



## **Resolution of the NATIONAL NATIVE AMERICAN BAR ASSOCIATION**

### **RESOLUTION # 2017 – 002**

**TITLE:** To Urge the Federal Government to Protect Tribal Interests in Federal Public Lands and to Not Transfer Federal Public Lands to the States

**WHEREAS**, the National Native American Bar Association (“NNABA”) works to promote issues important to the Native American community and to improve professional opportunities for Native American lawyers, we do hereby establish and submit the following resolution; and

**WHEREAS**, NNABA was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors and law students, and NNABA strives to be a leader on social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians; and

**WHEREAS**, the land that is currently treated as “Indian country” or is otherwise within the territorial jurisdiction of tribal nations is but a small remnant of the territories that historically comprised tribal homelands; and

**WHEREAS**, much of the land that tribal nations historically inhabited is currently held by the United States and administered as federal public lands; and

**WHEREAS**, Article 26 (1) of the United Nations Declaration on the Rights of Indigenous Peoples (“the Declaration”) recognizes and respects indigenous peoples’ “right to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.” Article 26 (3) requires “[s]tates shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned”; and

**WHEREAS**, Article 29 (1) of the Declaration recognizes that “[i]ndigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination”; and

**WHEREAS**, the United States of America State Department announced U.S. support for the Declaration and its Articles in 2010.



**WHEREAS**, federal public lands provide habitat for many culturally significant species of flora and fauna, including, in many cases, species in which tribal nations have treaty or statutory rights; and

**WHEREAS**, federal public lands encompass a great many places and landscapes that are important for the cultural heritage of tribal nations, and many such places hold religious and cultural significance and may also be eligible for the National Register of Historic Places; and

**WHEREAS**, in recent years, federal land managing agencies have taken a number of administrative actions in recognition of the various kinds of rights, interests, and concerns that tribal nations have regarding federal public lands, including but not limited to:

*Secretarial Order No. 3342: Identifying Opportunities for Cooperative and Collaborative Partnerships with Federally Recognized Indian Tribes in the Management of Federal Lands and Resources* (Oct. 21, 2016).

National Park Service (NPS) rule on gathering and removal of plants or plant parts for traditional purposes by members of federally recognized Indian tribes at traditional locations within National Park areas, 81 Fed. Reg. 45024 (July 12, 2016).

Forest Service, Department of Agriculture, final rule on providing forest products to tribes for traditional and cultural purposes, 81 Fed. Reg. 65891 (Sept. 26, 2016).

Bears Ears National Monument in Utah and Gold Butte National Monument in Nevada, established by presidential proclamations, 82 Fed. Reg. 1139, 1149 (Jan. 5, 2017), to, among other purposes “ensure protection of Indian sacred sites and traditional cultural properties . . . and provide for access by members of Indian tribes for traditional and customary uses,” and, with respect to Bears Ears, in recognition of the leadership provided by five tribal nations in the establishment of the National Monument, the proclamation includes the establishment of a commission, consisting of one official from each of the five tribal nations, “to ensure that management decisions affecting the monument reflect tribal expertise and traditional and historical knowledge.”

Memorandum of Understanding among the Departments of the Interior, Agriculture, Justice, Commerce, Defense, and Transportation, the Environmental Protection Agency, Council on Environmental Quality, and the Advisory Council on Historic Preservation regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights (Sept. 2016).



Memorandum of Understanding among the Departments of Defense, the Interior, Agriculture, and Energy, and the Advisory Council on Historic Preservation regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites (Nov. 2012).

**WHEREAS**, in recent years, proposals have been advanced to transfer federal public lands to the states, which would undercut the positive developments noted above, but, in the current political environment such proposals must be taken seriously; and

**WHEREAS**, ON April 26, 2017, the President signed an Executive Order directing the Secretary of the Interior to conduct a review of Presidential proclamations since January 1996 designating new national monuments or expanding existing monuments, and as part of such review, to provide an interim report (within 45 days) specifically addressing the establishment of Bears Ears National Monument, as well as such other national monument designations as the Secretary decides to include in such interim report.

**NOW THEREFORE BE IT RESOLVED**, that NNABA acknowledges that administrative actions and policies such as those listed above are positive steps in the ongoing development of relationships among federal land managing agencies and tribal nations, which can be expected to contribute to empowerment of tribal nation leaders to more effectively advocate for tribal nation rights, interests, and concerns regarding federal public lands and will, in turn, lead to decisions by federal agency officials that more fully incorporate consideration of tribal nation perspectives; and

**BE IT FURTHER RESOLVED**, that NNABA urges the federal government to not transfer federal public lands to the states, thus ensuring the protection of tribal rights, interest, and cultural resources in federal public lands; and

**BE IT FURTHER RESOLVED**, that NNABA urges the Secretary of the Interior to engage in meaningful government-to-government consultation with tribal nations in conducting the review called for in the Executive Order of April 26, 2017; and

**BE IT FURTHER RESOLVED**, that NNABA opposes any changes in the designation of Bears Ears National Monument unless such changes are supported by each of the tribal nations represented in the Bears Ears Commission, and

**BE IT FINALLY RESOLVED**, that this shall be the policy of NNABA until it is withdrawn or modified by subsequent resolution.



NATIONAL  
NATIVE AMERICAN  
BAR ASSOCIATION

### **CERTIFICATION**

The foregoing resolution was adopted by the Board of the National Native American Bar Association, on May 15, 2017, with a quorum present.

A handwritten signature in blue ink that reads "Diandra Benally". The signature is fluid and cursive.

Diandra Benally, NNABA President