

'Over my dead body'

Rhetoric heats up as conservationists fear the worst

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The Taos News, 12/1/2016

Sen. Martin Heinrich, D-NM, had a strong response to a Utah congressman's recent suggestion that President-elect Donald Trump should undo national monument designations.

"Any admin that tries to reverse 100-year history of #PublicLands that belong to every American, is going to have to do it over my dead body," Heinrich tweeted Nov. 17.

The election of Trump raised the alarm for conservationists across the country who fear the pro-industry, anti-regulation candidate will make sweeping changes that will undermine access and protection to public lands. In Taos County, the most obvious target could be the Rio Grande del Norte National Monument — 242,555 acres of federal lands that straddle the Rio Grande Gorge and are administered by the Bureau of Land Management.

President Obama created the monument through a 2013 proclamation as allowed under the 1906 Antiquities Act. Now the concern among some is that a President Trump could use the same law to un-make it. Trump told a crowd at a campaign rally in Maine, for instance, that Obama's decision to create a national monument in that state "undermines the people that live and work right here," adding later he would "turn it all around."

The question now is whether Trump intends to make good on those promises. If history is any indication, statements made on the campaign trail might not mean real action.

There were similar fears about undoing monuments 16 years ago when George W. Bush was elected. Bush's predecessor, Bill Clinton, established 19 national monuments during his two terms in office. Bush's vice-president, Dick Cheney, said Clinton had created monuments "willy-nilly all over the West" and that the Bush administration would pull back the designations.

That never happened. In fact, Bush used the Antiquities Act to designate two national monuments of his own.

But some, like Heinrich, worry that Trump may be far more unpredictable.

"At this point, where it's not very clear what direction the Trump administration is going to go, we have to take those threats seriously," Heinrich told

The Taos News in a phone interview from Washington, D.C., Nov. 30.

Heinrich called the Rio Grande del Norte "the poster child of a monument done right," pointing to broad support from business leaders, outfitters, elected officials, land grant organizers and Taos Pueblo representatives. To undo that work would have a huge impact on the local economy and culture, he added.

A 2012 report authored before the monument was designated found a national monument would generate about \$15 million in annual economic activity in Taos and Rio Arriba counties. Visitation to the area went up 40 percent in the year after the monument was declared.

Non-ument status

To date, no president has actually tried to abolish a monument. And according to legal scholars, any attempt to do so would be met with a flurry of opposition.

That's because the Antiquities Act gives the president clear power to designate a national monument, but it does not give explicit power to "un-make" one.

A 2016 report by Alexandra Wyatt of the Congressional Research Service — the non-partisan research arm of the Library of Congress — notes that erasing a monument isn't as simple as one president using executive authority to roll back a previous president's actions.

"Because the authority for national monument proclamations is provided by a specific statute [the Antiquities Act], the authority to revoke such proclamations have been interpreted to be more limited," Wyatt wrote.

Wyatt points to an attorney general opinion from 1938: Franklin Roosevelt's interior secretary asked the president to abolish the Castle-Pinckney National Monument in South Carolina. But Roosevelt's attorney general concluded that the president had no such authority because it was not explicitly written into the law.

Since no president has ever tried, the issue hasn't been conclusively litigated. If Trump did try to un-make any national monument, it would almost certainly be mired in litigation that would end up before the Supreme Court. Whether Trump feels it's worth it to get bogged down in that kind of fight remains to be seen.

Wyatt's report does note that several presidents have altered the size of designated monuments.

Legal scholars argue such changes are valid because of language in the Antiquities Act that requires protected area to be "the smallest area compatible with proper care and management of the objects to be protected."

The boundaries of Bandelier National Monument near Los Alamos, for example, have been enlarged and shrunk multiple times since it was established a century ago: Woodrow Wilson declared Bandelier a monument. Herbert Hoover and Dwight Eisenhower both expanded the boundaries. Then John F. Kennedy added another 2,882 acres in one area while removing another 3,925 acres elsewhere.

Even if Trump decides not to wade into the fray, Congress can (and has) deleted a national monument designation.

According to the National Park Service, 11 national monuments have been abolished by Congress, though only one has been abolished in the last 50 years. More often, Congress has designated presidentially proclaimed monuments as national parks and preserves, the Park Service says.

'Local input'

Another tact Republicans have used to limit presidential power when it comes to making monuments is to rewrite or abolish the Antiquities Act itself. Several current GOP members of

Congress have advocated for such changes, and with Republicans in control of Congress, such an effort could have legs.

“If anyone here likes the Antiquities Act the way it is written, uh, die,” said Rep. Bob Bishop, R-UT, during a conference of the Western State Land Commissioners Association in 2015. “I mean, [get] stupidity out of the gene pool. It is the most evil act ever invented.”

Bishop’s position might be considered extremist by conservationists, but he’s also the current chairman of the House Committee on Natural Resources, giving him sweeping power when it comes to deciding what public lands legislation will or won’t move forward.

Inquiries to Bishop’s D.C. office about his position on national monuments were referred to the committee spokesperson, who sent an emailed response Nov. 30.

“The Antiquities Act gives presidents sweeping authority that has been abused by the executive under both parties to unilaterally restrict land uses without local consultation and in many case despite local opposition,” wrote Elise Daniel, press secretary of the House Committee on Natural Resources, in an email to *The Taos News* .

Daniel did not respond to specific questions about whether the congressman felt monuments like Rio Grande del Norte — that enjoyed broad local support — should be overturned.

In an op-ed for the Boston Herald, Bishop did argue he was not opposed to all national monument designations. “I’m trying to create a national monument in Utah, but in the right way — legislatively through Congress,” Bishop wrote. “The problem today is that the president can create monuments without any local input.”

Protection of the Rio Grande del Norte started with a similar legislative approach.

Then-senator Jeff Bingaman, D-NM, introduced a bill in 2011 to create the “Rio Grande del Norte National Conservation Area.” The bill would have set aside what is now the national monument and would have also created wilderness areas on the Rio San Antonio and at Ute Mountain. But the bill got nowhere in a GOP-controlled Congress.

Seeing no way around the deadlock, Obama’s first interior secretary, Ken Salazar, visited Taos in December 2012 to gauge local sentiment. Three months later, Obama signed the proclamation creating the monument.

Reached this week, Bingaman told *The Taos News* any attempt to revoke monument status for Rio Grande del Norte would “be a major setback for our state and Northern New Mexico.”

But Bingaman questioned whether there will be much of an appetite in Congress to take on the Antiquities Act or revocation of monuments. He also said that Trump, who has a “certain authoritarian streak,” probably wouldn’t support any attempt to limit presidential power.

Like many, Bingaman said he’s waiting to see who Trump nominates for interior secretary. Trump likely doesn’t have much experience with public lands issues, Bingaman said, so policies will most likely come from his cabinet appointee.

On the ground

If the monument designation were somehow rolled back, it might not have a huge impact on the ground beyond taking down a few signs and changing the maps.

John Bailey with the Bureau of Land Management Taos Field Office, said the management plan for that area was crafted such that many of the protections offered by the monument

status were already in place. The area had already been determined to be off-limits to solar and wind power facilities. And with no oil or gas, and very little value to mining operations, the monument designation didn't "lock out" industry the way such status may have elsewhere.

Other protections are also in place. Beyond the monument title, the Rio Grande Gorge corridor has long been a Congressionally designated Wild and Scenic River, and the plateau is considered an "area of critical environmental concern."

Some things did change after the designation, Bailey said. And the proclamation also sets some clear rules.

The proclamation specifically precludes mineral sales or leasing. It does allow new utility rights-of-way. Grazing management is to remain unchanged under the proclamation. Local wood gathering is also allowed.

Bailey said a moratorium on new hiking trails was put in place to ensure better protection of migratory and nesting birds — wildlife that was specifically cited as objects of value in the proclamation.

In fact, Bailey said creating the monument gave his agency the chance to discover more objects of value that are likely worth preserving, whether or not it remains a formal monument.

"Even if the designation itself were removed, it has made a sea change in the way or staff and the public look at that land," Bailey said.



The skirt of the Ute Mountain can be seen in this aerial shot of the Rio Grande del Norte National Monument.

File photo



Sen. Martin Heinrich

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