

A president does not have the power to revoke a national monument

The Antiquities Act is one of the nation's most effective conservation laws. First used by Republican President Theodore Roosevelt in 1906, it is currently under attack from the Trump Administration and anti-conservationists in Congress.

[President Trump ordered a review](#) by the Department of the Interior of all national monuments that have been designated since 1996.

While the issue is legally untested, it is [highly unlikely that a sitting president could unilaterally abolish a previously established monument](#). When a president designates a national monument under the congressionally-delegated authority of the Antiquities Act of 1906, that proclamation has the force of law. The Act expressly authorizes the president to *create* national monuments, however, [it does not give the president the power to revoke or rescind](#) a national monument.

The only legal pronouncement on the issue is a 1938 attorney general opinion which concluded that the president did not have authority to revoke a prior monument proclamation.¹ It relied on an earlier attorney general opinion reasoning that a land withdrawal made pursuant to a statute delegating authority from Congress to the President is tantamount to an act of Congress itself. Therefore, the executive is without power to repeal an act of Congress at will unless done without clear legislative approval. This conclusion was supported by the fact that Congress did not grant the President revocation power as provided in two other withdrawal statutes that explicitly authorize the President to both make and revoke withdrawals.²

“There is no legal precedent for a president to abolish or rescind a national monument,” said **Nada Culver senior director of agency policy and planning**. “The Antiquities Act has a rich bipartisan history of protecting the places it was intended to – cultural, ecological and historical natural wonders. Any actions that try to undermine this foundational conservation law would be on shaky legal ground, to say the least.”

A president does not likely have the authority to modify the carefully-justified boundaries of national monuments.

While revisions to national monuments have occurred before, they were generally to address errors or missing information, and took place before the public land laws that currently govern how public lands are managed. Further, previous modifications were not challenged in court, so there is not an authoritative finding as to whether a president has this power.

¹ Proposed Abolishment of Castle Pinckney Nat'l Monument, *39 Op. Atty. Gen. 185, 187 (1938)*. “The grant of power to execute a trust, even discretionally, by no means implies the further power to undo it when it has been completed.” *39 Op. Att’y Gen. 185, 186 (1938)*; see also Sanjay Ranchod, *The Clinton National Monuments: Protecting Ecosystems with the Antiquities Act*, 25 *Harv. Envtl. L. Rev.* 535, 554 (2001)

² *Id.* (citing Pickett Act of 1910, Pub. L. No. 61-303, 36 Stat. 847. National Forest Organic Act of 1897, 30 Stat. 11 (1897)).

Both the 1938 AG opinion and a 1947 Department of the Interior Decision³ stated that a president has the power to reduce the size of a monument based on the provision in the Antiquities Act that monuments be confined to “the smallest area compatible with the proper care and management of the objects to be protected.” Any such action would presumably need to be based upon a supported finding that the areas to be modified or reduced represent the president’s judgment and still satisfy the purpose of the monument – a high bar.

Further, one legal scholar argues that because “an original monument proclamation, by definition, represents the judgment of a president that the area protected” meets the “smallest area” provision, the proclamation is valid, and any modification would be equivalent to the exercise of “a power not granted under the Antiquities Act, namely the power to reverse the judgment of a prior President and modify a monument proclamation.”⁴ So, just as a later president cannot revoke a national monument, he or she likely has no legal authority to modify a monument.

The monuments at issue in the current review were created based on thorough review of the values that needed to be protected and the resulting boundaries were carefully crafted – undermining any purported justification for modification.

Legal challenges likely to follow any interference with national monuments.

We expect any effort to revoke or modify an established monument would face a legal challenge and “be subject to judicial review on the grounds that a president abused his or her discretion.”⁵ Courts have been highly deferential to monument designations under the Antiquities Act, and any future challenge to a proclamation (consistent with the Act) would likely be upheld.⁶

The “objects of interest” that the Antiquities Act protects are typically archaeological, paleontological, geologic, biologic and historic resources and values found in the lands established as monuments, and their presence is what we would likely be highlighting as evidence of the impropriety of any revocation or modification in a hypothetical lawsuit.

“These national monuments safeguard irreplaceable values” **continued Culver.** The Wilderness Society and many others will be fighting to ensure they stay protected.”

³ *National Monuments*, 60 Int. Dec. 9 (1947).

⁴ Squillace, *supra* note X, at 555.

⁵ *Id.* at 568.

⁶ 252 U.S. 450 (1920); 426 U.S. 128 (1976); 58 F. Supp. 390 (D. Wyo. 1945).

