

ENSURING PUBLIC INVOLVEMENT IN THE CREATION OF
NATIONAL MONUMENTS ACT

SEPTEMBER 20, 2013.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1459]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1459) to ensure that the National Environmental Policy Act of 1969 applies to the declaration of national monuments, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1459 is to ensure that the National Environmental Policy Act of 1969 applies to the declaration of national monuments.

BACKGROUND AND NEED FOR LEGISLATION

Established in 1906, the Antiquities Act (16 U.S.C. 431) authorizes the President to proclaim national monuments on federal lands and regulate the care and study of our nation's antiquities. Created to quickly reserve and protect historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest, the Act has been used to designate tracks of land well beyond "the smallest area compatible with the proper care and management of the objects to be protected." Since the Act's inception in 1906, Presidents have proclaimed a total of 137 monuments, a number of

which have been contentious, and Presidential authority under the Act has been reduced twice. Following the unpopular 1943 proclamation of Jackson Hole National Monument, legislation incorporating Jackson Hole into Grand Teton National Park included a requirement for Congressional consent for any future creation or enlargement of National Monuments in Wyoming. Similarly, after controversial designations in Alaska, Congressional approval became necessary for designations in Alaska greater than 5,000 acres.

The Antiquities Act has been abused by Presidents of both parties, particularly in the West where the timing and large scope of many designations have resulted in unnecessary hardship to local communities dependent upon access and use of the land and resources within the designations. To date, no court challenges have succeeded in undoing a Presidential designation.

The Antiquities Act is outdated. Since its enactment, numerous laws like the Historic Preservation Act, Native American Graves Preservation and Repatriation Act, Archeological and Historic Preservation Act, Archeological Resources Preservation Act, and the National Environmental Policy Act are actively being used to protect and preserve American antiquities, artifacts and locations.

Antiquities Act designations should be limited to areas that face clearly-articulated, imminent threats. The Act was designed to prevent damage to specific sites, not to be a national land-use planning tool covering vast landscapes or as a backdoor maneuver to lock up lands, including private property and other inholdings, for purposes that deny public access for recreation and job-creation. There is no good reason for major land-use decisions, like monuments created under the Antiquities Act, to be done in secret without allowing proper stakeholder input.

H.R. 1459 would guarantee public participation in National Monument decisions by ensuring large-scale presidential designations abide by the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.). It prohibits the inclusion of private property without the approval of property owners. The bill allows the President to provide emergency protections for a genuinely threatened site of up to 5,000 acres, but limits these emergency designations to three years without Congressional approval. The bill would also allow no more than one designation per state during any presidential four-year term. Finally, the bill requires a study of the costs associated with managing the National Monument.

COMMITTEE ACTION

H.R. 1459 was introduced on April 10, 2013, by Congressman Rob Bishop (R-UT). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Public Lands and Environmental Regulation. On April 16, 2013, the Subcommittee held a hearing on the bill. On July 24, 2013, the full Natural Resources Committee met to consider the bill. The Subcommittee on Public Lands and Environmental Regulation was discharged by unanimous consent. Congressman Raúl Grijalva (D-AZ) offered an amendment designated .025 to the bill; the amendment was not adopted by voice vote. Congresswoman Niki Tsongas (D-MA) offered an amendment designated .027 to the bill; the

amendment was not adopted by a roll call vote of 13 to 24, as follows:

Committee on Natural Resources

U.S. House of Representatives

113th Congress

Date: July 24, 2013

Recorded Vote #: 2

Meeting on / Amendment on: H.R.1459 - Tsongas.027, Not agreed to by a vote of 13 yeas and 24 nays

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Hastings, WA, Chairman		X		Mr. Duncan of SC		X	
<i>Mr. Defazio, OR, Ranking</i>	X			<i>Mr. Cardenas, CA</i>			
Mr. Young, AK		X		Mr. Tipton, CO		X	
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Horsford, NV</i>			
Mr. Gohmert, TX		X		Mr. Gosar, AZ		X	
<i>Mr. Pallone, NJ</i>				<i>Mr. Huffman, CA</i>	X		
Mr. Bishop, UT		X		Mr. Labrador, ID			
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. Ruiz, CA</i>	X		
Mr. Lamborn, CO		X		Mr. Southerland, FL		X	
<i>Mr. Holt, NJ</i>				<i>Ms. Shea-Porter, NH</i>	X		
Mr. Wittman, VA		X		Mr. Flores, TX		X	
<i>Mr. Grijalva, AZ</i>	X			<i>Mr. Lowenthal, CA</i>	X		
Mr. Broun, GA		X		Mr. Runyan, NJ		X	
<i>Ms. Bordallo, GU</i>	X			<i>Mr. Garcia, FL</i>	X		
Mr. Fleming, LA		X		Mr. Amodei, NV		X	
<i>Mr. Costa, CA</i>				<i>Mr. Cartwright, PA</i>	X		
Mr. McClintock, CA		X		Mr. Mullin, OK		X	
<i>Mr. Sablan, CNMI</i>				Mr. Stewart, UT		X	
Mr. Thompson, PA		X		Mr. Daines, MT		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Cramer, ND			
Ms. Lummis, WY		X		Mr. LaMalfa, CA		X	
<i>Mr. Pierluisi, PR</i>	X			Mr. Smith, MO		X	
Mr. Benishek, MI		X		<i>Vacancy</i>			
<i>Ms. Hanabusa, HI</i>	X						
				TOTALS	13	24	

No further amendments were offered, and the bill was then adopted and ordered favorably reported to the House of Representatives by a roll call vote of 26 to 14, as follows:

Committee on Natural Resources

U.S. House of Representatives

113th Congress

Date: July 24, 2013

Recorded Vote #: 3

Meeting on / Amendment on: H.R.1459 - To adopt and favorably report the bill to the House, agreed to by a vote of 26 yeas and 14 nays

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Hastings, WA, Chairman	X			Mr. Duncan of SC	X		
<i>Mr. Defazio, OR, Ranking</i>		X		<i>Mr. Cardenas, CA</i>			
Mr. Young, AK	X			Mr. Tipton, CO	X		
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Horsford, NV</i>			
Mr. Gohmert, TX	X			Mr. Gosar, AZ	X		
<i>Mr. Pallone, NJ</i>				<i>Mr. Huffman, CA</i>		X	
Mr. Bishop, UT	X			Mr. Labrador, ID	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Ruiz, CA</i>		X	
Mr. Lamborn, CO	X			Mr. Southerland, FL	X		
<i>Mr. Holt, NJ</i>				<i>Ms. Shea-Porter, NH</i>		X	
Mr. Wittman, VA	X			Mr. Flores, TX	X		
<i>Mr. Grijalva, AZ</i>		X		<i>Mr. Lowenthal, CA</i>		X	
Mr. Broun, GA	X			Mr. Runyan, NJ	X		
<i>Ms. Bordallo, GU</i>		X		<i>Mr. Garcia, FL</i>		X	
Mr. Fleming, LA	X			Mr. Amodei, NV	X		
<i>Mr. Costa, CA</i>		X		<i>Mr. Cartwright, PA</i>		X	
Mr. McClintock, CA	X			Mr. Mullin, OK	X		
<i>Mr. Sablan, CNMI</i>				Mr. Stewart, UT	X		
Mr. Thompson, PA	X			Mr. Daines, MT	X		
<i>Ms. Tsongas, MA</i>		X		Mr. Cramer, ND	X		
Ms. Lummis, WY	X			Mr. LaMalfa, CA	X		
<i>Mr. Pierluisi, PR</i>		X		Mr. Smith, MO	X		
Mr. Benishek, MI	X			<i>Vacancy</i>			
<i>Ms. Hanabusa, HI</i>		X					
				TOTALS	26	14	

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 Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) 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)(2)(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. 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:

H.R. 1459—Ensuring Public Involvement in the Creation of National Monuments Act

H.R. 1459 would amend the process of designating new national monuments. The Antiquities Act of 1906 authorizes the President to declare landmarks, structures, and other objects of historic or scientific interest that are on federal land to be national monuments. H.R. 1459 would require an environmental review of any potential monuments that are greater than 5,000 acres. The designation of a national monument would expire after three years for any monument less than 5,000 acres unless the monument was designated by a change in the law. Under the bill, every designation would be followed by a feasibility study of the costs of managing the monument. The legislation also would limit the number of designations the President could make to one per state during a four-year term.

Based on information provided by the National Park Service, CBO estimates that implementing H.R. 1459 would cost about \$2 million over the 2014–2018 period. Over the past 10 years, 16 national monuments have been established. CBO estimates that the additional studies required under the legislation would increase the cost of designating a new monument by about \$300,000. Enacting H.R. 1459 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1459 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 CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of 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, credit authority, or an increase or decrease in revenues or tax expenditures.

Based on information provided by the National Park Service, CBO estimates that implementing H.R. 1459 would cost about \$2 million over the 2014–2018 period.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to ensure that the National Environmental Policy Act of 1969 applies to the declaration of national monuments.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

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):

ACT OF JUNE 8, 1906

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

SEC. 2. **[That the President]** (a) *That the President* of the United States is hereby authorized, in his **[discretion, to declare]** *discretion, subject to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), 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. *No more than one declaration shall be made in a State during any presidential four-year term of office without an express Act of Congress.*

(b) *A declaration under this section shall—*

(1) *not include private property without the informed written consent of the owner of the private property affected by the declaration;*

(2) *be considered a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), if it affects more than 5,000 acres;*

(3) *be categorically excluded under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and expire three years after the date of the declaration (unless specifically designated as a monument by Federal law), if it affects 5,000 acres or less; and*

(4) *be followed by a feasibility study that includes an estimate of the costs associated with managing the monument in perpetuity, including any loss of Federal and State revenue, which shall be submitted to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and made available on the website of the Department of the Interior not later than one year after the date of the declaration.*

* * * * *

DISSENTING VIEWS

H.R. 1459 is a disingenuous proposal to weaken the President's authority to establish National Monuments under the Antiquities Act. The bill would apply the National Environmental Policy Act (NEPA) to future Presidential monument declarations. While the majority has repeatedly sought to truncate or prohibit environmental reviews for drilling and mining, H.R. 1459 aims to require heightened environmental analysis for potentially time-sensitive conservation proposals.

H.R. 1459 would deem a monument designation above 5,000 acres a major federal action, requiring environmental review. The bill also limits the President to one monument designation per state, per year. These arbitrary hurdles are only intended to undermine the Antiquities Act and slow down conservation. Congress passed the Antiquities Act of 1906 to give Presidents the latitude to protect historically and culturally significant sites. Previous Congresses understood the importance of allowing the Executive Branch to move quickly to conserve resources, particularly given the pace of Congressional action.

Sixteen Presidents, both Republicans and Democrats, have used the Antiquities Act to establish National Monuments. Some of the nation's most cherished and visited National Parks, including the Grand Canyon, were first designated National Monuments because past Presidents had the foresight to set them aside. Presidents have used the Antiquities Act to protect resources central to the American story and identity, including Native American sacred sites, historic battlefields, and natural treasures like the Grand Staircase Escalante. With the Cesar E. Chavez National Monument and the Harriet Tubman National Monument, among others, recent declarations by President Obama have included sites significant to an even more diverse range of American communities.

H.R. 1459 incorrectly assumes that Presidential proclamations are done in secret, without the support of local stakeholders. Earlier this year, President Obama established five new National Monuments, all with broad support from local communities and affiliated public interest groups. At the hearing for H.R. 1459, the committee heard testimony from the Mayor of Hampton, Virginia, the site of the National Monument at Fort Monroe, established in 2011 by President Obama. The Mayor highlighted the inclusiveness of the process and the importance of the monument for her community.

In the 112th Congress, ten bills were introduced to designate monuments or protect areas as historic sites; only five of those bills were heard by the Committee and only two, both sponsored by Republicans, were put before the full House of Representatives. Three of the new monuments established by President Obama had bills

filed in the House last Congress; none of those bills received a hearing.

The Majority complains about the Antiquities Act and then fails to give new monument proposals a fair hearing. The Majority opposes new monument designations before they happen, but has never sought legislation to overturn a monument after it has been designated. Given this level of dysfunction, it is more important than ever that the authority granted the President in the Antiquities Act more than a century ago remain effective.

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NIKI TSONGAS.
RAÚL M. GRIJALVA.
JOE GARCIA.
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