

**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

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

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~~ and ~~state~~ 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;

124a **H→ WHEREAS, local Native American tribal members in San Juan County who were the**
 124b **first known inhabitants of the Bears Ears area are strongly opposed to the designation of a**
 124c **national monument and should be afforded additional time to present their concerns and**
 124d **interests in how the area would be managed in the future; ←H**

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;

128a **H→ WHEREAS, the Legislature and the Governor urge federal, state, and local**
 128b **cooperation to ensure that multiple use and sustained yield are maintained on public lands**
 128c **while protecting ancient Native American artifacts under existing laws like the Archeological**
 128d **Resource Protection Act (ARPA) and the National Environmental Policy Act (NEPA); ←H**

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~~
175a request that the authority of the President of the
176 Attorney General Sean Reyes ~~to research~~ oppose the authority of the President of the
176a 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~~
179a request that all legal options ~~and~~
180 Attorney General Sean Reyes ~~to research and explore~~ pursue ~~and~~
180a recourse available to the state
181 regarding ~~improper~~ 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.

Legislative Review Note
Office of Legislative Research and General Counsel