106TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
106–252

PUBLIC PARTICIPATION IN THE DECLARATION AND SUBSEQUENT MANAGEMENT OF NATIONAL MONUMENTS

JULY 22, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

R E P O R T

together with

SUPPLEMENTAL VIEWS

[To accompany H.R. 1487]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1487) to provide for public participation in the declaration of national monuments under the Act popularly known as the Antiquities Act of 1906, 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 out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. PUBLIC PARTICIPATION IN THE DECLARATION AND SUBSEQUENT MANAGEMENT OF NATIONAL MONUMENTS.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431; popularly known as the Antiquities Act of 1906), is amended—

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

(2) by adding at the end the following:

"(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 declaration; and

"(B) consult with the Governor and 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 declaration.

69–006

"(2) Before issuing a declaration 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 in question, including such public comments as may have been offered.

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

PURPOSE OF THE BILL

H.R. 1487, introduced by Congressman James V. Hansen of Utah, would provide for public participation in the declaration of national monuments under the Act popularly known as the Antiquities Act of 1906.

BACKGROUND AND NEED FOR LEGISLATION

In 1906 Congress passed the Antiquities Act (Act of June 8, 1906, codified at 16 U.S.C. 431). The Act was designed to respond to an urgent need to protect the Nation's archeological sites that were located on public lands. At the time there was no statutory authority for the President to conduct emergency withdrawals of the public domain from entry under the public land laws. The Antiquities Act was specifically designed to allow the President to act quickly, as soon as an archeological site was discovered, to protect it from looting and desecration. As a consequence of this, no public input was allowed on any monument declarations.

While the intent of the Act was to allow the preservation of archeological sites, the language was broad enough to also allow the President to withdraw areas 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 these specific objects.

The legislative history of the Antiquities Act makes clear that the national monument withdrawal power was not intended as a delegation of Congress's power to create national park-type reservations. However, because the Antiquities Act was the only statutory withdrawal power available to the Executive Branch in the early 20th century, several Presidents chose to use the Antiquities Act to create huge national park-type national monuments. For example, President Theodore Roosevelt created the Grand Canyon National Monument using the Antiquities Act. While such withdrawals were clearly outside of the scope of power intended by the Antiquities Act, they were understandable given the fact that other withdrawal powers were not yet statutorily granted to the Executive Branch.

The Antiquities Act served the public well during the first several decades of its existence and several important sites were preserved through Antiquities Act withdrawals. However, since that time Congress has passed numerous laws that protect public lands more fully and by authorizing large-scale executive withdrawals to protect endangered sites. These laws include the Archeological Resources Protection Act, the National Park Organic Act, the Wilderness Act, the Wild and Scenic Rivers Act, the Federal Land Policy and Management Act, and the National Forest Management Act. These laws protect our public lands, and have virtually eliminated the need for the Antiquities Act. In fact, besides some boundary ad-

justments by President Lyndon Johnson, the Antiquities Act has only been used on two occasions in the last 35 years. On both of these occasions—President Jimmy Carter's declaration of 56 million acres of Alaska monuments in 1978 and President Bill Clinton's 1.8 million-acre Grand Staircase-Escalante Utah monument in 1996—the President used the Antiquities Act to thwart public involvement in federal land management decisions. Protection of the land and its resources was available under numerous other laws which would have involved the public and Congress.

President Clinton's creation of the Grand Staircase-Escalante National Monument in September 1996 is a prime example of the need for more public input in national monument decisions. Documents obtained from the Clinton Administration by the Committee show that the monument was being planned for months—yet the Governor of Utah was not informed of the final decision to create a monument until 2:00 A.M. the morning that the proclamation was signed. The documents also demonstrate that the monument was planned as an election year ploy to help President Clinton's reelection campaign. The monument was kept secret until just before the announcement for political reasons and to avoid public input and 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).

This recent monument proclamation, as well as recent rumored efforts to create other large national monuments without public scrutiny, is the impetus behind H.R. 1487. H.R. 1487 is intended to preserve the President's authority under the Antiquities Act, while insuring public input into the process. The American public should be afforded extensive information and time to respond to decisions of such magnitude.

H.R. 1487, as introduced, required that all monument declarations be subject to public review and environmental analysis under the National Environmental Policy Act (NEPA, 42 U.S.C. 4331 et seq.). The bill required the Secretary of the Interior to complete an Environmental Impact Statement on a Presidential national monument proposal prior to the signing of any national monument proclamation by the President. This would have required extensive public input into national monument proclamation decisions and it was hoped that it would have ended the recent spate of secret back-room national monument decisions.

At the hearing on H.R. 1487, the Administration indicated that it was inappropriate to subject the President to the rigors of NEPA. Therefore, in an effort to work with the Administration, the Committee chose to adopt an approach that would amend the Antiquities Act so as to require public participation without actually addressing the NEPA issue. H.R. 1487 as reported from the Committee on Resources requires the President to solicit public partici-

pation and comment while preparing a national monument proposal "to the extent consistent with the protection of historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest located on the public lands to be designated." In addition, H.R. 1487 as reported requires the President to consult "to the extent practicable" with the Governor and Congressional delegation of the State in which the lands in question are located at least 60 days before declaring a monument.

The Committee has several specific concerns regarding these qualifiers. The first is the possibility that a President could still ignore the public consultation and official notice provisions of the Antiquities Act because of ambiguous phrases such as "to the extent consistent" and "to the extent practicable." While such phrases were intended to give the President a certain amount of latitude to cope with unusual circumstances, they were not intended to give the President carte blanche to ignore the provisions of the Antiquities Act, nor were they intended to preclude judicial review if the President does abuse this limited discretion.

The Committee strongly intends that the phrases "to the extent consistent" and "to the extent practicable" should not be interpreted as allowing the President to ignore the public participation and consultation provisions of the Antiquities Act simply because he can point to possible problems that may occur from delay. A certain amount of delay is inherent in a statutory scheme that requires public participation, and subsequent to the passage of this bill, Antiquities Act decisions could take considerably more time to make. The President, however, may not skip the public participation phase simply because it may take time. The President is expected to use other available provisions of law to protect the land if such protection is needed while public participation proceeds. For example, the fact that mining claimants might stake claims within a proposed monument would not give the President the right to forego public participation and consultation. In that case, the appropriate action would be for the President to ask the Secretary of the Interior to conduct a segregation or withdrawal under section 204 of the Federal Land Policy and Management Act (FLPMA) while public debate on the proposed monument proceeds.

The second issue is the nature of public participation that the President is required to allow prior to a national monument declaration. As previously stated, the original bill would have required the preparation of an Environmental Impact Statement pursuant to NEPA. The bill as amended does not address the NEPA issue but comparable public participation is still required. During Committee deliberations on the bill, Congressman Rick Hill (R–MT) expressed the concern that the bill, as amended, did not provide detailed procedures for the President to follow unlike the well-established process under NEPA. It is the Committee's strong intent that the President, subject to a few modifications reflecting the peculiarities of national monument declarations and the intent of this legislation, should follow the same general public participation pattern that the Interior Department follows when preparing Environmental Impact Statements on major land decisions under NEPA. This would include a formal scoping period on the proposal, a draft proposal period, a final proposal period and a record of decision.

The President should also provide at all stages (including scoping) for the dissemination of appropriate information, meaningful hearings, and allow generous comment periods. It is anticipated that the President may delegate the creation and administration of these procedures to an appropriate agency such as the Department of the Interior or the Department of Agriculture.

The Committee also expects any designation process under the Antiquities Act to address pertinent issues that are necessary for meaningful public comment and sound decision-making. This would include:

A description of the historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are to be protected by the proposed monument;

A map of the proposed boundaries of the national monument accompanied by notations describing the location of the objects to be protected;

A statement describing why each particular section of land is needed to protect the objects at issue;

An explanation describing how existing law is or is not operating to protect such objects and describing how national monument status would further such protection;

A statement describing which agency will manage the proposed national monument;

A statement describing how national monument status would affect natural resource uses in the area, including timber harvesting, grazing rights, water rights, wildlife management activities including hunting and fishing, and mineral resource development;

An estimate of whether and by how much national monument status would increase visitation pressure to the area and an estimate as to how such an increase would affect the resources of the area; and

An inventory of all State and private land and any existing private or State rights held on federal land within the boundaries of the proposed monument.

The Gubernatorial and Congressional delegation consultation provisions of H.R. 1487 are straightforward. While it is anticipated that the relevant Governors and Congressional delegations will be engaged in the dialogue on a national monument proposal throughout the public participation period, once the decision to proceed has been made, the President should formally consult with them at least 60 days prior to the signing of any national monument proclamation. The President should ensure that such consultation is meaningful and productive, and should adjust the final proclamation to take into account any concerns expressed by Governors and Congressional delegations.

H.R. 1487 also requires the President to consider any information made available in the development of existing plans and programs for the management of the lands in question, including public comments. This provision asks the President to consider such information as an aid to his decision-making process. The President should also make copies of such plans available to the general public during the scoping stage to facilitate constructive public input. If, as is often the case, very few copies of a dated management plan

are available, the President should provide for another printing of such plan, including maps, to facilitate distribution of the plan to the public to aid in the scoping process.

Finally, H.R. 1487 would require any subsequent management plans developed for a national monument to comply with NEPA. The fact that the President has gone through an extensive public input process on the decision whether to declare a monument should not be interpreted to replace the NEPA/public input process that will be associated with the subsequent management plan.

COMMITTEE ACTION

H.R. 1487 was introduced on April 20, 1999, by Congressman James V. Hansen (R–UT). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on National Parks and Public Lands. On June 17, 1999 the Subcommittee held a hearing on the bill, where the Administration testified in opposition. On June 24, 1999, the Subcommittee met to mark up the bill. Subcommittee Chairman Hansen offered an amendment in the nature of a substitute clarifying that the Secretary of the Interior (not the President) would do NEPA work on monument proposals. The amendment also removed some procedural hurdles, allowed the President to issue a proclamation as soon as the signing of a NEPA record of decision, deleted language that the Administration felt pre-judged NEPA threshold questions, and allowed for a withdrawal extension. The amendment was adopted by voice vote. The bill was then ordered favorably reported to the Full Committee by a roll call vote of 10–8, as follows:

106th Congress
Subcommittee on National Parks & Public Lands

RECORDED VOTES

Date: 6-24-99 **Time:** 10:00

Bill Number/Subject Matter: HR 1487

Amendment Number_____ **Offered By:**_____

Roll Call: **Passed:** 10-8 **Defeated:**_____ **(Forwarded to Full Cte)**

Republicans	Yea	Nea	Present	Democrats	Yea	Nea	Present
Hansen	X			*Romero-Barceló*		X	
Gallegly	X			*Rahall*			
Duncan	X			*Vento*		X	
Hefley				*Kildee*		X	
Pombo				*Christian-Christiansen*			
Radanovich	X			*Kind*		X	
Jones	X			*Inslee*		X	
Cannon	X			*Tom Udall*		X	
Hill	X			*Mark Udall*		X	
Gibbons	X			*Crowley*		X	
Souder	X						
Sherwood	X						
Total Republicans	10			*Total Democrats*		8	

On June 30, 1999, the Full Resources Committee met to consider the bill. Congressman Bruce Vento (D–MN) offered an amendment in the nature of a substitute which required the President to solicit public participation and comments and confer with a State's governor and Congressional delegation 60 days prior to signing any monument declarations. Delegate Robert Underwood (D–Guam) offered an amendment to the Vento amendment which clarified that consultation requirement also extended to territories as well as States. The Underwood amendment was adopted by unanimous consent. After lengthy debate on the intent of the language, the Vento amendment, as amended, was adopted by voice vote. The bill as amended was then ordered favorably reported to the House of Representatives by voice vote.

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 bill.

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.

3. Government Reform Oversight Findings.—Under clause 3(c)(4) of rule XIII of the rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

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, July 16, 1999.

Hon. DON YOUNG,
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. 1487, a bill to provide for public participation in the declaration of national monuments under the act popularly known as the Antiquities Act of 1906.

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. 1487—A bill to provide for public participation in the declaration of national monuments under the act popularly known as the Antiquities Act of 1906

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. 1487 would amend this act to require that the President solicit public participation and comment and consider information available from existing management plans and programs in the development of national monument declarations. The bill also would require that management plans for national monuments developed subsequent to a declaration made under H.R. 1487 comply with the procedural requirements of the National Environmental Policy Act of 1969.

CBO estimates that implementing this legislation would not have a 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. 1487 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 is Megan Carroll. This estimate was approved by Paul N. Van de Water, 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 omit-

ted 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

(POPULARLY KNOWN AS THE ANTIQUITIES ACT OF 1906)

CHAP. 3060.—AN ACT For the preservation of American antiquities.

* * * * * * *

[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.

(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 declaration; and

(B) consult with the Governor and 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 declaration.

(2) Before issuing a declaration 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 in question, including such public comments as may have been offered.

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

SUPPLEMENTAL VIEWS

As the author of the amendment that was adopted by the Resources Committee and which now serves as the amended text of HR 1487, I believe it is useful to elaborate on the purpose and intent of my amendment.

Over the past 90 years, the Antiquities Act has been used by fourteen Presidents a total of 105 times to protect such natural, historic and scientific treasures as the Grand Canyon, Death Valley, Carlsbad Cave, the Statue of Liberty, and Thomas Edison's laboratory. The language of HR 1487, as introduced, would have seriously undermined a President's authority to protect important public lands and resources under the Antiquities Act by placing unprecedented conditions on Presidential action subject to the National Environmental Policy Act. The delays and ambiguities caused by the provisions of HR 1487 would have placed unreasonable hurdles to the use of an important law that has protected significant aspects of our national heritage.

The serious problems with HR 1487 generated strong opposition to the proposal from the Administration as well as conservation and historic preservation organizations. In light of this long controversy concerning the Antiquities Act, I initiated discussions with Subcommittee Chairman Hansen to see if a way could be found to address the bill's serious shortcomings in such a way as to maintain the important authority of the President to act when necessary to protect public lands and resources while still providing for public participation and consultation when appropriate and practicable. The result of these discussions was the sound amendment adopted by the Full Committee.

The language of the Vento amendment is clear. There will be public participation and comment, as well as consultation on a monument declaration to the extent consistent with the protection of the resource values of the public lands to be designated. We can all be for public involvement in a monument declaration but this cannot be used to tie the President's hands in dealing with threats to the nationally significant resources found on our public lands. We cannot open the door to those who would use such a public participation process as a cloak to hide behind while they thwarted the protection of significant public resources. That is why the amended bill retains the authority of the President to act and act quickly to protect these resource values.

I recognize the amendment may not be agreeable to all parties. But it seems to me that the language is a reasonable compromise that is responsive to the concerns expressed and that will allow for public participation in most cases while still retaining the ability of a President to use the Antiquities Act to protect public lands. I appreciate the cooperation of Chairman Hansen and his staff, as well as Chairman Young in reaching this agreement which I hope

will settle the controversy that was originally generated by HR 1487 and previous legislative proposals.

BRUCE VENTO.

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