

To: Caroline Boulton[caroline_boulton@ios.doi.gov]
From: Ryan Zinke
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monument review summary 21 AUG.docx

Congress delegated to the Executive branch the power to designate a monument under the antiquities act signed in 1906. The Act authorizes the President singular authority to designate "objects of antiquity" as a monument without public comment, environmental review or further consent of Congress. Given the extraordinary executive power, Congress wisely placed limits on the executive by defining an object as being "cultural, prehistoric, or of scientific interest", restricting the authority to federal lands, and limiting the size of the monument to "the smallest area compatible with the protection of the object." Congress retained the authority itself to designate monuments without such limitations. Even with the restrictive language, use of the act by Presidential proclamation has not always been without controversy. In fact, Theodore Roosevelt's first proclamation of the roughly 1200 acre "Devil's Tower" in Wyoming was met with widespread opposition. Since that time, the use of the Antiquities Act has largely been viewed as an overwhelming American success story and today includes over 200 of America's greatest treasures. More recently, however, the Act's executive authority again under scrutiny as administrations have expanded both the size and scope of monument designation. Since 1996 alone, the antiquities Act has been used by the executive branch 27 times to create monuments that are over 100 thousand acres or more in size and include private property within the boundaries. Monument "objects of antiquity" have been expanded to include landscapes, biodiversity, and view sheds and features such as World War II desert bombing craters and "emptiness" have been included in supporting proclamations. The responsibility of protecting America's public lands and unique antiquities should not be taken lightly and neither should the authority and the power granted to a President under the Antiquities Act. It is Congress and not the President, that has the authority to designate monuments outside of the narrow scope of the Antiquities Act and only Congress retains the authority to enact public land designations such as Parks, wildernesses, Conservation and recreation Areas, and wildlife refuges. The executive power under the Antiquities is not a substitute for a lack of Congressional land designation action. No President, has the authority either to create or rescind a monument outside of the scope and intent of the Antiquities Act.

President Trump was correct in signing an executive order tasking the Secretary of Interior to review and provide recommendations of all monuments that were designated from 1996 to present that are 100,000 acres or greater in size. This is far from the first time an examination of scope of monuments has been conducted. Existing monuments have been modified by successive Presidents and Congress 18 times in the past and there is no doubt that President Trump has the authority to review and consider recommendations to modify or add a monument.

The review found that each monument was unique in terms of object(s) used for justification, proclamation language, history, management plans, economic impact, and local support. Adherence to the Act's definition of an "object" and "smallest area compatible" clause on some monuments were either arbitrary or likely politically motivated and boundaries could not be supported by science or reasons of practical resource management. Despite the lack of compliance to the law, some monuments reflect a long public debate process and are largely settled and strongly supported by the local community. Other monuments remain controversial and contain significant private property and other federal land designations such as National Forests, WSAs, monuments, and lands set aside by Congress for timber harvest. Inclusion of other Federally designated lands such as a Wilderness Study Area (WSA) that have more stringent environmental protections may establish the potential precedent of being able to reduce protections that are in conflict with Wilderness Act. Public comments, however, could be divided into two principle groups. Proponents tended to promote monument designation as a mechanism

to prevent the sale or transfer of public land. This narrative is false and has no basis of fact. Public lands within a monument are federally owned and managed regardless of designation or not. Proponents also point to the economic benefits from increased tourism from monument recognition. On this point, monument status has a potential economic benefit, particularly to service related industries, outdoor recreation industries, and other businesses dependent or supported by tourism. Of note is increased visitation also places an additional burden and responsibility on the federal government to provide additional resources and manpower. Public comments received were overwhelming in favor of maintaining existing monuments and demonstrated a well-orchestrated national campaign organized by multiple organizations. Opponents primarily supported rescinding or modifying the existing monuments to protect traditional multiple use and those most concerned were most often local residents associated with industries such as grazing, timber harvest, mining, hunting and fishing, and motorized recreation. Opponents point to other well documented cases where monument designation has resulted in reduced public access, road closures, hunting and fishing restrictions, multiple and confusing management plans, reduced grazing allotments and timber harvest, and pressure applied to private land owners in or adjacent to a monument to sell.

General recommendations include requesting from Congress three actions. The first is to request Congress consider tribal co-management of specific monuments and lands where the "object" is cultural artifacts and contain areas of tribal ceremony and ritual importance. The second request is Congress review larger scale monuments to determine whether lands contained within the monument are more appropriately placed within the National Park System or other public use designation. Thirdly, request Congress clarify the limits of executive power under the Antiquity Act and the intent of Congress pertaining to land use management intention when a monument is placed over another other federal land use designation.

Specific comments and recommendation pertaining to individual monuments are as follows

The methodology used for the review consisted of three steps. The first step was to gather the facts and included the examination of existing proclamations, "object(s) to be protected, segregation of the objects if practical to meet the "smallest area compatible" requirement, boundaries and land uses within the monument, public access and authorized traditional use, appropriate environmental and cultural protections, and to ensure the use of science and best practices management. As directed by the President, the second step was to ensure that the local voice was heard by holding meetings with local, state, tribal, and other elected officials as well as meetings with special interest groups and providing an online format for public comment. The final step was to review to include public access policy, hunting and fish rights, solicitor opinions, legal documents, traditional use, economic and environmental impacts, potential legal conflicts, and provide a report to the President no later than August 24, 2017.