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NATIONAL MONUMENTS

Fans of abolishing sites aim to build on past examples

Jennifer Yachnin, E&E News reporter

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Col. William F. "Buffalo Bill" Cody, center, and others visited Spirit Mountain Cave in 1909. Photo courtesy of Wyoming State Archives and Wyoming Geological Survey 1979.

More than 1,100 people make their way up Cedar Mountain in Wyoming each year, trekking 3 miles west of Cody and up a gravel road to explore the expansive Spirit Mountain Cave.

While spelunkers might appreciate the limestone cavern for both its beauty and its solitude — it's accessible only after securing a permit from the Bureau of Land Management and submitting a \$20 deposit to unlock the facility's gate — Congress might have more interest in the site's historical lessons.

The cave claims a status as one of the first national monuments to be created in the wake of the Antiquities Act of 1906, as well as one of the few to be formally abolished by Congress and transferred to state ownership, in 1954. But the land eventually made a round trip two decades later back to federal status — though not as a national monument.

Along the way, the 210-acre site changed its name from Frost Cave, in honor of the rancher who discovered it, to Shoshone Cavern National Monument and now to Spirit Mountain Cave.

"It turns out these monuments are quite popular even in the states where some of the

politicians object," said University of Colorado Law School professor Mark Squillace, who has studied the Antiquities Act.

Previous attempts to change monuments — including an unwanted harbor island in South Carolina and iconic Western areas wanted for grazing or timber — show there's no easy path for proponents of either abolishing them or simply amending their boundaries.

As Utah's state government, its congressional delegation and the Trump administration contemplate whether and how to reverse former President Obama's designation of the 1.35-million-acre Bears Ears National Monument in southeast Utah, there is relatively little precedent to rely on.

Congress itself has abolished fewer than a dozen national monuments — typically small sites like Spirit Mountain Cave that have been returned to state ownership or transferred to other agencies — and converted the status of another 50-odd monuments to national parks or preserves.

"Congress has never reversed a decision on a major national monument. That seems to suggest that there really isn't much appetite in the Congress for reversing these things once they are dedicated," Squillace said.

It may be that reluctance on Capitol Hill that has prompted House Natural Resources Chairman Rob Bishop (R-Utah) and his fellow legislators as well as the state Legislature to urge President Trump to undo the Bears Ears designation, as well as to shrink the boundaries of the state's Grand Staircase-Escalante National Monument.

"The fact that you can modify a monument, that's OK, means you can also just rescind a monument," Bishop told E&E News late last year, before Bears Ears was announced ([E&E News PM](#), Nov. 17, 2016).

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Early cave explorers pose in the main passage of Spirit Mountain Cave. Photo courtesy of Wyoming State Archives and Wyoming Geological Survey 1979.

But conservationists and some legal observers dispute that notion, asserting that the Antiquities Act does not give presidents that kind of authority. To date, no president has attempted to abolish a monument designation made by his predecessor, an action that would likely become entangled in legal challenges.

"There's really no precedent for a president abolishing a monument," said former Interior Department Deputy Solicitor for Land Resources Justin Pidot, who is now an associate professor at the University of Denver Sturm College of Law.

Both Pidot and Squillace pointed to an opinion then-Attorney General Homer Cummings issued in 1938 in response to whether President Franklin Roosevelt could abolish a monument designated by former President Coolidge.

In that decision, Cummings found that there was no statutory authority to revoke a monument, and that because such designations are equivalent to an act of Congress, only lawmakers could abolish a monument.

"The Antiquities Act explicitly delegates to the president the authority to proclaim a national monument but says nothing about revocation or modification," Squillace said. "There's a good policy reason for this, as well. The point of the Antiquities Act is to protect lands that have some sort of historic or scientific interest that the president thinks are worthy of protection."

The handful of monuments abolished by Congress itself include the one targeted by Roosevelt that prompted the 1938 opinion.

The former Castle Pinckney National Monument, a fort built in 1810 in the harbor of Charleston, S.C., gained its monument status in 1924. The 3.5-acre site was abolished by Congress in 1956 and transferred to South Carolina, where it was later purchased by the South Carolina Ports Authority.

News reports indicate that the dilapidated structure, which is not open to the public, was sold in 2011 to a local chapter of the Sons of Confederate Veterans for a nominal sum of \$10.

Boundary changes

Trump could, however, opt to rein in the boundaries of any national monuments — since the Antiquities Act requires only the "smallest area compatible with the proper care and management of the objects to be protected."

One of the most prominent examples of presidential reductions can be found in Washington state.

President Theodore Roosevelt designated the Mount Olympus National Monument there in 1909, but it faced three rounds of reductions before its conversion into Olympic National Park in 1938.

The largest of those cuts reduced Mount Olympus by nearly half its acreage.

According to National Park Service records, that cut occurred in 1915, when then-President Wilson reduced the monument by more than 313,000 acres as "an urgent need for timber supplies, including spruce for airplane construction," arose with the advent of World War I.

"It was very controversial, but it was never challenged in court," said Squillace, who cited the Mount Olympus boundary amendments as the best-known monument changes. Olympic

National Park contains around 923,000 acres.

Similarly, Franklin Roosevelt in 1940 slashed the Grand Canyon II National Monument by about one-quarter of its original size, nearly 72,000 acres. Squillace noted that the reduction was "done almost certainly at the behest of the grazing industry."

The monument would be redesignated as Grand Canyon National Park in 1975.

"There are interesting legal arguments about whether these are appropriate modifications," he added.

A Congressional Research Service report on monument modification notes that the Muir Woods National Monument in California has similarly undergone repeated boundary changes — as four presidents enlarged the site between its 1908 founding and 1959.

But a boundary reduction — whether at Bears Ears or Grand-Staircase Escalante — would likely prompt a lawsuit against the Trump administration, Pidot asserts.

"The president lacks authority to adjust a boundary if, in so doing, an object of scientific or historic interest that was included in the public proclamation would be outside the boundary of the monument," he said.

Critics of the Bears Ears monument, including Utah House Speaker Greg Hughes (R), have questioned the designation's protection of animals including skunks and its stated desire to protect "natural and quiet, deafening silence" ([*Greenwire*](#), Feb. 1).

Pidot acknowledged that defending the designation could be an "uphill battle" compared with changes to a boundary.

Still, he added: "That part of the world is full of cultural and historical resources all over the place, and the president's proclamation identifies a wide range of sites that are throughout the area. Anything other than a very surgical and limited modification of the boundary is inevitably going to leave some site that was inhabited thousands of years ago or continues to have spiritual significance to the tribes out of the boundary. That's where the most aggressive legal challenges are going to be brought."

Such challenges could include tribes who have been given a role in the Bears Ears Commission to advise the Interior Department on the monument's management ([*E&E News PM*](#), Jan. 30).

"The thing to me about Bears Ears that is so special ... is that it's the first time where tribes that have inhabited that landscape for generations upon generations were both so strongly seeking protection for their cultural and sacred sites and given an important advisory role in the way the federal government is going to manage these sites going forward," Pidot added. "I think it would be a real loss for a monument that in some sense is trying to change the dynamic between the federal government and tribes."

Conversion to parks

While more than 50 former national monuments have been converted to national parks, national historical parks or national preserves, those shifts tend to ruffle fewer feathers, explained former National Park Service Chief Historian Bob Sutton.

A spate of modifications to monuments in the 1970s and 1980s sought to address sites established in some cases before NPS itself was created in 1916.

The sites "had no money, no administration, nothing. They were designated, but beyond that there was no real mechanism to manage or fund any of these sites," he said.

Recent conversions include the First State National Historical Park in Delaware and the Oregon Caves National Monument and Preserve.

The former spent a little more than a year as a national monument before Congress approved its new status in fall 2014, while the Oregon Caves National Monument was first created in 1909.

Still, while national monument status generally prohibits new mineral leasing or extraction and limits road construction, Sutton said national park status can offer even more safeguards to public lands.

"Generally, they're far more protected, and there's usually a budget for NPS units as opposed to national monuments," Sutton said, noting that parks are typically created with both a fee boundary and a congressional boundary to allow NPS to purchase additional lands.

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