

# Only 2 ways to go...



# **CABPRO**

California Association of Business, Property  
and Resource Owners

20Nov12 - Grass Valley, CA

Veritas Research Consulting

Brief Overview of  
Apache County Stewardship

# Problems Facing Counties

- Ever increasing federal agency encroachment
- Ever increasing environmental litigation
- Ever decreasing coordination and cooperation from federal agencies
- Dramatic impacts to our cultural and historic uses
- Drastic increases to the attacks on local control

# The Attacks Are Endless

- Continual affronts to local control and authority
- Continual and systemic mismanagement
- Water grabs by Federal Agencies
- Unfunded mandates
- Wild and Scenic Designations
- Wilderness areas
- No travel and “quiet” areas
- Destruction of infrastructure and industry

# The Attacks Are Endless

- Endless attacks on all agricultural producers.
- Continual placement of plants, animals and insect above the needs of people.
- Bio-Regional Governance.
- National Planning Rule.
- TMR (Travel Management Rule)
- ESA (Endangered Species Act)
- NEPA (National Environmental Policy Act)
- FLPMA (Federal Land and Management Act)

# The Attacks Are Endless...But,

- There is a way out, with the Counties and States stepping-up to their rightful place of authority, utilizing their proper powers under the 10<sup>th</sup> Amendment to protect Health, Safety and Welfare while putting a stop to all actions that threaten those precepts. Almost all of these actions are also outside the proper scope of any agencies Delegation of Authority and/or Jurisdiction.

# Solutions

- Counties must take back full control of property rights, health, safety and welfare within their jurisdictions.
- Counties must band together, especially in the Western States, to accomplish this goal.
- Local Governments, the highest and most authoritative we have in our Republic, must quit attacking the symptoms and begin attacking the disease...Federal encroachment.

# Some Actions by Apache County, Arizona

- Apache County, Arizona, Board of Supervisors saw an immediate need for action and began taking steps.
- First with County Resolution's against the Travel Management Rule, National Planning Rule, BLM Wilderness Areas.



# Some Actions by Apache County, Arizona

- Next, contracting with a research, consulting and plan implementation firm, VRC, to retain a Natural Resource Coordinator to represent Apache County to the Federal Agencies and formulate strategies to fight back.
- Then, begin to utilize cohesive strategies to monitor all federal agency actions and properly submit commentary to have legal standing.

# Various Actions Apache County, Arizona had to defeat

- The Travel Management Rule (TMR) is the largest attack on right-of-way and roadway infrastructure to date. Apache County, AZ, submitted a 24-page legal brief and commentary to the Federal Register and the USFS to effectively stop actions on the Apache-Sitgreaves National Forest. As one high-level agency personnel put it, “It would be best if we let this plan die on the vine”.

# Various Actions Apache County, Arizona had to defeat

- The largest water grab and water claim filing by a federal agency in Arizona history was attempted in 2010-2011 by the USDA-USFS. Apache County led the fight by gathering all the agency water claims filed throughout the State, meeting with the AZ Department of Water Resources to verify the data, then do official testimony to the AZ Senate - Land Use, Water and Rural Development Committee.

# Various Actions Apache County, Arizona had to defeat

- Next, Apache County did all the legal proceedings through the AZDWR via “Letters of Protest” calling into question the federal agencies legal right, need and ability to claim such waters. This resulted in the agency unable to answer the Counties Claims, and having to drop the action due to the rules of the AZDWR Water Claim Filing Statutes. The total claimed 916,397 AcFt – 298,608,878,847 gallons the federal agencies desired control over!

# Various Actions Apache County, Arizona had to defeat

- The Environmental Community has a strategized plan called “Bio-Blitz” where in 2011 the predominant environmental groups proclaimed they were going to seek up-listings through the Fish and Wildlife Service (FWS) of some 700 species in one year. These up-listings were in the areas of Critical / Threatened and Endangered Species categories with a large portion of them in A.C.

# Various Actions Apache County, Arizona had to defeat

- Almost all of the species up-listings were tied to critical land and water resources, becoming a way to once again destroy cultural and historic uses. Apache County went on the offensive, systematically submitting commentary to the Federal Register, the FWS and the U.S. House Natural Resources Committee. This resulted in not a single one of the species filing petitions becoming effective in Apache County.

# The Wallow Fire

- Largest fire in AZ History
- Destroyed enough timber to have kept our largest mill, which had employed over 300 people, for 24/7 and lasting 21 years.
- The USDA-USFS-"RAT" team estimates a conservative \$110 million dollars in damage to the A-S National Forest.

# The Wallow Fire

- The systemic mismanagement of the federal agencies was done under the guise of “protecting” threatened and endangered species. Well, they managed to burn up over 80% of all spotted owls, PAC’s, nesting sites and habitat...it looks like they loved them to death. These two brief points are on top of the devastation to our tourism, watersheds, fisheries, hunting, etc.



# Wallow Fire

- With the agencies having no plan on what to do with salvageable timber, Apache County forced the issue. Conducting working meetings with a one month deadline, A.C. forced the agencies into roadside salvage sales which resulted in the harvesting of over 10 million Brd.Ft. before winter hit. Closed mills re-opened and 100's of jobs were re-created.

# Mt. Baldy Wilderness

- An individual lost in the Mt. Baldy Wilderness forced our Sheriff's Search and Rescue, Sheriff's Posse and local volunteers to mobilize. The agencies being of little to no help, our Apache County Sheriff, Sheriff Dedman, mobilized every member available with chainsaws and all closed and overgrown roads and trails were reopened by force throughout the 40 year old wilderness area.

# Current steps and actions

- Apache County, per the USFS, has the authority to decide and declare when and to what severity the fire restrictions start and where. The USFS will just implement the Counties plans as custodians, their properly defined jurisdictional status.

# Current steps and actions

- The USDA-USFS strategically located permanent steel gates around the forest. These were done while the forest was still closed by the “BAER” teams. When the forest was opened, Apache County unanimously passed the resolutions and hand delivered them to all levels of the agency and elected officials.

# Current steps and actions

- The Apache County Road Resolution categorically stated our Constitutional Authority over all right-of-way, roads, routes of travel, etc. within the exterior boundaries of our County. The USFS was also briefed by the Sheriff on the resolution, which stated not only will the offenders be charged and fined/jailed with a Class II offense, but will have to pay for all removal costs.

# Current steps and actions

- The Apache County Board of Supervisors and Apache County Sheriff was then given the keys to all the gates and they remain in the locked OPEN position permanently. Signage to be placed on each gate declaring the gate property of Apache County has already passed legal council and will be permanently affixed to any gates this year.

# Current steps and actions

- Apache County formulated, took all the way to Washington D.C. in person, and has gotten off the ground the first of it's kind program in America...County Stewardship. The contracts are already signed and in our hands and consist of Apache County being the project designator, contractor, hiring and working entity and the USFS pays for the work out of their budget.

# Current steps and actions

- Apache County also established and has signed contracts in our possession for multiple year “umbrella” or Master Agreements. These facilitate just a 3-4 page Project Agreement for each timber harvest or other projects and eliminate the need to renegotiate the finite details on each task. This saves a lot of time and speeds up the process exponentially.



# Current Steps and Actions

- Apache County is now starting on another 1800 acres by one community, 4000 acres by another community and is currently finalizing the plans for a 96,000 acre fire-break project to go across the middle of our forest, east to west, to protect the communities as a whole.

# Current Steps and Actions





# Current Steps and Actions





# Current Steps and Actions





# Current Steps and Actions





# Current Steps and Actions





# Current Steps and Actions





# Current Steps and Actions

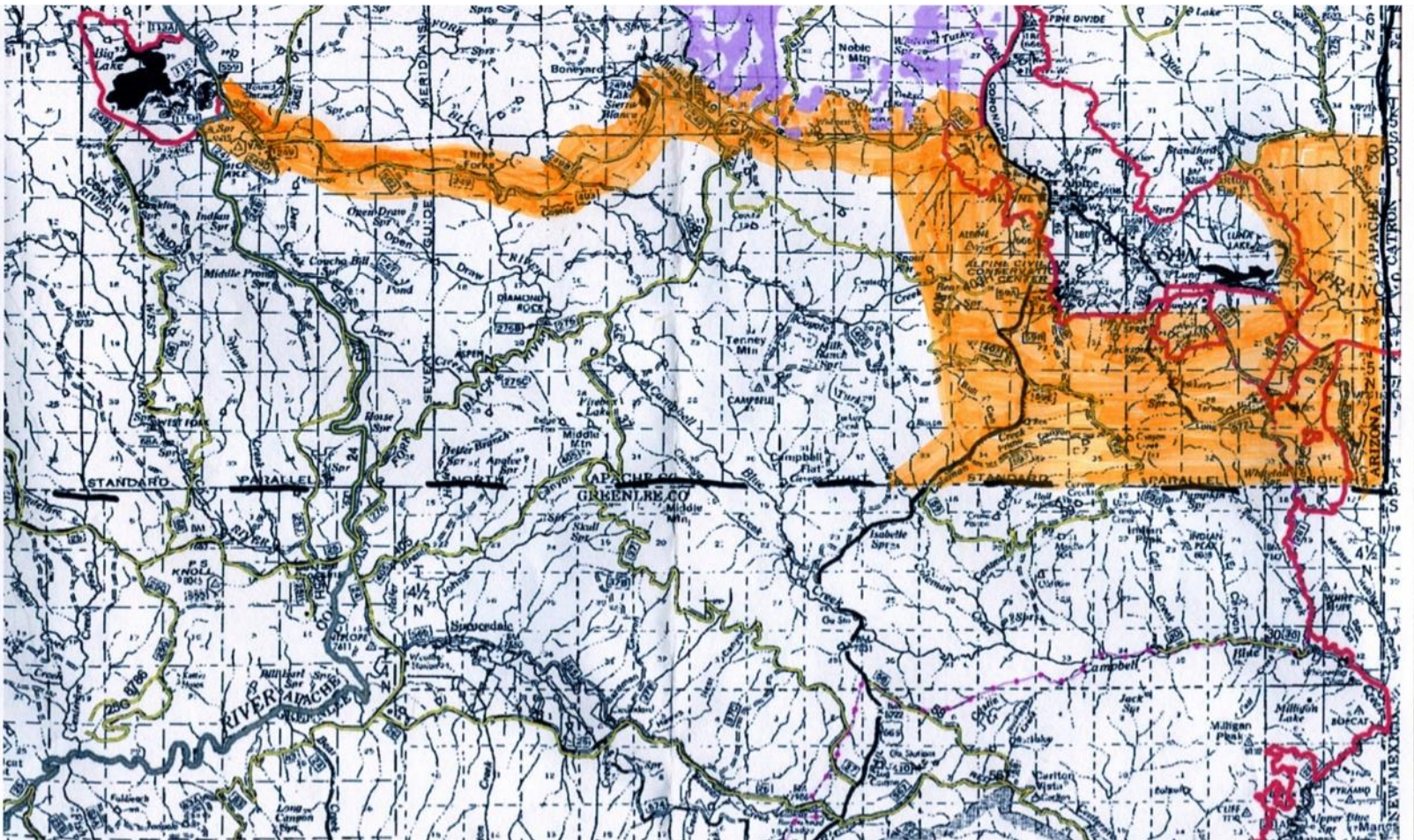




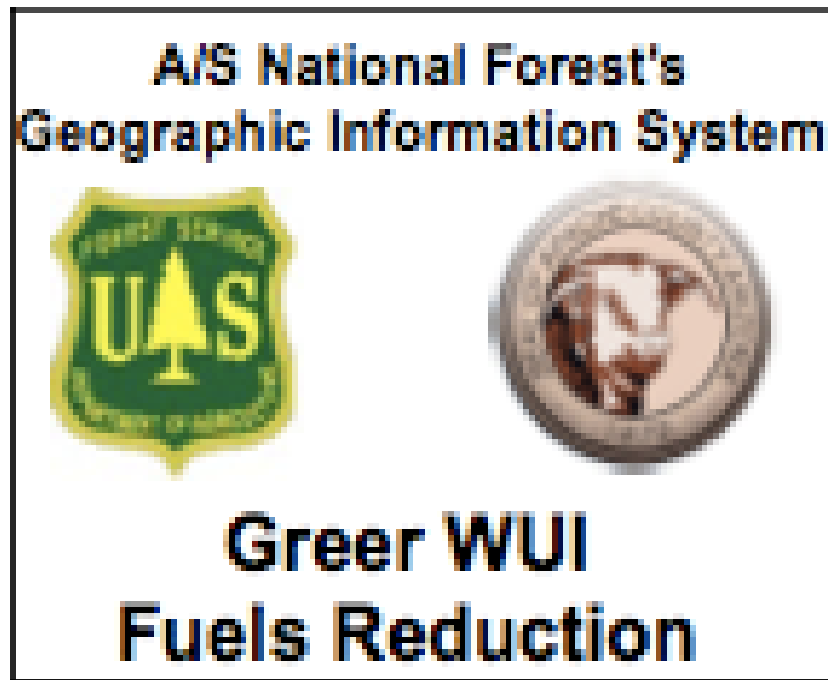
# Current Steps and Actions

- On October 30, 2012 Apache County leadership began the “ground-truthing” with the USFS, stakeholders, industry, watershed users and other interested parties on another project, fully a year ahead of the anticipated schedule. Apache County is on the I.D. Teams working in a fully coordinated fashion with the federal land management agencies to foster the plans for the benefit of the human and animal environment.

# Current Steps and Actions

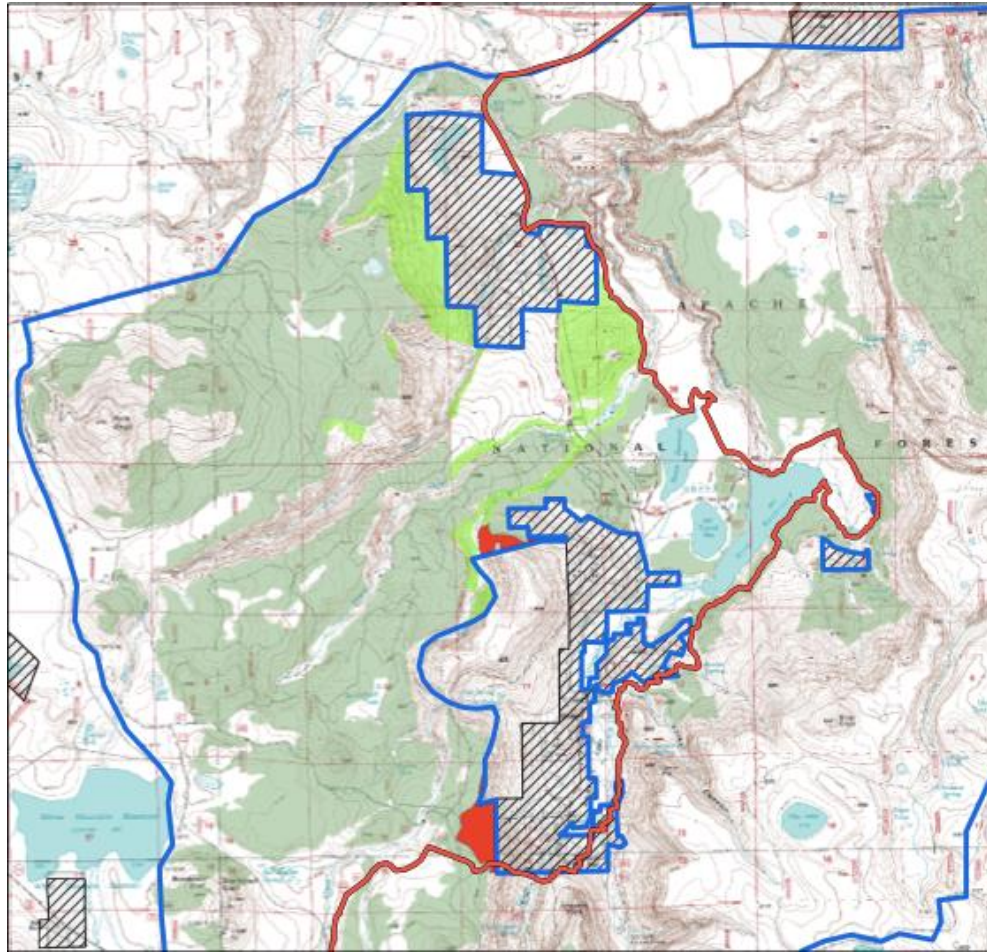


# Current Steps and Actions





# Current Steps and Actions





# Rep. Ivory (UT)



# Current Steps and Actions

The Apache County Stewardship plan was heralded as a “*model for other governments*” and “*part of a national strategy of forest management*” around the country in U.S. Congressional Hearings conducted in Washington D.C. on July 20, 2012.

# Current Steps and Actions

- Apache County's actions have led to the 3 previous lumber mills reopening and a new mill from the state of Washington moving in right now. As well, while we were traveling to this presentation a 5<sup>th</sup> mill on our AZ/NM border and a wood products company in Tucson have been linked-up to open another operation and will be creating many more jobs.

# Association of Counties

- On Friday November 16, 2012, Apache County, Arizona earned the most prestigious award a county can earn for, “County and Economic Development, for the implementation of innovative solutions to community challenges through **The County Stewardship Program**”



# County Summit Award

The Arizona Association of Counties & AACo Foundation award

APACHE COUNTY

with

2012 County Summit Award for  
Community & Economic Development


For the implementation of innovative solutions to community challenges through the  
COUNTY STEWARDSHIP PROGRAM

November 16, 2012

  
Hon. Keith Russell, President

  
ARIZONA  
ASSOCIATION OF  
COUNTIES

  
AACo Foundation

  
The Times-Gazette, Chairman of the Board

# Why We Must Fight

- These attacks upon our history and culture are eroding the very basis of our Constitutional Republic and all local control mechanisms.
- The economic effects of the TMR alone, and in just Apache County Arizona per the USFWS, University of Arizona and the AZ Game and Fish Department are as follows:

# Why We Must Fight

- Non-Consumptive Wildlife Activities:
  - 489 Jobs
  - \$41,967,228
- Hunting and Fishing Activities:
  - 1,010 Jobs
  - \$54,902,400
- Vehicular Activities:
  - 842 Jobs
  - \$76,863,360

# Why We Must Fight

- 298,608,878,847 gallons of water
- 300 jobs for 21 years straight burned up in 2 weeks.
- 4 Forests Restoration Initiative (4FRI) has not even started, nor has the funding to do NEPA reports on our forest. The project has been whittled down from 100,000 acres/yr. to just 10,000 acres/yr. with a possible start date in 6-7 years from now.

# Why We Must Fight

- Wallow West Treatment – Whittled down from January 2012 – April 2012 from 96,000 acres to just 15,000 acres spread out over 3 years...if they get funding! Also, the CBD has already sent notification in writing that if one tree with green still on it is cut, they will litigate.

# Why We Must Fight

- Counties are the most powerful and knowledgeable level of government!
- The Sheriff is the highest law enforcement official in the land! (see ARS 13-3875)
- County and then State Governments are the proper authorities for all actions in our Constitutional Republic
- The future of our great country and our posterity.

# Some of the legal basis Apache County used:

- US Attorneys – USAM – Title 9 – Sec. 665
- **“Determining Federal Jurisdiction”**
- “The United States has jurisdiction only if the land or building is within the special territorial jurisdiction of the United States.”

# Some of the legal basis Apache County used:

- “If the land is other than a military base, the regional counsel's office of the General Services Administration usually has the complete roster of all Federal lands and buildings in its region and can frequently provide a definitive answer to jurisdiction.”



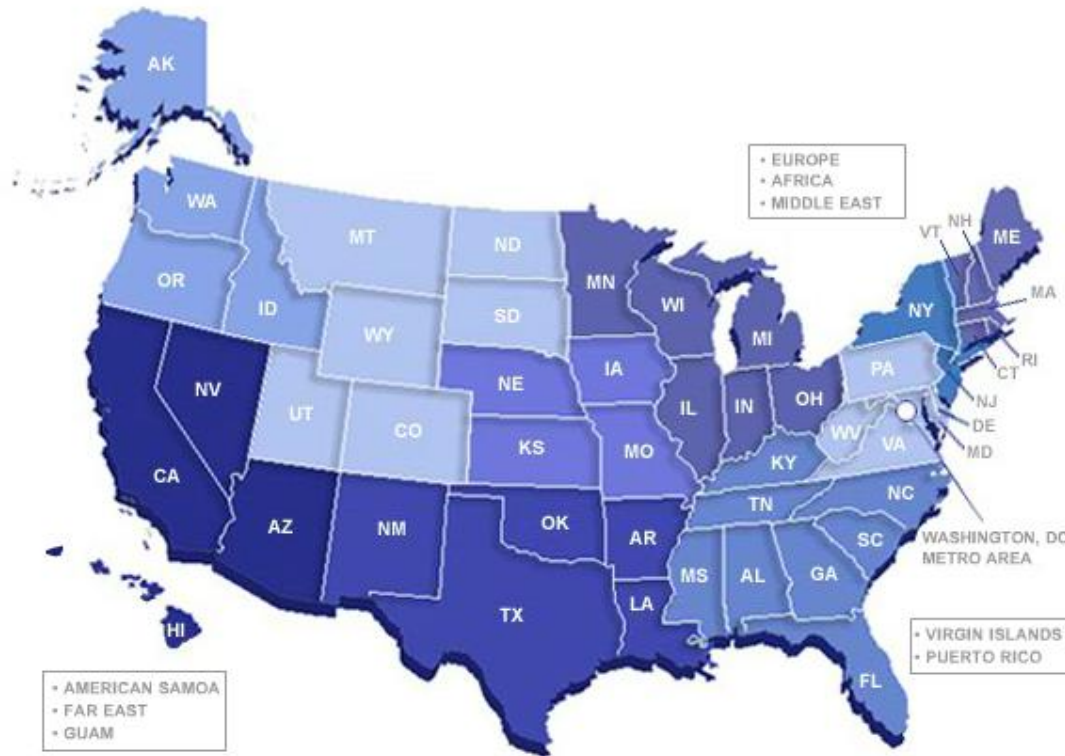
# Some of the legal basis Apache County used:

- “Each United States Attorney would be well advised to request from each agency within the district a report on the jurisdictional status claimed for each of its facilities and assurance that documentation is available.”

# Some of the legal basis Apache County used:

## GSA Regions

Find your GSA Region by selecting an area on the map below, or a city link: [Boston](#), [New York](#), [Philadelphia](#), [Atlanta](#), [Chicago](#), [Kansas City \(Missouri\)](#), [Fort Worth](#), [Denver](#), [San Francisco](#), [Auburn \(Seattle\)](#), and [Washington, DC](#).



# Some of the legal basis Apache County used:

- GSA Region 9 – Pacific Rim Region serves:
- Arizona
- California
- Hawaii
- Nevada

Regional Counsel - Chip Morris

(415) 522-2600

[chip.morris@gsa.gov](mailto:chip.morris@gsa.gov)

# Some of the legal basis Apache County used:

- GSA Region 10 – Northwest/Arctic Region
- Alaska
- Idaho
- Oregon
- Washington

Regional Counsel – Elizabeth Krueger

(253) 931-7007

[betsy.kruger@gsa.gov](mailto:betsy.kruger@gsa.gov)

# Some of the legal basis Apache County used:

- Type of Legislative Jurisdiction
  - Code 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 State’s authority over the area.”

# Some of the legal basis Apache County used:

- “Needful Buildings” clause of Article 1, Sec. 8, Clause 17 of the Constitution for the United States does not include Forests and Parklands.
- Collins vs. Yosemite Park and Curry Co.

# Some of the legal basis Apache County used:

- In the Organic Act of 1897 and the Weeks Forestry Act of 1911, Congress authorized the States to retain jurisdiction over National Forests.
- 16 U.S.C.
- 30 Stat. 36
- 30 Stat. 963

# Some of the legal basis Apache County used:

- The Act of May 9, 1941, 55 Stat. 183, codified at 43 U.S.C. 931a, authorized the Attorney General to retrocede jurisdiction over roads across federal properties. The Act of October 23, 1962, 76 Stat. 1129, codified at 40 U.S.C. 319, extended this power to executive agency heads generally (regional foresters).



# Some of the legal basis Apache County used:

- In 1970 Congress Authorized Federal Agencies again to retrocede jurisdiction over lands:
- In 1976 the Secretary of the Interior obtained retrocession authority with respect to National Parks.
- In 1978 the Secretary of Agriculture was added as well.

# Some of the legal basis Apache County used:

- Congress has made all federal property, including federal enclaves, subject to State environmental requirements and the power to enforce State environmental laws includes the power to enforce criminal provision of those laws.
- 133 Mil. L. Rev. 249, 278 (1991)

# Some of the legal basis Apache County used:

- To all the above points of Jurisdiction:
- A federal officer who is outside his jurisdiction loses his law enforcement authority and can make only a “citizens arrest”.
- People vs. Crusilla, 77 Cal. App.4<sup>th</sup> 141, 91 (1999)