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Indigenizing Grand Canyon

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INDIGENIZING GRAND CANYON

Jason Anthony Robison*

The magical place commonly called the “Grand Canyon” is Native space. Eleven tribes hold traditional connections to the canyon according to the National Park Service. This Article is about relationships between these tribes and the agency—past, present, and future. Grand Canyon National Park’s 2019 centennial afforded a valuable opportunity to reflect on these relationships and to envision what they might become. A reconception of the relationships has begun in recent decades that evidences a shift across the National Park System as a whole. This reconception should continue. Drawing on the tribal vision for Bears Ears National Monument, this Article advocates for Grand Canyon tribes and the Park Service to consider forming a Grand Canyon Commission for cooperative management of Grand Canyon National Park. Establishing this Commission would mark the vanguard of the relational reconception, and, in this precise sense, the Commission would lay a foundation for “indigenizing” Grand Canyon.

* © 2021 Jason Anthony Robison. Professor, University of Wyoming College of Law. S.J.D., Harvard Law School (2013); LL.M., Harvard Law School (2009); J.D., University of Oregon School of Law (2006); B.S., Environmental Studies, University of Utah (2003). This Article is dedicated to my Hopi friend Howard Dennis on Second Mesa, both for his friendship and for being a spiritual guide at *Öngtupqa*. The Article grows out of a gracious invitation from the University of Utah S.J. Quinney College of Law to be the 2019–2020 Stegner Young Scholar. I cannot thank the Stegner Center faculty and staff enough for selecting and hosting me. They provided a much-appreciated excuse for field work at a place of awe since my childhood, Grand Canyon National Park, where I incurred research debts to Janet Balsom and Kim Besom coupled with further debts to Roger Clark and Sarana Riggs at the Grand Canyon Trust’s office in Flagstaff. My heartfelt gratitude extends to all of you. Thanks, too, to my colleagues Robert Adler, Robin Craig, Sam Kalen, and Robert Keiter for their formative input on drafts of this piece. All errors or omissions are mine alone.

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I. INTRODUCTION

“The United States, acting through Congress . . . recognizes the special legal and political relationship Indian tribes have with the United States and the solemn covenant with the land we share. . . .”¹ That’s how the apology began, though you may have never heard of it. “The United States, acting through Congress . . . commends and honors Native Peoples for the thousands of years that they have

¹ Department of Defense Appropriations Act, 2010, Pub. L. No. 111-118, § 8113(a)(1), 123 Stat. 3409, 3453 (2009).

stewarded and protected this land”² Tucked into a defense appropriations bill, President Obama did not endorse the apology, despite being urged to do so.³ It was a “silent apology” or “(non)apology” for some Native Americans.⁴ “The United States, acting through Congress . . . expresses its regret for the ramifications of former wrongs and its commitment to build on the positive relationships of the past and present to move toward a brighter future where all the people of this land live reconciled as brothers and sisters, and harmoniously steward and protect this land together.”⁵ Words on a page. Lofty rhetoric—a “solemn covenant with the land we share,”⁶ a commitment to “harmoniously steward and protect this land together,”⁷ etc.

Let’s make these words real at the National Park System’s diadem: Grand Canyon.⁸

That is this Article’s aim. It is about relationships—past, present, and future—between the Park Service and eleven Native American tribes with ancestral connections to the Grand Canyon.⁹ These relationships do not exist in a vacuum. Rather, they are globally relevant to any circumstance where a settler state¹⁰

² *Id.* § 8113(a)(2), 123 Stat. at 3453.

³ “The United States, acting through Congress . . . urges the President to acknowledge the wrongs of the United States against Indian tribes in the history of the United States in order to bring healing to this land.” *Id.* § 8113(a)(6), 123 Stat. at 3453.

⁴ Mark Charles, *Mark Charles: U.S. ‘Apology’ to Indian People Goes Unnoticed*, INDIANZ (Mar. 12, 2012), <https://www.indianz.com/News/2012/03/12/mark-charles-us-apology-to-ind.asp> [<https://perma.cc/PYD4-C6C3>]. As expressed by Navajo tribal member Mark Charles: “I was shocked, confused, embarrassed and ashamed when I learned, two years after the fact, that the US government had issued an apology to its Native American citizens, but did very little to publicize it, and even seemed intent on burying it in a 67-page Defense Department appropriations bill.” *Id.*

⁵ § 8113(a)(5), 123 Stat. at 3453.

⁶ *Id.* § 8113(a)(1), 123 Stat. at 3453.

⁷ *Id.* § 8113(a)(5), 123 Stat. at 3453.

⁸ This Article builds on an earlier essay written by the author for Grand Canyon National Park’s 2019 centennial. See Jason Anthony Robison, *Grand Canyon as Legal Creation*, 60 J. ARIZ. HIST. 557 (2019). The metaphor of Grand Canyon as a diadem is from ROBERT H. KELLER & MICHAEL F. TUREK, *AMERICAN INDIANS & NATIONAL PARKS* 131 (1998).

⁹ The specific tribes and their respective connections to the Grand Canyon region are surveyed in Part II. These unfathomably rich connections should inform the legal rules at the Grand Canyon governing both (1) how human beings interact with one another, and (2) how human beings interact with other parts of nature (relations) within the ecosystem. For shorthand, these two strands of interactions can be referred to as “socioecological relations.” Future relationships between the Park Service and Grand Canyon tribes—for example, cooperative management—will shape what socioecological relations look like in this space.

¹⁰ See generally Jordan Engel, *Settler States of the World*, THE DECOLONIAL ATLAS (Nov. 3, 2014), <https://decolonialatlas.wordpress.com/2014/11/03/settler-states-of-the-world/> [<https://perma.cc/96H6-HEJU>] (“Settler states are sovereign states which were

superimposes upon a landscape traditionally inhabited or utilized by Indigenous Peoples¹¹ a land classification such as a national park designation that thereafter controls access to and management of the designated space. In the context of the twenty-first-century United States, reconceiving the relationships between the Park Service and Native American tribes is a priority that implicates the federal agency's trust responsibilities.¹² This reconception involves cutting-edge work on a foundational issue for the National Park System as a whole: “[W]hether the national park idea should also embrace the notion of parks as native homelands.”¹³ The short answer is “yes”; the inspiring challenge is “how”?

Native voices should shape national parks—at the Grand Canyon and elsewhere. In a nutshell, that’s this Article’s take on “how.” It advocates for Grand Canyon tribes and the Park Service to consider forming a new entity, a Grand Canyon Commission, to facilitate cooperative management of Grand Canyon National Park. The deferential tone in the word “consider” here is purposeful and

colonized by migrant settlers whose descendants remain politically dominant over the indigenous peoples.”).

¹¹ I rely on the following definition of “Indigenous Peoples”:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

José R. Martínez Cobo (Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), Economic and Social Council, *Study of the Problem of Discrimination Against Indigenous Populations*, ¶ 379, U.N. Doc. E/CN.4/Sub.2/1983/21/Add.8 (Sept. 30, 1983).

¹² See, e.g., U.S. DEP’T OF THE INTERIOR, ORDER NO. 3335, REAFFIRMATION OF THE FEDERAL TRUST RESPONSIBILITY TO FEDERALLY RECOGNIZED INDIAN TRIBES AND INDIVIDUAL INDIAN BENEFICIARIES 3 (2014) (noting that “[a]s instruments of the United States that make policy affecting Indian tribes and individual Indian beneficiaries, the . . . National Park Service [and other Department of the Interior agencies] share the same general Federal trust responsibility toward tribes and their members”). Although this Article focuses on reconceiving relationships between the Park Service and Grand Canyon tribes, this priority and associated trust responsibilities apply to federal agencies managing all types of public lands, including the Forest Service and Bureau of Land Management. For a thought-provoking discussion of future federal-tribal collaboration across the public lands, see Daniel Cordalis & Amy Cordalis, *Civilizing Public Land Management in the Colorado River Basin*, in *VISION & PLACE: JOHN WESLEY POWELL & REIMAGINING THE COLORADO RIVER BASIN* 242 (Jason Robison, Daniel McCool & Thomas Minckley eds., 2020).

¹³ ROBERT B. KEITER, TO CONSERVE UNIMPAIRED: THE EVOLUTION OF THE NATIONAL PARK IDEA 125 (2013).

intended to convey respect. Grand Canyon tribes possess a human right to self-determination¹⁴ as well as unfathomably deep connections to the place commonly known as the “Grand Canyon.” It is hoped that the Commission proposal harmonizes with the tribes’ self-determination and connections. If not, the dust bin of history is nearby.

Three Parts make up the narrative embodying the Grand Canyon Commission proposal. Part II begins by clarifying Grand Canyon tribes’ connections to the canyon. There is more to these connections than could ever be written. Even the snapshots provided, however, convey a sense of how embedded the canyon is within the tribes’ cultures, and how important the Park Service’s management of the canyon is. Part III, in turn, focuses on the relationships, particularly the “relational reconception” as it’s called between the Park Service and Grand Canyon tribes over the past few decades. A lot of bad blood preceded this reconception—colonial relations familiar across the globe and the United States—but Grand Canyon National Park’s centennial revealed a good deal of optimism about the path ahead. That is where Part IV goes. It examines recent developments at Bears Ears National Monument—especially a tribal coalition’s novel vision for federal-tribal collaborative management—and considers how this vision might further the relational reconception at Grand Canyon National Park through the proposed Commission. The impetus for this whole endeavor is what the Grand Canyon means to the tribes.

II. GRAND CANYON AS NATIVE SPACE

“Grand Canyon” is one name for it. John Wesley Powell affixed that label in 1869, though it had been used before.¹⁵ But there are other, much older words for the place: *Che Da* or *Ge Da Cho* (Apache); *Chimik’yana’kya* (Zuni); *Ha Tay G’am* or *Hagtaya Jigmima* (Havasupai);¹⁶ *Öngtupqa* (Hopi); *Piyapaxa ‘Uipi* (Southern

¹⁴ G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples, art. 3 (Sept. 13, 2007) [hereinafter UNDRIP] (“Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”). Self-determination is a core principle of UNDRIP. See, e.g., S. James Anaya, *The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era*, in MAKING THE DECLARATION WORK: THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES 184, 184 (Claire Charters & Rodolfo Stavenhagen eds., 2009), https://www.iwgia.org/images/publications/making_the_declaration_work.pdf [<https://perma.cc/D7S8-67Y7>].

¹⁵ See, e.g., J. DONALD HUGHES, IN THE HOUSE OF STONE AND LIGHT: A HUMAN HISTORY OF THE GRAND CANYON 37 (Timothy J. Priehs ed., 1978) (noting that “[w]hile he was not the first to use the name ‘Grand Canyon,’ Powell was the one who more than anyone else caused it to be accepted”).

¹⁶ As described by Havasupai tribal member Coleen Kaska, however: “In a few generations’ time, the word for Grand Canyon in the Havasupai language has become ‘wambodajwogo,’” which translates literally to “where the train stops”—a reference to the

Paiute); *Tsé Chii' Koo'* (Navajo); and *Wi: Nyi Gacha* (Hualapai).¹⁷ The languages embodying these Native terms are “living libraries of ecological knowledge”—“record[s] of biodiversity and environmental changes that predate Euro-American contact” and “speak the ‘grammar of animacy’ and remind humans that there are intelligences beyond our own.”¹⁸ It is thus an unfortunate result of Euro-American colonialization that these Native terms are not more visible. As cleverly described by one writer: “The canyon . . . is studded with peaks given the names of gods—Shiva, Osiris, Zoroaster, Jupiter—and though the spirit of the naming was right, I know they are the wrong gods.”¹⁹ Nonetheless, the existence of the Native terms and “living libraries” speaks volumes about the fundamental truth of interconnectedness. For at the Grand Canyon and across the Colorado Plateau, “[t]he geological, biological, and cultural landscapes . . . are inseparable.”²⁰

According to the National Park Service, there are eleven tribes with traditional connections to the Grand Canyon: the Havasupai Tribe, Hopi Tribe, Hualapai Tribe, Kaibab Band of Paiute Indians, Las Vegas Band of Paiute Indians, Moapa Band of Paiute Indians, Navajo Nation, Paiute Indian Tribe of Utah, San Juan Southern Paiute Tribe, Pueblo of Zuni, and Yavapai-Apache Nation.²¹ The Grand Canyon is home to these tribes.²² It has been part of their overlapping homelands for centuries, if not millennia.²³ They are *made* from the canyon.²⁴ Pause for a moment and reflect on what that word means. From the standpoint of western science, human beings

South Rim endpoint of the Grand Canyon Railway completed in 1901. *The Voices of Grand Canyon*, GRAND CANYON TR. (Feb. 20, 2020), <https://www.grandcanyontrust.org/native-american-stories-grand-canyon> [<https://perma.cc/S5ZC-9B82>] [hereinafter *Voices of Grand Canyon*].

¹⁷ These names are identified in the Museum of Northern Arizona’s exceptional permanent exhibition “Native Peoples of the Colorado Plateau.” It displays the stories of ten tribes of the Colorado Plateau and contains 350 objects selected by forty-two tribal consultants. Portions of the exhibition can be accessed at *Native People’s Gallery: Native Peoples of the Colorado Plateau*, MUSEUM N. ARIZ., <https://musnaz.org/native-peoples-gallery/> [<https://perma.cc/4MHD-J7QC>]. Materials from the exhibition, which the author viewed in person, will hereinafter be cited as *Native Peoples*.

¹⁸ Autumn L. Bernhardt, “*Pastoral and Civilized*”: *Water, Land, and Tribes in the Colorado River Basin*, in *VISION & PLACE: JOHN WESLEY POWELL & REIMAGINING THE COLORADO RIVER BASIN 220* (Jason Robison, Daniel McCool & Thomas Minckley eds., 2020).

¹⁹ PHILIP BURNHAM, *INDIAN COUNTRY, GOD’S COUNTRY: NATIVE AMERICANS AND THE NATIONAL PARKS* 273 (2000).

²⁰ *Native Peoples*, *supra* note 17.

²¹ *Associated Tribes*, NAT’L PARK SERV. (Sept. 21, 2019), <https://www.nps.gov/grca/learn/historyculture/associated-tribes.htm> [<https://perma.cc/BBU9-YTXW>].

²² *Voices of Grand Canyon*, *supra* note 16.

²³ *See id.* “It’s a homeland—a place of emergence, spiritual resting ground, library of cultural knowledge, and life source . . .”

²⁴ Interview with Jan Balsom, Senior Advisor, Off. of the Superintendent, Grand Canyon Nat’l Park (Sept. 6, 2019).

have inhabited the Grand Canyon for more than 13,000 years.²⁵ If you ask a tribal member how long their people have been connected to the canyon, however, you may get an answer that is both distinct and complementary: since time immemorial.²⁶

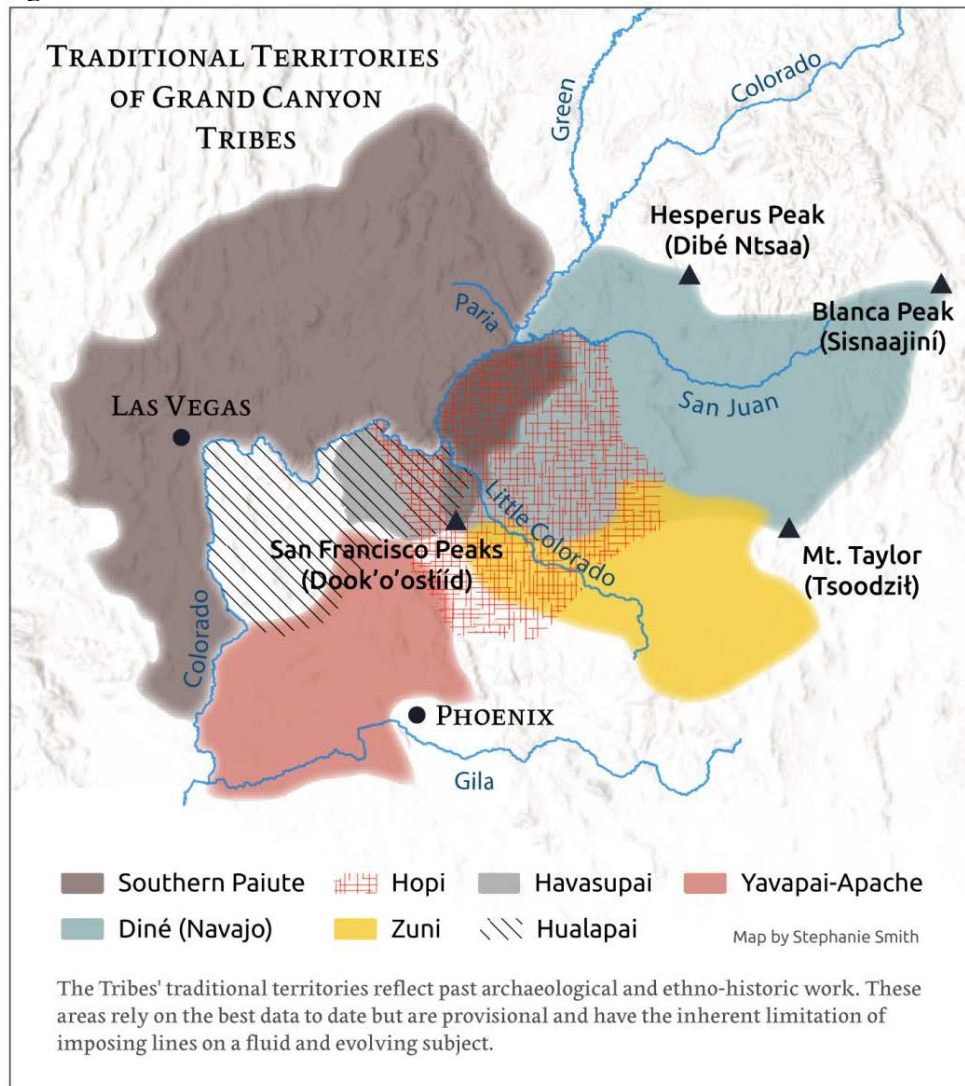
In light of the depth and diversity of Grand Canyon tribes' connections to this one-of-a-kind place, it is only possible to convey snapshots in the pages that follow.²⁷ Despite their brevity, however, these snapshots play an essential role within the Article as a whole. They introduce the tribes as *real* human beings—living, breathing human beings—whose ancestors had held relationships with the Grand Canyon since long before the United States was conceived, and, in turn, whose members have navigated relationships with the federal steward of the canyon, the Park Service, for 101 years as of the time of this writing. Whereas the latter relationships are the focus of Part III—most importantly, the ongoing reconception of these relationships referenced above—the former relationships must be broached beforehand. To this end, Grand Canyon National Park structures the discussion below. It begins with “neighbor” tribes whose modern reservations abut the park’s boundaries (Havasupai, Hualapai, and Navajo), and then turns to “nearby” tribes whose connections to the canyon are critical to understand regardless of the distance between their reservations and the park (Hopi, Zuni, Yavapai-Apache, and Southern Paiute). In both cases, Native people express their connections to the Grand Canyon in the most authentic, articulate ways, and a common message reverberates: Grand Canyon is Native space.

²⁵ *Associated Tribes*, *supra* note 21; see also WILDLANDS NETWORK, CULTURE HISTORY AND ETHNOGRAPHIC OVERVIEW OF THE PROPOSED GRAND CANYON WATERSHED NATIONAL MONUMENT (2017) (on file with author) (providing an overview of the cultural history of the Grand Canyon region as divided by archaeologists into the following time periods: Paleoindian (11500–8000 B.C.E.), Archaic (8000–1000 B.C.E.), Early Agricultural (1000 B.C.E.–400/500 C.E.), Formative (400/500–1300 C.E.), Protohistoric (1300–1500/1550 C.E.), and Historic (1500/1550 C.E.–present)).

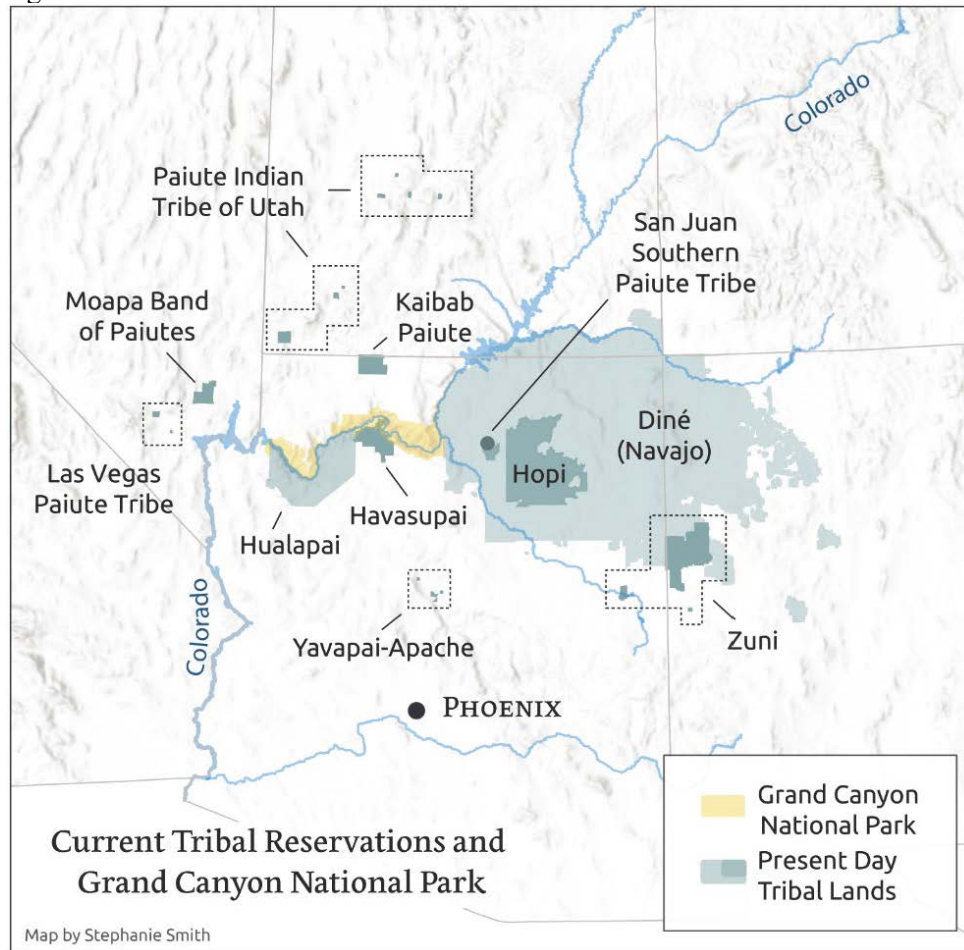
²⁶ As described by Navajo tribal member Sarana Riggs, who is also the Grand Canyon Program Manager at the Grand Canyon Trust: “It’s not the Grand Canyon to us, it is home. Our stories place us in the canyon since time immemorial . . .” *Native Voices Lead into Second Century of Grand Canyon National Park*, GRAND CANYON TR. (Feb. 26, 2020), <https://www.grandcanyontrust.org/native-voices-lead-second-century-grand-canyon-national-park> [<https://perma.cc/2BLC-CSQZ>] [hereinafter *Native Voices*].

²⁷ For a more extensive discussion of Grand Canyon tribes’ cultures and histories, see Sarah Krakoff, *Not Yet America’s Best Idea: Law, Inequality, and Grand Canyon National Park*, 91 U. COLO. L. REV. 559 (2020).

Figure 1²⁸



²⁸ *Id.* at 570 fig.1.

Figure 2²⁹

A. Neighbors

1. *Havasuw' Baaja* (Havasupai)

“We are the Grand Canyon.”³⁰ That is the essence of how the canyon’s guardians, the Havasupai, see themselves. “We are the watchers, sentinels, caretakers and guardians of the Grand Canyon region. Every Havasupai birth renews this connection.”³¹

The Havasupai are the *Havasuw' Baaja* (“people of the blue-green water”)—a reference to the breathtaking color of the water flowing through a tributary of the

²⁹ *Id.* at 571 fig.2.

³⁰ *Native Peoples*, *supra* note 17.

³¹ *Id.*

Colorado River, Havasu Creek, that runs through the capital of the Havasupai Reservation, Supai Village. The village lies inside *Ha Tay G'am* (again, the Grand Canyon), and the reservation abuts the national park's southern boundary.³² There is an unmistakable discrepancy in the relative sizes of the tribe's 185,000-acre reservation—originally designated as a postage-stamp, 518-acre reservation in 1882—and the more than three-million acres constituting the tribe's ancestral homeland.³³ Traditionally, the Havasupai's territory extended from *Hagtaya* (the Colorado River) in the north to *Wihaganbaja* (the San Francisco Peaks) in the south, and encompassed parts of *Hagtheela* (the Little Colorado River) in the east.³⁴ This vast expanse included land inside *Ha Tay G'am*—where the tribe would grow crops during summer—as well as across the Coconino Plateau—where the tribe would hunt and gather during winter.³⁵ The plateau is actually named after the Havasupai, which were known by their Hopi neighbors as the "*Cohonino*."³⁶

Havasupai connections to their homelands in and around *Ha Tay G'am* are as deep as the canyon itself. The tribe's place of emergence, *Wii'i Gdwiisa* (Red Butte, "earth's lungs"), lies near Grand Canyon National Park's southern gateway.³⁷ This sacred site is the spiritual center of the tribe's homeland—a place where the tribe holds gatherings to protect *Ha Tay G'am* and to oppose uranium mining.³⁸ In a similar fashion, the Havasupai consider *Wi'i Gleeva* (sacred rocks overlooking Supai Village) "guardian ancestors" who watch over them and the land.³⁹ Many more connections could be pointed to, but this summation from Havasupai Councilwoman Ophelia Watahomigie-Corliss says it all: "The Grand Canyon from the Havasupai perspective is the embryotic, the emergence, the origin of how we came to be [T]he Havasupais, in their blood and with every breath, . . . know how to take care of the Grand Canyon."⁴⁰

³² *Id.*

³³ Grand Canyon National Park Enlargement Act, Pub. L. No. 93-620, § 10(a), 88 Stat. 2089, 2091–92 (1975) (codified as amended at 16 U.S.C. § 228i (2012)). An 1880 executive order had created a reservation of sixty square miles within the canyon portion of the Havasupai's homeland, but President Chester Arthur reduced the reservation to 518 acres (less than one square mile) two years later. BURNHAM, *supra* note 19, at 75.

³⁴ *Native Peoples*, *supra* note 17.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*; Roger Clark, *Grand Canyon Guardians Gather at Red Butte*, GRAND CANYON TR. (Sept. 24, 2018), <https://www.grandcanyontrust.org/blog/grand-canyon-guardians-gather-red-butte> [<https://perma.cc/NJ6X-DVNC>].

³⁸ *Id.*

³⁹ *Native Peoples*, *supra* note 17.

⁴⁰ This statement comes from Havasupai Councilwoman Ophelia Watahomigie-Corliss. Sarana Riggs, *We're Still Here: Native Voices on the Grand Canyon National Park Centennial*, GRAND CANYON TR., <https://www.grandcanyontrust.org/advocatemag/fall-winter-2018/native-voices-grand-canyon> [<https://perma.cc/5FPM-TR94>].

2. *Hwal'bay (Hualapai)*

Floating downstream along the Colorado River, the Hualapai (*Hwal'bay* or “people of the tall pines”)⁴¹ are close (inseparable, really) relations with the Havasupai. The word “Pai” means “the people,” and according to traditional oral history all Pai bands consider themselves one ethnic group.⁴² Reflecting the common depth of their connections to *Wi: Nyi Gacha* (again, the Grand Canyon), the Hualapai explain their origin in the following way: “[We] were created from the reeds, sediment, and clay of the Colorado River at the Sacred Mountain of Creation, *Wi'Kahme*,”⁴³ which lies along the Lower Colorado River.⁴⁴

The Hualapai originally comprised fourteen bands from the pine-covered Hualapai Mountains near what is today Kingman, Arizona.⁴⁵ Thirteen of these bands remain.⁴⁶ They are organized in contemporary times as one people, one nation under the Hualapai Tribal Council and possess a one-million-acre reservation with Peach Springs, Arizona as its capital.⁴⁷ The reservation encompasses 106 miles of the Colorado River corridor within *Wi: Nyi Gacha* and abuts Grand Canyon National Park's southern boundary along this segment.⁴⁸ As is the case with the Havasupai Reservation, the Hualapai Reservation's size pales in comparison to that of the tribe's traditional territory, which extended over seven-million acres from the Lower Colorado River in the west to the Little Colorado River in the east, and from the Colorado River in the north to the San Francisco Peaks in the south.⁴⁹ Across this ancestral homeland, the Hualapai's seasonal migrations tracked those of the Havasupai, with planting season beginning in April deep inside *Wi: Nyi Gacha*, and winter calling for relocation to uplands for hunting and gathering.⁵⁰ “Spiritual and life skills were conveyed partially during these migration events[,] with Hualapai

⁴¹ See, e.g., *Native Peoples*, *supra* note 17.

⁴² HUALAPAI DEP'T OF CULTURAL RES., ABOUT THE HUALAPAI NATION 3 (2d ed. 2010), <http://hualapai-nsn.gov/wp-content/uploads/2011/05/AboutHualapaiBooklet.pdf> [https://perma.cc/P6TX-7DL4]. As described by Hualapai tribal member Richard Powskey, “[t]he Grand Canyon is a place where the Hualapai live and farm, and move back and forth with our sister tribe, the Havasupai.” Riggs, *supra* note 40.

⁴³ This description of the Grand Canyon appears in an exhibit at the Eagle Point area of Grand Canyon West on the Hualapai Reservation. *Eagle Point Exhibit*, The Hualapai Reservation, Grand Canyon West, Ariz. (on file with author).

⁴⁴ *Native Peoples*, *supra* note 17; HUALAPAI NATION, *supra* note 42, at 2.

⁴⁵ *Native Peoples*, *supra* note 17 (noting that these bands and their respective territories are identified on the “PAI” Affiliated Ancestral Clan/Band Territorial Homelands map); HUALAPAI NATION, *supra* note 42, at 21.

⁴⁶ *Native Peoples*, *supra* note 17.

⁴⁷ *Id.*

⁴⁸ *Voices of Grand Canyon*, *supra* note 16.

⁴⁹ *Native Peoples*, *supra* note 17.

⁵⁰ *Id.*; see also *Voices of Grand Canyon*, *supra* note 16 (explaining how Hualapai “migrated seasonally between the higher, cooler plateau lands in the pine trees, and the lower, lush banks of the Colorado River”).

teaching their children traditional knowledge through hunting and gathering, song and oration, and environmental stewardship.”⁵¹

Thus, “[s]ince time immemorial, the Colorado River and the Grand Canyon have been a very important link to our existence, to the time of our creation,”⁵² explains Hualapai tribal member Loretta Jackson-Kelly. “Our ancestors had always told us not to forget that the middle of the river is the backbone of the people. Without the backbone, we cannot survive”⁵³ Put in equally poignant words, *Ha ’yidada* (the Colorado River) is “revered as a life-giving source”⁵⁴—a “healing body of water”⁵⁵—and “[t]he long expanse of the River through the canyon and the riparian eco-systems makes a life-way connection that flows through the hearts of the Hualapai people.”⁵⁶ The river’s native fish are ancestors.⁵⁷ For the Hualapai—again, molded from the sediment and clay of *Ha ’yidada*—elements in and around *Wi: Nyi Gacha* are “filled with significant symbolism, powers of observation and awareness.”⁵⁸

The Hualapai people regard the canyon and the Colorado River as a living entity infused with conscious spirit. All of the physical elements here have powers of observation and awareness, including the air, land, water, plants, animals, and stars. Everything in the landscape has a spirit deserving of respect, so the Hualapai are careful in their actions.⁵⁹

In line with this vision, the Hualapai have been entrusted with caretaking responsibilities for *Wi: Nyi Gacha* and their entire ancestral homeland.⁶⁰ Both the vision and sense of stewardship are as profound as they are prevalent among Grand Canyon tribes.

3. *Diné* (Navajo)

“It’s where I get my cultural identity.”⁶¹ That’s how *Diné* (aka Navajo) tribal member Renae Yellowhorse describes *Tsé Chii’ Koo’* (again, the Grand Canyon). “The canyon is a sacred space. You only go there with prayers in your heart. With

⁵¹ HUALAPAI NATION, *supra* note 42, at 4.

⁵² *Voices of Grand Canyon*, *supra* note 16.

⁵³ *Id.*

⁵⁴ HUALAPAI NATION, *supra* note 42, at 6.

⁵⁵ *Voices of Grand Canyon*, *supra* note 16.

⁵⁶ HUALAPAI NATION, *supra* note 42, at 6.

⁵⁷ *Voices of Grand Canyon*, *supra* note 16.

⁵⁸ HUALAPAI NATION, *supra* note 42, at 6–7.

⁵⁹ *Eagle Point Exhibit*, *supra* note 43.

⁶⁰ HUALAPAI NATION, *supra* note 42, at 22.

⁶¹ Riggs, *supra* note 40.

purpose on your mind, with purpose in your steps. Then you leave it the way you found it.”⁶²

Constituting the largest Indian reservation in the United States, the Navajo Nation spans across more than 27,000 square miles of surreal high country in what is now northeastern Arizona, northwestern New Mexico, and southeastern Utah—an area roughly equivalent in size to West Virginia and surpassing in size ten of the fifty U.S. states.⁶³ The Navajo Nation abuts Grand Canyon National Park along its western boundary, while along its southwestern and northern boundaries the reservation encompasses portions of the Little Colorado River and San Juan River basins, respectively.⁶⁴ Notwithstanding the reservation’s comparatively large size, the Navajo’s *Diné Bikéyah* (traditional homeland) is much more extensive, similar to the Havasupai and Hualapai reservations as pointed out above. The Navajo homeland lies between four sacred mountains: *Sisnaajini* (Blanca Peak, Colorado), *Tsoodzil* (Mount Taylor, New Mexico), *Dook’o’oosliid* (San Francisco Peaks, Arizona), and *Dibé Ntsaa* (Hesperus Peak, Colorado).⁶⁵ In addition to these peaks, the Navajo also consider sacred *Ch’ool’i’i* (Governador Knob, New Mexico) and *Dzil Ná’oodilii* (Huerfano Mountain, New Mexico), the latter lying at the center of the Navajo homeland where life began.⁶⁶

As it concerns their connections to *Tsé Chii’ Koo’* and otherwise, spirituality lies at the heart of Navajo thinking. “We think of ourselves as spiritual people experiencing a physical world,” describes tribal member Kenneth W. Harvey, Jr. “I am a spirit living in a body.”⁶⁷ This spirituality enriches how the Navajo view and treat *Diné Bikéyah*. As expressed by tribal member Steve A. Darden: “We revere our land as ‘mother,’ for it nurtures and sustains us, and gives us a feeling of safety and inner peace. We are taught that how we regard the land is a reflection of how we regard ourselves.”⁶⁸ In this vein, Navajo ancestors, *Diyin Dine’é* (“Holy Ones”), emerged on earth from a place called *Hajíinéi*, which is encircled by their four sacred peaks.⁶⁹ The *Diyin Dine’é* instructed the Navajo to stay and live within *Diné Bikéyah* and entrusted it to them.⁷⁰ The Navajo consider *Tsé Chii’ Koo’* culturally and spiritually significant “because of the deities that live there”⁷¹ As tribal member Nikki Cooley explains: “We pray to them, for them, with them. It’s a very holy place. It’s my church, basically. That’s my place of worship.”⁷² Grand Canyon

⁶² *Id.*

⁶³ *Native Peoples*, *supra* note 17; *History*, OFF. SITE OF THE NAVAJO NATION, <https://www.navajo-nsn.gov/history.htm> [<https://perma.cc/ABX7-3VKC>].

⁶⁴ *Native Peoples*, *supra* note 17.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Voices of Grand Canyon*, *supra* note 16.

⁷² *Id.*

National Park's tribal neighbors are connected in this view, though it emanates far and wide beyond the park's boundaries as shown below.

B. Nearby

1. Hopituh Shi-nu-mu (Hopi)

“The canyon is a place of origin. The canyon is a place where the spirits return to the afterlife. The canyon is a place of wonder, of fear, of life and death. The canyon teaches you humility by its vastness, by its hostility, and by its peace”⁷³ Words cannot contain the layers of meaning that *Öngtupqa* (again, the Grand Canyon) holds for the *Hopituh Shi-nu-mu* (Hopi shortened, “peaceful people”).⁷⁴ As far as words go, though, this elegant expression from Hopi tribal member Ed Kabotie seems to embody much of the canyon's essence.

The Hopis' roots to *Öngtupqa* trace to time immemorial. Today, the tribe comprises thirty-four clans inhabiting twelve independent villages atop three mesas—First Mesa, Second Mesa, and Third Mesa—in what is now northern Arizona.⁷⁵ Established nearly a millennium ago, the village of Oraibi on Third Mesa is considered the oldest continuously inhabited settlement in North America.⁷⁶ While the Hopi Reservation encompasses roughly 1.5 million acres to the east of Grand Canyon National Park, the tribe's *Hopitutsqwa* (ancestral homelands) are much more expansive.⁷⁷ They envelope a long stretch of *Palavayu* (the Little Colorado River), extend north to part of the San Juan River Basin in present-day Utah, and abut the mainstem of *Pisisvayu* (the Colorado River) along its eastern and southern banks as it flows through *Öngtupqa*.⁷⁸

⁷³ Riggs, *supra* note 40.

⁷⁴ *Native Peoples*, *supra* note 17; *Welcome to Land of Hopi*, HOPI CULTURAL CTR., <https://hopiculturalcenter.com/> [<https://perma.cc/4TW7-LH6W>] (last visited July 22, 2020).

⁷⁵ *Explore the Centuries-Old History of the Hopi People*, HOPI CULTURAL CTR., <https://hopiculturalcenter.com/about-the-hopi/> [<https://perma.cc/P2ZF-9LGN>] [hereinafter *Explore Hopi*]. An additional Hopi village, Mũnqapi, is located approximately forty miles to the northwest of Third Mesa. *Visiting the Three Mesas of the Hopi Reservation*, AAA NATIVE ARTS, <https://www.aaanativearts.com/visiting-the-three-mesas-of-the-hopi-reservation> [<https://perma.cc/3G25-VDAG>].

⁷⁶ See, e.g., *Indigenous Voices of the Colorado Plateau: Hopi Places*, N. ARIZ. UNIV. CLINE LIBR., https://library.nau.edu/speccoll/exhibits/indigenous_voices/havasupai/overview.html [<https://perma.cc/84E3-66BT>] (last visited Dec. 2, 2020); see also *Voices of Grand Canyon*, *supra* note 16 (describing how the Hopi have “been in their present villages for about 1,000 years, but their history goes back much further, to the Ancestral Puebloans who lived, farmed, and moved throughout the Southwest”).

⁷⁷ *Native Peoples*, *supra* note 17.

⁷⁸ *Id.*; see also Janet Balsom, Senior Advisor to the Grand Canyon Nat'l Park Superintendent, Statement of Significance (Sept. 6, 2019) (on file with author) [hereinafter National Register Statement] (addressing the eligibility of the *Öngtupqa*, *Palavayu*, and

The Hopi are farmers—“[a]griculture is the cornerstone of traditional Hopi life”⁷⁹—stemming from *Tutavo* (instructions) given by *Ma’saw*, Earth’s Spiritual Guardian, to Hopi ancestors upon their emergence into the current world, the Fourth World.⁸⁰ “Hopi wisdom and historical memory go far back beyond this world and time”; they have a story of “living within three previous times or worlds.”⁸¹ Upon emerging into the Fourth World, *Ma’saw* gave Hopi ancestors a gourd water canteen and planting stick, and showed them different types of corn. They humbly selected a short ear of blue corn and thus began their life as farmers.⁸²

Öngtupqa is where Hopi ancestors emerged into the Fourth World. This emergence occurred at a sacred place near the confluence of the Colorado River and Little Colorado River called the *Sipapuni*, where Hopi ancestors received guidance from *Ma’saw* about how to live.⁸³ Not only did that guidance concern values—being “good stewards of the land, humble, cooperative, and hard working [sic]”—it also instructed Hopi ancestors on the need to travel through the new land.⁸⁴ Thus, from their place of emergence in *Öngtupqa*, Hopi ancestors migrated for centuries searching for *Tuuwanasavi* (the “center place”), their intended home where they live today and which they consider the spiritual center of the world.⁸⁵ The Hopis’ emergence in, and clan migrations from, *Öngtupqa* are central to their collective and individual identities. “It is through these events that Hopi identity is constructed and maintained,” and aspects of the events are “continually reaffirmed in the ceremonies and daily practices of the Hopi people.”⁸⁶

But that is not all. “When Hopi people pass from this life into the next, they travel to and reside in *Öngtupqa*.”⁸⁷ “The interface between this world and the next occurs roughly at the rim of *Öngtupqa* and makes *Öngtupqa* an especially sacred

Pisisvayu for inclusion on the National Register of Historic Places as a traditional cultural property of the Hopi and Zuni peoples).

⁷⁹ *Explore Hopi*, *supra* note 75.

⁸⁰ *Native Peoples*, *supra* note 17; See also LEIGH JENKINS & T.J. FERGUSON, *ÖNGTUPKA: HOPI SACRED GEOGRAPHY OF THE GRAND CANYON 1* (1994).

⁸¹ *Native Peoples*, *supra* note 17.

⁸² *Id.*

⁸³ National Register Statement, *supra* note 78, at 2–3.

⁸⁴ *Native Peoples*, *supra* note 17.

⁸⁵ *Id.* Clans arrived at *Tuuwanasavi* at different times and through different routes. *Id.* Together, they all helped to create *Hopivötskwani* (the “Hopi way of life”). *Id.*; see also JENKINS & FERGUSON, *supra* note 80, at 1–2 (discussing Hopi clan migrations following emergence from *Sipapuni*).

⁸⁶ National Register Statement, *supra* note 78, at 3; see also *Voices of Grand Canyon*, *supra* note 16 (“The Hopi remember their ancestors’ migrations through traditions and clan histories. Petroglyphs, pottery sherds, and archaeological sites are living connections to the people who walked before them.”).

⁸⁷ National Register Statement, *supra* note 78, at 575; see also Riggs, *supra* note 40 (“[The Grand Canyon is] a very spiritual place because of the *Sipapuni*, where we emerged from into this world. And it’s where we go back to when we leave this world.”).

and spiritually dangerous place to visit.”⁸⁸ In this respect, the Hopi associate *Öngtupqa* with many key figures in their history, culture, and religion, including *Ma’saw*, *Kwanitaqa*, *Muyingwa*, *Huruingwu’ti*, *Tiyo*, *Pökanghoya* and *Palöngawhoya*, *Öngwu’ti*, *Kokyangowu’ti*, *Sa’lako*, and *Kooyemsi*.⁸⁹ Further, “[o]ver 100 species of culturally significant plants have been identified in the riparian zones” along *Pisisvayu* and *Palavayu* inside *Öngtupqa*, and the Hopi equate numerous animals in *Öngtupqa* with health and life, such that their absence diminishes its significance.⁹⁰

There is more to the Hopis’ connections to *Öngtupqa* than this author will ever have the blessing of learning. In essence, “[i]t is their genesis as well as their final spiritual home,”⁹¹ “a monument to the legacy of the Hopi clans,”⁹² and a place whose “spiritual essence . . . is as awesome as the physical form of the beautiful and deeply stratified rocks that form the canyon walls.”⁹³ And lest anyone view the immemorial nature of the Hopis’ connection to this place as potentially dwindling, nothing could be further from the truth. As one tribal member affirms: “We’re still here. We’re still in active communities. We still care very deeply for the lands and this landscape. We still use it and are stewards.”⁹⁴ This stewardship is a sacred obligation rooted in the Hopis’ respect for their ancestors as well as their pact with *Ma’saw*.⁹⁵

2. *A:Shiwi (Zuni)*

The *A:Shiwi* (aka Zuni) also hold a rich, timeless relationship with *Chimik’yana’kya* (again, the Grand Canyon) that resembles in many respects the Hopis’ connection to the sacred place. The Zuni have lived in what is now the

⁸⁸ National Register Statement, *supra* note 78, at 5.

⁸⁹ *Id.* at 5–8. *Ma’saw* is “the guardian of the Fourth World, and one of his residences is within *Öngtupqa*.” *Id.* at 5. *Kwanitaqa* is a “One-horn Deity” who “played a role in the Emergence into the Fourth World.” *Id.* at 6. *Muyingwa* is a kachina “associated with the underworld and germination.” *Id.* *Huruingwu’ti* is a figure “involved in the creation of the world” and *Tiyo*’s journey down the Colorado River. *Id.* *Tiyo* is “the first person who navigated the Colorado River through the Grand Canyon.” *Id.* *Pökanghoya* and *Palöngawhoya* (The Twins) “led the Hopis to the Hopi Salt Mines from the Hopi Mesas” and established the Hopi Salt Trail. *Id.* at 7. Both twins live within *Öngtupqa*, and *Pökanghoya* is its protector. *Id.* “*Öngwu’ti* (Salt Woman) resides at the Hopi Salt Mine and tends to the salt.” *Id.* *Kokyangowu’ti* (Spider Old Woman or Spider Grandmother) is a “goddess’ of wisdom” who has a shrine dedicated to her in *Öngtupqa*. *Id.* “*Sa’lako* is a deity who originated in *Öngtupqa* and ultimately traveled to Zuni by way of *Nuvatukay’ovi* (San Francisco Peaks).” *Id.* *Kooyemsi* (Mudheads) “live in *Öngtupqa* at a place called *Tatatsiqwtömuy kiiam* (Mudhead Kiva).” *Id.* at 8.

⁹⁰ *Id.*

⁹¹ *Voices of Grand Canyon*, *supra* note 16.

⁹² *Id.*

⁹³ JENKINS & FERGUSON, *supra* note 80, at 3.

⁹⁴ Riggs, *supra* note 40 (quoting Hopi tribal member Georgie Pongyesva).

⁹⁵ JENKINS & FERGUSON, *supra* note 80, at 3.

southwestern United States for millennia,⁹⁶ and they, too, trace their origin to *Chimik'yana'kya*.

Traditional Zuni homelands are vast, encompassing *Chimik'yana'kya* as well as the entire Little Colorado River and San Juan River basins.⁹⁷ Nearly all of what is now New Mexico falls within these ancestral lands, as do wide swaths of what are now Arizona, southeastern Utah, and southwestern Colorado.⁹⁸ In contrast, the current-day Zuni Reservation spans 723 square miles beside the Zuni River in western New Mexico, and the tribe also owns land apart from the main reservation in Apache County, Arizona and Catron County, New Mexico.⁹⁹ Although they have adjusted to a cash economy in modern times—generating income from arts and crafts, raising livestock, and wage work—the Zuni traditionally have been farmers.¹⁰⁰ They have small farming settlements throughout their territory where some tribal members live during the summer months and return after harvest to the central village of *Halona:wa*.¹⁰¹

The Zuni are connected to *Chimik'yana'kya* in what has been described as an “umbilical” way.¹⁰² Their ancestors emerged from the fourth underworld at a sacred site called *Chimik'yana'kya dey'a* near Ribbon Falls in Grand Canyon National Park.¹⁰³ It is their place of origin and holds tremendous significance:

All of the plants that grow along the stream from Ribbon Falls to the Colorado River, and all the birds and other animals, springs, minerals, and natural resources located in the Grand Canyon and its tributaries have a central place in Zuni traditional cultural practices and ceremonial activities.¹⁰⁴

⁹⁶ *Keshi! Welcome*, PUEBLO OF ZUNI, <http://www.ashiwi.org/index.html> [https://perma.cc/3NAW-GRAF].

⁹⁷ *Native Peoples*, *supra* note 17.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*; see also *Voices of Grand Canyon*, *supra* note 16 (“The Zuni, a farming people, have long lived in the Zuni Valley. They settled where they found fertile soil and plentiful water.”).

¹⁰¹ *Native Peoples*, *supra* note 17.

¹⁰² *Id.*; National Register Statement, *supra* note 78, at 1. As described by Zuni tribal member Jim Enote: “The Zuni River and Little Colorado River are like umbilical cords, connecting us back to the place where we emerged” *Voices of Grand Canyon*, *supra* note 16.

¹⁰³ *Native Peoples*, *supra* note 17; see also HARRY CHIMONI & E. RICHARD HART, ZUNI AND THE GRAND CANYON 1 (1994) (“The Zunis first emerged out of Mother Earth’s fourth womb at a sacred place deep within the Grand Canyon. The Zunis . . . came into the first light of Sun Father at a beautiful spot near Ribbon Falls.”).

¹⁰⁴ National Register Statement, *supra* note 78, at 1.

Zuni ancestors were told after emergence to search for *Idiwana'a* (the “Middle Place”) and began a centuries-long migration within and far beyond *Chimik'yana'kya*.¹⁰⁵ Although there were multiple migration paths and localities,¹⁰⁶ the direct migration line extended “from *Chimik'yana'kya dey'a*, along the Colorado River to the confluence with the Little Colorado River, eastward up the Little Colorado River to its confluence with the Zuni River, and then up the Zuni River to what is the present day Zuni Indian Reservation”¹⁰⁷ In this way, the Zuni found *Idiwana'a*,¹⁰⁸ but “they have never forgotten where they come from: the Grand Canyon.”¹⁰⁹

The Zuni originally lived in several villages within the Zuni Valley, but later consolidated these communities into *Halona:wa*—the central village noted above—after joining the Pueblo Revolt of 1680 and temporarily expelling the Spanish from the region.¹¹⁰ The Zuni’s “annual community ceremonial cycle includes a complex set of ceremonies, many of which belong to the Kiva Societies.”¹¹¹ These societies are associated with *Kokkos* (spirit beings) that live at the confluence of the Little Colorado River and Zuni River.¹¹² The Zuni had important interactions with the *Kokkos* at this confluence during their migration to *Idiwana'a*.¹¹³ When Zuni people pass from this earth, their “spirits travel to this place to become one with the ancestors and forces of nature.”¹¹⁴ It is known as *Kolhu/wala:wa* or “Zuni Heaven.”¹¹⁵

Thus, the significance of this landscape to the Zuni is inexpressible. To synthesize the umbilical connection, “[t]he point of emergence, the place where Zunis go after death, and the village of the living Zunis, are all tied together by the sacred flowing waters of the Zuni River, the Little Colorado River and the Colorado River.”¹¹⁶ Further, as has been highlighted for other tribes, the Zuni consider *Chimik'yana'kya* to be alive. “The walls of the Grand Canyon, the rocks, the minerals and pigments there, and the water that flows between the walls of the

¹⁰⁵ *Native Peoples*, *supra* note 17.

¹⁰⁶ National Register Statement, *supra* note 78, at 1 (“The emergence of [the Zuni ancestors] onto this earth and their migration to Zuni Pueblo is the event that gives the rivers and canyons traditional cultural value. But the migration through these places is not a single event, rather it took centuries for the people to travel from the Place of Emergence to Zuni Pueblo.”).

¹⁰⁷ *Id.* at 1.

¹⁰⁸ *Native Peoples*, *supra* note 17.

¹⁰⁹ *Voices of Grand Canyon*, *supra* note 16.

¹¹⁰ *Native Peoples*, *supra* note 17.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ CHIMONI & HART, *supra* note 103, at 2.

¹¹⁴ *Native Peoples*, *supra* note 17.

¹¹⁵ CHIMONI & HART, *supra* note 103, at 2.

¹¹⁶ *Id.*

canyon are all alive.”¹¹⁷ “Like any other living being,” the canyon “can be harmed, injured and hurt when it is cut, gouged, or in other ways mistreated,” and therefore it must be protected.¹¹⁸

3. *Wipuhk’a’bah-Dil’zhe’e (Yavapai-Apache)*

The Yavapai-Apache Nation consists of two peoples: the Yuman-speaking Yavapai and the Athabaskan-speaking *Dilzhe’e* Apache.¹¹⁹ Although they are a united Nation in modern times, the tribes have “distinct cultures, languages, traditions, and up until ‘reservation times,’ mostly separate histories.”¹²⁰

Part of the Pai Indigenous group, which also includes the Havasupai and Hualapai as described above, the Yavapai historically consisted of several bands: Yavabé in the northwest, “Tolkapaya in the west and to the south (Prescott Yavapai Tribe), Wipukapaya in the Verde Valley (Yavapai-Apache Nation), and Kewevkapaya in the mountains to the south (Ft. McDowell).”¹²¹ Their way of life involved gathering, hunting, and “simple gardens with the ‘three sisters’—corns, beans and squash.”¹²²

The two tribes’ traditional homelands overlapped, with Yavapai mostly west of the Verde River, and Apache mostly to the east.¹²³ As described by tribal elders, they share a common place of origin: “Our tribes emerged at separate times into this world from a place Anglo-Americans call ‘Montezuma’s Well.’ Our Yavapai people call this place *Ahakisqywah*; our Apache people call it *Tu’ziichil*.”¹²⁴ The Yavapai and Apache frequently traveled to the Grand Canyon in summer and fall to gather edible plants such as pinyon nuts.¹²⁵

4. *Nüwü (Southern Paiute)*

A highly mobile hunting and gathering people, the Southern Paiute are the *Nüwü* (“people of the land”),¹²⁶ traditionally comprising fifteen bands made up of family groups with extensive homelands across what are now northern Arizona and

¹¹⁷ *Id.* at 3.

¹¹⁸ *Id.*

¹¹⁹ *Native Peoples*, *supra* note 17.

¹²⁰ *Yavapai History*, YAVAPAI–APACHE NATION CULTURAL RES. CTR, <http://yavapai-culture.org/Pages/YavaHistory.html> [<https://perma.cc/548V-BHEU>].

¹²¹ *Id.* “Another Yuman group . . . in the Gila River area is extinct today.” *Id.*

¹²² *Id.*

¹²³ *Native Peoples*, *supra* note 17.

¹²⁴ *Id.*

¹²⁵ Sarah Bohl Gerke, *Yavapai Apache*, NATURE, CULTURE AND HISTORY AT THE GRAND CANYON, <https://grcahistory.org/history/native-cultures/yavapai-apache/> [<https://perma.cc/NH8U-D37S>].

¹²⁶ *Native Peoples*, *supra* note 17.

southern Utah, as well as parts of what are now Nevada and California.¹²⁷ These bands lived for centuries on lands to the north, east, and west of *Paxa*' (the Colorado River) as it flows through *Piyapaxa* 'Uipi (again, the Grand Canyon), and along tributaries such as the Little Colorado, Paria, and San Juan rivers.¹²⁸ Southern Paiute ancestors were among the earliest peoples to establish permanent homes at and within the Grand Canyon.¹²⁹ According to most Southern Paiute oral traditions, Coyote sprang the Southern Paiute ancestors from his sack in the Spring Mountains of what is now southern Nevada, and the Southern Paiute have lived between those mountains and *Piyapaxa* 'Uipi ever since.¹³⁰ Thus, as expressed by one tribal elder, the Southern Paiute's roots in this landscape run deep:

We have been here forever; we have been here since the world was new. We don't have any oral history that we have been anywhere else . . . we are still connected to this land. This is where our umbilical cords are buried, and that is how we are connected.¹³¹

Today, five Southern Paiute tribes hold traditional connections with *Piyapaxa* 'Uipi. They are the Kaibab Band of Paiute Indians, Las Vegas Band of Paiute Indians, Moapa Band of Paiute Indians, Paiute Indian Tribe of Utah, and San Juan Southern Paiute Tribe.¹³² All of these tribes are federally recognized, and four of them have reservations in Arizona, Utah, or Nevada.¹³³ *Paxa*' and *Piyapaxa* 'Uipi in its entirety are both landscape features of importance to the Southern Paiute.¹³⁴ Examples of ceremonial landscapes within *Piyapaxa* 'Uipi include Mount Trumbull and a pilgrimage route to the Toroweap Overlook.¹³⁵

III. COLONIAL RELATIONS AT GRAND CANYON

Grand Canyon tribes' connections to their ancestral homelands can leave a person speechless. Imagine the vast, intimate knowledge tribal members and their ancestors have gained about the canyon from being connected with it for centuries,

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ MICHAEL F. ANDERSON, *LIVING AT THE EDGE: EXPLORERS, EXPLOITERS AND SETTLERS OF THE GRAND CANYON REGION* 11 (1998).

¹³⁰ WILDLANDS NETWORK, *supra* note 25, at 20. According to San Juan Southern Paiute oral history, Coyote released the people from his sack near Page, Arizona rather than the Spring Mountains. *Id.*

¹³¹ *Native Peoples, supra* note 17.

¹³² *Associated Tribes, supra* note 21.

¹³³ *Native Peoples, supra* note 17. The San Juan Southern Paiute Tribe does not yet have their own reservation. *About The Tribe*, SAN JUAN S. PAIUTE TRIBE, <https://www.sanjuanpaiute-nsn.gov/about> [<https://perma.cc/V75B-CYJB>].

¹³⁴ WILDLANDS NETWORK, *supra* note 25, at 21.

¹³⁵ *Id.*

millennia, or since time immemorial. Consider, too, the profound sense of care and stewardship these connections have instilled. On these bases and others, Grand Canyon tribes have so much to offer when it comes to managing the conjoined cultural and physical landscape. One would hope or even expect the National Park Service to recognize this capacity and cooperate, collaborate, and consult with tribes accordingly. That thinking is somewhat new school, however, not where the agency historically has been for most of the park's life. As described upon last year's centennial:

One hundred years of federal protections for Arizona's most distinctive landscape certainly seems noteworthy. But for the tribes who hold the canyon sacred, the centennial is not a celebration. The canyon's designation as a national park brought displacement, barriers to access, and a write-over of history for its Indigenous people.¹³⁶

And that returns to what this Article is all about: relationships—past, present, and future—between the Park Service and Grand Canyon tribes. The discussion that follows highlights salient aspects of these relationships from the mid-nineteenth century up to the present. The material is not intended to be exhaustive, as excellent scholarship on the history of these relationships already exists,¹³⁷ but instead to lay a foundation for advocacy—that is, for a vision of how these relationships might take a new shape in the future.

As a roadmap, the discussion begins with the construction of relations between the federal government and Grand Canyon tribes prior to Grand Canyon National Park's 1919 creation. In a nutshell, these relations were quintessentially colonial and involved the federal government's ethnocentric dominance of Grand Canyon tribes and facilitation of Euro-American settlement across the tribes' overlapping homelands.¹³⁸ Against this backdrop, the narrative then considers how the Park Service perpetuated this relational precedent following Grand Canyon's establishment. Key topics include the park's enlargement in 1975, and tensions between the Park Service and Grand Canyon tribes whose reservations about the park, especially the Havasupai. Finally, eyeing the future, the discussion turns to an

¹³⁶ Gayatri Girirajan, *Grand Canyon Centennial: An Interview with Colleen Cooley*, GRAND CANYON TR. (July 25, 2019), <https://www.grandcanyontrust.org/blog/grand-canyon-centennial-interview-colleen-cooley> [<https://perma.cc/9VD3-P49X>].

¹³⁷ Examples include Krakoff, *supra* note 27; JEFFREY P. SHEPHERD, *WE ARE AN INDIAN NATION: A HISTORY OF THE HUALAPAI PEOPLE* (2010); CHRISTIAN W. MCMILLEN, *MAKING INDIAN LAW: THE HUALAPAI LAND CASE AND THE BIRTH OF ETHNOHISTORY* (2007); STEPHEN HIRST, *I AM THE GRAND CANYON: THE STORY OF THE HAVASUPAI PEOPLE* (Todd R. Berger & Nicky Leach eds., The Havasupai Tribe 3d ed. 2006); BURNHAM, *supra* note 19; KELLER & TUREK, *supra* note 8.

¹³⁸ See Krakoff, *supra* note 27, at 567–69 (describing the multi-faceted onset of Euro-American colonization of the Grand Canyon region and broader Colorado Plateau during the latter half of the nineteenth century).

ongoing reconception of the relationships between the Park Service and Grand Canyon tribes that began in the late 1980s. It has both systemic and unit-specific dimensions and ultimately roots Part IV's advocacy.

A. Construction

Boundaries. That lone word captures so much of the relational history between the federal government and Grand Canyon tribes leading up to Grand Canyon National Park's establishment in 1919.¹³⁹ And there is a lot of baggage—immense intergenerational trauma within Native communities—stemming from the boundaries' imposition.¹⁴⁰ Without a sense of the boundaries, as well as the tumultuous federal-tribal relations associated with them, it is impossible to understand what the relationships between the Park Service and Grand Canyon tribes look like now, or to conceptualize what those relationships should look like in the future. The point of departure for this segment of the survey involves two foundational instruments—one signed in Philadelphia, the other in Guadalupe Hidalgo, Mexico.

¹³⁹ As described by Western historian Patty Limerick in regards to the region as a whole: “[T]he history of the West is a study of a place undergoing conquest and never fully escaping its consequences.” PATRICIA NELSON LIMERICK, *THE LEGACY OF CONQUEST: THE UNBROKEN PAST OF THE AMERICAN WEST* 26 (1987). Boundary setting by the federal government has been instrumental to this conquest:

Conquest basically involved the drawing of lines on a map, the definition and allocation of ownership (personal, tribal, corporate, state, federal, and international), and the evolution of land from matter to property. The process had two stages: the initial drawing of the lines (which we have usually called the frontier stage) and the subsequent giving of meaning and power to those lines, which is still under way.

Id. at 27. Applied to the Grand Canyon, boundary setting facilitated conquest of the canyon's Indigenous Peoples and landscape as a whole—that is, the entirety of its cultural and natural resources.

¹⁴⁰ See Riggs, *supra* note 40. As described by Hopi tribal member Ed Kabotie:

In the indigenous communities involved with the Grand Canyon, all of us are experiencing some type of environmental, historic, personal, or cultural trauma. The affiliated tribes of the Grand Canyon have all been severely assaulted over the last 125 years by government entities, mining companies, BIA [Bureau of Indian Affairs] boarding schools.

Id.

I. Constitutionalization

Constitutionalization of the Grand Canyon was the predicate boundary-setting act by the United States—a nation-state with a perceived providential “manifest destiny” to realize imperial ambitions across the entire North American continent, including Native American homelands.¹⁴¹ “Constitutional Migration” is another shorthand for this foundational move.¹⁴² It took place in 1848 via the treaty that ended the Mexican-American War, the Treaty of Guadalupe Hidalgo.¹⁴³ “[C]onstitutional frameworks require physical space for legal expression,”¹⁴⁴ and that’s precisely what the treaty afforded. Forcing Mexico to relinquish claims to a vast expanse of land within the Colorado River Basin—the Grand Canyon and elsewhere—the treaty’s formation can be visualized as the United States’ casting of a net across the canyon’s interconnected physical and cultural landscape. The net, of course, was the “supreme Law of the Land.”¹⁴⁵

From 1848 onward, the U.S. Constitution’s constituent strands—the Property Clause,¹⁴⁶ Treaty Clause,¹⁴⁷ Indian Commerce Clause,¹⁴⁸ and Compact Clause¹⁴⁹ in

¹⁴¹ RICHARD WHITE, “IT’S YOUR MISFORTUNE AND NONE OF MY OWN”: A NEW HISTORY OF THE AMERICAN WEST 73 (1991) (writing that according to New York newspaperman John O’Sullivan, who produced the phrase “manifest destiny,” “[b]efore the claims of Providence, legal claims of other nations, let alone the unmentioned claims of Indians who actually lived on these lands, were mere ‘cobweb tissues’”).

¹⁴² See Robison, *supra* note 8, at 561.

¹⁴³ Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, Mex.-U.S., Feb. 2, 1848, 9 Stat. 922 [hereinafter Treaty of Guadalupe Hidalgo]. See also WHITE, *supra* note 141, at 77–82 (discussing the Mexican-American War). For an examination of Spanish and Mexican colonization throughout the Southwest, including relations with Grand Canyon tribes, see EDWARD H. SPICER, CYCLES OF CONQUEST: THE IMPACT OF SPAIN, MEXICO, AND THE UNITED STATES ON THE INDIANS OF THE SOUTHWEST, 1533–1960 (1962).

¹⁴⁴ Robison, *supra* note 8, at 562.

¹⁴⁵ The Supremacy Clause provides: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land” U.S. CONST., art. VI, cl. 2.

¹⁴⁶ “The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States” *Id.* art. IV, § 3, cl. 2.

¹⁴⁷ “[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur” *Id.* art. II, § 2, cl. 2.

¹⁴⁸ “[The Congress shall have Power] [t]o regulate Commerce . . . with the Indian Tribes.” *Id.* art. I, § 8, cl. 3.

¹⁴⁹ Phrased in an inverse manner, the Compact Clause provides: “No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State” *Id.* art. I, § 10, cl. 3.

particular—set fundamental legal parameters that would thereafter define the relationship between the federal government and Grand Canyon tribes. Viewed in context, any survey of federal-tribal relations at the Grand Canyon must consider as a starting point the cornerstone of the settler state asserting ownership of and sovereignty over the canyon, the U.S. Constitution, as well as the international instrument that enabled the cornerstone's placement in this space, the Treaty of Guadalupe Hidalgo. The relational boundaries imposed by these two instruments function like an edifice atop which successive pieces of the colonial legal and political system rest. As for what those successive pieces came to be, they emerged along two interactive lines between the Grand Canyon's constitutionalization in 1848 and the national park's genesis in 1919.¹⁵⁰

2. *Native Segregation*

One line involved federal Indian policy and its manifestation at the Grand Canyon—that is, its application to Grand Canyon tribes' ancestral homelands and consequent segregation of the tribes onto reservations as referenced above.¹⁵¹ The Treaty Clause, Property Clause, and Indian Commerce Clause were tools to this end, with the 1848 Treaty of Guadalupe Hidalgo anticipating they would function in this very way. In paternalistic tones steeped in contemporary perceptions of Euro-American cultural supremacy, the treaty provided: “[A] great part of the territories which, by the present treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the government of the United States.”¹⁵² The following year, in 1849, the United States began exercising the “exclusive control” contemplated by the treaty in relation to Grand Canyon tribes. The Navajo Nation formed a treaty with the federal government at this time reciting how the tribe had been “lawfully placed under the exclusive jurisdiction and protection” of the United States, and how the “United States shall, at its earliest convenience, designate, settle, and adjust their territorial boundaries, and pass and execute in their territory such laws as may be deemed conducive to the prosperity and happiness of [the Navajo].”¹⁵³

¹⁵⁰ Although discussed here in relation to Grand Canyon National Park's backstory, the intertwined historical pattern of Native segregation via federal Indian policy coupled with federal occupation via public land law is relevant to the entire National Park System. *See, e.g.,* KEITER, *supra* note 13, at 124 (describing how federal “reservation and allotment policies mirrored the national park dispossession efforts that removed Native Americans from park lands and denied them any ongoing access rights”).

¹⁵¹ Krakoff, *supra* note 27, at 564 (describing how Grand Canyon National Park “stands on the site of a broad-based eviction”). *See* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW §§ 1.03, 1.04 (Nell Jessup Newton ed., 2012) (surveying federal reservation and allotment policies during this period).

¹⁵² Treaty of Guadalupe Hidalgo, *supra* note 143, at art. XI, ¶ 1.

¹⁵³ Treaty Between the United States of America and the Navajo Tribe of Indians, U.S.-Navajo Tribe, art. IX, Sept. 9, 1849, 9 Stat. 974–75.

The stage was thus set for drawing new, colonial boundaries—Indian reservations—and all that entailed for federal-tribal relations at and adjacent to the Grand Canyon. It was a lot: segregation of Grand Canyon tribes onto the reservations; attempted acculturation of the tribes to agriculture, private property, English, and Christianity; assumption of federal control over the Grand Canyon; and loads more.¹⁵⁴ An 1868 treaty between the Navajo Nation and the United States marked this pattern's onset. It created a reservation on a small portion of the Navajo's homeland and elicited agreements from the tribe to make the reservation their "permanent home," not to make "any permanent settlement elsewhere," and "to induce Indians now away from reservations . . . leading a nomadic life, or engaged in war against the people of the United States, to abandon such a life and settle permanently in one of the territorial reservations"¹⁵⁵ There is more to say about the oppression preceding this treaty's formation, but it was notably "the first instance in which Indian lands in the greater Grand Canyon were given new identity and substance through the drawing of boundaries."¹⁵⁶ Following the end of the treaty-making era in 1871,¹⁵⁷ executive orders created reservations for other Grand Canyon tribes up until 1919,¹⁵⁸ including the Yavapai-Apache Nation in 1871,¹⁵⁹ Zuni Tribe in 1877,¹⁶⁰ Havasupai Tribe in 1880,¹⁶¹ Hopi Tribe in 1882,¹⁶² Hualapai Tribe in 1883,¹⁶³ and Kaibab Band of Paiutes in 1917.¹⁶⁴ These reservations' boundaries commonly morphed across time.¹⁶⁵

¹⁵⁴ For insights into the social theory underlying federal reservation policy, see Cordalis & Cordalis, *supra* note 12 (addressing social theory in chapters 9–12 constituting Part III on Native Americans).

¹⁵⁵ Treaty Between the United States Government and the Navajo Tribe of Indians, U.S.-Navajo Tribe, arts. II, XIII, June 1, 1868, 15 Stat. 667.

¹⁵⁶ BARBARA J. MOREHOUSE, *A PLACE CALLED GRAND CANYON: CONTESTED GEOGRAPHIES* 21 (1996).

¹⁵⁷ The Indian Appropriations Act of 1871, ch. 120, 16 Stat. 544, 566 (1871) (codified as amended at 25 U.S.C. § 71) ("[H]ereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty").

¹⁵⁸ Indian Appropriations Act of 1919, ch. 4, 41 Stat. 3, 34 (1919) ("[H]ereafter no public lands of the United States shall be withdrawn by Executive Order, proclamation, or otherwise, for or as an Indian reservation except by act of Congress").

¹⁵⁹ Exec. Order (Oct. 3, 1871) ("Apache Mohave Indians").

¹⁶⁰ Zuni Indian Reservation in New Mexico and Arizona, H.R. Doc. No. 11, at 3 (1885).

¹⁶¹ Exec. Order (June 8, 1880) ("Suppai Indians").

¹⁶² Exec. Order (Dec. 16, 1882) ("Moqui").

¹⁶³ Exec. Order (Jan. 4, 1883).

¹⁶⁴ Exec. Order (July 17, 1917) (superseding a previous public land order on October 16, 1907, which took preliminary steps toward the creation of this reservation, and previous Exec. Order No. 1786 on June 11, 1913).

¹⁶⁵ Laws modifying or clarifying Grand Canyon tribes' reservation boundaries include Exec. Order (Apr. 23, 1875) (Yavapai-Apache); Exec. Order (Oct. 29, 1878) (Navajo); Exec. Order (Jan. 6, 1880) (Navajo); Exec. Order (Nov. 23, 1880) (Havasupai ("Suppai")); Exec.

Construction of the new boundaries heavily involved the U.S. military.

Circling back to the 1868 treaty creating the Navajo reservation, it was preceded by the Long Walk in 1864—involving a total of 53 episodes of forced removal of Navajo tribal members from their homelands—followed by four desolate years at an internment camp in eastern New Mexico called *Hwééldi* (the Bosque Redondo Reservation).¹⁶⁶ This horrid place is where the 1868 treaty was negotiated. “[W]e will make a boundary line outside of which you must not go except for the purpose of trading . . . ,” stated General Sherman at the negotiations.¹⁶⁷ “We must have a clearly defined boundary line and know exactly where you belong to”¹⁶⁸ This dialogue elicited a spirited reply from Navajo Chief Barboncito: “I hope to God you will not ask me to go to any other country except my own.”¹⁶⁹ Two days later, the initial boundaries of the Navajo reservation were drawn, enclosing a modest portion of the tribe’s homeland.¹⁷⁰

And the Navajo weren’t alone in enduring such suffering. Designation of the Hualapai Reservation in 1883 was also preceded by tragedy. In 1874, the U.S. military forcibly removed the Hualapai from their homeland, sending them to “bake in the desert of the Colorado River lowlands”¹⁷¹ at the La Paz internment camp.¹⁷² The long walk to La Paz is known as the Hualapai Trail of Tears.¹⁷³ Many tribal members died on it, and many others died while confined at the camp. After one year of incarceration, some Hualapai escaped from La Paz and returned to their homeland, only to find it occupied by Euro-American settlers.¹⁷⁴ Recognizing “their

Order (Mar. 31, 1882) (Havasupai (“Yavai Suppai”)); Exec. Order (May 1, 1883) (Zuni); Exec. Order (May 17, 1884); Exec. Order (Apr. 24, 1886) (Navajo); Exec. Order (Dec. 22, 1898) (Hualapai); Exec. Order (Jan. 8, 1900) (Navajo); Exec. Order (May 14, 1900) (Hualapai); Exec. Order (Nov. 14, 1901) (Navajo); Exec. Order No. 324-A (May 15, 1905) (Navajo); Exec. Order No. 744 (Jan. 28, 1908) (Navajo); Exec. Order No. 1000 (Dec. 30, 1908) (Navajo); Exec. Order No. 1284 (1911) (Navajo); Exec. Order No. 1368 (1911) (Hualapai (“Walapai”)); Exec. Order No. No. 1482 (1912) (Navajo); Exec. Order No. 1483 (1912) (Navajo); Exec. Order No. 1540 (1912) (Hualapai (“Walapai”)); Exec. Order No. 1700 (1913) (Navajo); Exec. Order No. 2612 (1917) (Navajo); Exec. Order No. 2789 (1918) (Navajo).

¹⁶⁶ BERNHARD MICHAELIS, *THE NAVAJO TREATY 1868: TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE NAVAJO TRIBE OF INDIANS* 7, 11 (2014).

¹⁶⁷ *Id.* at 18.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 21.

¹⁷¹ HUALAPAI NATION, *supra* note 42, at 18.

¹⁷² *Eagle Point Exhibit*, *supra* note 43.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

homeland had changed forever,” the La Paz survivors pursued and eventually secured their reservation,¹⁷⁵ despite calls from settlers to have the tribe permanently removed.¹⁷⁶

A final vignette of this sort comes from the Yavapai-Apache Nation. Following the invasion of their homeland by miners, ranchers, and farmers in the 1860s, the U.S. military forced tribal members onto the Camp Verde reserve established in 1871, killing those who resisted.¹⁷⁷ That reserve, in turn, was taken away in 1875, and the U.S. military forcibly relocated tribal members to the San Carlos Reservation during winter of that year—a 180-mile walk.¹⁷⁸ Again, many tribal members died on this long journey.¹⁷⁹ Those who were able to survive stayed at San Carlos for a generation.¹⁸⁰ The federal government supplied unhealthful rations on which they grew sick, outlawed tribal religious and cultural practices, and sent children away to boarding schools.¹⁸¹ As with the Hualapai at La Paz, some tribal members escaped and returned to their homeland, where Euro-American settlers called them “squatters.”¹⁸² The Camp Verde reserve was set aside for their return in 1910—thirty-five years after the forced relocation—and included a “fraction” of the Yavapai-Apache homeland: a total of eighteen acres.¹⁸³

3. Federal Occupation

Segregation of Grand Canyon tribes onto reservations occurred contemporaneously with federal occupation of the canyon leading up to the national park’s 1919 designation—a prevalent intersection between federal Indian policy and public land law during this period.¹⁸⁴ Reflecting successive exercises of the U.S. Constitution’s Property Clause, the complementary line of developments involving public lands marked the late-nineteenth-century transition from an initial era of federal disposal (privatization) to a subsequent era of federal retention.¹⁸⁵ Grand

¹⁷⁵ *Id.*

¹⁷⁶ *Native Peoples*, *supra* note 17.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ See Krakoff, *supra* note 27, at 566 (describing intersection of American Indian law and public land law in this historical context and their common facilitation of Euro-American colonization).

¹⁸⁵ See Robert B. Keiter, *John Wesley Powell and the National Park Idea: Preserving Colorado River Basin Public Lands*, in *VISION & PLACE: JOHN WESLEY POWELL & REIMAGINING THE COLORADO RIVER BASIN* 105 (Jason Robison, Daniel McCool & Thomas Minckley eds., 2020) (describing the transition in public land policy beginning in the late-

Canyon National Park is a creature of the latter and bears its hallmarks. It is a federal reservation—a federal land classification—whose management is prescribed by intertwined federal statutes, regulations, and policies, and entrusted to a federal agency for administration.

With these qualities in mind, “federal occupation” of the Grand Canyon predates the national park’s designation by a generation.¹⁸⁶ An 1891 statute, the Forest Reserve Act, empowered the president to establish forest reservations,¹⁸⁷ and two years later, in 1893, President Benjamin Harrison superimposed on the Grand Canyon an inaugural federal land classification: the Grand Canyon Forest Reserve.¹⁸⁸ Things progressed one step further, both at the canyon and nationally, with the 1897 Forest Service Organic Act.¹⁸⁹ It charged the Secretary of the Interior with administering forest reservations, later called “national forests,”¹⁹⁰ and enumerated their purposes: “to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber. . . .”¹⁹¹ The Coconino and Kaibab national forests spawned at and adjacent to the Grand Canyon during the next decade—simply put, new boundaries.¹⁹²

nineteenth century both nationally and within the Colorado River Basin). *See also* Krakoff, *supra* note 27, at 569.

¹⁸⁶ As described above, Grand Canyon’s “constitutionalization” via the 1848 Treaty of Guadalupe Hidalgo can be thought of as the first instance of federal occupation. *See* Treaty of Guadalupe Hidalgo, *supra* note 143. For purposes of this discussion, however, “federal occupation” refers to the federal government’s superimposing on different parts of the canyon land classifications rooted in subconstitutional laws such as statutes and presidential proclamations.

¹⁸⁷ The Forest Reserve Act empowered the president to “set apart and reserve . . . any part of the public lands wholly or in part covered with timber or undergrowth . . . as public reservations” Forest Reserve Act, ch. 561, § 24, 26 Stat. 1095, 1103 (1891).

¹⁸⁸ Proclamation No. 45, 27 Stat. 1064 (Feb. 20, 1893). The proclamation reserved the area from “entry or settlement” and excepted prior valid land entries and mining claims. *Id.* 1065. To be clear, while in the U.S. Senate, President Harrison had introduced legislation in 1882, 1883, and 1886 to set aside the Grand Canyon as a public park. ANDERSON, *supra* note 129, at 87.

¹⁸⁹ Act of June 4, 1897, ch. 2, 30 Stat. 11, 34 (codified as amended at 16 U.S.C. § 473–75, 477–82, 551).

¹⁹⁰ *Our History*, U.S. FOREST SERV., <https://www.fs.usda.gov/learn/our-history> [<https://perma.cc/5X5C-X8QU>].

¹⁹¹ 30 Stat. at 34–36.

¹⁹² Proclamation, 35 Stat. 2196 (July 2, 1908) (consolidating portion of Grand Canyon National Forest into Coconino National Forest and renaming different portion of Grand Canyon National Forest as Kaibab National Forest). Grand Canyon Forest Reserve was renamed “Grand Canyon National Forest” in 1907. MICHAEL F. ANDERSON, *POLISHING THE JEWEL: AN ADMINISTRATIVE HISTORY OF GRAND CANYON NATIONAL PARK* 8 (2000) [hereinafter ANDERSON, *POLISHING THE JEWEL*].

Omitting the Grand Canyon National Game Preserve's genesis for brevity,¹⁹³ the next waypoint in the federal-occupation story stemmed from the Antiquities Act passed in 1906. It authorized the president to establish national monuments—"to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments. . . ."¹⁹⁴ The groundwork had been laid for President Roosevelt to exercise this authority at the Grand Canyon two years later. Describing it as "an object of unusual scientific interest, being the greatest eroded canyon within the United States," Roosevelt's 1908 proclamation designated the Grand Canyon a 1,279-square-mile national monument, reserving it "from appropriation and use of all kinds under all of the public land laws," with "prior valid adverse claims" excepted.¹⁹⁵ The U.S. Forest Service administered the new monument with an "expanded mission" over the following decade.¹⁹⁶

Then came Grand Canyon National Park itself. It followed on the heels of the 1916 National Park Service Organic Act, which established the new agency, charged it with promoting and regulating the use of national parks, and articulated their fundamental purpose.¹⁹⁷ That purpose warrants emphasis: "to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."¹⁹⁸ From 1919 to the present, this purpose has governed the Park Service's management of those portions of the Grand Canyon tribes' homelands assimilated into the national park. It was incorporated into the statute creating Grand Canyon National Park,¹⁹⁹ which despite its protectionist nature permitted several curious activities so long as they were consistent with the park's primary purpose: railroad access via easements or rights of way; prospecting, development, and use of mineral resources; and development and maintenance of a federal reclamation project.²⁰⁰

¹⁹³ President Roosevelt created the preserve in 1906. Proclamation, 34 Stat. 3263 (Nov. 7, 1906). A brief discussion of the preserve can be found in Robison, *supra* note at 8, at 569.

¹⁹⁴ Antiquities Act of 1906, Pub. L. 59-209, § 2, 34 Stat. 225 (codified at 54 U.S.C. §§ 320301-03 (2012)).

¹⁹⁵ Proclamation, 35 Stat. 2175, 2176 (Jan. 11, 1908); ANDERSON, POLISHING THE JEWEL, *supra* note 192, at 8.

¹⁹⁶ ANDERSON, POLISHING THE JEWEL, *supra* note 192, at 8.

¹⁹⁷ National Park Service Organic Act, ch. 408, 39 Stat. 535 (1916) (codified as amended at 54 U.S.C. §§ 100101, 100301-03, 100751-53, 102101 (2014)).

¹⁹⁸ *Id.* § 1, 39 Stat. at 535.

¹⁹⁹ Grand Canyon National Park Establishment Act, ch. 44, § 2, 40 Stat. 1175, 1177 (1919) (codified as amended at 16 U.S.C. §§ 221-28 (1994)) ("[T]he administration, protection, and promotion of said Grand Canyon National Park shall be exercised . . . by the National Park Service, subject to the provisions of the [1916 Organic Act].").

²⁰⁰ *Id.* §§ 4-7, 40 Stat. at 1177-78.

One notable feature of the 1919 statute creating Grand Canyon National Park concerns the Havasupai Tribe. As mentioned earlier, while their homeland spans more than three-million acres within and atop the Grand Canyon, they were relegated to a 518-acre reservation inside the canyon for nearly forty years before the federal government designated the national park.²⁰¹ The 1919 statute made clear that it did not affect the boundaries of this postage-stamp reservation.²⁰² Further, it vested the Secretary of the Interior with discretion to permit tribal members “to use and occupy other tracts of land within [the national park] for agricultural purposes.”²⁰³

This provision deserves attention not only for illustrating the core theme of federal occupation, but also for distinguishing the 1919 statute from predecessors establishing the Grand Canyon Forest Reserve, Coconino and Kaibab national forests, Grand Canyon National Game Preserve, and Grand Canyon National Monument. A review of the text of these laws reveals that *none* of them addressed Grand Canyon tribes. Not a word. The laws plainly superimposed new federal land classifications onto the Grand Canyon’s landscape, prescribed management rules for these classifications, and assigned administrative obligations to federal agencies or officials. Yet Grand Canyon tribes appear to have been invisible.

Weaving everything together, during the roughly seventy-year period following the Grand Canyon’s constitutionalization via the 1848 Treaty of Guadalupe Hidalgo, the federal government segregated the Grand Canyon tribes onto reservations representing fractions of their homelands, and proceeded to occupy the canyon by superimposing on its physical and cultural landscape land classifications that disregarded with silence the ancient Native presence. The 1919 statute creating Grand Canyon National Park—with its provision leaving intact the Havasupai Reservation’s boundaries and empowering the Secretary of the Interior to permit Havasupai tribal members to transgress those boundaries to grow food—marks an exception. Only after the weighty precedent of these colonial federal-tribal relations had been set did relationships between the Park Service and Grand Canyon tribes form.

B. Perpetuation

What happened with Native segregation and federal occupation leading up to Grand Canyon National Park’s 1919 establishment was not anomalous. It was systemic:

With few exceptions, the early national parks were created without regard for competing Native American claims or concerns; entire tribes and families were routinely expelled from their ancestral lands, ironically, so as to protect these new nature enclaves from the taint of any permanent

²⁰¹ BURNHAM, *supra* note 19, at 75.

²⁰² § 3, 40 Stat. at 1177.

²⁰³ *Id.*

human presence. . . . [T]he early national parks were a creation of the dominant Anglo-European culture that spread across the United States, imposing its will and values on the surrounding landscape and indigenous peoples. Not only were Native Americans routinely displaced to make way for new settlers, they were dispossessed of their ancestral homelands in order to establish new national parks.²⁰⁴

Grand Canyon National Park is thus a microcosm.

To be clear, the systemic pattern departs markedly from the original concept of a “national park” articulated by American painter George Catlin in 1832, which envisioned a Native presence—a “nation’s Park containing man and beast, in all the wild and freshness of their nature’s beauty.”²⁰⁵ “Except for Catlin’s nostalgia,” however, “the reasons for creating parks did not take Indians into account.”²⁰⁶ Rather, “[w]ith newcomers believing that the land was virgin or that native populations would soon disappear, early park experience seemed to confirm this bias. . . . [T]he land seemed vacant, gardenlike, unspoiled, ripe for the taking—or saving.”²⁰⁷ A prevailing “mythology” thus took hold within the National Park Service—the “mythology of gifted land”—glossing over the reality that “some of our greatest parks were ‘gifted’ by people who had little choice in the matter.”²⁰⁸

It would take quite a while for the National Park Service to change course—or at least to begin to do so—at the Grand Canyon and elsewhere. More than 150 years after Catlin had articulated his vision, “after America had created hundreds of park units on eighty million acres of land, the government would finally adopt an official park policy toward native people” in 1987.²⁰⁹ It was around this time that relationships between the Park Service and Grand Canyon tribes likewise started to transform. For most of Grand Canyon National Park’s history, however, these relationships resembled and perpetuated the colonial federal-tribal relations existent before the park’s creation. Like above, two lines of developments are illustrative. On the one hand, the federal government’s presence at the Grand Canyon—within

²⁰⁴ KEITER, *supra* note 13, at 121–22. *See also id.* at 123 (“Without exception, the early legislation creating the nation’s first national parks made no mention of existing Native American inhabitants or any provision for their continued presence in the new parks.”).

²⁰⁵ *Id.* at 122.

²⁰⁶ KELLER & TUREK, *supra* note 8, at 20.

²⁰⁷ *Id.*

²⁰⁸ BURNHAM, *supra* note 19, at 10. *See also id.* at 9 (“Parkland was acquired in many ways in the West. . . . In some cases, as at the Grand Canyon, native people were forcibly removed from their homes so tourists would feel comfortable contemplating a true ‘wilderness.’”).

²⁰⁹ KELLER & TUREK, *supra* note 8, at 17–18 (referring to the Native American Relationships Management Policy, 52 Fed. Reg. 35, 674 (Sept. 22, 1987)). The authors describe, however: “As a special statement about a specific topic, that 1987 document survived just one year before being disassembled and scattered by seemingly endless NPS management directives.” *Id.*

those portions of the Grand Canyon tribes' homelands assimilated into the national park—grew significantly across the twentieth century as the park assumed its modern shape. On the other hand, Grand Canyon tribes persisted in the face of this expansion, enduring multiple forms of oppression by the Park Service, pushing back against federal boundaries, and attempting to regain ancestral ground by imposing boundaries of their own. All told, the relational shift that eventually began toward the twentieth century's end only came to pass after a good deal of bad blood.

1. Federal Expansion

More Boundaries. That sums up what occurred after the federal government's initial occupation of the Grand Canyon between the 1848 Treaty of Guadalupe Hidalgo and the 1919 statute creating Grand Canyon National Park. As the twentieth century progressed, the federal presence grew steadily, anchored yet again in the U.S. Constitution's Property Clause. Part of this expansion entailed drawing new boundaries, while another part involved ascribing meaning to existing ones.²¹⁰ In both cases, the boundary setting concerned Grand Canyon National Park—that is, the assimilation of new portions of Grand Canyon tribes' homelands into the park, and the Park Service's prescription of management rules for those assimilated lands.

A minor thread of developments in this vein took place shortly after Grand Canyon National Park's initial boundaries had been drawn. The mid-1920s saw a land exchange that conferred to the federal government patented land inside the park,²¹¹ and its boundaries were also subject to minor revisions.²¹² Notably, the boundary-revision statute incorporated the conserve-unimpaired mandate of the National Park Service's 1916 Organic Act for management purposes.²¹³ Following both measures in 1931 was a statute containing a prohibition that aligned with the conserve-unimpaired mandate, and that one might have imagined appearing in the 1919 statute creating the national park: “[H]ereafter no permit, license, lease, or other authorization for the prospecting, development, or utilization of the mineral resources within . . . the Grand Canyon National Park, Arizona, shall be granted or made.”²¹⁴

²¹⁰ These boundary-related activities harken back to Western historian Patty Limerick's description of the two stages of conquest within the region. LIMERICK, *supra* note 139, at 27.

²¹¹ Act to Authorize the Exchange of Certain Patented Lands in the Grand Canyon National Park for Certain Government Lands in Said Park, ch. 281, § 1, 44 Stat. 497, 497–98 (1926) (codified as amended at 16 U.S.C. § 221c).

²¹² Act to Revise the Boundary of the Grand Canyon National Park in the State of Arizona, and for Other Purposes, ch. 197, § 1, 44 Stat. 1238, 1238–40 (1927) (codified as amended at 16 U.S.C. § 221a).

²¹³ *See id.* § 2, 44 Stat. at 1240.

²¹⁴ Act to Provide for Uniform Administration of the National Parks by the United States Department of the Interior, and for Other Purposes, ch. 47, § 1, 46 Stat. 1043, 1043 (1931) (codified as amended at 16 U.S.C. § 115a).

While this minor thread is notable, it was accompanied by a major thread of federal expansion in what by then had become a familiar form. Recall President Roosevelt's designation of Grand Canyon National Monument during the decade before Grand Canyon National Park's genesis. That sequencing would repeat over the twentieth century. Initially, under President Hoover's pen, a new Grand Canyon National Monument would come into existence in 1932, encompassing 427 square miles within the lower canyon.²¹⁵ Hoover echoed Roosevelt in proclaiming: "[T]he Grand Canyon of the Colorado River is an object of unusual scientific interest, being the greatest eroded canyon within the United States."²¹⁶ Three decades later, in 1969, President Johnson would cast his eye toward the upper canyon, establishing another national monument at Marble Canyon—"a northerly continuation of the world-renowned Grand Canyon [that] possesses unusual geologic and paleontologic features and objects and other scientific and natural values . . ."²¹⁷ With respect to both expansions, the Park Service's conserve-unimpaired mandate would guide the monuments' management.²¹⁸

The repeat came when the national park incorporated the new monuments in 1975 via the Grand Canyon National Park Enlargement Act. Its policy declaration warrants quoting:

It is the object of this Act to provide for the recognition by Congress that the entire Grand Canyon, from the mouth of the Paria River to the Grand Wash Cliffs, including tributary side canyons and surrounding plateaus, is a natural feature of national and international significance. Congress therefore recognizes the need for, and in this Act provides for, the further protection and interpretation of the Grand Canyon in accordance with its true significance.²¹⁹

In line with this declaration, the statute grew the national park to 1.2 million acres.²²⁰

In a sense, this event marked the culmination of federal expansion at the Grand Canyon, but two additional aspects of the statute (and an amendment to it later in 1975) deserve mention. First, the Enlargement Act envisioned wilderness designations within Grand Canyon National Park. In accordance with the 1964 Wilderness Act, the Secretary of the Interior was obligated by the Enlargement Act to make recommendations regarding the "suitability or nonsuitability of any area

²¹⁵ Proclamation No. 2022, 47 Stat. 2547 (Dec. 22, 1932); ANDERSON, POLISHING THE JEWEL, *supra* note 192, at 38. *But see* Proclamation No. 2393, 54 Stat. 2692 (Apr. 4, 1940) (excluding certain lands from the monument).

²¹⁶ 47 Stat. at 2547.

²¹⁷ Proclamation No. 3889, 3 C.F.R. 26, 26 (Jan. 20, 1969), *reprinted in* 83 Stat. 924, 924 (1969).

²¹⁸ *See* 47 Stat. at 2548; 3 C.F.R. 26, 28.

²¹⁹ Grand Canyon National Park Enlargement Act, Pub. L. No. 93-620, § 2, 88 Stat. 2089, 2089-90 (1975) (codified as amended at 16 U.S.C. § 228).

²²⁰ *Id.* § 3(a), 88 Stat. at 2090.

within the national park for preservation as wilderness²²¹ Stemming from this mandate, the Park Service would later propose four wilderness areas totaling 1,143,918 acres within the national park, approximately 94 percent of its total area.²²² Congress has not yet acted on this proposal, but the Park Service nonetheless manages the proposed areas as wilderness.²²³ Second, as had been the case with the 1919 statute establishing the national park, the Enlargement Act was *not* silent about Grand Canyon tribes. Hoover's and Johnson's national monument proclamations had virtually been so.²²⁴ But quite the contrary for the Enlargement Act itself. Rather, it contained a cooperation provision applicable to all Grand Canyon tribes, as well as a reservation-expansion provision for the Havasupai, both of which are examined below.

2. *Native Persistence*

As the national park's boundaries morphed via the developments above, Grand Canyon tribes and tribal members had varied interactions with the Park Service. It would be impractical and improper to attempt to convey these experiences in a homogenous, monolithic way. One common theme that seems to resonate with many tribes and tribal members, however, is a sense that the Grand Canyon was once home . . . but is no longer.²²⁵ For most of the national park's history, federal boundaries have blocked Native connections. That is wholly unsurprising given the Park Service's historical relationship with Grand Canyon tribes, which can be

²²¹ Act to Amend the Grand Canyon National Park Enlargement Act, Pub. L. No. 94-31, § 11, 89 Stat. 172 (1975) (codified as amended at 16 U.S.C. § 228i-1).

²²² NAT'L PARK SERV., U.S. DEP'T OF THE INTERIOR, FINAL WILDERNESS RECOMMENDATION 2010 UPDATE: GRAND CANYON NATIONAL PARK, ARIZONA 4-5 (2010), https://www.nps.gov/grca/learn/management/upload/Draft_2010_Final_Wilderness_Rec.pdf [<https://perma.cc/8KS5-NLWK>].

²²³ Email from Paul Hirt, Professor of Hist. & Sustainability Scholar, Arizona State Univ., to Jason, Robison, Professor of Law, University of Wyoming (June 22, 2019, 9:52 AM) (on file with author); *cf.* HUGHES, *supra* note 15, at 108-09. In 1978, Professor J. Donald Hughes projected that "[i]t seems certain that most of Grand Canyon National Park will be designated as wilderness by Congress within the next few months." *Id.* Professor Hughes further noted that "[h]istorically, most of the park has been administered as wilderness since the national park was established, and even before that." *Id.*

²²⁴ Proclamation No. 2022, 47 Stat. 2547, 2547 (Dec. 22, 1932) (mentioning the "Hualpai Indian Reservation" when delineating the new Grand Canyon National Monument's boundaries); Proclamation No. 3889, 3 C.F.R. 26, 27 (Jan. 20, 1969), *reprinted in* 83 Stat. 924, 926 (1969) (referencing the "Navajo Indian Reservation" when drawing Marble Canyon National Monument's boundaries).

²²⁵ Interview with Roger Clark, Grand Canyon Program Dir., Grand Canyon Tr. and Sarana Riggs, Grand Canyon Program Manager, Grand Canyon Tr., in Flagstaff, Ariz. (Sept. 9, 2019).

summarized as one of “exclusion, hostility, and antagonism.”²²⁶

Havasupai tribal member Roland Manakaja captured the historical relationship vividly:

The old thought all the time was when the man in gray with the badge and the Smoky the Bear hat came, he was the one that moved us away from our lands, he wants to take this land from us. . . . That was the way our people looked at the Park Service officials for a long time.²²⁷

This account lines up with Hualapai tribal member Richard Powskey’s heartfelt words:

Since the creation of the national park at Grand Canyon, their whole approach was not very accommodating to the tribes. Theodore Roosevelt went there, designated it, and had all the tribes moved out of that area, claiming it a natural treasure for the American people. We are the American people too, and that’s our homeland.²²⁸

In short, federal disregard of Grand Canyon tribes perpetuated well beyond 1919.²²⁹ Witness again the overwriting of Indigenous place names in and adjacent to the national park. As described in 1998, shortly after the park’s seventy-fifth anniversary: “Of today’s 230 place-names, 8 are Havasupai, 13 Paiute, and 4 Hopi. Except for the Paiute, more Grand Canyon names originate with Asian and Egyptian mythology than from native words.”²³⁰ This overwrite makes sense in context. During the initial years following Grand Canyon National Park’s designation, Park Service reports seldom mentioned Native Americans. Rather, “one might conclude from the park superintendent’s annual reports between 1920 and 1932 that the nearest tribe lived along the Mississippi.”²³¹ In a similar vein, Park Service employees’ ignorance of Grand Canyon tribes’ cultures has been described as pervasive throughout this period.²³²

²²⁶ *Id.*; see also KELLER & TUREK, *supra* note 8, at 158–59 (explaining from a Havasupai perspective how, “[i]n administering the plateau and Havasu Canyon, the [Park Service] has been described as arrogant, oppressive, and racist.”).

²²⁷ Mr. Manakaja was the tribe’s former natural resources director. BURNHAM, *supra* note 19, at 287.

²²⁸ Riggs, *supra* note 40. The reference to Roosevelt presumably concerns his designation of Grand Canyon National Monument.

²²⁹ See, e.g., KELLER & TUREK, *supra* note 8, at 133 (“As with Yellowstone, Yosemite, Mt. Rainier, Glacier, and later Olympic, this process ignored Indian rights and prior occupation, including sites inside the canyon.”).

²³⁰ *Id.*

²³¹ *Id.* at 134. The authors note that “unpublished park documents indicated frequent and at times intense interactions with native people” during this time period. *Id.*

²³² See *id.* at 135.

Arguably the most intense tensions over Grand Canyon National Park's boundaries—original and expanded—have historically existed between the Park Service and the canyon's "guardians," the Havasupai.²³³ This relationship has had many flash points.

One involves a place within the canyon now called "Indian Garden," so named because it is part of the Havasupai's ancestral homeland where the tribe traditionally farmed.²³⁴ Until they were evicted. The Forest Service did so in 1905 shortly before Grand Canyon National Monument's designation, and the Park Service followed suit again in 1928, roughly a decade after Grand Canyon National Park's establishment.²³⁵

Another site of recurring conflict has been Supai Camp. Havasupai workers employed by the Park Service built the camp on the South Rim—within the plateau portion of the Havasupai homeland—after the national park's creation.²³⁶ "[T]o federal eyes," the camp "resembled a Depression-era shantytown," and the Park Service rebuilt it in the 1930s with some reluctance and resentment among the Havasupai.²³⁷ Two decades later, with federal Indian policy entering the termination era, the Park Service sought to eliminate the camp, razing the shacks and evicting non-employee tribal members considered "squatters."²³⁸ These tensions escalated further with the Park Service's assertion of ownership of the camp in the 1970s—after the Enlargement Act's passage—and plans to remove the camp both at that time and during the 1980s.²³⁹

Much more could be said about Indian Garden and Supai Camp, but they are certainly not the only sites of boundary-related conflicts between the Park Service and the Havasupai. Fuel to the fire was added during the 1960s when the agency embarked on a "campaign to remove Indian hogans and log cabins along the rim—at Grandview, Pasture Wash, and Drift Fence," including by burning these homes.²⁴⁰ This campaign fanned coals of resentment. The same goes for repeated Park Service proposals to eviscerate the Havasupai Reservation inside the Grand Canyon—again, originally a 518-acre toehold within the tribe's more than three-million-acre homeland.²⁴¹ Arno B. Cammerer—the Park Service's Associate Director from 1928 to 1933 and Director from 1933 to 1940—recommended removing the Havasupai

²³³ See, e.g., *Native Peoples*, *supra* note 17.

²³⁴ BURNHAM, *supra* note 19, at 80.

²³⁵ See KELLER & TUREK, *supra* note 8, at 138. See also BURNHAM, *supra* note 19, at 288 (describing Havasupai tribal member Roland Manakaja's account of his great-grandfather as "one of the last Havasupai driven out of Indian Gardens to make way for the tourists").

²³⁶ BURNHAM, *supra* note 19, at 84.

²³⁷ *Id.*; see KELLER & TUREK, *supra* note 8, at 174.

²³⁸ KELLER & TUREK, *supra* note 8, at 140.

²³⁹ See *id.* at 175–76.

²⁴⁰ *Id.* at 141.

²⁴¹ KELLER & TUREK, *supra* note 8, at 163; BURNHAM, *supra* note 19, at 75.

from their reservation during the 1930s.²⁴² “By 1939, the Park Service was invested in expanding the park’s boundaries to include the tribe’s lands, having purchased an old mining claim near [Havasu Falls] and constructed its own campground on the site.”²⁴³ Later, in the late 1960s, the Park Service similarly released a master plan that would have expanded the national park onto the reservation, emphasizing a “need for adequate tourist facilities in the increasingly popular falls area.”²⁴⁴ The plan wholly “neglected to state that a Havasupai Reservation existed.”²⁴⁵ Mind you it surfaced while the Park Service was busy destroying hogans and cabins on the rim.

The historically broken relationship between the Park Service and the Havasupai rose to the fore in especially poignant form during congressional testimony regarding the Enlargement Act. While speaking in support of that statute before a house subcommittee in 1973, Havasupai tribal leader Lee Marshall lit a fire of his own:

Ask the Park Service what they did to our old homes in 1934. Ask them what they did to Big Jim’s place in 1953. Ask them what they did to our burial ground below Havasu Falls. That’s how they protect things. We have no faith in the Park Service

For years the Park Service has neglected and mismanaged Havasu Campground, where we once cremated our people. Dead people’s things have long since walked off with hikers. They let people use the campground with no limit

They make us laugh when they talk about protecting the environment[,] which they just noticed. Have you seen Grand Canyon Village? . . . We do not believe the South Rim can support another Disneyland, whether it has so-called environmentalist approval or not. You should replace every Park Service employee on the South Rim, including the superintendent, with a Havasupai before they destroy our homeland forever. We suggest this as the best way to manage all our National Parks.²⁴⁶

This sentiment did not subside, at least for some Havasupai, by the time Grand Canyon National Park’s seventy-fifth anniversary arrived in 1994. Rather,

²⁴² KELLER & TUREK, *supra* note 8, at 136; *see also 3rd National Park Service Director: Arno B. Cammerer*, NAT’L PARK SERV., <https://www.nps.gov/articles/director-arno-cammerer.htm> [<https://perma.cc/36G4-DNTJ>].

²⁴³ KEITER, *supra* note 13, at 127. *See also* KELLER & TUREK, *supra* note 8, at 159 (describing a 1939 incident that “inspired the NPS to suggest once again that the tribe be placed on the Hualapai reserve, with the 518 acres in Havasu Canyon transferred to the NPS.”).

²⁴⁴ KEITER, *supra* note 13, at 127.

²⁴⁵ KELLER & TUREK, *supra* note 8, at 163.

²⁴⁶ *Id.* at 168–69.

remembering the “loss of land, relocation, evictions, and the burning of Indian homes by rangers,” Havasupai tribal member Wayne Sinyella echoed Lee Marshall with an analogy. For him, “attending the park’s seventy-fifth anniversary gala was akin to honoring Columbus.”²⁴⁷

Looking downstream along the Colorado River, the Havasupai’s close Pai relations, the Hualapai, have also had their fair share of boundary-related conflicts with the Park Service. Perhaps the most heated concern the river itself. It delineates the Hualapai Reservation’s 108-mile northern border.²⁴⁸ Yet which magical line actually marks the reservation boundary—the middle of the river or the high-water mark? This question captures a grand jurisdictional controversy.²⁴⁹ The answer to it bears directly on tribal economic development in the form of a river running enterprise, Hualapai River Runners, operating between Diamond Creek and Lake Mead.²⁵⁰ At stake on the other side, however, is Park Service control over the river—specifically, permitting authority and associated liability.²⁵¹ But that has not been the only point of friction. Bridge Canyon Dam (later renamed Hualapai Dam) is another. Proposed for inclusion in federal legislation that eventually became the 1968 Colorado River Basin Project Act, the dam would have impounded a reservoir in the lower canyon that inundated part of Grand Canyon National Park.²⁵² The Park Service and environmental organizations thus fought the dam, while the Hualapai and eight other tribes supported it. Hualapai Chairman George Rocha accused the opposition of “denying us, the first Americans, our right to help ourselves and condemning our families to lifelong poverty by forcing us to keep our homeland a wilderness.”²⁵³ This advocacy, however, did not win the day. The dam did not make it into the Colorado River Basin Project Act, nor did Congress later secure a spot for it in the Enlargement Act.²⁵⁴ In addition to these river-related conflicts, the Park Service and the Hualapai have been at odds about flyovers by South Rim tourist flights above the reservation, as well as attempted wilderness designation along a five-mile corridor within the canyon that included reservation land.²⁵⁵

²⁴⁷ *Id.* at 177.

²⁴⁸ *Id.* at 146.

²⁴⁹ See generally Memorandum from Patrick W. Hattaway, River Dist. Ranger, Grand Canyon Nat’l Park to Robert L. Arnberger, Superintendent, Grand Canyon Nat’l Park (Aug. 12, 1999) (on file with author) (providing a detailed chronology of events associated with this controversy).

²⁵⁰ *Hualapai River Runners*, GRAND CANYON W., <https://grandcanyonwest.com/expl-ore/colorado-river-rafting/> [<https://perma.cc/7ZLK-KHR2>].

²⁵¹ See KELLER & TUREK, *supra* note 8, at 147; BURNHAM, *supra* note 19, at 292–93.

²⁵² KELLER & TUREK, *supra* note 8, at 142.

²⁵³ *Id.* at 143.

²⁵⁴ *Id.* at 144. “By 1990 younger Hualapai leaders began to doubt if the dam had ever been a good idea,” as “the tribe shifted toward thinking that the entire Grand Canyon should remain an intact ecosystem,” stemming from federal-tribal studies of Glen Canyon Dam’s impacts. *Id.* at 146.

²⁵⁵ BURNHAM, *supra* note 19, at 293.

And “[b]oundaries are on the mind of the park’s powerful eastern neighbor, too.”²⁵⁶ Similar to the Hualapai, the Navajo have challenged the scope of the Park Service’s jurisdiction at the Grand Canyon, as circumscribed by the contested borders between the national park and the Navajo Reservation. The Navajo have historically viewed the Colorado River as “the true boundary between park and reservation,” rather than borders drawn by the Enlargement Act that vary from the canyon rim to a quarter mile from the river.²⁵⁷ In the same vein, at the height of controversy over the Enlargement Act during the 1970s, the Navajo protested attempts by the Park Service to fence off Cedar Mountain and Cedar Canyon on the peninsula formed by the Colorado River and Little Colorado River canyons.²⁵⁸ Navajo herders had grazed stock in this area for years, and contended that they needed access to continue doing so, as well as for water, piñon gathering, and religious rites.²⁵⁹ In addition to these conflicts along the eastern border, there have been recurring controversies inside the national park between the Park Service and Navajo vendors selling beads and jewelry. This vending occurred both adjacent to and within the park throughout the twentieth century, and the Park Service aggressively suppressed it inside the park during the 1980s, promulgating regulations, erecting signs, and arresting Navajo vendors who violated the rules.²⁶⁰ “Navajos and some NPS staff believed that the park might have been more lenient toward people trying to work themselves out of poverty.”²⁶¹

Boundary-related conflicts between the Park Service and the Navajo shed light on a final pattern of note within this line of developments: Grand Canyon tribes’ reacquisition of their homelands—or, put differently, expansion of their reservations. As should be painfully clear, none of the tribes “comes close to having a reservation whose absolute space encompasses its ancestral lands.”²⁶² That has not stopped the tribes from seeking reconnection to these lands, however, and in some cases working tirelessly for it.²⁶³ Described as “the most successful in reacquiring major portions of their ancestral lands,” the Navajo have indeed become the Park Service’s “powerful eastern neighbor” as alluded to above,²⁶⁴ gradually “extending their reservation westward as far as the Grand Canyon.”²⁶⁵ At the same time, this success has not been absolute, as the Navajo “have never achieved control over some

²⁵⁶ *Id.* at 275.

²⁵⁷ *Id.*

²⁵⁸ KELLER & TUREK, *supra* note 8, at 149.

²⁵⁹ *Id.* See also BURNHAM, *supra* note 19, at 284 (quoting Navajo tribal member and Park Service ranger Alice Talakte: “Native people didn’t like fences put up at the rim on the east side and so they tore them down. I come from a culture where there are no fences, no windows, no gates, no closed-in yards.”).

²⁶⁰ KELLER & TUREK, *supra* note 8, at 150.

²⁶¹ *Id.*

²⁶² MOREHOUSE, *supra* note 156, at 161.

²⁶³ See, e.g., *id.* at 160–61.

²⁶⁴ BURNHAM, *supra* note 19, at 275.

²⁶⁵ MOREHOUSE, *supra* note 156, at 160.

of their most sacred sites, including the San Francisco Peaks and the Grand Canyon itself.”²⁶⁶

Situated similarly to the Navajo in enjoying partial success with reacquisition is the tribe whose homeland was addressed by the 1975 Enlargement Act: the Havasupai. “At Supai Village, January 3rd is an official holiday commemorating passage of [the Act], the largest Indian land restoration act in U.S. history.”²⁶⁷ Neither the legislation’s passage nor its content were panaceas for the tribe, however. The Park Service (and environmental organizations) unsuccessfully resisted the legislation’s reacquisition provisions.²⁶⁸ And when it emerged in final form, the Enlargement Act constituted a qualified victory for the tribe.²⁶⁹

Specifically, “to improve the social, cultural, and economic life” of tribal members, the statute added 185,000 acres of Havasupai homeland to the reservation, but provided this land would be held in trust by the United States and “shall remain forever wild” subject to certain exceptions.²⁷⁰ Permitted land uses include traditional purposes (for example, religious purposes and hunting and gathering for native foods and materials); agriculture and grazing subject to the Secretary of the Interior’s discretion; historic burial areas; and residential, educational, and other community purposes deemed consistent with national park uses and values as set forth in a plan developed by the Secretary and the Havasupai Tribal Council.²⁷¹ In contrast, tribal small business enterprises are only allowed if authorized by the Secretary, and no commercial timber production, commercial mining or mineral production, or commercial or industrial development is permitted.²⁷² Accompanying this carefully prescribed expansion, the Enlargement Act also designated 95,300 acres of “Havasupai Use Lands” inside Grand Canyon National Park.²⁷³ The tribe is allowed to use this portion of its homeland for agriculture and other traditional purposes, but subject to secretarial regulations aimed at protecting the “scenic, natural, and wildlife values” of the parkland.²⁷⁴

Yet that is not all the Enlargement Act did. It looked beyond the Havasupai Reservation and Use Lands with a broader provision addressing the Secretary of the

²⁶⁶ *Id.*

²⁶⁷ KELLER & TUREK, *supra* note 8, at 149. Notably, the Bureau of Indian Affairs and tribal supporters had “tried in 1908, 1920, 1931, 1943, 1952, 1957, 1968, and 1973 to expand the tiny [Havasupai Reservation] by adding up to 300,000 acres of plateau land.” *Id.* at 158.

²⁶⁸ BURNHAM, *supra* note 19, at 180–82.

²⁶⁹ *See, e.g., id.* at 288 (describing tribal frustration with fiscal constraints imposed by the Enlargement Act’s land-use restrictions on tribal economic development and governmental programs).

²⁷⁰ Grand Canyon National Park Enlargement Act, Pub. L. No. 93-620, § 10, 88 Stat. 2089, 2091–93 (1975) (codified as amended at 16 U.S.C. § 228).

²⁷¹ *Id.* § 10, 88 Stat. at 2092.

²⁷² *Id.*

²⁷³ *Id.* § 10, 88 Stat. at 2093.

²⁷⁴ *Id.*

Interior's future relationships at Grand Canyon National Park. In relevant part, this provision states:

In the administration of the Grand Canyon National Park, as enlarged by this Act, the Secretary is authorized and encouraged to enter into cooperative agreements . . . with interested Indian tribes providing for the protection and interpretation of the Grand Canyon in its entirety.²⁷⁵

“Cooperation”—a word with the potential to bridge worlds.

C. Reconception

By the time Grand Canyon National Park's centennial rolled around in 2019, the Park Service had made some headway with cooperation. More work is needed—as taken up in Part IV—but a gradual shift in the relationships between the Park Service and Grand Canyon tribes is apparent, spanning from the late 1980s up to the present. I refer to this relational shift as a “reconception.” Tribal members themselves have best captured it.

When asked about challenges at Grand Canyon National Park upon its centennial, Havasupai Councilwoman Ophelia Watahomigie-Corliss offered these insights:

Borders. The park service showed up and told us what the borders were. And it was really hard to understand that we couldn't enter park-service land anymore, but the Supais kept doing it. . . . [O]ne of the issues has been the national park's original inability to communicate with the source communities who either lived there or would come there for ritual pilgrimages. So, the original partnership lacked and never existed. And then after about 80 years, then they wanted to start creating partnerships. And I appreciate that, I just wish they would acknowledge the years before. To acknowledge that they didn't want us involved, and to say they're sorry²⁷⁶

Another account comes from Hopi tribal member Ed Kabotie, who responded as follows when asked what he would like people to know about the Grand Canyon upon the centennial:

People come to the canyon to appreciate its beauty while being totally ignorant of the suffering that's taken place there, of how the landscapes

²⁷⁵ *Id.* § 2, 88 Stat. at 2090–91. The provision also contemplates the formation of cooperative agreements with “other Federal, State, and local public departments and agencies” *Id.* § 2, 88 Stat. at 2090.

²⁷⁶ Riggs, *supra* note 40.

have been abused, are being abused, and how the indigenous people of those landscapes are suffering. But I'm very encouraged by what's taking place in the park right now. I see very pointed efforts to reestablish relationships within our communities.²⁷⁷

These words and others like them embody the relational reconception.²⁷⁸ Greater humility will be needed for it to blossom during the next century of Grand Canyon National Park's life. "Looking back over the history and geography of the spaces and boundaries of the greater Grand Canyon," however, "we see a progression from conquest to contest to incipient *cooperation*"—again, that metaphorical bridge.²⁷⁹

And, to be clear, Grand Canyon is not an island. Although it is nascent and imperfect, the Park Service has made systemic efforts at relationship building with tribes in recent decades—efforts embedded within the self-determination era of federal Indian policy.²⁸⁰ Across the National Park System, tribes have "begun asserting powerful legal and moral claims to access the national parks, to reclaim park lands, and to play a role in management decisions."²⁸¹ These advances partly aim to redress historical injustices—forced removal of tribes from their homelands within parks as just one example—and partly aim to create brighter futures, including reconnecting parks with "an original human presence," promoting coordination between tribes and the Park Service, and bolstering tribal economic development.²⁸² In short, Native cultures have begun to be "written back" into the National Park System.²⁸³

To properly illustrate this reconception, a good deal of ground must be covered. The discussion below begins by traversing a vast body of laws and policies that have emerged to govern the Park Service's relationship with tribes in modern times. It is this systemic body that constitutes the backdrop against which relational developments at the Grand Canyon have occurred over the past few decades. That is where the narrative subsequently turns.

1. *Nascent Systemic Change*

Recall the Park Service's conserve-unimpaired mandate. The agency's contemporary approach to this mandate provides an initial vantage from which to consider how its relations with tribes have shifted from a systemic perspective in modern times—at least on the books. Rooted in the 1916 Organic Act as mentioned

²⁷⁷ *Id.*

²⁷⁸ See BURNHAM, *supra* note 19, at 287–88 (conveying Havasupai tribal member Roland Manakaja's perspective on evolving relations between the tribe and Park Service).

²⁷⁹ MOREHOUSE, *supra* note 156, at 157 (emphasis added).

²⁸⁰ See KEITER, *supra* note 13, at 125–26.

²⁸¹ *Id.* at 125.

²⁸² *Id.* at 139.

²⁸³ *Id.*

above,²⁸⁴ this mandate gives rise to a non-impairment prohibition—“the Park Service must leave park resources and values *unimpaired*”—constituting both the “cornerstone of the Organic Act” and the “primary responsibility” of the agency.²⁸⁵ The reference to “park resources and values” in this text, of course, begs the question of which specific subjects the prohibition applies to. And the answer reveals alignment between the Park Service’s primary responsibility and resources and values that matter most to tribes with homelands inside national parks. As relevant here, “park resources and values” encompass a “park’s scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including . . . natural landscapes; . . . water and air resources; soils; . . . paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; . . . and native plants and animals.”²⁸⁶ The Park Service is prohibited from approving actions that will impair these resources and values, and it must follow detailed procedures to avoid doing so.²⁸⁷ Thus, the initial systemic takeaway is that the conserve-unimpaired mandate is being approached in modern times in a way that bridges priorities shared by tribes and the Park Service.

This bridging is also apparent in another statutory context illustrating how relations between the Park Service and tribes are being reconceived. The relevant topic was broached earlier in relation to the Enlargement Act—cooperation, as reflected in that Act’s provision authorizing and encouraging the Secretary of the Interior to enter into cooperative agreements with tribes providing for the protection and unified interpretation of the Grand Canyon.²⁸⁸ A counterpart statutory provision also exists for the National Park System as a whole. In relevant part, the provision states: “The Secretary may enter into cooperative agreements with . . . tribal governments . . . for the purpose of protecting natural resources of System units through collaborative efforts on land inside and outside the System units.”²⁸⁹ The prescribed content of these agreements is spelled out, all of which touches on priorities yet again shared by tribes and the Park Service, including the “preservation, conservation, and restoration of coastal and riparian systems, watersheds, and wetlands,” as well as the “restoration of natural resources, including native wildlife habitat or ecosystems”²⁹⁰

²⁸⁴ National Park Service Organic Act, ch. 408, § 1, 39 Stat. 535, 535 (1916) (codified as amended at 54 U.S.C. §§ 100101, 100301–03, 100751–53, 102101 (2014)).

²⁸⁵ The non-impairment prohibition is discussed in § 1.4.4 of NATIONAL PARK SERVICE, MANAGEMENT POLICIES 2006, at 11 (2006), https://www.nps.gov/policy/MP_2006.pdf [<https://perma.cc/8SDV-BGPU>] [hereinafter MANAGEMENT POLICIES].

²⁸⁶ *Id.* at 11.

²⁸⁷ *Id.* at 12.

²⁸⁸ Grand Canyon National Park Enlargement Act, Pub. L. No. 93-620, § 2, 88 Stat. 2089, 2090 (1975) (codified as amended at 16 U.S.C. § 228).

²⁸⁹ 54 U.S.C. § 101702(d)(1) (2020).

²⁹⁰ *Id.* § 101702(d)(2)(A)(i), (iii).

Proceeding one step further along these lines, while this systemic cooperation provision itself illustrates the relational reconception, it has also driven developments within the Executive Branch. It was incorporated into a path-breaking document, Secretarial Order No. 3342, issued in November 2016. This order aims to “encourage cooperative management agreements and other collaborative partnerships between Department of the Interior . . . resource managers and tribes that will further share interests in the management of Federal lands and resources.”²⁹¹ Underlying this purpose is a recognition that tribes add distinct value to the management of national parks and other federal lands. “[T]ribes have special geographical, historical, and cultural connections to Federal lands and waters, and tribes have traditional ecological knowledge and practices regarding resource management that have been handed down through generations.”²⁹² A clear mandate grows from this recognition. The Park Service and other Interior agencies “must identify opportunities for cooperative management arrangements and collaborative partnerships with tribes and undertake efforts, where appropriate, to prepare their respective [agency] staffs to partner with tribes in the management of . . . natural and cultural resources.”²⁹³ Specific management activities covered by the order involve the same types of priorities shared by tribes and the Park Service as identified above.²⁹⁴

Secretarial Order No. 3342 did not appear as a bolt out of the blue. It sits within a constellation of executive orders, presidential memoranda, and other secretarial orders that further reflect a reconception of federal-tribal relations in recent decades. Executive Order 13175 cannot go unmentioned. It aims (*inter alia*) “to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications”²⁹⁵ Such policies are defined expansively as:

regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and

²⁹¹ U.S. DEP’T OF THE INTERIOR, ORDER NO. 3342, IDENTIFYING OPPORTUNITIES FOR COOPERATIVE AND COLLABORATIVE PARTNERSHIPS WITH FEDERALLY RECOGNIZED INDIAN TRIBES IN THE MANAGEMENT OF FEDERAL LANDS AND RESOURCES (2016).

²⁹² *Id.*

²⁹³ *Id.* at 5.

²⁹⁴ Examples include (1) identification, protection, preservation, and management of culturally significant sites, landscapes, and resources; (2) management of fish, wildlife, and plant resources; and (3) management of information related to tribal, cultural, and/or educational materials. *Id.* at 5–6.

²⁹⁵ Exec. Order No. 13175, 65 Fed. Reg. 67249 (Nov. 6, 2000), <https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf> [<https://perma.cc/QM9F-EX3N>].

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.²⁹⁶

In the formulation and implementation of these policies, the Park Service and other federal agencies are obligated to involve tribes in diverse ways.²⁹⁷ That includes deferring to tribes to establish standards where possible and consulting with tribes about federal standards.²⁹⁸ The topic of consultation pervades the order. It calls for the Park Service and other federal agencies to establish “an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”²⁹⁹ Tribal impact statements must be prepared stemming from this consultation.³⁰⁰ For context, while Executive Order 13175 was issued in November 2000, its consultation and collaboration mandate traces at least as far back as the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments, and implementation of the mandate was subsequently addressed in a Presidential Memorandum issued in November 2009 as well as Secretarial Order No. 3317 issued in December 2011.³⁰¹

Taken together, the statutes, executive orders, presidential memoranda, and secretarial orders just discussed (and others) are a firmament under which the National Park Service’s basic policy document rests—entitled, *Management Policies*.³⁰² Published in 2006, the current version of this document contains a dizzying scope of provisions illustrating the agency’s reconception of its relationships with tribes—again, at least on the books. The Park Service’s American Indian Liaison Office has prepared a useful excerpt of key relational provisions to narrow the scope.³⁰³ As is often the case with legal materials, however, one can travel

²⁹⁶ *Id.*

²⁹⁷ *Id.* at 67249–67250.

²⁹⁸ *Id.* at 67250.

²⁹⁹ *Id.* at 67250–67251.

³⁰⁰ *Id.*

³⁰¹ Memorandum on Government-to-Government Relations with Native American Tribal Governments, 59 Fed. Reg. 22951 (Apr. 29, 1994); U.S. DEP’T OF THE INTERIOR, ORDER NO. 3317, DEPARTMENT OF THE INTERIOR POLICY ON CONSULTATION WITH INDIAN TRIBES (Dec. 1, 2011), <https://www.fws.gov/nativeamerican/pdf/secretarial-order-3317.pdf> [<https://perma.cc/CSU4-YA3B>]; Memorandum on Tribal Consultation, 2009 DAILY COMP. PRES. DOC. 887 (Nov. 5, 2009), <https://www.govinfo.gov/content/pkg/DCPD-200900887/pdf/DCPD-200900887.pdf> [<https://perma.cc/5G9X-RR5K>].

³⁰² MANAGEMENT POLICIES, *supra* note 285, at 4.

³⁰³ *See generally* AMERICAN INDIAN LIAISON OFFICE, U.S. DEP’T OF THE INTERIOR, THE NATIONAL PARK SERVICE AND AMERICAN INDIANS, ALASKA NATIVES AND NATIVE HAWAIIANS: EXCERPTS AND IDENTIFIED SECTIONS FROM MANAGEMENT POLICIES (2008), <https://www.nps.gov/history/TRIBES/Documents/NPSManagementPolicy.pdf> [<https://perma.cc/3CAU-WDLZ>].

down the rabbit's hole as far as they wish to go. Space allows for selective coverage here.

To begin, a section of *Management Policies* is expressly devoted to the Park Service's relationship with tribes. Several acknowledgements in it deserve attention—namely, the “commitment to stewardship of the land and resources” shared by tribes and the Park Service; the “historical, cultural, and spiritual relationships that American Indian tribes have with park lands and resources”; and the associated reality that parks contain “ancestral homelands of many American Indian tribes [and] protect resources, sites, and vistas that are highly significant for the tribes.”³⁰⁴ The contemporary relationship has been conceptualized accordingly:

[T]he Service will pursue an open, collaborative relationship with American Indian tribes to help tribes maintain their cultural and spiritual practices and enhance the Park Service's understanding of the history and significance of sites and resources in the parks. Within the constraints of legal authority and its duty to protect park resources, the Service will work with tribal governments to provide access to park resources and places that are essential for the continuation of traditional American Indian cultural or religious practices.³⁰⁵

In line with this reconception, the Park Service has committed to working “directly with appropriate tribal government officials whenever plans or activities may directly or indirectly affect tribal interests, practices, and/or traditional use areas such as sacred sites.”³⁰⁶ And consultation is also called for—specifically, the development of “[m]utually acceptable consultation protocols to guide government-to-government relationships”³⁰⁷

Oodles of additional relational provisions appear elsewhere in *Management Policies*.

Several of these provisions surround park management and planning. For example, the Park Service is obligated to consult with tribes about “planning, management, and operational decisions that affect subsistence activities, sacred materials or places, or other resources with which they are historically associated.”³⁰⁸ Similarly, in accordance with the American Indian Religious Freedom Act, the Park Service is committed to being “as unrestrictive as possible in permitting . . . tribes access to park areas to perform traditional religious, ceremonial, or other customary activities at places that have been used historically for such

³⁰⁴ MANAGEMENT POLICIES, *supra* note 285, at 19.

³⁰⁵ *Id.*

³⁰⁶ *Id.* at 19.

³⁰⁷ *Id.*

³⁰⁸ *Id.* at 111.

purposes.”³⁰⁹ These are laudable policies illustrative of the relational reconception. They also dovetail with provisions calling for tribal consultation and participation in the development of general management plans for individual park units—Grand Canyon National Park and otherwise.³¹⁰

Management Policies similarly delves into specific categories of park resources whose management involves cooperating, collaborating, and consulting with tribes. Cultural resources management is predictably critical. The Park Service is committed to establishing “mutually beneficial agreements with interested groups to facilitate collaborative research, consultation, park planning, training, and cooperative management approaches with respect to park cultural resources and culturally important natural resources.”³¹¹ Tribes undoubtedly fit the bill of “interested parties” as used here, and one would be hard pressed to find better evidence of a departure from the Park Service’s historical relations with tribes than the notion of *cooperative* management agreements. In short, the provisions governing cultural resources management are replete with emphases on cooperation, collaboration, and/or consultation.³¹² A similar situation exists with natural resources management—for example, provisions authorizing agreements with tribes for cooperative conservation, maintenance of native plant and species, and harvesting or habitat management programs for plant and animal populations within parks.³¹³ Notably, the Park Service’s commitment to cooperative conservation, including “conservation partnerships,” extends beyond park boundaries to tribes with adjacent reservations.³¹⁴ The Havasupai, Hualapai, and Navajo reservations offer solid illustrations vis-à-vis Grand Canyon National Park.

Also worth highlighting as reflections of the relational reconception are two final subjects addressed in *Management Policies*. Research, education, and interpretation is an initial one. The Park Service has committed to conducting ethnographic and cultural anthropological research in collaboration and cooperation

³⁰⁹ *Id.*; see also *id.* at 85 (addressing tribal access to and protection of sacred sites in wilderness areas). Executive Order 13007 also addresses protection of sacred sites, tribal access to sacred sites, and consultation between the Park Service (and other federal agencies) and tribes regarding sacred sites. Exec. Order No. 13007, 61 Fed. Reg. 26771, 26771–72 (May 24, 1996).

³¹⁰ MANAGEMENT POLICIES, *supra* note 285, at 22, 23.

³¹¹ *Id.* at 64.

³¹² See *id.* at 63–64 (on consultation); *id.* at 67 (on stewardship of human remains and burials); *id.* at 69 (on cultural landscapes); *id.* at 70–71 (on ethnographic resources).

³¹³ See *id.* at 38 (partnerships); *id.* at 43 (plant and animal population management principles); *id.* at 46–47 (harvest of plants and animals). See also 36 C.F.R. § 2.6 (2020) (authorizing Park Service and tribes to enter into agreements for traditional gathering and removal of plants or plant parts for traditional purposes); MANAGEMENT POLICIES, *supra* note 285, at 30, 278 (setting forth that cooperative agreements may also be used in land protection planning processes).

³¹⁴ MANAGEMENT POLICIES, *supra* note 285, at 13, 31.

with tribes.³¹⁵ “Research findings will be used to inform planning, cultural and natural resource management decision-making, and interpretation, as well as to help managers meet responsibilities to associated peoples”³¹⁶ Similarly, with respect to education and interpretation, the Park Service has recognized such programs provide valuable opportunities for engagement with tribes, pledging to collaborate and cooperate as follows:

The Service will respectfully consult traditionally associated peoples . . . in the planning, development, presentation, and operation of park interpretive programs and media relating to their cultures and histories. Cooperative programs will be developed with tribal governments . . . to help the Service present accurate perspectives on their cultures.³¹⁷

Concessions are an additional subject deserving brief mention. By way of overview, the Park Service now encourages American Indian businesses to compete for concession contracts, calls for formal interpretive training to be provided to employees, and requires certain concessionaires to prepare plans to ensure merchandise promotes local Native American cultures.³¹⁸

Bringing the systemic material to a close, there is a bevy of laws and policies that have come into existence in recent decades illustrating how the Congress, President, Secretary of the Interior, and Park Service have partially reconceived the agency’s historical relationship with tribes. While the discussion above sheds light on this state of flux across the National Park System, the material below considers it in more detail at the Grand Canyon.

2. *Grand Canyon Reconception*

Beginning yet again with the law on the books, the systemic measures just surveyed have spawned unit-specific counterparts at Grand Canyon National Park. The Park Service has adopted a Grand Canyon General Management Plan—the current version dating to 1995—and an accompanying Foundation Statement published in 2010.³¹⁹ The relational content of these documents tracks in numerous ways *Management Policies* and other systemic materials, providing valuable

³¹⁵ *See id.* at 70–71, 72.

³¹⁶ *Id.* at 72.

³¹⁷ *Id.* at 94. *See also id.* at 93 (explaining the Park Service’s commitment to providing interpretation and education programs to provide opportunities for civic engagement related to difficult resource decisions).

³¹⁸ *See id.* at 144–46 (providing the Park Service’s concessions policies and provisions).

³¹⁹ NAT’L PARK SERV., GRAND CANYON NATIONAL PARK FOUNDATION STATEMENT (Apr. 2010), <https://www.nps.gov/grca/learn/management/upload/grca-foundation20100414.pdf> [<https://perma.cc/L6W9-RJVX>] [hereinafter FOUNDATION STATEMENT]; NAT’L PARK SERV., GENERAL MANAGEMENT PLAN, GRAND CANYON NATIONAL PARK (1995), https://www.nps.gov/grca/learn/management/upload/GRCA_General_Management_Plan.pdf [<https://perma.cc/6KUV-EUXS>] [hereinafter GENERAL MANAGEMENT PLAN].

insights into how the Park Service has begun to reconceive its relationships with Grand Canyon tribes over the past few decades.

For starters, tribal connections to the Grand Canyon are acknowledged throughout these documents, as are the implications of these connections for the Park Service's role at the canyon. The Foundation Statement is insightful in both ways, eloquently describing:

Native people have long been weft and weave of the canyon's human fabric—from tools left 12,000 years ago in what we now call archeological sites to participating in modern park development. Grand Canyon remains home to [N]ative peoples, a place of sacred pilgrimage and rare resources. Today, Native peoples return to Grand Canyon, a place of origin for some, to collect culturally important resources and make personally significant connections.³²⁰

The Park Service thus regards itself as the “primary steward of Native American heritage” for Grand Canyon tribes, including “overseeing archaeological and historic sites, traditional cultural properties, and management of culturally important natural resources.”³²¹

In light of the tribes' connections and the agency's self-concept, it is unsurprising that the documents broach the same relational topics that pervade *Management Policies* and other systemic materials: cooperation, collaboration, and consultation. Premised partly on the Enlargement Act's provision on cooperative agreements, the Foundation Statement describes how the Park Service maintains “government-to-government consultative relationships” with all of the Grand Canyon tribes, relying on these relationships to integrate tribal perspectives into park management.³²² The General Management Plan likewise calls for consultation to protect sacred sites identified by tribes, as well as “formal partnerships” between the Park Service and tribes for interpretive programs counterbalancing the historically dominant Euro-American focus.³²³ There is no mistaking tribes' interests in these management activities—that is, “in protecting their cultural legacies, histories, and tribal interests” inside the park.³²⁴ In a related vein, the Park Service has committed

³²⁰ FOUNDATION STATEMENT, *supra* note 319, at 28. *See also* GENERAL MANAGEMENT PLAN, *supra* note 319, at 8 (describing tribes' “close and sacred cultural ties to the Grand Canyon”).

³²¹ FOUNDATION STATEMENT, *supra* note 319, at 28.

³²² *Id.* at 5, 29. *See also* GENERAL MANAGEMENT PLAN, *supra* note 319, at 25 (“A memorandum of agreement will be executed with each associated American Indian tribe to detail consultation procedures for actions that might affect ethnographic resources and to ensure their protection.”).

³²³ GENERAL MANAGEMENT PLAN, *supra* note 319, at 29, 38.

³²⁴ FOUNDATION STATEMENT, *supra* note 319, at 31.

to “work cooperatively to assist [tribes] in planning, developing, and managing lands adjoining the park in a mutually compatible manner.”³²⁵

Dovetailing with this relational content, the documents also contain a good deal of material illustrating the Park Service’s prioritization of Grand Canyon tribes, an obvious break from earlier periods. In the Foundation Statement, the tribes appear among the park’s eight “[f]undamental resources and values”—specifically, those in the human history category.³²⁶ The tribes likewise factor prominently into several of the park’s primary interpretive themes: (1) Grand Canyon remains “a homeland and sacred place” for the tribes, (2) “Grand Canyon has sustained people materially and spiritually for thousands of years,” and (3) “[w]ater is Grand Canyon’s lifeblood” and a “spiritual element for native peoples”³²⁷ Similar prioritization can be seen in the General Management Plan’s vision statements and management objectives.³²⁸

Further indicia of the Park Service’s prioritization of the tribes in modern times comes from key management issues identified by the agency at the Grand Canyon. “Archeological sites are being vandalized, especially in the backcountry,” describes the General Management Plan in regard to North Rim planning issues as of the mid-1990s.³²⁹ This concern echoes at Tuweep: “There are a large number of significant archeological and probably ethnographic resources in the area. . . . [T]hese sites are being vandalized.”³³⁰ A red flag is raised, too, for the park’s corridor trails: “The historic character, cultural landscape, and archeological resources near the trails are being impacted by high visitor use.”³³¹ Fast forward to 2010, and the Foundation Statement expresses similar consternation in its human history section:

Current archeological inventories only cover approximately five percent of the park Likewise, ethnographic inventories are incomplete, and most information is gleaned through project consultation. This limited knowledge hampers staff ability to appropriately manage resources and values.³³²

In sum, the attention paid by the Park Service to these management issues bolsters the basic message above. The General Management Plan and the Foundation Statement illustrate the onset of a reconception of the relationships between the agency and Grand Canyon tribes.

Yet what about things on the ground—or, put differently, the law in action? It is one thing to view tribes as being written back into Grand Canyon National Park

³²⁵ GENERAL MANAGEMENT PLAN, *supra* note 319, at 14.

³²⁶ FOUNDATION STATEMENT, *supra* note 319, at 9.

³²⁷ *Id.* at 8.

³²⁸ GENERAL MANAGEMENT PLAN, *supra* note 319, at 10, 12–14.

³²⁹ *Id.* at 47.

³³⁰ *Id.* at 54.

³³¹ *Id.* at 57.

³³² FOUNDATION STATEMENT, *supra* note 319, at 30.

based upon words on a page—systemic or unit-specific. That angle, however, involves an inherent blind spot. To what extent has the relational reconception been apparent in actions translating the hefty mass of words into tangible change? In short, several developments over the past three decades show congruity between the Park Service’s words and deeds.³³³

Glen Canyon Dam offers a prime example. Located approximately fifteen miles upstream of Grand Canyon National Park on the Colorado River mainstem, releases from the dam’s reservoir, Lake Powell, directly impact cultural resources of importance to Grand Canyon tribes along the river corridor inside the park.³³⁴ To be clear, the Colorado River is the Grand Canyon’s “sculptor,”³³⁵ and although management of the river and canyon involve separate (though partly overlapping) legal regimes in modern times, the tribes view the *whole* system as interconnected and alive—a perspective conveyed above.³³⁶ Thus, since the late 1980s, the Park Service—particularly, former tribal liaison Janet Balsom—has worked closely with the tribes to ensure cultural resources are taken into account and protected by federal rules developed to govern Glen Canyon Dam’s operation.³³⁷ One statute is especially notable.

The Grand Canyon Protection Act was enacted in 1992 with the following mandate:

The Secretary [of the Interior] shall operate Glen Canyon Dam . . . in such a manner as to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park . . . [was] established, including, but not limited to natural and *cultural resources* and visitor use.³³⁸

The Park Service labored diligently, alongside Grand Canyon tribes, to ensure “cultural resources” were included in this text.³³⁹ Not only did this protectionist effort bear fruit within the mandate itself, it also shaped two key obligations imposed

³³³ In addition to the material below discussing Glen Canyon Dam, uranium mining, and Desert View, this congruity is also apparent from the Park Service’s adoption in 1993 of an entrance fee waiver for Havasupai, Hopi, Hualapai, Navajo, Southern Paiute, and Zuni tribal members at Grand Canyon National Park. Memorandum from Robert Chandler, Grand Canyon Nat’l Park Superintendent to Chief, Visitor & Res. Prot. (Mar. 15, 1993) (on file with author).

³³⁴ See, e.g., *Glen Canyon Unit*, BUREAU OF RECLAMATION, <https://www.usbr.gov/uc/rm/crsp/gc/> [<https://perma.cc/P7HM-ZMMY>].

³³⁵ Robison, *supra* note 8, at 576.

³³⁶ See *supra* Part II.

³³⁷ Balsom Interview, *supra* note 24. Ms. Balsom served as tribal liaison at Grand Canyon National Park from 1989 to 2008 while also employed as a park archaeologist.

³³⁸ Grand Canyon Protection Act of 1992, Pub. L. No. 102-575, § 1802(a), 106 Stat. 4669, 4669 (emphasis added).

³³⁹ Balsom Interview, *supra* note 24.

on the Secretary by the statute: (1) completing an environmental impact statement (“EIS”) for Glen Canyon Dam,³⁴⁰ and (2) establishing long-term monitoring programs and activities to ensure the dam is operated in a manner consistent with the mandate.³⁴¹ In a host of ways, the relational reconception between the Park Service and Grand Canyon tribes is further evidenced by these obligations.

Just as it had helped facilitate the Grand Canyon Protection Act’s inclusion of cultural resources, so too did the Park Service later work extensively with Grand Canyon tribes in the mid-1990s to prepare cultural resources content for the statutorily mandated EIS.³⁴² Several tribes were situated shoulder to shoulder with the Park Service as designated cooperating agencies for the EIS.³⁴³ And, in its final form, the document contained rich cultural resources content, both within the body (alternatives analysis and elsewhere),³⁴⁴ as well as an attached Programmatic Agreement on Cultural Resources entered into by the tribes.³⁴⁵

As for the second obligation, the Park Service and Grand Canyon tribes continued standing shoulder to shoulder moving forward from the EIS, as it brought into being the statutorily required long-term monitoring program, the Glen Canyon Dam Adaptive Management Program, in 1997.³⁴⁶ At the core of this program is an Adaptive Management Work Group—a federal advisory committee discussed in further detail below. This entity is composed in a broad-based manner, but as relevant here includes a representative from the Park Service along with representatives from seven of the eleven Grand Canyon tribes.³⁴⁷

That is not all. Adopted in 2016 after roughly two decades of collaboration within the adaptive management program, a Long-Term Experimental and Management Plan (“LTEMP”) for Glen Canyon Dam marks the most recent

³⁴⁰ § 1804, 106 Stat. at 4670.

³⁴¹ *Id.* § 1805, 106 Stat. at 4672.

³⁴² Balsom Interview, *supra* note 24.

³⁴³ BUREAU OF RECLAMATION, U.S. DEP’T OF THE INTERIOR, OPERATION OF GLEN CANYON DAM FINAL ENVIRONMENTAL IMPACT STATEMENT 3 (1995).

³⁴⁴ *See id.* at 140–46, 260–71 (addressing cultural resources in “affected environment” and “environmental consequences” sections).

³⁴⁵ *Id.* at Att-25.

³⁴⁶ *See, e.g., Glen Canyon Dam Adaptive Management Program*, BUREAU OF RECLAMATION, <https://www.usbr.gov/uc/progact/amp/index.html> [<https://perma.cc/42L4-QL8B>] (last updated July 13, 2020).

³⁴⁷ BUREAU OF RECLAMATION, U.S. DEP’T OF THE INTERIOR, GLEN CANYON DAM ADAPTIVE MANAGEMENT WORK GROUP CHARTER 3 (2017), https://www.usbr.gov/uc/progact/amp/pdfs/amwg_charter.pdf [<https://perma.cc/PX96-NSZ9>] [hereinafter AMWG CHARTER]. Specifically, the charter calls for one representative from each of the following tribes: the Hopi Tribe, Hualapai Tribe, Navajo Nation, San Juan Southern Paiute Tribe, Southern Paiute Consortium, and Pueblo of Zuni. *Id.* The Southern Paiute Consortium includes both the Kaibab Band of Paiute Indians and the Paiute Indian Tribe of Utah. *Southern Paiute Consortium*, KAIBAB BAND OF PAIUTE INDIANS, <https://www.kaibabpaiute-nsn.gov/SPC.html> [<https://perma.cc/D926-WN5A>].

development in this strand.³⁴⁸ There is much to say about the LTEMP, but process is again the critical focus. In the preparation of an EIS for the LTEMP, the Park Service did the same thing it had done in the mid-1990s following the Grand Canyon Protection Act's passage. The agency worked extensively with Grand Canyon tribes to ensure cultural resources content was given due attention in the EIS.³⁴⁹ As before, several tribes were designated cooperating agencies for the EIS³⁵⁰—while the Park Service and Bureau of Reclamation were lead agencies—and the document contains abundant cultural resources content (even more than its predecessor), both within the body and appendices.³⁵¹

Yet Glen Canyon Dam is not the only site where the relational conception can be seen in action. Grand Canyon uranium mines are another. While the mid- to late-twentieth century witnessed the advent of uranium mining in the Grand Canyon region,³⁵² the early twenty-first century saw a couple milestones telling of the industry's future—developments shedding further light on the nature of the contemporary relationship between the tribes and Park Service.

The Northern Arizona Withdrawal is the first milestone. In 2012, Secretary of the Interior Ken Salazar imposed a twenty-year moratorium on uranium mining on approximately 1,006,545 acres of predominantly federal lands managed by the Bureau of Land Management and U.S. Forest Service abutting or near Grand Canyon National Park.³⁵³ Protecting “the Grand Canyon Watershed from adverse effects of locatable mineral exploration and development” was the overarching rationale for this withdrawal.³⁵⁴ But it was informed by some specific, salient facts.

³⁴⁸ See *Project Summary*, GLEN CANYON DAM LONG-TERM EXPERIMENTAL AND MGMT. PLAN EIS, <http://ltempis.anl.gov/> [<https://perma.cc/9FSQ-M46N>].

³⁴⁹ Balsom Interview, *supra* note 24.

³⁵⁰ BUREAU OF RECLAMATION & NAT'L PARK SERV., U.S. DEP'T OF THE INTERIOR, GLEN CANYON DAM LONG-TERM EXPERIMENTAL AND MANAGEMENT PLAN FINAL ENVIRONMENTAL IMPACT STATEMENT 1-8 (2016), <http://ltempis.anl.gov/documents/final-eis/> [<https://perma.cc/32VA-8EX8>].

³⁵¹ *Id.* Examples in the body include discussions of tribal lands in Chapter 1; cultural resources and tribal perspectives on the geologic setting, water resources, vegetation, and wildlife in Chapter 3; and cultural resources in the alternatives analysis of Chapter 4. Equally notable are Appendix A (Adaptive Management Working Group Desired Future Conditions) and Appendix H (Cultural Resources Technical Information and Analysis).

³⁵² U.S. DEP'T. OF THE INTERIOR, RECORD OF DECISION: NORTHERN ARIZONA WITHDRAWAL 1 (2012), https://www.grandcanyontrust.org/sites/default/files/resources/Signed_NAZ_Withdrawal_ROD_0.pdf [<https://perma.cc/Z3JG-ANY6>] [hereinafter NAW ROD].

³⁵³ *Id.* at 1–3. See also *id.* at 7, map 1. Valid existing rights are excepted from the withdrawal. *Id.* at 5–6. The withdrawal was unsuccessfully challenged in federal court for approximately six years. The Ninth Circuit upheld the withdrawal in December 2017. *Nat'l Mining Ass'n. v. Zinke*, 877 F.3d 845, 878 (9th Cir. 2017). The U.S. Supreme Court then denied certiorari in October 2018. *Am. Expl. & Mining Ass'n v. Zinke*, 139 S. Ct. 309 (2018); *Nat'l Mining Ass'n v. Zinke*, 139 S. Ct. 57 (2018).

³⁵⁴ NAW ROD, *supra* note 352, at 1.

The “area is known as a home or sacred place of origin” to Grand Canyon tribes—a place whose “cultural significance goes back thousands of years”—and “[a]ny mining within the sacred and traditional places of tribal peoples may degrade the values of those lands to the tribes that use them.”³⁵⁵ This piece of the secretary’s rationale appeared for a reason.

Recall the Grand Canyon Protection Act and two associated EISs described above. An EIS was also drafted for the Northern Arizona Withdrawal, and the same type of relationship between the Park Service and Grand Canyon tribes is apparent with respect to it.³⁵⁶ The Park Service and two of the eleven Grand Canyon tribes, the Hualapai Tribe and Kaibab Band of Paiute Indians, were designated cooperating agencies.³⁵⁷ And again, working alongside the tribes, the Park Service prepared for the lead agency, the Bureau of Land Management, ethnographic reports that were utilized in the EIS and ultimately supported the withdrawal.³⁵⁸ The EIS contains an appendix on the “Culture History of the Proposed Withdrawal Area,” as well as discussions of “cultural resources” and “American Indian resources” in chapters on the affected environment and environmental consequences of uranium mining.³⁵⁹

Turning to the second milestone, the uranium mining ban may now become permanent. A piece of legislation from Arizona Representative Raúl Grijalva, the Grand Canyon Centennial Protection Act, would do just that.³⁶⁰ Flanked by Havasupai, Hualapai, Hopi, and Navajo tribal leaders at Grand Canyon National Park’s South Rim, Grijalva introduced this legislation on February 26, 2019, one hundred years to the day of the park’s creation.³⁶¹ It applies to the same 1,006,545

³⁵⁵ *Id.* at 3, 8.

³⁵⁶ BUREAU OF LAND MANAGEMENT, NORTHERN ARIZONA PROPOSED WITHDRAWAL: FINAL ENVIRONMENTAL IMPACT STATEMENT 1 (2011), https://www.grandcanyontrust.org/sites/default/files/resources/gc_FEIS_Northern_Arizona_Proposed_Withdrawal.pdf [<https://perma.cc/7VWD-4M6X>] [hereinafter NAW EIS].

³⁵⁷ *Id.* at 1-7-1-8, 1-10. The Bureau of Land Management also engaged in active consultation with the Havasupai Tribe, Hopi Tribe, Navajo Nation, Paiute Indian Tribe of Utah, and Pueblo of Zuni. *Id.* at 5-3-5-4.

³⁵⁸ Balsom Interview, *supra* note 24.

³⁵⁹ NAW EIS, *supra* note 356, at 3-203-220, 4-212-227, Appx. I. Going forward from the Northern Arizona Withdrawal, the Park Service has continued to produce studies since 2012 on resource-related issues of concern communicated by Grand Canyon tribes. Balsom Interview, *supra* note 24.

³⁶⁰ Grand Canyon Centennial Protection Act, H.R. 1373, 116th Cong. § 2(b)(3) (2019), <https://www.congress.gov/bill/116th-congress/house-bill/1373/text> [<https://perma.cc/LVG6-ZHCL>] [hereinafter GCCPA]. Representative Grijalva introduced similar legislation in 2008, 2009, 2011, 2013, 2015, and 2017. For a chart of this progression, *see* HOUSE COMM. ON NAT’L RES., THE GRAND CANYON CENTENNIAL PROTECTION ACT, <https://naturalresources.house.gov/imo/media/doc/Grand%20Canyon%20Centennial%20Protection%20Act%20History.pdf> [<https://perma.cc/E5A6-56CN>].

³⁶¹ *See* Andrew Niela, *Grijalva Unveils New Attempt to Ban Uranium Mining Permanently Near the Grand Canyon*, ARIZ. REPUBLIC (Feb. 23, 2019, 6:20 PM), <https://www.azcentral.com/story/news/local/arizona-environment/2019/02/23/grijalva->

acres covered by the current moratorium and calls for withdrawal within this area of “all forms of entry, appropriation, and disposal under the public land laws”; “location, entry, and patent under the mining laws”; and “operation of the mineral leasing, mineral materials, and geothermal leasing laws.”³⁶² As alluded to above, the area encompasses three chunks of federal lands that extend from the northwestern, northeastern, and southeastern borders of the national park, all of which constitute Grand Canyon tribes’ ancestral homelands.³⁶³ As of the time of this writing, the House of Representatives passed the legislation in October 2019,³⁶⁴ and Arizona Senator Kyrsten Sinema introduced it within that chamber two months later.³⁶⁵

The Grand Canyon Centennial Protection Act’s relational relevance is admittedly somewhat distinct from what has been discussed earlier. But the distinction highlights a defining quality of the contemporary relationship between the Park Service and Grand Canyon tribes. On the one hand, the legislation does not illustrate the Park Service collaborating with tribes to generate critical cultural resources (or other) content to inform an EIS. Nor does the legislation involve the Park Service and tribes working alongside each other as cooperating agencies for an EIS, or as collaborators within a federal advisory committee such as the Glen Canyon Dam Adaptive Management Work Group. On the other hand, however, something clear as day appears from the legislation. In a word, *confluence*. The legislation’s title bears the word “protection” for a reason. That is its fundamental goal—“[t]o protect, for current and future generations, the watershed, ecosystem, and cultural heritage of the Grand Canyon region”³⁶⁶ And just as this goal geographically encompasses Grand Canyon National Park and the tribes’ ancestral homelands, so too does it relationally encompass the Park Service’s and tribes’ shared interests in the protection afforded. They flow together in this space.

tribal-leaders-uranium-mining-ban-near-grand-canyon-arizona-lawmakers/2952967002/
[<https://perma.cc/K7A8-64AB>].

³⁶² GCCPA, *supra* note 360, at 2. Valid existing rights are excepted. *Id.*

³⁶³ For a map of the area, see HOUSE COMM. ON NAT’L RES., GRAND CANYON CENTENNIAL PROTECTION ACT MAP, https://naturalresources.house.gov/imo/media/doc/GrandCanyonCentennialProtectionAct_20190711.pdf [<https://perma.cc/V8C3-FZ2W>].

³⁶⁴ *Chair Grijalva Hails House Passage of “Grand Canyon Centennial Protection Act” to Block New Uranium Mining - Thanks Allies for Victory a Decade in the Making*, GRIJALVA.HOUSE.GOV (Oct. 30, 2019), <https://grijalva.house.gov/press-releases/chair-grijalva-hails-house-passage-of-grand-canyon-centennial-protection-act-to-block-new-uranium-mining-thanks-allies-for-victory-a-decade-in-the-making/> [<https://perma.cc/ZQ45-L8MA>].

³⁶⁵ *Sinema Introduces Bill Protecting the Grand Canyon, Strengthening Arizona’s Economy*, SINEMA.SENATE.GOV (Dec. 19, 2019), <https://www.sinema.senate.gov/sinema-introduces-bill-protecting-grand-canyon-strengthening-arizonas-economy> [<https://perma.cc/XK2C-JR3A>].

³⁶⁶ GCCPA, *supra* note 360, at 1.

Beyond Glen Canyon Dam and Grand Canyon uranium mines, one more place deserves a visit before considering what might come next in the reconception of relationships between the Park Service and Grand Canyon tribes. That place is Desert View.³⁶⁷ Used as a gathering site for millennia, Desert View serves as the eastern entrance to Grand Canyon National Park, representing the physical and cultural gateway from the park to adjacent reservations.³⁶⁸ The Desert View Watchtower, designed by architect Mary Colter in the 1930s “to introduce the depths of Native culture to the traveler,” is the area’s most well-known landmark.³⁶⁹ Modeled after structures built by ancestral Puebloan people at what are now Hovenweep National Monument and Mesa Verde National Park, the watchtower is adorned with paintings by Hopi artist Fred Kabotie and Fred Geary that recently have been conserved.³⁷⁰

Desert View is currently being reconceived as a space within Grand Canyon National Park. One can see in this spatial reconception the relational reconception woven throughout this material. Referred to as the “Desert View Tribal Heritage Project,” this effort is being driven primarily by a Native entity formed in 2013, the Intertribal Working Group (“ITWG”), composed of representatives from all eleven of the Grand Canyon tribes.³⁷¹ The ITWG has partnered with the Park Service and several other organizations in this endeavor,³⁷² and it has produced a strategic plan expressing beautifully the tribal representatives’ visions of the space:

We share Desert View as a symbol to bond the peoples of yesterday, today and tomorrow. The watchtower serves as a connection to embrace the heartbeats of our peoples and visitors far and wide with the heartbeat of the canyon . . . We are still here.³⁷³

³⁶⁷ *Desert View Tribal Heritage Project*, NAT’L PARK SERV., <https://www.nps.gov/grca/learn/photosmultimedia/gcid-05-dvwt.htm> [<https://perma.cc/ZQ N4-T365>] (Dec. 7, 2018).

³⁶⁸ *Id.*

³⁶⁹ *Mary Colter’s Desert View Watchtower*, NAT’L PARK SERV., <https://www.nps.gov/grca/learn/photosmultimedia/mary-colter---indian-watchtower.htm> [<https://perma.cc/SYJ2-LNWE>] (Sept. 21, 2019); *Grand Canyon National Park, Desert View Intertribal Cultural Heritage Center and Native Artists Program*, ARTPLACE AMERICA, <https://www.artplaceamerica.org/funded-projects/grand-canyon-national-park-desert-view-inter%C2%ADtribal-cultural-heritage-center-and> [<https://perma.cc/EA7G-NM7N>] [hereinafter *Native Artists Program*].

³⁷⁰ *Capturing the Colors: Conservation Work at Desert View Watchtower Concludes*, NATIONAL PARK SERVICE, <https://www.nps.gov/articles/conservation-work-at-desert-view-watchtower-concludes-10-04-2019.htm> [<https://perma.cc/QX5F-HF3C>].

³⁷¹ *Desert View Tribal Heritage Project*, *supra* note 367.

³⁷² *See Native Artists Program*, *supra* note 369 (listing partners).

³⁷³ GRAND CANYON NAT’L PARK INTER-TRIBAL ADVISORY COUNCIL, 2015–2020 STRATEGIC PLAN FOR DESERT VIEW PROJECT 1 (2015) <https://www.dropbox.com/sh/757ttxs7ct7dojc/AABL NohGclTKz-qmPIelueKqa/On%20File%20with%20Author?dl=0&pre>

As mapped out in the strategic plan, the ITWG's overall purpose is "to establish inter-tribal programming and a first-voice cultural interpretation place at Desert View."³⁷⁴ There are multiple goals subsumed within this umbrella. One category involves the ITWG and Park Service jointly developing diverse, broad-based, and interactive cultural programs (art, music, demonstrations) presented by tribal members.³⁷⁵ In this way, Desert View is being envisioned as a "living landscape."³⁷⁶ An overlapping category focuses on cultural awareness and sensitivity—specifically, the ITWG and Park Service producing a guidebook of tribal and agency protocols for use at Desert View.³⁷⁷ Finally, jobs are part of the picture, both at and beyond Desert View. The strategic plan calls for employment and internship opportunities for tribal members, including a Park Service-funded program coordinator position as well as positions in the Ancestral Lands Conservation Corps.³⁷⁸ Likewise, the plan looks toward adjacent reservations—particularly, the western part of the Navajo Reservation—to bolster tribal economic development through recreation and tourism jobs and revenue.³⁷⁹ The Park Service has capacity to assist with the infrastructure planning needed to make this tribal economic development happen.³⁸⁰

And that brings to an end the historical material. Desert View offers a natural segue to the next Part's advocacy. What is happening in this corner of Grand Canyon National Park can be thought of as the cooperative planting of a seed. Formative precedents are being sown—the ITWG's creation as a Native entity composed of Grand Canyon tribal representatives, the ITWG's partnership with the Park Service and diverse other organizations, and the ITWG-led vision being translated into reality. This endeavor is not taking place in isolation, but rather in sync with the preceding developments involving the Glen Canyon Dam Adaptive Management Program, Northern Arizona Withdrawal, and Grand Canyon Centennial Protection Act. The whole line constitutes an on-the-ground illustration of how relationships between the Park Service and Grand Canyon tribes are being reconceived. Honing in on Desert View, why is it that the ITWG's vision for that remarkable portion of the park must be confined to it, given that Grand Canyon is Native space in its entirety?³⁸¹ Moreover, while the ITWG's vision calls for tribal members being deeply and richly involved in interpretation and education at Desert View, how about

view=Intertribal+Working+Group+Desert+View+Strategic+Plan+(2015).pdf&subfolder_n av_tracking=1 [https://perma.cc/7ZR2-J5XT]. The ITWG is sometimes referred to as the "Inter-tribal Advisory Council" in Desert View materials such as this plan.

³⁷⁴ *Id.*

³⁷⁵ *Id.* at 3.

³⁷⁶ Balsom Interview, *supra* note 24.

³⁷⁷ GRAND CANYON NATIONAL PARK INTER-TRIBAL ADVISORY COUNCIL, *supra* note 373, at 5.

³⁷⁸ *Id.* at 4.

³⁷⁹ *See id.* at 5; Balsom Interview, *supra* note 24.

³⁸⁰ Balsom Interview, *supra* note 24.

³⁸¹ *See Clark & Riggs Interview, supra* note 225.

Grand Canyon tribes being directly engaged in a broader scope of management activities throughout the park? The prospect of the seed growing beyond these geographic and substantive boundaries is where the discussion now goes.

IV. WALKING TOWARD COOPERATION

“To redefine the next century of Grand Canyon National Park, Native voices need to be amplified.”³⁸² The park’s 2019 centennial was valuable not only for looking backward—reflecting on evolving relations between the Park Service and Grand Canyon tribes since 1919—but also as an opportunity to envision what lies ahead.³⁸³ Eyeing the park’s future, Native voices once again cannot be matched in expression. Navajo tribal member Renae Yellowhorse used the following words to convey her vision:

I’d like to see my progeny—all my great-grandchildren, and their grandchildren—be able to go to the canyon and realize and know that those places are protected and preserved for them. I don’t want them to come to face what we had to. The humiliation, the attempts to make us so ashamed of where we come from.³⁸⁴

This vision aligns with those expressed by Hopi tribal members, including Ed Kabotie:

I would love to see an increase in the awareness of the First Nations’ cultures and our relationships to the canyon. We get visitors from all over the world who are interested in seeing our landscape, and I’d hope that stories of our people would be elevated through the park service and our voices would be heard to the world.³⁸⁵

³⁸² *Native Voices*, *supra* note 26.

³⁸³ As expressed by Navajo tribal member Colleen Cooley: “Yes, the park is celebrating 100 years, but there’s a longer history, and the tribes want that recognized and acknowledged. The tribes are also in collaboration with the park on changes to come and don’t want to dwell on the past.” Girirajan, *supra* note 136.

³⁸⁴ Riggs, *supra* note 40.

³⁸⁵ *Id.* Hopi tribal member Georgie Pongyesva similarly describes:

I would love to see more Native presence . . . I’d like to have everyone’s voices represented in a respectful way. And I am excited to have our youth more present in the park . . . So overall to create more access for our tribal members and have us be able to tell our stories.

Id.

Continuing the relational reconception is essential for realizing these visions—a point Grand Canyon tribes are well aware of as reflected in this optimistic remark from Havasupai Councilwoman Ophelia Watahomigie-Corliss upon the centennial:

I feel like the people in positions inside the national park are listening to our perspective and they want to know what we have to say. And I'm excited that we might actually get somewhere. I feel like when I talk to these individuals in the park service that they want to help. So it's a matter of teaming up with them and finding a way for them to make it through the red tape of the federal agency they work for.³⁸⁶

The comment about “teaming up” speaks volumes. It captures, in my view, what's needed to take the relational reconception at Grand Canyon National Park to the next level: “cooperative management.” This concept can be approached in many ways—customized to the specific place, parties, relationships, etc.³⁸⁷—and arguably is already happening to an extent in the endeavors at Glen Canyon Dam and Desert View. The particular shift toward cooperative management being advocated here, however, would be foundational.

Grand Canyon tribes and the Park Service should consider forming a new entity, a “Grand Canyon Commission,” for cooperative management of Grand Canyon National Park. As noted in the Introduction, this proposal is purposefully stated in a deferential way—as an idea worth exploring—stemming from a deep sense of respect for the tribes' human right to self-determination,³⁸⁸ and an equally deep sense of humility given the tribes' inexpressible connections to the canyon and accumulated wisdom. The proposal is *not* written on a blank slate, however, instead growing from Native roots at both the Grand Canyon and Bears Ears.

The notion of a Grand Canyon Commission partly stems from the national park's 2019 centennial—specifically, the work of an Intertribal Centennial Conversations group (“ICCG”) facilitated by the Grand Canyon Trust.³⁸⁹ Composed of community members from Grand Canyon tribes, along with allied participants and advisers, the ICCG was formed in December 2017 as a spinoff of a larger Colorado Plateau Intertribal Conversations group.³⁹⁰ The ICCG has prepared a document entitled, *Vision Statement and Action Strategies: Education, Economy, Stewardship*, which it shared in draft form with Grand Canyon National Park, Grand

³⁸⁶ *Id.*

³⁸⁷ Clark & Riggs Interview, *supra* note 225.

³⁸⁸ UNDRIP, *supra* note 14, at art. 3.

³⁸⁹ Sarana Riggs, *Commemorating Our Indigenous Presence*, GRAND CANYON TR. (Feb. 20, 2019), <https://www.grandcanyontrust.org/blog/commemorating-our-indigenous-presence> [<https://perma.cc/XWJ4-J438>].

³⁹⁰ *Id.*

Canyon Conservancy, and other potential partners in May 2018.³⁹¹ The document's tribal stewardship content is key.³⁹² It revolves around a broad-based priority: "to improve the stewardship of the entire Grand Canyon through collaboration between regional tribes, National Park Service, U.S. Forest Service, and Bureau of Land Management."³⁹³ Multiple action items surround this priority, but one group is paramount. They call for creating an "Intertribal Grand Canyon Regional Stewardship Council."³⁹⁴ This Council would interface with the entities discussed above—the ITWG at Desert View and the Glen Canyon Dam Adaptive Management Work Group—and strive to move from federal-tribal advisory agreements to co-management agreements, possibly similar to the strategic agreement formed by the Navajo Nation, Park Service, and Bureau of Indian Affairs for Canyon de Chelly National Monument.³⁹⁵ Connected to these action items addressing the Council's creation are counterparts calling for "Cooperative Action and Use Agreements" between Grand Canyon tribes, the Park Service, and other agencies, including ensuring the Park Service's fidelity to the relational provisions ("direct involvement and input requirements") of the national park's General Management Plan.³⁹⁶

The other soil out of which the Grand Canyon Commission idea grows is at Bears Ears. Located in southeastern Utah, approximately 200 miles northeast of Grand Canyon National Park, President Obama designated Bears Ears National Monument in December 2016.³⁹⁷ It presents another rabbit hole in terms of how deep into the story one wishes to go. Of greatest import here is the Bears Ears Commission—a visionary entity created for collaborative management of the national monument. This entity and the broader narrative of which it is part are the initial focus of the material below. After mapping out the Bears Ears landscape, the discussion returns to the proposed Grand Canyon Commission, exploring how the relational reconception at the canyon can move forward by bringing this entity into being.

³⁹¹ *Id.*; GRAND CANYON INTERTRIBAL CENTENNIAL CONVERSATION GROUP, VISION STATEMENT AND ACTION STRATEGIES: EDUCATION, ECONOMY, STEWARDSHIP (2018) (on file with author) [hereinafter ICCG VISION].

³⁹² ICCG VISION, *supra* note 391, at 9–11.

³⁹³ *Id.* at 9.

³⁹⁴ *Id.*

³⁹⁵ *Id.* at 10. NAVAJO NATION, NAT'L PARK SERV. & BUREAU OF INDIAN AFFAIRS NAVAJO REGION, A STRATEGIC AGREEMENT BETWEEN THE NAVAJO NATION, NATIONAL PARK SERVICE, AND BUREAU OF INDIAN AFFAIRS FOR THE COOPERATIVE STEWARDSHIP OF CANYON DE CHELLY (June 21, 2018), https://gallery.mailchimp.com/0bf367cc7bf787cb9b02b21c8/files/6758d641-e844-4586-ac6a-6c8ad182b952/Strategic_Agreement_PDF.pdf [<https://perma.cc/6UYU-RXU4>].

³⁹⁶ ICCG VISION, *supra* note 391, at 10.

³⁹⁷ Proclamation No. 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/12/28/proclamation-establishment-bears-ears-national-monument> [<https://perma.cc/VWP3-3Z3U>].

A. Bears Ears

Bears Ears is Native space, too. “Rising from the center of the southeastern Utah landscape and visible from every direction are twin buttes so distinctive that in each of the native languages of the region their name is the same: *Hoon’Naqvut*, *Shash Jáa*, *Kwiyagatu Nukavachi*, *Ansh An Lashokdiwe*, or ‘Bears Ears.’”³⁹⁸ Parallels between tribal connections to the Bears Ears and Grand Canyon landscapes are abundant. This summary offers a succinct example:

Ever since time immemorial, the Bears Ears area has been important to Native American people as a homeland. In the mid-1800s, Native Americans were forced fully and violently . . . from the area and marched to reservations. But the Native bond to Bears Ears is strong and today is a place that embodies that history. Modern Native American people continue to use the Bears Ears area as a place for healing, ceremonies, and the gathering of firewood, plants, and medicinal herbs.³⁹⁹

More elaborate descriptions of these connections appear in the proposal submitted to President Obama in 2015 for creation of Bears Ears National Monument.⁴⁰⁰ It came from an historic tribal partnership—the Bears Ears Inter-Tribal Coalition (Coalition)—led by the Hopi Tribe, Navajo Nation, Uintah and Ouray Ute Tribe, Ute Mountain Ute Tribe, and Pueblo of Zuni, and supported by more than twenty-five other tribes.⁴⁰¹ And not only the partnership itself was path-breaking.

The Coalition’s novel vision was for federal-tribal collaborative management of the new monument—through the entity referenced above, the Bears Ears Commission.⁴⁰² Translation of that vision into reality has been tumultuous thus far and requires surveying three primary documents. The Coalition’s 2015 proposal is the starting point. It was followed in 2016 by President Obama’s proclamation designating Bears Ears National Monument under the Antiquities Act—spanning approximately 1.35 million acres—and calling for formation of both a federal advisory committee and a Bears Ears Commission.⁴⁰³ President Trump then intervened with a proclamation in 2017 that purported to rely on the Antiquities Act

³⁹⁸ *Id.* at 1391 (emphasis added).

³⁹⁹ BEARS EARS INTER-TRIBAL COAL., THE TRIBAL PROPOSAL TO PRESIDENT OBAMA FOR THE BEARS EARS NATIONAL MONUMENT (2015), <https://bearscoalition.org/wp-content/uploads/2015/01/ExecutiveSummaryBearsEarsProposal.pdf> [<https://perma.cc/A9GA-S94G>].

⁴⁰⁰ BEARS EARS INTER-TRIBAL COAL., PROPOSAL TO PRESIDENT BARACK OBAMA FOR THE CREATION OF BEARS EARS NATIONAL MONUMENT 8–13 (2015) [hereinafter COALITION PROPOSAL]; see also Proclamation No. 9558, 82 Fed. Reg. at 1139–40.

⁴⁰¹ *Proposal Overview*, BEARS EARS INTER-TRIBAL COAL., <https://bearscoalition.org/proposal-overview/> [<https://perma.cc/3Q5K-R2H3>].

⁴⁰² COALITION PROPOSAL, *supra* note 400, at 29–30.

⁴⁰³ Proclamation No. 9558, 82 Fed. Reg. at 1144.

to modify the national monument's boundaries—reducing it to roughly 201,876 acres—and to alter the Commission's name, authority, and composition.⁴⁰⁴ The Native American Rights Fund and other parties have challenged this attempted modification and reduction in federal court.⁴⁰⁵ Further details about each of these milestones appear below. Overall, they illustrate how federal-tribal collaborative management was originally conceived, though subsequently muddled, at Bears Ears as a reference point for Grand Canyon National Park. The two Bears Ears entities just identified—advisory committee and Commission—frame the discussion.

1. *Advisory Committee*

Broadly speaking, at Bears Ears and elsewhere, the Federal Advisory Committee Act (“FACA”) provides a means for agencies to obtain input and advice from stakeholders.⁴⁰⁶ Agencies within the Department of the Interior have relied on FACA to create a variety of advisory committees—for example, the Park Service currently has thirty-two such committees.⁴⁰⁷ The Colorado Plateau is not devoid of this pattern. The Bears Ears National Monument Advisory Committee has notable counterparts on the plateau in the form of the Grand Staircase-Escalante National Monument Advisory Committee and the Glen Canyon Dam Adaptive Management Work Group.⁴⁰⁸ Each advisory committee includes tribal representatives among their

⁴⁰⁴ Proclamation No. 9681, 82 Fed. Reg. 58081 (Dec. 4, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-12-08/pdf/2017-26709.pdf> [<https://perma.cc/H59V-4PL3>].

⁴⁰⁵ *Protecting Bears Ears National Monument*, NATIVE AM. RIGHTS FUND, <https://www.narf.org/cases/bears-ears/> [<https://perma.cc/T44T-DZNU>]. For an extensive analysis of the legality of President Trump's attempted modification and reduction of the monument, see John C. Ruple, *The Trump Administration and Lessons Not Learned from Prior National Monument Modifications*, 43 HARV. ENVTL. L. REV. 1 (2019).

⁴⁰⁶ NAT'L PARK SERV. OFF. OF POL'Y, NATIONAL PARK SERVICE GUIDE TO THE FEDERAL ADVISORY COMMITTEE ACT 1 (2011), https://www.nps.gov/policy/advisory/NPS_FACA_Guide_revFeb2011.pdf [<https://perma.cc/8ZJV-33PA>].

⁴⁰⁷ For data on these advisory committees, see *Agency Reports*, FACADATABASE.GOV, <https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyReports?id=001t000000DCAoqAAH> [<https://perma.cc/RS3B-ZJJT>]. The Park Service committees are listed in the “Committees in Groups Report” dropdown on this webpage.

⁴⁰⁸ BUREAU OF LAND MGMT., U.S. DEP'T OF THE INTERIOR & U.S. FOREST SERV., U.S. DEP'T OF AGRIC., BEARS EARS NATIONAL MONUMENT ADVISORY COMMITTEE CHARTER (2018), <https://www.blm.gov/sites/blm.gov/files/Utah%20Resource%20Advisory%20Councils%20BEARS%20EARS%20NM%20MAC%20SIGNED%20CHARTER9-12-2018.pdf> [<https://perma.cc/X5LP-SZYV>] [hereinafter BEARS EARS CHARTER]; BUREAU OF LAND MGMT., U.S. DEP'T OF THE INTERIOR, GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT ADVISORY COMMITTEE CHARTER (2018), <https://www.blm.gov/sites/blm.gov/files/Utah%20Resource%20Advisory%20Councils%20Grand%20Staircase%20MAC%20SIGNED%20CHARTER%209-5-18.pdf> [<https://perma.cc/X5LP-SZYV>] [hereinafter GSENM CHARTER]; AMWG CHARTER, *supra* note 347.

broad-based memberships,⁴⁰⁹ though this representation has been a flash point of controversy within the Bears Ears Advisory Committee, as described momentarily.

In terms of its origin, the Bears Ears Inter-Tribal Coalition did *not* advocate for a federal advisory committee to be formed for the new monument when submitting its 2015 proposal to President Obama. “Collaborative management” reverberated throughout the proposal—“[o]nly then will we Native people have real influence on how this sacred land is managed”⁴¹⁰—but an advisory committee was not part of the Coalition’s novel vision.

Rather, the genesis of the Bears Ears Advisory Committee traces to President Obama’s 2016 proclamation. After designating Bears Ears National Monument and delineating its boundaries, the proclamation called for the secretaries of agriculture and interior to manage the new monument through the Forest Service and Bureau of Land Management, respectively, and to jointly prepare a management plan.⁴¹¹ As part of this effort, the two agencies were instructed to establish an advisory committee under FACA, which would “provide information and advice regarding the development of the management plan and, as appropriate, management of the monument.”⁴¹² The advisory committee’s membership, in turn, was prescribed in a general way—consisting, at least in theory, of a “fair and balanced representation of interested stakeholders”—with “tribes” expressly mentioned for inclusion.⁴¹³

Then came the Trump Administration. In contrast to what it purported to do to the monument’s boundaries and size—as well as the Bears Ears Commission—President Trump’s proclamation did not itself touch the Bears Ears Advisory Committee as it had been established by President Obama. Instead, subsequent actions took aim at the committee’s composition. One action was structural. When the advisory committee’s charter was adopted in August 2018, its multi-stakeholder structure called for fifteen members in total, including “[t]wo representatives of Tribal interests.”⁴¹⁴ This arrangement poses an egregious ratio and sovereignty problem. Five tribal sovereigns form the Coalition—again, the Hopi Tribe, Navajo Nation, Uintah and Ouray Ute Tribe, Ute Mountain Ute Tribe, and Pueblo of Zuni—yet the committee’s structure only allots two spots for “representatives of Tribal interests,” whatever that phrase may mean exactly.⁴¹⁵ As described by Coalition Co-Chairman Carlton Bowekaty, a Zuni tribal leader, the Coalition tribes “are recognized domestic sovereigns and as such, all should be represented by their

⁴⁰⁹ BEARS EARS CHARTER, *supra* note 408, at 3–4; GSENM CHARTER, *supra* note 408, at 4; AMWG CHARTER, *supra* note 347, at 3–4.

⁴¹⁰ COALITION PROPOSAL, *supra* note 400, at 21.

⁴¹¹ Proclamation No. 9558, 82 Fed. Reg. 1139, 1143 (Dec. 28, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/12/28/proclamation-establishment-bears-ears-national-monument> [<https://perma.cc/VWP3-3Z3U>].

⁴¹² *Id.* at 1144.

⁴¹³ *Id.*

⁴¹⁴ BEARS EARS CHARTER, *supra* note 408, at 4.

⁴¹⁵ *Id.*

respective tribal leadership.”⁴¹⁶ Compounding this structural issue is a bit of gamesmanship. When it came time to appoint the advisory committee’s fifteen members, including the two tribal seats, appointments apparently went exclusively to “individuals who opposed creation of the Bears Ears National Monument.”⁴¹⁷ This skewing prompted Arizona Representative Raúl Grijalva—the proponent of the Grand Canyon Centennial Protection Act as noted above—to deride the committee as “a rigged panel of monument opponents.”⁴¹⁸

Much more could be said in this vein, but hopefully the punchline is clear. The Bears Ears Advisory Committee has not worked out as an entity for facilitating progressive federal-tribal collaborative management as sought by the Coalition when proposing Bears Ears. The advisory committee sprang from President Obama’s proclamation rather than the Coalition proposal, and the Trump Administration has since seriously compromised the committee’s composition. That circles back to what the Coalition had in mind in the first place.

2. *Commission*

The Coalition proposal for Bears Ears expressed a vision that needs to be quoted:

[T]his new monument must be managed under a sensible, entirely workable regime of true Federal-Tribal Collaborative Management. We know that this has never been done before. But most great breakthroughs in public policy have no direct precedent. We want to work with you on this. We have reflected long and hard to come up with the right words to install Collaborative Management in this particular place and circumstance, and believe in our suggested approach, but we welcome your thoughts on how to improve our formulation. Like you, we want to make the Bears Ears National Monument the shining example of the trust, the government-to-government relationship, and innovative, cutting-edge land management. But whatever the specific words might be, for the Bears Ears National Monument to be all it can be, the Tribes must be full partners with the United States in charting the vision for the monument and implementing that vision.⁴¹⁹

⁴¹⁶ *Injustice Reassured: Bears Ears Advisory Committee Stacked for Opposition*, BEARS EARS INTER-TRIBAL COAL. (Apr. 24, 2019), <https://bearscoalition.org/injustice-reassured-bears-ears-advisory-committee-stacked-for-opposition/> [<https://perma.cc/5V9H-8P84>].

⁴¹⁷ *Id.*

⁴¹⁸ Jennifer Yachnin, *Grijalva, Greens Fault BLM Rollout of Bears Ears Plan*, GREENWIRE (July 26, 2019), <https://www.eenews.net/greenwire/stories/1060792319/search?keyword=Grijalva%2C+greens+fault+BLM+rollout+of+Bears+Ears+plan> [<https://perma.cc/3D9V-E8K7>].

⁴¹⁹ COALITION PROPOSAL, *supra* note 400, at 3–4.

That captures the spirit of the whole endeavor. Uttered by descendants of Native peoples made from the Bears Ears landscape, and channeled into the colonial legal and political system via a tribal *partnership* seeking precisely the same thing with their federal trustee, these words are paradigm-shifting. And the proposal went far to flesh out their meaning.

The Bears Ears Commission was conceived as the primary vessel for this vision. Situated as the “policy making and planning body for the monument,” it would comprise eight members, one from each Coalition Tribe and one from each relevant federal agency—the Bureau of Land Management, Forest Service, and Park Service.⁴²⁰ The Commission would choose a chairperson and annually report to the secretaries of agriculture and interior on the monument’s administration.⁴²¹ Members of the Commission would “collaborate jointly on all procedures, decisions, and other activities”—“joint decision-making” as a shorthand—beginning with a management plan for Bears Ears.⁴²² The proposal also mapped out at a two-step dispute resolution process in the event the Commission faced an “impasse, undue delay, or other extraordinary circumstances.”⁴²³ Mediation would be an initial step. If it failed, “the Secretary of Interior or the Secretary of Agriculture, as appropriate, [would] in a written opinion explaining the reasons, make the relevant decisions.”⁴²⁴ The Coalition crafted this collaborative-management arrangement, including step two of the dispute resolution process, to ensure the Commission’s joint decision-making at Bears Ears would fit within existing parameters of federal law—specifically, *Stanton*’s non-subdelegation doctrine elucidated below.⁴²⁵

No doubt this proposal was a lot for President Obama to process. A truly beautifully written document, the Obama Proclamation leaves no question that he grasped, as much as any non-Native person can, the Coalition tribes’ deep roots at Bears Ears and heartfelt yearning for federal-tribal collaboration.⁴²⁶ Yet, while it broke new ground, the proclamation did not cut and paste the Coalition proposal. It instead created a Bears Ears Commission of a slightly different form.⁴²⁷ The Commission comprised five members—one elected officer of each Coalition tribe designated by that tribe.⁴²⁸ And its function was not to facilitate joint decision-making with federal agency representatives—at least in an internal sense—but rather

⁴²⁰ *Id.* at 29.

⁴²¹ *Id.*

⁴²² *Id.* at 22, 30.

⁴²³ *Id.* at 22.

⁴²⁴ *Id.*

⁴²⁵ *Id.* at 26–27; *Nat’l Park & Conservation Ass’n v. Stanton*, 54 F. Supp. 2d 7 (D.D.C. 1999).

⁴²⁶ This grasp is especially evident in Proclamation No. 9558, 82 Fed. Reg. 1139, 1139–40 (Dec. 28, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/12/28/proclamation-establishment-bears-ears-national-monument> [<https://perma.cc/VWP3-3Z3U>].

⁴²⁷ *Id.* at 1144.

⁴²⁸ *Id.*

“to provide guidance and recommendations on the development and implementation of management plans and on management of the monument.”⁴²⁹ In this way, the Commission would “partner” with the agencies to inform monument management.⁴³⁰ Further, and perhaps most importantly, the Commission would not be a toothless shell. The proclamation required the secretaries of agriculture and interior to “meaningfully engage the Commission” when developing a management plan for Bears Ears and making subsequent decisions under it.⁴³¹ In particular, while developing and revising the plan, if the secretaries declined to follow written recommendations submitted by the Commission, they were obligated to provide to the Commission a “written explanation of their reasoning.”⁴³²

But, again, then entered the Trump Administration. President Trump’s purported reduction of Bears Ears National Monument to roughly 201,876 acres entailed modifying its boundaries to encircle two “islands” of land within the approximately 1.35-million-acre expanse originally designated.⁴³³ These “islands” are the monument’s Indian Creek and Shash Jáa units.⁴³⁴ This attempted carving out directly impacted the Bears Ears Commission. No longer would it be so named, instead taking on the title of the sole unit to which it would apply—thus, the “Shash Jáa Commission.”⁴³⁵ Also, in a manner resembling what later happened with the Bears Ears Advisory Committee, the Trump Proclamation altered the Commission’s composition. While it initially had been composed solely of representatives from the Coalition tribes—one elected tribal officer designated by each tribe⁴³⁶—the proclamation added as a sixth member the San Juan County Commissioner for District 3.⁴³⁷ As of the time of this writing, the Commission has refused to engage with the Bureau of Land Management over Bears Ears due to the ongoing federal litigation challenging the Trump Proclamation’s legality.⁴³⁸

The trajectory of the Bears Ears Commission is therefore a bit different from that of the advisory council. There is no mistaking where the Commission idea came from, the Coalition, nor what vision it was designed to realize, “true Federal-Tribal Collaborative Management.”⁴³⁹ Although deviating from precisely what the

⁴²⁹ *Id.*

⁴³⁰ *Id.*

⁴³¹ *Id.*

⁴³² *Id.*

⁴³³ Proclamation No. 9681, 82 Fed. Reg. 58081, 58082 (Dec. 4, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-12-08/pdf/2017-26709.pdf> [<https://perma.cc/H59V-4PL3>].

⁴³⁴ *Id.* For a map of these units, *see id.* at 58087.

⁴³⁵ *Id.* at 58086.

⁴³⁶ Proclamation No. 9558, 82 Fed. Reg. at 1144.

⁴³⁷ Proclamation No. 9681, 82 Fed. Reg. at 58086.

⁴³⁸ Kate Groetzing, *Latest Bears Ears Planning Meeting Convenes Without Indigenous Voices*, KUER (Feb. 27, 2020, 5:00 AM), <https://www.kuer.org/post/latest-bears-ears-planning-meeting-convenes-without-indigenous-voices#stream/0> [<https://perma.cc/9K69-2N9D>].

⁴³⁹ COALITION PROPOSAL, *supra* note 400, at 3.

Coalition had in mind, the form of the Commission created by the Obama Proclamation foreseeably would have made strides in the right direction, and hopefully will still do so as events unfold. For now, though, it is the season of the Shash Jáa Commission. That season may be likened to winter and the Bears Ears Commission idea to fire. Fire makes winter bearable across the Colorado Plateau, its nurturing light and warmth staving off the long dark until spring revives life. Spring is beautiful at the Grand Canyon.

B. From Bears Ears to Grand Canyon

Maybe that's just a way of saying the relational reconception at Grand Canyon National Park should continue. The best is yet to come—or, at least, it could be.

Creating a Grand Canyon Commission would propel the relational reconception between the Park Service and Grand Canyon tribes. All parties foreseeably would benefit. On the tribal side, while mindful of the absolute impropriety of assuming to speak for the tribes, individually or collectively, there have been strong, consistent indicators in recent years of widespread interest in cooperative management. Recall along these lines the Glen Canyon Dam Adaptive Management Work Group, the Northern Arizona Withdrawal, the ITWG's efforts at Desert View, and the ICCG's Intertribal Grand Canyon Regional Stewardship Council idea. The Bears Ears Commission and vision, too, fall in this neighborhood. This trajectory is far from shocking given the tribes' ancestral connections to the canyon and heartfelt interests in telling their stories about the place (the whole history), protecting its cultural and natural resources, and figuring out how to foster tribal economic development to alleviate poverty. In addition to displaying indicators of a general interest in cooperative management among Grand Canyon tribes, the trajectory also illustrates how they are gradually building capacity for cooperative management with federal agencies—the Park Service and otherwise.⁴⁴⁰ As for the benefits of a Grand Canyon Commission to that agency, the discussion below considers this topic in detail, but the key takeaway is as legally critical as it is logically unsurprising. The Commission would further, not thwart, the Park Service's foundational conserve-unimpaired mandate.⁴⁴¹

And that brings to the fore *Stanton* and its non-subdelegation doctrine noted above. In short, the topic of boundaries needs to be revisited, albeit from a slightly different angle. *Stanton* is the seminal case governing the circumstances in which the Park Service and other federal land management agencies are legally permitted

⁴⁴⁰ This capacity building is not exclusive to Grand Canyon National Park, but rather apparent across the National Park System as a whole. See KEITER, *supra* note 13, at 141 (“Despite long-standing concerns about tribal capacity, the reality is that many tribes have gained significant experience in self-governance, resource management, and cultural preservation over recent years.”).

⁴⁴¹ National Park Service Organic Act, ch. 408, § 1, 39 Stat. 535, 535 (1916) (codified as amended at 54 U.S.C. §§ 100101, 100301–03, 100751–53, 102101 (2014)).

to delegate statutory responsibilities to a third party.⁴⁴² “Delegate,” of course, is the operative term. Although the boundary-imposing legal doctrine is sometimes referred to as the “unlawful delegation doctrine,” that phrasing is a misnomer.⁴⁴³ The doctrine does *not* concern the validity of Congress’ delegation of authority to a federal agency—for example, the Park Service’s 1916 Organic Act⁴⁴⁴—but focuses instead on the validity of a federal agency’s delegation of statutory responsibilities to a third party—for example, the Park Service’s delegation of Organic Act-based responsibilities to a cooperative-management entity.⁴⁴⁵ The latter step involves “subdelegation,” not “delegation.”

At the end of the day, in whatever form it may take, a Grand Canyon Commission must be created, procedurally and substantively, in a way that comports with *Stanton*. For starters, the Park Service must have statutory authority to enter into cooperative agreements to form a Commission. In addition, the Park Service’s statutory mandates must guide the Commission’s work—put differently, the work must align with those mandates. Finally, and perhaps most importantly, the Commission must be composed in a way that complies with *Stanton*’s “final reviewing authority” requirement. These boundaries circumscribe the creation of a Grand Canyon Commission. In doing so, they offer a ready framework for the material below, which relies on the boundaries to flesh out a host of procedural and substantive features associated with the Commission. Connecting this material to the overarching thesis, not only should the Park Service and Grand Canyon tribes consider forming a Commission, they should be mindful of *Stanton*’s parameters when thinking through the Commission’s design.

1. *Statutory Foundation*

For a Grand Canyon Commission to get off the ground, the Park Service and tribes must be able to rely on statutory law authorizing cooperation among the parties. If Congress hasn’t laid this foundation, that’s a non-starter. *Stanton* itself illustrates this important procedural hurdle, though it was not a contentious aspect of the case. Specifically, in *Stanton*, the Park Service formed cooperative agreements establishing a fifteen-member entity, the Niobrara Council, and authorizing it to manage segments of the Niobrara River that had been designated for inclusion in the Wild and Scenic Rivers System.⁴⁴⁶ The council was composed of federal, state, and local agency officials, as well as private parties.⁴⁴⁷ Specific provisions of the Wild

⁴⁴² Nat’l Park & Conservation Ass’n v. Stanton, 54 F. Supp. 2d 7 (D.D.C. 1999).

⁴⁴³ *Id.* at 19 n.5.

⁴⁴⁴ National Park Service Organic Act, ch. 408, 39 Stat. 535 (1916) (codified as amended at 54 U.S.C. §§ 100101, 100301–03, 100751–53, 102101 (2014)). For a discussion of the non-delegation doctrine, as distinct from the non-subdelegation doctrine, see ERWIN CHERMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 341–45 (5th ed. 2015).

⁴⁴⁵ *Stanton*, 54 F. Supp. 2d at 18–19.

⁴⁴⁶ *Id.* at 10–11.

⁴⁴⁷ *Id.* at 11.

and Scenic Rivers Act addressing cooperative agreements left no question that the Park Service could indeed utilize such agreements to establish a council.⁴⁴⁸ The rub in *Stanton* instead concerned the lack of “final-reviewing authority”—a topic tabled for now.⁴⁴⁹

There is a similarly solid statutory foundation for the Park Service and Grand Canyon tribes to rely on cooperative agreements to form a Grand Canyon Commission.⁴⁵⁰ The 1975 statute that grew Grand Canyon National Park to its current size, the Grand Canyon National Park Enlargement Act, is an anchor.⁴⁵¹ A fair amount of attention has already been paid to its cooperation provision, but the text is worth revisiting. “In the administration of the Grand Canyon National Park,” the provision “authorize[s]” and “encourage[s]” the Secretary of the Interior “to enter into cooperative agreements . . . with interested Indian tribes providing for the protection and interpretation of the Grand Canyon in its entirety.”⁴⁵² There it is. “Protection” and “interpretation” of the park are *the* essential reasons for forming a Commission. Cooperative agreements are proper instruments for this purpose as shown by *Stanton* itself. And Congress has not only authorized the formation of these agreements, but encouraged the Secretary to enter into them.

Further, even if the Enlargement Act weren’t enough alone, there’s more—namely, the cooperation provision introduced earlier for the National Park System as a whole.⁴⁵³ To reiterate, with its enactment of this provision, Congress authorized the Secretary of the Interior to enter into “cooperative agreements with . . . tribal governments . . . for the purpose of protecting natural resources of System units through collaborative efforts on land inside and outside the System units.”⁴⁵⁴ These cooperative agreements must be oriented toward particular activities—for example, the “preservation, conservation, and restoration” of “riparian systems, watersheds, and wetlands,” as well as the “restoration of natural resources, including native

⁴⁴⁸ See *id.* at 19–20 (discussing cooperative-agreement provisions in 16 U.S.C. § 1281(e) and § 1282(b)(1)). See also *Forest Serv. Employees for Env’t Ethics v. U.S. Forest Serv.*, 689 F. Supp. 2d 891, 901–02 (W.D. Ky. 2010) (identifying statutory provisions authorizing formation of Stewardship Agreement between agency and private, non-profit entity whereby entity was conferred permitting authority over particular land uses within national recreation area). As in *Stanton*, this Stewardship Agreement was held invalid, but *not* because the Forest Service erred in utilizing the underlying statutory provisions to form it. *Id.* at 901–05.

⁴⁴⁹ See *infra* Part IV.B.3.

⁴⁵⁰ Notwithstanding the strength of the existing statutory foundation, nothing in this discussion is intended to dismiss the prospect of enacting new statutory law expressly authorizing the use of cooperative agreements to establish a Grand Canyon Commission. It just seems unnecessary to do so.

⁴⁵¹ Grand Canyon National Park Enlargement Act, Pub. L. No. 93-620, § 2, 88 Stat. 2089 (1975) (codified as amended at 16 U.S.C. § 228).

⁴⁵² *Id.* § 2, 88 Stat. at 2090–91.

⁴⁵³ 54 U.S.C. § 101702(d) (2020).

⁴⁵⁴ *Id.* § 101702(d)(1).

wildlife habitat or ecosystems.”⁴⁵⁵ Like above, hand in glove. A Grand Canyon Commission would constitute a “collaborative effort[]” oriented toward “protecting natural resources” within Grand Canyon National Park. The prescribed activities would involve the exact type of work undertaken by the Commission—on “land inside and outside” the park’s boundaries. And again, *Stanton* makes clear that cooperative agreements like those founded on this provision are proper instruments for establishing management bodies such as a Commission.

Taken together, these unit-specific and systemic cooperation provisions are a proverbial launch pad for a Grand Canyon Commission. Cooperative agreements entered into by the Park Service and Grand Canyon tribes pursuant to the provisions would stand up and propel the entity. Because of *Stanton*’s focus on statutory law, it is unnecessary to take another trip through the slew of non-statutory materials identified earlier that emphasize federal-tribal cooperation and authorize cooperative agreements, including Secretarial Order No. 3342 and the prodigious sections of *Management Policies*.⁴⁵⁶ As a matter of policy, however, it should be noted that these non-statutory materials not only illustrate the relational reconception as highlighted above, but bolster the case for using cooperative agreements to form a Commission.

2. Mandate Alignment

Yet even with a statutory pathway enabling the formation of a Grand Canyon Commission via cooperative agreements, the entity cannot engage, or fail to engage, in management activities so as to violate the Park Service’s statutory obligations. *Stanton* posed this very dilemma. The cooperative agreement-based entity created to manage the Wild and Scenic River segments—again, the Niobrara Council—fell flat in this task. The litigation was actually filed because, according to the plaintiffs, the council had done nothing to protect or manage the Niobrara’s resources a year and a half after the entity had been formed.⁴⁵⁷ It would be naive to view this inaction as inadvertent given the council’s composition.⁴⁵⁸ “[M]ade up almost wholly of local commercial and land-owning interests,” the entity did not “share [the Park Service’s]

⁴⁵⁵ *Id.* § 101702(d)(2)(A)(i), (iii). Although the statutory text references “natural resources”—again, “riparian systems,” “watersheds,” “wetlands,” and “native wildlife habitat or ecosystems”—these terms simultaneously connote *cultural* resources for Grand Canyon tribes. Balsom Interview, *supra* note 24.

⁴⁵⁶ These non-statutory materials are discussed *supra* Part III.C.

⁴⁵⁷ Nat’l Park & Conservation Ass’n v. Stanton, 54 F. Supp. 2d 7, 11 (D.D.C. 1999).

⁴⁵⁸ The cooperative agreement establishing the council also called for it to “attempt to find outside sources of money, to avoid having [the Park Service] ‘dictate the decisions of the council.’” *Id.* at 10 (citing Niobrara Scenic River Designation Act of 1991, Pub. L. No. 102–50, 105 Stat. 254 (codified at 16 U.S.C. § 1274(a)(117)).

national vision and perspective.”⁴⁵⁹ Rather, “the Council’s dominant private local interests” were deemed “likely to conflict with the national environmental interests that [the Park Service] is statutorily mandated to represent.”⁴⁶⁰ Such an arrangement ran afoul of the non-subdelegation doctrine. In line with its boundaries, the Park Service could not “completely shift its responsibility to administer the Niobrara” to a third party, particularly an entity “whose objectivity may be questioned on grounds of conflict of interest.”⁴⁶¹

Bottom line: A Grand Canyon Commission would have to be created in a manner that furthers the Park Service’s statutory mandates. Whether by virtue of its actions, omissions, or membership, the Commission could not thwart those mandates. Another way of putting it is that the non-subdelegation doctrine requires “alignment” in this regard. And, as with the discussion above, the good news is that there is no legal obstacle presented.

The National Park Service’s conserve-unimpaired mandate is, of course, paramount.⁴⁶² Set forth in the 1916 Organic Act,⁴⁶³ and later incorporated into the 1919 statute creating Grand Canyon National Park,⁴⁶⁴ whatever precise form a Grand Canyon Commission might take would have to advance this mandate. But that is *not* a tall order given the parties involved, the Park Service and Grand Canyon tribes, and the diverse interests they share in the canyon. As the park’s former tribal liaison Janet Balsom described roughly two decades ago:

All of the tribes trace ancestry to the Canyon and the river. It’s the maintenance of that system, for their ancestral sites, for their spiritual sites, for their traditional cultural areas, in total, without degradation, which is the common bond. . . . That is totally in sync with what the Park Service

⁴⁵⁹ *Id.* at 20. As described by the court, the Park Service controlled only one of the fifteen council members, and that member plus a Fish and Wildlife Service counterpart were the only members who represented “national environmental concerns.” *Id.*

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.* at 18.

⁴⁶² The Grand Canyon National Park Enlargement Act’s policy statement is also worth briefly noting: “Congress therefore recognizes the need for, and in this Act provides for, the further protection and interpretation of the Grand Canyon in accordance with its true significance.” Grand Canyon National Park Enlargement Act, Pub. L. No. 93-620, § 2, 88 Stat. 2089, 2090 (1975) (codified as amended at 16 U.S.C. § 228). As discussed above, a Grand Canyon Commission would by definition facilitate “further protection and interpretation” of the park. *Id.*

⁴⁶³ National Park Service Organic Act, ch. 408, § 1, 39 Stat 535, 535, (1916) (codified as amended at 54 U.S.C. §§ 100101, 100301–03, 100751–53, 102101 (2014)).

⁴⁶⁴ *See* Grand Canyon National Park Establishment Act, ch. 44, § 2, 40 Stat. 1175, 1177 (1919) (codified as amended at 16 U.S.C. §§ 221–28 (1994)).

feels is important. There is no debate. What is most important is saving the integrity of the ecosystem.⁴⁶⁵

This account of alignment does not stand alone. Recall the non-impairment prohibition mentioned earlier as an outgrowth of the Park Service’s conserve-unimpaired mandate.⁴⁶⁶ The prohibition marks the agency’s “primary responsibility”—to “leave park resources and values *unimpaired*”—with “park resources and values” involving precisely those things about which the Park Service and Grand Canyon tribes mutually care.⁴⁶⁷ The list bears repeating:

[A] park’s scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including . . . natural landscapes; . . . water and air resources; soils; . . . paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; . . . and native plants and animals . . .⁴⁶⁸

Unlike the situation in *Stanton*, a Grand Canyon Commission would not thwart the Park Service’s conserve-unimpaired mandate in regards to these resources and values. It would do just the opposite. Grand Canyon tribal members’ longstanding connections to the canyon—and the knowledge and ethics bestowed by those connections—would foster the mandate’s fulfillment.

To take this line of thought one step further, *Management Policies* is ripe with sections calling for tribal engagement—cooperation, collaboration, and/or consultation—in relation to the “park resources and values” just identified. The chapter on cultural resources management is perhaps most robust, but as detailed in the relational-reconception material, there is a broad scope of other examples.⁴⁶⁹ The takeaway with respect to this content is twofold. Not only do the sections reflect how the Park Service conceptualizes its conserve-unimpaired mandate in modern times, they also evidence how the agency considers tribal engagement conducive to that mandate’s fulfillment in a wide variety of ways. By the same token, a Grand Canyon Commission would function as a mandate-promoting entity.

Finally, while fidelity to the Park Service’s conserve-unimpaired mandate is the legally critical focus under *Stanton*, and therefore the core of this discussion, it

⁴⁶⁵ KELLER & TUREK, *supra* note 8, at 146; *see also* KEITER, *supra* note 13, at 140 (describing how accommodation of tribal cultural and religious practices inside national parks “actually extends the Park Service’s traditional preservationist role into the realm of cultural preservation, which is not only consistent with its statutory obligations but can also complement its nature conservation efforts”).

⁴⁶⁶ MANAGEMENT POLICIES, *supra* note 285, at 11.

⁴⁶⁷ *Id.* (emphasis added).

⁴⁶⁸ *Id.* at 11.

⁴⁶⁹ *See id.* at 63–64, 67, 69, 70–71 (providing material on illustrative cultural resources). These sections and their counterparts are discussed *supra* Part III.C.1.

is worth flagging that a Grand Canyon Commission would also yield benefits in other statutory contexts. The Park Service is responsible for complying with a host of statutes mandating different types of tribal engagement (consultation, cooperation, etc.) at Grand Canyon National Park. This legal landscape includes the American Indian Religious Freedom Act, Archaeological and Historic Preservation Act, Archaeological Resources Protection Act of 1979, National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Native American Tourism and Improving Visitor Experience Act, and Religious Freedom Restoration Act.⁴⁷⁰ It goes beyond the scope of this Article to delve into detailed analyses of how a Grand Canyon Commission would facilitate compliance with these statutes. Broadly speaking, however, the relationship building associated with creating and participating in a Commission would be inherently facilitative, fostering communication and promoting efficiency.

3. *Forms & Phasing*

Turning now to “final reviewing authority”—the last piece of the Grand Canyon Commission puzzle—it was the linchpin in *Stanton*. Not only was the deck stacked within the Niobrara Council—an entity composed in a form antithetical to fulfilling the Park Service’s statutory obligations for the Wild and Scenic River segments⁴⁷¹—the council was also legally unsound because the Park Service lacked adequate supervisory authority over it.

As described by the *Stanton* court, subdelegations by federal agencies to third parties are valid “so long as the federal agency or official retains final reviewing authority.”⁴⁷² The Park Service had crossed this line. Whereas the cooperative agreement had charged the council with wide-ranging responsibilities for managing the Niobrara, the Park Service was relegated to “merely serving as liaison” and “providing technical support.”⁴⁷³ To ensure that the Park Service would not “dictate” the entity’s decisions, the agency had “only one voting member on the Council, and all decisions [were] made by majority vote.”⁴⁷⁴ Further, the Park Service lacked authority (*inter alia*) to “veto Council decisions which are contrary to the [general

⁴⁷⁰ Overviews of these statutes, including citations, can be found in NAT’L PARK SERV. & AM. INDIAN LIAISON OFF., U.S. DEP’T OF THE INTERIOR, LAWS, REGULATIONS, AND EXECUTIVE ORDERS: A QUICK GUIDE FOR PRESERVING NATIVE AMERICAN CULTURAL RESOURCES (2012), <https://www.nps.gov/history/tribes/Documents/Laws.pdf>. [https://perma.cc/5DA3-W9U9]. Beneficial to tribal economic development, the Native American Tourism and Improving Visitor Experience (NATIVE) Act postdates this guide and can be found at 25 U.S.C. §§ 4351, 4351–55 (2020).

⁴⁷¹ Nat’l Park & Conservation Ass’n v. Stanton, 54 F. Supp. 2d 7, 18–20 (D.D.C. 1999).

⁴⁷² *Id.* at 19.

⁴⁷³ *Id.* The council’s responsibilities included, in part, “monitoring the River resources, evaluating access sites and land protection needs . . . and maintaining roads, bridges, and other river access sites.” *Id.*

⁴⁷⁴ *Id.*

management plan]; independently review Council decisions prior to implementation; and control Council funding.”⁴⁷⁵ In the end, the Park Service’s “only authority over the Council appears to be its ability to terminate the Cooperative Agreement,” explained the court, which did not constitute the “final reviewing authority” required by the non-subdelegation doctrine.⁴⁷⁶

So, again, *Stanton* needs to be taken to heart. There is a solid statutory foundation for using cooperative agreements to form a Grand Canyon Commission. Such a Commission would further, not obstruct, the Park Service’s conserve-unimpaired mandate. But in terms of institutional design, the Commission would need to approach the “final reviewing authority” requirement in the proper way. Its nuances were not overlooked at Bears Ears—quite the contrary—instead shaping the Coalition’s vision for the Bears Ears Commission.⁴⁷⁷ The two forms of that entity espoused by the Coalition and President Obama provide useful models for mapping out how a Grand Canyon Commission might be composed.

Returning to the Obama model for an initial form, the Grand Canyon Commission would be composed as an exclusively tribal body.⁴⁷⁸ Its membership would consist of one tribal official from each Grand Canyon tribe designated by that tribe—thus, eleven members in total.⁴⁷⁹

By creating a tribal form of this sort, the Park Service would not abdicate its statutory management responsibilities for Grand Canyon National Park.⁴⁸⁰ As set forth in the 1919 statute establishing the park, its “administration, protection, and promotion . . . shall be exercised, under the direction of the Secretary of the Interior, by the National Park Service”⁴⁸¹ The Commission’s creation would *not* change this equation. Rather, the Commission would be charged with providing guidance and recommendations to the Secretary regarding park management. As used here,

⁴⁷⁵ *Id.* at 20.

⁴⁷⁶ *Id.* at 21.

⁴⁷⁷ COALITION PROPOSAL, *supra* note 400, at 26–28.

⁴⁷⁸ This form of the Grand Canyon Commission would not be accompanied by a federal advisory committee—that is, an analogue to the Bears Ears Advisory Committee created by President Obama. Proclamation No. 9558, 82 Fed. Reg. 1139, 1144 (Dec. 28, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/12/28/proclamation-establishment-bears-ears-national-monument> [<https://perma.cc/VWP3-3Z3U>].

⁴⁷⁹ The number of members could be altered if the Paiute tribes wished to modify their representation in some fashion. This possibility is noted solely because of the Glen Canyon Dam Adaptive Management Work Group. Its charter calls for one representative each from the San Juan Southern Paiute Tribe and the Southern Paiute Consortium. AMWG CHARTER, *supra* note 347, at 3. Again, the Southern Paiute Consortium includes both the Kaibab Band of Paiute Indians and the Paiute Indian Tribe of Utah. *Southern Paiute Consortium*, *supra* note 347.

⁴⁸⁰ To be clear, the Commission’s establishment would be a joint endeavor of the Park Service and Grand Canyon tribes, facilitated by Enlargement Act-based cooperative agreements entered into by the parties.

⁴⁸¹ Grand Canyon National Park Establishment Act, ch. 44, § 2, 40 Stat. 1175, 1177 (1919) (codified as amended at 16 U.S.C. §§ 221–28 (1994)).

“management” would encompass the full scope of subjects addressed by the General Management Plan and Foundation Statement⁴⁸²—at least insofar as the Commission were interested in providing guidance and recommendations within specific areas (cultural resources management, educational and interpretive programs, etc.). One notable task on which the Commission may wish to engage the Park Service at the outset is the preparation of a new general management plan. According to *Management Policies*, “[t]he Park Service will maintain a general management plan for each unit,” and the plan will be “reviewed and amended or revised, or a new plan will be prepared,” to stay current.⁴⁸³ Grand Canyon National Park’s General Management Plan turned twenty-five years old this year.⁴⁸⁴

To ensure meaningful engagement between the Commission and Secretary, the responsive approach at Bears Ears would be mimicked.⁴⁸⁵ This relationship would avoid a check-the-box mentality on the Commission’s management-related guidance and recommendations. Rather, the Commission would submit these materials in writing, and if the Secretary chose not to follow them, a written explanation of the rationale would be provided.

Moving from the Obama model to the Coalition model, an alternative form of a Grand Canyon Commission would be a federal-tribal entity, rather than a body composed solely of tribal officials.⁴⁸⁶ This hybrid structure would resemble much more of a partnership between the Park Service and Grand Canyon tribes, and thus require even greater care to avoid transgressing the non-subdelegation doctrine’s boundaries as drawn by *Stanton*—specifically, issues of proportionality, engagement, and veto power elaborated below. Membership is an initial feature of the hybrid body’s design that brings these issues to the fore.

On the tribal side, the membership arrangement outlined above vis-à-vis the Obama model would still adhere. Each Grand Canyon tribe would designate one

⁴⁸² GENERAL MANAGEMENT PLAN, *supra* note 319; FOUNDATION STATEMENT, *supra* note 319.

⁴⁸³ MANAGEMENT POLICIES, *supra* note 285, at 23, 26.

⁴⁸⁴ *But see id.* at 26 (“[R]eviews may be needed every 10 to 15 years, but may be needed sooner if conditions change significantly. If conditions remain substantially unchanged, a longer period between reviews would be acceptable”). Thus, the determinative factor seems to be the relative degree of change in conditions at Grand Canyon National Park since the existing general management plan was prepared in 1995.

⁴⁸⁵ Proclamation No. 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/12/28/proclamation-establishment-bears-ears-national-monument> [<https://perma.cc/VWP3-3Z3U>].

⁴⁸⁶ Although the hybrid form discussed here tracks the Coalition’s model as a federal-tribal entity, this structure is *not* intended to foreclose the possibility that the Commission may seek input from other stakeholders in decision-making processes, including state, local, and non-governmental entities.

tribal official to represent it on the Commission.⁴⁸⁷ In addition to being desirable, this arrangement is legally and politically necessary, as each tribe constitutes an independent tribal sovereign.

On the federal side, however, things would be a bit trickier due to the issue of proportionality posed by *Stanton*. In short, the *Stanton* court flagged the Park Service's minority representation on the Niobrara Council—only one of its fifteen members came from the agency—as a structural defect under the non-subdelegation doctrine.⁴⁸⁸ Such disproportionality must be avoided, and three strategies would be useful for doing so.

First, as the federal agency statutorily responsible for managing Grand Canyon National Park, the Park Service would need to have a robust contingent on the Commission. The notion of composing the Commission with a single Park Service representative (as in *Stanton*) is as legally dubious as it is impractical. Precisely how large the Park Service contingent should be deserves close attention, but it should indeed be a contingent. For structural reasons discussed below, it would make sense for the park superintendent to be the head of the contingent, as well as to be accompanied by several other Park Service officials with relevant expertise.

Second, because Grand Canyon National Park borders public lands administered by the Bureau of Land Management and the Forest Service, it would promote park management for these federal agencies to also have limited membership on the Commission.⁴⁸⁹ The emphasis on cooperative conservation in *Management Policies* is a testament. Activities on adjacent federal, tribal, and other lands can plainly impact park lands and resources (and vice versa), and thus park management historically has involved the Park Service monitoring and engaging in decision-making processes associated with such activities.⁴⁹⁰ From this perspective, it would foster the Commission's effectiveness and efficiency to reserve spots for

⁴⁸⁷ Again, if (but only if) desired, the Paiute tribes would be free to consolidate their representation as they have to a limited extent for the Glen Canyon Dam Adaptive Management Work Group. See AMWG CHARTER, *supra* note 347, at 3.

⁴⁸⁸ Nat'l Park & Conservation Ass'n v. Stanton, 54 F. Supp. 2d 7, 19 (D.D.C. 1999) (noting that “[t]o further ensure that NPS does not ‘dictate’ the decisions of the Council, NPS has only one voting member on the Council, and all decisions are made by majority vote”). See also *id.* at 20 (“NPS controls only one of the 15 Council members, and is the only member, besides [Fish and Wildlife Service], who represents national environmental concerns”).

⁴⁸⁹ For example, the Bureau of Land Management administers Vermillion Cliffs National Monument, and the Forest Service administers Kaibab National Forest, both of which are adjacent to Grand Canyon National Park. *Vermillion Cliffs National Monument*, BUREAU OF LAND MGMT., <https://www.blm.gov/node/10029> [<https://perma.cc/CV6A-3VKC>]; see also *Welcome to the Kaibab National Forest*, U.S. FOREST SERV., <https://www.fs.usda.gov/kaibab> [<https://perma.cc/7M6A-J2NB>].

⁴⁹⁰ Cooperative conservation is addressed in MANAGEMENT POLICIES, *supra* note 285, at 13–14, 31.

representatives from the Bureau of Land Management and the Forest Service.⁴⁹¹ Each agency should only be afforded a single representative, however, both to keep the size of the entity manageable, and to ensure primacy for the Park Service contingent among the federal membership.

Third, as Grand Canyon National Park contains several species listed under the Endangered Species Act,⁴⁹² the U.S. Fish and Wildlife Service should also have a seat on the Commission. *Stanton* actually involved an arrangement of this sort: the Fish and Wildlife Service was the only federal agency, besides the Park Service, with a member on the Niobrara Council representing “national environmental concerns.”⁴⁹³ Like above, however, the Fish and Wildlife Service should be limited to a single representative, in order to avoid making the Commission unwieldy in size and to ensure Park Service primacy.

In addition to these ideas for the Commission’s tribal and federal membership, there are complementary strategies for finessing *Stanton*’s boundaries. To be clear, the core priority for composing a Grand Canyon Commission in hybrid form would be to ensure Grand Canyon National Park’s “administration, protection, and promotion” would still be “exercised, under the direction of the Secretary of the Interior, by the National Park Service.”⁴⁹⁴ Again, the Park Service *can* subdelegate its statutory management responsibilities under *Stanton*, the agency just needs to do so in a way that minds the doctrinal lines. The issue of proportionality is an initial boundary. But as *Stanton*’s approach to “final reviewing authority” shows, there are others stemming from potential issues with the Park Service’s marginal engagement in the Commission,⁴⁹⁵ and the lack of veto power over any Commission decisions that may be deemed to run contrary to the Park Service’s statutory obligations.⁴⁹⁶

⁴⁹¹ Havasupai, Hualapai, and Navajo tribal representatives would add similar value on the Commission with respect to activities on their respective neighboring reservations that may affect park management.

⁴⁹² Lisa Winters, *Endangered Species in Grand Canyon National Park*, GRAND CANYON TR. (May 17, 2019), <https://www.grandcanyontrust.org/blog/endangered-species-grand-canyon-national-park> [<https://perma.cc/G3HF-ZP4D>].

⁴⁹³ *Stanton*, 564 F. Supp. 2d at 20.

⁴⁹⁴ Grand Canyon National Park Establishment Act, ch. 44, § 2, 40 Stat. 1175, 1177 (1919) (codified as amended at 16 U.S.C. §§ 221–28 (1994)) (emphasis added).

⁴⁹⁵ This engagement issue is apparent from the *Stanton* court’s emphasis on (1) the Park Service “merely serving as liaison” and “providing technical support” to the Niobrara Council, and (2) the Park Service having “only one voting member on the Council, and all decisions [were] made by majority vote.” *Stanton*, 54 F. Supp. 2d at 19. The second structural deficiency is, of course, also relevant to the issue of proportionality.

⁴⁹⁶ The veto-power issue is evident from the *Stanton* court’s emphasis on (1) the Park Service’s lack of authority to “veto Council decisions which are contrary to the [general management plan]” or “independently review Council decisions prior to implementation,” and (2) the Park Service’s only apparent recourse being termination of the cooperative agreement when faced with problematic decisions by the Council (for example, decisions violative of the agency’s statutory management responsibilities). The veto-power issue

Thus, as enumerated earlier, there needs to be proportionality, engagement, and veto power. In light of these boundaries, several additional features are worth considering for designing a Commission in hybrid form.

For starters, the Commission should have a chairperson to keep the trains running on time. Coordination of the Commission's work by the chairperson would be essential given the entity's broad-based federal-tribal membership. It would be strategic for the Grand Canyon National Park superintendent to serve in this position. Such an approach admittedly departs from what the Coalition called for at Bears Ears—namely, a chairperson chosen by Commission members.⁴⁹⁷ As just highlighted, however, the relative level of Park Service engagement within the Commission is a pivotal factor under *Stanton*. Placing the superintendent as chairperson would send a strong signal that the Park Service was not shirking its statutory obligations by means of a subdelegation to the Commission. And how fitting it would be if the superintendent were Native! Beyond navigating the engagement issue, the superintendent's serving as chairperson would also yield practical benefits, as explored further below.

Admittedly, although the Commission's inclusivity is fundamental, it could prove cumbersome. To get work done, a subcommittee structure should be employed. The original Commission members could devise this structure collaboratively—organizing it in a way that captures the Park Service's diverse management responsibilities—while successive Commission members would revise the structure over time. Subcommittee appointments would be made by the chairperson with deference given to members' preferences and attention paid to their expertise. If the park superintendent were designated chairperson, this appointment process would be a compelling way to show Park Service engagement within the Commission. Additional strategies could be pursued, too. A requirement might be imposed that each subcommittee include at least one Park Service official. If appointed as chairperson, the superintendent would be well positioned to match such officials with subcommittees based upon subject matter. Further, federal representatives from outside the Park Service—that is, from the Bureau of Land Management, Forest Service, and U.S. Fish and Wildlife Service—might be assigned exclusively to subcommittees focusing on issues within their respective agencies' jurisdiction—for example, cooperative conservation and protection of listed species under the Endangered Species Act. Like above, this approach would send a clear message under *Stanton*: The Park Service was fulfilling, not shirking, its statutory obligations via a subdelegation to the Commission.

Yet another feature would shore up this case. It involves relying on Park Service resources for management. To elaborate, just as the Coalition envisioned at Bears Ears, the Park Service's subdelegation to the Commission would situate that entity as the “policy making and planning body” for Grand Canyon National Park.⁴⁹⁸ The

seems to go to the heart of the non-subdelegation doctrine's “final reviewing authority” requirement. *Id.* at 20.

⁴⁹⁷ COALITION PROPOSAL, *supra* note 400, at 29.

⁴⁹⁸ *Id.*

Commission's high-level decisions, of course, would require on-the-ground implementation, and thus resources for that purpose. The Park Service already possesses such resources based on its existing management regime. Future reallocations of those resources would be inevitable in response to the Commission's policy-making and planning processes. But the *Stanton*-relevant point here is basic. An additional way of showing Park Service engagement in the Commission would be to rely on the agency's resources to implement the high-level body's decisions. As a practical matter, these resources would be invaluable to the Commission's work, and if the park superintendent were appointed chairperson, that would be a savvy way to harness the resources to full advantage.⁴⁹⁹

Finally, and most critically, there is the interface between the Secretary of the Interior and the Commission in hybrid form. In relation to the non-subdelegation doctrine, this interface is *the* most important aspect of the Commission's design, directly implicating *Stanton*'s "final reviewing authority" requirement.⁵⁰⁰ Returning again to the 1919 statute establishing Grand Canyon National Park, the park's "administration, protection, and promotion . . . shall be exercised, *under the direction of the Secretary of the Interior*, by the National Park Service . . ."⁵⁰¹ In line with the italicized text, if the Commission were to make a policy or planning decision that seemed potentially contrary to the Park Service's statutory obligations—or if the Commission were to reach an impasse over a decision of this type—the Secretary of the Interior is the statutorily designated official to step up and make the final call.

The Coalition proposal for Bears Ears lights the way in this realm. As surveyed earlier, it envisioned a two-step dispute resolution process.⁵⁰² This approach can be readily translated to the hybrid form of a Grand Canyon Commission. While the Commission would strive for consensus-based decision-making, it is unrealistic to assume consensus will always be possible. There would be impasses within the Commission—inevitably—and that throws into relief the necessity and import of dispute resolution methods. In line with the Coalition proposal, mediation would be the initial method utilized by the Commission. If consensus could not be reached under this method, however, the next step would be resort to the Secretary of the Interior. In this way, there would be a "secretarial backdrop" to the Commission's decision-making, and the existence of this "final reviewing authority" would

⁴⁹⁹ Although *Stanton* is not relevant in the same way, the notion of relying on Commission members' resources for implementation would be beneficial across the board, not just in relation to the Park Service. For example, it would be extremely helpful to be able to rely on Bureau of Land Management or Forest Service resources if the Commission were to determine certain activities on their respective lands needed to be managed to avoid adverse impacts on Grand Canyon National Park. A similar perspective applies to the Navajo Nation, as well as to the Hualapai and Havasu tribes, notwithstanding the reality of resource limitations.

⁵⁰⁰ *Nat'l Park & Conservation Ass'n v. Stanton*, 54 F. Supp. 2d 7, 21 (D.D.C. 1999).

⁵⁰¹ Grand Canyon National Park Establishment Act, ch. 44, § 2, 40 Stat. 1175, 1177 (1919) (codified as amended at 16 U.S.C. §§ 221–28 (1994)) (emphasis added).

⁵⁰² COALITION PROPOSAL, *supra* note 400, at 22.

comport with the non-subdelegation doctrine. Of course, if faced with breaking an impasse within the Commission, the Secretary could elect for reasons of workload, expertise, or otherwise to defer to Park Service leadership, particularly the Grand Canyon National Park superintendent if that official were appointed chairperson. It is hoped the prospect of unilateral decision-making posed by the secretarial backdrop would incentivize consensus within the Commission by promoting both collaboration and compromise among federal and tribal members. Notably, as a design feature of the Commission, the secretarial backdrop would be mandatory under *Stanton*, leaving less wiggle room as compared to the measures suggested above for addressing the proportionality issue (robust Park Service contingent) and engagement issue (park superintendent chairperson, Park Service subcommittee requirement, and Park Service implementation resources).

Having offered loose sketches of a Grand Canyon Commission in both tribal and hybrid forms, the natural question arises of which to pursue? For the reasons outlined above, the non-subdelegation doctrine would not pose an obstacle in either instance, at least assuming the Commission were composed in line with the boundaries surveyed. Thus, the most likely tendency of thought in this situation is singular: choose one option, jettison the other. What about walking a different path, however, by phasing the two forms? As with the entire notion of forming a Commission, this alternative is held out as food for thought.

As a threshold matter, the directionality of the phasing (and associated bias) should be laid on the table. In short, my view is that a hybrid form of a Grand Canyon Commission is desirable in the long run. Unsurprisingly, the fundamental reason for this bias is relational, reflecting a key distinction between the Obama and Coalition models at Bears Ears. Tribal sovereignty means something, for Grand Canyon tribes and more broadly. Likewise, tribal connections to ancestral homelands—homelands forcibly assimilated into national parks—mean something, at the Grand Canyon and elsewhere. As the relational reconception continues within the Park Service across the twenty-first century, these twin realities of sovereignty and connectivity deserve policies reflective of them, including cooperative management. Bringing this perspective to bear at the Grand Canyon, a Commission should be composed that “sees” tribes for what they are, capable sovereign partners, rather than for what they have historically been misperceived as, inferior dependent wards. While both forms of a Grand Canyon Commission would make advances in this direction, the hybrid form is distinctive for embodying and hopefully realizing the notion of actual federal-tribal partnership.

But that is not to say a tribal form of a Grand Canyon Commission would lack value. It could serve as an extremely valuable bridge—an interim body nudging the transition from Grand Canyon National Park’s centennial to its bicentennial. Grand Canyon tribes could benefit greatly from coming together in a tribal form of a Commission and meaningfully engaging with the Secretary of the Interior over the park’s management. Potentially rich collaboration—both inter-tribal and federal-tribal—would occur in the process of developing guidance and recommendations for the Secretary. Grand Canyon tribes foreseeably would build new relationships and strengthen existing ones; gain familiarity with the nuances of park management,

particularly at an uber-popular unit; and build capacity for a hybrid form of a Commission that would follow. Interim benefits would also accrue to the Park Service and other federal agencies⁵⁰³ slated to constitute the Commission in hybrid form. Perhaps most notable would be preparatory work (personnel, resources) for forming it.⁵⁰⁴

This phasing idea wraps up the non-subdelegation doctrine analysis of a Grand Canyon Commission. *Stanton*'s boundaries are formidable—but not impassable. Cooperative agreements among the Park Service and Grand Canyon tribes can serve as instruments for creating a Commission, and the Enlargement Act both authorizes and encourages the Secretary of the Interior to form such agreements. Turning to mandate alignment, the Park Service's conserve-unimpaired mandate may pit the agency and tribes against one another in some parallel universe, but not in the here and now. A Commission would further, not thwart, fulfillment of that mandate, as well as facilitate compliance in other statutory contexts. Last but not least, neither the tribal nor hybrid forms of a Commission would flaunt *Stanton*'s "final reviewing authority" requirement, though they differ in their approaches to federal-tribal partnership. The most compelling path forward in my view involves phasing—beginning with a tribal form for an interim period, but graduating to a hybrid form not too many years out.

V. CONCLUSION

At the dawn of the self-determination era of federal Indian policy, in July 1970, President Nixon delivered a Special Message to Congress containing a precedential statement:

It is long past time that the Indian policies of the Federal government began to recognize and build upon the capacities and insights of the Indian people. Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us.⁵⁰⁵

⁵⁰³ These agencies consist of the Bureau of Land Management, Forest Service, and U.S. Fish and Wildlife Service. *See supra* notes 489–93 and accompanying text.

⁵⁰⁴ If the Park Service or other federal agencies were keen on engaging in lobbying efforts related to the Commission (resource-related or otherwise)—or potentially pursuing statutory, regulatory, or policy reforms aimed at facilitating the Commission—the interim period would be conducive to such efforts.

⁵⁰⁵ President Richard M. Nixon, Special Message on Indian Affairs 1970 PUB. PAPERS 564 (July 8, 1970), http://www.ncai.org/attachments/Consultation_IJaOfGZqlYSuxpPUqoSSWIaNTkEJEPXxKLzLcaOikifwWhGOLSA_12%20Nixon%20Self%20Determination%20Policy.pdf [<https://perma.cc/CZ5B-V4XA>].

President Obama echoed this statement in a memorandum roughly forty years later:

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes.⁵⁰⁶

About midway through the time period spanned by these two documents, a shift began at Grand Canyon National Park in the relationships between the Park Service and Grand Canyon tribes. This shift has not been isolated, but systemic, and has been referred to as a “relational reconception” throughout this piece. Numerous developments show the reconception in motion, both in the law books and on the ground, and both at the Grand Canyon and its broader context, including at Bears Ears. The reconception should continue. The “Grand Canyon”—*Che Da* or *Ge Da Cho* (Apache); *Chimik’yana’kya* (Zuni); *Ha Tay G’am* or *Hagtaya Jigmima* (Havasupai); *Öngtupqa* (Hopi); *Piyapaxa ‘Uipi* (Southern Paiute); *Tsé Chii’ Koo’* (Navajo); *Wi: Nyi Gacha* (Hualapai)—is Native space.⁵⁰⁷ That profound reality needs to sink in more deeply. As the national park’s 2019 centennial reveals, one part of this gradual, vulnerable process involves looking behind and owning the past, while another part involves looking ahead and owning the future. Cooperation can bridge these worlds.

Cooperation can also make words on a page real—Congress’s apology/“silent apology”/“(non)apology” to Native Americans that began this Article,⁵⁰⁸ President Nixon’s and President Obama’s statements just quoted, everything in between. The question is how to do it? In the one-of-a-kind place that is Grand Canyon National Park, how should the Park Service and Grand Canyon tribes *cooperate* to move forward the relational reconception? A Grand Canyon Commission would help. What the Bears Ears Intertribal Coalition did a few years ago broke new ground. History will show it—and who was on which side. Again, likening the Coalition’s vision to fire, it is hoped that the Colorado Plateau’s winds fan those flames to the southwest, to the connected homelands of Grand Canyon tribes. The Enlargement Act’s cooperation provision opens the door to fulfill the Park Service’s conserve-unimpaired mandate in a transformative way at the National Park System’s “diadem.”⁵⁰⁹ That is what is being suggested as a path for the tribes and Park Service to walk together toward the bicentennial.

But walk together they should, whatever path they choose. That is my view. Much more important than it is what lies in the hearts and minds of Grand Canyon

⁵⁰⁶ Memorandum on Tribal Consultation, 2009 DAILY COMP. PRES. DOC. 887 (Nov. 5, 2009), <https://www.govinfo.gov/content/pkg/DCPD-200900887/pdf/DCPD-200900887.pdf> [<https://perma.cc/TG8Z-UZ6R>].

⁵⁰⁷ *Native Peoples*, *supra* note 17.

⁵⁰⁸ Department of Defense Appropriations Act, 2010, Pub. L. No. 111-118, § 8113, 123 Stat. 3409, 3453 (2009); Charles, *supra* note 4.

⁵⁰⁹ KELLER & TUREK, *supra* note 8, at 131.

tribal members. It is so incredibly humbling and inspiring to hear from them—to see leaders rising up, speaking truth, changing things. So, Havasupai Councilwoman Ophelia Watahomigie-Corliss' words will end this Article instead of mine, though what she has to say is certainly not about endings:

Havasuw' Baaja means the people of the blue-green waters. Those waters are the waters of Havasu Creek, and we are the original Guardians of the Grand Canyon. Thousands of more recent arrivals have since settled this land, built homes and raised families on our ancestral lands, and we know they love the canyon, too. Like us, they've come to know the names of the mountains, trails and waters in the region. The Grand Canyon has called them here, to make their lives in this incredible corner of the world. We are not so different after all.

And now it's time for them—and for everyone who loves the Grand Canyon—to stand with us, to get to know who we are, and to work with us toward a just and shared vision for the next 100 years of this national park.⁵¹⁰

⁵¹⁰ Ophelia Watahomigie-Corliss, *Uranium Mining Threatens Our Home, the Grand Canyon*, HIGH COUNTRY NEWS (Apr. 14, 2020), <https://www.hcn.org/articles/indigenous-affairs-mining-uranium-mining-threatens-our-home-the-grand-canyon> [<https://perma.cc/8CQL-D2E8>].