



## **Public Lands Foundation Position Statement Public Land Access**

### **Executive Summary**

An estimated nine million acres of land administered by the Bureau of Land Management (BLM) in the western states (excluding Alaska) can only be accessed with the permission of adjacent private landowners. There is increasing demand by the public to obtain or improve access to these public lands for public recreation. This paper only deals with issues of legal access, not physical access. The resolution of public access issues within the BLM is hampered primarily by limited funding and staffing in the lands and realty program. Passage of the Dingell Act in 2019 (Public Law 116-9) provides a process for the public to nominate parcels for improving access to the public lands. The BLM uses that information to help develop a priority access list. Existing access information could be digitized for use with GPS systems to assist the recreating public in knowing how to get to and stay on public land to avoid trespassing on private land.

### **Background**

The fragmented public land ownership pattern administered by the BLM in the western states today is the result of historic Acts of Congress such as the Homestead acts, mining laws, and the railroad and state land grants. This land ownership fragmentation has resulted in the elimination of adequate public access to many other well-blocked tracts of public lands administered by the BLM. A 2018 study by the Theodore Roosevelt Conservation Partnership estimated that about nine million acres of public land in the western states (excluding Alaska) can only be accessed with the permission of adjacent private landowners. This is an area about the size of New Hampshire and Connecticut combined. Access issues vary from state to state, depending upon the fragmentation pattern present and the quality/quantity of resources unavailable to the public. However, increased access to public lands is an issue in all of the western states.

The BLM and public land users have continually identified a need for additional access to the public lands for recreational opportunities. The public lands have become the open space and outdoor enjoyment areas for the urban populations of the West. The 2019 edition of the BLM's "Public Land Statistics" estimates there were over 71 million visitor days of recreational uses on the public lands that year. The public lands play a vital role to the estimated \$877 billion outdoor recreation economy.

The BLM had an easement acquisition program, the Acquisition and Transportation Right-of-Way (ATROW) program, that until about 1985 received an annual appropriation of about \$1.2

million. After that time, access funding was derived from the Land and Water Conservation Fund (LWCF) program, but emphasis on land acquisition has limited funding for easement acquisitions. With the lack of funding, BLM lost much of the staff with the experience and skills needed to process easements. Recent passage of the Great American Outdoors Act to permanently fund the LWCF could provide a funding source for easement acquisitions. However, unless the LWCF can also be used to fund additional staff for the lands and realty program, or unless other funds are appropriated to meet that need, the ability to research and compile data on access needs and to process easement acquisitions will be limited.

Throughout the western United States some purchasers of private properties acquire lands for the purpose of controlling access to adjacent Federal lands for a variety of reasons including fee hunting, stock driveways, and other for-profit or personal motives. There can be a reluctance on the part of county and state agencies to defend the status of historical roads and travel-ways for a variety of reasons, including road maintenance cost, legal fees, and a reluctance to confront the private landowner. There is also an increasing trend for the abandonment and closure of county roads and rights-of-way in many areas. Public county road systems in many counties are also often ill defined. There are private organizations in some states, such as Montana's non-profit Public Land and Water Access Association, that will research county road records when roads that have been used historically are closed by the private landowner. But this is an expensive and time-consuming proposition for small non-profits.

Passage of the Dingell Act provides a process for the public to nominate parcels for improving access, and the BLM is to use this information to "populate a standardized geodatabase with key information about those parcels". The BLM is then to use that information to help develop a priority access list with maps. An additional database that would be particularly useful for the public is one that would consolidate, digitize, and make publicly available recreational access information as GIS files suitable for use with GPS systems. The Modernizing Access to Our Public Lands Act (MAPLand Act) was proposed in the Senate in 2020 and has been reintroduced in 2021. This Act would direct the Federal land management agencies to develop this type of database.

In obtaining additional access, adequate provisions must also be made for the protection and management of sensitive resources in determining the need for public access. A budget strategy, coordinated with the overall access program strategy, needs to be developed so that the public and the Congress can see the direction of a positive, action-related program. The budget strategy needs to include the costs of hiring and training of staff, or funding for contracting the work of researching and gathering data, as well as securing access through easements or other reservations or conveyances. Budgets should also reflect a total cost approach so that the access program will not fail because of a lack of support funding from related resource management programs, especially for newly opened areas, to prevent degradation and damages.

## **PLF Position**

1. The BLM needs to respond to the increasing demand for recreational access to the public lands. It cannot do this until the lack of funding and staffing in the BLM lands and realty program is adequately addressed.
2. The LWCF should continue to be used as a funding source for easement acquisitions.
3. County road record research should be undertaken in priority counties where access to public lands has been identified as an issue.
4. The use of innovative partnership arrangements with State and local governments and private groups with an interest in acquiring access to public lands to help resolve access conflicts and uncertainties needs to be increased. Use of the full range of legal means, not just acquisitions, available to these public entities is needed in the resolution of access issues.
5. Greater use of land acquisitions and land exchanges to help alleviate the problems generated by the historical fragmentation of land ownership should be advocated. Some recent BLM land use plans prevent the BLM from pursuing the acquisition of private land unless approached first by the landowner or representative.
6. Incentive programs need to be developed and fostered to reward and compensate private landowners for public usage and access to public lands. Some states already use incentives that open access to BLM administered public lands for some uses.
7. A database that digitizes recreational access information for use with GPS is desirable. The MAPLand Act would meet this need, but it needs to take into consideration the BLM's ability to collect the necessary data and develop its transportation plans.

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