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Background Materials on the Pinnacles National Monument Expansion

U.S. Department of the Interior
January 11, 2000

Background Materials on the Pinnacles National Monument Expansion

THE ANTIQUITIES ACT

Section 2 of the Antiquities Act, 16 U.S.C. § 431, authorizes the President to establish as national monuments “objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States....”

Objects of Historic or Scientific Interest

In 1908, President Theodore Roosevelt proclaimed, “Whereas, the natural formations, known as the Pinnacles Rocks, with a series of caves underlying them, which are situated on public lands, within the Pinnacles National Forest, in the State of California, are of scientific interest, and it appears that the public interest would be promoted by reserving these formations and caves as a National Monument, with as much land as may be necessary for the proper protection thereof...” (Proclamation No. 796), thereby establishing the 2,060 acre Pinnacles National Monument. The monument was expanded in 1923 by 562 acres (Proclamation No. 1660), by 326 acres in 1924 (Proclamation No. 1704), and by 1,926 acres in 1931 (Proclamation No. 1948). Substantial expansions also occurred in 1933 and 1941, adding 5,322 acres and 4,300 acres respectively (Proclamation Nos. 2050 and 2528). In 1976, Congress added 1,720 acres to the monument (90 Stat. 2693).¹ Each time the expansions included objects of scientific interest or were required for the proper care, management, and protection of the objects of scientific interest situated on lands within the monument.

The outer boundary of this monument expansion covers about 10,800 acres, of which 7,900 acres are managed by the Bureau of Land Management (BLM). These lands are located to the north, northwest, northeast, and south of the monument.² The remaining 2,900 acres are privately owned. There are no state owned lands within the boundaries.

The Proclamation describes objects in the area that warrant protection as a national monument. Much of the expansion area has remained isolated, relatively undisturbed, and largely roadless. These conditions have afforded protection for the fragile, biological resources on these lands. The wild character of the land provides an important habitat for raptor populations, amphibians, and reptiles who reside in and use the resources of the monument. In addition to containing pieces of the same faults that have created the tremendous geological formations throughout the monument, the expansion lands hold part of the headwaters that drain into the basin of the

¹The same act designated 13,270 acres, constituting eighty percent of the total monument, as wilderness (90 Stat. 2693).

²Recognizing their natural, scientific, and ecological importance, the Department of the Interior designated seventy five percent of the included federal lands as a Wilderness Study Area, called the Pinnacles Contiguous Wilderness Study Area.

monument. By expanding the monument, these unique biological and geological resources are afforded more complete protection that will maintain and enhance the ecosystems of the monument.

Congressman Sam Farr of California introduced legislation in June 1999 (H.R. 2279) to add approximately 3,000 acres of BLM land to the Pinnacles National Monument and designate them as wilderness. The bill would allow for the acquisition of private land as well. H.R. 2279, "To expand the boundaries of Pinnacles National Monument, and for other purposes," has been referred to the House Committee on Resources, but no hearings have been held.

Land Area Reserved for the Proper Care and Management of the Objects to be Preserved

The Antiquities Act authorizes the President, as part of his declaration of a national monument, to reserve land, "the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected." 16 U.S.C. § 431. The expansion area has been carefully delineated, based on a thorough review of available information, to meet the goals of effectively caring for and managing the objects within the monument in perpetuity. The area includes the geologic and biological objects identified in the Proclamation.

LEGAL EFFECTS OF THE PROCLAMATION

There are several significant aspects of the Proclamation. First, it reserves only the federal lands in the area, because the Antiquities Act applies only to objects of historic or scientific interest "that are situated upon the lands owned or controlled by the Government of the United States...." 16 U.S.C. § 431.

Second, the Proclamation is subject to valid existing rights. Thus, to the extent a person or entity has valid existing rights in the federal lands or resources within the area, the Proclamation respects their rights. The exercise of such rights could, however, be regulated in order to protect the purposes of the monument.

Third, the Proclamation appropriates and withdraws the federal lands and interests in lands within the boundaries of the monument from entry, location, selection, sale, leasing, or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. This withdrawal prevents the location of new mining claims under the 1872 Mining Law, and prevents the Secretary of the Interior from exercising discretion under the mineral leasing acts and related laws to lease or sell federal minerals within the boundaries of the monument.

Fourth, the Proclamation reserves, subject to valid existing rights and as of the date of the Proclamation, sufficient water to fulfill the purposes for which the monument is established.

ADMINISTRATION OF THE MONUMENT

Management by the National Park Service

The federal lands described in the Proclamation are currently under the jurisdiction of the Bureau of Land Management (BLM) in the Department of the Interior. Pinnacles National Monument is currently managed by the National Park Service (NPS). The Proclamation transfers the expansion lands to the NPS to be managed in the same manner as the rest of the monument. Wilderness Study Areas will continue to be managed under section 603(c) of the Federal Land Policy and Management Act (FLPMA, 43 U.S.C. § 1701 et seq.). The Wilderness Act of 1964 serves some values (e.g., outstanding opportunities for solitude and primitive and unconfined recreation) that are not addressed in the Antiquities Act of 1906 which, as noted earlier, serves to protect “objects of historic or scientific interest.” Section 2(c) of the Wilderness Act expressly acknowledges that wilderness areas “may...contain ecological, geological, or other features of scientific, education...or historic value,” and section 4(b) directs that wilderness areas “shall be devoted to the public purposes” of, among others, “scientific, educational, conservation, and historical use.”

The designation of these lands as part of Pinnacles National Monument has no effect on the Wilderness Study Area status of the area, nor on any Congressional action to designate lands within the monument as wilderness. Congress has, in fact, many times in the past designated wilderness within existing national monuments, including other areas of the monument.

Impact of Monument Designation on Existing or Planned Activities in the Area

The expansion lands are currently lightly hunted, primarily by adjoining landowners. Hunting is generally prohibited in units of the National Park Service and will be eliminated with addition of this area to the monument. Grazing also currently occurs within the expanded area; the designation will not eliminate this use. There are no known mining claims in the area, and no outstanding oil, gas, or other mineral leases. Wilderness values within the Wilderness Study Areas will continue to be managed as specified above.

The area within the boundaries of the expansion area contains approximately 2,900 acres of private land. The monument designation does not apply to these lands, but the Proclamation provides that if any private lands within the outer boundaries of the monument are acquired into federal ownership in the future, they will become part of the monument. In the absence of acquisition, the laws applicable to the use of private lands prior to the establishment of the monument will continue to apply.

Attachment: Bibliography, Expansion to Pinnacles National Monument

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Background Materials on the Grand Canyon- Parashant National Monument

U.S. Department of the Interior
January 11, 2000

Background Materials on the Grand Canyon-Parashant National Monument

THE ANTIQUITIES ACT

Section 2 of the Antiquities Act, 16 U.S.C. § 431, authorizes the President to establish as national monuments “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States....”

Objects of Historic or Scientific Interest

The Grand Canyon-Parashant National Monument is located on the Colorado Plateau in northwestern Arizona, within the drainage of the Colorado River. It borders Grand Canyon National Park to the south, the state of Nevada to the west, and encompasses a portion of Lake Mead National Recreation Area. Elevations within the monument range from 2,300 to 8,000 feet above sea level. The map appended to the Proclamation sets out the boundaries of the land reserved for the monument. The outer boundaries of the area encompass 1,014,000 acres of federal land, of which the Bureau of Land Management (BLM) manages approximately 808,000 acres and the National Park Service (NPS) manages approximately 206,000 acres. The Proclamation describes objects in the area that warrant protection as a national monument.

The monument contains valuable geological resources, including relatively undeformed and unobscured Paleozoic and Mesozoic sedimentary rock layers, offering a clear view to understanding the geologic history of the Colorado Plateau. Deep canyons, mountains and lonely buttes testify to the power of geological forces and provide colorful vistas. Fossils are abundant throughout the monument. Among these are large numbers of invertebrate fossils, including bryozoans and brachiopods located in the Calville limestone of the Grand Wash Cliffs, and brachiopods, pelecypods, fenestrate bryozoa, and crinoid ossicles in the Toroweap and Kaibab formations of Whitmore Canyon. There are also sponges in nodules and pectenoid pelecypods throughout the Kaibab formation of Parashant Canyon.

Archaeological evidence shows much human use of the area over the past centuries. Prehistoric use is documented by irreplaceable rock art images, quarries, villages, watchtowers, farms, burial sites, caves, rockshelters, trails and camps. Historic ranch structures and corrals, fences, water tanks and the ruins of sawmills are scattered across the monument, and tell the stories of the remote family ranches and the lifestyles of early homesteaders. There are several old mining sites dating from the 1870s, showing the history of mining during the late nineteenth and early twentieth centuries.

The monument also contains outstanding biological resources. Giant Mojave yucca, spread out in undisturbed conditions, are found in the monument. Diverse wildlife inhabit the monument, including a trophy-quality mule deer herd, Kaibab squirrels, and wild turkey. There are numerous threatened or endangered species as well, including the Mexican spotted owl, the California

condor, the desert tortoise, and the southwestern willow flycatcher. There are also candidate or sensitive species, including the spotted bat, the western mastiff bat, the Townsend's big eared bat, and the goshawk. There are two federally recognized sensitive rare plant species: the *Penstemon distans* and the *Rosa stellata*.

The area in the monument has remained isolated and relatively undisturbed and is for the most part roadless. Most of the land within the outer boundaries of the monument is federally owned. The non-federal land is owned primarily by the State of Arizona in scattered 640 acre sections, the result of Arizona's statehood land grant. Currently, the federal lands in the area are used primarily for scientific study, primitive recreation, and livestock grazing.

In 1975, the Grand Canyon National Park Enlargement Act was signed into law. This Act continued, but did not complete, an historic effort to fully protect the Grand Canyon ecosystem. Preservation of the Grand Canyon area began with the creation of the Grand Canyon Forest Preserve in 1893, followed by the creation by President Theodore Roosevelt of the Grand Canyon National Monument in 1908. In 1919, Congress converted the Grand Canyon National Monument to a national park. Additional lands were made national monuments by Presidential Proclamation in 1932 and 1969. Congress enlarged the park in 1975 to include these lands, but that Act left open the question whether several drainages north of the Grand Canyon, including much of the Grand Canyon-Parashant National Monument, should be protected. The Act required that the Secretary study and issue a report on these lands. The report was completed in 1981, although no management recommendation was included.

In the late 1970s, the area was evaluated for its wilderness characteristics under the Federal Land Policy and Management Act, and in 1984 Congress designated four wilderness areas, totaling about 95,000 acres, in the national monument boundary. The documentation assembled in the National Park designation and the wilderness inventory and study processes has been useful in identifying many of the objects of scientific and historic interest within the monument area.

Land Area Reserved for the Proper Care and Management of the Objects to be Preserved

The Antiquities Act authorizes the President, as part of his declaration of a national monument, to reserve land, "the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected." 16 U.S.C. § 431. The area reserved has been carefully delineated, based on a thorough review of available information, to meet the goals of effectively caring for and managing the objects in perpetuity.

The area of the monument includes archaeological, biological, paleontological, geological, and historic objects identified in the Proclamation. The area is based on the conservation needs of these objects. Some of these objects, such as the geological resources, are present throughout the entire monument area. Others, such as the archeological resources, are scattered within it. Many objects, such as the biological and geological, are found in conjunction with one another. Some of the objects identified depend on their location at various sites or elevations for their scientific value.

Preservation of such objects requires, among other things, protection of enough land surrounding them to maintain the relatively remote conditions that have made their continued existence possible. Furthermore, the scientific value of many of the objects within the monument requires preservation of areas large enough to maintain the objects and their interactions. For example, species that exist because of the area's extraordinary geologic and environmental stability are distributed according to the geologic features to which they have adapted. Much of the biological and other scientific interest in the area results from the variety of geologic substrates across elevational gradients. Many species rely upon the entire area to maintain viable populations and their role in the ecosystem. Thus, protection of the aggregate area is necessary for proper care of the objects. Even if it were possible to disaggregate the area, management of a patchwork of reserved lands would be impractical, as it would make it more difficult to care for the objects, reduce options for natural resource management, and lead to inconsistent resource management standards for overlapping resources. Such a fragmentation of the monument would endanger many of the objects, undermine the purposes of the monument itself, and create substantial impediments to effective management of the monument. In short, reservation of a smaller area would undermine proper care and management of the monument.

LEGAL EFFECTS OF THE PROCLAMATION

There are several significant aspects of the Proclamation. First, it reserves only the federal lands in the area, because the Antiquities Act applies only to objects of historic or scientific interest "that are situated upon the lands owned or controlled by the Government of the United States." 16 U.S.C. § 431.

Second, the Proclamation is subject to valid existing rights. Thus, to the extent a person or entity has valid existing rights in the federal lands or resources within the area, the Proclamation respects their rights. The exercise of such rights could, however, be regulated in order to protect the purposes of the monument.

Third, the Proclamation appropriates and withdraws the federal lands and interests in lands within the boundaries of the monument from entry, location, sale, leasing, or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. This withdrawal prevents the location of new mining claims under the 1872 Mining Law, and prevents the Secretary of the Interior from exercising discretion under the mineral leasing acts and related laws to lease or sell federal minerals within the boundaries of the monument.

Fourth, the Proclamation does not reserve water resources of the area under federal law pursuant to the so-called Winters doctrine. Most of the objects to be protected under the Proclamation

(e.g., archaeology and geology) do not require water. For protection of other monument resources, the Proclamation direct the Secretary of the Interior to work with appropriate state authorities to ensure that water resources needed for monument purposes are available.

ADMINISTRATION OF THE MONUMENT

Management by the Bureau of Land Management and the National Park Service

The federal lands in the area described in the Proclamation are currently under the jurisdiction of the Bureau of Land Management (BLM) and the National Park Service (NPS, within the boundaries of the Lake Mead National Recreation Area) in the Department of the Interior. BLM manages the land pursuant to its basic organic authorities, the primary one being the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. § 1702 et seq.). The Park Service manages its lands pursuant to the National Park Service Organic Act (16 U.S.C. § 1) and the act creating the Lake Mead National Recreation Area (16 U.S.C. § 460n).

The Proclamation keeps the area under the existing BLM and NPS management. This keeps the management of the federal land under these agencies' existing authorities, but subject to the overriding purpose of protecting the scientific and historic objects described in the Proclamation. The establishment of the monument thus constitutes an overlay on the management regime otherwise applicable to lands managed by the BLM or the NPS; it limits the management discretion that the BLM and NPS might otherwise have, by mandating protection of the historic and scientific objects within the national monument.

As elsewhere, the designated wilderness areas encompassed within the monument will continue to be managed in accordance with the Wilderness Act of 1964 and the legislation designating them as wilderness. Other monuments have Congressionally designated wilderness, such as the Badlands, Bandelier, Chiricahua, Craters of the Moon, Lava Beds, Misty Fjords, Organ Pipe Cactus, Pinnacles, and Saguaro.

Impact of Monument Designation on Existing or Planned Activities in the Area

Currently permitted livestock grazing (including water impoundments, and similar range improvements), hunting, and similar activities:

Grazing, hunting and other similar uses are generally not be affected except where (1) the BLM or NPS, through processes required by existing law, identifies places where such uses ought to be restricted or prohibited as necessary to protect the federal lands and resources, including the objects protected by the monument designation; or (2) where the BLM or NPS finds a clear threat from such a use to the federal lands and resources, including the objects protected by the monument designation and the circumstances call for swift protective action. Such uses will, of course, remain subject to applicable laws

and regulations, and will therefore remain subject to regulation and limitation under such provisions for reasons other than establishment of the monument.

Use of existing rights-of-way (such as those established under R.S. 2477 or Title V of FLPMA):
The area covered by the Proclamation has very few roads; those that exist are primitive and tend to be rough and rutted much of the year. Use of existing rights-of-way will generally be subject to the same standards as described in the preceding paragraph. In some cases existing rights-of-way may include valid existing rights. The exercise of such rights may be regulated in order to protect the purposes of the monument, but any regulation must respect such rights.

Off road vehicle use:

For purposes of protecting the objects identified in the Proclamation, it prohibits motorized and mechanized vehicle travel off road, except for authorized administrative or emergency purposes. The current management plan prohibits such vehicle travel off road in the monument area so there should be no change in actual practice.

Activities on state or private land:

The area within the boundaries of the monument contains approximately 23,000 acres of state land. It also contains approximately 9,000 acres of private land. The monument designation does not apply to those lands, but the Proclamation provides that if any of these lands within the outer boundaries of the monument are acquired into federal ownership in the future, they will become part of the monument. In the absence of acquisition, the laws applicable to the use of private or state lands prior to the establishment of the monument will continue to apply.

Mining claims:

New mining claims are prohibited. The Proclamation withdraws the area from the 1872 Mining Law (30 U.S.C. § 21 et seq.). Existing mining claims with a valid discovery of a valuable mineral deposit as of the date of the designation will contain valid existing rights. The exercise of such rights may be regulated in order to protect the purposes of the monument, but any regulation must respect such rights. Existing mining claims that lack a valid discovery of a valuable mineral deposit have no valid existing rights; activities on such claims may be regulated or prohibited to protect the purposes of the monument.

Attachment: Bibliography, Grand Canyon-Parashant National Monument

Bibliography

Grand Canyon-Parashant National Monument

I. Geology Resources

Mineral Deposits

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Babbitt May Back More Monuments

By MATT KELLEY, Associated Press Writer

WASHINGTON (AP) -- A swath of Colorado canyons dotted with American Indian ruins and an ecologically diverse mountain in Oregon are "at the top of the list" to be new national monuments, Interior Secretary Bruce Babbitt said.

Babbitt indicated Monday he is on the verge of recommending that President Clinton create monuments around the southwestern Colorado canyons and Soda Mountain near the Oregon-California line. They would be the fifth and sixth monuments created by Clinton this year.

Babbitt has said the areas are unique and need to be protected from mining and overuse by off-road vehicles.

The 1906 Antiquities Act gives presidents broad power to create monuments and decide what uses should be restricted. Clinton has created two new monuments each in California and Arizona this year, prohibiting mining and logging in sequoia groves, the Grand Canyon watershed, an arid mountain valley and hundreds of small islands in the Pacific.

Congress also may declare areas monuments. Republicans say Clinton is circumventing the review process and ignoring the wishes of local residents by unilaterally making the declarations.

"This is not about the environment. It is about the constant abuse of power by the Clinton-Gore administration," said Rep. George Radanovich, R-Calif., and chairman of the House Western Caucus.

Sue Kupillas, a county commissioner who lives near Soda Mountain, questioned whether monument designation is needed.

"It could eliminate all of the multiple uses -- grazing, timber harvest, recreational vehicles -- anything but hiking," she said. "If this area is so valuable today, and we've had multiple use all these years, why should we change it now?"

Babbitt has discussed recommending the Colorado and Oregon monuments before, and they are now "at the top of

the list" as the Clinton administration works to fill out its environmental legacy, he said in a telephone interview.

Babbitt would not say precisely when he would ask Clinton to declare the new monuments.

He discussed the monument recommendations in an interview in Washington before leaving for his hometown of Flagstaff, Ariz., to renew his criticism of the 1872 law governing mining on federal land.

Babbitt arranged to visit a pumice mine on the flanks of the San Francisco Peaks today to criticize the law, which allows companies to buy mining land for as little as \$2.50 an acre and does not require them to pay royalties to the government. He called the mine, which produces rock used in stonewashing blue jeans, "a poster child for the abuses" of the law.

In many cases the mines are key to the local economy and Babbitt acknowledged Congress is unlikely to change the law in an election year.

Clinton vetoed an industry-backed reform proposal in 1995, saying it had too many loopholes.

AP-NY-04-25-00 0418EDT<

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Senate Rejects Blocking Monuments

by **ALAN FRAM**

Associated Press Writer

WASHINGTON (AP) -- In a victory for President Clinton, the Senate narrowly rejected an effort Tuesday by Western senators to bar him from protecting any more federal land by designating it as a national monument.

The 50-49 defeat of the proposal by Senate Majority Whip Don Nickles, R-Okla., underlined the sensitivity that environmental issues have in an election year. Of the six GOP senators who voted "no," five are up for re-election in November.

Clinton has added nearly 2 million acres to the country's national monuments so far this year, virtually all of it in Arizona, California, Colorado, Oregon and Washington state. He has done so, over the opposition of many Westerners, using a 1906 law that lets him create national monuments without the consent of Congress.

"I happen to be in favor of national monuments," Nickles said. "But I think we should have local input."

Sen. Richard Durbin, D-Ill., contrasted Nickles' proposal with the actions of President Theodore Roosevelt, who led early 20th century efforts to create national parks.

"The party of Teddy Roosevelt officially abandons its commitment to his environmental legacy," Durbin said of Tuesday's vote.

Opponents of new national monuments have been motivated, in part, by rumors that after the November elections, Clinton may designate part or all of Alaska's Arctic National Wildlife Refuge as a new monument. That could be a major impediment to the long-fought effort by oil companies to begin drilling on the refuge's oil-rich coastline.

Earlier, in the face of a likely defeat, Sen. Craig Thomas, R-Wyo., abandoned his effort to block a National Park Service ban on snowmobiling in nearly all national parks, monuments and recreation areas. Thomas will try working

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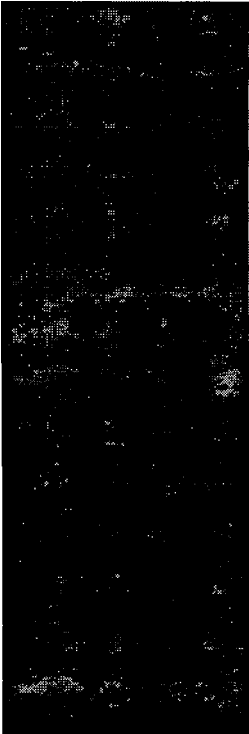
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out a compromise in coming weeks, a spokesman said.

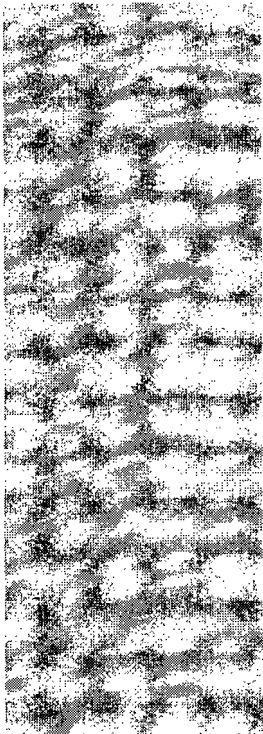
The administration has said the ban, issued last April, is aimed at reducing noise and environmental damage in the parks. It has been opposed by the recreation industry.

The national monument restriction was offered as an amendment to a \$15.5 billion measure financing the Interior Department and federal cultural programs in the coming fiscal year.

The House approved a \$14.6 billion version of the bill last month containing no language on snowmobiles or national monuments. House opponents of Clinton's monument designations lost an effort to virtually undo all the monuments he has named so far this year.

The House and Senate versions of the bill face an administration veto threat because they provide less than Clinton wants for parkland purchases, some programs for Indians, and the National Endowment for the Arts.

AP-NY-07-18-00 1136EDT<



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Clinton's set-aside lands get to court

Groups challenge five 'monuments'

ASSOCIATED PRESS

Land-use groups are challenging five new national "monuments" in federal court, claiming President Clinton overstepped his authority by putting new restrictions on 1.5 million acres in Arizona, Colorado, Oregon and Washington state.

The Mountain States Legal Foundation and the Blue Ribbon Coalition filed a lawsuit in U.S. District Court here yesterday seeking to overturn creation of the monuments, which are among 10 Mr. Clinton designated this year on 4 million acres the government already owned. Mining, logging, oil drilling and off-road vehicle use are banned or restricted in the monuments.

"The bottom line is, the president doesn't have the authority to do what he's done," said William Perry Pendley of the Mountain States Legal Foundation, a conservative group with a pending lawsuit challenging Mr. Clinton's 1996 creation of a national monument in Utah.

Spokesmen for the White House and the Interior Department said yesterday they had not seen the lawsuit and could not comment on it.

Mr. Clinton set aside the lands under the 1906 Antiquities Act, which allows presidents to protect areas with historic or scientific interest by designating them as monuments. He has said the monuments — which include a swath of arid canyons dotted with American Indian ruins and a spawning ground for salmon — need protection from overuse, vandalism, pollution or encroaching development.

Congress also has authority over federal land use, and Western Republicans have criticized Mr. Clinton's efforts, calling them an election-year ploy to please environmentalists that will prevent legitimate and profitable use of federal land. Republican vice-presidential candidate Richard B. Cheney suggested last week that some of the monuments might be rescinded if he and George W. Bush are elected in November.

Mr. Pendley's group says that in an effort to set aside as much land as possible, Mr. Clinton violated the Antiquities Act's requirement that monuments "shall be confined to the smallest area compatible with the proper care and management of the objects to be protected."

Mr. Clinton cannot use the act to protect features that are not historic, archaeological or scientific sites, Mr. Pendley said.

"He has no authority to close these areas because they are pretty, because they have endangered species habitat, because they have wild and scenic rivers or because they have 800-year-old trees," he said.

The Ironwood Forest National Monument in Arizona includes groves of the ancient desert trees.

Federal courts have rejected similar challenges to national monuments in the past. But Mr. Pendley said Supreme Court decisions upholding the creation of Grand Canyon National Monument — it later became a national park — and another monument in Nevada dealt mainly with side issues and not the scope of a president's monument-making authority.



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More opposition to Oregon monument

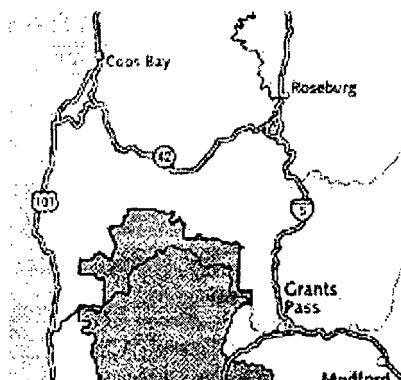
City officials, businesses urge Clinton not to issue order

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CAVE JUNCTION, Ore. -- The local city council and chamber of commerce joined the growing chorus of grass-roots opposition to an environmental activist plan to federalize more than 1 million acres of southwestern Oregon.

The Cave Junction City Council voted 3-0 with one abstention last week to oppose the creation of the Siskiyou Wild Rivers National Monument, a plan sitting on the desk of Interior Secretary Bruce Babbitt. The proposal is being promoted by a coalition of environmental activist groups including the Sierra Club, the Audubon Society, the Wilderness Society and the World Wildlife Fund.

"I don't have a problem with saving the environment, but I have a problem with the process," explained Mayor Ed Faircloth. "The people of Illinois Valley should have had input in the initial



I don't have a problem with saving the environment, but I have a problem with the process. The people of Illinois Valley should have had input in the initial proposal. ... There are a lot of unknowns with this.

-- Mayor Ed Faircloth of Cave Junction, Ore., on his reticence about the proposed Siskiyou Wild Rivers



input in the initial proposal. What if this proposal comes to pass? We won't know the effect until the management plan is complete. There are a lot of unknowns with this."

Area of Southern Oregon designated as the "Siskiyou Wild Rivers National Monument."

Meanwhile, the local chamber of commerce also voted to oppose the monument and sent a letter to Clinton advising him of the position.

"Most of us are not indifferent to the establishment of monuments, or to the proposition thereof," wrote Ross Welcome, president of the Illinois Valley business group. "We are concerned, though, about the feasibility of the monument for the Illinois Valley area. This concern is not shrouded in personal beliefs or convictions, but in the prospective guidelines set into motion by our forefathers, that the 'people have the right to govern themselves.'"

Opponents are holding weekly meetings in this town in rural southwestern Oregon and attracting upwards of 500 citizens who believe the declaration of a national monument will severely restrict mining, logging, development, grazing, farming and recreation in the area and eliminate jobs in an already depressed economy.

Ever since Clinton announced his Lands Legacy Initiative in January of last year, Babbitt has been zigzagging the West looking for areas already administered by the Bureau of Land Management he deems in need of special protection by the federal government as national monuments, critical habitat areas or other designation. This year, the president has designated at least five such monuments -- but none as big as the proposed Siskiyou Wild Rivers Monument that encompasses more than one million acres of mostly rugged forest surrounding the Illinois Valley towns of Cave Junction, Selma, Kerby and O'Brien and a rural population of some 17,000.

Opponents of the monument say the real agenda of the project is to drive out those pesky people.

"They call these 'public' lands," said one protester. "But they're not public at all. The purpose of this plan is to keep the public out."

While the monument project does not specifically call for relocation of the small population, opponents say that is what will be accomplished by increasingly

*Siskiyou Wild Rivers
National Monument*

**We are
concerned ...
about the
feasibility of
the
monument
for the
Illinois Valley
area.**

*-- Ross Welcome,
president, Illinois
Valley Chamber of
Commerce, in a
letter to President
Clinton opposing
the proposed
southern Oregon
monument*

**They call
these 'public'
lands. But
they're not
public at all.
The purpose
of this plan is
to keep the
public out.**

*-- A protester of
the Siskiyou Wild
Rivers National
Monument*

tough environmental regulations, protection of so-called "endangered species," downsizing of fire-fighting crews and closing of roads. All that, they say, coupled with a willingness by government to exercise eminent domain, condemnation and buyouts of private property, will inevitably lead to depopulation.

If approved by Clinton or his successor, the Siskiyou Wild River Monument would be the second largest ever created. The U.S. House of Representatives approved President Clinton's designation of 1.7 million acres of Utah land as a federal wilderness area and monument in 1998.

Clinton has used the Antiquities Act of 1906 to justify his monument proclamations. During his entire time in office, Clinton has created or added to 10 national monuments, covering nearly 4 million western acres in his effort to carve out an environmental legacy. Clinton's top aides have stated the president plans to continue to use his authority in issuing executive orders, presidential decision directives and proclamations right up until the day he leaves office.

Earlier story:

[Opposition builds to new land grab](#)



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ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOUNTAIN STATES LEGAL FOUNDATION,	)	
On Behalf of Its Members, and	)	
THE BLUE RIBBON COALITION,)		
On Behalf of Its Members,	)	
	)	Civil No.:
Plaintiffs,	)	
	)	
v.	)	COMPLAINT FOR
	)	DECLARATORY AND
WILLIAM JEFFERSON CLINTON,	)	INJUNCTIVE RELIEF
In His Official Capacity as President of	)	
the United States,	)	
	)	
Defendant.	)	
	)	

Plaintiffs, by and through counsel, allege the following:

INTRODUCTION

1. This Complaint concerns Proclamation 7265 of January 11, 2000, and Proclamations, 7317, 7318, 7319, and 7320 of June 9, 2000, by the President of the United States, each of which proclaims the establishment of a National Monument (affixed hereto as Attachments 1-5). Proclamation 7265 purports to create the "Grand Canyon-Parashant National Monument" in northwestern Arizona. Attachment 1. Proclamation 7317 purports to create the "Canyons of the Ancients National Monument" in southwestern Colorado. Attachment 2. Proclamation 7318 purports to create the "Cascade-Siskiyou National Monument" in southwestern Oregon. Attachment 3. Proclamation 7319 purports to create the "Hanford Reach National Monument" in south central Washington. Attachment 4. Proclamation 7320 purports to create the "Ironwood Forest National Monument" in south central Arizona. Attachment 5.

2. Plaintiffs, Mountain States Legal Foundation (MSLF), on behalf of its

members, and the Blue Ribbon Coalition (BRC), on behalf of its members, ask this Court to declare unconstitutional the aforementioned Proclamations made by Defendant on January 11, 2000, and June 9, 2000, purporting to create national monuments in Arizona, Colorado, Oregon, and Washington. Plaintiffs ask that the Court set aside these Proclamations as unconstitutional, enjoin management of the affected areas as national monuments, enjoin any enforcement of new rules and regulations contained in or based upon these Proclamations respecting property within these reservations, and order that the affected areas be returned to their prior management status. Plaintiffs request this declaratory and injunctive relief on the grounds that Defendant acted *ultra vires* any constitutional authority he may have when he proclaimed the existence of these five national monuments.

JURISDICTION AND VENUE

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 [federal question] because the matter in controversy arises under the Constitution of the United States.

4. Venue rests properly in this Court pursuant to 28 U.S.C. § 1391 (b) (1), because Defendant resides in Washington, D.C.

PARTIES

5. Plaintiff Mountain States Legal Foundation (MSLF) is a voluntary, not-for-profit, public-interest corporation organized under the laws of the State of Colorado, with its principal place of business in Denver, Colorado. MSLF is dedicated to individual liberty, the right to own and use property, limited government, and the free enterprise system. MSLF is dedicated to the principals of limited government and the doctrine of the separation of powers inherent in the Constitution. MSLF is dedicated to ensuring that federal lands remain open for multiple use as provided by federal law. MSLF has members throughout the United States, particularly in the West, including the states of Arizona, Colorado, Oregon, and Washington. Members of MSLF have in the past used, and have concrete plans for the future to use, each of the five areas at issue in this Complaint for a variety of purposes including, but not limited to: prospecting for minerals, exploring for and mining for ore bodies, exploring for and drilling for oil and gas deposits, hunting, fishing, camping or otherwise recreating, grazing livestock, harvesting timber, obtaining access to repair, upgrade or replace power transmission lines and facilities, obtaining access to private property or state-owned property, maintaining equipment, and for other lawful uses.

6. Plaintiff the Blue Ribbon Coalition (BRC) is a not-for-profit corporation organized under the laws of the State of Idaho. The membership of BRC includes over 550 businesses and organizations with a total of approximately 600,000 members nationwide. BRC members use motorized and non-motorized means, including off-highway vehicles, horses, mountain bikes, and hiking, to access federal lands throughout the United States, including such lands in Arizona, Colorado, Oregon, and Washington. BRC has a long-standing interest in the protection of the values and natural resources addressed in the Proclamations at issue in this Complaint and regularly works with land managers to provide recreation opportunities, preserve resources, and promote cooperation between public land visitors. BRC members have visited each of the five areas at issue in this Complaint and plan to continue to visit each of these areas as they are capable.

7. Defendant William Jefferson Clinton is President of the United States. In such

capacity, President Clinton is responsible for discharging his duties as Chief Executive pursuant solely to the authority granted to the President by the Constitution of the United States. President Clinton may not exercise authority not granted to him by the Constitution of the United States.

STATEMENT OF FACTS

8. On January 11, 2000, President William Jefferson Clinton signed and issued Presidential Proclamation 7265, proclaiming the establishment of a new national monument in the State of Arizona.

9. On January 18, 2000, Proclamation 7265 of January 11, 2000, was published in the Federal Register.

10. On June 9, 2000, President William Jefferson Clinton signed and issued four consecutive Proclamations, numbered 7317 through 7320, proclaiming the establishment of four new national monuments in the states of Colorado, Oregon, Washington, and Arizona.

11. On June 13, 2000, Proclamations 7317 through 7320 of June 9, 2000, were published in the Federal Register.

12. Each of these Proclamations purports to set apart and to reserve all lands and interests in lands owned or controlled by the United States within the boundaries of the areas described by a map attached to and forming part of each Proclamation. Each of these Proclamations, whether or not a valid exercise of constitutional authority by the President, has the immediate *de facto* affect of withdrawing and reserving the lands described therein.

13. Proclamation 7265 of January 11, 2000, is entitled, "Establishment of the Grand Canyon-Parashant National Monument." Proclamation 7265 purports to withdraw and reserve an area of 1,014,000 acres north of Grand Canyon National Park in northwest Arizona, seventy-five miles northwest of Flagstaff, Arizona.

14. Proclamation 7265 directs the Secretary of the Interior (the Secretary) to manage the Grand Canyon-Parashant National Monument through the Bureau of Land Management (BLM) and the National Park Service (NPS) as a national monument.

15. Proclamation 7265 withdraws all Federal lands within the boundaries of the monument from all entry, location, selection, sale or other disposition under the public land laws, including the mining laws and laws relating to mineral and geothermal leasing.

16. Proclamation 7265 directs the Secretary to prohibit all non-emergency off-road use of motorized and mechanized vehicles in the area covered by the Proclamation.

17. Proclamation 7265 prohibits the sale of vegetative material from the area covered by the Proclamation unless such sale is part of an authorized science-based ecological restoration project.

18. Proclamation 7265 directs the NPS and the BLM to manage the monument cooperatively and to prepare an agreement to share whatever resources are necessary to manage the monument.

19. Proclamation 7265 provides that the NPS shall have primary management authority over the portion of the area covered by the Proclamation within the Lake Mead National Recreation Area and that the BLM shall have primary management authority over the remaining portion of the area covered by the Proclamation.

20. Proclamation 7317 of June 9, 2000, is entitled, "Establishment of the Canyons

of the Ancients National Monument.” Proclamation 7317 purports to withdraw and reserve an area of 164,000 acres in the Four Corners region of southwestern Colorado, forty-five miles west of Durango, Colorado.

21. Proclamation 7317 directs the Secretary to manage the Canyons of the Ancients National Monument through the BLM as a national monument.

22. Proclamation 7317 withdraws all Federal lands within the boundaries of the monument from all entry, location, selection, sale or other disposition under the public land laws, including the mining laws and laws relating to mineral leasing, except that the area shall remain open to oil and gas leasing and development, as long as no “new impacts” are created through the exercise of these valid existing rights.

23. Proclamation 7317 directs the Secretary to prohibit all non-emergency off-road use of motorized and mechanized vehicles in the area covered by the Proclamation.

24. Proclamation 7317 directs the Secretary to “prepare a transportation plan that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this Proclamation.”

25. Proclamation 7318 of June 9, 2000, is entitled, “Establishment of the Cascade-Siskiyou National Monument.” Proclamation 7318 purports to withdraw and reserve an area of 52,000 acres located at the convergence of the Klamath and Cascade Mountains in southwestern Oregon, twenty-five miles southeast of Medford, Oregon.

26. Proclamation 7318 directs the Secretary to manage the Cascade-Siskiyou National Monument through the BLM as a national monument.

27. Proclamation 7318 withdraws all Federal lands within the boundaries of the monument from all entry, location, selection, sale or other disposition under the public land laws, including the mining laws and laws relating to mineral and geothermal leasing.

28. Proclamation 7318 directs the Secretary to prohibit all non-emergency off-road use of motorized and mechanized vehicles in the area covered by the Proclamation.

29. Proclamation 7318 directs the Secretary to prepare, within three years, a management plan for the monument to include appropriate transportation planning, including road closures or travel restrictions necessary to protect the objects identified in the Proclamation.

30. Proclamation 7318 reserves, subject to valid existing rights, “a quantity of water sufficient to fulfill the purposes for which this monument is established.”

31. Proclamation 7318 prohibits the commercial harvest of timber or other vegetative material from the area covered by the Proclamation.

32. Proclamation 7318 directs the Secretary to study the impacts of livestock grazing on the area, “with specific attention to sustaining the natural ecosystem dynamics.” Proclamation 7318 further directs the Secretary to retire any and all grazing allotments, “[s]hould grazing be found incompatible with protecting the objects of biological interest” within the area covered by the Proclamation.

33. Proclamation 7319 of June 9, 2000, is entitled, “Establishment of the Hanford Reach National Monument.” Proclamation 7319 purports to withdraw and reserve an area of 195,000 acres located along the Columbia River in south-central Washington, within the borders of the Department of Energy’s (DOE) Hanford Nuclear Reservation.

34. Proclamation 7319 directs the U.S. Fish and Wildlife Service (USFWS), under existing agreements with the DOE, to manage the Hanford Reach National Monument along with the DOE as a national monument.

35. Proclamation 7319 withdraws all Federal lands within the monument boundaries from all entry, location, selection, sale or other disposition under the public land laws, including the mining laws and laws relating to mineral and geothermal leasing.

36. Proclamation 7319 directs the DOE to turn over gradually to the USFWS the lands that the DOE manages that were formerly part of the Hanford Nuclear Reservation, as such lands become suitable for management by the USFWS.

37. Proclamation 7319 directs the Secretary to prohibit all non-emergency off-road use of motorized and mechanized vehicles in the area covered by the Proclamation.

38. Proclamation 7319 reserves a quantity of water in the Columbia River sufficient to fulfill the purposes for which the monument is established.

39. Proclamation 7319 instructs the Secretary to prohibit all livestock grazing in the area covered by the Proclamation.

40. Proclamation 7320 of June 9, 2000, is entitled, "Establishment of the Ironwood Forest National Monument." Proclamation 7320 purports to withdraw and reserve an area of 129,000 acres about twenty-five miles northwest of Tucson in southern Arizona.

41. Proclamation 7320 instructs the Secretary to manage the Ironwood Forest National Monument through the BLM as a national monument.

42. Proclamation 7320 withdraws all Federal lands within the monument boundaries from all entry, location, selection, sale or other disposition under the public land laws, including the mining laws and laws relating to mineral and geothermal leasing.

43. Proclamation 7320 directs the Secretary to prohibit all non-emergency off-road use of motorized and mechanized vehicles in the area covered by the Proclamation.

44. Proclamation 7320 directs the Secretary to prepare a transportation plan that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in the Proclamation.

FIRST CLAIM FOR RELIEF

(VIOLATION OF THE PROPERTY CLAUSE OF THE CONSTITUTION OF THE UNITED STATES)

45. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 44 of this Complaint.

46. The Property Clause of the United States Constitution provides, "[t]he Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States..."

47. On January 11, 2000, President William Jefferson Clinton issued Proclamation 7265 of January 11, 2000, thereby setting apart and reserving all lands and interests owned or controlled by the United States within the boundaries of an area of approximately 1,014,000 acres described on a map entitled, "Grand Canyon-Parashant National Monument"

attached to and forming part of Proclamation 7265.

48. President Clinton violated the Property Clause of the United States Constitution by issuing Proclamation 7265, because he thereby disposed of, reserved, and made various rules and regulations respecting property belonging to the United States.

SECOND CLAIM FOR RELIEF

**(SECOND VIOLATION OF THE PROPERTY CLAUSE OF THE
CONSTITUTION OF THE UNITED STATES)**

49. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 48 of this Complaint.

50. The Property Clause of the United States Constitution provides, “[t]he Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States...”

51. On June 9, 2000, President William Jefferson Clinton issued Proclamation 7317 of June 9, 2000, thereby setting apart and reserving all lands and interests owned or controlled by the United States within the boundaries of an area of approximately 164,000 acres described on a map entitled, “Canyons of the Ancients National Monument” attached to and forming part of Proclamation 7317.

52. President Clinton violated the Property Clause of the United States Constitution by issuing Proclamation 7317, because he thereby disposed of, reserved, and made various rules and regulations respecting property belonging to the United States.

THIRD CLAIM FOR RELIEF

(THIRD VIOLATION OF THE PROPERTY CLAUSE OF THE CONSTITUTION OF THE UNITED STATES)

53. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 52 of this Complaint.

54. The Property Clause of the United States Constitution provides, “[t]he Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States...”

55. On June 9, 2000, President William Jefferson Clinton issued Proclamation 7318 of June 9, 2000, thereby setting apart and reserving all lands and interests owned or controlled by the United States within the boundaries of an area of approximately 52,000 acres described on a map entitled, “Cascade-Siskiyou National Monument” attached to and forming part of Proclamation 7318.

56. President Clinton violated the Property Clause of the United States Constitution by issuing Proclamation 7318, because he thereby disposed of, reserved, and made various rules and regulations respecting property belonging to the United States.

FOURTH CLAIM FOR RELIEF

(FOURTH VIOLATION OF THE PROPERTY CLAUSE OF THE CONSTITUTION OF THE UNITED STATES)

57. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 56 of this Complaint.

58. The Property Clause of the United States Constitution provides, “[t]he Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States...”

59. On June 9, 2000, President William Jefferson Clinton issued Proclamation 7319 of June 9, 2000, thereby setting apart and reserving all lands and interests owned or controlled by the United States within the boundaries of an area of approximately 195,000 acres described on a map entitled, “Hanford Reach National Monument” attached to and forming part of Proclamation 7319.

60. President Clinton violated the Property Clause of the United States Constitution by issuing Proclamation 7319, because he thereby disposed of, reserved, and made various rules and regulations respecting property belonging to the United States.

FIFTH CLAIM FOR RELIEF

(FIFTH VIOLATION OF THE PROPERTY CLAUSE OF THE CONSTITUTION OF THE UNITED STATES)

61. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 60 of this Complaint.

62. The Property Clause of the United States Constitution provides, “[t]he

Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States..."

63. On June 9, 2000, President William Jefferson Clinton issued Proclamation 7320 of June 9, 2000, thereby setting apart and reserving all lands and interests owned or controlled by the United States within the boundaries of an area of approximately 128,917 acres described on a map entitled, "Ironwood Forest National Monument" attached to and forming part of Proclamation 7320.

64. President Clinton violated the Property Clause of the United States Constitution by issuing Proclamation 7320, because he thereby disposed of, reserved, and made various rules and regulations respecting property belonging to the United States.

WHEREFORE, Plaintiffs request that the Court grant relief and judgment against

Defendant as follows:

1. Declare, as a matter of law, that Defendant violated the Property Clause of the United States Constitution by issuing Proclamation 7265 of January 11, 2000, and Proclamations 3717, 3718, 3719, and 3720 of June 9, 2000, thereby unrightfully exercising authority over property owned by the United States, where such authority is vested solely in the Congress.

2. Declare, as a matter of law, that Proclamation 7265 of January 11, 2000, and Proclamations 3717, 3718, 3719, and 3720 of June 9, 2000, are null and void because they are unconstitutional exercises of legislative authority by the executive.

3. Order that the lands contained within the areas covered by Proclamation 7265 of January 11, 2000, and Proclamations 3717, 3718, 3719, and 3720 of June 9, 2000, be returned to the legal management status they held prior to the issuance of these Proclamations.

4. Enjoin Defendant and all agents of Defendant from enforcing any of the rules and regulations contained in Proclamation 7265 of January 11, 2000, and Proclamations 3717, 3718, 3719, and 3720 of June 9, 2000, respecting property owned by the United States.

5. Compel Defendant and all agents of Defendant to comply with the Constitution and all applicable federal law relating to withdrawal and reservation of lands owned by the United States.

6. Award Plaintiffs attorneys' fees and costs to the extent permitted by law; and

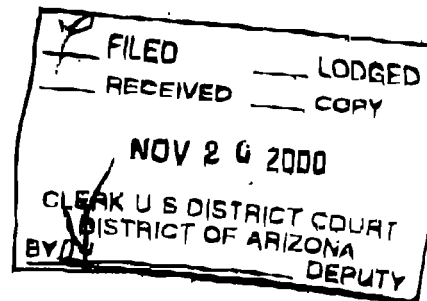
7. Grant Plaintiffs such further relief as may be appropriate.

Dated this _____ day of August, 2000.

Respectfully submitted,

William Perry Pendley, Esq.
D. Andrew Wight, Esq.

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Denver, Colorado, 80202
(303) 292-2021



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jeff and Tina Esplin, et al.,) CIV 00-0148-PCT-PGR
Plaintiffs,)
vs.) ORDER
William J. Clinton, et al.,)
Defendants.)

Pending before the Court is the defendants' motion to dismiss (doc. #7). Having considered the parties' memoranda in light of the evidence of record, the Court finds that the motion to dismiss should be granted.

BACKGROUND

On January 11, 2000, President Clinton issued a proclamation converting four separate areas of federally owned land into National Monuments under the Antiquities Act. Only one of these, Grand Canyon-Parashant National Monument (GCP Monument), is at issue here.

There are three categories of plaintiffs. The first category includes the Rancher Plaintiffs. These plaintiffs are residents of Utah, but live in Arizona for part of the year. They claim their ability to earn a living has been harmed by the defendants' action

18

1 which threaten to limit land use. The Rancher Plaintiffs also
2 assert that their constitutional equal protection rights have been
3 violated.

4 The second category is made up of the Legislator Plaintiffs.
5 Seven members of the Arizona House of Representatives claim they
6 have been prevented from carrying out their duties and representing
7 their constituents.

8 The third category, Plaintiff Williams, is an Arizona resident
9 living on the Navajo reservation. Mr. Williams generally objects to
10 the reservation of additional land in Arizona and "believes that he
11 should have the right to hold Congress and his state public
12 officials accountable at all levels of government." Complaint, ¶
13 49.

14 Plaintiffs generally complain that the President exceeded his
15 authority and request the Court to determine the proper
16 Constitutional process to permanently protect and conserve the
17 character of federal public domain lands. The specific relief
18 sought is to (1) order the Department of the Interior ("DOI") to
19 produce the record of the final agency action relating to the GCP
20 Monument; (2) require the defendants to follow the constitutional
21 process to dispose of federal land; (3) declare the Antiquities Act
22 unconstitutional and (4) grant an injunction prohibiting the
23 defendants from executing the GCP Monument Proclamation.

24 Defendants filed their motion to dismiss alleging dismissal is
25 appropriate pursuant to Rules 12(b)(1) and 12(b)(6). Defendants
26 assert plaintiffs lack standing. They claim that standing is
27 lacking primarily because no personal injury has been claimed for
28 each plaintiff. Plaintiffs claim that each of them has been and

1 will be injured as a result of the Proclamation. Defendants further
2 assert that fail to state a claim upon which relief can be granted
3 because they cannot prove any facts that would entitle them to
4 relief for their constitutional claims.

5 DISCUSSION

6 A. Rule 12(b)(1) Dismissal

7 1. Legal Standard

8 To satisfy the requirement of standing under Article III, a
9 plaintiff must show;

10 (1) that the plaintiff have suffered an 'injury in fact' --
11 an invasion of a judicially cognizable
interest which is

12 (a) concrete and particularized and

13 (b) actual or imminent, not conjectural or hypothetical;

14 (2) that there be a causal connection between the injury
and the conduct complained of -- the injury must be fairly
15 traceable to the challenged action of the defendant, and
not the result of the independent action of some third
party not before the court; and

16 (3) that it be likely, as opposed to merely speculative,
17 that the injury will be redressed by a favorable
decision.

18 Bennett v. Spear, 520 U.S. 154, 167 (1997) (citing Luian v.
19 Defenders of Wildlife, 504 U.S. 555 (1992)).

20 To satisfy the first prong, plaintiff must show how the
21 alleged injury is particularized as to him. Raines v. Byrd, 521
22 U.S. 811, 819 (1997). The third prong requires that "the plaintiff
23 have suffered 'an invasion of a legally protected interest which is
24 ... concrete and particularized,' and that the dispute is
25 'traditionally thought to be capable of resolution through the
26 judicial process.'" Id. (internal citations omitted).

2. Analysis

Although the Court is to "presume that general allegations embrace those specific facts that are necessary to support the claim" when deciding a motion to dismiss, the Court cannot envision any set of facts that would give rise to a particularized injury to each plaintiff. Bennett, 520 U.S. at 168. Furthermore, plaintiffs have continued to allege general and vague injuries: "this potential conversion," "he may restrict," "he does not wish to see his rights diminished" (emphasis added).

The Rancher Plaintiffs have not offered any specific and concrete injuries that they have suffered as a result of the Proclamation. The thrust of their argument seems to lie in potential, future injuries if the DOI restricts access to their property, terminates their grazing leases or restricts their water rights. While these may be legitimate concerns, they are not actual or imminent. Nor do plaintiffs offer any hint as to the probability that the DOI will in fact carry out these changes.

The Legislator Plaintiffs argue that they must join this suit "in their role as *parens patriae* to protect the rights of the Arizona citizens whom they represent." Response, p. 5. They do not allege that they have been personally injured; nor have they alleged that they have been affected differently than all Arizona legislators. "If one of the Members were to retire tomorrow, he would no longer have a claim; the claim would be possessed by his successor instead. The claimed injury thus runs...with the Member's seat, a seat which the Member holds...as trustee for his constituents, not as a prerogative of personal power." Raines, 521 U.S. at 821.

1 Plaintiff Williams' standing is the least likely of the three
2 categories. He doesn't offer a claim for a personal injury. The
3 closest claims to an injury offered are: "Mr. Williams objects to
4 the rancher plaintiffs becoming similarly situated to Native
5 Americans living on Indian reservations", Complaint, ¶49; and "He
6 does not wish to see his rights diminished further as a result of
7 more Arizona land remaining in permanent territorial status."
8 Response, p. 4. The boundaries of the GCP Monument do not
9 encompass, nor even abut, any part of the Navajo Reservation. The
10 Court fails to see any plausible injury Plaintiff might have
11 suffered as a result of the creation of the monument.

12 B. Rule 12(b)(6) Dismissal

13 1. Legal Standard

14 Dismissal of an action pursuant to Rule 12(b)(6) of the
15 Federal Rules of Civil Procedure is proper only where it appears
16 beyond a doubt that the plaintiff can prove no set of facts in
17 support of his claim which would entitle him to relief. Conley v.
18 Gibson, 355 U.S. 41, 47 (1957). In analyzing a motion to dismiss
19 for failure to state a claim upon which relief may be granted, all
20 allegations of material fact in the complaint are taken as true and
21 construed in the light most favorable to the nonmoving party.
22 Levine v. Diamanthuser, Inc., 950 F.2d 1478, 1482 (9th Cir. 1991).

23 The Federal Rules of Civil Procedure do not require a claimant
24 to set out in detail the facts upon which he bases his claim. To
25 the contrary, all the Rules require is a short and plain statement
26 of the claim that will give the defendant fair notice of what the
27 plaintiff's claim is and the grounds upon which it rests. Conley,
28 355 U.S. at 47; Fed.R.Civ.P. 12(b)(6). Rule 12(b)(6) is not a

1 device for testing the truth of what is asserted or for determining
2 whether a plaintiff has any evidence to support what is in the
3 complaint. If the factual allegations contained within the
4 complaint and the reasonable inferences derived therefrom would
5 support a theory entitling the plaintiff to some relief, a Rule
6 12(b)(6) motion should be denied. ACLU Foundation v. Barr, 952 F.2d
7 457, 467 (D.C. Cir. 1991).

8 2. Analysis

9 Presidents have created national monuments under the
10 Antiquities Act more than 120 times since its enactment. These
11 monuments have been located in 27 states. This use of the Act has
12 been challenged five times and has been upheld each time. Utah
13 Ass'n of Counties v. Clinton, Nos. 97 CV 479, 97 CV 492, 97 CV 863,
14 1999 U.S. Dist. LEXIS 15852, at *13 (D. Utah Aug. 12, 1999).¹

15 'It has long been held that where Congress has authorized
16 a public officer to take some specified legislative
17 action when in his judgment that action is necessary or
18 appropriate to carry out the policy of Congress, the
19 judgment of the officer as to the existence of the facts
20 calling for that action is subject to review.

18 * * *

19 For the judiciary to probe the reasoning which underlies
20 this Proclamation would amount to a clear invasion of the
21 legislative and executive domains.

21 Wyoming v. Franke, 58 F. Supp. 890, 896 (D. Wyo. 1945) (quoting
22 United States v. George S. Bush & Co., 310 U.S. 371, 3809 (1940)).
23 In Wyoming v. Franke, the state of Wyoming sued seeking a
24 construction of the Antiquities Act and an injunction voiding the
25

26 ¹ Cameron v. United States, 252 U.S. 450 (1920); Wyoming v.
27 Franke, 58 F. Supp. 890 (D. Wyo. 1945); Cappaert v. United States,
28 425 U.S. 128 (1976); Anaconda Copper Co. v. Andrus, No. A79-101 (D.
Alaska, filed June 26, 1980); Alaska v. Carter, 462 F. Supp. 1155
(D. Alaska 1978).

1 effects of the Presidential Proclamation creating the Jackson Hole
2 National Monument. The state asserted that the President was not
3 properly authorized to perform such an act, that enforcement of the
4 act would interfere with the rights of the state to control game
5 and fish, perform highway maintenance and collect revenues from
6 grazing rights. The court viewed the dispute as one between the
7 Legislative and Executive branches and outside the scope of the
8 Judicial branch. It concluded that

9 if the Congress presumes to delegate its inherent
10 authority to Executive Departments which exercise
11 acquisitive proclivities not actually intended, the
12 burden is on the Congress to pass such remedial
legislation as may obviate any injustice brought about as
the power and control over and disposition of government
lands inherently rests in its Legislative branch.

13 Wyoming v. Franke, 58 F. Supp. at 896.

14 The claims at issue here are similar. However, Plaintiffs have
15 not met their burden by showing a set of facts which supports their
16 claim that the Antiquities Act is unconstitutional.

17 As to Plaintiffs' equal protection claims, the Court agrees
18 with the reasoning and authority offered by Defendants in their
19 Reply. Plaintiffs have failed to offer any set of facts which show
20 they have been treated differently than other citizens. The land
21 encompassed by the GCP Monument was federally-owned land prior to
22 the Proclamation and remains federally-owned land after the
23 Proclamation; it is merely categorized differently.

24 CONCLUSION

25 Plaintiffs do not meet the standing requirements as required
26 by Article III of the Constitution. Further, Plaintiffs have failed
27 to state a claim upon which relief can be granted.

1 IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (Doc.
2 #7) is GRANTED.

3 DATED this 17th day of November, 2000.

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Paul G. Rosenblatt
United States District Judge

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