

To: Kevin Haugrud[jack.haugrud@sol.doi.gov]
Cc: Brown, Laura[Laura.Brown@sol.doi.gov]
From: Moody, Aaron
Sent: 2017-08-12T09:19:12-04:00
Importance: Normal
Subject: Fwd: co-management
Received: 2017-08-12T09:19:22-04:00
[Co management AGM 1 28 16.docx](#)
[Management with Tribes 2 9 16 to NB CLEAN.docx](#)
[letter from utah delegation.pdf](#)
[2016-12-29-JEC-to-Jewell-re-Bears-Ears.pdf](#)

Jack-

(b) (5) ACP
[Redacted]

[Redacted]

[Redacted]

Hope this helps. Of course let me know if you need more/something else.

-Aaron

Aaron G. Moody
Assistant Solicitor, Branch of Public Lands

Division of Land Resources
Office of the Solicitor
U.S. Department of the Interior
202-208-3495

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----- Forwarded message -----

From: **Moody, Aaron** <aaron.moody@sol.doi.gov>
Date: Fri, Jul 28, 2017 at 3:37 PM
Subject: Fwd: co-management
To: "Caminiti, Mariagrazia" <mariagrazia.caminiti@sol.doi.gov>

last one!

Aaron G. Moody
Assistant Solicitor, Branch of Public Lands
Division of Land Resources
Office of the Solicitor
U.S. Department of the Interior
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From: **Moody, Aaron** <aaron.moody@sol.doi.gov>
Date: Tue, Mar 7, 2017 at 1:06 PM
Subject: co-management
To: Downey Magallanes <downey_magallanes@ios.doi.gov>
Cc: "Brown, Laura" <Laura.Brown@sol.doi.gov>

ATTORNEY CLIENT PRIVILEGED/ATTORNEY WORK PRODUCT

Hi, Downey
Per our discussion, I'm attaching:

- (1) a Memo from former Deputy SOL Bret Birdsong to former Deputy Chief of Staff Nikki Buffa re: co management;
- (2) an outline I did upon which Bret's memo was partially based (has some more caselaw etc in it); and
- (3) letters from the delegation on the topic.

(b) (5) ACP



(b)(5) ACP, AWP
[Redacted text block]

A few points of note. First, the first two docs and the draft language quoted above are attorney client privileged. Second, the memos' reference to a tribal proposal is a reference to the proposal of the inter tribal coalition, which is available online [here](#). (b) (5) ACP

[Redacted text block]

I know this is a lot of info I'd be happy to discuss/walk through it.

Aaron

Aaron G. Moody
Assistant Solicitor, Branch of Public Lands
Division of Land Resources
Office of the Solicitor
U.S. Department of the Interior
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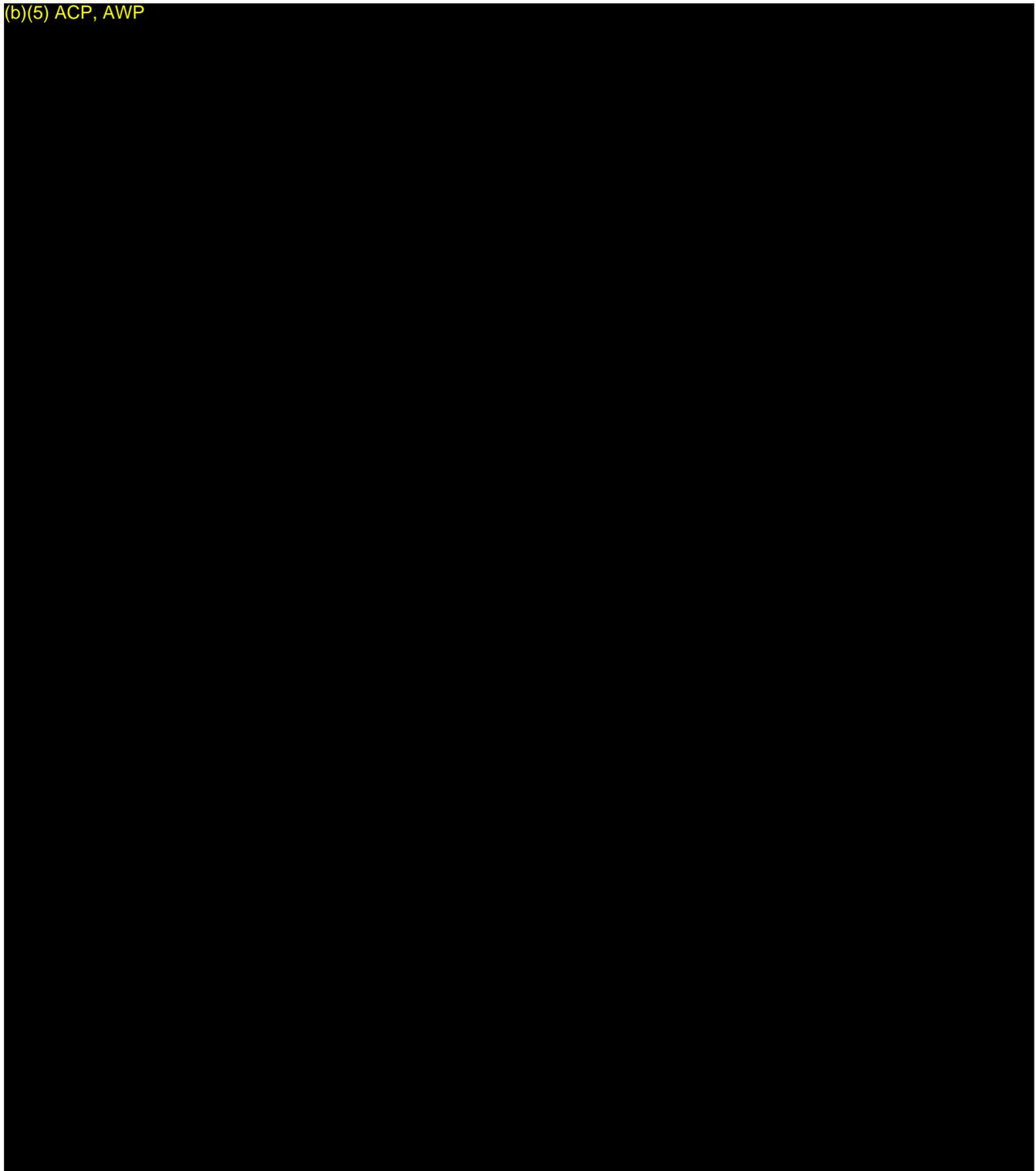
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To: Nikki Buffa, Deputy Chief of Staff

From: Bret Birdsong, Deputy Solicitor for Land Resources

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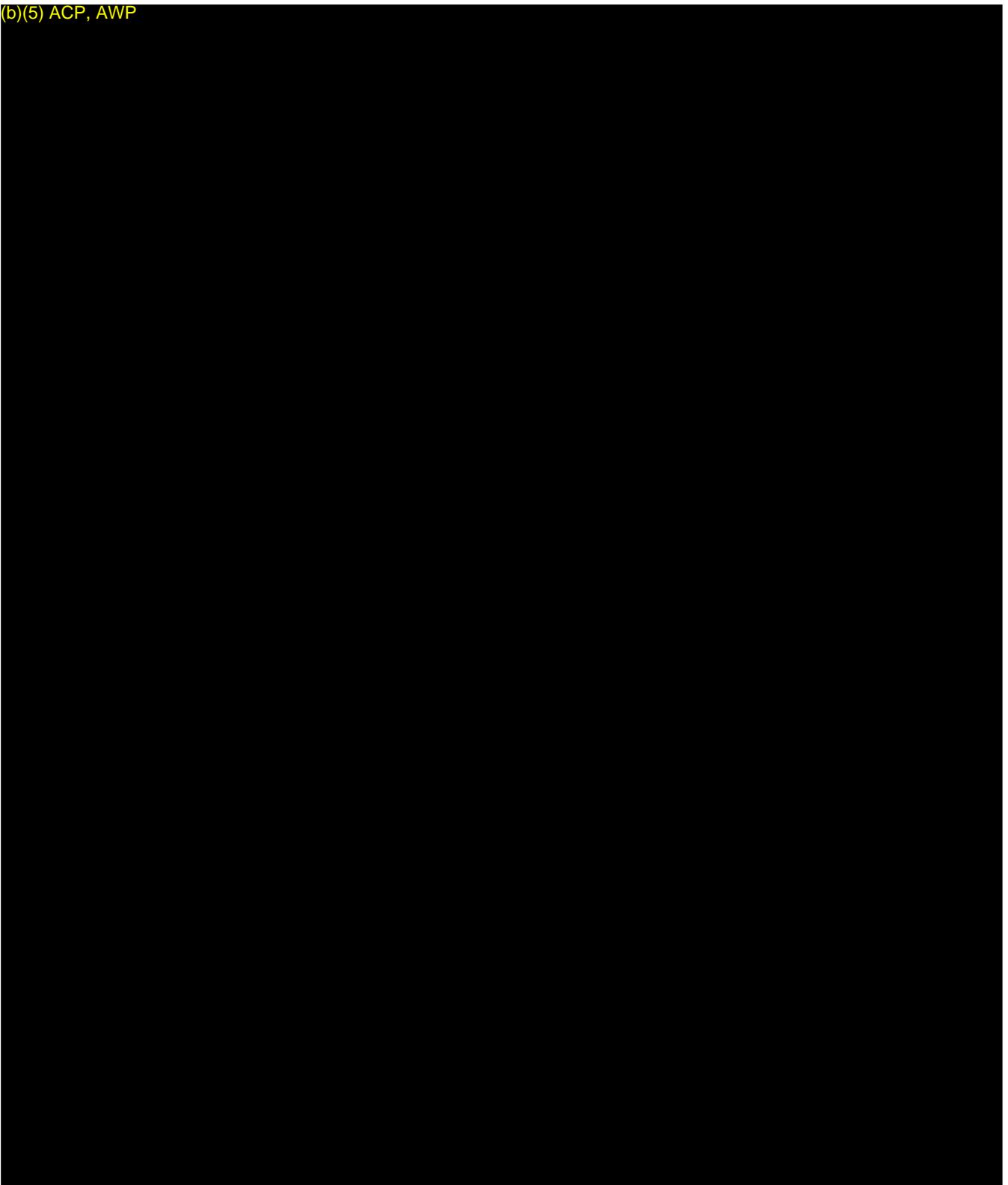
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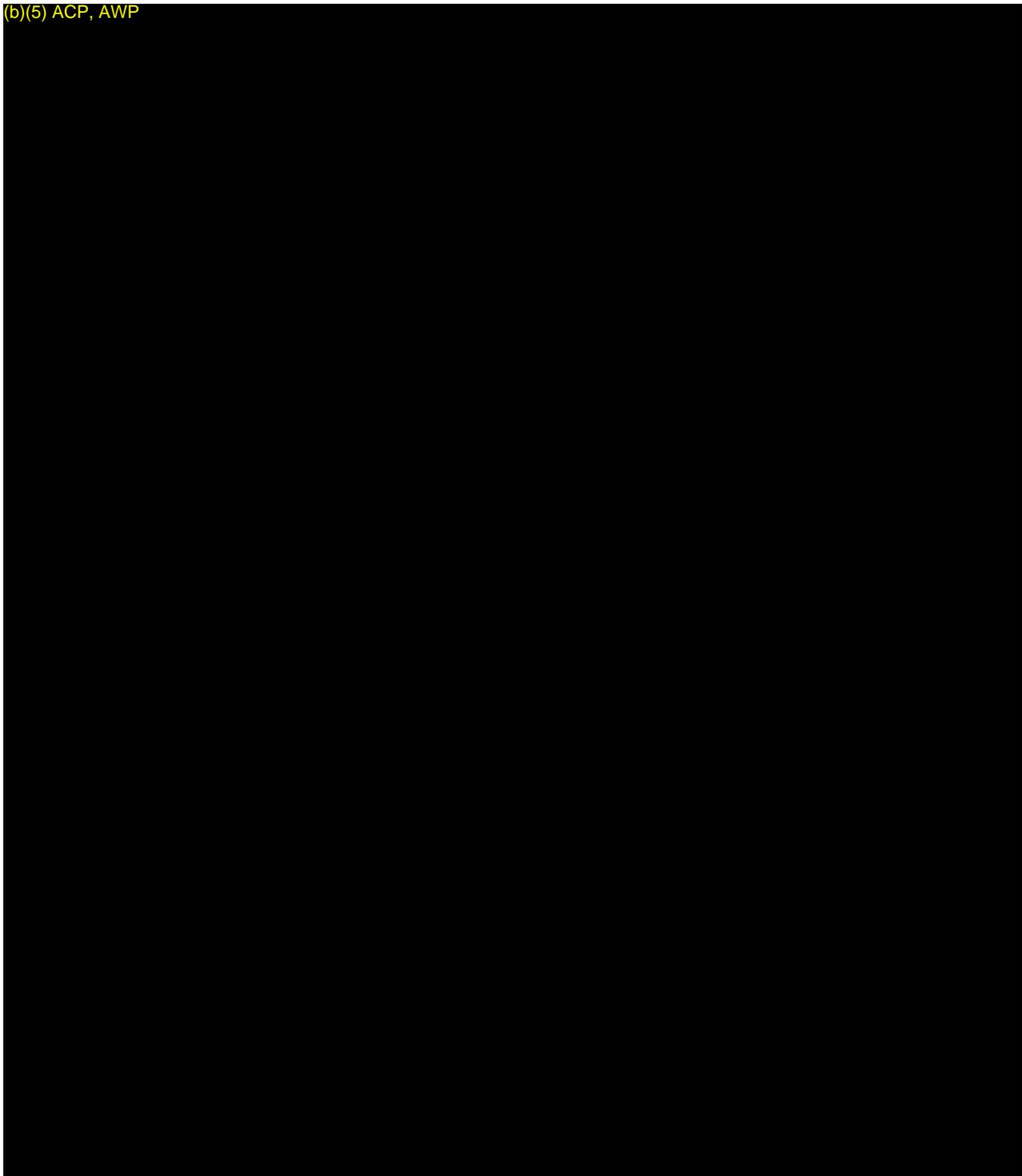
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Congress of the United States

Washington, DC 20515

December 15, 2016

The Honorable Barack Obama
President
United States of America
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Obama:

We are troubled by recent news that you may designate a massive new National Monument in southeast Utah in the next few weeks.¹ Such a unilateral designation infringes on the rights and the way of life of the Federally Recognized Indian Tribes in the area. This decision could abruptly and permanently close off a substantial area of land respected and used by generations of local Indian Tribes in an area already containing numerous national parks and monuments.²

One of the most alarming aspects of this prospective action arises from potential misrepresentations made by the Department of the Interior (DOI) to Indian tribes that DOI and the tribes will allegedly co-manage the monument.³ As noted in a recent letter to Interior Secretary Sally Jewell, DOI lacks authority to enter into any such cooperative management arrangement with the Tribes in the absence of authorization from Congress.⁴ We believe that such misleading promises may have been made by DOI in an attempt to persuade tribal members to support a possible designation. With the long and sordid history of the federal government's treatment of tribal obligations it would be the height of irresponsibility to designate a monument based on misrepresentations.⁵

With this extremely controversial decision allegedly pending, we write to, again, strongly and unequivocally ask that you not designate Bears Ears as a national monument. Doing so will not only deprive local Indian Tribes of use of land they have valued and rights they have

¹ Brian Maffly, *If Obama declares a mini Bears Ears monument, would anyone in Utah be happy?*, THE SALT LAKE TRIBUNE, Dec. 9, 2016, available at <http://www.sltrib.com/home/4689454-155/if-obama-declares-a-mini-bears>.

² Brian Maffly, *If Obama declares a Bears Ears monument in Utah, could President-elect Trump undo it?*, THE SALT LAKE TRIBUNE, Nov. 11, 2016, available at <http://www.sltrib.com/news/4563968-155/if-obama-declares-a-bears-ears>.

³ Dept. of Interior Sec. Order No. 3342 (Oct 21, 2016).

https://www.doi.gov/sites/doi.gov/files/uploads/so3342_partnerships.pdf.

⁴ Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, to Hon. Sally Jewell, Sec'y, U.S. Dept. of the Interior (Dec. 9, 2016).

⁵ Hansi Lo Wang, *Broken Promises On Display At Native American Treaties Exhibit*, NATIONAL PUBLIC RADIO, Jan. 18, 2015, available at <http://www.npr.org/sections/codeswitch/2015/01/18/368559990/broken-promises-on-display-at-native-american-treaties-exhibit>.

The Honorable Barack Obama
December 15, 2016
Page 2

enjoyed, but it will also ensure that we will be unable to work towards a commonsense Congressional solution that could allow for co-management with affected Tribes.

Sincerely,



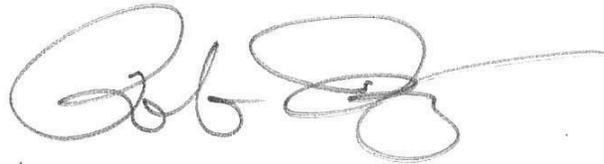
Orrin G. Hatch
United States Senator



Jason Chaffetz
Member of Congress



Michael S. Lee
United States Senator



Rob Bishop
Member of Congress

Enclosure

cc: President Russell Begaye

DRAFT

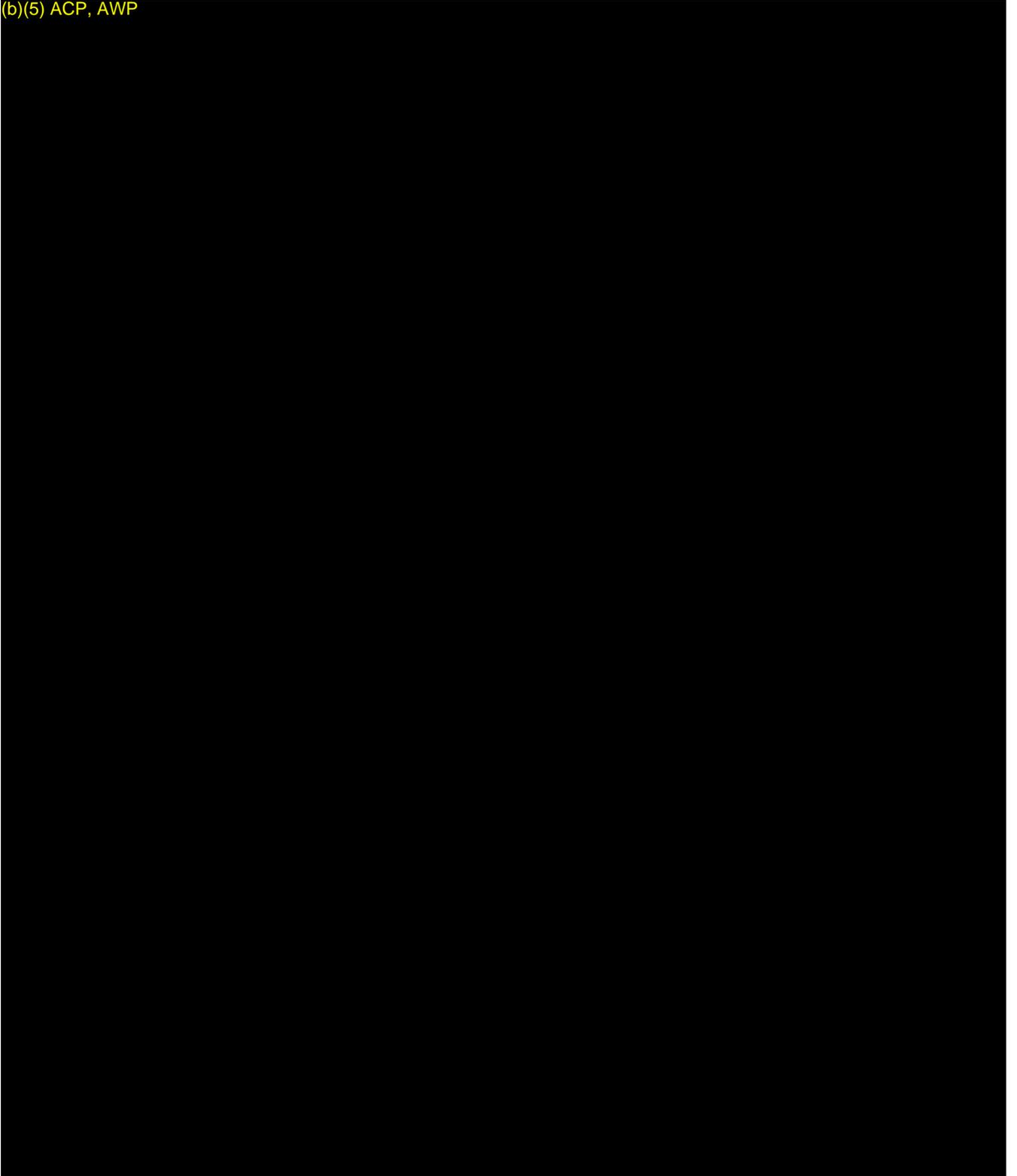
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Outline of Legal Sideboards re: Possible Authorities for “Co-Management” With Tribes

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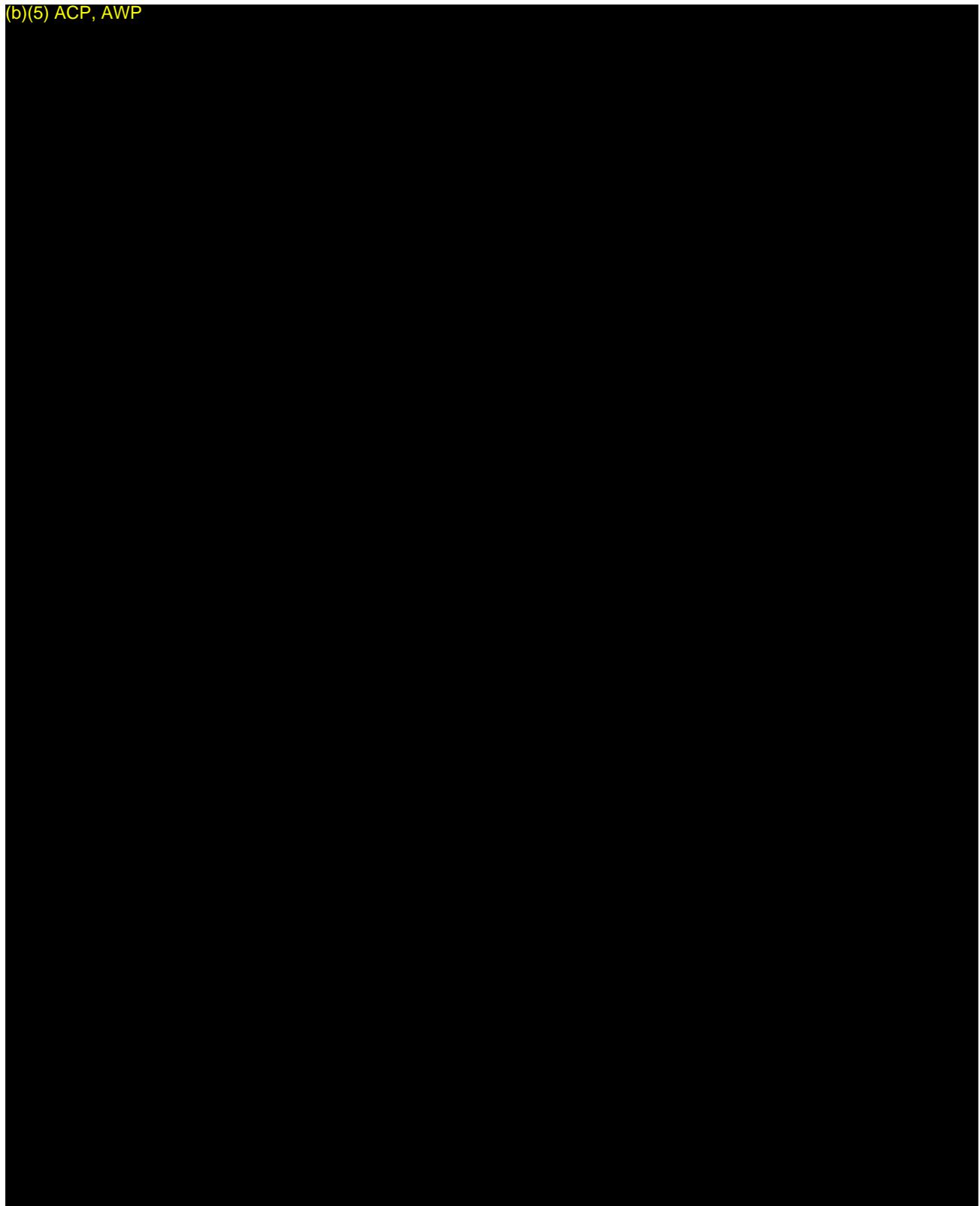
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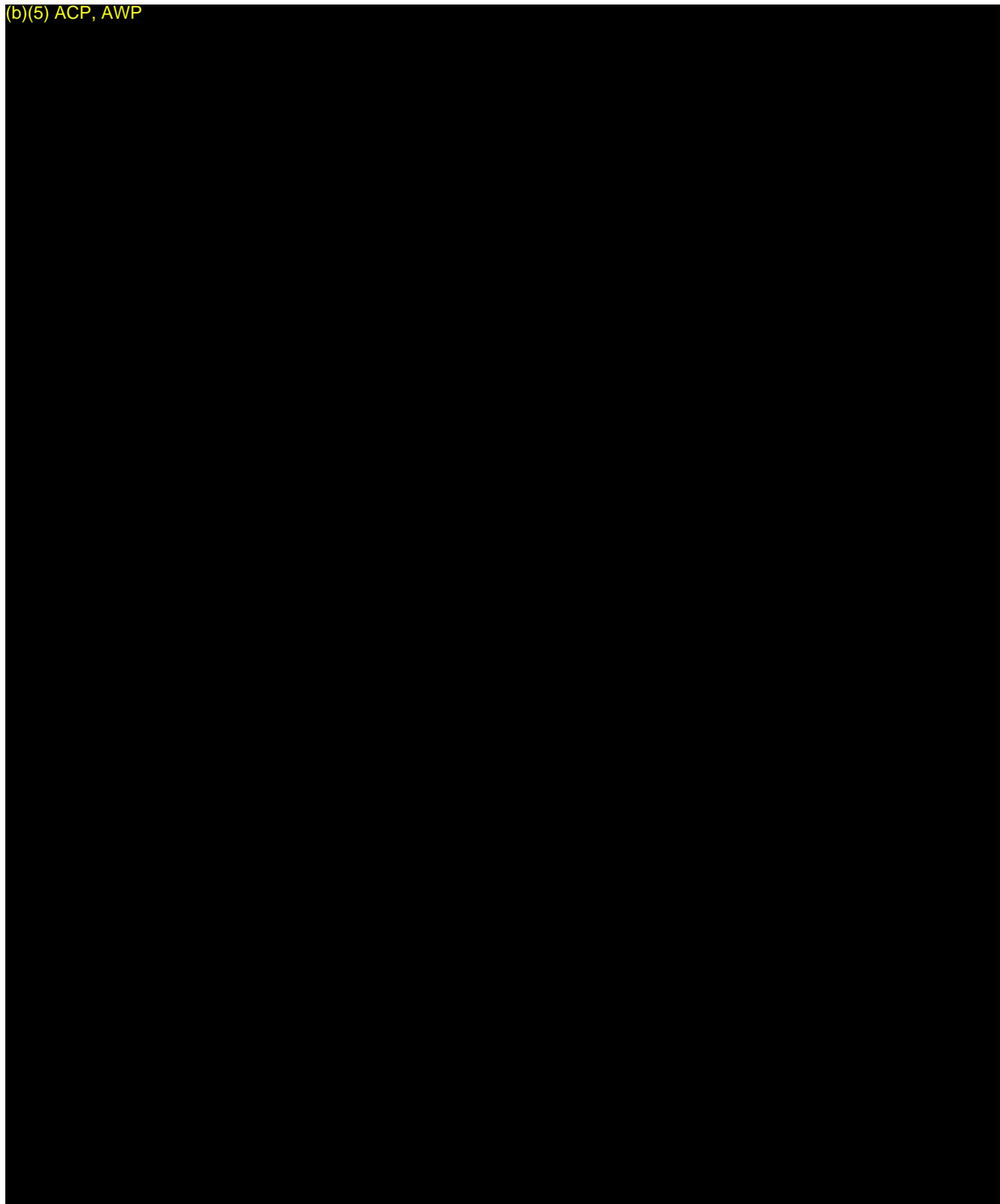
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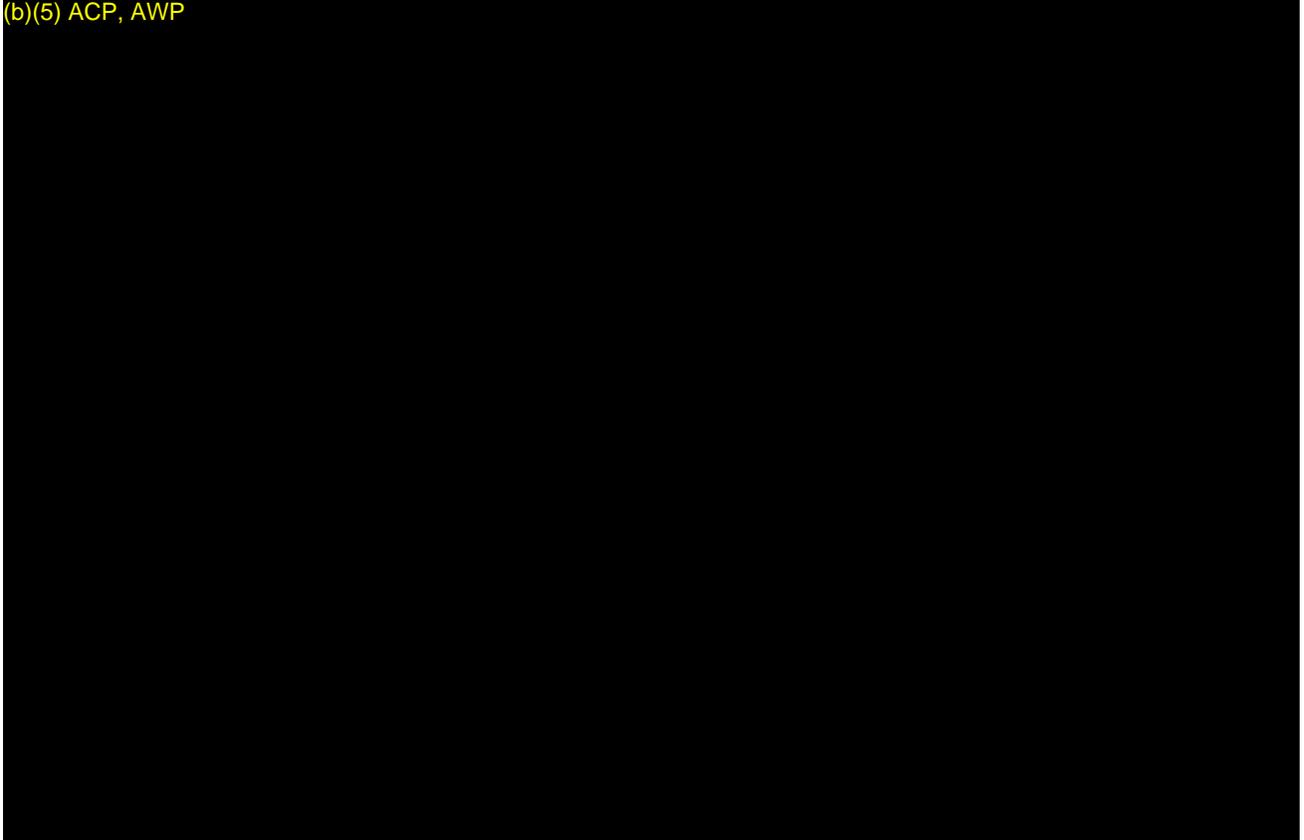
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JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH F. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<http://oversight.house.gov>

December 29, 2016

The Honorable Sally Jewell
Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Madam Secretary:

On December 28, 2016, President Obama designated the Bears Ears National Monument in Utah and the Gold Butte National Monument in Nevada pursuant to his authority under the Antiquities Act.¹ Advocates for this action touted it as a means to establish a co-management agreement for Bears Ears between the federal government and a group of Native American tribes.² In fact, in the press release announcing these new national monuments, the White House recognizes the importance of tribal participation in the management of the land and asserts this action serves as a tool to achieve co-management.³ Co-management of public lands, however, requires the approval of Congress.⁴ Advocacy organizations, federal agencies, and the White House have all put out differing opinions on co-management, and it is important to clarify the bounds of the President's authority. I am writing to obtain more information about how and why the President exercised his authority in this case.

¹ *Rumors point toward possible December 23 designation. Anxiety builds over possible national monument*, SAN JUAN RECORD, Dec. 13, 2016, available at http://www.sjrnews.com/view/full_story/27329673/article-Rumors-point-toward-possible-December-23-designation--Anxiety-builds-over-possible-national-monument-?instance=home_news_left.

² Amy Jol O'Donoghue, *Native American chairman says Jewell order lacks equality for tribes*, DESERET NEWS, Oct. 21, 2016, available at <http://www.deseretnews.com/article/865665388/Bears-Ears-coalition-leader-says-Jewell-order-lacks-equality-for-tribes.html?pg=all>.

³ FACT SHEET: President Obama to Designate New National Monuments Protecting Significant Natural and Cultural Resources in Utah and Nevada, <https://www.whitehouse.gov/the-press-office/2016/12/28/fact-sheet-president-obama-designate-new-national-monuments-protecting>.

⁴ See *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 565-66 (D.C. Cir. 2004) (“[S]ubdelegations to outside parties are assumed to be improper absent an affirmative showing of congressional authorization When an agency delegates authority to its subordinate, responsibility—and thus accountability—clearly remain with the federal agency. But when an agency delegates power to outside parties, lines of accountability may blur, undermining an important democratic check on government decision-making. Also, delegation to outside entities increases the risk that these parties will not share the agency’s “national vision and perspective”). See also *High Country Citizens’ Alliance v. Norton*, 448 F. Supp. 2d 1235, 1246-1247 (D. Colo. 2006) (similar, citing *U.S. Telecom*).

The Honorable Sally Jewell
 December 29, 2016
 Page 2

The President has exercised his authority under the Antiquities Act to create or expand at least 25 national monuments—more than any other president in history.⁵ His sweeping application of the Antiquities Act raises questions about the Administration’s commitment to transparency and consultation with local stakeholders with respect to designating national monuments. It also raises serious questions about whether these designations are limited to the, “smallest area compatible with proper care and management of the objects to be protected.”⁶ The Antiquities Act “was designed to protect federal lands and resources quickly” in response to concerns about “theft from and destruction of archaeological sites.”⁷ In most cases, however, the processes outlined by the National Environmental Policy Act (NEPA) and the Federal Land Policy Management Act (FLPMA) are most appropriate because they require environmental studies, a review of the public purpose, and an opportunity for public participation before any federal agency action.⁸ The NEPA and the FLPMA processes provide for a more thoughtful determination, whereas the Antiquities Act was meant to be reserved for emergency scenarios.

Until yesterday, the Administration’s actions with respect to Bears Ears more closely resembled the NEPA and FLPMA process. In anticipation of the Bears Ears designation, the Department of the Interior took on a large role in gathering input and coordinating planning.⁹ You, Secretary Jewell, visited the potential site for a listening session.¹⁰ In fact, during a hearing before the Subcommittee on the Interior, Bureau of Land Management (BLM) Director Neil Kornze testified that BLM and the White House have been coordinating.¹¹ It is therefore unclear why the President opted to designate a massive national monument in Utah via the Antiquities Act in the waning days of his presidency, and to ignore federal environmental and procedural laws enacted to ensure stakeholders and other affected parties have a meaningful role in determining the outcome.

Similarly, the President’s actions with regard to the Gold Butte National Monument designation bypassed Congress and the public. Located in Clark County, Nevada, the Gold Butte National Monument spans nearly 300,000 acres.¹² Such a large designation, made unilaterally, deprives the American people and their elected representatives a collaborative discussion on how best to protect the land for all to enjoy. Large designations such as Gold Butte Monument are the type of major federal agency action envisioned by our federal environmental and procedural laws.

⁵ H. Sterling Burnett, *Obama’s Dangerous Use of The National Monument law*, FORBES, Oct. 12 2016.

⁶ Antiquities Act of 1906, 54 U.S.C. §§320301-320303

⁷ Carol Hardy Vincent, “National Monuments and the Antiquities Act,” Cong. Research Serv. (2016) (R41330).

⁸ *Id.*

⁹ Amy Jol O’Donoghue, *Bears Ears Controversy Ramps Up With Jewell’s Visit; Bishop’s Planned Legislation*, KSL NEWS, July 13, 2016, available at <https://www.ksl.com/?sid=40632616&nid=148&title=bears-ears-controversy-ramps-up-with-jewells-visit-bishops-planned-legislation>.

¹⁰ *Id.*

¹¹ *Examining BLM Public Lands Leasing Hearing Before the Subcomm. on the Interior of the H. Comm. on Oversight and Gov’t Reform*, 114th Cong. 14 (2016) (statement of Neil Kornze, Director, Bureau of Land Management) (Mr. Kornze: “I am talking about looking at the country and figuring out where would this be appropriate, where would it not?” Mr. Gosar: “So there is some conversation going on between the White House and BLM and agencies in regards to antiquities withdrawal?” Mr. Kornze: “Yes.”).

¹² See *supra* note 3.

The Honorable Sally Jewell
December 29, 2016
Page 3

Furthermore, in a letter dated March 29, 2016, this Committee, along with the House Committees on Natural Resources and on Appropriations, requested information related to use of the Antiquities Act of 1906.¹³ After receiving an inadequate response, a follow up letter was sent on May 11, 2016.¹⁴ As outlined in both letters, the Committees are interested in the Administration's process for using the Antiquities Act. Specifically, the Committees requested documents and communications from the Council on Environmental Quality and the Department of the Interior (DOI) referring or relating to the selection or designation of national monuments under the Antiquities Act of 1906 by the President from January 1, 2015, to the present.

To date, DOI has only provided a very limited response to the Committee that largely consisted of public statements and news clippings. If the Department does not produce these documents voluntarily, the Committee will be required to obtain them through compulsory measures.

Please immediately provide the documents requested in the Committee's March 29th and May 11th letters. In addition, please produce the following documents as soon as possible, but not later than January 13, 2017:

1. All calendars, including all meetings and attendees, for all DOI employees involved or referenced in any discussions related to any national monument selection or designation.
2. The daily schedules and call logs for Secretary Jewell, Tommy Beaudreau, Nikki Buffa and Neil Kornze from April 21, 2013, to present.
3. All communications between any DOI employee and White House staff, including but not limited to Senior Advisor Brian Deese, between January 2015 and present.
4. All documents and communications referring or related to the selection or designation of national monuments under the Antiquities Act of 1906 by the President from April 21, 2013, to present.
5. All documents and communications related to the reduction in size, limitation, or repeal of a national monument from January 20, 2009, to present.

Additionally, please make available for transcribed interview the following three DOI officials as soon as possible, but not later than January 20, 2017: Bureau of Land Management Director Neil Kornze; your Chief of Staff Tommy Beaudreau; and DOI employee Nikki Buffa.

¹³ Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, Hon. Rob Bishop Chairman, H. Comm. on Nat. Resources, and Hon. Harold Rogers, Chairman, H. Comm. on Appropriations, to Hon. Sally Jewell, Secretary, U.S. Department of the Interior (Mar. 29, 2016).

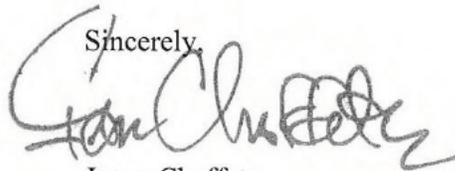
¹⁴ Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, and Hon. Cynthia Lummis, Chairman, H. Comm. on Oversight and Gov't Reform Subcommittee on the Interior, to Hon. Sally Jewell, Secretary, U.S. Department of the Interior (May 11, 2016).

The Honorable Sally Jewell
December 29, 2016
Page 4

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

Please contact Chris Esparza of the Committee staff at (202) 225-5074 to schedule the interviews, or with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Chaffetz", written over a light blue circular stamp.

Jason Chaffetz
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member