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### A Response to Dismantling Monuments

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## A RESPONSE TO DISMANTLING MONUMENTS

*John C. Ruple\**

“Abundant rock art, ancient cliff dwellings, ceremonial sites, and countless other artifacts provide an extraordinary archaeological and cultural record that is important to us all, but most notably the land is profoundly sacred to many Native American tribes. . . .”—thus begins President Obama’s proclamation creating the Bears Ears National Monument.<sup>1</sup> The proclamation creating the Grand Staircase-Escalante National Monument begins similarly, extolling a “vast and austere landscape [that] embraces a spectacular array of scientific and historic resources[, a] high, rugged, and remote region, where bold plateaus and multi-hued cliffs run for distances that defy human perspective.”<sup>2</sup> On December 4, 2017, President Trump shrank Bears Ears by 85% and the Grand Staircase Escalante by almost 50%.<sup>3</sup> The question at the heart of the lawsuits that followed is simple: does the President have the legal authority to dismember our national monuments? I believe that he does not, and that *Dismantling Monuments* did not delve deep enough in its analysis.

Questions of presidential powers necessarily begin with the U.S. Constitution, which is clear: “The *Congress* shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory and other Property belonging to the United States. . . .”<sup>4</sup> No comparable grant of power over our public lands was made to the President, so Congress must delegate its power to the President before he can act in this arena. In passing the Antiquities Act of 1906,<sup>5</sup> Congress empowered the President to *create* national monuments.<sup>6</sup> The Act and its legislative history, however, never mention monument reduction. The question is therefore how to interpret congressional silence? While this question appears destined for Supreme Court review, the weight of authority suggests that Congress intended to retain the power to remake our nation’s monuments.

But before discussing presidential power, we should revisit

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1. Proclamation No. 9558, 82 Fed. Reg. 1139, 1139 (Dec. 28, 2016).

2. Proclamation No. 6920, 61 Fed. Reg. 50,223, 50,223 (Sept. 18, 1996).

3. Proclamation No. 9682, 82 Fed. Reg. 58,089, 58,093 (Dec. 8, 2017) (regarding Grand Staircase-Escalante); Proclamation No. 9681, 82 Fed. Reg. 58,081, 58,085 (Dec. 8, 2017) (modifying Bears Ears).

4. U.S. CONST. art. IV, § 3, cl. 2 (emphasis added).

5. Pub. L. No. 59-209, 34 Stat. 225 (1906) (codified as amended in scattered sections of 54 U.S.C.).

6. *Id.*

*Dismantling Monuments* opening argument that the Antiquities Act cannot be used to protect natural resources or large landscapes.<sup>7</sup> In passing the Antiquities Act, Congress delegated to the President the authority to:

[D]eclare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments . . . . The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.<sup>8</sup>

An earlier bill proposed narrower language, limiting reservations to “monuments, cliff dwellings, cemeteries, graves, mounds, forts, or other work of prehistoric, primitive, or aboriginal man, to the extent of not exceeding three hundred and twenty acres.”<sup>9</sup> But Congress did not adopt that language, adopting instead the much broader “objects of historic or scientific interest” and leaving size to the discretion of the President.<sup>10</sup> Our courts, moreover, have on six occasions been asked whether natural resources are “objects” within the meaning of the Antiquities or whether a landscape-scale monument was too big. Every time the courts upheld the designation.<sup>11</sup> Take the Grand Canyon as an example: On January 11, 1908, just 18 months after passage of the Antiquities Act, President Roosevelt proclaimed the 808,000 acre Grand Canyon National Monument<sup>12</sup> (since expanded and elevated to national park status). Eight years later, the United States sued Ralph Cameron to invalidate his claim to a mine within the Monument, and to prevent him from interfering with Monument management.<sup>13</sup> Mr. Cameron countered that the canyon was neither a “historic landmark,” nor “an object of historic or scientific interest.”<sup>14</sup> He also argued that because of the Monument’s size, it was clearly not confined to the “smallest area compatible with the proper care and management” of the canyon.<sup>15</sup>

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7. Richard H. Seamon, *Dismantling Monuments*, 70 FLA. L. REV. 553, 556–57 (2018).

8. 54 U.S.C. § 320301(a)–(b).

9. H.R. 10451, 56th Cong. (1900).

10. 54 U.S.C. § 320301(a).

11. See *Cappaert v. United States*, 426 U.S. 128, 141–42 (1976); *Cameron v. United States*, 252 U.S. 450, 455–56 (1920); *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1137 (D.C. Cir. 2002); *Tulare Cty. v. Bush*, 306 F.3d 1138, 1140–42 (D.C. Cir. 2002); *Utah Ass’n of Cty. v. Bush*, 316 F. Supp. 2d 1172, 1183–84 (D. Utah 2004); *Anaconda Copper Co. v. Andrus*, No. A79-161, 1980 U.S. Dist. Lexis 17861, at \*5 (D. Alaska June 26, 1980).

12. Proclamation No. 794, 35 Stat. 2175 (Jan. 11, 1908).

13. *Cameron*, 252 U.S. at 454.

14. *Id.* at 455–56.

15. Answer to Amended Complaint at 11, *United States v. Cameron* (D. Ariz. July 28, 1916).

The Supreme Court disagreed, invalidating Cameron’s mining claim and affirming that the Grand Canyon is “an object of unusual scientific interest,” appropriately protected under the Antiquities Act.<sup>16</sup> Fifty-six years later, in the only other national monument challenge to reach the Supreme Court, “objects of historic or scientific interest” were again given a broad reading when the Court held that endemic fish and the pool they inhabited were objects of historic or scientific interest within the meaning of the Antiquities Act.<sup>17</sup>

Shortly after designation of the Grand Staircase-Escalante National Monument in 1996, the Utah Association of Counties sued to invalidate that monument, claiming, among other things, that the monument was too big and that the landscape was not an “object.”<sup>18</sup> They also lost the argument<sup>19</sup> that *Dismantling Monuments* seeks to resurrect. Challenges to monument size have never found traction with Congress or the courts. By 1936, Presidents had designated six monuments of roughly 1,000 square-miles or more without court or congressional objection.

*Dismantling Monuments* uses President Carter’s designation of vast Alaskan national monuments, and their subsequent congressional re-designations, to argue that Congress bristled at the idea of large monuments.<sup>20</sup> But the article neglected to explain why President Carter proclaimed those monuments, or that Congress *elevated* most of those monuments to national park status. Alaska’s statehood act, which was passed in 1959, recognized existing aboriginal land claims while also authorizing the state to claim millions of acres of land.<sup>21</sup> In 1971 Congress enacted the Alaska Native Claims Settlement Act (ANCSA)<sup>22</sup> to resolve competing Native and state land claims and to stimulate economic development. ANCSA authorized the Secretary of the Interior to withdraw public lands in Alaska from development for up to five years while Congress considered permanent protections for those lands.<sup>23</sup> The Secretary issued the temporary withdrawal, but Congress struggled to enact legislation in the time allotted. President Carter feared the rush of mining and homestead claims that a missed deadline would spawn, and that those claims would make comprehensive land designations far more

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16. *Cameron*, 252 U.S. at 455–56.

17. *Cappaert v. United States*, 426 U.S. 128, 142 (1976).

18. *Utah Ass’n of Ctys. v. Bush*, 316 F. Supp. 2d 1172, 1176–77 (D. Utah 2004).

19. *Id.* at 1186.

20. Seamon, *supra* note 7, at 568–69.

21. An Act to Provide for the Admission of the State of Alaska into the Union, Pub. L. No. 85-508, 72 Stat. 339, 340 (1958).

22. Alaska Native Claims Settlement Act (ANCSA), Pub. L. No. 92-203, 85 Stat. 668 (1971) (codified as amended in scattered sections of 43 U.S.C.).

23. 43 U.S.C. § 1616(d) (2012); *see also* Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 GA. L. REV. 473, 503 (2003) (discussing the effect of the ANCSA’s recommended withdrawals).

difficult.<sup>24</sup> On December 1, 1978, pressed to action by congressional delay, President Carter proclaimed seventeen new or expanded national monuments in Alaska, covering nearly 56 million acres.<sup>25</sup>

Two years later, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA),<sup>26</sup> designating over 100 million acres of land in new conservation units, “including 43.6 million acres of new parklands, 53.7 million acres of new wildlife refuge land, twenty-five new wild and scenic rivers, and 56.4 million acres of wilderness. Many of the protected areas were carved out of the monuments that had been declared just two years earlier by President Carter.”<sup>27</sup> Congress’ elevation of monuments to national parks and wildlife refuges was not a repudiation of the President’s actions, but finalization of years of legislative and executive effort to protect that landscape.

Returning to the question of presidential authority: Whether the Antiquities Act empowers the President to revise or rescind a national monument is a question of congressional intent, and there are at least five reasons to believe that Congress intended to reserve that power for itself. First, there was no reason for Congress to surrender that power. Congress passed the Antiquities Act because it was ill-equipped to identify threatened public lands and resources, or to swiftly develop the site-specific protections those lands required.<sup>28</sup> Resource protection at times required swift action, and delegating protective powers to the President made that possible. But while swift action was often needed to protect sensitive resources, there was no comparable need to swiftly gut protections, or to delegate away that power.

Second, Congress repeatedly enacted legislation authorizing a President to protect public lands and to revise or revoke those protections if circumstances changed.<sup>29</sup> In 1897, for example, Congress amended the Forest Reserve Act of 1891 to empower the President to modify national forest reservations.<sup>30</sup> Representative John Lacey, who lobbied for that

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24. Squillace, *supra* note 23, at 503–4.

25. *Id.* at 504.

26. Pub. L. No. 96-487, 94 Stat. 2371 (1980) (codified as amended in scattered sections of 16 U.S.C.).

27. Squillace, *supra* note 23, at 504.

28. ANNUAL REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE TO THE SECRETARY OF THE INTERIOR FOR THE FISCAL YEAR ENDED JUNE 30, 1904, at 59–60 (1904).

29. See 43 U.S.C. § 141 (1970) (repealed by FLPMA); 43 U.S.C. §§ 161–284 (1970) (repealed by FLPMA); 43 U.S.C. § 299 (1970) (repealed by FLPMA); 43 U.S.C. § 300 (1970) (repealed by FLPMA); Act of May 28, 1940, Pub. L. No. 76-532, 54 Stat. 224, 224 (1940); Act of Aug. 19, 1935, Pub. L. No. 74-268, 49 Stat. 660, 661 (1935); Boulder Canyon Project Act, Pub. L. No. 17-642, 45 Stat. 1057, 1063 (1928); Act of May 14, 1898, ch. 299, 30 Stat. 409, 414 (1898); Act of June 4, 1897, ch. 2, 30 Stat. 11, 36 (1897); Act of Oct. 2, 1888, ch. 1069, 25 Stat. 505, 527 (1888), *repealed by* Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701–84 (1976).

30. Forest Reserve Act of 1891, ch. 561, 26 Stat. 1095, 1103 (1891).

amendment, drafted the Antiquities Act less than a decade later. But Lacey did not propose, and Congress did not include, such two-way language in the Antiquities Act. Courts “presume that, where words differ [between statutes], ‘Congress acts intentionally and purposefully in the disparate inclusion or exclusion.’”<sup>31</sup> The different language used in the Antiquities Act must be given effect.

Third, Congress on seven occasions took up legislation to endow the President with the power to make wholesale changes to national monuments.<sup>32</sup> All of those efforts failed.<sup>33</sup> While we must be careful not to read too much into failed legislation,<sup>34</sup> these bills, when considered with other evidence, demonstrate that Congress understood the President to lack broad revisionary authority and they saw little need to endow him with such powers.

Fourth, the Executive Branch represented to both Congress and the Supreme Court that national monuments are not subject to the whims of the President. In 1979 it told Congress that a “National Monument designation” is “permanent.”<sup>35</sup> In 2006, the Department of Justice argued before the Supreme Court that “only Congress could abolish a national monument.”<sup>36</sup>

Fifth, whatever the President’s powers may have been in 1963 (when a President last reduced a national monument)<sup>37</sup> Congress dramatically reduced those powers in 1976 when it enacted the Federal Land Policy and Management Act (FLPMA).<sup>38</sup> As retired Congressional Research Service Attorney Pamela Baldwin explains, FLPMA “so changed the laws and the context within which to interpret withdrawal authority as to

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31. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 63 (2006) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)).

32. S. 3826, 68th Cong. 2d. Sess. (1925); S. 2703, 69th Cong. 1st Sess. (1926); S. 3840, 68th Cong. (1925); H.R. 11357, 68th Cong. 2d Sess. (1925); S. 4617, 71st Cong. 2d Sess. (1930); H.R. 14646, 72d Cong. 2d Sess. (1933); and H.R. 3990, 115th Cong. § 2 (2017).

33. *See*.

34. *See Cent. Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164, 187 (1994) (“Congressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change.”).

35. H.R. REP. NO. 96–97, pt. 1, at 341 (1979).

36. Memorandum in Support of Motion of the U.S. for Partial Summary Judgment on Count IV of the Amended Complaint at 44, *Alaska v. United States*, 546 U.S. 413 (2006) (No. 128, Original).

37. Proclamation No. 3539, 28 Fed. Reg. 5407, 5407 (June 1, 1963) (regarding Bandelier National Monument).

38. Pub. L. No. 94-579, 90 Stat. 2743, 2744–45 (1976) (codified as amended in scattered sections of 43 U.S.C.).

render pre-FLPMA presidential practices of little relevance.”<sup>39</sup> Congress specifically repealed twenty-nine “statutes or parts of statutes that had provided withdrawal authority to the [P]resident.”<sup>40</sup> FLPMA also expressly repealed the President’s implied authority to withdraw or reserve land,<sup>41</sup> and as the House Committee Report explains, FLPMA “would also specifically reserve to the Congress the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act. . . . These provisions will insure that the integrity of the great national resource management systems will remain under the control of the Congress.”<sup>42</sup> Congress simply did not intend for the President to assume the power to carve up our national monuments.

But even if the President has the power to reduce a monument to confine it to the “the smallest area compatible with the proper care and management of the objects to be protected,” that is not what President Trump did. Bears Ears was originally designated to protect “tens of thousands of historic and pre-historic structures, cliff dwellings, rock art panels (pictographs and petroglyphs), kivas, open service sites, pueblos, towers, middens, artifacts, ancient roads, historic trails, and other archaeological resources” that are important to Native Americans.<sup>43</sup> President Trump eliminated seventy-three percent of all documented archaeological sites from the monument.<sup>44</sup> At the Grand Staircase-Escalante, which was designated in large part to protect paleontological resources, “at least 700 scientifically important fossil sites have been excluded by the new monument,” including the almost entire record of whole geologic eras.<sup>45</sup> As the President of the Society of Vertebrate Paleontologists explains: “The rock layers of the monument are like pages in an ancient book. . . . If half of them are ripped out, the plot is lost.”<sup>46</sup> President Trump did not reduce the monuments to the smallest area necessary to protect irreplaceable resources. He dismantled the

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39. Pamela Baldwin, *Presidential Authority to Modify or Revoke National Monuments 2* (Sept. 17, 2017) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3095744](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3095744) [<https://perma.cc/YU7T-MHQF>].

40. *Id.*; see generally Pub. L. No. 94-579, 90 Stat. 2743 (codified as amended in scattered sections of 43 U.S.C.).

41. 43 U.S.C. § 704(a).

42. H.R. REP. NO. 94-1163, at 9 (1976).

43. Complaint for Declaratory and Injunctive Relief at 55–56, *Utah Diné Bikéyah v. Trump*, No. 1:17-cv-02605-TSC (D.D.C. Dec. 6, 2017).

44. *Id.* at 58.

45. Memorandum in Support of Plaintiffs’ Motion for Partial Summary Judgement at 15, *Grand Staircase Escalante Partners v. Trump*, No. 1:17-cv-02591-TSC (D.D.C. Jan. 20, 2018).

46. Tay Wiles, *Monument Reductions Threaten Future Dinosaur Discoveries*, HIGH COUNTRY NEWS (Jan. 30, 2018), <https://www.hcn.org/articles/public-lands-monument-reductions-threaten-future-dinosaur-discoveries> [<https://perma.cc/3MBZ-MEWD>] (quoting David Polly, President, Society of Vertebrate Paleontologists).

monuments to expedite energy development,<sup>47</sup> and in so doing, he reduced protections for tens of thousands of irreplaceable resources.

Two arguments in favor of the President's power to shrink national monuments deserve specific attention. *Dismantling Monuments* argues that the power to decide on monument designation necessarily includes the power to reconsider monument designations.<sup>48</sup> Two examples show why this sweeping proposition is not true. Once a President decides to sign a bill into law, neither that President nor his successor can un-sign the bill. Similarly, once a President decides to grant a pardon, neither he nor his successor can un-pardon that person. Presidents must live with their decisions and the decisions of their predecessors. The power to create does not automatically include the power to undo.

The most compelling argument in favor of the President's power to shrink monuments comes from the twenty or so times that Presidents have previously revised monuments. But those reductions, all of which occurred more than half a century ago, receive scant explanation in *Dismantling Monuments*. Each reduction is discussed elsewhere in great detail,<sup>49</sup> so a brief summary here will suffice. Until now, every national monument that has been reduced by presidential action had been set aside before 1940, and most at least a decade prior to that.<sup>50</sup> Maps of the rural West, where every reduced monument is found, were often of poor quality during the early monument designation period. Roughly half of the presidentially revised monument contained unsurveyed land.<sup>51</sup>

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47. See Eric Lipton & Lisa Friedman, *Oil Was Central in Decision to Shrink Protected Utah Site, Emails Show*, N.Y. TIMES, Mar. 5, 2018, at A11; Juliet Eilperin, *Uranium Firm Urged Trump Officials to Shrink Bears Ears National Monument*, WASH. POST (Dec. 8, 2017), [https://www.washingtonpost.com/national/health-science/uranium-firm-urged-trump-officials-to-shrink-bears-ears-national-monument/2017/12/08/2eea39b6-dc31-11e7-b1a8-62589434a581\\_story.html?utm\\_term=.17d3921ec401](https://www.washingtonpost.com/national/health-science/uranium-firm-urged-trump-officials-to-shrink-bears-ears-national-monument/2017/12/08/2eea39b6-dc31-11e7-b1a8-62589434a581_story.html?utm_term=.17d3921ec401) [https://perma.cc/23XZ-UPJY].

48. Seamon, *supra* note 7, at 584.

49. John C. Ruple, *The Trump Administration and Lessons Not Learned from Prior National Monument Modifications*, 43 HARV. ENVTL. L. REV. 1 (2019), [http://harvardelr.com/wp-content/uploads/2019/03/vol.43.1\\_Ruple.pdf](http://harvardelr.com/wp-content/uploads/2019/03/vol.43.1_Ruple.pdf).

50. Archeology Program, *Antiquities Act 1906-2006 Maps, Facts, & Figures: Monuments List*, NATIONAL PARK SERVICE, [www.nps.gov/archeology/sites/antiquities/monumentslist.htm](http://www.nps.gov/archeology/sites/antiquities/monumentslist.htm) [https://perma.cc/TFW7-DHYF] (last updated Oct. 21, 2018).

51. See Proclamation No. 1994, 47 Stat. 2506, 2506-07 (Mar. 17, 1932) (Great Sand Dunes); Proclamation No. 1875, 46 Stat. 2988, 2988 (Apr. 12, 1929) (Arches); Proclamation No. 1694, 43 Stat. 1947, 1947-48 (May 2, 1924); Proclamation No. 1640, 42 Stat. 2285, 2285 (Oct. 14, 1922) (Timpanogos), (Craters of the Moon); Proclamation No. 1322, 39 Stat. 1764, 1764 (Feb. 11, 1916) (Bandelier); Proclamation No. 869, 35 Stat. 2247, 2247-48 (Mar. 2, 1909) (Mt. Olympus); Proclamation No. 804, 35 Stat. 2183, 2183-84 (Apr. 16, 1908) (Natural Bridges), for examples of national monument proclamations which include unsurveyed lands or maps identifying unsurveyed lands. To get around this problem, some national monument proclamations describe lands in terms of degrees, minutes, and seconds rather than in accordance with the Public Land Survey System. See Proclamation No. 1733, 43 Stat. 1988, 1989 (Feb. 26,

Further complicating matters, surveys of that era were often riddled with errors.<sup>52</sup> Inadequate surveys made it difficult to describe the location of the objects to be protected, and to accurately define monument boundaries around those objects.

At both Navajo and Petrified Forest national monuments, looting forced monument designation before the location of the objects to be protected was known. The President, in both cases, designated a larger monument than necessary knowing that boundaries would be revised following survey completion.<sup>53</sup> Surveys at Great Sand Dunes, were so bad that the proclamation had to be revised to exclude references to lands that did not physically exist.<sup>54</sup> The Hovenweep proclamation misidentified the lands to be protected.<sup>55</sup> Revisions to Mt. Olympus (now Olympic National Park), Arches, Timpanogos Cave, and Natural Bridges also corrected errors in describing the objects to be protected or the boundary of the monuments around them.<sup>56</sup> No one claims that either Bears Ears or the Grand Staircase-Escalante proclamations suffered from survey errors.

Other monument modifications clarified that state and private land were not part of the monument. At Glacier Bay, a revision excluded a saw mill, multiple homesteads, a salmon cannery, a fur farm, and a secret military base.<sup>57</sup> At Katmai, President Coolidge excluded a mine,<sup>58</sup> and at Scotts Bluff he excluded a federal water project.<sup>59</sup> Mt. Olympus was reduced twice to clarify that homesteads were not part of the monument.<sup>60</sup> President Roosevelt eliminated rights-of-way for what would become

1925) (Glacier Bay); Proclamation No. 1487, 40 Stat. 1855, 1856 (Sept. 24, 1918) (Katmai); Proclamation No. 804, 35 Stat. 2183, 2183–84 (Apr. 16, 1908) (Natural Bridges).

52. See, e.g., PUB. LAND LAW REVIEW COMM'N, ONE THIRD OF THE NATION'S LANDS: A REPORT TO THE PRESIDENT AND TO THE CONGRESS BY THE PUBLIC LAND LAW REVIEW COMMISSION 260 (1970) (explaining that 93% of National Forest System boundaries either hadn't been surveyed or needed resurveying, and "[t]he magnitude of the problem is greater with respect to lands administered by the Bureau of Land Management").

53. See HAL K. ROTHMAN, NAT'L PARK SERV., NAVAJO NATIONAL MONUMENT: A PLACE AND ITS PEOPLE, AN ADMINISTRATIVE HISTORY 15 (1991); *Establishment of a National Park Service: Hearing on H.R. 22995 Before the H. Comm. on the Public Lands*, 62d Cong. 32 (1912).

54. Proclamation No. 2681, 11 Fed. Reg. 2623, 2625 (Mar. 14, 1946).

55. Proclamation No. 3132, 21 Fed. Reg. 2369, 2369 (Apr. 12, 1956).

56. See Ruple, *supra* note 49, at 46–51.

57. JOHN M. KAUFFMAN, GLACIER BAY NATIONAL MONUMENT, ALASKA: A HISTORY OF ITS BOUNDARIES 17–18, 31 (1954) (on file with author).

58. Exec. Order No. 3897, 40 Stat. 1855 (Sept. 5, 1923) (eliminating land from the Katmai National Monument "[i]n view of the prior occupation and development of the tract by John J. Folstad as a coal mine for supplying fuel for local use").

59. DEP'T OF THE INTERIOR, REPORT OF THE DIRECTOR OF THE NATIONAL PARK SERVICE TO THE SECRETARY OF THE INTERIOR FOR THE FISCAL YEAR ENDED JUNE 30, 1924 AND THE TRAVEL SEASON 1924, at 16 (1924).

60. Proclamation No. 1862, 45 Stat. 2984, 2985 (Jan. 7, 1929); Proclamation No. 1191, 37 Stat. 1737, 1737 (Apr. 17, 1912).

highway 70 from White Sands,<sup>61</sup> and a state highway from Craters of the Moon<sup>62</sup>—and all of this infrastructure predated monument reductions. No one contends that President Trump was surgically excluding non-federal lands or existing infrastructure from the Utah monuments.

The most recent monument reduction involved Bandelier National Monument in New Mexico.<sup>63</sup> But the brief explanation offered in *Dismantling Monuments* ignores a critical fact—the revision *improved* resource protection. Bandelier borders the Los Alamos National Laboratory, which is a centerpiece of our nation’s nuclear arsenal. In 1963, President Kennedy transferred 3,925 acres of monument land to the laboratory and 2,882 acres of laboratory land to the monument.<sup>64</sup> The lands removed from the monument, and the archaeological resources they contain, were subsequently locked behind the gate of a nuclear installation and placed out of reach of looters. The exchange, in short, increased protection for a site that suffered from vandalism and looting.<sup>65</sup> It is hard to see how this revision could justify reductions that leave vast tracts of resources unprotected.

Three times Presidents reduced national monuments to further our nation’s defense. At Santa Rosa Island, President Truman excluded land needed for Eglin Field—the airfield where Jimmy Doolittle trained for his daring WWII bombing raid on Japan.<sup>66</sup> In 1955, President Eisenhower eliminated a WWII airfield from Glacier Bay—an airfield that had been built in secret during WWII to defend against threatened Japanese attack.<sup>67</sup> At Mt. Olympus, President Wilson reduced the monument in part to provide timber needed for WWI.<sup>68</sup> Douglas fir was essential for ship building, and Sitka spruce was prized for airplane construction because it was light, strong, and did not splinter when struck by bullets.<sup>69</sup> Spruce, however, was available only in temperate rainforests like those along the Northwest coast, and the monument was home to the largest

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61. Proclamation No. 2295, 53 Stat. 2465 (Aug. 29, 1938).

62. Proclamation No. 2499, 55 Stat. 1660 (July 18, 1941); Ruple, *supra* note 49, at 60–61.

63. Proclamation No. 3539, 28 Fed. Reg. 5407, 5407 (June 1, 1963).

64. *Id.*

65. See Ruple, *supra* note 49, at 66–67.

66. See *Eglin Air Force Base History*, EGLIN AIR FORCE BASE (July 25, 2012), <https://www.eglin.af.mil/About-Us/Fact-Sheets/Display/Article/390964/eglin-air-force-base-history/> [<https://perma.cc/CPQ8-A42U>].

67. Proclamation No. 3089, 20 Fed. Reg. 2103, 2103 (Apr. 5, 1955). Ruple, *supra* note 49, at 70.

68. Proclamation No. 1293, 39 Stat. 1726, 1726 (May 11, 1915).

69. See Gerald W. Williams, *The Spruce Production Division*, FOREST HISTORY TODAY 3 (Spring 1999) (quoting Brice P. Disque, Brigadier General of the U.S. Army); see also GAIL E.H. EVANS & GERALD W. WILLIAMS, OVER HERE, OVER HERE: THE ARMY’S SPRUCE PRODUCTION DIVISION DURING “THE WAR TO END ALL WARS” 4 (1984).

Sitka spruce stands in the Northwest.<sup>70</sup> The U.S. went so far as to mobilize an Army division to ensure lumber for the war effort.<sup>71</sup> A 1935 Department of the Interior Solicitor's Opinion also observed that the Department of Agriculture investigated the boundary change and concluded that the reduction would not impact elk summer range or glaciers, which were the resources that the monument had been set aside to protect.<sup>72</sup> Five subsequent expansions added almost all of the excised lands, and then some, back into what is now Olympic National Park.

None of these prior reductions provide justification for the events of today. Good surveys predated establishment of both monuments, reductions were not a matter of national security, nor were they part of a broader effort that improved resource protection. And even if congressional acquiescence in prior monument reductions may have endowed the President with narrowly proscribed powers, enactment of FLPMA ended that era.

Reasonable people can disagree about the wisdom of individual monument designations or whether the Antiquities Act adequately reflects contemporary values. Those seeking redress for perceived injury are not without a remedy, but that remedy resides in the Halls of Congress which can create, modify, or even revoke national monument designations. The President, however, is without such powers—and there is no reason to expand the power of the President by creating implied powers that are supported neither by history nor congressional intent.

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70. GAIL E.H. EVANS, HISTORIC RESOURCE STUDY: OLYMPIC NATIONAL PARK WASHINGTON, ch. III (1983), [https://www.nps.gov/parkhistory/online\\_books/olym/hrs/chap3.htm](https://www.nps.gov/parkhistory/online_books/olym/hrs/chap3.htm) [https://perma.cc/LPS3-GBD9].

71. Williams, *supra* note 69, at 6–7; EVANS & WILLIAMS, *supra* note 69, at 6.

72. U.S. Dep't of Interior, Office of the Solicitor, Opinion Letter on Mount Olympus National Monument (Jan. 30, 1935). Although the original monument proclamation also referred to the elk's "breeding grounds," the Department did not address possible impacts to the breeding habitat. Proclamation No. 869, 35 Stat. 2247, 2247 (Mar. 2, 1909).