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# A MONUMENTAL MESS: CAN PRESIDENT TRUMP'S ADMINISTRATION FIND LEGAL GROUND TO SUPPORT ITS DECISION TO MODIFY NATIONAL MONUMENTS?

[Natural Resource \(/full-blog/category/Natural+Resource\)](#)

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On Monday, December 4, 2017, President Trump signed presidential proclamations to shrink both the Bears Ears and Grand Staircase-Escalante National Monuments, resulting in the largest reduction of public-lands protection in the history of our nation.[i] Bears Ears will see the biggest impact, with an 85% reduction from 1.3 million acres to 1.1 million acres.[ii] While some have supported the decision, there are many others who have strongly opposed it, bringing an unexplored legal question into the limelight: Does the 1906 Antiquities Act give the president the power to modify or eliminate national monuments, as well as designate?[iii]





[http://image.oregonlive.com/home/olive-media/width960/img/opinion\\_impact/photo/2017/12/05/bestpix-president-trump-delivers-remarks-at-utah-state-capitol-in-salt-lake-city-27308461954d30b8.jpg](http://image.oregonlive.com/home/olive-media/width960/img/opinion_impact/photo/2017/12/05/bestpix-president-trump-delivers-remarks-at-utah-state-capitol-in-salt-lake-city-27308461954d30b8.jpg)  
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The 1906 Antiquities Act states “[t]hat the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Federal [AC1] Government of the United States to be national monuments.”<sup>[iv]</sup> A plain reading of the Act clearly does not include a power to reduce the national monument. It is, however, still being argued that portions of the Act imply that power exists.<sup>[v]</sup> The 1906 Antiquities Act also states that “the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected.”<sup>[vi]</sup> Supporters of the reduction are construing this as a requirement that the president designating the national monument confine the area, thus giving a future president the power to confine it if it is found to be larger than needed.<sup>[vii]</sup> A response to that, though, is that this requirement is applied only at the time of designation and includes no power for diminishment after the fact.

President Trump’s biggest opponents—environmental groups and Native American tribes—fear that his decision will ruin the protected land as companies move in for oil and gas drilling, in addition to the potential destruction of historical artifacts and spiritual land.<sup>[viii]</sup> Their fears are on the brink of realization, as the monuments officially opened to mining on February 2, 2018.<sup>[ix]</sup> With Trump also intending to make reductions to other national monuments in the future,<sup>[x]</sup> five pending court decisions in on Bears Ears and Grand Staircase-Escalante interpreting the 1906 Antiquities Act will largely influence his future plans.

[i] Josh Dawsey & Juliet Eilperin, *Trump Shrinks Two Huge National Monuments in Utah, Drawing Praise and Protests*, Wash. Po. (Dec. 4, 2017), [https://www.washingtonpost.com/politics/trump-scales-back-two-huge-national-monuments-in-utah-drawing-praise-and-protests/2017/12/04/758c85c6-d908-11e7-b1a8-62589434a581\\_story.html?utm\\_term=.7194f056ef8c](https://www.washingtonpost.com/politics/trump-scales-back-two-huge-national-monuments-in-utah-drawing-praise-and-protests/2017/12/04/758c85c6-d908-11e7-b1a8-62589434a581_story.html?utm_term=.7194f056ef8c).

[ii] *Id.*

[iii] *Id.*

[iv] Antiquities Act of 1906, 16 U.S.C.A. §§ 320301–320303 (West 2018).

[v] John Hudak, *President Trump Has the Power to Shrink National Monuments*, Brookings Inst. (Dec. 7, 2017), <https://www.brookings.edu/blog/fixgov/2017/12/07/president-trump-has-the-power-to-shrink-national-monuments/>.

[vi] § 320301(b).

[vii] Hudak, *supra* note v.

[viii] James Rainey, *Trump Cutting Bears Ears and Other National Monuments Sets Up Environmental Showdown*, NBC (Dec. 6, 2017), <https://www.nbcnews.com/news/us-news/trump-cutting-bears-ears-other-national-monuments-sets-environmental-showdown-n826841>.

[ix] Jenny Rowland, *The National Monuments Slashed By Trump Will Officially Be Open to Mining on Friday*, Think Progress (Feb. 1, 2017), <https://thinkprogress.org/trump-national-monuments-mining-bc92ca54db29/>.

[x] Rainey, *supra* note viii.

[AC1] This is in the original quote.

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