

From: Downey Magallanes
To: laura_rigas@ios.doi.gov; heather_swift@ios.doi.gov; megan_bloomgren@ios.doi.gov
Subject: Fwd: AA EO Information
Date: Sunday, April 23, 2017 9:09:01 PM
Attachments: [ATT00001.htm](#)
[Path Forward \(4\).docx](#)
[AA Summary and Talkers.docx](#)
[ATT00002.htm](#)
[DOI National Monuments Data Call - Response 3.31.17.xlsx](#)
[ATT00003.htm](#)

Sent from my iPhone

Begin forwarded message:

From: "Magallanes, Downey" <downey_magallanes@ios.doi.gov>
Date: April 22, 2017 at 6:16:33 PM EDT
To: "Catanzaro, Michael J. EOP/WHO" (b) (6)
Subject: AA EO Information

Call me with questions. I am going to an engagement party but will have my phone.

Attached:

1. Options for an EO (you have seen this). Just a reminder.
2. Summary and Talkers tailored to Option #3. Some data/factoids hyperlinked throughout document. I gave you more info on GSENM since probably more difficult to pull information up on. BENM is pretty universally recognized/well known don't think you need much more here.

Also FYI- the Offshore EO calls for a review of marine monuments designated in the last 10 years. Do you want to exclude those from this one so we can just focus on it during that review- assuming we can look at commercial fishing in that review as well as offshore oil activities. If not we could be duplicating with Commerce here. If you decide to do that you may want to strike all the references here to federal waters.

3. Excel spreadsheet of every monument designated, either under AA or by Congress. Compiled by career staff here. It has ALOT of data, but you can sort by acres, time period, authority designating, etc. That's how I got the 188 number- which may be too specific for your purposes in talking points.

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Background

Antiquities Act

- The Antiquities Act gives authority to the President to designate monuments on federal lands that contain objects of historic, cultural or scientific interest.
- The one qualifier in the language of the act is that in designating a monument, the President is to reserve “*the smallest area compatible* with the proper care and management of the objects to be protected”.
- The President’s authority is singular; there is no requirement for public input before the designation of a monument. There is also no NEPA requirement.
- Since 1990, there have been about 188 or so monuments established or expanded under the Antiquities Act (see attached excel spreadsheet).

Legal Authority

- Courts have consistently upheld the President’s wide discretion in designating monuments.
- The language of the Antiquities Act only speaks to the President’s authority to designate a monument, it is silent on the President’s authority to modify or rescind a monument.
- In 1938, the then Attorney General (Homer) wrote an opinion that relied on this silence to conclude that the President has no authority to rescind a previous designation of a monument.
- No President has ever attempted to rescind a monument, so AG Homer’s opinion has never been tested.
- This opinion has recently been called into [question](#) by legal scholars, who have argued that the President has implied authority to rescind a monument, especially when it was designated on faulty legal foundations (ex: is not the smallest area compatible with protecting the objects of significance).
- Many Presidents have modified the boundaries of an existing monument, and this activity has been generally upheld by the courts.

Implications of Monument Designations

- The existing federal land designated as a National Monument retains the character and ownership of the land after designation
- For example, a monument designated on National Park Service (NPS) land remains NPS land after the designation and continues to be managed by NPS.
- As such, there are monuments on land operated by the NPS, the Bureau of Land Management (BLM), the Fish and Wildlife Service, the Forest Service, and the National Oceanic and Atmospheric Administration.
- After a monument is designated, the overriding land management goal becomes to protect the objects described in the proclamation designating the monument.
- This is especially problematic on BLM lands, which are otherwise managed under a multi-use philosophy.
- Designation of a monument restricts or outright prohibits activities or uses that are not “consistent” with the protection of the objects.

- This can include leasing, mining, timber harvesting, grazing, use of motorized transportation, and the construction of infrastructure.
- In recently designated marine monuments, commercial fishing is prohibited.

Abuse of the Antiquities Act

- President Obama unilaterally designated more areas of land and water (over [265 million](#)) than any previous President.
- This was often done over the opposition of states, counties and local leaders.
- The designations of the Grand Staircase-Escalante National Monument (GSENM) in 1996 and the Bears Ears National Monument (BENM) in 2016 represent the book-ends of modern Antiquities Act overreach.
- President Clinton’s designation of GSENM marked the first time a monument was designated on BLM land, and was called the “mother of all land grabs” [by](#) Senator Hatch, at 1.7 million acres.
- Garfield county in Utah has stated that GSENM [hurt](#) the county by causing a decrease in personal and per capita income, a drop in school enrollment, and an exodus of some residents.
- The monument locked away access to low-sulfur coal in the Kaiparowitz region as well as oil. Senator Hatch stated at the time that the coal reserves were valued at over \$[1 trillion](#).
- In 2016, President Obama designated the 1.3 million acre BENM over significant opposition from Utah local elected officials, the state legislature, the Governor, and the Congressional delegation.

Talking Points

This country has many significant objects of cultural, historical, and scientific value that should be protected for the benefit and enjoyment of the public.

But that shouldn't come at the expense of valuable economic activity that provides tangible benefits through increased wages and reduced costs of goods for families and workers.

That's why when the Antiquities Act was passed in 1906, the Act said that when designating a monument, the President should choose a boundary that is the smallest area necessary to protect the objects of significance.

Especially over the past 20 years, the designation of monuments have locked up millions of acres of economically productive land and waters.

The onerous restrictions resulting from monument designations have taken energy development, timber harvesting, grazing, the construction of infrastructure, and even commercial fishing off the table on federal lands and waters.

This has hurt families and workers in the counties and local areas in or near the monuments, counties that in many cases are some of the most impoverished in the country.

Monuments should only be designated in the absolute smallest geographic area necessary for the protection of important resources.

The local communities most directly impacted by the monument deserve to have a voice in what happens to the lands they rely on the most.

I have heard from states and local leaders that in some cases the designations of monuments have resulted in lost jobs, reduced wages, and residents moving away.

That's why I am asking for a review of all the monuments designated in the last 20 years, to see what changes can be made and to actually give states and local communities a say in this process.