

# BACKGROUND

No. 2998 | MARCH 25, 2015

## The Antiquated Act: Time to Repeal the Antiquities Act

Nicolas D. Loris

### Abstract

*For more than a century, the President of the United States has had the power to unilaterally designate land as a national monument without input from Congress or the states. The Antiquities Act of 1906 originally served as a means for the President to quickly designate land to prevent looting of archeological sites. However, Presidents from both parties have abused the power to place restrictions on land use. This practice prohibits or restricts economic opportunity, removes decision making from states and private citizens, and often does more environmental harm than good. President Barack Obama's recent proclamation of three national monuments in the United States should serve as a reminder that the Antiquities Act is no longer needed and that Congress should repeal the President's authority to designate national monuments.*

President Barack Obama recently designated three national monuments in Colorado, Hawaii, and Illinois.<sup>1</sup> Under the Antiquities Act,<sup>2</sup> the President can designate areas as “national monuments” without congressional approval. Both Democratic and Republican Administrations have unilaterally used the Antiquities Act to restrict land use without input from Congress, the states, or their citizens.

Congress should repeal the Antiquities Act and devolve land management decisions to the states. At the very least, any national monument designation should require congressional approval and approval of the state(s) where the proposed national monument would be located.

### KEY POINTS

- The Antiquities Act of 1906 was originally intended to prevent looting of archaeological and Native American structures and objects. Since then, Presidents from both parties have unilaterally declared national monuments of arbitrary size and scope, without congressional approval or input from states.
- Designating an area as a national monument often means additional land-use restrictions, such as prohibiting development of energy resources.
- The President's ability to designate national monuments likely does more environmental harm than good by adding additional burdens to the U.S. Department of the Interior, which already has a maintenance backlog in the tens of billions of dollars.
- Congress should recognize that states, local governments, and private citizens are the best arbiters of how to manage land and should repeal the Antiquities Act or limit the President's power by requiring congressional and state approval for any national monument designation.

This paper, in its entirety, can be found at <http://report.heritage.org/bg2998>

**The Heritage Foundation**  
214 Massachusetts Avenue, NE  
Washington, DC 20002  
(202) 546-4400 | [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

## What the Antiquities Act Does

The Antiquities Act dates back to 1906 and gives the President power to declare “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest” on federal lands.<sup>3</sup> National monuments differ from national parks in that national parks require congressional approval, although Congress has made many of the designated national monuments into national parks. Any excavation on national monument land requires permit approval from the department secretary with jurisdiction, typically the Secretary of the Interior or the Secretary of Agriculture.<sup>4</sup>

If any objects of significant importance are on private land, the land could be relinquished, but several court cases have stressed that relinquishment should remain voluntary and that the Antiquities Act applies only to federal land.<sup>5</sup> While no President has taken private property when designating a national monument, some instances have walled in private land owners, restricting their ability to use their land how they want.<sup>6</sup>

The act directs the President to limit the designation to the “smallest area compatible with proper care and management of the objects to be protected.”<sup>7</sup> Yet Presidents from both sides of the aisle have used their own discretion to determine the size and level of protection in designating national monuments, even as federal budgets have proved insufficient for “proper care and management.” Since 1906, 16 Presidents have designated more than 140 monuments covering in excess of 285 million acres of land and marine areas.<sup>8</sup>

## Harm to the Economy and the Environment

The Antiquities Act no longer serves its original purpose, and federal ownership of land has taken management control away from states and local interests. The result has been environmental degradation of America’s national monuments and parks, billions of dollars in maintenance backlogs, lost economic opportunity, and concentration of power in Washington.

Proponents of the Antiquities Act argue that the local economies will benefit from setting aside more public land. However, empirical analysis shows otherwise. Professors from Utah State University and Southern Utah University analyzed wilderness and non-wilderness counties over time and found no stimulus for local economies and, more likely, negative economic impacts. The authors concluded:

That is not to say that for one county, designating an area for recreation whether it be wilderness, a national park or other type of land use, may be a way to improve its economic conditions, and indeed we see some evidence for this proposition from the single significant result in our models. Nothing in this study precludes the wisdom of this use for individual counties if it is to their comparative advantage, rather the findings of this study indicate that the value of land protection without consideration of designation type cannot be taken as a given when considering the economic conditions of a particular area.<sup>9</sup>

- 
1. News release, “Launching the Every Kid in a Park Initiative and Designating New National Monuments,” The White House, February 19, 2015, <http://www.whitehouse.gov/the-press-office/2015/02/19/fact-sheet-launching-every-kid-park-initiative-and-designating-new-natio> (accessed February 25, 2015).
  2. American Antiquities Act of 1906, 16 U.S. Code §§ 431-433.
  3. *Ibid.*, § 431.
  4. *Ibid.*, § 432.
  5. *California v. U.S.*, 436 U.S. 32, 40 (1978), and *Buono v. Kempthorne*, 527 F.3d 758 (9th Cir. 2008).
  6. Carol Hardy Vincent and Kristina Alexander, “National Monuments and the Antiquities Act,” Congressional Research Service Report for Congress, July 20, 2010, <https://www.fas.org/sgp/crs/misc/R41330.pdf> (accessed February 25, 2015).
  7. 16 U.S. Code § 431.
  8. U.S. Department of the Interior, National Park Service, “Antiquities Act: 1906-2006,” <http://www.nps.gov/archeology/sites/antiquities/MonumentsList.htm> (accessed February 25, 2015).
  9. Ryan M. Yonk, Randy T. Simmons, and Brian C. Steed, “Politics, Economics, and Federal Land Designation: Assessing the Economic Impact of Land Protection—Grand Staircase—Escalante National Monument,” Utah State University, <http://www.usu.edu/ipe/wp-content/uploads/ipePublications/Politics-Economics-and-Federal-Land-Designation-Assess-the-Economic-Impact-of-Land-Protection-Grand-Staircase-Escalante-National-Monument.pdf> (accessed February 25, 2015).

In summary, the Antiquities Act:

- **No longer serves a purpose.** President Theodore Roosevelt signed the Antiquities Act in 1906 largely to prevent looting of archaeological and Native American structures and objects.<sup>10</sup> The purpose was to give the federal government an expeditious path to protect archeological sites. Such a quick, unilateral means to designate land is no longer necessary, and Presidents have used the act for more wide-ranging purposes, such as conservation or scenic protection. Removing the Antiquities Act does not preclude Congress from designating national monuments and national parks or other conservation efforts. It merely prevents the President from unilaterally restricting land use in states, often with arbitrary boundaries and with little or no input from the states and local citizens.
- **Adds to the problem of government mismanagement of federal land.** The President's ability to designate national monuments likely does more environmental harm than good. America's largest land holder, the Department of the Interior (DOI), has a maintenance backlog of \$13.5 billion to \$20 billion for the land it already owns—a deficit leading to environmental degradation, soil erosion, gross amounts of littering, and land mismanagement.<sup>11</sup> While the Antiquities Act does not take more acreage into federal possession, designating a national monument places additional burdens on an overstretched DOI. The solution is not to throw more money at the problem by increasing budgets, but to transfer responsibility to state and local governments and private actors. They are the parties closest to the issue who can prioritize problems, solve them effectively, and properly weigh the needs and desires of local communities.<sup>12</sup>
- **Prohibits and restricts economic opportunity.** Designating an area a national monument often means additional land-use restrictions, such as prohibiting energy development or other commercial endeavors. While many monument declarations protect existing activities on the land (although sometimes with more stringent environmental standards), most recent proclamations ban new activities. Thus, national monument recognition locks up abundant natural resources from developers in the West. These include conventional sources of energy such as coal, oil, natural gas, and uranium; unconventional sources of energy such as shale deposits; and renewable sources of energy such as wind, solar, and geothermal.<sup>13</sup> Restrictions on land use and consequently on job creation and economic activity have effects that extend well beyond energy. For instance, several of President Clinton's monument designations prohibited the use of off-road vehicles, and President George W. Bush's designations restricted and in some cases prohibited commercial and recreational fishing.<sup>14</sup> Presidents have also placed additional restrictions on timber development, grazing, and even pumping water on national monument land.
- **Takes decision making away from the states and people.** Many monument designations have prompted local opposition, litigation, and proposed changes to state and federal law. For instance, the Alaska National Interest Lands Conservation Act of 1980 requires congressional approval for all national monument proclamations in Alaska greater than 5,000 acres.<sup>15</sup> Further, strong opposition to Franklin Roosevelt's designation of the Jackson Hole National Monument in Wyoming led to a change in law in 1950 that requires congressional approval for all national

---

10. Judith Benderson, "Native American Artifacts," U.S. Department of Justice, Offices of the United States Attorneys, December 8, 2014, <http://www.justice.gov/usao/priority-areas/indian-country/native-american-artifacts> (accessed February 25, 2015).

11. Anu K. Mittal and Frank Rusco, testimony before the Subcommittee on Interior, Environment, and Related Agencies, Committee on Appropriations, U.S. House of Representatives, March 1, 2011, p. 9, <http://www.gao.gov/assets/130/125531.pdf> (accessed February 25, 2015).

12. The Heritage Foundation, "Environmental Conservation: Eight Principles of the American Conservation Ethic," July 27, 2012, <http://opportunity.heritage.org/consERVE-the-environment-through-responsible-stewardship/>.

13. Randy T. Simmons and Ryan M. Yonk, *Energy in National Monuments*, Strata, August 2013, <http://www.strata.org/wp-content/uploads/ipePublications/Energy-in-National-Monuments.pdf> (accessed February 26, 2015).

14. Vincent and Alexander, "National Monuments and the Antiquities Act."

15. Alaska National Interest Lands Conservation Act of 1980 (ANILCA), Public Law 96-487. See 16 U.S. Code § 3213.

monument proclamations in Wyoming.<sup>16</sup> Local coalitions have formed to oppose monument designations that adversely affect them, stressing that these decisions should be left to the states and involve local input.<sup>17</sup>

Whether the issue is logging, recreation, conservation, or energy extraction, such decisions are most effectively made at the state and local level. State regulators and private land owners have the local knowledge and the proper incentives to promote economic growth while protecting their environment. They understand site-specific challenges and can address concerns efficiently. They have the most to gain from proper management of natural resources and economic activity and the most to lose (including tax revenue) from mismanagement or mishandling of the environment. Land is a significant asset for a state, but that asset can become a liability if mishandled.

### **Repeal the Antiquities Act**

Congress should recognize what Wyoming recognized in 1943 and what the 81st Congress recognized in 1950: The President should not have the ability to unilaterally and arbitrarily declare national monuments and take away economic and environmental decisions from the states and local organizations. Congress should strip the President's authority to do so, either by repealing the Antiquities Act altogether or by requiring congressional and state approval for any designation.

—*Nicolas D. Loris is Herbert and Joyce Morgan Fellow in the Thomas A. Roe Institute for Economic Policy Studies, of the Institute for Economic Freedom and Opportunity, at The Heritage Foundation.*

---

16. Vincent and Alexander, "National Monuments and the Antiquities Act," and 16 U.S. Code § 431a.

17. Christina Jensen, "Local Group Meets in Opposition to National Monument," January 30, 2015, ABC 8 (Idaho Falls, ID), <http://www.localnews8.com/news/local-group-meets-in-opposition-to-national-monument/31020528> (accessed February 25, 2015).