

# Monuments in Name Only: The Delay Between Designation and Protection of National Monuments

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## *Table of Contents*

INTRODUCTION .....	400
I. WHAT, HOW, WHO, AND WHY: HOW A PUBLIC LAND BECOMES A NATIONAL MONUMENT .....	401
A. What Are Public Lands? .....	401
B. How to Create a National Monument .....	402
C. Who Manages the National Monuments? .....	402
D. Why National Monuments Are Important .....	405
II. OVERUSING PUBLIC LANDS AND THE MAZE OF RED TAPE.....	406
A. Overuse in National Monuments .....	407
III. HOW TO AVOID THE HARMS .....	410
A. Expediting Protections Through Presidential Proclamation ..	411
B. Dormant Monument Plan.....	413
1. Educating Visitors .....	417
2. Gateway Community Involvement and Funding .....	420
CONCLUSION.....	423

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## INTRODUCTION

Public lands are some of America's most valuable resources. To many, they embody the idealized, picturesque version of the wild and connect us to the land. For others, public lands are a means for industry, with cheap access to grazing or mineral deposits. Because these public lands belong to everyone, the government, as land manager, must balance a diverse set of competing interests. Although there are national parks and wilderness areas that skew management in favor of conservation, the vast majority of public lands are managed with a multiple-yield sustained-use mindset.<sup>1</sup>

The federal government uses a few different tools to manage these lands. From the top down, Congress can pass general, national statutes which create the overarching framework for land management but delegate the interstitial details of regulation to agencies. Agencies in turn promulgate rules to manage public lands and have influential policies and protocol that deal with the day-to-day. One of the federal government's most impactful tools to increase protections for public lands is the Antiquities Act. Through this Act, Congress delegated to the President the ability to "declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest . . . to be national monuments."<sup>2</sup>

When the President designates a national monument, the government is actively recognizing the importance of a place beyond just its extractive resource value. Monuments are meant to protect historical, cultural, and scientific worth. However, as is so often the case with government, expediency is unusual, and management plans for national monuments are no exception. There is a sizable delay that occurs between designating a national monument and actually implementing increased protections for a region. Once proclaimed, monuments are heavily publicized, drawing increased visitation toward the very resources the monument designation was meant to protect. This Note will discuss: (1) the process of designating a national monument; (2) the likely harms national monuments face due to overuse during the limbo between designation and implementation of a management plan; and (3) possible solutions to the delay between designation and increased protection.

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<sup>1</sup> See 43 U.S.C. § 1701(a)(7); *see also* 16 U.S.C. § 1601(a).

<sup>2</sup> 54 U.S.C. § 320301(a).

## I. WHAT, HOW, WHO, AND WHY: HOW A PUBLIC LAND BECOMES A NATIONAL MONUMENT

### A. *What Are Public Lands?*

The United States holds title to an enormous amount of land. Currently the United States owns approximately 640 million acres of land, which, for comparison, is just over a fourth of the surface area of all fifty states. Most public land lies west of the Oklahoma panhandle, a region classically considered to be the American West, and in Alaska.<sup>3</sup>

Congress's power to legislate over public lands is derived from the Property Clause of the Constitution.<sup>4</sup> This power is considered plenary, or essentially unlimited, granting Congress absolute control over federally owned lands.<sup>5</sup> Using the Necessary and Proper Clause of the Constitution, Congress has delegated some of its property power to a few federal agencies, through statutes like the Federal Land Policy and Management Act or National Forest Management Act, with instructions on how to manage the lands.<sup>6</sup> Given the many conflicting uses and multiple interest groups all vying for specific management practice, federal land management agencies have a difficult duty. Justice Scalia has described multiple use as a “deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put.”<sup>7</sup> Grazing, resource extraction, recreation, and the preservation of natural resources and cultural artifacts all have inherent, and often conflicting, tensions.

Congress has also delegated some of its power to the president. In 1906, Congress passed the Antiquities Act which allows the president to create a national monument to increase federal protections for those public lands that have “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government.”<sup>8</sup> Despite the title of the Antiquities Act, monuments are not limited by any classic idea of a

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<sup>3</sup> KATIE HOOVER, CONG. RSCH. SERV., IF10585, THE FEDERAL LAND MANAGEMENT AGENCIES 1 (2019).

<sup>4</sup> U.S. CONST. art. 4, § 3, cl. 2 (“The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.”).

<sup>5</sup> See generally *Kleppe v. New Mexico*, 96 S. Ct. 2285 (1976).

<sup>6</sup> Federal Land Policy and Management Act, 43 U.S.C. §§ 1701–1785; National Forest Management Act, 16 U.S.C. §§ 1600–1687.

<sup>7</sup> *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 58 (2014).

<sup>8</sup> 54 U.S.C. § 320301(a).

human-made artifact. The first national monument, designated by Teddy Roosevelt, was Devil's Tower in Wyoming, an entirely natural pillar of granite which "is such an extraordinary example of the effect of erosion in the mountain as to be a natural wonder and an object of historical and great scientific interest."<sup>9</sup> The Antiquities Act allows the Executive office to make the statement that some of our public lands deserve to be protected from extractive industry and development.

### *B. How to Create a National Monument*

In essence, creating a national monument is a three-step process. First, the federal government must own the land. Private or state land is not eligible for monument status. Second, the land must contain "historic landmarks, historic and prehistoric structures, [or] other objects of historic or scientific interest."<sup>10</sup> Third, the president or Congress must proclaim the land a national monument. In addition, if the president uses the Antiquities Act to create a national monument, the land must be limited to the "smallest area compatible with the proper care and management of the objects to be protected."<sup>11</sup> The president can also incorporate timelines and guidelines for how land management agencies should regulate the monument, but these are not legally enforceable. Because presidential proclamations are not binding unless they are based on a statutory grant of power, and the Antiquities Act only gives the president the power to declare public lands to be a national monument, the only legally binding aspect of the president's proclamation is the designation of the monument and the assignment of a land management agency to regulate it.<sup>12</sup>

### *C. Who Manages the National Monuments?*

The land management agency tasked with the maintenance of a new monument can heavily influence how that monument is managed. There are four main land management agencies: (1) The Bureau of Land Management ("BLM"); (2) the U.S. Forest Service ("USFS"); (3) the National Park Service ("NPS"); and (4) the U.S. Fish and Wildlife Service ("FWS"). The agency responsible for managing the most public lands is

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<sup>9</sup> Devils Tower National Monument Proclamation, 34 Stat. 3236 (Sept. 24, 1906), <https://www.theodorerooseveltcenter.org/Research/DigitalLibrary/Record/ImageViewer?libID=o293443&imageNo=1>.

<sup>10</sup> 54 U.S.C. § 320301(a).

<sup>11</sup> *Id.* at § 320301.

<sup>12</sup> JOHN CONTRUBIS, CONG. RSCH. SERV., EXECUTIVE ORDERS AND PROCLAMATIONS, CRS-1 (1999), <https://fas.org/sgp/crs/misc/95-772.pdf>.

the BLM, which is responsible for 245 million surface acres of public lands.<sup>13</sup> Under the Federal Land Policy and Management Act (“FLPMA”), the BLM is tasked with managing land for the purpose of sustained yield and multiple uses.<sup>14</sup> Similarly, USFS promulgates regulations pursuant to the National Forest Management Act (“NFMA”), which charges the agency with managing forest lands for sustained yields and forestry research.<sup>15</sup> FWS manages the National Wildlife Refuge System under the Refuge Improvement Act, a law that mandates a balancing of tensions in favor of the purpose of the refuge, to protect those specific areas and promote recreation.<sup>16</sup> Finally, the NPS’s Organic Statute mandates conserving public lands for the benefit of current and future generations. While this can be similar to a sustained yield management style, it is usually much stricter and does not leave room for multiple uses.<sup>17</sup>

Most national monuments are assigned to the NPS. Because NPS is statutorily mandated to conserve public lands, this allocation makes sense, as monument designation is a way to protect the land for posterity. However, the NPS is not the sole administrator of America’s monuments. The president has complete discretion to assign any land management agency to a new monument.<sup>18</sup> Occasionally the land management agency responsible for the region prior to designation is assigned responsibility for managing the new monument. The first time this occurred was in 1978 when, instead of the NPS, President Carter assigned the USFS and the FWS to manage two new national monuments in Alaska.<sup>19</sup> Because each land management agency was created for a different purpose and manages lands pursuant to a different statute, the agency chosen to manage a new monument is extremely important.

When public lands are initially proclaimed as a national monument, that declaration “changes the property from being federal land available for multiple uses to being a national monument with possible restricted

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<sup>13</sup> *8 Things You Didn’t Know About The Bureau of Land Management*, DOI: BLOG (July 13, 2017), <https://www.doi.gov/blog/8-things-you-didnt-know-about-bureau-land-management>.

<sup>14</sup> *Laws and Regulations*, BUREAU OF LAND MGMT., <https://www.blm.gov/about/laws-and-regulations> (last visited Feb. 17, 2020).

<sup>15</sup> *See Laws, Regulations & Policies*, U.S. FOREST SERV., <https://www.fs.fed.us/forestmanagement/aboutus/lawsandregs.shtml> (last visited Feb. 17, 2020).

<sup>16</sup> *See Laws and Regulations*, U.S. FISH AND WILDLIFE SERV., <https://www.fws.gov/le/laws-regulations.html> (last visited Feb. 17, 2020).

<sup>17</sup> *See* 16 U.S.C. § 1.

<sup>18</sup> CAROL HARDY VINCENT, CONG. RSCH. SERV., R41330, NATIONAL MONUMENTS AND THE ANTIQUITIES ACT 30 (2018), <https://fas.org/sgp/crs/misc/R41330.pdf>.

<sup>19</sup> *Id.* at 7.

uses.”<sup>20</sup> Because USFS and BLM have multiple-use and sustained-yield management mandates, monuments regulated by those agencies allow multipurpose uses. This is the least protective management style. FWS has somewhat stricter regulations for the monuments it regulates within the wildlife refuge system. NPS has the strictest protections as it is required by statute to manage monuments with strict conservation regulations and policies.<sup>21</sup>

Additionally, each monument is created with a specific purpose in mind. Traditionally, monuments were designated to protect a single discrete physical resource, such as an unusual geologic formation or historical artifact.<sup>22</sup> However, the Antiquities Act can be used to protect large ecosystems, some even acting as land buffers around national parks.<sup>23</sup> BLM and USFS’s multiple use land management mandates are compatible with the classic idea of a monument; the agencies can limit uses and protect an antiquity within a tract of public land while allowing other land uses around it. However, the multiple use management style is less suited to protecting large ecosystems designated as national monuments where the balance has been shifted toward conservation. Because of this mismatch, this Note primarily discusses the BLM and USFS.

To manage monument lands, the BLM and USFS create land management or resource management plans. The creation of a land management plan is involved. It couples agency expertise with community input to formulate a multi-year plan on how the agency will manage a region. The process includes: (1) identification of issues; (2) development of planning criteria; (3) information collection; (4) analysis of management situation; (5) alternatives development; (6) effects of alternatives; (7) selection of preferred alternative; and (8) monitoring.<sup>24</sup> Due to the procedural requirements of the Administrative Procedure Act (“APA”) and the National Environmental Policy Act (“NEPA”), the planning process requires meaningful public engagement through public comment.<sup>25</sup> Additionally, although the BLM and the USFS have national policies, field offices are responsible for drafting resource management

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<sup>20</sup> *Id.* at 8.

<sup>21</sup> See Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 GA. L. REV. 473, 514–15 (2003).

<sup>22</sup> Matthew J. Sanders, *Are National Monuments the Right Way to Manage Federal Public Lands?*, 31 NAT. RES. & ENV’T 3, 3, 5 (2016).

<sup>23</sup> *Id.*

<sup>24</sup> 43 C.F.R. § 1610.4 et seq. (2021).

<sup>25</sup> 40 C.F.R. § 1503 et seq. (2020); TODD GARVEY, CONG. RSCH. SERV., R41546, A BRIEF OVERVIEW OF RULEMAKING AND JUDICIAL REVIEW 2 (2017), <https://fas.org/sgp/crs/misc/R41546.pdf>.

plans and are often guided by the locality.<sup>26</sup> Whenever a new monument is designated, the agency responsible for the region has to create a new management plan for that region. Although the BLM is improving its process for developing land management plans, as of 2016, it took an average of eight years to create and implement a new plan.<sup>27</sup> The USFS has a goal of developing new plans within four years, though it admits that “[e]ven noncontroversial projects often proceed at a snail’s pace.”<sup>28</sup>

The BLM and the USFS are not the agencies best suited to manage national monuments designed to protect ecosystems because they are mandated to manage lands through a multiple use and sustained yield lens. The significant time it takes to create a new monument resource management plan compounds the problems that arise when the BLM or USFS manage ecosystem sized national monuments. This is especially true during the period between monument designation and management plan implementation.

#### *D. Why National Monuments Are Important*

National monuments provide long-term protections for valuable historic and scientific resources, protect public lands from extraction, and support local economies. Their creation forces land management agencies to refocus their management objectives and their resources toward protection. National monument designation also imparts exemptions from pro-extraction laws, which generally apply to public lands.<sup>29</sup> Documentation demonstrates that national monuments support local economies by generating jobs in the outdoor recreation industry and increasing job growth and wages in gateway communities.<sup>30</sup> Additionally, once an area is designated as a national monument, Congress is much more

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<sup>26</sup> 43 C.F.R. § 1601.0-2.

<sup>27</sup> *BLM Finalizes Rule to Make Land Use Plans More Responsive to Community Needs*, BUREAU OF LAND MGMT. (Dec. 1, 2016), <https://www.blm.gov/press-release/blm-finalizes-rule-make-land-use-plans-more-responsive-community-needs>.

<sup>28</sup> U.S. DEP’T OF AGRIC., *A CITIZENS’ GUIDE TO NATIONAL FOREST PLANNING 12* (June 2016), [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd509144.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd509144.pdf); U.S. FOREST SERV., *THE PROCESS PREDICAMENT 5* (June 2002), <https://www.fs.fed.us/projects/documents/Process-Predicament.pdf>.

<sup>29</sup> The Mining in Parks Act effectively withdrew all national monuments from location and entry under the General Mining Law of 1872, stopping any new mining claims in those areas. *See* 43 C.F.R. § 3811.2-2 (1994).

<sup>30</sup> U.S. SENATOR MARTIN HEINRICH, *NATIONAL MONUMENTS SUPPORT LOCAL ECONOMIES*, JOINT ECONOMIC COMMITTEE DEMOCRATS (last visited Feb. 17, 2020), [https://www.jec.senate.gov/public/\\_cache/files/c6187d98-6efd-4905-a93c-d9b70b5ba94c/national-monuments-support-local-economies.pdf](https://www.jec.senate.gov/public/_cache/files/c6187d98-6efd-4905-a93c-d9b70b5ba94c/national-monuments-support-local-economies.pdf).

likely to pass legislation designating the region into a national park with even more protections. As of 2020, twenty-six out of the fifty-nine national parks began as national monuments.<sup>31</sup>

Monument designation can have powerful, tangible effects on the management of a region. For example, the Bears Ears National Monument proclamation moves the BLM's regulations away from strictly multiple use, previously including extraction of oil rich shale, and focuses protections on historical and tribal artifacts, disallowing any uses that may interfere with the main purpose of the monument.<sup>32</sup> Similarly, Browns Canyon in Colorado was designated to protect the water, archeological resources, ecology, and recreation.<sup>33</sup> Its monument status ensures the preservation of the region's wilderness character, something that may have been lost under a multiple use sustained yield management plan.<sup>34</sup> Finally, Katahdin Woods and Waters National Monument was designated by proclamation in 2016 to protect scientific and historical interests in the archeological record of the Wabanaki peoples.<sup>35</sup> The region has been eyed by many for logging, and designation prevents heavy machinery and lumber interests from monopolizing the area.<sup>36</sup>

Designating federal public land as national monuments increases its protections, focuses its management, and highlights the importance of an area on the national and international scale.

## II. OVERUSING PUBLIC LANDS AND THE MAZE OF RED TAPE

One of the benefits of the Antiquities Act is that it circumvents the procedural red tape of NEPA. Under NEPA, all federal agencies are

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<sup>31</sup> Of the four new national parks designated since the cited article was published—New River Gorge, Gateway Arch, Indiana Dunes, and White Sands—only White Sands was a national monument first. Andy Kerr, *Many National Parks Arose From National Monuments*, PUBLIC LANDS BLOG (Nov. 10, 2017), <http://www.andykerr.net/kerr-public-lands-blog/2017/11/10/many-national-parks-arose-from-national-monuments>.

<sup>32</sup> See Establishment of Bears Ears National Monument, Proclamation No. 9558, 3 C.F.R. § 9558 (2016).

<sup>33</sup> See Establishment of Browns Canyon National Monument, Proclamation No. 9232, 3 C.F.R. § 9232 (2015).

<sup>34</sup> *Comment on Browns Canyon Draft Resource Management Plan*, ROCKY MOUNTAIN WILD (Oct. 18, 2019), <https://rockymountainwild.org/browns-canyon>.

<sup>35</sup> Establishment of the Katahdin Woods and Waters National Monument, Proclamation No. 9476, 3 C.F.R. § 9476 (2016).

<sup>36</sup> *National Monuments: Katahdin Woods and Waters*, THE WILDERNESS SOC'Y, <https://www.wilderness.org/wild-places/maine/national-monuments-katahdin-woods-and-waters> (last visited Apr. 9, 2020).



required to analyze the environmental impacts of any major federal action which significantly affects the human environment, a time-consuming process.<sup>37</sup> Because the president is not a federal agency, the Commander-in-Chief can designate national monuments without creating an Environmental Impact Statement or opening that decision up to public comment.<sup>38</sup> Although the president is immune to NEPA, the federal land management agencies are required to go through NEPA procedure.<sup>39</sup> As a result, designating a national monument can be a relatively quick process, but it can take years for the agency responsible for a new monument to create a land management plan that properly reflects the region's new status. At the same time, designating a national monument draws the country's attention toward the area and specifically points at the scientific and historical artifacts the monument status is meant to protect in the first place. During the delay between calling an area a national monument and protecting it like one, the region is vulnerable to the harms that come with overuse. This gap is an increasingly drastic issue as the public lands system continues to rise in popularity for recreation.<sup>40</sup>

### A. Overuse in National Monuments

Recreating is one of the major uses of our public lands system, and every footprint causes a little more harm. According to R.E. Burrillo, an archeologist focused on the Bears Ears region, “[v]isitation is probably the biggest impact factor across the board for cultural resources . . . It’s steady. It’s constant. It’s death by a thousand cuts.”<sup>41</sup> NPS statistics indicate that our use of public lands has drastically increased over the past ten years.<sup>42</sup> The BLM has also logged a noted increase in visitation across its offices in Utah.<sup>43</sup> Most of this use-burden falls on world-famous national parks,

<sup>37</sup> 42 U.S.C. § 4332.

<sup>38</sup> VINCENT, *supra* note 18, at 10.

<sup>39</sup> *Id.*

<sup>40</sup> Lucy Livesay, *290 Million Reasons To Invest In America’s Public Lands*, CENTER FOR WESTERN PRIORITIES 1, 4 (Mar. 2018), <https://westernpriorities.org/wp-content/uploads/2018/03/290-Million-Visits-Report.pdf>.

<sup>41</sup> Zak Podmore, *Hiking Fees Set To Double In Parts Of Bears Ears National Monument*, SALT LAKE TRIBUNE (Dec. 28, 2019), <https://www.sltrib.com/news/2019/12/28/hiking-fees-set-double/?fbclid=IwAR2vuX7LQHZuZqbPZYQULHUHdLNg2ZvT4oyLOBwZAKaBH97ga0qu5MMCBj8>.

<sup>42</sup> *Annual Visitation Report by Years: 2008 to 2018*, NAT’L PARK SERV., [https://irma.nps.gov/STATS/SSRSReports/national%20Reports/Annual%20Visitation%20By%20Park%20\(1979%20-%20Last%20Calendar%20Year\)](https://irma.nps.gov/STATS/SSRSReports/national%20Reports/Annual%20Visitation%20By%20Park%20(1979%20-%20Last%20Calendar%20Year)) (last visited Apr. 9, 2020).

<sup>43</sup> *2009-2018 BLM Utah Estimated Visitation by Field Office*, BUREAU OF LAND MGMT., <https://www.blm.gov/sites/blm.gov/files/BLM%20Utah%20Estimated%20Visit>

such as Zion or Yosemite, but national monument use has also drastically increased alongside these more famous places.<sup>44</sup>

The harm is not equally shared among monuments. Different regions have a higher risk of overuse. National monuments most at risk are close to major cities, like Muir Woods or Cabrillo Beach, only sixteen miles from San Francisco and ten miles from San Diego respectively.<sup>45</sup> Other vulnerable monuments are located proximate to a national park, such as Cedar Breaks or Bears Ears, sixty miles from Zion National Park and 121 miles from Arches National Park, respectively.<sup>46</sup> Although the risk of overuse is not universal to all national monuments—the least visited NPS regulated monument is Aniakchak, which is 450 miles away from Anchorage, and the “notoriously bad weather makes access to Aniakchak unpredictable”<sup>47</sup>—it is serious where present.

Moreover, the act of designating a national monument immediately increases visitation and focuses attention on the resources its monument status was meant to protect. For example, in Katahdin Woods and Waters, there is a main thoroughfare called Loop Road through the monument. Prior to designation, the road saw approximately 600 vehicles per year. After designation, it took four months (August-October) to register over twice the number of vehicles (1,215).<sup>48</sup> This immediate increase in use is a common problem for newly designated national monuments,<sup>49</sup> and there is currently no solution. Although land management agencies have many policies in place to tackle the issues that arise from overuse, such as

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ation%20by%20Field%20Office%20Web%20PDF%20March%202019.pdf (last updated Mar. 20, 2018).

<sup>44</sup> *Annual Visitation Report by Years: 2008 to 2018*, *supra* note 42.

<sup>45</sup> Driving Directions from San Francisco to Muir Woods National Monument, GOOGLE MAPS, <http://maps.google.com> (follow “Directions” hyperlink; then search starting point field for “San Francisco” and search destination field for “Muir Woods National Monument”); *Id.* (follow “Directions” hyperlink; then search starting point field for “San Diego” and search destination field for “Cabrillo National Monument”).

<sup>46</sup> Driving Directions from Zion to Bears Ears to Arches, GOOGLE MAPS, <http://maps.google.com> (follow “Directions” hyperlink; then search starting point field for “Zion National Park,” search destination field for “Cedar Breaks National Monument.”); *Id.* (follow “Directions” hyperlink; then search starting point field for “Arches National Park,” search destination field for “Bears Ears National Monument.”).

<sup>47</sup> *Aniakchak*, NAT’L PARK SERV., <https://www.nps.gov/ania/planyourvisit/directions.htm> (last visited Apr. 9, 2020).

<sup>48</sup> NAT’L PARK SERV., CALL FOR DATA RELATED TO REVIEW OF KATAHDIN WOODS AND WATERS NATIONAL MONUMENT UNDER EO 13792, at 2 (Apr. 26, 2017), [https://www.doi.gov/sites/doi.gov/files/uploads/nps-2018-00005\\_combined.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/nps-2018-00005_combined.pdf).

<sup>49</sup> Since its designation as a national monument, many environmental advocates fear that the management plan will not properly curtail the increased use facing the Canyon. *See* ROCKY MOUNTAIN WILD, *supra* note 34.

restricting visitation or requiring permits,<sup>50</sup> these tools all fall under the purview of land management plans, which become outdated when a new monument is designated.

Because national parks are our crown jewels, most of the research on overuse of public lands focuses on parks rather than monuments. National parks, however, are better funded and managed exclusively by the NPS for conservation rather than multiple use. Even so, national parks provide a great example of how overuse can impact the less protected national monuments.

In Mesa Verde National Park, for example, there have been numerous instances of vandalism and destruction of the historic archeological sites.<sup>51</sup> Because of the nature of the Antiquities Act, many national monuments are designated specifically to protect historical or cultural artifacts, making cultural and historical resources some of the most vulnerable in newly designated national monuments. Designating a monument shines a spotlight on these artifacts and draws visitors toward them. Without proper management, vandalism and looting are likely to occur and damage the areas the monument status was meant to protect in the first place.<sup>52</sup>

Moreover, overuse has direct effects on the ecosystems of the national monuments. For example, in Zion National Park, overcrowding on the popular hike, the Narrows, has led to trampled “vegetation, aquatic insects, and fish habitat.”<sup>53</sup> Although national monuments encompass a wide variety of ecosystems, overuse presents the same types of ecological harms across the country: soil loss, erosion, loss of vegetation, and disturbed wildlife.<sup>54</sup>

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<sup>50</sup> BUREAU OF LAND MGMT., RECREATION PERMIT AND FEE ADMINISTRATION HANDBOOK 2–21 (Nov. 17, 2014), [https://www.blm.gov/sites/blm.gov/files/uploads/Media\\_Library\\_BLM\\_Policy\\_H\\_2930\\_1.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_H_2930_1.pdf); *Passes and Permits*, U.S. FOREST SERV., <https://www.fs.usda.gov/visit/passes-permits> (last visited Apr. 9, 2020).

<sup>51</sup> David Mitchell, *Vandals Destroy Ancient Artifacts to Create Graffiti at Mesa Verde*, KDVR FOX 31 DENVER (July 22, 2017, 10:31 AM), <https://kdvr.com/news/vandals-destroy-ancient-artifacts-to-create-graffiti-at-mesa-verde/>; *Vandalism Hurts*, NAT’L PARK SERV., <https://www.nps.gov/articles/vandalism-hurts.htm> (last visited Apr. 9, 2020).

<sup>52</sup> J. Bishop Grewell, *All Play and No Pay: The Adverse Effects of Welfare Recreation*, in GOVERNMENT VS. ENVIRONMENT 9–10 (Donald R. Leal & Roger E. Meiners eds., 2002).

<sup>53</sup> Jim Robbins, *How a Surge in Visitors Is Overwhelming America’s National Parks*, YALE ENV’T 360 (July 31, 2017), <https://e360.yale.edu/features/greenlock-a-visitor-crush-is-overwhelming-americas-national-parks>.

<sup>54</sup> Dennis J. Herman, *Loving Them to Death: Legal Controls on the Type and Scale of Development in the National Parks*, 11 STAN. ENVTL. L.J. 3, 12–13 (1992); Grewell, *supra* note 52, at 6–7.

Although a national monument's purpose is not to enshrine natural areas in a glass box never to be used by the general public, managing public access is an important step in ensuring future generations have similar access and use.

### III. HOW TO AVOID THE HARMS

In general, designating a national monument increases a region's protections. However, "requiring process before these protections are in place can have the effect of targeting a resource in a manner that attracts the very damage that the proclamation is designed to prevent."<sup>55</sup> The time it takes to go through the lengthy process of developing a new land management plan leaves the area vulnerable. Still, avoiding all processes and rushing through a new land management plan comes with its own set of issues. Due to the requirements of the APA and best practices for agency decision-making, land management agencies need to consider public comments and the community when creating plans.<sup>56</sup> Expediting this process would both side-step mandatory statutory requirements and alienate the local community by depriving them the opportunity for meaningful engagement with the process. This concern is especially true for national monuments designated by a presidential proclamation, as the president is not required to undergo NEPA procedural requirements meant to engage the public.<sup>57</sup> However, in the time it takes to create a new, thorough management plan, these places are vulnerable to overuse.

For example, Bears Ears was designated in 2016 for the purpose of protecting historical and cultural artifacts.<sup>58</sup> However, its proximity to popular national parks and ease of access creates a high risk of vandalism for its historic sites and artifacts and a high risk of harm to its delicate ecosystem.<sup>59</sup> Similarly, Katahdin Woods and Waters was designated in 2016 for the purpose of protecting the ecology of north central Maine.<sup>60</sup> A sudden influx in recreational visitors could result in the introduction of

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<sup>55</sup> Squillace, *supra* note 21, at 577.

<sup>56</sup> 5 U.S.C. § 553.

<sup>57</sup> VINCENT, *supra* note 18, at 10.

<sup>58</sup> See Establishment of Bears Ears National Monument, *supra* note 32.

<sup>59</sup> Jenny Rowland-Shea, *Bears Ears Cultural Area: the Most Vulnerable U.S. Site for Looting, Vandalism, and Grave Robbing*, CTR. FOR AM. PROGRESS (June 13, 2016, 9:01 AM), [https://www.americanprogress.org/issues/green/news/2016/06/13/139\\_344/bears-ears-cultural-area-the-most-vulnerable-u-s-site-for-looting-vandalism-and-grave-robbing/](https://www.americanprogress.org/issues/green/news/2016/06/13/139_344/bears-ears-cultural-area-the-most-vulnerable-u-s-site-for-looting-vandalism-and-grave-robbing/).

<sup>60</sup> See Establishment of the Katahdin Woods and Waters National Monument, *supra* note 35.

invasive plants, erosion of trail conditions, and harm to the local wildlife.<sup>61</sup> In addition, Browns Canyon is located only twenty-five miles from Buena Vista, a city known for its amazing recreational opportunities. Its new monument status will undoubtedly draw visitation and trigger overuse, which may cause a “proliferation of new campsites, loss of vegetation cover, clearing land for firewood, increase in bare ground, soil compaction, erosion, decreased wildlife counts and viewing, etc.”<sup>62</sup> A sudden increase in rafters along the Arkansas River through Browns Canyon without proper planning has the potential to lead to more deaths and injuries for extreme recreationists, along with the associated costs and impacts that come along with rescues.<sup>63</sup> Although these harms can be addressed and mitigated through proper management, the delay between designation and creation of a proper land management plan leaves the region vulnerable in the interim.

Further, national monuments have massive impacts on their outlying gateway communities. For example, the community outside Katahdin Woods and Waters has complained to the NPS that it is “not physically ready for an influx of people – [sic] no hotels, not enough restaurants, [or] tourist supports yet in place.”<sup>64</sup> Although the government cannot regulate and manage the issues of the local community, it can incorporate community input into its land management plans. If community input in the planning process is not acted on until years after designation, this leaves the community voiceless as well as vulnerable.

### *A. Expediting Protections Through Presidential Proclamation*

Solutions to the pronounced vulnerability monuments can face in the delay between designation and protection can be approached from a few different angles. An impactful method would be to include timelines in the presidential proclamation that designates the land as a national monument. The president has broad power in the proclamation to create guidelines

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<sup>61</sup> LEIGH TILLMAN FACILITATION, NAT'L PARK SERV., COMMUNITY LISTENING SESSIONS REPORT OF INPUT 68, 99 (2016), <https://www.nps.gov/kaww/getinvolved/upload/NPS-Katahdin-Woods-and-Waters-Community-Listening-Sessions-Report-of-Input-September-2016-1-w-post-publ-comments.pdf>.

<sup>62</sup> BLM & USFS, BROWNS CANYON NATIONAL MONUMENT RESOURCE MANAGEMENT PLAN AND ENVIRONMENTAL IMPACT STATEMENT: FINAL SCOPING REPORT 14 (July 12, 2019), [https://eplanning.blm.gov/epl-front-office/projects/lup/69924/20000063/250000065/BCNM\\_ScopingReport\\_Final\\_190712\\_508-for\\_Web.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/69924/20000063/250000065/BCNM_ScopingReport_Final_190712_508-for_Web.pdf).

<sup>63</sup> Hayley Sanchez, *Updated: Deaths on Colorado's Rivers Rise and Rafting Oversight Falls*, COLO. PUB. RADIO (July 12, 2019), <https://www.cpr.org/2019/07/12/deaths-on-colorados-rivers-rise-and-rafting-oversight-falls/>.

<sup>64</sup> LEIGH TILLMAN FACILITATION, *supra* note 61, at 26.

and deadlines for the new land management plan accompanying the national monument. Although they do not create a cause of action for lawsuits, executive deadlines can be a powerful motivator for agencies to be more expedient in their goals.<sup>65</sup> For example, President Clinton created a three-year deadline for new land management plans when proclaiming Grand Staircase-Escalante as a new national monument.<sup>66</sup> With this time frame built into the proclamation, it took just over three years for the BLM to develop and implement the Grand Staircase-Escalante monument plan.<sup>67</sup> In contrast, President Obama designated San Juan Island National Monument in 2014 without a deadline for a new plan.<sup>68</sup> While the BLM has proposed an updated plan, it has yet to be finalized or enacted as of the date of this writing, six years after the designation.<sup>69</sup> Similarly, Rio Grande del Norte was designated a national monument in 2013; as of January 2020, it still lacks an updated resource management plan.<sup>70</sup> Presidential timeframes incentivize agencies to meet deadlines and moves the timetable up for monument protections, decreasing the potential for harm during the multiyear regulatory gap.

In addition to timelines, the president can designate land management agencies the Executive office believes are best suited to manage the newly proclaimed national monument. Although the first time this occurred was relatively recently, when President Carter in 1978 designated a slew of Alaskan monuments, it has been widely accepted as part of the powers given to the president under the Antiquities Act.<sup>71</sup> Different agencies

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<sup>65</sup> Michael D. Sant'Ambrogio, *Agency Delays: How a Principal-Agent Approach Can Inform Judicial and Executive Branch Review of Agency Foot-Dragging*, 79 GEO. WASH. L. REV. 1381, 1422–23 (2011).

<sup>66</sup> “The Secretary of the Interior shall prepare, within 3 years of this date, a management plan for this monument, and shall promulgate such regulations for its management as he deems appropriate.” Establishment of the Grand Staircase-Escalante National Monument, 61 Fed. Reg. 50,223, 50,225 (Sept. 24, 1996); Sanjay Ranchod, *The Clinton National Monuments: Protecting Ecosystems with the Antiquities Act*, 25 HARV. ENVTL. L. REV. 535, 558 (2001).

<sup>67</sup> BLM, GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT MANAGEMENT PLAN i (2000), [https://eplanning.blm.gov/epl-front-office/projects/lup/65870/79803/92581/GSENM\\_MP.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/65870/79803/92581/GSENM_MP.pdf).

<sup>68</sup> “For purposes of protecting and restoring the objects identified above, the Secretary, through the BLM, shall prepare and maintain a management plan for the monument . . .” Establishment of the San Juan Islands National Monument, 78 Fed. Reg. 18,789, 18,791 (Mar. 28, 2013).

<sup>69</sup> *San Juan Islands National Monument RMP*, BUREAU OF LAND MGMT., <https://eplanning.blm.gov/eplanning-ui/project/49041/510> (last updated Nov. 4, 2020).

<sup>70</sup> *Taos RMP Amendment: Rio Grande del Norte Monument Plan*, BUREAU OF LAND MGMT., <https://eplanning.blm.gov/eplanning-ui/project/72807/510> (last updated Mar. 10, 2020).

<sup>71</sup> VINCENT, *supra* note 18, at 7.

protect the land in different ways. The NPS's Organic Act requires management that protects and preserves the lands within the monument, the FWS service has less stringent requirements for its National Wildlife Refuge System, while the BLM and Forest Service's relevant statutes require a multiuse management style.<sup>72</sup> Giving control of a monument to the NPS will result in a very different management style than giving control to the USFS. If the president believes that one agency will be more effective than another at managing a monument, the Antiquities Act allows for executive flexibility.

However, deadlines imposed under the Antiquities Act do not carry the weight of law. The Antiquities Act only gives the president the power to create a national monument and designate an agency to regulate; the president cannot use the Act to manage the land and entirely bypass the procedural guidelines for NEPA. Therefore, although deadlines may be an effective tool to expedite a new land management plan, they may decrease flexibility and limit an agency's ability to respond to the immediate harms that arise when a new national monument is designated. Further, this is entirely dependent on the president and is, therefore, an unreliable, long-term solution.

### *B. Dormant Monument Plan*

When a new national monument is designated, it is a national monument in name only. The land management agencies do not receive new resources until it is requested in their budget report and are often limited by their old management plans until they can develop a new monument management plan.<sup>73</sup> One way to avoid the harm that comes with the delay in creating a new management plan is through an adaptive management style dormant plan which becomes active when a region is designated as a national monument.

The first requirement for a national monument is that it must be public land and controlled by the federal government. As such, the region must already be managed under one of the various land management agencies, and that agency must have a land or resource management plan for the region already in place prior to monument designation. Because the only public lands managed by the NPS are national monuments and parks,

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<sup>72</sup> Squillace, *supra* note 21, at 516.

<sup>73</sup> BLM, BUDGET JUSTIFICATIONS AND PERFORMANCE INFORMATION FISCAL YEAR 2021 v-115 (2021), <https://www.doi.gov/sites/doi.gov/files/uploads/fy2021-budget-justification-blm.pdf>; BILL HENIFF JR., THE EXECUTIVE BUDGET PROCESS TIMETABLE 1-2 (Cong. Rsch. Serv. ed. 2008), [https://digital.library.unt.edu/ark:/67531/metadc821127/m2/1/high\\_res\\_d/RS20152\\_2008Jun17.pdf](https://digital.library.unt.edu/ark:/67531/metadc821127/m2/1/high_res_d/RS20152_2008Jun17.pdf).

and the FWS only manages National Wildlife Refuges, most federal land is controlled by the BLM and the USFS. Although the BLM and the USFS regulate pursuant to different statutes, both are tasked with managing land with a wide, multiuse scope, which only partially focuses on the landscape, scientific, or historically important aspects of the region while balancing other types of use, like extraction. This is necessary, as the dominant use of much of our public lands is industry, forestry, and rangelands.<sup>74</sup> However, if an area of public land, when designated, carries the hallmarks of overuse due to its proximity to major cities or other popular public lands, the relevant agency can prevent undue harm through the development of a dormant monument plan. These plans would be created as part of the regular land management process, pursuant to procedures already mandated by statute, and would trigger in the event that the region is proclaimed a national monument or has a sudden increase in visitation.

There are many benefits to a dormant plan. The most important is, in the event of monument designation, these plans would be immediately accessible to the land management agency to avoid the procedural delay required to create a brand new monument plan, expediting the process of increasing protections for the region. Although the approval of a land use plan is a major federal action that requires NEPA procedure, if the dormant monument plan is developed contemporaneously with the main land use plan, when it is implemented, it will not trigger any new statutorily mandated procedure.<sup>75</sup>

During the normal regulatory gap after designation and while a long-term management plan is developed according to NEPA and APA procedures, these adaptive dormant plans would be in effect, and the agency would be able to allocate resources to the most necessary protective measures, allowing the agency to respond to a sudden influx of people without the need to initiate the procedures of a new planning process. In addition, these plans would be temporary by nature. They would only be in effect during the period between the initial designation and when a new monument focused land management plan could be properly promulgated. These dormant plans would focus and reprioritize specific management objectives in order to address the most likely and

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<sup>74</sup> JOHN B. LOOMIS, INTEGRATED PUBLIC LANDS MANAGEMENT 3 (Columbia University Press 2d ed. 2002).

<sup>75</sup> Norton v. S. Utah Wilderness All., 542 U.S. 55, 73 (2004) (“although the ‘[a]pproval of a [land use plan]’ is a ‘major Federal action’ requiring an EIS, 43 CFR § 1601.0-6 (2003) (emphasis added), that action is completed when the plan is approved. The land use plan is the “proposed action” contemplated by the regulation. There is no ongoing “major Federal action” that could require supplementation (though BLM *is* required to perform additional NEPA analyses if a plan is amended or revised, see §§ 1610.5-5, 5-6.)” (alterations in original).



immediate harms of overuse, providing valuable protections while a more thorough plan is created.

Another key benefit of a dormant plan is that they would be created as part of a regular land management plan. Just as a normal land management plan is required to go through NEPA and APA procedure, these dormant plans would be a sub-section of the land management plan and therefore, would have necessarily gone through the same procedures and public input. The local and nationwide communities will have had the opportunity to comment on the dormant plan and the agency will have analyzed the environmental impacts if the plan were to become applicable. Therefore, if the region is designated a national monument, these dormant plans would not disregard environmental laws and regulations or the public interest; rather, they would be founded upon these principles. Further, dormant plans would obligate agencies to use their local expertise to identify any resources that have the potential to be historically or scientifically significant. Even if the region is never designated as a national monument, having agencies identify monument-esque resources may ensure increased protections for those resources in general. Finally, even if the agency is incorrect in evaluating what resources may be eligible for protection through monument designation, these dormant plans would help agencies quickly respond to any sudden increase in use or visitation, building room for reactivity.

Incorporating a dormant plan into the land management planning process does not require significant change to the procedure already in place, and in many ways, compliments the goals and policies of the land management agencies. The BLM is tasked with regulating its lands pursuant to FLPMA, a statute that requires a management scheme that focuses on both present and future use of a region.<sup>76</sup> Moreover, the BLM's management policy highlights that the agency's highest priority is to "create a conservation stewardship legacy second only to Teddy Roosevelt."<sup>77</sup> By creating a dormant plan in the land management planning process, the BLM would be able to better adapt to the future, focus resources on conservation, and set itself up for future success.

Similar to the BLM, the USFS action statute, the National Forest Management Act, focuses USFS resources on providing benefits to the people and communities surrounding National Forests for the present and future. These benefits include "spiritual, educational, and cultural

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<sup>76</sup> 43 U.S.C. § 1701.

<sup>77</sup> *What We Manage: National*, BUREAU OF LAND MGMT., <https://www.blm.gov/about/what-we-manage/national> (last visited Apr. 9, 2020).

benefits.”<sup>78</sup> In other words, the future protection of historic and scientifically significant resources.

Specifically, when creating a land management plan, the USFS must identify resources that are “areas of tribal importance” and “cultural and historic resources and uses.”<sup>79</sup> This is codified in Forest Service regulations which mandate the USFS to consider the “cultural and heritage resources . . . geologic features . . . scenery . . . and other relevant resources and uses” which incorporates historic and scientifically valuable resources into the land management plan process.<sup>80</sup>

Both the BLM and the USFS are required to identify resources of historical and scientific significance during the land management process. A dormant monument plan would only require the extra step of identifying the likely harms that would occur to these resources in the event of a sudden and drastic increase in visitation and possible ways to reduce these harms.

However, one potential roadblock to a dormant monument plan is the requirement that the BLM avoid “unnecessary data collection and analyses” and that a management plan is “tailored to the issues previously identified.”<sup>81</sup> If there is no current or even projected uptick in use, it is conceivable that a dormant monument plan could be considered unnecessary or inappropriately tailored to the issues of the region.

Still, categorizing adaptive management as “unnecessary data collection” is a responsive methodology rather than a proactive strategy. This approach would leave these areas vulnerable while the agency takes time to respond. If the only issues a land management plan can focus on are those “previously identified,” there is no room for any adaptation to unforeseen harms. Further, if an area of public lands has the hallmarks of other national monuments that have suffered from overuse, such as proximity to other national parks and major cities, it is entirely conceivable and even likely that overuse harms will occur if it were designated. Finally, identifying possible antiquities and planning for their protection does not handcuff the government if a monument is not designated. This process of identifying potential antiquities and protections from overuse, though helpful, does not necessitate a new management plan for the region.<sup>82</sup> Rather, this process can only prepare land management agencies for dealing with monument designations and unforeseen increases in use.

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<sup>78</sup> 36 C.F.R. § 219.1 (2012).

<sup>79</sup> *Id.* § 219.6.

<sup>80</sup> *Id.* § 219.10.

<sup>81</sup> 43 C.F.R. § 1610.4-2(a)(1)–(2) (2019).

<sup>82</sup> 43 U.S.C. § 1711.

### 1. *Educating Visitors*

As recreational use of public lands increases, so too does the number of visitors who may be ignorant of the differences between a national monument and a theme park.<sup>83</sup> For many, pottery shards make great souvenirs and maintenance is built-in. Proper ethics in the outdoors is a learned skill; it is not obvious and can vary from landscape to landscape. For example, in the Utah desert, where delicate cryptobiotic soil thrives, it is imperative that visitors stay on trails and avoid crushing the hidden life.<sup>84</sup> In the Alaskan tundra, in contrast, proper etiquette is to spread out to avoid cutting through the tundra with repeated footprints.<sup>85</sup> Although there are many free online resources for recreational visitors to learn leave-no-trace principles,<sup>86</sup> it is important for the agency responsible for managing a place to highlight the ethics of the landscape it manages.

Outdoor ethics and conservation are not the main goals for the BLM and the USFS. Their management mandates focus on multiple uses—ensuring that visitors avoid harming the landscape and any artifacts is not always the first priority. However, the main purpose of monument designation is to change the management of a region from a multiple-sustained use focus to a more resource specific management plan.<sup>87</sup> As a result, things like outdoor ethics and education should move up the priority list, and the management plan should reflect this change.

A dormant monument plan will reflect this priority reorganization and allow the land-management agency to identify where resources can be reallocated in order to better protect the landscape and those historical and scientific resources that may be identified in a monument proclamation. In addition, a dormant plan can help agencies proactively identify which educational resources would yield the highest returns on fostering an informed public. Because dormant monument plans will be developed as part of each site-specific land management plan, each will be tailored to the region it is meant to protect. Each national monument occurs in a different place and is meant to protect different antiquities. Treating

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<sup>83</sup> Kurt Repanshek, *Amusement Parks and National Parks*, NAT'L PARKS TRAVELER (June 14, 2007), <https://www.nationalparkstraveler.org/2006/03/amusement-parks-and-national-parks>.

<sup>84</sup> *Biological Crust of Southeast Utah*, NAT'L PARK SERV., <https://www.nps.gov/articles/seug-soil-crust.htm> (last updated Feb. 15, 2020).

<sup>85</sup> *Traveling in Trail-less Wilderness*, NAT'L PARK SERV., <https://www.nps.gov/dena/planyourvisit/bctravel.htm> (last updated May 10, 2017).

<sup>86</sup> *Online Awareness Course*, LEAVE NO TRACE, <https://lnt.org/get-involved/training-courses/online-awareness-course/> (last visited Apr. 9, 2020).

<sup>87</sup> VINCENT, *supra* note 18, at 8.

different places identically will likely result in both over and under protection of the resources.

Still, the procedures of spreading awareness will have some substantial overlap between places, and there are some generalities that these dormant monument plans can focus on. One of the key ways to protect the valuable resources of a monument is to educate visitors so that each individual has the tools to lessen their impact on the region. There are two simple ways of accomplishing this: (1) increased signage, and (2) increased access and resources at information centers.

Increasing signage is a relatively simple and cost-effective way to inform the general public of a region's new designation and the measures recreational visitors should take to avoid harming the region. The BLM's National Sign Program strategy goals coincide with this purpose as well, as signs are meant to "support land use plans and resource management plans" and "provide information about the use and management of resources."<sup>88</sup> Further, the BLM handbook states that the decision to use a sign "should be the result of careful planning" and complement larger planning efforts, such as resource management planning.<sup>89</sup> Without a dormant monument plan, it could take years for a resource management plan to properly reflect the area's new monument status. With a dormant plan that triggers upon monument status and focuses on land stewardship, the agency can immediately focus on updating and implementing new signs that teach visitors how to best interact with the land, switching the management focus from multiple use to conservation.

Similarly, the USFS objectives for signage are to support the relevant land and resource management plan and provide information on the use and management of national forest lands.<sup>90</sup> However, the USFS policy states that signage should only be changed if there is a change in circumstances, such as levels of use or when management objectives are revised.<sup>91</sup> A dormant monument plan would expedite the process of revising management objectives and, therefore, expedite the process of creating new signage to reflect new regional priorities. These signs are a simple yet effective way to protect a region.

For example, signs around cultural artifacts informing visitors of the artifacts' historical significance, their place in the larger landscape, and

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<sup>88</sup> BUREAU OF LAND MGMT., NATIONAL SIGN HANDBOOK 2 (2016), [https://www.blm.gov/sites/blm.gov/files/documents/files/NationalSignHandbook16\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/documents/files/NationalSignHandbook16_0.pdf).

<sup>89</sup> *Id.* at 5.

<sup>90</sup> U.S. DEP'T OF AGRIC., SIGN AND POSTER GUIDELINES FOR THE FOREST SERVICE 1-1 (Oct. 2013), *available at* [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprd3810021.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3810021.pdf).

<sup>91</sup> *Id.* at 2-2.

the punishment for vandalism or theft can be a strong deterrent and incentive to leave artifacts as they are. Similarly, informing visitors of the harms of overuse at trailheads can create awareness that may otherwise be lacking. Although these extra signs may not have been implemented during the initial land management plan due to the allocation of resources towards more multi-use schemes, the purpose of designating a monument is to protect historical and cultural artifacts and warrants a reprioritization of resources. Through the creation of a dormant monument plan, agencies should be able to identify areas where they can funnel resources toward protecting any identified scientific or historic artifacts identified during the creation of the initial land management plan.

Further, some areas of public lands may change from allowing multiple uses to a single use due to monument designation. There may be some areas within a region that previously allowed all-terrain vehicles that, when designated as a national monument, may now only be suitable for hiking. Currently, BLM offices re-evaluate signage every five years on average. The BLM may change signs based on a variety of factors, including “revised resource or transportation management objectives.”<sup>92</sup> In addition, the entire process of identifying which roads and trails are better suited for single-use versus multiple-use may take years with the development of an entirely new land management plan. With the incorporation of a dormant monument plan into the management scheme, the applicable local agency would have already considered re-evaluating certain trails and roads and what signage would be appropriate in the region. This would greatly increase the speed at which signs are updated to align with new monument uses.

In addition to signage, the BLM and the USFS can increase user education and awareness by allocating additional resources toward visitor centers. Similar to signs, educating visitors will ideally provide individuals the materials needed to decrease their impact on the area. Visitor centers can provide maps that highlight areas that can handle high-density visitation, resources on how to interact with the wildlife, and information on the new monument status, which can all lessen the overall impact on the region.

Although it is not the case for every newly designated monument, many will be faced with a sharp uptick in the number of visitors as a result of its new monument status. Ensuring that the local agency can quickly and effectively re-allocate resources toward education and signage is a simple way to help prevent the harms of overuse.

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<sup>92</sup> BUREAU OF LAND MGMT., *supra* note 88, at 62.

## 2. Gateway Community Involvement and Funding

Although national monuments can be a representation of wild landscapes, they do not exist in isolation. Other than a few monuments located in the Alaskan wild, many have local communities on their borders whose economies depend on the tourism the monuments attract.

Consistently, studies have shown that the economies of gateway communities have increased and benefited as a result of being adjacent to a national monument.<sup>93</sup> Communities value this boon to the economy. Utah, for example, has codified the importance of federal public lands, citing the necessity that these regions should remain open year-round “because of their significant economic contributions to nearby communities.”<sup>94</sup>

This is especially true in today’s environment, where recreation accounts for 2.2% of the gross domestic product, generating over \$427.2 billion per year.<sup>95</sup> The economies of smaller towns like Moab, Utah and Buena Vista, Colorado are based almost entirely on the recreation industry and rely heavily on public lands.<sup>96</sup> With the creation of Browns Canyon National Monument and Bears Ears National Monument, both of these places will see an increase in visitation and an increase in spending on their recreational industries. Both Moab and Buena Vista have already developed economies around access to public lands and are prepared for large influxes of people. Some communities are not. Although monument designation tends to result in long-term economic benefits for gateway communities, the initial designation of a monument may negatively impact it. For example, the community surrounding Katahdin Woods and Waters is fearful that they will be overrun by visitors because they do not have the proper facilities to accommodate the predicted increase in visitation the new monument will bring.<sup>97</sup>

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<sup>93</sup> HEADWATERS ECONOMICS, UPDATED SUMMARY: THE ECONOMIC IMPORTANCE OF NATIONAL MONUMENTS TO LOCAL COMMUNITIES 1–3 (2017), <https://headwaterseconomics.org/wp-content/uploads/monuments-summary.pdf>.

<sup>94</sup> UTAH ADMIN. CODE r.357-12-4 (2020).

<sup>95</sup> *Outdoor Recreation Satellite Account, U.S. and Prototype for States, 2017*, BUREAU OF ECON. ANALYSIS, <https://www.bea.gov/news/2019/outdoor-recreation-satellite-account-us-and-prototype-states-2017> (last modified Sept. 30, 2020); *see generally* OUTDOOR INDUSTRY ASSOCIATION, THE OUTDOOR RECREATION ECONOMY (2017), [https://outdoorindustry.org/wp-content/uploads/2017/04/OIA\\_RecEconomy\\_FINAL\\_Single.pdf](https://outdoorindustry.org/wp-content/uploads/2017/04/OIA_RecEconomy_FINAL_Single.pdf) (additional information and importance of the recreational industry for the economy).

<sup>96</sup> *See generally Discover Moab*, MOAB, <https://www.discovermoab.com/> (last visited Apr. 9, 2020); *Buena Vista Welcome Center*, BUENA VISTA, <https://www.buenavistacolorado.org/great-outdoors/> (last visited Apr. 9, 2020).

<sup>97</sup> LEIGH TILLMAN FACILITATION, *supra* note 61, at 14, 26.

This relationship goes both ways. Monuments can bring visitors to local communities and increase their economies, and those communities act as gatekeepers to their national monuments.<sup>98</sup> In more rural areas, visitors have no choice but to interact with these towns in order to visit the monuments. Services like gasoline, groceries, and other supplies are necessities that compel tourists to stop in the town. Reinforcing a stewardship ethic in these communities can be a powerful resource for educating tourists. Similar to visitor centers, many towns can provide educational material to tourists that foster a conservation mindset when they visit the national monuments.

Because of these communities' role as gatekeepers to national monuments, it is imperative that the land management agencies incorporate community outreach into their dormant monument plan. Outreach and education in these places can be a relatively cheap, yet effective, way to influence visitors that come to the new monument. In addition, it can quell any uncertainties or doubts any local community has on the region's new monument status. Because of the nature of the Antiquities Act, gateway communities, many of which are in rural areas, may be unaware of an impending monumental designation.<sup>99</sup> As such, one of the key aspects of a dormant monument plan should be to reallocate resources toward community outreach and the creation of educational resources for the local town. Similar to increasing educational signage and resources, increasing community outreach can be an effective tool to prevent and minimize the harms of overuse.<sup>100</sup>

The BLM already has a strong policy for connecting with local communities in order to "foster a commitment to shared stewardship" of the land.<sup>101</sup> Some of the methods used by the BLM include providing volunteer services, reaching out to the community to assist with resource conservation, creating recreational and educational opportunities for youth, conducting fundraising events, and advocating for community involvement in BLM sites.<sup>102</sup> Each of these tools can help to develop a more community-forward approach to protecting a new monument. One

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<sup>98</sup> HEADWATERS ECONOMICS, *supra* note 93.

<sup>99</sup> David Foster, *Clinton Designates Several National Monuments*, ABC NEWS (Aug. 7, 2000), <https://abcnews.go.com/Travel/story?id=118851&page=1>.

<sup>100</sup> Ronald Bjorkland & Catherine M. Pringle, *Educating Our Communities and Ourselves About Conservation of Aquatic Resources Through Environmental Outreach*, 51 BIOSCIENCE 279, 279 (2001) (discussing community education for aquatic resources as a parallel).

<sup>101</sup> BUREAU OF LAND MGMT., ENGAGING COMMUNITIES IN BLM PUBLIC LANDS STEWARDSHIP 1 (Dec. 10, 2018), <https://www.blm.gov/sites/blm.gov/files/documents/files/FINAL%20DRAFT.Friends%20Toolkit.12.10.2018.pdf>.

<sup>102</sup> *Id.* at 12.

of the tools the BLM most heavily relies on is the assistance of a Friends Group—a private independent 501(c)(3) non-profit organization managed by local citizens with assistance from the BLM—to create “fresh ideas, volunteers, and revenue to support the goals of a BLM site.”<sup>103</sup> Incentivizing assistance with these groups should be directly integrated into dormant monument plans.

Although the BLM cannot create or directly manage Friends Groups, the local BLM office can provide key support such as funding, office space, helping to organize and host meetings, providing technical assistance and training to board members, and sharing resource management plans to highlight areas of focus and goals for the group and the BLM.<sup>104</sup> By reallocating resources toward creating these groups in the surrounding community, the BLM can then use the community to help support its new policy objectives while supporting the community’s own transition toward becoming a monument gateway.

Unlike the BLM, the USFS does not have any local community-focused programs beyond volunteer opportunities. The USFS instead focuses largely on working with the state tourism offices, which although valuable, can separate it from the concerns and voices of the local gateway communities.<sup>105</sup> Still, increasing volunteer opportunities can be an effective way to implement community outreach with the USFS. Before 1972 it was illegal to volunteer with the USFS, and volunteerism was only legalized through the Volunteers in the National Forest Act.<sup>106</sup> Currently, there is a robust USFS volunteer program that, although formal—in some instances volunteers are required to wear USFS uniforms—does aim to incorporate the community into the stewardship program. Similar to allocating resources toward Friends Groups with a BLM dormant monument plan, ramping up community volunteer programs after designation can be another effective tool to involve gateway communities in protecting the new national monument. Getting the local community invested in the national monument can help create a sense of stewardship and respect for place, which they can pass onto visitors.<sup>107</sup>

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<sup>103</sup> *Id.* at 4, 12.

<sup>104</sup> *Id.* at 13.

<sup>105</sup> *Travel, Tourism, and Interpretation*, U.S. FOREST SERV., <https://www.fs.fed.us/recreation/programs/tourism/> (last visited Apr. 9, 2020).

<sup>106</sup> TECHNOLOGY AND DEVELOPMENT PROGRAM, USDA, WELCOME TO THE FOREST SERVICE: A GUIDE FOR VOLUNTEERS 4 (U.S. Forest Service ed. 2009), <https://www.fs.fed.us/t-d/pubs/pdfpubs/pdf09672813/pdf09672813dpi72pt01.pdf>.

<sup>107</sup> Anna Hausmann et. al., *The Ecosystem Service of Sense of Place*, 43 ENVTL. CONSERVATION 117, 123 (2015).



Community outreach and volunteerism can be beneficial not just for the stewardship ethic but also for quick, on the ground efforts to adapt the region to its new monument status. One of the main obstacles for many governmental agencies is access to sufficient funding.<sup>108</sup> Although designating a national monument begins the process of protecting the area, monument designation rarely increases the funds available to a field office.<sup>109</sup> If funds are allocated, the agency must wait for congressional appropriations or an increase in the budget for the next fiscal year.<sup>110</sup> Another key reason why the designation of a national monument may be in name only.

Volunteers can help with this budget-stall. For example, one of the most obvious harms from overuse is an increase in trash.<sup>111</sup> The land management agency can reach out to the local community and involve them in the stewardship of the area, perhaps by organizing a trash clean-up. These events can simultaneously tackle some of the symptoms of overuse while also increasing goodwill and education in the local communities.<sup>112</sup>

For these reasons, a dormant monument plan will be able to allocate resources quickly and effectively to ensure community involvement while also addressing the most likely harms of overuse.

## CONCLUSION

Our public lands are amazing places. Year after year, people travel from across the globe to experience America's natural beauty and history through the public lands system. Although national parks are most well-known, national monuments hold wonders just as inspiring and beautiful and are often the first step in creating a new national park.

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<sup>108</sup> VANESSA DICK, GREEN INVESTMENTS 8–9, 12–13 (2017), <https://defenders.org/sites/default/files/publications/FY17-Green-Investments.pdf>.

<sup>109</sup> Memorandum from Ryan K. Zinke, Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act 9 (2017), [https://www.doi.gov/sites/doi.gov/files/uploads/revised\\_final\\_report.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/revised_final_report.pdf).

<sup>110</sup> BILL HENIFF JR., THE EXECUTIVE BUDGET PROCESS TIMETABLE 1–2 (Cong. Rsch. Serv. ed. 2008), [https://digital.library.unt.edu/ark:/67531/metadc821127/m2/1/high\\_res\\_d/RS20152\\_2008Jun17.pdf](https://digital.library.unt.edu/ark:/67531/metadc821127/m2/1/high_res_d/RS20152_2008Jun17.pdf).

<sup>111</sup> Grewell, *supra* note 52, at 4.

<sup>112</sup> The largest organized volunteer clean-up in any national park is Yosemite's facelift, which is renowned for its community aspects. See *16th Annual Facelift to be Held in Yosemite National Park*, NAT'L PARK SERV., <https://www.nps.gov/yose/learn/news/16th-annual-facelift-to-be-held-in-yosemite-national-park.htm> (last updated Sept. 23, 2019).

As visitation swells in our public lands system, and with the advent of social media, this trend of increased use does not seem to be going away. Moreover, many who plan on visiting public lands system are now willing to eschew the popular national parks for more remote and lesser-known areas. For many, this means exploring the national monument system, and experiencing the beautiful, often less crowded, wilder areas of the country.

When a new national monument is designated, many now flock to the region to recreate, explore, and learn about why it is a place worthy of the government's protection. Places that have been otherwise hidden are now elevated to the spotlight and attract avid recreationists to their borders. As more and more people flock to these areas, they each bring with them a small amount of harm which, piece-by-piece, erodes at the beauty and integrity of these monuments. Artifacts can be vandalized or stolen, trails are often expanded and eroded, trash piles up at trailheads, and the antiquities these monuments are designed to protect often attract the highest use and highest harm.

Despite this trend, for many years after their initial designation, new national monuments are only monuments in name. The system takes years to respond to community input and expertise in order to create a new land management plan for the region, and in the interim, the monument lacks some key monumental protections.

Although there are changes at the highest level of government that can help to alleviate these harms, small adaptability is best suited to fix this issue. Allowing the land management agencies, which manage areas with the highest risk of overuse, to create a dormant plan can allow quick and effective responses to overuse. These plans would trigger in the result of a monument designation or other sudden increase in visitation and would provide the agency a quick way to reallocate resources and focus management policies on protecting the nation's valuable historic, scenic, and cultural artifacts. These dormant plans do not require much change in how the system currently operates, but they provide incredible flexibility for adaptation.

In some areas, we are loving our public lands to death. Being adaptable and prepared for people to use our public lands is a simple way to ensure that they are conserved and respected for future generations.