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National Monuments and the Antiquities Act: Recent Designations and Issues

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ABSTRACT

This report addresses the authority of the President to create national monuments on federal lands under the Antiquities Act of 1906. It discusses the benefits of the Act and those aspects of the Act that have been controversial, including the size and types of resources protected; the level of and types of threat to designated areas; effects of proclamations on land uses; consistency of the Act with the withdrawal, public participation, and environmental review aspects of other laws; monument management by agencies other than the National Park Service (NPS); and the constitutionality of the Act. It also provides background on the 13 monuments President Clinton created or enlarged by proclamation to date, and discusses the land uses permitted within these monuments. The report discusses possible future monument designations and issues and legislative activity related to presidential designation of monuments. This report will be updated as events may require.

For additional information on national monuments, see: CRS Report RS20647, *Authority of a President to Modify or Eliminate a National Monument*; CRS Report 98-993 ENR, *Grand Staircase-Escalante National Monument*; CRS Report RS20602, *Presidential Authority to Create a National Monument on the Coastal Plain of the Arctic National Wildlife Refuge*; RS20625, *Provisions on National Monuments and the Interior Columbia Basin Ecosystem Management Project in the FY2001 Department of the Interior Appropriations Bill*; and CRS General Distribution Memorandum, *Legal Issues Raised by the Designation of the Grand Staircase-Escalante National Monument*.

National Monuments and the Antiquities Act: Recent Designations and Issues

Summary

To date, President Clinton has used The Antiquities Act of 1906 (16 U.S.C. §§431-433) to create 11 new national monuments and enlarge two others. Most designations were made during 2000, except the Grand Staircase-Escalante National Monument (UT), which was proclaimed on September 18, 1996. The new monuments range in size from two acres to nearly 1.9 million acres. The 13 monuments created or enlarged by President Clinton total approximately 4.8 million acres, the second largest of all Presidents and a larger amount than any other President's total acreage in the contiguous 48 states.

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 more than 100 monuments totaling about 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 Carter's massive Alaskan withdrawals in 1978. Recent monuments created by President Clinton also have generated criticisms of the Act that have centered on the size and types of resources protected; the level and type of threats to areas; 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 (e.g., Federal Land Policy and Management Act of 1976, and National Environmental Policy Act). 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 over time. They contend that the President needs continued authority to promptly protect valuable resources on federal lands that may be threatened, e.g., by looting or commercial development, and to avoid speculation in lands to be protected.

President Clinton selected the Bureau of Land Management (BLM) to manage several of the monuments, but other agencies were assigned to manage monuments as well. Monuments typically are established or enlarged subject to valid existing rights; generally, 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 address land uses. In many of the new monuments new mining claims and mineral and energy leases are barred and grazing is allowed. In some cases, water rights have been reserved for the federal government.

The Clinton Administration has expressed interest in creating additional monuments, especially "national landscape monuments," to protect complete landscapes and ecosystems that are "distinct and significant." President-elect Bush reportedly may take a different approach.

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National Monuments and the Antiquities Act: Recent Designations and Issues

Introduction

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 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.¹ 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.² Yet, initial opposition to some monument designations turned to support over time. Some of the most controversial monuments later were enlarged and redesignated as national parks that today are among the most popular parks and are of substantial economic benefit to the surrounding communities. For instance, the Jackson Hole National Monument was expanded and redesignated as the Grand Teton National Park.

To date, President Clinton has created 11 new monuments and enlarged two others.³ Most of the monuments were created (or enlarged) during 2000, except that the Grand Staircase-Escalante National Monument (Utah) was proclaimed on September 18, 1996. On January 11, 2000, President Clinton issued proclamations creating three new monuments and expanding one existing monument. The new monuments are the Grand Canyon-Parashant National Monument (Arizona), the Agua Fria National Monument (Arizona), and the California Coastal National Monument (California). The enlarged monument is the Pinnacles National Monument (California). On April 15, 2000, President Clinton created another new monument,

¹ These 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.

² Proc. 6920, September 18, 1996; 61 Fed. Reg. 50,223 (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.

³ This report focuses on monuments created by President Clinton under the Antiquities Act. Another national monument—the Santa Rosa and San Jacinto Mountains National Monument—was created by law during the Clinton Administration (P.L. 106-351). It is mentioned in the final section of this report entitled “Legislative Activity.”

the Giant Sequoia National Monument (California). On June 9, 2000, he established four monuments: Canyons of the Ancients National Monument (Colorado), Cascade-Siskiyou National Monument (Oregon), Hanford Reach National Monument (Washington), and Ironwood Forest National Monument (Arizona). On July 7, 2000, President Clinton created the President Lincoln and Soldier's Home National Monument (Washington, D.C.). On November 9, 2000, he created the Vermilion Cliffs National Monument (Arizona) and significantly expanded the Craters of the Moon National Monument (Idaho).⁴

The Clinton Administration has expressed interest in creating additional monuments, especially "national landscape monuments." These monuments evidently would protect complete landscapes and whole ecosystems that are "distinct and significant." Indications are that they probably would be created on Bureau of Land Management (BLM) lands and be managed by BLM.

The recent proclamations and the possibility of additional proclamations have generated criticisms of 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. Significant criticism has been expressed by those who fear and oppose restrictions on land uses, both extractive (e.g., mining) and recreational, 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.*),⁵ 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 and major land management laws. Among the measures considered in the 106th Congress were bills to encourage public participation in the monument designation process, to require congressional approval of some or all monument designations, and to promote presidential creation of monuments in accordance with certain federal land management and environmental laws.

Supporters of the Antiquities Act assert that changes to the Act are neither warranted nor desirable. They assert 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 their 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 perceived dangers. In providing instant protection to areas, supporters assert that the Antiquities Act thereby avoids possibly speculative establishment of rights that could be costly for the government to buy out following slower designation processes. While the Secretary

⁴ For details on each monument, including its location, size, resources, and management agency, see Appendix 1 of this report.

⁵ This 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.

of the Interior can make temporary emergency withdrawals of BLM lands,⁶ 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 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.

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 17 Presidents since 1906 have created more than 100 monuments in total, including Grand Canyon, Grand Teton, Zion, Olympic, Statue of Liberty, and Chesapeake and Ohio Canal.⁷ Many areas initially designated as national monuments were later made into national parks. President Franklin Delano Roosevelt used his authority to create or modify monuments on 28 occasions—more than any other President. Several Presidents since 1906 have used their authority to create or modify monuments more often than President Clinton. In terms of acreage, President Jimmy Carter included significantly more land in monuments than any other President. He withdrew 56 million acres of land in Alaska to establish 15 new monuments and enlarge 2 others.⁸ The 13 monuments created or enlarged by President Clinton total approximately 4.8 million acres, the second largest of all Presidents and a larger amount than any other President’s total acreage in the contiguous 48 states.

⁶ 43 U.S.C. § 1714.

⁷ A chronological list of monuments created by Presidents from 1906 through 1999 is contained in *H.R. 1487, The National Monument NEPA Compliance Act*, Hearing before the Subcommittee on National Parks and Public Lands of the House Committee on Resources, 106th Cong., 1st Sess., June 17, 1999 at 24-44. A list of presidentially-proclaimed monuments, organized by President, is contained in the 146 Cong. Rec., (daily edition, July 17, 2000), at S7,030-S7,032. Information on monuments created by both the President and Congress is contained in the notes following 16 U.S.C. §431.

⁸ Congress rescinded these withdrawals and reestablished most of the lands as national monuments or other protective designations (such as national parks) in §1322 of ANILCA.

Congress, too, may create national monuments on federal lands (completely apart from the Antiquities Act). Congress has done so and also has modified monuments (including those created by the President), for instance, by changing their boundaries. Congress has rescinded about a dozen presidential withdrawals that created national monuments (e.g., those in Alaska that were not converted into other conservation units); abolished some monuments outright; and converted national monuments into other protective designations, such as national parks. In fact, of the 55 current national parks, 28 were first designated as national monuments.

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 acre 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—approximately 70 million acres—has at one time been protected under the Antiquities Act.⁹

Monument Issues and Controversies

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). 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 13 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.” The monuments 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 the Act was intended 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, where proposals to limit a withdrawal to 320

⁹ Most 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.

or 640 acres were mentioned. 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.¹⁰

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 the original purpose of the Act was to protect specific objects, particularly objects of antiquity such as cliff dwellings, pueblos, and other archeological ruins in the Southwest (hence the name “Antiquities Act”). They claim that Presidents have used the Act for impermissibly broad purposes, such as general conservation, recreation, scenic protection, or protection of living organisms—purposes 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

¹⁰ For more information on cases on monument size and other legal issues, see CRS General 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.

interest.”¹¹ However, in another case a lower court did note in dicta (that is, not as part of the holding) that there might be circumstances in which a President might be held to have exceeded his authority.¹² 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 stated that the National Trust for Historic Preservation designated 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 as sufficient grounds for contemporary presidential action.

Inclusion of Non-Federal Lands

In some cases, non-federal lands are physically 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, in 1999 John D. Leshy asserted this view in testimony before Congress, stating that the Antiquities Act applies only to federal lands and that monument designations cannot

¹¹ *Cameron v. United States*, 252 U.S. 450, 455-456 (1920).

¹² *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.

bring state or private lands into federal ownership.¹³ 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. 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."¹⁴ 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 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 affect pre-designation land uses on federal lands by limiting or prohibiting 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. 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. 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.

¹³ See *infra* note 7, at 53 and 55.

¹⁴ See U.S. Department of the Interior, Bureau of Land Management, *Interim Management Policy for Newly Created National Monuments*, January 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.

Other concerns have included the possible effects of monument designation on grazing, hunting, and off-road vehicle use. Proclamations have restricted such activities to protect monument resources, and the monument management plans may result in additional restrictions. Some private citizens who use public lands, for instance for grazing cattle or extracting minerals, have expressed fear of economic losses as a result of possible restrictions to those activities.

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 energy development limitations 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 approval for withdrawals that exceed 5,000 acres, but in a manner that is likely to be an unconstitutional “legislative veto” provision under the ruling in *Immigration and Naturalization Service v. Chadha*.¹⁵ 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 argue that the Antiquities Act 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. 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 believe it was the clear intent of Congress to retain presidential withdrawal authority under the Antiquities Act.

¹⁵ 462 U.S. 919 (1983).

Similarly, critics note that recent establishments of monuments were accomplished 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.

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.¹⁶ They assert that 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.¹⁷

Monument Management

Although most monuments 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 six of the monuments created in 2000. In one case, a state agency is managing the monument on behalf of BLM. President Clinton chose BLM and NPS to jointly manage two other monuments, and selected the NPS alone to manage yet another. He gave the Forest Service management responsibility for another of the new monuments. He charged the Fish and Wildlife Service (Department of the Interior) with managing lands within another monument, in accordance with existing arrangements with the Department of Energy (DOE), except that the DOE will manage lands not covered in the agreements. Finally, he assigned one monument to the Armed Forces Retirement Home, through the Soldiers’ and Airmen’s Home, and in consultation with the Secretary of the Interior.

In creating new monuments, President Clinton retained as monument manager the agency that was administering the lands before the monument designation. In the

¹⁶ The *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 other agencies.

¹⁷ Proposals to address the issues raised in this section, primarily those considered during the 106th Congress, are covered below under “Legislative Activity.”

two 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. Also, 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.

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 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 legally compatible with BLM management but 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.¹⁸

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

¹⁸ As 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.

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.¹⁹ However, other legal considerations cast doubt on the issue, notably whether management by other agencies may constitute a reorganization which would require congressional approval.

Some assert 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. Others argue that management by an agency other than NPS is a transfer of part of the current functions of the NPS. They assert 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. Others allege 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). The designation of monuments, with management by other agencies and departments, may raise this issue anew.

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 presidential 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

¹⁹ 4B Op. Off. Legal Counsel 396 (February 8, 1980).

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.

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 United States 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 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.

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

A challenge²⁰ to the designation of Giant Sequoia 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 Art. IV authority of Congress to manage the property of the United States. 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 accomplish.²¹ 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.²² The final management plan for Grand Staircase-Escalante, effective in February 2000, describes the objectives and actions for managing the monument.²³ Management plans for other monuments are underway. For example, BLM’s state office in Colorado issued interim management guidance for Canyons of the Ancients; the guidance will be in effect until a management plan specific to the monument is finalized (by December 2003). 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 California Coastal and President Lincoln and Soldiers’ Home Monuments generally do not address as many issues as the proclamations for other monuments. Some issues may not arise for these two monuments given their distinctive characteristics—the off-shore nature of the California Coastal Monument and the small size of the house and grounds of the President Lincoln and Soldiers’ Home Monument. Most of the other monuments protect large parcels of on-shore land with diverse features.

²⁰ Tulare County, *et al*, v. Clinton, 1:00CV02560, (D.D.C.).

²¹ 16 U.S.C. § 1609.

²² See *infra* note 14.

²³ For more information on Grand Staircase-Escalante, see 1) U.S. Department 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*.

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.

Mineral Development

The 13 proclamations issued by President Clinton withdrew monument lands from new mineral development. The proclamations state that such withdrawals are subject to valid existing rights, except that the proclamation for the President Lincoln and Soldier's 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.

For Canyons of the Ancients, the prohibition is similar except that the proclamation 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.²⁴ Subject to valid existing rights, the Secretary of the Interior is to manage oil and gas development 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 was created, about 85% of the monument 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.²⁵

Withdrawals Preserved

The 13 proclamations state that existing withdrawals, reservations, and appropriations continue, but the monument becomes the dominant reservation. This

²⁴ New 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.

²⁵ U.S. Department 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>].

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, Craters of the Moon, Giant Sequoia, Grand Canyon-Parashant, Grand Staircase-Escalante, Ironwood Forest, and Vermilion Cliffs, grazing would continue to be governed by laws and regulations other than the proclamations. 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.²⁶ Grazing may continue to be permitted in the expanded Pinnacles area, under the proclamation, although it is not allowed elsewhere in the monument.

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.

For Hanford Reach, the proclamation requires the Secretary of the Interior to prohibit grazing to protect monument objects. The proclamations for California Coastal and President Lincoln and Soldier’s Home 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. 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.”

²⁶ 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 land within the Lake Mead National Recreation Area.

Timber

The 13 proclamations imply that timber cutting is precluded, through a general prohibition against removing any “feature” of the monuments. In addition, 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 frequently 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, 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, and Vermilion Cliffs expressly do not reserve federal water rights, but also do not relinquish any existing federal water rights. Federal land management agencies 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 directed 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 appropriate

water rights under Utah State law for the limited visitor facilities within the monument that need water.

The proclamations for two monuments—the California Coastal and President Lincoln and Soldier’s Home Monuments—do not address water rights, apparently because water rights is not an issue for these monuments, given their unusual nature.

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 that will be managed by the NPS, according to a BLM fact sheet.

The California Coastal and President Lincoln and Soldier’s Home Monuments do not address fish and wildlife management. 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.

Although the proclamations do not change 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. 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 several monuments—Agua Fria, Canyons of the Ancients, Cascade-Siskiyou, Craters of the Moon, Grand Canyon-Parashant, Hanford Reach, Ironwood Forest, 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 to close routes 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, a prohibition on off-road vehicle use had been in existence before the monument designations, but the prohibitions may not have been fully implemented. In other areas that became monuments, off-road vehicles had been banned only in some places. For instance, for Canyons of the Ancients, the existing management plan 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 are 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.

The proclamations for California Coastal, Pinnacles, and President Lincoln and Soldier's Home do not address off-road vehicles. Off-road vehicle use does not appear to be an issue in the California Coastal and President Lincoln and Soldier's Home Monuments because of the nature of the monuments. Recreational vehicle use off road is not allowed in the Pinnacles expansion area, according to the NPS, as is typical for NPS lands.

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, Cascade-Siskiyou, Craters of the Moon, Ironwood Forest, and Vermilion Cliffs state that the Secretary of the Interior is to prepare a transportation management plan that addresses road closures, travel restrictions, or other actions necessary to protect objects within the monument.

Future Monument Issues

The Clinton Administration has expressed interest in creating additional monuments, citing population growth and increasing urbanization in the West, and commercial development as threats to the land and its resources. In particular, on December 22, 2000, Interior Secretary Babbitt announced his recommendation that President Clinton create four new national monuments and expand an existing one. The proposed four new monuments, and their estimated federal acreages, are the: Upper Missouri River Breaks, on 377,346 acres of federal land in Montana; Pompeys Pillar, on 51 acres of federal land in Montana; Carrizo Plain, on 204,107 acres of federal land in California; and U.S. Virgin Island Coral Reef, with 12,708 acres of federal submerged lands off of St. John. The Buck Island Reef National Monument off St. Croix in the U.S. Virgin Islands would be expanded by 18,135 marine acres of federal submerged lands. In addition, on January 8, 2001, Secretary Babbitt recommended that the President create two additional monuments: the Sonoran Desert National Monument, on approximately 486,000 acres of federal land in Arizona, and the Kasha-Katuwe Tent Rocks National Monument, on an estimated 4,100 acres in New Mexico.

In addition, there has been discussion in recent months over a possible monument designation involving the coastal plain of the Arctic National Wildlife Refuge (ANWR) in Alaska. President Clinton reportedly has decided against creating a monument in ANWR on the grounds that a monument would not provide land protection beyond that contained in current law.²⁷

Secretary of the Interior Babbitt has expressed particular interest in creating “national landscape monuments.”²⁸ National landscape monuments evidently would protect integrated landscapes and ecosystems that are “distinct and significant,” in contrast with existing monuments, which Secretary Babbitt called “curiosities” that stand out from the landscape because of their beauty or geographic or historical value. Whether the President has authority to accomplish these management goals through the creation of national landscape monuments under the Antiquities Act is not clear.

According to Secretary Babbitt, national landscape monuments would be created on BLM lands and would be administered by BLM. Secretary Babbitt has 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

²⁷ For more information on this issue, see CRS Report RS20602, *Presidential Authority to Create a National Monument on the Coastal Plain of the Arctic National Wildlife Refuge*.

²⁸ Much 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>].

areas.²⁹ Approximately 39,000,000 acres are in the system, which is 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 NPS. The landscape monuments apparently would serve outdoor recreationists but would not accommodate large numbers of visitors; they typically would 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 national park system, although Secretary Babbitt has stated that “destructive and incompatible uses” would be barred. New mining activities likely would be prohibited, but hunting and/or grazing may be allowed if compatible with the protection of a large landscape. BLM lands that are not given particular protective designations, such as national monument, typically are open to mining and other commercial activities.

President-elect Bush reportedly may take a different approach. Some may encourage the President-elect to proceed slowly in the planning processes of the newly-created monuments. Others have expressed hope that the incoming President will modify or overturn some of the recently-created monuments. While it appears that a President can modify a previous presidentially-created monument, we have found no court cases deciding the issue of the authority of a President (as distinct from Congress) to revoke a national monument. While in FLPMA Congress expressly limited the authority of the Secretary of the Interior to revoke monument withdrawals and reservations, that language arguably does not affect the President’s authority under the Antiquities Act, which FLPMA neither amended nor repealed. However, there is no language in the Antiquities Act that expressly authorizes presidential revocation; there is no instance of past practice in that regard; and an attorney general opinion from 1938 concluded that the President lacks this authority.³⁰

Legislative Activity

Congress has considered the issues and policies surrounding the Antiquities Act and whether and how to possibly amend it. Supporters of the President’s authority assert that changes to the Antiquities Act are neither necessary nor desirable because there is broad public support for monument designation, and all Presidents need authority to expeditiously protect valuable federal lands and resources. Critics however, contend that the Antiquities Act permits land actions otherwise reserved to Congress and that they may be taken without congressional input, public participation, or environmental reviews. Some state and local government officials have expressed

²⁹ See U.S. Department 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].

³⁰ 39 Op. Atty. Gen. 185 (1938) (Opinion). For more information on whether a President (as opposed to Congress) can eliminate a national monument, see CRS Report RS20647, *Authority of a President to Modify or Eliminate a National Monument*.

concern with presidential actions in their states, while others denounce presidential action as political or creating undesirable restrictions on land use. Of particular concern have been the economic effects of actual and potential restrictions on mining, grazing, logging, and recreational uses.

The 106th Congress considered proposals to address some of these criticisms. One measure to amend the Antiquities Act, H.R. 1487, stated that to the “extent consistent with the protection of” the sites being designated, the President was required to: 1) solicit public participation and comment in the development of a monument declaration, and 2) “to the extent practicable,” consult with the Governor and congressional delegation of the state or territory in which lands considered for designation were located, at least 60 days before a monument designation. The measure also specified that NEPA was to apply to monument planning. The bill passed the House and was reported by the Senate Committee on Energy and Natural Resources, but there was no further action.³¹ The Clinton Administration had pledged to veto the bill.

Another 106th Congress measure, S. 729, was reported by the Senate Committee on Energy and Natural Resources, but no further action was taken.³² The Clinton Administration also threatened to veto this measure. It would have established a procedure for the Interior and Agriculture Secretaries to make recommendations to the President as to monument creation and for the President in turn to make recommendations and submit maps to Congress. Presidential recommendations would be effective only if approved by Act of Congress. The bill also would have required the Secretaries to establish processes for public comment, and studies and recommendations to be conducted in accordance with NEPA.

The 106th Congress also considered legislation to limit funds for administering the new national monuments and to take away the President’s authority to create national monuments. For instance, the House rejected an amendment to prohibit funds under the Conservation and Reinvestment Act (CARA), H.R. 701, from being used for national monuments created after 1995. Both chambers considered, but Congress did not enact, monument-related language as part of the FY2001 Interior Department appropriations (P.L. 106-291). The House efforts sought to limit funds for monuments created after 1999.³³ The Senate narrowly defeated a floor amendment (49-50) designed to prohibit the President from creating or expanding

³¹ U.S. Congress, House Committee on Resources, *Public Participation in the Declaration and Subsequent Management of National Monuments*, report to accompany H.R. 1487, 106th Cong., 1st Sess., H. Rept. 106-252 (Washington: GPO, 1999). Also, U.S. Congress, Senate Committee on Energy and Natural Resources, *Antiquities Act of 1906*, report to accompany H.R. 1487, 106th Cong., 2d Sess., S. Rept. 106-250 (Washington: GPO, 2000).

³² U.S. Congress, Senate Committee on Energy and Natural Resources, *National Monument Public Participation Act of 1999*, report to accompany S. 729, 106th Cong., 2d Sess., S. Rept. 106-372 (Washington: GPO, 2000).

³³ For more on House action, see CRS Report RS20625, *Provisions on National Monuments and the Interior Columbia Basin Ecosystem Management Project in the FY2001 Department of the Interior Appropriations Bill*.

national monuments after a particular date. The language would have allowed only Congress to create national monuments.

Critics in recent Congresses have put forth other alternatives to amend the Antiquities Act directly, including: (1) Congress may repeal the Antiquities Act outright, so that Congress alone can create monuments; (2) Congress could enact legislation to impose a range of restrictions on presidential authority under the Antiquities Act, such as limiting the size or duration of withdrawals; or (3) Congress could prohibit or restrict withdrawals in particular states, as has been done for Wyoming and Alaska.

Rather than amend the Antiquities Act itself, opponents also have suggested that Congress overturn or amend a particular presidentially-created monument through subsequent legislation, as Congress has done occasionally in the past. They point out that Congress also can control implementation of the Antiquities Act through its authority over programs (in addition to funds to administer monuments). Some also may encourage the incoming President to proceed slowly in the planning efforts of the newly-created monuments.

Additionally, critics have proposed that Antiquities Act designations might be prevented by congressional establishment of protected areas, such as conservation areas, wilderness areas, heritage areas, or other conservation units. Congress, too, can enact legislation to create national monuments. 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 instance by allowing new commercial development, or it can afford additional protection. Some advocate legislation (as opposed to presidential action) as more likely to involve the input of local citizens and the larger public.

The 106th Congress also considered a variety of measures to establish protected areas. Some of these measures reportedly were pursued as alternatives to presidentially-created monuments. A few such measures, recently enacted, include: (1) the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (P.L. 106-351), (2) the Steens Mountain Cooperative Management and Protection Act of 2000 (P.L. 106-399), and (3) the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000 (P.L. 106-353).

By contrast, monument defenders generally have not introduced or supported legislation to change the Antiquities Act. They claim that the Act has been used throughout the century by Presidents of both parties to protect important federal lands and resources. They assert that, in the past, even controversial presidential designations usually have been accepted, supported, and occasionally expanded over time. They further note that previous Congresses that focused on the authority of the President to withdraw lands did not repeal the Antiquities Act, and that the courts thus far have supported past presidential actions under the Act.

Monument designation advocates contend that currently there is widespread public support for such land protection initiatives. Environmental and conservation groups generally have favored additional monuments as necessary to quickly protect

valuable lands and resources. They assert that merely being in federal ownership sometimes does not offer enough protection, and that monument designation is needed to protect for future generations resources that they view as extraordinary, such as those of supreme scientific, natural, cultural, biological, and historic value. Further, in some Western communities there is considerable public support for conservation and protection of open spaces for both “quality of life” and economic reasons. Some communities see the increased tourism and recreation that may result from monument designation as exceeding the benefits of traditional commercial development.

The Clinton Administration cited frustration with the slow pace of legislated land protection as justification for the President to create national monuments. Secretary Babbitt stated that President Clinton used his authority under the Antiquities Act to designate additional monuments where areas of interest to the Clinton Administration are not being protected through the legislative process. The Clinton Administration and other supporters of the Antiquities Act charge that expeditious action is needed to protect valuable federal lands and resources that may be threatened imminently or in the future. Monument supporters have cited threats including looting, vandalism, increased recreation, population growth, and commercial development.

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

September 18, 1996

To date, President Clinton has created 11 new monuments, and enlarged two other monuments, using the authority contained in the Antiquities Act. All but one of the monuments were created (or enlarged) during 2000. President Clinton created the Grand Staircase-Escalante National Monument in Utah on September 18, 1996.³⁴ 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.³⁵ 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 state 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 frontcountry 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 Grand Canyon-Parashant National Monument, the Agua Fria National Monument, and the California Coastal

³⁴ Proc. 6290, September 18, 1996; 61 Fed. Reg. 50,223 (September 24, 1996).

³⁵ U.S. Department of the Interior, Bureau of Land Management, *Grand Staircase-Escalante National Monument: Management Plan* (Cedar City, Utah: 2000.)

National Monument. The enlarged monument is the Pinnacles National Monument.³⁶

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) 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 National Recreation Area (216,544 acres), and the BLM will have primary authority over the rest (807,241 acres).

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, and the Clinton Administration sought to enhance the conservation role of BLM.

The third new monument, 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 7,000 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 any necessary revisions to the memorandum of understanding).

³⁶ The relevant presidential proclamations are as follows: for the Grand Canyon-Parashant National Monument, Proc. No. 7265; for the Agua Fria National Monument, Proc. No. 7263; for the California Coastal National Monument, Proc. No. 7264; and for the Pinnacles National Monument, Proc. No. 7266. They are all published at 65 Fed. Reg. 2821-2834 (January 18, 2000).

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 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

On April 15, 2000, President Clinton proclaimed the Giant Sequoia National Monument in California.³⁷ 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 is managed by the Secretary of Agriculture, together with the underlying Sequoia National Forest, 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.³⁸

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

³⁷ Proc. 7295, April 15, 2000; 65 Fed. Reg. 24,095 (April 25, 2000).

³⁸ The 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. 37,243-37,262 (June 13, 2000).

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, and the Clinton Administration sought to enhance the conservation role of BLM. Four units of the Hovenweep National Monument, comprising about 400 acres, are within the boundaries of the monument but are not part of the monument itself. These areas will continue to be managed by the NPS.

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 52,790 acres of federal land, although an additional 32,383 acres of private land are included within its borders. The proclamation makes BLM responsible for managing the monument; the BLM was managing the lands before the monument designation, and the Clinton Administration sought to enhance the conservation role of BLM. 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.

The Hanford Reach National Monument, located in Southcentral Washington along the Columbia River, has been a buffer area in a federal reservation conducting nuclear weapons development. 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.

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, and the Clinton Administration sought to enhance the conservation role of BLM.

July 7, 2000

On July 7, 2000, President Clinton created the President Lincoln and Soldier's Home National Monument in Washington, D.C.³⁹ 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 (by July 7, 2003), 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 Arizona⁴⁰ and significantly expanded the Craters of the Moon National Monument in Idaho.⁴¹ 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. The monument contains approximately 293,000 acres of federal land, and approximately 13,000 acres of state land and 450 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, and the Clinton Administration sought to enhance the conservation role of BLM.

³⁹ Proc. 7329, July 7, 2000; 65 Fed. Reg. 43,673 (July 13, 2000).

⁴⁰ Proc. 7374, November 9, 2000; 65 Fed. Reg. 69,227 (November 15, 2000).

⁴¹ Proc. 7373, November 9, 2000; 65 Fed. Reg. 69,221 (November 15, 2000).

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 661,287 acres of federal land to the existing monument of approximately 54,000 acres. The expansion area also contains approximately 7,000 acres of state land and an additional 7,000 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 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. A BLM fact sheet specifies that 410,512 acres of the expansion lands are transferred from the BLM to the NPS to be managed in the same manner as the existing monument. The remaining portion of the expansion, 250,775 acres, contains lands historically used for grazing, and these lands will continue to be managed by the BLM.