



July 9, 2017

The Honorable Ryan K. Zinke  
Secretary  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

Re: Support for the Giant Sequoia National Monument

Dear Secretary Zinke:

We are writing you today as individuals and organizations who actively work to conserve and protect natural resources in the Sierra Nevada. We support the designation of the Giant Sequoia National Monument (“Monument”) for the protection of the unique objects of historic, cultural and scientific interest within its boundary. As we describe below, the designated area (327,769 acres) is the smallest area compatible to protect the Giant Sequoias and other objects of historical and scientific interest. Further, the available uses identified in the Proclamation provide protection of these unique resources while allowing the appropriate management by the USDA Forest Service, and use and enjoyment of the Monument by local communities and visitors. There was strong support in California at the time of designation in 2000 and this remains the case today.

**I. Objects of Interest in the Monument**

The Proclamation emphasizes the variety of scientific and historic resources across the designated landscape.

The rich and varied landscape of the Giant Sequoia National Monument holds a diverse array of scientific and historic resources. Magnificent groves of towering giant sequoias, the world’s largest trees, are interspersed within a great belt of coniferous forest, jeweled with mountain meadows. Bold granitic domes, spires, and plunging gorges texture the landscape. The area’s elevation climbs from about 2,500 to 9,700 feet over a distance of

only a few miles, capturing an extraordinary number of habitats within a relatively small area. This spectrum of ecosystems is home to a diverse array of plants and animals, many of which are rare or endemic to the southern Sierra Nevada. The monument embraces limestone caverns and holds unique paleontological resources documenting tens of thousands of years of ecosystem change. The monument also has many archaeological sites recording Native American occupation and adaptations to this complex landscape, and historic remnants of early Euroamerican settlement as well as the commercial exploitation of the giant sequoias. The monument provides exemplary opportunities for biologists, geologists, paleontologists, archaeologists, and historians to study these objects.<sup>1</sup>

The giant sequoias are a featured object of this landscape, with an emphasis on the ecosystems in which they reside. Thus, the objects of interest in the Proclamation are not simply the sequoia groves, but extend to the terrestrial and aquatic ecosystems that surround the groves. The Proclamation found:

The great elevational range of the monument embraces a number of climatic zones, providing habitats for an extraordinary diversity of plant species and communities. The monument is rich in rare plants and is home to more than 200 plant species endemic to the southern Sierra Nevada mountain range, arrayed in plant communities ranging from low-elevation oak woodlands and chaparral to high-elevation subalpine forest. Numerous meadows and streams provide an interconnected web of habitats for moisture-loving species.

This spectrum of interconnected vegetation types provides essential habitat for wildlife, ranging from large, charismatic animals to less visible and less familiar forms of life, such as fungi and insects. The mid-elevation forests are dominated by massive conifers arrayed in a complex landscape mosaic, providing one of the last refugia for the Pacific fisher in California. The fisher appears to have been extirpated from the northern Sierra Nevada mountain range. The forests of the monument are also home to great gray owl, American marten, northern goshawk, peregrine falcon, spotted owl, and a number of rare amphibians. The giant sequoias themselves are the only known trees large enough to provide nesting cavities for the California condor, which otherwise must nest on cliff faces. In fact, the last pair of condors breeding in the wild was discovered in a giant sequoia that is part of the new monument. The monument's giant sequoia ecosystem remains available for the return and study of condors.<sup>2</sup>

The proclamation also highlights the unique setting that the Monument offers to the study of environmental change:

Ancestral forms of giant sequoia were a part of the western North American landscape for millions of years. Giant sequoias are the largest trees ever to have lived, and are

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<sup>1</sup> Establishment of the Giant Sequoia National Monument By the President of the United States of America, April 15, 2000, A Proclamation

<sup>2</sup> Establishment of the Giant Sequoia National Monument By the President of the United States of America, April 15, 2000, A Proclamation.

among the world's longest-lived trees, reaching ages of more than 3,200 years or more. Because of this great longevity, giant sequoias hold within their tree rings multi-millennial records of past environmental changes such as climate, fire regimes, and consequent forest response. Only one other North American tree species, the high-elevation bristlecone pine of the desert mountain ranges east of the Sierra Nevada, holds such lengthy and detailed chronologies of past changes and events.

Sequoias and their surrounding ecosystems provide a context for understanding ongoing environmental changes. For example, a century of fire suppression has led to an unprecedented failure in sequoia reproduction in otherwise undisturbed groves. Climatic change also has influenced the sequoia groves; their present highly disjunct distribution is at least partly due to generally higher summertime temperatures and prolonged summer droughts in California from about 10,000 to 4,500 years ago. During that period, sequoias were rarer than today. Only following a slight cooling and shortening of summer droughts, about 4,500 years ago, has the sequoia been able to spread and create today's groves.<sup>3</sup>

The physiography and geology of the Monument provide unique opportunities for study since they

have been shaped by millions of years of intensive uplift, erosion, volcanism, and glaciation. The monument is dominated by granitic rocks, most noticeable as domes and spires in areas such as the Needles. The magnificent Kern Canyon forms the eastern boundary of the monument's southern unit. The canyon follows an ancient fault, forming the only major north-south river drainage in the Sierra Nevada. Remnants of volcanism are expressed as hot springs and soda springs in some drainages.

Particularly in the northern unit of the monument, limestone outcrops, remnants of an ancient seabed, are noted for their caves. Subfossil vegetation entombed within ancient woodrat middens in these caves has provided the only direct evidence of where giant sequoias grew during the Pleistocene Era, and documents substantial vegetation changes over the last 50,000 or more years. Vertebrate fossils also have been found within the middens. Other paleontological resources are found in meadow sediments, which hold detailed records of the last 10 millennia of changing vegetation, fire regimes, and volcanism in the Sierra Nevada. The multi-millennial, annual- and seasonal- resolution records of past fire regimes held in giant sequoia tree-rings are unique worldwide.<sup>4</sup>

Humans also have a prominent role in shaping and affecting this landscape which provides an important setting to study the intersection of archeology, history, and ecology:

During the past 8,000 years, Native American peoples of the Sierra Nevada have lived by hunting and fishing, gathering, and trading with other people throughout the region.

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Archaeological sites such as lithic scatters, food-processing sites, rock shelters, village sites, petroglyphs, and pictographs are found in the monument. These sites have the potential to shed light on the roles of prehistoric peoples, including the role they played in shaping the ecosystems on which they depended.

One of the earliest recorded references to giant sequoias is found in the notes of the Walker Expedition of 1833, which described "trees of the redwood species, incredibly large ...." The world became aware of giant sequoias when sections of the massive trees were transported east and displayed as curiosities for eastern audiences. Logging of giant sequoias throughout the Sierra Nevada mountain range began in 1856. Logging has continued intermittently to this day on nonfederal lands within the area of the monument. Early entrepreneurs, seeing profit in the gigantic trees, began acquiring lands within the present monument under the Timber and Stone Act in the 1880s. Today our understanding of the history of the Hume Lake and Converse Basin areas of the monument is supported by a treasure trove of historical photographs and other documentation. These records provide a unique and unusually clear picture of more than half a century of logging that resulted in the virtual removal of most forest in some areas of the monument. Outstanding opportunities exist for studying forest resilience to large-scale logging and the consequences of different approaches to forest restoration.<sup>5</sup>

Thus, the Proclamation clearly identifies the importance and uniqueness of the Monument within a landscape that encompasses the giant sequoia groves and the landscape around the groves that includes additional unique resources of interest.

## **II. Importance of the Boundary to the Proper Care and Management of the Objects**

The boundary of the Monument largely is based on the boundaries of planning watersheds that encompass the giant sequoia groves and that are modified by administrative boundaries. The Proclamation highlights the important role fire played in shaping this landscape and the damaging effects of fire suppression and logging on forest resilience and health. Fire and its beneficial role in shaping the giant sequoia groves and the targeted ecosystems is a landscape level process. The ecological use of fire must be managed over large areas with an integrated approach to ensure that fire occurs at the appropriate periods and intensities to benefit giant sequoias and their surrounding ecosystems.

Not only does management of fire as an ecological process require large landscapes, several of the wildlife species are wide ranging and will benefit from an integrated approach to their management. The imperiled Pacific fisher, extirpated from the northern Sierra Nevada and identified as a resource of interest, have large home ranges (2,500 to 7,000 acres<sup>6</sup>). Some of the

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<sup>5</sup> Establishment of the Giant Sequoia National Monument By the President of the United States of America, April 15, 2000, A Proclamation

<sup>6</sup> Spencer, W.D., S.C. Sawyer, H.L. Romsos, W.J. Zielinski, R.A. Sweitzer, C.M. Thompson, K.L. Purcell, D.L. Clifford, L. Cline, H.D. Safford, S.A. Britting, and J.M. Tucker. 2015. Southern Sierra Nevada fisher conservation assessment. Unpublished report produced by Conservation Biology Institute.

best remaining habitats for Pacific fishers occur within the Monument boundary.<sup>7</sup> Similarly, spotted owl, another resource of interest, is an at-risk species that occurs in mixed-conifer and giant sequoia habitats. Long term demographic studies in the Sierra Nevada bioregion indicate that the spotted owl populations on three study areas on national forest lands are declining and populations are stable or increasing on the study area within the Sequoia-Kings Canyon National Park. These results suggest that the habitat conditions in the giant sequoia and mixed conifer landscape within the national park, a result of changed management that promotes the use of fire and limits logging, are beneficial to spotted owl. Management that more closely follows the approach in the national park and that is consistent with the Proclamation is likely to support a stable to growing population of spotted owls.

The specific boundary is also important to the protection of the geological, archeological, and historical resources of interest that occur throughout the designated area.

### **III. Restrictions Necessary to Protect the Objects**

The Proclamation recognized that longstanding threats to the giant sequoia groves and associated ecosystems included logging with the objective of producing commercial timber volume and off-road use of motorized vehicles. Cumulatively, these activities have degraded terrestrial and aquatic ecosystems within the designated area. Designation of the Monument provides the opportunity to direct the use and management of the resources of interest in order to protect them from further degradation and to restore them.

#### **A. The Monument Is Not Suitable for Timber Production**

The National Forest System lands are managed for multiple uses. One such use is the sustained yield of timber. Land management activities for each national forest are guided by a land and resource management plan (LRMP). Among other things, the LRMP establishes which areas within the national forest are suitable for producing timber as a primary or secondary objective. If land is suited for timber production, it means that the logging of trees for the purpose of generating revenue is a purpose that competes equally with the protection of other resources. The consequence of finding that land is suitable for timber production means that economic arguments, and not simply restoration needs, can be used to justify the removal of trees.

Logging for the purposes of generating revenue generally focuses on accelerating the growth of trees and logging the largest trees in a stand. At the scales needed to produce a sustained yield of timber, these actions are not consistent with ecological restoration of the giant sequoia groves and associated forest ecosystems. In response, the Proclamation removes the threat of timber production from the management of the Monument.

The Proclamation, however, does not prevent the removal of trees, i.e., logging, if the purpose of such removal is for personal fuel wood, restoration, or safety.

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<sup>7</sup> Spencer, W.D., S.C. Sawyer, H.L. Romsos, W.J. Zielinski, R.A. Sweitzer, C.M. Thompson, K.L. Purcell, D.L. Clifford, L. Cline, H.D. Safford, S.A. Britting, and J.M. Tucker. 2015. Southern Sierra Nevada fisher conservation assessment. Unpublished report produced by Conservation Biology Institute.

Removal of trees, except for personal use fuel wood, from within the monument area may take place only if clearly needed for ecological restoration and maintenance or public safety.<sup>8</sup>

The required management plan for the Monument, adopted in 2012, clearly establishes the criteria for assessing the need to remove trees from the Monument and establishes a hierarchy of practices that favors use of fire (natural ignitions or prescribed fire) as priority over use of mechanical equipment to restore that landscape. This management framework allows the mechanical removal of trees in order to meet restoration goals when other methods are not feasible.

The Proclamation clearly authorizes the removal of trees to address public safety. This can include the removal of standing dead trees determined to be a hazard to public safety. Removal of such trees includes removing them from the Monument itself, i.e., not simply falling the trees and leaving them on the ground, if it is determined that doing so is necessary for restoration or to address public safety.<sup>9</sup>

The Proclamation also does not prohibit commercial activity or the sale of trees that are removed from the Monument. The management plan allows the removal of commercial sized trees to meet restoration purposes. And, the Proclamation does not prohibit the sale of forest products that are incidental to logging related to restoration, maintenance, or public safety.

The Forest Service clearly contemplated removal of trees that could be sold as saw logs or biomass. The Final Environmental Impact Statement (FEIS) for the management plan demonstrates that the removal of logs and biomass that could be sold was expected and modeled:

According to the SPECTRUM model, the maximum potential incidental biomass produced for the Monument is variable, but declines sharply in the first five decades for all alternatives. In the first decade, for sawlog volume, all the alternatives range from 6,738 CCF (100 cubic feet) to 8,096 CCF, with the exception of Alternative F which has the maximum potential for 17,921 CCF. By the third decade, the potential outputs for Alternatives A through E drop to less than 600 CCF. Alternative F declines to 9,408 CCF by the third decade. By the fifth decade, all alternatives are less than 150 CCF. **Because the total fiber production is not broken out by sawtimber, poles, fuelwood, and other products, the contribution to the economy cannot be further quantified.** In addition, the numbers projected by the SPECTRUM Model are estimates and do not represent a definite commitment by the Sequoia National Forest. Actual incidental biomass produced from the Monument will depend on site-specific project analysis and will only occur as a result of ecological restoration activities. (emphasis added)<sup>10</sup>

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<sup>8</sup> Establishment of the Giant Sequoia National Monument By the President of the United States of America, April 15, 2000, A Proclamation.

<sup>9</sup> We are aware of claims made by the County of Tulare, timber industry groups, and off-road vehicle users that hazard trees cannot now be removed from the Monument. This is incorrect. The Proclamation allows such removal if needed to address public safety, and restoration and maintenance of the objects.

<sup>10</sup>USDA Forest Service 2012. Giant Sequoia National Monument Management Plan, Final Environmental Impact Statement, p. 581.

The FEIS recognized that biomass (including sawtimber) originating from the Monument could be sold, but that this would be incidental and only as a result of the allowed activities.

## **B. The Proclamation and Management Plan Address Concerns About Wildfire**

The management plan also is responsive to the concern stated in the Proclamation about “an increased hazard of wildfires of a severity that was rarely encountered in pre-Euroamerican times.” The need to reduce fuel loads and restore periodic fire is emphasized in the plan, and the plan provides for the use of a variety of tools and practices to accomplish these safety and restoration objectives.

In making his decision, Forest Supervisor Kevin Elliot found that implementation of the plan was feasible even with the possibility of declining budgets:

Tens of thousands of comments have been received since we began development of this Monument Plan in 2001. These included many comments about the agency’s ability to effectively manage the Monument in light of recent trends in budget and a smaller workforce. I recognize that the optimal implementation rate for the Monument Plan could require higher funding levels in some areas than those currently allocated; however, I believe that the strategic direction described in the Monument Plan gives managers the flexibility to implement the plan under current budgets or budgets that may be even lower.<sup>11</sup>

Thus, the effectiveness of the management plan and Proclamation are not constrained by the actions that are allowed. Instead, it is the budget that Congress approves that constrains management actions including restoration, fuel reduction, and support for visitor services and infrastructure.

## **C. Off-Road Motorized Vehicle Use Not Allowed**

Off-road vehicle use and management of the transportation system on national forest lands have each been identified as having significant impacts on natural resources. The Forest Service found for the Sequoia National Forest in 2009 that:

Over the past few decades, the availability and capability of motor vehicles, particularly OHVs and sport utility vehicles (SUVs), have increased tremendously. Nationally, the number of OHV users has climbed sevenfold in the past 30 years, from approximately 5 million in 1972 to 36 million in 2000. California is experiencing the highest level of OHV use of any state in the nation. There were 786,914 all-terrain vehicles (ATVs), OHVs, and motorcycles registered in 2004, an increase of 330% since 1980. Annual sales of ATVs and OHV motorcycles in California were the highest in the U.S. for the last 5

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<sup>11</sup> USDA Forest Service 2012. Record of Decision. Giant Sequoia National Monument Management Plan, Final Environmental Impact Statement, p. 8.

years. From 1989 to 2002, four-wheel-drive vehicle sales in California also increased by 1500% to 3,046,866.

Unmanaged OHV use has resulted in unplanned roads and trails, erosion, watershed and habitat degradation, user conflicts, and impacts to cultural resource sites. Compaction and erosion are the primary effects of OHV use on soils. Riparian areas and aquatic-dependent species are particularly vulnerable to damage from OHV use. Unmanaged recreation, including impacts from OHVs, is one of “Four Key Threats Facing the Nation’s Forests and Grasslands” (USDA Forest Service, June 2004).<sup>12</sup>

On some National Forest System (NFS) lands, long managed as open to crosscountry motor vehicle travel, repeated use has resulted in unplanned, unauthorized roads and trails. These unauthorized routes generally developed without environmental analysis or public involvement, and do not have the same status as roads and trails included in the NFTS.<sup>13</sup>

The magnitude of unmanaged off-road vehicle use was significant at the time the Monument designated. For instance, approximately 954 miles of routes were identified in a road inventory completed in 2005 on the national forest lands just outside of the Monument and only 55% of these roads were authorized.<sup>14</sup> The remaining 427 miles were not authorized for use, had not been constructed to specifications, had not followed best management practices when they were created, and were not being maintained.

Because unmanaged off-road and off-trail vehicle use, both motorized and mechanized, were threatening the resources of interest in the Monument, the proclamation directed the creation of a transportation plan to address specific uses:

The management plan shall contain a transportation plan for the monument that provides for visitor enjoyment and understanding about the scientific and historic objects in the monument, consistent with their protection. For the purposes of protecting the objects included in the monument, motorized vehicle use will be permitted only on designated roads, and nonmotorized mechanized vehicle use will be permitted only on designated roads and trails, except for emergency or authorized administrative purposes or to provide access for persons with disabilities. No new roads or trails will be authorized within the monument except to further the purposes of the monument. Prior to the issuance of the management plan, existing roads and trails may be closed or altered to protect the objects of interest in the monument, and motorized vehicle use will be permitted on trails until but not after December 31, 2000.

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<sup>12</sup> USDA Forest Service 2009. Motorized Travel Management Final Environmental Impact Statement, Sequoia National Forest, p. 7

<sup>13</sup> USDA Forest Service 2009. Motorized Travel Management Final Environmental Impact Statement, Sequoia National Forest, p. 8

<sup>14</sup> USDA Forest Service 2009. Motorized Travel Management Final Environmental Impact Statement, Sequoia National Forest, p. 10

In 2005, the Forest Service adopted a set of rules nationwide to guide travel management planning. These rules established a process to designate the road system, to regulate its use, and set road management expectations for each national forest. Through that process, a motorized vehicle use map and transportation plan was developed for the Monument and lands in the Sequoia National Forest.

#### **D. The Management Plan for the Monument is the Environmentally Preferred Alternative**

The Proclamation directed the creation of a management plan to “provide for and encourage continued public and recreational access and use consistent with the purposes of the monument.” The management plan was developed and reviewed following the National Environmental Policy Act. In accordance with NEPA, the environmental impact statement considered a range of alternatives including one that allowed logging that was more aggressive. In selecting the terms for the final management plan, the Forest Service determined that the chosen alternative, Alternative B, was the “environmentally preferred alternative” because:

Alternative B will ensure the future health of the land by providing appropriate strategies, objectives, standards and guidelines, and management tools to:

- Protect and preserve the unique features of the Monument consistent with the requirements of the Proclamation
- Restore and maintain natural ecological processes
- Provide key resources and opportunities for public use within the Monument
- Reduce fuel loads and improve wildlife habitat
- Replace the multiple and confusing levels of current management direction with a single comprehensive management plan

Alternative B includes those uses appropriate to the Monument such as dispersed and developed recreation and livestock grazing. The design criteria in Part 3 of the Monument Plan, including the standards and guidelines, will be used to guard against undesirable and/or unintended outcomes.<sup>15</sup>

#### **IV. Contributions to the Local Economy and Culture**

Western counties with protected public lands, like national monuments, have been more successful at attracting fast-growing economic sectors and as a result grow more quickly, on average, than counties without protected public lands. In addition, protected natural amenities—such as the pristine scenery and vistas, and high quality recreational experiences found at the Monument—also help sustain property values and attract new investment.<sup>16</sup>

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<sup>15</sup> USDA Forest Service 2012. Record of Decision. Giant Sequoia National Monument Management Plan, Final Environmental Impact Statement, p. 21.

<sup>16</sup> Headwaters Economics 2017. Giant Sequoia National Monument: *A Summary of Economic Performance in the Surrounding Communities*.

## **A. Economic Growth in Communities Surrounding the Monument**

The communities in Fresno and Tulare counties that are neighbors to the Monument experienced strong growth after the designation of the monument, continuing previous growth trends. From 2001 to 2015, in the region:<sup>17</sup>

- Population grew by 21%
- Jobs grew by 20%
- Real per capita income grew by 24%
- Real personal income grew by 50%

Services jobs, such as doctors, engineers, and teachers, account for the majority of employment growth in the Giant Sequoia Region in recent decades. Non-service jobs, including those related to agriculture and forestry have remained stable since designation of the Monument.<sup>18</sup>

These statistics are reinforced by the feedback from business owners and citizens at the recent Porterville City Council on June 22, 2017. Public speakers at this hearing emphasized the value of the Monument designation to their livelihoods, businesses and personal well-being. Based on this support, the City Council voted to send a letter to Secretary Zinke in support of the Monument.

## **B. Timber Supply and Forestry Sectors**

Timber industry groups allege that designation of the Monument caused a decline in timber supply. They further state that this Monument-influenced decline has negatively affected their industry. There is no question that the timber supply from federal lands has declined statewide since the 1980s.<sup>19</sup> The decline in timber volume for the Sequoia National Forest preceded the designation of the Monument and began around 1994 with the adoption of forest plan amendments throughout the Sierra Nevada to address conservation of an at-risk species. The following table from the FEIS for the Sierra Nevada Forest Plan Amendments illustrates this:<sup>20</sup>

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<sup>17</sup> Headwaters Economics 2017. *Giant Sequoia National Monument: A Summary of Economic Performance in the Surrounding Communities*. All economic data come from U.S. Department of Commerce. 2016. Bureau of Economic Analysis, *Regional Economic Accounts*, Washington, DC; U.S. Department of Commerce. 2017. Census Bureau, *County Business Patterns*, Washington, DC.

<sup>18</sup> Headwaters Economics 2017. *Giant Sequoia National Monument: A Summary of Economic Performance in the Surrounding Communities*. <https://headwaterseconomics.org/wp-content/uploads/Sequoia.pdf>

<sup>19</sup> USDA Forest Service 2004. *Sierra Nevada Forest Plan Amendment Final Environmental Impact Statement*, p. 177.

<sup>20</sup> USDA Forest Service 2004. *Sierra Nevada Forest Plan Amendment Final Environmental Impact Statement*, p. 176.

**Table 3.3.1b.** Average Annual Sawtimber Sold from National Forests in the Sierra Nevada Region, Calendar Years 1988-2002.

National Forest	Average Annual Sales (MMBF)				
	1988-1990	1991-1993	1994-1996	1997-1999	2000-2002
Eldorado	156.4	109.5	5.9	40.6	35.2
Inyo	5.1	5.2	0.3	1.1	3.4
Lassen	134.9	124.2	19.3	41.7	19.8
Modoc	51.9	31.6	5.2	9.2	4.6
Plumas	185.3	75.6	20.0	23.3	6.0
Sequoia	48.5	47.7	4.9	14.1	6.1
Sierra	122.6	51.8	19.4	10.9	7.9
Stanislaus	180.1	47.4	14.2	31.7	10.2
Tahoe	103.3	33.3	47.3	31.1	25.1
LTBMU	4.0	3.6	13.8	1.4	0.4
Humboldt-Toiyabe	5.4	3.2	3.3	0.0	-
<b>TOTAL</b>	<b>997.5</b>	<b>533.0</b>	<b>153.7</b>	<b>205.1</b>	<b>118.8</b>

MMBF = million board feet (Source: USDA Forest Service 1998-2002)

Since adoption in 2000, the annual amount of timber sold has averaged 5.3 mmbf.<sup>21</sup> This is comparable to levels in 1994 to 1996 and indicates that the timber volume prior to designation was not much different than the volume available after designation. The FEIS also identified that:

Multiple factors are involved in closures [of mills], including the supply of and demand for both raw materials and finished products. Consolidation and increasing efficiency in the forest products industry has also played a role (Laaksonen-Craig et al. undated).<sup>22</sup>

Timber supply in the southern Sierra Nevada region has also been strongly affected by the recent drought-related tree mortality. Following an unprecedented drought between 2012 and 2016, significant numbers of trees have died within an elevational band that falls within portions of the Monument. The Forest Service and the National Park Service are now faced with removing trees that pose a hazard. The lumber mills in the region, however, don't have the capacity to utilize all the dead timber.<sup>23</sup>

## V. Support for the Monument at Time of Designation and Now

Support for designation of the Monument was extensive and strong leading up to the Proclamation. As early as 1992, Rep. Levine and others proposed legislation to create the Sequoia Monument (H.R. 5594). This was followed in 1993 and 1997 by legislative proposals from Rep. Brown and ten others to establish a forest preserve to protect the sequoia groves and adjacent forests from threats resulting from management (H.R. 2153 and H.R. 2077).

<sup>21</sup> Values taken from Periodic Timber Sale Accomplishment Reports (PTSAR) for Sequoia National Forest (<https://www.fs.fed.us/forestmanagement/products/ptsar/index.shtml>)

<sup>22</sup> USDA Forest Service 2004. Sierra Nevada Forest Plan Amendment Final Environmental Impact Statement, p. 176.

<sup>23</sup> <http://www.visaliatimesdelta.com/story/news/local/2016/04/22/trying-keep-dead-trees-california-forests/83400444/>

Once the Monument was proposed, Rep. Sam Farr and sixteen of his California colleagues delivered to President Clinton a letter supporting his intention to create the Giant Sequoia National Monument, citing its value for recreation, clean drinking water and forest conservation. Building on this, sixty-five state legislators in California signed a similar letter of support. Reinforcing this legislative support, supporters of the Monument sent 600,000 postcards to Congress and President Clinton, urging them to protect the sequoias.<sup>24</sup> As part of the review undertaken by Agriculture Secretary Dan Glickman in early 2000, well attended public meetings were held in Visalia and Fresno, communities close to the Monument, providing opportunities for interested persons to express support and concern.

The designation of the Monument was challenged by Tulare County and others later in 2000. In response to this challenge, California Attorney General Bill Lockyer joined the U. S. Department of Justice in defending the President's authority to designate the Monument. This investment of public resources in defending the Monument reflects California's strong support of the designation at that time.

Today, the Giant Sequoia National Monument has strong support in California. In response to the Executive Order directing a review of selected monuments, California Senators Feinstein and Harris sent a letter of support for the designation of the Giant Sequoia Monument and five others in California that are under review.<sup>25</sup> In addition, the California State Assembly and Senate passed a joint resolution on June 13, 2017 supporting all monument designations in California and specifically naming the Giant Sequoia National Monument.<sup>26</sup> Lastly, California Attorney General Xavier Becerra sent a letter to Secretary Zinke supporting the designation of the Giant Sequoia Monument and the other five under review in California, defended the authority of the President to designate, and identified the lack of authority of a subsequent President to change this designation.<sup>27</sup>

## **VI. The Proclamation was Legal and Adequate Under the Antiquities Act**

### **A. 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.<sup>28</sup>

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<sup>24</sup> Sierra Club Hails New Sequoia National Monument, Saturday, April 15, 2000

([http://vault.sierraclub.org/ca/sequoia/Monument/sc\\_press\\_release\\_41500.htm](http://vault.sierraclub.org/ca/sequoia/Monument/sc_press_release_41500.htm))

<sup>25</sup> <https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=6836900A-EEB7-45F2-AD0E-DBA051C0EB28>

<sup>26</sup> AJR 15, Aguiar-Curry. Federal public lands.

([https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AJR15](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AJR15))

<sup>27</sup> <https://oag.ca.gov/news/press-releases/attorney-general-becerra-trump-administration-protect-california%E2%80%99s-national>

<sup>28</sup> 54 U.S.C. § 320301(a) (2012).

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.”<sup>29</sup>

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 court generally has recourse to congressional intent in the interpretation of a statute *only when the language of a statute is ambiguous*.<sup>30</sup>

Before passing the Antiquities Act of 1906, Congress had considered other antiquities bills that set forth a clearly defined list of qualifying “antiquities.”<sup>31</sup> An earlier version of the Antiquities Act—considered immediately before the final Act—also would have made reservations larger than 640 acres only temporary.<sup>32</sup> 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.<sup>33</sup>

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<sup>29</sup> *Id.* § 320301(a), (b).

<sup>30</sup> *Utah Ass’n of Cty.s. 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).

<sup>31</sup> 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.*].

<sup>32</sup> *See* S. 5603, 58th Cong. § 2 (1905), *reprinted in* *History of Legis.*

<sup>33</sup> S. 4698, 59th Cong. § 2 (1906), *reprinted in* *History of Legis.*

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.”<sup>34</sup> 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.”<sup>35</sup>

## **B. “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.”<sup>36</sup> 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 grounds of the Olympic Elk (*Cervus roosevelti*), a species peculiar to these mountains and rapidly decreasing in numbers.”<sup>37</sup>

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.<sup>38</sup> 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.”<sup>39</sup>

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

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<sup>34</sup> 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).

<sup>35</sup> *Id.*

<sup>36</sup> Proclamation No. 793, 35 Stat. 2174 (1908).

<sup>37</sup> Proclamation No. 896, 35 Stat. 2247 (1909).

<sup>38</sup> 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).

<sup>39</sup> Proclamation No. 1262, 38 Stat. 1991 (1914).

preserved in absolutely natural condition, and great stretches now bare that will become forested in the course of the next century.<sup>40</sup>

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.”<sup>41</sup> President Franklin D. Roosevelt designated Channel Islands National Monument, in part, for the “ancient trees” it contained.<sup>42</sup> 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.”<sup>43</sup>

### **C. 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 of what constitute “objects” and “scientific interests” when those findings are challenged.<sup>44</sup> 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.”<sup>45</sup>

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.”<sup>46</sup> In his proclamation, President Truman 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 ...’”<sup>47</sup> 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.”<sup>48</sup> 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.’”<sup>49</sup>

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<sup>40</sup> Proclamation No. 1733, 43 Stat. 1988 (1925).

<sup>41</sup> Proclamation No. 1950, 47 Stat. 2453 (1931).

<sup>42</sup> Proclamation No. 2281, 52 Stat. 1541 (1938).

<sup>43</sup> Proclamation No. 3506, 77 Stat. 960 (1962).

<sup>44</sup> 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.”).

<sup>45</sup> *Cameron v. United States*, 252 U.S. 450, 455–56 (1920) (quoting Proclamation No. 794, 34 Stat. 225 (1908)).

<sup>46</sup> *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.)).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 142 (emphasis added) (citing *Cameron v. U.S.*, 252 U.S. 450, 455–56 (1920)).

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.<sup>50</sup>

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.”<sup>51</sup> The court also found 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.<sup>52</sup>

Recently, Giant Sequoia National Monument was challenged on grounds that it protects objects that do not qualify under the Act.<sup>53</sup> 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.”<sup>54</sup>

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.<sup>55</sup>

#### **D. 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.”<sup>56</sup> In other

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<sup>50</sup> *Wyoming v. Franke*, 58 F. Supp. 890, 895 (D. Wyo. 1945).

<sup>51</sup> *Anaconda Copper Co. v. Andrus*, 14 Env’t Rep. Cas. (BNA) 1853, 1855 (D. Alaska 1980).

<sup>52</sup> *Id.*

<sup>53</sup> *Tulare County v. Bush*, 306 F.3d 1138, 1140–41 (D.C. Cir. 2002).

<sup>54</sup> *Id.* at 1142 (emphasis added) (internal quotations omitted).

<sup>55</sup> *Mt. States Leg. Found. v. Bush*, 306 F.3d 1132, 1133–34 (D.C. Cir. 2002) (citations omitted).

<sup>56</sup> 58 F. Supp. 890, 896 (D. Wyo. 1945).

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.<sup>57</sup> Since then, courts have been exceedingly hesitant to infringe upon the president’s broad discretion in determining the “smallest area” possible encompassed by a monument—including the 1.7 million-acre Grand Staircase-Escalante National Monument.<sup>58</sup>

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.”<sup>59</sup> Beginning in 1978, presidents have included this declaration in all proclamations establishing or enlarging national monuments.<sup>60</sup>

### **E. 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.<sup>61</sup> 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

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<sup>57</sup> 252 U.S. 450, 455–56 (1920).

<sup>58</sup> *Utah Ass’n of Cty.s. 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.”).

<sup>59</sup> 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).

<sup>60</sup> 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).

<sup>61</sup> The only significant exceptions to the President’s authority passed 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 the by 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.<sup>62</sup> 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”).

percent of those established, which encompass more than 70 percent of the acreage that has been withdrawn by the President under the Antiquities Act.<sup>62</sup>

Future congressional approval has been more likely, moreover, when considering designations or subsequent expansions that are “more than 100,000 acres.”<sup>63</sup> Through 1981 and excluding monuments included in the Secretary’s current review, Congress explicitly approved of 86 percent, or 25 of the 29, reservations fitting that description.<sup>64</sup>

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.<sup>65</sup> In some cases, such as Craters of the Moon, however, it has taken Congress 78 years to act.<sup>66</sup> 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: Badlands<sup>67</sup> (130,000 acres), Biscayne<sup>68</sup> (172,924 acres), Mount Saint Helens<sup>69</sup> (110,000 acres), El Malpais<sup>70</sup> (114,000 acres), and Santa Rosa and San Jacinto Mountains<sup>71</sup> (272,000 acres). Two of these, Badlands and Biscayne, were subsequently re-designated as national parks.

#### **F. 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.”<sup>72</sup> In a press briefing on this order, Secretary Zinke stated that the it “directs the Department of Interior to make recommendations to the President on whether a monument should be rescinded, resized, [or]<sup>73</sup> modified.” However, any such actions taken by the president

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<sup>62</sup> 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”).

<sup>63</sup> Exec. Order No. 13792 § 2.

<sup>64</sup> MONUMENTS LIST DATA.

<sup>65</sup> *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).

<sup>66</sup> 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).

<sup>67</sup> P.L. 70-1021; 45 Stat. 1553.

<sup>68</sup> P.L. 90-606; 82 Stat. 1188.

<sup>69</sup> P.L. 97-243; 96 Stat. 301.

<sup>70</sup> P.L. 100-225; 101 Stat. 1539.

<sup>71</sup> P.L. 106-351; 114 Stat. 1362.<sup>72</sup> Exec. Order No. 13792, 82 Fed. Reg. 20,429 (May 1, 2017).

<sup>72</sup> Exec. Order No. 13792, 82 Fed. Reg. 20,429 (May 1, 2017).

<sup>73</sup> 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>

would be unlawful: only Congress has the authority to rescind, reduce, or substantially modify a national monument.

The president’s powers regarding management of public lands are limited to those delegated to him by Congress. While the Antiquities Act of 1906 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.<sup>74</sup>

The Property Clause of the U.S. Constitution<sup>75</sup> gives Congress “exclusive” authority over federal property,<sup>76</sup> in effect making “Congress[] trustee of public lands for all the people.”<sup>77</sup> “The Clause must be given an expansive reading, for ‘(t)he power over the public lands thus entrusted to Congress is without limitations.’”<sup>78</sup> Congress may, of course, delegate its authority to manage these lands to executive agencies or the president,<sup>79</sup> 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.”<sup>80</sup> 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.<sup>81</sup> 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.<sup>82</sup>

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<sup>74</sup> 54 U.S.C. § 320301(a), (b).

<sup>75</sup> U.S. Const. art. IV, § 3, cl. 2.

<sup>76</sup> See, e.g., *Utah Power & Light Co. v. United States*, 243 U.S. 389, 404 (1917).

<sup>77</sup> *United States v. City & Cty. of San Francisco*, 310 U.S. 16, 28 (1940).

<sup>78</sup> *Kleppe v. New Mexico*, 426 U.S. 529, 539–40 (1976) (quoting *San Francisco*, 310 U.S. at 29).

<sup>79</sup> *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 Ctys. 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)).

<sup>80</sup> 54 U.S.C. § 320301(a)–(b) (2012).

<sup>81</sup> *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.”).

<sup>82</sup> 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.<sup>83</sup> 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.

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.<sup>84</sup> 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."<sup>85</sup> 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.<sup>86</sup>

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."<sup>87</sup> However, none of these Presidential actions that reduced the size of national monuments has ever been challenged in court. Perhaps more importantly, 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.<sup>88</sup>

In FLPMA, Congress not only repealed nearly all sources of executive authority to make withdrawals except for the Antiquities Act,<sup>89</sup> but also overturned the implied executive authority to withdraw public lands that the Supreme Court had recognized in 1915 as well.<sup>90</sup> FLPMA's

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<sup>83</sup> H.R. 11357, 68<sup>th</sup> Cong. (1925).

<sup>84</sup> *Cf. Utah Ass'n of Ctys. 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.").

<sup>85</sup> Proposed Abolishment of Castle Pickney National Monument, 39 Op. Atty. Gen. 185, 185.

<sup>86</sup> *Id.* at 187 (emphasis added) (quoting 10 Op. Atty. Gen. at 364).

<sup>87</sup> *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).

<sup>88</sup> Pub. L. 94-579 (Oct. 21, 1976), codified at 43 U.S.C. § 1701 *et seq.*

<sup>89</sup> *Id.* at Title II, § 204, Title VII, §704(a).

<sup>90</sup> *Id.*; *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915).

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.”<sup>91</sup>

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 . . . .”<sup>92</sup> 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.”<sup>93</sup>

## VII. Conclusion

The Giant Sequoia Monument and the other monuments in California are treasured by the majority of Californians as reflected by support from our elected state officials. The monuments foster a deep connection to the historic and environmental resources they protect and offer numerous opportunities to study the unique roles that these resources play in our culture and environment. These monuments should be left intact as originally designated and celebrated and supported for the benefit of future generation.

Sincerely,



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<sup>91</sup> H.R. REP. 94-1163, 9, 1976 U.S.C.C.A.N. 6175, 6183 (emphasis added).

<sup>92</sup> Proposed Abolishment of Castle Pickney National Monument, 39 Op. Atty. Gen. 185, 187 (1938) (citing 10 Op. Atty. Gen. 359, 364 (1862)).

<sup>93</sup> 58 F. Supp. 890, 896 (D. Wyo. 1945).



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