SLIDES: The Centennial of the Antiquities Act: A Cause for Celebration?

James R. Rasband

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The Centennial of the Antiquities Act: A Cause for Celebration?

James R. Rasband
Celebrating the Centennial of the Antiquities Act, Natural Resources Law Center and the Center for the American West, University of Colorado, October 9, 2006
“The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon 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.”
Paul Begala, July 1998
“[A] foul, sneaking Pearl Harbor blow.” Senator Edward Robertson, Wyoming

“[C]ontrary to every principle of freedom and democracy.” Representative Frank Barrett, Wyoming

“Let them bring the matter before Congress and let the people be heard on it. . . . Are they the masters of the people? Are they above the law?”
Representative Frank Barrett, Wyoming

Incorporated into Grand Teton National Park in 1950.

“Nowhere else in the United States, including Alaska, can the casual visitor observe such a striking diversity of wildlife as that abounding in Grand Teton National Park and Yellowstone National Park.”
Jackson Hole, Wyoming Chamber of Commerce

Picture Credit: NPS Photo, http://www.nps.gov/archive/arte/galleries/scenery/grand.jpg
Arches (1969)

The proclamations were “arbitrary” and “unilateral . . . With no notice whatsoever, without hearing any interested group, without prior consultation with Congress and without consultation or discussion with state officials.”

*Senator Wallace F. Bennett of Utah*

The proclamations [of Capitol Reef and Arches National Parks] are a “last gasp attempt to embalm a little more land in the West.”

*Senator Wallace F. Bennett, UT*

“We’d rather go down fighting than lying on our backs.”

*President, Utah Cattlemen’s Association*

“Road development in the area will stop; existing roads and trails within the areas’ boundaries will be blocked; oil and gas development will stop; grazing rights will be terminated; mining operations will stop; watershed and soil conservation will stop; logging and lumbering will stop; hunting and recreational expansion will stop.”

*Garfield County Commissioner*
“This area of southern Utah has a diversity of landscape like no other area in the state - red rock formations and canyons, pristine meadows, alpine forests, as well as lush green valleys.”

Capital Reef Country Travel Council
“In all my years in the U.S. Senate, I have never seen a clearer example of the arrogance of federal power . . . . Indeed, this is the mother of all land grabs.”
Senator Hatch, Utah

“[T]he height of arrogance.”
Senator Bennett, Utah

The act of a “tyrant.”
Senator Burns, Montana

“[A] phenomenal misuse of power.”
Senator Craig, Idaho

“I surely think that the people of the West have just been written off.”
Representative Hansen, Utah

“It was an arrogant as hell for the president to use the law to his advantage as he did.” “What I’d like to do is declare war on the White House . . . but my church and the laws don’t allow me to do that.”
Kane County Commissioner
“This is the most arrogant gesture I have seen in my lifetime. . . . The only comparable act I can think of is when a country is ruled by a king and he sweeps his hand across a map and says, ‘It will be thus!’”

*Executive Director, Utah Association of Local Governments.*

“[T]he extreme environmental community, who wants to kill our timber, wants to kill our mining, wants to keep people from going into the wilderness and enjoying it and fishing, hunting, standing there and looking at God’s beauty, no, we do not get to do that, because the President of the United States, in his great, wonderful, awesome wisdom, greater than anybody . . . had the right to say this beautiful area should be reserved.”

*Representative Hansen, Utah*
“[S]trikingly beautiful and scientifically important,” “[the monument] offers an impressive array of educational, recreational, and other multiple-use opportunities for visitors.”

*Kane County Visitor’s Guide*

“[M]ore natural scenic attractions than anywhere in the world.”

“America’s largest national monument.”

*Garfield County Tourism Office*

“Geology unequaled anywhere on the Colorado Plateau; a diverse array of ecosystems; one of the best and most continuous of fossil records of late Cretaceous life in the world; evidence of three major prehistoric cultures. These are but a few of the treasures the Monument holds for scientific study.”

*Kane County Office of Tourism*
“The president flew in here for just a couple of hours. He has never been to the area. He issues his edict. He’s gone and then leaves somebody else, in effect, to clean up the mess.”

*Senator Jon Kyl, AZ*

“This expansive mosaic of semi-desert area, cut by ribbons of valuable riparian forest, offers one of the most significant systems of prehistoric sites in the American Southwest. In addition to the rich record of human history, the monument contains outstanding biological resources.”

*Go-Arizona.com*
“[T]his administration is involved in a very desperate grab of our Federal land . . . . The President is currently engaging in the biggest land grab since the invasion of Poland.”
Representative Helen Chenoweth-Hage

“These monuments are issued around election time where great, vast, beautiful landscapes are used as nothing more than a backdrop for politically motivated press conferences. . . . “[A]ll of the flannel shirts and blue jeans cannot obscure the nakedness of a President bereft of the constitutional covering . . . .”
Representative Schaffer

“Covering 1,054,264 acres of remote and unspoiled public lands, this monument is a scientific treasure, containing many of the same values that have long been protected in the Grand Canyon National Park.”
Go-Arizona.Com
“The procedure of administrative rulemaking is in my opinion one of the greatest inventions of modern government.”

*Kenneth Culp Davis*

“One might argue that correct outcomes are all that really matter and the democratic process is valuable only insofar as it contributes to correct outcomes. But surely the more widely held view is that an undemocratic regime violates an important human right, even if it legislates as well as or even better than a democratic regime.”

*Lawrence B. Solum*

“I think the emphasis on the redemptive quality of procedural reform is about nine parts myth and one part coconut oil.”

*Joseph Sax*

Notice-and-comment rulemaking is to public participation as Japanese Kabuki theatre is to human passions—a highly stylized process for displaying in a formal way the essence of something which in real life takes place in other venues.”

*E. Donald Elliot.*
“Only Losers Care About Process.”
“The preservationists are really moralists at heart, and people are very much at the center of their concerns. They encourage people to immerse themselves in natural settings and to behave there in certain ways, because they believe such behavior is redeeming.”
Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431; popularly known as the Antiquities Act of 1906), is amended . . . by adding at the end the following:

(b)(1) To the extent consistent with the protection of the historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest located on the public lands to be designated, the President shall--

(A) solicit public participation and comment in the development of a monument declaration; and

(B) consult with the Governor and congressional delegation of the State or territory in which such lands are located, to the extent practicable, at least 60 days prior to any national monument declaration.

(2) Before issuing a declaration under this section, the President shall consider any information made available in the development of existing plans and programs for the management of the lands in question, including such public comments as may have been offered.

(c) Any management plan for a national monument developed subsequent to a declaration made under this section shall comply with the procedural requirements of the National Environmental Policy Act of 1969.'.

SEC. 2. RULE OF CONSTRUCTION.

Nothing in this Act or any amendment made by this Act shall be construed to enlarge, diminish, or modify the authority of the President to act to protect public lands and resources.
National Monument Fairness Act of 1997

Section 2 of the Act of June 8, 1906, commonly referred to as the `Antiquities Act' (34 Stat. 225; 16 U.S.C. 431) is amended by adding the following at the end thereof:

“A proclamation of the President under this section that results in the designation of a total acreage in excess of 50,000 acres in a single State in a single calendar year as a national monument may not be issued until 30 days after the President has transmitted the proposed proclamation to the Governor of the State in which such acreage is located and solicited such Governor's written comments, and any such proclamation shall cease to be effective on the date 2 years after issuance unless the Congress has approved such proclamation by joint resolution.”
Is the Antiquities Act nothing more than Congress tying itself to the mast?
“On and after October 21, 1976, a withdrawal aggregating five thousand acres or more may be made (or such a withdrawal or any other withdrawal involving in the aggregate five thousand acres or more which terminates after such date of approval may be extended) only for a period of not more than twenty years by the Secretary on his own motion or upon request by a department or agency head. The Secretary shall notify both Houses of Congress of such a withdrawal no later than its effective date and the withdrawal shall terminate and become ineffective at the end of ninety days (not counting days on which the Senate or the House of Representatives has adjourned for more than three consecutive days) beginning on the day notice of such withdrawal has been submitted to the Senate and the House of Representatives, if the Congress has adopted a concurrent resolution stating that such House does not approve the withdrawal. . . .” FLPMA, 42 U.S.C. 1714(c)(2).
(2) With the notices required by subsection (c)(1) of this section and within three months after filing the notice under subsection (e) of this section, the Secretary shall furnish to the committees—

(1) a clear explanation of the proposed use of the land involved which led to the withdrawal;
(2) an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation;
(3) an identification of present users of the land involved, and how they will be affected by the proposed use;
(4) an analysis of the manner in which existing and potential resource uses are incompatible with or in conflict with the proposed use, together with a statement of the provisions to be made for continuation or termination of existing uses, including an economic analysis of such continuation or termination;
(5) an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed use;
(6) a statement as to whether any suitable alternative sites are available (including cost estimates) for the proposed use or for uses such a withdrawal would displace;
(7) a statement of the consultation which has been or will be had with other Federal departments and agencies, with regional, State, and local government bodies, and with other appropriate individuals and groups;
(8) a statement indicating the effect of the proposed uses, if any, on State and local government interests and the regional economy;
(9) a statement of the expected length of time needed for the withdrawal;
(10) the time and place of hearings and of other public involvement concerning such withdrawal;
(11) the place where the records on the withdrawal can be examined by interested parties; and
(12) a report prepared by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present and potential market demands. 42 U.S.C. 1714(c)(2).
(d) Withdrawals aggregating less than five thousand acres; procedure applicable
A withdrawal aggregating less than five thousand acres may be made under this
subsection by the Secretary on his own motion or upon request by a department
or an agency head—
(1) for such period of time as he deems desirable for a resource use; or
(2) for a period of not more than twenty years for any other use, including but not
limited to use for administrative sites, location of facilities, and other proprietary
purposes; or
(3) for a period of not more than five years to preserve such tract for a specific
use then under consideration by the Congress.

(e) Emergency withdrawals; procedure applicable; duration
When the Secretary determines, or when the Committee on Natural Resources of
the House of Representatives or the Committee on Energy and Natural Resources
of the Senate notifies the Secretary, that an emergency situation exists and that
extraordinary measures must be taken to preserve values that would otherwise be
lost, the Secretary notwithstanding the provisions of subsections (c)(1) and (d) of
this section, shall immediately make a withdrawal and file notice of such
emergency withdrawal with both of those Committees. Such emergency
withdrawal shall be effective when made but shall last only for a period not to
exceed three years and may not be extended except under the provisions of
subsection (c)(1) or (d), whichever is applicable, and (b)(1) of this section. The
information required in subsection (c)(2) of this subsection shall be furnished the
committees within three months after filing.