

Statement for the Record
U.S. Department of the Interior
Senate Committee on Energy and Natural Resources
Concerning Three Bills to Amend the Act Popularly Known as the
Antiquities Act of 1906
September 22, 2016

Thank you for the opportunity to provide the views of the Administration on three bills—S. 437, S. 1416, and S. 3317—to amend the Act popularly known as the Antiquities Act of 1906 (“Antiquities Act”).

The Administration strongly opposes these three bills. The Antiquities Act has been used by U.S. Presidents of both major parties for more than 100 years as an instrument to preserve and protect critical natural, historical, and scientific resources on Federal lands for future generations. The authority has contributed significantly to the strength of the National Park System and the protection of special qualities of other Federal lands—resources that constitute some of the most important elements of our nation’s heritage. These three bills, which would limit the President’s authority in various ways, would undermine this vital authority.

S. 437 would require the President to consider proposals for national monument designations subject to the procedural provisions of the National Environmental Policy Act of 1969 (NEPA) and obtain approval from Congress and the state legislature in which the proposed national monument is located prior to designating a national monument. For any new marine national monument located in an exclusive economic zone, additional requirements would have to be met, including submitting a proposal to the governor of each state or territory located within 100 nautical miles of the proposed national monument. The bill would also prohibit any restrictions on public use of marine national monuments in the exclusive economic zone until after a public review period and approval by Congress.

S. 1416 would prohibit the President from reserving any implied or expressed water rights associated with a national monument; water rights associated with a national monument could only be acquired in accordance with the laws of the state in which a monument is located.

S. 3317 would bar the use of the Antiquities Act to extend or establish new national monuments in Utah unless authorized by Congress.

The authority granted to the President by Congress through the Antiquities Act is one of the most important tools a president has to protect and conserve historic and natural resources. It is a tool that this President has not used lightly or invoked without serious consideration of the impacts on current and future generations. The Administration has consistently invited public comment from national, state, local and Tribal stakeholders at meetings in local communities. However, by requiring the formal approval of Governors and legislatures prior to a designation, S. 437 would limit the flexibility of the President to respond to impending threats to resources, and the ability of the President to recognize, protect and preserve areas of incredible importance to the Nation’s heritage. Furthermore, while land management agencies typically use the NEPA process in their development of management plans for new national monuments, NEPA does not

apply to decisions by the President, as provided in S. 437, because the President is not a Federal agency. This would be unprecedented. And S. 3317 would eliminate a critical tool available to protect natural or cultural resources on Federal land in the State of Utah, if those resources were threatened.

With respect to S. 1416, we note that currently the designation of a national monument by presidential proclamation does not alter or affect the valid existing water rights of any party, including any previously reserved rights of the United States. While there are often no federally reserved water rights associated with monument designations, through the establishment of a national monument, the Federal government may reserve unappropriated waters appurtenant to the land to the extent necessary for the requirements and purposes of the monument. Water appropriated through state law that has an earlier priority date to the national monument would retain that priority. By prohibiting a president from reserving water rights associated with a national monument, S. 1416 would limit the ability of a Federal land management agency to maintain the water necessary to protect a monument's resources and meet the needs of visitors.

The Antiquities Act was the first U.S. law to provide general legal protection of cultural and natural resources of historic or scientific interest on Federal lands. After a generation-long effort, President Theodore Roosevelt signed the Antiquities Act on June 8, 1906. The Antiquities Act set an important precedent by asserting a broad public interest in the preservation of these resources on Federal lands. Designations under the Act apply only to Federal lands; they place no restrictions on private property and have not affected valid existing rights.

After signing the Antiquities Act into law, President Roosevelt used the Antiquities Act eighteen times to establish national monuments. Those first monuments included what are now known as Grand Canyon National Park, Petrified Forest National Park, Chaco Culture National Historical Park, Lassen Volcanic National Park, Tumacacori National Historical Park, and Olympic National Park.

Since enactment, sixteen U.S. Presidents, both Republican and Democrat, have used the Act more than 150 times to establish or expand national monuments. The National Park Service currently manages 55 national monuments established by presidential proclamation, including some of our most iconic national monuments such as Devils Tower, Muir Woods, and the Statue of Liberty. The Bureau of Land Management also administers 23 national monuments designated by presidential proclamation (one of which is co-managed with the National Park Service), including Agua Fria (AZ) and Canyons of the Ancients (CO) that preserve significant archeological sites. The Fish and Wildlife Service administers eight presidentially proclaimed national monuments (two of which are co-managed with the National Park Service).

Like his predecessors, President Obama's designations have provided permanent protections for unique historic and cultural sites, incredible natural resources and wildlife habitat. These include, among others, Waco Mammoth National Monument in Texas, Stonewall National Monument in New York, San Juan Islands National Monument in Washington, and Río Grande del Norte National Monument in New Mexico. President Obama's use of the Antiquities Act has been supported by a wide range of stakeholders, including state and local governments, tribes,

business groups, elected officials, community leaders, regional utilities, as well as faith leaders, sportsmen, historians, conservationists, recreation enthusiasts, and others.

Without the President's authority under the Antiquities Act, it is unlikely that many of these special places would have been protected and preserved as quickly and as fully as they were. As Congress intended when it enacted the Antiquities Act, the statute provides the necessary flexibility to respond to impending threats to resources, while striking an appropriate balance between legislative and executive decision making.

These bills, S. 437, S. 1416, and S. 3315, would severely limit the historically-affirmed presidential authority to protect the Nation's resources for the American public and their children, and such a weakening of the President's authority would be contrary to the Antiquities Act's spirit and protective purposes.

The Antiquities Act has a proven track record of protecting significant Federal lands and waters and the unique cultural and natural resources they possess. These monuments have become universally revered symbols of America's beauty and legacy. Though some national monuments have been established amidst controversy, who among us today would dam the Grand Canyon, turn Muir Woods over to development, or deny the historic significance of Harriet Tubman's struggle against slavery? These sites are much cherished landscapes which help to define the American spirit. They speak eloquently to the wisdom of retaining the Antiquities Act in its current form.