



National Headquarters

1130 17th Street, N.W. | Washington, D.C. 20036-4604 | tel 202.682.9400 | fax 202.682.1331
www.defenders.org

Submitted electronically via regulations.gov

July 10, 2017

The Honorable Ryan Zinke
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
Monument Review, MS-1530
Washington, DC 20240

Re: Review of Certain National Monuments Established Since 1996; Notice of Opportunity for Public Comment (May 11, 2017)

Dear Secretary Zinke:

Defenders of Wildlife (Defenders) respectfully submits the following comments on Grand Canyon-Parashant National Monument for consideration in the Department of the Interior's "Review of Certain National Monuments Established Since 1996."¹

Founded in 1947, Defenders of Wildlife is a national non-profit conservation organization focused on conserving and restoring native species and the habitat upon which they depend. Based in Washington, DC, the organization also maintains six regional field offices, including in the Southwest. Defenders is deeply involved in public lands management and wildlife conservation, including the protection and recovery of flora and fauna in northwest Arizona. We submit these comments on behalf of almost 1.2 million members and supporters nationwide, including our 27581 members in Arizona.

President Trump's Executive Order 13792² directed you to "review" national monuments designated or expanded since January 1, 1996, pursuant to the Antiquities Act of 1906.³ Section 1 of the order, "Policy," states in pertinent part: "[d]esignations should be made in accordance with the requirements and original objectives of the Act and appropriately balance the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities."

¹ 82 Fed. Reg. 22016 (May 11, 2017).

² 82 Fed. Reg. 20429 (May 1, 2017).

³ Act of June 8, 1906, ch. 3060, 34 Stat. 225, codified at 54 U.S.C. ch. 3203.

Section 2 of Executive Order 13792 establishes seven criteria for reviewing national monument designations or expansions since January 1, 1996, either 1) where the designation or the designation after expansion exceeded 100,000 acres or 2) “where the Secretary determines that the designation or expansion was made without adequate public outreach and coordination with relevant stakeholders.” The review is to determine whether each designation or expansion “conforms to the policy set forth in section 1 of the order.” At the conclusion of this review, you are to “formulate recommendations for Presidential actions, legislative proposals, or other appropriate actions to carry out that policy.”⁴

Twenty-seven national monuments are listed in the Notice of Opportunity for Public Comment, including five marine national monuments that will also be subject to separate review under Executive Order 13795, “Implementing an America-First Offshore Energy Strategy.”⁵ Defenders firmly believes that none of America’s national monuments should be revoked, reduced in size or opened to nonconforming uses, including Grand Canyon-Parashant and the 26 other (marine) national monuments identified for administrative review.

Grand Canyon-Parashant National Monument protects invaluable cultural, historic and scientific resources that provide immeasurable social and economic benefits to local communities and citizens across the United States. These public lands merit the protections provided as a national monument, a designation that was made fully consistent with the Antiquities Act and the policy set forth in section 1 of Executive Order 13792.

The president lacks the legal authority to revoke or reduce the size of a national monument and should additionally refrain from seeking legislative action or taking any other action to undermine the designation. Defenders of Wildlife therefore urges that your report should not include any recommendations to alter the size or status of Grand-Canyon Parashant National Monument.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'RD', with a horizontal line extending to the right from the end of the signature.

Robert G. Dreher
Senior Vice President, Conservation Programs

⁴ 82 Fed. Reg. 22,016 (May 11, 2017).

⁵ Exec. Order No. 13795, 82 Fed. Reg. 20815 (May 3, 2017).

PROCLAMATION OF GRAND CANYON-PARASHANT NATIONAL MONUMENT WAS LEGAL AND APPROPRIATE UNDER THE ANTIQUITIES ACT

The Antiquities Act Imposes Few Requirements Restricting the President's Authority to Designate National Monuments

In the Antiquities Act of 1906, Congress chose to implement the general policy of protecting “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest” on federal lands by affording the president broad power to designate national monuments by proclamation.⁶

In designating national monuments under Antiquities Act, the only limits on the president's authority are that: (1) the area must contain “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest”; (2) the area must be “situated on land owned or controlled by the Federal Government”; and (3) “[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.”⁷

Beyond these requirements, the president is afforded extensive discretion to protect federal lands and waters under the Antiquities Act. If Congress had sought to limit the type or size of objects that could be reserved under the Antiquities Act, the text of the statute would have reflected that limitation. Instead, as federal courts have repeatedly held, the plain language of the Antiquities Act bestows vast discretionary authority upon the president to select both the type and size of an object to be protected. For example, in rejecting a challenge to President Clinton's designation of Grand Staircase-Escalante National Monument premised on the argument that the legislative history of the Act demonstrated Congress' intent to protect only man-made objects, the reviewing court stated:

This discussion, while no doubt of interest to the historian, is irrelevant to the legal questions before the Court, since the plain language of the Antiquities Act empowers the President to set aside “objects of historic or scientific interest.” 16 U.S.C. § 431. The Act does not require that the objects so designated be made by man, and its strictures concerning the size of the area set aside are satisfied when the President declares that he has designated the smallest area compatible with the designated objects' protection. There is no occasion for this Court to determine whether the plaintiffs' interpretation of the congressional debates they quote is correct, since a

⁶ 54 U.S.C. § 320301(a) (2012).

⁷ *Id.* § 320301(a), (b).

court generally has recourse to congressional intent in the interpretation of a statute *only when the language of a statute is ambiguous*.⁸

Before passing the Antiquities Act of 1906, Congress had considered other antiquities bills that set forth a clearly defined list of qualifying “antiquities.”⁹ An earlier version of the Antiquities Act—considered immediately before the final Act—also would have made reservations larger than 640 acres only temporary.¹⁰ Rather than place limitations on the president’s authority, however, the final version of the Act expanded executive discretion by adding the phrase “other objects of historic or scientific interest” to the list of interests that may be protected as national monuments.¹¹

The addition of this language to the Act has significant implications for how it is administered. Former National Park Service Chief Historian Ronald Lee recognized that “the single word ‘scientific’ in the Antiquities Act proved sufficient basis to establish the entire system of ... national monuments preserving many kinds of natural areas.”¹² By the time the Federal Lands Policy and Management Act of 1976 (“FLPMA”) was enacted, 51 of the 88 national monuments that had been established “were set aside by successive Presidents ... primarily though not exclusively for their scientific value.”¹³

“Scientific Interests” Have Included Biological Features Since the Earliest National Monument Designations

The designation of national monuments for scientific interests is not a recent phenomenon. For more than 100 years, national monuments have been established for the “scientific interests” they preserve. These values have included plants, animals, and other ecological concerns. In 1908, for instance, President Theodore Roosevelt designated Muir Woods National Monument because the “extensive growth of redwood trees (*Sequoia sempervirens*) ... is of extraordinary scientific interest and importance because of the primeval character of the forest in which it is located, and of the character, age and size of the trees.”¹⁴ President Roosevelt also established Mount Olympus National Monument because it “embrace[d] certain objects of unusual scientific interest, including numerous glaciers, and the region which from time immemorial has formed summer range and breeding

⁸ *Utah Ass’n of Chys. v. Bush*, 316 F. Supp. 2d 1172, 1186 n.8 (D. Utah 2004) (emphasis added) (citation omitted); see also *Mt. States Leg. Found. v. Bush*, 306 F.3d 1132, 1137 (D.C. Cir. 2002) (affirming the president’s broad discretionary authority to designate natural, landscape-scale objects of historic or scientific interest).

⁹ H.R. 12447, 58th Cong. § 3 (1904), reprinted in National Park Service, History of Legislation Relating to The National Park System Through the 82d Congress: Antiquities Act App. A (Edmund B. Rogers, comp., 1958) [hereinafter History of Legis.].

¹⁰ See S. 5603, 58th Cong. § 2 (1905), reprinted in History of Legis.

¹¹ S. 4698, 59th Cong. § 2 (1906), reprinted in History of Legis.

¹² Ronald F. Lee, The Antiquities Act of 1906 (1970), reprinted in Raymond H. Thompson, *An Old and Reliable Authority*, 42 J. OF THE S.W. 197, 240 (2000).

¹³ *Id.*

¹⁴ Proclamation No. 793, 35 Stat. 2174 (1908).

grounds of the Olympic Elk (*Cervus roosevelti*), a species peculiar to these mountains and rapidly decreasing in numbers.”¹⁵

President Roosevelt was not alone in utilizing the Antiquities Act’s broad authority to protect ecological marvels. For example, Presidents Harding, Roosevelt, Truman, and Eisenhower all subsequently expanded Muir Woods National Monument for the same reasons it was originally designated.¹⁶ Likewise, in designating Papago Saguaro National Monument in 1914, President Wilson’s proclamation highlighted that the “splendid examples of the giant and many other species of cacti and the yucca palm, with many additional forms of characteristic desert flora [that] grow to great size and perfection . . . are of great scientific interest, and should, therefore, be preserved.”¹⁷

Further, in 1925, President Coolidge designated nearly 1.4 million acres as Glacier Bay National Monument because

the region [was] said by the Ecological Society of America to contain a great variety of forest covering consisting of mature areas, bodies of youthful trees which have become established since the retreat of the ice which should be preserved in absolutely natural condition, and great stretches now bare that will become forested in the course of the next century.¹⁸

Similarly, President Hoover enlarged Katmai National Monument “for the purpose of including within said monument additional lands on which there are located features of historical and scientific interest and for the protection of the brown bear, moose, and other wild animals.”¹⁹ President Franklin D. Roosevelt designated Channel Islands National Monument, in part, for the “ancient trees” it contained.²⁰ President Kennedy expanded Craters of the Moon National Monument to include “an island of vegetation completely surrounded by lava, that is scientifically valuable for ecological studies because it contains a mature, native sagebrush-grassland association which has been undisturbed by man or domestic livestock.”²¹

Federal Courts Have Confirmed the President’s Authority to Determine the Meaning of “Scientific Interests”

The broad objectives of the Antiquities Act, coupled with the vast deference afforded to the president in specifying a monument’s purpose, compel courts to uphold presidential determinations

¹⁵ Proclamation No. 896, 35 Stat. 2247 (1909).

¹⁶ Proclamation No. 1608, 42 Stat. 2249 (1921); Proclamation No. 2122, 49 Stat. 3443 (1935); Proclamation No. 2932, 65 Stat. c20 (1951); Proclamation No. 3311, 73 Stat. c76 (1959).

¹⁷ Proclamation No. 1262, 38 Stat. 1991 (1914).

¹⁸ Proclamation No. 1733, 43 Stat. 1988 (1925).

¹⁹ Proclamation No. 1950, 47 Stat. 2453 (1931).

²⁰ Proclamation No. 2281, 52 Stat. 1541 (1938).

²¹ Proclamation No. 3506, 77 Stat. 960 (1962).

of what constitute “objects” and “scientific interests” when those findings are challenged.²² Beginning with a challenge to the designation of the Grand Canyon National Monument in 1920, the Supreme Court has promoted an expansive reading of the president’s discretion to determine which “scientific interests” may be protected. In its analysis, the Supreme Court simply quoted from President Roosevelt’s proclamation to uphold the presidential finding that the Canyon “is an object of unusual scientific interest.”²³

In *Cappaert v. United States*, the Supreme Court upheld President Truman’s exercise of authority to add Devil’s Hole to the Death Valley National Monument by relying upon the designation’s objective of preserving a “remarkable underground pool,” which contained “unusual features of scenic, scientific, and educational interest.”²⁴ In his proclamation, President Truman’s noted “that the pool contains ‘a peculiar race of desert fish ... which is found nowhere else in the world’ and that the ‘pool is of ... outstanding scientific importance ...’”²⁵ In its analysis, the Supreme Court acknowledged that “the language of the Act . . . is not so limited” as to preclude the president from exercising his broad discretion to protect such unique “features of scientific interest.”²⁶ As a result, the Supreme Court ultimately held that “[t]he pool in Devil’s Hole and its rare inhabitants are ‘objects of historic or scientific interest.’”²⁷

Similarly, in upholding the designation of Jackson Hole National Monument, the district court of Wyoming found that

plant life indigenous to the particular area, a biological field for research of wild life in its particular habitat within the area, involving a study of the origin, life, habits and perpetuation of the different species of wild animals ... [all] constitute matters of scientific interest within the scope and contemplation of the Antiquities Act.²⁸

Likewise, when ruling on a challenge to the millions of acres that President Carter set aside as national monuments in Alaska, the district court of Alaska concluded that “[o]bviously, matters of scientific interest which involve geological formations or which may involve plant, animal or fish life are within this reach of the presidential authority under the Antiquities Act.”²⁹ The court also found

²² See *Utah Ass’n of Cty.s. v. Bush*, 316 F. Supp. 2d 1172, 1179 (D. Utah 2004) (“[T]here have been several legal challenges to presidential monument designations ... Every challenge to date has been unsuccessful.”).

²³ *Cameron v. United States*, 252 U.S. 450, 455–56 (1920) (quoting Proclamation No. 794, 34 Stat. 225 (1908)).

²⁴ *Cappaert v. United States*, 426 U.S. 128, 141 (1976) (internal quotations omitted) (quoting Proclamation No. 2961, 3 C.F.R. § 147 (1949-1953 Comp.)).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 142 (emphasis added) (citing *Cameron v. U.S.*, 252 U.S. 450, 455–56 (1920)).

²⁸ *Wyoming v. Franke*, 58 F. Supp. 890, 895 (D. Wyo. 1945).

²⁹ *Anaconda Copper Co. v. Andrus*, 14 Env’t Rep. Cas. (BNA) 1853, 1855 (D. Alaska 1980).

that the Act protected a broad range of natural features, including the ecosystems of plant and animal communities relied upon by the Western Arctic Caribou herd.³⁰

Recently, Giant Sequoia National Monument was challenged on grounds that it protects objects that do not qualify under the Act.³¹ In rejecting that argument, the circuit court noted that “other objects of historic or scientific interest may qualify, at the President’s discretion, for protection as monuments. Inclusion of *such items as ecosystems and scenic vistas* in the Proclamation did not contravene the terms of the statute by relying on nonqualifying features.”³²

In addition, one court found that the designation of the Cascade-Siskiyou National Monument legitimately protects “scientific interests” within the meaning of the Act, because the Monument is

a “biological crossroads” in southwestern Oregon where the Cascade Range intersects with adjacent ecoregions ... the Hanford Reach National Monument, a habitat in southern Washington that is the largest remnant of the shrub-steppe ecosystem that once dominated the Columbia River basin ... and ... the Sonoran Desert National Monument, a desert ecosystem containing an array of biological, scientific, and historic resources.³³

There Are No Restrictions on the Size of the Objects That May be Designated as National Monuments

As the court in *Wyoming v. Franke* recognized: “What has been said with reference to the objects of historic and scientific interest applies equally to the discretion of the Executive in defining the area compatible with the proper care and management of the objects to be protected.”³⁴ In other words, the determination of “the smallest area compatible with the proper care and management of the objects to be protected” is almost entirely within the president’s authority.

The Supreme Court honored this principle in *Cameron v. United States* by finding that President Theodore Roosevelt was authorized to establish the 800,000-acre Grand Canyon National Monument.³⁵ Since then, courts have been exceedingly hesitant to infringe upon the president’s

³⁰ *Id.*

³¹ *Tulare County v. Bush*, 306 F.3d 1138, 1140–41 (D.C. Cir. 2002).

³² *Id.* at 1142 (emphasis added) (internal quotations omitted).

³³ *Mt. States Leg. Found. v. Bush*, 306 F.3d 1132, 1133–34 (D.C. Cir. 2002) (citations omitted).

³⁴ 58 F. Supp. 890, 896 (D. Wyo. 1945).

³⁵ 252 U.S. 450, 455–56 (1920).

broad discretion in determining the “smallest area” possible encompassed by a monument—including the 1.7 million-acre Grand Staircase-Escalante National Monument.³⁶

Courts, moreover, are even less likely to disturb the president’s factual determinations when a proclamation contains the statement that the monument “is the smallest area compatible with the proper care and management of the objects to be protected.”³⁷ Beginning in 1978, presidents have included this declaration in all proclamations establishing or enlarging national monuments.³⁸

Congress Has Demonstrated its Approval of Large National Monument Designations

Individual presidential proclamations reserving significant amounts of land in national monuments has received much criticism. Rather than curbing the president’s power to do so, however, Congress has embraced the presidents’ inclusive interpretation and use of the authority of the Antiquities Act with limited exceptions.³⁹ Congress has shown explicit approval for these presidential withdrawals by re-designating national monuments as national parks, preserves, historic sites, or wildlife refuges and passing legislation otherwise approving the boundaries of national monuments. This congressional approval includes at least 69 national monuments, or 44 percent of those established, which encompass more than 70 percent of the acreage that has been withdrawn by the President under the Antiquities Act.⁴⁰

³⁶ *Utah Ass’n of Cty. v. Bush*, 316 F. Supp. 2d 1172, 1183 (D. Utah 2004) (“When the President is given such a broad grant of discretion as in the Antiquities Act, the courts have no authority to determine whether the President abused his discretion.”).

³⁷ See, e.g., *Mt. States Leg. Found.*, 306 F.3d at 1137; *Tulare County v. Bush*, 306 F.3d 1138, 1142 (D.C. Cir. 2002).

³⁸ Including the determination that each national monument is confined to “the smallest area compatible with the proper care and management of the objects to be protected” began with President Carter (Proc. Nos. 4611–4627), and was continued by Presidents Clinton (Proc. Nos. 6920, 7263–66, 7317–20, 7329, 7373–74, 7392–7401), G.W. Bush (Proc. Nos. 7647, 7984, 8031), and Obama (Proc. Nos. 8750, 8803, 8868, 8884, 8943–47, 8089, 9131, 9173, 9194, 9232–34, 9297–99, 9394–96, 9423, 9465, 9476, 9478, 9496, 9558–59, 9563–67).

³⁹ The only significant exceptions to the President’s authority conveyed by Congress has been the restriction on the extension or establishment of new national monuments in Wyoming, Act of Sept. 14, 1950, Pub. L. No. 787, § 1, 64 Stat. 849 (codified as amended at 54 U.S.C. § 320301(d), and making all Executive withdrawals of more than 5,000 acres in Alaska subject to congressional approval, 16 U.S.C. §3213(a). In addition, Congress withheld funds from the Chesapeake & Ohio Canal National Monument after it was designated by President Eisenhower in 1961. See Les Blumenthal, *Presidents as Preservationists: Antiquities Act gives Chief Executive Free Hand in Creating National Monuments*, NEWS TRIB. (Tacoma) A1 (May 28, 2000). A decade later, however, Congress re-designated the monument as a national historical park. 16 U.S.C. § 410y.

⁴⁰ Figures established in spreadsheet created with data from NPS, ARCHEOLOGY PROGRAM, *Antiquities Act 1906-2006: Monuments List*, (updated May 8, 2017 07:53:03), <https://www.nps.gov/archeology/sites/antiquities/monumentslist.htm> as well as presidential proclamations and acts of Congress not included in therein (hereinafter “MONUMENTS LIST DATA”).

Future congressional approval has been more likely, moreover, when considering designations or subsequent expansions that “more than 100,000 acres.”⁴¹ Through 1981 and excluding monuments subject to the Secretary’s current review, Congress explicitly approved of 86 percent, or 25 of the 29, reservations fitting that description.⁴²

On average, these Congressional actions have taken more than 34 years from the time of the original designation or expansion – a figure that jumps to nearly 47 years when excluding the 17 Alaskan monument proclamations incorporated two years later by ANILCA.⁴³ In some cases, such as Craters of the Moon, however, it has taken Congress 78 years to act.⁴⁴ The monuments currently under review, in contrast, have been in existence for only 20 years or less, which is well within the time of typical congressional action regarding national monuments.

Moreover, Congress has established 45 national monuments by statute, including several that were over 100,000 acres in size at the time of enactment: Badlands⁴⁵ (130,000 acres), Biscayne⁴⁶ (172,924 acres), Mount Saint Helens⁴⁷ (110,000 acres), El Malpais⁴⁸ (114,000 acres), and Santa Rosa and San Jacinto Mountains⁴⁹ (272,000 acres). Two of these, Badlands and Biscayne, were subsequently re-designated as national parks.

Only Congress Has the Authority to Revoke or Reduce the Size of a National Monument

Executive Order 13792 instructs the Interior Secretary to “review” national monuments designated or expanded under the Antiquities Act and “include recommendations for Presidential actions.” In a press briefing on the order, Secretary Zinke stated that it “directs the Department of Interior to make recommendations to the President on whether a monument should be rescinded, resized, [or] modified.”⁵⁰ However, any such actions taken by the president would be unlawful: only Congress has the authority to rescind, reduce, or substantially modify a national monument.

⁴¹ Exec. Order No. 13792 § 2.

⁴² MONUMENTS LIST DATA.

⁴³ *Id.* See Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, Title II, § 201, Dec. 2, 1980 (codified at 16 U.S.C. § 410hh).

⁴⁴ MONUMENTS LIST DATA (Craters of the Moon is the longest time it took for Congress to act on a monument larger than 100,000 acres, but it took 105 years for Pinnacles National Monument to be re-designated as a National Park).

⁴⁵ P.L. 70-1021; 45 Stat. 1553.

⁴⁶ P.L. 90-606; 82 Stat. 1188.

⁴⁷ P.L. 97-243; 96 Stat. 301.

⁴⁸ P.L. 100-225; 101 Stat. 1539.

⁴⁹ P.L. 106-351; 114 Stat. 1362.

⁵⁰ Press Briefing on the Executive Order to Review Designations Under the Antiquities Act, Ryan Zinke, Sec’y of the Interior (Apr. 25, 2017), <https://www.whitehouse.gov/the-press-office/2017/04/25/press-briefing-secretary-interior-ryan-zinke-executive-order-review>.

The president’s powers regarding management of public lands are limited to those delegated to him by Congress. While the Antiquities Act provides the president the power to “declare” and “reserve” national monuments, it does not grant him authority to rescind, resize, modify, or otherwise diminish designated national monuments.⁵¹

The Property Clause of the U.S. Constitution⁵² gives Congress “exclusive” authority over federal property,⁵³ in effect making “Congress[] trustee of public lands for all the people.”⁵⁴ “The Clause must be given an expansive reading, for ‘(t)he power over the public lands thus entrusted to Congress is without limitations.’”⁵⁵ Congress may, of course, delegate its authority to manage these lands to executive agencies or the president,⁵⁶ as it did in the Antiquities Act.

In the Antiquities Act, Congress only delegated to the president the broad authority to *designate* as national monuments “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest”—an authority limited only by the requirement that such reservations be “confined to the smallest area compatible with the proper care and management of the objects to be protected.”⁵⁷ Conspicuously absent from the Act, however, is language authorizing *any* substantive changes to national monuments once they have been established.

The omission of language granting the president the authority to rescind, reduce, or modify national monuments is intentional. Without it, an implicit congressional grant of these authorities cannot be read into the Antiquities Act.⁵⁸ If Congress intended to allow future presidents to rescind or reduce existing national monument designations, it would have included express language to that effect in the Act. Congress had done just that in many of the other public land reservation bills of the era.⁵⁹

⁵¹ 54 U.S.C. § 320301(a), (b).

⁵² U.S. Const. art. IV, § 3, cl. 2.

⁵³ See, e.g., *Utah Power & Light Co. v. United States*, 243 U.S. 389, 404 (1917).

⁵⁴ *United States v. City & Cty. of San Francisco*, 310 U.S. 16, 28 (1940).

⁵⁵ *Kleppe v. New Mexico*, 426 U.S. 529, 539–40 (1976) (quoting *San Francisco*, 310 U.S. at 29).

⁵⁶ *United States v. Grimaud*, 220 U.S. 506, 517 (1911); *Cameron v. United States*, 252 U.S. 450, 459–60 (1920); *Utah Ass’n of Cty. v. Bush*, 316 F. Supp. 2d 1172, 1191 (D. Utah 2004) (upholding Grand Staircase–Escalante National Monument) (citing *Yakus v. United States*, 321 U.S. 414 (1944)).

⁵⁷ 54 U.S.C. § 320301(a)–(b) (2012).

⁵⁸ *Ethyl Corp. v. EPA*, 51 F.3d 1053, 1060 (D.C. Cir. 1995) (refusing “once again, to presume a delegation of power merely because Congress has not expressly withheld such power.”).

⁵⁹ See National Forest Organic Act of 1897, Act of June 4, 1897, 30 Stat. 1, 34, 36 (authorizing President “to *modify* any Executive order that has been or may hereafter be made establishing any forest reserve, and by such modification may *reduce* the area or *change the boundary lines* of such reserve, or *may vacate altogether* any order creating such reserve.”) (emphasis added) (repealed in part by Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. 94-579, Title VII, § 704(a), Oct. 21, 1976; National Forest Management Act of 1976, 16 U.S.C. § 1609(a)); Pickett Act, Act of June 25, 1910, c. 421, § 1, 36 Stat. 847 (executive withdrawals were “temporary,” only to “remain in effect until revoked by him or by an Act of Congress.”) (repealed by FLPMA § 704(a)).

Furthermore, Congress considered a bill that would have authorized the president to restore future national monuments to the public domain, which passed the House in 1925, but was never enacted.⁶⁰ Logically, that effort would have been redundant if such authority already existed under the Act. The Antiquities Act thus demonstrates that Congress chose to constrain the president's authority not by limiting his ability to designate or expand national monuments, but by withholding the power to rescind, reduce, or modify monuments once designated or expanded. In every case where a monument has been eliminated, it has taken an act of Congress to do so, even in the case of New York's Father Millet Cross National Monument, which was only 320 square feet in size.⁶¹

For nearly eighty years, the federal government's position has been that the president lacks the authority to rescind, repeal, or revoke national monuments. Of course, if the president lacks such authority, it follows that the secretary lacks the authority to rescind, repeal, or revoke national monuments as well.⁶² In 1938, U.S. Attorney General Homer Cummings concluded that "[t]he Antiquities Act ... authorizing the President to establish national monuments, does not authorize him to abolish them after they have been established."⁶³ The Attorney General Opinion went on to state:

The grant of power to execute a trust, even discretionally, *by no means* implies the further power to undo it when it has been completed. A duty properly performed by the Executive under statutory authority has the validity and sanctity which belong to the statute itself, and, unless it be within the terms of the power conferred by that statute, the Executive can no more destroy his own authorized work, without some other legislative sanction, than any other person can. To assert such a principle is to claim for the Executive the power to repeal or alter an act of Congress at will.⁶⁴

Despite the apparent contradiction to this passage, and without addressing its legality or providing much discussion, this Attorney General's Opinion also recognized that "the President from time to time has diminished the area of national monuments established under the Antiquities Act."⁶⁵ However, none of these Presidential actions that reduced the size of national monuments has ever been challenged in court. Perhaps more importantly, President Kennedy was the last to diminish a

⁶⁰ H.R. 11357, 68th Cong. (1925).

⁶¹ 28 H.R. 4073, Pub. L. 81-292, 63 Stat. 691.

⁶² *Cf. Utah Ass'n of Cty's. v. Bush*, 316 F. Supp. 2d 1172, 1197 (D. Utah 2004) ("Because Congress only authorized the withdrawal of land for national monuments to be done in the president's discretion, it follows that the President is the only individual who can exercise this authority because only the President can exercise his own discretion.").

⁶³ Proposed Abolishment of Castle Pickney National Monument, 39 Op. Atty. Gen. 185, 185.

⁶⁴ *Id.* at 187 (emphasis added) (quoting 10 Op. Atty. Gen. at 364).

⁶⁵ *Id.* at 188. *See also* National Monuments, 60 Interior Dec. 9 (1947) (concluding that the president is authorized to reduce the area of national monuments by virtue of the same provision of Act).

national monument⁶⁶ (adding to Bandelier National Monument 2,882 acres formerly controlled by the Atomic Energy Agency and removing the 3,925-acre Otwi Section containing “limited archaeological values”), and there have been no attempts by the President or the Secretary to rescind, resize, modify, or otherwise diminish designated national monuments since the enactment of FLPMA.⁶⁷

In FLPMA, Congress not only repealed nearly all sources of executive authority to make withdrawals except for the Antiquities Act,⁶⁸ but also overturned the implied executive authority to withdraw public lands that the Supreme Court had recognized in 1915 as well.⁶⁹ FLPMA’s treatment of the Antiquities Act was designed, moreover, to “specifically *reserve to the Congress the authority to modify and revoke withdrawals* for national monuments created under the Antiquities Act.”⁷⁰

Consequently, the authority Congress delegated to the president in the Antiquities Act is limited to the designation or expansion of national monuments. Where a President acts in accordance with that power, the designation is “in effect a reservation by Congress itself, and . . . the President thereafter [i]s without power to revoke or rescind the reservation”⁷¹ Thus, as the district court in *Wyoming v. Franke* summarized, where “Congress presumes to delegate its inherent authority to [the president], . . . the burden is on the Congress to pass such remedial legislation as may obviate any injustice brought about [because] the power and control over and disposition of government lands inherently rests in its Legislative branch.”⁷²

GRAND CANYON-PARASHANT NATIONAL MONUMENT

President Clinton established the Grand Canyon-Parashant National Monument (Parashant) in 2000 through Presidential Proclamation 7265. The monument spans more than 1 million acres within Mohave County in northwest Arizona and is jointly managed by the Bureau of Land Management (BLM) and National Park Service (NPS).

A recent assessment analyzed ecological values of Parashant by mapping and comparing a random sample of equivalent size areas in the region.⁷³ Based on this science-based analysis, the monument

⁶⁶ Proclamation 3539, May 27, 1963.

⁶⁷ Pub. L. 94-579 (Oct. 21, 1976), codified at 43 U.S.C. § 1701 *et seq.*

⁶⁸ *Id.* at Title II, § 204, Title VII, §704(a).

⁶⁹ *Id.*; *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915).

⁷⁰ H.R. REP. 94-1163, 9, 1976 U.S.C.C.A.N. 6175, 6183 (emphasis added).

⁷¹ Proposed Abolishment of Castle Pickney National Monument, 39 Op. Atty. Gen. 185, 187 (1938) (citing 10 Op. Atty. Gen. 359, 364 (1862)).

⁷² 58 F. Supp. 890, 896 (D. Wyo. 1945).

⁷³ Dickson, B.G., M.L. McClure, and C.M. Albano. 2017. A Landscape-level Assessment of Ecological Values for 22 National Monuments. Final Report submitted to the Center for American Progress. Conservation Science Partners. Truckee, CA (available at <http://www.csp-inc.org/wp-content/uploads/2017/06/NationalMonumentsAssessment.pdf>).

ranked 98 percent on ecological connectivity and 96 percent on ecological intactness. The Parashant is species rich and diverse, scoring 86 percent on reptile diversity, 67 percent in bird diversity, and 82 percent on rarity-weighted species richness. Additionally, the monument is highly resilient to climate change, with a score of 87 percent for climate resilience.

Federal land managers are conducting a wide range of scientific research at Grand Canyon-Parashant. Some projects include research related to acoustical monitoring, viewsheds, caves, water quality, re-introduction of the relict leopard frog, restoration of Pakoon Springs, invasive plant species, vegetation mapping, long-term monitoring of large and small arid springs in the Mojave Desert, post-fire restoration of the Mojave Desert ecosystem, and dark sky monitoring.⁷⁴

Designation of Grand Canyon-Parashant National Monument Protects and Provides for the Proper Care and Management of Significant and Rare Landscape and Ecosystem Objects and Values

Courts have upheld that the Act provides the President with the discretion to protect ecosystems, ecosystem features and large landscapes. In *Tulare vs. Bush* the court found that inclusion of ecosystems within the Proclamation “did not contravene the terms of the statute by relying on nonqualifying features.”⁷⁵ Indeed, the Parashant Proclamation describes in great factual detail the diversity of qualifying ecosystem types and natural and scientific features found within the monument boundaries. The facts demonstrate that President Clinton designated the land necessary to protect the diversity of ecosystems found within the Grand Canyon-Parashant National Monument.

Parashant protects and provides for the proper care and management of exceptionally important and unique ecosystem and landscape conservation values. The area contained within the monument boundaries exhibits a high and increasingly rare level of ecological integrity compared to other western lands. The Antiquities Act provides the President with the authority to protect and properly management landscapes and ecosystems for their scientific and other values.

The management plan for the monument prioritizes the protection and enhancement of the following ecosystem types and resident endemic species.

Ecosystems

Parashant is unique, a biological crossroads where the Mojave Desert meets the Colorado Plateau and the Great Basin. The monument contains a stunning and unique diversity of ecosystem types,

⁷⁴ National Park Service. 2016. Parashant: Science & Research. Sept. 6. Available at <https://www.nps.gov/para/learn/scienceresearch.htm>.

⁷⁵ *Tulare Cnty. v. Bush*, 306 F.3d at 1142.

including arid desert, riparian areas, shrub steppe, pinyon-juniper woodlands, and high elevation ponderosa pine forests.

Ponderosa Pine Ecosystem

Parashant's ponderosa pine forests, the forests of the Mt. Trumbull area in particular, are documented biological resources of scientific interest. The monument designation supports scientific research into these forests and emphasizes the protection and ecological restoration of the Mt. Trumbull pine forests. A change or revocation of the monument's protections could have significant implications for the Mt. Trumbull area; the 88,654 acre Mt. Trumbull Resource Conservation Area (RCA) is revoked in the monument management plan "because the Monument provides adequate protection of resources" for the area.⁷⁶

Ponderosa pine forests within the monument support a variety of wildlife including Merriam's turkey, Kaibab squirrel, and mule deer, as well as a number of raptors including sharp-shinned hawk, northern goshawk, Coopers hawk, American kestrel and red-tailed hawk. These forests also support a variety of bats and migratory birds. The monument management plan allocated over 18,000 acres of ponderosa pine habitat in the Mt. Trumbull and Mt. Logan areas to protected Kaibab squirrels, which are considered to be imperiled within the state of Arizona.

Mojave Desert Ecosystem

The Mojave Desert ecosystem supports endemic plant species such as creosote bush, Joshua tree, Mojave yucca and cacti and endemic animal species such as the threatened desert tortoise and chuckwalla.

Mojave-Great Basin Transition Zone Ecosystem

The Mojave-Great Basin Transition Zone ecosystem supports endemic plant species such as black brush, Joshua tree, Mojave yucca, and cacti and endemic animal species such as desert tortoise, chuckwalla and desert bighorn sheep.

Pinyon-Juniper Communities

Pinyon-juniper communities support mule deer and raptors such as sharp-shinned hawk, northern goshawk, Coopers hawk, American kestrel, and red-tailed hawk.

⁷⁶ Grand Canyon-Parashant National Monument. Approved Plan, p. 2-102. The Parashant RCA (39,854 acres) was revoked for the same reason.

Interior Chaparral Ecosystem

The Interior Chaparral ecosystem supports endemic plant species such as manzanita, silk tassel and live oak and endemic animal species such as black-chinned sparrow and also mule deer. An endemic subspecies of soap tree yucca is associated with this community.

Plains-Grasslands Ecosystem

The Plains-Grasslands ecosystem supports endemic plant species such as galleta, sand dropseed, Indian ricegrass, blue grama, black grama, needle and thread grass, four-wing saltbush, shadescale, winterfat, and Mormon tea and endemic animal species such as pronghorn antelope, Cassin's sparrow and Brewer's sparrow.

Sagebrush Communities

Sagebrush communities within the monument support Vesper sparrows and lark sparrows, Brewer's sparrows, sage sparrows, black-throated sparrows, gray flycatchers, sage thrashers, long-billed curlews and burrowing owls.

Riparian Areas and Corridors

Parashant is a key contributor to the Grand Canyon watershed, containing tributaries that feed the Colorado River, which was also a primary factor in determining the monument's boundaries.⁷⁷ Springs, including Tassi and Pakoon Springs in the Grand Wash Trough, support sensitive riparian ecosystems and plant communities within the Mojave Desert. Tassi Spring's riparian habitat supports a diversity of bird and mammal populations, as well as the Grand Wash Spring snail, a candidate for listing under the Endangered Species Act.⁷⁸ The Pakoon Springs complex is the largest in the monument and is suitable for the reintroduction of relict leopard frogs, Grand Wash Spring snails and other at-risk species. The monument designation supports the protection and restoration of these unique and rare aquatic features.

Riparian plant communities recognized and protected within Parashant are worth noting, given the tremendous importance of water resources in the 21st century west. Riparian communities support rare and at-risk species such as southwestern willow flycatcher, Mexican spotted owl, common black hawk, Lucy's warbler, and speckled dace.

The endangered southwestern willow flycatcher, which requires moist riparian vegetation near saturated areas and surface water in order to breed. A large portion of their habitat has been lost and

⁷⁷ See Ingram (July 22, 2016).

⁷⁸ Truini, M. 2013. Preliminary hydrogeologic assessment near Tassi and Pakoon Springs, western part of Grand Canyon-Parashant National Monument, Arizona. U.S. Geological Survey Scientific Investigations Report 2012-5276. 12 p.

degraded across the species range due to water diversion, livestock grazing, urban development, and other human induced habitat changes.

Ecological Condition

The designation of Parashant appropriately recognized and protected an intact and functional western landscape. Remote landscapes relatively unmodified by human intrusion and development are increasingly rare in the region and the nation. Parashant is one of the most remote areas in the United States outside of Alaska.

Most of Parashant lies within the Mojave Basin and Range ecoregion and was recently analyzed in a Rapid Ecoregional Assessment (REA) completed by NatureServe and partners as part of the BLM's landscape approach to resource planning.⁷⁹ An important landscape characteristic measured and mapped in the REA is *landscape condition*. The REA's evaluation of landscape condition provides "one composite view of the relative impacts of land uses across the entire ecoregion." Except for a very small area, the REA found that Parashant is among the highest scoring areas for landscape condition in the region.

Large Landscape Conservation

Scientists have understood for decades that large, intact, connected landscapes protected from human development and habitat degradation are essential for maintaining viable wildlife populations.⁸⁰ Larger areas tend to include a broader diversity of habitats and habitat characteristics and can accommodate more species than smaller areas⁸¹ and better provide for wide-ranging species with extensive home ranges such as large carnivores and ungulates that move between seasonal habitats. The optimal size of a given protected area depends on the habitat needs of the species that occur there, whether residents or migrants. Different species have varied habitat requirements over their life cycle that can depend on both a diversity of habitat types and patch size.⁸² The composition and distribution of species in an area can also change over time due to periodic disturbance, such as

⁷⁹ Comer, P., P. Crist, M. Reid, J. Hak, H. Hamilton, D. Braun, G. Kittel, I. Varley, B. Unnasch, S. Auer, M. Creutzburg, D. Theobald, and L. Kutner. 2013. Mojave Basin and Range Rapid Ecoregional Assessment Report. Prepared for the U.S. Department of the Interior, Bureau of Land Management. 173 pp + appendices.

⁸⁰ Higgs, A.J. Island biogeography and nature reserve design. 1981. *Journal of Biogeography* 8: 117-124; Pickett, S.T.A., and J.N. Thompson. 1978. Patch dynamics and the design of nature reserves. *Biological Conservation* 13: 27-37.

⁸¹ Margules, C., A.J. Higgs, and R.W. Rafe. 1982. Modern biogeography theory: are there any lessons for nature reserve design? *Biological Conservation* 24: 115-128; Rowland, M.M. and M.J. Wisdom. 2009. Habitat networks for terrestrial wildlife: concepts and case studies. In: MODELS FOR PLANNING WILDLIFE CONSERVATION IN LARGE LANDSCAPES. J.J. Millspaugh, F.R. Thompson, III (eds). Elsevier. Ch. 19, pp. 501-531.

⁸² Margules, C.F. and R.L. Pressey. Systematic conservation planning. *Nature* 405: 243-253.

wildfire, and ecological successional stage. Larger areas offer greater representation of habitat diversity, characteristics and patch size, and are therefore more resilient to disturbances and stressors and supportive of the species that depend on them.⁸³

The boundaries of many monuments subject to the current review have been demarcated with these central ecological concepts in mind. Presidents' proclamations have, for example, named wide-ranging wildlife, including mule deer, bighorn sheep, pronghorn, elk, mountain lions, and others as monument objects. The importance of sufficiently large areas to protect biological objects must be considered in the review process.

Wildlife Habitat Connectivity

Landscape connectivity is also an increasingly important factor in the conservation of fish, wildlife, and plant populations.⁸⁴ Habitat loss, degradation and fragmentation pose the most important threat to the survival of native species, contributing to the shrinking distribution of many wildlife populations in North America. Landscapes fragmented by development and roads lead to increased mortality⁸⁵ for wide-ranging wildlife, including big game and large carnivores. Local populations, especially those of at-risk species, can decline and disappear without connectivity to support immigration.

The recognition and protection of habitat connectivity and wildlife corridors facilitates migration, dispersal, plant pollination, and gene flow within and across monument boundaries. Establishing new areas and expanding existing protected areas is necessary to allow species to shift their ranges to adapt to climate change.⁸⁶ Connecting these habitat cores is also essential: wildlife corridors increase movement between isolated habitat patches by approximately fifty percent, compared to areas that are not connected by corridors.⁸⁷

Parashant provides for regionally significant landscape-level connectivity, an important and rare ecological feature in western landscapes. Additionally, the management plan for Parashant emphasizes the maintenance of habitat connectivity and wildlife movement to enhance wildlife

⁸³ Margules, C.F. and R.L. Pressey. Systematic conservation planning. *Nature* 405: 243-253.

⁸⁴ Correa Ayram C.A., M. E. Mendoza, A. Etter, and D. R. Perez Salicrup. 2016. Habitat connectivity in biodiversity conservation: A Review of Recent Studies and Applications. *Progress in Physical Geography* 40(1): 7-37.

⁸⁵ Cushman, S.A., B. McRae, F. Adriaesen, P. Beier, M. Shirley, and K. Zeller. 2013. Biological corridors and connectivity. In: KEY TOPICS IN CONSERVATION BIOLOGY 2, First Edition. D.W. MacDonald and K.J. Willis (eds). John Wiley & Sons, Ltd.

⁸⁶ Heller, N.E. and E.A. Zavaleta. 2009. Biodiversity management in the face of climate change: a review of 22 years of recommendations. *Biological Conservation* 142: 14–32.

⁸⁷ Gilbert-Norton, L., R. Wilson, J.R. Stevens, and K.H. Beard. 2010. A meta-analytic review of corridor effectiveness. *Conservation Biology* 24(3): 660-668.

populations. For example, the plan states that for the imperiled desert tortoise, “[h]abitat connectivity will be maintained, providing sufficiently frequent contact between tortoises to maintain genetic diversity.”⁸⁸

The Designation of Grand Canyon-Parashant National Monument Protects and Provides for the Proper Care and Management of Significant Rare and At-risk Fish, Wildlife, and Plant Habitats and Values

Habitat for fish and wildlife qualify for protection as scientific objects under the Antiquities Act. Parashant provides essential habitat for a wide variety of fish, wildlife and plant species, including rare, endemic and at-risk species, including key habitat areas for species listed under the Endangered Species Act (ESA).

Altering the configuration or management of the monument would remove lawful protections for the fish, wildlife and plant species found within the monument, which are considered to be objects of scientific interest.

The monument’s management plan stresses the protection and restoration of all native wildlife communities, as monument objects. The management plan emphasizes the reintroduction and/or augmentation of pronghorn antelope, mule deer, desert bighorn sheep, Merriam’s turkey, Kaibab squirrel and other populations of special status species.⁸⁹

At-risk Species

Parashant provides habitat values that are significant to the region, and the configuration of the monument is necessary for the proper care and management of these habitat values. Parashant protects and provides for the proper management of a number of at-risk species, including those listed under the ESA. The monument supports 73 rare, sensitive or ESA-listed animals and plants. Management of the monument focuses on the recovery and protection of at-risk and rare species. The monument’s management plan states that “(t)he Monument will provide a block of remote, contiguous habitat that will serve as refugia for populations of special status species.”⁹⁰

Special status species not listed under the ESA with the potential to occur within the monument include chuckwalla, banded Gila monster, northern leopard frog, relict leopard frog, lowland leopard frog, endemic springsnails, Virgin spikedace, desert sucker, flannelmouth sucker, ferruginous hawk, northern goshawk, western burrowing owl, peregrine falcon, common black hawk, and white-faced

⁸⁸ Grand Canyon-Parashant National Monument. Approved Plan, p. 2-46.

⁸⁹ Special status species include those federally listed under the ESA, species proposed for federal listing, candidates for federal listing, species included on the state of Arizona’s Wildlife Species of Concern, and species identified by the BLM or NPS as “Sensitive Species.”

⁹⁰ Grand Canyon-Parashant National Monument. Approved Plan.

ibis. Some rare plant species include the Parashant milkvetch, foothill ash, orange kallstroemia, yellow bluestem, spike pappusgrass, and leafy pondweed.

Species Listed under the Endangered Species Act

The U.S. Fish and Wildlife Service’s (USFWS) Information for Planning and Consultation⁹¹ web tool indicates that the following ESA-listed have the potential to occur within the Grand-Canyon Parashant National Monument (see Table below). Additionally, the USFWS’s biological opinion for the Parashant management plan identifies three additional listed species associated with the monument: Brady Pincushion Cactus (*Pediocactus bradyi*), which is endangered, and Jones’ Cycladenia (*Cycladenia humilis* var. *jonesii*), Siler Pincushion Cactus (*Pediocactus* (= *echinocactus*, = *utahia*) *sileri*), and Welsh’s Milkweed (*Asclepias welsbii*), which are threatened.⁹²

ESA-listed Species with Potential to Occur within the Grand Canyon-Parashant National Monument		
Common Name	Scientific Name	Federal ESA Status
California Condor	<i>Gymnogyps californianus</i>	Endangered, except where listed as experimental population – areas of Arizona, Nevada, Utah
California Least Tern	<i>Sterna antillarum</i>	Endangered
Mexican Spotted Owl*	<i>Strix occidentalis lucida</i>	Threatened
Southwestern Willow Flycatcher*	<i>Empidonax traillii extimus</i>	Endangered
Yellow-billed Cuckoo*	<i>Coccyzus americanus</i>	Threatened
Yuma Clapper Rail	<i>Rallus longirostris yumanensis</i>	Endangered
Desert Tortoise*	<i>Gopherus agassizii</i>	Threatened
Northern Mexican Gartersnake	<i>Thamnophis eques megalops</i>	Threatened
Bonytail Chub	<i>Gila elegans</i>	Endangered
Humpback Chub*	<i>Gila cypha</i>	Endangered
Razorback Sucker*	<i>Xyrauchen texanus</i>	Endangered
Virginia River Chub	<i>Gila seminuda</i>	Endangered
Woundfin	<i>Plagopterus argentissimus</i>	Endangered
Fickeisen Plain Cactus	<i>Pediocactus peeblesianus fickeiseniae</i>	Endangered
Gierisch Mallow	<i>SPHAERALCEA GIERISCHII</i>	Endangered
Holmgren Milk-vetch	<i>Astragalus holmgreniorum</i>	Endangered
* Designated critical habitat for these species overlaps the monument area.		

⁹¹ United State Fish and Wildlife Service. Information for Planning and Consultation (<https://ecos.fws.gov/ipac/>).

⁹² Grand Canyon-Parashant National Monument. Approved Plan. Appendix B.

The Parashant management plan establishes the protection of threatened and endangered species as a primary goal within the monument, stating that “(a)ll federally listed threatened and endangered species found in the Monument will be recovered.”

The management plan places a conservation emphasis on particular listed species, for example, stating, as a desired future condition: “The Mojave population of desert tortoise will be recovered and delisted.”⁹³ The monument management plan allocated 171,709 acres to the Pakoon Wildlife Habitat Area (WHA) for the protection of desert tortoise and its designated critical habitat, along with numerous management guidelines. A change or revocation of the monument’s protections for desert tortoise would have dire consequences for the protection of the species because the Pakoon Area of Critical Environmental Concern (ACEC), which was established for the protection of the species prior to the designation of the monument, was revoked in the monument management plan because of the protections offered under monument status.⁹⁴

The monument offers protection for several listed species that are endemic to the region or have very restricted ranges. For example, the brady pincushion cactus is endemic to northwestern Arizona. In Arizona, the Jones’ Cycladenia is known to occur on only a few sites in Mojave County.⁹⁵ The Fickeisen plain cactus is known to only two counties in Arizona, including Mojave.⁹⁶ The Holmgren milkvetch has a very restricted range in northwestern Arizona and southwestern Utah.⁹⁷ The impacts of human threats to these species, such as off-road vehicle use and livestock grazing, are high to very high, but the monument protection enables management to address and limit such threats.

Wide-ranging Species

Parashant supports a number of ungulates including mule deer, pronghorn antelope and desert bighorn sheep, which are a vulnerable species in the state of Arizona. These are all landscape species that rely on large, connected habitat areas to make season movements. Crucial mule deer winter range is provided in Whitmore Canyon and Andrus Point and prioritized for protection within the management plan. Bighorn sheep habitat areas, including the 114,288-acre Grand Wash Cliffs habitat area, are prioritized within the management plan.

⁹³ Grand Canyon-Parashant National Monument. Approved Plan.

⁹⁴ The Witch Pool and Nampaweap ACECs are also revoked under the monument management plan “because Monument status provides additional protection of resources beyond ACEC designation.” Grand Canyon-Parashant National Monument Approved Plan, p. 2-102.

⁹⁵ NatureServe. 2017. *Cycladenia humilis* var. *jonesii*. NatureServe Explorer: An Online Encyclopedia of Life [web application]. Version 7.1. NatureServe, Arlington, VA.

⁹⁶ NatureServe. 2017. *Pediocactus peeblesianus fickeiseniae*. NatureServe Explorer: An Online Encyclopedia of Life [web application]. Version 7.1. NatureServe, Arlington, VA.

⁹⁷ NatureServe. 2017. *Astragalus holmgreniorum*. NatureServe Explorer: An Online Encyclopedia of Life [web application]. Version 7.1. NatureServe, Arlington, VA.

The Parashant management plan emphasizes the role of predators, such as mountain lions, in maintaining the integrity of plant and animal communities. Large predators also require large, intact areas due to their territorial natures and extensive home ranges. Protection under monument designation enables a management system that can address and mitigate conflicts that can develop between human uses and predators. The Parashant management plan stresses human/wildlife coexistence and conflict avoidance and resolution.

CONCLUSION

Grand Canyon-Parashant National Monument protects invaluable cultural, historic and scientific resources that provide immeasurable social and economic benefits to local communities and citizens across the United States. There is no question that these public lands warrant the protections provided under the Antiquities Act and that the designation is both consistent with the law as well as the policy set forth in section 1 of Executive Order 13792. The President lacks the legal authority to revoke or diminish a national monument and should additionally refrain from seeking legislative action or take any other action to undermine the designation.