

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<http://oversight.house.gov>

December 29, 2016

Ms. Christy Goldfuss
Managing Director
Council on Environmental Quality
722 Jackson Place NW
Washington, D.C. 20503

Dear Ms. Goldfuss:

On December 28, 2016, President Obama designated the Bears Ears National Monument in Utah and the Gold Butte National Monument in Nevada pursuant to his authority under the Antiquities Act.¹ Advocates for this action touted it as a means to establish a co-management agreement for Bears Ears between the federal government and a group of Native American tribes.² In fact, in the press release announcing these new national monuments, the White House recognizes the importance of tribal participation in the management of the land and asserts this action serves as a tool to achieve co-management.³ Co-management of public lands, however, requires the approval of Congress.⁴ Advocacy organizations, federal agencies, and the White House have all put out differing opinions on co-management, and it is important to clarify the bounds of the President's authority. I am writing to obtain more information about how and why the President exercised his authority in this case.

¹ *Rumors point toward possible December 23 designation. Anxiety builds over possible national monument*, SAN JUAN RECORD, Dec. 13, 2016, available at http://www.sjrnews.com/view/full_story/27329673/article-Rumors-point-toward-possible-December-23-designation--Anxiety-builds-over-possible-national-monument-?instance=home_news_left.

² Amy Jol O'Donoghue, *Native American chairman says Jewell order lacks equality for tribes*, DESERET NEWS, Oct. 21, 2016, available at <http://www.deseretnews.com/article/865665388/Bears-Ears-coalition-leader-says-Jewell-order-lacks-equality-for-tribes.html?pg=all>.

³ FACT SHEET: President Obama to Designate New National Monuments Protecting Significant Natural and Cultural Resources in Utah and Nevada, , <https://www.whitehouse.gov/the-press-office/2016/12/28/fact-sheet-president-obama-designate-new-national-monuments-protecting>.

⁴ See *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 565-66 (D.C. Cir. 2004) (“[S]ubdelegations to outside parties are assumed to be improper absent an affirmative showing of congressional authorization When an agency delegates authority to its subordinate, responsibility—and thus accountability—clearly remain with the federal agency. But when an agency delegates power to outside parties, lines of accountability may blur, undermining an important democratic check on government decision-making. Also, delegation to outside entities increases the risk that these parties will not share the agency’s “national vision and perspective”). See also *High Country Citizens' Alliance v. Norton*, 448 F. Supp. 2d 1235, 1246-1247 (D. Colo. 2006) (similar, citing *U.S. Telecom*).

The President has exercised his authority under the Antiquities Act to create or expand at least 25 national monuments—more than any other president in history.⁵ His sweeping application of the Antiquities Act raises questions about the Administration’s commitment to transparency and consultation with local stakeholders with respect to designating national monuments. It also raises serious questions about whether these designations are limited to the, “smallest area compatible with proper care and management of the objects to be protected.”⁶ The Antiquities Act “was designed to protect federal lands and resources quickly” in response to concerns about “theft from and destruction of archaeological sites.”⁷ In most cases, however, the processes outlined by the National Environmental Policy Act (NEPA) and the Federal Land Policy Management Act (FLPMA) are most appropriate because they require environmental studies, a review of the public purpose, and an opportunity for public participation before any federal agency action.⁸ The NEPA and the FLPMA processes provide for a more thoughtful determination, whereas the Antiquities Act was meant to be reserved for emergency scenarios.

Until yesterday, the Administration’s actions with respect to Bears Ears more closely resembled the NEPA and FLPMA process. In anticipation of the Bears Ears designation, the Department of the Interior took on a large role in gathering input and coordinating planning.⁹ In fact, during a hearing before the Subcommittee on the Interior, Bureau of Land Management (BLM) Director Neil Kornze testified that BLM and the White House have been coordinating.¹⁰ It is therefore unclear why the President opted to designate a massive national monument in Utah via the Antiquities Act in the waning days of his presidency, and to ignore federal environmental and procedural laws enacted to ensure stakeholders and other affected parties have a meaningful role in determining the outcome.

Similarly, the President’s actions with regard to the Gold Butte National Monument designation bypassed Congress and the public. Located in Clark County, Nevada, the Gold Butte National Monument spans nearly 300,000 acres.¹¹ Such a large designation, made unilaterally, deprives the American people and their elected representatives a collaborative discussion on how best to protect the land for all to enjoy. Large designations such as Gold Butte Monument are the type of major federal agency action envisioned by our federal environmental and procedural laws.

⁵ H. Sterling Burnett, *Obama’s Dangerous Use of The National Monument law*, FORBES, Oct. 12 2016.

⁶ Antiquities Act of 1906, 54 U.S.C. §§320301-320303

⁷ Carol Hardy Vincent, “National Monuments and the Antiquities Act,” Cong. Research Serv. (2016) (R41330).

⁸ *Id.*

⁹ Amy Jol O’Donoghue, *Bears Ears Controversy Ramps Up With Jewell’s Visit; Bishop’s Planned Legislation*, KSL NEWS, July 13, 2016, available at <https://www.ksl.com/?sid=40632616&nid=148&title=bears-ears-controversy-ramps-up-with-jewells-visit-bishops-planned-legislation>.

¹⁰ *Examining BLM Public Lands Leasing Hearing Before the Subcomm. on the Interior of the H. Comm. on Oversight and Gov’t Reform*, 114th Cong. 14 (2016) (statement of Neil Kornze, Director, Bureau of Land Management) (Mr. Kornze: “I am talking about looking at the country and figuring out where would this be appropriate, where would it not?” Mr. Gosar: “So there is some conversation going on between the White House and BLM and agencies in regards to antiquities withdrawal?” Mr. Kornze: “Yes.”).

¹¹ See *supra* note 3.

Furthermore, in a letter dated March 29, 2016, this Committee, along with the House Committees on Natural Resources and on Appropriations, requested information related to use of the Antiquities Act of 1906.¹² After receiving an inadequate response, a follow up letter was sent on May 11, 2016.¹³ As outlined in both letters, the Committees are interested in the Administration's process for using the Antiquities Act. Specifically, the Committees requested documents and communications from the Council on Environmental Quality (CEQ) and the Department of the Interior (DOI) referring or relating to the selection or designation of national monuments under the Antiquities Act of 1906 by the President from January 1, 2015, to the present.

To date, CEQ has not provided a single responsive document to the Committees' request. If CEQ does not produce these documents voluntarily, the Committee will be required to use compulsory process to obtain them.

Please immediately provide the documents requested in the Committee's March 29th and May 11th letters. In addition, please produce the following documents as soon as possible, but not later than January 13, 2016:

1. All calendars, including all meetings and attendees, for all CEQ staff involved or referenced in any discussions related to any national monument selection or designation.
2. All call logs for any CEQ employees involved or referenced in any discussions related to any national monument selection or designation.
3. All communications between any CEQ staff and White House staff, including but not limited to Senior advisor Brian Deese, between January 2015 and present.
4. All documents and communications referring or related to the selection or designation of national monuments under the Antiquities Act of 1906 by the President from April 21, 2013 to present.
5. All documents and communications related to the reduction in size, limitation, or repeal of a national monument from January 20, 2008 to present.

Additionally, in order to better understand the Administration's use of the Antiquities Act, please make yourself and Stephanie Harding, Associate Director of Legislative Affairs, available for a transcribed interview as soon as possible, but not later than January 20, 2016.

¹² Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, Hon. Rob Bishop Chairman, H. Comm. on Nat. Resources, and Hon. Harold Rogers, Chairman, H. Comm. on Appropriations, to Hon. Sally Jewell, Secretary, U.S. Department of the Interior (Mar. 29, 2016).

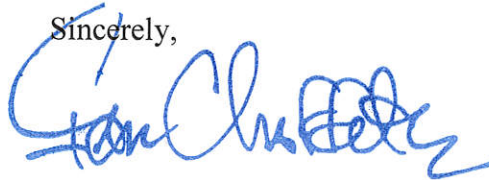
¹³ Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, and Hon. Cynthia Lummis, Chairman, H. Comm. on Oversight and Gov't Reform Subcommittee on the Interior, to Hon. Sally Jewell, Secretary, U.S. Department of the Interior (May 11, 2016).

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The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

Please contact Chris Esparza of the Committee staff at (202) 225-5074 to schedule the interviews, or with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Chaffetz". The signature is stylized and written in a cursive-like font.

Jason Chaffetz
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
 6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
 7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.
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