

NATIONAL MONUMENT CREATION AND PROTECTION ACT

DECEMBER 19, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3990]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3990) to amend title 54, United States Code, to reform the Antiquities Act of 1906, and for other purposes, 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 Creation and Protection Act” or the “National Monument CAP Act”.

SEC. 2. LIMITATION ON SIZE; CLARIFICATION OF ELIGIBLE OBJECTS.

Section 320301 of title 54, United States Code, is amended—

(1) in subsection (a), by striking “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest” and inserting “object or objects of antiquity”;

(2) in subsection (b), by striking “confined to the smallest area compatible with the proper care and management of the objects to be protected” and inserting “in accordance with the limitations outlined in subsections (e), (f), (g), and (h)”; and

(3) by adding at the end the following:

“(e) LIMITATION ON SIZE OF NATIONAL MONUMENTS.—Except as provided by subsections (f), (g), and (h), after the date of the enactment of this subsection, land may not be declared under this section in a configuration that would create a national monument—

“(1) that is more than 640 acres; and

- “(2) whose exterior boundary is less than 50 miles from the closest exterior boundary of another national monument declared under this section.
- “(f) EXCEPTION FOR MONUMENTS OF LESS THAN 5,000 ACRES.—Subsection (e) shall not apply to the designation of a national monument under this section if the national monument so designated—
- “(1) would be less than 5,000 acres;
- “(2) would have all exterior boundaries 50 miles or more from the closest exterior boundary of another national monument declared under this section; and
- “(3) has been reviewed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by the Secretary of the Interior or the Secretary of Agriculture, as appropriate.
- “(g) EXCEPTION FOR MONUMENTS OF 5,000 ACRES AND UP TO 10,000 ACRES.—
- “(1) IN GENERAL.—Subsection (e) shall not apply to the designation of a national monument under this section if the national monument so designated—
- “(A) would be at least 5,000 acres but not more than 10,000 acres; and
- “(B) would have all exterior boundaries 50 miles or more from the closest exterior boundary of another national monument declaration under this section.
- “(2) OTHER REQUIREMENT.—A monument described in this subsection shall be subject to the preparation of an environmental assessment or environmental impact statement as part of a review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The choice of environmental review document shall be within the discretion of the Secretary of the Interior or the Secretary of Agriculture, as appropriate.
- “(h) EXCEPTION FOR MONUMENTS 10,000 ACRES AND UP TO 85,000 ACRES.—Subsection (e) shall not apply to the designation of a national monument under this section if the national monument so designated—
- “(1) would be at least 10,000 acres but not more than 85,000 acres;
- “(2) would have all exterior boundaries 50 miles or more from the closest exterior boundary of another national monument declaration under this section; and
- “(3) has been approved by the elected governing body of each county (or county equivalent), the legislature of each State, and the Governor of each State within whose boundaries the national monument will be located (and the Governor of each such State has transmitted a copy of each such approval to the President).
- “(i) EXCEPTION FOR EMERGENCY DESIGNATION.—
- “(1) IN GENERAL.—Subsection (e) shall not apply to the designation under this section of a national monument of any acreage amount if designation is made to prevent imminent and irreparable harm to the object or objects of antiquity to be protected by the designation.
- “(2) ONE YEAR LIMITATION.—A national monument designation under this subsection shall terminate on the date that is one calendar year after the date of the designation.
- “(3) ONE TIME DESIGNATION.—Land designated as a national monument under this subsection—
- “(A) may only be so designated one time; and
- “(B) may not also be permanently designated as a national monument under this section.
- “(4) RIGHTS AND USES.—Land designated as a national monument under this subsection shall remain subject to—
- “(A) valid existing rights; and
- “(B) uses allowed on the day before such designation under an applicable Resource Management Plan or Forest Plan.
- “(j) PRESIDENTIAL AUTHORITY TO REDUCE SIZE OF DECLARED MONUMENTS.—The President may—
- “(1) reduce the size of any national monument declared under this section by 85,000 acres or less; or
- “(2) reduce the size of any national monument declared under this section by more than 85,000 acres only if the reduction—
- “(A) has been approved by the elected governing body of each county (or county equivalent), the legislature of each State, and the Governor of each State within whose boundaries the national monument will be located (and the Governor of each such State has transmitted a copy of each such approval to the President); and
- “(B) has been reviewed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by the Secretary of the Interior or the Secretary of Agriculture, as appropriate.
- “(k) NON-FEDERALLY OWNED PROPERTY.—After the date of the enactment of this subsection, land may not be declared as a national monument under this section in

a configuration that would place non-federally owned property within the exterior boundaries of the national monument without the express written consent of the owners of that non-federally owned property.

“(l) EFFECT OF DECLARATION ON FEDERAL FUNDS.—No declaration under this section shall be construed to increase the amount of Federal funds that are authorized to be appropriated for any fiscal year.

“(m) WATER RIGHTS ASSOCIATED WITH A DECLARATION.—Water rights associated with a declaration under this section—

“(1) may not be reserved expressly or by implication by a declaration under this section; and

“(2) may be acquired for a declaration under this section only in accordance with the laws of the State in which the water rights are based.

“(n) DEFINITIONS.—For the purposes of this section:

“(1) DECLARATION; DECLARED.—The terms ‘declaration’ and ‘declared’ shall only include the creation or expansion of a national monument under this section.

“(2) LAND.—The term ‘land’ shall not include submerged land or water.

“(3) OBJECT OR OBJECTS OF ANTIQUITY.—

“(A) The term ‘object or objects of antiquity’ means—

“(i) relics;

“(ii) artifacts;

“(iii) human or animal skeletal remains;

“(iv) fossils (other than fossil fuels); and

“(v) certain buildings constructed before the date of the enactment of this subsection.

“(B) The term ‘object or objects of antiquity’ does not include—

“(i) natural geographic features; and

“(ii) objects not made by humans, except fossils (other than fossil fuels) or human or animal skeletal remains.”

PURPOSE OF THE BILL

The purpose of H.R. 3990 is to amend title 54, United States Code, to reform the Antiquities Act of 1906.

BACKGROUND AND NEED FOR LEGISLATION

At the beginning of the 20th century, vandals began looting sacred Native American burial grounds and archeological sites throughout the U.S. territories of the Southwest. The destruction of archeological artifacts prompted Congress to enact the Antiquities Act of 1906, which authorized the President to designate national monuments on federal lands containing “historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest.”¹ The law also specified that national monuments were “to be confined to the smallest area compatible with proper care and management of the objects to be protected.”² Furthermore, the President could only designate national monuments “upon the lands owned or controlled by the Government of the United States.”³

The Antiquities Act granted Presidents the flexibility to quickly protect small Native American sites in imminent danger of looting and destruction.⁴ President Theodore Roosevelt designated the first National Monument, Devil’s Tower, in 1906.⁵ Since that time, Presidents have broadly interpreted the Antiquities Act to expand both the size and justifications for national monument designa-

¹ Public Law 59–209; 34 Stat. 225; 54 U.S.C. 320301 et seq.

² Id.

³ Id.

⁴ Benderson, Judith. “The Archaeological Resources Protection Act and the native American Graves Protection and Repatriation Act.” Offices of the United States Attorneys. <https://www.justice.gov/usao/priority-areas/indian-country/native-american-artifacts>.

⁵ <https://www.nps.gov/archeology/sites/antiquities/monumentslist.htm>.

tions, despite its clear language and legislative history plainly reflecting Congress' intent to limit the scope of the designations.⁶

Presidents have used their authority under the Antiquities Act more than 230 times to establish and enlarge 158 National Monuments totaling over 840 million acres—roughly 10 times the size of the National Park System.⁷ The monuments sites have ranged from approximately 1 acre to 283 million acres.⁸ President Obama exercised Antiquities Act authority more than any other president, issuing 34 national monument declarations covering more than 553 million acres of land. Presidents have also used their authority to reduce the size of national monuments, most recently President Trump.⁹

Although the National Park Service administers most of the monuments, in recent decades national monuments have been placed under the management of the Bureau of Land Management, the U.S. Forest Service, the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration.¹⁰ Congress also has established 45 national monuments by law, including Appomattox (1940), Badlands (1939) and Biscayne (1968).¹¹

In its 112-year history, the Antiquities Act has only been amended twice—both times to enact statutory restrictions on the President's authority to declare national monuments. The first, passed in 1950, prohibited the designation of monuments in Wyoming. The second, passed in 1986, requires prior Congressional approval of executive land withdrawals in Alaska greater than 5,000 acres. These actions followed controversial declarations of the Jackson Hole National Monument by President Franklin Roosevelt and President Jimmy Carter's establishment of several national monuments in Alaska.¹²

The Antiquities Act predates the establishment of five states (including New Mexico and Arizona), the establishment of the National Park Service, and the creation of major environmental and archeological resources protection laws. These include the organic act for the National Park System (1916), the Archeological and Historic Preservation Act (1974), Archeological Resources Protection Act (1979), National Historic Preservation Act (1966), Native American Graves Protection and Repatriation Act (1990), the National Stolen Property Act (1948), the Historic Sites Act (1935), the Reservoir Salvage Act (1980), Abandoned Shipwreck Act (1987), National Historic Lighthouse Preservation Act (1980), Federal Land Policy and Management Act (1976) and National Environmental Policy Act (1969). In many cases, enactment of these more modern authorities renders the protections of the Antiquities Act outdated.

⁶In their discussions of the bill that became the Antiquities Act of 1906, Congressmen Lacey and Stephens debated whether Presidents would eventually abuse the Act. Congressman Lacey, the bill's sponsor, reassured that the bill provides that monuments "shall be the smallest area necessary [sic] for the care and maintenance of the objects to be preserved", Congressional Record 1906, <https://coast.noaa.gov/data/Documents/OceanLawSearch/Congressional%20Record—House%20&%20Senate%201906.pdf?redirect=301ocm>.

⁷Information provided by the Congressional Research Service.

⁸<http://www.crs.gov/Reports/R41330?source=search&guid=c64c8af27d3d4ccd80ffae04a033e0f3&index=2>.

⁹Id.

¹⁰<https://www.nps.gov/archeology/sites/antiquities/monumentslist.htm>.

¹¹<https://www.nps.gov/archeology/sites/antiquities/monumentslist.htm>; <https://www.nps.gov/apco/mclean-house.htm>; <https://moon.com/2016/07/history-badlands-national-park/>; <https://www.nps.gov/bisc/learn/historyculture/the-birth-of-biscayne-national-park.htm>.

¹²Carol Hardy Vincent, "National Monuments and the Antiquities Act", Congressional Research Service (2017), page 1.

H.R. 3990 restores Congress' original intent for the Antiquities Act of 1906 while modernizing it for the 21st century. The comprehensive reform legislation includes provisions to protect endangered antiquities, prevent abuse of executive authority and the designation of excessive national monuments, and empowers local communities. These reforms balance the protection of archeological resources with the elimination of egregious Executive Branch overreach.

As ordered reported, the bill retains Presidential authority to designate national monuments up to 640 acres, allowing the President to rapidly protect objects of antiquity in imminent danger, restoring the original focus of the Antiquities Act. This limited authority cannot be used to create multiple small monuments in the same locale, however. New monument designations between 640 and 10,000 acres will now require environmental review under the National Environmental Policy Act prior to being finalized.

The bill also empowers State and local voices by requiring approval by all county commissions, State legislatures, and governors impacted by a proposed national monument for any monument designation between 10,000 and 85,000 acres. Any monument designation greater than 85,000 acres would require an act of Congress. The bill also creates new Presidential authority to create "emergency" national monuments for up to one year, to protect areas of any size in times of emergency, as determined by the President. However, lands so declared may not be permanently designated a national monument in the future.

The bill also clarifies Presidential authority to reduce national monuments, requiring reductions of more than 85,000 acres be approved by all affected counties, State legislatures and governors and also be subject to environmental review under the National Environmental Policy Act.

The bill also gives much needed clarification to the definition of "antiquities", returning the Act to its original focus of protecting specific objects of archeological value such as Native American burial remains. This will prohibit future marine national monuments and sprawling land-based national monuments with no archeological or historic features in need of protection. The bill does not affect the protection of these sites under other laws.

COMMITTEE ACTION

H.R. 3990 was introduced on October 6, 2017, by Congressman Rob Bishop (R-UT). The bill was referred to the Committee on Natural Resources. On October 11, 2017, the Natural Resources Committee met to consider the bill. Congressman Rob Bishop offered an amendment in the nature of a substitute designated 036. It was adopted by voice vote. The bill, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 23 ayes and 17 noes, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 10-11-17

Recorded Vote #: 1

Meeting on / Amendment on: **FC Mark Up on Favorably Reporting H.R. 3990 (Rep. Rob Bishop of UT)**, To amend title 54, United States Code, to reform the Antiquities Act of 1906, and for other purposes. "*National Monument Creation and Protection Act.*"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Soto, FL</i>		X	
Mr. Young, AK, Chairman Emeritus	X			Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. McEachin, VA</i>		X	
Mr. Gohmert, TX, Vice Chairman	X			Mr. Graves, LA	X		
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. Brown, MD</i>		X	
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>		X		<i>Mr. Clay, MO</i>		X	
Mr. Wittman, VA				Mrs. Radewagen, AS	X		
<i>Mr. Sablan, CNMI</i>		X		<i>Mr. Gomez, CA</i>		X	
Mr. McClintock, CA	X			Mr. LaHood, IL	X		
<i>Ms. Tsongas, MA</i>		X		Mr. Webster, FL	X		
Mr. Pearce, NM	X			Mr. Bergman, MI	X		
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY	X		
Mr. Thompson, PA	X			Mr. Johnson, LA	X		
<i>Mr. Lowenthal, CA</i>		X		Ms. González-Colón, PR	X		
Mr. Gosar, AZ	X			Mr. Gianforte, MT	X		
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>		X					
Mr. Tipton, CO	X						
<i>Mr. Gallego, AZ</i>		X					
Mr. LaMalfa, CA	X						
<i>Ms. Hanabusa, HI</i>		X					
Mr. Denham, CA	X						
<i>Ms. Barragán, CA</i>		X		TOTAL:	23	17	

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 AND
CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 8, 2017.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3990, the National Monument Creation and Protection Act.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 3990—National Monument Creation and Protection Act

Under current law, the President can declare areas of historic or scientific interest located on federally owned or managed lands as national monuments to be preserved permanently. H.R. 3990 would modify the President's authority to designate national monuments and provide the President with the authority to reduce the acreage of existing national monuments. Under the bill, monument designations for areas larger than 85,000 acres would require an act of the Congress to be established.

H.R. 3990 also would subject certain monument designations and reductions to review under the National Environmental Policy Act of 1969 (NEPA). CBO expects that the Department of the Interior and the Forest Service would incur administrative costs associated with NEPA reviews. However, CBO cannot estimate those costs because of uncertainty about whether or when executive action to establish or modify a national monument would occur. Any such spending would be subject to the availability of appropriated funds.

Enacting H.R. 3990 could affect direct spending; therefore, pay-as-you-go procedures apply. Reducing the size of an existing national monument would return the affected lands to the status they held before a national monument was established. That earlier status may have permitted mining, logging, or other resource extraction activities that generate offsetting receipts, which are treated

as reductions in direct spending. However, CBO cannot estimate the direct spending effects of H.R. 3990 because the potential for existing national monument lands to be used for resource extraction is unknown as is whether any future executive action would reduce the size of an existing monument. Enacting H.R. 3990 would not affect revenues.

CBO estimates that enacting H.R. 3990 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3990 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was approved by H. Samuel Papenfuss, Deputy Director for Budget Analysis.

2. 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 amend title 54, United States Code, to reform the Antiquities Act of 1906.

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. This bill does not contain any directed rule makings.

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, and existing law in which no change is proposed is shown in roman):

TITLE 54, UNITED STATES CODE

* * * * *

SUBTITLE III—NATIONAL PRESERVATION
PROGRAMS

* * * * *

CHAPTER 3203—MONUMENTS, RUINS, SITES, AND
OBJECTS OF ANTIQUITY

* * * * *

§ 320301. National monuments

(a) **PRESIDENTIAL DECLARATION.**—The President may, in the President's discretion, declare by public proclamation [historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest] *object or objects of antiquity* that are situated on land owned or controlled by the Federal Government to be national monuments.

(b) **RESERVATION OF LAND.**—The President may reserve parcels of land as a part of the national monuments. The limits of the parcels shall be [confined to the smallest area compatible with the proper care and management of the objects to be protected] *in accordance with the limitations outlined in subsections (e), (f), (g), and (h).*

(c) **RELINQUISHMENT TO FEDERAL GOVERNMENT.**—When an object is situated on a parcel covered by a bona fide unperfected claim or held in private ownership, the parcel, or so much of the parcel as may be necessary for the proper care and management of the object, may be relinquished to the Federal Government and the Secretary may accept the relinquishment of the parcel on behalf of the Federal Government.

(d) **LIMITATION ON EXTENSION OR ESTABLISHMENT OF NATIONAL MONUMENTS IN WYOMING.**—No extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress.

(e) **LIMITATION ON SIZE OF NATIONAL MONUMENTS.**—*Except as provided by subsections (f), (g), and (h), after the date of the enactment of this subsection, land may not be declared under this section in a configuration that would create a national monument—*

(1) *that is more than 640 acres; and*

(2) *whose exterior boundary is less than 50 miles from the closest exterior boundary of another national monument declared under this section.*

(f) **EXCEPTION FOR MONUMENTS OF LESS THAN 5,000 ACRES.**—*Subsection (e) shall not apply to the designation of a national monument under this section if the national monument so designated—*

(1) *would be less than 5,000 acres;*

(2) *would have all exterior boundaries 50 miles or more from the closest exterior boundary of another national monument declared under this section; and*

(3) *has been reviewed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by the Secretary of the Interior or the Secretary of Agriculture, as appropriate.*

(g) *EXCEPTION FOR MONUMENTS OF 5,000 ACRES AND UP TO 10,000 ACRES.—*

(1) *IN GENERAL.—Subsection (e) shall not apply to the designation of a national monument under this section if the national monument so designated—*

(A) *would be at least 5,000 acres but not more than 10,000 acres; and*

(B) *would have all exterior boundaries 50 miles or more from the closest exterior boundary of another national monument declaration under this section.*

(2) *OTHER REQUIREMENT.—A monument described in this subsection shall be subject to the preparation of an environmental assessment or environmental impact statement as part of a review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The choice of environmental review document shall be within the discretion of the Secretary of the Interior or the Secretary of Agriculture, as appropriate.*

(h) *EXCEPTION FOR MONUMENTS 10,000 ACRES AND UP TO 85,000 ACRES.—Subsection (e) shall not apply to the designation of a national monument under this section if the national monument so designated—*

(1) *would be at least 10,000 acres but not more than 85,000 acres;*

(2) *would have all exterior boundaries 50 miles or more from the closest exterior boundary of another national monument declaration under this section; and*

(3) *has been approved by the elected governing body of each county (or county equivalent), the legislature of each State, and the Governor of each State within whose boundaries the national monument will be located (and the Governor of each such State has transmitted a copy of each such approval to the President).*

(i) *EXCEPTION FOR EMERGENCY DESIGNATION.—*

(1) *IN GENERAL.—Subsection (e) shall not apply to the designation under this section of a national monument of any acreage amount if designation is made to prevent imminent and irreparable harm to the object or objects of antiquity to be protected by the designation.*

(2) *ONE YEAR LIMITATION.—A national monument designation under this subsection shall terminate on the date that is one calendar year after the date of the designation.*

(3) *ONE TIME DESIGNATION.—Land designated as a national monument under this subsection—*

(A) *may only be so designated one time; and*

(B) *may not also be permanently designated as a national monument under this section.*

(4) *RIGHTS AND USES.—Land designated as a national monument under this subsection shall remain subject to—*

(A) *valid existing rights; and*

(B) *uses allowed on the day before such designation under an applicable Resource Management Plan or Forest Plan.*

(j) *PRESIDENTIAL AUTHORITY TO REDUCE SIZE OF DECLARED MONUMENTS.*—*The President may—*

(1) *reduce the size of any national monument declared under this section by 85,000 acres or less; or*

(2) *reduce the size of any national monument declared under this section by more than 85,000 acres only if the reduction—*

(A) *has been approved by the elected governing body of each county (or county equivalent), the legislature of each State, and the Governor of each State within whose boundaries the national monument will be located (and the Governor of each such State has transmitted a copy of each such approval to the President); and*

(B) *has been reviewed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by the Secretary of the Interior or the Secretary of Agriculture, as appropriate.*

(k) *NON-FEDERALLY OWNED PROPERTY.*—*After the date of the enactment of this subsection, land may not be declared as a national monument under this section in a configuration that would place non-federally owned property within the exterior boundaries of the national monument without the express written consent of the owners of that non-federally owned property.*

(l) *EFFECT OF DECLARATION ON FEDERAL FUNDS.*—*No declaration under this section shall be construed to increase the amount of Federal funds that are authorized to be appropriated for any fiscal year.*

(m) *WATER RIGHTS ASSOCIATED WITH A DECLARATION.*—*Water rights associated with a declaration under this section—*

(1) *may not be reserved expressly or by implication by a declaration under this section; and*

(2) *may be acquired for a declaration under this section only in accordance with the laws of the State in which the water rights are based.*

(n) *DEFINITIONS.*—*For the purposes of this section:*

(1) *DECLARATION; DECLARED.*—*The terms “declaration” and “declared” shall only include the creation or expansion of a national monument under this section.*

(2) *LAND.*—*The term “land” shall not include submerged land or water.*

(3) *OBJECT OR OBJECTS OF ANTIQUITY.*—

(A) *The term “object or objects of antiquity” means—*

(i) *relics;*

(ii) *artifacts;*

(iii) *human or animal skeletal remains;*

(iv) *fossils (other than fossil fuels); and*

(v) *certain buildings constructed before the date of the enactment of this subsection.*

(B) *The term “object or objects of antiquity” does not include—*

(i) *natural geographic features; and*

(ii) *objects not made by humans, except fossils (other than fossil fuels) or human or animal skeletal remains.*

* * * * *

DISSENTING VIEWS

H.R. 3990 is a misleading proposal designed to undermine the Antiquities Act and establish barriers to future national monument designations. Chairman Bishop hastily introduced the bill just days before markup in response to the minority's request for information about the Trump administration's review of existing national monuments. Rather than work with Democrats to promote transparency in government, the Chairman chose to steer his bill directly to markup without holding a hearing or providing any other opportunity for public scrutiny.

H.R. 3990 is premised on a series of falsehoods about the Antiquities Act and its legacy of protecting public lands. First and foremost, the bill expressly grants the president the authority to reduce the size of previously designated monuments. The inclusion of this provision in the Chairman's bill is an admission that the president does not currently have this authority. In our view, this admission weakens the legality of the president's actions to shrink monuments.

Congress passed the Antiquities Act in response to rampant looting and destruction of archaeological sites on federal land. Since Congress created the authority in 1906, sixteen presidents have used it to designate national monuments, many of which have been validated by Congress and turned into national parks. In fact, Theodore Roosevelt—the law's first champion—designated sixteen national monuments, including the Grand Canyon and Muir Woods.

Despite the well-documented role of the Antiquities Act protecting prominent natural areas, H.R. 3990 rewrites history to redefine future use of the Antiquities Act. Specifically, the bill restricts presidential authority to “objects or objects of antiquity” and expressly excludes natural geographic features, which define many of the visually-stunning monuments that we cherish. Sponsors of the bill claim presidents have drifted from Congressional intent by creating large monuments, but the language and history of the Act state otherwise. The Antiquities Act already provides guidance to determine the appropriate size of monuments and early usage of the Act by former presidents began with the protection of large landscapes. Recent marine monument designations by Presidents George W. Bush and Barack Obama—two of which total nearly 376 million acres—skew the overall average and are not representative of a typical land monument.

H.R. 3990 also subjects future monument designations to the environmental review and public participation requirements of the National Environmental Policy Act (NEPA). This is incredibly disingenuous. Republicans are bending over backwards to short circuit environmental review for any kind of commercial activity—from highway projects to oil and gas developments. To suggest that

monuments designations, which are designed to preserve precious resources for future generations, deserve the same level of scrutiny does not add up, especially when NEPA is applied at the agency level and existing activities are not always affected by designations. Monuments are by no means shielded from public review. Following a presidential proclamation, agencies develop a management plan pursuant to NEPA and go through several rounds of public scoping and review prior to implementation. The public has ample opportunity to participate in monument management and administration.

Furthermore, presidents engage in plenty of public outreach and monument designations are widely supported by the American people. Chairman Bishop would understand the vast amounts of public support for national monuments if he ever held hearings on any of the designation bills referred to the committee. Instead, H.R. 3990 gives local governments veto power over future designations. This completely distorts the intent of the law—Congress created the authority with the understanding that politics can often slow down or otherwise hamper efforts to protect certain special places. Rather than honor that insight, this bill simply relocates the political fight and jeopardizes the future efforts to protect our most treasured resources. This bill is more about erecting barriers to future designation than addressing a lack of transparency in the current designation process.

Plus, nothing stops Congress from adjusting a monument boundary or rescinding it altogether. House Republicans complain about the monument designation process, but it is curious that they never introduce legislation to repeal monuments they claim lack public support. That's because national monuments and the Antiquities Act are extremely popular. For example, a poll conducted by Colorado College found that 80 percent of Western voters support existing monuments. We oppose H.R. 3990 and encourage our Senate colleagues to reject this attack on the future of the Antiquities Act.

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