

“This is the moment when we must come together to save this planet. Let us resolve that we will not leave our children a world where the oceans rise and famine spreads and terrible storms devastate our lands. Let us resolve that all nations—including my own—will act with the same seriousness of purpose as has your nation, and reduce the carbon we send into our atmosphere. This is the moment to give our children back their future. This is the moment to stand as one.”

Can Obama Save the Planet?

Structure of the Environmental Policy “Game” in the U.S.

Fragmentation of Authority

- Federalism
 - National Government
 - State Government
 - Local Government
- Separation of Powers
 - – Executive
 - – Legislative
 - – Judiciary

•Checks & Balances

Implications

- Many “access points” to government
- Policy requires broad political consensus to advance
- Easier to stall policy than it is to make it
- Policy change tends to be incremental
 - Crises
 - Issues of low political salience

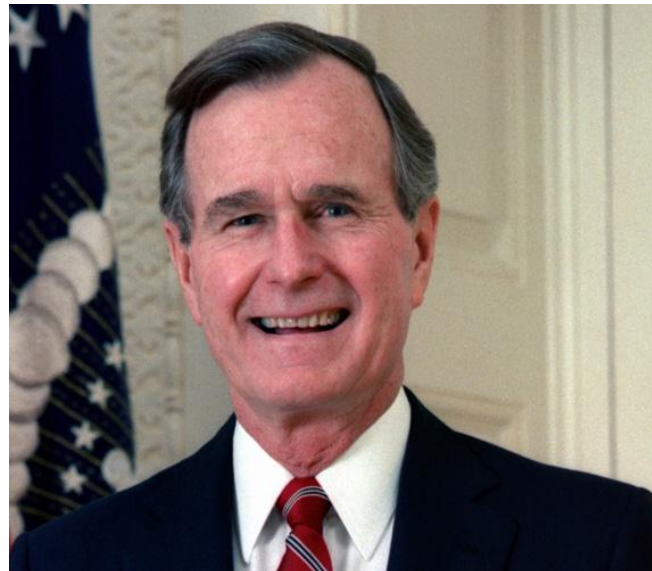
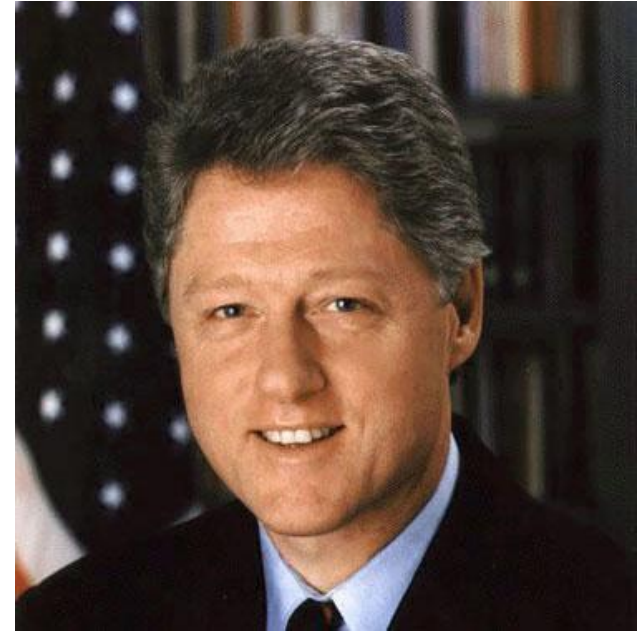


Policy Process as a Game

- What are the structure & rules of the game and how do they affect the outcome?
- Who are the players?
- What tools do the players have to influence the game?
- Where in the game are players most influential?

Vig's Approach

Rollback Advocates



Opportunistic leaders



President's Environmental Goals

■ Electoral

- Nature of election victory
- Importance of environment
- Relative importance of environment relative to other goals

■ Personal

- Personal experience and beliefs



Presidential Tools

- Agenda setting
- Policy formulation
- Policy implementation
- Foreign policy



President's Environmental Strategy

- Salience of environmental issues in public opinion
- Congressional opposition
- Focusing events/Policy windows
- Impact of previous policies



Constraints

- Congress for legislation and funding
- Senate for treaties
- Courts reviews rules, regulations, and legislation
- Media scrutiny
- Interest group scrutiny
- Public apathy

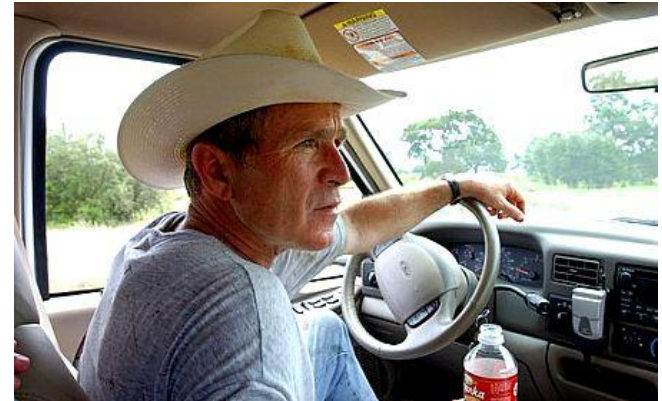
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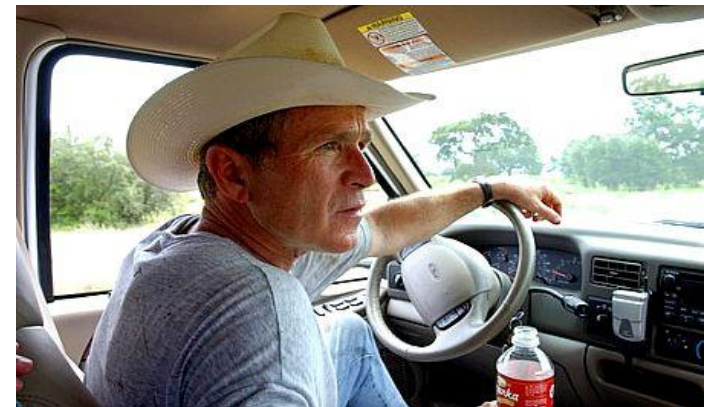
■ Personal

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President's Environmental Strategic Opportunity

- Salience of environmental issues in public opinion
- Congressional opposition
- Focusing events/Policy windows
- Impact of previous policies



PRESIDENTIAL POWER

CONGRESS AF 1



WOW.

THE BAD NEWS IS MOST OF THEM AREN'T CONNECTED TO ANYTHING.



ACTUALLY, THEY'RE CONNECTED TO CONGRESS, BUT THE DIFFERENCE IS ONLY TECHNICAL.

- Chief Executive
- – White House Staff
- – CEQ
- – OMB
- • Executive Agency
- Chiefs
- – Political appointees
- • Dept. Secretaries
- • Deputy &

- • Tools
- – Executive Authority
- • Decision-making
- • reorganization
- • Executive orders
- • Hire & fire
- – Agenda setting



Pathways to Presidential Power

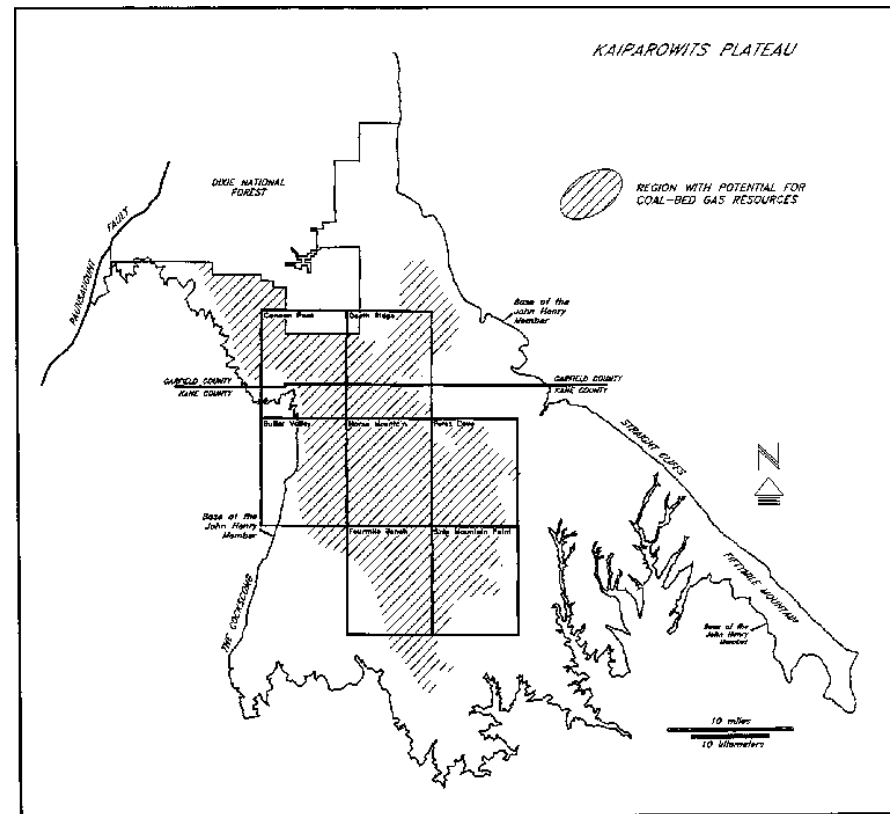
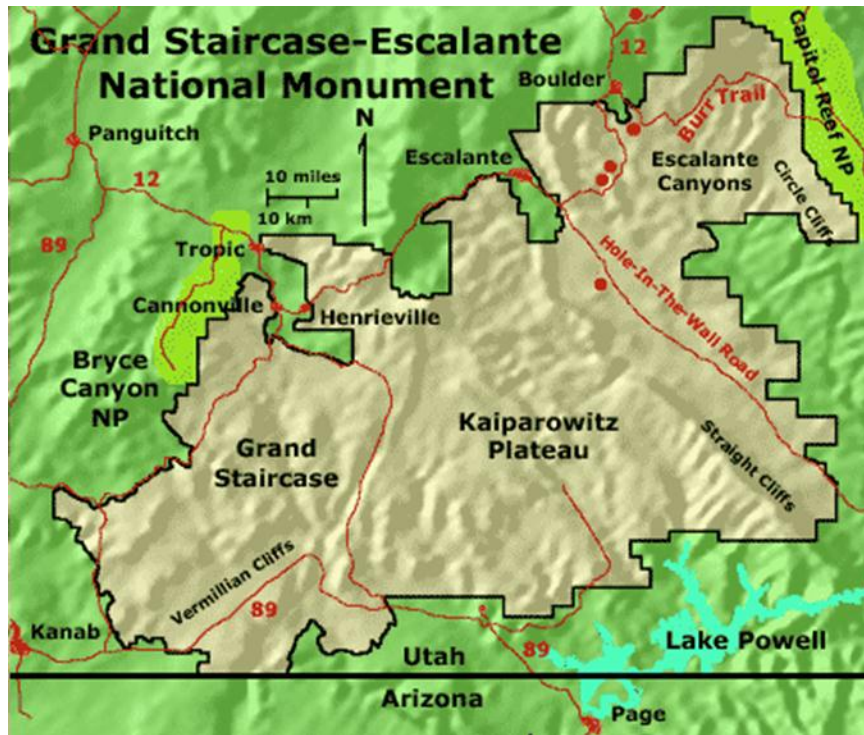
- Discretionary authority granted by statutes
(Vague Legislation)

Antiquities Act of 1906

- “ 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*,”
- Limits on presidential authority? Size? Scope?

Kaiparowits Plateau -

Utah Geological Survey- \$223 - \$331 billion in energy and mineral resources





- Grand Staircase Escalante National Monument designated by Clinton
- Utah Geological Survey- \$223 -\$331 billion in energy and mineral resources



**\$120+ million in royalties for UT
vs.**





- ***"We are saying very simply, our parents and grandparents saved the Grand Canyon for us; today, we will save the Grand Escalante Canyons and the Kaiparowits Plateaus of Utah for our children."***




- “On this site, on this remarkable site, God's handiwork is everywhere in the natural beauty of the Escalante Canyons and in the Kaiparowits Plateau, in the rock formations that show layer by layer billions of years of geology, in the fossil record of dinosaurs and other prehistoric life, in the remains of ancient American civilizations like the Anacosi Indians.”

**Sep 18, 1996, Outside El Tovar Lodge
Grand Canyon National Park, Arizona**



GOP West Officials Response

- Craig Peterson, “I feel violated.” (majority leader of UT State Senate)
- Murkowski (R-AK)- “most arrogant, hypocritical, and blatantly political exercise of federal power affecting public land”
- Chenoweth (R-ID)- “biggest land grab since the invasion of Poland.”
- House Resource Committee issues 2 reports
 - The Abuse of Trust and Discretion..
 - Monumental Abuse...

- 
- GOP introduces bills to limit or block the president's ability to make such designations without approval from Congress
 - District Court- the President “complied with the Antiquities Act's two requirements.”

Congress



- Congress passes 3 national conservation areas, one national monument, one cooperative protection act in 2000
 - Colorado Canyon Conservation Area Act of 2000

Monuments Designated by President Clinton by Proclamation

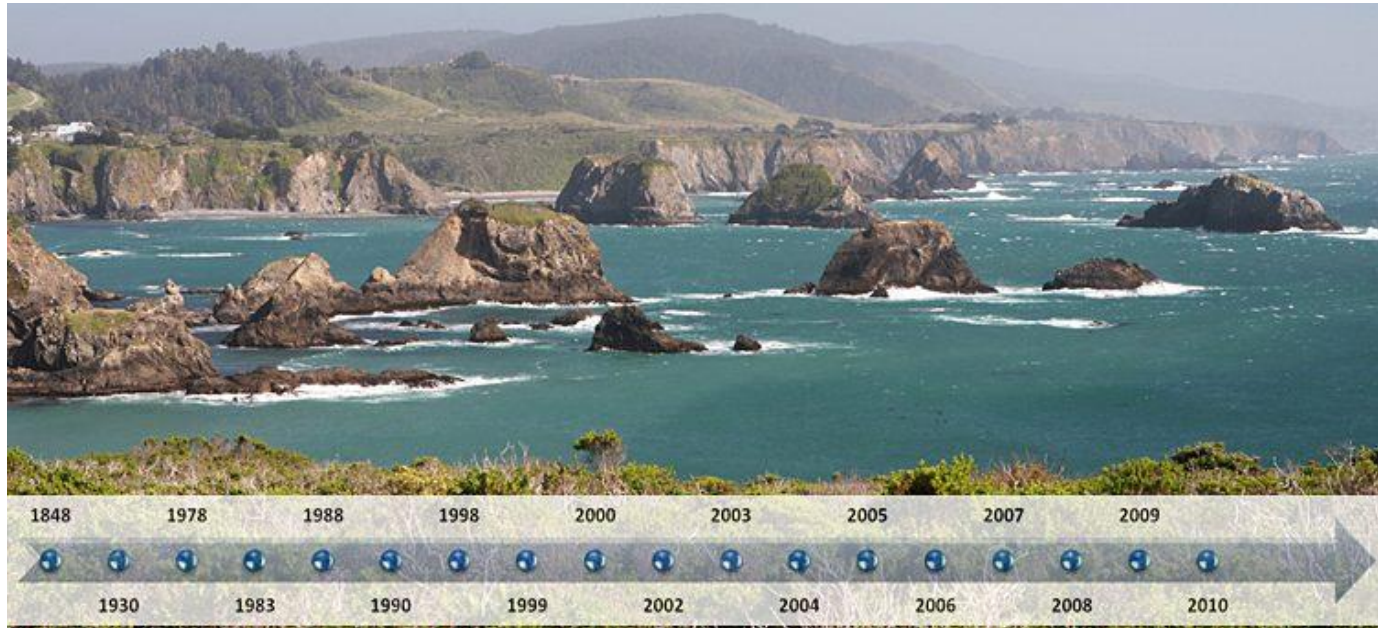
Proclamation	Date	Monument	Acres
6920	September 18, 1996	Grand Staircase-Escalante	1,700,000
7263	January 11, 2000	Agua Fria	71,100
7264	January 11, 2000	California Coastal	840 miles*
7265	January 11, 2000	Grand Canyon-Parashant	1,014,000
7266	January 11, 2000	Enlargement of the Pinnacles	7,900
7295	April 15, 2000	Giant Sequoia	327,769
7317	June 9, 2000	Canyons of the Ancients	164,000
7318	June 9, 2000	Cascade Siskiyou	52,000
7319	June 9, 2000	Hanford Reach	195,000
7320	June 9, 2000	Ironwood Forest	128,917
7373	November 9, 2000	Enlargement of Craters of the Moon	661,287
7374	November 9, 2000	Vermilion Cliffs	293,000
7392	January 17, 2001	Boundary Enlargement and Modifications of the Buck Island Reef	18,135**
7393	January 17, 2001	Carrizo Plain	204,107
7394	January 17, 2001	Kasha-Katuwe Tent Rocks	4,148
7395	January 17, 2001	Minidoka Internment	72,75
7396	January 17, 2001	Pompeys Pillar	51
7397	January 17, 2001	Sonoran Desert	486,149
7398	January 17, 2001	Upper Missouri River Breaks	377,346
7399	January 17, 2001	Virgin Islands Coral Reef	12,708**
7402	January 20, 2001	Governors Island	20
Total Acres			5,686,767***

Note: *Excludes California Coastal because total acreage cannot be readily calculated. **Figure is denoted in marine acres. ***Total excludes California Coastal acreage and marine acres.

Source: National Archives and Records Administration, www.nara.gov.

- 18 more
- 6 million acres
- But's that not all....

California Coastal National Monument



- “all unappropriated or unreserved lands and interest in the lands owned or controlled by the United States in the form of islands, rocks, exposed reefs, and pinnacles above mean high tide within 12 nautical miles of the shoreline of the State of California.”



Pathways to Presidential Power

- Rulemaking- writing the standards, criteria or processes about how a statute is to be interpreted.

New Source Review

Regulation

THE CATO REVIEW OF BUSINESS AND GOVERNMENT

Spring 2006 | Vol. 29, No. 1 | \$3.95



What's Old is New

New Source Review's grandfathering problem

ALSO

When Scientists Politicize Science

Is Protectionism A Legitimate State Interest?

Remembering John Muth



“Major Modification” Is Central to Both NSR Enforcement and Reforms

- Historic and still current (in most of U.S.) definition of “major modification:”
 - Any physical change in or change in the method of operation of an existing major source that would result in a significant net emissions increase of any pollutant subject to regulation under the CAA

From Nixon and Peabody, NSR Update to RI

The Equipment Replacement Provision – BUSH EPA Ryle

- An activity (or aggregation of activities) will fall under the RMR&R exclusion if:
 1. It involves replacement of any existing *component(s)* of a *process unit* with identical or *functionally equivalent* components;
 2. The *fixed capital costs* of the replaced component(s) plus the costs of activities that are part of the replacement effort do not exceed 20% of the current *replacement value* of the process unit; and
 3. The replacement component(s) does not alter the *basic design parameters* of the process unit or cause the process unit to exceed any legally enforceable emission or emission-constraining operational limitations applicable to the process unit

From Nixon Peabody, NSR Update to RI

What's Important to


Remember?

- The final leg of this 11-year odyssey to NSR reform is far from over
 - The D.C. Circuit is reviewing the 2003 reform
 - Review of Duke 2005 by the Supreme Court is being sought
 - States and environmental groups will fight the proposed 2005 reform
 - Will State resistance overwhelm the system?
 - How long will it take EPA Regional Offices to approve SIP revisions implementing the reforms in State PSD and NANSR regulations?



President's Alternative Pathways

- Appointments
- Issue executive orders
 - issue EO or commands to agency and department heads to shape what they do
- Implementation
 - Use open language of statutes to implement law strategically
- Rulemaking
 - Write agency statement about how they will interpret, implement prescribed law or policy
- Strategic litigation

- 
- In 2009, cumulative wind capacity increased by 39% and cumulative solar PV capacity grew nearly 52% from the previous year.
 - In 2009, renewable energy accounted
 - for more than 55% of all new electrical capacity installations in the United
 - States—a large contrast from 2004 when all renewable energy captured only 2% of

Reduction driven by the recession, high energy prices and natural gas availability.

50-65 GW of coal at risk of retirement due to various EPA requirements (not GHG).

New CAFE standards can deliver absolute reductions in CO₂

Natural gas substitutes for retired coal capacity.

It may be possible for the USA to reach its GHG target, but post recession growth is uncertain as is the impact of CAA.

