

Major Talking Points and Questions on the Antiquities Act

1. It is clear from the language of the Antiquities Act that the authority given to presidents by Congress was limited. He could declare as national monuments **“historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.”** It was these objects that were the national monuments. Therefore, while presidents have abused this authority over the years by declaring huge areas to be “monuments,” such as the GSENM, doing so violates what Congress originally intended, which was to give emergency authority to designate “objects.”

2. In addition to designating the objects as national monuments, Congress granted limited authority to presidents to designate a limited amount of land to protect the object or objects designated to be national monuments. The amount that could be designated must meet this criteria in the words of the Act, **“the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected...”**

Beginning with Teddy Roosevelt, who signed the law, presidents have violated both the letter and the spirit of the Act, but the courts have not prevented, largely because it is a separation of powers situation and the courts generally feel that since Congress under Article 4, Section 3 of the Constitution has exclusive jurisdiction over the public lands they can intervene if they are not disagree with the way presidents have used the Act, including nullifying monuments designated.

3. In fact Congress has limited presidential authority, but only twice. No monument can be created in Wyoming without specific congressional approval and none in Alaska over 5,000 acres with out Congressional approval.

Specific Questions for the Secretary

1. Will the Obama administration limit itself to listing in detail the specific objects that are declared monuments? If not, why not? (Land is not an object of “historic or scientific interest” and was clearly not considered to be so by Congress since it authorized presidents to set aside a limited amount of “land” to protect the “objects.” The San Rafael Swell is not an “object.” This listing of the specific objects to be designated)

2. Will the Obama administration justify in detail its determination that the land that might be set aside to protect the objects is in fact the smallest amount compatible? If not, why not? (It is not enough to simply declare that it is as the proclamations frequently do.)

3. Will the administration specify the specific threat it sees to these “objects” and make the case why existing law and regulations are not adequate to protect them? If not, why not?

4. Will the Obama Administration give states like Utah the same consideration as Wyoming and Alaska and not create monuments without congressional approval?
If not, why not?

5. Will the Obama Administration specify where the additional money to administer objects will come from and what other federal activities will be foregone to pay for new monuments?

6. Finally, and most important, will the Secretary answer these questions and concerns laid out in more detail in writing before the president acts? If not, why not?

American Antiquities Act of 1906

16 USC 431-433

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall appropriate, excavate, injure, or destroy **any historic or prehistoric ruin or monument, or any object of antiquity**, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction **over the lands on which said antiquities are situated**, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

Sec. 2. That the President of the United States is hereby 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 proper care and management of the objects to be protected**: Provided, That when such objects are situated upon a tract covered by a bona fied unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

Sec. 3. That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulation as they may prescribe: Provided, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.

Sec. 4. That the Secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act.

Approved, June 8, 1906