

The Propriety of President Bill Clinton's Establishment of the Grand Staircase Escalante National Monument

by Paul Veravanich

Nothing like this land exists anywhere else on Earth

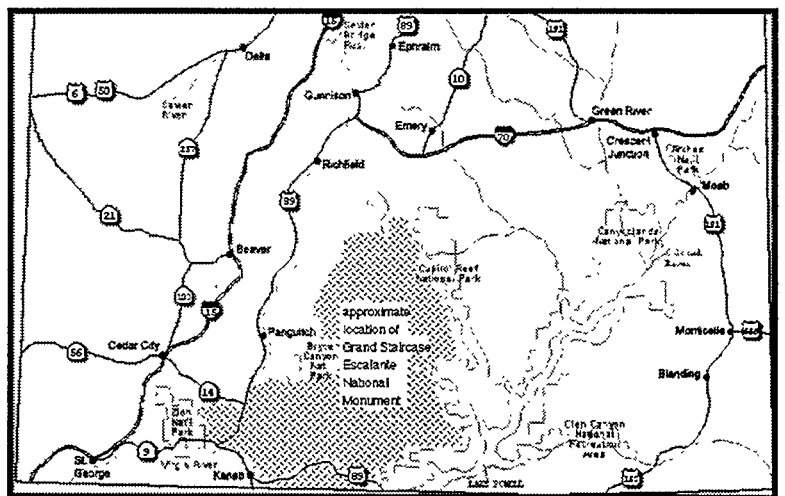
*Robert Redford*¹

Introduction

On Wednesday, September 18, 1996, President Bill Clinton invoked the almost century old Antiquities Act of 1906² in order to set aside 1.7 million acres of canyon lands located in Utah as a national monument.³ There will certainly be political opposition to this action considering Utah is a Republican stronghold. Additionally, Andalex Resources, a Dutch mining company, currently holds mining rights to parts of the land that will be protected. While the favorable environmental impact of protecting an area of land that is more than twice the size of Yosemite National Park is considerable, there are several significant considerations that must be addressed in analyzing whether the establishment of the Grand Staircase Escalante National Monument is a positive action by the President. These considerations include the constitutional validity of the Antiquities Act, political and policy concerns, and possible methods of compensation for Andalex's mineral leases.

Background: Grand Staircase Escalante National Monument

The federal land protected by President Clinton's action is one of the most undeveloped and isolated wilderness areas in the lower 48 states. The monument is, in fact, one of the largest protected areas in the United States outside of Alaska. The spectacular landscape sprawls over an area west of the Colorado River, east of Bryce Canyon National Park, and adjacent to the Grand Canyon. The monument includes the Grand Staircase, Kaiparowits Plateau and Escalante Canyon. The Kaiparowits Plateau is home



to a large number of Native American archeological sites and one of the largest reserves of coal in the nation. The Grand Staircase comprises towering red rock cliffs and terraces that contain an abundant supply of fossils. The monument consists of untamed land that has been described as some of the least visited and most rugged frontiers in the Southwest. It is an area that environmentalist groups such as the Sierra Club had been fighting for decades to protect.

Antiquities Act of 1906

In creating the Grand Staircase Escalante National Monument, President Clinton invoked the powers of the Antiquities Act of 1906.

The Antiquities Act was passed to protect Native American artifacts.⁴

The looting and destruction of Native American archeological ruins in the late 1800's and early 1900's was the genesis of the Act.⁵ Interest in preventing the vandalism of the archeologically valuable ruins

prompted several government reports and investigations into the situation.⁶

It was with the protection of these Native American dwellings in mind that President Theodore Roosevelt signed the Antiquities Act into law on June 8, 1906. As part of the Act, the President was given the authority to declare vast tracts of government land to be national monuments without congressional approval, and, in so doing, protect those lands from vandals and private interests.⁷

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The protection of archeologically significant ruins such as pueblos and cliff dwellings is the main focus of the act.⁸ In addition, the act includes language that refers to historic ruins and other-objects of scientific interest. This collateral language enables the executive branch to interpret the act broadly in order to protect vast areas of land that were not necessarily the main focus of the legislation. These executive branch powers have since been used countless times to protect some of the United States' most recognizable and familiar landmarks, including the Grand Canyon⁹, Bryce Canyon¹⁰, and Death Valley¹¹. Some of the lands protected by Presidential proclamation as national monuments, including the Grand Canyon and Death Valley National Monuments, were later redesignated national parks.¹²

Political Considerations

The contemporary appropriateness of a 90 year old congressional act conferring on the President broad, unrestricted powers to withdraw federal lands demands critical analysis. Although the designation of Grand Staircase Escalante as a national monument is, without a doubt, a victory for environmentalists everywhere, it is not bereft of political motivation. President Clinton's action comes during an election year. His invocation of the Antiquities Act in this manner suggests an attempt to court the environmental vote at virtually no corresponding political risk. Utah Governor Michael Leavitt and Utah Senators Orrin Hatch and Robert Bennett immediately attacked the President's proclamation as an unwelcome federal intrusion on Utah's economic interests. Senator Bennett went so far as to denounce the President's action as being "the height of arrogance."¹³ Utah is currently a firmly Republican state. Therefore, any actions by the President that could arguably reduce economic opportunities in Utah in the form of lost mining opportunities would not matter much to Clinton politically. In fact, President Clinton lost to Bob Dole in Utah by a 21% margin, the largest percentage loss suffered by Clinton during the 1996 presidential elections.¹⁴

The President's action also breaks a stalemate in Congress concerning the Grand Staircase Escalante land. The environmental lobby advocated the protection of the area's extraordinary geologic formations from large mining operations, whereas delegates from Utah were attempting to pass legislation that would have allowed mining on the land.¹⁵ This is not the first time a President has invoked the Antiquities Act in order to break a deadlock in Congress and to further promote his policies.¹⁶ Although invoking the Antiquities Act may oftentimes be politically motivated, there has been relatively little action by either the courts or Congress to curtail the powers granted to the President by the Act.

Interpretation of the Antiquities Act

With few exceptions, the courts have consistently upheld broad Presidential application of the Antiquities Act.¹⁷ Congress has not yet revoked it. As previously mentioned, the original intent of the Antiquities Act was to protect the pueblos and cliff dwellings of the Southwest from vandals and looters.¹⁸ However, the executive branch quickly seized upon the opportunities afforded by the vague and ambiguous wording of the statute in order to protect areas that had relatively little to do with Native American archeological sites but did have other scientific or historical value.¹⁹ Liberties undertaken by the executive branch under the Antiquities Act have been challenged in the courts numerous times.²⁰ Historically, however, the courts have consistently validated broad

applications of the law and have confirmed the President's authority to designate a wide range of land as national monuments in a manner that is beyond the legislature's original intent.

For example, in *United States v. Cappaert* the Supreme Court upheld the protection of Devil's Hole and its incorporation into the Death Valley National Monument on the grounds that not only did the Devil's Hole pool contain unique limestone formations, but it also contained pupfish, an endangered species.²¹ The Grand Canyon National Monument²² and the Jackson Hole National Monument²³ were also able to be classified as objects of historic or scientific interest, thus enabling the President to invoke the Antiquities Act. It should be noted that the proclamation of Jackson Hole as a national monument created such an uproar that Congress passed a statute eliminating the further establishment of national monuments in Wyoming without congressional authority.²⁴ To date, Wyoming is the only state protected in this manner and this statute is one of the few restrictions on the President's power under the Antiquities Act.

In *State of Wyoming v. Franke*, Wyoming challenged the legal authority of President Franklin Roosevelt to establish the Jackson Hole National Monument using the Antiquities Act. The District Court declared that when Congress has authorized the President to take legislative action at his discretion, his action is not subject to review by the court.²⁵ Further, the court decided that the burden was on Congress to pass remedial action if they felt it necessary to curb the President's powers under the Antiquities Act.²⁶

The most recent judicial interpretation of the President's authority to protect lands under the Antiquities Act was *State of Alaska v. Carter*.²⁷ In that case, President Carter's declaration protecting 56 million acres of land under the act was deemed to be exempt from an environmental impact statement process set up by Congress.²⁸ Up until that time, only about 12 million acres of land in total had been protected under the Antiquities Act. President Carter's action was the largest withdrawal of public land in history.²⁹

Historically, the Antiquities Act has proven to be a powerful tool in protecting vast areas of land that have both scientific and historical value. As it applies to the case at hand, the Grand Staircase Escalante National Monument will certainly contain numerous Native American archeological sites. However, the vast majority of the 1.7 million acres of land is being preserved for reasons other than the archeological sites. These include such motivations as keeping virgin wilderness undeveloped, protecting animals that are indigenous to the area, and protecting fossils located in its rock formations. There are also arguably political motivations. In light of the historical interpretation of the Antiquities Act by both the President and the courts, President Clinton's actions seem to be well within the scope of the Act and should be upheld in court should there be any legal challenge to it.

Policy Considerations: Andalex's Mining Leases

The President has the authority to establish the Grand Staircase Escalante National Monument without congressional approval since the land is federally owned. However, Andalex Resources, a Dutch owned company, holds valid coal leases on the Kaiparowits Plateau. Under a federal mineral lease, the holder of the lease is granted the right to develop and mine for a specific mineral, such as coal, on federal land.³⁰

To understand the general properties of a mineral lease, it is helpful to analogize it to a typical leasehold.³¹ If a party is granted a mineral lease, it is given property rights to a parcel of federal land for a specified period of time, after which the property rights revert to the government. In exchange, the government receives "rent" in the form of royalty payments generated by the sale of the minerals. This is similar conceptually to an apartment lease whereby a landlord temporarily transfers property interests to a tenant in exchange for

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rent. Additionally, as in most apartment leases, mineral leases usually contain guidelines regulating the use of the property.³² If a mineral lease holder violates any of these terms, the United States has the right to cancel the lease.³³ Also, the federal government maintains ownership of the land and the minerals, just as a landlord retains ownership of the apartment. How-

ever, a mineral lease provides stronger property rights than an everyday lease. The owner of the mineral lease not only gains temporary possession of the land but also receives title to, and the right to sell, the minerals that are actually extracted.³⁴

According to Secretary of the Interior Bruce Babbitt, these leases are unaffected by the President's proclamation.³⁵ In fact, Andalex was in the process of submitting plans for a coal mine on the Grand Staircase Escalante property and planned to export a substantial amount of coal extracted from that area to various Pacific Rim countries.³⁶ Andalex could still be granted these permits. Because the high quality coal has been valued at \$1 trillion, Andalex Resources is expected to challenge the Presidential proclamation.

The problem of mineral leases located within a national monument is not a new one. The government cannot simply revoke these mineral rights when

protecting an area of land or withdrawing a parcel of land. Even though mining leases may not generally be granted on land located within a national monument, the creation of national monuments does not usually extinguish any valid existing leases since the leases are legal property interests and are entitled to protection by the Fifth Amendment.³⁷ Moreover, the courts have upheld the principle that any taking of mineral leases by the government without just compensation would be in violation of the Fifth Amendment.³⁸

In *United States v. Atomic Fuel Coal Company*, the Fourth Circuit found that a holder of a valid mineral lease must be compensated for land that has been condemned or taken by the government.³⁹ Although this case did not concern a national park or monument, it does support the principle that mineral leases cannot be arbitrarily extinguished without just compensation.

Another case upholding the property rights of holders of mining leases is *Oil Shale Corporation v. Morton*. In this case, the court addressed a grant of oil shale mining claims. The U.S. District Court for the District of Colorado decided that the holder of a valid mining claim, such as a mineral lease, is entitled to the benefits of real property.⁴⁰ Consequently, the Interior Department does not have the power to unjustly deprive the holder of such title.⁴¹

In order to resolve the situation, the administration is considering offering Andalex leases on other federal lands in exchange for Andalex's leases located in Grand Staircase Escalante.

On the other hand, a person who is not in possession of a mineral lease but is in the process of applying for one is not afforded the protection of the Fifth Amendment should the government decide to withdraw federal lands from mining. The Ninth Circuit, in *Swanson v. Babbitt*, decided that, "[u]ntil a patent is issued, the government has broad authority to manage public lands."⁴² The patent at issue in that case was a mill site,⁴³ however, a mineral lease is also a form of a patent.⁴⁴

As a result of the property rights inherent in mineral leases, the government is not free to arbitrarily extinguish Andalex Resources' leases. The government must acquire the leases by justly compensating Andalex. In order to resolve the situation, the administration is considering offering Andalex leases on other federal lands in exchange for Andalex's leases located in Grand Staircase Escalante.⁴⁵

Land Swapping Proposal

The idea of swapping claims and leases located on other federal lands for those located in or near parks is not a novel concept. Recently, the Clinton administration reached an agreement with Crown Butte Resources regarding an environmentally sensitive gold mine located near Yellowstone National Park. Environmentalists were concerned that the mine and a dam associated with the mine would have caused a dangerous increase in water pollution and would have led to the destruction of wildlife around the area. Crown Butte has claimed that nearly \$650 million worth of gold, silver, and copper could have been produced by the mine. In exchange for the deeds and production rights for the gold mine, Crown Butte will receive \$65 million worth of federal land elsewhere.⁴⁶

In light of the fact that Crown Butte will receive \$65 million worth of federal land for its claim on a mine that could, by their estimates, produce \$650 million worth of minerals, how much land should Andalex Resources receive in exchange for its mineral lease on property that could potentially produce coal valued at \$1 trillion? Andalex would most likely demand land that contained valuable minerals - not just any random, isolated piece of property - in exchange for its highly valuable lease. It would be very difficult to even find enough land to equitably trade with Andalex. In fact, the agreement that the Clinton administration has made with Crown Butte regarding the Yellowstone land could very well fall apart due to the inability of the government to find enough land suitable for the exchange.⁴⁷ If the government is encountering difficulty in satisfying a transfer of land for a mineral claim worth \$650 million, imagine the hurdles the government would have to overcome in identifying enough land to equitably compensate for a mineral lease valued at \$1 trillion. A possible alternative to the traditional land swapping proposal is a debt-for-nature arrangement.

Debt-For-Nature Deal

An alternative to a land swap deal would be for the government to obtain Andalex's mineral leases through a debt-for-nature arrangement. A debt-for-nature arrangement is a creative financial tool that has been used by the United States to forgive a certain amount of debt that a nation, usually a less developed country, owes the U.S. government in exchange for the implementation of environmentally beneficial programs by that nation. The principal goal of these agreements is to reduce the destruction of environmentally sensitive areas, such as rain forests. However, a debt-for-nature exchange has never been conducted with a business entity. In fact, the statutes regulating debt-for-nature exchanges specifically state that these agreements are to be made with the government of foreign nations and do not contain any provisions for arrangements to be made with a corporation.⁴⁸

Although a debt-for-nature trade has not yet been applied to a company's debt, there have been recent proposals that such a procedure be utilized to trade a company's debt to the government in exchange for their rights to environmentally sensitive land. A group of clergymen recently proposed that the government eliminate \$250 million in debt owed by Pacific Lumber in exchange for the company's rights to 3,000 acres of land located in the Headwaters Forest, an area that environmentalists are attempting to protect from logging due to the ancient redwood groves located there.⁴⁹

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In the immediate situation, the United States could propose a trade for Andalex's mineral leases located on the Kaiparowits Plateau in return for eliminating an agreed upon amount of Andalex's debt to the government. In doing so, the government would not be burdened with finding an equitable amount of federal land to exchange for Andalex's mineral leases as would be the case in a land swapping arrangement. It would be immensely more convenient for the government to find a large amount of debt to forgive than for it to find enough federal land to swap for the extremely valuable coal leases on the Kaiparowits Plateau. Any corporation conducting business within the United States inevitably owes a substantial amount of money in taxes to the Internal Revenue Service or could possibly owe other debts due to violations of various laws.⁵⁰ For instance, in the Headwaters Forest/Pacific Lumber debt-for-nature proposal, the debt that would have been forgiven was a fine that Pacific Lumber's parent corporation owed due to a savings and loan failure.⁵¹

More importantly, the advantages this arrangement would hold for the environment would be enormous. Should the government pursue land swapping proposal, Andalex Resources would still presumably be able to operate mines somewhere on federal land, albeit not on land located within the Grand Staircase Escalante National Monument. However, if a debt-for-nature deal could be negotiated between the United States and Andalex, the environmental destruction of federal land could be avoided altogether. It would be environmentally favorable for the government to gain possession of mineral rights on sensitive lands through this method. In the interest of preserving nature, the United States should utilize the debt-for-nature tool more broadly.

Policy Considerations: Economic Impact

Utah politicians vigorously oppose the President's actions, claiming that the creation of the monument would deprive the state of valuable economic opportunities. State officials estimate that the mine proposed by Andalex Resources could have generated 1,000 jobs, \$1 million in revenue annually for Kane County, and an additional \$10 million annually in federal and state taxes.⁵² Also,

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an additional 200,000 acres located within the monument were suitable for mining or development. This hypothetical development would have generated another \$2 billion for the state's schools.⁵³

In offering this economic denouncement of the national monument, Utah officials are being extremely short-sighted. The politicians who are voicing their opposition are closing their eyes to the obvious beneficial impact a national monument would have on tourism. Grand Staircase Escalante's establishment as a national monument will certainly increase Utah's visibility as a tourist destination to the general public. Surely many more people will now be aware of the natural beauty and geologic wonders that Grand Staircase Escalante has to offer and the tourism in the area should correspondingly increase. In fact, tourism is already an important economic force in Utah, supporting 73,000 jobs.⁵⁴ Ironically, in light of the vocal criticism by Utah politicians, the tourism industry surpasses the combined total of mining and agricultural industries in terms of economic importance. A study by the Utah Division of Travel Development estimates that \$3.75 billion will be spent by tourists in Utah this year, resulting in \$2.75 billion in tax revenue.⁵⁵ The new national monument will only increase these figures.

Moreover, it should not be forgotten that coal is a commodity. There is no guarantee regarding the eventual value of the coal reserves. Fluctuating world markets and the possible advent of new energy technologies are just two of many factors that could render the coal less valuable. Further, coal is a finite resource and will eventually be depleted. In contrast, the Grand Staircase Escalante National Monument, by the nature of its protected status, will remain intact for generations and continue to provide a boost to the tourism industry in Utah. If, rather than saving the majestic lands located in Grand Staircase Escalante, Andalex Resources is allowed to mine on the property, Utah would not necessar-

ily receive all the revenues generated by the land. Andalex is a Dutch owned company, therefore a substantial amount of revenue generated by any coal mine they would operate in the area would presumably not stay in the local economy. On the other hand, tourism would return more revenues back into the economy than a foreign-owned mine. Not surprisingly, there have been efforts in recent years to increase tourism in rural areas.⁵⁶ Consequently, the national monument should provide an increase in economic activity, not a decrease as the Utah politicians contend.

Conclusion

By establishing the Grand Staircase Escalante National Monument, President Clinton has effectively used the Antiquities Act of 1906. Concededly, Clinton's action may not necessarily coincide with the original legislative intent of Congress and may be somewhat politically motivated. The establishment of monuments in such a manner, however, has been consistently approved by the courts and is squarely within the framework provided by Congress.

Although the federal government still faces the problem of obtaining Andalex Resources' mineral lease on the Kaiparowits Plateau, a debt-for-nature agreement could provide an equitable solution. With a debt-for-nature deal, the government will not have to burden itself with finding a suitable amount of federal land to exchange for Andalex's extremely valuable lease. In addition, the environment will suffer no degradation; the administration will sacrifice paper debt rather than land.

The Grand Staircase Escalante National Monument also has the potential to be an economic benefit to Utah, rather than a detriment as Utah politicians contend. Tourism is already a major factor in the Utah economy, having surpassed both mining and agriculture in importance. The addition of another national monument in Utah should increase interest in tourism and provide a boost to the local economy.

Thus, President Clinton's establishment of the Grand Staircase Escalante National Monument is both permissible and beneficial to Utah economically. More importantly, Clinton's actions will preserve the beauty and splendor of the area. The Grand Staircase Escalante National Monument is an extremely rugged, frontier-like country that will be able to provide scientific, educational, and archeological value for many future generations to come.

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Notes

¹ Robert Redford, *Perspective On The West: This Land is Your Children's Land Setting aside 1.7 million acres of virgin land in Utah may become a defining legacy of the Clinton presidency*, L.A. TIMES, Sept. 19, 1996, at B9, available in 1996 WL 11645293.

² 16 U.S.C. § 431 (1993).

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.

³ Proclamation No. 6920, 61 Fed. Reg. 50,223 (1996).

⁴ See JOHN ISE, OUR NATIONAL PARK POLICY 146 (1961).

⁵ *Id.*

⁶ *Id.* at 143-152. Ise points out that Representative John F. Lacey, who was instrumental in the introduction of the bill that eventually became the Antiquities Act, was very concerned about the destruction of Native American relics. Lacey was the chairman of the House Public Lands Committee in 1900 and visited Native American ruins in New Mexico in 1902. Lacey consequently became determined to protect them. Around the same time, there was also a call for the legislature to protect these ruins by the Commissioner of the General Land Office. Additionally, Dr. Edgar L. Hewett, a noted archaeologist associated with the Smithsonian Institute, submitted a report deploring the destruction of the relics.

⁷ 16 U.S.C. § 431 (1993).

⁸ ISE, *supra* note 4 at 153.

⁹ Proclamation No. 794, 35 Stat. 2175 (1908).

¹⁰ Proclamation No. 1664, 43 Stat. 1914 (1923).

¹¹ Proclamation No. 2028, 47 Stat. 2554 (1933).

¹² Grand Canyon National Monument was incorporated into Grand Canyon National Park. 16 U.S.C. § 228b (1992). Similarly, Death Valley National Monument was converted into Death Valley National Park. 16 U.S.C. § 410aaa-1 (Supp. 1996).

¹³ Frank Clifford & Paul Richter, *Utah Officials Oppose U.S. Plan for Land Environment: Clinton is poised to create huge national monument. Foes fear economic damage*, L.A. TIMES, Sept. 18, 1996, at A3, available in 1996 WL 11645108.

¹⁴ SACRAMENTO BEE, Nov. 7, 1996, at A10. In Utah, Bob Dole received 54% of the vote while President Clinton only received 33%.

¹⁵ Frank Clifford & Paul Richter, *Clinton Designates Monument in Utah Parks: 1.7-*

million-acre site is larger than Yosemite. President makes concessions to state officials who said move would hurt economy and block planned coal mine, L.A. TIMES, Sept. 19, 1996, at A3, available in 1996 WL 11645564.

¹⁶ ISE, *supra* note 4 at 494-498. For example, President Franklin D. Roosevelt established the Jackson Hole National Monument, using the Antiquities Act, due to the unwillingness of Congress to do so.

¹⁷ See *United States v. Cappaert*, 426 U.S. 128 (1976); *Cameron v. United States*, 252 U.S. 450 (1920); *State of Alaska v. Carter*, 462 F. Supp. 1155 (D. Alaska 1978); *State of Wyoming v. Franke*, 58 F. Supp. 890 (D. Wyo. 1945).

¹⁸ ISE, *supra* note 4.

¹⁹ ISE, *supra* note 4 at 153-154.

²⁰ See *United States v. Cappaert*, 426 U.S. 128 (1976); *Cameron v. United States*, 252 U.S. 450 (1920); *State of Alaska v. Carter*, 462 F. Supp. 1155 (D. Alaska 1978); *State of Wyoming v. Franke*, 58 F. Supp. 890 (D. Wyo. 1945).

²¹ *Cappaert*, 426 U.S. at 141-142. Chief Justice Burger's opinion stated that, "The pool in Devil's Hole and its rare inhabitants are 'objects of historic or scientific interest.'"

²² *Cameron*, 252 U.S. at 455-456. The court described the President's authority as follows:

The act under which the President proceeded empowered him to establish reserves embracing "objects of historic or scientific interest." The Grand Canyon, as stated in his proclamation, "is an object of unusual scientific interest." It is the greatest eroded canyon in the United States, if not in the world, is over a mile in depth, has attracted wide attention among explorers and scientists, affords an unexampled field for geologic study, is regarded as one of the great natural wonders, and annually draws to its borders thousands of visitors.

²³ *Franke*, 58 F. Supp. at 895. The District Court of Wyoming held that if the President could provide any evidence showing the historic or scientific value of an area, his authority under the Antiquities Act would be affirmed: "If there be evidence in the case of a substantial character upon which the President may have acted in declaring that there were objects of historic or scientific interest included within the area, it is sufficient upon which he may have based a discretion."

²⁴ 16 U.S.C. § 431a (1992). "No further extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress."; Congress would later abolish Jackson Hole's monument designation and incorporate it into the Grand Teton National Park. 16 U.S.C. § 406d-1 (1992).

²⁵ See *Franke*, 58 F. Supp. at 895-896.

²⁶ See *Franke*, 58 F. Supp. at 896-897. The District Court's decision concerning the restriction of Presidential authority follows:

[I]f the Congress presumes to delegate its inherent authority to Executive Departments which exercise acquisitive proclivities not actually intended, the burden is on the Congress to pass such remedial legislation as may obviate any injustice brought about as the power and control over and disposition of government lands inherently rests in its Legislative branch.

27 *Carter*, 462 F. Supp. 1155.

28 *See Carter*, 462 F. Supp. at 1159-1160. "No cases have been brought to the court's attention that hold that the President must file an environmental impact statement prior to acting under a specific delegation of Congressional authority such as is embodied in the Antiquities Act."

29 GEORGE CAMERON COGGINS ET AL., FEDERAL PUBLIC LAND AND RESOURCES LAW 142-145 (3d ed. 1993). President Carter's actions were later reaffirmed by the Alaska National Interest Lands Conservation Act (ANILCA). ANILCA rescinded Carter's withdrawals but allocated the lands, in addition to other Alaskan lands, to the National Park System, National Wildlife Refuge System, and National Wilderness Preservation System. In all, 103 million acres were assigned to the federal conservation systems.

30 *Id.* at 510-513.

31 *See COGGINS ET AL.*, *supra* note 29 at 510-585 for an in-depth analysis of the federal mineral lease program.

32 *See COGGINS ET AL.*, *supra* note 29 at 511. Mineral leases may include clauses addressing issues such as development plans, land-use goals, and the protection of the environment.

33 *Boesche v. Udall*, 373 U.S. 472 (1963).

34 Frank Buono et al., *Mining Laws and Regulations and the National Park System*, in *MANAGING NATIONAL PARK SYSTEM RESOURCES* 125, 128-129 (Michael A. Mantell ed., 1990).

35 Clifford and Richter, *supra* note 13.

36 Mike Gorrell, *Plenty of Questions No Real Answers; A Pretty, Great Monument?; What Now? No One Knows For Certain; What Now? No One Seems To Know for Sure*, SALT LAKE TRIBUNE, Sept. 19, 1996, at A1, available in 1996 WL 3051175.

37 U.S. CONST. amend. V. The Fifth Amendment prohibits the deprivation of "life, liberty, or property, without due process of law" and the taking of private property "for public use, without just compensation." *See also* Buono et al., *supra* note 34.

38 *See United States v. Atomic Fuel Coal Company*, 383 F.2d 1 (4th Cir. 1967); *Oil Shale Corporation v. Morton*, 370 F. Supp. 108 (D. Colo. 1973).

39 *Atomic Fuel Coal Company*, 383 F.2d at 3.

40 *Oil Shale Corporation*, 370 F. Supp. 108.

41 *See Oil Shale Corporation*, 370 F. Supp. at 124. The court stated that:

A mining claim is an interest in land which cannot be unreasonably or unfairly dissolved at the whim of the Interior Department. Once

there is a valid discovery and proper location, a mining claim, in the language of the Supreme Court, is "real property in the highest sense." Legal title to the land remains in the United States, but the claimant enjoys a valid, equitable, possessory title, subject to taxation, transferable by deed or devise, and otherwise possessing the incidents of real property.

⁴² *Swanson v. Babbitt*, 3 F.3d 1348, 1352 (9th Cir. 1993). "There is no question the government has the authority to withdraw public lands from mining upon the establishment of National Recreation Areas."

⁴³ *Swanson*, 3 F.3d at 1354. The Ninth Circuit denied an application for a mill site patent to be located in the Sawtooth National Recreation Area in Idaho.

⁴⁴ BLACK'S LAW DICTIONARY 1125 (6th ed. 1990). A patent is defined as "a grant of some ... property ... made by the government ... to one or more individuals."

⁴⁵ Clifford and Richter, *supra* note 13.

⁴⁶ *Canada's Crown Butte To End Mining Effort Close to Yellowstone*, WALL ST. J., Aug. 13, 1996, at B6, available in 1996 WL-WSJ 3114218.

⁴⁷ Timothy Nash and Carlos Tejada, *Concerns Mount Over Plan to Swap Land for Gold Mine*, WALL ST. J., Sept. 9, 1996, at A7, available in 1996 WL-WSJ 11797664.

⁴⁸ 22 U.S.C. § 2281 (1990). Debt-for-nature is defined as:

[T]he cancellation or redemption of the foreign debt of the government of a country in exchange for (1) that government's making available local currencies (including through the issuance of bonds) which are used only for eligible projects involving the conservation or protection of the environment in that country (as described in section 2283 of this title); or (2) that government's financial resource or policy commitment to take certain specified actions to ensure the restoration, protection, or sustainable use of (2) natural resources within that country; or (3) a combination of assets and actions under both paragraphs (1) and (2).

⁴⁹ George Snyder, *Debt-for-Nature Swap Proposed In Humboldt / Tax forgiveness urged for Headwaters Forest owner*, S.F. CHRONICLE, Apr. 27, 1996, at A19, available in 1996 WL 3218571.

⁵⁰ For example, extremely large fines imposed by the Securities and Exchange Commission are not uncommon. For instance, Michael Milken, in 1990, was fined \$600 million for violations of federal securities laws including insider trading. *Michael Milken, Lowell Milken To Be Permanently Enjoined*, SEC NEWS DIGEST 90-79, available in 1990 WL 267661.

⁵¹ Snyder, *supra* note 49.

⁵² Clifford and Richter, *supra* note 13.

⁵³ *Id.*

54 *Tourism in Utah Passes Mining, Agriculture in Importance*, SALT LAKE TRIBUNE, May 15, 1996, at B7, available in 1996 WL 3031281.

55 *Id.*

56 Dina Long, *Rural Tourism: Drawing Visitors Into The Hinterlands*, TOUR AND TRAVEL NEWS, Dec. 9, 1991, at T1, available in 1991 WL 5550888.

