

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

2016 SECOND SPECIAL SESSION

STATE OF UTAH

**Chief Sponsor: Keven J. Stratton**

Senate Sponsor: David P. Hinkins

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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 without local input and state legislative approval.

**Highlighted Provisions:**

This resolution:

▶ expresses strong opposition to the use of the Antiquities Act by the President of the United States to establish a new national monument in the state without local input and state legislative approval.

**Special Clauses:**

None

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

WHEREAS, the members of the Utah Legislature and the Governor are honored to have all taken an oath to uphold the divinely inspired Constitution and the laws of the state and the United States;

WHEREAS, the framers of our constitution, as evidenced by their inspired and carefully crafted constitutional balance of power and responsibilities between branches of government and between the national and state governments, did not intend to grant the



28 executive branch unilateral authority to set aside vast swaths of land within the borders of a  
29 state without input from Congress or state officials;

30 WHEREAS, egregious federal overreach is among the greatest threats to:

- 31 • the current strength and vitality of the state;
- 32 • the health, safety, and welfare of its citizens;
- 33 • the pursuit by its citizens of life, liberty, and happiness;
- 34 • the long-term economic prosperity of the state; and
- 35 • the equitable per pupil funding of education for Utah's children;

36 WHEREAS, the Utah Legislature and the Governor oppose the actions of those who  
37 would seek to resolve conflicts with the federal government by methods outside the bounds of  
38 the law;

39 WHEREAS, it is in this spirit of lawful resolution of conflicts that the Utah Legislature  
40 and the Governor submit the matters herein set forth;

41 WHEREAS, the state of Utah is a public lands state, committed to preserving certain of  
42 these lands in their natural condition, allowing continued recreational access for hunters,  
43 anglers, campers, and other recreators on other land, as well allowing some public lands to be  
44 utilized for additional benefits, including agriculture, timber production, and energy and natural  
45 resource development;

46 WHEREAS, a high and critical priority for the Legislature and the Governor is the  
47 health, protection, preservation, and productivity of, and access to the public lands within the  
48 state—lands that are greater in size than the total land mass within the borders of 19 of the  
49 other 49 states;

50 WHEREAS, roughly 66% of the land within the sovereign state of Utah is presently  
51 owned and administered by the federal government, unlike 38 states in the Union that govern  
52 almost all the land within their borders, and members of the Legislature and the Governor are  
53 concerned by federal policies and management that threaten the health, protection, and  
54 productivity of, and access to these public lands;

55 WHEREAS, Utah is 50th in the nation in per pupil spending due to the large portion of  
56 the state that is held as federal land and not subject to property tax;

57 WHEREAS, the officials of the state have a legitimate basis to believe that President  
58 Barack Obama is considering issuing a proclamation under the Antiquities Act designating one

59 or more national monuments within the borders of the state of Utah before the end of his term  
60 in office;

61 WHEREAS, one of the national monuments being considered—Bears Ears National  
62 Monument—may be nearly 1.9 million acres in size and cover roughly 40% of San Juan  
63 County;

64 WHEREAS, the Antiquities Act limits a presidential monument designation to the  
65 "smallest area compatible with proper care and management of the objects to be protected";

66 WHEREAS, the state of Utah is already home to the Grand Staircase-Escalante  
67 National Monument designated by President Bill Clinton, which placed 1,880,461 acres, or  
68 2,938 square miles, of land within the borders of Utah under protected status, greatly restricting  
69 its use by local individuals, all without consulting the Governor, the Legislature, or the  
70 congressional delegation of the state of Utah;

71 WHEREAS, an additional national monument designation within the borders of the  
72 state without the consent of the Governor, Legislature, or Utah's congressional delegation will  
73 have the effect of further restricting the public's access to and enjoyment of public lands in  
74 Utah;

75 WHEREAS, the creation of another national monument in Utah—already home to five  
76 national parks and seven national monuments—would only add to the burden placed on the  
77 funding of Utah schools;

78 WHEREAS, during her confirmation hearing on March 7, 2013, Secretary of the  
79 Interior Sally Jewell committed to Senator Mike Lee that gaining local support for a national  
80 monument should be a prerequisite for national monument designations under the Antiquities  
81 Act;

82 WHEREAS, over the past three years, Secretary Jewell has repeatedly made reference  
83 to the importance of local buy-in through local meetings, input, and public hearings before a  
84 national monument is designated;

85 WHEREAS, on Wednesday, February 24, 2016, in a House Natural Resources  
86 Committee discussion with Secretary Jewell, Chairman Rob Bishop noted that during each of  
87 President Obama's previous monument declarations, at least one member of that state's  
88 congressional delegation supported a monument declaration;

89 WHEREAS, Chairman Bishop went on to note that not one single member of Utah's

90 congressional delegation supports another national monument declaration in Utah under the  
91 Antiquities Act;

92 WHEREAS, on February 23, 2016, in her response to Senator Lee during a hearing  
93 before the Senate Committee on Energy and Natural Resources, Secretary Jewell became  
94 noncommittal regarding working with Utah's Governor, federal delegation, and local elected  
95 officials, and stated in reference to concerns about a potential new monument designation in  
96 southeastern Utah: "Well, to be clear, I can't commit to anything with regard to the Antiquities  
97 Act because that is a tool of the President of the United States. I will commit that we will go  
98 out and spend time within the community and take input from the community. That is  
99 something that we have done every time and we will continue to do that.";

100 WHEREAS, as of May 2016, that process of taking input from local communities has  
101 not occurred in Utah;

102 WHEREAS, the Legislature of the state of Utah hereby goes on record as not only  
103 withholding its consent to the establishment of any proposed new national monuments without  
104 state legislative input and approval, but emphatically objecting to the establishment of the  
105 same;

106 WHEREAS, Governor Gary R. Herbert has written to the President of the United States  
107 twice—once in August 2015 and once in February 2016—urging him not to use the Antiquities  
108 Act to designate another national monument in Utah;

109 WHEREAS, Governor Herbert noted that another monument designation in Utah  
110 would "inflame passion, spur divisiveness, and ensure perpetual opposition";

111 WHEREAS, while some tribes with historic ties to Bears Ears support the proposed  
112 monument, most members of the Navajo Nation who live in San Juan County do not support  
113 the monument designation;

114 WHEREAS, Navajos in San Juan County experience some of the highest rates of  
115 unemployment in the state;

116 WHEREAS, San Juan County commissioner Rebecca Bennally, whose constituency  
117 includes members of the Navajo Nation who live in San Juan County, indicated on April 20,  
118 2016, that Navajos in that region would prefer sacred sites be protected through application of  
119 a conservation area designation, with some areas left available for development and job  
120 creation for locals;

121 WHEREAS, the Legislature and the Governor believe that democratic process matters,  
122 and that consideration of whether to set aside Bears Ears for preservation should involve all  
123 interested stakeholders, in a manner that protects Bears Ears while still allowing local concerns  
124 to be heard and recognized;

125 WHEREAS, the Legislature and the Governor invite the President and the Secretary of  
126 the Interior to join Utah's congressional delegation, the Governor, state legislative leadership  
127 from both parties, locally elected officials, and interested stakeholders to engage in such a  
128 constitutional process;

129 WHEREAS, the Legislature and the Governor are opposed to a unilateral use of the  
130 Antiquities Act to create a Bears Ears National Monument without a more in-depth process that  
131 draws all stakeholders together;

132 WHEREAS, while some resident and non-resident individuals and groups support the  
133 designation of the monument, the majority of San Juan County citizens, including Navajo tribal  
134 members, are opposed to it;

135 WHEREAS, the Legislature and the Governor also favor protection and conservation of  
136 the Bears Ears area, but prefer a constitutionally sound, locally driven legislative approach;

137 WHEREAS, citizens in rural Utah already experience difficult economic prospects, and  
138 tourism alone from Utah's current seven national monuments and five national parks has not  
139 been able to provide a sufficient, year-round revenue base for these communities;

140 WHEREAS, citizens in rural Utah deserve the opportunity to create a diversified,  
141 ongoing economy;

142 WHEREAS, responsible and environmentally sound economic development can be  
143 pursued simultaneously with wilderness preservation and conservation;

144 WHEREAS, a monument designation would remove forever the possibility of  
145 economic development in the Bears Ears region, hurting those who live in the area to benefit  
146 those who only wish to visit the area;

147 WHEREAS, many potential issues with a proposed Bears Ears monument have not  
148 been resolved and need further informed discussion;

149 WHEREAS, the proposed Bears Ears National Monument contains approximately  
150 150,000 acres of School and Institutional Trust Lands Administration land;

151 WHEREAS, neither the federal government nor the proponents of the Bears Ears area

152 have done any environmental or socioeconomic impact study of the proposal;

153 WHEREAS, the system of having federal officials over a thousand miles away govern  
154 land in Utah, particularly without sufficient local input, is contrary to the dual sovereignty  
155 design of our federal republic, which protects individual liberty by diffusing sovereign power;

156 WHEREAS, decisions regarding the health, safety, and welfare of Utah citizens are,  
157 under our federal system, properly placed with local governments;

158 WHEREAS, the use of the Antiquities Act in recent years by presidents to designate  
159 millions of acres of land as national monuments disparately impacts western states, including  
160 Utah, because only western states have large areas of federal land remaining within their  
161 borders;

162 WHEREAS, two western states—Wyoming and Alaska—received special exemptions  
163 from the Antiquities Act in 1950 and 1980, respectively, after the act was used extensively  
164 within the boundaries of those two states; and

165 WHEREAS, Utah is already the home to seven national monuments and should be  
166 considered for an exemption from the Antiquities Act, like Wyoming and Alaska:

167 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the  
168 Governor concurring therein, expresses strong opposition to the creation of any new national  
169 monuments within the state by the President of the United States without approval by the  
170 Governor and the Legislature.

171 BE IT FURTHER RESOLVED that the Legislature and the Governor encourage  
172 Congress to amend the Antiquities Act to prevent presidents from unilaterally designating  
173 enormous amounts of land within a sovereign state, Utah in particular, as national monuments  
174 without local input and state legislative approval.

175 BE IT FURTHER RESOLVED that the Legislature and the Governor encourage  
176 Attorney General Sean Reyes to research the authority of the President of the United States to  
177 designate a proposed national monument within the borders of the state of Utah without state  
178 legislative approval.

179 BE IT FURTHER RESOLVED that the Legislature and the Governor encourage  
180 Attorney General Sean Reyes to research and explore all legal options available to the state  
181 regarding unilateral national monument designations.

182 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of

183 the United States, the members of Utah's congressional delegation, and Attorney General Sean  
184 Reyes.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**