Nos. 14-17350 (Lead), 14-17351, 14-17352, & 14-17374

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NATIONAL MINING ASSOCIATION,
Plaintiff-Appellant,

v.

S.M.R. JEWELL, Secretary of Interior, *et al.*,
Defendants-Appellees,

GRAND CANYON TRUST, HAVASUPAI TRIBE,
CENTER FOR BIOLOGICAL DIVERSITY, SIERRA CLUB and
NATIONAL PARKS CONSERVATION ASSOCIATION,
Intervenors-Defendants-Appellees.

On Appeal from the United States District Court for the District of Arizona
Civil Action Nos. 3:11-cv-08171-DGC, 3:11-cv-08038-DGC,
3:11-cv-08042-DGC, and 3:11-cv-08075-DGC,
The Honorable David G. Campbell, U.S. District Judge

RESPONSE BRIEF OF INTERVENORS-DEFENDANTS-APPELLEES GRAND CANYON TRUST and HAVASUPAI TRIBE, *et al.*

ORAL ARGUMENT REQUESTED

Edward B. Zukoski (tzukoski@earthjustice.org)
Daniel Cordalis (dcordalis@earthjustice.org)
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
(303) 623-9466 (tel), (303) 623-8083 (fax)

Roger Flynn (wmap@igc.org)
Western Mining Action Project
P.O. Box 349, 440 Main St. #2
Lyons, CO 80540
(303) 823-5738 (tel)
(303) 823-5732 (fax)

Aaron M. Paul (apaul@grandcanyontrust.org)
Grand Canyon Trust
4454 Tennyson St.
Denver, CO 80212
(303) 477-1486

Filed: September 3, 2015

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Intervenors-Defendants-Appellees Grand Canyon Trust, National Parks Conservation Association, Center for Biological Diversity, and Sierra Club are nonprofit conservation organizations that have no parent corporations, subsidiaries, or affiliates that have issued shares to the public. The Havasupai Tribe is a federally recognized Indian tribe that likewise has no parent corporations, subsidiaries, or affiliates that have issued shares to the public.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

In 2007, a spike in uranium prices set off a rush to stake mining claims around one of the most remote and scenic landscapes in the world: the Grand Canyon. The uranium boom threatened to unleash hundreds of exploration drilling projects, dozens of operating mines, relentless truck traffic, and, potentially, radioactive contamination of aquifers used for drinking water.

Responding to public outcry, the Secretary of the Interior ("Secretary") on January 21, 2012, issued a land-withdrawal order under the Federal Land Policy and Management Act ("FLPMA") that put a twenty-year hold on new mining claims and most uranium-mining activities on about one million acres of public lands surrounding Grand Canyon National Park. The Secretary made this withdrawal after more than two years of analysis with help from more than a dozen federal, state, and local agencies; after completing formal consultation with seven area American Indian tribes; after considering and responding to hundreds of thousands of public comments; after studying how decades of uranium mining has already scarred the Grand Canyon and surrounding area; and after completing an Environmental Impact Statement ("EIS") under the National Environmental Policy Act ("NEPA") supported by a nearly hundred-thousand-page administrative record.

Appellants sued, claiming the record did not support the Secretary's decision, that a mishmash of law and policies imposed requirements the Secretary

did not follow, and that constitutional infirmities in FLPMA deprived the Secretary of authority to make the withdrawal. The district court disagreed, dismissing some claims and granting summary judgment to the federal defendants and intervenors on the rest.

On appeal, Appellants: again argue that an easily severable legislative veto requires elimination of the Secretary's authority to make *any* withdrawal over 5,000 acres; invent constraints to limit the Secretary's considerable discretion to make withdrawals; and nitpick Interior's studied analysis and conclusions using rhetoric divorced from fact and law. All Appellants' arguments lack merit. The district court's decision holding that the Secretary had ample basis "to err on the side of caution in protecting a national treasure – [the] Grand Canyon" should be affirmed. AEMA-ER 45.[1]

[1] We use the following abbreviations to refer to prior filings referenced herein:
AEMA (Opening Brief of American Exploration & Mining Ass'n (Apr. 10, 2015));
AEMA-ER (AEMA's Excerpts of Record);
DOI (Response Brief of Federal Defendants-Appellees (Aug. 19, 2015));
DOI-SER (Federal Defendants-Appellees Supplemental Excerpts of Record);
NMA (Opening Brief of National Mining Association (Apr. 10, 2015));
NMA-ER (NMA's Excerpts of Record);
Metamin (Opening Brief of Metamin Enterprises USA, Inc. *et al*. (Apr. 10, 2015));
Metamin-ER (Metamin's Excerpts of Record);
Trust-SER (the Trust's Supplemental Excerpts of Record, filed herewith);
Utah (Brief of the States Utah, Arizona *et al.*, Amicus Curiae (Apr. 17, 2015)); and
Yount (Appellant's Informal Brief of Gregory Yount (Apr. 10, 2015)).

STATEMENT OF JURISDICTION

Intervenors-Defendants-Appellees Grand Canyon Trust *et al.* ("the Trust") adopt Defendants-Appellees Department of the Interior's ("Interior's") jurisdictional statement. DOI 1.

ISSUES PRESENTED

The Trust adopts Interior's "Issues Presented." DOI 1–2.

STATEMENT OF FACTS

I. THE GRAND CANYON

The Grand Canyon is one of the world's greatest natural wonders. DOI-SER 276. The mile-deep, 277 mile-long canyon is protected as a national park and surrounded by millions of acres of extraordinary public lands, ranging from vibrant desert landscapes to towering ponderosa pine forests. DOI-SER 166, 178, 180. Lush groundwater-fed springs dot the area, supporting a diversity of species up to 500 times greater than the surrounding, more arid, lands. DOI-SER 296.

The region is also the ancestral homelands of numerous American Indian tribes. Metamin-ER 126; DOI-SER 194–202, 237. The Havasupai Tribe, for example, has lived within the Grand Canyon for millennia and its history, culture, and spiritual identity are intimately and inextricably connected to the region and its abundant resources. AEMA-ER 270; Trust-SER 203.

These natural, tribal, and cultural resources create a recreational mecca that welcomes nearly five million visitors a year, making tourism a leading economic driver in the area. DOI-SER 209–16, 249, 271–77.

II. URANIUM MINING THREATENS THE GRAND CANYON REGION.

Uranium mining in and around the Grand Canyon began during the 1940s and 1950s Cold War uranium boom and continued until the market fell in the late 1980s. DOI-SER 8, 169. That mining left behind a legacy of radioactive contamination that continues to threaten the region's public health, ecosystems, tribal interests, and recreational opportunities. Drainage from the abandoned Orphan Mine on the Grand Canyon's South Rim, for example, has contaminated the principal regional aquifer – the Redwall-Muav, or "R-aquifer." Metamin-ER 137; AEMA-ER 292–93. Measured uranium concentrations for R-aquifer discharge at nearby Horn Creek are as high as 400 micrograms/liter, over 13 times the Environmental Protection Agency ("EPA") drinking-water standard. DOI-SER 86, 89; Metamin-ER 143, 147. As a result, the National Park Service warns hikers not to drink from Horn Creek "unless death by thirst is the only other option." Trust-SER 187; *see also* Trust-SER 84–85. Mining has also contaminated surface water. A 1984 flash flood "washed tons of high-grade uranium ore [from uranium mines] down Kanab Creek and into the [Park]." Trust-SER 84; *see also* DOI-SER 40, 41–43, 45.

Future uranium mining threatens additional contamination, groundwater depletion, and transformation of some of the region's wild landscapes into industrial zones with webs of power lines, mine facilities, and roads traversed by trucks loaded with uranium ore. *See, e.g.*, AEMA-ER 281–82, 290–92, 301–22. Such development would: destroy or degrade habitat and sensitive areas; pollute the environment; disproportionately affect American Indian resources and values; and threaten the singular natural beauty and solitude of the Grand Canyon region. DOI-SER 306–10, 326–50.

III. THE WITHDRAWAL

A. The Secretary's Proposal

In 2007, a spike in global uranium prices drove a rush to stake uranium mining claims on public lands around the Grand Canyon. Metamin-ER 111. By 2009, over 10,000 individual mining claims had been filed in the area. AEMA-ER 167. The Bureau of Land Management ("BLM") later predicted that unless mining was checked, "approximately 728 uranium exploration projects, 30 uranium mines, 317,505 ore haul trips, and 22.4 miles of new roads and power lines with approximately 1,321 acres of disturbed landscape" would occur in the Grand Canyon region over 20 years. DOI-SER 315.

In response to the uranium boom, U.S. Representative Raúl Grijalva in 2008 introduced the Grand Canyon Watersheds Protection Act, a bill to permanently

close to new mining claims over one million acres of public lands surrounding the Grand Canyon. AEMA-ER 167; Metamin ER-111. This and other public outcry prompted the Secretary on July 21, 2009, to temporarily close to new mining claims essentially the same area identified by Rep. Grijalva and to begin the process of adopting a 20-year withdrawal. 74 Fed. Reg. 35,887 (July 21, 2009), AEMA-ER 216; *see also id.* 167 (discussing legislation as background for proposed withdrawal); Trust-SER 62–63 (governor of Arizona requesting emergency withdrawal). The proposed withdrawal covered three parcels: a 550,000-acre North Parcel, 322,000-acre East Parcel, and 134,500-acre South Parcel. DOI-SER 110, 155 (map).

B. Drafting the EIS

Because the proposed withdrawal was a "major Federal action[]" that could "significantly affect[] the quality of the human environment," 42 U.S.C. § 4332(2)(C), BLM set about preparing an EIS as required by NEPA. BLM spent the next two-plus years analyzing the proposed withdrawal's effects. It worked closely with the United States Forest Service and United States Geological Survey ("USGS") throughout, formally designating both as "cooperating agencies," *see* 40 C.F.R. §§ 1501.6, 1508.5, along with all five counties comprising Appellant Arizona Utah Local Economic Coalition (the "Coalition"), and eight other federal, state, and local entities and American Indian tribes. DOI-SER 158–62.

BLM coordinated with USGS because of the latter's expertise in mining-related environmental conditions, mineral resource availability, geology, hydrology, and biology. DOI-SER 159. USGS prepared a series of comprehensive, peer-reviewed scientific reports (the "USGS Report") that, among other matters, estimated the amount of uranium in the withdrawal area and analyzed the past and potential future effects of uranium mining in the proposed withdrawal area on surface waters and groundwater. *See* DOI-SER 1–17. BLM and the National Park Service also asked consultants to prepare a cultural and ethnographic study to inform its analysis of potential impacts to cultural and American Indian resources. Trust-SER 159–173, 194–98.

In February 2011, BLM released for public comment a 1,072-page draft EIS ("DEIS"), which analyzed how the proposed withdrawal and three other alternatives would affect a long list of environmental, cultural, and other resources. Trust-SER 1–48.

C. The Final EIS

After spending nine months revising the DEIS in response to nearly 300,000 comments from the public and cooperating agencies, BLM published its Final EIS ("FEIS") on October 26, 2011, identifying as its "preferred alternative" closure of the full million acres to mineral entry. AEMA-ER 220; Metamin-ER 298. The 60-page water-impact analysis explained that there is uncertainty about the movement

of groundwater that feeds the area's springs, especially north of the Colorado River where most uranium mining has occurred. Metamin-ER 131–32, 299. Those springs are critical water sources for plants, animals, American Indian tribes and backcountry recreationists in an otherwise parched landscape, and they contribute flows to the Colorado River, which serves as the drinking water source for over 26 million people in major cities throughout the Southwest. *See* DOI-SER 198, 201, 296; AEMA-ER 281; Trust-SER 84, 86, 91–93. The FEIS explained that, absent the withdrawal, uranium mining could have "major" impacts to springs, groundwater and surface water quality and quantity, and may impact public drinking water wells at Tusayan. AEMA-ER 301–22.

The FEIS included separate discussions of American Indian resources and cultural resources based on the commissioned ethnographic study, tribal comments, and additional analyses. In addressing American Indian resources, the FEIS explained that many tribes "have an intimate relationship" with the Grand Canyon area, a traditional territory those tribes have inhabited and used for thousands of years. DOI-SER 194, 197. The ethnographic study likewise observed: "These tangible resources form unique ethnographic landscapes for each tribe that are steeped in culture, history, and tradition" which "are interconnected with animals, plants, and water resources." Trust-SER 213. Tribal resources – including traditional use areas, trails, springs and waterways, sacred sites and other

places of traditional importance – are found throughout all withdrawal parcels. DOI-SER 193–203; AEMA-ER 334.

Although the proposed withdrawal would permit those with valid existing rights to mine, a withdrawal would greatly reduce the extent and impacts of mining, resulting in approximately 717 fewer uranium exploration projects, 19 fewer uranium mines, 210,000 fewer ore-haul trips, 16 fewer miles of new roads and power lines, and 1,160 fewer acres of disturbed landscape. *Compare* DOI-SER 315, 324 (impacts without withdrawal) *with* DOI-SER 324 (impacts with withdrawal).

D. The Record of Decision

Based on the USGS Report, the FEIS, and other record evidence, and with the consent of the Forest Service, the Secretary determined that the one-million-acre withdrawal ("the Withdrawal") was warranted. AEMA-ER 173–76, 340. The ROD concluded: "[a]s this area contains unique landscapes, is a sacred place for numerous tribes, and receives visitors from all over the world, it is appropriate to tread carefully." AEMA-ER 175–76. Accordingly, the Secretary determined that the Withdrawal was "the most appropriate option to influence the pace of reasonably foreseeable [uranium] mining" in "a sensitive area" while the impacts associated with ongoing mining "will continue to be monitored and studied." AEMA-ER 176.

The Secretary highlighted four reasons for the Withdrawal. First, the available data showed that "the likelihood of a serious impact" to water resources from radioactive contamination "may be low, but should such an event occur, significant." AEMA-ER 173. The Secretary concluded that such a risk was "unacceptable" and that the Withdrawal "allow[s] for additional data to be gathered and more thorough investigation of groundwater flow paths, travel times, and radionuclide contributions from mining as recommended by USGS." AEMA-ER 173–74. Second, because "[a]ny mining within the sacred and traditional places of tribal peoples may degrade the values of those lands to the tribes that use them[,]" the Secretary concluded that "potential impacts to tribal resources [likely] could not be mitigated." AEMA-ER 173, 175. Third, the ROD pointed to "major cumulative effect[s] to visual resources resulting from dust emissions" associated with truck traffic, and potential impacts to wildlife "[a]s a result of projected surface and groundwater effects" absent a withdrawal. AEMA-ER 175. Finally, the ROD explained that "potentially eleven mines, including the four mines currently approved, could proceed under [the] withdrawal," provided the mines contain valid existing rights. AEMA-ER 173, 175–76.

STATEMENT OF THE CASE

The Trust adopts Interior's "Statement of the Case" and its description of district court decisions below. DOI 2–5, 17–20.

SUMMARY OF ARGUMENT

The Court should sever only the unconstitutional legislative veto in FLPMA's withdrawal provisions. Because FLPMA has a severability clause, the veto is presumptively severable unless there is "strong evidence" Congress intended otherwise. Neither FLPMA's text nor its legislative history provide such evidence. FLPMA split withdrawals into two general categories: (1) permanent withdrawals to be made by Congress for national parks, monuments, forests and the like; and (2) time-limited withdrawals to be made by the Executive, subject to congressional oversight. If the veto is severed, this system would be preserved, for the Executive could still make temporary large-tract withdrawals subject to detailed congressional reporting requirements. That result is not only consistent with FLPMA's text but also the legislative history concerning the veto, which indicates that the Senate preferred no limits at all on Executive withdrawals.

Further, the Secretary's Withdrawal to protect the area surrounding the Grand Canyon fully complied with FLPMA. That act grants the Secretary broad authority to withdraw lands to protect "public values," many of which the record showed could be degraded by a uranium mining boom. Uranium mining threatened to contaminate and deplete precious surface water and groundwater around the Canyon, a threat grave enough to at least merit additional study, as the Secretary recognized. It would also damage the region's spectacular views and

harm wildlife. And uranium cannot be mined around the Grand Canyon without adversely impacting resources and values venerated by the region's American Indian tribes. The Secretary's decision to tread carefully and conservatively in protecting these resources around the iconic Grand Canyon is well supported and consistent with FLPMA.

The Government also complied with NEPA, NFMA, and the Establishment Clause. As for NEPA, Interior identified missing information and explained why it was not essential to its analysis. Interior also coordinated with local governments, considered their comments and local laws and plans, and described inconsistencies between the Withdrawal and some of those plans. NEPA requires no more. Concerning NFMA, having helped extensively to prepare the EIS, the Forest Service properly consented to the Withdrawal in a short letter. The Forest Service was not required to amend its forest plan to implement the Withdrawal because forest plans cannot open or close lands to mining. Finally, the Withdrawal did not run afoul of the Establishment Clause because it did not endorse the tribes' religion and had a secular purpose: to protect numerous non-mineral resources around the Grand Canyon, including not only tribal resources, but also water, viewsheds, and wildlife.

STANDARD OF REVIEW

The Trust adopts the first paragraph of Interior's "Standard of Review." DOI 20.

ARGUMENT

I. ONLY THE UNCONSTITUTIONAL LEGISLATIVE VETO IN SUBSECTION 204(C)(1) OF FLPMA SHOULD BE SEVERED.

FLPMA provides the Secretary with authority to remove certain lands from the operation of the mining law via withdrawals, subject to defined restrictions. 43 U.S.C. § 1714. Among those restrictions is a legislative veto, a procedure that, after FLPMA's passage and in construing a different statute, the Supreme Court held unconstitutional. *INS v. Chadha*, 462 U.S. 919, 959 (1983). Applying *Chadha*, the district court found unconstitutional FLPMA subsection 204(c)(1)'s provision allowing Congress to veto withdrawals, a conclusion the Trust does not dispute. The district court properly severed only the veto, leaving intact the Secretary's large-tract withdrawal authority. AEMA-ER 59–87.

NMA and AEMA contend that the legislative veto cannot be severed, so all of subsection 204(c)(1) must be excised, the Secretary's authority to make temporary large-tract withdrawals must be invalidated, and the Withdrawal must be set aside. NMA 17–54; AEMA 20–30. But the proper remedy is *not* to maximize damage to the Secretary's withdrawal authority, as NMA and AEMA urge. Instead, this Court should affirm the district court's decision to sever only

the constitutionally infirm language: the seven and a half sentences in subsection 204(c)(1) that comprise the legislative veto. Doing so would leave both the Secretary's large-tract withdrawal authority and the Withdrawal decision unaffected.

A. Statutory Background

FLPMA section 204 authorizes the Secretary to "make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section." 43 U.S.C. § 1714(a). For large-tract withdrawals (those 5,000 acres or greater), subsection 204(c)(1) provides in part:

> [A] withdrawal … may be made … only for a period of not more than twenty years by the Secretary on his own motion or upon request by a department or agency head. The Secretary shall notify both Houses of Congress of such a withdrawal no later than its effective date and the withdrawal shall terminate and become ineffective at the end of ninety days … if the Congress has adopted a concurrent resolution stating that such House does not approve the withdrawal.

Id. § 1714(c)(1). Subsection 204(c)(2) provides that "[w]ith the notices required by" subsection 204(c)(1), the Secretary shall provide to the relevant congressional committees a detailed report containing, *inter alia*, information on the proposed use for the withdrawal, the area's existing and potential resources, and potential environmental and economic impacts. *Id.* § 1714(c)(2).[2]

[2] Section 204 establishes different standards for small-tract withdrawals (less than 5,000 acres), *id.* § 1714(d), large-tract withdrawals, *id.* § 1714(c); and short-term emergency withdrawals, *id.* § 1714(e). *See* DOI 7–8.

B. Because FLPMA Contains A Severability Clause, Appellants Must Show "Strong Evidence" That The Legislative Veto Is Not Severable.

Rather than invalidate entire statutes that contain unconstitutional language, courts presume that the invalid language, and only that language, should be severed. *See* DOI 28–30; *see also Hamad v. Gates*, 732 F.3d 990, 1001 (9th Cir. 2013) (explaining presumption of severability). This conservative approach is mandated by the separation of powers issues at play when courts alter congressional enactments. *See Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 345 (1936) (Brandeis, J., concurring).

The plaintiff's burden to overcome this presumption is higher where, as here, the act at issue contains a severability clause. FLPMA, Pub. L. No. 94-579, § 707, 90 Stat. 2743, 2794 (1976). A unanimous Supreme Court has stated:

> [T]he inclusion of such a [severability] clause creates a presumption that Congress did not intend the validity of the statute in question to depend on the validity of the constitutionally offensive provision. In such a case, unless there is *strong evidence* that Congress intended otherwise, the objectionable provision can be excised from the remainder of the statute.

Alaska Airlines, Inc. v. Brock, 480 U.S. 678, 686 (1987) (emphasis added) (citations omitted); *see also United States v. Spokane Tribe of Indians*, 139 F.3d 1297, 1299–1300 (9th Cir. 1998) (requiring "strong evidence"). This "strong evidence" standard cannot be met merely by showing that the law will be altered by excising the veto. Instead, a plaintiff must provide strong evidence that

Congress would have preferred to eliminate more of the act had Congress known the infirm language would be removed. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S.Ct. 2566, 2607 (2012); *Chadha*, 462 U.S. at 931–32. NMA fails to identify strong evidence that Congress meant for its unconstitutional veto and the Secretary's withdrawal authority to stand or fall together.

C. FLPMA's Structure And Text Do Not Provide Strong Evidence That Congress Would Have Prohibited All Executive Large-Tract Withdrawals Absent A Legislative Veto.

Courts divine Congress's intent by examining the law's text, structure, and legislative history. *Alaska Airlines*, 480 U.S. at 687. Evidence of mere "reluctance" to delegate authority to the Executive is not enough to demonstrate that a legislative veto is inseverable. *Chadha*, 462 U.S. at 932.

FLPMA's history and text show that Congress chose to delegate to the Executive the authority to make time-limited withdrawals with certain checks, while Congress retained complete control only over certain *permanent* withdrawals. This statutory scheme is not strong evidence that Congress would have delegated no large-tract withdrawal authority to the Executive without the legislative veto. To the contrary, striking just the veto would preserve Congress's intent by preserving its division of withdrawal authority between itself and the Executive.

1. FLPMA's Origin

By the mid-20th Century, management of federal public lands "became chaotic," in part due to the hodgepodge of sometimes conflicting public lands management statutes and the Executive's virtually unchecked power to make land withdrawals. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 876 (1990). Congress responded in 1964 by establishing the Public Land Law Review Commission ("PLLRC") to study and make recommendations for improving public land management. *Id.* at 876–77.

The PLLRC's report concluded that executive withdrawals had occurred in "an uncontrolled and haphazard manner." Pub. Land Law Review Comm'n, *One Third of the Nation's Land* 43 (1970) (hereinafter "PLLRC Report"), NMA-ER 94; *see also Lujan*, 497 U.S. at 876. The PLLRC found it difficult to obtain even basic information about the location and extent of executive withdrawals. PLLRC Report at 52, NMA-ER 96; *Lujan*, 497 U.S. at 876–77. Executive withdrawals were plagued by "problems such as excessive size, indefiniteness of boundaries, lack of uniformity, and interminable 'temporary' withdrawals." PLLRC Report at 55, NMA-ER 99. These problems stemmed in part from "the lack of adequate public accountability" for executive withdrawals, owing to the negligible

"statutory restriction[s] on the asserted *permanent* withdrawal authority of the Executive." PLLRC Report at 44 (emphasis added), 55, NMA-ER 95, 99.[3]

To address these issues, the PLLRC recommended that Congress: (1) exercise complete authority over "permanent or indefinite" withdrawals, including those "for the purpose of establishing or enlarging … national parks, national monuments … national forests … units of the wilderness system"; and (2) delegate "[*a*]*ll other withdrawal authority*" to the Executive to establish time-limited withdrawals with procedural safeguards. PLLRC Report at 9 (emphasis added), 54, Trust-SER 286, NMA-ER 98. "Executive withdrawals" should be limited in duration; they should occur only after public involvement, after the Executive evaluates a series of factors, and after the Executive explains its findings, thus enabling public, judicial, and congressional oversight. PLLRC Report at 55, NMA-ER 99.

2. FLPMA's Structure and Text Show Congress Limited the Executive's Withdrawal Authority, Even Absent the Veto.

With FLPMA, Congress established the two-tier system the PLLRC recommended, reserving to itself the power to make *permanent* withdrawals for national parks, forests, wilderness and certain defense lands, while "delineat[ing]

[3] *See also* David H. Getches, *Managing the Public Lands: The Authority of the Executive to Withdraw Lands*, 22 Nat. Resources J. 279, 290–300 (1982), Trust-SER 226, 237–247 (describing the Executive's reliance on "implied authority" for large, permanent withdrawals before FLPMA).

the extent to which *the Executive* may withdraw lands *without legislative action*." 43 U.S.C. § 1701(a)(4) (emphasis added).

Congress delegated to the Executive the authority to make time-limited, large-tract withdrawals, and did so with procedural safeguards, including limiting who may make withdrawals, how and when Congress must be notified and the public involved, the duration of large-tract withdrawals, and the circumstances under which such withdrawals may be extended. *See* DOI 33; 43 U.S.C. § 1714(a) (who); *id.* § 1714(b)(1), (c)(2), (h) (notice to public, Congress, and public hearings); *id.* § 1714(c)(1) (limiting duration to no more than 20 years); *id.* § 1714(f) (limitations on extensions). Thus, even without the legislative veto, FLPMA circumscribed the Executive's authority to make withdrawals, effectively eliminating the prior disarray the PLLRC identified. NMA argues otherwise, alleging that invalidating the legislative veto but not the Secretary's authority to make time-limited large-tract withdrawals would contradict Congress's intent to rein in executive withdrawals. NMA 13, 24; *see also* AEMA 22. As discussed below, NMA's argument ignores the two-tier system of withdrawals FLPMA established, misconstrues caselaw, wrongly belittles the importance of checks that remain absent the veto, and exaggerates the strength of the anemic veto Congress adopted but never exercised.

3. Neither The Word "Provision" In The Severability Clause Nor The Legislative Veto's Location Require Severing All Of Section 204(c)(1).

FLPMA's severability clause states that if "any provision" of the law is invalidated, the remainder of the law "shall not be affected." FLPMA § 707, Pub. L. No. 94-579. Congress's use of the term "any provision," NMA says, is strong evidence that the Court must strike all of subsection 43 U.S.C. § 1714(c)(1) because the legislative veto is not itself a "provision" but several sentences within the withdrawal "provision." NMA 20–22; *see also* AEMA 24–25. NMA is incorrect.

NMA cites no cases in which a court has mechanically interpreted the term "provision" in a severability clause to require invalidating an entire subsection when striking just the offending words would eliminate the constitutional defect. In fact, courts have repeatedly done the opposite. In the leading case on the constitutionality of legislative vetoes, the Supreme Court found that a severability clause virtually identical to that in FLPMA gave rise "to a presumption that Congress did not intend the validity of … *any part* of the Act" to depend on the veto clause's validity. *Chadha*, 462 U.S. at 932 (emphasis added). By using the term "part," the Supreme Court gave the term "provision" a general meaning, rather that the narrow one NMA urges.

Further, following *Chadha*, an appellate court effectively rejected NMA's approach. In addressing a severability clause nearly identical to FLPMA's, the Eleventh Circuit severed a one-half sentence legislative veto, leaving intact the remainder of the multi-sentence subparagraph that addressed a congressional reporting requirement. *Ala. Power Co. v. U.S. Dep't of Energy*, 307 F.3d 1300, 1306 n.5, 1307–08 (11th Cir. 2002); *see also* DOI 31 (citing cases).

This approach makes sense because the whole point of a severability clause is to explicitly direct courts to remove only the unlawful parts of a statute and preserve the rest. NMA's approach, in contrast, would lead to the opposite and illogical conclusion that courts must sever *more* of a statute where Congress makes clear through a severability provision its intent to save as much of a statute as possible. In *Alaska Airlines*, the Supreme Court was confronted with a statute that arguably had no severability clause. 480 U.S. at 686–87. Yet the Court severed a half-sentence legislative veto from a subparagraph (49 U.S.C. app. § 1552(f)(3)), without invalidating the remainder of the sentence. *Id.* at 682, 697. NMA's argument, when viewed together with the Court's approach in *Alaska Airlines*, would turn severability canon upside-down, equipping courts with a scalpel to pare constitutionally infirm text from statutes lacking a severability clause while requiring them to use a hacksaw where Congress adopted such a clause.

Further, the Supreme Court has repeatedly severed clauses, and even words *within* a clause or sentence, leaving in place the remaining parts of the sentence. *E.g.*, *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504–07 (1985) (remanding to consider whether to invalidate six words within subsection defining "prurient"); *Regan v. Time, Inc.*, 468 U.S. 641, 649, 652 (1984) (holding invalid an act's "purpose requirement" of fifteen words plus parenthetical phrase within a subparagraph).[4] In severability analysis, "[t]he offending provision – whether section, sentence, phrase or individual word – can be excised." Robert L. Stern, *Separability and Separability Clauses in the Supreme Court*, 51 Harv. L. Rev. 76, 106 (1937).

NMA and AEMA also argue that the location of the legislative veto in the same subsection authorizing large-tract withdrawals means, per se, that the entire subparagraph must be struck. NMA 21–22; AEMA 23–24. But the Supreme Court rejected that idea a century ago. "The point is not whether the [valid and invalid] parts are contained in the same section, for the distribution into sections is purely artificial, but whether they are essentially and inseparably connected in substance, – whether the provisions are so interdependent that one cannot operate

[4] The Supreme Court has severed words from the middle of sentences. *E.g.*, *El Paso & Ne. Ry. Co. v. Gutierrez*, 215 U.S. 87, 95–97 (1909) (severing 45 words in middle of sentence); *Berea Coll. v. Kentucky*, 211 U.S. 45, 54–56 (1908) (finding that while application of one word in a sentence of law might be unconstitutional, rest of the sentence could survive).

without the other." *Loeb v. Trs. of Columbia Twp.*, 179 U.S. 472, 490 (1900) (quoting *Fayette Cnty. Treasurer v. People's & Drover's Bank*, 25 N.E. 697, 702 (Ohio 1890)). Here, language granting the Executive authority to make large-tract withdrawals is easily separable from the legislative veto in substance: one grants the Secretary the authority to make withdrawals; the other grants Congress an after-the-fact opportunity to review the Secretary's decision. Indeed, the Supreme Court has explained that "a legislative veto … *by its very nature is separate* from the operation of the substantive provisions of a statute." *Alaska Airlines*, 480 U.S. at 684–85 (emphasis added).[5]

[5] NMA cites cases in which courts found that invalid language was so interwoven with other arguably constitutional language that the latter text must also be struck. NMA 21–22, 34–35, 49 n.22; *see also* AEMA 24. None of these cases help NMA. In *American Federation of Government Employees v. Pierce*, the court concluded that the valid half-sentence could not be severed because a thorough review of *congressional intent* and legislative history showed the language in each half of the sentence was inseparable, *not* due to mere textual proximity. 697 F.2d 303, 306–07 (D.C. Cir. 1982). In *Planned Parenthood of Central Missouri v. Danforth*, the Court found two sentences "inextricably bound together" where both criminalized activities of health care professionals providing abortions. 428 U.S. 52, 82–84 (1976). Here, there is nothing unconstitutional about delegating authority to the Secretary to make withdrawals. Justice Brennan in *Regan* criticized the majority's severing only part of a statutory phrase because that fundamentally altered the prohibitory scheme Congress adopted. 468 U.S. at 667–68 (Brennan, J., concurring & dissenting in part) ("[T]his is the first time that Members of the Court have sought to sever selected words from a single integrated statutory phrase and to transform a modifying clause into a provision that can operate independently."). Severing the legislative veto here would have no novel or transformative effect. *Thomas v. Union Carbide Agricultural Products Co.* is irrelevant; the Supreme Court found the provision there constitutional. 473 U.S. 568, 594 (1985).

4. FLPMA's Policy Statement And Repudiation Of *Midwest Oil* Are Not Strong Evidence Against Severability.

In FLPMA, Congress declared it national policy that:

> Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action.

43 U.S.C. § 1701(a)(4). NMA claims that this statement provides "strong evidence" that Congress would not have delegated authority to the Executive to make any non-emergency large-tract withdrawals absent the veto. NMA is wrong. FLPMA's policy statement comports perfectly with the Act's text and purpose: eliminating the Executive's largely unfettered withdrawal authority and replacing it with the two-tier system the PLLRC recommended and Congress adopted. 43 U.S.C. § 1714(b)-(j). Absent the legislative veto, that two-tier system would remain.

To carry out Congress's policy, FLPMA section 704 made clear that the act eliminated all implied Executive authority to make withdrawals under *United States v. Midwest Oil*, 236 U.S. 459, 472 (1915). FLPMA § 704, Pub. L. No. 94-579. No "implied" or unfettered authority remains, despite NMA's contentions. NMA 24. Absent the veto, the Secretary's large-tract withdrawal authority is delineated, cabined by a time limitation, and subject to reporting requirements and public involvement. Section 704 thus provides no evidence that Congress would

have chosen to retain all authority to make time-limited large-tract withdrawals absent the veto.[6]

5. FLPMA Section 204(a)'s "Only In Accordance With" Language Is Not Strong Evidence Against Severability.

FLPMA section 204(a) states that the Secretary may "make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section." 43 U.S.C. § 1714(a). NMA asserts that the "only in accordance with" language requires the Court to sever the entire large-tract withdrawal provision because voiding only the legislative veto would eliminate one of the "limitations" of section 204(c)(1). NMA 25–30. This argument also fails.

First, when read in context of the entire statute, the "accordance" text makes clear that the Secretary no longer has any implied withdrawal authority. *See also* 43 U.S.C. § 1712(e)(3) ("Public lands shall be removed from or restored to the operation of the Mining Law of 1872 … only by withdrawal action pursuant to [43 U.S.C.] section 1714."). Section 204(a) simply explains that the Secretary's withdrawal authority is limited to that expressed in section 204. Thus, section 204(a) and the severability clause can be read in harmony, as they should. *See Morton v. Mancari*, 417 U.S. 535, 551 (1974) ("[W]hen two statutes are capable of

[6] Congress knew how to retain control over large withdrawals, as it did in pre-FLPMA legislation for large-tract defense withdrawals. *See* 43 U.S.C. § 156 (reserving to Congress authority to withdraw more than 5,000 acres of land for defense purposes). It simply chose not to for time-limited withdrawals in FLPMA.

coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.").[7]

Second, the cases NMA cites – *Miller v. Albright*, 523 U.S. 420 (1998), and *Nguyen v. INS*, 533 U.S. 53 (2001) – are unpersuasive. NMA 26–30; *see also* AEMA 23. Justice Scalia's concurrence in *Miller* argued that a disputed naturalization requirement was inseverable because the statute provided that "[a] person may only be naturalized … in the manner and under the conditions prescribed in this subchapter *and not otherwise*." *Miller*, 523 U.S. at 457 (quoting 8 U.S.C. § 1421(d)). NMA contends that FLPMA's "only-in-accordance-with" language, like the "and-not-otherwise" phrase in *Miller*, is "the sort of restriction that the Supreme Court found required broad severance of the authority tethered to an unconstitutional limit on that authority." NMA 28.

NMA's argument is meritless first and foremost because Justice Scalia's concurrence is not controlling precedent, contrary to NMA's assertion. *See* DOI 45 n.17 (refuting NMA 30 n.13). Nor did the Supreme Court in *Nguyen* "endorse"

[7] Congress knows how to ensure that sections or subparagraphs rise or fall together by exempting statutory provisions from a severability clause. *See, e.g.*, 25 U.S.C. § 941m(a) ("If any provision of section 941b(a), 941c, or 941d of this title is rendered invalid by the final action of a court, then all of this subchapter is invalid. Should any other section of this subchapter be rendered invalid by the final action of a court, the remaining sections of this subchapter shall remain in full force and effect.") (codification of Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, Pub. L. No. 103-116, § 15(a)). Congress crafted no such explicit language in FLPMA.

Justice Scalia's argument, NMA 27, but rather specifically declined to take a position on it. *Nguyen*, 533 U.S. at 72 ("In light of our holding that there is no equal protection violation, we need not rely on this argument.").

In any case, Justice Scalia's concurrence is not apt. *See* AEMA-ER 50–52, 68–70 (district court orders rejecting NMA's argument). It argued that the Court could not sever one of four substantive naturalization requirements, thereby judicially granting citizenship if only three of the requirements Congress enacted were met. *Nguyen*, 533 U.S. at 73. Here, the legislative veto is *not* an inseparable, substantive precondition that the Secretary must fulfill, but a separate procedural mechanism concerning a different branch of government's after-the-fact oversight. *See* AEMA-ER 51–52 (district court order). It is a single provision that can be severed without working any substantive change at all in how Interior exercises its withdrawal authority.[8]

6. There Are Significant Differences Between Temporary Large-Tract Withdrawals And Other Withdrawals Besides The Legislative Veto.

NMA argues that FLPMA's text shows Congress meant to establish greater oversight over large-tract withdrawals than over other executive withdrawals, and

[8] Because *Miller* involved an equal-protection challenge, moreover, the question was not whether a single unconstitutional provision could be severed, but how to remedy inequities in differing naturalization requirements. AEMA-ER 51; *Miller*, 523 U.S. at 459 ("There is no way a court can 'fix' the law by merely disregarding one provision or the other as unconstitutional.").

that without the legislative veto that distinction would disappear, leaving the Secretary with "unfettered discretion" for large-tract withdrawals. NMA 31–32; *see also* AEMA 26–27. Again, NMA is mistaken. *See* DOI 35–36.

While removing the veto would eliminate one distinction between withdrawals under section 204(c) and sections 204(d) and (e), other distinctions remain. First, large-tract withdrawals are limited to 20 years. Smaller-tract withdrawals (less than 5,000 acres) for a "resource use" are of unlimited duration; those for "any other use" are limited to 20 years; and those for "specific use[s] … under consideration by the Congress" may not exceed five years. 43 U.S.C. § 1714(d). Emergency withdrawals may last only three years, and may not be renewed as emergencies. *Id.* § 1714(e).

Further, for large- but not small-tract withdrawals, the Secretary must present to congressional committees: a "clear explanation" of the reasons for the withdrawal, *id.* § 1714(c)(2)(1); an evaluation of the environmental impact of the current uses and the economic impact of the change, *id.* § 1714(c)(2)(2); an identification of present land uses and users, including how these will be affected by a withdrawal, *id.* § 1714(c)(2)(3); an explanation of what provisions will be made for continuation or termination of existing uses, *id.* § 1714(c)(2)(4); a statement of consultation that has or will occur with local governments and other impacted individuals and groups, and of the withdrawal's impact on these parties,

id. § 1714(c)(2)(7) – (8); a statement of the time and location of public hearings or other public involvement, *id.* § 1714(c)(2)(10); a statement of where the records of the withdrawal can be examined by interested parties, *id.* § 1714(c)(2)(11); and a report prepared by a qualified mining engineer, engineering geologist, or geologist concerning general geology, known mineral deposits, past and present mineral production, and present and future market demands, *id.* § 1714(c)(2)(12). This detailed, mandatory, information gathering ensures that the Secretary must carefully consider large-tract withdrawals, evaluate relevant information, consult with the public, and consider local government input before making a decision.

NMA's argument that FLPMA's notice and detailed report requirement is meaningless absent a veto, NMA 48–52, contradicts Supreme Court precedent in *Chadha* and *Alaska Airlines*. In those cases, the Court concluded that retaining provisions requiring reports to Congress preserved congressional oversight and Congress's ability to influence or repeal the executive action. *Chadha*, 462 U.S. at 934–35 ("Congress' oversight of the exercise of this delegated authority is preserved" through report to Congress); *Alaska Airlines*, 480 U.S. at 689–90.[9] Moreover, the report requirement ensures that Interior will carefully evaluate a

[9] Other courts agree. *See Ala. Power Co.*, 307 F.3d at 1308 (severing veto from reporting requirement because "[t]hrough the reporting requirement, Congress will still have the ability to keep tabs on the Secretary's use of … discretion"); *Gulf Oil Corp. v. Dyke*, 734 F.2d 797, 804-05 (Temp. Emer. Ct. App. 1984) (adopting *Chadha*'s reasoning).

proposed withdrawal and solicit public input. This is exactly how the PLLRC envisioned the reporting requirement would improve executive decisionmaking. *See* PLLRC Report at 55, NMA-ER 99 ("[E]valuation of the merits of proposed withdrawals" is an "essential step[] … to be[ing] consistent with sound land use planning").[10]

NMA is also wrong to imply that the reporting requirements would lack teeth but for the veto because Congress can only control the Executive by overriding a withdrawal. NMA 52–53. Congress has many other options, such as limiting Interior's appropriations, pressuring the Secretary with hearings, information requests, letters, and proposed legislation, and denying the Secretary other priorities if the withdrawal is not undone. Congress can better employ all

[10] NMA's reliance on the refusal of the court in *City of New Haven* to sever the report from the veto because Congress was not interested in obtaining information from the executive is misplaced. NMA 50. There, the court found the report would not have aided Congress because existing law already required the President to submit information about the executive action subject to a veto. *See City of New Haven v. United States*, 634 F. Supp. 1449, 1457 n.11 (D.D.C. 1986). And while NMA contends that "Congress already received notice" of large-tract withdrawals before FLPMA, NMA 51 n.24 (citing PLLRC Report at 44, NMA-ER 95), that notice was spectacularly ineffective. The pre-FLPMA notice was provided pursuant to "informal agreement," PLLRC Report at 44, NMA-ER 95, and was so deficient that the PLLRC could not even determine "the extent of existing Executive withdrawals and the degree to which withdrawals overlap each other." PLLRC Report at 52, NMA-ER 96. Section 204(c)(1)'s detailed mandate for reporting and informing Congress and the public is much more robust than prior informal agreements.

these tactics because FLPMA mandates notice, study, reporting, and disclosure concerning each large-tract withdrawal.[11]

Important distinctions also remain between large-tract and emergency withdrawals absent the veto. In non-emergency situations, the Secretary must provide advance public notice, public involvement, and must carefully weigh a multitude of factors *before* making a decision, all requirements that do not constrain the Secretary in making emergency withdrawals. 43 U.S.C. § 1714(b), (c)(2), (h). By contrast, emergency withdrawals can only be made where the Secretary determines "that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost," a requirement that does not apply absent emergencies. *Id.* § 1714(e).

[11] NMA also alleges that FLPMA's limits on large-tract withdrawal "provide no meaningful constraint" on the Executive in part because withdrawals are "infinitely renewable." NMA 48, 51. But FLPMA restricts extensions. 43 U.S.C. § 1714(f); *New Mexico v. Watkins*, 969 F.2d 1122, 1124, 1135–37 (D.C. Cir. 1992) (invalidating Interior decision to extend a large-tract withdrawal when the agency simultaneously amended the withdrawal's purpose, an action FLPMA prohibits). Professor Getches called the provision ending the Executive's authority to make indefinite-term large-tract withdrawals "*probably the most important limit on the executive's withdrawal authority under the FLPMA*" because it "forces rethinking the wisdom of a withdrawal periodically," something that Interior was not forced to do before FLPMA. Getches, 22 Nat. Resources J. at 324 (emphasis added), Trust-SER 271.

7. The Text Of The Legislative Veto Undermines Any Claim That It Was Meant As A Strong Check Against Executive Authority.

NMA's argument that the legislative veto is inseverable from FLPMA section 204(c)(1) exaggerates the importance of a particularly weak variety of veto. Downplaying the significance of time limits, reports, hearings, and notices in cabining the delegated time-limited withdrawal authority, NMA exalts the legislative veto as the only effective check on executive withdrawals. NMA 51. This argument ignores that FLPMA's veto requires disapproval by both houses, making it more difficult to implement, and thus a feebler check on Executive action, than a one-house veto. *See Chadha*, 462 U.S. at 923 (severing one-house veto); *Alaska Airlines*, 480 U.S. at 682 (same). And the veto provision is poorly drafted, something one would not expect if Congress regarded the veto as the most important bulwark against unfettered executive withdrawal authority.[12]

8. Section 204(c)(1) Is Fully Operative Without The Veto.

"A provision is further presumed severable if what remains after severance is fully operative as a law." *Chadha*, 462 U.S. at 934 (internal quotation marks omitted); *accord Alaska Airlines*, 480 U.S. at 684–85 ("[W]hen Congress enacted

[12] The veto requires a "concurrent resolution" stating that "such House does not approve the withdrawal." 43 U.S.C. § 1714(c)(1). Concurrent resolutions generally address the sentiments of both chambers, not a single house. The veto provision also refers to a "Presidential recommendation," a procedure not present in subsection 204(c). *Id*. *See also* Getches, 22 Nat. Resources J. at 318 n.225, Trust-SER 265 (veto provision is "fraught with interpretive problems").

legislative-veto provisions, it contemplated that activity under the legislation would take place so long as Congress *refrained* from exercising that power."). That standard is satisfied here, for if the legislative veto is struck, FLPMA would operate in the same manner as if the veto was not exercised.

NMA's argument to the contrary is unpersuasive. NMA 35–37. Invalidating any part of a law will necessarily change it. The question is not whether FLPMA will be exactly the same after severance, but whether Congress would have preferred to eliminate entirely the Executive's ability to make any non-emergency, time-limited large-tract withdrawals absent the veto. *See Alaska Airlines*, 480 U.S. at 685. Neither FLPMA nor its legislative history provides strong evidence Congress wanted that result.[13]

D. FLPMA's Legislative History Lacks Strong Evidence Contradicting Severability.

The snippets of legislative history NMA and AEMA cite do not provide strong evidence that Congress would have given the Executive no authority to make large-tract withdrawals if Congress did not have the authority to veto such withdrawals. NMA 41–42; AEMA 28–29. "[T]he authoritative source for finding the Legislature's intent" outside of the text of the bill itself "lies in the Committee Reports on the bill." *Garcia v. United States*, 469 U.S. 70, 76 (1984). "Stray

[13] The Trust adopts Interior's arguments concerning the Property Clause and separation of powers. DOI 41–42.

comments by individual legislators, not otherwise supported by statutory language or committee reports, cannot be attributed to the full body." *In re Kelly*, 841 F.2d 908, 912 n.3 (9th Cir. 1988).

The Senate, House, and Conference Committee reports do not aid NMA's cause. The Conference Report contains two sentences describing the competing House and Senate provisions, and says nothing at all about vetoing withdrawals. H.R. Rep. No. 94-1724, at 58, 66 (1976) (Conf. Rep.), *reprinted in* 1976 U.S.C.C.A.N. 6227, 6230, 6237 (*see* Addendum 76, 77). The House report confirms that the House intended to terminate the Secretary's implied withdrawal authority and delegate to the Secretary "subject to certain procedural controls, authority to create, modify, and terminate *all withdrawals* … existing and proposed *other than those reserved by the bill to the Congress*." H.R. Rep. No. 94-1163, at 3–4, 9 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6175, 6178, 6183 (emphasis added) (*see* Addendum 61–64, 70–71). The report nowhere indicates that the House would not have made that delegation in the absence of a legislative veto.

Meanwhile, the Senate adopted *no provisions* limiting the Executive's withdrawal authority in S. 507, the Senate's precursor to FLPMA. The report accompanying S. 507 is similarly silent. *See* S. Rep. No. 94-583, at 1–24 (1975) (*see* Addendum 79–102). The Senate's silence shows that it had no interest in regulating executive withdrawals, undermining any claim that Congress would

have wanted to retain all authority over time-limited, large-tract withdrawals absent the veto.[14] Conference Committee documents confirm this conclusion, identifying the legislative veto as consistent only with the House's approach. *See* Staff of Committee on Conference of S. 507, 94th Cong., Federal Land Policy and Management Act & Natural Resource Lands Management Act (Comm. Print) at 748, 767–69 (1976) (*see* Addendum 104–110); *see also* AEMA-ER 81–82 (district court opinion).

While NMA cites a few remarks from House members supposedly touting the veto's importance, the record undermines any implication that even the House would have retained the authority to make all time-limited large-tract withdrawals. NMA alleges that FLPMA's chief House sponsor, Rep. Melcher, "highlighted how crucial the legislative veto was to Congress's limited delegation." NMA 40. But Rep. Melcher downplayed the veto's significance as a check on the Executive's authority: "The bill does not in any way limit or interfere with [the Secretary's] authority to make the withdrawal." 122 Cong. Rec. H7600 (July 22, 1976) (emphasis added) (*see* Addendum 58). Severing all of section 204(c)(1) would not

[14] NMA claims that the Senate's disinterest in any limits on withdrawals is irrelevant because the Senate ultimately approved FLPMA. NMA 37–38 n.14. But the fact that the Senate acquiesced to the House cannot possibly represent "strong evidence" that the Senate would have preferred Congress to retain all large-tract withdrawal authority if FLPMA did not contain a legislative veto. The Senate clearly preferred less congressional oversight to more.

just "limit or interfere" with the Secretary's large-tract withdrawal authority, it would eliminate it entirely.[15]

Contrary to NMA's assertion, NMA 42–43, this is not a case like *City of New Haven v. United States*, in which the court could find "[n]owhere in the legislative history … the slightest suggestion that the President be given statutory authority to defer funds without the possible check of … a … veto." 809 F.2d 900, 908 (D.C. Cir. 1987). Here, Congress was a house divided on whether Congress should place *any* limits on the Executive's withdrawal authority.[16]

Instead, this case is closer to *Gulf Oil*, where the appellate court severed a legislative veto. 734 F.2d at 802–05. There, the court found that even the "presence of continued and heated debate" did not make it "evident that Congress would have declined to enact [the laws] without the … veto provisions." *Id.* at

[15] NMA argues that when Congress was warned a one-house veto might be unconstitutional, it "did not simply dispense with the veto," but adopted a two-house veto. NMA 38 n.15. This argument does not help NMA. It shows that when faced with the potential unconstitutionality of the House's chosen veto mechanism, Congress did not take the safest course to ensure congressional control (prohibiting the Executive from making large-tract withdrawals), but adopted a veto that would be harder to exercise, showing it preferred weaker oversight rather than certain authority.

[16] Nor is *Western States Medical Center v. Shalala* on point. 238 F.3d 1090 (9th Cir. 2001); NMA 43–44. There, this Court examined legislative history and held that the entire statute represented a trade-off between exempting certain pharmacy practices from a federal drug law in return for a prohibition (ultimately held unconstitutional) on promoting certain drugs. *Western States*, 238 F.3d at 1097. The legislative history here provides no evidence that the legislative veto was the fulcrum of a trade-off that drove Congress's legislation of withdrawal authority.

804. *Gulf Oil* follows *Chadha* in concluding that without the veto, congressional oversight purposes were served through the laws' requirement that the Executive report to Congress. *Id.* at 804–05 (citing *Chadha*, 462 U.S. at 935 n.9). Here, while some in the House showed "reluctance" to delegate time-limited large-tract withdrawal authority to the Executive, that alone is not "strong evidence" demonstrating that a legislative veto is inseverable. *See Chadha*, 462 U.S. at 932. This Court should therefore sever the veto and leave the remainder of the statute intact.

II. INTERIOR COMPLIED WITH FLPMA.

A. The Secretary Has Broad Discretion To Make Temporary Large-Tract Withdrawals.

Although FLPMA limits the process for making, and the duration of, large-tract withdrawals, the Secretary has broad discretion to identify a withdrawal's purpose and scope. The Secretary may make withdrawals for the purpose of limiting uses such as mining "in order to maintain other public values in the area." 43 U.S.C. § 1702(j); *accord* 43 C.F.R. § 2300.0-5(h). *See also Mount Royal Joint Venture v. Kempthorne*, 477 F.3d 745, 756 (D.C. Cir. 2007) (finding FLPMA did not prevent Secretary from making large-tract withdrawal of lands Congress proposed to protect because FLPMA permits Secretary to "withdraw such a land tract for *any purpose*") (emphasis added); Getches, 22 Nat. Resources J. at 317–18, Trust-SER 264–65 (large-tract withdrawal authority imposes "[f]ew substantive

restrictions"); Getches, 22 Nat. Resources J. at 320, Trust-SER 267 (withdrawals "5,000 acres and larger [] may be made ... for *any purpose*") (emphasis added). FLPMA does not limit the "public values" that a withdrawal may "maintain." *See* 43 U.S.C. § 1714(c).

Ignoring FLPMA's plain language, Appellants attempt to manufacture several limits on the Secretary's discretion. Metamin first contends that FLPMA limits the Secretary's withdrawal authority "to instances when the proposed use *will* cause environmental degradation." Metamin 34 (emphasis added). To support its argument, Metamin erroneously relies on, and misquotes, a requirement that the Secretary must *report* to Congress how the land use to be limited by withdrawal will affect "natural resource uses and values," including whether a withdrawn use "*might* cause" environmental degradation. 43 U.S.C. § 1714(c)(2)(2) (emphasis added). That the Secretary must disclose certain potential impacts does not place a substantive limit on the Secretary's withdrawal authority.[17]

AEMA implies that the Secretary may not withdraw lands unless she concludes that public values will be "significantly impacted." AEMA 41; *see also* AEMA 46 (alleging Withdrawal unlawful because it will "not significantly increase protection" for the area). Metamin similarly asserts that "FLPMA does

[17] Further, neither Metamin's amended complaint nor its brief below raised this argument, so it is waived. *Edlund v. Massanari*, 253 F.3d 1152, 1158 & n.7 (9th Cir. 2001).

not authorize a conservative approach when closing public land" to certain uses through withdrawal. Metamin 37. But neither AEMA nor Metamin cites a single statute, regulation, or precedent to support the contention that the Secretary may only withdraw lands to prevent a specific threshold of impacts to natural and other resources.

Alternatively, Metamin and AEMA point to an Interior guidance manual that states that "withdrawals shall be kept to a minimum" and that applications submitted to the Secretary must demonstrate a need for the withdrawal, including "an explanation of why existing law or regulation cannot protect or preserve the resource." Metamin 35; AEMA 32, 34; *see* Metamin Add. 164–66 (department manual 603). This argument fails for the reasons set forth in Interior's brief, DOI 91–98, which the Trust adopts.

B. Record Evidence Supports The Withdrawal's Resource Protection Purposes.

The Secretary provided four rationales for the Withdrawal: (1) the protection of water resources; (2) the protection of American Indian and cultural resources; (3) the protection of wildlife and visual resources; and (4) the fact that uranium mining could continue at its historic level under the Withdrawal. *See supra* 10. While Appellants' attack each conclusion, the record abundantly supports the Secretary's rationales, and there is a rational connection between the facts found in

the EIS and the decision the Secretary made. *Barnes v. U.S. Dep't of Transp.*, 655 F.3d 1124, 1132 (9th Cir. 2011).

1. Water Resources

The Secretary approved the Withdrawal in part as a cautious measure to protect scarce water resources in the Grand Canyon region from uranium mining impacts. AEMA-ER 173–74. AEMA, Metamin, and Mr. Yount argue that the record does not support the Secretary's reasoning and that the existing regulatory framework is sufficient to protect water resources from radioactive uranium pollution and other mining harms. AEMA 38; Metamin 29–30, 54–64, Yount 27–28. These claims ignore history, scientific studies, significant hydrologic uncertainty, and the potential for mining accidents, all solid grounds for the Secretary's careful approach.

In response to the Secretary's request, USGS completed a comprehensive hydrology study on past mining impacts to water resources in the Withdrawal area, which identified numerous sites where dissolved uranium concentrations exceeded EPA's maximum contaminant levels for drinking water. *See* DOI 52–53 (explaining studies); DOI-SER 8, 46–99. The report found "limited and inconclusive" patterns about whether or not mining impacted water quality across the Withdrawal area, largely due to data limitations. DOI-SER 97–99. At least some of the reported uncertainty resulted from the fact that existing data could not

rule out the potential for significant impacts to the R-aquifer from past or recent uranium mining because "[a]ffected groundwater, if any, may not have flowed yet to the points sampled in this study." DOI-SER 97; AEMA-ER 292 (FEIS). The USGS did find, however, that future mining may release more uranium into aquifers and springs. The report explained that numerous geologic features, including breccia pipes (where uranium deposits are found and mining occurs), can act as conduits for uranium-polluted water into aquifers that feed area seeps and springs. DOI-SER 51; Trust-SER 119.

BLM incorporated the USGS report and conducted additional analyses for a total of 687 sampling locations to inform its analysis. Metamin-ER 143–45. The FEIS addressed uncertainties "by the use of best available information and conservative assumptions." AEMA-ER 298. Absent the Withdrawal, the FEIS found that uranium mining could pollute water and lower aquifer levels in some areas. *See* AEMA-ER 311–16 (potentially major impacts on South Parcel surface waters and R-aquifer springs); AEMA-ER 302 (potentially moderate impacts on water quality of North Parcel perched aquifer springs); *id.* 302–03 (potential depletion of perched aquifers in North Parcel), *id.* 313–17 (potential moderate impacts to surface water quality, quantity, and stream function). These potential

harms would be reduced or completely eliminated by the Withdrawal. *See* AEMA-ER 322; DOI-SER 288–91. [18]

Based on water's critical importance in this arid environment, and the potential, albeit low, of uranium contamination degrading that crucial resource, the Secretary properly exercised his discretion to maintain this public value by approving the Withdrawal.

AEMA claims the Secretary "vastly overstated the potential risk of impacts from mining on water resources to justify" the Withdrawal because the FEIS failed to assume compliance with current laws and regulations in its analysis. AEMA 38. But the FEIS *did* assume compliance with applicable laws and regulations; AEMA simply disagrees with the FEIS's results and conservative assumptions. *See* DOI 59; DOI-SER 286 (for groundwater analysis, "it is assumed that mines comply with all applicable state and federal regulations"). And while AEMA and Metamin complain that Interior's assumptions are overblown, AEMA 36–37; Metamin 60–64, at least one expert concluded Interior *underestimated* potential harm to groundwater. *See* Trust-SER 176–78 (hydrogeology professor commenting that the FEIS underestimated potential impacts to the R-aquifer, and FEIS omitted

[18] Mr. Yount and AEMA argue that the FEIS's estimated 13.3% probability of an impact to perched aquifer springs or wells is unsupported because mitigation will protect perched aquifers. Yount 16–17, AEMA 37–38. As DOI explains, this claim is meritless. DOI 54-56.

important research). The record shows potential risks to water resources due to uranium mining even assuming compliance with environmental statutes.

AEMA also complains that contrary opinions regarding potential risks to water from a few Interior personnel "demonstrate[] that the record does not support" the Withdrawal's purpose. AEMA 33–35. Disagreement among agency personnel, however, does not render a decision arbitrary and capricious if record evidence supports the decision. *See Nat'l Ass'n of Homebuilders v. Defenders of Wildlife*, 551 U.S. 644, 658–59 (2007) (stating that internal inconsistency within agency does not by itself render agency decision arbitrary and capricious); *WildEarth Guardians v. Nat'l Park Serv.*, 703 F.3d 1178, 1186–87 (10th Cir. 2013) ("[A] diversity of opinion by local or lower-level agency representatives will not preclude the agency from reaching a contrary decision."). *See also* DOI 59–60.

Where, as here, an agency is "making predictions, within its area of special expertise, at the frontiers of science ... a reviewing court must generally be at its most deferential." *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 103 (1983); *Lands Council v. McNair*, 537 F.3d 981, 993 (9th Cir. 2008) (same). The Secretary acknowledged the uncertain nature of the existing science and concluded that although "the likelihood of a serious impact may be low," such an event would be "significant." AEMA-ER 173. This Court should defer to that well-supported conclusion.

2. American Indian and cultural resources

The Secretary properly relied on abundant record evidence in adopting the Withdrawal in part to protect American Indian resources for the area's seven tribes, resources that are "public values" to be "maintain[ed]" under a FLPMA withdrawal. 43 U.S.C. § 1702(j); AEMA-ER 175. Nevertheless, Appellants claim that such evidence is lacking and, regardless of record support, claim protecting tribal resources is an improper justification for the Withdrawal. Metamin 50–51, AEMA 39–40, Yount 7–23, Utah 6, 13–16. Both these arguments fail.

a. The Grand Canyon region is a unique and critically important cultural landscape for American Indian tribes.

American Indian tribal groups have lived and interacted in the landscapes within the Withdrawal area since time immemorial. Trust-SER 175, 181, 203. These tribes "combined their subsistence strategies within [the Grand Canyon region's] strikingly magnificent landscape, producing belief systems that incorporate earthly elements and religion and result in a feeling of sacredness for the region from which they as people cannot be separated." Trust-SER 175. The Withdrawal borders three Indian reservations (the Navajo, Kaibab Paiute, and Havasupai), and is a part of the aboriginal territory of four additional tribal groups, the Hualapai, Hopi, Zuni and Southern Paiute. AEMA-ER 272; Metamin-ER 110 (map). The Havasupai believe they are part of the Grand Canyon: "we feel our environment – the earth, the sun, the water, the air – this is us." Trust-SER 108,

113. "If our water were polluted," a Havasupai tribal leader stated, "we could not relocate … someplace else and still survive as the Havasupai Tribe. We are the Grand Canyon." Trust-SER 121.

As a part of formal government-to-government consultation, BLM and the Forest Service held more than forty meetings with tribes while preparing the EIS. DOI-SER 407–09. The National Park Service and BLM also each commissioned surveys to gather information on American Indian and cultural resources in the area. Trust-SER 159 (BLM), 194 (Park Service).[19]

Interior used the reports to analyze uranium mining's potential impacts on two categories of values: cultural resources and American Indian resources. Cultural resources were defined as "prehistoric and Historic period archaeological sites and historic buildings and structures," including "places of traditional religious and cultural importance." DOI-SER 326. By contrast, American Indian resources were defined as "places regarded as important to American Indian cultures and traditions," including "tribal homelands, places of traditional importance, traditional use areas, trails, springs and waterways, and sacred sites." DOI-SER 120; AEMA-ER 334.

[19] Tribes also supplemented the information gathering with their own cultural studies and comments. *See* Trust-SER 101–05 (Navajo congressional testimony), *id.* 152–53 (Kaibab Paiute comment), *id.* 158 (Hualapai study).

In its cultural resources evaluation, the FEIS identified 447 sites within the Withdrawal area that were eligible for the National Register of Historic Places, twelve that are presently listed, and almost 2,000 unevaluated sites. DOI-SER 187–88, Trust-SER 174. Because so little of the Withdrawal area has been surveyed, hundreds if not thousands more sites likely exist there. *See* DOI-SER 188 ("[P]erhaps as few at 10% of the expected sites have been identified in the North and East parcels.") Although the FEIS found that no cumulative impacts to cultural resources would be expected due to regulatory compliance and mitigation, it concluded that there could be some direct impacts to cultural resources from physical land disturbances. DOI-SER 327–30.

In its American Indian resources analysis, however, the FEIS found extensive natural resources, springs, trails, seasonal camps, traditional use areas, subsistence areas, and dance sites important to the tribes in the area. DOI-SER 198–202.[20] The FEIS determined that the region's tribes "see their history and culture as being bound and expressed in the [Grand Canyon] landscape," and the Havasupai, Hopi, and Zuni tribes believe they emerged into this world from within the Grand Canyon and were placed there to care for the Canyon and lands around it. AEMA-ER 269–71.

[20] The FEIS notes that that the data reviewed likely represents only a "fraction" of the area's American Indian resources because many tribes do not share traditional and sacred knowledge with outsiders. AEMA-ER 336, Trust-SER 212 (stating Zuni did not disclose information).

Unlike for cultural resources, the FEIS determined that "mitigation may be difficult or impossible in many cases" for American Indian resources, and "damage to the values of significant, connected places may be irreversible and irreparable, regardless of reclamation." AEMA-ER 335. Absent a withdrawal, the FEIS found potential impacts to American Indian resources that may be "significant," and that may disrupt ceremonial activities detrimental to tribes' culture. DOI-SER 336–37. The FEIS concluded that the cumulative disturbance to tribal resources could ultimately result in the loss of function and sacredness of these places. AMEA-ER 338. Based on this record, the Secretary had ample basis to conclude that "any mining within the sacred and traditional places … may degrade the values of those lands to the tribes that use them," and that "it is likely that the potential impacts to tribal resources could not be mitigated." AEMA-ER 173.

Metamin, Yount, and AEMA also claim that the Withdrawal is not necessary because existing laws would adequately protect tribal resources absent the Withdrawal. AEMA 39–40; Metamin 48; Yount 6–7. They point, however, only to the FEIS's analysis of "Cultural Resources," ignoring the FEIS's conclusion that unrestrained mining would significantly damage American Indian resources.[21]

[21] Metamin claims that "FLPMA does not authorize withdrawals based on the belief that mining wounds the earth," arguing that the American Indian worldview that mining negatively impacts the land is improper for Interior to consider. Metamin 47, 49–50. But FLPMA provides the Secretary with sufficiently broad authority to withdraw lands to protect the tribes' "functional use of the area's

Similarly, Mr. Yount's claim that these landscapes, trails, and use areas are historical relics, Yount 18, ignores evidence of current and continued tribal use. *See, e.g.*, Trust-SER 181 (describing continued Hopi use of region); DOI-SER 199-201 (describing continued Havasupai, Hopi and Hualapai use).

b. The Secretary has authority to protect Grand Canyon area tribal resources.

Metamin, Yount, and Utah misconstrue FLPMA and American Indian cultural-sites law to assert that the Secretary has no authority to protect tribal resources on public lands in the Withdrawal area. Metamin 50–53; Yount 8–32; Utah 13–19. Their claims all fail because statutory and executive policy support "solicitude" towards American Indian cultural resources in public lands decisionmaking. *See Lyng v. Nw. Indian Cemetery Prot. Ass'n*, 485 U.S. 439, 454–55 (1998).

First, under FLPMA, American Indian and cultural resources are "public values" that the Secretary may safeguard through a withdrawal. 43 U.S.C. § 1702(j). This is underscored by the fact that FLPMA requires generally that "the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values." 43 U.S.C. § 1701(a)(8). American Indian and cultural

---

natural resources," AEMA-ER 175, a well-supported conclusion based on consideration of numerous impacts of mining, of which concern about wounding the earth was but a minor part. AEMA-ER 334–35.

resources unquestionably include "historical" and "archeological" values public lands management aims to protect, and American Indian resources are inextricably intertwined with ecological, environmental, water and other resources.

Second, numerous statutes and executive policies provide federal land management agencies with broad authority to protect cultural landscapes and sacred sites and to accommodate tribes' traditional values and uses.[22] For example, this Court has noted that Interior must comply with Executive Order 13,007, which requires federal agencies to accommodate tribal access to and ceremonial use of sacred sites and to avoid physical damage to those sites "to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions." Exec. Order No. 13,007, 61 Fed. Reg. 26,711 (May 24, 1996); *S. Fork Band Council of W. Shoshone of Nev. v. U.S. Dep't of Interior*, 588 F.3d 718, 724 (9th Cir. 2009). In interpreting these laws and policies, federal courts hold that land management agencies, in their discretion, may protect American Indian resources.

[22] *See, e.g.*, 1978 American Indian Religious Freedom Act, 42 U.S.C. § 1996 (affirming policy of the United States to protect American Indian traditional religions and access to sites); 1992 National Historic Preservation Act Amendments, 54 U.S.C. §§ 302701, 302706 (supporting tribal religious and cultural sites to be included in National Register of Historic places); Cultural and Heritage Cooperation Authority, 25 U.S.C. §§ 3051-56 (permitting tribal gathering of forest products, reburials on forest lands, temporary forest closures for tribal cultural practices); Exec. Order No. 13,175, 65 Fed. Reg. 67,249, 67,250 (Nov. 6, 2000) ("Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.").

See, e.g., *Mount Royal*, 477 F.3d at 758 (upholding FLPMA large-tract withdrawal based in part on tribal resource protection rationale); *Access Fund v. U.S. Dep't of Agric.*, 499 F.3d 1036, 1046–47 (9th Cir. 2007) (upholding agency decision to ban rock climbing to protect tribe's resources in national forest).[23]

These cases stand for the principle that agencies generally have discretion to protect tribal resources, a principle Metamin, AEMA, and Mr. Yount overlook. Instead, they argue that cases upholding agency decisions *opting* not to protect tribal resources mean that agencies *cannot* protect tribal resources. *See* Metamin 50, AEMA 40, Yount 8–13, citing, *inter alia*, *Lyng*, 485 U.S. at 453–58; *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1073 (9th Cir. 2008) (en banc); *Havasupai Tribe v. U.S. Forest Serv.*, 752 F. Supp. 1471, 1485–86 (D. Ariz. 1990), *aff'd Havasupai Tribe v. Robertson*, 943 F.2d 32 (9th Cir. 1991). But while these cases hold that agencies generally cannot be *compelled* to protect tribal resources, none undermine the key principle that agencies are *empowered* to protect tribal resources on public lands should they decide to do so, as Interior did here. *See Lyng*, 485 U.S. at 454 ("The Government's rights to the use of its own land, for

[23] *See also Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 975–77 (9th Cir. 2004) (protecting tribes' cultural site from mining, stating "protecting Native American … culturally[]important sites has historical value for the nation as a whole."); *Wyo. Sawmills, Inc. v. U.S. Forest Serv.*, 383 F.3d 1241, 1245 (10th Cir. 2004) (upholding Forest Service's preservation plan for tribal cultural site); *Fortune v. Thompson*, No. CV-09-98-GF-SEH, 2011 WL 206164 (D. Mont. 2011) (upholding Forest Service travel plan based, in part, on limiting interference with tribal cultural practices).

example, *need not and should not discourage it from accommodating religious practices* like those engaged in by the Indian respondents.") (emphasis added).

Nor does caselaw support Appellants' claim that agencies may accommodate protection of American Indian resources only with respect to small, discrete sites. Appellants suggest that this Court be the first to vacate an agency decision because the area protected is purportedly too large. *See* Metamin 51–53; Yount 19; Utah 13, 16–18. This Court should not do so. Courts afford agencies deference to the geographic scope of their protections as long as the record supports the decision. *See Mount Royal*, 477 F.3d at 758 (upholding 20,000 acre FLPMA withdrawal based, in part, on tribal cultural resource protections); *Wyo. Sawmills*, 383 F.3d at 1245 (upholding 20,000 acre "Area of Consultation" that was "considerably larger" than specific cultural site to protect and minimize impacts to historic resources and traditional cultural use); *Fortune*, 2011 WL 206164 at *3, n.5 (upholding agency decision that limited motorized travel within 129,000-acre Forest Service landscape in part to accommodate tribal concerns). This approach is consistent with federal policy and law that empowers tribal members to define the limits of their cultural sites.[24] The record here shows the existence of important landscapes and areas, as well as hundreds, if not thousands,

[24] *See* Exec. Order 13,007 (defining sacred sites as "identified by an Indian tribe, or an Indian individual determined to be an appropriately authoritative representative of an Indian religion").

of discrete American Indian sites located throughout each of the Withdrawal's three parcels, all of which Interior has discretion to protect. *See supra* 46. Appellants' arguments that the Secretary lacks authority to protect American Indian resources, or the factual basis to do so, fall short.

3. Wildlife and visual resources

Record evidence also supports the Secretary's rationale that the Withdrawal protects wildlife and visual resources, contrary to AEMA's assertions. AEMA 40–44. The record identifies many impacts to wildlife absent the Withdrawal, chemical and radiation hazards among them. DOI-SER 297–300, Trust-SER 128. The FEIS concludes that "given the reduced impacts (fewer acres directly and indirectly affected, fewer roads and power lines built, fewer haul trips generated) associated with [the Withdrawal], the magnitude of these impacts [to wildlife] is significantly less" than without the Withdrawal. DOI-SER 310.[25] Arizona's Game and Fish Department commented that mining may impact wildlife "directly by displacing wildlife[,] ... indirectly by fragmenting intact habitat, and adding toxic materials to the environment." Trust-SER 128.[26] The U.S. Fish and Wildlife

[25] *Compare* DOI-SER 310 (impacts to wildlife would be "moderate ... and long term" absent the Withdrawal), *with* DOI-SER 311 (under Withdrawal, impacts to wildlife would be "minor ... and long term"); DOI-SER 307–10 (describing increased potential for release of radionuclides into the environment and associated impacts to wildlife).

[26] Arizona's Game and Fish Commission voted "to support the ... Withdrawal." Trust-SER 66.

Service agreed with BLM's assessment that the Withdrawal would "remove potential threats" to threatened and endangered wildlife. DOI-SER 312–13 (FEIS noting potential impacts to imperiled species); Trust-SER 147–48 (BLM statement); Trust-SER 154–57 (Fish and Wildlife concurrence). The FEIS found that even minimal uranium contamination levels could harm aquatic organisms and riparian habitats, noting "impacts from increased uranium levels in surface waters could occur at every level of the foodweb." DOI-SER 296, 303. This evidence refutes AEMA's contention that "mineral exploration and development would have no apparent impact on wildlife." AEMA 43.

AEMA also argues that existing regulations and laws are sufficient to mitigate any adverse effects of mining on wildlife. AEMA 43. But the FEIS assumed compliance with all existing laws and still found that "the loss of and disturbance to vegetation and aquatic resources, along with alterations to the topographic features of the area, may impact habitat for numerous species." DOI-SER 296.

AEMA's argument ultimately rests on the assumption that "moderate" impacts to wildlife are insufficient to support a withdrawal. AEMA 44 (acknowledging FEIS's finding that certain wildlife impacts absent withdrawal will be "moderate"). FLPMA does not create such a threshold, and this Court should not impose one.

The record likewise supports the Secretary's conclusion that the Withdrawal would reduce impacts to visual resources. AEMA claims that the FEIS determined that impacts to visual resources absent the Withdrawal would only be moderate, not "major" as the Secretary concluded. AEMA 40–41. This is both irrelevant and incorrect. FLPMA imposes no requirement that a withdrawal prevent only "major" impacts. *Supra* 38-39. And the FEIS repeatedly found that impacts to visual resources from mining operations could be major. For example, the FEIS projected that "[t]he addition of 317,505 ore hauling truck trips" absent the Withdrawal "would create a major cumulative impact to visual resources ... from fugitive dust generated by truck traffic." DOI-SER 324.[27] The record also contradicts AEMA's argument that impacts to visual resources are "overstated" because BLM allegedly did not analyze the current regulatory scheme's mitigating effects. AEMA 41. To the contrary, the FEIS assumed compliance with all existing regulations and laws.[28] Because the record supports the Secretary's

[27] *See also* DOI-SER 318 (without Withdrawal, "impacts to visual resources could be moderate to major" in the North Parcel.); *id.* (same for East Parcel); DOI-SER 319 (same for South Parcel); DOI-SER 323 (absent Withdrawal, visual impacts from dust "would be moderate to major and long term"); DOI-SER 324 (Withdrawal's "reduction in mining operations and associated activities would result in reduced visual impacts with a magnitude of minor.").

[28] *See* Metamin-ER 115–24, 224. The FEIS specifically addressed mitigation in the context of visual resources. *See, e.g.*, DOI-SER 317 (at North Parcel, absent Withdrawal, "mining operation visual impacts ... in high use and visually sensitive areas could be difficult to mitigate"); DOI-SER 318 (same at East Parcel).

decision to protect wildlife and visual resources, this Court should reject AEMA's claims.

4. Continued uranium mining

The record also supports the Secretary's rationale that uranium mining could continue on valid existing claims and that "the economic benefits of continued uranium mining could still be realized by local communities." AEMA-ER 173, 175; DOI-SER 455–57 (describing predicted mining levels). The Withdrawal was made subject to valid existing rights, meaning that, subject to a "validity determination," those who had discovered a valuable mineral deposit before the Withdrawal could still mine in the Withdrawal area. AEMA 187. In a detailed analysis, Interior projected that eleven mines could potentially demonstrate that they had valid existing rights at the time of the Withdrawal. DOI-SER 455–57.

AEMA and Mr. Yount both argue that the Secretary's rationale is unsupported because Interior underestimated the uranium endowment in the withdrawn area and thus incorrectly balanced the economic impacts of the Withdrawal. AEMA 44–46; Yount 24–25. But the Secretary's rationale was based *not* on how much uranium would *not* be mined (and economic benefits foregone), but on the fact that some mining, and thus some economic activity, would *continue* under the Withdrawal. *See* AEMA-ER 173, 175–76. That conclusion would be true even if Interior's uranium-endowment estimates were dead wrong (which they

were not). Put differently, Interior never claimed that the Withdrawal would *not* have a "major effect on the economic benefits of mining." AEMA 44. Appellants' argument that Interior underestimated those economic benefits is simply not relevant to the Secretary's conclusion.

AEMA makes two other arguments that similarly do not hang together. First, AEMA asserts that "it is irrelevant whether some mining will continue if the withdrawal arbitrarily and unnecessarily limits mining exploration and development," thwarting the purposes of the Mining Law, FLPMA, and the 1984 Arizona Wilderness Act. AEMA 45. But this argument assumes the Withdrawal arbitrarily limits mineral exploration, the very assertion that AEMA seeks to prove. AEMA 31, 44. Regardless, Congress adopted FLPMA with the express purpose of granting the Secretary authority to withdraw lands from mineral entry. Congress also placed no limits on the Secretary's withdrawal authority in the 1984 wilderness law. *See* Arizona Wilderness Act of 1984, Pub. L. No. 98-406, 98 Stat. 1485 (1984); DOI 78.

Second, AEMA complains that the Withdrawal may force mining companies to obtain expensive validity determinations, discouraging them from developing their claims. AEMA 46. But Interior understood that validity determinations would be required after the Withdrawal and incorporated that consideration into its

estimate of the number of mines that would operate post-Withdrawal. DOI-SER 455–56.

To the extent AEMA and Mr. Yount argue that Interior violated FLPMA and the APA by underestimating the uranium endowment, regardless of whether that estimate affected the Secretary's decision to make the Withdrawal, that claim also fails. True, Interior based its estimates on a 1990 study, as AEMA points out. AEMA 45. But, as Interior observes, DOI 77–78, USGS experts drafted their own detailed, lengthy, peer-reviewed report that *updated* that study. DOI-SER 1, 21–38 (recalculating endowment for only the Withdrawal area); AEMA-ER 182.

Mr. Yount also contends that Interior miscalculated how much of the uranium endowment could be economically recovered.[29] Yount 24–26. But, as Interior explains, DOI 72–76, Interior's estimate that 15% of the endowment could be recovered is well supported, in part by industry experts, literature, and assumptions. DOI-SER 442–46 (adopting industry assumption that each mine will extract an average of 3 million pounds of uranium ore);[30] DOI-SER 447 (adopting

[29] Mr. Yount styles his argument as an APA claim but does not specify the statute under which his claim arises. Yount 23–27. If this Court construes his claim to arise under NEPA rather than FLPMA, it still fails because the FEIS included a full and fair discussion of the endowment and related economic impacts of continued mining, DOI-SER 248–81, 355–404, satisfying NEPA's "hard look" standard. *See Conservation Cong. v. Finley*, 774 F.3d 611, 621 (9th Cir. 2014).

[30] Using industry's estimate may well have *overstated* the amount of recoverable uranium given that it is more than twice the expected output from existing mines. *See* Trust-SER 132–40 (letter of economic expert).

industry assumption that six mines could operate simultaneously); Trust-SER 88–89 (explaining basis, including industry expert input, for 15% figure); Metamin-ER 288, 606–52 (industry report providing assumptions). AEMA and Mr. Yount disagree with Interior's numbers. But disagreement over such technical, scientific matters is squarely the sort where deference to the agency is warranted, especially where, as here, the agency has carefully justified its analysis. *See Conservation Cong.*, 774 F.3d at 617 ("[W]hen reviewing scientific judgments and technical analyses within the agency's expertise, the reviewing court must be at its most deferential.") (citation and internal quotation marks omitted).

C. The Scope Of The Withdrawal Was Proper.

Metamin and AEMA argue that the Secretary violated Interior's Departmental Manual, FLPMA, and the APA by including in the Withdrawal 200,000 acres of the North Parcel that are allegedly within the Virgin River watershed and outside the watershed that drains directly into the Grand Canyon. Metamin 35, 39–46; AEMA 34; *see also* Utah 10–12. This argument fails.

Interior cannot violate its manual because the manual is not legally enforceable. *See* DOI 91–94. And Interior did not violate section 103(j) of FLPMA, as Metamin contends. Metamin 39 (citing 43 U.S.C. § 1702(j)). Section 103(j) defines the term "withdrawal" in pertinent part as a "withholding" of land from some uses for the purpose of "limiting activities … in order to maintain other

public values" or "reserving the area for a particular public purpose or program." 43 U.S.C. § 1702(j). The Withdrawal falls into the first category – limiting activities to maintain other public values. Metamin's arguments based on the other category – reserving the area for a particular public purpose, *see* Metamin 34 – are thus irrelevant. But even if Interior must "provide a particular public purpose" for including the disputed 200,000 acres in the Withdrawal, the FEIS and ROD fit the bill: withholding those 200,000 acres, like the other 800,000, will maintain public values and serve a public purpose in the area by limiting uranium mining's damaging impacts on soil, water, wildlife, visual, tribal and other resources. *See, e.g.*, AEMA-ER 260 (map showing numerous mining claims in these 200,000 acres); *id.* 280 (water impacts in Virgin River watershed); Trust-SER 223–24 (cataloging ethnographic resources in the Fort Pierce Wash within the 200,000 acres); DOI-SER 179, 316–18, 322 (North Parcel visual resource impacts); *id.* 302–04 (wildlife impacts in Virgin River watershed).

Metamin's main gripe is that the Withdrawal's initial stated purpose was protection of the "Grand Canyon watershed," and it was thus arbitrary for the Secretary to withdraw lands where surface water may not flow into the Grand Canyon. Metamin 39–46; *see also* AEMA 32–34. This argument mischaracterizes the record. The Secretary proposed the withdrawal to protect the million acres of public lands identified in Representative Grijalva's proposed legislation, an area

that always included the 200,000 acres Metamin disputes. *See supra* 5–6.[31] The mere fact that the Secretary called the area the "Grand Canyon watershed" did not somehow limit his authority to approve the Withdrawal in order to protect the area's public values.[32]

Even if a law required the Secretary to demonstrate that uranium mining on the 200,000 acres of withdrawn lands could impact the Grand Canyon watershed as Metamin defines it, the record supports such a connection. First, while surface water in the western part of the Withdrawal's North Parcel flows roughly north into the Virgin River, Metamin-ER 138, groundwater flows in that area are less certain, and some may flow directly into the Grand Canyon. DOI-SER 177, AEMA-ER 280 (underground fault zones west of the North Parcel "likely collect and convey groundwater chiefly north toward central and southern Utah and *lesser amounts south toward the Grand Canyon*" (emphasis added)). *See also* DOI 81–82. The reverse is true in the northeast part of the North Parcel, where groundwater may flow north into Utah, DOI-SER 177, though surface water indisputably flows into the Canyon through Kanab Creek. Metamin-ER 140. Uncertainty about

[31] *Compare* Trust-SER 94, 95 (maps of legislation) *with* Metamin-ER 112 (map of proposed withdrawal).

[32] Metamin's reliance on BLM and EPA handbooks to define the term "watershed," Metamin 45; *see also* Utah 1, are irrelevant; neither govern the Secretary's withdrawal authority.

groundwater impacts was one justification for the Withdrawal. AEMA-ER 173–76, 298–99.

Second, even if ground or surface water does not flow from some of the North Parcel into the Grand Canyon, uranium mining there could still impact many public values on lands where water does flow into the Grand Canyon. *See* DOI 82–84. Watershed boundaries do not constrain how wildlife, air, or uranium dust from mining and ore transport. DOI-SER 307 ("Uranium and other radionuclides can be transported through the environment and contribute to exposure of biological receptors via atmospheric deposition, dust, runoff, erosion and deposition, groundwater and surface water, and the food chain."); AEMA-ER 315 ("[T]he primary mechanism of contaminant dispersal outside mine perimeters is fugitive dust."). And areas of tribal importance throughout the North Parcel, including ceremonial sites, are part and parcel of the tribal resources Interior aimed to protect. *See, e.g.*, AEMA-ER 337 (explaining that mining in the North Parcel would disturb "the traditional territory of the Southern Paiute," which the Southern Paiute see "as an interconnected series of places"). The Secretary thus had a reasoned basis for withdrawing lands in the North Parcel, whether or not ground or surface water from every acre of that parcel flows directly into the Grand Canyon.

D. Interior's Rationale For The Withdrawal Did Not Impermissibly Deviate From The Withdrawal Application.

AEMA cites a medley of FLPMA provisions, regulations, and policies to argue that Interior's rationale for the Withdrawal improperly deviated from the application for the withdrawal that BLM filed in 2009. AEMA 32–34. This argument is incorrect on several counts. First, there is no discrepancy between the Withdrawal rationale and BLM's application. *Compare* AEMA-ER 166 (ROD's statement that it documents Interior's decision to make the Withdrawal "to protect the Grand Canyon Watershed from adverse effects of locatable mineral exploration and development") *with* AEMA-ER 212 (application's statement that "[t]he purpose of the proposed withdrawal … would be to protect the Grand Canyon watershed from adverse effects of locatable hardrock mineral exploration and mining"). *See also* AMEA-ER 183 (describing origin, and consistent definition, of Withdrawal's purpose and need).

Second, AEMA gives no reason why it would be impermissible for Interior's reasoning for the Withdrawal to have evolved between the time the Secretary directed BLM to file the application in 2009, AEMA-ER 208–09, and when the Secretary exercised his expansive discretion to make the Withdrawal in 2012. The regulations and FLPMA section AEMA cites (43 C.F.R. § 2310.3-3; 43 U.S.C. § 1714(b)(1)) merely discuss the mechanics for withdrawals with reference to the withdrawal application; they do not say, as AEMA argues, that the Secretary must

"analyze the application to determine if the withdrawal was appropriate based upon the stated purpose of the applicant." AEMA 32, 34. *See also* DOI 90–91.

E. Interior Complied With FLPMA In Coordinating With Counties.

Metamin maintains that Interior violated FLPMA by failing to "meaningfully" coordinate with local governments. Metamin 64–77. Metamin relies on two sections of FLPMA: (1) the congressional reporting requirements in section 204(c)(2); and (2) the criteria in section 202(c) that the Secretary must apply when developing land use plans. Metamin 67.[33] Interior complied with the first section; the second is inapplicable.

FLPMA section 204(c)(2) requires that, for large-tract withdrawals, the Secretary furnish to Congress "a statement of the consultation" that Interior undertook with, among others, local governments, and a statement on potential impacts to "local government interests and the regional economy." 43 U.S.C. § 1714(c)(2)(7), (8). Interior's report to Congress contained this information. *See* Trust-SER 49–61 (report); Trust-SER 56–57 (describing consultation with local governments); Trust-SER 58–59 (describing Withdrawal's potential effect on local government interests and regional economies). Section 204 requires nothing more.

Section 202(c) lists directives to be followed by the Secretary "[i]n the development and revision of *land use plans*," including that BLM "coordinate"

[33] Metamin's passing citation to 43 U.S.C. § 1739(e), Metamin 68, is inapt for the reasons Interior states. DOI 85 n.27.

with local governments and others. 43 U.S.C. § 1712(c) (emphasis added); *id.* § 1712(c)(9). These directives do not apply to withdrawals. *See id.* § 1712(c) ("In the development and revision of land use plans, the Secretary shall…."); *id.* § 1712(e)(3) (providing that withdrawals must be made only under 43 U.S.C. § 1714). Interior thus could not (and did not) violate the intergovernmental-coordination provisions of FLPMA section 202(c).[34]

Even so, Interior took great pains to coordinate with local governments. In addition to collaboration Interior describes, DOI 86–87, Interior specifically sought information and analytical assistance from the Coalition-member counties (since they were NEPA cooperating agencies); gave the counties (as cooperating agencies) an advance opportunity to review and provide feedback on draft documents, *see, e.g.*, DOI-SER 425–26; held monthly conference calls with the cooperating agencies as it prepared the FEIS, Trust-SER 141–42, DOI-SER 425–26; had many other exchanges with the Coalition and its members, Trust-SER 106–07, 127, 130–31, 149–51 (e-mail and other correspondence with Counties); and engaged a second consultant to independently revise BLM's initial economic

[34] The cases Metamin cites, *see* Metamin 68, 73, do not hold or even suggest that FLPMA section 202 applies to withdrawals under section 204. *National Wildlife Federation v. Burford*, 835 F.2d 305, 322 (D.C. Cir. 1987), interpreted section 1739(e)'s public-participation provisions to apply to withdrawal-revocation decisions and said nothing of section 202(c)'s coordination requirements. *American Motorcyclist Association v. Watt*, 534 F. Supp. 923, 926 (D.C. Cal. 1981), involved a land management plan prepared under 43 U.S.C. § 1781, which is explicitly subject to section 202. *See* 43 U.S.C. § 1781(d).

analysis with input from the Coalition. Metamin-ER 283; Trust-SER 96–100, 143, 144–46.

Metamin's complaint, it seems, is not that Interior failed to adequately coordinate with local governments, but that Interior ultimately disagreed with them. Metamin 70. In support of its argument that Interior "marginalized local government participation," Metamin confesses a great deal of local government participation and simply disputes the accuracy of Interior's economic analysis. Metamin 69–71. But Metamin's mere disagreement with the *substance* of Interior's conclusions does not mean that Interior's consultation *process* violated FLPMA.

III. INTERIOR COMPLIED WITH NEPA.

A. Interior Complied With NEPA's Mandates Concerning Unavailable Information.

Metamin claims Interior violated NEPA by relying on inaccurate data and assumptions to conclude that "missing information on uranium mining's impacts to water resources and other natural resources was not essential to the [Withdrawal] decision-making process," and that NEPA required Interior to make additional disclosures to address the unavailable information. Metamin 55. Metamin's allegations lack merit. BLM diligently gathered and analyzed data and determined that additional data was not essential to making a decision to understand potential

uranium contamination risks. This Court should defer to Interior's reasonable conclusion.

Agencies must "make clear" in an EIS when "there is incomplete or unavailable information." 40 C.F.R. § 1502.22. "If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives" the agency must include that information in the EIS. *Id.* § 1502.22(a). If the agency determines the information is essential to a reasoned choice among alternatives and the cost is too exorbitant or the means to obtain the information "are not known," it must make additional findings. *See id.* § 1502.22(b). But if the agency reasonably concludes the information is not essential to a reasoned choice, after it describes what information is incomplete in the EIS, the agency's duties under section 1502.22 are satisfied.

As DOI explains, BLM met these standards. DOI 100–01. Further, BLM's use of "reasonable conservative assumptions" was appropriate to address scientific unknowns that may impact human health. For example, the FEIS used conservative assumptions on the South Parcel – such as assuming mine placement on either side of the groundwater divide, high concentrations of uranium and arsenic in mine drainage, average spring discharge volumes, and a range of measured ambient arsenic and uranium concentrations – to assess whether contaminated water may reach springs on the Havasupai Reservation and

groundwater wells at the towns of Tusayan and Valle. *See* AEMA-ER 291, 311–12, 321.[35]

Metamin attacks the Secretary's justification for concluding additional information was not essential, arguing that the Secretary's reliance on data regarding previously mined sites, particularly the Orphan Mine, was not representative of modern uranium mining impacts. Metamin 61. Yet BLM did not treat Orphan Mine as representative of modern mines; rather, it acknowledged that "the Horn Creek data [reflecting contamination from Orphan] represent the upper end of potential contamination that will be required to be addressed." AEMA-ER 293. And BLM sought other data from administering agencies and former mine personnel to round out its analysis. AEMA-ER 299.

Metamin further contends that the "conservative assumptions" the Secretary relied on to conclude unavailable information was not essential were "pure conjecture" and contradicted by the record. Metamin 64; 61–62. Metamin implies that Interior's assumptions are arbitrary because the record shows uranium mining has not, and cannot, impact water resources. *Id.* Metamin ignores potential major impacts to water resources that are unrelated to Interior's use of historic mining data and argues without support that Interior's assumptions are misleading. Given

[35] Contrary to Metamin's assertion, Metamin 57, the FEIS never "admits" that the unavailable information was "necessary." The FEIS merely characterized additional studies that could be done as "helpful" or "useful" in the future and stated some data "merit additional investigation." DOI-SER 301–02, 312.

the thorough effort Interior made to locate existing and develop new data, this Court should reject Metamin's invitation to flyspeck the EIS. *Lands Council v. McNair*, 629 F.3d 1070, 1074 (9th Cir. 2010) ("We are not to act as a panel of scientists, instructing the agency, choosing among scientific studies, and ordering the agency to explain every possible scientific uncertainty.") (internal quotation marks and citations omitted).

Courts regularly uphold agency decisions that rely on conservative assumptions to err on the side of environmental protection, particularly where, as here, significant public values are at stake. *See Baltimore Gas & Elec. Co.*, 462 U.S. at 103 (finding reasonable an agency decision to "counteract the uncertainties" inherent in its scientific analyses by "overestimat[ing]" environmental impacts); *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 610 (9th Cir. 2014) (upholding agency decision to use conservative data when "[f]acing great measurement uncertainty" and to "choos[e] an analytical tool that resulted in greater protections" for an imperiled species).

Neither of the cases Metamin cites aid its argument. In *Montana Wilderness Association v. McAllister*, this Court concluded the Forest Service could not make a reasoned conclusion that it was complying with the Montana Wilderness Study Act because the agency's flawed legal analysis "caused [the agency] to ignore an important aspect of the problem before it" and so to omit essential information.

666 F.3d 549, 560 (9th Cir. 2011), cited by Metamin 60. Interior made no legal error here, nor did it "ignore" the issue of potential impacts to water or other resources.

Native Village of Point Hope v. Jewell is similarly inapposite. 740 F.3d 489 (9th Cir. 2014), cited by Metamin 58–60. There, this Court stated that in determining compliance with 40 C.F.R. § 1502.22's mandates, it "will defer to the agency's judgment about the appropriate level of analysis so long as the EIS provides as much environmental analysis as is reasonably possible under the circumstances." *Id.* at 498. Because Interior provided reasonable analysis here, this Court should defer to the Secretary's decision that the missing information was not essential.

B. Interior Disclosed Conflicts With Local Land Use Plans.

Metamin asserts that in preparing the EIS, Interior violated NEPA by not allowing county governments "to fully participate as cooperators." Metamin 72. Metamin makes three complaints: (1) Interior "did not involve the Coalition in developing the alternatives"; (2) Interior "disregarded" Coalition members' comments on Interior's economic analysis; and (3) Interior "ignored" conflicts between the Withdrawal and "local land use plans and policies." Metamin 72–73. Each of these complaints is unsupported by the law and record.

First, while local governments may become cooperating agencies, no rule mandates that federal agencies involve cooperators in every phase of alternative development. *See* 40 C.F.R. §§ 1501.6, 1506.2 (discussing cooperating agencies, omitting reference to alternatives); DOI 106. Even so, Interior *did* seek input from the counties when developing alternatives. *See supra* 63–65; Metamin-ER 572, 581 (cooperating agency meeting minutes reflecting report on alternatives development and asking that meeting participants provide "further ideas for alternatives").

Second, the record shows that Interior did not "disregard" the counties' comments on the economic analysis, but simply disagreed with the counties in a considered exercise of technical judgment. *See supra* 64–65; Metamin-ER 283 (describing Interior's analysis), 589–90 (Interior consultation with counties on economic analysis).

Third, Interior did not "ignore" conflicts between the Withdrawal and local land use plans. An EIS need only "*discuss* any inconsistency of a proposed action with any approved State or local plan and laws ... [and] *describe* the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d) (emphasis added). The FEIS did that, analyzing Coconino and Mohave Counties' general plans and describing whether they were consistent with the Withdrawal. DOI-SER 227–32 (describing counties' plans); Metamin-ER 126–

27 (describing consistency).[36] NEPA does not require federal agencies to *conform* their proposed actions to local law. *See Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dep't of Interior*, 927 F. Supp. 2d 921, 946 (S.D. Cal. 2013), *appeal docketed*, No. 13-55704 (Apr. 26, 2013) (finding analysis of consistency with local laws to be sufficient under NEPA). Further, Interior could not have reconciled the Withdrawal with both counties' policies because Coconino supported the Withdrawal and Mohave opposed it. Metamin-ER 126–27; Trust-SER 73–80 (describing Coconino County's support for Withdrawal); *see also* DOI 104.

IV. THE FOREST SERVICE'S CONSENT TO THE WITHDRAWAL DID NOT VIOLATE THE NATIONAL FOREST MANAGEMENT ACT.

AEMA alone argues that the Withdrawal violated NFMA and other laws because the Withdrawal allegedly conflicts with Kaibab National Forest's management plan. AEMA 48–59. AEMA also argues that the Forest Service's consent to the Withdrawal was arbitrary. *Id.* 60. These arguments lack merit.

FLPMA provides that the Secretary may withdraw National Forest lands "only with the consent of" the Forest Service's Chief or Secretary of Agriculture. 43 U.S.C. § 1714(i); 43 C.F.R. § 2310.1-2(c)(3). The Chief provided his consent. AEMA-ER 340. AEMA contends that the Chief's consent violated NFMA and the

[36] The EIS did not discuss whether the Withdrawal was consistent with the general plans of the other counties because those counties had no jurisdiction over withdrawn areas. DOI-SER 164.

1988 Kaibab Forest Plan because the Withdrawal is inconsistent with that plan, which allegedly "provides" that certain forest lands "are open for location and entry." AEMA 55. This argument fails because forest plans cannot by law open or close lands to mineral entry.

FLPMA mandates that "public lands shall be removed from or restored to the operation of the Mining Law of 1872 ... *only* by withdrawal action pursuant to [43 U.S.C.] section 1714." 43 U.S.C. § 1712(e)(3) (emphasis added).[37] Decisions to close public lands to mineral entry can be made only by act of Congress or by express authority delegated by Congress, such as FLPMA's withdrawal authority or the Antiquities Act (which permits the President to withdraw lands for national monuments). 54 U.S.C. § 320301.

Thus, though the Forest Service may *regulate* mining operations under the NFMA, the Forest Service cannot open or close lands to mining through Forest planning.[38] Instead, a Forest Plan can only reflect the fact that some lands are open and others closed to mineral entry. A FLPMA withdrawal thus by its very nature

[37] FLPMA defines "public lands" to include "any land and interest in land" managed by BLM. 43 U.S.C. § 1702(e). BLM manages the mineral estate of Forest Service lands. *See Cal. Coastal Comm'n v. Granite Rock*, 480 U.S. 572, 585 (1987) (citing FLPMA).

[38] *Pacific Rivers Council v. Thomas* does not aid AEMA's case. 873 F. Supp. 365, 372–73 (D. Idaho 1995); AEMA 52–53. That case discussed the relevance of forest plans to mining *operations*, not to a Secretarial decision opening or closing areas to mining. *Pac. Rivers*, 873 F. Supp. at 372.

cannot conflict with a forest plan. *See* DOI 110–11 (making similar argument). AEMA's argument therefore fails.[39]

AEMA further complains that the Chief's consent letter contains only two sentences of explanation and is therefore inadequate. AEMA 60. But FLPMA does not supply a standard against which the Chief's consent must be weighed. *See* 43 U.S.C. § 1714(i); 43 C.F.R. § 2310.1-2(c)(3). The Forest Service also had ample basis for its decision, articulated not only in the Chief's letter (which provides basis enough), but in the FEIS, in whose preparation the Service was deeply involved. *See* AEMA-ER 340 (Chief's consent letter stating, "[t]he Forest Service has been a cooperator in the preparation of the [EIS] that considered the effects of this potential withdrawal and has been engaged in the process since it began"); DOI-SER 110 (FEIS represents "concerted efforts on the part of experts, specialists, and representatives of the … Kaibab National Forest," among others); *id.* 432 (listing 12 Forest Service staff among FEIS "Preparers").[40]

---

[39] Interior's argument, DOI 110, may be construed to urge that 16 U.S.C. § 472 curbed the Forest Service's authority to regulate the surface impacts of mining. This Court has rejected such an interpretation. *See Public Lands for the People, Inc. v. U.S. Dep't of Agric.*, 697 F.3d 1192, 1198 (9th Cir. 2012) (dismissing mining claimants' assertion that § 472 "restricts the [Agriculture] Secretary's discretion" to impose restrictions on alleged "rights in their mining claims.").

[40] Given the Forest Service's significant involvement in preparing the Withdrawal EIS, AEMA's claim that the agency failed to independently analyze the Withdrawal's impacts on Forest lands must fail. AEMA 60.

In attempting to devise a standard that the Chief's consent must meet, AEMA asserts that the Chief "fail[ed] to consider the Forest Service's multiple use mandate." AEMA 60. But that mandate, standing alone, "breathes discretion at every pore," and thus "can hardly be considered [to set] concrete limits upon agency discretion." *Perkins v. Bergland*, 608 F.2d 803, 806 (9th Cir. 1979) (alterations incorporated, quotations and citation omitted). The multiple use concept encourages agencies to consider and balance different uses. But because "not all uses are compatible," it does not require that every use occur on each acre of public land. *See Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 58 (2004). Here, the Forest Service had plentiful evidence to conclude that limiting a single use (hardrock mining) would benefit many other values.

V. THE WITHDRAWAL DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE.

The Trust adopts the section of Interior's brief that refutes Mr. Yount's argument that the Secretary violated the Establishment Clause. DOI 115–20; Yount 7. We further note that *Mount Royal Joint Venture v. Kempthorne* is directly on point. 477 F.3d at 756. There, the D.C. Circuit summarily rejected a similar Establishment Clause challenge to a FLPMA large-tract withdrawal where "[t]he Secretary enunciated several secular purposes for withdrawing the [lands in question], including protection of aquifers and the environment." *Id.* at 758. The D.C. Circuit upheld the withdrawal on FLPMA and constitutional grounds, stating

that the withdrawal "does not primarily affect religious interests; on the contrary, it protects all non-mineral resources in the [area]." *Id.*[41] The same is true here. The district court's decision denying Mr. Yount's Establishment clause claim should be upheld. AEMA-ER 43–45.

VI. IF THE COURT RULES FOR APPELLANTS, IT SHOULD REMAND WITHOUT VACATUR.

Should the Court rule for Appellants on any claim, the appropriate remedy would be remand without vacatur. Courts may remand illegal agency action without vacatur "when equity demands," for example, when necessary to prevent serious harm to the environment or public health. *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1405–06 (9th Cir. 1995) (retaining endangered species listing to avoid species' possible extinction while agency resolved defect on remand).[42]

In the typical case challenging agency action, remand with vacatur often has few consequences because the proposed action is suspended, maintaining the status

---

[41] *See also Fortune*, 2011 WL 206164 at *3 (finding Forest Service decision limiting motor vehicle travel did not violate Establishment Clause in part because the "Travel Plan sets forth a host of secular purposes, including benefits to air quality, water quality, soil quality, wildlife habitat, and fish habitat").

[42] Courts have also left an unlawful action in place where vacatur would have severely disruptive consequences or thwart the objective of the statute at issue. *See Cal. Cmtys. Against Toxics v. EPA*, 688 F.3d 989, 993–94 (9th Cir. 2012) (remanding without vacatur to avoid disruption to power supply); *W. Oil & Gas Ass'n v. EPA*, 633 F.2d 803, 813 (9th Cir. 1980) (retaining non-attainment designations to avoid thwarting purpose of Clean Air Act).

quo. This case is different. Vacatur would eliminate environmental protections, and open the Withdrawal area to location and entry under the mining law. This could cause significant environmental damage, including a rush to stake additional uranium claims and to conduct exploration activities to prove valuable discoveries. For example, the FEIS predicted, absent withdrawal, that more than 700 uranium exploration projects would occur over twenty years – about one new project *every ten days* – requiring as many as 3,640 drill holes. DOI-SER 450–51. Each exploration project (which could include road and drill pad construction) can disturb up to five acres, and can be undertaken based solely on notice to the relevant agency, without NEPA analysis. *See* 43 C.F.R. § 3809.21(a) (BLM); 36 C.F.R. § 228.4(a) (Forest Service); *Sierra Club v. Penfold*, 857 F.2d 1307, 1314 (9th Cir. 1988); DOI-SER 436–38. Mining operations during remand could also help companies obtain evidence needed to secure valid existing rights, and lead to development of more mines than the FEIS predicted, potentially irreparably impacting groundwater and other resources. Remand without vacatur is thus the appropriate remedy if any legal violation is found.[43]

[43] If this Court finds for Appellants but concludes additional factual development on remedy is necessary, it can remand to the district court for further action. *See, e.g., Alaska Wilderness Recreation & Tourism Ass'n v. Morrison*, 67 F.3d 723, 732 (9th Cir. 1995).

CONCLUSION

The Secretary properly concluded that because the Grand Canyon region "contains unique landscapes, is a sacred place for numerous tribes, and receives visitors from all over the world, it is appropriate to tread carefully." AEMA-ER 175–76. The Secretary's approval of the Withdrawal fully complies with law. This Court should affirm the district court.

Respectfully submitted, September 3, 2015

s/ Edward B. Zukoski
Edward B. Zukoski
Daniel Cordalis
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
(303) 623-9466
(303) 623-8083 (fax)
tzukoski@earthjustice.org
dcordalis@earthjustice.org

Roger Flynn
Western Mining Action Project
P.O. Box 349, 440 Main St. #2
Lyons, CO 80540
(303) 823-5738
(303) 823-5732 (fax)
wmap@igc.org

Attorneys for

Intervenor-Defendants-Appellees Grand Canyon Trust, Havasupai Tribe, Center For Biological Diversity, Sierra Club, and National Parks Conservation Association

Aaron M. Paul
4454 Tennyson St.
Denver, CO 80212
303-477-1486
apaul@grandcanyontrust.org

Counsel for the Grand Canyon Trust

STATEMENT OF RELATED CASES

This case related to, and is consolidated with, three cases pending before this Court, all of which challenge the same decision of the Secretary of Interior challenged in this appeal:

- *Metamin Enter. USA, Inc. v. Jewell*, No. 14-17351 (9th Cir. filed Nov. 28, 2014);
- *American Exploration & Mining Association v. S.M.R. Jewell*, No. 14-17352 (9th Cir. filed Nov. 28, 2014); and
- *Gregory Yount v. S.M.R. Jewell, et al.*, No. 14-17374 (9th Cir. filed Dec. 1, 2014).

CERTIFICATE OF COMPLIANCE

This brief is accompanied by a motion for leave to file an oversize brief pursuant to Circuit Rule 32-2 and is 17,815 words, as calculated by Microsoft Word 2010's "word count" function, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word 2010, Times New Roman, 14-point font.

s/ Edward B. Zukoski
Edward B. Zukoski

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2015, I electronically filed the foregoing RESPONSE BRIEF OF INTERVENORS-DEFENDANTS-APPELLEES GRAND CANYON TRUST and HAVASUPAI TRIBE, *et al.* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that one of the participants in the case is not a registered CM/ECF user. I have mailed the foregoing document by First-Class Mail, postage prepaid to the following non-CM/ECF participant:

Gregory Yount
807 W. Butterfield Road
Chino, Valley, AZ 86323

s/ Edward B. Zukoski
Edward B. Zukoski

ADDENDUM

INDEX TO
INTERVENORS-DEFENDANTS-APPELLEES
GRAND CANYON TRUST and HAVASUPAI TRIBE, *et al's*. ADDENDUM

Except for the following, all applicable statutes, etc., are contained in the addendum to Appellant Metamin Enterprises USA, Inc. *et al.*'s Opening Brief or in the addendum to Appellant American Exploration and Mining Association's Opening Brief. *See* Circuit Rule 28-2.7.

25 U.S.C.A. § 941m

§ 941m. General provisions

(a) Severability

If any provision of section 941b(a), 941c, or 941d of this title is rendered invalid by the final action of a court, then all of this subchapter is invalid. Should any other section of this subchapter be rendered invalid by the final action of a court, the remaining sections of this subchapter shall remain in full force and effect.

(b) Interpretation consistent with Settlement Agreement

To the extent possible, this subchapter shall be construed in a manner consistent with the Settlement Agreement and the State Act. In the event of a conflict between the provisions of this subchapter and the Settlement Agreement or the State Act, the terms of this subchapter shall govern. In the event of a conflict between the State Act and the Settlement Agreement, the terms of the State Act shall govern. The Settlement Agreement and the State Act shall be maintained on file and available for public inspection at the Department of the Interior.

(c) Laws and regulations of United States

The provisions of any Federal law enacted after October 27, 1993, for the benefit of Indians, Indian nations, tribes, or bands of Indians, which would affect or preempt the application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this subchapter and the South Carolina State Implementing Act, shall not apply within the State of South Carolina, unless such provision of such subsequently enacted Federal law is specifcally[1] made applicable within the State of South Carolina.

(d) Eligibility for consideration to become enterprise zone or general purpose foreign trade zone

Notwithstanding the provisions of any other law or regulation, the Tribe shall be eligible to become, sponsor and operate (1) an “enterprise zone” pursuant to title VII of the Housing and Community Development Act of 1987 (42 U.S.C. 11501-11505) or any other applicable Federal (or State) laws or regulations; or (2) a “foreign-trade

zone" or "subzone" pursuant to the Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u) and the regulations thereunder, to the same extent as other federally recognized Indian Tribes.

(e) General applicability of State law

Consistent with the provisions of section 941b(a)(2) of this title, the provisions of South Carolina Code Annotated, section 27-16-40, and section 19.1 of the Settlement Agreement are approved, ratified, and confirmed by the United States, and shall be complied with in the same manner and to the same extent as if they had been enacted into Federal law.

(f) Subsequent amendments to Settlement Agreement or State Act

Consent is hereby given to the Tribe and the State to amend the Settlement Agreement and the State Act if consent to such amendment is given by both the State and the Tribe, and if such amendment relates to--

(1) the jurisdiction, enforcement, or application of civil, criminal, regulatory, or tax laws of the Tribe and the State;

(2) the allocation or determination of governmental responsibility of the State and the Tribe over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the Tribe;

(3) the allocation of jurisdiction between the tribal courts and the State courts; or

(4) technical and other corrections and revisions to conform the State Act and the Agreement in Principle attached to the State Act to the Settlement Agreement.

CREDIT(S)

(Pub.L. 103-116, § 15, Oct. 27, 1993, 107 Stat. 1136.)

Footnotes

1

So in original. Probably should be “specifically”.

25 U.S.C.A. § 941m, 25 USCA § 941m

25 U.S.C.A. § 3051

§ 3051. Purposes

The purposes of this chapter are--

(1) to authorize the reburial of human remains and cultural items on National Forest System land, including human remains and cultural items repatriated under the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.);

(2) to prevent the unauthorized disclosure of information regarding reburial sites, including the quantity and identity of human remains and cultural items on sites and the location of sites;

(3) to authorize the Secretary of Agriculture to ensure access to National Forest System land, to the maximum extent practicable, by Indians and Indian tribes for traditional and cultural purposes;

(4) to authorize the Secretary to provide forest products, without consideration, to Indian tribes for traditional and cultural purposes;

(5) to authorize the Secretary to protect the confidentiality of certain information, including information that is culturally sensitive to Indian tribes;

(6) to increase the availability of Forest Service programs and resources to Indian tribes in support of the policy of the United States to promote tribal sovereignty and self-determination; and

(7) to strengthen support for the policy of the United States of protecting and preserving the traditional, cultural, and ceremonial rites and practices of Indian tribes, in accordance with Public Law 95-341 (commonly known as the American Indian Religious Freedom Act; 42 U.S.C. 1996).

CREDIT(S)

(Pub.L. 110-234, Title VIII, § 8101, May 22, 2008, 122 Stat. 1286; Pub.L. 110-246, § 4(a), Title VIII, § 8101, June 18, 2008, 122 Stat. 1664, 2048.)

25 U.S.C.A. § 3052

§ 3052. Definitions

In this chapter:

(1) Adjacent site

The term "adjacent site" means a site that borders a boundary line of National Forest System land.

(2) Cultural items

The term "cultural items" has the meaning given the term in section 3001 of this title, except that the term does not include human remains.

(3) Human remains

The term "human remains" means the physical remains of the body of a person of Indian ancestry.

(4) Indian

The term "Indian" means an individual who is a member of an Indian tribe.

(5) Indian tribe

The term "Indian tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 479a-1 of this title.

(6) Lineal descendant

The term "lineal descendant" means an individual that can trace, directly and without interruption, the ancestry of the individual through the traditional kinship system of an Indian tribe, or through the common law system of descent, to a known Indian, the human remains, funerary objects, or other sacred objects of whom are claimed by the individual.

(7) National Forest System

The term "National Forest System" has the meaning given the term in section 1609(a) of Title 16.

(8) Reburial site

The term "reburial site" means a specific physical location at which cultural items or human remains are reburied.

(9) Traditional and cultural purpose

The term "traditional and cultural purpose", with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

CREDIT(S)

(Pub.L. 110-234, Title VIII, § 8102, May 22, 2008, 122 Stat. 1287; Pub.L. 110-246, § 4(a), Title VIII, § 8102, June 18, 2008, 122 Stat. 1664, 2048.)

25 U.S.C.A. § 3053

§ 3053. Reburial of human remains and cultural items

(a) Reburial sites

In consultation with an affected Indian tribe or lineal descendant, the Secretary may authorize the use of National Forest System land by the Indian tribe or lineal descendant for the reburial of human remains or cultural items in the possession of the Indian tribe or lineal descendant that have been disinterred from National Forest System land or an adjacent site.

(b) Reburial

With the consent of the affected Indian tribe or lineal descendent, the Secretary may recover and rebury, at Federal expense or using other available funds, human remains and cultural items described in subsection (a) at the National Forest System land identified under that subsection.

(c) Authorization of use

(1) In general

Subject to paragraph (2), the Secretary may authorize such uses of reburial sites on National Forest System land, or on the National Forest System land immediately surrounding a reburial site, as the Secretary determines to be necessary for management of the National Forest System.

(2) Avoidance of adverse impacts

In carrying out paragraph (1), the Secretary shall avoid adverse impacts to cultural items and human remains, to the maximum extent practicable.

CREDIT(S)
(Pub.L. 110-234, Title VIII, § 8103, May 22, 2008, 122 Stat. 1287; Pub.L. 110-246, § 4(a), Title VIII, § 8103, June 18, 2008, 122 Stat. 1664, 2049.)

25 U.S.C.A. § 3054

§ 3054. Temporary closure for traditional and cultural purposes

(a) Recognition of historic use

To the maximum extent practicable, the Secretary shall ensure access to National Forest System land by Indians for traditional and cultural purposes, in accordance with subsection (b), in recognition of the historic use by Indians of National Forest System land.

(b) Closing land from public access

(1) Authority to close

Upon the approval by the Secretary of a request from an Indian tribe, the Secretary may temporarily close from public access specifically identified National Forest System land to protect the privacy of tribal activities for traditional and cultural purposes.

(2) Limitation

A closure of National Forest System land under paragraph (1) shall affect the smallest practicable area for the minimum period necessary for activities of the applicable Indian tribe.

(3) Consistency

Access by Indian tribes to National Forest System land under this subsection shall be consistent with the purposes of Public Law 95-341 (commonly known as the American Indian Religious Freedom Act; 42 U.S.C. 1996).

CREDIT(S)
(Pub.L. 110-234, Title VIII, § 8104, May 22, 2008, 122 Stat. 1288; Pub.L. 110-246, § 4(a), Title VIII, § 8104, June 18, 2008, 122 Stat. 1664, 2049.)

25 U.S.C.A. § 3055

§ 3055. Forest products for traditional and cultural purposes

(a) In general

Notwithstanding section 472a of Title 16, the Secretary may provide free of charge to Indian tribes any trees, portions of trees, or forest products from National Forest System land for traditional and cultural purposes.

(b) Prohibition

Trees, portions of trees, or forest products provided under subsection (a) may not be used for commercial purposes.

CREDIT(S)

(Pub.L. 110-234, Title VIII, § 8105, May 22, 2008, 122 Stat. 1288; Pub.L. 110-246, § 4(a), Title VIII, § 8105, June 18, 2008, 122 Stat. 1664, 2050.)

25 U.S.C.A. § 3056

§ 3056. Prohibition on disclosure

(a) Nondisclosure of information

(1) In general

The Secretary shall not disclose under section 552 of Title 5 (commonly known as the "Freedom of Information Act"), information relating to--

(A) subject to subsection (b)(l),[1] human remains or cultural items reburied on National Forest System land under section 3053 of this title; or

(B) subject to subsection (b)(2), resources, cultural items, uses, or activities that--

(i) have a traditional and cultural purpose; and

(ii) are provided to the Secretary by an Indian or Indian tribe under an express expectation of confidentiality in the context of forest and rangeland research activities carried out under the authority of the Forest Service.

(2) Limitations on disclosure

Subject to subsection (b)(2), the Secretary shall not be required to disclose information under section 552 of Title 5 (commonly known as the "Freedom of Information Act"), concerning the identity, use, or specific location in the National Forest System of--

(A) a site or resource used for traditional and cultural purposes by an Indian tribe; or

(B) any cultural items not covered under section 3053 of this title.

(b) Limited release of information

(1) Reburial

The Secretary may disclose information described in subsection (a)(l)(A)[2] if, before the disclosure, the Secretary--

(A) consults with an affected Indian tribe or lineal descendent;

(B) determines that disclosure of the information--

(i) would advance the purposes of this chapter; and

(ii) is necessary to protect the human remains or cultural items from harm, theft, or destruction; and

(C) attempts to mitigate any adverse impacts identified by an Indian tribe or lineal descendant that reasonably could be expected to result from disclosure of the information.

(2) Other information

The Secretary, in consultation with appropriate Indian tribes, may disclose information described under paragraph (1)(B) or (2) of subsection (a) if the Secretary determines that disclosure of the information to the public--

(A) would advance the purposes of this chapter;

(B) would not create an unreasonable risk of harm, theft, or destruction of the resource, site, or object, including individual organic or inorganic specimens; and

(C) would be consistent with other applicable laws.

CREDIT(S)

(Pub.L. 110-234, Title VIII, § 8106, May 22, 2008, 122 Stat. 1288; Pub.L. 110-246, § 4(a), Title VIII, § 8106, June 18, 2008, 122 Stat. 1664, 2050.)

Footnotes

1 So in original. Probably should be “(b)(1)”.

2 So in original. Probably should be “(a)(1)(A)”.

43 U.S.C.A. § 156

§ 156. Approval by Congress necessary for withdrawal, reservation, or restriction of over 5,000 acres for any Department of Defense project or facility

No public land, water, or land and water area shall, except by Act of Congress, on and after February 28, 1958 be (1) withdrawn from settlement, location, sale, or entry for the use of the Department of Defense for defense purposes; (2) reserved for such use; or (3) restricted from operation of the mineral leasing provisions of the Outer Continental Shelf Lands Act [43 U.S.C.A. § 1331 et seq.], if such withdrawal, reservation, or restriction would result in the withdrawal, reservation, or restriction of more than five thousand acres in the aggregate for any one defense project or facility of the Department of Defense since February 28, 1958, or since the last previous Act of Congress which withdrew, reserved, or restricted public land, water, or land and water area for that project or facility, whichever is later.

CREDIT(S)

(Pub.L. 85-337, § 2, Feb. 28, 1958, 72 Stat. 28.)

43 U.S.C.A. § 1781

§ 1781. California Desert Conservation Area

(a) Congressional findings

The Congress finds that--

(1) the California desert contains historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent to an area of large population;

(2) the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;

(3) the California desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California;

(4) the use of all California desert resources can and should be provided for in a multiple use and sustained yield management plant[1] to conserve these resources for future generations, and to provide present and future use and enjoyment, particularly outdoor recreation uses, including the use, where appropriate, of off-road recreational vehicles;

(5) the Secretary has initiated a comprehensive planning process and established an interim management program for the public lands in the California desert; and

(6) to insure further study of the relationship of man and the California desert environment, preserve the unique and irreplaceable resources, including archeological values, and conserve the use of the economic resources of the California desert, the public must be provided more opportunity to participate in such planning and management, and additional management authority must be

provided to the Secretary to facilitate effective implementation of such planning and management.

(b) Statement of purpose

It is the purpose of this section to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality.

(c) Description of Area

(1) For the purpose of this section, the term "California desert" means the area generally depicted on a map entitled "California Desert Conservation Area--Proposed" dated April 1974, and described as provided in subsection (c)(2) of this section.

(2) As soon as practicable after October 21, 1976, the Secretary shall file a revised map and a legal description of the California Desert Conservation Area with the Committees on Interior and Insular Affairs of the United States Senate and the House of Representatives, and such map and description shall have the same force and effect as if included in this Act. Correction of clerical and typographical errors in such legal description and a map may be made by the Secretary. To the extent practicable, the Secretary shall make such legal description and map available to the public promptly upon request.

(d) Preparation and implementation of comprehensive long-range plan for management, use, etc.

The Secretary, in accordance with section 1712 of this title, shall prepare and implement a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area. Such plan shall take into account the principles of multiple use and sustained yield in providing for resource use and development, including, but not limited to, maintenance of environmental quality, rights-of-way, and mineral development. Such plan shall be completed and implementation thereof initiated on or before September 30, 1980.

(e) Interim program for management, use, etc.

During the period beginning on October 21, 1976, and ending on the effective date of implementation of the comprehensive, long-range plan, the Secretary shall execute an interim program to manage, use, and protect the public lands, and their resources now in danger of destruction, in the California Desert Conservation Area, to provide for the public use of such lands in an orderly and reasonable manner such as through the development of campgrounds and visitor centers, and to provide for a uniformed desert ranger force.

(f) Applicability of mining laws

Subject to valid existing rights, nothing in this Act shall affect the applicability of the United States mining laws on the public lands within the California Desert Conservation Area, except that all mining claims located on public lands within the California Desert Conservation Area shall be subject to such reasonable regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent issued on any such mining claim shall recite this limitation and continue to be subject to such regulations. Such regulations shall provide for such measures as may be reasonable to protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation Area against undue impairment, and to assure against pollution of the streams and waters within the California Desert Conservation Area.

(g) Advisory Committee; establishment; functions

(1) The Secretary, within sixty days after October 21, 1976, shall establish a California Desert Conservation Area Advisory Committee (hereinafter referred to as “advisory committee”) in accordance with the provisions of section 1739 of this title.

(2) It shall be the function of the advisory committee to advise the Secretary with respect to the preparation and implementation of the comprehensive, long-range plan required under subsection (d) of this section.

(h) Management of lands under jurisdiction of Secretary of Agriculture and Secretary of Defense

The Secretary of Agriculture and the Secretary of Defense shall manage lands within their respective jurisdictions located in or adjacent to the California Desert Conservation Area, in accordance with the laws relating to such lands and wherever practicable, in a manner consonant with the purpose of this section. The Secretary, the Secretary of Agriculture, and the Secretary of Defense are authorized and directed to consult among themselves and take cooperative actions to carry out the provisions of this subsection, including a program of law enforcement in accordance with applicable authorities to protect the archeological and other values of the California Desert Conservation Area and adjacent lands.

(i) Omitted

(j) Authorization of appropriations

There are authorized to be appropriated for fiscal years 1977 through 1981 not to exceed $40,000,000 for the purpose of this section, such amount to remain available until expended.

CREDIT(S)

(Pub.L. 94-579, Title VI, § 601, Oct. 21, 1976, 90 Stat. 2782.)

Footnotes

[1]

So in original. Probably should be “plan”.

54 U.S.C.A. § 302701

§ 302701. Program to assist Indian tribes in preserving historic property

Effective: December 19, 2014

(a) Establishment of program.--The Secretary shall establish a program and promulgate regulations to assist Indian tribes in preserving their historic property.

(b) Communication and cooperation.--The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation program to--

(1) ensure that all types of historic property and all public interests in historic property are given due consideration; and

(2) encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic property.

(c) Tribal values.--The program under subsection (a) shall be developed in a manner to ensure that tribal values are taken into account to the extent feasible. The Secretary may waive or modify requirements of this subdivision to conform to the cultural setting of tribal heritage preservation goals and objectives.

(d) Scope of tribal programs.--The tribal programs implemented by specific tribal organizations may vary in scope, as determined by each Indian tribe's chief governing authority.

(e) Consultation.--The Secretary shall consult with Indian tribes, other Federal agencies, State Historic Preservations Officers, and other interested parties concerning the program under subsection (a).

CREDIT(S)

(Pub.L. 113-287, § 3, Dec. 19, 2014, 128 Stat. 3199.)

54 U.S.C.A. § 302706

§ 302706. Eligibility for inclusion on National Register

Effective: December 19, 2014

(a) In general.--Property of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

(b) Consultation.--In carrying out its responsibilities under section 306108 of this title, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to property described in subsection (a).

(c) Hawaii.--In carrying out responsibilities under section 302303 of this title, the State Historic Preservation Officer for Hawaii shall--

(1) consult with Native Hawaiian organizations in assessing the cultural significance of any property in determining whether to nominate the property to the National Register;

(2) consult with Native Hawaiian organizations in developing the cultural component of a preservation program or plan for the property; and

(3) enter into a memorandum of understanding or agreement with Native Hawaiian organizations for the assessment of the cultural significance of a property in determining whether to nominate the property to the National Register and to carry out the cultural component of the preservation program or plan.

CREDIT(S)

(Pub.L. 113-287, § 3, Dec. 19, 2014, 128 Stat. 3201.)

54 U.S.C.A. § 320301

§ 320301. National monuments

Effective: December 19, 2014

(a) Presidential declaration.--The President may, in the President's discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.

(b) Reservation of land.--The President may reserve parcels of land as a part of the national monuments. The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

(c) Relinquishment to Federal Government.--When an object is situated on a parcel covered by a bona fide unperfected claim or held in private ownership, the parcel, or so much of the parcel as may be necessary for the proper care and management of the object, may be relinquished to the Federal Government and the Secretary may accept the relinquishment of the parcel on behalf of the Federal Government.

(d) Limitation on extension or establishment of national monuments in Wyoming.--No extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress.

CREDIT(S)

(Pub.L. 113-287, § 3, Dec. 19, 2014, 128 Stat. 3259.)

PL 98–406, AUGUST 28, 1984, 98 Stat 1485

UNITED STATES PUBLIC LAWS
98th Congress - Second Session
Convening January 23, 1984

DATA SUPPLIED BY THE U.S. DEPARTMENT OF JUSTICE. (SEE SCOPE)
Additions and Deletions are not identified in this document.

PL 98–406 (HR 4707)
AUGUST 28, 1984

An Act to designate certain national forest lands in the State of Arizona as wilderness, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Arizona Wilderness Act of 1984'.

TITLE I

SEC. 101. (a) In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131–1136), the following lands in the State of Arizona are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System:

(1) "16 USC 1132' certain lands in the Prescott National Forest, which comprise approximately five thousand four hundred and twenty acres, as generally depicted on a map entitled "Apache Creek Wilderness — Proposed', dated February 1984, and which shall be known as the Apache Creek Wilderness;
(2) "16 USC 1132' certain lands in the Prescott National Forest, which comprise approximately fourteen thousand nine hundred and fifty acres, as generally depicted on a map entitled "Cedar Bench Wilderness — Proposed', dated August 1984, and which shall be known as the Cedar Bench Wilderness;
(3) "16 USC 1132' certain lands in the Apache–Sitgreaves National Forest, which comprise approximately eleven thousand and eighty acres, as generally depicted on a map entitled "Bear Wallow Wilderness — Proposed', dated March 1984, and which shall be known as the Bear Wallow Wilderness;
(4) "16 USC 1132' certain lands in the Prescott National Forest, which comprise approximately twenty-six thousand and thirty acres, as generally depicted on a map entitled "Castle Creek Wilderness — Proposed', dated August 1984, and which shall be known as the Castle Creek Wilderness;

(5) certain lands in the Coronado National Forest, which comprise approximately sixty-nine thousand seven hundred acres, as generally depicted on a map entitled "Chiricahua Wilderness — Proposed', dated March 1984, and which are hereby incorporated in and shall be deemed part of the Chiricahua Wilderness, as designated by Public Law 88–577 "16 USC 1131';
(6) "16 USC 1132' certain lands in the Coconino National Forest, which comprise approximately eleven thousand five hundred and fifty acres, as generally depicted on a map entitled "Fossil Springs Wilderness — Proposed', dated April 1984, and which shall be known as the Fossil Springs Wilderness;
(7) "16 USC 1132' certain lands in the Tonto National Forest, which comprise approximately fifty-three thousand five hundred acres, as generally depicted on a map entitled "Four Peaks Wilderness — Proposed', dated April 1984, and which shall be known as the Four Peaks Wilderness;
(8) certain lands in the Coronado National Forest, which comprise approximately twenty-three thousand six hundred acres, as generally depicted on a map entitled "Galiuro Wilderness Additions — Proposed', dated April 1984, and which are hereby incorporated in and shall be deemed a part of the Galiuro Wilderness as designated by Public Law 88–577; "16 USC 1131'
(9) "16 USC 1132' certain lands in the Prescott National Forest, which comprise approximately nine thousand eight hundred acres, as generally depicted on a map entitled "Granite Mountain Wilderness — Proposed', dated April 1984, and which shall be known as Granite Mountain Wilderness;
(10) "16 USC 1132' certain lands in the Tonto National Forest, which comprise approximately thirty-six thousand seven hundred and eighty acres, as generally depicted on a map entitled "Hellsgate Wilderness — Proposed', dated August 1984, and which shall be known as the Hellsgate Wilderness;
(11) "16 USC 1132' certain lands in the Prescott National Forest which comprise approximately seven thousand six hundred acres, as generally depicted on a map entitled "Juniper Mesa Wilderness — Proposed', dated February 1984, and which shall be known as the Juniper Mesa Wilderness;
(12) "16 USC 1132' certain lands in the Kalbab and Coconino National Forests, which comprise approximately six thousand five hundred and ten acres, as generally depicted on a map entitled "Kendrick Mountain Wilderness — Proposed', dated February 1984, and which shall be known as Kendrick Mountain Wilderness;
(13) "16 USC 1131' certain lands in the Tonto National Forest, which comprise approximately forty-six thousand six hundred and seventy acres, as generally depicted on a map entitled "Mazatzal Wilderness Additions — Proposed', dated August 1984, and which are hereby incorporated and shall be deemed a part of the Mazatzal Wilderness as designated by Public Law 88–577: Provided, That within

the lands added to the Mazatzal Wilderness by this Act, the provisions of the Wilderness Act shall not be construed to prevent the installation and maintenance of hydrologic, meteorologic, or telecommunications facilities, or any combination of the foregoing, or limited motorized access to such facilities when nonmotorized access means are not reasonably available or when time is of the essence, subject to such conditions as the Secretary deems desirable, where such facilities or access are essential to flood warning, flood control, and water reservoir operation purposes;
(14) "16 USC 1132' certain lands in the Coronado National Forest, which comprise approximately twenty thousand one hundred and ninety acres, as generally depicted on a map entitled "Miller Peak Wilderness — Proposed', dated February 1984, and which shall be known as the Miller Peak Wilderness;
(15) "16 USC 1132' certain lands in the Coronado National Forest, which comprise approximately twenty-five thousand two hundred and sixty acres, as generally depicted on a map entitled "Mt. Wrightson Wilderness — Proposed', dated February 1984, and which shall be known as the Mt. Wrightson Wilderness;
(16) "16 USC 1132' certain lands in the Coconino National Forest, which comprise approximately eighteen thousand one hundred and fifty acres, as generally depicted on a map entitled "Munds Mountain Wilderness — Proposed', dated August 1984, and which shall be known as the Munds Mountain Wilderness;
(17) "16 USC 1132' certain lands in the Coronado National Forest, which comprise approximately seven thousand four hundred and twenty acres, as generally depicted on a map entitled "Pajarita Wilderness — Proposed', dated March 1984, and which shall be known as the Pajarita Wilderness;
(18) "16 USC 1132' certain lands in the Coconino National Forest, which comprise approximately forty-three thousand nine hundred and fifty acres, as generally depicted on a map entitled "Red Rock–Secret Mountain Wilderness — Proposed', dated April 1984, and which shall be known as the Red Rock–Secret Mountain Wilderness;
(19) "16 USC 1132' certain lands in the Coronado National Forest, which comprise approximately thirty-eight thousand five hundred and ninety acres, as generally depicted on a map entitled "Rincon Mountain Wilderness — Proposed'; dated February 1984, and which shall be known as the Rincon Mountain Wilderness;
(20) "16 USC 1132' certain lands in the Tonto National Forest, which comprise approximately eighteen thousand nine hundred and fifty acres, as generally depicted on a map entitled "Salome Wilderness — Proposed', dated August 1984, and which shall be known as the Salome Wilderness;
(21) "16 USC 1132' certain lands in the Tonto National Forest, which comprise approximately thirty-two thousand eight hundred acres, as generally depicted on a map entitled "Salt River Canyon Wilderness — Proposed', dated April 1984, and which shall be known as the Salt River Canyon Wilderness;

(22) “16 USC 1132’ certain lands in the Coconino National Forest, which comprise approximately eighteen thousand two hundred acres, as generally depicted on a map entitled “Kachina Peaks Wilderness — Proposed’, dated August 1984, and which shall be known as the Kachina Peaks Wilderness;
(23) “16 USC 1132’ certain lands in the Coronado National Forest, which comprise approximately twenty-six thousand seven hundred and eighty acres, as generally depicted on a map entitled “Santa Teresa Wilderness — Proposed’, dated February 1984, and which shall be known as the Santa Teresa Wilderness; the governmental agency having jurisdictional authority may authorize limited access to the area, for private and administrative purposes, from U.S. Route 70 along Black Rock Wash to the vicinity of Black Rock;
(24) certain lands in the Tonto National Forest, which comprise approximately thirty-five thousand six hundred and forty acres, as generally depicted on a map entitled “Superstition Wilderness Additions — Proposed’, dated August 1984, and which are hereby incorporated in and shall be deemed to be a part of the Superstition Wilderness as designated by Public Law 88–577;
(25) “16 USC 1131’ certain lands in the Coconino National Forest and Prescott National Forest, which comprise approximately eight thousand one hundred and eighty acres, as generally depicted on a map entitled “Sycamore Canyon Wilderness Additions — Proposed’, dated April 1984, and which are hereby incorporated in and shall be deemed a part of the Sycamore Canyon Wilderness as designated by Public Law 92–241;
(26) “16 USC 1132’ certain lands in the Coconino National Forest, which comprise approximately thirteen thousand six hundred acres, as generally depicted on a map entitled “West Clear Creek Wilderness — Proposed’, dated April 1984, and which shall be known as the West Clear Creek Wilderness;
(27) “16 USC 1132’ certain lands in the Coconino National Forest, which comprise approximately six thousand seven hundred acres, as generally depicted on a map entitled “Wet Beaver Wilderness — Proposed’, dated February 1984, and which shall be known as the Wet Beaver Wilderness;
(28) “16 USC 1132’ certain lands in the Prescott National Forest, which comprise approximately five thousand six hundred acres, as generally depicted on a map entitled “Woodchute Wilderness — Proposed’, dated August 1984, and which shall be known as the Woodchute Wilderness;
(29) “16 USC 1132’ certain lands in the Coconino National Forest, which compromise approximately ten thousand one hundred and forty acres, as generally depicted on a map entitled “Strawberry Crater Wilderness — Proposed’, dated April 1984, and which shall be known as Strawberry Crater Wilderness;

(30) “16 USC 1132’ certain lands in the Apache–Sitgreaves National Forest, which comprise approximately five thousand two hundred acres, as generally depicted on a map entitled “Escudilla — Proposed Wilderness’, dated April 1984, and which shall be known as Escudilla Wilderness.

(b) Subject to valid existing rights, the wilderness areas designated under this section shall be administered by the Secretary of Agriculture (hereinafter in this title referred to as the “Secretary’) in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of enactment of this Act.

(c) “16 USC 1131’ As soon as practicable after enactment of this Act, the Secretary shall file a map and a legal description of each wilderness area designated under this section with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in such legal description and map may be made. Such map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, United States Department of Agriculture.

(d) The Congress does not intend that designation of wilderness areas in the State of Arizona lead to the creation of protective perimeters or buffer zones around each wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(e)(1) “16 USC 1133’ As provided in paragraph (6) of section 4(d) of the Wilderness Act, nothing in this Act or in the Wilderness Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from Arizona State water laws.
(2) “16 USC 1131’ As provided in paragraph (7) of section 4(d) of the Wilderness Act, nothing in this Act or in the Wilderness Act shall be construed as affecting the jurisdiction or responsibilities of the State of Arizona with respect to wildlife and fish in the national forests located in that State.

(f)(1) Grazing of livestock in wilderness areas established by this title, where established prior to the date of the enactment of this Act, shall be administered in

accordance with section 4(d)(4) of the Wilderness Act and section 108 of Public Law 96–560.
(2) “16 USC 1133’ The Secretary is directed to review all policies, practices, and regulations of the Department of Agriculture regarding livestock grazing in national forest wilderness areas in Arizona in order to insure that such policies, practices, and regulations fully conform with and implement the intent of Congress regarding grazing in such areas, as such intent is expressed in this Act.
(3) Not later than one year after the date of the enactment of this Act, and at least every five years thereafter, the Secretary of Agriculture shall submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate a report detailing the progress made by the Forest Service in carrying out the provisions of paragraphs (1) and (2) of this section.

SEC. 102. (a) In furtherance of the purposes of the Wilderness Act, the Secretary of Agriculture shall review the following as to their suitability or nonsuitability for preservation as wilderness and shall submit his recommendations to the President:

(1) certain lands in the Coronado National Forest, which comprise approximately eight hundred fifty acres, as generally depicted on a map entitled “Bunk Robinson Wilderness Study Area Additions — Proposed’, dated February 1984, and which are hereby incorporated in the Bunk Robinson Wilderness Study Area as designated by Public Law 96–550;
(2) “94 Stat. 3223 certain lands in the Coronado National Forest, which comprise approximately five thousand and eighty acres, as generally depicted on a map entitled “Whitmire Canyon Study Area Additions — Proposed’, dated February 1984, and which are hereby incorporated in the Whitmire Canyon Wilderness Study Area as designated by Public Law 96–550; and
(3) certain lands in the Coronado National Forest, which comprise approximately sixty-two thousand acres, as generally depicted on a map entitled “Mount Graham Wilderness Study Area’, dated August 1984, and which shall be known as the Mount Graham Wilderness Study Area.

With respect to the areas named in paragraphs (1) and (2), the President shall submit his recommendations to the United States House of Representatives and the United States Senate no later than January 1, 1986.

(b) Subject to valid existing rights, the wilderness study areas designated by this section shall, until Congress determines otherwise, be administered by the Secretary so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.

SEC. 103. (a) The Congress finds that —

(1) the Department of Agriculture has completed the second roadless area review and evaluation program (RARE II);
(2) the Congress has made its own review and examination of national forest system roadless areas in Arizona and of the environmental impacts associated with alternative allocations of such areas.

(b) On the basis of such review, the Congress hereby determines and directs that —
(1) "16 USC 1600' without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to national forest system lands in States other than Arizona, such statement shall not be subject to judicial review with respect to national forest system lands in the State of Arizona;
(2) with respect to the national forest system lands in the State of Arizona which were reviewed by the Department of Agriculture in the second roadless area review and evaluation (RARE II) and those lands referred to in subsection (d), except those lands designated for wilderness study upon enactment of this Act, that review and evaluation or reference shall be deemed for the purposes of the initial land management plans required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revisions of the plans, but shall review the wilderness option when the plans are revised, which revisions will ordinarily occur on a ten-year cycle, or at least every fifteen years, unless, prior to such time the Secretary of Agriculture finds that conditions in a unit have significantly changed;
(3) areas in the State of Arizona reviewed in such final environmental statement or referred to in subsection (d) and not designated wilderness or wilderness study upon enactment of this Act shall be managed for multiple use in accordance with land management plans pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976: Provided, That such areas need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of the initial land management plans;
(4) "16 USC 1604' in the event that revised land management plans in the State of Arizona are implemented pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest

Management Act of 1976, and other applicable law, areas not recommended for wilderness designation need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of such plans, and areas recommended for wilderness designation shall be managed for the purpose of protecting their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law; and
(5) "16 USC 1600' unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of national forest system lands in the State of Arizona for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

(c) "16 USC 1604' As used in this section, and as provided in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, the term "revision' shall not include an "amendment' to a plan.

(d) The provisions of this section shall also apply to national forest system roadless lands in the State of Arizona which are less than five thousand acres in size.

SEC. 104. Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274) is amended by inserting the following after paragraph (50):

"(51) VERDE, ARIZONA. — The segment from the boundary between national forest and private land in sections 26 and 27, township 13 north, range 5 east, Gila Salt River meridian, downstream to the confluence with Red Creek, as generally depicted on a map entitled "Verde River — Wild and Scenic River' dated March 1984, which is on file and available for public inspection in the Office of the Chief, Forest Service, United States Department of Agriculture; to be administered by the Secretary of Agriculture. This designation shall not prevent water users receiving Central Arizona Project water allocations from diverting that water through an exchange agreement with downstream water users in accordance with Arizona water law. After consultation with State and local governments and the interested public and within two years after the date of enactment of this paragraph, the Secretary shall take such action as is required under subsection (b) of this section.'.

SEC. 105. There are added to the Chiricahua National Monument, in the State of Arizona, established by Proclamation Numbered 1692 of April 18, 1924 (43 Stat. 1946) certain lands in the Coronado National Forest which comprise approximately eight hundred and fifty acres as generally depicted on the map

entitled “Bonita Creek Watershed’, dated May 1984, retained by the United States Park Service, Washington, D.C. The area added by this paragraph shall be administered by the National Park Service as wilderness.

TITLE II

SEC. 201. The Congress finds that —

(1) the Aravaipa Canyon, situated in the Galiuro Mountains in the Sonoran desert region of southern Arizona, is a primitive place of great natural beauty that, due to the rare presence of a perennial stream, supports an extraordinary abundance and diversity of native plant, fish, and wildlife, making it a resource of national significance; and

(2) the Aravaipa Canyon should, together with certain adjoining public lands, be incorporated within the National Wilderness Preservation System in order to provide for the preservation and protection of this relatively undisturbed but fragile complex of desert, riparian and aquatic ecosystems, and the native plant, fish, and wildlife communities dependent on it, as well as to protect and preserve the area’s great scenic, geologic, and historical values, to a greater degree than would be possible in the absence of wilderness designation.

SEC. 202. “16 USC 1132’ In furtherance of the purposes of the Wilderness Act of 1964 (78 Stat. 890, 16 U.S.C. 1131 et seq.) and consistent with the policies and provisions of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743; 43 U.S.C. 1701 et seq.), certain public lands in Graham and Pinal Counties, Arizona, which comprise approximately six thousand six hundred and seventy acres, as generally depicted on a map entitled “Aravaipa Canyon Wilderness — Proposed’ and dated May 1980, are hereby designated as the Aravaipa Canyon Wilderness and, therefore, as a component of the National Wilderness Preservation System.

SEC. 203. “16 USC 1131’ Subject to valid existing rights, the Aravaipa Canyon Wilderness shall be administered by the Secretary of the Interior in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness. For purposes of this title, any references in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act and any reference to the Secretary of Agriculture with regard to administration of such areas shall be deemed to be a reference to the Secretary of the Interior, and any reference to wilderness areas designated by the Wilderness Act or designated national forest wilderness areas shall be deemed to be a reference to the Aravaipa Canyon Wilderness. For purposes of this title, the

reference to national forest rules and regulations in the second sentence of section 4(d)(3) of the Wilderness Act shall be deemed to be a reference to rules and regulations applicable to public lands, as defined in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1702).

SEC. 204. "16 USC 1133' As soon as practicable after this Act takes effect, the Secretary of the Interior shall file a map and a legal description of the Aravaipa Canyon Wilderness with the Committee on Energy and Natural Resources of the United States Senate and with the Committee on Interior and Insular Affairs of the United States House of Representatives, and such map and description shall have the same force and effect as if included in this Act: Provided, That correction of clerical and typographical errors in the legal description and map may be made. The map and legal description shall be on file and available for public inspection in the offices of the Bureau of Land Management, Department of the Interior.

SEC. 205. Except as further provided in this section, the Aravaipa Primitive Area designations of January 16, 1969, and April 28, 1971, are hereby revoked.

TITLE III

SEC. 301. "16 USC 1131' (a) In furtherance of the purposes of the Wilderness Act, the following lands are hereby designated as wilderness and therefore, as components of the National Wilderness Preservation System —

(1) "16 USC 1132' certain lands in the Arizona Strip District of the Bureau of Land Management, Arizona, which comprise approximately six thousand five hundred acres, as generally depicted on a map entitled "Cottonwood Point Wilderness — Proposed', dated May 1983, and which shall be known as the Cottonwood Point Wilderness;
(2) "16 USC 1132' certain lands in the Arizona Strip District of the Bureau of Land Management, Arizona, which comprise approximately thirty-six thousand three hundred acres, as generally depicted on a map entitled "Grand Wash Cliffs Wilderness — Proposed', dated May 1983, and which shall be known as the Grand Wash Cliffs Wilderness;
(3) "16 USC 1132' certain lands in the Kaibab National Forest and in the Arizona Strip District of the Bureau of Land Management, Arizona, which comprise approximately seventy-seven thousand one hundred acres, as generally depicted on a map entitled "Kanab Creek Wilderness — Proposed', dated May 1983, and which shall be known as the Kanab Creek Wilderness;
(4) "16 USC 1132' certain lands in the Arizona Strip District of the Bureau of Land Management, Arizona, which comprise approximately fourteen thousand six hundred acres, as generally depicted on a map entitled "Mt. Logan Wilderness —

Proposed', dated May 1983, and which shall be known as the Mount Logan Wilderness;
(5) "16 USC 1132' certain lands in the Arizona Strip District of the Bureau of Land Management, Arizona, which comprise approximately seven thousand nine hundred acres, as generally depicted on a map entitled "Mt. Trumbull Wilderness — Proposed', dated May 1983, and which shall be known as the Mount Trumbull Wilderness;
(6) "16 USC 1132' certain lands in the Arizona Strip District of the Bureau of Land Management, Arizona, which comprise approximately eighty-four thousand seven hundred acres, as generally depicted on a map entitled "Paiute Wilderness — Proposed', dated May 1983, and which shall be known as the Paiute Wilderness;
(7) "16 USC 1132' certain lands in the Arizona Strip District, Arizona, and in the Cedar City District, Utah, of the Bureau of Land Management, which comprise approximately one hundred and ten thousand acres, as generally depicted on a map entitled "Paria Canyon–Vermilion Cliffs Wilderness — Proposed', dated May 1983, and which shall be known as the Paria Canvon–Vermilion Cliffs Wilderness;
(8) "16 USC 1132' certain lands in the Kaibab National Forest, Arizona, which comprise approximately forty thousand six hundred acres, as generally depicted on a map entitled "Saddle Mountain Wilderness — Proposed', dated May 1983, and which shall be known as the Saddle Mountain Wilderness; and
(9) "16 USC 1132' certain lands in the Arizona Strip District, Arizona, and in the Cedar City District, Utah, of the Bureau of Land Management which comprise approximately nineteen thousand six hundred acres, as generally depicted on a map entitled "Beaver Dam Mountains Wilderness — Proposed', dated May 1983, and which shall be known as the Beaver Dam Mountains Wilderness.

(b) The previous classifications of the Paiute Primitive Area and the Paria Canyon Primitive Area are hereby abolished.

SEC. 302. (a) Subject to valid existing rights, each wilderness area designated by this title shall be administered by the appropriate Secretary in accordance with the provisions of the Wilderness Act: Provided, That any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act, and any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary who has administrative jurisdiction over the area.

(b) Within the wilderness areas designated by this title, the grazing of livestock, where established prior to the date of enactment of this Act, shall be permitted to continue subject to such reasonable regulations, policies, and practices as the Secretary concerned deems necessary, as long as such regulations, policies, and

practices fully conform with and implement the intent of Congress regarding grazing in such areas as such intent is expressed in the Wilderness Act.

SEC. 303. As soon as practicable after enactment of this Act, a map and a legal description on each wilderness area designated by this title shall be filed by the Secretary concerned with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the House of Representatives, and each such map and description shall have the same force and effect as if included in this Act: Provided, That correction of clerical and typographical errors in each such legal description and map may be made by the Secretary concerned subsequent to such filings. Each such map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture or in the Office of the Director of the Bureau of Land Management, Department of the Interior, as is appropriate.

SEC. 304. "43 USC 1782' The Congress hereby finds and directs that lands in the Arizona Strip District of the Bureau of Land Management, Arizona, and those portions of the Starvation Point Wilderness Study Area (UT–040–057) and Paria Canyon Instant Study Area and contiguous Utah units in the Cedar City District of the Bureau of Land Management, Utah, not designated as wilderness by this Act have been adequately studied for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act (Public Law 94–579) and are no longer subject to the requirement of section 603(c) of the Federal Land Policy and Management Act pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such areas for preservation as wilderness.

TITLE IV

SEC. 401. If any provision of this Act or the application thereof is held invalid, the remainder of the Act and the application thereof shall not be affected thereby.

Approved August 28, 1984.

Exec. Order No. 13007, 61 FR 26771
Executive Order 13007

Indian Sacred Sites

May 24, 1996

***26771** By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. *Accommodation of Sacred Sites.* (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and

(iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Sec. 2. *Procedures.* (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land

management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites. ***26772**

***26772 Sec. 3.** Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE, May 24, 1996.

Exec. Order No. 13175, 65 FR 67249
Executive Order 13175

Consultation and Coordination With Indian Tribal Governments

November 6, 2000

***67249** By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:
(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. *Fundamental Principles.* In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The

Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. *Policymaking Criteria.* In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications: ***67250**

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. *Consultation.* (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the ***67251** need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. *Increasing Flexibility for Indian Tribal Waivers.*
(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. *Accountability.*
(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. *General Provisions.* (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.
(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

***67252**

Sec. 10. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

WILLIAM J. CLINTON
THE WHITE HOUSE, November 6, 2000.

36 C.F.R. § 228.4

§ 228.4 Plan of operations—notice of intent—requirements.

Effective: July 6, 2005

(a) Except as provided in paragraph (a)(1) of this section, a notice of intent to operate is required from any person proposing to conduct operations which might cause significant disturbance of surface resources. Such notice of intent to operate shall be submitted to the District Ranger having jurisdiction over the area in which the operations will be conducted. Each notice of intent to operate shall provide information sufficient to identify the area involved, the nature of the proposed operations, the route of access to the area of operations, and the method of transport.

(1) A notice of intent to operate is not required for:

(i) Operations which will be limited to the use of vehicles on existing public roads or roads used and maintained for National Forest System purposes;

(ii) Prospecting and sampling which will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study which generally might include searching for and occasionally removing small mineral samples or specimens, gold panning, metal detecting, non-motorized hand sluicing, using battery operated dry washers, and collecting of mineral specimens using hand tools;

(iii) Marking and monumenting a mining claim;

(iv) Underground operations which will not cause significant surface resource disturbance;

(v) Operations, which in their totality, will not cause surface resource disturbance which is substantially different than that caused by other users of the National Forest System who are not required to obtain a Forest Service special use authorization, contract, or other written authorization;

(vi) Operations which will not involve the use of mechanized earthmoving equipment, such as bulldozers or backhoes, or the cutting of trees, unless those operations otherwise might cause a significant disturbance of surface resources;

or

(vii) Operations for which a proposed plan of operations is submitted for approval;

(2) The District Ranger will, within 15 days of receipt of a notice of intent to operate, notify the operator if approval of a plan of operations is required before the operations may begin.

(3) An operator shall submit a proposed plan of operations to the District Ranger having jurisdiction over the area in which operations will be conducted in lieu of a notice of intent to operate if the proposed operations will likely cause a significant disturbance of surface resources. An operator also shall submit a proposed plan of operations, or a proposed supplemental plan of operations consistent with § 228.4(d), to the District Ranger having jurisdiction over the area in which operations are being conducted if those operations are causing a significant disturbance of surface resources but are not covered by a current approved plan of operations. The requirement to submit a plan of operations shall not apply to the operations listed in paragraphs (a)(1)(i) through (v). The requirement to submit a plan of operations also shall not apply to operations which will not involve the use of mechanized earthmoving equipment, such as bulldozers or backhoes, or the cutting of trees, unless those operations otherwise will likely cause a significant disturbance of surface resources.

(4) If the District Ranger determines that any operation is causing or will likely cause significant disturbance of surface resources, the District Ranger shall notify the operator that the operator must submit a proposed plan of operations for approval and that the operations can not be conducted until a plan of operations is approved.

(b) Any person conducting operations on the effective date of these regulations, who would have been required to submit a plan of operations under § 228.4(a), may continue operations but shall within 120 days thereafter submit a plan of operations to the District Ranger having jurisdiction over the area within which operations are being conducted: *Provided, however,* That upon a showing of good cause the authorized officer will grant an extension of time for submission of a plan of operations, not to exceed an additional 6 months. Operations may continue according to the submitted plan during its review, unless the authorized officer determines that the operations are unnecessarily or unreasonably causing irreparable damage to surface resources and advises the operator of those measures needed to

avoid such damage. Upon approval of a plan of operations, operations shall be conducted in accordance with the approved plan. The requirement to submit a plan of operations shall not apply: (1) To operations excepted in § 228.4(a) or (2) to operations concluded prior to the effective date of the regulations in this part.

(c) The plan of operations shall include:

(1) The name and legal mailing address of the operators (and claimants if they are not the operators) and their lessees, assigns, or designees.

(2) A map or sketch showing information sufficient to locate the proposed area of operations on the ground, existing and/or proposed roads or access routes to be used in connection with the operations as set forth in § 228.12 and the approximate location and size of areas where surface resources will be disturbed.

(3) Information sufficient to describe or identify the type of operations proposed and how they would be conducted, the type and standard of existing and proposed roads or access routes, the means of transportation used or to be used as set forth in § 228.12, the period during which the proposed activity will take place, and measures to be taken to meet the requirements for environmental protection in § 228.8.

(d) The plan of operations shall cover the requirements set forth in paragraph (c) of this section, as foreseen for the entire operation for the full estimated period of activity: *Provided*, *however*, That if the development of a plan for an entire operation is not possible at the time of preparation of a plan, the operator shall file an initial plan setting forth his proposed operation to the degree reasonably foreseeable at that time, and shall thereafter file a supplemental plan or plans whenever it is proposed to undertake any significant surface disturbance not covered by the initial plan.

(e) At any time during operations under an approved plan of operations, the authorized officer may ask the operator to furnish a proposed modification of the plan detailing the means of minimizing unforeseen significant disturbance of surface resources. If the operator does not furnish a proposed modification within a time deemed reasonable by the authorized officer, the authorized officer may recommend to his immediate superior that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth in detail the supporting facts and reasons for his recommendations. In acting upon such recommendation, the immediate superior of the authorized officer shall determine:

(1) Whether all reasonable measures were taken by the authorized officer to predict the environmental impacts of the proposed operations prior to approving the operating plan,

(2) Whether the disturbance is or probably will become of such significance as to require modification of the operating plan in order to meet the requirements for environmental protection specified in § 228.8 and

(3) Whether the disturbance can be minimized using reasonable means. Lacking such determination that unforeseen significant disturbance of surface resources is occurring or probable and that the disturbance can be minimized using reasonable means, no operator shall be required to submit a proposed modification of an approved plan of operations. Operations may continue in accordance with the approved plan until a modified plan is approved, unless the immediate superior of the authorized officer determines that the operations are unnecessarily or unreasonably causing irreparable injury, loss or damage to surface resources and advises the operator of those measures needed to avoid such damage.

(f) Upon completion of an environmental analysis in connection with each proposed operating plan, the authorized officer will determine whether an environmental statement is required. Not every plan of operations, supplemental plan or modification will involve the preparation of an environmental statement. Environmental impacts will vary substantially depending on whether the nature of operations is prospecting, exploration, development, or processing, and on the scope of operations (such as size of operations, construction required, length of operations and equipment required), resulting in varying degrees of disturbance to vegetative resources, soil, water, air, or wildlife. The Forest Service will prepare any environmental statements that may be required.

(g) The information required to be included in a notice of intent or a plan of operations, or supplement or modification thereto, has been assigned Office of Management and Budget Control #0596–0022. The public reporting burden for this collection of information is estimated to vary from a few minutes for an activity involving little or no surface disturbance to several months for activities involving heavy capital investments and significant surface disturbance, with an average of 2 hours per individual response. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding

the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief (2800), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Credits

[54 FR 6893, Feb. 15, 1989; 69 FR 41430, July 9, 2004; 70 FR 32731, June 6, 2005]

SOURCE: 39 FR 31317, Aug. 28, 1974; 46 FR 36142, July 14, 1981; 51 FR 20827, June 9, 1986; 55 FR 10443, March 21, 1990; 55 FR 51705, Dec. 17, 1990; 78 FR 33724, June 5, 2013, unless otherwise noted.

AUTHORITY: 16 U.S.C. 478, 551; 30 U.S.C. 226, 352, 601, 611; 94 Stat. 2400.

40 C.F.R. § 1501.6

§ 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in § 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their

budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

SOURCE: 43 FR 55992, Nov. 29, 1978, unless otherwise noted.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and Executive Order 11514, Mar. 5, 1970, as amended by Executive Order 11991, May 24, 1977).

40 C.F.R. § 1508.5

§ 1508.5 Cooperating agency.

Cooperating agency means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in § 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

SOURCE: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514 (Mar. 5, 1970, as amended by Executive Order 11991, May 24, 1977).

43 C.F.R. § 2300.0–5

§ 2300.0–5 Definitions.

As used in this part, the term:

(a) Secretary means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President by and with the advice and consent of the Senate and to whom has been delegated the authority of the Secretary to perform the duties described in this part to be performed by the Secretary.

(b) Authorized officer means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part to be performed by the authorized officer.

(c) Act means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), unless otherwise specified.

(d) Lands includes both upland and submerged land areas and any right or interest in such areas. To the extent provided in section 1 of the Act of February 28, 1958 (43 U.S.C. 155), the term also includes offshore waters.

(e) Cultural resources means those fragile and nonrenewable physical remains of human activity found in districts, sites, structures, burial mounds, petroglyphs, artifacts, objects, ruins, works of art, architecture or natural settings or features which were important to prehistoric, historic or other land and resource use events.

(f) Archeological areas/resources means sites or areas containing important evidence or the physical remains of former but now extinct cultural groups, their skeletons, settlements, implements, artifacts, monuments and inscriptions.

(g) Resource use means a land use having as its primary objective the preservation, conservation, enhancement or development of:

(1) Any renewable or nonrenewable natural resource indigenous to a particular land area, including, but not limited to, mineral, timber, forage, water, fish or wildlife resources, or

(2) Any resource value associated with a particular land area, including, but not

limited to, watershed, power, scenic, wilderness, clean air or recreational values. The term does not include military or other governmental activities requiring land sites only as an incidental means to achieving an end not related primarily to the preservation, conservation, enhancement or development of natural resources or resource values indigenous to or associated with a particular land area.

(h) Withdrawal means withholding an area of Federal land from settlement, sale, location, or entry under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than property governed by the Federal Property and Administrative Services Act (40 U.S.C. 472), from one department, bureau or agency to another department, bureau or agency.

(i) Department means a unit of the Executive branch of the Federal Government which is headed by a member of the President's Cabinet.

(j) Agency means a unit of the Executive branch of the Federal Government which is not within a Department.

(k) Office means an office or bureau of the Department of the Interior.

(l) Applicant means any Federal department, agency or office.

(m) Segregation means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws, pursuant to the exercise by the Secretary of regulatory authority to allow for the orderly administration of the public lands.

(n) Legal description means a written land description based upon either an approved and filed Federal land survey executed as a part of the United States Public Land Survey System or, where specifically authorized under Federal law, upon a protraction diagram. In the absence of the foregoing, the term means a written description, approved by the authorized officer, which defines the exterior boundaries of a tract of land by reference to a metes and bounds survey or natural or other monuments.

(o) Modify or modification does not include, for the purposes of section 204 of the Act (43 U.S.C. 1714), the addition of lands to an existing withdrawal or the partial revocation of a withdrawal.

(p) Withdrawal petition means a request, originated within the Department of the Interior and submitted to the Secretary, to file an application for withdrawal.

(q) Withdrawal proposal means a withdrawal petition approved by the Secretary.

SOURCE: 46 FR 5796, Jan. 19, 1981, unless otherwise noted.

AUTHORITY: 43 U.S.C. 1201; 43 U.S.C. 1740; Executive Order No. 10355 (17 FR 4831, 4833).

43 C.F.R. § 3809.21

§ 3809.21 When do I have to submit a notice?

(a) You must submit a complete notice of your operations 15 calendar days before you commence exploration causing surface disturbance of 5 acres or less of public lands on which reclamation has not been completed. See § 3809.301 for information on what you must include in your notice.

(b) You must not segment a project area by filing a series of notices for the purpose of avoiding filing a plan of operations. See §§ 3809.300 through 3809.336 for regulations applicable to notice-level operations.

SOURCE: 45 FR 13974, March 3, 1980; 59 FR 44856, Aug. 30, 1994; 62 FR 9099, Feb. 28, 1997; 63 FR 52954, Oct. 1, 1998; 65 FR 70112, Nov. 21, 2000; 70 FR 58878, Oct. 7, 2005; 73 FR 73794, Dec. 4, 2008, unless otherwise noted.

AUTHORITY: 16 U.S.C. 3101 et seq.; 30 U.S.C. 22–42, 181 et seq., 301–306, 351–359, and 601 et seq.; 31 U.S.C. 9701; 40 U.S.C. 471 et seq.; 42 U.S.C. 6508; 43 U.S.C. 1701 et seq.; and Pub.L. No. 97–35, 95 Stat. 357.; 16 U.S.C. 1280; 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C. 1201; and 43 U.S.C. 1732, 1733, 1740, 1781, and 1782.

74 FR 35887-01
NOTICES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

Tuesday, July 21, 2009

AGENCY: Bureau of Land Management, Interior.

***35887** ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw approximately 633,547 acres of public lands and 360,002 acres of National Forest System lands for up to 20 years from location and entry under the Mining Law of 1872, 30 U.S.C. 22 et seq., on behalf of the Bureau of Land Management and the United States Forest Service. The purpose of the withdrawal, if determined to be appropriate, would be to protect the Grand Canyon watershed from adverse effects of locatable hardrock mineral exploration and mining. This notice segregates the lands from location and entry under the 1872 Mining Law for up to 2 years to allow time for various studies and analyses, including appropriate National Environmental Policy Act analysis. These actions will support a final decision on whether or not to proceed with a withdrawal. The lands will remain open to the mineral leasing, geothermal leasing, mineral materials, and public land laws.
DATES: Comments and requests for a public meeting must be received by October 19, 2009.

ADDRESSES: Comments and meeting requests should be sent to the District Manager, Bureau of Land Management, Arizona Strip District Office, 345 East Riverside Drive, St. George, Utah 84790-9000, or Forest Supervisor, Forest Service, Kaibab National Forest, 800 South Sixth St., Williams, Arizona 86046.

FOR FURTHER INFORMATION CONTACT: Scott Florence, District Manager, BLM Arizona Strip District, 435-688-3200, or Michael Williams, Forest Supervisor, Kaibab National Forest, 928-635-8200.

SUPPLEMENTARY INFORMATION: The applicant is the Bureau of Land Management at the address above and its petition/application requests the Secretary of the Interior to withdraw, subject to valid existing rights, the following public lands and National Forest System lands from location and entry under the 1872

Mining Law, but not the mineral leasing, geothermal leasing, mineral materials laws, or public land laws: All the Federal lands identified in the townships below, and all non-Federal lands within the exterior boundaries described below that are subsequently acquired by the Federal government, to the boundary of the Grand Canyon National Game Preserve, including the overlap of the withdrawal for the Kanab Creek Wilderness, as depicted on the map entitled "Petition/Application for Withdrawal" available from the BLM Arizona Strip District office and the FS Kaibab National Forest office at the addresses listed above.

Public Lands

Gila and Salt River Meridian, Arizona

Tps. 40 and 41 N., R. 1E.,

Tps. 38 and 40 N., R. 3 E., to the boundary of the Vermilion Cliffs National Monument,

Tps. 36 to 38 N., Rs. 4 and 5 E., to the boundary of the Vermilion Cliffs National Monument,

Tps. 37 to 39 N., R. 6 E., to the boundary of the Vermilion Cliffs National Monument,

T. 39 N., R. 7 E., to the boundary of the Vermilion Cliffs National Monument,

Tps. 38 to 41 N., R. 1 W.,

Tps. 38 to 40 N., R. 2 W.,

Tps. 36 to 40 N., R. 3 W.,

Tps. 35 to 40 N., Rs. 4 and 5 W.,

Tps. 35 to 39 N., Rs. 6 and 7 W.,
The areas described contain approximately 633,547 acres of public lands in Coconino and Mohave Counties.

National Forest System Lands

Kaibab National Forest

Gila and Salt River Meridian, Arizona.

North Kaibab Ranger District

Tps. 37 to 40 N., R. 3 E., to the boundary of the Vermilion Cliffs National Monument,

Tps. 36 and 37 N., R. 4 E.,

T. 36 N., R. 5 E.,

T. 38 N., R. 3 W.,

Tps. 36 and 37 N., Rs. 3 and 4 W.,

Tusayan Ranger District

Tps. 28 to 31 N., R. 1 E.,

Tps. 28 to 30 N., R 2 E.,

Tps. 27 to 30 N., Rs. 3 to 6 E.,

Tps. 31 and 32 N., R 1 W.,
The areas described contain approximately 360,002 acres of National Forest System lands in Coconino and Mohave Counties.

The total areas described aggregate approximately 993,549 acres of both public and National Forest System lands in Coconino and Mohave Counties located adjacent to the Grand Canyon National Park in Arizona. The total non-Federal lands within the area aggregate approximately 85,673 acres in Coconino and Mohave Counties.

The Secretary of the Interior has approved the Bureau of Land Management's petition for approval to file its withdrawal application. The Secretary's approval of the petition constitutes his proposal to withdraw the subject lands. The Forest Service has consented to proposing the withdrawal of lands under its administrative jurisdiction.

The purpose of the withdrawal, if determined to be appropriate, would be to protect the Grand Canyon watershed from adverse effects of locatable hardrock mineral exploration and mining for up to a 20-year period, which is the maximum allowable for a withdrawal aggregating more than 5,000 acres.

The use of a right-of-way, interagency, or cooperative agreement, or surface management by the Bureau of Land Management under 43 CFR 3715 and 3809 regulations and by the Forest Service under 36 CFR 228 would not adequately

constrain nondiscretionary uses which could result in permanent loss of significant values and irreplaceable resources at the site.

There are no suitable alternative sites for the withdrawal.

No water rights would be needed to fulfill the purpose of the requested withdrawal.

Records relating to the application may be examined by contacting the BLM District Manager at the above address or by calling 435-688-3200 or the Forest Supervisor, Kaibab National Forest, 800 South Sixth Street, Williams, AZ 86046 or by calling 928-635-8200.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM District Manager at the address noted above.

Comments including names and street addresses of respondents will be available for public review at the BLM Arizona Strip District Office at the address noted above, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under ***35888** the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that one or more public meetings will be held in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM District Manager no later than October 19, 2009. A notice of the time and place of any public meetings will be published in the Federal Register and a local newspaper at least 30 days before the scheduled date of the meeting.

This application/proposal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands described in this notice will be segregated from location and entry under the 1872 Mining Law, unless the application/proposal is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or other discretionary land use authorizations may be allowed with the approval of an authorized officer of the Bureau of Land Management or Forest Service during the segregative period.

Authority: 43 CFR 2310.3-1.

Dated: July 16, 2009.

Mike Pool,

Acting Director, Bureau of Land Management.

[FR Doc. E9-17293 Filed 7-20-09; 8:45 am]

BILLING CODE 4310-32-P

95th Congress
2d Session
COMMITTEE PRINT

LEGISLATIVE HISTORY OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

(PUBLIC LAW 94–579)

PREPARED AT THE REQUEST OF

HENRY M. JACKSON, *Chairman*

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

APRIL 1978

Publication No. 95–99

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1978

23-832 O

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

Mr. BOLLING. Mr. Speaker, direction of the Committee on Rules, I call up House Resolution 1284 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1284

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 13777) to establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the public lands; and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed two hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs, the bill shall be read for amendment under the five-minute rule by titles instead of by sections. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER. The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Mississippi (Mr. LOTT), pending which I yield myself such time as I may consume.

Mr. Speaker, this is a normal open rule providing for 2 hours of general debate and providing that the bill be read by titles instead of by sections. There was no opposition to the rule before the Committee on Rules. I know of no opposition to the rule.

Therefore, I reserve the balance of my time.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LOTT asked and was given permission to revise and extend his remarks.)

Mr. LOTT. Mr. Speaker, as the gentleman from Missouri has explained, House Resolution 1284 permits the House to resolve itself into the Committee of the Whole for the consideration of H.R. 13777, the Federal Land Policy and Management Act of 1976. The rule provides that the measure will be open to all germane amendments at the conclusion of 2 hours of general debate, and the bill is to be read for amendment by titles instead of by sections.

The primary purposes of H.R. 13777 are to establish a public land policy; to establish guidelines for its administration; and to provide for the management, protection, development, and enhancement of the public lands. To these ends, the legislation proposes to achieve the following objectives:

First. Create a mission for the public lands administered by the Secretary of the Interior through the Bureau of Land Management.

Second. Authorize BLM sufficiently for it to carry out the goals mandated by law for the public lands under its jurisdiction.

Third. Enact standards to be followed by BLM and the Forest Service in the administration of various resources under their control consistent with statutory purposes.

Fourth. Establish procedures to facilitate congressional oversight of public land operations of the Secretary of Interior.

Fifth. Eliminate obsolete statutes and parts of statutes from the law.

The cost estimate for fiscal 1977 is $14 million. Authorizations in the bill total $75 million for a 5-year period.

It is my understanding that there has been a certain amount of controversy surrounding the passage of this legislation. This controversy has arisen in part because of jurisdictional questions and in part because of environmental concerns. However, I know of no opposition existing at this time from anyone to the adoption of this rule; and I urge its approval.

Mr. BOLLING. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. BELL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—ayes 393, nays 0, answered "present" 3, not voting 36, as follows:

[Roll No. 536]

YEAS—393

Abdnor	Clawson, Del	Gibbons
Adams	Cleveland	Gilman
Addabbo	Cochran	Ginn
Alexander	Cohen	Goldwater
Allen	Collins, Ill.	Gonzalez
Ambro	Collins, Tex.	Goodling
Anderson, Calif.	Conable	Gradison
	Conlan	Grassley
Andrews, N. Dak.	Conte	Green
	Conyers	Gude
Annunzio	Corman	Hagedorn
Archer	Cornell	Haley
Armstrong	Cotter	Hall, Ill.
Ashbrook	Coughlin	Hall, Tex.
Ashley	Crane	Hamilton
Aspin	D'Amours	Hammer-schmidt
AuCoin	Daniel, Dan	
Badillo	Daniel, R. W.	Hanley
Baldus	Daniels, N.J.	Hannaford
Baucus	Danielson	Hansen
Bauman	Davis	Harrington
Beard, R.I.	de la Garza	Harris
Beard, Tenn.	Delaney	Harsha
Bedell	Dellums	Hawkins
Bell	Dent	Hayes, Ind.
Bennett	Derrick	Hechler, W. Va.
Bergland	Devine	Heckler, Mass.
Bevill	Dickinson	Hefner
Biaggi	Dingell	Heinz
Biester	Dodd	Helstoski
Bingham	Downey, N.Y.	Henderson
Blanchard	Downing, Va.	Hicks
Blouin	Drinan	Hightower
Boggs	Duncan, Oreg.	Hillis
Boland	du Pont	Holland
Bolling	Early	Holt
Bonker	Eckhardt	Holtzman
Bowen	Edgar	Horton
Brademas	Edwards, Ala.	Howard
Breaux	Edwards, Calif.	Hubbard
Breckinridge	Eilberg	Hughes
Brodhead	Emery	Hungate
Brooks	English	Hutchinson
Broomfield	Erlenborn	Hyde
Brown, Calif.	Eshleman	Ichord
Brown, Mich.	Evans, Colo.	Jacobs
Brown, Ohio	Evans, Ind.	Jarman
Broyhill	Fary	Jeffords
Buchanan	Fascell	Jenrette
Burgener	Fenwick	Johnson, Calif.
Burke, Calif.	Findley	Johnson, Colo.
Burke, Fla.	Fish	Johnson, Pa.
Burke, Mass.	Fisher	Jones, Ala.
Burleson, Tex.	Fithian	Jones, N.C.
Burlison, Mo.	Flood	Jones, Okla.
Burton, Phillip	Florio	Kasten
Butler	Flowers	Kastenmeier
Byron	Foley	Kazen
Carney	Ford, Mich.	Kelly
Carr	Ford, Tenn.	Kemp
Carter	Forsythe	Ketchum
Cederberg	Fountain	Keys
Chappell	Fraser	Kindness
Chisholm	Frey	Koch
Clancy	Fuqua	Krebs
Clausen, Don H.	Gaydos	LaFalce
	Giaimo	Lagomarsino

subject to reversal by this body. But in any event, they would hardly impose an "onerous" burden.

If they had involved, for example, the creation of another protective habitat for the cousin to the side-blotched uta, the blue-bellied lizard perhaps this body would desire to pursue at least a passing inquiry as to whether or not that was the best exercise of administrative discretion and in the interest of this Nation.

Mr. Chairman, 5,000 is a rational threshold, but 25,000 is a preposterous loophole through which every possible potential for administrative abuse in the withdrawal authority could be exercised.

If a 25,000 acre floor is placed in this legislation it will effectively wipe out and eradicate any congressional oversight because any infounded withdrawal will then be made within the 5,000 to 25,000 acres in order to avoid congressional scrutiny.

I think it is a fair and rational compromise to set a 5,000-acre ceiling. I think it is a fair assumption of our legislative responsibility that there have been mistakes made in the past and they can be avoided in the future, but I think it is imperative that the position of the committee be maintained.

Mr. RONCALIO. Mr. Chairman. I move to strike the requisite number of words.

(Mr. RONCALIO asked and was given permission to revise and extend his remarks.)

Mr. RONCALIO. Mr. Chairman, first of all I want to welcome this opportunity which is the first one in the entire 94th Congress where I have joined issue with my good friend and colleague and soulmate, the gentleman from Nevada (Mr. SANTINI).

Mr. Chairman, I think there are times, and there are many, when we have to ask guidance from ourselves such as on the death blow we gave to the subsidizing of the synthetic fuels program with $6 billion last fall when my good friend from Colorado left the Chamber, thank you for saving me from myself.

Let me say, Mr. Chairman, that had it not been for the authority inherent in the Secretary of the Interior and the President of the United States, the great Grand Teton National Park would never have been created into a national park as it is today, which is one of the most magnificent areas on the face of God's earth, that would never have occurred had it had to have been done by legislation of this Congress. It would never have been done.

It was almost common knowledge in Wyoming some 40 years ago that anyone who would have advocated legislation to create such a park would have been met with guns at the city limits of Jackson Hole, Wyo.

It was only by a ruse that Franklin D. Roosevelt and his old curmudgeon Harold Ickes were able to make such a withdrawal and create that land into a national park which today has earned from the ranchers there, whose parents vehemently opposed it 40 years ago, eternal gratitude for the machinery that made it possible.

So, Mr. Chairman, I believe this amendment should be adopted. To permit a 5,000-acre withdrawal would be a healthy limitation upon the abuse of the machinery necessary to preserve portions of America for the people.

Mr. SANTINI. Mr. Chairman, will the gentleman yield?

Mr. RONCALIO. I yield to my colleague, the gentleman from Nevada.

Mr. SANTINI. Mr. Chairman, I thank my good friend the gentleman from Wyoming (Mr. RONCALIO) for yielding to me. I regret that the gentleman from Wyoming finds himself in opposition to my decision.

However, I think it is important to clarify for the record that Teton National Park was not created by withdrawals, and that national parks are not the subject matter of this particular amendment.

Grand Teton Park was not created by withdrawal, it was created by a congressional act.

Mr. RONCALIO. No, I beg to differ with the gentleman from Nevada, the gentleman is totally in error, thoroughly, totally, and completely in error. It was created by Executive proclamation based upon the withdrawal concept because it was impossible to get a bill passed in either the House or the Senate which would have withdrawn that land, which resulted in 97 percent of the tax bill in the Grand Teton Park going into the Federal Government.

Mr. SANTINI. That was a national monument; was it not?

Mr. RONCALIO. It is a national park. It has been amended by legislation.

Mr. SANTINI. But it was created as a national monument under executive authority.

Mr. RONCALIO. That is precisely correct.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield?

Mr. RONCALIO. I yield to the gentleman from Ohio.

Mr. SEIBERLING. I thank the gentleman for yielding.

Every national monument is a part of the National Park System.

Mr. RONCALIO. It is now.

We are quibbling about how it came into being and that is what withdrawals are all about. The gentlewoman from New Jersey talked about how they came into being. I think the 5,000-acre limitation is about right. It will save abuses by the Executive and the Congress.

Mr. MELCHER. Mr. Chairman, will the gentleman yield?

Mr. RONCALIO. I yield to the gentleman from Montana.

Mr. MELCHER. I thank the gentleman for yielding.

The gentleman certainly has no doubt but what Congress would approve such a withdrawal.

Mr. RONCALIO. I am not about to pass judgment on what this Congress or any other Congress might approve or disapprove. As I say, the Lord gives us the wisdom and the faith to go along with that which we cannot do anything about, and the guts to fight what we can do something about.

The CHAIRMAN. The time of the gentleman has expired.

Mr. SEIBERLING. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, first of all, let me point out that the much bandied about withdrawal of 1,800 acres to protect the side-blotched uta, or whatever it is called, is a withdrawal that would be permitted by the bill as already written, without congressional review. So that is not a very good example.

Second, let me say that we all should know what the real issue is behind the opposition to this particular amendment. It is to expand the ability of private mining interests to go anywhere they want on the public lands, staking out claims and obtaining title to the taxpayers' lands without the Federal Government's having any effective means of blocking it other than by an act of Congress.

The purpose of withdrawal by the Secretary, without waiting for the lengthy process of legislation, is to be able to act promptly to set aside lands that have higher values for other public uses. The Congress can always overrule the Secretary's withdrawal. So the issue is whether the Secretary is going to have flexibility to act to protect threatened areas from private interests who for reasons, which may or may not be in the national interest may want to go in, stake out a claim under the 1872 mining law, and acquire title to the land. We really ought to change that law. A lot of things have happened since 1872, and just maybe that is not the best way to develop our mining resources any more. But for various reasons we have not gotten around to doing that. We are trying to preserve by this amendment a reasonable but still very limited authority of the Secretary to protect areas that are very important for public reasons.

Mr. MELCHER. Mr. Chairman, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Montana.

Mr. MELCHER. I thank the gentleman for yielding.

I must remind the gentleman from Ohio that the Secreatry will exercise his authority for withdrawal as he sees necessary under the terms of the bill. Under emergency terms he acts promptly, and there is no review. Under other conditions where it is not of an emergency nature, he makes the withdrawal as he sees fit, and in the amount of acres as he believes the public interest it should be.

The bill only carries with it when it is over 5,000 acres that either House has the option of within 90 legislative days to disagree with him. The bill does not in any way limit or interfere with his authority to make the withdrawal.

Mr. SEIBERLING. It puts a limit of 1 year on emergency withdrawals, and it puts a 5,000-acre limit on other discriminary withdrawals. The gentleman knows there can be varying degrees of an emergency.

Mr. MELCHER. Will the gentleman yield further?

Mr. SEIBERLING. I yield to the gentleman.

Mr. MELCHER. The bill in no way puts a 5,000-acre limit on withdrawals. He

H.R. REP. 94-1163, H.R. Rep. No. 1163, 94TH Cong., 2ND Sess. 1976, 1976 U.S.C.C.A.N. 6175, 1976 WL 14070 (Leg.Hist.)
****6175** P.L. 94-579, FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976
Senate Report (Interior and Insular Affairs Committee) No. 94-583, Dec. 18, 1976 (To accompany S. 507)
House Report (Interior and Insular Affairs Committee) No. 94-1163, May 15, 1976 (To accompany H.R. 13777)
House Conference Report No. 94-1724, Sept. 29, 1976 (To accompany S. 507)
Cong. Record Vol. 122 (1976)
DATES OF CONSIDERATION AND PASSAGE
Senate February 25, October 1, 1976
House July 22, September 30, 1976
The Senate bill was passed in lieu of the House bill after amending its language to contain much of the test of the House bill. The House Report and the House Conference Report are set out.

(CONSULT NOTE FOLLOWING TEXT FOR INFORMATION ABOUT OMITTED MATERIAL. EACH COMMITTEE REPORT IS A SEPARATE DOCUMENT ON WESTLAW.)

HOUSE REPORT NO. 94-1163 [***EXCERPTS***]

May 15, 1976

***1** The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 13777) to establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the public lands; and for other purposes, having considered the same, report favorably thereon without amendment and recommended that the bill do pass.

PURPOSE

From the beginnings of the Republic, the public lands have played a key role in the development of the economy and institutions of the United States. In directing the role that the public lands have played, the Congress has enacted thousands of public

land laws. More than 3,000 remain on the books today. These laws represented and effectuated Congressional policies needed when they were passed. Many of them are still viable and applicable today under present conditions. However, in many instances they are absolute and, in total, do not add up to a coherent expression of Congressional policies adequate for today's national goals.

The Executive Branch of the Government has tended to fill in missing gaps in the law, not always in a manner consistent with a system balanced in the best interests of all the people. A major weakness which has arisen under these circumstances is instability of national policies.

****6176 *2** The Committee recommends the enactment of H.R. 13777 [1] as a major step towards modernizing these public land laws. To this end, the bill will accomplish the following major objectives:

(1) Establish a mission for the public lands administered by the Secretary of the Interior through the Bureau of Land Management. At the present, these public lands total more than 450 million acres (out of an original total of 1,800 million acres), about one-fifth of the Nation's land. Located almost entirely in the 11 western states and in Alaska, their resources are highly varied and of tremendous value.

(2) Clothe the Bureau of Land Management with sufficient authority to enable it to carry out the goals and objectives established by law for the public lands under its jurisdiction.

(3) Enact into law criteria, guidelines, and standards to be followed by the Bureau of Land Management, and in a more limited way by the Forest Service, in the administration of various resources under their jurisdiction consistent with statutory goals. H.R. 13777 addresses those resource issues which have been identified as having urgent need for statutory direction at this time.

(4) Establish procedures to facilitate Congressional oversight of public land operations entrusted to the Secretary of the Interior.

(5) Weed out of the body of law those statutes and parts of statutes which are obsolete. The section-by-section analysis describes the means by which these objectives are to be achieved. In summary, they are as follows.

MISSION

The underlying mission proposed for the public lands is the multiple use of resources on a sustained-yield basis. Corollary to this is the selective transfer of public lands to other ownerships where the public interest will be served thereby. The proper multiple use mix of retained public lands is to be achieved by comprehensive land use planning, coordinated with State and local planning. Planning decisions are to be made only after full opportunity for public involvement in the planning process. Management and disposal of the public lands are to be consistent with land use plans so developed.

AUTHORITY FOR THE BUREAU OF LAND MANAGEMENT

The authorities that would be granted to the Bureau of Land Management involve:

(1) resource inventories and land-use planning;

(2) sales of public lands subject to specific statutory criteria and procedures;

(3) issuance of leases, licenses, and permits for use, occupancy, and development of public lands;

(4) terms and conditions in leases, licenses, permits, easements, and conveyances;

***3 **6177** (5) acquisitions of land and interest in land by purchase, donation and exchange with the right of eminent domain limited to acquisition of access to public lands;

(6) recordation of mining claims and termination of unrecorded claims;

(7) Recordable disclaimers of interest in land;

(8) conveyance of reserved mineral interests;

(9) enforcement of laws and regulations;

(10) administrative-type authorities, including:

(a) charges for services rendered

(b) deposits for rehabilitation of lands and resources

(c) working capital fund

(d) research

(e) cooperative agreements

(f) acceptance of contributions

(g) multi-year contracts for airborne cadastral survey and resource protection operations;

(11) advisory boards and councils;

(12) issuance of rules and regulations;

(13) issuance and termination of rights-of-way; and

(14) withdrawals.

GUIDELINES FOR SPECIFIC RESOURCE MANAGEMENT

Urgent need for Congressional direction has been identified for a number of resource areas, as follows:

(1) a system for computation of grazing fees which will be equitable and will remove the subject from continuing controversy;

(2) a clarification of the tenure of grazing users which is now implied in existing legislation;

(3) inclusion of BLM lands in the Wilderness System and procedures;

(4) establishment of goals and timetable for protection and management of the California desert area;

(5) liberalization of Recreation and Public Purposes Act with respect to grants of recreational lands to States and local governments; and

(6) use of motorized vehicles in the protection and management of wild horses and burros and transfer of title to animals from Federal lands is necessary to accomplish the purposes of the Act.

OVERSIGHT PROCEDURES

Public concern over the possibility of excessive disposals of public lands on the one hand and excessive restrictions on the other is reflected in the inclusion of requirements for referral of certain types of actions to the Congress for review. The general requirements of overview show the desirability of a mandatory annual report. H.R. 13777 contains the following requirements:

(1) referral to Congress of actions implementing decisions to exclude one or more principal uses from areas of 100,000 acres or more of public lands;

***4 **6178** (2) referral to Congress of proposed sales of areas in excess of 2,500 acres;

(3) referral to Congress of withdrawals and extensions of withdrawals of 5,000 acres or more and reports to Congress on the results of review of certain withdrawals existing on the date of approval of H.R. 13777;

(4) annual reports;

(5) appointment of the Director by the President with the advice and consent of the Senate; and

(6) requirement for biennial appropriation authorizations.

NATIONAL FOREST SYSTEM

In view of Committee responsibility for the forest reserves created out of the public domain and the equal applicability of certain policies to such lands, the provisions of H.R. 13777 apply to public domain lands in such forest reserves with respect to:

1. grazing fees;

2. grazing tenure and advisory boards;

3. wild horses and burros;

4. rights-of-way;

5. inventory and planning;

6. disposal of lands around compacted communities;

7. exchanges;

8. mining claims; and

9. recordable disclaimers of interest.

SECTION BY SECTION ANALYSIS

TITLE I-SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

Section 101-Short Title

The short title identifies the legislation as 'The Federal Land Policy and Management Act of 1976.'

Section 102-Declaration of Policy

This section sets forth Congressional policy which is the basis for the statutory authority and directives contained in subsequent sections of H.R. 13777 and for future legislation concerning the use, occupancy, and disposition of the public lands. The 13 points include policies for retention and selective disposal of the public lands; up-to-date inventories and comprehensive land-use plans; Congressional oversight of withdrawals; fair and equitable administrative procedures; judicial review of administrative decisions; management under principles of multiple use and sustained yield; protection of environmental and other public values; receipt of fair market value for public lands and resources; acquisition and exchanges; recognition of need for materials; and payments to states and local governments to compensate for tax immunity.

Section 103-Definitions

The section defines 14 terms used in the bill: (1) areas of critical environmental concern; (2) holder; (3) multiple use; (4) public involvement; (5) public lands; (6) right-of-way; (7) Secretary; (8) ****6179 *5** sustained yield; (9) wilderness; (10) withdrawal; (11) allotment management plan; (12) principal or major uses; (13) department and agency; and (14) lands in the National Forest System.

The definitions of ‘multiple use‘ and ‘sustained yield‘ preserve essentially their same meaning as used in the Forest Service Multiple Use Act of 1960 and in the now-expired Public Land Classification and Multiple Use Act of 1964. ‘Public lands‘ are defined as including all classes of lands managed by the Bureau of Land Management (BLM), except lands of the Outer Continental Shelf, thereby creating a common management base for all BLM lands. ‘Wilderness‘ is defined as used in the Wilderness Act of 1964. ‘Withdrawal‘ is defined to preserve its traditional meanings. The term ‘principal or major uses‘ is defined for the purposes of section 202 of the bill. They represent the uses for which Congressional oversight is particularly needed. The definition does not mean to imply that other uses such as ‘watershed‘ are not of great public significance. National Forest System lands are defined as public domain lands in national forests created out of the public domain.

TITLE II-PLANNING FUTURE PUBLIC LAND USE

Section 201-Inventory and Identification

This provision directs the Secretary of the Interior and the Secretary of Agriculture to inventory the lands (except wilderness) under their respective jurisdiction, and subject to the availability of funds, to identify such lands and provide state and local governments with data from the inventory. The section re-enacts the Forest Service inventory provisions of the Humphrey-Rarick Act of 1974.

Section 202-Land Use Planning

Subsections (a) and (b) direct the Secretary of the Interior and the Secretary of Agriculture to develop land use plans. Eight guiding principles are established, including multiple use and sustained yield, special attention to areas of critical environmental concern, present and potential uses, scarcity of values, long-term benefits, compliance with applicable pollution control laws, and coordination with state and local government planning activities. The principles incorporate provisions

of the Humphrey-Rarick Act of 1974 which apply to planning for National Forest lands.

The term ‘land use planning‘ is not defined in the bill because it is a term now in general usage and permits a large variety of techniques and procedures and various alternatives. The Committee is well acquainted with the land use planning systems of the Bureau of Land Management and the Forest Service and has found them to be consistent in general principles and practices with the objectives of H.R. 13777. Both systems treat land use planning as dynamic and subject to change with changing conditions and values.

The bill requires that the agency plans conform to land use plans of State and local governments ‘to the maximum extent‘ consistent with applicable Federal law. The responsibility for determining whether maximum conformance has been achieved is placed in the appropriate Secretary who is expected by the Committee to make every reasonable effort to achieve consistency.

****6180 *6** Subsection (c) requires a review of existing land use classifications and the inclusion of all lands in plans developed.

Subsection (d) requires public lands designated for retention to be managed under principles of multiple use and sustained yield unless dedicated to a specific use by law.

Subsection (e) authorizes the Secretary to implement his land use plans by management decisions. However, he will have to use the withdrawal procedures of the bill where the implementation action involves the application of the mining law or the transfer of lands from BLM to another governmental unit. Management decisions which would exclude one or more principal or major uses (as defined in the bill) for two years or more on areas in excess of 100,000 acres will have to be referred to Congress. Congress reserves the right to veto such decisions by the action of either House.

In subsection (f)(1) the Secretary of the Interior is directed to regulate, through permits, licenses, leases, published rules, or other documents, the use, occupancy and development of the public lands. The terms and conditions of his regulations would be subject to applicable law. The term ‘published rules‘ is used to make clear that individual authorizations are not required (such as for casual uses) where the law otherwise does not mandate that type of permission. This subsection will provide the Secretary with authority, under such terms and conditions are are found

necessary and consistent with existing law, to authorize and regulate uses not otherwise specifically provided by law. It provides that hunting and fishing will be permitted in accordance with Federal and State laws and that no Federal permits for hunting or fishing are authorized by this section. It permits the Secretaries to close areas to hunting and fishing for reasons of public safety. The Secretaries are expected to use the authority granted by the bill to close areas only if essential to the public safety, and then only for the shortest periods needed to accomplish this purpose. Protection of the public safety includes prevention and avoidance of hazards to persons, animals, and property. The authority granted is not in derogation of other authority granted by law for the protection of natural resources, including endangered species. The section specifies that no provision of the Mining Law of 1872 will be amended or altered by this legislation except as provided in section 207 (recordation of mining claims), subsection 401(f) (regulation of mining in the California desert), section 311 (wilderness review areas and wilderness areas), and except for the fact that the Secretary of the Interior is given specific authority, by regulation or otherwise, to provide that prospecting and mining under the Mining Law will not result in unnecessary or undue degradation of the public lands. The Secretary is granted general authority to prevent such degradation. Existing authority for control or regulations of migratory birds is preserved.

Subsection (f)(2) directs the Secretary to insert in permits and leases, provisions authorizing revocation or suspension, after notice and hearing, for violations of regulations or applicable State or Federal air or water pollution control plans. Immediate temporary revocations or suspensions may be ordered in emergencies. To be a basis for an action for suspension or termination, a violation must involve a term or condition specified in the document. The Committee expects that the Secretaries will be as explicit as is practical in listing ****6181 *7** the terms and conditions in order that the holder will be fully aware of his obligations under the document involved. The Secretaries will avoid vague and general language. The Secretaries will terminate suspensions promptly upon abatement of the offending violation and other necessary corrective action.

In subsection (g) the Secretary is directed to allow public involvement and to establish procedures for Federal, State, and local government and public participation in development of public land use plans and programs. In requiring ‘public participation‘ the Committee does not intend any dimunition in the authority and responsibility of the Secretaries to make public land National Forest decisions. It does expect the Secretaries to provide means for input by the interested public before decisions are made. The Secretaries will be expected to respond to public opinion but are expected to make their decisions on the merits of each case and not on

counting the numbers of responses pro and con. As to the extent of public participation in each case a rule of reason will be applied so that the cost of input procedures does not exceed the values involved. However, some expenditures will always be justified to insure public exposure of proposed decisions, even though the public may not in all cases respond to the opportunity to comment.

Section 203-Sales

(a) The section authorizes the sale of public lands (except land designated as wilderness) where (1) the land is difficult or uneconomic to manage and is not needed by another Federal agency; or (2) the land was acquired for specific purpose but is no longer needed for any Federal purpose; or (3) disposal of the land will serve public objectives. The term ‘public objectives‘ is meant in its broadest sense to include such goals as community and economic development.

(b) Sales of more than 2,500 acres may be made only after 90 days notification to the House and Senate and only then if neither House disapproves. The Chairmen of the Interior and Insular Affairs Committees will inform the Secretary as to specific reporting requirements, including but not limited to, format, information to be included, and timing of reports.

(c) Sales will be made at fair market value.

(d) Sales will be made on the basis of competitive bidding except where the Secretary determines that some other method is needed in order to achieve (1) equitable distribution of land, or (2) equitable consideration or public policies. Under the latter, State and local governmental agencies will have first consideration but not an automatic priority. To afford the preference rights authorized by the bill, the Secretary may grant a right of first refusal or make any other appropriate modification of competitive bidding. The Committee finds that an appropriate modification of competitive bidding in order to afford preference rights to adjoining owners would be continuance of the policy of permitting such owners to purchase the lands at not more than three times their appraised fair market value. This is not to say that other arrangements would not also be appropriate.

(e) Procedures and time limitations for rejection or acceptance of offers to purchase are established.

****6182 *8** (f) The Secretary is given authority to issue all public land patents, deeds and other documents of conveyance, and where necessary, to make corrections of

documents issued heretofore or in the future. As used in this subsection, when it refers to patents issued in the past, ‘public lands‘ includes lands under the jurisdiction of BLM and its predecessor agencies.

(g) The Secretary is directed to reserve mineral rights except (1) where there are no known minerals or (2) the reservation would interfere with more valuable surface development.

(h) The Secretary is directed to cooperate with State and local authorities. Sales are prohibited if they would contain terms and conditions that would be in violation of laws and regulations pursuant to State and local land use plans and programs.

Notice of proposed sales to governments and local government authorities is required. The mandatory nature of the requirement does not prevent such officials from arranging with the Secretary for any selective reference of proposed sales or elimination of the notices altogether.

(i) Patentees must be United States citizens or domestic corporations.

(j) Existing law authorizes the Secretary of Agriculture to designate, subdivide, and dispose of townsites needed for the expansion of communities adjoining national forest lands. This subsection amends the law to permit the Secretary of Agriculture to sell such lands en bloc to a local government for subdivision and disposal. The Secretary will have the authority to condition the sale to assure local governmental control of development of the lands consistent with the protection, management, and development of adjoining national forest lands.

The subsection permits the Secretary of Agriculture to transfer public lands under the 1958 Act, as amended only if the transfer would serve ‘indigenous‘ community objectives. The purpose of this is to limit transfers to essential community needs resulting from internal growth and from the need to improve and modernize community facilities and services. Examples of acceptable objectives include space for housing and service industries, expansion of existing economic enterprises, new industries utilizing local resources and skills, community parks and other intensive recreation areas for the local citizenry, public schools, and public health facilities. Examples of unacceptable objectives include intensive commercial recreation enterprises, new industries that would change the character of the local community, and housing projects to attract seasonal or other outside occupants. Should the

Secretary decide that it is in the public interest to convey lands for the latter kinds of purposes, he would have to use whatever authority he has to accomplish the transfer.

(k) This subsection directs the Secretary of the Interior to complete within a specified time action on the remaining pending applications under the Unintentional Trespass Act of 1968, now expired except as to such applications. The Committee considers the delays in final action as unconscionable and defeative of the objectives of the Congress in enacting the 1968 law. The Act intended that relief would be given to innocent trespassers within a reasonable time. Failure of the Secretary to act in a reasonably prompt manner has caused continuation ***9 **6183** of the conditions which warranted relief and requires applicants to absorb the costs of inflation which prompt administrative action would have avoided. This section provides for the relief originally intended by the Congress. For sales under the Act, the lands will hereafter be appraised as of September 26, 1972, and offered at that price to preference right holders if the Secretary decides to sell the lands.

Section 204-Withdrawal of Land

With certain exceptions, H.R. 13777 will repeal all existing law relating to executive authority to create, modify, and terminate withdrawals and reservations. It would reserve to the Congress the authority to create, modify, and terminate withdrawals for national parks, national forests, the Wilderness System, Indian reservations, certain defense withdrawals, and withdrawals for National Wild and Scenic Rivers, National Trails, and for other ‘national‘ recreation units, such as National Recreation Areas and National Seashores. It would also specifically reserve to the Congress the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act and for modification and revocation of withdrawals adding lands to the National Wildlife Refuge System. These provisions will insure that the integrity of the great national resource management systems will remain under the control of the Congress.

For the protection of statutory programs for the public lands and other statutory management programs, the bill grants to the Secretary of the Interior, subject to certain procedural controls, authority to create, modify, and terminate all withdrawals and reservations for all public purposes and departmental agency programs, existing and proposed other than those reserved by the bill to the Congress. Except for ‘emergency withdrawals‘ and ‘resource use‘ withdrawals of less than 5,000 acres and extensions of certain other withdrawals, all withdrawals created by the Secretary will have a duration of 5 years. The Secretary will have the authority to extend such withdrawals for additional 5-year periods. The smaller

'resource use' withdrawals will have their duration specified by the Secretary. Emergency withdrawals will have a maximum duration of one year. The Secretary will not have authority to extend such emergency withdrawals since one year gives sufficient time for him to determine whether a withdrawal should be made under the regular procedures or abandoned altogether. The Secretary will be required to notify Congress of all emergency withdrawals. He will also have to send notice of all other withdrawals (both original withdrawals and extensions) affecting 5,000 acres or more of Federal lands. Upon receipt of notice, each House will have, for a period of 90 days, the opportunity to terminate all such withdrawals, except emergency withdrawals, by a resolution of that House. Absent such timely action, it will take an Act of Congress to terminate the withdrawal if the Secretary does not do so. The bill specifies the information that the Secretary shall provide the Congress when he notifies it of withdrawals made under the provisions of the legislation. Other arrangements for reporting, such as the time for reporting, will be specified by the Chairmen of the Committees of Interior and Insular Affairs in the usual manner.

The bill requires all withdrawals under its provisions to be promulgated on the record after an opportunity for agency hearing. Except ****6184 *10** with respect to emergency withdrawals, it also requires that concurrence of heads of departments and independent agencies when lands under their jurisdiction would be affected.

The bill specifically grants the Secretary the authority, by regulation, to provide procedures (segregation of the lands) for protection of values in lands from nonconforming uses and for other purposes while he is considering their possible withdrawal. It allows the Secretary a period of one year to process proposals under such regulations. If he fails to take definitive action by that time, the protective provisions provided by the regulations would terminate. A period of a year is ample time for the Secretary to determine the course of action which will be in the public interest.

The bill would limit the authority of the Secretary to delegate his withdrawal authority to subordinates. Since withdrawals go to the heart of basic Federal land policies, he will be able to delegate action only to policy officers in the Office of the Secretary appointed by the President with the advice and consent of the Senate. Bureau Chiefs will not be permitted to exercise withdrawal authority. The Secretary of the Interior is directed to process all withdrawal applications pending as of the date of the Act within ten years of that date.

…. [***END OF EXCERPT***]

95th Congress
2d Session

COMMITTEE PRINT

LEGISLATIVE HISTORY OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 (PUBLIC LAW 94–579)

PREPARED AT THE REQUEST OF

HENRY M. JACKSON, *Chairman*

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

APRIL 1978

Publication No. 95–99

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

23-832 O

WASHINGTON : 1978

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 94-1724

PROVIDING FOR THE MANAGEMENT, PROTECTION, AND DEVELOPMENT OF THE NATIONAL RESOURCE LANDS, AND OTHER PURPOSES

SEPTEMBER 29, 1976.—Ordered to be printed

Mr. MELCHER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 507]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 507) to provide for the management, protection, and development of the national resource lands, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

TABLE OF CONTENTS

TITLE I—SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

SHORT TITLE

SEC. 101. This Act may be cited as the "Federal Land Policy and Management Act of 1976".

JOINT STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 507) to provide for the management, protection, and development of the national resource lands, and for other purposes, submit this joint statement in explanation of the effect of the language agreed upon by the managers and recommended in the accompanying conference report.

MAJOR PROVISIONS

1. The Senate bill provided an organic act for the Bureau of Land Management, and also addressed a number of resource related problems. The House amendments, in addition, addressed a number of other major BLM resource-related problems of current concern and to the extent these problems and organic provisions dealt with subject matter where Bureau of Land Management and Forest Service programs interfaced, the House amendments made them applicable to national forest lands. Where the interfacing is limited geographically, the applicability of the provisions is adjusted accordingly.

The conferees adopted the House approach but modified or deleted certain provisions as noted below. Consistent with this, the conferees adopted the short title of the bill contained in the House amendments instead of the Senate's "National Resource Lands Management Act."

2. The declarations of policy in the Senate bill and the House amendments were essentially the same. The House amendments expressed the policies in more specific detail in some instances. With minor changes, the conferees adopted the House amendments.

3. The conferees, with some editorial changes, adopted the definitions in the Senate bill and the House amendments except as follows:

(*a*) The conferees retained the traditional use of the term "public lands" (hereinafter referred to as BLM lands) in referring to the bulk of the lands administered by BLM. However, this does not prevent the Secretary of the Interior from continuing to use the term "national resource lands" in official as well as unofficial references to the public lands. It was made clear that the definition of "public lands" and other terms in S. 507 do not change the meaning of the terms in statutes enacted prior to the approval of S. 507.

(*b*) The conferees deleted the definition of "lands in the National Forest System," preferring to retain the definition of that term as it appears in the Humphrey-Rarick Act.

4. The Senate bill and the House amendments both had similar provisions for the inventory and identification of, and land use planning for, BLM lands. The House amendments had some additional provi-

sions which the conferees acted upon as follows; in addition to consolidating and making editorial improvements in the adopted text:

(a) The conferees adopted the House provisions that the Forest Service shall coordinate its land use plans with those of Indian tribes.

(b) The conferees adopted the House requirement that BLM land use planning provide for compliance with, rather than consideration of, both State and Federal pollution standards or implementation plans.

(c) The conferees adopted a consolidation of the Senate and House provisions for coordination of BLM land use planning with Federal, State, local governments, and Indian tribes, with revisions making clear that the ultimate decision as to determining the extent of feasible consistency between BLM plans and such other plans rests with the Secretary of the Interior. This affirmed the need to maintain the integrity of governing Federal laws and Congressional policies.

(d) The conferees adopted the House provisions for referral to Congress and possible veto of certain management decisions excluding public lands from one or more principal uses. As to this and other veto provisions of the House amendments, the conferees revised the House amendments to require adverse actions by concurrent resolution. They also adopted procedures for facilitating consideration of such resolutions when introduced.

5. The Senate bill and the House amendments both had similar provisions for sales of public lands. The House amendments had some additional provisions which the conferees, in addition to consolidating and making editorial improvements in the adopted text, acted upon as follows:

(a) The conferees did not adopt the Senate provision barring sales of tracts which would cause needless degradation of the lands. They adopted elsewhere in S. 507 provisions giving the Secretary of the Interior general authority to prevent needless degradation of the public lands.

(b) The conferees adopted the House provision forbidding sales of land designated as "wilderness" and broadened the prohibition to lands designated as national wild and scenic rivers and as national trails.

(c) The conferees adopted a revised version of the House provision for referring proposed sales of tracts of more than 2500 acres to Congress for review and possible veto.

6. The Senate bill contained no provisions relating to authority for withdrawals of public lands. The conferees adopted the House amendments with the following changes:

(a) A provision permitting the Secretary of the Interior to publish notice of a proposed withdrawal prior to his noting his records of the proposal. This is to minimize possible nuisance filings on lands proposed for withdrawal.

(b) The conferees extended time periods in the House amendments as follows:

1. Two-year segregative period (instead of one),
2. Twenty-year terms for withdrawals (instead of ten),
3. Three years for emergency withdrawals (instead of one),
4. Fifteen year for withdrawal review (instead of ten).

In specifying the substance to be included in reports to be submitted to the Congress or its committees, the bill establishes the general areas of subject matter. Details to be included in the reports will be worked out between the committees and the departments. The committees have authority ot waive the supplying of required information whenever they determine that it will serve no legislative purpose.

38. S. 507 is not to be construed as repealing any prior legislation by implication.

39. The Senate bill (but not the House amendments) provided for immediate repeal of the Alaska settlement laws. The conferees provided for termination of those laws ten years after the date of approval of S. 507.

40. The House amendments (but not the Senate bill) provided for repeal of practically all existing executive withdrawal authority. The conferees agreed to this repeal to the extent provided for by the House.

JOHN MELCHER,
HAROLD T. JOHNSON,
MORRIS UDALL,
PHILLIP BURTON,
JOHN F. SEIBERLING,
JIM SANTINI,
JAMES WEAVER,
DON H. CLAUSEN,
DON YOUNG,
Managers on the Part of the House.

HENRY M. JACKSON,
FRANK CHURCH,
LEE METCALF,
J. BENNETT JOHNSTON,
FLOYD K. HASKELL,
DALE BUMPERS,
MARK O. HATFIELD,
JAMES A. MCCLURE,
Managers on the Part of the Senate.

95th Congress
2d Session

COMMITTEE PRINT

LEGISLATIVE HISTORY OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 (PUBLIC LAW 94–579)

PREPARED AT THE REQUEST OF

HENRY M. JACKSON, *Chairman*

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

APRIL 1978

Publication No. 95–99

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1978

23-832 O

Calendar No. 561

94TH CONGRESS 1st Session } SENATE { REPORT No. 94-583

NATIONAL RESOURCE LANDS MANAGEMENT ACT

DECEMBER 18 (legislative day, DECEMBER 15,) 1975.—Ordered to be printed

Mr. HASKELL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 507]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 507), to provide for the management, protection, and development of the national resource lands, and for other purposes, having considered the same, reports favorably thereon with an amendment to the text and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following language:

That (a) this Act may be cited as the "National Resource Lands Management Act".

(b) TABLE OF CONTENTS.—

SEC. 2. DEFINITIONS.—As used in this Act:

(a) "The Secretary" means the Secretary of the Interior.

(b) "National resource lands" means all lands and interests in lands (including the renewable and nonrenewable resources thereof) now or hereafter administered by the Secretary through the Bureau of Land Mangement, except the Outer Continental Shelf.

(c) "Multiple use" means the management of the national resource lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; 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 recreation and scenic values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment, with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(d) "Sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of land without permanent impairment of the quality and productivity of the land or its environmental values.

(e) "Areas of critical environmental concern" means areas within the national resource lands where special management attention is required to protect important historic, cultural, or scenic values, or natural systems or processes, or life and safety as a result of natural hazards.

(f) "Right-of-way" means an easement, lease, permit, or license to occupy, use, or traverse national resource lands granted for the purposes listed in title IV.

(g) "Holder" means any State or local governmental entity or agency, individual, partnership, corporation, association, or other business entity receiving or using a right-of-way under title IV.

SEC. 3. DECLARATION OF POLICY.—(a) The Congress hereby declares that—

(1) the national resource lands are a vital national asset containing a wide variety of natural resource values;

(2) sound, long-term management of the national resource lands is vital to the maintenance of a livable environment and essential to the well-being of the American people;

(3) the national interest will be best realized if the national resource lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts; and

(4) except where disposal of particular tracts is made in accordance with title II, the national interest will be best served by retaining the national resource lands in Federal ownership.

(b) The Congress hereby directs that the Secretary shall manage the national resource lands under principles of multiple use and sustained yield in a manner which will, using all practicable means and measures: (i) assure the environmental quality of such lands for present and future generations; (ii) provide for, but not necessarily be limited to, such uses as provision of food and habitat for wildlife, fish and domestic animals, minerals and materials production, supplying the products of trees and plants, human occupancy and use, and various forms of outdoor recreation; (iii) include scientific, scenic, historical, archeological, natural ecological, air and atmospheric, water resource, and other public values; (iv) continue certain areas in their natural condition; (v) balance various demands on such lands consistent with national goals; (vi) assure payment of fair market value by users of such lands; and (vii) provide maximum opportunity for the public to participate in decisionmaking concerning such lands.

SEC. 4. RULES AND REGULATIONS.—The Secretary is authorized to promulgate such rules and regulations as he deems necessary to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the Administrative Procedure Act (60 Stat. 237), as amended. Prior to the promulgation of such rules and regulations, the national resource lands shall be administered under existing rules and regulations concerning such lands.

SEC. 5. PUBLIC PARTICIPATION.—In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management, of the national resource lands

SEC. 6. ADVISORY BOARDS AND COMMITTEES.—In providing for public participation in the planning for and management of the national resource lands, the Secretary, pursuant to the Federal Advisory Committee Act (86 Stat. 770) and other applicable law, may establish and consult such advisory boards and committees as he deems necessary to secure full information and advice on the execution of his responsibilities. The membership of such boards and committees shall be representative of a cross section of groups interested in the management of the national resource lands and the various types of use and enjoyment of such lands.

SEC. 7. ANNUAL REPORT.—The Secretary shall prepare an annual report which he shall make available to the public and submit to Congress no later than 120 days after the close of each fiscal year. The report shall describe, in appropriate detail, activities relating or pursuant to this Act for the fiscal year just ended, any problems which may have arisen concerning such activities, and other pertinent information which will assist the accomplishment of the provisions and purposes of this Act. The report shall contain a detailed list and description of all transfers of national resource lands out of Federal ownership for the fiscal year just ended. It shall include such tables, graphs, and illustrations as will adequately reflect the fiscal year's activities, historical trends, and future projections relating to the national resource lands.

SEC. 8. DIRECTOR.—Appointments made on or after the date of the enactment of this Act to the position of the Director of the Bureau of Land Management, within the Department of the Interior, shall be made by the President, by and with the advice and consent of the Senate. The Director shall have a broad background and experience in public land and natural resource management.

SEC. 9. APPROPRIATIONS.—There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes and provisions of this Act.

TITLE I—GENERAL MANAGEMENT AUTHORITY

SEC. 101. MANAGEMENT.—The Secretary shall manage the national resource lands in accordance with the policies and procedures of this Act and with any land use plans which he has prepared pursuant to section 103, except to the extent that other applicable law provides otherwise. Such management shall include:

(1) regulating, through permits, licenses, leases, or such other instruments as the Secretary deems appropriate, the use, occupancy, or development of the national resource lands not provided for by other laws: *Provided, however,* That no provision of this Act shall be construed as authorizing the Secretary to require any Federal permit to hunt or fish on the national resource lands;

(2) requiring appropriate land reclamation as a condition of use, and

requiring performance bonds or other security guaranteeing such reclamation in a timely manner from any person permitted to engage in an extractive or other activity likely to entail significant disturbance to or alteration of the national resource lands;

(3) inserting in permits, licenses, leases, or other authorizations to use, occupy, or develop the national resource lands, provisions authorizing revocation or suspension, after notice and hearing, of such permits, licenses, leases, or other authorizations, upon final administrative finding of a violation of any applicable regulations issued by the Secretary under any Act applicable to the national resource lands or upon final administrative finding of a violation on such lands of any applicable State or Federal air or water quality laws or regulations: *Provided*, That any such suspension shall be terminated no later than the date upon which the cause of said violation has been rectified: *Provided further*, That the Secretary may order an immediate temporary suspension prior to a hearing or final administrative finding if he determines that such a suspension is necessary to protect public health or safety or the environment: *Provided further*, That, where other applicable law contains specific provisions for suspension, revocation, or cancellation of a permit, license, or other authorization to use, occupy, or develop the national resource lands, the specific provisions of such law shall prevail; and

(4) the prompt development of regulations for the protection of areas of critical environmental concern.

SEC. 102. INVENTORY.—(a) The Secretary shall prepare and maintain on a continuing basis an inventory of all national resource lands, and their resource and other values (including outdoor recreation and scenic values), giving priority to areas of critical environmental concern. Areas containing wilderness characteristics as described in section 2(c) of the Act of September 3, 1964 (78 Stat. 890, 891), shall be identified within five years of enactment of this Act. The inventory shall be kept current so as to reflect changes in conditions and in identifications of resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change in the management or use of national resource lands.

(b) As funds and manpower become available, the Secretary shall provide (i) means of public identification of national resource lands, including signs and maps, and (ii) State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in the proximity of national resource lands.

SEC. 103. LAND USE PLANS.—(a) The Secretary shall, with public participation, develop, maintain, and, when appropriate, revise land use plans for the national resource lands consistent with the terms and conditions of this Act and coordinated so far as he finds feasible and proper, or as may be required by the enactment of a national land use policy or other law, with the land use plans, including the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended, of State and local governments and other Federal agencies.

(b) In the development and maintenance of land use plans, the Secretary shall:

(1) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and social sciences;

(2) give priority to the designation and protection of areas of critical environmental concern;

(3) rely, to the extent it is available, on the inventory of the national resource lands, their resources, and other values;

(4) consider present and potential uses of the lands;

(5) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(6) weigh long-term public benefits; and

(7) consider the requirements of applicable pollution control laws including State or Federal air or water quality standards, noise standards, and implementation plans.

(c) Wherever any proposed change in the permitted uses on any national resource lands would affect authorization for use of such lands, persons holding leases, licenses, or permits concerning the use to be affected and State and local governments with jurisdiction in the affected area shall be given written notice by the Secretary of such proposed change sufficiently in advance to permit such persons to initiate such administrative review processes available to them under the authorization before such change is put into effect.

(d) Areas identified pursuant to section 102 as having wilderness characteristics shall be reviewed within fifteen years of enactment of this Act pursuant to the procedures set forth in subsections 3(c) and (d) of the Act of September 3, 1964 (78 Stat. 890, 892–893): *Provided, however,* That such review shall not, of itself, either change or prevent change in the management or use of the national resource lands.

TITLE II—CONVEYANCE AND ACQUISITION AUTHORITIES

SEC. 201. AUTHORITY TO SELL.—Except as otherwise provided by law, and subject to the requirements of section 3 of this Act, the Secretary is authorized to sell national resource lands. Any tract of the national resource lands may be sold if the Secretary, in accordance with the guidelines he has established for sale of national resource lands and after preparation pursuant to section 103 of a land use plan which includes such tract, determines that the sale of such tract will not cause needless degradation of the environment and meets the disposal criteria of section 202.

SEC. 202. DISPOSAL CRITERIA.—(a) Except as to conveyances under sections 208, 213, and 214, a tract of national resource lands may be transferred out of Federal ownership under this Act only where, as a result of land use planning required under section 103, the Secretary determines that—

(1) such tract, because of its location and other characteristics, is difficult to manage as part of the national resource lands and is not suitable for management by another Federal agency; or

(2) such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(3) disposal of such tract will serve objectives which cannot be achieved prudently or feasibly on land other than such tract and which outweigh all public objectives and values which would be served by maintaining such tract in Federal ownership.

(b) Where the Secretary determines that land to be conveyed under clause (3) of subsection (a) is of agricultural value and is desert in character, such land shall be conveyed either under the sale authority of section 201 or in accordance with existing law.

SEC. 203. SALES AT FAIR MARKET VALUE.—Sales of national resource lands under this Act shall be at not less than the appraised fair market value as determined by the Secretary.

SEC. 204. SIZE OF TRACTS.—The Secretary shall determine and establish the size of tracts of national resource lands to be sold on the basis of the land use capabilities and development requirements of the lands; and, where any such tract which is judged by the Secretary to be chiefly valuable for agriculture is sold, its size shall be no larger than necessary to support a family-sized farm.

SEC. 205. COMPETITIVE BIDDING PROCEDURES.—Except as to sales under sections 208 and 214, sales of national resource lands under this Act shall be conducted under competitive bidding procedures to be established by the Secretary. However, where the Secretary determines it necessary and proper (i) to assure equitable distribution among purchasers of national resource lands, or (ii) to recognize equitable considerations or public policies, including but not limited to a preference to users, he is authorized to sell national resource lands with modified competitive bidding or without competitive bidding.

SEC. 206. RIGHT TO REFUSE OR REJECT OFFER OF PURCHASE.—Until the Secretary has accepted an offer to purchase, he may refuse to accept any offer or may withdraw any land or interest in land from sale under this Act when he determines that consummation of the sale would not be consistent with this Act or other applicable law. The Secretary shall accept or reject, in writing, any offer to purchase made through competitive bid at his invitation no later than thirty days after the submission of such offer.

SEC. 207. RESERVATION OF MINERAL INTERESTS.—All conveyances of title issued by the Secretary under this Act, except conveyances under section 213, shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe: *Provided,* That, where prospecting, mining, or removing minerals reserved to the United States would interfere with or preclude the appropriate use or development of such land, the Secretary may (1) enter into covenants at the time of conveyance of such land or thereafter which provide that such activities shall not be pursued for a specified period, or (2) convey the minerals in the conveyance of title in accordance with the provisions of section 208(a) (1) and (2).

SEC. 208. CONVEYANCE OF RESERVED MINERAL INTERESTS.—(a) The Secretary may convey mineral interests owned by the United States where the surface is in non-Federal ownership, regardless of which Federal agency may have administered the surface, if he finds (1) that there are no mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.

(b) Conveyance of mineral interests pursuant to this section shall be made only to the record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed.

(c) Before considering an application for conveyance of mineral interests pursuant to this section—

(1) the Secretary shall require the deposit by the applicant of a sum of money which he deems sufficient to cover administrative costs including, but not limited to, costs of conducting an exploratory program to determine the character of the mineral deposits in the land, evaluating the data obtained under the exploratory program to determine the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance: *Provided*, That, if the administrative costs exceed the deposit, the applicant shall pay the outstanding amount; and, if the deposit exceeds the administrative costs, the applicant shall be given a credit for or refund of the excess; or

(2) the applicant shall have conducted, and submitted to the Secretary the results of, such an exploratory program, in accordance with standards promulgated by the Secretary.

(d) Moneys paid to the Secretary for administrative costs pursuant to subsection (c) of this section shall be paid to the agency which rendered the service and deposited to the appropriation then current.

SEC. 209. TERMS OF PATENT.—The Secretary shall insert in patents or other documents of conveyance he issues under this Act such terms, covenants, conditions, and reservations which he deems to be essential to insure proper land use and protection of the public interest: *Provided*, That such terms, covenants, conditions, and reservations shall not require or permit the land conveyed to be used in conflict with Federal or State law or State land use plans.

SEC. 210. CONFORMING CONVEYANCES TO STATE AND LOCAL PLANNING.—At least ninety days prior to a sale or other conveyance of national resource lands under this Act, the Secretary shall notify the Governor of the State within which such lands are located and the head of the governing body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which such lands are located in order to afford the appropriate body or bodies the opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning, the use of such lands prior to such conveyance. The Secretary shall also promptly notify such public officials of the issuance of the patent or other document of conveyance for such lands.

SEC. 211. AUTHORITY TO ISSUE AND CORRECT DOCUMENTS OF CONVEYANCE.—Consistent with his authority to dispose of national resource lands, the Secretary is authorized to issue deeds, patents, and other indicia of title, and to correct such documents where necessary. In addition, the Secretary is authorized to make corrections on any documents of conveyance which have heretofore been issued on lands which would, at the time of their conveyance, have met the description of national resource lands.

SEC. 212. RECORDABLE DISCLAIMERS OF INTERESTS IN LAND.—(a) After consulting with any affected Federal agency, the Secretary is authorized to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where he determines (1) a record interest of the United States in lands has terminated by operation of law; or (2) the lands lying between the meander line shown on a plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States; or (3) accreted, relicted, or avulsed lands are not lands of the United States.

(b) No document of disclaimer shall be issued pursuant to this section unless the applicant therefor has filed with the Secretary an application in writing, notice of such application setting forth the grounds supporting such application has been published in the Federal Register at least ninety days preceding the issuance of such disclaimer, and the applicant has paid to the Secretary the administrative costs of issuing the disclaimer, as determined by the Secretary. All receipts shall be credited to the appropriation from which expended.

(c) Issuance of a document of disclaimer by the Secretary pursuant to the provisions of this section and regulations promulgated hereunder shall have the same effect as a quitclaim deed from the United States.

SEC. 213. ACQUISITION AND EXCHANGE OF LAND.—(a) The Secretary is authorized to acquire, by purchase, exchange, or donation, lands or interests therein where necessary for proper management of the national resource lands: *Provided*, That lands or interests in land may be acquired pursuant to this title by eminent domain only if necessary in order to secure access to national resource lands: *Provided further*, That any such lands or interests acquired by eminent domain shall be confined to as narrow a corridor as is necessary to serve such purpose.

(b) Acquisitions pursuant to this Act shall be consistent with applicable land use plans prepared by the Secretary under section 103.

(c) In exercising the exchange authority granted by subsection (a) of this section, the Secretary may accept title to any non-Federal lands or interests therein and in exchange therefor he may convey to the grantor of such lands or interests any national resource lands or interests therein which are located in the same State as the non-Federal land to be acquired, and (1) which he finds proper for transfer out of Federal ownership pursuant to section 202, or (2) the values of which and the objectives which such lands or interests may serve if retained in Federal ownership he finds to be outweighed by the values of the non-Federal lands or interests and the public objectives they could serve if acquired. The values of the lands or interests so exchanged either shall be equal, of if they are not equal, shall be equalized by the payment of money to the grantor or to the Secretary as the circumstances require: *Provided*, That such payment shall not exceed 30 per centum of the total value of the lands or interests transferred out of Federal ownership.

(d) Lands or interests in lands acquired purusant to this section or section 301(c) shall, upon acceptance of title, become national resource lands, and, for the administration of public lands not repealed by this Act, shall become public lands. If such acquired lands or interests are located within the exterior boundaries of a grazing district established pursuant to section 1 of the Taylor Grazing Act (48 Stat. 1269), as amended, they shall become a part of that district.

(e) Lands or interests in lands acquired under this section or section 301(c) which are within the boundaries of the national forest system may be transferred to the Secretary of Agriculture for administration as part of, and in accordance with, the laws, rules, and regulations applicable to, the National Forest System. Such transfer shall not result in the reduction in the percentage of in-lieu payments receivable by State and local governments. Lands or interests in lands acquired under this section or section 301(c) which are within the boundaries of the National Park, Wildlife Refuge, Wild and Scenic Rivers, or Trails Systems, or any other system established by Act of Congress, may be transferred to the appropriate agency head for administration as part of, and in accordance with the laws, rules, and regulations applicable to, such system.

SEC. 214. OMITTED LANDS.—(a) The Secretary is hereby authorized to convey to States or their political subdivisions under the Recreation and Public Purposes Act (44 Stat. 741), as amended, but without regard to the acreage limitations contained therein, unsurveyed islands determined by the Secretary to be public lands of the United States. The conveyance of any such island may be made without survey: *Provided, however*, That such island may be surveyed at the request of the applicant State or its political subdivision if such State or subdivision donates money or services to the Secretary for such survey, the Secretary accepts such money or services, and such services are conducted pursuant to criteria established by the Director of the Bureau of Land Management. Any such island so surveyed shall not be conveyed without approval of such survey by the Secretary prior to the conveyance.

(b)(1) The Secretary is authorized to convey to States and their political subdivisions under the Recreation and Public Purposes Act, but without regard to the acreage limitations contained therein, lands other than islands determined by him after survey to be public lands of the United States erroneously or fraudulently omitted from the original surveys (hereinafter referred to as "omitted lands"). Any such conveyance shall not be made without a survey: *Provided*, That the prospective recipient may donate money or services to the Secretary for the surveying necessary prior to conveyance if the Secretary accepts such money or services, such services are conducted pursuant to criteria established by the Director of the Bureau of Land Management, and such survey is approved by the Secretary prior to the conveyance.

(2) The Secretary is authorized to convey to the occupant of any omitted lands which, after survey, are found to have been occupied and developed for a five-year period prior to January 1, 1975, if the Secretary determines that such conveyance is in the public interest and will serve objectives which outweigh all public objectives and values which would be served by retaining such lands in Federal ownership. Conveyance under this subparagraph shall be made at not less than the fair market value of the land, as determined by the Secretary, and upon payment in addition of administrative costs, including the cost of making the survey, the cost of appraisal, and the cost of making the conveyance.

(c)(1) No conveyance shall be made pursuant to this section until the relevant State government, local government, and area-wide planning agency designated pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262) and/or title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 1103–4) have notified the Secretary as to the consistency of such conveyance with applicable State and local government land use plans and programs.

(2) The provisions of section 210 of this Act shall be applicable to all conveyances under this section.

(d) The final sentence of section 1(c) of the Recreation and Public Purposes Act shall not be applicable to conveyances under this section.

(e) No conveyance pursuant to this section shall be used as the basis for determining the baseline between Federal and State ownership, the boundary of any State for purposes of determining the extent of a State's submerged lands or the line of demarcation of Federal jurisdiction, or any similar or related purpose.

(f) The provisions of this section shall not apply to any lands within the National Forest System, as defined in the Act of August 17, 1974 (88 Stat. 480), the National Park System, the National Wildlife Refuge System, and the National Wild and Scenic Rivers System.

(g) Nothing in this section shall supersede the provisions of the Act of December 22, 1928 (45 Stat. 1069), as amended, and the Act of May 31, 1962 (76 Stat. 89) or any other Act authorizing the sale of specific omitted lands.

TITLE III—MANAGEMENT IMPLEMENTING AUTHORITY

SEC. 301. STUDIES, COOPERATIVE AGREEMENTS, AND CONTRIBUTIONS.—(a) The Secretary may conduct investigations, studies, and experiments, on his own initiative or in cooperation with others, involving the management, protection, development, acquisition, and conveying of the national resource lands.

(b) The Secretary may enter into contracts or cooperative agreements involving the management, protection, development, acquisition, and conveying of the national resource lands.

(c) The Secretary may accept contributions or donations of money, services, and property, real, personal, or mixed, for the management, protection, development, acquisition, and conveying of the national resources lands, including the acquisition of rights-of-way for such purposes. He may accept contributions for cadastral surveying performed on federally controlled or intermingled lands. Moneys received hereunder shall be credited to a separate account in the Treasury and are hereby appropriated and made available until expended, as the Secretary may direct, for payment of expenses incident to the function toward the administration of which the contributions were made and for refunds to depositors of amounts contributed by them in specific instances where contributions are in excess of their share of the cost.

SEC. 302. SERVICE CHARGES, REIMBURSEMENT PAYMENTS, AND EXCESS PAYMENTS.—(a) Notwithstanding any other provision of law, the Secretary may establish filing fees, service fees and charges, and commissions with respect to applications and other documents relating to national resource lands and may change and abolish such fees, charges, and commissions.

(b) The Secretary is authorized to require a deposit of any payments intended to reimburse the United States for extraordinary costs with respect to applications and other documents relating to national resource lands. The moneys received for extraordinary costs under this subsection shall be deposited with the Treasury in a special account and are hereby appropriated and made available until expended. As used in this subsection, "extraordinary costs" include but are not limited to the costs of special studies; environmental impact statements; monitoring construction, operation, maintenance, and termination of any authorized facility; or other special activities.

23-832 O - 78 - 7

(c) In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of the national resource lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

SEC. 303. WORKING CAPITAL FUND.—(a) There is hereby established a working capital fund for the management of national resource lands. This fund shall be available without fiscal year limitation for expenses necessary for furnishing, in accordance with the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and regulations promulgated thereunder, supplies and equipment services in support of Bureau of Land Management programs, including but not limited to, the purchase or construction of storage facilities, equipment yards, and related improvements and the purchase, lease, or rent of motor vehicles, aircraft, heavy equipment, and fire control and other resource management equipment within the limitations set forth in appropriations made to the Bureau of Land Management.

(b) The initial capital of the fund shall consist of appropriations made for that purpose together with the fair and reasonable value at the fund's inception of the inventories, equipment, receivables, and other assets, less the liabilities, transferred to the fund. The Secretary is authorized to make such subsequent transfers to the fund as he deems appropriate in connection with the functions to be carried on through the fund.

(c) The fund shall be credited with payments from appropriations and funds of the Bureau of Land Management, other agencies of the Department of the Interior, other Federal agencies, and other sources, as authorized by law, at rates approximately equal to the cost of furnishing the facilities, supplies, equipment, and services (including depreciation and accrued annual leave). Such payments may be made in advance in connection with firm orders, or by way of reimbursement.

(d) There is hereby authorized to be appropriated not to exceed $3,000,000 as initial capital of the fund.

SEC. 304. DEPOSITS AND FORFEITURES.—(a) Any moneys received by the United States as a result of the forfeiture of a bond or other security by a resource developer or purchaser or permittee who does not fulfill the requirements of his contract or permit or does not comply with the regulations of the Secretary, or as a result of a compromise or settlement of any claim whether sounding in tort or in contract involving present or potential damage to national resource lands, shall be credited to a separate account in the Treasury and are hereby appropriated and made available, until expended as the Secretary may direct, to cover the cost to the United States of any improvement, protection, or rehabilitation work on the national resource lands which has been rendered necessary by the action which has led to the forfeiture, compromise, or settlement.

(b) The Secretary may require a user or users of roads, trails, lands, or facilities under the jurisdiction of the Bureau of Land Management to maintain such roads, trails, lands, or facilities in a satisfactory condition commensurate with the particular use requirements and the use made by each user, the extent of such maintenance to be shared by the users in proportion to such use or, if such maintenance cannot be so provided, to deposit sufficient money to enable the Secretary to provide such maintenance. Such deposits shall be credited to a separate account in the Treasury and are hereby appropriated and made available until expended, as the Secretary may direct, to cover the cost to the United States of the maintenance of any roads, trails, lands, or facilities under the jurisdiction of the Bureau of Land Management: *Provided*, That nothing in this subsection shall be construed to require a user to provide maintenance or deposits to repair any damages attributable to general public use rather than the specific use of such user.

(c) Any moneys collected under this Act in connection with lands administered under the Act of August 28, 1937 (50 Stat. 874), as amended, shall be expended for the benefit of such lands only.

(d) If any portion of a deposit or amount forfeited under this section is found by the Secretary to be in excess of the cost of doing the work authorized under this Act, the amount in excess shall be transferred to miscellaneous receipts.

SEC. 305. CONTRACTS FOR CADASTRAL SURVEY OPERATIONS AND RESOURCE PROTECTION.—(a) The Secretary is authorized to enter into contracts for the use of aircraft, and for supplies and services, prior to the passage of an appropriation therefor, for airborne cadastral survey and resource protection operations

of the Bureau of Land Management. He may renew such contracts annually, not more than twice, without additional competition. Such contracts shall obligate funds for the fiscal years in which the costs are incurred.

(b) Each such contract shall provide that the obligation of the United States for the ensuing fiscal years is contingent upon the passage of an applicable appropriation, and that no payment shall be made under the contract for the ensuing fiscal years until such appropriation becomes available for expenditure.

SEC. 306. UNAUTHORIZED USE.—The use, occupancy, or development of any portion of the national resource lands contrary to any regulation of the Secretary or other responsibile authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited.

SEC. 307. ENFORCEMENT AUTHORITY.—(a) Any violation of regulations which the Secretary issues with respect to the management, protection, development, acquisition, and conveying of the national resource lands and property located thereon and which the Secretary identifies as being subject to this section shall be punishable by a fine of not more than $1,000 or imprisonment for not more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.

(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from using, occupying, or developing the national resource lands in violation of laws or regulations relating to lands or resources managed by the Secretary.

(c) For the specific purpose of enforcing any law or regulation relating to lands or resources managed by the Secretary, the Secretary may designate any employee to (1) carry firearms; (2) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; and (3) make arrests without warrant or process for a misdemeanor the employee has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

SEC. 308. COOPERATION WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES.—In the administration and regulation of the use, occupancy, and development of the national resource lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of the use, occupancy, and development of national resource lands.

SEC. 309. CALIFORNIA DESERT AREA.—(a) The Congress finds that—

(1) the California desert contains historical, scenic, archeological, environmental, biological, cultural, scientific, and educational resources which are unique and irreplaceable;

(2) the desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;

(3) the desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use;

(4) because of the proximity of the California desert to the rapidly growing population centers of southern California, these threats are certain to intensify;

(5) the Secretary has initiated a comprehensive planning process and established an interim management program for the California desert; and

(6) to insure further study of the relationship of man and the desert environment and preserve the unique and irreplaceable resources of the California desert, the public must be provided more opportunity to participate in such planning and management, and additional authority must be provided to the Secretary to enable effective implementation of such planning and management.

(b) It is the purpose of this section to provide for the immediate and future protection, development, and management of the California desert within the framework of a balanced program of multiple use, sustained yield and maintenance of environmental quality as provided in this Act.

(c)(1) For the purpose of this section, the "California desert area" is the area generally depicted on a map entitled "California Desert Area—Proposed", dated April 1974, and on file in the Office of the Director of the Bureau of Land Management.

(2) As soon as practicable after this Act takes effect, the Secretary shall file a map and a legal discription of the California desert area with the Committees on Interior and Insular Affairs of the United States Senate and the House of Representatives, and such description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made by the Secretary. To the extent practicable, the Secretary shall make such legal description and map available to the public promptly upon request.

(d) The Secretary, in accordance with section 103, shall prepare and implement a comprehensive, long-range plan for the management, use, and protection of the national resource lands within the California desert area. Such plan shall be completed and implementation thereof initiated on or before June 30, 1980.

(e) During the period beginning on the date of enactment of this Act and ending on the effective date of implementation of the comprehensive, long-range plan, the Secretary shall execute an interim program to manage and protect the national resource lands, and their resources now in danger of destruction, in the California desert area, provide for the public use of such lands in an orderly and reasonable manner, and establish a uniformed desert ranger force.

(f)(1) The Secretary, within sixty days of enactment of this Act, shall establish a California Desert Area Advisory Committee (hereinafter referred to as "advisory committee") in accordance with the provisions of section 6.

(2) It shall be the function of the advisory committee to advise the Secretary with respect to the preparation and implementation of the comprehensive, long-range plan required under subsection (d) of this section.

(g) The Secretary shall administer the national resource lands in the California desert area in accordance with the provisions of this Act and such other Acts as may be applicable. The Secretaries of Agriculture and Defense shall manage lands within their respective jurisdictions located in or adjacent to the California desert area, in accordance with the laws relating to such lands and wherever practicable in a manner consonant with the purpose of this section. The Secretaries of the Interior, Agriculture, and Defense are authorized and encouraged to consult among themselves and take cooperative actions to implement this subsection.

(h) The Secretary shall report to the Congress no later than two years after the enactment of this Act, and annually thereafter in the report required in section 7 of this Act, on the progress in, and any problems concerning, the implementation of this section, together with any recommendations, which he may deem necessary to remedy such problems.

(i) There is authorized to be appropriated for fiscal years 1977 through 1981 not to exceed $40,000,000 to effect the purpose of this section, such amount to remain available until expended.

SEC. 310. MINERAL REVENUES.—(a) Section 35 of the Act of February 25, 1920 (41 Stat. 437, 450), as amended, is further amended by—

(1) deleting "52½ per centum thereof shall be paid into, reserved" and inserting in lieu thereof: "30 per centum thereof shall be paid into, reserved"; and

(2) inserting after "direct;" and before "and" the following language: "an additional 22½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said additional 22½ per centum of all moneys paid to any State to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act, for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services;".

(b)(1) The Secretary is authorized to make loans to States and their political subdivisions in order to relieve social or economic impacts occasioned by the development of minerals leased in such States pursuant to the Act of February 25, 1920, as amended. Such loans shall be confined to the uses specified for the 22½ per centum of mineral revenues to be received by such States and subdivisions pursuant to section 35 of such Act. All loans shall bear interest at a rate not to exceed 3 per centum and shall be for such amounts and durations as the Secretary shall determine. The Secretary shall limit the amounts of such loans to the portion of the 22½ per centum of anticipated mineral revenues to be received by the

recipients of said loans pursuant to said section 35 for any prospective 10-year period. Such loans shall be repaid by the loan recipients from that portion of the 22½ per centum of mineral revenues to be derived from said section 35 by such recipients, as the Secretary determines.

(2) The Secretary, after consultation with Governors of the affected States, shall allocate such loans among the States and their subdivisions in a fair and equitable manner, giving priority to those States and subdivisions suffering the most severe impacts.

(3) Loans under this subsection shall be subject to such terms and conditions as the Secretary determines necessary to assure that the purpose of this subsection will be achieved. The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this subsection.

SEC. 311. RECORDATION OF MINING CLAIMS.—(a) Each mining claim under the Mining Law of 1872, as amended (Revised Statutes 2318–2352; 30 USC 22), shall be recorded by the claimant with the Secretary within two years after the date of enactment of this Act or within thirty days of location of the claim, whichever is later. Any claim not so recorded shall be conclusively presumed to be abandoned and shall be void.

(b) Any claim recorded pursuant to subsection (a) for which the claimant has not made application for patent within ten years after the date of recordation of the claim shall be conclusively presumed to be abandoned and shall be void: *Provided, however,* That upon a showing that a mineral survey cannot be completed within said ten-year period, the filing of an application for a mineral survey, which states on its face that it was filed for the purpose of proceeding to patent, shall be acceptable for the patent application purpose of this subsection if all other applicable requirements under the general mining laws have been met and if the applicant subsequently prosecutes diligently his application for patent to completion.

(c) Such recordation or application shall not render valid any claim which was not valid on the date of enactment of this Act, or which becomes invalid thereafter.

TITLE IV—AUTHORITY TO GRANT RIGHTS-OF-WAY

SEC. 401. AUTHORIZATION TO GRANT RIGHTS-OF-WAY.—(a) The Secretary is authorized to grant, issue, or renew rights-of-way over, upon, or through the national resource lands for—

(1) reservoirs, canals, ditches flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, or water, and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Power Commission under the Act of June 10, 1920 (41 Stat. 1063), as amended;

(5) systems for transmission or reception of radio, television, telegraph, and other electronic signals, and other means of communication;

(6) roads, trails, highways, railroads, canals, tramways, airways, livestock driveways, or other means of transportation; and

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, or through the national resource lands.

(b)(1) The Secretary is authorized to provide for the acquisition, construction, and maintenance of roads within and near the national resource lands in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management of such lands and the other resources thereof. Financing of such roads may be accomplished (A) by the Secretary using appropriated funds, (B) by requirements on purchasers of timber and other products from the national resource lands, including provisions for amortization of road costs in contracts, (C) by cooperative financing with other public agencies and with private agencies or persons, or (D) by a

combination of these methods: *Provided*, That where roads of a higher standard than those needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of timber and other products from the national resource lands shall not be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate: *Provided further*, That it is understood that when timber is offered with the condition that the purchaser thereof will build roads in accordance with standards specified in the offer, the purchaser of the timber will be responsible for paying the full costs of construction of such roads.

(2) Copies of all instruments affecting permanent interests in land executed pursuant to this subsection shall be recorded in each county where the lands are located.

(3) Whenever the agreement under which the United States has obtained for the use of, or in connection with, the national resource lands a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor.

(c)(1) The Secretary shall require, prior to granting, issuing, or renewing a right-of-way pursuant to this title that the applicant submit and disclose any or all plans, contracts, agreements, or other information or material reasonably related to the use, or intended use, of the right-of-way which the Secretary deems necessary to a determination, in accordance with the provisions of this title, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in such right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary, prior to granting, issuing, or renewing a right-of-way pursuant to this title, shall require the applicant to disclose the identity of the participants in the entity. Such disclosure shall include, where applicable: (1) the name and address of each partner in the entity; (2) the name and address of each shareholder owning 3 per centum or more of the shares of such entity, together with the number and percentage of any class of voting shares which such shareholder is authorized to vote; and (3) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

SEC. 402. RIGHTS-OF-WAY CORRIDORS.—(a) In accordance with section 28 (s) of the Mineral Leasing Act of 1920 (41 Stat. 437, 449) as amended by the Act of November 16, 1973 (87 Stat. 576, 582), and the report submitted by the Secretary pursuant thereto, the Secretary shall, consistent with applicable land use plans, designate transportation and utility corridors on national resource lands and, to the extent practical and appropriate, require that rights-of-way be confined to them. In designating such corridors and in determining whether to require that rights-of-way be confined to them, the Secretary shall take into consideration National and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices. The Secretary shall issue regulations containing the criteria and procedures he will use in designating such corridors. Any existing transportation and utility corridors may be designated as transportation and utility corridors pursuant to this subsection without further review.

(b) In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across national resource lands, the use of rights-of-way in common shall be required to the extent practical, and each right-of-way granted, issued, or renewed pursuant to this title shall reserve to the Secretary the right to grant additional rights-of-way for compatible uses on or adjacent to such right-of-way.

SEC. 403. GENERAL PROVISIONS.—(a) The Secretary shall specify the boundaries of each right-of-way granted, issued, or renewed pursuant to this title as precisely as is practicable. Each right-of-way shall be limited to the ground which the Secretary determines: (1) will be occupied by facilities which constitute the project for which the right-of-way is granted, issued, or renewed, (2) to be required for the operation or maintenance of the project, and (3) to be necessary to protect the environment or public safety. The Secretary may authorize the temporary use of such additional lands as he determines to be reasonably necessary for the construction, operation, maintenance, or termination of the project or a portion thereof, or for access thereto.

(b) The Secretary shall determine the duration of each right-of-way or other authorization to be granted, issued, or renewed pursuant to this title. In determining the duration the Secretary shall take into consideration, among other things, the cost of any facility placed on the right-of-way and its useful life.

(c) Rights-of-way shall be granted, issued, or renewed pursuant to this title under such regulations or stipulations, in accordance with the provisions of this title or any other law, and subject to such terms and conditions as the Secretary may prescribe regarding extent, duration, survey, location, construction, maintenance, and termination.

(d) The Secretary, prior to granting or issuing a right-of-way pursuant to this title for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way which shall comply with stipulations imposed or with regulations issued by the Secretary. The Secretary shall issue regulations or impose stipulations which shall include, but shall not be limited to: (1) requirements to insure that activities on the right-of-way will not violate applicable air and water quality standards or applicable transmission, powerplant, and related facility siting standards established by or pursuant to law; (2) requirements designed to control or prevent (A) damage to the environment (including damage to fish and wildlife habitat), (B) damage to public or private property, and (C) hazards to public health and safety; and (3) requirements to protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes. Such regulations shall be regularly revised. Such regulations shall be applicable to every right-of-way granted or issued pursuant to this title and to any subsequent renewal thereof, and may be applicable to rights-of-way not granted or issued, but renewed pursuant to this title.

(e) Mineral and vegatative materials, including timber, within or without a right-of-way granted, issued, or renewed pursuant to this title may be used or disposed of in connection with construction or other purposes only if authorization to remove or use such materials has been obtained pursuant to applicable laws.

(f) No right-of-way shall be granted, issued, or renewed pursuant to this title for less than the fair market value thereof as determined by the Secretary. The Secretary may, by regulation or, prior to promulgation of such regulations, as a condition of a right-of-way, require an applicant for or holder of a right-of-way to reimburse the United States for all reasonable administrative and other costs incurred in processing an application for such right-of-way and in inspection and monitoring of construction, operation, and termination of the facility pursuant to such right-of-way: *Provided, however,* That such costs need not be reimbursed in any cooperative cost share right-of-way program between the United States and the holder of the right-of-way: *Provided further,* That rights-of-way may be granted, issued, or renewed to State or local governments or agencies or instrumentalities thereof, or to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises, for such lesser charge as the Secretary finds equitable and in the public interest.

(g)(1) The Secretary shall promulgate regulations specifying the extent to which holders of rights-of-way granted, issued, or renewed pursuant to this title shall be liable to the United States for damage or injury incurred by the United States in connection with the rights-of-way. The regulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liabilities, damages, or claims arising in connection with the rights-of-way.

(2) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(h) Where he deems it appropriate, the Secretary may require a holder of a right-of-way granted, issued, or renewed pursuant to this title to furnish a bond, or other security, satisfactory to the Secretary to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or by any rule or regulation of the Secretary.

(i) The Secretary shall grant, issue, or renew a right-of-way pursuant to this title only when he is satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested, and in accord with the requirements of this title.

SEC. 404. TERMS AND CONDITIONS.—Each right-of-way granted, issued, or renewed pursuant to this title shall contain such terms and conditions as the Secretary deems necessary to (1) carry out the purposes of this Act and rules and

regulations hereunder; (2) protect the environment; (3) protect Federal property and monetary interests; (4) manage efficiently national resource lands which are subject to the right-of-way or adjacent thereto and protect the other lawful users of the national resource lands adjacent to or traversed by said right-of-way; (5) protect lives and property; (6) protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes; and (7) protect the public interest in the national resource lands.

SEC. 405. SUSPENSION OR TERMINATION OF RIGHTS-OF-WAY.—Abandonment of a right-of-way granted, issued, or renewed pursuant to this title or noncompliance with any provision of this title, condition of the right-of-way, or applicable rule or regulation of the Secretary may be grounds for suspension or termination of the right-of-way if, after due notice to the holder of the right-of-way and an appropriate administrative proceeding pursuant to section 554 of title 5, United States Code, the Secretary determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time. If the Secretary determines that an immediate temporary suspension of activities within a right-of-way for violation of its terms and conditions is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding. Prior to commencing any proceeding to suspend or terminate a right-of-way the Secretary shall give written notice to the holder of the ground or grounds for such action and shall give the holder a reasonable time to resume use of the right-of-way or to comply with this title, condition, rule, or regulation as the case may be. Failure of the holder of the right-of-way to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: *Provided, however*, That where the failure of the holder to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period is due to circumstances not within the holder's control the Secretary is not required to commence proceedings to suspend or terminate the right-of-way.

SEC. 406. RIGHTS-OF-WAY FOR FEDERAL AGENCIES.—(a) The Secretary may reserve for the use of any department or agency of the United States a right-of-way over, upon, or through national resource lands, subject to such terms and conditions as he may impose. The provisions of this title shall be applicable to any such right-of-way.

(b) Where a right-of-way has been reserved for the use of any department or agency of the United States, the Secretary shall take no action to terminate, or otherwise limit, that use without the consent of the head of such department or agency.

SEC. 407. CONVEYANCE OF LANDS.—If under applicable law the Secretary decides to transfer out of Federal ownership, by patent, deed, or otherwise, any national resource lands covered in whole or in part by a right-of-way, including a right-of-way granted under the Act of November 16, 1973 (87 Stat. 576), the lands may be conveyed subject to the right-of-way; however, if the Secretary determines that retention of Federal control over the right-of-way is necessary to assure that the purposes of this title will be carried out, the terms and conditions of the right-of-way complied with, or the national resource lands protected, he shall (1) reserve to the United States that portion of the lands which lies within the boundaries of the right-of-way, or (2) convey the lands, including that portion within the boundaries of the right-of-way, subject to the right-of-way and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way, including the right to renew it or extend it upon its termination and to collect rents.

SEC. 408. EXISTING RIGHTS-OF-WAY.—Nothing in this title shall have the effect of terminating any rights-of-way or rights-of-use heretofore issued, granted, or permitted by the Secretary. However, the Secretary may cancel such a right-of-way or right-of-use with the consent of the holder thereof and in its stead issue a right-of-way pursuant to the provisions of this title.

SEC. 409. STATE STANDARDS.—The Secretary shall take into consideration and, to the extent practical, comply with State standards for rights-of-way construction, operation, and maintenance if those standards are for similar purposes as, and more stringent than, applicable Federal standards and if the national resource lands are adjacent to lands to which such State standards apply.

SEC. 410. EFFECT ON OTHER LAWS.—(a) After the date of enactment of this Act, no right-of-way for the purposes listed in this title shall be granted, issued, or renewed over, upon, or through national resource lands except under and subject to the provisions, limitations, and conditions of this title: *Provided*, That any application for a right-of-way filed under any other law prior to the date of enactment of this Act may, at the applicant's option, be considered as an application under this title or the Act under which the application was filed. The Secretary may require the applicant to submit any additional information he deems necessary to comply with the requirements of this title.

(b) Nothing in this title shall be construed to preclude the use of national resource lands for highway purposes pursuant to sections 107 and 317 of title 23, United States Code.

SEC. 411. INTERAGENCY COORDINATION.—Applicants before any Federal agency other than the Department of the Interior seeking a license, certificate, or other authority for a project which will involve national resource lands shall simultaneously apply to the Secretary for the appropriate authority to use national resource lands and submit to the Secretary all information furnished to such other Federal agency.

TITLE V—CONSTRUCTION OF LAW, PRESERVATION OF VALID EXISTING RIGHTS, AND REPEAL OF LAWS

SEC. 501. CONSTRUCTION OF LAW.—(a) Except as provided in section 410; the authority conferred upon the Secretary by this Act is in addition to all other authority vested in him by law, and nothing in this Act shall be deemed to repeal any such other authority by implication.

(b) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States, or—

(1) as affecting in any way any law governing appropriation or use of, or Federal right to, water on national resource lands;

(2) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control;

(3) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two or more States and the Federal Government;

(4) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto;

(5) as modifying the terms of any interstate compact;

(6) as a limitation upon any State criminal statute or upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands;

(7) as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national resource lands; or

(8) as amending, limiting, or infringing the existing laws providing grants of lands to the States.

SEC. 502. VALID EXISTING RIGHTS.—All actions by the Secretary under this Act shall be subject to valid existing rights.

SEC. 503. REPEAL OF LAWS RELATING TO DISPOSAL OF NATIONAL RESOURCE LANDS.—(a) The following statutes or parts of statutes are repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Homesteads:				
Revised Statute 2289				161, 171.
Mar. 3, 1891	561	5	26: 1097	161, 162.
Revised Statute 2290				162.
Revised Statute 2295				163.
Revised Statute 2291				164.
June 6, 1912	153		37: 123	164, 169, 218.
May 14, 1880	89		21: 141	166, 185, 202, 223.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
June 6, 1900	821		31: 683	166, 223.
Aug. 9, 1912	280		37: 267	
Apr. 6, 1914	51		38: 312	167.
Mar. 1, 1921	90		41: 1193	
Oct. 17, 1914	325		38: 740	168.
Revised Statute 2297				169.
Mar. 3, 1881	153		21: 511	
Oct. 22, 1914	335		38: 766	170.
Revised Statute 2292				171.
June 8, 1880	136		21: 166	172.
Revised Statute 2301				173.
Mar. 3, 1891	561	6	26: 1098	
June 3, 1896	312	2	29: 197	
Revised Statute 2288				174.
Mar. 3, 1891	561	3	26: 1097	
Mar. 3, 1905	1424		33: 991	
Revised Statute 2296				175.
Apr. 28, 1922	155		42: 502	
May 17, 1900	479	1	31: 179	179.
Jan. 26, 1901	180		31: 740	180.
Sept. 5, 1914	294		38: 712	182.
Revised Statute 2300				183.
Aug. 31, 1918	166	8	40: 957	
Sept. 13, 1918	173		40: 960	
Revised Statute 2302				184, 201.
July 26, 1892	251		27: 270	185.
Feb. 14, 1920	76		41: 434	186.
Jan. 21, 1922	32		42: 358	
Dec. 28, 1922	19		42: 1067	
June 12, 1930	471		46: 580	
Feb. 25, 1925	326		43: 981	187.
June 21, 1934	690		48: 1185	187a.
May 22, 1902	821	2	32: 203	187b.
June 5, 1900	716		31: 270	188, 217.
Mar. 3, 1875	131	15	18: 420	189.
July 4, 1884	180	Only last paragraph of sec. 1.	23: 96	190.
Mar. 1, 1933	160	1	47: 1418	190a.

The following words only: "*Provided*, That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homesteads be made in said county under the Act of July 4, 1884 (23 Stat. 96: U.S.C. title 43, sec. 190)."

Revised Statutes 2310, 2311				191.
June 13, 1902	1080		32: 384	203.
Mar. 3, 1879	191		20: 472	204.
July 1, 1879	60		21: 46	205.
May 6, 1886	88		24: 22	206.
Aug. 21, 1916	361		39: 518	207.
June 3, 1924	240		43: 357	208.
Revised Statute 2298				211.
Aug. 30, 1890	837		26: 391	212.

The following words only: "No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement is validated by this act."

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Mar. 3, 1891	561	17	26: 1101	
The following words only: "and that the provision of 'An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes,' which reads as follows, viz: 'No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws,' shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral land laws."				
Apr. 28, 1904	1776		33: 527	213.
Aug. 3, 1950	521		64: 398	
Mar. 2, 1889	381	6	25: 854	214.
Feb. 20, 1917	98		39: 925	215.
Mar. 4, 1921	162	1	41: 1433	216.
Feb. 19, 1909	160		35: 639	218.
June 13, 1912	166		37: 132	
Mar. 3, 1915	84		38: 953	
Mar. 3, 1915	91		38: 957	
Mar. 4, 1915	150	2	38: 1163	
July 3, 1916	220		39: 344	
Feb. 11, 1913	39		37: 666	218, 219.
June 17, 1910	298		36: 531	219.
Mar. 3, 1915	91		38: 957	
Sept. 5, 1916	440		39: 724	
Aug. 10, 1917	52	10	40: 275	
Mar. 4, 1915	150	1	38: 1162	220.
Mar. 4, 1923	245	1	42: 1445	222.
Apr. 28, 1904	1801		33: 547	224.
Mar. 2, 1907	2527		34: 1224	
May 29, 1908	220	7	35: 466	
Aug. 24, 1912	371		37: 499	
Aug. 22, 1914	270		38: 704	231.
Feb. 25, 1919	21		40: 1153	
July 3, 1916	214		39: 341	232.
Sept. 29, 1919	64		41: 288	233.
Apr. 6, 1922	122		42: 491	223, 272, 273.
Mar. 2, 1889	381	3	25: 854	234.
Dec. 29, 1894	14		28: 599	
July 1, 1879	63	1	21: 48	235.
Dec. 20, 1917	6		40: 430	236.
July 24, 1919	26	Next to last paragraph only.	41: 271	237.
Mar. 2, 1932	69		47: 59	237a.
May 21, 1934	320		48: 787	237b.
May 22, 1935	135		49: 286	237c.
Aug. 19, 1935	560		49: 659	237d.
Mar. 31, 1938	57		52: 149	
Apr. 20, 1936	239		49: 1235	237e.
July 30, 1956	778	1, 2, 4	70: 715	237 f,g,h.
Mar. 1, 1921	102		41: 1202	238.
Apr. 7, 1922	125		42: 492	
Revised Statute 2308				239.
June 16, 1898	458		30: 473	240.
Aug. 29, 1916	420		39: 671	
Apr. 7, 1930	108		46: 144	243.
Mar. 3, 1933	198		47: 1424	243a.
Mar. 3, 1879	192		20: 472	251.
Mar. 2, 1889	381	7	25: 855	252.
June 3, 1878	152		20: 91	253.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Revised Statute 2294				254.
May 26, 1890	355		26: 121	
Mar. 11, 1902	182		32: 63	
Mar. 4, 1904	394		33: 59	
Feb. 23, 1923	105		42: 1281	
Revised Statute 2293				255.
Oct. 6, 1917	86		40: 391	
Mar. 4, 1913	149	Only last paragraph of section headed "Public Land Service."	37: 925	256.
May 13, 1932	178		47: 153	256a.
June 16, 1933	99		48: 274	
July 26, 1935	419		49: 504	
June 16, 1937	361		50: 303	
Aug. 27, 1935	770		49: 909	256b.
Sept. 30, 1890	J. Res. 59		26: 684	261.
June 16, 1880	244		21: 287	263.
Apr. 18, 1904	25		33; 589	
Revised Statute 2304				271.
Mar. 1, 1901	674		31: 847	271, 272.
Revised Statute 2305				272.
Feb. 25, 1919	37		40: 1161	272a.
Dec. 28, 1922	19		42: 1067	
Revised Statute 2306				274.
Mar. 3, 1893	208		27: 593	275.

The following words only: "And provided further; That where soldier's additional homestead entries have been made or initiated upon certificate of the Commissioner of the General Land Office of the right to make such entry, and there is no adverse claimant, and such certificate is found erroneous or invalid for any cause, the purchaser thereunder, or making proof of such purchase, may perfect his title by payment of the Government price for the land; but no person shall be permitted to acquire more than one hundred and sixty acres of public land through the location of any such certificate."

Aug. 18, 1894	301	Only last paragraph of Section headed "Surveying the Public Lands."	28: 397	276.
Revised Statute 2309				277.
Revised Statute 2307				278.
Sept. 21, 1922	357		42: 990	
Sept. 27, 1944	421		58: 747	279–283.
June 25, 1946	474		60: 308	279.
May 31, 1947	88		61: 123	279, 280, 282.
June 18, 1954	306		68: 253	279, 282.
June 3, 1948	399		62: 305	283, 284.
Dec. 29, 1916	9	1–8	39: 862	291–298.
Feb. 28, 1931	328		46: 1454	291.
June 9, 1933	53		48: 119	291.
June 6, 1924	274		46: 469	292.
Oct. 25, 1918	195		40: 1016	293.
Sept. 29, 1919	63		41: 287	294, 295.
Mar. 4, 1923	245	2	42: 1445	302.
Aug. 21, 1916	361		39: 518	1075.
Aug. 28, 1937	876	3	50: 875	1181c.
2. Sale and Disposal Laws:				
Mar. 3, 1891	561	9	26: 1099	671.
Revised Statute 2354				673.
Revised Statute 2355				674.
May 18, 1898	344	2	30: 418	675.
Revised Statute 2365				676.
Revised Statute 2357				678.

Act of	Chapter	Section	Statute at Large	43 U.S. Codes
June 15, 1880	227	3, 4	21: 238	679, 680.
Mar. 2, 1889	381	4	25: 854	681.
Mar. 1, 1907	2286		34: 1052	682.
June 1, 1938	317		52: 609	682a–e.
July 14, 1945	298		59: 467	
June 8, 1954	270		68: 239	
Revised Statute 2361				688.
Revised Statute 2362				689.
Revised Statute 2363				690.
Revised Statute 2368				691.
Revised Statute 2366				692.
Revised Statute 2369				693.
Revised Statute 2370				694.
Revised Statute 2371				695.
Revised Statute 2374				696.
Revised Statute 2372				697.
Feb. 24, 1909	181		35: 645	
May 21, 1926	353	The two provisos only.	44: 591	
Revised Statute 2375				698.
Revised Statute 2376				699.
Mar. 2, 1889	381	1	25: 854	700.
3. Townsite Reservation and Sale:				
Revised Statute 2380				711.
Revised Statute 2381				712.
Revised Statute 2382				713.
Aug. 24, 1954	904		68: 792	
Revised Statute 2383				714.
Revised Statute 2384				715.
Revised Statute 2386				717.
Revised Statute 2387				718.
Revised Statute 2388				719.
Revised Statute 2389				720.
Revised Statute 2391				721.
Revised Statute 2392				722.
Revised Statute 2393				723.
Revised Statute 2394				724.
Mar. 3, 1877	113	1, 3, 4	19: 392	725–727.
Mar. 3, 1891	561	16	26: 1101	728.
July 9, 1914	138		38: 454	730.
Feb. 9, 1903	531		32: 820	731.
4. Drainage Under State Laws:				
May 20, 1908	181	1–7	35: 171	1021–1027.
May 1, 1958	P.L. 85–387		72: 99	1029–1034.
Jan. 17, 1920	47		41: 392	1041–1048.
5. Abandoned Military Reservation:				
July 5, 1884	214	5	23: 104	1074.
Aug. 21, 1916	361		39: 518	1075.
Mar. 3, 1893	208		27: 593	1076.
The following words only: "*Provided*, That the President is hereby authorized by proclamation to withhold from sale and grant for public use to the municipal corporation in which the same is situated all or any portion of any abandoned military reservation not exceeding twenty acres in one place."				
Aug. 23, 1894	314		28: 491	1077, 1078.
Feb. 11, 1903	543		32: 822	1079.
Feb. 15, 1895	92		28: 664	1080, 1077.
Apr. 23, 1904	1496		33: 306	1081.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
6. Public Lands; Oklahoma:				
May 2, 1890	182	Last paragraph of sec. 18 and secs. 20, 21, 22, 24, 27.	26: 90	1091–1094, 1096, 1097.
Mar. 3, 1891	543	16	26: 1026	1098.
Aug. 7, 1946	772	1, 2	60: 872	1100–1101.
Aug. 3, 1955	498	1–8	69: 445	1102–1102g.
May 14, 1890	207		26: 109	1111–1117.
Sept. 1, 1893	J. Res. 4		28: 11	1118.
May 11, 1896	168	1, 2	29: 116	1119.
Jan. 18, 1897	62	1–3, 5, 7	29: 490	1131–1134.
June 23, 1897	8		30: 105	
Mar. 1, 1899	328		30: 966	
7. Sales of Isolated Tracts:				
Revised Statute 2455				1171.
Feb. 26, 1895	133		28: 687	
June 27, 1906	3554		34: 517	
Mar. 28, 1912	67		37: 77	
Mar. 9, 1928	164		45: 253	
June 28, 1934	865	14	48: 1274	
July 30, 1947	383		61: 630	
Apr. 24, 1928	428		45: 457	1171a.
May 23, 1930	313		46: 377	1171b.
Feb. 4, 1919	13		40: 1055	1172.
May 10, 1920	178		41: 595	1173.
Aug. 11, 1921	62		42: 159	1175.
May 19, 1926	337		44: 566	1176.
Feb. 14, 1931	170		46: 1105	1177.
8. Alaska Special Laws:				
Mar. 3, 1891	561	11	26: 1099	732.
May 25, 1926	379		44: 629	733–736.
May 29, 1963	P.L. 88–34		77: 52	
July 24, 1947	305		61: 414	738.
May 14, 1898	299	1	30: 409	270.
Mar. 3, 1903	1002		32: 1028	
Apr. 29, 1950	137	1	64: 94	
Aug. 3, 1955	496		69: 444	270, 687a–2.
Apr. 29, 1950	137	2–5	64: 95	270, 270–5.
July 11, 1956	571	2	70: 529	270–6, 270–7, 687a–1.
July 8, 1916	228		39: 352	270–8, 270–9.
June 28, 1918	110		40: 632	270–10, 270–14.
July 11, 1956	571	1	70: 528	
Mar. 8, 1922	96	1	42: 415	270–11.
Aug. 23, 1958	P.L. 85–725	1, 4	72: 730	
Aug. 17, 1961	P.L. 87–147		75: 384	270–13.
Oct. 3, 1962	P.L. 87–742		76: 740	
Apr. 13, 1926	121		44: 243	270–15.
Apr. 29, 1950	134	3	64: 93	270–16, 270–17.
May 14, 1898	299	10	30: 413	270–4, 687a to 687a–5.
Mar. 3, 1927	323		44: 1364	
May 26, 1934	357		48: 809	
Aug. 23, 1958	P.L. 85–725	3	72: 730	
Mar. 3, 1891	561	13	26: 1100	687a–6.
Aug. 30, 1949	521		63: 679	687b to 687b–4.
July 19, 1963	P.L. 88–66		77: 80	687b–5.
9. Pittman Underground Water Act:				
Sept. 22, 1922	400		42: 1012	356.

(b) Section 7 of the Taylor Grazing Act (48 Stat. 1269, 1272), as amended by section 2 of the Act of June 26, 1936 (49 Stat. 1976), is further amended to read as follows:

"The Secretary of the Interior is authorized, in his discretion to examine and classify any lands withdrawn or reserved by Executive order of November 26, 1934 (numbered 6910), and amendments thereto, and Executive order of February 5, 1935 (numbered 6964), or within a grazing district, which are more valuable or suitable for any other use than for the use provided for under this Act, or proper for acquisition in satisfaction of any outstanding lieu, exchange or land grant, and to open such lands to disposal in accordance with such classification under applicable public land laws. Such lands shall not be subject to disposition until after the same have been classified and opened to disposal.".

(c) Section 2 of the Act of March 8, 1922 (42 Stat. 415, 416), as amended by section 2 of the Act of August 23, 1958 (72 Stat. 730), is further amended to read:

"The coal, oil, or gas deposits reserved to the United States in accordance with the Act of March 8, 1922 (42 Stat. 415), as added to by the Act of August 17, 1961 (75 Stat. 384), and amended by the Act of October 3, 1962 (76 Stat. 740), shall be subject to disposal by the United States in accordance with the provisions of the laws applicable to coal, oil, or gas deposits or coal, oil, or gas lands in Alaska in force at the time of such disposal. Any person qualified to acquire coal, oil, or gas deposits, or the right to mine or remove the coal or to drill for and remove the oil or gas under the laws of the United States shall have the right at all times to enter upon the lands patented under the Act of March 8, 1922, as amended, and in accordance with the provisions hereof, for the purpose of prospecting for coal, oil, or gas therein, upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal, oil, or gas deposits in any such land, or the right to mine, drill for, or remove the same, may reenter and occupy so much of the surface thereof incident to the mining and removal of the coal, oil, or gas therefrom, and mine and remove the coal or drill for and remove oil and gas upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: *Provided*, That the owner under such limited patent shall have the right to mine the coal for use on the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits: *Provided further*, That nothing in this Act shall be construed as authorizing the exploration upon or entry of any coal deposits withdrawn from such exploration and purchase.".

(e) Section 3 of the Act of August 30, 1949 (63 Stat. 679), is amended to read:

"Notwithstanding the provisions of any Act of Congress to the contrary, any person who prospects for, mines, or removes any minerals from any land disposed of under the Act of August 30, 1949 (63 Stat. 679), shall be liable for any damage that may be caused to the value of the land and tangible improvements thereon by such prospecting for, mining, or removal of minerals. Nothing in this section shall be construed to impair any vested right in existence on August 30, 1949.".

SEC. 504. REPEAL OF LAWS RELATING TO ADMINISTRATION OF NATIONAL RESOURCE LANDS.—The following statutes or parts of statutes are repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Mar. 2, 1895	174		28: 744	176.
2. June 28, 1934	865	8	48: 1272	315g.
June 26, 1936	842	3	49: 1976, title I.	
June 19, 1948	548	1	62: 533	
July 9, 1962	P.L. 87-524		76: 140	315g-1.
3. Aug. 24, 1937	744		50: 748	315p.
4. Mar. 3, 1909	271	2d proviso only.	35: 845	772.
June 25, 1910	J. Res. 40		36: 884	
5. June 21, 1934	689		48:1185	871a.
6. Revised Statute 2447				1151.
Revised Statute 2448				1152.

Act of	Chapter	Section	Statute at Large	U.S. Code
7. June 6, 1874	223		18: 62	1153, 1154.
8. Jan. 28, 1879	30		20: 274	1155.
9. May 30, 1894	87		28: 84	1156.
10. Revised Statute 2450				1161.
Feb. 27, 1877	69	1	19: 244	
The following words only: "Section twenty-four hundred and fifty is amended by striking out in the fourth line the words 'Secretary of the Treasury' and inserting the words 'Secretary of the Interior' ".				
Revised Statute 2451				1162.
Feb. 27, 1877	69	1	19: 244	
The following words only; "Section twenty-four hundred and fifty-one is amended by striking out, in the first and second lines, the words 'Secretary of the Treasury' and inserting the words 'Secretary of the Interior' ".				
Revised Statute 2456				1163.
Sept. 20, 1922	350		42: 857	
The words ". . . and sections 2450, 2451, and 2456 be amended to read as follows;" and all words following in the Act.				
Revised Statute 2457				1164.
11. Mar. 3, 1891	561	7	26: 1098	1165.
12. Revised Statute 2471				1191.
Revised Statute 2472				1192.
Revised Statute 2473				1193.
13. July 14, 1960	P.L. 86-649	101-202(a), 203-204(a), 310-303.	74:506	1361, 1362, 1363-1383.
14. Sept. 26, 1970	P.L. 91-429		84: 885	1362a.
15. July 31, 1939	401	1, 2	53: 1144	

SEC. 505. REPEAL OF LAWS RELATING TO RIGHTS-OF-WAY.—(a) The following statutes or parts of statutes are repealed insofar as they apply to national resource lands:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Revised Statutes 2339				661.
The following words only: "and the right-of-way for the construction of ditches and canals for the purpose herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage."				
Revised Statutes 2340				661.
The following words only: ", or rights to ditches and reservoirs used in connection with such water rights,".				
Feb. 26, 1897	335		29: 599	664.
Mar. 3, 1899	427	1	30: 1233	665, 958 (16 U.S.C. 525).
The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby."				
Mar. 3, 1875	152		18: 482	934-939.
May 14, 1898	299	2-9	30: 409	942-1 to 942-9.
Feb. 27, 1901	614		31: 815	943.
June 26, 1906	3548		34: 481	944.
Mar. 3, 1891	561	18-21	26: 1101	946-949.
Mar. 4, 1917	184	1	39: 1197	
May 28, 1926	409		44: 668	
Mar. 1, 1921	93		41: 1194	950.
Jan. 13, 1897	11		29: 484	952-955.
Mar. 3, 1923	219		42: 1437	

Act of	Chapter	Section	Statute at Large	U.S. Code
Jan. 21, 1895	37		28: 635	951, 956, 957.
May 14, 1896	179		29:120	
May 11, 1898	292		30: 404	
Mar. 4, 1917	184	2	39: 1197	
Feb. 15, 1901	372		31: 790	959 (16 U.S.C. 79, 522).
Mar. 4, 1911	238		36: 1253	961 (16 U.S.C. 5, 420, 523).
Only the last two paragraphs under the subheading "Improvement of the National Forests" under the heading "Forest Service."				
May 27, 1952	338		66: 95	
May 21, 1896	212		29: 127	962-965.
Apr. 12, 1910	155		36: 296	966-970.

(b) Notwithstanding the provisions of subsection (a) of this section, the following statute is repealed in its entirety:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Revised Statute 2477				43 U.S.C. 932.

I. PURPOSE OF S. 507, AS ORDERED REPORTED

The purpose of S. 507, as ordered reported, the National Resource Lands Management Act, is to provide the first comprehensive, statutory statement of purposes, goals, and authority for the use and management of about 448 million acres of federally-owned lands administered by the Secretary of the Interior through the Bureau of Land Management.

These lands—designated as "national resource lands" in S. 507—constitute the largest system of Federal lands—comprising 20 percent of America's land base and 60 percent of all federally-owned property. Over the years, the Congress has established statutory bases for the management of other, smaller Federal land systems: the National Forest, National Park, and National Wildlife Refuge Systems. No similar legislative foundation exists for the national resource lands.

While the Nation has come to regard the national resource lands as a permanent national asset which, for the most part, should be retained and managed on a multiple use, sustained yield basis, the only management tools available for this purpose remain some 3,000 public land laws which have accumulated over the last 170 years. Most of these statutes were written at a time when Federal ownership of the national resource lands was expected to be shortlived and, consequently, the Federal Government was regarded as only a temporary custodian of those lands. In comparison with the organic acts of the other Federal land management agencies, these laws are often conflicting, on occasion truly contradictory, and, to a serious extent, incomplete and inadequate. S. 507, as ordered reported, would consolidate these laws, remove conflicts, and provide missing authority.

II. SUMMARY OF MAJOR PROVISIONS

The introductory sections of S. 507, as ordered reported, establish the basic management policies; Titles I, II, III, and IV provide the

23-832 O - 78 - 8

95th Congress
2d Session

COMMITTEE PRINT

LEGISLATIVE HISTORY OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

(PUBLIC LAW 94–579)

PREPARED AT THE REQUEST OF

HENRY M. JACKSON, *Chairman*

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

APRIL 1978

Publication No. 95–99

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1978

23-832 O

[COMMITTEE PRINT]

S. 507

STAFF RECOMMENDATIONS

SEPTEMBER 9, 1976

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

AND

NATIONAL RESOURCE LANDS MANAGEMENT ACT

[PREPARED FOR THE USE OF THE SENATE-HOUSE OF REPRESENTATIVES CONFERENCE ON S. 507, 94TH CONGRESS, SECOND SESSION]

EXPLANATORY NOTE

At its meeting on August 30, the Committee of Conference on S. 507 instructed staff of both Houses to analyze the differences in the two versions of S. 507 and to recommend to the committee an appropriate resolution of as many differences as possible. The text that follows is the staff response to that instruction.

The portions of the text shown in roman were agreed upon by the staff as consistent with the provisions of the two versions of the bill.

The portions of the text shown ~~in~~ italics were agreed upon by the staff as consistent with the objectives of the two Houses and as an appropriate resolution of issues involved.

The portions of the text shown in bold face are provisions included in only one version of the bill for which staff identified no basis for a definitive recommendation.

TABLE OF CONTENTS

TITLE IV—RANGE MANAGEMENT

TITLE V—RIGHTS-OF-WAY

TITLE VI—DESIGNATED MANAGEMENT AREAS

TITLE VII—EFFECT ON EXISTING RIGHTS: REPEAL OF EXISTING LAWS; SEVERABILITY

C. 101, H. 101, S. 1(a)

TITLE I—SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

SHORT TITLE

SEC. 101. *This Act may be cited as the "Federal Land Policy and Management Act of 1976".*

sand five hundred acres, at the end of thirty days after the end of the ninety-day period provided in subsection (c) of this section, whichever is later, unless the offeror waives his right to a decision within such thirty-day period. Prior to the expiration of such periods the Secretary may refuse to accept any offer or may withdraw any land or interest in land from sale under this section when he determines that consummation of the sale would not be consistent with this Act or other applicable law.

C. 204, H. 204 and 404

SEC. 204. (a) *On and after the effective date of this Act the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section. The Secretary may delegate this withdrawal authority only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate.*

(b) (1) *Within thirty days of receipt of an application for withdrawal, and whenever he proposes a withdrawal on his own motion, the Secretary shall publish a notice in the Federal Register stating that the application has been submitted for filing or the proposal has been made and the extent to which the land is to be segregated while the application is being considered by the Secretary. Upon publication of such notice the land shall be segregated from the operation of the*

public land laws to the extent specified in the notice. The segregative effect of the application shall terminate upon (a) rejection of the application by the Secretary, (b) withdrawal of lands by the Secretary, or (c) the expiration of **one year** *from the date of the notice.*

(2) The publication provisions of this subsection are not applicable to withdrawals under subsection (e) hereof.

(c)(1) On and after the date of approval of this Act a withdrawal aggregating five thousand acres or more may be made (or such a withdrawal or any other withdrawal involving in the aggregate five thousand acres or more which terminates after such date of approval may be extended) only for a period of not more than **ten** *years by the Secretary on his own motion or upon request by a department or agency head. The Secretary shall notify both Houses of Congress of such a withdrawal no later than its effective date* **and the withdrawal shall terminate and become ineffective at the end of ninety days (not counting days on which the Senate or the House of Representatives has adjourned for more than three consecutive days) beginning on the day notice of such withdrawal has been submitted to the Senate and the House of Representatives, if either House has adopted a resolution stating that such House does not approve the withdrawal.**

(2) With the notices required by subsection (c)(1) of

this section and within three months after filing the notice under subsection (e) of this section, the Secretary shall furnish to the committees—

(1) a clear explanation of the proposed use of the land involved which led to the withdrawal;

(2) an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation;

(3) an identification of present users of the land involved, and how they will be affected by the proposed use;

(4) an analysis of the manner in which existing and potential resource uses and users are incompatible with or in conflict with the proposed use, together with a statement of the provisions to be made for continuation or termination of existing uses, including an economic analysis of such continuation or termination;

(5) an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed use;

(6) a statement as to whether any suitable alterna-

tive sites are available (including cost estimates) for the proposed use or for uses such a withdrawal would displace;

(7) a statement of the consultation which has been or will be had with other Federal departments and agencies, with regional, State, and local government bodies, and with other appropriate individuals and groups;

(8) a statement indicating the effect of the proposed uses, if any, on State and local government interests and the regional economy;

(9) a statement of the expected length of time needed for the withdrawal;

(10) the time and place of hearings and of other public involvement concerning such withdrawal;

(11) the place where the records on the withdrawal can be examined by interested parties; and

(12) a report prepared by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present and potential market demands.

(d) A withdrawal aggregating less than five thousand