Public Interest Comment from Strata Policy on Bears Ears National Monument Designation

Public Interest Comment on The Department of the Interior's Review of Certain National Monuments Established Since 1996

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ABOUT STRATA

Strata is a public policy research center in Logan, Utah, that seeks to help people make informed decisions about issues that impact the freedom to live their lives. We work to achieve more prosperous and free societies by conducting academic research on energy and environmental issues.¹ We draw from the collective academic strength and ideas from a strong network of academics and professionals across the world.

Docket ID: DOI–2017–0002
Released: May 24, 2017

¹ A statement on Strata’s policies regarding research independence and integrity is available at: http://www.strata.org/research-policy/
Introduction and Background

The Department of the Interior’s request for comment on the designation of Bears Ears National Monument and other monuments designated over the past 20 years responds to Executive Order 13792 (hereafter ‘The Executive Order’), issued by President Trump. The Executive Order instructs the Secretary of the Interior to consider past designations’ adherence to statutory language in the Antiquities Act of 1906 (54 U.S. Code § 320301), among other criteria.

One of the most controversial of these designations has been Bears Ears National Monument. Strata is a public policy think tank based in Logan, Utah, that uses public choice theory and constitutional political economy to evaluate the legal and economic ramifications of government actions, especially as they relate to environmental policy. We are interested in the review of Bears Ears National Monument because we are concerned about the rule of law, the abuse of government power, and the effects of government policies on a wide range of people. Our organization is composed of academics and policy professionals who engage in research to better understand the incentives behind government policies and the consequences that result from these policies. We have found that Bears Ears National Monument, as currently designated, does not comport with the Act’s “requirements and original objectives.” We have also found that the current designation does not “appropriately balance the protection of landmarks, structures, and objects against the appropriate use of federal lands and the effects on surrounding lands and communities.”

In December 2016, President Obama signed a presidential proclamation establishing Bears Ears National Monument in southeast Utah. In this proclamation, President Obama extolled the scenic amenities of the region and cited the area’s cultural and historical importance to local Native American people. The language of the proclamation argues that the natural, historical, and cultural amenities in the area need protection. President Obama claimed that the monument’s 1.35 million acres are “the smallest area compatible with the proper care and management of the objects to be protected.” In the five months since President Obama established the monument, the debate for and against it has been widely publicized and contentious. The heightened emotions surrounding the review of this national monument should not influence how the Department of the Interior analyzes the monument’s economic impacts, legal implications, and effects on conservation. Below, we have listed seven factors that the Department of the Interior should consider in its review of Bears Ears National Monument. The factors are listed in the order we discuss them throughout the document.

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1. The monument violates the law by being significantly larger than “the smallest area compatible with the proper care and management of the objects to be protected” and includes many objects for protection beyond the scope of the Antiquities Act.

2. The creation of the monument seems to be rooted in the desire to establish an “environmental legacy,” rather than the stated purpose of the Antiquities Act.

3. Historical precedent gives ample evidence that the executive may unilaterally reduce the size of improperly large designations.

4. The monument designation does little to give additional protection to the amenities described in the presidential proclamation.

5. Federal, state, and local lawmakers supported land use policies that would balance the use of federal lands between competing interests. The monument designation overrode local interests.

6. The proclamation heavily emphasizes the importance of the area to Native Americans, but the future management may not actually reflect the desires of the Native peoples who value the land.

7. The designation does not necessarily give more freedom to Native Americans to use their sacred land as they see fit.

Analysis

Bears Ears National Monument Exceeds the Size Stipulations in the Antiquities Act

Legal Historical Background

The Department of the Interior’s request for public comment asks for information regarding “[t]he requirements and original objectives of the Act, including the Act’s requirement that reservations of land not exceed ‘the smallest area compatible with the proper care and management of the objects to be protected’” and “whether designated lands are appropriately classified under the Act as ‘historic landmarks, historic and prehistoric structures, [or] other objects of historic or scientific interest.’”

The phrase “historic landmarks, historic and prehistoric structures, [or] other objects of historic or scientific interest” is drawn from the Antiquities Act and establishes the criteria the President may use to determine whether a given site can appropriately be designated as a national monument. The statute does not supply any formal definition for these criteria. The Act’s legislative history is long and complex, but plenty of contemporary legislative documents and remarks by representatives indicate that the Act’s

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original purpose was to protect small geographic areas associated with specific relics and sites. The phrase “other objects of historic or scientific significance” was not included in early proposals of the Act, but was instead added by a committee appointee from the American Anthropological Association. The Department of the Interior, interested in preserving greater swaths of land, approved the change, but Western congressional delegations disagreed, fearing land grabs. To appease concerned stakeholders in the West, the “smallest area compatible” language was included in the final bill.

President Obama’s Proclamation Includes Many Objects for Protection Beyond the Scope of the Antiquities Act

President Obama’s proclamation includes several references to sites that clearly fall within the scope of the Antiquities Act. Lime Ridge Clovis Site and Moon House Ruin, both located within Bears Ears National Monument, are two examples of candidates for legitimate designation because of their clear historic interest. The proclamation, however, goes much further in both geographic scope and in terms of what is considered an appropriate justification for designation. The proclamation talks at length about unique geological features, long-gone explorers, and “star-filled nights and natural quiet.” It contains seven long paragraphs listing species present in the area; though a few are rare or even endemic; many, like sagebrush, are extensively present throughout the Intermountain West and beyond.

It is difficult to argue that “scientific interest” extends so far that the mere presence of pine trees, rabbits, and mule deer is sufficient to justify a “smallest area compatible” designation of over a million acres — such a conclusion could be used to designate nearly all public lands on the Colorado Plateau. Bona fide historic sites exist in the monument, but these areas could just as easily be protected by a significantly smaller designation. The same is true for scientific sites and the presence of paleontological digs or habitat for endemic species like the moth *Eucosma navajoensis*. None of the sites of legitimate historic or scientific interest offered in the proclamation fulfill the burden of defending the full extent of the designation. The Department of the Interior, in its review, should consider reducing the size of Bears Ears to more appropriately encompass sites of legitimate historical and scientific interest, reasonably defined. The definition of “scientific interest” can easily be extended to the point of legal meaninglessness, but without a robust explanation for a particular area’s unique value, the Antiquities Act is left open for rampant abuse.

It is also difficult to argue that the “historic interest” arguments for the monument are justifiable. With a loose interpretation of “historic interest,” the monument’s boundaries could potentially include the entire Four Corners region. The proclamation includes a description of the cultural and historical importance of

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Bears Ears, but the proclamation also includes archeological sites from the Clovis culture, the ancestral Puebloans, and more recent archeological findings from the Ute, Navajo, and Paiute cultures. By justifying the extent of the current monument on these grounds, the monument could be extended several hundred miles in every direction. Such a hypothetical designation would be politically unviable and an extreme abuse of the Antiquities Act. This thought experiment, however, suggests that the boundaries of the monument have been strategically drawn to maximize the extent of the monument while minimizing the political backlash from an overly large monument. Although strategic on the part of the Obama Administration, the scope of this designation and its ad hoc justifications erode the rule of law by increasing the expanding power of the executive branch.

Political Economy Explanation for the Designation of National Monuments

Rather than following the stated purpose of the Antiquities Act, the creation of the monument seems to be rooted in the desire for an “environmental legacy.” The fact that President Obama designated this controversial monument during the lame duck period between the 2016 election and the presidential inauguration strongly suggests that this was a classic case of environmental legacy building. There is strong evidence to suggest that several past presidents have used the Antiquities Act for this motive, but such designations are inconsistent with the wording and original intention of the Act. Using the Antiquities Act as a means of self-aggrandizement on the part of lame duck presidents is inconsistent with the Act’s requirements and original objectives.

Although difficult to definitely prove that a designation is used for motives other than the protection of antiquities, economic theory can inform us of likely cases where designations are used for motives other than those expressly written in the Act. First, the lame duck period between an election and an inauguration is a strategic time for controversial actions on the part of the president and Congress alike. The chance for retribution on the part of the electorate is minimal for both the president and his party, which explains why presidents often save their most controversial designations for this period. Second, the size of monuments helps build up an environmental legacy because presidents are seen as having “saved” the largest amount of land possible. Third, national monument designations are one of the lowest cost ways for presidents to build an environmental legacy. Alternative means, such as landmark legislation or national park designations, are difficult and costly for a president to achieve because engaging with Congress to create such policies is time consuming and requires extensive coalition building, among other costs. Designating a national monument, on the other hand, can be done unilaterally. The judiciary’s lax enforcement of the Antiquities Act’s restrictions makes this even easier.

For presidents who want to have an environmental legacy, the Antiquities Act is a relatively low cost means to designate the largest amount of land possible at the most strategic time. President Obama appears to have followed this strategy with his designation of Bears Ears National Monument. Our comment is not to say that environmental legacy-building is good or bad, but simply that this use of the Antiquities Act is inconsistent with the original objectives and intent of the law. Such uses of the law are an overreach of executive power.
Bears Ears National Monument Exceeds the Antiquities Act’s Size Limitations

Bears Ears National Monument does not fulfill the requirements of the Antiquities Act because the size of the monument is much larger than “the smallest area compatible with the proper care and management of the objects to be protected.” Although the Act implicitly gives the president wide discretion to designate national monuments on federal lands, the law should not be read to give the president unlimited authority to unilaterally designate vast areas. Past abuses of the Antiquities Act do not justify continuing abuses. The Bears Ears, the monument’s namesake, are two mesas located in Utah’s San Juan County. The mesas are only a small fraction of the large area within Bears Ears National Monument.

Devils Tower National Monument, the first national monument in the United States, protects a geological feature similar to the Bears Ears, but the area of the monument is approximately two square miles. President Theodore Roosevelt used the Antiquities Act in 1906 to create Devils Tower National Monument, but his designation was only slightly larger than the footprint of the Devils Tower butte itself. This seems more consistent with the wording to protect “the smallest area compatible with the proper care and management of the objects to be protected.” Despite this precedent, presidents have made increasingly large designations. Over the years, the Supreme Court and other federal courts have consistently upheld presidential designations of national monuments, creating the incentive for presidents’ to abuse their fiat power.9

According to a strict interpretation of the Act, a monument designation protecting only the Bears Ears mesas would include an area of roughly five by five miles. Various other legitimate historic and scientific sites throughout the area could be protected by narrow piecemeal designations. The current monument, however, extends approximately 80 miles from north to south, and 50 miles from east to west. The monument also completely encapsulates other heavily protected areas, including Natural Bridges National Monument, Dark Canyon Wilderness Area, and Cedar Mesa Primitive Area. This suggests that many areas within the monument were already protected well before the national monument designation. The dimensions of Bears Ears National Monument are clearly larger than “the smallest area compatible with the proper care and management” of the Bears Ears mesas and their immediate surroundings.

The Executive Has the Authority to Reduce the Size of Existing National Monuments Under Some Circumstances

No president has ever attempted the wholesale removal of a national monument designation. There is legal disagreement over whether such an attempt would ultimately be upheld in the courts, with reasonable arguments to be made for both sides.10 Ultimately, executive-led full revocation of monument

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10 Presidential Authority to Revoke or Reduce National Monument Designations by John Yoo and Todd Gaziano, cited later in this paragraph, begins with the argument that the president has the general authority to revoke designations
status is legally uncharted territory. Reductions in size, however, have occurred multiple times without court challenges. First, President Taft reduced his own designation of Navajo National Monument, cutting its land area by 89 percent. Multiple presidents cut pieces from Mount Olympus National Monument, reducing its size by nearly half. President Truman removed nearly half of Santa Rosa Island National Monument from designation, and President Eisenhower diminished Great Sand Dunes National Monument by 25 percent. This is not an exhaustive list — it merely highlights major reductions.11

President Taft’s proclamation vastly reducing Navajo National Monument is illustrative. It specifically states that the decision was a result of finding that the designation constituted “a much larger tract of land than is necessary for the protection of such of the ruins as should be reserved.”12 Even without general authority to rescind monument status, there is a strong case to be made that the president retains the power to shrink existing monuments according to a finding that an original designation was inappropriately large. No federal court has ever ruled directly on these reductions, but in Alaska v. United States, the Supreme Court “accepted without discussion” that the boundaries of Glacier Bay National Monument redrawn by President Eisenhower were legitimate.13 Eisenhower’s proclamation made reductions on three different plots for separate reasons: the land could serve a more critical federal purpose; it was improvidently included in the designation to begin with; and Antiquities Act protection was no longer necessary.14 The Congressional Research Service’s report on presidential authority under the Antiquities Act concludes (albeit with an air of legal uncertainty) that these and other reductions are legally legitimate.15

Historical examples of presidents shrinking previous monument designations abound, including some which are quite large. The Department of the Interior should reevaluate previous designations to ascertain both whether they were originally valid and/or continue to be necessary. If either of those conditions is not met, the President and Secretary should seek to redraw monument boundaries in accordance with the size and scope limitations present in the text of the Antiquities Act.

under a number of well accepted legal principles. For legal opinions arguing that the executive does not have the right to remove monuments, see Wyatt, A. M. (2016). Antiquities Act: Scope of Authority for Modification of National Monuments. Congressional Research Service Report R44687.
http://www.law.indiana.edu/publicland/files/national_monuments_modifications_CRS.pdf


13 545 U.S. 75. (S.C. 2005). Quotation and analysis from Yoo & Gaziano, Presidential Authority, supra.


15 Wyatt, Antiquities Act, supra.
The Monument Designation Does Little to Give Additional Protections

The monument designation does little to give additional protection to the amenities described in the presidential proclamation. The U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) will continue to manage the land within the monument that they were already managing prior to the designation.\textsuperscript{16}

President Obama’s proclamation also stipulates that the USFS and the BLM “shall consult with other Federal land management agencies in the local area, including the National Park Service” when deciding on a management plan for the monument. Management plans must include “maximum public involvement,” which includes federally recognized tribes, state governments, and local governments. Management plans must also be drafted to “maximize opportunities [...] for shared resources, operational efficiency, and cooperation.”\textsuperscript{17} Prior to the monument designation, agencies collaborated to manage the area and members of the community were involved in land management decisions. Many laws already direct the USFS and the BLM to protect and preserve the scientific, historical, and cultural amenities of the area.\textsuperscript{18} Although national monuments historically served a critical role in protecting artifacts, the Bears Ears designation serves little purpose in protecting any sites or amenities because newer federal laws and regulations, as well as USFS and BLM management plans, already protected the sites and amenities listed in the presidential proclamation.

Protections for the Area Prior to the National Monument Designation

The Antiquities Act was passed in 1906 under a set of unique circumstances and with particular intentions. In the late 19th century and early 20th century, policymakers, academics, and the general public were concerned that development and looting were destroying archeological sites and other artifacts across the country. Congress passed the Antiquities Act as a relatively low-cost means of quickly protecting cultural and natural resources that were in immediate danger of destruction.\textsuperscript{19}

As the 20th century progressed, other legislation and regulations were enacted to protect cultural and natural resources. These additional protections should have limited the need for presidents to use the Antiquities Act, at least in theory. For example, the Archaeological Resources Protection Act (ARPA) of

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\textsuperscript{16} Proclamation No. 9558, \textit{supra}.  
\textsuperscript{17} Id.  
\textsuperscript{19} National Park Service. (2016). \textit{About the Antiquities Act}.  
https://www.nps.gov/archeology/sites/antiquities/about.htm
1979 protects archaeological resources found on federally-owned and tribal lands, making monument designations to protect these resources redundant in many cases. ARPA also bans the trafficking of archaeological resources that people obtain when violating existing laws and regulations. Despite increasing protections for cultural and natural resources, presidents continued to use their authority under the Act to designate monuments. In many cases, the Antiquities Act has evolved into a political tool, rather than a last-resort means of preserving endangered antiquities.

Advocates for the designation of Bears Ears National Monument wished to ensure protection for Native American artifacts and sacred sites. The Inter-Tribal Coalition, one of the groups that advocated for the designation of the monument, argued that more protection was needed for artifacts within the proposed area. These areas are already protected by ARPA, which states “No person may [or attempt to] excavate, remove, damage, or otherwise alter or deface […] any archaeological resource located on public lands or Indian lands” unless they have been issued a permit by the proper governing body. People that knowingly violate this law can be fined up to $10,000 or imprisoned for up to a year. The Inter-Tribal Coalition argued that Native American artifacts in the Bears Ears area needed additional protection, since laws that prohibit removing or damaging Native American artifacts were enforced by a single BLM law enforcement officer that covered all of San Juan County, almost 8,000 square miles.

The USFS and the BLM have failed to make it clear how the monument designation will provide the area any protection beyond what current laws and resources already provide the area. Following the designation of the area, the USFS released a report on the recreation conditions of the monument. The report states that outfitter and guide permits, hunting, and firewood gathering would continue in the same manner that they had in the past, subject to USFS regulations and standards. The report also provided “etiquette for preserving [archaeological] sites.” The guidelines inform visitors how to interact with historic sites and artifacts within the area, but they do not provide any information on the enforcement of laws prohibiting the removal of Native American artifacts. The BLM has yet to release management guidelines specifically for Bears Ears National Monument, but the BLM provides general guidelines for the management of national monuments. These guidelines stipulate that the BLM must continue to manage the areas as multiple use, maintain relationships with local governments, land managers, and tribal governments, and “conserve, protect, and restore nationally significant landscapes.”

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among other things. These guidelines provide no explanation of how a national monument designation will increase protections relative to the BLM’s prior management.

The monument designation specifically maintains the status quo for many aspects of the monument’s management, further making the designation superfluous. President Obama’s proclamation states:

1. “Laws, regulations, and policies followed by USFS or BLM in issuing and administering grazing permits or leases on lands under their jurisdiction shall continue to apply with regard to the lands in the monument.”
2. “Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Utah, including its jurisdiction and authority with respect to fish and wildlife management.”
3. “Nothing in this proclamation shall preclude low-level overflights of military aircraft...or the use or establishment of military flight training routes.”
4. “Nothing in this proclamation shall be construed to alter the authority or responsibility of any party with respect to emergency response activities within the monument, including wildland fire response.”
5. “Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the monument shall be the dominant reservation.”

All of these stipulations appear to preserve the status quo of grazing, wildlife management, military activities, emergency response, wildland fire response, or other existing land and water use rights.

Lack of Funding for Public Lands

Although Bears Ears National Monument was meant to further protect the land, serious funding issues limit federal land managers ability extend current protections. For example, the National Park Service currently has a $12 billion backlog of deferred maintenance projects, which is roughly five times more than the average amount that Congress appropriates to the entire Service annually. The BLM, which will manage parts of Bears Ears under the National Landscape Conservation System, is also severely underfunded. These National Conservation Lands compose 12 percent of BLM land but only receive 6 percent of total BLM funding. The BLM has only $2.23 per acre for its National Conservation Lands. The USFS also struggles with funding, due in large part to the high expense of fighting fires. The USFS


claims that “rising fire suppression costs is predicted to continue as long as the 10-year average serves as the funding model and presents a significant threat to the viability of all other services that support our national forests.”

Given the perpetual funding issues with the NPS, USFS, and BLM, Bears Ears National Monument will continue to struggle with the same issues that existed prior to the designation. The title of “national monument” does not automatically solve the fiscal issues that presented challenges in managing the lands prior to the designation.

As has been the case with national monuments in the past, Bears Ears National Monument designation may increase tourism to the area. Considering the fiscal issues that the USFS and BLM face, they may not have the resources to properly protect the objects of interest found within the monument. The designation may have the unintended consequence of degrading the very things the monument was intended to protect.

**Concerns of State, Tribal, and Local Governments and Economic Impacts**

The Department of the Interior’s request for public comment asks for information regarding “concerns of State, tribal, and local governments affected by a designation, including the economic development and fiscal condition of affected States, tribes, and localities.”

**Concerns of State and Local Governments**

Utah’s delegation to Congress, as well as many local officials in San Juan County, supported an alternative proposal to Bears Ears National Monument. Two of Utah’s Representatives, Rob Bishop and Jason Chaffetz, sponsored the Public Lands Initiative (PLI) to balance the desires for conservation against local economic development and funding for public schools. The PLI was one way to balance the competing uses of the area in two ways. First, it proposed a massive conservation effort, including new national conservation areas, a new national monument, and new wilderness areas in Utah. Second, the bill would have promoted economic development by opening up some of Utah’s federally owned lands to energy development.

Representative Chaffetz said, “Instead of the arrogance of a unilateral designation by a president who has never visited these areas, this bill enjoys broad local support after a very open and transparent process.”

Despite the attempt at compromise, the PLI became highly controversial within

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Utah and across the country. With the establishment of Bears Ears, the PLI died in Congress. The concerns that prompted the PLI are still salient because the monument designation will affect local economic development.

Concerns of Tribal Governments and Native Americans

The presidential proclamation heavily emphasizes the importance of the area to Native Americans, but future management may not actually reflect the desires of the Native peoples who value the land. Within the proclamation, President Obama established the Bears Ears Commission to “ensure that management decisions affecting the monument reflect tribal expertise and traditional and historical knowledge.” The Commission’s duties are described as providing “guidance and recommendations on the development and implementation of management plans and on management of the monument.” The Commission is composed of one elected officer each from the Hopi Nation, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of the Uintah Ouray, and Zuni Tribe, designated by the officers’ respective tribes.

Within the wording of the proclamation, both the Secretary of the Interior and the Secretary of Agriculture “shall meaningfully engage the Commission or, should the Commission no longer exist, the tribal governments through some other entity composed of elected tribal government officers (comparable entity), in the development of the management plan and to inform subsequent management of the monument.” Although the Commission can put forward suggestions to the Secretaries, they have no specific obligation to follow the desires of the Commission. If the Secretaries choose to deviate from the suggestions of the Commission, the Secretaries must provide the Commission with a written explanation of their reasoning. Any management plans created by the Secretaries and their agencies must also include “parameters for continued meaningful engagement with the Commission.” The vague wording and arbitrary nature of these directives indicate that current and future Secretaries can simply disregard the Commission’s suggestions as long as they give a written justification for their actions. There is no definition for “meaningful engagement,” so nearly any interpretation could be considered valid. Although some Secretaries may give considerable deference to the wishes of the Commission, some Secretaries in the future, depending on politics and other constraints, may choose to completely disregard the Commission’s guidance.

The designation does not necessarily give more freedom for Native Americans to use their sacred land as they see fit. President Obama’s proclamation specifically states that “[n]othing in this proclamation shall be deemed to enlarge or diminish the rights or jurisdiction of any Indian tribe.” The proclamation also states that the monument’s management will be “consistent with the American Indian Religious Freedom Act (42 U.S.C. 1996) and Executive Order 13007 of May 24, 1996 (Indian Sacred Sites), including collection of medicines, berries and other vegetation, forest products, and firewood for personal noncommercial use in a manner consistent with the care and management of the objects identified above.”

Both the Indian Religious Freedom Act and Executive Order 13007 have allowed Native Americans across the country to engage in traditional activities. The national monument designation does not give
any tribe additional jurisdiction over the area, which means that Native Americans do not have more access to their sacred lands than they did before the designation.

Conclusion

While many Americans value the idea of land preservation, the designation of Bears Ears National Monument is an abuse of executive power and does little to increase the area’s protections. The argument over Bears Ears National Monument is about more than just the monument itself. Rather, it is about the overextension of the Antiquities Act. The stakes of the current debate are not about how scenic or how beloved the land may or may not be, but the rule of law and the appropriate use of executive power granted by the Antiquities Act.

As requested by the Department of the Interior, we have identified seven reasons why Bears Ears National Monument does not reflect the “requirements and original objectives” of the Antiquities Act, and it does not “appropriately balance the protection” of objects of interest. First, the monument violates the law by being significantly larger than “the smallest area compatible with the proper care and management of the objects to be protected” and includes many objects for protection beyond the scope of the Antiquities Act. Second, the creation of the monument violates the stated purpose of the Antiquities Act because it was clearly used as a tool to build an environmental legacy. Third, there are many historical cases where the executive has unilaterally reduced the size of improvidently large designations. Fourth, the monument designation does little to give additional protection to the amenities described in the presidential proclamation. Fifth, federal, state, and local lawmakers supported land use policies that would balance the use of federal lands between competing interests, but the monument designation overrode local say in the matter. Sixth, the proclamation heavily emphasizes the importance of the area to Native Americans, but the future management may not actually reflect the desires of the Native peoples who value the land. Seventh, the designation does not necessarily give more freedom for Native Americans to use their sacred land as they see fit.

We recommend that the Secretary take several courses of action. First, the Department of the Interior, in its review, should consider reducing the size of Bears Ears to more appropriately encompass sites of legitimate historical and scientific interest, reasonably defined. Second, the Department of the Interior should reevaluate previous designations to ascertain both whether they were originally valid and/or continue to be necessary. If either of those conditions is not met, the President and Secretary should seek to redraw the monument’s boundaries in accordance with the size and scope limitations present in the text of the Antiquities Act.