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### Notes on the Antiquities Act and Alaska

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## NOTES ON THE ANTIQUITIES ACT AND ALASKA

**Professor John Freemuth**

### Antiquities Act Context.

Most are familiar with the use of the Antiquities Act in Alaska by President Carter. It was not the first use of the Act in Alaska, however. President Woodrow Wilson proclaimed Katmai National Monument in 1918 (about one million acres, later enlarged to 2.6 million); while President Coolidge proclaimed Glacier Bay National Monument in 1925 (at 1.2 million acres, now 3.3 million acres and a national park and preserve).

### Context of the Carter Proclamations

Alaska received statehood in 1958. The state was given the right to select 105 million acres of land. However, there were a number of unresolved issues, including unresolved native land claims and knowledge of the land's resources. Oil was discovered in Prudhoe Bay in 1968. Congress passed the Alaska Native Claims Act to resolve the native claims and thus allow access to Prudhoe Bay. Section 17(d)(2) of that Act authorized the Secretary of Interior to withdraw up to 80 million acres of unreserved public lands, including lands selected by the state and by natives. The Secretary was also given two years to make recommendations as to the inclusions of these lands in the park, wildlife refuge, wild and scenic river and forest systems. Once the recommendations had been made, Congress had five years to act on them.

### The Battle for Alaska

Secretary Rodgers C.B. Morton presented his final recommendations on December 17, 1973. The legislative clock had begun. Congress worked on a number of different bills over the next five years, but histories of the period suggest the hard and serious work began in earnest in 1977. More protective legislation came from the House, led by Morris Udall and John Seiberling. Action in the Senate was more restrained, and the role of Alaska's two senators was key. Ted Stevens stayed very involved, fighting for Alaska concerns; while Mike Gravel through up obstacle after obstacle, often threatening filibusters. Gravel went so far as opposing any extension of the five year deadline. When the state of Alaska filed for land selections that included 14 million acres in proposed reservations in Andrus' Interior recommendations, it was time for the Antiquities Act. The Park Service had been working on the possibility of using the Act, and Andrus presented the option to Carter. Carter used the Act to protect 56 million acres, and 40 million acres were also protected using other legislative authority. The action forced Congress back to work. Andrus used the Federal Land Policy and Management Act to make administrative withdrawals and keep up pressure on Congress. Ronald Reagan won the 1980 election leading Alaska protection proponents to settle for what was still possible. The Alaska National Interest Lands Conservation (ANICLA) act was passed in late 1980, adding 43 million acres to the park system, 54 million acres to the wildlife refuge system, and 56 million acres to the wilderness system.

### Considerations and Observations

1. The Antiquities Act was using strategically by the Executive branch in Alaska, in order to force action as on the d2 provision. Once that had happened its proclamations were repealed by ANICLA.
2. Should the Antiquities Act be amended to include participation, consultation and impact requirements as argued by James R. Rasband in The Antiquities Act? How would that have worked in this case?
3. Senator Gravel used the filibuster to try and derail protection. Recently, some in the Senate wanted to place the opening of the Alaska National Wildlife Refuge (ANWR) to oil and gas development in the budget bill, essentially preventing a filibuster because that bill would be exempt, needed only 51 votes to pass.