

Antiquities Act Statement

Before the House Natural Resources Subcommittee on Public Lands and
Environmental Regulation

By Commissioner John Jones

Carbon County, Utah

April 16, 2013

I would like to thank Chairman Hastings, Subcommittee Chairman Bishop, Ranking Members Markey, Grijalva and members of the Natural Resources Committee for the opportunity to be here today.

My name is John Jones and I am a Democratic commissioner from Carbon County, Utah. I am the President of the Utah Association of Counties and I currently serve on the Public Land Steering Committee of the National Association of Counties.

I am representing NACo here today and would ask that a separate statement by Mr. Ryan Yates of NACo be included in today's hearing record.

Thank you. Mr. Chairman.

In Utah we have been wary of Presidential misuse of the Antiquities Act to create National Monuments from the day Lyndon Johnson designated Capitol Reef National Monument in the waning hours of his Presidency in January 1969.

We've lived in actual fear of this raw Executive power ever since President Clinton and Vice President Gore, in a cowardly, infamous act, failed to engage the people of Utah in a public process nor did they give advance notice to the state's locally elected officials, Governor, or Congressional delegation when they flew to Arizona's Grand Canyon National Park, & with the stroke of a pen, designated the 1.9 million acre Grand Staircase Escalante National Monument – one of the largest monuments ever designated.

That single action deprived the people of Utah and the nation of its cleanest low sulfur-high BTU coal supply across the vast Kaiparowits Plateau. Actual loss to taxpayers was conservatively estimated to exceed \$2 billion in lost mineral lease royalties and 60% of the known coal reserves in our state.

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. 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.

While originally designed to protect against legitimate threats to artifacts and historic and geological sites, President Clinton abused the law by invoking the Act 22 times to create 19 new monuments and enlarge three others. Many of these proclamations were made unilaterally and without public involvement or local support.

Similarly, a leaked secret memo from the Department of Interior in 2010 stated that the current Administration was considering using the Antiquities Act to designate or expand additional monuments in California, Colorado, New Mexico, Oregon, Utah, Washington and Arizona. This memo, cooked up in the same backrooms as the Grand-Staircase, has spread those same fears across the west.

As a result of this most recent threat, the American Farm Bureau, the National Beef/Cattlemen's Association, Public Lands Council and my own resolution before the National Association of Counties have all been enacted urging either Congressional approval and involvement or requiring NEPA compliance by the President, or both, before any additional National Monuments are designated.

Fortunately, many of the communities listed in the secret memo pushed back when they learned of President Obama's secret plans. And as a result, President Obama has stayed away from those sites and instead has used the Antiquities Act to create five new National Monuments in areas in which there seems to be local support. When the President designated these five sites, he touted public involvement and local support for his decisions. As a fellow Democrat, I appreciated President Obama's openness and outreach to the local communities. However, without Chairman Bishop's bill or some of the others under consideration today, how can we be certain that future President's adhere to the same principles of public involvement and local support?

The fact is, Mr Chairman:

1. Unilateral Executive Branch use of the Antiquities Act to restrict land use under the guise of protecting such land without NEPA compliance or Congressional or State legislatures' approvals represents excessive power in the hands of the President. The Act must be amended to include one or all of these steps to limit that power & assure adequate prior public involvement and support;
2. All proposals and solutions, such as is contained in each of the bills before the Committee today should be considered. There is not one silver bullet;
3. While a bill banning monuments on a state-by-state basis as is the case in Wyoming and Alaska, or legislation requiring Congressional approval or state legislative approval

are preferred, Congressman Bishop's bill requiring NEPA compliance is at a minimum, a good start. It ensures public involvement, protects private property, and places some restraints on the President's Executive Branch power; something that must be codified so future Presidents follow President Obama's, and not President Clinton's lead, wise public policy to prevent further wrongdoings to states like Utah, which have in the past been ambushed by heavy-handed misuse of this power.

Again, thank you for including the accompanying statement by the National Association of Counties in the record along with my statement of recommendations.

SUBCOMMITTEE ON PUBLIC LANDS and Environmental Regulation
1324 Longworth House Office Building
Tuesday, April 16, 2013
10:00 a.m.

Legislative Hearing on:

H.R. 250 (Chaffetz), To amend the Antiquities Act of 1906 to place additional requirements on the establishment of national monuments under that Act, and for other purposes.

H.R. 382 (Foxx), To provide for State approval of national monuments, and for other purposes. "Preserve land Freedom for Americans Act"

H.R. 432 (Amodei), To prohibit the further extension or establishment of national monuments in Nevada except by express authorization of Congress.

H.R. 758 (Stewart), To prohibit the further extension or establishment of national monuments in Utah except by express authorization of Congress. "Utah Land Sovereignty Act"

H.R. 1512 (Pearce), To prohibit the further extension or establishment of national monuments in New Mexico except by express authorization of Congress. "New Mexico Land Sovereignty Act"

H.R. 1434 (Daines), To prohibit the further extension or establishment of national monuments in Montana, except by express authorization of Congress, and for other purposes. "Montana Land Sovereignty Act"

H.R. 1439 (Labrador), To prohibit the further extension or establishment of national monuments in Idaho, except by express authorization of Congress. "Idaho Land Sovereignty Act"

H.R. 1459 (Bishop), To ensure that the National Environmental Policy Act of 1969 applies to the declaration of national monuments, and for other purposes. "Ensuring Public Involvement in the Creation of National Monuments Act"

Testimony submitted on behalf of the National Association of Counties

Chairman Bishop, Ranking Member Grijalva, we appreciate the subcommittee scheduling this timely hearing to examine legislative modifications to the Antiquities Act. Thank you for giving counties and the National Association of Counties (NACo) the opportunity to submit testimony for the record. On behalf of NACo and the members of its Western Interstate Region (WIR), we applaud your efforts to provide to provide transparency and accountability in the designation of national monuments.

NACo supports congressional revisions of the Antiquities Act of 1906 (16 U.S.C. 431) to require that any Presidential national monument proclamation be subject to NEPA review and congressional approval.

Historically, the Antiquities Act was enacted as a response to concerns over theft from and destruction of archaeological sites and was designed to provide an expeditious means to protect federal lands and resources. It authorizes the President to proclaim national monuments on federal lands that contain “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.” The Act requires the President to reserve “the smallest area compatible with the proper care and management of the objects to be protected.”

President Theodore Roosevelt first used the authority in 1906 to establish the Devil’s Tower in Wyoming. Presidents have created more than 120 monuments, totaling more than 70 million acres. President Franklin Delano Roosevelt used the Act 28 times and President Carter bestowed monument status on 56 million acres in Alaska. President Clinton used the Act 22 times to create 19 new monuments and enlarge three others to designate 5.9 million acres; most were done during his last year in office. He cited frustration with the slow pace of legislated land protection as a justification.

The lack of local or congressional input and approval of a president’s monument designation often generates much controversy at the local level. Yet, under the terms of the Act, the president is not required to consult with local and state authorities. Under current law, the president is not obligated to seek congressional advice and consent prior to declaring lands national monuments.

The potentially detrimental effects of a monument designation frequently cause local residents, county elected officials, and state legislators, who have valid interests in the lands, to push Congress for reform. Counties should be fully involved as affected partners in any process to designate federal land use designations which restrict public use. Congress and Federal agencies should coordinate with affected counties when considering special land use designations that impact the use and status of public lands. NACo strongly opposes Federal land management agency actions that limit access and multiple use of lands that otherwise would be available to the public (i.e. Wilderness Study Areas, “Wild Lands,” or any other de facto wilderness designation).

Accordingly to a leaked memo from the Department of the Interior, the Administration is considering using the Antiquities Act to designate or expand additional monuments in Arizona, California, Colorado, Montana, New Mexico, Oregon, Utah, and Washington. Under current law, the President could use the Antiquities Act to designate millions of acres of land without first notifying Congress or the affected Governors, tribes, or communities involved. Moreover, there is no requirement to determine what the impact of the designation would be upon local communities.

Congressional oversight and full NEPA analysis and public review are necessary to curb last minute Presidential designations of large tracts of lands for National Monument status, some of which some are high value energy areas and important to the American people for resources above and beyond that of just recreation.

An important policy reason for passage of the National Environmental Policy Act (NEPA) was to have large tracts of public lands scrutinized by public and local government input before significant federal action is taken on those lands. That policy applies should apply to large land tracts being proposed presidentially for National Monument designation. Recent use of the Antiquities Act for large tract designation has not provided reasonable notice to state and local governments, and has gone well beyond Congress' original intent to designate the smallest portion of land needed to represent certain objects of historic and scientific interest.

Federal consultation with state, county, and tribal governments should be required prior to the development and designation of any national monument. Critical multiple use activities will be preserved if Presidential National Monument declarations are subjected to a transparent public review and approval process. This will preserve the economic base, prosperity and livelihood of many western counties and their economies.

In conclusion, the designation of federal land as defacto wilderness, national monument, or similar designation without input from local governments can lead to devastating reductions in economic activity the loss of jobs in resource dependent communities. NACo appreciates the House Natural Resources Committee's attention to this important issue and looks forward to assisting the Unites States Congress to develop and enact much needed reform to the Antiquities Act.

For more information, please contact Ryan R. Yates, Associate Legislative Director, National Association of Counties at (202) 942-4207 or ryates@naco.org.