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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 Gold Butte 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 the Southwest. Defenders is deeply involved in public lands management and wildlife conservation, including the protection and recovery of flora and fauna in the Mojave Desert. We submit these comments on behalf of our 1.2 million members and supporters nationwide, including our 7200 donors and activists in Nevada.

President Trump's Executive Order 13792[2] 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."

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[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 Gold Butte and the 26 other terrestrial and marine national monuments identified for administrative review.

Gold Butte 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 Gold Butte National Monument.

Thank you for your attention to these comments.

Sincerely,

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 GOLD BUTTE 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

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[8] *Utah Ass'n of Ctys. 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

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[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

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[22] *See Utah Ass'n of Ctys. 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 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]

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[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).
[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.").

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]

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]

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[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) Al (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.

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: Badlands[45] (130,000 acres), Biscayne[46] (172,924 acres), Mount Saint Helens[47] (110,000 acres), El Malpais[48] (114,000 acres), and Santa Rosa and San Jacinto Mountains[49] (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]

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[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. Constitution[52] 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 the power to rescind, reduce, or modify monuments once designated or expanded. In every case

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[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 Ctys. v. Bush*, 316 F. Supp. 2d 1172, 1191 (D. Utah 2004) (upholding Grand Staircase–Escalante National Monument) (citing *Yakus v. United States*, 321 U.S. 414 (1944)).
[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).

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 monument[66] (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]

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[61] 28 H.R. 4073, Pub. L. 81-292, 63 Stat. 691.
[62] *Cf. Utah Ass'n of Ctys. v. Bush*, 316 F. Supp. 2d 1172, 1197 (D. Utah 2004) ("Because Congress only authorized the withdrawal of land for national monuments to be done in the president's discretion, it follows that the President is the only individual who can exercise this authority because only the President can exercise his own discretion.").
[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.
[67] Pub. L. 94-579 (Oct. 21, 1976), codified at 43 U.S.C. § 1701 *et seq.*

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]

GOLD BUTTE NATIONAL MONUMENT

President Obama established the Gold Butte National Monument (Gold Butte) on December 28, 2016, through Presidential Proclamation 9559.[73] The monument spans 296,937 acres of Clark County in southeast Nevada and is administered by the Bureau of Land Management (BLM).

A recent assessment analyzed ecological values of Gold Butte by mapping and comparing a random sample of equivalent size areas in the region.[74] Based on this scientific analysis, the monument ranked at 92 percent for ecological intactness and 90 percent for ecological connectivity. Gold Butte is species rich and diverse, scoring at 87 percent for reptile diversity, 69 percent in avian diversity, and 87 percent for rarity-weighted species richness. Additionally, the monument is highly resilient to climate change, with a score of 82 percent for climate resilience.

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[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. 9559, 82 Fed. Reg. 1149 (2016).
[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, CA (available at http://www.csp-inc.org/wp-content/uploads/2017/06/NationalMonumentsAssessment.pdf).

The Designation of Gold Butte 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 Gold Butte 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 Obama designated the area necessary to protect the diversity of ecosystems found within the Gold Butte National Monument.

The ecological importance of Gold Butte National Monument has long been recognized by the BLM, as evidenced by the designation of the entire area of monument designation within Areas of Critical Environmental Concern (ACEC)[76] under FLPMA in both the 1998 Resource Management Plan and the 2014 Draft Revision. The relevance and importance criteria[77] for several ACECs that encompass lands within the area later designated as Gold Butte National Monument are discussed in detail in the BLM's 2014 Las Vegas and Pahrump Draft Resource Management Plan and Environmental Impact Statement.[78] Under the EIS's Preferred Alternative, the following ACECs are designated based on their relevant and important values:

Gold Butte, Part A (183,441 acres) -- Relevant and important values identified: Scenic values, cultural/historic values, desert tortoise, relict leopard frog

Gold Butte, Part B (116,734 acres) -- Relevant and important values identified: Scenic values, cultural/historic values, desert tortoise, relict leopard frog, desert bighorn sheep, Las Vegas buckwheat, and Las Vegas bearpoppy

Gold Butte, Part C (Virgin Mountains) (35,707 acres) -- Relevant and important values identified: Scenic values, cultural/historic values, relict forest stands, and desert bighorn sheep

Gold Butte Townsite (159 acres) -- Relevant and important values identified: Cultural/historic values and historic mining sites

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[75] *Tulare Cnty. v. Bush*, 306 F.3d at 1142.
[76] 43 U.S.C. 1702 Sec. 103(a); 43 U.S.C. 1711 Sec. 201 (a)]; 43 U.S.C. 1712 Sec. 202 (c)(3).
[77] 43 CFR 1610.7-2. BLM Manual 1613
[78] U.S. Department of the Interior, Bureau of Land Management. 2014. Las Vegas and Pahrump Field Offices Draft Resource Management Plan and Environmental Impact Statement. Southern Nevada District Office. 2209 pp. https://eplanning.blm.gov/epl-front-office/projects/lup/2900/49585/53975/Draft_RMP_EIS_September_2014_Version_5.pdf

Devil's Throat (639 acres) -- Relevant and important values identified: Natural hazard area

Red Rock Spring (638 acres) -- Relevant and important values identified: Cultural/historic values and relict leopard frog

Whitney Pocket (160 acres) -- Relevant and important values identified: Cultural/historic values

Unfortunately, the ACECs established prior to national monument designation were not sufficient to protect the resources found in these areas. The Friends of Gold Butte organization surveyed the area between November 2014 and July 2015 and documented "significant damage" to natural and cultural resources in nominally protected ACECs within the Gold Butte area:[79]

- "evidence of unauthorized water infrastructure that is being constructed across several miles of desert that is designated as ACEC," including water tanks, tire water troughs, piping and trenches;
- "multiple, illegal vehicle intrusions that have impacted archaeological sites and petroglyph sites; historic sites such as the Mud Wash corral and Gold Butte Townsite; and sensitive desert ecosystems including riparian areas, crypto-biotic soil, stretches of desert pavement, and unique red sand dunes; and sensitive bearpoppy restoration areas," with damage to desert pavement, trampling of cactus and other vegetation, and incursions into sensitive riparian areas; and
- "vandalism, [including] the looting of historic gravesites and damage to signs in Gold Butte, as well as cutting of fences, defacing of informational kiosks and removals of signage."

These documented incursions and vandalism underscore the need for the added protection conveyed by national monument status. This is further highlighted by placing Gold Butte in a regional context. BLM has identified the area as an important contributor to regional mitigation goals in its Regional Mitigation Strategy for the Dry Lake Solar Energy Zone.[80] The strategy identifies Gold Butte as a key target for mitigation actions to compensate for the unavoidable impacts of solar development in the Dry Lake SEZ:

> They consist of restoration and preservation measures prescribed for the Gold Butte Area of Critical Environmental Concern (ACEC), but for which sufficient resources have been unavailable. The Gold Butte ACEC is in the same ecological zone (ecoregion) and subzone as the Dry Lake SEZ and is of the same vegetation community. The Gold Butte ACEC provides habitat for all of the wildlife, including

[79] Friends of Gold Butte. 2015. Gold Butte Damage Report, August 2015. 33pp. https://www.eenews.net/assets/2015/08/19/document_gw_02.pdf

[80] Bureau of Land Management. 2014. Solar Regional Mitigation Strategy for the Dry Lake Solar Energy Zone. Tech Note 444. Bureau of Land Management, Southern Nevada District Office. Las Vegas, NV. http://blmsolar.anl.gov/documents/docs/TN_444_March_2014.pdf

> the special status species, found in the Dry Lake SEZ. Under the terms of this strategy, funding derived from mitigation fees for the Dry Lake SEZ will not be sufficient to fund all of the potential restoration and protection needs in the Gold Butte ACEC, but they will allow significant progress toward achieving the management objectives for the ACEC: to preserve the extraordinary resource values found there while providing for human use and enjoyment.

Given that, as described above, ACEC designation has not proven sufficient to protect the resources found in this unique area, unimpeded and undiminished protection under national monument status is critically important to protect these resources and ensure the success and durability of mitigation investments.

Gold Butte 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 other western lands. The Antiquities Act provides the President with the authority to protect and properly management landscapes and ecosystems for their scientific and other values.

The monument prioritizes the protection and enhancement of the following ecosystem types and resident endemic species.

Terrestrial Ecosystems

Gold Butte is a unique landscape where the Mojave Desert meets snow-capped mountains. The monument contains a stunning and unique diversity of ecosystem types, including arid desert, shrub steppe, pinyon-juniper woodlands, and high elevation ponderosa pine forests.

High Elevation: Ponderosa Pine-White Fir Ecosystem

The high-elevation regions of the Virgin Mountains (up to 8,000 feet) form a "sky island" above the surrounding desert and scrub ecosystem types and represent a "transition between ecosystems in the southwest. At the highest points of the Virgin Mountains, visitors can hike through Ponderosa pine and white fir forests, and visit the southernmost stand of Douglas fir in Nevada. In this area, visitors are also treated to a rare sight: the Silver State's only stand of the Arizona cypress."[81] The Las Vegas RMP adds that, "Floristically, vegetation in the Virgin Mountains has a closer affinity to the Colorado Plateau and Rocky Mountains and represents the westernmost distribution of some species." These forested mountain ecosystems provide habitat for numerous bat, small mammal,

[81] Proclamation No. 9559, 82 Fed. Reg. 1149 (2016).

raptor, and migratory bird species, as well as "exemplary high mountain habitat" (crucial and winter habitat) for the desert bighorn sheep, a BLM-sensitive species.[82]

Mid-Elevation: Pinyon-Juniper and Sagebrush Communities

Gold Butte's "lower to middle elevations of the area are home to stands of pinyon pine, Utah juniper, sagebrush, and acacia woodlands, along with occasional mesquite stands. By adding structural complexity to a shrub-dominated landscape, these woodlands provide important breeding, foraging, and resting places for a variety of creatures, including birds and insects, and support a number of plant species."[83] Pinyon-juniper communities and scrub and sagebrush step support a number of BLM-sensitive species, like Brewer's sparrow, Bendire's and LeConte's thrashers, pinyon jay, loggerhead shrike and raptors such as burrowing owl, sharp-shinned hawk, northern goshawk, Coopers hawk, American kestrel, and red-tailed hawk.

Low Elevation: Mojave Desert Ecosystem Types

The Presidential Proclamation describes in detail the value of the low-elevation desert habitat types protected by Gold Butte National Monument:

> The arid eastern Mojave Desert landscape that dominates the area is characterized by the creosote bush and white bursage vegetative community that covers large, open expanses scattered with low shrubs. Blackbrush scrub, a slow-growing species that can live up to 400 years, is abundant in middle elevations. Both creosote-bursage and blackbrush scrub vegetation communities can take decades or even centuries to recover from disturbances due to the long-lived nature of the plant species in these vegetative communities and the area's low rainfall.[84]

Rare and endemic plant communities of Gold Butte include gypsum soil-dependent species like sticky ringstem, Las Vegas buckwheat, and Las Vegas bearpoppy (state listed as critically endangered in Nevada[85]). These slow-growing specialist plants are threatened by gypsum mining outside of the monument and by unregulated off-highway vehicle use throughout their range. Other species are endemic to sand and gravel soils, like threecorner milkvetch and sticky wild buckwheat. The region

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[82] BLM. 2014. Las Vegas and Pahrump Field Offices Draft Resource Management Plan and Environmental Impact Statement. Southern Nevada District Office. 2209 pp. https://eplanning.blm.gov/epl-front-office/projects/lup/2900/49585/53975/Draft_RMP_EIS_September_2014_Version_5.pdf
[83] Proclamation No. 9559, 82 Fed. Reg. 1149 (2016).
[84] Proclamation No. 9559, 82 Fed. Reg. 1149 (2016).
[85] Clark County Multiple Species Habitat Conservation Plan. 2000. http://www.clarkcountynv.gov/airquality/dcp/Pages/CurrentHCP.aspx

is also home to other iconic species like Joshua trees, Mojave yucca, several varieties of cactus and other rare plants like the Rosy two-tone beardtongue and the Mokiak milkvetch.

Washes, Riparian Areas and Springs

Located within one of the most arid regions of the country, water is life in Gold Butte National Monument. The Virgin Mountains are regular recipients of snow and are thus a key contributor to the Virgin River, which feeds Lake Mead. The federally endangered southwestern willow flycatcher, which require moist riparian vegetation near saturated areas and surface water in order to breed, has designated critical habitat along the Virgin River,[86] and thus depends on water originating in Gold Butte National Monument and flowing through the Monuments streams and washes. The federally threatened yellow-billed cuckoo utilizes similar habitats and also has range in the area A large portion of these riparian habitats have been lost and degraded across the species' range due to water diversion, livestock grazing, urban development, and other human induced habitat changes.

Springs, including Quail Spring, Horse Spring, Bear Paw Spring and Red Rock Spring, all of which are priority management areas for translocated populations of the relict leopard frog, which was recently removed from the federal ESA candidate species status due to intensive conservation efforts.[87]

Ecological Condition

The designation of Gold Butte appropriately recognized and protected an intact and functional western landscape. Remote landscapes relatively unmodified by human intrusion and development are increasingly rare in the region and the nation.

Gold Butte National Monument lies within the Mojave Basin and Range ecoregion and was recently analyzed in a Rapid Ecoregional Assessment (REA) completed by NatureServe and partners as part of the BLM's landscape approach to resource planning.[88] An important landscape characteristic measured and mapped in the REA is *landscape condition,* The REA's evaluation of landscape condition provides "one composite view of the relative impacts of land uses across the entire ecoregion." The REA found that nearly the entire area of Gold Butte contains among the highest scoring areas for landscape condition in the ecoregion.

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[86] 78 Fed. Reg. 344.
[87] 81 Fed.. Reg. 69437.
[88] Comer, P., P. Crist, M. Reid, J. Hak, H. Hamilton, D. Braun, G. Kittel, I. Varley, B. Unnasch, S. Auer, M. Creutzburg, D. Theobald, and L. Kutner. 2013. Mojave Basin and Range Rapid Ecoregional Assessment Report. Prepared for the U.S. Department of the Interior, Bureau of Land Management. 173 pp + appendices.

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.[89] Larger areas tend to include a broader diversity of habitats and habitat characteristics and can accommodate more species than smaller areas[90] 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 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.[91] 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.[92]

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 also an increasingly important factor in the conservation of fish, wildlife, and plant populations.[93] 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

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

[90] 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; Rowland, M.M. 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. Millspaugh, F.R. Thompson, III (eds). Elsevier. Ch. 19, pp. 501-531.

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

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

[93] 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.

mortality[94] 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.[95] 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.[96]

Regional connectivity in the northeastern Mojave Basin and Range ecoregion is constrained by substantial natural and anthropogenic barriers, namely the Colorado River, Grand Canyon, Lake Mead, Interstate 15 and the city of Las Vegas. Gold Butte National Monument is an important linkage between northwestern Arizona (Grand Canyon-Parashant National Monument) and other parts of the ecoregion.

Climate Change Resilience

The Mojave Basin and Range REA included several measures of climate change impacts.[97] While the Gold Butte National Monument area is forecast to undergo substantial changes in temperature and precipitation over the course of this century, the REA's climate envelope modeling to 2060 forecasts that the entire area of the monument will have continued or expanded potential habitat for Sonora-Mojave Creosotebush-White Bursage Desert Scrub, and a substantial portion will have persistent or expanded habitat for Mojave Mid-Elevation Mixed (Joshua tree-blackbrush) Desert Scrub.

The national monument is thus forecast to be a climate refugia for the threatened Mojave desert tortoise. Since the Monument currently contains designated critical habitat for the tortoise,[98] the forecast likelihood that the region will continue to be suitable for decades into the future underscores the importance of continued protection of Gold Butte. Indeed, the high likelihood of

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[94] 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.

[95] 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.

[96] 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.

[97] Comer, P., P. Crist, M. Reid, J. Hak, H. Hamilton, D. Braun, G. Kittel, I. Varley, B. Unnasch, S. Auer, M. Creutzburg, D. Theobald, and L. Kutner. 2013. Mojave Basin and Range Rapid Ecoregional Assessment Report. Prepared for the U.S. Department of the Interior, Bureau of Land Management. 173 pp + appendices.

[98] Proclamation No. 9559, 82 Fed. Reg. 1149 (2016).

Mojave desert tortoise habitat resilience in Gold Butte figures prominently in its primacy as a mitigation location for the Dry Lake Solar Energy Zone (SEZ):

- The Mojave Basin and Range REA (NatureServe 2013) suggests that creosote-bursage vegetation in the Gold Butte ACEC may persist longer under climate change than the other nominated ACECs.
- Niche modeling, completed by the National Park Service for the Lake Mead National Recreation Area, suggests, under future climate change, high-quality desert tortoise habitat will remain in the Gold Butte ACEC while most of the adjacent desert tortoise habitat in the national recreation area will decline and disappear.[99]

The REA's climate envelope modeling also suggests that Gold Butte will persist as habitat for desert bighorn sheep and potentially expanded habitat for the Gila monster.

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

Habitat for fish and wildlife qualify for protection as scientific objects under the Antiquities Act. Gold Butte provides essential habitat for a wide variety of fish, wildlife and plant species, including rare, endemic and at-risk species, including 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 fish, wildlife and plant species found within the monument, which are considered to be objects of scientific interest.

Species Listed under the Endangered Species Act

As described above, Gold Butte provides critical habitat for the Mojave desert tortoise and is projected to remain as viable habitat even in light of climate-driven changes to temperature and precipitation. The U.S. Fish and Wildlife Service's (USFWS) Information for Planning and Consultation[100] web tool indicates that the following ESA-listed have the potential to occur within the Gold Butte National Monument (see Table below).

[99] Bureau of Land Management. 2014. Solar Regional Mitigation Strategy for the Dry Lake Solar Energy Zone. Tech Note 444. Bureau of Land Management, Southern Nevada District Office, Las Vegas, NV. http://blmsolar.anl.gov/documents/docs/TN_444_March_2014.pdf.
[100] U.S. Fish and Wildlife Service. Information for Planning and Consultation. https://ecos.fws.gov/ipac/.

Common Name	Scientific Name	Federal ESA Status
California Condor	*Gymnogyps californianus*	Endangered, except where listed as experimental pop.
California Least Tern	*Sterna antillarum*	Endangered
Southwestern Willow Flycatcher	*Empidonax traillii extimus*	Endangered*
Yellow-billed Cuckoo	*Coccyzus americanus*	Threatened*
Yuma Clapper Rail	*Rallus longirostris yumanensis*	Endangered
Desert Tortoise	*Gopherus agassizii*	Threatened*
Northern Mexican Gartersnake	*Thamnophis eques megalops*	Threatened
Razorback Sucker	*Xyrauchen texanus*	Endangered*
Roundtail Chub	*Gila robusta*	Proposed Threatened
Virgin River Chub	*Gila seminuda (=robusta)*	Endangered
Woundfin	*Plagopterus argentissimus*	Endangered
* Designated critical habitat for these species overlaps the monument area.		

At-risk Species

Due to the recent designation of Gold Butte National Monument, a management plan and comprehensive species list are not yet available for the designated area. Nonetheless the available information attests to the area's importance for a wide array of wildlife. The monument proclamation[101] names 15 species of interest that are found in the monument, including six (western burrowing owl, Costa's hummingbird, Bendire's thrasher, Lucy's warbler, black-chinned sparrow and gray vireo) that are U.S. Fish and Wildlife Service (USFWS) birds of conservation concern (BCCs) for the Sonoran and Mojave Desert bird conservation region.[102]

Additional information on species that are likely present in Gold Butte comes from the Clark County Multi-Species Habitat Conservation Plan,[103] which covers 79 species, and includes a further 103 species for evaluation and 51 as "Watch List" species. The covered species include four mammals, eight birds (including two ESA listed and two USFWS BCC species), fifteen reptiles (eleven of which are also listed in the Monument Proclamation), one amphibian, ten invertebrates and 41 plant species). As the entirety of Gold Butte lies within Clark County, and it contains a wide

[101] Proclamation No. 9559, 82 Fed. Reg. 1149 (2016).
[102] U.S. Fish and Wildlife Service. 2008. Birds of Conservation Concern 2008. United States Department of Interior, Fish and Wildlife Service, Division of Migratory Bird Management, Arlington, Virginia. 85 pp. https://www.fws.gov/migratorybirds/pdf/management/BCC2008.pdf.
[103] Clark County Multiple Species Habitat Conservation Plan. 2000. http://www.clarkcountynv.gov/airquality/dcp/Pages/CurrentHCP.aspx.

array of intact and high-quality habitat types, preservation of Gold Butte National Monument will undoubtedly contribute to the conservation of many of these imperiled species.

Wide-ranging Species

Gold Butte supports a number of ungulates including pronghorn antelope, mule deer, and desert bighorn sheep. BLM has designated the area as bighorn sheep crucial habitat; Bighorn sheep winter range; mule deer crucial summer habitat; and mule deer winter range.[104] Several predator species also have habitat in the monument, including mountain lions, bobcats and foxes.

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

The Gold Butte National Monument is consistent with the multiple-use policies of the federal land management agencies. The natural resource and management values conserved within the monument will best meet the present and future needs of the American people. Recreation, watershed, wildlife and fish, natural scenic, scientific and historical values are all provided by the monument. The monument designation was judicious, conserving resources while allowing for the continuation of some uses. Multiple use must be viewed in a broad context with the acknowledgement that not every use must occur on every acre; while the Gold Butte National Monument protected certain values, other various values and uses can be emphasized in other areas.

The economic value of these types of uses to the state of Nevada is considerable. The Outdoor Industry Association[105] estimates that in 2012, the last year for which data is available, outdoor recreation generated $14.9 billion in consumer spending in Nevada, supporting 148,000 jobs, $4.8 billion in wages, and $1 billion million in state and local tax revenue. Based on the 2012 state population of 2,755,000 people, outdoor recreation generated $362.98 in tax revenue per Nevada resident, one of the highest per capita values in the nation. In California, by comparison, outdoor recreation generated $171.18 per resident and in Utah $299.72.

CONCLUSION

Gold Butte 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

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[104] U.S. Department of the Interior, Bureau of Land Management. 2014. Las Vegas and Pahrump Field Offices Draft Resource Management Plan and Environmental Impact Statement. (Appendix A). Southern Nevada District Office. Las Vegas, NV. https://eplanning.blm.gov/epl-front-office/projects/lup/2900/495 https://outdoorindustry.org/advocacy/85/53975/Draft_RMP_EIS_September_2014_Version_5.pdf.

diminish a national monument and should additionally refrain from seeking legislative action or take any other action to undermine the designation.