Brian Segee
Senior Attorney
Center for Biological Diversity
660 S. Figueroa St. Suite 1000
Los Angeles, CA 90017

Steve Best, Forest Supervisor
Apache-Sitgreaves National Forests
P.O. 640
30 S. Chiricahua Dr.
Springerville, AZ 85939

Adam Mendomca, Forest Supervisor
Gila National Forest
3005 E. Camino del Bosque
Silver City, NM 88061-8201

David Bernhardt
Secretary of the Interior
U.S. Dept. of the Interior
1849 C Street, NW
Washington, DC 20240

Vicki Christiansen, Chief
U.S. Forest Service
1400 Independence Ave, S.W.
Washington, D.C. 20250-1111

Amy Lueders
Regional Director
U.S. Fish and Wildlife Service
Southwest Region
500 Gold Avenue S.W.
Albuquerque, NM 87102

Margaret Everson
Principal Deputy Director, by
The Authority of the Director
U.S. Fish and Wildlife Service
1849 C Street, N.W.
Washington, D.C. 20240

William Barr Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Wilbur Ross
Secretary of Commerce
Department of Commerce
1401 Constitution Ave N.W.
Washington, D.C. 20230
(202) 482-2000

TRAVEL MANAGEMENT PLAN COMMENTS
October 4, 2019

FROM:
ROBERT CORBELL
562 Lemons Lane
Duncan, Arizona 85534
(928) 215-0118
Rcorbell2@vtc.net

1. Where is the authority of the Forest Service to diminish or abrogate an Act of Congress? If you claim that authority please send me your legal basis for your claim of that authority.

2. Your position conflicts with Arizona Law.
   At Arizona Revised Statue, Title 37 Public Lands , at 37-931

3. See ARIZONA REVISED STATUE ARS 37-931 as quoted in the lines below:

   Representative Mark Finchem, Chairman

   Federal Relations Committee, 54th Legislature

   Legislative District 11, serving NW Pima & SW Pinal Counties

   1700 W. Washington Street

   Phoenix, AZ 87005

   Cell: (520) 955-7695 Office: (602) 926-3122

From: Sharon Carpenter <SCarpenter@azleg.gov>
Sent: Monday, September 9, 2019 9:02 AM
To: Mark Finchem <MFinchem@azleg.gov>
Subject: RS 2477 (ARS 37-931)

Link to BSI: https://apps.azleg.gov/BillStatus/BillOverview/65971

Link to ARS 37-931:
https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/37/00931.htm

37-931. Claims of right-of-way under revised statute 2477

A. This state, on behalf of itself and its political subdivisions, asserts and claims rights-of-way across public lands under section 8 of the mining act of 1866, reenacted and recodified as Revised Statute 2477; 43 United States Code section 932, acquired from and after its effective date through October 21, 1976, the date of its repeal, by authority of the department of the interior and related agencies appropriations act, 1997, section 108, enacted by the omnibus consolidated appropriations act, 1997 (P.L. 104-208; 110 Stat. 3009). These rights-of-way across public lands may have been acquired in any manner authorized by the law of the United States, the Territory of Arizona or this state, including:

1. The use by this state or a political subdivision of this state with the intention of establishing a public highway over public lands.

2. The construction or maintenance of a public highway over public lands.

3. The inclusion of a legally described right-of-way across public lands in a state, county or municipal plat or map of public roads.

4. The expenditure of public monies on the highway.

5. The execution of a memorandum of understanding or other agreement with any agency of the United States government that recognizes the right or obligation of this state or a county, city or town of this state to widen or maintain a highway or a portion of a highway.

6. Any other affirmative act by this state or a county, city or town of this state, consistent with federal, territorial or state law, indicating acceptance of a right-of-way across public lands.

7. The use by the public for a period required by law.

B. This state does not recognize or consent, and has not consented, to the exchange, waiver or abandonment of any Revised Statute 2477 right-of-way across public lands unless by formal, written official action that was taken by the state, county or municipal agency or instrumentality that held the right-of-way across public lands and that was recorded in the office of the county recorder of the county in which the public lands are located. No officer, employee or agent of this state or a county, city or town of this state has or had authority to exchange, waive or abandon a Revised Statute 2477 right-of-way across public lands in violation of this subsection, and any such purported action was void when taken unless later ratified by official action in compliance with this subsection.

C. The failure to conduct mechanical maintenance of a Revised Statute 2477 right-of-way across public lands does not affect the status of the right-of-way across public lands as a highway for any purpose of Revised Statute 2477.

D. The omission of a Revised Statute 2477 right-of-way across public lands from any plat, description or map of public roads does not waive or constitute a failure to acquire a right-of-way across public lands under Revised Statute 2477.

E. For the purposes of this section:

1. The extent of a Revised Statute 2477 right-of-way across public lands is the dimension that is reasonable under the circumstance.

2. A Revised Statute 2477 right-of-way across public lands includes the right to:

(a) Widen the highway as necessary to accommodate increased public travel and traffic associated with all accepted uses.

(b) Change or modify the horizontal alignment or vertical profiles as required for public safety and contemporary design standards.

3. The public has the right to use a Revised Statute 2477 right-of-way across public lands to access public lands.

4. If privately owned land is completely surrounded by or adjacent to public lands, the landowner has the right to use a Revised Statute 2477 right-of-way across public lands to access that land.

5. A Revised Statute 2477 right-of-way across public lands shall be closed only by order of a court of competent jurisdiction or the proper completion of an administrative process established for the abandonment, maintenance, construction or vacation of a public right-of-way otherwise allowed by law.

F. This section does not affect the inclusion or exclusion of, or the obligation of maintaining, any highway, road, street or route in any system of state, county or municipal streets, roads or highways. The inclusion of any highway, road, street or route in the state, county or municipal system shall be solely in accordance with other law.

G. This section does not:

1. Apply to any Revised Statute 2477 right-of-way across private property.

2. Impair, modify or otherwise affect any private property rights in effect on July 3, 2015. Any claim, determination or identification of a right-of-way across public lands pursuant to this section does not establish prior rights for determining financial or legal responsibility for taking any private property rights, in whole or in part. All presumptions and interpretations of fact and law relating to a claim, determination or identification of a right-of-way across public lands pursuant to this section shall be in favor of preserving private property rights.

Sharon Carpenter

Policy Advisor

4. The interior and related agencies appropriations act, 1997, section 108, enacted by the omnibus consolidated appropriations act, 1997 (P.L. 104-208; 110 Stat. 3009) which is included in the first paragraph of ARS 37-931 is permanent Law as clearly stated in the report from the GENERAL ACCOUNTING OFFICE, document B-277719, dated August 20, 1997**. SEE ATTACHMENT A FOR FULL REPORT.**

> This responds to your July 29, 1997, letter asking whether section 108 of the Department of the Interior and Related Agencies Appropriations Act, 1997, is permanent law or expires at the end of fiscal year 1997.[1] Section 108 of the Interior Appropriations Act states that:
>
> > "No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act." 110 Stat. 3009-200.

For the reasons discussed below, we believe section 108 is permanent law.

5. . Do you agree or disagree with the Supreme Court's definitions of "United States" in *Hooven & Allison Co. v. Evatt*, 324 U.S. 653 (1945) is often cited for the definition of the term "United States"?
   If no answer is otherwise provided the answer is "Agree"
   If the answer is "Disagree" please provide the authority you are relying upon to support your answer.

6. 8. Do you agree or disagree with the finding by the Supreme Court in *Lujan* supra that the ESA is applicable only on the high seas and within the territorial limits of the "United States" Washington DC, its Territories, Insular Possessions (Title 48) and enclaves (Article 1 Section 8 Clause 17)?

   If no answer is otherwise provided the answer is "Agree"
   If the answer is "Disagree" please provide the authority you are relying upon to support your answer.

7. Do you agree or disagree with the Supreme Court in *Lujan* supra that §7 of the ESA is applicable only to actions within the United States or on the high seas?

   If no answer is otherwise provided the answer is "Agree"
   If the answer is "Disagree" please provide the authority you are relying upon to support your answer.

8. . Do you agree or disagree with the finding by the Supreme Court in *Lujan* supra that the ESA is applicable only on the high seas and within the territorial limits of the "United States" Washington DC, its Territories, Insular Possessions (Title 48) and enclaves (Article 1 Section 8 Clause 17)?

   If no answer is otherwise provided the answer is "Agree"

If the answer is "Disagree" please provide the authority you are relying upon to support your answer.

9. Do you agree or disagree with the purpose and scope of the ESA at 16 U.S. Code § 1531 - Congressional findings and declaration of purposes and policy (a) Findings The Congress finds and declares that— (4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to— [emphasis added]
   (A) migratory bird treaties with Canada and Mexico; (Treaty Law)
   (B) the Migratory and Endangered Bird Treaty with Japan; (Treaty Law)
   (C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere; (Treaty Law)
   (D) the International Convention for the Northwest Atlantic Fisheries; (Treaty Law)
   (E) the International Convention for the High Seas Fisheries of the North Pacific Ocean; (Treaty Law)
   (F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; (Treaty Law) and
   (G) other international agreements; and ? (Treaty Law)

   If no answer is given the answer is "Agree"
   If the answer is "Disagree" please provide the Authority you are relying upon for your answer.

10. Based on the above do you agree or disagree that the ESA is federal municipal law or treaty law that is not applicable within the boundaries of the union states which number 50 and does not include states of the union such as Arizona, New Mexico, California, Oregon, Nevada, North Dakota, Alaska etc and that is why (5) (16 U.S.C. § 1531)encouraging the States and other interested parties, through **Federal financial assistance and a system of incentives**, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.?

    If no answer is given the answer is "Agree"
    If the answer is "Disagree" please provide the authority you are relying upon for your answer.

11. Do you agree or disagree that under the Constitution of the United States at Article II section 2 Clause 2 that the President under his executive powers has authority to make Treaties with foreign Countries, with the ratification by two thirds of the Senators present concur; and that Treaties are only applicable within the 10 square miles of Washington DC, its Territories, Insular possessions and enclaves.?

    If no answer is given the answer is "Agree"
    If the answer given is "Disagree" please provide the authority you are relying upon for your answer.

12. . Do you agree or disagree that only when the state cedes jurisdiction to the United States federal government under Article 1 Section 8 Clause 17 does the Congressional Act operate within the boundaries of the states of the union, exclusively of those enumerated powers at Article 1 Sections 8-10.?

If no answer is given the answer is "Agree"
If the answer given is "Disagree" please provide the authority you are relying upon for your answer.

13. Do you agree or disagree, environmental legislation is inherently the proper subject of legislation for the State, and many States currently have such acts in effect within their jurisdictions. At the Federal level, the jurisdiction of the United States is constrained by the operation of Art. 1, § 8, cl. 17 of the U. S. Constitution, and the multitude of decided cases regarding this part of the Constitution declares that the United States has territorial jurisdiction solely within Washington, D.C., the federal enclaves inside the States, and the territories and insular possessions of the United States. The possession of territorial jurisdiction is essential under this constitutional provision for federal municipal law such as environmental legislation to apply. Within the territories and possessions of the United States, the federal government possesses power similar to that of a State legislature; see *Berman v. Parker*, 348 U.S. 26, 31, 75 S.Ct. 98, 102 (1954); and *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 317, 57 S.Ct. 764, 768 (1937). Therefore, municipal environmental legislation enacted by Congress could readily apply in these areas within the jurisdiction of the United States. Logically, a consideration of solely this part of the Constitution would dictate a conclusion that this type of federal municipal law could apply only within those areas subject to the jurisdiction of the United States, and not within the jurisdiction of the States?

If no answer is given then the answer is "Agree"
If the answer is "Disagree" please provide the authority you are relying upon to support your answer.

14. Do your agree or disagree the police power is vested in the States and not the federal government; see *Wilkerson v. Rahrer*, 140 U.S. 545, 554, 11 S.Ct. 865, 866 (1891) (the police power "is a power originally and always belonging to the states, not surrendered to them by the general government, nor directly restrained by the constitution of the United States, and essentially exclusive"); *Union National Bank v. Brown*, 101 Ky. 354, 41 S.W. 273 (1897); *John Woods & Sons v. Carl*, 75 Ark. 328, 87 S.W. 621, 623 (1905); *Southern Express Co. v. Whittle*, 194 Ala. 406, 69 So.2d 652, 655 (1915); *Shealey v. Southern Ry. Co.*, 127 S.C. 15, 120 S.E. 561, 562 (1924) ("The police power under the American constitutional system has been left to the states. It has always belonged to them and was not surrendered by them to the general government, nor directly restrained by the constitution of the United States... Congress has no general power to enact police regulations operative within the territorial limits of a state"); and *McInerney v. Ervin*, 46 So.2d 458, 463 (Fla. 1950). But every day, the people of this country experience actions of the feds outside the jurisdiction of the United States and inside the jurisdiction of the States. Precisely what provision of the U.S. Constitution authorizes this conduct by a variety of federal agencies? Moreover, how can we determine what is the real jurisdiction of any federal agency?

If no answer is given the answer is "Agree"
If the answer is "Disagree" please provide the authority you are relying upon to support your answer.

15. Do you Agree or Disagree that by statute, all federal agencies must confine their activities to the jurisdiction delegated to them; see 5 U.S.C. §558. While this is a simple statutory command, there is an evident problem in

that most federal agencies fail to publish any statements, either in the Code of Federal Regulations or some other source, which define their respective jurisdictions. The C.I.A. is one agency where it is easy to determine its jurisdiction because a statute has deprived it of any domestic jurisdiction; see *Weissman v. C.I.A.*, 565 F.2d 692, 696 (D.C. Cir. 1977).[1] However, to determine the jurisdiction of other federal agencies requires some study.

Perhaps the best way to determine the jurisdiction of any given federal agency is to examine various cases regarding the subject matter of that agency. For example, the United States Constitution does not provide that Congress has any authority concerning the fish and wildlife within this country and this has been noted in several cases. In *McCready v. Virginia*, 94 U.S. 391, 394, 395 (1877), the Supreme Court held regarding the fish within the oceans:

"[T]he States own the tidewaters themselves and the fish in them, so far as they are capable of ownership while running."

"The title thus held is subject to the paramount right of navigation, the regulation of which, in respect to foreign and interstate commerce, has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the exclusive control of the State."?

If no answer is given, the answer is "Agree"
If the answer is "Disagree" please provide the authority you are relying upon in support of your answer.

16. . Do you agree or disagree, like fish, the Constitution simply grants no authority to the federal government to control the wildlife within the States of this nation and this is noted in several cases. A ready example of such a case is *United States v. Shauver*, 214 F. 154, 160 (E.D.Ark. 1914), which concerned the question of where the Migratory Bird Act of March, 1913, could apply. Via this act, Congress sought to extend protection to migratory birds by limiting the hunting season and otherwise placing constraints upon hunting of these birds. As is only natural, upon adoption of this act federal law enforcement officials started enforcing it and here they had arrested Shauver in Arkansas for shooting and killing migratory birds. Shauver moved to dismiss the indictment filed against him on the grounds that the act contravened the 10th Amendment by invading the jurisdiction of the States upon a matter historically reserved for legislation by the states. In deciding that this act was unconstitutional, Judge Trieber noted that the common law provided that the States essentially owned the birds within their borders and State legislation was the sole source by which control of hunting could be accomplished. In so concluding, he held:

"It is the people who alone can amend the Constitution to grant Congress the power to enact such legislation as they deem necessary. All the courts are authorized to do when the constitutionality of a legislative act is questioned is to determine whether Congress, under the Constitution as it is, possesses the power to enact the legislation in controversy; their power does not extend to the matter of expediency. If Congress has not the power, the duty of the court is to declare the act void. The court is unable to find any provision in the Constitution authorizing Congress, either expressly or by necessary implication, to protect or regulate the shooting of migratory wild game in a state, and is therefore forced to the conclusion that the act is unconstitutional."?

If no answer is given the answer is "Agree"
If the answer given is "Disagree" please provide the authority you are relying upon to support your answer.

17. . Do you agree or disagree that notwithstanding Judge Trieber's decision, implementation of the act did not stop and it was thereafter enforced within Kansas, where a fellow named McCullagh was arrested for killing migratory birds. In *United States v. McCullagh*, 221 F. 288, 293 (D.Kan. 1915), the issue of the constitutionality of the 1913 Migratory Bird Act was again before a different court and it, relying upon its own research of the law as well as the decision in *Shauver*, likewise concluded that this act was unconstitutional:
"[T]he exclusive title and power to control the taking and ultimate disposition of the wild game of this country resides in the state, to be parted with and exercised by the state for the common good of all the people of the state, as in its wisdom may seem best."?

If no answer is given the answer is "Agree"
If the answer given is "Disagree" please provide the authority you are relying upon to support your answer.

18. Do you agree or disagree that the purpose and scope of the ESA at 16 U.S.C. § 1531(a)(4)(5) limits the Act to 7 treaties and that all laws are to be read as a whole and that the doctrine of *Pari materia* where all laws must be construed with reference to each other. (See Black's Law Dictionary 6th Edition page 1115 *Pari materia.)?*

If no answer is given, the answer is "Agree"
If the answer given is "Disagree" please provide the authority you are relying upon to support your answer.

19. . Do you Agree or Disagree with the definition of "Secretary" by the ESA 16 U.S.C. 1532(15) (15) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this chapter and the Convention which pertain to the importation or exportation of terrestrial plants, the term also means the Secretary of Agriculture?

If no answer is given, the answer is "Agree"
If the answer given is "Disagree" please provide the authority you are relying upon to support your answer.

20. Based on the definition of "Secretary" above should you have given notice to the Secretary of Commerce as well?

If no answer is given the answer is "Yes"
If the answer given is "NO" please provide the authority you are relying upon to support your answer.

21. . Do you Agree or Disagree with the definition of "State" by the ESA 16 U.S.C. 1532(17)
The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands?

If no answer is given, the answer is "Agree"
If the answer given is "Disagree" please provide the authority you are relying upon to support your answer.

22. . Do you Agree or Disagree with the doctrine of ***inclusion unius est exclusion alterius*** that the inclusion of one is the exclusion of another. In the ESA definition "State" that the inclusion of the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands is referring to the federal states and not to the 50 states of the union created under the Constitution of the United States, such as Oregon, California, Arizona, New Mexico and North Dakota? (See CRS Report to Congress Order Code # 97-589, Statutory Interpretation General Principals and Trends Mary 2006.)

If no answer is given, the answer is "Agree"
If the answer given is "Disagree" please provide the authority you are relying upon to support your answer.

23. Do you Agree or Disagree with the definition of "State" by the ESA 16 U.S.C. 1532(17)
The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands?

If no answer is given, the answer is "Agree"
If the answer given is "Disagree" please provide the authority you are relying upon to support your answer.

24. Do you Agree or Disagree with the definition of "United States" by the ESA 16 U.S.C. 1532 (21) The term "United States", when used in a geographical context, includes all States (States is defined in request for Admissions 23)?

If no answer is given, the answer is "Agree"
If the answer given is "Disagree" please provide the authority you are relying upon to support your answer.

25. . Do you Agree or Disagree with the provisions of the ESA 16 U.S.C. § 1540 Penalties and Enforcement (a)(2) that there must be an Administrative hearing prior to judicial review at 5 U.S.C. 554 ?

If no answer is given, the answer is "Agree"
If the answer given is "Disagree" please provide the authority you are relying upon to support your answer.

26. . Do you Agree or Disagree with the provisions of the ESA 16 U.S.C. § 1540 (c) (c) District court jurisdiction The several district courts of the United States, including the courts enumerated in section 460 of title 28,(gives additional jurisdiction to Federal Court of Claims) shall have jurisdiction over any actions arising under this chapter. For the purpose of this chapter, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.?

If no answer is given, the answer is "Agree"
If the answer given is "Disagree" please provide the authority you are relying upon to support your answer

27. Do you Agree or Disagree that the "district courts of the United States" and the "United States District Courts" are not one in the same according to the Supreme Court in Mookini v. United State and Balzac v. Porto Rico? The term 'District Courts of the United States,' as used in the rules, without an addition expressing a wider connotation, has its historic significance. It describes the constitutional courts created under article 3 of the Constitution. Courts of the Territories are legislative courts, properly speaking, and are not District Courts of the United States. We have often held that vesting a territorial court with jurisdiction similar to that vested in the District Courts of the United States does not make it a 'District Court of the United States.' *Reynolds v. United States*, 98 U.S. 145 , 154; *The City of Panama*, 101 U.S. 453 , 460; *In re Mills*, 135 U.S. 263, 268 , 10 S.Ct. 762; *McAllister v. United States*, 141 U.S. 174, 182 , 183 S., 11 S.Ct. 949; Stephens v. Cherokee Nation, 174 U.S. 445, 476 , 477 S., 19 S.Ct. 722; *Summers v. United States*, 231 U.S. 92, 101 , 102 S., 34 S.Ct. 38; *United States v. Burroughs*, 289 U.S. 159, 163 , 53 S.Ct. 574. Not only did the promulgating order use the term District Courts of the United States in its historic and proper sense, but the omission of provision for the application of the rules to the territorial courts and other courts mentioned in the authorizing act clearly shows the limitation that was intended. *Mookini v. United State*, 303 U.S. 201 (1938)

"The **United States District Court is not a true United States court established under Article III of the Constitution to administer the judicial power of the United States therein conveyed.** It is created by virtue of the sovereign congressional faculty, granted under Article IV, Section 3, of that instrument, of making all needful rules and regulations respecting the territory belonging to the United States. The resemblance of its jurisdiction to that of true United States courts in offering an opportunity to

nonresidents of resorting to a tribunal not subject to local influence, does not change its character as a mere territorial court."
Balzac v. Porto Rico, 258 U.S. 298 at 312, 42 S.Ct. 343, 66 L.Ed. 627 (1921)

If no answer is given the answer is "Agree"
If the answer given is "Disagree" please provide the authority you are relying upon to support your answer.

28. . Do you agree or disagree with the General Service Administration (GSA) the keeper of the records, that the lands in question are not Federal Lands as defined at 40 U.S.C. 102 definitions but are listed only as a 4 (proprietorial Interest only) with no legislative Authority and without any Constitutional Authority at Article 1 Section 8 Clause 17?

See GSA website at http.//ogc.elaw.gsa.gov/Legislation/GSAInventoryReport1962/index.htm See Congressional Report generated during the Eisenhower Administration entitled *Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, Part 1 and Part 2*, April 1956 and 1957 (40 USC 255 and 50 USC 175 amended to 40 U.S.C. 3111 and 3112).

If no answer is otherwise provided the answer is: "Agree"
If the answer given is "Disagree" please provide the authority you are relying upon to support your answer.

29. Do you agree or disagree that the ESA at 16 U.S.C. 1533(a)(2)(A)(B)(C) that the Secretary of Commerce makes the determination as species being listed?
(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—
(A) in any case in which the Secretary of Commerce determines that such species should—
(i) be listed as an endangered species or a threatened species, or
(ii) be changed in status from a threatened species to an endangered species,
he shall so inform the Secretary of the Interior; who shall list such species in accordance with this section;
(B) in any case in which the Secretary of Commerce determines that such species should—
(i) be removed from any list published pursuant to subsection (c) of this section, or
(ii) be changed in status from an endangered species to a threatened species,
he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and
(C) **the Secretary of the Interior <u>may not list or remove from any list</u> any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce**. [emphasis added]

If no answer is otherwise provided the answer is "Agree"
If the answer given is "Disagree" please provide the authority that you are relying upon to support your answer.

30. . Do you agree or disagree that the ESA at 16 U.S.C. 1533(b)(1)(A) requires the best scientific evidence.? (b) Basis for determinations (1)(A) The Secretary shall make determinations required by subsection (a)(1) solely on the basis of the **best scientific and commercial data available** to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction; or on the high seas. [emphasis added]

If no answer is otherwise provided the answer is "Agree"
If the answer given is "Disagree" please provide the authority that you are relying upon to support your answer.

31. . Do you agree or disagree that under the doctrine of *pari materia* that the best scientific and commercial data available is governed by the United States Data Integrity Act? **Data Quality Act (DQA)** or **Information Quality Act (IQA)**, passed through the United States Congress in Section 515 of the Consolidated Appropriations Act, 2001 (Pub.L. 106–554) gives the Office of Management and Budget (OMB) the authority to write the guidelines for the Act.

If no answer is otherwise provided the answer is "Agree"
If the answer provided is "Disagree" please provide the authority that you are relying upon to support your answer.

32. Do you agree or disagree with the finding of the U.S. Supreme Court in ***New York v. United States,*** 505 U.S. 144 (1992)?

(Page 133) Justice O'Connor delivered the opinion of the Court. *"Just as the separation and independence of the coordinate Branches of the Federal Government serves to prevent the accumulation of excessive power in any one Branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.*

Where Congress exceeds its authority relative to the States, therefore, the departure from the constitutional plan cannot be ratified by the "consent" of state officials. An analogy to the separation of powers among the Branches of the Federal Government clarifies this point. The Constitution's division of power among the three branches is violated where one Branch invades the territory of another, whether or not the encroached upon Branch approves the encroachment….
The constitutional authority of Congress cannot be expanded by the "consent" of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States.
***State officials thus cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution**."[emphasis added]*

If no answer is otherwise provided the answer is: "Agree"
If the answer given is "Disagree" please provide the authority that you are relying upon to support your answer.

33. .. Do you agree or disagree with Justice Scalia in the United States Supreme Court case of ***Printz v. United States*** , 521 U.S. 898 (1997)where he delivered the opinion of the Court?

(Pg 935) "*We held in New York that* ***Congress cannot compel the States to enact or enforce a federal regulatory program.*** *Today we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the State's officers, or those of their political subdivisions, to administer, or enforce a federal regulatory program. It matters not whether policymaking is involved,* ***and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty***.*[emphasis added] Accordingly, the judgment of the Court of Appeals for the Ninth Circuit is reversed. It is so ordered."*[emphasis added]

If no answer is otherwise provided the answer is: "Agree"
If the answer provided is "Disagree" please provide the authority you are relying upon to support your answer.

34. Do you agree or disagree that your oath of office is a contract, and that your oath requires that as public officials and as officers of the court, that you stay within the bounds of your authority?

If no answer is otherwise provided the answer is: "Agree"
If the answer provided is "Disagree" please provide the authority you are relying upon to support your answer.

35. Do you agree or disagree that your actions are interfering with interstate commerce and is actionable under 15 U.S.C. § 1, *Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.*

If no answer is otherwise provided the answer is: "Agree"
If the answer provided is "Disagree" please provide the authority you are relying upon to support your answer.

36. Do you agree or disagree that the 1905 Transfer Act (16 U.S.C. § 472, 33 Stat. 628) did not grant the U.S.D.A any authority other than provide a sustainable yield of timber for the communities and to increase the water flow, and that 16 U.S.C. § 471 ("The Secretary of the Department of Agriculture shall execute or cause to be executed all laws affecting public lands reserved under the provisions of section 471 [1]") was repealed by Public Law 94-579 section 704(a) Oct 21, 1976 (90 Stat. 2792)?

See ***United States v. New Mexico***, 438 U.S. 696 (July 3, 1978). Organic Administration Act of June 4, 1897, 30 Stat. 34, 16 U. S. C. § 473 et seq. (1976 ed.). In particular, Congress provided: "No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use Page 707 and necessities of citizens of the United States ; but it is not the purpose or intent of these provisions, or of [the Creative Act of 1891], to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes." 30 Stat. 35, as codified, 16 U. S. C. § 475 (1976 ed.) (emphasis added).

If no answer is otherwise provided the answer is: "Agree"
If the answer provided is "Disagree" please provide the authority you are relying upon to support your answer.

37. . Do you agree or disagree that it is mandatory that bonds be provided upon request in the event that any person is injured by your actions? See 28 U.S.C. § 1737 (62 Stat. 947).

If no answer is otherwise provided the answer is: "Agree"

If the answer provided is "Disagree" please provide the authority you are relying upon to support your answer.

38. Where is the Forest Service's Criminal and Civil Jurisdiction in Greenlee County, State of Arizona or any other county in the state of Arizona? **SEE ATTACHMENT B**,

> Affidavit Pertaining to Federal Jurisdiction Over Areas Acquired By the United States in the county of Greenlee, state of Arizona

The Forest Service is without criminal or civil jurisdiction, **SEE ATTACHMENT B**,

> Affidavit Pertaining to Federal Jurisdiction Over Areas Acquired By the United States in the county of Greenlee, state of Arizona

ATTACHMENT A

United States
General Accounting Office
Document B-277719, August 20, 1997

GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-277719

August 20, 1997

Congressional Requesters

This responds to your July 29, 1997, letter asking whether section 108 of the Department of the Interior and Related Agencies Appropriations Act, 1997, is permanent law or expires at the end of fiscal year 1997.[1] Section 108 of the Interior Appropriations Act states that:

> "No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act." 110 Stat. 3009-200.

For the reasons discussed below, we believe section 108 is permanent law.

Discussion

Since an appropriation act is made for a particular fiscal year, the starting presumption is that everything contained in the act is effective only for the year covered. 31 U.S.C § 1301(c)(2)(1994). For this reason, a provision in an appropriation act will be considered to be permanent only if the statutory language or the nature of the provision makes it clear that Congress intended the provision to be permanent. 65 Comp. Gen. 588, 589 (1986).

Permanency is indicated most clearly when the provision in the appropriation act uses words of futurity. While "hereafter" is a common "word of futurity," we have afforded language such as "after the date of approval of this act" the same treatment. E.g., 36 Comp. Gen 434, 436 (1956). The language "subsequent to the date of enactment of this Act" found in section 108 of the fiscal year 1997 Interior Appropriations Act is of the same character.

[1] The Department of the Interior and Related Agencies Appropriations Act, 1997, is contained in section 101(d) of the Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009, 3009-181 (1996).

The precise location of the words of futurity can be important and can determine whether or not a provision is permanent. Cf. B-228838, Sept. 16, 1987 (words of futurity in a proviso of a section did not make the entire section permanent). In the case of section 108, the location of the phrase "subsequent to the date of enactment of this Act" presents two possible interpretations. On the one hand, "subsequent to the date of enactment of this Act" could apply only to the immediately preceding phrase "Act of Congress" and thereby describe only the period of enactment for the authorizing "Act of Congress" that must occur for an agency rule or regulation on R.S. 2477 rights-of-way to take effect.[2] Under this reading, the phrase "subsequent to the date of enactment" means that the agency rule can become effective only if it is expressly authorized by a new, not a previous, Act of Congress. This limitation on agency rulemaking would expire at the end of fiscal year 1997.

Alternatively, "subsequent to the date of enactment of this Act" could apply to all of section 108 and thereby describe the time period applicable to the limitation on agency rulemaking on R.S. 2477 rights-of-way. Under this reading, the phrase "subsequent to the date of enactment of this Act" means that the requirement for an express authorization by an Act of Congress before the agency rule can become effective is a permanent requirement beginning with the enactment of the fiscal year 1997 appropriation. We believe the latter interpretation is the meaning best ascribed to section 108 based on its legislative history and purpose.

[2]Section 8 of the Mining Act of 1866 stated that "the right of way for the construction of highways over public lands, not reserved for public uses is hereby granted." That section was codified as section 2477 of the Revised Statutes, and has been commonly referred to since then as "R.S. 2477." Section 706 of the Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. No. 94-579, 90 Stat. 2793, repealed R.S. 2477 but section 701 provided that FLPMA did not terminate any land use, including rights-of-way, existing on October 21, 1976. FLPMA did not provide a time limitation on filing claims for pre-1976 rights-of-way. The rules and regulations that are the subject of section 108 are proposals to change how R.S. 2477 claims are processed.

Language similar to that found in section 108 first appeared as section 349(a) (1) of the National Highway System Designation Act of 1995, Pub. L. No. 104-59, 109 Stat. 568, 617-618 (1995). Section 349(a)(l) states:

> "(a) MORATORIUM.-
>
> "(1) IN GENERAL. -Notwithstanding any other provision of law, no agency of the Federal Government may take any action to prepare, promulgate, or implement any rule or regulation addressing rights-of-way authorized pursuant to section 2477 of the Revised Statutes (43 U.S.C. 932), as such section was in effect before October 21, 1976."

As indicated by the heading of subsection (a) of section 349, paragraph (1) was a moratorium on agency actions on rules and regulations regarding R.S. 2477 rights-of-way. Paragraph (2) provided that the moratorium would be effective through September 30, 1996.[3] The purpose of the moratorium was to delay regulations proposed by the Secretary of the Interior so that the Congress and the states could address concerns over proposed changes to the process for recognizing state and local government claims for rights-of-way across federal lands granted pursuant to R.S. 2477. 141 Cong. Rec. S8924-8925 (daily ed. June 22, 1995)(statements of Sens. Stevens and Murkowski).[4]

Before the moratorium expired, the Senate Committee on Energy and Natural Resources considered S. 1425, a bill to "recognize the validity of rights-of-way

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[3]Your letter refers to another restriction running through fiscal year 1996. Section 110 of the Department of the Interior and Related Agencies Appropriations Act, 1996, as contained in section 101(c) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1321-156, provided that none of the funds appropriated or otherwise made available by the Act could be used by the Secretary of the Interior to develop, promulgate, and implement a rule concerning R.S. 2477 rights-of-way. 110 Stat. 1321-177. This provision was in H.R. 1977, the Department of Interior and Related Agencies Appropriations Bill, 1996, when it was reported from the House Committee on Appropriations on June 30, 1995. It remained intact through the enactment of Pub. L. No. 104-134 on April 26, 1996, and is narrower in scope than the moratorium enacted by section 349 of Pub. L. No. 104-59 five months earlier.

[4]The provision for the moratorium was added to the Senate bill as a floor amendment and had a December 1, 1995 expiration date. The conference committee adopted the moratorium contained in the Senate bill and extended its application through the end of fiscal year 1996. H. Rep. Conf. Rep. No. 104-345 at 108 (Nov. 15, 1995), reprinted in 1995 U.S.C.C.A.N. 610.

granted under section 2477 of the Revised Statutes, and for other purposes." The bill, as reported from the Committee on May 9, 1996, consisted entirely of the language now found at section 108 of the fiscal year 1997 Interior Appropriations Act. The purpose of S. 1425 was to allow the Department of the Interior to develop new regulations while prohibiting their implementation until expressly approved by an Act of Congress. S. Rep. No. 104-261, at 2 (1996). There is no question that if it had been enacted into law, S. 1425 would have continued indefinitely the restriction against agency rules or regulations on R.S. 2477 rights-of-way becoming effective without an authorizing Act of Congress. See, id., at 3-4 (Letter from June E. O'Neill, Director, Congressional Budget Office, dated May 8, 1996). While no further action was taken on S. 1425, its language ultimately became section 108 of the fiscal year 1997 Interior Appropriations Act.

A little more than a month after the Senate Committee on Energy and Natural Resources reported S. 1425, the House of Representatives passed H.R. 3662, the Department of the Interior and Related Agencies Appropriations Bill, 1997. Section 109 of H.R. 3662 stated that

> "None of the funds appropriated or otherwise made available by this Act may be obligated or expended by the Secretary of the Interior for developing, promulgating, and thereafter implementing a rule concerning right-of-way under section 2477 of the Revised Statutes."

This language was identical to language in the fiscal year 1996 appropriation act enacted two months before. See note 2 above. When the Senate Committee on Appropriations reported its version of the appropriations bill, it deleted the House language and substituted the language of S. 1425, stating that it was "identical to the bipartisan proposal reported by the Senate Energy and Natural Resources Committee (Senate bill1475 [sic])." S. Rep. No. 104-319, at 56 (1996). This is the language ultimately enacted as section 108 of the fiscal year 1997 Interior Appropriations Act as contained in Pub. L. No. 104-208.

This history strongly supports the conclusion that Congress intended section 108 to be permanent. Section 108 was lifted verbatim from a bill that by virtue of its language and its character as general legislation would, if enacted, have continued indefinitely the restriction on implementing rules on R.S. 2477 rights-of-way. Also, the Senate and ultimately the Congress substituted the language of S. 1425 for the language of H.R. 3662, which like the identical language of Pub. L. No. 104-134 for fiscal year 1996, was clearly applicable only for a fiscal year. In revealing the origin of section 108, the applicable discussion inS. Rep. No. 104-319 and H. Conf. Rep. No. 104-863 contains nothing to suggest that Congress intended for the effect of the language from S. 1425, i.e., an indefinite restriction, to be different when included in the appropriation act.

Other reasons support the conclusion that the Congress intended section 108 to be permanent legislation. The language of section 108 is not a restriction on the use of appropriations. It is a substantive provision addressing when certain agency rules or regulations can take effect. Its language standing alone is permanent in nature. 36 Camp. Gen. at 436. Also, no real effect would be given to the phrase ""subsequent to the date of enactment of this Act" if it were interpreted to only describe the time period when an authorizing "Act of Congress" must occur before an agency rule becomes effective. Section 108 could not have been designed to vitiate a prior Act of Congress expressly authorizing final agency rules or regulations on R.S. 2477 rights-of-way for the simple reason that there was and is none. Accordingly, any Act of Congress expressly authorizing a final rule or regulation on R.S. 2477 rights-of-way would be one enacted after enactment of the fiscal year 1997 Interior Appropriations Act. For the phrase "subsequent to the date of enactment of this Act" to have any effect, it must mean that the section 108 restriction on when a rule or regulation on R.S. 2477 rights-of-way takes effect is permanent law beginning with the date of enactment of the fiscal year 1997 Interior Appropriations Act.

For the reasons discussed above, we conclude that section 108 is permanent law. I trust the foregoing will be of assistance.

Sincerely yours,

Robert P. Murphy
General Counsel

Enclosure

ENCLOSURE

List of Requesters

The Honorable Robert F. Bennett
The Honorable Conrad Burns
The Honorable Larry E. Craig
The Honorable Orrin G. Hatch
The Honorable Frank H. Murkowski
The Honorable Ted Stevens
United States Senate

The Honorable Chris Cannon
The Honorable Helen Chenoweth
The Honorable Michael D. Crapo
The Honorable Barbara Cubin
The Honorable Randy "Duke" Cunningham
The Honorable John T. Doolittle
The Honorable John E. Ensign
The Honorable Jim Gibbons
The Honorable James V. Hansen
The Honorable Doc Hastings
The Honorable J.D. Hayworth
The Honorable Wally Herger
The Honorable Jim Kolbe
The Honorable Jerry Lewis
The Honorable George R. Nethercutt, Jr.
The Honorable Ron Packard
The Honorable Richard W. Pompa
The Honorable George P. Radanovich
The Honorable Bob Schaffer
The Honorable Joe Skeen
The Honorable Robert F. (Bob) Smith
The Honorable Bob Stump
The Honorable Charles H. Taylor
The Honorable Don Young
House of Representatives

B-277719

August 20, 1997

DIGEST

The presumption is that everything in an appropriation act is effective only for the year covered, but the presumption can be overcome with "words of futurity" that reflect the Congress' intention for the provision to be permanent law. The location of the "words of futurity" in a restriction on agency rulemaking contained in the fiscal year 1997 Interior Appropriations Act created some ambiguity about what the words modified and, therefore, whether the restriction was permanent law or expired at the end of the fiscal year. An analysis of the provision's legislative history and purpose supported the conclusion that the restriction is permanent law.

ATTACHMENT B

Affidavit Pertaining to Federal Jurisdiction Over Areas Acquired By the United States in the county of Greenlee, state of Arizona

2007-00589
Page 1 of 15
Requested By: DANIEL G. MARTINEZ
BERTA MANUZ RECORDER GREENLEE COUNTY AZ
07-16-2007 03:33 PM Recording Fee $24.00

Affidavit Pertaining to Federal Jurisdiction Over Areas Acquired By the United States in the county of Greenlee, state of Arizona

The undersigned Affiant, Wray J. Shildneck, is of majority age and of sound mind, and has researched the laws and actions of the state of Arizona to determine if all the requirements of the law had been met by the state of Arizona to (1) give consent to the United States to acquire areas within the county of Greenlee, state of Arizona for Federal purposes; and (2) cede to the United States any exclusive legislative jurisdiction, concurrent legislative jurisdiction, or partial legislative jurisdiction over such areas. Affiant is competent to testify as to His personal knowledge and belief of the truth of all the following:

1. That Affiant has read and understands the Congressional Report generated during the Eisenhower Administration entitled *Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, Part 1 and Part 2,* April 1956 and 1957 (40 USC 255 and 50 USC 175 amended to 40 U.S.C. 3111 and 3112). This report, which is often referred to as the Eisenhower Report, outlined four basic areas of federal jurisdiction within the states: (1) exclusive legislative jurisdiction, (2) concurrent jurisdiction, (3) partial jurisdiction, and (4) proprietorial jurisdiction.
2. That the Eisenhower Report defines the four types of federal jurisdiction possible within the states as follows:
    1. Exclusive Legislative Jurisdiction: This term is applied when the Federal Government possesses, by whichever method acquired, all of the authority of the State, and in which the State concerned has not reserved to itself the right to exercise any of the authority concurrently with the United States

except the right to serve civil or criminal process in the area for activities which occurred outside the area.

2. Concurrent Legislative Jurisdiction: This term is applied in those instances wherein in granting to the United States authority which would otherwise amount to exclusive legislative jurisdiction over an area, the State concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority.
3. Partial Legislative Jurisdiction: This term is applied in those instances wherein the Federal Government has been granted for exercise by it over an area in a State certain of the State's authority, but where the State concerned has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the right to serve civil or criminal process in the area (e.g., the right to tax private property).
4. Proprietorial Interest Only: This term is applied to those instances wherein the Federal Government has acquired some right or title to an area in a State, but has not obtained any measure of the States authority over the area. In applying this definition, recognition should be given to the fact that the United States, by virtue of its functions and authority of the Constitution, has many powers and immunities not possessed by ordinary landholders with respect to areas in which it acquires an interest, and of the further fact that all its properties and functions are held or performed in a governmental rather than a proprietary capacity.

3. That Affiant has read and understands Article 1, Section 8, Clause 17 of the US Constitution which places limits on the exercise of exclusive jurisdiction over lands acquired by the US within the boundaries of a state. In this clause, the United States is allowed "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection ofForts, Magazines, Arsenals, dock-Yards, and other needful Buildings."
4. That Affiant has read and understands the following Arizona Revised Statutes (ARS) that establish the requirements and authority for the state of Arizona to

give consent for the acquisition of areas within the state of Arizona for Federal purposes, and to grant exclusive legislative jurisdiction to the United States over such areas:

Title 26 - Military Affairs and Emergency

Management Chapter 1 - Emergency and Military

Affairs

Article 6 - Acquisition of Lands by United States for Military

Purposes

26-251. Acquisition of lands by United States for military purposes

The consent of the state may be given pursuant to section 37-620.02 in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States to the acquisition by the United States by purchase, lease, condemnation or otherwise of any land in the state required for the erection of forts, magazines, arsenals, dockyards and other needful buildings, or for any other military installations of the government of the United States.

26-252. Exclusive jurisdiction of United States over lands acquired for military purposes; termination of jurisdiction

Exclusive jurisdiction over any land in the state acquired for any of the purposes set forth in section 26-251, and over any public domain in the state reserved or used for military purposes is ceded to the United States, but such jurisdiction shall continue no longer than the United States owns or leases the land or continues to reserve or use such public domain for military purposes.

26-253. Power of state to serve process upon land ceded United States for military purposes

The state retains concurrent jurisdiction with the United States for serving process, civil or criminal, issuing under the authority of the state, or any courts, or judicial officers thereof, upon any person amenable thereto within the limits of any land over which exclusive jurisdiction has been ceded by the state to the United States for military purposes in like manner as if no cession had taken place.

Title 37- Public Lands

Chapter 2 - Administration of State and Other Public Lands

Article 17- Concurrent Jurisdiction With United States Over Certain Lands and Areas

37-620.02. State consent to acquisition of land by the United States for exclusive jurisdiction

Pursuant to article I, section 8, clause 17 of the Constitution of the United States, the consent of this state may be given to the acquisition of any other privately owned real property within this state by the United States only upon the governor's signing a joint resolution adopted by the legislature to that effect. The joint resolution shall recite the legal description of the land and the purposes to which the state consents that the property may be used.

5. Affiant affirms that the state of Arizona Legislature and Governor did, via the following statute, cede concurrent criminal jurisdiction to the United States over specified areas in the state of Arizona which did not include the county of Greenlee:

Title 37- Public Lands

Chapter 2 - Administration of State and Other Public Lands

Article 17- Concurrent Jurisdiction With United States Over Certain Lands and Areas

37-620. Vesting of concurrent criminal jurisdiction in the United States over certain lands and areas

A. Concurrent criminal jurisdiction over any lands in the state heretofore reserved from public domain or acquired by the United States as identified in subsection D, and any additions made to such lands, is hereby vested in the United States upon completion of the conditions set forth in subsection B, except that the jurisdiction of the state over such lands shall continue.

B. Concurrent criminal jurisdiction shall vest as to the lands in each area identified in subsection D when the United States submits to the governor of the state a formal written request for concurrent criminal jurisdiction accompanied by a satisfactory legal description and plat of such area, and upon approval by the governor granting concurrent jurisdiction such legal description and plat shall be filed by the governor with the county recorder of each county in which the land is situated. The state may withdraw jurisdiction over any land or area three years after written notification by the governor to the secretary of the interior.

C. The concurrent criminal jurisdiction hereby vested shall continue only as long as the United States continues to own or control the lands within such areas. In the case of any lands included within the boundaries of the areas set forth in subsection D which are not owned or controlled by the United States,

the jurisdiction shall not change by operation of this section.

D. The lands subject to this section are all those lands which are owned or controlled by the United States and which are now or hereafter included within the exterior boundaries of:

1. The national park service lands consisting of:

(a) Canyon de Chelly national monument.

(b) Casa Grande Ruins national monument.

(c) Chiricahua national monument.

(d) Coronado national memorial.

(e) Fort Bowie national historic site.

(f) Glen Canyon national recreation area.

(g) Grand Canyon national park.

(h) Hohokam Pima national monument.

(i) Hubbell Trading Post national historic site.

G) Lake Mead national recreation area.

(k) Montezuma Castle national monument.

(1) Navajo national monument.

(m) Organ Pipe Cactus national monument.

(n) Petrified Forest national park.

(o) Pipe Spring national monument.

(p) Saguaro national monument.

(q) Sunset Crater national monument.

(r) Tonto national monument.

(s) Tumacacori national monument.

(t) Tuzigoot national monument.

(u) Walnut Canyon national monument.

(v) Wupatki national monument.

2. Those lands administered by the bureau of reclamation or its successor agency of the department of the interior, consisting of:

(a) Davis dam

(b) Glen Canyon dam.

(c) Hoover dam.

(d) Imperial dam.

(e) Laguna dam.

(f) Parker dam.

37-620.01 Concurrent jurisdiction over veterans administration properties; acceptance

A. If the administrator of the veterans administration of the United States desires, on behalf of the United States, to relinquish to this state any legislative jurisdiction over lands or interests in lands under the administrator's supervision or control in order to establish concurrent jurisdiction between the United States and this state pursuant to title 38, section 1004(g) or 5007, United States code, the administrator may file with the governor a written notice to that effect. The notice shall state the nature and extent of such jurisdiction to be relinquished to the state by specifying the subjects upon which the state may legislate and the lands or interests in lands affected.

B. This state may accept such jurisdiction upon the governor's signing a joint resolution adopted by the legislature. The joint resolution shall state the nature and extent of the jurisdiction to be accepted by this state by specifying the subjects upon which the state may legislate and the lands or interests in lands affected.

6. That in order to determine if all the requirements of ARS sections 37-620, 37-620.01, or 37-620.02 for transfer of any degree of legislative jurisdiction to the United States over areas acquired by the United States for Federal purposes within the state of Arizona, Affiant personally conducted a diligent search in each of the bound volumes of the Session Laws of Arizona from 1912 to 2006. The search was limited to Joint Resolutions of the Legislature that were signed by the Governor which (1) granted consent to the United States to acquire specified areas in the state of Arizona; and (2) ceded any degree of legislative jurisdiction over such areas. Affiant conducted this search on June 13 and 14, 2007, in the state capitol of Arizona Law Library.

7. That, as a result of the diligent search of the Session Laws of the Arizona Legislature, Affiant affirms that he did not find any Joint Resolutions of the Arizona Legislature that ceded any degree of excusive, concurrent, or partial legislative jurisdiction to the United States, as shown in Table 1.

Table 1. Results of Affiant's Search for Joint Resolutions Ceding Jurisdiction to the United States in the Arizona Legislative Sessions Laws 1912 to 2006

Year	Legislature	Session	Resolutions*
1912	First	First Regular	None
1913	First	First Regular	None
1915	Second	First Regular First Special Second Special	None
1917	Third	First Regular	None
1918	Third	First Special	None
1919	Fourth	First Regular	None
1921	Fourth	First Special	None
1922	Fifth	First Regular First Special	None
1923	Sixth	First Regular	None
1925	Seventh	First Regular	None
1927	Eighth	First Regular First Special Second Special Third Special Fourth Special Fifth Special Sixth Special	None
1929	Ninth	First Regular	None
1931	Tenth	First Regular First Special	None
1933	Eleventh	First Regular First Special Second Special	None
1935	Twelfth	First Regular	None
1936	Twelfth	First Special	None
1937	Thirteenth	First Regular First Special Second Special Third Special	None
1938	Thirteenth	Fourth Special	None
1939	Fourteenth	First Regular	None
1940	Fourteenth	First Special	None
1941	Fifteenth	First Regular	None

1942	Fifteenth	First Special	None
1943	Sixteenth	First Regular	None
1944	Sixteenth	First Special Second Special	None
1945	Seventeenth	First Regular First Special	None
1946	Seventeenth	Second Special Third Special	None
1947	Eighteenth	First Regular First Special Second Special	None
1948	Eighteenth	Third Special Fourth Special Fifth Special Sixth Special Seventh Special	None
1949	Nineteenth	First Regular	None
1950	Nineteenth	First Special Second Special	None
1951	Twentieth	First Regular First Special	None
1952	Twentieth	Second Regular Second Special	None
1953	Twenty-First	First Regular First Special	None
1954	Twenty-First	Second Regular	None
1955	Twenty-Second	First Regular	None
1956	Twenty-Second	Second Regular First Special Second Special Third Special	None
1957	Twenty-Third	First Regular	None
1958	Twenty-Third	Second Regular First Special	None
1959	Twenty-Fourth	First Regular	None
1960	Twenty-Fourth	Second Regular	None
1961	Twenty-Fifth	First Regular First Special	None
1962	Twenty-Fifth	Second Regular	None
1963	Twenty-Sixth	First Regular First Special Second Special	None
1964	Twenty-Sixth	Second Regular	None
1965	Twenty-Seventh	First Regular First Special Second Special Third Special	None
1966	Twenty-Seventh	Second Regular Fourth Special	None

1967	Twenty- Eighth	First Regular First Special Second Special Third Special Fourth Special	None
1968	Twenty- Eighth	Second Regular	None
1969	Twenty-Ninth	First Regular	None
1970	Twenty-Ninth	Second Regular First Special	None
1971	Thirtieth	First Regular	None
1972	Thirtieth	Second Regular First Special	None
1973	Thirty-First	First Regular	None
1974	Thirty-First	Second Regular First Special Second Special	None
1975	Thirty-Second	First Regular	None
1976	Thirty-Second	Second Regular First Special	None
1977	Thirty-Third	First Regular	None
1978	Thirty-Third	Second Regular First Special Second Special	None
1979	Thirty-Fourth	First Regular First Special	None
1980	Thirty-Fourth	Second Regular Second Special Third Special Fourth Special Fifth Special	None
1981	Thirty-Fifth	First Regular First Special Second Special Third Special Fourth Special	None
1982	Thirty-Fifth	Second Regular Fifth Special Sixth Special Seventh Special	None
1983	Thirty-Sixth	First Regular	None
1984	Thirty-Sixth	Second Regular First Special Second Special Third Special	None
1985	Thirty-Seventh	First Regular	None
1986	Thirty-Seventh	Second Regular	None
1987	Thirty- Eighth	First Regular First Special Second Special Third Special	None
1988	Thirty- Eighth	Second Regular	None

1989	Thirty-Ninth	First Regular First Special Second Special	None
1990	Thirty-Ninth	Second Regular Third Special Fourth Special Fifth Special	None
1991	Fortieth	First Regular First Special Second Special Third Special Fourth Special	None
1992	Fortieth	Second Regular Fifth Special Sixth Special Seventh Special Eighth Special Ninth Special	None
1993	Forty-First	First Regular First Special Second Special Third Special Fourth Special Fifth Special Sixth Special Seventh Special	None
1994	Forty-First	Second Regular Eighth Special Ninth Special	None
1995	Forty-Second	First Regular First Special Second Special Third Special Fourth Special	None
1996	Forty-Second	Second Regular Fifth Special Sixth Special Seventh Special	None
1997	Forty-Third	First Regular First Special Second Special	None
1998	Forty-Third	Second Regular Third Special Fourth Special Fifth Special Sixth Special	None
1999	Forty-Fourth	First Regular First Special Second Special	None
2000	Forty-Fourth	Second Regular Third Special Fourth Special Fifth Special Sixth Special Seventh Special	None

2001	Forty-Fifth	First Regular First Special	None
2002	Forty-Fifth	Second Regular Second Special Third Special Fourth Special Fifth Special Sixth Special	None
2003	Forty-Sixth	First Regular First Special Second Special	None
2004	Forty-Sixth	Second Regular	None
2005	Forty-Seventh	First Regular	None
2006	Forty-Seventh	Second Regular	None

*Joint resolutions that cede any degree of legislative jurisdiction to the United States.

8. Affiant affirms that ARS section 37-620(B) states that any transfer of concurrent jurisdiction over Federal areas within the state of Arizona "...shall be filed by the governor with the county recorder of each county in which the land is situated." Therefore, on June 16, 2007, Affiant personally conducted a diligent search in the records located in the county of Greenlee Recorders Office for Joint Resolutions of the Arizona Legislature that ceded any concurrent legislative jurisdiction to the United States that had been recorded in the county in accordance with ARS section 37-620(B) ARS. Affiant found that since statehood, the Arizona Legislature and Governor have not ceded any level of legislative jurisdiction to the United States over any Federal areas within the county of Greenlee.

9. Affiant affirms that, to the best of Affiant's knowledge and belief, the results of these diligent searches provides evidence that the Arizona Legislature and the Governor have not ceded exclusive, concurrent, or partial legislative jurisdiction to the United States since statehood over any areas acquired by the United States in the county of Greenlee, state of Arizona, in accordance with ARS sections 26-251,26-252,26-253,37-620, 37-620.01, and 37-620.02, or in accordance with Article 1, Section 8, Clause 17 of the Constitution of the United States of America.

10. Affiant affirms that, to the best of Affiant's knowledge and belief, after searching the applicable laws, court cases, and the US Attorneys Manual, Title 9, Criminal Resource Manual, Section 664 Territorial Jurisdiction, the United States may hold or acquire property within the borders of a state without acquiring jurisdiction. The United States may acquire title to land necessary for

the performance of its functions by purchase or eminent domain without the state's consent *(See Kohl v. United States,* 91 U.S. 367, 371, 372 (1976)), but it does not thereby acquire legislative jurisdiction by virtue of its proprietorship. The acquisition of jurisdiction is dependent on the consent of, or cession of, jurisdiction by the state, *(See Mason Co. v. Tax Commission,* 302 U.S. 97 (1937); *James v. Dravo Contracting Co.,* 302 U.S. at 141-42.) and acceptance by the United States (See *Adams v. United States,* 319 U.S. 312 (1943))

11. Affiant has read and affirms that, to the best of Affiant's knowledge and belief, the United States required, upon the statehood of Arizona, that the Constitution of Arizona include the following statement relative to the public domain lying within the boundaries of the new state:

"Article 20, Section 4, Public Lands. The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof, ..."

12. Affiant has read and affirms that, to the best of Affiant's knowledge and belief, the above stipulation in Article 20, Section 4 of the Constitution of Arizona did not reserve to the United States any exclusive, concurrent, or partial legislative jurisdiction over the unappropriated and ungranted public lands as is evidenced by the following cases:

In Pollard vs. Hagan, 3 How. 212 (1845) 11 Law Ed. 570 - 571, the Court held that if such stipulation *"...had been inserted in the agreement, granting the municipal right of sovereignty and eminent domain to the United States, such stipulation would have been void and inoperative, because the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty or eminent domain, within the limits of a State or elsewhere, except in the case in which it is expressly granted.* "

"...the United States never held any municipal sovereignty, jurisdiction or right of soil in and to the territory of which Alabama or any of the new states were formed; except for temporary purposes, and to execute the trusts created by the acts of Virginia and Georgia Legislatures, and the deeds of cession executed by them to the United States, and the trust created by the Treaty with the French Republic of the 30th of April 1803 ceding Louisiana. "

"The right of Alabama and every other new state to exercise all the powers of government, which belong to and may be exercised by the original states of the Union must be admitted,· and remain unquestioned, except so far as they are temporarily deprived of control over the public lands. ... The object of all the parties to these contracts of cession was to convert the land into money for the payment of the debt, and to erect new states over the territory thus ceded,· and as soon as these purposes could be accomplished, the power of the United States over these lands as property was to cease. "

13. Affiant, after reading and understanding the following cases, affirms that, to the best of Affiant's knowledge and belief, the U.S. Supreme Court held that the reservation of the public lands by the United States upon statehood did not grant to the United States any degree of legislative jurisdiction over these lands, but that the United States only retained a proprietorial interest:

In Fort Leavenworth R. Co. v. Lowe, 114 U.S. 525, 531, 5 S.Ct. 995 (1885), the Court carefully explained federal jurisdiction within the States as follows: *"The consent of the states to the purchase of lands within them for the special purposes named, is, however, essential, under the constitution, to the transfer to the general government, with the title, of political jurisdiction and dominion. Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor. The property in that case, unless used as a means to carry out the purposes of the government, is subject to the legislative authority and control of the states equally with the property of private individuals.* "

In Pollard v. Hagan, 44 U.S. (3 How.) 212 (1845), the Court held: *"We think a proper examination of this subject will show that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory, of which Alabama or any of the new States were formed,"* 44 U.S., at 221. *"...[B]ecause, the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State or elsewhere, except in the cases in which it is expressly granted,"* 44 U.S., at 223.

14. Affiant also searched the General Service Administration's Inventory Report on Jurisdictional Status of Federal Areas Within the States (Published June 30,

1962), and affirms that, to the best of Affiant's knowledge and belief, this report shows that there are no Federal areas within the county of Greenlee, state of Arizona, to which any exclusive, concurrent, or partial legislative jurisdiction has been ceded to the United States by the state of Arizona.

15. Therefore, as a result of Affiant's searches relative to the status of Federal jurisdiction over Federal areas within the county of Greenlee, state of Arizona, Affiant affirms, to the best of Affiant's knowledge and belief, that there appears to be no evidence, in accordance with the Article 1, Section 8, Clause 17 of the Constitution of the United States and the ARS sections 26-251, 26- 252, 26-253, 37-620, 37-620.01, and 37-620.02, that the State of Arizona has ever ceded any exclusive, concurrent, or partial legislative jurisdiction to the United States over any lands acquired by the United States within the boundaries of the county of Greenlee since statehood. Also, Affiant affirms, to the best of Affiant's knowledge and belief, that the GSA Inventory Report does not list the so-called public lands of the United States as having any degree of legislative jurisdiction.

16. As a result of Affiant's research, Affiant is not in possession of any documents that lead Affiant to believe that the state of Arizona has ceded to the United States any exclusive, concurrent, or partial legislative jurisdiction over any land area within the county of Greenlee, state of Arizona, and Affiant believes that no other cession of any degree of legislative jurisdiction by the state of Arizona to the United States exists.

Further Affiant Sayeth Naught.

NOTARY STATEMENT

STATE OF IOWA)
)
COUNTY OF APPANOOSE)

Before me, the undersigned, a Notary Public in and for said County and State on this 6th day of July, 2007, personally appeared Wray J. Shildneck, known to me to be the identical person who executed the within and foregoing instrument and acknowledged to me that he first took an oath upon reason and belief as to the truth and then executed the above affidavit as a free and voluntary act.

Kathy Cridlebaugh
Notary Public

My commission expires:

KATHY CRIDLEBAUGH
APPANOOSE CO. DEP. RECORDER
MY COMM. EXP. 12-31-2010