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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Arizona State Legislature, et al.,
Plaintiffs,
v.
Joseph R Biden, Jr., et al.,
Defendants.

No. CV-24-08026-PCT-SMM
ORDER

This matter is before the Court on two Rule 12(b)(1) Motions to Dismiss. (Docs. 49, 73). The first Motion was filed on June 3, 2024 by Defendants Joseph R. Biden Jr., *et al.* (the “United States”) and is fully briefed. (Docs. 49, 60, 63, 71). The second Motion was filed on September 13, 2024 by Intervenor-Defendants State of Arizona and Governor Katie Hobbs (“State and Governor of Arizona”) and is also fully briefed. (Docs. 73, 74, 76). For the reasons stated below, the Court grants the Motion to Dismiss filed by the United States, (Doc. 49), and dismisses this action. The Court denies as moot the Motion filed by the State and Governor of Arizona. (Doc. 73).

I. BACKGROUND

Pursuant to the Antiquities Act of 1906, President Joseph R. Biden established the Baaj Nwaavjo I’tah Kukveni – Ancestral Footprints of the Grand Canyon National Monument (“Ancestral Footprints National Monument” or the “Monument”) via Proclamation 10606 (the “Proclamation”) on August 8, 2023. See 88 Fed. Reg. 55,331

1 (Aug. 8, 2023).¹ The Proclamation reserved approximately 917,618 acres of land in
2 Northern Arizona comprising three non-contiguous parcels of land bordering Grand
3 Canyon National Park, Kaibab National Forest, Vermilion Cliffs National Monument,
4 Grand Canyon-Parashant National Monument. Id. at 17, 23. Also bordering Ancestral
5 Footprints Monument are the Navajo, Kaibab-Paiute, and Havasupai Reservations. Ibid.
6 The Monument’s purpose, as detailed in the Proclamation, is to conserve areas in the Grand
7 Canyon region containing “over 3,000 known cultural and historic sites, including 12
8 properties listed on the National Register of Historic Places,” 88 Fed. Reg. at 55,333;
9 sacred or significant locations to Indigenous peoples in the region such as historic trails,
10 cliff houses, dwelling sites, rock art, pottery, and sacred sites, id. at 55,333–34; areas of
11 geologic and hydrologic interest, id. at 55,334–35; notable plant and animal species in the
12 region, id. at 55,335–36; and remnants of Euro-American settlements, id. at 55,337.

13 The Antiquities Act, passed by Congress in 1906 and signed into law by President
14 Theodore Roosevelt, grants the President discretion “to declare by public proclamation
15 historic landmarks, historic and prehistoric structures, and other objects of historic or
16 scientific interest that are situated on land owned or controlled by the Federal Government
17 to be national monuments.” 54 U.S.C. § 320301(a). Together with the authority to declare
18 national monuments, the President is empowered to “reserve parcels of land for the
19 monuments. The limits of the parcels shall be confined to the smallest area compatible with
20 the proper care and management of the objects to be protected.” § 320301(b).

21 President Biden’s creation of Ancestral Footprints Monuments Monument does not
22 mark the first time that the Monument’s encompassed lands have been withdrawn by
23 executive branch. After a surge in the price of uranium in the mid-2000s, thousands of new
24 uranium mining claims were staked on the lands surrounding Grand Canyon National Park.
25 (Doc. 1 at 16). “By 2009, more than 10,000 mining claims had been staked outside Grand
26 Canyon National Park.” (Ibid.) This surge in uranium mining claims spurred efforts at the
27 federal level to restrict mining on the lands surrounding Grand Canyon National Park. After

28 ¹ As Proclamation 10606 is central to this litigation and is not subject to reasonable dispute, the Court takes judicial notice of the Proclamation and its contents.

1 Congressional legislation aimed at protecting the land surrounding Grand Canyon National
2 Park failed to secure support, the Secretary of the Interior (the “Secretary”) issued a two-
3 year ban on location and entry of new mining claims on 993,569 acres of land comprising
4 three non-contiguous parcels that track closely with the present boundaries of Ancestral
5 Footprints Monument. (Id. at 17). In 2011, after the two years had elapsed, the Secretary
6 withdrew 1,010,776 acres for a further six months pursuant to his emergency authority and
7 the 1872 Mining Law. (Id. at 18). Then, in 2012, the Secretary withdrew the same parcels—
8 slightly diminished to a total of 1,006,545 acres—from location and entry under the
9 General Mining Law for 20 years, subject to valid existing rights, which at the time
10 included eleven uranium mines. (Ibid.) Several parties, including counties, associations,
11 companies, and an individual, challenged the Secretary’s 2012 land withdrawal (the “2012
12 FLPMA Withdrawal”) in this district, claiming that the withdrawal violated several federal
13 statutes. See Yount v. Salazar, No. CV11-8171 PCT-DGC, 2014 WL 4904423, at *1 (D.
14 Ariz. Sept. 30, 2014). Judge Campbell upheld the withdrawal on the merits, finding that
15 the Secretary did not act inappropriately in withdrawing the lands in order to allow the
16 agency to complete further assessment of the potential environmental contamination that
17 could result from increased uranium mining in the area. Id. at *17, 20, 27–28. The Ninth
18 Circuit affirmed Judge Campbell’s decision. See Nat’l Mining Ass’n v. Zinke, 877 F.3d
19 845, 878 (9th Cir. 2017).

20 Plaintiffs now seek to challenge President Biden’s 2023 designation of Ancestral
21 Footprints National Monument. This consolidated action consists of two cases filed
22 consecutively on February 12, 2024. (Doc. 1), see CV-24-8027-PHX-SMM. The Plaintiffs
23 in the first-filed action (collectively, “ASL Plaintiffs”) include the Arizona State
24 Legislature by and through Senate President Warren Petersen and House Speaker Ben
25 Toma (the “Legislature”); Kimberly Yee in her official capacity as Treasurer of the State
26 of Arizona (the “Treasurer”); Mohave County; the town of Colorado City; and the town of
27 Fredonia (collectively, “Local Government Plaintiffs”). Chris Heaton (“Plaintiff Heaton”)
28 is the sole Plaintiff in the later-filed case. See CV-24-8027-PHX-SMM.

1 Plaintiffs allege that Proclamation 10606 exceeds President Biden’s authority to
2 designate national monuments under the Antiquities Act of 1906. The Antiquities Act, as
3 ASL Plaintiffs argue, “says only certain items can be declared to be national monuments:
4 historic landmarks, historic or prehistoric structures, or ‘other objects of historic or
5 scientific interest.’” (Doc. 1 at 24). Alternatively, to the extent that the Antiquities Act
6 authorizes such expansive delegations, ASL Plaintiffs argue that the Antiquities Act is
7 unconstitutional. (Id. at 1, 45). ASL Plaintiffs also argue that the National Monument
8 conflicts with the Arizona Wilderness Act of 1984 because certain lands designated as
9 wilderness under the Arizona Wilderness Act are encompassed by the Ancestral Footprints
10 National Monument. (Id. at 47).

11 Plaintiff Heaton alleges parallel claims against many of the same Defendants. (Doc.
12 1 of CV-24-8027-PHX-SMM). Plaintiff Heaton is a sixth-generation cattle rancher in
13 Northern Arizona. (Id. at 2). Plaintiff Heaton’s ranch is 48,063 acres and consists of private
14 land as well as land leased from Arizona and from the Bureau of Land Management
15 (“BLM”). (Ibid.) The Monument now covers much of Plaintiff Heaton’s ranch and “lists
16 several alleged ‘objects’ that are on Mr. Heaton’s Ranch.” (Id. at 12). Plaintiff Heaton
17 claims that “the Proclamation has exposed him to severe regulatory burdens and the threat
18 of criminal penalties for engaging in everyday conduct on his Ranch.” (Id. at 2).

19 ASL Plaintiffs focus their claims on the impact of the Proclamation on uranium
20 mining interests and Arizona’s ability to manage its State Trust Lands. (Doc. 1 at 31–32).
21 As ASL Plaintiffs acknowledge, such uranium mining claims were actually precluded from
22 advancing by the Secretary of the Interior’s 2012 FLPMA Withdrawal. (Doc. 1 at 18) (“As
23 a result of the Secretary of the Interior’s decision, no new action on mining claims could
24 begin until 2032.”). ASL Plaintiffs contrast the temporary nature of the Secretary’s 2012
25 decision with the Proclamation, however, stating that “[t]he Ancestral Footprints
26 Monument makes permanent the ban on new mining within the monument.” (Id. at 32).
27 ASL Plaintiffs argue that lost revenue from uranium mining harms the State and local
28

1 communities within the State. (Doc. 1 at 33) (“Uranium mining is ... critical for ensuring
2 power provision for the State.”).

3 The United States filed its combined Rule 12(b)(1) Motion to Dismiss this
4 consolidated action on June 3, 2024, arguing that neither ASL Plaintiffs nor Individual
5 Plaintiff have Article III standing to bring this action. (Doc. 49). The Motion is fully
6 briefed. (Docs. 49, 60, 63, 71). On September 9, 2024, the Court granted the State and
7 Governor of Arizona’s Motion to Intervene² and the State and Governor shortly thereafter
8 filed their Motion to Dismiss. Both Motions are fully briefed. (Docs. 49, 60, 63, 71, 73, 74,
9 76).

10 II. LEGAL STANDARD

11 A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(1)
12 challenges the Court’s subject matter jurisdiction over the action. Federal courts are of
13 limited jurisdiction, and “Article III of the Constitution confines the jurisdiction of federal
14 courts to ‘Cases’ and ‘Controversies.’” Food & Drug Admin. v. All. for Hippocratic Med.,
15 602 U.S. 367, 378 (2024). Any plaintiff who invokes the jurisdiction of a federal court is
16 thus charged with establishing standing to bring suit. Hollingsworth v. Perry, 570 U.S. 693,
17 704 (2013); see also Spokeo, Inc. v. Robins, 578 U.S. 330, 338 (2016) (“Standing to sue is
18 a doctrine rooted in the traditional understanding of a case or controversy.”). “To establish
19 standing, ... a plaintiff must demonstrate (i) that she has suffered or likely will suffer an
20 injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and
21 (iii) that the injury likely would be redressed by the requested judicial relief.” All. for
22 Hippocratic Med., 602 U.S. at 368. In short, a plaintiff needs to show (a) injury, (b)
23 causation, and (c) redressability. Ibid.

24 The “injury in fact” asserted by the plaintiff must be “(a) concrete and particularized,
25 and (b) ‘actual or imminent, not conjectural or hypothetical[.]’” Lujan v. Def. of Wildlife,
26 504 U.S. 555, 560 (1992) (internal citations omitted) (quoting Whitmore v. Arkansas, 495

27 _____
28 ² The Court denied similar motions to intervene filed by several tribal nations and
conservation organizations but found that those groups could seek to intervene again if the
United States’ materially position changed.

1 U.S. 149, 155 (1990)). In other words, “[a]bstract injury is not enough. The plaintiff must
 2 show that he ‘has sustained or is immediately in danger of sustaining some direct injury’
 3 as a result of the challenged official conduct[.]” City of Los Angeles v. Lyons, 461 U.S.
 4 95, 101–02 (1983); see also Clapper v. Amnesty Int’l, 568 U.S. 398, 416 (2013) (holding
 5 that parties lacked standing because “hypothetical future harm” asserted “was not certainly
 6 impending.”).

7 “The second and third standing requirements—causation and redressability—are
 8 often ‘flip sides of the same coin.’” All. for Hippocratic Med., 602 U.S. at 380 (quoting
 9 Sprint Commc’ns Co. v. APCC Servs., Inc., 554 U.S. 269, 288 (2008)). That is, an injury
 10 caused by the defendant’s conduct will generally be redressed by awarding damages for or
 11 enjoining the conduct. Id. at 381. Causation requires a causal connection between the injury
 12 and the alleged conduct, meaning that “the injury has to be ‘fairly ... trace[able] to the
 13 challenged action of the defendant, and not ... th[e] result [of] the independent action of
 14 some third party not before the court.’” Lujan, 504 U.S. 560 (alterations in original)
 15 (quoting Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 41–42 (1976)). Demonstrating
 16 redressability requires that it be “likely” rather than “speculative” that the plaintiff’s injury
 17 will be redressed by a favorable decision. Lujan, 506 U.S. at 561.

18 III. ANALYSIS

19 a. The Legislature lacks legislative standing.

20 ASL Plaintiffs argue that the Legislature has institutional standing to challenge the
 21 Proclamation based on the Arizona Constitution’s grant of authority over State Trust Lands
 22 to the legislature. Because the Proclamation has the effect of limiting development and
 23 mining of State Trust Lands, ASL Plaintiffs argue that the Legislature suffers an injury as
 24 a result. “These injuries include institutional injuries to the Legislature’s rights to
 25 implement the Enabling Act and pass laws relating to mining leases, highway easements,
 26 improvements, and the state budget.” (Doc. 63 at 6).

27 Legislative standing to sue has generally been recognized when a dispute arises
 28 between the branches of state government in which the legislature’s vote has, or is

1 threatened to be, nullified by a challenged law.³ This was the case in the Supreme Court’s
2 seminal decision recognizing legislative standing, Coleman v. Miller, 307 U.S. 433 (1939);
3 see also Raines v. Byrd, 521 U.S. 811, 823 (1997) (“Coleman stands ... for the proposition
4 that legislators whose votes would have been sufficient to defeat [or enact] a specific
5 legislative Act have standing to sue if that legislative action goes into effect [or does not
6 go into effect], on the ground that their votes have been completely nullified.”). And it was
7 the case in Arizona State Legislature v. Arizona Independent Redistricting Commission,
8 576 U.S. 787 (2015), which the Legislature relies on in support of its standing arguments.

9 Due to the intra-governmental nature of the disputes over which state legislatures
10 have brought suit, legislative standing to sue has been raised more frequently in state court,
11 where “standing is a prudential consideration rather than a jurisdictional one.” Biggs v.
12 Cooper ex rel. Cnty. of Maricopa, 341 P.3d 457, 460, 462 (Ariz. 2014) (finding that bloc
13 of legislators had standing to sue governor, judge, and state agency director on vote
14 nullification theory); see also Forty-Seventh Legislature of State v. Napolitano, 143 P.3d
15 1023, 1028 (Ariz. 2006) (finding that legislature had alleged particularized injury to
16 legislative body as a result of governor’s unconstitutional line item veto), and Bennett v.
17 Napolitano, 81 P.3d 311, 317–18 (Ariz. 2003) (finding that four legislators failed to allege
18 particularized injury as result of governor’s veto because no legislator’s vote was nullified).
19 Although Arizona State Legislature was initially brought in federal court—specifically,
20 before a three-judge panel of the federal district court pursuant to 28 U.S.C. § 2284—the
21 nature of the dispute was still, as the United States phrases it, “an intra-sovereign dispute
22 between two departments.” (Doc. 49 at 20).

23 In this action, the Legislature seeks to challenge to a Presidential proclamation in
24 federal court. The Legislature’s claims are readily distinguishable on this basis alone from
25 the ilk of intra-governmental disputes that have previously given rise to legislative

26
27 ³ Legislative standing to sue should not be conflated with a legislature’s authority to defend the
28 constitutionality of state legislation in federal court. See, e.g., Virginia House of Delegates v.
Bethune-Hill, 587 U.S. 658, 662 (2019) (legislative body which had intervened to defend the
constitutionality of state’s redistricting plan had “no standing to appeal the invalidation of the
redistricting plan separately from the State of which it is a part”).

1 standing, and so the Court must scrutinize whether the Legislature’s alleged injuries
2 belongs to the Legislature or whether—as the United States and Intervenor-Defendants
3 State and Governor of Arizona argue—the Legislature’s alleged injuries instead belong to
4 the State. This distinction is not only relevant to the question of whether the Legislature
5 has alleged a concrete and particularized injury sufficient to establish Article III standing,
6 but it is also relevant because the Legislature is not authorized to bring claims on behalf of
7 the State. See Brnovich v. Democratic Nat’l Comm., 594 U.S. 647, 665 (2021) (“[T]he
8 attorney general is authorized to represent the State in any action in federal court.”), citing
9 Ariz. Rev. Stat. § 41-193(A)(3); see also State ex rel. Woods v. Block, 942 P.2d 428, 436
10 (Ariz. 1997) (“[C]onducting litigation on behalf of the state, as authorized by the
11 Legislature, is an executive function, because doing so carries out the purposes of the
12 Legislature.”).

13 ASL Plaintiffs do not contest that the Legislature is without authority to litigate on
14 the State’s behalf but argues instead that the Legislature brings this challenge on behalf of
15 itself. The Proclamation, ASL Plaintiffs argue, causes an institutional injury to the
16 legislative body because “the Legislature will have to divert resources to deal with the
17 effects the Proclamation will have on the State of Arizona.” (Doc. 1 at 34). ASL Plaintiffs
18 contend that “The Proclamation will affect the State budget in numerous ways” and detail
19 several diversion-of-resource harms. (Id.) However, the harms that ASL Plaintiffs allege
20 are not direct harms to the Legislature; instead, the alleged harms primarily arise from
21 Ancestral Footprints Monument’s impact on Arizona’s State Trust Lands.

22 As ASL Plaintiffs argue, the Legislature is vested with oversight of State Trust
23 Lands pursuant to Arizona’s Constitution, which provides that:

24 The legislature shall provide by proper laws for the sale of all state lands or
25 the lease of such lands, and shall further provide by said laws for the
26 protection of the actual bona fide residents and lessees of such lands,
27 whereby such residents and lessees of said lands shall be protected in their
28 rights to their improvements.

1 Ariz. Const. art. X, § 10. ASL Plaintiffs argue that the Legislature’s authority over State
2 Trust Lands, as conferred by the Arizona Constitution, means that harm to State Trust
3 Lands injures the Legislature.

4 The Court finds that ASL Plaintiffs have failed to allege a particularized institutional
5 injury to the Legislature. “For an injury to be ‘particularized,’ it ‘must affect the plaintiff
6 in a personal and individual way.’” Spokeo, 587 U.S. at 339 (quoting Lujan, 504 U.S. at
7 560). The Legislature’s claimed injuries do not amount to a complete nullification of the
8 Legislature’s votes, as was deemed sufficient in Coleman, nor that “the Legislature’s right
9 to have the votes of a majority given effect has been overridden and the Legislature, as an
10 institution, has sustained a direct injury to its authority to make and amend laws by a
11 majority vote.” Forty-Seventh Legislature, 143 P.3d at 1028.

12 Legislative standing is appropriate in a decidedly narrow range of circumstances
13 that are not present here. The Supreme Court in Bethune-Hill suggested in a footnote that
14 “[a] legislative chamber as an institution ... suffers no legally cognizable injury from
15 changes to the *content* of legislation its future members may elect to enact. By contrast, the
16 House has an obvious institutional interest in the *manner* in which it goes about its
17 business.” 587 U.S. at 670 n.6 (emphasis in original). This formulation is consistent with
18 the circumstances in which the Supreme Court has endorsed legislative standing, including
19 Coleman, where the legislature “challenged the right of the Lieutenant Governor to cast
20 the deciding vote in the Senate[,]” see 307 U.S. at 436, and Arizona State Legislature,
21 where the legislature claimed that the Arizona Independent Redistricting Commission
22 (“AIRC”), created by a citizen initiative which amended the Arizona Constitution to divest
23 the Arizona legislature of its redistricting power and vest it into the AIRC, deprived the
24 legislature of its right to initiate redistricting under the U.S. Constitution. See 576 U.S. at
25 800 (“Proposition 106, which gives the AIRC binding authority over redistricting, strips
26 the Legislature of its alleged prerogative to initiate redistricting.”).

27 ASL Plaintiffs cite to the Sixth Circuit’s decision in State by and through Tennessee
28 General Assembly v. United States Department of State for the proposition that

1 “[I]nterference with a legislative body’s specific powers, such as its ability to subpoena
2 witnesses, or a constitutionally assigned power, may create an injury that is concrete
3 enough for Article III standing.” 931 F.3d 499, 512 (6th Cir. 2019). In Tennessee General
4 Assembly, the General Assembly filed suit on its own behalf against the U.S. Department
5 of State, alleging that the United States had violated the constitution by requiring
6 Tennessee to provide Medicaid coverage to refugees. Id. at 501–02. The Six Circuit
7 concluded that the General Assembly lacked standing to pursue claims on its own behalf
8 against the federal government. Id. at 519.

9 Tennessee General Assembly is instructive as to why the Legislature lacks standing
10 in this action. The Sixth Circuit observed in that case that the General Assembly’s “claimed
11 injury appears to derive, if anywhere, from the alleged injury to Tennessee’s sovereignty
12 The impact on the General Assembly’s obligation to appropriate funding is more akin
13 to the alleged injury in Raines, of an abstract ‘loss of political power.’” Id. at 514, citing
14 Raines, 521 U.S. at 82. The same rings true here. For instance, ASL Plaintiffs allege broad
15 injuries arising from the Legislature’s “interest in vindicating its constitutionally-provided
16 role in management and disposition of State Trust Lands” and “cognizable interest in the
17 federal government removing or encumbering State Trust Land only through congressional
18 action as opposed to unilateral executive action.” (Doc. 1 at 37–38). ASL Plaintiffs
19 endeavor to derive an institutional injury to the Legislature from the Proclamation’s impact
20 on the State but have articulated no more than an abstract loss of sovereign authority over
21 State Trust Lands. The impact on State Trust Lands as a result of the Proclamation does
22 not approach the sort of direct, particularized harms to the Legislature as have previously
23 given rise to legislative standing.

24 The Legislature is indeed obligated to “provide by proper laws” for State Trust
25 Lands pursuant to the Arizona Constitution. See Ariz. Const. art. X, § 10. As ASL Plaintiffs
26 point out in their Enabling Act arguments, “[a]fter title to [the State Trust Lands] had vested
27 in the state [by the Enabling Act], it became exclusively the province of the state
28 Legislature to provide a method for disposing of them which would further the objects for

1 which the various grants were made[.]” (Doc. 63 at 6) (quoting “Campbell v. Flying V
2 Cattle Co., 220 P. 417, 418 (Ariz. 1923)). However, as the Arizona Supreme Court went
3 on to say in Flying V Cattle Company, “[t]he legislature did this in 1915 by enacting the
4 Public Land Code, in which the state land department was created and *complete authority*
5 *to administer these lands* conferred upon it.” Ibid. (emphasis added).

6 In other words, ASL Plaintiffs’ Enabling Act arguments rely on an authority which
7 the Legislature conferred on Arizona’s State Land Department more than a century ago. It
8 is indisputable that the Legislature created the State Land Department and the State Land
9 Commissioner to manage State Trust Lands. (Doc. 63 at 5), citing Farmers Inv. Co. v. Ariz.
10 State Land Dep’t, 666 P.2d 469, 476 (Ariz. Ct. App. 1982). It is similarly indisputable that
11 the Legislature may not bring litigation on behalf of the State Land Department because
12 that authority belongs to the attorney general. See A.R.S. § 41-192(D); see also A.R.S. §
13 37-102(C) (providing that the State Land Department “may commence, prosecute and
14 defend all actions and proceedings to protect the interest of this state in lands within this
15 state or the proceeds of lands within this state. Actions shall be commenced and prosecuted
16 at the request of the department by the attorney general[.]”).

17 The same conclusion is true for the remainder of the Legislature’s alleged injuries
18 resulting from the Proclamation’s impact on State Trust Lands. For instance, ASL Plaintiffs
19 raise a mining-related theory of standing pursuant to the Legislature’s “constitutional
20 authority over sale or lease of mining rights on State Trust Land,” citing to Arizona’s
21 statutory scheme governing mining leases. (Doc. 63 at 7). What ASL Plaintiffs fail to note
22 that the cited statutes confer the authority to issue leases on the State Land Department and
23 State Land Commissioner. See, e.g., A.R.S. §§ 27-236, 27-272. The Legislature also argues
24 that the Proclamation diminishes the Legislature’s constitutional authority over
25 improvements of State Trust Lands, (Doc. 63 at 8), as well as airspace. (Id. at 9). It bears
26 repeating that the Legislature has empowered the State Land Department to litigate, by and
27 through the attorney general, “all actions and proceedings to protect the interest of this state
28 in lands within this state or the proceeds of lands within this state.” § 37-102(C).

1 ASL Plaintiffs’ legislative standing arguments fail to trump the plain language of
2 the statutes that the Legislature has enacted. “[A] State must be able to designate agents to
3 represent it in federal court.” Hollingsworth v. Perry, 570 U.S. 693, 710 (2013). Arizona
4 law expressly provides that the attorney general is tasked with representing the State “in
5 any action in a federal court.” Ariz. Rev. Stat. § 41-193(A)(3). Consequently, litigating on
6 the State’s behalf is the prerogative of the executive branch, not the Legislature. See Block,
7 942 P.2d at 436 (Ariz. 1997); see also Va. House of Delegates v. Bethune-Hill, 587 U.S.
8 658, 665–66 (2019) (finding that state house of representatives was without authority to
9 press appeal on behalf of the state after invalidation of the state’s redistricting plan). ASL
10 Plaintiffs cannot unilaterally assume that authority by claiming indirect injuries to the
11 Legislature.

12 Moreover, the Legislature’s expansive view of legislative standing would run afoul
13 of the separation of powers clause enumerated in Arizona’s Constitution. See Block, 942
14 P.2d 428 (Ariz. 1997). Arizona’s Constitution, which, in creating the three departments of
15 state, proscribes that “each department shall be separate and distinct, and no one of such
16 departments shall exercise the powers properly belonging to either of the others.” Ariz.
17 Const. art. III. In Block, the Arizona Supreme Court considered the attorney general’s
18 challenge to the Arizona Legislature’s 1994 creation of the Constitutional Defense Council
19 (“CDC”), comprised of three members: the Governor or her designee, a member appointed
20 by the Senate President, and a member appointed by the House Speaker. 942 P.2d at 430.
21 The CDC’s original purpose was to direct the attorney general to initiate litigation on behalf
22 of the CDC, although the CDC could also employ outside counsel. Ibid. Then, the
23 Legislature amended the statute in 1996 to remove the veto power of the attorney general
24 and add two advisory members—the Chairman of the House of Representatives Committee
25 on States’ Rights and Mandates and the Chairman of the Senate Committee on Government
26 Reform. Ibid. The Arizona Supreme Court found that the CDC constituted a legislative
27 body performing an executive function and the statute was therefore unconstitutional under
28 the Arizona Constitution’s separation of powers clause. Id. at 437. The Arizona Supreme

1 Court also observed that “[t]he Legislature’s actions in amending A.R.S. § 41–401 show
2 its intent to take over an executive function by eliminating the Attorney General from the
3 litigation process[.]” Id. at 436.

4 In bringing this action, the Legislature appears to have a similar motive as did the
5 Legislature in Block: supplanting the attorney general in the litigation process. The Court’s
6 conclusion that the Legislature lacks standing here finds support in the statutory text of §
7 41-193(A)(8), which was amended after the Arizona Supreme Court’s decision in Block
8 and contemplates that the attorney general is charged with the challenging the
9 constitutionality of Presidential acts on behalf of the state. Subsection (A)(8) of the statute
10 provides that the attorney general shall:

11 On demand by the legislature, either house of the legislature or any member
12 of the legislature ... review an executive order issued by the president of the
13 United States ... to determine the constitutionality of the executive order and
14 whether this state should seek an exemption from the application of the
15 executive order or seek to have the order declared to be an unconstitutional
16 legislative authority by the president.

17 A.R.S. § 41-193(A)(8). While the text specifies “executive orders” rather than Presidential
18 proclamations, the two are functionally equivalent in many respects. See Indep. Meat
19 Packers Ass’n v. Butz, 526 F.2d 228, 234 (8th Cir. 1975) (“Presidential proclamations and
20 orders have the force and effect of laws when issued pursuant to a statutory mandate or
21 delegation of authority from Congress.”). By proscribing that the State is the entity which
22 should seek have the order declared unconstitutional, the statute vests the authority to do
23 so in the attorney general. Nowhere does it indicate that the Legislature, rather than the
24 State by and through the attorney general, is the arm of government tasked with
25 undertaking litigation, on behalf of itself, to declare a Presidential act unconstitutional.

26 In short, the Legislature endeavors to transmute injury to the legislative body from
27 injury to the State and thereby subvert the attorney general’s authority to litigate on the
28 State’s behalf. That the State is not inclined to challenge the Proclamation—as evinced by

1 the State’s intervention as a Defendant in this matter—does not vest that authority with the
2 Legislature. Giving credence to such an authority would run afoul of the Arizona
3 Constitution’s separation of powers clause and it would circumvent the statutorily
4 provided-for means of ensuring that the Legislature’s voice is heard in litigation conducted
5 on behalf of the State. See A.R.S. § 41-193(A)(8).

6 **b. ASL Plaintiffs lack standing based on a diversion of resources injury.**

7 ASL Plaintiffs next argue that they have demonstrated Article III standing based on
8 a diversion of resources theory. ASL Plaintiffs argue that “[a]n entity has standing to sue
9 ‘when it suffered both a diversion of its resources and a frustration of its mission.’” (Doc.
10 63 at 13) (quoting La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest,
11 624 F.3d 1083, 1088 (9th Cir. 2010) (“Lake Forest”). With respect to the Legislature, ASL
12 Plaintiffs contend that “the Proclamation may well require new legislation to authorize
13 such activities, and that new legislature will necessarily divert staff time and attention that
14 otherwise would be spent on pressing state priorities.” (Doc. 63 at 13). ASL Plaintiffs raise
15 that:

16 At a minimum, legislative staff will need to closely evaluate existing statutory
17 authorities to determine whether additional legislation is necessary to permit
18 the required collaboration with the Federal Government. That staff time
19 necessarily will be diverted from other high-priority legislative tasks. These
20 diversions of staff resources result directly from the Proclamation and
21 undermine the performance of the Legislature’s official duties. Thus, these
22 diversions of resources establish standing on behalf of the Legislature and the
23 Treasurer.

24 (Id. at 13–14). ASL Plaintiffs advance a similar argument on behalf of the Treasurer,
25 arguing that the Treasurer will need to “divert resources from other vital public tasks” in
26 order to cooperate with the federal government on wildlife management within the
27 Monument. “These diversions of staff resources[,]” ASL Plaintiffs argue, undermine the
28 Treasurer’s ability to focus her resources on more pressing state tasks. (Doc. 63 at 13–14).

1 With respect to Local Government Plaintiffs, ASL Plaintiffs argue that Local Government
2 Plaintiffs have standing to challenge the Proclamation because Local Government
3 Plaintiffs will need to devote resources to addressing the Proclamation’s impacts. (Doc. 63
4 at 17). “By statute, Mohave County’s Board of Supervisors must prepare a comprehensive
5 development plan every ten years,” ASL Plaintiffs explain. (Doc. 63 at 17). “To assess and
6 plan around the regulatory consequences” of the Monument’s creation, “the County must
7 invest additional staff time and resources to preparing the comprehensive plan. This use of
8 resources necessarily will require the reallocation of staff that would otherwise be
9 advancing other important governmental tasks.” (*Ibid.*) ASL Plaintiffs argue that “[t]hese
10 staff resources necessarily will come at the expense of other important governmental
11 functions and thus support standing. (*Ibid.*)

12 As an initial matter, the Court is unpersuaded that any Plaintiff can assert Article III
13 standing based on the diversion of resources theory that ASL Plaintiffs have advanced. The
14 diversion of resources injury recognized by the Supreme Court in Havens Realty Corp. v.
15 Coleman—from which the standard delineated in Lake Forest was derived, see 624 F.3d
16 at 1088—was specific to the nonprofit organization that had brought suit in the case. 455
17 U.S. 363, (1982); see All. for Hippocratic Med., 602 U.S. at 396 (“Havens was an unusual
18 case, and this Court has been careful not to extend the Havens holding beyond its
19 context.”). The Havens theory of standing has been advanced almost exclusively by similar
20 nonprofit organizations in the cases in which the Ninth Circuit has considered
21 organizational standing based on a cognizable diversion of resources injury, including Lake
22 Forest. See 624 F.3d at 1085, 1088; El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr.
23 Rev., 959 F.2d 742, 745–48 (9th Cir. 1991) (considering standing of nonprofit immigration
24 assistance organization); Fair Hous. of Marin v. Combs, 285 F.3d 899, 902–05 (9th Cir.
25 2002) (considering standing of nonprofit housing organization); Smith v. Pac. Props. &
26 Dev. Corp., 358 F.3d 1097, 1105–06 (9th Cir. 2004) (considering standing of nonprofit
27 civil rights organization); Rodriguez v. City of San Jose, 930 F.3d 1123, 1134–35 (9th Cir.
28 2019) (considering standing of gun rights organization); see also Alfred L. Snapp & Son,

1 Inc. v. Puerto Rico, ex rel., Barez, 458 U.S. 592, 611 (1982) (“A private organization may
2 bring suit to vindicate its own concrete interest in performing those activities for which it
3 was formed.”) (Brennan, J., concurring) (citing Havens, 455 U.S. at 378–79). No Plaintiff
4 in this action is an organization. ASL Plaintiffs comprise a governmental body, a
5 government official, and three local governments. The Court is unaware of any case in this
6 circuit in which a diversion of resources theory of standing has been considered or accepted
7 for a governmental plaintiff. See also City and Cnty. of San Francisco v. Whitaker, 357
8 F.Supp.3d 931, 944 (N.D. Cal. 2018) (finding that city’s organizational standing arguments
9 were subsumed into its economic harm arguments because “a municipality’s ability to
10 claim proprietary interests to the full extent of its responsibilities, powers, and assets
11 appears to amply cover the goals that could properly constitute the City’s organizational
12 mission.”) (internal quotation marks omitted).

13 In any event, even if ASL Plaintiffs were able to assert an injury based on a diversion
14 of resources theory, ASL Plaintiffs rely on a legal standard that has since been disclaimed
15 by the Supreme Court. As the United States argues, ASL Plaintiffs’ formulation of
16 organizational standing is no longer good law after the Supreme Court’s decision in
17 Alliance for Hippocratic Medicine. (Doc. 71 at 5-6), see 602 U.S. at 394–95. Indeed, the
18 Ninth Circuit has now recognized that its line of cases interpreting Havens Realty Corp. v.
19 Coleman, 455 U.S. 363 (1982), which had been construed as “allowing an organization to
20 assert standing if it diverts resources in response to a governmental policy that frustrates
21 its mission[,]” has been overruled by Alliance for Hippocratic Medicine. See Ariz. All. for
22 Retired Am. v. Mayes, 117 F.4th 1165, 1170 (9th Cir. 2024). As the Ninth Circuit has
23 stated, “the distinctive theory of organizational standing reflected in Havens Realty extends
24 *only* to cases in which an organization can show that a challenged governmental action
25 directly injures the organization’s pre-existing core activities and does so *apart* from the
26 plaintiffs’ response to that governmental action.” Ibid. (emphasis in original).

27 ASL Plaintiffs argue for standing based on a diversion of resources theory that is no
28 longer good law. Under Alliance for Hippocratic Medicine, demonstrating an

1 organizational injury requires ASL Plaintiffs to show that their core activities are injured
2 apart from their response to the Proclamation. However, ASL Plaintiffs fail to contend that
3 their pre-existing core activities are injured by the Proclamation or that the alleged injuries
4 suffered by the Legislature, the Treasurer, or Local Government Plaintiffs are distinct in
5 any way from their respective responses to the Proclamation. In fact, it appears to the Court
6 that the alleged resource diversions that ASL Plaintiffs complain of are indistinguishable
7 from the due performance of their respective functions. ASL Plaintiff's allegations in
8 support of this injury are wholly inadequate to demonstrate a cognizable injury sufficient
9 for Article III standing.

10 **c. ASL Plaintiffs lack standing based on an injury to water rights.**

11 ASL Plaintiffs argue with respect to Local Government Plaintiffs that the
12 Proclamation injures Local Government Plaintiffs by creating a reservation of water that
13 impinges on their water rights. ASL Plaintiffs argue that “by designated the landscapes as
14 monuments, the Proclamation designates the water in the landscapes as protected
15 monuments.” (Doc. 63 at 18). “[T]he extent of the Proclamation, and its focus on water
16 resources, creates an extensive federal-reserved right to water however measured.” (*Id.* at
17 19). ASL Plaintiffs do not attempt to quantify the amount of water that will be necessary
18 to serve the Monument's purposes but argue that such quantification is unnecessary for the
19 Court to conclude that the Proclamation creates a substantial reservation of water. (Doc.
20 63 at 18). ASL Plaintiffs posit that “[t]he local need for water and the magnitude of the
21 federal reserved right the Monument creates means the conflict between the federal
22 government and local users like Mohave County, Colorado City, and Fredonia is ‘actual or
23 imminent.’” (Doc. 63 at 20) (quoting *All. For Hippocratic Med.*, 602 U.S. at 380).

24 The United States contends that ASL Plaintiffs' standing arguments based on water
25 rights contradict with ASL Plaintiffs' own Complaint. (Doc. 71 at 8). While the Complaint
26 only alleges that the Proclamation has created ambiguity regarding water rights, the United
27 States argues, ASL Plaintiffs' “Opposition claims an imminent, far-reaching injury to water
28 rights.” (*Ibid.*) The United States contends that ASL Plaintiffs' injection of new allegations

1 into their opposition to the United States’ motion to dismiss is improper and such
2 allegations should be disregarded. (Id. at 11). However, were the Court to consider ASL
3 Plaintiffs’ new allegations regarding the extent of the new federal-reserved water rights,
4 the United States argues that “ASL Plaintiffs have identified no concrete conflict between
5 their water rights and any reserved water right anywhere in the Monument.” (Ibid.)

6 The Court agrees that ASL Plaintiffs have identified no conflict between ASL
7 Plaintiffs’ existing water rights and the Proclamation’s impacts which amounts to a
8 concrete injury. ASL Plaintiffs argue that the Proclamation’s references to water and
9 hydrology supports ASL Plaintiffs’ position that the Proclamation creates “an extensive
10 federal-reserved right to water,” (Doc. 63 at 19), but fail to even mention the
11 Proclamation’s express disclaimer that “[n]othing in this proclamation shall be construed
12 to alter the valid existing water rights of any party[.]” 99 Fed. Reg. 55,339. Mere conjecture
13 regarding the Proclamation’s supposed potential effects on Local Government Plaintiff’s
14 water rights is insufficient to support Article III standing. Similarly inadequate are ASL
15 Plaintiffs’ arguments that the Legislature is injured in some fashion because the Legislature
16 bears a constitutional duty to protect the water rights of State Trust Land lessees. (Doc. 63
17 at 25) (“Federal interference with water rights, especially of this magnitude, undermines
18 the Legislature’s constitutional duty with regards to State Trust Lands.”). The Court finds
19 that ASL Plaintiffs have failed to show a concrete or imminent injury relating to water
20 rights. See Spokeo, 578 U.S. at 339 (“[T]he claimed injury must be concrete, or “‘*de facto*’;
21 that is, it must actually exist.”) (quoting Black’s Law Dictionary 479 (9th ed. 2009)); see
22 also Lyons, 461 U.S. at 101–02 (“The Plaintiff must show that he ‘has sustained or is
23 immediately in danger of sustaining some direct injury’ as a result of the challenged official
24 conduct[.]”).

25 **d. ASL Plaintiffs lack standing based on injury to economic or energy**
26 **interests.**

27 ASL Plaintiffs argue that Local Government Plaintiffs, the Legislature, and the
28 Treasurer each have standing to challenge the Proclamation on the basis that the

1 Proclamation will reduce revenue and economic development that would otherwise be
2 gained through uranium mining activities. (Doc. 63 at 27). Because the Proclamation
3 precludes further development of mining claims on the lands encompassed by the
4 Monument, ASL Plaintiffs argue that every ASL Plaintiff—especially Mohave County,
5 one of the Local Government Plaintiffs—will be injured by the Proclamation’s impact on
6 economic development associated with uranium mining. (Id. at 27–28). ASL Plaintiffs also
7 raise the argument that all Plaintiffs are energy consumers now at risk of energy disruption
8 and higher energy prices due to the Proclamation’s restrictions on uranium mining. (Id. at
9 27). The Court evaluates the standing arguments of each of the ASL Plaintiffs with respect
10 to the asserted economic and mining interests at stake.

11 i. Standing of the Legislature

12 ASL Plaintiffs argue that the Legislature has standing to bring this action on the
13 basis that the Proclamation will decrease revenue to the state budget from State Trust Lands
14 and mining. (Doc. 63 at 27). However, ASL Plaintiffs advance no justification for why
15 reduced revenue harms the Legislature directly as opposed to the State of Arizona.
16 Consequently, ASL Plaintiffs’ theory of standing as to the Legislature is unavailing the
17 same reasons as stated above in the Court’s legislative standing analysis. Lessened revenue
18 to the state budget and state fund do not amount to a particularized injury to the Legislature
19 which would empower the Legislature to bring suit on its own behalf.

20 ii. Standing of the Treasurer

21 ASL Plaintiffs argue that the Treasurer is adversely impacted by the Proclamation
22 in the context of uranium mining because “[t]he Treasurer exercises ‘those powers of the
23 surveyor-general with respect to the selection of lands’ under A.R.S. § 37-202.” (Doc. 63
24 at 34–35. ASL Plaintiffs argue that “the Treasurer is responsible for all surveying necessary
25 to secure title to State Trust Land and to determine distribution of water to benefit State
26 Trust Land.” (Id. at 35). “The Proclamation affects water rights and State Trust Land ...
27 and thus will impact past and future surveys the Treasurer performs as surveyor-general.”
28 (Ibid.)

1 It is unclear to the Court how the Proclamation's impact on the Treasurer's land
2 surveys constitutes an injury. In any event, ASL Plaintiffs' argument on this basis has been
3 more or less disposed of because the Court has already determined that the Treasurer is not
4 empowered to bring litigation on behalf of the State Land Department and that Plaintiffs
5 have failed to establish any concrete water rights injury.

6 iii. Standing of Local Government Plaintiffs

7 ASL Plaintiffs primarily direct their mining revenue-related standing arguments
8 towards economic harms that the Proclamation causes to Local Government Plaintiffs'
9 propriety interests. Because the Proclamation prohibits development of uranium mining
10 claims staked within the Monument's boundaries, "Mohave County, Colorado City, and
11 Fredonia allege the Proclamation will reduce the tax revenue they collect due to reduced
12 mining activities and reduced economic development." (Doc. 63 at 28). "Mohave County
13 also alleges that the reduced revenue will impose costs on its relating to its poverty services
14 and measures to address budget shortfalls." (*Ibid.*)

15 The United States argues that the restrictions on uranium mine development that
16 ASL Plaintiffs identify were already in place by way of the 2012 FLPMA Withdrawal,
17 which withdrew the lands encompassed by the Monument for a period of 20 years. (Doc.
18 49 at 25, Doc. 71 at 14). The 2012 Withdrawal is still in place. See 88 Fed. Reg. 55,342
19 ("Nothing in this proclamation shall be deemed to revoke any existing withdrawal,
20 reservation, or appropriation; however, the monument shall be the dominant reservation.").
21 ASL Plaintiffs acknowledge as much in their Complaint. (Doc. 1 at 32) ("As a result of the
22 Secretary of the Interior's decision, no new action on mining claims could begin until
23 2032"). The United States argues that ASL Plaintiffs' claimed injuries are thus not
24 imminent or "certainly impending" because any economic injury suffered as a result of the
25 Proclamation would not materialize until after 2032. (Doc. 71 at 15). Moreover, the United
26 States argues, ASL Plaintiffs' alleged economic injuries are contingent on future uranium
27 prices being high enough to generate renewed interest in mining the lands after 2032.
28 (*Ibid.*)

1 The United States cites to McConnell v. Federal Election Commission in support of
2 its position that ASL Plaintiffs lack standing due to the remoteness of the alleged injury.
3 540 U.S. 93, 226 (2003), overruled in part on other grounds by Citizens United v. Fed.
4 Election Comm’n, 558 U.S. 310 (2010). In McConnell, the Supreme Court determined that
5 a U.S. Senator lacked standing to challenge a federal law because the earliest that the
6 Senator could be affected by the law was during the Senator’s re-election bid in five years.
7 Ibid. The Supreme Court held that the Senator had failed to establish an injury in fact
8 because the injury was “too remote temporally to satisfy Article III Standing.” Ibid.

9 ASL Plaintiffs contend that the Court should not defer to McConnell because it is a
10 “splintered and overruled decision[.]” (Doc. 63 at 31). This argument is unavailing.
11 Although McConnell was indeed later overruled by Citizens United, it was overruled on
12 the substantive questions presented—entirely separate and distinct from the issue of
13 standing. The requirement that an injury be certainly impending for Article III standing
14 purposes necessitates some temporal inquiry.

15 The Court finds that ASL Plaintiffs have failed to show that Local Government
16 Plaintiffs have standing based on injuries to Local Government Plaintiffs’ propriety
17 interests caused by the Proclamation. ASL Plaintiffs’ theory of standing suffers from
18 several deficiencies; first, ASL Plaintiffs’ asserted injuries are not imminent or certainly
19 impending. Second, ASL Plaintiffs argue for Local Government Plaintiffs’ standing based
20 primarily on a prior decision in this district as to Mohave County that does not bear on the
21 current litigation. Third, ASL Plaintiffs have not identified any meaningful distinction
22 between the 2012 Withdrawal and the Proclamation that would constitute an imminent
23 injury. Finally, ASL Plaintiffs have not shown that a favorable decision in this action would
24 redress Local Government Plaintiffs’ asserted injuries.

25 With respect to imminency, ASL Plaintiffs have not shown that the Proclamation
26 causes imminent economic harm to Local Government Plaintiffs because the lands
27 reserved by the Proclamation were already withdrawn until 2032 via the 2012 Withdrawal.
28 The mining claims that were staked in the mid-2000s after uranium prices spiked were

1 halted by the 2012 Withdrawal, not the Proclamation. The economic gains that Local
2 Government Plaintiffs may have secured after 2032 if not for the 2012 Withdrawal and the
3 Proclamation’s permanent ban on mining development are too remote and too speculative
4 to support an injury in fact and, as the United States argues, the extent of any economic
5 injury is likely dependent on uranium prices, as well as the future interest of mining
6 companies in pursuing uranium mine development in the area. See Lujan, 504 U.S. at 562
7 (explaining that standing is substantially more difficult to establish when “[t]he existence
8 of one or more of the essential elements of standing ‘depends on the unfettered choices
9 made by independent actors not before the courts and whose exercise of broad and
10 legitimate discretion the courts cannot presume either to control or to predict.’”) (quoting
11 ASARCO, Inc. v. Kadish, 490 U.S. 605, 615 (1989)). Consequently, Local Government
12 Plaintiffs’ alleged economic harms are far from “certainly impending.” Clapper v. Amnesty
13 Int’l, 568 U.S. 398, 422 (2013).

14 With respect to Mohave County’s standing, ASL Plaintiffs’ arguments are
15 unavailing because ASL Plaintiffs rely almost exclusively on a prior decision from this
16 district, Yount v. Salazar, to argue that this Court should find Article III standing as to
17 Mohave County—and, by extension, the other Local Government Plaintiffs. See No.
18 CV11-8171-PCT DGC, 2013 WL 93372 (D. Ariz. Jan. 8, 2013). In Yount, several mining
19 companies and associations, including a coalition representing Mohave County, challenged
20 the Secretary’s 2012 Withdrawal. Id. at *1. Upon a review of Mohave County’s General
21 Plan and 40-year revenue projections, which estimated that—if not for the 2012
22 Withdrawal—uranium mining would have created 1,078 new jobs and generated \$40
23 million annually from payroll, \$29.4 billion in output, \$2 billion in federal and state income
24 taxes, as well as other benefits, Judge Campbell concluded that Mohave County had alleged
25 sufficient facts to support the County’s standing to challenge the Secretary’s 2012
26 Withdrawal. Id. at *10–14.⁴

27
28 ⁴ As earlier stated, Judge Campbell went on to grant summary judgment in favor of the
defendants, upholding the 2012 Withdrawal against the plaintiffs’ constitutional and
statutory challenges. See Yount, 2014 WL 4904423, at *27–28.

1 However, that Mohave County had standing in that case does not summarily impel
2 the conclusion that Mohave County now has standing to challenge the Proclamation. Judge
3 Campbell’s decision was made 12 years ago based on Mohave County’s contemporaneous
4 projections as to economic injury caused by the 2012 Withdrawal. The economic
5 projections that Judge Campbell considered—which ASL Plaintiffs attach to this case as
6 support for their arguments—are not persuasive evidence of the County’s projections more
7 than a decade later, particularly since Mohave County’s challenge to the 2012 Withdrawal
8 was unsuccessful on the merits. Nor does ASL Plaintiffs’ Complaint in this action proffer
9 new allegations of reduced economic projections; the Complaint merely alleges that “the
10 Proclamation will result in a loss of tax revenue to Mohave County from reduced mining
11 activities and reduced economic development resulting from the reduced mining
12 activities.” (Doc. 1 at 39). The Court cannot draw conclusions as to Mohave County’s
13 proprietary interests and projected economic harms based on a decision rendered in a
14 different case 12 years ago.

15 ASL Plaintiffs also contend that the Proclamation does have immediate impact on
16 Local Government Plaintiffs because the Proclamation prohibits more activities than does
17 the 2012 Withdrawal. (Doc. 63 at 29–30). In particular, ASL Plaintiffs highlight language
18 of the 2012 Withdrawal stating that the withdrawn lands “are hereby withdrawn from
19 location and entry under the Mining Law of 1872 (20 U.S.C. 22-54), but *not* from the
20 mineral leasing, geothermal leasing, mineral materials or other public lands laws[.]” 77
21 Fed. Reg. 2,563 (Jan. 18, 2012) (emphasis added). ASL Plaintiffs argue that, by contrast,
22 “[t]he Proclamation affected more rights than the 2012 Withdrawal, including those leasing
23 activities that the Withdrawal expressly excluded[.]” (Doc. 63 at 30). ASL Plaintiffs cite
24 text of the Proclamation stating that the lands encompassed by the Monument are
25 withdrawn “from location, entry, and patent under the mining laws; *and* from disposition
26 under all laws relating to mineral and geothermal leasing.” 88 Fed. Reg. at 55,339
27 (emphasis added). Accordingly, ASL Plaintiffs argue that “the Proclamation immediately
28 harms Plaintiffs by eliminating the possibility of tax revenue and other economic

1 development relating to mineral leasing, geothermal leasing and patent under the mining
2 laws.” (Doc. 63 at 30).

3 As the United States counters, however, ASL Plaintiffs’ argument as the immediate
4 impact of the Proclamation is unavailing because ASL Plaintiffs’ claimed injuries are based
5 on the development of uranium mining claims rather than mineral leasing, geothermal
6 leasing, or patents. (Doc. 71 at 14). ASL Plaintiffs’ Complaint contains no allegations of
7 harm suffered as a result of the Proclamation’s impact on mineral or geothermal leasing.
8 As such, ASL Plaintiffs have identified no concrete injury that will imminently result due
9 to the additional exclusions contained in the Proclamation.

10 Even were the Court to conclude that ASL Plaintiffs had alleged a cognizable injury
11 in fact resulting from the Proclamation, the Court is unpersuaded that ASL Plaintiffs’ injury
12 would be redressed by a favorable decision in this case. The 2012 Withdrawal that is still
13 in effect was heavily premised on the need to examine the potential environmental effects
14 of uranium mining, including possible contamination of groundwater sources and the
15 Colorado River. See Zinke, 877 F.3d at 859 (“Because of the uncertainty regarding the
16 movement of groundwater in the region, the [Record of Decision] explained, Interior could
17 not risk contamination of springs feeding into the Colorado River.”) (discussing the
18 Secretary’s basis for the 2012 Withdrawal). “Uranium mining has been associated with
19 uranium and arsenic contamination in water supplies, which may affect plant and animal
20 growth, survival, and reproduction, and which may increase the incidence of kidney
21 damage and cancer in humans.” Id. at 857. The Ninth Circuit upheld the 2012 Withdrawal,
22 finding that the Secretary’s decision to withdraw the lands from mining development was
23 not arbitrary or capricious. See id. at 878 (“As Interior concluded, withdrawal of the area
24 from new mining claims for a limited period will permit more careful, longer-term study
25 of the uncertain effects of uranium mining in the area and better-informed decisionmaking
26 in the future.”).

27 The United States asserts, and ASL Plaintiffs do not contest, that the Secretary may,
28 under the FLPMA, choose to extend the withdrawal for another twenty years once the 2012

1 Withdrawal is set to expire. (Doc. 49 at 27). If the Secretary should choose to extend the
2 withdrawal, then any relief granted by this Court would not redress Local Government
3 Plaintiffs’ alleged economic injuries. While it is uncertain that the Secretary would renew
4 the withdrawal in order to continue evaluating the environmental contamination that may
5 result from uranium mining, the parties do not discuss the potential of a renewal in detail
6 and the Court cannot draw conclusions as to its likelihood. Given this uncertainty, the Court
7 cannot conclude, based on the allegations and arguments presented, that ASL Plaintiffs’
8 have alleged a significant likelihood that a favorable decision in this action would redress
9 their claimed injuries. See Gonzales v. Gorsuch, 688 F.2d 1263, 1267 (9th Cir. 1982) (“It
10 is a prerequisite of justiciability that judicial relief will prevent or redress the claimed
11 injury, or that there is a significant likelihood of such redress.”); see also Lujan, 506 U.S.
12 at 561.

13 In sum, ASL Plaintiffs have not met their burden of showing an imminent injury to
14 Local Government Plaintiffs that is traceable to the Proclamation because the 2012
15 Withdrawal already prohibited mining claim development until 2032. In addition, ASL
16 Plaintiffs have not alleged a cognizable injury to Local Government Plaintiffs’ proprietary
17 interests occurring after 2032, nor have ASL Plaintiffs shown that this injury would be
18 redressed by judicial relief in this action. The Court finds that Local Government Plaintiffs
19 lack Article III standing based on injury to propriety interests.

20 iv. Standing as energy consumers

21 ASL Plaintiffs contend that ASL Plaintiffs have Article III standing to bring this
22 action because all Plaintiffs “are energy consumers that are now subject to the risk of
23 disruption and higher energy prices.” (Doc. 63 at 27). As ASL Plaintiffs aver in their
24 Complaint, “the Proclamation impairs domestic mining of uranium and so increases and
25 reinforces reliance on foreign imports—which increases the risks and instability of nuclear
26 power as a source of energy.” (Doc. 1 at 35). ASL Plaintiffs’ alleged injury presupposes
27 that the federal government would fail to alter its position in anticipation of foreign
28 instability which would impact uranium imports. This argument is exceedingly speculative

1 and ASL Plaintiffs expend little of their Opposition brief in defense of it. The Court
2 concludes that ASL Plaintiffs’ fears of potential geopolitical shifts that may impact
3 domestic uranium prices in the future are inadequate to support an injury-in-fact.

4 **e. Individual Plaintiff Chris Heaton lacks standing.**

5 Plaintiff Heaton argues that he has Article III standing to challenge the Proclamation
6 because the Monument encompasses the portion of Plaintiff Heaton’s ranch that he leases
7 from BLM. (Doc. 1, CV-24-8027). Plaintiff Heaton alleges several harms as a result of the
8 Proclamation; for instance, Plaintiff Heaton alleges that “[i]f Mr. Heaton appropriates,
9 injures, destroys, or removes any feature of the Monument ... he is subject to criminal
10 penalties[.]” (*Id.* at 13). Plaintiff Heaton proffers that he regularly removes trees from
11 springs on his ranch and cleans earth ponds with heavy equipment. (*Ibid.*) Plaintiff Heaton
12 claims that he could be subject to criminal penalties for removing cactus, picking up pottery
13 shards, and hiking. (*Ibid.*) Because the Proclamation designates “entire landscapes” as
14 objects of historic and scientific interest, Plaintiff Heaton alleges that he is subject to
15 criminal penalties if he “injures, destroys, or removes any item—rock, shrub, or even blade
16 of grass—identified or unidentified in the Proclamation.” (*Ibid.*) Plaintiff Heaton
17 additionally alleges an injury from regulatory burdens, arguing that he will suffer
18 “decreased income, ranching opportunities, and opportunities to use his ranch—including
19 his existing grazing permits and water rights.” (*Id.* at 14). In Plaintiff Heaton’s opposition
20 to the United States’ Motion to Dismiss, Plaintiff Heaton raises additional arguments,
21 contending that he will suffer an aesthetic and recreational injury as a result of increased
22 tourism on and around his ranch. (Doc. 60 at 14–15).

23 The United States counters that Plaintiff Heaton has failed to allege any of the
24 elements necessary to show a pre-enforcement injury. (Doc. 49 at 34). The United States
25 argues that Plaintiff Heaton cannot establish standing based on increased regulatory
26 burdens as a result of the Proclamation because the Proclamation expressly does not impact
27 existing grazing leases. (*Id.* at 34–35). Plaintiff Heaton’s claims, the United States argues,
28 also suffer from a redressability problem because, even absent the penal provisions of the

1 Antiquities Act, Plaintiff Heaton could presumably still face prosecution for appropriating
2 artifacts under the federal theft statute. (Doc. 49 at 36). With respect to Plaintiff Heaton’s
3 aesthetic injury arguments, the United States contends that Plaintiff Heaton omitted any
4 mention of increased tourism in Plaintiff Heaton’s Complaint and that the Court should
5 disregard Plaintiff Heaton’s aesthetic injury arguments. (Doc. 71 at 15–17).

6 i. Threat of criminal penalties

7 Plaintiff Heaton raises a pre-enforcement injury to the Proclamation based on
8 anticipated enforcement of 18 U.S.C. § 1866(b) against Plaintiff Heaton for conducting
9 activities on the BLM-leased portion of Plaintiff Heaton’s ranch. Section 1866(b) provides
10 criminal penalties for whomever “appropriates, excavates, injures, or destroys any historic
11 or prehistoric ruin or monument or any other object of antiquity that is situated on land
12 owned or controlled by the Federal Government without the permission of the head of the
13 Federal agency having jurisdiction over the land[.]”

14 Pre-enforcement injury may give rise to Article III standing where a plaintiff is
15 deterred from exercising his constitutional rights due to the threatened enforcement of a
16 law. Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158–59 (2014) “Pre-enforcement
17 standing injuries are predicated on the anticipated enforcement of the challenged statute in
18 the future and the resulting chilling effect in the present.” Seattle Pac. Univ. v. Ferguson,
19 105 F.4th 50, 59 (9th Cir. 2024). In order to allege a pre-enforcement injury, “(1) a plaintiff
20 must allege ‘an intention to engage in a course of conduct arguably affected with a
21 constitutional interest,’ (2) a plaintiff’s intended future conduct must be ‘arguably ...
22 proscribed by [the] statute’ it wishes to challenge, and (3) the threat of future enforcement
23 must be ‘substantial.’” Ibid. (quoting Driehaus, 573 U.S. at 151).

24 With respect to the first element, Plaintiff Heaton argues that he “has alleged a
25 course of conduct—numerous activities he engages in on the Monument—arguably
26 effected with the constitutional interest of not being prosecuted for strict-liability crimes
27 and deprived of the use of his liberty or property.” (Doc. 60 at 11). The activities Plaintiff
28 Heaton raised in his Complaint, as detailed above, include hiking, removing cacti and trees,

1 cleaning ponds, and picking up pottery shards. (Doc. 1 at 13, CV24-8027). As to the second
2 element, Plaintiff Heaton argues that such activities are “arguably proscribed by statute”
3 because Plaintiff Heaton and his family “could accidentally cause harm to the innumerable
4 objects protected on the Monument[,]” which would be illegal under § 1866(b). (Doc. 60
5 at 12). Lastly, Plaintiff Heaton argues that the Proclamation creates a credible threat of
6 enforcement against Plaintiff Heaton for accidentally harming any part of the monument.
7 (Id. at 12–13).

8 The United States counters that § 1866(b) is not a strict liability statute because it
9 exempts individuals with agency permission—like Plaintiff Heaton, who possesses a
10 grazing permit for the Monument’s encompassed lands—from its scope, and thus Plaintiff
11 Heaton’s alleged constitutional interest in not being subject to a strict liability statute is
12 groundless. (Doc. 71 at 18). The United States further argues that Plaintiff Heaton’s
13 arguments fail because Plaintiff Heaton cannot establish a credible threat of enforcement
14 for accidental injury to the monument. (Ibid.) The United States avers that the only past
15 prosecutions under §1866(b) have involved the intentional appropriation of artefacts—not,
16 as Plaintiff Heaton fears, accidental destruction or appropriation. (Id. at 18–19).

17 The Court finds that Plaintiff Heaton has alleged the first element of a pre-
18 enforcement injury because he has alleged a course of conduct affected with an interest in
19 avoiding the deprivation of his liberty and property. See Isaacson v. Mayes, 84 F.4th 1089,
20 1099 (9th Cir. 2023) (finding that plaintiff doctors had alleged imminent future injuries
21 affecting constitutional interests because violations of the challenged statute could result
22 in loss of liberty, i.e. imprisonment, or property, i.e. medical license revocation, loss of
23 revenue, or monetary damages). Similarly, the Court finds that Plaintiff Heaton has
24 adequately alleged that at least some of his anticipated accidental conduct—namely,
25 damage to or removal of artefacts or pottery shards—is proscribed by §1866(b).

26 However, Plaintiff Heaton fails to demonstrate the final element of a pre-
27 enforcement injury: that the threat of future enforcement is substantial or credible. Plaintiff
28 Heaton merely alleges a fear of enforcement that could result from Plaintiff Heaton’s

1 accidental damage to or appropriation of plants or small artefacts on the portion of his ranch
2 that he leases from BLM. As the United States argues, there have been no instances in
3 which § 1866(b) was enforced against individuals who accidentally damaged objects of
4 antiquity. Plaintiff Heaton’s alleged fears of prosecution for damaging grass or moving
5 pottery shards do not confer Article III standing to challenge the Monument because
6 Plaintiff Heaton has not shown that there is any substantial threat of § 1866(b) being
7 enforced on him. Consequently, the Court finds that Plaintiff Heaton has failed to allege a
8 pre-enforcement injury.

9 ii. Regulatory burdens

10 Plaintiff Heaton argues that the Proclamation subjects Plaintiff Heaton to new
11 regulatory burdens sufficient to give him Article III standing. (Doc. 60 at 8–9). “For
12 example, Mr. Heaton annually applies to BLM for permits to make improvements to his
13 ranch, including for water catchments[.]” (*Id.* at 8). Plaintiff Heaton “plans to apply for
14 permits to build water catchments, water pipelines and to drill wells.” (*Ibid.*) When Plaintiff
15 Heaton does apply for these new permits, Plaintiff Heaton argues that the BLM officials
16 reviewing his applications will need to account for the Proclamation and the Antiquities
17 Act when determining whether to approve the permits. (*Ibid.*) Plaintiff Heaton alleges that
18 “[t]his increased regulatory hurdle creates standing.” (*Ibid.*) Plaintiff Heaton endeavors to
19 minimize the burden on him to show Article III standing, stating that “[w]here ‘the legality
20 of government action or inaction’ is being challenged, ‘there is ordinarily little question’
21 of standing for a plaintiff who is the ‘object of the action (or foregone action) at issue.’”
22 (Doc. 60 at 8) (quoting *Lujan*, 504 U.S. at 561–62).

23 The United States argues in opposition that Plaintiff Heaton’s regulatory burden
24 arguments fail on two grounds; first, Plaintiff Heaton did not allege any increased burdens
25 associated with filing for new permits in his Complaint, and thus the Court should disregard
26 Plaintiff Heaton’s arguments on this point. (Doc. 71 at 17). Second, the United States
27 counters that the Proclamation places no new regulatory burdens on Plaintiff Heaton;
28 instead, the regulatory burden falls on the BLM officials, “who may have to perform

1 additional work to assess the impact of the requested permits on monument objects[.]”
2 (Ibid.).

3 The United States is correct that Plaintiff Heaton has alleged no regulatory burden
4 associated with BLM permits in his Complaint. (Doc. 1, CV24-8027). Irrespective of this
5 deficiency, however, Plaintiff Heaton’s regulatory burden arguments are unavailing.
6 Plaintiff Heaton has failed to show that the Proclamation imposes a regulatory burden on
7 Plaintiff Heaton’s operation of his ranch. Due to the fact that Plaintiff Heaton leases a
8 portion of his ranch from BLM and operates under federal permits, Plaintiff Heaton is
9 already necessarily subject to some regulations, such as Plaintiff Heaton’s obligation to
10 annually apply for new permits. (Doc. 60). Any new burden caused by the Proclamation
11 on the issuance of such permits falls on the BLM, not Plaintiff Heaton. Similarly, Plaintiff
12 Heaton has failed to show a non-speculative injury arising from any future impact of the
13 Proclamation on Plaintiff Heaton’s grazing rights. The Proclamation expressly provides
14 that “[n]othing in this proclamation shall be deemed to prohibit grazing pursuant to existing
15 leases or permits within the monument, or the renewal or assignment of such leases or
16 permits, which the BLM and Forest Services shall continue to manage pursuant to their
17 respective laws, regulations, and policies.” 88 Fed. Reg. at 55,341. Accordingly, any fears
18 of Plaintiff Heaton that he will be injured by increased regulatory burdens do not amount
19 to concrete and particularized harm necessary to support Article III standing.

20 i. Other arguments

21 Plaintiff Heaton alleges an aesthetic injury caused by the potential of increased
22 tourism on his ranch. As the United States counters, however, Plaintiff Heaton failed to
23 raise any allegations pertaining to harm caused by potential increased tourism. Further,
24 Plaintiff Heaton has alleged no facts to support his argument that there will be an increase
25 in tourism to Plaintiff Heaton’s ranch. A generalized fear of potential increased tourism
26 does not amount to an injury in fact sufficient for Article III standing. See Clapper, 568
27 U.S. at 1148 (finding that plaintiffs’ “highly speculative fear” did not constitute a certainly
28 impending injury).

1 Equally unavailing is Plaintiff Heaton's argument that the Court should apply a
2 lower bar for Plaintiff Heaton's standing to challenge the Proclamation because his "claims
3 all concern the separation of powers." (Doc. 60 at 15). Plaintiff Heaton's want of Article
4 III standing is not cured by the fact that Plaintiff Heaton alleges that the Proclamation
5 violates the separation of powers doctrine.

6 Because the Court finds that Plaintiff Heaton has failed to allege a cognizable injury
7 in fact, the Court need not address Plaintiff Heaton's remaining standing arguments as to
8 causation and redressability.

9 IV. CONCLUSION

10 Upon review of the parties' briefing on the United States' Rule 12(b)(1) Motion to
11 Dismiss, the Court concludes that none of the ASL Plaintiffs nor Plaintiff Heaton have
12 established Article III standing to bring this action.⁵ As no Plaintiff has standing, the Court
13 lacks subject matter jurisdiction over this matter and dismisses the parties' Complaints
14 without prejudice pursuant to Rule 12(b)(1).⁶ See Frigard v. United States, 862 F.2d 201,
15 204 (9th Cir. 1988) (dismissals for lack of subject matter jurisdiction should ordinarily be
16 without prejudice). In dismissing this action, the Court does not reach the merits of
17 Plaintiffs' claims regarding the Proclamation and the scope of presidential authority under
18 the Antiquities Act; the Court finds only that these Plaintiffs cannot pursue such claims in
19 this forum. Because the Court did not reach the later-filed Motion to Dismiss by the State
20 and Governor of Arizona, (Doc. 73), the Court denies that Motion as moot.

21 **IT IS THEREFORE ORDERED granting** the United States' Motion to Dismiss.
22 (Doc. 49).

23 **IT IS FURTHER ORDERED dismissing without prejudice** this action.

24 **IT IS FURTHER ORDERED denying as moot** the State and Governor of
25 Arizona's Motion to Dismiss. (Doc. 73).

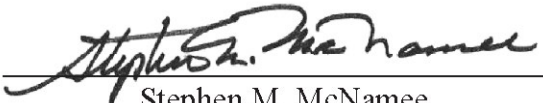
26 _____
27 ⁵ Because the Court has found that no Plaintiff has standing to bring this action, the Court
28 need not address Plaintiff Heaton's request to proceed with the suit if any single Plaintiff
has standing. (Doc. 60 at 17).

⁶ Neither ASL Plaintiffs nor Plaintiff Heaton have requested leave to amend their respective
Complaints in the event of dismissal.

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IT IS FURTHER ORDERED directing the Clerk of Court to terminate this action.

Dated this 27th day of January, 2025.



Stephen M. McNamee
Senior United States District Judge