

To: Andrew Brown[andrew_brown@fws.gov]; Anissa Craghead (b) (6); Cathy Enoch[Cathy_Enoch@fws.gov]; Krista Holloway[Krista_Holloway@fws.gov]; Marcia Cash[Marcia_Cash@fws.gov]; Michel Bagbonon[michel_bagbonon@fws.gov]; Sara Prigan[Sara_Prigan@fws.gov]; Susan Wilkinson[Susan_Wilkinson@fws.gov]; Tina Campbell[tina_campbell@fws.gov]; Howze, Kim[kim_howze@fws.gov]; Kashyap Patel[kashyap_patel@fws.gov]; Baucum, Madonna[madonna_baucum@fws.gov]
From: Garrity, Katherine
Sent: 2017-07-06T14:27:44-04:00
Importance: Normal
Subject: NATIONAL MONUMENTS Legal experts say shrinking sites illegal;
Received: 2017-07-06T14:28:35-04:00

NATIONAL MONUMENTS

Legal experts say shrinking sites illegal; lobbying heats up

Jennifer Yachnin and Nick Bowlin, E&E News reporters

Published: Thursday, July 6, 2017

Law scholars warned Interior Secretary Ryan Zinke in a letter that the Trump administration can't reduce the number or size of national monuments without sparking lawsuits. Credit: Lance Cheung/Agriculture Department

Interior Secretary Ryan Zinke advocated for an "illegal and unconstitutional action" when he proposed reductions to Bears Ears National Monument last month, according to a new assessment endorsed by more than 120 academics with expertise in environmental, natural resources and administrative law.

The scholars also raised questions over a half-dozen legal issues in President Trump's late-April order mandating a review of dozens of national monuments with an eye toward eliminating or reducing the size of those sites.

The arguments are outlined in a letter submitted today to the Interior Department via the public comment process for its ongoing review of 27 national monuments that includes Bears Ears. The missive is also addressed to Commerce Secretary Wilbur Ross.

"It is beyond question that the proclamations creating the national monuments under review — both the terrestrial monuments and the marine monuments — identify a wealth of unique and precious resources that qualify as 'objects of historic and scientific interest,' throughout the reserved federal lands," says the letter.

It's signed by people including University of Colorado Natural Resources Law Center Director Mark Squillace, University of California Berkeley School of Law professor Eric Biber and UCLA Environmental Law Clinic Co-Director Sean Hecht.

The 75-page submission, which includes supporting materials, notes that while presidents may designate national monuments under the Antiquities Act of 1906, only Congress claims the authority to manage public lands under the Constitution.

"If the new administration believes that those objects and the lands containing them do not warrant protection, or that factors external to the Antiquities Act should be considered in evaluating national monument designations, the administration must turn to Congress for a remedy," the letter says.

When Zinke recommended in an interim report on his review that the Bears Ears monument be sharply reduced from its existing 1.35-million-acre boundaries, he was advocating for an illegal action, the letter added (*E&E News PM*, June 12).

The letter goes on to say that Trump erred in his executive order mandating the review by directing Zinke to consider "a broad range of policy considerations entirely unmoored from the Antiquities Act."

Although Congress could consider issues such as the impact of monument protections on the use of adjacent federal lands or the economic impact of new sites, the Antiquities Act allows a president to consider only the historic, scientific or cultural value of a site, the scholars say. They also note that the 1906 law contains no requirement for public input, although some presidents have sought commentary before designating monuments.

"The President expressed an intent to give power 'back to the states and to the people.' This misunderstands the nature of federal public lands law," the letter adds. "Congress possesses plenary power over federal public lands, managing them on behalf of the American people. Congress has delegated some of its authority to the executive branch, subject to specific processes and constraints. The President and federal land management agencies have no authority to abdicate those responsibilities and give states control over federal lands."

Zinke is scheduled to file a final report with his recommendations on Aug. 24.

Ore. site

Oregon Sens. Jeff Merkley and Ron Wyden released their own missive to Zinke yesterday, in which the Democratic duo once again urged the secretary to refrain from recommending any changes to the Cascade-Siskiyou National Monument.

The 100,000-acre site, which spans Northern California and southern Oregon, was created by President Clinton in 2000 and expanded by President Obama last year.

"We hope that you will consider the diverse public support and the public input process that led to expanding the Cascade-Siskiyou National Monument as you review national monument designations," wrote Merkley, who serves on the Environment and Public Works Committee, and Wyden, who sits on the Energy and Natural Resources Committee.

The letter marks the second plea from the Democratic lawmakers, who in an early May letter to Zinke likewise touted the "extensive public process" that preceded the monument's expansion ([Greenwire](#), May 9).

LCV campaign

The League of Conservation Voters today launched a \$75,000 digital ad campaign to urge Western Republican senators to withdraw their support of Interior's monument review.

With the public comment period on the reviews set to close Monday, the environmental advocacy group is targeting GOP Sens. Dean Heller of Nevada, Jeff Flake of Arizona, and Jim Risch and Mike Crapo of Idaho, who have previously voiced support for the review.

The effort includes social media ads, local Snapchat filters, Spanish-language spots, and ads on the *Arizona Republic* and *Reno Gazette-Journal* websites.

"Senators who support this unprecedented assault on our national monuments are gambling with the future of not just these places, but all of our majestic national parks and monuments," LCV President Gene Karpinski said in a statement.

Each senator hails from a state with at least one reviewed monument: Basin and Range and Gold Butte in Nevada; Bears Ears and Grand Staircase-Escalante in Utah; Craters of the Moon in

Idaho; and Grand Canyon-Parashant, Ironwood Forest, Sonoran Desert and Vermilion Cliffs in Arizona.

The LCV has a separate effort called "Our Lands, Our Vote," intended to flood Interior with pro-monument public comments. According to the group, it has rallied 250,000 comments and intends to reach 300,000 by Monday.

Katherine Garrity
Deputy Division Chief
Audit Liaison Officer and Internal Control Coordinator
Division of Policy, Performance and Management Programs
US Fish and Wildlife Service MS BPHC
5275 Leesburg Pike
Falls Church, VA 22041
703.358.2551