

Trump's National Monument Mischief

By Sarah Krakoff & Robert Anderson

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Today, the Democratic led House Natural Resources Committee will hold its first hearing on how President Trump misused executive authority to **revoke** Bears Ears National Monument. The committee will discuss how and why Trump decided to take action against the first national monument ever proposed by American Indian tribes, turning it into the first national monument ever erased by executive proclamation.

When President Obama designated Bears Ears, he described it as "one of the most significant cultural landscapes in the United States." Tribes, conservationists, and much of the public agreed. The House committee will investigate why, given the rich natural, historic, and archeological resources in Bears Ears, Trump undermined its protected status. The hearings will shed light on the real reasons for Trump's gutting of the monument, which have nothing to do with protecting an iconic landscape. They will hear, for example, how Energy Fuels, a Canadian uranium mining company with mineral interests in Bears Ears, with top Department of the Interior officials in early 2017, months before Trump's proclamation was written.

Meanwhile, down the street, a federal judge will be answering an equally important question: Does the president, acting on his own, have the legal power to strip environmental protections from lands that have been set aside for the benefit of the American people? Judge Tanya S. Chutkan will **address** the question of whether the Antiquities Act authorizes the President to reverse national monument proclamations. Her decision, which could ultimately make its way to the Supreme Court, could call into question the protected status of **150** other treasured sites across America.

Like many Trumpian acts, the president's revocation of Bears Ears was **unprecedented**. Over the 112 years of the Act's life, no president had ever invoked its authority to repeal a monument. Other presidents adjusted monument boundaries to reflect that non-federal lands were mistakenly included in the designation, or to alter legal descriptions to match the designation's original intent once surveys were completed. Trump's evisceration of Bears Ears, on the other hand, is a wholesale gutting of a monument.

In the long history of the Antiquities Act, only one boundary alteration came even arguably close to President Trump's revocation of Bears Ears. During World War I, Mt. Olympus National Monument was **reduced** due to the perceived need for timber to produce fighter planes, and that unauthorized action was never challenged. By contrast, there is no national need to repeal Bears Ear. There is only the president's zeal to erase the conservation legacy of his predecessor.

Monuments, once designated, become wildly popular with the public. Most presidents since the Act's passage have used it to cement their legacies, often in the waning days of their administrations. Overall, 17 presidents from both parties, including Trump, have used the Antiquities Act to protect beloved places ranging from the Statue of Liberty in New York Harbor to Joshua Tree outside of Los Angeles.

No president has used the Antiquities Act to revoke National Monuments, nor does the president have that power. Congress passed the Act to grant the president a nimble power to withdraw federal lands from other uses. Congress delegated a one-way protective power to the president, but reserved to itself the power to reverse such protections.

Today, expanding the nation's conservation footprint continues to be popular. Last month Congress passed a massive public lands package that protected nearly 2 million acres of federal lands. By contrast, if the Trump administration is successful in repealing the Bears Ears designation, there are over 300 claims by prospective uranium miners in the former boundaries of the monument. Firms, including Energy Fuels, prepared maps of potential mines and used those maps to inform lobbying for Bears Ears' reversal. Those mines could destroy natural heritage, erase unspoiled views, and pollute waters vital to the region's population of animals and people, including the very tribal nations who have petitioned for its protections for generations. If that is the fate of Bears Ears — if the Antiquities Act conveys the power to serve up our nation's most beautiful places to corporate mining operations — who is the law working for?

The Antiquities Act gives presidents authority to protect and preserve public lands. Congress has reserved to itself the authority to revoke or alter the scope and terms of the designation. President Trump's capricious revocation usurps that congressional authority and is therefore unlawful. Congress is right to investigate this important issue. Meanwhile, the courts should reign in an executive run amuck on our public lands.

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