



June 29, 2017

Review, MS-1530
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

[Docket No. DOI-2017-0002]
Review of Certain National Monuments Established Since 1996

Public Comment Re: Grand Canyon-Parashant National Monument

Dear Secretary Zinke:

Since 1919, the National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our more than 1.2 million members and supporters nationwide, including over 25,000 members in Arizona alone, NPCA respectfully asks that you uphold the current monument designation for Grand Canyon-Parashant National Monument (Parashant), thus maintaining the boundaries and protections as established by President Clinton's Proclamation 7265 on January 11, 2000.

Located in one of the most remote places in the United States, Parashant is an environmentally diverse, rugged, and stunning landscape covering just over 1 million acres in northwest Arizona. To its visitors, Parashant offers spectacular vistas, pristine night skies, four separate wilderness areas, historical and archeological treasures, varied biological resources, abundant fossils, and myriad scientific and educational opportunities. Jointly managed by the National Park Service (NPS) and the Bureau of Land Management (BLM), Parashant abuts Grand Canyon National Park to the north and extends west to the border of Nevada.

As NPCA explains in its comments below, the Department of Interior should not recommend any changes to Parashant for the following reasons:

- The President does not have the legal authority to rescind Parashant's designation as a national monument or otherwise reduce in size Parashant's long-established boundaries;
- Congress ratified President Clinton's designation of Parashant through its repeated appropriation of federal funds earmarked for Parashant. This congressional ratification renders moot any argument that Proclamation 7265 did not comply with the requirements of the Antiquities Act;
- The designation of Parashant fits squarely within the requirements and original objectives of the Antiquities Act. Scientific and historic objects protected by the designation include geologic features, such as faults and sedimentary rock layers; archeological treasures evidencing thousands of years of human history; sacred Indian sites; and diverse biologic and scientific resources, including dry caves and multiple endangered and threatened species. Preserving these unique objects requires maintaining Parashant as a remote landscape and, thus, the designation is "the smallest area compatible with the proper care and management of the objects to be protected;"

- BLM and NPS manage Parashant for multiple uses. Recreational uses include photography, hiking, and camping. Hunting is a popular activity. And significant numbers of livestock graze in Parashant;
- Given its remote location, the designation of Parashant has little effect on non-federal lands. Indeed, no communities are located within Parashant and the closest communities outside Parashant are no less than a two-hour drive away;
- The designation of Parashant was, and continues to be, widely supported by State, local, and tribal communities and governments. These stakeholders have been involved with land planning and management at every step; and
- In keeping with the vision to keep Parashant unspoiled, few federal resources are required to maintain Parashant.

I. The President Lacks the Legal Authority to Rescind or Reduce in Size a National Monument under the Antiquities Act.

NPCA submits that the President lacks the legal authority to rescind or reduce in size any national monument proclaimed under the Antiquities Act, including Parashant. Attached to these comments is a memorandum from the law firm of Arnold & Porter Kaye Scholer (“APKS Memo”) (Appendix A) and a law review article by four professors (the “Squillace Article”) (Appendix B), who collectively conclude that no such power of rescission or to make material changes exists. The only result of the current review ordered by President Trump, therefore, would be to make recommendations to Congress, asking that Congress draft legislation to make whatever revocations or modifications your office and the President believe justified.

In summary, whether a president may make a rescission or modification of a monument designation does not turn on any power granted a president by the U.S. Constitution. This issue instead concerns administration of federally owned land, and the Constitution gives that power exclusively to Congress.¹ Whether a president has the power to revoke a national monument designation therefore depends on whether that power is expressly or by implication delegated to a president by an Act of Congress. The Antiquities Act of 1906 authorizes a president to create national monuments on land owned or controlled by the federal government.² The Act says nothing about a President having the power to abolish a national monument or to reduce the size of a monument. And no such power may be implied. This is so for several reasons:

First, the U.S. Attorney General opined in 1938 that the Antiquities Act could not be interpreted to imply that a president has the power to revoke a national monument’s designation. No president has attempted to revoke such a designation since then.³

Second, in the more than 100 years since the adoption of the Antiquities Act, Congress has adopted a comprehensive legislative portfolio to govern federally-owned land, into which the Antiquities Act was folded and in relation with which it must be interpreted. One of those statutes was the Federal Land Policy and Management Act (“FLPMA”), adopted in 1976.⁴

- In FLPMA, Congress effectively adopted the Attorney General’s interpretation that no revocation power should be read into the Antiquities Act by implication. When Congress legislates on a subject, “[C]ongress is deemed to know the executive and judicial gloss given to certain language and thus adopts the existing interpretation unless it affirmatively acts to

¹ See U.S. Const., Property Clause, Art. IV, § 3.

² 54 U.S.C. § 320301(a).

³ “Proposed Abolishment of Castle Pinckney Nat’l Monument,” 39 Op. Atty. Gen. 185 (1938).

⁴ 43 U.S.C. 1704 *et seq.*

change the meaning.”⁵ Yet in FLPMA, Congress did not “affirmatively act to change the meaning” of the Antiquities Act as interpreted by the Attorney General in 1938. Congress therefore in effect adopted that interpretation.

- One of Congress’ purposes in FLPMA was to reassert its own authority over federal land withdrawals and to limit the authority of the Executive Branch to express delegations.⁶ Accordingly, FLPMA repeals a number of prior statutes that had authorized Executive Branch withdrawals and revocations and, thus, renders obsolete a Supreme Court decision that had found an implied power in the presidency to withdraw land from oil exploration.⁷ The Supreme Court has made clear that, to harmonize different statutes, “a specific policy embodied in a later federal statute should control our construction of [a prior one], even though it had not been expressly amended.”⁸ This is particularly so when the later statute is a comprehensive legislative scheme.⁹ FLPMA was the very sort of “comprehensive legislative scheme” that requires interpreting the Antiquities Act to harmonize with FLPMA, and it would not be harmonious to read into the Antiquities Act an implied authorization for a president to revoke or materially modify a prior monument’s designation.¹⁰

Moreover, a president does not have the power to reduce the size of a national monument. This is because a president does not have the power to do in part what he cannot do in full. It is true that some presidents did modify the size of monument designations before FLPMA, but the background of those modifications demonstrates that FLPMA withdrew the underpinnings of that authority. FLPMA makes clear that it is “specially reserv[ing] to the Congress *the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act.*”¹¹ Accordingly, no president has attempted to reduce the size of a national monument since FLPMA any more than to revoke such a designation altogether.

II. No Legal Authority Exists for the President to Rescind or Reduce in Size a Monument Administered by the National Park Service.

The conclusion that only Congress may revoke a national monument designation applies doubly to those national monuments administered by NPS. In the case of Parashant, the national monument is jointly managed by BLM and NPS.¹²

Ten years after adoption of the Antiquities Act, Congress adopted the Organic Act of 1916 creating the National Park System.¹³ Congress there mandated that the fundamental purpose of the Park

⁵ *Bledsoe v. Palm Beach County Soil & Water Conservation Dist.*, 133 F.3d 816, 822 (11th Cir. 1998) (addressing legislative action after earlier Attorney General interpretation); see *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 381-82 and n.66 (1982) (considering whether rights should be implied under a statute); *Souter v. Jones*, 395 F.3d 577, 598 (6th Cir. 2005).

⁶ 43 U.S.C. § 1704 (a)(4).

⁷ *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915).

⁸ See *United States v. Romani*, 523 U.S. 517 (1998).

⁹ See *Northwest Airlines, Inc. v. Transport Workers Union*, 451 U.S. 77, 97 (1981); see also *Hi-Lex Controls Inc. v. Blue Cross*, 2013 WL 228097 (E.D. Mich. Jan. 22, 2013), at *3.

¹⁰ See APKS Memo at 8-14; Squillace Article at 3-5.

¹¹ House Rep. No. 94-1163 (May 15, 1976), at 9 (emphasis added).

¹² Establishment of the Grand Canyon-Parashant National Monument, Proclamation 7265, 65 Fed. Reg. 2825 (Jan. 11, 2000) [hereinafter, “Proclamation 7265”], at 2828 (“The Secretary of the Interior shall manage the monument through the [BLM] and the [NPS]. . . . [NPS] shall continue to have primary management authority over the portion of the monument within the Lake Mead National Recreation Area, and [BLM] shall have primary management authority over the remaining portion of the monument.”).

¹³ Codified at 54 U.S.C. § 100101(a).

System is to “conserve the scenery, natural and historic objects, and the wild life in the System units ... [and] leave them unimpaired for the enjoyment of future generations.”¹⁴ In 1970, Congress adopted amendments to that Organic Act which made clear that national monuments administered by NPS are part of that System and are to be protected as such.¹⁵ And Congress provided that the entire National Park System is a “cumulative expression of a single national heritage.”¹⁶

In 1978, Congress returned to this subject and added the mandate that

the protection, management, and administration of the System units shall be conducted in light of the high public value and integrity of the System and shall not be exercised in derogation of the values and purposes for which the System units have been established, *except as directly and specifically provided by Congress.*¹⁷

Congress thus did not intend that a president could unilaterally revoke the designation of a national monument that is part of the National Park System without Congress’ directly and specifically so providing. Such an act would be in derogation of the values and purposes for which Parashant had previously been established.

Moreover, a president clearly lacks the authority to reduce the size of a national monument where, as here, NPS administers the land. That is because Congress adopted provisions governing the National Park System expressly addressing the change in boundaries for any unit of the system, and those provisions include monuments administered by NPS.¹⁸ While Congress in 1977 gave the Secretary of the Interior the power to make minor boundary adjustments, Congress made clear in 1990 amendments (Pub. Law No. 101-628) that any other changes in boundaries would require a proposal to Congress and legislative action.¹⁹ Congress also made clear that any such proposal would need to be accompanied by, among other things, an

analysis of whether or not an existing boundary provides for the adequate protection and preservation of the natural, historic, cultural, scenic and recreational resources integral to the System unit.²⁰

Indeed, Congress provided that even “minor boundary changes involving only deletions of acreage owned by the Federal Government and administered by the [NPS] may be made only by an Act of Congress.”²¹

As in the case of FLPMA’s putting an end to boundary changes made by previous presidents in non-NPS monuments, this amendment to the legislation governing the National Park System makes clear

¹⁴ *Id.*

¹⁵ See Pub. L. No. 91-383 (National Park System General Authorities Act), codified in this regard at 54 U.S.C. §§ 100102(2), 100501 (defining “National Park System” to include any area administered by the Director of NPS, including for “monument” purposes). Those monuments are as fully covered by general regulations protecting the entire System as are any national parks created by Congress. See 36 C.F.R. § 1.2 (NPS regulations apply to federally owned land administered by NPS).

¹⁶ 54 U.S.C. § 100101(b)(1)(B).

¹⁷ *Id.* § 100101(b)(2) (emphasis added).

¹⁸ See 54 U.S.C. 100102 and 100501.

¹⁹ See 54 U.S.C. 100505, 100506 (a), (c); see also H.R. Rep. No. 101-695 (Sept. 13, 1990) at 6 (“The Committee believes it is important to keep in mind that this is a study process and no decisions on these matters will be made unless there is subsequent Congressional action.”).

²⁰ *Id.* § 100506(a)(1).

²¹ *Id.* § 100506(c)(6); see also 2006 Management Policies 3.5.

that, at least thereafter, no boundary changes may be made by a president to any monument that is part of that System.

III. Congress Has Ratified the Designation of Parashant as a National Monument.

Since its designation as a national monument in 2000, Congress has ratified Parashant's designation through its repeated and knowing appropriation of federal funds to support Parashant's mission. This congressional ratification renders moot any argument that Proclamation 7265 did not comply with the requirements of the Antiquities Act.

The Supreme Court has held that Congress can ratify a presidential action taken pursuant to statutory authority — such as Proclamation 7265 — through appropriations. For example, in *Fleming v. Mohawk Wrecking & Lumber Co.*, the Court held that Congress's appropriation of funds to the Office of Temporary Controls ratified President Roosevelt's executive order creating the agency and vesting it with duties of the previous Office of Price Administration.²² Likewise, in *Isbrandtsen-Moller Co. v. United States*, the Supreme Court noted in dicta that Congress ratified a presidential order transferring to the Commerce Department the duties of an agency that administered a maritime trade statute by appropriating funds to the Commerce Department earmarked for that purpose.²³

Repeated appropriations in support of Parashant establishes congressional intent to ratify President Clinton's designation of Parashant under the Antiquities Act. Funding from BLM, including funds coming from the Land and Water Conservation Fund (LWCF), has been used to acquire inholdings at Parashant.²⁴ In 2001, BLM spent \$500,000 to acquire the Bar Ten Ranch inholding. The Bar Ten Ranch includes 400-acres of private land and a 43,572-acre grazing lease. In 2010, BLM spent approximately \$1.8 million to acquire 1,920 acres of private property that allows for greater access to recreation, hunting, sightseeing, and scientific monitoring programs within Parashant.²⁵

Additionally, the Committee on Appropriations recommended providing funds of \$1.2 million for fiscal year 2002 to support Parashant.²⁶ Likewise, in fiscal year 2005, BLM requested \$800,000 to

²² See 331 U.S. 111, 116 (1947) (“And the appropriation by Congress of funds for the use of such agencies stands as confirmation and ratification of the action of the Chief Executive.”); *id.* at 118–19; see also *Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275, 293–94 (1958), *overruled in part on other grounds by California v. United States*, 438 U.S. 645 (1978) (holding that repeated congressional reauthorization and explicit appropriations for a California water project ratified the Interior Secretary's interpretation of a statute regulating the project); *Brooks v. Dewar*, 313 U.S. 354, 360–61 (1941) (finding that Congress ratified the Interior Department's program of selling temporary licenses for grazing livestock on public lands by repeatedly and with knowledge of the license sales appropriating a portion of the revenues the program generated for improvements to grazing areas).

²³ See 300 U.S. 139, 147 (1937) (“Whatever doubt may be entertained as to the intent of Congress that the Shipping Board should be subject to transfer by the President . . . , Congress appears to have recognized the validity of the transfer and ratified the President's action by the appropriation Acts . . . all of which make appropriations to the Department of Commerce for salaries and expenses to carry out the provisions of the Shipping Act as amended and refer to the executive order.”).

²⁴ The LWCF was established by Congress in 1964 and uses earnings from offshore oil and gas leases to acquire lands, waters, and interests to support federal land management agencies' objectives. See Land & Water Conservation Fund, at <https://www.nps.gov/subjects/lwcf/index.htm> (last accessed 6/26/2017). LWCF appropriations bills typically identify purposes for which agencies are to use the funds, although the president may allot any undirected funds. See Carol Hardy Vincent, Cong. Research Serv., RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues* 1–2 (2014), at <https://fas.org/sgp/crs/misc/RL33531.pdf> (last accessed 6/26/2017).

²⁵ See The Conservation Fund, Land Conservation History by County: Northern Arizona (Appendix C).

²⁶ See H.R. Rep. No. 107-103, at 21 (June 19, 2001) (Dep't of Interior and Related Agencies Appropriations Bill, 2002).

support Parashant.²⁷ These requests, which were known to Congress as part of the budget process, were approved.

IV. Analysis of the Factors Identified in the Request for Comments Supports Parashant’s Continued Designation as a National Monument and Maintenance of Its Existing Boundaries.

Even assuming President Trump has the power to revoke Parashant’s designation as a national monument or otherwise modify its boundaries, NPCA respectfully submits that the President should not do so. Analysis of the factors identified in the Notice of Opportunity for Public Comment (“the Notice”²⁸) supports both Parashant’s continued designation as a national monument and its existing boundaries.

A. Factors (i) and (ii): The Parashant Designation Reflects the Antiquity Act’s Requirements and Original Objectives.

The Notice requests comment on whether the designation of Parashant meets the “original objectives” and requirements of the Antiquities Act, including that Parashant be the “smallest area compatible with the proper care and management of the objects to be protected,” and whether the designated lands are appropriately classified as those eligible for protection under that Act.²⁹ Both factors support Parashant’s continued designation.

1. Congress Intended the Antiquities Act to Protect Large Areas Having Historic and Scientific Interest.

The term “original objectives” suggests that there has been some change in the Antiquities Act’s objectives over time. But there has been none. Nor were the “original objectives” limited to protecting small areas.

From its inception, Congress intended the Antiquities Act to include large areas of historic or scientific interest as well as small areas around archeological ruins. President Theodore Roosevelt designated monuments of 818,000 acres — Grand Canyon (1908) — and 640,000 acres — Mount Olympus (1909). The Supreme Court upheld the Grand Canyon designation in 1920.³⁰ And every court to have considered the issue since then has agreed that the Act was intended to protect, not just archeological “objects,” but large natural areas having historic or scientific interest, as the Act provides.³¹ For example, in 1976, the Supreme Court found that a pool of water and the fish which live there are such objects.³² The Court of Appeals for the District of Columbia rejected an argument that Giant Sequoia National Monument was a violation of the Antiquities Act because it included supposedly non-qualifying objects, explaining that “such items as ecosystems and scenic vistas ... did not contravene the terms of the statute.”³³

²⁷ See S. Hrg. 108-401, at 81 (Feb. 12, 2004), available at <https://www.gpo.gov/fdsys/pkg/CHRG-108shrg92723/pdf/CHRG-108shrg92723.pdf> (Proposed Fiscal Year 2005 Budget Request for the Dep’t of the Interior) (last accessed 6/26/2017).

²⁸ See <https://www.gpo.gov/fdsys/pkg/FR-2017-05-11/pdf/2017-09490.pdf>

²⁹ Review of Certain National Monuments Established Since 1996; Notice of Opportunity for Public Comment, 82 Fed. Reg. 22016 (May 11, 2107) [hereinafter, “Notice”].

³⁰ *Cameron v. United States*, 252 U.S. 459 (1920).

³¹ See, e.g., *Caepfert v. United States*, 426 U.S. 128 (1976); *Mountain States Legal Found. v. Bush*, 306 F. 3d 1132 (D.C. Cir. 2002).

³² *Caepfert*, 426 U.S. at 141-42.

³³ *Tulare Cty. v. Bush*, 306 F. 3d 1138, 1141-42 (D.C. Cir. 2002).

Because the Antiquities Act may be used to protect objects as large as the Grand Canyon and objects of natural rather than archeological interest that are of historic or scientific interest, size alone does not make a national monument illegal under the Act.

2. *Parashant Is Precisely the Type of Federal Land that Congress Intended to Protect.*

Parashant fits squarely within Congress' objectives in enacting the Antiquities Act. As Proclamation 7265 makes clear, Parashant "encompass[es] an array of scientific and historic objects" resulting from a "rich human history spanning more than 11,000 years, and an equally rich geologic history spanning almost 2 billion years."³⁴ The designation also protects a complete ecosystem.³⁵

Parashant is a geologic and scientific treasure offering deep insight into Earth's formation. Within its borders, the Colorado Plateau includes "[d]eep canyons, mountains, and lonely buttes [that] testify to the power of geologic forces and provide colorful vistas."³⁶ The largely "undeformed and unobscured" sedimentary rock layers offer a "clear view to understanding the geologic history of the Colorado Plateau."³⁷ The Shivwits Plateau is located at the intersection of the Sonoran, Great Basin, and Mojave deserts and includes highly faulted terrain consisting of canyons, cliffs, and volcanic rock.³⁸ Fossils are found in abundance throughout Parashant.³⁹ Visitors can enjoy four separate wilderness areas: Grand Wash Cliffs, Paiute, Mt. Trumbull, and Mt. Logan.⁴⁰

Significant scientific research takes place in Parashant. Such research includes vegetation mapping and monitoring, hydrology evaluation, weather assessment, and habitat rehabilitation. Of particular scientific interest are the dry caves where research focused on biodiversity, fossils, and microbial crusts takes place.⁴¹ As NPS has explained, the "largely wild and undisturbed dry caves of Parashant represent time capsules that harbor items like ice age fossils, cultural artifacts, unique wildlife and geologic features."⁴² Also of scientific interest is the ponderosa pine ecosystem in the Mt. Trumbull Wilderness Area. Scientists have studied this ecosystem to gain insight into tree-ring climatic reconstruction, fire history, and forest structure change.⁴³

The designated lands also are rich in archeological and historic objects. Rock art images, quarries, villages, watchtowers, agricultural features, burial sites, caves, and rock shelters give evidence of human presence as early as 7000 B.C.⁴⁴ Petroglyphs, agave roasting pits, and pueblos evidence the

³⁴ Proclamation 7265, 65 Fed. Reg. at 2825; see Dep't of Interior, Grand Canyon-Parashant National Monument, Long-range Interpretative Plan (Aug. 2012) [hereinafter "LRIP"], at 2, *available at* https://www.nps.gov/para/learn/management/upload/PARA_LRIP.pdf (last accessed 6/19/2017).

³⁵ See LRIP at 2.

³⁶ Proclamation 7265, 65 Fed. Reg. at 2825.

³⁷ *Id.*

³⁸ See *id.* 2826, 2827; Backpacker, Grand Canyon-Parashant National Monument (Oct. 18, 2000), *available at* <https://www.backpacker.com/stories/grand-canyon-parashant-national-monument> (last accessed 6/19/2017).

³⁹ See Proclamation 7265, 65 Fed. Reg. at 2826; Grand Canyon-Parashant Background Materials, U.S. Dep't of Interior (Jan. 11, 2000); LRIP at 2.

⁴⁰ NPS, Grand Canyon-Parashant National Monument, Wilderness, *at* <https://www.nps.gov/para/planyourvisit/wilderness.htm> (last accessed 6/21/2017).

⁴¹ See NPS, Grand Canyon-Parashant National Monument, Science & Research, *at* <https://www.nps.gov/para/learn/scienceresearch.htm> (last accessed 6/19/2017).

⁴² *Id.*

⁴³ See LRIP at 3.

⁴⁴ See Proclamation 7265, 65 Fed. Reg. at 2826.

rich history of the Ancestral Puebloan and Southern Paiute cultures.⁴⁵ Numerous sacred sites of the Southern Paiute and other American Indian tribes are located in Parashant.⁴⁶ The lifestyles of early ranchers and miners also are seen in the ranch structures, corrals, fences, water tanks, and sawmill ruins scattered throughout Parashant.⁴⁷

Parashant abounds with biologic resources. The Mexican spotted owl, California condor, desert tortoise, peregrine falcon, pronghorn antelope, desert bighorn sheep, and southwestern willow flycatcher are just a few of the endangered, threatened or special wildlife species found in Parashant.⁴⁸ Threatened plant species include Brady Pincushion Cactus, Holmgren Milk Vetch, Jones' Cycladenia, Siler Pincushion Cactus, and Welsh's Milkweed.⁴⁹

In designating Parashant, President Clinton carefully considered and complied with the Antiquities Act's requirement to reserve "the smallest area compatible with the proper care and management of the objects to be protected." As discussed, Parashant includes widely scattered, diverse, and abundant geologic, scientific, biological, archeological, and historic resources. A smaller designation would not meet the conservation needs of these resources. Critically, preservation of the historic and geological objects requires sufficient land to retain the remoteness of the area that allowed for the preservation of these objects in the first instance. Similarly, the scientific value of this area in many cases depends on maintaining the size of the area and ensuring the continued interaction of these objects.⁵⁰ Moreover, many of the biological resources rely on the entire area to maintain viable populations and their ecosystems, while other biological resources rely on specific geologic formations to which they have adapted.⁵¹ As a practical matter, disaggregation of Parashant would complicate its management, put in danger the very resources that the designation is intended to protect, and be more expensive than maintaining the area as it exists today.⁵²

B. Factors (iii) and (iv): The Diverse and Abundant Resources Found in Parashant Are Available for Multiple Uses.

The Notice requests comment on the effect of the designation on available uses on both Federal and non-Federal Lands within, or in proximity to, the designated lands. Parashant's designation has allowed for greater and more enjoyable access to the designated lands and has allowed surrounding communities to thrive.⁵³

⁴⁵ See Grand Canyon Trust, Grand Canyon-Parashant National Monument, at <https://www.grandcanyontrust.org/grand-canyon-parashant-national-monument> (last accessed 6/19/2017). Parashant is derived from an early translation of a Paiute family name "Parashonts," meaning "elk or large deer standing in water." *Id.*

⁴⁶ See LRIP at 2.

⁴⁷ See Proclamation 7265, 65 Fed. Reg. at 2826.

⁴⁸ See *id.* at 2827; Backpacker, Grand Canyon-Parashant National Monument (Oct. 18, 2000), available at <https://www.backpacker.com/stories/grand-canyon-parashant-national-monument> (last accessed 6/19/2017).

⁴⁹ See Dep't of Interior, Grand Canyon-Parashant National Monument Management Plan (Approved Plan) (Feb. 2008), at B-5, available at <https://www.nps.gov/para/learn/management/records-of-decision-and-management-plan.htm> (last accessed 6/26/2017).

⁵⁰ See U.S. Dep't of Interior, Grand Canyon-Parashant Background Materials (Jan. 11, 2000), at 2 (Appendix D).

⁵¹ See *id.* at 2-3.

⁵² See *id.* at 3.

⁵³ See Notice, 82 Fed. Reg. at 22016.

1. *Parashant is Managed for Multiple Uses on Federal Lands.*

The FLPMA provides that management of public land “be on the basis of multiple use” and further that the public lands “be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values.”⁵⁴ The designation of Parashant allows not only multiple uses, but ensures that the resources found within it are properly protected.

Proclamation 7265 contemplates that Parashant will be managed to accommodate multiple uses, and both the 2008 Management Plan and the 2012 Long-Range Interpretative Plan confirm that the land is being managed for multiple uses.

Myriad recreational opportunities are available at Parashant: viewing and photographing wildlife, scenery, and cultural sites; mountain biking; horseback riding, off-road vehicle use; hiking; rock climbing, and backpacking and camping.⁵⁵ Due to its remoteness, Parashant is a popular stargazing site that has received the coveted International Dark Sky Province designation.⁵⁶ Hunting also is permitted at Parashant. Hunters commonly pursue mule deer in the fall, quail in winter, and mountain lions year-round.⁵⁷

With the exception of state licenses required for hunting, these recreational uses are free to visitors. Estimated annual visitation at Parashant in 2011 was over 72,000 visitors.⁵⁸ Visitation, which has seen a steady rise since Parashant’s designation in 2000, will only continue to climb as Parashant becomes a better known and more popular destination.

In addition to these recreational uses, BLM issues a significant number of grazing leases each year. Permitted grazing levels have remained largely unchanged since Parashant’s designation.⁵⁹ As of 2012, nearly 15,000 head of cattle graze in Parashant in the nearly 800,000 acres allotted and/or leased for livestock grazing.⁶⁰ Viewed another way, BLM has issued 117 grazing permits.⁶¹

Various educational opportunities also are available in Parashant. For example, the Southern Paiute tribe holds a camp each year to bring together tribal youth and elders from Arizona, Utah, and Nevada for a three-day camping and learning experience. Likewise, a six-day “immersion” camp is held for honors students from across the United States.⁶²

⁵⁴ 43 U.S.C. § 1701(a)(7), (8).

⁵⁵ See LRIP at 7, 14; National Conservation Lands, Grand Canyon-Parashant National Monument, *available at* <http://conservationlands.org/conservationlands/grand-canyon-parashant-national-monument> (last accessed 6/22/2017).

⁵⁶ See Int’l Dark Sky Association, The International Dark-Sky Association Awards Dark Sky Status to Grand Canyon-Parashant National Monument (March 21, 2014), *available at* <http://www.darksky.org/the-international-dark-sky-association-awards-dark-sky-status-to-grand-canyon-parashant-national-monument/>.

⁵⁷ See LRIP at 15; *see also* National Conservation Lands, Grand Canyon-Parashant National Monument, *available at* <http://conservationlands.org/conservationlands/grand-canyon-parashant-national-monument>.

⁵⁸ See LRIP at 14.

⁵⁹ See E&E News, Grazing in Clinton-era monuments (April 18, 2016), *at* <https://www.eenews.net/stories/1060035783> (last accessed 6/19/2017).

⁶⁰ See LRIP at iii, 33.

⁶¹ See *id.* at 33.

⁶² See *id.* at 26.

Finally, although there is currently no active mineral development,⁶³ Proclamation 7265 does allow for action upon existing mineral leases.⁶⁴ Notably, however, there is no record of any oil and gas activity in the designated area.⁶⁵ And the last drilled well located near Parashant (although still outside the designated land) was closed in 1998.⁶⁶

Moreover, the Arizona Geological Survey concluded in May 2017 that the designated lands lack significant mineral resources. The only exception appears to be potentially uranium deposits. Mining for uranium, however, is unlikely given stagnant uranium ore prices, availability of inexpensive imported uranium ore, and the declining demand for uranium.⁶⁷

2. *The Designation Has Little Impact on Non-Federal Lands.*

Given its remoteness and harsh conditions, few non-Federal lands are found within Parashant's borders—there are just 23,206 acres of Arizona State Trust lands and 6,005 acres of private lands. No communities are located within Parashant.⁶⁸

Indeed, the nearest communities are still a two-hour drive away. Those “nearby” communities to Parashant include Littlefield, Beaver Dam, Scenic, Fredonia, Colorado City, and Centennial, Arizona; Mesquite and Bunkerville, Nevada; and St. George, Utah.⁶⁹ As discussed in the following sections, the natural landscape and designation has allowed the surrounding communities to thrive.⁷⁰

C. **Factor (v): Support for Parashant Runs Deep.**

The Notice requests comment regarding any concerns by those affected by the designation as well as the effect of the designation on those affected.⁷¹ In this regard, Parashant has wide support.

Prior to President Clinton's designation of Parashant, polling regarding the possible designation evidenced overwhelming support. One statewide poll from January 2000 indicates that a large

⁶³ An abandoned copper mine, the Grand Gulch Mine, is located on private land within Parashant. Mining operations at Grand Gulch, which began in 1890, ceased in 1918. A fire destroyed most of the facilities in 1950, and the mine was permanently closed in 1966. Visiting the mine remnants is popular among visitors to Parashant. Although this land was once listed for sale, there appeared to be little interest in resuming copper mining on this land. See Ebay, Grand Gulch Mine in Grand Canyon-Parashant Nat'l Monument-Private land, Patented, at <http://www.ebay.com/itm/Grand-Gulch-Mine-in-Grand-Canyon-Parashant-Nat-039-1-Monument-Private-land-Patented-/150829687016> (last accessed 6/26/2017).

⁶⁴ See Proclamation 7265, Fed. Reg. at 2828.

⁶⁵ See generally Arizona Oil & Gas Conservation Commission Map, at <http://welldata.azogcc.az.gov/> (last accessed 6/22/2017).

⁶⁶ See *id.* (Well Name: Medallion Oil 1-15 Federal; State Permit Number: AZOGCC:0879).

⁶⁷ University of Arizona, Arizona Geological Survey (May 2017) available at http://repository.azgs.az.gov/sites/default/files/dlio/files/nid1715/grandcanyon-parashant_factsheet.pdf (last accessed 6/26/2017).

⁶⁸ See LRIP at iii.

⁶⁹ See *id.*

⁷⁰ The Notice provides that the Secretary should consider whether the designation “appropriately balance[s] the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.” Notice, 82 Fed. Reg. at 22016. But this balancing standard is not found within the Antiquities Act. As such, even assuming the President had the authority to rescind or modify a monument designation, the President cannot rewrite the requirements under the Act. This balancing test thus cannot be relied upon by the Department in making a recommendation concerning any national monument, including Parashant.

⁷¹ See Notice, 82 Fed. Reg. at 22016.

majority of Arizonans — nearly three out of four Arizonans across all political spectrums — supported the designation.⁷²

There was significant public input prior to the designation, which identified strong public support for setting aside these lands.⁷³ Then Secretary of State Bruce Babbitt visited the area on three occasions; two large public meetings were held; and 59 other meetings were conducted with local governments, tribes and other stakeholder groups.⁷⁴

Stakeholders have been, and continue to be, involved with Parashant's management. In 2008, the Resource Management Plan for Parashant was completed. This plan was approved by BLM and NPS, as well as the following 10 stakeholders: Mohave and Coconino Counties in Arizona, Washington and Kane counties in Utah, the Kaibab Paiute Tribe, the towns of Fredonia and Colorado City, the Arizona Game and Fish Department, the Arizona Department of Transportation, and the Federal Highway Administration.⁷⁵

Tribal stakeholders are particularly involved in the management of Parashant. Of note, Parashant has a dedicated tribal liaison who reports directly to the BLM Arizona Strip District Manager and consults with tribes regarding planning and land management decisions affecting Parashant.⁷⁶

Private parties also have shown their continuing support for Parashant. In 2001, private parties spent \$500,000 (in conjunction with BLM's influx of \$500,000) to acquire the Bar Ten Ranch inholding. Likewise, in 2002, private fundraising of \$520,000 allowed for the purchase of the Pakoon Springs inholding, consisting of 340 acres of private property, 32,000 acres of public land grazing, and critical desert tortoise habitat.⁷⁷

Mohave County, Arizona and Washington County, Utah neighbor Parashant. When assessed on any number of metrics, these counties have shown growth since 2000. Between 2001 and 2015, the population of these counties grew 41% and total employment increased 42%. Likewise, real personal income grew 59% and real per capita income 12%.⁷⁸

The protected public landscape of Parashant is vital to this growth. As of 2015, travel and tourism account for 22% of total private wage and salary employment, or 19,310 jobs in the neighboring communities.⁷⁹

In contrast, few jobs are derived from commodity industries. Agriculture accounts for only 1% of total employment; mining and timber, collectively, account for only 0.5% of total private employment in the region.⁸⁰

⁷² See *Arizonans Support Monuments*, Arizona Republic (Jan. 20, 2000), at 8 (Appendix E); John D. Leshy, *Shaping the Modern West: The Role of the Executive Branch*, 72 U. Colo. L. Rev. 287, 307 (2001).

⁷³ See Leshy, *supra*, at 306-07.

⁷⁴ See *id.*; White House Media Release, Grand Canyon-Parashant National Monument (Jan. 11, 2000) (Appendix F).

⁷⁵ See LRIP at 16.

⁷⁶ See Sarah F. Trainor, *Finding Common Ground: Moral Values and Cultural Identity in Early Conflict Over the Grand Staircase-Escalante National Monument*, 28 J. Land Resources & Envtl. L. 331, 341 (2008).

⁷⁷ See The Conservation Fund, Land Conservation History by County: Northern Arizona (Appendix C).

⁷⁸ See Headwater Economics, Grand Canyon-Parashant National Monument: A Summary of Economic Performance in the Surrounding Communities (Spring 2017), *available at* https://headwaterseconomics.org/wp-content/uploads/GC_Para.pdf (last accessed 6/26/2017).

⁷⁹ See *id.*

⁸⁰ See *id.*

D. Factor (vi): Parashant Requires Limited Resources to Maintain.

The Notice requests comment on the availability of federal resources to manage Parashant.⁸¹ Again, this factor weighs in favor of maintaining Parashant's current designation and boundaries.

As described, Parashant is remotely located and has been managed so as to require very limited resources. The remoteness and undisturbed nature of Parashant is purposeful:

The vision for Parashant is to retain, where it currently exists, the present natural and socially remote nature of Parashant while still allowing compatible human use to occur within "the place where the West stays wild."⁸²

To this end, there are no paved roads, no visitor centers, and no other infrastructure to maintain. Indeed, visitors are cautioned that motorized travel requires high-clearance vehicles, cell phone service is unavailable, and extra water and food should be carried.⁸³

V. Conclusion

Thank you for your consideration of these comments. The Grand Canyon-Parashant National Monument is an unspoiled and diverse landscape that fully comports with the requirements and objectives of the Antiquities Act. NPCA and its members and supporters respectfully urge you to support the designation of Grand Canyon-Parashant as a National Monument and leave a lasting legacy for all Americans in this remarkable, remote, and wild place.

Broad support for our nation's monuments, including Parashant exists. On May 2, 2017 over 450 organizations signed a letter to your office in support of the Antiquities Act and expressed deep concerns with the April 26th Executive Order from President Trump. In this letter, the community, including NPCA notes:

Since its enactment over a hundred years ago, the Antiquities Act has been one of our nation's most critical conservation tools for preserving our nation's most important public lands and waters. Our national parks and monuments and other protected public lands and waters unite all Americans by protecting our shared American heritage for future generations to enjoy. The sheer diversity of historic, cultural, and natural treasures that have been protected by the Antiquities Act is the reason why hundreds of groups representing sportsmen, cultural heritage organizations, evangelicals, conservation, recreation businesses, historic preservation, social justice, and many others all oppose efforts to undermine our national monuments and view an attack on any one national monument as an attack on them all.

To call into question whether our national heritage is worth protecting will have lasting repercussions on the preservation of our public lands for generations to come. Eight Republican and eight Democratic presidents have designated 157 national monuments under the authority of the Antiquities Act. As noted above, this includes nationally significant cultural, historical, and natural sites such as, the Grand Canyon and Acadia National Parks, Statue of Liberty and Muir Woods National Monuments, and the Chesapeake and Ohio Canal National Historical Park. In fact, many of

⁸¹ See Notice, 82 Fed. Reg. at 22016.

⁸² Dep't of Interior, Grand Canyon-Parashant National Monument Management Plan (Approved Plan) (Feb. 2008), at 1-20, *available at* <https://www.nps.gov/para/learn/management/records-of-decision-and-management-plan.htm> (last accessed 6/21/2017).

⁸³ See NPS, Grand Canyon-Parashant National Monument, Basic Information, *at* <https://www.nps.gov/para/planyourvisit/basicinfo.htm> (last accessed 6/22/2017).

our nation's most popular and iconic national parks were first protected using the Antiquities Act. More recently, the Antiquities Act has help safeguard and honor more diverse stories in the National Park System through the designations of Stonewall, Belmont-Paul Women's Equality, and César E. Chávez National Monuments. We urge you to imagine what our country would be like without these incredible places, protected just as they should be.

Thank you for your consideration of these comments and those of our members and supporters. We call on your administration to maintain and support all of our country's national monuments, including the Grand Canyon-Parashant National Monument, leaving a lasting legacy for all Americans.

Sincerely,



Theresa Pierno
President and CEO

Enclosures

Appendix A Arnold & Porter Kaye Scholer Memo: The President Has No Power Unilaterally to Abolish or Materially Change a National Monument Designation Under the Antiquities Act of 1906

Appendix B "National monuments: Presidents can create them, but only Congress can undo them" by Nicholas Bryner, Eric Biber, Mark Squillace and Sean B. Hecht

Appendix C The Conservation Fund, Land Conservation History by County: Northern Arizona

Appendix D U.S. Dep't of Interior, Grand Canyon-Parashant Background Materials (Jan. 11, 2000)

Appendix E *Arizonans Support Monuments*, Arizona Republic (Jan. 20, 2000)

Appendix F White House Media Release, Grand Canyon-Parashant National Monument (Jan. 11, 2000)

Appendix A

Arnold & Porter Kaye Scholer Memo: The President Has No Power Unilaterally to Abolish or Materially Change a National Monument Designation Under the Antiquities Act of 1906

**The President Has No Power Unilaterally to Abolish
or Materially Change a National Monument
Designation Under the Antiquities Act of 1906**

We have been asked by our client, National Parks Conservation Association, whether a sitting President may unilaterally abolish or materially change a national monument that was established by an earlier President under the authority of the Antiquities Act of 1906. The question arises in the context of President Trump’s Executive Order of April 26, 2017 directing the Secretary of the Interior to conduct a review of all national monuments designated since 1996 which are at least 100,000 acres or which the Secretary determines were designated without adequate public input.¹ The Executive Order directs the Secretary to report back to the President and make recommendations “for such Presidential actions, legislative proposals, or other actions consistent with law as the Secretary may consider appropriate to carry out the policy set forth in section 1 of this order.” Section 1 broadly talks about public input, economic growth, the “original objectives” of the Antiquities Act and “appropriately balance[ing] the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.”

President Trump stated when he issued the Order that “the Antiquities Act does not give the federal government unlimited power to lock up millions of acres of land and water, and it’s time that we ended this abusive practice.”² That review will cover some 25 national monuments designated or expanded since 1996.

President Trump said he was particularly eager to change the boundary of Bears Ears National Monument in Utah.³ President Obama designated that monument primarily at the request of Native American tribes, declaring that the “paleontological resources [there] are among the richest and most significant in the United States” and that the area’s “petroglyphs and pictographs capture the imagination with images dating back at least 5,000 years.”⁴ President Trump, however, referred to this monument designation as a “massive federal land grab,”⁵ which suggests that the federal government did not already own the land before that event. However, the federal government has owned that land since long before Utah became a state in 1896. While the federal government made land grants to the new State for various purposes,⁶ the new State’s constitution, as Congress required, “forever disclaim[ed] all right and title” to federal

¹ *Review of Designations Under the Antiquities Act*, Exec. Order 13792, 82 Fed. Reg. 20429 (May 1, 2017).

² Juliet Eilperin, “Trump orders a review of newer national monuments,” *Washington Post*, April 27, 2017, at A3.

³ *Id.*

⁴ *Establishment of the Bears Ears National Monument*, Proclamation No. 9558, 82 Fed. Reg. 1139 (Jan. 5, 2017).

⁵ Eilperin, at A3.

⁶ See Utah Enabling Act, ch 138, § § 6-12, 28 Stat. 107 (1894), <https://archives.utah.gov/research/exhibits/Statehood/1894text.htm>.

lands within the State’s boundaries.”⁷ Under these circumstances, it is unclear from whom the federal government supposedly “grabbed” this land.

Secretary Ryan Zinke explained at the time of President Trump’s Executive Order that he will be considering whether monuments should be “rescinded, resized, [or] modified.” When asked if the President has the power to do so unilaterally, he said it is “untested” whether the President has the unilateral power to rescind a monument but that “it’s undisputed the President has the authority to modify a monument.”⁸

It is apparent, in part from the President’s terminology (e.g., that Bears Ears was a federal “land grab”) and the Secretary’s description of the law, that they have been influenced by a March 2017 report written for the American Enterprise Institute by John Yoo and Todd Gaziano entitled “Presidential Authority to Revoke or Reduce National Monument Designations.” Those authors argue there that President Trump has the authority to rescind or revoke the creation of national monuments by President Obama and that the President also has the authority to reduce the size of national monuments. They also argue that the Antiquities Act only authorized, or at least that Congress only intended that it be used to designate, relatively small areas as monuments around human archeological sites.

It is beyond the scope of this memorandum to discuss the merits of particular national monument designations or the fact that President Obama established procedures to assure there was significant public outreach and input before each of his monument designations. The purpose of this memorandum is instead to address the Yoo and Gaziano arguments about the scope and nature of the monuments Congress authorized to be designated in the Antiquities Act and their arguments that a President may unilaterally rescind or materially reduce the size of a monument previously established. After evaluating the U.S. Constitution, relevant statutes and other relevant authorities, we have concluded that Yoo and Gaziano are wrong about these matters.

Executive Summary

The authority granted by the Antiquities Act is not limited to small areas around human archeological sites.

President Trump’s Executive Order and accompanying Administration statements suggest that the “original” objective of the Antiquities Act was limited to permitting the President to set aside small areas of land around human archeological sites. Monument designations outside this constrained scope are called “abuses.” This is the view for which Yoo and Gaziano argue and this (“abuses”) is how they describe large monuments protecting natural sites. However, they base their argument - - not on the final language of the statute - - but on early bills rejected by Congress. This is a novel way to understand a statute.

⁷ *Id.*, § 3.

⁸ “Press Briefing by Secretary of Interior Ryan Zinke to Review the Designations Under the Antiquities Act,” Office of the Press Secretary, White House, April 25, 2017.

In fact, in the five or six years before the Antiquities Act was adopted, there were two camps seeking such a statute, but they had different concepts of what it should authorize. Archeologists wanted a narrow statute to protect archeological sites. The Department of the Interior wanted a statute authorizing the protection of large scenic areas, this being before creation of the National Park System. In the end, all sides agreed upon compromise language that became the Antiquities Act. The compromise added a clause authorizing protection of areas having “historic or scientific interest” and provided that the monument “shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.”⁹

Almost immediately after the Act’s adoption, President Theodore Roosevelt established the Grand Canyon National Monument, protecting 818,000 acres, and almost immediately someone challenged the legality of that monument’s designation under the Act. But the U.S. Supreme Court rejected the challenge in *Cameron v. United States*.¹⁰ Referring to the clause which formed the basis of the compromise, the Court explained that the Grand Canyon “is an object of unusual scientific interest” and went on to explain its scientific importance and natural wonders.

Every court thereafter has reached the same conclusion as to other monuments challenged as natural rather than archeological. It is not surprising that larger areas are required to protect natural wonders than the areas required to protect archeological sites. Congress provided flexibility concerning the size of each monument in order to allow for differences based on what is being protected. Referring to larger monuments as “abuses” ignores the text of the statute and the history behind its adoption.

The President has no authority to revoke or materially reduce previously designated monuments.

In our system of Government, Presidents have no power other than that granted to them by the U.S. Constitution or by an Act of Congress. The issue here does not invoke any power granted the President by the U.S. Constitution. The issue instead concerns administration of federally owned land, and the Constitution gives that power exclusively to Congress. U.S. Const., Property Clause, Art. IV, § 3. Whether or not the President has the power unilaterally to revoke a national monument designation therefore depends on whether that power is expressly or by implication delegated to the President by an Act of Congress. The Antiquities Act of 1906 authorizes the President to create national monuments on land owned or controlled by the federal government.¹¹ The Act says nothing about a President’s having the power to abolish a national monument or to reduce the size of a monument. The question is therefore whether such a power may be implied.

Contrary to the arguments of Yoo and Gaziano, reading a revocation power into that statute by implication would be improper. This is so for several reasons.

⁹ 54 U.S.C. § 320301(a) and (b).

¹⁰ 252 U.S. 459 (1920).

¹¹ 54 U.S.C. § 320301(a).

First, the U.S. Attorney General opined long ago that the Antiquities Act could not be interpreted to imply that a President has the power to revoke a national monument's designation. No President has attempted to revoke such a designation since that Opinion was issued in 1938.

Second, Yoo and Gaziano fail to recognize that in the more than 100 years since the adoption of the Antiquities Act, Congress has adopted a comprehensive legislative scheme to govern federally owned land, into which the Antiquities Act was folded and in relation with which it must be interpreted. One of those statutes was the Federal Land Policy and Management Act ("FLPMA"), adopted in 1976.¹² Congress there in effect adopted the Attorney General's interpretation that no revocation power should be read into the Antiquities Act by implication. Thereafter, it would be particularly improper to interpret the Antiquities Act as implying that the President has the power to revoke a monument designation.

Third, as to those national monuments which were made part of the National Park System, Congress has mandated that the power to manage those special places "shall not be exercised in derogation of the values and purposes for which the System units have been established, except as directly and specifically provided by Congress."¹³ Revoking the designation of such a national monument and pulling it out of the National Park System would certainly be in derogation of the reasons such special places were added to that System.

Secretary Zinke, however, stated that a President has the authority to modify a monument, and President Trump stated he is eager to modify the boundaries of Bears Ears National Monument. If they are thinking that the President would have the power to modify that monument in a material way that would undermine the protection of the resources for which it was created, they are wrong. A President does not have the power to do in part what he may not do in full. While there were some instances before 1976 of Presidents changing the boundaries of monuments, no President has attempted to do so after FLPMA was adopted.

The revocation of the designation of a national monument or the material reduction in its size, and particularly a monument that is part of the National Park System, is therefore beyond the power of a President acting without Congress. The interpretation proffered by Yoo and Gaziano would therefore, if acted upon, result in a usurpation of congressional powers by the Executive Branch.

* * * * *

I. The Antiquities Act of 1906.

The Nineteen Century saw substantial western expansion of the United States, and it was the federal government that acquired the land making that expansion possible. While that government had acquired land since its founding, the government substantially increased its holdings by such events as the Louisiana Purchase of 1803, the Oregon Compromise with

¹² 43 U.S.C. 1704 *et seq.*

¹³ 54 U.S.C. § 100101(b)(2).

England in 1846 and the treaty resolving the Mexican-American War in 1848.¹⁴ No sooner had the public land domain been established in the Eighteenth Century than a policy of disposing of the land had been initiated.¹⁵ The federal government transferred nearly 816 million acres of public domain land to private ownership and 328 million acres to the States as they became established.¹⁶

By late in the Nineteenth Century, however, demands grew to “withdraw” some public lands from that available for sale, grant or other disposition so it could be retained by the federal government for conservation and similar purposes. The first permanent federal land reservation was Yellowstone National Park, created in 1872, and in 1891 the President was given power to withdraw forest lands and prevent their disposal.¹⁷ The federal government retained for the benefit of all Americans a large part of the land that government had acquired, totaling approximately 600 million acres.¹⁸

In recognition of the slow process of enacting federal legislation, Congress adopted the Antiquities Act in 1906 to empower the President to protect some of that federal land promptly. That Act, as now codified, provides:

(a) The President may, in the President’s discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.

(b) The President may reserve parcels of land as a part of the national monuments. The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.¹⁹

President Theodore Roosevelt was the first to use that Act, establishing 18 national monuments, including Devil’s Tower, Muir Woods, Mount Olympus (the predecessor to Olympic National Park) and the Grand Canyon. Almost every President thereafter has designated additional national monuments. These monuments were created to provide for the enjoyment and use of the federal lands by the American people.

¹⁴ See generally “Natural Resources Land Management Act,” S. Rep. No. 94-583 (hereafter the “Senate Report”) at 27-32; Carol Hardy Vincent et al., Cong. Research Serv., *Federal Land Ownership: Overview and Data* 5 (2014), available at <https://fas.org/sgp/crs/misc/R42346.pdf>.

¹⁵ See Senate Report, at 28.

¹⁶ Kristina Alexander and Ross W. Gorte, Cong. Research Serv. RL34267, *Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention* 5 (2007), available at <https://fas.org/sgp/crs/misc/RL34267.pdf>.

¹⁷ 17 Stat. 326; 26 Stat. 1095.

¹⁸ Alexander and Gorte, at 9.

¹⁹ 54 U.S.C. § 320301(a) and (b).

II. The President's Authority under the 1906 Act is not Limited to Protecting Small Areas Around Archeological Sites, As Yoo and Gaziano Argue and the Administration Claims.

Yoo and Gaziano argue that Congress only intended in the Antiquities Act to authorize the President to create monuments to protect small areas around human archeological sites. They concede that the Act's "final language covered more than antiquities" and that "small scenic areas" were contemplated. But they argue that "the statute's title, drafting history and historical context" should convince Presidents "to follow the text and spirit of the original law."²⁰ And they repeatedly call Presidential proclamations that did not do so "abuses." This is a novel way of understanding a statute passed by Congress, i.e., by looking to earlier versions of a bill not adopted rather than to the "final language" of the act. Contrary to these arguments, the Act by its terms and as understood by Congress at the time authorizes protection of large areas containing natural resources, and the size of the protected area depends on the resources being protected.

It is true that the national monument authority is generally referred to as the "Antiquities Act," but that is so because parts of the statute did in fact address only antiquities, such as by prohibiting their looting.²¹ But the legislative history of the portion of the Act relating to monuments, as well as its text, makes clear that that authority was not limited to protecting antiquities. There was considerable disagreement about what became this part of the Act in the years before its adoption. There were two views: archeologists and the Smithsonian Institution wanted a law providing for the protection only of archeological sites in order to address Western legislators' concerns over the size and scope of protected areas, as Yoo and Gaziano say.²² The Department of the Interior and some members of Congress, on the other hand, wanted a law that would provide protection as well for large "scenic beauties and natural wonders and curiosities".²³ While Yoo and Gaziano say Congress had rejected bills the Department supported, they omit the fact that bills limited as the archeologists wanted had also failed.²⁴ This process went on for 5 years. Finally, Professor Edgar Hewett drafted a compromise bill that was adopted without much further ado and became the relevant part of the Antiquities Act of 1906.²⁵

Yoo and Gaziano rely largely on a work by Ronald Lee for their recital of the history of the Act.²⁶ Here is what he says about the final bill:

Senator Lodge's bill, in its earlier versions, had been limited to historic and prehistoric antiquities and made no provision for protecting natural areas. At some point in his

²⁰ Yoo and Gaziano, at 3.

²¹ See 54 U.S.C. § 32032.

²² See Ronald F Lee, "The Antiquities Act, 1900-1906," in *The Story of the Antiquities Act* (National Park Service, March 15, 2016), www.nps.gov/archeology/pubs/lee/Lee_CH6.htm at 2-3.

²³ *Id.*, at 3.

²⁴ *Id.*, at 4-6.

²⁵ *Id.*, at 7.

²⁶ Yoo and Gaziano, at nn. 3, 5, 6 and 8.

discussions with government departments, Hewett was persuaded, probably by officials of the Interior Department, to broaden his draft to include the phrase “other objects of historic or scientific interest.” ... As it later turned out, the single word “scientific” in the Antiquities Act proved sufficient basis to establish ... national monuments preserving many kinds of natural areas, ...²⁷

One of the first monuments to be designated under that Act was President Theodore Roosevelt’s 1908 creation of Grand Canyon National Monument, which covered 818,000 acres.²⁸ The holder of a mining claim to land on the south rim of the Canyon challenged the legality of the monument designation because it supposedly exceeded the President’s power under the Antiquities Act. In *Cameron v. United States*, the Court rejected that argument.²⁹ The mining claim, the Court explained, included the trailhead of the famous Bright Angel Trail “over which visitors descend to and ascend from the bottom of the canyon.”³⁰

The act under which the President proceeded empowered him to establish reserves embracing “objects of historic or scientific interest.” The Grand Canyon, as stated in his proclamation, “is an object of unusual scientific interest.” It is the greatest eroded canyon in the United States, if not the world, is over a mile in depth, has attracted wide attention among explorers and scientists, affords an unexampled field for geologic study, is regarded as one of the great natural wonders, and annually draws to its borders thousands of visitors.³¹

In 1976, the Supreme Court again was called on to address this issue and again explained that the Antiquities Act is not limited to archeological areas. In *Caepfert v. United States*, the Court upheld President Truman’s creation of a national monument at Devil’s Hole, Nevada, as a habitat for a species of fish found only there. The fish, said the Court, were “objects of historic or scientific interest” within the meaning of that clause in the Antiquities Act.³² Similarly, when President Carter designated several national monuments in Alaska based in part on their natural resources, opponents challenged the designations in court, making the same arguments about the supposedly constrained nature of places that could be so designated. The district court resoundingly rejected those arguments, based in part on *Cameron* and *Caepfert* as well as on the court’s analysis of the Act’s legislative history.³³ Reciting the same legislative history discussed above, the court found that Mr. Hewett’s compromise bill, which contained the clause “other objects of historic or scientific interest” and which had become law, “was indeed intended to enlarge the authority of the President.” Moreover, the court concluded that “matters of scientific

²⁷ Lee, at 9.

²⁸ *Establishment of Grand Canyon National Monument*, Proclamation No. 794, 35 Stat. 2175 (1908).

²⁹ 252 U.S. 459 (1920). President Roosevelt also designated the 60,000 acre Petrified Forest National Monument in 1906, the 10,000 Chaco Canyon National Monument in 1907 and the almost 640,000 acre Mount Olympus National Monument in 1909. See Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 GA. L. Rev. 473, 490 n. 92 (2003).

³⁰ 252 U.S. at 455 and n.1.

³¹ *Id.*, at 455-56.

³² 426 U.S. 128, 141-42 (1976).

³³ *Anaconda Copper Co. v. Andrus*, No. A79-161, civil, 14 ERC 1853 (D, Alaska July 1, 1980).

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.”³⁴

The Administration’s claims that large monuments are “abuses” of the Antiquities Act and that it was only intended to apply to small areas are simply wrong. In setting limits on the size of areas to be protected, the Act merely imposed the requirement that the president designate the “smallest area compatible with the proper care and management of the objects to be protected.” From the very beginning, that Act was used to protect large areas such as the Grand Canyon and Mount Olympus, which later became Olympic National Park. It is obvious that more land is needed to protect natural resources such as these areas than to protect isolated archeological sites. It is therefore simply not true that the areas protected under the Act in its early years were limited to small areas of a few hundred acres.

III. The President Has No Implied Power to Revoke a National Monument Created under the Antiquities Act.

Because the Antiquities Act does not expressly empower or prohibit Presidents to revoke national monuments, proponents of such a power argue that that power may be read into the Act by implication. Gaziano and Yoo and some members of Congress argue that the President has many implied powers and that this is merely one such power. They are wrong.

Yoo and Gaziano argue for a general proposition that “the authority to execute a discretionary government power usually includes the power to revoke it -- unless the original grant expressly limits the power of revocation.”³⁵ They argue that this supposedly follows from the principle that each “branch of government can reverse its earlier actions using the same process originally used.”³⁶ They point to the President’s power to fire Executive Branch officials even after the Senate has confirmed the appointment and to the President’s power over foreign treaties. The problem with that argument is that it ignores the source of the original power. There is no government-wide general rule on this subject; each source of power must be examined to assess whether a power to revoke previous actions should be implied. As former President and Supreme Court Chief Justice Taft stated:

The true view of the Executive function is, as I conceive it, that the President can exercise no power which cannot be fairly and reasonably traced to *some specific grant of power or justly implied and included within such express grant as proper and necessary to its exercise*. Such specific grant must be either in the Federal Constitution or in an act of Congress passed in pursuance thereof.³⁷

³⁴ *Id.*

³⁵ Yoo and Gaziano, at 7.

³⁶ *Id.*, at 8.

³⁷ William Howard Taft, OUR CHIEF MAGISTRATE AND HIS POWERS 139-40 (1916), available at <https://archive.org/stream/ourchiefmagistra00taftuoft#page/n5/mode/2up> (*emphasis added*).

Accordingly, when Yoo and Gaziano point to the power of the President to fire Executive Branch officers and to revoke treaties with foreign governments, they are pointing to powers found in the Constitution's grant of executive authority to the President. The Constitution provides that "[t]he executive Power shall be vested in a President of the United States of America." U.S. Const., Art. II, § 1. It is reasonable to conclude that that broad grant includes the power to revoke what has been done. As Justice Taft explained:

The grants of Executive power are necessarily in general terms in order not to embarrass the Executive within the field of action plainly marked for him, but his jurisdiction must be justified and vindicated by affirmative constitutional or statutory provision, or it does not exist.³⁸

The same may be said of specific powers granted the President, including that to make treaties with foreign countries. *See* U.S. Const., Art. II, § 2.

But here we are not dealing with the scope of the powers granted the Executive Branch under the Constitution. Here, we are dealing instead with the power over federal lands, and the Constitution grants that power, not to the President, but exclusively to the Congress. The Property Clause of the Constitution provides that "[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" *Id.*, Art. IV, § 3, Cl. 2.

For the President to have the power to revoke a monument designation under the Antiquities Act, therefore, the issue is whether that Act of Congress, not the Constitution's grant of the executive power to the President, may be interpreted to imply the unstated power to revoke a monument designation thereunder.³⁹

This is a question on which the Attorney General of the United States, Homer S. Cummings, ruled in the negative.⁴⁰ In 1938, President Franklin Roosevelt asked Attorney General Cummings for a formal Legal Opinion as to whether the President could rescind former President Coolidge's designation of the Castle Pinckney National Monument under the Antiquities Act. After careful study, Attorney General Cummings explained that the answer was "no."

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

³⁸ *Id.*

³⁹ Yoo and Gaziano also argue as an analogy that the Executive Branch has the power to repeal regulations adopted under discretionary statutory authority. But that authority is recognized, in the words of Justice Taft, as "included within such express grant as proper and necessary to its exercise." *Id.* That says nothing about whether such implied power should also be implied in the Antiquities Act.

⁴⁰ Attorney General Cummings held a PhD and law degree from Yale University. He served from 1933 until 1939. (*See* U.S. Department of Justice, *Attorneys General of the United States*, at <https://www.justice.gov/ag/bio/cummings-homer-still>)

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.⁴¹

The Attorney General's Opinion explained that under long-standing precedent "if public lands are reserved by the President for a particular purpose under express authority of an act of Congress, the President is thereafter without authority to abolish such reservation."⁴² Since the Cummings Opinion, no President has attempted unilaterally to rescind a national monument.⁴³ Rather, as contemplated by the Cummings Opinion, when some monuments have been abolished, it has been Congress that has done so by legislation.⁴⁴

Yoo and Gaziano argue that the Cummings Opinion was "poorly reasoned" and "erroneous as a matter of law."⁴⁵ But their description of that opinion is not a fair characterization of Attorney General Cumming's reasoning. For example, they claim he found binding an 1862 opinion when he merely relied on its reasoning and they then describe that earlier opinion unfairly. But what Cummings found significant about that earlier case is that, as in the case of the Antiquities Act, the statute in question had authorized the President to reserve lands but had said nothing about his power to undo the reservation made. And the earlier Attorney General had concluded that such power could not be implied. In reaching the same conclusion as to the Antiquities Act, Attorney General Cummings distinguished statutes that expressly authorize the President to revoke reservations.

The gaping hole in the Yoo and Gaziano arguments, however, is that they ignore or minimize the importance of the fact that, since 1906, Congress has adopted a comprehensive system of laws to govern federally-owned lands, and that the Antiquities Act must be understood and interpreted as part of that legal structure. Statutes covering the same subject matter are interpreted together. *See Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132–33 (2000). Two particular later statutes are relevant here. First, in 1976, Congress adopted the Federal Land Policy and Management Act ("FLPMA").⁴⁶ Second, in 1916,

⁴¹ "Proposed Abolishment of Castle Pinckney Nat'l Monument," 39 Op. Atty. Gen. 185, 185 (1938), *citing* Opinion by Attorney General Edward Bates to the Secretary of the Interior, 10 U.S. Op. Atty. Gen. 359 (1862). As a general matter, opinions of the Attorney General are binding on the Executive Branch offices that request them until they are overruled or withdrawn. *See Pub. Citizen v. Burke*, 655 F. Supp. 318, 321–22 (D.D.C. 1987) ("As interpreted by the courts, an Attorney General's opinion is binding as a matter of law on those who request it until withdrawn by the Attorney General or overruled by the courts." (citation and internal quotations omitted)), *aff'd*, 843 F.2d 1473 (D.C. Cir. 1988); *cf.* Trevor W. Morrison, *Stare Decisis in the Office of Legal Counsel*, 110 Colum. L. Rev. 1448, 1472, 1482–84 (2010).

⁴² 39 Op. Atty. Gen. at 186–87.

⁴³ Squillace, at 553.

⁴⁴ Congress has abolished a number of National Monuments by legislation. *See, e.g.*, Wheeler National Monument in 1950 (64 Stat. 405); Shoshone Cavern in 1954 (68 Stat. 98); Papago Saguaro in 1930 (46 Stat. 142); Old Kasaan in 1955 (69 Stat. 380); Fossil Cyad in 1956 (70 Stat. 898); Castle Pinkney in 1956 (70 Stat. 61); Father Millet Cross in 1949 (63 Stat. 691); Holy Cross in 1950 (64 Stat. 404); Verendrye in 1956 (70 Stat. 730), and Santa Rosa Island in 1946 (60 Stat. 712).

⁴⁵ Yoo and Gaziano, at 5.

⁴⁶ 43 U.S.C. 1704 *et seq.*

Congress adopted the National Park System Organic Act, to which Congress added significant provisions in 1970 and 1978.

When FLPMA was adopted in 1976, Congress legislated against the backdrop of the Antiquities Act providing that the President could create national monuments and the Cummings Opinion that the President could not revoke national monuments. There is evidence that Congress was aware of the Cummins Opinion, which was reported in one of the studies leading to FLPMA's passage.⁴⁷ But in any event, when Congress legislates on a subject, "[C]ongress is deemed to know the executive and judicial gloss given to certain language and thus adopts the existing interpretation unless it affirmatively acts to change the meaning."⁴⁸ Yet in FLPMA, Congress did not "affirmatively act[] to change the meaning" of the Antiquities Act as interpreted by the Cummings Opinion. Congress therefore in effect adopted that interpretation.

Moreover, the Supreme Court has made clear that, to harmonize different statutes, "a specific policy embodied in a later federal statute should control our construction of [a prior one], even though it had not been expressly amended."⁴⁹ This is particularly so when the later statute is a comprehensive legislative scheme.⁵⁰ FLPMA was the very sort of "comprehensive legislative scheme" that requires interpreting the Antiquities Act to harmonize with FLPMA. It would not be harmonious with FLPMA to read into the Antiquities Act an implied authorization for a President to revoke a prior monument's designation because in FLPMA, one of Congress' purposes was to reassert its own authority over federal land withdrawals and to limit to express delegations the authority of the Executive Branch in this regard.

FLPMA was the result of a years-long re-examination and reorganization of laws governing management of federal lands, including the creation of reservations or "withdrawals" of land for particular purposes.⁵¹ In 1964, Congress had created The Public Land Law Review Commission to undertake that reexamination, finding in part that there were many statutes governing federal lands "which are not fully correlated with each other."⁵² The Commission obtained extensive studies and finally issued its report in 1970.⁵³ One of its recommendations was that "[d]elegations of the congressional authority should be specific, not implied,"

⁴⁷ See Charles F. Wheatley, Jr., "Study of Withdrawals and Reservations of Public Domain Lands" (Public Land Law Review Commission 1969), at 17, 264.

⁴⁸ *Bledsoe v. Palm Beach County Soil & Water Conservation Dist.*, 133 F.3d 816, 822 (11th Cir. 1998) (addressing legislative action after earlier Attorney General interpretation); see also, to the same effect, e.g., *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 381-82 and n.66 (1982) (considering whether rights should be implied under a statute); *Souter v. Jones*, 395 F.3d 577, 598 (6th Cir. 2005).

⁴⁹ See *United States v. Romani*, 523 U.S. 517 (1998).

⁵⁰ See *Northwest Airlines, Inc. v. Transport Workers Union*, 451 U.S. 77, 97 (1981); see also *Hi-Lex Controls Inc. v. Blue Cross*, 2013 WL 228097 (E.D. Mich. Jan. 22, 2013) at *3.

⁵¹ Pub. Law No. 94-579, codified at 43 U.S.C. § 43 U.S.C. § 1701 *et seq.* As the Senate Report accompanying the bill that became FLPMA explained, Congress had long recognized "a need to review and reassess the entire body of law governing Federal lands." Senate Report, at 34.

⁵² See 78 Stat. 982 (Sept. 19, 1964).

⁵³ Public Land Law Review Commission, "One Third of the Nation's Land: A Report to the President and the Congress" (1970); see also Senate Report, at 32-36.

Congress followed that recommendation, declaring in FLPMA that “it is the policy of the United States that ... the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action.”⁵⁴ Accordingly, Congress expressly repealed a large number of statutes previously authorizing the Executive Branch to make withdrawals of federal land and overturned a court decision implying such power.⁵⁵ But FLPMA did not repeal the Antiquities Act. This was no oversight; the decision to leave that Act in effect was noted in the House Report.⁵⁶ And while Congress gave the Secretary of the Interior some powers to make, modify or revoke withdrawals, FLPMA provided that the Secretary did not have power to “revoke or modify” any Antiquities Act monument designation.⁵⁷

The House Report made clear that there were to be no more implied powers to withdraw lands or to revoke previous withdrawals; only Congress was to have those powers except as expressly delegated.

With certain exceptions [including under the Antiquities Act], H.R. 13777 will repeal all existing law relating to executive authority to create, modify, and terminate withdrawal and reservations. It would reserve to the Congress the authority to create, modify, and terminate withdrawals for national parks, national forests, the Wilderness System, *It would also specially reserve to the Congress the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act* These provisions will insure that the integrity of the great national resource management systems will remain under the control of the Congress.”⁵⁸

Specifically as to national monuments, therefore, just as Attorney General Cummings concluded, while the President would continue to have the power to establish national monuments under that Act, only Congress would be empowered to revoke a monuments designation. Any other understanding of the Antiquities Act would be contrary to Congress’

⁵⁴ *Id.*, codified at 43 U.S.C. § 1704(a)(4).

⁵⁵ See Pub. Law No. 74-597, § 704 (“Effective on and after the date of approval of this Act, the implied authority of the President to make withdrawals and reservations resulting from acquiescence of the Congress (*U.S. v. Midwest Oil Co.*, 236 U.S. 459) and the following statutes and parts of statutes are repealed: ...”).

⁵⁶ “The exceptions, which are not repealed, are contained in the Antiquities Act (national monuments),” House Report, at 29.

⁵⁷ 43 U.S.C. §1714 and § 1714(j). Those sections speak in terms of the authority of the Secretary of the Interior to make, modify or revoke withdrawals, but it is relevant to note in understanding that section that at the time of FLPMA’s adoption, the President had delegated to the Secretary of the Interior all of the President’s “authority ... vested in him to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States in the continental United States or Alaska for public purposes, including authority to modify or revoke withdrawals and reservations of such lands heretofore or hereafter made.” *Delegating to the Secretary of the Interior the Authority of the President to Withdraw or Reserve Lands of the United States for Public Purposes*, Exec. Order 10355, 17 Fed. Reg. 4831 (May 28, 1952); Wheatley, at 379 (that Executive Order, as of 1969, “is now the controlling authority”).

⁵⁸ House Report, at 9 (*emphasis added*).

purpose and comprehensive legislative scheme in FLPMA to eliminate all implied delegations of authority to the Executive Branch to withdraw or revoke withdrawals.

Yoo and Gaziano nevertheless suggest that a President could revoke a prior designation if the later President determines it was based on a factual error, is no longer a valid designation due to changed circumstances, or is “illegally or inappropriately large.”⁵⁹ But there already exists a remedy under such circumstances; those same arguments can be made to Congress.⁶⁰

The conclusion that only Congress may revoke a national monument designation applies doubly to those national monuments created under the Antiquities Act and administered by the National Park Service (“NPS”).⁶¹ Ten years after adoption of the Antiquities Act, Congress adopted the Organic Act of 1916 creating the National Park System.⁶² Congress there mandated that the fundamental purpose of the System is to “conserve the scenery, natural and historic objects, and the wild life in the System units ... [and] leave them unimpaired for the enjoyment of future generations.”⁶³ In 1970, Congress adopted amendments to that Organic Act which made clear that national monuments administered by NPS are part of that System and are to be protected as such.⁶⁴ And Congress provided that the entire National Park System is a “cumulative expression[] of a single national heritage.”⁶⁵ In 1978, not satisfied that the Executive Branch had gotten the message, Congress returned to this subject and added the mandate that

the protection, management, and administration of the System units shall be conducted in light of the high public value and integrity of the System and shall not be exercised in derogation of the values and purposes for which the System units have been established, *except as directly and specifically provided by Congress.*⁶⁶

Congress clearly did not intend that a President could unilaterally revoke the designation of a national monument that is part of the National Park System without Congress’ directly and

⁵⁹ Yoo and Gaziano, at 9, 10.

⁶⁰ As described in noted 4 above, on several occasions Congress has abolished national monuments by legislation.

⁶¹ For example, recent Proclamations establishing national monuments as part of the National Park System have provided “The Secretary of the Interior (Secretary) shall manage the monument through the National Park Service, pursuant to applicable legal authorities, consistent with the purposes and provisions of this proclamation.” *Establishment of the Belmont-Paul Women’s Equality National Monument*, Proclamation No. 9423, 81 Fed. Reg. 22505 (Apr. 15, 2016).

⁶² Now codified at 54 U.S.C. §100101(a).

⁶³ *Id.*

⁶⁴ See Pub. L. No. 91-383 (National Park System General Authorities Act), codified in this regard at 54 U.S.C. §§ 100102(2), 100501 (defining “National Park System” to include any area administered by the Director of NPS, including for “monument” purposes). Those monuments are as fully covered by general regulations protecting the entire System as are any national parks created by Congress. See 36 C.F.R. §1.2 (NPS regulations apply to federally owned land administered by NPS).

⁶⁵ 54 U.S.C. § 100101(b)(1)(B).

⁶⁶ *Id.*, § 100101(b)(2) (*emphasis added*).

specifically so providing. Such an act would certainly be in derogation of the values and purposes for which the monument had previously been established.⁶⁷

All of this simply goes further to establish that in the 1970s Congress adopted the Cummins Opinion's conclusion that no President may unilaterally revoke the establishment of any national monument. Such a revocation would require an act of Congress.

IV. For the Same Reasons, No President May Unilaterally Materially Reduce the Size of a National Monument.

President Trump's Executive Order of April 26, 2017 and Secretary Zinke's comments also raise the issue whether a President may unilaterally reduce the size of a national monument. Yoo and Gaziano argue that that power is to be implied into the Antiquities Act even if the President does not have the power to revoke a monument's designation.⁶⁸ But there is no merit to this claim, which is simply an alternative formulation of the baseless argument that a President may unilaterally abolish a national monument. Any attempts by the President to remove land or features that would undermine the purposes and values for which the monument was originally created would be a partial revocation of the monument. The President does not have the power to do in part what he cannot do in full.

Yoo and Gaziano rely on the fact that Presidents have issued a handful of proclamations that reduced the size of some national monuments. Whatever the understanding of this power might have been before the 1970s legislation discussed above, however, they cite not one example of any such reduction after FLPMA was adopted in 1976. The last time such a thing happened was in 1963, when President Kennedy issued a Proclamation to remove certain lands from Bandelier National Monument in New Mexico.⁶⁹ In FLPMA, Congress reasserted its authority over such matters. As discussed above, Congress made clear that it was "specially reserv[ing] to the Congress *the authority to modify* and revoke withdrawals for national monuments created under the Antiquities Act."⁷⁰

It is unclear whether a President could make non-material adjustments to monument boundaries without congressional authorization. But President Trump does not appear to be planning to test that question when he says he is eager to change the boundaries of Bears Ears National Monument. It is at least clear that any reduction in the size of the monument or other modification that undermines the purpose and values for which it was created could be made only by Congress.

⁶⁷ For example, the Presidential Proclamation designating Bears Ears National Monument explains that it is intended to preserve features of the lands that are sacred to Native Americans, paleontological resources, and a wide variety of vegetation. *Establishment of the Bears Ears National Monument*, Proclamation No. 9558, 83 Fed. Reg. 1139 (Jan. 5, 2017).

⁶⁸ Yoo and Gaziano, at 14-17.

⁶⁹ *Revising the Boundaries of the Bandelier National Monument*, Proclamation No. 3539, 28 Fed. Reg. 5407 (May 27, 1963).

⁷⁰ House Report, at 9 (*emphasis added*).

V. Conclusion.

For over one hundred years, the Antiquities Act has allowed Presidents to create national monuments and preserve worthy lands for the enjoyment of all Americans and future generations. There are today national monuments in 31 states. For all Americans, they offer recreational opportunities and preserve a heritage of beauty, scientific marvels, and human achievement. But the Antiquities Act and subsequent legislation reserved to Congress, which has Constitutional authority over public lands, the sole power to revoke such a designation or materially to reduce the monument's size.

Robert Rosenbaum, Andrew Shipe, Lindsey Beckett, Andrew Treaster, Jamen Tyler

May 3, 2017

Appendix B

“National monuments: Presidents can create them, but only Congress can undo them” by Nicholas Bryner, Eric Biber, Mark Squillace and Sean B. Hecht

THE CONVERSATION

Academic rigor, journalistic flair



National monuments: Presidents can create them, but only Congress can undo them

April 27, 2017 9.49pm EDT

Bears Ears National Monument, Utah. Bob Wick, BLM/Flickr, CC BY

On April 26 President Trump issued an executive order calling for a review of national monuments designated under the Antiquities Act. This law authorizes presidents to set aside federal lands in order to protect “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.”

Since the act became law in 1906, presidents of both parties have used it to preserve 157 historic sites, archaeological treasures and scenic landscapes, from the Grand Canyon to key landmarks of the civil rights movement in Birmingham, Alabama.

President Trump calls recent national monuments “a massive federal land grab,” and argues that control over some should be given to the states. In our view, this misrepresents the law. National monuments can be designated only on federal lands already owned or controlled by the United States.

The president’s order also suggests that he may consider trying to rescind or shrink monuments that were previously designated. Based on our analysis of the Antiquities Act and other laws, presidents do not have the authority to undo or downsize existing national monuments. This power rests with Congress, which has reversed national monument designations only 10 times in more than a century.

Contests over land use

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Trump's executive order responds to opposition from some members of Congress and local officials to national monuments created by Presidents Bill Clinton and Barack Obama. It calls for Interior Secretary Ryan Zinke to review certain national monuments created since 1996 and to recommend "Presidential actions, legislative proposals, or other actions," presumably to shrink or eliminate these monuments. The order applies to monuments larger than 100,000 acres, as well as others to be identified by Secretary Zinke.

Sean B. Hecht

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When a president creates a national monument, the area is "reserved" for the protection of sites and objects there, and may also be "withdrawn," or exempted, from laws that would allow for mining, logging or oil and gas development. Frequently, monument designations grandfather in existing uses of the land, but prohibit new activities such as mineral leases or mining claims.

Zinke said that he will examine whether such restrictions have led to "loss of jobs, reduced wages and reduced public access" in communities around national monuments. Following Secretary Zinke's review, the Trump administration may try either to rescind monument designations or modify them, either by reducing the size of the monument or authorizing more extractive activities within their boundaries.



Opponents of the proposed Bears Ears National Monument in Monticello, Utah during a visit by then-Interior Secretary Sally Jewell, July 14, 2016. AP Photo/Rick Bowmer

Two of the most-contested monuments are in Utah. In 1996 President Clinton designated the Grand Staircase-Escalante National Monument, a region of incredible slot canyons and remote plateaus. Twenty years later, President Obama designated Bears Ears National Monument, an area of scenic rock formations and sites sacred to Native American tribes.

Utah's governor and congressional delegation oppose these monuments, arguing that they are larger than necessary and that presidents should defer to the state about whether to use the Antiquities Act. Local officials have raised similar complaints about the Gold Butte National Monument in Nevada and the Katahdin Woods and Waters National Monument in Maine, both designated by Obama in late 2016.

What the law says

The key question at issue is whether the Antiquities Act gives presidents the power to alter or revoke decisions by past administrations. The U.S. Constitution gives Congress the power to decide what happens on "territory or other property belonging to the United States." When Congress passed the Antiquities Act, it delegated a portion of that authority to the president so that administrations could act quickly to protect resources or sites that are threatened.

Critics of recent national monuments argue that if a president can create a national monument, the next one can undo it. However, the Antiquities Act speaks only of designating monuments. It says nothing about abolishing or shrinking them.

Two other land management statutes from the turn of the 20th century – the Pickett Act of 1910 and the Forest Service Organic Act of 1897 – gave the president authority to withdraw other types of land, and also specifically stated that the president could modify or revoke those actions. These laws clearly contrast with the Antiquities Act's silence on reversing past decisions.



Ruins at Chaco Culture National Historic Park, New Mexico, originally protected under the Antiquities Act by President Theodore Roosevelt in 1907 to prevent looting of archaeological sites. Steven C. Price/Wikipedia, CC BY-SA

In 1938, when President Franklin D. Roosevelt considered abolishing the Castle-Pinkney National Monument – a deteriorating fort in Charleston, South Carolina – Attorney General Homer Cummings

advised that the president did not have the power to take this step. (Congress abolished the monument in 1951.)



Congress enacted a major overhaul of public lands law in 1976, the **Federal Land Policy and Management Act**, repealing many earlier laws. However, it did not change the Antiquities Act. The House Committee that drafted the 1976 law also made clear in legislative reports that it intended to prohibit the president from modifying or abolishing a national monument, stating that the law would “specifically reserve to the Congress the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act.”

The value of preservation

Many national monuments faced vociferous local opposition when they were declared, including Jackson Hole National Monument, which is now part of **Grand Teton National Park**. But over time Americans have come to appreciate them.

Indeed, Congress has converted many monuments into national parks, including **Acadia**, the **Grand Canyon**, **Arches** and **Joshua Tree**. These four parks alone attracted over 13 million visitors in 2016. The aesthetic, cultural, scientific, spiritual and economic value of preserving them has long exceeded whatever short-term benefit could have been derived without legal protection.

As Secretary Zinke begins his review of Bears Ears and other national monuments, he should heed that lesson, and also ensure that his recommendations do not overstep the president’s lawful authority.

 [Federalism](#) [national monuments](#) [Trump administration](#) [Antiquities Act](#) [public lands](#) 

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Appendix C

Land Conservation History By County: Northern Arizona (Select Projects)

The Conservation Fund

Land Conservation History By County: Northern Arizona (Select Projects)

<u>Project Name</u>	<u>State</u>	<u>Close Date</u>	<u>Assigned Date</u>	<u>Fee</u>	<u>Easement</u>	<u>Other</u>	<u>Total Acres</u>
Coconino	Projects: 1	Acres: 851,000.00	Acquisition Cost:	\$4,500,000.00	FMV:	\$4,500,000.00	
Kane and Two Mile Ranch	AZ	9/26/2005		1,000.00	0.00	850,000.00	851,000.00
Larger Project Name: Kane and Two Mile Ranch - North Rim Ranch, LLC Partnership							
Seller: Kane Ranch, LLC		TCF Partner: Land Trust		Acquisition Cost:	\$4,500,000.00	Fair Market Value:	\$4,500,000.00
County (ies): Coconino Kane		TCF Category: Co-op		Status: Property Conveyed			
Primary Resource Value: Open Spaces		Acquired For: National Park		Special Concern: Grazing Rights			
Funding: BLM; Grand Canyon Trust				Disposition Date: 1/28/2009			

The Kane Ranch shares a 100-mile boundary with the North Rim of the Grand Canyon National Park. The adjacent Two Mile Ranch contains within its boundaries the beautiful Paria Plateau and the slot canyons of Buckskin Gulch and Paria Canyon, alleged to be the most beautiful in the world. Much of the Kane Ranch is made up of the sky island of the Kaibab Plateau, which is home to the highest density old growth ponderosa pines in the Southwest. The Vermilion Cliffs National Monument, enclosed completely within the Two Mile Ranch, is the epicenter of the reintroduction efforts for the endangered California condor in Arizona. Collectively, the Kane and Two Mile ranches lie in the heart of a vast system of conservation lands and upon acquisition the ranches will be managed to accentuate their role as an important ecological link tying together three national monuments, two national recreation areas, three designated wilderness areas, and one of our nation's crown jewel National Parks -- the Grand Canyon National Park. We will be acquiring approximately one million acres in this transaction, which is composed of deeded land, Forest Service and Bureau of Land Management grazing permits, water, and real property improvements associated with the Ranch. Following acquisition we will work with the Grand Canyon Trust and create a one million acre "Sustainable Working Western Ranch." Grazing will be sharply reduced and retired on approximately 800,000 acres and the Grand Canyon Trust will begin habitat restoration projects on the most critical parts of the landscape. We have already received the support of the Bureau of Land Management and the US Forest Service and we will work with both agencies, and the Arizona Game & Fish Department towards our respective goals.

<u>Project Name</u>	<u>State</u>	<u>Close Date</u>	<u>Assigned Date</u>	<u>Fee</u>	<u>Easement</u>	<u>Other</u>	<u>Total Acres</u>
Mohave	Projects: 4	Acres: 82,892.10	Acquisition Cost:	\$2,811,462.50		FMV: \$2,910,750.00	

Grand Canyon-Parashant National Monument	AZ	7/31/2001		400.10	0.00	43,572.00	43,972.10
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Larger Project Name: Grand Canyon-Parashant National Monument - Bar Ten Ranch

Seller: Heaton Family Limited Partnership **TCF Partner:** Bureau of Land Management (BLM) **Acquisition Cost:** \$500,000.00 **Fair Market Value:** \$500,000.00

County (ies): Mohave **TCF Category:** Co-op **Status:** Property Conveyed

Primary Resource Value: Parks **Acquired For:** National Monument **Special Concern:** Parks

Funding: BLM: \$250,000; Private Fundraising (Weeden Foundation; Grand Canyon Trust; NFWF; Wallace Global Fund): \$250,000 **Disposition Date:** 2/25/2008

The Bar Ten Ranch is comprised of 400-acres of private land and 43,572 acres of grazing lease plus water rights within the newly designated Grand Canyon-Parashant National Monument administered by the Bureau of Land Management. The Monument, located north of the Grand Canyon in Mohave County, Arizona, provides multiple recreation opportunities within 100 miles of Las Vegas, Nevada and acquisition of this critical inholding would eliminate future threat of development. The Bar Ten Ranch includes numerous riparian areas and springs that are relatively scarce or unique to the area. The springs and a portion of the grazing permit are also located within the Mt. Trumbell Wilderness Area. The current landowner is under intense pressure from potential developers and neighbors to develop the land but he and his family have expressed a strong desire to see the property preserved and protected in conservation consistent with the objectives of the Monument. The Heaton family has continuously owned the Bar Ten Ranch for over 120 years and this unprecedented opportunity provides the BLM a rare chance to work together to preserve and protect additional lands with a win-win solution.,

Grand Canyon-Parashant National Monument	AZ	6/19/2002		240.00	0.00	36,760.00	37,000.00
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Larger Project Name: Pakoon Springs

Seller: Simmons, Charles **TCF Partner:** Bureau of Land Management (BLM) **Acquisition Cost:** \$520,000.00 **Fair Market Value:** \$525,000.00

County (ies): Mohave **TCF Category:** RK Mellon Foundation **Status:** Property Conveyed

Primary Resource Value: Parks **Acquired For:** National Monument **Special Concern:** Parks

Funding: RKMF: Full Funding via the American Land Conservation Bank (Provided At Closing) **Disposition Date:** 6/19/2002

Pakoon Springs is comprised of approximately 240 acres of private property and 32,000 acres of public land grazing lease surrounding the private lands. The Ranch is located in desert tortoise habitat on the western edge of the Grand Canyon Parashant National Monument. The property contains important springs, ponds, and cultural and palentological sites that are potentially eligible for the National Register. Pakoon Springs also has the potential to make an excellent administrative site for the west side of the Parashant National Monument. Abundant water, excellent accessibility, and its location which is close to a major fire hazard area make it a strong candidate for an administrative site for fire protection and visitor services in one of the most remote portions of the entire southwest. Acquisition of this site, along with the Bar Ten Ranch on the eastern portion of the monument has resulted in protection of over 90,000 acres of critical inholding within the Monument.

<u>Project Name</u>	<u>State</u>	<u>Close Date</u>	<u>Assigned Date</u>	<u>Fee</u>	<u>Easement</u>	<u>Other</u>	<u>Total Acres</u>
Grand Canyon-Parashant National Monument	AZ	11/18/2010		1,855.00	0.00	0.00	1,855.00

Larger Project Name: Grand Canyon-Parashant National Monument - Terry Esplin Property, Phase I

Seller: Bridlebit Three Cattle Company **TCF Partner:** Bureau of Land Management (BLM) **Acquisition Cost:** \$1,732,800.00 **Fair Market Value:** \$1,824,000.00

County (ies): Mohave **TCF Category:** Co-op **Status:** Property Conveyed

Primary Resource Value: Open Spaces **Acquired For:** National Monument **Special Concern:** Recreation

Funding: Both Phases of the Esplin Properties: BLM-LWCF (FY10): \$1.6M; BLM-FLTFA: \$1.5M **Disposition Date:** 10/25/2011

This 1,920.00+/- acre parcel is within the Grand Canyon Parashant National Monument and would, upon acquisition, be reserved and managed as part of the Monument. Acquisition of this property would provide important public access to the Monument, Lake Mead National Recreation Area, and Grand Canyon National Park for recreation, hunting, sightseeing, and scientific monitoring programs. This acquisition will complement other projects completed in the Grand Canyon Parashant National Monument, including the Bar 10 Ranch, Pakoon Springs, and the Kane and Two Mile Ranch.

Grand Canyon-Parashant National Monument	AZ	12/17/2010		65.00	0.00	0.00	65.00
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Larger Project Name: Grand Canyon-Parashant National Monument - Terry Esplin Property, Phase II

Seller: Bridlebit Three Cattle Company **TCF Partner:** Bureau of Land Management (BLM) **Acquisition Cost:** \$58,662.50 **Fair Market Value:** \$61,750.00

County (ies): Mohave **TCF Category:** Co-op **Status:** Property Conveyed

Primary Resource Value: Open Spaces **Acquired For:** National Monument **Special Concern:** Recreation

Funding: Both Phases of the Esplin Properties: BLM-LWCF (FY10): \$1.6M; BLM-FLTFA: \$1.5M **Disposition Date:** 10/25/2011

This 1,920.00+/- acre parcel is within the Grand Canyon Parashant National Monument and would, upon acquisition, be reserved and managed as part of the Monument. Acquisition of this property would provide important public access to the Monument, Lake Mead National Recreation Area, and Grand Canyon National Park for recreation, hunting, sightseeing, and scientific monitoring programs. This acquisition will complement other projects completed in the Grand Canyon Parashant National Monument, including the Bar 10 Ranch, Pakoon Springs, and the Kane and Two Mile Ranch.

	<u>Projects</u>	<u>Fee Acres</u>	<u>Eased Acres</u>	<u>Other Acres</u>	<u>Total Acres</u>	<u>Acquisition Cost</u>	<u>Fair Market Value</u>
Totals	5	3,560.10	0.00	930,332.00	933,892.10	\$7,311,462.50	\$7,410,750.00

Appendix D

Grand Canyon-Parashant National Monument Background Materials



Grand Canyon-Parashant National Monument Background Materials



U.S. Department of the Interior, January 11, 2000

THE ANTIQUITIES ACT

Section 2 of the Antiquities Act, 16 U.S.C. § 431, authorizes the President to establish as national monuments "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States...."

Objects of Historic or Scientific Interest

The Grand Canyon-Parashant National Monument is located on the Colorado Plateau in northwestern Arizona, within the drainage of the Colorado River. It borders Grand Canyon National Park to the south, the state of Nevada to the west, and encompasses a portion of Lake Mead National Recreation Area. Elevations within the monument range from 2,300 to 8,000 feet above sea level. The map appended to the Proclamation sets out the boundaries of the land reserved for the monument. The outer boundaries of the area encompass 1,014,000 acres of federal land, of which the Bureau of Land Management (BLM) manages approximately 808,000 acres and the National Park Service (NPS) manages approximately 206,000 acres. The Proclamation describes objects in the area that warrant protection as a national monument.

The monument contains valuable geological resources, including relatively undeformed and unobscured Paleozoic and Mesozoic sedimentary rock layers, offering a clear view to understanding the geologic history of the Colorado Plateau. Deep canyons, mountains and lonely buttes testify to the power of geological forces and provide colorful vistas. Fossils are abundant throughout the monument. Among these are large numbers of invertebrate fossils, including bryozoans and brachiopods located in the Calville limestone of the Grand Wash Cliffs, and brachiopods, pelecypods, fenestrate bryozoa, and crinoid ossicles in the Toroweap and Kaibab formations of Whitmore Canyon. There are also sponges in nodules and pectenoid pelecypods throughout the Kaibab formation of Parashant Canyon.

Archaeological evidence shows much human use of the area over the past centuries. Prehistoric use is documented by irreplaceable rock art images, quarries, villages, watchtowers, farms, burial sites, caves, rockshelters, trails and camps. Historic ranch structures and corrals, fences, water tanks and the ruins of sawmills are scattered across the monument, and tell the stories of the remote family ranches and the lifestyles of early homesteaders. There are several old mining sites dating from the 1870s, showing the history of mining during the late nineteenth and early twentieth centuries.

The monument also contains outstanding biological resources. Giant Mojave yucca, spread out in undisturbed conditions, are found in the monument. Diverse wildlife inhabit the monument, including a trophy-quality mule deer herd, Kaibab squirrels, and wild turkey. There are numerous threatened or endangered species as well, including the Mexican

spotted owl, the California condor, the desert tortoise, and the southwestern willow flycatcher. There are also candidate or sensitive species, including the spotted bat, the western mastiff bat, the Townsend's big eared bat, and the goshawk. There are two federally recognized sensitive rare plant species: the *Penstemon distans* and the *Rosa stellata*.

The area in the monument has remained isolated and relatively undisturbed and is for the most part roadless. Most of the land within the outer boundaries of the monument is federally owned. The non-federal land is owned primarily by the State of Arizona in scattered 640 acre sections, the result of Arizona's statehood land grant. Currently, the federal lands in the area are used primarily for scientific study, primitive recreation, and livestock grazing.

In 1975, the Grand Canyon National Park Enlargement Act was signed into law. This Act continued, but did not complete, an historic effort to fully protect the Grand Canyon ecosystem. Preservation of the Grand Canyon area began with the creation of the Grand Canyon Forest Preserve in 1893, followed by the creation by President Theodore Roosevelt of the Grand Canyon National Monument in 1908. In 1919, Congress converted the Grand Canyon National Monument to a national park. Additional lands were made national monuments by Presidential Proclamation in 1932 and 1969. Congress enlarged the park in 1975 to include these lands, but that Act left open the question whether several drainages north of the Grand Canyon, including much of the Grand Canyon-Parashant National Monument, should be protected. The Act required that the Secretary study and issue a report on these lands. The report was completed in 1981, although no management recommendation was included.

In the late 1970s, the area was evaluated for its wilderness characteristics under the Federal Land Policy and Management Act, and in 1984 Congress designated four wilderness areas, totaling about 95,000 acres, in the national monument boundary. The documentation assembled in the National Park designation and the wilderness inventory and study processes has been useful in identifying many of the objects of scientific and historic interest within the monument area.

Land Area Reserved for the Proper Care and Management of the Objects to be Preserved

The Antiquities Act authorizes the President, as part of his declaration of a national monument, to reserve land, "the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected." 16 U.S.C. § 431. The area reserved has been carefully delineated, based on a thorough review of available information, to meet the goals of effectively caring for and managing the objects in perpetuity.

The area of the monument includes archaeological, biological, paleontological, geological, and historic objects identified in the Proclamation. The area is based on the conservation needs of these objects. Some of these objects, such as the geological resources, are present throughout the entire monument area. Others, such as the archeological resources, are scattered within it. Many objects, such as the biological and geological, are found in conjunction with one another. Some of the objects identified depend on their location at various sites or elevations for their scientific value.

Preservation of such objects requires, among other things, protection of enough land surrounding them to maintain the relatively remote conditions that have made their continued existence possible. Furthermore, the scientific value of many of the objects within the monument requires preservation of areas large enough to maintain the objects and their interactions. For example, species that exist because of the area's extraordinary geologic and environmental stability are distributed according to the geologic features to which they have adapted. Much of the biological and other scientific interest in the area results from the

variety of geologic substrates across elevational gradients. Many species rely upon the entire area to maintain viable populations and their role in the ecosystem. Thus, protection of the aggregate area is necessary for proper care of the objects. Even if it were possible to disaggregate the area, management of a patchwork of reserved lands would be impractical, as it would make it more difficult to care for the objects, reduce options for natural resource management, and lead to inconsistent resource management standards for overlapping resources. Such a fragmentation of the monument would endanger many of the objects, undermine the purposes of the monument itself, and create substantial impediments to effective management of the monument. In short, reservation of a smaller area would undermine proper care and management of the monument.

LEGAL EFFECTS OF THE PROCLAMATION

There are several significant aspects of the Proclamation. First, it reserves only the federal lands in the area, because the Antiquities Act applies only to objects of historic or scientific interest "that are situated upon the lands owned or controlled by the Government of the United States." 16 U.S.C. § 431.

Second, the Proclamation is subject to valid existing rights. Thus, to the extent a person or entity has valid existing rights in the federal lands or resources within the area, the Proclamation respects their rights. The exercise of such rights could, however, be regulated in order to protect the purposes of the monument.

Third, the Proclamation appropriates and withdraws the federal lands and interests in lands within the boundaries of the monument from entry, location, sale, leasing, or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. This withdrawal prevents the location of new mining claims under the 1872 Mining Law, and prevents the Secretary of the Interior from exercising discretion under the mineral leasing acts and related laws to lease or sell federal minerals within the boundaries of the monument.

Fourth, the Proclamation does not reserve water resources of the area under federal law pursuant to the so-called Winters doctrine. Most of the objects to be protected under the Proclamation

(e.g., archaeology and geology) do not require water. For protection of other monument resources, the Proclamation direct the Secretary of the Interior to work with appropriate state authorities to ensure that water resources needed for monument purposes are available.

ADMINISTRATION OF THE MONUMENT

Management by the Bureau of Land Management and the National Park Service

The federal lands in the area described in the Proclamation are currently under the jurisdiction of the Bureau of Land Management (BLM) and the National Park Service (NPS, within the boundaries of the Lake Mead National Recreation Area) in the Department of the Interior. BLM manages the land pursuant to its basic organic authorities, the primary one being the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. § 1702 et seq.). The Park Service manages its lands pursuant to the National Park Service Organic Act (16 U.S.C. § 1) and the act creating the Lake Mead National Recreation Area (16 U.S.C. § 460n).

The Proclamation keeps the area under the existing BLM and NPS management. This keeps the management of the federal land under these agencies' existing authorities, but subject to the overriding purpose of protecting the scientific and historic objects described in the

Proclamation. The establishment of the monument thus constitutes an overlay on the management regime otherwise applicable to lands managed by the BLM or the NPS; it limits the management discretion that the BLM and NPS might otherwise have, by mandating protection of the historic and scientific objects within the national monument.

As elsewhere, the designated wilderness areas encompassed within the monument will continue to be managed in accordance with the Wilderness Act of 1964 and the legislation designating them as wilderness. Other monuments have Congressionally designated wilderness, such as the Badlands, Bandelier, Chiricahua, Craters of the Moon, Lava Beds, Misty Fjords, Organ Pipe Cactus, Pinnacles, and Saguaro.

Impact of Monument Designation on Existing or Planned Activities in the Area

Currently permitted livestock grazing (including water impoundments, and similar range improvements), hunting, and similar activities:

Grazing, hunting and other similar uses are generally not be affected except where (1) the BLM or NPS, through processes required by existing law, identifies places where such uses ought to be restricted or prohibited as necessary to protect the federal lands and resources, including the objects protected by the monument designation; or (2) where the BLM or NPS finds a clear threat from such a use to the federal lands and resources, including the objects protected by the monument designation and the circumstances call for swift protective action. Such uses will, of course, remain subject to applicable laws and regulations, and will therefore remain subject to regulation and limitation under such provisions for reasons other than establishment of the monument.

Use of existing rights-of-way (such as those established under R.S. 2477 or Title V of FLPMA):

The area covered by the Proclamation has very few roads; those that exist are primitive and tend to be rough and rutted much of the year. Use of existing rights-of-way will generally be subject to the same standards as described in the preceding paragraph. In some cases existing rights-of-way may include valid existing rights. The exercise of such rights may be regulated in order to protect the purposes of the monument, but any regulation must respect such rights.

Off road vehicle use:

For purposes of protecting the objects identified in the Proclamation, it prohibits motorized and mechanized vehicle travel off road, except for authorized administrative or emergency purposes. The current management plan prohibits such vehicle travel off road in the monument area so there should be no change in actual practice.

Activities on state or private land:

The area within the boundaries of the monument contains approximately 23,000 acres of state land. It also contains approximately 9,000 acres of private land. The monument designation does not apply to those lands, but the Proclamation provides that if any of these lands within the outer boundaries of the monument are acquired into federal ownership in the future, they will become part of the monument. In the absence of acquisition, the laws applicable to the use of private or state lands prior to the establishment of the monument will continue to apply.

Mining claims:

New mining claims are prohibited. The Proclamation withdraws the area from the 1872 Mining Law (30 U.S.C. § 21 et seq.). Existing mining claims with a valid discovery of a valuable mineral deposit as of the date of the designation will contain valid existing rights. The exercise of such rights may be regulated in order to protect the purposes of the monument, but any regulation must respect such rights. Existing mining claims that lack a valid discovery of a valuable mineral deposit have no valid existing rights; activities on such claims may be regulated or prohibited to protect the purposes of the monument.

Appendix E

Arizona Republic

Arizonans support monuments

The Arizona Republic

Gov. Jane Hull's criticism of Arizona's two new national monuments appears counter to the wishes of most Arizonans, according to a poll by Behavior Research Center of Phoenix.

The poll — taken from Dec. 27 and Jan. 3 of 505 voters statewide — indicated that 68 percent favored President Clinton's Jan. 11 action to create the 1 million-acre Grand Canyon-Parashant National Monument, northwest of

Grand Canyon National Park, and the 71,000-acre Agua Fria National Monument, north of Phoenix. Twenty-four percent were opposed, and 8 percent were unsure.

Support for the president's action was favored by overwhelming majorities of voters from both major parties and by independents, and those living in both urban and rural Arizona, according to the poll. It has a margin of error of plus or minus 4.4 percentage points.

Although it was sponsored by four environmental groups, the poll's research director, Earl de Berge, said the findings were similar to an independent poll he conducted in May that indicated even higher support — 84 percent — for a proposed new 3 million-acre Sonoran Desert National Park.

"I think it speaks very clearly to Arizonans' concerns about the disruption of the environment (and of) air pollution and urban sprawl," de Berge said.

Appendix F

Proclamation Press Release



January 11, 2000

ESTABLISHMENT OF THE GRAND CANYON-PARASHANT NATIONAL MONUMENT

THE WHITE HOUSE

Office of the Press Secretary
(Grand Canyon, Arizona)

For Immediate Release

January 11, 2000

ESTABLISHMENT OF THE GRAND CANYON-PARASHANT NATIONAL MONUMENT

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

The Grand Canyon-Parashant National Monument is a vast, biologically diverse, impressive landscape encompassing an array of scientific and historic objects. This remote area of open, undeveloped spaces and engaging scenery is located on the edge of one of the most beautiful places on earth, the Grand Canyon. Despite the hardships created by rugged isolation and the lack of natural waters, the monument has a long and rich human history spanning more than 11,000 years, and an equally rich geologic history spanning almost 2 billion years. Full of natural splendor and a sense of solitude, this area remains remote and unspoiled, qualities that are essential to the protection of the scientific and historic resources it contains.

The monument is a geological treasure. Its Paleozoic and Mesozoic sedimentary rock layers are relatively undeformed and unobscured by vegetation, offering a clear view to understanding the geologic history of the Colorado Plateau. Deep canyons, mountains, and lonely buttes testify to the power of geological forces and provide colorful vistas. A variety of formations have been exposed by millennia of erosion by the Colorado River. The Cambrian, Devonian, and Mississippian formations (Muav Limestone, Temple Butte Formation, and the Redwall Limestone) are exposed at the southern end of the lower Grand Wash Cliffs. The Pennsylvanian and Permian formations (Calville Limestone, Esplanade Sandstone, Hermit Shale, Toroweap Formation, and the Kaibab Formation) are well exposed within the Parashant, Andrus, and Whitmore Canyons, and on the Grand Gulch Bench. The Triassic Chinle and Moenkopi Formations are exposed on the Shivwits Plateau, and the purple, pink, and white shale, mudstone, and sandstone of the Triassic Chinle Formation are exposed in Hells Hole.

The monument encompasses the lower portion of the Shivwits Plateau, which forms an important watershed for the Colorado River and the Grand Canyon. The Plateau is bounded on the west by the Grand Wash Cliffs and on the east by the Hurricane Cliffs. These cliffs, formed by large faults that sever the Colorado Plateau slicing north to south through the region, were and are major topographic barriers to travel across the area. The

Grand Wash Cliffs juxtapose the colorful, lava-capped Precambrian and Paleozoic strata of the Grand Canyon against the highly faulted terrain, recent lake beds, and desert volcanic peaks of the down-dropped Grand Wash trough. These cliffs, which consist of lower and upper cliffs separated by the Grand Gulch Bench, form a spectacular boundary between the basin and range and the Colorado Plateau geologic provinces. At the south end of the Shivwits Plateau are several important tributaries to the Colorado River, including the rugged and beautiful Parashant, Andrus, and Whitmore canyons. The Plateau here is capped by volcanic rocks with an array of cinder cones and basalt flows, ranging in age from 9 million to only about 1000 years old. Lava from the Whitmore and Toroweap areas flowed into the Grand Canyon and dammed the river many times over the past several million years. The monument is pocketed with sinkholes and breccia pipes, structures associated with volcanism and the collapse of underlying rock layers through ground water dissolution.

Fossils are abundant in the monument. Among these are large numbers of invertebrate fossils, including bryozoans and brachiopods located in the Calville limestone of the Grand Wash Cliffs, and brachiopods, pelecypods, fenestrate bryozoa, and crinoid ossicles in the Toroweap and Kaibab formations of Whitmore Canyon. There are also sponges in nodules and pectenoid pelecypods throughout the Kaibab formation of Parashant Canyon.

The Grand Canyon-Parashant National Monument contains portions of geologic faults, including the Dellenbaugh fault, which cuts basalt flows dated 6 to 7 million years old, the Toroweap fault, which has been active within the last 30,000 years, the Hurricane fault, which forms the Hurricane Cliffs and extends over 150 miles across northern Arizona and into Utah, and the Grand Wash fault, which bounds the west side of the Shivwits Plateau and has approximately 15,000 feet of displacement across the monument.

Archaeological evidence shows much human use of the area over the past centuries. Because of their remoteness and the lack of easy road access, the sites in this area have experienced relatively little vandalism. Their good condition distinguishes them from many prehistoric resources in other areas. Prehistoric use is documented by irreplaceable rock art images, quarries, villages, watchtowers, agricultural features, burial sites, caves, rockshelters, trails, and camps. Current evidence indicates that the monument was utilized by small numbers of hunter-gatherers during the Archaic Period (7000 B.C. to 300 B.C.). Population and utilization of the monument increased during the Ancestral Puebloan Period from the Basketmaker II Phase through the Pueblo II Phase (300 B.C. to 1150 A.D.), as evidenced by the presence of pit houses, habitation rooms, agricultural features, and pueblo structures. Population size decreased during the Pueblo III Phase (1150 A.D. to 1225 A.D.). Southern Paiute groups replaced the Pueblo groups and were occupying the monument at the time of Euro-American contact. Archeological sites in the monument include large concentrations of ancestral Puebloan (Anasazi or Hitesatsinom) villages, a large, intact Pueblo II village, numerous archaic period archeological sites, ancestral Puebloan sites, and Southern Paiute sites. The monument also contains areas of importance to existing Indian tribes.

In 1776, the Escalante-Dominguez expedition of Spanish explorers passed near Mount Trumbull. In the first half of the 19th century, Jedediah Smith, Antonio Armijo, and John C. Fremont explored portions of this remote area. Jacob Hamblin, a noted Mormon pioneer, explored portions of the Shivwits Plateau in 1858 and, with John Wesley Powell, in the 1870s. Clarence Dutton completed some of the first geological explorations of this area and provided some of the most stirring written descriptions. Having traversed this area by wagon at the request of the territorial legislature, Sharlot Hall recommended it for inclusion within the State of Arizona when it gained Statehood in 1912. Early historic sawmills provided timber that was hauled 70 miles along the Temple Trail wagon road from Mt. Trumbull

down the Hurricane Cliffs to St. George, Utah. Ranch structures and corrals, fences, water tanks, and the ruins of sawmills are scattered across the monument and tell the stories of the remote family ranches and the lifestyles of early homesteaders. There are several old mining sites dating from the 1870s, showing the history of mining during the late 19th and early 20th centuries. The remote and undeveloped nature of the monument protects these historical sites in nearly their original context.

The monument also contains outstanding biological resources preserved by remoteness and limited travel corridors. The monument is the junction of two physiographic ecoregions: the Mojave Desert and the Colorado Plateau. Individually, these regions contain ecosystems extreme to each other, ranging from stark, arid desert to complex, dramatic higher elevation plateaus, tributaries, and rims of the Grand Canyon. The western margin of the Shivwits Plateau marks the boundary between the Sonoran/Mojave/Great Basin floristic provinces to the west and south, and the Colorado Plateau province to the northeast. This intersection of these biomes is a distinctive and remarkable feature. Riparian corridors link the plateau to the Colorado River corridor below, allowing wildlife movement and plant dispersal. The Shivwits Plateau is in an arid environment with between 14 to 18 inches of precipitation a year. Giant Mojave Yucca cacti proliferate in undisturbed conditions throughout the monument. Diverse wildlife inhabit the monument, including a trophy-quality mule deer herd, Kaibab squirrels, and wild turkey. There are numerous threatened or endangered species as well, including the Mexican spotted owl, the California condor, the desert tortoise, and the southwestern willow flycatcher. There are also candidate or sensitive species, including the spotted bat, the western mastiff bat, the Townsend's big eared bat, and the goshawk, as well as two federally recognized sensitive rare plant species: *Penstemon distans* and *Rosa stellata*. The ponderosa pine ecosystem in the Mt. Trumbull area is a biological resource of scientific interest, which has been studied to gain important insights regarding dendroclimatic reconstruction, fire history, forest structure change, and the long-term persistence and stability of presettlement pine groups.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Grand Canyon-Parashant National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Grand Canyon-Parashant National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled "Grand Canyon-Parashant National Monument" attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 1,014,000 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

For the purpose of protecting the objects identified above, all motorized and mechanized vehicle use off road will be prohibited, except

for emergency or authorized administrative purposes.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Arizona with respect to fish and wildlife management.

The establishment of this monument is subject to valid existing rights.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. Sale of vegetative material is permitted only if part of an authorized science-based ecological restoration project. Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

This proclamation does not reserve water as a matter of Federal law nor relinquish any water rights held by the Federal Government existing on this date. The Federal land managing agencies shall work with appropriate State authorities to ensure that water resources needed for monument purposes are available.

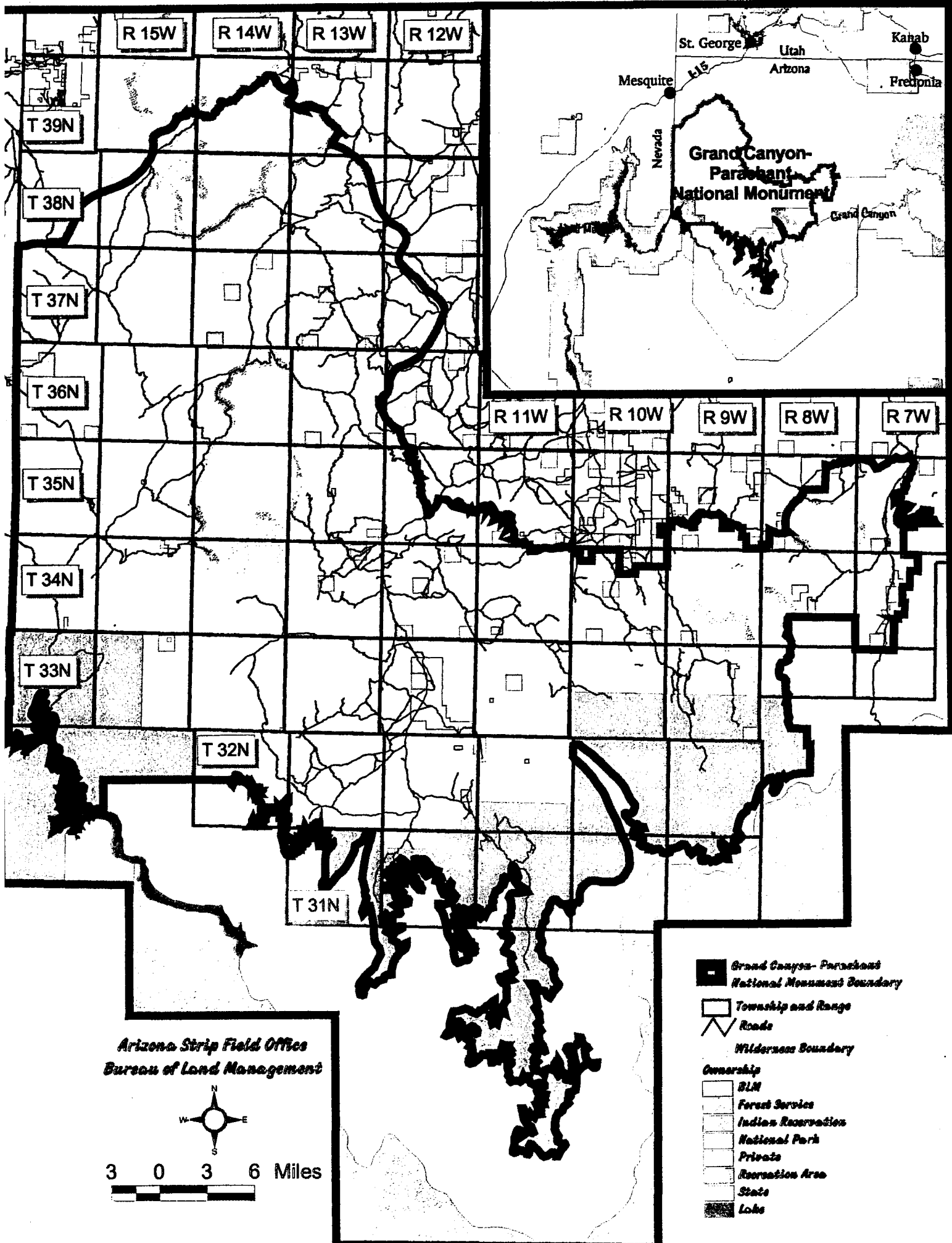
The Secretary of the Interior shall manage the monument through the Bureau of Land Management and the National Park Service, pursuant to applicable legal authorities, to implement the purposes of this proclamation. The National Park Service and the Bureau of Land Management shall manage the monument cooperatively and shall prepare an agreement to share, consistent with applicable laws, whatever resources are necessary to properly manage the monument; however, the National Park Service shall continue to have primary management authority over the portion of the monument within the Lake Mead National Recreation Area, and the Bureau of Land Management shall have primary management authority over the remaining portion of the monument.

The Bureau of Land Management shall continue to issue and administer grazing leases within the portion of the monument within the Lake Mead National Recreation Area, consistent with the Lake Mead National Recreation Area authorizing legislation. Laws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing leases on all lands under its jurisdiction shall continue to apply to the remaining portion of the monument.

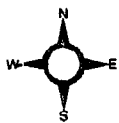
Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation. Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of January, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

WILLIAM J. CLINTON



Arizona Strip Field Office
Bureau of Land Management



3 0 3 6 Miles

- Grand Canyon-Parashant National Monument Boundary
- Township and Range
- Roads
- Wilderness Boundary
- Ownership**
- BLM
- Forest Service
- Indian Reservation
- National Park
- Private
- Recreation Area
- State
- Lake