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Highlights and Summaries of Major Public Land Laws



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Highlights and Summaries of
Major Public Land Laws

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Highlights and Summaries of Major Federal Land Laws

The public lands managed by the Bureau of Land Management and U.S. Forest Service are governed by numerous laws, some of which date back to the American Revolution. The Public Land Law Review Commission, in a 1968 report to Congress, listed 2,669 laws that affect the administration of the public lands. Of these many laws, only a few stand out as being major pieces of legislation. This publication outlines the major pieces of legislation that affect the operations of the two largest federal land managing agencies, the Bureau of Land Management (Department of Interior) and the U.S. Forest Service (Department of Agriculture).

These laws range from all-encompassing legislation that set policy and direction for the agencies, such as the National Forest Management Act (NFMA) and the Federal Land Policy and Management Act (FLPMA), to laws that specify special programs affecting both agencies, such as the Wilderness Act or the Wild and Scenic Rivers Act. Some laws, such as the Public Rangelands Improvement Act, authorize Congress to appropriate monies for specific activities, but these are only authorizations and money must be budgeted annually by Congress. While a bill may sound impressive and direct large amounts of money to be spent on a project, without appropriation of funds by Congress the activities called for will not take place.

The typical format of most laws is a brief policy statement, followed by definitions, procedural instructions, and items authorized by the legislation. In some cases where a Congressional investigation has preceded the legislation, the findings of Congress are included in the first section of the law. Laws, by themselves, do not indicate that actual on-the-ground procedures that will be used in implementation. Rather, the appropriate Department (in the case of federal land management, this would be usually Agriculture or Interior), in conjunction with the affected agency, writes rules and regulations. This can be time consuming. For example, both FLPMA and NFMA were passed in 1976, yet the final regulations were not published until 1979. These rules and regulations are then codified and operation manuals are developed for use at the field level.

This also may require a period of years.

Often the intent of Congress is not clear and laws are interpreted and changed with use and the test of time. An example of this is the Wilderness Act. When the Forest Service first began to work with the Wilderness Act, it interpreted the language of the law strictly. Fences were judged to be structures, and thus the presence of a fence was enough to eliminate an area from wilderness consideration. Recently, Congressional approval of various wilderness areas containing fences, stockmen's overnight huts, and water developments, indicates criteria are being interpreted more loosely. A number of restricted and specific activities may now be permitted in designated wilderness areas.

What follows are the summarized highlights of major pieces of federal land use legislation, and where possible, a discussion of the intent of Congress. There are many laws involved with federal land management and only those with major impact or of interest to citizens concerned with federal land management will be discussed. Interested citizens may wish to read the complete law and any amendments or court decisions that may have changed the interpretation of the legislation. Major college and university libraries contain copies of the Federal Code of Regulations and the Federal Register in which the original text of all laws can be found. Usually the local BLM District Office or the Forest Supervisor's Office will have available to the public copies of major laws affecting their operations.

Four recent laws having major impact on the management of federal lands are discussed first. Then, in chronological order, with the oldest first, other laws still in effect or that are important in an historical context to understanding the management of federal lands are discussed.

The National Environmental Policy Act (NEPA) signed into law on January 1, 1970, was one of the first laws passed by Congress reflecting the environmental concerns of the public during the late 1960's. This law requires federal agencies to consider the Environmental Impact Statement (EIS) process and provides for citizen involvement in the federal decision making process.

The Federal Land Policy and Management Act (FLPMA) and the Forest and Rangelands Renewable Resources Planning Act (RPA), amended by the National Forest Management Act (NFMA), give policy and management directives to the largest federal land managing agencies, the USDI Bureau of Land Management and the USDA Forest Service. Both of these laws call for new planning systems to

be implemented that incorporate the basic requirements of NEPA and that use public involvement throughout the process.

National Environmental Policy Act of 1969 (NEPA)

Public Law 91-190 — Jan. 1, 1970

Congress, in recognizing the impact of man's activity on all parts of the natural environment declares as policy "...to create and maintain conditions under which man and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans." This law establishes the need for environmental analysis and environmental impact statements. On any proposed legislation or other major federal actions significantly affecting the quality of the human environment a detailed statement by the responsible official is required. This statement is required to include an analysis of:

- 1) environmental impacts of the proposed action;
- 2) any adverse environmental effects that cannot be avoided should the proposal be implemented;
- 3) alternatives to the proposed action;
- 4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
- 5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

NEPA requires that environmental considerations be integrated into the decision-making process used by federal agencies. NEPA authorized the creation of the Council of Environmental Quality (CEQ), which in 1978 issued regulations for the implementation of NEPA. Before this NEPA was carried out by guidelines that were developed agency by agency, and that lacked a consistent procedure that could be followed easily by all agencies. The "new" regulations clarify the intent of NEPA and are designed to reduce the amount of paperwork, to reduce delay, and to produce better decisions. Two of the most important items in the new regulations are the requirement that, if possible, environmental impact statements (EIS) should not exceed 150 pages, and provisions for a "scoping" process.

Scoping is a procedure that takes place at the very beginning of the EIS process. It involves identifying important issues that must be addressed in the EIS document and it is required that the public take part in the process.

Scoping also should limit the number of issues to be discussed in the EIS to those of major importance, and should ensure that the EIS is an integral part of the agency planning process. For further information consult the Federal Register, Vol. 43, No. 230, Wednesday, Nov. 29, 1978.

Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA)

August 17, 1974 (88 Stat. 476, as amended; 16 U.S.C. 1600 - 1614)

This is a comprehensive law that establishes a long-range renewable resource planning program. The Forest Service is given the responsibility to assure that the nation uses its natural resources wisely. The Forest Service is required to make sure that our renewable natural resources are used in such a way that there will always be a supply of renewable resources from the Nation's public and private forests and rangelands. The Forest Service must assess supply and demand forecasts, analyze environmental and economic impacts, coordinate multiple use and sustained-yield opportunities, and the agency must use public participation throughout the process.

The Act requires the Forest Service to do two major things: 1) submit to Congress, every 10 years, a Renewable Resources Assessment, and 2) submit to Congress a long-range Renewable Resources Program, due in 1980.

The Renewable Resources Assessment takes into account all forest and range lands in the United States, both public and private. It includes an inventory of present and potential renewable resources, along with opportunities for improving yields, and cost-benefit analyses. The assessment also must include a description of the Forest Service research and cooperative programs, and how they relate to the National Forest System, as well as how these programs relate to public and private activities. The assessment also must discuss important policy directives and laws that affect the management of forest and rangelands.

The Renewable Resources Program is specific and is more of an action plan than is the Assessment. The Program includes an inventory of specific needs and opportunities for both public and private investments, identifies specific outputs of goods such as timber and fiber, and the anticipated results of Forest Service activities. In addition, priorities are set for meeting the objectives of Forest Service programs, and detailed study of personnel requirements for carrying out existing programs is also included.

National Forest Management Act of 1976 (NFMA)

Public Law 94-588 — Oct. 22, 1976

This act amends the Forest and Rangelands Renewable Resources Planning Act of 1974 (RPA).

These amendments require the RPA Program to evaluate major Forest Service program objectives; to explain opportunities for all forest and rangeland owners to improve their lands; to recognize the need to improve and protect soil, water, and air; to establish national goals for all renewable resources; and to evaluate the impact of log exports and imports on domestic timber supplies and prices (USDA-FS-CIR No. 16, Dec. 1976). The Act requires that additional information be considered in reports, including information on fiber potential, wood utilization by mills, wood wastes, and wood products recycling. Reforestation is established as a national policy. One objective of the Forest Service's land management plans is close monitoring of forests to determine where the need for reforestation exists. Requirements for National Forest System resource planning are modified, and in particular, public participation is to be included in the development, review and revision of all Forest Service land management plans (Forest Plans).

As regards land management planning, NFMA discusses specific requirements. The main points are:

- 1) Plans shall form one integrated plan for each unit of the National Forest System, incorporating in one document or one set of documents, available to the public at convenient locations, all the features required by this section.
- 2) Plans shall be developed by an interdisciplinary team based on inventories of the applicable resources of the forest.
- 3) Plans shall be embodied in appropriate written material, including maps and other descriptive documents.
- 4) Plans shall be amended in any manner whatsoever after final adoption and public notice...with public involvement comparable to that earlier specified.
- 5) Plans shall be revised at least every 15 years.

Much more detailed information is provided in the text of the NFMA. Generally this Act redefines the Forest Service's land use planning process, and indicates that basic geographic planning units are to be individual national forests. The other major requirement of this act is that the Forest Service must clearly document all planning materials and have this information

available for the public to review.

Federal Land Policy and Management Act of 1976 (FLPMA)

Public Law 94-579 — Oct. 21, 1976

The purpose as stated in the law is "to establish public land policy; to provide for the management, protection, development, and enhancement of the public lands.

FLPMA is commonly referred to as the "BLM Organic Act." Perhaps its most important provision is that "the public lands be retained in federal ownership." Prior to passage of FLPMA, the BLM fulfilled a custodial role relative to lands in the public domain. There had been no clear policies established contrary to the original intent of the federal government to dispose of most public domain lands. FLPMA gave the BLM its charter, and defined its mission as active management of the public lands and resources "... on the basis of multiple use and sustained yield." FLPMA has also resulted in the creation of a new BLM land use planning process (Resource Management Planning) which requires extensive involvement of the public in all major land use planning activities.

Other important policies that are established include the following:

- 1) 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; that, where appropriate will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.
- 2) The United States receive fair market value for the public lands and their resources unless otherwise provided for by statute.
- 3) Regulations and plans for the protection of public land areas of critical environmental concern be developed promptly.
- 4) The public lands be managed in a manner that recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands.

General Mining Law Act of 1872

May 10, 1872

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The General Mining Law of 1872 governs access to federal non-fuel mineral resources. This law covers extraction of hard rock minerals such as copper, lead, uranium, gold, silver, nickel, iron, zinc and molybdenum. Anyone is free to prospect and stake a claim on most federal lands. A claim is 20 acres of land, which the prospector stakes by marking the boundaries, usually with wooden posts at the corners, and posting a notice. The prospector then must record the claim at both the county recorder's office and the local BLM office. Basically, this is all that must be done before mining can begin, but it must be shown that at least \$100 per year is spent on developing the claim. The federal government charges no fee in connection with the removal of minerals from public lands.

This law still governs much of the mining activity taking place on federal lands, and is the source of considerable controversy. Many people feel that the law requires updating or replacement by legislation more reflective of the times and technological advances in mining that have occurred over the past 100 years.

American Antiquities Act of 1906

59th Congress, Session I Ch. 3060, 3061

The American Antiquities Act protects historic and prehistoric ruins and monuments, and objects of antiquity that are located on public lands. This Act was an early step to preserve some evidence of our cultural and historical heritage. The minimum fine if convicted of breaking this law is \$500, or imprisonment for not more than 90 days, but, because federal agencies do not have funds for strict enforcement, this law has been applied more to large scale operations, such as the sale of Indian artifacts, rather than to minor offenses.

Taylor Grazing Act of 1934

73rd Congress, Session II Ch. 865 - June 28, 1934

This is the first major law dealing with the administration and regulation of grazing on the public domain land. Created in part due to concern by livestock groups over the poor condition of rangelands in the Intermountain and Great Basin areas of the U.S., it provides for some 80 million acres to be included in grazing districts. The Act took these lands from their unprotected and unreserved status and put them under federal regulation.

Until the Taylor Grazing Act was passed, little provision was made for administering grazing on public lands. Lack of grazing regulations led to extensive damage to the range. A general consensus developed that legislation

was needed in order to prevent further damage and allow for orderly management. The Taylor Grazing Act was, for the most part, formulated by, and designed to aid, livestock growers. The major purposes of the act (as stated in the preamble) are: "to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range." Fifty-nine grazing districts were created in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming. These districts are the basis of the organizational structure used by the BLM today.

Multiple Use - Sustained Yield Act of 1960

Public Law 86-517 -- June 12, 1960

This Act is brief by Congressional standards (only five sections), and is directed at National Forest lands. It states that..."the policy of the Congress is that the National Forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. Multiple use is defined as the management of all the various renewable surface resources of the National Forests so that they are utilized in the combination that will best meet the 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; that some land will be used for less than all of the resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output."

The concept of sustained yield is that goods derived from federal land resources are to be removed in such a manner that the productivity of the land will not decline over time. Thus, grazing and other activities can occur only at a rate determined by the carrying capacity of the land.

Multiple Use Reclassification Act of 1964

Public Law 88-607 -- Sept. 19, 1964

This law orders the Secretary of Interior to determine which public lands administered by the Bureau of Land Management should be: 1) disposed of to private or state ownership, or 2) retained in federal ownership and managed for multiple use. Lands that are valuable primarily for residential, commercial, agricultural, industrial or local public use may be disposed of to private or state ownership. Lands that are retained in federal ownership are to be managed

for domestic livestock grazing, fish and wildlife development and utilization, industrial development, mineral production, occupancy, outdoor recreation, timber production, watershed protection, wilderness preservation, and/or preservation of public values that would be lost if the land passed from federal ownership.

The Wilderness Act of 1964

Public Law 88-572 -- Sept. 3, 1964

The Wilderness Act creates a National Wilderness Preservation System. The Act declares as policy of the Congress..."to secure for the American people of present and future generations the benefits of an enduring resource of wilderness." A wilderness is defined in part as being..."in contrast with those areas where man and his own works dominate the landscape,...(wilderness) is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain." The law establishes a timetable for the evaluation of all federal land areas that appear to meet the requirements. Accomodations are made for uses such as mining, logging, and grazing; all can continue, but with certain restrictions.

The intent of the Act is to insure that America preserves some of its land in its natural condition. This legacy of undeveloped, natural land areas is in contrast to most other developed nations. The Act requires the Secretary of Agriculture to review National Forest lands for suitability for preservation as wilderness. This was done under the Roadless Area Review and Evaluation programs (RARE I and II). The Federal Land Policy and Management Act (FLPMA), requires that the BLM conduct the same kind of review (now in progress). Congress makes the final decision on all wilderness designations.

The Wilderness Act states that nothing in the Act should be interpreted as interfering with the multiple use aspects of National Forest management as established in the Organic Act or the Multiple Use Sustained Yield Act. It also specifies that in designated wilderness areas, management should be such that the wilderness character of the area is preserved.

Land uses that are prohibited in conjunction with wilderness designation are: 1) commercial developments, 2) permanent or temporary roads, 3) motor vehicles, 4) landing of aircraft or other mechanized transport, and 5) installation of permanent structures.

Wild and Scenic Rivers Act of 1968

Public Law 90-542 -- Oct. 2, 1968

The Wild and Scenic Rivers Act declares as policy of Congress...

"that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreation, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in their free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations."

This Act establishes a wild and scenic river system in which portions of certain rivers that have outstanding characteristics for a number of multiple uses can be protected from damming and the effects of dams and development. The law initially gave wild and scenic status to five rivers in the West: the Clearwater and the Middle Fork in Idaho; the Feather in California; the Rogue in Oregon; and the Flathead and Missouri rivers in Montana. The law established a plan for studying fifty-eight sections of rivers for possible inclusion in the system.

Wild Free-Roaming Horses and Burros Protection Act of 1971

Public Law 92-195 -- Dec. 15, 1971

This bill creates legislation for the management of wild horses and burros. This was a grassroots-inspired bill that became law due to pressure from interest groups. Section 1 states: "Congress finds and declares that wild, free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild, free roaming horses and burros will be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of public lands."

Such animals are placed under the jurisdiction of the Secretary of the Interior and administered by the Bureau of Land Management. Since the law limits management techniques and specifies the options available, it has created a number of problems. It has been subsequently amended, most importantly by FLPMA and the Public Rangelands Improvement Act of 1978, which loosened the controls and allowed for the use of some practical means to manage herd size.

Endangered Species Act of 1973

Public Law 93-205 — Dec. 28, 1973

The Endangered Species Act came about because many species of fish, wildlife,

and plants in the United States are now extinct as a consequence of economic growth and development, and because others are endangered and/or threatened. Congress will encourage the states (through financial assistance) to develop and maintain conservation programs. The law is designed to provide a program for conserving rare and endangered species and to support various international treaties and conventions named in the Act.

The Secretaries of Interior and Commerce are directed to determine if any species (plant or animal) is endangered or threatened, and to consider it endangered or threatened if:

- 1) there is current or threatened destruction, modification, or curtailment of its habitat or range;
- 2) it is being overutilized for commercial, sporting, scientific, or educational purposes;
- 3) there are disease or predation problems;
- 4) existing regulatory mechanisms are inadequate; or
- 5) natural or man made factors are adversely affecting its continued existence.

When a species is determined to be threatened, the appropriate Secretary issues regulations deemed necessary to ensure the conservation of that species.

Renewable Resources Extension Act of 1978

Public Law 95-306 -- June 30, 1978

Although not a law directly concerning public lands, this education act provides for an expanded and comprehensive Extension education program for forest and rangeland renewable resources. Congress recognizes that the USDA and the states provide, through Extension activities, useful and productive educational programs that apply to private forest and rangeland owners, as well as to those who manage federal lands.

The Secretary of Agriculture is authorized to provide educational programs that will help individuals recognize, analyze and resolve problems dealing with renewable resources. The law authorizes several different educational programs that may be provided by eligible colleges and universities. A broad spectrum of topics is to be covered in these educational programs including the needs of small, private, non-industrial forest landowners, range and fish and wildlife management, programs for professionally trained individuals, and the identification of areas needing research.

The State Directors of Cooperative Extension Services are directed to

develop, with the administrative heads of eligible colleges and universities, an annual comprehensive and coordinated renewable resources Extension program.

In addition, at the national level, the Secretary of Agriculture is directed to prepare by the spring of 1980, a five-year plan for implementation of the Act. This plan will be updated every 5 years thereafter. All aspects of the Renewable Resources Extension Program are to be covered by the national plan, including evaluation criteria. The law authorizes \$15,000,000 to be appropriated annually from 1979 to 1989.

Public Rangelands Improvement Act of 1978 (PRIA)

Public Law 95-514 -- Oct. 25, 1978

The Public Rangelands Improvement Act (PRIA), directs the Bureau of Land Management to manage public rangelands that are not set aside for other specific uses, with the goal being "...to improve the range conditions...so that they become as productive as feasible in accordance with the rangeland management objectives established through the land use planning process."

This law authorizes Congress to appropriate funds for large-scale improvements, and it authorizes a grazing fee and indicates the formula to be used. The Act stipulates that the annual increase or decrease cannot exceed 25 percent of the previous year's fee. The BLM is directed to cooperate closely with leasees, permittees, and landowners to develop allotment management plans. The Secretaries of Agriculture and Interior are directed to develop an experimental stewardship program which is to be designed to offer incentives or rewards to the permittees and leasees whose stewardship results in improvement of the range condition of lands under permit or lease. One suggested method of reward is to allow the permittee to use up to 50 percent of the grazing fee in the form of range improvement.

Another major portion of PRIA amends the Wild Horses and Burros Act. The Secretary of Interior is directed to maintain a current inventory of wild, free-roaming horses and burros on public lands. By using this inventory, overpopulation problems can be identified and appropriate management levels established. The Secretary is authorized to remove excess numbers of animals so that a natural ecological balance can be restored to the range. The Act authorizes the Secretary to order old, sick, or lame animals to be destroyed in the most humane manner possible. It also authorizes that excess animals that are not adopted are to be destroyed in the most humane and cost efficient manner possible.