

## Understanding Arizona's Propositions: Prop 110

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### Proposition 110 – State Trust Lands

Proposition 110 would amend the Arizona Constitution to allow the state to exchange state trust land for other public land and permit the state to sell, lease or otherwise manage state trust land without auction or advertisement to avoid uses that would interfere with military installations, airspace or operations.<sup>i</sup>

Prop 110 also establishes a number of provisions that must be met in order to execute a land exchange, including: requiring an exchange be in the state's best interests; ensuring an exchange protects military facilities or provides for the proper management, protection or public use of state lands; requiring two detailed, independent appraisals that serve a variety of purposes; requiring a public hearing and voter approval.

At least five land exchange measures have been referred to Arizona voters in recent years and all have been rejected. Additionally, voters have weighed in on a similar proposition regarding land exchanges and military airports. A 2004 measure that sought to protect Luke Air Force Base – an issue addressed by the current proposition – failed to pass.

In 1910, Congress allowed Arizona to seek statehood and the Enabling Act granted Arizona approximately 10.9 million acres of trust land.<sup>ii</sup> State leaders decided that Arizona would not sell its trust land outright, as most states did,<sup>iii</sup> but would sell or lease each parcel based on its intended use.

Trust land is intended in the state Constitution to produce revenue for various public institutions, including schools. The state can lease or sell trust land, and the products of the land, only to the "highest and best bidder" at public auction.

In 1936, Congress amended the Enabling Act to give Arizona more flexibility by allowing the state to exchange trust land for other public or private lands, a tool available to many other states. For several decades, the state exchanged lands – usually with the federal government – to end the “checkerboard” pattern of ownership along railroad lines and to consolidate trust land in larger blocks of land.

#### **Not Exactly Public**

State trust lands are not “public lands” in the usual understanding of that phrase. They are instead part of a public trust created to support Arizona's public schools and other institutions. Officials do this by selling or leasing the land for a variety of uses, from grazing to conservation. Some trust land is open to recreation, but a permit is required to camp, hike or travel there.

Despite its extensive record of land exchanges, Arizona never amended its state Constitution to formally incorporate the enhanced legal authority granted by Congress. In 1990, the Arizona Supreme Court declared land exchanges unconstitutional – despite the fact exchanges are permitted by the state’s Enabling Act – because such action constituted a “sale” without a public auction. This brought land exchanges to a halt. The current proposition would resolve this issue.

Since statehood, Arizona has disposed of or exchanged about 1.6 million acres of trust lands, with about 9.2 million acres remaining.<sup>iv</sup>

### **Yes on Proposition 110?**

Supporters of Proposition 110 – a varied group including the Arizona Chamber of Commerce and Industry, the State Land Commissioner, the Sierra Club and the Nature Conservancy – note that Prop 110 serves two critical purposes.

First, the proposition would protect possible future encroachment on all military bases in Arizona, viewed as an essential part of the state economy. Specifically, Luke Air Force Base, opened in 1941 to train Army Air Corps fighter pilots, would be protected. In recent years, increasing residential development of cities such as Surprise and El Mirage near the base has threatened to curtail the base’s ability to train pilots and thus jeopardize its annual multi-billion-dollar contribution to the economy.<sup>v</sup>

While state law already regulates development around Luke, some landowners have expressed concern that they cannot continue to develop their land. The issue has grown in importance as Luke competes with other bases to land the assignment to train pilots for the Air Force’s next generation F-35 Joint Strike Fighter.<sup>vi</sup> According to supporters, Proposition 110 would provide constitutional protections, stronger than what currently exists in statute, to ensure controlled land use and development around the base.

Second, Proposition 110 also would remedy the prohibition on land exchanges that exists currently. Proponents believe Arizona has used this process efficiently and effectively in the past, and if the proposition were successful, the state would have access to a tool that has been unavailable since 1990.

Finally, supporters stress what they view as transparency and voter engagement as put forth in Proposition 110. If passed, any proposed land exchange must include two independent analyses that include a number of factors, including fiscal impact; public hearings; and approval by voters every time through a ballot measure during the November election.

### **No on Proposition 110?**

In the past, opponents to land exchanges have argued that public lands have frequently been exchanged in less-than-equitable deals that have benefited developers but short-changed the public.<sup>vii</sup> Ultimately, the land exchange leads to ownership by a private entity for development. Most point to the current constitutional language that only requires state trust land to be sold to the “highest and best bidder.”

While Prop 110 would address general protection for military bases, protections for open space and land conservation are not a part of Prop 110. In *The Arizona We Want*, a recent Gallup survey of Arizonans asking residents to identify what they value about the state, “the state’s natural beauty and open spaces are seen by citizens as our greatest asset.”

Prop 110 coupled with Prop 301 – a proposed sweep of the Land Conservation Fund, the sole state funding source dedicated to preserving open space near urban areas – leave opponents concerned about land exchanges impacting open space preservation.

Another issue raised is what actual impact Prop 110 would have. There is not much state land near Luke – only some south of Indian School Road – so exactly how exchanges could be used as a tool to manage and protect the military base is unclear. Opponents question whether Prop 110 would bring any real value or change to the process.

Some proponents of broader-based state trust land reform have expressed concern that this measure does not accomplish much, and setting up an exchange process that requires public votes will actually hurt the cause of long-term reform efforts.

Finally, there are those who point to the benefit of simply governing the process through sale to the highest and best bidder, pointing to a basic free market philosophy to both guide the process and increase fiscal reserves in the state land trust for the benefit of public education.

### **The Bottom Line**

A “yes” vote would allow the state to exchange state trust land for other public land and permit the state to sell, lease or otherwise manage state trust land without auction or advertisement to avoid uses that would interfere with military installations, airspace or operations.

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<sup>i</sup> This and the following analysis rely heavily on Senate Concurrent Resolution 1047 and the draft report by the Arizona Legislative Council,

<http://www.azleg.gov/alispdfs/Council/2010BallotMeasures/ChairSCR1047draft.pdf>

<sup>ii</sup> *Ibid.*

<sup>iii</sup> Arizona State Land Department, *Historical Overview*, <http://www.land.state.az.us/history.htm>

<sup>iv</sup> Arizona State Land Department, *Historical Overview*, <http://www.land.state.az.us/history.htm>

<sup>v</sup> Madrid, David. “Luke Air Base to get F-35, McCain says,” *The Arizona Republic*, Jun 19, 2010, <http://www.azcentral.com/community/glendale/articles/2010/06/19/20100619glendale-luke-air-base-mccain-f35-aircraft.html#ixzzOrVlpXq2a>

<sup>vi</sup> *Ibid.*

<sup>vii</sup> Statement by Kenneth P. Langton, Chairperson, Sierra Club – Grand Canyon Chapter, in *Arizona 2004 Ballot Proposition Publicity Pamphlet*, Arizona Secretary of State, <http://www.azsos.gov/election/2004>

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