

CRS Report for Congress

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Grand Staircase-Escalante National Monument

(name redacted)

Specialist

Environment and Natural Resources Policy Division

Summary

President Clinton created the Grand Staircase-Escalante National Monument in Utah, by proclamation on September 18, 1996. The Monument contains geological, paleontological, archeological, biological, natural, and historical resources. It is managed by the Bureau of Land Management (BLM) under interim guidelines, pending approval of a final management plan and environmental impact statement (EIS) by September 18, 1999. The creation of the Monument was controversial. Issues include the President's use of the Antiquities Act of 1906 to create the Monument; the Monument's general effect on land uses; the implications for development of minerals and school trust lands; and the bearing on the designation of wilderness. This report discusses these issues and will be updated if their status changes.

Introduction

On September 18, 1996, President Clinton issued a proclamation creating the Grand Staircase-Escalante National Monument in south-central Utah, initially with 1.9 million acres of federal land (Proc. No. 6920, 61 *Fed. Reg.* 50,223).¹ The Monument contains geological, paleontological, archeological, 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.

The President created the Monument using the authority contained in the Antiquities Act of 1906 (16 U.S.C. 431 *et seq.*). The President described the "spectacular array" of resources that he believed needed protection, in part to preserve our national heritage. Although generally supported by environmentalists, the creation of the Monument was controversial. Among the primary issues are the President's use of the Antiquities Act to create the Monument; the effect of the Monument generally on land uses within its borders; the implications for development of minerals and school trust lands; and the

¹This figure was reported initially as 1.7 million acres, but has been recalculated.

bearing on actions to establish Utah wilderness areas. These issues have been the subject of congressional oversight and legislation, and law suits against the Administration.

The Antiquities Act of 1906

The Antiquities Act of 1906 authorizes the President to create national monuments on federal land. The land must contain historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest. Regarding size, the President is to reserve “the smallest area compatible with the proper care and management of the objects to be protected.” Extensions or establishment of monuments in Wyoming require the authorization of Congress (16 U.S.C. 431a), and withdrawals in Alaska exceeding 5,000 acres are subject to congressional approval (16 U.S.C. 3213).

The Antiquities Act 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. President Theodore Roosevelt first 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 proclaimed more than 100 monuments. Many presidentially-designated monuments now are national parks. For instance, the Grand Canyon initially was a national monument measuring 0.8 million acres, and is now a national park with 1.2 million acres. Also, monuments have been created or modified by Acts of Congress.

Sizes of monuments vary widely. While more than half initially involved less than 5,000 acres, they ranged from less than 1 acre to nearly 11 million acres. The largest monument was created as part of President Carter’s 1978 withdrawal of 56 million acres of land in Alaska, to establish 15 new monuments and enlarge 2 others. Grand Staircase-Escalante is the largest presidentially-created monument outside Alaska. About 10% of all federal land--nearly 70 million acres--has been designated using the Antiquities Act.²

Presidential establishment of national monuments sometimes has been controversial, *e.g.* the Jackson Hole National Monument in Wyoming (1943) and especially President Carter’s Alaskan withdrawal. Some contend that Presidents have used the Act for broad conservation or recreation purposes, rather than to protect endangered resources. President Clinton’s use of the Antiquities Act to create Grand Staircase-Escalante raised several issues. Concern has centered on justification for the types of resources and the size of the area protected, as well as the level of threat to the area. Other legal and policy aspects of the proclamation and the Antiquities Act generally have been questioned, including constitutionality; consistency with other law, especially land withdrawal provisions of the Federal Land Policy and Management Act of 1976 (FLPMA); and the exclusion of Congress, government officials, and the public from the designation process.

Monument Management and Effect on Land Uses

Under the proclamation, the Escalante Monument is being managed by BLM. This is the first time that BLM is managing a national monument; most are managed by the

²For data on monuments as well as BLM’s Escalante activities generally, see BLM’s monument website at: <http://www.ut.blm.gov/monument>.

National Park Service (NPS). BLM may have been chosen because the federal lands already were under BLM management, or were intended to be both protected and yet managed for multiple uses. Both the President's authority to choose a management agency other than NPS, and the choice of BLM, have been questioned.³ Concern also has centered on the types and extent of land uses limited or prohibited by the designation.

The proclamation gave BLM until September 18, 1999 (3 years) to issue a final plan for managing the Monument. In November 1998, BLM released a Draft Management Plan and Draft EIS outlining five approaches and identifying a preferred alternative. All five approaches propose a high degree of protection for Monument resources, but they have different emphases. The preferred alternative emphasizes conservation of the Monument as an unspoiled area, concentrating recreational use along highway corridors, restricting use and access in the interior, and promoting research and applied science. The other options emphasize either continuation of current management, recreation, research, or the primitive nature of the land. The plan is available for public review and comment until February 12, 1999 (90 days). BLM expects to circulate a Proposed Management Plan and a Final EIS in the summer of 1999, with the Final Management Plan and Record of Decision on the EIS by September 18, 1999.

The presidential proclamation and accompanying statement addressed management of the Monument, and BLM interim guidelines incorporate and expand on such presidential direction pending approval of a management plan. President Clinton indicated that the proclamation does not apply to the state and private lands included in the Monument's borders when designated, but rather to the federal lands. The proclamation did authorize land exchanges to further the protective purposes of the Monument. Further, under the interim guidelines, activities on non-Monument lands that damage or are expected to damage Monument lands "must be reported to the responsible management official for appropriate action."

In general, existing uses of the land that are not precluded by the proclamation, and do not conflict with the purposes of the Monument, may continue. Before the Monument's designation, some uses of the land had been authorized through mineral leases (oil, gas, and coal) and mining claims; grazing allotments; rights of way grants; special and commercial recreation permits; and wood collection permits. Under the guidelines, existing use authorizations also may be renewed, and new use authorizations may be approved, if they are in accord with laws and regulations and do not conflict with the purposes of the Monument. The final management plan is expected to review how valid existing rights for varied land use activities are determined and whether any restrictions will be imposed.

Subject to valid existing rights, federal lands and interests in lands within the Monument were withdrawn from entry, location, selection, sale, leasing, or other disposition under the public land laws. BLM has interpreted this as barring *new* mineral leases, mining claims, and prospecting or exploration activities. Existing withdrawals,

³For legal issues, including the selection of BLM as Monument manager, see CRS Memorandum, *Legal Issues Raised by the Designation of the Grand Staircase-Escalante National Monument*, by (name redacted), December 13, 1996.

reservations, and appropriations continue, but the Monument is the dominant reservation; this generally requires that uses be managed to protect Monument values.

The Proclamation states that water rights are not reserved. In preparing the management plan, the Secretary is to address the necessity of water for the care and management of the objects within the Monument, and the extent to which further action is needed under federal or state law to ensure availability of water.

The Proclamation also states that the creation of the Monument would not affect grazing, which would continue to be governed by other laws and regulations. Most of the Monument currently is under grazing allotments. The authority of the state of Utah for fish and wildlife management on federal lands within the Monument also will continue. Under the interim guidelines, scientific, archaeological, and historical investigations, including collection of paleontological resources, may continue, except that surface disturbance must be minimal. Types of recreation, including hiking and camping, generally are allowed. Protection of wilderness study areas is continued. No additional areas for off-road vehicles may be designated, and some existing areas may be closed. Road maintenance may be permitted, but road improvements are to be minimal. Certain rights of way and ancillary public facilities necessary for established communities generally will be processed.

Mining and Mineral Development

The Monument contains energy and mineral resources. The Kaiparowits Plateau is known for its large reserves of low-sulfur coal, although estimates of the amount of coal and its worth vary. For a 1997 report, the General Accounting Office contacted a variety of sources to ascertain comprehensive estimates, and found only two--the Utah Geological Survey for the Monument generally, and the Utah Governor's Office for the Smoky Hollow Mine, an extensive coal mining operation proposed by Andalex Resources, Inc. The Utah Geological Survey valued all energy and mineral resources within the Monument at between \$223 billion and \$331 billion. The President's statement indicates that designation of the Monument was motivated partly by concern, shared with the environmental community, that a large coal mining operation (*i.e.*, Smoky Hollow) was imminent and could damage the resources of the area. The Utah Governor's Office estimated that the coal mined at Smoky Hollow would be worth \$1.4 billion over 30 years, and would create several hundred jobs in Utah. The Department of the Interior has disputed the estimates of the State of Utah.⁴

The establishment of the Monument was viewed by many area residents as federal intrusion on the state's economic interests, which would significantly damage the local and state economies by effectively barring development. Others disputed the expected economic benefits, including the projected local effects, noting that a principal mining company is based overseas. Still others viewed the Monument as having a positive economic impact, primarily from increased tourism to the area.

⁴For more information on economic issues including mineral development, see GAO Report B-278137, *Federal Land Management: Estimates of Mineral Values and of the Economic Effects of Developing Minerals in the Grand Staircase-Escalante National Monument*, October 31, 1997.

A variety of leases and claims existed on its lands when the Monument was created. Two companies held a number of uncontested leases to mine coal. A number of different companies and individuals held a total of 89 leases for oil and gas, although 59 were held by one company. Also, there were dozens of claims for a variety of other minerals, such as gold and silver. BLM asserted that while new leases and claims were prohibited, existing coal, oil, and gas leases and mineral claims that were determined to be valid would remain in effect. However, BLM also noted that development would have to adhere to a higher standard of environmental review, to assess its compatibility with the National Monument designation. Many pro-development advocates feared that the new standard effectively could restrict or prohibit development of resources.

The Proclamation preserved valid existing rights. Holders of leases and claims predating the Monument have pursued different courses. No coal leases have been developed, and the Administration and lease-holding companies are voluntarily pursuing an exchange of those holdings for other lands, resources, or compensation. The President expressed interest in such exchanges when establishing the Monument. The company holding the majority of oil and gas leases was authorized by BLM to drill an exploratory well (but did not do so), but may seek to obtain a permit to drill other sites. Some claim holders have filed notices with BLM that they will conduct operations on preexisting mining claims. Limited operations not affecting monument values have begun on some claims, but validity determinations will be completed only if more development is likely.

School Trust Lands

When established, the Monument contained state lands and mineral interests of the Utah School and Institutional Trust Lands Administration (SITLA). These lands were among those given to Utah from the public domain as part of its admission to statehood, to generate money for Utah schools. Designating the Monument was viewed by many in the area as limiting Utah's authority to develop the surface and mineral resources on its school trust lands, because such development might be incompatible with the purposes for which the Monument was created. The Utah Geological Survey estimated that between 876 million and 1.3 billion tons of coal are located on the school trust lands, and that revenue to the school trust fund would range from \$1.4 billion to over \$2 billion if all the recoverable coal were developed. Others disputed the mineral value or development potential of the state lands. The location of the school trust lands among federal lands presents management problems both the state and the federal government.

In creating the Monument, President Clinton advocated exchanges of school trust lands within the Monument for other federal land. The 105th Congress enacted related legislation (P.L. 105-335). The law transfers to the federal government a total of 362,992 acres of Utah state lands and 90,423 additional acres of mineral rights, including 177,312 acres of land and 23,521 acres of mineral rights within Grand Staircase-Escalante. In exchange, Utah receives a package including 119,296 acres of federal land and 31,952 additional acres of mineral interests, and \$50 million. The exchange is to be completed by January 9, 1999, and would increase the size of the Monument to 2.1 million acres.

Under the law, the state of Utah and the federal government are required to honor valid existing rights on lands they acquire, which in some cases may present challenges to implement. The law reflects a 1998 state-federal land exchange agreement between the

state of Utah and the Department of the Interior. It is the culmination of years of proposals, and supercedes a related 1993 law (P.L. 103-93).

The 105th Congress enacted separate legislation (P.L. 105-355) to alter the borders of the Monument to exclude certain parcels of land desired by local communities for community needs and to add others. This law was crafted to resolve some of the local controversy over potential restrictions on land development.

Wilderness

The creation of the Monument occurred in the context of a lengthy dispute over the designation of wilderness in Utah. Environmental groups led an effort for wilderness protection of 5.7 million acres, while the Utah congressional delegation, among others, generally supported 1.8 million acres. Units of the National Wilderness Preservation System must be designated by Congress by law, and designation of the Monument came on the heels of defeat of a 1.8 million acre wilderness bill in 1996.

The Monument designation affected some of the land previously considered for wilderness, but generally is not as restrictive as a designated wilderness. Wilderness areas usually do not have roads and generally prohibit motorized vehicles and other forms of intrusive human activity to allow for solitude and primitive recreation. A greater variety of activities may be permitted in monuments, so long as their resources are protected. Having BLM, rather than the NPS, manage this Monument apparently will result in more flexible management; the President stated that Monument lands would remain “open for multiple uses.” The Proclamation’s controversy hinged on its inclusion of areas some wanted as wilderness and others desired as unrestricted for development.

The federal government owns 33.8 million acres (64%) of land in Utah. There are 0.8 million acres of wilderness (mostly managed by the Forest Service), although none are within the Monument. There are also 3.2 million acres being managed as wilderness study areas (WSAs), a result of a BLM inventory some years ago, 0.9 million of which are within the Monument. WSAs are managed to maintain their suitability for wilderness designation until legislation is enacted to determine their final status. The creation of the Monument does not affect these study areas, or preclude Congress from designating wilderness within the Monument’s borders.

Currently, BLM is reviewing additional land of at least 2.5 million acres in Utah for potential inclusion in the wilderness system; about one-sixth of this acreage is within the Monument. This inventory has been controversial, and contested by the state and others who believe it is biased towards establishing wilderness. It was halted by the courts, then recently resumed following an appeal (*Utah v. Babbitt*, 137 F. 3d 1193 (10th Cir. 1998)).

Controversy continues over wilderness in Utah, focusing on the adequacy of the Monument designation versus a wilderness designation to protect resources; the size and location of wilderness areas; eligibility of land with certain travel routes for designation as wilderness; whether to release areas from further wilderness review or study; how water rights would be treated; the role of local governments in the management of wilderness; and management direction, including whether to allow certain land uses.

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