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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 Ironwood Forest 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 southern Arizona. We submit these comments on behalf of our 1.2 million members and supporters nationwide, including our 27,581 members in Arizona.

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 Ironwood Forest and the 26 other (marine) national monuments identified for administrative review.

Ironwood Forest 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 Ironwood Forest National Monument.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'RD', 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 IRONWOOD FOREST 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

IRONWOOD FOREST NATIONAL MONUMENT

President Clinton established the Ironwood Forest National Monument (IFNM or “Monument”) in 2000 through Presidential Proclamation 7320.⁷³ The Monument spans approximately 128,917 acres overlapping Pima and Pinal counties in southern Arizona and is administered by the Bureau of Land Management (BLM).

A recent assessment analyzed ecological values of the IFNM by mapping and comparing a random sample of equivalent size areas in the region.⁷⁴ This science-based analysis found the monument

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. 7320, 65 Fed. Reg. 37259 (2000).

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

ranked extremely high for biodiversity: 94 percent in mammal diversity, 94 percent in reptile diversity, and 83 percent in bird diversity. These findings affirm the Monument’s importance to wildlife in southern Arizona.

The IFNM is renowned for its biodiversity. Tersey et al. (2001) noted that, “[w]ith more than 670 species of plants and animals documented within the boundaries of the IFNM, it is one of the most biologically diverse areas within the Sonoran Desert and in the southwestern United States. Many of these plants and animals are found nowhere else in the United States... .”⁷⁵

Of unique botanical interest is Ragged Top, an area within the IFNM that supports more than 400 plant species, representing about 72 percent of plant species found in the Monument. The BLM’s Proposed Resource Management Plan and Final Environmental Impact Statement (IFNM PRMP/FEIS) for the Monument stated that “[t]he high diversity, structure, and composition of plants in this area support both a high abundance and high diversity of wildlife.”⁷⁶

The Designation of Ironwood Forest 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.”⁷⁷ The facts demonstrate that President Clinton’s designation in Ironwood Forest was necessary to protect the diversity of ecosystems 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,

Stands of ironwood, palo verde, and saguaro blanket the monument floor beneath the rugged mountain ranges, including the Silver Bell Mountains. Ragged Top Mountain is a biological and geological crown jewel amid the depositional plains in the monument. The

Science Partners. Truckee, CA. Available at <http://www.csp-inc.org/wp-content/uploads/2017/06/NationalMonumentsAssessment.pdf>.

⁷⁵ Tersey, D., B. Drennen, and D. Moore. 2001. Pre-Plan Analysis for the Ironwood Forest National Monument. February 9. Available at <https://ironwoodforest.org/wp-content/uploads/2017/05/Pre-Plan-Analysis-February-2001.pdf>.

⁷⁶ Bureau of Land Management. 2011. Ironwood Forest National Monument Proposed Resource Management Plan and Final Environmental Impact Statement. September, pp. 3-17.

⁷⁷ *Tulare Cnty. v. Bush*, 306 F.3d at 1142.

geologic and topographic variability of the monument contributes to the area's high biological diversity.⁷⁸

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

Desert Ironwood Forest

Abundant, viable populations of ironwood trees are an indicator of ecological integrity for the Sonoran Desert. The trees can live over 800 years and “generate a chain of influences on associated understory plants, affecting their dispersal, germination, establishment, and rates of growth.”⁷⁹ As described in the Proclamation, ironwood forests benefit wildlife and other plants, including raptors, desert bighorn sheep, saguaro cactus, native bees, and cereus.⁸⁰ The lesser long-nosed bat, a federally endangered species, follows the blooming seasons for ironwood and other species on its annual migrations north and south, and the bat's range overlaps the ironwood forest range.

Jojoba – Chaparral

This community is a rare vegetation type in IFNM, covering about 1,600 acres or 0.8 percent of the Monument.⁸¹ It is threatened by livestock grazing. Jojoba is a nutrient-rich food source for desert bighorn sheep, mule deer, and jackrabbits. The community attracts a diversity of birds such as crissal thrashers and brown towhees.⁸²

Curly Mesquite Grassland

This ecosystem, found in the Roskrige Mountains, is an threatened ecosystem that provides habitat for several at-risk species including: cactus ferruginous pygmy-owls, big free-tailed bats, and mesquite mice. Desert scrub has encroached on curly mesquite grasslands, especially at lower elevations.⁸³

⁷⁸ Proclamation No. 7320, 65 Fed. Reg. 37259 (2000), 37259.

⁷⁹ Tersey, D., B. Drennen, and D. Moore. 2001. Pre-Plan Analysis for the Ironwood Forest National Monument. February 9, p. 7. Available at <https://ironwoodforest.org/wp-content/uploads/2017/05/Pre-Plan-Analysis-February-2001.pdf>.

⁸⁰ Bureau of Land Management. 2011. Ironwood Forest National Monument Proposed Resource Management Plan and Final Environmental Impact Statement. September.

⁸¹ Wiens, J.F., T.R. Van Devender, M.A. Dimmitt. 2015. Vegetation and Vascular Flora of Ironwood Forest National Monument, Pima and Pinal Counties, Arizona. *Desert Plants* 30(2): 1-71.

⁸² Matthews, R.F. 1994. *Simmondsia chinensis*. In: FIRE EFFECTS INFORMATION SYSTEM. U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station, Fire Sciences Laboratory.

⁸³ Bureau of Land Management. 2011. Ironwood Forest National Monument Proposed Resource Management Plan and Final Environmental Impact Statement. September.

Paloverde – Saguaro

This iconic cactus community provides habitat for a range of wildlife and plant species. Examples include imperiled birds of prey like the crested caracara and ferruginous pygmy-owl and bats like the big free-tailed bat and Mexican long-tongued bat, which is a BLM sensitive species.

Caves, Abandoned Mines, and Crevices

These unique landscape features provide important hibernacula for bats, many of them imperiled. Bats known to occur in the Monument that depend on these structural elements include California leaf-nosed bat, cave myotis, greater western mastiff bat, pale Townsend's big-eared bat (a BLM sensitive species), pocketed free-tailed bat (a BLM sensitive species), and western small-footed myotis.⁸⁴

Riparian and Xeroriparian Ecosystems

Riparian and xeroriparian communities are vital for many desert-dwelling species. A few examples of riparian ecosystems and wildlife associates include xeroriparian and rufous-winged sparrow; Sonoran riparian deciduous woodland and Abert's towhee and Mississippi kite; streamside cottonwoods and willows and cactus ferruginous pygmy-owl and tropical kingbird; and broadleaf riparian deciduous forest and western red bat.⁸⁵

Other Ecosystems of Concern

The IFNM PRMP/FEIS identified the following ecosystems of concern in the Monument: cactus dunes, cholla forest, and creosote.⁸⁶ Additionally, rare seeps and springs support imperiled species such as the Arizona giant sedge, which is a BLM sensitive species.

Other Ecosystems

Some less vulnerable ecosystems are also essential for at-risk wildlife in the Monument.⁸⁷ For example, mesquite bosques help support the cactus ferruginous pygmy-owl, big free-tailed bat, and mesquite mouse. The lesser long-nosed bat and western small-footed myotis are associated with oak woodlands and oak-pine forests. Swainson's hawks, western burrowing owls, lesser long-nosed bats, and pocketed free-tailed bat (a BLM sensitive species) depend on desert grasslands in the

⁸⁴ Bureau of Land Management. 2011. Ironwood Forest National Monument Proposed Resource Management Plan and Final Environmental Impact Statement. September.

⁸⁵ Bureau of Land Management. 2011. Ironwood Forest National Monument Proposed Resource Management Plan and Final Environmental Impact Statement. September.

⁸⁶ Bureau of Land Management. 2011. Ironwood Forest National Monument Proposed Resource Management Plan and Final Environmental Impact Statement. September.

⁸⁷ Bureau of Land Management. 2011. Ironwood Forest National Monument Proposed Resource Management Plan and Final Environmental Impact Statement. September.

Monument. Desert scrub uplands are important for Mississippi kites, Swainson's hawks, western burrowing owls, big free-tailed bats, California leaf-nosed bats, lesser long-nosed bats, and pale Townsend's big-eared bats.

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.⁸⁸ Larger areas tend to include a broader diversity of habitats and habitat characteristics and can accommodate more species than smaller areas⁸⁹ 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.⁹⁰ 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.⁹¹

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.⁹² Habitat loss, degradation and fragmentation pose the most important threat

⁸⁸ 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.

⁸⁹ Margules, 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. Millsaugh, F.R. Thompson, III (eds). Elsevier. Ch. 19, pp. 501-531.

⁹⁰ Margules, C.F. and R.L. Pressey. Systematic conservation planning. *Nature* 405: 243-253.

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

⁹² 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.

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 mortality⁹³ 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.⁹⁴ 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.⁹⁵

The monument designation will enable the BLM to continue improving wildlife habitat connectivity within the Monument and work with adjacent landowners to improve connectivity across the Monument boundaries. Connectivity is a major focus in the IFNM resource management plan (RMP). The RMP outlines six goals and objectives⁹⁶ and a set of actions⁹⁷ aimed at maintaining and enhancing wildlife corridors between habitat cores. Examples include working with neighboring landowners to “minimize degradation, loss, and fragmentation” of wildlife habitat and, more specifically,

Manage and/or conserve areas identified as important for the viability of priority species and bighorn sheep populations, including, but not limited to lambing areas and movement corridors. Within 10 years, enhance habitat conditions in movement corridors so they are conducive to wildlife movement.⁹⁸

⁹³ 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.

⁹⁴ 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.

⁹⁵ 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.

⁹⁶ Bureau of Land Management. 2013. Ironwood Forest National Monument – Record of Decision and Approved Resource Management Plan. February. Wildlife and Wildlife Habitat, Management Goals and Objectives: 2.2.5.1 – WH-002, WH-003, WH-004, WH-005, and WH-007, pp. 43-44, p. 76, and Lands and Realty, Management Goals and Objectives 2.2.16.1 – LR-003, p. 76.

⁹⁷ Bureau of Land Management. 2013. Ironwood Forest National Monument – Record of Decision and Approved Resource Management Plan. February; for example: Wildlife Management Action WH-010, p. 44, and Administrative Action AA-062, p. 45.

⁹⁸ Bureau of Land Management. 2013. Ironwood Forest National Monument – Record of Decision and Approved Resource Management Plan. February. Wildlife and Wildlife Habitat – Management Goals and Objectives 2.2.5. WH-005, p. 44.

At the time of designation, the IFNM's population of desert bighorn sheep were restricted to a very small area—a problem that should be addressed through management that reduces isolation and fragmentation.

Intactness

Ironwood National Monument lies within the Sonoran Desert ecoregion, which was recently analyzed in a Rapid Ecoregional Assessment (REA) completed by the Conservation Biology Institute as part of the BLM's landscape approach to resource planning.⁹⁹ Two important landscape characteristics measured and mapped in the REA are landscape intactness and potential for climate change impact. As defined in the REA, “[i]ntactness is a measure of naturalness as well as an attribute that can be defensibly supported by existing geospatial datasets, mapped, and reasonably tracked through time. Because vegetative cover represents wildlife habitat, it serves as a surrogate to estimate the status of species that depend on that habitat, particularly since spatial data for the pre-disturbance distribution or abundances of various wildlife species are typically not available.” Consequently, areas with high intactness scores are particularly important for wildlife habitat. IFNM has a relatively high intactness score, with most habitat within the monument scoring “high” or “moderately high.”

Resiliency

The REA also modeled potential for climate change impact, an important measure of the projected importance of habitat over time as climate warming leads to changes in temperature, precipitation and vegetative type. The REA used a fuzzy logic model and identified as “high” potential for climate impact any area that is modeled to undergo a change in vegetation type; the analysis also weighed other relevant factors, including modeled changes in temperature, precipitation and runoff. The REA found IFNM is dominated by “low” and “moderately low” potential for climate-related ecosystem change. The combination of relatively high intactness and particularly low climate change impact demonstrate the importance of IFNM as wildlife habitat, now and in the future.

The Designation of Ironwood Forest 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 BLM. As described in the Monument proclamation:

⁹⁹ Strittholt, J.R., S.A. Bryce, B.C. Ward, and D.M. Bachelet. 2012. Sonoran Desert Rapid Ecoregional Assessment Report. Prepared for the U.S. Department of the Interior, Bureau of Land Management. Denver, CO.

Ironwood is the dominant nurse plant in this region, and the Silver Bell Mountains support the highest density of ironwood trees recorded in the Sonoran Desert. Ironwood trees provide, among other things, roosting sites for hawks and owls, forage for desert bighorn sheep, protection for saguaro against freezing, burrows for tortoises, flowers for native bees, dense canopy for nesting of white-winged doves and other birds, and protection against sunburn for night blooming cereus.¹⁰⁰

The ironwood-bursage habitat in the Silver Bell Mountains is associated with more than 674 species, including 64 mammalian and 57 bird species. Within the Sonoran Desert, Ragged Top Mountain contains the greatest richness of species. The monument is home to species federally listed as threatened or endangered, including the Nichols turk's head cactus and the lesser long-nosed bat, and contains historic and potential habitat for the cactus ferruginous pygmy-owl. The desert bighorn sheep in the monument may be the last viable population indigenous to the Tucson basin.¹⁰¹

Altering the size or 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. A goal of the IFNM is to “[m]anage allowable activities and uses to protect the following priority species: game species, bighorn sheep, mule deer, javelina, burrowing owls, migratory birds, and special status species to sustain healthy populations.”¹⁰²

At-risk Species

The IFNM PRMP/FEIS lists 66 at-risk species that occur or are believed to occur in the Monument.¹⁰³ There are approximately 24 BLM sensitive species associated with the Monument.¹⁰⁴ The U.S. Fish and Wildlife Service lists 37 migratory birds of conservation concern relevant to the IFNM that are also protected under the Migratory Bird Treaty Act.¹⁰⁵

The following Arizona Species of Greatest Conservation Need (SGCN) are believed to use the Monument: lowland leopard frog, Abert's towhee, Arizona Bell's vireo, rufous-winged sparrow,

¹⁰⁰ Proclamation No. 7320, 65 Fed. Reg. 37259 (2000), 37259.

¹⁰¹ Proclamation No. 7320, 65 Fed. Reg. 37259 (2000), 37259.

¹⁰² Bureau of Land Management. 2013. Ironwood Forest National Monument – Record of Decision and Approved Resource Management Plan. February. Wildlife and Wildlife Habitat, Management Goals and Objectives: 2.2.5.1 – WH-008, p. 44.

¹⁰³ Bureau of Land Management. 2011. Ironwood Forest National Monument: Proposed Resource Management Plan and Final Environmental Impact Statement. September.

¹⁰⁴ Bureau of Land Management. 2017. Arizona – Bureau Sensitive Species List. February.

¹⁰⁵ United States Fish and Wildlife Service. 2017. Information for Planning and Consultation. Available at <https://ecos.fws.gov/ipac/>.

Swainson’s hawk, Baboquivari talussnail, western yellow bat, western burrowing owl, California leaf-nosed bat, cave myotis, and greater western mastiff bat.

There are at least nine plants that occur on the Monument that are included on the Arizona Rare Plant List: Graham nipple cactus, Needle-spined pineapple cactus, Nichol Turk’s head cactus, Pima Indian mallow, Pima pineapple cactus, Arizona giant sedge, Arizona Sonoran rosewood, Bartram stonecrop, and Gentry indigo bush.¹⁰⁶

The mesquite mouse is endemic to the region.

Species Listed under the Endangered Species Act

ESA-listed Species with Potential to Occur within Ironwood Forest National Monument		
Common Name	Scientific Name	Federal ESA Status
Jaguar	<i>Panthera onca</i>	Endangered
Lesser Long-nosed Bat	<i>Leptonycteris curasoae yerbabuena</i>	Endangered
Sonoran Pronghorn	<i>Antilocapra americana sonoriensis</i>	EXPN
California Least Tern	<i>Sterna antillarum browni</i>	Endangered
Yellow-billed Cuckoo	<i>Coccyzus americanus</i>	Threatened
Northern Mexican Gartersnake	<i>Thamnophis eques megalops</i>	Threatened
Sonoyta Mud Turtle	<i>Kinosternon sonoriense longifemorale</i>	Proposed Endangered
Nichol's Turk's Head Cactus	<i>Echinocactus horizonthalonius var. nicholii</i>	Endangered
Pima Pineapple Cactus	<i>Coryphantha scheeri var. robustispina</i>	Endangered

Wide-ranging Species

The IFNM supports a number of native ungulates, including the desert bighorn sheep, which is vulnerable in Arizona,¹⁰⁷ mule deer, and pronghorn. Wide-ranging carnivores include mountain lions, bobcats, and coyotes. The Monument is also within the historic range of endangered jaguars and Mexican gray wolves.

CONCLUSION

Ironwood Forest 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

¹⁰⁶ Arizona Native Plant Society. 2000. Arizona Rare Plant List. Available at <http://www.aznps.com/rareplants.php>.

¹⁰⁷ NatureServe. 2017. *Ovis canadensis mexicana*. NatureServe Explorer: An Encyclopedia of Life [web application]. Version 7.1. NatureServe, Arlington, VA.

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