PACIFIC LEGAL FOUNDATION

May 25, 2017

Monument Review
MS-1530
United States Department of the Interior
1849 C Street NW
Washington, D.C. 20240

VIA www.regulations.gov
AND U.S. MAIL

Re: Comments on Review of Certain National Monuments Established Since 1996; 82 Fed. Reg. 22016 (May 11, 2017); Executive Order 13792 of April 26, 2017

Dear Secretary Zinke:

The following comments are submitted on behalf of Pacific Legal Foundation (PLF), regarding the review of the Bears Ears National Monument. PLF appreciates the opportunity to comment on the Department and President's review of national monument designations. As demonstrated below, the President has the authority to eliminate or reduce monument designations from previous administrations. PLF recommends that the President act consistently with the Antiquities Act and rescind or reduce the Bears Ears National Monument.

STATEMENT OF INTEREST

Pacific Legal Foundation is the oldest donor-supported public interest law foundation of its kind. Founded in 1973, PLF provides a voice for those who believe in limited government, private property rights, balanced environmental regulation, individual freedom, and free enterprise. Thousands of individuals across the country support PLF, as do numerous organizations and associations nationwide.

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BACKGROUND

I. The Antiquities Act

In 1906, Congress passed the Antiquities Act which provides that "[t]he President may, in the President's discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments."[1] The President may reserve public lands to protect national monuments, but only if the reservation is "confined to the smallest area compatible with the proper care and management of the objects to be protected."[2]

As its name suggests, the Antiquities Act was passed primarily to protect American Indian archeological sites from looting.[3] Specifically, those that originally proposed the idea for a bill bemoaned the fact that, unlike many European countries, the United States had no law protecting antiquities.[4] Prior to the passage of the Antiquities Act, there were many instances of citizens of other countries taking artifacts to their home countries for display.

That the Antiquities Act was passed the same month as the act establishing Mesa Verde National Park further emphasizes its purpose. Prior to its designation as a National Park, the ruins at Mesa Verde were targets of vandalism and theft.[5] In order to prevent this type of damage, Congress established the park "for the

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[1] 54 U.S.C. § 320301(a).

[2] 54 U.S.C. § 320301(b).

[3] Ronald F. Lee, *The Antiquities Act, 1900–06, in The Story of the Antiquities Act*, National Park Service (Mar. 15, 2016), https://www.nps.gov/archeology/pubs/lee/Lee_CH6.htm.

[4] *Ibid.*

[5] *See* United States Department of Interior, *Reports to the Superintendent of the Mesa Verde National Park and J. Walter Fewkes, in Charge of Excavation and Repair of Ruins, to the Secretary of the Interior* (1909).

preservation from injury or spoliation of the ruins and other works and relics of prehistoric or primitive man within said park . . . ."[6]

Although the Act's final language allows the President to designate "objects of . . . scientific interest," the title, text, drafting history, and historical context reflect a desire to keep monument designations small. Original drafts of the bill limited designations to 320 acres and 640 acres respectfully. Eventually, Congress decided on the "smallest area compatible" language, but there is no indication that it intended authority under the Antiquities Act to be used for withdrawals of large tracts of land. President Theodore Roosevelt originally used his power under the Antiquities Act to designate relatively small landmarks and American Indian ruins, but he soon expanded the use of the Act.

In 1908, President Theodore Roosevelt reserved more than 808,000 acres for the protection of the Grand Canyon National Monument. In 1919, Congress revoked and repealed the Grand Canyon National Monument, establishing the area as the Grand Canyon National Park.[7] This response further indicates that Congress intended National Monuments to be different than National Parks, which traditionally reserved large tracks of federal land for preservation.

For many years after 1908, most monument reservations were smaller than 5,000 acres, and actually protected antiquities. Although there were some larger reservations, the issue of monument size came to a head in 1943. In that year, President Franklin Roosevelt's designation of the Jackson Hole National monument caused Congress to pass a bill overturning the designation, but the bill was vetoed. In 1950, Congress passed a law establishing much of the Jackson Hole National Monument as the Grand Teton National Park, but the law also restricted further use of the Antiquities Act in Wyoming. After 1943, Presidential use of the Antiquities Act remained limited until the late 1970s.

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[6] National Park Service, *Mesa Verde Administrative History Appendix A*, http://npshistory.com/publications/meve/adhi/appa.htm.

[7] Pub. L. No. 65-277, 40 Stat. 1175 (Feb. 26, 1919).

II. The Federal Land Policy and Management Act

Disputes over public land reservations were not limited to Antiquities Act abuses. These disputes, along with others, led to the creation of the Public Land Law Review Commission (PLLRC) in 1964.[8] Among other land management issues, Congress asked the PLLRC to address "problems associated with the 'withdrawal' and 'reservation' of public domain lands."[9] This concern was "strongly voiced in the deliberations which led to the creation of the Commission, and was a recurring subject of complaint in the Commission's public meetings."[10]

In addressing this problem, the PLLRC found that executive reservation and withdrawal of land had led to "virtually all" of the public domain being locked up by 1970.[11] Accordingly, the Commission recommended

> that large scale withdrawals and reservations for the purpose of establishing or enlarging any of the following should be reserved to congressional action: national parks, national monuments, national historic sites, national seashores, national recreation areas and other units of the National Park System looking toward permanent use, national forests, national riverways and scenic rivers, national trails, units of the wilderness system, other areas set aside for preservation or protection of natural phenomena or for scientific purposes, units of the national wildlife refuge and game range system, other areas set aside for protection of birds or animals, and reservations for defense purposes.[12]

In response to the Commission's recommendations, Congress enacted the Federal Land Policy and Management Act (FLPMA) in 1976.[13] Although FLPMA

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[8] Pub. L. No. 88-606, 78 Stat. 982 (Sept. 19, 1964).

[9] PLLRC, *One Third of the Nation's Land* 43 (1970) (PLLRC Report).

[10] *Id.*

[11] *Id.* at 52

[12] *Id.* at 54 (emphasis omitted).

[13] 43 U.S.C. § 1701, *et seq*.

prevented the President and Secretary of Interior from withdrawing more than 5,000 acres of federal land without congressional approval, it did not alter the President's authority under the Antiquities Act.[14] FLPMA only addresses the Antiquities Act in one section, and directs it towards the Secretary of the Interior, not the President.[15] The provision provides that "[t]he Secretary shall not . . . modify or revoke any withdrawal creating national monuments . . . ."[16]

It is unclear why Congress did not address presidential authority under the Antiquities Act, but it is likely because presidential abuses of the Act had abated by the mid-1970s. Congress felt that it was necessary to expressly overturn any implied (*i.e.*, non-statutory) authority of the President to make withdrawals of public land, an authority which had been repeatedly abused by the President.[17] Thus, it is likely that Congress saw the President's reservation authority under the Antiquities Act as limited, and did not anticipate further use of the Act to withdraw large tracts of public land. Ultimately, while Congress was clearly concerned about reservations and withdrawals of large tracts of public land, it never altered the President's authority under the Antiquities Act.

As a result, abuses of the Antiquities Act continued after the passage of FLPMA. President Carter made nine designations larger than a million acres and two larger than 10 million acres. On a single day, he designated 56 million acres of land in Alaska,[18] which elicited another Congressional response in the form of the Alaska National Interest Lands Conservation Act (ANILCA).[19] After ANILCA,

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[14] 43 U.S.C. § 1714.

[15] 43 U.S.C. § 1714(j); Jonathan Wood, *Law professors argue the President can't revoke national monuments (and implicity that Congress can't either)*, PLF Liberty Blog May 16, 2017, http://blog.pacificlegal.org/law-review-article-implicitly-argues-not-even-congress-can-reverse-national-monuments/.

[16] 43 U.S.C. § 1714(j).

[17] Pub. L. No. 94-579, 90 Stat. 2743, 2792 (Oct. 21, 1976).

[18] Jimmy Carter, *Designation of National Monuments in Alaska Statement by the President*, The American Presidency Project, Dec. 1, 1978, http://www.presidency.ucsb.edu/ws/?pid=30228.

[19] Pub. L. No. 96-487, 94 Stat. 2371 (Dec. 2, 1980)

neither Presidents Reagan nor Bush issued any proclamations under the Antiquities Act. But after that, the abuses continued, with Presidents Clinton, George W. Bush, and Obama making even more and larger monument designations. In reviewing the Bears Ears and other recent National Monuments, the Department and the President should consider Congress's intentions, as expressed in FLPMA, of limiting large-track withdrawal and reservations of public lands without Congressional approval.

III. The Bears Ears National Monument Proclamation

In December 2016, during the final days of his administration, President Obama reserved 1.35 million acres for the Bears Ears National Monument.[20] The Monument is in San Juan County, in southeastern Utah. Bears Ears is representative of other Antiquities Act abuses that have occurred since the 1970s. The Proclamation lists several different types of "objects" that are purportedly of historic or scientific interest. Relatively few of those objects are actual antiquities, however. While the Proclamation does mention ancient tools, petroglyphs, and dwellings, much of the focus is on the landscape and wildlife of the area. The Proclamation was signed despite strong and unanimous opposition from the Utah Congressional Delegation and despite the positions of the Utah Governor and state legislature. Furthermore, the Monument was designated notwithstanding a proposed compromise bill that would have established portions of the area as a conservation area.[21]

COMMENTS

I. The President Has the Power To Revoke or Substantially Shrink Existing Monuments

Just as the President has discretionary power to establish monuments under the Antiquities Act, he has the discretionary authority to revoke a monument designation. Earlier this year, the American Enterprise Institute published a paper thoroughly explaining the basis of this power written by Professor John Yoo of Berkeley and Todd Gaziano, a Senior Fellow in Constitutional Law at the Pacific

[20] Proclamation 9558 of December 28, 2016. 82 Fed. Reg. 1139.

[21] Utah Public Lands Initiative Act, H.R. 5780, 114th Cong. (introduced July 14, 2016).

Legal Foundation.[22] That paper demonstrates that there is a strong presumption that the President's power to issue a proclamation implies the power to revoke it. Congress has given no indication that it wished to exclude the Antiquities Act from that presumption. Therefore, the President has the same discretion to revoke a monument that he has to establish one and may do so if he believes the designation is illegal, too big, or simply not in the nation's interest.

A. There Is a Strong Presumption That the Power To Make a Decision Includes the Power To Reconsider It

A basic constitutional principle is that a branch of government can reverse its own earlier actions using the same process originally used. It is often observed, for instance, that no Congress can bind a future Congress and no President can bind a future President. Thus the Constitution carefully describes the process—bicameralism and presentment—by which Congress and the President enact law. But the Constitution is silent about whether and how Congress and the President can amend or repeal a law. However, historical practice shows that the power to enact law implies the power to reconsider it using the same procedure.

This implied power is not limited to the enactment of new laws. Across government, the power to make a particular decision almost invariably implies the power to reconsider it using the same procedure. The Supreme Court can overrule an earlier case by simply issuing an opinion, as it did in *Brown v. Board of Education*.[23] The same strong presumption applies to the Constitution's amendment process (no express power to amend or repeal an earlier amendment but it is implied); executive branch appointments (the Constitution does not have an express removal power but the President can remove an appointee unilaterally);[24] and regulations (the power to

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[22] John Yoo & Todd Gaziano, *Presidential Authority to Revoke or Reduce National Monument Designations*, American Enterprise Institute Paper (2017), *available at* https://www.aei.org/wp-content/uploads/2017/03/Presidential-Authority-to-Revoke-or-Reduce-National-Monument-Designations.pdf.

[23] 347 U.S. 483 (1954).

[24] *Myers v. United States*, 272 U.S. 52 (1926).

issue regulations implicitly includes the power to amend or repeal them, unless Congress indicates otherwise).[25]

B. Congress Has Not Indicated That the Presumption Does Not Apply To the Antiquities Act

The presumption applies across so many government functions that one would expect Congress to be very clear when it wants to create an extremely rare exception. At a minimum, Congress must give some indication that the presumption does not apply.

Congress gave no such indication in the Antiquities Act. The statute is silent on the President's authority to revoke monuments, suggesting that the normal presumption would apply. No one has identified any ambiguity in the statute or even a snippet of legislative history to suggest that Congress meant to set aside the usual presumption for this statute.

Presidents' historic practice under the Antiquities Act confirms that the normal presumption applies to the statute. Many Presidents have used their implicit power to reconsider monuments to reduce the size of existing monuments, often substantially. In the largest reduction, President Wilson removed more than 300,000 acres from the Mount Olympus monument.[26] The largest percentage reduction was by President Taft, who reduced the size of the Navajo National Monument by 89%.[27]

The only historic indication against the presumption's applicability is a 1938 opinion from President Roosevelt's Attorney General, which concluded that the President lacks the authority to revoke a national monument.[28] Although commentators have cited this opinion, no court has ever analyzed its validity. The opinion's flaws are so numerous that no court should find it persuasive.

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[25] *See, e.g.*, *Commonwealth of Pa. v. Lynn*, 501 F.2d 848, 855-56 (D.C. Cir. 1974).

[26] *See* Yoo & Gaziano, *supra* note 22, at 15.

[27] *See id.*

[28] Proposed Abolishment of Castle Pinckney Nat'l Monument, 39 Op. Att'y Gen. 185 (1938).

First, the 1938 opinion principally relies on an 1862 opinion from Attorney General Edward Bates that it interprets completely backwards.[29] According to the 1938 opinion, Bates concluded that withdrawals of federal lands are generally irrevocable. However, the Bates opinion reached the opposite result, concluding that the President could abandon a previous military reservation. After recognizing the President's revocation authority, Bates next considered what happens to the federal lands that had been within the military reservation. He concluded that the land would not become eligible for settlement and could only be disposed of under laws governing the sale of abandoned military property. The 1938 opinion errantly interprets this section to bar the President from revoking a withdrawal, even though it has nothing to say on the question, and the 1862 opinion actually recognized the President's power to abandon military reservations.

Second, the 1938 opinion analogized monument designations to trust law under which, the opinion states, the "power to execute a trust, even discretionarily, by no means implies the further power to undo it when it has been completed." However, the normal rule under trust law is that a settlor defines whether a trust is revocable or not when it is created, and a trust is presumed to be revocable if the settlor retains an interest in it. A trust may be made expressly irrevocable or there may be some other indication that the trust is irrevocable, but that is not the usual practice.[30] So while it is not always true that the power to execute a trust implies the power to revoke it, it usually does.

Third, the 1938 opinion makes the bizarre claim that revoking a monument designation would amount to an implied repeal of the Antiquities Act and is, therefore, unconstitutional. This argument makes no sense whatsoever since whether a particular monument is established, maintained, or revoked has no effect on the continuing validity of the statute. Revoking a single monument no more repeals the statute than amending or withdrawing a regulation repeals the statute under which the regulation was issued.

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[29] Rock Island Military Reservation, 10 Op. Att'y Gen. 359 (1862).

[30] *See* Restatement (Third) of Trusts: Power of Settlor to Revoke or Modify § 63 (2003).

C. The Argument Against the President's Power To Revoke Monument Designations Leads to Absurd Results

The argument against the President's authority is baseless and leads to absurd results. Several law professors, ignoring the strong presumption, claim that the lack of an express revocation power implies that it doesn't exist.[31] They base this argument on several other statutes that they say expressly authorize revocation of similar decisions. In addition to the law professors, environmental groups have argued that the President lacks this authority, relying principally on the claim that it is contrary to the Antiquities Act's purposes. None of these arguments, however, has merit.

1. The Pickett Act Does Not Imply That the President Cannot Revoke a Monument

Contrary to the law professors' article, the Pickett Act of 1910 reinforces the conclusion that the President may revoke a monument. As their article notes, that statute allowed the President to withdraw federal lands from settlements and provided that the withdrawal would remain in effect "until revoked by [the President] or by an Act of Congress."[32] The law professors argue that this shows that when Congress wants to authorize the President to revoke a withdrawal, it says so expressly.[33]

But the quoted language does not purport to authorize the President to revoke a withdrawal. It does not, for instance, say "the President may revoke a withdrawal," which is what one would expect Congress to say if it thought the President ordinarily lacked this power. On the contrary, it assumes the existence of the power—placing it on par with Congress' ability to amend the law—and merely explains that a withdrawal remains effective until the President or Congress exercises their revocation power.

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[31] *See* Mark Stephen Squillace, et al., *Presidents Lack the Authority to Abolish or Diminish National Monuments*, 103 Va. L. Rev. Online ____ (forthcoming 2017), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2967807.

[32] Pub. L. No. 303, 36 Stat. 847 (June 25, 1910).

[33] *See* Squillace, et al., *supra* note 31, at 2.

The argument that this implies the President otherwise lacks any revocation power is absurd. The quoted language not only references the President's revocation power but also Congress', neither of which are explicitly addressed in the Antiquities Act. If the Antiquities Act's silence on the President's revocation power means he lacks it, that would equally mean that Congress lacks the power to pass an act revoking a monument. Thus, if this argument is taken seriously, the Congress that passed the Antiquities Act fundamentally and—most troubling—implicitly reshaped the separation of powers by giving the President power that no future President and no future Congress could undo. That conclusion is absurd and the argument, therefore, must be rejected.

2. The Forest Service Organic Administration Act Does Not Either

Next, the law professors cite the 1897 Forest Service Organic Administration Act's explicit authorization for the President to vacate an executive order.[34] From this explicit authorization, the authors apparently conclude (although they do not address the full consequences of this argument) that the President is unable to revoke an executive order or proclamation unless Congress expressly authorizes it.[35]

The better reading of this language is that Congress took a belt-and-suspenders approach to make abundantly clear that the President may revoke an executive order. The contrary argument is inconsistent with historical practice, in which Presidents have routinely reconsidered their predecessors' executive orders. It would also lead to the ridiculous result that most executive orders are permanent and binding on all future Presidents. If Congress wanted to make such a monumental change in executive power, it would have said so expressly, not by making it an unstated implication of a statute that would go unnoticed for 120 years.

3. FLPMA Does Not Affect the President's Power Under the Antiquities Act

The last statute that the law professors rely on is the Federal Land Policy Management Act of 1976. FLPMA authorizes the Secretary of Interior, under certain conditions, "to make, modify, or revoke withdrawals" but qualifies this power by

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[34] 30 Stat. 36 (1897).

[35] *See* Squillace, et al., *supra* note 31, at 2.

withholding the power to "modify or revoke any withdrawal creating national monuments under [the Antiquities Act.]"[36]

If Congress wished to withhold the same power from the President, it would have said so expressly. By 1976, Presidents had clearly established their power to modify existing monuments, including the power to shrink them dramatically. By its own terms, the FLPMA provision only applies to the Secretary and has no effect on the President's authority. Law professors acknowledge that the FLPMA does not address the President's authority to revoke or shrink monuments, but nonetheless argue that Congress secretly withdrew this authority through a piece of ambiguous legislative history.[37]

Reliance on this piece of legislative history is misguided. Not only is the one portion of the House Report vague, FLPMA's text and other legislative history demonstrate Congress' skepticism towards locking up large tracts of federal land without Congressional approval. Arguing that Congress intended to prevent the freeing up of public lands is contradictory to one of the major aspects of FLPMA.

Even if the FLPMA House Report were not ambiguous, it would have no effect on the President's power to revoke national monuments. Legislative history, no matter how clear, cannot supplant clear statutory text or create ambiguity where there isn't any.[38] FLPMA is clear that the power to modify or revoke a monument is withheld only from the Secretary. No legislative history can overcome that clear text.

The House Report also cannot amend the Antiquities Act or change the President's authority under it. The argument to the contrary is plainly inconsistent with the Constitution. The Supreme Court has held that the Constitution forbids a single House of Congress from passing a resolution that amends executive power under a statute.[39] The only way to amend the law is through bicameralism and

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[36] 43 U.S.C. § 1714(j).

[37] H.R. Rep. No. 1163, 94th Cong. at 9 (May 15, 1976).

[38] *See Hearn v. Western Conference of Teamsters Pension Trust Fund*, 68 F.3d 301, 304 (9th Cir. 1995).

[39] *See I.N.S. v. Chadha*, 462 U.S. 919 (1983).

presentment. Of course, if the House of Representatives cannot deprive the President of his revocation authority by passing a resolution, it also cannot do it by issuing a House Report.

4. The President's Power To Revoke or Shrink Monuments Is Consistent With the Antiquities Act's Purpose

The only other argument against the President's power to revoke or shrink a monument is the question-begging argument that this power is inconsistent with the Antiquities Act's purposes. Claims about a statute's purpose almost invariably boil down to the political preferences of the person making the claim. And that is certainly true here.

There is little support for the argument that Congress' purpose in enacting the Antiquities Act was to allow the President to unilaterally lock up huge areas of federal land and permanently prohibit productive use. On the contrary, we know that Congress passed the statute in response to reports of the looting of Indian artifacts on federal lands in the southwest. To allow the President to promptly respond to this threat, the statute allows the President to designate monuments to protect particular objects and constrains designations to the smallest area compatible with the objects' protection.[40] The President's power to reconsider an earlier monument designation is entirely consistent with this more specific purpose, as it would allow monument designations to remain in place until the President, Congress, or agencies can learn more about the threats facing an area and determine what should be done to protect them.

However the statute's purpose is defined, the President's power to reconsider a monument designation because the monument is too large, too burdensome, or simply because the President believes revocation is in the nation's best interests is fully consistent with that purpose. The argument to the contrary conveniently ignores that the statute *never* requires a monument to be designated. Instead, it vests this decision solely in the President's discretion. The statute explicitly allows the

[40] This purpose is now largely addressed through FLPMA, which authorizes the Secretary of Interior to issue emergency withdrawals of any federal land that remain in effect for up to three years. 43 U.S.C. § 1714(e).

President to decide against designating an otherwise deserving area for any reason, including that it would destroy jobs, harm local economies, or just because the President would prefer to see the land put to some other use.

If the President's discretion to not designate a monument for these reasons is consistent with the Antiquities Act's purposes, how could revocation for the exact same reasons not be? The only reasonable answer is that the President's power to revoke or shrink monuments is entirely consistent with the statute's purposes. Any argument to the contrary is just a thinly-veiled disguise for the political preferences of the person making the argument.

II. The Bears Ears National Monument Should Be Rescinded Consistent With the Antiquities Act and the Principle of Multiple Use Management

In reviewing the Bears Ears National Monument, the Department should keep in mind the command of the Antiquities Act that "[t]he limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected."[41] 1.35 million acres is not necessary to protect the objects of historic or scientific interest within the Bears Ears area. At a minimum, the monument designation should be reduced to cover only those antiquities that were specifically identified in the Proclamation.

As with other National Monuments under review, the primary motivation is not to protect specific historic "objects," but rather to prevent development and multiple use of the area. The Proclamation provides that "[a]ll Federal lands and interests in lands within the boundaries of the monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws or laws applicable to the U.S. Forest Service . . . ."[42] Instead of naming specific objects and reserving small areas of land around those objects, the Proclamation eliminates multiple use on 1.35 million acres.

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[41] 54 U.S.C. § 320301(b).

[42] Proclamation 9558 of December 28, 2016. 82 Fed. Reg. at 1143.

A monument designation, however, is not necessary to protect the natural resources in the area. Operations on public lands are limited and temporary. Various federal, state, and local laws govern the management of public lands and ensure that natural resources are protected for generations to come. Furthermore, federal, state, and local laws also protect man-made and historical objects. For example, operations on public lands must comply with the National Historic Preservation Act. Indeed, the fact that "visitors" can "marvel at artistry and architecture that have withstood thousands of seasons in this harsh climate" is further evidence that pre-designation laws have not resulted in destruction of the objects identified in the Proclamation.[43]

In fact, in addition to being unnecessary, additional regulations may make it harder to protect resources in the Bears Ears area. The Proclamation implicitly recognizes the value of multiple use management with respect to grazing. It states that laws and policies relating to the administering of grazing permits shall continue to apply "to ensure the ongoing consistency with the care and management of the objects identified above." But the benefits of multiple use management are not limited to ranching.

Instead, cooperation with state authorities and owners of private adjoining land often promotes better land-use decisions, including protections. This cooperation also increases support for resulting decisions and guarantees that all interested parties are heard. Working with local property owners also increases fundamental fairness, by ensuring that monument designations do not wall in private lands and restrict use of that property. That concern is eminent in the Bears Ears area, which contains 151,000 acres of state school trust lands and 18,000 acres of private property.[44]

Furthermore, a large monument designation has a large effect on the local and state economy. Preventing multiple use eliminates job opportunities for those in the

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[43] Proclamation 9558 of December 28, 2016. 82 Fed. Reg. at 1139.

[44] San Juan County Commission, *The Advisability of Designating the Bears Ears as a Monument Under the Antiquities Act* (Oct. 2016), http://www.sanjuancounty.org/documents/Advisability%20of%20Designating%20the%20Bears%20Ears.pdf.

surrounding communities and, in turn, hurts local, state, and federal tax revenue. Furthermore, the loss of royalties from operators, and additional costs to maintain the monument, contribute to the Department of Interior's already significant maintenance backlog.[45]

The Bears Ears area is a good example of how cooperation and multiple use has led to protection and enjoyment of the area for large groups of people.[46] As a local businessman put it, "[f]or generations, the local people have used and cared for this land. We are the reason it is still in the relatively pristine condition that others deem worthy of protection."[47] A monument designation was not necessary to protect the "objects" listed in the Proclamation. PLF recommends that the President, consistent with the Antiquities Act, rescind the Proclamation that established the Bears Ears National Monument.

CONCLUSION

Even if a monument designation were necessary to protect the identified antiquities in the area, that would not justify a 1.35 million acre reservation. If the Department and the President determine that a monument designation is warranted with respect to the ancient dwellings and other man-made objects, then the monument should be reduced to only cover those specific areas. A reduction in the size of the Monument would mitigate at least some of the various problems with the

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[45] *See* Hearing before the Subcomm. on the Interior, Env't, & Related Agencies of the H. Comm. on Appropriations (2001) (statement of Anu K. Mittal and Frank Rusco), http://www.gao.gov/assets/130/125531.pdf (discussing the Department's maintenance backlog).

[46] Joe Lyman, *Why Oppose the Bears Ears National Monument?*, The Bill Lane Center for the American West, Nov. 15, 2016, https://west.stanford.edu/news/blogs/and-the-west-blog/2016/bears-ears-debate/joe-lyman.

[47] *Id.*

current designation. Therefore, at a minimum, the President should significantly reduce the size of the Bears Ears National Monument.

Respectfully Submitted,

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