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MEMORANDUM

TO: INTERESTED PARTIES

**FROM: KAREN BUDD-FALEN
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RE: DOUBLE NATIONAL MONUMENTS?

Below please find some information that I hope you will find useful relating to local government influence of federal land management decisions, including management of the new proposal by President Obama to almost double the acreage in National Monuments.

On April 16, 2010, the Obama administration held a White House conference as a first step in its plans for the America's Great Outdoors initiative. While this conference was touted as providing a chance for all viewpoints to be voiced in order to create a comprehensive conservation plan for public lands in the United States, an Interior Department document leaked on February 14, 2010 shows that the Obama Administration is also seeking to limit access and use to over 10 million acres of land in the West, by possibly designating 14 new National Monuments under the Antiquities Act. While the designation of National Monuments is technically supposed to only include the minimum amount of land necessary to preserve America's "antiquities," in reality, in recent years these designations have been significantly larger and have had a severe negative impact on the tax base on many Western communities and counties. But because National Monuments are designated under the Antiquities Act pursuant to an Executive Order by the President, there is not much legal recourse in opposing the designations themselves in federal court.

Even without Obama's proposed designations, currently there are 100 National Monuments across the Nation, located in 27 states. President Teddy Roosevelt established the first National Monument, Devils Tower in Wyoming in 1906. President Bill Clinton created the most National Monuments, 19 plus the expansion of three

existing monuments. Only Richard Nixon, Ronald Reagan and George H.W. Bush did not create any new monuments under the Antiquities Act. Over 12,091,930 acres are included in these 100 existing Monuments; President Obama's proposal would add 10,000,000 acres more to that total.

The question is what can be done by local counties and communities to protect their economies, environment and citizens when more and more land is "saved" from the people who care about the land. There is a serious misconception by elite bureaucrats and radical environmental groups that those who live on the land are destroying the land. Being a bureaucrat in Washington D.C. does not make them an expert in land management; just as someone belonging to a radical environmental group that claims to care about the planet, does not make their loud claims valid. Who better understands the neighborhood than the people who live there—whether that neighborhood is a city block in Chicago, a farm in Iowa or a ranch in New Mexico. Local opinion and knowledge should not be discounted just because there are more people on your block in New York than on mine in Wyoming.

If rhetoric wins over common sense and more land is "saved" from the people who live there, there are ways for local governments to protect their tax base and economic stability – namely through active participation in the federal decision-making processes. Specifically, statutes like the National Environmental Policy Act ("NEPA"), the Federal Lands Policy and Management Act ("FLPMA"), and the National Forest Management Act ("NFMA") require that the federal government proactively seek the input of local governments before the federal agency can make substantive decisions. Additionally, regulations governing the U.S. Forest Service ("USFS"), the Bureau of Land Management ("BLM"), and the Fish and Wildlife Service ("FWS") require that the federal agencies, at a minimum, notify and additionally coordinate with local governments to develop federal land use plans. These statutes allow local governments to take an active role in influencing federal decisions, should the local government decide to accept that role. Consider the following statutory requirements:

The NEPA mandates that the federal government consider the "environmental impacts" of all federal decisions. If there is an environmental impact, the federal government also has to consider the economic, local tax base and social impacts of the decision as well. Local governments can influence these deliberations as active participants, by developing alternatives to the federal decision, preparing or reviewing economic or environmental studies and forcing federal agencies to substantively respond to local plans and policies. The question is whether the local government is willing to enforce its rights under federal law and regulation.

As another example, U.S. Forest Service ("USFS") regulations specifically invite local governments to participate in and to influence regional and forest-wide land use plans including plans for management of National Monuments. The regulations require, at a minimum, participation by local governments in the development of the federal land use plan and the USFS's selection of a preferred alternative. Additionally,

the USFS is required to review, and coordinate with, the regional and local planning efforts of state and local governments. The review must include consideration of the explicit objectives in the local land use plans and policies, an assessment of the inter-related impacts of these plans and policies, a determination of how each USFS plan should deal with any impacts on the local land use, and consideration of alternatives should there be conflicts between the federal plans and the local land use policies and plans. Finally, the affect of the final federal land use plan must be monitored to evaluate the effects of local land use plans on National Forest lands, and vice versa. These coordination regulations ensure that the local environmental and economic needs are being met, even through federal land use decisions.

Federal law also provides opportunities for local governments to participate in, and to influence BLM land use policies, plans and programs. The BLM regulations require the agency to be kept apprised of all state and local land management plans, to ensure that appropriate consideration is given to these local land use plans in the development of federal resource management plans. Additionally the BLM must take all practical measures to resolve any inconsistencies between the federal and local land use plans while providing early involvement of the local governments in the federal decision-making process, again including National Monument management. Thus, the BLM is required to give advance notice of any preparation, amendment or revision of a resource management plan to the state and local governments, in order to ensure the earliest possible coordination with them. The BLM regulations also require consistency between the federal and local land use plans, so long as the local government timely notifies the BLM of any such inconsistencies. Once the BLM is notified of any inconsistencies between the federal and local land use plans, the agency must consider alternatives to alleviate the problem.

The importance of federal land use and resource management plans cannot be overlooked – these plans govern all federal decision making, including decisions regarding uses on federal lands. By local governments taking an active role in federal decision making processes, which may include having a local land use plan in place, local governments will be able to influence federal decision making processes. Federal agencies are required to coordinate with local governments, but local governments must be willing to be active participants in that process. Will the Great American Outdoor Initiative and almost doubling the amount of land in National Monuments be “saved” from the American public or managed, with local input, “for” the American public?

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