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### NATIONAL MONUMENT PUBLIC PARTICIPATION ACT OF 1999

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AUGUST 25, 2000.—Ordered to be printed

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Mr. MURKOWSKI, from the Committee on Energy and Natural  
Resources, submitted the following

### REPORT

together with

### MINORITY VIEWS

[To accompany S. 729]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 729) to ensure that congress and the public have the right to participate in the declaration of national monuments on Federal land, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE MEASURE

The purpose of S. 729 is to amend the Antiquities Act to ensure that Congress and the public have a right to participate in the declaration of national monuments on federal land.

#### BACKGROUND AND NEED

Under the Antiquities Act, 34 Stat. 225 (16 U.S.C. 431), the President has the authority to designate national monuments on land under federal jurisdiction in order to protect "objects of historic or scientific interest \* \* \* and \* \* \* parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the \* \* \* management of the objects to be protected."

Since the passage of the Antiquities Act in 1906, Congress has passed, and the President has signed into law, a substantial amount of legislation dealing with the management of Federal lands. These Acts reflect the evolution of public thought on the management of their common lands. The statutes require agencies to fully analyze ongoing activities and proposed actions which are, or may have, a detrimental effect on public lands. In addition, these laws require that public lands be managed in ways which serve the common good, are based on sound science, include public involvement, and mitigate environmental impacts to the maximum extent practical. Among these laws are: National Park Service Organic Act of 1916; Wilderness Act of 1964; National environmental Policy Act of 1970; Mining and Minerals Policy Act of 1970; Federal Land Policy and Management Act of 1976; National Forest Management Act of 1977; Wild and Scenic Rivers Act of 1968; National Trails System Act of 1968; Surface Mining Control and Reclamation Act of 1977; Archaeological Resources Protection Act of 1979; Federal Cave Resources Protection Act of 1988; Archaeological Recovery Act of 1960; Fish and wildlife Conservation Act of 1980; endangered Species Act of 1973; Fish and wildlife Act of 1956; and, the Forest Service Organic Act of 1958.

Congress has also provided limitations on the ability of Executive Branch agencies to alter the use of Federal lands or withdraw them from permitted uses. Emergency withdrawal authority, similar to the authority contained in the Antiquities Act, is now limited in scope and duration under statutes such as the Federal Land Policy and Management Act in order to provide protection from immediate threats while preserving Congress's Constitutional role with respect to the management of Federal lands and property. These changes reflect the development of the Nation. When the Antiquities Act as enacted, Congress met only briefly during the year and communications were more limited. Considering the times, it was appropriate to invest the Executive with emergency authority to protect important and significant resources when there may not have been adequate time to submit a legislative proposal to Congress. Although Congress had established several National Parks, it had yet to establish general guidelines for their management.

This legislation was developed as a response to concerns that the original purposes that led to passage of the Antiquities Act have been overtaken by the passage of new legislation and that the Act has become an opportunity to avoid both the constitutional role of Congress and public participation, which is required in almost all other administrative decisions relating to land management. Concerns have also been expressed that designations and withdrawals pursuant to the Antiquities Act, while clearly major Federal actions having a significant impact on the human environment, are not made in a public and fully informed manner as required by the National Environmental Policy Act (NEPA). In part, the failure to perform the types of studies and analyses that would be required under NEPA or any of the various land and resources management statutes, also has led to concerns that significant energy and mineral resources are being adversely affected. Most recently, additional concerns have been raised that the Act is no longer being used for its original objective, and that the limitation of reserving "the smallest area compatible" with management are being ignored

in favor of a public relations campaign to designate as many lands as possible for political purposes.

Given that Congress has invested Federal agencies with emergency withdrawal authority, as well as with significant land management and enforcement authorities to protect lands and resources, there no longer appears to be any compelling reason to avoid either public participation, informed decision-making as required by NEPA and other statutes, or the Constitutional role of Congress under Article IV of the Constitution.

S. 729 amends the Antiquities Act to require the Secretaries of Agriculture and the Interior to promulgate regulations that ensure the process to create monument designations is consistent with contemporary land management laws, including the opportunity for public notice and comment. In addition, a national monument designation will require an environmental impact statement, a mineral and surface resources survey, and an identification of inholdings and other existing rights. After inventory and analysis, the Secretaries will recommend to the President whether monument status is warranted, and within two years this recommendation will be forwarded to the Congress. The monument designation recommendation will become effective when approved by an Act of Congress.

#### LEGISLATIVE HISTORY

S. 729 was introduced by Senators Craig, Bennett, Burns, Campbell, Crapo, Enzi, Hagel, Helms, Inhofe, Kyl, Lott, Murkowski, Sessions, Shelby, Smith of Oregon, Stevens, and Thomas on March 25, 1999. The Subcommittee on Forests and Public Land Management held a hearing on S. 729 on July 20, 1999. At the business meeting on June 7, 2000, the Committee on Energy and Natural Resources ordered S. 729 to be favorably reported, without amendment.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on June 7, 2000, by a voice vote of a quorum present recommends that the Senate pass S. 729.

#### SECTION-BY-SECTION ANALYSIS

*Section 1.* Refers to the short title of the bill as the “The National Monument Public Participation Act of 1999”.

*Section 2.* This section states that the purpose of the act is to ensure that Congress and the public have a right and an opportunity to participate in the decisions to declare national monuments.

*Section 3* amend the Antiquities Act of 1906 by adding section 5 which requires: (1) public notice, hearings, and comment; (2) an environmental impact statement; (3) a mineral survey; (4) an assessment of surface values; (5) an inventory of existing rights; and (6) identification of State and private inholdings. The section also requires potential monuments to be recommended to the President upon completion of the surveys and analysis above, with designation effective when approved by an Act of Congress.

## COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office (CBO) estimate of the costs of this measure follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 23, 2000.*

Hon. FRANK H. MURKOWSKI,  
*Chairman, Committee on Energy and Natural Resources,  
Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 729, the National Monument Public Participation Act of 1999.

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.

*S. 729—National Monument Public Participation Act of 1999*

CBO estimates that implementing S. 729 would increase discretionary costs related to the designation of national monuments. Costs that would be incurred to meet the requirements of the bill could exceed \$1 million a year, depending on the characteristics of new national monument recommendations made in the future. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 729 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.

Under the Antiquities Act of 1906, the President may declare landmarks, structures, and other objects of historic or scientific interest that are on federal land to be national monuments. The Secretary of Agriculture or the Secretary of the Interior typically advise the President and make recommendations for such declarations. S. 729 would amend the Antiquities Act to require that the Secretary of Agriculture and the Secretary of Interior establish procedures to ensure that federal, state, and local governments and the public participate in planning of national monuments. Specifically, the bill would require the Secretaries to complete an environmental impacts statement and conduct certain surveys prior to recommending the declaration of a monument. S. 729 would require the President to advise the Congress on the status of any recommendations for new monuments made by the two Secretaries. Finally, under the bill, future Presidential declarations of national monuments would be subject to Congressional approval.

Based on information from the Department of the Interior and the Council for Environmental Quality, CBO estimates that requiring environmental impact statements prior to recommendations for new monuments would increase the cost of national monument declarations by between \$100,000 and \$1 million per recommendation, assuming the availability of appropriated funds. The current Administration has established or expanded 10 national monuments within the past five years.

On July 16, 1999, CBO transmitted a cost estimate for H.R. 1487, similar legislation that was ordered reported by the House Committee on Resources on June 30, 1999. Differences between the two cost estimates reflect differences in the procedures required under the bills.

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

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 729.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 729, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

On June 7, 2000 the Committee on Energy and Natural Resources requested legislative reports from the Secretary of the Interior, the Secretary of Agriculture, and the Office of Management and Budget setting forth Executive agency recommendations on S. 729. These reports had not been received at the time the report on S. 729 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Council on Environmental Quality at the Subcommittee hearing follows:

#### STATEMENT OF GEORGE FRAMPTON, ACTING CHAIR, COUNCIL ON ENVIRONMENTAL QUALITY, EXECUTIVE OFFICE OF THE PRESIDENT

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today to present the views of the Council on Environmental Quality on S. 729, the "National Monument Public Participation Act of 1999."

The Administration strongly opposes this legislation. Should it be presented to the President, his senior advisers would recommend that he veto the bill.

S. 729 would amend the Antiquities Act of 1906 (16 U.S.C. 431), one of the most successful environmental laws in American history. It would impose unprecedented limitations on the presidential authority provided by that Act, which has existed unchanged since 1906. Amendment of this Act is unnecessary and unwarranted.

The Act permits the President, in his discretion, to protect our most precious resources by declaring lands that are already owned or controlled by the federal government to be national monuments. It has been used consistently

by Presidents of both parties to protect some of our nation's national treasures.

Between 1906 and 1999 fourteen Presidents have used the Antiquities Act to protect significant natural, historical and scientific resources on Federal lands. All but three Presidents in this century have made use of the Act, creating 105 national monuments in 24 different states and the Virgin Islands and protecting about 70 million acres.

President Theodore Roosevelt was the first to use the Antiquities Act in 1906 to declare Devils Tower in Wyoming a national monument. Since then, the Antiquities Act has been used to protect sites including the Grand Canyon, Acadia National Park, Muir Woods National Monument, Carlsbad Caverns, the Channel Islands, Death Valley, the Edison Laboratory, the Statue of Liberty, and the C&O Canal. The history of the Act contains no evidence of abuse of this authority. Rather, it is filled with instances of the Act's use to protect areas that now seem sacrosanct from threats that were very real. For example, President Theodore Roosevelt proclaimed the Grand Canyon a national monument to protect it from threatened mining. The coastal redwoods in Muir Woods were threatened by a condemnation action filed by a power company that wanted to flood the land for a reservoir, and President Roosevelt was able to take immediate action to accept the land and protect it.

Some uses of the Act have been initially controversial and generated local opposition. However, again history has taught us that even the actions that are controversial at the outset are soon embraced by the public and often ratified by Congress. For example, the 212,000 acres in Wyoming designated as Jackson Hole National Monument are now part of Grand Teton National Park. Most of the lands in Alaska protected by President Carter were soon designated by Congress as conservation units under the Alaska National Interest Lands Conservation Act. Most recently, President Clinton's designation of the Grand Staircase-Escalante in Utah was ratified by the 105th Congress through a landmark land exchange bill benefiting the school children of Utah and all Americans.

A few presidential proclamations have sparked efforts to amend the Act, including the designation of Jackson Hole and President Carter's reservation of 56 million acres in Alaska. Those efforts were rejected by the Congress, and the lands protected are among the most precious to the American people.

It is important to note that, notwithstanding the discretion provided to the President under the Antiquities Act, Congress retains considerable authority to exercise oversight and to affect the status of the lands involved and their management. Congress obviously retains the power to overturn any presidential monument designation. However, as further evidence of the careful use that has been made by presidents of this authority, only a few proclamations totaling less than 5,000 acres of the 70 million acres

protected have been rescinded since 1906. In addition, Congress can affect the implementation of the Act through its authority over laws governing the management of public lands as well as through the appropriations process.

In contrast to current law, S. 729 would impose new and unprecedented requirements on the exercise of presidential authority. Specifically, the bill would require that the Secretaries of the Interior and Agriculture, before preparing any recommendation to the President regarding national monument designation, prepare a full environmental impact statement under the National Environmental Policy Act (NEPA). It would further require that any such recommendation include assessments of the value of minerals and surface resources, and identification of any existing rights and State and private inholdings within the Federal land in question. In addition, it apparently would require that not only the ultimate recommendation but also the accompanying studies be individually subject to NEPA.

It also would require that "adequate notice and opportunity" for public comment, potentially including public hearings, be provided before monument designation. This appears to contemplate some additional public process, perhaps between the time of the cabinet official's recommendation and the President's action, beyond that already required by the application of NEPA.

Finally, section (f) could be read effectively to annul the President's authority under current law by requiring congressional approval in advance of any national monument designation.

It has long been accepted that discretionary presidential actions are excluded from NEPA. Applicability of NEPA to the preparation of recommendations by cabinet officials to the President can have the same effect as requiring presidential NEPA compliance and interfere with the President's Constitutional right to seek advice from his appointees. Thus, a Court reviewing President Carter's use of the Antiquities Act held that the Secretary's preparation of a recommendation to the President to assist in his consideration of action under the Antiquities Act is similarly exempt from EPA requirements. As the Court pointed out, if cabinet secretaries could not advise the President on such matters without triggering NEPA, it would create a result that "approaches the absurd." The President would be required to "personally draw lines on maps, file the necessary papers, and [attend to] the other details that are necessary to the issuance of a Presidential proclamation in order to escape the procedural requirements of NEPA."  
\* \* \*

Moreover, S. 729 goes beyond merely requiring that cabinet officials comply with NEPA in preparing their Antiquities Act recommendations to the President. It would force all recommendations on monuments, regardless of size or complexity, to skip over the environmental assessment stage of NEPA and assume instead sufficient environmental impact to require preparation of an environ-

mental impact statement (EIS). In addition, it would mandate preparation of certain studies not necessarily required by NEPA, including mineral and surface resource valuation, and apply NEPA procedures to those studies as well.

As the Committee is aware, the Administration and the Council on Environmental Quality are fully supportive of public input and the applicability of NEPA generally to management decisions by federal agencies on federal lands. However, it would be inappropriate to use the general value of such procedures to undermine the unique and carefully crafted presidential authority involved in the Antiquities Act. The authority provided to the President by the Act is necessary to allow him to act quickly and decisively to protect our most significant resources. If the mandatory processes set out in S. 729 had limited the President's authority, some of our most treasured places might have been lost during this century. We cannot now accept that risk for future generations in order to address a problem that does not exist.

The President's ability to act unilaterally and decisively does not preclude public input on the management of the lands involved. Presidential action to declare a national monument does not substitute for, and is typically followed by, the development of a management plan for the new monument that is fully subject to NEPA and the public input it requires. This process, and the oversight of monument decisions available to Congress as discussed above, strikes the appropriate balance between the branches of government, the public, and the protection of our national treasures.

This system has worked well for almost 100 years. Historical perspective not only ratifies the actions taken under the Antiquities Act, but also demonstrates that they are of the highest possible significance. To alter this system now is unwarranted and unprecedented. Erosion of the President's authority would not just be a loss for the President, but most importantly for all of our citizens who so value the priceless resources that have been and will be protected by this Act.

This concludes my statement. I would be happy to answer any questions the Committee may have.



MINORITY VIEWS OF SENATORS BINGAMAN, AKAKA,  
GRAHAM, LANDRIEU, BAYH, AND LINCOLN

At its business meeting on June 7, 2000, the Committee ordered several bills to be favorably reported en bloc by voice vote, including S. 729. However, if there had been a separate vote on S. 729, we would have opposed reporting the bill.

S. 729 would essentially terminate the President's authority to designate national monuments under the Antiquities Act, by requiring Congressional approval for any monument designation to become effective. The bill's proponents contend it is needed to ensure that notice and public participation are required before a President designates a new national monument under the Antiquities Act. However, the Committee has already reported a bill which would provide for additional notice and public participation in this process. That measure, H.R. 1487 (Calendar No. 477), was favorably reported by the Committee last October. We were willing to support that bill because it provided for public participation while making clear that the President's authority to designate national monuments is not modified or otherwise restricted.

Since its enactment in 1906, the Antiquities Act has been one of the most successful environmental laws in the past century. Using the authorities granted by the Act, all but three Presidents have set aside and protected some of the most magnificent areas in our nation, including the Grand Canyon in Arizona, Grand Teton National Park in Wyoming, Olympic National Park in Washington, and most of the national parks in Utah and Alaska. Many areas initially designated as national monuments, including all of the previous examples, were subsequently redesignated by Congress as national parks. The areas protected through the Antiquities Act have protected many of the remarkable natural, cultural and historic features throughout the country.

While many of the monument designations have initially been controversial, over time tremendous public support and appreciation has developed for the far-sighted protection of those areas. Even though the Antiquities Act grants the President very broad powers, Congress always retain the ability to enact legislation repealing a designation. Despite the controversy surrounding some of the recent destinations, not one bill has been introduced in the Senate to repeal any of the newly created monuments. And with the benefit of history, nobody would even consider revoking any of the earlier designations.

S. 729 would also mandate compliance under the National Environmental Policy Act for actions relating to the designation of a national monument, despite the fact that actions by the President are not subject to NEPA.

We oppose S. 729 because it represents bad public policy and because the Committee has already acted to provide for public participation in the designation of national monuments.

JEFF BINGAMAN.  
DANIEL K. AKAKA.  
BOB GRAHAM.  
MARY L. LANDRIEU.  
EVAN BAYH.  
BLANCHE L. LINCOLN.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 729, as ordered 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):

**THE ACT OF JUNE 8, 1906 (AN ACT FOR THE  
PRESERVATION OF AMERICAN ANTIQUITIES)**

\* \* \* \* \*

SEC. 4. That the Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of the Act.

**SEC. 5. CONGRESSIONAL AND PUBLIC ROLES IN NATIONAL MONUMENT DECLARATIONS.**

(a) *IN GENERAL.*—*The Secretary of the Interior and the Secretary of Agriculture shall promulgate regulations that establish procedures to ensure that Federal, State, and local governments and the public have the right to participate in the formulation of plans relating to the declaration of a national monument on Federal land on or after the date of enactment of this section, including procedures—*

(1) *to provide the public with adequate notice and opportunity to comment on and participate in the declaration of a national monument on Federal land; and*

(2) *for public hearings, when appropriate, on the declaration of a national monument on Federal land.*

(b) *OTHER DUTIES.*—*Prior to making any recommendations for declaration of a national monument in an area, the Secretary of the Interior and the Secretary of Agriculture shall—*

(1) *ensure, to the maximum extent practicable, compliance with all applicable Federal land management and environmental laws, including the completion of a programmatic environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);*

(2) *cause mineral surveys to be conducted by the Geological Survey to determine the mineral values, if any, that may be present in the area;*

(3) *cause an assessment of the surface resource values of the land to be completed and made available by the appropriate agencies;*

(4) *identify all existing rights held on Federal land contained within the area by type and acreage; and*

(5) *identify all State and private land contained within the area.*

(c) *RECOMMENDATIONS.*—On completion of the reviews and mineral surveys required under subsection (b), the Secretary of the Interior and the Secretary of Agriculture shall submit to the President recommendations as to whether any area on Federal land warrants declaration as a national monument.

(d) *FEDERAL ACTION.*—Any study or recommendation under this section shall be considered a federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) *REPORTS.*—Not later than 2 years after the receipt of a recommendation under subsection (c), the President shall—

(1) advise the President of the Senate and the Speaker of the House of Representatives of the President's recommendation with respect to whether each area evaluated should be declared a national monument; and

(2) provide a map and description of the boundaries of each area evaluated for declaration to the President of the Senate and the Speaker of the House of Representatives.

(f) *DECLARATION AFTER EFFECTIVE DATE.*—A recommendation of the President for declaration of a national monument that is made after the effective date of this section shall become effective only if the declaration is approved by Act of Congress.

