Achieving compliance: Cultural resources management at Red Rock Canyon Nca

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ACHIEVING COMPLIANCE: CULTURAL RESOURCES

MANAGEMENT AT RED ROCK CANYON

NCA

by

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A thesis submitted in partial fulfillment
of the requirement for the

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ABSTRACT

Achieving Compliance: Cultural Resources Management at Red Rock Canyon NCA

by

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This thesis investigates the policy context of U.S. cultural resource management legislation and the ethical values that underlie it. The actions taken by the Bureau of Land Management (BLM) to preserve and protect cultural resources within Red Rock Canyon National Conservation Area (NCA), Las Vegas, Nevada, from 1964 to 2004, are studied to identify the values embodied within the laws and policies. The BLM's actions are taken as representative of these values and of the barriers and limitations existing within the policy context that challenge their achievement.

U.S. law requires cultural resources to be preserved and protected on public lands, but negative effects are commonly observed even with management. There appears to be a gap between what the law intends and the effects resulting from management actions. This thesis seeks to answer the question, If cultural resources within Red Rock Canyon should and can be preserved and protected, how do law, policy and archaeology work together to ensure it happens?
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CHAPTER I

INTRODUCTION

For more than a century, United States (U.S.) federal policies have addressed the importance of preserving and protecting cultural resources on public lands. Beginning with the Antiquities Act of 1906,¹ conditions have existed within U.S. law that provide penalties for damaging cultural resources, establish reservations of public lands to protect cultural resources, and require permits for examining, excavating and gathering cultural resources from public lands. The National Historic Preservation Act (NHPA) of 1966,² as amended, formally recognizes cultural resources as foundations of the Nation’s spirit and direction, and historic properties as vital legacies for future generations. Preserving and protecting cultural resources are policy goals that serve the ideals of our citizens’ spirit, direction and legacy.

Annually, increasing numbers of public visitors and recreationists enjoy activities on U.S. public lands, yet the means of controlling the effects from increased visitation and recreational usage on cultural resources is inadequately understood. This thesis describes the utilitarian and normative aspects of cultural resources laws, policies and the management actions taken by the Bureau of Land Management (BLM) at Red Rock Canyon National Conservation Area, Clark County, Nevada. The focus of this thesis is two-pronged: First, the effects of BLM multiple use, sustained yield mandated

¹ 34 Stat. 225, 16 U.S.C. 431-233
the legal requirements of cultural resources (or ‘historic preservation’) law.

Ample evidence exists that both the public and the BLM hold the preservation and protection of cultural resources at Red Rock Canyon as a value. Prior to its designation as Red Rock Canyon Recreation Lands, in 1967, members of the public worked steadfastly toward legal protections in order to ensure that Red Rock Canyon’s cultural resources would be preserved. An open letter dated December 15, 1965, to Leslie H. Gould, chairman, State Park Advisory Commission, from the ad hoc “Committee for the Development of a Red Rock Interpretive Center,” began,

The several meetings of interested citizen groups in Clark County concerned with the development of state parks in southern Nevada have arrived at a consensus that priority should be given to

1. The planning and construction of an interpretive center, to include an arboretum and recreational park in the Red Rock area, and
2. Archaeological investigations in the prehistory of the area...

It is well known that there are numerous sites in southern Nevada, none of which has had more than a superficial examination by archaeologists. These are referred to in part in the Nevada State Museum Archaeological Papers No. 7. With encroaching civilization and the opening of the area to the public through improvements of roads, and especially with the event of the development of picnic and camping in the area, it becomes imperative to establish plans of completely investigating the most important sites, to protect the sites themselves from vandalism, to make an orderly study of artifacts and to remove these to protective quarters and in so doing create as a part of the recreational complex archaeological on-site exhibits where these sites can be viewed by the public, and to retain the artifacts in an interpretive center where they will be available for viewing by the public under controlled conditions and, importantly, be available for scholarly study.

The letter was signed by eleven members of an ad hoc committee who identified themselves as being interested private individuals who were also affiliated with community and professional organizations including the Sierra Club, League of Women

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Since its 1967 classification as Red Rock Canyon Recreation Lands, numerous public meetings have been hosted by the BLM to obtain comments on management plans and project proposals addressing the potential effects of BLM management actions on Red Rock Canyon’s resources. The BLM consistently has asked the public their opinions on the question, “How should cultural and paleontological resources be managed?”

Planning efforts have involved the public in consultation on major projects including the preparation of master plans, environmental impact statements, environmental assessments and general management plans. This thesis analyzes and evaluates the results of these efforts on the part of the BLM – and the public – to achieve the objectives of preservation and protection that both group’s desire and that is promised by U.S. cultural resources legislation.

Three linked questions guide the first prong of the study as well as narrow its focus: (1) How are federal cultural resources management policies communicated into directives to the BLM at Red Rock Canyon?; (2) are BLM actions compliant with relevant cultural resources management policies at Red Rock Canyon?; and, (3) have BLM actions to implement cultural resources management policies at Red Rock Canyon resulted in expected outcomes? On a practical level, the three questions seek answers to fundamentally legal issues that challenge the BLM in their efforts to implement cultural resource policies at Red Rock Canyon. On a broader level, the three questions address the

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fundamental role that policy plays in steering public land managers into taking actions towards achieving outcomes consistent with normative values we hold dear as a nation.

A more general question guides the second prong of the study: If cultural resources within Red Rock Canyon should and can be preserved and protected, how do law, policy and archaeology work together to ensure that happens? In considering this question I examine arguments by scientist and philosopher Aldo Leopold who, in 1948, proposed that the time had arrived for the development of an ethical approach to the land and its management. I investigate the positions of environmental ethicists, scholars and philosophers J. Baird Callicott and Holmes Rolston III, who argue in favor of Leopold's position, while policy theorist and scholar Mark Sagoff represents a counterargument to Leopold's, one that favors instrumental (economic) value over normative value as a guiding principle for resource management decisions. In the context of the BLM's overarching multiple use and sustained yield mandate and assignment as governing agency for thirteen national conservation areas, Leopold's concept of a land ethic seems potentially to strengthen the justifications for taking actions to preserve and protect cultural resources on the basis of normative values within cultural resources management laws and policies.

Public policy theorist and scholar Frank Fischer argues that a basic task of policy analysis "is to show that a policy goal is or is not compatible with or instrumental to the existing societal" system. In examining the questions posed above, the study makes use of a long timeframe of existing records in order to assess the validity of governmental

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claims that cultural resources management policies foster the protection and preservation of cultural resources on public lands. Using preservation (which some see as a form of “sustainability”), as a measurement tool, this study assesses BLM claims of compliance with cultural resource policies and claims that seek to justify continuing current cultural resources policy practices at Red Rock Canyon.

I propose that existing U.S. cultural resource management policy has the capacity to contribute substantively to the preservation and protection of cultural resources, that cultural resources preservation and protection have normative value, and that preservation and protection of cultural resources through management practices is an efficient and right use of administrative resources by the BLM at Red Rock Canyon and elsewhere. Through the review of legislation presented in this thesis, I argue that language exists within current policies that provides clear and adequate authority to enable the BLM to preserve and protect cultural resources at Red Rock Canyon without the need for new or amended legislation, but that by an overly narrow interpretation of cultural resources the scope of current practices is inadequate.

Based on an empirical analysis of evidence presented in a comprehensive review of archaeological studies of Red Rock Canyon, produced in 1991 by BLM archaeologist Keith Myhrer, I argue that BLM compliance with federal cultural resources law can be demonstrated to be consistent with requirements of law for managing cultural resources, but that, regardless, the result has not preserved or protected cultural resources in compliance with the normative intent of the law. Based on an ethical evaluation of evidence drawn from the empirical analysis, I argue that limited (and possibly conflicting) interpretations of cultural resources laws and policies challenge the
soundness of certain BLM management decisions affecting cultural resources within Red Rock Canyon. These conclusions identify that negative effects to cultural resources at Red Rock Canyon have occurred and may be expected to continue to progress regardless that BLM actions can be viewed as, to some level, compliant with cultural resources law and policies. In this interpretation, preservation (or sustainability) of cultural resources within Red Rock Canyon is not being achieved as anticipated.

Based on these conclusions, I suggest a strategy of broadening the interpretation of cultural resources laws and policies and re-examining the practice of cultural resources management on public lands beyond current practices which remain closely tied to public land’s legacy of utility. The very term “resources” and the BLM’s mandate of “multiple use and sustained yield” embody utilitarian principles that ultimately may be inconsistent with the special designation of Red Rock Canyon as a national repository of “conservation” values. Refining the interpretations of cultural resources laws and BLM policies, such that the awareness of the BLM and the public is raised to include the recognition of values that exist in addition to utilitarian (instrumental) concepts, may be helpful in ensuring the preservation and protection of cultural resources on public lands such as Red Rock Canyon, where efforts such as compliance (by the BLM) and education (of the public) have fallen short.

Background

Situated along the western flanks of the Spring Mountains Range, within twenty miles of the city of Las Vegas, Nevada, Red Rock Canyon is well suited as a site for a case study of U.S. federal cultural resource policies. Currently approximately 198,000
acres in size, it encompasses both historic and prehistoric sites, rock art, cultural complexes and traditional cultural properties.

The lands that became Red Rock Canyon were first withdrawn into the public domain in 1964 when the BLM placed 10,000 acres into protective withdrawal status under the Classification and Multiple Use Act of 1964. In 1967, 62,000 acres was designated as Red Rock Canyon Recreation Lands, “adding elements of historic and archeologic importance, unique ecological environments, and recreation opportunities” to the regional recreation scheme. In 1990, Congress passed the Red Rock Canyon National Conservation Area Establishment Act, increasing its size to 83,100 acres and recognizing it as an area of national significance. The Red Rock Canyon National Conservation Area was expanded to its current size, 198,000 acres, in 2002.

Over 326 archaeological sites have been recorded at Red Rock Canyon through various archaeological surveys and other work conducted in the area from the early 1960's to 2004. Kevin Rafferty, BLM Stateline Resource Area archaeologist from 1983 to 1985, stated that regarding the sensitivity of Red Rock Canyon for cultural resources “this is indicative of long term occupation of the region.” Surveys of archaeological sites have provided evidence suggesting that continuous human habitation began at Red Rock Canyon as early as 3500 B.C., with intensive use occurring within the last 1000 years.

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8 43 CFR 1412
10 Title I, Clark County Conservation of Public Land and National Resources Act of 2002 (Public Law 107-282, November 6, 2002)
years. Research of cultural resources in the vicinity suggests that human use of Red Rock Canyon may have begun as early as 10,000 years ago.

Early occupants and visitors to Red Rock Canyon were Native Americans with cultural associations including Desert Archaic, Virgin Anasazi, Patayan, Southern Paiute, Chemehuevi, Mojave and Shoshone peoples. Members of two federally-recognized Southern Paiute tribes, as well as Shoshones, Chemehuevis and Moijaves living in the vicinity today claim ties to places within the boundaries of the national conservation area. Historic sites within Red Rock Canyon include a section of the Old Spanish/Mormon Trail (1829-1905), an abandoned sandstone quarry (1905-1912) and early ranch buildings that are now part of Spring Mountain Ranch State Park which is managed by the Nevada Division of State Parks. Because the land that is now southern Nevada was occupied by Native Americans before European contact, the largest portion of southern Nevada’s cultural resources are of Native American origin.

Of the very earliest people in southern Nevada, little is known. Some people look to public lands such as Red Rock Canyon as potentially contributing to our knowledge of these early people through future archaeological interpretation of the cultural resources remaining within these lands. Limitations of funding and staffing have restricted agencies such as the BLM, from the 1980’s to the present writing, from undertaking much in the way of proactive cultural resources research projects.

For the most part, Red Rock Canyon’s cultural resources lack the kind of visibility that draws a great deal of attention and warrants extraordinary measures for preservation.

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and protection beyond that provided by its classification as a federal public land. While Red Rock Canyon contains one of the most significant assemblages of rock art (pictographs and petroglyphs) in Clark County, Nevada, and the highest known concentration of rock features known as agave roasting pits, these resources are not, in themselves, aesthetically spectacular. Red Rock Canyon has no known significant associations with important historical individuals, no significant or unique architectural structures and has never been identified as the location of any important American event. It is the relative ordinariness of Red Rock Canyon, and the commonality with cultural resources it shares with adjacent Forest Service, Fish and Wildlife Service, and National Park Service lands, that makes Red Rock Canyon so well suited for a case study of cultural resources policy. In areas where unique, scenic or more important cultural resources exist, management actions may not represent standard practices.

**Cultural Resources: Basic Definitions**

Cultural resources comprise tangible artifacts, structures and places, generally 100 years old or older (as defined by the Archaeological Resources Protection Act), that are associated with humans living in social groups. Under the National Historic Preservation Act (NHPA) of 1966, Section 106, historic preservation does not distinguish between historic and prehistoric, for legal purposes. In some sources, cultural resources are characterized as either historic or prehistoric. In this thesis, a primary reference for cultural resources at Red Rock Canyon distinguishes historic cultural resources as those associated with groups of people with written histories and prehistoric cultural resources as those associated with groups of people without written histories.
By these definitions, the world of the Greek philosophers Socrates (who died in 399 B.C.) and Aristotle (born in 384 B.C.) is ancient, but historic, being known from written histories, lectures, and other written records of the time. The world of Native Americans was prehistoric until approximately 1829 A.D., when native people in the area encountered the earliest European Americans to explore the region. Once Native Americans encountered European American explorers and native lifeways began to be documented (albeit by others) their historic period began.

In the U.S., cultural resources management (CRM) may be characterized as encompassing several fields including archaeology and historic preservation, as well as history and ethnography. Thomas King, cultural resources management consultant, cautions that “the equation of CRM with narrower practices like applied archaeology, inevitably leads to communication problems,” for example “archaeologists tend to mean ‘archaeological site’ when they say ‘cultural resource.”” For the purposes of this thesis, archaeology is defined as the study of the material remains of humankind’s past.

Today, “conservation” is commonly understood as a synonym for preservation and protection, the evidence of which is found in the establishment acts and expansion acts for Red Rock Canyon National Conservation Area. Language is found in establishment acts for earlier BLM National Conservation Areas that specifies usage limitations more restrictive than those of national recreation areas (“controlled use - areas of critical environmental concern,…limited use – only low-intensity multiple land uses would be allowed, in order to protect resources,… moderate use - a balance between use and

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Conservation is a word, like so many in resource management discussions, that can have very specific meanings in certain usages. This was not the case when the Antiquities Act of 1906 was established. Then, conservation was a consumptively utilitarian concept. Conservationists were persons who wanted regulated use of federal park lands (to include timbering, mining and reservoir building activities), rather than strict preservation. The construction of the Hetch Hetchy Valley dam on the Tuolumne River, Yosemite Valley, California, in 1923, was a victory of conservation (in this sense) over preservation. The usage of the word “conservation” in the public land classification “national conservation area” suggests that current understanding has come a long way from Hetch Hetchy, yet denotes the multiple use mandate that is central to the mission of the BLM.

Cultural resources management on public lands is undertaken by various persons with formal authority, including BLM park rangers, archaeologists, historic preservationists, ethnographers, recreation planners, interpretive staff, volunteer site stewards, or other staff (including other volunteers). Legally, cultural resources management is not undertaken by the general public, except in the sense of general stewardship (or care), such as in taking actions not to harm cultural resources.

In practice, cultural resources are sometimes treated by BLM staff (paid and volunteer) as if they have been ranked on the basis of eligibility for nomination to the National Register of Historic Places under the NHPA, Section 106, as amended. Cultural resources that are, or believed to be, potentially eligible may receive greater attention.

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than other sites, whereas sites believed to lack qualifications for eligibility may be excluded by from surveys, inventories, monitoring activities or other protections. At Red Rock Canyon, which has experienced staffing shortages for much of the period from 1996-2004, professionally qualified cultural resource staff familiar with the current status of the cultural resources inventory have, therefore, not always been available to provide clarification and guidance. Confusion about the status of cultural resources inventory may facilitate possible harms to resources that cultural resource management legislation seeks to protect.

Some of the cultural resources within Red Rock Canyon that received the most intensive visitation and recreational use between 1964 and 2004, and were recommended for nomination to the National Register of Historic Places, are closely examined in the empirical analysis to investigate the protections provided them over time. These sites include Red Spring/Calico Basin, Sandstone Quarry, Lost Creek, Willow Spring and Brownstone Canyon. Overly narrow interpretations of status regarding eligibility may have the unintended result of non-compliance with management policies and allow possible harms to resources that cultural resource management legislation seeks to protect.

Changes in cultural resources are referred to in terms of 'effect.' These changes are defined to either as no effect, negative effect, or positive effect. The term 'negative effect' is used in favor of the term adverse effect, which commonly has a legal connotation. Each of these terms is commonly used in cultural resource management as evaluative measurements that may result in management actions of some kind.
Finally, it is important to address the usage of the term “compliance” within this thesis. As used here, compliance means general conformity with cultural resource management policies rather than solely legal conformity to the general and special conditions of the National Historic Preservation Act (NHPA) of 1966, as amended. Where the word compliance is used I have endeavored to reference the relevant associated law, regulation or management policy in order to make the intended association clear.

Cultural Resource Legislation

The earliest U.S. legislation providing for preservation and protection of cultural resources was the Antiquities Act of 1906. The Act includes penalties for illegal excavation of both prehistoric and historic cultural resources on federal lands without a permit, and allows issuance of permits to scientific and educational institutions. The National Park Service, created in 1916, was the first federal agency to manage cultural resources, being directed to conserve scenery, natural and historic objects and wildlife for the enjoyment of future generations. Within the directives of the Antiquities Act of 1906 and the legislation creating the National Park Service are found the origins of challenges facing the BLM and that remain at the heart of cultural resource management today.

Within cultural resource management legislation one finds language that reveals the core meanings that the laws embody. The words “protect,” and “preserve,” are found repeatedly in the majority, if not all, of cultural resource management legislation. Often, the benefits that are hoped for through the legislation are plainly stated there as well. For

17 16 U.S.C. 431-33, Public Law 59-209
example, within the National Historic Preservation Act of 1966, as amended through 1992, Section 1 (16 U.S.C. 470) (b) states, in part:

“(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

“(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people,

Similarly, the Federal Public Land Management Act (FLPMA) of 1976, as amended through 2001, Section 102 [43 U.S.C. 1701(a)] (8) states, in part:

“The Congress declares that it is the policy of the United States 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 archaeological value;”

Finally, from the Red Rock Canyon National Conservation Area Establishment Act of 1990, Section 1 (a):

“In General – (1) In order to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the area in southern Nevada containing and surrounding the Red Rock Canyon and the unique and nationally important geological, archaeological, ecological, cultural, scenic, scientific, wildlife, endangered species, riparian, wilderness, and recreation resources of the public lands therein contained, there is established the Red Rock National Conservation Area.”

The normative values contained in the language found in these pieces of legislation affirm the value of cultural heritage resources and establish as benefits the preservation and protection of places such as Red Rock Canyon. In describing these benefits the legislation reveals fundamental values held for people living within the representative democracy of modern America.
The BLM and National Conservation Areas

The management of U.S. federal public lands is a responsibility divided among departments within the executive branch of government. The BLM, an agency within the Department of the Interior, is responsible for managing more than 270 million acres of non-military land, and 570 million acres of minerals, mostly within the western states and Alaska. The BLM administers an array of programs affecting both the cultural and natural resources within the public lands under its charge. Included among these public lands are National Conservation Areas.

The BLM is guided in its responsibilities both by legislative laws and by agency regulations and policies that direct considerations of multiple use and sustained yield. There is some ambiguity in the definitions of both. In general, multiple use is taken to mean the coordination of a combination of land uses within public land units. These land uses can include “recreation, range, timber, minerals, watershed, wildlife and fish, and natural, scenic, scientific, and historical values.” Sustained yield generally applies to consumptive land uses for renewable resources, such as timber, and refers to harvesting no more of the resource than can regenerate within a year.

These principles originated in the Classification and Multiple Use Act of 1964. The Act was temporary and originally scheduled to expire in 1968 (later extended to 1970). It directed the BLM to survey and classify its lands for retention or disposal and to dedicate some of its holdings in the West to the National Park Service. The plan was that the National Park Service would subsequently establish National Monuments from these units in order to benefit declining rural economies through increased visitation. Opponents of an increased role for the National Park Service in conserving America’s

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natural resources, under President John Kennedy, intended the Act to allow Congress time to study public land laws and reassert its role in public land policy oversight.

This plan posed a genuine threat to the BLM in the form of decreased land holdings and influence. Unexpectedly, the BLM fought back. It completed the survey and classification of its lands within an unreasonably tight deadline that it was not expected to meet. Using a strategy of public participation and interagency cooperation, both of which became hallmarks of BLM public land management, it transformed its operations from an orientation toward single-use, grazing and mineral applications processing to a collaborative and integrated, multiple use planning approach. Subsequently, it proactively proposed that Congress establish a new public land management classification, the National Conservation Area. The BLM was anxious to prove the capabilities of the multiple use mandate by undertaking endeavors in competition with the National Park Service.

The earliest of the BLM's National Conservation Areas were public lands that fell short of qualifying as National Park Service properties. In general, the National Park Service was happy to have the BLM take responsibility for these less spectacular, lower profile lands. The BLM became responsible for its first national conservation area, the 60,000 acre King Range, California, in 1970, under President Richard Nixon. By 1988, five National Conservation Areas had been assigned to the BLM by Congress.

National Conservation Areas are designated by Congress for the purposes of protecting resources of special value, within multiple use management specifications, that are of national significance and potentially offer a diversity of uses and values. The objectives and values are specified by Congress within the establishing acts for each area.
Instead of uniform national standards for National Conservation Areas, the governing agency crafts a management plan incorporating the requirements of the national conservation area’s establishment act with the agency’s policies and procedures.

In 1976, the Federal Public Land Management Act\(^\text{19}\) reaffirmed the BLM’s multiple use and sustained yield mandate on a permanent basis. The agency remained at a fairly constant level of budget allocations and staffing throughout the 1970’s. In the mid-1980’s the BLM’s revenues declined and its public land holdings were again threatened with acquisition by the National Park Service.

Once again, in 1988, the BLM proactively undertook a campaign for additional National Conservation Areas to “demonstrate BLM’s commitment to Multiple Use and the capacity to manage nationally significant properties.”\(^\text{20}\) The National Conservation Areas were seen as “relatively low cost to establish and manage… easy to adapt to existing BLM management entities… with high acceptance to the public and Congress.” On a photocopied BLM “Call to Action” strategy memo, on file in the Red Rock Canyon visitor center archive files, under a typed list of lands under consideration as acquisitions by the National Park Service, is one penciled in addition, “Red Rock Canyon Recreation Lands.” The new campaign succeeded and in 1990, 83,100 acres of former recreation lands became Red Rock Canyon National Conservation Area, the BLM’s seventh national conservation area.

\(^{19}\) 43 U.S.C. 1702

Significance of the Study

In the larger view of worldwide habitat destruction, human poverty and real threats to safety and security, the preservation and protection of U.S. cultural resources may seem to some persons to be marginal, unimportant, or even wasteful of fiscal appropriations and staffing assignments. The preservation and protection of cultural resources has been dismissed as a Native American issue, a recreation issue, or an anti-development issue. The arguments presented against preserving and protecting cultural resources on public lands range from those that question the value that cultural resources contribute to non-Native Americans, to those that question the value of history in relation to other values, to those that question the value of excluding public lands from development (especially as a potentially taxable revenue source). Environmental, so-called “green,” advocates sometimes distinguish between “hard” environmental issues (such as clean air, clean water and sustainable energy) and “soft” conservation issues (such as land management and resource preservation) as if there is an implicit, hierarchical ranking of worthiness indicating that environmental issues must have priority over cultural resource issues. As practiced by federal agencies today, these charges can be said to be, in part, true.

One view for providing resolution to the question of priorities argues that where there are the real or potential increased risks of illness, disease and death to persons, the relevant policy issues should have priority, especially regarding access to fiscal and staffing resources. Holmes Rolston III has called this the anthropocentric view and he has been criticized for suggesting that risks to ecosystems should be considered to have primacy over solely human needs. I argue that where there is competition for fiscal and

21 87% of the State of Nevada is federal land which is managed by agencies including the BLM (controlling the largest percentage), Bureau of Indian Affairs, Bureau of Reclamation, Department of Defense, Department of Energy, Fish and Wildlife Service, Forest Service and National Park Service.
staffing resources, but without real or potential increased risks of illness, disease and
death to persons, environmental and cultural resource policies should be treated equally
and provided with equal access to fiscal and staffing resources.

In this study we shall see that due to the increases in size of Red Rock Canyon, the
classification changes and the delays in producing finalized management plans, elements
of tension affected BLM cultural resource management at Red Rock Canyon. Particularly
after 1996, organizational and political factors due to personnel changes and budget
reductions, along with increased workload pressures from the annual Southern Nevada
Public Lands Management Act of 1998 (SNPLMA) land sales and project
nomination/award process, all inserted additional disruptive influences that interfered
with the smooth administration of Red Rock Canyon. In 2002, BLM Nevada State
Director Bob Abbey, in testimony before the Senate Energy & Natural Resources
Committee, Subcommittee on Public Lands and Forests, cautioned that Congressional
 largesse was overloading existing Nevada State BLM and field office staffs.  

One result of these pressures was that, after 1997, the BLM unquestionably became
non-compliant with the requirements of establishing legislation for Red Rock Canyon
National Conservation Area for producing a general management plan. Originally to have
been completed within three years of the establishment date, an extension was granted
in the Red Rock Canyon Nation Conservation Area Boundary Expansion Act. A final
general management plan and draft environmental impact statement were issued for
public comment, in 1999, and a final environmental impact statement was issued in 2000,

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22 Congressional testimony of Robert Abbey, Bureau of Land Management, before the Senate Energy &
Natural Resources Committee, Subcommittee on Public Lands and Forests, “S.2612-Clark County World
24 H.R. 3050, Public Law 103-450, November 2, 1994
but the final plan was not approved by the Secretary of the Department of the Interior until September 21, 2005. The 1995 *Interim General Management Plan*, 25 which was written to provide broad management guidance to the BLM as a transition between the outdated 1976 Red Rock Canyon Master Plan and the required general management plan, remained the governing document in effect for Red Rock Canyon National Conservation Area up to that time. In addition to the final plan being overdue, the *1995 Interim General Management Plan* addressed only the original 83,100 acres (rather than 198,000 acres), was not a publicly reviewed document and remained in place for ten years, from 1995-2005.

This failure of compliance is not in itself indicative of malice, intentional deceit, or intent to commit fraud. It may, however, be symptomatic of conflicting priorities resulting in a lesser level of protection for Red Rock Canyon than was intended by Congress. Regardless, the lack of remedies for providing assistance to the BLM to correct the condition, or possibly the lack of penalties for noncompliance of this nature and magnitude (significant time lapse without a comprehensive management plan), suggest that there is room for improvement. In this case, simply indicating within the establishing legislation that actions should be taken was inadequate to insure compliance. Without guarantees built into the system, the harms that federal environmental legislation are intended to protect federal public lands from are without force. Determining whether or not harms to resources within Red Rock Canyon actually resulted from this is, with the exception of effects to cultural resources, beyond the scope of the thesis.

Research Methodology

The analysis and evaluation within this thesis is based upon four sources of material: 1) a traditional review of scholarly and professional literature, legislation, statutes and associated relevant regulatory materials; 2) a review of the BLM management plans specific to the governance of Red Rock Canyon; 3) an empirical case study that assesses existing archaeological inventories, surveys and monitoring reports compiled at Red Rock Canyon National Conservation Area (1964-2004); and 4) an ethical evaluation of the normative bases for cultural resources management on public lands considering, as a primary argument, the debate that places the utilitarian foundations of BLM management in opposition to the “land ethic” proposed by scientist and philosopher Aldo Leopold.

The study period begins in 1964, when 10,000 acres of Red Rock Canyon were placed on protective withdrawal status by the BLM. The study period concludes with the year 2004, two years after the Red Rock Canyon National Conservation Area was expanded to approximately 198,000 acres. The BLM has been the primary governing agency for Red Rock Canyon for the entire period. The earliest archaeological survey work within Red Rock Canyon was recorded in the 1930’s, followed by a general reconnaissance survey in 1962, both at Willow Spring. A series of more intensive and broad ranging archaeological surveys were conducted from 1967 through 1977. Site monitoring of selected cultural resources has continued, sporadically, through the study period to the present time, and generally without direction from, or supervision by, BLM cultural resource specialists. During the study period, cultural resources legislation developed from well-meaning authorizations which, initially, lacked Congressional
allocations for funding or conditions for enforcement to powerful, if still under-funded, authorizations with a well-developed body of case law.26


Archaeological records provide a basis for evaluating the general condition of selected cultural resources within Red Rock Canyon which are assessed to determine the influence of: 1) BLM actions, and 2) cultural resource management policies, or 3) both BLM actions and cultural resource management policies to determine changes in the condition of cultural resources over the study period at Red Rock Canyon.

The original case study included within the thesis uses the experimental program research methodology to examine the effects of cultural resource management practices on cultural resource preservation and protection by the BLM at Red Rock Canyon, from 1964 to 2004. Experimental program research, sometimes called “evaluation research,” is a technique that allows objectives to be measured at various points in time over the life of a program. This is an empirical approach that requires basic objectives to be identifiable and measurable. The availability of documentation specific to cultural resource

legislation, BLM governing documents, and archaeological surveys of Red Rock Canyon, for selected points in time over the period of study, are basic necessities for analysis by this method. These are provided by the 1991 Class I Report and the 2005 Resource Management Plan.

Published reports addressing the condition of cultural resources within Red Rock Canyon for the period study, 1964 to 2004, could have provided useful references for assessing cultural resource management by the BLM at Red Rock Canyon National Conservation Area. However, with the exception of the 1991 Class I Report, materials addressing the condition of cultural resources within Red Rock Canyon were either not available as public records or simply did not exist at the time of this research. An original case study was, therefore, undertaken in order to provide a basis for the analysis and evaluation of the selected cultural resources at Red Rock Canyon referenced within this thesis.

Fischer\textsuperscript{28} cites experimental program research methodology as important in programmatic verification of policy goals. He cautions, however, that the potential exists for biases in research design, the instruments of measure and the selection of resources to be measured. These methodological limitations may exist within this study as no related studies of cultural resource management policies have been found upon which to model the work. Although these biases may influence the validity of the results somewhat, careful citation of the sources referenced within the study should allow independent verification of this analysis to be conducted by others. The results of the case study should be viewed as suggestive rather than definitive due to these limitations.

Nonetheless, they should provide a basis for further conclusions within the context of the research questions.

In addressing the effectiveness of cultural resources policies in achieving the protection and preservation of cultural resources, two sets of relationships are examined: 1) the relationship between the enactment of cultural resources legislation and the communication of cultural resources policies into actions taken at the level of the BLM at Red Rock Canyon National Conservation Area; and 2) the relationship between the actions taken by the BLM at Red Rock Canyon National Conservation Area over forty years, from 1964 to 2004, and the effects of those actions on Red Rock Canyon’s cultural resources. These tasks seek to identify what was required and when, what actions the BLM took and when, and what effects there were to the cultural resources at Red Rock Canyon. To assess the effects to cultural resources, whether required actions were taken or not, the condition of the cultural resources is compared by available data (reports or photographs or both) at points in time over the forty years examined by the study, for selected cultural resources (those for which adequate data is available).

Organization of Material

The thesis is organized into five chapters. The introductory chapter provides a context for the chapters to follow and provides the reader with a basic understanding that cultural resources are of social value, have legal standing, that the legal standing has evolved over time, that the legal standing varies dependent upon the land classification within which cultural resource are located, that interpretation of cultural resources laws and regulations affects CRM policy implementation, and that sustainability of cultural resources may
require the reform of CRM policies or of policy implementation practices by governing agencies, such as the BLM (using Red Rock Canyon National Conservation as an example).

Chapter II introduces the language of the major cultural resource management laws and policies and the impetus behind their enactment. Chapter III presents an empirical analysis of the data identified as relevant by the BLM to implement cultural resource management policies at Red Rock Canyon and assesses BLM cultural resource management actions at Red Rock Canyon from 1964-2004. Chapter IV evaluates the normative values and ethical imperative of cultural resource management policies at Red Rock Canyon, considering the utilitarian basis of U.S. public lands and public lands management (its effect on the BLM's cultural resources management actions regarding the preservation and protection of cultural resources within Red Rock Canyon over the period of study) and contrasting it with the conservation ethics espoused by philosopher Aldo Leopold's "land ethic."

Finally, Chapter V concludes with an evaluation of the results of the study and the implications for cultural resources at Red Rock Canyon in the future. That cultural resource policies can withstand major changes in the uses, meanings, and needs of American society may be the highest evidence of the fundamental value of preservation and protection of cultural resources on public lands. Ultimately, achieving compliance with cultural resource policy is not about simply having a management plan properly in place. It is about working at minimizing the destruction of the values that these tangible resources symbolize.
CHAPTER II

REVIEW OF LAWS, POLICIES AND RECORDS

If cultural resources within Red Rock Canyon, Clark County, Nevada, should and can be preserved and protected, how do law, BLM policy and archaeology work together to ensure that happens? The occupation of Red Rock Canyon from prehistoric to historic times by aboriginal peoples, Spanish explorers, American pioneers and immigrant settlers has resulted in material remains of past ways of life that have been studied through archaeological research and are valued as significant to our national heritage. Its contemporary use under the designations of Red Rock Canyon Recreation Lands (1967-1990) and Red Rock Canyon National Conservation Area (1990-2005) has resulted in moderate to intensive recreational usage by approximately one million visitors annually. The designation of National Conservation Area (NCA) implies compliance by the BLM both with applicable laws and federal agency policies, as well as with conditions imposed by the establishing legislation for Red Rock Canyon NCA.

This chapter reviews and evaluates the sources of authority under which the BLM preserves and protects cultural resources within the boundaries of public lands, in general, and within Red Rock Canyon, in particular. The chapter has two objectives. First, it examines literature ranging from legislative statutes, to BLM regulatory policies, and archaeological reports addressing cultural resource management in order to provide an introductory description and discussion of the major influences on culture resources.
preservation and protection at Red Rock Canyon over a forty-year period, roughly from 1964 to 2004. Second, it examines the influences, dependencies and possible conflicts these exert upon one another, and upon BLM actions to preserve and protect cultural resources within Red Rock Canyon in order to introduce the central issue of sustainability through compliance with cultural resource legislation and policies that is examined in the following chapters.

Legislative statutes and federal regulations require the BLM to identify, preserve and protect cultural resources within its jurisdiction. These statutes and regulations have co-evolved over time as changes in social culture have influenced the values that American citizens place upon cultural resources. These values include a sense of who we are as people, respect for knowledge and for the understanding we can gain from studying the lives of past peoples, community and cultural pride gained from recognizing our connection to human history and from caring for our public lands, and confidence in our way of life as beneficial, today, and ensuring similar opportunities in the future. The fundamental objective of preserving and protecting cultural resources is the sustenance of these values.

At Red Rock Canyon, these values are embodied in the preservation of tangible cultural sites, artifacts and features including roasting pits, rock art, rock shelters, ceramic sherds, remnant plant-fiber textiles (from yucca and other plants), scattered lithic materials (stone implements and debitage), trails, built rock structures, pioneer castoffs, quarried and mined sites, and even piles of old rusting cans. Based on the evidence of archaeologist Keith Myhrer’s 1991 Class I Report of cultural resource studies of Red Rock Canyon, the potential knowledge, understanding and sense of purpose to be gained
from the cultural resources found within southern Nevada has yet to be realized. Red Rock Canyon provides opportunities for reaping the benefits of these values, but these benefits come with a price. Especially in the face of BLM funding and staffing shortfalls, priorities must be established and choices made.

Communicating and implementing statutory and regulatory requirements into management actions that embody our values, yet acknowledges priorities, is a challenging task. New legislation and amendments to existing legislation continually come forth from Congress. ‘Informational memorandums’ direct the BLM to incorporate these into agency procedures, either as new regulations or as amendments to existing regulations or procedures. Ideally, the BLM must ensure that new or amended regulations blend with existing workloads and budgets, are implemented by staff and that the results of the implementation accomplish the objectives intended. Examination of major the legislation authorizing the BLM with responsibilities for preserving cultural resources provides a context for assessing these challenges. Examination of the establishing legislation for Red Rock Canyon provides a context for understanding the complexities faced by the BLM in simultaneously managing a public property and implementing compliant policies.

Published archaeological studies of cultural resource inventories for cultural sites within Red Rock Canyon, central to the empirical analyses in Chapter III, indicate the richness of cultural history within the NCA and provide measures to assess the BLM's efforts at compliance with statutes and policies for preserving cultural resources. Selected archaeological studies of other cultural resources in the greater Las Vegas Valley vicinity
are reviewed to validate chronologies and group affiliations for occupancy and use of
Red Rock Canyon.

Part I. Applicable Laws

The general legislative authority directing the BLM to protect cultural resources is
found principally within statutes including: "(1) the 1906 Antiquities Act (16 U.S.C. 431-
433), (2) the 1966 National Historic Preservation Act, as amended (16 U.S.C. 470), (3)
the 1969 National Environmental Policy Act, (4) Executive Order 11593, 1971,
Protection and Enhancement of Cultural Properties, (5) the 1974 Archaeological and
Historic Preservation Act, and (6) the Archaeological Resources Preservation Act of
1979." 29

Two other important statutes strongly influence BLM planning and management
actions and thereby indirectly affect the protection of cultural resources: the Federal Land
Policy Management Act of 1976 (43 U.S.C. 1701-1872) and the Southern Nevada Public
Lands Management Act of 1998. Together these eight Acts frame the BLM’s legal
obligations, as established by Congress, for ensuring that adequate consideration is given
in planning management actions on public lands in order to prevent inadvertent harm or
destruction to cultural resources. Of these, none is more frequently cited in the literature
and in case law than the 1966 National Historic Preservation Act.

The specific legislative authority directing the BLM to protect cultural resources
within Red Rock Canyon is found within the establishing legislation designating the area

29 U.S. Department of the Interior, Bureau of Land Management, Final Environmental Assessment, NV-
059-9-30; Oil and Gas Leasing in the Red Rock Canyon National Recreation Lands (June 1980). GPO 689-
161/80-1001, Appendix K-1.
as public lands\textsuperscript{30} and in subsequent boundary expansion acts: (1) Red Rock Canyon Recreation Lands Act of 1967,\textsuperscript{31} (2) Red Rock Canyon National Conservation Area Establishment Act of 1990 (Public Law 101-621), (3) Red Rock Canyon National Conservation Area Boundary Expansion of 1994 (Public Law 103-450), and (4) Clark County Conservation of Public Land and Natural Resources Act of 2002, Title I (Red Rock Canyon National Conservation Area Protection and Enhancement Act of 2002; Public Law 107-282). Together these four acts frame the BLM’s obligations for ensuring that planning criteria and management actions prevent inadvertent harm or destruction (effect) to cultural and natural resources within Red Rock Canyon.

A. General Authority

The 1906 Antiquities Act establishes the imposition of penalties upon any person who takes possession of, injures, or destroys any object of antiquity, or historic or prehistoric ruin or monument located within U.S. federal public lands without permission of the government of the United States. It authorizes the President of the United States to withdraw historic landmarks, prehistoric or historic structures, or other objects of historic or scientific interest, into the care and management of the government of the United States by proclaiming them as national monuments. It establishes a requirement for permission of the U.S. government for examining ruins, including the excavation of archaeological sites and collection of objects of antiquity.

\textsuperscript{30} The US Code Collection of the Legal Information Institute defines the term “public lands” as “any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management…” Internet website accessed April 2005. <http://straylight.law.cornell.edu/uscode/html/uscode43/uscode43_00001702----0000-.html>

\textsuperscript{31} 87\textsuperscript{th} Congress; Public Law number unknown.
This act has been subject to debate and controversy since its enactment due to its exclusion of public participation and Congressional oversight. It is the Act by which President Richard Nixon created the Environmental Protection Agency (E.O. 11514, 1970). A proposed amendment to the 1906 Antiquities Act, the 1999 National Monument NEPA Compliance Act, would require public participation and Congressional oversight consistent with requirements established under the 1969 National Environmental Protection Act (NEPA). Cultural resources management consultant Thomas King\textsuperscript{32} notes that the 1906 Antiquities Act was ruled to be unconstitutionally vague by the Ninth Circuit Court of Appeals, in \textit{United States v. Diaz}, 1974. Nevertheless, by Executive Order President Jimmy Carter established the Alaska natural gas transportation system (E.O. 12142, 1979) and President Bill Clinton created the Escalante-Grand Staircase National Monument (Proclamation 6920, 1996).

The 1966 National Historic Preservation Act (NHPA) establishes the National Register of Historic Places and its criteria of eligibility for nomination and listing of cultural resource sites. Most archaeology in the United States seeks to establish the significance of cultural resources by standards of recognition, primarily by listing in the National Register of Historical Places. NHPA establishes State Historic Preservation Officers (SHPO), and Tribal Historic Preservation Officers (THPO), and procedures for coordination between federal land managers and the SHPO or THPO. Articles of key significance within NHPA are Section 106 and Section 110. NHPA

Section 106 conditions dominate the work of cultural resource professionals. Section 106 establishes a requirement for consultation with the Presidential Advisory Council on Historic Preservation prior to taking actions affecting a cultural resource with potential

\textsuperscript{32} King, \textit{Cultural Resource Laws and Practice}, 26-27.
for listing on the National Register of Historical Places. It specifies the procedures for eligibility, nomination and listing of cultural properties to the National Register of Historic Places. Section 110 requires that federal agencies locate, inventory and consider for nominations all cultural properties within their jurisdiction. It establishes explicit guidelines for coordination between public land managers and the Secretary of the Department of the Interior regarding actions that may affect cultural resources with the potential for listing on the National Register of Historical Places or, lacking the potential for listing, that may nonetheless be affected by the decisions or actions of land managers.

The 1969 National Environmental Policy Act (NEPA) establishes that federal agencies must integrate environmental values into their decision making and that important historic, cultural or natural resources have value as our national heritage. This act is a landmark of environmental legislation that establishes requirements for preparation of environmental impact statements (EIS) by federal agencies prior to undertaking actions affecting public lands. Subsequent amendments to NEPA, especially those of 1978, established the primary planning guidelines followed by federal agencies today. These include seeking public involvement in the planning and review process and addressing proposed actions, alternative actions (including a “no action” alternative) and probable environmental outcomes of each alternative for management actions affecting public lands.

Executive Order 11593 of 1971 mandates that preservation of cultural resources be incorporated into the management plans and programs of agencies within the executive branch of the U.S. government (federal agencies). It stipulates that the government provide leadership in the preservation and protection of cultural resources on public
lands. It compels federal agencies to locate, inventory and nominate cultural resources with potential for listing in the National Register of Historic Places. It provides for protection of nominated properties during the nomination and evaluation process, allows for disposal of public lands that do not qualify for listing and provides for procedures (outlined in 36 CFR 800) to be followed if the SHPO does not concur with federal agency evaluation regarding the listing a property in the National Register of Historic Places.

The 1974 Archaeological and Historic Preservation Act (AHPA) amends the Archaeological Recovery Act of 1960 that sought preservation of cultural resources potentially affected by federal dam construction. The 1974 act expands the scope of the 1960 act to require preservation of cultural resource data that might be affected by any federal (or federally funded) land modification. This act provides for financial transfer (to one percent of project cost) for the salvage of cultural resources or site data related to land modifications other than dam building.

The Archaeological Resources Preservation Act of 1979 establishes civil and criminal penalties that can be assessed against individuals for damages to or destruction of cultural resources on public lands. This act recognizes that many cultural resources are “at risk” because of their commercial market value (especially illegal market value) and their vulnerability within isolated or remote public lands. It strengthens legislative acknowledgement of cultural resources as irreplaceable parts of the nations’ heritage.

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33 This requirement was first established in the 1966 NHPA, but was weakly stated and initially ignored by the agencies.
The Federal Land Policy Management Act of 1976 (FLPMA) constitutes the organic act for the BLM. It specifies that management actions follow a land use planning process incorporating the principles of multiple use and sustained yields in order to protect and preserve resources and provide for recreation and occupancy uses. It provides for public land disposal and acquisitions through sales, exchanges and withdrawals. It establishes the requirement for maintenance of inventories of BLM lands and their resources. It continues to be an authority argued in case law.\(^{35}\)

The Southern Nevada Public Lands Management Act of 1998 (SNPLMA, Public Law 105-263) establishes procedures for BLM sale of public lands within southern Nevada as a method for acquiring funding for improvements to other southern Nevada public lands. SNPLMA further specifies the provisions for public land sales allowed by FLPMA. Much of the NHPA, Section 110 work associated with Red Rock Canyon is accomplished through funding provided through SNPLMA.

B. Specific Authority

The Red Rock Canyon Recreation Lands (RRCRL) Act of 1967 dedicated 62,000 acres of Red Rock Canyon, Las Vegas, Nevada, as Class I, High Density recreation area. The Recreation Lands classification replaced a 1964 federal protective withdrawal of 10,000 acres and implemented a recommendation made in the 1965 Nevada State Outdoor Recreation Plan to protect and develop Red Rock Canyon for recreational purposes.


\(^{35}\) Including an April 2004 decision against the BLM resulting in a settlement in which BLM renounced the authority to designate wilderness areas through FLPMA; *BLM and The Wilderness Society v. Southwest Four Wheel Drive Association and Las Cruces Four Wheel Drive Club*. 

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The Act established jurisdiction of the NCA solely under authority of the BLM with Nevada Division of State Parks retaining jurisdiction only for certain inholdings and for wildlife within the NCA consistent with applicable law. The Act clarified the statutory purpose of the NCA as "to conserve, protect and enhance...the unique and nationally important geologic, archeological, ecological, cultural, scenic, scientific, wildlife, riparian, wilderness, endangered species, and recreation resources of the public lands therein contained...." It expanded the administrative boundaries to 83,100 acres, proscribed allowable uses, and required a general management plan (GMP) to be prepared within three fiscal years following enactment of the establishment act. The GMP was to include, among other things, a cultural resources management plan.

The Red Rock Canyon National Conservation Area Boundary Expansion of 1994 more than doubled the size of the NCA increasing the property to approximately 195,610 acres. The Act also amended the deadline imposed in the 1990 NCA establishment act for completing the GMP within three-fiscal years and extended the deadline to January 1, 1997.

The Clark County Conservation of Public Land and Natural Resources Act of 2002, Title I: Red Rock Canyon National Conservation Area Land Exchange and Boundary Adjustment, Red Rock Canyon National Conservation Area Protection and Enhancement Act of 2002, further expanded the NCA to its current size of approximately 198,000 acres. It specified the conveyance of holdings subject to the Red Rock Canyon National

Conservation Area Establishment Act of 1990, SNPLMA and other applicable laws, although it neglected to specify the exact size of the expansion. This oversight repeats the omission of the 1994 and 1998 boundary expansions such that the exact size of the NCA is not easily verifiable.

Part II. Regulatory Guidance


Statement for Red Rock Canyon National Conservation Area. These plans provide an historical timeline of BLM efforts to implement the directives of legislation, federal land acts and expansion acts affecting Red Rock Canyon.

A. The 1968 Master Plan and 1975 Environmental Impact Statement

The 1968 Master Plan for Red Rock Canyon Recreation Lands (1968 Master Plan) was the governing document for Red Rock Canyon Recreation Lands (RRCRL) from August 1968 to 1975. In 1969 the Nevada State Division of Parks entered into a contract with the BLM for joint management of the RRCRL. Management responsibilities were divided such that the BLM managed 45,000 acres (Calico Hills south to Pine Creek) and the Nevada Division of Parks and BLM jointly managed the remaining 17,000 acres (Oak Creek south to Cottonwood Valley), with the exception of inholdings. Actions taken under the 1968 Master Plan included improvements to camping and picnicking facilities, followed by the 1972 completion of Segment A of the Scenic Drive. Next was to be the development of interpretive facilities on the canyon floor, followed by developments in the canyons and on top of the Sandstone Bluffs.

In 1972, public criticism about excessive road cuts and landfills made during construction of Segment A resulted in public meetings that led to an agreement to write an environmental impact statement (EIS) to govern management actions within the RRCRL in compliance with the National Environmental Policy Act of 1969. A year of planning in preparation for writing the EIS revealed serious public dissatisfaction with

39 The 2000 Proposed General Management Plan and Final Environmental Impact Statement was adopted as the 2005 Resource Management Plan in September 2005. The 2005 plan is not listed here as it is outside the timeframe of the study period.
40 Inholdings include private property in Calico Basin, Bonnie Springs Ranch, Oliver Ranch, Blue Diamond and Mountain Springs, plus Nevada state property at Spring Mountain Ranch.
41 The Sandstone Bluffs are also known as the Wilson Bluff Cliffs or, more simply, the escarpment.
the developments proposed in the 1968 Master Plan. The EIS was completed in 1975 and gained public favor by having omitted plans for extensive developments in the canyons and on top of the Sandstone Bluffs. Plans for construction of the visitor center and Segment B of the Scenic Drive were included, but recreational amenities would be primitive and minimal throughout the rest of the RRCRL. A new master plan in support of the 1975 EIS was to be developed under a joint contract with the BLM and Nevada Division of State Parks.

B. The 1976 Master Plan

The 1976 Master Plan for Red Rock Canyon Recreation Lands (1976 Master Plan) served as the governing document for Red Rock Canyon from 1977 to 1995. It was authorized and publicly distributed in mid-1977. At the time, annual visitation on the Scenic Drive was estimated at approximately 300,000 people. Prepared by Royston, Hanamoto, Beck and Abey, Landscape Architects, the plan relied on public input, site (archaeological) reconnaissance and input from other recreation agencies to provide guidance for proposed use, facilities planning and resource protection. With the 1990 reclassification of Red Rock Canyon from recreation lands to national conservation area, and expansion of the property to 83,100 acres, the 1976 Master Plan was to be replaced by a general management plan (GMP) in compliance with the establishing legislation for the NCA.

C. The 1994 General Management Plan

In April 1994, a Proposed General Management Plan for the Red Rock Canyon National Conservation Area (1994 Plan) was drafted and issued for public comment.

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42 The GMP is a National Park Service planning document, but in the establishing act Congress stipulated that the BLM prepare a GMP.
Response to the plan indicated strong public interest in the preparation of an environmental impact statement (EIS) along with the GMP. Before the 1994 Plan could be finalized, or a decision made regarding preparation of an EIS, a November 1994 expansion bill more than doubled the NCA increasing the size to 195,610 acres. The expansion made the 1994 Plan obsolete and an interim plan was prepared to bridge the gap between the outdated 1976 Master Plan and the forthcoming GMP. The *1995 Interim General Management Plan* (Interim Plan) was issued in June 1995.

D. The 1995 Interim General Management Plan

The *1995 Interim General Management Plan* (IGMP) was the governing document for Red Rock Canyon NCA from June 1995 to September 21, 2005. It replaced the outdated 1976 Master Plan and provided guidance to the BLM for administrative actions to be taken in its management of Red Rock Canyon NCA after the draft 1994 General Management Plan was made obsolete after the 1994 Boundary Expansion Act more than doubled the size of the NCA. It was only intended to remain in place for two years, until 1997, while the revised, final general management plan (resource management plan) was completed. The policies within the IGMP guided the BLM its management actions with regard to the preservation of cultural resources for ten years without having been through the public scoping process. For this reason, I examine the specifications within the IGMP in detail whereas the specifications were overlooked in the discussions of the 1968 and 1976 Master Plans.

Cultural resources were addressed within three sections of the IGMP: Section 1 Planning Issues, Section 2 Standard Operating Procedures and Section 2 Actions Selected to Address Key Issues. The sections repeated several of the same points, but provided
issue descriptions, defined allowable uses, encouraged cooperative agreements with other governmental agencies (including Indian Tribes), stipulated methods of protection and specified management objectives. The following briefly summarizes these sections and addresses their relevance to compliance with cultural resource policy.

D.1. Section 1, Planning Issues: Section I noted that eight key issues resulted from public scoping meetings held in January and February 1992. "These key issues were used as a basis for the development of preferred actions and alternatives" for BLM management of Red Rock Canyon.

Issue 3 directly addressed cultural resources, posing the question, "How should cultural and paleontological resources be managed?" The "Background" statement, Section 1, Issue 3, identified normative values associated with the benefits of preserving and protecting cultural resources, as follows:

The study of cultural resources enhances our present knowledge of plants and animals, and man's interaction with plants, animals and fellow man. It allows us to understand the process that has led us to where we are today, and can help us deal with future situations. The more intact a cultural site is, the more likely it is to yield valuable scientific information.

The quotation embodies the belief that enhancing present knowledge and allowing understanding to help us deal with the future through acquiring scientific information may result in societal benefits. This is clearly a moral judgment, albeit the implied basis of the judgment – that scientific information leads to knowledge and beneficial understanding – is not addressed here.

An "Opportunities" statement included in Section 1, Issue 3, further suggested that interpretation serves a dual purpose in the preservation and protection of cultural

44 Ibid., 10.
resources. Interpretation “educates the public about past cultures in the area and
discourages destruction and vandalism of cultural and paleontological resources.” A
concern about avoiding damage to cultural resources through intentional actions (such as
vandalism and looting) or inadvertent actions (such as failure to recognize cultural
resources/sites or the consequences of actions including touching or removing artifacts)
represented the moral choice of valuing the human past as well as the human present.

D.2. Section 2, Standard Operating Procedures: Section 2, Standard Operating
Procedures, identified the legislation that governs the BLM’s responsibility for managing
cultural resources within Red Rock Canyon. Of the three sections within the IGMP
addressing cultural resources, the most stringent and specific is this section: “BLM is
required to identify, evaluate and protect cultural resources on public land under its
jurisdiction and to ensure that Bureau authorized actions do not inadvertently harm or
destroy non-federal cultural resources. These requirements are mandated by Section 110
of the NHPA 1966 and amendments, the NEPA 1969, Executive Order 11593 (1971),
and the ARPA 1979, together with 36 CFR 800.”

This section notes that “the activity that places cultural resources most at risk is
unplanned public activity.” Methods of protection are also addressed in this section,
specifically, avoidance, mitigation and project/action abandonment.

D.3. Section 2, Actions Selected to Address Key Issues: In Section 2, Actions
Selected to Address Key Issues, the subsection “Cultural Resources” identified three
objectives of cultural resources management. These objectives are managing for

46 Ibid.
information potential, managing for public values and managing for conservation. The section identified the associated values of each objective, as follows:

- **Information Potential:** “Cultural resources are capable of contributing useful scientific, historic and management information.”
- **Public Values:** “Cultural resources possess identified sociocultural, educational, recreational, and other public values.”
- **Conservation:** “Cultural resources have overriding scientific or historic importance.”

In addition, management direction is provided in the form of seven recommended actions. These actions include: nomination of sites for listing on the National Register of Historic Places, installation of interpretive signage that explains the resources, installation of accessible trails at two sites, maintenance of vehicle closure and protection of specific rock art panels, installation of ARPA signs at all rock art sites, consultation with Native American groups and individuals and development of a cooperative agreement, and management for information potential upon approval of a plan for study by an accredited institution.


In July 1999, long overdue (based on the extended deadline for completion by January 1, 1997) a *Proposed General Management Plan and Draft Environmental Impact Statement for Red Rock Canyon National Conservation Area* (Draft GMP), providing guidance for managing the entire NCA (approximately 196,000 acres), was

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47 Ibid., 38.
48 Ibid.
49 Ibid.
issued for public review and comment. In December 2000, after incorporating comments, the *Proposed General Management Plan and Final Environmental Impact Statement for Red Rock Canyon National Conservation Area* (Proposed Final GMP) was published.

During the final 30-day protest period, early in 2001, the BLM received five protests, including one from the U.S. Fish and Wildlife Service (USFWS) regarding the plans for managing wild horses and burros in the herd management areas within Red Rock Canyon. Each protesting party was contacted and interviewed to determine how best to resolve the specific protest. Upon interviewing the protesting parties, one of the five was found not to be a genuine protest and was retracted, three were resolved and the final one, the USFWS protest, necessitated a time extension. Following a formal response to the USFWS, a 60-day extension was granted by the BLM to allow the USFWS to write a biological opinion on the wild horse and burro issue.

By the time the USFWS biological opinion was received by the BLM, the planner responsible for the finalizing the GMP had vacated his position with the BLM Las Vegas District Field Office. The reassignment of the responsibility for finalizing the GMP was given to another staff member who, very soon thereafter, was reassigned before the GMP was completed. Concurrent with the GMP protest resolution and finalization effort, the workload increased for the BLM Las Vegas District Field Office staff due sales of public land in Clark County authorized through the Southern Nevada Public Land Management Act (SNPLMA)\(^{50}\) and the effort to finalize the GMP was sidelined. With the advent of the annual SNPLMA land sale/nomination/award cycle, the BLM Las Vegas District Field Office began the struggle of managing the work created by the nomination and award.

\(^{50}\) The impact of the SNPLMA land sale/nomination/award cycle cannot be easily dismissed. In July 2000, SNPLMA Round I, alone, awarded $894 million dollars to the BLM for projects in Clark County, NV.
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Part III. Archaeological Inventories


\textsuperscript{XX} The impact of the SNPLMA land sale/nomination/award cycle cannot be easily dismissed. In July 2000, SNPLMA Round I, alone, awarded $894 million dollars to the BLM for projects in Clark County, NV.


research projects from 1987 to 1991. There is minor overlap in the date ranges of the categories because Myhrer places more emphasis on the purposes behind the surveys rather than on when they were made.

For the earliest archaeological records, I relied on Myhrer’s review of the field reports regardless of whether or not original records are available for review. He notes that archaeological surveys made before enactment of the NHPA (1966) and NEPA (1969) were conducted when protocols for site surveys were not yet standardized. Site numbering, location recording, data recording and surveying parameters varied from survey to survey. Some data were never recorded on the appropriate forms for the time. Myhrer’s report adequately resolved the variances in these early records for the purposes of this study.

In addition to Myhrer’s 1991 Class I Report, a comprehensive 1980 report prepared by the U.S. Department of the Interior, Bureau of Land Management, titled Final Environmental Assessment, NV-050-9-30: Oil and Gas Leasing in the Red Rock Canyon Recreation Lands (1980 Oil and Gas EA) provided details of archaeological surveys, as well as land use plans (with accompanying maps) and recreational data. A 1985 report prepared by archaeologist Kevin Rafferty, “Cultural Resource Overview of the Las Vegas Valley,” published by the Bureau of Land Management, Nevada, provided details of archaeological work at Red Rock Canyon and the greater Las Vegas valley that substantiated the information provided in 1991 Class I Report and the 1980 BLM Oil and Gas Leasing EA. Together the three reports provided a fairly complete record of these surveys by including helpful data such as project leader, scope, location and report number thus minimizing the possibility of mistaking repeated surveys to some sites as
single surveys or double listing others. These data served as the source material for the empirical analysis presented in Chapter IV and prefaced in Chapter III.

A. Initial Exploration and Site Identification, 1930 to 1969

Although the first archaeological survey of Red Rock Canyon is reported by Myhrer as occurring in 1930, in the capable hands of renowned archaeologist Mark Harrington, who was director of the Civilian Conservation Corps at the time, there are no other published studies until 1962. Archaeologists Richard and Mary Shutler recorded a general reconnaissance survey, in 1962, the same year that avocational archaeologist Karma K. Miller received permission from the BLM to survey Willow Spring. These surveys pre-dated the 1964 withdrawal of 10,000 acres of Red Rock Canyon from the public domain into protective withdrawal status, the BLM's selection as governing agency (after National Park Service declined) and the 1966 enactment of the NHPA.

In 1967, the RRCRL was dedicated and master plan preparation began as a joint effort between the BLM and Nevada Division of State Parks for the 62,000 acre public land. NHPA Section 106 was amended. Dr. Richard Brooks, with Nevada Archaeological Survey (NAS), Desert Research Institute, University of Nevada, Las Vegas, was contracted by the BLM to survey the new RRCRL and from 1967-1969 conducted a series of small surveys covering over 3,300 acres. The results of these surveys were recorded as Cultural Resources Report No. 5-89. In addition to Willow Spring, other areas surveyed included Red Spring/Calico Basin, Sandstone Quarry, Brownstone Canyon, the escarpment from Mountain Springs to the Red Rock Summit and two Calico

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Basin area cave sites (north of Red Spring/Calico Basin on private land). It should be noted that not all surveys resulted in the finding cultural sites, artifacts or features.

B. BLM Contracted Surveys, 1968 to 1978

In 1968, the RRCRL finalized and adopted its first Master Plan. An emphasis was placed on evaluating the potential impacts of increased visitation and recreational uses to known and potential sites consistent with the designation of Red Rock Canyon Recreation Lands. Congress amended NHPA Section 110 (1968), and enacted the NEPA of 1969. Construction of Scenic Drive, Segment A was completed (1972). The 1975 EIS was issued followed by the 1976 Master Plan (replacing the 1968 Master Plan). Congress authorized the FLPMA of 1976.

Between 1968 and 1978, Dr. Richard Brooks, NAS, University of Nevada, Las Vegas surveyed an estimated 10,000 acres, at Class III level standards, at the request of the BLM. Survey methodology and reporting procedures became more standardized as it became apparent that previous survey data are not, in all cases, verifiable. The BLM was more active in directing survey activities. Possible nominations to the National Historic Register of Places of several sites were considered for sites including La Madre Canyon, Willow Spring, White Rock Springs, Sandstone Quarry, Red Spring/Calico Basin, Pine Creek Canyon and Lone Grapevine Spring. Brownstone Canyon was nominated for National Historic Register of Places listing in 1977.

By 1978, over 300 archaeological sites (both prehistoric and historic) were recorded within Red Rock Canyon. In addition to the areas noted above they included Spring Mountain Ranch, the Red Rock Visitor Center, Lost Creek, First Creek, Oak Creek, Ice Box Canyon, Rocky Gap Road, the Red Rock escarpment (Sandstone Bluffs), Calico
Springs, Blue Diamond, the Loop Road, Blue Diamond Hill, Highway 159, the Stripper’s (Hermit’s) Cabin, and the Old Spanish Trail/Mormon Trail.

C. Inventories in Compliance with Federal Actions, 1975 to 1991

BLM contracted for a series of small, compliance-oriented archaeological inventories totaling 820 acres (ranging in size from 1 to 160 acres each) at Class III level standards. BLM land use surveys reported that the areas of highest visitation and recreational use at Red Rock Canyon were also known, or potential, archaeological sites. Brownstone Canyon was accepted for listing on the National Register of Historic Places in 1982. Myhrer reported that the direction of BLM cultural resources management at Red Rock Canyon was moving toward proactive preservation. BLM worked internally on a campaign to improve its public image by pursuing responsibilities for a new public land classification “National Conservation Area.” Red Rock Canyon more than doubled in size following its reclassification as a National Conservation Area (1990).


BLM archaeologists Stanton Rolf, Keith Myhrer and Kevin Rafferty excavated the Willow Spring “handprints” midden and shelter, in 1987, and Red Spring/Calico Basin archaeological complex, in 1991. The Willow Spring site was subsequently fenced, interpretive signage installed and a paved, accessible trail provided from the nearest parking area. The Red Spring/Calico Basin archaeological complex was relegated to service as a picnicking area after failing to qualify for listing on the National Historic Register of Places. The Stripper’s Cabin (renamed Hermit’s Cabin by Rafferty), surveyed in 1987, was subsequently scavenged in the mid-1990’s as a BLM “clean-up” project.

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after failing to qualify for listing on the National Historic Register of Places. The remnants of an automobile stripping operation, circa 1950’s, were removed and disposed of following analysis of Myhrer’s archaeological site survey records and formal report of the evaluation.

A section of the Old Spanish Trail/Mormon Road that lies within Red Rock Canyon (Blue Diamond vicinity), surveyed and reported on by Rolf and Myhrer in 1987, was abandoned to no further action after being determined ineligible for nomination to the National Register of Historic Places, at that time. Subsequently, the designation of the entire, multi-state trail as a National Historic Trail, in 2002, provided the potential recognition for influencing the protection of the site.

CHAPTER III

EMPIRICAL ANALYSIS

This chapter addresses the procedural aspect of the general question, If cultural resources within Red Rock Canyon should and can be preserved and protected, how do law, BLM policy and archaeology work together to ensure that happens? The procedural aspect considers BLM actions taken at Red Rock Canyon from 1964 to 2004 in the practical context of the three linked questions: (1) How are federal cultural resources management policies communicated into directives to the BLM at Red Rock Canyon?, (2) are BLM actions compliant with relevant cultural resources management policies at Red Rock Canyon?, and, (3) have BLM actions to implement cultural resources management policies at Red Rock Canyon resulted in expected outcomes? Answering the three linked questions requires examining the actions of the BLM in order to determine its understanding of its purpose and role in preserving and protecting cultural resources at Red Rock Canyon, assessing the conformance of the BLM with the requirements of that role and evaluating the effectiveness of actions taken at Red Rock Canyon in accomplishing the intent of relevant cultural resources policies and laws.

As a general formula, an agency such as the BLM is directed to take actions to preserve or protect cultural resources at Red Rock Canyon from the date at which each relevant act of cultural resource management legislation is passed into law by Congress. Additionally, upon Congressional designation of special management area status for Red

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Rock Canyon (first recreation lands, later national conservation area) the BLM was directed to prepare a management plan consistent with the establishing acts for the area and with the Nevada State BLM's standard operating procedures (each state office has their own). The management plan includes guidance for preserving and protecting cultural resources at Red Rock Canyon, effective the date of being signed into effect by the Secretary of the Department of the Interior. The order of cultural resource management actions within the management plan specific to Red Rock Canyon are: conduct an archaeological site survey, produce an inventory of cultural resources (based on the archaeological site survey), monitor the cultural resources identified on the inventory, evaluate the archaeological surveys for scientific and informational uses, and develop public educational and interpretive materials.

As addressed in Chapter I, compliance is central to the analysis of empirical evidence presented in this chapter. In general, this chapter assesses the conformity of the BLM to established standards for cultural resource management as specified in legislation, the management plan and the BLM standard operating procedures applicable to Red Rock Canyon, from 1964 to 2004. In particular, this chapter reviews the records of selected cultural resources within Red Rock Canyon in order to identify effects (changes) to the resources during the period of study and address whether or not actions have resulted in expected outcomes. The term “compliance,” as used in this study, does not refer solely or particularly to conformance with the specifications of the National Historic Preservation Act, Section 106 (or other any sections).

This study examines a forty year timeframe, rather than a single point in time, because of the opportunity afforded by the availability of existing records spanning the
entire history of Red Rock Canyon as public land. A criticism of this longitudinal approach is that what happened in the past matters little in terms of the current needs for the preservation and protection of cultural resources. I counter this criticism with the argument that without recognizing that the legal obligations of the BLM for managing cultural resources have changed over time it is impossible to determine whether changes have occurred to cultural resources as a result of BLM management decisions or from other factors.

Research Phases

Phase 1: Reviewing sources of data sets addressing cultural resources management at Red Rock Canyon – Lacking existing similar case studies upon which to base the research design for the empirical study, it was necessary to survey a wide variety of sources to identify factors relevant to the study. The sources for the data analyzed in this empirical study of cultural resources at Red Rock Canyon from 1964 to 2004 were selected from the following: existing published literature, including BLM annual reports, records located in the Red Rock Canyon National Conservation Area visitor center BLM archival files and in the Special Collections Library, University of Nevada, Las Vegas, personal interviews with current and former BLM Las Vegas District (and the former Stateline Resource District) staff and personal interviews with staff in the national headquarters of the BLM.

Phase 2: Identifying and developing a Red Rock Canyon cultural resources data set – A challenge of this study was in selecting appropriate indicators, determining how to measure them and minimizing potential bias in the empirical study design. It is quite
common for empirical policy analyses to rely on familiar indicators such as dollars (funding, expenditures or revenues) or staffing (increases, decreases, excesses or shortfalls) or other types of numbers that may be statistically assessed and evaluated as results with which people are generally familiar. From the beginning, it was clear that many people lack familiarity with federal land management responsibilities, public land classifications and even with the location of regional public lands, including Red Rock Canyon. An extensive survey of policy analyses and case studies on topics ranging from environmental issues, to natural and cultural resources to sustainable building practices were reviewed, as well as a lesser number of publicly published archaeological, cultural resource and historical reports, and “gray” publications (not generally available for public review, made available to me by permission of BLM Las Vegas District Field Office staff). From this research, I sought to identify indicators and measures that held salience for the study topic, yet framed the analysis in concepts familiar to readers of this study and, potentially, subsequent researchers.

The framework for the empirical analysis of cultural resource policy at Red Rock Canyon was guided by archaeologist Keith Myhrer's DDD 1991 Class I Cultural Resources Report. The work of cultural resource management consultant Thomas F. King EEE provided guidance in analyzing Red Rock Canyon's archaeological reports in relation to the changes in archaeological practices and cultural resource laws that occurring over the period studied. Implementation studies reported in the National Park Service journal


“CRM” provided examples of methodologies and measurements successfully applied to assess compliance in similar studies. Myhrer’s 1991 Class I Cultural Resources Report and the BLM’s 1980 *Oil and Gas Leasing Environmental Assessment* are the primary sources of the archaeological data.

The work of James Dearing and Everett Rogers in public agenda-setting inspired the general longitudinal approach of the empirical study and, in particular, suggested the use of time sequence as an aid in analysis. Dearing and Rogers claim that, “Longitudinal research, in which data from more than one point in time are collected, is well suited to investigating a process, which occurs over time…” and provides “improved understanding of the process.” Policy theorist Frank Fischer’s policy deliberation framework, which encourages reviewing empirical analyses in the context public deliberation and social values, served as the model for the evaluation and conclusions of the empirical analysis.

The following data sets were examined for use in this study, but were not selected for the reasons given:

- BLM Las Vegas District staffing: Staffing data is a familiar resource commonly measured in analyses, but it is only available for limited years. The data is also only partial relevant, because non-paid staff (volunteers) is not accounted for.

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• BLM Las Vegas District funding: Funding data is a familiar resource; however, detailed financial data specific to Red Rock Canyon is not readily available and is only partially relevant, because resources contributed by non-profits are not accounted for (Red Rock Canyon Interpretive Association and Friends of Red Rock Canyon, among other groups).

• Red Rock Canyon visitation (from annual statistics for vehicles and visitors on the Scenic Drive, at the visitor center and at selected sites within Red Rock Canyon): This data is available from 1973 for vehicles on the Scenic Drive and from 1982 for the Visitor Center, but is only partially relevant because it is not available for each of the cultural sites within Red Rock Canyon.

• Population growth (from annual censuses of Las Vegas and Clark County, Nevada): This data is available and familiar, but is overly general.

• Political affiliations (of U.S. Congress and Presidents in years of Red Rock Canyon enactments, expansions and other significant actions): This data is available and familiar, but is only relevant to limited aspects of the study.

• BLM Annual Report listings of recorded archaeological and historic sites (number of recorded and assessed cultural properties): This data is overly general and the method of calculation changed significantly in 2002 from the preceding years.

The primary sources of the data set selected for use in the study are two, BLM technical reports that comprehensively surveyed all archaeological studies done at Red Rock Canyon from the early 1960’s to 1990. The data set selected can be classified as, “BLM reports of actions to preserve and protect selected cultural resources within Red Rock Canyon.”
This data set is not a commonly familiar one for this type of empirical analysis, but its availability due to the publication of the 1991 Class I Report and the 1980 BLM Oil and Gas Leasing EA is fortuitous. The sources provide comprehensive reviews the work done from the early 1960's to 1991, although provide no information on the period from 1992 to 2004. This limitation is accepted due to the confidentiality with which the BLM typically holds this type of data and the fact that data for approximately 60% of the study period was available.

The data set selected is viewed as having both high relevance and high salience to the three linked study questions noted in this chapter’s introduction (and in Chapter I). It is specific to the cultural resources featured within the empirical study, adequate data is available to allow assessment from more than one perspective and the data is verifiable as having been derived from more than one source. In addition, the use of a data set based on the 1991 Class I Report facilitates correlation between the results of this study and further analyses utilizing the 1991 Class I Report.

Phase 3: Developing a framework for analysis – After establishing a data set, a framework for analysis was sought to easily analyze and assess the material presented over the forty year study period. Myhrer’s 1991 Class I Report provided an example, but posed a limitation as well. Myhrer’s assessment of cultural resources management at Red Rock Canyon up to 1991 was made by possible by his own professional qualifications and expertise as an archaeologist. This researcher, lacking the professional qualifications and training, or the supervision of an archaeologist under which to conduct the research, utilized Myhrer’s framework nonetheless. This may pose limitations for future use of the information resulting from this study, but is adequate for the purposes of the thesis.
Instruments for reporting changes to cultural resources have become somewhat more standardized since publication of the 1991 Class I Report, but instruments for measuring changes remain limited. Currently, the Inter-Mountain Archaeological Computer System (IMACS) is the official instrument for official archaeological recording in Nevada. The Nevada Site Steward program and the Nevada Rock Art Foundation (NRAF) program, both of which train volunteers to monitor of cultural sites throughout Nevada, but the BLM has chosen not to include Red Rock Canyon in the site steward program. IMACS information specific to cultural sites at Red Rock Canyon was, therefore, not applicable for use in this thesis.

For this study, a comparative approach was taken whereby the years when cultural resource actions occurred were identified and the report results, if available, were compared to identify trends for specific cultural resources at Red Rock Canyon. Trends are of three kinds: no effect, negative effect, positive effect. “No effect” means an identifiable change has not occurred to the cultural resource. “Negative effect” means a detrimental change has occurred to the cultural resource. (Negative effect is sometimes referred to as “adverse effect,” but, as noted in Chapter I, the term “negative effect” is used throughout this thesis in preference of the term “adverse effect.”)

“Positive effect” means that a beneficial change has occurred to the cultural resource.

Phase 4: Selecting a subset of cases for in-depth study – After establishing a framework, a subset of cases was sought that could be examined at various points in time. Four major time periods were identified: early Red Rock Canyon Recreation Lands (RRCRL; 1967-1976), late RRCRL (1976-1990), early Red Rock Canyon National Conservation Area (RRCNCA, 1990-1994) and late RRCNCA (1994-2004). The early
RRCRL and late RRCRL and early and late RRCNCA timeframe classifications have never been used by others, to my knowledge, and it is important to note that they have been arbitrarily determined. As noted in Chapter II, the 1968 Master Plan was in effect until it was replaced by the 1976 Master Plan. The 1976 Master Plan remained in effect until it was replaced by the 1995 Interim General Management plan, but more importantly, in 1990 Red Rock Canyon’s boundaries (and size) changed significantly when it became a conservation area. Again, in 1994, Red Rock Canyon’s size more than doubled. For the time periods designated early and late RRCNCA these changes in size have been selected to define the limits of the time periods.

While most of the cultural resources within Red Rock Canyon are identified with numbers correlating to recognized systems (Smithsonian trinomials, BLM, IMACS), the 1991 Class I Report and most other BLM documents refer to Red Rock Canyon’s cultural resources simply by locale name. The locale names correlate with physical locations within Red Rock Canyon. Where multiple sites are present within some locales, they are not distinguished in any way in this system. This level of detail is adequate for the purposes of this empirical analysis, however.

Initially, I attempted to categorize all of the cultural resources known to exist within Red Rock Canyon (as of 2004) into the three subzones established in the 1991 Class I Report - Red Rock Summit Subzone, North Red Rock Escarpment/La Madre Mountain Subzone, and South Red Rock Escarpment/Cottonwood Valley Subzone. This did not result in an organization that facilitated an analysis over time, because the studies were not completed in an order that could be easily correlated within a linear listing by year. Some cultural resources were the subject of multiple studies and the geographical
boundaries of the studies were not, in all cases, consistent in each subsequent study. In
addition, the archaeological studies listed in the 1991 Class I Report included work done
outside of the administrative boundaries of the BLM’s jurisdiction.

This last issue was not a limitation to the 1991 Class I Report, but was a restrictive
element to this study because of the unavailability of maps that clearly delineated the
changing property lines of Red Rock Canyon over time. Two maps were found that
indicated areas that were archaeologically surveyed at Red Rock Canyon. These maps,
dated June 1980 (in the BLM’s 1980 Oil and Gas Leasing EA) and June 1985 KKK,
(published by Rafferty) indicated surveyed parcels on sections of 15’ USGS maps.

Finally, I determined that rather than expend further research time into clarifying this
issue, the cultural resources data set would be limited to those cultural resources
identified in the 1991 Class I Report as most sensitive (high in quality and high
likelihood of intensive impact due to visitation, recreation and management actions), plus
significant identifiable cultural resources located in the 1994 boundary expansion area, if
any. Reduced to a more manageable size, the revised data set allowed the cultural
resources to be assessed in multiple dimensions, including correlations relevant to the
timing and influence of BLM actions at Red Rock Canyon. The adjustment resulted in
limiting the case study to the following cultural resources: Brownstone Canyon, Red
Spring/Calico Basin, Sandstone Quarry, Lost Creek and Willow Spring. The Old Spanish
Trail/Mormon Road was selected as representative of the 1994 boundary expansion area.

Phase 5: Collecting information on selected cultural resources cases at Red Rock
Canyon – With the cases chosen, the identification of actions that could be classified as

KKK Figure I; Kevin Rafferty, Cultural Resources Overview of the Las Vegas Valley, Technical Report No. 13, (Reno, Nevada: Bureau of Land Management, 1984), 4.
preservation and/or protection measures proceeded. Available records were surveyed to identify reports of action and reports of condition affecting the selected cases. These actions are addressed in the “Research Results” and “Findings” sections of this chapter.

Phase 6: Case analysis – In the final phase of the empirical research, the trends that were identified (as described in Phase 3) were correlated with the enactment of cultural resource legislation and with the publication of BLM management plans for Red Rock Canyon. Initially, significant dates associated with the enactment of cultural resource legislation were held rather rigidly as frames within which the trending data was expected to fit. Similarly, significant dates associated with the publication of BLM management plans for Red Rock Canyon were initially held as frames within which the trending data was expected to fit. Given the range of dates (pattern) in the analysis, this approach was determined to be ineffective. Instead, in the final analysis, the dates of the enactment of cultural resource legislation and dates of publication of BLM management plans were held as contributing to the actions taken by the BLM to preserve and protect cultural resources at Red Rock Canyon rather than as initiating the actions and then considered in the context of their influence on expected outcomes.

**Research Results**

From the Chapter II literature search and search of the BLM archival files, three elements emerged as the most salient for the purposes of addressing the empirical analysis of the study: (1) changes in cultural resource legislation, (2) changes in archaeological paradigms and practices and, (3) the changes in Red Rock Canyon’s classifications and boundaries. From the 1960’s through the early 2000’s, cultural
resource legislation became more comprehensive and more enforceable with an increasing number of prosecutions for crimes such as illegal trafficking in antiquities, looting and vandalism. Between the 1960's and 1990's, the emphasis in archaeology evolved in its focus from general field salvage, to field salvage for the purposes of developing information potential (scientific or educational), to preservation archaeology, to site patterning (sensitivity or predictive modeling using nondestructive techniques). The 1990 Red Rock Canyon classification change from recreation land to national conservation area imposed different planning requirements upon the BLM and on the resources within Red Rock Canyon's expanded boundaries. This suggested that different management objectives would be imposed as well due to the connotations associated with the change from "recreation" land to "conservation" area.

The elements served as the basis for addressing the three linked question raised in Chapter I. The first question, "How are federal cultural resources management policies communicated into directives to the BLM at Red Rock Canyon?" addresses the general laws of cultural resource legislation that comprehensively directs public agencies and private citizens, including the BLM, in the management of cultural resources existing within public lands. The second question, "Are BLM actions compliant with relevant cultural resources management policies at Red Rock Canyon?" addresses the specific laws and policies that are particular to Red Rock Canyon, including the establishing acts, boundary expansions and management plans. The third question, "Have BLM actions to

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implement cultural resources management policies at Red Rock Canyon resulted in expected outcomes?" addresses the effects of the general and specific authority and BLM policies on BLM actions to preserve and protect cultural resources within Red Rock Canyon. The following discussion examines each question in depth.

**Question 1**

How are federal cultural resources management policies communicated into directives to the BLM at Red Rock Canyon? This question required examination of the general laws authorizing cultural resources management by the BLM to in order to accomplish two tasks necessary to the question. The first task was to identify language in the laws or other claims that identified them as directly relevant to cultural resource preservation and protection by federal agencies. The second task was to identify the means by which the BLM is notified of their responsibilities under the law. The eight pieces of cultural resource legislation identified in the literature review as containing language relevant to communicating direction to the BLM were the sources for the research. To accommodate time limitations for case development these eight laws, selected from a much larger body of cultural resources legislation with which the BLM must comply in its general responsibilities for managing public lands, were chosen based on their relevance to the BLM's governance of Red Rock Canyon.

**Task 1 -** The relevance of these laws was initially determined based on the frequency of citation in outdated master plans and draft management plans for Red Rock Canyon.

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**Note:** The outdated plans for Red Rock Canyon are the 1967 Master Plan, 1976 Master Plan, 1994 Draft General Management Plan, 1995 Interim General Management plan, 1999 General Management plan/Draft
To confirm the relevance of the eight laws to the work of BLM cultural resource specialists, BLM staff was informally interviewed. Eight BLM staff respondents were selected (Appendix A), which included two recreation planners, four park rangers, two archaeologists (all with the BLM Las Vegas District Field Office) and one senior natural resource specialist (from the BLM Washington, D.C. Office), who were interviewed over a six year period, from 1999 to 2004. Six of the eight respondents were interviewed on more than one occasion. All interviews were conducted for the purposes of either clarifying the legal authority that directed the BLM’s planning process, determining the status of the general management planning process for Red Rock Canyon, clarifying the cultural resources management process at Red Rock Canyon, or for identifying the status of cultural resources management monitoring and surveying of specific cultural resources within Red Rock Canyon.

Each of the interview respondents indicated that all eight of the cultural resource laws are relevant to Red Rock Canyon. The National Historic Preservation Act of 1966 et seq. (NHPA; 16 USC 470a) was identified as the most relevant regarding BLM actions taken to preserve and protect cultural resources within the BLM Las Vegas District Field Office region and ARPA was identified as most relevant for law enforcement. Respondents 3, 7 and 8 indicated that the majority of BLM Las Vegas District Field Office cultural resource staff effort is taken up with NHPA, Section 106 compliance, however cultural resource staff assignments have excluded support for Red Rock Canyon (and Sloan


PPP The “BLM Stateline Resource Area, Las Vegas District” changed to the “BLM Las Vegas District Field Office” in 1996. The interviews all took place following the name change.
Canyon), since 2002. Exceptions have been made when BLM actions that might have resulted in effects to cultural resources within Red Rock Canyon were pending. (Between 1992, following the departure of Myhrer from the BLM Stateline Resource Area, and 2002, BLM Las Vegas District cultural resources staff would respond on an as-needed basis to requests for support from Red Rock Canyon as no archaeologist was formally assigned to Red Rock Canyon during this time period.)

The interview respondents seemed to suggest that narrowing the pool of laws addressed in the study and focusing only on NHPA and ARPA might be possible, but the literature search suggested that a strong correlation existed between the eight selected laws and the preparation of management plans for Red Rock Canyon (as required by the establishment acts and boundary expansion acts). To attempt to further identify the possible correlations between the eight laws and BLM actions taken at Red Rock Canyon, a timeline was constructed that listed time (in years), the dates of the enactment of the eight relevant cultural resource laws, Red Rock Canyon plans and Red Rock Canyon public land classifications. The timeline (Appendix A) plus the evidence from the literature search suggested that both the enactment of cultural resource legislation and the changes in classification of Red Rock Canyon (recreation land to national conservation area) have exerted moderate to strong influences during the study period, whereas the Red Rock Canyon management plans have exerted weak or null influences during the study period.

In the early RRCRL and late RRCRL time periods, the timing of cultural resources surveys appeared more closely correlated with the enactment of federal cultural resource laws rather than with the completion of Red Rock Canyon management plans, increases

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in visitation or development of recreational amenities (including the paving of the Scenic Drive or opening of the visitor center), but not definitively so. In addition, FLPMA and the establishing acts for Red Rock Canyon were found to add special conditions for the management of cultural resources at Red Rock Canyon, but these influences were weak or null regarding their influences on archaeological surveys.

Task 2 - The second task was to identify the means by which the BLM is notified of their responsibilities under the law. This task was accomplished by a survey of the eight pieces of relevant legislation as well as by interview of BLM respondents over the same six year period as noted above, 1999-2004. It seemed intuitive that the BLM would be bound by the relevant legislation as of the date of enactment, but this question was posed to the same BLM respondents as were identified in Task 1, above. BLM respondents number 1, 3, 4, 5, 7 and 8 verbally provided citation references to the “BLM Manual,” Code of Federal Regulations, Federal Register and specific relevant cultural resources legislation. Respondent number 2 provided photocopied document samples. Respondent number 6 provided electronically mailed “PDF” document filesRRR for relevant sections of BLM Organization Manual 1201, BLM Headquarters Organization Manual 1211 and BLM Planning Manual/Handbook 1601. These references identified the authority by which the BLM is bound and also the primary method of notification of relevant legislation. In addition, Respondent number 2 stated that BLM legislative staffs in the BLM Washington, D.C. Office work closely with Congressional representatives on items affecting the BLM and notifications such as “Informational Memoranda” are utilized to

RRR The interview with BLM respondent number 6 (BLM Washington, D.C. Office) and the electronic transmittal of documents took place on October 11, 2004.
electronically transmit updates on legislation in progress to potentially responsible BLM district offices.

Question 2

Are BLM actions compliant with relevant cultural resources management policies at Red Rock Canyon? This question required close examination of relevant cultural resource policies in order to accomplish two tasks. First, relevant laws, policies and planning guidelines were identified, including: (1) cultural resource laws, (2) Red Rock Canyon establishment acts and boundary expansion acts, (3) Nevada State BLM standard operating procedures (regulations and policies), and (4) Red Rock Canyon management plans were identified. Second, BLM conformance with these laws, regulations and policies were assessed at points in time over the study period.

Task 1 – In this task, the relevant cultural resource laws, Red Rock Canyon establishments act and boundary expansion acts, Nevada State BLM standard operating procedures (regulations and policies) and Red Rock Canyon management plans were addressed separately.

(1) Cultural resource laws: As revealed by the literature review, federal laws provide certain protections to public lands because, due to their status as federal properties, all cultural resource laws apply: permits are required for excavations of cultural sites (Antiquities Act of 1906 and ARPA), project plans must be developed prior to undertaking activities with potential for creating effects to cultural resources (NEPA of 1969), funding for cultural resources work can come from project budgets (AHPA of 1974), penalties may be levied for harms (effects) to cultural resources caused by
members of the public (ARPA of 1979), surveys of holdings to identify cultural resources must be undertaken (NHPA of 1966 and E.O. 11593 of 1971), and agencies must consider the effects of their actions on cultural resources that are potentially eligible for nomination for the National Register of Historic Places (NHPA of 1966). These laws were identified as references within BLM planning documents, including the 1995 IGMP and the 1999/2000 General Management Plan/EIS.

(2) Red Rock Canyon establishment acts and boundary expansion acts: For Red Rock Canyon, “recreation lands” status conferred protections including an end to impacts from ranching, such as trampled vegetation and modifications/diversions of natural springs formerly used as water sources for livestock. While surface-disturbing activities increased due to the construction of recreational amenities such as trails, picnic areas, restrooms, the Scenic Drive (completed in two segments; 1972 and 1978) and the visitor center (opened in 1982), these were undertaken following proactive archaeological surveys in compliance with NHPA, Section 106. Increasingly, staff was present during each day (park rangers, law enforcement rangers, volunteers and interpretive staff) which possibly minimized vandalism and the looting of some cultural resources. In the BLM Stateline Resource Area, Las Vegas District, first a recreation planner, then an archaeologist added Red Rock Canyon to their responsibilities.

Additional protections were afforded to Red Rock Canyon by its reclassification as a national conservation area in 1990. The reclassification expanded the former recreation lands by approximately 20,000 acres, incorporating some, but not all of the NDSP controlled areas under the BLM. The Red Rock Canyon National Conservation Area
Establishment Act of 1990 (Public Law 101-621, 1990), specified that, as part of a required management plan for the national conservation area, the general plan would include a subset of plans as well, including plans for interpretation and public education, administrative and public facilities, cultural resources, wildlife resource management, and recreation management (in that order).

In addition to a required cultural resources plan, the 1990 Red Rock Canyon Establishment Act, Section 5 (a) (1) (C) stipulated the priority of two cultural resource laws above all others, ARPA and NHPA:

A cultural resources management plan for the conservation area (shall be) prepared in consultation with the Nevada State Historic Preservation Officer, with emphasis on the preservation of the resources in the conservation area and the interpretive, educational, and long-term scientific uses of these resources, giving priority to the enforcement of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) and the National Historic Preservation Act (16 U.S.C. 470 et seq.) within the conservation area.

(3) Nevada State BLM standard operating procedures (regulations and policies): The literature search found that the 1995 Interim General Management Plan (IGMP), “Section 2 – The Plan,” identifies special conditions addressing the BLM’s responsibilities for managing cultural resources at Red Rock Canyon. Specifically, the IGMP states that the Nevada State BLM’s standard operating procedures state that “BLM is required to identify, evaluate and protect cultural resources on public land under its jurisdiction and to ensure that Bureau authorized actions do not inadvertently harm or destroy non-federal cultural resources. These requirements are mandated by Section 110 of the NHPA 1966 and amendments, the NEPA 1969, Executive Order 11593 (1971),
and the ARPA 1979, together with 36 CFR 800. In addition, as a further aid to clarifying the BLM’s responsibilities, three methods of protection for cultural resources under the BLM’s care within a proposed project area are specified: avoidance, mitigation and project/action abandonment.

Avoidance – Cultural resources would be protected by redesigning or relocating the project or excluding significant cultural resource areas away from development.

Mitigation – If a project cannot be redesigned or relocated, cultural resource values will be mitigated through controlled, scientific methods pursuant to the SHPO agreement.

Project/Action Abandonment – If the site is determined to be of significant value or the above mentioned methods are not considered adequate, the project will be abandoned...

These stipulations address effects to cultural resources associated with BLM project actions, but do not address effects resulting from neglect or impact from visitation or recreational use. Significantly, the Nevada State BLM standard operating procedures acknowledge that “the activity that places cultural resources most at risk is unplanned public activity,” but does not address special actions to be taken, except as regards “special management areas” and “cultural sites known to be eligible for National Register nomination or listed on the National Register.” The standard operating procedures direct that these cultural resources are to be closed to off-road vehicle use or otherwise protected.

According to Keith Myhrer, the BLM Stateline Resources Area did not create a position for a staff archaeologist until the early 1980’s; personal communication, October 2005.
(4) Red Rock Canyon management plans: Four management plans have been authorized at Red Rock Canyon, each signed into effect by Secretaries of the Department of the Interior: 1) 1968 Master Plan for RRCRL, 2) 1976 Master Plan for RRCRL, 3) 1995 Interim General Management Plan for RRCNCA, and 4) 2005 Resource Management Plan for RRCNCA. This suggests that for guidance regarding the management of cultural resources at Red Rock Canyon, the federal laws addressing cultural resources have authority beyond the management plans. The Nevada State BLM standard operating procedures make no mention of requiring compliance with management plans for Red Rock Canyon.

Task 2 - To facilitate the analysis of Question 2, reports of archaeological surveys of all cultural resources at Red Rock Canyon were analyzed. The Chapter II literature search of archaeological reports specific to Red Rock Canyon suggests that little further archaeological research since 1990 has been undertaken at Red Rock Canyon. Acknowledging that archaeological surveys are only one step in the cultural resource management process – initial survey, development of an inventory list, scientific evaluation of the survey findings, monitoring to assess effects to the surveyed cultural resources, preparation of educational and interpretive materials based on the scientific evaluation – Myhrer’s 1991 Class I Report provides the most detailed insight into the status of cultural resources management by the BLM at Red Rock Canyon up to that

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XXX Correspondence to and from Dr. Shutler exists in the BLM archive files, but from an earlier date, 1965-1966, which sheds no light on his contract hiring a decade later.


ZZZ Ibid.

time. Further, the 1991 Class I Report includes Myhrer’s own recommendations for future management.

Myhrer claimed that initial surveys were undertaken for virtually all cultural resources located in sensitive areas within the RRCRL based on analysis of the site patterning models of sensitivity. As noted in Question I, the timing of the majority of the archaeological surveys does not appear to be strongly correlated with requirements specified within the applicable laws or with specifications within the Red Rock Canyon management plans. Rather, it appears that the majority of the archaeological surveys cluster around the dates 1976 and 1977, suggesting the possibility that the 1974 Classification and Multiple Use Act (directing the BLM to survey their holdings of public lands not later than 1976, later extended to 1978) may have influenced the timing of this work. One factor that is not known is if the requirement for surveying placed on the BLM by the 1974 Classification and Multiple Use Act dictated the timing of the contract hiring of an archaeologist (Dr. Richard Shutler) to undertake the 1976 and 1977 surveys at Red Rock Canyon.

In the early RRCRL and late RRCRL time periods, the timing of cultural resources surveys appeared more closely correlated with the enactment of federal cultural resource laws rather than with the completion of Red Rock Canyon management plans, increases in visitation or development of recreational amenities (including the paving of the Scenic Drive or opening of the visitor center), but not definitively so. In addition, FLPMA and the establishing acts for Red Rock Canyon were found to add special conditions for the

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According to Keith Myhrer, the BLM Stateline Resources Area did not create a position for a staff archaeologist until the early 1980’s; personal communication, October 2005.

Correspondence to and from Dr. Shutler exists in the BLM archive files, but from an earlier date, 1965-1966, which sheds no light on his contract hiring a decade later.
management of cultural resources at Red Rock Canyon, but these influences were weak or null regarding their influences on archaeological surveys.

Myhrer reported that archaeological surveys conducted through 1982 may have been adequate for the time, but that they were inadequate as of 1991 for anything but identifying general locations and suggesting types of materials recovered by surface collection of excavation. More importantly he reports that most of these early RRCRL archaeological surveys represent the basis of current knowledge and understanding of the heritage represented by cultural resources within Red Rock Canyon.

During the first twelve years of inventory in Red Rock sites were poorly recorded, at least in terms of contemporary standards. Emphasis at the time was centered on noting the locations of sites on maps, not on obtaining accurate measurements of features. Inspection of the site recording forms from the Red Rock Summit surveys shows a lack of consistency in recorded data ... Because few additional sites have been discovered in Red Rock since the early 1980's, and agency funding for proactive work to update files has been severely limited, recording forms from 20 years ago remain the principal records for most sites in Red Rock.

Through September 1990, Myhrer identified that 153 sites had been recorded in the Red Rock Canyon Recreation Lands, although only 17% of the RRCRL's 63,110 acres of the area had been formally surveyed. He used a method of evaluation called "site patterning" as an aid to predicting the likelihood of the presence of cultural resources in uninvestigated areas. Site patterning considers the density of factors commonly associated with the presence of cultural resources in order to determine the likelihood of finding cultural resources. Site patterning results in ratings of likelihood (sensitivity) for the presence of cultural resources.

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Ibid., DEIS-A105

Myhrer, "1991 Class I Report," DEIS-A112. In the 2005 Resource Management Plan, 326 cultural resources are reported. There is no accounting for this variance as of this writing.

10,820 acres, total, were surveyed as of September 1990; Ibid., DEIS-A 105.
Myhrer suggested that BLM evaluation and preservation activities should be increased at Red Rock Canyon Recreation Lands and that this might involve data collection through surface-disturbing activities at selected sensitive sites. He concluded that recreational visitation would continue to increase at sites near trails and recommended that sensitive sites be identified, consistent with BLM Manual Section 8110 guidance for identifying and classifying cultural resources into use categories. Significant resources located away from areas of potentially heavy recreational impact should be managed for conservation for future use (research potential at a later date). Cultural resources not likely to qualify under the criterion established for nomination and listing on the National Register of Historic Places should be managed for information uses such as data recovery. Cultural resources located in areas subject to intense recreational impacts, but having interpretive potential should be managed for public uses including education and interpretive exhibits-in-place.

He characterized his recommendations for the management of cultural resources within the Red Rock Canyon Recreation Lands as general strategic recommendations. Acknowledging that his review of cultural resources was based on archaeological survey and evaluation of only a small percentage of the RRCRL, he asked, “Does the 17% total area surveyed in Red Rock represent a biased or non-biased sample?” In this question, he considered whether or not site sensitivity formulas can accurately project expectations of the numbers and kinds of cultural sites that might be found based on such a low percentage of the RRCRL’s acreage having been sampled as of that time.

As of this writing, BLM use categories include: scientific use, conservation for future use, traditional use, public use, experimental use and discharge from management; per BLM Manual Section 8110.42, Identifying Cultural Resources (Interim Guidance). 

Ibid., DEIS-A115.
Myhrer's conclusions were that the pre-1975 surveys were, in fact, biased, but with positive results. The sites selected for the pre-1975 surveys had high potential for both cultural resource sensitivity and for intense visitor use. In selecting this dual criterion, the researchers' own expertise intuitively biased the survey work such that the early researchers "identified most, if not all, of the sensitive locales." The compliance-driven surveys, undertaken in areas of proposed disturbance rather than in areas of high sensitivity, were similarly biased but with null effects. (The proposed locations for the Scenic Drive, the visitor center and off-highway trails did not lend themselves, for the most part, either to contemporary visitation or prehistoric uses.) Myhrer took the results of these surveys as a test of the usefulness of using site patterning as a predictive tool and, further, as confirmation of Myhrer's claim that sensitive cultural sites do not appear to be evenly distributed across the RRCRL.

Question 3

Have BLM actions taken to preserve and protect cultural resources management policies at Red Rock Canyon resulted in expected outcomes? Anticipating a lack of conclusiveness for Question 2, regarding determination of the legal and normative compliance of the BLM with relevant cultural resource law, Nevada State BLM policies and Red Rock Canyon management plans, Question 3 was designed to examine outcomes regardless of the results for Question 2.

Ibid., DEIS-A116.

Ibid., DEIS-A115.

Ibid., DEIS-A117.

Ibid., DEIS-A127-128.

Question 3 turns on the treatment of the cultural resources themselves.

The literature search identified recommendations made by Myhrer, consistent with NHPA, Section 106 for “proactive management” of selected cultural resources addressed within the 1991 Class I Report. He identified the following cases in the recommendations of the 1991 report:

Four sites have not been formally evaluated by the BLM – Lost Creek, Willow Spring, Red Spring/Calico Basin, and Sandstone Quarry. Until the consultation process has been completed, the sites are considered eligible for nomination to the National Register of Historical Places under criterion in 36 CFR 60.4. Due to the present degree of high intensive public uses, the sites should be treated under Section 106 consultation as if adverse effects are occurring. The management strategy should consist of the following steps: 1) test for eligibility, 2) consult on initial determinations, 3) conduct a data recovery program if needed, 4) complete consultations on final determinations, and 5) develop project plans to manage or public uses.

In order to make further determinations on eligibility three of the sites require further probing and testing, and one should be determined not eligible without further work.

Myhrer continued, stating that only Brownstone Canyon, which was listed on the National Register of Historic Places in 1982 received subsequent attention recommended. The Willow Spring complex had been so heavily impacted from recreational uses and improvements that, as of 1991, the site lacked the integrity that was so intriguing to archaeologists just 15 years earlier. He pronounced the site no longer eligible for nomination to the National Register of Historic Places under Section 106.

Data provided from the BLM archive files, Red Rock Canyon National Conservation Area visitor center.

Vehicle occupancy estimates are not available for NDSP vehicle counts. Occupancy estimates used later, by consultant Robert Peccia, 2001, were 2.52 persons per vehicle.

Vehicle Counts for Willow Spring/Loop Road from 1973 to 1985 were collected by Nevada Division of State Parks.
One toilet, adjacent to the pictographic “handprints” midden, was installed on top of a roasting pit due to the ease of the material for underground excavation. Visitation from 1968 to 1988 remained fairly constant, estimated to be between 200,000 to 300,000 visitors annually. It can be said with a high degree of certainly that, in the case Willow Spring, BLM actions have not resulted in expected outcomes and that negative effect has resulted.

Of the three remaining selected cases, Red Spring/Calico Basin underwent a major restoration, beginning in 2004, primarily for the purposes of protecting sensitive species, including the Spring Mountains spring snail (*Pyrgulopsis deaconii*), the alkali mariposa lily (*Calochortus striatus*) and the white bearpoppy (*Arctomecon merriamii*) and for restoring the Red Spring/Calico Basin riparian area that was negatively affected by use as a picnic and recreation area from 1974-2004. The presence of cultural resources at Red Spring/Calico Basin is acknowledged in Issue #7 of the environmental assessment written for the restoration project in compliance with NEPA. Selected cultural features located within the Red Spring/Calico Basin archaeological complex were incorporated into a half-mile long, raised interpretive boardwalk trail designed to minimize further negative impact to the sensitive alkali meadow and riparian spring habitat by visitors of the Red Spring/Calico Basin site. The restoration at Red Spring/Calico Basin represents a proactive management action taken by the BLM. By virtue of having gone through the NHPA, Section 106 consultation process as well as public scoping (not a procedural requirement for an environmental assessment) it may be judged to be in compliance both legally and normatively with relevant cultural resources legislation.

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Similarly, the Old Spanish Trail/Mormon Trail that lies within Red Rock Canyon (Blue Diamond vicinity), surveyed in 1987, but determined as ineligible for nomination to the National Register of Historic Places by the BLM at the time, later was conceptually upgraded in status. Upon designation of the entire, multi-state trail as a National Historic Trail, in 2002, (by others, not by the Nevada State BLM), the outcome appears to be the both legally and normatively compliant actions have occurred that may increase the likelihood of preservation and protection of the resource. The legal compliance is an assumption based on the National Historic Trail designation. The normative compliance is based on the designation including the Red Rock Canyon section which, as an isolated segment of the larger trail lacked the integrity to qualify for eligibility.

Findings

The findings of the empirical analysis provide answers to the three linked questions that have guided the study. In this chapter, the three questions were closely examined and Questions 1 and 2 were found to have two components each, requiring each to be investigated and each contributing to the answers. In summary, the questions and their answers are these:

1) How are federal cultural resources management policies communicated into directives to the BLM at Red Rock Canyon? This question asks whether there is language within the laws and policies that clearly directs the BLM to preserve and protect cultural resources at Red Rock Canyon. If language does exist within the law that directs the BLM to action, a secondary question asks what the means of communicating these directives is. Analysis of the materials identified in the literature search identified that
management policies are communicated into directives to the BLM to take actions at Red Rock Canyon through the mechanisms of Nevada State BLM standard operating procedures, informational memoranda and language within the Red Rock Canyon establishment acts and boundary expansion acts.

(2) Are BLM actions compliant with relevant cultural resources management policies at Red Rock Canyon? This question asks what laws and/or regulations, policies or guidelines there are with which compliance is required and also whether or not the BLM has been/is compliant with these laws. (In the context of the empirical study legal compliance, primarily, is considered.) Analysis of materials investigated in the literature search identified three classes of laws, regulations, and polices or guidelines with which compliance may be assessed. These are federal laws, Nevada State BLM standard operating procedures (regulations and policies) and Red Rock Canyon management plans. It should be noted that noncompliance with federal law is conceptually a serious violation of law, whereas noncompliance with standard operating procedures and/or management plans is merely a matter of concern to the BLM, but not to Congress.

Federal laws consist of what have been referred to as the eight relevant cultural resource laws – Antiquities Act of 1906, NHPA 1966, NEPA 1969, E.O. 11593 of 1971, AHPA 1974, ARPA 1979, FLPMA 1976 and SNPLMA 1998 – and the RRCRL and RRCNCA establishment acts and boundary expansion acts for Red Rock Canyon. FLPMA and SNPLMA are not strictly cultural resource laws, but within the thesis study have been addressed only in the context of their influence on the BLM actions with respect to cultural resources. The Chapter III empirical analysis found that, from 1964
through 2004, the BLM actions have been generally compliant with the eight relevant cultural resource federal laws throughout the study period, with the following exceptions:

- E.O. 11593 of 1971, Section 1: Providing cultural resources management leadership cannot be said to have occurred due to a vacancy of more than three years in the position of cultural resources specialist for Red Rock Canyon. On this condition, the BLM appears to be noncompliant.

- AHPA of 1974, Section 5(b): Compliance with this Section, on the bases of questions raised about the present location of some (or all) of the archaeological artifacts removed from cultural sites within Red Rock Canyon during approved cultural resources field investigations and as to consultation with the Secretary of the Department of the Interior regarding appropriate repositories for recovered artifacts, were not been conclusively confirmed by the thesis study.

- NHPA, Section 110: Compliance with this Section, on the basis of the requirement to inventory all cultural resources within the agency’s jurisdiction and maintain monitoring reports on their status, was not conclusively confirmed by the thesis study.

After January 1, 1997, the BLM became noncompliant with management objectives identified in the 1990 Red Rock Canyon National Conservation Area Establishment Act and the 1994 RRC boundary expansion act specifying that a general management plan and a cultural resources management plan be produced.

Nevada State BLM standard operating procedures (regulations and policies) – Each state BLM office may have differences in the standard operating procedures adopted for
the state, therefore throughout the thesis, in referring to BLM standard operating
procedures, the Nevada State designation has preceded the statement. The Chapter III
empirical analysis found that the Nevada State BLM standard operating procedures
require the identification, evaluation and protection of cultural resources at Red Rock
Canyon in order to avoid inadvertent harm or destruction to the resources. The 1991
Class I Report stated that as of 1990 only 17% of 63,110 acres had been archaeologically
surveyed. The author of the report archaeologist Keith Myhrer, argued, however, that
predictive analysis (site patterning) suggested that the majority of the cultural resources
of geographical size (physical extent) had likely been identified as of 1991.

While the 1991 Class I report included mention of selected cultural resources outside
of the jurisdictional boundaries of the Red Rock Canyon Recreation Lands (but within
the geographic vicinity of Red Rock Canyon), the report did not anticipate the subsequent
boundary expansions that, as of 2002, increased the size to approximately to 198,000
acres. For example, the Class I Report makes no mention of cultural resources within the
present RRCNCA located on the north elevation of the Spring Mountains Range
extending across the lower elevations of both Kyle Canyon and Lee Canyon, a vicinity
reported as being intensely sensitive for cultural resources by the neighboring U.S. Forest
Service.

On the basis of percentage of acreage surveyed as of 1991, Myhrer’s claim that 17%
may actually achieve a high level of compliance for “surveying” seems a generous
interpretation. Myhrer is less generous regarding the level of compliance with evaluation
of cultural resources. In the 1991 Class I Report he claims that only four cultural
resources (Brownstone Canyon, the Willow Spring “handprints” midden, the “Stripper’s
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"Cabin" and the Old Spanish Trail/Mormon Road) were evaluated to a level that allowed
determination of eligibility for nomination to the National Register of Historic places.
The 1980 BLM Oil and Gas EA reported that nine cultural resources were potentially
eligible. On the condition of “evaluation” the BLMs actions must be said to have a low
level of compliance. Regarding the condition of “protection,” the 1991 Class I Report
provides comparisons of reports for selected cultural resources that confirm that for some
cultural resources, especially Red Spring/Calico Basin and Willow Spring, negative
effect resulted from the period of the early RRCRL (1964-1976) to the late RRCRL

Management Plans – These include both the master plans of the RRCRL period and
the general management plans of the RRCNCA period. Four management plans have
been adopted for Red Rock Canyon from 1964 to 2005: the 1968 Master Plan, the 1976
Master Plan, the 1995 Interim General Management plan (IGMP) and the 2005 Resource
Management Plan. Management plans may be considered to have the same or similar
authority as Nevada State BLM standard operating procedures. While federal law (the
establishment acts enacted by Congress), may require management plans to be produced
they are not, themselves, federal laws. Ideally, they provide management guidelines to
the BLM and inform the public of the BLM’s intentions (through public scoping
meetings and as public documents). At Red Rock Canyon, it has been the case that the
management plans have received more attention than the relevant federal laws.

The 1968 Master Plan specified an intensive program of facility development which
the public objected to, resulting in its revision. The 1976 Master Plan (and 1975 EIS)
specified that historic and archeologic resources be interpreted with supervision and
monitored for impact. Prior to the paving of the 13-mile Scenic Drive (completed in 1978), completion of the visitor center (1982), interpretation and monitoring of cultural resources were accomplished primarily by volunteers.

After the organization of the Friends of Red Rock Canyon (1984), hiring of the first two law enforcement rangers authorized for Red Rock Canyon (1986) and establishment of the Red Rock Canyon Interpretive Association (1988), interpretation and monitoring of cultural resources were accomplished a combination of staff and volunteers. From approximately 1980 through 1992, the BLM Stateline Resource Area, Las Vegas District archaeologist oversaw the monitoring of cultural resources at Red Rock Canyon. Through 1996, the BLM Visitor Center manager was an archaeologist by education. Although the visitor center manager’s position did not include archaeological responsibilities, she did provide guidance to the Friends of Red Rock Canyon cultural resources committee who undertook a program of monitoring cultural resources under her guidance. Through the early RRCRL (1968-1976), late RRCRL (1976-1990) and early RRCNCA (1990-1994) periods the BLM’s actions may be interpreted as highly compliant with the management plan requirement for monitoring cultural resources.

An anomaly developed at the time the 1995 IGMP went into effect due to the 1994 Boundary Expansion Act which increased the size of Red Rock Canyon to 195,610 acres. The 1994 Boundary Expansion Act extended the deadline for completion of a general management plan for Red Rock Canyon to January 1997, but failed to address the boundary limitations of the existing 1976 Master Plan, which was in effect for only 83,100 acres. Additionally, investigation of the 1995 IGMP identified that the Nevada State BLM standard operating procedures provided guidelines for management of
cultural resources (noted above). As of the start of the late RRCNCA (1994-2004) period, the BLM’s actions regarding compliance with management plan requirements are difficult to determine due to the anomalous circumstance.

(3) Have BLM actions to implement cultural resources management policies at Red Rock Canyon resulted in expected outcomes? If by “expected outcomes” this question’s intent is to determine if actions consistent with federal cultural resource laws and agency policies have been taken by BLM staff (paid or volunteer) at Red Rock Canyon, without regard for the effect or value of the effect, then the answer can be that the expected outcomes (actions of some kind being taken) have been met. If by “expected outcome” the intent is to determine if actions taken during the period of the study (1964-2004) have been effective in preserving and protecting cultural resources at Red Rock Canyon consistent with laws, regulations, policies and guidance, the answer must be that actions have been taken in part, but, regardless of these actions, substantial negative effect has occurred to some cultural resources. The evidence for claiming negative effect to some cultural resources at Red Rock Canyon is within the findings of the 1991 Class 1 Report.

Myhrer makes several claims upon which this determination is based: First, that initial surveys have been made for all culturally sensitive areas based on the predictive confidence in site patterning. Second, that through 1982 archaeological surveying at Red Rock Canyon was inadequate for all uses except identifying the locations of cultural resources and for identifying the type of site (roasting pit, rock art, rock shelter, etc.). Third, that as of 1992 only 17% of the RRCRL was formally surveyed (which arguably may represent a large percentage of the cultural resources within the 62,110 acres). Finally, that as of 1992 Willow Spring and Red Spring/Calico Basin had experienced
severely negative effects to the condition of the cultural resources found at those locales, Brownstone Canyon was listed on the National Register of Historic Places and that four additional sites had been evaluated as not eligible for nomination.

Evidence for addressing BLM actions from 1992 to 2004, and interpreting them as compliant or noncompliant is implicit, rather than explicit, due to the unavailability of data similar to the 1991 Class I Report upon which to base an assessment. I therefore conclude that, at the present time, BLM actions are generally consistent with federal cultural resource law, noncompliant with Nevada State BLM operating procedures and an anomalous condition exists with regard to Red Rock Canyon management plans.

Conclusion

The expectation for the empirical study was that it would show that language within the cultural resource laws, BLM policies and regulations, Red Rock Canyon establishment acts and boundary expansion acts and management plans exists and is adequate to direct the BLM to take actions that may result in the preservation and protection of cultural resources located within Red Rock Canyon. The forty-year study period, 1964-2004, offered an opportunity to assess the affects of cultural resources management practices at Red Rock Canyon during a timeframe when phenomenal growth in land development and population of the adjacent Las Vegas, Nevada valley coincided with increasing visitation and recreational use of Red Rock Canyon. BLM management of Red Rock Canyon throughout the period of study, including through changes in classification from recreation land to national conservation area, provided an element of consistency regardless that the BLM experienced organizational and
procedural changes during the same period. The fact that the laws referenced in the empirical study have been enacted at different points in time, that the boundaries of Red Rock Canyon have changed over time and that the standards of cultural resources management have changed over time are all additional variable elements that have influenced the BLM’s actions to preserve and protect cultural resources at Red Rock Canyon.

It is Myhrer’s claim that, in regard to the formal evaluation process for the most intensively studied cultural resources within Red Rock Canyon, BLM management procedures have not been adequate to achieve protections under NHPA, one of the two cultural resource protection laws specified in the Red Rock Canyon National Conservation Area Establishment Act of 1990 as being of the highest priority. NHPA, Section 106, provides direction to agencies for determining eligibility of cultural resources to the National Register Historic Places. In 1991, according to Myhrer’s details for the five selected cases (Brownstone Canyon, Red Spring, Sandstone Quarry, Lost Creek and Willow Spring), further action was recommended in order to proceed with determination of eligibility of the sites for actual nomination to the National Register. In addition, Myhrer, in the same report, recommended that the five eligible sites be treated as if negative effects were occurring due to high intensive public uses (recreation and general visitation). The listing of a cultural resource on the National Register of Historical Places is a recognition that, in itself, does not provide any additional protections to the resource. The preparation process for nomination is costly in terms of staff time (direction of qualified individuals in further field work, and in preparation and submittal of forms). The benefit to the cultural resources really is in the preparation
process itself. The additional field work necessitates that the current condition of the resource be assessed. In the field, the investigation will clarify research questions about the chronology and cultural context of the resource that cannot be advanced by other means (Class I or Class II level work).

It appears, however, that a potential weakness exists in the NHPA. The NHPA, Section 106 process shifts the focus from the preservation and protection of cultural resources to the administrative process which, itself, becomes the outcome. Compliance with the NHPA, Section 106 process, therefore, is ultimately about conformance with procedural steps rather than about the effect of actions upon cultural resources. Where the cultural resources management process addresses "detailed evaluation, testing, data recovery and proactive management for preservation," the NHPA, Section 106 process addresses taking "into account the effect of the undertaking on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places." The NHPA, Section 106 process is subject to rules and regulations and to review by the SHPO, but is analogous to the incidental takings allowed to land development contractors upon payment of a fee to Clark County, Nevada to compensate for unintentional harm to endangered desert tortoise (Gopherus agassazii) during construction activities. In both cases, resources legally may be harmed so long as the designated procedures have been followed.

The NHPA, Section 106 process leaves the decision to the relevant agency whether to pursue nomination for the National Register of Historic Places or not. As long as an

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99 The incidental take permit for desert tortoise was issued by the United States Fish and Wildlife service to Clark County, Nevada in August 1995, in conformance with the Clark County Desert Conservation Plan, Section 10 (a)(1)(B).
agency has followed the required procedural steps of NHPA, Section 106, any further actions are at the discretion of the agency. At Red Rock Canyon, lacking a cultural resources specialist to make determinations regarding the necessity of taking actions in order to preserve and protect Red Rock Canyon’s cultural resources, the trends that Myhrer noted in 1991 can be found at the present time and potentially may be expected to continue in the future, regardless of NHPA.

It has been shown that, while BLM actions were conceptually compliant with federal cultural resource management law, negative effects were occurring to four of the five selected cultural resources located within the original boundaries of the RRCRL (Red Spring/Calico Basin, Sandstone Quarry, Lost Creek, and Willow Spring) and to the additional case representing the larger RRCNCA boundaries (Old Spanish Trail/Mormon Road). Only Brownstone Canyon received minimal negative effect during the study period and the reason for this seems to be due to management actions (such as its listing on the National Register of Historic Places).

Based solely on the case of Brownstone Canyon, one might be tempted to make an intuitive assumption that cultural resources located in less accessible locales within Red Rock Canyon have received (or will receive) less negative effect than more accessible cultural resources. This proposition rests on the assumption that ease of accessibility equates to a larger (or increased) number of visitors which equates to stronger negative effects to cultural resources. The evidence of the five selected cases within the original RRCRL boundaries contradicts this assumption.
The strongest negative effects to the cultural resources at Red Rock Canyon have been documented by Rafferty\textsuperscript{100} as being due to governmental projects rather than public activities. (He makes no mention of conformance with the NHPA, Section 106 consultation process and the report is, therefore, inadequate to identify if the improvements were compliant with NHPA or not.) The development of water sources for wildlife and cattle were authorized by the federal government at Red Rock Canyon in the 1930's (two guzzlers/dams were built in Brownstone Canyon adjacent to roasting pits). In the 1950's federal spring improvement projects modified springs including Willow Springs (concrete box around the spring), Red Spring (spring flow diversion) and others including "Oak Creek, La Madre Springs, Ash Creek, White Rock Spring, Calico Spring, Lone Grapevine Spring and several others."\textsuperscript{101} He also reported on the affects of extensive amenity improvements at Willow Spring.

When recreation facilities were constructed there [at Willow Spring] in the late 1960's, several of the roasting pits suffered severe damage. Two picnic tables each were constructed on top of two roasting pits, a toilet was constructed on top of another, and an early access road was bladed through another roasting pit at the mouth of the spring area and through a pit near La Madre Springs, north of Willow Springs.

Myhrer claimed that in regard to the formal evaluation process for the most intensively studied cultural resources within Red Rock Canyon BLM management decisions have been inadequate to achieve protections at Red Rock Canyon for cultural resources in areas where visitation is high and/or recreational activities are intensive.\textsuperscript{102} However, small numbers of recreationists, including backcountry hikers and campers, technical and recreational climbers, horseback riders, photographers, geocaching participants, amateur archaeologists, graffiti artists and looters often travel into

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\begin{itemize}
\item \textsuperscript{100} Rafferty, "Cultural Resources Overview," 43.
\item \textsuperscript{101} Rafferty, "Cultural Resources Overview," 43.
\item \textsuperscript{102} Myhrer, "1991 Class I Report," A-131.
\end{itemize}
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inaccessible areas of Red Rock Canyon and, whether intentionally or not, may cause significant effect to both cultural and natural resources. For illegal activities such as vandalism by graffiti and looting, inaccessible sites may provide cover that facilitates these activities. Further consideration of the influence of accessibility upon preservation and protection of cultural sites deserves investigation, but ranges beyond of the scope of the current study.

Based on the findings of the empirical study it is my recommendation that further consideration be given by the Nevada State BLM Las Vegas District Field Office regarding the relationship of the 1990 Red Rock Canyon National Conservation Area Establishment Act and the 1994 Red Rock Canyon National Conservation Area Boundary Expansion Act to the Nevada State BLM standard operating procedures and the existing relevant cultural resource laws identified within this thesis as being directly applicable to management within Red Rock Canyon. The 1990 establishment act and the 1994 boundary expansion act, for example, being Congressionally enacted legislation, should have adequate authority to influence thorough and timely conformity to cultural resources management policies within Red Rock Canyon.

The language of cultural resources laws and policies appears to have established adequate standards, clearly expressed in achievable terms consistent with Nevada State BLM standard operating procedures, but if the BLM does not meet those standards in a thorough or timely manner (or chooses not to meet those standards in a thorough or timely manner) there appear to be no remedies or consequences (penalties) for less than thorough or tardy conformance with these laws. For example, the deterioration of the Willow Spring archaeological complex (identified in this study as possibly beginning in
the 1960’s) and other cultural resources at Red Rock Canyon due to negative effects is counter to the intent of NHPA, Section 106. The failure to initiate the systematic survey of the Red Rock Canyon boundary expansion lands from 1990 through 2002 (formally recommended at least as early as the 1991 Class I Report) is counter to NHPA, Section 110. The delay in producing a general management plan for Red Rock Canyon National Conservation Area was a violation of the 1990 Red Rock Canyon National Conservation Area Establishment Act and the 1994 Red Rock Canyon National Conservation Area Boundary Expansion Act that has been remedied by the authorization of the 2005 Resource Management Plan and Environmental Impact Statement for Red Rock Canyon National Conservation Area.

Education of the public in order to develop a sense of stewardship for public lands in order to preserve and protect cultural and natural resources has been recommended by Myhrer, Rafferty and many others. I argue that education of the public is a component that is entirely separate from the first line of action that should be taken, which is conformance by land management agencies, such as the BLM, with existing laws. One directive encouraging this action is found within Executive Order 11593, Section 1, Policy:

The Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Agencies of the executive branch of the Government... shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored and maintained for the inspiration and benefit of the people...

103 Ibid., A-131.
104 Rafferty, “Cultural Resources Overview,” 51.
With conformant actions being taken by agencies, such as the BLM, government can perform a leading role in inspiring stewardship by the public consistent with that suggested by existing law. Such actions by the BLM can provide the sense of a value system upon which to ground public stewardship, without which the public education lacks a purpose.
CHAPTER IV

ETHICAL EVALUATION

This chapter addresses the normative aspect of the general question, If cultural resources within Red Rock Canyon should and can be preserved and protected, how do law, BLM policy and archaeology work together to ensure that happens? The normative aspect of the general question considers whether the decisions and actions of the BLM are compliant with the ethical context of cultural resources management policies and law.

In Chapter III, the empirical analysis found that laws and policies clearly specify that procedural actions are to be taken to preserve and protect cultural resources on public lands. The BLM's actions were found to be generally compliant with federal cultural resource laws with selected exceptions and partially noncompliant with Nevada State BLM standard operating procedures and with the Red Rock Canyon National Conservation Area Establishment Act of 1990 and the Red Rock Canyon National Conservation Area Boundary Expansion Act of 1994 during the period of the study (1964-2004). In Chapter IV, these findings serve as a basis for examining the nature of the values that underlie the cultural resources management laws and policies influencing the BLM's decisions and actions at Red Rock Canyon.

To go beyond the procedural aspect of compliance with cultural resources management laws and policies in order to consider the normative aspect requires a consideration of the meanings we, as a nation, have attached to these laws and policies in
the past and the relevance of those meanings to the present. In this chapter, the values within two concepts – utilitarianism and the conservationist “land ethic” – are examined in order to identify the nature of each, the strengths and weaknesses of each and evaluate their potentials for facilitating the preservation and protection of cultural resources at Red Rock Canyon in conformance with existing cultural resources management laws and policies.

Contrasting Values: Utility and Land Ethic

The origins of U.S. public land management are rooted in utilitarian principles, and utilitarianism remains the dominant paradigm for public land and resource management decisions today. Utilitarianism seeks to provide a structured yet flexible decision framework that can accommodate changes over time by adapting its central tenet – the distribution of goods (benefits) – to the changing needs and desires of society.

The BLM is often thought of solely as a regulatory agency due to its authority over private and commercial use permits for activities on public lands including mining, ranching, timber harvesting, oil and natural gas exploration and geothermal development. The existence of U.S. public lands, that is, lands held in trust by the BLM for use by present and future generations, is based on the utilitarian principle of the distribution of goods. In the language of utilitarianism, the “present and future generations” are “stakeholders” for whom the “distribution of goods” are “benefits.” In the context of this study, these “stakeholders” are the public. (In reality, the BLM’s stakeholders include all entities with an interest in the progress or the results of the work of the BLM including
other governmental agencies, Tribal governments, inter-agency task groups, non-profit organizations, and industrial and commercial businesses.)

The “land ethic” was proposed by scientist and philosopher Aldo Leopold in his 1948 essay of the same name. Published in his book of essays, *A Sand County Almanac*, Leopold’s “land ethic” proposes that obligations to preserve and protect the functional integrity the Earth’s ecosystems – so that ultimately we do not destroy life on Earth – override the concept of providing benefits to humans at the expense of the Earth’s ecosystems. Leopold sees the Earth’s ecosystems as the home of all life on Earth, including humans, and this view has become a central topic in contemporary environmental ethics and environmental education debates. The “land ethic” contrasts the conservation concepts of “intrinsic” and “systemic” values against the utilitarian concept of “instrumental” value (sometimes referred to as economic value).

The principle of utility is the foundation of the multiple use/sustained yield mandate, yet the dominant philosophy of the conservation movement has, since 1948, been straining toward an ethic that argues for obligations to the land and eschews the subordination of ecological values to the consumptive needs and desires of individuals and social governments. By “the land” Leopold means “soils, waters, plants and animals, or collectively: the land.” Leopold’s “land ethic” frames resources and land management concepts in terms of practical ethics rather than in utilitarian terms.

The BLM’s management of public lands is prescribed by the multiple use and sustained yield concept mandated by the Federal Land Policy and Management Act (FLPMA) of 1976. Multiple use is defined in Section 103 [43 U.S.C. 1702].

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(c) The term “multiple use” means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform with changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the uses that will give the greatest economic return or the greatest unit output. ¹⁰⁷

In this definition is found the language that allows for the establishment of national conservation areas (and other special status areas), the preservation and protection of cultural resources (a nonrenewable resource), the evaluation of cultural resources for scientific and historical values and the consideration of other relative values of resources over uses, or combinations of uses, yielding economic benefits (return or unit output). Sustained yield, defined in Section 103, subsection (h), refers specifically to “renewable” resources, such as timber, wildlife and fish; resources with annual or regular periodic output.

The political dimension of cultural resources management is especially relevant as utility theory emphasizes the concept of being “value neutral,” or “value free,” which critics, including policy theorist Frank Fischer, argue distorts the nature of public decision making. ¹⁰⁸ Seeking to minimize or eliminate values as a factor in policy making or policy implementation tends to obscure the inherent presence of preferences which are unavoidably embodied within every law and policy. Acknowledging that preferences

¹⁰⁸ Fisher, Evaluating Public Policy, 44.
reflect choices that have been proposed, considered and accepted into law and policy is a first step towards recognizing that the conflict in the discussion about the applicability of utility theory to cultural resources management is not fundamentally about whether normative values are reflected within the laws and policies or not. Rather, the conflict is fundamentally about which values are reflected in the laws and policies and who is likely to benefit from them.

Environmental philosopher and scholar J. Baird Callicott, in his article “The Ethical View,” asserts that values based on utilitarianism are in opposition to the values espoused by Leopold’s “land ethic.” In Callicott’s discussion, the values that are at odds are instrumental values (which serve as means to ends, including the means to achieving other values) and intrinsic values (which are ends in and of themselves and independent of any of the things they may affect). Callicott credits 18th century philosopher Jeremy Bentham with proposing human happiness as the highest good in the sense of the modern utilitarian context (the utilitarian concept has ancient roots). Leopold’s 20th century premise, that duties are owed to communities and that humans, as organisms living within the ecosystem, owe duties to the Earth’s systemic (organic/inorganic) communities, has arguably become a primary precept of a major branch of environmental ethics. Callicott argues in favor of the “land ethic” on the basis of scientific advances made since 1948 that have revealed the dual roles that natural resources play in the ecosystem, both as resources and as suppliers of services, and on the basis of our ethical obligation to do no harm that puts the ecosystem at risk of destruction (especially as humans are capable of causing great harm).

In the late 1700’s and early 1800’s, utilitarianism, with its emphasis on rational empiricism, was a reforming influence on English institutions that traditionally were biased towards class privilege. This was a condition which placed the common people at a disadvantage in all aspects of governance. Bentham was successful in accomplishing both social and political reforms that ended much injustice under the elitist system.

Now viewed with abhorrence by many (including environmentalists and conservations), utilitarianism is often charged with being more protective of business or other special interests than of general interests. Utilitarianism, by underlying close relationships between the government, industry and interest groups such that influence from the outside is restricted, is described as facilitating the development of sub-governments or “iron triangle” relationships. Utilitarianism is especially assisted in underpinning these relationships through the use of empirical methodologies such as cost-benefit analysis, risk-benefit analysis and other quantifiable analysis tools that have evolved into a modern, so-called, “technocratic threat” to the deliberative democratic process (public participation). This characteristic of modern utilitarianism seems to be in opposition to the role it played role as Bentham’s 18th century remedy for privileged class abuses of public institutions; however, it leads directly to modern criticisms of utilitarianism as elitist, positivist and as attempting to promote “value neutral” views of the world.

Leopold argued that a “land ethic” is an ecological necessity and urged that imagery of the land as a “biotic mechanism,” fueled by energy flowing on a world-wide scale, be employed as an organizing motivator. Since the publication of “The Land Ethic,”

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philosophers and scholars have searched for the proper location of duties in this new ethic and for understanding as to the nature of the values within its context. This has been done in order to strengthen the arguments for supplanting the dominant utilitarian, value neutral views of resource management with moral, or value-laden, perspectives.

Should the dominant utilitarian, positivist approach to policy evaluation be shaken it would represent a major paradigm shift in U.S. policy methodology, one that has only strengthened in more than five decades of scholarly study and government implementation. Utility has become the dominant factor underlying policy formation and programmatic analysis in the U.S., especially as cost-benefit and risk-benefit analyses provide a means of tangibly expressing benefits and risks associated with laws, policies and programs. This is as true of resource and land management policy as it is of other types of policies.

Philosopher and theologian Holmes Rolston III is considered by many to be the founding father of environmental ethics as an academic discipline. In part, Rolston’s acclaim is based on bringing environmental ethics to the attention of mainstream philosophy. Rolston, in his 1988 essay “Life in Community: Duties to Ecosystems,” supports Leopold’s view that the natural world has intrinsic value which morally obligates humans with ethical duties towards the Earth’s ecosystems. Rolston makes an implicit argument for fair treatment of ecosystems by humans. He commends the worth of ecosystems on their own merits rather than because of their instrumental value, in whole or in part, to humans. To this end, he builds a case for the ecosystem to be viewed

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as a natural community and argues that this community is the proper unit of the natural world which is due fair treatment by humans.

Rolston proposes that the historical and contemporary use of natural resources for human economic benefit is morally wrong if the use results in the destruction of biotic communities. Neither Leopold nor Rolston deny that an economic relationship to the land exists, and justifiably so as the fair treatment of human groups (a central concept of environmental justice) depends on this. They seek ethical guidance, however, in order to overcome the limitations of self-interest that persistently threatens genuine progress towards conservation reforms. Rolston goes so far as to say that the view favoring human culture as having precedence over the natural world is biased, should be resisted and is best overcome. Rolston’s anti-anthropocentric view has drawn the criticism that he implies human communities must suffer want or exposure to hazards in order to accomplish fair treatment of ecosystems by leveling human needs with ecosystemic needs.

The basis of Rolston’s claim for ethical treatment of the land is the concept that a value beyond intrinsic value exists, which he calls systemic value. Leopold set the groundwork for the understanding of this newly realized value when he wrote, “All ethics so far evolved rest upon a single premise: that the individual is a member of a community of interdependent parts...”\(^\text{112}\) For both Rolston and Leopold, the ultimate good of human moral actions towards ecosystems should result in the potential for a perpetual flourishing of life in ecosystems capable of natural sustenance. This concept has commonly come to be called “sustainability.” Sustainability, in the context of resource and land management, is best described as a measure of preservation. Its applicability as a measurement tool has

been found useful in relation to both renewable and nonrenewable resources (cultural resources being nonrenewable).

Policy theorist and utilitarian philosopher Mark Sagoff, in his 1988 book *The Economy of the Earth*, and in subsequent writings, examines the relationship between environmental economics and the deliberative democratic process. He asks, "How can we reconcile aesthetic and other 'elitist' values with property rights and free markets?" Sagoff begins from an understanding that the proper unit for moral obligation to the natural world is resources. He argues for wresting control of public lands from intrusive government managers, which he calls 'absentee landlords,' and restoring control to local communities that could base economic viability on solutions situated to local marketplaces as opposed to distant markets.

Sagoff represents the utilitarian view that promotes the preservation of natural resources based on instrumental value. He challenges the concept of duties to ecosystems on the basis that ecosystems fail to qualify as communities, charging that this has not been proven scientifically. On the surface, it may appear that Sagoff's argument defends and strengthens Rolston's argument for moral obligations towards ecosystems while completely setting aside the question of recognizing ecosystems as communities and whether human duties are due them. At the center of Sagoff's view, however, lies the denial of the value of the physical world without that value being attributed by humans. At the center of Rolston's and Leopold's view value exists in the physical world, whether or not humans even exist (the absolute denial of human self-interest).

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Fischer claims that, in practice, some things of value do not lend themselves well either to monetary valuation or to free market valuation.\textsuperscript{115} This argument serves to reaffirm the necessity for a governmental role in safeguarding resources that are characterized by values other than economic values. This would include cultural resources, especially those that are sites or landscapes within public lands, such as Red Rock Canyon, which under BLM use categories might offer scientific, educational, public or traditional values, but which defy monetary or free market valuation. (That is not to deny that an active black market exists for cultural artifacts looted from public lands, but only to acknowledge that intact cultural sites within public lands are rarely, if ever, evaluated in economic terms.)

Callicott notes that ecosystems have proved more complex than Leopold thought and that the rate of negative human affects on natural systems has escalated. Rolston notes that at the time Leopold proposed the “land ethic” the biotic community had no standing in terms of natural resources management laws and policies. The first major environmental acts were still a decade away from enactment when “The Land Ethic” was published. Placed in the context of contemporary understanding, Aldo Leopold’s now famous ethical charge, “A thing is right when it tends to preserve the integrity, stability and beauty of a biotic community. It is wrong when it tends otherwise,” takes on a renewed urgency. Callicott suggests that, “If we fully understood the usefulness of nature, then as good utilitarians we should be able to preserve it without disturbing our venerable beliefs about our uniqueness and superiority as human beings. But because of

\textsuperscript{115} Fischer, \textit{Evaluating Public Policy}, 43.
our lack of knowledge and the extreme complexity of ecosystems, ecological self-interest is not enough to save them."  

Callicott’s’ dire pronouncement regarding negative affects to natural resources has a corollary to cultural resources. Even acknowledging, by existing laws and policies, that cultural resources have value to the public and the nation, the deterioration of cultural resources on public lands, such as Red Rock Canyon, continues unabated. In part, this can be expected as deterioration is a risk consistent with the passage of time. It becomes imperative, however, because of existing cultural resources management laws and policies, to consider potential remedies beyond the existing laws and policies, if compliant BLM cultural resources management actions are found not to result in the preservation and protection of cultural resources on public lands.

The Meanings of Value

It is a challenge to understand the basis of laws from the viewpoint of utilitarianism if utilitarianism denies “the inherent link between social action and social values.”

Scholar and cultural resource law prosecutor Sherry Hutt writes that, “Cultural property law has grown from the common law of property to an array of statutes and codes that direct the management, protection, and preservation of cultural property in its many public and private manifestations.” The specific actions recommended by the eight cultural resource laws most relevant to the preservation and protection of cultural resources at Red Rock Canyon can be related to from a “value neutral” viewpoint, but an

\[\text{\footnotesize \cite{Callicott_The_Ethical_View, Fischer_Evaluating_Public_Policy, Sherry_Hutt_et_al._Cultural_Property_Law}}\]
examination of the purposes and language of any one of the eight reveals that the laws are far from “value free.”

Values themselves have been studied from many perspectives. In the context of this thesis study, the meanings of values have a bearing on understanding the cultural resource laws and policies under discussion. The concept of meanings is typically organized into conceptual frameworks; however, a detailed discussion of this aspect of research is beyond the scope of this study. A basis for understanding the processes involved in the construction of meanings to which individuals may then attach values, has been provided by research undertaken by the National Conservation Training Center.

A 2001 study on the meanings that visitors attach to heritage resources identified that in one theoretical framework, constructivism, two opposing views of the origin of meaning-making have been proposed; intersubjective and relational:

In the intersubjective account of meaning, the mind of the individual serves as an originary source. Meaning is generated within the mind and transmitted via words or gestures. In the relational case, however, there is no proper beginning, no originary source, no specific region in which meaning takes wing, for we are always ready in a relational standing with others and the world (p. 264).119

Intersubjective meaning is a social construction of the individual that is independent of contact (or relationship) with objects, events or places. Relational meanings necessarily develop from contact with objects, events or places and may accumulate over time, evolving into a social construction through interactions with other individuals. These views are at the center of a heated debate that seeks to understand how people develop associations between values and heritage resources. The results of the findings of

this research will affect how educators, interpretive planners and front-line interpreters develop stewardship programs and materials and engage individuals in order to minimize visitor impact to resources on public lands such as Red Rock Canyon.

In Chapter II, the laws that guide the BLM in its actions to preserve and protect cultural resources at Red Rock Canyon were reviewed for the ethical evaluation in an attempt to identify common factors of meaning with these laws. The first group of laws is categorized as applicable laws (general authority and special authority) and laws providing regulatory guidance. The general authority laws have been described throughout the thesis as eight relevant cultural resource laws, specifically: (1) Antiquities Act of 1906, (2) the 1966 National Historic Preservation Act (NHPA), as amended, (3) the 1969 National Environmental Policy Act (NEPA), (4) Executive Order 11593, 1971, Protection and Enhancement of Cultural Properties, (5) the 1974 Archaeological and Historic Preservation Act (AHPA), (6) the Archaeological Resources Preservation Act (ARPA) of 1979,\(^\text{120}\) (7) Federal Land Policy Management Act (FLPMA) of 1976, and (8) Southern Nevada Public Lands Management Act (SNPLMA) of 1998.

If there is commonality in these laws beyond their bearing on the preservation and protection of cultural resources by federal agencies, private and public industries, and citizens, it is that they all represent social values more or less accepted by the public. That is to say that, should general public objections to a law develop, Congress can take up the question of amendment to the law on behalf of the public. (The exception is Executive Order 11593. Executive Orders are legally binding rules typically issued from the executive branch of government, often to clarify or strengthen a pre-existing law.

Executive Order 11593, in part, put federal agencies on notice that compliance with NHPA 1966 is required.)

Other laws, characterized as specific authorities, include the establishment acts and boundary expansion acts for Red Rock Canyon. These were reviewed and evaluated as well. The specific authorities include: (1) Red Rock Canyon Recreation Lands Act of 1967, (2) Red Rock Canyon National Conservation Area Establishment Act of 1990, (3) Red Rock Canyon National Conservation Area Boundary Expansion Act of 1994, and (4) Clark County Conservation of Public Land and Natural Resources Act of 2002 (Title I).

If there is commonality in these laws, beyond the value of public lands being established and generally accessible to the public, it is represented by the suite of resources that Red Rock Canyon represents: cultural resources, natural resources, visual resources, biodiversity, recreational resources and others.

One additional law was identified in the ethical evaluation which deserves to be added to the list of specific authorities, but it is not referenced elsewhere in this thesis. This law addresses the area immediately outside of the jurisdictional boundaries of Red Rock Canyon and, therefore, is not binding on the BLM. It is a specific authority, by the definition accepted within the thesis, and contributes to the preservation and protection of Red Rock Canyon’s general resources in substantive ways. This law is Nevada Senate Bill No. 358 (SB 358)\textsuperscript{121} which protects Red Rock Canyon from rezoning and unharmonious adjacent construction. A partial recounting of the preamble to SB 358 makes clear its importance to the survival of Red Rock Canyon as a unique classification of public land:

\textsuperscript{121} Proposed by Nevada State Senators Titus, Wiener, Care, Schneider and Coffin; enacted July 2, 2003.
An Act relating to land use planning, limiting certain powers of planning and zoning that may be exercised by local governments within certain enumerated lands adjacent to Red Rock Canyon National Conservation Area; providing certain exceptions; and providing other matters properly relating thereto.

...Whereas, If the scenic views and largely rural character of Red Rock Canyon were to be encroached upon by development that is on a large scale or of inappropriate character, the value of Red Rock Canyon with respect to tourism, sightseeing and recreation would be greatly diminished, to the detriment of Clark County and the State of Nevada, as a whole; ...”

The values in the documents characterized in Chapter II as laws providing regulatory guidance – the master plans, management plans, environmental impact statements and environmental assessments written by the BLM – were, after 1969, prepared with public participation as required by NEPA. The public participatory process itself, formally elicited through means of public scoping meetings and public opinion documentation gathered during NEPA mandated public review and comment periods (generally lasting 30 days, but sometimes longer), is described by Fischer as being well-established as an intrinsic value. The literature search revealed that the BLM’s commitment to collaborative processes has strengthened over the period of the study. This commitment arguably contributes to the legitimacy of the BLM’s actions at Red Rock Canyon.

As noted in Chapter III, an anomaly developed relating to the 1995 IGMP, which went into effect after the 1994 Boundary Expansion Act more than doubled the size of the national conservation area. The public might have been expected to voice concerns about the deterioration of cultural resources at Red Rock Canyon through the mid-1990’s had they not possibly been misled into thinking that the BLM had a general management plan in effect that addressed Red Rock Canyon National Conservation Areas expanded acreage, including the 1994 boundary expansion lands (195,610 acres) and smaller

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122 Fischer, *Evaluating Public Policy*, 44
subsequent expansions (to approximately 198,000 acres). The 1995 IGMP which, as noted in Chapter II, was enacted temporarily in order to allow the BLM the time to create a revised plan that would incorporate the 1994 boundary expansion lands, was expected to be replaced not later than January 1, 1997. In July 1999, upon issuance of, and public scoping meetings held to address, the 1999 Proposed General Management Plan/Draft Environmental Impact Statement and, later, the 2000 Proposed General Management Plan/Final Environmental Impact Statement, this document was commonly believed to be in effect. Few people were aware that the adoption of the 1999/2000 general management plan was delayed until September 2005.

While the BLM was undeniably noncompliant with requirements in the establishing act for producing a general management plan in a timely manner, there is no evidence suggesting that the noncompliance intentionally deceptive. The Chapter II literature search revealed a sequence of events affecting the delay in completing a general management plan that may be considered symptomatic of pressures affecting the BLM in the decade of the 1990’s. Does there ever come a time when an agency such as the BLM requests assistance in order to achieve compliance? Certainly this is where collaborative resource management partnerships with other agencies, non-profit organizations and the public become crucial resource. The basis upon which these relationships can work relies, fundamentally, on developing an understanding of the range and scope of the work to be done. Regarding the preservation and protection of cultural resources at Red Rock Canyon, this understanding is, to some degree, subject to interpretation.

Legitimacy and Public Trust

When considering compliance with laws and policies, or questioning the values that underlie them, the issue of legitimacy must also be considered. Philosopher and scholar David Beetham, University of Leeds, U.K., offers three criteria for assessing the legitimacy of power in governance. He states that power is legitimate when:

i) [it] conforms to established rules, ii) the rules can be justified by reference to beliefs shared by both dominant and subordinate, and iii) there is evidence of consent by the subordinate to the particular power relation.124

Beetham’s first criterion – conformance with established rules – when applied to the eight relevant cultural resource laws, Nevada State BLM standard operating procedures, and Red Rock Canyon establishment acts and boundary expansion acts, goes to the heart the first of the three linked questions that have guided the study. Paraphrasing Question 1, Are there laws that clearly establish the BLM’s legal obligations for preserving and protecting cultural resources at Red Rock Canyon and how does the BLM learn its obligations? The finding of Chapter III that the BLM was generally conformant with the laws and policies (with limitations) can be interpreted, here, as consistent with Beetham’s first criterion.

Beetham’s second criterion – rules justified by shared beliefs of both the dominant and subordinate entities – frames the relationship between the BLM and the public in terms of power. The BLM, a federal agency, may be seen as the dominant power and the public may be seen as a subordinate power. Whether or not the BLM and the public share beliefs is a more ambiguous issue. When considering the cultural resource laws and policies, both “powers” (the BLM and the public) may be said to come to have shared

beliefs as they are filtered through the planning process and emerge as published management plans.

In the context of the management plans, it is at the locus of Beetham's second criterion that legitimacy breaks down at Red Rock Canyon. In relation to the general management plan for the national conservation area, the "powers" beliefs about the governing documents that were in effect were not shared regarding the general management plan. The public was misled into believing that the BLM's actions were consistent with the 1999/2000 proposed general management plan and draft environmental impact statement (1999/2000 GMP) for Red Rock Canyon when the BLM knew that the 1995 Interim General Management Plan was the effective governing document from 1995 through 2005. The 1999/2000 GMP included the 1991 Class I Report (Appendix 22) which made recommendations for the preservation and protection of cultural resources at Red Rock Canyon, and included the Red Rock Canyon National Conservation Area Establishment Act of 1990 (Appendix 17) and Red Rock Canyon National Conservation Area Boundary Expansion Act of 1994 (Appendix 18). The publication of the Appendices 17, 18 and 22 materials potentially resulted in misleading the public about the obligations of the BLM for management of Red Rock Canyon, obligations that, until September 2005, the date when the 2005 Resource Management Plan became effective, the BLM was legally not obligated to fulfill.

Beetham's third criterion — evidence of consent by the subordinate to the power relation — implies that public awareness allows free consent or, in the case of cultural resources management policy, approval of the BLM's actions based on public trust.
As the BLM’s actions are considered generally compliant with the eight relevant cultural resources laws, but less compliant with policies and the Red Rock Canyon National Conservation Area Establishment Act of 1990, yet can be said not to have resulted in expected outcomes, there is a disjunction between the laws, the BLM and the expected outcomes.

Several factors can obscure a clear understanding of how far from genuine conformance the agency may be. Because cultural resource laws provide a measure of restriction of information about cultural resources in order to ensure the protection of the resources, the public is at a disadvantage for understanding the status of the BLM with the relevant laws at any one point in time. If the BLM can choose to implement selected aspects of the relevant laws (prioritizing on basis of available funding or staffing, for example), then justifiable delays may impeded conformance.

When the timeframe for nonconformance stretches into years, such as with the completion of the 2005 Resource Management Plan, then it becomes important to investigate and examine the situation, determine the barriers and constraints involved in progressing towards conformance, identify the affects of the delay and examine the requirement or obligation itself. One issue to consider in such a situation is whether the conflicted law is merely symbolic.

Political scientist Murray Edelman wrote, in 1967, “If the regulatory process is examined in terms of a divergence between political and legal promises on the one hand and resource allocations and group reactions on the other hand, the largely symbolic character of the entire process becomes apparent.”125 A possible example of the symbolic

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nature of laws relating to Red Rock Canyon may be the 1990 designation change from Red Rock Canyon Recreation Lands to Red Rock Canyon National Conservation Area. The absence of special regulations addressing national conservation areas as different from other public lands suggests that “conservation” may be a concept in name only. Reinforcing the idea that Red Rock Canyon holds no special status separate from other public lands, BLM Las Vegas District resource specialists have, since 1990, rarely provided services to the national conservation area with certain exceptions (including studies of Red Rock Canyon’s springs, wild horses and burros). Even in local annual bird counts, counts of threatened and endangered species and counts of species of special concern to Clark County, Red Rock Canyon National Conservation Area has been excluded from the surveys.

Edelman’s proposal suggests that a missing element relating to the BLM’s actions at Red Rock Canyon may be a lack of tension in the regulatory process itself. Edelman suggests that group reaction may be used as a test to determine the level and nature of tension – potential conflict and potential resolution – within the process. To paraphrase Edelman, it is the stakeholders who must keep the agency energized by remaining informed and current as to the work.

The BLM historically has been a regulatory agency and only fairly recently in its existence has taken on broader responsibilities, including management of national conservation areas. In more traditional BLM regulatory actions, such as the application/permit process for land or geothermal development, oil and natural gas exploration, minerals extraction, timbering, grazing and off-road racing, political and

127 BLM interview respondents 3, 4 and 7, personal communications, June 2004.
legal promises (the application submittal) are resolved by allocations (permit issuance).

In Edelman's view, preserving and protecting cultural resources at Red Rock Canyon appears to be an issue for which there is no collective action.

In the utilitarian setting, considering that laws are enacted to codify commitments in order to preserve benefits, it is understandable that concepts such as collective action and interest group conflict might be introduced into the discussion. It is difficult, if not impossible, to separate the concept of benefits from values; however, utilitarianism appears to seek to separate values from benefits in order to minimize the risk of unfair distribution of benefits. Guarding against this is a proper function of government and one that should not be subverted. This raises a question, then, of how government can be moderated in order to uphold values within the utilitarian "value neutral" context and yet provide for actions that are compliant with "value laden" laws.

In the context of preserving and protecting cultural resources at Red Rock Canyon the issue focuses on BLM compliance with relevant laws regardless of whether the public will ever be motivated to call for enforcement if conditions of nonconformance develop. From this perspective the issue seems to be removed from the regulatory expectation. Perhaps the lack of tension, what Edelman calls "the divergence," can be viewed as responsible for what I have called in this thesis the BLM's position of general compliance with the relevant cultural resource laws (rather than definitive compliance). Much of this issue turns on interpretation of law and actions and understanding the usage of the words found within the actual laws and policies.

In policy theorist Deborah Stone's book *Policy Paradox* she discusses the roles that words play as symbols; symbols being anything that people become used to associating
meanings with, and Stone finds that symbols are an effective means to "transform intentions and actions into results." The preamble of the NHPA of 1966 states, in part, "the spirit and direction of the Nation are founded upon and reflected in its historic heritage." This language is strongly symbolic and suggests a vision for cultural resources management that was only aspired to when the NHPA was originated. Now, nearly forty years later, the NHPA has grown in power. The vision that valuing our heritage of diverse cultures might one day serve as a source of inspiration for decisions guiding us as a Nation suggests that someone considered well the idea that preserving the best from our past might lead to strengths that carry us into the future.

In surveying the language of the relevant cultural resources associated with the management of cultural resources at Red Rock Canyon one finds a mix of usages of the words "preservation," "protection," and "conservation." The Antiquities Act does not include any one of these three words. NHPA uses "protection" nineteen times and "preservation" eleven times, but does not use "conservation." E.O. 11593 uses "preservation," or its variations 'preserving" and "preserved," thirteen times. The AHPA uses "preservation" eleven times, but does not use "protection" or "conservation." ARPA uses "conservation" once, but does not use "preservation" and "protection" at all. Of all of the Acts, NHPA is the only one to include definitions of "preservation" and "protection." Of these two, the definition of "preservation" is general, but the definition of "protection" is specific to "the participation of certified local governments in the National Register nomination process."

129 National Historic Preservation Act, Title I, Section 101, d. (4) (B).
The laws that are the relevant cultural resources laws of Red Rock Canyon, taken together, embody the concept that the heritage represented by tangible cultural resources is of value and should be venerated such that the cultural resources are sustained into the future. The relevant laws are not lacking in clarity, nor is their symbolism intended merely to be emblematic. The existing laws require compliance and the means of preserving and protecting cultural resources at Red Rock Canyon is within the reach of the BLM through compliant actions. Where education of the public has been recommended (Myhrer and Rafferty) and undertaken it appears always to have fallen short of expectations. The findings of this chapter suggest that this is because education must be grounded upon values.

The Dilemma of Compliance

If the BLM's claim that the actions taken to preserve and protect cultural resources at Red Rock Canyon have been adequately been in conformance with laws and policies, how does that account for the surveying and evaluating work that remains to be done fourteen years after it was identified within the 1991 Class I Report? Throughout the 1991 Class I Report there are recommendations for additional work that should be done to further the scientific and educational or interpretive purposes. Does the utilitarian "value free" viewpoint interfere with comprehensively attending to processes with regard to cultural resources management?

19th century philosopher John Stuart Mill, follower of Bentham, defended the concept of secondary principles that guide utilitarian decision making in the specific circumstances of life. It may be that on the basis of the secondary principle of impartiality
(or rather partiality) that the BLM can justify the cultural resources management work remaining to be undertaken. Mill wrote that in applying partiality to our relations with other persons, special circumstances would include consideration for those who are weak, ill or handicapped. Mill’s argument for impartiality, as may be applied to resource management, can be restated such that impartiality is imperative in the general planning for work to be done, but that special consideration can be justified in response to mitigating circumstances such as lack of funding or limited staffing. Capriciousness, frivolousness or favoritism do not stand up under the test of utilitarian partiality on the basis of secondary principles and neither do they stand up under NHPA regulations. Nonconformance requires valid justifications. Under this argument the BLM could claim lack of the assignment of a cultural resources specialist/archaeologist to Red Rock Canyon as a special consideration due to lack of funding.

The comprehensive cultural resources process begins with an investigative survey (which may include field work) and continues with creation of an archaeological inventory which may then be monitored in order to identify effective changes to the cultural resource. The procedure does not end there, however, but continues with evaluation of data and materials collected from the field investigations and concludes with management decisions based on the results of these evaluations.

Consistent with the recommendations of the 1991 Class I Report, in order to complete the cultural resources management process and become genuinely conformant with full-scale cultural resource management guidelines much work remains to be completed. This work includes completing archaeological evaluations for all cultural resource materials removed from Red Rock Canyon during archaeological surveys, identifying the locations
of the removed materials and comparing the provenance reports with the materials actually curated as stored collections (wherever they may be), and then evaluating the materials for chronology, context and all other appropriate informational potential. Whether or not archaeological materials removed from Red Rock Canyon in the surveys are found to be of scientific value, decisions may then be legitimately made about management of the sites and the appropriate educational and interpretive materials may then be prepared. Additionally, archaeological surveying of previously unsurveyed areas of Red Rock Canyon remains to be completed which may include cultural resources within the original RRCRL boundaries, as well as those within the limits of subsequent boundary expansion lands. Site patterning may assist with predicting areas of likely cultural resource sensitivity, but is likely not definitive enough a technique to replace field work entirely.

Legal compliance with relevant cultural resource legislation is expected to lead to conformance with the law; however, the findings in Chapter III suggest that compliance with the relevant cultural resources legislation can lead to a condition whereby conformance with cultural resource law actually may result in adverse effects to cultural resources. Of the selected cases examined in the thesis, the most extreme example at Red Rock Canyon is that of the deteriorating Willow Spring archaeological complex so thoroughly documented in the 1991 Class I Report.

Some discussions of effect and eligibility entirely omit the question of values inherent within cultural resources, such as Willow Spring, that lie exist outside of the parameters of eligibility for nomination to the National Register of Historic Places, under NHPA. Regardless of the potential ineligibility of many of Red Rock Canyon's cultural

\[16 \text{ U.S.C. 469a-3(b) Repositories for relics and specimens}\]
resources, the richness of the cultural legacy represented by their presence within Red Rock Canyon could remain valid. That is not to suggest that every cultural resource should be attended at the same level, but only that valuations other than economic and legal can exist beyond those of National Register of Historic Places status. The segment of the Old Spanish Trail/Mormon Road within Red Rock Canyon is an example of a cultural resource that initially failed to qualify for listing on the National Register of Historic Places its own merit, but subsequently was qualified as a segment of the overall National Historic Trail.

Conclusion

This chapter has addressed the normative aspects of the general question, If cultural within Red Rock Canyon should and can be preserved and protected, how do law, the BLM and archaeology work together to accomplish that? Referencing materials identified in the Chapter II literature search and the Chapter III empirical study, Chapter IV examined the utilitarian principles underlying the BLM, its policies and the overarching multiple use and sustained yield mandate. A key finding was that regardless of emphasizing the concept of being “value neutral” or “value free,” utility is not without normative and organizing values. It strives to eliminate a reliance on moral positions to minimize the potential for capture by special interests. While it has been charged with facilitating the formation of “iron triangle” relationships this is in opposition to its original (17th century) role as a remedy for abuses of the public by special interests. It is constrained by efficiency, a comparative criteria for determining the best means for maximizing benefits.
Utility theory is contrasted with Aldo Leopold's "land ethic," a proposal that encourages the development of a sense of obligation in humans to care for the ecosystem as a world community of which we are a part and inseparable from. The "land ethic" bases its values on the concept of "do no harm," but proponents Holmes Rolston III and J. Baird Callicott diverge beyond that point. Rolston pursues an anti-anthropomorphic position that argues the ecosystem has systemic value with or without the existence of humans. Callicott pursues an anthropomorphic position that allows humans a place within the whole. The position of utilitarian proponent Mark Sagoff is contrasted with Rolston's and Callicott's defense of Leopold, arguing that economic valuation begins with resources and denies the integrity of the ecosystem as a community. Sagoff offers a weak argument in favor of privatizing public lands to allow free-market economics to benefit local communities. This provides a strong argument in favor of a role for government in safeguarding resources that are lacking in monetary value, which includes cultural resources.

None of these arguments, however, can be said to have strongly supported the concept of valuing of cultural resources found within the cultural resources management laws and policies relevant to the BLM's preservation and protection of cultural resources within Red Rock Canyon. The strongest argument made was found to result from the BLM's actions in relation to two of the relevant laws: Executive Order 11593 of 1971 and the National Historic Preservation Act, Section 110. While this study could not conclusively confirm that the BLM's actions were entirely compliant with either law, the nature of these two laws are so central to the preservation of cultural resources at Red Rock Canyon that, I believe, if the BLM would only take the actions necessary to become
definitively in compliance with these two statutes, that the progression of negative affects to cultural resources at Red Rock Canyon could, at least, be minimized and possibly halted for selected cultural resources.

By complying with E.O. 11593, the BLM would take the leadership role in preserving the cultural environment of Red Rock Canyon and would undertake action to complete a planned program of inventorying, evaluating and monitoring cultural resources at Red Rock Canyon recommended by NHPA, Section 110. This would provide an example to the public that could serve as a basis upon which cultural heritage education could be organized. The findings of the ethical evaluation suggest a strong likelihood of influencing changed behavior in BLM staff and the public. It is important that valuing behavior be modeled by the BLM, otherwise a backward situation may arise in which the public takes the leadership position and engages in behavior that serves to teach the BLM why cultural resources should be protected. (Theoretically, that situation would be a reversal of the dominant-subordinate power role that Beetham suggests exists underpins legitimacy.)

In reviewing the outcomes cultural resource laws intend and in examining what has actually resulted from BLM actions opportunities are found to consider whether we have achieved the stated objectives of cultural resources management at Red Rock Canyon. If some distance remains to be covered before achievement can be claimed, the BLM should consider what work remains in order to bridge the gap between the intended outcomes and the actual results, then proactively undertake the actions required to complete the work. In this way, the BLM may claim that the actions are consistent with the intentions and expectations within the law and justify those actions to the public.
CHAPTER V

CONCLUSION

This thesis examines compliance by the BLM with relevant cultural resources legislation, BLM policies and with the establishing acts at Red Rock Canyon, Clark County, Nevada, from 1964 to 2004. In the first four chapters, cultural resources are defined and recognized as having characteristics of meaningful value to the citizens of the nation in the regard to our history as people, our present social purpose and our endurance as a culture into the future. The practices of preserving and protecting cultural resources, seemingly less complex than preserving and protecting living resources, such as ecological communities, have proved to be intricate and nuanced.

Two major considerations serve as the basis of the thesis study: the policy context and the ethical context. These considerations are represented by two questions. The policy context is addressed by three linked questions first introduced in Chapter I: (1) How are federal cultural resources management policies communicated into directives to the BLM at Red Rock Canyon?; (2) are BLM actions compliant with relevant cultural resources management policies at Red Rock Canyon?; and (3) have BLM actions to implement cultural resources management policies at Red Rock Canyon resulted in expected outcomes? The ethical perspective is represented by a general question first introduced in Chapter II: If cultural resources within Red Rock Canyon should and can
be preserved and protected, how do law, BLM policy and archaeology work together to ensure that happens?

The study can be summarized as a description of, (1) the legal requirements for preserving and protecting cultural resources at Red Rock Canyon (defined by the laws, regulations and policies), (2) BLM actions taken to preserve and protect cultural resources within Red Rock Canyon from 1964 to 2004, (3) the ethical values that are central to cultural resources management and conservation (utilitarian and the "land ethic"), and (4) results of the empirical and ethical analyses, including identification of successes, limitations, false assumptions and recommendations for future actions.

The actions of the BLM may have underserved the concept of conservation at Red Rock Canyon. Evidence suggesting this is found in the BLM's failure to complete the general management plan within the established time frame, failure to take action required by NHPA, Section 110 to inventory and protect cultural resources at Red Rock Canyon to the extent of the jurisdictional boundaries, failure to adequately make use of existing available resources — such non-paid staff — to make progress towards completing cultural resources management tasks (especially volunteers trained in cultural resource monitoring and rock art recording techniques), and failure to take actions to initiate cultural resources inventories and further evaluate cultural resources as recommended in the 1991 Class I Report. But where the cultural resources process has been conducted through the full cycle, from inventory through evaluation, benefits and achievements have resulted that have shown the value in undertaking the efforts towards compliance with existing cultural resources laws and policies. This chapter addresses the successes,
limitations, false assumptions and recommendations for future actions resulting from the findings of the thesis study.

A Working Definition

To evaluate the actions of the BLM and the normative values represented within the relevant legislation guiding the BLM in its work, the kinds and types of data that qualified as relevant and substantive to the study were identified (Chapters I and II). Following the identification of these materials, the legal and ethical frameworks were established, then the scope of the work done in compliance with the legal and ethical frameworks were identified, measured and assessed (Chapters III and IV). The expected outcomes, as well as the actual outcomes, were addressed within each chapter. The cumulative results suggested that a definition of cultural resources management could be established whereas, previously, a definition had not been formulated.

Based on the investigations of the laws and policies of cultural resources at Red Rock Canyon over four decades, this definition of cultural resources management is offered: Cultural resources management is the practice of implementing cultural resources laws, BLM policies and public land legislations to the full extent of the law in order to identify tangible cultural resources, their historical context, meaning and significance for the purposes of delivering the benefits to present and future generations that cultural resources embody.
The thesis was designed to consider and integrate both the (a) empirical aspects and the (b) ethical aspects of the policy question rather than to see those aspects as being in opposition to each other. Some see the empirical and ethical aspects as anathema to one another; however I sought to understand the real world problem in terms of both its tangible challenges and its intangible challenges. This approach followed the examples of Frank Fischer and Hank Jenkins-Smith, policy theorists working (independently of one another) on a holistic framework blending technocratic policy analysis methodologies with the political deliberative process. Fischer calls the result “policy deliberation” or “practical deliberation.”

In the real world of policy analysis success or failure, the end product would be viewed by a client/user who would make the determination of its success or failure. It is likely that the client would have a bias and might not appreciate that the study is more descriptive than prescriptive. In the process of investigating the issue, I variously saw justification for and against the BLM regarding its state of compliance with the requirements of cultural resources law, BLM policy and management guidelines. In the review process, my “clients,” professors on my thesis committee, contributed their opinions of the work as well as on the substance of the analysis. (It may be that they did not realize this was so.) This was helpful in serving to provide a course correction for my own bias, which is a factor that may skew the results of the experimental research methodology I applied to the study.

Certain factors proved to be strongly valid when tested by this form of verification, if I may call the review process “verification.” The review and evaluation of the draft form
of this work served as a concrete situational context. The process not only answered the question of how the thesis progressed as a conceptual exercise, but also vindicated the topic as having contributive, or instrumental, value in itself. This was, in part, because of disagreement in the interpretation of results of the empirical analysis. The disagreement in the interpretation of the results turned on the issue of the BLM’s obligation to comply with a federal law when that law is particular rather than general. Specifically, the BLM failed to comply with the 1990 Red Rock Canyon National Conservation Area Establishment Act of 1990 and the 1994 Red Rock Canyon National Conservation Area Boundary Expansion Act in the matter of producing a general management plan, a guideline for BLM management of Red Rock Canyon.

While it is true that the general management plan is a guideline for BLM management, and failure to comply with a condition of the general management plan would not equate with violating federal law, it is not true that the 1990 establishment act and the 1994 boundary expansion act are guidelines. The establishment and boundary expansion acts are federal laws enacted by Congress with weights equal to other federal laws, or which should be treated as such. Not to do so would be similar to lying to Congress about something one viewed as a personal matter, and from some viewpoints not rightly the purview of Congress, and expecting no consequence. Another interpretation of the lying to Congress example would hold that lying to Congress on any matter is still a federal violation. I am of the latter opinion.

In the real world of the BLM’s management of Red Rock Canyon, there was no penalty for the failure of compliance with Red Rock Canyon’s establishment and
boundary expansion acts. I take this as symptomatic of a flaw in the system, rather than a flaw in my interpretation of the noncompliance.

An Evaluation of Combined Affects

How do understanding the values within utility theory and the "land ethic" contribute to explaining the progression of negative affects to the selected cultural resources at Red Rock Canyon as identified by the 1991 Class I Report? Utility can be seen as synonymous with BLM policy, but BLM actions have been found to be less than consistent with the utilitarian principle. The "land ethic" supports the concept of preservation and protection, but its emphasis on the idea of ecosystems as communities deserving of human obligations does not represent the spirit of cultural resources law. The "land ethic" can be seen to diverge from the spirit of the law in its attempts to justify human obligations to ecosystems based upon systemic values. Neither utility, with its emphasis on being "value neutral" or "value free" as a defense against capture by elitist or other special interests, nor the "land ethic," with its relatively poorly developed arguments for duties towards ecosystems on the basis of systemic values, is adequate to compel compliance with cultural resource laws and policies.

Education of the public was recommended by Leopold, and has been recommended by Myhrer and Rafferty as well, as a means for developing a sense of duties to protect resources. The evidence of research referenced in Chapter IV, that investigated how people learn to attach meanings to resources, strongly indicates that education without a value system fails to develop into understanding or stewardship.
The three linked questions introduced in Chapter I that served to guide the first prong of the two pronged thesis study, provided clarity to the actions of the BLM towards preserving and protecting cultural resources at Red Rock Canyon from 1964 to 2004. The answers to these three questions, here briefly detailed, identify where in the process the progress succeeds or falters:

(1) How are federal cultural resources management policies communicated into directives to the BLM at Red Rock Canyon? As answered in Chapter III, language within the laws and policies clearly directs the BLM to preserve and protect cultural resources at Red Rock Canyon and these directives are communicated through the mechanisms of Nevada State BLM standard operating procedures, informational memoranda and language within the Red Rock Canyon establishment acts and boundary expansion acts.

(2) Are BLM actions compliant with relevant cultural resources management policies at Red Rock Canyon? To the extent that the confidentiality of the laws has allowed the status of compliance to be assessed for the purposes of this study, as answered in Chapter III and Chapter IV the BLM’s actions have been as follows. Specifically, the BLM appears compliant with the Antiquities Act of 1906, the National Historic Preservation Act of 1966 (Section 106), the National Environmental Protection Act of 1969, the Archaeological Protection Act of 1979, the Federal Land Policy and Management Act of 1976 and the Southern Nevada Public Lands management Act of 1998.

It does not appear that the BLM’s actions can be called entirely compliant with Executive Order 11593 of 1971, consistent with “Section 1. Policy. The Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Agencies… shall (1) administer the cultural
properties under their control in a spirit of stewardship and trusteeship for future
generations, (2) initiate measures necessary to direct their policies, plans and programs in
such a way that federally owned sites, structures, and objects of historical, architectural or
archaeological significance are preserved, restored and maintained for the inspiration and
benefit of the people…" While granting that Section, items (1) and (2) are very
ambiguous, the position of cultural resources specialist for Red Rock Canyon having
been vacant for greater than three years cannot be said to be consistent with “providing
leadership.”

It cannot be confirmed whether or not the BLM’s actions have been compliant with
the Archaeological Historic Preservation Act (AHPA) of 1974. On the basis of questions
raised about the present location of certain archaeological artifacts that were removed
from cultural sites within Red Rock Canyon, the compliance of the BLM with Section 5
(b), consultation with the Secretary of the Department of the Interior, regarding “the most
appropriate repository for any relics and specimens recovered as a result of any work
performed as provided for in this section”¹³¹ is inconclusive.

On the basis of the National Historic Preservation Act of 1966, Section 110, it does
not appear that the BLMs’ actions were compliant as of the 1991 Class I Report, or
afterwards, with the requirement to inventory all cultural resources within the agency’s
jurisdiction and to maintain monitoring reports on the status and uses of those cultural
resources. This cannot conclusively be confirmed as this study did not attempt to assess
the status of all of the cultural resources known to exist within the 198,000 acre national
conservation area, but investigated only selected cultural resources, including
Brownstone Canyon, Red Spring/Calico Basin, Sandstone Quarry, Lost Creek Willow Spring and the Old Spanish Trail/Mormon Road.

The BLM was not compliant with the Red Rock Canyon National Conservation Area Establishment Act of 1990 or with the Red Rock Canyon National Conservation Area Boundary Expansion Act of 1994 on the basis producing a general management plan until September 2005, when the 2005 Resource Management Plan was produced in fulfillment of this requirement. It has not been confirmed whether or not a cultural resources management plan has been prepared, as required.

On the basis of the Nevada State BLM standard operating procedures it does not appear that the BLMs' actions were compliant with the Section 2 requirements to "identify, evaluate and protect cultural resources on public land under its jurisdiction and to ensure that Bureau authorized actions do not inadvertently harm or destroy non-federal cultural resources... mandated by Section 110 of the NHPA 1966 and amendments, the NEPA 1969, Executive Order 11593 (1971), and the ARPA 1979, together with 36 CFR 800."^{132}

(3) Have BLM actions to implement cultural resources management policies at Red Rock Canyon resulted in expected outcomes? There are two component parts to this question and the answers provided in Chapter III and Chapter IV both contribute to the two-part answer. Question 3 was designed to allow the study to reach a conclusion whether or not the BLM was found by the thesis study to be compliant with the relevant cultural resource management policies at Red Rock Canyon. An assumption was made that the implicit issue of expected outcome was more important to the overarching,

general question introduced in Chapter II (If cultural resources Red Rock Canyon, Clark County, Nevada, should and can be preserved and protected, how does law, BLM policy and archaeology work together to ensure that happens?)

Cultural resources law (NHPA, Section 110) states that actions to preserve and protect cultural resources are required to be undertaken by the BLM at Red Rock Canyon. Nevada State BLM standard operating procedures state that actions to identify, evaluate and protect cultural resources on public land under its jurisdiction (Red Rock Canyon) are to be taken and that Bureau authorized actions not inadvertently harm or destroy non-federal cultural resources (in accordance with NHPA, Section 110; E.O. 11593, ARPA and 36 CFR 800). Red Rock Canyon management plans state that a cultural resources management plan for Red Rock Canyon National Conservation Area is to be prepared. Archaeological practices prescribe measures to be taken to identify areas of cultural sensitivity, identification, surveying, and periodic monitoring of known cultural resources at Red Rock Canyon and evaluating materials removed from excavated sites (possibly sharing information with inter-agency researchers and the public.) The evidence in Chapter III indicates that there are gaps between intention and results.

The possible reasons that cultural resources work remains uncompleted at Red Rock Canyon need to be considered. The work of cultural resources consultant Thomas King suggests that one possibility is that BLM cultural resources specialists may have focused too closely on what they know. In general, King recommends broadening the interpretation of cultural resources laws and policies, especially to avoid an overly focus on NHPA, Section 106 to the exclusion of other applicable laws. Not to do so is not just.
At the rate that cultural resources on public lands are being negatively affected, not to do so may mean that information potential is lost forever.

Holmes Rolston III suggests that the ethical principles associated with the valuing of cultural resources goes to the philosophical debate on history. "This is the whole question of the worth of history, with a spectrum of opinions, all the way from Henry Ford's "History is bunk," to George Santayana's "He who forgets the past is condemned to repeat it." Arguably, Rolston's priorities lie with convincing ecologists of the worth of philosophy and philosophers of the worth of ecology, yet his defense of Leopold's "land ethic" suggest that he, too, acknowledges humans as members of the ecosystemic community. The chronology of human history in the Las Vegas valley encompasses more than 10,000 years of adaptation to climate change, as well as provides information on geologic history.

All of the BLM interview respondents (numbers 1 through 8) cited severely limited financial resources as reasons influencing staffing shortages affecting the resource specialist classifications within the BLM Stateline Resource Area, Las Vegas District Office (through mid-1996) and the later BLM Stateline Resource Area, Las Vegas District Office (from mid-1996).

I argue that, in general, what has negatively affected (since 1991), and what continues to negatively affect (through 2005), the preservation and protection of cultural resources at Red Rock Canyon is an overly gracious interpretation by the management staff located within the BLM Las Vegas District of cultural resources management actions to date combined with general ignorance of the requirements within the eight relevant cultural

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133 Holmes Rolston III, personnel communication, October 29, 2005.
resources laws, Nevada State BLM standard operating procedures, the 1990 Red Rock Canyon establishment act and the 1994 boundary expansion act.

**The Effects of Laws and Actions**

A central role in the thesis study is played by archaeologist Keith Myhrer's 1991 Class I Report which described the actions taken by the BLM affecting cultural resources at Red Rock Canyon from the early 1960's to 1991. The 1991 Class I Report offered both a record of archaeological studies and management decisions as well as a limited recommendation for future cultural resources management practices at Red Rock Canyon and served as the basis for the empirical analysis undertaken in Chapter III.

The Chapter III findings of general compliance by the BLM with cultural resources laws, but somewhat less compliance with Nevada State BLM standard operating procedures and Red Rock Canyon management plans resulting in affects to selected cultural resource cases, can be seen as diverging into two parallel sets of effects: a) The effects of law on the BLM and, b) the effects of BLM actions/inactions on cultural resources.

a) The effects of cultural resource laws on the BLM can be seen in a narrowing of the interpretations of the BLM's legal responsibilities. These narrowings of interpretation can be viewed as responses to circumstances affecting the BLM from both outside of the organization and from the inside. The pressure of circumstances from outside of the organization are numerous, but for the purposes of understanding the narrowing of definitions of responsibility for preserving and protecting cultural resources at Red Rock Canyon in compliance with relevant law, three factors appear highly significant:
1) the expansion of Red Rock Canyon from 62,000 acres to 198,000 acres in thirty-five years (1967-2002);

2) development pressures on the 5 million acre BLM Las Vegas District from the growing cities of Las Vegas, Henderson and Pahrump, as well as Clark and Nye counties (the population of Clark County grew from 273,288 in 1970 to 1,715,337 in 2004); and

3) the unexpected financial success of the SNPLMA land sales (1998-2004; revenues of $1,383,744,611 from sales of 8,202.77 acres).

The results of the pressures from the outside on the BLM have been that planning and resource staffs have been overwhelmed by the workload and that staff effort was directed to assignments other than Red Rock Canyon.

Circumstances affecting the BLM from inside the BLM Las Vegas District, again numerous, have included:

1) the support and collaboration of the non-profit groups Friends of Red Rock Canyon (1984-present) and Red Rock Canyon Interpretive Association (1988-present) in staffing the visitor center, completing maintenance and natural resource projects, preparing interpretive materials and programs, and contributing funds to the BLM for capitol improvements, staff training and other projects (especially prior to recreational amenity fee collection);

2) the collection of a recreational amenity fee upon entry to Red Rock Canyon, payable at the staffed entrance station located at the start of the one-way Scenic Drive (1998-present; $5.00 per vehicle, $20.00 per annual pass); and
3) the pressure of other priorities, such as highly public debate regarding managing the wild horses and burros resident within the Red Rock Canyon (a long term issue), recreational development (trail improvements, GPS documentation, sports climbing, mountain biking, coordination with regional trail planners with the city of Las Vegas and Clark County) and permit management for commercial filming, recreational concessionaires and weddings.

b) The effects of BLM actions/inactions on the cultural resources can be seen in the dearth of archaeological reports on the cultural resources within Red Rock Canyon, in the limitations of the few existing reports in representing the total area of Red Rock Canyon, and in the currency (or lack of currency) of the interpretative materials available to provide education about Red Rock Canyon's cultural context to the general public. While the exact locations of cultural sites and the details about the cultural materials associated with specific sites are legally protected by confidentiality laws, and rightfully so, the relevant cultural resources management laws provide for sharing (distribution of benefits) information about cultural resources found within public lands with the public (stakeholders) as values (benefits) of the public lands system. This distributory aspect of the cultural resources management process contributes to the fulfillment of objectives within the laws that provide for education, inspiration, and developing and strengthening our sense of who we, the American people, are as a nation.
On Conservation and Compliance

Definitive definitions of the word “conservation” and of the concept “national conservation area” do not exist. Aldo Leopold defined conservation as “a state of harmony between humans and the land.” It is difficult to see that the definition of “national conservation area” has evolved over the last fifteen years, since Red Rock Canyon National Conservation Area was established. With the exception of additional acreage removed from the possibility of current development, such as is affecting the greater Las Vegas valley, little appears to have changed for Red Rock Canyon regarding management activities following the name change from recreation lands to national conservation area. The major findings of the 1991 Class I Report remain valid today, fifteen years after the report was initially submitted. Nevertheless, changes have occurred that influence and affect Red Rock Canyon.

One of the most meaningful may be that, in the private sector, a concept related to conservation has evolved out of the idea of preservation; that idea is sustainability. Never mentioned in the early management plans for Red Rock Canyon sustainability has, nevertheless, become recognized as a consequence and embodiment of conservation. Where conservation appears to fall short, in fact, sustainability strengthens the idea of the persistence of resources, over time, as an ideal. Sustainability is now recognized as a definitive, long-term, achievable goal that benefits from collaborative efforts such as inter-agency partnerships, partnerships with non-profit agencies and utilization of trained, non-paid staff (volunteers). Lacking proactive programmatic management actions towards sustainability within the conservation area, this may be one issue about which the subordinate power (the public) will take a leadership role and, in a reversal of the

standard power arrangement, provide education and guidance to the dominant power (the BLM).

Environmental historians have questioned at what point in the changing landscape are land managers to preserve environments. Arguments focus on which wilderness to preserve and at what point in plant succession to intervene with restorations, or other means. Land managers struggle with daily operations regardless of funding and staffing shortfalls impacting their ability to achieve the objectives within the laws, regulations and policies affecting Red Rock Canyon. Some who argue against sustainability suggest that abundance is a more natural characteristic of nature. Just as there are species that are no longer suited to the altered environments of the contemporary world, and possibly should not be championed, there are natural successions of life, by which plants and animals change boundaries and ranges with the result of fluctuations in populations. These sorts of factors are encouraging new dialogue about the concept of sustainability which, in this thesis I have likened to preservation and that which previously did not have a place in the on-going dialogue.

Sustainability in the context of cultural resources which, by the nature of their being at least 50-100 years old before they qualify as such, focuses on the fragility of remnants of past cultures. That persons living on the world today are overrunning the natural landscape and affecting previously only lightly impacted wildlands is just one factor affecting the preservation and protection of cultural resources. That persons are involved in takings of cultural resources, for their own benefit, resulting in losses to the general public of a heritage and legacy the U.S. government has codified into law as assets.
citizens hold in common, is a completely separate issue. It is the latter issue, and also inadvertent losses that I have addressed in this thesis.

Recommendations

Within the context of the study, claims and recommendations have been made by Myhrer, Rafferty, Leopold, Rolston, Callicott, Myhrer, Fischer, Beetham and Stone. An unexpected finding of the thesis study was that some of these recommendations are not supported by evidence and, in some cases, are belied by evidence. It would be a shortcoming of the work not to include recommendations that I have found to be based on false assumptions. The most significant of these false assumptions are the following five:

(1) Nomination to the National Register of Historical Places increases protection for cultural resources: Nomination to the National Register of Historical Places in conformance with NHPA, Section 106, has not been found to ensure additional protections for cultural resources. While the law states that cultural resources that are potentially eligible for nomination should be treated as if they have been listed, listing itself does not provide additional protections above those which an agency such as the BLM is prepared to provide to any cultural resource.

(2) Education fosters a sense of stewardship towards cultural (and natural) resources: Education has perennially been recommended as a remedy for shortcomings in the development of a sense of stewardship in members of the general public. The evidence found in Chapter IV does not support this claim. Research has found that stewardship correlates with values and meanings rather than with education. Public visitors learn to
attach meanings, and the values associated with meanings, to cultural resources. The connections that must be made to increase stewardship are between education and values, not between education and resources. This is potentially problematic for governmental agencies that eschew all values because of the utilitarian emphasis on "value neutral" or "value free" management strategies.

(3) The proximity of cultural resources to areas that receive high visitation increases the potential for negative affects to the resources: This is simply not borne out by the evidence in Chapter III. While some of the most negatively affected cultural resources at Red Rock Canyon are located in areas that also receive high visitation, the most intensive impacts to those resources, to Willow Spring for example, resulted from government-funded improvements. For the selected cases researched in the thesis study, where amenity improvements or archaeological excavations have not been undertaken, cultural resources have arguably remained little changed over the period of the study.

(4) The isolation of areas away from high visitation (or with low visitation for other reasons) decreases the likelihood for negative affects to cultural resources: This is not borne out by the evidence in Chapter III. For the selected cases researched in the thesis study, where cultural resources are isolated, difficult to reach or for other reasons experience a low level of visitation, the likelihood of negative affects from vandalism, graffiti or looting are increased.

(5) The existence of cultural resources laws and policies is adequate to deter negative affects to cultural resources: The findings of Chapter IV do not support this assumption.
Without BLM leadership, as required by E.O. 11593 and NHPA, Section 110, the general public is not guided towards valuing cultural resources at Red Rock Canyon or towards general stewardship of public lands. The role of the public in the preservation and protection of cultural resources at Red Rock Canyon requires guidance. Legally and ethically, that leadership should come from the governing agency, the BLM.

Recommendations for further action follow. These include recommendations made by archaeologist Keith Myhrer in the 1991 Class I Report.

(A) Undertake and complete cultural resources inventories of all expansion lands that have been added to Red Rock Canyon since 1990.

(B) Provide cultural resources management guidance to trained volunteers to establish and undertake a systematic monitoring program at Red Rock Canyon.

(C) Identify the locations of all cultural resources materials that were removed from Red Rock Canyon during archaeological excavations, conduct evaluations of the materials to determine their value for scientific, educational or public uses and provide updated educational and interpretative material to the public about the cultural heritage of Red Rock Canyon based upon the evaluation of these materials.

(D) Work with inter-agency partners to provide archaeological information about Red Rock Canyon that broadens the understanding of the cultural history of the greater Las Vegas valley area.

(E) Work with inter-agency partners and non-profit agencies to strengthen and develop value-based meanings upon which education of the public can be grounded in order to reduce negative affect to cultural resources at Red Rock Canyon from unintentional actions by the public.
(F) Develop an advocacy program whereby the Nevada State BLM staff and the Las Vegas District Field Office advocate for cultural resources management by the BLM at Red Rock Canyon.

(G) Set, and regularly assess, cultural resources management goals for Red Rock Canyon in order to work towards achieving compliance with existing cultural resources laws, policies.

Achieving compliance with cultural resources management laws and policies is an objective that has been shown by this thesis study to be within the reach of the BLM at Red Rock Canyon National Conservation Area. In over forty years of governance by the BLM, Red Rock Canyon has grown to encompass 198,000 acres. This can be seen as an example of the strength and commitment of the spirit of conservation that recognizes that many values can be found within the scenic Mojave Desert ecosystem. The preservation and protection of cultural resources within Red Rock Canyon represents just one.

The values embodied within utilitarianism, within Leopold’s “land ethic” and within the relevant cultural resources management laws and policies have not been found by this study to be incompatible. Rather, the work remaining to be done, as identified by the 1991 Class I Report, the findings of the empirical study (Chapter III), the ethical evaluation (Chapter IV) and the concluding recommendations (Chapter V), has been shown to be achievable through systematically planned actions. Cultural resources at Red Rock Canyon should and can be preserved and protected. The key to the law, the BLM and archaeology working together to achieve this lies in the BLM taking a leadership role to ensure that happens.
APPENDIX A

Chapter III Interview Respondents

The interview respondents whose comments are referenced in the Chapter III empirical study are identified below by title and work location. Their identities are viewed as confidential. Interviews were conducted between 1999 and 2005. Questions were pre-planned, but interviews were informal. No attempt was made to standardize the questions asked of each respondent. Interviews were not recorded. The researcher received training in the procedures for conducting formal oral history interviews through the Oral History Program, Special Collections Library, University of Nevada, Las Vegas, in Summer 2004, but this procedure was not followed. The notes from these interviews are not on file in the Special Collections Library, University of Nevada, Las Vegas.

Those interviewed included the following:

(1) BLM Recreation Planner, Las Vegas District Field Office
(2) BLM Recreation Planner, Las Vegas District Field Office
(3) BLM Park Ranger, Red Rock Canyon Visitor Center
(4) BLM Park Ranger, Red Rock Canyon Visitor Center
(5) BLM Park Ranger, Red Rock Canyon Visitor Center
(6) BLM Senior Natural Resource Specialist, Washington, D.C. Office
(7) BLM Archaeologist, Las Vegas District Field Office
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