



Submitted electronically via regulations.gov

July 10, 2017

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

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

Dear Secretary Zinke:

Defenders of Wildlife, Los Padres ForestWatch, Carrizo Plain Conservancy, The Conservation Lands Foundation, and The Wilderness Society respectfully submit the following comments on Carrizo Plain National Monument for consideration in the Department of the Interior's "Review of Certain National Monuments Established Since 1996."¹

Founded in 1947, Defenders of Wildlife is a national non-profit conservation organization focused on conserving and restoring native species and the habitat upon which they depend. Based in Washington, DC, the organization also maintains six regional field offices, including in California. Defenders is deeply involved in public lands management and wildlife conservation, including the protection and recovery of flora and fauna in the Golden State. We submit these comments on behalf of almost 1.2 million members and supporters nationwide, including our 173,373 members in California.

Los Padres ForestWatch is a nonprofit organization that works to protect the Los Padres National Forest, the Carrizo Plain National Monument, and other public lands along California's central coast. ForestWatch participated in the development of the management plan for the Carrizo Plain

¹ 82 Fed. Reg. 22016 (May 11, 2017).

National Monument, organizes volunteers to improve wildlife habitat on the Plain, and engages in the day-to-day management of the area in partnership with other public interest organizations and state and federal agencies.

The Conservation Lands Foundation was founded in 2007 on the belief that our public lands are best protected when there is a national network of local advocates working to advance a common conservation vision. As the only non-profit in the country dedicated solely to safeguarding the National Conservation Lands, our mission is to protect, restore and expand these lands through education, advocacy and partnerships.

The Carrizo Plain Conservancy was formed in 2013 to build upon the vision and energy from both the proclamation of Carrizo Plain National Monument and recent conservation efforts associated with locally sited solar power facilities. The Conservancy's mission is to create conservation initiatives and facilitate on-going conservation and restoration efforts on the Carrizo Plain.

The Wilderness Society (TWS) has been a leading organization protecting our nation's shared public lands since 1935. Through conservation and public engagement efforts, TWS works to preserve our nation's rich natural legacy for future generations by engaging its 700,000 members and supporters. TWS' work focuses on protecting public lands in large connected landscapes, driving energy development toward appropriate places and ensuring that people can access and share in the benefits of the outdoors.

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

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

² 82 Fed. Reg. 20429 (May 1, 2017).

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

⁴ 82 Fed. Reg. 22,016 (May 11, 2017).

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

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

The president lacks the legal authority to revoke or reduce the size of a national monument and should additionally refrain from seeking legislative action or taking any other action to undermine the designation. We therefore urge that your report should not include any recommendations to alter the size or status of Carrizo Plain National Monument.

Thank you for your attention to these comments.

Sincerely,

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Defenders of Wildlife

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

PROCLAMATION OF CARRIZO PLAIN NATIONAL MONUMENT WAS LEGAL AND APPROPRIATE UNDER THE ANTIQUITIES ACT

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

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

In designating national monuments under Antiquities Act, the only limits on the president's authority are that: (1) the area must contain “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest”; (2) the area must be “situated on land owned or controlled by the Federal Government”; and (3) “[t]he limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.”⁷

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

This discussion, while no doubt of interest to the historian, is irrelevant to the legal questions before the Court, since the plain language of the Antiquities Act empowers the President to set aside “objects of historic or scientific interest.” 16 U.S.C. § 431. The Act does not require that the objects so designated be made by man, and its strictures concerning the size of the area set aside are satisfied when the President declares that he has designated the smallest area compatible with the designated objects' protection. There is no occasion for this Court to determine whether the plaintiffs' interpretation of the congressional debates they quote is correct, since a court generally has recourse to congressional intent in the interpretation of a statute *only when the language of a statute is ambiguous*.⁸

⁶ 54 U.S.C. § 320301(a) (2012).

⁷ *Id.* § 320301(a), (b).

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

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

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

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

The designation of national monuments for scientific interests is not a recent phenomenon. For more than 100 years, national monuments have been established for the “scientific interests” they preserve. These values have included plants, animals, and other ecological concerns. In 1908, for instance, President Theodore Roosevelt designated Muir Woods National Monument because the “extensive growth of redwood trees (*Sequoia sempervirens*) ... is of extraordinary scientific interest and importance because of the primeval character of the forest in which it is located, and of the character, age and size of the trees.”¹⁴ President Roosevelt also established Mount Olympus National Monument because it “embrace[d] certain objects of unusual scientific interest, including numerous glaciers, and the region which from time immemorial has formed summer range and breeding grounds of the Olympic Elk (*Cervus roosevelti*), a species peculiar to these mountains and rapidly decreasing in numbers.”¹⁵

President Roosevelt was not alone in utilizing the Antiquities Act’s broad authority to protect ecological marvels. For example, Presidents Harding, Roosevelt, Truman, and Eisenhower all

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

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

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

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

¹³ *Id.*

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

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

subsequently expanded Muir Woods National Monument for the same reasons it was originally designated.¹⁶ Likewise, in designating Papago Saguaro National Monument in 1914, President Wilson’s proclamation highlighted that the “splendid examples of the giant and many other species of cacti and the yucca palm, with many additional forms of characteristic desert flora [that] grow to great size and perfection . . . are of great scientific interest, and should, therefore, be preserved.”¹⁷

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

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

Similarly, President Hoover enlarged Katmai National Monument “for the purpose of including within said monument additional lands on which there are located features of historical and scientific interest and for the protection of the brown bear, moose, and other wild animals.”¹⁹

President Franklin D. Roosevelt designated Channel Islands National Monument, in part, for the “ancient trees” it contained.²⁰ President Kennedy expanded Craters of the Moon National Monument to include “an island of vegetation completely surrounded by lava, that is scientifically valuable for ecological studies because it contains a mature, native sagebrush-grassland association which has been undisturbed by man or domestic livestock.”²¹

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

The broad objectives of the Antiquities Act, coupled with the vast deference afforded to the president in specifying a monument’s purpose, compel courts to uphold presidential determinations of what constitute “objects” and “scientific interests” when those findings are challenged.²² Beginning with a challenge to the designation of the Grand Canyon National Monument in 1920, the Supreme Court has promoted an expansive reading of the president’s discretion to determine which “scientific interests” may be protected. In its analysis, the Supreme Court simply quoted from

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

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

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

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

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

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

²² See *Utah Ass’n of Clys. v. Bush*, 316 F. Supp. 2d 1172, 1179 (D. Utah 2004) (“[I]here have been several legal challenges to presidential monument designations . . . Every challenge to date has been unsuccessful.”).

President Roosevelt’s proclamation to uphold the presidential finding that the Canyon “is an object of unusual scientific interest.”²³

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

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

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

Likewise, when ruling on a challenge to the millions of acres that President Carter set aside as national monuments in Alaska, the district court of Alaska concluded that “[o]bviously, matters of scientific interest which involve geological formations or which may involve plant, animal or fish life are within this reach of the presidential authority under the Antiquities Act.”²⁹ The court also found that the Act protected a broad range of natural features, including the ecosystems of plant and animal communities relied upon by the Western Arctic Caribou herd.³⁰

Recently, Giant Sequoia National Monument was challenged on grounds that it protects objects that do not qualify under the Act.³¹ In rejecting that argument, the circuit court noted that “other objects of historic or scientific interest may qualify, at the President’s discretion, for protection as

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

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

²⁵ *Id.*

²⁶ *Id.*

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

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

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

³⁰ *Id.*

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

monuments. Inclusion of *such items as ecosystems and scenic vistas* in the Proclamation did not contravene the terms of the statute by relying on nonqualifying features.”³²

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

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

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

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

The Supreme Court honored this principle in *Cameron v. United States* by finding that President Theodore Roosevelt was authorized to establish the 800,000-acre Grand Canyon National Monument.³⁵ Since then, courts have been exceedingly hesitant to infringe upon the president’s broad discretion in determining the “smallest area” possible encompassed by a monument—including the 1.7 million-acre Grand Staircase-Escalante National Monument.³⁶

Courts, moreover, are even less likely to disturb the president’s factual determinations when a proclamation contains the statement that the monument “is the smallest area compatible with the

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

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

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

³⁵ 252 U.S. 450, 455–56 (1920).

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

proper care and management of the objects to be protected.”³⁷ Beginning in 1978, presidents have included this declaration in all proclamations establishing or enlarging national monuments.³⁸

Congress Has Demonstrated Its Approval of Large National Monument Designations

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

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

On average, these Congressional actions have taken more than 34 years from the time of the original designation or expansion – a figure that jumps to nearly 47 years when excluding the 17 Alaskan

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

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

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

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

⁴¹ Exec. Order No. 13792 § 2.

⁴² MONUMENTS LIST DATA.

monument proclamations incorporated two years later by ANILCA.⁴³ In some cases, such as Craters of the Moon, however, it has taken Congress 78 years to act.⁴⁴ The monuments currently under review, in contrast, have been in existence for only 20 years or less, which is well within the time of typical congressional action regarding national monuments.

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

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

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

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

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

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

⁴⁵ P.L. 70-1021; 45 Stat. 1553.

⁴⁶ P.L. 90-606; 82 Stat. 1188.

⁴⁷ P.L. 97-243; 96 Stat. 301.

⁴⁸ P.L. 100-225; 101 Stat. 1539.

⁴⁹ P.L. 106-351; 114 Stat. 1362.

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

⁵¹ 54 U.S.C. § 320301(a), (b).

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

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

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

Furthermore, Congress considered a bill that would have authorized the president to restore future national monuments to the public domain, which passed the House in 1925, but was never enacted.⁶⁰ Logically, that effort would have been redundant if such authority already existed under the Act. The Antiquities Act thus demonstrates that Congress chose to constrain the president’s authority not by limiting his ability to designate or expand national monuments, but by withholding

⁵² U.S. Const. art. IV, § 3, cl. 2.

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

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

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

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

⁵⁷ 54 U.S.C. § 320301(a)–(b) (2012).

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

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

⁶⁰ H.R. 11357, 68th Cong. (1925).

the power to rescind, reduce, or modify monuments once designated or expanded. In every case where a monument has been eliminated, it has taken an act of Congress to do so, even in the case of New York's Father Millet Cross National Monument, which was only 320 square feet in size.⁶¹

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

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

Despite the apparent contradiction to this passage, and without addressing its legality or providing much discussion, this Attorney General's Opinion also recognized that "the President from time to time has diminished the area of national monuments established under the Antiquities Act."⁶⁵ However, none of these Presidential actions that reduced the size of national monuments has ever been challenged in court. Perhaps more importantly, President Kennedy was the last to diminish a national monument⁶⁶ (adding to Bandelier National Monument 2,882 acres formerly controlled by the Atomic Energy Agency and removing the 3,925-acre Otwi Section containing "limited archaeological values"), and there have been no attempts by the President or the Secretary to

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

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

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

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

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

⁶⁶ Proclamation 3539, May 27, 1963.

rescind, resize, modify, or otherwise diminish designated national monuments since the enactment of FLPMA.⁶⁷

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

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

CARRIZO PLAIN NATIONAL MONUMENT

President Clinton established the Carrizo Plain National Monument (CPNM or Carrizo Plain) in 2001 through Presidential Proclamation 7393. The monument spans more than 204,000 acres, administered by the Bureau of Land Management (BLM) within San Luis Obispo and Kern counties in central California.

As described in the Carrizo Plain's management plan:

The CPNM adjoins some of the most intensively managed agricultural lands and petroleum deposits in the U.S. and is less than 100 air miles from Los Angeles. However, the area remains relatively isolated and undeveloped, and retains an intact landscape character. Prominent features include the white alkali flats of Soda Lake, vast open grasslands, and a broad plain rimmed by mountains. The plain is home to diverse communities of wildlife and plant species including several listed as threatened or endangered. The area is culturally important to Native Americans. It is traversed by the San Andreas Fault, which has carved

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

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

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

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

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

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

valleys and created and moved mountains. The CPNM is surrounded by several small, unincorporated communities, with larger population centers along the U.S. 101 corridor to the west and San Joaquin Valley to the east.⁷³

Interest in the conservation of the Carrizo Plain area began in earnest in the 1980s. A changing weather pattern and lack of water for irrigation had essentially brought an end to the decades of dry-farming that had occurred on the Carrizo Plain, and the land reverted to livestock grazing as its primary use. As the neighboring San Joaquin Valley continued to be converted into intensive agriculture, industrial, and urban land uses, interest increased in the Carrizo Plain as the largest remnant of the San Joaquin Valley grassland ecosystem. In 1988, the Nature Conservancy (TNC) concluded a real estate transaction with Occidental Petroleum Co., transferring more than 82,000 acres of land on the floor of the Carrizo Plain into the ownership of TNC. This acreage, combined with the already existing public domain lands, allowed for the establishment of a large natural area managed by TNC, the BLM, and the California Department of Fish and Game. These three “managing partners” worked on a comprehensive management plan for the area over the years and ultimately created the “Carrizo Plain Natural Area.” The 82,000 acres held by TNC were transferred to BLM by 1989 with the intention to restore the original native-dominated vegetation of the region. Livestock grazing would continue as the primary land management tool, but would be done on an as-needed basis for management of grass biomass rather than a simple commodity.

Just as the Carrizo Plain Natural Area was formally established in the mid-1980s, efforts began to provide stronger federal recognition and protection for the area with the introduction of legislation to create a Carrizo Plain National Conservation Area. This legislation slowly worked its way through Congress but never received a formal vote for establishment. President Clinton’s Carrizo Plain National Monument proclamation was the ultimate success of twenty years of citizen efforts and significant expenditure of both public and private funds to formally recognize the ecological treasure that is the Carrizo Plain.

A recent assessment analyzed ecological values of the Carrizo Plain by mapping and comparing a random sample of equivalent size areas in the region.⁷⁴ This science-based analysis found the Carrizo Plain ranked extremely high in bird diversity at 96 percent and reptile diversity at 82 percent; rarity-weighted species richness scored 95 percent. These results affirm the importance of CPNM to wildlife in this unique environment.

⁷³ *Carrizo Plain National Monument Approved Resource Management Plan and Record of Decision*, United States Department of Interior, Bureau of Land Management, April 2010.

⁷⁴ Dickson, B.G., M.L. McClure, and C.M. Albano. 2017. A Landscape-level Assessment of Ecological Values for 22 National Monuments. Final Report submitted to the Center for American Progress. Conservation Science Partners. Truckee, California. <http://www.csp-inc.org/wp-content/uploads/2017/06/NationalMonumentsAssessment.pdf>.

The Designation of Carrizo Plain National Monument Protects and Provides for the Proper Care and Management of Significant and Rare Landscape and Ecosystem Objects and Values

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

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

Carrizo Plain National Monument contains numerous scattered sites of cultural or religious importance to Native Americans, including village middens, bedrock mortar milling features, and elaborate world-class pictographs. The monument includes crucial habitat for a wide array of rare or endangered plant and animal species and is part of the largest core recovery area for a suite of imperiled San Joaquin Valley Grassland species including the charismatic San Joaquin kit fox and the elusive blunt-nosed leopard lizard. As the largest remnant of San Joaquin Valley grasslands ecosystem, there is vast habitat for larger animals of interest and value, such as pronghorn and tule elk, objects to be protected that have been subjects of reintroduction efforts by the California Department of Fish and Wildlife. There are unusual plant assemblages, some unique to the Carrizo Plain and just a few nearby sites. There is the distinctive trace of the great San Andreas Fault, which runs the entire length of the monument, a desert-like landscape bounded by two rugged mountain ranges. The strongest earthquake in California's recorded history ripped through the San Andreas Fault in 1857, wrenching the western side of the Carrizo Plain thirty-one feet northward. The area is also rich in significant fossil assemblages, including terrestrial fossil mammal remains that date back 13 million to 25 million years. These features warranted protection of the Carrizo Plain and drew the interest of scientists, ecologists, anthropologists, archeologists and many others for years prior to establishment of the monument.

Ecosystems

The Carrizo Plain lies at a unique biological crossroads where California's central Coast Ranges meet the drier, more desert-like San Joaquin Valley. On the floor of the CPNM is Soda Lake, southern California's largest remaining natural alkali wetland and the only closed-basin found in the coastal

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

mountains. Salts are concentrated in Soda Lake as water evaporates, leaving deposits of sulfates and carbonates that give a ghostly glimmer to the valley floor. Despite the harsh saline environment, many plants and animals are well-adapted to these conditions. This area is an especially important stopover on the Pacific Flyway during the winter months, when Soda Lake comes alive with thousands of migratory birds, long-billed curlews, sandhill cranes and mountain plovers, all of which are monument objects to be protected.

The diversity of ecosystems within the Carrizo Plain National Monument is illustrated by the sheer number of different plant communities highlighted in the management plan. These include valley sink scrub, valley saltbrush scrub, spiny saltbrush scrub, upper Sonoran saltbrush scrub, interior Coast Range saltbrush scrub, Diablan sage scrub, nonnative grasslands, juniper oak cismontane woodland, cismontane juniper woodland and scrub, blue oak woodland and Alvord oak woodland, biological soil crusts, lichens and bryophytes, vernal pools and other ephemeral aquatic habitats, and riparian systems including springs, seeps, and the Cuyama River. The distinct topography and geology of the Carrizo Plain contribute to the area's rich biological diversity.

Ecological Condition

The designation of Carrizo Plain appropriately recognized and protected an intact and functional landscape. Remote landscapes relatively unmodified by human intrusion and development are increasingly rare in the region and the nation. Carrizo Plain is one of the most remote areas in California, yet it is less than 100 miles from Los Angeles, the second largest metropolitan area in the United States. Because of its remoteness, the Carrizo Plain is renowned for its dark skies and deafening silence – a true rarity in California, home to nearly 40 million people.

Large Landscape Conservation

Scientists have understood for decades that large, intact, connected landscapes protected from human development and habitat degradation are essential for maintaining viable wildlife populations.⁷⁶ Larger areas tend to include a broader diversity of habitats and habitat characteristics and can accommodate more species than smaller areas⁷⁷ and better provide for wide-ranging species with extensive home ranges such as large carnivores and ungulates that move between seasonal habitats. The optimal size of a given protected area depends on the habitat needs of the species that

⁷⁶ Higgs, A.J. Island biogeography and nature reserve design. 1981. *Journal of Biogeography* 8: 117-124; S.T.A. Pickett and J.N. Thompson. 1978. Patch dynamics and the design of nature reserves. *Biological Conservation* 13: 27-37.

⁷⁷ Marguiles, C., A.J. Higgs, and R.W. Rafe. 1982. Modern biogeography theory: are there any lessons for nature reserve design? *Biological Conservation* 24: 115-128; M.M. Rowland and M.J. Wisdom. 2009. Habitat networks for terrestrial wildlife: concepts and case studies. In: *MODELS FOR PLANNING WILDLIFE CONSERVATION IN LARGE LANDSCAPES*. J.J. Millsbaugh, F.R. Thompson, III (eds). Elsevier. Ch. 19, pp. 501-531.

occur there, whether residents or migrants. Different species have varied habitat requirements over their life cycle that can depend on both a diversity of habitat types and patch size.⁷⁸ The composition and distribution of species in an area can also change over time due to periodic disturbance, such as wildfire, and ecological successional stage. Larger areas offer greater representation of habitat diversity, characteristics and patch size, and are therefore more resilient to disturbances and stressors and supportive of the species that depend on them.⁷⁹

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

Habitat Connectivity

Landscape connectivity is an increasingly important factor in the conservation of fish, wildlife, and plant populations.⁸⁰ Habitat loss, degradation and fragmentation pose the most important threat to the survival of native species, contributing to the shrinking distribution of many wildlife populations in North America. Landscapes fragmented by development and roads lead to increased mortality⁸¹ for wide-ranging wildlife, including big game and large carnivores. Local populations, especially those of at-risk species, can decline and disappear without connectivity to support immigration.

The recognition and protection of habitat connectivity and wildlife corridors facilitates migration, dispersal, plant pollination, and gene flow within and across monument boundaries. Establishing new areas and expanding existing protected areas is necessary to allow species to shift their ranges to adapt to climate change.⁸² Connecting these habitat cores is also essential: wildlife corridors increase movement between isolated habitat patches by approximately fifty percent, compared to areas that are not connected by corridors.⁸³

Carrizo Plain provides for regionally significant landscape-level connectivity, an important and rare ecological feature in western landscapes. The monument supports a number of species that rely on

⁷⁸ Margules, C.F. and R.L. Pressey. Systematic conservation planning. *Nature* 405: 243-253.

⁷⁹ Margules, C.F. and R.L. Pressey. Systematic conservation planning. *Nature* 405: 243-253.

⁸⁰ Correa Ayram C.A., M. E. Mendoza, A. Etter, and D. R. Perez Salicrup. 2016. Habitat connectivity in biodiversity conservation: A Review of Recent Studies and Applications. *Progress in Physical Geography* 40(1): 7-37.

⁸¹ Cushman, S.A., B. McRae, F. Adriaesen, P. Beier, M. Shirley, and K. Zeller. 2013. Biological corridors and connectivity. In: KEY TOPICS IN CONSERVATION BIOLOGY 2, First Edition. D.W. MacDonald and K.J. Willis (eds). John Wiley & Sons, Ltd.

⁸² Heller, N.E. and E.A. Zavaleta. 2009. Biodiversity management in the face of climate change: a review of 22 years of recommendations. *Biological Conservation* 142: 14–32.

⁸³ Gilbert-Norton, L., R. Wilson, J.R. Stevens, and K.H. Beard. 2010. A meta-analytic review of corridor effectiveness. *Conservation Biology* 24(3): 660-668.

large, well-connected habitats, including tule elk, pronghorn and San Joaquin kit fox. The diverse terrain of Carrizo Plain stretches approximately 50 miles from north to south and up to 15 miles east to west, including rugged mountain ranges and broad, flat grasslands, providing ecological connectivity across dozens of ecosystems that remain largely intact and devoid of human development. This unbroken landscape provides critical opportunities for species movement both seasonally and into the future as wildlife and plant communities adapt to changing climatic conditions.

The Designation of Carrizo Plain National Monument Protects and Provides for the Proper Care and Management of Significant Rare and At-risk Fish, Wildlife, Plants and Habitats

As discussed above, habitat for wildlife and plants qualify for protection as scientific objects under the Antiquities Act. Carrizo Plain provides essential habitat for a wide variety of plant and wildlife species, including rare, endemic and at-risk species, and key habitat areas for species listed under the Endangered Species Act (ESA). Altering the configuration or management of the monument would remove lawful protections for the wildlife and plant species found within the monument.

Carrizo Plain National Monument's management plan stresses the protection and restoration of native wildlife and vegetative communities as monument objects. These objects to protect include the "flora and fauna characteristic of the San Joaquin Valley region; habitat for the long-term conservation of the many endemic plant and animal species that inhabit the area; endangered, threatened, and rare animal species such as San Joaquin kit fox, California condor, blunt-nosed leopard lizard, giant kangaroo rat, San Joaquin antelope squirrel, longhorn fairy shrimp, and vernal pool fairy shrimp; the migratory birds, cranes, curlews, and mountain plovers that use Soda Lake; populations of pronghorn antelope and Tule elk; and San Joaquin grassland ecosystem flora, including rare and sensitive plant species such as California jewelflower, Hoover's woolly- star, San Joaquin woolly-threads, pale-yellow layia, forked fiddleneck, Carrizo peppergrass, Lost Hills saltbush, Temblor buckwheat, recurved larkspur, and Munz's tidy-tips." The management plan recognizes the "primary importance as habitat for threatened and endangered species, rare natural communities, species recovery, and regional conservation; the uniqueness of the CPNM as a significant undeveloped portion of the once vast San Joaquin Valley ecosystem; and the importance of restoring and maintaining a mosaic of natural communities and successional stages to benefit the biodiversity inherent in the ecosystem."⁸⁴

With more than 90 percent of San Joaquin Valley grassland, scrub and wetland habitats converted to intensive agricultural, urban and industrial land uses, the Carrizo Plain National Monument has remained largely intact with native wildlife dominating this large landscape. Due to the rarity of these ecosystems, the CPNM plays a significant role in the conservation and recovery of several San Joaquin Valley special status species. The National Audubon Society also designated the Carrizo

⁸⁴ *Carrizo Plain National Monument Approved Resource Management Plan and Record of Decision*, United States Department of Interior, Bureau of Land Management, April 2010.

Plain as a Globally Important Bird Area, which if degraded or lost would leave a lasting negative impact on bird populations.

At-risk Species

Carrizo Plain National Monument provides habitat values that are significant to the region, and the configuration of the monument is necessary for the proper care and management of these habitat values. Carrizo Plain protects and provides for the proper management of a number of at-risk species, including those listed under the ESA. The monument supports more than 40 special status animals and has been identified as a core recovery area of natural lands targeted for protection in the *Recovery Plan for Upland Species of the San Joaquin Valley, California*.⁸⁵ As such, management of the monument focuses on the recovery and protection of at-risk and rare species.

Special Status Wildlife Species within the Carrizo Plain National Monument		
Common Name	Scientific Name	Status
San Joaquin Kit Fox	<i>Vulpes macrotis mutica</i>	Federal Endangered, State Threatened
Giant Kangaroo Rat	<i>Dipodomys ingens</i>	Federal Endangered, State Endangered
Blunt-Nosed Leopard Lizard	<i>Gambelia sila</i>	Federal Endangered, State Fully Protected Species
San Joaquin Antelope Squirrel	<i>Ammospermophilus nelsoni</i>	State Threatened, BLM sensitive species
California Condor	<i>Gymnogyps californianus</i>	Federal Endangered, State Endangered, State Fully Protected Species
Greater Sandhill Crane	<i>Grus canadensis tabida</i>	State Threatened
Lesser Sandhill Crane	<i>Grus canadensis canadensis</i>	State Species of Special Concern
Western Burrowing Owl	<i>Athene cunicularia hypugea</i>	State Species of Special Concern, BLM sensitive species
Mountain Plover	<i>Charadrius montanus</i>	State Species of Special Concern, BLM sensitive species
Western Spadefoot Toad	<i>Spea hammondi</i>	State Species of Special Concern, BLM sensitive species
Kern Primrose Sphinx Moth	<i>Euproserpinus enterpe</i>	Federal Threatened
Longhorn Fairy Shrimp	<i>Branchinecta longiantenna</i>	Federal Endangered
Vernal Pool Fairy Shrimp	<i>Branchinecta lynchi</i>	Federal Threatened

⁸⁵ US Fish and Wildlife Service, 1998.

The Size of the Monument Designation is Necessary to Protect Monument Values

The BLM's Draft RMP for the Carrizo Plain National Monument elaborates on the necessity of protecting the Carrizo Plain as a whole. Specifically, it states:

Preservation of such objects requires, among other things, protection of enough land to maintain the conditions that have made their continued existence possible. The scientific value of many of the objects within the monument requires preservation of areas large enough to maintain the objects and their interactions. For example, because the area is remnant of the dwindling natural ecosystem of the San Joaquin Valley region, some sensitive species depend on its entirety for survival. Many species must range within and through the area to maintain viable populations and their role in the ecosystem. Thus, protection of the aggregate area is necessary for proper care of the objects. Management of a patchwork of reserved lands would be impractical, as it would make it more difficult to care for the objects, reduce options for natural resource management, and lead to inconsistent natural resource management standards for overlapping resources. In short, our analysis indicates that reservation of a smaller area would undermine proper care and management of the monument.

It is also important to note that the size of the protected area in the Carrizo Plain was reduced by several thousand acres through the monument designation process. Prior to monument designation, the Carrizo Plain Natural Area encompassed 253,628 acres of BLM, TNC, CDFW, and private land. These boundaries were redrawn as part of the monument proclamation, removing approximately 4,000 acres. The acreage of the Carrizo Plain National Monument is 249,817 acres, including managing partners' ownerships (BLM, TNC, CDFW), substantially less than what was protected prior to monument designation.

Carrizo Plain National Monument is Consistent with Multiple-use Policy and Provides Significant Social and Economic Benefits to the Region and Communities

The public domain lands of the Carrizo Plain have been governed by regulations of the Taylor Grazing Act of 1934, in which neighboring private ranchlands could gain access to allotments for livestock grazing. Many of the privately owned lands were in crop production, chiefly hay and grains, which required no supplemental irrigation and were at the mercy of the weather. Over the years these farming operations failed, such that only a few operations, mostly in the northern portion of Carrizo Plain and well outside the monument, still remain in production. Most of the lands on the Plain converted to seasonal livestock grazing and were consolidated into larger holdings more appropriate for this use. When TNC transferred ownership of its lands on the Plain to BLM, it included the stipulation that livestock grazing would be used as a management tool to assist restoration of a presumably more natural grassland with scattered shrubs. This led to the so-called

“free grazing” areas where livestock would graze areas for a certain amount of time and then be removed; in poor rainfall years, there might be no grazing at all. The ranchers did not pay for these grazing privileges, but they were expected to maintain fences, gates, and other grazing infrastructure. This arrangement continued under the Natural Area and National Monument designations; likewise, those portions of the monument governed under the Taylor Grazing Act continue under those rules. Thus, there has been no significant diminution of livestock grazing privileges under the Carrizo Plain National Monument status. Of far greater importance to the viability of livestock grazing on the Carrizo Plain is the weather. California’s recent drought has decimated many herds and few cattle have even been available to utilize what little forage there was in the extremely dry years prior to the wet 2016-2017 rainfall season.

The lands to the east and southwest of Carrizo Plain have been known for many years to be sources of oil and some gas. These areas, around Taft to the east and in the Cuyama Valley to the southwest both have significant producing oil fields. One large field, the Russell Ranch Field, lies within the Monument boundaries. These fields include both public and private lands. The presence of these fields has led to numerous exploratory wells being drilled in many places in the Carrizo Plain over the years, however, no economically recoverable amount of oil or gas has ever been found within the Plain.

Hunting was permitted in season prior to the establishment of Carrizo Plain National Monument and remains permitted in season today. Camping was and remains a popular use of the monument, as well.

Off-road driving has never been a formally permitted activity either prior to monument designation or afterward; however, back road driving on the more than 200 miles of unmaintained roads within the monument has always been, and remains today, a popular activity. There are prohibitions against driving off road and creating new roads; however, this has been the policy for many years and is standard policy for nearly all land management agencies except for certain areas where such use is specifically allowed.

No major changes have occurred in land management policy or historical uses in Carrizo Plain National Monument, other than a few common-sense rules prohibiting shooting toward or across a public road, restrictions on campfires, and prohibition of illegal off-road vehicle activity.

The monument is enjoyed by thousands of people every year who come to enjoy the scenery, the solitude or the wonderful wildflower displays for which the area is famous. In turn, these visitors contribute to the local economies of nearby gateway communities through spending at restaurants, hotels, gas stations, grocery stores and more. In fact, in the six years immediately following the area’s designation as a national monument, visitation increased nearly four-fold, from 24,620 visitors in 2001 to 87,040 visitors in 2007. This trend continues to increase, particularly during years of strong wildflower displays known as “super blooms.” The advent of social media has propelled the Carrizo Plain into the spotlight, and visitation was higher than ever before during the spring 2017 super bloom.

These visitors support the economies of small, rural communities surrounding the monument. The cities of Atascadero and Taft, along with the community of Santa Margarita, have all voted to formally recognize themselves as “gateway” communities to the Carrizo Plain, with the strong support and partnership of their respective chambers of commerce. The designation of the Carrizo Plain National Monument has served as an economic driver in these communities, diversifying their revenue sources and making additional funds available for basic services.

The Designation of Carrizo Plain National Monument was Subject to a Vigorous Public Process Involving Diverse Stakeholders

Prior to monument designation, the original Steering Committee for the Carrizo Plain Natural Area included representatives from diverse backgrounds and interests, including:

- Wildlife Agencies: U.S. Fish & Wildlife Service, California Department of Fish & Game
- Conservation Organizations: The Nature Conservancy, National Audubon Society
- Oil Companies: Shell California Production, Inc., Santa Fe Energy Company, Tenneco Oil Company, Chevron U.S.A., and Texaco Incorporated
- Mining Interests: Lowe’s Southern Clay
- Utilities: Pacific Gas & Electric
- Local Governments: Kern County Planning Department, San Luis Obispo County Board of Supervisors
- Educational Institutions: University of California

In 1987, the steering committee was expanded to include landowners (Oppenheimer Industries, Inc.), the San Luis Obispo County Planning Department, the California Department of Energy, SUN Exploration and Production, and the Bureau of Land Management.

These steering committee members assisted with the preparation of the Carrizo Plain Natural Area Plan, which was approved by BLM, TNC, and CDFW in 1996. Public scoping included a series of public meetings held in 1989 and 1991, in conjunction with the development of the Caliente RMP. Further meetings were held upon release of the Caliente Draft RMP in 1994, which included a preliminary draft of the Carrizo Plain Natural Area Management Plan. The Caliente RMP was completed in 1997 and encompassed all BLM managed public lands within San Luis Obispo, Santa Barbara, Ventura, Kings, Tulare, and western Kern counties, including the Carrizo Plain. Public involvement in preparation of the Caliente RMP was solicited through announcements in the Federal Register, the mailing of a notice to 1,300 people and organizations, six scoping meetings, the mailing of a draft plan to 1,000 interested publics, and 6 public open houses.

The Carrizo Plain Natural Area Management Plan was completed between 1996 and 1999. This plan was jointly prepared and signed by TNC, California Department of Fish and Game, and BLM, following public involvement that included a mailing to 1,000 people and organizations, 7 public meetings, and an additional mailing to a list of 200 people and organizations before the final plan was compiled.

Two public advisory councils – the Bakersfield Resource Advisory Council and the Central California Resource Advisory Council – discussed the Carrizo Plain Natural Area Management Plan during several meetings and field trips to the area leading up to the monument designation in 2001.

Also prior to monument designation, legislation was introduced in May 1999 to designate the Carrizo Plain National Conservation Area. This began a public process that included recommendations from the local Resource Advisory Council forwarded to Congresswoman Lois Capps and Interior Secretary Bruce Babbitt in December 1999 that were incorporated into the bill. Secretary Babbitt made two trips to the area to hold public meetings in late 1999. Neither the House nor the Senate acted on the legislation, prompting Secretary Babbitt to recommend to the President that the area be designated as a national monument.

This spirit of robust and diversified public participation has broadened even further in the sixteen years since monument designation. Less than one year following monument designation, the BLM assembled a Carrizo Plain National Monument Advisory Committee (MAC) consisting of ten members, including representatives from Kern and San Luis Obispo Board of Supervisors, the Carrizo Native American Advisory Council, Central California Resource Advisory Council, and those authorized to graze livestock within the monument. In addition, there are members who represent the purpose for which the monument was established and the interests of community members. The diverse members of the MAC help ensure BLM land managers receive varying perspectives they need to achieve their mission. The MAC has met regularly in the 14 years since its formation, reviewing and providing input on proposed alternatives in the RMP, reviewing public input received during the formal planning process, and providing input on the overall direction of the plan. Every MAC meeting is publicly noticed, and the public is encouraged to attend and provide comments during the meetings or in writing.

The public has also been instrumental in steering the course of the Carrizo Plain RMP. The BLM initially announced its intent to prepare a RMP in 2002, and based on public input, decided to prepare an Environmental Impact Statement (EIS) to accompany the RMP. This EIS provided a mechanism for expanding opportunities for public input and participation into the planning process, including a second round of public scoping that involved four meetings in rural communities adjacent to the monument, as well as larger cities further afoot.

BLM received 15,580 comments on the Draft RMP EIS from federal and state agencies, interest groups, and members of the public. The Preferred Alternative in the Draft RMP/Draft Environmental Impact Statement was revised to address comments received during the 90-day public comment period. The resultant alternative became the Proposed Plan in the Proposed

RMP/Final EIS, published on November 13, 2009, and has been carried forward as the Approved RMP. The RMP has now been in effect for nearly seven years with broad public support.

CONCLUSION

Carrizo Plain National Monument is a loved and cherished part of central California. It has many unique qualities, which were and continue to be worthy of protection, interpretation, and citizen enjoyment for generations to come. The establishment of the monument has not materially affected existing rights or private parties, and active uses such as back road driving, camping and hunting continue to be enjoyed by many visitors. The ultimate establishment of the monument went through a lengthy process of preliminaries, including voluntary sale and purchase of private lands, establishment of a monument-like status for the area, and finally proclamation of the monument in 2001. Since then, the Carrizo Plain National Monument has also undergone a rigorous public process for its Resource Management Plan, which was finalized in 2010.

The monument has become more widely known and visitation has steadily increased over the years since the proclamation. In 2017, the area's significant rainfall led to a spectacular "super bloom" of millions of wildflowers creating a stunning landscape that brought thousands of visitors to the Carrizo Plain and, on the way there and back, through towns and villages that enjoyed significant financial benefit from these visitors. There is no reason to doubt that such financial benefits will continue well into the future with continued protections of the Carrizo Plain.

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