



Written by [Steve Byas](#) on December 29, 2016

Lame Duck Obama Grabs More Land and Power

“This arrogant act by a lame duck president will not stand,” tweeted Senator Mike Lee (R-Utah) in reaction to President Barack Obama designating two national monuments Wednesday at sites in Nevada and in Lee’s home state of Utah.

Christy Goldfuss, managing director of the White House Council on Environmental Quality, stated that the action will not allow any new mining or oil and gas development within the monument boundaries.



The Bears Ears National Monument in Utah designation adds even more land to the control of the federal government, covering 1.35 million acres in the Four Corners region. While Lee and many other residents of the states affected by Obama’s latest executive order reacted angrily, conservationists were ecstatic.

The proposed monument is located in between existing national parks and the Navajo Indian Reservation. Navajo Nation President Russell Begaye called it an exciting day for members of his tribe. “We have always looked to Bears Ears as a place of refuge, as a place where we can gather herbs and medicinal plants, and a place of prayer and sacredness,” he said. “The rocks, the winds, the land — they are living, breathing things that deserve timely and lasting protection.”

Today, the federal government owns two-third of the land in Utah. In the case of Bears Ears, the federal government will “co-manage” the land not with the state of Utah, but rather with five tribes: the Hopi, the Navajo Nation, the Uintah-Ouray Utes, the Ute Mountain Ute, and the Pueblo of Zuni.

Senator Orrin Hatch (R-Utah) called the action by Obama “an astonishing and egregious abuse of executive power,” which indicated to him that “far-left special interest groups matter more to him than the people who have lived on and cared for Utah’s lands for generations.” Representative Jason Chaffetz (R-Utah) also expressed his disapproval of Obama’s actions: “The midnight move is a slap in the face to the people of Utah, attempting to silence the voices of those who will bear the heavy burden it imposes. It does not have the support of the governor, a single member of the state’s congressional delegation, nor any local elected officials or state legislators who represent the area.”

Such disrespect for the wishes of the population and its elected officials of the area affected is yet another indication of the low regard in which the Obama administration holds the principle of federalism. Utah’s Attorney General Sean Reyes has promised to sue over the action.

In Nevada, the Gold Butte National Monument has been a site of controversy for more than 15 years. Environmentalists have worked feverishly to stop the expansion of Las Vegas in order to protect various indigenous species such as the desert tortoise. Local cattle rancher Cliven Bundy made national news when he refused to recognize the authority of the federal government over the land, eventually engaging in an armed standoff with officials of the Bureau of Land Management (BLM) in 2014.

Nevada Governor Brian Sandoval and U.S. Senator Dean Heller, both Republicans, contend that it is Congress that should make land designations, not the president. But Senator Harry Reid (D-Nev.), the



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retiring Democrat leader in the U.S. Senate, actually pushed for the designation for the remote area northeast of Lake Mead, claiming it's "a wonderful capstone to [my] career of fighting to protect Nevada's pristine landscapes."

Obama said his action will "protect some of our country's most important cultural treasures, including abundant rock art, archaeological sites, and lands considered sacred by Native American tribes. Today's actions will help protect this cultural legacy and will ensure that future generations are able to enjoy and appreciate these scenic and historic landscapes."

He defended the legality of his designation of 1.35 million acres as now off-limits to new energy development and recreation by citing the 1906 Antiquities Act, a law passed during the Progressive Era in which Congress gave up power to the president to designate national monuments on his own, without approval from Congress. The Antiquities Act was passed at the urging of progressive Republican President Theodore Roosevelt, a strong believer not only in government taking over private land "to conserve it," but also in increasing the power of the president. He argued that a president should be able to do anything that he is not forbidden to do under the Constitution, and is therefore generally regarded as the one most responsible for changing the office of president into what is now called "the Imperial Presidency."

Interestingly, Homer Cummings, the U.S. attorney general for President Franklin Roosevelt, issued an opinion in 1938 that while presidents could remove land from private use under the 1906 law, they could not reverse such executive actions. Republicans in Congress, incensed at Obama's repeated use of executive orders to circumvent the will of Congress, are threatening to change the law in January.

While Franklin Roosevelt used the law to limit use of land in the West the most during his 12 years in office, Obama has taken the most land: 554,590,000 acres. This latest action is the 29th time Obama has used the power to create national monuments.

Only William Howard Taft has reduced the amount of land taken by the federal government (only 500 acres). Only four presidents did not use the power at all — Warren Harding, Richard Nixon, Ronald Reagan, and George H.W. Bush. Gerald Ford added a mere 90 acres.

It appears that Obama is doing his best to take as many actions as he can to advance his progressive viewpoint in the little time he has left in office. For example, he has blocked additional mining outside of Yellowstone National Park, and has stopped new oil drilling in the Arctic Ocean. Donald Trump is slated to take the oath of office as the 45th president on January 20, 2017, and environmentalists have expressed deep concern that he will attempt to alter Obama's land "protections."

This is an opportunity for the Republicans, who now control both houses of Congress, and the White House to rein in both the excessive power of the Imperial Presidency, and the policy of the federal government controlling more and more land in the western states. Whether they will actually do so remains to be seen.

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