



*"Working together for responsible management."*

## **STATEMENT OF PURPOSE**

Numerous Congressional acts and executive orders, including the Endangered Species Act, the Clean Water Act and Executive Order 11900 - Protection of Wetlands, give federal and state agencies the power to control the use and productivity of private property, private property rights and economic-backed expectations on private, state and federal lands. Additionally, the misinterpretation of the Federal Land Policy and Management Act, the National Forest Management Act and the Multiple Use, Sustained Yield Act can also diminish or eliminate the productive uses of the federally managed, multiple use lands. The misapplication of these laws can elevate wildlife protection, roadless recreation and other "preservation-type" land uses over and above individual rights, multiple land use, rural community protection, commodity use, employment opportunities, economic development and the stability of western rural counties.

Private property in this context includes private lands, private improvements on state or federal lands, private rights on federal lands such as livestock grazing rights and mining rights conveyed under the 1872 Mining Law, development and use rights on federal lands such as the right to harvest timber, and the right to free and unencumbered access to state, federal and private land holdings. Additionally, private property can include protection for investment-backed expectation under Executive Order 12630.

The objectives of the Coalition of Arizona/New Mexico Counties for Stable Economic Growth (Coalition of Counties) are: (1) To address the above described erosion of private property ownership and rights; and (2) to reduce the loss of multiple use lands to single use management. Through these objectives, the members of the Coalition of Counties can protect their citizens and their economic base.

The Coalition of Counties supports the protection of truly endangered species, navigable waters, wetlands and other important values on both multiple use and private lands. Congress and the President have determined that it is in the "public interest" to protect and enhance these values. However, Congress, the President, the U.S. Supreme Court, as well as the framers of the U.S. Constitution have also deemed that private property ownership and rights should not be diminished or destroyed in order to protect the resources in the "public interest." In fact, the Fifth Amendment of the Constitution mandates that, if private property rights are diminished "in the public interest," the holders of those rights must receive just compensation for their losses. It is through the protection of these individual rights on both private property and federal lands that the members of the Coalition of Counties can protect their individual rural economic base.

The objective of stabilizing local economies can be achieved in two ways. First, the Coalition of Counties must understand the economic impacts that the loss of property rights and job security will have on each individual county. To come to such an understanding, counties within the Coalition should conduct individual and joint economic assessments or studies to determine the strength and vitality of each industry contributing to the local economy within that county. These economic assessments should include consideration of the way that federal and state regulations can affect those individual industries, local tax

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revenues, job security, property values, etc. These economic assessments should also describe the effects that the devaluation of private property will have on the local economic base.

Second, the Coalition of Counties must ascertain how to protect their economic base by: (1) Protecting the private property use and rights of the citizens in their counties; and (2) protecting the multiple use lands from single use advocates. This protection can be enhanced through enforcement of (a) the Fifth Amendment guarantee that private property shall not be taken for a public use without the payment of just compensation, (b) the U.S. Supreme Court interpretation regarding the protection of private property rights from temporary or unreasonable governmental intervention, and (c) Executive Order 12630 which protects property rights from federal agency rules and regulations.

Note that throughout this process, the Coalition of Counties will make every attempt to work with the federal and state agencies and to inform them of the effect that their regulations are having on the Coalition and its individual members. Such cooperation can only bring about a greater understanding of the needs of the Coalition of Counties in protecting their citizens and their economic base.

### **Objectives, Tasks and Duties**

To reach the goal of protecting the stability of local economies through the protection of private property rights, the Coalition of Counties should adopt the following short range and long range objectives:

#### **SHORT RANGE OBJECTIVES:**

##### **A. Endangered Species Resolution**

The Coalition of Counties should adopt the attached resolution entitled “Endangered Species Resolution.” This resolution offers a proactive solution to county economic problems which both protects and enhances plant and animal species listed as threatened or endangered under the Endangered Species Act (ESA) and, at the same time, reduces the negative effects of the ESA restrictions on state, federal and private land use and development. The net effect of this resolution is to protect and enhance endangered species, private property rights and the economic base of local communities.

**(1) This resolution has been adopted by the New Mexico Cattle Growers Association, the Catron County Cattle Growers Association, the New Mexico Farm and Livestock Bureau, the Catron County Commissioners, the Catron County Land Use Alliance, and several Arizona counties. Additionally, on January 31, 1990, this resolution was adopted as a national policy objective by the National Cattlemen’s Association.**

To implement this resolution, the Coalition of Counties should actively work with Congressional sponsors and supporters of this concept that will introduce and work toward passage of this legislation before Congress. Congressional adoption of this legislation would accomplish three objectives:

1. Passage of national legislation of this type would implement the original Congressional intention behind the Endangered Species Act: To actively enhance populations of plant and animal species that are truly threatened or endangered so that those species may then be removed from the endangered species designation;
2. Passage of this legislation would assert a positive image for local counties and communities, as well as for the livestock, timber, oil and gas and mining industries, as those industries and communities actively work toward enhancing the populations of endangered species;

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3. Passage of this legislation would relieve the negative impacts of implementation of the ESA on private, state and federal properties. These negative impacts, such as the limitation or elimination of the use and development of state, federal and private property, also result in additional difficulties for local governments as less revenue is generated in each locality;
4. Passage of this legislation will stimulate business and bring new revenue into local areas; and
5. Passage of this legislation will eliminate the “taking” of private property, described in Executive Order 12630.

### **B. Wildlife Management Issues**

The Coalition of Counties would establish a wildlife advisory committee to advise the Coalition regarding: (1) The takings implications caused by the management, or lack of management of wildlife by state and federal agencies; and (2) the opportunities to correct the negative impacts of those takings implications.

Wildlife Management, or the lack of wildlife management, is having a severe and devastating impact on local economies. Wildlife population numbers are rapidly increasing, thereby increasing: (1) Wildlife damage to private property such as fences and haystacks; (2) the amount of forage taken from private, state and federal lands by wildlife; and (3) by decreasing the amount of land that can be used for other legitimate uses such as mining, timber, and livestock. Again, the damage directly decreases the amount of revenue generated by those local industries to support the community and county governments.

Not only are state agencies guilty of allowing private property destruction and economic damage by wildlife, but federal agencies are at fault as well. Federal agencies are charged with the management and protection of the resources on federal lands. In order to protect those resources, federal agencies must be forced to manage wildlife using those resources. Again, that failure to manage wildlife is causing a taking of private property rights for which just compensation must be paid.

Upon creation of the wildlife advisory committee, the committee should complete the following tasks:

1. The wildlife advisory committee for the Coalition of Counties should request that a public meeting be held with the Forest Service Regional Forester for Region III, the New Mexico and Arizona State Directors for the Bureau of Land Management and the directors of the State wildlife management agencies for Arizona and New Mexico. The Coalition committee should set the agenda for this meeting, select a moderator for the meeting and prepare specific questions, problems and demands to present to these state and federal agencies regarding the economic losses associated with the lack of wildlife management in Arizona and New Mexico.

The wildlife advisory committee should gather information regarding the takings of private property by wildlife so that a request for completion of a Takings Implications Assessment under Executive Order 12630 can be filed.

### **C. State Protection For Private Property Rights**

The Coalition of Counties should actively work to influence the state legislatures of Arizona and New Mexico to enact a state law prohibiting the taking of private property by state regulatory agencies without guaranteeing the payment of just compensation. The legislation can be patterned after Presidential Executive Order 12630 which prohibits the taking of private property by federal agency regulation without completing a Takings Implications Assessment (TIA) to assess the effect of that regulation on private property and private property rights. The passage of such a measure by each state would further protect the property rights of the citizens in each state.

### **LONG TERM OBJECTIVES:**

### **A. Vested Rights on Federal Lands**

An integral consideration for the protection of those local economies dependent on the livestock industry is the reestablishment of a private property “vested” right in livestock grazing on federal lands. At the current time, federal agencies consider livestock grazing permits as a “mere privilege” which can be revoked at will. However, there is strong legal and economic evidence to support the proposition that livestock grazing on federal lands is more than a privilege, but is, in fact, a legally protected right, the taking of which requires payment under the Fifth Amendment of the U.S. Constitution. To achieve the objective of proving the existence of vested private property grazing rights, the Coalition of Counties should:

1. Assist in funding a legal study to determine the extent of vested private property grazing rights on federal lands.
2. Recruit other funding sources to assist in completing this legal study, including seeking support from the National Cattlemen’s Association, the Public Lands Council, the American Farm Bureau and other associations.

### **B. Protection of 1872 Mining Law**

The Coalition of Counties should work to ensure that the Mining Law of 1872 remains intact and is not altered or amended by Congress. This law is the basis of numerous principles that protect local economies such as the prior appropriations doctrine under state water law, the law allowing the transfer of title to subsurface rights on federal lands and the principle of a “split estate” on BLM and Forest Service lands. These principles are critical to the protection of the local mining and livestock industries. Congress must not be allowed, even inadvertently, to alter these rights.

### **C. Other Projects for Consideration**

The following issues are also important to the citizens represented by the Coalition of Counties.

1. Congressional and federal agency proposals to create additional wilderness areas and wild and scenic river designations.
2. The acquisition of water rights by the state and federal government.