

History and Intent of the Proclamation for Canyons of the Ancients National Monument

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Canyons of the Ancients—A Monumental Legacy

Setting and Overview

Interwoven with the soils and the ruggedly textured landscape of what is now southwestern Colorado is the cultural legacy of the Ancestral Pueblo people that lived here for centuries. In testimony to these ancient people, to their modern descendants and to the archaeological significance of this landscape, President William J. Clinton designated 164,000 acres as the Canyons of the Ancients National Monument. On June 9, 2000, under the authority of the Antiquities Act of 1906, President Clinton issued Proclamation 7317 (Appendix A).

In 2000, Canyons of the Ancients National Monument (the Monument) also became part of the Bureau of Land Management's (BLM) National Landscape Conservation System (NLCS), a system consisting of the crown jewels of the West. In recognition of its status as a national monument, and as an invaluable part of the National Landscape Conservation System, the BLM will manage the Monument in strict accordance with, first and foremost, the provisions of the Proclamation "*so as not to create any new impacts that interfere with the proper care and management of the objects protected by this proclamation*" and for the enduring benefit of all Americans.

Proclamation Intent—Protection and Preservation in Context

The cultural, historic, natural, geological, and archaeological scientific objects of the Monument are woven together in the majestic landscape that is the Canyons of the Ancients National Monument. The intent of the Proclamation that established the Monument is to protect and preserve, for the benefit of present and future generations of Americans, these uniquely rich and irreplaceable objects of the Monument. And, just as the full significance and enduring value of these objects are best when considered in their context, so is the Proclamation (and its intent) best when considered within the historical context of the social and political landscape.

In the late nineteenth century and early twentieth century, a progressive movement extolling the responsibilities of a centralized government over the assets of the nation, and a conservation movement deeply concerned about the endangered prehistoric ruins of the American Southwest, combined and called for the Federal government to protect the best of the West. The collective consciousness of the American people, and their representative government, shifted from that of settling and developing every square inch of public lands for the benefit of individuals, local communities, and commodity-based businesses to that of setting aside spectacular untouched lands for the benefit of all Americans before their unique and irreplaceable values were forever lost (McManamon 2000; Nash 1982; Rothman 1989).

The following is a discussion of the public lands system in America; the progressive and conservation movements that generated the passage of national conservation legislation (the Antiquities Act, which enables the President to proclaim unique areas as national

monuments); the history of the public lands that would eventually become the Canyons of the Ancients National Monument; the role and authority of the Federal agency (the BLM) that administers the Monument, and the agency's commitment to managing the Monument in accordance with the intent of its establishing Proclamation.

AMERICAN PUBLIC LANDS

There are approximately 2.4 billion acres of land in the United States. Almost 28 percent, approximately 681 million acres, of this land is under the management of the Federal government. This land, which belongs to all Americans, is considered public domain. Several agencies manage this land and its resources, including the U.S. Forest Service (USFS), the National Park Service (NPS), the U.S. Fish and Wildlife Service (USFWS), and the Bureau of Land Management (BLM). The BLM manages approximately 264 million surface acres and 700 million acres of subsurface minerals, more public land than any other agency (source: <http://www.blm.gov/>).

Public Lands and the Frontier

In order to avoid further conflict and to cement their new bond and status as a nation, the original 13 colonies ceded their claims to all western lands to the Federal government soon after the War of Independence. In accordance with the Land Ordinance of 1785 and the Northwest Ordinance of 1787, Congress directed that these public domain lands, along with lands acquired from other countries (including the Louisiana Purchase of 1803) be explored, surveyed, and made available for settlement. Little recognition was given to the rights of the Native American people as sovereign nations already occupying these lands.

In the early nineteenth century, U.S. Government policy was to dispose of all public domain lands by moving it into private hands for settlement and development to create national wealth and to secure sovereignty for itself. At the time, there was an unquestioned belief that land and resources were to be improved and used, and that development would proceed most efficiently through private means. To help achieve the goal of settling the frontier, in 1812 Congress created the General Land Office (GLO) under the Department of the Treasury in 1812 (which, in 1849, was transferred to the newly established Department of the Interior). During the GLO's existence, over 1 billion acres of land were transferred from Federal to State and private ownership. With the focus pinpointed on westward expansion, Congress passed the Homestead Act of 1862. Under this law, any U.S. citizen or intended citizen, including freed slaves, who had never borne arms against the U.S. Government could receive 160 acres of public land if they lived on it and farmed it for five years (source: <http://www.blm.gov/flpma>; Goetzmann 1966; Nash 1982; Rothman 1989).

Public Lands—Preservation of the Priceless

As the nineteenth century progressed, the American people and their Congress began to realize that the frontier was not limitless; that western resources were not unlimited; and that carving up the public domain without thoughtful consideration of consequences was not necessarily in the interest of the greater good of the nation (Nash 1982). By the 1870s, there was also a growing sense that much of what remained of public lands, due to its inherently priceless and irreplaceable resource values (cultural, historical, natural, scenic or scientific), should remain in the public domain for the benefit of all Americans. As a result, under the guidance of the GLO, Congress began to withdraw selected lands from individual settlement and to set them aside for general public use. In 1864,

Yosemite Valley was granted to the State of California for public use and enjoyment. In 1872, Yellowstone National Park in Wyoming became the first national park (BLM 1995).

In 1890, the official U.S. Census declared that the western frontier had closed. For the first time in its young history the nation began to consider its future as a nation. No longer able to expand westward, the country began to focus on filling in the gaps fostered by seemingly haphazard growth. As a result, a growing number of people, especially those interested in conserving and preserving what they were just beginning to recognize as American treasures, began to focus attention on protecting the nation's priceless natural, scenic, historic, and prehistoric heritage. It was becoming obvious to a greater number of Americans that a more efficient use of resources would require a different national philosophy than the one that had fostered unregulated exploitation, including that related to (and resulting from) mining and grazing on the western public lands (Nash 1982; Rothman 1989).

At the end of the nineteenth century, as a result of this new focus on the public value of public lands, the Federal government began to accept a greater responsibility for the management of, and stewardship over, American public lands (Rothman 1989). The General Revision Act of 1891 was one of the first legislative acts to acknowledge this growing conservation philosophy and the growing sense of governmental duty over national resources. The Act allowed the President the discretionary power to reserve (by Proclamation) forested lands in the public domain from the claims of private citizens. Immediately after its enactment, President Harrison proclaimed 13 million acres of forest reserves (Chepesiuk 2005).

Ancient Architecture Captures Public Interest

Throughout the late nineteenth century, prehistoric architectural sites in the Southwest attracted the attention of American explorers. These expeditions fostered an intense interest in prehistoric people and landscapes. In 1874, William Henry Jackson of the Hayden Survey photographed and named numerous Ancestral Puebloan sites in southwestern Colorado including areas now part of Canyons of the Ancients National Monument. The sophistication of the architecture amazed the public and a small but influential minority became interested in the fate of American prehistory (Goetzmann 1966; Rothman 1989).

The founding of the Bureau of American Ethnology in 1879 also contributed to the growing interest in America's prehistoric heritage. This was, in part, thanks to the public interest in the government sponsored expeditions of John Wesley Powell. With governmental and public encouragement, Powell and scientists like him began to apply their experiences and ideals to create a coherent Federal resource policy covering the management of public lands and related resources (Hays 1959). The Bureau favored the systematic organization of resources in accordance with newly recognized scientific principles (Rothman 1989). The idea of protecting scarce and invaluable resources from overuse, abuse, and depletion, while conserving them for future use, developed. As historian and author Hal Rothman stated, "If the closing of the frontier told Americans they would not be expanding into new territory, modern science gave the nation a way to counter the anxiety created by its loss. Conservation allowed for the planning of the future through goals of increased efficiency and equitable distribution" (Rothman 1989).

As the nineteenth century was coming to a close, the American Southwest was experiencing an increasing number of settlers and an increasing interest in the highly visible ancient architecture. As a result, the effects of visitation and the impacts of both

casual and organized artifact collecting became evident. Homesteading itself escalated the destruction and removal of American antiquities from western public lands (Bandelier 1890, 1892; Hewett 1906; Ise 1961). Just as growing numbers of Americans began to learn about the heritage and archaeology of the Southwest, they also became increasingly aware of the destruction of these very same treasures, including at Casa Grande in Arizona and the Mesa Verde area of Colorado.

Casa Grande

The Casa Grande ruins in Arizona, which contain intricate prehistoric structures surrounded by a compound wall, were built by the Hohokam (Hohokam is an O'odham word meaning Those Who Are Gone) who farmed the Gila Valley in the early 1200s. The plundering of these ruins galvanized the concerns of archaeologists and other budding supporters of archaeological preservation into political action (Hirst 2006).

In 1889, hearing about the rampant vandalism and looting at Casa Grande, fourteen prominent Boston citizens (including Oliver Wendell Homes and the Governor of Massachusetts, Oliver Ames) wrote to U.S. Senator Hoar requesting that the Federal government take immediate steps to protect the site from destruction or injury (McManamon 2006). [In 1882, Senator Hoar had presented a petition to Congress calling for the general preservation of ancient sites and natural and cultural antiquities. The petition failed. (Lee 1970/2001; Rothman 1989; Thompson 2000a, 2000b).] Senator Hoar agreed to present the new petition to Congress. The petition asked that the Casa Grande ruins be designated a national reservation reserved for its cultural value (Lee 1970/2001; Rothman 1989). This time, willing to act on a specific case presented by influential people of the times, Congress responded quickly. They appropriated funds for repair of the deterioration at Casa Grande. They also authorized the President to withdraw the land containing the site from settlement or sale. In 1892, President Benjamin Harrison signed a Proclamation (recommended to him by the GLO and by the Bureau of Ethnology) mandating the permanent protection of the Casa Grande ruin, as well as the 480 acres upon which the ruins stood, thereby creating the first Federal archaeological preserve established by a United States president (Ise 1961; Lee 1970/2001; McManamon 2006).

Southwestern Colorado and Mesa Verde

After the publication of the Hayden Survey report, word spread quickly. Well-read settlers now had detailed maps and information about the area, and essentially the first guide book to the cliff dwellings. As a result between 1878 and 1885 numerous, undocumented collections left the Mesa Verde area and artifacts became a trade and barter item in southwestern communities like Durango, Colorado (Blackburn 2006).

In 1891, Gustav Nordenskjold, a young Swedish scientist, teamed up with the Mancos based Wetherill family to explore and excavate many of the Mesa Verde area sites. Their systematic documentation, photography, mapping and cataloging of numerous artifacts and cliff dwellings was published in 1893. Regardless of his noteworthy scientific methods, local citizens of Durango raised protest when Nordenskiold attempted to ship artifacts home to Sweden. Eventually his collection ended up in Finland's National Museum in Helsinki, (where it is well cared for), but not before the American public realized that no law existed to prevent the removal of artifacts from public or Indian lands (Blackburn 2006; Reynolds and Reynolds 2006).

About this time, a movement was started in Denver, Colorado to save the cliff dwellings of Mesa Verde. A group of women established the Colorado Cliff Dweller Association and launched a vigorous and effective campaign to establish Mesa Verde as a national park. In 1900, unable (and unwilling) to wait for Federal action, the group attempted to lease major cliff dwellings (what is now Mesa Verde National Park) from the Ute Tribe for \$300 a year. They immediately began planning for the repair of roads and for the erection of a rest-house. As a result, the GLO, pending a determination of the advisability of establishing the area as a national park, withdrew an extensive part of the Mesa Verde area from sale, entry, settlement, or other disposal (Rothman 1989; Sproul 2001).

A Call for the Preservation and Protection of America's Heritage

A free for all style of visitation and artifact collection of archaeological sites became rampant across the entire Southwest, just as public fascination with native people and concern over the rapidly closing American western frontier was increasing (Cronin 1994; Hinsley 1991; Lister and Lister 1981; Runte 1987). As attention turned to the existence of these rich cultural resources, Americans came to realize, for perhaps the first time, that they had a national heritage—one rivaling that of Europe, with its ancient civilizations and castles. Before long, appreciation of the rich and varied natural environment of the nation, as well as of the archeological and cultural vestiges being discovered throughout the West, led to a wave of American nationalism (Runte 1987). In growing defiance of calls for increased natural resource extraction, the natural and cultural jewels of America were gaining an appreciation that surpassed the designated monetary value of what could be cut down, dug up, carted off, or drilled from those lands (Cronin 1994; McManamon 2000; Rothman 1989). Places like Casa Grande, Mesa Verde, and Yellowstone began to be cherished by Americans for their inherent value and for the invaluable natural, cultural, scenic, and scientific contributions they offered the nation (Cronin 1994; McManamon 2000).

The victory of preserving Casa Grande did little to establish a precedent of conservation. This site-specific, one-at-a-time, piecemeal method of conservation was not meeting the need for preservation. Other countries had already established their own legal protections for national artifacts (including England's Ancient Monuments Act of 1882 and Mexico's Law of Archaeological Monuments of 1897) and there was a growing demand for similar legislative protection in the United States (Rothman 1989). The push to legislate the preservation of antiquities on a national scale began in earnest at the beginning of the twentieth century. Various organizations, including the Anthropological Society of Washington, the American Anthropological Association, and the Archaeological Institute of America, began to steadily push for political and legislative action to protect American archeological sites (Lee 1970/2001; Rothman 1989; Thompson 2000b).

The GLO was already fully aware of the need to protect prehistoric objects on the public lands. As historian Ronald Lee noted, "interesting discoveries were constantly being made of caves, craters, minerals springs, unusual geological formations, and other scientific features that appeared to merit special attention by the nation" (Lee 1970/2001). However, if these treasures were located in non-forested areas, the only real option available to the GLO was to ask Congress to create a national park, which was turning out to be a long, unwieldy process (Lee 1970/2001; Thompson 2000b).

In 1904, the GLO (with the support of the Department of the Interior and the House Public Lands Committee) turned to an archaeologist experienced in the prehistoric ruins

of the Southwest for assistance. Edgar Hewett was asked to write a report on Southwestern archaeological areas and resources. Hewett's subsequent report, entitled "Memorandum Concerning the Historic and Prehistoric Ruins of Arizona, New Mexico, Colorado, and Utah, and their Preservation," provided the GLO and, eventually, Congress with a comprehensive and fact-based review of all of the known antiquities located on Federal lands in four key states (Hirst 2006; Norris 2006; Rothman 1989; Sellers 2008).

Hewitt soon became an advocate for a bill that would cover the conservation and preservation of antiquities on public lands and would include language to authorize the President to protect such sites via the act of signing a Proclamation expressing that intent (Thompson 2000; Lee 1970/2001). In late 1905, Hewett presented a draft of a newly conceived bill at a widely attended archaeological conference. The meeting unanimously endorsed Hewett's draft. That draft, in turn, was passed on to an influential congressional representative, John F. Lacey, a Republican representative from Iowa.

[Lacey was a Civil War veteran (a Union adjutant-general) and an avid conservationist who had traveled to the Southwest in 1902 to see the cliff houses and prehistoric ruins for himself. He had already been associated with legislation calling for the preservation of American antiquities (Lee 1970/2001). In 1900 Lacey had introduced legislation to create a Federal administrative entity that would be responsible for managing America's national parks and reserves. The bill was defeated. Lacey, however, continued to fight for the protection of valuable cultural, scientific, and natural resources (Lee 1970/2001; Rothman 1989). In 1901, Lacey secured the passage of the first comprehensive Federal legislation designed to protect wildlife. The Lacey Act criminalized the interstate shipment of wild animals or birds killed in violation of State laws.]

On January 9, 1906 Congressman Lacey introduced "An Act for the Preservation of American Antiquities" in the House of Representatives (H.R. 11016). On February 26, Senator Thomas M. Patterson of Colorado introduced a companion measure in the Senate (S. 4698). By the time it was passed by Congress, not a single significant word had been altered from the draft Hewett had presented six months earlier to the American Anthropological Association and the Archaeological Institute of America (Conard 2006; Lee 1970/2001). On June 8, 1906, the Antiquities Act was signed into law by President Theodore Roosevelt. On September 24, barely three months later, President Roosevelt signed the Proclamation establishing Devils Tower National Monument in Wyoming, making it the first national monument in the United States.

The immensity of man's power to destroy imposes a responsibility to preserve.

-- U.S. Congressman John F. Lacey, 1901

Progressive Conservation

The Act for the Preservation of American Antiquities, known as the Antiquities Act, came about in direct response to the growing concern over conserving endangered American archeological resources, as well as in direct response to the progressive call for the Federal government to manage national assets for the good of all Americans. In effect,

the Act's passage paralleled a national conservation movement that heralded the philosophy of giving controlled regulation of the nation's resources to a socially responsible, centralized government (Dustin, McAvoy, and Odgen 2005)

During the early twentieth century, President Theodore Roosevelt was the heart and soul of the Progressive Movement. President Roosevelt embraced and embodied Progressivism—which was the belief that those elected by the public should take responsibility for the direction of the nation's policies for the benefit of that public. At the time, health, nature, and fitness were national obsessions. These goals were considered achievable for all Americans through active governmental involvement. Progressivism was a reaction to the excesses of rugged individualism (Dustin, McAvoy, and Ogden 2005; Hirst 2006). On a larger scale, it was also a backlash to the greed of Robber Barons and the consuming misery of the Industrial Revolution of the late nineteenth century (Hirst 2006; Rothman 1989).

When Roosevelt became President in 1901, conservation and Progressivism was elevated to the highest levels of the American social agenda. Roosevelt advocated a government with the power to enforce concepts of fairness and justice. Under Roosevelt, a man passionate about natural resources and their preservation, antiquities conservation acquired a new significance and a powerful advocate (Hirst, 2006; Rothman 1989).

The Progressive Movement, essentially led at the time by Roosevelt, believed that active governmental involvement could be used to create a healthy, prosperous middle class. The Antiquities Act was a part of that movement, as it used Federal action (rather than private interests) to create and preserve natural, healthy places for people to visit, and to preserve cultural and scientific data important to understanding the nation's past (Hirst 2006).

Defenders of the short-sighted men who in their greed and selfishness will, if permitted, rob our country of half its charm by their reckless extermination of all useful and beautiful wild things sometimes seek to champion them by saying the 'the game belongs to the people.' So it does; and not merely to the people now alive, but to the unborn people. The 'greatest good for the greatest number' applies to the number within the womb of time, compared to which those now alive form but an insignificant fraction. Our duty to the whole, including the unborn generations, bids us restrain an unprincipled present-day minority from wasting the heritage of these unborn generations. The movement for the conservation of wild life and the larger movement for the conservation of all our natural resources are essentially democratic in spirit, purpose, and method.

-- President Theodore Roosevelt, 1916

NATIONAL LEGISLATION—AGENDA FOR CONSERVATION

The Antiquities Act

The Antiquities Act (16 USC 431-433) initiated a Federal system designed to protect American antiquities on public lands, to regulate archeological activities, and to punish persons known to have disturbed prehistoric sites without a permit. By declaring antiquities “scientific objects” and the sites upon which they existed as public sources of education, scientific information, and/or commemorative value, the Antiquities Act established fundamental policies for the treatment of cultural resources that have influenced archaeology and historic preservation into the twenty-first century (Lee 1970/2001; McManamon 1996, 2001; Rothman 1989; Thompson 2000a). The Antiquities Act provided a foundation for regulating public archeological investigations and for protecting archeological sites. The Act also established key principles from which future historic preservation policies and statutes would be derived (McManamon 1996; Sproul 2001). In full, the Antiquities Act reads:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, at the discretion of the court.

Section 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected: Provided, That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much as thereof may be necessary for the proper care and management of the objects may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

Section 3. That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulation as they may prescribe: Provided, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings should be made for permanent preservation in public museums.

Section 4. That the Secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act.

*Approved
June 8, 1906
Theodore Roosevelt*

The passage of the Antiquities Act had three enduring impacts on American archaeology, historic preservation, and natural resource conservation. First, it was now possible for the President to unilaterally set aside public lands, by Proclamation, for preservation as national monuments. Second, archeologists were required to secure a permit from the land managing officials (the Secretaries of Agriculture, Interior, or War), in order to conduct any type of archeological or paleontological research on federally owned or controlled land. Third, individuals who removed, disturbed, or destroyed antiquities on public lands were subject to punishment by fine and/or imprisonment (source: <http://www.nps.gov/history/archeology/>).

Section 2 of the Antiquities Act specifically gives the President the power to unilaterally designate, by Proclamation, "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" as national monuments. Setting aside national monuments from tracts of land already owned by the government allowed the President to ban certain activities on those properties. Such activities included unauthorized excavation, homesteading, mining, grazing, logging, and other activities previously permitted on those properties (Hirst 2006).

Prior to the Antiquities Act, areas of special interest had been set aside as parks or reserves (including Hot Springs, Arkansas in 1832, Yellowstone National Park in 1872, and Casa Grande, Arizona in 1892). However, the establishment of these parks or reserves required an act of Congress, as well as Presidential approval. The Antiquities Act made the establishment of national monuments administrative actions—actions that were quicker and far easier to execute (McManamon 1996). In essence, the Antiquities Act became a handy tool for protecting specific cultural and historic sites that were in imminent danger and in a way that an often slow-acting Congress could not (Dustin, McAvoy, and Ogden 2005; Rothman 1989).

There were no intrinsic features that distinguished the new national monuments from national parks or reserves, only the mode of their establishment. Congress had to pass bills authorizing new national parks, whereas the President could now proclaim national monuments with the stroke of a pen. As a result, areas with identical features may be found in both categories.

The Antiquities Act lent legal sanction to the informal system already firmly entrenched in the GLO (the agency that would, in 1946, combine with the U.S. Grazing Service and become the BLM). Beginning in the early 1890s, the GLO had actively pursued a policy of withdrawing places with archaeological, historical, or natural significance from settlement and other kinds of land claims (areas brought to their attention by agents in the field or by petitions from the public). In order to prevent development and exploitation, the GLO had withdrawn a broad array of locations across the American West (Ise 1961; Rothman 1989).

After the passage of the Antiquities Act, the GLO began to work to convert previously withdrawn places into national monuments. During the summer of 1906, the GLO staff reviewed withdrawn tracts and drew up preliminary Proclamations (Devils Tower was the

first to be presented to, and signed by, President Roosevelt). Under the Department of the Interior, GLO efforts to administer the monuments began. Frank Bond, the chief clerk of the GLO at the time, assumed responsibility for the national monuments under the agency's care. Bond evaluated national monument proposals and drafted proclamations for the establishment of various monuments and, in general, assumed responsibility for determining whether a proposed area would become a national monument (Bond 1911). Rejecting numerous inappropriate requests, Bond eventually wrote all of the 28 proclamations establishing national monuments between 1906 and 1911 (Bond 1911; Rothman 1989).

The Antiquities Act, in fact, is the most important piece of preservation legislation ever enacted by the United States government. Although its title suggests significance only in archaeological matters, in practice the law became the cornerstone of preservation in the Federal system. Without it, there would have been little flexibility in the preservation process, and many areas of significance would have been destroyed long before Congress passed legislation to protect them.

-- Hal Rothman

America's National Monuments: The Politics of Preservation (1989)

The Antiquities Act set important precedents, including the assertion of a broad public interest in archaeology on public lands. It also established Federal support for the care and management of archaeological sites, collections, and information (and created the basis for the Federal government's efforts to protect archaeological sites from looting and vandalism). The Antiquities Act stands as an important achievement in the progress of conservation and preservation efforts in the United States. It permitted the protection and preservation of specific areas important for their cultural, archaeological, historical, and scientific resources. The Antiquities Act provided a foundation of public policy from which more specific public attention to, and preservation of, historic places and structures, cultural landscapes, and other cultural resources developed during the course of the twentieth century.

The Antiquities Act and Cultural Contributions—Commemorative not Commercial

By the end of the nineteenth century, the prehistoric sites of the American Southwest had become tied to the modern market economy, with pot-hunters and wealthy collectors increasingly aware of the prestige and profits that the acquisition of ancient artifacts could bestow. A kind of archaeological frontier blossomed, with the unrestrained collecting of thousands of invaluable objects from ancient sites. At the time, this was paralleled by the rampant extraction of natural resources from public lands across the West (Hirst 2006; Rothman 1989).

By the end of the nineteenth century, however, areas within the public lands system came to be seen as possessing unique and invaluable qualities that went far beyond purely economic factors. These public lands came to be seen as worthy of being retained by the Federal government as part of the public trust—lands not to be disposed

of, or managed, as commodities (Rothman 1989; Sellers 2006). The initial impetus for the Antiquities Act was to stop the destruction of archaeological sites in the American Southwest (Rothman 1989). By defining who would be allowed to conduct archaeological excavations on public lands, the Antiquities Act also defined the study of archaeology as a scientific endeavor, rather than art history. It also sanctified acquiring knowledge and permanent preservation in public museums as its goal, rather than excavating artifacts as a commodity (Hirst 2006).

The Antiquities Act established that the conservation and preservation of historic, archaeological, and other scientific sites on public lands was indeed a Federal responsibility. It was the first law to establish archaeological sites on public lands as invaluable public resources in, and of, themselves. It obligated Federal land management agencies to preserve, for present and future generations, the historic, scientific, commemorative, and cultural values of the archaeological and historic sites and structures on these national monument lands (source: <http://www.nps.gov/history/archeology/>). The Act also made it clear that, unlike the forest reserves, the primary value of such special places lay not in their commercial value, but rather in their contribution to education and knowledge for the general public good (Hirst 2006; Sellers 2008). This defining of cultural and archaeological resources as non-commercial was the most basic public policy established by the Antiquities Act. According to the Antiquities Act, archaeological sites are most valuable for the information they contain—their inherent commemorative, educational, scientific, and inspirational values—not as commodities for commercial exchange. The preservation of these heritage resources, like clean air and clean water and the teachings they offer, is what contributes to the public good and is of great public concern (Lee 1970/2001; McManamon 1996; Rothman 1989; Sellers 2008; Waldbaum 2006).

The [Antiquities] Act worked a fundamental change in how people thought about the beautiful, compelling, and fragile relics left behind by earlier civilizations. It encouraged Americans to feel that our shared heritage is a public treasure, not merely a commercial asset to be exploited. It fostered -- and enforced -- the notion that cultural resources on public lands should be treated with the utmost respect, and that only the best stewardship practices, the highest level of scholarship, and the most up-to-date technology should be employed in their identification, preservation, and interpretation.

***-- Richard Moe
President, National Trust for Historic Preservation, 2006***

Additional Conservation and Preservation Legislation

Antiquities are not renewable resources. The conditions—the people, their times, their technologies, the prevalent environmental conditions that sustained them, etc.—in which these objects were created and crafted can never be duplicated. The yield of these priceless objects (educational, inspirational, or scientific) can only be sustained by their careful preservation, especially within the context of the landscape within which they were created. Any damage to, or destruction of, these irreplaceable objects whether by

reckless management, or by individuals or industries seeking short-term economic profit would constitute an irretrievable and irreversible impact; a loss to the American people that could never be regained by any type, or amount, of mitigation measure. The nation's antiquities can endure for centuries more, for the lasting benefit of all present and future generations of Americans only if properly managed by those entrusted with their care. Thus, the Federal land management agencies administering American public lands and resources are legally and ethically bound to ensure the enduring preservation of American antiquities under their care. This is especially true when it comes to American public lands that have been elevated to the highest echelons of prestige -- national monuments—lands that contain and are specifically dedicated to one-of-a-kind, irreplaceable national heritage treasures.

The Antiquities Act of 1906 laid the basis for additional Federal legislation designed to preserve the historic and cultural resources of the public domain, including:

Historic Sites Act of 1935

The Historic Sites Act of 1935, as amended (PL 74-292; 49 Stat. 666; 16 USC 461), established national policy designed to identify and preserve nationally significant "historic sites, buildings, objects and antiquities." The Act authorized the National Historic Landmarks program and provided the foundation for the National Register of Historic Places authorized in the National Historic Preservation Act of 1966 (see below).

The policy stated in this Act followed from the non-commercial and public value policies established by the Antiquities Act. Section 1 of the Act states that "it is hereby declared that it is a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States." Under the Act, historic sites and cultural resources could be added to the public domain (McManamon 1996).

Reservoir Salvage Act of 1960

The Reservoir Salvage Act of 1960, as amended (16 USC 469-469c), expanded the Historic Sites Act of 1935. It gave the Department of the Interior, through the NPS, the responsibility for the preservation of archaeological data that might be lost specifically through dam construction.

National Historic Preservation Act of 1966

The National Historic Preservation Act (NHPA) of 1966, as amended (PL 89-665; 80 Stat. 915; 16 USC 470), created the National Register of Historic Places (NRHP). The NHPA provided protection to historic places of State and local, as well as national, significance. It established the Advisory Council on Historic Preservation (ACHP), State Historic Preservation Officers (SHPOs), Native American Tribal Preservation Officers, and a preservation grants-in-aid program. Section 106 of the Act directs Federal agencies to take into account effects (impacts) of their actions (undertakings) on properties listed on, or eligible for, the NRHP. Section 110(a) of the Act sets inventory, nomination, protection, and preservation responsibilities for federally owned cultural properties. Section 110(c) of the Act requires each Federal agency to designate a Preservation Officer to coordinate activities under the Act.

[Executive Order 11593](#), "Protection and Enhancement of the Cultural Environment" (36 CFR 8921, May 13, 1971) directs Federal agencies to inventory cultural properties under their jurisdiction. It also directs such agencies to nominate to the NRHP all federally

owned properties that meet the criteria, to use due caution until the inventory and nomination processes are completed, and to assure that Federal plans and programs contribute to the preservation and enhancement of non-Federal properties.

The NHPA was the second expansion of the basic policy of the Antiquities Act. The Act embraces a wider range of historic and cultural properties than the Antiquities Act and the Historic Sites Act. However, like the two acts before it, the NHPA adheres to the public policy that historic properties have a non-commercial, non-commodity based value to all Americans. Section 1(a)(4) states that “the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans.” The non-commercial values of these properties were stressed, as well as the fact that the manner in which the properties are managed is of public concern (McManamon 1996).

National Environmental Policy Act of 1969

The National Environmental Policy Act (NEPA) of 1969, as amended (42 USC 4321 and 4331-4335), states that it is the Federal government's continuing responsibility to use all practicable means to preserve important historic, cultural, and natural aspects of the nation's heritage. It also instructs Federal agencies to prepare environmental impact statements (EISs) for each major Federal action potentially having an effect (impact) on the environment.

Archaeological and Historic Preservation Act of 1974

The Archaeological and Historic Preservation Act (AHPA) of 1974 amended the Reservoir Salvage Act of 1960 (PL 86-523; 74 Stat. 220, 221; 16 USC 469; PL 93-291; 88 Stat. 174; 16 USC 469). The Act provides for the preservation of historical and archaeological data that might otherwise be lost as the result of Federal construction projects or federally licensed or assisted programs. The Act provides that up to one percent of congressionally authorized funds for a project may be spent from appropriated project funds to recover, preserve, and protect archaeological and historical data.

American Indian Religious Freedom Act of 1978

The American Indian Religious Freedom Act (AIRFA) of 1978, as amended (PL 95-431; 92 Stat. 469; 42 USC 1996), directs that it shall be the policy of the United States to protect and preserve for the American Indian, Eskimo, Aleut, and Native Hawaiian people the inherent right of freedom to believe, express, and exercise their traditional religions. This includes access to religious sites, use and possession of sacred objects, and freedom to worship through ceremonial and traditional rites. Under the Act, Federal agencies are directed to evaluate their policies and procedures in order to determine if changes are needed to protect such rights and freedoms from agency practices. (The Act is a specific expression of First Amendment guarantees of religious freedom. It is not implemented by regulations.)

Archaeological Resources Protection Act of 1979

The Archaeological Resources Protection Act (ARPA) of 1979, as amended (PL 96-95; 93 Stat. 721; 16 USC 470), set felony-level penalties for excavating, removing, damaging, altering, or defacing any archaeological resource more than 100 old on public or Native American tribal lands, unless authorized by a permit. The Act prohibits the

sale, purchase, exchange, transportation, receipt, or offering of any archaeological resource obtained in violation of any regulation or permit under the Act or under any Federal, State, or local law. The Act's definitions, permit requirements, and criminal and civil penalties augment those established under the Antiquities Act. The basic purpose of the Act is to “secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands.”

Native American Graves Protection and Repatriation Act of 1990

The Native American Graves Protection and Repatriation Act (NAGPRA) of 1990, as amended (PL 101-601; 104 Stat. 3048; 25 USC 3001 et seq.), established rights of Native American tribes and Native Hawaiian organizations to claim ownership of certain cultural items (including human remains, funerary objects, sacred objects, and objects of cultural patrimony) held or controlled by Federal agencies and/or museums that receive Federal funds. It requires agencies and museums to identify holdings of such remains and objects, and to work with appropriate Native Americans toward their repatriation. Permits for the excavation and/or removal of cultural items protected by the Act require Native American consultation and notification of discoveries of cultural items made during Federal land use activities.

PRESIDENTIAL PROCLAMATIONS OF PRESERVATION

Since the passage of the Antiquities Act in 1906, all but four presidents have used the authority of the Act to proclaim 125 national monuments covering nearly 100 million acres of Federal public lands. Many of the monuments were established to protect American antiquities; however, over time, presidents have used the Act to proclaim national monuments for their scenic, natural, historic, and scientific objects as well (Dustin, McAvoy, and Ogden 2005). Presidents who established national monuments include:

- **President Theodore Roosevelt, 1901-1909**, used the Antiquities Act to proclaim 18 national monuments.
- **President William Howard Taft, 1909-1913**, used the Antiquities Act to proclaim 10 national monuments.
- **President Woodrow Wilson, 1913-1921**, used the Antiquities Act to proclaim 14 national monuments.
- **President Warren G Harding, 1921-1923**, used the Antiquities Act to proclaim 8 national monuments.
- **President Calvin Coolidge, 1923-1929**, used the Antiquities Act to proclaim 13 national monuments.
- **President Herbert Hoover, 1929-1933**, used the Antiquities Act to proclaim 9 national monuments.
- **President Franklin D. Roosevelt, 1933-1945** used the Antiquities Act to proclaim 11 national monuments.
- **President Harry S. Truman, 1945-1953** used the Antiquities Act to proclaim 1 national monument.

- **President Dwight D. Eisenhower, 1953-1961**, used the Antiquities Act to proclaim 2 national monuments.
- **President John F. Kennedy, 1961- 1963**, used the Antiquities Act to proclaim 2 national monuments.
- **President Lyndon B. Johnson, 1963-1969**, used the Antiquities Act to proclaim 1 national monument.
- **President Jimmy Carter, 1977-1981**, used the Antiquities Act to proclaim 15 national monuments.
- **President William J. Clinton, 1993-2001**, used the Antiquities Act to proclaim 18 national monuments, and to expand the boundaries of 3 national monuments.
- **President George W. Bush, 2001-2008**, used the Antiquities Act to proclaim 5 national monuments (source: <http://www.nps.gov/history/history/hisnps/NPSHistory/>).

National Monument Management

When the Antiquities Act was passed in 1906, American public lands were under the management of either the Department of the Interior (the GLO), the Department of Agriculture (the U.S. Forest Service), or the Department of War. The Antiquities Act did not specify which Federal land management agency should manage national monuments proclaimed by presidents. However, the implications of the permitting process, outlined in Section 3, is that the management of the national monuments would be under the jurisdiction of the governmental agency that owned the property prior to the monument designation (Hirst 2006).

The most appropriate agency for managing archaeological and cultural properties in 1906 may have been the Bureau of American Ethnology (BAE) at the Smithsonian Institution (which had staff archaeologists). The BAE, however, was not set up to manage lands. It soon became evident that the Department of War and the Department of Agriculture (the USFS) were also not equipped to manage the monuments, especially when it came to managing properties they could not use in their normal course of operations (Hirst 2006).

The proclamations establishing national monuments typically came with no additional funding or staffing. GLO field agents posted warning signs at each monument, offering the only form of protection for the monuments and making the areas all the more identifiable for collectors and casual visitors who did not realize that their behavior was now illegal (Rothman 1989). In addition, field agents often only visited national monuments once or twice a year. One GLO Inspector, Leslie Gillett, sent a report to her GLO superiors that the lack of "evidence of care" at one new national monument, El Morro, made it "doubtful whether visiting tourists, especially those who do not visit [El Morro] with the idea of its being a national monument in mind, are acquainted with the fact that the site has been withdrawn" (Gillette 1915). With only a warning sign to indicate the significance of each national monument, people did not sense the special status of the designated areas (Rothman 1989).

Frank Bond, the chief clerk of the GLO, stated that it was "only a question of time when [the national monuments] will be secretly attacked and pillaged piecemeal, until there is nothing left to preserve... [They are] a responsibility which we now feel but cannot make

effective" (Bond 1911). Without appropriate funding and staffing, there was little the GLO could do to protect or preserve the antiquities assigned to their care and management.

By 1910, a movement to establish a branch of the Department of the Interior specifically dedicated to administering national parks and national monuments gained momentum. In 1912, President Taft called on Congress to develop a coordinated system to manage the rapidly expanding national parks and monuments. In 1916, a formally recognized Federal bureau designed to manage America's treasures was created. The National Park Service Organic Act of 1916 was passed by Congress and signed by President Woodrow Wilson. The new agency was dedicated to the specific purpose of managing national treasures on American public lands. Until 1933, the USFS continued to manage the national monuments under its purview. Then, in 1933, President Franklin D. Roosevelt signed Executive Order 6166, transferring the administrative functions of public buildings, reservations, national parks, national monuments and national cemeteries over to the National Park Service (Hirst 2006).

When President Clinton proclaimed the Grand Staircase-Escalante National Monument, he also proclaimed the BLM as the managing agency—the agency that was administering the lands before the establishing proclamation. Although most national monuments are under the management of the NPS, President Clinton's national monument proclamations established a new paradigm in which other Federal agencies have sole or shared jurisdiction. Fourteen of President Clinton's national monuments are run by the BLM (including the Canyons of the Ancients National Monument), 6 by the NPS, and 2 are under joint management by the NPS and the BLM. In addition, the USFS and the USFWS each oversee one national monument. In 2006, Papahānaumokuākea Marine National Monument proclaimed by President Bush in the northwestern Hawaiian Islands was placed under the management of the National Oceanic and Atmospheric Administration (NOAA).

Presidential Preservation—Conservation Controversy

All but four presidents (Nixon, Ford, Reagan, and G.H.W. Bush) have used the Antiquities Act to proclaim numerous national monuments. On occasion, however, the implementation of the presidential power has stirred controversy and contention. Such controversial issues have included the size of the areas designated, the types of resources protected (scenic, geologic, historic, cultural, scientific, etc.), the inclusion of non-Federal lands within the boundaries of national monuments, restrictions on land uses (including logging, hunting, grazing, and mining), the manner and timing in which monuments were created, the selection of the managing agency, and other issues (Vincent 2006). However, in all cases to date, Congress and the Courts have upheld establishing particular monuments, and the president's authority to do so under the Antiquities Act (Hirst 2006; Raffensperger 2007, 2007; Vincent 2006).

The provisions of the Antiquities Act have remained largely unchanged since 1906. They have been broadly interpreted by presidents to include areas of all sizes and to contain a diverse array of cultural, natural, scenic, and/or scientific features. The impetus for the Act may have been to protect prehistoric cultural objects (antiquities) in the Southwest. However, the reference in the act to "objects of ... scientific interest" enabled President Theodore Roosevelt to make a natural geological feature, Devils Tower in Wyoming, the first national monument. The next three monuments he proclaimed in 1906 included one for its natural features (the Petrified Forest in Arizona) and two for cultural features (El Morro in New Mexico, and Montezuma Castle in Arizona).

Although most national monuments have been established by presidential proclamation under the Antiquities Act, Congress does have the authority to establish monuments. Congressional establishment of a national monument, however, can take years—from the first introduction of the special authorizing legislation, through passage by both the House of Representatives and by the Senate, through presidential approval, to the final enactment (as well as through any court review and/or litigation). A President's unilateral power to proclaim national monuments has been challenged as a circumvention of Congress. Presidents, however, have defended their use of the Antiquities Act as a way to cut through bureaucratic deadlock and to protect vital natural areas under imminent threat—when, and where, time is of the essence (Getches 1982; Farrensperger 2007; Rothman 1989).

First Controversy

The first legal challenge to the use of the Antiquities Act came in 1943, when President Franklin D. Roosevelt proclaimed a wildlife reserve in Wyoming as the Jackson Hole National Monument. President Roosevelt proclaimed the area a national monument in order to accept a donation of lands from John D. Rockefeller, Jr. Congress had declined to authorize the inclusion of these lands, as an expansion, into the already established Grand Teton National Park.

Wyoming's congressional representatives favored local control of the area. Thus, in May 1943 the State of Wyoming filed suit challenging the legality of Roosevelt's actions. A key aspect of the State's argument was that the use of the Antiquities Act was invalid because the Jackson Hole area did "not actually contain any historic landmark, or any historic or prehistoric structure, or any other object of historic or scientific interest." In response, NPS attorneys gathered a number of historians, biologists, and geologists to testify that the area did indeed possess values worthy of the language prescribed by the Antiquities Act. A judge in Sheridan, Wyoming heard the case and, in August 1944, sided with the NPS (Getches 1982; Rothman 1989). At the national level, legislation intended to abolish Jackson Hole National Monument passed Congress. It was, however, vetoed by President Roosevelt. The battle over the land continued until the end of the decade. In 1950, Congress sided with the president and added most of the national monument into Grand Teton National Park. It also banned the creation of any future national monuments in Wyoming without congressional approval (Farrensperger 2007; Rothman 1989).

Largest Controversy

In 1978, President Jimmy Carter elevated the largest amount of land ever, more than 58 million acres in Alaska, by any president to national monument status. That action led to one of the greatest conservation achievements of the century, the Alaska National Interest Lands Conservation Act (more than doubling the size of the lands administered by the NPS). It also ignited one of the largest controversies over the use of the Antiquities Act. Believing that Carter, like Franklin Roosevelt, had sidestepped Congress, some Alaskans were incensed and one group of citizens in Fairbanks burned Carter in effigy. After years of debate, the Alaska National Interest Lands Conservation Act was passed in 1980, expanding protected land in Alaska and, at the same time, barring the creation of any future national monuments in Alaska without congressional approval (Raffensperger 2007).

Latest Controversy

In 1996, President Clinton designated a series of unique geologic landforms and elaborate canyons in Utah, totaling approximately 1.7 million acres of land, as the Grand Staircase-Escalante National Monument. This decision was a popular one across the nation, except for some people in Utah and a coal mining endeavor preparing to set up operations within this unique landscape (Hirst 2006; Rothman 1989; Squillace 2006).

In 1997, in response to President Clinton's proclamation, the Utah Association of Counties, joined by the Mountain States Legal Foundation, filed suit against his administration. Several U.S. House members also introduced bills designed to reduce the president's authority to establish new monuments. One bill, the National Monument Fairness Act (H.R. 1127), sponsored by Representative James Hansen (R-UT), demanded that no new monuments over 5,000 acres be established without the concurrence of Congress, and by both the Governor and the State legislature of the State in question. This bill passed the House but died in the Senate (*Congressional Record* 143 (1997), 21441–21443; Squillace 2006).

Weathering that storm, President Clinton, between January 2000 and the end of his term a year later, went on to proclaim more national monuments than any other president (establishing 18 new, and expanding 3, national monuments). Some western congressional representatives attempted to undo President Clinton's proclamations, as well as to reduce the president's ability to create new monuments. In June 2001, 30 House members introduced a new National Monument Fairness Act.

On July 17, 2001, on behalf of over 20 organizations opposed to the National Monument Fairness Act, the great grandson of President Theodore Roosevelt, the President who signed the Antiquities Act, testified before Congress in opposition to the bill:

I am Ted Roosevelt IV, a businessman, conservationist, and a rancher. I am also a Republican...This is the third time that I have testified before the House and Senate Committees in defense of the Antiquities Act. It is my hope that, eventually, these challenges to the Act will be simply a matter for the history books and that Congress will come to recognize that the Act itself is a monument to our national conscience.

Our national identity is not solely defined by the success of our economic enterprise, and the American people repeatedly and resoundingly confirm to their representatives in Congress that the health, integrity, and beauty of our landscape is an absolute value of national importance to them...The Antiquities Act remains an important tool for protection of Federal lands held in trust for all Americans, not just the residents in a particular state...The Antiquities Act is a distinctly American law, designed by your farsighted predecessors to assure that we do not damage those natural, archeological, and cultural treasures unique to our American landscape. Since its passage in 1906, it has served our nation well, ensuring that presidents have the ability to protect fragile and special places from ill-conceived commercial exploitation with the speed not found in the ordinary legislative process. Presidents have used the Act sparingly and appropriately to respond to public concerns about the preservation of places that are keystones to our national memory and that help define us as a people and a nation. We respectfully urge your opposition to H.R. 2114 (source: <http://www.wilderness.org/Library/Documents/upload/Monuments-Roosevelt-Statement.pdf>).

The bill, which was largely a repeat of what had had passed the U.S. House of Representatives four years earlier, passed the House Resources Committee. It was never, however, considered by the full House (*House Journal* [2001], 690–691 and 2388) (Harmon et al. 2006).

On January 25, 2001, the Mountain States Legal Foundation filed suit against President Clinton, seeking to set aside six national monuments designated by the President. On November 15, 2001, Judge Paul Friedman, sitting in the U.S. District Court for the District of Columbia, dismissed the lawsuit. Judge Friedman concluded that the Antiquities Act of 1906, upon which President Clinton based his designations, is a proper delegation of authority to the President. On October 18, 2002, a Federal Court of Appeals in Washington, D.C. affirmed Judge Friedman’s decision. All in all, the court dismissed several challenges to the designation of monuments by President Clinton. [Challenges claiming that the monuments were 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), the Administrative Procedure Act (APA), and National Environmental Policy Act (NEPA).]

President Clinton used the Antiquities Act to proclaim 18 national monuments and to expand the boundaries of 3 national monuments. (Only President Franklin D. Roosevelt used his authority more often, and only President Jimmy Carter created more national monument acreage on land, than President Clinton. President Clinton was not the first to use the Antiquities Act's proclamation authority to enlarge existing national monuments. Franklin D. Roosevelt significantly enlarged Dinosaur National Monument in 1938; Lyndon B. Johnson added Ellis Island to Statue of Liberty National Monument in 1965; and Jimmy Carter made major additions to Glacier Bay and Katmai National Monuments in 1978.) In spite of the legislative and court actions determined to negate or alter these designations, all of the national monuments proclaimed by President Clinton under the authority of the Antiquities Act remain in effect.

Like Theodore Roosevelt, I believe there are certain places humankind simply cannot improve upon, places whose beauty and interest no photograph could capture; places you simply have to see for yourself.... We must use this time of unparalleled prosperity to ensure people will always be able to see these places as we see them today.... There is no greater gift we can offer to the new millennium than to protect these treasures for all Americans for all time.

-- President William J. Clinton, 2000

Lame Duck or Lasting Legacy

Presidents alone serve a national constituency. And, as history shows, when preparing to leave office, presidents, both Democratic and Republican presidents, have often used the Antiquities Act to enhance their legacies. President Theodore Roosevelt reportedly proclaimed Mount Olympus National Monument as a “going away present to himself” (Dustin, McAvoy, and Odgen 2005). After his defeat by President Franklin D. Roosevelt,

President Herbert Hoover proclaimed a number of national monuments. In a three-month period, Hoover set aside a second Grand Canyon National Monument, the White Sands National Monument, the Death Valley National Monument, the Saguaro National Monument, and the Black Canyon of the Gunnison National Monument (the last three were subsequently converted into national parks by Congress).

In 1961, shortly before the end of his second term, President Eisenhower established the Chesapeake and Ohio Canal National Monument. After Richard Nixon's election in 1969, President Lyndon Johnson proclaimed Marble Canyon National Monument. And, shortly after being defeated by Ronald Reagan, Jimmy Carter proclaimed more than 50 million acres of American public lands as national monuments in Alaska.

At the end of the twentieth century, President Clinton used the Antiquities Act to proclaim and enlarge national monuments. With one exception, the Grand Staircase-Escalante National Monument, all of the monuments were designated during President Clinton's last year in office, based on the assertion that Congress had not acted quickly enough to protect Federal lands and resources (Vincent 2006; Rothman 1989).

Nearing the end of his presidency, President Bush proclaimed the smallest (the African Burial Grounds in Manhattan) and the largest (covering an archipelago 1,400 miles long and 100 miles wide in the northwestern Hawaiian Islands) national monuments. Like all of the presidents before him who had used the Antiquities Act, President Bush made the decision to circumvent Congress. President Bush had initially planned to use the National Marine Sanctuary Act to preserve the area. This law allows challenges from Congress and others regarding such a decision. However, according to James Connaughton, chairman of the White House Council on Environmental Quality, "As we drew closer and closer to our target to propose a marine sanctuary, and coupled with his great experience with Jean-Michel Cousteau and Sylvia Earle, [President Bush] realized that we had the consensus, that we had run the process, and the time was right to just get the job done." According to the proclamation, the government began a five-year phase-out of the commercial fishing permits in the area and imposed strict prohibitions on any other extractive uses (source: Associated Press article on FOXNEWS.COM; available on the Internet at: <http://www.foxnews.com/story/>).

The process to make the area in Hawaii a national monument had been in process for 5 years. However, President Bush called on the Antiquities Act to give the archipelago (140,000 square miles of largely uninhabited islands, atolls, coral reef colonies and underwater peaks known as seamounts) the greatest protection under the law. "To put this area in context," Bush said in a speech, "this national monument is more than 100 times larger than Yosemite National Park. It's larger than 46 of our 50 states, and more than seven times larger than all our national marine sanctuaries combined. This is a big deal." In a letter to the White House, former Speaker of the House Newt Gingrich (R-GA) called the creation of the national monument "a marvelous opportunity to leave a historic mark on U.S. and world conservation history" (source: Associated Press article on FOXNEWS.COM; available on the Internet at: <http://www.foxnews.com/story/>). Two weeks before he left office, President Bush established 3 additional marine national monuments: the Mariana Trench, Pacific Remote Islands and Rose Atoll Marine National Monuments encompass 195,280 square miles of high seas barred from fishing, mining, and other uses (source: http://www.usatoday.com/tech/science/environment/2009-01-05-mariana-trench_N.htm).

This monument will protect the cultural ties that native Hawaiians have to these lands and waters. We respect these natives' beliefs, and this monument will safeguard both the natural and spiritual treasures of the region.

-- President Bush, 2006

The Antiquities Act—Presidential Preservation Prevails

In spite of, and sometimes as a result of, congressional legislation and court litigation, the Antiquities Act has withstood the tests of time and trial. Today, it still stands as one of the primary components of American conservation legislation (Rothman 1989). American presidents, whether on their first day or on their last day in office, have used their power to proclaim public lands as national monuments when such places were threatened, or when priceless antiquities existing upon those lands faced potential, and impending, devastating consequences. Congress and the U.S. Courts have set, and upheld, the precedent that national monuments are set aside for the enduring benefit of all Americans. They were not set aside, at taxpayers' expense, for individuals or communities closest to them, or for industries or companies seeking to make a short-term economic profit on their resources, especially when such actions would degrade the non-commercial values and irreplaceable objects for which the public lands were set aside as national monuments. Throughout the years, Congress has done more to validate the decisions the presidents have made in proclaiming national monuments, by subsequently expanding or redesignating them as national parks, than to counter them (Dustin, McAvoy, and Ogden 2005; Rothman 1989). The Antiquities Act, more than 100 years after it was enacted, is still a vibrant, viable piece of legislation that future presidents will continue to use when deemed necessary.

If there is one thing that unites our fractious, argumentative country across generations and parties and across time, it is the love we have for our land.... You know, 10,000 or 20,000 years from now, if the good Lord lets us all survive as a human race, no one will remember who set aside this land on this day. But the children will still enjoy it.

-- President William J. Clinton, 2000

National Strategy—Preserving the Nation's Archaeological Heritage

In 1991, the U.S. Department of the Interior established the National Strategy for Federal Archaeology, which states:

The stewardship of America's archeological heritage is a well-established policy and function of the Federal government. Beginning in 1892 when Casa Grande Ruins were set aside for preservation, Federal agencies have paid special attention to the archeological resources on their lands, or that their activities

affect... Archeological resources -- sites, collections, and records -- are unique and fragile. They must be used wisely and protected for future generations (source: <http://www.cr.nps.gov/archeology/tools/NatStrat.html>).

The four basic elements of the national strategy are to:

- preserve and protect archaeological sites in place;
- conserve archaeological collections and records;
- utilize and share archaeological research results; and
- increase outreach and participation in public archaeology.

THE BLM AND AMERICAN PUBLIC LANDS

In 1946, in accordance with the Reorganization Act of 1945, Congress merged the GLO with the U.S. Grazing Service (established by the Taylor Grazing Act of 1934) and created the BLM. The BLM was mandated to manage public domain lands in order to ensure greater use, and more efficient administration, of Federal lands and natural resources. When it was established, the BLM inherited the responsibility for what remained of all public lands across the nation (primarily in the west). For the most part, these lands had never been developed (Muhn and Stuart 1988). All in all, the BLM has come to manage approximately one-eighth of the nation (source: <http://www.blm.gov>).

When the BLM was initially created, there were over 2,000 unrelated, and often conflicting, laws for managing the public lands. These disparate authorities often resulted in inefficient and inconsistent land and resource management. These laws applied not only to grazing and land disposal, but also to mineral leasing and mining, timber harvesting, and even to homesteading. The result was rapid economic development on public (BLM 1995).

In the 1960s and 1970s, there was an increasing demand for the protection and preservation of public lands undisturbed for present and future generations of Americans. As a result, several major environmental laws were enacted, including the Wilderness Preservation Act of 1964, the National Environmental Policy Act of 1969, and the Endangered Species Act of 1973.

The National Environmental Policy Act (NEPA) of 1969 (42 USC 4321 et seq.), signed into law in 1970, established a national environmental policy. It included a multidisciplinary approach to considering environmental resources in the decision-making process. The NEPA requires Federal agencies, including the BLM, to consider potential environmental impacts for all Federal actions that may significantly affect (impact) the human environment.

As a result of this increased interest in environmental protection, Congress overhauled the land use planning process governing public lands. The goal was to encourage land management agencies, including the BLM, to meet society's increasing demand for materials and energy, to support economic growth, and to protect and preserve non-economic values (including those related to wildlife, historic and cultural objects, outdoor recreation, visual aesthetics, air and water quality, etc.).

In 1976, Congress enacted the Federal Land Policy and Management Act (FLPMA) of 1976, giving the BLM a unified legislative mandate. Under the FLPMA, numerous land and resource management authorities were established, amended, or repealed (including provisions on Federal land withdrawals, land acquisitions and exchanges, Rights-of-Way, range management, and the general organization and administration of

BLM public lands). The FLPMA established the BLM as a multiple-use agency, meaning that management would be accomplished on the basis of multiple use and sustained yield in a manner that best meets the present and future needs of the American people for renewable and non-renewable resources.

The FLPMA also specified that:

... the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.

In short, the FLPMA proclaimed multiple use, sustained yield, and environmental protection as the guiding principles for public land management. Thus, the BLM is responsible for the balanced management of the public lands and resources, and their various values, so that they are considered in a combination that will best serve the long-term needs of current and future generations of Americans. These resources include recreation, range, timber, minerals, watershed, fish and wildlife, wilderness, and natural scenic and scientific values. The FLPMA established the BLM's public planning process for lands under its jurisdiction, and the requirement for the BLM to involve other Federal agencies, States, local communities, Native American tribes, and all concerned individuals, groups, and organizations in the planning process.

The BLM and the Canyons of the Ancients

Area Background—Prelude to a Monument

At first glance, southwestern Colorado appears as a strikingly harsh, rugged environment; a natural landscape of expansive vistas, high rocky mesas and plateaus, and deep canyons. Upon closer inspection, however, the area managed by the Federal government as part of the American public lands system (first by the GLO, then, after 1946, by the BLM) is a cultural and historical landscape with a bountiful, yet fragile, testimony to Native Americans who once lived upon the land. It is a landscape that still contains the invaluable remnants of their lives; a vast array of irreplaceable historic, cultural, archaeological, and scientific objects that connect the people who visit this landscape today with the people who lived upon it in the past.

During the time the Ancestral Puebloan people occupied southwestern Colorado, they shifted from a migratory to a sedentary lifestyle. Archaeologists have given descriptive names to the different developmental phases or periods. The cultural history of southwest Colorado is thoroughly described in *Colorado Prehistory: A Context for the Southern Colorado River Basin* (Lipe et al. 1999), and summarized in the table below:

Cultural Chronology for Southwest Colorado		
Dates	Periods	Distinctive Characteristics
A.D. 776 to present	Euro-American	Homesteads dating from as early as the 1880s, camps, rock art and inscriptions, water control features, animal pens, mining claim markers, and roads.
Undetermined date to present	Ute	A mobile lifestyle based on seasonal rounds of hunting and gathering. Later, there were farms in McElmo Canyon. Early sites were represented by wickiups, rock art, and brown-ware pottery.
A.D. 1300 to present	Navajo	Seasonal use of the area for livestock grazing and resource gathering; hogans, sweat lodges, and distinctive pottery.
A.D. 1150 to A.D. 1300	Pueblo III	Large pueblos and a shift in settlement from mesa tops to canyon rims in some areas with a dispersed pattern in others; high kiva-to-room ratios, cliff dwellings and towers; corrugated gray and elaborate black and white (B/W) pottery, and red or orange pottery (red ware) in some areas. There was a mass migration from the area by A.D. 1300.
A.D. 900 to A.D. 1150	Pueblo II	A Chacoan influence; Great Houses, great kivas, roads, etc., in many, but not all regions; strong differences between Great Houses and surrounding unit pueblos composed of a kiva and small surface masonry room block; corrugated gray and elaborate B/W pottery, and decorated red ware.
A.D. 750 to A.D. 900	Pueblo I	Large villages; unit pueblos of proto-kiva plus surface room block of jacal or crude masonry; great kivas; plain and neck-banded gray pottery; and low frequencies of B/W and decorated red ware.
A.D. 500 to A.D. 750	Basketmaker III	Habitation in deep pit houses, plus surface storage pits, cists, or rooms; dispersed settlement with occasional small villages and occasional great kivas; plain gray pottery; and low frequencies of B/W pottery. The bow and arrow replaced the atlatl; and beans were added to the diet.
A.D. 50 to A.D. 500	Basketmaker II (late)	Habitation in shallow pit houses, plus storage pits or cists; dispersed settlement with small low-density villages in some areas; campsites were important as well; gray pottery; atlatl and dart; corn and squash, but no beans; and upland dry farming in addition to floodplain farming.
1500 B.C. to A.D. 50	Basketmaker II (early)	Long-term seasonal use of caves, rock shelters, and alcoves for camping, storage, burial, and rock art; San Juan anthropomorphic style pictographs/petroglyphs; and limited activity sites in open. There were baskets, but infrequent gray pottery; atlatl and dart; corn and squash, but no beans; and cultivation was primarily floodplain or runoff based.
7000 B.C. to 1500 B.C.	Archaic	Subsistence based on hunting and gathering of wild foods; high mobility; low population density; shelters and open sites; atlatl and dart; and use of baskets, but not pottery.
8000 B.C. to 7000 B.C.	Paleo-Indian	Big game hunting and wild food procurement; high mobility; low population density; large, unfluted lanceolate projectile points; and use of baskets, but not pottery.

Source: Adapted from Lipe, et al. 1999.

The wealth and abundance of cultural antiquities within this landscape has attracted numerous scientists, scholars, archaeologists, and anthropologists for over a century. As a result, the research and studies conducted in the area helped in the development of archaeology as a professional scientific discipline. The intense interest also led to a greater awareness of antiquities on public lands and to the interest of the American public which was already focused on areas such as Casa Grande and Mesa Verde.

The earliest recorded exploration of the area was conducted in the 1870s by William H. Holmes and William Henry Jackson. In 1878, Lewis Henry Morgan visited the McElmo valley. His maps and information appeared in the 1881 publication, "Houses and House-Life of the American Aborigines." In 1889, the very first public lands in the United States, the Goodman Point ruins in southwestern Colorado, were officially set aside by the GLO for the protection of significant cultural resources. This action reflects the historic beginnings of the call to protect the irreplaceable and invaluable cultural resources in the area (BLM 2000). [In 1951, President Harry S. Truman expanded Hovenweep National Monument (established in 1923) to include the Goodman Point ruins under the management of the NPS.]

At the beginning of the twentieth century, T. Mitchell Prudden conducted archaeological studies documenting the basic residential unit used by Ancestral Puebloan households. Only a few years later, in 1906, the Antiquities Act was passed by Congress. That same year, nearby Mesa Verde was designated as a National Park (Varien and Jacobson 2001). In 1907, after being called upon by the GLO to inventory the Southwest, archaeologist Edgar Hewett recruited Sylvanus Griswold Morley, Alfred Vincent Kidder, and John Gould Fletcher to conduct a survey in the McElmo drainage (Morley returned in 1908 to excavate Cannonball Ruin). Jesse Walter Fewkes also conducted archaeological investigations in the area, publishing his finds in 1919. As a result of these and other investigations, public awareness of the area and of the need to preserve and protect the antiquities intensified.

The Sacred Mountain Planning Unit

By the middle of the twentieth century, all BLM-administered public lands in the southwest corner of Colorado came to be referred to as the Sacred Mountain Planning Unit of the San Juan Resource Area (Montrose District Office). The area within this planning unit, within Montezuma and Dolores Counties, totaled approximately 217,000 acres.

In 1965, the BLM contracted with the University of Colorado, Department of Anthropology, to conduct extensive inventories of the ancient Indian ruins occurring on the Sacred Mountain Planning Unit. In a 1974 report entitled "Management of Sacred Mountain Planning Unit" the BLM stated:

We are committed by law to:

- *Administer the cultural properties under our control in a spirit of stewardship and trusteeship for future generations.*
- *Initiate measures necessary to direct our policies, plans, and programs in such a way that federally-owned sites, structures, and objects of historical, architectural, or archeological significance are preserved, restored, and maintained for the inspiration and benefit of the people.*

Based on the University of Colorado report, and other studies, the BLM considered the area to contain “unique resources of significant national and worldwide interest” and concluded that

There is growing evidence that the Sacred Mountain Planning Unit of national resource lands, with an adjacent area in Utah, represents a longer cultural span than that represented at Mesa Verde. Archaeologists speculate that the Sacred Mountain Planning area was the center of the wide range Anasazi culture, prehistoric agriculturalists known for their highly developed civilization. Mesa Verde may have been a recent suburb of these early people (BLM 1974).

In terms of protecting these high value archaeological resources, the BLM also stated:

Inefficient control of resource uses and destruction of sites are two key problems. Oil and gas seismograph exploration has caused some damage and requires considerable manpower for supervision. Uncontrolled pot hunting, pure vandalism, and natural elements are taking their toll...The two carbon dioxide wells located in Sand Canyon have created some disturbance in an area of high intensity archaeological values. It has provided access into this area causing increased pot hunting and vandalism.

In order to address these management problems, the BLM proposed four management alternatives for the Sacred Mountain Planning Unit:

- Continue present level of management. Multiple-use policies would continue as presently performed; archeological resources would continue to suffer damage from pot hunting, vandalism, and natural deterioration.
- Encourage NPS acquisition of high value archeological areas; BLM to retain and manage lands not chosen for National Park status.
- As a minimum measures, establish a patrol-protection program to prevent illegal pot hunting and vandalism. New State legislation would be sought to preserve antiquities values through legal sanctions. Local law enforcement agencies could assist BLM in protection of archeological resources.
- Strengthen BLM management of the Sacred Mountain Planning Unit. Existing Bureau policies of multiple use resource management would be pursued with the emphasis on the protection, preservation and management of the archeological resource.

The fourth alternative was selected as the only course of action that would achieve the basic requirements set forth in the proposal that the archeological resources must be protected and preserved. The BLM proposed extensive surveying of the area prior to any further development that could adversely impact the area’s antiquities, stating, “It is incumbent upon BLM to be aware of the resource they are managing to better manage it” (BLM 1974).

The Rare Lizard and Snake Instant Study Area

On February 4, 1965, approximately 443 acres of the Sacred Mountain Planning Unit, located near McElmo Canyon in Montezuma County, were withdrawn from mineral entry (by Public Land Order No. 3530, amended by Public Law 3701). This withdrawal established the creation of the Rare Lizard and Snake Instant Study Area (ISA), also known as the McElmo Rare Lizard and Snake Area or Reptile Natural Area. In accordance with provisions of 43 CFR, subpart 2310, the withdrawal provided for “the

protection of unique botanical, geological, or zoological characteristics and of irreplaceable scientific and recreational values” (BLM 1976).

The Rare Lizard and Snake ISA was established in recognition of unique values other than cultural within the area. Specifically, the area was found to contain “an assemblage of amphibians and reptiles that is not duplicated elsewhere in Colorado” (BLM 1976). These rare species include the Desert spiny lizard (*Sceloporus magister*) and the king snake (*Lampropeltis getulus*). In addition, the area contains the rare longnose leopard lizard (*Gambelia wislizenii*) and the Mesa Verde nightsnake (*Hypsiglena torquata*), two reptiles that only occur in the desert areas of extreme western Colorado. [In Colorado, the longnose leopard lizard is restricted to the west-central and southwest edge of the State (Hammerson 1999). It is possible that longnose leopard lizards may act as indicators of healthy, undisturbed shrublands in the arid Southwest (CNHP 2006). Considered to be rare in the Monument (Zortman 1968; Bury 1977), surveys have only uncovered a handful of individuals (Bury 1977; Lambert 2004).] In 1976, the BLM determined that the Rare Lizard and Snake ISA withdrawal protected valuable and unique surface resources and a recommendation was made that the withdrawal be maintained (BLM 1976).

At that time, the Montrose District was developing the San Juan/San Miguel Resource Management Plan, which would analyze and propose specific management objectives for the area. [In 1980/1981, a wilderness study and inventory was conducted to determine whether or not the area met the requirements and criteria to become a Wilderness Study Area (WSA). As a result of this inventory, it was determined that the area did contain ecological, geological, and other features of outstanding scientific, educational, scenic, and historical value. It did not, however, meet the full criteria to become a WSA (BLM 1980; BLM 1981).]

Proposed Anasazi National Conservation Area

In 1979, Congressman Ray Kogovsek of Colorado introduced a bill to establish the Anasazi National Conservation Area (NCA) in order to protect and perpetuate a unique cultural resource (BLM 1983). The proposed NCA would have encompassed 217,000 acres of public lands in the Sacred Mountain Planning Unit.

[NOTE: The term Anasazi was initially used by archaeologist Alfred V. Kidder in the 1930s. The term, which is a Navajo word, was construed by him to mean the old ones or the ancient ones. However, the Hopi Tribe, who have a deep tribal connection to the Ancestral Puebloans, refer to their ancestors as *Hisatsinom*. In this document, the people who populated this region during ancient times will be referred to as ancient or Ancestral Puebloan.]

In 1981, as national concern regarding the protection and preservation of this unique area increased, the Congressional Anasazi Advisory Committee for the proposed NCA was created. In their 1983 report to Congress entitled “Sacred Mountain Planning Unit Resources and Development Opportunities,” the Committee emphasized the priority on preserving the antiquities of the area. “Cultural resources or archaeological sites are a non-renewable resource in that once they are disturbed or destroyed, they cannot be replaced” (Anasazi Advisory Committee 1983). According to the report, three uses constituted the primary land use activities in the area: grazing, mineral development, and recreation. “Each of the primary activities incurs natural resource limitations and conflicts with the other use operators in the area. Each pursued within its own special interest may create relatively little disturbance to the archaeological/cultural resources

on the land area. However, the cumulative effect of the three primary activities within the same land area upon each other and upon the archaeological/cultural resources can be significant” (BLM 1983). To summarize the management dilemma, the Committee concluded that: “The real management problem for the BLM appears to be the recognition that not every use can take place on every piece of land.”

Unable to reach a consensus on use amenable to all parties, the area was dropped from further consideration as an NCA. However, the attention and debate eventually led to a large portion of the area being set aside as an Area of Critical Environmental Concern (ACEC).

The Anasazi Culture Multiple-Use Area and ACEC

Upon approval in 1985, the San Juan/San Miguel Resource Management Plan (BLM 1985) designated 156,000 acres, including the Rare Lizard and Snake ISA, as the Anasazi Culture Multiple-Use Area and ACEC (BLM 1986a). [BLM regulations define an ACEC as an area within the public lands where special management attention is required (when such areas are developed or used and/or where no development is required) in order to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources; and/or other natural systems or processes; and/or to protect life and safety from natural hazards.]

The Anasazi ACEC was established to provide elevated levels of protection for the cultural landscape. The designation of these public lands as an ACEC was based on the fact that the area contained the highest known density of archaeological sites in the United States, held evidence of cultures and traditions spanning thousands of years, and contained important “cultural, mineral, recreation, range, backcountry values, and wildlife resources” (BLM 1985). Several sites that are similar in character and cultural affiliation to sites within the ACEC were previously designated as Hovenweep National Monument in 1923 (Proclamation 1654 of March 2, 1923, Proclamation 2924 of April 26, 1951, and Proclamation 2998 of November 20, 1952).

In reference to the designation of the Anasazi Culture Multiple-Use Area and ACEC (Anasazi ACEC), the Record of Decision (ROD) for the San Juan/San Miguel RMP stated:

Designation of the 156,000-acre Anasazi Culture Multiple-Use Area as an Area of Critical Environmental Concern will have long-term positive impacts to cultural resources. The plan will provide continued protection and management to important cultural sites and areas. Overall, long-term benefits will occur because of the protective withdrawals and stipulations to mineral development (BLM 1985a).

In 1986, in the ACEC Plan Management Guidelines, the BLM stated:

The cultural resource properties are significant in various ways and to different degrees; they are highly valuable scientifically and aesthetically. Most of the sites representing varied aspects of the Anasazi culture lie in the Sacred Mountain area (primarily Montezuma and Dolores Counties). They are considered both individually and collectively unique and nationally important, representing a successful and challenging adaptation to marginal environments that lasted for 800 years. The boundary of the ACEC surrounds the area of densest recorded prehistoric occupation in the Nation (BLM 1986a).

In the BLM's "Management Guidelines for the Anasazi Culture Multiple-Use Area" (ACMUA), the following were listed as management guidelines for the ACEC:

- Cultural resources within the ACMUA will be more intensively managed. The objectives are to identify, evaluate, preserve, develop, interpret, and utilize these resources, as defined on a case-by-case basis, for individual cultural sites or areas of high site concentrations.
- Cultural resource inventory priorities are established for the entire ACMUA.
- Specific interim management actions for significant cultural resources, such as stabilization, interpretation, inventory and visitor management, are identified.
- General policies are established for management of other multiple-use programs in light of cultural resource values (BLM 1986a).

Proposed Hovenweep Expansion and Anasazi National Monument

Hovenweep Expansion

In the late 1980s, the NPS, working with the BLM, proposed to expand Hovenweep National Monument to include some of the ruins within the Anasazi ACEC managed by the BLM (Hovenweep is a Ute word meaning deserted valley). In their "General Management Plan and Development Concept Plan" (NPS 1987), with the goal of enhanced land and resource protection of the area's antiquities, the NPS stated:

It was once thought that it was sufficient to preserve and protect only the most spectacular aspect of a climax vegetation, such as the great redwood trees. As the discipline of ecology matured, it was learned that it is also important to consider the successional system that led up to (and will continue after) the maintenance of these individual trees. In a similar way, the study of archaeology now recognizes the successional patterns of cultures. It is important to understand and safeguard the previous aspects of a particular culture in order to understand the climax phenomenon. In other words, the reason behind the construction of Hovenweep tower complexes may not lie within these ruins, but in the previous settlement areas that were generally abandoned and that currently surround the national monument. Mesa tops away from the canyonheads also contain areas of agricultural activity that may have supported the canyonhead communities... For the reasons discussed above and the need to protect cultural resource sites and settings on surrounding lands, this GMP proposes expansion of the boundary at Goodman Point.

The NPS also proposed a Resource Protection Zone on approximately 6,000 acres of public lands administered by the BLM (lands within the Anasazi Culture Multiple-Use ACEC) as part of a cooperative management strategy. An Interagency Agreement between the NPS and the BLM (Utah and Colorado State Offices) dated April 1, 1987 was established for lands surrounding the Square Tower, Holly, Hackberry, Cutthroat, and Goodman Point units (NPS 1992). However, due to agency and regulatory differences, the RPZ was discontinued in 1988 (BLM 1988a).

Anasazi National Monument

In 1988, the NPS, in accordance with the House Conference Report accompanying the Interior Appropriations Bill (PL 100-448) was directed by Congress to evaluate proposals for establishing an Anasazi National Monument. Realizing that Mesa Verde National Park and Hovenweep National Monument (adjacent to and within the Anasazi Culture

Multiple-Use Area) were just the tip of the iceberg when it came to understanding and valuing the ancient Puebloans, the NPS stated:

Today, ruins in southwestern Colorado provide an exceptional opportunity to undertake a comprehensive study of the Northern San Juan (Mesa Verde) branch of the Anasazi, who lived north of the San Juan River. Sites representing the full continuum of occupation -- from Basketmaker II through Pueblo III -- are present in this area. Mesa Verde is one of the most spectacular and best-known of the Northern San Juan Anasazi areas, but archaeologists now know that most of the northern Anasazi population, estimated at 30,000 to 40,000 people, lived in the Montezuma Valley to the north. Literally thousands of sites exist throughout this area, allowing us to learn not only about the minor details of everyday life, but also the development of the culture over hundreds of years and the social, political, economic, and ceremonial dynamics that energized the entire civilization (NPS 1989).

The National Park Service concluded that:

Along with Mesa Verde National Park and Hovenweep National Monument, these sites present a fairly complete picture of the Anasazi life north of the San Juan River, as well as unique aspects of prehistoric life that are not represented elsewhere in the national park system (NPS 1989).

After conducting studies and investigations, neither the expansion at Hovenweep National Monument nor the proposed Anasazi National Monument were undertaken by the two agencies.

From ACEC to National Monument—Elevating Antiquities Preservation

After proclaiming the Grand Staircase-Escalante National Monument in 1996, President Clinton selected the BLM to manage the area. Soon thereafter, President Clinton requested that the Secretary of the Interior, Bruce Babbitt, report to him on additional unique and fragile Federal lands in need of protection (source: <http://clinton4.nara.gov/textonly/>). By 1999, under this direction, Secretary Babbitt had compiled a list of public lands in need of the highest level of protection and preservation. The list included the BLM-administered Anasazi ACEC in southwestern Colorado.

In May of 1999, Secretary Babbitt sent Senator Ben Nighthorse Campbell (R-CO) a letter demonstrating his interest in preserving the antiquities of southwestern Colorado:

As I have previously discussed with you, I am interested in working with you to extend appropriate recognition and protection for the many cultural and archeological treasures found on public lands in southwestern Colorado that have not been afforded the protection they deserve. I plan to visit the area next week, and remain open to discussing with you appropriate ways that we might protect these resources through either legislation or administrative actions (Babbitt 1999a).

On May 24, 1999, Secretary Babbitt did visit southwestern Colorado, viewing lands within the ACEC (including Lowry Pueblo, Sand Canyon and East Rock Canyon, as well as the carbon dioxide gas field development on Mockingbird Mesa). At the conclusion of this field trip, Secretary Babbitt told members of the media, BLM staff, and local area residents that he saw a need to achieve a greater level of protection over the unique values of the area. He stated he was especially concerned about vandalism and looting, and insufficient funding for appropriate-level preservation.

While touring the Anasazi ACEC, Secretary Babbitt stated that President Clinton's push for new national monuments across the West was designed to resolve the conflicts that often arise from the nation's policy of multiple use on public lands. Secretary Babbitt called for a higher level of management care:

You can't have a cattle ranch, a mine, a timber mill, and a campground all on the same 40 acres. We [need to] think of public lands in terms of the dominant and preferable public use of that particular area. We've got to get away from this idea that every square inch is available for everything. These natural landscapes are unique, historic American treasures. They need more care and protection than we are giving them (McManus, Sierra, 2001).

After his visit, the Secretary asked the BLM and the Southwest Resource Advisory Council (SWRAC) to begin, and lead, a public process designed to discuss key issues, concerns, and ideas so that the BLM could move forward in "securing greater recognition and protection for the tremendous cultural resource values present in the area" (BLM 1999).

The BLM asked the SWRAC to form a subgroup (a working group) to assist in identifying the major considerations in increasing the protection and recognition of the nationally significant landscape (BLM 1999). The SWRAC working group, with representatives from local government; oil and gas; tourism; livestock/grazing; recreation entities; environmental organizations; and archaeologists/historians, held a series of seven public meetings. In August of 1999, they forwarded management recommendations in a report to Secretary Babbitt.

The Secretary of the Interior responded to the working group's report, stating that he thought most of the working group's report could be built into the BLM's management of the area. "But I am also," he added, "committed to finding methods to secure the adequate and long-term funding and staffing to allow the Bureau to do the work" (Babbitt 1999). In his response to the working group's report, he identified two realistic options for ensuring long-term protection of the ACEC:

- Congressional establishment of a National Conservation Area (NCA) focused on preserving the cultural resources within the ACEC, or
- designation of the area as a national monument, either through legislation or under the authority of the Antiquities Act of 1906 (Babbitt 1999).

Secretary Babbitt concluded the letter by stating that he would continue to seek the Colorado delegation's support and sponsorship of a legislative approach to protecting and preserving the area and its antiquities:

I absolutely agree that we have to find ways to bring more resources to bear on taking care of this invaluable landscape; we are falling woefully short at the present time... I firmly believe that there is a critical need to deliberately and quickly move forward with actions to protect the values of the ACEC. In the absence of prompt legislative action, I will recommend to the President that he proceed with a Proclamation to establish a national monument under the Antiquities Act (Babbitt 1999).

Secretary Babbitt told local community residents that he cared more about securing the appropriate protection and funding for the cultural resources than he did about the national monument label. If Congress was willing to act to make the area a NCA through legislation tailored to meet local needs, he would refrain from nominating the area to the president for national monument designation.

In November of 1999, Secretary Babbitt again visited the area and met with local citizens and governmental agencies. Richard Moe, the President of the National Trust for Historic Preservation, toured the area with Secretary Babbitt. Alarmed at the deterioration and degradation he witnessed, primarily due to looting, vandalism, and resource extraction, Moe also called for a higher level of protection for the area and its invaluable artifacts. "The artifacts of this country belong to everyone and the risk of losing them before future generations is too great...This needs a higher level of protection. This is all our heritage" (Cleary, Daily Sentinel, 1999).

Richard Moe said that the nation has a responsibility to protect America's treasures. "It's a question of protection. People need to understand this is part of our heritage and history. These are the ruins and remnants of the first Americans. American history didn't start with Jamestown" (source: <http://press.nationaltrust.org/>).

This is five-star archaeology. There are a lot of protected areas around the West that have a lot less to offer in terms of volume and integrity than this... There are national monuments without a fraction of the character of this area. I'm certain as sunrise that we need more intense protection and management of the cultural resources... You can't walk from here over to that tree without stumbling over artifacts.

***-- Secretary of the Interior Bruce Babbitt,
touring southwestern Colorado, 1999***

In a speech delivered at the University of Denver Law School in February of 2000, Secretary Babbitt discussed his interest and intent in preserving the lands and resources in southwestern Colorado:

*It would be great to get these protection issues resolved in the Congressional, legislative process. But if that's not possible, I'm prepared to go back to the President, and not only ask, not only advise, but **implore** him to use his powers under the Antiquities Act and to say to him: "Mr. President, if they don't, and you do, you will be vindicated by history for generations to come." Just as President Harrison, President Cleveland, Woodrow Wilson, Taft, notably Teddy Roosevelt, Franklin Roosevelt, Jimmy Carter, virtually every President in the past century has done. Often in the midst of intense controversy. But in every single case, validated by history and the generations of Americans who have this passion for the western landscape (source: [//www.blm.gov/ca/ca/news/2000/02/nr/babbitt_denver_speech.html](http://www.blm.gov/ca/ca/news/2000/02/nr/babbitt_denver_speech.html)).*

In February of 2000, Senator Campbell (R-CO) introduced legislation to establish the Canyons of the Ancients NCA (S. 2034). Representative Scott McInnis (R-CO) introduced a companion bill in the House of Representatives (H.R. 3687). Senator Campbell, however, failing to reach a consensus, suspended all actions on his bill on March 23, 2000. In turn, McInnis suspended actions on the House bill.

Commenting on the collapse of the proposed NCA, Secretary Babbitt said that he would have preferred congressional action to protect the area, “but it’s the protection that’s important, not the label” (Kelley 2000). On May 31, 2000, Secretary Babbitt recommended to President Clinton that the area, as well as three other unique landscapes across the nation, be designated as national monuments:

These are priceless natural landscapes that have somehow remained almost untouched by exploitation, development and urban sprawl. But we are losing open spaces every day. Protection of several of these areas, in one form or another has been discussed for years, but no action has been taken. We may not have another chance before they are lost, so I am urging the President to protect these unique landscapes now for future generations of Americans (source: <http://www.doi.gov/doi/press/proposedmonuments.html>).

In response to Secretary Babbitt’s recommendation, President Clinton issued a statement:

I am pleased to receive Secretary Babbitt’s recommendations today for the creation of new national monuments to protect unique federal lands in Arizona, Colorado, Oregon, and Washington.

As trustee of much of our nation’s natural endowment, the Federal government must do its utmost to ensure lasting protection of our most precious lands. That is why I asked the Secretary to identify Federal lands most in need of additional protection, and why I have exercised my authority under the Antiquities Act to grant such protection to some of our most cherished landscapes -- from California’s ancient sequoias to the north rim of the Grand Canyon.

Each of the areas recommended today represents an exceptional, irreplaceable piece of America’s natural and cultural heritage. I will carefully consider the recommendations and hope to reach a decision on them in the near future (source: http://clinton4.nara.gov/CEQ/statement_2000-5-31.html).

This is not about locking up lands. This is about freeing lands up from the threat of development so children of the future can enjoy these places.

-- President William J. Clinton, 2000

CANYONS OF THE ANCIENTS—AN AMERICAN MONUMENT

On June 9, 2000, President Clinton signed proclamations creating four new national monuments, including Canyons of the Ancients National Monument. According to a White House Press Release, the intent of these national monument proclamations was to protect Federal lands representing unique, irreplaceable pieces of America’s natural and cultural heritage (source: <http://clinton4.nara.gov/textonly/WH/New/>).

Management of the area was to be afforded the highest level of protection; protection dedicated to the overriding purpose of protecting the objects described in the Proclamation. The Monument was delineated to the south by McElmo Creek and the Ute

Mountain Ute Reservation, the State border to the west, and includes the upper reaches of many canyons at its north and east boundaries. The area within the boundaries of the Monument included approximately 164,000 acres of BLM-administered land, approximately 18,600 acres of private land, and approximately 400 acres of Federal land managed by the NPS as Hovenweep National Monument. The Monument designation does not apply to private lands; however, the Proclamation provides that if any of these lands within the outer boundaries are acquired into Federal ownership, they would 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 would continue to apply.

After President Clinton proclaimed the area the Canyons of the Ancients National Monument, the White House, through the Office of the Press Secretary, issued an announcement regarding the new designation:

President Clinton today signed a proclamation creating the Canyons of the Ancients National Monument in southwest Colorado. The 164,000-acre monument contains the highest known density of archeological sites anywhere in the United States, with rich, well-preserved remnants of native cultures going back thousands of years.

A Treasure Trove of Ancient Culture. The new monument is located in the Four Corners region, about 45 miles west of Durango and 9 miles west of Mesa Verde National Park. Occupation of this area by hunters and gatherers likely began over 10,000 years ago. Farming in the area blossomed between 450 and 1300 A.D., when the area was occupied by Ancestral Northern Pueblo People. Year-round villages were established, evolving from pit house dwellings to the cliff-dwelling pueblos.

The archeological record etched into this landscape is much more than isolated islands of architecture. The more than 20,000 archeological sites reflect all the physical components of past human life: villages, field houses, check dams, reservoirs, great kivas, cliff dwellings, shrines, sacred springs, agricultural fields, petroglyphs, and sweat lodges. Some of the area has more than 100 sites per square mile. Because of the remoteness of the area and the protection efforts of both the Bureau of Land Management and the local community, the integrity of most of these sites has been maintained. The growth of population and tourism in the Four Corners area will increasingly threaten these resources with vandalism and other types of degradation, making additional protections necessary.

Managing the New Monument. The Bureau of Land Management designated the area as the Anasazi Area of Critical Environmental Concern in 1985. Because the vast majority of the Federal lands within the monument have already been leased for oil and gas (including carbon dioxide) and development already is occurring, the lands will remain open to oil and gas leasing and development. Development will be managed, subject to valid existing rights, so as not to create any new impacts that would interfere with the proper care and management of the objects protected by the designation. New leases will be allowed only for the purpose of promoting conservation of oil and gas in reservoirs now being produced under existing leases or to protect against drainage. Finally, the rights of Indian Tribes will not be affected.

History and Process. Public discussions regarding protection of this area date back to 1894 when the Salt Lake Times ran a story detailing interest in protecting

the region. In 1979, a bill was introduced in Congress to designate the area a National Conservation Area. In the spring of 1999, Interior Secretary Bruce Babbitt began a dialogue with the local communities concerning proper management and protection of the area. The local Resource Advisory Council held five public meetings, consulted with local governments, and forwarded management recommendations to the Secretary in August 1999. Senator Ben Nighthorse Campbell introduced new National Conservation Area legislation in February 2000 (S. 2034), but he suspended all action on his bill on March 23, 2000. Secretary Babbitt recommended to the President last month that the area be designated as a National Monument (source: http://clinton4.nara.gov/textonly/WH/New/html/20000609_2.html).

Unique and Irreplaceable Cultural Resources

Cultural resources are the material and physical remains of past human activity, ranging from objects such as artifacts, structures, and features, to natural features and landscapes. Cultural resources are finite and non-renewable resources that embody characteristics and information specific to the cultural group who produced them, and to the time period during which they were created.

Within the Monument, the known cultural resources include 4,965 (96 percent) prehistoric sites, 81 (2 percent) historic sites, and 111 (2 percent) multi-component prehistoric/historic sites. An additional three sites of unknown age, as well as 1,101 isolated finds, have been recorded (1,081 prehistoric and 20 historic), for a total of 6,261 documented cultural resources in the area. Some areas have very high site densities, exceeding 100 sites per square mile. Individual sites range in size from less than 1 acre to more than 10 acres, and reflect all facets of everyday life (including field houses, check dams, reservoirs, kivas, cliff dwellings, shrines, sacred springs, agricultural fields, petroglyphs, and sweat lodges).

Areas of heaviest site density reflect, to a large degree, areas that have had intensive archaeological surveys conducted. Approximately 18 percent of BLM-administered public lands in the area has been intensively inventoried for cultural resources. (Less than 6 percent of the 262 million acres managed by the BLM across the nation has been inventoried for cultural resources.) However, many of the past inventories were not conducted in a manner that meets current standards. Subsequent reexamination of these areas has determined that earlier site data can be unreliable and/or poorly documented. Based on current projections, it is estimated that the total number of sites may range from 20,000 to 30,000. As stated in the Proclamation, the Monument offers an unparalleled opportunity to “observe, study, and experience how cultures lived and adapted over time in the American Southwest.”

Cultural Resource Sites or Areas within the Monument

Ten sites are listed on the National Register of Historic Places. Important cultural resource sites or areas within the Monument include:

- **Lowry Pueblo** - Originally excavated in the 1930s by archaeologist Paul S. Martin, the area is protected by an administrative withdrawal. The pueblo contains 39 rooms and 7 kivas, as well as a Great Kiva; and is part of a much larger community of villages occupied in the eleventh, twelfth, and thirteenth centuries. Lowry Pueblo was designated as the Lowry Ruin National Historic

Landmark in 1967. This designation automatically placed Lowry Pueblo on the National Register of Historic Places.

- **Sand Canyon/East Rock Canyon** - Sand and East Rock Canyons contain a large number of late Ancestral Puebloan cliff dwellings unique to the area. At the head of Sand Canyon lies one of the largest and best preserved Ancestral Puebloan sites in the area. (This site received a protective mineral withdrawal in August 1984). The Sand Canyon National Register District was listed on the National Register of Historic Places in 2005.
- **Painted Hand Pueblo** - Painted Hand Pueblo overlooks Hovenweep Canyon (near Hovenweep National Monument's Cutthroat Castle Group). Similar to several of the Hovenweep sites, it includes a well-preserved masonry tower more than 15 feet in height and three painted hand pictographs that are extremely rare to the area.

Special Designation Areas within the Monument

There are areas within the Monument that have special designations for management purposes. These include Areas of Critical Environmental Concern (ACECs), Research Natural Areas (RNAs), and Wilderness Study Areas (WSAs). An overview of these areas is described below.

ACECs/RNAs

Research Natural Areas (RNAs) are a unique type of ACEC. RNAs are areas that are a part of a national network of special management areas that contain important ecological and scientific values and resources that are managed for minimum human disturbance. The RNA program was created to:

- preserve examples of all significant natural ecosystems for comparison with those influenced by people;
- provide educational and research areas for ecological and environmental studies; and
- preserve gene pools of typical and endangered plants and animals.

As unique ACECs, RNAs are intended to represent the full array of North American ecosystems, including their biological communities, habitats, natural phenomena, and geological and hydrological formations. In RNAs, natural processes are allowed to predominate without human intervention. RNAs are primarily used for non-manipulative research and for gathering baseline data on relatively unaltered community types. Under certain conditions, deliberate manipulation may be used in order to maintain the unique features for which the RNA was established. RNAs can serve as excellent controls for similar communities that are being actively managed. In addition, RNAs may provide an essential network of diverse habitat types that will be preserved in their natural state for future generations.

- **The McElmo RNA** - The McElmo Research Natural Area (RNA) was designated in March 1986 through the San Juan/San Miguel Resource Management Plan (RMP) (BLM 1985). [It has the dual designation as an Instant Study Area (ISA). ISAs do not meet the acreage requirements to become Wilderness Study Areas (WSAs); however, they are managed as WSAs.] The RNA consists of approximately 427 acres and is located in Bridge Canyon. The BLM, in cooperation with Fort Lewis College, designated the RNA in order to provide an

area for herpetological research (the study of indigenous reptile species) and for habitat protection. The primary goal for the McElmo RNA is to provide a natural and undisturbed setting for scientific research and public education as an outdoor classroom.

Wilderness Study Areas (WSAs)

There are no designated wilderness areas on the Monument. There are three Wilderness Study Areas (WSAs) on the Monument. These WSAs include the Cross Canyon WSA, the Squaw/Papoose Canyon WSA, and Cahone Canyon WSA. The Cahone Canyon WSA is situated entirely within the boundaries of the Monument. The Cross Canyon and Squaw/Papoose Canyon WSAs extend beyond the western boundaries of the Monument into Utah. These WSAs are described below:

- **Cross Canyon** - The Cross Canyon WSA (12,721 acres) is located approximately 14 miles southwest of Cahone on the Dolores/Montezuma County line (a 1,008 acre portion of the WSA extends into Utah). Elevations in the area range from 5,140 feet to 6,500 feet. Cross, Ruin, and Cow Canyons, with their perennial streams, are the major topographic features of the WSA. Pinyon-juniper woodland is the predominant vegetation on the slopes and canyon rims; sagebrush parks and riparian vegetation can be found along the canyon bottoms.
- **Squaw/Papoose Canyon** - The Squaw/Papoose Canyon WSA (11,357 acres) is located just north of the Cross Canyon WSA, approximately 12 miles south of Dove Creek (6,676 acres of the WSA are located in Utah). Elevations in the area range from 5,300 feet to 6,600 feet. The major topographic features of the WSA are Squaw and Papoose Canyons. Squaw Canyon has a perennial stream.
- **Cahone Canyon** - The Cahone Canyon WSA (9,156 acres) is located approximately 4 miles west of Cahone and just north of the Cross Canyon WSA. Elevations in the area range from 5,900 feet to 6,600 feet. Three canyon systems with intermittent streams are the dominant topographic feature of this WSA. Vegetation is primarily pinyon-juniper woodland with sagebrush parks and riparian zones along the canyon bottoms.

National Register of Historic Places

The National Historic Preservation Act (NHPA) of 1966 provides for the protection of cultural resources on Federal lands and established the National Register of Historic Places (NRHP), which is a national program that coordinates and supports public and private sectors in the identification, evaluation, and protection of historic and archeological resources. In accordance with the NHPA, the eligibility of historic properties to the NRHP is determined through evaluation of the property using the guidelines and criteria in 36 CFR 60. The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and that:

- are associated with events that have made a significant contribution to the broad patterns of our history;
- are associated with the lives of persons significant in America's past;
- embody the distinctive characteristics of a type, period, or method of construction; represent the work of a master; possess high artistic values; or

- represent a significant and distinguishable entity whose components may lack individual distinction; and/or
- have yielded, or may be likely to yield, information important in prehistory or history (36 CFR 60.4 a.-c.).

The NRHP eligibility of traditional cultural properties is usually assessed based upon information obtained through consultations with elders and other knowledgeable individuals of a cultural group, as well as through a review of historical documentation.

On a landscape scale, the Monument contains a remarkable diversity and density of cultural resources that represent past lifeways and associated cultures and traditions spanning thousands of years. A site database, compiled by the Colorado Historical Society’s Office of Archaeology and Historic Preservation (OAHP) for sites within the boundaries of the Monument, summarizes site data and the diversity of site types. By 2008, the Monument had a total of 175 sites listed on the NRHP. This includes Lowry Pueblo, which is also listed as a National Historic Landmark. Of the total 4,965 sites documented to date, 2,038 have been determined eligible for the NRHP.

Presidential Proclamation and Monument Management

The Proclamation that established the Monument has the Secretary of the Interior, through the BLM, managing the area under its existing authorities. This management, however, is subject to the overriding purpose of protecting the objects described in the Proclamation. The establishment of the Monument, therefore, constitutes an overlay on the management regime otherwise applicable to lands managed by the BLM. It limits the management discretion that the BLM would otherwise have by mandating protection of the historic, cultural, natural, geological, and scientific objects within the national monument as the highest priority.

In recognition of its status as a national monument, the BLM will manage the Monument in strict accordance with, first and foremost, the provisions of the Proclamation “so as *not to create any new impacts that interfere with the proper care and management of the objects protected by this proclamation*” and for the enduring benefit of all Americans.

In addition, the Monument will be managed in accordance with the following laws, regulations, executive orders, and agreements:

Cultural Resource Laws and Proclamations
Monument Proclamation (establishment of Canyons of the Ancients National Monument by the President of the United States of America, June 9, 2000)
Antiquities Act of 1906 (PL 59-209; 34 Stat. 225; 16 USC 431 - 433)
Historic Sites Act of 1935 (PL 74-292; 49 Stat. 666; 16 USC 461)
Reservoir Salvage Act of 1960, as amended by Archaeological and Historic Preservation Act of 1974 (PL 86-523; 74 Stat. 220, 221; 16 USC 469; PL 93-291; 88 Stat. 174; 16 USC 469)
National Historic Preservation Act of 1966 as amended (NHPA) (PL 89-665; 80 Stat. 915; 16 USC 470)
National Environmental Policy Act of 1969 (NEPA)(PL 91-190; 83 Stat. 852; 42 USC 4321)

Archaeological and Historic Preservation Act of 1974 (AHPA) (16 USC 46-469C)
Federal Land Policy and Management Act of 1976 (FLPMA) (PL 94-579; 90 Stat. 2743; 43 USC 1701)
American Indian Religious Freedom Act of 1978(PL 5-431; 92 Stat. 469; 42 USC 1996)
Archaeological Resources Protection Act of 1979 (ARPA) (PL 96-95; 93 Stat. 721; 16 USC 470aa et seq.) as amended (PL 100-555; PL 100-588)
Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) (PL 101-601; 104 Stat. 3048; 25 USC 3001)
Cultural Resource Regulations
36 CFR Part 800 (Protection of Historic Properties)
36 CFR Part 60 (National Register of Historic Places [NRHP])
36 CFR Part 7 (Waiver of Federal Agency Responsibilities under Section 110, NNHPA)
36 CFR 79 (Curation of Federally Owned and Administered Archaeological Collections)
43 CFR Part 3 (Preservation of American Antiquities; implementing regulations for the Antiquities Act)
43 CFR Part 7 (Protection of Archaeological Resources)
43 CFR Part 10 (NAGPRA Regulations; Final Rule)
Cultural Resource Executive Orders
Executive Order 11593, Protection and Enhancement of the Cultural Environment
Executive Order 13007, Providing for American Indian and Alaska Native Religious Freedom and Sacred Land Protections
Executive Order 13084, Consultation and Coordination with Indian Tribal Governments
Executive Order 13195, Trails for America in the 21st Century
Executive Order 13287, Preserve America
Cultural Resource Agreements
Programmatic Agreement between the BLM, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers regarding the manner in which the BLM will meet its responsibilities under the National Historic Preservation Act (BLM 1999a)
State Protocol Agreement between the BLM Colorado State Director and the Colorado State Historic Preservation Officer (BLM 1998a) regarding the manner in which the BLM will meet its responsibilities under the NHPA, and the National Programmatic Agreement between the BLM, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers

Legal Effects of the Monument Proclamation

In terms of management, there are several significant aspects of the Proclamation. First, it reserves only the Federal lands in the area. This is 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 USC 431).

Second, the Proclamation is subject to valid existing rights, including any relevant rights the Ute Indians may have under the Brunot Agreement of 1874 (April 29, 1874). Therefore, to the extent a person or entity has valid existing rights within the Monument, the Proclamation respects their rights. The exercise of such rights, however, can be regulated in order to protect the objects of the Monument and to adhere to the intent of the Proclamation.

Third, the Proclamation appropriates, and withdraws, the Federal lands and interests in lands within the boundaries of the Monument from entry, location, sale, or other disposition under the public land laws. This includes, but is not limited to, withdrawal from location, entry, and patent under the mining laws and from disposition under all laws relating to mineral leasing, other than by exchange that furthers the protective purposes of the Monument, and except for oil and gas (including carbon dioxide) leasing (as described below). This withdrawal prevents the location of new mining claims under the 1872 Mining Law. It also prevents the Secretary of the Interior from exercising discretion under the mineral leasing acts, and related laws, to lease or sell Federal minerals, except for oil and gas, within the boundaries of the Monument.

Approximately 80 percent of the Federal lands within the Monument have already been leased for oil and gas (including carbon dioxide). Monument lands remain open to continued oil and gas (including carbon dioxide) development, but only through existing leases, and only under current lease restrictions and BLM regulations. The Proclamation allows new leases to be issued only for the purpose of either protecting against drainage, or promoting conservation of oil and gas resources in a common reservoir now being produced under existing leases. The Proclamation directs the BLM to manage all development, subject to valid existing rights, "*so as not to create any new impacts that interfere with the proper care and management of the objects protected by the Proclamation.*"

Fourth, the Proclamation does not reserve water resources within the Monument. The Proclamation, however, directs the BLM to work with appropriate State authorities in order to ensure that any water resources needed for Monument purposes are available.

I recognize the right and duty of this generation to develop and use the natural resources of our land; but I do not recognize the right to waste them, or to rob, by wasteful use, the generations that come after us.... We have become great because of the lavish use of our resources. But the time has come to inquire seriously what will happen when our forests are gone, when the coal, the iron, the oil, and the gas are exhausted....

-- President Theodore Roosevelt, 1906

CANYONS OF THE ANCIENTS—A NATIONAL LANDSCAPE

Landscapes of the American Spirit

When President Clinton proclaimed the Grand Staircase-Escalante National Monument in 1996, the expectation was that the area would be placed under the management of the National Park Service. Instead, Secretary Babbitt convinced President Clinton that it would be more appropriate for the BLM to run the new monument—lands that had been under its administrative jurisdiction prior to its designation. Secretary Babbitt told President Clinton that he thought the BLM should “have a sense of pride rather than...a bunch of inventory out in the garage that is discovered and given to someone else” (Allen 2002).

One of the things I think about sites on public lands, is that it's our story; America's history literally etched out on the public lands.

-- Colorado BLM State Director, Sally Wisely, 2006

Landscape-Level Management

In a speech delivered at the University of Denver Law School in February of 2000, Secretary Babbitt focused on the need for landscape-level management, including at the Anasazi ACEC in southwestern Colorado:

The West is once again quickening to the issues of how we live on this landscape and what kind of open space we want, and how it is we're going to strike a more sensitive balance on the landscape in terms of development, the use of natural resources, and our long-term presence on this landscape.

Colorado got off to a good start on these issues at the turn of the century. With a lot of action in terms of the creation of national parks, monuments, forests. It was an extraordinary legacy. But in recent decades, it's been quiescent. In fact, it's been kind of quiescent all over the West. And the fact that has changed is that the West is filling up. That the open spaces are now beginning to close and the West is becoming an urban place. And there is now, I think, a sense of urgency, about - not just celebrating the visionary acts of a lot of great leaders in the first half of the century - but turning to the future and saying "What is it that we want to see fifty and a hundred years from now?"

...The country down below Durango and out toward Cortez and Dove Creek is the richest, most extraordinary archeological landscape in North America. I won't detail the kinds of discoveries that are coming off of that landscape, but it is truly incredible. Now, in the nineteenth century, people were down there - and, of course, they saw Mesa Verde immediately, and it may, in many ways, be the most evocative of all of our national parks...there is something about being on that landscape. A sense...a palpable sense of the presence of our ancestors and the magical way that they lived on that land in absolute resonance with the

landscape and the life on the land that is...it is just really incredible. I can't describe it.

The people who were down there then turned back and said "These sites need protecting." And they protected Mesa Verde in the form of a national park. But then they went West onto this landscape of riches and they would see a ruin and they would make a National Park or a monument out of the forty acres surrounding the ruin. And if you go down to Hovenweep National Monument, it's like little postage stamps on the landscape. Somebody saw a ruin and fenced off 20 acres, ten, five, forty around it. And you begin looking across this landscape and say, "Hey, wait a minute. This isn't about a ruin here or there. Don't you see, it's about a whole, interwoven landscape. It's about communities that were living in and on this land and relating to each other and moving across this landscape and drawing their living and their inspiration and their spirituality from a landscape." Doesn't it make sense, in light of a subsequent 100 years of understanding, to say that we have room in the West to protect the landscape, and -- if you will -- an anthropological ecosystem. The real science on these landscapes doesn't come out of digging out a room and extracting a few pots. That was the nineteenth century.... The real discoveries today come from asking the deeper question of "How did communities manage to live in spiritual and physical equilibrium with the landscape?" And don't we need to assess all of the traces that have been left in so many intense and variegated ways, whether it's with petroglyphs, diversion structures for water, ramadas, all of those things. So, that's the question in Southwestern Colorado. Do we have the wisdom and foresight to say, before it's too late, before these landscapes start to get chopped up: We can do better than to protect five or six Indian ruins out on that land and say that there is room in this culture for a quarter million acres from which we honor the past and, more importantly, learn, and take inspiration from the past.

After the speech, Secretary Babbitt answered a series of questions, including a question regarding his purpose and intent with regard to the new policy of placing national monument management of these landscapes under the BLM. He responded:

The institutional story is this, traditionally in the West when we've talked about monuments and parks what it has meant is designating the landscape and then taking it away from the Bureau of Land Management which administrates the public domain in the West. The Bureau of Land Management has three times as much land as the National Park Service, twice as much as the Forest Service. It is the owner of the matrix of public lands in the West. The traditional approach is, you see something nice, you get up a big movement to protect it, and you take it away from the Bureau of Land Management and give it to somebody else, namely typically the National Park Service in some cases the National Wildlife Refuge System. And out of that has grown a kind of perception that the BLM is sort of the Bureau of leftovers, livestock and mining -- whatever you want to call it. But it doesn't seem to me to be an adequate way of looking at the Western landscape, because the largest land manager ought to be induced to have a sense of pride rather than simply having a bunch of inventory out in the garage that is discovered and given to someone else.

And that's the reason, when President Clinton did the Grand Staircase-Escalante in 1996, I said to him, "you should create a first monument by Presidential Proclamation that has ever been created for and within the Bureau of Land Management". And people said, "Well, why do that?" Well, I've given you one

reason. And that is I think you give an institution some pride and some direction, not by stripping it by its best assets. But you also induce a new sense of the relationships on the landscape (source: http://www.blm.gov/ca/ca/news/2000/02/nr/babbitt_denver_speech.html).

In the twenty-first century...BLM can become the greatest modern American land management agency, the one that sets the standard for protecting landscapes, applying evolving knowledge and social standards, and bringing people together to live in harmony with the land.

-- Secretary of the Interior, Bruce Babbitt, 2000

Secretary Babbitt promoted this new landscape-level approach to national monument management by administratively creating a new program within the BLM responsible for managing special and unique BLM lands; i.e. the National Landscape Conservation System. With the establishment of the National Landscape Conservation System in 2000, a new focus emerged in how the agency administered the crown jewels under its jurisdiction. Under the National Landscape Conservation System, the conservation of the cultural and natural resources that led to the designation of the areas as national treasures becomes the overriding objective (Harmon, McManamon, and Pitcaithley 2006).

Today, the National Landscape Conservation System consists of over 850 federally recognized areas or units, and includes

- 15 National Monuments;
- 14 National Conservation Areas;
- 36 Wild and Scenic Rivers;
- 148 Wilderness Areas;
- 4,264 miles of National and Scenic Trails; and
- more than 600 Wilderness Study Areas.

According to the BLM, the National Landscape Conservation System:

...encompasses red-rock deserts and rugged ocean coastlines, deep river canyons and broad Alaskan tundra. Many areas are remote and wild but others are surprisingly accessible. The NLCS also reveals and protects our cultural legacy. It safeguards American Indian cliff dwellings and cultural sites, and preserves the remaining traces of our Nation's historic trails and pathways.

The NLCS works to conserve the essential fabric of the West. NLCS areas are part of an active, vibrant landscape where people live, work and play. They offer exceptional opportunities for recreation, solitude, wildlife viewing, exploring history, scientific research, and a wide range of traditional uses.

These are places that spark the imagination. Their spacious beauty has drawn people to the West for generations. The NLCS sustains for the future -- and for

everyone -- these remarkable **landscapes of the American spirit** (source: http://www.blm.gov/wo/st/en/prog/blm_special_areas/NLCS.1.html).

The mission of the NLCS is to conserve, protect and restore nationally significant landscapes recognized for their outstanding cultural, ecological and scientific values.

-- http://www.blm.gov/wo/st/en/prog/blm_special_areas/NLCS.html

Canyons of the Ancients National Monument—Crown Jewell of the National Landscape Conservation System

After receiving the final report on the potential designation of Canyons of the Ancients National Monument from the Anasazi Working Group, Secretary Babbitt focused on the landscape-level management requirements of the area:

The report you prepared, and the opportunities to be heard that your meetings provided to the public, have already proven to be of great value as we investigate ways to ensure the long-term protection of the cultural resources and landscapes included within the Anasazi Culture Multiple-Use Area of Critical Environmental Concern (Babbitt 1999).

Secretary Babbitt went on to state that protecting cultural resources, and controlling causes of resource degradation in the area, were his main impetus for finding a way to protect the overall landscape:

As you know, these are my primary concerns for this landscape. Few places in our country contain such density of cultural resources, and essentially no other areas contain cultural resources in the context provided by this landscape. While individual cultural sites can provide significant scientific information, or can provide valuable interpretation opportunities, this landscape offers us a chance to study an entire culture, one that may have been as rich and diverse as the one we have today. Looking at the entire landscape allows us the chance to begin to understand why Ancestral Puebloans chose to live where they did, interacted with their neighbors, used the natural resources of this valley, communicated with others, worshipped, and why their communities changed over time.

Looking at the entire landscape also points out the magnitude of the risks posed to these resources.... Together the thousands of archeological sites in the area comprise a landscape that may have supported a regional population even greater than today's.... As important as it is to protect outstanding individual sites, it is the overall picture of how these thousands of sites were interrelated that presents the greatest opportunity for us to understand and appreciate these earlier inhabitants and their culture. The individual features take on much greater importance when viewed in the overall context (Babbitt 1999).

In November 1999, Secretary Babbitt visited the area again. He told local residents and the media that the perception and management of the land once occupied by the ancient Puebloans has evolved. "It's the end of the postage stamp view of Indian dwellings.... It's a changing view of how we look at the past and the land" (Cleary, Daily Sentinel, 1999).

Touring Lowry Pueblo, Secretary Babbitt added, "One of the issues driving our decisions is the need for protection of the landscape...the fact is that in a small site there may be more information than in a great big 200-room pueblo.... Once it's broken up, dug up or roaded over the information that can be gained from the landscape is contaminated or lost (Binkley, Cortez Journal, 1999).

In a letter to the Director of the BLM after the designation of Canyons of the Ancients National Monument, dated June 28, 2000, Secretary Babbitt stated that the "national monument designation continues in the tradition of giving management responsibility to the [BLM], offering BLM a highly visible opportunity to demonstrate its stewardship over the landscape" (Babbitt 2000). He also stated that the Monument's "unique archeological, historical, and biological resources" are to be protected in their landscape context. Secretary Babbitt concluded the letter with a call for the proper management of the newly designated landscape by the BLM:

The management of the Canyons of the Ancients National Monuments is one of the Department's most visible and important priorities. Your work will have a profound impact on the public's assessment of the Bureau of Land Management and of Federal land management in general.

After designation of the area as the Canyons of the Ancients National Monument, the BLM began to focus on Secretary Babbitt's landscape-level management. The Monument includes significant archaeological, geological, and biological objects. The scientific value of many of the objects requires preservation of areas large enough to maintain the objects and their interactions. In fact, a great deal of the significance of these objects stems from the relationships of such sites when considered within a much larger comparative landscape context. Thus, protection of the aggregate area is necessary for proper care of the objects.

Management focused only on a patchwork of reserved lands here and there within the Monument would be impractical. Such piece-meal management would make it more difficult to adequately care for the objects; reduce options for resource management; and, in all probability, lead to inconsistent resource management standards for overlapping resources, undermining the proper care and management of the Monument (source: <http://www.blm.gov>).

The BLM's goal, according to Victoria Atkins, an Interpretive Specialist for the Monument and the Anasazi Heritage Center in Dolores is "to preserve a total landscape that shows human activity on the land.... National monuments are meant to offer visible architecture set among fields, check dams, rock art, ceremonial sites, and water sources. Visitors come away with a more holistic understanding of the past, rather than seeing it a piece at a time" (O'Brien, Trail and Timberline, 2000).

There was quite a large community here, but it's important to think about how interconnected and interdependent things were across the whole landscape.

***-- Canyons of the Ancients National Monument,
Monument Manager, LouAnn Jacobson 2002***

Future of the National Landscape Conservation System

The National Landscape Conservation System was created by Secretary Bruce Babbitt through an administrative action under the Department of the Interior. However, because the National Landscape Conservation System was established administratively without congressional mandate, it does not have the permanence that it would have if enacted by law. Only Congress can permanently establish the National Landscape Conservation System as an integrated network of protected public lands with an appropriate level of funding and staffing for the BLM to effectively manage the agency's crown jewels. Without congressional designation, the status of the National Landscape Conservation System could be reversed at any time.

In 2002, the National Trust for Historic Preservation, along with other private and public organizations, launched a public lands initiative to increase funding and levels of protection for the National Landscape Conservation System. The Conservation System Alliance now includes over 70 recreational, environmental, religious, and other public and private groups.

In 2005, the National Landscape Conservation System was named as one of America's 11 Most Endangered Historic Places by the National Trust for Historic Preservation. "It comes down to this," Richard Moe, the President of the National Trust, said, "In 2006, just as in 1906, the natural and cultural treasures on our public lands need the safeguards provided by the Antiquities Act.... The agencies responsible for carrying out its mandate must be given the support they need to do their job well. We can't keep asking Federal land management agencies to do the impossible. We can't keep allowing irreplaceable treasures to be lost. We can't stand by while important chapters in America's story are erased before we've had a chance to read them. Failure to meet this challenge would be a refutation of all that the Antiquities Act stands for—and a debit against the American spirit" (source: <http://press.nationaltrust.org/>).

"The National Landscape Conservation System was created to safeguard landscapes that are as spectacular in their own way as our National Parks," said former Secretary of the Interior, Bruce Babbitt, in 2005. "There is clear evidence, however, that we are at risk of moving backwards and failing to adequately protect these special American lands. The Department of the Interior and our leaders in Congress should take the recommendations of this report to heart and support the conservation mission of the National Landscape Conservation System before it is too late" (source: <http://www.commondreams.org/news2005/1025-18.htm>).

In 2007, Senators Ken Salazar (D-CO) and Jeff Bingaman (D-NM) introduced legislation to codify the National Landscape Conservation System, giving it congressional support and funding. The National Landscape Conservation System Act (S.1139) would group all of the areas into one permanent system. Senator Salazar stated that:

The National Landscape Conservation System has taken a back seat in our country's land conservation efforts, getting shortchanged by the President's budget year in and year out. Places like Canyons of the Ancients National Monument, McInnis Canyons National Conservation Area, and Gunnison Gorge National Conservation Area – some of America's most famous landscapes – deserve real protection from vandalism, neglect and other abuses. This bill simply writes the National Landscape Conservation System into law – without affecting grazing rights, water rights, and public access to the national monuments, wilderness or conservation areas – to make sure National Landscape Conservation System lands are protected always.

Senator Bingaman stated that the bill would “highlight the importance of preserving some of our country’s most historic and culturally rich areas and will help ensure they remain a high priority within the BLM and the Department of the Interior. It is my hope this bill will be able to move quickly through the Congress and be enacted into law” (source: <http://salazar.senate.gov/news/releases/070419env.htm>). A House of Representatives version of the bill (H.R. 2016), sponsored by Representative Raul Grijalva (D-AZ) (with 65 co-sponsors), was also presented to Congress.

The Conservation System Alliance supports the legislation. "Without permanent protection, the system suffers from neglect and could even be dissolved," the Alliance warns. "Passage of the act will be a defining moment in American conservation history" (Wagner, Arizona Republic, 2008).

BLM officials, as well as Alliance members, say that official designation of the National Landscape Conservation System is essential. "While I don't have any particular reason to believe other Secretaries [of the Interior] will come in and undo the system, the fact is it can be pulled apart to disparate units," said Elena Daly, now retired Director of the National Landscape Conservation System. "[The Act would] give us legislative authority to exist and would require legislative action to undo. It would put us on par with National Park Service."

The bills in the House and the Senate would not increase funding or mandate any change in management policies. However, Daly stressed the importance of the legislation. "The difference is not so much in the day-to-day management of the system," she said. "But, in the larger sense, it would be tremendously significant. It puts us on a level playing field in the minds of the American public with other valuable Federal lands. And it makes very clear that the system will always be part of BLM" (Karaim, Preservation Magazine, 2008). In a separate statement, Daly said that the enactment of the legislation was “like being a part of a birthing.... I think we are all about to witness the next major conservation system in the United States" (Wagner, Arizona Republic, 2008).

In May of 2007, the Senate Energy and Natural Resources Committee approved the National Landscape Conservation System Act (S.1139). “Our country,” Senator Bingaman said, “is home to some of the world’s most beautiful natural wonders. I am pleased the Energy Committee has given approval to this bill, which will help protect and preserve them for generations to come” (source: salazar.senate.gov/news/releases/). Having been approved by Senate Committee, S. 1139 went on for consideration by the full Senate. The House Natural Resources Committee also approved the House version of the proposed legislation (H.R. 2016).

"Congress," Richard Moe said, “took a major step toward permanently recognizing the National Landscape Conservation System. These places are living history books of the American West, and by unifying them into a single system under the BLM's careful management, we are ensuring that these irreplaceable treasures are preserved for future generations" (Karaim, Preservation Magazine, 2008).

In April 2008, the U.S. House of Representatives passed the National Landscape Conservation System Act, formally recognizing the 26 million acres of the National Landscape Conservation System. "Many of these lands contain man's first imprints on the American landscape in the form of kivas, pueblos and rock art," said Richard Moe. "Because they represent our shared heritage, they richly deserve the recognition that this legislation gives them" (source: www.conservationssystem.org/). The legislation was later included in the Omnibus Public Land Management Act of 2009. The Public Lands bill was passed by the Senate (77-20 votes) on March 19, 2009 and by the House of

Representatives (285-140 votes) on March 25, 2009. President Obama signed the Act into law on March 30, 2009, formally recognizing the significance of public lands in the BLM's National Landscape Conservation System.

CANYONS OF THE ANCIENTS—FOR ALL AMERICANS

The public lands in southwestern Colorado, now Canyons of the Ancients, have always belonged to Americans. Since the original 13 colonies ceded their claims to all western lands to the Federal Government, the area has been an integral part of the American public lands system. In fact, some of the very first lands ever set aside for protection and preservation, in recognition of their inherent value as part of this nation's historic and cultural heritage, were in the heart of these public lands. Today, Canyons of the Ancients is a national monument; it is a crown jewel in the highest echelon of designated lands within the public domain of this nation. It was so designated for the express purpose and intent of protecting and preserving its cultural, historic, natural, geological, archaeological, and overall scientific objects, as described in Proclamation 7313 issued on June 9, 2000 by President Clinton:

Containing the highest known density of archaeological sites in the Nation, the Canyons of the Ancients National Monument holds evidence of cultures and traditions spanning thousands of years. This area, with its intertwined natural and cultural resources, is a rugged landscape, a quality that greatly contributes to the protection of its scientific and historic objects. The monument offers an unparalleled opportunity to observe, study, and experience how cultures lived and adapted over time in the American Southwest.

The rugged landscape of Canyons of the Ancients was designated a national monument in accordance with (as well as the precedents set by) the Antiquities Act of 1906. It was designated as a national monument for its enduring non-commodity and non-commercial values (including commemorative, educational, scientific, and inspirational).

Today, the Canyons of the Ancients National Monument belongs to all American citizens equally—from those who live steps from her boundaries to those who live a block from the White House. The Canyons of the Ancients National Monument is a testament to our past and a gift to our future. It is the privilege and the responsibility of the Bureau of Land Management to ensure that the irreplaceable objects, resources, and values for which the public lands were set aside are protected and preserved. Thus, in recognition of its status as a national monument, and as an invaluable part of the National Landscape Conservation System, the BLM will manage the Canyons of the Ancients National Monument in strict accordance with, first and foremost, the provisions of the Proclamation “so as not to create any new impacts that interfere with the proper care and management of the objects protected by this proclamation” for the enduring benefit of all Americans.

"With an emphasis on conservation, protection and restoration, the National Landscape Conservation System and Canyons of the Ancients National Monument represent a new era of management for the BLM. After 130 years of exploration and research identifying tens of thousands of irreplaceable and fragile archaeological sites, we know that Canyons of the Ancients represents the best of our cultural heritage. Using an army of volunteers who contribute on the ground services and applying the principles of balanced management and science-based decision-making, this crown jewel preserves ancestral homes and landscapes for Native American citizens and for children and communities throughout the United States."

Secretary of Interior, Ken Salazar 2009

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