

**To:** Foss, Scott[sfoss@blm.gov]  
**From:** Polly, P. David  
**Sent:** 2017-03-30T16:38:22-04:00  
**Importance:** Normal  
**Subject:** Re: Executive Order, Promoting Energy Independence  
**Received:** 2017-03-30T16:38:35-04:00

doh! that's too bad. No need to phone in I don't think. The real value would just be able to have an in-person conversation about what things look like these days in DOI.

On 30 Mar 2017, at 1:41 PM, Foss, Scott <[sfoss@blm.gov](mailto:sfoss@blm.gov)> wrote:

Oh Fiddlesticks! I was thinking this weekend. I will be in Oregon on April 7 9. I could call in during that time if you like; all things being equal Saturday would be best. The timing would have been perfect for this weekend. C'est la Vie.

S

On Thu, Mar 30, 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&amp;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 repeal the 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 has been 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 that 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. Kaziano.

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 developed for extraction industries, but let's do our jobs and have that debate with our constituents through real legislation," 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 in the 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 discussion, 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 against the president's use of the 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 done so more than a dozen times. It has, however, converted about 50 national monuments into parks or preserves ([Greenwire](#), Feb. 8).

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

A handful of monuments have been reduced by previous commanders in chief. In fact, no president has sought to undo a monument's status. Conservation groups suggest that any move by Trump to reduce a monument's boundaries would be a challenge, asserting that the president does not have authority to amend or abolish 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 the designations — despite the cursory but contrary view of Attorney General Cummings in 1938," Yoo and Gaziano wrote. "While Congress could limit the president's power, the 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 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 was released under an embargo until this evening's event.

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

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

The analysis highlights the Federal Land Policy and Management Act, en  
which reserved for Congress "the authority to modify and revoke withdraw  
monuments," while also arguing that removing monuments included in the  
System would violate federal laws that prohibit derogation of the park syst

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

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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/presi  
dential-  
executive-  
order-  
promoting-  
energy-  
independen  
ce-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>

