Federal Land Ownership: Overview and Data

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Summary

The federal government owns roughly 640 million acres, about 28% of the 2.27 billion acres of land in the United States. Four major federal land management agencies administer 606.5 million acres of this land (as of September 30, 2018). They are the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and National Park Service (NPS) in the Department of the Interior (DOI) and the Forest Service (FS) in the Department of Agriculture. A fifth agency, the Department of Defense (excluding the U.S. Army Corps of Engineers), administers 8.8 million acres in the United States (as of September 30, 2017), consisting of military bases, training ranges, and more. Together, the five agencies manage about 615.3 million acres, or 27% of the U.S. land base. Many other agencies administer the remaining federal acreage.

The lands administered by the four major agencies are managed for many purposes, primarily related to preservation, recreation, and development of natural resources. Yet the agencies have distinct responsibilities. The BLM manages 244.4 million acres and the FS manages 192.9 million acres under similar multiple-use, sustained-yield mandates that support a variety of activities and programs. The FWS manages 89.2 million acres of the U.S. total, primarily to conserve and protect animals and plants. In FY2018, the NPS managed 79.9 million acres in 417 diverse units to conserve lands and resources and make them available for public use. The 8.8 million acres of DOD lands are managed primarily for military training and testing.

The amount and percentage of federally owned land in each state vary widely, ranging from 0.3% of land (in Connecticut and Iowa) to 80.1% of land (in Nevada). However, federal land ownership is concentrated in Alaska (60.9%) and 11 coterminous western states (45.9%), in contrast with lands in the other states (4.1%). This western concentration has contributed to a higher degree of controversy over federal land ownership and use in that part of the country.

Throughout America's history, federal land laws have sought to dispose of some federal lands while keeping others in federal ownership. During the 19th century, many laws encouraged western settlement through federal land disposal. Mostly in the 20th century, emphasis shifted to retention of federal lands. Congress has provided the agencies with varying land acquisition and disposal authorities, ranging from restricted (NPS) to broad (BLM). As a result of acquisitions and disposals, from 1990 to 2018, total federal land ownership by the five agencies declined by 31.5 million acres (4.9%), from 646.9 million acres to 615.3 million acres. Much of the decline is due to BLM land disposals in Alaska and reductions in DOD ownership in favor of other legal arrangements. By contrast, land ownership by the NPS, FWS, and FS increased over the 28-year period. Further, 15 states had decreases of federal land during this period and the other states had varying increases.

Numerous issues affecting federal land management are before Congress. One set of issues relates to the extent of federal ownership and whether to decrease, maintain, or increase the amount of federal holdings; the concentration of federal lands in the West; the suitability and use of acquisition and disposal authorities; and the amount, type, and location of use of acquisition funding. A second issue is the priority of acquiring new lands versus addressing the condition of current federal infrastructure. The $19.38 billion maintenance backlog of the four major land management agencies is a factor in the debate. A third focus is the optimal balance between land protection and use (e.g., for energy development, livestock grazing, recreation, and other purposes), and whether federal lands should be managed primarily to benefit the nation as a whole or to benefit the localities and states in which the federal lands are located. Fourth, border control on federal lands along the southwestern border presents particular challenges due to the length of the border, differing agency missions, and divergent views on constructing border barriers.

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Introduction

Today the federal government owns and manages roughly 640 million acres of land in the United States, or roughly 28% of the 2.27 billion total land acres.[1] Four major federal land management agencies manage 606.5 million acres of this land, or about 95% of all federal land in the United States. These agencies are as follows: Bureau of Land Management (BLM), 244.4 million acres; Forest Service (FS), 192.9 million acres; Fish and Wildlife Service (FWS), 89.2 million acres; and National Park Service (NPS), 79.9 million acres. Most of these lands are in the West, including Alaska. A fifth agency, the Department of Defense (DOD) administers 8.8 million acres in the United States,[2] about 1% of all federal land.[3] Together, the five agencies manage about 615.3 million acres. The remaining acreage, approximately 4% of all federal land in the United States, is managed by a variety of other government agencies.

Ownership and use of federal lands have stirred controversy for decades.[4] Conflicting public values concerning federal lands raise many questions and issues, including the extent to which the federal government should own land; whether to focus resources on maintenance of existing infrastructure and lands or acquisition of new areas; how to balance use and protection; and how to ensure the security of international borders along the federal lands of multiple agencies. Congress continues to examine these questions through legislative proposals, program oversight, and annual appropriations for the federal land management agencies.

Historical Background

Federal lands and resources have played a significant role in American history, adding to the strength and stature of the federal government, serving as an attraction and opportunity for settlement and economic development, and providing a source of revenue for schools, transportation, national defense, and other national, state, and local needs.

The formation of the U.S. federal government was particularly influenced by the struggle for control over what were then known as the "western" lands—the lands between the Appalachian Mountains and the Mississippi River that were claimed by the original colonies. The original

[1] Total federal land in the United States is not definitively known. The estimate of 640 million acres presumes that the five agencies of focus in this report have accurate data on lands under their jurisdiction. The combined total for the five agencies is estimated at 615.3 million acres, as shown in **Table 1**. Other agencies are presumed to encompass about 20 million acres of federal land, although this estimate is rough. The estimate of 640 million acres generally excludes lands in marine refuges and national monuments and ownership of interests in lands (e.g., subsurface minerals, easements). It also does not reflect Indian lands, many of which are held in trust by the federal government but are not owned by the federal government. According to the Bureau of Indian Affairs (BIA), the United States holds approximately 56 million acres in trust for various Indian tribes and individuals. There are also other types of Indian lands. See U.S. Department of the Interior, BIA, "Frequently Asked Questions," at https://www.bia.gov/FAQs/.

[2] Acreage figures for the four land management agencies are current as of September 30, 2018; the Department of Defense (DOD) figure is current as of September 30, 2017 (the most recent available). The DOD figure excludes land managed by the U.S. Army Corps of Engineers.

[3] In addition, Forest Service (FS), Fish and Wildlife Service (FWS), National Park Service (NPS), and DOD manage varying acreages in the U.S. territories; FWS manages additional acres of marine refuges and national monuments; and DOD manages additional acres overseas.

[4] In this report, the term *federal land* is used to refer to any land owned (fee simple title) and managed by the federal government, regardless of its mode of acquisition or managing agency; it excludes lands administered by a federal agency under easements, leases, contracts, or other arrangements. *Public land* is used to refer to lands managed by the Bureau of Land Management (BLM) as defined in 43 U.S.C. §1702(e).

states reluctantly ceded the lands to the developing new government. This cession, together with granting constitutional powers to the new federal government, including the authority to regulate federal property and to create new states, played a crucial role in transforming the weak central government under the Articles of Confederation into a stronger, centralized federal government under the U.S. Constitution.

Subsequent federal land laws sought to reserve some federal lands (such as for national forests and national parks) and to sell or otherwise dispose of other lands to raise money or encourage transportation, development, and settlement. From the earliest days, these options took on East/West overtones, with easterners more likely to view the lands as national public property, and westerners more likely to view the lands as necessary for local use and development. Most agreed, however, on measures that promoted settlement of the lands to pay soldiers, to reduce the national debt, and to strengthen the nation. This settlement trend accelerated with federal acquisition of additional territory through the Louisiana Purchase in 1803, the Oregon Compromise with England in 1846, and cession of lands by treaty after the Mexican War in 1848.[5]

In the mid-to-late 1800s, Congress enacted many laws to encourage and accelerate the settlement of the West by disposing of federal lands. Examples include the Homestead Act of 1862 and the Desert Lands Entry Act of 1877. Approximately 1.29 billion acres of public domain land was transferred out of federal ownership between 1781 and 2018. The total included transfers of 816 million acres to private ownership (individuals, railroads, etc.), 328 million acres to states generally, and 143 million acres in Alaska under state and Native selection laws.[6] Most transfers to private ownership (97%) occurred before 1940; homestead entries, for example, peaked in 1910 at 18.3 million acres but dropped below 200,000 acres annually after 1935, until being fully eliminated in 1986.[7]

Although several earlier laws had protected some lands and resources, such as salt deposits and certain timber for military use, new laws in the late 1800s reflected the growing concern that rapid development threatened some of the scenic treasures of the nation, as well as resources that would be needed for future use. A preservation and conservation movement evolved to ensure that certain lands and resources were left untouched or reserved for future use. For example, Yellowstone National Park was established in 1872 to preserve its resources in a natural condition, and to dedicate recreation opportunities for the public. It was the world's first national park,[8] and like the other early parks, Yellowstone was protected by the U.S. Army—primarily

[5] These major land acquisitions gave rise to a distinction in the laws between *public domain lands*, which essentially are those ceded by the original states or obtained from a foreign sovereign (via purchase, treaty, or other means), and *acquired lands*, which are those obtained from a state or individual by exchange, purchase, or gift. About 90% of all federal lands are public domain lands, while the other 10% are acquired lands. Many laws were enacted that related only to public domain lands. Even though the distinction has lost most of its underlying significance today, different laws may still apply depending on the original nature of the lands involved.

[6] U.S. Dept. of the Interior, Bureau of Land Management, *Public Land Statistics, 2018*, Table 1-2, at https://www.blm.gov/sites/blm.gov/files/PublicLandStatistics2018.pdf.

[7] U.S. Dept. of Commerce, Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970* (Washington, DC: GPO, 1976), H.Doc. 93-78 (93rd Congress, 1st Session), pp. 428-429. The homesteading laws were generally repealed in 1976, although homesteading was allowed to continue in Alaska for another 10 years.

[8] Act of March 1, 1872; 16 U.S.C. §21, et seq. "Yo-Semite" had been established by an act of Congress in 1864, to protect Yosemite Valley from development, but was transferred to the State of California to administer. In 1890, surrounding lands were designated as Yosemite National Park, and in 1905, Yosemite Valley was returned to federal jurisdiction and incorporated into the park. Still earlier, Hot Springs Reservation (AR) had been reserved in 1832; it was dedicated to public use in 1880 and designated as Hot Springs National Park in 1921.

from poachers of wildlife or timber. In 1891, concern over the effects of timber harvests on water supplies and downstream flooding led to the creation of forest reserves (renamed national forests in 1907).

Emphasis shifted during the 20th century from the disposal and conveyance of title to private citizens to the retention and management of the remaining federal lands. During debates on the Taylor Grazing Act of 1934,[9] some western Members of Congress acknowledged the poor prospects for relinquishing federal lands to the states, but language included in the act left disposal as a possibility. It was not until the enactment of the Federal Land Policy and Management Act of 1976 (FLPMA) that Congress expressly declared that the remaining public domain lands generally would remain in federal ownership.[10] This declaration of permanent federal land ownership was a significant factor in what became known as the Sagebrush Rebellion, an effort that started in the late 1970s to strengthen state or local control over federal land and management decisions. Recently, there has been renewed interest in some western states in assuming ownership of some federal lands within their borders. This interest stems in part from concerns about the extent, condition, and cost of federal land ownership and the type and amount of land uses and revenue derived from federal lands. Judicial challenges and legislative and executive efforts generally have not resulted in broad changes to the level of federal ownership. Current authorities for acquiring and disposing of federal lands are unique to each agency.[11]

Current Federal Land Management

The creation of national parks and forest reserves laid the foundation for the current federal agencies whose primary purposes are managing natural resources on federal lands—the BLM, FS, FWS, and NPS. These four agencies were created at different times, and their missions and purposes differ. As noted, DOD is the fifth-largest land management agency, with lands consisting of military bases, training ranges, and more. These five agencies, which together manage about 96% of all federal land, are described below. Numerous other federal agencies—the U.S. Army Corps of Engineers, Bureau of Reclamation,[12] Post Office, the National Aeronautics and Space Administration, the Department of Energy, and many more—each administer relatively small amounts of additional federal lands.

[9] 43 U.S.C. §§315, et seq.

[10] 43 U.S.C. §§1701, et seq. The Federal Land Policy and Management Act of 1976 (FLPMA) also established a comprehensive system of management for the remaining western public lands, and a definitive mission and policy statement for the BLM.

[11] For a description of these authorities, see CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*, by Carol Hardy Vincent et al.

[12] The Bureau of Reclamation (Reclamation), a federal agency created in 1902, is responsible for much of the water infrastructure in the 17 states west of the Mississippi River. Reclamation is the largest water wholesaler in the country and provides irrigation water for 10 million acres of farmland. Pursuant to its authorities to develop and maintain water resources infrastructure, Reclamation owns approximately 6 million acres of land in the western United States.

Agencies[13]

Bureau of Land Management

The BLM was formed in 1946 by combining two existing agencies.[14] One was the Grazing Service (first known as the DOI Grazing Division), established in 1934 to administer grazing on public rangelands. The other was the General Land Office, which had been created in 1812 to oversee disposal of the federal lands.[15] The BLM currently administers 244.4 million acres, more federal lands in the United States than any other agency. BLM lands are heavily concentrated (more than 99%) in the 11 contiguous western states and Alaska.[16]

As defined in FLPMA,[17] BLM management responsibilities are similar to those of the FS—sustained yields of multiple uses, including recreation, grazing, timber, energy and minerals, watershed, wildlife and fish habitat, and conservation. However, each agency historically has emphasized different uses. For instance, more rangelands are managed by the BLM, while most federal forests are managed by the FS. In addition, the BLM administers more than 700 million acres of federal subsurface mineral estate throughout the nation.[18]

Forest Service

The FS is the oldest of the four federal land management agencies. It was established in the Department of Agriculture (USDA) in 1905 and is charged with conducting forestry research, providing assistance to nonfederal forest owners, and managing the National Forest System (NFS).[19] Today, the FS administers 192.9 million acres of land in the United States,[20] predominantly in the West, while also managing about three-fifths of all federal lands in the East (as shown in **Table 5**).

The first forest reserves—later renamed national forests—originally were authorized to protect the lands, preserve water flows, and provide timber. These purposes were expanded in the Multiple Use-Sustained Yield Act of 1960.[21] This act added recreation, livestock grazing, and wildlife and fish habitat as purposes of the national forests, with wilderness added in 1964.[22] The

[13] For a list of CRS experts for federal land management agencies and issues, see CRS Report R42656, *Federal Land Management Agencies and Programs: CRS Experts*, by R. Eliot Crafton.

[14] Paul W. Gates, *History of Public Land Law Development*, written for the Public Land Law Review Commission (Washington, DC: GPO, Nov. 1968), pp. 610-622.

[15] The General Land Office administered the forest reserves prior to the creation of the FS in 1905.

[16] The 11 western states are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Data on BLM acreage by state was provided by BLM to CRS on December 16, 2019. Figures represent acreage as of September 30, 2018.

[17] FLPMA is sometimes called the BLM Organic Act.

[18] Not all of the more than 700 million acres contain extractable mineral and energy resources.

[19] In 1891, Congress had authorized the President to establish forest reserves from the public domain lands administered by the Department of the Interior (Act of March 3, 1891; 16 U.S.C. §471). This authority was repealed in 1976. See also the Organic Administration Act of 1897, 16 U.S.C. §§473 et seq.

[20] U.S. Dept. of Agriculture, Forest Service, *Land Areas of the National Forest System—As of Sept 30, 2018*, Tables 1 and 4, at https://www.fs.fed.us/land/staff/lar/LAR2018/lar2018index.html. Data reflect land within the National Forest System, including national forests, national grasslands, purchase units, land utilization projects, experimental areas, and other areas. The FS manages an additional 28,937 acres in the U.S. territories.

[21] 16 U.S.C. §§528-531.

[22] The Wilderness Act of 1964, 16 U.S.C. §§1131-1136.

act directed that these multiple uses be managed in a "harmonious and coordinated" manner "in the combination that will best meet the needs of the American people." The act also directed the FS to manage renewable resources under the principle of sustained yield, meaning to achieve a high level of resource outputs in perpetuity without impairing the productivity of the lands.

Fish and Wildlife Service

The first national wildlife refuge was established by executive order in 1903, although it was not until 1966 that the refuges were aggregated into the National Wildlife Refuge System (NWRS) administered by the FWS.[23] The NWRS includes wildlife refuges, national monument areas, waterfowl production areas, and wildlife coordination units. Outside of the NWRS, the FWS administers lands for administrative sites, National Fish Hatcheries, and national monument areas. In total, the FWS administers 89.2 million acres of federal land in the United States, of which 76.6 million acres (85.9%) are in Alaska.[24]

The NWRS's mission is to administer a network of lands and waters for the conservation, management, and restoration of fish, wildlife, and plants and their habitats.[25] Other uses (recreation, hunting, timber cutting, oil or gas drilling, etc.) may be permitted, to the extent that they are compatible with the NWRS mission and an individual unit's purpose.[26] However, wildlife-related activities (hunting, bird watching, hiking, education, etc.) are considered "priority uses" and are given priority consideration in refuge planning. It can be challenging to determine compatibility, but the relative clarity of the mission generally has minimized conflicts over refuge management and use, although there are exceptions.[27]

National Park Service

The NPS was created in 1916 to manage the growing number of park units established by Congress and monuments proclaimed by the President.[28] By September 30, 2018, the National Park System had grown to 417 units with 79.9 million acres of federal land in the United States. About two-thirds of the lands (52.5 million acres, or 65. 6%) are in Alaska.[29] NPS units have

[23] National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. §§668dd-668ee.

[24] U.S. Dept. of the Interior, Fish and Wildlife Service, *2018 Annual Lands Report Data Tables, as of September 30, 2018*, Table 1A, at https://www.fws.gov/refuges/land/PDF/2018_Annual_Report_of_Lands_Data_Tables.pdf. Data reflect federally owned lands, submerged lands, and waters, over which the FWS has sole or primary jurisdiction in the 50 states. The FWS manages an additional 24,773 acres in the U.S. territories and an estimated 662 million acres within the U.S. Minor Outlying Islands, which primarily include marine areas in the Pacific Ocean.

[25] 16 U.S.C. §668dd(a)(2).

[26] In the case where the NWRS mission and a unit's purpose are in conflict, the unit's purpose takes priority (16 U.S.C. §§668dd(a)(4)(D)). For example, see CRS Report RL33872, *Arctic National Wildlife Refuge (ANWR): An Overview*, by Laura B. Comay, Michael Ratner, and R. Eliot Crafton.

[27] On some FWS lands, there are preexisting property rights, particularly of subsurface resources, but also easements or rights-of-way. In such cases, use of these rights may conflict with primary uses of a refuge. Where possible, the FWS may seek to acquire these rights through purchase from willing sellers.

[28] NPS was created by the Act of Aug. 25, 1916; 16 U.S.C. §§1-4.

[29] This text identifies the number of NPS units in existence on September 30, 2018, for consistency with the acreage data presented for the other agencies, which are from that date (except for DOD). See U.S. Dept. of the Interior, National Park Service, Land Resources Division, *Acreage by State*, as of 9/30/2018, at https://www.nps.gov/subjects/lwcf/upload/NPS-Acreage-9-30-2018.pdf. Data reflect federally owned lands managed by the NPS, as of September 30, 2018. Also, the NPS managed an additional 26,852 acres in the U.S. territories as of that date. Currently, the National Park System contains 419 units, with 80.0 million acres in the U.S. and an additional 26,852 acres in the territories as of December 31, 2019.

diverse titles—national park, national monument, national preserve, national historic site, national recreation area, national battlefield, and many more.[30]

The NPS has a dual mission—to preserve unique resources and to provide for their enjoyment by the public. Activities that harvest or remove resources from NPS lands generally are prohibited. Park units include spectacular natural areas, unique prehistoric sites, and special places in American history, as well as recreational opportunities. The tension between providing recreation and preserving resources has caused many management challenges.

Department of Defense

The National Security Act of 1947 established a Department of National Defense (later renamed the Department of Defense, or DOD) by consolidating the previously separate Cabinet-level Department of War (renamed Department of the Army) and Department of the Navy and creating the Department of the Air Force.[31] Responsibility for managing the land on federal military reservations was retained by these departments, with some transfer of Army land to the Air Force upon its creation.

There are more than 4,775 defense sites worldwide on a total of 26.9 million acres of land owned, leased, or otherwise possessed by DOD. Of the DOD sites, DOD owns 8.8 million acres in the United States, with individual parcel ownership ranging from 1 acre to more than a million acres.[32] Although management of military reservations remains the responsibility of each of the various military departments and defense agencies, those secretaries and directors operate under the centralized direction of the Secretary of Defense. With regard to natural resource conservation, defense instruction provides that

> The principal purpose of DOD lands, waters, airspace, and coastal resources is to support mission-related activities. All DOD natural resources conservation program activities shall work to guarantee DOD continued access to its land, air, and water resources for realistic military training and testing and to sustain the long-term ecological integrity of the resource base and the ecosystem services it provides.... DOD shall manage its natural resources to facilitate testing and training, mission readiness, and range sustainability in a long-term, comprehensive, coordinated, and cost-effective manner.[33]

Federal Land Ownership, 2018

The 615.3 million acres of federal land in the United States managed by the five major land management agencies represents about 27% of the total land base of 2.27 billion acres. **Table 1** provides data on the total acreage of federal land administered by the four major federal land management agencies and the DOD in each state and the District of Columbia. The lands administered by each of the five agencies in each state are shown in **Table 2**.[34] These tables

[30] See CRS Report R41816, *National Park System: What Do the Different Park Titles Signify?*, by Laura B. Comay.

[31] Act of July 26, 1947; 50 U.S.C. §3001 et seq. (2012).

[32] See U.S. Department of Defense, Office of the Deputy Assistant Secretary of Defense for Infrastructure, *Base Structure Report, Fiscal Year 2018 Baseline (A Summary of the Real Property Inventory Data)*, as of September 30, 2017, VI (hereinafter referred to as DOD FY2018 Baseline). Total DOD Inventory, pp. DOD-29 to DOD-88, at https://www.acq.osd.mil/eie/Downloads/BSI/Base%20Structure%20Report%20FY18.pdf. Unlike the data for the other agencies, the DOD data is current as of September 30, 2017. The source excludes U.S. Army Corps of Engineers lands.

[33] Department of Defense Instruction 4715.03 of March 18, 2011, p. 2.

[34] Some county-level data are available through the Payments in Lieu of Taxes (PILT) program, administered by the Department of the Interior. For these data, see at https://www.nbc.gov/pilt/states-payments.cfm. However, though most

reflect federal acreage as of September 30, 2018, except that DOD figures are current as of September 30, 2017. The figures understate total federal land, since they do not include lands administered by other federal agencies, such as the Bureau of Reclamation and the Department of Energy. **Table 1** also identifies the total acreage of each state and the percentage of land in each state administered by the five federal land agencies. These percentages point to significant variation in the federal presence within states. The figures range from 0.3% of land (in Connecticut and Iowa) to 80.1% of land (in Nevada). **Figure 1**, **Figure 2**, and **Figure 3** show these federal lands. **Figure 1** is a map of federal lands in the West; **Figure 2** is a map of federal lands in the East; and **Figure 3** is a map of federal lands in Alaska and Hawaii.

Although 15 states contain less than half a million acres of federal land,[35] the 11 western states and Alaska each have more than 10 million acres managed by these five agencies within their borders. This contrast is a result of early treaties, land settlement laws and patterns, and laws requiring that states agree to surrender any claim to federal lands within their border as a prerequisite for admission to the Union. Management of these lands is often controversial, especially in states where the federal government is a predominant or majority landholder and where competing and conflicting uses of the lands are at issue.

Table 1. Total Federal Land in the United States Administered by Five Agencies, by State, 2018

	Total Federal Acreage	Total Acreage in State	Federal Acreage's % of State
Alabama	880,188	32,678,400	2.7%
Alaska	222,666,580	365,481,600	60.9%
Arizona	28,077,992	72,688,000	38.6%
Arkansas	3,159,486	33,599,360	9.4%
California	45,493,133	100,206,720	45.4%
Colorado	24,100,247	66,485,760	36.2%
Connecticut	9,110	3,135,360	0.3%
Delaware	29,918	1,265,920	2.4%
District of Columbia	9,649	39,040	24.7%
Florida	4,491,200	34,721,280	12.9%
Georgia	1,946,492	37,295,360	5.2%
Hawaii[a]	829,830	4,105,600	20.2%
Idaho	32,789,648	52,933,120	61.9%
Illinois	423,782	35,795,200	1.2%
Indiana	384,726	23,158,400	1.7%

lands of the four major federal land management agencies are eligible for PILT payments, a small fraction are not. Also, DOD lands are among those generally not eligible for PILT payments. A small portion of PILT payments are made for certain lands managed by agencies other than the five covered in this report. Thus, the PILT county-level data do not always match the state acreage data shown in this report. For additional information on PILT, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by Katie Hoover.

[35] This includes 14 states and the District of Columbia. When referring to acreage figures in this report, *states* is often used to include the District of Columbia in addition to the 50 states.

	Total Federal Acreage	Total Acreage in State	Federal Acreage's % of State
Iowa	97,509	35,860,480	0.3%
Kansas	253,919	52,510,720	0.5%
Kentucky	1,100,160	25,512,320	4.3%
Louisiana	1,353,291	28,867,840	4.7%
Maine	301,481	19,847,680	1.5%
Maryland	205,362	6,319,360	3.2%
Massachusetts	62,680	5,034,880	1.2%
Michigan	3,637,599	36,492,160	10.0%
Minnesota	3,503,977	51,205,760	6.8%
Mississippi	1,552,634	30,222,720	5.1%
Missouri	1,702,983	44,248,320	3.8%
Montana	27,082,401	93,271,040	29.0%
Nebraska	546,852	49,031,680	1.1%
Nevada	56,262,610	70,264,320	80.1%
New Hampshire	805,472	5,768,960	14.0%
New Jersey	171,956	4,813,440	3.6%
New Mexico	24,665,774	77,766,400	31.7%
New York	230,992	30,680,960	0.8%
North Carolina	2,434,801	31,402,880	7.8%
North Dakota	1,733,641	44,452,480	3.9%
Ohio	305,502	26,222,080	1.2%
Oklahoma	683,289	44,087,680	1.5%
Oregon	32,244,257	61,598,720	52.3%
Pennsylvania	622,160	28,804,480	2.2%
Rhode Island	4,513	677,120	0.7%
South Carolina	875,316	19,374,080	4.5%
South Dakota	2,640,005	48,881,920	5.4%
Tennessee	1,281,362	26,727,680	4.8%
Texas	3,231,198	168,217,600	1.9%
Utah	33,267,621	52,696,960	63.1%
Vermont	465,888	5,936,640	7.8%
Virginia	2,373,616	25,496,320	9.3%
Washington	12,192,855	42,693,760	28.6%
West Virginia	1,134,138	15,410,560	7.4%
Wisconsin	1,854,085	35,011,200	5.3%
Wyoming	29,137,722	62,343,040	46.7%

	Total Federal Acreage	Total Acreage in State	Federal Acreage's % of State
U.S. Total	**615,311,596**	**2,271,343,360**	**27.1%**

Sources: For federal lands, see sources listed in **Table 2**. Total acreage of states is from U.S. General Services Administration, Office of Governmentwide Policy, *Federal Real Property Profile, as of September 30, 2004*, Table 16, pp. 18-19.

Notes: Figures understate federal lands in each state and the total in the United States. They include only land of the five largest land-managing agencies: BLM, FS, FWS, NPS, and DOD lands. Thus, the figures exclude federal lands managed by other agencies, such as the Bureau of Reclamation. They also exclude any land managed by the five agencies in the territories, DOD-managed acreage overseas, submerged lands in the outer continental shelf, and an estimated 662 million acres managed by FWS within the U.S. Minor Outlying Islands, primarily marine areas in the Pacific Ocean.

The total federal acreage column does not add to the precise total shown due to small discrepancies in the sources used. This is also the case for some other tables in this report. Also, here and throughout the report, figures might not sum to the totals shown due to rounding.

a. This figure includes approximately 253,000 acres of submerged lands and waters within the Hawaiian Islands National Wildlife Refuge. Thus, the percentage shown overestimates the area that is federally owned.

Table 2. Federal Acreage in Each State, by Agency, 2018

State	BLM	FS	FWS	NPS	DOD
Alabama	3,011	670,889	32,585	17,540	156,163
Alaska	71,397,880	22,138,560	76,649,320	52,455,308	25,512
Arizona	12,120,512	11,179,113	1,683,512	2,658,112	436,743
Arkansas	1,405	2,593,165	379,648	98,346	86,922
California	15,088,090	20,791,505	296,899	7,612,898	1,703,741
Colorado	8,352,437	14,487,064	174,983	665,260	420,503
Connecticut	0	23	1,754	5,846	1,487
Delaware	0	0	25,543	890	3,485
Dist. of Col.	0	0	0	8,476	1,173
Florida	2,239	1,203,418	293,636	2,469,173	522,734
Georgia	0	867,580	488,648	39,935	550,329
Hawaii[a]	0	0	309,594	358,160	162,076
Idaho	11,776,995	20,447,859	49,733	511,963	3,098
Illinois	20	304,538	90,000	12	29,212
Indiana	0	204,318	16,868	10,769	152,771
Iowa	0	0	73,427	2,708	21,374
Kansas	1	108,621	29,509	462	115,326
Kentucky	0	818,268	11,838	94,103	175,951
Louisiana	2,043	608,546	582,342	17,690	142,670
Maine	0	53,880	73,434	156,205	17,962
Maryland	548	0	49,795	41,532	113,487
Massachusetts	0	0	23,342	33,336	6,002
Michigan	610	2,874,631	117,816	632,280	12,262

State	BLM	FS	FWS	NPS	DOD
Minnesota	1,101	2,844,937	516,150	139,789	2,000
Mississippi	5,048	1,190,979	211,438	104,369	40,800
Missouri	59	1,507,891	61,368	54,569	79,096
Montana	8,022,852	17,186,331	653,097	1,214,193	5,928
Nebraska	5,325	351,205	174,401	5,899	10,022
Nevada	47,298,840	5,760,954	2,345,102	797,613	60,101
New Hampshire	0	753,921	34,716	13,696	3,139
New Jersey	0	0	73,785	35,683	62,488
New Mexico	13,500,023	9,225,354	332,058	468,968	1,139,371
New York	0	16,352	29,301	34,106	151,233
North Carolina	0	1,256,493	423,879	366,889	387,540
North Dakota	58,032	1,103,160	488,648	71,192	12,609
Ohio	0	244,440	9,109	20,290	31,663
Oklahoma	1,942	399,578	108,046	10,011	163,712
Oregon	15,742,384	15,697,445	575,379	196,197	32,852
Pennsylvania	0	513,891	12,614	53,460	42,195
Rhode Island	0	0	2,415	5	2,093
South Carolina	0	634,594	130,051	32,339	78,332
South Dakota	275,336	2,006,214	206,930	148,010	3,515
Tennessee	0	722,057	54,338	359,197	145,770
Texas	12,188	757,036	574,956	1,206,489	680,529
Utah	22,787,881	8,192,893	110,567	2,097,860	78,420
Vermont	0	410,654	34,195	9,836	11,203
Virginia	805	1,668,369	132,201	306,393	265,848
Washington	437,342	9,335,431	163,791	1,834,616	421,675
West Virginia	0	1,046,426	19,888	65,554	2,270
Wisconsin	2,488	1,524,576	202,424	61,835	62,762
Wyoming	17,493,875	9,215,971	70,930	2,345,619	11,327
U.S. Total	**244,391,312**	**192,919,130**	**89,205,999**	**79,945,679**	**8,849,476**
Territories	0	28,937	24,773	26,852	59,058
Overseas	0	0	0	0	12,816
Agency Total	244,391,312	192,948,059	89,230,772	79,972,531	8,921,349

Sources: For BLM, data provided to CRS by BLM on December 16, 2019. Data reflect BLM ownership as of September 30, 2018.

For FS: U.S. Dept. of Agriculture, Forest Service, *Land Areas of the National Forest System—As of Sept 30, 2018*, Tables 1 and 4, at https://www.fs.fed.us/land/staff/lar/LAR2018/lar2018index.html. Data reflect land within the National Forest System, including national forests, national grasslands, purchase units, land utilization projects, experimental areas, and other areas. **Table 1** shows an agency total of 192,948,059. However, the individual state and territory acreages copied here from **Table 4** appear to sum to 192,948,067. The reason for the

discrepancy is not apparent. In this table, the agency total is reflected as the total reported in **Table 1**, 192,948,059.

For FWS: U.S. Dept. of the Interior, Fish and Wildlife Service, *2018 Annual Lands Report Data Tables, as of September 30, 2018*, Table 1A, at https://www.fws.gov/refuges/land/PDF/2018_Annual_Report_of_Lands_Data_Tables.pdf. Data reflect federally owned land over which the FWS has sole or primary jurisdiction.

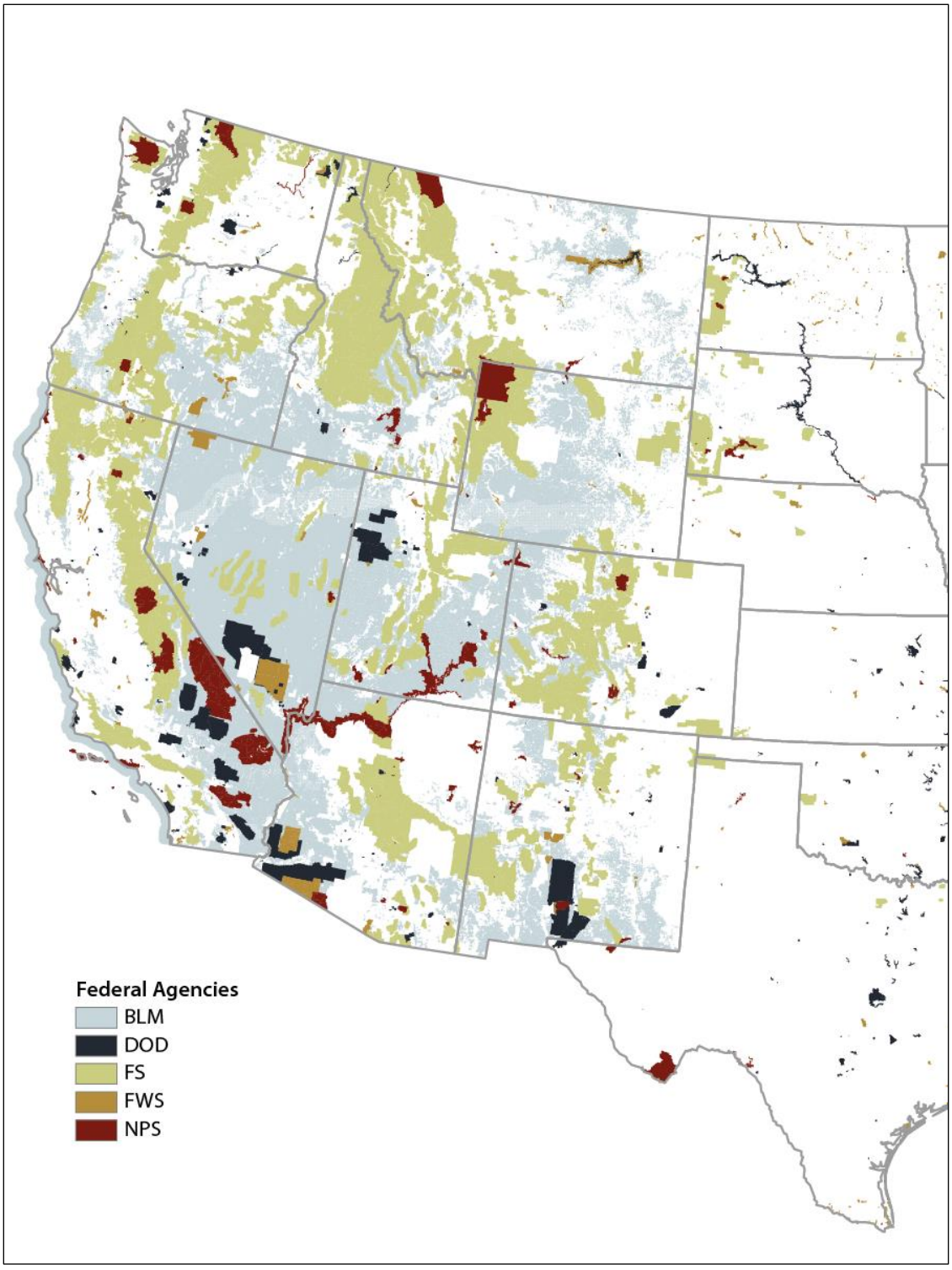
For NPS: U.S. Dept. of the Interior, National Park Service, Land Resources Division, *Acreage by State*, as of 9/30/2018, at https://www.nps.gov/subjects/lwcf/upload/NPS-Acreage-9-30-2018.pdf. Data reflect federally owned lands managed by the NPS.

For DOD: U.S. Department of Defense, Office of the Deputy Assistant Secretary of Defense for Infrastructure, *Base Structure Report, Fiscal Year 2018 Baseline (A Summary of the Real Property Inventory Data)*, as of September 30, 2017, VI. Total DOD Inventory, pp. DOD-29 to DOD-88, at https://www.acq.osd.mil/eie/Downloads/BSI/Base%20Structure%20Report%20FY18.pdf. Hereinafter this source is referred to as the DOD FY2018 Baseline. Unlike the data for the other agencies, the DOD data is current as of September 30, 2017. The source excludes U.S. Army Corps of Engineers lands.

Notes: See notes for **Table 1**.

a. This figure includes approximately 253,000 acres of submerged lands and waters within the Hawaiian Islands National Wildlife Refuge.

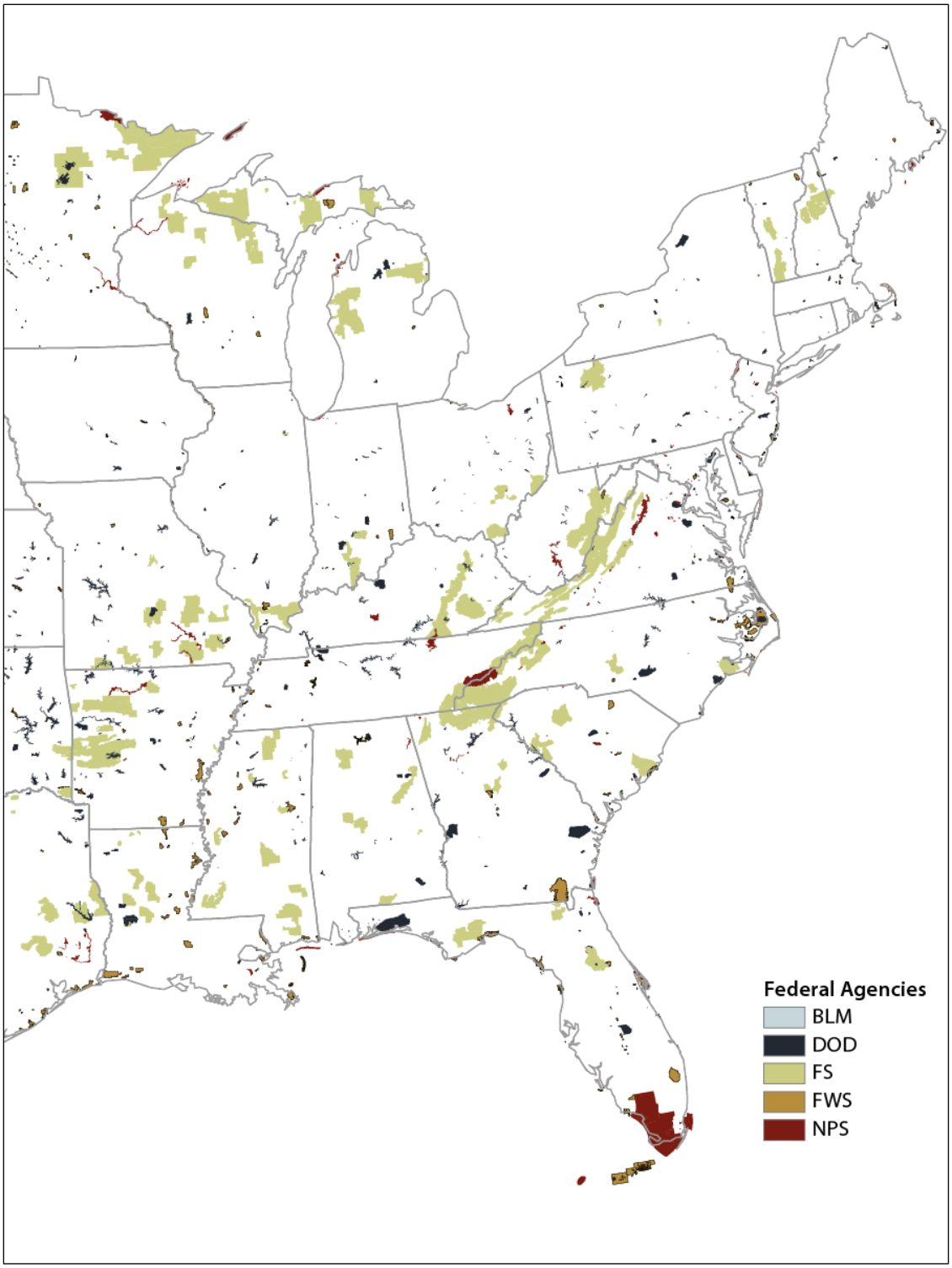
Figure 1. Western Federal Lands Managed by Five Agencies



Source: Map boundaries and information generated by CRS using federal lands GIS data from the National Atlas, 2005, and an ESRI USA Base Map.

Notes: Scale 1:11,283,485. The line along the coast of California indicates BLM administration of numerous small islands. Also, the map may reflect a broader definition of DOD land than shown in the data in **Table 2**.

Figure 2. Eastern Federal Lands Managed by Five Agencies



Source: Map boundaries and information generated by CRS using federal lands GIS data from the National Atlas, 2005, and an ESRI USA Base Map.

Note: Scale 1:13,293,047. Also, the map may reflect a broader definition of DOD land than shown in the data in Table 2.

Figure 3. Federal Lands in Alaska and Hawaii Managed by Five Agencies

Source: Map boundaries and information generated by CRS using federal lands GIS data from the National Atlas, 2005, and an ESRI USA Base Map.

Note: Hawaii scale 1:8,000,000. Alaska scale 1:20,000,000. Also, the map may reflect a broader definition of DOD land than shown in the data in Table 2.

Federal Land Ownership Changes, 1990-2018

Since 1990, total federal lands in the United States have generally declined. Many disposals of areas of federal lands have occurred. At the same time, the federal government has acquired many parcels of land, and there have been various new federal land designations, including wilderness areas and national park units. Through the numerous individual acquisitions and disposals since 1990, the total federal land ownership has declined by 31.5 million acres, or 4.9% of the total of the five agencies, as shown in **Table 3**.

The total acreage decline reflects decreased acreage for two agencies but increased acreage for three others. BLM ownership decreased by 27.6 million acres (10.2%), in large part due to the disposal of BLM land, under law, to the State of Alaska, Alaska Natives, and Alaska Native Corporations.[36] DOD land ownership also declined, by 11.7 million acres (56.8%). This decline was primarily due to changes in legal arrangements for managing military installations rather than changes in the sizes of the installations themselves. For instance, of the 26.9 million acres of defense sites (worldwide) in DOD's FY2018 Baseline report—more than 98% of which is in the United States or territories—8.9 million acres (33%) were federally owned,[37] 0.9 million acres (3%) were leased, and 17.1 million acres (63%) were managed through a legal interest that was "other" than owned or leased.[38] By comparison, of the 28.4 million acres of defense sites

[36] Other actions and factors contributed to the decline in BLM lands. For example, a reduction of about 1 million acres (primarily in the eastern states) resulted from a revision in the way the BLM reported acreage withdrawn or reserved for another federal agency or purpose.

[37] The 8.9 million figure used here includes lands worldwide, whereas the 8.8 million figure shown for 2018 elsewhere in this report reflects land in the United States only.

[38] Acreage figures are taken from the DOD FY2018 Baseline, pp. DOD-15 to DOD-16. That document indicates, on p. DOD-5, that total acreage figures include "government owned land, public land, public land withdrawn for military use, licensed and permitted land," and other types of arrangements.

(worldwide) in DOD's 2010 report, approximately 19.8 million (70%) were federally owned,[39] 0.5 million (2%) were leased, and 8.0 million (28%) were managed under another legal interest.

In contrast, the NPS, FWS, and FS expanded their acreage during the period, with the NPS having the largest increase in both acreage and percentage growth—3.8 million acres (5.0%). In some cases, a decrease in one agency's acreage was tied to an increase in acreage owned by another agency.[40]

Table 3. Change in Federal Acreage in the United States Since 1990, by Agency

	1990	2000	2010	2018	Change 1990-2018	% Change Since 1990
BLM	272,029,418	264,398,133	247,859,076	244,391,312	-27,638,106	-10.2%
FS	191,367,364	192,355,099	192,880,840	192,919,130	1,551,766	0.8%
FWS	86,822,107	88,225,669	88,948,699	89,205,999	2,383,892	2.7%
NPS	76,133,510	77,931,021	79,691,484	79,945,679	3,812,169	5.0%
DOD	20,501,315	24,052,268	19,421,540	8,849,476	-11,651,839	-56.8%
U.S. Total	**646,853,714**	**646,962,190**	**628,801,839**	**615,311,596**	**-31,542,118**	**-4.9%**

Sources: See sources listed **Table 2.**

Notes: See notes for **Table 1.** Also, estimates generally reflect the end of the fiscal year for the years shown, (i.e., September 30). However, DOD figures for the years indicated were not readily available. Rather, the DOD figures for the four columns were derived respectively from the FY1989 Base Structure Report (published in February 1988), the FY1999 Base Structure Report (with data as of September 30, 1999), the FY2010 Base Structure Report (with data as of September 30, 2009), and the FY2018 Base Structure Report (with data as of September 30, 2017).

The total federal acreage decline (shown in **Table 3**) is a composite of various decreases in acreage in 15 states and increases in acreage in 36 states (including the District of Columbia). A reduction in federal lands in Alaska was a major reason for the total decline in federal lands since 1990. As shown in **Table 4**, federal land declined in Alaska by 23.0 million acres (9.4%) between 1990 and 2018. As noted, this decline in Alaska is largely the result of the disposal of BLM land under Alaska-specific laws. Specifically, from 1990 to 2018, BLM land in Alaska declined by 21.1 million acres (22.8%).

Since 1990, federal land also has decreased in the 11 contiguous western states, by 10.7 million acres (3.0%). Reflected in the overall decline are reductions for 6 of the 11 states, with decreases of 6.3 million acres in Arizona, 3.7 million acres in Nevada,[41] and smaller decreases in four other states. Five of the 11 states each had increases ranging roughly from 0.2 million acres to 0.5 million acres, with the largest being 0.5 million acres in Colorado.

[39] The 19.8 million acre figure used here includes land worldwide, more than 97% of which is in the United States. The 19.4 million acre figure shown for 2010 in **Table 3** reflects land in the United States only.

[40] For instance, a decrease in BLM acreage and an increase in NPS acreage was the result of enactment of the California Desert Protection Act of 1994 (P.L. 103-433). Among other provisions, the law established one new national park unit and expanded two other park units on land that was owned by the BLM, and transferred ownership of the lands to the NPS. BLM estimated the total transfer of BLM land to the NPS for the three areas at 2.9 million acres.

[41] These reductions were due primarily to relatively large reductions of both BLM and DOD land in Arizona and of DOD land in Nevada.

Outside Alaska and the other western states, federal land increased by 2.1 million acres (4.5%). This increase was not uniform, with declines in some states and varying increases (in acreages and percentage) in others.

Table 4. Change in Federal Acreage in the United States Since 1990, by State

	1990	2000	2010	2018	Change 1990-2018	% Change Since 1990
Alabama	944,505	979,907	871,232	880,188	-64,317	-6.8%
Alaska	245,669,027	237,828,917	225,848,164	222,666,580	-23,002,447	-9.4%
Arizona	34,399,867	33,421,887	30,741,287	28,077,992	-6,321,875	-18.4%
Arkansas	3,147,518	3,418,455	3,161,978	3,159,486	11,968	0.4%
California	46,182,591	47,490,824	47,797,533	45,493,133	-689,458	-1.5%
Colorado	23,579,790	24,001,922	24,086,075	24,100,247	520,457	2.2%
Connecticut	6,784	9,012	8,557	9,110	2,326	34.3%
Delaware	27,731	28,397	28,574	29,918	2,187	7.9%
Dist. of Col.	9,533	8,466	8,450	9,649	116	1.2%
Florida	4,344,976	4,671,958	4,536,811	4,491,200	146,224	3.4%
Georgia	1,921,674	1,933,464	1,956,720	1,946,492	24,818	1.3%
Hawaii	715,215	682,650	833,786	829,830	114,615	16.0%
Idaho	32,566,081	32,569,711	32,635,835	32,789,648	223,567	0.7%
Illinois	353,061	403,835	406,734	423,782	70,721	20.0%
Indiana	274,483	394,243	340,696	384,726	110,243	40.2%
Iowa	33,247	83,134	122,602	97,509	64,262	193.3%
Kansas	281,135	300,465	301,157	253,919	-27,216	-9.7%
Kentucky	966,483	1,065,814	1,083,104	1,100,160	133,677	13.8%
Louisiana	1,578,151	1,565,875	1,330,429	1,353,291	-224,860	-14.2%
Maine	176,486	210,167	209,735	301,481	124,995	70.8%
Maryland	173,707	190,783	195,986	205,362	31,655	18.2%
Massachusetts	63,291	63,998	81,692	62,680	-611	-1.0%
Michigan	3,649,258	3,692,271	3,637,965	3,637,599	-11,659	-0.3%
Minnesota	3,545,702	3,581,741	3,469,211	3,503,977	-41,725	-1.2%
Mississippi	1,478,726	1,544,501	1,523,574	1,552,634	73,908	5.0%
Missouri	1,666,718	1,676,175	1,675,400	1,702,983	36,265	2.2%
Montana	26,726,219	26,745,666	26,921,861	27,082,401	356,182	1.3%
Nebraska	528,707	556,347	549,346	546,852	18,145	3.4%
Nevada	60,012,488	60,180,297	56,961,778	56,262,610	-3,749,878	-6.2%
New Hampshire	734,163	754,858	777,807	805,472	71,309	9.7%
New Jersey	146,436	164,865	176,691	171,956	25,520	17.4%

	1990	2000	2010	2018	Change 1990-2018	% Change Since 1990
New Mexico	24,742,260	26,829,296	27,001,583	24,665,774	-76,486	-0.3%
New York	215,441	229,097	211,422	230,992	15,551	7.2%
North Carolina	2,289,509	2,415,560	2,426,699	2,434,801	145,292	6.3%
North Dakota	1,727,541	1,729,430	1,735,755	1,733,641	6,100	0.4%
Ohio	234,396	289,566	298,500	305,502	71,106	30.3%
Oklahoma	505,898	696,377	703,336	683,289	177,391	35.1%
Oregon	32,062,004	32,703,212	32,665,430	32,244,257	182,253	0.6%
Pennsylvania	611,249	598,165	616,895	622,160	10,911	1.8%
Rhode Island	3,110	4,867	5,248	4,513	1,403	45.1%
South Carolina	891,182	872,173	898,637	875,316	-15,866	-1.8%
South Dakota	2,626,594	2,642,646	2,646,241	2,640,005	13,411	0.5%
Tennessee	980,416	1,251,514	1,273,974	1,281,362	300,946	30.7%
Texas	2,651,675	2,855,997	2,977,950	3,231,198	579,523	21.9%
Utah	33,582,578	34,982,884	35,033,603	33,267,621	-314,957	-0.9%
Vermont	346,518	428,314	453,871	465,888	119,370	34.4%
Virginia	2,319,524	2,381,575	2,358,071	2,373,616	54,092	2.3%
Washington	11,983,984	12,646,137	12,173,813	12,192,855	208,871	1.7%
West Virginia	1,062,500	1,096,956	1,130,951	1,134,138	71,638	6.7%
Wisconsin	1,980,460	2,006,778	1,865,374	1,854,085	-126,375	-6.4%
Wyoming	30,133,121	30,081,046	30,043,513	29,137,722	-995,399	-3.3%
U.S. Total	**646,853,714**	**646,962,190**	**628,801,639**	**615,311,596**	**-31,542,118**	**-4.9%**

Sources: See sources listed in **Table 2**.

Notes: See notes to **Table 1** and **Table 3**.

Current Issues

Since the cession to the federal government of the western lands by several of the original 13 states, many federal land issues have recurred. The extent of ownership continues to be debated. Some advocate disposing of federal lands to state or private ownership; others favor retaining currently owned lands; still others promote land acquisition by the federal government, including through increased or more stable funding sources. Another focus is on the condition of federal lands and related infrastructure. Some assert that lands and infrastructure have deteriorated and that agency activities and funding should focus on restoration and maintenance, whereas others advocate expanding federal protection to additional lands. Debates also encompass the extent to which federal lands should be developed, preserved, and open to recreation and whether federal lands should be managed primarily to produce national benefits or benefits primarily for the localities and states in which the lands are located. Finally, border security, along and near the southwestern border in particular, raises questions related to management of, and access to,

federal lands. These questions stem, in part, from the differing roles of the Department of Homeland Security (DHS) and the federal land management agencies.[42]

Extent of Ownership

The optimal extent of federal land ownership is an enduring issue for Congress. Current debates encompass the extent to which the federal government should dispose of, retain, or acquire lands in general and in particular areas. Advocates of retention of federal lands, and federal acquisition of additional lands, assert a variety of benefits to the public of federal land ownership. They include protection and preservation of unique natural and other resources; open space; and public access, especially for recreation. Some support land protection from development.

Disposal advocates have expressed concerns about the efficacy and efficiency of federal land management, accessibility of federal lands for certain types of recreation, and limitations on development of federal lands. Some support selling federal land for financial reasons, such as to help lower federal expenditures, reduce the deficit, or balance the budget. Others assert that limited federal resources constrain agencies' abilities to protect and manage the lands and resources. Other concerns involve the potential influence of federal land protection on private property, development, and local economic activity. Some seek disposal to states or private landowners to foster state, local, and private control over lands and resources.

Other issues center on the suitability of authorities for acquiring and disposing of lands and their use in particular areas. Congress has provided to the federal agencies varying authorities for acquiring and disposing of land.[43] With regard to acquisition, the BLM has relatively broad authority, the FWS has various authorities, and the FS authority is mostly limited to lands within or contiguous to the boundaries of a national forest. DOD also has authority for acquisitions.[44] By contrast, the NPS has no general authority to acquire land to create new park units. Condemnation for acquiring land is feasible, but, with the exception of DOD, rarely is used by these agencies. Its potential use has been controversial in some cases. The primary funding mechanism for federal land acquisition, for the four major federal land management agencies, has been appropriations from the Land and Water Conservation Fund (LWCF).[45] For the FWS, the Migratory Bird Conservation Fund (supported by sales of Duck Stamps and import taxes on arms and ammunition) provides an additional source of mandatory spending for land acquisition. Funding for acquisitions by DOD is provided in DOD appropriations laws. There continue to be different views as to acquisition funding, including the appropriate amount, type (discretionary and/or mandatory), and location of use.

With regard to disposal, the NPS and FWS have no general authority to dispose of the lands they administer, and the FS disposal authorities are restricted. The BLM has broader authority under provisions of FLPMA.[46] DOD lands that are excess to military needs can be disposed of under the surplus property process administered by the General Services Administration (GSA). While

[42] Additional discussion of federal land management issues is contained in CRS Report R43429, *Federal Lands and Related Resources: Overview and Selected Issues for the 116th Congress*, coordinated by Katie Hoover.

[43] For information on the acquisition and disposal authorities of the four major federal land management agencies, see CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*, by Carol Hardy Vincent et al.

[44] See 10 U.S.C. §2663.

[45] For information on the Land and Water Conservation Fund, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent.

[46] 43 U.S.C. §1713.

surplus DOD real property is routinely disposed of by the GSA, legislation authorizing base realignment and closure (BRAC) rounds typically has authorized the Secretary of Defense to exercise GSA's disposal authority during BRAC rounds.[47]

It is not uncommon for Congress to enact legislation providing for the acquisition or disposal of particular lands where an agency lacks such authority or providing particular procedures for specified land transactions. Further, recent Congresses have considered measures to establish or amend broader authorities for acquiring or disposing of land.

Western Land Concentration

The concentration of federal lands in the West has contributed to a higher degree of controversy over federal land ownership in that part of the country. For instance, the dominance of BLM and FS lands in the western states has led to various efforts to divest the federal government of significant amounts of land. In recent years, some western states, among others, have considered measures to provide for or express support for the transfer of federal lands to states, to establish task forces or commissions to examine federal land transfer issues, and to assert management authority over federal lands. An earlier collection of efforts from the late 1970s and early 1980s, known as the Sagebrush Rebellion, also sought to foster divestiture of federal lands. However, that effort was not successful in achieving this end through legal challenges in the federal courts and efforts to persuade the Reagan Administration and Congress to transfer the lands to state or private ownership. Some supporters of continued or expanded federal land ownership have asserted that state and local resource constraints, other economic considerations, or environmental or recreational priorities weigh against state challenges to federal land ownership. In recent years, some states have considered measures to express support for federal lands or to limit the sale of federal lands in the state.[48]

As shown in **Table 1** and **Table 2**, the 11 contiguous western states and Alaska have extensive areas of federal lands. **Table 5** summarizes the data in **Table 1** to clarify the difference in the extent of federal ownership between western and other states. As can be seen in **Table 5**, 60.9% of the land in Alaska is federally owned, which includes 85.9% of the total FWS lands and 65.6% of the total NPS lands. In contrast, only 0.3% of DOD-owned lands are in Alaska. Of the land in the 11 contiguous western states, 45.9% is federally owned, which includes 73.4% of total FS lands and 70.6% of total BLM lands. In the rest of the country, the federal government owns 4.1% of the lands. The FS manages the largest portion of this land in other states—61.8%—and BLM manages the least—0.8%. Slightly more than half (51%) of DOD lands are in the other states, with slightly less than half (49%) in the 11 western states.

[47] For information on the disposal of surplus federal property by the U.S. General Services Administration (GSA), see 40 U.S.C. §101 et seq. and CRS Report R44377, *Disposal of Unneeded Federal Buildings: Legislative Proposals in the 114th Congress*, by Garrett Hatch. For information on DOD disposal during BRAC rounds, see CRS Report R45705, *Base Closure and Realignment (BRAC): Background and Issues for Congress*, by Christopher T. Mann.

[48] For a discussion of issues related to potential state management of federal lands, see CRS Report R44267, *State Management of Federal Lands: Frequently Asked Questions*, by Carol Hardy Vincent.

Table 5. Federal Acreage in the United States, by Agency and State or Region, 2018

	Alaska	11 Western States[a]	Other States	U.S. Total
BLM	71,397,880	172,621,231	372,201	244,391,312
FS	22,138,560	141,519,920	29,260,650	192,919,130
FWS	76,649,320	6,456,051	6,100,632	89,205,999
NPS	52,455,308	20,403,299	7,087,074	79,945,679
DOD	25,512	4,313,759	4,510,205	8,849,476
U.S. Total	222,666,580	345,314,260	47,330,762	615,311,596
Acreage of States	365,481,600	752,947,840	1,152,913,920	2,271,343,360
Percentage Federal	**60.9%**	**45.9%**	**4.1%**	**27.1%**

Sources: For federal lands, see sources listed in **Table 2**. Total acreage of states is from U.S. General Services Administration, Office of Governmentwide Policy, *Federal Real Property Profile, as of September 30, 2004*, Table 16, pp. 18-19.

Notes: See notes for **Table 1**. As mentioned, the U.S. total shown is not the precise sum of the figures in the first three columns due to small discrepancies in the sources used and rounding.

a. The 11 western states are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

Maintaining Infrastructure and Lands

Debate continues over how to balance the acquisition of new assets and lands with the maintenance of the agencies' existing infrastructure and the care of current federal lands. Some assert that addressing the condition of infrastructure and lands in current federal ownership is paramount. They support ecological restoration as a focus of agency activities and funding and an emphasis on managing current federal lands for continued productivity and public benefit. They oppose new land acquisitions and unit designations until the backlog of maintenance activities has been eliminated or greatly reduced and the condition of current range, forest, and other federal lands is significantly improved. Others contend that expanding federal protection to additional lands is essential to provide new areas for public use, protect important natural and cultural resources, and respond to changing land and resource conditions.

The ecological condition of current federal lands has long been a focus of attention. For example, the poor condition of public rangelands due to overgrazing was the rationale for enacting the Taylor Grazing Act of 1934 and the creation of the BLM.[49] Today, debates on the health and productivity of federal lands center on rangelands, forests, riparian areas, and other resources. These lands and resources might be affected in some areas by various land uses, such as livestock grazing, recreation, and energy development. Many other variables might impact the health of federal lands and resources, including wildfires, community expansion, invasive weeds, and drought.

The deferred maintenance of federal infrastructure also has been a focus of Congress and the Administration for many years. Deferred maintenance, often called the maintenance backlog, is defined as maintenance that was not done when scheduled or planned. The agencies assert that

[49] S.T. Dana and S.K. Fairfax, *Forest and Range Policy: Its Development in the United States*, 2nd ed. (New York: McGraw-Hill Book Co., 1980), pp. 158-164.

continuing to defer maintenance of facilities accelerates their rate of deterioration, increases their repair costs, and decreases their value.

Congressional and administrative attention has centered on the NPS backlog. DOI estimated deferred maintenance for the NPS for FY2018 at $11.92 billion. Of the total deferred maintenance, 57% was for roads, bridges, and trails; 19% was for buildings; 6% was for irrigation, dams, and other water structures; and 18% was for other structures (e.g., recreation sites).[50] DOI estimates of the NPS backlog have increased overall since FY1999, from $4.25 billion in that year.[51] It is unclear what portion of the change is due to the addition of maintenance work that was not done on time or the availability of more precise estimates of the backlog. The NPS, as well as the other land management agencies, increased efforts to define and quantify maintenance needs over the past two decades.

While attention has focused on the NPS backlog, the other federal land management agencies also have maintenance backlogs. The FS estimated its backlog for FY2018 at $5.20 billion.[52] Of the total deferred maintenance, 61% was for roads,[53] 24% was for buildings, and the remaining 15% was for a variety of other assets (e.g., trails, fences, and bridges). For FY2018, DOI estimated the FWS backlog at $1.30 billion and the BLM backlog at $0.96 billion.[54] The four agencies together had a combined FY2018 backlog estimated at $19.38 billion.

The agency backlogs have been attributed to decades of funding shortfalls. However, it is unclear how much total funding has been provided for the maintenance backlog over the years. Annual presidential budget requests and appropriations laws typically have not identified funds from all sources that may be used to address the maintenance backlog. Opinions differ over the level of funds needed to address deferred maintenance, whether to use funds from other programs and new sources, and how to prioritize funds for maintenance needs.

Protection and Use

The extent to which federal lands should be opened to development, available for recreation, and/or preserved has been controversial. Differences of opinion exist on the amount of traditional commercial development that should be allowed, particularly involving energy development, grazing, and timber harvesting. Whether and where to restrict recreation, generally and for high-impact uses such as motorized off-road vehicles, also is a focus. How much land to dedicate to enhanced protection, what type of protection to provide, and who should protect federal lands are continuing questions. Another area under consideration involves how to balance the protection of wild horses and burros on federal lands with protection of the range and other land uses.

Debates also encompass whether federal lands should be managed primarily to emphasize benefits nationally or for the localities and states where the lands are located. National benefits can include using lands to produce wood products for housing or energy from traditional (oil, gas, coal) and alternative/renewable sources (wind, solar, geothermal, biomass). Other national benefits might encompass clean water for downstream uses; biodiversity for ecological resilience

[50] This information was provided to CRS by the DOI Budget Office on March 25, 2019. DOI estimates are based on DOI financial reports and may differ from figures reported by the agencies independently. As one example, DOI financial reports reflect agency-owned assets only, whereas figures reported by individual DOI agencies sometimes include other types of assets (e.g., leased assets).

[51] FY1999 is the first year for which an estimate is readily available.

[52] This information was provided to CRS by the Forest Service, Office of Legislative Affairs, on February 12, 2019.

[53] This estimate of the deferred maintenance for roads reflects passenger-car roads only.

[54] This information was provided to CRS by the DOI Budget Office on March 25, 2019.

and adaptability; and wild animals and wild places for human enjoyment. Local benefits can include economic activities, such as livestock grazing, timber for sawmills, ski areas, tourism, and other types of development. Local benefits could also be scenic vistas and areas for recreation—picnicking, sightseeing, backpacking, four-wheeling, snowmobiling, hunting and fishing, and much more.

At some levels, the many uses and values can generally be compatible. However, as demands on the federal lands have risen, the conflicts among uses and values have escalated. Some lands—notably those administered by the FWS and DOD—have an overriding primary purpose (wildlife habitat and military needs, respectively). The conflicts typically are greatest for the multiple-use lands managed by the BLM and FS, because the potential uses and values are more diverse.

Other issues of debate include who decides the national-local balance, and how those decisions are made. Some would like to see more local control of land and a reduced federal role, while others seek to maintain or enhance the federal role in land management to represent the interests of all citizens.

Border Security[55]

Border security presents special challenges on federal lands, given the extensive federal lands along the southwestern border with Mexico and the northern border with Canada. The federal lands on the borders tend to be geographically remote and include mountains, deserts, and other inhospitable terrain with limited law enforcement coverage. Moreover, the lands are managed by different federal agencies, under various laws, and for many purposes.

The southwestern border with Mexico has been a particular focus. There are various estimates and depictions of federal lands on or near the border. For instance, by one estimate, six different agencies manage 621.5 (linear) miles of federal lands along the southwestern border.[56] Second, a depiction of federal (and Indian) lands located within 50 and 100 miles from the U.S.-Mexican border is shown in **Table 4**. Third, according to the House Committee on Natural Resources, there are about 26.7 million acres of federal lands within 100 miles of the border (and an additional 3.5 million acres of Indian lands).[57] Nearly half of the federal lands (12.3 million acres) are managed by the BLM, and the remainder are managed by DOD (5.8 million acres), FS (3.8 million acres), NPS (2.4 million acres), FWS (2.2 million acres), and other federal agencies (0.2 million acres).

The extent to which federal and other lands along the southwestern border should be used for the construction of barriers to deter illegal immigration and other illegal activity is under current debate. Efforts to build border infrastructure to reduce illicit activity at the border, such as illegal entry and drug and contraband smuggling, are a priority for the Trump Administration as well as for some Members of Congress and portions of the public. By contrast, some Members of Congress and segments of the public oppose barrier construction as potentially costly, possibly

[55] For additional information, see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*, coordinated by Audrey Singer.

[56] The estimate of 621.5 linear miles was prepared by CRS. It excludes 71.9 miles of land managed by the Bureau of Indian Affairs, for a total of 693.4 miles of federal and Indian lands on the border. For additional information, see CRS In Focus IF10832, *Federal and Indian Lands on the U.S.-Mexico Border*, by Carol Hardy Vincent and James C. Uzel.

[57] See the map on the website of the House Committee on Natural Resources at https://republicans-naturalresources.house.gov/info/borderoverview.htm.

damaging to lands and resources, and unlikely to be a major deterrent to illegal activity, among other reasons.[58]

Within DHS, the U.S. Border Patrol (USBP) takes the lead role in staffing and securing the international borders, but more than 40% of the southwestern border abuts federal and tribal lands overseen by the FS and the four DOI agencies (including the Bureau of Indian Affairs) that also have law enforcement responsibilities.[59] Differences in missions and jurisdictional complexity among these agencies may hinder border control. To facilitate control efforts, three federal agencies—DHS, the Department of Agriculture (for the FS), and DOI—have signed memoranda of understanding (MOUs) on border security. These MOUs govern information sharing, budgeting, operational planning, USBP access to federal lands, and interoperable radio communications, among other issues.[60]

In general, federal efforts to secure the border are subject to the National Environmental Policy Act of 1969 (NEPA), which requires agencies to evaluate the potential environmental impacts of proposed programs, projects, and actions before decisions are made to implement them.[61] Implementing regulations require agencies to integrate NEPA project evaluations with other planning and regulatory compliance requirements to ensure that planning and decisions reflect environmental considerations.[62] Federal law confers the DHS Secretary with broad authority to construct barriers and roads along U.S. borders to deter illegal crossings. The Secretary may waive application of NEPA and other laws that the Secretary determines may impede the expeditious construction of these barriers and roads.[63] In the past, Congress has introduced legislation to broaden DHS's authority to be exempt from NEPA, land management statutes, and other environmental laws on the grounds that these laws (and related litigation) may impede DHS from taking actions on federal lands to secure the border. Some have opposed such legislation on the grounds that it would remove important protections for sensitive and critical habitats and resources and that the current authority is already sufficiently broad.

[58] For an overview of funding appropriated for border barrier constructions, see CRS Report R45888, *DHS Border Barrier Funding*, by William L. Painter and Audrey Singer. For a discussion of Department of Defense funding of border barrier construction see CRS Report R45937, *Military Funding for Southwest Border Barriers*, by Christopher T. Mann.

[59] U.S. Government Accountability Office, *Border Security: Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177, November 2010, p. 4.

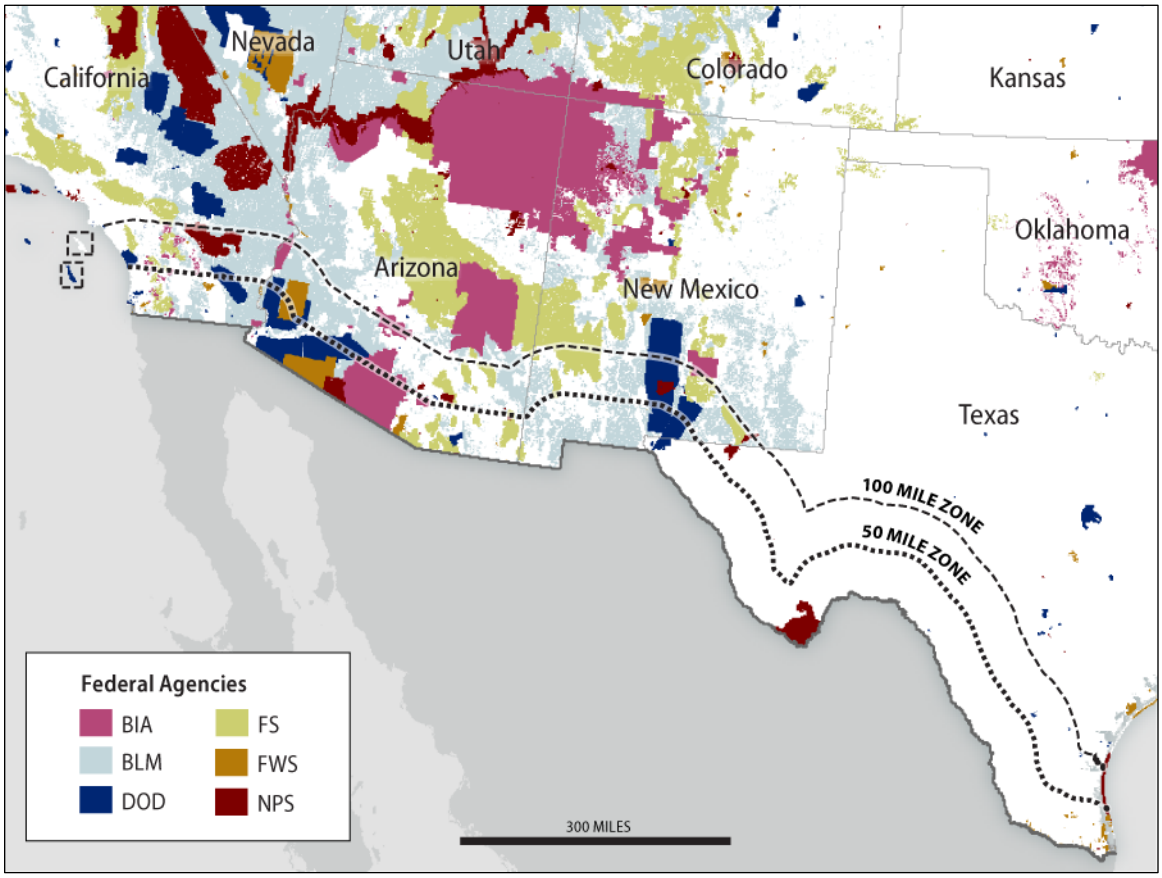
[60] For example, in 2006, DOI, DHS, and USDA entered into a memorandum of understanding entitled *Cooperative National Security and Counterterrorism Efforts on Federals Lands along the United States' Borders.* These departments have entered into additional memoranda of understanding addressing issues such as "road maintenance, secure radio communication, environmental coordination, and sharing of geospatial information, among others." U.S. Congress, House Committee on Natural Resources, Subcommittee on Oversight and Investigations, *The Consequences of Federal Land Management Along the U.S. Border to Rural Communities and National Security*, testimony of U.S. Department of the Interior's Interagency Borderlands Coordinator, Jon Andrew, 114th Cong., 2nd sess., April 28, 2016.

[61] P.L. 91-190; 42 U.S.C. §§4321-4347.

[62] For more information on DHS compliance with NEPA, see https://www.dhs.gov/national-environmental-policy-act-nepa-department-homeland-security-implementing-procedures. The U.S. Border Patrol is a component within DHS's U.S. Customs and Border Protection (CBP). For more information on CBP's compliance with NEPA, see https://www.cbp.gov/about/environmental-management-sustainability/nepa.

[63] Illegal Immigration Reform and Immigrant Responsibility Act, P.L. 104-208, div. C, §102(a)-(c), as amended by the REAL ID Act of 2005, P.L. 109-13, div. B, §102; the Secure Fence Act of 2006, P.L. 109-367, §3; and the Consolidated Appropriations Act, 2008 P.L. 110-161, div. E, §564(a). See also CRS Report R43975, *Barriers Along the U.S. Borders: Key Authorities and Requirements*, by Michael John Garcia, which discusses DHS's border infrastructure deployment authority and identifies laws waived for several border construction projects.

Figure 4. Federal and Indian Lands Near the Southwestern Border



Source: Map boundaries and information generated by CRS using U.S. Geological Survey, Gap Analysis Program (GAP). May 2016. Protected Areas Database of the United States (PAD-US), version 1.4 Combined Feature Class and an ESRI USA Base Map.

Notes: Two areas of land off the southwest border (in the Pacific Ocean) are shown in dashed boxes because they are within the 100-mile zone. Federal lands not owned by BLM, DOD, FS, FWS, and NPS or held in trust by the Bureau of Indian Affairs were not included due to their small size relative to the displayed federal lands.

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Land Disposal Authorities and Processes of the Bureau of Land Management

June 3, 2024

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CRS REPORT
Prepared for Members and
Committees of Congress

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Land Disposal Authorities and Processes of the Bureau of Land Management

Congress has provided various statutory authorities to the Bureau of Land Management (BLM), within the Department of the Interior, to dispose of federal lands through conveyance to another party. One such disposal authority is the Federal Land Policy and Management Act (FLPMA; 43 U.S.C. §§1701 et seq.). Another BLM disposal authority is the Recreation and Public Purposes Act (RPPA; 43 U.S.C. §§869 et seq.). The suitability of existing BLM disposal authorities, the circumstances of their use, and the extent of BLM land ownership overall form the backdrop for congressional consideration of measures to establish, eliminate, or modify authorities as well as measures to dispose of specific BLM lands.

FLPMA requires BLM to develop land use plans for its lands. Each plan is the basis for actions related to the covered lands and identifies lands potentially available for disposal under FLPMA, RPPA, or other authorities. FLPMA allows BLM to sell tracts of land that are identified for disposal through the land use planning process and that meet certain criteria. These criteria are that (1) the tract is difficult and uneconomic for BLM to manage and not suitable for management by another agency, (2) the tract is no longer needed for the purpose for which it was acquired or for any other federal purpose, or (3) disposal of the tract will serve important public objectives. FLPMA also authorizes BLM to exchange federal lands for nonfederal lands and sets out terms and conditions for exchanges. For instance, an exchange must be in the public interest and the federal and nonfederal lands must be in the same state and essentially of equal value.

RPPA allows BLM to sell or lease lands to states and other governmental units, federally recognized Indian tribes, and nonprofit entities for various public purposes, such as the establishment of parks, schools, police stations, and public works. Disposal must be in the public interest and requires a classification analysis of the specific intended use. Other conditions include acreage limitations for sales and term lengths for leases. BLM's general policy is to first issue a lease to help ensure the area is developed before authorizing a sale. Further, the price of the land depends in part on the type of entity that is to receive it (e.g., governmental or nonprofit), whether the land is sold or leased, and the intended use of the land.

BLM conveyances are governed by various requirements and processes. For example, land sales and exchanges under FLPMA and RPPA generally are subject to the federal environmental review process under the National Environmental Policy Act (NEPA; 42 U.S.C. §§4321 et seq.). The level of review depends on the significance of the potential environmental effects of the disposal. BLM typically has prepared environmental assessments for disposals under FLPMA or RPPA; highly complex disposals have, at times, required more detailed environmental impact statements. NEPA analyses may incorporate information prepared by agencies under other laws, such as consultations under Section 7 of the Endangered Species Act (ESA; 16 U.S.C. §§1531 et seq.) or reviews under Section 106 of the National Historic Preservation Act (NHPA; 54 U.S.C. §§300101 et seq.). Section 7 of the ESA requires federal agencies to ensure their actions do not jeopardize species listed under the ESA or adversely modify or destroy designated critical habitat. For Section 7 to apply, there must be discretionary federal involvement or control in the action. Section 106 of the NHPA requires federal agencies to review the potential impacts of their actions on historic properties and consult with interested parties to seek ways to avoid, minimize, or mitigate any adverse effects.

BLM typically obtains an appraisal of market value for land disposals under FLPMA, whether by sale or exchange. FLPMA specifies that lands may not be sold at less than their fair market value. BLM regulations state that an exchange of lands must be based on the market value of the federal and nonfederal lands. Market value typically is based on an economic assessment of the highest and best use. Under RPPA, lands generally are sold or leased for less than market value or for free, although some lands are sold or leased based on a formula that depends on an appraisal to determine market value.

There is no general statutory timeline for BLM to dispose of lands or authority governing the order in which disposals are undertaken. The length of time to complete disposals varies widely, ranging from months to years. It depends on the number, variety, and components of applicable requirements; attributes and variables of the lands; whether the parcel is identified in a land use plan; BLM priorities and workload; and the availability and expertise of BLM staff, among other factors. Exchanges can be more time consuming than disposals because they involve two transactions.

SUMMARY

R48079

June 3, 2024

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Introduction

Congress has broad constitutional power to manage the lands owned by the federal government, including the power to dispose of federal lands.[1] Congress has provided an array of statutory authorities to the Bureau of Land Management (BLM), within the Department of the Interior (DOI), to dispose of federal lands.[2] A *disposal* is the conveyance of BLM-administered land to a nonfederal party through methods such as sale and exchange. This report provides an overview of the main authorities and processes for BLM to dispose of federal land managed by the agency.[3] It focuses on two *standing* authorities that generally are among the primary authorities BLM uses to dispose of land. For lands meeting certain conditions, the Federal Land Policy and Management Act (FLPMA) authorizes BLM to sell lands to, or exchange lands with, any nonfederal party.[4] The Recreation and Public Purposes Act (RPPA) authorizes BLM to sell or lease lands to states and other governmental units, federally recognized Indian tribes, and nonprofit entities for specific purposes.[5]

In addition to these two standing authorities to convey land, this report covers selected related requirements and processes for conveyances.[6] They include BLM's land use planning process; notification, consultation, and coordination requirements; the environmental review process under the National Environmental Policy Act (NEPA);[7] Endangered Species Act (ESA) Section 7 consultation;[8] National Historic Preservation Act (NHPA) Section 106 requirements;[9] and land appraisals. It concludes with a discussion of factors contributing to the length of the land disposal process.

The BLM land use planning process, provides the framework for land disposals and thus is set out first in this report. Some requirements for disposals often are addressed concurrently by the agency, such as, consultation and coordination and assessments under ESA, NHPA, and NEPA, notwithstanding the order of their discussion in this report. Other land disposal actions may be taken later in the disposal process. An example is land appraisal, because appraisals typically are valid for one year only. Accordingly, appraisals are discussed in this report after other disposal requirements.

[1] The Property Clause of the U.S. Constitution, Article IV, Section 3, clause 2, gives Congress the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."

[2] Land disposal authorities and actions of the Secretary of the Interior discussed in this report generally are exercised by BLM. Further, in some cases, this report refers to Bureau of Land Management (BLM) although the authorities specify the Secretary of the Interior.

[3] In this report, references to *federal land* and *land* generally encompass areas over which the BLM has full ownership (i.e., ownership in fee) as well as BLM interests in lands. An *interest in land* is something less than full ownership, such as an easement. Also, some of the information in this report is derived from a CRS report that provides an overview of the main authorities of BLM and other land management agencies to acquire and dispose of lands. See CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*, coordinated by Carol Hardy Vincent.

[4] Federal Land Policy and Management Act (FLPMA) sale authority is at 43 U.S.C. §1713. Exchange authority is at 43 U.S.C. §1716.

[5] Recreation and Public Purposes Act (RPPA); 43 U.S.C. §§869 et seq.

[6] This report does not identify or discuss all pertinent provisions of FLPMA, RPPA, or other laws governing related requirements and processes, nor does it identify or discuss all related regulations and agency policies.

[7] National Environmental Policy Act (NEPA); 42 U.S.C. §§4321 et seq.

[8] Endangered Species Act (ESA); 16 U.S.C. §§1531 et seq.

[9] National Historic Preservation Act (NHPA); 54 U.S.C. §§300101 et seq.

Land Use Planning Process Under the Federal Land Policy and Management Act

FLPMA, enacted in 1976, is sometimes called BLM's *Organic Act* because it consolidated and articulated BLM's management responsibilities. Under the "multiple use" and "sustained yield" mandate set out in FLPMA,[10] BLM lands are managed for diverse purposes. These purposes include energy and mineral development, livestock grazing, timber harvesting, rights-of-way, recreation, preservation of cultural resources, and protection of species and habitat. Some areas are withdrawn from one or more uses or managed for a predominant use.[11]

FLPMA requires BLM to develop land use plans for its lands.[12] These plans sometimes are called *resource management plans* (RMPs) or, more simply, *plans*. Each BLM plan typically covers a broad area of BLM lands, such as those within the jurisdiction of a BLM district or field office, or BLM lands within a specially designated area, such as a national monument.[13]

Various processes and requirements apply when BLM develops an RMP. BLM develops the RMP through public participation and coordination with federal, state, local, and tribal planning efforts and assesses the potential environmental impacts of proposed RMPs under the NEPA process. The land use planning process begins with public scoping to identify the issues that should be addressed for the lands covered by the plan. BLM analyzes the issues and develops alternative management options, typically in a draft RMP and draft environmental impact statement (EIS).[14] BLM subsequently revises these draft documents based on comments and, after taking other required actions, issues a final RMP and EIS.[15]

Plans are the basis of every action related to BLM lands. In each RMP, BLM provides goals and direction for managing lands currently and in the future, determines the uses for the covered lands, sets out resource protection needs and ways of achieving them, and identifies lands that might be suitable for BLM to acquire. BLM also identifies lands potentially available for disposal by assessing whether parcels might meet the requirements for sales or exchanges under FLPMA, sales or leases under RPPA, and/or disposal under other authorities.

For BLM to dispose of a parcel, the parcel generally must be identified in an RMP as suitable for disposal and the conveyance must conform to the RMP. However, after the initial development of an RMP, it is possible for BLM to amend the plan to make available for disposal a parcel that

[10] In 43 U.S.C. §1702, FLPMA defines *multiple use* in part to include "a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values." The law also defines *sustained yield* as "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use."

[11] For information on the multiple use and sustained yield mission of BLM, see CRS Legal Sidebar LSB10982, *Federal Land Management: When "Multiple Use" and "Sustained Yield" Diverge*, by Adam Vann.

[12] 43 U.S.C. 1712. Regulations governing BLM resource management planning are at 43 C.F.R. §1610. Additional BLM policy sources include BLM Manual 1601—*Land Use Planning* and BLM Handbook H-1601-1—*Land Use Planning Handbook*, release 1-1693, March 11, 2005, https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_h1601-1.pdf.

[13] BLM regulations specify that a plan must be developed on a resource or field office basis unless the BLM state director authorizes otherwise. 43 C.F.R. §1610.1(b).

[14] See, for instance, 43 C.F.R. §1601.0-6.

[15] For additional information on BLM's land use planning process, see the agency's "Planning and NEPA in the BLM" webpage at https://www.blm.gov/programs/planning-and-nepa. For additional information on notification, consultation, and coordination requirements and NEPA, see the pertinent sections in this report.

originally had not been identified.[16] BLM regulations provide that interest in having specific parcels of land offered for sale may be expressed through public input to the land use planning process or made directly to the pertinent BLM personnel.[17]

BLM typically does not engage in detailed reviews, analyses, and consultations regarding particular parcels as part of the land use planning process because circumstances affecting the parcels could change before they are disposed of. Instead, when a party expresses interest in acquiring a parcel identified as suitable for disposal in a plan, BLM engages in various reviews, analyses, and consultations to determine whether the parcel can be disposed of. These actions are undertaken pursuant to various laws. Some reviews may be conducted as part of the NEPA process, such as mineral, cultural, and other resource assessments. Analyses related to species and critical habitat are undertaken pursuant to ESA, and assessments related to historic properties are made pursuant to NHPA. BLM checks the cadastral survey and land status of the federal land to ensure its availability for disposal and, for exchanges, the title of the nonfederal land to ensure its acceptability for acquisition.[18] DOI conducts an appraisal to determine the value of the land being conveyed out of federal ownership and the value of land being acquired as part of any exchange.[19]

In addition, RPPA disposals have a specific classification requirement to determine whether an intended land use upon transfer would be consistent with RPPA and appropriate for the resources in the area.[20] Classification can be set out in the RMP or determined when an entity (e.g., a local government) applies to have the land conveyed. Classification often is done when there is an application for lands for a specific project.[21]

Federal Land Policy and Management Act Sales and Exchanges[22]

Sales

FLPMA authorizes BLM to sell certain tracts of land that are identified for disposal through the land use planning process. Such a tract must meet specific criteria:[23]

[16] See 43 C.F.R. §1610.5-3(c) and 43 C.F.R. §1610.5-5 pertaining to plan amendments.

[17] 43 C.F.R. §2710.0-6(b).

[18] A cadastral survey creates, marks, defines, retraces, or reestablishes the boundaries and subdivisions of BLM land in order to define the limits of title. The distinguishing features of a cadastral surveys are the establishment of monuments on the ground to define the boundaries of the land and their identification in land records by field notes and plats. See BLM, *Glossaries of BLM Surveying and Mapping Terms*, prepared by the cadastral survey training staff, Denver Service Center, 1980, p. 10, and BLM, *Public Land Statistics 2022*, Glossary, p. 241, https://www.blm.gov/sites/default/files/docs/2023-07/Public_Lands_Statistics_2022.pdf.

[19] Sections of this report discuss several of these reviews, analyses, and consultations.

[20] Regulations governing land classification are at 43 C.F.R. Part 2400. In particular, 43 C.F.R. §2400.0-3(f) identifies RPPA disposals as requiring classification.

[21] CRS consultation with BLM staff on September 18, 2023.

[22] As noted, sale authority is at 43 U.S.C. §1713 and exchange authority is at 43 U.S.C. §1716. Regulations governing FLPMA sales are at 43 C.F.R. Part 2710. Regulations governing FLPMA exchanges are at 43 C.F.R. Part 2200. Additional BLM policy sources include BLM Handbook H-2200-1—*Land Exchange Handbook*, release 2-297, August 20, 2007, https://www.blm.gov/sites/blm.gov/files/H-2200-1.pdf. Hereinafter referred to as *Land Exchange Handbook.*

[23] The criteria are set out in 43 U.S.C. §1713(a).

- The tract must be difficult and uneconomic to manage as part of the public lands because of its location or other characteristics and not suitable for management by another federal department or agency; or
- The tract must have been acquired for a specific purpose and must no longer be required for that or any other federal purpose; or
- Disposal of the tract must serve important public objectives, including but not limited to expansion of communities and economic development, that cannot be achieved prudently or feasibly on land other than public land and that outweigh other public objectives and values, including but not limited to recreation and scenic values, that would be served by maintaining such tract in federal ownership.

BLM generally determines the size of the tract to make available for sale by "the land use capabilities and development requirements."[24] FLPMA specifies that proposals to sell parcels of more than 2,500 acres first must be submitted to Congress and can be disapproved by Congress.[25] Also, FLPMA generally provides for the reservation of minerals to the United States in land sales, although it allows for conveyance of such rights in certain specified situations.[26]

Under FLPMA, lands may not be sold at less than their fair market value.[27] (For information on appraisal of a tract's fair market value, see "Appraisals," below.) They generally must be sold through competitive bidding.[28] However, modified competition and noncompetitive sales are allowed where the Secretary of the Interior determines it is necessary to assure equitable distribution among purchasers or to recognize equitable considerations or public policies. In determining the method of sale, factors for consideration include competitive interest, needs of state and local governments, adjoining landowners, historical uses, and equitable distribution of land ownership.[29]

Exchanges

FLPMA authorizes BLM to exchange lands. The land exchange process generally has five phases: (1) development of an exchange proposal, (2) feasibility evaluation, (3) processing and documentation, (4) decision analysis and approval, and (5) title transfer.[30] Each phase typically involves multiple actions. For example, the processing and documentation phase includes title review; public notice and comment; identification and mitigation of environmental effects under NEPA; assessments of mineral, cultural, and other resources; Native American consultations; threatened and endangered species consultations; and preparation and review of land appraisals.[31]

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[24] 43 U.S.C. §1713(e).

[25] 43 U.S.C. §1713(c). In 2017, the U.S. Court of Appeals for the Ninth Circuit held in National Mining Association v. Zinke, 877 F.3d 845, 861 (9th Cir. 2017), that the concurrent resolution disapproval mechanism for withdrawals in FLPMA §204(c) constituted an unconstitutional legislative veto in light of the Supreme Court's ruling in Immigration and Naturalization Service v. Chadha, 462 U.S. 919, 952-59 (1983), due to the omission of a presentment requirement in the statutory provision. The concurrent resolution disapproval mechanism for sales would raise the same constitutional concern.

[26] 43 U.S.C. §1719.

[27] 43 U.S.C. §1713(d).

[28] 43 U.S.C. §1713(f).

[29] 43 C.F.R. §2710.0-6(c).

[30] BLM, Handbook H-2200-1—*Land Exchange Handbook*, p. 1-15 - I-17.

[31] Additional detail on these five phases and land exchanges in general is contained in CRS Report R41509, *Land Exchanges: Bureau of Land Management (BLM) Process and Issues*, by Carol Hardy Vincent.

FLPMA sets out terms and conditions for exchanges.[32] The law requires that the federal and nonfederal lands in the exchange must be located in the same state.

Exchanges under FLPMA must be in the public interest. Public land may be exchanged if the Secretary of the Interior determines the public interest will be "well served."[33] FLPMA and accompanying regulations require that, when determining the public interest, the Secretary must consider numerous factors. These factors include achieving better federal land management, including by consolidation of lands; meeting the needs of state and local people for economic and community expansion; enhancing recreation and public access; and protecting fish and wildlife habitats, cultural resources, watersheds, wilderness, and aesthetic values.[34]

To make an exchange, the Secretary must find that the resource values and public benefits of the federal lands to be conveyed are not more than those of the nonfederal lands being acquired.[35] Further, the intended use of the conveyed federal lands should not conflict significantly with management of adjacent federal and Indian trust lands.[36] In making an exchange, BLM must reserve any rights or retain interests that are needed to protect the public interest or otherwise impose restrictions on the use of the federal lands conveyed.[37] BLM may not accept title to nonfederal land if there are reserved or outstanding interests that would interfere with the use and management of the lands or are inconsistent with the purposes for which the lands are being acquired.[38]

Under FLPMA, the values of the lands exchanged are to be equal or, if they are not equal, they are to be equalized by the payment of money up to 25% of the value of the federal lands being conveyed in the exchange.[39] The parties in the exchange may agree to waive this payment if the exchange meets certain requirements, including that the amount waived is not more than 3% of the value of the federal lands or $15,000, whichever is less.[40] Another way of equalizing value is for either party to add or remove lands. Further, the Secretary of the Interior may exchange lands that are of "approximately" equal value under certain conditions, including if the value of the federal lands does not exceed $150,000.[41] (For information on appraisals, see "Appraisals," below.)

BLM and other parties generally are required to bear their own administrative costs of an exchange; these may include, for instance, costs related to conducting land appraisals, mineral examinations, and cultural resource surveys and addressing deficiencies preventing highest and best use of the land.[42] However, if BLM determines it is in the public interest, the parties can agree that one party may bear costs and responsibilities typically assumed by the other, subject to certain terms.[43]

[32] 43 U.S.C. §1716.

[33] 43 U.S.C. §1716(a).

[34] 43 U.S.C. §1716(a); 43 C.F.R. §2200.0-6(b).

[35] 43 U.S.C. §1716(a).

[36] 43 C.F.R. §2200.0-6(b).

[37] 43 C.F.R. §2200.0-6(i).

[38] 43 C.F.R. §2201.8(c).

[39] 43 U.S.C. §1716(b).

[40] 43 U.S.C. §1716(b).

[41] 43 U.S.C. §1716(b); 43 C.F.R. §§2201.5 and 2201.6.

[42] 43 C.F.R. §2201.1-3.

[43] 43 U.S.C. §1716(f)(2)(B); 43 C.F.R. §2201.1-3.

Although some exchanges involve single parcels, BLM regulations also allow for the use of assembled land exchanges, which consolidate multiple parcels for one or more exchanges over time.[44] An assembled land exchange may be used to facilitate exchanges and reduce costs, for instance, by consolidating many federal parcels of limited value. In other cases, third parties may secure lands that BLM wants to acquire from multiple owners to facilitate negotiations. Both for-profit and nonprofit organizations have facilitated assembled land exchanges, typically functioning as brokers/agents for the exchange.

Recreation and Public Purposes Act Sales and Leases[45]

RPPA authorizes the disposal of BLM lands "to a State, federally recognized Indian Tribe, Territory, county, municipality, or other State, Tribal, Territorial, or Federal instrumentality or political subdivision for any public purposes, or to a nonprofit corporation or nonprofit association for any recreational or any public purpose consistent with its articles of incorporation or other creating authority."[46]

The lands can be sold or leased for various public purposes. Examples of public purposes include the establishment of parks, historic monument sites, fairgrounds, schools, hospitals, fire and police stations, courthouses, social services facilities, and public works, among others.[47]

RPPA and related authorities specify conditions and qualifications for land sales and leases.[48] Under BLM policies, BLM first issues a lease, or a lease with option to purchase, before selling the land.[49] This process is intended to help ensure the area is developed before BLM sells the land. A disposal must be in the public interest. The land may not be of national significance or more acreage than is reasonably necessary for the proposed use. The Secretary must be satisfied that the land is to be used for "an established or definitely proposed project" that includes development and management plans.[50] As noted, disposals under RPPA require a classification analysis of a specific intended use of the land to determine whether the disposal would be consistent with RPPA and the resources in the area. Such classification usually is done when there is an application for lands for a specific project. For proposals of over 640 acres, the appropriate

[44] BLM regulations, at 43 C.F.R. §2200.0-5(f), define an *assembled land exchange* as consolidation of multiple parcels of federal or nonfederal land for the purpose of one or more exchange transactions over a period of time.

[45] 43 U.S.C. §§869 et seq. Regulations governing RPPA sales are at 43 C.F.R. Part 2740. Regulations governing RPPA leases are at 43 C.F.R. Subpart 2912. Additional BLM policy sources for sales and leases include BLM Manual Handbook H-2740-1—*Recreation and Public Purposes*, release 2-275, May 10, 1993, https://www.blm.gov/sites/blm.gov/files/Media_Library_BLM_Policy_h2740-1.pdf, and a BLM "Recreation and Public Purposes Act Information Sheet" on the agency's website at https://www.blm.gov/sites/default/files/LandTenure_RecandPublicPurposesAct_InfoSheet.pdf. Hereinafter cited as "BLM RPPA Information Sheet."

[46] 43 U.S.C. §869.

[47] BLM regulations define *public purpose* as "providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety or welfare. Use of lands or facilities for habitation, cultivation, trade or manufacturing is permissible only when necessary for and integral to, i.e., and [sic] essential part of, the public purpose." 43 C.F.R. §2740.0-5(d).

[48] Information on conditions and qualifications is derived from the law at 43 U.S.C. §§869 et seq., regulations at 43 C.F.R. Part 2740, regulations for leases at 43 C.F.R. Part 2912, and the BLM RPPA Information Sheet. This report does not detail RPPA and associated provisions of regulations specific to solid waste disposal and the disposal, placement, or release of hazardous substances. See 43 U.S.C. §869-2 and 43 C.F.R. Subpart 2743.

[49] However, projects that include the disposal, placement, or release of hazardous materials (i.e., sanitary landfills) may only be sold. BLM RPPA Information Sheet, p. 1.

[50] 43 U.S.C. §869.

state, tribal, or local authority must have adopted comprehensive land use plans and zoning regulations applicable to the area.[51] Also, RPPA sales and leases must provide for the reservation of minerals to the United States.[52]

Additional conditions apply to leases under RPPA. These conditions include a stipulation that leases may not exceed 20 years for nonprofit entities and 25 years for governmental entities and may allow for renewal.[53] Leases may be terminated for noncompliance with the terms, including use of the land for purposes that were not authorized and failure to use the lands for the specified period. A lessee may apply for a new lease with any changes in terms and conditions, accompanied by consent to cancel an existing lease.[54]

For sales, the law specifies annual acreage limitations. For example, for recreational purposes, any state, state (park) agency, or political subdivision of a state may acquire up to 6,400 acres annually and may acquire "such additional acreage as may be needed" for roadside parks and rest sites of no more than 10 acres each.[55] As another example, in general, no more than 25,600 acres annually may be conveyed for recreational purposes in any state.[56] For purposes other than recreation, any state, state agency, political subdivision of a state, nonprofit entity, and federally recognized Indian tribe may acquire 640 acres annually.[57] For leases, the law does not set limitations on the acreage.

Under RPPA, the price of the land depends in part on the type of entity that is to receive it—for instance, whether the entity is governmental or nonprofit.[58] The price also depends on whether the lands are sold or leased and the intended use of the land. For governmental entities, RPPA provides that sales are to be made at no cost for recreational or historic monument purposes and sales for other purposes are to be made at a price determined by the Secretary of the Interior "through appraisal or otherwise after taking into consideration the purpose for which the lands are to be used."[59] The law provides that leases to governmental entities for recreation are to be made at no cost and leases for other purposes are to be made "at a reasonable annual rent."[60] For nonprofit entities, RPPA provides that sales are to be made at a price determined by the Secretary of the Interior "through appraisal, after taking into consideration the purpose for which the lands are to be used," and leases are to be made at a "reasonable annual rent."[61] BLM policies detail pricing schedules for different entities for varying purposes.[62] Some sales and leases qualify for special fixed pricing under BLM policies (e.g., $10 per acre for certain sales).[63]

[51] 43 U.S.C. §869.

[52] 43 U.S.C. §869-1.

[53] 43 C.F.R. §2912.1-1(a).

[54] 43 C.F.R. Subpart 2912.

[55] This and other acreage limitations are set out at 43 U.S.C. §869(b).

[56] 43 U.S.C. §869(b)(1)(C).

[57] 43 U.S.C. §869(b)(2).

[58] *Governmental* is used in this paragraph to encompass "State, federally recognized Indian Tribe, Territory, county, or other State, Tribal, Territorial, or Federal instrumentality or political subdivision in which the lands are situated, or to a nearby federally recognized Indian Tribe or municipal corporation in the same State or Territory," as set out in 43 U.S.C. §869-1.

[59] 43 U.S.C. §869-1.

[60] 43 U.S.C. §869-1.

[61] 43 U.S.C. §869-1.

[62] BLM RPPA Information Sheet, p. 2.

[63] Ibid.

Patents for lands sold under RPPA typically include a reversionary clause requiring the recipient to use the lands for the intended public purposes or the lands revert to the federal government.[64] This is because the lands are conveyed for free or below market value to a qualified applicant for specified public purposes.

BLM policies contain application requirements and guidance for parties interested in an RPPA sale or lease.[65] Depending on the magnitude of, and public interest in, the proposed use, "various investigations, studies, analyses, public meetings and negotiations may be required of the applicant prior to the submission of the application," according to BLM regulations.[66] BLM policies also address agency actions and procedures after receiving an RPPA application. These actions and procedures include determining if the proposal conforms with governing authorities such as the RMP, law, and regulations; evaluating the applicant's development and management plans, construction schedule, and financing to determine their adequacy and effectiveness; checking for the presence of unpatented mining claims (which would bar an RPPA disposal); conducting a cadastral survey of the land; obtaining an appraisal (for lands sold or leased based on market value); soliciting views and comments from agencies and the public; and engaging in environmental and other reviews and analyses, among other requirements.[67]

Other BLM Disposal Authorities

In addition to authority in FLPMA and RPPA, Congress has provided BLM with other standing authorities to dispose of land. One authority pertains to patents under the General Mining Law of 1872.[68] However, since FY1995, a series of moratoria in annual appropriations laws essentially have prevented this means of federal land disposal.[69] Certain laws provide specifically for the disposal of desert lands. The Carey Act authorizes transfers of desert lands to a state,[70] upon application and meeting certain requirements, and the Desert Entry Land Act allows citizens to reclaim and patent 320 acres of desert public land.[71]

The Federal Land Transaction Facilitation Act provides for the sale or exchange of BLM lands identified for disposal under BLM land use plans.[72] The law created a separate Treasury account

[64] 43 U.S.C. §869-2.

[65] BLM RPPA Information Sheet, pp. 4-6.

[66] 43 C.F.R. §2741.3(c).

[67] Some of these actions are set out in the BLM RPPA Information Sheet, pp. 6-7.

[68] Provisions of the General Mining Law of 1872 allow access to and development of hard-rock minerals on federal lands that have not been withdrawn from entry. With evidence of valuable minerals and sufficient developmental effort, the law allows mining claims to be patented, with full title (of surface and mineral rights) transferred to the claimant upon payment of the appropriate fee (30 U.S.C. §29). Nonmineral lands used for associated milling or other processing operations also can be patented (30 U.S.C. §42).

[69] Patent applications meeting certain requirements filed on or before September 30, 1994, have been allowed to proceed. See, for example, Consolidated Appropriations Act, 2024 (P.L. 117-42), Division E, §404.

[70] Carey Act; 43 U.S.C. §641.

[71] Desert Entry Land Act; 43 U.S.C. §321. Desert land laws are seldom used today because the lands must be classified as available and the claimant must obtain sufficient water rights for settling on the land.

[72] The Federal Land Transaction Facilitation Act (FLTFA) originally was enacted on July 25, 2000, as P.L. 106-248, Title II. The law initially provided authority to BLM to sell or exchange land under FLTFA for 10 years, expiring on July 25, 2010. Subsequently, on July 29, 2010, the authority was extended for one year; it expired on July 25, 2011. The authority was revised and made permanent on March 23, 2018, by provisions of the Consolidated Appropriations Act, 2018 (P.L. 115-141, Division O, Title III).

for most of the proceeds from the sale or exchange,[73] and it provided for the use of those funds by the Secretary of the Interior and the Secretary of Agriculture.[74] The Secretaries may use the funds to acquire nonfederal lands (specifically inholdings), lands adjacent to federal lands that contain exceptional resources, and areas adjacent to inaccessible lands that are open to recreation. Up to 20% of the funds in the account may be used for administrative costs, and at least 80% of the funds for acquisition are to be used in the state in which the funds are generated.

BLM also has geographically limited land disposal authorities. The program with the largest revenue stream has been under the Southern Nevada Public Land Management Act of 1998.[75] The law authorizes the Secretary of the Interior to sell or exchange BLM land around Las Vegas,[76] with a goal of allowing for community expansion and economic development. Of total receipts, 85% are deposited into a special account and are available to the Secretary of the Interior for land acquisition and other activities in Nevada and 15% are allocated to Nevada for specified state and local purposes. Other provisions of law similarly authorize BLM land disposal in particular areas with specific allocations of the proceeds. In addition, BLM continues to dispose of land in Alaska as required by law, such as through transfers to the State of Alaska, Alaska Native Corporations, and individual Alaska Natives.[77] A total of about 150 million acres in Alaska is in the process of being transferred from federal ownership to state and private ownership.

In addition to providing BLM with standing disposal authorities, Congress enacts legislation authorizing or directing the disposal of particular parcels or types of land managed by BLM. BLM disposals under such legislated conveyances generally are subject to requirements and processes similar to those for BLM disposals under FLPMA and RPPA, unless Congress specifies otherwise. There may be other exceptions; for example, BLM might determine there is insufficient time or need to engage in an action, such as an appraisal of lands specified in law for disposal at no cost.[78]

Notification, Consultation, and Coordination Requirements[79]

BLM is required to provide for notification, consultation, and governmental coordination in management of lands generally. For instance, FLPMA requires the Secretary of the Interior to

[73] The FY2024 BLM budget justification notes that under the 1952 Interior and Related Agencies Appropriations Act, "states are paid five percent of the net proceeds (four percent of gross proceeds) from the sale of public land and public land products." See BLM, *Budget Justifications and Performance Information, Fiscal Year 2024*, p. XI-2. This same source notes that 4% of FLTFA collections are paid to the state where the land is sold; see pp. IV-3 and XII-14.

[74] The FLTFA Interagency Implementation Agreement, dated January 2022, provides for an approximate allocation of acquisition funds: 60% for BLM, 20% for U.S. Forest Service, 10% for U.S. Fish and Wildlife Service (FWS), and 10% for National Park Service.

[75] Southern Nevada Public Land Management Act of 1998; P.L. 105-263, as amended.

[76] In this report, authorities and actions of the Secretary of the Interior generally are exercised by BLM. Further, in some cases, this report refers to BLM although the authorities specify the Secretary of the Interior.

[77] Multiple provisions of law provide authority for conveyance of lands in Alaska. They include the 1906 Native Allotment Act, Alaska Statehood Act of 1959, Alaska Native Claims Settlement Act of 1971, Alaska Native Veterans Allotment Act of 1998, and Alaska Native Vietnam Era Veterans Land Allotment Program in P.L. 116-9, §1119. For information on the Alaska Native Claims Settlement Act, see CRS Report R46997, *Alaska Native Lands and the Alaska Native Claims Settlement Act (ANCSA): Overview and Selected Issues for Congress*, by Mariel J. Murray.

[78] This information is based in part on CRS consultation with BLM staff on September 18, 2023.

[79] In addition to the authorities referenced in this section, notification, consultation, and coordination requirements are (continued...)

provide for public involvement in land use planning and management, and it directs the Secretary to issue regulations establishing procedures to give federal, state, and local governments and the public "adequate notice and opportunity to comment upon and participate in the formulation of plans and programs" related to management of BLM lands.[80] BLM regulations set out requirements for public participation in land use planning.[81] Under this authority, BLM often receives input on planning from the general public, local user groups, and industry representatives, among other groups. Further, FLPMA provides for coordination of BLM land use inventory, planning, and management activities with the land use planning and management programs of other federal agencies, state and local governments, and tribes. It also provides for consistency of BLM plans with nonfederal government plans to the maximum extent practicable.[82] BLM regulations include related provisions.[83]

Related provisions of FLPMA pertain to notification, consultation, and coordination requirements for land conveyances in particular. For example, one provision directs the Secretary of the Interior to notify pertinent state and local governments at least 60 days before offering to dispose of lands under the act, to allow state and local governments to zone/regulate the area or change the zoning/other regulations for the area prior to conveyance.[84] BLM regulations contain additional directives. For instance, at least 60 days prior to a land sale under FLPMA, BLM is required to publish and send notice to interested parties. The notice must provide 45 days for comment by the public and interested parties. At least 60 days prior to a sale, BLM also is required to send notice to Members of Congress in whose districts or states the lands are located and to certain state and local officials. In addition, BLM must send notice to adjoining landowners, current landowners, and "other known interested parties of record."[85]

In addition to FLPMA, other authorities require notification, consultation, and/or governmental coordination in BLM land management generally and land disposal in particular. For example, RPPA requires the Secretary of the Interior to provide "an opportunity for participation by affected citizens in disposals" under the law, including public hearings or meetings as the Secretary deems appropriate.[86] For any proposed disposal of more than 640 acres, the law requires at least one public meeting and that comprehensive land use plans and zoning regulations for the area have been adopted by the appropriate state, local, or tribal authority, as noted.[87] Another example is Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[88] This provision requires federal agencies to disclose whether contamination is present and to remediate contamination prior to disposal, unless the recipient agrees to accept responsibility for the remediation in certain situations.[89]

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contained in BLM policy sources. These include BLM Manual 1780—*Tribal Relations*, BLM Handbook H-2200-1—*Land Exchange Handbook*, and BLM's 2012 guidance entitled *A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners*.

[80] 43 U.S.C. §1712(f).

[81] See, for example, 43 C.F.R. §1610.2.

[82] 43 U.S.C. §1712(c)(9).

[83] See, for example, 43 C.F.R. §1610.3.

[84] 43 U.S.C. §1720.

[85] 43 C.F.R. §2711.1-2.

[86] 43 U.S.C. §869(a).

[87] 43 U.S.C. §869(a).

[88] Comprehensive Environmental Response, Compensation, and Liability Act; 42 U.S.C. §9620(h).

[89] For additional information on these requirements and notification of other potential hazards, see BLM Handbook H-2000-02—*Environmental Site Assessments for Disposal of Real Property*, release 2-299, August 21, 2012, https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_H-2000-02.pdf.

Additional authorities pertain to notification of Congress, as is the case for land sales under FLPMA exceeding 2,500 acres.[90] Further, explanatory statements accompanying annual appropriations laws have specified that exchanges involving federal lands valued at more than $1.0 million may not be completed until the House and Senate Committees on Appropriations have had 30 days to review the exchange. The explanatory statements also have directed that agencies provide advance notice to these committees of exchanges involving federal lands valued at between $0.5 million and $1.0 million.[91]

National Environmental Policy Act Environmental Review Process

A BLM land sale or exchange may be subject to the federal environmental review process under NEPA if it is a "major federal action" covered under the statute.[92] Section 321 of the Fiscal Responsibility Act of 2023 (FRA) amended NEPA to define this and other terms and specified certain review procedures in the statute.[93] These amendments codified various regulations that the Council on Environmental Quality (CEQ) promulgated to carry out NEPA, albeit with certain differences and additions.[94] On May 1, 2024, CEQ issued a rule to revise these regulations pursuant to the FRA amendments and for certain other purposes; the revised regulations will become effective on July 1, 2024.[95] Individual agencies also may revise their NEPA procedures pursuant to the FRA amendments and these CEQ regulations. DOI regulations for carrying out NEPA apply department-wide.[96] BLM outlined additional procedures in its *National Environmental Policy Act Handbook* for major federal actions under its jurisdiction.[97] DOI and BLM issued these procedures prior to the FRA, but many of these procedures are similar to those codified in the amendments to NEPA.

NEPA defines *major federal action* to mean "an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility."[98] This definition also excludes certain types of actions that are not subject to NEPA; for example, it excludes "activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority."[99]

Discretionary land sales or exchanges executed under BLM's standing authority (e.g., under FLPMA or RPPA) generally are subject to NEPA, unless the specific action is covered by an

[90] See footnote 25.

[91] Consolidated Appropriations Act, 2024, "Joint Explanatory Statement, Division E, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2024," *Congressional Record*, March 5, 2024, S1676.

[92] 42 U.S.C. §§4321 et seq.

[93] Fiscal Responsibility Act of 2023; P.L. 118-5. For an overview of NEPA as amended, see CRS In Focus IF12417, *Environmental Reviews and the 118th Congress*, by Kristen Hite.

[94] 40 C.F.R. Parts 1500-1508.

[95] Council on Environmental Quality, "National Environmental Policy Act Implementing Regulations Revisions Phase 2," 89 *Federal Register* 35442-35577, May 1, 2024.

[96] 43 C.F.R. Part 46.

[97] BLM Handbook H-1790-1—*National Environmental Policy Act Handbook*, release 1-1710, January 30, 2008, https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_h1790-1.pdf. Hereinafter referred to as *National Environmental Policy Act Handbook.*

[98] 42 U.S.C. §4336e(10).

[99] 42 U.S.C. §4336e(10)(B)(vii).

exclusion in NEPA.[100] Whether a land sale or exchange is subject to NEPA review also depends on certain other exclusions that could apply to some situations.[101] Land sales or exchanges that Congress directs in statute also generally are subject to NEPA review, unless the statute authorizing the sale or exchange expressly waives the requirement or removes all BLM discretion in executing the disposal (or unless the sales or exchanges are otherwise excluded under NEPA).[102] The BLM *Land Exchange Handbook* notes that legislatively directed land exchanges have varied widely in terms of whether Congress has specified in such legislation if NEPA analysis must be conducted.[103]

When NEPA applies to a land sale or exchange, the level of review that BLM must conduct depends on the significance of the proposed action's potential environmental effects. NEPA requires the preparation of an EIS for major federal actions "significantly affecting the quality of the human environment."[104] The act also requires that an EIS include analyses of the "reasonably foreseeable environmental effects" of a proposed action, a "reasonable range of alternatives" to carry out the purpose and need of the action, and certain other factors.[105] CEQ regulations specify additional information to support these analyses.[106] NEPA also requires agencies to request public comment when issuing a notice of intent to prepare an EIS.[107] CEQ regulations outline additional opportunities for public involvement.[108] Once an EIS is finalized, CEQ regulations require an agency to document its decision, consideration of alternatives, and analyses in a record of decision.[109]

NEPA directs agencies to prepare an environmental assessment (EA) when the proposed action "does not have a reasonably foreseeable significant effect" on the human environment to merit an EIS or when the significance of such effects is unknown, unless an exclusion applies under NEPA or another provision of law.[110] If an agency determines the proposed action's effects would be significant, an EIS would be required.[111] If an agency determines the effects would not be significant, the agency would issue a Finding of No Significant Impact (commonly referred to as FONSI), which would conclude the NEPA process for that action.[112] Agencies may provide opportunities for public involvement in preparing an EA, but such opportunities are not required by statute.

NEPA allows agencies to identify specific categories of major federal actions that normally would not have significant effects on the quality of the human environment sufficient to trigger a requirement to prepare a detailed statement (i.e., EIS) under NEPA, generally referred to as

[100] 42 U.S.C. §4336e(10)(B).

[101] 42 U.S.C. §4336(a).

[102] 42 U.S.C. §4336e(10); 42 U.S.C. §4336(a).

[103] BLM Handbook H-2200-1—*Land Exchange Handbook,* p. 1-5.

[104] 42 U.S.C. §4332(2)(C); 42 U.S.C. §4336(b)(1); 42 U.S.C. §4336e(6).

[105] 42 U.S.C. §4332(2)(C).

[106] 40 C.F.R. Part 1502.

[107] 42 U.S.C. §4336a(c).

[108] 40 C.F.R. §1506.6.

[109] 40 C.F.R. Part 1505.

[110] 42 U.S.C. §4336(b)(2). Council on Environmental Quality regulations, which predate the existing statutory provision, outline similar procedures for when agencies should prepare an environmental assessment (EA). See 40 C.F.R. §1501.5.

[111] 42 U.S.C. §4332(2)(C); 42 U.S.C. §4336(b)(1)-(2); 40 C.F.R. §1501.5(c)(1).

[112] 42 U.S.C. §4336e(7) and 40 C.F.R. §1501.6.

categorical exclusions.[113] CEQ regulations outline procedures for agencies to establish categorical exclusions.[114] To date, neither Congress, DOI, nor BLM has established a categorical exclusion for land sales and exchanges.[115]

In past practice, BLM typically has prepared an EA for land disposals conducted under FLPMA or RPPA, according to BLM.[116] However, for a highly complex area, BLM indicated the agency would more likely prepare an EIS.[117] The BLM National NEPA Register contains documents related to BLM land disposals.[118]

The timing of a NEPA review is largely driven by the complexity of the analyses. The scope of potential environmental effects that an agency must consider under NEPA is relatively broad. CEQ regulations define the term *environmental effects* or *impacts* for the purposes of NEPA to include not just ecological effects but also "aesthetic, historic, cultural, economic, social, or health effects, whether direct, indirect, or cumulative."[119]

Depending on the breadth of the potential effects and applicable laws, multiple federal, state, local, or tribal agencies may be involved in the preparation of analyses for an EA or EIS. NEPA establishes procedures for identifying lead, cooperating, and participating agencies and for coordination of their respective roles.[120] NEPA analyses may incorporate information prepared by lead, cooperating, or participating agencies under other laws, such as ESA consultations or NHPA reviews (discussed below). A land exchange could be more complex than a land sale, given that BLM would be required to consider foreseeable future uses of both the federal and nonfederal

[113] 42 U.S.C. §4336e(1) and 40 C.F.R. §1501.4. Categorical exclusions often are referred to as CE, CX, or CAT-EX.

[114] 40 C.F.R. §1501.4.

[115] Department of the Interior (DOI) department-wide categorical exclusions are listed in 43 C.F.R. §46.205, §46.210, and §46.215. Additional BLM categorical exclusions are listed in BLM Handbook H-1790-1, *National Environmental Policy Act Handbook*, pp. 17-20.

[116] CRS consultation with BLM staff on September 18, 2023.

[117] Ibid.

[118] The BLM National NEPA Register is on the BLM website, "BLM National NEPA Register" webpage, https://eplanning.blm.gov/eplanning-ui/home. See the following documents on the website for examples of land disposal:

For an example of a BLM EA for a land sale under FLPMA, see BLM's webpage on "Smith Mountain Land Sale (Disposal)," project information last updated on August 22, 2016, https://eplanning.blm.gov/eplanning-ui/project/62496/510**.** This EA pertains to the Smith Mountain Land Sale (CA), a direct sale of an approximately 40-acre parcel to an adjacent property owner, at not less than fair market value. The sale was to include the surface and mineral estate and a reservation to the United States for ditches and canals, and was subject to an existing right-of-way for a communication facility.

For an example of a BLM EA for a lease and conveyance under RPPA, see BLM's webpage on "Peralta Recreation & Public Purposes Act Project," project information last updated on August 8, 2019, https://eplanning.blm.gov/eplanning-ui/project/93074/510. This EA pertains to the Peralta RPPA Project (AZ). This project involved an application from a county for a 25-year lease, with an option for conveyance, of approximately 498 acres for a regional park. The EA also analyzed impacts of cancellation of an existing BLM grazing lease.

For an example of an environmental impact statement for a land exchange under FLMPA, see BLM's webpage on "Proposed Blue Valley Land Exchange," project information last updated on May 7, 2024, https://eplanning.blm.gov/eplanning-ui/project/81162/510, regarding the Blue Valley Land Exchange (CO). The exchange involves BLM conveyance of nine parcels totaling 1,489 acres and a cash equalization payment to the owner of Blue Valley Ranch, in exchange for nine parcels of nonfederal lands totaling 1,830 acres, a portion of which was donated. The exchange included mineral estates, water rights, and an access easement to the United States. A portion of the nonfederal land acquired by BLM would be transferred to the administrative jurisdiction of the U.S. Forest Service because the area is within the boundaries of a National Forest. (This description reflects corrections in an Errata document at 03032023 Blue Valley Ranch Extra Sheet for ROD.pdf (blm.gov)).

[119] 40 C.F.R. §1508.1.

[120] 42 U.S.C. §4336a(a).

land for a land exchange.[121] However, the complexity of NEPA analyses to evaluate a particular action ultimately would be site-specific. Land sales and exchanges may vary in terms of this complexity and whether an EA or EIS is required under NEPA.

Endangered Species Act Section 7 Consultation[122]

When disposing of public land, BLM must consider its obligations under the ESA.[123] Section 7 of the ESA requires federal agencies such as BLM to ensure their actions do not jeopardize species listed under the ESA or adversely modify or destroy designated critical habitat.[124] Agencies must make these determinations in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (together, the Services), which administer the act.[125] Section 7 requirements generally apply to actions that federal agencies undertake directly, authorize (e.g., permit or license), or fund.[126] With regard to disposals by exchange, the Section 7 requirements would apply to the entire agency action, including the effect of accepting the nonfederal land into federal ownership.

For Section 7 to apply, there must be discretionary federal involvement or control in the action.[127] A disposal mandated by Congress in legislation gives BLM less discretion in carrying out the action than if BLM were to initiate a disposal under one of its standing authorities, such as FLPMA or RPPA. So long as BLM retains discretion in any aspect of carrying out a disposal, the requirements of Section 7 may apply to the action. Even if Section 7 applies to a particular action such that consultation is required, the discretion afforded the agency may affect other aspects of the consultation. Such aspects may include the *reasonable and prudent alternatives* (RPAs) available for the action, if the Services determine the action may jeopardize listed species, or the *reasonable and prudent measures* (RPMs) the Services may determine are necessary or appropriate to minimize the action's impact on listed species.[128]

The level of consultation required under Section 7 depends on the extent of the agency's discretion in carrying out the action and the action's anticipated effect on listed species and critical habitat. To assess the action's potential effect, the agency must determine the area likely to be affected, referred to as the *action area*.[129] The action area includes areas directly or indirectly affected by the action.[130] For example, for BLM disposals, the action area would include the land to be conveyed but also may include surrounding areas that may be affected by the transfer of ownership. For disposals by exchange, the action area would include the land to be taken into

[121] BLM Handbook H-2200-1—*Land Exchange Handbook*, p. 6-3.

[122] For additional information on the Section 7 consultation process, see CRS In Focus IF12423, *Endangered Species Act (ESA) Section 7 Consultation*, by Erin H. Ward and Pervaze A. Sheikh.

[123] 16 U.S.C. §§1531 et seq.

[124] 16 U.S.C. §1536(a)(2). Species are listed as endangered or threatened pursuant to Section 4 of the ESA. 16 U.S.C. §1533. Critical habitat, endangered species, and threatened species are defined in Section 3 of the ESA. 16 U.S.C. §1532(5), (6), & (20).

[125] 16 U.S.C. §1536(a)(2); 50 C.F.R. §402.01(b). Generally, FWS administers the ESA for terrestrial, freshwater, and catadromous species and the National Marine Fisheries Service administers the act for marine and anadromous species.

[126] 16 U.S.C. §1536(a)(2); 50 C.F.R. §402.02.

[127] 50 C.F.R. §402.03.

[128] 16 U.S.C. §1536(b)(4).

[129] 50 C.F.R. §402.02.

[130] Ibid.

federal ownership in addition to the land being conveyed and any other areas that may be affected.

Once BLM determines the action area for the disposal, it must determine whether listed species or critical habitat are present in the action area. FWS's "Information for Planning and Consultation" (IPaC) site provides resources to assist federal agencies with determining whether listed species or critical habitat may be affected by a particular project, among other things.[131] BLM may use the IPaC site to assess a particular disposal or seek assistance directly from FWS to make this determination.

If BLM determines that listed species or critical habitat may be present in the action area, it must assess the potential impact the disposal would have on the species and habitat. Depending on the nature of the disposal, BLM may be required to prepare a *biological assessment* or to otherwise provide the Services with "an account of the basis for evaluating the likely effects of the action."[132] Such an analysis might include examining the effects of removing federal management and any associated protections or requirements that apply only to federal land and the effects of any planned activities on the land following the conveyance. For example, when the U.S. Army Corps of Engineers and the U.S. Forest Service proposed to approve a mining project that would involve an exchange of federal lands for nonfederal lands, FWS considered the proposed future development by the mining company on the conveyed federal land to be an indirect effect of the proposed land exchange.[133]

When determining a proposed action's potential effects and whether formal consultation is required, BLM may choose to informally consult with the Services on the anticipated effects of a disposal and alternatives for modifying the action to reduce or eliminate anticipated effects on listed species or critical habitat.[134] When disposing of federal property, BLM may consider, for example, whether to include conditions or reversionary clauses in the deed (if permitted by the authorizing federal law) to provide for the protection of species or habitat.[135]

If BLM concludes the disposal may adversely affect listed species or critical habitat, it must initiate formal consultation with the Service(s) responsible for administering the ESA for the affected species.[136] BLM then initiates formal consultation by submitting a request in writing to the relevant Service that includes information about the proposed action and its anticipated effects on species and critical habitat.[137]

At the conclusion of formal consultation, the relevant Service issues a *biological opinion* (BiOp) setting forth how the disposal may affect listed species and critical habitat and, specifically, whether it is likely to jeopardize listed species or adversely modify or destroy critical habitat.[138] If the Service concludes the disposal as proposed is likely to jeopardize listed species or adversely modify critical habitat, it must suggest any RPAs that BLM could take in carrying out the disposal

[131] FWS, "Information for Planning and Coordination," https://ipac.ecosphere.fws.gov/.

[132] 50 C.F.R. §402.12; FWS and National Marine Fisheries Services, Section 3.4: "Biological Assessments," in *Endangered Species Consultation Handbook*, March 1998.

[133] FWS, *Biological Opinion: Effects to Canada Lynx, Gray Wolf, and Northern Long-Eared Bat from the Proposed NorthMet Project and Land Exchange*, February 2016, p. 2, https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/PolyMet/Northmet%20ROD%20App%20C-%20Bio%20opinion.pdf?ver=2019-03-22-085448-887.

[134] 50 C.F.R. §402.13.

[135] A *reversionary clause* requires the land to revert to federal ownership if the federal government determines the land is not being used in accordance with its specific intended purpose.

[136] 50 C.F.R. §402.14.

[137] 50 C.F.R. §402.14(b).

[138] 16 U.S.C. §1536(b)(3); 50 C.F.R. §402.14(h).

that would not violate the ESA.[139] Provided the Service concludes the disposal will not jeopardize listed species or adversely modify critical habitat—or identifies RPAs—then the BiOp includes an *incidental take statement* that specifies the anticipated impact of any incidental take of the species and operates as a permit to take the species without violating the ESA.[140] The incidental take statement also includes RPMs as necessary to minimize the impact on the species, as well as terms and conditions to implement such measures that the federal agency must abide by to receive the benefit of the effective permit.[141]

National Historic Preservation Act Section 106 Requirements[142]

Real property disposals typically are considered to be *undertakings* subject to the review process under Section 106 of the NHPA and its implementing regulations promulgated by the Advisory Council on Historic Preservation (ACHP).[143] Section 106 requires federal agencies to review the potential impacts of their actions on *historic properties* and consult with interested parties to seek ways to avoid, minimize, or mitigate any adverse effects.[144] Section 106 reviews generally follow a four-step process: (1) initiation, in which the agency determines whether the action is an undertaking subject to review; (2) identification of historic properties in the area of potential effects;[145] (3) assessment of whether the action would cause adverse effects to historic properties; and (4) resolution between parties on steps to address any adverse effects. Throughout the Section 106 process, federal agencies must consult with various entities—such as the state historic preservation officer (SHPO) or tribal historic preservation officer—to determine whether the relevant historic properties have been identified and to consider solutions to address potential adverse effects on those properties.

Regulations allow federal agencies to work with the ACHP to tailor the Section 106 process to meet their needs and develop alternate methods to meet their obligations under the NHPA.[146] In 1997, BLM executed a national programmatic agreement (nPA) with the ACHP and the National Conference of State Historic Preservation Officers to guide the BLM's planning and decisionmaking as it affects historic properties and to outline the manner in which the agency will comply with its Section 106 responsibilities. The nPA subsequently was revised and signed in

[139] 16 U.S.C. §1536(b)(3).

[140] 16 U.S.C. §1536(b)(4).

[141] Ibid.

[142] For additional information on the Section 106 process, see CRS Report R47543, *Historic Properties and Federal Responsibilities: An Introduction to Section 106 Reviews*, by Mark K. DeSantis.

[143] 54 U.S.C. §§300101 et seq. The Advisory Council on Historic Preservation (ACHP) is an independent agency comprised of federal, state, and tribal government members, as well as experts in historic preservation and members of the public. Through its authority under NHPA, the ACHP promulgated regulations for the Section 106 process found at 36 C.F.R. Part 800.

[144] A *historic property* is defined in 54 U.S.C. §300308 as "any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register of Historic Places, including artifacts, records, and material remains relating to the district, site, building, structure, or object."

[145] As defined in 36 C.F.R. §800.16(d), the *area of potential effects* is "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking."

[146] 36 C.F.R. §800.14.

2012.[147] The agreement authorizes the development of state-specific protocol agreements between BLM state offices and SHPOs that set forth measures for alternative compliance for certain types of actions in 11 states.[148] Specifically, these protocols allow for "streamlined (as opposed to case-by-case) consultation" for undertakings that are determined to have no adverse effect on historic properties or for scenarios in which BLM and the relevant SHPO reach an agreement on the resolution of such adverse effects.[149] The nPA also established a Preservation Board composed of BLM historic preservation experts and line officers that provide policy recommendations to BLM managers at the local, state, and national levels. BLM policies and procedures—contained in agency manuals and handbooks—provide further direction on the agency's responsibilities under Section 106 and how to implement the nPA and state-specific protocol agreements.[150]

In general, the time needed—and the analysis required—to comply with Section 106 is contingent on the scale, complexity, and particulars of the project in question. For land disposals, such factors could include the geographic footprint of the proposed disposal, whether an area identified for disposal has been previously inventoried for historic properties, or whether any legal covenants or protections apply to the land or properties in question.[151] In addition, agencies often coordinate Section 106 compliance with other federal review processes, such as those required by NEPA.[152] As a result, it can be difficult to distinguish between requirements and the compliance timeline associated with NEPA and requirements that must be met under separate statutory mandates, such as Section 106.

[147] BLM, "Programmatic Agreement Among the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Manner in Which the BLM Will Meet Its Responsibilities Under the National Historic Preservation Act," 2012, https://www.blm.gov/sites/blm.gov/files/National%20Programmatic%20Agreement.pdf (hereinafter "BLM, "National Historic Preservation nPA"). The 2012 agreement was set to expire after a period of 10 years, with an option for renewal in 2-year increments. In 2022, the ACHP, BLM, and National Conference of State Historic Preservation Officers executed a two-year extension to the nPA. In 2023, BLM announced a proposed revision to the nPA based on tribal, public, and signatory consultation and to extend it an additional 10 years. As of May 1, 2024, the revision process was not yet completed. In February 2024, the signatories executed another two-year extension to the nPA. The agreement is set to expire on February 9, 2026.

[148] The 11 states authorized to execute state-specific protocol agreements are Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, and Wyoming. Protocol agreements can be found at ACHP, "BLM Completes Revision of All State Protocols," https://www.achp.gov/BLM/State%20Protocols.

[149] BLM, "National Historic Preservation nPA."

[150] For example, see BLM, Manual 1780, *Tribal Relations*; BLM, Handbook H-1780-1, *Improving and Sustaining BLM—Tribal Relations*, release 1-1781, December 15, 2016, https://www.blm.gov/sites/blm.gov/files/uploads/H-1780-1__0.pdf; and BLM, Manual Series 8000, *Recreation & Cultural Programs*.

[151] Examples of BLM land disposals illustrate the range of associated NHPA analysis and documentation. For instance, the proposed exchange of 719 acres of BLM lands to the J. R. Simplot Company (Simplot) in exchange for 667 acres of nonfederal land required the agency to contract a third party to conduct a full class III cultural resource survey (see BLM, "BLM National NEPA Register: Documents," https://eplanning.blm.gov/eplanning-ui/project/119626/570). (Class III surveys are the most intensive field surveys and are intended to locate and record all historic properties in a given area.) By contrast, because BLM previously had conducted a class III survey as part of a broader 46,700-acre proposed conveyance analyzed in 2004 (see BLM, *2004 Final Las Vegas Valley Disposal Boundary Environmental Impact Statement (FEIS)*), the direct sale of a 10-acre parcel of land to the city of Henderson, NV, in 2018 did not require additional analysis (see BLM, "BLM National NEPA Register: 1 Parcel City of Henderson Direct Sale," https://eplanning.blm.gov/eplanning-ui/project/103848/510).

[152] In particular, regulations encourage federal agencies to use their broad environmental review process, carried out under NEPA, as an "umbrella" compliance process. Regulations for the coordination of the Section 106 process with NEPA can be found at 36 C.F.R. §800.8. Discussion of NEPA as an umbrella compliance process can be found at ACHP, "Integrating NEPA and Section 106," https://www.achp.gov/integrating_nepa_106.

Appraisals

BLM typically obtains an appraisal of market value for land disposals under FLPMA, whether by sale or exchange.[153] Both federal employees and contractors conduct appraisals.[154] Appraisals are guided by law, regulation, and other authorities, including the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.[155]

FLPMA specifies that lands may not be sold at less than their fair market value.[156] BLM regulations state that an exchange of lands must be based on the market value of the federal and nonfederal lands.[157] For FLPMA sales and exchanges, market value typically is based on the highest and best use of the property—that is, the highest and most profitable use for which the property is physically adaptable and needed or likely to be needed in the future.[158] Market value is based on an economic assessment of the highest and best use. The appraiser is to estimate the value of the lands as if in private ownership and available for sale in the open market, and must include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities that are reflected in prices paid for similar properties in the competitive market. Interests in land—such as minerals or water rights—are considered to the extent consistent with highest and best use. In the absence of current market information, other methods may be used to estimate market value.[159]

The appraiser prepares a report estimating market value that describes the work conducted and sets forth the information and analysis supporting the estimate, among other information. Each appraisal report is assessed by a review appraiser. FLPMA provides that disputes over the appraised values of lands to be exchanged can be resolved by arbitration, bargaining, or other methods.[160]

Under RPPA, although lands generally are sold or leased for less than market value or for free, some lands are sold or leased based on a formula that depends on an appraisal to determine

[153] Some BLM authorities and related appraisal guidance use the term *market value*, and others use the term *fair market value*. In this section, the terms are used interchangeably.

[154] DOI, Appraisal and Valuation Services Office, is the lead federal office for conducting appraisals of BLM land and nonfederal land that is part of an exchange with BLM. For information on the work of the office, see the DOI website at https://www.doi.gov/valuationservices.

[155] See The Appraisal Foundation, *Uniform Appraisal Standards for Federal Land Acquisitions, 2016*, on the website of the Department of Justice at Uniform Appraisal Standards for Federal Land Acquisitions (justice.gov). Hereinafter referred to as Appraisal Foundation, *Uniform Appraisal Standards*. Although the document specifies appraisals for acquisitions, it also is used for disposals. For instance, BLM regulations at 43 C.F.R. §2710.0-6(f) state that for FLPMA land sales, "value is to be determined by an appraisal performed by a Federal or independent appraiser, as determined by the authorized officer, using the principles contained in the Uniform Appraisal Standards for Federal Land Acquisitions."

See The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice*, 2024. This document contains ethical and performance standards for the appraisal profession. For additional information on the document, see The Appraisal Foundation, "What Is USPAP?," https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbfa-41b3-9878-fac35923d2af.

[156] 43 U.S.C. §1713(d).

[157] 43 C.F.R. §2200.0-6(c).

[158] Appraisal Foundation, *Uniform Appraisal Standards*, p. 22.

[159] Information in this paragraph is derived from 43 C.F.R. §2201.3–2 for exchanges and, more generally, *Uniform Appraisal Standards*, including pp. 22-24.

[160] 43 U.S.C. §1716(d). Regulations governing bargaining and arbitration for exchanges are at 43 C.F.R. §2201.4.

market value. For instance, BLM may sell or lease land to a nonprofit entity at 50% of market value (or 90% if the use is not open to the public).[161]

Factors Contributing to Length of Disposal Process

There is no general statutory timeline for BLM to dispose of lands. The length of time to complete disposals varies widely among transactions, with some completed in months, others in one or two years, and still others several years or more. Further, there is no general statute governing the order in which BLM land disposals are undertaken. Instead, disposals are based primarily on agency priorities and workload.

BLM disposals generally must comply with various statutory and regulatory requirements and policies, unless exempted by Congress. Such requirements include those set out in this report, namely BLM land use planning; notification, consultation, and coordination requirements; ESA Section 7 consultations; NHPA Section 106 reviews; NEPA analyses; CERCLA environmental site assessments and remediation of contamination if needed; and land appraisals, among others. The number, variety, and components of these requirements are major factors in the time to complete disposals, although in some cases the requirements are undertaken simultaneously or with partial overlap. Even if not exempted by Congress, disposals mandated by Congress may reduce the extent of BLM discretion in disposing of the land and thereby may result in a more limited and potentially faster version of certain analyses, such as NEPA and ESA Section 7.

The attributes and variables of the lands themselves also contribute to the time to complete disposals. Challenges may arise where there is a wide variety of resources and land uses on the BLM parcels to be conveyed. Challenges also may arise related to the nonfederal lands to be acquired by exchange, such as environmental hazards or infrastructure on the lands, and title ambiguities, among others.

A parcel of land generally must be identified for disposal in an RMP for BLM to convey it.[162] Thus, additional time would be involved in amending an RMP to specify a parcel that had not been identified previously.

The authority used to dispose of land can affect the length of the process. For example, some disposals under RPPA may take less time because they do not require an appraisal to determine value. Instead, they are made at no cost or through special (fixed) pricing.

Exchanges

Estimates of the time to complete land exchanges have varied. The most recent estimates produced and made available by government agencies appear to have been issued more than a decade ago. The BLM *Land Exchange Handbook* estimated an average completion time of 18 to 24 months for 26 actions related to BLM exchanges. The source also noted that times may vary widely, from two months to several years for development of exchange proposals, with additional time for other actions such as evaluating the feasibility of proposals.[163] A 2009 report of the Government Accountability Office, determined that BLM completed 38 exchanges between October 2004 and June 2008, with an average completion time of four years from the time an

[161] BLM RPPA Information Sheet, p. 2. In other cases, BLM sells or leases lands under RPPA through other methods, such as for free or through special (fixed) pricing.

[162] BLM, "*Lands Potentially Available for Disposal*," https://www.blm.gov/programs/lands-and-realty/land-tenure/lands-potentially-for-disposal.

[163] BLM, Handbook H-2200-1, *Land Exchange Handbook*, p. 1-15.

agreement to initiate an exchange was signed between BLM and the other parties to the exchange.[164] More recently, BLM staff estimated that after formal initiation, a nongovernmental exchange that is relatively straightforward might be completed on average in 18 months to 24 months. However, they indicated that additional research would be needed to estimate with more certainty.[165]

In general, exchanges can be more time consuming than transactions involving only disposal of BLM land. This is because they involve two transactions—a disposal of BLM land and an acquisition by BLM of nonfederal land. On the complexities of exchanges, the BLM *Land Exchange Handbook* states,

> Proper consideration of land exchange proposals involves a substantial investment of time and resources by both Federal and non-Federal parties. Land exchange processing is often highly complex because of the wide range of individuals and entities that hold some form of valid right, title, or interest in the land being considered for exchange, determining land values, weighing public interests and effectively involving the public in the process.[166]

In effect, an exchange could double the requirements for consultation, evaluation, and appraisal, among other requirements. Further, the FLPMA requirement for equal value exchanges can be difficult to achieve.[167] The most complicated exchanges often involve tribes or state or local governments.[168] Such transactions require compliance both with authorities applicable to the federal lands and authorities applicable to the lands of the other government. Due to their intricacies, some exchanges have been facilitated by third parties and/or conducted in multiple phases.

Staffing Capacity

The number, availability, and expertise of BLM realty staff can affect the length of the disposal process. BLM realty staff generally have broad responsibilities that may compete for their time to conduct exchanges. These responsibilities may include assistance with issuing permits, implementing land withdrawals, acquiring lands, and issuing rights-of-way, among other activities. Some BLM field offices may have one or a few realty specialists responsible for managing transactions affecting hundreds of thousands or even millions of acres of BLM land. Further, the complexity of some land disposals can require deep expertise, and it may take several years for realty staff to become capable of handling such processes independently. Retirements and other departures of BLM realty staff may have impacted the capacity to process disposals.[169]

Similarly, DOI's capacity to conduct land appraisals can affect the length of the land disposal process. DOI has cited an insufficiency of appraisers as contributing to delays in land appraisals.[170] The DOI Appraisal and Valuation Services Office (AVSO) is the lead federal office for conducting appraisals for BLM and other DOI agencies. According to DOI, "[l]ack of staff has a direct impact on the timely delivery of appraisals to clients and improvement in the timeliness of service remains a top goal for AVSO as we continue to fill vacant appraisal

[164] Government Accountability Office, *Federal Land Management: BLM and the Forest Service Have Improved Oversight of the Land Exchange Process, but Additional Actions Are Needed*, GAO-09-611, June 2009, p. 14.

[165] CRS consultation with BLM staff on September 18, 2023.

[166] BLM, Handbook H-2200-1, *Land Exchange Handbook*, p. 1-1.

[167] For details on the equal value requirement, see the discussion of FLPMA in the "Exchanges" section of this report.

[168] CRS consultation with BLM staff on September 18, 2023.

[169] Information in this paragraph is derived in part from CRS consultation with BLM staff on September 18, 2023.

[170] DOI, *Budget Justifications and Performance Information, Fiscal Year 2024*, Office of the Secretary, Departmentwide Programs, pp. DO-93–DO-94.

positions."[171] DOI cited a profession-wide problem of a decrease over the past decade in the pool of appraisers to recruit from, together with no increase in people entering the profession. DOI identified actions being taken to address this deficiency, including special pay efforts, staff training, implementation of workplace efficiencies, and development of an apprenticeship program.

Congressional Role in Disposal of BLM Lands

Congress often faces questions regarding the adequacy of RPPA, FLPMA, and other BLM disposal authorities; the nature, extent, and location of their use; and the extent of BLM land ownership overall. These questions form the backdrop for congressional consideration of measures to establish, eliminate, or modify authorities as well as measures to dispose of specific BLM lands. For example, with regard to the establishment of new authorities, legislation introduced in the 117th Congress sought to authorize certain states to apply to relinquish land grant parcels in exchange for federal lands managed by BLM.[172] With regard to the elimination of authorities, moratoria on issuing mineral patents under the General Mining Law of 1872 have been included in annual appropriations laws since FY1995, as noted.[173] With regard to the modification of authorities, for example, the 117th Congress amended RPPA to specifically authorize disposal to federally recognized Indian tribes.[174]

In addition, Congress frequently considers legislation governing the disposal of specific parcels of BLM land. For example, provisions of P.L. 117-263 authorized exchanges of BLM and private land in Churchill County, NV, and directed conveyance of BLM parcels to Lander County, NV, for use for airport facilities, watershed protection, recreation, and parks.[175] In general, Congress might consider disposal legislation to provide BLM with authority in a particular situation when such authority is lacking, based on its evaluation of public needs. Congress also might seek to direct specific transactions, although BLM already has authority to dispose of lands, in order to facilitate the transactions. Further, Congress may seek to modify the applicable requirements by authorizing or directing actions not ordinarily permitted under an agency's authority to dispose of land. For instance, it might expedite the disposal process by including provisions that limit assessment and evaluation requirements or authorize the conveyance of land at reduced or no cost rather than at fair market value.

Congress also addresses disposal policy in the context of deliberations on the role and goals of the federal government in owning and managing land generally. Stakeholders have differing views on when federal ownership of lands is appropriate and how federal lands should be managed.[176] For example, some stakeholders contend that there is excessive federal influence over western lands and economies and that the federal government should divest itself of many lands. Other stakeholders support the policy of retaining lands in federal ownership on behalf of the public and sometimes advocate adding more lands to enhance protection. Recent Congresses considered

[171] Ibid, p. DO-94.

[172] H.R. 2348, 117th Congress.

[173] Patent applications meeting certain requirements filed on or before September 30, 1994, have been allowed to proceed. See, for example, Consolidated Appropriations Act, 2024 (P.L. 118-42). Division E, Title IV, §404.

[174] RPPA was amended by provisions of the Consolidated Appropriations Act, 2023, at P.L. 117-328, Division DD, Title I, §104.

[175] P.L. 117-263, Division B, Title XXIX, §2908 (Churchill County, NV) and §2922 (Lander County, NV).

[176] As an example of varied stakeholder perspectives, see Property and Environment Research Center (PERC), "Should Federal Lands be Transferred to Western States? A PERC Forum," July 27, 2017, https://www.perc.org/2017/07/27/should-federal-lands-be-transferred-to-western-states/.

diverse bills pertaining to the extent of federal land ownership. Among other proposals, legislation in the 118th Congress would direct federal agencies with a net increase in lands through acquisition to offer an equal amount of land for sale.[177]

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[177] H.R. 172, 118th Congress.

Withdrawal of Federal Lands: Analysis of a Common Legislated Withdrawal Provision

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SUMMARY

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Withdrawal of Federal Lands: Analysis of a Common Legislated Withdrawal Provision

Lands and interest in lands owned by the United States (i.e., federal lands) have been withdrawn from agency management under various public land laws. Federal land withdrawals typically seek to preclude lands from being used for certain purposes (i.e., *withdraw* them) in order to dedicate them to other purposes or to maintain other public values. For example, some laws established or expanded federal land designations, such as wilderness areas or units of the National Park System, and withdrew the lands apparently to foster the primary purposes of these designations. Withdrawals affect lands managed by agencies including the four major land management agencies: the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS), all in the Department of the Interior, and the U.S. Forest Service (FS), in the Department of Agriculture.

Federal lands have been withdrawn under various authorities. Congress has enacted particular withdrawal provisions in similar form in many individual laws, referred to herein as *legislated withdrawals*. An analysis of the meaning of these provisions could aid congressional development and consideration of withdrawal legislation. In general, legislated withdrawals typically withdraw the land from one or more of three general categories of laws: (1) public land laws, (2) mining laws, and (3) mineral leasing laws. For analysis purposes, this report uses the following example provision that appears in some legislated withdrawals: *subject to valid existing rights, [the federal land] is withdrawn from (1) all forms of entry, appropriation, and disposal under the public land laws; (2) location, entry, and patent under the mining laws; and (3) operation of the mineral leasing, mineral materials, and geothermal leasing laws*. Legislated withdrawals may include variations on this language depending on Congress's objectives for the parcels. A more complete understanding of the meaning of a specific legislated withdrawal might require examination of its legislative history and the laws, policies, and management plans governing the affected parcels.

The first component of the example provision generally would bar third parties from applying to take ownership and obtaining possession of the lands or resources on the lands under *public land laws*. However, the lack of a comprehensive list of public land laws—and the lack of a single, consistent definition of the term *public land laws* itself over time—makes it challenging to determine the precise meaning and applicability. The second component generally would prevent the withdrawn lands from being available for new mining (e.g., under the General Mining Law of 1872). The third component generally would prevent the withdrawn lands from being available for new mineral leasing, sale of mineral materials, and geothermal leasing (e.g., under the Mineral Leasing Act of 1920, Materials Act of 1947, and Geothermal Steam Act of 1970). Together, the three components primarily would affect BLM and FS, because laws governing lands managed by those agencies generally allow for energy and mineral development and provide broader authority to convey lands out of federal ownership than laws governing NPS and FWS lands. Typically, the three components would not bar various surface uses that otherwise might be allowed, possibly including recreation, hunting, and livestock grazing. However, some uses might be limited by Congress or by subsequent agency actions, such as amendments to land management plans, if the uses are inconsistent with the withdrawal's purposes.

Legislated withdrawals generally are made "subject to valid existing rights." Including this phrase appears to protect third-party (i.e., nonfederal) interests in withdrawn federal land from being terminated or limited by the withdrawal. Though commonly used, there is no universal definition or interpretation of which interests qualify as *valid existing rights*. The *validity* of the interest generally depends on whether the third party has met the requirements of the law under which it alleges to have secured the interest. In addition, the interest claimed by the third party generally must have *existed* at the time of withdrawal. Finally, the third party generally must have obtained a property interest in the land (e.g., ownership) to have a *right*—mere use of the land is insufficient. The "valid existing rights" that a particular withdrawal is "subject to" could arise under any number of current or former laws that allowed third parties to obtain interests in federal land. Accordingly, courts and agencies have interpreted the phrase on a case-by-case basis, considering the purpose and structure of the relevant law.

Where legislated withdrawals are enacted "subject to valid existing rights," the existing rights remain in effect after the withdrawal. In some cases, acquiring or "taking" those rights may serve the purpose of the withdrawal. The federal government may acquire such rights by taking the property through the power of eminent domain, which would require "just compensation" under the Takings Clause of the U.S. Constitution, or through voluntary transactions such as purchase, exchange, or donation. Congress may consider appropriating funds for any such acquisitions.

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Introduction

Lands and interest in lands owned by the United States (i.e., federal lands) have been withdrawn from agency management under various public land laws. Federal land withdrawals typically seek to preclude lands from being used for certain purposes in order to dedicate the lands to other particular purposes or maintain them consistent with certain public values. Congress may effectuate withdrawals through new laws or the executive branch may withdraw land under differing authorities (as noted below in this section).[1] This report focuses on one type of withdrawal provision that Congress has enacted in individual laws, hereinafter typically referred to as *legislated withdrawals*.

Though legislated withdrawals seek to withdraw the designated land from a specified set of laws, which set of laws and the exact terms used vary. The variation depends in large part on Congress's intent for how the lands should be managed by federal agencies and used by the public following the withdrawal. In general, legislated withdrawals typically withdraw the land from one or more of three general categories of laws: (1) public land laws, (2) mining laws, and (3) mineral leasing laws. This report bases its analysis on the following example provision, used in some legislated withdrawals, that includes all three categories of laws:

> Subject to valid existing rights, [the federal land] is withdrawn from:
>
> (1) all forms of entry, appropriation, and disposal under the public land laws;
>
> (2) location, entry, and patent under the mining laws; and
>
> (3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.[2]

In this report, each of these three components of a withdrawal provision is referenced by its adjacent number above. This exact provision appears in some withdrawal laws, but components thereof or variants on this language have been used in many other legislated withdrawals.[3] Many of the terms in this provision have historical roots and are interpreted differently by the courts and agencies in the public land context than in common parlance.[4]

To aid in the congressional development and consideration of withdrawal legislation, this report discusses the meaning of each of these three components, as well as the limitation that the withdrawal be "subject to valid existing rights." This analysis could aid Congress in drafting and enacting withdrawal measures with the particular components (or variations) desired for the land parcels at issue. Enhanced precision and clarity of withdrawal measures might augment agency understanding of how Congress intends the lands to be managed following enactment of a legislated withdrawal. It could also foster public understanding of allowable uses of federal lands that have been withdrawn legislatively.

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[1] The authority for Congress to make land withdrawals derives from the Property Clause of the U.S. Constitution, Article IV, Section 3, Clause 2. This provision gives Congress authority over the lands, territories, or other property of the United States, thus providing Congress broad authority over lands owned by the federal government.

[2] See, for example: P.L. 116-9, 133 Stat. 580, 629 (116th Cong.); P.L. 109-94, 119 Stat. 2106 (109th Cong.); P.L. 109-385, 120 Stat. 2681 (109th Cong.) (providing for valid existing rights in a separate subsection but otherwise identical).

[3] This provision or variants thereof appeared in 116th Congress bills and laws. See, for example, P.L. 116-9, 133 Stat. 580 (116th Cong.).

[4] See U.S. Department of the Interior, Bureau of Land Management (BLM), *Glossaries of BLM Surveying and Mapping Terms*, 2003 (searchable PDF), at https://www.blm.gov/or/gis/geoscience/files/BLMglossary.pdf; and Mansfield, Maria E. "A Primer of Public Land Law." Washington Law Review, vol. 68, no. 4, October, 1993. Hereinafter referred to as Mansfield, A Primer of Public Land Law.

Legislated withdrawals may affect lands managed by different federal agencies. This report focuses on withdrawals affecting lands of the four major federal land management agencies. These agencies are the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), and the National Park Service (NPS), all in the Department of the Interior, and the U.S. Forest Service (FS), in the Department of Agriculture.

This report does not address standing authorities in statutes that have delegated withdrawal authority to the President or agencies. Among other examples, these laws allow the President to withdraw federal lands for national monument purposes under the Antiquities Act of 1906 and lands in the outer continental shelf from disposition under the Outer Continental Shelf Lands Act,[5] and allow the Secretary of the Interior to issue public land orders withdrawing land under the Federal Land Policy and Management Act of 1976 (FLPMA).[6] In addition, throughout U.S. history, many land withdrawals were made under authorities that have since been repealed by FLPMA and other laws.[7] This report does not address withdrawal authorities that are no longer in effect.

Purposes of Legislated Withdrawals

In general, legislated withdrawals often seek to preclude specified lands from being used for certain purposes so as to maintain other public values in the area or reserve the land for a particular public purpose or program. For example, some laws established or expanded federal land designations—such as wilderness areas, national conservation areas, national monuments, national recreation areas, and units of the National Park System—and withdrew the lands apparently to foster the primary purposes of these designations.[8] Another purpose of legislated withdrawals has been to facilitate the subsequent conveyance of federal lands to individuals or entities under specified terms and conditions.[9] Other withdrawal laws have reserved lands for use by the military for national defense purposes.[10] The purpose of other legislated withdrawals is not readily apparent from the enacted text,[11] though other congressional, federal agency, or public sources may have addressed the purposes.

[5] The Antiquities Act is codified at 54 U.S.C. §§320301-320303. The Outer Continental Shelf Lands Act is codified at 43 U.S.C. §1341(a).

[6] 43 U.S.C. §1714.

[7] Some repealed authorities allowed for withdrawals by executive orders, secretarial orders, and presidential proclamations.

[8] Examples of provisions of law that established or expanded land designations and contained withdrawals of the affected lands—primarily BLM and U.S. Forest Service (FS) lands—include the following: P.L. 111-11, §§1202, 1503, and 1803, among others, for designation of Wilderness Areas; §1974 and §§2202-2203, among others, for establishment of National Conservation Areas; §1204 for establishment of the Mount Hood National Recreation Area; §1205 for establishment of the Crystal Springs Watershed Special Resources Management Unit; §1808, to designate the Ancient Bristlecone Pine Forest; and §§2103-2104, to establish the Prehistoric Trackways National Monument. Other provisions were included in P.L. 113-291 (e.g., §3043 and §3092, designating or establishing units of the National Park System, and §3062, establishing the Hermosa Creek Special Management Area on FS lands).

[9] Examples include P.L. 113-107 and P.L. 113-291, §§3002(c), 3009(b), and 3009(d).

[10] Examples include P.L. 113-66, §§2931, 2941, and 2951.

[11] Examples include P.L. 109-385 and P.L. 106-113, in a proviso for the Forest Service Land Acquisition account.

Legislated Withdrawal Variations

Many laws have included the three components of legislated withdrawals essentially in the form set out in the "Introduction" to this report. However, legislated withdrawals might include variations on those components, as Congress determines what is appropriate to its objectives for the parcels at issue, which have varying legal effects. Such variations may include omitting one or more components, limiting the scope in some way, or specifying future application, as described below.

Omissions

Some legislated withdrawals have omitted one or more of the three components. For instance, in designating national scenic areas under FS management, one law omitted the first of the three components (*all forms of entry, appropriation, and disposal under the public land laws*),[12] as did provisions of law conveying specified BLM land.[13] Legislated withdrawals also have omitted specific terms or activities from the three components. For example, provisions of law authorizing and governing disposal of BLM land parcels under specified terms omitted "disposal" from the first component of the withdrawal language and specified that the withdrawal did not apply to "sales made consistent with this subsection."[14] Other laws have briefer withdrawal provisions that omit multiple parts of the three components. For example, some provisions of law authorizing land withdrawals for military purposes omitted both "entry" and "disposal" under the first component and "mineral materials" under the third component, among other differences.[15]

Limitations

In some cases, legislated withdrawals have included all three components of the withdrawal provision but expressly limited their scope. For instance, some provisions of law that withdrew lands from all forms of entry, appropriation, and disposal under the public land laws specified exceptions that allowed for particular disposals.[16] Other provisions of law that generally withdrew lands from mineral leasing authorized the Secretary of the Interior to lease oil and gas resources that were within a mile of the boundary of the withdrawal area, under specified terms and conditions.[17] Another law specified that the withdrawal would not pertain to particular parcels in the area.[18]

Future Applicability

Some legislated withdrawals have specified that provisions applicable to lands currently in federal ownership also apply to future federal acquisition of lands in the area. For instance,

[12] P.L. 111-11, §1104(l).

[13] P.L. 113-291, §3092(i).

[14] P.L. 111-11, §2601(d).

[15] P.L. 113-66, §§2931(a) and 2941(a). The text of the withdrawal provisions is similar, in providing that, subject to valid existing rights and except as otherwise provided, specified public land (including interests in land) and any lands within the boundary that become subject to the public land laws are "withdrawn from all forms of appropriation under the public land laws, including the mining laws, the mineral leasing laws, and the geothermal leasing laws."

[16] P.L. 111-11, §2606(c); P.L. 113-291, §3062(d); P.L. 113-291, §3092(f).

[17] P.L. 111-11, §3202(f).

[18] P.L. 113-291, §3062(b).

provisions of one law required that any lands acquired by the federal government within certain boundaries would be withdrawn as set out for lands already in federal ownership.[19] Similarly, a law establishing a national monument as a unit of the National Park System provided that lands acquired after enactment for inclusion in the monument would be subject to the withdrawal provisions set out for federal land within the monument at its establishment.[20] As another example, provisions of a law required that if any rights on the land were relinquished or otherwise acquired by the federal government after enactment, the land subject to those rights would be withdrawn under the terms specified for lands in federal ownership as of enactment.[21]

General Considerations in Determining Meaning

In some cases, it may not be readily apparent what, if any, difference in meaning Congress intends by variation in the terms and components of legislated withdrawals. For example, it may be unclear to what extent laws that bar "entry" only in the second component provide for a more limited withdrawal than laws that also bar entry in the first component.[22] Also, for laws that omit "mineral materials" from the third component,[23] it may be unclear whether the terms of the first and third components of the withdrawal nevertheless would preclude the sale of materials.[24]

The reasons for omitting particular terms from legislated withdrawals may not be clear from the text. Some laws might omit terms to protect continued or future land use for these activities; other laws might omit the same language because certain activities are not occurring or are unlikely to occur in the future on the withdrawn land. As an example, for parcels with no history of mineral development or findings or no evidence of mineral potential, Congress might not see a need to specify a withdrawal under the mining laws. In these cases, although the parcels might remain legally open to mineral development, in practice they might never be used for that purpose based on the resources on the lands. It is also possible that the omissions were inadvertent. Contrarily, the omissions may have been intentional because other sources, such as explanatory materials accompanying the laws, provide specificity and clarity as to the intent of the legislation.

A more complete understanding of a particular legislated withdrawal's meaning may require examining sources of information beyond the text of the law. Accordingly, agencies and courts determine the meaning and legal effect of legislated withdrawals on a case-by-case basis by examining existing authorities, legislative history, and agency documents.

Existing agency authorities governing the affected parcels could inform the meaning of a legislated withdrawal. For example, under general agency authorities, BLM and FS lands generally are open to energy and mineral development, and both agencies have authorities to convey lands out of federal ownership under certain conditions, as described in the section entitled "Entry, Appropriation, and Disposal." In contrast, lands managed by NPS generally are not open to such development or conveyance out of federal ownership. Thus, a legislated withdrawal of NPS lands might omit specifying that the parcels are withdrawn from these activities because other NPS authorities already preclude them. Similarly, it could be useful to

[19] P.L. 111-11, §2601(f).

[20] P.L. 113-291, §3092(a).

[21] P.L. 111-11, §3202(b).

[22] As an example of a law with entry only in the second component, see P.L. 111-11, §3202(a).

[23] See, for example, P.L. 111-11, §§1204(g) and 3202(a).

[24] In conversations with the Congressional Research Service (CRS), BLM staff have indicated that it is clearer to the agency when laws specifically address mineral materials.

consult any laws specific to the particular parcels at issue, such as laws establishing affected land units, which might contain requirements that differ from the authorities generally applicable to an agency's lands.

In addition, the legislative history of a legislated withdrawal, including committee report language, could provide insight as to congressional intent. For example, report language might contain more specificity than bill text as to the intended meaning of terms and components; the laws that apply to management of the parcels; and the activities that are continued, limited, or banned. Though such information is not itself part of the law, it can inform agencies' and courts' interpretations of the statutory text.[25]

Another potential source of information about how certain withdrawals may be interpreted is a land management plan. Management plans developed by agencies for land units and areas typically contain details on the types and locations of allowed activities and thus could be helpful in assessing the meaning of legislated withdrawal provisions. In some cases, an examination of agency guidance on withdrawals also could be useful, though the extent to which such guidance applies to legislated withdrawals is not readily apparent, as discussed in the following section ("Analysis of Legislated Withdrawal Components").

Analysis of Legislated Withdrawal Components

This section provides an analysis of the three components of the following example legislated withdrawal language:

> Subject to valid existing rights, [the federal land] is withdrawn from:
>
> (1) all forms of entry, appropriation, and disposal under the public land laws;
>
> (2) location, entry, and patent under the mining laws; and
>
> (3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.[26]

Information in this section is based on several sources. First, the Congressional Research Service (CRS) searched laws since the 106th Congress in Congress.gov to identify legislated withdrawals. Through this search, CRS identified a variety of legislated withdrawals as an illustrative, rather than a comprehensive, set of withdrawal laws. Information herein also draws on CRS conversations with realty experts and other staff of the four major land management agencies in December 2019 and January 2020, as well as on earlier conversations with BLM staff.[27]

In addition, CRS consulted some general authorities governing administrative withdrawals (e.g., provisions of FLPMA) and selected agency guidance. However, the extent to which agency guidance applies to legislated withdrawals is not readily apparent; the guidance may pertain

[25] For more information about how courts may use legislative history when interpreting statutes, see CRS Report R45153, *Statutory Interpretation: Theories, Tools, and Trends*, by Valerie C. Brannon.

[26] See, for example: P.L. 116-9, 133 Stat. 580, 629 (116th Cong.); P.L. 109-94, 119 Stat. 2106 (109th Cong.); P.L. 109-385, 120 Stat. 2681 (109th Cong.) (providing for valid existing rights in a separate subsection but otherwise identical).

[27] CRS conversations with agency staff were held on the following dates: BLM, December 18, 2019; FS, January 13, 2020; National Park Service (NPS), January 22, 2020; and U.S. Fish and Wildlife Service (FWS), January 31, 2020. Earlier CRS conversations with BLM staff were conducted on various dates during 2018 and 2019. This report does not explicitly note each instance in which information presented was derived from consultations with agency staff, though this is sometimes noted for emphasis. For brevity, text references to agency consultations do not typically denote the agency or agencies that provided the information.

primarily or exclusively to administrative withdrawals.[28] For instance, regulations applicable to withdrawals by the Secretary of the Interior under FLPMA note that they "do not apply to withdrawals that are made by the Secretary of the Interior pursuant to an act of Congress which directs the issuance of an order by the Secretary."[29] Similarly, FWS withdrawal policies cite provisions of FLPMA and related regulations on procedures for agencies to submit withdrawal requests under that law.[30] FS guidance on withdrawals appears to focus on withdrawals under FLPMA and other broad laws.[31] NPS policy indicates that when acquisition within a park boundary is necessary, the agency will consider various methods, including withdrawal from the public domain; it does not elaborate on withdrawal policies or processes.[32]

As noted in the "Introduction," the legislated withdrawal example language at issue specifies, "Subject to valid existing rights," the identified federal land is withdrawn from the specified components. Thus, the three withdrawal components discussed below this clause all are "Subject to valid existing rights," though this is not consistently restated throughout the discussions. An analysis of the meaning of this terminology is provided in the section of this report entitled "Interpreting 'Subject to Valid Existing Rights.'"

Entry, Appropriation, and Disposal Under the Public Land Laws

The first component of the legislated withdrawal language at issue, as set out in the "Introduction," specifies that the federal land is withdrawn from (1) *all forms of entry, appropriation, and disposal under the public land laws*. This component is analyzed in two parts: first, the *public land laws*, and then the *entry, appropriation, and disposal.*

Public Land Laws

This language generally would bar activities authorized under various public land laws (subject to valid existing rights). There are numerous public land laws, but no land management agency maintains a comprehensive list of such laws and the lands to which each law applies, according to agency staff consulted for this report. Further, it is likely impossible to develop such a list, because currently there does not appear to be a single definition in law of the term *public lands* or a single definition in use by agencies of the term *public land law.* Moreover, different meanings may have been used over time, as discussed in this section.[33] The absence of a comprehensive list of public land laws and the lack of a single, consistent definition of *public lands* over time make

[28] As noted, legislated withdrawals are made under the Property Clause of the U.S. Constitution, Article IV, Section 3, Clause 2. Administrative withdrawals are made under various statutes, e.g., provisions of the Federal Land Policy and Management Act of 1976 at 43 U.S.C. §1714.

[29] 43 C.F.R. §2300.0-1(b).

[30] FWS, *Service Manual, 342 FW 5, Non-Purchase Acquisition*, Section 5.9—Withdrawal, at https://www.fws.gov/policy/342fw5.html.

[31] See, for instance, FS, *Forest Service Manual 2700*, Chapter 2760-Withdrawals, at https://www.fs.fed.us/im/directives/dughtml/fsm2000.html.

[32] NPS, *Management Policies 2006*, p. 32, at https://www.nps.gov/policy/MP_2006.pdf, and Director's Order #25: Land Protection, Section 10.0—Property Acquisition/Relocation Assistance and Section 11.0—Acquisition Methods, at https://www.nps.gov/policy/DOrders/DOrder25.htm#Acquisition_Assistance.

[33] For instance, one scholar observed that "When first approaching the task, the uninitiated may take comfort in the label 'public land law,' believing that such nomenclature indicates a unified field of law amenable to simple outline. In reality, however, the term is mere shorthand. Modern 'public land law' covers a myriad of individual agency mandates to manage particular lands and particular resources." The scholar further observed that "as a legal term, however, 'public lands' has had different meanings at various times." See Mansfield, A Primer of Public Land Law, p. 802.

it challenging to determine the precise meaning or applicability of this component of legislated withdrawals.

Public Domain Lands

Historically, the term *public land laws* referred to laws providing for disposal of the *public domain*, according to some scholars.[34] The public domain label was used for those lands that never left federal ownership. Typically, these lands were ceded by the original states or obtained from a foreign sovereign (e.g., by purchase or treaty).[35] In contrast, the federal government usually obtained *acquired lands* from a state or individual through exchange, purchase, condemnation, or gift. Roughly 90% of all federal lands were public domain, with roughly 10% acquired.[36] The distinction in types of lands based on their manner of acquisition has lost some of its underlying significance today, though different laws still may apply depending on whether the lands involved were public domain or acquired.

The term *public land laws* continues to apply today to public domain lands, according to some agency staff. Some of these staff also used the term *public domain* to refer to land currently managed by BLM. The application to BLM land also is asserted in FWS policy guidance stating

> The term 'public domain land' has been supplanted by the term "public land," defined in FLPMA as any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership.[37]

In this sense, public domain is used more narrowly to refer to the lands that continue to be managed by BLM rather than also to lands that have been reserved from the public domain for particular uses or purposes.38 Throughout U.S. history, various laws and administrative authorities were used to withdraw lands from the public domain to establish or enlarge land units, such as national forests (managed by FS) and national wildlife refuges (managed by FWS). Accordingly, such land units sometimes are referred to as having been reserved from the public domain.

Land Management Broadly

Some scholars have asserted a seemingly broader interpretation of the term *public land law*. According to one scholar, in modern usage, public land law does not indicate a "unified field of law amenable to simple outline."[39] It "covers a myriad of individual agency mandates to manage

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[34] David H. Getches, "Managing the Public Lands: The Authority of the Executive to Withdraw Lands," *Natural Resources Journal*, vol. 22, no. 2 (April 1982), p. 282. Hereinafter referred to as Getches, "Managing the Public Lands." See also Mansfield, "Primer of Public Land Law," p. 821.

[35] An apparently broader definition of *public domain lands* is contained in BLM's *Public Land Statistics 2019*, as follows: "Original public domain lands that have never left federal ownership; lands in federal ownership that were obtained in exchange for public domain lands or for timber on public domain lands; one category of public lands." See U.S. Department of the Interior, BLM, *Public Land Statistics 2019*, p. 242.

[36] U.S. General Services Administration, *Overview of the United States Government's Owned and Leased Real Property: Federal Real Property Profile as of September 30, 2003*, p. 16.

[37] FWS, *Service Manual, 342 FW 5, Non-Purchase Acquisition*, Section 5.9—Withdrawal, at https://www.fws.gov/policy/342fw5.html.

[38] Mansfield, "Primer of Public Land Law," p. 832. The definition of *public lands* in the Federal Land Policy and Management Act of 1976 (FLPMA) is codified at 43 U.S.C. §1702(e).

[39] Mansfield, "Primer of Public Land Law," p. 802.

particular lands and particular resources."[40] Under this broader interpretation, the term *public land* encompasses diverse land systems managed by different agencies under varying laws.[41]

Under another broad definition, the term *public land laws* refers to laws (and regulations) governing the retention, management, and disposition of the public lands.[42] This definition derives from the Public Land Law Review Commission, established by law in 1964 to "study existing statutes and regulations governing the retention, management, and disposition of the public lands."[43] In the establishing statute, Congress outlined the purpose of the commission:

> Because the public land laws of the United States have developed over a long period of years through a series of Acts of Congress which are not fully correlated with each other and because ... administration of the public lands and the laws relating thereto has been divided among several agencies of the Federal Government, it is necessary to have a comprehensive review of those laws and the rules and regulations promulgated thereunder and to determine whether and to what extent revisions thereof are necessary.[44]

The land within the statutory mandate of the Public Land Law Review Commission included not only BLM lands but also NPS, FS, and FWS lands.[45]

Entry, Appropriation, and Disposal

A withdrawal from entry,[46] appropriation, and disposal generally would bar third parties from applying to take ownership of the lands or resources on the lands under applicable law and from obtaining possession of the same.[47] It also would preclude the lands from being "appropriated" for (i.e., used for) a primary purpose other than the one intended by the legislated withdrawal (subject to valid existing rights), according to agency staff consulted for this report.[48] Further, such a withdrawal typically would prohibit the transfer of the land to other federal agencies, in cases where such authority otherwise would exist, and action by the Secretary of the Interior to take the lands into trust for Indian tribes.[49]

This language generally would prevent the lands from being conveyed out of (e.g., disposed from) federal ownership by sale or exchange. Currently, the four major federal land management agencies have varying degrees of authority to convey lands out of federal ownership, ranging

[40] Mansfield, "Primer of Public Land Law," p. 802.

[41] Mansfield, "Primer of Public Land Law," p. 831.

[42] Getches, "Managing the Public Lands," p. 282.

[43] P.L. 88-606, §4.

[44] P.L. 88-606, §2.

[45] Mansfield, "Primer of Public Land Law," pp. 802-803.

[46] Some former and current laws specifically refer to authority to "enter" federal lands or make "entry" to federal lands in order to obtain possession of the lands or resources thereon. As an example of a former law, the Homestead Act of 1862 authorized individuals meeting certain qualifications to "enter" and make "entry" to public lands in order to settle on the lands. The applicant, sometimes referred to as the "entryman," received title to the lands after a specified period, providing certain conditions were met. The text of the statute is at https://uscode.house.gov/statviewer.htm?volume=12&page=392. Among current laws, the Desert Land Act (43 U.S.C. §321) and the General Mining Law of 1872 (30 U.S.C. §§22-42) also use the terms.

[47] In this sentence and elsewhere in this report, *third parties* includes individuals, corporations, and certain governmental entities.

[48] As an example, FS lands withdrawn from "appropriation" could not later be administratively reserved or classified as power sites or used for reservoirs under provisions of the Federal Power Act, according to FS staff. Pertinent provisions of the Federal Power Act are at 16 U.S.C. §818.

[49] Information in this paragraph is derived primarily from CRS conversations with BLM and FS staff.

from no general authority to relatively broad authority. This component of legislated withdrawals is less likely to affect NPS and FWS than FS and BLM, because NPS and FWS lack general authority to dispose of lands, though there are exceptions. By contrast, FS has various authorities to dispose of land, although they are somewhat constrained and not used frequently, and BLM has relatively broad authority to dispose of land. BLM disposal authorities include exchanges and sales under FLPMA;[50] transfers to other governmental units or nonprofit entities for public purposes under the Recreation and Public Purposes Act;[51] geographically limited sale authorities, such as the Southern Nevada Public Land Management Act of 1998;[52] and patents under the General Mining Law of 1872.[53] With regard to the latter authority, since FY1995, a series of annual moratoria on funding for issuing mineral patents have been enacted into law.[54] These moratoria, contained in the annual Interior appropriations laws, in effect have prevented this means of federal land disposal. The language in this component generally would also ban the disposal of resources on the lands (such as minerals) and other interests in the lands, which are something less than full ownership (such as conservation easements).

The terms *entry*, *appropriation*, and *disposal* have lost some of their historical import through the repeal of certain disposal laws and infrequent use today of others.[55] For example, authority to dispose of public lands under the Homestead Act of 1862 was repealed in 1976 by FLPMA (with a 10-year extension in Alaska). As another example, desert lands can be disposed under other laws, though these laws are seldom used because the lands must be classified as available, and sufficient water rights for settling on the land must be obtained. The Carey Act authorizes transfer to a state of desert public land for settlement, irrigation, and cultivation, upon application and meeting certain requirements.[56] Relatedly, the Desert Land Act allows citizens to reclaim and patent 320 acres of desert public land.[57] Though the scope of these terms may have changed over time, this component continues to restrict certain actions, such as the transfer of land out of federal ownership where such authority otherwise would exist.

Effect on Surface Uses

Withdrawals from entry, appropriation, and disposal typically would not bar multiple surface uses, possibly including recreation, hunting, grazing, and issuance of rights-of-way, among others. In some cases, the authorities that govern an agency's lands generally prohibit some of these uses, such as livestock grazing on NPS and FWS lands. Where an agency has discretionary

[50] 43 U.S.C. §1716, §1713.

[51] 43 U.S.C. §869.

[52] P.L. 105-263, as amended.

[53] 30 U.S.C. §§22-42. A *patent* is an instrument by which the federal government conveys title to lands.

[54] However, patent applications meeting certain requirements filed on or before September 30, 1994, have been allowed to proceed.

[55] For information on the primary current land disposal authorities of the four major federal land management agencies, see CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*, coordinated by Carol Hardy Vincent.

[56] 43 U.S.C. §641.

[57] 43 U.S.C. §321. For information on obtaining desert lands under the Desert Land Act, see the "Q&A on Desert Land Entries" under the "Desert Land Act" section of the BLM website at https://www.blm.gov/programs/lands-and-realty/land-tenure/sales-and-exchanges. The "Q&A on Desert Land Entries" indicates that the authority applies to desert public lands in 12 states: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, Washington, and Wyoming.

authority to permit surface uses, as in the case of BLM and FS for livestock grazing, such discretionary activities typically could continue on withdrawn lands, unless otherwise specified.

In other cases, the first component of the text could preclude particular surface issues. The withdrawal from "entry" in this component of the text, together with the withdrawal from "entry" under the second component, typically would prohibit location and entry under the mining laws, as discussed below. Further, some legislated withdrawals may affect authorized land uses that Congress considers inconsistent with the purposes of the withdrawal. For instance, a withdrawal to reserve lands for military use and to transfer administrative jurisdiction to the military could affect public access for recreation due to public safety reasons. Surface uses also could be affected by subsequent agency actions. For example, an agency might amend the relevant land management plan to restrict land uses in order to achieve a broad resource-protection goal of a particular legislated withdrawal.[58]

Location, Entry, and Patent Under the Mining Laws

The second component of the legislated withdrawal language at issue, as set out in the "Introduction," specifies that the federal land is withdrawn from (2) *location, entry, and patent under the mining laws*.

This component of legislated withdrawals generally would prevent the withdrawn lands from being available for new mining operations (subject to valid existing rights). It primarily would affect BLM and FS lands, because general laws governing these lands allow for mineral development, in contrast with the general laws governing NPS and FWS lands.

Mining of hard-rock minerals on federal lands is governed primarily by the General Mining Law of 1872 (the Mining Law). The original purposes of the Mining Law were to promote mineral exploration and development on federal lands in the western United States, offer an opportunity to obtain title to mines already being worked, and help settle the West. The Mining Law grants free access ("open to mineral entry") to third parties to prospect for minerals on open public domain lands and allows third parties, upon making a discovery, to stake (or *locate*) a claim on the deposit.[59] A valid claim entitles the holder to develop the minerals. The Mining Law continues to provide the structure for much of the western mineral development on public domain lands.[60]

With evidence of valuable minerals and sufficient developmental effort, the Mining Law allows mining claims to be patented, with full title (of surface and mineral rights) transferred to the claimant upon payment of the appropriate fee. Nonmineral lands used for associated milling or other processing operations also can be patented.[61] Patented lands may be used for purposes other than mineral development.[62]

The Mining Law is considered a nondiscretionary agency authority. That is, BLM lacks general discretion to reject a claim to valuable minerals where the claimant complies with the terms of

[58] Information in this section is derived from conversations between CRS and BLM staff in 2018 and 2019.

[59] The terms *open to mineral entry* and *locate* typically are used by BLM.

[60] 30 U.S.C. §§22-42.

[61] 30 U.S.C. §42.

[62] However, as noted above, since FY1995, appropriations laws have contained annual moratoria on funding for issuing mineral patents under the general mining laws. Patent applications meeting certain requirements filed on or before September 30, 1994, have been allowed to proceed. The most recent annual mining patent moratorium is contained in the Further Consolidated Appropriations Act, 2020 (P.L. 116-94), Division D, §404.

law. In this way, the Mining Law differs from major laws affected by components one and three of legislated withdrawals.[63]

Withdrawals from location and entry under the mining laws typically would not affect various surface uses of the lands, which might include recreation, hunting, and grazing, among others, depending on the general authorities that govern the surface lands. However, subsequent agency actions, such as amendments to land management plans, could affect surface uses, as noted above.

Operation of the Mineral Leasing, Mineral Materials, and Geothermal Leasing Laws

The third component of the legislated withdrawal language, as set out in the "Introduction," specifies that the federal land is withdrawn from (3) *operation of the mineral leasing, mineral materials, and geothermal leasing laws*.

This component generally would prevent the withdrawn lands from being available for new mineral leasing, sale of mineral materials, and geothermal leasing (all subject to valid existing rights). It would affect mainly BLM and FS lands because the main laws governing these activities primarily apply to these agencies. These laws—the Mineral Leasing Act of 1920 (MLA), the Materials Act of 1947, and the Geothermal Steam Act of 1970—are discussed below. Moreover, general laws governing BLM and FS allow for multiple uses, including energy development, in contrast to the general laws governing NPS and FWS lands.[64]

As in the case of withdrawals under the Mining Law, withdrawals from mineral leasing, sale of mineral materials, and geothermal leasing typically would not affect multiple uses of the surface lands. However, subsequent agency actions, such as amendments to land management plans, could affect surface uses, as noted above.

Mineral Leasing Act of 1920

The third component of legislated withdrawals generally would prevent the withdrawn lands from being available for new mineral leasing (subject to valid existing rights). The MLA primarily governs the development of leasable minerals (e.g., oil, gas, coal, and certain agricultural minerals) on federal lands.[65] Under the MLA, the Secretary of the Interior, through the BLM, leases subsurface rights on federal lands (generally those under the jurisdiction of BLM and FS) that contain fossil fuel deposits, with the federal government retaining title to the lands. The MLA authorizes both competitive and noncompetitive bidding processes for oil and gas exploration and production leases.

The Materials Act of 1947

The third component of legislated withdrawals generally would prevent the withdrawn lands from being available for new disposal of materials on public lands (subject to valid existing rights).

[63] For instance, agencies with land disposal authority have general discretion as to whether to exercise their conveyance authority upon application by a prospective purchaser.

[64] Although energy development is not a general use of NPS and FWS lands, there are exceptions. For instance, for information on oil and gas activities on FWS lands, see CRS Report R45192, *Oil and Gas Activities Within the National Wildlife Refuge System*, by R. Eliot Crafton, Laura B. Comay, and Marc Humphries.

[65] 30 U.S.C. §181.

The primary law at issue, the Materials Act of 1947 (as amended),[66] gave the Secretary of the Interior and the Secretary of Agriculture authority to dispose of mineral materials including—but not limited to—sand, stone, gravel, pumice, and clay, and vegetative materials including—but not limited to—yucca, manzanita, mesquite, cactus, timber, and other forest products.[67] The law pertains to lands where the disposal of such mineral and vegetative materials otherwise is not expressly authorized by law, including the mining laws; is not expressly prohibited by law; and would not be detrimental to the public interest.[68] The law generally requires payment of "adequate compensation" for the materials, and it requires the pertinent Secretary to dispose of materials to the highest qualified bidder after advertising and other public notices. The law contains exceptions, including authorization for the pertinent Secretary to permit federal, state, and local governmental entities and not-for-profit entities to remove materials without charge under certain circumstances.

Geothermal Steam Act of 1970

The third component of legislated withdrawals also generally would prevent the withdrawn lands from being available for new geothermal leasing (subject to valid existing rights). The primary law governing geothermal energy development on federal lands is the Geothermal Steam Act of 1970.[69] The law sets out provisions governing the issuance and administration of geothermal steam leases. Under the law, the Secretary of the Interior, through BLM, authorizes leases on federal lands (generally lands under BLM and FS jurisdiction) for geothermal exploration and development. This law (and related regulations) governing geothermal steam leasing and administration provide for principles and processes that are similar to those for oil and natural gas leasing on federal lands under the MLA. For instance, the Geothermal Steam Act, like the MLA, authorizes both competitive and noncompetitive leasing processes.

Interpreting "Subject to Valid Existing Rights"

As noted in the "Introduction," Congress generally makes legislated withdrawals "subject to valid existing rights."[70] Congress generally withdraws public lands "to prevent the initiation of new claims" rather than to destroy "rights theretofore fairly earned."[71] By including the phrase "subject to valid existing rights," Congress protects third-party property interests (e.g., ownership) in withdrawn federal land.[72] Though commonly used, the phrase has no universal definition or agreed-upon interpretation.[73] Instead, as discussed in more detail in this section, courts and agencies have interpreted the phrase on a case-by-case basis in light of the purpose and

[66] 30 U.S.C. §§601-604.

[67] In this context, the authority to "dispose of" mineral materials means authorization for the "removal of" mineral materials from the land.

[68] 30 U.S.C. §601.

[69] 30 U.S.C. §§1001 et seq.

[70] See, for example: P.L. 116-9, 133 Stat. 580, 629 (116th Cong.); P.L. 109-94, 119 Stat. 2106 (109th Cong.); P.L. 109-385, 120 Stat. 2681 (109th Cong.) (providing for valid existing rights in a separate subsection but otherwise identical).

[71] Executive Withdrawal Order of November 26, 1934, as Affecting Taylor Grazing Act and Other Prior Legislation, 55 Interior Dec. 205, 210 (1935) [hereinafter 1935 Solicitor Opinion] (citing Williams v. Brening, 51 Pub. Lands Dec. 225 (1925) (on reh'g)).

[72] See, for example, Jan G. Laitos & Richard A. Westfall, *Government Interference with Private Interests in Public Resources*, 11 HARV. ENVTL. L. REV. 1, 6-9 (1987).

[73] 1935 Solicitor Opinion, *supra* note 71, at 210-11; see also Laitos & Westfall, *supra* note 71, at 19-22.

structure of the law in which it appears.[74] Furthermore, third parties may have obtained their "valid existing rights" under any number of current or former laws that created avenues for obtaining interests in federal land.[75] As such, the examples of "existing rights" this report provides are illustrative rather than comprehensive.[76]

When Congress enacts legislated withdrawals "subject to valid existing rights," any existing rights remain in effect after the withdrawal. In some cases, the government may acquire or "take" certain rights to serve the purpose of the withdrawal. The federal government has authority to take private property for public uses through its eminent domain powers.[77] The Takings Clause of the U.S. Constitution limits this power by providing that private property cannot "be taken for public use, without just compensation."[78] As described further below in "Rights," however, some valid existing rights may not qualify as property interests that require compensation under the Takings Clause.[79]

Alternatively, legislated withdrawals may allow federal agencies to acquire valid existing rights through voluntary transactions, such as purchase or exchange.[80] The relevant federal agency may have preexisting statutory authority to acquire such rights.[81] If the agency does not have that authority or the authority is limited, Congress may consider providing such authority in the legislated withdrawal. Congress also may consider appropriating funds for any such acquisitions.

[74] See, for example, Laitos & Westfall, *supra* note 71, at 19-22.

[75] See, for example, 1935 Solicitor Opinion, *supra* note 71, at 210-11 ("It is hardly practicable to give a precise or general definition of the meaning of 'existing valid rights,' as used in the savings clause of the said Executive Order. The circumstances of each particular case will have to be considered in applying that provision.").

[76] While some examples discussed in this report involve laws that are no longer in effect, rights obtained under those laws still could be "valid existing rights" even after the law's expiration or repeal. Additionally, those examples show the historical understanding of "valid existing rights" and demonstrate legal principles that apply to similar laws that currently are in effect.

[77] United States v. Jones, 109 U.S. 513, 518-19 (1883).

[78] U.S. Const. amend. V; *Jones*, 109 U.S. at 518-19. See also, for example, Horne v. Dep't of Ag., 576 U.S. 350, 357-58 (2015) ("There is no dispute that the 'classic taking [is one] in which the government directly appropriates private property for its own use. Nor is there any dispute that, in the case of real property, such an appropriation is a *per se* taking that requires just compensation." (citations omitted) (emphasis in original)); Meridian Land & Mineral Co. v. Hodel, 843 F.2d 340, 346-47 (9th Cir. 1988) (noting that during congressional debate, Congressman Udall objected to an amendment "because it takes from the bill a statement that valid legal rights should be preserved," which he did not think Congress "should do without paying compensation under the fifth amendment").

[79] The various constitutional considerations under the Takings Clause for "valid existing rights" are beyond the scope of this report. For more information on the Takings Clause, see CRS, Amdt5.5 Taking Private Property for Public Use, Constitution Annotated (2020), https://constitution.congress.gov/browse/amendment-5/.

[80] See, for example, P.L. 96-290, 94 Stat. 607 (1980) (amending an act establishing a wildlife refuge to include that the Secretary of the Interior "may acquire lands and waters or interests therein ... within the boundaries of the refuge by donation, purchase with donated or appropriated funds, or exchange"); P.L. 93-402, 88 Stat. 801 (1974) ("The Secretary may acquire by donation, purchase with donated or appropriated funds, or exchange, such lands and waters and interests therein (including in-holdings) that are adjacent to the [lands and waters reserved for the Great Dismal Swamp National Wildlife Refuge] and are within the area known as the Great Dismal Swamp ... as he determines to be suitable to carry out the purposes of this Act.").

[81] For instance, the Secretary of the Interior has authority to acquire interests in lands under FLPMA, 43 U.S.C. §1715, (acting through BLM), the National Wildlife Refuge System Administration Act, 16 U.S.C. §668dd(b), (acting through FWS), and the Migratory Bird Treaty Act, 16 U.S.C. § 715d (acting through FWS).

Defining "Valid Existing Rights"

As used in legislated withdrawals, a "valid existing right" is a third-party (i.e., nonfederal) interest in federal land that the relevant federal agency cannot terminate or unduly limit.[82] To have a valid existing right, the third party must

- have met the requirements under the relevant law to obtain a property interest in the land (i.e., the property interest must be *valid*);
- have had a protectable interest before the United States withdraws the land (i.e., the property interest was *existing* at the time of withdrawal);[83] and
- possess a property interest (or in some cases a possessory interest) in the land that constitutes a right for purposes of withdrawals (i.e., it must be a *right*).[84]

Valid

The validity of the interest depends on whether the third party has met the requirements of the law under which it alleges to have secured the property interest. First, the interest itself must be legitimate (i.e., supported by evidence of the factual basis required by the relevant statute). For example, to secure a mining claim as a valid right under the mining laws, a claimant must demonstrate that they have made a "valid discovery" of a valuable mineral deposit that can be extracted and marketed.[85]

Second, the third party must have complied with any procedural requirements set out in statute.[86] The "steps required to secure the right" similarly depend on the law on which the interest is based. For example, under the General Mining Law of 1872, to be eligible for exclusive possession and enjoyment (i.e., development) of a mineral deposit, a claimant must (1) make a discovery of a mineral vein, lode, or ledge and (2) properly stake (or *locate)* the claim.[87] To receive a land patent (i.e., title to the land) from the Secretary of the Interior for the land on which a valuable mineral discovery is located, the claimant must perform a requisite amount of work developing the claim and pay a fee.[88] Similarly, before purchasing up to 80 acres of public land as

[82] See, for example, The Bureau of Land Management Wilderness Review and Valid Existing Rights, M-36910 (Supp.), 88 Interior Dec. 909, 912 (1981) [hereinafter 1981 Solicitor Opinion]("'[V]alid existing rights' are those rights short of vested rights that are immune from denial or extinguishment by the exercise of secretarial discretion."); Laitos & Westfall, *supra* note 71, at 26.

[83] As described below in "Existing," certain property interests may be allowed to relate back to the date the claimant first occupied the land before a withdrawal and be considered "existing" even if the right is not secured (i.e., the process for obtaining the right is not complete) until after the withdrawal.

[84] See, generally, Laitos & Westfall, *supra* note 71. Property interests versus possessory interests are discussed below in "Rights."

[85] *See, e.g.*, Vane Minerals v. United States, 116 Fed. Cl. 48, 55-59 (2014); Skaw v. United States, 13 Cl. Ct. 7, 28 (1987), *aff'd* 847 F.2d 842 (Fed. Cir. 1988); *see also* 43 C.F.R. § 3809.00(a). A valid discovery "occurs when the claimant demonstrates that a reasonably prudent person would be justified in expending further effort to develop the claim." *Vane Minerals*, 116 Fed. Cl. at 55. The claimant also must "establish that 'the mineral can be extracted, removed, and marketed at a profit.'" *Id.* at 56 (quoting United States v. Coleman, 390 U.S. 599, 602 (1968)).

[86] Russian-American Packing Co. v. United States, 199 U.S. 570, 575 (1905) ("[T]he mere settlement upon public lands without taking some steps required by law to initiate the settler's right thereto, is wholly inoperative as against the United States.").

[87] 30 U.S.C. §26.

[88] 30 U.S.C. §§28-29. However, since FY1995, a series of annual moratoria on funding for issuing mineral patents has been enacted into law. *See, e.g.*, P.L. 116-94, Div. D, tit. IV, § 404, 133 Stat. 3013 (2019). Patent applications filed on or before September 30, 1994, that met certain requirements have been allowed to proceed.

a trade and manufacturing site, the Trade Manufacturing and Site Act required the claimant to file a notice of location to claim of "unoccupied, unimproved, and unappropriated" land and apply to purchase the claim within five years of the notice.[89] Generally, a third party must complete the steps required by law to secure a *valid* "valid existing right" in federal land.

Existing

The second requirement for a third party to have a "valid existing right" is that the property interest existed at the time of withdrawal.[90] Depending on the legal basis for the right, a third party obtains an interest in federal land either (1) once they meet the statutory requirements, without the federal agency having to act, or (2) when the federal agency exercises its discretion to grant the property interest after the third party meets the relevant statutory requirements.[91] Third parties claiming property interests under laws that do not require the federal agency to grant the interest have an existing property interest as soon as they meet the law's requirements.[92] For example, a claimant under federal mining laws is entitled to the claim once they complete the statutory steps described above (discovery and location).[93] Whether the Secretary of the Interior has issued a land patent to transfer title to the claimant does not affect the claimant's right to the land; once federal mining law requirements are met, the property right "vests" (i.e., ownership is transferred to the claimant) and the right *exists*.[94] In some cases, the claimant need not complete all of the required steps before the withdrawal to obtain an existing right. If the law allows claims to relate back to occupancy (i.e., be back-dated to when the claimant first occupied the land), claimants may have *existing* rights if they occupied the land before withdrawal and ultimately complete the remaining steps required by law.[95]

Other laws provide that a claimant's interest in federal land only becomes a valid existing right once the Secretary has acted to make it valid.[96] For example, third parties acquire oil and gas leases when the Secretary of the Interior approves their application.[97] Although courts and agencies have recognized these leases as valid existing rights in various contexts, they have not recognized *applications* for oil and gas leases or other leasehold interests in federal land.[98]

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[89] 43 U.S.C. §687a-1, *repealed* effective Oct. 21, 1986, P.L. 94-579, title VII, § 703(a) (1976); 43 C.F.R. §2562.1 (1983).

[90] 1981 Solicitor Opinion, *supra* note 82 at 911 ("They are property interests rather than mere expectancies.").

[91] *Id.* at 912; Laitos & Westfall, *supra* note 71, at 25-36.

[92] Laitos & Westfall, *supra* note 71, at 12-13, 16-17.

[93] 30 U.S.C. §§26; *see also* 1981 Solicitor Opinion, *supra* note 82, at 912.

[94] Black's Law Dictionary (11th ed. 2019) (defining vest to mean "to confer ownership (of property) on a person). See, for example, Wyoming v. United States, 255 U.S. 489, 501, 508-09 (1921); Kern Oil Co. v. Clarke, 30 Pub. Lands Dec. 550, 550 (1901). During this time, the United States merely holds the title to the land in trust on behalf of the claimant until the land patent (i.e., the official document granting title) issues. See, for example, *Wyoming*, 255 U.S. at 501-02. Note, however, that since FY1995, a series of annual moratoria on funding for issuing mineral patents has been enacted into law. *See, e.g.*, P.L. 116-94, Div. D, tit. IV, § 404, 133 Stat. 3013 (2019). Patent applications filed on or before September 30, 1994, that met certain requirements have been allowed to proceed.

[95] James Milton Cann, 16 IBLA 374 (1974); *cf.* Ramstad v. Hodel, 756 F.2d 1379, 1382-86 (9th Cir. 1985).

[96] See, for example, James v. Canon, 84 Interior Dec. 176, 181 (1977) (affirming that lease offerors have no right to a lease).

[97] 30 U.S.C. §226.

[98] Compare Union Oil Co. of Cal. v. Morton, 512 F.2d 743, 750-51 (9th Cir. 1975) (recognizing that an oil and gas lease is a property right) with James v. Canon, 84 Interior Dec. 176, 181 (1977) (affirming that lease offerors have no right to a lease). See also Miller v. Udall, 317 F.2d 573, 576 (D.C. Cir. 1963) ("[A]lthough filing an offer is a necessary condition or prerequisite to the issuance of a lease, it does not give the applicant a valid existing right to a lease.");

Courts and agencies have at times concluded that a third party has a valid existing right despite not having established an interest by law before the land is withdrawn.[99] The Solicitor of the Department of the Interior has offered "an expansive interpretation of 'existing valid rights' in the context of withdrawal"[100] that includes "all prior valid applications for entry, selection, or location, which were substantially complete at the date of the withdrawal" and "[c]laims under the Color of Title Act of December 22, 1928."[101] A court or agency also may recognize a valid existing right, even if the claimant is not legally entitled to it, because it would be equitable (i.e., consistent with the principles of justice).[102]

Rights

Not all uses of or interests in federal land qualify as valid existing "rights." The third party usually must have obtained a *property interest* in the land to have a right; merely using the land generally is insufficient to establish a valid existing right.[103] To determine whether the asserted interest qualifies as a right, courts and agencies examine the law authorizing the interest and the withdrawal law.[104] Courts and agencies have recognized a number of property interests as protected rights, such as entitlements to land patents under mining laws and entry-based laws such as the Homestead Acts and the Trade and Manufacturing Site Act;[105] land grants to states;[106] rights-of-way;[107] and mineral leases.[108]

Courts and agencies also have deemed certain *possessory* interests protected, the most common example being perfected but unpatented mining claims.[109] However, they have declined to recognize other possessory interests as valid existing rights.[110] Courts and agencies have generally

1981 Solicitor Opinion, *supra* note 82, at 912 (describing when valid existing rights arise); Laitos & Westfall, *supra* note 71, at 12-19 (describing how courts and agencies have treated different types of interests in property).

[99] 1935 Solicitor Opinion, *supra* note 71, at 210.

[100] *Ramstad*, 756 F.2d at 1385.

[101] 1935 Solicitor Opinion, *supra* note 71, at 210. The Color of Title Act provides a means for BLM to resolve certain private party claims on public lands through conveyance of patents. *See* 43 U.S.C. §1068.

[102] See, for example, *Ramstad*, 756 F.2d at 1383-86; 1935 Solicitor Opinion, *supra* note 71, at 210-11; Black's Law Dictionary (11th ed. 2019) (defining equitable as "Just; consistent with principles of justice and right").

[103] 1981 Solicitor Opinion, *supra* note 82, at 911.

[104] *Id*. at 912.

[105] See, for example, Stockley v. United States, 260 U.S. 532, 536-42 (1922); Ramstad v. Hodel, 756 F.2d 1379, 1380-81 (9th Cir. 1985).

[106] Wyoming v. United States, 255 U.S. 489, 501-02 (1921).

[107] Sierra Club v. Hodel, 848 F.2d 1068, 1085-86 (10th Cir. 1988), overruled on other grounds by Village of Los Ranchos de Albuquerque v. Marsh, 956 F.2d 970 (10th Cir. 1992). See also FLPMA §701(a) & (h), P.L. 94-579, Title I, §102, 90 Stat. 2744 (1976) (codified at 43 U.S.C. 1701 note).

[108] See, for example, Skaw v. United States, 740 F.2d 932, 935-36 (Fed. Cir. 1984).

[109] United States v. Locke, 471 U.S. 84, 88 (1985); Best v. Humboldt Placer Mining Co., 371 U.S. 334, 335-37 (1963); Wilbur v. United States *ex rel.* Krushnic, 280 U.S. 306, 316-17 (1930); Laitos & Westfall, *supra* note 71, at 15-16. A mining claim is perfected but unpatented when the claimant has complied with all the requirements of the law but the United States has not issued a land patent to transfer title. See, for example, *Wilbur*, 280 U.S. at 316-17; Belk v. Meagher, 104 U.S. 279, 283-84 (1881).

[110] Wisenak, Inc. v. Andrus, 471 F. Supp. 1004, 1009 (D. Alaska 1979) (declining to recognize the doctrine of *pedis possessio*, which protects prospectors from encroachment by other explorers, as creating valid existing rights); Laitos & Westfall, *supra* note 71, at 18.

not recognized permits, such as grazing permits, as protected property rights for purposes of interpreting withdrawals, absent a specific provision in the withdrawal law or order.[111]

"Subject to" Valid Existing Rights

Once a third party establishes a "valid existing right" in withdrawn federal land, the relevant federal agency must determine how to manage the land "subject to" that right.[112] Valid existing rights limit the federal agency's ability to manage withdrawn land pursuant to the directives in the withdrawal legislation.[113] For example, under FLPMA, the Secretary of the Interior must manage any areas being considered for wilderness designation "so as not to impair the suitability of such areas for preservation as wilderness."[114] However, FLPMA's savings clause requires the Secretary to carry out actions under FLPMA—including wilderness management—"subject to valid existing rights."[115] As the Solicitor for the Department of the Interior recognized in a 1981 opinion, this savings clause limits prevents the Secretary from applying the nonimpairment standard in a way that "would prevent the exercise of any 'valid existing rights.'"[116]

Valid existing rights are not absolute rights that cannot be managed or limited.[117] The nature of the right depends on the law that created the right, the terms of any agreement involved (e.g., an oil and gas lease), and how the relevant federal agency exercises its discretion.[118] The Secretary of the Interior has taken the position that federal agencies may regulate valid existing rights provided that they do not regulate "to the point where the regulation unreasonably interferes with enjoyment of the benefit of the right."[119]

Identifying Valid Existing Rights

Due to the large number of public land laws and natural resource laws under which parties may have obtained rights to federal land, and the variability in how parties obtain a "valid existing" right under each law, federal agencies or courts necessarily must analyze "valid existing rights" on a case-by-case basis.[120] The particular right retained by a party also may depend on various

[111] *Cf.* United States v. Fuller, 409 U.S. 488, 494 (1973) ("The provisions of the Taylor Grazing Act ... make clear the congressional intent that no compensable property might be created in the permit lands themselves as a result of the issuance of the permit."); LaRue v. Udall, 324 F.2d 428, 431 (D.C. Cir. 1963) ("By no means should [a grazing permit provision of the Taylor Grazing Act] be construed as providing that, by maintaining a lien on his grazing unit, a permitee may also create and maintain a vested interest therein which will prevent the United States from exchange [the land]."); Bradshaw v. United States, 47 Fed. Cl. 549, 553 (Fed. Cl. 2000) ("[N]either the grazing permit, nor the historical grazing preference is a compensable interest.... "); see also Leigh Raymond, *Viewpoint: Are Grazing Rights on Public Lands a Form of Private Property?*, 50 J. RANGE MGMT. 431, 431-36 (1997).

[112] 1981 Solicitor Opinion, *supra* note 82, at 912-13.

[113] *Id*. at 913.

[114] 43 U.S.C. §1782(c).

[115] 43 U.S.C. 1701 note.

[116] 1981 Solicitor Opinion, *supra* note 82, at 911.

[117] *Id*. at 912 (citing Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); Continental Oil Co. v. United States, 184 F.2d 802 (9th Cir. 1950)).

[118] *See id*.

[119] *Id*. at 913-14.

[120] See, for example, *id*. at 912 ("Thus, it is not possible to identify in the abstract every interest that is a valid existing right; the question turns upon the interpretation of the applicable statute and the nature of the rights conveyed by approval of an application."). Conversations with staff at BLM, FS, FWS, and NPS confirmed that the agencies generally determine the valid existing rights that apply to a particular withdrawal on a case-by-case basis. CRS held conversations with agency staff specifically to obtain information for this report on the following dates: BLM,

other factors, including the site-specific conditions of the property.[121] The agencies rely primarily on master plats of public domain land units that BLM maintains, which track awarded leases, locations, entries, rights-of-way, easements, and other property interests. The agencies also may conduct independent title searches. Some agency regulations provide procedures for parties to obtain valid existing rights determinations under certain statutes.[122] Claimants may challenge "valid existing rights" determinations in administrative proceedings before the agency with jurisdiction over the land, if the agency so provides, or in court.[123]

Summary of Analysis

In exercise of its authority over federal lands, Congress considers and enacts legislation to withdraw lands from management under various laws. *Legislated withdrawals* often have common goals, components, and protections. A common goal is to preclude the lands from being used for certain purposes to foster other particular purposes or values. Common components include the removal of the affected parcels from operation under one or more categories of law, namely public land laws, mining laws, and/or mineral leasing laws. Common protections pertain to valid existing rights, to prevent termination or limitation of third-party property interests following the withdrawal. Though legislated withdrawals have much in common, Congress has enacted variations in their components and terms. These variations enable Congress to determine the appropriate management for the lands to reach its desired objectives.

Determining the meaning and effect of legislated withdrawals can be challenging. For example, there are numerous public land laws, but no single, consistent definition of this term or comprehensive list of such laws and the lands to which each law applies. Further, there are a large number of laws under which third parties may have obtained rights to federal land. Accordingly, agencies and courts determine the meaning and effect of legislated withdrawals on a case-by-case basis. To enhance clarity of intent, Congress can provide specifications in the text of the withdrawal laws and in accompanying explanatory documents.

Though legislated withdrawals are generally made subject to valid existing rights, Congress may provide for any such rights—or other property interests within the withdrawal boundaries—to be acquired through the power of eminent domain (with just compensation) or voluntary transactions such as purchases, donations, or exchanges. When enacting a legislated withdrawal, Congress may consider whether the purposes of the withdrawal may be served by allowing the relevant federal agency to pursue such acquisitions.

December 18, 2019; FS, January 13, 2020; NPS, January 22, 2020; and FWS, January 31, 2020. For brevity, text references to agency consultations do not typically denote the agency or agencies that provided the information.

[121] See, for example, 1981 Solicitor Opinion, *supra* note 82, at 913.

[122] See, for example, 30 C.F.R. §761.16 (providing for valid existing rights determinations under surface mining laws); 36 C.F.R. §§292.63, 292.64 (providing for valid existing rights determinations for the Smith River National Recreation Area); Vane Minerals v. United States, 116 Fed. Cl. 48, 57-59 (2014) (describing agency valid existing rights determination procedures for mining claims).

[123] See, for example, Shepley v. Cowan, 91 U.S. 330, 338 (1876); Kern Oil Co. v. Clarke, 30 Pub. Lands Dec. 550, 550 (1901).

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