

Public Lands Foundation

Position Statement: 2010-14

Public Land Disposal through Legislation

August 25, 2010

Executive Summary

Special Congressional legislation is directing the Bureau of Land Management (BLM) to sell large blocks of public land in Nevada, Idaho and Utah. The legislation provides direction on such issues as what lands will be sold, for what uses, who will get the lands, and for what purposes.

The National System of Public Lands, administered by the BLM, is a national asset, and these Public Lands should be retained in public hands for use and enjoyment by the American people. These Public Lands should not be viewed as a source of funding for local projects, programs or purposes.

The Federal Land Policy and Management Act of 1976 provides that the BLM Public Lands are to “be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest.”

The Public Lands Foundation opposes special land disposal legislation that transfers large blocks of the National System of Public Lands out of federal ownership and gives special privileges to local interests without regard to the requirements of existing statutes like the Federal Land Policy and Management Act and the National Environmental Policy Act.

Congress has equipped the BLM with adequate authorities to dispose of federal public lands where needed for local development and uses, and special land disposal legislation is, in most cases, unnecessary.

Background

Beginning in the 1990s, there has been a series of special Congressional Acts and Bills that direct the BLM to dispose of large blocks of federal public lands to various western counties, cities and entities. This type of special legislation started in Nevada, but then spread to counties in Idaho and Utah. Typically the legislative proposals require BLM to sell public land to a designated entity and for a designated purpose or use. Other provisions vary in the different legislative proposals, but they include such requirements as:

- exempting the land disposal from the land use planning requirements in Sections 202 and 203 of FLPMA,

- specifying the acreage of land that BLM will identify for disposal in the agency's land use plans,
- setting sale deadlines that make it difficult or impossible for BLM to comply with the requirements of the National Environmental Policy Act,
- setting the sale price for the land,
- setting guidelines for the appraisals of land to be used in land exchanges,
- specifying how the money from the land sale will be used,
- establishing Wilderness Areas in "quid pro quo" agreements with environmental interests to gain their support for the special legislation, and
- establishing "stakeholder groups" for public input and setting up "trustee groups" to oversee the management of BLM lands.

The list of these Congressional Acts includes the following:

- The Southern Nevada Public Land Management Act of 1998 authorizes the sale of BLM public lands in the Las Vegas, Nevada area. Most of the money from the land sales is designated for conservation, environmental and capital improvement projects in the Clark County and Lake Tahoe areas. By 2007, nearly 500 parcels of BLM lands, totaling nearly 13,000 acres had been sold in 14 public auctions, for a total of about \$2.5 billion.
- Several Mesquite Land Acts give the City of Mesquite, Nevada the exclusive right to purchase 12,200 acres of BLM lands in the vicinity of the City. The sales will be at fair market value and subject to all appropriate environmental reviews.
- The Ivanpah Valley (Nevada) Public Lands Transfer Act of 2000 directs BLM to convey 5,800 acres to Clark County, Nevada, "notwithstanding the land planning requirements in Sections 202 and 203 of FLPMA." The Act states that the land is for airport use, and the fair market value price is set at \$20.6 million. An additional 13,000 acres may also be conveyed to Clark County if environmental studies support airport use of the 5,800 acres. If not, the 5,800 acres revert to the BLM and the \$20.6 million is returned to Clark County.
- The Lincoln County (Nevada) Land Act of 2000 required BLM to competitively sell 13,300 acres of BLM land near Mesquite within 75 days of passage of the Act. Due to the short deadline, the courts decided that the sale was exempt from the requirements of the National Environmental Policy Act. The land sale was completed in 2005 with total receipts of \$47.5 million.
- The Lincoln County (Nevada) Conservation, Recreation & Development Act of 2004 directs the BLM to identify not more than 90,000 acres of BLM land for disposal in that County.
- The White Pine County (Nevada) Conservation, Recreation & Development Act of 2006 directs the disposal of not more than 45,000 acres of BLM public

lands in that County.

Discussion

There are reasons why these legislated land disposals occur. In some situations, BLM is unable or unwilling to respond in a timely manner to local land development needs for public lands. Revising a BLM Land Use Plan to designate public land for sale is commonly a lengthy and potentially a controversial process. Like any other public land decision, it is a public process, and there is the likelihood of protest or litigation from interest groups that oppose the disposal of public lands. If an Environmental Impact Statement is deemed necessary, it will typically take three years or even longer to reach a decision. These uncertainties do not fit well with the business and financial cycle timelines that are needed for a development project, so local interests turn to Congress in hopes of obtaining quicker and more certain results. Selling BLM lands is a popular concept in some areas of the West, and members of Congress try to capitalize on this popularity when they sponsor public land sale legislation.

However, the BLM administered public lands are an important national asset, and fortunately, the public is beginning to recognize that fact. These federal public lands provide a wealth of mineral, energy, forage, timber and wildlife resources. They are becoming the open space and outdoor recreation playgrounds for the people in the metropolitan areas of the rapidly growing West.

The Federal Land Policy and Management Act (FLPMA) of 1976 provided that these BLM administered public lands would be:

“managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural conditions; that will provide food and habitat for fish and wildlife and domestic animals; that will provide for outdoor recreation and human occupancy and use,” and

“retained in Federal ownership unless, as a result of the land use planning procedure provided in this Act, it is determined that disposal of a particular parcel would serve the national interest.”

BLM has developed and implemented a resource management planning process that inventories and evaluates the natural and cultural resources on the federal public lands. In a collaborative process with the public, the BLM develops Resource Management Plans for the public lands, which include identifying land parcels that are suitable and needed for local public and private purposes. In FLPMA, Congress gave BLM the land sale and exchange authorities to make these land disposals when and where needed.

The PLF believes that there are major problems involved with the growing trend for public land disposals by special Congressional legislation. Problems include the perceived need by some for privatizing public lands, the issue of national vs. local interests, and the accountability of the large amounts of money that is changing hands. There also is the concern that this series of special land sale legislation could lead to a national policy of disposing of the BLM Public Lands.

Many of the special Congressional Acts and legislative proposals bypass the land use planning and environmental requirements of other federal laws like FLPMA and NEPA that have been passed to provide orderly processes for making decisions on the disposal of public lands. Some legislation designates who can buy the land, what the sale price will be, and what the land will be used for.

Each of these special Congressional Acts and legislative proposals designate large acreages of federal public lands for disposal. In many of the areas there is no critical need for more private land. The special legislation for Lincoln County and White Pine County in Nevada requires the sale of up to 103,000 acres of BLM land in Lincoln County and 45,000 acres in White Pine County. There are about 5,000 residents in Lincoln County and 10,000 residents in White Pine County. These land sales will transfer a large acreage of public land into private ownership, and potentially will have a significant negative impact on existing land values in these counties. The need to transfer that much public land to private ownership in these two counties at this time is questionable.

Section 202 of FLPMA states very clearly that the disposal of the BLM public lands must “serve the national interest.” The Acts and legislative proposals cited above blatantly benefit local interests over national interests. Most of these legislated land disposals are for designated local purposes with the monies paid for the land being given to non-federal entities for local uses. The PLF believes that it is contrary to national public land policy and unwise to sell the public land heritage of the United States to subsidize local government budgets.

Additionally, BLM lands should not be viewed as a source of funding for other national programs, such as “paying off the national debt,” which is sometimes proposed. These Public Lands are used and enjoyed by the public in the rapidly growing West. The National System of Public Lands has public values as worthy of protection and preservation as those in the National Forest, National Park and National Wildlife Refuge Systems.

There are situations where Congressional legislation may be necessary to provide public lands in a timely manner to meet local development needs, but the large acreages that are being included in the recent legislation and legislative proposals, far exceed the acreages that are needed at this time.

When BLM Resource Management Plans identify lands as suitable for disposal, there are the options of using the land exchange process where the BLM lands are traded for other lands that are needed for public land management purposes, or land sales under the Federal Land Transaction Facilitation Act, which would enable BLM to use the money received from the sale to purchase other lands needed for public uses.

These Congressionally directed land disposals may also be setting the BLM up for future controversies over the uses that are made of the lands, and questions about where the money went. The BLM can sell the land, issue the land patents, and distribute the money paid for the lands as required by each of the Congressional Acts. However, there are no requirements for monitoring and enforcing the future uses of the land and how the monies are spent. The BLM has been criticized many times in the past over land exchanges and other land disposals, which, in retrospect, appear to have been unfavorable for the federal government. These current legislative land disposals may be

setting the BLM up to be the “scapegoat” down the road when local land use plans change and the money is spent.

PLF Position

1. The practice of disposing of large acreages of the BLM administered National System of Public Lands through special Congressional legislation is opposed.
2. The BLM Public Lands are a major national asset that is used and enjoyed by the American people, and they should be retained in federal ownership unless, as a result of the land use planning process which Congress provided in the Federal Land Policy and Management Act of 1976, it is determined that disposal of a particular parcel would serve the national interest.
3. The BLM administered public lands should not be viewed as a source of funding for local projects, programs or purposes. The BLM’s National System of Public Lands has public values as worthy of protection and preservation as those in the National Forest, National Park, and National Wildlife Refuge Systems.
4. BLM needs to give priority to using public lands identified for disposal through sale or exchange to acquire needed inholdings within the National System of Public Lands. Proceeds from land sales should go into a fund to buy additional lands for high value public purposes, such as BLM has done under FLTFA.
5. Congress has provided BLM with adequate authority to sell, exchange and lease the public lands in accordance with the land use plans, which the agency makes in collaboration with local governments and the public.
6. BLM needs to be able to respond more quickly when public lands are needed for development purposes in local areas. However, there is no critical need for the large-scale privatization of BLM Public Lands that is contemplated by the recent Congressional legislation, nor should these land transactions be exempted from the land use planning and environmental analysis procedures that have been established by earlier Acts of Congress.
7. Public land disposal decisions should be made through the land use planning procedures established by the Federal Land Policy and Management Act of 1976. This gives opportunity for all citizens and interest groups to have input to the decisions; federal public land is disposed of when needed for local purposes; and the land transfers are made in a public process which does not give special privileges to designated entities or individuals.

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