

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

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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  
26                  state 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  
29                  discrete monuments or memorials as existed in Utah prior to the unfortunate

30 creation of the 1996 Grand 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

58 which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other  
59 needful 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  
67 States, are reserved to the States";

68 WHEREAS, Article IV, Section 4 of the United States 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  
71 is abrogated and violated when the President of the United States purports through the  
72 Antiquities Act, 16 U.S.C. Sec. 431, to exercise exclusive jurisdiction with the mere stroke of  
73 a pen over lands in the San Rafael and Cedar Mesa areas that do not fit the category of Article  
74 I, Section 8, 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 the BLM to manage  
78 public lands according to Resource Management Plans (RMPs) which "shall be consistent  
79 with State and local plans to the maximum extent [the Secretary of Interior] finds consistent  
80 with Federal 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 . . .";

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  
110 a 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 the 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  
125 multiple-use access to the BLM lands in the San Rafael Swell and Cedar Mesa areas of the  
126 State, most of which will be taken away through national monument designation:

127 NOW, THEREFORE, BE IT RESOLVED that 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 the Legislature and the Governor express strong  
157 opposition to presidential or congressional action that would unnecessarily restrict and reduce  
158 public access to federal lands.

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