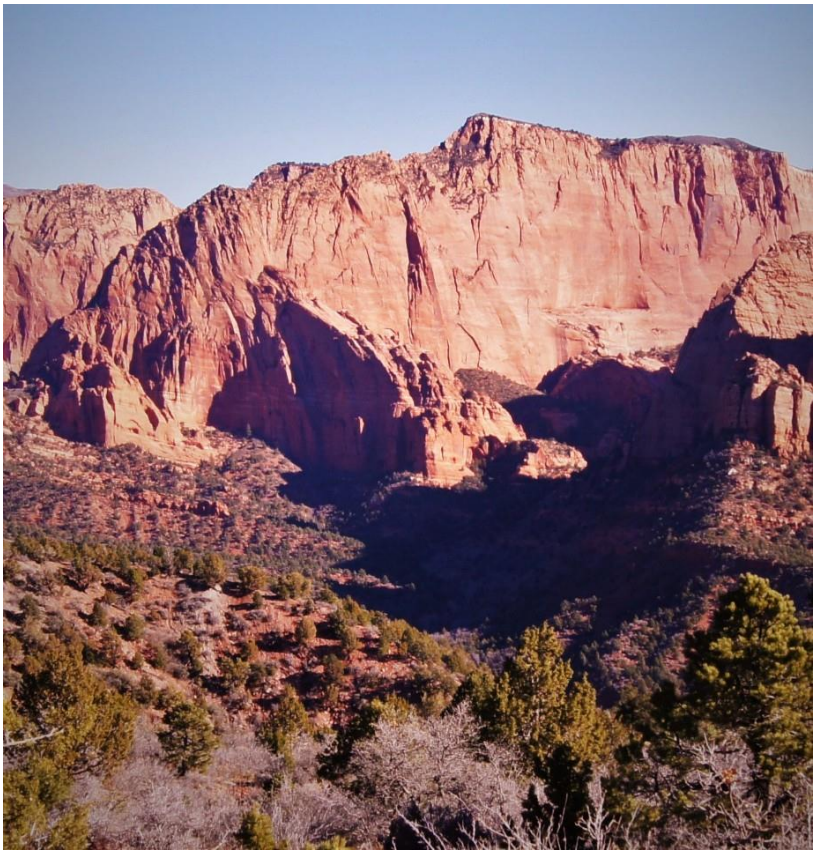

PRESIDENTS LACK THE AUTHORITY TO ABOLISH OR DIMINISH NATIONAL MONUMENTS

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Introduction

By any measure, the Antiquities Act of 1906 has a remarkable legacy. Under the Act, 16 presidents have proclaimed 157 national monuments, protecting a diverse range of historic, archaeological, cultural, and geologic resources. [1] Many of these monuments, including such iconic places as the Grand Canyon, Zion, Olympic, and Acadia, have been expanded and redesignated by Congress as national parks.

While the designation of national monuments is often celebrated, it has on occasion sparked local opposition, and led to calls for a President to abolish or shrink a national monument that was proclaimed by a predecessor. [2] This article examines the Antiquities Act and other statutes, concluding that the President lacks the legal authority to abolish or diminish national monuments. Instead, these powers are reserved to Congress.

The Authority to Abolish National Monuments

The Property Clause of the Constitution vests in Congress the "power to dispose of and make all needful rules and regulations respecting [public property]." [3] The U.S. Supreme Court has frequently reviewed this power in the context of public lands management and found it to be "without limitations." [4] Congress can, however, delegate power to the President or other members of the executive branch so long as it sets out an intelligible principle to guide the exercise of executive discretion. [5]

Congress did exactly this when it enacted the Antiquities Act and delegated to the President the power to "declare by public proclamation" national monuments. [6] At the same time, Congress did not, in the Antiquities Act or otherwise, delegate to the President the authority to revoke the designation of monuments. Further, the Federal Land Policy and Management Act of 1976 (FLPMA) makes it clear that the President does not have any implied authority to do so, but rather that Congress reserved for itself the power to modify or revoke monument designations.

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1 *See* National Parks Conservation Association, *Monuments Protected Under the Antiquities Act*, Jan. 13, 2017, https://www.npca.org/resources/2658-monuments-protected-under-the-antiquities-act.

2 On April 26, 2017, President Trump issued an Executive Order calling for the Secretary of the Interior to review certain national monument designations made since 1996. *Presidential Executive Order on the Review of Designations Under the Antiquities Act*, Apr. 26, 2017, *available at* https://www.whitehouse.gov/the-press-office/2017/04/26/presidential-executive-order-review-designations-under-antiquities-act. The Order encompasses Antiquities Act designations since 1996 over 100,000 acres in size or "where the Secretary determines that the designation or expansion was made without adequate public outreach and coordination with relevant stakeholders[.]" *Id*. § 2(a). The Order asks the Secretary to make "recommendations for . . . Presidential actions, legislative proposals, or other actions consistent with law as the Secretary may consider appropriate to carry out" the policy described in the Order. *Id.* § 2(d)-(e).

3 U.S. Constitution, Art. IV, § 3, cl. 2.

4 *See Kleppe v. New Mexico*, 426 U.S. 529 (1976); *United States v. San Francisco*, 310 U.S. 16, 29 (1940).

5 *J. W. Hampton, Jr. & Co. v. United States,* 276 U.S. 394 (1928). The Supreme Court has also made clear that any delegation of legislative power must be construed narrowly to avoid constitutional problems. *Mistretta v. United States*, 488 U.S. 361, 373, n.7 (1989).

6 54 U.S.C. § 320301(a).

The Antiquities Act does not grant authority to revoke a monument designation

The United States owns about one third of our nation's lands.[7] These lands, which exist throughout the country but are concentrated in the western United States, are managed by federal agencies for a wide range of purposes such as preservation, outdoor recreation, mineral and timber extraction, and ranching. Homestead, mining, and other laws transferred ownership rights over large areas of federal lands to private parties. At the same time, vast tracts of land remain in public ownership, and these lands contain a rich assortment of natural, historical, and cultural resources.

Over its long history, Congress has "withdrawn," or exempted, some federal public lands from statutes that allow for resource extraction and development, and "reserved" them for particular uses, including for preservation and resource conservation. Congress has also, in several instances, delegated to the executive branch the authority to set aside lands for particular types of protection. The Antiquities Act of 1906 is one such delegation.

The core of the Antiquities Act is both simple and narrow. It reads, in part:

> [T]he President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.....[8]

This narrow authority granted to the President to *reserve* land [9] under the Antiquities Act stands in marked contrast to contemporaneous laws that delegated much broader executive authority to designate, repeal, or modify other types of federal reservations of public lands. For example, the Pickett Act of 1910 allowed the President to withdraw public lands from "settlement, location, sale, or entry" and reserve these lands for a wide range of specified purposes "*until revoked by him or an Act of Congress*."[10] Likewise, the Forest Service Organic Administration Act of 1897 authorized the President "to modify any Executive order that has been or may hereafter be made establishing any forest reserve, and by such modification *may reduce the area or change the boundary lines of such reserve, or may vacate altogether any order creating such reserve*."[11]

Unlike the Pickett Act and the Forest Service Organic Administration Act, the Antiquities Act withholds authority from the President to change or revoke a national monument designation. That authority remains with Congress under the Property Clause.

This interpretation of the President's authority finds support in the single

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7 *See* PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND (1970).

8 As in the original. 34 Stat. 225 (1906). The language of the Act was edited and re-codified in 2014 at 54 U.S.C. § 320301(a)-(b) with the stated intent of "conform[ing] to the understood policy, intent, and purpose of Congress in the original enactments[.]" Pub. L. 113-287, §§ 2-3, 128 Stat. 3093,3094, 3259 (2014).

9 In an opinion dated September 15, 2000, the Office of Legal Counsel in the Department of Justice found that the authority to reserve federal land under the Antiquities Act encompassed the authority to proclaim a national monument in the territorial sea, 3-12 nautical miles from the shore, or the exclusive economic zone, 12-200 nautical miles from the shore. *Administration of Coral Reef Resources in the Northwest Hawaiian Islands*, 24 Op. O.L.C. 183 (2000), *available at* https://www.justice.gov/sites/default/files/olc/opinions/2000/09/31/op-olc-v024-p0183_0.pdf.

10 36 Stat. 847 (1910) (emphasis added).

11 30 Stat. 36 (1897) (emphasis added).

authoritative executive branch source interpreting the scope of Presidential power to revoke monuments designated under the Act: a 1938 opinion by Attorney General Homer Cummings. President Franklin D. Roosevelt had specifically asked Cummings whether the Antiquities Act authorized the President to revoke the Castle Pinckney National Monument. In his opinion, Cummings compared the language noted above from the Pickett Act and the Forest Service Organic Act with the language in the Antiquities Act, and concluded unequivocally that the Antiquities Act "does not authorize [the President] to abolish [national monuments] after they have been established."[12]

FLPMA clarifies that only Congress can revoke or downsize a national monument

In 1976, Congress enacted the Federal Land Policy and Management Act of 1976 (FLPMA).[13] FLPMA governs the management of federal public lands lacking any specific designation as a national park, national forest, national wildlife refuge, or other specialized unit. The text, structure, and legislative history of FLPMA leave no doubt that the President does not possess the authority to revoke or downsize a monument designation.

FLPMA codified federal policy to retain, rather than dispose of, the remaining federal public lands, provided for specific procedures for land-use planning on those lands, and consolidated the wide-ranging legal authorities relating to the uses of those lands. Prior to FLPMA's enactment, delegations of executive authority to withdraw public lands from development or resource extraction were dispersed among federal statutes including the Pickett Act and the Forest Service Organic Act. Moreover, in *United States v. Midwest Oil Co.*, the Supreme Court had held withdrawal to be an implied power of the presidency in the absence of direct statutory authority or prohibition.[14]

FLPMA consolidated and streamlined the President's withdrawal power: it repealed the Pickett Act,[15] along with most other executive authority for withdrawing lands—with the notable exception of the Antiquities Act. In place of these prior withdrawal authorities, FLPMA included a new provision – section 204 – that authorizes the Secretary of the Interior "*to make, modify, extend, or revoke withdrawals* but only in accordance with the provisions and limitations of this section."[16]

Subsection 204(j) of FLPMA somewhat curiously states that "[t]he Secretary [of Interior] shall not . . . modify, or revoke any withdrawal creating national monuments under [the Antiquities Act] . . . ."[17] Because only the *President*, and not the Secretary of Interior, has authority to proclaim national monuments, Congress's reference to the *Secretary*'s authority under the Antiquities Act is anomalous and, as explained further below, may be the result of a drafting error. Nonetheless, this language does reinforce the most plausible reading of the text of the Antiquities Act: that it deliberately provides for one-way designation authority. The President may act to create a national monument, but only Congress can modify or revoke that action.

An examination of FLPMA's legislative history removes any doubt that section 204(j) was intended to reserve to Congress the exclusive authority to modify or revoke national monuments. FLPMA's restriction of executive withdrawal powers originated in

[12] 39 Op. Att'y Gen. 185, 185 (1938).

[13] Federal Land Policy and Management Act of 1976 [hereinafter "FLPMA"], Pub. L. 94-579, 90 Stat. 2743 (1976).

[14] 236 U.S. 459 (1915).

[15] FLPMA, § 704(a), 90 Stat. 2792 (1976). The authority to create or modify forest reserves was repealed previously in 1907. 34 Stat. 1269 (1907).

[16] 43 U.S.C. § 1714(a) (emphasis added).

[17] 43 U.S.C. § 1714(j). This same subsection reiterates the authority of Congress in other areas of land management, prohibiting the Secretary from modifying or revoking the designation of lands as national wildlife refuges or from affecting withdrawals that were made by Congress itself. *Id.*

the House version of the legislation.[18] Skepticism in the House towards executive withdrawal authority dated back to the 1970 report of the Public Lands Law Review Commission (PLLRC), a Congressionally-created special committee tasked with recommending a complete overhaul of the public land laws. The PLLRC report called on Congress to repeal all existing withdrawal powers, including the power to create national monuments under the Antiquities Act.[19] The Commission suggested replacing this authority with a comprehensive withdrawal process run by the Secretary of the Interior and closely supervised by Congress.[20]

The House Committee on Interior and Insular Affairs' Subcommittee on Public Lands largely followed this recommendation in including Section 204 in its draft of FLPMA. Complementing this section, the bill presented to and passed by the House included a provision – ultimately enacted as Section 704(a) of FLPMA – that repealed the Pickett Act and other extant laws allowing executive withdrawals, as well as the implied executive authority to withdraw public lands that the Supreme Court recognized in *United States v. Midwest Oil Co.*[21]

Consistent with this approach, the Subcommittee on Public Lands drafted Section 204(j) in order to constrain Executive Branch discretion in the context of national monuments. The Subcommittee frequently discussed the issue during its detailed markup sessions in 1975 and early 1976 on its version of the bill that would eventually become FLPMA.[22]

At an early markup session in May 1975, some subcommittee members, under the mistaken impression that the Secretary of the Interior created national monuments, expressed concerns that some future Secretary might modify or revoke them.[23] The Subcommittee therefore began shaping the bill to eliminate any possibility of unilateral executive power to modify or revoke monuments, while maintaining the existing power to create monuments.[24]

Once the Subcommittee's misunderstanding about Secretarial authority to designate monuments was corrected, the Subcommittee also proposed shifting the authority to create national monuments from the President to the Secretary, in the pattern of consolidating withdrawal authority in Section 204.[25] It was after this discussion that the first version of what later became Section 204(j) of FLPMA was drafted, paired with a provision that would have amended the

[18] The Senate bill, S. 507 (94th Cong.), contained no restrictions on executive withdrawal power.

[19] See PUBLIC LAND LAW REVIEW COMMISSION, *supra* note 7, at 2, 54-57.

[20] *Id.*

[21] 236 U.S. 459 (1915).

[22] The subcommittee's hearings and markups focused on H.R. 5224, which eventually passed the full Committee in May 1976. The amended version was reintroduced as a clean bill, H.R. 13777, which was approved by the House and set to the conference committee.

[23] *See* Subcommittee on Public Lands, Committee on Interior and Insular Affairs, U.S. House of Representatives, Executive Session, H.R. 5224, et al., Public Land Policy and Management Act of 1975, at 88-93 (May 6, 1975). Later statements by subcommittee members indicate that their understanding was that the Secretary had delegated authority to propose the creation of monuments, but that they were ultimately proclaimed by the President. Subcommittee on Public Lands, Committee on Interior and Insular Affairs, U.S. House of Representatives, Executive Session, H.R. 5224 & H.R. 5622, at 184 (June 6, 1975).

[24] *See* Subcommittee on Public Lands, Committee on Interior and Insular Affairs, U.S. House of Representatives, Executive Session, H.R. 5224, et al., Public Land Policy and Management Act of 1975, at 91 (May 6, 1975) (statement of Rep. Melcher) ("I would say that it would be better for us if, in presenting this bill to the House, for that matter in full committee, if we made it clear that the Secretary and perhaps also make it part of the bill somewhere, that he can not revoke a national monument."); *id.* at 93 (statement of Rep. Senzel) ("So we could put in here that—we can put in the statement that he cannot revoke national monuments once created."); *see also* Subcommittee on Public Lands, Committee on Interior and Insular Affairs, U.S. House of Representatives, Executive Session, H.R. 5224 & H.R. 5622, at 176 (June 6, 1975) (statement of Rep. Senzel) ("In accordance with the decision made the last time, there is a section added in there that provides that no modification or revocation of national monuments can be made except by act of Congress.")

[25] *Id.* at 183-85.

Antiquities Act to transfer designation authority from the President to the Secretary of the Interior.[26] The Ford Administration objected generally to taking away the president's power to withdraw public lands.[27] As part of the subsequent changes to the draft legislation, the Subcommittee dropped the provision that would have transferred monument designation authority from the President to the Secretary.[28]

Section 204(j), however, was retained. Pairing Section 204(j) with the proposed transfer of monument designation power strongly suggests that the language of Section 204(j) was not an effort to constrain (non-existent) Secretarial authority to modify or revoke national monuments, while retaining Presidential authority to do so. Instead, it was part of an overall plan to constrain and systematize all Executive Branch withdrawal power, and reserve to Congress the powers to modify or rescind monument designations. The House Committee's Report on the bill makes clear that this provision was designed to prevent *any* unilateral executive modification or revocation of national monuments. In describing Section 204 of the bill as it was presented for debate on the House floor, the Report explains:

> With certain exceptions, [the bill] will repeal all existing law relating to executive authority to create, modify, and terminate withdrawals and reservations. It would reserve to the Congress the authority to create, modify, and terminate withdrawals for national parks, national forests, the Wilderness System, Indian reservations, certain defense withdrawals, and withdrawals for National Wild and Scenic Rivers, National Trails, and for other "national" recreation units, such as National Recreation Areas and National Seashores. *It would also specifically reserve to the Congress the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act* and for modification and revocation of withdrawals adding lands to the National Wildlife Refuge System. These provisions will insure that the integrity of the great national resource management systems will remain under the control of the Congress.[29]

Thus, notwithstanding the anomalous reference to the Secretary in Section 204(j), Congress explicitly stated its intention to reserve for itself the authority to modify or revoke national monuments. The plain language of this report, combined with other statements in the legislative history and the process by which Section 204(j) was created, makes clear that Congress' intent was to constrain all Executive Branch power to modify or revoke national monuments, not just Secretarial authority.

In light of the text of the Antiquities Act, the contrasting language in other statutes at the turn of the 20th century, and the changes to federal land management law in FLPMA, the Antiquities Act must be construed to limit the President's authority to proclaiming national monuments on federal lands. Only Congress can modify or revoke such proclamations.

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[26] See Subcommittee on Public Lands, Committee on Interior and Insular Affairs, U.S. House of Representatives, Markup Public Land Policy and Management Act of 1975 Print No. 2, § 204(a), at 23-24 (Sept. 8, 1975) (prohibiting the Secretary from modifying or revoking a national monument); *id.* § 604(c), at 92 (amending the Antiquities Act by substituting "Secretary for the Interior" for "President of the United States").

[27] *See* H.R. REP. 94-1163, at 52 (May 15, 1976) (comments from Secretary of Interior on Subcommittee Print No. 2 stating that under it, "the proposed . . . Act would be the only basis for withdrawal authority").

[28] See Subcommittee on Public Lands, Committee on Interior and Insular Affairs, U.S. House of Representatives, Public Land Policy and Management Act of 1975 Print No. 4 (March 16, 1976).

[29] H.R. REP. 94-1163, at 9 (emphasis added). Floor debates in the House do not contain any record of discussing this particular issue, and the Conference Report on FLPMA, later in 1976, did not specifically address it.

Authority for Shrinking National Monuments or Removing Restrictive Terms

If the President cannot eliminate a national monument, it follows that the President cannot accomplish that prohibited objective by downsizing or loosening the protections afforded to a monument. Moreover, the use of the phrase "modify and revoke" to describe prohibited actions under FLPMA makes clear that the same legal principles that prevent future executives from revoking monument status apply to prevent modifications of prior proclamations. The analysis above thus applies with equal force to limit the President's authority to remove land from a previously-designated national monument or to remove restrictions originally imposed on allowable activities within a monument's boundaries. While the Antiquities Act limits national monuments to "the smallest area compatible with the proper care and management of the objects to be protected,"[30] that language does not grant the President the authority to revisit previous presidential decisions about what area or level of protection is needed as a justification for shrinking a monument or changing its restrictive terms.

Presidents lack legal authority to shrink national monuments

In the first few decades of the law's existence, various Presidents, on occasion, reduced the size of monuments designated by predecessors. But the President's authority to remove land from monuments has never been tested in court, and so no court has ever weighed in on the legal arguments raised here. Moreover, all such actions occurred prior to 1976; since FLPMA became law in that year, no President has attempted to downsize a national monument or remove previously adopted restrictions. As the language and legislative history of FLPMA make clear, Congress has quite specifically reserved to itself "the authority to *modify* and revoke withdrawals for national monuments created under the Antiquities Act."[31]

In his 1938 opinion, Attorney General Cummings acknowledged the history of modifications to national monuments, noting that "the President from time to time has diminished the area of national monuments established under the Antiquities Act by removing or excluding lands therefrom[.]"[32] The opinion, however, does not directly address whether these actions were legal, and does not analyze this issue.

The Interior Department's Solicitor did review several presidential attempts to shrink monuments, but reached inconsistent conclusions. In 1915, the Solicitor examined President Woodrow Wilson's proposal to shrink the Mt. Olympus National Monument, which President Theodore Roosevelt had designated in 1909.[33] Without addressing the core legal issue of whether the President had authority to change the monument status of lands designated by a prior President, the Solicitor expressed the opinion that lands removed from the monument would revert to national forest (rather than unreserved public domain) because they had previously been national forest lands.[34]

In the end, President Wilson did downsize the Mt. Olympus National Monument by more than 313,000 acres, nearly cutting it in half.[35] Despite an outcry from the conservation community, Wilson's decision was not

30 54 U.S.C. § 320301(b).

31 H.R. REP. 94-1163, at 9 (emphasis added); 43 U.S.C. 1714(j) ("The Secretary shall not . . . *modify* or revoke any withdrawal creating national monuments under [the Antiquities Act] . . . .") (emphasis added).

32 39 Op. Att'y Gen. 185, 188 (1938).

33 Proclamation No. 869, 35 Stat. 2247 (1909); *see also* Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 GA. L. REV. 473, 562-63 (2003).

34 Solicitor's Opinion of April 20, 1915, at 5-6 (on file with authors).

35 Proclamation No. 1293, 39 Stat. 1726 (1915).

challenged in court and so was allowed to stand.[36]

In 1924, for the first time, the Solicitor squarely confronted the issue of whether a President has the authority to reduce the size of a national monument, concluding that the President lacked this authority. The Solicitor considered whether the President could reduce the size of the Gran Quivira[37] and Chaco Canyon National Monuments.[38] Relying on a 1921 Attorney General's opinion involving military withdrawals, the Solicitor concluded that the President was not authorized to restore lands to the public domain that had been previously set aside as part of a national monument.[39] The Solicitor confirmed this position in a subsequent decision issued in 1932.[40]

Subsequently, in 1935, the Interior Solicitor reversed the agency's position, but this time on somewhat narrow grounds.[41] This opinion relied heavily on the implied authority of the President to make and modify withdrawals that had been upheld by the U.S. Supreme Court in *United States v. Midwest Oil Co*. [42] As noted previously, however, Congress expressly overturned *Midwest Oil* in FLPMA in 1976.[43] Thus, even if those earlier monument modifications could arguably have been supported by implied presidential authority to make withdrawals and reservations, after FLPMA, it is no longer available to justify the shrinking of national monuments.

Critics of recent national monument designations have argued that a President could downsize a national monument by asserting portions of it do not represent the "smallest area compatible" with the protection of the resources and sites identified in the monument proclamation.[44] Courts have consistently upheld the use of the Antiquities Act to protect large landscapes as "objects of historic or scientific interest," from the Grand Canyon,[45] designated less than two years after the Act's passage, to the Giant Sequoia National Monument, created in 2000.[46]

In appropriate circumstances, a court might consider a claim that a monument proclamation violates the "smallest area compatible" provision of the statute, albeit under a standard of review highly deferential to the designating President's findings. [47] However, the clear restriction on modifying or revoking a national monument

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[36] *See* Squillace, *supra* note 33, at 563-64.

[37] Proclamation No. 959, 36 Stat. 2503 (1909).

[38] Proclamation No. 740, 35 Stat. 2119 (1907).

[39] Solicitor's Opinion of June 3, 1924, M-12501. In language that anticipated the later 1938 opinion, this 1921 Attorney General's opinion concluded that "[t]he power to thus reserve public lands and appropriate them . . . does not necessarily include the power to either restore them to the general public domain or transfer them to another department." 32 Op. Att'y Gen. 488, 488-491 (1921). The Solicitor's 1924 opinion might be distinguished from the 1915 opinion on the grounds that the earlier opinion had specifically supported the modification of the monument because the lands would not be restored to the public domain, but would rather be reclassified as national forests. The legal argument against the modification of monument proclamations, however, has never rested on whether the lands would be restored to the public domain or revert to another reservation or designation.

[40] Solicitor's Opinion of May 16, 1932, M-27025.

[41] Solicitor's Opinion of January 30, 1935, M-27657.

[42] 236 U.S. 459 (1915).

[43] FLPMA, § 704(a), 90 Stat. 2792 (1976).

[44] *See, e.g.*, John Yoo & Todd Gaziano, *Presidential Authority to Revoke or Reduce National Monument Designations* 14-18 (American Enterprise Institute 2017). The Interior Solicitor's 1935 opinion, and a subsequent one in 1947, addressed this issue in reviewing and supporting the validity of the decision by Woodrow Wilson to shrink the Mt. Olympus National Monument. According to that opinion, both the Interior and Agriculture Departments thought the area was "larger than necessary." However, there is no legal basis for determining that the opinions of cabinet officials should overturn a prior presidential determination as to the management requirements of a protected monument. *See* Squillace, *supra* note 33, at 561-62; *National Monuments*, 60 *Interior* Dec. 9 (July 21, 1947).

[45] Cameron v. United States, 252 U.S. 450, 455-56 (1920).

[46] Tulare County v. Bush, 306 F.3d 1138, 1140-41 (D.C. Cir. 2002). Additional Supreme Court cases that address Antiquities Act designations support this broad interpretation of what may constitute an "object of historic or scientific interest." *See* United States v. California, 436 U.S. 32, 34 (1978); Cappaert v. United States, 426 U.S. 128, 131-32 (1976).

[47] *See Tulare County*, 306 F.3d at 1142; Mountain States Legal Foundation v. Bush, 306 F.3d 1132, 1136 (D.C. Cir. 2002).

designation—cemented by FLPMA—indicates that a President cannot simply revisit a predecessor's decision about how much area is required.

Removing protections that apply on national monuments would be an unlawful modification

A related issue is whether a President can modify a national monument proclamation by removing some or all of the protections applied to the monument area, such as limitations on livestock grazing, mineral leasing, or mining claims location. Plainly, these are types of "modifications." As discussed above, Congress's use of the phrase "modify and revoke" to describe prohibited actions demonstrates that the same legal principles apply here as would apply to an attempt to abolish a monument. More generally, if a President lacks the authority to abolish or downsize a monument, it would also suggest a lack of presidential authority to remove any restrictions imposed by a predecessor. Moreover, to the extent that presidential authority is premised on an argument that the President can shrink a monument to conform to the "smallest area compatible" language of the Antiquities Act, that argument would be inapplicable to an effort to remove restrictive language from a predecessor's national monument proclamation.[48]

Aside from these legal arguments, construing the Antiquities Act as providing one-way Presidential designation authority is consistent with the fundamental goal of the statute. Faced with a concern that historical, archaeological, and natural or scenic resources could be damaged or lost, Congress purposefully devised a delegation to the President to act quickly to ensure that objects of historic and scientific interest on public lands can be preserved before they are looted or compromised by incompatible land uses, such as the location of mining claims. Once the President has determined that these objects are worthy of protection, no future President should be able to undermine that choice. That is a decision that Congress has lawfully reserved for itself under the terms of the Antiquities Act, as reinforced by the text of FLPMA.

Conclusion

Our conclusion, based on analysis of the text, other statutes, and legal opinions, is that the President lacks the authority to rescind, downsize, or otherwise weaken the protections afforded by a national monument proclamation declared by a predecessor. Moreover, while we believe this to be the correct reading of the law from the time that the Antiquities Act was adopted in 1906, the enactment of FLPMA in 1976 removes any doubt as to whether Congress intended to reserve for itself the power to revoke or modify national monument proclamations. Congress stated so explicitly.

Presidents may retain some authority to clarify a proclamation that contains an ambiguous legal description or a mistake of fact.[49] Where expert opinions differ, however,

[48] For further discussion of this issue, *see* Squillace, *supra* note 33, at 566-68.

[49] The Navajo National Monument offers a good example. The original proclamation issued by President Taft protected "all prehistoric cliff dwellings, pueblo and other ruins and relics of prehistoric people, situated on the Navajo Indian Reservation, Arizona between the parallels of latitude 36°30' North, and 37° North, and between longitude 110 ° West and 110 ° 45' West . . . together with forty acres of land upon which each ruin is located, in square form, the side lines running north and south and east and west, equidistance from the centers of said ruins." Proclamation No. 873, 36 Stat. 2491 (1909). The map accompanying the proclamation stated that it is "[e]mbracing all cliff dwelling and pueblo ruins" [between those lines] . . . with 40 acres of land in square form around each of said ruins." The original proclamation was apparently intended to include only 40 acres around the ruins in that large area but the map that accompanied the proclamation was ambiguous at best. The revised proclamation, which was signed three years later by the same President Taft, references a survey done after the original

courts should defer to the choices made by the President proclaiming the monument and the relevant objects designated for protection. Otherwise, a future President could undermine the one-way conservation authority afforded the President under the Antiquities Act and the congressional decision to reserve for itself the authority to abolish or modify national monuments.

The remarkable success of the Antiquities Act in preserving many of our nation's most iconic places is perhaps best captured by the fact that Congress has never repealed any significant monument designation.[50] Instead, in many instances, Congress has expanded national monuments and redesignated them as national parks. For more than 100 years, Presidents from Teddy Roosevelt to Barack Obama have used the Antiquities Act to protect our historical, scientific, and cultural heritage, often at the very moment when these resources were at risk of being exploited. That is the enduring legacy of this extraordinary law. And it remains our best hope for preserving our public land resources well into the future.

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proclamation and specifically identified two 160-acre tracts of land and one 40-acre tract for protection. Proclamation No. 1186, 37 Stat. 1738 (1912).

[50] About a dozen monuments have been abolished by the Congress. None of these were larger than 10,000 acres, and no monument has been abolished without redesignating the land as part of another national monument or other protected area since 1956. *See* Squillace, *supra* note 33, Appendix.

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Cover Photo: Kolob Canyon, Zion National Park, Utah (Nicholas Bryner)