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SLIDES: The Monumental Legacy of the Antiquities Act of 1906: The Rainbow Bridge National Monument in Context

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The Monumental Legacy of the Antiquities Act of 1906

The Rainbow Bridge National Monument in Context



The Grand Canyon. Photo Courtesy of the National Parks Service, by Mark Lelloch

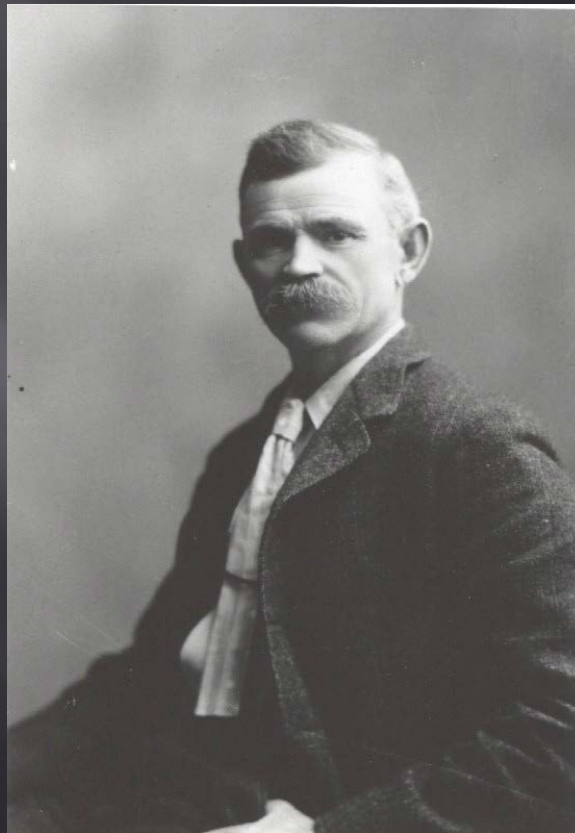
Professor Mark Squillace, Director, Natural Resources Law Center, CU Law School

Historical Background

- ▣ **The Antiquities Act was originally conceived to protect public lands from looting**
- ▣ **But Interior wanted the President to have authority to establish national parks**
- ▣ **Congress resisted, but Interior officials drafted the bill that became the Antiquities Act without amendment**



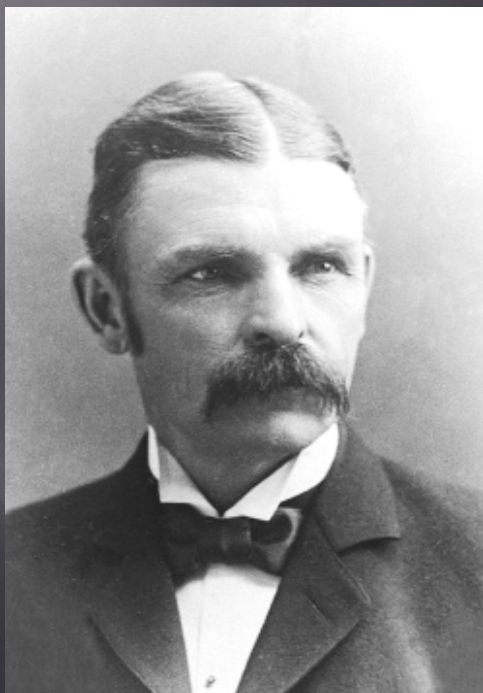
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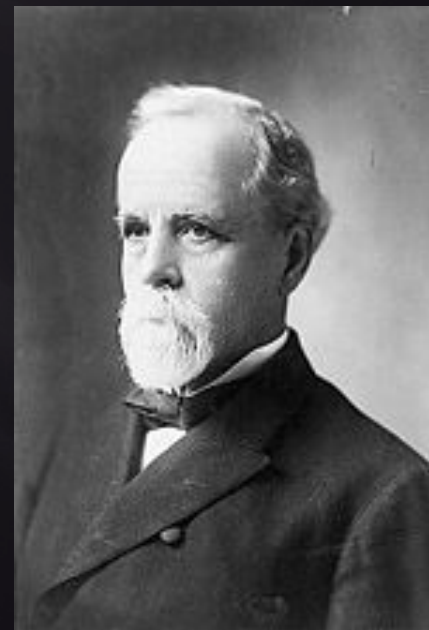
Richard Wetherill



**Binger Hermann, GLO
Commissioner, 1893-**



**William Alford (W.A.) Richards
GLO Commissioner, 1903-1907**



**John F. Lacey,
Iowa Congressman**

The Antiquities Act, 16 U.S.C. §431

The President ... is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest ... situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve 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.

Remarkable Places First Protected Under the Antiquities Act

- ▣ Devil's Tower (1906) (the first national monument)
- ▣ Grand Canyon (Grand Canyon Nat'l Park) (1908)
- ▣ Mount Olympus (Olympic Nat'l Park) (1909)
- ▣ Mukuntuweap (Zion Nat'l Park) (1909)
- ▣ Sieur de Monts (Acadia Nat'l Park) (1916)
- ▣ Bryce Canyon (Bryce Canyon Nat'l Park) (1923)
- ▣ Fort Wood (Statue of Liberty) (1924)
- ▣ Glacier Bay (Glacier Bay Nat'l Park) (1925)
- ▣ Arches (Arches Nat'l Park) (1929)
- ▣ Death Valley (Death Valley Nat'l Park) (1933)
- ▣ Capitol Reef (Capitol Reef Nat'l Park) (1937)

Rainbow Bridge National Monument

(May 30, 1910)





The Legacy of the Antiquities Act

215 Presidential Proclamations

**128 National Monuments in 28 states,
several territories, and the District of
Columbia**

Understanding the Antiquities Act

- ▣ **What makes a monument?**
 - **Ownership or control of land**
 - **“Smallest areas compatible with the proper care and management of the objects”**
 - **A “reservation” of land**
- ▣ **What is the process for establishing a monument?**
- ▣ **Can a monument be abolished or modified by proclamation?**

What Makes a Monument?

Federal
ownership
or control
of land



Buck Island National Monument, U.S. Virgin Islands

Our Newest National Monuments

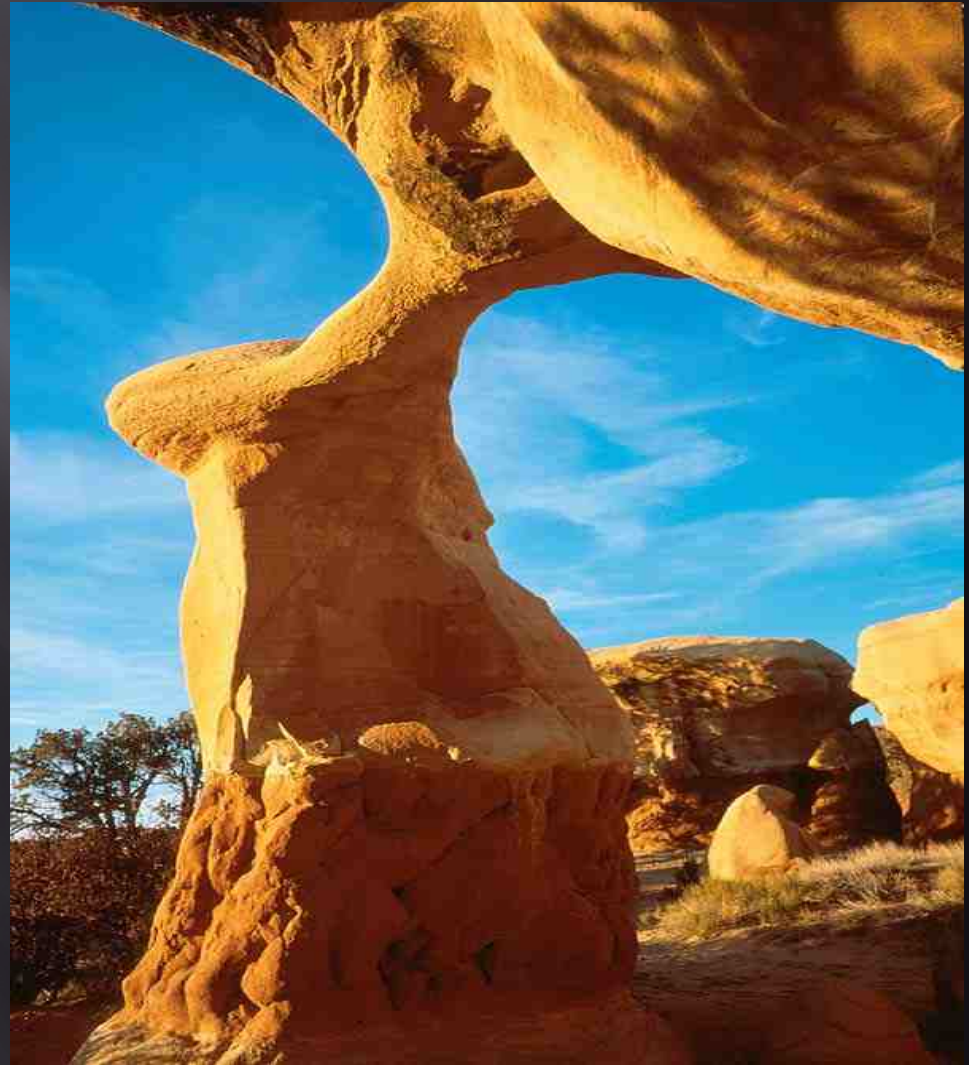
- ▣ Papahānaumokuākea Marine National Monument (Northwestern Hawaiian Islands)
- ▣ Marianas Trench Marine National Monument
- ▣ Pacific Remote Islands Marine National Monument
- ▣ Rose Atoll Marine National Monument

All monuments designated in the “exclusive economic zone,” which extends 200 nautical miles from shore (territorial seas extend only 12 miles from shore)



What Makes a Monument?

Historic landmarks or other “objects of historic or scientific interest”



Metate Arch - Grand Staircase-Escalante National Monument

Rainbow Bridge: An Object of Historic or Scientific Interest?



Landscapes as Objects: The Grand Canyon



“[I]t is the greatest eroded canyon in the United States, if not the world, . . . affords an unexampled field for geologic study, is regarded as one of the great natural wonders....

Cameron v. United States, 252 U.S. 450, 455 (1920)

Landscapes as Objects: The Jackson Hole Nat'l Monument



“It is rough sagebrush, grazing land, and some lakes but there is no particular reason it should be included in the Park Service, and this land has been used and is beneficial for livestock, and for farming purposes and nothing more.” Wyoming Congressman Frank Barrett

What makes a monument?



Authority to
“reserve” federal
land allows the
President to
establish any
restrictions
necessary to
accomplish the
monument’s
purpose

The Process for Designating National Monument

- ▣ The property clause of the U.S. Constitution gives the Congress the “power to ... make all needful rules ... respecting the ... property belonging to the United States.” Art. IV, § 3, cl. 2.
- ▣ Under the Antiquities Act, the Congress has delegated to the President the power “to declare” national monuments “by public proclamation.”
 - A monument becomes a monument simply by the President declaring it to be so
 - Consider Pelican Island NWR in Florida (established 1903)

Public Process

Should the designation of a national monument be preceded by notice and comment or some other public process?

Public Process

- ▣ **Current law requires no process**
- ▣ **Has led opponents of the law to propose amendments that would –**
 - *Require notice and public comment opportunities before designation*
 - *Require NEPA compliance*
 - *Establish a Congressional review and approval process*

Arguments for Public Process

- ▣ **Consistent with fundamental tenets of democratic government**
- ▣ **Assures opportunity for local involvement in decisions**
- ▣ **Will lead to better, or at least more informed, decisions**

Arguments Against Public Process

- ▣ Republican system of government does not always honor majoritarian views
 - Democratic decisions will not lead to rational social choices (Arrow's theorem)
- ▣ Issues are not local and do not simply affect the present generation; they are national and impact future generations
- ▣ Decisions are subject to public process, review, and revision at the legislative level
 - Congress can repeal a reservation improvidently made; it can't restore an area once it has been destroyed
- ▣ Presidential decisions often made without public process

Can a Monument be *Abolished* or *Diminished* by Proclamation?

- ▣ A 1938 Attorney General Opinion says no.
 - The Antiquities Act authorizes the President to *proclaim* monuments; it does not authorize the president to *revoke* or *modify* monuments.
- ▣ But Interior has not always adhered to this opinion
 - A 1915 opinion by Interior Solicitor says yes; a subsequent 1924 opinion said no; and opinions from 1935 and 1947 say yes.

Arguments for Allowing Presidential Modification

- ▣ Monuments limited to the “smallest area compatible with the proper care and management of the objects”
 - President may decide that a smaller area is all that is needed
- ▣ Implied authority to modify monuments exists under *United States v. Midwest Oil*

Arguments Against Allowing Presidential Modification

- ▣ “Smallest area compatible” restriction involves exercise of discretion.
 - “One-way” authority assures protection pending congressional action.
- ▣ Congress expressly authorized modification of reservations in other laws (e.g., the Pickett Act) but did not do so in the Antiquities Act
- ▣ Congress expressly repealed the President’s implied authority to reserve land recognized by the Supreme Court in *United States v. Midwest Oil* in 1976 (FLPMA)

Prominent Modifications (never challenged in court)

- ▣ Woodrow Wilson reduced Mount Olympus by more than 300,000 acres
 - Lobbied by mining and logging interests during WWI as necessary to support the war effort
 - Conservation groups decried the decision as the “rape of 1915”
- ▣ Franklin Roosevelt reduced the Grand Canyon by more than 71,000 acres
 - Reduction in the size of the monument pushed by ranchers and local officials

The Role of the Antiquities Act in Land Conservation

- ▣ Consider the places that might never have been protected but for the Antiquities Act
 - The Grand Canyon
 - Olympic National Park
 - Most of what is now the Grand Teton National Park
 - The Grand Staircase-Escalante National Monument

The Grand Canyon

- ▣ Local mining and ranching interests in Arizona strongly opposed the national monument. Had there been no monument in 1908, mining and ranching interests would have become more entrenched and might well have blocked the legislation creating a national park in 1919
 - They surely would have limited its size and made inroads with their claims

- ▣ Ralph Henry Cameron was a delegate from the Arizona territory from 1909-1912 and was elected Senator in 1920. He owned mining claims along the Bright Angel Trail.
 - His claims were most likely invalid but he used them as a pretense to charge access fees to tourists who wanted to hike down the trail
 - Opposed the monument but ultimately lost in the U.S. Supreme Court. *Cameron v. United States*, 252 U.S. 450, 455 (1920)

Mount Olympus National Monument (Olympic National Park)

- ▣ The proclamation was issued just two days before Teddy Roosevelt left office
- ▣ The monument was sought by Congressman Humphrey (from Tacoma) and Roosevelt approved it
 - Mining companies tried to get it repealed almost immediately, and aided by the timber industry, ultimately persuaded Woodrow Wilson to reduce it in size by half

Roosevelt Elk



Jackson Hole National Monument

- ▣ **The original Grand Teton National Park, set aside by an act of Congress in 1929, included only the Teton Range and six glacial lakes at the base of the mountains**
- ▣ **The National Park Service proposed expansion of Yellowstone south to cover the Tetons in 1919**
 - **A bill passed in the House but died in the Senate due to opposition of Idaho Senator John Nugent and the livestock industry**

Jackson Hole National Monument



- ▣ **Proclaimed by Franklin Roosevelt in 1943**
 - Secured a major gift of land from J.D. Rockefeller, Jr.
- ▣ **Touched off a furor in Wyoming**
 - Legislation passed to overturn proclamation vetoed by Roosevelt
- ▣ **Compromise leads to no more monuments in Wyoming**
 - Clinton might have otherwise designated the Red Desert

The Grand Staircase-Escalante

- ▣ 1.7 million acres of red rock canyons and plateaus
 - ▣ Prized by conservation groups that were politically-marginalized in Utah
- ▣ Sought for development by coal industry
- ▣ Stronghold of ranchers



Jacob Hamblin Arch

Places that might have been preserved

**Photo of Labyrinth Canyon
in the Glen Canyon before
it was inundated by Lake
Powell**

“The place no one knew.”

**Photo by Phil Pennington (1962) Glen
Canyon Institute**



Conclusion

- ▣ The Antiquities Act may be the most effective land preservation law *ever adopted anywhere*
- ▣ By authorizing the President to protect lands simply and unilaterally some of our most precious public lands have been preserved
- ▣ The President's authority under the Act is substantial but is subject to review both in Congress and the Courts
 - The fact that neither the Congress nor the Courts have ever overturned a major monument proclamation suggests that Presidents have used their authority wisely
 - Wallace Stegner has famously described our national parks as "*the best idea we ever had.*" I would argue that this idea was made possible by the Antiquities Act of 1906

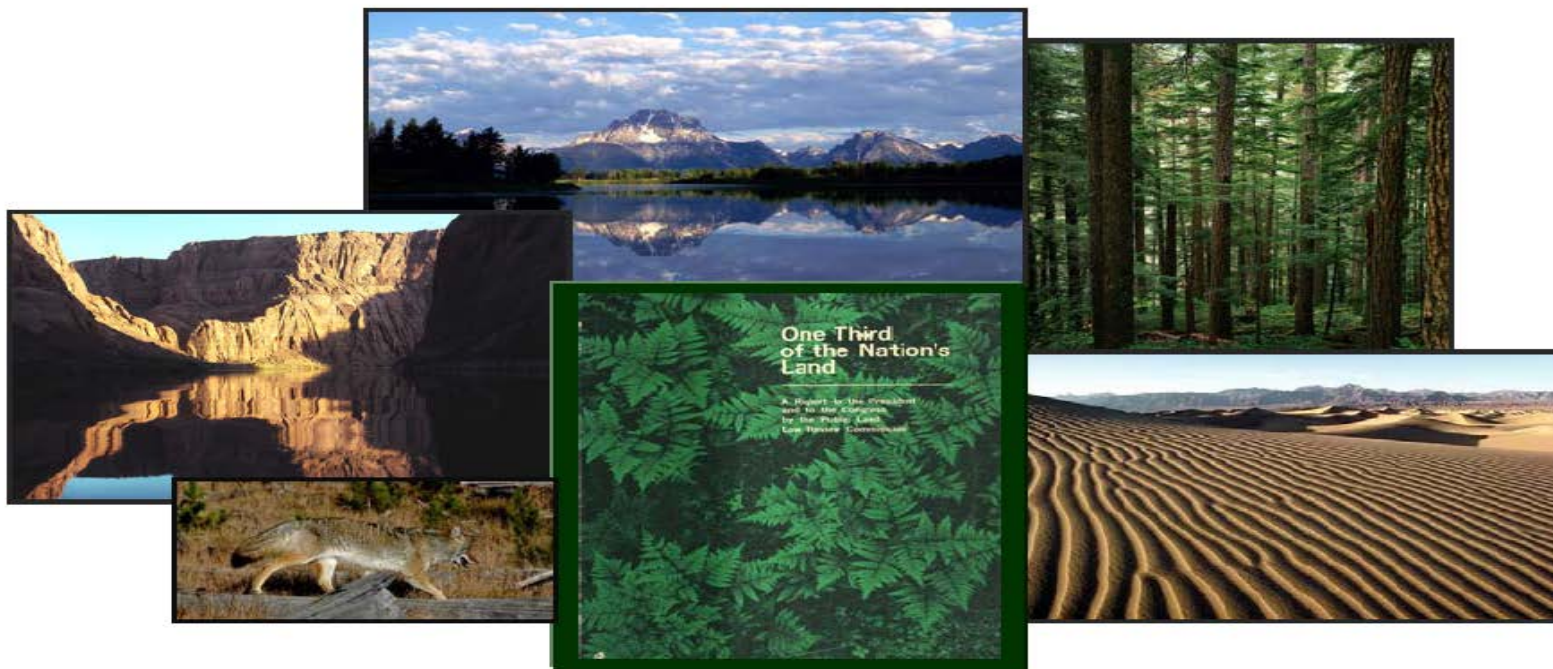
Thank you!

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