

1 **CONCURRENT RESOLUTION OPPOSING THE USE OF**
2 **PRESIDENTIAL POWER TO CREATE NEW NATIONAL**
3 **MONUMENTS IN UTAH**

4 2010 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Michael E. Noel**

7 Senate Sponsor: David P. Hinkins

8
9 **LONG TITLE**

10 **General Description:**

11 This concurrent resolution of the Legislature and the Governor urges the President of
12 the United States and the United States Congress to refrain from designating new
13 national monuments in the San Rafael Swell area, the Cedar Mesa area, and any other
14 area in Utah.

15 **Highlighted Provisions:**

16 This resolution:

- 17 ▶ expresses opposition to the presidential creation of any large area national
18 monument, as an abuse and violation of the Antiquities Act's
19 smallest-area-compatible mandate;
- 20 ▶ urges the President of the United States and the United States Congress to refrain
21 from using the Antiquities Act to designate new national monuments in the San
22 Rafael Swell area, the Cedar Mesa area, and any other area in Utah;
- 23 ▶ declares that this unchecked exercise of power concentrated in the President
24 portends serious consequences for Utah and essentially coronates the President,
25 giving him the ultimate ability to determine the fate of nearly 70% of the entire state
26 with the mere stroke of an unchecked presidential pen;
- 27 ▶ urges Congress to check the President's authority to exercise this power by



28 amending the Antiquities Act to clarify its actual intent, which is to establish small discrete
29 monuments or memorials as existed in Utah prior to the unfortunate creation of the 1996 Grand
30 Staircase National Monument;

31 ▶ expresses support for S 3016, introduced in the United States Senate, which would
32 prohibit the further extension or establishment of national monuments in Utah,
33 except by the express authorization of Congress; and

34 ▶ calls on the United States government to manage federal public lands in Utah
35 according to state and local government plans, policies, and public input as
36 promised by the Federal Land Policy Management Act of 1976 and the United
37 States constitutional guarantee of a republican form of government on equal footing
38 with all states in the Union, or otherwise to convey the federal public lands to Utah
39 for proper care and management, consistent with the Constitution's Framers'
40 original intent.

41 **Special Clauses:**

42 None



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

45 WHEREAS, the Antiquities Act, 16 U.S.C. Sec. 431, empowers the President of the
46 United States to singlehandedly bypass congressional, state, and local land management
47 policies and tie up any federal land in Utah through national monument declarations;

48 WHEREAS, a recent confirmed United States Department of Interior (DOI) internal
49 memorandum declares that the 75-by-40 mile San Rafael Swell and surrounding "canyons,
50 gorges, mesas, and buttes," plus an area of unspecified size referred to as the Cedar Mesa area,
51 among others, "may be good candidates for National Monument designation under the
52 Antiquities Act;"

53 WHEREAS, the San Rafael Swell and surrounding areas and the Cedar Mesa area
54 described in the DOI memorandum are in Emery, Wayne, and San Juan Counties, Utah;

55 WHEREAS, Article I, Section 8, Clause 17 of the United States Constitution grants the
56 United States government the power to exercise exclusive jurisdiction over the District of
57 Columbia and over all "places purchased by the consent of the Legislature of the State in which
58 the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful

59 buildings";

60 WHEREAS, no lands in the San Rafael Swell and Cedar Mesa areas of Utah fit into
61 this category;

62 WHEREAS, the United States Constitution delegates to the government of the United
63 States no other power of exclusive jurisdiction over land in Utah, other than that referenced in
64 Article I, Section 8, Clause 17;

65 WHEREAS, the Tenth Amendment to the United States Constitution states, "The
66 powers not delegated to the United States by the Constitution, nor prohibited by it to the States,
67 are reserved to the States";

68 WHEREAS, Article IV, Section 4 of the United State Constitution states, "The United
69 States shall guarantee to every State in the Union a Republican Form of Government";

70 WHEREAS, the constitutional guarantee to Utah of a republican form of government is
71 abrogated and violated when the President of the United States purports through the Antiquities
72 Act, 16 U.S.C. Sec. 431, to exercise exclusive jurisdiction with the mere stroke of a pen over
73 lands in the San Rafael and Cedar Mesa areas that do not fit the category of Article I, Section 8,
74 Clause 17, exclusive jurisdiction land;

75 WHEREAS, lands in the San Rafael Swell and Cedar Mesa areas of Utah are currently
76 managed by the United States Bureau of Land Management (BLM) pursuant to the Federal
77 Land Policy Management Act (FLPMA) of 1976, and the Act directs BLM to manage public
78 lands according to Resource Management Plans (RMPs) which "shall be consistent with State
79 and local plans to the maximum extent [the Secretary of Interior] finds consistent with Federal
80 law and the purpose of [FLPMA]";

81 WHEREAS, the state of Utah and the counties of Emery, Wayne, and San Juan have
82 recently completed an expensive and protracted multi-year FLPMA and National
83 Environmental Policy Act (NEPA) process with the BLM and the public to revise and update
84 the BLM's RMPs in planning areas which include the San Rafael Swell and Cedar Mesa areas;

85 WHEREAS, the revised RMPs do not call for the creation of national monuments in
86 the San Rafael Swell and Cedar Mesa areas;

87 WHEREAS, creating national monuments in the San Rafael Swell and Cedar Mesa
88 areas would violate and undercut the integrity of the RMPs revision process in Emery, Wayne,
89 and San Juan Counties where the San Rafael Swell and Cedar Mesa areas are situated, and

90 would be inconsistent with the plans and policies of the state of Utah and those counties and
91 their duly elected governmental boards and leaders, all in violation of the constitutional
92 guarantee of a republican form of government as well as violating federal statutory consistency
93 requirements of FLPMA;

94 WHEREAS, a presidential proclamation declaring national monuments in the San
95 Rafael Swell and Cedar Mesa areas would single-handedly bypass the revised RMPs and the
96 universal opposition by the duly elected leaders of the state of Utah and the counties where
97 those lands lie;

98 WHEREAS, a presidential proclamation of this type would constitute an illegitimate
99 arrogation of exclusive jurisdiction over lands by the President, exceeding the bounds of
100 legitimate and lawful authority permitted by the United States Constitution;

101 WHEREAS, the Antiquities Act states, "The President . . . may reserve as a part [of a
102 national monument] parcels of land, the limits of which in all cases shall be confined to the
103 smallest areas compatible with the proper care and management of the objects to be protected. .
104 . ." (italics added);

105 WHEREAS, the size of the 1996 Grand Staircase National Monument in Garfield and
106 Kane Counties far exceeded "the smallest areas compatible" with the feigned object of that
107 monument;

108 WHEREAS, the size of the San Rafael Swell area stated in the DOI memo, namely
109 75-by-40 miles plus surrounding canyons, gorges, mesas, and buttes, is staggering in terms of a
110 national monument;

111 WHEREAS, Utah favors protecting the remarkably scenic, recreational, and sensitive
112 areas of the San Rafael Swell and Cedar Mesa areas, however highest and best use of vast
113 tracts of land in those areas is continued grazing and environmentally sensitive energy and
114 mineral development done in such a way as to protect and preserve the scenic and recreational
115 values;

116 WHEREAS, as history has demonstrated in the case of the Grand Staircase National
117 Monument, many thousands of acres of important grazing and mineral and other multiple use
118 resources and values have been closed to reasonable development due to the multi-hundred
119 thousand acre national monument designation;

120 WHEREAS, Senator Bob Bennett has introduced S 3016 in the United States Senate,

121 which would prohibit the further extension or establishment of national monuments in Utah,
122 except by express authorization of Congress; and

123 WHEREAS, Utah's economy, industry, culture, way of life, and its viability as a
124 sovereign state guaranteed a republican form of government depend on reasonable multiple-use
125 access to the BLM lands in the San Rafael Swell and Cedar Mesa areas of the State, most of
126 which will be taken away through national monument designation:

127 NOW, THEREFORE, BE IT RESOLVED by the Legislature of the state of Utah, the
128 Governor concurring therein, express their opposition to the presidential creation of any large
129 area national monument, as an abuse and violation of the Antiquities Act's
130 smallest-area-compatible mandate.

131 BE IT FURTHER RESOLVED that the Legislature and the Governor oppose the
132 presidential creation of new national monuments in the San Rafael Swell area, Cedar Mesa
133 area, and any other area of Utah.

134 BE IT FURTHER RESOLVED that the Legislature and the Governor declare openly to
135 the United States government that this unchecked exercise of power concentrated in the
136 President portends serious consequences for Utah, as nearly 70% of the State is federally
137 owned.

138 BE IT FURTHER RESOLVED that the Legislature and the Governor declare openly to
139 the United States government that the exercise of this power would essentially coronate the
140 President, giving him the ultimate ability to determine the fate of nearly 70% of the entire state
141 with the mere stroke of an unchecked presidential pen.

142 BE IT FURTHER RESOLVED that the Legislature and the Governor urge Congress to
143 check the President's ability to exercise such power by amending the Antiquities Act to clarify
144 its actual intent, which is to establish small discrete monuments or memorials as existed in
145 Utah prior to the unfortunate creation of the 1996 Grand Staircase National Monument.

146 BE IT FURTHER RESOLVED that the Legislature and the Governor strongly urge the
147 federal government to manage federal public lands in Utah according to state and local
148 government plans, policies, and public input as promised by the Federal Land Policy
149 Management Act of 1976 and the United States constitutional guarantee of a republican form
150 of government on equal footing with all states in the Union, or otherwise convey the federal
151 public lands to Utah for proper care and management, consistent with the original intent of the

152 Constitution's Framers.

153 BE IT FURTHER RESOLVED that the Legislature and the Governor express support
154 for S 3016, introduced in the United States Senate, which would prohibit the further extension
155 or establishment of national monuments in Utah, except by express authorization of Congress.

156 BE IT FURTHER RESOLVED that copies of this resolution be sent to the President of
157 the United States, the Majority Leader of the United States Senate, the Speaker of the United
158 States House of Representatives, and to the members of Utah's congressional delegation.

Legislative Review Note
as of 2-25-10 9:28 AM

Office of Legislative Research and General Counsel

Fiscal Note**H.C.R. 17 - Concurrent Resolution Opposing the Use of Presidential Power to
Create New National Monuments in Utah**

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
