

NATIVE AMERICAN MANAGEMENT

Tribes can manage their own antiquities sites on federal lands

by Terry L. Anderson and Brian Seasholes



Bears Ears National Monument, Utah

Photo © Bob Wick, BLM

There is no doubt that southeastern Utah contains an abundance of culturally significant artifacts and sacred sites. But when President Barack Obama used the Antiquities Act to declare the Bears Ears National Monument in December 2016, many objected to the scale of the designation. The monument encompasses 1.35 million acres, vastly more land than the sites containing significant Native American antiquities, and the designation puts much of the area off limits to certain uses such as grazing, energy development, and other economic activities in the future.

In his June 2017 interim report on Bears Ears, Interior Secretary Ryan Zinke recommended that Congress shrink the size of the monument to ensure that the designation is limited to “the smallest area compatible with proper care and management of the objects to be protected,” as required by the Antiquities Act.³ The report also noted that the region contains “rock art, dwellings, ceremonial sites, granaries, and other cultural resources that reflect its long historical and cultural significance to Native Americans” and called for legislation granting tribes legal authority for “co-management of designated cultural areas” within revised monument boundaries.

Although President Obama's proclamation creating the national monument contained a provision to establish the Bears Ears Commission, consisting of one member from each of five Indian tribes who will provide input on the management of the monument, it did not go far enough to grant real tribal authority.⁴ The commission's role is only advisory, so the federal government can heed or ignore its recommendations as it sees fit. Meaningful control of sacred cultural sites involves more than the chance to consult.⁵

One way the federal government could give tribes direct control over federal land containing antiquities sites would be to grant Native Americans legal rights to oversee and manage the specific sites in the region. Such a framework would confer strong and durable rights to Native Americans and provide a transparent mechanism for governance.

In fact, there is precedent for partnering with tribes to manage federal lands. Four national park units, including two national monuments, are already jointly managed by the federal government and tribal partners and could serve as models in southeastern Utah.⁶ One of the most noteworthy is the Canyon de Chelly National Monument in northeastern Arizona. The site is owned by the Navajo Nation, and about 40 Navajo families still live and farm there. The Navajo and National Park Service work cooperatively to protect the area, especially the canyon floor where antiquities sites are located.⁷ The Navajo Nation retains authority over many activities, including the right to control access to and conduct tours of the area. The model has worked well: Canyon de Chelly attracts more than 800,000 annual visitors and is one of the best known national monuments in the country.⁸

Similarly, a group of tribes could be allowed to manage the sacred sites within the Bears Ears region. One such site is Grand Gulch, a remote and narrow canyon of about 38,000 acres within the monument boundaries and home to numerous Anasazi sites of cultural significance. Tribal managers could coordinate with federal administrators in the same way that the Navajo work with the National Park Service in Canyon de Chelly. The group could control access to ensure that the gulch is not overrun with or damaged by tourists, charge visitor fees to raise revenue for protection efforts, or even prohibit visitors at certain sites that warrant it.

Granting Native Americans control to antiquities sites within Bears Ears would give tribes true authority over culturally important sites in the region, unlike a national monument proclamation that merely pays lip service to tribal authority. The approach could involve a tribal non-profit group that receives donations from foundations, corporations, and individuals to fund the protection of antiquities. Tribes granted authority could work with managing federal agencies to devise a plan to protect sites and possibly even jointly certify guides. The framework would not only do a better job protecting antiquities in the area than sole control by funding-strapped agencies, but it would also confer clear and meaningful rights to Native Americans who have historical ties to the region.

While one tribe owns Canyon de Chelly, Bears Ears is more complex because it involves five tribes and federally owned land. Furthermore, tribal members disagree over the extent of the protections needed in the Bears Ears region and over which tribes and members should have co-management authority. Therefore, some sort of fair and transparent process would be necessary to sort out competing Native American claims to antiquities on federal land.⁹

There is every reason that a co-management approach could succeed in Bears Ears—or in similar cases across the country that involve protection of Native American cultural sites and artifacts. Given Native Americans’ historical ties to the antiquities and archaeological sites in the Bears Ears region, co-management could protect sacred sites and objects better than the non-binding consultation framework of the Bears Ears monument proclamation.

Granting control of such sites to Native Americans would allow for protection of antiquities on federal land with much less political rancor and greater effectiveness than current management of Bears Ears has demonstrated so far, and the approach could also conceivably prevent similar conflicts elsewhere in the future.

Recommendations:

- Provide a legal mechanism for Native American tribes to co-manage antiquities sites on federal land. Such a mechanism would confer meaningful rights to such sites and allow for tribes to control access and collect visitor fees.
- Establish a fair and transparent process to sort out competing Native American claims to co-manage antiquities sites on federal land.
- Limit use of the Antiquities Act to its statutory intent of “the smallest area compatible with proper care and management of the objects to be protected.”

Further Reading:

- [*Unlocking the Wealth of Indian Nations*](#), by Terry L. Anderson (ed). Lexington Press (2016).
- [“Give Bears Ears To Native Americans,”](#) by Terry L. Anderson. *Forbes*. May 19, 2017.
- [“Public Comment to the U.S. Department of the Interior on the Review of Certain National Monuments Established Under the Antiquities Act of 1906: Regarding Bears Ears National Monument,”](#) by Brian Seasholes. May 25, 2017.