



*"...to preserve and protect the nighttime environment and our heritage of dark skies through environmentally responsible outdoor lighting."*

**IDA Headquarters**  
3223 North First Avenue, Tucson, AZ 85719, USA  
tel +1.520.293.3198 | fax +1.520.293.3192  
www.darksky.org | ida@darksky.org

**Via Email ~ Hard Copy To Follow**

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July 8, 2017

The Honorable Ryan K. Zinke  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington DC 20240

**Re: *Docket No. DOI-2017-0002 (Review of Certain National Monuments Established Since 1996; Notice of Opportunity for Public Comment)***

Dear Mr. Secretary:

It has been appropriately noted that America's public lands are our Nation's crown jewels. As a fellow outdoors enthusiast, I think you will agree that, in the words of the American novelist Wallace Stegner, "they reflect us at our best."

Less than a century ago, the United States introduced the notion that a public good existed in certain wild and scenic places whose preservation in their natural state befitted the natural and cultural inheritance of not just America, but the entire world. Parks, nature reserves, historic sites, wildlife refuges, and similar protected places are now recognized worldwide, reflecting the legacy, foresight and wisdom of some of our earliest conservationists, including John Muir and Theodore Roosevelt. These men and their contemporaries possessed a vision far exceeding the limits of their times, promoting values and an ethic that, today, remain the bedrock and the backbone of our Nation's land management policies. All Americans, regardless of where they reside, their age and social communities, or political beliefs, benefit from that vision ~ now enshrined in the mission of the Department of Interior (DOI) and its agencies charged with the long-term stewardship of the country's natural resources.

The International Dark-Sky Association (IDA) shares this vision. Founded in 1988, IDA is the world's foremost authority on the impact of artificial light at night to the natural nighttime environment. Our mission is to preserve and protect that environment and our heritage of dark skies through environmentally responsible outdoor lighting. We represent more than 3,000 members, with 65 chapters in 18 countries, all who are dedicated to the

proposition that natural nighttime darkness is a resource worth conserving and celebrating. IDA informs, educates, and advocates for the preservation of the natural night, balancing the needs of the environment against the human need to use outdoor nighttime lighting to promote public safety, economic development, and quality of life.

Since 2001, IDA's International Dark Sky Places Program<sup>1</sup> has made 77 designations in 14 countries and 19 U.S. states, bringing dark nighttime conditions to include more than 26,000 square miles of land under rigorous conservation. The success of this program hinges on a combination of land management best practices, public policies, and widespread citizen support for quality outdoor lighting, preservation of starry night skies, and the protection of vulnerable nocturnal species.

In this effort, we have partnered with 17 federally managed land units, including seven National Monuments. While voluntary, the efforts of those National Monuments seeking IDA International Dark Sky Park status are supported by agency-level policies that seek to effectively manage natural darkness in concert with other critical resources, such as air and water quality. The land use restrictions attendant to National Monument designations are key to the eligibility of these lands for IDA accreditation. However, we are now concerned that recent changes in federal policy, including those which are the subject of this rule making, may put these remarkable places at risk.

On May 1, 2017, President Trump issued Executive Order 13792<sup>2</sup> (Executive Order) calling on your office *"to conduct a review of all Presidential designations or expansions of designations under the Antiquities Act made since January 1, 1996, where the designation covers more than 100,000 acres, where the designation after expansion covers more than 100,000 acres, or where the Secretary determines that the designation or expansion was made without adequate public outreach and coordination with relevant stakeholders, to determine whether each designation or expansion conforms to the policy set forth in section 1 of the order."* Among other provisions, Section 1 states that designations should reflect the Act's *"requirements and original objectives"* and *"appropriately balance the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities."*

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<sup>1</sup> <http://darksky.org/idsp/>

<sup>2</sup> E.O. 13792, 82 FR 20429, May 1, 2017.

One of the 21 National Monuments identified for review pursuant to the Executive Order, Grand Canyon-Parashant National Monument in Arizona, is currently designated as an IDA International Dark Sky Park<sup>3</sup>, recognized for its “exceptional or distinguished quality of starry nights and a nocturnal environment that is specifically protected for its scientific, natural, educational, cultural heritage, and/or public enjoyment<sup>4</sup>.” Six other National Monuments under review pursuant to the Executive Order have either applied for IDA accreditation or have indicated their intent to apply in the future. Indeed, it is the protected status as National Monuments that make these unique sites eligible, *a priori*, for consideration under the terms of our program. Grand Canyon-Parashant National Monument is jointly managed by the U.S. National Park Service (NPS) and the Bureau of Land Management (BLM), both agencies which are committed to the protection of dark nighttime conditions as expressed in their policies that identify natural darkness as a conservation priority<sup>5,6</sup>.

The protection of nighttime darkness in National Monuments is consistent with the provisions of the Antiquities Act of 1906<sup>7</sup>, which contemplates the preservation of “*objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States.*” Dark night sky is certainly a feature of historic interest to the many peoples who have historically inhabited lands owned or controlled by the U.S. government, particularly Native Americans. The night sky features prominently in the culture and folklore of both prehistoric and historic Native Americans, as well as European settlers, and archaeoastronomical evidence exists linking observing the night sky to purpose-made structures and objects on the ground. This historical record indicates a strong cultural affinity of place between Earth and sky that is inextricable from other characteristics defining “antiquity” in the Act.

Further, natural nighttime darkness is of considerable scientific interest, given its significance to wildlife ecology, and that it is an “object” in the sense that it is an aspect of a “landmark” that is definitive and sets it apart from other lands in its vicinity. Light pollution threatens the integrity of natural darkness and the visibility of the night sky above many federal lands whose history and prehistory indicate uses consistent with the historic interest of night skies, and in which

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<sup>3</sup> <http://darksky.org/idsp/parks/parashant/>

<sup>4</sup> 2015 International Dark Sky Park guidelines, page 2. ([http://darksky.org/wp-content/uploads/bsk-pdf-manager/IDSP\\_Guidelines\\_Oct2015\\_23.pdf](http://darksky.org/wp-content/uploads/bsk-pdf-manager/IDSP_Guidelines_Oct2015_23.pdf))

<sup>5</sup> Management Policies (2006), Natural Resource Management: §4.10 Lightscape Management; Green Parks Plan: Advancing Our Mission through Sustainable Operations (2012), p. 12.; NPS Interim Outdoor Lighting Guidelines (2007), p. 3.; National Park Service Director’s Call To Action Report (2015) Action 27, p. 18.

<sup>6</sup> BLM is currently developing agency-level policy for protection of dark skies based on NPS guidance.

<sup>7</sup> Pub. L. 59-209, 34 Stat. 225, codified as amended at 16 U.S.C. §§ 431-433 (2000).

natural nighttime darkness is an essential element of the lands' scientific interest. In nearly a century of case law, the United States Supreme Court has repeatedly held<sup>8</sup> that protection of lands for reasons other than the material objects of historical interest they contain is consistent with both the intent and provisions of the Antiquities Act.

The mere recognition that natural darkness and dark night skies are of "historic" and "scientific" interest, respectively, in the context of the Antiquities Act is sufficient to establish the value of National Monuments for the preservation of those resources, whether or not they were cited as motivators in creating new National Monuments. Because land management agencies, such as NPS, have identified natural darkness as a conservation priority, and because they have established policies guiding their protection in National Parks and Monuments, the enhanced status of these lands is crucial for bringing their darkness resource under active management.

Rescinding National Monument designations or revising downward the land area they protect presents a clear danger to the integrity of their resources already under management. Because nighttime darkness and dark night skies are fully integrated into the landscape, there is no means of preserving the resource by reducing or eliminating the protected area. Removing the protections and land use limitations associated with National Monument status will ultimately allow uses that are incompatible with night sky stewardship and necessarily imperil naturally dark nighttime conditions over these lands.

There is also no legal precedent for a President to revoke an existing National Monument designation, nor does the Antiquities Act imply that the President hold such authority. Moreover, the statute finds no requirement to conduct "adequate public outreach and coordination with relevant stakeholders." The Supreme Court has affirmed that the decision to designate a National Monument rests entirely with, and at the complete discretion of, the President and requires no permission or input from "relevant stakeholders."

This rule making requests the public to evaluate, "*Whether national monuments in addition to those listed above should be reviewed because they were designated or expanded after January 1, 1996 'without adequate public outreach and coordination with relevant stakeholders;'* and (2) *the application of factors (i) through (vii) to the listed national monuments or to other Presidential designations or expansions of designations meeting the criteria of the Executive Order.*"

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<sup>8</sup> See e.g., *Cameron v. United States* 252 U.S. 450 (1920) and *Cappaert v. United States* 426 U.S. 128 (1976)

Based on the Antiquities Act and its relevant case law, several of these factors are beyond the scope of this review. Federal courts have generally declined petitions concerning applications of the Antiquities Act and, when ruling on such petitions, have given tremendous deference to the President designating the National Monument. The legislative history of the Antiquities Act cites two significant amendments made to the original statute that vastly expanded the scope of federal lands eligible for National Monument status and relaxed initial limits on the allowed acreage of National Monuments designated under the Act<sup>9</sup>.

In fact, Congress has repeatedly resisted efforts to limit the reach of the Executive Branch pursuant to the Antiquities Act. Even while circumscribing the President's authority to temporarily withdraw land for protection of oil and gas reserves, Congress declined to extend the same limits to the establishment of National Monuments in terms of acreage, duration, or purpose<sup>10</sup>. In repealing land withdrawal authorities in 29 statutes when enacting the Federal Land Policy and Management Act of 1976<sup>11</sup>(FLPMA), Congress specifically exempted the Antiquities Act.

As set out in this rule making, Factor (i) calls for a review of the 21 named National Monuments based on "*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.'*" As noted above, federal courts have consistently refused to revise the land area of National Monuments, deferring instead to the Congress to make such decisions. Because Executive Orders invoking Presidential actions taken pursuant to the Antiquities Act are not subject to the Administrative Procedures Act of 1946<sup>12</sup>, the courts have historically applied the "arbitrary and capricious" standard of review to National Monument designations<sup>13</sup>. To date, no court has held that a President abused the authority of the Antiquities Act in designating a National Monument.

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<sup>9</sup> see Christine A. Klein, "Preserving Monumental Landscapes Under the Antiquities Act," 87 Cornell L. Rev. 1333 (2002), available at <http://scholarship.law.ufl.edu/facultypub/12> and Alexandra M. Wyatt, "Antiquities Act: Scope of Authority for Modification of National Monuments," CRS report R44687 (2016), available at [http://www.law.indiana.edu/publicland/files/national\\_monuments\\_modifications\\_CRS.pdf](http://www.law.indiana.edu/publicland/files/national_monuments_modifications_CRS.pdf), for historical perspectives.

<sup>10</sup> Pickett Act, Pub. L. No. 303, 36 Stat. 847 (1910); repealed 1976.

<sup>11</sup> Pub. L. No. 94-579, 90 Stat. 2743, codified as amended at 43 U.S.C. §§ 1701-1782 and in various sections of the U.S. Code (1994 & Supp. V 1999).

<sup>12</sup> Pub.L. 79-404, 60 Stat. 237.

<sup>13</sup> 5 U.S.C. § 706(2)(A).

Factor (iii) calls for review based on “*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), as well as the effects on the available uses of Federal lands beyond the monument boundaries.*” Consideration of impacts is the responsibility of the President who exercises the power granted by the Antiquities Act to designate National Monuments. FLMMA does not restrict the President’s authority to name or expand National Monuments with their attendant land use restrictions as they are “otherwise specified by law,” that law being the Antiquities Act as amended.

FLMMA also states<sup>14</sup> “*it is the policy of the United States that ... the public lands be managed in a manner that will protect the quality of the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values; [and] that, where appropriate, will preserve and protect certain public lands in their natural condition.*” To the extent that threatened resources exist on federal lands adjoining National Monuments, the status of these National Monuments should be considered in the context of potential impacts to those resources arising from actions taken pursuant to this rule making. In particular, the revocation of a National Monument’s status or a revision of its size may have specific impacts to management activities on adjacent lands. Thus, a change of status of existing National Monuments may well jeopardize not only the integrity of natural nighttime darkness on those lands, but on federal lands adjacent to these National Monuments.

Factor (iv) calls for review based on “*the effects of a designation on the use and enjoyment of non-Federal lands within or beyond monument boundaries.*” We see no conflict here, particularly as regards the pursuit of dark-skies conservation in National Monuments. Agencies have never applied policies protecting dark skies to restrict the use of non-federal lands on, or adjacent to, National Monuments, nor is it our expectation that agencies would do so.

Factor (v) calls for review based on the “*concerns of State, tribal, and local governments affected by a designation, including the economic development and fiscal condition of affected States, tribes, and localities.*” Management of federal lands, and in reference to the Antiquities Act in particular, is the sole prerogative of Congress to remedy, an interpretation with which the courts have consistently concurred.

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<sup>14</sup> 43 U.S.C. 1701(a)(8).

Factor (vi) calls for review based on “*the availability of Federal resources to properly manage designated areas.*” This, too, is an authority vested with the Congress (the appropriation of federal funds), which has – on occasion – withheld funding for the administration and management of National Monuments in protest of a President’s actions<sup>15</sup>.

The rule making also solicits public comment on “*other factors the Secretary might consider for this review,*” specifically with respect to Factor (vii) (“*such other factors as the Secretary deems appropriate.*”). To the extent that the DoI may evaluate ‘other factors’ in its review, we urge the Department to consider the following issues that bear critically on the continued conservation of natural darkness and dark night sky resources in National Monuments.

1. We urge the Administration to consider the economic development potential of the many permitted uses of National Monuments consistent with 43 U.S.C. 1701(a)(8) (providing “for outdoor recreation and human occupancy and use”). Access to natural darkness and dark night skies provides that opportunity. On the Colorado Plateau alone, one recent estimate notes the potential for ~\$2 billion worth of tourism related to night skies in the next decade<sup>16</sup>. To the extent that any National Monument designation is reconsidered due to the regional economic impact of *restrictions* on land use accompanying the National Monument status, it is only fair to weigh those losses against the potential gains enabled by new forms of economic activity related to sustainable night skies tourism. National Monument status elevates the profile of certain federal lands, which affords these lands greater public attention, increased demands for tourism, and – ultimately – more jobs to fuel local economies.
2. The protection of dark skies and natural darkness on National Monuments is consistent with the FLPMA policy statement<sup>17</sup> that “*public lands be managed in a manner that will protect the quality of the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values.*” Any decision to modify the boundaries of existing National Monuments should take into account the presence of natural darkness over the site. This is particularly true if that darkness faces acute threats from new land uses that would be permitted should a National Monument’s status be

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<sup>15</sup> See Proclamation No. 2578, 3 C.F.R. 327 (1943) protecting the 221,610-acre Jackson Hole National Monument in Wyoming, which Congress later included as part of Grand Teton National Park, and Proclamation No. 2578, 3 C.F.R. 639 (1961) creating Chesapeake and Ohio Canal National Monument, upon which a hostile Congress refused to appropriate management funds for its management. In neither case did Congress act to revoke the Monument designation.

<sup>16</sup> David Mitchell and Terrel Gallaway, “Estimating the Potential Economic Value of the Night Skies Above the Colorado Plateau”, National Park Service white paper (2016).

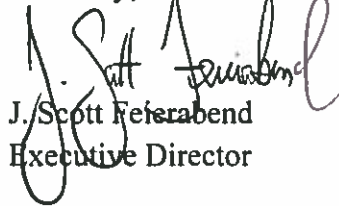
<sup>17</sup> 43 U.S.C. 1701(a)(8).

revoked or its land area diminished. Given our scientific understanding of the value of nighttime darkness to a variety of ecosystem services and the perturbation of these systems from exposure to artificial light at night<sup>18</sup>, National Monuments should be maintained and managed in a way that properly supports and promotes this value.

3. The protection of public lands is integrative of *all* aspects of landscapes, including – but not limited to – air and water quality, scenic view sheds, and cultural resources. Nighttime darkness and dark night skies are a definitive characteristic of these landscapes, and by implication are included in the “other objects of historic or scientific interest” cited in the Antiquities Act and supporting case law. Any review of National Monument status must consider this characteristic, one that is inseparable from the conservation policies and priorities called out in FLPMA.

In closing, IDA appeals to you as a lifelong sportsman who, no doubt, has marveled at the dark night skies above Montana’s public lands, such as Glacier National Park – the newest of our International Dark Sky Parks. Such night skies, largely devoid of light pollution, keep a universe full of stars available to current and future generations of Americans who, too, will see us reflected “at our best” in these protected spaces.

Sincerely,



J. Scott Feisrabend  
Executive Director

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<sup>18</sup> See e.g., Travis Longcore and Catherine Rich, eds. *Ecological Consequences of Artificial Night Lighting*. Island Press: Washington (2006).