

**CONCURRENT RESOLUTION OPPOSING UNILATERAL USE  
OF THE ANTIQUITIES ACT**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Keven J. Stratton**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This concurrent resolution of the Legislature and the Governor expresses strong opposition to the designation of a new national monument in the state.

**Highlighted Provisions:**

This resolution:

- ▶ expresses strong opposition to the President of the United States establishing a new national monument in the state under the Antiquities Act; and
- ▶ states that the disparate impact the federal land takeover has on Utah is unconstitutional and violates the equal sovereignty principle.

**Special Clauses:**

None

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*Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:*

WHEREAS, the Legislature has a legitimate basis to believe that President Obama intends to issue a proclamation under the Antiquities Act designating one or more national monuments within the borders of the state of Utah before the end of his term as President of the United States;

WHEREAS, the Legislature has a legitimate basis to believe that the national monuments so designated will exceed two million acres in size;



28 WHEREAS, the state of Utah is already home to the Grand Staircase-Escalante  
29 National Monument designated by President Clinton, which has removed 1,880,461 acres, or  
30 2,938 square miles, of the land within the borders of Utah from local governance by Utah's  
31 elected officials, and transferred exclusive governance of that area to the federal government,  
32 all without the consent of the Legislature of the state of Utah;

33 WHEREAS, the Grand Staircase-Escalante National Monument is over two times the  
34 size of the state of Rhode Island;

35 WHEREAS, an additional national monument designation within the borders of the  
36 state will have the effect of removing even more land from local governance by the state of  
37 Utah, and transferring exclusive governance of the new monument to the federal government,  
38 all without the consent of the Legislature;

39 WHEREAS, the Enclave Clause, Article I, Section 8, Clause 17, of the United States  
40 Constitution sets forth the only legal mechanism through which the federal government can  
41 obtain exclusive legislative authority over land within the borders of a sovereign state:

42 "To exercise exclusive Legislation in all Cases whatsoever, over such District (not  
43 exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of  
44 Congress, become the Seat of the Government of the United States, and to exercise like  
45 Authority over all Places purchased by the Consent of the Legislature of the State in which the  
46 Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful  
47 Buildings";

48 WHEREAS, in debating the Enclave Clause at the Constitutional Convention, the  
49 consent of the state legislature as a necessary pre-condition for the federal government to  
50 obtain exclusive legislative power was considered a necessary safeguard to maintain the  
51 sovereignty of the state in which the land was to be placed under exclusive federal legislative  
52 control, as per the following exchange on September 5, 1787, documented in James Madison's  
53 notes on the Constitutional Debate:

54 "Mr. GERRY contended that this power might be made use of to enslave any particular  
55 State by buying up its territory, and that the strongholds proposed would be a means of awing  
56 the State into an undue obedience to the Genl. Government.

57 "Mr. KING thought himself the provision unnecessary, the power being already  
58 involved: but would move to insert after the word 'purchased' the words 'by the consent of the

59 Legislature of the State.' This would certainly make the power safe.

60 "Mr. Govr. MORRIS 2ded. the motion, which was agreed to nem: con: as was then the  
61 residue of the clause as amended."

62 WHEREAS, if our Framers decided, after careful debate and in all their wisdom, that  
63 safeguards needed to be placed on Congress, which includes elected representatives of all the  
64 states, before allowing exclusive federal legislative governance of land within the borders of a  
65 state, it is even more imperative that safeguards be placed upon the ability of a single person --  
66 the President of the United States -- to declare with sole and exclusive power that millions of  
67 acres within a sovereign state can be transferred to the exclusive control of the federal  
68 government;

69 WHEREAS, the Legislature of the state of Utah hereby goes on record as not only  
70 withholding its consent to the establishment of any proposed new national monuments without  
71 state legislative approval, but emphatically objecting to the establishment of the same;

72 WHEREAS, transferring exclusive legislative control from local government to federal  
73 bureaucrats over a thousand miles away is contrary to the dual sovereignty design of our federal  
74 republic, which protects individual liberty by diffusing sovereign power so that no single  
75 sovereign can become tyrannical, controlling all aspects of our lives;

76 WHEREAS, decisions regarding the health, safety, and welfare -- the "police power" --  
77 of citizens are, under our federal system, properly placed with local governments more  
78 accountable to the citizens, not with unelected, unaccountable federal bureaucrats;

79 WHEREAS, transferring the police power from the state to the federal government  
80 within the boundaries of a national monument without state legislative approval is  
81 unconstitutional and contrary to the design of our federal system;

82 WHEREAS, over 66.5% of the land within the sovereign state of Utah is already owned  
83 by the federal government, unlike 38 states in the Union which enjoy dominion over almost all  
84 the land within their borders;

85 WHEREAS, the sovereignty of the state of Utah is already negatively impacted by this  
86 vast federal territory -- larger than the entire state of New York -- within its borders, placing its  
87 citizens' rights and liberties at jeopardy;

88 WHEREAS, the use of the Antiquities Act in recent years by presidents to designate  
89 millions of acres of land as national monuments disparately impacts western states, including

90 Utah, because only western states have large areas of federal land remaining within their  
91 borders; and

92 WHEREAS, this disparate impact on Utah and other western states is unconstitutional  
93 and violates the equal sovereignty principle, which states that all states in our federal system  
94 must be equal in sovereignty:

95 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the  
96 Governor concurring therein, expresses strong opposition to the creation of any new national  
97 monuments within the state by the President of the United States without state legislative  
98 approval.

99 BE IT FURTHER RESOLVED that the Legislature and Governor encourage Congress  
100 to amend the Antiquities Act to prevent President Obama and future presidents from  
101 unilaterally designating enormous amounts of land within a sovereign state as a national  
102 monument.

103 BE IT FURTHER RESOLVED that the Legislature and Governor encourage Attorney  
104 General Sean Reyes to research a methodical and appropriate approach to timely assert a  
105 declaratory judgment action challenging the constitutionality of the power of the President of  
106 the United States designating a proposed national monument within the borders of the state of  
107 Utah, and seek to permanently enjoin the President of the United States from doing so without  
108 state legislative approval.

109 BE IT FURTHER RESOLVED that the Legislature and the Governor encourage the  
110 Attorney General to report his determination to the Judiciary Interim Committee by the May  
111 2016 Interim meeting.

112 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of  
113 the United States, the members of Utah's congressional delegation, and Attorney General Sean  
114 Reyes.