



State of New Mexico

Susana Martinez
Governor

July 10, 2017

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

Re: DOI-2017-0002 (Review of Certain National Monuments Established Since 1996)

Dear Secretary Zinke:

I appreciate the unique opportunity to provide input on the "Review of Certain National Monuments Established Since 1996; Notice of Opportunity for Public Comment (National Monument Review)" that was published in the *Federal Register* on May 11, 2017, (82 FR 22016 – 22017).¹

I recognize the Department of Interior's (DOI) effort to seek input regarding the National Monuments Review, which has been designated using the Antiquities Act of 1906 (Act). Included in this review are two monuments in New Mexico: the Rio Grande Del Norte National Monument (RGDNNM), designated in 2013, and the Organ Mountains-Desert Peaks National Monument (OMDPNM), designated in 2014. Comments are organized to address the policy considerations stated in Executive Order 13792 dated April 26, 2017. I support a thorough review of the two national monuments to focus on the respective proclamations and the objects to be protected to analyze whether the designations make the best sense for New Mexico.

Organ Mountains-Desert Peaks National Monument

A review of the OMDPNM follows below and is organized by the questions asked in the National Monument Review request.

(i) The requirements and original objectives of the Act, including the Act's requirement that reservations of land not exceed "the smallest area compatible with the proper care and management of the objects to be protected":

¹ 82 FR 22016

According to the Presidential Proclamation that established the OMDPNM, "Federal land and interests in land" encompasses approximately 496,330 acres of Bureau of Land Management (BLM) land. It is worth noting that approximately 9,925 acres of private land and 67,083 acres of state trust land are also included within the OMDPNM boundaries. The addition of state and private land brings the total amount of land within the OMDPNM to 573,537 acres, which is almost 25 percent of Dona Ana County. The sheer size and scope of the monument increases management complexity and requirements for all parties (federal, state, local, and private entities).

The nearly 574,000 acres that encompass the OMDPNM may be greater than needed to address concerns of "theft from and destruction of archaeological sites,"² which was the original impetus for the Act. It is unclear how a larger designation better protects specific objects, especially since multiple federal laws, policies, and programs already exist to protect antiquities and archaeological sites. Such laws include but are not limited to:

- Archaeological and Historic Preservation Act of 1960
- National Historic Preservation Act of 1966
- National Environmental Policy Act of 1969
- Federal Land Policy Management Act of 1976
- Archaeological Resources Protection Act of 1979

These laws include provisions that require federal agencies to consider cultural, archeological, and historical properties and resources in decisions for projects that have a federal land or funding nexus.

Also, congressional and administrative protections exist for large portions of the OMDPNM in the form of prior designations. These include approximately 64,137 acres of Areas of Critical Environmental Concern; 3,746 acres of Research Natural Area; 64,481 acres of Special Recreation Management Areas; and 196,094 acres of Wilderness Study Areas (WSA). It is not clear what the monument designation achieves when prior designations are considered.

Support for keeping monument designations to the "smallest area compatible" can be seen in the legislative history of the Act. Earlier versions of the Act included language stipulating that monument reservations were not to exceed a finitely determined acreage amount (i.e., 320 or 640 acres).³

(ii) whether designated lands are appropriately classified under the Act as "historic landmarks, historic and prehistoric structures, [or] other objects of historic or scientific interest . . .":

It is important to clarify that there are objects in the area that qualify for protection under the Act. However, these objects can be specifically identified and reasonably designated to be protected and managed using the "smallest area compatible."

² Vincent, Carol H. "National Monuments and the Antiquities Act" Congressional Research Service. Report No. R41330, September 7, 2016. <https://fas.org/sgp/crs/misc/R41330.pdf>

³ Lee, Ronald F. "The Story of the Antiquities Act" National Park Service, March 15, 2016, https://www.nps.gov/archeology/PUBS/LEE/Lee_CH6.htm

In addition, the proclamation lists some objects that do not satisfy the intent of the Act. For example, the proclamation vaguely refers to such flora and fauna that are abundantly and regularly found in this area. Animals such as the western diamondback rattlesnake, jackrabbits, and kangaroo rats are not objects meant to be protected under the Act.

Other features cited in the proclamation such as limestone ridges, hogbacks, Chihuahua grasslands, and scrublands are not objects under the Act, but are typical of the overall landscape. These descriptions may lack specificity to be identified as objects of particular scientific or historic interest.

(iii) the effects of a designation on the available uses of designated Federal lands, including consideration of the multiple-use policy of section 102(a)(7) of the Federal Land Policy and Management Act (43 U.S.C. 1701(a)(7)), as well as the effects on the available uses of Federal lands beyond the monument boundaries:

The designation of the OMDPNM does allow for watershed restoration projects, small-scale flood prevention projects, and grazing to continue on OMDPNM lands. However, these authorizations also include the stipulation that they may continue only if they are "consistent with the protection of the objects identified above." This condition could create a management system where all other uses are inferior to those listed within the proclamation. Therefore, many uses (including grazing operations, watershed restoration projects, and recreation) may not continue if considered in conflict with the objects listed.

The restriction of motorized use on the OMDPNM to designated roads limits entrance by the public and restricts the ability of ranchers, farmers, and other natural resource managers to maintain critical infrastructure such as earthen flood control structures, fences, and livestock water wells and drinkers. This could lead to reductions in livestock grazing and a reduction in economic activity as a result. It should also be noted that the OMDPNM Resource Management Plan (RMP) is still under development and may impose additional restrictions on access and uses within the OMDPNM. A critical concern for the agricultural community is the uncertainty that is inherent during the RMP development process, which has been known to be a lengthy process (i.e., the Tri-County RMP which has been in development since 2006).

(iv) the effects of a designation on the use and enjoyment of non-Federal lands within or beyond monument boundaries:

As stated above, there are approximately 9,925 acres of private land and 67,083 acres of state trust land within the borders of the OMDPNM. Although private and state land is technically not part of the OMDPNM, the designation has the effect of constraining development as well as ingress and egress due to the management of surrounding federal lands thus having the effect of curtailment of activities that may include enjoyment of nonfederal lands with the monument.

(v) concerns of State, tribal, and local governments affected by a designation, including the economic development and fiscal condition of affected States, tribes, and localities:

Conservation and Restoration

Setting aside vast areas of public lands with restrictive federal land designations often creates additional issues for natural resource management entities. Two examples are New Mexico's

soil and water conservation districts (SWCDs) and the Elephant Butte Irrigation District (EBID). SWCDs are local units of government established under state law with the mandate to “further the conservation, development, utilization, flood prevention and disposal of water, and thereby preserve and protect New Mexico's land and water resources.”⁴ EBID is responsible for operating and maintaining the irrigation system that delivers surface water to farmers in the Rincon and Mesilla valleys. Among other things, both entities are responsible for maintaining flood control dams that were originally built to protect agricultural land, but now also protect population centers within the Lower Rio Grande Watershed. The restriction of access to “designated” roads may cause unintended environmental degradation due to the inability to maintain structures and initiate restoration projects critical to the health of the watershed within the OMDPNM.

Economic Considerations

The economic benefit of monument designations is often cited as a benefit, but only anecdotal evidence appears to be available to substantiate this. An important feature of any monument designation should be a thorough economic analysis of the benefits and consequences of said designation. Unaccounted for or unintended losses of economic opportunities associated with ranching and other development opportunities may not have been fully considered in the OMDPNM designation. A small portion of Dona Ana County, about 15 percent, is comprised of nongovernmental lands⁵; and it should be noted that private land and livestock ranching are significant contributors to the tax base of the county. The statement in the proclamation that “Lands and interests in lands within the monument’s boundaries not owned or controlled by the United States shall be reserved as part of the monument upon acquisition of ownership or control by the United States” is concerning as it may imply the federal government intends to acquire control of additional land within the OMDPNM; or, alternatively, restrictive management protocols and access issues may lead to disuse of private land and conflicts.

The continued availability of grazing allotments is important in terms of public priorities, economic vitality of rural economies, range health, and the customs and culture of many people in New Mexico. Specifically, the area within the OMDPNM has provided forage and range conditions that are the backbone of the local ranching industry for over one hundred years.

(vi) the availability of Federal resources to properly manage designated areas:

According to the Congressional Research Service, three federal land management agencies within the DOI combine for a deferred maintenance estimate of approximately \$13.13 billion.⁶ Also, President Trump’s FY 2018 Budget requests \$11.6 billion for DOI, which is a 12 percent decrease from the 2017 annualized continuing resolution level.⁷ The current maintenance backlog in conjunction with possible budget reductions could severely inhibit BLM’s ability to manage the OMDPNM properly.

⁴ New Mexico Statutes Annotated 73-20-3.

⁵ “Frequently Asked Questions” Dona Ana County Assessor. <https://donaanacounty.org/assessor/taxfaq#agr>

⁶ Vincent, Carol H. “Deferred Maintenance of Federal Land Management Agencies: FY2007-FY2016 Estimates and Issues” Congressional Research Service. Report No. R43997. April 25, 2017. <https://fas.org/sgp/crs/misc/R43997.pdf>

⁷ “America First: A Budget Blueprint to Make America Great Again.” The President’s 2018 Budget. Office of Management and Budget. March 15, 2017. https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fv2018_2018_blueprint.pdf

Rio Grande del Norte National Monument

The RGDNNM was designated in March 2013 by President Obama via Presidential Proclamation⁸. The monument consists of the Rio Grande Gorge and surrounding lands, most of which were included in previously designated Areas of Critical Environmental Concern or as a Wild and Scenic River. It is not clear what additional goals the monument designation achieves outside the previous designations. It is important for the state and the public to understand the effect of monument designations and the difference between the protections provided under the Act or other scenarios.

Livestock producers and agricultural users in the area of the RGDNNM have expressed that designation of this national monument restricts their ability to access and maintain their allotments. According to information obtained from BLM, there are 62 allotments within the RGDNNM boundaries. The proclamation for the designation of this national monument does not list specific "objects" that warrant protection. Rather, the proclamation describes the landscape as a whole as requiring protection. Therefore, a review of the RGDNNM should determine if this proclamation is an appropriate use of the Act, and the record should show what objects are intended for protection.

Conclusion

I appreciate the unique opportunity to comment on the "Review of Certain National Monuments Established Since 1996." I support the review of the Organ Mountains-Desert Peaks National Monument and the Rio Grande del Norte National Monument to ensure both designations are of an appropriate area consistent with the original substance and requirements of the Antiquities Act. Of critical importance for my state and all others as well, is an understanding of ways in which the Act has been utilized to designate monuments historically within the spirit and letter of the Act, "the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected." It should be clarified whether the Act is meant to be used to include large landscapes as "objects" for protection. My cabinet secretaries and staff stand ready to assist you with this important analysis and can provide further detailed information should you require it.

Sincerely,



Susana Martinez
Governor

⁸ Proclamation 8946—Establishment of the Rio Grande del Norte National Monument