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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 Vermilion Cliffs 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 northern 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 Vermilion Cliffs and the 26 other (marine) national monuments identified for administrative review.

Vermilion Cliffs 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 Vermilion Cliffs 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. 22,016 (May 11, 2017).

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

PROCLAMATION OF VERMILION CLIFFS 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

VERMILION CLIFFS NATIONAL MONUMENT

President Clinton established the Vermilion Cliffs National Monument (VCNM or Monument) in 2000 with Presidential Proclamation 7374.⁷³ The Monument spans approximately 293,000 acres within Coconino County in northern Arizona. It is managed by the Bureau of Land Management (BLM). In 2008, the BLM developed a Resource Management Plan (RMP).⁷⁴ This management plan provides special desired conditions and management actions is intended to protect monument objects, special status wildlife, and other natural resources. The Monument also has a National Landscape Conservation System science plan.

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., 66 Fed. Reg. 7354 (2000).

⁷⁴ Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February.

A recent assessment analyzed ecological values of the VCNM by mapping and comparing a random sample of equivalent size areas in the region.⁷⁵ This science-based analysis found the Monument ranked high in ecological intactness at 92 percent, 80 percent at climate resilience, and 90 percent in ecological connectivity. Rarity-weighted species richness scored at 84 percent.

VCNM contains a wide range of unique biodiversity preserved by its remoteness and lack of travel corridors. The vegetation within the Monument ranges from cold desert flora to warm desert grasslands and is home to the threatened Welsh's milkweed. Although rain and water sources are limited, mammals, amphibians, and reptiles are abundant throughout. Over 20 raptor species have been seen in the Monument including the reintroduced endangered California condor. A variety of fish species also occur within the Paria River. The Monument is home to over 500 plant species.

The designation of Vermilion Cliffs 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.”⁷⁶ Indeed, the Monument Proclamation describes in great factual detail the diversity of qualifying ecosystem types and natural and scientific features found within the monument boundaries. The facts demonstrate that President Clinton designated the land necessary to protect the diversity of ecosystems found within the Monument.

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

Ecosystems

Some of the VCNM’s dominant ecosystems include pinyon-juniper, sagebrush, and desert grassland communities. And, though sparse and small in area, the Monument’s riparian systems are among the most important for wildlife.

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

Riparian Areas

Riparian areas in the VCNM include the Paria River and a few springs, the largest of which are Badger, Soap, and Lowry springs. Along with Wrather Riparian Area, these are all considered “priority riparian areas” in the VCNM RMP. The Paria River provides aquatic habitat for at risk fishes such as the flannelmouth sucker, desert sucker, and speckled dace. Surrounding vegetation of cottonwood trees, willows, rushes and sedges, and other plants provide important sheltering and perching habitat for wildlife. Some other imperiled species associated with the Monument’s riparian areas include the endangered southwestern willow flycatcher, Lucy’s warbler, and common black hawk.

Great Basin Sagebrush Shrubland

These ecosystems are dominated by sagebrush species. Other shrubs, such as ephedra, are typically prevalent as are various bunchgrass species. Examples of some of the wildlife that can be found in this ecosystem on the VCNM includes black-throated sparrows, Brewer’s sparrows, burrowing owls, gray flycatchers, lark sparrows, loggerhead shrikes, long-billed curlews, sage sparrows, sage thrashers, and vesper sparrows. The VCNM management plan contains several provisions to maintain and restore sagebrush communities for wildlife, including the following desired condition that emphasizes the importance of large patches on continuous habitat, “[s]agebrush communities will include large, continuous blocks (>300 acres) of unfragmented sagebrush habitat, including mosaics of open to moderate shrub canopy cover (5 to 25%) and multiple age and height classes to benefit sage-dependent species.”⁷⁷

Great Basin Pinyon-Juniper Woodlands

Some of the wildlife that occurs in the Monument associated with pinyon-juniper woodlands includes American kestrel, Coopers hawk, juniper titmouse, mule deer, northern goshawk, pinyon jay, red-tailed hawk, and sharp-shinned hawk. The RMP recognizes the importance of managing for a mosaic of habitat patches, for example,

Healthy, diverse woodland communities will consist of a mosaic of trees, shrubs, grasses, and forbs. Mosaic patches can include stands of young and old pinyon-juniper, openings, wet meadows, seeps, and other interspersed shrub habitats. The communities will be composed of a variety of different height structures and age classes, with a thriving understory community of native grasses, forbs, and shrubs.⁷⁸

⁷⁷ Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February. p. 2-18.

⁷⁸ Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February. p. 2-19.

Management actions aimed at benefiting Monument objects and wildlife include provisions to restore pinyon-juniper habitat.

Colorado Plateau Transition Ecological Zone

This ecosystem is characterized by sparse vegetation of shrubs, forbs, and bunchgrasses. A small sampling of native plant species includes blackbrush, fourwing saltbrush, and shadscale, and examples of fauna include desert bighorn sheep, House Rock Valley chisel-toothed kangaroo rat, and peregrine falcon. The RMP for the Monument includes the following desired conditions for this ecosystem, “Management of the Colorado Plateau Transition Ecological Zone plant communities will focus on removing invasive non-native plants, especially cheatgrass and red brome, and preventing habitat degradation.”⁷⁹

Great Basin Desert Grassland

Species such as Cassin’s sparrows, Brewer’s sparrow, and pronghorn are associated with this ecosystem. The ecosystem is dominated by perennial bunchgrasses such as blue grama, black grama, Indian ricegrass, galleta grass, and needle-and-thread grasses. Interspersed shrubs include such species as ephedra, four-wing saltbush, and winterfat. Other forbs, grasses, and shrubs are also part of the ecosystem. The RMP for the Monument includes the following desired conditions for this ecosystem, “[t]he Plains-Grassland Ecological Zone habitats will include a mosaic of grassland and shrub communities, varying age structure, sparse vegetation, scattered to larger expanses of separate grassland or shrub communities, or various mixes of these communities.”⁸⁰

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.⁸¹ Larger areas tend to include a broader diversity of habitats and habitat characteristics and can accommodate more species than smaller areas⁸² and better provide for wide-ranging species

⁷⁹ Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February. p. 2-20.

⁸⁰ Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February. p. 2-21.

⁸¹ 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.

⁸² 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.

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.⁸³ 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.⁸⁴

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.⁸⁵ 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 mortality⁸⁶ 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.⁸⁷ Connecting these habitat cores is also essential: wildlife corridors increase

⁸³ Margules, C.F. and R.L. Pressey. Systematic conservation planning. *Nature* 405: 243-253.

⁸⁴ Margules, C.F. and R.L. Pressey. Systematic conservation planning. *Nature* 405: 243-253.

⁸⁵ 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.

⁸⁶ 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.

⁸⁷ Heller, N.E. and E.A. Zavaleta. 2009. Biodiversity management in the face of climate change: a review of 22 years of recommendations. *Biological Conservation* 142: 14-32.

movement between isolated habitat patches by approximately fifty percent, compared to areas that are not connected by corridors.⁸⁸

The VCNM RMP affirms the importance of minimizing habitat fragmentation and maintaining connectivity to enable wildlife to move easily through the landscape; the RMP includes several desired conditions and actions that address connectivity.⁸⁹ For example the RMP includes the desired conditions “[h]abitat connectivity and wildlife movement between ecological zones will be maintained” and [f]ences will be wildlife passable...⁹⁰

The RMP includes the following management actions for special status raptors, “[h]abitats will be managed for large, contiguous blocks, rather than for small fragmented areas. Connectivity to currently isolated suitable sites will be enhanced.”⁹¹ Actions for special status birds that are riparian-dependent, the southwestern willow flycatcher specifically, include, “[m]anagement will aim for large, contiguous blocks of habitat rather than for small fragmented areas. Connectivity to currently isolated suitable sites will be enhanced. The use of buffer zones between riparian habitats and adjacent upland areas will be encouraged.”⁹² The following is a management action to benefit yellow-billed cuckoos,

Large, contiguous blocks of habitat (>15 ha) will be managed in conjunction with removal of competing exotic species (i.e. salt cedar). The use of buffer zones between riparian habitats and adjacent development will be encouraged. Corridors between— islands of suitable habitat will be established to allow natural dispersal and recolonization of historic habitats.⁹³

The Science Plan for the Monument aims to “[r]esearch into understanding wildlife connectivity and movement between VCNM and other landscapes.”⁹⁴ Not only has the California condor lost a

⁸⁸ 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.

⁸⁹ Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February.

⁹⁰ Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February. p. 2-24.

⁹¹ Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February. p. 2-36.

⁹² Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February. pp. 2-37, 2-41.

⁹³ Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February. p. 2-42.

⁹⁴ Bureau of Land Management. 2014. Vermilion Cliffs National Monument Science Plan. August.

significant portion of its habitat, but remaining habitat often has no connectivity to other patches of habitat suitable for foraging, nesting, and roosting.⁹⁵

Intactness

VCNM lies within the Colorado Plateau ecoregion and was thus included in the Rapid Ecoregional Assessment (REA) completed by the Conservation Biology Institute as part of the BLM's landscape approach to planning.⁹⁶ One important landscape characteristics measured and mapped in the REA is landscape intactness. As defined in the REA,

Intactness 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.

Therefore, areas with high intactness scores are particularly important for wildlife habitat. The Monument has one of the highest overall levels of intactness of the entire ecoregion, with most the area scoring “very high” and the rest of its area scoring “high” or “moderately high.”

The Designation of Vermilion Cliffs 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.

Despite sporadic rainfall and widely scattered ephemeral water sources, the monument supports a variety of wildlife species. At least twenty species of raptors have been documented in the monument, as well as a variety of reptiles and amphibians. California condors have been reintroduced into the monument in an effort to establish another wild population of this highly endangered species. Desert bighorn sheep, pronghorn antelope, mountain lion, and other mammals roam the canyons and plateaus. The Paria River supports sensitive native fish, including the flannelmouth sucker and the speckled dace.⁹⁷

⁹⁵ U.S. Fish and Wildlife Service. 2013. California Condor (*Gymnogyps californianus*) 5-year Review: Summary and Evaluation. USFWS, Pacific Southwest Region. June.

⁹⁶ Bryce, S.A., J.R. Strittholt, B.C. Ward, and D.M. Bachelet. 2012. Colorado Plateau Rapid Ecoregional Assessment Report. Prepared for the U.S. Department of the Interior, Bureau of Land Management, Denver, Colorado.

⁹⁷ Proclamation No., 66 Fed. Reg. 7354 (2000), 69228.

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.

Additionally, the BLM did not designate Coyote Valley Area of Critical Environmental Concern (ACEC) in its final plan decision. The ACEC was intended to provide species protection for the Paradine pincushion cactus (known alternatively as the Kaibab pincushion cactus). The Proposed Plan and Final Environmental Impact Statement states, “[m]onument status provides protection for this cactus and the ACEC designation is not necessary.”⁹⁸

At-risk Species

The VCNM management plan recognizes that an array of wildlife and plant species that occur within or otherwise use the Monument are at-risk and require special management to become viable and to recover. The RMP includes provisions such as the protection of caves, which benefits bats species that roost in caves. Several at-risk bats are known or occur on the Monument or believed to occur there such as the spotted bat, Allen’s big-eared bat, small-footed myotis, and fringed myotis—all BLM sensitive species. Restoration of terrestrial and riparian vegetation to benefit uncommon, rare, and special status species; and the removal of noxious weed control, riparian area restoration.

Special status species include species listed under the Endangered Species Act (ESA), addressed in the section below, BLM sensitive species, migratory birds, and others. A few examples of BLM sensitive species are the speckled dace, western burrowing owl, Houserock Valley chisel-toothed kangaroo rat (an endemic species), chuckwalla, and northern sagebrush lizard. The U.S. Fish and Wildlife Service recognizes 32 migratory birds that use the Monument for stopover or seasonal habitat. Some of these include Bell’s vireo, Bendire’s thrasher, Calliope hummingbird, Grace’s warbler, and olive-sided flycatcher.⁹⁹ The VCNM proclamation notes 20 raptors species that occur in the Monument, and the management plan considers raptors as special status species, for example, sharp-shinned hawk, Coopers hawk, American kestrel, and red-tailed hawk. Priority special status raptors include bald eagle, burrowing owl, California condor, common black hawk, ferruginous hawk, Mexican spotted owl, northern goshawk, and peregrine falcon.¹⁰⁰ Other at-risk and special status species include the yellow-breasted chat, common black hawk, Lucy’s warbler, Brewer’s sparrows, loggerhead shrike, long-billed curlew, mule deer, pronghorn, and desert bighorn sheep.

⁹⁸ Bureau of Land Management. 2007. Arizona Strip Proposed Plan and Final Environmental Impact Statement. January. p. ES-14.

⁹⁹ U.S. Fish and Wildlife Service. 2017. Information for Planning and Consultation. Available at <https://ecos.fws.gov/ipac/>.

¹⁰⁰ Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February. p. 2-36.

Species Listed under the Endangered Species Act

The threatened and endangered species listed in the following table are associated with the Monument.¹⁰¹ The VCNM plan includes provisions to protect specific individual species and others that protect the habitat of listed species. We provide a few examples of these species and describe how management under the monument designation can help them recover.

ESA-listed Species with Potential to Occur within the Vermilion Cliffs National Monument		
Common Name	Scientific Name	Federal ESA Status
Utah Prairie Dog	<i>Cynomys parvidens</i>	Threatened
California Condor	<i>Gymnogyps californianus</i>	EXPN
Mexican Spotted Owl	<i>Strix occidentalis lucida</i>	Threatened
Southwestern Willow Flycatcher	<i>Empidonax traillii extimus</i>	Endangered
Yellow-billed Cuckoo	<i>Coccyzus americanus</i>	Threatened
Northern Mexican Gartersnake	<i>Thamnophis eques megalops</i>	Threatened
Humpback Chub	<i>Gila cypha</i>	Endangered
Razorback Sucker*	<i>Xyrauchen texanus</i>	Endangered
Roundtail Chub	<i>Gila robusta</i>	Proposed Threatened
Brady Pincushion Cactus	<i>Pediocactus bradyi</i>	Endangered
Fickeisen Plains Cactus	<i>Pediocactus peeblesianus fickeiseniae</i>	Endangered
Jones Cycladenia	<i>Cycladenia humilis</i> var. <i>jonesii</i>	Threatened
Siler Pincushion Cactus	<i>Pediocactus</i> (= <i>Echinocactus</i> , = <i>Utahia</i>) <i>sileri</i>	Threatened
Welsh's Milkweed	<i>Asclepias welsbii</i>	Threatened
* Designated critical habitat for these species overlaps the monument area.		

California Condor

VCNM is essential for California recovery. The species, once extinct in Arizona, has been bolstered by reintroductions to the Vermilion Cliffs starting in 1996.¹⁰² The Monument RMP includes a range of provisions to support reintroduction and protect the bird and its habitat.

Once abundant across North America, the California condor is now limited to small portions of the western United States. Several factors have threatened and continue to threaten their survival. These include the buildup of microtrash, habitat modification, pesticide ingestion, and lead poisoning. Particularly damaging is habitat loss and degradation which threatens the existence and quality of nesting sites, roosting sites, and foraging habitat. Human encroachment has led to behavioral disturbances and decreases in other species' populations resulting in starvation. In addition,

¹⁰¹ U.S. Fish and Wildlife Service. 2017. Information for Planning and Consultation. Available at <https://ecos.fws.gov/ipac/>.

¹⁰² Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February.

infrastructure such as power lines and wind energy has resulted in high numbers of death. Areas free of infrastructure and human influence are key to their survival. The Vermilion Cliffs offer relatively undeveloped habitat for California condors.

Mexican Spotted Owl

The BLM has selected the threatened Mexican spotted owl as a priority species status species, and the RMP includes desired conditions to contribute to recovery and delisting, have not net loss in the quality or quantity of habitat, and maintain abundant roosting sites, for example.¹⁰³ The RMP includes management actions that specifically pertain to the species such as modifying livestock grazing practices to improve habitat for the owls and their prey and to minimize or eliminate take and also that mitigate impacts of fire suppression activities.¹⁰⁴ Other management actions that pertain to all special status raptors include to manage habitat to maintain and expand the population, follow a policy of “no net loss” of habitat, prioritize occupied habitat for the species over other uses, and monitor population trends and distribution in coordination with Arizona Game and Fish Department, among several other actions.¹⁰⁵

Southwestern Willow Flycatcher, Yellow-billed Cuckoo, and Yuma Clapper Rail

The federally listed southwestern willow flycatcher, yellow-billed cuckoo, and, Yuma clapper rail are all riparian-dependent species. Each species prefers slightly different habitats with the rail seeking dense marshes with cattails, the flycatcher opting for willow-lined banks, and the cuckoo being attracted to cottonwood galleries. The VCNM RMP contains detailed management direction to protect these species and their riparian habitats.

The Monument offers protection for several listed plants that are endemic to the region or have very restricted ranges. The Welsh's milkweed only occurs in small portions of southern Utah and northern Arizona. Siler pincushion cactus populations are restricted to on two counties in Arizona, including Coconino and two counties in Utah. The brady pincushion cactus is endemic to northwestern Arizona. In Arizona, the Jones' Cycladenia is known to occur on only a few sites. The Fickeisen plain cactus also is known to only a few sites in Arizona.¹⁰⁶ The Holmgren milkvetch has a very restricted range in northwestern Arizona and southwestern Utah.¹⁰⁷ The impacts of human

¹⁰³ Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February. p. 2-35.

¹⁰⁴ Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February. p. G-11.

¹⁰⁵ Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February. pp. 2-36, 2-37.

¹⁰⁶ NatureServe. 2017. *Pediocactus peeblesianus fickeseisenaie*. NatureServe Explorer: An Online Encyclopedia of Life [web application]. Version 7.1. NatureServe, Arlington, VA.

¹⁰⁷ NatureServe. 2017. *Astragalus holmgreniorum*. NatureServe Explorer: An Online Encyclopedia of Life [web application]. Version 7.1. NatureServe, Arlington, VA.

threats to these species, such as off-road vehicle use and livestock grazing and trampling, are high to very high, but the monument protection enables management to address and limit such threats.

ESA Listed Plants

The RMP includes many provisions aimed at protecting threatened and endangered and other special status plant.¹⁰⁸ Management desired conditions for special status plants include recovery and no net loss in quantity or quality of habitat. Removing non-native invasive plants is a priority in the RMP. Collection of federally protected plants is not authorized. Recreational activities that degrade habitats of special status plant species' habitats are to be relocated; livestock grazing must be modified to minimized and eliminate disturbance and mortality; restoration activities are prohibited in special status plant habitat unless they are beneficial to the at-risk plant; surface disturbing activities must be limited or reduced. The Science Plan for Vermilion Cliffs National Monument addresses these concerns and states that it will "[c]ontinue inventory and monitoring of special status plant species."¹⁰⁹

Wide-ranging Species

VCNM supports a number of ungulates including the desert bighorn sheep, mule deer, and pronghorn. Wide-ranging carnivores include mountain lions, bobcats, and coyotes. These species need large landscapes and connected habitat for their long-term survival.

Mule deer, pronghorn, and desert bighorn sheep, which are a vulnerable species in the state of Arizona, are all landscape species that rely connected habitat areas to make seasonal movements. Crucial mule deer winter range is provided on Buckskin Mountain and prioritized for protection within the management plan. Bighorn sheep habitat areas, including the Paria – Vermilion Cliffs habitat area, are prioritized within the management plan.

The Monument management plan emphasizes the role of predators, such as mountain lions, in maintaining the integrity of plant and animal communities. Large predators also require large, intact areas due to their territorial natures and extensive home ranges. Protection under monument designation enables a management system that can address and mitigate conflicts that can develop between human uses and predators. The VCNM management plan stresses human/wildlife coexistence and conflict avoidance and resolution.

CONCLUSION

Vermilion Cliffs 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

¹⁰⁸ Bureau of Land Management. 2008. Vermilion Cliffs Approved Resource Management Plan and Record of Decision. Bureau of Land Management, Arizona Strip Field Office. February.

¹⁰⁹ Bureau of Land Management. 2014. Vermilion Cliffs National Monument Science Plan. August.

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.