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Precedent for Secretary Zinke’s Gut-Job on the National Monuments

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by Andy Kerr

Abstract

The Trump administration is moving ahead with its intention to review and rescind national monument designations for some public lands. Now a leaked memorandum from Secretary of the Interior Ryan Zinke shows that he will be pointing to unproclamations of portions of national monuments by previous presidents as precedent. We take a closer look here at such precedents and also suggest the illegality of presidents abolishing, diminishing and/or weakening national monuments.

Introduction

Presidents are authorized by Congress by way of the [National Monuments Act of 1906](#) to proclaim national monuments, but they are not authorized to unproclaim or diminish monuments either in area or protections for the “objects” of interest. According to reputable legal scholars, [these powers are reserved to Congress](#) under the property clause of the United States Constitution (Article IV, Section 3, Clause 2). Nonetheless, proponents of the elimination or evisceration of national monuments have pointed to past examples where a president diminished a previously proclaimed national monument.

Now we have Secretary of the Interior Ryan Zinke writing the following in his undated “Memorandum for the President: Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act,” [leaked](#) on 17 September 2017:

The Act has been used to designate or expand national monuments on Federal lands more than 150 times. It has also been used at least 18 times by Presidents to reduce the size of 16 national monuments, including 3 reductions of Mount Olympus National Monument by Presidents Taft, Wilson, and Coolidge that cumulatively reduced the size of the 639,200-acre Monument by a total of approximately 314,080 acres, and a reduction of the Navajo National Monument by President Taft from its original 360 acres to 40 acres. President Roosevelt also modified the reservation of the Katmai National Monument to modify management of the Monument.

Really, Mr. Secretary?

The Historical Record

The secretary of the interior has misstated and/or misshaded a few facts in the paragraph just quoted.

1. While 155 national monuments have been proclaimed or expanded, 260 proclamations were issued. Many national monuments were expanded at least once, if not several times. TR’s Pinnacles National Monument was expanded six times by five presidents (Hoover twice!) before being redesignated by Congress as the Pinnacles National Park in 2012.
2. The three reductions to the Mount Olympus National Monument from Theodore Roosevelt’s original 639,200 acres were by 160 acres, 305,325 acres, and 640 acres (for a total of 306,125 acres) respectively by Presidents Taft, Wilson, and Coolidge. (These acreages were lifted directly or derived from the respective presidential proclamations, while Zinke’s acreage may have been a later mapping estimate.) The largest reduction did not stand, as in 1938 Congress absorbed the Mount Olympus National Monument into an Olympic National Park, which today is 922,650 acres in size, 50 percent larger than TR’s original proclamation.
3. Regarding the acreage of the Navajo National Monument, President Taft’s original proclamation in 1909 failed to state a specific acreage or a specific legal description from which a specific acreage could be derived. In his 1912 proclamation, Taft dialed back his description of the “objects” in his 1909 proclamation, limiting the monument to “two tracts of land containing one hundred and sixty acres each, and within which are situated prehistoric ruins known as ‘Betata Kin’ and ‘Keet Seel,’ respectively, and one tract of land, containing forty acres, and within which is situated a prehistoric ruin known as ‘Inscription House’.” Therefore, the reduced size is 360 acres (160+160+40), not 40 acres.

4. President Franklin Roosevelt’s clarification of management for the Katmai National Monument was to make the 1,088,000 acres in President Wilson’s 1918 proclamation (and the 1,609,590 acres in Hoover’s expansion) specifically subject to valid existing rights (legitimate land and/or mining claims filed prior to the proclamation, etc.), as generally all presidentially proclaimed national monuments had been before and have been after FDR’s clarification. Wilson could have drafted it better in the first place, and Hoover should have caught it.

Zinke did get a couple of things right. While no presidentially proclaimed national monument has ever been completely unproclaimed by subsequent presidential proclamation, there have been eighteen occasions (affecting sixteen national monuments, listed in Table 1 and subsequently described) where later presidential proclamation—sometimes even by the same president—has reduced the size of a national monument. At *least* 462,573 acres of land presidentially proclaimed as national monument have been later presidentially unproclaimed as national monument—sometimes by the same president. Fortunately, most—but certainly not all—of the unproclaimed acreage was reproclaimed by a later president or otherwise protected by an act of Congress. Four no-harm, no-foul subsequent proclamations have clarified but not diminished a previous national monument proclamation. All of these unproclamations and clarifying subsequent proclamations are detailed below.

Table 1 Presidential Reductions to Previously Proclaimed National Monuments						
National Monument	Established, Expanded		Diminished			
	<i>Year</i>	<i>President</i>	<i>Year</i>	<i>Acreage</i>	<i>President</i>	<i>Explanation in Proclamation</i>
Arches	1929 1938 1969	Hoover F. Roosevelt Johnson	1960	–720	Eisenhower	Found to have “no known scenic or scientific value” and “the lands are used for grazing.”
Bandelier	1916 1932 1961	Wilson Hoover Kennedy	1963	–3,925	Kennedy	Found to have “limited archeological values.”
Black Canyon of the Gunnison	1933 1938 1939	Hoover F. Roosevelt F. Roosevelt	1960	–470	Eisenhower	After completion of congressionally authorized land exchanges, the lands were no longer needed for the “proper care and management of the objects of scientific interest.”
Colorado	1911 1933	Taft Hoover	1960	–211	Eisenhower	The deleted acreage was “not necessary” to conserve the objects of scientific interest.
Craters of the Moon	1924 1928 1930 1962 2000	Coolidge Coolidge Hoover Kennedy Clinton	1941	–500	F. Roosevelt	To allow construction of a state highway.
Grand Canyon	1908 1932 1969	T. Roosevelt Hoover Johnson	1940	–71,854	F. Roosevelt	“[N]ot necessary.”

Glacier Bay	1925 1939 1978	Coolidge F. Roosevelt Carter	1955	-29,118	Eisenhower	Presently being used as a military airfield and suitable for agriculture and no longer necessary to conserve objects of scientific interest.
Great Sand Dunes	1932 1946	Hoover Truman	1956	-9,480	Eisenhower	No longer necessary for conservation.
Hovenweep	1923 1951 1952	Harding Truman Truman	1956	-40	Eisenhower	Was “erroneously included” in the first place.
Mount Olympus	1909	T. Roosevelt	1912 1915 1929	-160 -305,325 -640	Taft Wilson Coolidge	No explanation.
Natural Bridges	1908 1909 1962	T. Roosevelt Taft Kennedy	1962	-320	Wilson	“[N]o longer contain features of archeological value.”
Navajo	1909	Taft	1912	unclear	Taft	First proclamation stated no acreage and was quite expansive in geographic description. Diminishing proclamation dialed it back to just three prehistoric ruins totaling 360 acres.
Petrified Forest	1906 1930 1931 1932	T. Roosevelt Coolidge Hoover Hoover	1911	-35,150	Taft	The original proclamation reserved a larger area than necessary to conserve the objects.
Santa Rosa Island	1939	F. Roosevelt	1945	-4,700	Truman	Conversion to military use.
White Sands	1933 1934 1953	Hoover F. Roosevelt Eisenhower	1938	-87	F. Roosevelt	Removed U.S. Highway 70 right-of-way.
Wupatki	1924 1937	Coolidge F. Roosevelt	1941	-53	F. Roosevelt	To facilitate a diversion dam for irrigation.
			Total	-462,753	(at least; see Navajo entry)	

The Sixteen Presidentially Diminished National Monuments

Arches National Monument, Utah

Original Proclamation Numbers: 1875, 2312, and 3887

Original Proclamation Dates: April 12, 1929; November 25, 1938; and January 20, 1969

Proclaimed By: Herbert Hoover, Franklin Roosevelt, and Lyndon Johnson

Acreage: 4,520; 29,160; and 48,943 (total 82,623)

Reducing Proclamation Number: [3360](#)

Reducing Proclamation Date: April 8, 1960

Reduction Proclaimed By: Dwight Eisenhower

Acreage Reduction: 720 (480 added, for a net loss of 240)

Deletion Reasoning: The lands “are used for grazing and . . . have no known scenic or scientific value.”

Current Status of the National Monument: Congress redesignated the area as Arches National Park in 1971. In 2014, the park was 76,546.95 acres in size; including 133.03 acres of other public land gives a total of 76,679.98 acres.

Bandelier National Monument, New Mexico

Original Proclamation Numbers: 1322, 1991, and 3388

Original Proclamation Dates: February 11, 1916; February 25, 1932; and January 9, 1961

Proclaimed By: Woodrow Wilson, Herbert Hoover, John Kennedy, and John Kennedy

Acreage: 23,352; 2,997; and 3,600 (total 29,949)

Reducing Proclamation Number: [3539](#)

Reducing Proclamation Date: May 27, 1963

Reduction Proclaimed By: John Kennedy

Acreage Reduction: 3,925 (2,882 added, for a net loss of 1,043)

Deletion Reasoning: “[I]t appears that it would be in the public interest to exclude from the detached Otowi section of the monument approximately 3,925 acres of land containing limited archeological values which have been fully researched and are not needed to complete the interpretive story of the Bandelier National Monument.”

Current Status of the National Monument: As of 2014, it totaled 33,676.67 acres in size.

Black Canyon of the Gunnison National Monument, Colorado

Original Proclamation Numbers: 2033, 2286, and 2372

Original Proclamation Dates: March 2, 1933; May 16, 1938; and October 18, 1939

Proclaimed By: Herbert Hoover, Franklin Roosevelt, and Franklin Roosevelt

Acreage: 10,288; 100; and 2,760 (total 13,148)

Reducing Proclamation Number: [3344](#)

Reducing Proclamation Date: April 8, 1960

Reduction Proclaimed By: Dwight Eisenhower

Acreage Reduction: 470

Deletion Reasoning: After congressionally authorized land exchanges between private and federal landowners were completed, “it appears that certain hereinafter-described lands now in private or Federal ownership within the external boundaries of the Black Canyon of the Gunnison National Monument are no longer required for the proper care, protection, and management of the objects of scientific interest situated on lands within the monument, and it would be in the public interest to exclude such lands from the monument.”

Current Status of the National Monument: Congress designated the national monument as Black Canyon of the Gunnison National Park in 1999; as of 2014, it totaled 30,749.75 acres in size.

Colorado National Monument, Colorado

Original Proclamation Numbers: 1126 and 2037

Original Proclamation Dates: May 24, 1911, and March 3, 1933

Proclaimed By: William Taft, Herbert Hoover

Acreage: 13,883 and 6,651 (total 20,534)

Reducing Proclamation Number: [3344](#)

Reducing Proclamation Date: April 8, 1960

Reduction Proclaimed By: Dwight Eisenhower

Acreage Reduction: 211 (120 acres added for a net reduction of 91 acres)

Deletion Reasoning: The deleted lands “are not necessary for the proper care, management, and protection of the objects of scientific interest situated on the lands within the monument.”

Current Status of the National Monument: As of 2014, it totaled 20,536.39 acres in size.

Craters of the Moon National Monument, Idaho

Original Proclamation Numbers: 1694, 1843, 1916, 3506, and 7373

Original Proclamation Dates: May 2, 1924; July 23, 1928; July 9, 1930; November 19, 1962; and November 9, 2000.

Proclaimed By: Calvin Coolidge, Calvin Coolidge, Herbert Hoover, John Kennedy, Bill Clinton

Acreage: 24,960; 26,240; 40; 5,360; 661,287 (total 717,887)

Reducing Proclamation Number: [2499](#)

Reducing Proclamation Date: July 18, 1941

Reduction Proclaimed By: Franklin Roosevelt

Acreage Reduction: 500

Deletion Reasoning: “[S]uch land is needed for the construction of Idaho State Highway No. 22.”

Current Status of the National Monument: In 2009, Congress redesignated the Clinton expansion lands to be a “national preserve,” still jointly co-administered by the National Park Service and the Bureau of Land Management. The Craters of the Moon National Monument and Preserve (the latter is the land in Clinton’s expansion of 2000 that is co-administered by the National Park Service and Bureau of Land Management) is ~738,000 acres in size. As of 2014, the Craters of the Moon National Monument was 53,571.05 acres and the Craters of the Moon National Preserve was 410,732.92 acres, for a total of 464,203.97 National Park Service acres. The Bureau of Land Management administers 275,100 acres of the Craters of the Moon National Monument and Preserve.

Glacier Bay National Monument, Alaska

Original Proclamation Numbers: 1733, 2330, and 4618

Original Proclamation Dates: February 26, 1925; April 18, 1939; and December 1, 1978

Proclaimed By: Calvin Coolidge, Franklin Roosevelt, and Jimmy Carter

Acreage: 1,164,800; 904,960; and 550,000 (total 2,619,760)

Reducing Proclamation Number: [3089](#)

Reducing Proclamation Date: March 31, 1955

Reduction Proclaimed By: Dwight Eisenhower

Acreage Reduction: 29,118

Deletion Reasoning: “[N]ow being used as an airfield for national defense purposes and . . . no longer suitable for national-monument purposes” and “suitable for a limited type of agricultural use and . . . no longer necessary for the proper care and management of the objects of scientific interest on the lands within the monument.”

Current Status of the National Monument: In 1980, Congress redesignated the monument as Glacier Bay National Park (3,223,383.43 acres) and Preserve (58,406.00 acres).

Grand Canyon National Monument, Arizona

Original Proclamation Numbers: 794, 2022, and 3889

Original Proclamation Dates: January 11, 1908; December 22, 1932; and January 20, 1969

Proclaimed By: Theodore Roosevelt, Herbert Hoover, and Lyndon Johnson

Acreage: 808,120; 273,145; and 26,080 (total 1,107,345)

Reducing Proclamation Number: [2393](#)

Reducing Proclamation Date: April 4, 1940

Reduction Proclaimed By: Franklin Roosevelt

Acreage Reduction: 71,854

Deletion Reasoning: The lands “are not necessary for the proper care and management of the objects of scientific interest situated on the lands within the said monument.”

Current Status of the National Monument: In 1919, Congress established Grand Canyon National Park. As of 2014, the national park is 1,201,647.03 acres in size.

Great Sand Dunes National Monument, Colorado

Original Proclamation Number: 1994 and 2681

Original Proclamation Dates: March 17, 1932, and March 12, 1946

Proclaimed By: Herbert Hoover and Harry Truman

Acreage: 44,810; 0 (fixed errors in legal description of original proclamation)

Reducing Proclamation Number: [3138](#)

Reducing Proclamation Date: June 6, 1956

Reduction Proclaimed By: Dwight Eisenhower

Acreage Reduction: 9,480 (960 acres added, for a net loss of 8,520)

Deletion Reasoning: “[R]etention of certain lands within the monument is no longer necessary” for the purposes of “the preservation of the great sand dunes and additional features of scenic, scientific, and educational interests.”

Current Status of the National Monument: In 2004, Congress redesignated the monument as Great Sand Dunes National Park (107,301.87 acres) and Preserve (41,686.00 acres).

Hovenweep National Monument, Utah and Colorado

Original Proclamation Number: 1654, 2924, and 2998

Original Proclamation Dates: March 2, 1923; April 26, 1951; and November 20, 1952

Proclaimed By: Warren G. Harding, Harry Truman, and Harry Truman

Acreage: 286; 100; 81 (total 467)

Reducing Proclamation Number: [3132](#)

Reducing Proclamation Date: April 6, 1956

Reduction Proclaimed By: Dwight Eisenhower

Acreage Reduction: 40 (40 acres and an additional undefined acreage were gained, for a slight net gain)

Deletion Reasoning: The lands “contain no objects of historic or scientific interest and were erroneously included.”

Current Status of the National Monument: As of 2014, the national monument was 784.93 acres in size.

Mount Olympus National Monument, Washington

Original Proclamation Number: 869

Original Proclamation Date: March 2, 1909

Proclaimed By: Theodore Roosevelt

Acreage: 639,200

Reducing Proclamation Numbers: [1191](#), [1293](#), and [1862](#)

Reducing Proclamation Dates: April 17, 1912; May 11, 1915; and January 7, 1929

Reductions Proclaimed By: William Taft, Woodrow Wilson, Calvin Coolidge

Acreage Reductions: 160; 305,325; 640 (total 306,125)

Deletion Reasonings: Though the proclamation provides no reason for the reduction, [according to the National Park Service](#), Taft eliminated 160 acres “to relieve homesteader Robert E. Voorhies of legal entanglements caused by the original proclamation.” Though the proclamation does not say, Wilson may have, [according to the National Park Service](#), been responding to the argument by some that “there was an urgent need for timber supplies, including spruce for airplane construction.” Coolidge eliminated 640 acres “[presumably to relieve a homestead claim of a private individual](#).” The proclamation language provided that the parcel continue as part of Olympic National Forest.

Current Status of the National Monument: In 1938, Congress redesignated the monument as Olympic National Park. As of 2014, the park was 922,650.10 acres in size.

Navajo National Monument, Arizona

Original Proclamation Number: 873

Original Proclamation Date: March 20, 1909

Proclaimed By: William Taft

Acreage: Not specified in original proclamation, but the [language was expansive](#): “All prehistoric cliff dwellings, pueblo and other ruins and relics of prehistoric peoples, situated upon the Navajo Indian Reservation, Arizona, between the parallels of latitude thirty-six degrees thirty minutes North, and thirty-seven degrees North, and between longitude one hundred and ten degrees West and one hundred and ten degrees forty-five minutes West from Greenwich, more particularly located along the arroyas, canyons and their tributaries, near the sources of and draining into Laguna Creek, embracing the Bubbling Spring group, along Navajo Creek and along Moonlight and Tsagt-at-sosa canyons, together with forty acres of land upon which each ruin is located, in square form, the side lines running north and south and east and west, equidistant from the respective centers of said ruins. The diagram hereto attached and made a part of this proclamation shows the approximate location of these ruins only.”

Reducing Proclamation Number: [1186](#)

Reducing Proclamation Date: March 14, 1912

Reduction Proclaimed By: William Taft

Acreage Reduction: Unknown, but the proclamation protected merely 360 acres, specifying only three “prehistoric ruins” known as Betata Kin, Keet Seel, and Inscription House.

Deletion Reasoning: The original proclamation “has been found to reserve a much larger tract of land than is necessary for the protection of such of the ruins as should be reserved, and therefore the same should be reduced in area to conform to the requirements of the act authorizing the creation of National Monuments.”

Current Status of the National Monument: As of 2014, the it was 360 acres in size.

Natural Bridges National Monument, Utah

Original Proclamation Numbers: 804, 881

Original Proclamation Dates: April 16, 1908, and September 5, 1909

Proclaimed By: Theodore Roosevelt, William Taft

Acreage: 120

Reducing Proclamation Number: [3486](#)

Reducing Proclamation Date: August 14, 1962

Reduction Proclaimed By: John Kennedy

Acreage Reduction: 320 acres (5,236 added, for a net of 4,916)

Deletion Reasoning: “[N]o longer contain features of archeological value and are not needed for the proper care, management, protection, interpretation, and preservation of the monument.”

Current Status of the National Monument: As of 2017, the it was 7,630 acres in size.

Petrified Forest National Monument, Arizona

Original Proclamation Numbers: 697, 1927, 1975, and 2011

Original Proclamation Dates: December 8, 1906; November 14, 1930; November 30, 1931; and September 23, 1932

Proclaimed By: Theodore Roosevelt, Calvin Coolidge, Herbert Hoover, Herbert Hoover

Acreage: 60,776; 11,010; 80; and 53,300 (total 125,166)

Reducing Proclamation Number: [1167](#)

Reducing Proclamation Date: July 31, 1911

Reduction Proclaimed By: William Taft

Acreage Reduction: 35,150

Deletion Reasoning: This proclamation says that the original proclamation was “found, through a careful geological survey of its deposits of mineralized forest remains, to reserve a much larger area of land than is necessary to protect the objects for which the Monument was created, and therefore the same should be reduced in area to conform to the requirements of the act authorizing the creation of National Monuments.”

Current Status of National Monument: In 1962, Congress redesignated the national monument as Petrified Forest National Park. As of 2014, the national park boundary encompassed 221,415.74 acres.

Santa Rosa Island, Florida

Original Proclamation Number: 2337

Original Proclamation Dates: May 17, 1939

Proclaimed By: Franklin Roosevelt

Acreage: 9,500

Reducing Proclamation Number: [2659](#)

Reducing Proclamation Date: August 13, 1945

Reduction Proclaimed By: Harry Truman

Acreage Reduction: 4,700

Deletion Reasoning: “[C]ertain Government-owned lands now comprising a part of Santa Rosa Island National Monument, in the state of Florida, are needed by the War Department for military purposes; and . . . the elimination of such lands from the national monument would not seriously interfere with its administration.”

Current Status of National Monument: In 1971, Congress established the Gulf Islands National Seashore, which absorbed Santa Rosa Island National Monument.

White Sands National Monument, New Mexico

Original Proclamation Numbers: 2025, 2108, and 3024

Original Proclamation Dates: January 18, 1933; November 28, 1934; and June 24, 1953

Proclaimed By: Herbert Hoover, Franklin Roosevelt, Dwight Eisenhower

Acreage: 142,788; 159; and 479 (total 143,426)

Reducing Proclamation Number: [2295](#)

Reducing Proclamation Date: August 29, 1938

Reduction Proclaimed By: Franklin Roosevelt

Acreage Reduction: 87

Deletion Reasoning: “[I]t appears that certain sections of the right-of-way for United States Highway Route 70 are included within the White Sands National Monument . . . and it appears that it would be in the public interest to exclude from said monument such sections of said right-of-way.”

Current Status of National Monument: As 2014, the National Park System administered 143,733.25 acres within the national monument.

Wupatki National Monument, Arizona

Original Proclamation Numbers: 1721, 2243

Original Proclamation Dates: December 9, 1924, and July 9, 1937

Proclaimed By: Calvin Coolidge, Franklin Roosevelt

Acreage: 2,234 and 33,631 (total 35,865)

Reducing Proclamation Number: [2454](#)

Reducing Proclamation Date: January 22, 1941

Reduction Proclaimed By: Franklin Roosevelt, Franklin Roosevelt

Acreage Reduction: 53

Deletion Reasoning: “[I]t appears that it would be in the public interest to exclude such lands from the Wupatki National Monument; and . . . such lands are needed in the construction

and operation of a diversion dam in Little Colorado River to facilitate the irrigation of lands on the Navajo Indian Reservation.”

Current Status of the National Monument: As of 2014, the national monument was 35,422.13 acres in size.

No-Harm, No-Foul Subsequent Proclamations

Buck Reef National Monument, Virgin Islands

On March 28, 1975, in Proclamation [4359](#), President Gerald Ford fixed a typographical error in Proclamation 4346, signed by him on February 1, 1975. There was no change of acreage of the national monument.

Katmai National Monument, Alaska

On August 4, 1942, in Proclamation [2177](#), President Franklin Roosevelt “modified so as to make the reservations contained therein subject to valid claims under the public-land laws affecting any lands within the aforesaid Katmai National Monument [Alaska] existing when the proclamations were issued and since maintained.” As a matter of law and practice, all national monuments proclaimed pursuant to congressional authority granted by the National Monument Act of 1906 are subject to valid existing rights.

Natural Bridges National Monument, Utah

On February 11, 1916, in Proclamation [1323](#), President Woodrow Wilson stated updated survey information to describe the boundaries of the national monument. There was no change of acreage.

Timpanogas Cave National Monument, Utah

On March 27, 1962, in Proclamation [3457](#), President John Kennedy corrected a survey error in the original proclamation. There was no change of acreage.

Discussion and Analysis

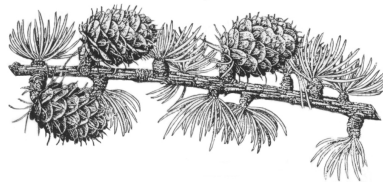
While the average (mean) of all presidential deletions is 27,221 acres, the median reduction is 640 acres (coincidentally one square mile). The one outlier that makes the mean so mean was Wilson’s halving of TR’s Mount Olympus National Monument. Nonetheless, today, Wilson’s deleted acreage is safely within the Olympic National Park.

Some reducing proclamations have been based on a finding that the acreage specified in the first proclamation was unnecessary. Other reducing proclamations have simply found the lands

eliminated no longer necessary. Each reducing proclamation has been triggered by a prospective (or in a few cases existing) development or exploitative use.

Conclusion

None of the unproclamations were ever litigated, so there has never been a judicial determination of whether those reputable legal scholars are indeed correct. Now, however, if President Trump acts on Secretary Zinke's recommendations, the time will come for such a test.



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