STEWARDING AMERICA'S FEDERAL PUBLIC LANDS

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"This land is your land, this land is my land.

This land was made for you and me."

—Woody Guthrie

INTRODUCTION

The iconic Woody Guthrie Song "This Land Is Your Land" is a song celebrating the great diversity of landscapes which define the geography of the United States, from spring-fed turquoise rivers and unique and vast deserts to awe-inspiring mountain precipices and prairies that hold countless ecosystems and mythologies. The United States government holds many of these public lands in trust for the whole of the American people, providing an opportunity both to engage with these wondrous spaces and to protect their beauty for generations to come.

Throughout American history, different presidential administrations and congresses have dealt with federal lands in a variety of ways—reflecting the complexities implicit in land being both *yours* and *mine*. There have been periods that focused on land conservation—famously, during the Teddy Roosevelt administration—and others on resource extraction—most recently, during the Donald Trump administration. Many of the most famous (and controversial) actions of both administrations regarding federal lands center on their use of the Antiquities Act of 1906, which enables the President to establish, modify, and possibly disestablish national monuments. This executive branch authority exists in tension with Congress's ability to pass legislation creating, modifying, and disestablishing national monuments.

This article examines the historical and legal foundations of federal lands in the United States, with a focus on the Antiquities Act. It concludes by offering three recommendations. First, the Antiquities Act should be amended to reserve the right to diminish existing monuments solely to Congress. Second, any amendment should also require minimum management standards for all new national monuments. Finally, the article calls for executive branch agencies to develop more robust means for incorporating stakeholder input in the management planning of national

monuments, including through advisory boards and co-stewardship agreements with Native American tribes and organizations.[2] Where agencies lack authority to create such forums and advisory bodies, Congress should codify requirements to do so.

FEDERAL PUBLIC LANDS

Federal Land Acquisition and Disposition

The United States contains 2.27 billion acres of land.[3] Of that, 28 percent (610 million acres) is federally owned, and these federal lands are valuable assets.[4] They provide ecosystem services, are used in commodity production, provide support to the defense industry, support wildlife and biodiversity, and attract people and businesses. Tourism to national parks brings significant amounts of revenue to the local economies; in fact, the 2018 National Park Visitor Spending Effect reported $40.1 billion in visitor spending to the benefit of communities near national parks—supporting 329,000 jobs.[5]

However, despite their obvious benefits, public lands have been subject to controversy—both with respect to their existence and their management—since the founding of the US. In the present day, to some individuals, businesses, and state and local governments, the federal government's ownership of land is seen as an infringement of their property rights and economic freedoms.

Throughout the late 1700s and early to mid-1800s, the United States acquired large amounts of land through forced removal of Native Americans, cessions from war with Mexico, and purchases from European countries.[6] The federal policies of this period reflected popular ideas that the American West was an unlimited frontier for economic gain—despite water scarcity and the Indigenous populations living there.[7] Through the Homestead Act of 1862,[8] the General Mining Law of 1872,[9] and the Desert Lands Act of 1877,[10] the federal government further emphasized private property ownership and resource extraction.[11] The Homestead Act of 1862 aligned with the prevailing sentiment of Manifest Destiny.[12] Under the Homestead Act, the federal government provided settlers with land if they journeyed west to populate the newly gained territories.[13] To encourage individual settlement, the federal government deployed the military to forcibly move Native Americans off prospective homesteads and onto reservations.[14]

By the turn of the twentieth century, widespread disposition and unfettered development culminated in corporate abuse of the nearly-free land and mineral rights,[15] depleted timber resources, diminished wildlife populations, and scarred landscapes through boom-and-bust mining cycles.[16] In response, the federal government began to withdraw certain lands from public sale.[17] By 1890, the western frontier was nearly closed and the sale of public lands decreased significantly.[18] However, the emphasis on land disposition guided federal policy into the twentieth century,[19] culminating in the repeal of the Homestead Act in 1976.[20]

MANAGEMENT AND USE OF FEDERAL PUBLIC LANDS

The way public lands should be managed and used is a contentious topic, particularly in the American West, where much land is federally owned.[21] Two land ethics predominate this debate: conservation and preservation, which can be traced back to John Muir and Gifford Pinchot at the turn of the twentieth century.[22] Muir believed in preservation—the idea that land ought to be kept as close to its natural state as possible, and that exposure to nature offers spiritual benefits to people and society.[23] Preservationists believe that land serves the people best when undeveloped and unfettered; thus, preservationists generally oppose logging, mining, and other extractive uses on federal land.[24]

Alternatively, conservation stems from Pinchot, who argued that lands ought to be managed to provide the highest possible return to society. Conservationists believe that one can attach monetary value to resources and attributes of the land; the way these lands are managed ought to best value the ecological and scientific evaluation of the land for both the present day and for generations to come.[25]

Conservationist principles have largely guided the American approach to managing federal lands.[26]

Congress and the executive branch are in something of a tug-of-war regarding authority over public lands. Article IV, Clause 3 of the US Constitution states that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property of the United States."[27] The first case to significantly interpret this power was *United States v. Gratiot*. This case, from the 1840s, gave a broad reading to the clause, holding that Congress's power on federal land is "without limitation."[28]

The broad authority of Congress over federal lands articulated in *Gratiot* was upheld by a 1976 Supreme Court case, *Kleppe v. New Mexico,* which adopted a broad interpretation of "without limitation" under Article IV, Clause 3.[29] *Kleppe* addressed the question of whether the federal government can regulate and protect wildlife on federal land. Specifically, the case dealt with the Wild Free-Roaming Horses and Burros Act, which provides that if protected horses or burros that live on land administered by the Secretary of the Interior or Secretary of Agriculture wander onto private land, they are protected from "capture, branding, harassment, or death," as they are considered components of public land.[30] The State of New Mexico argued that the Act was an infringement upon New Mexico's sovereignty, as it conflicted with state law.[31] In *Kleppe v. New Mexico*, the Supreme Court held that "the Clause must be given an expansive reading," and that Congress has "complete authority over the public lands [and the wildlife living there]."[32]

Despite its "complete authority" over public lands, Congress delegates most of its land management authority to executive branch agencies due to the scientific complexity of many land management decisions. These agencies each manage their lands according to individual statutory mandates. The agency that manages a parcel of federal land and the type of designation assigned to the parcel significantly impacts how it is managed and which uses are allowed upon it.

There are three federal departments that collectively administer approximately 96 percent of the federal lands: the Department of Agriculture (USDA), the Department of the Interior (DOI), and the Department of Defense (DOD).[33] Within the DOI are the National Park Service (NPS), the US Fish and Wildlife Service (FWS), and the Bureau of Land Management (BLM). The NPS manages 79.9 million acres.[34] Its controlling statute, the National Park Organic Act, sets forth a two-pronged mission: to conserve the land and to promote recreation.[35] The FWS manages 89.2 million acres of land, predominantly National Wildlife Refuges.[36] It is mandated by the Fish and Wildlife Act primarily to administer regulations and conservation assistance to fish and wildlife populations, but also to educate the public on these resources.[37] The BLM manages 244.4 million acres.[38] It is responsible for many different types of land designations but the most common is simply called BLM lands. The BLM has a multiple-use mandate; the 1976 Federal Land Policy and Management Act (FLPMA) directs it to balance recreation, grazing, timber, energy and minerals, watershed, wildlife and fish habitat, and conservation.[39] Under the USDA is the Forest Service (FS), which manages 192.9 million acres.[40] The FS has a multiple-use mandate for natural resource management, research, education, and recreation; it is primarily responsible for the management of National Forests and Grasslands.[41]

In addition to the types of lands primarily administered by specific agencies, some land designations, such as Wilderness Areas, Wild and Scenic Rivers, National Monuments and National Scenic and Historic Trails, can be "overlaid" on federal lands managed by any of the agencies described above. When Congress or the executive branch makes such an overlay, the federal agency that previously managed the land typically continues to do so, but it does so pursuant to the purposes of the overlay, rather than in accordance with the agency's organic statute. For example, BLM lands are managed for multiple uses in accordance with FLPMA, but when a Wilderness Area overlay is created for a parcel of land managed by BLM, the agency henceforth manages the property according to the strict guidelines set forth in the Wilderness Act.[42] Similarly, some National Parks contain

Wilderness Areas which are managed by NPS specifically for the preservation of wilderness and contain some of the strictest management rules.

There are also some federal lands and waters that are managed jointly by two or more federal agencies or by the federal government and tribal, state, or local governments. For instance, several marine national monuments are managed jointly by the FWS and the National Oceanic and Atmospheric Administration. In the case of national monuments, the Antiquities Act—which gives the president power to establish monuments and will be further discussed in the next section—enables the president to outline specific conservation goals for the monument. These goals then mitigate discrepancies between agency mandate policies to guide a consistent management plan for the monument.

While these charters mitigate many agency conflicts, in the present day, the wide array of stakeholder views and different agencies has culminated in enduring debate over what uses should be allowed on public lands.[43] While federal lands are technically held in trust for the American people, they are not always open to public access, and certainly not all uses.[44] On public lands, people of all interests and backgrounds compete to use the land as they wish. Anglers argue for open stream access, ranchers want open grazing, hikers and cyclists seek quiet trails, and ATV riders covet the ability to ride in wild spaces. All the while, energy companies want to extract resources and environmentalists want to preserve the land that these resources are found on; hunters want to shoot game, and birdwatchers want wildlife protected. While America's public lands appeal to many they certainly are not conducive to all uses simultaneously.

Thus, to help mitigate this competition, some federal lands charters may designate an advisory board of relevant groups and people to shape the specific management plan for the land. The Federal Land Recreation Enhancement Act[45] requires the Secretaries of Interior and Agriculture establish Recreation Resource Advisory Committees[46] when fees are collected on their agencies' lands—as the Antiquities Act permits. Such advisory committees have served a significant role in the federal government since its advent.[47] The various land management agencies often rely on the input of advisory committees to guide management plans for specific parcels of land. These committees are a key way that agencies engage with a wide array of perspectives and land interests. For example, the BLM advisory councils include statewide and regional committees affiliated with specific sites on the BLM's National Conservation Lands, and the National Wild Horse and Burro Advisory Board. These committees are "sounding boards for BLM initiatives, regulatory proposals, and policy changes."[48] Each group is comprised of 10 to 15 members of diverse interests such as ranchers, environmentalists, tribes, state and local government officials, recreationists, and more.[49]

However, advisory committees are not a sure-fire way to prevent dispute and controversy on federal lands. Rather, despite dedicated advisory councils for the Bears Ears and Grand-Staircase Escalante national monuments, the two parcels have been engulfed in legal battles and back-and-forth executive action for years.[50] In many ways, the nation's national monuments—created at the intersection of executive and congressional power—are a prime example of the management tug-o-war that exists broadly on federal lands.

THE ANTIQUITIES ACT

National monuments are present throughout the nation and feature several prominent landscapes beloved by many Americans. Disputes over their creation and preservation under the Antiquities Act have been equally prominent in the nation's courts.[51] The presidential ability to create and modify monuments, the allowable size of monuments, the types of resources that can be protected, the management of national monuments, and the potential inclusion of nonfederal land in designations have all been litigated in recent years.[52] Many challenges to national monument designations have been brought by the states in which the monuments are located.[53] However, few of these issues have been judicially resolved.[54] Before many cases can reach a

decision, the management decisions that sparked the litigation often change with changes in administrations—thus rendering the litigation moot and leaving the Antiquities Act largely without judicial clarification.

The Antiquities Act[55] was established in 1906 authorizing the president to designate federal land as a national monument to protect and preserve "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest."[56] Under the Act, the president is to reserve the "smallest area compatible with the proper care and management of the objects to be protected."[57]

The Act was initially created in response to theft and looting concerns at significant historical sites, mainly in the southwestern United Sates.[58] To address the issue, the House Committee of Public Lands considered many proposals that ranged from narrow to expansive. Ultimately, they took the expansive route. The committee, chaired by Iowa Congressman John Lacey, was presented with three different bills. The broadest of the three, H.R. 8066,[59] allowed presidential designation of lands for scenic beauty and natural uniqueness; another, H.R. 8195,[60] simply prohibited individuals from harming antiquities on federal public lands; and the third, H.R. 9245,[61] gave the Secretary of the Interior the ability to designate areas of land smaller than 320 acres for protection.[62] Chairman Lacey sent all three bills to the DOI for review. At the DOI, Binger Hermann, Commissioner of the General Land Office (GLO), argued for an even more expansive bill[63]—one that would allow the president to designate National Parks.[64] In 1900, Congressman Lacey proposed H.R. 11021, a bill most similar to the broadest of the three initially debated, but that also included language for protecting the "scenic beauties, natural wonders or curiosities" of potential land designations.[65] This bill was met with resistance—particularly from western congressmen—in committee.[66]

Several years and debates later, a final bill was authored by Dr. Edgar Lee Hewett, a prominent expert on American Indian ruins in the southwestern United States.[67] The bill had unanimous support from the American Anthropological Association and the Archaeological Institute.[68] It reflected a compromise between the DOI's preferred expansive scope and the trepidations of the western Congressional delegations. The bill did not include specific acre limits on designations, but claimed much more generally that, "The President is to reserve 'the smallest area compatible with the proper care and management of the objects to be protected.'"[69] The final proposal did not include the DOI's favored scope to include "scenic" protections, but instead allowed designations that protect land for its "scientific and historic" value.

On January 9, 1906, Representative Lacey introduced Hewett's bill in the House as H.R. 13349. Senator Thomas Patterson of Colorado introduced an identical companion bill to the Senate on February 26, 1906.[70] There was little floor debate over the bill, so context for understanding the bill's intent is largely limited to committee history. Generally speaking, the legislative history supports a narrow interpretation of the President's power, but Hewett's actual wording shows no evidence of restricting designations to small sites.[71] Ultimately, President Theodore Roosevelt signed the bill into law on June 8, 1906, enabling the presidential power that gave birth to many renowned national monuments.[72] That law, codified at 54 USC section 320301, provides that the president may declare historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest on federal lands (or private lands appropriately relinquished to the federal government) so long as the designation is confined to the smallest area compatible with the proper care and management of the objects to be protected.[73]

Establishing National Monuments

There are two mechanisms for creating a national monument. First, the president can issue a presidential proclamation creating a national monument pursuant to his Antiquities Act authority. In total, 18 of the 21 presidents since 1906 have created 161 national monuments.[74] Additionally, Congress can create a national monument through legislation. In total, Congress has created 45 national monuments.[75]

The lands Congress has designated as national monuments are often relatively small in size (most are under 1,000 acres) and many are significant historical sites such as battlefields or forts. This is likely because Congress also can create national parks, so their larger designations tend to receive this more protected status instead.

National monuments can be found across the United States and its territories.[76] Monuments vary widely, ranging in scope from individual buildings in urban areas to large swaths of remote land and ocean. Some of the most well-known national monuments include the Statue of Liberty, Devils Tower, and Muir Woods. And, as discussed above, many of the United States' national parks began as national monuments—for example, the Grand Canyon, Great Sand Dunes, Olympic, Joshua Tree, Grand Teton, and the St. Louis Arch all began as national monuments.[77]

The Antiquities Act was first used in the year of its passage (1906) when President Theodore Roosevelt declared Devils Tower National Monument the nation's first national monument, encompassing 1,347 acres in Wyoming.[78] He established 17 more national monuments within the next three years, most notably the Grand Canyon, which was created in 1908 and encompassed 800,000 acres. This designation prompted a suit that was eventually heard by the Supreme Court in *Cameron v. United States*.

In that case, plaintiff Ralph Henry Cameron had developed a prosperous copper mine on the south rim of the canyon and held mining claims at certain points along the Bright Angel Trail (a significant hiking trail still maintained today as part of Grand Canyon National Park). Cameron's claims were likely bogus and staked just so that he could charge tourists an entrance fee to the trail.[79] Before the Supreme Court, Cameron argued that the president did not have the power to designate the Grand Canyon as a national monument. The Supreme Court upheld the 800,000-acre designation, citing the Grand Canyon's scientific significance.[80] *Cameron* set the precedent that presidents can establish monuments that are large in size, if the objects to be protected conform to the criteria established in the Antiquities Act.

Fifty-six years later, in 1976, the Supreme Court again considered the scope of the Antiquities Act, this time involving Devil's Hole National Monument, a detached, 40-acre unit of the former Death Valley National Monument (now Death Valley National Park).[81] Devil's Hole contains the only naturally occurring population of the endangered pupfish, and thus has great scientific value.[82] In 1968, nearby ranchers, the Cappaerts, began pumping groundwater from the same source that feeds Devil's Hole, thereby lowering the water level in Devil's Hole and harming the endangered fish that live there. In *Cappaert v. United States*, the Supreme Court unanimously held that "when the United States reserved Devil's Hole, it acquired by reservation water rights in unappropriated appurtenant water sufficient to maintain the level of the pool to preserve its scientific value."[83] Section 2 of the Antiquities Act specifies that when "[significant] objects are situated upon a tract … held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government."[84] The Supreme Court interpreted this statutory provision broadly, holding that groundwater on privately-owned land can be enjoined if it interferes with the federal government's ability to properly care for Devil's Hole. Thus, *Cappaert* held that the designation of a national monument can affect the rights and actions of private property owners holding land outside of the monument boundaries.

Section 2 of the Act also raises questions about the extent to which nonfederal land can be included in national monuments. It specifies that national monument lands must be "owned or controlled by the government of the United States," but it does not directly speak to private landowners selling or donating their property to the federal government for designation, as has occurred from time to time.[85] It also does not speak to whether the federal government can use eminent domain to seize private lands for inclusion in national monuments. To date, the federal government has never attempted to do so, but the theoretical possibility remains.

Presidents Clinton, Bush, and Obama all declared numerous and vast monuments during their respective times in office. President Clinton led off by designating 1.7 million acres in Utah as Grand Staircase–Escalante National Monument.[86] The move generated swift criticism as some called it unlawful and locals complained of foregone natural resource extraction jobs in the area.[87] In creating the monument, President Clinton cited concerns over a large coal mining operation in the vicinity and plans for its expansion.[88] Locals have argued that although tourism did increase after the designation, those jobs do not compare to the full-time, benefit-paying jobs in the mining industry.[89] In addition to Grand Staircase–Escalante, President Clinton created 18 other monuments.[90]

In 2006, President George W. Bush created the largest-ever monument, Papahānaumokuākea National Monument, the nation's first marine monument, which encompasses 140,000 square miles of ocean in the Hawaiian Archipelago.[91] Following Papahānaumokuākea's designation, President Bush created four other large marine monuments, each of which are managed jointly by the FWS and the National Oceanic and Atmospheric Administration.[92] Critics of these marine designations argue that the Antiquities Act does not expressly give the president power to designate monuments in an Exclusive Economic Zone (such as the Outer Continental Shelf), and therefore such designations are unconstitutional.[93] However, proponents argue that swift executive action is necessary to protect eminently threatened fisheries and coral reefs.[94]

President Obama continued his predecessors' trend towards expansive designations. In total, he created 29 new national monuments ranging in size from 0.12 acres to 1.6 million acres.[95] Perhaps the most controversial of these designations was the Bears Ears National Monument in Utah, encompassing 1.35 million acres.[96] The area is known for its beautiful and unique geologic features, its cultural significance to Native people, and for the presence of historical sites. Bears Ears was established under the joint management of the BLM and the US Forest Service.

Diminishing and Abolishing National Monuments

Just as monuments can be created, they can also be diminished, abolished, or redesignated. Congress explicitly has this power pursuant to FLPMA.[97] Most often, Congress has redesignated national monuments as national parks,[98] national preserves,[99] or wilderness areas.[100] Congress has abolished 11 monuments in total—usually because the resources, artifacts, or structures they were protecting were reevaluated or removed. Some monuments have also been abolished because of budget restrictions in the managing agency, mismanagement, or because they were publicly inaccessible.[101]

The Antiquities Act does not explicitly give the president the ability to diminish or abolish national monuments, and FLPMA is silent on the issue. Some commentators argue that diminishment is not allowed because the Act is silent on the ability to revoke or diminish previous designations.[102]

Others claim that the Act's silence is actually evidence of an implied power of the president to review former administrations' designations.[103] This issue of presidential diminishment has never been dealt with formally by Congress or the courts. Yet, seven presidents have diminished a total of 14 national monuments.[104] Many of these diminishments were relatively small (less than 1,000 acres), though Mount Olympus National Monument, a notable exception, was significantly diminished by President Wilson allegedly for the purpose of providing timber for the World War effort in 1915. Fortunately, the 608,640-acre original area was later included in the nearly 1,000,000-acre Olympic National Park created by Congress in 1938.[105]

The case of Olympic National Park foreshadowed the path of other prized federal lands throughout the twentieth century and into the present day. For example, in 2017, President Trump made headlines by issuing proclamations to significantly reduce the size of Bears Ears National Monument and Grand Staircase–Escalante National Monument. He is the first president to attempt diminishment since FLMPA was passed.

Managing National Monuments

In addition to these issues regarding the existence and size of national monuments, another question is *how* national monuments should be managed. When a monument is created, it is assigned a managing agency (or agencies).[106] Usually, the managing agency is the same one that previously owned the land, though they manage the monument in accordance with the terms of the relevant proclamation or act, and not in accordance with their organic act.[107] In some cases, a proclamation or act has directed a national monument to be managed jointly by multiple agencies, in which case they co-operate to manage the monument according to its designating proclamation or act. Each designation, whether by Congress or the president, directs agencies to manage the area in the spirit of a monument—in other words, for "the care and management of objects of scientific and historic interest identified by the proclamations."[108] As discussed above, monument designation acts as an overlay designation and can limit or prohibit land uses, such as development or recreational uses, pursuant to its designating document.

Yet, despite the specific management directives for national monuments, they are not immune from the management challenges facing all other public lands. The agency responsible for management usually faces some difficulty in deciding which uses are appropriate for the land—even within the established guidelines—as not all possible uses are conducive to one another.

Perhaps the most well-known dispute regarding uses of a national monument concerns Devils Tower National Monument in Wyoming. Devils Tower is managed by the NPS and, as noted above, was the nation's first national monument. In 1995, the NPS issued a Final Climbing Management Plan (FCMP) for the monument.[109] Among other restrictions, the FCMP asked rock climbers to "voluntarily refrain from climbing on Devils Tower during the culturally significant month of June" out of respect to Native American reverence for "Devils Tower as a sacred site." The FCMP had also initially included a commercial climbing ban in June, but that was removed in 1996. The FCMP sparked a lawsuit led by a climbing guiding group, Bear Lodge Multiple Use Association, which contended that the plan violated the Establishment Clause of the First Amendment by promoting Native religious practice, and that the plan conflicted with the NPS's own recreation mandate and policies.[110] Ultimately, the federal district court disagreed and upheld the FCMP as lawful. This case exemplifies how important management plans can be in navigating conflicting land uses and preserving threatened objects and landscapes.

In recent years, the role of advisory boards has been bolstered for some monuments to partially mitigate these types of conflicts. Ideally, if effectively implemented, advisory boards can be useful for preempting the type of conflict that sparked litigation over Devils Tower, however, as will be discussed in the following section, this goal is not always achieved.

ANALYSIS AND RECOMMENDATIONS

The time for more durable management is now. Public lands face an increasing threat from climate change. With raging wildfires, water scarcity, increasingly severe weather, rising seas, and warming temperatures—American public lands are in a dangerous state.[111] But with the ever-present turmoil of the American political system and starkly diverging views of public lands, the question of how to create responsive management in the face of all these threats is a challenging one.

In the case of national monuments in particular, there appear to be three different paths for moving forward. One potential avenue is to amend the Antiquities Act to prescribe minimum management standards that must be strictly adhered to or to specifically prohibit diminishment.

Another, and likely more attainable, option would be to prescribe advisory boards and bolster their authority to make decisions that ensure inclusive and cooperative management. These boards are all the more appropriate when they enable Native Americans to share traditional knowledge and have input on the management of national monuments that comprise their traditional homeland. Further,

while threatened by climate change, public lands, such as national monuments, have emerged as an increasingly valuable resource for *fighting* climate change through carbon sequestration and by supporting biodiversity. Traditional approaches to environmental stewardship that are led and informed by indigenous groups are emerging as a critical way to address these challenges. On national monuments and other public lands, American leadership has the opportunity to confront the climate crisis while prioritizing justice for communities who have been historically marginalized and harmed by US federal land policy.

To effectively manage the land—and avoid the ad hoc approach that has plagued monuments for so long—it is important that there is guidance on whose voice should take priority. In the case of Bears Ears and similar monuments, the voices that are prioritized ought to be the long-ignored ones—those of Native American tribes and marginalized communities. When considering a monument celebrated for its cultural and spiritual significance to populations that have been systemically oppressed by American land policy for centuries, it is necessary that Native American voices take a central role in management. There are many reasons for this.

Tribes hold significant historical and ecological knowledge of their traditional homelands.[112] Thus, beyond the equitable considerations of including indigenous voices in stewardship decisions, advisory boards, and tribal participation can offer critical support on developing sustainable management.[113] In the era of climate change, such sustainability is critical.[114] In the area of climate change research, studies have shown that "traditional knowledge can expand the range and richness of the information available, in both space and time scale."[115] To support this type of involvement, Congress should consider an amendment to the Antiquities Act that requires the establishment of an advisory board—as well as request a tribal commission when appropriate—for all new national monuments created by the Act. As discussed above, the political appetite for these legislative interventions may not exist. If so, Congress could instead delegate greater authority for agencies to partner with stakeholders without considering something as significant as an amendment to the Antiquities Act itself. This type of action would create greater ability within the executive branch to utilize the knowledge and input of tribes and other stakeholder groups for creating effective monument management.

Until congressional action occurs, it is up to the president and managing agencies to include a wide range of stakeholder views in management decisions pursuant to their existing authority.[116] Soliciting broader input could support a number of existing administrative initiatives, such as the 30 by 30 pledge.[117] The Biden administration has made several moves to foster this type of collaboration—even going further than calling for advisory boards at times. Where advisory boards are insufficient to address the nuanced management decisions and historical context of certain lands, there are several opportunities for fostering other kinds of tribal inclusion—namely, through co-stewardship agreements. The term "co-stewardship" encompasses the various federal approaches to incorporating tribal traditional and ecological knowledge, treaty rights, and tribal input into land management decisions.[118] This means that in certain circumstances, where congressional authority allows for an agency to enter into such agreements, tribes can gain substantial authority over management decisions for lands owned by the federal government that goes beyond the ability to merely give input.

CONCLUSION

The modern distribution of administrative powers on public lands reflects the need to create effective policy for such wild and ecologically diverse places. However, the lack of a consistent policy to definitively protect federal lands from development and leasing has left these lands cyclically threatened with the changing of presidential administrations. In the case of public lands, even one administration acting illegally—and too rapidly for the courts to perform a check on the abuse—could leave large swaths of land irrevocably damaged. When a species becomes extinct—whether polar bears in

Alaska or whooping cranes in the southeast—it can *never* return. While judicial review may provide remedy to poor policy, it cannot regrow 2000-year-old redwoods lost to unsustainable logging. No number of appeals can undo an oil spill in a once-protected marine monument diminished by a future administration and opened to offshore drilling that causes billions of dollars in damage and claims countless marine lives.

Amending the Antiquities Act to give the executive branch a more permanent ability to create national monuments would enable opportunities to create durable land conservation practices and protect many acres of American land from the ravages of extraction. However, a more manageable solution might be for each land management agency to collectively agree to minimum management standards for all national monuments—in accordance with their establishing document. These minimum standards should be augmented by the creation of advisory boards for all national monuments to guide their implementation and more nuanced management decisions. Congressional activity to codify requirements for the creation of these advisory boards would be greatly beneficial for ensuring more informed management. Further, agency efforts to specifically foster tribal co-management, where appropriate, should be heightened and greater authority ought to be congressionally given to such agencies to enter into co-management agreements. These approaches would lead to better-informed, more inclusive, and more durable land management. As recent years have exposed just how vulnerable many lands are under the current approach, developing new management tools is imperative.

Notes

1 Excerpts of this article are taken from a manuscript originally published by the authors in the Stanford Environmental Law Journal. Abigail M. Hunt & Robin M. Rotman, Intersectional Management: An Analysis of Cooperation and Competition on American Public Lands, 42 Stan. Envtl. L. J. 121 (2023).

2 For more on tribal involvement in resource development and tribal capacity building, see Sam J. Carter and Robin M. Rotman, Resurfacing Sovereignty: Who Regulates Surface Mining in Indian Country After McGirt?, 83 Mont. L. Rev. 266 (2022).

3 Bureau of Land Mgmt., U.S. Dep't of the Interior, Public Land Statistics 2018, at 3 (2019), https://www.blm.gov/sites/blm.gov/files/PublicLandStatistics2018.pdf [https://perma.cc/7MKE-W54B].

4 Carol Hardy Vincent et al., Cong. Rsch. Serv., R42346, Federal Land Ownership: Overview and Data 1 (2020) https://fas.org/sgp/crs/misc/R42346.pdf [https://perma.cc/DM8V-PDBR].

5 National Park Visitor Spending Contributed $40 Billion to U.S. Economy, Nat'l Park Serv. (May 23, 2019), https://www.nps.gov/orgs/1207/national-park-visitor-spending-contributed-40-billion-to-u-s-economy.htm [https://perma.cc/ARB3-7BDJ].

6 Bureau of Land Mgmt., U.S. Dep't of the Interior, supra note 32, at 3-5 [https://perma.cc/7MKE-W54B].

7 See generally Lee Ann Potter & Wynell Schamel, The Homestead Act of 1862, 61 Soc. Educ. 359 (1997).

8 Homestead Act of 1862, ch. 75, 12 Stat. 392 (repealed 1976).

9 General Mining Law of 1872, ch. 152, 17 Stat. 91 (codified as amended at 30 U.S.C. §§ 22–24, 26–30, 33–43, 46-48, 50-52, 71-76 (1993)).

10 Desert Lands Act of 1877, ch. 107, 19 Stat. 377 (codified as amended at 43 U.S.C. §§ 321–23, 325, 327–29 (1976)).

11 See Robert B. Keiter, Public Lands and Law Reform: Putting Theory, Policy, and Practice in Perspective, 4 Utah L. Rev. 1127, 1132–1133 (2005).

12 Signed into law by President Abraham Lincoln on May 20, 1862, the Homestead Act encouraged Western migration by providing settlers 160 acres of public land. In exchange, homesteaders paid a small filing fee and were required to complete five years of continuous residence before receiving ownership of the land. After six months of residency, homesteaders also had the option of purchasing the land from the government for $1.25 per acre. The Homestead Act led to the distribution of 80 million acres of public land by 1900.

13 See generally Potter & Schamel, supra note 7.

14 Keiter, supra note 11, at 1132. The legacy of dispossession, assimilation, and allotment continues to shape the sociocultural fabric and economy in Indian country today. See Sam J. Carter and & Robin M. Rotman, It's None of Your Business: State Regulation of Tribal Businesses Undermines Sovereignty and Justice, 18 N. Y. U. J. L. & Bus. 1 (2021).

15 For example, after gaining land rights in Montana, the Anaconda Copper Company grew to massive proportions, effectively controlling all Butte politics and media. Today in Butte, where 1.5 billion tons of ore were extracted, lies the infamous Berkeley Pit. Its water is laden with heavy metals and various toxins and has twice killed migrating flocks of snow geese that landed there. See Kathleen McLaughlin, A Once-powerful Montana Mining Town Warily Awaits Final Cleanup of its Toxic Past, Wash. Post, Feb. 10, 2020, https://www.washingtonpost.com/climate-environment/a-once-powerful-montana-mining-town-warily-awaits-final-cleanup-of-its-toxic-past/2020/02/09/514c4220-4943-11ea-bdbf-1dfb23249293_story.html [https://perma.cc/H5RP-BVDZ].

16 Keiter, supra note 11, at 1133.

17 For example, the government protected hot springs in Arkansas, scenic waterways in the Yosemite Valley, and regions of land in Yellowstone—all of which eventually became designated as National Parks, Scott W. Hardt, Federal Land Management in the Twenty-First Century: From Wise Use to Wise Stewardship, 18 Harv. Env't L. Rev. 345, 352–53 (1994).

18 Keiter, supra note 11, at 1132–33.

19 Hardt, supra note 17, at 352-54.

20 Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743 (codified as amended at 43 U.S.C. §§ 1701–85 (2012)). The Homestead Act was repealed with the passage of the Federal Land Policy and Management Act.

21 Vincent, supra note 4, at 7-8 (2020), https://sgp.fas.org/crs/misc/R42346.pdf [https://perma.cc/P8NK-BCYG].

22 Robert Hudson Westover, Conservation Versus Preservation?, U.S. Dep't Agric. (Feb. 21, 2017), https://www.usda.gov/media/blog/2016/03/22/conservation-versus-preservation [https://perma.cc/4Z5J-W6Z3].

23 Keiter, supra note 11, at 1165.

24 Hardt, supra note 17, at 357 (citing Stephen Fox, John Muir and His Legacy: The American Conservation Movement, 9 Humboldt J. Soc. Rel. 172 (1981)). See also Keiter, supra note 11, at 1167.

25 See Hardt, supra note 17, at 357 n. 68 (first citing Harold T. Pinkett, Gifford Pinchot, Private And Public Forester, 59 (1970); then quoting Gifford Pinchot, The Fight for Conservation, 42–43 (1911) ("The first principle of conservation is development, the use of the natural resources now existing on this continent for the benefit of the people who live here now. There may be just as much waste in neglecting the development and use of certain natural resources as there is in their destruction.")).

26 See Keiter, supra note 11, at 1159.

27 U.S. Const. art. IV, § 3.

28 United States v. Gratiot, 39 U.S. 526, 537 (1840); see also id. at 534) ("The words 'dispose of' the public lands, used in the Constitution of the United States, cannot, under the decisions of the Supreme Court, receive any other construction than that Congress has the power, in its discretion, to authorize the leasing of the lead mines on the public lands in the territories of the United States. There can be no apprehensions of any encroachments upon state rights by the creation of a numerous tenantry within the borders of the states from the adoption of such measures.") Id. at 534.

29 Kleppe v. New Mexico, 426 U.S. 529, 538 (1976).

30 The Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340 (1970).

31 Kleppe, 426 U.S. at 541.

32 Id. at 530.

33 Vincent, supra note 4, at 3. Because lands managed by the Department of Defense are not at issue in this article, we will not focus on the Department's approach to management. See id. at 15.

34 See id. at 5.

35 National Park Service Organic Act of 1916, ch. 408, 39 Stat. 535 (codified as amended at 16 U.S.C. §§ 1–4) (stating the NPS shall act "to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations").

36 See Vincent, supra note 4, at 5.

37 See Fish and Wildlife Act of 1956, ch. 1039 70 Stat. 1119, P.L. 1024.

38 See Vincent, supra note 4, at 4.

39 See Multiple Surface Uses of the Public Domain, Hearing on H.R. 5891 Before the H. Comm. on Interior and Insular Affairs, 84th Cong. (1955); What We Manage, Bureau of Land Mgmt., https://www.blm.gov/about/what-we-manage/national [https://perma.cc/5FHV-577S] (archived Apr. 5, 2023). Pinchot's ideas of conservation are paramount in the BLM's "multiple use" mandate. Public Law 84-167 enabled disposal of and claims to certain federal lands and resources (notably, not to national parks, monuments, or Native lands). Private groups typically cannot obtain the property rights to federal lands, but they can acquire a contract, lease, or permit to extract and produce oil and gas, coal, strategic minerals, and renewable energy resources. See Surface Resources and Multiple Use Act of 1955 (Multiple Use Act), Public Law No. 84-167, 69 Stat. 367.

40 See Vincent et al., supra note 4, at 4.

41 National Forest Management Act of 1976, Pub. L. No. 94-588, 90 Stat. 2949 (codified as amended at 16 U.S.C. §§ 1600–14 (1994)).

42 Wilderness Act of 1964, Pub. L. No. 88–577, § 1(B), 78 Stat. 890 (codified as amended at 16 U.S.C. §§ 1131–36 (2006)) ("the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before…").

43 Charles S. Lucero, Public Access to Federal Lands: Dilemma, 3 Pub. Land L. Rev. 194, 201 (1982).

44 Id. at 195 ("This inaccessibility results from four problems: 1) a lack of public awareness concerning which lands are public; 2) the physical remoteness of public lands from established roads and trails; 3) government lessees and permittees who prohibit public use on federal lands; and

4) private landowners who block access to public lands by controlling key tracts of land.").

45 Federal Lands Recreation Enhancement Act, Pub. L. No. 108-447, 118 Stat. 3377 (codified as amended at 16 U.S.C. 87, §§ 6801–6814 (2004)).

46 See Recreation Advisory Committees, U.S. Dep't Agric., https://www.fs.usda.gov/working-with-us/committees/recreation-advisory-committees [https://perma.cc/H5CZ-Y7SY] (archived Apr. 5, 2023).

47 "President George Washington sought the advice of such a committee during the Whiskey Rebellion of 1794, the contributions made by these groups have been impressive and diverse." Finding Information on FACA Committees, U.S. Gen. Services Admin., https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/finding-information-on-faca-committees/faca-101 [https://perma.cc/N4DJ-DMT6] (archived Apr. 5, 2023).

48 About Advisory Councils, Bureau of Land Mgmt., https://www.blm.gov/get-involved/resource-advisory-council/about-rac [https://perma.cc/32LY-W3EM] (archived Apr. 5, 2023).

49 Id.

50 For an in-depth discussing the disputes over the Bears Ears and Grand-Staircase Escalante monuments, see Hunt and Rotman, supra note 1.

51 The U.S. Supreme Court has held that review is available for challenges of a president's use of the Antiquities Act to "ensure that the Proclamations are consistent with constitutional principles and that the President has not exceeded his statutory authority," Mountain States Legal Found. v. Bush, 306 F.3d 1132, 1136 (D.C. Cir. 2002), citing United States v. California, 436 U.S. 32, 35-36 (1978); Cappaert v. United States, 426 U.S. 128, 141-142 (1976); Cameron v. United States, 252 U.S. 450, 455–56 (1920).

52 See, e.g., Massachusetts Lobstermen's Ass'n v. Ross, 945 F.3d 535 (D.C. Cir. 2019) (holding that submerged canyons and seamounts in the Atlantic Ocean were "lands" the President was able to reserve as a national monument under the Antiquities Act; Tulare Cnty. v. Bush, 306 F.3d 1138 (D.C. Cir. 2002) (holding that the authority under the Act is not limited to only archeological sites).

53 See Maureen A. McCotter, A Presidential Power of Monumental Proportions: Does the Antiquities Act Permit the Review and Revision of National Monuments or Can the President Steal Your Land?, 30 Vill. Env't L.J. 173, 177 (2019).

54 Laura Pousson, The Battle Has Just Begun: Monumental Issues of Implied Powers Within the Antiquities Act of 1906, 7 LSU J. Energy L. & Resources 193, 210–11 (2019).

55 Antiquities Act of 1906, 54 U.S.C. §§ 320301–320303 [previously Pub. L. No. 59-209, 34 Stat. 225 (1906) (codified at 16 U.S.C. § 431–33) (recodified by Pub. L. No. 113-287, 128 Stat. 3259 (2014))].

56 Id. § 320301(a), (b).

57 See id.

58 Jesse Knowlden, The Presidential Authority to Reserve and Modify National Monuments Under the Antiquities Act, 87 U. Cin. L. Rev. 593, 595 (2018).

59 H.R. 8066, 56th Cong. (1900).

60 H.R. 8195, 56th Cong. (1900).

61 H.R. 9245, 56th Cong. (1900).

62 See generally Mark Squillace, The Looming Battle over the Antiquities Act, Harv. L. Rev. Blog (Jan. 6, 2018), https://blog.harvardlawreview.org/the-looming-battle-over-the-antiquities-act/ [https://perma.cc/A9RQ-3T6T].

63 Mark Squillace, The Monumental Legacy of the Antiquities Act of 1906, 37 Ga. L. Rev. 473, 476–78 (2003).

64 Birth of a National Park, Nat'l Park Serv., https://www.nps.gov/yell/learn/historyculture/yellowstoneestablishment.htm [https://perma.cc/89CK-FVR5] (archived Apr. 5, 2023). The first national park was Yellowstone National Park, created in 1872 by the Yellowstone National Park Protection Act. The National Park Service was created later in 1916 due to an apparent need for organized management in National Parks.

65 Squillace, supra note 63, at 480 (citing Ronald F. Lee, The Antiquities Act of 1906, Nat'l Park Serv., Archeology Program (1970), https://www.nps.gov/archeology/pubs/lee/index.htm [https://perma.cc/R9V6-2KKQ], reprinted in Raymond Harris Thompson, An Old and Reliable Authority, 42 J. Sw., at 198 (2000)).

66 Id. at 482 (citing Samuel P. Hays, Conservation and The Gospel Of Efficiency: The Progressive Conservation Movement, 1890-1920, at 47 (1959)).

67 H.R. 11016, 59th Cong. (1906).

68 Lee, supra note 65, at ch. 6.

69 Carol Hardy Vincent, Cong. Rsch Serv., R41330, National Monuments and the Antiquities Act 1 (2022), https://sgp.fas.org/crs/misc/R41330.pdf [https://perma.cc/QH2D-5G33] (quoting 54 U.S.C. § 320301(b)).

70 S. 4698, 59th Cong. (1906).

71 See 40 Cong. Rec. 7888 (1906). This conversation between Rep. Lacey and Tex. Congressman, John H. Stephens, is often referenced to support a legislative intent for small-sized designations:

> MR. STEPHENS: How much land will be taken off the market in the Western States [] by the passage of the bill?
>
> MR. LACEY: Not very much. The bill provides that it shall be the smallest area necessary for the care and maintenance of the objects to be preserved.
>
> MR. STEPHENS: Would it be anything like the forest-reserve bill, by which seventy or eighty million acres of land in the United States ha[s] been tied up?
>
> MR. LACEY: Certainly not. The object is entirely different. It is to preserve those old objects of special interest and the Indian remains in the pueblos in the Southwest, whilst the other [bill] reserves the forests and the water courses.
>
> MR. STEPHENS: I will say that that bill was abused ... I hope ... this bill will not result in locking up other lands.

72 54 U.S.C. §§ 320301–320303.

73 54 U.S.C. § 320301.

74 Vincent, supra note 69, at 3.

75 See generally Antiquities Act of 1906, Frequently Asked Questions, Nat'l Park Serv., Archeology Program, https://www.nps.gov/archeology/sites/antiquities/FAQs.doc [https://perma.cc/3PNE-RW2X] (archived Apr. 5, 2023).

76 See Antiquities Act – Maps, Facts & Figures, Nat'l Park Serv., Archeology Program, https://www.nps.gov/archeology/sites/antiquities/fullMap.htm [https://perma.cc/MV8U-DFZJ] (last updated Apr. 20, 2022).

77 National Monument Facts and Figures, Nat'l Park Serv., Archeology Program, https://www.nps.gov/archeology/sites/Antiquities/MonumentsList.htm [https://perma.cc/MU4G-HFAT].

78 Proclamation No. 658, 34 Stat. 3236 (Sept. 24, 1906).

79 Bright Angel trail is a popular day hike located in what is now Grand Canyon National Park.

80 See Cameron, 252 U.S. at 456 (1920) ("[The Grand Canyon] is the greatest eroded canyon in the United States, if not in the world, is over a mile in depth, has attracted wide attention among explorers and scientists, affords an unexampled field for geologic study, is regarded as one of the great natural wonders, and annually draws to its borders thousands of visitors.").

81 Cappaert, 426 U.S. at 128. Death Valley was designated by President Hoover in 1933 to include two million acres. Greg Lucas, Death Valley Becomes a National Monument, Cal@170, https://cal170.library.ca.gov/february-11-1933-death-valley-becomes-a-national-monument-2/ [https://perma.cc/M9NM-CVJA]. In 1952, it was enlarged to include the Devil's Hole tract. Proclamation No. 2961, 66 Stat. 320301 (Jan. 17, 1952). Death Valley was redesignated as a National Park in 1994. Death Valley National Park Celebrates 25th Anniversary, Nat'l Park Serv., https://www.nps.gov/deva/learn/news/25th-anniversary.htm#:~:text=On%20October%2031%2C%201994%2C%20President,and%20established%20Mojave%20National%20Preserve [https://perma.cc/QT2R-8YFY].

82 Devils Hole, Nat'l Park Serv., https://www.nps.gov/deva/learn/nature/devils-hole.htm [https://perma.cc/6XB8-EUEL].

83 Cappaert, 426 U.S. at 138.

84 54 U.S.C. § 320301(a).

85 This most recently occurred with the César E. Chávez National Monument established by President Obama in 2012 with lands donated by the National Chávez Center. Proclamation No. 8884, 77 Fed. Reg. 62,413 (Oct. 8, 2012).

86 Proclamation No. 6920, 61 Fed. Reg. 50,223 (Sept. 18, 1996).

87 David Negri, Grand Staircase–Escalante National Monument: Presidential Discretion Plus Congressional Acquiescence Equals a New National Monument, 10 Utah B.J. 20, 20 (1997).

88 See Sanjay Ranchod, The Clinton National Monuments: Protecting Ecosystems with the Antiquities Act, 25 Harv. Env't L. Rev. 535, 557–558 (2001).

89 Hannah Nordhaus, What Trump's Shrinking of National Monuments Actually Means, Nat'l Geographic (Feb. 2, 2018), https://www.nationalgeographic.com/news/2017/12/trump-shrinks-bears-ears-grand-Staircase–Escalante-national-monuments/#close [https://perma.cc/8GF9-SZXF].

90 Proclamation No. 7399, 3 C.F.R. 7399 (Jan. 17, 2001).

91 Proclamation No. 8031, 71 Fed. Reg. 36,441 (June 15, 2006).

92 Joseph Briggett, An Ocean of Executive Authority: Courts Should Limit the President's Antiquities Act Power to Designate Monuments in the Outer Continental Shelf, 22 Tul. Env't. L.J. 403, 407 (2008).

93 Id. at 422.

94 See id. at 404.

95 See Vincent, supra note 69, at 11.

96 National Monument Facts and Figures, supra note 77. For context, about 42 percent of land in Utah is publicly owned. Bureau of Land Management, https://www.blm.gov/maps/frequently-requested/utah [https://perma.cc/2U2W-M4GU].

97 See id. for complete list of monument designations and congressional action.

98 Id.

99 A National Preserve, Nat'l Park Serv., https://www.nps.gov/bicy/learn/the-first-national-preserve.htm [https://perma.cc/H7AF-SFWS] (last updated May 24, 2022). National preserves are a type of land management concept that is a compromise between the restrictive uses associated with National Parks and protecting critical and beautiful land. Preserves are areas "that [are] protected, but also allow for specific activities that [are] described by Congress within the legislation that [creates] the preserve." Id.

100 54 U.S.C. §§ 320301. Those monuments are Mount of the Holy Cross, Mistry Fjords, and Wheeler.

101 Abolished National Monuments, Nat'l Park Serv., https://www.nps.gov/articles/000/abolished-national-monuments.htm [https://perma.cc/HX43-FNWR] (last updated Feb. 17, 2021). Eight of the nine transferred monuments were less than 350 acres; except Papago Saguaro, which is now a Phoenix city park, is approximately 2050 acres. Papago Saguaro National Monument, Natl Park Serv., https://www.nps.gov/archeology/sites/antiquities/profilepapagosaguaro.htm [https://perma.cc/KG75-NUPW].

102 Squillace, supra note 63, at 554–58.

103 John Yoo & Todd Gaziano, Presidential Authority to Revoke or Reduce National Monument Designations, 35 Yale J. on Reg. 617, 647–48 (2018). Those who argue that the Antiquities Act allows subsequent presidents to diminish or revoke a national monument tend to also argue that the President's designating powers as more limited, for example that monuments should be relatively small in size. Id.

104 These reductions generally fit into three categories: "(1) reductions that were intended to correct mapping errors, or errors and omissions in the initial proclamation;

(2) reductions responding to new information; or (3) reductions that were made based on authority other than the Antiquities Act, such as the President's Article II power as Commander in Chief." John C. Ruple, The Trump Administration and Lessons Not Learned from Prior National Monument Modifications, 43 Harv. Env't. L. Rev. 1,40 (2019).

105 Mount Olympus National Monument was created just two days before President Roosevelt left office. It encompassed 608,640 acres of temperate rainforest and Pacific shoreline. In 1915, President Wilson diminished the Monument by nearly half of its acreage. President Wilson purported that the diminishment was needed to timber resources for military operations in WWI, but some commentators have stated this likely done to please the timber industry. See Emily Bergeron, Bridging the Nature-Culture Gap: Using Cultural Resource Laws for Environmental Protection, Nat. Res. & Env't, Winter 2020, at 18 (citing Carten Lien, Olympic Battleground: Creating and Defending Olympic National Park, 51–52 (2d ed. 2000)).

106 See Vincent, supra note 69 at 7.

107 See id. Although presidents have, in fact, selected agencies other than the NPS to manage national monuments—most commonly, the agency that managed the parcel before the monument designation—the legal authority for the president to do so has been called into question. Prior to 1933, presidents designated a variety of federal land management agencies to manage various monuments. The Franklin Roosevelt administration, however, consolidated all management under the NPS. This persisted until 1978, when President Carter selected the FWS to manage two national monuments and the FS to manage two others. Id. at 8. In response, the Supreme Court held that the Antiquities Act means "no more than that the land is shifted from one federal use, and perhaps from one federal managing agency, to another." United States v. California, 436 U.S. 32, 41 (1978).

108 Antiquities Act of 1906, 54 U.S.C. §§ 320301–320303 [previously Pub. L. No. 59-209, 34 Stat. 225 (1906) (codified at 16 U.S.C. § 431–33) (recodified by Pub. L. No. 113-287, 128 Stat. 3259 (2014))].

109 Final Climbing Management Plan/Finding of No Significant Impact, Devils Tower National Monument, Nat'l Park Serv. (Feb. 1995), https://www.nps.gov/deto/planyourvisit/upload/DETO-FCMP-1995-accessible.pdf [https://perma.cc/6KEV-CYXL].

110 Bear Lodge Multiple Use Ass'n v. Babbitt, 2 F. Supp. 2d 1448 (D. Wyo. 1998).

111 For in-depth reading on how climate change is affecting national parks and monuments across the country, see Michael J. Yochim, Requiem for America's Best Idea: National Parks in the Era of Climate Change (2022).

112 Our Common Future, Report of the World Commission on Environment and Development, p. 12 (1987) ("Tribal and indigenous peoples' ... lifestyles can offer modern societies many lessons in the management of resources in complex forest, mountain and dryland ecosystems."). Specifically, "in north-western New Mexico, traditional Indigenous farming methods are being passed down to protect against the effects of climate crisis[.]" Samuel Gilbert, Blue corn and melons: meet the seed keepers reviving ancient, resilient crops, The Guardian (Apr. 18, 2022), https://www.theguardian.com/environment/2022/apr/18/seed-keeper-indigenous-farming-acoma [https://perma.cc/7WB8-CD6K].

113 See Lake et al., Returning Fire to the Land: Celebrating Traditional Knowledge and Fire, 115 J. Forestry, 343, 343-53 (2017).

114 Sarah Krakoff, Public Lands and the Possibility of Justice, 53 Harv. C.R.-C.L. L. Rev. 213, 255 (2018) ("Science, with its methods of data collection, measurement, assessment, and falsification can tell us what has happened. It can also make predictions about the future. But traditional knowledge comprises an intimate and detailed cultural connection between humans and place, which accrues slowly and deeply over time. This kind of knowledge will be crucial for maintaining the human-land connection as we move into an era of constant change.").

115 Firket Berkes, Sacred Ecology 164 (4th ed. 1999) (citing Riedlinger, D. & F. Berkes, Contributions of traditional knowledge to understanding climate change in the Canadian Arctic, 37 Polar Record 315, 315–28 (2001)). In discussing the value of incorporating Indigenous knowledge into climate change science, Berkes noted that climate models do not often address the full picture. However, "projects involving multiple communities and examining indigenous observations at regional as well as local scales are very significant in this regard because they provide cross-scale insights." Id. at 175.

116 See Sarah Krakoff, Public Lands and the Possibility of Justice, 53 Harv. C.R.-C.L. L. Rev. 213, 237 (2018). Some agencies have already begun to engage with Tribes in meaningful ways: "In the public lands context, several statutes and executive orders require or encourage federal agencies to cooperate and consult with Tribes on a range of matters. And at Yellowstone and [Grand Canyon National Park], the Park Service regularly consults with the many Tribes that once called those vast landscapes home." Id.

117 Michael C. Blumm & Gregory A. Allen, The 30 by 30 Proposal, Areas of Critical Environmental Concern, and Tribal Cultural Lands, 52 Env't. L. Rep. 10366, 10367 (2022).

118 See Monte Mills & Martin Nie, Bridges to A New Era: A Report on the Past, Present, and Potential Future of Tribal Co-Management on Federal Public Lands, 52 Env't. L. Rep. 10661, 10661 (2022).