

A Small Law With a Mighty Big Take

Caught up in presidential excess and the Antiquities Act. By Teresa Platt

It's the community, not just the land, that creates the value of the resource," stated Congressman Steve Daines of Montana at an April 16, 2013, hearing on the Antiquities Act of 1906 in our nation's capital.

The act was designed to protect archeological treasures on public lands from looting. It gave the president the power to "declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected."

Beyond limiting the designation to "the smallest area compatible" with the care of the historic "objects to be protected" and any "archeological treasures," the act also authorized "relinquishment" of lands owned pri-

vately. The Constitution's Fifth Amendment requires that those with property rights in the area be compensated.

Ken Salazar, former Secretary of the Department of the Interior, said: "From the treasured landscapes of northern New Mexico and Washington, to the historic sites in Delaware, to the sites that show our nation's path from Civil War to civil rights, these monuments help tell the rich and complex story of our nation's history and natural beauty. There's no doubt that these monuments will serve as economic engines for the local communities through tourism and outdoor recreation—supporting economic growth and creating jobs."

National monuments being economic engines for communities is not true in most circumstances and the act provides no com-

ensation for lost custom and culture, and no protection from sweeping changes made to the economics of communities within designated areas. For example, when fishing activity is banned within a national monument but "nonconsumptive uses" such as

bird-watching and diving are allowed under federal permit, can you, as a fisherman, modify your commercial fishing boat into a recreational vessel servicing divers and tourists?

The government will not provide you with the means to do so, so you'll have to get a loan or use your savings to pay for changes. You will have to learn new skills

and market your services to a new audience that may or may not ever show up. If the monument is located 100 miles outside a large city, you might gamble on this being a good bet. If you are hundreds of miles from a metropolitan area, you might decide that you can't gamble your future that you'll be able to make a living in this new field. Perhaps it's time to leave the area. What happens to a community, a working town of 400 people, when 200 residents pack up and move?

The hearing in D.C. on the Antiquities Act was designed to start the process of asking these questions.

Presidents Use The Act To Go Big

After President Theodore Roosevelt designated the first national monument in 1906—less than 1,200 acres surrounding Devils Tower in Wyoming—he went big, using the act a total of 18 times for national monument designations which included 800,000 acres in the Grand Canyon in 1908 and more than 600,000 acres around Washington's Mount Olympus in 1909.

President Calvin Coolidge's proclamations were equally grandiose. He set aside 1.4 million acres as a new national monument in Glacier Bay, Alaska, in 1925; President Franklin Roosevelt enlarged it by another 900,000 acres in 1939. Various other presidents engaged their Antiquities Act powers,

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In January 1908, President Theodore Roosevelt declared 800,000 acres of the Grand Canyon in northwestern Arizona a national monument. President Woodrow Wilson turned it into a national park in 1919. Grand Canyon National Park now covers 1,902 square miles (1.217 million acres). Presidents ignore the fact that the "community" responsible for creating "the value of the resource" is based in Washington, D.C., not in the states where the monuments are located. States often suffer from a listing.

including President Clinton who set aside almost two million acres in his controversial Grand Staircase-Escalante designation in Utah. George W. Bush went to sea and used the act to protect hundreds of thousands of square miles—hundreds of millions of acres—in the Pacific from use including fishing. President Barack Obama used the act as recently as 2013 when he designated five new national monuments in Delaware, Maryland, New Mexico, Ohio and Washington. The largest area, 240,000 acres, is in the new Rio Grande del Norte National Monument in New Mexico. President Obama previously set aside four monuments, two in California and one each in Virginia and Colorado.

Presidents have used the unilateral power granted them in the Antiquities Act to transform hundreds of millions of acres of productive multiple-use areas into what is essentially a very limited recreational category. The monuments are managed by federal agencies such as DOI's National Landscape Conservation System or its National Park Service.

Sally Jewell, our new secretary of the Interior and chairman of the National Parks Foundation, has described the Antiquities Act as a “very, very important avenue for protecting special places.” She noted that “understanding how the communities feel and connecting with the communities in some way” was also important.

But the community that is responsible for creating the value of the resource is based in Washington in the District of Columbia, not in the states where the monuments are located. As of 2004, this D.C. community owned only 24.67 percent of the District of Columbia but fully 69.09 percent of Alaska and 84.5 percent of Nevada. During Jewell's April confirmation hearings, Alaska's Sen. Lisa Murkowski said: “I think we recognize as westerners that this is a position that has great meaning to our states, so we pay attention to who is the secretary of Interior. Really the most prominent role is being a landlord...and we need to trust our landlord.”

Whatever the D.C. Landlord Wants, The D.C. Landlord Gets

“One man's signature changed our lives completely,” says Commissioner John Jones of Carbon County, Utah, about President William Clinton's designation of 1.9 million acres of federal land into the Grand Staircase-Escalante National Monument. Local tour guides view the action as positive, feder-



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After President Theodore Roosevelt designated the first national monument in 1906—less than 1,200 acres surrounding Devils Tower in Wyoming (above)—he went big, using the act a total of 18 times for national-monument designations which included more than 600,000 acres around Washington's Mount Olympus in 1909.

al government-sponsored marketing of the tourist services they offer. But cattlemen, loggers and miners, excluded from land utilized for human benefit for generations, hold another viewpoint. And those who sell them supplies and equipment are also concerned.

Even worse, while D.C. has given lip service to “understanding how the communities feel and connecting with the communities in some way,” the act does not require any notification to the locals. The first designation of Devils Tower in Wyoming didn't even receive mention in the local papers in 1906. The Grand Staircase-Escalante designation happened with virtually no warning and no input from local elected representatives. But a D.C. reporter knew exactly when and where the signing ceremony would be held at least a week in advance: “south rim of the grand canyon, sept 18th - be there or be square,” wrote Tom Kenworthy of the *Washington Post* in a Sept. 11, 1996, email to a White House press officer. That was two days after another White House staffer assured the Utah congressional delegation that no decision had been made and that Utah would be consulted.

Congressman Rob Bishop (R-UT) did an excellent job developing these points at the hearing in D.C., organized by the staff of the Subcommittee on Public Lands and Environmental Regulation of the House Resources Committee. Beyond listening to complaints, the hearing also included witnesses who had had good experiences with national monument designations. Their insight revealed how and when the act worked well and under what specific circumstances. Local support for the designation appeared as a crucial point.

Commissioner Jones testified: “We've lived in actual fear of this raw executive power ever since President Clinton and Vice President Gore...flew to Arizona's Grand Canyon National Park, and with the stroke of a pen, designated the 1.9-million-acre Grand Staircase-Escalante National Monument—one of the largest monuments ever designated. This blatant political move has subsequently devastated the economies of Kane and Garfield counties and lifestyles of the people who live there, greatly damaged the reputation of my beloved Democratic Party in rural Utah, and has demolished the

Department of Interior's credibility in a state in which they are the majority landowner."

He continued: "Most importantly, if recreation and tourism, which are supposed to accompany the designation of national monuments, are such an economic benefit to local communities, why is the school system in Escalante, Utah, in the heart of the Grand Staircase, about to close due to a continual decline in local population since the monument was created? Please don't insult rural communities with the notion that the mere designation of national monuments and the restrictions on the land which follow are in any way a substitute for long-term wise use of the resources and the solid high-wage jobs and economic certainty which those resources provide."

In a sea of suits, the lone cowboy hat

worn by fourth-generation rancher Dave Eliason of the Public Lands Council of the Utah Cattlemen's Association stood out at the hearing. "Historically," Eliason said, "national monuments have had strangling effects on livestock grazing. Even when grazing is grandfathered in, either direct agency decisions reduce grazing, or the cost of doing business on these restricted areas becomes prohibitive."

Those who support the Antiquities Act status quo have issued an enthusiastic economic report and are tweeting by #monumentsmatter on twitter.com. Rural counties should engage in this conversation. You can tweet too. Consider submitting stats on tax receipts from before and after an Antiquities Act designation. Beyond counties, anyone can submit formal testimony into the record.

For help, contact Jim Streeter, staff director for the Subcommittee on Public Lands and Environmental Regulation, at 202-226-7736, James.Streeter@mail.house.gov.

Decisions about your future are made this way—in D.C.—far from where cowboys range and cattle graze. Decisions about your future will be made this way, so it's important that you participate in discussions about the use of your state's federal lands. At the same April hearing, Montana Rep. Steve Daines talked about "our dying small towns." It seems that, if we keep going in this direction, we'll be using the Antiquities Act in 20 years to preserve the empty buildings and remains left behind in all the small towns the Act is now extinguishing. ■

ROCK SQUIRREL, GRAND CANYON © MARK LAGRANGE / TOM STACK & ASSOCIATES



Inventory, Measure, Transfer

What to ask your representatives in Congress.

Inventory Our Land

The U.S. General Services Administration (GSA) inventories the federal government's real-estate holdings. However, President George W. Bush's 2004 Executive Order 13327 modified how the GSA inventories the land,

excluding certain public-domain lands from the official inventory such as military holdings, forests, parks and wildlife refuges. The last full GSA inventory was issued in 2004 when federal public-domain lands totaled 653.3 million acres, almost 30 percent of the total landmass of the 50 states.

Due to this accounting change, the GSA's Federal Real Property Report for 2010 included only 37.7 million acres in the federal domain and included this disclaimer related to Executive Order 13327: "As a result, the federal government's total land acreage does not include the totality of federal landholdings." Add in territories such as Puerto Rico, Guam, American Samoa, the Northern Mariana Islands and the Virgin Islands and the United States is blessed with great treasure. We need an accounting that details exactly how much land, water, mineral and other assets the federal government controls, under what designations the assets are managed (which greatly impact use and value), and which agency is responsible for management.

Measure Economic Benefits and Losses From Designations

While national monuments are promoted as good for the economy, the federal government should go back 30 years, at least, and compile stats on revenue to the counties before and after such des-

ignations. National-monument designations should not bankrupt local economies, and, if they are doing so as some claim, this issue should be addressed.

Transfer National Monuments to the States Upon Request

Several states have introduced legislation to limit the acreage set aside for each national monument to 5,000 acres subject to congressional approval. But it might be easier and quicker to simply thank the feds for holding all this land and then transfer national monuments back to the states in which they exist upon request, thereby creating local control and revenue.

It's been done before:

■ Arizona—Papago Saguaro, est. 1914, was transferred to the state in 1930 and is now Papago State Park.

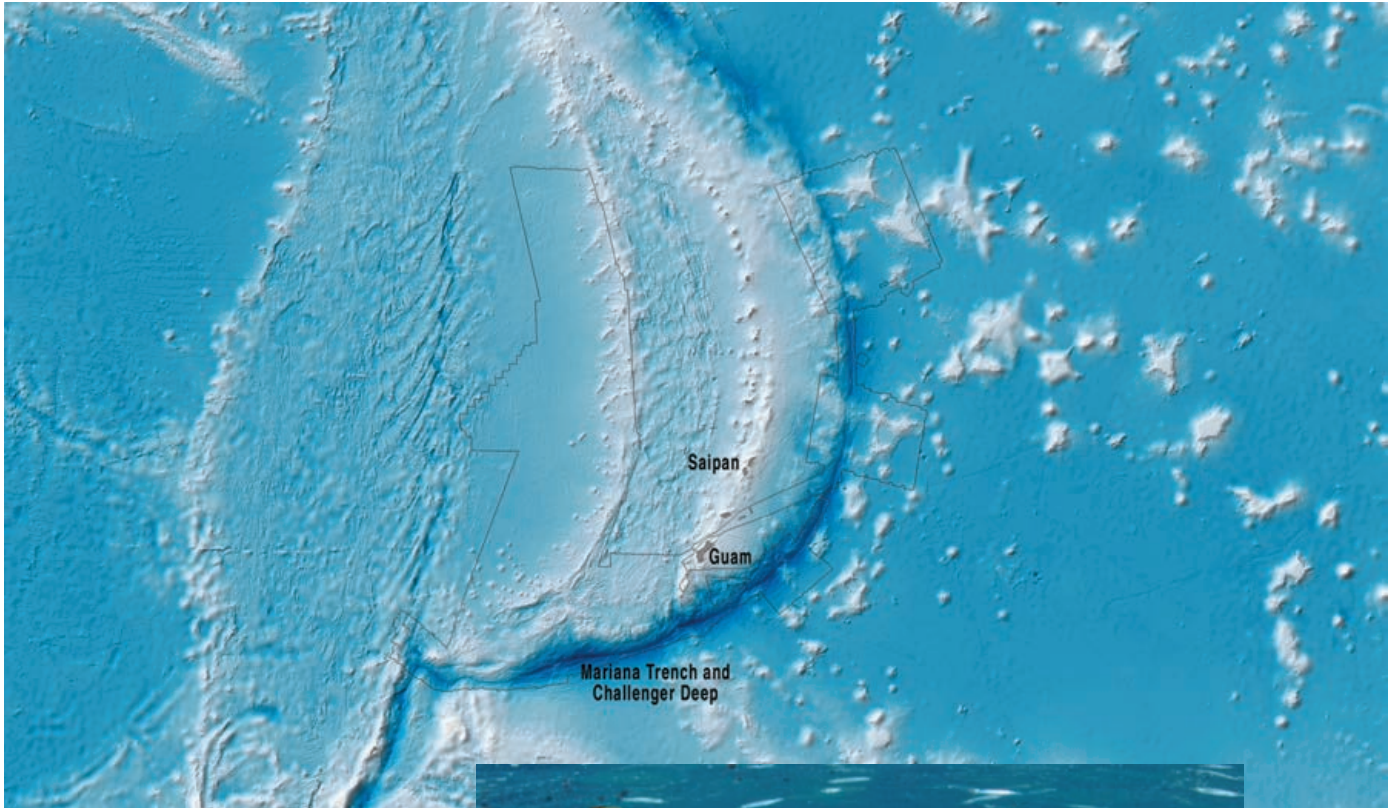
■ Montana—Holy Cross National Monument, est. 1929, was deemed difficult to reach and develop and was transferred to the U.S. Forest Service in 1950; Lewis and Clark Cavern, est. 1908, was transferred to the state in 1937 and is now Lewis & Clark Caverns State Park.

■ North Dakota—Verendrye, est. 1917, was transferred to the state in 1956.

■ New York—Father Millett Cross, est. 1925, was transferred to the state in 1949. It is now Fort Niagara State Park.

■ South Carolina—Castle Pinckney, est. 1924, was abolished by Congress in 1951 and transferred to the state in 1956. The *Charleston Mercury* reported that, in 2011, "the Fort Sumter Camp No. 1269 of the Sons of Confederate Veterans purchased historic Castle Pinckney from the State Ports Authority for the whopping sum of 10 confederate dollars." The fort's ruins are not currently open to the public.

■ Wyoming—Shoshone Cavern, est. 1909, was transferred to the state in 1954.



The Bush Bonanza

The excess keeps getting bigger.

President George W. Bush holds the Antiquities Act designation record. Jean-Michel Cousteau (Jacques' son) used his access to the president and in 2006 he proclaimed 139,797 square miles (89.5 million acres) as the Northwestern Hawaiian Island Marine National Monument. Fishing was banned five years later and snorkeling and diving now require federal government permits.

In January 2009, Bush designated another 90 million acres, later expanded to 125 million acres. This includes:

- Rose Atoll Marine National Monument (8.6 million acres/13,451 square miles)—or Motu O Manu, as it is known to the Polynesians who live in the area—is located east of the U.S. Territory of American Samoa. Beyond limited research and recreation, most activities, including fishing, are banned.

- Mariana Trench Marine National Monument (60.8 million acres/95,000 square miles) in the western Pacific near Guam is the deepest part of the world's oceans.

- Pacific Remote Islands Marine



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The Mariana Trench in the western Pacific is the deepest trench in the world's deepest ocean, and by using sound waves, scientists now have a new map of its lightless depth. INSET: School of threadfin butterfly fish.

National Monument (55.6 million acres/86,888 square miles) is south of the Hawaiian Islands. This monument includes several islands (Howland, Baker, Jarvis) and atolls (Johnston, Kingman Reef and Palmyra).

It took 18 designations for Theodore Roosevelt to set aside 1.5 million acres; Carter used 15 to set aside 54 million acres; Clinton used 19 to set aside five million acres. In just two designations, George W. Bush set aside 180 million acres, now grown to encompass 215 million acres. ■

Teresa Platt writes about natural resources, the environment, and science. She blogs at www.teresaplatt.com. Portions of this article were originally published on April 19, 2013, on the blog for National Center for Public Policy Research. Contact Teresa at 760-468-2025 or TeresaPlatt.com@gmail.com. "If you're interested in real-life examples of what happens when constitutional checks and balances fail, watch the full hearing," Teresa says. "If you're pressed for time, at least check the exchanges at 2:12:30-2:18:29; 2:22:42-2:24:18; and 2:26:24 to the close. You can find the Web archive of the hearing at <http://natural-resources.house.gov/calendar/eventsingle.aspx?EventID=327051>."