

**To:** Foss, Scott[sfoss@blm.gov]  
**From:** Polly, P. David  
**Sent:** 2017-03-30T15:00:27-04:00  
**Importance:** Normal  
**Subject:** Re: Executive Order, Promoting Energy Independence  
**Received:** 2017-03-30T15:03:09-04:00

ESP is a good trait for someone in your job. I'll see if we can schedule you for the very end of the meeting Sunday morning, which will be followed by lunch and departure. I'd probably be glad to have a ride to the Pentagon (not something I ever thought I'd say, but then again there was never an Irish Pub promised at the Pentagon either).

On 30 Mar 2017, at 1:14 PM, Foss, Scott <[sfoss@blm.gov](mailto:sfoss@blm.gov)> wrote:

ESP. Kenshu needed the update this week. Thought you might postpone the meeting to have it during the Science March.

If you schedule me for late on Sunday I could drive up to three people to Pentagon/Crystal City/National Airport when we're done. There's an Irish pub at the Pentagon City Mall, just one stop from the airport. I usually tell people to stage there instead of waiting at the airport.

S

Scott E. Foss, PhD  
BLM Senior Paleontologist  
20 M St. SE, Suite 2134, Washington, DC 20003  
[sfoss@blm.gov](mailto:sfoss@blm.gov), 202-912-7253

On Thu, Mar 30, 2017 at 12:24 PM, Polly, P. David <[pdpolly@indiana.edu](mailto:pdpolly@indiana.edu)> wrote:

Let me see what I can arrange.

Did I say (or do you know through ESP) that the midyear meeting dates are Apr 7-9?

On 30 Mar 2017, at 11:49 AM, Foss, Scott <[sfoss@blm.gov](mailto:sfoss@blm.gov)> wrote:

(b) (6) but I am available any time on  
Sunday.

S

On Thu, Mar 30, 2017 at 11:37 AM, Polly, P. David <[pdpolly@indiana.edu](mailto:pdpolly@indiana.edu)> wrote:

would you have time to come out to Bethesda on saturday or sunday AM? giving the executive committee a chance to talk to you about paleo issues and any changes that might be forthcoming could be quite valuable. we're drawing up the agenda now but surely I can fit you in whenever you can come.

On 30 Mar 2017, at 11:34 AM, Foss, Scott  
<[sfoss@blm.gov](mailto:sfoss@blm.gov)> wrote:

I wrote a more detailed summary that Kenshu will forward to you as part of the mid year meeting update.

BTW. Let me know if you want me to do anything, Q&A, etc.

S

On Thu, Mar 30, 2017 at 11:04 AM, Polly, P. David <[pdpolly@indiana.edu](mailto:pdpolly@indiana.edu)>  
wrote:

it's the year for overload.... thanks!

On 30 Mar 2017, at 11:02 AM, Foss,  
Scott <[sfoss@blm.gov](mailto:sfoss@blm.gov)> wrote:

I don't mean to overload you, but the Yoo & Gaziano analysis is out today. It contradicts the Arnold & Porter conclusion. (attached)

S

On Thu, Mar 30, 2017 at 9:18 AM, Foss, Scott <[sfoss@blm.gov](mailto:sfoss@blm.gov)>  
wrote:

Good observation.

On Thu, Mar 30, 2017 at 9:16 AM, Polly, P. David  
<[pdpolly@indiana.edu](mailto:pdpolly@indiana.edu)> wrote:

The Secretary moves faster on energy than on fossil protection! Thanks for the pointer.

On 30 Mar 2017, at 9:13  
AM, Foss, Scott  
<[sfoss@blm.gov](mailto:sfoss@blm.gov)> wrote:

This Secretarial Order (3349) goes along with the EO on "Energy Independence"  
that was signed on Tuesday. It sort  
of completes the set.

S

On Thu, Mar 30, 2017 at 8:18 AM, Foss, Scott  
<[sfoss@blm.gov](mailto:sfoss@blm.gov)> wrote:

Hi David,

I sent Kenshu a list of bills (with links) in the 115th Congress that, if enacted,  
could affect paleo resources.  
Many of those could have  
implications for Bears Ears. This  
EO is about energy extraction,  
but it does call for actions to be  
lawful, so I don't think it would  
directly affect work in  
monuments, but would definitely  
affect paleontological resources  
outside and near monuments.  
Extraction activities put pressure  
on paleo resources, but also  
provide the opportunity to  
discover and access paleo  
resources (when we have the  
ability to be part of the process).

With respect to Bears Ears there is an interesting conversation going on right now  
(see two articles, one appended,  
one attached).

S

AN E&E NEWS PUBLICATION

NATIONAL MONUMENTS

Grijalva baits Bishop on Antiquities Act

**Jennifer Yachnin, E&E News reporter**

*Published: Wednesday, March 29, 2017*

Arizona Rep. Raúl Grijalva, the top Democrat on the House Natural Resources Committee, is challenging Chairman Rob Bishop to introduce legislation to Antiquities Act, accusing the Utah Republican of attempting to dismantle national monuments via "a behind-the-scenes legal strategy."

In a statement issued yesterday, Grijalva took aim at his counterpart, who is a vocal critic of the 1906 law that allows presidents to designate land as monuments to protect objects of historic or scientific interest.

Along with other members of Utah's all-GOP delegation, Bishop has argued the Antiquities Act can be used both to create and dismantle such sites, including the 1.35-million-acre Bears Ears National Monument in southeast Utah.

Both Bishop and Sen. Mike Lee (R-Utah) are set to speak at an event in Washington, D.C., tonight hosted by the Pacific Legal Foundation and American Enterprise Institute on that subject.

The event, titled "Presidential Authority to Revoke or Reduce National Monuments Designations," will focus on a new paper by AEI legal scholar John Yoo and Michael J. Kazarian.

In his statement, Grijalva criticized the GOP-aligned briefing and noted that the Natural Resources Committee has not held a hearing on the status of any monuments since Bishop became chairman in 2015.

"We can disagree about whether our federal lands should be protected or leased to extraction industries, but let's do our jobs and have that debate with our constituents, not behind closed doors," Grijalva said.

Although Bishop has previously sponsored or co-sponsored measures that would allow for new national monuments in Utah or require congressional approval for such actions, he has yet to do so in this session. Bishop did, however, author a change to House rules this year that designates federal land transfers as cost-free ([E&E Daily](#)).

"Chairman Bishop has the power to introduce a bill that puts his ideas into legislation, to discuss its merits and hold a vote whenever he chooses," Grijalva continued. "Rather than trying to convince a small handful of people to support a behind-the-scenes strategy, let's see what happens when he asks our colleagues to vote again on the future of our country's public lands when the cameras are rolling."

A committee spokesman declined to comment on Grijalva's statements.

Although Congress may opt to abolish monuments via legislation, it has declined to do so in the past.

than a dozen times. It has, however, converted about 50 national monuments or preserves ([Greenwire](#), Feb. 8).

While both state and federal GOP lawmakers from Utah have criticized the monument — as well as the older Grand Staircase-Escalante National Monument by President Clinton — their aim has largely been to urge President Trump to rescind designations for those sites or reduce their size.

A handful of monuments have been reduced by previous commanders in chief. To date, no president has sought to undo a monument's status. Conservationists suggest that any move by Trump to reduce a monument's boundaries would face a legal challenge, asserting that the president does not have authority to amend or only to create them.

But in a December [op-ed](#) in *The Wall Street Journal*, published shortly after President Obama designated the Bears Ears site, Yoo and Gaziano argued that because the president has granted power to presidents to create monuments, that means a commander in chief can undo those designations.

"After studying the president's legal authority, we conclude that he can rescind designations — despite the cursory but contrary view of Attorney General Cummings in 1938," Yoo and Gaziano wrote. "While Congress could limit the president's law's text and original purposes strongly support a president's ability to undo his predecessors' abuses."

The duo point to Congress' ability to rescind regulations issued by the executive branch as well as a president's ability to remove appointed officials even after they have been approved by the Senate.

"Similarly, presidents have the constitutional authority to terminate a treaty without their approval; they need Senate advice and consent to make it," Yoo and Gaziano wrote.

The pair's new paper on whether Trump can amend or rescind monuments is embargoed until this evening's event.

But Grijalva pointed to an [analysis](#) published earlier this month by law firm Porter & Porter that argues presidents have not been given authority to undo monuments.

"The Antiquities Act and subsequent legislation reserved to Congress, which has the Constitutional authority over public lands, the sole power to revoke such a designation," the analysis states.

The analysis highlights the Federal Land Policy and Management Act, enacted in 1906, which reserved for Congress "the authority to modify and revoke withdrawals of public lands," while also arguing that removing monuments included in the National Monument System would violate federal laws that prohibit derogation of the park system.

The firm also criticized Yoo and Gaziano's interpretation of the Antiquities Act, stating that allowing a president to rescind a monument would be equivalent to "a usurpation of congressional powers by the Executive Branch."

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E&E News  
122 C Street NW 7th Floor  
Washington, DC 20001  
Phone: 202-628-6500 Fax: 202-628-6501  
[www.eenews.net](http://www.eenews.net)

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Scott E. Foss, PhD  
BLM Senior Paleontologist  
20 M St. SE, Suite 2134, Washington, DC 20003  
[sfoss@blm.gov](mailto:sfoss@blm.gov), 202-912-7253

On Wed, Mar 29, 2017 at 3:15 PM, Polly, P. David  
<[pdpolly@indiana.edu](mailto:pdpolly@indiana.edu)>  
wrote:

Sigh. Among many other questions, do you think this will put pressure on Bears Ears, Grand Escalante, or other areas that have paleo resources?

On 29 Mar  
2017, at 2:49  
PM, Foss,  
Scott  
<[sfoss@blm.gov](mailto:sfoss@blm.gov)> wrote:

Just out today:  
<https://www.whitehouse.gov/the-press->

[office/2017/  
03/28/presid  
ential-  
executive-  
order-  
promoting-  
energy-  
independenc  
e-and-  
economy-1](https://www.whitehouse.gov/the-press-office/2017/03/28/presidential-executive-order-promoting-energy-independence-and-economic)

<Yoo & Gaziano 2017, Presidential  
Authority to Revoke or Reduce National  
Monument Designations.pdf><Yoo &  
Gaziano 2017, Presidential Authority to  
Revoke or Reduce National Monument  
Designations, summary.pdf>