

CONTROVERSY TO CATALYST: The Monument, the Plan, and Beyond

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I. Introduction

To say the least, President Bill Clinton's designation of the Grand Staircase-Escalante National Monument (Monument) ¹ in southern Utah was controversial. The president's announcement of the new Monument, which came during the waning days of the 1996 presidential campaign, triggered an enormous and perhaps predictable local reaction. Nearby communities went into mourning, Congress embarked upon an investigation of the Monument decision process, numerous bills were introduced in Congress to amend the Antiquities Act, ² and three lawsuits were filed challenging the legality of the designation. In the midst of this turmoil, the new Monument's managers--the Bureau of Land Management (BLM)--set about the business of preparing a management plan for these now protected lands. It was the first time that the BLM had ever assumed responsibility for a national monument.

Four years later, as Yogi Berra used to say, It's deja vu all over again. Or is it? Before leaving office, President Clinton used his Antiquities Act powers to designate or enlarge twenty more national monuments, ³ including twelve to be [*522] administered by the BLM as part of its new National Landscape Conservation System. ⁴ In several areas, local communities

¹ Exec. Procl. 6920, 3 C.F.R. 64 (1996). The proclamation is reprinted at page 515.

² The Antiquities Act of 1906, Pub. L. No. 209, 34 Stat. 225 (1906) (codified at 16 U.S.C. § § 431 433).

³ Agua Fria National Monument, Exec. Procl. 7263, 65 Fed. Reg. 2817 (Jan. 11, 2000); Buck Island Reef National Monument, (expansion), Exec. Procl. 7392, 66 Fed. Reg. 7335 (Jan. 17, 2001); California Coastal National Monument, Exec. Procl. 7264, 65 Fed. Reg. 2821 (Jan. 11, 2000); Canyons of the Ancients National Monument, Exec. Procl. 7317, 65 Fed. Reg. 37243 (June 9, 2000); Carrizo Plain National Monument, Exec. Procl. 7393, 66 Fed. Reg. 7339 (Jan. 17, 2001); Cascade Siskiyou National Monument, Exec. Procl. 7318, 65 Fed. Reg. 37249 (June 9, 2000); Craters of the Moon National Monument (expansion), Exec. Procl. 7373, 65 Fed. Reg. 69221 (Nov. 9, 2000); Grand CanyonParashant National Monument, Exec. Procl. 7265, 65 Fed. Reg. 2825 (Jan. 11, 2000); Grand Sequoia National Monument, Exec. Procl. 7295, 65 Fed. Reg. 24095 (Apr. 15, 2000); Hanford Reach National Monument, Exec. Procl. 7319, 65 Fed. Reg. 37253 (June 9, 2000); Ironwood Forest National Monument, Exec. Procl. 7320, 65 Fed. Reg. 37259 (June 9, 2000); KashaKatuwe Tent Rocks National Monument, Exec. Procl. 7394, 66 Fed. Reg. 7343 (Jan. 17, 2001); Minidoka Internment National Monument, Exec. Procl. 7395, 66 Fed. Reg. 7347 (Jan. 17, 2001); Pinnacles National Monument (expansion), Exec. Procl. 7266, 65 Fed. Reg. 2831 (Jan 11, 2000); Pompeys Pillar National Monument, Exec. Procl. 7396, 66 Fed. Reg. 7351 (Jan. 17, 2001); President Lincoln and Soldiers' Home National Monument, Exec. Procl. 7329, 65 Fed. Reg. 43673 (July 7, 2000); Sonoran Desert National Monument, Exec. Procl. 7397, 66 Fed. Reg. 7354 (Jan. 17, 2001); Upper Missouri River Breaks National Monument, Exec. Procl. 7398, 66 Fed. Reg. 7359 (Jan. 17, 2001); Vermillion Cliffs National Monument, Exec. Procl. 7374, 65 Fed. Reg. 69227 (Nov. 9, 2000); Virgin Islands Coral Reef National Monument, Exec. Procl. 7399, 66 Fed. Reg. 7364 (Jan 17, 2001).

⁴ U.S. Dept. of Int., Bureau of Land Mgt., National Landscape Conservation System <<http://www.blm.gov/nhp/what/nlcs/index.html>>

and political leaders were harshly critical of the president's new monument announcements, but the overall reaction was rather muted compared to the earlier Utah experience. Clearly, lessons had been learned from the Grand Staircase-Escalante experience--namely that a new national monument designation did not foretell imminent doom, but rather could be viewed as an opportunity for a new beginning.

Indeed, the Monument designation and planning process represents an important new development in public land policy, one with profound local as well as national implications and lessons. In 1997, the Wallace Stegner Center hosted a conference on Utah's new national Monument, seeking to shed some light on the resources that would be protected by the new designation and on how the BLM might conduct its planning process, as well as some of the potential pitfalls that it might anticipate.⁵ Now, with the plan finalized for the Monument, and with the newly designated BLM monuments embarking upon a similar planning exercise, it is time to extract meaningful lessons from the Monument planning process. The articles that follow do just that. But to set the stage, it is helpful to review the Grand Staircase-Escalante designation and the ensuing planning process, while also offering some general observations in light of trends in public land policy.

II. The Grand Staircase-Escalante Planning Process

The history of the Antiquities Act (Act) is well known. The Act dates from 1906, when Congress adopted it primarily to protect the Southwest's fragile archeological sites from vandalism.⁶ The Act authorizes the president to designate national monuments to protect "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" located on federally owned lands.⁷ Although ostensibly designed to safeguard small cultural and natural sites, President Teddy Roosevelt immediately used his new Antiquities Act powers to protect the Grand Canyon from threatened development.⁸ [*523] Subsequent presidents have similarly viewed the Act as a primary conservation tool. In fact, every president (except Presidents Nixon, Reagan, and Bush) have used the Act to protect vulnerable public lands, many of which Congress has subsequently transformed into important national parks.⁹ The courts have consistently deferred to the president's prerogative under the statute, even in the case of large presidential withdrawals, as when President Jimmy Carter withdrew over fifty million acres in Alaska and created seventeen new national monuments.¹⁰

The country encompassing the Monument has long been a contrary and contested landscape. The region's early inhabitants were the Anasazi or ancestral Pueblo Indians who lived in scattered settlements amid the rugged canyons and engaged in primitive agricultural practices.¹¹ They were, however, eventually forced to depart the region, perhaps no longer able to subsist on the dry, arid landscape. Next came the Mormon pioneers, some of whom managed to settle the land and to eke out a living by running cattle and farming. Other settlers, though, were forced to abandon their homesteads, victims of this harsh, unforgiving, and yet alluring environment.¹² In the 1930s, Secretary of the Interior Harold Ickes floated the idea of an

(accessed Mar. 5, 2001).

⁵ The conference proceedings were subsequently published as *Visions of the Grand Staircase Escalante* (Robert B. Keiter, Sarah B. George & Joro Walker eds., Utah Museum of Nat. History & Wallace Stegner Ctr. 1998).

⁶ For legislative history of the Antiquities Act, see David Getches, *Managing the Public Lands: The Authority of the Executive to Withdraw Lands*, 22 Nat. Resources J. 279 (1982); Ronald F. Lee, *The Antiquities Act of 1906*, NPS/IRM (Natl. Technical Info. Serv. 1970).

⁷ 16 U.S.C. § 431 (1994).

⁸ Exec. Procl. 794, 54 Stat. 2692 (1908).

⁹ John D. Leshy, *Putting the Antiquities Act in Perspective*, in *Visions of the Grand Staircase Escalante* 83, 83-84 (Robert B. Keiter, Sarah B. George & Joro Walker eds., Utah Museum of Nat. History & Wallace Stegner Ctr. 1998).

¹⁰ *Anaconda Copper Co. v. Andrus*, 14 Env't. Rep. (BNA) 1853 (D. Alaska 1980); Alaska v. Carter, 462 F. Supp. 1155 (D. Alaska 1978).

¹¹ Exec. Procl. 6920, 3 C.F.R. at 65-66.

¹² Thomas L. Fleischner, *Singing Stone: A Natural History of the Escalante Canyons* 94 (U. of Utah Press 1999); Dean L. May, *A Human History*, in *Visions of the Grand Staircase Escalante* 43, 49 (Robert B. Keiter, Sarah B. George & Joro Walker eds., Utah Museum of Nat. History & Wallace Stegner Ctr. 1998); T.H. Watkins, *The Redrock Chronicles: Saving Wild Utah* 58 (Johns Hopkins U. Press 2000).

expansive national park in southern Utah that encompassed the maze-like canyons of the Escalante, but the idea ultimately went nowhere. Meanwhile, Congress was busy ringing the Escalante country with national parks and recreation areas, including Bryce Canyon,¹³ Canyonlands,¹⁴ and the Glen Canyon Recreation Area.¹⁵ By the mid-1980s, the Escalante country had become a major battleground in the Utah BLM wilderness debate, which harkened back to the passage of the Federal Land Policy and Management Act (FLPMA) of 1976¹⁶ that formally extended the wilderness concept to BLM public lands.¹⁷

By the early 1990s, the debate had been stalled for more than a decade. [*524] With the antagonists stalemated over how much acreage qualified as wilderness and other related issues, Governor Mike Leavitt floated the notion of creating a Canyons of Escalante Ecoregion, which would be managed on the twin principles of sustainability and diversification. A new concept, the Escalante Ecoregion idea sought to capitalize on expanding recreational visitation to the region by adding an additional layer of protection to the landscape and by diversifying the local economy through new tourism and recreation opportunities.¹⁸ The watchwords of the proposal, sustainability and diversification, were credible enough to start a discussion among various factions that were usually at odds with one another. But following the 1994 elections, when the Republicans recaptured control of Congress, the state's now all-Republican delegation seized the political moment and tried to force through a small-acreage wilderness bill that was entirely unacceptable to the environmental community.¹⁹ Their efforts were eventually thwarted, but did not go unnoticed.

In 1996, on the eve of the presidential election and with the recent legislative battle over Utah wilderness fresh in mind, President Clinton created the new Grand Staircase-Escalante National Monument, invoking the Antiquities Act for the first time in sixteen years. In his proclamation, the president took several unprecedented steps in defining how the Monument would be managed. First, he vested the BLM with responsibility for administering the new Monument, representing the first time the BLM had ever been charged with such an overt preservationist task.²⁰ Second, he allowed livestock grazing to continue in the Monument, deferred on claiming new federal water rights, and acknowledged ongoing state responsibility for wildlife management.²¹ Third, he established a three-year planning horizon, and pledged federal cooperation with state and local officials in the process.²² Fourth, he agreed to negotiate a prompt exchange of state school trust lands located within the Monument for federal lands of equal value. The idea was to create a new category of multiple-use monuments with considerable deference to state and local sensitivities.

Reactions to the new Monument were swift and rarely equivocal. Environmental groups generally applauded the designation, viewing it as an [*525] important step forward in permanently protecting southern Utah's vulnerable landscapes. State and

¹³ 16 U.S.C. § 401 402(g) (1994).

¹⁴ 16 U.S.C. § 271(a) (g) (1994).

¹⁵ 16 U.S.C. § 460(dd) (dd 9) (1994).

¹⁶ 43 U.S.C. § 1701 1784 (1994).

¹⁷ *Id.* § 1782. See generally John D. Leshy, *Wilderness and Its Discontents: Wilderness Review Comes to the Public Lands*, 1981 *Ariz. St. L.J.* 361 (1981). On the Utah BLM wilderness controversy, see Watkins, *supra* n. 12; *Contested Landscape: The Politics of Wilderness in Utah and the West* (Doug Goodman & Daniel McCool, eds., U. of Utah Press 1999).

¹⁸ *Canyons of the Escalante: A National Ecoregion* (unpublished draft staff conceptual paper, July 22, 1994) (copy on file with the author).

¹⁹ *Utah Public Lands Act* of 1995, H.R. 1745, 104th Cong. (1995); Sen. 884, 104th Cong. (1995). For a description of the legislation and related matters, see Ray Wheeler, *The Crowd, Chanting*: 5.7, 27 *High Country News* 1 (Dec. 25, 1995). A concise summary of the Utah BLM wilderness controversy appears in James R. Rasband, *Utah's Grand Staircase: The Right Path to Wilderness Preservation?*, 70 *U. Colo. L. Rev.* 483, 488-98 (1999).

²⁰ Exec. Procl. 6920, 3 C.F.R. at 67.

²¹ *Id.*

²² *Id.*

local political leaders uniformly condemned the decision, labeling it a land grab, crass political opportunism, and much worse. The local counties filed a lawsuit challenging the Monument's legality, which is still pending in federal court.²³ The Utah congressional delegation and their allies introduced a spate of bills in Congress, seeking to deprive the president of his unilateral Antiquities Act powers.²⁴ The Utah delegation also initiated a congressional investigation into the Monument designation decision process, attempting to show that the White House had illegally bypassed statutorily mandated public involvement requirements.²⁵ And nearly everyone wondered whether the new Monument would have any impact on the ongoing state wilderness controversy, and how the BLM would handle its new responsibilities.

The stage was plainly set for more prolonged controversy over these lands, especially given this new hybrid creation and the acrimonious atmosphere surrounding its birth. But the expected controversy has not occurred. Why not?

The BLM moved decisively to begin the Monument planning process, while also seeking to engage the state, counties, and local communities in the process. Among other things, the BLM added five state members to the Monument planning team, which followed the agency's own familiar FLPMA-mandated resource management planning process.²⁶ Using the National Environmental Policy Act's (NEPA)²⁷ environmental impact statement (EIS) process, the planning process was designed to be open and to encourage broad public involvement. As part of the process, a science symposium was convened to help identify Monument resources.²⁸ Moreover, the BLM made special efforts to incorporate local concerns into the planning process.²⁹

The Monument management plan, which was finalized in November [*526] 1999, basically fulfills the BLM's preservationist responsibilities to the new Monument, while also addressing local social-economic concerns and introducing new ecosystem management protocols. Consistent with the Antiquities Act's mandate, the plan is based on two fundamental principles. First, protect the Monument in its primitive, frontier state; and second, provide compatible opportunities for scientific and historical study. To meet these principles, the plan creates four management zones, placing sixty-five percent of the Monument's nearly 1.9 million acres in the primitive zone, which will remain undeveloped without motorized access or facilities. Another twenty-nine percent of the Monument (roughly 537,000 acres) is placed in the outback zone, where it will remain undeveloped except for designated road access. The plan also recommends 252 miles of river segments for inclusion in the Wild and Scenic Rivers System.³⁰ It provides that the visitor center, science center, lodging, and other tourism-related facilities will be located outside the Monument near existing communities to generate visitation and local economic opportunities.³¹ In addition, the plan

²³ Utah Assn. of Counties v. Clinton, Civ. No. 97 CV 0479 (D. Utah filed June 23, 1997); Mt. Sts. Leg. Found. v. Clinton, Civ. No. 97 CV 0863 (D. Utah filed Nov. 5, 1997). On these legal challenges to the Grand Staircase Escalante National Monument, see Rasband, *supra* n. 19, at 514-18.

²⁴ See e.g. The National Monument Fairness Act of 1997, H.R. 1127, 105th Cong. (1997) (requiring an act of Congress and consultation with the governor and state legislature prior to establishment); National Monument Fairness Act of 1997, Sen. 477 105th Cong. (1997) (amending the Antiquities Act to provide for consultation with the governor and state legislature for designations in excess of 5,000 acres); Public Lands Management Participation Act of 1997, Sen. 691, 105th Cong. (1997).

²⁵ Release of House Resource Committee Majority Staff Report on Subpoenaed National Monument Documents, 143 Cong. Rec. E2259 E2272 (daily ed. Nov. 9, 1997).

²⁶ 43 U.S.C. § 1712; 43 C.F.R. 1600 (1984); see also Robert B. Keiter, Defining a Legal Framework for BLM Management, in *Visions of the Grand Staircase-Escalante* 89, 92-93 (Robert B. Keiter, Sarah B. George & Joro Walker eds., Utah Museum of Nat. History & Wallace Stegner Ctr. 1998).

²⁷ 42 U.S.C. §§ 4321-4370d (1994).

²⁸ Learning from the Land: Grand Staircase-Escalante National Monument Science Symposium Proceedings, (Linda M. Hill ed., U.S. Dept. Int. 1997).

²⁹ David Williams, Planning the BLM's First National Monument, 21 J. Land, Resources, & Envtl. L. 543, 546 (2001).

³⁰ The Wild and Scenic Rivers Act, Pub. L. No. 90542, 82 Stat. 906 (1968) (codified as amended at 16 U.S.C. §§ 1271-1287).

³¹ One outgrowth of the planning negotiations was to divide the visitor center and science center between Kane and Garfield counties, giving each community a stake in the Monument and a potential visitor attraction.

establishes an elaborate, scaled-down process of analysis for making resource management decisions, which requires managers to assess the impacts of proposed decisions at an appropriate ecological scale. It further establishes an adaptive management protocol that will allow managers to adjust resource decisions based on an ongoing inventory and monitoring process. Remarkably, although the plan drew administrative protests, it was not judicially challenged, which suggests it generally satisfied all of the fractious interests that have long-contested these public lands.³²

The plan, however, does not resolve every issue confronting the Monument. It defers making any further wilderness study area (WSA) recommendations, leaving BLM to address this sticky issue through its statewide wilderness reinventory process and related agency management decisions.³³ The plan does not resolve the contentious Revised Statute (RS) 2477³⁴ road issue, deferring this matter to the state's soon to be initiated RS 2477 litigation or [*527] leaving it to be negotiated with the individual counties.³⁵ Finally, it defers making any final livestock grazing decisions, postponing this issue for a later allotment management planning process that is now just beginning.³⁶

During the planning process, the federal government and the state of Utah consummated an historic land exchange. The exchange agreement shifted approximately 180,000 acres of state school trust lands situated within the Monument to federal ownership (and 183,000 acres of other state school trust land inholdings in other Utah national parks, forests, and Indian reservations) in exchange for 145,000 acres of "blocked up" (and therefore more easily managed) public land elsewhere and an additional \$ 50 million for the school trust fund.³⁷ Despite numerous prior efforts, including the state's Project Bold initiative in the early 1980s, federal and state officials had never been able to conclude a major land exchange.³⁸ The Monument designation plainly provided the catalyst for this historic event. By all accounts, the exchange was a win for everyone involved, certainly for the state's long-suffering school trust fund that should finally see some meaningful financial returns.³⁹ Once the negotiations were concluded, Congress acted quickly to approve the exchange in legislation that was signed into law last year.⁴⁰

In addition, two major industrial development threats within the Monument were eliminated. First, the government purchased outstanding coal leases from the two companies (Andalex and PacifiCorp) that held mining rights within the Monument

³² For more detail on the plan, see Grand Staircase-Escalante National Monument Approved Management Plan Record of Decision (U.S. Dept. Int., Bureau of Land Mgt. 2000).

³³ See The 1999 Wilderness Inventory Report (U.S. Dept. Int. 1999) (available from Bureau Land Mgt., Salt Lake City, Utah or at www.ut.blm.gov/wilderness/wrpt/wrptcontents.html); Brent Israelson, Environmentalists Urge Protection of 5.9 Million More Wilderness Areas, Salt Lake Trib. D3 (Aug. 5, 1999); see generally *Utah v. Babbitt*, 137 F.3d 1193 (10th Cir. 1998).

³⁴ Act of July 26, 1866, § 8, 14 Stat. 253 (later codified separately at 43 U.S.C. § 932) (repealed 1976) (existing rights of way were grandfathered under Pub. L. No. 94 579, 701 (1976)) (codified at 43 U.S.C. § 1701).

³⁵ Joe Judd, County Collaboration with the BLM on the Monument Plan and Its Roads, 21 J. Land, Resources, & Envtl. L. 553, 555 (2001). On the RS 2477 controversy, see generally Barbara G. Hjelle, Ten Essential Points Concerning R.S. 2477 Rights of Way, 14 J. Energy, Nat. Resources, & Envtl. L. 301 (1994); William J. Lockhart, Federal Statutory Grants Are Not Placeholders for Manipulated State Law: A Response to Ms. Hjelle, 14 J. Energy, Nat. Resources, & Envtl. L. 323 (1994).

³⁶ See Chris Killingsworth, Management of Grazing: Where Do We Go from Here? 21 J. Land, Resources, & Envtl. L. 607 (2001).

³⁷ Utah Schools and Lands Exchange Act of 1998, Pub. L. No. 105 335, 112 Stat. 3139 (1998).

³⁸ Utah Dept. of Nat. Resources and Energy, Project Bold: Alternatives for Utah Land Consolidation and Exchange (1985); see generally John W. Andrews, State Trust Lands: Reconciling the Public Interest in Environmental Protection with Trust Management Principles, 44 Rocky Mt. Mineral L. Inst. 5 1 (1998); Scott T. Evans, Student Author, Revisiting the Utah School Trust Lands Dilemma: Golden Arches National Park?, 11 J. Energy, Nat. Resources, & Envtl. L. 347 (1991).

³⁹ Brad Barber, The Grand Staircase Escalante National Monument Embarking on the New Millennium: The Utah Experience, 21 J. Land, Resources, & Envtl. L. 561, 563 (2001).

⁴⁰ 112 Stat. 3139.

boundaries.⁴¹ Next, after drilling two dry holes following the Monument designation, Conoco let several of its federal oil and gas leases lapse when they came up for renewal.⁴² Although other drilling proposals have [*528] subsequently surfaced, the primary mineral development threats seem to have been removed from the Monument.⁴³ This means that the BLM can focus primarily on its resource protection and scientific research agenda.

Given the history surrounding the lands included in the Grand Staircase-Escalante designation, the Monument is interlinked with the long-festering Utah wilderness debate, and the Monument planning process has not altered the stalemate that prevails on that front. After Governor Leavitt and Secretary of the Interior Bruce Babbitt successfully negotiated the school trust land exchange, they sought to initiate a series of regional negotiations on the wilderness controversy that would begin with Utah's West Desert public lands and then move on to other contested areas. But their joint proposal for a West Desert wilderness settlement was strongly resisted by the environmental community, nor was it warmly endorsed in other quarters.⁴⁴ Congressional legislation to implement the LeavittBabbitt West Desert wilderness proposal has thus far languished, but the related West Desert school trust lands exchange has won congressional approval.⁴⁵ A related, locally inspired effort to push through a San Rafael Swell National Conservation Area bill has also failed, succumbing to the criticism that it was not sufficiently protective of wilderness quality lands and that the process had not been broadly inclusive of all of the potentially affected interests.⁴⁶ Meanwhile, the BLM has finished the reinventory of potential WSAs across the state and concluded that another approximately two million acres are eligible for wilderness consideration.⁴⁷ The BLM is currently deciding how to manage these newly identified lands, specifically, whether to manage them as WSAs which would give them considerable legal protection under the FLPMA "nonimpairment" management standard.⁴⁸ Whatever the BLM decides, more litigation can be expected over the reinventory itself as well as related management decisions. As a political matter, Congress remains deadlocked over [*529] the wilderness question, which has now been elevated to a national-level issue following the 1995 legislative donnybrook. Moreover, the piecemeal approach to resolving the wilderness issue does not appear to have any real traction.

But, while controversy continues to swirl around the Utah wilderness debate, other state public land issues, and the Antiquities Act, a surprising degree of harmony seems to prevail over the Monument itself. This is just short of astonishing given the acrimony that accompanied the original designation four short years ago.⁴⁹ Whether this state of affairs will continue may

⁴¹ Allison Mitchell, President Designates a Monument Across Utah, N.Y. Times B11 (Sept. 19, 1996); Jim Woolf, U.S. Government Buys Coal Leases in National Monument, Salt Lake Trib. A7 (Oct. 16, 1999).

⁴² Gary Bryner, What Does the Grand Staircase Escalante Mean for Land Protection in the West? Resources Development and Ecological Protection, 21 J. Land, Resources, & Envtl. L. 567, 571 (2001); Brent Israelson, Conoco to Drill In Prospective Wilderness, Salt Lake Trib. B1 (Feb. 2, 1999); Donna M. Kemp, Activists to Protest Gas Drilling, Deseret News A6 (Oct. 2, 2000).

⁴³ Brent Israelson, BLM Seeks to OK Grand Staircase Ore Processor, Salt Lake Trib. B2 (Nov. 14, 2000); Heather May, Conoco Applies for Permits to Drill Three Wells in Escalante Monument Despite Previous Failure, Salt Lake Trib. D2 (June 27, 1998).

⁴⁴ See e.g. Mike Matz, The Politics of Wilderness Preservation, 16 Redrock Wilderness 4 (Winter 1999); Dennis Romboy & Donna Kemp, Another Wilds Proposal Unveiled, Deseret News B1 (May 4, 2000); Jerry D. Spangler, White House, Leavitt Strike a Lands Deal, Deseret News A1 (May 27, 1999).

⁴⁵ Utah National Parks and Public Lands Wilderness Act, H.R. 3035, 106th Cong. (1999); Utah West Desert Land Exchange Act of 2000, Pub. L. No. 106 301, 114 Stat. 1059 (2000).

⁴⁶ San Rafael Western Legacy District and National Conservation Act, H.R. 3605, 106th Cong. (2000); Sen. 2048, 106th Cong. (2000).

⁴⁷ Bureau of Land Mgt., Utah Wilderness Inventory Acreage Summary Table <<http://www.ut.blm.gov/wilderness/wrpt/wrptacres.html>> (accessed Mar. 27, 2001).

⁴⁸ 43 U.S.C. § 1782(c) (requiring the secretary of the interior to manage designated wilderness study areas "so as not to impair the suitability of such areas for preservation as wilderness . . ."); The 1999 Wilderness Inventory Report, supra n. 33; see generally Utah v. Babbitt, 137 F.3d 1193 (10th Cir.1998).

⁴⁹ See Louise Liston, Sustaining Traditional Community Values 21 J. Land, Resources, & Envtl. L. 585 (2001); Traci Wilson, Residents Resent Edicts Creating Monuments; President's Declarations Put Millions of Acres Off Limits, USA Today 1A (Jan. 11, 2001).

well depend on the next steps in the Monument management process, which will test the relationships that have evolved during the planning process. On the immediate agenda, managers must address questions concerning livestock grazing in the Monument, including how much grazing is compatible with preserving ecological integrity, what new regulations may be necessary to meet this objective, and whether "conservation buy-outs" might be used to address the most troublesome locales.

⁵⁰ Negotiations continue over Monument road closures and maintenance responsibilities, which are entwined with the RS 2477 controversy and related litigation. ⁵¹ All eyes will also be on the Monument's managers to see how they use their scaled-down assessment strategy to address resource issues that arise, and whether they are prepared to meet their adaptive management responsibilities to guard against resource degradation.

III. Beyond the Grand Staircase-Escalante: Preservation in a New Age

To put the Grand Staircase-Escalante and other new national monument designations (as well as other recent Clinton administration public land policy initiatives) in perspective, it is important to recognize that the West of today is not the West of yesterday, nor will it be the West of tomorrow. Change is endemic in the modern world, and perhaps nowhere as ubiquitous as in the [*530] American West. Several interrelated forces for change are inexorably moving us toward a new set of policies and priorities for managing the western public lands. Briefly stated they are 1) population growth, increased urbanization, and the emergence of a new western culture and economy; 2) a growing public commitment to environmental, recreational, and other amenity values on the public lands; 3) increased globalization and international trade that has drawn many of the extractive industries overseas; 4) the reemergence of federalism and related devolution policies as reflected in the growth of partnership-based collaborative initiatives on the public lands; 5) the emergence of ecosystem management and restoration policies that have shifted the priorities, scale, and protocols underlying public land management; and 6) an ongoing role for public-interest litigation and the courts in setting the management agenda on the public lands. ⁵²

Given these developments, President Clinton's aggressive use of his Antiquities Act powers generally squares with the evolving trends toward greater environmental protection, an expanding federal commitment to preservation, ecological management principles, and the changing economic priorities of an evolving new West. Learning from the Grand Staircase-Escalante designation furor and subsequent planning experience, the Clinton administration sought to establish a dialogue with local communities situated near proposed new monuments. Local resistance, however, certainly did not deter its ultimate designation decisions, which also incorporated several features from the Grand Staircase-Escalante into the new monuments. This included giving the BLM responsibility for managing twelve of the new monuments, maintaining current livestock grazing patterns as well as the state's jurisdictional authority over wildlife, leaving existing water rights largely undisturbed, using grandfather provisions to protect valid existing rights, and limiting motorized access, just as in the Grand Staircase-Escalante plan. ⁵³

Large chunks of public land are included within the various new monument boundaries, though none approach the Grand Staircase-Escalante in sheer size. The new Grand Canyon-Parashant National Monument, for example, protects over one million acres of public land. In most instances, the new monuments are designed to achieve scientific preservation objectives,

⁵⁰ Unfortunately, a recent drought has precipitated an ugly confrontation between the BLM and two of its grazing permittees who have refused to remove their cattle from the Monument despite a BLM grazing closure order, which has tested the agency's resolve as well as its relationships with area ranchers. Julie Cart, *Amid Drought, A Range War Erupts in Utah Over Grazing Restrictions*, L.A. Times A5 (Dec. 26, 2000); Brent Israelson, *Ranchers and Sheriff Defy Feds: Take Back Seized Herd of Cattle*, Salt Lake Trib. C1 (Nov. 9, 2000); Donna Kemp, *Feds Start Roundup of Trespassing Cattle in Grand Staircase*, Deseret News B7 (Oct. 17, 2000); Sally Wisely, *State Director Sally Wisely Speaks Out* <<http://www.ut.blm.gov/cattle/ctlspeechdec7.html>> (accessed Feb. 8, 2001).

⁵¹ Jim Woolf, *Leavitt Takes On Dirt Road Ownership; Governor Promises A Massive Lawsuit to Resolve the Thorny Issue Once and For All*, Salt Lake Trib. A1 (March 17, 2000).

⁵² Robert B. Keiter, *Change Comes to the Public Lands: New Forces, Directions, and Policies*, 46 Rocky Mt. Mineral L. Inst. 3 1 (2000); see generally, Jan G. Laitos & Thomas A. Carr, *The Transformation on Public Lands*, 26 *Ecology L. Q.* 140 (1999); Joseph L. Sax, *Perspectives Lecture: Public Land Law in the 21st Century*, 45 Rocky Mt. Mineral L. Inst. 1 1 (1999).

⁵³ See e.g. Establishment of the Agua Fria National Monument, Exec. Procl. 7263, 65 Fed. Reg. at 2817; Establishment of the Grand Canyon Parashant National Monument, Exec. Procl. 7265, 65 Fed. Reg. at 2825.

as understood in current ecological and cultural landscape conservation terms. The [*531] focus is on protecting relatively large landscapes, not just specific biological or cultural sites, which is the only effective means for meeting longterm biodiversity and cultural conservation objectives. In some instances, like both the Grand Staircase-Escalante and Grand Canyon-Parashant designations, the new national monuments have effectively expanded the unprotected boundaries of already-preserved national park lands, thus buffering these sensitive enclaves. With these expansive designations, the opportunity exists to absorb important endangered species and biodiversity conservation obligations on federal lands, and thus perhaps relieve some of the pressure that the Endangered Species Act⁵⁴ generates on private lands.

By vesting the BLM with management responsibility for this new array of national monuments, the Clinton administration has evidently sought to turn this often-maligned agency in a new direction—one that has resource preservation as an important part of its agenda. Secretary of the Interior Babbitt, noting that for fifty years each new national monument created in the West involved turning choice BLM lands over to the National Park Service to manage, expressly challenged the BLM to "show it is committed to, and capable of delivering on the conservation part of its existing legal mandate."⁵⁵ He envisioned a "new BLM" that has "at its core a system of specially protected and managed conservation units, including landscape Monuments and National Conservation Areas . . . a system that stands proudly alongside parks and refuges as part of our national heritage."⁵⁶ The BLM has responded by aggregating its special conservation areas into a new National Landscape Conservation System that totals over forty million acres of public land.⁵⁷ We may, therefore, be witnessing the "greening" of the BLM and the creation of an important new landscape-based conservation system. How the agency handles its new responsibilities and how well it integrates these protected lands into its overall resource management agenda will reveal whether this new system represents a true conservation legacy.

In our system of governmental checks and balances, the president does not always have the final word. In this instance, the president's authority derives from the Antiquities Act, which means Congress can always deprive the president of this power or override his designation decisions. (On rare occasions Congress has, in fact, reversed a presidential national monument decision, but only after the designation proved too small or inconsequential to stand.) In the aftermath of the Grand Staircase-Escalante designation, several bills were introduced in Congress [*532] to eliminate or limit the president's Antiquities Act powers, but none has yet passed.⁵⁸ Congress also has taken no action to decertify the Monument; rather, it appropriated funds for the Monument planning process, made minor boundary adjustments, and quickly ratified the negotiated land exchange involving the state school trust land inholdings. Moreover, Congress has itself created new BLM-managed national monuments and national conservation areas, such as the Colorado Canyons National Conservation Area and the Santa Rosa and San Jacinto Mountains National Monument.⁵⁹ Historically, Congress has regularly converted presidentially-created national monuments into fully protected national parks, which is the case with Zion, Arches, Capitol Reef, and Bryce Canyon national parks in Utah, as well as the Grand Canyon and Grand Teton national parks, to name a few. This does not mean that Congress will never alter the Act or tamper with some of the new presidential designations, but the general landscape preservation theme of these new designations is remarkably consistent with much of what Congress has actually been doing itself.

Beyond Congress, the courts have yet to be heard from on the new national monument designations. Two lawsuits are pending in federal court challenging the Grand Staircase-Escalante designation, and others have been filed challenging the new

⁵⁴ 16 U.S.C. § 1531 (1994).

⁵⁵ See Bruce Babbitt, Sec. of Int., Remarks, BLM Interactive Town Hall Meeting (Phoenix, Ariz., Mar. 24, 2000) <<http://www.doi.gov/news/archives/000324.html>> (accessed Feb. 8, 2001).

⁵⁶ Id.

⁵⁷ U.S. Dept. of Int., *supra* n. 4.

⁵⁸ See e.g. H.R. 4118, 104th Cong. (1996); H.R. 4242, 104th Cong. (1996); H.R. 4214, 104th Cong. (1996); H.R. 563, 104th Cong. (1995); see also Senate approves appropriation bill; Monuments rider barely killed, 25 Pub. Lands News 3 (July 21, 2000).

⁵⁹ Congress has also designated new National Wild and Scenic River segments, established new BLM wilderness areas (at least in California, Arizona, and Colorado), and funded the regional Interior Columbia Basin Ecosystem Management Project planning initiative, another landscape scale public land conservation and restoration project.

proclamations.⁶⁰ But the challengers face a tough road: The existing judicial precedent interpreting the Act indicates that the president has broad discretion in determining whether specific scientific or historical objects merit protection and in determining the size of new national monuments.⁶¹ And as to the argument that the Grand Staircase-Escalante and other national monument proclamations were inspired by political rather than scientific or historical considerations, the answer is evident: Of course there was an overt political element to the designation (which is true of virtually all public land allocation and management decisions), but do we really want the courts to begin invalidating presidential decisions on the basis of whether they are political in nature. If so, the courts will be overrun with lawsuits, and they will have a devilish time devising standards to ferret out forbidden political intent. In short, Congress--not the courts--is the place to resolve such political issues. [*533]

Following the 2000 presidential election, a new Republican administration now occupies the White House. Could the new president reverse these national monument designations? During the campaign, vice president candidate Dick Cheney suggested that a new Bush administration might consider such an action. But there is no explicit or implicit authority in the Antiquities Act to rescind a national monument designation, and no precedent for such a presidential action. Without an express delegation of authority, the courts have been loath to imply such powers under traditional administrative law doctrine, particularly in the public land arena absent a long tradition of such an exercise of executive power.⁶² Besides, why expend precious political capital on reversing a conservation decision that history indicates will pay long term national and local dividends?

In sum, we live in an era where conservation and democracy are inextricably linked. Both of these important values have been incorporated into the Grand Staircase-Escalante planning process, with what appear to be fruitful results that will benefit generations to come. By taking the long view, the BLM can learn from its Grand Staircase-Escalante planning experience, and use these lessons to shape a richer future on the public lands. It can begin building a true preservation legacy into the agency's culture.

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⁶⁰ Utah Assn. of Counties v. Clinton, No. 97 CV 479; Mt. Sts. Leg. Found. v. Clinton, No. 97 CV 863; Groups Say Clinton Exceeded His Authority With Monuments, 19 Land Ltr. 5 (Nov. 8, 2000).

⁶¹ See e.g. *Cameron v. U.S.*, 252 U.S. 450 (1920); *Wyo. v. Franke*, 58 F. Supp. 890 (D. Wyo. 1945).

⁶² See *Milk Indus. Found. v. Glickman*, 949 F. Supp. 882, 891 (D.D.C. 1996). But see *Midwest Oil Co. v. U.S.*, 236 U.S. 459 (1915) (sustaining an implicit presidential withdrawal power for public lands based on longstanding practices and repeated congressional acquiescence); see generally James R. Rasband, The Future of the Antiquities Act, 21 J. Land, Resources, & Envtl. L. 619 (2001).