

CRS Report for Congress

Received through the CRS Web

National Monuments and the Antiquities Act: President Clinton's Designations and Related Issues

Updated June 28, 2001

Carol Hardy Vincent
Specialist in Natural Resources Policy
Resources, Science, and Industry Division

Pamela Baldwin
Legislative Attorney
American Law Division

National Monuments and the Antiquities Act: Recent Designations and Issues

Summary

President Clinton used the Antiquities Act of 1906 (16 U.S.C. §§431-433) to create 19 new national monuments and enlarge 3 others. All but one of the designations were made during President Clinton's last year in office. The new monuments range in size from 2 acres to nearly 1.9 million acres. The 22 monuments created or enlarged by President Clinton total about 5.9 million acres, the second largest acreage of any President, and only President Franklin D. Roosevelt used his authority more often (on 28 occasions vs. 22 for President Clinton).

The Antiquities Act authorizes the President to create national monuments on federal lands that contain historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest. The President is to reserve "the smallest area compatible with the proper care and management of the objects to be protected." The Act was designed to quickly protect federal lands and resources, and Presidents have proclaimed about 120 monuments totaling about more than 70 million acres. Congress has modified many of these, has created monuments itself, and about a dozen times has abolished presidentially created monuments.

Presidential establishment of monuments sometimes has been contentious, e.g., President Franklin Delano Roosevelt's creation of the Jackson Hole National Monument in Wyoming (1943) and especially President Carter's massive Alaskan withdrawals (1978). Monuments created by President Clinton also have generated criticisms centering on the size and the types of resources protected; the level and types of threats to areas; the inclusion of non-federal lands within monument boundaries; effects on land uses; the agency that manages the monuments; the constitutionality of the Act; and consistencies of the Act with the withdrawal, public participation, and environmental review aspects of other laws. Opponents have sought to revoke or limit the President's authority to proclaim monuments, or to impose environmental studies and consultation procedures, among other changes. Supporters favor the Act in its present form, as applied by Presidents for nearly a century, and note that many past designations that initially were controversial have come to be supported. They contend that the President needs continued authority to promptly protect valuable resources on federal lands that may be threatened.

President Clinton selected the Bureau of Land Management (BLM) to manage many of the monuments, but other agencies were assigned to manage monuments as well. Monuments typically are established or enlarged subject to valid existing rights, which would allow existing rights to continue, e.g., development of valid existing mineral rights. In general, land uses may continue if they are not barred by the proclamations and do not conflict with monument purposes. Usually the proclamations and supporting documents do address land uses. Many of the new monuments bar *new* mining claims and mineral and energy leases, as well as motorized vehicle use off-road, although grazing often is allowed. In some cases, water rights have been reserved for the federal government, while in others water rights are expressly *not* reserved. Monument management plans, to be developed with public participation, also will elaborate on land use regulation.

Contents

Introduction	1
The Antiquities Act of 1906	3
Monument Issues and Controversies	4
Monument Size	5
Objects Protected	7
Level and Type of Threat	7
Inclusion of Non-Federal Lands	8
Effects on Land Use	9
“Consistency” of Antiquities Act with NEPA and FLPMA	10
Monument Management	11
Other Legal Issues	13
Land Uses in Recently Designated Monuments	15
Mineral Development	16
Withdrawals Preserved	17
Grazing	17
Timber	18
Water Rights	19
Fish and Wildlife	20
Off-Road Vehicle Use	21
Synopsis	22
Appendix: Chronology of Monuments Established or Enlarged During the Clinton Administration	23
September 18, 1996	23
Grand Staircase-Escalante	23
January 11, 2000	23
Agua Fria	24
California Coastal	24
Grand Canyon-Parashant	24
Pinnacles	24
April 15, 2000	25
Giant Sequoia	25
June 9, 2000	25
Canyons of the Ancients	25
Cascade-Siskiyou	26
Hanford Reach	26
Ironwood Forest	26
July 7, 2000	26
President Lincoln and Soldiers’ Home	27
November 9, 2000	27
Craters of the Moon	27
Vermilion Cliffs	28
January 17, 2001	28
Buck Island Reef	28

Carrizo Plain	29
Kasha-Katuwe Tent Rocks	29
Minidoka Internment	29
Pompeys Pillar	29
Sonoran Desert	30
Upper Missouri River Breaks	30
Virgin Islands Coral Reef	30
January 19, 2001	30
Governors Island	30

National Monuments and the Antiquities Act: Recent Designations and Issues

Introduction¹

Presidential establishment of national monuments under the Antiquities Act of 1906 (16 U.S.C. §§431 *et seq.*) has protected valuable sites, but also sometimes has been controversial. Displeasure with President Franklin Roosevelt's proclaiming of the Jackson Hole National Monument in Wyoming (1943) prompted litigation on the extent of presidential authority under the Antiquities Act, as well as a 1950 law to prohibit future establishment of national monuments in Wyoming except as authorized by Congress. President Carter's Alaska withdrawals (1978) also were challenged in the courts and led to a statutory requirement of congressional approval for withdrawals in Alaska larger than 5,000 acres.² President Clinton's proclamation of the Grand Staircase-Escalante National Monument (1996) triggered several lawsuits, a law authorizing land exchanges, and proposals to amend or revoke presidential authority under the Antiquities Act.³ Yet, initial opposition to some monument designations turned to support over time. Some controversial monuments later were enlarged and redesignated as national parks by Congress, and today are popular parks with substantial economic benefit to the surrounding communities. For instance, the Jackson Hole National Monument was expanded and redesignated as the Grand Teton National Park.

¹For additional information on national monuments, including 107th Congress issues and legislation: see CRS Report RS20902, *National Monument Issues* and CRS Issue Brief IB10076, *Public (BLM) Lands and National Forests*. Additional CRS reports on national monuments include RS20647, *Authority of a President to Modify or Eliminate a National Monument*; 98-993 ENR, *Grand Staircase-Escalante National Monument*; RS20602, *Presidential Authority to Create a National Monument on the Coastal Plain of the Arctic National Wildlife Refuge*; and RS20625, *Provisions on National Monuments and the Interior Columbia Basin Ecosystem Management Project in the FY2001 Department of the Interior Appropriations Bill*. CRS Congressional Distribution Memoranda include: *Legal Issues Raised by the Designation of the Grand Staircase-Escalante National Monument*, by Pamela Baldwin, December 13, 1996 and *Designation of Part of Governors Island as a National Monument*, by Pamela Baldwin and Morton Rosenberg, May 22, 2001.

²These provisions were enacted as part of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), P.L. 96-487; see 16 U.S.C. §3213.

³Proc. 6920, September 18, 1996; 61 *Fed. Reg.* 50223 (September 24, 1996). This monument initially was reported at 1.7 million acres, but was recalculated by BLM and also modified acts of Congress (P.L. 105-335 and P.L. 105-355). Its current acreage is estimated at 1,870,800 federal acres.

President Clinton created 19 new monuments and enlarged 3 others.⁴ Most of the monuments were created (or enlarged) during President Clinton's last year in office, except the Grand Staircase-Escalante National Monument (UT), which was proclaimed on September 18, 1996. On January 11, 2000, President Clinton issued proclamations creating three new monuments and expanding an existing one. The new ones are the Agua Fria National Monument (AZ), the California Coastal National Monument (CA), and the Grand Canyon-Parashant National Monument (AZ). The enlarged monument is the Pinnacles National Monument (CA). On April 15, 2000, President Clinton created another new monument, the Giant Sequoia National Monument (CA). On June 9, 2000, he established four: Canyons of the Ancients National Monument (CO), Cascade-Siskiyou National Monument (OR), Hanford Reach National Monument (WA), and Ironwood Forest National Monument (AZ). On July 7, 2000, President Clinton created the President Lincoln and Soldiers' Home National Monument (DC). On November 9, 2000, he significantly expanded the Craters of the Moon National Monument (ID) and created the Vermilion Cliffs National Monument (AZ).

On January 17, 2001, the President expanded the Buck Island Reef National Monument (VI) and created seven others: Carrizo Plain (CA), Kasha-Katuwe Tent Rocks (NM), Minidoka Internment (ID), Pompeys Pillar (MT), Sonoran Desert (AZ), Upper Missouri River Breaks (MT), and Virgin Islands Coral Reef (VI). Lastly, on January 19, 2001, President Clinton created the Governors Island National Monument (NY).⁵

The Clinton Administration cited frustration with the slow pace of legislated land protection as justification for the President to create these national monuments. President Clinton's Secretary of the Interior, Bruce Babbitt, stated that President Clinton used his authority under the Antiquities Act to designate additional monuments where areas of interest to the Clinton Administration were not being protected through the legislative process.

Several of the new monuments were described as "national landscape monuments" by Secretary Babbitt.⁶ National landscape monuments evidently would protect integrated landscapes and ecosystems that are "distinct and significant," in contrast with earlier monuments, which Secretary Babbitt called "curiosities" that stand out from the landscape because of their beauty or geographic or historical value. Some plaintiffs have challenged whether the President has authority to accomplish these management goals through the creation of national landscape monuments, given

⁴This report focuses on monuments created by President Clinton under the Antiquities Act. National monuments amended or created by law during President Clinton's tenure in office, such as the Santa Rosa and San Jacinto Mountains National Monument (created by P.L. 106-351), are not discussed.

⁵For details on each monument, including its location, size, resources, and management agency, see Appendix I of this report.

⁶Much of the description in this section is derived from remarks of Interior Secretary Bruce Babbitt at the University of Denver Law School on February 17, 2000, available on the website of the Department of the Interior at [<http://www.doi.gov/news/000222b.html>].

the language in the Antiquities Act regarding protecting “objects” and limiting the size of monuments.

Secretary Babbitt sought to create national landscape monuments on BLM lands and to have BLM continue to administer the lands. The Secretary sought to develop the BLM’s role in land protection, broadening the agency’s traditional focus on mining and grazing and other extractive land uses. To this end, on June 19, 2000, the BLM announced the creation of a national landscape conservation system, comprised of the agency’s national monuments, conservation areas, wilderness areas, wilderness study areas, wild and scenic rivers, scenic trails, historic trails, and other areas.⁷ Approximately 39,000,000 acres are in this “system,” approximately 15% of all land BLM administers. According to BLM statements, incorporating these units into a system will give them greater recognition, management attention, and resources.

Secretary Babbitt contrasted national landscape monuments with National Park System units administered by the Park Service. Landscape monuments were intended to serve outdoor recreationists but would not accommodate large numbers of visitors. They were to lack visitor centers, guides, overnight accommodations, and fees, so that they would present “an adventure” for visitors. Land uses would not be as restricted as in units of the Park System, although Secretary Babbitt stated that “destructive and incompatible uses” would be barred.

The Antiquities Act of 1906

The Antiquities Act of 1906 authorizes the President to proclaim national monuments on federal lands that contain “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.” The President is to reserve “the smallest area compatible with the proper care and management of the objects to be protected” (16 U.S.C. §431). Congress subsequently limited the President’s authority by requiring congressional authorization for extensions or establishment of monuments in Wyoming (16 U.S.C. §431a), and by making all withdrawals in Alaska exceeding 5,000 acres subject to congressional approval (16 U.S.C. §3213).

The Antiquities Act was a response to concerns over theft from and destruction of archaeological sites, and was designed to provide an expeditious means to protect federal lands and resources. President Theodore Roosevelt used the authority in 1906 to establish Devil’s Tower in Wyoming as the first national monument. Fourteen of the 18 Presidents since 1906 have created about 120 monuments in total, including Grand Canyon, Grand Teton, Zion, Olympic, Statue of Liberty, and Chesapeake and Ohio Canal.⁸ Many areas initially designated as national monuments were later made

⁷See U.S. Dept. of the Interior, Bureau of Land Management, *BLM Creates National Landscape Conservation System, Fry Announces*, June 19, 2000, on BLM’s website at [http://www.blm.gov/nhp/news/releases/pages/2000/pr000619_NCLS.htm].

⁸Monuments created by Presidents from 1906 through 1999 are listed chronologically in:
(continued...)

into national parks. President Clinton used his authority under the Antiquities Act 22 times to proclaim 19 new monuments and to enlarge 3 others, with a total federal acreage of approximately 5.9 million acres. Only President Franklin Delano Roosevelt used his authority more often — on 28 occasions — and only President Jimmy Carter proclaimed more monument acreage — 56 million acres of land in 17 units in Alaska.⁹

Congress, too, may create national monuments on federal lands, and has done so on many occasions. Supporters of congressional, rather than presidential, action note that Congress is unlimited in its authority to custom-craft legislation to suit a particular area. For instance, Congress could allow more land uses than is typical for national monuments created by the President, for example by allowing new commercial development, or it can afford additional protection. Some observers advocate legislation (as opposed to presidential action) as more likely to involve the input of local and other citizens.

Congress also has modified monuments (including those created by the President), for instance, by changing their boundaries. Congress has abolished some monuments outright and converted others into different protective designations, such as national parks. About half of the current national parks were first designated as national monuments. Further, Congress has enacted legislation to establish a variety of other protected areas. Some recent measures reportedly were pursued as alternatives to monument designations.

Monuments vary widely in size. While more than half of the presidentially proclaimed monuments initially involved less than 5,000 acres, they have ranged from less than 1 to nearly 11 million acres. The largest monument (the Wrangell-St. Elias National Monument, now a national park and national preserve) was created as part of President Carter's 1978 Alaska withdrawals. About 10% of all federal land — more than 70 million acres — has at one time been protected under the Antiquities Act.¹⁰

Monument Issues and Controversies

President Clinton's monument proclamations generated concerns among some Members of Congress, state and local officials, user groups, and others regarding

⁸(...continued)

House Committee on Resources, Subcommittee on National Parks and Public Lands, Hearings on *H.R. 1487, The National Monument NEPA Compliance Act*, 106th Cong., 1st sess., 17 June 1999, 24-44. Presidentially-proclaimed monuments, organized by President, are listed in: Sen. Don Nickles, remarks in the Senate, *Congressional Record*, daily ed., 146 (17 July 2000): S7030-S7032. Information on monuments created by both the President and Congress is contained in the notes following 16 U.S.C. §431.

⁹Congress rescinded these withdrawals and reestablished most of the lands as national monuments or other protective designations (such as national parks or national preserves) in §1322 of the Alaska National Interest Lands Conservation Act (ANILCA, P.L. 96-487).

¹⁰Most of this acreage is no longer in monument status because it has been included by Congress in other protective designations, primarily through enactment of ANILCA.

presidential authority to create monuments. Recent criticisms and controversies in Congress have challenged the size of the areas and types of resources protected, and the authority and procedures for monument designation. Criticism has been expressed by those who oppose restrictions on land uses, both extractive (e.g., mining) and recreational (e.g., off-road vehicle use), as a result of monument proclamations. Critics also perceive a lack of consistency between the Antiquities Act and the policies established in other laws, especially the land withdrawal provisions of the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. § 1701 *et seq.*),¹¹ the environmental reviews required by the National Environmental Policy Act (NEPA, 42 U.S.C. § 4321 *et seq.*), and the public participation requirements of NEPA, FLPMA, and other laws.

Among the measures considered during recent Congresses were bills to impose restrictions on presidential authority, such as to limit the size or duration of withdrawals; prohibit or restrict withdrawals in particular states; encourage public participation in the monument designation process; revoke the President’s authority to designate monuments or require congressional approval of some or all monument designations; and promote presidential creation of monuments in accordance with certain federal land management and environmental laws. Measures also were introduced to change land uses within monuments and to alter monument boundaries.

Supporters of the Antiquities Act assert that changes to the Act are neither warranted nor desirable. They contend that previous Congresses that focused on this issue were correct in not repealing the Antiquities Act, and that the courts have been generally supportive of presidential actions under the Act. They further claim that Presidents of both parties have used the authority for nearly a century to expeditiously protect valuable federal lands and resources, and they defend the President’s ability to take prompt action to protect areas that may be vulnerable to looting, vandalism, commercial development, and other real or perceived dangers. Because it can provide instant protection to areas, the Antiquities Act is supported as avoiding possibly speculative establishment of rights that could be costly for the government to buy out following slower designation processes. While the Secretary of the Interior can make temporary emergency withdrawals of BLM lands,¹² there is no comparable authority with respect to national forest lands or other federal lands. Defenders also note that some past designations that initially were contentious have come to be widely supported over time. They contend that large segments of the public support land protection, such as through monument designations, for the recreational and economic benefits that such designations often bring.

Monument Size

In establishing a national monument, the President is required by the Antiquities Act to reserve “the smallest area compatible with the proper care and management of the objects to be protected” (16 U.S.C. §431). Many monuments have been quite

¹¹This law applies primarily to the lands managed by the Bureau of Land Management (BLM) and actions taken by the Secretary of the Interior, although some provisions also apply to the lands managed by the Forest Service and the Secretary of Agriculture.

¹²43 U.S.C. § 1714.

small, but several Presidents have established large monuments. Examples of large monuments include Katmai, established in 1918 with 1,088,000 acres; Glacier Bay, created in 1925 with 1,379,316 acres; most of the Alaska monuments proclaimed in 1978, the largest being Wrangell-St. Elias with 10,950,000 acres; and Grand Staircase-Escalante, established in 1996 with approximately 1,900,000 acres.

The proclamations for all 22 of the monuments created or enlarged by President Clinton repeat the language of the Antiquities Act, that the acreage reserved is the “smallest area compatible with the proper care and management of the objects to be protected.” These proclamations range in size from 2 acres to 1,870,800 acres. Supporting documents for some of the larger recent monuments assert that the lands surrounding the identified objects are included to maintain the relationships among the objects and the remoteness that allows them to exist. Also mentioned are that biological objects need the preservation of an entire ecosystem, and that management of a series of discrete sites is more difficult than managing a larger, contiguous area.

Critics assert that large monuments violate the Antiquities Act, in that the President’s authority regarding size was intended to be narrow and limited. They charge that Congress intended the Act to protect specific items of interest, especially archaeological sites and the small areas surrounding them. They support this view with the legislative history of the Act, in which proposals to limit a withdrawal to 320 or 640 acres were mentioned but not enacted. They contend that some of the monument designations were greater than needed to protect particular objects of value.

Defenders argue that the Antiquities Act gives the President discretion to determine the acreage necessary to ensure protection of the resources in question, which can be a particular archaeological site or larger features or resources. The Grand Canyon, for example, originally was a national monument measuring 0.8 million acres; President Theodore Roosevelt determined that this large size was necessary to protect the “object” in question — the canyon. Defenders also note that after considering the issue in the early 1900s, Congress deliberately rejected proposals to restrict the President’s authority to set the size of the withdrawal. Further, they assert that preserving objects of interest may require withdrawal of sizeable tracts of surrounding land to preserve the integrity of the objects and the interactions and relationships among them.

The courts generally have deferred to the President’s judgment as to proper size. However, the case law on this subject is not extensive, and it is uncertain what conclusion a court might reach in any particular case in the future.¹³

¹³For more information on cases on monument size and other legal issues, see CRS Congressional Distribution Memorandum, *Legal Issues Raised by the Designation of the Grand Staircase- Escalante National Monument*, by Pamela Baldwin, December 13, 1996. The memorandum addresses the types of objects protected, designation procedures, BLM as monument manager, and whether non-NPS management may constitute a reorganization requiring congressional approval.

Objects Protected

Under the Antiquities Act, the President can establish monuments on federal land containing “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.” Some proclamations have identified particular objects needing protection, while others have referred more generally to scenic, scientific, or educational features of interest.

Some critics assert that because the original purpose of the Act was to protect specific objects, particularly objects of antiquity such as cliff dwellings, pueblos, and other archeological ruins (hence the name “Antiquities Act”), Presidents have used the Act for impermissibly broad purposes, such as general conservation, recreation, scenic protection, or protection of living organisms. These purposes, they argue, are more appropriate for a national park or other designation established by Congress. Supporters of current presidential authority counter that the Act does not limit the President to protecting ancient relics, and maintain that “other objects of historic or scientific interest” is broad wording that grants considerable discretion to the President.

A review of legal challenges on this issue shows a general deference to presidential determinations of objects appropriate for protection. The Supreme Court upheld the creation of the Grand Canyon National Monument in apparent agreement with the President’s assertion that the Grand Canyon “is an object of unusual scientific interest.”¹⁴ However, in another case a lower court did note *in dicta* (that is, not as part of the holding, and hence not precedent) that there might be circumstances in which a President might be held to have exceeded his authority.¹⁵ Thus, the outcome of any future legal challenge in this area is not certain.

Level and Type of Threat

Presidents sometimes have cited threats to resources (e.g., natural and cultural) to support establishing monuments, although imminent threat is not expressly required by the Antiquities Act. In his remarks designating the Grand Staircase-Escalante National Monument, for instance, President Clinton expressed concern about work underway for a large coal mining operation that, he asserted, could damage resources in the area. Sometimes the noted threats appear less immediate, as for the lands included in the Grand Canyon-Parashant Monument (proclaimed January 11, 2000) which “could be increasingly threatened by potential mineral development,” according to the Administration. In other cases, threats were reported by the press. One press report, for instance, stated that the National Trust for Historic Preservation had

¹⁴*Cameron v. United States*, 252 U.S. 450, 455-456 (1920).

¹⁵*Wyoming v. Franke*, 58 F. Supp. 895 (D. Wy. 1945). In this case, the court indicated that if there were an instance where there was no evidence of a substantial character that an area contained objects of historic or scientific interest, the creation of a monument by a President could be found to be “arbitrary and capricious and clearly outside the scope and purpose of the Monument Act.” However, the court noted that evidence from experts and others introduced at trial was sufficient to support a finding that there were objects of historic and scientific interest in the Jackson Hole National Monument.

identified the (now) President Lincoln and Soldiers' Home National Monument as one of the country's most endangered historic properties.

Presidential creation of monuments in the absence of immediate threats to resources troubles those who believe that the law is intended to protect objects that are endangered or threatened. They charge that Presidents have established monuments to support environmental causes, limit development, and score political gains, among other reasons. Those who contest these charges note that the Antiquities Act lacks a requirement that objects be immediately threatened or endangered. Others cite the pervasive dangers of development and growth, recreation, looting, and vandalism as sufficient grounds for contemporary presidential action.

Inclusion of Non-Federal Lands

In some cases, non-federal lands are contained within the outer boundaries of a monument, regardless of whether they are technically, or even expressly, excluded from it. The inclusion of state or private lands among federal lands within a monument's borders has been a source of controversy. The Clinton Administration has indicated that the monument designation does not apply to non-federal lands, because the Antiquities Act authorizes the President to proclaim monuments only on federal lands. As Solicitor of the Department of the Interior, John D. Leschy asserted this view in 1999 testimony before Congress, stating that the Antiquities Act applies only to federal lands and that monument designations cannot bring state or private lands into federal ownership.¹⁶ Nearly all of President Clinton's monument proclamations have stated that non-federal lands will become part of the monument if the federal government acquires title to the lands from the current owners. Whether lands could be condemned for monument purposes is not clear.

Others, however, note that while private or state-owned lands are technically not part of the monument, development of such land located within monuments is difficult because such development might be incompatible with the purposes for which the monument was created or constrained by management of the surrounding federal lands. A BLM interim monument management policy provides that activities on non-monument lands that damage the monument be reported "to the responsible management official for appropriate action."¹⁷ There is no elaboration on what might constitute appropriate action.

Monument supporters also note that if state or private land owners within a monument fear or experience difficulties, they can pursue land exchanges with the federal government. President Clinton's monument proclamations typically have authorized land exchanges to further the protective purposes of the monument. For

¹⁶See *infra* note 8, at 53 and 55.

¹⁷See U.S. Dept. of the Interior, Bureau of Land Management, *Interim Management Policy for Newly Created National Monuments*, Jan. 11, 2000, on BLM's website at [<http://www.az.blm.gov/interimgt.htm>]. The interim management policy was issued to provide guidance on managing BLM monuments pending completion of the planning process to develop particular management guidance for each monument.

the BLM-managed monuments, the agency is to consider not only land exchanges but land or easement acquisitions to enhance the purposes of the monuments, according to the interim management policy.

Effects on Land Use

Monument designation applies to federal lands, but in some cases designation may have implications for uses on non-federal lands. Designation can limit or prohibit existing or potential development or recreational uses. A common concern is that monument designation potentially could result in new constraints on development of existing mineral and energy leases, claims, and permits, as well as barring new leases, claims, and permits. There are fears that mineral activities may have to adhere to a higher standard of environmental review, and probably will have a higher cost of mitigation, to ensure compatibility with monument designation. The recent proclamations have protections for valid existing rights for land uses, but the extent to which designations may affect those rights is not yet clear. (See the discussion of mineral rights below.)

Another concern is actual or potential restriction on commercial timber cutting as a result of designation. For instance, future timber production is expressly precluded in the Giant Sequoia National Monument, although certain current logging contracts can be implemented. Some argue that restrictions are needed to protect the environmental, scenic, and recreational attributes of forests. Logging supporters assert that forests can be used sustainably and that concerns raised by environmentalists as grounds for limiting commercial timber operations do not reflect modern forestry practices.

Other concerns have included the possible effects of monument designation on grazing, hunting, and off-road vehicle use. Some of President Clinton's proclamations have restricted such activities to protect monument resources, and the monument management plans being developed for the new monuments may result in additional restrictions. For instance, some private citizens who use public lands for grazing cattle or extracting minerals have claimed that their activities have been restricted and that they have suffered economically as a result.

States and counties frequently have viewed restrictions on federal lands in their jurisdictions as threats to economic development. They argue that local communities are hurt by the loss of jobs and tax revenues that result from prohibiting/restricting future mineral exploration, timber development, or other activities. Some argue that limitations on energy exploration could leave the United States more dependent on foreign oil.

Advocates of creating monuments claim there are positive economic impacts resulting from designation, including increased tourism, recreation, and the relocation of businesses and people which may exceed the benefits of traditional economic development. Others allege that the public interest value of environmental protection outweighs any economic benefit that could have resulted from development. Some maintain that development is insufficiently limited by monument designation, through the preservation of valid existing rights for particular uses, such as grazing and

mining, and that the restrictions on future use should be tighter. Areas need to be left intact for future generations, they argue.

“Consistency” of Antiquities Act with NEPA and FLPMA

The Federal Land Policy and Management Act of 1976 (FLPMA) authorizes the Secretary of the Interior to make certain land withdrawals under specified procedures. It requires congressional review of withdrawals that exceed 5,000 acres, but in a manner that is likely to be considered an unconstitutional “legislative veto” under the ruling in *Immigration and Naturalization Service v. Chadha*.¹⁸ FLPMA also contains notice and hearing procedures for withdrawals by the Secretary of less than 5,000 acres. In enacting FLPMA, Congress not only imposed limits on the ability of the Interior Secretary to make withdrawals, but repealed much of the express and implied withdrawal authority previously granted to the President by several earlier laws.

Critics of the Antiquities Act argue that it is inconsistent with the intent of FLPMA to restore control of public land withdrawal policy to Congress. They assert that Congress is the appropriate body to make and implement land withdrawal policy and that Congress intended to review and retain veto control over all executive withdrawals exceeding 5,000 acres. Legislation to abolish the President’s authority to create national monuments, or to require congressional approval of presidential recommendations for national monuments, was considered in recent Congresses. Challengers to this view note that Congress, in enacting FLPMA, did not repeal or amend the Antiquities Act despite extensive consideration of all executive withdrawal authorities. They argue it was the clear intent of Congress to retain presidential withdrawal authority under the Antiquities Act.

Similarly, critics note that recent monuments were proclaimed by President Clinton without the environmental studies required of agencies for “major federal actions” under the National Environmental Policy Act (NEPA), or the opportunities for public participation that NEPA, FLPMA, and other land management laws provide. Here, too, it can be noted that the statutes in question do not pertain to the actions of a President under the Antiquities Act (as opposed to an action of an agency) and that the Antiquities Act is silent as to the procedures a President must follow to proclaim a new monument. Some urge that procedures for environmental review and public participation should be added to the monument designation process so that significant withdrawals (with resulting effects on existing uses) would not be made without scientific, economic, and public input. Legislative proposals of this sort were considered in the past few Congresses.

Others counter that such changes would impair the ability of the President to take action quickly to protect objects and lands, thereby avoiding possible damage to the resources and the possible speculative establishment of rights.¹⁹ They assert that

¹⁸462 U.S. 919 (1983).

¹⁹The *status quo* of BLM-managed lands could be maintained because §204(e) of FLPMA (43 U.S.C. 1714(e)) authorizes the Secretary to temporarily withdraw BLM lands for a period of up to two years. Comparable authority does not exist with respect to lands managed by
(continued...)

participation requirements are not needed in law because Presidents typically consult with government officials and the public before establishing monuments. Further, they charge that NEPA applies to proposed actions that might harm the environment, not to protective actions such as monument designation. Some believe that NEPA requirements are unnecessary for monument designation because once monuments are created, detailed management plans are developed in accordance with NEPA.²⁰

Monument Management

Although most monuments now are managed by the National Park Service (NPS), Congress has created some monuments that are managed by other agencies. In 1996, President Clinton created the Grand Staircase-Escalante National Monument and assigned its management to BLM, the first such area administered by BLM. President Clinton subsequently selected BLM as exclusive manager of more new monuments. In other cases, monument management is being conducted jointly by BLM and another agency. For instance, President Clinton chose BLM and NPS to jointly manage two monuments. The President also chose other agencies to manage monuments, solely or jointly, including the Forest Service, Fish and Wildlife Service, Department of Energy, and Department of Defense.

In creating new monuments, President Clinton often retained as monument manager the agency that was administering the lands before the monument designation. In two of the proclamations that expanded monuments, President Clinton made management changes. The Pinnacles expansion lands were transferred from the BLM to the NPS, because the existing Pinnacles Monument was being managed by the NPS. For the Craters of the Moon National Monument expansion, President Clinton chose the NPS as primary manager of some of the lands that had been under BLM jurisdiction. For the two marine monuments — Buck Island Reef and Virgin Islands Coral Reef — the President assigned management to the NPS. Further, although the Bureau of Reclamation owns the land within Minidoka Internment, President Clinton required the Secretary of the Interior to transfer administration of the monument to the NPS. Finally, President Clinton selected the NPS to manage Governors Island, in consultation with the Administrator of the General Services Administration (GSA), although existing law (P.L. 105-33, §9101) requires the GSA to sell the land.²¹

The Clinton Administration had expressed interest in having BLM manage monuments created on its lands, and in increasing the emphasis of the agency on land protection. The BLM also may have been chosen to manage several of the new

¹⁹(...continued)
other agencies.

²⁰Proposals to address the issues raised in this section, primarily those considered during the 106th Congress, are covered below under “Legislative Activity.”

²¹For a discussion of the legal issues associated with the creation of the monument and the sale of the land, see CRS Congressional Distribution Memorandum, *Designation of Part of Governors Island as a National Monument*, by Pamela Baldwin and Morton Rosenberg, May 22, 2001.

monuments because the lands were intended to be both protected and managed for multiple uses. Multiple uses include recreation; range; timber; minerals; watershed; fish and wildlife; and protecting scenic, scientific, and historical values. Mineral development, timber, and hunting are the principal uses that would be compatible with BLM management but generally not with NPS management. All the BLM-managed monuments protect valid existing rights, which would allow development of existing mineral rights. Except for Canyons of the Ancients, they also preclude establishment of *new* mineral and energy rights, and hence are similar to NPS units in that respect. The Canyons of the Ancients Monument allows new oil and gas leasing and development under certain circumstances. Grazing is another land use typically allowed on BLM lands, but often precluded on NPS lands even though it is allowed under statute.²²

It could be argued that having BLM manage monuments, rather than NPS, generally allows for more flexible management. That is, under the BLM interim management policy, uses generally would be permitted unless shown to be detrimental to the monuments. In NPS units, uses are more likely to be prohibited unless shown to be beneficial. Some critics have expressed concern that the BLM lacks sufficient expertise or dedication to land conservation to be charged with monument management.

The President's authority to choose a management agency other than NPS has been questioned. Before 1933, monuments were managed by different agencies, including the War Department and the Department of Agriculture. In 1933, President Franklin D. Roosevelt, by Executive Order 6166, consolidated management of national monuments in the NPS. Most, and possibly all, existing monuments were transferred to the NPS, and no monuments presidentially created between 1933 and 1978 were managed outside the NPS. Two of the Alaska monuments created by President Carter in 1978 were managed by the Forest Service (which is in the Department of Agriculture), and two were managed by the Fish and Wildlife Service (FWS). Management by FWS does not appear to have been contentious. However, assigning management of the two Alaska monuments to the Forest Service was controversial, and the NPS and the Department of Agriculture agreed to enter into a memorandum of understanding on managing the monuments. The two monuments subsequently were given statutory approval (in ANILCA) for Forest Service management.

A 1980 Opinion from the Office of Legal Counsel (Department of Justice) appears to indicate that the President may have some flexibility in choosing the managers of post-1933 monuments.²³ Others assert too that the authority of the President under the Antiquities Act carries with it discretion to choose the managing agency. They contend that there is no exclusive authority for the NPS to manage monuments. However, critics argue that management by an agency other than NPS

²²As a general matter, grazing may be allowed in NPS units under 16 U.S.C. §3, unless it is prohibited by the statute creating the unit or the Secretary of the Interior finds grazing would be detrimental. In practice, grazing often is not allowed. However, some statutes authorizing park units specifically allow for grazing in these units.

²³4B Op. Off. Legal Counsel 396 (February 8, 1980).

is a transfer of part of the current functions of the NPS, and that the transfer of an agency function, especially to another department, constitutes a reorganization of government, and that the President currently lacks such reorganization authority. Some counter that establishing a new monument under another agency would not constitute a reorganization because management of current NPS units, and the general authority of the NPS to manage monuments, would be unaffected. Even if placing management authority under a department other than the Department of the Interior might constitute a reorganization, the President nevertheless might be able to move a function of the NPS to the BLM under congressionally approved authority allowing transfers of functions within the Department of the Interior (Reorganization Plan No. 3 of 1950). Some of the Clinton designations raise the issue of whether the President has authority to choose a management agency other than the NPS.

Other Legal Issues

The “Property Clause” of the Constitution (Article IV, sec. 3, cl. 2) gives Congress the authority to dispose of and make needful rules and regulations regarding property belonging to the United States. Some have asserted that the Antiquities Act is an unconstitutionally broad delegation of Congress’ power, because the President’s authority to create monuments is essentially limitless since all federal land has some historic or scientific value. Others believe the Act would be upheld if challenged on this basis because it has been in effect for so long and because courts have upheld other broad delegations of property authority; for example, the Mining Law of 1872, which allows state and local laws and customs to supplement federal law.

Several cases were filed challenging the 1996 designation of the Grand Staircase-Escalante National Monument on various grounds. The Utah Association of Counties (UAC) filed suit asking the court to set aside the proclamation on the grounds that: 1) President Clinton violated the Antiquities Act and the separation of powers doctrine by withdrawing public lands from the application of the mining laws and mineral leasing laws when Congress reserved this power to the Secretary of the Interior; 2) President Clinton exceeded his constitutionally delegated authority under the Act to achieve wilderness preservation of lands when Congress reserved that authority to itself; 3) President Clinton exceeded his authority under the Act to reserve only the “smallest area” compatible with protection of specific objects; 4) the chair of the Council on Environmental Quality failed to implement and enforce NEPA and worked with defendants Secretary Babbitt and the Department of the Interior to avoid complying with NEPA; and 5) Secretary Babbitt and the Interior Department violated federal law by recommending the creation of the monument without complying with procedures imposed by federal law.

A second suit was filed by the Utah Schools and Institutional Trust Lands Administration (SITLA). It alleged that President Clinton exceeded his authority under the Act and the Constitution when he created the monument; that the Interior Department violated FLPMA and NEPA during the course of designation; and that the withdrawal violated the Utah Enabling Act of 1894 and the “Equal Footing” doctrine, under which new states are admitted to the Union on a par with existing states.

The Mountain States Legal Foundation also filed suit alleging that the creation of the monument violated the Antiquities Act because 1) President Clinton did not confine the withdrawal to the smallest area compatible with the purpose; 2) President Clinton did not confine it to objects of scientific and historic interest; and 3) his actions were arbitrary and capricious in that he exceeded his authority under the Constitution. This suit also alleges that all defendants violated FLPMA, the Federal Advisory Committee Act, the Anti-Deficiency Act, and the Constitution.

The cases were consolidated, but the SITLA case was settled and has been dismissed. The others are being heard in the U.S. District Court for Utah, but have not moved very far toward decision. The United States asked the court to rule first on the question of whether Congress could be said to have ratified the creation of the monument through several enactments since its creation, e.g., those related to boundary adjustments and land exchanges. In the procedural context in which the issue was before the court, the court found Congress's actions insufficient to constitute ratification and declined to dismiss the case on that ground. The United States attempted to appeal on this issue before completion of the trial in the District Court, but the 10th Circuit denied this interlocutory appeal. There is no indication of when the lower court might rule on the other issues. An environmental group that was denied intervenor status has appealed that ruling.

A suit also was filed in the U.S. District Court for Arizona challenging the Grand Canyon-Parashant National Monument. It raised questions related to whether the monument might threaten to limit land use; prevent legislators from representing their constituents; reduce the accountability of governmental officials; and violate the equal protection aspects of the 14th Amendment. Plaintiffs sought to have the Antiquities Act declared unconstitutional and to require the President to follow constitutional disposal processes. The suit was dismissed on November 20, 2000, for lack of standing and for failure to state a claim on which relief could be granted.

Another suit was filed challenging the designations of Canyons of the Ancients, Cascade-Siskiyou, Hanford Reach, and Ironwood Forest. It claimed, without elaboration, that by creating these monuments and specifying certain management restrictions, President Clinton impermissibly took actions with respect to federal lands by exercising powers that are reserved to Congress under the Constitution.

A challenge²⁴ to the designation of Giant Sequoia National Monument asserts, among other counts, that the creation of the Giant Sequoia monument to protect “ecosystems” and “landscapes” was so lacking in specificity as to the objects protected that it either does not comport with the standards in the Antiquities Act, or the Act itself represents an unconstitutional delegation of the authority of Congress to manage the property of the United States (Article IV of the U.S. Constitution). Furthermore, the suit asserts, the land management restrictions in the Giant Sequoia Proclamation and related administrative documents violate the planning requirements of the National Forest Management Act (NFMA) and NEPA, as well as § 9 of the NFMA, which requires an act of Congress to return national forest lands to the public domain, which plaintiffs maintain is what the new management restrictions

²⁴Tulare County, *et al.*, v. Clinton, 1:00CV02560, (D.D.C.).

accomplish.²⁵ In addition, the suit claims that the Proclamation could not override a 1990 Agreement between the Forest Service and outside parties regarding the management of the Sequoia groves.

Land Uses in Recently Designated Monuments

This section provides a summary of selected land uses within the monuments created (or expanded) by President Clinton, focusing on the effect of monument designation on existing or potential development or recreational land uses. The presidential proclamations and accompanying Clinton Administration statements address land uses within the monuments. An interim management policy for all newly created BLM monuments, issued January 11, 2000, provides additional guidance for BLM monuments pending approval of a management plan for each monument under BLM's planning process.²⁶ The final management plan for Grand Staircase-Escalante, effective in February 2000, describes the objectives and actions for managing the monument.²⁷ Management plans for other monuments are underway, and in some cases their development has been controversial. Several of the proclamations direct that the management plans be completed within a specified time, e.g., 3 years.

The overriding management goal for all monuments is protection of the objects described in the proclamations. The amount of detail on land uses varies among the monuments. For instance, the proclamations for the Buck Island Reef, California Coastal, Governors Island, Minidoka Internment, Pompeys Pillar, President Lincoln and Soldiers' Home, and Virgin Islands Coral Reef Monuments generally do not address as many issues as the proclamations for other monuments. Some issues may not arise for these monuments given their distinctive characteristics, for instance, their small size or water-based nature. Most of the other monuments protect large parcels of on-shore land with diverse features.

Except for the proclamation for the President Lincoln and Soldiers' Home National Monument, the proclamations establish or enlarge the monuments subject to valid existing rights. Existing uses of the land that are not precluded by the proclamations, and do not conflict with the purposes of the monuments, generally may continue. Supporting documents for the BLM monuments state that the exercise of such rights could be regulated where necessary to protect a monument under BLM administration.

²⁵16 U.S.C. § 1609.

²⁶See *infra* note 17.

²⁷For more information on Grand Staircase-Escalante, see 1) U.S. Dept. of the Interior, Bureau of Land Management, *Grand Staircase-Escalante National Monument: Management Plan* (Cedar City, Utah: 2000); and 2) CRS Report 98-993, *Grand Staircase-Escalante National Monument*.

Mineral Development

The 22 proclamations issued by President Clinton withdrew monument lands from new mineral development generally. The proclamations state that such withdrawals are subject to valid existing rights, except that the proclamation for the President Lincoln and Soldiers' Home does not address valid existing rights. Subject to valid existing rights, most of the proclamations bar *new* mineral leases, mining claims, prospecting or exploration activities, and oil, gas, and geothermal leases by withdrawing the lands within the monuments from entry, location, selection, sale, leasing, or other disposition under the public land laws, mining laws, and mineral and geothermal leasing laws.

However, the proclamation for Canyons of the Ancients allows new oil and gas leasing (including carbon dioxide) under specified circumstances. In addition to continuing existing oil and gas leases, the Secretary may issue new leases only to promote conservation of oil and gas resources in any common reservoir being produced under existing leases, or to protect oil and gas resources against drainage.²⁸ In both Canyons of the Ancients and Upper Missouri River Breaks, the Secretary of the Interior is to manage oil and gas development, subject to valid existing rights, so as not to create any new impacts that interfere with the care and management of the monument.

These oil and gas leasing provisions were included because, at the time Canyons of the Ancients National Monument was created, about 85% of the monument's lands had been leased for oil and gas development and development was underway. Production primarily occurs on the McElmo Dome field, which contains carbon dioxide reserves, and the overlying Island Butte II, Cutthroat, and Canyon units, which produce natural gas, condensate, and oil. Supporting agency materials state that as production is completed, the area will be reclaimed, and there will be no new development thereafter. Production from current leases is estimated to last for 30 to 40 years.²⁹ For Upper Missouri River Breaks, more than 60,000 acres (16%) are covered by existing federal oil and gas leases. These leases include part of the LeRoy natural gas field that has been developed over the past few decades.

Agency materials provide information on energy development within other national monuments. For many of the monuments, there are no existing federal oil, gas, or mineral leases, but in some cases there is current development. Approximately 135,000 acres of Grand Staircase-Escalante currently are leased for oil and gas, and about 65,000 barrels of oil are produced annually from five active wells. There also are 6 federal oil and gas leases covering approximately 6,000 acres (3%) of the Carrizo Plain that are now producing commercial quantities of oil and gas; in 1999, more than 48,000 barrels of oil were produced.

²⁸New leases could promote conservation of the oil resources by more efficiently emptying an oil reserve and may be necessary to prevent drainage of the federal portion of a common reserve by nonfederal drilling.

²⁹U.S. Dept. of the Interior, Bureau of Land Management, *Background Materials on the Canyons of the Ancients National Monument*, June 9, 2000, on BLM's website at: [<http://www.co.blm.gov/canm/canmback.htm>].

Other agency documents contain information on energy reserves within national monuments. In particular, a study by the U.S. Geological Survey assesses the probability of the existence of oil, gas, coal, and coal-bed methane within the new monuments, and the potential volume of oil and gas. The report states that five monuments were appraised as having moderate to high probability of the existence of oil and gas resources (California Coastal, Canyons of the Ancients, Carrizo Plain, Hanford Reach, and Upper Missouri River Breaks). The other monuments were estimated to have no potential, or low to very low probability, of the existence of oil and gas. The report also determined that only Grand Staircase-Escalante has a high probability of coal and coal-bed gas. The other monuments were determined to have no, low, or very low probability of coal and coal-bed gas. The study does not address on-going development within national monuments, or the availability of monument lands to resource extraction.

In some cases the federal government does not own the mineral estate of lands within the monuments. For example, the federal government owns only the surface estate of approximately 100,000 acres within Carrizo Plain, and the mineral estate of lands within Pompeys Pillar is held in trust by the United States for the Crow Tribe.

Withdrawals Preserved

The 22 proclamations state that existing withdrawals, reservations, and appropriations continue, but the monument becomes the dominant reservation. This generally requires that uses of monument lands be managed to protect monument values and, if there is a conflict with uses otherwise authorized, protection of the monument governs. Prior to the creation of a monument, for instance, lands in the area may have been removed or withdrawn from the operation of some or all of the public land laws, or from being subject to some particular use, either by statute or secretarial order. Such withdrawals generally remain in effect until they expire or are specifically modified or revoked.

Grazing

Grazing expressly may continue in several of the monuments created or enlarged by President Clinton, according to the proclamations. For Agua Fria, Canyons of the Ancients, Carrizo Plain, Craters of the Moon, Giant Sequoia, Grand Canyon-Parashant, Grand Staircase-Escalante, Ironwood Forest, Upper Missouri River Breaks, and Vermilion Cliffs, grazing would continue to be governed by laws and regulations other than the proclamations. Grazing has been controversial in some of these monuments, e.g., Grand Staircase-Escalante and Carrizo Plain, with some asserting that grazing has been unnecessarily curtailed while others claim that grazing has not been sufficiently limited to prevent ecological damage. BLM is to continue to issue and administer grazing leases within the Lake Mead National Recreation Area of the Grand Canyon-Parashant Monument, in accordance with the law establishing that area.³⁰ Grazing may continue to be permitted in the expanded Pinnacles area,

³⁰ 16 U.S.C. §460n-3. The NPS and the BLM share management authority for Grand Canyon-Parashant, but, under the proclamation the NPS has primary management authority over the (continued...)

under the proclamation, although it is not allowed elsewhere in this NPS-managed monument. In practice, grazing is typically precluded on NPS lands.

The proclamation for Cascade-Siskiyou states that existing grazing permits or leases may continue, with “appropriate” terms and conditions. In addition, the Secretary of the Interior is to study the impacts of grazing on objects of biological interest within the monument. The Secretary is instructed to retire allotments if grazing is determined to be incompatible with protecting monument objects of biological interest. If permits or leases are relinquished by existing holders before the study is completed, the Secretary may reallocate forage for grazing only if reallocation furthers the protection of the monument.

The proclamations for Kasha-Katuwe Tent Rocks and Sonoran Desert contain particular direction on grazing. The Secretary is to retire the grazing allotments on lands within Kasha-Katuwe Tent Rocks, unless the Secretary determines that grazing advances the protective purpose of the monument. Agency documents state that only 12 cows graze on monument lands during part of the year, and that if there is available forage, “the animal unit months should be reallocated.”

In the Sonoran Desert National Monument, grazing south of Interstate Highway 8 may continue only until the current permits expire. Grazing permits in that area will not be renewed. Grazing south of the Interstate is prohibited to foster the long-term ecological health and stability of the area, according to agency documents. In developing the management plan for the area, BLM will consider whether to also ban grazing north of Interstate Highway 8. Grazing north of that highway may continue only if BLM finds it compatible with the protection of the historic, scientific, and other objects of interest within the monument.

For Hanford Reach, the proclamation requires the Secretary of the Interior to prohibit grazing to protect monument objects. The proclamations for Buck Island Reef, California Coastal, Governors Island, Minidoka Internment, Pompeys Pillar, President Lincoln and Soldiers’ Home, and Virgin Islands Coral Reef do not directly address grazing, apparently because grazing is not an issue for these monuments.

For BLM monuments, the agency’s interim monument management policy generally allows livestock grazing in accordance with existing permits and leases. Under existing laws, policies, and procedures, BLM generally is allowed to make adjustments to grazing permits and leases and this authority is reflected in the interim policy. For instance, adjustments could be made to ensure that proper stocking levels are not exceeded, which the interim policy characterizes as of “paramount importance.”

Timber

The 22 proclamations imply that timber cutting is precluded, through a general prohibition against removing any “feature” of the monuments. Harvesting appears to

³⁰(...continued)

land within the Lake Mead National Recreation Area.

have been a significant issue for only a few of the monuments. In particular, two of the proclamations contain specific provisions on timber. Commercial timber harvesting is specifically prohibited in Cascade-Siskiyou, except when part of an authorized ecological restoration project. The area currently is under a timber harvesting moratorium, and the proclamation makes this moratorium permanent, according to a White House press release (dated June 9, 2000). New timber production is precluded in Giant Sequoia, but timber sales under existing contracts and those with a decision notice signed between January 1, 1999, and December 31, 1999, may be completed under the terms of the decision notice or contract. This provision provides a transition period of approximately two and a half years during which timber sales are phased out.

For both Cascade-Siskiyou and Giant Sequoia, some trees may be removed as needed for ecological restoration, maintenance, or public safety, and also for personal fuelwood in the case of Giant Sequoia. Ecological restoration activities may be needed to counteract the effects of previous fire suppression and logging, according to the Giant Sequoia proclamation.

The final management plan for Grand Staircase-Escalante prohibits commercial timber harvesting within the monument. Other provisions of the plan address collecting forestry products. For instance, the plan allows fuelwood harvesting, post cutting, and Christmas tree cutting by permit, within designated areas.

Water Rights

Federal reserved water rights often have been controversial, but have been asserted and upheld with respect to management of national monuments and parks. Subject to other valid existing water rights, water rights necessary to protect monument objectives are expressly reserved for the federal government in several of the monuments: Agua Fria, Carrizo Plain, Cascade-Siskiyou, Giant Sequoia, Hanford Reach, and Pinnacles. These proclamations do not relinquish or reduce any federal water use or rights that existed prior to the establishment of the monuments.

The proclamations for Canyons of the Ancients, Craters of the Moon, Grand Canyon-Parashant, Ironwood Forest, Kasha-Katuwe Tent Rocks, Minidoka Internment, Pompeys Pillar, Sonoran Desert, and Vermilion Cliffs expressly do not reserve federal water rights, but also do not relinquish any existing federal water rights. Federal land management agencies (or, in some cases, the Secretary of the Interior) are to work with state authorities to ensure that sufficient water is available for the monuments. The proclamation for Grand Staircase-Escalante also states that water rights are not reserved. It directs the Secretary of the Interior, in preparing the monument management plan, to evaluate the necessity of water for the care and management of the objects and resources protected by the monument, and the extent to which further action is needed under federal or state law to assure availability of water. The final monument management plan does contain provisions on water, including several that seek to assure water availability and quality. One such provision states that BLM may seek appropriative water rights under Utah State law for the limited visitor facilities within the monument that need water.

Water is not reserved generally for the Upper Missouri River Breaks because federal water rights already exist within the monument. In 1976, Congress included the area in the National Wild and Scenic Rivers System, and that water right has been quantified through a compact between the United States and the State of Montana. However, the proclamation does reserve water in two tributaries containing biological objects that are dependent on water. That reservation, in the Judith River and Arrow Creek, does not relinquish or reduce any federal water use or right that existed before the creation of the monument.

Water rights are not addressed in the proclamations for several monuments—Buck Island Reef, California Coastal, Governors Island, President Lincoln and Soldiers' Home, and Virgin Islands Coral Reef. Water rights does not appear to be an issue for these monuments given their small size or location.

Fish and Wildlife

For most of the monuments, the existing authority of the state (in which the monument is located) for fish and wildlife management on federal lands would continue. This means that the state can regulate fish and wildlife on federal lands, notably fishing and hunting, except as overridden or modified by the Secretary. Hunting is banned in the expanded Pinnacles Monument area, as is typically the case on NPS lands under general NPS authorities. Hunting had been allowed when the land was managed by BLM. Hunting also is banned on lands added to the Craters of the Moon National Monument, which will be managed by the NPS. That ban has been controversial (and the subject of legislation) because hunting had been allowed on these lands, under BLM management, before the monument was designated.

Fish and wildlife management are not addressed explicitly by the Buck Island Reef, California Coastal, Governors Island, Minidoka Internment, and President Lincoln and Soldiers' Home Monuments. Hunting is not an issue for some of these monuments, given their nature, and hunting is typically banned on NPS lands.

While not explicitly stated, existing fish and wildlife authority is generally not affected by the proclamation for the California Coastal Monument. According to the Clinton Administration, the proclamation does not affect federal or state authority over fishing, oil and gas development, or other uses of adjacent water. However, the proclamation protects federally owned features in the “near-shore ocean zone” for 12 miles from shore, in part to provide for feeding and nesting habitat. This may raise questions as to authority to regulate fisheries between the state, the Department of Commerce, and the Department of the Interior.

The Secretary of the Interior is to prohibit all extractive uses in the Buck Island Reef Monument. The Secretary also is to generally prohibit extractive uses in the Virgin Islands Coral Reef Monument. However, the Secretary may issue permits for bait fishing and blue runner line fishing in certain areas if such fishing is consistent with the protection of the monument.

Although the proclamations do not alter state authority for fish and wildlife management, it is likely that the federal monument managers will work in conjunction with state authorities in managing fish and wildlife since federal managers have

authority to modify or override state regulation in some instances. BLM's management plan for Grand Staircase-Escalante, for instance, contains five objectives and numerous actions for managing fish and wildlife. One objective is to manage land uses within the monument so as to prevent damage to fish and wildlife and their habitats. Another objective is to work cooperatively with the Utah Division of Wildlife Resources to reestablish populations of native species and to protect and enhance the habitat of native species.

Off-Road Vehicle Use

Using motorized and mechanized vehicles off-road, except for emergency or authorized purposes, is prohibited under the proclamations for many monuments — Agua Fria, Canyons of the Ancients, Carrizo Plain, Cascade-Siskiyou, Craters of the Moon, Grand Canyon-Parashant, Hanford Reach, Ironwood Forest, Kasha-Katuwe Tent Rocks, Sonoran Desert, Upper Missouri River Breaks, and Vermilion Cliffs. The ban is designed to protect objects within the monuments. Similarly, the interim policy governing BLM monuments generally bars motorized and mechanized vehicles off-road, and states that management discretion should be used where necessary to protect monument resources, such as through emergency closures.

Whether to allow vehicular travel on designated routes or in designated areas, or to close routes or areas to vehicular use in those monuments where such use is not expressly prohibited, likely will be addressed when drafting the management plan for each monument. For example, although the proclamation creating Grand Staircase-Escalante is silent as to off-road vehicles, the final management plan for the monument prohibits motorized and mechanized travel off-road. Motorized and mechanized vehicles are allowed on designated routes, which, according to the plan, primarily provide access to particular destinations and do not present a significant threat to monument resources.

In some of the areas, off-road vehicle use was prohibited before the monument designations; some of the prohibitions may not have been fully implemented. In other areas that became monuments, off-road vehicles had been allowed, at least in some places. For instance, for Canyons of the Ancients, the existing management plan only prohibited travel off-road in approximately 25% of the monument area.

For Giant Sequoia, motorized vehicle use is permitted only on designated roads. No new roads or trails are to be authorized, except to further the protective purposes of the monument, and roads and trails may be closed or altered before the management plan is issued to protect monument objects. Motorized vehicles were permitted on trails until the end of the year 2000. The management plan is to contain a transportation plan that provides for visitor enjoyment and education.

Off-road vehicles are not addressed for the several monuments—Buck Island Reef, California Coastal, Governors Island, Minidoka Internment, Pinnacles, Pompeys Pillar, President Lincoln and Soldiers' Home, and Virgin Islands Coral Reef. Off-road vehicle use does not appear to be an issue in several cases because of the nature of the monuments. Recreational vehicle use off-road typically is not allowed on NPS lands, and generally is barred in BLM monuments under the agency's interim policy for new monuments.

Some of the proclamations address other transportation issues. For instance, the proclamation for Cascade-Siskiyou states that the Secretary of the Interior shall close a particular road to motorized and mechanized vehicular use. Other routes or parts of routes have been closed under the interim management policy for Cascade-Siskiyou. The proclamations for Canyons of the Ancients, Carrizo Plain, Cascade-Siskiyou, Craters of the Moon, Ironwood Forest, Kasha-Katuwe Tent Rocks, Sonoran Desert, Upper Missouri River Breaks, and Vermilion Cliffs state that the Secretary of the Interior is to prepare a transportation plan (or management plan) that addresses road closures, travel restrictions, or other actions necessary to protect objects within the monument. Management of vessels is to be included in the management plans for the Buck Island Reef and Virgin Islands Coral Reef Monuments.

Synopsis

President Clinton created 19 new national monuments and enlarged 3 others. The monuments vary greatly in size from a few acres to nearly 2 million acres. Creation of some of them has been controversial and raised numerous issues, including whether the President has the authority under the Antiquities Act to create “landscape” monuments of great size; and whether the Antiquities Act should be amended to limit large withdrawals or to address concerns about the process by which monuments are designated. The Clinton monuments also vary as to the uses that are allowed or prohibited on them, and the agencies entrusted with their management.

The Bush Administration has indicated that it will reconsider the boundaries and uses established in the monuments created or expanded by President Clinton, and that it will seek public input into a reexamination of individual monuments. The extent to which a subsequent President can modify or rescind monuments created by a previous President raises legal issues. Also, some Members of Congress have indicated an interest in revoking or amending the authority of the President to create national monuments, and in considering expressions of public approval or disapproval of the monuments or of particular aspects of their size, configuration, and management.

Appendix: Chronology of Monuments Established or Enlarged During the Clinton Administration

September 18, 1996

Grand Staircase-Escalante. President Clinton created the Grand Staircase-Escalante National Monument in southern Utah on September 18, 1996.³¹ The proclamation for this monument notes that it contains geological, paleontological, archaeological, biological, natural, and historical resources. While covering a broad and diverse area, the monument contains three primary physiographic regions: the Grand Staircase, the Kaiparowits Plateau, and the Escalante Canyons. It currently contains approximately 1,870,800 acres of federal land, and an additional 15,000 acres of private land are within the borders of the monument. These figures reflect land exchanges and boundary adjustments since the monument was proclaimed.

Under the proclamation, the monument is being managed by the BLM; the BLM was managing the lands before the monument designation, and the Clinton Administration sought to enhance the conservation role of BLM. The proclamation gave BLM three years to develop a plan for managing the monument, and in February 2000, the final plan became effective.³² The management plan calls for the establishment of a Monument Advisory Committee, comprised primarily of scientists, to advise monument managers on science issues and on implementing the management plan. It emphasizes maintaining the primitive and remote condition of the land, while providing for the study of scientific and historic resources within the monument. Developed recreation is limited to small areas of the monument and major visitor facilities will be located outside the monument; motorized access is limited; and the lands are withdrawn from new mineral development, subject to valid existing rights. The heart of the management plan is a zone system, whereby visitor use and activities are organized according to four geographic areas: the front country zone, passage zone, outback zone, and primitive zone.

January 11, 2000

On January 11, 2000, President Clinton proclaimed 3 new national monuments and enlarged a fourth. The new monuments are the Agua Fria National Monument, the California Coastal National Monument, and the Grand Canyon-Parashant National Monument. The enlarged monument is the Pinnacles National Monument.³³

³¹Proc. 6290, September 18, 1996; 61 *Fed. Reg.* 50223 (September 24, 1996).

³²U.S. Dept. of the Interior, Bureau of Land Management, *Grand Staircase-Escalante National Monument: Management Plan* (Cedar City, Utah: 2000.)

³³The relevant presidential proclamations are as follows: for the Agua Fria National Monument, Proc. No. 7263; for the California Coastal National Monument, Proc. No. 7264; for the Grand Canyon-Parashant National Monument, Proc. No. 7265; and for the Pinnacles National Monument, Proc. No. 7266. They are all published at 65 *Fed. Reg.* 2821-2834 (January 18, 2000).

Agua Fria. The Agua Fria National Monument was created in Arizona, about 40 miles north of Phoenix. The monument includes two mesas and the canyon of the Agua Fria River. The proclamation states that the land contains prehistoric ruins including petroglyphs, agricultural areas, and rock pueblos; historic sites; and biological and scientific resources. The monument contains approximately 71,100 acres of federal land, although another 1,444 acres of private land are within its borders. The proclamation assigns BLM responsibility for managing the monument; the BLM was managing the lands before the monument designation.

California Coastal. The California Coastal National Monument is comprised of thousands of federally owned islands, rocks, reefs, and pinnacles above mean high tide within 12 miles of the California shoreline. The proclamation states that the lands, which extend the length of the California coast, contain biological resources and geological formations and provide feeding and nesting grounds for sea mammals and birds. The monument contains approximately 1,000 acres of federal land. The proclamation assigns BLM responsibility for managing the monument. While the lands were under BLM's jurisdiction before monument designation, the California State Department of Fish and Game had been managing the lands within California Coastal on behalf of BLM, under a memorandum of understanding. Management by the state agency is expected to continue (with a revised memorandum of understanding, if necessary).

Grand Canyon-Parashant. The Grand Canyon-Parashant National Monument was established in northwestern Arizona. The proclamation states that the monument includes canyons, mountains, and buttes on the north rim of the Grand Canyon, and contains geological, biological, historic, paleontological, and archaeological resources. It encompasses the lower portion of the Shivwits Plateau, a watershed of the Colorado River and Grand Canyon. The monument contains approximately 1,023,785 acres of federal land, although an additional 21,979 acres of state land and 8,500 acres of private land are included within its borders.

Before the Grand Canyon-Parashant Monument was created, the land within its boundaries was managed by the NPS (the Lake Mead National Recreation Area (NRA)) and BLM (the other lands). The two agencies also are to manage the new monument jointly, and prepare an agreement for sharing related resources. The NPS will continue to have primary management authority over the land within the Lake Mead NRA (216,544 acres), and the BLM will have primary authority over the rest (807,241 acres).

Pinnacles. The Pinnacles National Monument, located south of San Jose, California, was originally proclaimed in 1908 to preserve rock formations and a series of caves underlying them, and has been expanded several times. The Clinton proclamation states that the current expansion includes additional pieces of the faults that created the geological formations throughout the monument, the headwaters that drain into the basin of the monument, and a biological system of plant and animal communities. The expansion consisted of approximately 7,900 acres of federal land, and an additional 2,850 acres of private land are within the borders of the monument. The expanded monument now consists of approximately 24,165 acres. Pinnacles was being managed by the NPS before the current expansion, and the NPS also will

manage the additional 7,900 acres. The expansion lands were being managed by the BLM before the proclamation.

April 15, 2000

Giant Sequoia. On April 15, 2000, President Clinton proclaimed the Giant Sequoia National Monument in California.³⁴ The proclamation states that it seeks to protect groves of giant sequoias, geological formations, limestone caverns, paleontological resources, archaeological sites, historic remnants, and diverse ecological components, among other features. The monument contains approximately 327,769 acres of federal land, although an additional 5,127 acres of state land and 22,399 acres of private land are included within its borders.

The monument, together with the underlying Sequoia National Forest, is managed by the Secretary of Agriculture acting through the Forest Service. Prior to the monument designation, the lands were under the authority of the Forest Service. The Secretary of Agriculture, in consultation with the Secretary of the Interior, is to develop a management plan within three years and may develop special management rules and regulations governing the monument. The Secretary, in consultation with the National Academy of Sciences, is to appoint a scientific advisory board to assist in developing the initial management plan for the monument.

June 9, 2000

On June 9, 2000, President Clinton proclaimed 4 new national monuments. The monuments are the Canyons of the Ancients National Monument, the Cascade-Siskiyou National Monument, the Hanford Reach National Monument, and the Ironwood Forest National Monument.³⁵

Canyons of the Ancients. The Canyons of the Ancients National Monument was established in southwest Colorado, in the Four Corners region. The proclamation states that the area contains the highest known density of archaeological sites in the United States — more than 5,000 recorded archaeological sites, and possibly thousands more unrecorded. These cultural resources include ancient villages, sacred springs, and cliff dwellings. The monument also encompasses natural resources and a wide variety of wildlife species. It contains approximately 163,852 acres of federal land, and an additional 18,570 acres of private land are included within its borders. The proclamation assigns BLM responsibility for managing the monument; the BLM was managing the lands before the monument designation. Four units of the Hovenweep National Monument, comprising about 400 acres, also are within the

³⁴Proc. 7295, April 15, 2000; 65 *Fed. Reg.* 24095 (April 25, 2000).

³⁵The relevant presidential proclamations are as follows: for the Canyons of the Ancients National Monument, Proc. No. 7317; for the Cascade-Siskiyou National Monument, Proc. No. 7318; for the Hanford Reach National Monument, Proc. No. 7319; and for the Ironwood Forest National Monument, Proc. No. 7320. They are all published at 65 *Fed. Reg.* 37243-37262 (June 13, 2000).

boundaries of the monument but are not part of the monument itself. These areas will continue to be managed by the NPS.

Cascade-Siskiyou. The Cascade-Siskiyou National Monument is located in southwestern Oregon and includes Soda Mountain. The proclamation states that the monument includes a variety of plants and animals from each of three ecoregions that converge: the Cascade, Klamath, and Siskiyou ecoregions. It includes geological features, such as Pilot Rock, a volcanic plug that provides an example of the inside of a volcano. It also has archaeological and historic attributes. The monument contains approximately 52,951 acres of federal land, although an additional 32,222 acres of private land are included within its borders. The proclamation makes BLM responsible for managing the monument (except for 4 acres managed by the Bureau of Reclamation); the BLM was managing the lands before the monument designation. The proclamation gives the Secretary of the Interior three years (by June 9, 2003) to prepare a monument management plan, and the Secretary is to promulgate appropriate regulations.

Hanford Reach. The Hanford Reach National Monument, located in southcentral Washington along the Columbia River, has been a buffer area in a federal reservation developing nuclear weapons. It includes the 51-mile Hanford Reach, the only free-flowing, non-tidal portion of the Columbia River, where approximately 80% of the Columbia's fall chinook salmon spawn. The proclamation states that the monument contains archaeological deposits; biological resources including riparian, aquatic, and shrub-steppe habitats with a high diversity of plant and animal species; and geological and paleontological attributes such as the cliffs known as the White Bluffs. The monument contains approximately 195,843 acres of federal land.

Although within the borders of the Department of Energy's (DOE) Hanford Reservation, much of the land within the monument was being managed by the FWS prior to the monument's designation. Under the proclamation, much of the monument will continue to be managed by the FWS under existing agreements with the Department of Energy; the DOE will manage areas not covered by agreements with the FWS. The proclamation also states that upon determination by the FWS and DOE, the FWS will assume management of monument lands being managed by the DOE. For monument lands under DOE management, the Secretary of Energy is to consult with the Secretary of the Interior in developing any management plan, rules, and regulations. The monument boundaries exclude the nuclear facilities.

Ironwood Forest. The Ironwood Forest National Monument, situated in southern Arizona near Tucson, is a desert landscape. The proclamation states that its features include ironwood trees that can live for 800 years, a high diversity of birds and animals, geological and topographical resources, and archaeological objects such as rock art sites. The monument contains approximately 129,022 acres of federal land, although an additional 54,697 acres of state land and 6,012 acres of private land are included within its borders. The proclamation charges BLM with managing the monument; the BLM was managing the lands before the monument designation.

July 7, 2000

President Lincoln and Soldiers' Home. On July 7, 2000, President Clinton created the President Lincoln and Soldiers' Home National Monument in Washington, DC.³⁶ Known as Anderson Cottage, the home is where President Lincoln spent about one-quarter of his presidency and completed the Emancipation Proclamation to abolish slavery. In support of making the home a monument, President Clinton noted the historic role it played in our nation's history and the need to preserve it. The monument is different from those created earlier during the Clinton Administration, in that it consists primarily of a historic site rather than a relatively large parcel of land. The monument contains approximately two acres of federal land.

Prior to the proclamation, the monument was part of the U.S. Soldiers' and Airmen's Home, which was administered by the Armed Forces Retirement Home, an independent executive branch agency. The proclamation essentially continues this arrangement; the Armed Forces Retirement Home will manage the monument, through the U.S. Soldiers' and Airmen's Home. The proclamation also states that the Armed Forces Retirement Home is to prepare a monument management plan within three years, and promulgate regulations for the care and management of the monument (to the extent authorized). Managing the monument, drafting the plan, and promulgating regulations are to be undertaken in consultation with the Secretary of the Interior, through the NPS.

November 9, 2000

On November 9, 2000, President Clinton created the Vermilion Cliffs National Monument in Arizona³⁷ and significantly expanded the Craters of the Moon National Monument in Idaho.³⁸

Craters of the Moon. The Craters of the Moon National Monument, in southern Idaho, originally was proclaimed in 1924 to protect craters and lava flows thought to resemble a lunar landscape. The current expansion encompasses the whole lava field, which contains preserved volcanic features such as craters, cones, lava flows, caves, and fissures of the Great Rift – which is 65 miles long. The proclamation asserts that the area is of significant scientific interest, and contains some of the last “nearly pristine” vegetation in the Snake River Plain. The proclamation added approximately 686,395 acres of federal land to the existing monument of approximately 53,287 acres. The expansion area also contains approximately 8,321 acres of state land and an additional 6,860 acres of private land.

The existing Craters of the Moon National Monument was being managed by the NPS before the current expansion. The expansion lands were being managed by the BLM before the recent proclamation, but under the proclamation the monument will

³⁶Proc. 7329, July 7, 2000; 65 *Fed. Reg.* 43673 (July 13, 2000).

³⁷Proc. 7374, November 9, 2000; 65 *Fed. Reg.* 69227 (November 15, 2000).

³⁸Proc. 7373, November 9, 2000; 65 *Fed. Reg.* 69221 (November 15, 2000).

be managed “cooperatively” by the BLM and the NPS. The proclamation states that the NPS will have primary management authority for monument lands containing the exposed lava flows, and that BLM will have primary authority for the remaining monument lands. According to the BLM, 412,548 acres of the expansion lands are transferred from the BLM to the NPS to be managed in the same manner as the existing monument. Under the proclamation, hunting is banned on the lands added to the monument that will be managed by the NPS; this ban has been controversial because hunting had been allowed before the monument was created. The remaining portion of the expansion, 273,847 acres, contains lands historically used for grazing, and these lands will continue to be managed by the BLM.

Vermilion Cliffs. The proclamation for Vermilion Cliffs, located on the Colorado Plateau in northern Arizona, states that the monument was established to protect geologic resources including the Paria Plateau, referred to as a “grand terrace,” and the Vermilion Cliffs, which consist of multicolored layers of shale and sandstone. The proclamation also mentions historic, archaeological, biological, and other resources. Among the biological resources are fish, reptiles, amphibians, mammals, and raptors, and the endangered California condor has been reintroduced to establish another wild population of this species. The monument contains approximately 280,324 acres of federal land, and approximately 13,388 acres of state land and 448 acres of private land are within the monument’s borders. The proclamation accords BLM management of the monument; the BLM was managing the lands before the monument designation.

January 17, 2001

On January 17, 2001, President Clinton significantly expanded one monument and created 7 new monuments. The expanded monument is the Buck Island Reef National Monument. The new monuments are the Carrizo Plain National Monument, Kasha-Katuwe Tent Rocks National Monument, Minidoka Internment National Monument, Pompeys Pillar National Monument, Sonoran Desert National Monument, Upper Missouri River Breaks National Monument, and Virgin Islands National Monument.³⁹

Buck Island Reef. The Buck Island Reef National Monument, in the U.S. Virgin Islands, was originally established by presidential proclamation in 1961 to protect 850 marine acres. The area encompassed Buck Island and its adjoining shoals, rocks, and underwater coral reefs. The recent proclamation states that the area is regarded as among “the finest marine gardens in the Caribbean Sea,” and that the natural area and dependent marine life are at risk of “commercial exploitation and destruction.” The expanded monument includes habitats not contained in the original monument; threatened and endangered species; and myriad species of fish,

³⁹The relevant proclamations are as follows: for Buck Island Reef, Proc. No. 7392; for Carrizo Plain, Proc. No. 7393; for Kasha-Katuwe Tent Rocks, Proc. No. 7394; for Minidoka Internment, Proc. No. 7395; for Pompeys Pillar, Proc. No. 7396; for Sonoran Desert, Proc. No. 7397; for Upper Missouri River Breaks, Proc. No. 7398; and for Virgin Islands Coral Reef, Proc. No. 7399. They are all published at 66 *Fed. Reg.* 7335-7367 (January 22, 2001).

invertebrates, plants, and sea birds. Cultural and historical objects, such as the wreckage of a slave ship, also are within the new monument. The recent proclamation expanded the monument by approximately 18,135 marine acres, and the President assigned management of these federal submerged lands to the NPS.

Carrizo Plain. The area of the Carrizo Plain National Monument in California was formed by shifts along the San Andreas Fault, and is well-known for its fault-generated land forms. The monument contains Soda Lake, the largest remaining alkali wetland in southern California. The proclamation describes the area's attributes as including endangered, threatened, and rare animals; rare and sensitive plants; terrestrial and marine fossils; and archaeological objects. The monument contains about 204,107 acres of federal land. The boundaries of the monument also encompass state and private acreage but the precise amount has not been determined by the BLM. BLM manages the monument in coordination with the California Department of Fish and Game and The Nature Conservancy, as was the case before the monument designation.

Kasha-Katuwe Tent Rocks. Located in northcentral New Mexico, the Kasha-Katuwe Tent Rocks National Monument contains tent rock formations that are the result of volcanic eruptions that occurred 6 to 7 million years ago. In addition to this geologic scenery, the proclamation describes cultural remnants from human history and biological objects including various birds and trees. The monument contains approximately 4,148 acres of federal land. The boundaries of the monument also encompass state and private acreage but the precise amount has not been determined by the BLM. The BLM is to manage the monument "in close cooperation with the Pueblo de Cochiti" under the proclamation. Prior to the monument's creation, on September 19, 2000, the BLM and the Pueblo de Cochiti had entered into an intergovernmental cooperative agreement for the area to coordinate and cooperatively manage federal and Pueblo lands.

Minidoka Internment. The Minidoka National Monument was created in Idaho to protect historic structures and objects related to the internment of Japanese Americans during World War II. The area was used as a relocation center to house American citizens and resident aliens of Japanese ancestry who were evacuated from their homes after Executive Order 9066 was signed by President Franklin D. Roosevelt. Known during the War as the Minidoka Relocation Center, as well as Hunt Site, the center's population reached more than 9,000 Japanese Americans and the center had more than 600 buildings. The monument encompasses 73 acres of land. The Bureau of Reclamation, within the Department of the Interior, currently is managing the lands. Under the proclamation, the Secretary of the Interior is to manage the monument and "transfer administration of the monument" to the NPS.

Pompeys Pillar. East of Billings, Montana, is the Pompeys Pillar National Monument, a large sandstone formation on the banks of the Yellowstone River that rises 150 feet from a base of nearly two acres. The proclamation calls the pillar a "celebrated landmark" and a "living journal" of the West. For instance, Captain William Clark, of the Lewis and Clark Expedition, recorded his stop at this site by writing his name and the date of his visit on the pillar. Captain Clark named the rock "Pompy's Tower" after the infant son of Sacagawea, a guide on the journey, and the name was later changed to Pompeys Pillar. The rock contains petroglyphs and

markings from many other visitors throughout history. The Monument consists of 51 acres of federal land, and is to be managed by the BLM, as before the monument designation.

Sonoran Desert. The Sonoran Desert National Monument, in southcentral Arizona, is a desert ecosystem with an array of biological, scientific, and historic resources. This “most biologically diverse of the North American deserts,” according to the proclamation, contains mountain ranges and wide valleys as well as saguaro cactus areas and diverse plant communities that provide habitat for a wide array of wildlife. Among the monument’s archaeological and historic sites are rock art, lithic quarries, and signs of large villages and historic trails. A total of 486,603 federal acres are within the monument; 408,646 are managed by the BLM and 77,957 are managed by the Department of Defense (DOD). On November 6, 2001, BLM is to resume management of the lands being managed by DOD pursuant to a military withdrawal. An additional 3,867 acres of state and 5,867 acres of private land are included within the monument’s borders.

Upper Missouri River Breaks. Situated in central Montana, the Upper Missouri River Breaks National Monument spans 149 miles of the Upper Missouri River, the adjacent Breaks country, and parts of Arrow Creek, Antelope Creek, and the Judith River. According to the proclamation, the landscape of the monument was formed by glaciers, volcanic activity, shallow seas that covered the area during the Cretaceous period, and erosion. Biological objects include elk, sage grouse, prairie dogs, a variety of plants, cottonwood trees, antelope, bald eagles and other raptors, waterfowl, and an array of fish species. Portions of the Lewis and Clark National Historic Trail and remnants of Native Americans that inhabited the area are among the historical features of the area. The Monument contains approximately 377,346 federal acres, and is to continue to be managed by the BLM. The boundaries of the monument also encompass state and private acreage but the precise amount has not been determined by the BLM.

Virgin Islands Coral Reef. The submerged lands consisting of the Virgin Islands Coral Reef National Monument, located off St. John in the U.S. Virgin Islands, comprise a tropical marine ecosystem. Of biological and/or scientific importance are the varied habitats, such as mangroves, sea grass beds, coral reefs, sediments, and algal plains, according to the proclamation. Other biological objects are reported to include whales, dolphins, pelicans, terns, sea turtles, sea birds, and numerous species of fish, invertebrates, and plants. The monument consists of approximately 12,708 marine acres, and the President assigned management of these federal submerged lands to the NPS. Another 1,185 acres of Virgin Islands territorial submerged lands are within the boundaries of the monument.

January 19, 2001

Governors Island. On January 19, 2001, the President established the Governors Island National Monument in New York.⁴⁰ The Monument is located on the tip of Governors Island, at the confluence of the Hudson and Eastern Rivers. The

⁴⁰Proc. 7402, January 19, 2001; 66 *Fed. Reg.* 7855 (January 25, 2001).

monument contains Castle William and Fort Jay, which protected New York City from an attack from the water. The proclamation calls these edifices “two of the finest types of defensive structures in use from the Renaissance to the American Civil War.” The structures were used during several wars including the War of 1812 and World War II. The monument consists of approximately 20 federal acres of the approximately 172 acre island. While Governors Island has been managed by the U.S. Army and the U.S. Coast Guard for about 200 years, it is no longer needed for military or Coast Guard purposes. An earlier law requires the entire Island to be disposed of by the General Services Administration (§9101 of P.L. 105-33), raising questions as to how to interpret the Presidents’ action in creating the monument. Under the proclamation, the monument is to be managed by the NPS in consultation with the Administrator of the General Services Administration.⁴¹

⁴¹As noted earlier, a discussion of the legal issues associated with the monument is the subject of CRS Congressional Distribution Memorandum, *Designation of Part of Governors Island as a National Monument*, by Pamela Baldwin and Morton Rosenberg, May 22, 2001.

ALAN FREEMEYER

- The lack of process and state/local involvement is leading to the uproar.
- Roosevelt was the first POTUS to really get in trouble for designations. Congress took away power to designate in Wyoming.
- Half of the national monuments are < 5,000 acres.
- Worked for Congressman Hansen when GSENM happened.
- Emails between McGinty and Lance at CEQ were aware of the potential for backlash from locals and were in part a political move to court enviros.
- WaPo was notified on 9/6 that there would be a monument. The delegation asked on 9/16 if there was going to be a designation and they were told that there were no plans to do so. Clinton called Leavitt at 2am the day of the delegation to tell him it was happening.
- Obama administration did a better job of working with local communities to make sure they were heard and weren't surprised.
- BE is one of the richest places in the country for archeological resources, but the locals don't think that there is an imminent threat.
- These designations impact people in places where there is little population density and median household income is less than \$50k per year.
- Since 1996 there are a number of bills to address AA "abuse" but none have been successful.

DOUG WHEELER

- CLF represented pro bono by HL and plans to be lead plaintiff in future lawsuit on monuments.
- Two other groups of PP (1) native Americans, (2) other enviros represented by EJ.
- BLM now has a national conservation land system that includes NMs. CLF was founded to help out with those by providing support for local friends groups.

HILLARY THOMPSON

- Congress began withdrawing public land for conservation in the late 19th century (Yellowstone 1872) - needed a more structured regulatory regime - rather than just selling and conveying to states.
- Withdrawal by legislation was a slow process and couldn't react to quickly changing conditions on the ground.
- Leg history on 204 - congress has power to modify or revoke monuments.
- DC circuit rejected claims that you could only look at the objects and not the area as not sufficient to state a claim. Also, whether or not there was an abuse of discretion.
- AA gives power to designate, but not reverse - plain language.
- OCSLA - similarly lacks clear authority to reverse.

MATT HAYNIE (API) -

- OCSLA case - league of conservation voters v. Trump.
 - (1) exceeds constitutional authorities and is contrary to statute
 - (2) reversal is ultra vires
 - Expect that there will be challenges to the PP standing - long time between reversal of withdrawal and leading - no particularized harm. Also, hard to see particularized harm even if there is activity in leases.
- OCSLA is different than AA - complex process to make areas available to leasing. Purpose is to lease, unlimited withdrawal would be contrary to that purpose.
- Inherent authority to reverse presidential action.
- AA - Lawsuit brought against Atlantic monument (MA lobsterman v Ross)
 - (1) whether the area in the EEZ is under control of the Feds;
 - (2) whether the area was smallest compatible to protect and whether protecting the marine ecosystem rather than just the seamounts can be protected under the AA.
- Industry thinks congress should look at the AA and determine whether designations are consistent with MU/SA - important for economy and jobs.

Questions & Answers

Q: What is taken into account with "smallest area compatible"?

AF - drafters of GSENM did a good job of describing all of the things that are being protected. If the map is drawn according to those objects, then it is hard to argue with that.

HT - courts will give deference to what is that area. Scenic views have been upheld as a proper designation. Thinks there has been an evolution of understanding of interconnectedness of areas.

Q: in terms of OCSLA is there interest in doing offshore drilling considering price.

MH - yes but because there is such a long lead up time to the lease and development, companies will want to not foreclose the opportunity. Also, the withdrawals prevent seismic exploration, so they don't even know what's out there and whether they might be interested. Want to be able to evaluate the areas and then let them go through the process.

Q: how does the perceived "threat" play into the analysis for BE?

AF: Most of the BE area is in WSA status. Congress believes that there are a wide range of tools that are already available to the executive other than a NM to protect the resources.

DW: the thought is that the monument designation would enhance protection of cultural resources that have been damaged in recent years.

HT: it is important to remember that there is huge tribal population in the BE area and the monument designation does more than just a WSA. It makes protection of cultural and historic object the dominant reservation - more protection than WSA.

AF: destruction of artifacts is a crime today. If the monument designation brings additional resources to protect those things, then that is a positive outcome.

Q: how can the Feds be more responsive to local citizens

DW: there was a proposal within the BE proclamation to exchange SITLA lands

AF: SITLA plans to avail itself of the exchange.

DW: another benefit of a NM is economic development from recreation industry. #1 economic driver in Utah. Community benefits from these resources.

AF: the Feds also paid \$50 m to SITLA, which helped mitigate, at least in part, the public's perception of the process.

Q: can you comment more on 1938 opinion and the reasoning.

HT: short opinion that says that what congress doesn't give to the president the president cannot exercise. AA is a narrow grant of authority and it does not include express or implied authority to reverse.

AF: When congress appropriated money to support GSENM that goes to the support of the monument.

Q: is there any public engagement requirement in the law or legislative history.

HT: nothing in the law that requires public comment.

DW: there is a question with regard to the adequacy of Zinke's review under the APA

Dear Tribal Leader:

On April 26, 2017, President Trump issued an executive order directing Interior to review national monument designations established or expanded since January 1, 1996, that meet certain criteria¹ to determine whether each designation or expansion conforms to the Executive Order's policy. *See* E.O. 13792, 82 Fed. Reg. 20429.

On May 5, 2017, Secretary Zinke released a list of National Monuments being initially reviewed. The list is available as an enclosure to this letter and is also available at the following website: <https://www.doi.gov/pressreleases/interior-department-releases-list-monuments-under-review-announces-first-ever-formal>.

I invite you to attend one of the listening sessions listed in the enclosure to provide your input before the Secretary provides an interim report to the President on the June 15, 2017, deadline established in the Executive Order. We have attempted to identify centralized locations for these sessions to facilitate your participation, but if you are unable to attend in person, I encourage you to attend the teleconference session.

If you would like to submit written input, please submit your comments to <http://www.regulations.gov> by entering "DOI-2017-0002" in the Search bar and clicking "Search," or by mail to Monument Review, MS-1530, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240.

Very Truly,

Michael S. Black
Acting Assistant Secretary Indian Affairs

Enclosures

¹ 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. *See* E.O. 13792, Section 2(a).

Listening Sessions on Interior's Review of National Monuments Identified under E.O. 13792

Date	Time	Location
XXXXXX, May [23-26], 2017	X a.m. X p.m. Local Time	Portland, OR (In conjunction with the Affiliated Tribes of Northwest Indians Mid-Year Conference)
XXXXXX, May XX, 2017	X a.m. X p.m. Local Time	Albuquerque or Phoenix
XXXXXX, May XX, 2017	X a.m. X p.m. Local Time	Rapid City, SD
XXXXXX, June XX, 2017	X a.m. X p.m. Local Time	Oklahoma, OK
XXXXXX, June XX, 2017	X a.m. X p.m. Eastern Time	Teleconference
XXXXXX, June [12-15], 2017	X a.m. X p.m. Local Time	Uncasville, CT (In conjunction with the National Congress of American Indians Mid-Year Conference)

**NATIONAL MONUMENTS BEING INITIALLY REVIEWED PURSUANT TO
CRITERIA IN EXECUTIVE ORDER 13792**

Monument	Location	Year(s)	Acreage
Basin and Range	Nevada	2015	703,585
Bears Ears	Utah	2016	1,353,000
Berryessa Snow Mountain	California	2015	330,780
Canyons of the Ancients	Colorado	2000	175,160
Carrizo Plain	California	2001	204,107
Cascade Siskiyou	Oregon	2000/2017	100,000
Craters of the Moon	Idaho	1924/2000	737,525
Giant Sequoia	California	2000	327,760
Gold Butte	Nevada	2016	296,937
Grand Canyon-Parashant	Arizona	2000	1,014,000
Grand Staircase-Escalante	Utah	1996	1,700,000
Hanford Reach	Washington	2000	194,450.93
Ironwood Forest	Arizona	2000	128,917
Mojave Trails	California	2016	1,600,000
Organ Mountains-Desert Peaks	New Mexico	2014	496,330
Rio Grande del Norte	New Mexico	2013	242,555
Sand to Snow	California	2016	154,000
San Gabriel Mountains	California	2014	346,177
Sonoran Desert	Arizona	2001	486,149
Upper Missouri River Breaks	Montana	2001	377,346
Vermilion Cliffs	Arizona	2000	279,568

**MARINE NATIONAL MONUMENTS BEING REVIEWED PURSUANT TO
EXECUTIVE ORDERS 13795 AND 13792**

Marianas Trench	CNMI/Pacific Ocean	2009	60,938,240
Northeast Canyons and Seamounts	Atlantic Ocean	2016	3,114,320
Pacific Remote Islands	Pacific Ocean	2009	55,608,320
Papahānaumokuākea	Hawaii	2006/2016	89,600,000
Rose Atoll	American Samoa	2009	8,609,045

**NATIONAL MONUMENTS BEING REVIEWED TO DETERMINE WHETHER THE
DESIGNATION OR EXPANSION WAS MADE WITHOUT ADEQUATE PUBLIC
OUTREACH AND COORDINATION WITH RELEVANT STAKEHOLDERS**

Katahdin Woods and Waters	Maine	2016	87,563
---------------------------	-------	------	--------

Dear Tribal Leader:

On April 26, 2017, President Trump issued an executive order directing Interior to review national monument designations established or expanded since January 1, 1996, that meet certain criteria¹ to determine whether each designation or expansion conforms to the Executive Order's policy. *See* E.O. 13792, 82 Fed. Reg. 20429.

On May 5, 2017, Secretary Zinke released a list of National Monuments being initially reviewed. The list is available as an enclosure to this letter and is also available at the following website: <https://www.doi.gov/pressreleases/interior-department-releases-list-monuments-under-review-announces-first-ever-formal>.

I invite you to attend one of the listening sessions listed in the enclosure to provide your input before the Secretary provides an interim report to the President on the June 15, 2017, deadline established in the Executive Order.

If you would like to submit written input, please submit your comments by email to consultation@bia.gov at your earliest convenience. Comments from the public are also being accepted at www.regulations.gov or by mail to Monument Review, MS-1530, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240.

Very Truly,

Michael S. Black
Acting Assistant Secretary Indian Affairs

Enclosures

¹ 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. *See* E.O. 13792, Section 2(a).

Listening Sessions on Interior’s Review of National Monuments Identified under E.O. 13792

Date	Time	Location
Thursday, May 25, 2017	3:15 p.m. – 5:00 p.m. Local Time	Hilton DoubleTree Lloyd Center 1000 NE Multnomah Street Portland, OR 97232 (In conjunction with the Affiliated Tribes of Northwest Indians Mid-Year Conference)
Tuesday, May 30, 2017	8:30 a.m. – 12:00 p.m. Local Time	[Venue TBD] Billings, MT
Thursday, June 1, 2017	1:00 p.m. – 4:00 p.m. Local Time	Phoenix Convention Center 100 N 3rd Street Phoenix, AZ 85004
Monday, June 12, 2017	3:00 p.m. – 5:00 p.m. Local Time	Mohegan Sun 1 Mohegan Sun Boulevard Uncasville, CT 06382 (In conjunction with the National Congress of American Indians Mid-Year Conference)

**NATIONAL MONUMENTS BEING INITIALLY REVIEWED PURSUANT TO
CRITERIA IN EXECUTIVE ORDER 13792**

Monument	Location	Year(s)	Acreage
Basin and Range	Nevada	2015	703,585
Bears Ears	Utah	2016	1,353,000
Berryessa Snow Mountain	California	2015	330,780
Canyons of the Ancients	Colorado	2000	175,160
Carrizo Plain	California	2001	204,107
Cascade Siskiyou	Oregon	2000/2017	100,000
Craters of the Moon	Idaho	1924/2000	737,525
Giant Sequoia	California	2000	327,760
Gold Butte	Nevada	2016	296,937
Grand Canyon-Parashant	Arizona	2000	1,014,000
Grand Staircase-Escalante	Utah	1996	1,700,000
Hanford Reach	Washington	2000	194,450.93
Ironwood Forest	Arizona	2000	128,917
Mojave Trails	California	2016	1,600,000
Organ Mountains-Desert Peaks	New Mexico	2014	496,330
Rio Grande del Norte	New Mexico	2013	242,555
Sand to Snow	California	2016	154,000
San Gabriel Mountains	California	2014	346,177
Sonoran Desert	Arizona	2001	486,149
Upper Missouri River Breaks	Montana	2001	377,346
Vermilion Cliffs	Arizona	2000	279,568

**MARINE NATIONAL MONUMENTS BEING REVIEWED PURSUANT TO
EXECUTIVE ORDERS 13795 AND 13792**

Marianas Trench	CNMI/Pacific Ocean	2009	60,938,240
Northeast Canyons and Seamounts	Atlantic Ocean	2016	3,114,320
Pacific Remote Islands	Pacific Ocean	2009	55,608,320
Papahānaumokuākea	Hawaii	2006/2016	89,600,000
Rose Atoll	American Samoa	2009	8,609,045

**NATIONAL MONUMENTS BEING REVIEWED TO DETERMINE WHETHER THE
DESIGNATION OR EXPANSION WAS MADE WITHOUT ADEQUATE PUBLIC
OUTREACH AND COORDINATION WITH RELEVANT STAKEHOLDERS**

Katahdin Woods and Waters	Maine	2016	87,563
---------------------------	-------	------	--------