

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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December 9, 2016

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

Dear Madam Secretary:

On October 21, 2016, you issued a Secretarial Order encouraging cooperative management opportunities between the Department's land and water managers and federally-recognized tribes.¹ The Department has described this Order as establishing a framework to ensure that Native communities have the opportunity to assume meaningful and substantive roles in managing public lands that have special geographical, historical, and cultural connections to the tribes.² The Committee is requesting more information to better understand the Department's new policy.

As discussions continue surrounding the possible designation of a Bears Ears national monument in Utah, the Committee is particularly interested in how co-management agreements would work.³ A type of agreement monument advocates are in favor of, these arrangements entail a specific legal basis that requires co-management of natural resources or makes co-management otherwise necessary.⁴ Despite claims to the contrary, co-management of public lands requires approval by Congress.⁵ Some affected tribes have noted the order fails to provide

¹ Dept. of Interior Sec. Order No. 3342 (Oct 21, 2016).

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

² Secretary Jewell Issues Secretarial Order to Encourage Tribal Role in Managing Interior Lands with Native American Connections, Press Releases (2016), <https://www.doi.gov/pressreleases/secretary-jewell-issues-secretarial-order-encourage-tribal-role-managing-interior>.

³ Amy Jol O'Donoghue, Navajo Voice Opinion on Bears Ears Proposal during Hatch, Herbet Visit, KSL News, June 2, 2016, <https://www.ksl.com/?sid=40036711&nid=148&title=navajo-voice-opinions-on-bears-ears-proposal-during-hatch-herbert-visit>.

⁴ See *supra* note 2.

⁵ 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*).

tribes the full legal co-management status they seek.⁶ The Committee wants to ensure that tribes and other affected groups appreciate the bounds of your authority. Some may inaccurately view your order as establishing a co-management relationship for control and use of the land. You do not have that authority.⁷

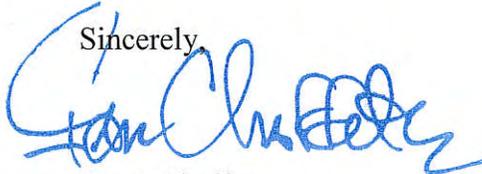
The issue of co-management of public lands is especially relevant as Congress takes steps to create such a legal arrangement for land use and protection with tribes. Legislation such as Representative Rob Bishop's Public Lands Initiative seeks to create a co-management relationship with tribes around the proposed National Conservation Areas for Indian Creek and Bears Ears in Utah.⁸

In an effort to better understand the scope and intent of your Secretarial Order, please provide a briefing to the Committee by December 23, 2016, explaining details of the management framework you hope to establish with tribes.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Please have your staff contact Chris Esparza of Chairman Chaffetz' staff at (202) 225-5074 to schedule the briefing or with any questions about this request. Thank you for your cooperation in this matter.

Sincerely,



Jason Chaffetz
Chairman

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

⁶ Amy Jol O'Donoghue, Native American chairman says Jewell order lacks equality for tribes, Deseret News, October 21, 2016, <http://www.deseretnews.com/article/865665388/Bears-Ears-coalition-leader-says-Jewell-order-lacks-equality-for-tribes.html?pg=all>.

⁷ See *supra* note 5.

⁸ Amy Jol O'Donoghue, Bishop Wants Tribes to Co-Manage Bears Ears Region, KSL News, August 11, 2016, <https://www.ksl.com/?sid=41029265&nid=148&title=bishop-wants-tribes-to-co-manage-bears-ears-region>.