

CALIFORNIA SENATE OFFICE OF RESEARCH

JULY 2017

Federal Update

NATIONAL MONUMENTS UNDER REVIEW BY PRESIDENT TRUMP'S EXECUTIVE ORDER

On April 26, 2017, President Trump signed an executive order, "Review of Designations Under the Antiquities Act," which directs the U.S. Department of the Interior to review designations of national monuments. In signing the order, President Trump described the designations as a "massive federal land grab" and said "it's time to end these abuses and return control to the people . . . the people of all of the states, the people of the United States. "

The order applies to all monuments created since January 1, 1996, of at least 100,000 acres. As of this month, the Department of the Interior reports 25 national monuments (six in California) are under review in accordance with the order. The review could mean some monuments will be altered or eliminated altogether.

BACKGROUND

The Antiquities Act of 1906 (16 U.S.C. 431–433), signed by President Theodore Roosevelt, was the first U.S. law to provide general protection for any wide-ranging kind of cultural or natural resource. It established the first national historic preservation policy for the United States. Section 2 of the statute gives the president the authority to set aside for protection " . . . 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 . . . " These protected areas were designated as "national monuments," and the federal agencies assigned to oversee them were required to maintain appropriate care and management of the resources.¹

When he signed the Antiquities Act, President Roosevelt created 18 monuments, including the Grand Canyon and Olympic National Park in Washington, totaling more than 1 million acres. According to the National Park Service, 15 other presidents from both parties have designated a total of 170 monuments, including marine monuments.

EXECUTIVE ORDER

According to the summary of notice posted by the Department of the Interior, the review is “to determine whether each designation or expansion conforms to the policy stated in the April 26, 2017, executive order and to formulate recommendations for presidential actions, legislative proposals, or other appropriate actions to carry out that policy.”

The executive order directs the Secretary of the Interior to consider:

- The language of the Antiquities Act stating “the smallest area compatible with the proper care and management of the objects to be protected”
- Whether designated lands are appropriately classified as “historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest”
- The effects of a designation on the available uses of designated federal lands, including consideration of the multiple-use policy section 102 (a)(7) of the federal Land Policy Management Act (43 U.S.C. 1701 (a)(7)), as well as the effects on the available uses of federal lands beyond the monument boundaries
- The effects of a designation on the use and enjoyment of nonfederal lands within or beyond monument boundaries
- Concerns of state, tribal, and local governments affected by the designation, including the economic development and fiscal condition of affected states, tribes, and localities
- The availability of federal resources to properly manage designated areas
- Other factors as the Secretary of the Interior deems appropriate

PUBLIC COMMENT

On July 10, 2017, the formal public comment period closed for the review of national monuments. According to the Department of the Interior, more than 1.2 million comments were received on www.regulations.gov, and “thousands more” were received via traditional mail. The department reports 25 national monuments are under review in accordance with the executive order. Secretary of the Interior Ryan Zinke said he will issue a final report within 120 days of the order’s signing, which falls at the end of August.

The order has sparked an intense political and legal battle. Conservationists, tribes, and various local communities have expressed concern about any effort to alter existing monuments. These groups claim the monuments have not only supported these communities and their economies but that any attempt to undo an existing monument is a “betrayal” to the people who have fought for generations to protect and safeguard them for the future.

Proponents of the order say it is time for the administration to scrutinize how the Antiquities Act has been applied and to update the law itself. Secretary Zinke has said he will study whether any designations have led to “loss of jobs, reduced wages, and reduced public access” because “some of these areas were put off limits for traditional uses, like farming, ranching, timber harvest, mining, oil and gas exploration, fishing and motorized recreation.”

IMPACT ON CALIFORNIA

Of the 25 designations subject to review under President Trump’s executive order, six land-based monuments are in California:

- Berryessa Snow Mountain in Northern California, designated by President Obama in 2015
- Carrizo Plain in Southern California, designated by President Clinton in 2001
- Giant Sequoia in the southern Sierra Nevada, designated by President Clinton in 2000
- Mojave Trails, connecting the Mojave National Preserve to Joshua Tree National Park, designated by President Obama in 2016
- Sand to Snow in the San Bernardino Mountains, designated by President Obama in 2016
- San Gabriel Mountains, part of the Los Angeles and San Bernardino national forests, designated by President Obama in 2014

Supporters of the order in California, as elsewhere, have concerns about whether heightened protection of some federal lands has hurt local economies or reduced public access, and whether communities have had a meaningful voice in the decisions. In the case of Mojave Trails, for example, while many view conservation as the appropriate status of

much of the area, some believe the case for local consensus was not made prior to its designation.

Critics of the order contend it is an effort to expand extractive industries for private profit on public lands. If this contention holds true, two monuments in California may be especially vulnerable. Carrizo Plain sits near oil deposits, and some oil companies maintain mineral rights below the protected lands. Also, Mojave Trails National Monument surrounds the controversial Cadiz Water Project. The water project sits in the heart of the monument and aims to use this aquifer system to help create a reliable water supply for Southern California.

Last month, Sens. Dianne Feinstein and Kamala Harris, both California Democrats, called on Secretary Zinke to preserve the monument designation and current boundaries of all six California national monuments under review by the Trump administration. “These iconic California landscapes and historic landmarks were designated by President Trump’s predecessors in recognition of their ‘historic or scientific interest’ to the nation and special meaning for our state,” the senators wrote. The full text of the letter can be found at https://www.feinstein.senate.gov/public/_cache/files/6/b/6b617c72-2898-4f7c-beae-695a02f129fa/7E0102ACEC4FC43525B9570EE5508713.2017.06.09-zinke-letter-on-national-monuments.pdf.

Conversely, Congressional Republicans of the House Western Caucus urged Secretary Zinke to eliminate or shrink some of the monuments under review, including some in California, stating in a letter also sent last month, “No one person should be able to unilaterally lock-up millions of acres of public land from multiple use with the stroke of a pen. Local stakeholders deserve to have a voice on public land-use decisions that impact their livelihoods.” The full text of the letter can be found at <https://westerncaucus.house.gov/sites/westerncaucus.house.gov/files/documents/6.30.17%20Final%20letter%20to%20Zinke%20Antiquities%20Review.pdf>.

Written by Meg Svoboda. The California Senate Office of Research is a nonpartisan office charged with serving the research needs of the California State Senate and assisting Senate members and committees with the development of effective public policy. The office was established by the Senate Rules Committee in 1969. For more information, please visit <http://sor.senate.ca.gov> or call (916) 651-1500.

¹ Linda Ellis, “*Archeological Method and Theory: An Encyclopedia*” (New York: Garland Pub., 2000), p. 33–35, <https://www.nps.gov/archeology/tools/laws/antact.htm>.