

# Subcommittee on Federal Lands

Tom McClintock, Chairman  
Hearing Memorandum

May 1, 2017

**To:** All Subcommittee on Federal Lands Members

**From:** Majority Committee Staff – Aniela Butler  
Subcommittee on Federal Lands (x 6-7736)

**Hearing:** Oversight hearing on “*Examining the Consequences of Executive Branch Overreach of the Antiquities Act.*”  
**May 2, 2017 at 10:00 AM; 1324 Longworth HOB.**

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The Subcommittee on Federal Lands will hold an oversight hearing to hear testimony on “*Examining the Consequences of Executive Branch Overreach of the Antiquities Act*” on Tuesday, May 2, at 10:00 a.m. in 1324 Longworth House Office Building. The hearing will focus on reviewing national monuments designated without significant local input or support and national monuments with excessively large or restrictive designations.

## **Policy Overview**

- Presidents of both parties have exceeded the intent and law of the Antiquities Act since its enactment in 1906 to designate increasingly large and restricted areas of land.
- Originally intended to protect rare, sacred Native American burial grounds and endangered archeological sites, Presidents now routinely use the Antiquities Act to lock up millions of acres of land and water from public access, energy development, timber production, grazing, fishing and other uses.
- President Obama’s excessive use of the Antiquities Act locked up nearly *554 million acres* of land and water--more than any other Administration in history, and resulted in designations that prioritized legacy-building over state and local input and support.
- Widely opposed designations in Maine, Utah, Oregon, and California exemplify the negative results that unilateral national monument designations can force on local communities through elimination of multiple-use, loss of rural jobs, and restricted recreational access.

## **Invited Witnesses**

*The Honorable Paul LePage*  
Governor, The State of Maine  
Augusta, Maine

*Ms. Kathleen Clarke*  
Director, Utah Public Lands Policy Coordinating Office  
Former Director, Bureau of Land Management  
Bountiful, Utah

*Mr. Knox Marshall*  
Vice President of Resources, Murphy Company  
Eugene, Oregon

*Mr. Lucas St. Clair*  
President, Elliotsville Plantation, Inc.  
Portland, Maine

## **Background**

At the beginning of the 20<sup>th</sup> century, vandals and robbers began looting sacred Native American burial grounds and archeological sites throughout the territories in the Southwest. The destruction of archeological artifacts prompted Congress to enact the Antiquities Act of 1906, which authorized the President to designate national monuments on federal lands containing “historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest.”<sup>1</sup> The law also specified that national monuments “be confined to the smallest area compatible with proper care and management of the objects to be protected.”<sup>2</sup> Furthermore, the President could only designate national monuments “upon the lands owned or controlled by the Government of the United States.”<sup>3</sup>

The Act granted Presidents the flexibility to quickly protect small Native American sites in imminent danger from looting and destruction.<sup>4</sup> President Theodore Roosevelt designated the first National Monument, Devils Tower, in 1906. Since that time, Presidents have broadly interpreted the Antiquities Act to expand both the size and justifications for National Monument designations, despite the 1906 Congressional Record plainly reflecting Congress’s clear intent to limit the size of the designations.<sup>5</sup>

Presidents have used their authority under the Antiquities Act 233 times to establish and enlarge 157 National Monuments totaling 840.4 million acres, or roughly 10 times the size of the entire National Park System.<sup>6</sup> Although the National Park Service (NPS) primarily manages National Monuments, in recent decades the majority of National Monuments have been placed under the management of agencies like the Bureau of Land Management (BLM), U.S. Forest Service (FS), and the U.S. Fish and Wildlife Service (FWS). Although presidential declarations create most national monuments, Congress has also established 45 national monuments, including Appomattox (1935), Badlands (1929), and Biscayne (1968).

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<sup>1</sup> 34 Stat. 225, 16 U.S.C. 431-433.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Benderson, Judith. “The Archaeological Resources Protection Act and The Native American Graves Protection and Repatriation Act.” Offices of the United States Attorneys. <https://www.justice.gov/usao/priority-areas/indian-country/native-american-artifacts>

<sup>5</sup> In their discussions of the bill, Congressmen Lacey and Stephens debated whether Presidents would eventually abuse the Antiquities Act. Congressman Lacey, the bill’s sponsor, reassured the bill provides that reservations “shall be the smallest area necessary [sic] for the care and maintenance of the objects to be preserved,” Congressional Record, 1906, [https://coast.noaa.gov/data/Documents/OceanLawSearch/Congressional%20Record\\_House%20&%20Senate%201906.pdf?redirect=301ocm](https://coast.noaa.gov/data/Documents/OceanLawSearch/Congressional%20Record_House%20&%20Senate%201906.pdf?redirect=301ocm).

<sup>6</sup> Information provided by the Congressional Research Service.

In its 111-year history, Congress amended the Antiquities Act only twice to enact statutory restrictions on the President’s authority to designate National Monuments. The first, passed in 1950, prohibits the designation of National Monuments in the State of Wyoming. The second restriction, passed in 1986, requires prior Congressional approval of executive land withdrawals in the State of Alaska exceeding 5,000 acres.<sup>7</sup> These actions followed the controversial declarations of Jackson Hole National Monument by President Franklin Roosevelt and President Carter’s establishment of several monuments in Alaska, respectively.

The Antiquities Act pre-dates the establishment of 5 states, including New Mexico and Arizona, the establishment of the National Park Service, and the creation of major environmental and archeological resources protection laws. Since the creation of the Antiquities Act, Congress and the executive branch enacted over one dozen new statutes and regulations rendering protections under the Act outdated.<sup>8</sup>

On April 26, 2017, President Trump signed a Presidential Executive Order directing the Secretary of the Interior to review all unilateral national monument designations “made since January 1, 1996, where the designation covers more than 100,000 acres, where the designation after expansion covers more than 100,000 acres, or where the Secretary determines that the designation or expansion was made without adequate public outreach and coordination with relevant stakeholders.”<sup>9</sup> The Executive Order directs the Secretary to recommend any necessary legislative or administrative changes to those designations. This Executive Order itself makes no changes to any national monuments, and will not affect the ownership of the land in the event the administration decides to reduce or rescind certain national monuments.

### Modern Abuses of the Antiquities Act

Over the past eight years, President Obama used the Antiquities Act 34 times to lock up **553,599,880 acres** of land and water as national monuments--representing 66% of all of the land and water ever designated as a national monument using the Antiquities Act. This is more than any other administration in history.<sup>10</sup>



<sup>7</sup> Hardy Vincent, Carol. “National Monuments and the Antiquities Act.” Congressional Research Service. P. 1.

<sup>8</sup>Some of the major statutes created to protect archeological resources include: *Historic Sites Act (1935)* – establishing the National Historic Landmarks Program; *National Stolen Property Act (1948)* – established fines and penalties for transporting or transferring stolen property; *Reservoir Salvage Act (1960)* – required study and protection of archeological objects that may be destroyed during the construction of a dam or reservoir; *National Historic Preservation Act (1966)* – established the National Register of Historic Places and State Historic Preservation Offices; *Archeological and Historic Preservation Act (1974)* – preserved archeological objects that might otherwise be destroyed during any federally licensed activity or program (such as a federal construction project); *Archeological Resources Protection Act (1979)* – strengthened fines and penalties for unauthorized excavation of archeological sites on federal land; *Abandoned Shipwreck Act (1987)* – established federal ownership and a management structure of abandoned shipwrecks in submerged waters of the United States; *Native American Graves Protection and Repatriation Act (1990)* – required consultation with Native American groups before archeological excavation of culturally sensitive sites; *National Maritime Heritage Act (1994)* – established to National Maritime Heritage Grants Program; *American Battlefield Protection Program Act (1996)* – provided assistance to private and public individuals and institutions to protect historic battlefields in the United States; *National Historic Lighthouse Preservation Act (2000)* – allowed the transfer of deteriorating historic lighthouses to other government entities or non-profit, educational, or community development organizations with the capacity to maintain the lighthouse; *Sunken Military Craft Act (2004)* – codified the sovereign status and permanent U.S. ownership of sunken military aircraft and vessels and preserved sunken military aircraft and vessels in U.S. waters.

<sup>9</sup> President Donald J. Trump, “Presidential Executive Order on the Review of Designations Under the Antiquities Act”, 04/26/17, <https://www.whitehouse.gov/the-press-office/2017/04/26/presidential-executive-order-review-designations-under-antiquities-act>.

<sup>10</sup> President Obama’s total acreage equates to 189,589 acres designated as a national monument for every day he was in office, or an area roughly equivalent to the size of Delaware for every month of the Obama Administration.

## *Katahdin Woods and Waters National Monument*

On August 24, 2016, President Obama designated 87,563 acres in central Maine as the Katahdin Woods and Waters National Monument. One day prior to the designation, Elliotsville Plantation, Inc. donated the land to the Department of the Interior (DOI) with the intention of eventually converting the area to a National Park.<sup>11</sup> Nearly twice the size of Acadia National Park, the Katahdin Woods and Waters National Monument became the largest parcel of federal land in a state that has just 1.1% federal land ownership.<sup>12</sup>

The effort to create a National Park in this area began over two decades ago with a proposal to create a 3.2 million acre National Park, the second largest in the continental U.S.<sup>13</sup> Varied other proposals have included the creation of a 150,000 acre National Park and National Recreation Area. In 2002, to facilitate the creation of a National Park, Roxanne Quimby, the founder of Burt's Bees,<sup>14</sup> established Elliotsville Plantation, Inc. According to media accounts, after acquiring land for the proposed park site, Elliotsville Plantation evicted campers, burned down cabins, and closed the area to the “hunters and to the snowmobilers who had long relied on it for north-south access.”<sup>15</sup> These actions were strongly opposed in the surrounding communities who were concerned a National Park would restrict snowmobiling, hunting and the local timber industry, and in 2016, residents of East Millinocket, Medway, and Patten voted resoundingly against the proposed National Park.<sup>16</sup>

After the National Park proposal failed to gain traction in the state, Elliotsville Plantation, Inc., led by Mr. Lucas St. Clair, shifted its focus toward designating the land as a National Monument under the Antiquities Act. The National Monument proposal faced significant opposition in the State of Maine. No Member of Congress introduced a bill studying the creation of or designating the land as a National Park or National Monument. Comparatively, every NPS National Monument designation made by President Obama prior to the designation of Katahdin Woods and Waters National Monument had corresponding legislation in Congress either establishing the area as an NPS unit or authorizing a special resource study.<sup>17</sup>

On November 20, 2015, Maine Senators Collins and King and Representative Poliquin, wrote President Obama to express “serious reservations and significant concerns” about the proposed monument.<sup>18</sup> Later that year, the Maine State Legislature passed L.D. 1600, a bill opposing the creation of a National Monument in Maine, sponsored by Rep. Stephen Stanley (D-Medway), by bipartisan votes in both the House and Senate.<sup>19</sup> On June 1, 2016, the Committee on Natural Resources held a field hearing in East Millinocket, Maine, on the proposed National Monument designation entitled “*Elevating Local Voices and Promoting Transparency for a*

<sup>11</sup> Kevin Miller, “A national park or a national monument? North Woods groups shift focus”, Portland Press Herald, 11/29/15, <http://www.pressherald.com/2015/11/29/a-national-park-or-a-national-monument-north-woods-groups-shift-focus/>.

<sup>12</sup> Carol Hardy Vincent et al., “Federal Land Ownership: Overview and Data”, Congressional Research Service, 03/02/17, <http://www.crs.gov/reports/pdf/R42346>.

<sup>13</sup> Tux Turkel, “A dream endures for another park in North Woods”, Portland Press Herald, 08/24/14, <http://www.pressherald.com/2014/08/24/a-dream-endures-for-another-park-in-north-woods/>.

<sup>14</sup> In 2007, Burt's Bees was purchased by Clorox for \$925 million, see: Andrew Farrell, “Clorox to buy Burt's Bees”, Forbes, 10/31/07, [https://www.forbes.com/2007/10/31/clorox-burts-bees-markets-equity-cx\\_af\\_1031markets15.html](https://www.forbes.com/2007/10/31/clorox-burts-bees-markets-equity-cx_af_1031markets15.html).

<sup>15</sup> Billy Baker, “A feud as big as the great outdoors” Boston Globe, 11/17/13, <https://www.bostonglobe.com/magazine/2013/11/17/son-burt-bees-cofounder-leads-fight-for-maine-national-park/iQHv6w2s7IUJc6MBt6ZJSN/story.html>.

<sup>16</sup> Residents of East Millinocket, Medway, and Patten voted 320-191, 252-102, and 121-53 against the proposed National Park, respectively. See: Nick Sambides Jr., “East Millinocket voters reject national park by wide margin.”, Bangor Daily News, 06/29/15, <http://bangordailynews.com/2015/06/29/outdoors/east-millinocket-voters-reject-national-park-by-wide-margin/>

<sup>17</sup> Information provided by the Congressional Research Service.

<sup>18</sup> Collins, King, and Poliquin, Letter to President Obama, 11/20/15, <https://poliquin.house.gov/media-center/press-releases/collins-king-poliquin-send-letter-president-possible-national-monument> <https://www.king.senate.gov/download/?id=474877DD-9E5C-48E6-BF2E-5A4768C86522&inline=file>.

<sup>19</sup> L.D. 1600, Maine State Legislature, [http://www.mainelegislature.org/legis/bills/bills\\_127th/billtexts/HP109102.asp](http://www.mainelegislature.org/legis/bills/bills_127th/billtexts/HP109102.asp). At a listening session between locally-elected officials from the towns surrounding the National Monument and NPS, only 2 of the 75 attendees voiced support for a designation. See: Sambides, Nick. “Maine people weigh in on proposed national monument at packed forums.” 05/17/16. <https://bangordailynews.com/2016/05/16/news/state/maine-people-weigh-in-on-proposed-national-monument-at-packed-forums-in-orono-east-millinocket/>.

*Potential Monument Designation in Maine.*<sup>20</sup> During the hearing, numerous state and locally-elected officials representing the area, along with witnesses from sportsmen and snowmobiling groups, expressed significant concerns about the National Monument proposal. Although multiple proponents of the National Monument, including Mr. St. Clair, were repeatedly invited to testify at the hearing, they declined to attend.



Among the concerns raised, opponents of the National Monument argued it was an unsuitable addition to the National Park System. Many believed Ms. Quimby’s status as a Board Member of the National Park Foundation would grant her unfair influence in the decision. Furthermore, NPS currently faces an \$11.927 billion deferred maintenance backlog and any new land acquisition would add to that total. In Acadia National Park alone, NPS boasts a \$68.25 million deferred maintenance backlog. Along with the land donation, Elliotsville Plantation, Inc. created a \$20 million endowment to maintain the National Monument and pledged to raise an additional \$20 million in donations. Although the endowment helps alleviate some costs of maintaining the land, the entire endowment would still not be sufficient to cover the deferred maintenance backlog of Acadia National Park.

Mainers also expressed concerns about the National Monument’s impact on the local forest products industry and the subsequent effects on rural economies in central Maine. Since the early 1800’s, the land in central Maine has been a working forest that supports the local communities. The current gateway community to the National Monument, Millinocket, started in 1989 with the creation of Great Northern Paper, the largest paper mill in the world at the time. In Maine, the forest products industry creates an \$8 billion impact on the economy and supplies 1 in 20 jobs in the State.<sup>21</sup> Furthermore, Maine could soon experience a large spruce budworm outbreak that could kill thousands of acres of the spruce-fir forest within the National Monument.<sup>22</sup> Lack of active management of the forests within the National Monument could cause this epidemic to spread and potentially kill thousands of trees on state and private land.

Proponents of the National Monument suggested that jobs related to increased tourism would supplant the forest products industry. However, most of the promised tourism jobs are low-wage and seasonal.<sup>23</sup> Furthermore, according to NPS data from 2017, National Parks created almost six times as many jobs and had an economic output nearly \$8 billion greater than NPS-operated

<sup>20</sup> Committee on Natural Resources, “Field Hearing on Elevating Local Voices and Promoting Transparency for a Potential Monument Designation in Maine”, 06/01/16, <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=400497>

<sup>21</sup> Maine Forest Products Council, “Maine’s Forest Economy”, 2013, <http://maineforest.org/wp-content/uploads/2013/09/Maines-forest-economy.pdf>

<sup>22</sup> Cooperative Forestry Research Unit, University of Maine et al. “Coming Spruce Budworm Outbreak: Initial Risk Assessment and Preparation & Response Recommendations for Maine’s Forestry Community” 3/16/16, [http://www.sprucebudwormmaine.org/docs/SBW\\_full\\_report\\_web.pdf](http://www.sprucebudwormmaine.org/docs/SBW_full_report_web.pdf)

<sup>23</sup> In his analysis about the tourism economy in Maine, Thomas McLaughlin, a professor in the School of Social Work at the University of New England, stated: “Lost in all this good news [about rising tourism spending] is the percentage of the population who rely on seasonal work as employees to make ends meet throughout the entire 52 weeks. While a small percentage of the workers may have access to overtime, most will work 30 to 40 hours per week during the 10-week summer period. At minimum wage, this means, at most, the worker could gross \$3,000 in a 10-week period. For most families in Maine who have two seasonal workers, this means a “good summer” would be \$6,000 of full-time work, then sporadic hours during the remaining 42 weeks during the year. Most of these seasonal workers live well below the poverty line. This means summer earnings must be saved and past due bills paid during the good times.” Thomas McLaughlin, “How Maine’s seasonal workers could benefit more from summer tourism”, Bangor Daily News, 07/26/17, <http://bangordailynews.com/2016/07/25/opinion/contributors/how-maines-seasonal-workers-could-benefit-more-from-summer-tourism/>.

National Monuments.<sup>24</sup> On average, National Parks also hosted over 46.7 million more visitors than National Monuments.<sup>25</sup>

Further hindering economic potential, the National Monument restricts traditional recreational uses of the land, including hunting<sup>26</sup> and snowmobiling,<sup>27</sup> and in some cases, the deeds failed to include protections for pre-existing snowmobiling routes in the National Monument.<sup>28</sup> As of April 2016, NPS advises that the National Monument includes limited amenities and spotty or non-existent cell phone coverage. Currently, there is also no wheeled access to the National Monument, two access roads are gated by NPS, and NPS halted all grooming for snowmobiling and skiing.<sup>29</sup> In November 2016, NPS closed Loop Road, a main attraction in the National Monument, due to snowfall, and have yet to reopen the route.

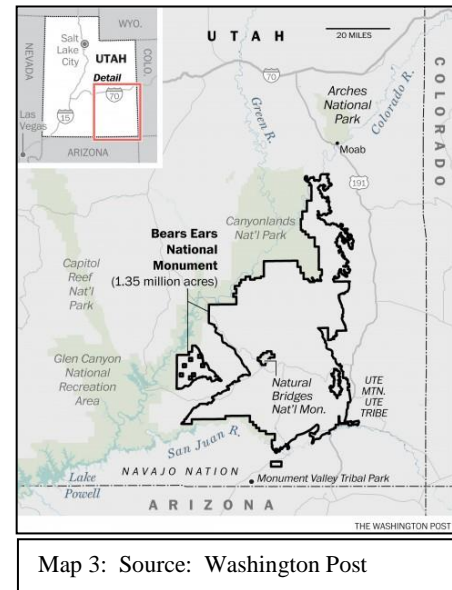
In a letter dated February 14, 2017, Governor LePage asked President Trump to “undo the [National Monument] designation and return the land to private ownership before economic damage occurs and traditional recreational pursuits are diminished.”<sup>30</sup>

### *Bears Ears National Monument*

President Obama designated the Bears Ears National Monument in San Juan County, Utah, during the final weeks of his administration. The National Monument, totaling 1,351,849 acres, covers an area larger than the State of Delaware.<sup>31</sup>

The push for a National Monument in southeastern Utah began in October 2014 during a meeting of the Conservation Lands Foundation (CLF) in San Francisco, California. During the meeting, CLF discussed the prospects of designating a national monument in southeastern Utah and agreed to call the National Monument ‘Bears Ears’, “to

move away from a Navajo name.”<sup>32</sup> CLF expressed concerns about “hitching [their] success to the Navajo” in the event that local Navajo in San Juan County disagreed with the group’s proposals.<sup>33</sup> The campaign to designate Bears Ears as a national monument received millions of dollars in donations from out-of-state environmentalists, including \$20 million in donations from the Hewlett and Packard foundations and a portion of \$15.6 million in grants from the Leonardo DiCaprio Foundation.<sup>34</sup> Outside organizations also heavily supported



<sup>24</sup> NPS, “Visitor Spending Effects - Economic Contributions of National Park Visitor Spending.”, <https://www.nps.gov/subjects/socialscience/vse.htm>.

<sup>25</sup> Ibid.

<sup>26</sup> Less than 40% of the land conveyed to the Federal Government included specific protections for hunting. NPS can also close that land to hunting at any time “for reasons of public safety, administration, or resource protection” and the deeds specifically ban all trapping and hunting with dogs and bait. Quitclaim deed with covenant, Hunt Farm, 08/23/16.

<sup>27</sup> Only four deeded parcels, covering less than 20 percent of the National Monument, included any protections to continue traditional snowmobiling uses. See: John Holyoke and Nick McCrea, “What we know about access to North Woods national monument land”, Bangor Daily News, 08/24/16, <https://bangordailynews.com/2016/08/24/outdoors/what-we-know-about-access-to-north-woods-national-monument-land/?ref=relatedSidebar>.

<sup>28</sup> Ibid.

<sup>29</sup> NPS, Katahdin Woods and Waters, up to date as of 4/25/17, <https://www.nps.gov/kaww/planyourvisit/conditions.htm>.

<sup>30</sup> Governor Paul LePage, Letter to President Donald J. Trump, 02/14/17, [https://www.cenews.net/assets/2017/02/23/document\\_gw\\_09.pdf](https://www.cenews.net/assets/2017/02/23/document_gw_09.pdf).

<sup>31</sup> Alexandra DeSanctis, “Reversing Obama’s Last-Minute Land Grab”, National Review, 01/02/17, <http://www.nationalreview.com/article/443462/trump-gop-aim-reverse-obamas-land-grab-utah-nevada-million-acres>.

<sup>32</sup> Conservation Lands Foundation, Board Meeting Minutes, San Francisco, California, 10/24/14, pg. a6, <http://conservationlands.org/wp-content/uploads/2015/05/Fall-2014-meeting-minutes.pdf>.

<sup>33</sup> Ibid. pg. a6.

<sup>34</sup> Amy Joi O’Donoghue, “Big money, environmentalists and the Bears Ears story”, Deseret News, 08/04/16, <http://www.deseretnews.com/article/865659464/Big-money-environmentalists-and-the-Bears-Ears-story.html>.

the Bears Ears Inter-Tribal Coalition, a group representing five tribes that supported a National Monument designation, by creating their website, crafting maps of their National Monument proposal, and sending out their press releases and contacting the media.<sup>35</sup> According to Blanding City Manager Jeremy Redd, “This is not a grass-roots Native American effort to protect sacred lands. This is an effort by environmental groups to get what they want. ... People feel like they are being run over by the money and the organization that these special interest groups have. Sadly, local people don't have that kind of money behind them.” San Juan County Commissioner Rebecca Benally, a Diné and Navajo woman, testified on the record during a Natural Resources Committee hearing last September that:

“Bears Ears National Monument campaign is a cynical political stunt that, if successful, will deny grass roots Utah Navajos access to their sacred and spiritual grounds. Traditional Utah Navajo people depend on that land for their necessities of life: to gather medicinal plants, fire wood, piñon nuts, as well as to hunt and practice sacred ceremonies. Traditional Utah Navajo people are not conspiring with lawyers in board rooms in Salt Lake City and San Francisco. Traditional Utah Navajo people are not collecting \$20 million from the Hewlett and Packard foundations and Leonardo De Caprio to sponsor this toxic divide-and-conquer campaign. Traditional Utah Navajo people are not magazine environmentalists but are real stewards of the land whose interests will be destroyed by a Bears Ears National Monument. Grassroots Utah Navajo people do not support this effort to convert our sacred lands into a federal designation that will subjugate them to micromanagement by bureaucrats in Washington DC.”

Since the designation, out-of-state groups and corporations have continued campaigns aimed at maintaining the Bears Ears designation. Outdoor Retailer economically retaliated against the local opposition to Bears Ears National Monument by pulling its \$45 million industry shows out of the State.<sup>36</sup> Patagonia, the \$800 million outdoor clothing retail corporation, funneled millions of dollars into grants and videos about the new National Monument.<sup>37</sup> After the April executive order reviewing national monument designations, Patagonia stated its intention to continue fighting any diminishment of the National Monument’s boundaries.

The National Monument proposal faced enormous opposition in the state of Utah. In a poll conducted in May 2016, only 17 percent of Utahans favored the President designating Bears Ears as a National Monument.<sup>38</sup> No members of the Utah Congressional delegation or the Governor supported the unilateral designation and were not meaningfully consulted on a national monument proposal prior to the designation. The Obama Administration failed to offer any concrete plans or details about the designation to members of the Congressional delegation, despite repeated requests on the record to discuss the future of the area. In a 2016 Subcommittee on Oversight and Investigations hearing, Council on Environmental Quality (CEQ) Chair Christy Goldfuss refused to discuss the Administration’s plans for Bears Ears:

“CHAIRMAN BISHOP: Is CEQ actively working on a national monument proposal for Bears Ears in San Juan County in my State?”

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<sup>35</sup> Ibid.

<sup>36</sup> Jason Lee, “Impact of Outdoor Retailer departure far-reaching”, Deseret News, 02/17/17, <http://www.deseretnews.com/article/865673692/Impact-of-Outdoor-Retailer-departure-far-reaching.html>.

<sup>37</sup> Stuart Leavenworth, “Outdoors companies mobilize hikers in multimillion-dollar battle over public lands”, McClatchy DC, 03/28/17, <http://www.mcclatchydc.com/news/politics-government/white-house/article141223478.html>.

<sup>38</sup> <http://utahpolicy.com/index.php/features/today-at-utah-policy/9551-poll-only-17-of-utahns-want-obama-to-designate-bears-ears-as-a-national-monument>

MS. GOLDFUSS. I cannot talk about any specific proposals that we are working on out of CEQ or out of the Administration with regard to national monuments.”<sup>39</sup>

In addition, at a Committee on Natural Resources oversight hearing on March 1, 2016, Secretary Jewell stated President Obama had no prior intentions of designating any national monuments:

“DR. GOSAR: How many more new national monuments does this Administration plan to designate this year? What are the names and geographic locations of potential monuments being considered?

SECRETARY JEWELL: That is entirely up to the President of the United States. There are many people that come through the doors saying, "We would like you to look at monuments." There are, you know, assessments that happen from across the country of interest. They go directly to the White House.

DR. GOSAR: So let me stop you there. *So, the President hasn't given you any detailed leanings, one way or the other?*

SECRETARY JEWELL: *The President has not.*

DR. GOSAR: *Absolutely zippo?*

SECRETARY JEWELL: *Absolutely zippo.*”<sup>40</sup> (emphasis added)

In a written response to a Senator’s question, the former Acting Assistant Director of the National Landscape Conservation System and Community Partnerships for BLM, denied any knowledge of plans to designate national monuments such as Bears Ears.<sup>41</sup>

Given the Administration’s use of the Antiquities Act, this “midnight monument” designation did not come as a surprise to many local residents.<sup>42</sup> However, these transcripts point to a clear lack of coordination and consultation between the Administration and members of the delegation on the National Monument and demonstrate the total lack of transparency in the designation process.

Local San Juan County tribes and residents also voiced overwhelming opposition to a National Monument designation under the Antiquities Act. In May 2016, the Blue Mountain Dine’ Community unanimously passed a resolution against the proposed National Monument, stating they disagreed “that the creation of an Inter-Tribal National Monument will be in the best interests and welfare of not only local Navajo people, but of all locals who love the land of their heritage.”<sup>43</sup> The Aneth Chapter of the Navajo Nation, based in San Juan County, also passed a resolution opposing the unilateral National Monument designation.<sup>44</sup> One hundred San Juan County residents signed a petition endorsing a National Conservation Area over a National

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<sup>39</sup> Subcommittee on Oversight and Investigations, Oversight hearing on The President’s Imposition of New Environmental Mitigation Regulations, 02/24/16, <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=399897>.

<sup>40</sup> Committee on Natural Resources, Oversight hearing on the President’s 2017 Budget Proposal with Department of the Interior Secretary Sally Jewell, 03/01/16, <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=399957>.

<sup>41</sup> “Question (Flake) (written) - Please provide a list of any National Monuments that are presently under consideration for designation by the President under the Antiquities Act. Answer (Murphy) (written) - I am not aware of any list of proposed National Monuments under consideration by the President.” Administration statements to Senator Flake on consultation before a national monument designation, [https://www.flake.senate.gov/public/\\_cache/files/3e031699-a39a-4f5b-b785-ea0a82971eeb/10.03.16-flake-mccain-letter-to-potus-re-national-monuments.pdf](https://www.flake.senate.gov/public/_cache/files/3e031699-a39a-4f5b-b785-ea0a82971eeb/10.03.16-flake-mccain-letter-to-potus-re-national-monuments.pdf).

<sup>42</sup> David DeMille, “Utah Republicans voice fears about ‘Midnight Monument’ at Bears Ears”, The Spectrum, 12/15/16, <http://www.thespectrum.com/story/news/2016/12/15/utah-republicans-voicing-fears-midnight-monument-bears-ears/95473834/>.

<sup>43</sup> Blue Mountain Dine’ Community, “A Resolution Establishing in Opposition to the Proposed Bears Ears National Monument and in the Alternative, in Support of a National Conservation Area”, Resolution No.: 055216.

<sup>44</sup> Resolution of the Aneth Chapter, “Requesting the Naa’bik’iyati Committee of the Navajo Nation Council Rescind Resolution Nabima-13-15, “Supporting the Utah Dine Bikeyah Conservation Proposal for the Federal Designation of Bear’s Ears National Conservation Area/National Monument in San Juan County, Utah, to Protect the Native Rights and Interest on Federal Lands for Future Generations”, ACNOV-16-014.



Monument, in part because it offered “the greatest recognition/protection of our sacred sites and cultural resources that are existing in the proposed designated area.”<sup>45</sup>

In a letter to Interior Secretary Zinke after the designation, a community organization, Stewards of San Juan County, stated, “The majority of Navajo and Ute residents in San Juan County overwhelmingly oppose the monument designation, in contrast to out-of-county/state tribes who know very little of this area and will simply not be affected by this monument. It is appalling that non-local voices have drowned out those who treasure this land the most.” The group later continued, “This monument was designated in order to appease outside special interest groups. It was done WITHOUT a robust consultation with the stakeholders who actually live in San Juan County. Voices of life-long residents and tribal members have been, and continue to be, blatantly ignored.”<sup>46</sup> After the designation, Suzette Morris, a Ute Mountain Ute member and Vice President of Stewards of San Juan County, stated, “We have cemeteries up there and I don't want our ancestors to be put in museums” and “We all have a fight and we all are going to continue to fight for this to be rescinded.”<sup>47</sup>

According to previous statements on the record, the National Monument designation likely fell short of expectations of even the most vocal National Monument supporters. A major point of contention during the debate over a National Monument versus a National Conservation Area revolved around the ability to allow the tribes to co-manage the land. Since its establishment, some supporters of the National Monument falsely claim the designation allowed the first ever tribal co-management of a National Monument. However, the tribes do not currently co-manage the land and the words “co-management” do not appear anywhere in the text of the proclamation.<sup>48</sup> Instead, the proclamation creates the Bears Ears Commission, a standard advisory committee created using authority under the Federal Advisory Committee Act, not the Antiquities Act.<sup>49</sup> The proclamation states that the Commission will “provide guidance and recommendations” on the management of the National Monument, but stops short of actually allowing the tribes to partner with the BLM and FS to manage Bears Ears.<sup>50</sup>

After the release of a Secretarial Order promoting the role of tribes in the management of lands, Willie Grayeyes, Chairman of Utah Dine Bikéyah, stated that, “I would have to read [the Secretarial Order], but *if it is less than co-management, I think it would fall short of our goal.*”<sup>51</sup> (emphasis added) Additionally, in testimony before the Committee on Natural Resources, Regina Lopez-Whiteskunk, the Co-Chair of the Bears Ears Inter-Tribal Coalition, stated that a key reason the BEITC supported unilateral executive action over the Public Lands Initiative process was the acreage size for the National Monument. In her written testimony, she stated that BEITC’s “call to protect 1.9 million acres is already a conservation request. *Anything less is tantamount to destruction of sacred sites that the identities of native people are affixed to.*”<sup>52</sup> (emphasis added) Despite the administration failing to follow through on these core aspects of

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<sup>45</sup> Residents of San Juan County, Utah, Petition to Support Alternative B, Plan for Designation of Southeastern Utah Public Land As National Conservation Area”, <http://sutherlandinstitute.org/wp-content/uploads/Navajo-Opposition-Packet.pdf>.

<sup>46</sup> Stewards of San Juan County, Letter to DOI Secretary Zinke, 02/21/17, <https://stewardsofsanjuansos.files.wordpress.com/2017/02/letter-to-zinke1.pdf>.

<sup>47</sup> Devon Dewey, “Road to Understanding: Bears Ears still a topic of controversy in San Juan County”, KSL, 03/25/17, <https://www.ksl.com/index.php?sid=43636087&mid=148&title=road-to-understanding-bears-ears-still-a-topic-of-controversy-in-san-juan-county>.

<sup>48</sup> President Barack Obama, Presidential Proclamation – Establishment of the Bears Ears National Monument, 12/28/16, <https://obamawhitehouse.archives.gov/the-press-office/2016/12/28/proclamation-establishment-bears-ears-national-monument>. Instead, the proclamation creates the Bears Ears Commission, a standard advisory committee created using authority under the Federal Advisory Committee Act, not the Antiquities Act.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Amy Joi O'Donoghue, “Native American chairman says Jewell order lacks equality for tribes”, Deseret News, 10/21/16, <http://www.deseretnews.com/article/865665388/Bears-Ears-coalition-leader-says-Jewell-order-lacks-equality-for-tribes.html?pg=all>.

<sup>52</sup> Regina Lopez-Whiteskunk, Testimony before the House Committee on Natural Resources Subcommittee on Federal Lands, Hearing on H.R. 5780, Utah Public Lands Initiative Act, 09/14/16.

their proposal, BEITC and Utah Dine Bikéyah supported the National Monument after its creation.

Prior to the unilateral designation of the National Monument, Natural Resources Committee Chairman Bishop and Oversight and Government Reform Committee Chairman Chaffetz proposed two alternative National Conservation Areas to protect the Bears Ears area in H.R. 5780, "*Utah Public Lands Initiative Act*." The process to craft the solution, which lasted over three years and involved over 1,200 meetings with stakeholders, drew widespread support from locals in San Juan County. This solution offered the only permanent protection for the Bears Ears area and the only legal mechanism to allow the tribes to co-manage the land. The Bears Ears National Conservation Area language focused on creating the necessary footprint to preserve the archeological resources and objects of antiquity within Bears Ears, while also allowing the tribes access to sacred sites and preserving traditional tribal uses of the land. The Indian Creek National Conservation Area focused on allowing outdoor recreation and preserving traditional uses of the land, such as grazing. On September 22, 2016, the Committee on Natural Resources successfully reported H.R. 5780 out of Committee by a vote of 21-13. During the markup, an amendment offered by Ranking Member Grijalva striking the section of the bill related to Bears Ears failed on a bipartisan vote of 11-19.<sup>53</sup>

As in the case of Grand Staircase-Escalante 20 years earlier, the National Monument designation locked up 109,000 acres of Utah School and Institutional Trust Land Administration (SITLA) land, which benefits Utah public schoolchildren.<sup>54</sup> Scattered across Utah in a checkerboard pattern, SITLA land derives revenues from activities such as energy and mineral resource development, grazing, and timber production. The funds from these revenues go into the State School Fund, "a permanent income-producing endowment created by Congress in the Utah Enabling Act for the support of the state's K-12 public education system."<sup>55</sup> In the past 20 years, revenue from SITLA's lands generated over \$1.7 billion in revenue for Utah's public schoolchildren.<sup>56</sup> According to Dave Ure, SITLA's Director, "Approximately 64 percent of our state is federal public land, while only six percent is trust land."<sup>57</sup> This means that any designation that stunts the growth in revenue from SITLA lands will have far-reaching consequences for public schoolchildren across the state. Resolving this situation and freeing up the SITLA land will require "identification of possible exchange lands, negotiations, appraisals, adherence to the National Environmental Policy Act (NEPA), and approval by the Utah Legislature and likely the U.S. Congress."<sup>58</sup> Previous exchanges took up to 9 years to complete.<sup>59</sup>

While proponents of the National Monument claim it will bring new economic opportunities to San Juan County, this appears unlikely. San Juan County already home to a National Park, a National Forest, a National Recreation Area, and three National Monuments.<sup>60</sup> Despite this seemingly expansive tourism economy, San Juan County is still the poorest county

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<sup>53</sup> Committee on Natural Resources, Markup on 09/22/16, Roll Call Vote #1.

<sup>54</sup> SITLA, "109K ACRES OF SCHOOL TRUST LAND CAPTURED IN BEARS EARS NATIONAL MONUMENT", 01/03/17, <https://trustlands.utah.gov/109k-acres-of-school-trust-land-captured-in-bears-ears-national-monument/>

<sup>55</sup> Dave Ure, Testimony before the House Committee on Natural Resources Subcommittee on Federal Lands on H.R. 5780, Utah Public Lands Initiative Act, 09/14/16, pg. 2.

<sup>56</sup> Ibid. "109K ACRES OF SCHOOL TRUST LAND CAPTURED IN BEARS EARS NATIONAL MONUMENT".

<sup>57</sup> Utah State Board of Educators, "Utah Leaders Ask President to Address 109,106 Acres of Trust Land Inholdings Captured Within New Monument", 12/28/16,

<https://schoolboard.utah.gov/tag/utah-school-and-institutional-lands-administration>

<sup>58</sup> Ibid. "109k Acres of School Trust Land Captured in Bears Ears National Monument".

<sup>59</sup> Ibid.

<sup>60</sup> Matthew Anderson, "10 questions about Bears Ears for the outdoor retail industry", Sutherland Institute, <http://sutherlandinstitute.org/10-questions-about-the-bears-ears-for-the-outdoor-retail-industry/>.

in Utah, with 28.5% of its population living in poverty--more than double the state average.<sup>61</sup> In order to truly prosper, San Juan County needs to diversify its economy and attract full-time, high-paying jobs. Furthermore, since the designation, groups have already attempted to limit outdoor recreational access, which would bring additional revenue to the area. For example, a coalition of environmental groups initiated litigation blocking previously approved recreation access to the National Monument. In March 2017, a judge halted the creation of a 6.4 mile ATV trail the County worked on for over a decade.<sup>62</sup> The State of Utah, San Juan County, and the BLM are fighting the decision.

After the President's signing of the Executive Order on the Antiquities Act, DOI Secretary Zinke announced his intention to offer a recommendation on maintaining, modifying, or rescinding Bears Ears National Monument to the White House within 45 days.<sup>63</sup> Secretary Zinke said, "For years, the people of Utah and other rural communities have voiced concern and opposition to some monument designations. But too often in recent history, exiting presidents make designations despite those concerns. And the acreage is increasing." In a poll released the day before the executive order, a majority of Utahans supported a reduction or rescission in the size of Bears Ears, with a plurality of Utahans responding they "definitely" supported the action.<sup>64</sup>

### *Grand Staircase-Escalante National Monument*

On September 18, 1996, during the waning months of his first term, President Clinton designated 1.7 million acres in Utah as the Grand Staircase-Escalante National Monument during a ceremony on the South Rim of the Grand Canyon. After generally consolidating national monuments under the National Park Service, Grand Staircase-Escalante represented the first BLM-managed national monument.<sup>65</sup>

The designation immediately kicked off a massive controversy in the State of Utah. The Governor, members of the Congressional delegation, and residents of Utah all expressed outrage at the lack of prior consultation or warning of the designation. Utahans previously worked on proposals to protect the land and were stunned when the designation happened and uprooted those plans. For Utahans, their unhappiness was not a result of not wanting to preserve the environment; "on the contrary, they [understood] that their state is worthy of preservation and [took] measures to assure that proper regions of their state have necessary protection. However, President Clinton's unilateral designation of Grand Staircase as a national monument severely conflicted with many of the uses that national, state, and local governments had planned for the land."<sup>66</sup> The Governor at the time, Mike Leavitt, testified before Congress that:

"At two o'clock eastern time, the President stood at the north rim of the Grand Canyon to announce the creation of the Grand Staircase-Escalante National Monument and its 1.7 million acre expanse of Utah's Garfield and Kane Counties. As has been mentioned, no

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<sup>61</sup> United States Census Bureau, 2015, <https://www.census.gov/quickfacts/table/IPE120215/49037.49.49017.49025>.

<sup>62</sup> Amy Joi O'Donoghue, "Bears Ears designation upends proposed ATV trail in San Juan County" Deseret News, 03/16/17, <http://www.deseretnews.com/article/865675786/Bears-Ears-designation-upends-proposed-ATV-trail-in-San-Juan-County.html>.

<sup>63</sup> Thomas Burr and Brian Maffly, "Zinke will recommend Bears Ears fate within 45 days", The Salt Lake Tribune, 04/25/17, <http://www.sltrib.com/news/5217193-155/wh-official-trump-to-order-review>.

<sup>64</sup> Bryan Schott, "Poll: Utahns want Trump to change or undo Bears Ears" Utah Policy, 04/25/17, <http://utahpolicy.com/index.php/features/today-at-utah-policy/13020-poll-utahns-want-trump-to-change-or-undo-bears-ears>.

<sup>65</sup> NPS, Archeology Program, <https://www.nps.gov/archeology/sites/antiquities/MonumentsList.htm>.

<sup>66</sup> Eric C. Rusnak, "The Straw that Broke the Camel's Back? Grand Staircase-Escalante National Monument Antiquates the Antiquities Act", Ohio State Law Journal 64:669, p. 703.

Member of Congress, no local official, or had the Governor ever been consulted, nor had the public. As the Governor, I had not seen a map. I had not read the proclamation, or, for that matter, was I even invited. This isn't about courtesy, it is about process. It is about public trust. A major land decision, perhaps the biggest land decision that has been made or will be made in the next two decades, had occurred. Obviously, this is not the way public land decisions should or were ever intended to be made."<sup>67</sup>

According to Senator Orrin Hatch, the Administration assured him "in a meeting just a week prior to the President's announcement that the leaks concerning a designation of a monument in Utah were not true, and that no such action was contemplated. If it were, we were told, the Utah Delegation would be fully apprised and consulted."<sup>68</sup> Prior to the designation, the Clinton Administration held no town halls, public meetings, or public comment sessions in Utah and did not receive any input from local stakeholders or land managers in the area. Perhaps most egregiously, the Administration only kept the designation a secret from members of *Utah's* Congressional delegation. CEQ reached out to former Senator Harry Reid (D-NV), Governor Roy Romer (D-CO), Rep. Bill Richardson (D-NM), and Governor Bob Miller (D-NV) to get feedback on the proposal and even questioned if "there [were] Democratic candidates [they] should alert" about the designation.<sup>69</sup> Over a week before the designation, CEQ staff notified reporters at the Washington Post about the designation while simultaneously assuring the Utah delegation that no decision had been made yet.<sup>70</sup>

The Clinton administration clearly established the National Monument for political, not archeological, purposes. According to correspondence obtained by the Committee, former Clinton CEQ Chair, Katie McGinty, expressed hesitation about the designation and said, "I'm [sic] increasingly of the view that we should just drop these Utah [sic] ideas. We [sic] do not really know how the enviros will react and I do think there is a danger of "abuse" of the withdraw/antiquities authorities especially because these lands are not really endangered."<sup>71</sup> She also wrote to the President that the action "would help overcome the negative views toward the Administration created by the timber rider. Designation of the new monument would create a compelling reason for persons who are now disaffected to come around and enthusiastically support the Administration."<sup>72</sup>

The designation of the Grand Staircase Escalante National Monument resulted in devastating consequences for the surrounding communities. In a study conducted by Utah State University, researchers found that the reduction in grazing alone resulted in a loss of 81 jobs and \$9,101,801 in economic input yearly in Garfield and Kane Counties.<sup>73</sup> However, the largest losses in economic output and jobs came from the reduced potential for energy and minerals development. According to a study from the Utah Geological Survey, the value of potential energy mineral resources in Grand Staircase-Escalante totals between **\$223 billion and \$330 billion**, including \$221-321 billion of coal, \$2 billion-\$17.5 billion of coal-bed gas, \$20 million-

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<sup>67</sup> Committee on Resources Subcommittee on National Parks and Public Lands, "Establishing the Grand Staircase-Escalante National Monument", Serial No. 105-20, pg. 23-24.

<sup>68</sup> Ibid. Pg. 12.

<sup>69</sup> Committee on Resources, "Behind Closed Doors: The Abuse of Trust and Discretion in the Establishment of the Grand Staircase-Escalante National Monument", Report 105-s1, 11/07/97, pg. 5.

<sup>70</sup> Ibid. Pg. 6.

<sup>71</sup> Committee on Resources, "Monumental Abuse: The Clinton Administration's Campaign of Misinformation in the Establishment of the Grand Staircase-Escalante National Monument", House Report 105-824.

<sup>72</sup> Ibid. "Behind Closed Doors: The Abuse of Trust and Discretion in the Establishment of the Grand Staircase-Escalante National Monument", pg. 19.

<sup>73</sup> American Stewards – analyzing data from Utah State University Extension and Economics Associations of Utah, Inc., "Economic and Cultural Report on Livestock Grazing in The Grand Staircase Escalante National Monument to The Kane County Board of Commissioners." <https://www.americanstewards.us/wp-content/uploads/2015/07/Economic-and-Cultural-Report-on-Grazing-on-The-Grand-Staircase.pdf>

\$1.1 billion of petroleum, and at least \$4.5 million of other minerals.<sup>74</sup> This amounts to an estimated 62 billion tons of coal, 2.6-10.5 trillion cubic feet of methane, and 270 million barrels of oil.<sup>75</sup> At the time of the designation, companies including Andalex, PacifiCorp, and Conoco Oil, had 89 oil and gas leases covering 137,700 acres and 22 coal leases covering 59,100 acres.<sup>76</sup> The National Monument directly prevented the creation of a planned coal mine, costing the area 1,100 jobs.<sup>77</sup> The lost royalties impacted every level of government, with Conoco estimating that the development of a 150 million barrel oil field would have resulted in \$864 million in royalties, including \$313 million for the state, \$33 million for SITLA, and \$94 million for the counties.<sup>78</sup>

One of the most controversial aspects of the designation involved the inclusion of roughly 176,000 acres of SITLA land in the exterior boundaries of the National Monument. The White House was not aware of the existence of SITLA land “or their importance” and needed an explanation of their benefits to schoolchildren the day before the National Monument’s designation.<sup>79</sup> According to the Utah Geological Survey, “the value of the recoverable coal on School Trust lands [was] at least \$17 billion but could [have been] \$25 billion or more” with potential royalties worth \$1.4-\$2 billion.<sup>80</sup> Years later, in order to compensate the State of Utah, SITLA received 145,000 acres of land outside of the National Monument and a \$50 million cash equalization payment.<sup>81</sup>

Over 20 years after the designation, the National Monument still creates serious problems for the local communities. On June 22, 2015, Garfield County Commissioners declared a state of emergency due to declining enrollment in the County’s schools.<sup>82</sup> Since the designation, enrollment in the Garfield School District dropped by 300 students and the student body in Escalante High School declined by two-thirds.<sup>83</sup> In the resolution declaring the state of emergency, Garfield County cited the National Monument and federal land management policies as the reason for “virtually eliminat[ing] historic social and economic stability in Garfield County’s communities and families.”<sup>84</sup> Management of the National Monument also continues to present challenges to BLM and local communities. A 2014 Manager’s Report highlighted the management difficulties at the National Monument by stating, “Increased backcountry visitor impacts include increased graffiti, human waste issues, water quality concerns and parking congestion.”<sup>85</sup> According to BLM, over a 10 year period, Grand Staircase-Escalante experienced 78 separate incidents of vandalism, theft, or damage and destruction of archeological and natural resources.<sup>86</sup> In 2015 alone, rangers removed more than 1,234 square feet of graffiti.<sup>87</sup> In comparison, before its designation as a National Monument, Bears Ears only experienced 1

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<sup>74</sup> M. Lee Allison et al., “A Preliminary Assessment of Energy and Mineral Resources within the Grand Staircase - Escalante National Monument”, Utah Geological Survey, January 1997, <http://files.geology.utah.gov/online/c/c-93/index.htm>.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid. “The Straw that Broke the Camel’s Back? Grand Staircase-Escalante National Monument Antiquates the Antiquities Act”, pg. 704-5. Janice Fried, “The Grand Staircase-Escalante National Monument: A Case Study in Western Land Management”, 17 Va. Envtl. L.J. 477 1997-1998, pg. 489.

<sup>77</sup> AP, “Strong emotions reignited on 20th anniversary of Utah monument”, CBS News, 09/18/16, <http://www.cbsnews.com/news/strong-emotions-20th-anniversary-utah-grand-staircase-escalante-national-monument/>

<sup>78</sup> Karl Cates, “Plans for Escalante Wells Attacked”, Deseret News, 02/12/97, <http://www.deseretnews.com/article/542880/PLANS-FOR-ESCALANTE-WELLS-ATTACKED.html>.

<sup>79</sup> Ibid. “Establishing the Grand Staircase-Escalante National Monument”, p. 23.

<sup>80</sup> Ibid. “A Preliminary Assessment of Energy and Mineral Resources within the Grand Staircase - Escalante National Monument”

<sup>81</sup> Brian Maffly, “Utah not ready to sign off on a Bears Ears lands swap”, The Salt Lake Tribune, 01/20/17, <http://www.sltrib.com/home/4835113-155/utah-not-ready-to-sign-off>.

<sup>82</sup> McKeller, Katie, “Garfield County issues unique state of emergency”, Deseret News, 06/22/15, <http://www.deseretnews.com/article/865631229/Garfield-County-issues-unique-state-of-emergency.html>

<sup>83</sup> McKeller, Katie, “Does Garfield County have a future? Student numbers tell troubled story”, Deseret News, 06/09/15, <http://www.deseretnews.com/article/865630428/Does-Garfield-County-have-a-future-Student-numbers-tell-troubled-story.html?pg=all>

<sup>84</sup> Garfield County Board of Commissioners, Resolution 2015-3, 06/22/15, <http://garfield.utah.gov/wp-content/uploads/2015/07/commission-meeting-6-22-2015.pdf>

<sup>85</sup> BLM, Grand Staircase-Escalante Manager’s Annual Report, 2014, [https://www.blm.gov/nlcs\\_web/sites/style/medialib/blm/ut/grand\\_staircase-escalante/nlcs\\_mgrs\\_report.Par.61629.File.dat/GSENM\\_Manager\\_Report\\_FY2014\\_draft1-25-2015.pdf](https://www.blm.gov/nlcs_web/sites/style/medialib/blm/ut/grand_staircase-escalante/nlcs_mgrs_report.Par.61629.File.dat/GSENM_Manager_Report_FY2014_draft1-25-2015.pdf) pg 46

<sup>86</sup> Information obtained by the Congressional Research Service and provided by the Bureau of Land Management.

<sup>87</sup> Fox 13 News, “Rangers investigate vandalism at Grand Staircase-Escalante National Monument”, 04/04/16, <http://fox13now.com/2016/04/04/rangers-investigate-vandalism-at-grand-staircase-escalante-national-monument/>.

incident of vandalism over 5 years.<sup>88</sup> On February 17, 2017, Governor Herbert signed H.C.R. 12, a bipartisan state law urging a federal reduction in the size of Grand Staircase-Escalante.<sup>89</sup>

### *Cascade-Siskiyou National Monument*

On June 9, 2000, President Clinton designated Cascade-Siskiyou National Monument in southwestern Oregon. President Obama expanded the National Monument by 47,624 acres, including 5,275 acres in California, as one of his last uses of the Antiquities Act on January 12, 2017. A major concern with the designation involved the massive amount of private land included in the boundaries of the National Monument. President Obama's expansion added 32,977 acres of private land to the National Monument, in addition to the approximately 19,000 of private land already within the National Monument's original footprint.<sup>90</sup>

Currently, Murphy Company, a forest products company, and the Association of O&C Counties are suing over the designation, arguing the expansion illegally overlaps with Oregon and California Railroad lands (O&C Lands). According to a 1940 opinion from DOI Solicitor General Nathan R. Margold, the President does not possess the authority to designate a National Monument on O&C Lands, stating:

“There can be no doubt that the administration of the lands for national monument purposes would be inconsistent with the utilization of the O. and C. lands as directed by Congress. It is well settled that where Congress has set aside lands for a specific purpose the President is without authority to reserve lands for another purpose inconsistent with that specified by Congress.”<sup>91</sup>

Roughly 40,000 acres of the 48,000 acre expansion overlap O&C Lands that are meant for the sustained yield of timber production.<sup>92</sup> Congress passed the O&C Lands Act in 1937 for “permanent forest production” and stated “the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities.”<sup>93</sup> 50 percent of the revenues from O&C Lands go directly to the Counties, which pay for “essential public services of all kinds, from public safety such as sheriff patrols and jails to public health programs and libraries.”<sup>94</sup> When these lands are taken out of multiple-use, the Counties face extreme budget shortfalls that negatively impact residents in the surrounding rural communities.

The restrictions from the National Monument expansion will not only harm the local forest products industry, but also make science-based management of the forest a near impossibility. Active management is critical to resilient forest health and preventing catastrophic wildfires in the face of drought, insects, and disease. The National Monument designation will

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<sup>88</sup> Ibid. Rebecca Benally, Subcommittee on Federal Lands Hearing on H.R. 5780.

<sup>89</sup> Benjamin Wood, “Utah Senate approves call to shrink Grand Staircase-Escalante National Monument”, The Salt Lake Tribune, 02/08/17, <http://www.sltrib.com/home/4919019-155/utah-senate-approves-call-to-shrink>.

<sup>90</sup> Mark Freeman, “Obama expands Cascade-Siskiyou National Monument”, Mail Tribune, 01/13/17, <http://www.mailtribune.com/news/20170112/obama-expands-cascade-siskiyou-national-monument>.

<sup>91</sup> Department of the Interior Solicitor General Nathan R. Margold, M. 30506, 03/09/40, pgs. 3-4.

<sup>92</sup> Karina Brown, “Oregon Counties Fight Expansion of National Monument”, Courthouse News Service, 02/16/17, <https://www.courthousenews.com/oregon-counties-fight-expansion-of-national-monument/>.

<sup>93</sup> 43 U.S.C. §1181a

<sup>94</sup> Association of O&C Counties, Testimony for the House Committee on Natural Resources Subcommittee on Federal Lands Regarding the Antiquities Act, pg. 2.

not only prevent commercial timber harvesting, but also essential forest management activities such as thinning.<sup>95</sup> In a scientific study conducted in 2014, researchers categorized most of the lands in the National Monument footprint as having moderate (25-45%) to high (45-65%) active restoration needs.<sup>96</sup> Potentially exacerbating these conditions are the restrictions on transportation within the National Monument and reduced funds to maintain and repair infrastructure, which could severely limit access for firefighters in the event of a catastrophic wildfire.<sup>97</sup> According to testimony provided by the American Forest Resource Council, “Because these are dynamic ecosystems – and the boundaries of the monument are not – catastrophic fire is not a matter of “if.” It is a matter of when.”<sup>98</sup>

Grazing presents another challenge with the National Monument’s expansion. President Clinton’s original designation of Cascade-Siskiyou specifically targeted grazing and ordered BLM to study grazing’s impact on biological diversity in the National Monument.<sup>99</sup> After the original designation, the permitted animal unit months (AUMs) fell from 2,714 to 101, covering 47,281 acres.<sup>100</sup> Many ranchers reluctantly agreed to receive buyouts because the regulations impacting their grazing operations became too burdensome and were threatening their profitability.<sup>101</sup> In testimony provided to the Committee, Jackson County, Oregon, reported that one rancher loses nearly \$170,000 per year because restrictions on transportation in the National Monument prevent him from reaching his 360 acres of lands leased for grazing.<sup>102</sup> After the expansion of the National Monument, many ranchers faced renewed concerns that the designation would prevent ranchers from “properly maintain[ing] fences, water structures and other range improvements, diminishing the land’s suitability for grazing.”<sup>103</sup>

Several groups and individuals in Oregon and California opposed the expansion including Chairmen Greg Walden (R-OR-02), Tom McClintock (R-CA-04), and Doug LaMalfa (R-CA-01), Oregon State Senators Herman Baertschiger Jr. and Doug Whitsett, Oregon State Representatives Mike McLane, Carl Wilson, Gail Whitsett, Sal Esquivel, and Duane Stark, Jackson County, Oregon, Siskiyou County, California, Klamath County, Oregon, the Association of O&C Counties, local forestry companies, including the Murphy Company, Medford/Jackson Chamber of Commerce, the Oregon Farm Bureau, the Oregon Cattlemen’s Association, Oregon Snowmobilers, Jefferson State 4x4, and the Jackson County Chamber of Commerce.<sup>104</sup> The designation also lacked adequate public input, as the BLM Medford Office never provided “accurate maps and data to enable the public to learn more about how the expansion” would affect the local community.<sup>105</sup>

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<sup>95</sup> Travis Joseph, Testimony on “Consequences of Executive Branch Overreach of the Antiquities Act”, AFRC, pg. 4.

<sup>96</sup> Ryan Haugo et al. “A new approach to evaluate forest structure restoration needs across Oregon and Washington, USA”, *Forest Ecology and Management* 335 (2015) 37–50.

<sup>97</sup> Jackson County, Oregon, Letter RE: House Natural Resources Committee, Subcommittee on Federal Lands Oversight Hearing – Examining the Consequences of Executive Branch Overreach of the Antiquities Act, pg. 2.

<sup>98</sup> *Ibid.*, Testimony on “Consequences of Executive Branch Overreach of the Antiquities Act”, AFRC, pg. 4.

<sup>99</sup> President Bill Clinton, Proclamation 7318, 06/09/00, [https://www.blm.gov/or/resources/recreation/csnm/files/Proclamation\\_7318.pdf](https://www.blm.gov/or/resources/recreation/csnm/files/Proclamation_7318.pdf).

<sup>100</sup> Phil Taylor, “Grazing in Clinton-era monuments – it’s complicated”, *E&E News*, 04/28/16, <https://www.eenews.net/stories/1060035783>.

<sup>101</sup> *Ibid.*, “Grazing in Clinton-era monuments – it’s complicated.”

<sup>102</sup> *Ibid.*, Letter RE: House Natural Resources Committee, Subcommittee on Federal Lands Oversight Hearing – Examining the Consequences of Executive Branch Overreach of the Antiquities Act, pg. 2.

<sup>103</sup> Mateusz Perkowski, “Ranchers dread effects of Cascade-Siskiyou monument expansion, *Capital Press*, 01/11/17, <http://www.capitalpress.com/Oregon/20170112/obama-expands-cascade-siskiyou-national-monument>.

<sup>104</sup> Letters provide to the Committee on Natural Resources.

<sup>105</sup> Members representing Southern Oregon in the Oregon State Legislature, Letter RE: Cascade Siskiyou, 11/1/16.