



July 10, 2017

Submitted via www.regulations.gov

The Honorable Ryan Zinke
Secretary
U.S. Department of the Interior
Monument Review, MS-1530
1849 C St. NW
Washington, DC 20240

Re: Review of Certain National Monuments Established Since 1996

Dear Secretary Zinke:

Western Energy Alliance appreciates the opportunity to submit comments on the Department of the Interior's (DOI) review of certain national monuments designated under the Antiquities Act of 1906. We are encouraged that DOI recognizes the need to limit abuses of the Act, whereby large areas of land are locked away from public uses in an undemocratic manner, and we recommend that DOI focus its efforts on working with Congress to address those abuses.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The Alliance represents independent, the majority of which are small businesses with an average of fifteen employees. The Alliance is a dedicated advocate for the proper management of our public lands under the guiding principles of multiple use and sustained yield, while protecting their historical and cultural values.

Enacted in 1906, the Antiquities Act served to protect historic and cultural resources from looting, destruction and private appropriation. No federal law protected these resources and the public lands were being transferred into private ownership by various disposing land laws. The original intent of the Antiquities Act was to protect small, significant places of national interest.

According to the text of the Act, monument designations are to be made for "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest," and the government must reserve "the smallest area compatible with proper care and management of the objects to be protected." The clear implication of this language is that monuments were intended by Congress to protect specific resources and the land in their immediate vicinity that is directly threatened, not hundreds of thousands or millions of acres.

Recent designations have far exceeded this intent and have instead been used to place millions of acres off limits to productive uses such as energy development. The designations under review have ranged in size from 87,563 acres to 1.7 million acres, which indicates an overreach beyond congressional intent. Large monument designations without the input of local communities and elected officials negatively impact state and local economies in many cases.

National monument designations place land off limits to energy development and other productive uses. These restrictions are necessary and appropriate for monuments that comply with the original intent of the Act, i.e., are limited to historic artifacts and their immediate vicinity. However, several recent monument designations have been used to set aside millions of acres from productive use, rather than protect significant historic areas. These designations have been made over the objection of state, local, and tribal leaders, and those who live and make a living near the monuments.

The oil and natural gas industry has undergone significant technological transformation in the last decade, and innovations such as horizontal and directional drilling, paired with hydraulic fracturing, dramatically reduce the operational footprint of development by up to 70%.¹ Energy development does not threaten historic and cultural resources, as those who advocate for huge swaths of lands to be locked away in monuments would have the public believe. Rather, these technological advances allow development to coexist with other land uses while protecting cultural and historic resources.

In addition, both federal law and public appreciation of historical sites have significantly changed since 1906 when the Antiquities Act was enacted. With the Federal Land Policy and Management Act of 1976 (FLPMA), public lands are no longer being transferred into private ownership and special areas can be protected, with public input, through the land use planning process. The Archaeological Resources Protection Act of 1979 criminalized destruction of archaeological resources, and the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) provided additional protections. Moreover, oil and natural gas companies comply with the National Historic Preservation Act of 1966 (NHPA) to ensure no damage to cultural resources.

The NHPA, ARPA, NAGPRA and FLPMA were not in existence when the Antiquities Act was enacted, nor was the ethic that our society, including the oil and natural gas industry, has since developed to respect and protect our shared cultural heritage. The threat to our cultural heritage that the Antiquities Act was meant to address has largely disappeared, and the Antiquities Act has been used instead as unrestrained presidential power that circumvents the will of Congress and the needs of local communities directly impacted.

Fortunately, only a few of the monuments being reviewed contain significant oil and natural gas resources. Four of the monuments under review are known to contain oil and natural gas reserves: Bears Ears, Canyons of the Ancients, Organ Mountains-Desert Peaks,

¹ *Oil & Gas Impacts on Wyoming's Sage-Grouse: Summarizing the Past & Predicting the Foreseeable Future, 8 Human-Wildlife Interactions*, David H. Applegate & Nicholas L. Owens, Fall 2014, 288.

and the Upper Missouri River Breaks. In some cases acreage designated as part of these monuments was already leased to companies to develop the resources, but that acreage is now foreclosed to development. However, with the exception of the most recent monument, the history of these monuments and the time that has passed raises questions on whether readjusting them is a fruitful policy direction for the Department.

On the other hand, given the recent nature of the Bears Ears designation and the fact that it has not yet undergone the management planning process, perhaps some adjustments could be made to accommodate existing leases, which are on the periphery of the monument and not of direct threat to the cultural resources the designation was meant to protect. That may be a promising direction to explore with the tribes that advocated for the designation, especially if it is accompanied by true delegation of management authority that respects their sovereignty.

While there is known oil and natural gas in just four of the monuments, perhaps of more concern is a scenario of future presidents using the Antiquities Act to lock away areas with truly critical energy resources. We would also note that as technology advances, areas across the country that were not thought to contain significant recoverable oil and natural gas reserves even a decade ago are now viable. Those technological advances also ensure that the land, cultural and other resource values are protected even as energy development occurs. This begs the question of whether more large-scale Antiquities designations are needed when we can do both, protect resources and develop American energy.

To protect against the scenario of future use of the Antiquities Act to deny oil and natural gas development in truly productive areas, we believe it is paramount that the Act be updated to prevent continued abuses. The Act has not been modified since its passage more than a century ago. Sensible updates could include limiting designations to 5,000 acres, requiring congressional approval, and enhancing local input from those who would be most impacted by a designation. Right-sized designations would allow for responsible oil and natural gas, grazing, mining, timber harvesting, and other productive uses without disturbing historic and cultural artifacts.

Updating the Antiquities Act to its original intent would be a judicious use of Department resources, and would provide the guarantee that appropriate multiple-use federal lands are not subject to the whims of future presidents. We urge DOI to work with Congress on legislation to limit the abuses of the Act. Thank you for the opportunity to comment on this review.

Sincerely,



Kathleen M. Sgamma
President