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Submitted electronically via regulations.gov

July 10, 2017

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

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

Dear Secretary Zinke:

Defenders of Wildlife (Defenders) respectfully submits the following comments on San Gabriel Mountains 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 central California. We submit these comments on behalf of almost 1.2 million members and supporters nationwide, including our 173,373 members in California.

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

¹ 82 Fed. Reg. 22016 (May 11, 2017).

² 82 Fed. Reg. 20429 (May 1, 2017).

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

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

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

San Gabriel Mountains 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 of and the policy set forth in section 1 of Executive Order 13792.

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

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "RDreher", with a horizontal line extending to the right.

Robert G. Dreher
Senior Vice President, Conservation Programs

⁴ 82 Fed. Reg. 22016 (May 11, 2017).

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

PROCLAMATION OF SAN GABRIEL MOUNTAINS NATIONAL MONUMENT WAS LEGAL AND APPROPRIATE UNDER THE ANTIQUITIES ACT

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

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

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

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

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

⁶ 54 U.S.C. § 320301(a) (2012).

⁷ *Id.* § 320301(a), (b).

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

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

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

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

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

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

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

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

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

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

¹³ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁵ *Id.*

²⁶ *Id.*

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

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

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

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

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

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

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

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

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

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

³⁰ *Id.*

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

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

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

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

³⁵ 252 U.S. 450, 455–56 (1920).

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

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

Congress Has Demonstrated Its Approval of Large National Monument Designations

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

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

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

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

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

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

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

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

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

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

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

⁴¹ Exec. Order No. 13792 § 2.

⁴² MONUMENTS LIST DATA.

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

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

⁴⁵ P.L. 70-1021; 45 Stat. 1553.

⁴⁶ P.L. 90-606; 82 Stat. 1188.

⁴⁷ P.L. 97-243; 96 Stat. 301.

⁴⁸ P.L. 100-225; 101 Stat. 1539.

⁴⁹ P.L. 106-351; 114 Stat. 1362.

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

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

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

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

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

⁵¹ 54 U.S.C. § 320301(a), (b).

⁵² U.S. Const. art. IV, § 3, cl. 2.

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

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

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

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

⁵⁷ 54 U.S.C. § 320301(a)–(b) (2012).

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

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

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

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

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

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

⁶⁰ H.R. 11357, 68th Cong. (1925).

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

⁶² *Cf. Utah Ass'n of 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).

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

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

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

SAN GABRIEL MOUNTAINS NATIONAL MONUMENT

President Obama established the San Gabriel Mountains National Monument (SGMNM or “Monument”) in 2014 with Presidential Proclamation 9194.⁷³ The Monument spans approximately 346,177 acres within Los Angeles County in southern California. It is managed by the U.S. Forest Service.

The National Park Service, which conducted an assessment of the region in 2011, considers the San Gabriel Mountains a “nationally significant region,” in part due to the high biodiversity of the area.⁷⁴ California ranks highest of all U.S. states in biodiversity and species endemism, according to

⁶⁶ Proclamation 3539, May 27, 1963.

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

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

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

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

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

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

⁷³ Proclamation No. 9194, 79 Fed. Reg. 62303 (2014).

⁷⁴ National Park Service. 2011. San Gabriel Watershed and Mountains: Special Resource Study and Environmental Assessment (Draft). U.S. Department of the Interior. September, p. 99.

NatureServe.⁷⁵ Southern California is a biodiversity hotspot with a large array of imperiled wildlife and plant species. The San Gabriel Mountains are among the most biologically diverse regions in the state based on measures of species richness, species endemism, and species rarity. The mountains have among the highest levels of amphibian, bird, mammal, and reptile richness; vegetation community richness; plant rarity; and invertebrate rarity.⁷⁶ The area contained within the Monument boundaries exhibits a high and increasingly rare level of ecological integrity.

Owing to intensive and expansive urbanization in Los Angeles County, the region is also among the most ecologically threatened in the country. The Monument is a popular destination for Los Angeles metro area residents. Monument status is providing the Forest Service the ability to manage significant human uses in ways that are more protective of sensitive ecosystems and at-risk species. Some species listed under the Endangered Species Act (ESA) depend on habitats within the Monument that had become degraded by overuse. The Forest Service is now developing a management plan for SGMNM that prioritizes protecting Monument objects, including ecosystems, vegetative communities, and wildlife and plant species. Additionally, Monument managers have begun developing a travel management plan that is intended to be a blueprint for sustainable transportation to and from the Monument for visitors.

A recent assessment analyzed ecological values of the SGMNM by mapping and comparing a random sample of equivalent size areas in the region.⁷⁷ This science-based analysis found the Monument ranked extremely high in bird diversity at 97 percent and reptile diversity at 86 percent; rarity-weighted species richness scored 96 percent. The Monument is also predicted to be resistant to climate change effects with a ranking of 94 percent. Ecological system type rarity scored at 88 percent and ecological system diversity at 78 percent. These results affirm the importance of the Monument to California's wildlife and ecosystems.

The Designation of San Gabriel Mountains 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 Antiquities 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.”⁷⁸ Indeed, the SGMNM Proclamation describes in great detail the diversity of qualifying ecosystem types and natural and scientific features found within the Monument's

⁷⁵ Stein, B.A. 2002. States of the Union: Ranking America's Biodiversity. NatureServe, Arlington, VA.

⁷⁶ California Department of Game and Fish. 2003. Atlas of the Biodiversity of California.

⁷⁷ 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>.

⁷⁸ *Tulare Cnty. v. Bush*, 306 F.3d at 1142.

boundaries. The facts demonstrate that President Obama's designation was necessary to protect the diversity of natural values found within the Monument.

Ecosystems

The President's proclamation for the Monument was clear that ecosystems were important, qualifying objects needing protection. It states, for example,

Climatic contrasts in the San Gabriels range from the northern slope desert region, home to Joshua trees and pinyon pines, to high-elevation white fir and a notable stand of 1,000-year-old limber pines. Vegetation communities, including chaparral and oak woodland, represent a portion of the rare Mediterranean ecosystem found in only 3 percent of the world. Mediterranean climate zones have high numbers of species for their area.⁷⁹

The Monument's ecosystems, some rare and sensitive, are essential to supporting the diversity of wildlife referenced herein.

Chaparral Ecosystems

California is known for its chaparral ecosystems. There are three types of chaparral vegetative communities within the Monument: chamise-redshank chaparral, mixed chaparral, and montane chaparral. Chamise-redshank chaparral is a vulnerable ecosystem.⁸⁰ Mixed chaparral includes about 240 plant species.⁸¹ California's montane chaparral community is vulnerable to threats, and about 70 percent is degraded and fragmented across the state.⁸² The remaining intact areas are protected by designated wilderness such as those within the SGMNM and on other Forest Service lands.

Some of the vertebrate wildlife associated with chaparral include a number of endemic species and those with restricted ranges, such as San Diego black-tailed jackrabbit, California pocket mouse, big-eared woodrat, Merriam chipmunk, agile kangaroo rat,⁸³ Blainville's horned lizard, and southern California legless lizard; several species that the California Department of Game and Fish⁸⁴ considers at-risk and has designated Species of Greatest Conservation Need (SGCN), such as long-eared Myotis, long-legged myotis, ring-tail, California vole, Gilbert's skink; as well as more common

⁷⁹ Proclamation No. 9194, 79 Fed. Reg. 62303 (2014), 62305.

⁸⁰ NatureServe. 2017. NatureServe Explorer: An Online Encyclopedia of Life [web application]. Version 7.1. NatureServe, Arlington, VA.

⁸¹ National Park Service. 2011. San Gabriel Watershed and Mountains: Special Resource Study and Environmental Assessment (Draft). U.S. Department of the Interior. September.

⁸² World Wildlife Fund. 2017. California montane chaparral woodlands. Ecoregions. Available at <https://www.worldwildlife.org/biomes>.

⁸³ Hogan, C.M. 2014. California montane chaparral and woodlands. In M. McGinley (ed.) *ENCYCLOPEDIA OF EARTH*. World Wildlife Fund and National Council for Science and the Environment.

⁸⁴ Arizona Game and Fish Department. 2012. Arizona's State Wildlife Action Plan, 2012-2022. May 16.

species, such as North American opossum, broad-footed mole, desert cottontail, brush rabbit, cactus deer mouse, striped skunk, spotted skunk, bobcat, mule deer, and southern alligator lizard.⁸⁵

Juniper and Pinyon-Juniper Woodlands

Both juniper-dominated and pinyon-juniper woodlands occur along the northern slopes of the San Gabriel Mountains in the Monument.⁸⁶ Other plants associated with these ecosystems include buckwheats, yuccas, penstemons, and native grasses. The ecosystem provides food and shelter for an abundance and diversity of wildlife.⁸⁷ For example, a variety of birds and mammals rely on juniper berries. The pinyon mouse is a pinyon-juniper obligate species. Some endemic and near-endemic species occur in and around the SGMNM; examples include the San Diego black-tailed jackrabbit, Merriam chipmunk, San Diego pocket mouse, Panamint kangaroo rat, and agile kangaroo rat. Large mammals, such as desert bighorn sheep and mule deer browse, graze and find shelter among the trees and other seek prey: badgers, bobcats, coyotes, gray foxes, ringtails, skunks, weasels, and others. Smaller mammals that occur in the ecosystem: desert cottontail, California ground squirrel, Botta's pocket gopher, Merriam kangaroo rat, cactus deer mouse, and dusky-footed Woodrat (an SGCN). Gilbert's skink and other reptiles use this habitat. Birds such as Steller's and pinyon jays and Clark's nutcrackers eat pinyon seeds.

Joshua Tree Woodland

The iconic Joshua tree, a named object in the President's Proclamation, dominates Joshua tree woodland. Joshua tree woodlands occur around the northern base of the San Gabriel Mountains in low slope areas.⁸⁸ The ecosystem provides habitat for associated species, such as perching and nesting sites for birds and other plant life including smaller shrubs, sagebrush, and creosote bushes.⁸⁹

⁸⁵ Vaughan, T.A. 1954. Mammals of the San Gabriel Mountains of California. University of Kansas Publications, Museum of Natural History 7(9): 513-582; J. Strong and T. Chester. 2001. FIELD GUIDE TO THE SAN GABRIEL MOUNTAINS: LIZARDS.

⁸⁶ National Park Service. 2011. San Gabriel Watershed and Mountains: Special Resource Study and Environmental Assessment (Draft). U.S. Department of the Interior. September.

⁸⁷ Short, H.L. and C.Y. McCulloch. 1977. Managing pinyon-juniper ranges for wildlife. General Technical Report. RM-47. U.S. Department of Agriculture, Forest Service, Rocky Mountain Forest and Range Experiment Station; T.A. Vaughan. 1954. Mammals of the San Gabriel Mountains of California. University of Kansas Publications, Museum of Natural History. 7(9): 513-582; J. Strong and T. Chester. 2001. FIELD GUIDE TO THE SAN GABRIEL MOUNTAINS: LIZARDS; United States Department of Agriculture, Forest Service. 2017. Ponderosa pine species review. Fire Effects Information System: Synthesis about Fire Ecology and Fire Regimes in the United States. Available at <https://www.feis-crs.org/feis/>.

⁸⁸ National Park Service. 2011. San Gabriel Watershed and Mountains: Special Resource Study and Environmental Assessment (Draft). U.S. Department of the Interior. September.

⁸⁹ Rundel, P.W. and A.C. Gibson. 1996. Ecological communities and processes in a Mojave Desert ecosystem: Rock Valley, Nevada. Cambridge; New York: Cambridge University Press. 369 p.; R.J. Camp and R.L. Knight. 1997. Cliff bird and plant communities in Joshua Tree National Park, California, USA. *Natural Areas Journal* 17(2): 110-117; S.L. Keith. 1982. A tree named Joshua. *American Forests* 88(7): 40-42; United

A variety of small mammals use the ecosystem such as California Mole, Interior Long-legged Bat, California Jack Rabbit, Mexican woodrats, Merriam's kangaroo rats, southern grasshopper mice (SGCN) and other mice species, squirrels, jackrabbits; some eat Joshua tree fruits. Antelope squirrels eat the fruits and cache the seeds. Mexican woodrats use the tree's spiny leaves as protection around their burrows. Ladder-backed woodpeckers may be Joshua tree associates in California. A host of birds use the Joshua tree woodland habitat: American kestrels, ash-throated flycatchers, common nighthawks, cactus wrens, loggerhead shrikes, northern mockingbirds, northern flickers, orange-crowned warblers, and Scott's orioles. Desert spiny lizards and small desert night lizards use Joshua tree bark for hibernacula.

Montane Hardwood

This ecosystem occurs in the middle to higher elevations in the San Gabriel Mountains. The community includes an understory of chaparral associates like coffeeberry and manzanita, and an overstory of a variety of pines, bigcone Douglas-fir, bigleaf maple, California black oak and other oaks, incense-cedar, California-laurel, and white alder.⁹⁰ Wildlife found in this habitat include a number of amphibians and reptiles, jays, woodpeckers, squirrels, mule deer, and black bears.

Ponderosa Pine Forest

The ponderosa pine ecosystem occurs in the eastern higher elevations of the SGMNM. Plants within this community include Pacific dogwood, manzanita, ceanothus, mountain-misery, and others.⁹¹ The habitat is used by California condors and migratory deer. The ponderosa pine tree itself provides food, cover, and bird perching and nesting habitat for many species.⁹² Small mammals such as chipmunks, ground and tree squirrels, deer mice, shrews, and voles feed on stems and roots. Deer, elk, hares, porcupines, and rabbits browse the trees. Seed-eating passerines flock to ponderosas including Cassin's finches, Clark's nutcrackers, chickadees, evening grosbeaks, juncos, pine siskins, several sparrow species, varied thrushes, and others. Tree cavity associates use mature ponderosa trees and snags for shelter and nesting.

States Department of Agriculture, Forest Service. 2017. Ponderosa pine species review. Fire Effects Information System: Synthesis about Fire Ecology and Fire Regimes in the Unites States. Available at <https://www.feis-crs.org/feis/>.

⁹⁰ National Park Service. 2011. San Gabriel Watershed and Mountains: Special Resource Study and Environmental Assessment (Draft). U.S. Department of the Interior. September.

⁹¹ National Park Service. 2011. San Gabriel Watershed and Mountains: Special Resource Study and Environmental Assessment (Draft). U.S. Department of the Interior. September.

⁹² United States Department of Agriculture, Forest Service. 2017. Ponderosa pine species review. Fire Effects Information System: Synthesis about Fire Ecology and Fire Regimes in the Unites States. Available at <https://www.feis-crs.org/feis/>.

Jeffrey Pine Forest

The Jeffrey pine ecosystem is associated with firs and other pines as well as black cottonwood and understory of ceanothus and scrub oak, and it can be found between pinyon-juniper and subalpine conifer communities in the San Gabriel Mountains.⁹³ Jeffrey pine trees are used for cover and their seeds, bark, foliage provide food for wildlife.⁹⁴ Animals that use the ecosystem include American black bears, mule deer, California ground squirrels, Douglas squirrels, least chipmunks, western gray squirrels, Townsend's chipmunks, yellow-pine chipmunks, deer mice, American crows, California quail, Clark's nutcrackers, mountain chickadees, northern flickers, nuthatches, sparrows, flammulated owls, and yellow-blotched and San Gabriel Mountain salamanders.

Lodgepole Pine and Subalpine Coniferous Forests

These ecosystems occur at the highest elevations of the San Gabriel Mountains. Both are dominated by lodgepole pine and also limber pine and white fir, with occasional occurrences of aspen and mountain hemlock and narrow endemic alpine plants.⁹⁵ The ecosystem supports at least 31 mammal species, 50 bird species, and others.⁹⁶ Ground-nesting birds, such as spruce grouse, feed on lodgepole pine needles. Various chipmunks, mice, squirrels, and birds eat lodgepole seeds. The trees and snags provide nesting and sheltering sites for cavity-nesting birds. Deer use these forests. At least three at-risk mammals occur in these ecosystems, which are California Species of Conservation Need: agile kangaroo rat, lodgepole chipmunk, and the San Bernardino flying squirrel.⁹⁷ Amphibians and reptiles can also be found in these forests, such as the southern alligator lizard.

Wet Meadows

Scattered montane wet meadows occur in SGMNM; these habitats are dominated by grasses and herbaceous plants in areas surrounded by conifer forests.⁹⁸ A few at-risk species associated with montane wet meadows in the Monument include the San Bernardino dusky shrew, Calliope

⁹³ National Park Service. 2011. San Gabriel Watershed and Mountains: Special Resource Study and Environmental Assessment (Draft). U.S. Department of the Interior. September.

⁹⁴ United States Department of Agriculture, Forest Service. 2017. Jeffrey pine species review. Fire Effects Information System: Synthesis about Fire Ecology and Fire Regimes in the United States. Available at <https://www.feis-crs.org/feis/>.

⁹⁵ National Park Service. 2011. San Gabriel Watershed and Mountains: Special Resource Study and Environmental Assessment (Draft). U.S. Department of the Interior. September.

⁹⁶ United States Department of Agriculture, Forest Service. 2017. Jeffrey pine species review. Fire Effects Information System: Synthesis about Fire Ecology and Fire Regimes in the United States. Available at <https://www.feis-crs.org/feis/>.

⁹⁷ California Department of Fish and Wildlife. 2015. California State Wildlife Action Plan.

⁹⁸ National Park Service. 2011. San Gabriel Watershed and Mountains: Special Resource Study and Environmental Assessment (Draft). U.S. Department of the Interior. September.

hummingbird, McGillivray's warbler, Lincoln sparrow, and San Gabriel Mountains greenish blue butterfly.⁹⁹

Important Riparian Areas

Monument status allows the Forest Service to prioritize the protection of riparian areas, essential for SGMNM and threatened and endangered species. The San Gabriel River branches into three main forks—West, North, and East. The River and its tributaries are essential habitats for fish such as the Santa Ana sucker, Santa Ana speckled dace, arroyo chub, and amphibian such as the California red-legged frog and San Gabriel Mountains slender salamander.¹⁰⁰ Little Rock Creek provides significant habitat for endangered yellow-legged frogs near the higher elevation headwaters and endangered arroyo toads in the lower reaches. The creek also provides habitat for California red-legged frog populations. Little Rock Creek is long and drains through the desert. The upper reaches remain remote and largely unroaded, making this high-integrity habitat valuable for frog conservation and recovery.¹⁰¹ Vincent Gulch and Vincent Gulch above Prairie Fork provide habitat for a mountain yellow-legged frog population, and the impending management plan could conserve and contribute to the recovery of the species by keeping closed a jeep trail that runs along Prairie Fork.¹⁰² Though much of Big Tujunga Creek flows outside of the SGMNM boundaries, the creek is essential for the Santa Ana sucker, arroyo chub, and may provide recovery habitat for the Santa Ana speckled dace within the Monument.

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.¹⁰³ Larger areas tend to include a broader diversity of habitats and habitat characteristics and can accommodate more species than smaller areas¹⁰⁴ and better provide for wide-ranging species

⁹⁹ Stephenson, J.R. and G.M. Calcarone. 1999. Southern California Mountains and Foothills Assessment: Habitat and Species Conservation Issues. General Technical Report. GTR-PSW-175. Pacific Southwest Research Station, U.S. Forest Service, U.S. Department of Agriculture. 402 p.

¹⁰⁰ Stephenson, J.R. and G.M. Calcarone. 1999. Southern California Mountains and Foothills Assessment: Habitat and Species Conservation Issues. General Technical Report. GTR-PSW-175. Pacific Southwest Research Station, U.S. Forest Service, U.S. Department of Agriculture. 402 p.

¹⁰¹ Stephenson, J.R. and G.M. Calcarone. 1999. Southern California Mountains and Foothills Assessment: Habitat and Species Conservation Issues. General Technical Report. GTR-PSW-175. Pacific Southwest Research Station, U.S. Forest Service, U.S. Department of Agriculture. 402 p.

¹⁰² Bond, M. and C. Bradley. undated. Recommended Critical Biological Zones in Southern California's Four National Forests. Center for Biological Diversity.

¹⁰³ 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.

¹⁰⁴ 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

with extensive home ranges such as large carnivores and ungulates that move between seasonal habitats. The optimal size of a given protected area depends on the habitat needs of the species that occur there, whether residents or migrants. Different species have varied habitat requirements over their life cycle that can depend on both a diversity of habitat types and patch size.¹⁰⁵ 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.¹⁰⁶

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

Wildlife Habitat Connectivity

Landscape connectivity is also an increasingly important factor in the conservation of fish, wildlife, and plant populations.¹⁰⁷ 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 mortality¹⁰⁸ 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.¹⁰⁹ Connecting these habitat cores is also essential: wildlife corridors increase

networks for terrestrial wildlife: concepts and case studies. In: MODELS FOR PLANNING WILDLIFE CONSERVATION IN LARGE LANDSCAPES. J.J. Millspaugh, F.R. Thompson, III (eds). Elsevier. Ch. 19, pp. 501-531.

¹⁰⁵ Margules, C.F. and R.L. Pressey. Systematic conservation planning. *Nature* 405: 243-253.

¹⁰⁶ Margules, C.F. and R.L. Pressey. Systematic conservation planning. *Nature* 405: 243-253.

¹⁰⁷ 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.

¹⁰⁸ 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.

¹⁰⁹ 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.

movement between isolated habitat patches by approximately fifty percent, compared to areas that are not connected by corridors.¹¹⁰

The President's Proclamation designating the SGMNM included a wildlife "connectivity corridor" as a monument object "important for wide ranging species, such as mountain lions."¹¹¹

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

Wildlife habitat qualifies for protection as a scientific object under the Antiquities Act. The Monument provides essential habitat for a variety of wildlife, including rare and at-risk species. This includes species listed under the Endangered Species Act (ESA) (see Table below) and those identified as sensitive by the Forest Service. Below are proclamation statements that make this clear.

The San Gabriels' rivers not only provide drinking water but are also areas of high ecological significance supporting rare populations of native fish, including the threatened Santa Ana sucker. The San Gabriel River supports rare arroyo chub and Santa Ana speckled dace, a species found only in the Los Angeles Basin. Little Rock Creek tumbles down from the northern escarpment to the Mojave Desert below and supports important populations of the endangered mountain yellow-legged frog and arroyo toad, as well as the threatened California red-legged frog.¹¹²

Altering the configuration of the monument would remove protections for many of these species. The Monument provides habitat values that are significant to the region, and the current configuration of the monument is necessary for the proper care and management of these habitat values.

At-risk Species

As stated above, the Monument is incredibly species-rich and includes a vast array of at-risk wildlife and plants. The President's Proclamation designating the SGMNM gave object status to "52 Forest Service Sensitive Plants and as many as 300 California-endemic species."¹¹³

A few of the Forest Service sensitive plant species include: crested milkvetch, San Antonio milkvetch, slender mariposa-lily, San Gabriel River dudleya, San Gabriel Mountains dudleya, and

¹¹⁰ 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.

¹¹¹ Proclamation No. 9194, 79 Fed. Reg. 62303 (2014), 62304.

¹¹² Proclamation No. 9194, 79 Fed. Reg. 62303 (2014), 62304.

¹¹³ Proclamation No. 9194, 79 Fed. Reg. 62303 (2014), 62305.

many-stemmed dudleya, fragrant pitcher sage, and Rock Creek broomrape. The Joshua tree is also an at-risk plant.

There are Forest Service amphibian sensitive species that occur on the Monument such as yellow-blotched salamander and San Gabriel Mountains slender salamander. Other at-risk amphibians that may occur on the SGMNM include Coast range newt and arboreal salamander.

Several bird species associated with the Monument that are both Forest Service sensitive species and California SGCN include northern goshawk, bald eagle, and California spotted owl (currently under review by the Fish and Wildlife Service for listing under the ESA). The gray vireo is also a Forest Service sensitive species. Other species that are SGCN include black swift, yellow warbler, song sparrow, and yellow-breasted chat. Additional at-risk species associated with SGMNM include the tree swallow, Swainson’s thrush, American dipper, warbling vireo, Lawrence’s goldfinch, California gnatcatcher, Rufous-crowned sparrow, Bell’s sage sparrow, flammulated owl, northern saw-whet owl, Williamson’s sapsucker, white-headed woodpecker, hermit thrush, and Virginia’s warbler.

Fish, such as the arroyo chub and Santa Ana speckled dace, are both SGCN and Forest Service sensitive species.

Among the invertebrate pollinators that are Forest Service sensitive species are the San Emigdio blue butterfly and San Gabriel Mountains blue butterfly.

The Nelson’s bighorn sheep, pallid bad, and Townsend’s big-eared bat are among mammal species that are both Forest Service sensitive species and SGCN. Several at-risk bats are known to or may occur on the SGMNM such as Yuma myotis, western small-footed myotis bat, spotted bat, western mastiff bat.¹¹⁴

There are several at risk reptiles associated with the Monument. The San Bernardino Mountain kingsnake, two-striped garter snake, and San Bernardino ringneck snake are Forest Service sensitive species. The southwestern pond turtle is a SGCN. The California legless lizard is both an SGCN and Forest Service sensitive species. Others reptiles at risk include the sagebrush lizard and rosy boa.

Species Listed under the Endangered Species Act

ESA-listed Species with Potential to Occur within San Gabriel Mountains National Monument		
Common Name	Scientific Name	Federal ESA Status
California Condor	<i>Gymnogyps californianus</i>	Endangered

¹¹⁴ Stephenson, J.R. and G.M. Calcarone. 1999. Southern California Mountains and Foothills Assessment: Habitat and Species Conservation Issues. General Technical Report. GTR-PSW-175. Pacific Southwest Research Station, U.S. Forest Service, U.S. Department of Agriculture. 402 p.

ESA-listed Species with Potential to Occur within San Gabriel Mountains National Monument		
Common Name	Scientific Name	Federal ESA Status
Coastal California Gnatcatcher	<i>Poliioptila californica californica</i>	Threatened
Least Bell's Vireo	<i>Vireo bellii pusillus</i>	Endangered
Southwestern Willow Flycatcher	<i>Empidonax traillii extimus</i>	Endangered
Desert Tortoise	<i>Gopherus agassizii</i>	Threatened
Arroyo (=arroyo Southwestern) Toad	<i>Anaxyrus californicus</i>	Endangered*
California Red-legged Frog	<i>Rana draytonii</i>	Threatened
Mountain Yellow-legged Frog	<i>Rana muscosa</i>	Endangered*
Santa Ana Sucker	<i>Catostomus santaanae</i>	Threatened*
Unarmored Threespine Stickleback	<i>Gasterosteus aculeatus williamsoni</i>	Endangered
Riverside Fairy Shrimp	<i>Streptocephalus woottoni</i>	Endangered
Vernal Pool Fairy Shrimp	<i>Branchinecta lynchi</i>	Threatened
Braunton's Milkvetch	<i>Astragalus brauntonii</i>	Endangered
Gambel's Watercress	<i>Rorippa gambellii</i>	Endangered
Marsh Sandwort	<i>Arenaria paludicola</i>	Endangered
Nevin's Barberry	<i>Berberis nevinii</i>	Endangered
San Fernando Valley Spineflower	<i>Chorizanthe parryi</i> var. <i>fernandina</i>	Proposed Threatened
Slender-horned Spineflower	<i>Dodecabeema leptoceras</i>	Threatened
Spreading Navarretia	<i>Navarretia fossalis</i>	Threatened
Thread-leaved Brodiaea	<i>Brodiaea filifolia</i>	Threatened
* Designated critical habitat for these species overlaps the monument area.		

The California condor's historic range covers a large area in the western U.S., from the Pacific coastline and east into western Montana, Wyoming, and Colorado. The species was once believed to be extinct in the San Gabriel Mountains but birds have been sighted in recent years, and the region contains suitable habitat: remote roosting sites on cliffs, nesting sites in tall trees, and foothill rangelands.¹¹⁵ The Monument provides undeveloped refuge, in a heavily populated southern California, where the birds will not be disturbed by oil and gas development and mining under new claims.

The SGMNM contains suitable habitat and has the potential to contribute significantly the least Bell's vireo's recovery. The species depends on riparian woodlands. Loss of habitat due to large-scale

¹¹⁵ National Park Service. 2011. San Gabriel Watershed and Mountains: Special Resource Study and Environmental Assessment (Draft). U.S. Department of the Interior. September; United States Forest Service. 2005. Southern California National Forests Plan: Land Management Plan, Angeles National Forest Strategy.

development around the Monument along with invasive species outside and inside the Monument threaten the bird.¹¹⁶ Long-term camping in least Bell's vireo habitat is also a threat, which can be remedied by the SGMNM management plan.

The Santa Ana sucker is endemic to the Santa Ana River, San Gabriel river, and the Los Angeles River but its populations are now isolated in the East, North, and West forks of the San Gabriel River.¹¹⁷ As indicated above, the viability and recovery of the species depend on management that prioritizes protecting management objects; the new management approach enabled by the designation will allow the Forest Service to better protect and contribute to the recovery of such endangered and threatened species.

The mountain yellow-legged frog has been extirpated from nearly all of its historic range, which included nearly all of southern California's desert and coastal slopes of the Palomar, San Bernardino, San Gabriel, and San Jacinto mountains.¹¹⁸ The remaining isolated, small populations occur in the San Gabriel Mountains' headwater streams. Designated critical habitat helps protect these populations, and monument protection will allow management that better balances human uses with species needs to help promote recovery.

The California red-legged frog population in the state has declined due to habitat loss and degradation, livestock grazing, predation and competition from non-native species, off-road vehicle use, reservoir construction, and poor water quality. Livestock grazing no longer occurs in sensitive areas. Management under the mandate of the monument proclamation requires the Forest Service to address threats to the species under its control such as water quality, off-road vehicles, and non-native species.

The SGMNM contains critical habitat for the arroyo toad, a highly endangered species. There are restoration projects ongoing in Upper Big Tujunga Canyon and Little Rock Creek aimed to restore the species' habitat.¹¹⁹

Wide-ranging Species

The SGMNM supports a number of ungulates, including the desert bighorn sheep and mule deer. Wide-ranging carnivores include mountain lions, black bears, bobcats, and coyotes. The Monument

¹¹⁶ National Park Service. 2011. San Gabriel Watershed and Mountains: Special Resource Study and Environmental Assessment (Draft). U.S. Department of the Interior. September.

¹¹⁷ National Park Service. 2011. San Gabriel Watershed and Mountains: Special Resource Study and Environmental Assessment (Draft). U.S. Department of the Interior. September.

¹¹⁸ National Park Service. 2011. San Gabriel Watershed and Mountains: Special Resource Study and Environmental Assessment (Draft). U.S. Department of the Interior. September.

¹¹⁹ U.S. Fish and Wildlife Service. 2013. Programmatic Biological Opinion for the Revised Land Management Plans for the Four Southern California National Forests, California. Carlsbad and Ventura Fish and Wildlife Offices. September 30.

is also within the historic range of the gray wolf. These species need large landscapes and connected habitat for their long-term survival.

CONCLUSION

San Gabriel Mountains 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.