohibits acquisition using eminent domain or condemnation.

(3) Clarifies that any land that is acquired within the exterior boundary of the Indian Creek National Monument shall be added to the Monument.

(c) Excludes non-federal land from the Monument.

(d) Stipulates that this Act shall not affect existing water rights in the area.

(e) Stipulates that this Act shall not affect State fish and wildlife authority

(f) Stipulates that emergency response activities within the Monument shall not be affected by this Act.

(g) Stipulates that nothing in this Act shall prevent overflights of military aircraft over the Monument.

(h) Stipulates that nothing in this title shall affect Tribal rights.

Section 205- Indian Creek Management Council

- (a) The Management Council is tasked with developing and implementing the comprehensive management plan required by this title and to regularly and meaningfully engage with the Bears Ears Commission regarding the Indian Creek National Monument.
- (b) Membership
 - The Management Council will consist of five individuals appointed by the President:
 - (2) One individual from the Department of the Interior or the Department of Agriculture
 - (2) Four individuals appointed in consultation with the Utah Congressional delegation:
 - (A) Two who are members of the San Juan County Board of Commissioners
 - (B) One who is a representative of the executive branch off the State of Utah with expertise in the purposes of the Monument.
 - (C) One who is a member of a federally-recognized Indian tribe in the State of Utah
- (c) Qualifications of Members appointed in consultation with the Utah Congressional delegation
 - (1) No federal employees.
 - (2) All must be residents of Utah.
- (d) Limits non-federal Management Council members to five year terms and prohibits members from serving more than three consecutive terms.
- (e) Establishes the same process for filling vacancies as was laid out in the initial selection guidelines
- (f) Establishes that members will serve without pay except for reasonable travel expenses.
- (g) Gives members the authority to select a Chair of the Management Council from among the non-federal members.
- (h) Requires the Management Council to post an annual public report by September 30 of each year and requires the report to include a description of the actions taken by the Management Council to develop or implement the management plan, the results of recommendations made by certain stakeholders, and its administrative expenses.
- (i) Gives the Management Council authority to request administrative assistance from the Department of the Interior or Department of Agriculture.
- (j) Requires the Management Council to meet at least once per year.

Section 206- Bears Ears Commission

Clarifies that the Bears Ears Commission will also advise the Management Council as provided under this title.

Section 207-Archaeological Resources Protection

- (a) Indian Creek Archaeological Resources Protection Unit
 - (1) Requires the Management Council to establish and maintain an Indian Creek Archaeological Resources Protections Unit to provide technical assistance to protect and preserve the unique artifacts, antiquities and resources of the Monument.
 - (2) Membership
 - The Management Council shall appoint nine individuals to the Unit as follows:

- (A) Five individuals with expertise in preserving tribal relics, artifacts and other sacred tribal site and object.
 - (B) One individual with expertise in preserving archaeological resources.
 - (C) One individual with expertise in protecting scenic and natural resources.
 - (D) One individual representing a scientific or educational institution in the State of Utah.
 - (E) One individual with expertise in historic preservation in the State of Utah.
- (3) Archaeological Resources Protection Unit Duties
- (A) Requires the Unit to advise the Management Council on ways to protect, conserve and enhance the unique resources in the Monument.
 - (B) Requires the Unit to recommend educational materials and signage to informing visitors of the unique and nationally historic resources in the Monument.
 - (C) Requires the Unit to recommend educational material or signage to prevent the destruction, vandalism or looting of sites within the Monument.
 - (D) Requires the Unit within 60 days after its establishment to submit a report to the Management Council regarding sites that are at a high risk of destruction, degradation, vandalism and looting within the Monument; suggestions for specific actions to minimize these threats within the Monument; and suggestions for additional administrative or other actions to minimize these threats within the Monument.
- (4) Terms
- (A) Limits Unit members to five year terms.
 - (B) Establishes the same process for filling vacancies as was laid out in the initial selection guidelines.
 - (C) Establishes that members will serve without pay except for reasonable travel expenses.
 - (D) Gives the Unit authority to request administrative assistance from the Department of the Interior or Department of Agriculture.
 - (E) Requires the Unit to meet at least once per year.

Section 208- Enhanced Resource Protection Capabilities in the Indian Creek National Monument

- (a) Enhanced Enforcement Capability
 - (1) Requires the Secretary of the Interior and the Secretary of Agriculture to assign at least 10 law enforcement personnel to protect the resources and antiquities in the Monument.
 - (2) Requires the Secretary of the Interior and the Secretary of Agriculture to ensure law enforcement personnel perform their duties consistent with the management plan required by this title.
- (b) Requires the Secretary of the Interior and the Secretary of Agriculture to enter into memoranda of understanding or cooperative agreements with local, State, or Tribal law enforcement entities.

Section 209- Scientific Research To Further Purpose of Indian Creek National Monument

Authorizes the Secretary of the Interior and the Secretary of Agriculture to enter into memoranda of understanding or cooperative agreements with educational institutions or other relevant entities to conduct scientific research within the Monument.

Section 210- Federal Land Manager Adherence

Requires federal land managers to adhere to the management plan created by the Management Council.

Title III Utah Public School Trust Land Certainty

Section 301- Definitions

Section 302- Exchange of Land to Benefit the Utah Public School Trust

- (a) Authorizes the Secretary of the Interior to accept any offer the State of Utah makes to convey all or part of the non-Federal land that is part of the State Trust Land proposed for transfer.
- (b) Applicable Law
 - (1) Requires the land exchange to be subject to the Federal Land Policy and Management Act (FLPMA).
 - (2) The Secretary shall not be required to undertake any additional land use planning under FLPMA before the conveyance of the Federal land.
- (c) Requires the Secretary and the State of Utah to jointly select which parcels of Federal land to exchange.
- (d) Stipulates that the authorized land exchange shall be subject to existing rights and permitted existing uses.
- (e) Stipulates the title to the Federal land and non-Federal land to be exchanged shall be acceptable to the Secretary and the State of Utah.
- (f) Requires the Secretary to consult with any federally-recognized Indian tribe in the vicinity of the Federal land and non-Federal land.
- (g) Requires the Secretary to finalize the map and legal descriptions of the land to be conveyed.
- (h) Stipulates that the costs of conveyance shall be allocated in accordance with FLPMA.
- (i) Requires the non-Federal land exchanged to be added to either the Shash Jáa National Monument or the Indian Creek National Monument and to be administered in accordance with this Act and relevant existing federal land laws.
- (j) Requires the land exchange to take place as expeditiously as possible.

Section 303- Equal Value Land Exchanges and Appraisals

- (a) Appraisals
 - (1) Stipulates that the values of the lands exchanged shall be determined by one or more independent and qualified appraisers.
 - (2) Authorizes the Secretary of the Interior and the State of Utah to use an independent appraiser retained by the State if the Secretary consents.
 - (3) Requires the appraisals to be conducted with nationally recognized appraisal standards.

- (4) Requires the appraisals conducted under this title to be approved by both the State of Utah and the Secretary.
 - (5) Requires the cost of the appraisal to be split equally between the Secretary and the State.
 - (6) Allows appraisals to consider mineral and technical reports in the evaluation of the Federal and non-Federal land.
 - (7) Appraisals shall remain valid for three years after approval.
- (b) Equalization
- (1) If the final appraised value of Federal land exceeds the non-Federal land, additional non-Federal land can make up the difference, or Secretary can accept a payment of more than 25 percent of the value of the Federal land.
 - (2) If the final appraised value of the non-Federal land exceeds the Federal land, the State of Utah shall adjust the non-Federal acreage to be conveyed.

Cost:

The Congressional Budget Office has not completed a cost estimate of this bill at this time.

Administration Position:

The Administration's position is currently unknown.

Effect on Current Law (Ramseyer)

None.