LEGAL ANALYSIS OF EXECUTIVE ORDER DIRECTING HUNTING BE ALLOWED IN TWO NPS NATIONAL MONUMENTS

A striking feature of the Trump Executive Order of September 17, 2026 is the Presidential determination that allowing hunting in Castle Mountain and Craters of the Moon National Monuments is permissible on the grounds that hunting does not threaten any of the objects of scientific or historic interest for which past Presidents proclaimed the two sites as monuments.

The Order states:

> "I have determined that appropriately managed hunting would not put the objects of historic and scientific interest that these monuments protect at risk."

This statement reflects the belief that nothing else in the two monuments is protected, except for the specifically cited Proclamation features, mostly geologic. The President appears to mistakenly believe that the only governing authority over the two monuments (and by implication all other monuments within the national park system) is the originating proclamation.

However, other laws and regulations do apply.

These two monuments are part of an extensive national system of protected areas, known as the national park system. The two monuments and all parks "…though distinct in character, are united through their interrelated purposes and resources into one national park system as cumulative expressions of a single national heritage;" Act for Administration of the National Park System, 1970. 84 STAT. 825

That same Act further directs that all park areas are governed not only by their enabling act (or proclamation) but by all laws governing the national park system, beginning with the Act of August 25, 1916 – The Organic Act.

In 1978, Congress reinvigorated the protective purpose of the Organic Act by declaring that:

> "Congress further reaffirms, declares and directs that the promotion and regulation of the various areas of the National Park System . . . shall be consistent with and founded in the purpose established by the first section of the Act of August 25, 1916, to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management and

> administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress."

Hunting, by its very nature, is an activity in derogation of values and purposes of all parks and thus is allowed ONLY in national park system units where Congress has directly and specifically authorized it.

As for Craters of the Moon, Congress had the opportunity in 2002 to authorize hunting in the original 1924 national monument when Congress created the adjoining Craters of the Moon National Preserve, an area in which Congress specifically authorized hunting. Congress elected to leave the original monument untouched and thus closed to hunting.

In *National Rifle Association v. Potter* (628 F. Supp. 903 (D.D.C. 1986), the U.S. Court of Appeal for the District of Columbia held that hunting and trapping are prohibited are allowed only where directly and specifically authorized in law. Trump's order on the two monuments violates that ruling.

Trump's EO directs the Secretary to modify the existing regulations (for the NPS that is at 36 CFR Parts 1 and 2) to allow hunting and trapping in Castle Mountain and Craters of the Moon National Monuments. The EO cannot and does not do that on its own.

Instead, NPS is slated to propose a special rule for each of the two units at 36 CFR Part 7. The NPS managers at these units cannot simply modify their compilation of designation and closures (the Superintendent's Compendium) at 36 CFR 1.7 to allow hunting and trapping. Because these activities are strictly forbidden by 36 CFR 2.1 and 2.2, the NPS must adopt a special rule modifying that prohibition.

However, even that action would be without precedent with regard to recreational hunting or trapping since the NPS adopted its current rules at 36 CFR in 1983.

Moreover, it is unclear whether NPS will undertake an analysis as required by the National Environmental Policy Act (NEPA) to accompany these special rules. If past is prologue, NPS will not undertake a full environmental impact statement but will instead perform a perfunctory environmental assessment (EA) followed by a Finding of No Significant Impact (FONSI).

Few ideas reverberate with more resonance in the history of the parks than that they are sanctuaries for animals UNLESS Congress provides otherwise. This feature makes the parks unique among all the federal land managing agencies.

Notably, the NPS cannot use the designations or closures sections of 36 CFR 1.5 to amend the Superintendent's compilations (the Compendium) of such actions. The Preamble to the Final Rule of June 30, 1983, states:

> "Section 1.5(a) may never be used to contravene Federal statutory law or the general regulations in this chapter, unless specifically provided for in a particular section" (of 36 CFR Part 2).

Sections at 36 CFR 2.1 and 2.2 DO NOT provide any waiver authority.

There is only one example of a President creating or governing a national park system monument that allows some hunting. President Obama created Katahdin Woods and Waters NM in Maine and in his Proclamation authorized recreational hunting in a portion of the new monument. His reason was that the donation of the land to the United States (which made the use of the Antiquities Act possible in the first place) was conditioned by the donor to allow continued hunting on that portion of any new monument.

There is only one example of Congress, in law, authorizing hunting in an NPS "national monument." That is for Hagerman Fossil Beds NM in Idaho, which allows some limited duck hunting over the Snake River.

Castle Mountain and Craters of the Moon were both reserved from BLM-administered public lands. Congress in 2002 already designated the additions to Craters of the Moon NM made by Proclamation in 2000 into a National Preserve, open to hunting and trapping. Craters of the Moon NM has not been open to hunting and trapping since President Coolidge proclaimed it in 1924.

The Bureau of Land Management, Forest Service, U.S. Fish and Wildlife Service and the Department of the Army administer many national monuments, created by proclamation or acts of Congress. All are open to hunting and trapping, except one – Castner Range National Monument in Texas, that lies wholly within a military reservation – Fort Bliss, and is closed to all public access. Only the NPS administers national monuments closed to hunting, except for the two exceptions cited above.

If the President (Trump or any other) can order the Secretary to adopt rules to allow hunting in Castle Mountain and Craters of the Moon, the President may do so for every other NPS national monument. Under this scenario, a President would not need to abolish or reduce their size, he can simply order the Secretary to open them all to hunting and trapping and thus destroy (what we thought for a century) was their indelible characteristic as strict sanctuaries for animals.

Title 36 —Parks, Forests, and Public Property

Chapter I —National Park Service, Department of the Interior

Part 2 —Resource Protection, Public Use and Recreation

36 CFR 2.1
Authority: 54 U.S.C. 100101, 100751, 320102.

§ 2.1 Preservation of natural, cultural and archeological resources.

(a) Except as otherwise provided in this chapter, the following is prohibited:

(1) Possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state:

(i) Living or dead wildlife or fish, or the parts or products thereof, such as antlers or nests.

(ii) Plants or the parts or products thereof.

(iii) Nonfossilized and fossilized paleontological specimens, cultural or archeological resources, or the parts thereof.

(iv) A mineral resource or cave formation or the parts thereof.

(2) Introducing wildlife, fish or plants, including their reproductive bodies, into a park area ecosystem.

(3) Tossing, throwing or rolling rocks or other items inside caves or caverns, into valleys, canyons, or caverns, down hillsides or mountainsides, or into thermal features.

(4) Using or possessing wood gathered from within the park area: *Provided, however,* That the superintendent may designate areas where dead wood on the ground may be collected for use as fuel for campfires within the park area.

(5) Walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statue, except in designated areas and under conditions established by the superintendent.

(6) Possessing, destroying, injuring, defacing, removing, digging, or disturbing a structure or its furnishing or fixtures, or other cultural or archeological resources.

(7) Possessing or using a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device, or subbottom profiler.

This paragraph does not apply to:

(i) A device broken down and stored or packed to prevent its use while in park areas.

(ii) Electronic equipment used primarily for the navigation and safe operation of boats and aircraft.

(iii) Mineral or metal detectors, magnetometers, or subbottom profilers used for authorized scientific, mining, or administrative activities.

(b) The superintendent may restrict hiking or pedestrian use to a designated trail or walkway system pursuant to §§ 1.5 and 1.7. Leaving a trail or walkway to shortcut between portions of the same trail or walkway, or to shortcut to an adjacent trail or walkway in violation of designated restrictions is prohibited.

(c)

(1) The superintendent may designate certain fruits, berries, nuts, or unoccupied seashells which may be gathered by hand for personal use or consumption upon a written determination that the gathering or consumption will not adversely affect park wildlife, the reproductive potential of a plant species, or otherwise adversely affect park resources.

(2) The superintendent may:

(i) Limit the size and quantity of the natural products that may be gathered or possessed for this purpose; or

(ii) Limit the location where natural products may be gathered; or

(iii) Restrict the possession and consumption of natural products to the park area.

(3) The following are prohibited:

(i) Gathering or possessing undesignated natural products.

(ii) Gathering or possessing natural products in violation of the size or quantity limits designated by the superintendent.

(iii) Unauthorized removal of natural products from the park area.

(iv) Gathering natural products outside of designated areas.

(v) Sale or commercial use of natural products.

(d) This section shall not be construed as authorizing the taking, use, or possession of fish, wildlife, or plants for ceremonial or religious purposes, except for the gathering and removal of plants or plant parts by enrolled members of an Indian tribe in accordance with § 2.6, or where specifically authorized by federal statutory law, treaty, or in accordance with § 2.2 or § 2.3.

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