



June 30, 2017

Monument 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: Ironwood Forest 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 in Arizona alone, I write to express our unwavering support for Ironwood Forest National Monument (IFNM), and to ask that you uphold the current monument designation, maintaining the boundaries and protections established in the proclamation by President Clinton on June 9, 2000.

Ironwood Forest National Monument arose from a transparent effort to permanently protect the natural resources and landmarks, structures, and historic and scientific features of Arizona's Pima County. This campaign began with the Pima County Board of Supervisors and grew to involve the relevant stakeholder groups including landowners, ranchers, preservationists, and the Tohono O'odham Nation, who all aligned to develop and propose a national monument that would provide significant and lasting protections for the natural features, antiquities, and traditional uses of this area.

As NPCA explains below, President Clinton's use of the Antiquities Act to protect the Ironwood Forest National Monument was wholly appropriate and justified, and the Department of the Interior should not recommend any changes to IFNM for the following reasons:

- The President does not have the legal authority to rescind IFNM's designation as a national monument or otherwise reduce IFNM's boundaries.
- The designation of IFNM fulfills the requirements and original objectives of the Antiquities Act. Scientific and historic objects protected by the designation include geologic features, such as the iconic Ragged Top, mountain ranges, cliffs, dune areas, sedimentation sites, and mammal fossil sites; archeological treasures evidencing thousands of years of human history; and multiple diverse biological communities, including endangered and other vulnerable species. Furthermore, IFNM is "the smallest area compatible with the proper care and management of the objects to be protected" because the proper care and management of IFNM's resources require an area at least the size of IFNM to preserve the resources themselves along with appropriate buffer zones and natural corridors.

- The Bureau of Land Management (BLM) manages IFNM for multiple uses. Traditional ranching uses have continued since designation, and recreational uses include hiking, camping, biking, and hunting.
- IFNM’s designation benefits the surrounding areas and has minimal adverse impacts.
- IFNM’s designation was instigated by local conservation planning efforts. The development of the proposal for the monument involved outreach to landowners, ranchers, conservationists, preservationists, scientists and historic resource experts, as well as the Tohono O’odham Nation, and IFNM’s designation received enthusiastic support from Pima and Pinal County officials. IFNM continues to be widely supported by these communities.
- The BLM, which had oversight of IFNM even before the designation, has resources to manage the monument. When considering the availability of federal resources to manage IFNM, the economic benefits of management of IFNM as a national monument should also be taken into account.

## **I. There Is No Legal Authority for the President to Rescind or Resize a Monument Under the Antiquities Act**

The current review of 27 national monuments, including IFNM, provides no legal avenue for the president to rescind or reduce in size any national monument. No president has the legal authority to rescind or materially modify any national monument proclaimed under the Antiquities Act.

President Trump’s Executive Order on the Review of Designations Under the Antiquities Act signed on April 26, 2017 directs the Secretary of the Department of Interior to provide the Office of Management and Budget and President Trump with potential 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 of the order broadly talks about public input, economic growth, the “original objectives” of the Antiquities Act and “appropriately balanc[ing] the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.” At the time of President Trump’s Executive Order, you explained that you will consider whether monuments should be “rescinded, resized, [or] modified.” When asked if the president has the power to do so unilaterally, you suggested that 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.”<sup>1</sup>

We urge you, Secretary Zinke, to re-examine your understanding of this issue. The president has no power unilaterally to modify or “resize” a monument, much less rescind one. We attach 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 exists and no such power to make material changes exists. The only result of the current review ordered by President Trump, therefore, would be to recommend to Congress that it draft legislation to make whatever revocations or modifications your office and the president believe justified.

To summarize the arguments in the APKS Memo and Squillace Article, the U.S. Constitution grants the power to administer federal lands exclusively to Congress, not the president.<sup>2</sup> Whether or not the president has the power unilaterally to modify or revoke a national monument designation therefore

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<sup>1</sup> “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.

<sup>2</sup> Const., Property Clause, Art. IV, § 3.

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,<sup>3</sup> but it says nothing about a president having the power to abolish a national monument or to reduce its size. And no such power may be implied. This is so for several reasons:

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.<sup>4</sup>

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 conjunction with which it must be interpreted. One of those statutes was the Federal Land Policy and Management Act (FLPMA), adopted in 1976.<sup>5</sup>

- One of Congress's purposes in FLPMA 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.<sup>6</sup> Accordingly, Congress there repealed a number of prior statutes that had authorized Executive Branch withdrawals and revocations, and Congress also repealed a Supreme Court decision that had found an implied power in the presidency to withdraw land from oil exploration.<sup>7</sup> 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."<sup>8</sup> This is particularly so when the later statute is a comprehensive legislative scheme.<sup>9</sup> 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. *See* APKS Memo at pages 8-14; Squillace Article at pages 3-5.
- Consistent with this, Congress in effect 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 change the meaning."<sup>10</sup> 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, consistent with its purpose of reasserting its authority over federal lands.

Moreover, while you have stated that the power to modify a monument is supposedly uncontested, that is not the case. A president does not have the power to do in part what he cannot do in full. It is

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<sup>3</sup> 54 U.S.C. § 320301(a).

<sup>4</sup> "Proposed Abolishment of Castle Pinckney Nat'l Monument," 39 Op. Atty. Gen. 185 (1938)

<sup>5</sup> 43 U.S.C. 1704 *et seq.*

<sup>6</sup> 43 U.S.C. 1704 (a)(4).

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

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

<sup>9</sup> *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.

<sup>10</sup> *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).

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. In 1935, the Solicitor of the Department of the Interior was asked to opine about the president's power to reduce in size monuments created under the Antiquities Act. The Solicitor concluded that that power did exist based on the *Midwest Oil* decision.<sup>11</sup> When Congress expressly repealed *Midwest Oil*, however, the basis for the Solicitor's decision was removed. See Squillace at 6-8. In FLPMA, Congress made clear when it adopted that statute that it was "specially reserv[ing] to the Congress *the authority to modify* and revoke withdrawals for national monuments created under the Antiquities Act."<sup>12</sup> Accordingly, no president has attempted to modify the size of a national monument since FLPMA any more than to revoke such a designation altogether.

In the Executive Order of April 26, 2017, President Trump asked for a review of whether the designations "appropriately balance the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities." In the unlikely event that a court might find that a president does have the power to rescind or modify a monument designation, however, such a power can be no broader than the Antiquities Act into which the power is implied. No such balancing test is found in the Antiquities Act. The balancing standard laid out in President Trump's Executive Order on April 26, 2017 is therefore inapplicable and must not be relied on by your office in making any recommendations.

Nevertheless, even if the application of such a balancing test were within a president's authority, the close look necessary for such a balancing would reveal that the land encompassed by IFNM is necessary to protect its significant natural, historic, and scientific holdings, and that IFNM's preservation and conservation purposes are consistent with and complement recreational, ranching, and other uses.

## **II. Consideration of the Factors Identified in the Request for Comments Supports Ironwood Forest National Monument's Continued Designation as a National Monument and Maintenance of Its Existing Boundaries**

Even assuming, counterfactually, that President Trump has the power to revoke IFNM's designation as a national monument or otherwise modify to reduce its boundaries, NPCA respectfully submits that the president should not do so. Analysis of the factors identified by you, Secretary Zinke, in your request for comments supports both IFNM's continued designation as a national monument and its existing boundaries.

### **A. *Factors (i) and (ii): The Designation of the Ironwood Forest National Monument Reflects the Antiquity Act's Requirements and Original Objectives***

Secretary Zinke, you have requested comments regarding whether a national monument's designation meets the "original objectives" and requirements of the Antiquities Act that the monument 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.

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

The assumption behind the use of the term "original objectives" suggests there has been some change in the objectives over time, but that is not true. Nor is it true that the "original objectives"

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<sup>11</sup> Opinion of the Solicitor M27657 (Jan. 30, 1935).

<sup>12</sup> House Rep. No. 94-1163 (May 15, 1976), at 9 (*emphasis added*).

were limited to protecting small areas, as some have argued and as the review of all monuments of more than 100,000 acres suggests. Mr. Secretary, you stated on April 25, 2017 that the average size of monuments designated in the early years of the Antiquities Act was 442 acres, but that is also incorrect.

In fact, the Antiquities Act from its inception was intended by Congress to include large areas having historic or scientific interest as well as small areas around archeological ruins. President Theodore Roosevelt, who you lauded at your press conference, designated monuments of 818,000 acres (1908, Grand Canyon) and 640,000 (1909, Mount Olympus). The Supreme Court upheld the Grand Canyon designation in 1920.<sup>13</sup> And every court to have considered the issue since then has agreed that the Antiquities Act was intended to protect, not just archeological “objects,” but large natural areas having historic or scientific interest, as the act provides.<sup>14</sup> For example, in 1976, the Supreme Court found that a pool of water and the fish which live there are such objects.<sup>15</sup> And 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.”<sup>16</sup>

Given that 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, nor must the “object” be as constrained as opponents of national monuments argue.

## 2. *Significant Objects of Historic and Scientific Interest Are Found Throughout the Lands of Ironwood Forest National Monument*

The lands incorporated into IFNM are appropriately classified under the Antiquities Act as “historic landmarks, historic and prehistoric structures, [or] other objects of historic or scientific interest.” The objects within IFNM embody quintessential visual, biological, and geological elements of the Sonoran Desert, and they include significant historic artifacts from thousands of years of human habitation.

These resources have immense historic and scientific value. IFNM has long served as a location for research across many disciplines due to the “exceptional quality and diversity of the desert habitats” and geological features contained within it.<sup>17</sup> The area’s role as a longstanding and significant locale for scientific research, including its inclusion in the 1970s International Biome Study, was documented at the time of IFNM’s designation in 2000.<sup>18</sup> Also in 2000, just before IFNM’s designation, the Arizona-Sonora Desert Museum noted in its report on the potential monument that the area’s “long history of research in desert ecosystems” made it a “prime candidate for future

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<sup>13</sup> *Cameron v United States*, 252 U.S. 459 (1920).

<sup>14</sup> *See, e.g., Caepfert v United States*, 426 U.S. 128 (1976); *Mountain States Legal Foundation v Bush*, 306 F. 3d 1132 (D.C. Cir. 2002).

<sup>15</sup> *Caepfert*, 426 U.S. at 141-42.

<sup>16</sup> *Tulare County v. Bush*, 306 F. 3d 1138, 1141-42 (D.C. Cir. 2002).

<sup>17</sup> U.S. Bureau of Land Mgmt. (BLM), *Ironwood Forest National Monument: Manager’s Annual Report FY 2014*, at 12-13 (Jan. 29, 2015) [hereinafter *IFNM 2014 Annual Report*], [https://www.blm.gov/nlcs\\_web/sites/style/medialib/blm/az/pdfs/nepa/library/nlcs/14.Par.38425.File.dat/IFNM-14.pdf](https://www.blm.gov/nlcs_web/sites/style/medialib/blm/az/pdfs/nepa/library/nlcs/14.Par.38425.File.dat/IFNM-14.pdf).

<sup>18</sup> Coal. for Sonoran Desert Prot., *Proposal for the Establishment of the Morris K. Udall Ironwood Forest-Upland Corridor National Monument 3* (Apr. 2000) [hereinafter *Morris K. Udall Proposal*], available at <https://ironwoodforest.org/wp-content/uploads/2017/05/Morris-K-Udall-April-2000.pdf>.

studies of environmental change.”<sup>19</sup> The Desert Museum report indicated that the area was particularly valuable because it was relatively pristine and less affected by human encroachment than other similar areas. Since its designation, IFNM has continued to draw scientific researchers.<sup>20</sup>

a. Objects of Scientific Interest—Flora

The proclamation establishing IFNM cited its “high biological diversity” and asserted that the monument presented “a quintessential view of the Sonoran Desert with ancient legume and cactus forests.”<sup>21</sup> The monument takes its name from the ecologically important ironwood tree, a woody legume which functions as a habitat-modifying keystone species and nurse plant. The ironwood tree is a locally dominant species with a spreading crown, and it exerts a strong influence on the distribution and abundance of other species by providing safe sites for seed dispersal and “nursing” seedlings and saplings by protecting them from browsing and extreme cold and heat.<sup>22</sup> An ironwood tree’s influence may persist for centuries, since trees may live for 800 years or more and their durable, decay-resistant trunks may survive twice that long.

IFNM was named after the ironwood tree because ironwood trees in the area of the monument have more “ecological associates”—i.e., provide a better example of ironwood’s ability to modify and enrich its habitat—than in any other place where this has been investigated.<sup>23</sup> This is documented in the *Desert Ironwood Primer*, a report issued in February 2000 by the prestigious Arizona-Sonora Desert Museum. The report compiled previously published literature on ironwood ecology and analyzed data from almost 150 new study areas.<sup>24</sup> The *Desert Ironwood Primer* documented the

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<sup>19</sup> Ariz.-Sonora Desert Museum, *Geological and Ecological Diversity in the Proposed Ironwood Preserve: Assessing Rock-Soil-Plant-Wildlife Relations in the Silverbell, Ragged Top, Waterman and Roskrige Ranges of Pima County, Arizona* (Mark A. Dimmitt et al. eds. May 2000) [hereinafter *Geological and Ecological Diversity Report*] (noting that existing studies involved the collection of “ample baseline data”), available at [https://repository.asu.edu/attachments/126955/content/R%2036\\_44%20Geological%20and%20ecological%20diversity%20in%20the%20proposed%20Ironwood%20Preserve.PDF](https://repository.asu.edu/attachments/126955/content/R%2036_44%20Geological%20and%20ecological%20diversity%20in%20the%20proposed%20Ironwood%20Preserve.PDF).

<sup>20</sup> For example, for fiscal year 2014, BLM reported five ongoing investigations by researchers from three universities, as well as a long-term monitoring project by the Nichol Turk’s Head Cactus Working Group. *IFNM 2014 Annual Report*, *supra* note 17, at 12. In addition to these research projects, BLM reported in its 2016 fiscal year annual report that it was collaborating with the National Park Service and Pima County to monitor several carnivore species with focus on wildlife movements at a landscape scale. BLM also reported the Museum of the Southwest’s interest in conducting surveys of Mesozoic formations for vertebrate fossils. BLM, *Ironwood Forest National Monument: Annual Manager’s Report—Fiscal Year 2016*, at 15 (Jan. 16, 2017) [hereinafter *IFNM 2016 Annual Report*]; see also *IFNM 2014 Annual Report*, *supra* note 17, at 13.

<sup>21</sup> Proclamation No. 7320 (June 9, 2000); see also *Pre-Plan Analysis for the Ironwood Forest National Monument* 14 (Feb. 9, 2001) (IFNM area is “one of the most ecologically diverse areas in North America”), available at <https://ironwoodforest.org/wp-content/uploads/2017/05/Pre-Plan-Analysis-February-2001.pdf>.

<sup>22</sup> *Natural History of the Desert Ironwood Tree*, in Ariz.-Sonora Desert Museum, *Biological Survey of Ironwood Forest National Monument* (2003), [http://www.desertmuseum.org/programs/ifnm\\_ironwoodtree.php](http://www.desertmuseum.org/programs/ifnm_ironwoodtree.php). Due to their longevity and their creation of stable microenvironments, ironwood trees increase the chances of successful seed dispersal by other plants and make the structure of vegetation more diverse.

<sup>23</sup> *Ecology of Ironwood Trees in Ironwood Forest National Monument*, in Ariz.-Sonora Desert Museum, *Biological Survey of Ironwood Forest National Monument* (2003), [http://www.desertmuseum.org/programs/ifnm\\_ironwoodtree.php](http://www.desertmuseum.org/programs/ifnm_ironwoodtree.php).

<sup>24</sup> Ariz.-Sonora Desert Museum, *Desert Ironwood Primer: Biodiversity and Uses Associated with Ancient Legume and Cactus Forests in the Sonoran Desert* (Feb. 2000) [hereinafter *Desert Ironwood Primer*],

ecological and cultural importance of the ironwood forest as well as threats to ironwood habitat due to fragmentation resulting from rapid growth of cities, conversion to agricultural land and other factors.

The *Primer* identified Ragged Top (on the boundary of Pima and Pinal Counties in the central part of IFNM) and the Cocoraque Rock area (in the southeast portion of IFNM) as the cornerstones of the preserve, capable of providing “a regional reserve network to the protect the biodiversity associated with ironwood habitats in the Sonoran Desert.” Other areas ultimately incorporated into IFNM provide necessary buffers and corridors around Ragged Top and Cocoraque Rock, as well as “undoubtedly deserv[ing] further study and protection” on their own merits.<sup>25</sup>

An even broader expanse of lands both within and without IFNM was identified as an important area for conservation of biodiversity in the Sonoran Desert in a report compiled as part of a two-year, binational effort led by The Nature Conservancy, Sonoran Institute, and Instituto del Medio Ambiente y el Desarrollo Sustentable del Estado de Sonora. The report identified a network of landscape-scale Conservation Sites for long-term protection of biodiversity in the Sonoran Desert.<sup>26</sup> Each landscape-scale area represented “expert opinion on habitats and areas needed to support the Conservation Targets found within the site and represent some of the best remaining conservation opportunities in the Ecoregion.”<sup>27</sup> The Sawtooth-Silverbell Mountains area was one of those key habitat areas, along with other lands in Pinal County.<sup>28</sup>

Just after IFNM’s designation, the Desert Museum conducted a thorough biological survey of IFNM.<sup>29</sup> The Desert Museum mapped the distribution of ironwood forests, which extend across all but the westernmost portion of IFNM.<sup>30</sup> The survey also reflected on both the critical importance of the ironwood tree and on the modern risks it confronts—two of the factors that make IFNM’s continuing existence so vital. The authors wrote:

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available at

[https://repository.asu.edu/attachments/126888/content/R%2036\\_30%20Desert%20ironwood%20primer.PDF](https://repository.asu.edu/attachments/126888/content/R%2036_30%20Desert%20ironwood%20primer.PDF).

<sup>25</sup> *Desert Ironwood Primer*, *supra* note 24, at vi.

<sup>26</sup> See The Nature Conservancy et al., *An Ecological Analysis of Conservation Priorities in the Sonoran Desert Ecoregion* (Apr. 2000) [hereinafter *Sonoran Desert Ecoregion Report*], <https://www.conservationgateway.org/ConservationPlanning/SettingPriorities/EcoregionalReports/Documents/SonoranPlan.pdf>; Letter from Robert M. Marshall, Conservation Science Program Manager, The Nature Conservancy, to Roy Wright, Special Assistant, Office of the Secretary (May 5, 2000) (Appendix C). The report identified 450 species representing a cross-section of Sonoran Desert biodiversity and 100 landscape-scale key habitat areas for those species.

<sup>27</sup> *Sonoran Desert Ecoregion Report*, *supra* note 26, at 26.

<sup>28</sup> See The Nature Conservancy of Arizona, *Ironwood Forest National Monument* (2004) (Appendix D) (showing Conservation Site 19, the Sawtooth-Silverbell Mountains, which covers much of the same lands as IFNM, though it does not include the areas of the Los Robles Archaeological District or the Mission Santa Ana del Cuiquiburitac and incorporates tribal lands that are not part of IFNM).

<sup>29</sup> See Ariz.-Sonora Desert Museum, *Biological Survey of Ironwood Forest National Monument* (2003), [http://www.desertmuseum.org/programs/ifnm\\_index.php](http://www.desertmuseum.org/programs/ifnm_index.php).

<sup>30</sup> A map showing the distribution of ironwood trees within IFNM is available at [http://www.desertmuseum.org/programs/images/ifnm\\_olntesdistrib-plots.jpg](http://www.desertmuseum.org/programs/images/ifnm_olntesdistrib-plots.jpg). See also *Ecology of Ironwood Trees in Ironwood Forest National Monument*, in Ariz.-Sonora Desert Museum, *Biological Survey of Ironwood Forest National Monument* (2003), [http://www.desertmuseum.org/programs/ifnm\\_ironwoodtree.php](http://www.desertmuseum.org/programs/ifnm_ironwoodtree.php) (explaining that “[t]he size of the green circles indicates the relative abundance of ironwood trees from rare to common” and “[t]he red triangles are sites surveyed”).

While ironwood is not considered endangered because of its large range, it is easily overexploited because of certain life history traits, primarily its slow growth rates and low levels of seedling establishment .... Ironwood populations play a vital role in sustaining other species and populations of the Sonoran Desert. If ironwoods were eliminated from Sonoran Desert habitats, there would be a decrease in the density of associated plants and subsequently in associated local faunal communities. Ironwoods must be protected both to maintain the diversity and lushness of the Sonoran Desert communities they inhabit and to maintain the regeneration dynamics of rare plant populations that grow under its canopies. Ironwoods are truly a hallmark of the desert landscape living well beyond other desert plant species. The ironwood is both a constant witness to a changing environment and an active participant in the maintenance of generations of lush Sonoran Desert plant and animal communities.<sup>31</sup>

The Desert Museum's post-designation study also documented and mapped the other significant biological elements that IFNM protects, demonstrating that important and varied biological resources are found throughout the lands within IFNM.<sup>32</sup> These include extensive areas of the Arizona Upland subdivision of the Sonoran Desert with dense groves of ironwoods as well as above-average densities of saguaro and foothill palo verde. The Desert Museum survey indicated that saguaro densities in some parts of IFNM approach the densities in Saguaro National Park, "which has the most luxuriant saguaro forests that we know of."<sup>33</sup> The desert washes within IFNM's boundaries—which are "highly vulnerable to human disturbance"—serve important ecological functions and provide dispersal corridors for animals and plants. Other important flora documented in IFNM include dense stands of cholla cactus and an area of cactus dunes west of the Sawtooth Mountains.<sup>34</sup> The Desert Museum survey's authors indicated that they were aware of only one similar area of cactus dunes, and that this other area's plant and cactus density and diversity were much lower than in the IFNM cactus dune area.<sup>35</sup>

The flora documented in the Desert Museum survey comprised 560 taxa, including 271 taxa that were uncommon, rare, or of limited distribution.<sup>36</sup> Researchers have continued discover additional taxa, and by 2015 the documented flora included 593 taxa.<sup>37</sup> One plant species—the Nichol Turk's head cactus—is listed as endangered under the federal Endangered Species Act and is known from

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<sup>31</sup> *Natural History of the Desert Ironwood Tree*, in Ariz.-Sonora Desert Museum, *Biological Survey of Ironwood Forest National Monument* (2003) (citation omitted), [http://www.desertmuseum.org/programs/ifnm\\_ironwoodtree.php](http://www.desertmuseum.org/programs/ifnm_ironwoodtree.php).

<sup>32</sup> See Figure 2: Detail Vegetation Map of Ironwood Forest National Monument, in Ariz.-Sonora Desert Museum, *Biological Survey of Ironwood Forest National Monument* (2003), [http://www.desertmuseum.org/programs/images/ifnm\\_vegdetail.jpg](http://www.desertmuseum.org/programs/images/ifnm_vegdetail.jpg).

<sup>33</sup> *Distribution and Status of Saguaros and Trees*, in Ariz.-Sonora Desert Museum, *Biological Survey of Ironwood Forest National Monument* (2003), [http://www.desertmuseum.org/programs/ifnm\\_saguaro.php](http://www.desertmuseum.org/programs/ifnm_saguaro.php).

<sup>34</sup> *General Vegetation*, in Ariz.-Sonora Desert Museum, *Biological Survey of Ironwood Forest National Monument* (2003), [http://www.desertmuseum.org/programs/ifnm\\_veg.php](http://www.desertmuseum.org/programs/ifnm_veg.php).

<sup>35</sup> *Id.*; see also John F. Wiens et al., *Vegetation and Vascular Flora of Ironwood Forest National Monument, Pima and Pinal Counties, Arizona*, *Desert Plants*, vol. 30, no. 2, Jan. 2015, at 21, available at <http://hdl.handle.net/10150/622002>.

<sup>36</sup> *Vascular Flora*, in Ariz.-Sonora Desert Museum, *Biological Survey of Ironwood Forest National Monument* (2003), [http://www.desertmuseum.org/programs/ifnm\\_flora.php](http://www.desertmuseum.org/programs/ifnm_flora.php).

<sup>37</sup> Wiens et al., *supra* note 35, at 11.



only three locations in the world. In the IFNM, however, there are 2,240 acres of Nichol Turk’s head habitat within public land in the Waterman Mountains.<sup>38</sup>

IFNM protects and preserves floral diversity in other ways as well. For example, it is the sole U.S. home for Mexican devil’s claw (on Ragged Top),<sup>39</sup> false grama, and vainoro,<sup>40</sup> and it is home for a number of other plant species protected under Arizona law.<sup>41</sup> This diversity is not just of scientific interest; IFNM also has areas of reliable “and sometimes spectacular” wildflower blooms in at least the Silverbell, Waterman, and Roskrug ranges.<sup>42</sup>

Each different part of IFNM contributes to this diversity by contributing habitats and microhabitats not found in other areas in the monument, or found only in limited amounts.<sup>43</sup> For example, 76 IFNM taxa were found only on Ragged Top and nowhere else, and 20 IFNM taxa were found only in the Sawtooth Mountains.

In summary, although IFNM is much more than just its flora, this flora by itself would justify designation as a monument. IFNM holds exemplar assemblages of several floral communities in addition to those of the ironwood. IFNM’s floral assemblages also comprise a remarkable diversity of species fostered by IFNM’s topographic, geological, and biological microhabitats, including species endangered and protected under federal and state law as well as species known from nowhere else in the U.S. These assemblages have special scientific value because they are relatively pristine, with only limited encroachment by exotic invaders.<sup>44</sup>

#### b. Objects of Scientific Interest—Fauna

IFNM provides crucial habitat for an array of animal species. One of these, the endangered<sup>45</sup> lesser long-nosed bat—a nectar-feeding bat that migrates from Mexico to establish maternity colonies and give birth to their young—is believed to make use of IFNM as foraging grounds or as a stopover during its migration along “nectar corridors” populated by their food plants such as the saguaro.<sup>46</sup>

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<sup>38</sup> *Biological Assessment*, in BLM, *Ironwood Forest National Monument Travel Management Plan and Environmental Assessment* app. P (Sept. 2014), [https://eplanning.blm.gov/epl-front-office/projects/nepa/36800/56852/61544/APPENDIX-P-BIOLOGICAL\\_ASSESSMENT\\_IFNM\\_TMP-100814.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/36800/56852/61544/APPENDIX-P-BIOLOGICAL_ASSESSMENT_IFNM_TMP-100814.pdf). Since 1989, the Waterman Mountains habitat for the Nichol Turk’s head cactus has been subject to use restrictions and habitat management protections due to its designation by BLM as an Area of Environmental Concern. *See id.* (restrictions included mineral withdrawal, limitations on motorized vehicles and on land use authorizations, planned acquisition of more than 1,000 acres, implementation of a habitat management plan, and prohibition of oil and gas development).

<sup>39</sup> Royce E. Ballinger et al., *Natural History, Archaeology, and Cultures of Southern Arizona’s Ironwood Forest*, *Old Pueblo Archaeology* (Bulletin of Old Pueblo Archaeology Ctr.), No. 73, Feb. 2015, at 2, <http://www.oldpueblo.org/wp-content/uploads/2015/12/201502201310pa73IronwoodForest.MHEDITS.pdf>.

<sup>40</sup> Wiens et al., *supra* note 35, at 17-19.

<sup>41</sup> *Rare Plant Inventory*, in Ariz.-Sonora Desert Museum, *Biological Survey of Ironwood Forest National Monument* (2003), [http://www.desertmuseum.org/programs/ifnm\\_rare.php](http://www.desertmuseum.org/programs/ifnm_rare.php).

<sup>42</sup> *Wildflower Distribution*, in *Geological and Ecological Diversity Report*, *supra* note 19, at app. III.

<sup>43</sup> *Rare Plant Inventory*, in Ariz.-Sonora Desert Museum, *Biological Survey of Ironwood Forest National Monument* (2003), [http://www.desertmuseum.org/programs/ifnm\\_rare.php](http://www.desertmuseum.org/programs/ifnm_rare.php).

<sup>44</sup> *See* Wiens et al., *supra* note 35, at 3.

<sup>45</sup> On January 6, 2017, the U.S. Fish and Wildlife Service published a proposed rule to remove the lesser long-nosed bat from the list of endangered and threatened wildlife. 82 Fed. Reg. 1665 (Jan. 6, 2017).

<sup>46</sup> *Lesser Long-Nosed Bat*, in Ariz.-Sonora Desert Museum, *Biological Survey of Ironwood Forest National Monument* (2003), [http://www.desertmuseum.org/programs/ifnm\\_bat.php](http://www.desertmuseum.org/programs/ifnm_bat.php).

IFNM also contains historic and potential habitat for the cactus ferruginous pygmy-owl,<sup>47</sup> as well as habitat for the Sonoran desert tortoise and Tucson shovel-nosed snake.<sup>48</sup> The desert tortoise was found on all major mountain ranges and hill complexes and their associated valleys in IFNM, except for the Roskrige Mountains (where tortoise sign was found) and Malpais Hill.<sup>49</sup>

The Arizona-Sonora Desert Museum indicated in a 2000 report that a preserve in the IFNM area could complement habitats protected in Saguaro National Park, which lies just east of IFNM, and Organ Pipe Cactus National Monument, to “build a regional network of habitats functional as a corridor for migratory wildlife such as bat, hummingbird and dove pollinators.”<sup>50</sup> Thus, IFNM contributes to the preservation of fauna not only within its own boundaries, but regionally as well.

One example of this is the far-roaming desert bighorn sheep. The management area for desert bighorns covers a broad sweep of IFNM territory,<sup>51</sup> and the IFNM population of desert bighorns may be the last viable population indigenous to the Tucson basin.<sup>52</sup> In 2016, however, two desert bighorns appeared for the first time in 60 years in Saguaro National Park, just across the Avra Valley from IFNM, and it was determined they came from IFNM.<sup>53</sup> Just as predicted by the 2000 report, IFNM is part of a regional habitat network allowing the desert bighorns to re-colonize their historic domain.

### c. Objects of Scientific Interest—Geological Resources

Although President Clinton’s proclamation creating IFNM focused on Ragged Top as the “biological and geological crown jewel amid the depositional plains in the monument,”<sup>54</sup> numerous other scientifically valuable and sensitive geological features are present in IFNM and warrant protection from human-caused disturbance and destruction.<sup>55</sup> These features include:

- Sizable areas of “desert pavement” and bar and swale gravels—particularly the western flank of the Sawtooth Mountains—that form very slowly and are easily destroyed. The

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

<sup>48</sup> See *Biological Assessment*, in BLM, *Ironwood Forest National Monument Travel Management Plan and Environmental Assessment* app. P (Sept. 2014), [https://eplanning.blm.gov/epl-front-office/projects/nepa/36800/56852/61544/APPENDIX-P-BIOLOGICAL\\_ASSESSMENT\\_IFNM\\_TMP-100814.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/36800/56852/61544/APPENDIX-P-BIOLOGICAL_ASSESSMENT_IFNM_TMP-100814.pdf).

<sup>49</sup> Ariz. Game & Fish Dep’t, *Distribution and Density of Desert Tortoises at Ironwood Forest National Monument, with Notes on Other Vertebrates* 16 (May 21, 2002).

<sup>50</sup> *Geological and Ecological Diversity Report*, *supra* note 19, at vi.

<sup>51</sup> See *Map 10.3: Biological Resources, Wildlife Habitat Management Areas in the Monument*, in BLM, *Ironwood Forest National Monument Travel Management Plan and Environmental Assessment* (Sept. 2014), [https://eplanning.blm.gov/epl-front-office/projects/nepa/36800/56863/61555/MAP\\_10.3\\_BIOLOGICAL\\_RESOURCES\\_IFNM\\_TMP-11X17L-100814.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/36800/56863/61555/MAP_10.3_BIOLOGICAL_RESOURCES_IFNM_TMP-11X17L-100814.pdf).

<sup>52</sup> See *IFNM 2014 Annual Report*, *supra* note 17, at 18-19.

<sup>53</sup> Doug Kreutz, *Pair of bighorn sheep spotted in Saguaro West are first since 1950s*, Tucson.com, Mar. 17, 2016, [http://tucson.com/news/local/pair-of-bighorn-sheep-spotted-in-saguaro-west-are-first/article\\_1f32cf77-b9fe-51f5-bd6d-25a3b5d44bca.html](http://tucson.com/news/local/pair-of-bighorn-sheep-spotted-in-saguaro-west-are-first/article_1f32cf77-b9fe-51f5-bd6d-25a3b5d44bca.html).

<sup>54</sup> Proclamation 7320; see also *Geologic Aspects of Ironwood Forest National Monument*, in Ariz.-Sonora Desert Museum, *Biological Survey of Ironwood Forest National Monument* (2003) (describing Ragged Top as “a textbook-quality example of a volcanic neck, or plug”), [http://www.desertmuseum.org/programs/ifnm\\_geology.php](http://www.desertmuseum.org/programs/ifnm_geology.php).

<sup>55</sup> *Id.*

Desert Museum survey indicated that their “considerable age and unusual history warrants their protection.”<sup>56</sup>

- A dune field west of Wildcat Peak in the southern Sawtooth Mountains that is extremely sensitive to disturbance.
- Sites with cryptobiotic crusts (biological soil crusts).
- Bedrock cliffs with thick coverage of lichens, including a hill west of the Pan Quemado hills and the southeastern section of the Waterman mountains.
- Sites of sedimentation, including a site at El Cerrito de Represso in the southern portion of IFNM, which may provide habitat for wildlife and contain sedimentary history.
- Known and potential mammal fossil sites.

d. Objects of Historic Interest

IFNM’s archeological and historic resources provide a remarkable 10,000-year view of human civilization and survival in this rugged desert environment. As stated in a 2015 report on these resources, they “can help answer fundamental anthropological questions” because they represent “thousands of years of land use by multiple cultural groups.”<sup>57</sup> For example, “sites in the IFNM contribute to an understanding of how settlement and use [of areas in IFNM] varied through time with changes in cultural systems and environment, how communities formed and interacted, the role of agriculture in desert ecosystems,” and other significant questions.<sup>58</sup>

One historic site and two archeological areas within IFNM are listed on the National Register of Historic Places: the Mission Santa Ana del Cuiquiburitac, the Cocoraque Butte Archeological District, and the Los Robles Archeological District.

The Mission Santa Ana del Cuiquiburitac was a satellite of a larger Spanish mission. It was built in 1811 and abandoned by the 1850s. Only the stone footings remain. It is an important site because it was the last and the farthest north of the missions constructed in Pimería Alta, the home of “Upper” or northern Piman-speaking Indians. Since it was inhabited for only a short period of time, a proper excavation would yield valuable information.<sup>59</sup> Other historic sites in IFNM include homestead and ranching sites, historic mining towns, cemeteries, railroad segments, roads and trails established more than 100 years ago, mining sites, a gas pipeline constructed in the 1930s, campsites, and artifact scatters.<sup>60</sup>

The Cocoraque Butte Archeological District covers 300 acres in the southeastern portion of IFNM and contains several long-term Hohokam residential sites that were occupied from the Colonial (A.D. 700 or 800) to Classic (ca. A.D. 1400) times. Hundreds of Archaic and Hohokam petroglyph panels are located in this district. A report on behalf of the Arizona Open Lands Trust in 2008 described a consensus of the Tohono O’odham Cultural Preservation Committee and cultural experts that the

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<sup>56</sup> *Id.*

<sup>57</sup> Ballinger et al., *supra* note 39, at 14.

<sup>58</sup> *Id.* at 15.

<sup>59</sup> National Register of Historic Places Inventory - Nomination Form: Mission Santa Ana del Chiquiburitac (Dec. 17, 1973); Bernard L. Fontana, *Santa Ana de Cuiquiburitac: Pimeria Alta’s Northernmost Mission*, 29 *Journal of the Southwest* 133 (1987).

<sup>60</sup> *See generally*, at 14.

area is a valuable place.<sup>61</sup> The Hohokam who created the petroglyphs are thought to be ancestors of the Tohono O’odham, whose reservation is adjacent to IFNM.

The Los Robles Archeological District covers almost 13,000 acres along the east and northern edges of the Samaniego Hills in the northeastern part of IFNM and contains 100 historic and prehistoric archeological sites, most which were part of an extensive Hohokam community in the early Classic period (A.D. 1150 to 1300).<sup>62</sup>

In addition to these well-documented historic resources, there are potentially thousands of other sites expected to hold valuable historical and prehistorical artifacts. Only approximately 20 percent of lands within the perimeter of IFNM, including non-federal lands, have been surveyed for cultural resources by 2015, but those surveys recorded more than 250 historical and prehistorical sites.<sup>63</sup> The authors estimated, based on the frequency of sites within the surveyed area, there would be approximately 1,000 to 5,600 cultural resource sites within IFNM.<sup>64</sup>

Other researchers have reached similar conclusions. An earlier proposal by conservationists for the monument observed sites of archeological significance in the Sawtooth Mountains area were considered highly likely though little surveying had been done, noting a 2000 informal, cursory survey that turned up six sites potentially eligible for listing on the National Register of Historic Places, with significant potential for many more.<sup>65</sup>

In summary, as stated in connection with the Sonoran Desert Conservation Plan (which, as discussed below, was a progenitor of IFNM), studies of IFNM:

have established the importance of cultural resources within the area. Bedrock outcrops and volcanic hills in the Ragged Top, Pan Quemado, and Silverbell mountains are unusual for the number of petroglyph or rock art sites that have been recorded. There is wide variation in the number and complexity of petroglyph sites, ranging from a handful of simple elements to hundreds of individual petroglyph elements, some of which are very complex.

At the south end of this region of prehistoric settlement lies Cocoraque Butte, which is listed on the National Register. This butte and its surrounding desert floor exhibits an extensive Hohokam village and numerous rock art panels that are exceptional for their complexity of design and the number of elements. Like many rock art

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<sup>61</sup> T.J. Ferguson, Ariz. Open Lands Trust, *Cocoraque Butte: Signs of History in the Storied Landscape of the Tohono O’odham* (July 22, 2008), [http://www.cocoraque.com/wp-content/uploads/2013/05/Revised-Ferguson-Report-Cocoraque-Butte-7-22-2008 .pdf](http://www.cocoraque.com/wp-content/uploads/2013/05/Revised-Ferguson-Report-Cocoraque-Butte-7-22-2008.pdf).

<sup>62</sup> National Register of Historic Places - Registration Form: Los Robles Archeological District (Nov. 16, 1988).

<sup>63</sup> Ballinger et al., *supra* note 39, at 5. This 2015 report said, however, that “it still would not be too surprising if Paleoindian sites eventually are found in IFNM,” given findings from nearby archeological surveys. *Id.* at 6. A 2001 overview of archeological resources indicated that there are numerous known sites with preceramic, Hohokam, protohistoric, and historic occupations covering a 5,000-year timespan. William H. Doelle, *Preserving Archaeology on an Unprecedented Scale*, *Archaeology Southwest*, vol. 15, no. 1, Winter 2001, <https://www.archaeologysouthwest.org/pdf/arch-sw-v15-no1.pdf>.

<sup>64</sup> The 2015 report indicated that these estimates “are of course influenced by recording methodology and other factors, including representativeness and site size.” Ballinger et al., *supra* note 39, at 5.

<sup>65</sup> *Morris K. Udall Proposal*, *supra* note 18, at 14; Jon M. Shumaker, Coal. for Sonoran Desert Prot., *A Class II Cultural Resources Survey of the Sawtooth Mountains, Pinal County, Arizona* (May 2000).

sites, Cocoraque Butte is considered to be a traditional cultural place by the Tohono O'odham and Hopi Indian tribes.<sup>66</sup>

IFNM is necessary to preserve these aforementioned historic objects, since they otherwise would be vulnerable to injury, theft and destruction by off-road vehicles, collectors, and vandals.<sup>67</sup>

e. Summary

The studies and other original materials cited in this letter provide an impressive list of the historic and scientific objects preserved in IFNM.<sup>68</sup> The ongoing scientific and archeological research in IFNM demonstrates this list as only a start, and that much more remains to be discovered. A short (and necessarily incomplete) summary of these historic and scientific objects includes the following:

- Cocoraque Butte and Roskrige Mountains: important ironwood habitat; Cocoraque Butte Archeological District; reliable and sometimes spectacular wildflower blooms.
- Pan Quemado and the Waterman Mountains: important ironwood habitat; one of three locations in the world where the endangered Nichol Turk's head cactus is found; sensitive habitats comprising bedrock cliffs with thick coverage of lichens; spectacular wildflower blooms.
- Silverbell Mountains, Ragged Top, Wolcott Peak, Samaniego Hills, and West Silverbell Mountains: important ironwood habitat; recognized as a component of a key conservation area by the binational Sonoran Desert Ecoregion Project; home of what may be the last viable population of desert bighorn sheep indigenous to the Tucson basin; location of the Los Robles Archeological District.
- Sawtooth Mountains: recognized as a component of a key conservation area by the binational Sonoran Desert Ecoregion Project; unique area of cactus dunes; sizable but vulnerable areas of "desert pavement" and bar and swale gravels.
- IFNM Overall: based on extrapolation from the hundreds of known archeological sites, IFNM contains thousands of undiscovered historic and prehistoric sites throughout its area.

3. *All Lands Included Within Ironwood Forest National Monument Are Necessary for the Proper Care and Management of Its Objects*

IFNM easily meets the requirements and original objectives of the Antiquities Act that reservations of land not exceed "the smallest area compatible with the proper care and management of the objects to be protected." Indeed, as the binational report referenced above shows, the weight of scientific evidence establishes that IFNM is, if anything, not large enough. It is in keeping with the Antiquities Act that IFNM's landscape and the resources it hosts be considered in their entirety and at a landscape scale, in order for IFNM's historic and scientific objects to receive "proper care and management."

It has long been recognized that small reserves are vulnerable to a variety of biological, meteorological, and human stresses. For example, in 1999, just before IFNM's designation, the Natural Resource Conservation Service of the U.S. Department of Agriculture provided its "principles" of reserve design that included the following: "large reserves/patches are better than

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<sup>66</sup> *Ironwood Forest National Monument*, Pima County, <http://www.pima.gov/CMO/SDCP/species/iw/iw.html> (last visited June 29, 2017).

<sup>67</sup> See Shumaker, *supra* note 65.

<sup>68</sup> See, e.g., *Desert Ironwood Primer*, *supra* note 24; *Morris K. Udall Proposal*, *supra* note 18; *Sonoran Desert Ecoregion Report*, *supra* note 26.

small reserves/patches. Connected reserves/patches are better than separated reserves/patches. Unified reserves/patches are better than fragmented reserves/patches. Several reserves/patches (redundancy) are better than one reserve/patch.”<sup>69</sup> Large reserves also provide more opportunities for collaboration between communities and land management agencies, scientific study, recreation, and public engagement.

IFNM is consistent with these principles. IFNM begins in the southeast at Cocoraque Butte with its National Register-listed archeological district and the ironwood forests of the Roskrige Mountains. It stretches north to include the bedrock cliffs of the Pan Quemado with its petroglyphs and the Waterman Mountains with its Nichol Turk’s head cactus. It then turns east and captures the ironwood forests, floral diversity, and spectacular geological features of the Silverbell Mountains, Ragged Top, Wolcott Peak, Samaniego Hills and the West Silverbell Mountains. Finally, it turns north to the Sawtooth Mountains and its cactus dunes, geology, and unique species. Together these areas provide multiple, connected habitats for the species that IFNM was intended to protect, consistent with conservation principles, including the Natural Resource Conservation Service’s.

### **B. Factor (iii): Multiple Uses Co-Exist Throughout the Ironwood Forest National Monument**

The Federal Land Policy and Management Act 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.”<sup>70</sup> The designation of IFNM allows not only multiple uses, but ensures the resources found within it are properly protected. Although Proclamation 7320 withdrew federal lands within IFNM “from location, entry, and patent under the mining laws” and from mineral and geothermal leasing, the proclamation otherwise contemplates that IFNM will be managed by the BLM to accommodate multiple uses.

The 2013 Resource Management Plan confirms the land is being managed for a wide variety of compatible uses. Recreational uses include desert touring on improved roads for viewing the natural and cultural landscape. Although the proclamation directed the Secretary of the Interior to prohibit all motorized and mechanized vehicle use off road except for emergency or authorized administrative purposes, the IFNM Management Plan provides for use of off-highway vehicles on semi-primitive routes for desert touring. Hiking, horseback riding, biking, camping, and wildlife viewing are also available, and hunting is permitted in accordance with Arizona hunting regulations.<sup>71</sup> Grazing has continued to be a permitted use within IFNM consistent with the longstanding historical use of the area and as contemplated by Proclamation 7320. As noted earlier in this letter, IFNM also is a venue for scientific research efforts across multiple disciplines.

Visits to IFNM have increased substantially since its designation. A 2004 report on IFNM access and visitor use indicated that approximately 12,000 to 15,000 visitors travelled through IFNM annually.<sup>72</sup> In the 2014 fiscal year, an estimated 47,000 people visited IFNM,<sup>73</sup> and in fiscal year

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<sup>69</sup> Craig W. Johnson, *Conservation Corridor Planning at the Landscape Level: Managing for Wildlife Habitat*, at 5-2 (Aug. 1999, USDA Natural Resource Conservation Service et al.).

<sup>70</sup> 43 U.S.C. § 1701(a)(7), (8).

<sup>71</sup> BLM, *Ironwood Forest National Monument: Record of Decision and Approved Resource Management Plan* 64-70 (Feb. 2013).

<sup>72</sup> Randy Gimblett, BLM, *Ironwood Forest National Monument Access, Travel Route Inventory and Visitor Use Study: Final Report* 31 (Feb. 2004), [https://cals.arizona.edu/~gimblett/IFNM\\_Final\\_Report.pdf](https://cals.arizona.edu/~gimblett/IFNM_Final_Report.pdf).

<sup>73</sup> *IFNM 2014 Annual Report*, *supra* note 17, at 8.

2016, an estimated 23,600 visited.<sup>74</sup> Non-profit organization such as Friends of Ironwood Forest and Arizona Native Plant Society-Tucson Chapter partner with BLM on recreational and education events, as well as on efforts to control invasive species such as buffelgrass.<sup>75</sup>

**C. Factor (iv): Ironwood Forest National Monument's Status Has Benefits for and Minimal Adverse Impacts on Non-Federal Lands**

Another area in which comment is sought is “the effects of a designation on the use and enjoyment of non-Federal lands within or beyond monument boundaries.” The designation of IFNM did not change the status of non-federal lands within the IFNM’s boundaries, and any restrictions applicable to IFNM do not apply to the non-federal lands within its boundaries. However, as previously discussed, IFNM’s designation was an outgrowth of Pima County’s regional conservation planning effort, which was intended to allow the region to accommodate economic growth while also protecting its natural and cultural heritage.

Indeed, the continuation of ranching interests within and adjacent to IFNM has been integral to the monument from its inception. As Pima County’s proposal for IFNM evolved, the Pima County Board of Supervisors stressed that traditional and historic ranching would continue.<sup>76</sup> Members of the Tohono O’odham Nation agreed that ranching was consistent with IFNM’s purpose of protecting historic artifacts,<sup>77</sup> and ranchers supported IFNM’s designation.<sup>78</sup> Another non-federal land use, the Silver Bell mine, located adjacent to the boundaries of IFNM, was expanding as of 2014 and 2016.<sup>79</sup>

**D. Factor (v): Local Governments and Organizations Laid the Groundwork for Designation of the Ironwood Forest National Monument**

The process by which IFNM’s significant biological, geological, and historic resources came to be protected was driven by local interest. The “concerns of State, tribal, and local governments affected by a designation, including the economic development and fiscal condition of affected States, tribes, and localities” were at all times at the forefront of this process.

*1. The Designation of IFNM Was a Homegrown Effort*

The designation of IFNM in June 2000 was a homegrown effort, supported unanimously by the elected county officials in both Pima and Pinal Counties. The idea of establishing a preserve originated in Pima County’s commencement of a regional conservation planning process in 1998 to respond to the pressures of rapid urban growth.<sup>80</sup> The resulting Sonoran Desert Conservation Plan balances protection of historic and natural resources with “efforts to maintain an economically vigorous and fiscally responsible community.”<sup>81</sup> Development of the conservation plan and of local

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<sup>74</sup> *IFNM 2016 Annual Report*, *supra* note 20, at 10.

<sup>75</sup> *IFNM 2016 Annual Report*, *supra* note 20, at 11.

<sup>76</sup> See Letter from Raúl M. Grijalva, Chairman, Pima County Board of Supervisors, to the Honorable Gale A. Norton, Secretary, United States Department of the Interior (Apr. 4, 2001) (Appendix E).

<sup>77</sup> See Ferguson, *supra* note 61.

<sup>78</sup> See, e.g., Chris Limberis, *Monument Attack: GOP leaders and mining company want Ironwood Forest National Monument changes*, Tucson Weekly, May 3, 2001, <https://www.tucsonweekly.com/tucson/monument-attack/Content?oid=1068325>.

<sup>79</sup> *IFNM 2016 Annual Report*, *supra* note 20, at 20; *IFNM 2014 Annual Report*, *supra* note 17, at 17.

<sup>80</sup> *SDCP Accomplishments*, Pima County, <http://webcms.pima.gov/cms/one.aspx?portalId=169&pageId=52663> (last visited June 29, 2017).

<sup>81</sup> *Id.*

proposals for IFNM were the products of extensive outreach and planning that involved landowners, ranchers, conservationists, preservationists, scientists and historic resource experts, as well as the Tohono O'odham Nation.

An initial proposal for a preserve (which focused, of course, on Pima County lands) grew out of the research on ironwood habitat encapsulated in the *Desert Ironwood Primer* (discussed in more detail earlier in this letter). The *Primer*, which put forward recommendations for conservation based on a decade of study, was one of the research products developed in conjunction with Pima County's regional conservation planning effort.<sup>82</sup> The recommendations stemming from the information compiled in the *Primer* included protection of areas of highest-density ironwood and protection of a corridor of "stepping stone reserves" within ironwood habitats for the benefit of species such as the pygmy-owl (at the time, a listed endangered species). The recommendations also included protection of ironwood in wash, rocky slope, and valley/plains habitats.<sup>83</sup> The proposal for the preserve identified Ragged Top (in the central portion of IFNM) and Cocoraque Rock (in the southeastern corner) as priorities due to their significance for biodiversity conservation.

On March 21, 2000, the Board of Supervisors unanimously passed a resolution referring to the ironwood forest as "a quiet but enormously important protector of species diversity within the Sonoran Desert" and requesting that the federal government work with the County in a manner consistent with the Sonoran Desert Conservation Plan to establish a preserve.<sup>84</sup>

2. *Scientific Studies Showed that IFNM Must Include More than Just Ragged Top and Cocoraque Rock*

In April 2000, conservationists, led by the Coalition for Sonoran Desert Protection, proposed the inclusion of additional lands in the monument beyond what Pima County proposed, and beyond what was eventually included in the proclamation.<sup>85</sup> The conservationists' proposal, which they called the "Morris K. Udall Ironwood Forest-Upland Corridor National Monument," included nine "physically distinct but biologically connected units" in Pima County as well as lands in Pinal County to the north.<sup>86</sup> This proposal identified these additional areas as necessary for protection of ironwoods and other important species and to allow the recovery of the cactus ferruginous pygmy-owl.

The conservationists' more expansive proposal was solidly grounded in science and in regional conservation objectives, in particular in the report of the binational effort led by The Nature Conservancy, Sonoran Institute, and Instituto del Medio Ambiente y el Desarrollo Sustentable del Estado de Sonora to identify conservation priorities in the Sonoran Desert, which identified the Sawtooth-Silverbell Mountains area as a key habitat area along with other areas in Pinal County that the conservationists proposed for inclusion in the monument designation.<sup>87</sup> The Nature Conservancy, in a letter to the Department of the Interior, emphasized the importance of the Sawtooth-Silverbell Mountains conservation site to the Sonoran Desert Ecoregion and commended

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<sup>82</sup> Pima Cnty. Bd. of Supervisors, *Proposal in Support of the Ironwood Preserve* 9 (Mar. 2000), <http://www.pima.gov/CMO/SDCP/reports/d13/034PRO.PDF>.

<sup>83</sup> *Id.*

<sup>84</sup> Pima Cnty. Bd. of Supervisors, Resolution No. 2000-63.

<sup>85</sup> See *Morris K. Udall Proposal*, *supra* note 18.

<sup>86</sup> See *Morris K. Udall Proposal*, *supra* note 18 (page 33 of PDF).

<sup>87</sup> See The Nature Conservancy of Arizona, *Ironwood Forest National Monument (2004)* (Appendix D) (showing Conservation Site 19, the Sawtooth-Silverbell Mountains, which covers much of the same lands as IFNM, though it does not include the areas of the Los Robles Archaeological District or the Mission Santa Ana del Cuiquiburitac and incorporates tribal lands that are not part of IFNM).



the conservationists' proposal for its accurate reflection of the distribution of species, including important corridors for bighorn sheep, and avoidance of areas already developed.<sup>88</sup>

The more extensive monument proposed by conservation groups received enthusiastic support from the Pinal County Board of Supervisors, which sent a letter to Secretary Babbitt endorsing it.<sup>89</sup> In the days leading up to the designation, the Tohono O'odham Nation also expressed support for the more expansive proposal. The chairman of the Tohono O'odham Nation wrote to Secretary Babbitt that each of the proposed units contained "cultural artifacts and wildlife which hold tremendous significance to the Tohono O'odham" that would only receive necessary protection through monument designation.<sup>90</sup> The Chairman of the San Xavier District of the Tohono O'odham Nation wrote of the necessity of protecting sites of cultural and spiritual significance as well as movement corridors and larger areas for plants and animals "to preserve the sacred maze of life."<sup>91</sup>

3. *The Final Designation Was a Compromise That Included Only the Contiguous Areas*

Considering all the aforementioned feedback from local communities, on June 9, 2000, President Clinton issued Proclamation 7320 designating IFNM. As designated, IFNM is a contiguous serpentine area that encompasses the important ironwood habitats recommended for inclusion in the preserve based on research compiled in the *Desert Ironwood Primer*. While it excluded biologically connected but non-contiguous units identified in the conservationists' larger proposal, it did include the Sawtooth Mountains, one of the landscape-scale conservation areas identified by the binational Sonoran Desert Ecoregion project.

4. *IFNM Was Highly Popular at Its Designation and Remains So Today Because of Its Many Benefits, Including Economic Ones*

After the George W. Bush Administration took office, Pima County officials reiterated to his Secretary of the Interior, Gale Norton, that IFNM had emerged "only after numerous meetings with private property owners, ranchers, and other interests, all of whom supported the designation."<sup>92</sup> The officials wrote that to their knowledge, the only group that had opposed the monument's designation was a mining interest. The Board of Supervisors unanimously passed a resolution reasserting its support for IFNM.<sup>93</sup>

A year after the designation, a public opinion poll found overwhelming support for new national monuments in Arizona and IFNM in particular. Regarding IFNM, 79% of the respondents opposed a mining company's plan to remove some of the lands from IFNM. More generally, 75% of respondents

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<sup>88</sup> Letter from Robert M. Marshall, Conservation Science Program Manager, The Nature Conservancy, to Roy Wright, Special Assistant, Office of the Secretary 2 (May 5, 2000) (Appendix C) (The Nature Conservancy indicated that the conservationists' proposed boundaries for the monument "more accurately reflect the distribution of the species of interest, including identifying important corridors for bighorn, while avoiding areas that have already been developed.").

<sup>89</sup> Letter from Pinal County Board of Supervisors to the Honorable Bruce Babbitt, Secretary of the US Department of the Interior (May 18, 2000) (Appendix F).

<sup>90</sup> Letter from Edward D. Manuel, Chairman, Tohono O'odham Nation, to the Honorable Bruce Babbitt, Secretary of the Interior (June 6, 2000) (Appendix G).

<sup>91</sup> Letter from Austin G. Nunez, Chairman, San Xavier District Tohono O'odham, to Mr. Bruce Babbitt, Secretary, Department of Interior (May 12, 2000) (Appendix H).

<sup>92</sup> Limberis, *supra* note 78.

<sup>93</sup> Pima Cnty. Bd. of Supervisors, Resolution No. 2001-21 (Feb. 6, 2001) (Appendix I).

believed that public lands in Arizona that have unique or special features should be protected from logging, mining, road building, and off-road vehicle use.

In recent years, BLM has acquired private inholdings within IFNM using federal funds from the Land and Water Conservation Fund, including 602 acres (a patented homestead in the Silverbell Mountains) in 2016 and 358 acres in 2014 that included habitat for the endangered Nichol Turk's head cactus and a cave serving as a major bat roost.<sup>94</sup>

Today, Ironwood Forest National Monument retains widespread local support and yields economic as well as historical and scientific benefits to the surrounding communities. On May 16, 2017, the Pima County Board of Supervisors confirmed this in a resolution expressing support for the Antiquities Act and other national monuments in general, and for IFNM in particular.<sup>95</sup> In the resolution, the Board praised the economic benefits from the recreational use of public lands such as IFNM, and noted that travel and tourism accounted for \$2.24 billion in direct spending in Pima County in 2015, as well as for 24,060 jobs, \$115.4 million in state tax revenue, and \$81.9 million in local tax revenue. The Board attributed these benefits at least in part to IFNM, and concluded that the elimination or reduction of IFNM would likewise reduce these benefits.

There is other evidence of IFNM's economic benefits as well. A Headwaters Economics synopsis prepared in 2017 indicated that in the years since IFNM's designation, Pima County has seen growth in its population by 18 percent, jobs by 15 percent, and personal income by 28 percent, including a 54 percent increase in non-labor income (investment income and government transfer payments on which many retirees rely). In its summary of economic performance in IFNM's surrounding communities, Headwaters Economics concluded that non-labor income would continue to grow and that people with investment income and retirees value protected lands such as IFNM.<sup>96</sup>

**E. *Factor (vi): Ironwood Forest National Monument Can Be Efficiently and Effectively Managed by the Federal Government***

An additional area in which comment is sought is “the availability of Federal resources to properly manage designated areas.” Proclamation 7320 charged BLM with management responsibility for IFNM. BLM's approximately 9,700 employees manage more than 240 million surface acres of land, and 700 million acres of sub-surface mineral estate, across the nation.<sup>97</sup> BLM managed the land that comprises IFNM long before President Clinton proclaimed it a national monument. Thus, there is no additional acreage for BLM to manage.

In 2015, Congress appropriated an approximately \$1.14 billion budget for the BLM's management activities; in 2016, the BLM's budget was \$1.25 billion.<sup>98</sup> BLM's request for its 2017 fiscal year budget was \$1.26 billion.<sup>99</sup> Furthering its mission to “emphasize[] the interconnection and interdependence between people and the public lands,”<sup>100</sup> BLM has used the resources allotted to it, and will continue to be able to do so. Moreover, BLM management of public lands has the potential to increase

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<sup>94</sup> *IFNM 2016 Annual Report*, *supra* note 20, at 14; *IFNM 2014 Annual Report*, *supra* note 17, at 11.

<sup>95</sup> Pima Cnty. Bd. of Supervisors, Resolution No. 2017-33 (May 16, 2017) (Appendix J).

<sup>96</sup> Headwater Economics, *Ironwood Forest National Monument: A Summary of Economic Performance in the Surrounding Communities* (Spring 2017), <https://headwaterseconomics.org/wp-content/uploads/Ironwood.pdf>.

<sup>97</sup> BLM, *Budget Justifications and Performance Information: Fiscal Year 2017*, at I-2, [https://www.doi.gov/sites/doi.gov/files/uploads/FY2017\\_BLM\\_Budget\\_Justification.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/FY2017_BLM_Budget_Justification.pdf).

<sup>98</sup> *Id.* at I-11.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at I-1.

revenues and economic growth. For example, in 2014, a Department of the Interior Economic Impact Report estimated that BLM-managed lands contributed \$114 billion to the U.S.'s economic output and supported nearly 450,000 domestic jobs through extractive and non-extractive uses of those lands.<sup>101</sup> Evaluations of the resources available to manage IFNM must also take into consideration the potential for economic growth related to IFNM's designation.

In addition, the BLM is not the only entity protecting IFNM. The U.S. Fish and Wildlife Service has a Recovery Plan and Habitat Management Plan for Nichol Turk's head cactus and a Recovery Plan for the lesser long-nosed bat; the State of Arizona has two Active Management Area plans for protecting groundwater under IFNM and a Comprehensive Wildlife Conservation Strategy that provides funds for restoration and enhancement of wildlife populations and habitat; Pima County (the bulk of IFNM) has a Comprehensive Plan, Sonoran Desert Conservation Plan and zoning ordinance that recognize and protect the County's unique environmental and cultural resources such as IFNM; Pinal County (northern Samaniego Hills and Sawtooths) also has a Comprehensive Plan and zoning ordinance that recognize and protect environmental and cultural resources; the City of Tucson has a general plan to balance growth with preservation of natural resources; and the Town of Marana has general and supplemental plans that do likewise.<sup>102</sup> It is clear that there is an across the board interest in protecting this remarkable place. Further, these plans work together without giving rise to jurisdictional confusion.

### **III. Conclusion**

NPCA urges the administration to maintain the current protections of the Ironwood Forest National Monument. We believe your office should provide the leadership necessary to continue the protections that decades of study have shown IFNM's biological, geological and historic treasures so manifestly deserve. We are not alone in this belief. Local governments, environmental organizations, ranchers, and the Tohono O'odham nation all endorse the preservation of these quintessential Sonoran Desert resources and the scientific, historical, and economic benefits they provide. Ironwood Forest National Monument is a unique, rich desert landscape worthy of its current designation and wholly in keeping with the intention and written purpose of the Antiquities Act.

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, states:

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.

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<sup>101</sup> *Id.* at I-3.

<sup>102</sup> *Introduction*, in BLM, *Ironwood Forest National Monument PRMP/FEIS 1-14 to 1-16* (Sept. 2011), [https://eplanning.blm.gov/epl-front-office/projects/lup/78206/104857/128425/07\\_Chapter\\_1\\_Introduction.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/78206/104857/128425/07_Chapter_1_Introduction.pdf).

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 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 Ironwood Forest National Monument, to leave 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: Letter from Robert M. Marshall, Conservation Science Program Manager, The Nature Conservancy, to Roy Wright, Special Assistant, Office of the Secretary (May 5, 2000)

Appendix D: Map Showing Conservation Site 19 from the Sonoran Desert Ecoregion Project

Appendix E: Letter from Raúl M. Grijalva, Chairman, Pima County Board of Supervisors, to the Honorable Gale A. Norton, Secretary, United States Department of the Interior (Apr. 4, 2001)

Appendix F: Letter from Pinal County Board of Supervisors to the Honorable Bruce Babbitt, Secretary of the US Department of the Interior (May 18, 2000)

Appendix G: Letter from Edward D. Manuel, Chairman, Tohono O’odham Nation, to the Honorable Bruce Babbitt, Secretary of the Interior (June 6, 2000)

Appendix H: Letter from Austin G. Nunez, Chairman, San Xavier District Tohono O’odham, to Mr. Bruce Babbitt, Secretary, Department of Interior (May 12, 2000)

Appendix I: Pima Cnty. Bd. of Supervisors, Resolution No. 2001-21 (Feb. 6, 2001)

Appendix J: Pima Cnty. Bd. of Supervisors, Resolution No. 2017-33 (May 16, 2017)

## **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.<sup>1</sup> 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.”<sup>2</sup> 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.<sup>3</sup> 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.”<sup>4</sup> President Trump, however, referred to this monument designation as a “massive federal land grab,”<sup>5</sup> 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,<sup>6</sup> the new State’s constitution, as Congress required, “forever disclaim[ed] all right and title” to federal

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

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

<sup>3</sup> *Id.*

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

<sup>5</sup> Eilperin, at A3.

<sup>6</sup> 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.”<sup>7</sup> 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.”<sup>8</sup>

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.

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<sup>7</sup> *Id.*, § 3.

<sup>8</sup> “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.”<sup>9</sup>

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*.<sup>10</sup> 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.<sup>11</sup> 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.

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<sup>9</sup> 54 U.S.C. § 320301(a) and (b).

<sup>10</sup> 252 U.S. 459 (1920).

<sup>11</sup> 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.<sup>12</sup> 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."<sup>13</sup> 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.

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## **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

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<sup>12</sup> 43 U.S.C. 1704 *et seq.*

<sup>13</sup> 54 U.S.C. § 100101(b)(2).

England in 1846 and the treaty resolving the Mexican-American War in 1848.<sup>14</sup> No sooner had the public land domain been established in the Eighteenth Century than a policy of disposing of the land had been initiated.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup>

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.

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<sup>14</sup> 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>.

<sup>15</sup> See Senate Report, at 28.

<sup>16</sup> 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>.

<sup>17</sup> 17 Stat. 326; 26 Stat. 1095.

<sup>18</sup> Alexander and Gorte, at 9.

<sup>19</sup> 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."<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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".<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup>

Yoo and Gaziano rely largely on a work by Ronald Lee for their recital of the history of the Act.<sup>26</sup> 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

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<sup>20</sup> Yoo and Gaziano, at 3.

<sup>21</sup> See 54 U.S.C. § 32032.

<sup>22</sup> 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](http://www.nps.gov/archeology/pubs/lee/Lee_CH6.htm) at 2-3.

<sup>23</sup> *Id.*, at 3.

<sup>24</sup> *Id.*, at 4-6.

<sup>25</sup> *Id.*, at 7.

<sup>26</sup> 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, ...<sup>27</sup>

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.<sup>28</sup> 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.<sup>29</sup> 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.”<sup>30</sup>

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.<sup>31</sup>

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.<sup>32</sup> 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.<sup>33</sup> 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

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<sup>27</sup> Lee, at 9.

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

<sup>29</sup> 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).

<sup>30</sup> 252 U.S. at 455 and n.1.

<sup>31</sup> *Id.*, at 455-56.

<sup>32</sup> 426 U.S. 128, 141-42 (1976).

<sup>33</sup> *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.”<sup>34</sup>

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.”<sup>35</sup> 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.”<sup>36</sup> 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.<sup>37</sup>

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<sup>34</sup> *Id.*

<sup>35</sup> Yoo and Gaziano, at 7.

<sup>36</sup> *Id.*, at 8.

<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup>

This is a question on which the Attorney General of the United States, Homer S. Cummings, ruled in the negative.<sup>40</sup> 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

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<sup>38</sup> *Id.*

<sup>39</sup> 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.

<sup>40</sup> 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.<sup>41</sup>

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.”<sup>42</sup> Since the Cummings Opinion, no President has attempted unilaterally to rescind a national monument.<sup>43</sup> Rather, as contemplated by the Cummings Opinion, when some monuments have been abolished, it has been Congress that has done so by legislation.<sup>44</sup>

Yoo and Gaziano argue that the Cummings Opinion was “poorly reasoned” and “erroneous as a matter of law.”<sup>45</sup> 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”).<sup>46</sup> Second, in 1916,

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<sup>41</sup> “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).

<sup>42</sup> 39 Op. Atty. Gen. at 186–87.

<sup>43</sup> Squillace, at 553.

<sup>44</sup> 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).

<sup>45</sup> Yoo and Gaziano, at 5.

<sup>46</sup> 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.<sup>47</sup> 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."<sup>48</sup> 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."<sup>49</sup> This is particularly so when the later statute is a comprehensive legislative scheme.<sup>50</sup> 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.<sup>51</sup> 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."<sup>52</sup> The Commission obtained extensive studies and finally issued its report in 1970.<sup>53</sup> One of its recommendations was that "[d]elegations of the congressional authority should be specific, not implied, ...."

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

<sup>48</sup> *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).

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

<sup>50</sup> 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.

<sup>51</sup> 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.

<sup>52</sup> See 78 Stat. 982 (Sept. 19, 1964).

<sup>53</sup> 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.”<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup>

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.”<sup>58</sup>

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’

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

<sup>55</sup> 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: ...”).

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

<sup>57</sup> 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”).

<sup>58</sup> 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.”<sup>59</sup> But there already exists a remedy under such circumstances; those same arguments can be made to Congress.<sup>60</sup>

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”).<sup>61</sup> Ten years after adoption of the Antiquities Act, Congress adopted the Organic Act of 1916 creating the National Park System.<sup>62</sup> 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.”<sup>63</sup> 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.<sup>64</sup> And Congress provided that the entire National Park System is a “cumulative expression[] of a single national heritage.”<sup>65</sup> 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.*<sup>66</sup>

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

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<sup>59</sup> Yoo and Gaziano, at 9, 10.

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

<sup>61</sup> 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).

<sup>62</sup> Now codified at 54 U.S.C. §100101(a).

<sup>63</sup> *Id.*

<sup>64</sup> 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).

<sup>65</sup> 54 U.S.C. § 100101(b)(1)(B).

<sup>66</sup> *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.<sup>67</sup>

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.<sup>68</sup> 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.<sup>69</sup> 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."<sup>70</sup>

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.

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<sup>67</sup> 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).

<sup>68</sup> Yoo and Gaziano, at 14-17.

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

<sup>70</sup> 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

### Authors



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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

Professor of Policy and Practice; Co-Executive Director, Emmett Institute on Climate Change and the Environment; and Co-Director, UCLA Law Environmental Law Clinic, University of California, Los Angeles

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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May 5, 2000

Mr. Roy Wright  
Special Assistant, Office of the Secretary  
1549 C Street, NW  
Room 6142  
Washington, DC 20240

Dear Mr. Wright:

Thank you for attending the recent meeting in Tucson regarding the designation of an Ironwood Preserve in Pima County. I wanted to followup with some additional information as we discussed. The information was compiled during our Sonoran Ecoregion Project, a two-year, bi-national effort led by The Nature Conservancy, Sonoran Institute and Instituto del Medio Ambiente y el Desarrollo Sustentable del estado de Sonora to identify areas in the Sonoran Desert Ecoregion that are important for the conservation of biological diversity.

The objective of the Sonoran Desert Ecoregion Project was to identify a network of conservation sites in the desert that, with appropriate management, would conserve the Ecoregion's biodiversity over the long-term. The area we investigated included parts of Arizona, California, Baja California, and Sonora, a total of 55 million acres. We defined biodiversity as the full range of species and natural community types found in the desert, including rare species, common species, natural vegetation communities such as the palo verde-mixed cacti community where ironwood trees are found, and the ecological processes needed to maintain these elements, such as seed dispersal by birds and mammals and maintenance of mycorrhizal soil communities that fix nitrogen. A 12-member technical team compiled data and completed all of the analyses. The project relied heavily on the input from more than 100 experts from public land management agencies, academic institutions, tribes, private natural resource professionals, and conservation organizations throughout the Ecoregion.

We selected more than 400 species and natural vegetation communities found in the desert to represent biodiversity as a whole and developed a set of conservation goals and criteria to guide data analyses and the identification of Conservation Sites. Overall, 100 landscape-scale Conservation Sites were identified as areas critical to the conservation of the desert's biological diversity (see enclosed map labeled "**Figure 9**"). Most of the Conservation Sites fall into two general size classes, between 5,000 and 50,000 acres and between 100,000 and 500,000 acres. The majority of Conservation Sites identified in the U.S. portion of the Ecoregion occur on public lands. A total of fourteen Conservation Sites was identified within Pima County.

Conservation Site number 19, referred to as the Sawtooth-Silverbell Site, was identified based on the occurrence of 8 species. The median number of species found at the 100 sites identified Ecoregion-wide was 6, so Conservation Site 19 ranks above average in the proportion of the

The Coalition for Sonoran Desert Protection has collected site-level data for their proposal to protect a number of important areas in the Sonoran Desert Ecoregion. Among those areas is their Sawtooth-Silverbell unit. Their boundaries (presented on the enclosed map as the dashed green line) correspond closely to those developed for our Ecoregion Project. But more importantly, the Coalition's boundaries more accurately reflect the distribution of the species of interest, including identifying important corridors for bighorn, while avoiding areas that have already been developed. The approximate size of the refined boundary (in green) is 208,784 acres, including approximately 134,611 acres of BLM lands, 68,375 acres of State Trust Lands, and 5,798 acres of private lands.

We would like to emphasize the importance of the Sawtooth-Silverbell Site to the Sonoran Desert Ecoregion as a whole. As one of 100 Conservation Sites identified Ecoregion-wide, and one of 14 in Pima County, that is critical to the long-term persistence of the Ecoregion's biodiversity, conservation action taken at the Sawtooth-Silverbell Site would benefit biodiversity conservation throughout the Ecoregion. Designation of an Ironwood National Monument, in conjunction with conservation actions that Pima County may initiate at the 13 remaining Sites in Pima County through the Sonoran Desert Protection Plan would represent substantial progress towards accomplishing the overall biodiversity conservation needs of the Sonoran Desert Ecoregion.

The results of our Sonoran Ecoregion Project have been presented to the Science Technical Advisory Team of the Pima County Sonoran Desert Conservation Plan. We will continue to work with Pima County, public agencies, and other interested groups to promote the conservation of biological diversity throughout the network of Sonoran Desert Ecoregion Conservation Sites.

If you need additional information please contact me at the above number.

Sincerely,



Robert M. Marshall  
Conservation Science Program Manager

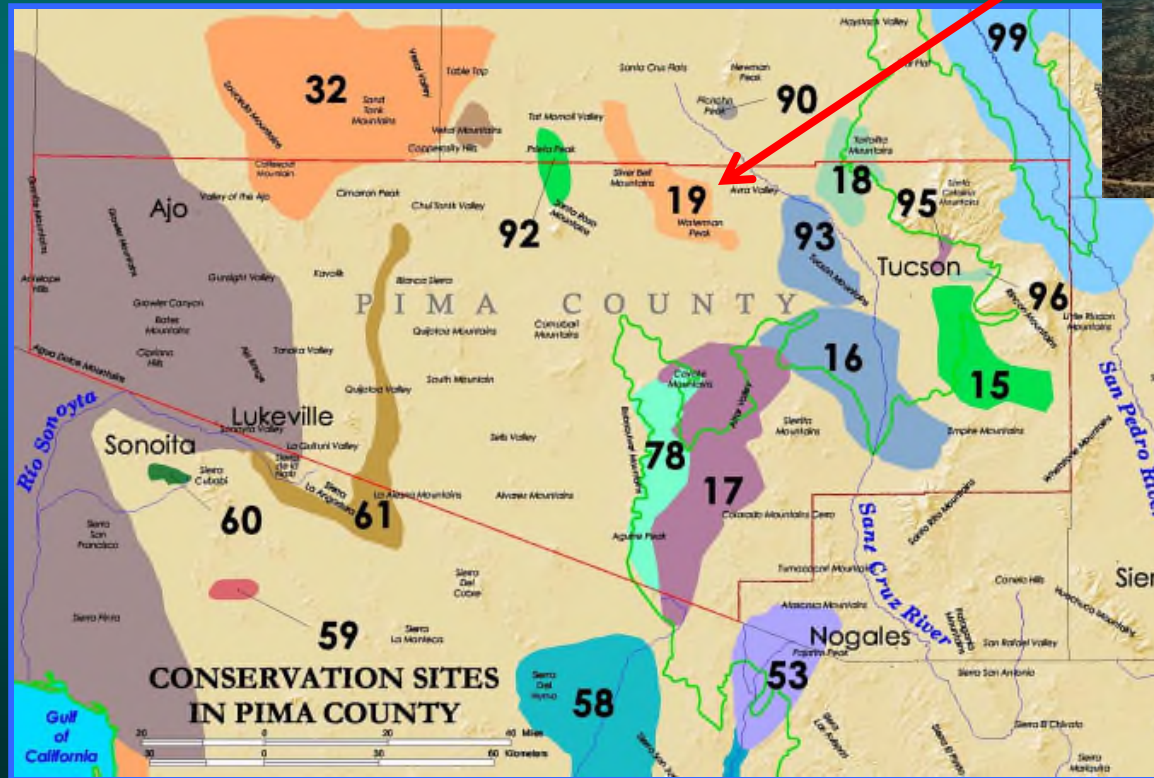
cc M. Behan  
C. Campbell

encl/ 2 maps





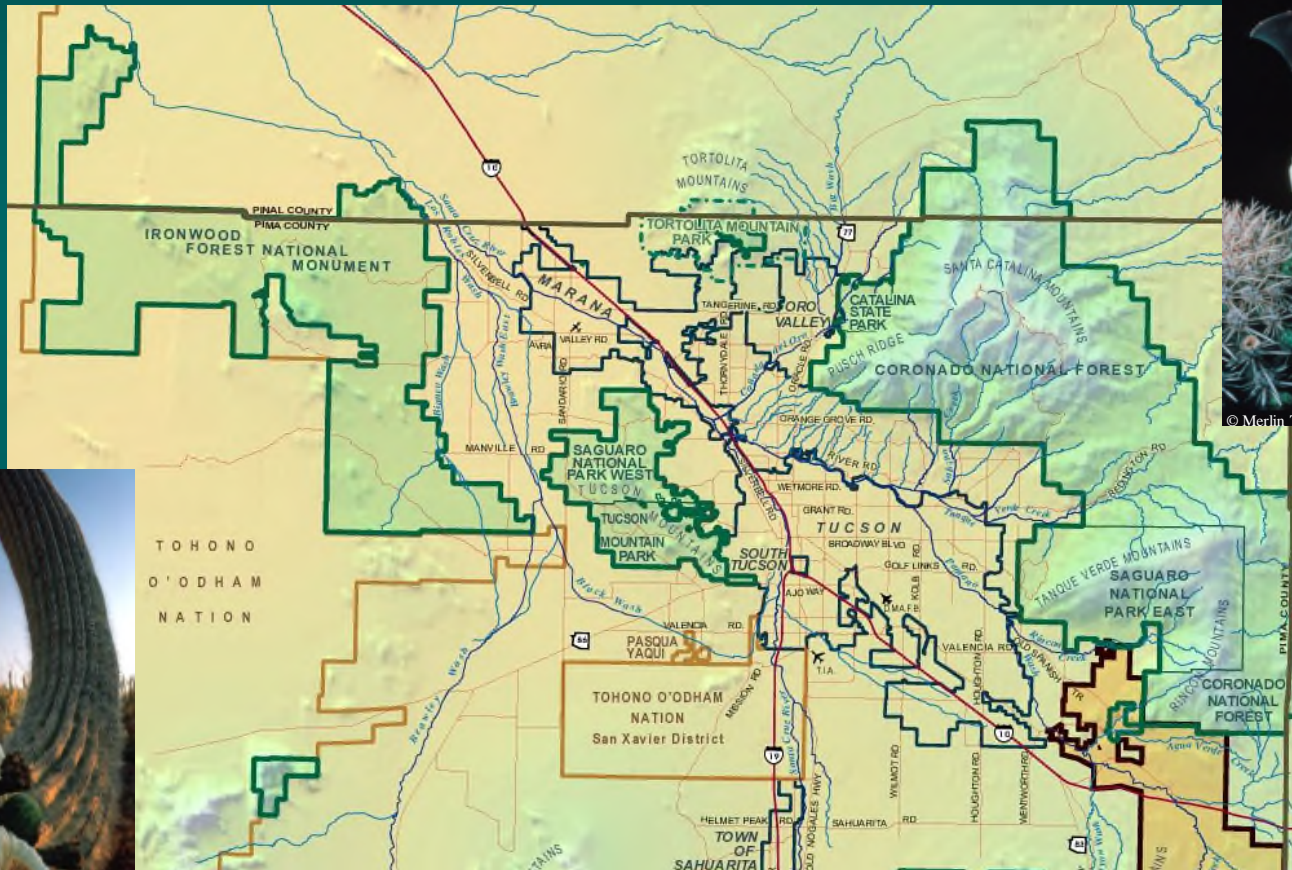
# Ironwood Forest National Monument



134,750 acres



# Ironwood Forest National Monument



© Merlin Tuttle



© Jack

**PIMA COUNTY BOARD OF SUPERVISORS**

130 WEST CONGRESS STREET, 11 FLOOR  
TUCSON, ARIZONA 85701-1317  
(520) 740-8126  
FAX: (520) 884-1152



**RAÚL M. GRIJALVA, CHAIRMAN**  
PIMA COUNTY BOARD OF SUPERVISORS-DISTRICT #5

**GLENN E. MILLER**  
EXECUTIVE ASSISTANT-DISTRICT #5

**BARBARA ROMAN**  
SPECIAL STAFF ASSISTANT-DISTRICT #5

**RUBEN REYES**  
SPECIAL STAFF ASSISTANT-DISTRICT #5

April 4, 2001

The Honorable Gale A. Norton, Secretary  
United States Department of the Interior  
1849 C Street NW  
6229 Main Interior Building  
Washington, D.C. 20240

**Re: Your Letter Dated March 28, 2001 Soliciting Comment from the Pima County Board of Supervisors Regarding Ironwood Forest National Monument**

Dear Secretary Norton:

Contrary to the assumption that local input was missing in the designation of the new National Monument in Pima County Arizona, the Ironwood Forest National Monument was established after an extensive and detailed public review and participation process. The genesis for the Ironwood Forest National Monument began almost three years ago with the Board of Supervisors initiating a regional conservation planning process. This process led to a number of scientific reports, one of which identified an unusual and unique stand of Ironwood trees now within the Ironwood Forest National Monument. These trees have been described as being more ecologically important to the bio-diversity of the Sonoran Desert than the Saguaro Cacti, yet Ironwood trees are essentially unprotected. We believe the Monument is an appropriate form of protection and should remain without modification or boundary adjustment.

We also understand that a mining company operating Silverbell Mine has trespassed on Federal Lands. This trespass should be resolved. It can be resolved either by the mining company removing the trespass and restoring the lands to their natural condition or an exchange of lands between the Federal Government and the mining interest. We would suggest either course of action is acceptable. If an exchange of lands option is chosen, we would suggest that lands owned by the mining interest within habitat designated critical for the survival and recovery of the endangered Cactus Ferruginous Pygmy-Owl be selected as exchange property.

The Honorable Gale A. Norton, Secretary  
Your Letter Dated March 28, 2001 Soliciting Comment from the Pima County Board of  
Supervisors Regarding Ironwood Forest National Monument


April 4, 2001

Page 2

With regard to uses, during the public hearings held by the County on the proposed establishment of Ironwood Forest National Monument, we stressed and were reassured that existing uses could continue such as traditional and historic ranching. In fact, the Proclamation specifically states that laws, regulations and policies followed by the Bureau of Land Management in issuing grazing permits and leases shall continue. We have found that the Bureau of Land Management public partnerships formed to plan uses with their lands, whether they be National Monuments or National Conservation Areas, is thorough and allows all parties to equally participate in future use discussions. We believe those uses that are historic and conform with conservation principals and should continue.

Thank you for the opportunity to comment on this matter. The Board today feels as strongly as it did when it passed Resolution 2000-63 requesting that the Secretary of the Interior petition the President to establish Ironwood Forest National Monument. I am providing a copy of this letter also to your local Bureau of Land Management State Director for their information and use.

Sincerely,



Raúl M. Grijalva, Chairman  
Pima County Board of Supervisors

Attachment

c: The Honorable Members, Pima County Board of Supervisors  
C.H. Huckelberry, County Administrator  
Denise Meridith, Bureau of Land Management State Director



PIMA COUNTY  
RESOLUTION NO. 2000- 63

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA  
TO PURSUE THE ESTABLISHMENT OF A RAGGED TOP AND SILVERBELL MOUNTAINS  
IRONWOOD PRESERVE CONSISTENT WITH THE SONORAN DESERT CONSERVATION PLAN**

**WHEREAS**, on March 2, 1999, the Board adopted the Sonoran Desert Conservation Plan in concept; and

**WHEREAS**, the Sonoran Desert Conservation Plan is the largest and most comprehensive regional multi-species conservation plan in the United States; and

**WHEREAS**, on December 3, 1998 the Board entered into Resolution 1998-250 with the Secretary of the Interior to:

(1) support the underlying purpose of the Endangered Species Act which is to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, and

(2) work with the Department of the Interior to develop the Sonoran Desert Conservation Plan; and

**WHEREAS**, in addition to addressing species conservation and federal compliance issues through protection of Critical Habitat along with other Sensitive Habitat and Corridors, the Sonoran Desert Conservation Plan encompasses six planning elements, including Riparian Restoration, Mountain Park expansion, Ranch Conservation, and Cultural and Historic Preservation; and

**WHEREAS**, under the Sonoran Desert Conservation Plan, 108 vulnerable species are being considered for protection, including 24 federally listed, proposed and candidate species, and including the endangered cactus ferruginous pygmy-owl; and

**WHEREAS**, under the Sonoran Desert Conservation Plan, 12 habitat types and 20 plant communities are being considered for protection, including riparian habitat which has been substantially degraded; and

**WHEREAS**, recent scientific findings published in the *Desert Ironwood Primer* establish the importance of ironwood as a habitat modifying keystone species and nurse plant that has a role in supporting the biodiversity of over 500 Sonoran Desert species, including the endangered cactus ferruginous pygmy-owl; and

**WHEREAS**, the ironwood-bursage habitat in the Silverbell Mountains of Pima County is associated with 674 species, including 64 mammals and 57 bird species; and

**WHEREAS**, *Desert Ironwood Primer* establishes that within the Sonoran Desert the Ragged Top site ... contributed the highest levels of species richness of the study; and

**WHEREAS**, additional findings that emphasize the importance of Ironwood to the Sonoran Desert ecosystem include that:

- ▶ "Ironwood generates a chain of influences on associated understory plants, affecting their dispersal, germination, establishment, and rates of growth. ... Ironwood is the dominant nurse plant in some subregions of the Sonoran Desert;" and
- ▶ "The mere presence of ironwood and other legume trees can increase the number of bird species in desertscrub habitat by 63%;" and
- ▶ "Recent studies show that without the protective cover of the desert legumes, the distributional ranges of saguaro, organ pipe, and senita cactus would retreat many miles, to more southern, frost-free areas;" and
- ▶ "Protecting ironwood habitat in Pima County, Arizona, will benefit a different mix of native species than would be conserved in ironwood habitats currently being protected on the islands or coasts of the Gulf of California;" and
- ▶ "North of the U.S. - Mexico border, the highest ironwood densities we recorded per hectare came from Arizona Uplands sites in Pima County (Ragged Top, 35 trees/ha; Cocoraque and Saguaro National Park West 22 trees/ha);" and

**WHEREAS**, the United States offers limited protection for ironwood, compared to Mexico, despite the importance of the ironwood stands to the species itself, and to the larger Sonoran Desert system; and

**WHEREAS**, the Ragged Top and Cocoraque Rock areas are identified by the science community as priorities for new protection and for strengthened conservation management; and

**WHEREAS**, the importance of cultural resources within the area has been established and includes a wide variation of petroglyph sites in the Ragged Top and Silverbell Mountains; and

**WHEREAS**, in addition to its valuable rock art sites, the Cocoraque Butte, listed in the National Register, is considered to be a traditional cultural place by the Tohono O'odham and Hopi Nations; and

**WHEREAS**, the U.S. Bureau of Land Management administers a large quantity of land in the Silverbell Mountains region of Pima County northwest of the Tucson Basin; and

**WHEREAS**, in addition to actions at the local level, Pima County proposes that federal protections could be achieved through the establishment of a Ragged Top and Silverbell Mountains Ironwood Preserve; and

WHEREAS, the Ironwood forest has served as a quiet but enormously important protector of species diversity within the Sonoran Desert; and

WHEREAS, preserve status, up to and including a National Monument designation would serve to honor this species for its role in upholding the ecosystem and the Preserve would achieve practical conservation goals that are necessary to promote the recovery of the endangered pygmy-owl; and

WHEREAS, Pima County has a longstanding demonstrated interest in open space protection and conservation objectives that reflect quality of life values important to the Southwestern United States and Arizona; and

WHEREAS, federal support for the Ragged Top and Silverbell Mountains Ironwood Preserve confirms the importance to communities of balancing natural and economic resources;

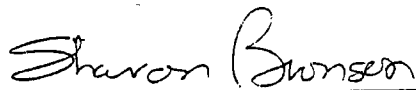
NOW THEREFORE BE IT RESOLVED THAT THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, as follows:

Requests that the United States of America through the Secretary of the Department of the Interior, consistent with the Sonoran Desert Conservation Plan, work cooperatively with Pima County to establish the Ragged Top and Silverbell Ironwood Preserve in the Silverbell Mountains.

PASSED AND ADOPTED THIS 21st day of March, 2000.

PIMA COUNTY BOARD OF SUPERVISORS

WITNESSED BY:



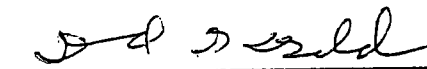
Chair of the Board



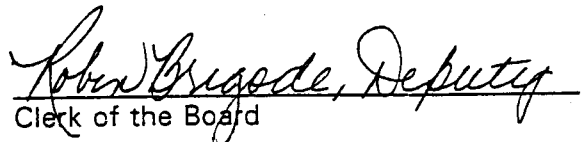
Secretary of the Department of Interior

APPROVED AS TO FORM:

ATTEST:



Deputy County Attorney



Clerk of the Board

# PINAL COUNTY BOARD OF SUPERVISORS

**LIONEL D. RUIZ, District 1**  
Mammoth

**SANDIE SMITH, District 2**  
Apache Junction

**JIMMIE B. KERR, District 3**  
Casa Grande



**STANLEY D. GRIFFIS, Ph.D.**  
County Manager

May 18, 2000

The Honorable Bruce Babbitt  
Secretary of the US Department of the Interior  
1849 "C" Street NW, Room 6140  
Washington DC 20240

Dear Secretary Babbitt,

The Coalition for Sonoran Desert Protection, an alliance of conservation groups, neighborhood associations and governmental organizations, has formulated an outstanding plan that will protect valuable desert scientific and historical resources. The biodiversity of the proposed monument area is absolutely phenomenal—ironwood trees, pygmy owl, desert bighorn sheep, packrats and other vertebrates, many varieties of cactus including Nichols Turk's Head cactus, desert tortoise, ad infinitum.

The designation of this area as the "Morris K. Udall Ironwood Forest-Upland Corridor National Monument" would preserve for all posterity this biologically and geologically diverse area while paying tribute to a great American and Arizonan. Individually, either of the two reasons is more than sufficient justification for the designation of this area as a national monument. To preserve the pristine area and honor a great American should leave no doubt about the requested designation of national monument status.

The Pinal County Board of Supervisors, on behalf of all County citizens, strongly support the designation of the area, delineated in the "Proposal for the establishment of the Morris K. Udall Ironwood Forest-Upland Corridor National Monument" and we ask that you give it your full support.

Sincerely,

Pinal County Board of Supervisors

Lionel D. Ruiz  
District I Supervisor

Sandie Smith  
District II Supervisor

Jimmie B. Kerr  
District III Supervisor

BOS/rp

Edward D. Manuel  
Chairman



Henry A. Ramon  
Vice-Chairman

**OFFICE OF THE CHAIRMAN  
& VICE CHAIRMAN  
TOHONO O'ODHAM NATION**

P.O. Box 837 • Sells, Arizona 85634  
Telephone (520) 383-2028 • Fax (520) 383-3379

June 6, 2000

The Honorable Bruce Babbitt  
Secretary  
U.S. Department of Interior  
1849 C Street N.W., Room 6140  
Washington, D.C. 20240

Dear Secretary Babbitt,

On behalf of the 23,500 members of the Tohono O'odham Nation, I support the Morris Canyon Ironwood Forest-Upland Corridor National Monument proposal put forward by the Coalition for Sonoran Desert Protection. Each of the nine units proposed by the Coalition for protected status contain cultural artifacts and wildlife which hold tremendous significance to the Tohono O'odham. Only through monument designation, will these sites receive the protection necessary to preserve them for future generations.

While the Nation supports the Coalition's proposal in concept, we expect that the Coalition and the U.S. Department of Interior provide the Nation with a direct role in decisions regarding the development of the monument and its management.

Thank you in advance for your consideration.

Sincerely,

Edward D. Manuel  
Chairman

- cc: William Jefferson Clinton, President, United States
- Ed Pastor, U.S. House of Representatives
- Jon McCain, U.S. Senate
- Carolyn Campbell, Executive Director, Coalition for Sonoran Desert Protection
- Jane Dee Hull, Governor, State of Arizona
- Sharon Bronson, Chair, Pima County Board of Supervisors
- John Lewis, Executive Director, Inter-Tribal Council of Arizona



## Coalition for Sonoran Desert Protection

300 E. University Blvd., Suite 120  
Tucson, Arizona 85705  
p (520) 388-9925 • f (520) 629-0525  
csdp@azstarnet.com • www.sonorandesert.org

December 13, 2000

Chairman Edward Manuel  
Tohono O'odham Nation  
P.O. Box 837  
Sells, Arizona 85634

Dear Chairman Manuel:

It was a pleasure meeting you last week with the Secretary of Interior in the Sand Tank Mountains, and I look forward to meeting with you again tomorrow in Casa Grande regarding the proposed Sonoran Desert National Monument.

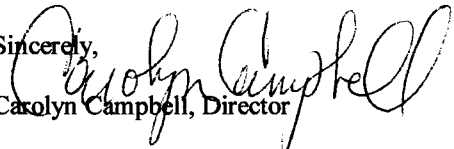
Environmentalists and others are proposing that Secretary Babbitt and President Clinton place the identified lands surrounding the Sand Tank Mountains, the Table Top Mountains Wilderness, the Maricopa Mountains Wilderness, and Sentinel Plain in national monument status at this time, and we strongly request your support. This is the only immediate process to protect the unique cultural and natural resources in the area. And although we recognize and appreciate the tribal interest in eventually transferring some of these parcels to Tohono O'odham ownership, we hope you realize and support our goal of immediate protection.

We fully respect the sovereignty of the Tohono O'odham Nation and its people, and will support similar traditional activities of the Nation in the new monument to the activities the Nation conducts on its own lands, lands that had prior occupation by Hohokam people.

I also want to thank you again for your support of the Coalition's proposal for the Ironwood Forest National Monument last spring. Tribal members and Coalition members have been working productively in the interim management process, and I hope we can achieve our common goals of resource protection.

Conservationists had a very productive meeting with your staff members Alex Ritchie, Marco Rivera and Jonathan Jantzen this morning. We discussed issues and goals that we share, and I would like to request that we continue this dialogue so that we can obtain the highest protection possible for the cultural and natural resources should this monument become a reality. I hope that myself and others might have the opportunity to meet with you and/or your staff, as well as with members of the Cultural Preservation and Natural Resources Committees in the near future to discuss these issues. Please call me at (520) 388-9925 if there is an opportunity in the near future to meet.

Sincerely,

  
Carolyn Campbell, Director

Cc: Mr. Peter Steere, Cultural Resources Manager  
Mr. Tony Burrell, Cultural Preservation Committee Chair  
Mr. Austin Nunez, San Xavier District Chair ✓  
Ms. Rita Martinez, Natural Resources Committee Chair

Arizona Center for Law  
in the Public Interest  
Arizona League of  
Conservation Voters  
Arizona Native Plant Society  
Buffers  
Center for Biological  
Diversity  
Center for Environmental  
Connections  
Center for Environmental  
Ethics  
Defenders of Wildlife  
Desert Watch  
Drylands Institute  
Environmental and Cultural  
Conservation Organization  
Friends of Cabeza Prieta  
Friends of the Rillito River  
Friends of Sweetwater  
Gates Pass Area  
Neighborhood Association  
GREEN—GrassRoots  
Environmental Effectiveness  
Network  
Neighborhood Coalition  
of Greater Tucson  
Northern Tucson Mountains  
Resource Conservation-  
Education Project  
Northwest Coalition for  
Responsible Development  
Oro Valley Neighborhood  
Coalition  
Pima Farms/Scenic Drive  
Neighborhood Association  
Protect Land and  
Neighborhoods  
Saguaro Forest Associates  
Save the Scenic Santa Ritas  
Sierra Club-Grand Canyon  
Chapter  
Sierra Club-Rincon Group  
Silverbell Mountain Alliance  
Sky Island Alliance  
Sky Island Watch  
Society for Ecological  
Restoration  
Sonoran Arthropod Studies  
Institute  
Southwest Tucson  
Environmental Alliance  
Southwestern Biological  
Institute  
Student Environmental  
Action Coalition/Southwest  
Tucson Audubon Society  
Tucson Herpetological  
Society  
Tucson Mountains  
Association  
Tucson Solar Alliance  
The Wildlands Project  
Wildlife Damage Review  
Women for Sustainable  
Technologies

**SAN XAVIER DISTRICT  
OF THE**

**TOHONO O'ODHAM NATION**

2018 WEST SAN XAVIER ROAD • TUCSON, ARIZONA 85746  
TELEPHONE: (520) 294-5727 • FAX: (520) 294-0613

May 12, 2000

Mr. Bruce Babbitt, Secretary  
Department of Interior  
1849 C Street NW, Room 6140  
Washington, D.C. 20240

Dear Secretary Babbitt:

The San Xavier District of the Tohono O'odham Nation would like to express its support for the Coalition for Sonoran Desert Protection's proposal for the Morris K. Udall Ironwood Forest-Upland Corridor National Monument.

The Tohono O'odham ancestors, the HoHokam, have occupied the lands being proposed for protected status from time immemorial. These lands as you can see from the Coalition report, are rich in the history of our people. Rock art images, villages, burial sites, metate stones, ancient ball courts, plaza areas, potshards, and quarries are found abundantly throughout the nine units proposed by the Coalition. These sites have very important cultural and spiritual significance to our current members and future generations. We feel that these sites must be protected and a monument designation would put the necessary protections in place.

The Tohono O'Odham also feels very strongly connected to our natural world. For many generations, we have lived among the ironwood and mesquite trees, harvested saguaro fruit and cholla buds, honored and respected the many plants and animals that co-exist with us, such as the desert tortoise, rattlesnake, bighorn sheep, and all other wildlife. And, as development has crept up to many of our borders, our tribal lands have become, in essence, wildlife sanctuaries. We must protect movement corridors and larger areas for these plants and animals as well, in order to preserve the sacred maze of life.

With this show of support, the Tohono O'Odham people will expect to have access to use and visit these sacred sites, and be involved with the development of a management plan regarding this monument.

Thank you very much.

Sincerely,



Austin G. Nunez, Chairman  
San Xavier District

**REGULAR AGENDA**

9. **BOARD OF SUPERVISORS: ESTABLISHMENT OF IRONWOOD NATIONAL MONUMENT**

RESOLUTION NO. 2001 - 21, supporting the establishment of the Ironwood Forest National Monument and requesting President George W. Bush to support the Monument by maintaining its status as a National Monument. (District 3)

Supervisor Bronson stated she placed this item on the agenda because there were discussions in Washington that some of the actions of the previous administration, particularly related to the establishments of monuments, may be reversed. She felt it was important to reassert the Board of Supervisors support of this national monument because it was critical to the success of the Sonoran Desert Conservation Plan.

On consideration, it was moved by Supervisor Bronson, seconded by Supervisor Carroll, and unanimously carried by a five to zero vote, to pass and adopt Resolution No. 2001 - 21, and send a letter to President Bush and a copy to the Honorable Gale Norton, Secretary of the Interior, to indicate a unanimous vote of the Board of Supervisors in support of this national monument.

10. **BOARD OF SUPERVISORS: PROJECT FUNDING REQUEST**

Wingspan Domestic Violence Project funding request for \$21,900.00. Discussion/Action/ Direction to Staff. (District 5)

Chairman Grijalva stated he placed this request on the agenda on advice from staff. Most Outside Agencies received two year reciprocal funding, however, because the vote was discretionary the Board assumed the funding for Wingspan was for a two year period. Staff pointed out the Board was not specific in their vote, therefore, the matter must be voted on for another year.

On consideration, it was moved by Supervisor Bronson, seconded by Chairman Grijalva, and carried by a four to zero vote, Supervisor Carroll not present for the vote, to approve the project funding request.



RESOLUTION NO. 2001- 21

RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS IN SUPPORT OF THE IRONWOOD FOREST NATIONAL MONUMENT AND REQUESTING THAT PRESIDENT GEORGE W. BUSH SUPPORT THE MONUMENT BY MAINTAINING ITS STATUS AS A NATIONAL MONUMENT.

WHEREAS the Pima County Board of Supervisors enacted a Declaration to Pursue the Establishment of a Ragged Top and Silverbell Mountain Ironwood Preserve Consistent with the Sonoran Desert Conservation Plan on March 21, 2000;

WHEREAS President William J. Clinton established the Ironwood Forest National Monument including the Ragged Top and Silverbell Mountain Ironwood Forest by Proclamation on June 9, 2000;

WHEREAS nothing in the Proclamation is deemed to enlarge or diminish the jurisdiction of the State of Arizona with respect to fish and wildlife management;

WHEREAS Bureau of Land Management regulations and policies regarding issuance and administration of grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument;

WHEREAS the Proclamation directed the Secretary of the Interior to manage the monument through the Bureau of Land Management to implement the purposes of the proclamation;

WHEREAS the Bureau of Land Management has commenced its management of the Monument including mapping of the Monument;

WHEREAS the existence of the Monument is consistent with the Pima County Sonoran Desert Conservation Plan, which combines short-term actions to protect and enhance the natural environment with long-range planning to ensure that Pima County's natural and urban environments not only coexist but develop an interdependent relationship, where one enhances the other;

WHEREAS President Bush has repeatedly recognized the importance of local government input in federal decisions which impact local jurisdictions;

NOW THEREFORE BE IT RESOLVED that the Pima County Board of Supervisors supports the establishment of the Ironwood Forest National Monument by Proclamation of former President William J. Clinton on June 9, 2000 and respectfully requests President George W. Bush to support the Ironwood Forest National Monument by maintaining its status as a national monument and by continuing funding necessary for the maintenance and management of the Monument.

PASSED, ADOPTED, AND APPROVED, by the Pima County Board of Supervisors this 6th day of February, 2001.

ATTEST: PIMA COUNTY

Lori Madorsky  
Clerk of the Board of Supervisors

Raul W. Grijalva  
Chair of the Board of Supervisors  
FEB 06 2001

APPROVED AS TO FORM:

K. Rich Lee  
Deputy County Attorney

**RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS  
RECOGNIZING THE IMPORTANCE OF THE 1906 ANTIQUITIES ACT  
AND SUPPORTING THE IRONWOOD FOREST NATIONAL MONUMENT  
DESIGNATION IN PIMA COUNTY CONSISTENT WITH THE SONORAN  
DESERT CONSERVATION PLAN**

**The Board of Supervisors of Pima County, Arizona finds:**

1. Since 1872, the United States National Park System has grown from a single, public reservation now called Yellowstone National Park to embrace over 450 natural, historical, recreational, memorial, and cultural areas throughout the United States under the control and protection of the Secretary of the Interior.
2. The Antiquities Act of 1906, (P.L. 59–209, formerly 16 U.S.C. §§ 431-433, now 54 U.S.C. §§ 320301-320303), the cornerstone of our nation’s cultural heritage protection laws, was passed by the United States Congress and signed into law by President Theodore Roosevelt on June 8, 1906.
3. Section 2 of the Antiquities Act gives the President the authority to set aside for protection "...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."
4. In 1998, the Pima County Board of Supervisors entered into Resolution 1998-250 with the Secretary of Interior to support the Endangered Species Act and to work with the Department of Interior to develop the Sonoran Desert Conservation Plan.
5. In 1999, the Board of Supervisors adopted the Sonoran Desert Conservation Plan that encompasses five conservation elements – riparian areas, habitat protection, mountain parks, ranch conservation, and cultural and historic site preservation.
6. In 2000, scientific findings concluded that the Ragged Top Mountain and Cocoraque Butte areas had the highest levels of species richness due to the Ironwood tree forest in the study area, as well as numerous cultural resource sites, and that these areas should be identified as priorities for new protection and for strengthened conservation management.
7. In 2000, the Pima County Board of Supervisors passed Resolution 2000-63, witnessed by the Secretary of Interior, to pursue the establishment of a Ragged Top and Silverbell Mountains Ironwood Preserve “up to and including a National Monument designation....”

8. On June 9, 2000, President William J. Clinton signed a Proclamation declaring the establishment of the Ironwood Forest National Monument in on public lands in Pima and Pinal counties to be managed by the Bureau of Land Management.
9. There are currently 22 National Parks, National Monuments, Historic Sites, Trails and Memorials managed by the National Park Service in Arizona, and five National Monuments that are managed by the Bureau of Land Management.
10. On April 26, 2017, President Trump signed Executive Order 13792 instructing the Department of Interior to review 27 national monuments designated under the 1906 Antiquities Act. The order specifically instructs the Department of Interior to review monuments over 100,000 acres and designated since 1996, to decide whether these should be retained, eliminated or reduced in size. Public comment will be taken after May 12, 2017, for a period of 60 days.
11. Four out of the five National Monuments in Arizona managed by the Bureau of Land Management are under review, including Ironwood Forest, Sonoran Desert, Grand Canyon-Parashant, and Vermilion Cliffs National Monuments.
12. These four Arizona National Monuments conserve a great diversity of natural and cultural resources, protect magnificent landscapes, preserve countless archaeological sites considered sacred by Arizona tribal nations, provide habitat for endangered species and game species, provide public access and enjoyment of some of the Nation's best remaining wildlands, and ultimately provide enormous economic benefits to the state of Arizona from outdoor recreation and tourism.
13. The economic benefits to the Mountain West states, especially in rural areas including Arizona, from outdoor recreation on public lands resulted annually in direct spending of \$104.5 billion; 925,000 jobs; federal tax revenues of \$7.7 billion; and state and local tax revenues of \$7.2 billion, according to the Outdoor Recreation Association Economic Benefits Report 2017.
14. In Pima County in 2015, travel and tourism accounted for \$2.24 billion in direct spending; 24,060 jobs, \$115.4 million in state tax revenue, and \$81.9 million in local tax receipts, and because of tourism and visitor spending, each Pima County household had their tax burden reduced by \$490, according to Visit Tucson Economic Impact of Travel and Tourism Report 2017.
15. Should the Ironwood Forest National Monument be eliminated or reduced in size, Pima County could expect less tourism based on outdoor recreation, fewer visitors, diminished economic benefits, and less in state and local tax receipts and benefits to the local economy.
16. Should the Ironwood Forest National Monument be eliminated or reduced in size, Pima County will experience the loss of protections for the Monument's natural

resources and cultural and historic sites that would lessen the effectiveness of landscape level protections and objectives of the Sonoran Desert Conservation Plan.

NOW, THEREFORE, BE IT RESOLVED that the Pima County Board of Supervisors:

1. Supports retaining the full text and authorities of the 1906 Antiquities Act, signed by President Roosevelt, as one of the nation's most important conservation laws to safeguard and preserve public lands, natural wonders, and cultural and historic sites for all Americans to enjoy.
2. Reaffirms its support for the designation of the Ironwood Forest National Monument consistent with the findings and objectives of the Sonoran Desert Conservation Plan.
3. Concludes that the Ironwood Forest National Monument and all designated National Monuments deserve to be safeguarded and retained as proclaimed under the 1906 Antiquities Act.
4. Finds that numerous values, including enormous economic benefits, accrue from the designation and protection of National Monuments throughout the United States, and that their value to the American people should not be questioned or threatened with diminished protections.
5. Authorizes and directs the County Administrator and appropriate staff to effect this resolution and urge the United States of America through the Secretary of Interior and Arizona's Congressional delegation to retain the full text and authorities of the 1906 Antiquities Act and to retain the full designation and protections of the Ironwood Forest National Monument.


Passed, adopted and approved, this 16 day of May, 2017.


 MAY 16 2017

Sharon Bronson, Chair, Pima County Board of Supervisors

ATTEST:

APPROVED AS TO FORM:

  
Julie Castañeda, Clerk of the Board

  
Thomas Weaver, County Attorney