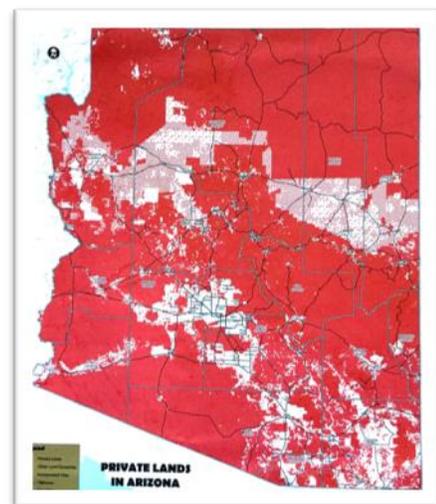
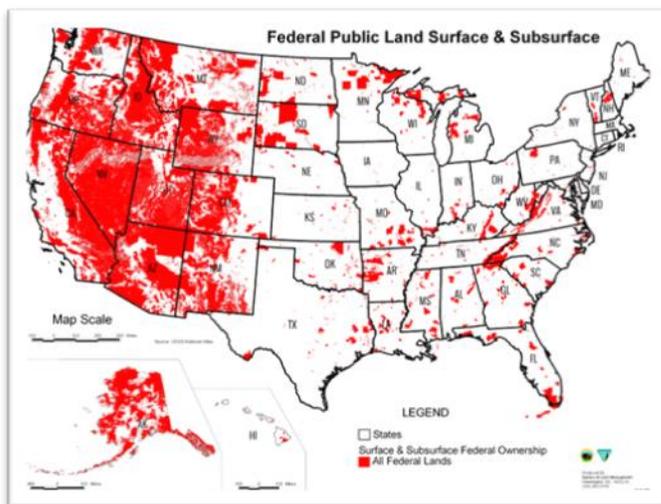


## Opposition to National Monuments within Arizona

The State of Arizona is opposed to the creation of the proposed 1.7 million acre Grand Canyon Watershed National Monument (GCWNM), and any other new or enlarged National Monument within Arizona.

The GCWNM is opposed by: 39 bipartisan Arizona State House and Senate members, 25 members of the U.S. House of Representatives including the majority of Arizona Congressmen, both U.S. Senators McCain and Flake, the Arizona Game and Fish Department and its Commission, Arizona city and county elected officials, members of the Arizona Havasupai and Navajo Tribes, and over 60 wildlife, recreational and agricultural organizations. <sup>11</sup>

Nearly 81 percent (59.7 million acres) of land within Arizona is already under the control of the United States (see the red areas in the BLM and AZ state maps below), including National Monuments, National Parks, National Forests, Bureau of Land Management, military, tribal, U.S. Fish and Wildlife, Wilderness restrictions and special land use designations. The GCWNM will withdraw 1.7 million additional acres from multiple-uses, such as recreation (hiking, camping, hunting, fishing), agriculture (farming, ranching, grazing), mining and development.



Only about 18 percent of the 73 million acres of land within Arizona is in private ownership, and thus paying taxes for public education and other needed government services. This places Arizona and the other western states at huge fiscal disadvantages, in comparison to the eastern states that have very small percentages of their land under the control of the United States.

## Executive Summary of the Facts

The following includes many of the reasons why the United States cannot and should not create the GCWNM and other new National Monuments:

- It is a contractual breach by the United States of the terms of Arizona's Enabling Act, which stipulates that a portion of the revenue from the State Trust land be used for public education (the beneficiaries.) The existing and newly proposed National Monuments encumber almost 162,000 acres of Arizona State Trust land, which violates the terms of Arizona's Enabling Act and financially punishes Arizona public education <sup>4</sup>
- None of the Arizona Legislatures (as required by Article I, Section 8, Paragraph 17 of the U.S. Constitution), Governors, or any voter referendum has ever approved the creation of any of the National Monuments or National Parks created within Arizona <sup>2</sup>
- It will encumber 1.7 million more acres of land within Arizona (an area larger than the States of Delaware and Rhode Island combined), including the unconstitutional seizing of over 62,000 acres of additional State Trust land, 7,000 acres of private land, and vast amounts of contractually leased public land. The perimeter fence alone will be greater than the distance between Washington D.C and New York City, approximately 206 miles long
- It will lock-up vast natural lumber and mineral resources, including gold, silver, copper, and what is believed to be the largest and richest uranium deposits in the world, a resource that has been called "the most significant of strategic minerals." The National Materials and Minerals Policy Research and Development Act of 1980, TITLE 30 CHAPTER 28 § 1601 begins by stating "The Congress finds that (1) the availability of materials is essential for national security, economic well-being, and industrial production." Encumbering this important resource would be devastating for the United States, especially in light of the recent revelation that under Secretary of State Clinton, the Russians have gained control over 20 percent of the United States Uranium <sup>10</sup>
- GCWNM was not proposed in compliance with FLPMA (Federal Land Policy and Management Act) or NEPA (National Environmental Policy Act), and its creation lacks transparency, public involvement and a full accounting of all impacts to multi-users including outdoor recreational enthusiasts. It specifically harms Arizona's authority to manage wildlife (including threatened and endangered) and their associated habitats <sup>1</sup>
- Use of the Antiquities Act of 1906 <sup>3</sup> for the creation of National Monuments within the states is in violation of the U.S. Constitution:
  1. Article I, Section 8, Paragraph 17: use of state land by the United States must be for enumerated uses and "purchased by the consent of the legislature of

the state". Arizona has never approved or has been compensated for the State Trust land encumbered within the National Monuments. <sup>2</sup>

2. The Fifth Amendment: "No person shall... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation," which has occurred repeatedly to Arizona State Trust, private and contractually leased public land <sup>7</sup>
  3. Article 4, Section 4: citizens are constitutionally guaranteed a "Republican Form of Government" within the states, which is violated whenever an individual enters Federally controlled Arizona lands <sup>8</sup>
  4. The Antiquities Act is unconstitutional because it grants the President with entirely new powers that are not enumerated and are not in Pursuance of the Constitution (the Supremacy Clause, Article VI, Clause 2.) The U.S. Constitution does not grant Congress with the enumerated power or authority to enact these new Executive powers, which are clearly not in pursuance of the Constitution, but are in fact in direct conflict with it (Article I, Section 8, Paragraph 17.) In order for the Act to be considered Constitutional, a new amendment is required that would define "National Monuments" and "National Parks" as enumerated uses of land within a state by the United States, and would provide the President with these new powers claimed within the Act: to seize land within a state for use by the United States without the consent of the state legislature and without just compensation. <sup>3</sup>
- The GCWNM, and the current National Monuments, violate multiple provisions of the Antiquities Act of 1906 which is used as the instrument for the unlawful seizure of huge amounts of State Trust, private and contractually leased public land <sup>3</sup>
  - It violates the doctrine of the Equality of States: The United States currently controls 59.7 million acres (81 percent) of land within Arizona. This includes 3.7 million acres within 22 National Monuments and Parks, which have already encumbered almost 100,000 acres of State Trust land, and countless acres of private land and contractually leased public land. The United States only pays PILT (Payment in Lieu of Taxes) at an annual average of about 59 cents per acre, but unlike all other private landowners, the United States does not pay assessed property taxes on any of the 59.7 million acres of land it holds within Arizona. This massive inequity in the Federal control of state land does not exist within the eastern states, and it dramatically harms our city, county and state government's ability to fund education and basic public services. <sup>9</sup>
  - It again violates the doctrine of the Equality of States: Arizona currently has the largest number of National Monuments (22) created with the second largest number of acres (3.7 million.) There are grave inequalities between western and

eastern states. There are almost 5 times more National Monuments in the western states (W=102, E=23), the total number of acres of National Monuments in the western states is 879 times larger (W=71,200,000 acres, E=81,000 acres), and the average number of acres within each National Monument in the western states is 189 times larger (W=698,337 acres, E=3,523 acres).<sup>9</sup>

- It will end multiple-use lands within the GCWNM, including access, conservation efforts and wildlife-related recreation, wildlife population augmentations, wildlife habitat manipulations and enhancements, wildlife water development and maintenance, and hunting and fishing access<sup>1</sup>
- It has huge potentially negative economic impacts: fishing, hunting and recreation generates \$1.2 billion in spending, creating an economic impact of \$2.1 billion to the State of Arizona annually, supporting more than 18,000 jobs, \$699 million in wages, and generating more than \$132 million in state tax revenue. Arizona's neighbor Utah reports that with the creation of the Escalante-Grand Staircase National Monument, local counties and communities have experienced rural depopulation, a negative impact on public schools, and overall economic losses and negative impacts to the cities, counties and state.<sup>6</sup>

In conclusion, the State of Arizona implores the United States to end its 109-year unconstitutional practice of creating National Monuments within Arizona and the other states, that place land use restrictions on additional acreage within Arizona, and to immediately begin the process of fully returning these lands to the control of each state. Additionally, the United States needs to immediately begin the process of disposing of its vast land holdings within Arizona and the other western states, as it has already done in the eastern states.

The following information is provided in support of the claims made within this document, and are referenced by superscript numerals (see above) to the following numbered items.

### **1. The Findings of the Arizona Game and Fish Department**

The Arizona Game and Fish Department (AZGFD) and its Commission are in opposition to the GCWNM, its special land-use designation, and the resulting impacts on multiple-use lands, including the impacts on access, conservation efforts and wildlife-related recreation. This proposed Presidential Proclamation lacks transparency, public involvement and a full accounting of all impacts to multi-users, specifically the Department's authority to manage wildlife, associated habitat and the impacts to outdoor recreational enthusiasts.

The AZGFD Commission's concerns include:

- The new National Monument has not been proposed in compliance with the Federal Land Policy and Management Act or the National Environmental Policy Act.

- It does not take into consideration traditional uses of the land, which includes recreational opportunities.
- It may further restrict and preclude motorized access for recreational use, wildlife viewing opportunities, disabled hunters and anglers, and the retrieval of downed game.
- It may cause legal ambiguity concerning the ability to properly manage wildlife and wildlife habitat.

An analysis by the AZGFD demonstrates that this new national monument designation can lead to restrictions on proactive wildlife management, including but not limited to:

- Wildlife population augmentations
- Wildlife habitat manipulations and enhancements
- Wildlife water development and maintenance
- Hunting and fishing access

## **2. U.S. Constitutionally: Enumerated Use of State Land by the United States**

According to the U.S. Constitution Article I, Section 8, Paragraph 17, the United States has specific enumerated uses for land within a state that are "purchased by the consent of the legislature of the state." Much of the 59.7 million acres (81 percent) of Arizona land that is currently under the control of the United States does not serve a Constitutionally approved enumerated purpose, including:

- National Monuments
- National Parks
- National Forests
- U.S. Fish & Wildlife Acreage
- Wilderness Areas
- Wildlife Refuges
- National Historic Sites
- Bureau of Land Management (BLM) holdings

## **3. The Antiquities Act of 1906**

The enumerated powers and restrictions of the United States government are defined within the Constitution, and the Tenth Amendment states that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." The Antiquities Act is unconstitutional because Congress does not have the power or authority to grant the Executive Branch of the United States with the power to seize land, a power which is not granted anywhere within the Constitution. In fact, Article 4, Section 3 suggests that Congress only has the power to dispose of land, not to acquire.

The Antiquities Act is also unconstitutional, because it allows for the creation of 'National Monuments,' which are not defined as constitutionally enumerated uses of state land by the United States. In the past 109-years, Congress has never bothered to propose an amendment to the U.S. Constitution that would fix these problems..

Section 2 of the Antiquities Act states “That 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 proper care and management of the objects to be protected: Provided, That when such objects are situated upon a tract covered by a bona fied 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.”

The Act states that those lands that will become National Monuments must be owned or controlled by the government of the United States, which has typically not been the case in much of the lands that constitute the National Monuments created within Arizona. Nowhere within the Act does it suggest that the United States has the authority to seize State Trust land, especially without state legislative approval or just compensation as required by Article I, Section 8, Paragraph 17.

The Act encourages property owners with a “tract covered by a bona fied unperfected claim or held in private ownership” to relinquish their property to the United States, which conflicts with the Fifth Amendment that requires the United States to compensate citizens when it takes property for public use. <sup>7</sup>

However, the Act does state “the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected.” In almost every case, this provision of the Act has been violated by the United States, where the average size of the National Monuments located within Arizona is almost 174,000 acres, clearly not confined to the smallest area as called for within the Act, lands that include Arizona State Trust, private and contractually leased public land.

The United States has not demonstrated a valid justification for the immense 1.7 million acre size of the proposed GCWNM, or in fact the other 22 National Monuments that were created within Arizona. Where is the inventory of each specific individual “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest” to be protected, as called for in the Act? Where is each object located (GPS coordinates), where are the digital photographs of each object, where is the independent peer-reviewed scientific documentation and justification / necessity for protecting each object, how many square feet of land does each object occupy and what is the amount of land (in square feet) that is required for the “proper care and management of the objects to be protected” as called for within the Act?

#### **4. Arizona Enabling Act of 1910 and Public Education Funding**

The creation of National Monuments directly conflicts with Arizona's Enabling Act, which repeatedly refers to the use of State Trust land, and in Section 24 states: "the passage of this Act are hereby granted to the said State for the support of common schools". If the United States creates another National Monument within Arizona, almost 162,000 acres of State Trust land will be financially unavailable for use by the beneficiaries outlined in Arizona's Enabling Act, including public schools and universities. This is a violation, a breach of the contractual terms agreed to by Congress and by the State of Arizona within its Enabling Act, which stipulates that the financial proceeds from the Arizona State Trust land would be used to support public education.

#### **5. National Monuments Located Within Arizona**

The twenty-two National Monuments created within Arizona total 3.7 million acres. The addition of the proposed 1.7 million acre GCWNM would increase Arizona's total National Monument acreage by 146 percent to 5.4 million acres. The total size of National Monuments within Arizona would then exceed each individual size of the states of Massachusetts, New Jersey, Hawaii, Connecticut, Delaware and Rhode Island, an area 127 times larger than Washington DC.

#### **6. Negative Economic Impacts of National Monuments**

According to the Congressional Sportsmen's Foundation, fishing and hunting recreation generates \$1.2 billion in spending and creates an economic impact of \$2.1 billion to the State of Arizona annually. These activities support more than 18,000 jobs, provides residents with \$699 million in salary and wages and generates more than \$132 million in state tax revenue. Our neighbor Utah reports that with the creation of the Escalante-Grand Staircase National Monument, local counties and communities have experienced rural depopulation, a negative impact on public schools, and overall economic losses and negative impacts to the cities, counties and state.

#### **7. Due Process Under the Law**

The seizure of 1.7 million more acres for the GCWNM by Presidential Proclamation is a violation of the State of Arizona and its private citizen's constitutionally guaranteed Due Process rights. The Fifth Amendment states that "No person shall... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

#### **8. Guaranteed Republican Form of Government**

The 59.7 million acres of land currently controlled by the United States within Arizona is a violation both of Arizona state sovereignty and Arizona's constitutionally guaranteed Republican Form of Government (Article 4, Section 4). When within those Federally controlled lands, citizens do not have a voice or vote, they do not have the same liberties that are guaranteed by Arizona outside of those lands, and they have no city, county or state representation.

## **9. Doctrine of the Equality of States**

Arizona's Enabling Act of 1910 states "the proposed State of Arizona shall be deemed admitted by Congress into the Union by virtue of this Act on an equal footing with other States." The Supreme Court ruled (3 Stat. 489, 492 (1819)) concerning the sovereignty and jurisdiction of the States, that inasmuch as the original States retained sovereignty and jurisdiction over the navigable waters and the soil beneath them within their boundaries, retention by the United States of either title to or jurisdiction over common lands in the new States would bring those States into the Union on less than an equal footing with the original States. (<http://law.justia.com/constitution/us/article-4/22-doctrine-of-equality-of-states.html>). The huge 81 percent of land controlled by the United States places Arizona (and the other western states) on an unequal footing with the original States and with the eastern states.

## **10. Arizona Uranium deposits in the proposed GCWNM**

On June 24, 2015, the Arizona State Geologist released its new report "Partial database for breccia pipes and collapse features on the Colorado Plateau, northwestern Arizona" ([http://www.azgs.az.gov/news\\_releases2015.shtml#jun24](http://www.azgs.az.gov/news_releases2015.shtml#jun24)) that found concentrations of breccia pipes 10 to 100 times higher than previously known, in two test study areas. Breccia pipes are the primary targets for uranium and other minerals. The State Geologist believes that the same density of pipes extends across the entire region, which would make the area, that includes the GCWNM, one of the largest and richest uranium districts in the world. For the United States, Uranium has been called "the most significant of strategic minerals." From a safety standpoint, more Uranium flows down the Colorado River from natural erosion (60 tons) than is annually mined worldwide.

## **11. Resolutions, Letters and Opposition to the Grand Canyon Watershed National Monument Include**

- A February 2015 letter in opposition written to the President by 25 members of the U.S. House of Representatives
- A 2015 Arizona State Legislative Concurrent Memorial #1001
- A February 2015 Legislative Resolution from the Arizona State House of Representatives
- A May 2012 Resolution from the Arizona Game and Fish Department Commission
- A March 2015 Resolution from Jim Unmacht, the President of the Arizona Sportsmen for Wildlife Conservation, which includes AZ Deer Association, AZ Outdoor Sports, AZ Big Game Super Raffle, 1.2.3.Go..., AZ Antelope Foundation, AZ Desert Bighorn Sheep Society, Outdoor Experience 4 All, Xtreme Predator Callers, AZ Houndsmen, AZ Flycasters Club, Coconino Sportsmen, AZ Bowhunters Association, South Eastern AZ Sportsmen's Club, Mohave Sportsman Club, AZ State Chapter of National Wild Turkey Federation, AZ Elk

Society, AZ Chapter of Safari Club International, AZ BASS Nation, The BASS Federation, SRT Outdoors, Anglers United, AZ Council of Trout Unlimited

- An April 2015 Resolution from Mayor John Moore and the city council of the City of Williams, Arizona
- An April 2015 Resolution from the Town Council of Fredonia, Arizona
- A letter to The Honorable Sally Jewell, Secretary, U.S. Department of the Interior and to The Honorable Tom Vilsack, Secretary, U.S. Department of Agriculture from Whit Fosburgh, President and CEO of the Theodore Roosevelt Conservation partnership
- A letter to U.S Representatives Grijalva, Kirkpatrick & Gallego from the members of Archery Trade Association, Association of Fish and Wildlife Agencies, Boone and Crockett Club, Camp Fire Club of America, Congressional Sportsmen's Foundation, Council to Advance Hunting and the Shooting Sports, Dallas Safari Club, Delta Waterfowl Foundation, Houston Safari Club, Masters of Foxhounds Association, Mule Deer Foundation, National Association of Forest Service Retirees, National Rifle Association, National Shooting Sports Foundation, National Wild Turkey Federation, North American Bear Foundation, Orion: The Hunter's Institute, Quality Deer Management Association, Rocky Mountain Elk Foundation, Ruffed Grouse Society, Safari Club International, Tread Lightly!, Wildlife Management Institute, Wild Sheep Foundation, Whitetails Unlimited, U.S. Sportsmen's Alliance
- A March 2015 letter to Congresswoman Ann Kirkpatrick from the Arizona Wildlife Foundation
- A March 2015 letter to Congresswoman Ann Kirkpatrick from the Apache County Supervisor Barry Weller
- An April 2015 letter from Steve Clark, Executive Director of the Arizona Elk Society
- A public statement in August 2015 by Mohave County, the Mohave Cattlemen association and the Mohave Sportsmen Club
- Letters sent to Federal officials by the Arizona Cattlemen's Association
- Letters sent to Federal officials by the Arizona Farm Bureau
- Letters sent to Federal officials by President Jim Parks and the Coconino County Cattle Growers & Farm Bureau
- Former Yavapai County Cattle Growers President Andy Groseta
- The members of the Arizona Rock Products Association