

CRS Report for Congress

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National Monument Issues

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Summary

Presidential creation of national monuments under the Antiquities Act of 1906 often has been contentious. The most recent controversy has focused on President Clinton's creation of 19 new monuments and expansion of 3 others. Issues have related to the size of the areas and types of resources protected, the inclusion of non-federal lands within monument boundaries, restrictions on land uses, the manner in which the monuments were created, the selection of the managing agency, and other legal issues. The Bush Administration and Members of the 107th Congress are reviewing President Clinton's monument actions. This report will be updated to reflect changes.

Introduction

Presidential establishment of national monuments under the Antiquities Act of 1906 (16 U.S.C. §§431-433) has protected valuable sites, but also has been contentious. President Clinton used his authority 22 times to proclaim 19 new monuments and to enlarge 3 others (See Appendix 1). With one exception, the monuments were designated during President Clinton's last year in office, on the assertion that Congress had not acted quickly enough to protect federal land.

The establishment of national monuments by President Clinton raised concerns including the authority of the President to create large monuments; impact on development within monuments and access to monuments for recreation; and lack of a requirement for environmental studies and public input in the monument designation process. Lawsuits challenged several of the monuments on various grounds, described below.¹ The Bush Administration and the 107th Congress are examining the monument actions of President Clinton. Monument supporters assert that changes to the Antiquities Act are neither warranted nor desirable, courts have supported presidential actions, and large segments of the public support such protections.

¹ For more information, see CRS Report RL30528, *National Monuments and the Antiquities Act: President Clinton's Designations and Issues*. Legal issues related to national monuments are handled by Pamela Baldwin at ext. 7-8597.

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 Act does not specify particular procedures for creating monuments. It was a response to concerns over theft and destruction of archaeological sites, and was designed to provide an expeditious means to protect federal lands and resources. Congress later limited the President’s authority in Wyoming (16 U.S.C. §431a) and Alaska (16 U.S.C. §3213).

Presidents have designated about 120 national monuments, totaling more than 70 million acres, although most of this acreage is no longer in monument status. Congress has abolished some monuments outright, and converted many more into other designations. For instance, Grand Canyon initially was proclaimed a national monument, but was converted into a national park. Congress itself has created monuments on federal lands, and has modified others. President Clinton’s 19 new and 3 enlarged monuments comprise about 5.9 million federal acres. Only President Franklin Delano Roosevelt used his authority more often—28 times—and only President Jimmy Carter created more monument acreage—56 million acres in Alaska.

Monument Issues and Controversies

Various issues regarding presidentially-created monuments have generated both controversy and lawsuits. Issues include the size of the areas and types of resources protected, the inclusion of non-federal lands within monument boundaries, restrictions on land uses that may result, the manner in which the monuments were created, the selection of the managing agency, and other legal issues. Courts have upheld both particular monuments and the President’s authority to create them. Most recently, a court dismissed challenges to Clinton monuments based on improper delegation of authority by Congress; size; lack of specificity; non-qualifying objects; increased likelihood of harm to resources; and alleged violations of the National Forest Management Act of 1976 (NFMA, 16 U.S.C. §1601 *et seq.*), Administrative Procedure Act (APA, 5 U.S.C. §551 *et seq.*), and National Environmental Policy Act (NEPA, 42 U.S.C. §4321 *et seq.*).² Another case reportedly found a President’s action in creating a monument to be unreviewable.³

Monument Size and Objects Protected. Critics assert that large monuments violate the Antiquities Act, in that the President’s authority was intended to be narrow and limited. The monuments designated by President Clinton range in size from 2 acres to 1,870,800 acres. Defenders argue that the Antiquities Act gives the President discretion to determine the acreage necessary to ensure protection of the designated resources, while reserving “the smallest area compatible with the proper care and management of the objects to be protected” (16 U.S.C. §431). Critics also contend that President Clinton used the Antiquities Act for impermissibly broad purposes, such as general conservation and scenic protection. Supporters counter that the Act’s wording – “other objects of historic or scientific interest” – grants broad discretion to the President. Further, some

² Tulare County v. Bush, Civ. No. 00-2560 (D.C. D.C., September, 2001).

³ Mountain States Legal Foundation v. Bush, Civ. No. 00-2072 (D.C. D.C., November 16, 2001).

claim that the Antiquities Act is designed to protect only objects that are immediately endangered or threatened, but others note that the Antiquities Act lacks such a specific requirement. To date, the courts have upheld the authority of the President in these areas.

Inclusion of Non-Federal Lands. In some cases, non-federal lands are contained within the boundaries of a national monument. Some state and private landowners have been concerned that development of such non-federal land is, or could be, more difficult because it might be judged incompatible with monument purposes or constrained by management of surrounding federal lands. The Clinton Administration asserted in testimony that under the Antiquities Act, the monument designation applies only to federal lands. Monument supporters note that concerned state and local landowners can pursue land exchanges with the federal government.

Effects on Land Uses. State and local officials and other citizens have been concerned that monument designation can limit or prohibit development on federal lands. They argue that local communities are hurt by the loss of jobs and tax revenues that result from prohibiting or restricting future mineral exploration, timber development, or other activities. The potential effect of monument designation on energy development has been particularly contentious, given the current emphasis on energy production. Subject to valid existing rights, most of the recent 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. Further, mineral activities that would be allowed may have to adhere to a higher standard of environmental regulation to ensure compatibility with the monument designation and purposes. Others claim that monuments have positive economic impacts, including increased tourism, recreation, and relocation of businesses in those areas. Some maintain that development is insufficiently limited because recent monument proclamations typically have preserved valid existing rights for particular uses, such as mineral development, and continued certain activities, such as grazing.

Some recreation groups and other citizens have opposed restrictions on recreation, such as hunting and off-road vehicle use. Proclamations typically have restricted some such activities to protect monument resources, and management plans being developed may contain additional restrictions.

Consistency of Antiquities Act with NEPA and FLPMA. Critics of the Antiquities Act argue that its use is inconsistent with the intent of the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. §1701 *et seq.*) to restore land withdrawal policy to Congress. A withdrawal restricts the use or disposition of public lands, e.g., for mineral leasing. In enacting FLPMA, Congress repealed much of the President's withdrawal authority and limited the ability of the Secretary of the Interior to make land withdrawals. It required congressional review of secretarial withdrawals exceeding 5,000 acres,⁴ and contains notice and hearing procedures for withdrawals.

⁴ The provision in FLPMA is likely to be an unconstitutional "legislative veto" under INS v. Chadha, 462 U.S. 919 (1983), because it authorizes the termination of an executive action other than by act of Congress. However, there have been no rulings on this particular provision.

Supporters of presidential authority note that in enacting FLPMA, Congress did not repeal or amend the Antiquities Act and thus desired to retain presidential withdrawal authority.

Critics of the Antiquities Act also assert that there has been insufficient public input and environmental studies on presidentially-created monuments, and favor amending the Antiquities Act to require public and scientific input similar to that required under NEPA, FLPMA, and other laws. Others counter that such changes would impair the ability of the President to act quickly and could result in resource impairment or additional expense. They assert that Presidents typically consult *in practice*, and that NEPA applies only to proposed actions that might harm the environment and not to protective measures.

Monument Management. Whereas previously the National Park Service (NPS) had managed most monuments, President Clinton selected the Bureau of Land Management (BLM) and other agencies to manage many of the new monuments. Some critics have expressed concern that the BLM lacks sufficient expertise or dedication to land conservation to manage monuments. President Clinton chose BLM where its own lands were involved, to increase the agency's emphasis on land protection, and possibly both to protect the lands and manage them for multiple uses. Mineral development, timber harvesting, and hunting are the principal uses that would be legally compatible with BLM management but not with management by the NPS. Grazing also typically is allowed on BLM lands, but often precluded on NPS lands. Another concern has been that non-NPS management is a transfer of an NPS function that may constitute an improper reorganization of government. Others counter that there is no reorganization because management of current NPS units, and the general management authority of the NPS, are unaffected. Still others say that the President might be able to move an NPS function to the BLM under congressionally-approved authority allowing transfers of functions within the Interior Department.

Other Legal Issues. The "Property Clause" of the Constitution (Article IV, sec. 3, cl. 2) gives Congress the authority to dispose of and make needed 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. A court recently dismissed a suit raising this issue.⁵

The recent monument designations have renewed discussion of whether a President can modify or eliminate a presidentially-created national monument. While it appears that a President can modify a monument, it has not been established that the President, like Congress, has the authority to revoke a presidential monument designation. (For more information, see CRS Report RS20647.)

Administrative and Legislative Activity

Administrative Action. Interior Secretary Gale Norton has announced that the Department is examining the monument actions of President Clinton. The Secretary is reported to support a case-by-case assessment to determine where changes may be desirable, rather than comprehensive reversal of monument designations. Further, the

⁵ See note 2.

agencies are developing management plans for several of the new monuments. In March 2001, Secretary Norton sent letters to federal, state, county, and tribal leaders in the states where President Clinton designated monuments to seek local input on monument management. Input was sought on desired boundary adjustments, land uses, resource protection, access to inholdings, rights of way, water rights, and other issues. The Department has not taken other action with respect to the Clinton monuments or announced a schedule for doing so.

Legislative Action. While the past two Congresses considered a variety of proposals to amend the Antiquities Act, none were enacted. Some sought to facilitate public participation, require environmental reviews, and take away or limit the President's authority to create monuments.

In the 107th Congress, Republican leaders of the House Resources Committee sent letters to Members with newly-designated monuments in their districts seeking input on how their constituents and local officials view the monuments. They sought input to assist in determining whether changes to any monuments should be made through legislation. A bill (H.R. 601) to allow hunting to continue in the expansion lands of Craters of the Moon National Monument, through creation of a National Preserve, has passed the House and been the subject of hearings by a subcommittee of the Senate Energy and Natural Resource Committee. Two measures have been introduced (H.R. 1334, and S. 689) to govern management of the Governors Island National Monument and to transfer monument management, at no cost, from the Administrator of the General Services Administration to the Interior Secretary.

Another 107th Congress bill, H.R. 2114, would amend the Antiquities Act of 1906 to make presidential designations of monuments exceeding 50,000 acres ineffective unless approved by Congress within 2 years; to the "extent consistent with protection of" the resources in question, would establish a process for public input in presidential monument designations; and require monument management plans to be developed in accordance with the National Environmental Policy Act of 1969. The Bush Administration testified in favor of this bill, and a subcommittee of the House Resources Committee has marked up the measure and forwarded it to the full committee.

Appendix 1. Monuments Proclaimed by President Clinton ¹

Date and Proclamation	Name	State	Acreage (Federal) ²	Managing Agency
9/18/96 Proc. No. 6290	Grand Staircase-Escalante	Utah	1,870,800	BLM
1/11/00 Proc. No. 7263	Agua Fria	Arizona	71,100	BLM
1/11/00 Proc. No. 7264	California Coastal	California	1,000	BLM ³
1/11/00 Proc. No. 7265	Grand Canyon-Parashant	Arizona	1,023,785	BLM & NPS
1/11/00 Proc. No. 7266	<i>Pinnacles (expansion)</i>	<i>California</i>	<i>7,900⁴</i>	<i>NPS</i>
4/15/00 Proc. No. 7295	Giant Sequoia	California	327,769	Forest Service

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6/9/00 Proc. No. 7317	Canyons of the Ancients	Colorado	163,852	BLM
6/9/00 Proc. No. 7318	Cascade-Siskiyou	Oregon	52,951	BLM
6/9/00 Proc. No. 7319	Hanford Reach	Washington	195,843	FWS & DOE ⁵
6/9/00 Proc. No. 7320	Ironwood Forest	Arizona	129,022	BLM
7/7/00 Proc. No. 7329	President Lincoln & Soldier's Home	District of Columbia	2	U.S. Soldiers' & Airmen's Home ⁶
11/9/00 Proc. No. 7373	<i>Craters of the Moon (expansion)</i>	<i>Idaho</i>	<i>661,287⁷</i>	<i>BLM & NPS</i>
11/9/00 Proc. No. 7374	Vermilion Cliffs	Arizona	280,324	BLM
1/17/01 Proc. No. 7392	<i>Buck Island Reef (expansion)</i>	<i>Virgin Islands</i>	<i>18,135⁸</i>	<i>NPS</i>
1/17/01 Proc. No. 7393	Carrizo Plain	California	204,107	BLM
1/17/01 Proc. No. 7394	Kasha-Katuwe Tent Rocks	New Mexico	4,148	BLM ⁹
1/17/01 Proc. No. 7395	Minidoka Internment	Idaho	73	NPS ¹⁰
1/17/01 Proc. No. 7396	Pompeys Pillar	Montana	51	BLM
1/17/01 Proc. No. 7397	Sonoran Desert	Arizona	486,603	BLM ¹¹
1/17/01 Proc. No. 7398	Upper Missouri River Breaks	Montana	377,346	BLM
1/17/01 Proc. No. 7399	Virgin Islands Coral Reef	Virgin Islands	12,708	NPS
1/19/01 Proc. No. 7402	Governors Island	New York	20	NPS ¹²

Table sources: Presidential proclamations, agency documents, and agency staff.

¹ The following abbreviations are used: BLM: Bureau of Land Management; NPS: National Park Service; FWS: Fish and Wildlife Service; DOE: Department of Energy; and DOD: Department of Defense.

² Non-federal lands, such as state and private lands, are included within the boundaries of some of the monuments but are not part of the monument and not reflected in this column.

³ The Monument is being managed cooperatively with the California State Department of Fish and Game under a Memorandum of Understanding with the BLM, according to agency documents.

⁴ The expanded monument now consists of 24,165 acres.

⁵ To be managed by the FWS under existing agreements with the DOE, except that the DOE manages certain lands. The FWS is to assume management of DOE lands if the DOE and FWS determine that the lands have become suitable for management by that agency.

⁶ The Armed Forces Retirement Home (AFRH), through the U.S. Soldiers' and Airmen's Home, is to manage the monument. The AFRH is to consult with the Secretary of the Interior through the NPS.

⁷ The expanded monument now consists of 739,682 acres.

⁸ The expanded monument now consists of 19,015 acres.

⁹ To be managed "in close cooperation with the Pueblo de Cochiti."

¹⁰ The Secretary of the Interior is to manage the monument and "transfer administration of the monument" to the NPS.

¹¹ On November 6, 2001, BLM resumed management of lands being managed by DOD pursuant to a military withdrawal.

¹² To be managed in consultation with the Administrator of General Services.