

## HCR017S01 compared with HCR017

~~text~~ shows text that was in HCR017 but was deleted in HCR017S01.

text shows text that was not in HCR017 but was inserted into HCR017S01.

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Representative Keven J. Stratton proposes the following substitute bill:

### 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:

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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}~~ is considering issuing 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 one of the national monuments ~~{so designated will exceed two}~~ being considered may be nearly 1.9 million acres in size;

WHEREAS, the state of Utah is already home to the Grand Staircase-Escalante National Monument designated by President Clinton, which ~~{has removed}~~ placed 1,880,461 acres, or 2,938 square miles, of ~~{the }~~ land within the borders of Utah ~~{from local governance by Utah's elected officials, and transferred exclusive governance of that area to the federal government}~~ under protected status, greatly restricting its use by local individuals, all without the consent of the Legislature of the state of Utah;

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

WHEREAS, an additional national monument designation within the borders of the state will have the effect of ~~{removing even more land from local governance by the state of Utah, and transferring exclusive governance of the new monument to the federal government, all}~~ further restricting the public's access and enjoyment of lands in Utah without the consent of the Governor or the Legislature;

WHEREAS, ~~{the Enclave Clause, Article I, Section 8, Clause 17, of the United States Constitution sets forth the only legal mechanism through which the federal government can obtain exclusive legislative authority over land within the borders of a sovereign state:~~  
~~———"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful~~

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Buildings";

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

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

~~"Mr. KING thought himself the provision unnecessary, the power being already involved: but would move to insert after the word 'purchased' the words 'by the consent of the Legislature of the State.' This would certainly make the power safe:~~

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

~~WHEREAS, if our Framers decided, after careful debate and in all their wisdom, that safeguards needed to be placed on Congress, which includes elected representatives of all the states, before allowing exclusive federal legislative governance}~~ it is unlikely that our Framers, as evidenced by their inspired and carefully crafted constitutional design to balance power and responsibilities between branches of government and between the national and state governments, ever intended to grant the executive branch unilateral authority to set aside vast swaths of land within the borders of a state~~{, it is even more imperative that safeguards be placed upon the ability of a single person -- the President}~~ without input from Congress or locally elected representatives;

WHEREAS, on March 7, 2013 in her confirmation hearing to be Secretary of the Interior, Sally Jewell committed to Senator Mike Lee that gaining local support for a national monument should be a pre-requisite for national monument designations under the Antiquities Act;

WHEREAS, over the past three years, Secretary Jewell has repeatedly made reference to the importance of local buy-in, including local meetings, input, and public hearings before a monument designation;

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

WHEREAS, Chairman Bishop went on to note that not one single member of Utah's congressional delegation supports another national monument declaration in Utah under the Antiquities Act;

WHEREAS, on February 23, 2016, in her response to Senator Lee in a hearing before the Senate Committee on Energy and Natural Resources, Secretary Jewell remained non-committal regarding working with Utah's Governor, federal delegation, and local elected officials, and stated in reference to concerns about a potential new monument designation in southeastern Utah: "Well, to be clear, I can't commit to anything with regard to the Antiquities Act because that is a tool of the president of the United States~~{ -- to declare with sole and exclusive power that millions of acres within a sovereign state can be transferred to the exclusive control of the federal government}~~. I will commit that we will go out and spend time within the community and take input from the community. That is something that we have done every time and we will continue to do that.";

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

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

WHEREAS, ~~{transferring exclusive legislative control from local government to}~~Governor Gary R. Herbert has written to the President of the United States twice -- once in August 2015 and once in February 2016 -- urging him not to use the Antiquities Act to designate another national monument in Utah;

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

WHEREAS, the system of having federal bureaucrats over a thousand miles away govern land in Utah is contrary to the dual sovereignty design of our federal republic, which protects individual liberty by diffusing sovereign power so that no single sovereign can become

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tyrannical, controlling all aspects of our lives;

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

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

‡ WHEREAS, over 66.5% of the land within the sovereign state of Utah is already ~~{owned}~~ controlled by the federal government, unlike 38 states in the Union which enjoy dominion over almost all the land within their borders;

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

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

WHEREAS, this disparate impact on Utah and other western states is unconstitutional and violates the equal sovereignty principle, ~~{which states that all states in our federal system must be equal in sovereignty}~~ and equal footing doctrine;

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

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

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

BE IT FURTHER RESOLVED that the Legislature and Governor encourage Congress to amend the Antiquities Act to prevent President Obama and future presidents from

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unilaterally designating enormous amounts of land within a sovereign state, Utah in particular, as a national monument without state legislative approval.

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

BE IT FURTHER RESOLVED that the Legislature and the Governor encourage the Attorney General to ~~{report his determination to the Judiciary Interim Committee by the May 2016 Interim meeting}~~ research and explore all legal options available to the state regarding unilateral national monument designations.

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

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~~Legislative Review Note~~

~~Office of Legislative Research and General Counsel}~~