



POLICY BRIEF

# The Proposed Grand Canyon Watershed National Monument: A Monumental Mistake?

## Introduction

Arizona has more national parks and monuments than any other state in the country. Between lands owned and managed by the federal government and those it holds in trust for the Indian tribes, almost 70% of all land in Arizona is under the control of the federal government. Privately-owned land is the foundation of our state's economic engine, yet less than 20% of land in Arizona is privately owned. As such, Arizona depends on the multiple use designation of federal lands and a strong state-federal land management partnership for its economic health, and for most of Arizona's history that multiple-use partnership has worked.

President Obama is now considering a proposal to further limit the multiple-use mandate on Arizona's lands by using a more than 100-year old law to designate 1.7 million acres of northern Arizona as the Grand Canyon Watershed National Monument. Until 2012, the majority of those 1.7 million acres were successfully managed under a multiple-use

framework in partnership among state and federal agencies, resulting in effective and productive wilderness, resource, and wildlife management. When the Secretary of the Interior withdrew almost one million acres of Arizona's land from mining development in 2012—a move that was opposed by Senator John McCain and then-Senator Jon Kyl along with other members of Arizona's

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congressional delegation—he upset that framework, undermining the important state-federal partnership that had previously characterized land management in Arizona. The proposed monument designation will even further limit the lands available for multiple use, drastically reducing public access, impeding efficient land management, and representing unwarranted and unwanted federal overreach.

In addition, the proposed monument designation would break the spirit of a historic compromise on wilderness designations and multiple land use policy that culminated in the Arizona Wilderness Act of 1984. The Act, which will be explored in greater detail in a future Foundation paper, designated over 1.1 million acres of wilderness across Arizona and, at the same time, released an additional 540,000 acres of federal land for multiple-use development.<sup>1</sup> The Act represents the “gold standard of stakeholder collaboration and bipartisan compromise,” allowing “sustainable uranium mining to co-exist with the protection of some of Arizona’s most treasured natural resources.”<sup>2</sup> The stakeholders involved in that historic process included the Reagan Administration, members of the Arizona congressional delegation, the State of Arizona, the federal Bureau of Land Management, the mining industry, environmental groups, and others. With respect to the Act’s treatment of federal lands on the Arizona Strip, it was well understood by

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Congress and the stakeholders involved that the low-impact method of breccia pipe uranium mining occurring still today north of Grand Canyon National Park did not threaten the newly created wilderness areas or the Grand Canyon itself. As such, much of the Arizona Strip was excluded from wilderness designation, and all stakeholders involved fully expected that the future development of those lands would be governed by the land management planning process. Moving forward with monument designation now would cast aside that historic compromise and undermine the collaborative state and federal land management process that Arizona has long enjoyed.

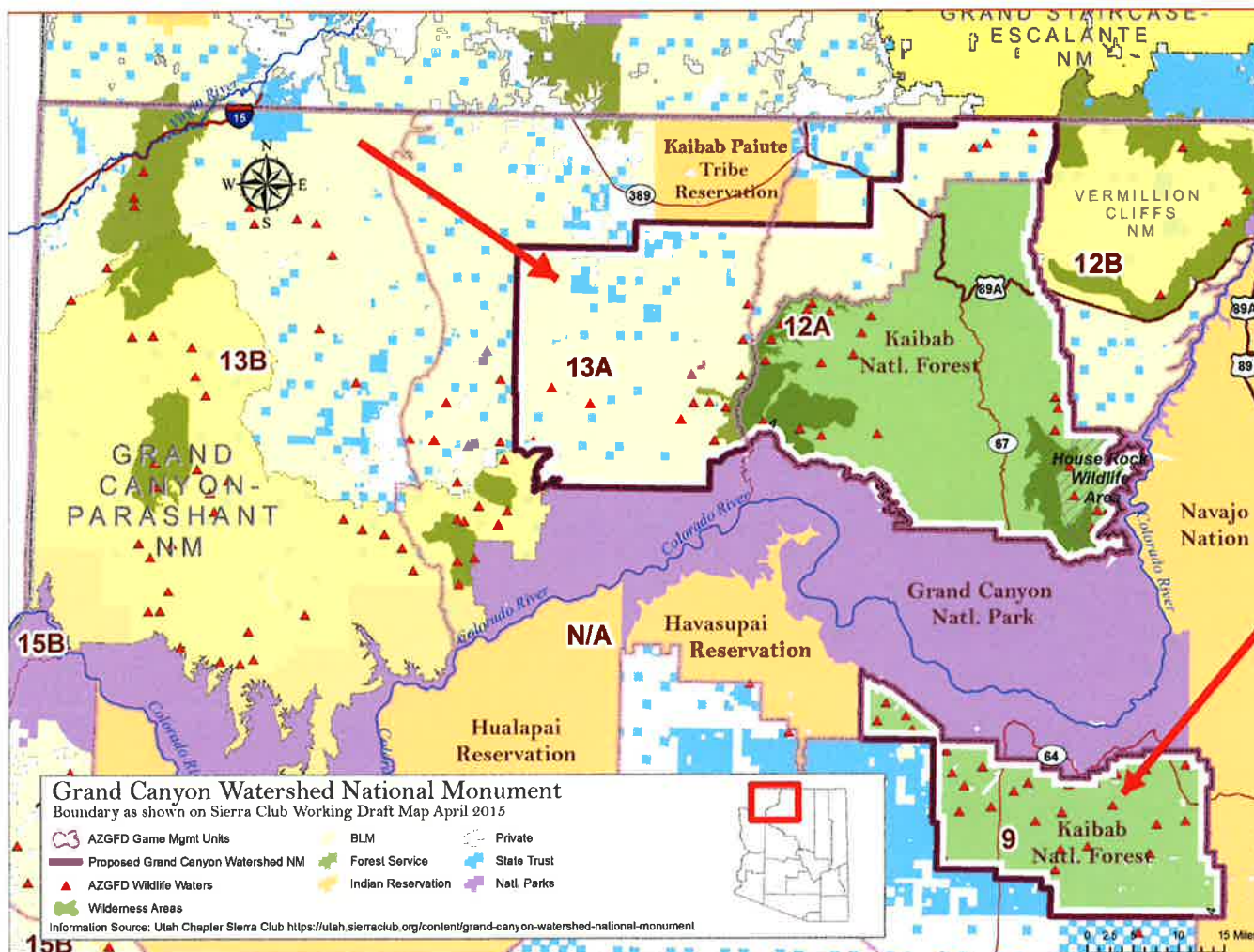
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## I. The Antiquities Act and the Proposed Grand Canyon Watershed National Monument

The Antiquities Act of 1906 authorizes the President to unilaterally proclaim relatively small tracts of land owned or managed by the federal government as national monuments without input from Congress or the affected states. The Act was originally intended to enable presidents to quickly protect federal lands and resources that contain historic landmarks, structures, and objects of

particular scientific or historic interest, and especially to prevent the looting of archaeological and Native American sites.<sup>3</sup>

However, presidential monument designations have long been controversial, for reasons including the size of the areas designated, types of resources they are claimed to protect, inclusion



of nonfederal lands within monument boundaries, and the lack of transparency in presidential designations and limited opportunity for public participation and input, especially from the local community affected.<sup>4</sup> Although the Act requires any monument designation to set aside “the smallest area compatible with the proper care and management of the objects to be protected,”<sup>5</sup> there are few if any checks to ensure that monument designations adhere to this limitation. For example, in 1978 President Jimmy Carter used the Antiquities Act to designate 11 million acres of Alaska wilderness the Wrangell-St. Elias National Monument in the face of fierce opposition by Alaskans, including Alaska Senator Mike Gravel and other state and local leaders.<sup>6</sup>

The proposed Grand Canyon Watershed National

Monument would encompass 1.7 million acres of northern Arizona. This single presidential designation would double the amount of acreage in Arizona designated as a national monument, and would include most of Arizona north of the Grand Canyon and a significant area between Flagstaff and the Grand Canyon National Park boundary.<sup>7</sup> The total proposed monument area is larger than the state of Delaware, which would make it the nation’s second largest on-land national monument.<sup>8</sup> Most lands in the proposed monument designation area are currently managed in a multi-use framework by the Arizona Game and Fish Department in partnership with the Bureau of Land Management and U.S. Forest Service, but the area also includes nearly 64,000 acres of State Trust land and an additional 28,000 acres of privately held land.<sup>9</sup>

## II. Local Agents, Not Those in Washington, Are the Best Stewards of Arizona's Land

Arizona, home of the Saguaro Cactus and Ponderosa Pine, Sonoran Desert and 210 named mountain ranges, is a quintessential western state: characterized by picture-perfect vistas and independent citizens with a long-held appreciation for the outdoors. The western way of life is epitomized in Arizona, where generations have lived, worked, and recreated in harmony with the natural environment. Ranching families that have lived in Arizona since the time of statehood still graze their cattle on Arizona's high grasslands and generations of sportsmen hunt Arizona's elk and deer, working within the confines of Arizona Game and Fish regulations to responsibly manage wildlife to the benefit of all species.

The idea that regulators in Washington are in the best position to exclusively manage Arizona's land and natural resources, without state and local input and collaboration, would sound laughable to most people in Arizona. Yet that is exactly what will happen if President Obama moves forward with the proposed Grand Canyon Watershed National Monument, sweeping nearly 2 million acres of northern Arizona under exclusive federal control with virtually no input, oversight, or involvement from Arizona citizens and their elected representatives.

More controversial policies are imposed when federal authority is augmented or expanded. Because the proposed monument designation represents a particularly aggressive example of federal overreach, the effects of the designation will be amplified. The reintroduction of the Mexican gray wolf by the U.S. Fish and Wildlife Service into regions and landscapes within Arizona that are not part of the wolf's historical range typifies the kind of federal policy imposed by Washington that has proven to have controversial local consequences. The recent toxic waste spill at the hands of the

Environmental Protection Agency into western rivers, including the Animas River in Colorado, is another example of a situation in which unnecessary federal involvement proved problematic. On August 5, 2015, federal EPA agents caused three million gallons of acid mine water and heavy metals to flow into rivers in Colorado, New Mexico, and Utah, threatening Arizona's rivers as well. A report by the Department of Interior found that the incident was both "preventable" and "emblematic" of agencies' inconsistent and deeply flawed approaches to reopening shuttered mines.<sup>10</sup> The EPA has come under fire for its slow response and attempt to downplay the environmental damage, which could ultimately cost taxpayers as much as \$28 billion over the years to remediate.<sup>11</sup> Some, including the Navajo Nation, worry that heavy metals may be present in waterways for decades.

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designation. The consequences of this are heightened by the fact that the National Park Service, which is the branch of the Department of Interior that typically manages national parks and monuments, already struggles to maintain the land under its control, with an estimated shortfall in deferred maintenance of \$11.5 billion.<sup>12</sup> National parks and monuments in Arizona represent nearly \$500 million of that shortfall, with Grand Canyon National Park alone suffering a shortfall of \$329.5 million.<sup>13</sup>

Bringing this huge portion of Arizona's territory, both public and private, under the exclusive

authority and management of a federal agency that is struggling to maintain the land already under its control would only serve to hinder management, conservation, and access, especially given that national parks and monuments under the purview of the Department of Interior are subject to closures due to government shutdowns and budget shortfalls. In addition, a new monument designation primes the area for future, more restrictive designations that will further impede public access and management flexibility, endangering Arizona's precious lands.

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### III. A Monument Designation Will Only Hurt— Not Help—Arizona

As President Reagan once said, the nine most terrifying words in the English language are "I'm from the government and I'm here to help." Although proponents of the Grand Canyon Watershed National Monument designation would say that it is designed to help preserve and protect Arizona, it would do just the opposite. Indeed, presidential designations under the Antiquities Act to create national monuments can represent the worst kind of federal overreach, and this proposed monument designation is no exception. Even the name of the proposed monument is misleading: much of the land included is at great distance from the Grand Canyon, and the proportion of land that actually constitutes real "watershed" is far from clear. Rather than protect Arizona and its resources, this designation would have far-reaching consequences in terms of public access, water rights, and land and resource management.

First, designating the area as a national monument "federalizes" the land, opening the door to new restrictions on use and access for Arizona's cattlemen, sportsmen, and recreating public. Although in general monument proclamations may include protections for valid existing uses, there is no

requirement that they do so. Some monument proclamations have restricted or prohibited existing uses like the harvesting of timber, motorized and mechanized off-road vehicles, and hunting, fishing, and grazing.<sup>14</sup> And while the extent to which valid existing uses may be affected is unclear, the status of new uses is even less certain.<sup>15</sup> Proponents argue that these types of restrictions are necessary to protect the land and its resources and native species, but history has shown that a monument designation can actually hurt local wildlife populations. For example, in 1999 there were more than 100 big horn sheep in what would become the Sonoran Desert National Monument; today there are fewer than 35. The Arizona Department of Game and Fish attributes this population decline to the Department's limited access inside the monument area to provide new and sustainable water sources.<sup>16</sup>

Second, a national monument designation could impact the surface water and groundwater rights in the monument area. While a monument proclamation could be written to ensure that water rights are unchanged by the designation (much in the way a proclamation could protect valid existing land uses),

there is no requirement that the proclamation include language respecting existing water rights. Under federal law, the designation of any new federal land reservation, including a monument, automatically carries with it an implied water right to serve the purposes of that new reservation as of the date of designation. In addition to superseding later created state rights to surface water, this opens the door to more conflicts in Arizona's general stream adjudications, including claims involving the complex interactions between surface and groundwater. And because the broad rights granted to the President under the Antiquities Act to "protect" areas in a national monument designation include the ability to obtain water rights, state and private rights to the watershed in and around the monument area are at risk.<sup>17</sup> Calling the Grand Canyon Watershed National Monument designation an "illegal water grab," Senator John McCain explained, "If the Obama Administration moves forward with this proposed monument, it has the potential to 'federalize' the area's watershed and uproot critical water rights in Arizona."<sup>18</sup> As the Arizona Republic's Editorial Board pointed out, "[w]ater rights in the arid West—especially in times of drought—frequently are underappreciated in Washington, D.C. They can mean the difference between economic life or death. A monument designation could alter the water rights of countless rural enterprises in the area of a Grand Canyon monument."<sup>19</sup>

Third, a national monument designation could undermine the ability to effectively manage Arizona's land and resources, putting forest health at risk and increasing the likelihood that Arizona will experience catastrophic forest fires. Supporters of monument designation argue that a national monument in northern Arizona is necessary to ensure that Arizona's old-growth Ponderosa Pine forests are no longer threatened by commercial logging, but the truth is that commercial-scale logging of old-growth forests in Arizona ended in the 1990s as a result of legal challenges.<sup>20</sup> Instead, catastrophic wildfires—and not commercial logging—now present the greatest threat to Arizona's old-growth forests.<sup>21</sup> A monument proclamation can restrict

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or altogether prohibit the harvesting of timber, so forest thinning, which actually protects old-growth forests, could no longer be counted on as a viable and necessary management tool.

While proponents of the national monument designation argue that it is necessary to prevent uranium mining in the area around the Grand Canyon, scientists within the National Park Service have called the potential environmental impacts of uranium mining in the Grand Canyon region "very minor to negligible."<sup>22</sup>

It is also important to note that uranium mining is essential for the production of nuclear energy, and provides over 60% of the emission-free and carbon-free electricity in the United States. Twenty-first century uranium mining is highly regulated and performed under a comprehensive regime enforced by federal, state, and local authorities including the Bureau of Land Management, the Forest Service, the U.S. Environmental Protection Agency, and the Arizona Department of Environmental Quality, to ensure compliance with environmental standards. Access to federal lands for mineral exploration and development is critical to maintain a strong

domestic mining industry, and these lands historically have—and will continue to—provide a large share of the metals and hardrock minerals produced and used in this country. Although a monument designation may preserve valid existing mining claims, this important source of carbon-free energy would be significantly diminished since siting an actual mining operation within a national monument would be operationally and socially impossible.

Proponents of the national monument also argue that the designation is necessary to protect archaeological sites and sacred Native American land (which is already protected), but the proposed monument area encompasses far more land than is necessary to do that.

What's worse, the supposed economic benefits claimed by proponents may be illusory. Although proponents have claimed that a national monument designation would strengthen and expand economic growth in the region, there is empirical evidence indicating such a designation results in no

stimulus for local economies and, in some cases, negative economic impacts.<sup>23</sup> A study conducted by professors at Utah State University concluded that land protection through monument designations does not automatically result in net positive economic impacts;<sup>24</sup> this makes sense, given that a national monument designation typically entails additional land-use restrictions, limitations or outright bans on commercial development, grazing, the harvesting of timber, and off-road vehicles, and can even include bans on new or existing activities.<sup>25</sup> Such restrictions on land use invariably have significant and far-reaching consequences for job creation and economic growth far beyond the monument's region.

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## IV. Inclusion of Non-Federal Land: Implications for Arizona's State Trust Land and Private Landholders

Although the Antiquities Act technically only applies to lands "owned or controlled" by the federal government, the Act states that property "may be relinquished to the Government" where the object of preservation is situated on private land.<sup>26</sup> It is unclear whether relinquishment may be accomplished only through voluntary agreement between the parties or via forced condemnation.<sup>27</sup> Importantly, even if the technical ownership of the land does not change as a result of a monument designation (i.e. the federal government does not actually acquire title to the land), rights of private landholders, including state entities, may nevertheless be affected; plots of privately held land may be completely surrounded by monument land thus cutting off or

limiting access and use, and development rights may be eliminated or constrained where development becomes incompatible with the purpose for which the monument was created.<sup>28</sup>

In the case of the proposed Grand Canyon Watershed National Monument, the implications for state landholders are significant. Of the 1.7 million acres in the proposed monument, roughly 64,000 acres are part of Arizona's State Land Trust.

Protecting State Trust land is more important now than ever in light of Proposition 123, which is expected to appear on Arizona's ballot in May 2016. Thanks to land grants laid out in Arizona's statehood

enabling act and subsequent acquisitions, the State of Arizona holds roughly 9 million acres in trust for a variety of beneficiaries; just over 8 million acres are held in trust specifically for the benefit of Arizona's "common schools" (i.e. k-12 education).<sup>29</sup> The Enabling Act is clear that State Trust land may only be disposed of (through sale, lease, grazing permits or otherwise) in a way that serves the best interest of the trust, and even then only in accordance with specific guidelines.<sup>30</sup>

Arizona's State Land Department and State Treasurer actively manage the Trust land and revenues for the benefit of Arizona's schools. Proposition 123, if passed by voters, will amend Arizona's Constitution to increase Land Trust distributions to 6.9% for 10 years, providing an additional \$2 billion in Land Trust revenue over that time for Arizona's schools and helping to settle a long-standing lawsuit over school funding.<sup>31</sup> By locking up 64,000 acres of State Trust land, the national monument would deny their beneficial use to the State Land Trust and its beneficiaries. Without any discussion of compensating the Trust for essentially taking 64,000 acres of Trust land, the amount of money available to fund education in Arizona will be reduced. This has the potential to set a precedent for the future treatment of State Trust land, with far-reaching implications for trust beneficiaries and the funding of education in Arizona.

The implications for private landholders are no less significant. The proposed national monument area encompasses 22,000 acres of private land. Even if private landowners retain title, their rights to access, use, develop, and transfer their property will almost certainly be affected.<sup>32</sup>

Advocates for the monument say that private landowners will still have access to their land, and that water rights and activities like hunting, fishing, recreation, and forest management would continue unchanged.<sup>33</sup> Unfortunately, there is nothing in the Antiquities Act to ensure this is the case. There is no specific language the President must use to designate a national monument through an executive

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order, and no requirement that the President provide language for potentially affected states or parties to review in advance of designation. Given that the name of the proposed monument includes the word "watershed," there is reason to believe water rights may be implicated. While President Obama could include language in his executive order specifically reserving and protecting private property and water rights, there is nothing that obligates him to do so, and he has provided no indication that he will. Absent protective language in the designation itself, there is no guarantee that private land use and water rights will be protected.

Arizona's state land and wildlife management agencies are diligently working with the public to manage Arizona's land and resources for the benefit of its residents and native species. These agencies and their efforts should be supported, not overruled, by a presidential declaration without public input. Arizona's State Land Department actively manages over nine million acres of state land held in trust and managed for the sole purpose of generating revenues its beneficiaries, and Arizona's Game and Fish Department, which manages everything from off-highway vehicles to hunting, fishing, recreation, wildlife, and conservation efforts, already works in close partnership with the U.S. Forest Service and Bureau of Land Management. A national monument designation would diminish their ability to manage the resources under their purview, would limit hunting and recreation, delay projects, boost costs, expose the agencies to increased legal challenges,<sup>34</sup> and diminish the value of State Trust land that is essential to Arizona's education funding framework.<sup>35</sup>



## IV. Protecting Arizona from Unnecessary and Overly Restrictive Federal Policies

The Antiquities Act is just one part of a federal legal regime that is both unnecessary and overly restrictive in its treatment of land use. This regime—the scope of which will be explored more fully in a future Foundation paper—allows for myriad regulatory abuses, the effects of which are far-reaching not just for land management and property rights but for mining, economic development, and interstate commerce.

Designation of the Grand Canyon Watershed National Monument pursuant to the Antiquities Act is just one manifestation of this regime, but the likely effects are illustrative of the larger problem. Without action, 1.7 million acres of northern Arizona may soon be under the exclusive jurisdiction of the Department of Interior in Washington, D.C., upsetting the existing federal-state land management partnerships, with all the attendant consequences that brings.

There are now several different efforts underway to protect Arizona's land and preserve states' rights from the proposed monument designation. Each would require more transparency, congressional oversight, and public input in the national monument designation process.

The first is a bill introduced by Senator Mike Crapo of Idaho, called The National Monument Designation Transparency and Accountability Act (S. 228), that would limit the President's unfettered discretion in designating national monuments by requiring Congress to approve new national monuments within two years of establishment, and only after determining "that the state in which the monument is to be located has enacted legislation approving its designation."<sup>36</sup> In the absence of congressional approval, new monuments would revert to their previous status. Senator Crapo's bill would also ensure that any restrictions placed on public lands

are narrowly tailored and essential to the proper care and management of the objects protected by a monument designation, thereby ensuring better conformity with the guidelines in the Antiquities Act and better respecting states' rights and interest in the management of their own lands.<sup>37</sup>

The second effort, an amendment introduced by Congressmen Paul Gosar of Arizona and Cresent Hardy of Nevada, is a so-called "targeted county approach" that prohibits public land management agencies from carrying out declarations under the Antiquities Act in counties where there is significant local opposition. The Gosar-Hardy Amendment (H.R. 2822), which passed the U.S. House of Representatives by a vote of 222-206 in July 2015, also specifically prohibits pending presidential national monument designations in specified counties,

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### S. 228

The National Monument Designation Transparency and Accountability Act

### H.R. 2822

Gosar-Hardy Amendment

### S. 1416

"A bill to amend title 54, United States Code, to limit the authority to reserve water rights in designating a national monument."

including Mohave and Coconino in Arizona and various counties in California, Colorado, Nevada, New Mexico, Oregon, and Utah.<sup>38</sup>

A measure introduced by Arizona Senators Jeff Flake and John McCain, along with Senators Orrin Hatch and Mike Lee of Utah, represents a third effort and focuses on the impact on water rights of federal monument designations, limiting the ability of the Administration to change existing water rights without an act of Congress. Currently, the President has the ability to unilaterally expand the federal reserved water rights associated with existing federal lands through monument designations because such declarations limit public access and change the water rights associated with the land. This measure would restrict the type of water rights that are associated with a monument when it is designated without congressional approval, ensuring that the President cannot conduct “water grabs” by unilaterally expanding federal water rights.<sup>39</sup>

Each of these efforts, if enacted, would help protect Arizona, and all represent good public policy. However, none are likely to become law. The best solution for Arizona—and every other western state that faces a similar threat from Washington—is, instead, a grassroots movement that, with the help of state governors, attorneys general, and state land managers across the Southwest, conveys opposition to the President and federal legislators in Washington. Every Arizonan should be outraged that the President is contemplating a unilateral move that would take private property, State Trust land, and Arizona’s unique resources and lock them up under federal control without any respect for the public process, private property rights, or the livelihood of the people and communities who work and live here. Citizens across the Southwest must channel this outrage to the benefit of all western states by making their opposition to these types of Antiquities Act designations known.

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## Conclusion

The federal government already owns or controls 70% of the land in Arizona. The best way to protect Arizona’s land and natural resources is to enact good public policies that entrust the care of those resources to the people who know the land best—those here in Arizona. The proposed Grand Canyon Watershed National Monument, if enacted, typifies the type of abuse and federal overreach long perpetrated under the Antiquities Act. Although the Act is intended to allow designations to quickly protect an area in danger and requires the designation of the smallest area possible, there is little oversight or transparency—and no public involvement by the communities affected—to ensure that these requirements are met. Simply put, a new national monument designation in Arizona would further restrict public access to Arizona’s wilderness areas, impede active forest, wildlife, and resource management, and risk jeopardizing

Arizona’s natural resources by placing them under the custody of an agency already experiencing a multi-billion dollar budget shortfall. As President Theodore Roosevelt once said, “Wildlife and its habitat cannot speak, so we must and we will.”

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## The Following Local and National Leaders and Organizations Oppose the Designation of the Grand Canyon Watershed National Monument:

Arizona Governor Doug Ducey  
Arizona Attorney General Mark Brnovich  
Senator John McCain  
Senator Jeff Flake  
Congressman Paul Gosar  
Congressman David Schweikert  
Congressman Trent Franks  
Congressman Matt Salmon  
The Honorable Jon Kyl  
Arizona State Land Commissioner Lisa Atkins  
Arizona Speaker of the House David Gowan  
Arizona State Senate President Andy Biggs  
Arizona State Senator Gail Griffin  
Arizona State Senator Steve Pierce  
1.2.3.Go...  
Anglers United  
Archery Trade Association  
Arizona Antelope Foundation  
Arizona BASS Nation  
Arizona Big Game Super Raffle  
Arizona Bowhunters Association  
Arizona Cattlemen's Association  
Arizona Chamber of Commerce and Industry  
Arizona Chapter of Safari Club International  
Arizona Council of Trout Unlimited  
Arizona Deer Association  
Arizona Desert Bighorn Sheep Society  
Arizona Elk Society  
Arizona Farm Bureau  
Arizona Flycasters Club  
Arizona Game and Fish Commission  
Arizona Houndsmen  
Arizona Manufacturers Council  
Arizona Mining Association  
Arizona Outdoor Sports  
Arizona Sportsmen for Wildlife Conservation  
Arizona State Chapter of National Wild Turkey Federation  
Association of Fish and Wildlife Agencies  
Association of Wildlife Conservation Partners  
Boone and Crockett Club  
Bullhead City Town Council  
Camp Fire Club of America  
Coconino Sportsmen  
Congressional Sportsmen's Foundation  
Fredonia Town Council  
Masters of Foxhounds Association  
Mohave County Board of Supervisors  
Mohave Sportsman Club  
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  
Outdoor Experience 4 All  
Quality Deer Management Association  
Rocky Mountain Elk Foundation  
Ruffed Grouse Society  
South Eastern Arizona Sportsmen's Club  
SRT Outdoors  
The BASS Federation  
Tread Lightly!  
Tusayan Town Council  
U.S. Sportsmen's Alliance  
Whitetails Unlimited  
Wild Sheep Foundation  
Wildlife Management Institute  
Williams Town Council  
Congresswoman Cynthia Lummis  
Congressman Mark Amodei  
Congressman Crescent Hardy  
Congressman Doug LaMalfa  
Congressman Glenn Thompson  
Congressman Scott Tipton  
Congressman Bruce Westerman  
Congressman Ryan Zinke  
Congressman Paul Cook  
Congressman Mike Kelly  
Congresswoman Aumua Amata Coleman Radewagen  
Congressman Daniel Webster  
Congressman John Culberson  
Congressman John Fleming  
Congressman Louis Gohmert  
Congressman Bob Goodlatte  
Congressman Steve King  
Congressman Doug Lamborn  
Congressman Tom McClintock  
Congressman Steve Pearce  
Congressman Don Young

## End Notes

1. Arizona Wilderness Act of 1984, P.L. 98-406, 98 Stat. 1485.
2. Letter to the Honorable Ken Salazar, Secretary, U.S. Department of Interior, from Senators Orrin Hatch, Mike Lee, Jon Kyl, John Barrasso, and John McCain and Congressmen Trent Franks, Ben Quayle, David Schweikert, Paul Gosar, Jeff Flake, Jason Chaffetz, and Rob Bishop, Oct. 12, 2011.
3. Carol Hardy Vincent & Kristina Alexander, National Monuments and the Antiquities Act at 1-2 (Congressional Research Service March 21, 2014), available at <https://www.hsdl.org/?view&did=751853>; Nicolas D. Loris, The Antiquated Act: Time to Repeal the Antiquities Act (The Heritage Foundation March 25, 2015), available at <http://report.heritage.org/bg2998>.
4. Vincent & Alexander at 3.
5. Antiquities Act of 1906, 16 U.S.C. Sec. 431.
6. Vincent & Alexander at n.10; see also President Jimmy Carter, Proclamation 4625 - Wrangell-St. Elias National Monument, Dec. 1, 1978, available at <http://www.presidency.ucsb.edu/ws/?pid=30244>; Geoffrey T. Bleakley, Contested Ground: An Administrative History of Wrangell-St. Elias National Park and Preserve, Alaska, 1978-2001 at 21 (National Park Service 2002), available at [http://www.nps.gov/parkhistory/online\\_books/wrst/wrst.pdf](http://www.nps.gov/parkhistory/online_books/wrst/wrst.pdf).
7. Pete Aleshire, "Lawmaker Decries Plan for Monuments," Payson Roundup, Sept. 11, 2015, available at <http://www.paysonroundup.com/news/2015/sep/12/lawmaker-decries-plan-monuments/>.
8. The Grand Staircase-Escalante National Monument, at 1.9 million acres, is the largest. See [http://www.blm.gov/ut/st/en/fo/grand\\_staircase-escalante.html](http://www.blm.gov/ut/st/en/fo/grand_staircase-escalante.html); see also Press Release: Senators John McCain and Jeff Flake Urge President Obama Not to Take Executive Action to Designate More National Monuments in Arizona, March 10, 2015, available at <http://www.mccain.senate.gov/public/index.cfm/2015/3/senators-john-mccain-and-jeff-flake-urge-president-obama-not-to-take-executive-action-to-designate-more-national-monuments-in-arizona>.
9. Arizona State Land Department Figures, Nov. 12, 2015.
10. Alan Neuhauser, "EPA to Blame for 'Preventable' Gold King Mine Spill," US News and World Report, Oct. 22, 2015, available at <http://www.usnews.com/news/articles/2015/10/22/epa-to-blame-for-preventable-gold-king-mine-spill-interior-dept-finds>; Technical Evaluation of the Gold King Mine Incident, San Juan County, Colorado, U.S. Department of the Interior, Bureau of Reclamation, Technical Service Center, October 2015, available at <https://assets.documentcloud.org/documents/2475483/technical-evaluation-of-the-gold-king-mine.pdf>.
11. Michael Bastasch, "Gov't Report Raises Serious Questions About EPA's Handling Of Gold King Mine," The Daily Caller, October 22, 2015, available at <http://dailycaller.com/2015/10/22/govt-report-raises-serious-questions-about-epas-handling-of-gold-king-mine/#ixzz3rQ4tcMJh>.
12. Press Release: House Passes Gosar-Hardy Amendment Blocking Grand Canyon Watershed National Monument, July 8, 2015, available at <https://gosar.house.gov/press-release/>
13. Bill Theobald, "Report: Arizona's national parks need \$500 million in maintenance," Arizona Republic, March 25, 2015, available at <http://www.azcentral.com/story/news/arizona/politics/2015/03/24/report-arizona-national-parks-need-maintenance/70407568/>.
14. Vincent & Alexander at 8.
15. Vincent & Alexander at 7.
16. Robert Mansell, "Proposed national monument: federal land grab, protection or feel-good folly?" Arizona Capitol Times, May 11, 2015, available at <http://azcapitoltimes.com/news/2015/05/11/proposed-national-monument-federal-land-grab-protection-or-feel-good-folly/#ixzz3s4qKo9aA>.
17. Vincent & Alexander at 2-3.
18. Press Release: Hatch, Flake, McCain and Lee Introduce Bill Prohibiting Presidential Water Grab, May 21, 2015, available at <http://www.hatch.senate.gov/public/index.cfm/2015/5/hatch-flake-mccain-and-lee-introduce-bill-prohibiting-presidential-water-grab>.
19. Editorial Board, "Our View: Protecting the Grand Canyon is important, but it's crucial we address any potential problems before they arise," Arizona Republic, May 25, 2015, available at <http://www.azcentral.com/story/opinion/editorial/2015/05/26/feds-hear-people-out-before-grabbing-our-land/27826113/>.
20. Mark Flatten, "Logging Industry on Verge of Extinction," East Valley Tribune, April 29, 2003, available at [http://www.eastvalleytribune.com/news/article\\_29fed0a2-22ac-5560-9384-edbd70a39489.html](http://www.eastvalleytribune.com/news/article_29fed0a2-22ac-5560-9384-edbd70a39489.html).
21. Peter Friederici, "Catching Fire," Nature Conservancy Magazine, July/August 2013, available at [http://www.nature.org/media/magazine/media/NCMagazine\\_2013\\_Issue\\_3\\_July-August.pdf](http://www.nature.org/media/magazine/media/NCMagazine_2013_Issue_3_July-August.pdf).
22. Press Release: Government Scientist Believed Impacts from Arizona Uranium Mining "Grossly Overestimated" in Obama Administration Document, May 23, 2012, available at <http://naturalresources.house.gov/newsroom/documentsingle.aspx?DocumentID=296638>.
23. Loris at 2.
24. See Ryan M. Yonk, Randy T. Simmons, and Brian C. Steed, "Politics, Economics, and Federal Land Designation: Assessing the Economic Impact of Land Protection—Grand Staircase-Escalante National Monument," Utah State University, available at <http://www.usu.edu/ipe/wp-content/uploads/ipePublications/Politics-Economics-and-Federal-Land-Designation-Assess-the-Economic-Impact-of-Land-Protection-Grand-Staircase-Escalante-National-Monument.pdf>.
25. Loris at 3.
26. 16 U.S.C. Sec. 431; see also Vincent & Alexander at 6.
27. The Fifth Amendment protects state property just as it does privately-held property. *California v. United States*, 395 F.2d 261,

263-64 (9th Cir. 1968) (“[T]he Fifth Amendment protects the property of the State from appropriation by the United States without ‘just compensation.’ This is true even when the property has been dedicated by the State to public use.”).

28. Vincent & Alexander at 7.

29. History, Arizona State Land Department, <https://land.az.gov/about/history>.

30. Enabling Act Sec. 28, Act of June 20, 1910, ch. 310, 36 U.S. Stat. 557, 568-579, available at <http://www.azleg.state.az.us/const/enabling.pdf>.

31. Senate Concurrent Resolution 1001, State of Arizona, Fifty-Second Legislature, First Special Session, 2015 available at <http://www.azleg.gov/legtext/52leg/1s/bills/scr1001s.pdf>.

32. In the case of both private and State Trust land, the level of interference wrought by a national monument designation could also potentially give rise to a takings claim. The Fifth Amendment to the United States Constitution guarantees that private property shall not be taken for public use without just compensation, U.S. Const. amend. V. To establish a viable takings claim, a landholder must establish that it has a property interest for purposes of the Fifth Amendment, and also that the government action amounts to a compensable taking. *Arkansas Game & Fish Comm’n v. United States*, 87 Fed. Cl. 594, 615 (2009). Federal courts have recognized, and the U.S. Supreme Court has accepted, that “private property” for purposes of the Fifth Amendment includes state-held property dedicated to public use. *California v. United States*, 395 F.2d 261, 264 (9th Cir. 1968); cf. *Arkansas Game and Fish Comm’n v. United States*, 133 S. Ct. 511 (2012). As such, both privately-held and State Trust land likely enjoy constitutional protections against an uncompensated land-grab by the federal government.

33. Pete Aleshire, “Lawmaker Decries Plan for Monuments,” *Payson Roundup*, Sept. 11, 2015.

34. Ryan Heinsius, “Debate Continues Over Proposed Grand Canyon Watershed National Monument,” KNAU Arizona Public Radio, Jun 24, 2015, available at <http://knau.org/post/debate-continues-over-proposed-grand-canyon-watershed-national-monument#stream/0>.

35. There is an additional effort to defund the Antiquities Act altogether through federal legislation. While some have considered this a viable option, many consider the better course to be maintaining the Antiquities Act for the purposes for which it was originally intended while respecting states’ rights by giving an affected state the opportunity to weigh in on any proposal to designate a national monument within its borders.

36. S. 228, The National Monument Designation Transparency and Accountability Act of 2015, available at <https://www.congress.gov/bill/114th-congress/senate-bill/228>.

37. Press Release: Crapo Bill to Provide Check on Presidential Power in National Monument Designation Process, Jan. 22, 2015, available at [http://www.crapo.senate.gov/media/newsreleases/release\\_full.cfm?id=358671](http://www.crapo.senate.gov/media/newsreleases/release_full.cfm?id=358671).

38. Press Release: House Passes Gosar-Hardy Amendment Blocking Grand Canyon Watershed National Monument, July 8, 2015, available at <https://gosar.house.gov/press-release/house-passes-gosar-hardy-amendment-blocking-grand-canyon-watershed-national-monument>.

39. Press Release: Flake, Hatch, McCain and Lee Introduce Bill Prohibiting Presidential Water Grab, May 21, 2015, available at <http://www.flake.senate.gov/public/index.cfm/2015/5/flake-hatch-mccain-and-lee-introduce-bill-prohibiting-presidential-water-grab>; see also Editorial Board, “Our View: Protecting the Grand Canyon is important, but it’s crucial we address any potential problems before they arise,” *The Arizona Republic*, May 25, 2015, available at <http://www.azcentral.com/story/opinion/editorial/2015/05/26/feds-hear-people-out-before-grabbing-our-land/27826113/>.



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