

NATIONAL MONUMENT FAIRNESS ACT

APRIL 15, 2002.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2114]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2114) to amend the Antiquities Act regarding the establishment by the President of certain national monuments and to provide for public participation in the proclamation of national monuments, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “National Monument Fairness Act”.

**SEC. 2. CONGRESSIONAL REVIEW OF NATIONAL MONUMENT STATUS AND CONSULTATION.**

Section 2 of the Act of June 8, 1906, commonly referred to as the “Antiquities Act” (34 Stat. 225; 16 U.S.C. 431) is amended—

(1) by striking “SEC. 2. That the” and inserting “SEC. 2. (a) The”;

(2) by adding the following at the end of subsection (a) (as so designated by paragraph (1)): “A proclamation of the President under this section that, during one calendar year, creates a national monument that is more than 50,000 acres or that, during one calendar year, adds more than 50,000 acres to an existing national monument may not be issued until 30 days after the President has transmitted the proposed proclamation to the Governor of the State or States in which such acreage is located and solicited such Governor’s or Governors’ written comments, and any such proclamation shall cease to be effective on the date 2 years after issuance of the proclamation unless the proclamation has been approved by an Act of Congress. Land and interests in land that were subject to a proclamation issued after the date of the enactment of the National Monument Fairness Act that ceases to be effective under the preceding sentence

shall revert to the land use status such land and interests in land had immediately before the proclamation was issued.”; and

(3) by adding after subsection (a) (as so designated by paragraph (1)) the following new subsections:

“(b)(1) To the extent consistent with the protection of the historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest located on the public lands to be designated, the President shall—

“(A) solicit public participation and comment in the development of a monument proclamation; and

“(B) consult with the Governor and entire congressional delegation of the State or territory in which such lands are located, to the extent practicable, at least 60 days prior to any national monument proclamation.

“(2) Before issuing a proclamation under this section, the President shall consider any information made available in the development of existing plans and programs for the management of the lands under consideration for proclamation as a monument, including such public comments as may have been offered.

“(c) Any management plan for a national monument developed subsequent to a proclamation made under this section shall comply with the procedural requirements of the National Environmental Policy Act of 1969.”.

#### PURPOSE OF THE BILL

The purpose of H.R. 2114, is to amend the Antiquities Act regarding the establishment by the President of certain national monuments, and to provide for public participation in the proclamation of national monuments.

#### BACKGROUND AND NEED FOR LEGISLATION

In 1906, Congress passed the Antiquities Act (Act of June 8, 1906, codified at 16 U.S.C. 431) in response to a national movement to stop vandalism and looting that was occurring on public lands with landmarks of prehistoric, historic or scientific interest and value. Using this authority, President Theodore Roosevelt established 18 national monuments, including the Grand Canyon. Many of these monuments, and subsequent monuments, have become a part of the National Park system.

While the intent of the Antiquities Act was to allow the President to act quickly to preserve archeological sites, the language was broad enough to also allow the President to withdraw sites of scientific and historic interest such as paleontological and geological sites. The Act specifically stated, however, that the President should not withdraw more land than was necessary to protect the named specific objects.

Since 1906, Congress has passed numerous laws which give the Congress and the Executive Branch different tools to protect public lands and resources, including legislation creating the National Park System, the Wildlife Refuge System, the National Wilderness Preservation System, the National Historic Preservation Act, the Wild and Scenic Rivers System, the Archaeological Resources Protection Act, the Federal Land Policy and Management Act, and the National Environmental Policy Act.

On September 18, 1996, President Bill Clinton established the 1.7 million acre Grand Staircase-Escalante National Monument in Southern Utah. According to testimony and documents received in previous Congresses by the Committee on Resources, this Presidential action was accomplished to appease some in the environmental community and timed accordingly to the November Presidential election. Some of these documents make it clear that this action had very little to do with protection of lands but was focused

on political advantage. For example, an E-mail dated March 22, 1996, from Linda Lance in the Clinton White House to the Council on Environmental Quality and the Office of Management and Budget staff discussing a draft letter from the President said:

I realize the real remaining question is not so much what this letter says, but the political consequences of designating these lands as monuments when they're not threatened with losing wilderness status, and they're probably not the areas of the country most in need of this designation. Presidents have not used their monument designation authority in this way in the past. \* \* \*

President Clinton's creation of the Grand Staircase-Escalante National Monument is a prime example of the need for more public input in national monument decisions. Additional documents obtained in previous Congresses by the Committee show that this particular monument was being planned for months, yet the Governor of Utah and Utah's Congressional delegation were not informed of the Presidential decision until 2 a.m. the morning that the proclamation was signed. These documents also demonstrated that the monument proclamation was kept secret until just before the announcement to avoid public input and Congressional scrutiny, in addition to avoiding the environmental analysis otherwise required for public land designations under the National Environmental Policy Act. [For further information on this topic see the November 7, 1997, House Committee on Resources Majority Staff Report, "Behind Closed Doors: The Abuse of Trust and Discretion in the Establishment of the Grand Staircase-Escalante National Monument," (Committee Report 105-D), and the October 16, 1998, Committee on Resources Report, "Monumental Abuse: The Clinton Administration's Campaign of Misinformation in the Establishment of the Grand Staircase-Escalante National Monument" (H. Rept. 105-824)].

H.R. 2114 would amend the Antiquities Act of 1906 by ensuring it is used only for those purposes originally intended. It would also strengthen the Act by ensuring that state and local officials are consulted and provided a role in the designation process. The bill would amend the Act as follows:

(1) Require the President to transmit the proposed monument proclamation to the Governor of the state(s) in which a monument is located at least 30 days in advance of the notification if the monument exceeds 50,000 acres, or enlarges an existing national monument by more than 50,000 acres;

(2) Require Congressional approval within two years of any national monument proclamation that creates a national monument more than 50,000 acres, or enlarges an existing national monument by more than 50,000 acres. If Congressional approval does not occur within two years, the proclamation shall cease to be in effect, and

(3) Require the President to solicit public participation and comment, and to consult with the Governor and congressional delegation of the state at least 60 days prior to any national monument proclamation.

## COMMITTEE ACTION

H.R. 2114 was introduced on June 7, 2001, by Congressman Mike Simpson (R-ID), and referred to the Committee on Resources. On June 14, 2001, the bill was referred to the Subcommittee on National Parks, Recreation, and Public Lands. On July 17, 2001, the Subcommittee held a hearing on the bill. On July 31, 2001, the Subcommittee met to mark-up the bill. Congressman Mike Simpson offered an amendment requiring the Secretary of Interior to revert the land uses and interests in the land that were subject to a proclamation under the Act should Congress not approve the proclamation within two years. The amendment was adopted by voice vote. The bill, as amended, was then forwarded to the Full Committee by voice vote. On March 20, 2002, the Full Resources Committee met to consider the bill. Congressman Mike Simpson offered an additional amendment to clarify that land and interests in land that were subject to a proclamation not approved by Congress and are reverted back to their use prior to the proclamation will only affect those proclamations issued after the date of enactment of this Act, and not all prior proclamations under the Antiquities Act. The amendment also clarified that Congressional approval must be by an Act of Congress. The amendment was adopted by voice vote. The bill, as further amended, was then ordered favorably reported to the House of Representatives by a roll call vote of 23 to 18, as follows:

**COMMITTEE ON RESOURCES**

U.S. House of Representatives  
107<sup>th</sup> Congress

Date: March 20, 2002Convened: 10:36amAdjourned: 1:42pmMeeting on: **To order H.R. 2114 favorably reported to the House, amended.** Attendance Voice Vote Roll Call VoteTotal Yeas 23 Nays 18

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Hansen, UT, Chairman	✓			Mr. Jones, NC	✓		
<i>Mr. Rahall, WV</i>		✓		<i>Mr. Kind, WI</i>		✓	
Mr. Young, AK				Mr. Thornberry, TX	✓		
<i>Mr. Miller, CA</i>				<i>Mr. Inslee, WA</i>		✓	
Mr. Tauzin, LA				Mr. Cannon, UT	✓		
<i>Mr. Markey, MA</i>		✓		<i>Mrs. Napolitano, CA</i>		✓	
Mr. Saxton, NJ				Mr. Peterson, PA	✓		
<i>Mr. Kildee, MI</i>		✓		<i>Mr. Tom Udall, NM</i>		✓	
Mr. Gallegly, CA	✓			Mr. Schaffer, CO			
<i>Mr. DeFazio, OR</i>				<i>Mr. Mark Udall, CO</i>		✓	
Mr. Duncan, TN				Mr. Gibbons, NV	✓		
<i>Mr. Faleomavaega, AS</i>		✓		<i>Mr. Holt, NJ</i>		✓	
Mr. Hefley, CO				Mr. Souder, IN	✓		
<i>Mr. Abercrombie, HI</i>				<i>Mr. McGovern, MA</i>		✓	
Mr. Gilchrest, MD	✓			Mr. Walden, OR	✓		
<i>Mr. Ortiz, TX</i>				<i>Mr. Acevedo-Vilá, PR</i>		✓	
Mr. Calvert, CA	✓			Mr. Simpson, ID	✓		
<i>Mr. Pallone, NJ</i>		✓		<i>Ms. Solis, CA</i>		✓	
Mr. McInnis, CO	✓			Mr. Tancredo, CO	✓		
<i>Mr. Dooley, CA</i>	✓			<i>Mr. Carson, OK</i>		✓	
Mr. Pombo, CA	✓			Mr. Hayworth, AZ	✓		
<i>Mr. Underwood, GU</i>				<i>Ms. McCollum, MN</i>		✓	
Mrs. Cubin, WY	✓			Mr. Otter, ID	✓		
<i>Mr. Smith, WA</i>		✓		Mr. Osborne, NE	✓		
Mr. Radanovich, CA	✓			Mr. Flake, AZ	✓		
<i>Ms. Christensen, VI</i>		✓		Mr. Rehberg, MT	✓		
				<b>Total</b>	<b>23</b>	<b>18</b>	

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

## CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3, of the Constitution of the United States grant Congress the authority to enact this legislation.

## COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. According to the Congressional Budget Office, enactment of this legislation would have no significant impact on the federal budget and would not significantly affect federal costs.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 5, 2002.*

Hon. JAMES V. HANSEN,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2114, the National Monument Fairness Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 2114—National Monument Fairness Act*

CBO estimates that implementing H.R. 2114 would have no significant impact on the federal budget. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 2114 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The Antiquities Act of 1906 authorizes the President to declare landmarks, structures, and other objects of historic or scientific interest on federal lands to be national monuments. H.R. 2114 would amend that act to require the President to solicit public participation and comment and to consult with governors and congressional delegations from affected states at least 60 days before designing a monument of any size. H.R. 2114 would prohibit the President from designating monuments exceeding 50,000 acres until 30 days after notifying the governors of states in which the proposed monuments would be located. Under the bill, designations of such monuments would require Congressional approval within two years to remain in effect. Finally, H.R. 2114 would require that management plans for national monuments developed subsequent to a declaration made under H.R. 2114 comply with the procedural requirements of the National Environmental Policy Act of 1969.

According to the Department of the Interior, the Administration currently follows procedures for designating monuments that would satisfy new requirements under H.R. 2114. Hence, CBO estimates that implementing this bill would not significantly affect federal costs.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

## PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**SECTION 2 OF THE ACT OF JUNE 8, 1906**

**CHAP. 3060.**—An Act For the preservation of American antiquities.

(Commonly referred to as the “Antiquities Act”)

\* \* \* \* \*

**[SEC. 2. That the]** *SEC. 2. (a) The* President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and

other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected: *Provided*, That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States. *A proclamation of the President under this section that, during one calendar year, creates a national monument that is more than 50,000 acres or that, during one calendar year, adds more than 50,000 acres to an existing national monument may not be issued until 30 days after the President has transmitted the proposed proclamation to the Governor of the State or States in which such acreage is located and solicited such Governor's or Governors' written comments, and any such proclamation shall cease to be effective on the date 2 years after issuance of the proclamation unless the proclamation has been approved by an Act of Congress. Land and interests in land that were subject to a proclamation issued after the date of the enactment of the National Monument Fairness Act that ceases to be effective under the preceding sentence shall revert to the land use status such land and interests in land had immediately before the proclamation was issued.*

*(b)(1) To the extent consistent with the protection of the historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest located on the public lands to be designated, the President shall—*

*(A) solicit public participation and comment in the development of a monument proclamation; and*

*(B) consult with the Governor and entire congressional delegation of the State or territory in which such lands are located, to the extent practicable, at least 60 days prior to any national monument proclamation.*

*(2) Before issuing a proclamation under this section, the President shall consider any information made available in the development of existing plans and programs for the management of the lands under consideration for proclamation as a monument, including such public comments as may have been offered.*

*(c) Any management plan for a national monument developed subsequent to a proclamation made under this section shall comply with the procedural requirements of the National Environmental Policy Act of 1969.*

\* \* \* \* \*



## DISSENTING VIEWS

We are strongly opposed to H.R. 2114. The bill is a misguided legislative proposal that would undermine an important law that has been used to protect significant aspects of our national heritage.

Since its enactment 96 years ago, the Antiquities Act has been used by 14 Presidents 122 times to protect unique and vulnerable public lands from threats, both natural and man-made. While the Antiquities Act of 1906 may sound outdated to some, the importance of the resource protection the Act has provided has only increased over time. Sprawl, development and pollution have intensified the pressure on sensitive areas of public lands containing significant natural, historical, and scientific resources.

At the core of H.R. 2114 are unworkable provisions left over from a divisive and unsuccessful monument fight back in the 105th Congress. These provisions allow national monument opponents to block new designations by stalling legislation in Congress and use an arbitrary 50,000-acre threshold that has no relationship to the protection of endangered resources on the ground.

Not only are the bill's provisions unworkable but they are unwarranted as well. Contrary to the assertions that have been made, the Antiquities Act does not authorize "land grabs." The Act clearly states that the President can only designate public lands as national monuments. All our national monuments were already owned by the American people before they were designated. No private property has been or will be taken by a monument designation.

But these claims are not the real reason proponents are pushing this bill. The real reason is more disappointing. President Clinton left office more than 14 months ago, but it was obvious from the comments of the bill's supporters in Committee that they are still fighting him. This legislation appears to be more about revenge than developing sound public policy. There are those who don't want to accept the fact that the National Monuments proclaimed by previous Presidents are supported and treasured by the American public. They dare not attack those monuments head-on, so they resort to the backdoor approach of H.R. 2114.

In their haste to punish a former President, however, supporters of this bill send a clear message that they don't trust the current President nor his Secretary of the Interior. This distrust is ironic given that the only monument proposal of which we are aware is one being prepared by Interior Secretary Norton that will encompass 640,000 acres of the San Rafael Swell in Utah; a proposal that was suggested by the Republic Governor of Utah and is supported by the Chairman of the Resources Committee.

There is nothing in either current law or the Constitution that limits Congressional authority to pass legislation to amend, modify,

or repeal the designation of a national monument. If there are problems with an individual designation that is the process that can and should be used.

Last year the Administration proposed oil and gas drilling in our national monuments. The Congress wisely passed legislation preventing this exploitation of our national heritage. H.R. 2114 is a new assault on the protection of sensitive and pristine public lands. Congress would be wise to bury this proposal as well. We urge the defeat of H.R. 2114.

NICK RAHALL.  
GEORGE MILLER.  
JAY INSLEE.  
FRANK PALLONE, Jr.  
RUSH HOLT.  
HILDA L. SOLIS.  
MARK UDALL.  
DALE E. KILDEE.  
ED MARKEY.  
TOM UDALL.  
BETTY MCCOLLUM.  
PETER A. DEFAZIO.

