

**Hearing on the Grand Staircase-Escalante Enhancement Act**  
**Subcommittee on Federal Lands**  
**House Natural Resources Committee**  
**December 14, 2017**

Michael O. Leavitt, Governor of Utah 1993-2003, Administrator of the Environmental Protection Agency 2003-2005, Secretary of Health and Human Services 2005-2009

Chairman Bishop, Subcommittee Chairman McClintock, Ranking Member Hanabusa, and committee members, thank you for the invitation to speak with you, as we again find monuments and public land protections in my home state of Utah in the national spotlight under debate. This is where we should have been all along.

There are lands in our state that require protection, and the record will show me to be consistently supportive of responsible efforts to do so. My statement today is aimed at establishing two foundational points. First, both the Grand Staircase-Escalante and Bears Ears National Monuments were abuses of the 1906 Antiquities Act, setting aside far more land than was necessary to meet the law's purpose. Second, the way Grand Staircase came forward was an abuse of power, process and protocol so egregious that it is offensive to the concept of democracy itself.

Debate is a wonderful thing. Good-faith collaborations yield extraordinary results. An open give-and-take involving governments and citizens at all levels makes democracies work. Trust is essential. Had any of these been applied to the original process of designating Grand Staircase in 1996, I doubt we would be here.

The Grand Staircase monument is 21 years old. Bill Clinton was the president who created it. I was governor of Utah at the time. The monument was done in stealth, under wraps and on the fly. There was no consultation with any state, county or local leaders in Utah, our federal office-holders or our people. There was a deliberate effort to conceal and keep monument planning out of public view. Secrecy was so vital a concern to the endeavor that the administration was denying a decision had been made, even as bleachers were going up for the presidential announcement at the Grand Canyon.

There were calls made by administration figures to Democratic politicians and allies in surrounding states. Activist groups had input and major newspapers received advance word. Aides to Mr. Clinton fretted over whether to give a heads up to Democratic candidates for office in other states. Utah didn't rate. We couldn't even get a map. The partisanship and unilateral power play were unprecedented and stunning to behold.

Confronted with those circumstances, the move was contentious from Day One. With the stroke of a pen, local communities had their interests upended. Mining leases were impacted, as was statewide funding of public education. Commercial development was

precluded; a seven-year environmental impact study on the coal fields of the Kaiparowits Plateau jettisoned overnight.

Then came the repercussions. Congressional hearings were held, lawsuits filed, the Antiquities Act challenged, and the smoking embers of national vs. western land-use antagonisms once again flamed.

The law was followed, a court ruled eight years later. But the breach of trust, federal overreach and disregard for the basic foundations of democratic government lingered in Utah much longer. The monument born of political expedience never had the buy-in and the constructive voice of surrounding communities those lands warranted and deserved.

Twenty-one years later, a new president and a different Congress are taking another look. Grand Staircase faces a downsizing and reconfiguration, along with Bears Ears. It did not have to be this way.

There are parallels in the two cases. They rely on an expansive reading of the Antiquities Act in the creation of massive landscape monuments rather than the smallest-area-compatible standard required by the law. Where Grand Staircase was enshrined to curry favor and galvanize preservationist voters, Bears Ears came at the behest of environmental groups, backed by foundation money and fronted by representatives of Indian tribes.

Both monument designations were a race against the clock to do something before time ran out, either to win votes or secure a historical footnote. And both had the effect, whether calculated or not, of forestalling other more time-consuming but comprehensive and workable initiatives to protect the same lands – more assiduously in some cases – while balancing conservation with the economic stability of local communities. One of those initiatives was a Canyons of the Escalante National Eco-region my administration proposed three years before Grand Staircase; the other was the Utah Public Lands Act Initiative launched and led here by Representatives Rob Bishop and Jason Chaffetz.

There is a reason that Washington declarations like Grand Staircase and Bears Ears are described in Utah as “midnight monuments.” They are sprung on the state by a federal government removed from the aftermath and disinterested in its socio-economic realities. This time, we can do better. We can work it out for the American people and for Utah, in open discussion with honest brokers, congressional authority and the state of Utah’s imprimatur.

That starts with some undeniable truths and a look back on the Grand Staircase process with the perspective of two decades. First, Utah is a state where 65 percent of the lands are federally owned and administered. San Juan County alone, where Bears Ears is located, is home to a National Park, a National Forest, a National Recreation Area, three National Monuments and the highest poverty rate in Utah.

In Kane and Garfield counties, which share the Grand Staircase footprint, it is a Godzilla-sized imprint. Half of Kane County is taken up by the monument. In Garfield, 98 percent of the land is federally owned.

The preservation of public lands in Utah is always a familiar issue. I grew up in Southern Utah, where all of our national parks and both of these monuments are located. No one in this country can love those lands more than those of us who live there. These places are vast and beautiful. They symbolize America and define Utah. They are home. But we also have to honor the processes and laws that guarantee ultimate stewardship and effective management.

In Utah, we seek out new and better ways to work with the federal government in the planning and administration of these lands. Governors and local officials build relationships, forge partnerships and lay the groundwork for interagency cooperation. This is one reason the Grand Staircase designation caused shock and outrage. It was inconceivable that someone entrusted to the highest office of the United States would be willing to undertake a process that was purely partisan on a matter of such importance.

I'll remind you of how it transpired. President Clinton announced creation of the monument on September 18, 1996. The first reports of it that I or any other elected official in the state received came just 11 days earlier from a story in the Washington Post.

This kicked off days of phone calls, conversations, delays and denials by the White House and Interior Department. Secretary Bruce Babbitt said his department was not involved. The White House's director of intergovernmental affairs told me they weren't certain where the report came from. I asked for a meeting with President Clinton or Chief of Staff Leon Panetta and was given one a week later on September 17, one day before the still undisclosed monument announcement.

Media reports, meanwhile were indicating that an important environmental announcement was planned at the Grand Canyon the following week. When we inquired directly of the administration about the time, place and subject, they would not even confirm an event would occur. Local governments in Utah were becoming more and more concerned. On two other occasions that week I had conversations with Mr. Babbitt or his office. They continued to indicate that they had no information, insisting that the matter was being handled by the White House. When we called the White House, we were referred to Interior.

Phone calls and meetings with local officials continued through the weekend, and we were still being told that "no decision had been made." On Monday September 16, 1996, the governor's office could still not get confirmation of where or what the official announcement would be, despite the fact that buses were being organized to take Utahns to Arizona. I traveled to Washington for the Panetta meeting.

That meeting lasted just under an hour. Mr. Panetta was attentive and gracious. He told me that was the first time he had been able to focus on the issue and that he had set aside the afternoon to prepare a recommendation to the president.

I reviewed for him the Canyons of the Escalante Eco-region proposal, a new model of land designation that incorporated the requirements of all the others and tailored the correct land use to specific land parcels. It matched up with the contours of the new Grand Staircase and had been previewed at least a year earlier to Secretary Babbitt. Ironically, the most pristine areas would have been afforded much more aggressive protection in that proposal than what was ultimately proposed.

The bulk of the meeting, however, centered on the presence of school trust lands within the monument. These are lands scattered across Utah that derive revenues from energy, mineral resource development, grazing and timber production. The monies flow to a permanent endowment created at statehood to support public education. Prior to that discussion – and this is the day before the announcement - Mr. Panetta had been unaware of those lands' existence and the importance they held for the school children of our state.

At the end of the presentation, Mr. Panetta told me I had made a compelling case. To which I replied, "If this is compelling to you, then before the president sets aside a piece of land equal to Rhode Island, Delaware and Washington, D.C., combined, he needs to hear the same information directly from the governor of the state." I was told Mr. Clinton was campaigning in Illinois and Michigan, but he would call me later in the evening.

At 1:58 a.m. on September 18, I got the call, and we talked for 30 minutes. The president said he was just then beginning to review the matter. I restated the points raised with Mr. Panetta and offered to put them into a memo the president could read in the morning. This was before laptops and smart phones, so I sat at the hotel desk and wrote three pages by hand, then faxed it to the president at his hotel at 4:30 a.m.

The memo said that if a monument was going to be created, the president should create a commission that included state and local government officials to recommend boundaries and solve a number of management questions. It stated that it should work toward a policy that protects the land, preserves the assets and maintains the integrity of the public process.

Several hours later, I spoke again with Mr. Panetta, who said my ideas had merit and that he would be reviewing this again with the president. Later in the morning he informed me that the monument would be announced and said some of my suggestions on water, wildlife access and a planning process with local and state participation were being incorporated.

I was back in Salt Lake City at the Capitol when the announcement was made at the north rim of the Grand Canyon - in Arizona. As governor, I had never seen a map, read the proclamation or been invited. Simple courtesies were never the issue. The issue

was process and public trust. It's hard to believe this was how such a decision could be made by the executive branch of the U.S. government.

Grand Staircase was a major land decision, still one of the biggest in the United States. It was not made the way public lands decisions should or were ever intended to be made. In 1976, the nation made an important public policy decision when Congress passed the landmark Federal Land Policy and Management Act (FLPMA). It required great deliberation and careful process in determining how public lands would be used. That act and other related legislation contains protections for state and local communities. It was the policy of my administration then to assure that our state was not denied those protections, to defend Utah's interest against abuses of power, and to seek additional protections when existing measures proved inadequate.

Use of the Antiquities Act to create Grand Staircase was a clear example of inadequate protection. Our system of government was constructed to prevent one person from having that much power without checks or balances from another source.

The Antiquities Act was originally intended to provide emergency power to protect Indian artifacts and objects of historic and scientific importance, not to create sweeping monuments of a million-plus acres, with minimal regard for the relationship between the land and the local economy. In Southern Utah, both Grand Staircase and Bears Ears individually are larger in size than our five national parks combined.

Using the Antiquities Act also has another downside. What one president can do with a pen, a phone and a podium at the north rim, another can undo or unravel. Congressional action, had it not been pre-empted by executive overreach, would have required more time and debate. It also would have provided a solid, enduring foundation.

In the ensuing months, we pressed forward with the administration on our objectives for the monument. We reached agreement on the management plan, and it was better because of the state's involvement.

Two years later, we signed an agreement for a historic land swap: the state exchanged 370,000 acres of trust lands within federal holdings for 140,000 acres of federal land and leases for coal and natural gas and \$50 million in cash.

In future years, I served in the Cabinet of the George W. Bush Administration, first as EPA Administrator and then Health and Human Services Secretary. For nearly six years there, I saw how important decisions should be made in the White House. Nothing ever rivaled the abuse of power and questionable ethics of the Grand Staircase episode.

More was uncovered in time, sometimes under subpoena, about the undemocratic process that occurred – and also about monument impacts and competing values.

The obsessive secrecy was documented multiple times: once in a letter from Interior Department Solicitor John Leshy to the Colorado professor who drafted the proclamation. Leshy stated, "I can't emphasize confidentiality too much. If word leaks out, it probably won't happen, so take care." Another time it was reinforced in a memo from the Council on Environmental Quality Director, Kathleen McGinty, to another official at the White House. That one stated warned that "any public release of the information will probably foreclose the President's option to proceed."

Mr. Panetta and President Clinton both indicated at the time that they did not like how it all unfolded, but felt that the momentum of the event had swept things irrevocably forward.

I believe with considerable certainty that the monument originated at the Department of Interior, working closely with national environmental groups. The proposal was given to CEQ to manage. I'm confident that Mr. Panetta and the President liked the idea of creating a national monument, but I suspect the presidential campaign and environmental organizations clearly took over the process.

Somebody got worried that the White House might start asking questions and delay the event, so they leaked the monument proposal to the Washington Post, making it impossible for them to back out. The fact that it was sprung as a surprise, even after being denied all week was morally wrong. The fact that the White House discussed it with the governors of other states, but not Utah was a clear indication of the political nature.

Some additional mindsets and methodologies were revealed in more recent recollections of staff members who gave oral histories for college libraries. Those included statements that locking up coal reserves in the monument was the primary motivation, and that the administration could have used litigation to squeeze out lease-holding coal companies without paying them, but made deals out of fairness.

There was speculation about the future of coal. Solicitor Leshy stated in 2014 that half the coal-fired plants in the country were shutting down, and "coal is on its way out." He described Southern Utah's interest in coal development as shortsighted, and surmised that the monument payout gave Andalex – the company with the EIS proceeding for its lease on the Kaiparowits – an excuse to "basically beat a retreat."

With a straight face I imagine, he also lamented that the atmosphere in Congress surrounding the Antiquities Act had become so partisan and assessed that Grand Staircase was the formal end to the region's "dream" of a heavy industry economy and the turning point to a future based on recreation and tourism. Good to know.

There was a revelation that in drawing up the monument boundaries, a drafter called a friend who had worked at the Grand Canyon Trust to help set the southern border.

And in a candid reflection, U.S. Geological Survey biologist Jayne Belnap, who helped craft the monument, suggested that most people likely believe it is God's will that land be taken care of, but then dialogue falls apart when it comes to defining what caring for the land truly means.

The Sand Flats Recreation Area near Moab, she said, was "killed off" by mountain bikers, not ranching and grazing, and there was no prevailing on bicyclists to acknowledge otherwise. As she put it, "I watched it several times, people riding everywhere making a mess. I tried to talk to some of them about it and they were the most arrogant ... 'I am a well-educated environmentalist who sends my money to Sierra Club. You have nothing to tell me.' I would way rather deal with a rancher, frankly." It's all about the construct and point of view.

One other email that surfaced a year after the monument designation was starkly prescient. Written by an associate director of the CEQ, it noted that presidents before Mr. Clinton "have not used their monument designation authority in this way in the past – only for large dramatic parcels that are threatened. The bad guys – her words - will have the chance to suggest that this administration could use this authority all the time all over the country and start to argue that the discretion is too broad."

Twenty years later, by the end of eight years in office, President Obama had used the Antiquities Act 34 times to lock up more than 553 million acres of land and water as national monuments – 66 percent of the total ever designated as a national monument under the Act. It was more than any other administration in history.

To my knowledge, neither president has ever set foot in Grand Staircase or Bears Ears. Yet the proponents of their unilateral actions always maintain that the people who live in these areas will come around and learn to love the monuments. What they never seem to comprehend is that we always did.

The opportunity now lies with Congress to protect and set apart the places in Utah that deserve it, to consider what the lands mean to those who live on them as well as those who visit, to apply the law as designed and assert its proper authority in establishing the best fit for Utah and all of America.