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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 Sonoran Desert 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 Arizona. We submit these comments on behalf of almost 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 Sonoran Desert and the 26 other (marine) national monuments identified for administrative review.

Sonoran Desert 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 Sonoran Desert 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 SONORAN DESERT 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 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

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

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 Cty's. 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

SONORAN DESERT NATIONAL MONUMENT

President Clinton established the Sonoran Desert National Monument (SDNM or Monument) in 2001 with Presidential Proclamation 7397.⁷³ The Monument spans approximately 486,149 acres within Maricopa and Pinal counties in southern Arizona. It is managed by the Bureau of Land Management (BLM). The BLM has developed special management goals, objectives, and actions to protect the objects of the SDNM.⁷⁴

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. 7397, 66 Fed. Reg. 7354 (2001).

⁷⁴ Bureau of Land Management. 2012. Sonoran Desert National Monument Record of Decision and Approved Resource Management Plan. September.

A recent assessment analyzed ecological values of the SDNM by mapping and comparing a random sample of equivalent size areas in the region.⁷⁵ This science-based analysis found the Monument ranked extremely high in reptile diversity at 93 percent and high in mammal diversity at 64 percent. Night sky darkness, a metric of relative remoteness, scored at 63 percent.

Indeed, the Monument is species-rich with at least 10 amphibian, 28 mammal, 36 reptile species, including six of 11 of Arizona's rattlesnake species; there are also approximately 500 species of vascular plants, including at least 20 species of cacti.⁷⁶ Thirty-two migratory birds that are designated as Birds of Conservation Concern by the U.S. Fish and Wildlife Service use the SDNM area, including four hummingbird species.⁷⁷

The Designation of Sonoran Desert 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.”⁷⁸ The facts demonstrate that President Clinton designated the land necessary to protect the diversity of ecosystems found within the Monument.

The SDNM protects and provides for the proper care and management of exceptionally important and unique ecosystem and landscape conservation values. The Antiquities Act provides the President with the authority to protect and properly management landscapes and ecosystems for their scientific and other values.

Ecosystems

The President's Proclamation for the monument made clear that ecosystems were important objects needing protection. It states, for example,

⁷⁵ Dickson, B.G., M.L. McClure, and C.M. Albano. 2017. A Landscape-level Assessment of Ecological Values for 22 National Monuments. Final Report submitted to the Center for American Progress. Conservation Science Partners. Truckee, California. Available at <http://www.csp-inc.org/wp-content/uploads/2017/06/NationalMonumentsAssessment.pdf>.

⁷⁶ Felger, R.S., D.S. Turner, L. Leigh, K. Mauz, C.S. Funicelli, R.X. Barry, R. Bezy, E. Enderson, J. Malusa, T. Van Devender, M.F. Wilson. 2001. Biological Resources of the Sonoran Desert National Monument, Arizona. Drylands Institute. June.

⁷⁷ U.S. Fish and Wildlife Service. 2017. Information for Conservation and Planning. Available at <https://ecos.fws.gov/ipac/>.

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

The most biologically diverse of the North American deserts, the monument consists of distinct mountain ranges separated by wide valleys, and includes large saguaro cactus forest communities that provide excellent habitat for a wide range of wildlife species.⁷⁹

The monument's biological resources include a spectacular diversity of plant and animal species. The higher peaks include unique woodland assemblages, while the lower elevation lands offer one of the most structurally complex examples of palo verde/mixed cacti association in the Sonoran Desert. The dense stands of leguminous trees and cacti are dominated by saguaros, palo-verde trees, ironwood, prickly pear, and cholla. Important natural water holes, known as tinajas, exist throughout the monument.⁸⁰

The most striking aspect of the plant communities within the monument are the abundant saguaro cactus forests. The saguaro is a signature plant of the Sonoran Desert. Individual saguaro plants are indeed magnificent, but a forest of these plants, together with the wide variety of trees, shrubs, and herbaceous plants that make up the forest community, is an impressive site to behold. The saguaro cactus forests within the monument are a national treasure, rivaling those within the Saguaro National Park.⁸¹

The Monument's ecosystems, some rare and at risk, are essential to supporting the diversity of wildlife referenced above.

While this is cactus country, monsoonal rains offer rare and vital summer moisture that attracts wildlife. The SDNM contains three mountain ranges: the Maricopa Mountains, Sand Tank Mountains, and Table Top Mountains that drain into basin wash networks that provide important xeroriparian and seasonal wetland habitat for wildlife.⁸² This physiography, in part, accounts for the flora and fauna diversity in the Monument. Elevation in the SDNM ranges from about 800 to 4,300 feet. The washes are cooler than the higher, drier surrounding desert and attract animals that need refuge from the heat, water for drinking, and shelter from the higher and denser vegetation. For example, desert tortoises seek the cooler wash areas to move through the monument. Little Rainbow Valley forms an alluvial plain important for desert tortoises and Sonoran green toads. The Vekol Valley's seasonal wetlands make up an essential breeding complex for a unique assemblage of 10 species of toads and frogs. The BLM designated 3,500 acres of the valley as the Vekol Valley Grasslands Area of Critical Environmental Concern, which is closed to vehicle use.

⁷⁹ Proclamation No. 7397, 66 Fed. Reg. 7354 (2001), 7354.

⁸⁰ Proclamation No. 7397, 66 Fed. Reg. 7354 (2001), 7354.

⁸¹ Proclamation No. 7397, 66 Fed. Reg. 7354 (2001), 7354.

⁸² Felger, R.S., D.S. Turner, L. Leigh, K. Mauz, C.S. Funicelli, R.X. Barry, R. Bezy, E. Enderson, J. Malusa, T. Van Devender, M.F. Wilson. 2001. Biological Resources of the Sonoran Desert National Monument, Arizona. Drylands Institute. June.

To protect ecological objects and ecological values, the Monument's 2012 Resource Management Plan (RMP) includes provisions to, for example, restore degraded vegetative communities, use only native seed for restoring vegetation, and prohibit plant collection.⁸³ Monument status provides authorization for the BLM to manage to minimize and eliminate threats to monument objects. Under the Proclamation, SDNM is withdrawn from mineral entry; it is closed to salable and leasable minerals. About 68 percent of monument lands are unavailable for livestock grazing under the RMP.

The cacti and scrub desert such as saguaro forest, creosote – bursage, and paloverde mixed cacti communities support wildlife species such as the desert tortoise, verdins and black-tailed gnatcatchers, Wilson's, MacGillivray's, and other warblers; and a diversity of mammals and other reptiles. Saguaro cacti make up an important part of the diet of several bats and also provide shelter and nesting cavities for woodpeckers, purple martins, kestrels, and small owls.

The SDNM's mountain ranges offer varied upland habitats.⁸⁴ For example, the remote mountains provide important habitat for the rosy boa that are threatened by collection in areas proximal to roads. The Maricopa Mountains have been the site of a long-term desert tortoise study⁸⁵ and are inhabited by several hundred desert bighorn sheep—one of the most robust populations in the southwest. Isolated and rare Tobosa grassland occurs in the Table Top Mountains. Areas, totaling 157,600 acres, in the Maricopa and Table Top mountains are closed to vehicle use.⁸⁶ The Sand Tank Mountains are known for its unique plant life.⁸⁷

Several raptor species hunt in the open areas, such as around the Tobosa grasslands, and grass seeds provide a food sources for small mammals as well as birds, including the lark bunting. Other grasses include grammas, bush muhly, sand dropseed, and bristlegrass.

Even small amounts of rain can bring the desert's arid-adapted plant species to life with flowers and fruits. Mesquite bosques in valley bottoms collect moisture during the monsoon season and attract birds such as Brewer's sparrows, black-throated sparrows, and Harris' hawks. Tinajas are waterholes at canyon bottoms in such places as Bender Spring Canyon and the Vekol Valley. The Vekol Valley is known for its frog and toad populations including the Sinaloan narrowmouth toad, Sonoran green

⁸³ Bureau of Land Management. 2012. Sonoran Desert National Monument Record of Decision and Approved Resource Management Plan. September.

⁸⁴ Felger, R.S., D.S. Turner, L. Leigh, K. Mauz, C.S. Funicelli, R.X. Barry, R. Bezy, E. Enderson, J. Malusa, T. Van Devender, M.F. Wilson. 2001. Biological Resources of the Sonoran Desert National Monument, Arizona. Drylands Institute. June.

⁸⁵ *c.f.*, Wirt, E.B. and P.A. Holm. 1997. Climatic Effects on Survival and Reproduction of the Desert Tortoise (*Gopherus agassizii*) in the Maricopa Mountains, Arizona.

⁸⁶ Bureau of Land Management. 2012. Lower Sonoran-Sonoran Desert National Monument Proposed Resource Management Plan and Final Environmental Impact Statement. June.

⁸⁷ Felger, R.S., D.S. Turner, L. Leigh, K. Mauz, C.S. Funicelli, R.X. Barry, R. Bezy, E. Enderson, J. Malusa, T. Van Devender, M.F. Wilson. 2001. Biological Resources of the Sonoran Desert National Monument, Arizona. Drylands Institute. June.

toad, and lowland burrowing treefrog; the densest population in Arizona of the western narrowmouth frog occurs in the Vekol Valley. Intermittent, ephemeral Xeroriparian areas bring in birds such as Costa's hummingbirds, elf owls, Gila woodpeckers, ash-throated flycatchers, phainopeplas, mockingbirds, curve-billed thrashers, black-tailed gnatcatchers, and Vermillion flycatchers.⁸⁸

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 areas⁹⁰ 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.

⁸⁸ Felger, R.S., D.S. Turner, L. Leigh, K. Mauz, C.S. Funicelli, R.X. Barry, R. Bezy, E. Enderson, J. Malusa, T. Van Devender, M.F. Wilson. 2001. Biological Resources of the Sonoran Desert National Monument, Arizona. Drylands Institute. June.

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 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.

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.

Wildlife 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 mortality⁹⁴ 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

SDNM is a crucial link in a habitat connectivity zone that enables wildlife to move across five protected areas and military land that serves as a de facto protected area in the center of the Sonoran Desert. The other areas include: Cabeza Prieta National Wildlife Refuge and Organ Pipe Cactus National Monument in Arizona; Reserva de la Biosfera El Pinacate y Gran Desierto de Altar in Sonora, Mexico; Reserva de la Biosfera Alto Golfo de California y Delta del Río Colorado in Sonora and Baja California, Mexico; and the Barry M. Goldwater Range in Arizona.⁹⁷ The Monument connects the Sierra Estrella Mountains on the east side and the Gila Bend Mountain Range to the

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.

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 Altshul, K. 2008. Lines in the sand: movement as a practice of spatialization and wildernization: a case study of the Cabeza Prieta Wilderness, Arizona. *Anthropological Notebooks* 14(1): 5-25; Felger, R.S., B. Broyles, M.F. Wilson, G.P. Nabhan and D.S. Turner. 2007. Six Grand Reserves, One Grand Desert. In: DRY BORDERS. GREAT NATURAL RESERVES OF THE SONORAN DESERT. R.S. Felger and B. Broyles (eds.) The University of Utah Press, Salt Lake City, UT. pp. 3-26.

west. The wildlife linkage between these areas provide connected habitat for desert bighorn sheep, javelinas, mule deer, bobcats, Gila monsters, and desert tortoises.⁹⁸

State and federal agencies: Arizona Game and Fish Department (AGFD), Arizona Department of Transportation, Federal Highways Administration, US Forest Service, BLM, US Fish and Wildlife Service (USFWS), are coordinating to identify wildlife linkages across the Sonoran Desert Landscape. For example, AGDF is investing heavily in efforts to reduce habitat fragmentation in the area and particularly in the region of the SDNM. AGFD provided a grant for a project conducted by Northern Arizona University (NAU) to identify wildlife corridors in the region.⁹⁹ A joint study between BLM and the Arizona Game and Fish found evidence that a mountain lion movement corridor runs through the monument.¹⁰⁰

The following passage indicates why protecting large areas and restoring and retaining habitat connectivity is so important:

In desert settings, bighorn populations persist as metapopulations (sets of small, interacting subpopulations) which depend on movement of individuals between mountain ranges for long-term viability. They tend to make linear movements between ranges, and may temporarily use small isolated areas of mountainous habitat as “stepping stones” within corridors. Thus protection of movement corridors across a wide valley such as Little Rainbow Valley may require protecting broad swaths of valley floor, including isolated outcrops such as Espanto Mountain. Protecting a functional corridor across this valley may be critical to maintaining a viable bighorn population in the Sierra Estrella, which is otherwise isolated by spreading urbanization from greater Phoenix.¹⁰¹

The SDNM Resource Management Plan (RMP) contains the goal to “[m]anage wildlife movement corridors so they contain ample habitat to assist wildlife in moving from one area to another in a relatively safe manner” and management actions to help attain this by, for example, by removing fences and partnering with local landowners.¹⁰²

⁹⁸ Beier, P., E. Garding, and D. Majka. 2008. Arizona Missing Linkages: Gila Bend – Sierra Estrella Linkage Design. Report to Arizona Fish and Game Department, Northern Arizona University School of Forestry.

⁹⁹ Beier, P., E. Garding, and D. Majka. 2008. Arizona Missing Linkages: Gila Bend – Sierra Estrella Linkage Design. Report to Arizona Fish and Game Department, Northern Arizona University School of Forestry.

¹⁰⁰ Bureau of Land Management. 2014. Sonoran Desert National Monument, Managers Annual Report FY 2014.

¹⁰¹ Felger, R.S., D.S. Turner, L. Leigh, K. Mauz, C.S. Funicelli, R.X. Barry, R. Bezy, E. Enderson, J. Malusa, T. Van Devender, M.F. Wilson. 2001. Biological Resources of the Sonoran Desert National Monument, Arizona. Drylands Institute. June. (citations omitted).

¹⁰² Bureau of Land Management. 2012. Sonoran Desert National Monument Record of Decision and Approved Resource Management Plan. September. pp. 2-56 and 2-59.

Intactness

Sonoran Desert National Monument is located 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.¹⁰³ 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. The SDNM has a very high intactness score, with significant portions scoring “very high” and most of the remainder of the designation area 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 SDNM is dominated by “moderately low” potential for climate-related ecosystem change. The combination of high intactness and relatively low climate change impact demonstrate the importance of SDNM as wildlife habitat, now and in the future.

The Designation of Sonoran Desert 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 great diversity 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. Below are proclamation statements that make this clear.

The diverse plant communities present in the monument support a wide variety of wildlife, including the endangered Sonoran pronghorn, a robust population of desert bighorn sheep, especially in the Maricopa Mountains area, and other mammalian species such as mule deer,

¹⁰³ 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, Colorado.

javelina, mountain lion, gray fox, and bobcat. Bat species within the monument include the endangered lesser long-nosed bat, the California leaf-nosed bat, and the cave myotis. Over 200 species of birds are found in the monument, including 59 species known to nest in the Vekol Valley area. Numerous species of raptors and owls inhabit the monument, including the elf owl and the western screech owl. The monument also supports a diverse array of reptiles and amphibians, including the Sonoran desert tortoise and the red-backed whiptail. The Bureau of Land Management has designated approximately 25,000 acres of land in the Maricopa Mountains area as critical habitat for the desert tortoise. The Vekol Valley and Sand Tank Mountain areas contain especially diverse and robust populations of amphibians. During summer rainfall events, thousands of Sonoran green toads in the Vekol Valley can be heard moving around and calling out.¹⁰⁴

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.

At-risk Species

SDNM provides habitat values that are significant to the region, and the size and configuration of the monument are necessary for the proper care and management of these habitat values. The BLM will be developing a management plan that is protective of species Monument's objects first and foremost, many of which are rare, endemic, and imperiled species that are vulnerable to extinction and need the protections monument status can afford.

A few at-risk species are endemic or rare to the area, and their protection by the Monument is particularly important due to their restricted ranges and small populations. Some include the lowland burrowing treefrog the Sonoran green toad, which are BLM sensitive species and Arizona Species of Greatest Conservation Need¹⁰⁵ (SGCN). The range of the Abert's towhee occurs almost entirely in southern and western Arizona; the species is a SGCN. The red-backed whiptail lizard, a SGCN, exists only in small, isolated pockets in southwestern Arizona, and the SDNM's population likely makes a significant contribution to the species' genetic diversity.¹⁰⁶ Another SGCN, the Arizona mud turtle, is narrowly distributed in southern Arizona and northern Mexico.¹⁰⁷ There are rare plants

¹⁰⁴ Proclamation No. 7397, 66 Fed. Reg. 7354 (2001), 7354.

¹⁰⁵ Arizona Game and Fish Department. 2013. Arizona's State Wildlife Action Plan 2012-2022. May 16.

¹⁰⁶ Felger, R.S., D.S. Turner, L. Leigh, K. Mauz, C.S. Funicelli, R.X. Barry, R. Bezy, E. Enderson, J. Malusa, T. Van Devender, M.F. Wilson. 2001. Biological Resources of the Sonoran Desert National Monument, Arizona. Drylands Institute. June.

¹⁰⁷ NatureServe. 2017. *Kinosternon arizonense*. NatureServe Explorer: An online encyclopedia of life [web application]. Version 7.1. NatureServe, Arlington, Virginia; Felger, R.S., D.S. Turner, L. Leigh, K. Mauz, C.S. Funicelli, R.X. Barry, R. Bezy, E. Enderson, J. Malusa, T. Van Devender, M.F. Wilson. 2001. Biological Resources of the Sonoran Desert National Monument, Arizona. Drylands Institute. June. pgs. 22-23.

the occur on the Monument such as the Kofa Mountain barberry, a BLM sensitive species, and milkweed vine, Arizona snakeweed, pineappleweed, pencil cholla, green flower nipple cactus, desert night-blooming cereus, organ pipe, Arizona lupine, and sticky germander.¹⁰⁸

Protecting large areas for the imperiled¹⁰⁹ desert tortoise is key to their survival. They make long-distance movements (2.5 miles) from primary activity centers.¹¹⁰ Sufficiently large protected areas and the restoration and enhancement of habitat connectivity can help address threats to the species such as habitat loss and fragmentation, disease, livestock grazing, off-highway vehicle use.

The desert bighorn sheep population is sufficiently robust to allow it to serve as a source population for translocations to other areas in the southwest.¹¹¹ The species is considered vulnerable in Arizona and critically imperiled in New Mexico.¹¹²

Species Listed under the Endangered Species Act

ESA-listed Species with Potential to Occur within Sonoran Desert National Monument		
Common Name	Scientific Name	Federal ESA Status
Lesser Long-nosed Bat	<i>Leptonycteris curasoae yerbabuena</i>	Endangered
Sonoran Pronghorn	<i>Antilocapra americana sonoriensis</i>	Endangered, except were listed as experimental population (Arizona, Mexico)
California Least Tern	<i>Sterna antillarum</i>	Endangered
Southwestern Willow Flycatcher	<i>Empidonax traillii extimus</i>	Endangered
Yellow-billed Cuckoo	<i>Coccyzus americanus</i>	Threatened
Yuma Clapper Rail	<i>Rallus longirostris yumanensis</i>	Endangered
Northern Mexican Gartersnake	<i>Thamnophis eques megalops</i>	Threatened
Desert Pupfish	<i>Cyprinodon macularius</i>	Endangered
Roundtail Chub	<i>Gila robusta</i>	Proposed Threatened

¹⁰⁸ Felger, R.S., D.S. Turner, L. Leigh, K. Mauz, C.S. Funicelli, R.X. Barry, R. Bezy, E. Enderson, J. Malusa, T. Van Devender, M.F. Wilson. 2001. Biological Resources of the Sonoran Desert National Monument, Arizona. Drylands Institute. June.

¹⁰⁹ NatureServe. 2017. *Gopherus agassizii*. NatureServe Explorer: An online encyclopedia of life [web application]. Version 7.1. NatureServe, Arlington, Virginia.

¹¹⁰ Felger, R.S., D.S. Turner, L. Leigh, K. Mauz, C.S. Funicelli, R.X. Barry, R. Bezy, E. Enderson, J. Malusa, T. Van Devender, M.F. Wilson. 2001. Biological Resources of the Sonoran Desert National Monument, Arizona. Drylands Institute. June.

¹¹¹ Felger, R.S., D.S. Turner, L. Leigh, K. Mauz, C.S. Funicelli, R.X. Barry, R. Bezy, E. Enderson, J. Malusa, T. Van Devender, M.F. Wilson. 2001. Biological Resources of the Sonoran Desert National Monument, Arizona. Drylands Institute. June.

¹¹² NatureServe. 2017. *Onis canadensis mexicanus*. NatureServe Explorer: An online encyclopedia of life [web application]. Version 7.1. NatureServe, Arlington, Virginia.

ESA-listed Species with Potential to Occur within Sonoran Desert National Monument		
Common Name	Scientific Name	Federal ESA Status
Acuña Cactus*	<i>Echinomastus erectocentrus</i> var. <i>acunensis</i>	Endangered
Nichol's Turk's Head Cactus	<i>Echinocactus horizonthalonius</i> var. <i>nicholii</i>	Endangered
* Designated critical habitat for these species overlaps the monument area.		

Acuña pineapple cactus has a restricted range in southcentral and southwestern Arizona and northern Sonora, Mexico. There are only six known occurrences in the U.S. Threats include collection (a declining threat), prolonged drought, urban development, livestock grazing that can spread invasive grasses, and mining—a potential, future threat in other locations.¹¹³

The endangered lesser long-nosed bat is an important cactus pollinator. The species depends on the dense saguaro forests in the SDNM.¹¹⁴ The bat's diet includes cactus flower nectar and cactus fruits. Threats include the loss of cacti food sources to agriculture and also loss of roosting sites (caves and mines) and roost-site disturbance by humans.¹¹⁵

Sonoran pronghorns require large protected areas. They have large home ranges and make long seasonal movements.¹¹⁶ The Sonoran pronghorn home range averages about 320 square miles and up to 1,100 square miles.¹¹⁷ They once inhabited desert valleys throughout western Arizona. Reasons for their decline include over-hunting and livestock grazing.¹¹⁸

Wide-ranging Species

The SDNM supports a number of ungulates including the desert bighorn sheep, mule deer, and Sonoran pronghorn. Wide-ranging carnivores include mountain lions, bobcats, and coyotes. The Monument is also within the historic range of the jaguar and Mexican gray wolf. These species need large landscapes and connected habitat for their long-term survival.

¹¹³ NatureServe. 2017. *Echinomastus erectocentrus* var. *acunensis*. NatureServe Explorer: An online encyclopedia of life [web application]. Version 7.1. NatureServe, Arlington, Virginia.

¹¹⁴ Felger, R.S., D.S. Turner, L. Leigh, K. Mauz, C.S. Funicelli, R.X. Barry, R. Bezy, E. Enderson, J. Malusa, T. Van Devender, M.F. Wilson. 2001. Biological Resources of the Sonoran Desert National Monument, Arizona. Drylands Institute. June.

¹¹⁵ NatureServe. 2017. *Leptonycteris curasoae yerbabuena*. NatureServe Explorer: An online encyclopedia of life [web application]. Version 7.1. NatureServe, Arlington, Virginia.

¹¹⁶ Felger, R.S., D.S. Turner, L. Leigh, K. Mauz, C.S. Funicelli, R.X. Barry, R. Bezy, E. Enderson, J. Malusa, T. Van Devender, M.F. Wilson. 2001. Biological Resources of the Sonoran Desert National Monument, Arizona. Drylands Institute. June.

¹¹⁷ Hervert, J.J., J.L. Bright, R.S. Henry, L.A. Piest, and M.T. Brown. 2005. Home-range and habitat-use patterns of Sonoran Pronghorn in Arizona. *Wildlife Society Bulletin* 33: 8-15.

¹¹⁸ U.S. Fish and Wildlife Service. 1994. Sonoran pronghorn recovery plan revision.

CONCLUSION

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