History 101: America's Public Lands From Founding to Framework, 1776–1946

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Mission

Strengthen America's Counties

Vision

Healthy, safe and vibrant counties across America

About

The National Association of Counties (NACo) strengthens America's counties, serving nearly 38,000 county elected officials and 3.6 million county employees. Founded in 1935, NACo unites county officials to:

- **Advocate** county priorities in federal policymaking
- **Promote** exemplary county policies and practices
- **Nurture** leadership skills and expand knowledge networks
- **Optimize** county and taxpayer resources and cost savings, and
- **Enrich** the public understanding of county government.

National Center for Public Lands Counties

As a signature program of the NACo Research Foundation, **the National Center for Public Lands Counties (NCPLC) advances the policy and practice study for America's public lands counties** by educating intergovernmental policymakers about the unique opportunities and challenges faced by county officials in areas with significant federal public lands, conducting research and facilitating public forums to inform policies and practices and fostering dialogue between federal, state, tribal and local governments on key issues.

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EXECUTIVE SUMMARY:

Public lands are essential to the county landscape, offering economic, environmental and social benefits. This inaugural *History 101* report from the National Center for Public Lands Counties (the Center) provides meaningful and relevant research in support of the National Association of Counties' mission to strengthen America's counties. The report examines the historical context of emerging congressional policies and administrative directives that fundamentally shape modern public lands policy and the transition from land acquisitions and disposals to management across the nation's history.

This report provides an overview of key policies from 1776 to 1946 that have shaped the history and management of public lands in the United States. Although not an exhaustive account, the report establishes an ongoing effort by the Center to advance the study of policy and practice for America's public lands counties. By exploring the foundation of federal public lands policies and situating the development of the Big Four Land Management Agencies, this report lays the groundwork for understanding the contemporary county nexus and the intergovernmental partnerships that define federal public lands governance.

History 101 provides the foundation for future comprehensive research by the Center on major policy enactments and practices by the federal legislative and executive branches and their interpretation by the judiciary across the intergovernmental public lands research space. This history outlines the emergence of federal public lands, their acquisition, and their disposal over the history of the United States through early formation of today's Big Four contemporary land management agencies: the U.S. Forest Service (FS), the U.S. Fish and Wildlife Service (FWS), the National Park Service (NPS) and the Bureau of Land Management (BLM).

Laying the foundation for the Center's future work, this review of the history of public lands from 1776 to 1946 examines the formation of the Big Four land management agencies, providing essential historical context on their development within the broader framework of early administrative and congressional actions. The establishment of these agencies marks the emergence of the broader land management paradigm, which began taking shape in the late 19th and early 20th centuries and has continued to develop throughout the 20th and into the 21st century. The Big Four's formation marks a fundamental shift in Congressional direction from early policies of disposing of public lands, where the general focus was on settling the land through western expansion.

The Big Four are not the only public lands management agencies, but they account for the management of **94.77 percent** of the Federal public lands.[i] The Bureau of Reclamation and the Department of Defense are significant public land managers; however, they are distinct and have evolved in response to unique and varied circumstances compared to the Big Four land management agencies. **Future work by the National Center will examine these**

agencies, their history and their nexus to counties within the intergovernmental landscape to inform the Center's stakeholders.

History 101 provides a broad overview of the changing policy direction in response to evolving concerns throughout the nation's genesis and development. Numerous 20th century policies warrant individual attention, including but not limited to:

- National Stolen Property Act (1948)
- Reservoir Salvage Act (1960)
- Multiple Use Sustained Yield Act (1960)
- Clean Air Act (1963)
- Wilderness Act (1964)
- National Historic Preservation Act (1966)
- National Environmental Policy Act (1970)
- Clean Water Act (1972)
- Coastal Zone Management Act (1972)
- Endangered Species Act (1973)
- Archeological and Historic Preservation Act (1974)
- Federal Land Policy and Management Act (1976)
- Payment in Lieu of Taxes Act (PILT) (1976)
- National Forest Management Act (1976)
- Archeological Resources Protection Act (1979)
- Abandoned Shipwreck Act (1987)
- Native American Graves Protection and Repatriation Act (1990)
- National Maritime Heritage Act (1994)
- American Battlefield Protection Program Act (1996)
- National Historic Lighthouse Preservation Act (2000)
- The Secure Rural Schools and Community Self-Determination Act (2000)
- Sunken Military Craft Act (2004)
- Paleontological Resources Preservation Act (2009)

Future work of the National Center will undertake a comprehensive study of many of these policy enactments and their nexus to counties within the intergovernmental public lands system. **The public lands counties' landscape is complex, and there are many unique policies related to the public lands-county nexus, which the Center's future work will explore.**

This report begins by examining how Congress and the executive branch shaped the nation's expansion through policies promoting the acquisition and settlement of public lands. It then explores the range of policies that enabled the transfer and use of these lands. Finally, the report details the creation of the four primary federal public land management agencies and concludes by situating public lands and the county nexus. The Center's future work will explore the diversity of uses and examine specific case studies on the intersection of counties' jurisdictional boundaries with public lands, moving into contemporary research, curriculum development, data collection, case study development and analysis.

Key Themes:

The evolution of federal public lands management is a complex topic, defined by **Management Complexities**. Today, the federal government owns 28% of U.S. land, managed by agencies including the Big Four, the Bureau of Reclamation, and the Department of Defense. Effective coordination is necessary for counties to navigate agency-specific complexities, often including divergent use and shared stewardship arrangements, ever-changing leadership, conflicting policies and directives, bureaucratic realignments and unpredictable shifts in resource allocations to federal programs and services.

Economic and Environmental Contributions: Public lands support local economies through various activities, including agriculture, forestry, recreation, resource extraction, timber and other uses. Counties benefit from these activities, balancing development and environmental protection in alignment with fiduciary stewardship. Counties work within the intergovernmental space with state and federal policymakers to align local priorities with federal policies, ensuring sustainable land use, maximizing community benefits and planning for the future. However, risks from public lands also impact counties, including diminished local revenues, crime, workforce housing shortages, illegal dumping, wildfire, overuse, erosion, flooding and many more.

County Roles and Responsibilities: Counties support public lands within their jurisdictional boundaries by providing essential services, including search and rescue, justice and public safety, permitting reviews, code enforcement, restaurant inspections, education, health and human services, emergency management, coroner and medical examiner services and many more. Despite restrictions on generating local revenue on that land to support those services, public lands draw a variety of economic activity and yet pose risks and strain many county systems, including the justice and public safety systems. Rural communities often experience metropolitan levels of visitation, which brings both benefits and challenges.

Federal Support and Policy Needs: Programs like Payment in Lieu of Taxes (PILT) and Secure Rural Schools (SRS) are essential for financial support but lack stable, predictable funding. Innovative policies are necessary to address counties' evolving needs in their work to strengthen their communities and respond at the local level within the intergovernmental public lands space.

Public Lands Summary Timeline:

18th Century

- **1781 – The Birth of the Nation:** The formation of the U.S. federal government, through unanimous adoption of the Articles of Confederation, emerged by adjudicating control over what was known as the "Western" lands—the lands between the Appalachian Mountains and the Mississippi River — and areas of the "Northwest Territory" which were claimed by the independent colonies. The formation of the federal government was conditioned upon the independent colonies ceding these claimed lands to the federal government to be owned by all.
- **1788 – A Strong Central Government:** With the creation of the U.S. Constitution, replacing the Articles of Confederation, the federal government gained power. By acquiring Western lands, the federal government assumed responsibility for regulating the public land and creating new states through the disposition of public property.

19th Century

- **Promotion of Settlement:** As the federal government obtained more land, congressional and administrative leaders and other stakeholders incentivized settlement in the West. Increased settlement enabled the federal government to compensate soldiers, reduce the national debt and bolster the nation's strength.
- **Large public lands acquisitions**:
  - Louisiana Purchase - 1803
  - Adams-Onís Treaty - 1818
  - Oregon Compromise - 1846
  - Treaty of Guadalupe-Hidalgo - 1848
  - Gadsden Purchase - 1853
  - Purchase of Alaska - 1867
  - Overthrow of the Hawaiian Republic and Annexation by the United States - 1898
- Laws to encourage and accelerate settlement on these lands include:
  - Preemption Act - 1841
  - Donation Land Claim Act - 1850
  - Homestead Act - 1862
  - The General Mining Act - 1872
  - The Timber Culture Act - 1873
  - Timber and Stone Act - 1878
  - Desert Lands Entry Act - 1877

Early Conservation Concerns: As land was transferred to federal ownership, concerns arose regarding rapid development, speculation, fraud, the impact on adjacent communities and the future viability of these assets as the nation's collective resources. The effect of this early movement on policy is evident in President Ulysses S. Grant's 1868 decision to protect Alaska's Pribilof Islands as a habitat for the northern fur seal.

20th Century

- **An Inflection Point**: Emphasis shifted from the disposal and conveyance of public land to individuals and corporations to the retention and management of the remaining public lands. This trend was solidified by the Taylor Grazing Act in 1934.
    - The Big Four were formed:
        - USFS - 1905
        - FWS – 1940
        - NPS - 1916
        - BLM - 1946

- **Federal Land Policy and Management Act (FLPMA) and National Forest Management Act (NFMA):** Through these Acts, Congress expressly declared that the remaining public domain lands generally would remain in federal ownership and required owning agencies to assess the environmental value of the land and regulate economic activity on these lands.

- **The Sagebrush Rebellion (1970s and 80s):** Formed in response to perceived overreach of the FLPMA and concentrated in western states with significant federal land holdings, this movement sought to strengthen state and local control over these lands or transfer ownership of public land to states, local governments and private owners.

Present day: Authorities for acquiring and disposing of federal lands are unique to each land-owning agency. In the contemporary period, there have not been broad changes to federal ownership despite judicial challenges and legislative and executive efforts.

AN INTRODUCTION TO PUBLIC LANDS

Public lands is the colloquial term for parcels and acres owned by governmental entities, including states, tribes, counties, cities and the federal government. In the United States, this can be national parks, monuments, historic sites, trails, forests and others. America's public lands are some of its most beautiful and prized natural landscapes.

Some public lands are used as physical facilities for government functions, such as office buildings, maintenance sites and detention centers. Many states, counties and cities have designated parcels as public parks for residents and visitors. Public lands, as the name suggests, are for the benefit and enjoyment of the public.

History of the Concept of Federal Public Lands

Public lands are indispensable to the history of the Nation's growth and evolution. Discussions about the use, purpose and local economic benefit of federally owned land date back to the founding of the United States.[ii] As perspectives and opportunities evolved, so did federal legislation determining how public lands are stewarded. Public land originated through the Nation's struggle for independence from the British Crown as the federal government was legally codified in the Articles of Confederation and subsequent Constitution and iterated upon through Congressional legislation, executive action and judicial review.

This historical account acknowledges that Native American communities lived across the American landscape, utilizing diverse social structures, land-use practices and cultural traditions. The early federal government's land acquisitions resulted in the displacement of Indigenous peoples, as their lands were taken and repurposed for national expansion. This history is important; however, it is beyond the scope of deriving a history of the emergence of the concept of public lands, their use and subsequent management. Native Americans have rich histories tied to their ancestral homelands, which later became public lands.

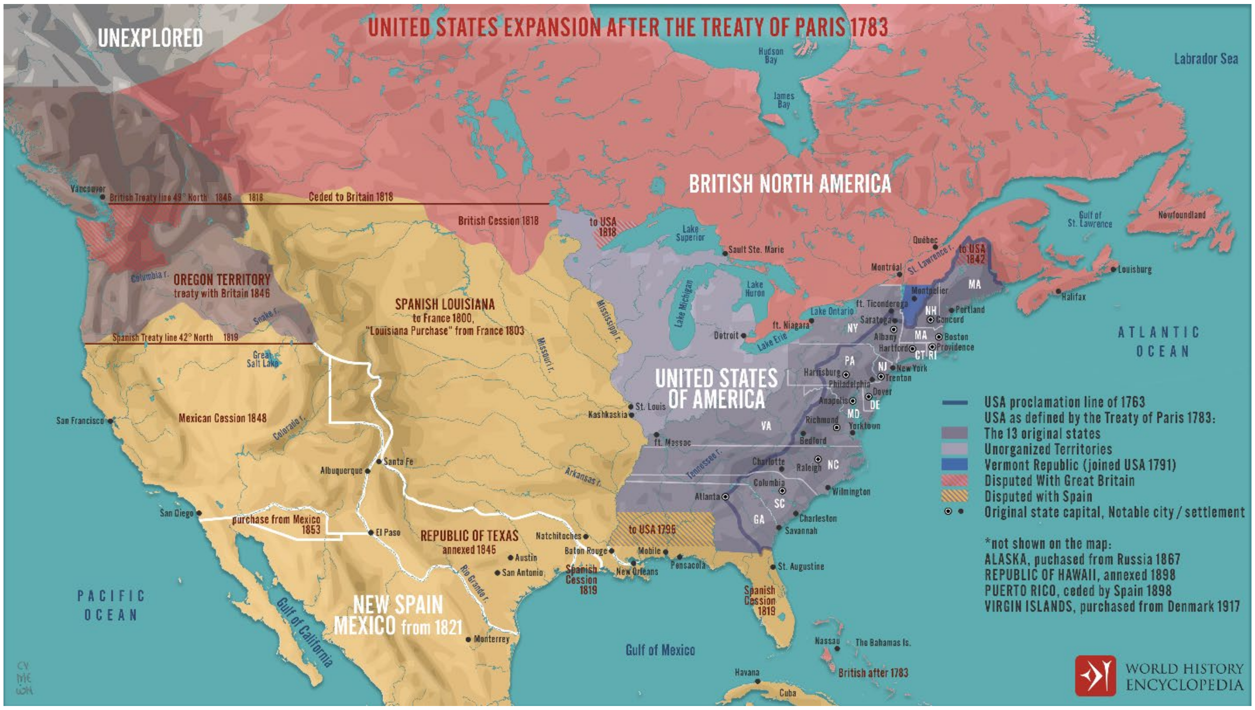
The birth of the United States was conceived and stabilized by answering questions about the future of British Crown lands claimed by the former colonies during the Revolutionary War period. Seven declared independent colonies, Georgia, South Carolina, North Carolina, Virginia, Connecticut, Massachusetts and New York, claimed "unsettled" territory west to the Mississippi River. As the early American colonies debated the formation of a national government, resolving issues surrounding western lands was crucial in building the consensus that ultimately led to the establishment of the Articles of Confederation.

On December 16, 1777, Virginia was the first state to ratify the Articles. Other states ratified during the early months of 1778. When the Second Continental Congress reconvened in June 1778, the delegates learned that Maryland, Delaware and New Jersey had refused to ratify the Articles. The Articles required unanimous approval from the states to become effective.[iii] These smaller states would not ratify unless other states relinquished their western land claims. In 1779, Maryland was the last holdout, arguing that these Crown lands should be considered common property of the United States.[iv] In May 1779, instructions of the General Assembly of Maryland stated:

> We are convinced policy and justice require that a country unsettled at the commencement of this war, claimed by the British Crown, and ceded to it by the Treaty of Paris, if wrested from the common enemy by the blood and treasure of the thirteen States, should be considered as a common property, subject to be parceled out by Congress into free, convenient and independent governments, in such manner and at such times as the wisdom of the assembly shall hereafter direct.[v]

Maryland became the last state to join the Articles of Confederation on March 1, 1781, after the larger states agreed to cede their western land claims to the emergent federal government. The cession of these lands ensured that the territories would be managed in a way that would benefit all states equally, by placing ownership within the trust of the federal government beyond the control of any single state. This early federal government was conditioned upon a fundamental question as to what to do with the claimed unsettled territory of the independent colonies.

The Treaty of Paris of 1783 ended the revolutionary war and formally ceded British claim to these western lands to the United States, including the Northwest Territory (encompassing the region lying west of Pennsylvania, north of the Ohio River, east of the Mississippi River and south of the Great Lakes) and land between the Appalachian Mountains and the Mississippi river. These lands became part of the young nation at its independence and were the property of the United States prior to the signing and ratification of the Constitution in 1787 and 1788. These lands are designated in light purple as unorganized territories in the map below.



Source: World History Encyclopedia. "United States Expansion After the Treaty of Paris." World History Encyclopedia. Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License. Accessed Feb 18, 2025. https://www.worldhistory.org/image/16880/united-states-expansion-after-the-treaty-of-paris/)

State cessions to the federal government occurred between 1781 and 1802. During that time, 236,825,600 acres were ceded to common ownership by the Federal Government. The ratification of the Constitution ensured that these lands were owned in common by the United States Government.

The ratification of the United States Constitution occurred on June 21, 1788, when New Hampshire became the ninth state to ratify the Constitution.[vi] The property clause of the Constitution permits common ownership of property and territory.

The Constitution's Article IV Section 3 states:

> New states may be admitted by the Congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.
>
> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;

> and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Public land disposal was foundational to the creation of the United States, dating back before the enactment of the Constitution. The early United States used these lands to build the nation by providing private property, common resources, compensation, schooling and transportation. The first land disposals occurred to compensate service members of the Continental Army. At the time, the young nation, struggling with debt from its fight for independence, faced a lack of treasury finances. Through **the Resolution of September 16, 1776**, the Continental Congress approved awarding grants of public lands to all who served in the Continental Army.[vii] The Resolution was the fundamental law through which Revolutionary War veterans were granted bounty-land warrants by the federal government until 1855.

Further acts of Congress authorized bounty land warrants for military service in the Revolutionary War under acts of 1788, 1803 and 1806.[viii] Congress restricted eligibility to men and noncommissioned officers and made changes to the amount of land granted in each of these successive acts. The amount of land varied with rank, ranging from 100 acres for privates and noncommissioned officers to 500 acres for colonels and 1,100 acres for major generals. Congress utilized the bounty-land compensation method to dispose of lands to encourage enlistment during the War of 1812 and the Mexican War.

Over 61 million acres of public domain lands west of the Appalachian Mountains were granted to veterans of the Revolutionary War and the War of 1812 as compensation for their service.[ix]

Key public lands management legislation originated during the early Confederation Congress. Thomas Jefferson's **Ordinance of 1784** established the legal framework for creating territorial governments North of the Ohio River. The **Ordinance of 1785** provided for the survey and sale of land. This ordinance established the township and range surveying method and divided lands into 6-mile townships, each containing thirty-six one-mile square areas called sections. Each section contained 640 Acres. This ordinance permitted the Federal Government to sell land in the Northwest Territory for a minimum of $1 per acre.

The Ordinance of 1785 provided the foundational public lands management policy until the passage of the Homestead Act of 1862. The Ordinance established the basis for the Public Land Survey System. The **Northwest Ordinance of 1787**, approved on July 13, 1787, superseded the ordinances of 1784 and 1785. This ordinance provided a path toward statehood of the ceded Crown lands northwest of the Ohio River, encompassing the area that would become the future states of Illinois, Indiana, Michigan, Ohio, Wisconsin and part of Minnesota.[x] This ordinance outlined a process for acquiring statehood. The First Federal Congress renewed the Ordinance in 1789.

As the nation's territory evolved, Congress made changes to these fundamental public lands management policies to accommodate a growing nation. The acquisition of new lands drove change in addition to disposal. The Louisiana Purchase and the acquisition of Spanish Florida compelled policymakers to adapt the Northwest Ordinance to the changing circumstances of the early nation. Public lands policy was a critical book of policy work for a young nation.

While these land disposals were occurring, the United States also experienced significant territorial expansion. The table below shows many significant acquisitions and their costs.

Table 1-1. ACQUISITION OF THE PUBLIC DOMAIN, 1781–1867

	Area			Percentage of	
	Land *Acres*	Water *Acres*	Total *Acres*	Total U.S. Area /a/	Cost /b/
State Cessions (1781–1802)	233,415,680	3,409,920	236,825,600	9.7	$6,200,000 /c/
Louisiana Purchase (1803) /d/	523,446,400	6,465,280	529,911,680	21.8	23,213,568
Red River Basin (1782–1817)	29,066,880	535,040	29,601,920	1.2	0
Cession from Spain (1819)	43,342,720	2,801,920	46,144,640	1.9	6,674,057
Oregon Compromise (1846)	180,644,480	2,741,760	183,386,240	7.5	0
Mexican Cession (1848)	334,479,360	4,201,600	338,680,960	13.9	16,295,149
Purchase from Texas (1850)	78,842,880	83,840	78,926,720	3.2	15,496,448
Gadsden Purchase (1853)	18,961,920	26,880	18,988,800	0.8	10,000,000
Alaska Purchase (1867)	365,333,120	12,909,440	378,242,560	15.6	7,200,000
Total Public Domain	**1,807,533,440**	**33,175,680**	**1,840,709,120**	**75.6**	**$85,079,222**

/a/ Represents the percentage of total U.S. area, which is 2,429,914,880 acres (3,796,742 square miles), according to U.S. Census Bureau data as of January 1, 2010. This figure excludes U.S. territories and possessions.

/b/ Cost data for all except "State Cessions" obtained from U.S. Geological Survey, *Boundaries, Areas, Geographic Centers and Altitudes of the United States and the Several States* (Washington, DC, U.S. Government Printing Office, 1939), 249–51.

/c/ See Public Land Commission, *The Public Domain: Its History, with Statistics* (Washington, DC, U.S. Government Printing Office, 1880), 11.

/d/ Excludes areas eliminated by treaty of 1819 with Spain.

Source: U.S. Department of the Interior, Office of the Secretary, Areas of Acquisition to the Territory of the United States (Washington, DC, U.S. Government Printing Office, 1992). Acres therein are based on findings adopted February 2, 1912, by the Secretary of the Interior.

Source: Bureau of Land Management. *Public Land Statistics 2020*. U.S. Department of the Interior, 2021. Table 1-1. https://www.blm.gov/sites/default/files/docs/2021-08/PublicLandStatistics2020_1.pdf.

The **1803 Louisiana Purchase for $15 million** doubled the size of the United States, adding 529,911,680 acres to the nation's territorial claim and began the major period of westward expansion. Public land acquisitions in the early United States were accomplished through **three primary means: war, treaty and purchase.** In 1812, **the General Land Office** was established as a federal agency within the Department of the Treasury. The Office's primary responsibility was to oversee the survey and sales of public domain lands. The Office was transferred to the Department of the Interior in 1849. The Office was the primary executive agency overseeing the ceding and acquisition of public lands. The contemporary Bureau of Land Management traces its evolution to the establishment of the General Land Office.

In the **Treaty of 1818**, Britain ceded land to the United States south of the **49th Parallel**, including parts of North Dakota and the Upper Peninsula of Michigan, while simultaneously resolving boundary issues from the War of 1812. Through the **Adams–Onís Treaty of 1819**, or the Transcontinental Treaty, the United States acquired **Florida** and established the boundary of U.S. territory and **claims through the Rocky Mountains and west to the Pacific Ocean.**

In 1836, Texas rebelled and gained independence from Mexico after the **Battle of San Jacinto** and became the **Independent Republic of Texas**. During this time, Texas claimed land all the way north into contemporary Carbon County, Wyoming, as well as parts of contemporary Kansas, Oklahoma, Colorado, Utah and New Mexico. For the next nine years, Texas was an independent nation.

In **1848, the Treaty of Guadalupe-Hidalgo** officially ended the Mexican-American War. Through the Treaty, Mexico ceded California and the Southwest portion of the contemporary United States. The agreement recognized the United States' annexation of Texas, which became a state in 1845. Mexico also relinquished all claims to Texas and recognized the Rio Grande as the southern boundary with the United States. The treaty provided the United States with an additional 338,680,960 acres. Mexico ceded **55% of its territory** to the United States, including the present-day territory of California, Nevada, Utah, New Mexico, most of Arizona, Colorado, parts of Oklahoma, Kansas and Wyoming. [xi]

After Mexico's recognition of Texas, further acquisitions by the federal government would take place, including the **1846 Treaty with Great Britain**, which provided the United States with an additional 183,386,240 acres of the **Oregon Territory south of the 49th parallel**. This treaty would resolve the northern boundary with Canada and end the joint occupation of the Oregon territory. Originally, Spain, Great Britain, Russia and the United States claimed the Oregon territory. In 1819, under terms of the Transcontinental Treaty, Spain ceded its claims to the Oregon territory to the United States. During this time, there was a movement to obtain the whole of the Pacific Northwest as far north as the boundary of Russian Alaska at **54°40' latitude** — the origin of the slogan **Fifty-four Forty or Fight**! Ultimately, the agreement was the 49th parallel with Great Britain.

Source: Wikimedia Commons. *Map of the Oregon Country*. Wikimedia Commons, https://upload.wikimedia.org/wikipedia/commons/c/cb/Oregoncountry2.png. Accessed March 18, 2025.

During this time, the term "**manifest destiny**" entered national conversation. In 1845, journalist **John Louis O'Sullivan** wrote, "our manifest destiny to overspread and to possess the whole of the continent which Providence has given us for the development of the great experiment of liberty and federated self-government entrusted to us."[xii] Further acquisitions would occur, executing O'Sullivan's sentiment.

Texas relinquished its claims to the large tracts of land with the **Compromise of 1850** by ceding them to the United States. The United States acquired another 78,926,720 acres in present-day New Mexico and other states in return for the federal assumption of Texas's public debt acquired prior to its annexation to the United States. It is often reported that this exchange of debt for land is considered a purchase by the federal government. The map below illustrates the boundaries of Texas's claims up through Wyoming and the Oregon Boundary at the 54th parallel.

Source: University of Texas at Arlington Libraries. *Map of U.S. and Mexico During the U.S.-Mexican War*. University of Texas at Arlington, https://sites.libraries.uta.edu/usmexicowar/sites/usmexicowar/files/2022-11/usmw-132_2_00583.jpg. Accessed March 18, 2025.

As the United States expanded westward, it continued acquiring public lands through purchase, war and treaty negotiations. Congress utilized the United States' public lands for expansion through Territorial Acts, Enabling Act Legislation and State Acts of Admission to create new jurisdictions out of the federal public land holdings.[xiii] The Congressional Research Service explains:

> The Territorial Clause, found in Article IV, Section 3, clause 2 of the U.S. Constitution, grants Congress plenary authority 'to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.' Territorial self-governance and political relations between the federal government

> and a territorial one are embodied in a concept known as *political status*. Congress and the executive branch have long expressed support for self-determination in all territories. The federal government generally recognizes three constitutionally valid status options: (1) statehood, (2) independence (including free association), or (3) territory.[xiv]

According to the Congressional Research Service, Congress enacted 31 pieces of legislation that established territorial governments, 22 enabling acts that allowed residents to prepare for statehood and 37 acts of admission to admit states into the Union.[xv] The 13 original states and another six states (California, Kentucky, Maine, Texas, West Virginia, Vermont) moved directly to statehood without an intervening period of territorial government.

The expansion of the United States, through the conversion of public land into territories and eventually states, frequently embroiled policymakers with questions as to the expansion of slavery. There were numerous debates about any measure to admit new states and territories. For example, the Ordinance of 1787 resolved the slavery expansion question in 1787 for the Northwest Territory and the Compromise of 1850 again bridged the question of slavery and its expansion. A discussion on slavery is beyond the scope of this work, but policymaking around the **"peculiar institution"** frequently intersects with the conversion of public lands into organized governmental jurisdictions as debates over free and slave state admissions into the Union gripped policymakers.

In the years leading up to the Civil War, the United States continued to acquire territory, utilizing its economic strength to expand its territorial holdings. In **1853, the Gadsden Purchase** was executed for $10 million, adding an additional 18,988,800 acres of public lands to the United States.[xvi] The Gadsden lands were acquired to facilitate a southern transcontinental railroad and resolve remaining conflicts after the Mexican-American War.[xvii] These lands included areas of what is now **Southern Arizona** and **Southwestern New Mexico.**

The Civil War inhibited further acquisitions. After Russia's defeat in the Crimean War, it offered to sell Alaska to the United States in 1859, but the forthcoming Civil War delayed the sale.[xviii] After the Civil War, Russia initiated a reinvigorated effort to sell the land. **Alaska's 378,242,560 acres were sold in 1867 for $7.2 million**, or about two cents an acre, after **Secretary of State William Seward** completed the deal. **Two cents an acre** was far cheaper than the $1 per acre that Congress initially approved to sell lands of the "Northwest Territory" under the 1785 ordinance.

Little was done with the newly acquired Alaskan lands until an effort was made to organize a government following the passage of the **1872 General Mining Law**. Critics of the purchase dubbed the purchase as **“Seward’s Folly”** or **“Seward’s Icebox.”** The discovery of gold in **1896** along a tributary of the **Klondike River** would unleash a gold rush. The discovery renewed interest in the area. Today, the purchase is widely considered one of the best land deals in history.

After years of discussion on the annexation of Hawaii, dating back to the 1850s, Congress approved a joint resolution in 1898 to annex the independent Hawaii Republic. The Republic was an independent, unified kingdom that was gradually eroded through the work of militia affiliated with the Hawaiian League and the overthrow of the queen by the “**Committee of Safety**,” led by sugar interests from the United States, backed by a contingent of Marines from the U.S.S. Boston.[xix]

House Joint Resolution 259, 55th Congress, 2nd session, **"The Newlands Resolution,"** passed Congress and was signed into law by **President McKinley** on July 7, 1898. The resolution stated:

> Whereas, the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America, all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States, the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining…
>
> …The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition: *Provided*, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.[xx]

Under this provision of the Newlands Resolution, the United States government acquired title to approximately **1,800,000 acres of Hawaii's public land** at no monetary cost.[xxi] The Newlands Resolution stipulated that **existing public lands laws were not applied to the Hawaiian Islands**. This differs from the core western states.

The overthrow and annexation of the Republic of Hawaii marked the culmination of the major territorial acquisitions that ultimately led to the creation of the 50 states we know today. However, the federal government continued to acquire additional territory after the annexation of Hawaii, including Guam, Puerto Rico, the Philippines, the Samoan Islands, the Panama Canal Zone and others. This history is important, but outside the scope of this history of public lands and their relation to the county nexus.

The acquisition of public domain lands was a foundational element in the establishment and development of the United States as a nation. The history of public lands in the United States and their acquisition is the history of the country's expansion. The United States' existence is predicated upon the concept of public lands. These lands date back to the earliest moments of a nation struggling for independence from the British Crown. From 1781, when Maryland became the last state to join the Confederation, to 1867, with the purchase of Alaska, the United States acquired approximately 1.84 billion acres of land, or about 81% of its territory, for approximately $85 million. **Today, the United States contains nearly 2.26 billion acres of total land.**

Examples of Public Lands Disposition to Create Western States

Acquisitions precipitated the building of the Nation. Simultaneously, as these lands were acquired, they were disposed of by the federal government through the selling and granting of public lands as private property, common resources, veteran benefits, education and transportation.

Lands were disposed of in various ways. Three major components of disposal included the **Land Acts, Railroad Grants and Enabling State Acts**. The Land Acts, such as the Ordinance of 1785, permitted the selling and granting of public lands. Congress would pass numerous acts and add additional provisions that altered the one-dollar-per-acre formula over time. Nearly 180 million acres of land were sold through the Land Acts.


THE UNITED STATES OF AMERICA,

To all to whom these presents shall come, greeting:

Source: Washington, D.C. General land office, “The United States of America, To all whom these presents shall come, greeting,” *Digital Vermont: A Project of the Vermont Historical Society*, accessed March 21, 2025, https://www.digitalvermont.org/items/show/4746.

The **Preemption Act of 1841**, also known as the **Distributed Preemption Act**, permitted "squatters" who were living on federal government-owned land to purchase up to 160 acres at a price of not less than $1.25 per acre before the land was to be offered for sale to the general public. To qualify under the law, the "squatter" had to be a "head of household", a single man over 21 or a widow, a citizen of the United States (or intending to become naturalized) and a resident of the claimed land for a minimum of 14 months. The Act further stipulated that Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas and Michigan, or any state afterward admitted to the Union would be paid 10 percent of the proceeds from the sale of such public land.[xxii] The Preemption Act was repealed by Congress and replaced by the Land Revision Act in 1891 or the Forest Reserve Act of 1891.

Another example of a Land Act was the **Donation Land Claim Act of 1850.** This act sought to promote homestead settlements in the Oregon Territory, including the states of Oregon, Washington, Idaho and part of Wyoming. This act was the precursor to the Homestead Act. It authorized 640-acre claims for white male citizens and their wives, at 320 acres for the men and 320 for the wives. It also allowed mixed Native Americans to make claims. The Act expired in 1855.

The **Swamp Land Act of 1850** provided a mechanism for reverting the title of federal public swamp lands to states that would agree to and execute the drainage of the land for agricultural productivity. It was targeted to harness the land in Arkansas and those lands in Florida known as the Everglades but was applied to a variety of lands across the United States. Florida became a state in 1845, and through this act, the state transformed from 15 million acres to 35 million acres.[xxiii]

The largest disposition of public lands came through the **Homestead Act 1862.** In 1860, a homestead policy was passed by Congress but was vetoed by President James Buchanan.[xxiv] The Act passed Congress after the Southern States seceded from the Union in 1861, removing their opposition in Congress. In the same year, the Morrill Land-Grant Act of 1862 permitted the setting aside of public lands to create colleges to "benefit the agricultural and mechanical arts." It also passed without the 11 Southern States. The period of the Civil War, without the southern members of Congress, saw action on public lands policy, setting the foundation for public lands management policy after the war.

Throughout the Homestead Act's history, 270 million acres went into private ownership until it was repealed in 1976 by the **Federal Land Policy and Management Act (FLPMA).** The General Land Office, within the Department of the Interior, administered the Homestead Act. Initially, the Homestead Act permitted the granting of 160 acres to the head of the household (could be a man or woman). To receive land through this program, one had to be at least 21 years old, live on the land for five years and construct a house. Any U.S. Citizen or intended citizen who had never borne arms against the U.S. Government could file a claim. The acreage limits were increased as the most productive lands were homesteaded east to west. Congress would increase the size of the grants of land to 360 acres and eventually 640 acres as larger tracts were needed to provide subsistence as the wetter lands, east of the 100th meridian, grew unavailable and were among the first to be homesteaded.

Source: Bureau of Land Management. General Land Office Records. U.S. Department of the Interior. https://glorecords.blm.gov/default.aspx (accessed March 24, 2025).

The Railroad Grants provided another method of public land disposal. Approximately 180 million acres were granted to railroad companies to encourage private railroad construction.[xxv] Companies were deeded 200 feet on either side of the track. For every mile of completed track, as much as 12,500 acres of land in a checkerboard pattern were transferred to the railroad. Many of these lands were sold on the private market. In Arizona, they are often checkerboarded with state-trust land.

For example, in 1866, the **Oregon & California Railroad Company** was granted public land to construct approximately 300 miles of the Oregon portion of the railroad from Portland, OR, to Sacramento, CA. The railroad received alternating sections of land, averaging 20 miles on each side of the proposed route, resulting in a checkerboard ownership pattern with private, state, local and federal ownership. Congress, to incentivize settlement and development, authorized the railroad to sell parcels no larger than 160 acres at a maximum price of $2.50 an acre. Similarly, in 1869, public lands were granted for the construction of a military road from Roseburg to Coos Bay.

At the same time, railroad companies were being incentivized through land grants, Congress took action to induce the expansion of mining on public lands with the passage of the **1872 General Mining Act.** Emerging through the experience of the California Gold Rush, the Act was developed to increase expansion in the Western United States. The Act declares:

> …That all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase by citizens of the United States and those who have declared their intention to become such…[xxvi]

The Library of Congress recognizes the parallel between the **1862 Homestead Act and the 1872 General Mining Act**. The mining law allowed prospectors to survey and claim public lands in the western states in order to incentivize settlement of the West.[xxvii] The Act permitted a claim to be made, requiring the claim's owner to perform $100 of labor each year until a patent was issued for the claim.[xxviii] Unlike the Homestead Act, the Mining Act recognized that people could work together and become co-owners of a mining claim and that if one of the co-owners failed to contribute to annual improvements, their stake would revert to the other claimants. The 1872 Act originally applied to all valuable mineral deposits except coal.[xxix]

The law established the claim-patent system. The claim-patent system does not generate royalties for federal taxpayers. After a prospector conducts exploration work on public land, they may locate a claim to an area believed to contain a valuable mineral. Once a claimed mineral deposit is determined to be economically recoverable and after at least $500 of development work has been performed, the claimant could purchase surface and mineral rights at a rate of $2.50 per acre for placer claims and $5 per acre for lode claims. According to the Congressional Research Service, “A placer deposit is an alluvial deposit of valuable minerals, usually in sand or gravel; a lode or vein deposit is of a valuable mineral consisting of quartz or other rock in place with definite boundaries. A placer claim is usually limited to 20 acres, whereas a lode claim may be slightly greater than 20 acres.”[xxx] At the time of enactment, these per-acre fees were substantial; however, today, claimed land and minerals far exceed these amounts. The Congressional Research Service notes that only a small percentage of claims are ever patented, totaling about 3.4 million acres from 1867 through 2006. This represents approximately 1.5 percent of all public lands patented, whereas the homestead entries, statehood grants, railroad grants and other non-mineral public lands patented far more public lands.

The Congressional Research Service explains that the claim-patent system does not place limits on the number of claims a person can locate or requirements that mineral production ever commence. The system also allows mineral production to take place without a patent or royalty payments to the federal government, and claims can be held indefinitely with or without mineral production, subject to challenge if not developed.[xxxi]

In 1920, Congress passed the **Mineral Leasing Act**. The Act removed oil, gas, oil shale, phosphates, sodium and other minerals on public lands from the claim-patent system of the 1872 Mining Law. The 1920 act established a system of leasing in which the federal government retains ownership of the leased lands. This act established a royalty system for the extraction of fuel resources extracted from public lands with a minimum royalty rate of 12.5 percent for oil and gas and a minimum of 12.5 percent for surface mined coal. The Wyoming Historical Society explains that companies pay up-front fees when they first lease a piece of federal land with oil or coal. The companies pay the government a royalty of one-eighth of the revenue they get from the sale of the fuel produced from the land. The federal government pays half that royalty back to the states from which the fuel was extracted.[xxxii]

Prior to 1920, coal had its own claim-patent law (the 1873 Coal Act). The 1920 Act included coal in the leasing system established by the Act.

In 1947, Congress passed the **Materials Act of 1947**, granting authority to the Secretary of the Interior to dispose of mineral materials not locatable under the Mining Act. **Locatable minerals** generally refer to minerals that are rare, including both metallic minerals (gold, silver, lead, copper, zinc, nickel, etc.) and nonmetallic minerals (fluorspar, mica, certain limestones and gypsum, tantalum, heavy minerals in placer form and gemstones).[xxxiii] **Non-locatable** minerals are those that are fairly common, such as sand, common clay, cinder and gravel.[xxxiv]

Scan to Read More About Hardrock Minerals Mining on Public Lands from the Congressional Research Service

The 1872 General Mining Law originated from Congress's efforts to promote western settlement by encouraging private ownership and use of the Nation's extensive public lands. For example, Congress enacted further legislation to enhance the Homestead Act and provide new opportunities for the disposal of public lands and the settlement of western lands. **The Timber Culture Act of 1873** allowed individuals to claim 160 acres of land if trees were planted on at least 40 acres or one-fourth of the land. At first, anyone, including immigrants, could claim land under this act. Homesteaders would use this authority to acquire an additional 160 acres. In 1874, the Act was amended to require the same age and citizen qualifications as the Preemption and Homestead Acts. The Act did not require residency on the land. Subsequent changes would reduce the tree planting requirement to 10 acres. The Act was repealed in 1891. In total, 10,900,000 acres of public land were granted through this act.[xxxv]

In 1877 the **Desert Land Act** amended the Homestead Act of 1862, permitting 640-acre claims at $1.25 an acre for married couples and 320 acres for single men. The Act intended to promote economic development of the arid and semiarid public lands of the Western States and did not require proof of residency. The Act authorized individuals to apply for a desert-land entry to reclaim, irrigate and cultivate these lands. Utilizers had to submit proof of irrigation efforts, and the program suffered greatly from fraud due to the filing of fraudulent irrigation effort proofs. The National Archives notes that, in some instances, proof consisted of buckets of water spread across the land.[xxxvi] Large areas in western valleys, including the Salt River of Arizona, the Imperial of California, the Snake River of Idaho, the Gallatin of

Montana and the Yakima of Washington, were granted under the act.[xxxvii] A total of 10,700,000 acres of public lands were sold under this act.

The **Timber and Stone Act of 1878** initially permitted the selling of western timberland for $2.50 per acre in 160-acre blocks. Land deemed "unfit for farming" was sold to those individuals who wanted to engage in logging and mining. Initially, the policy targeted land in four Western states or territories of California, Oregon, Nevada and Washington, but was also utilized elsewhere as it extended to all public lands states in 1892 including northern Minnesota.[xxxviii] The policy was designed to limit buyers to one person, a family or a small company and only those who were U.S. citizens or in the process of becoming naturalized. The Act strived to ensure that the land was purchased by independent timbermen and settlers, not large timber operators. An affidavit was required to be signed affirming that the purchaser was only going to use the land for their own use. However, speculators utilized the Act by working with individual purchasers who would transfer ownership to large companies.[xxxix] In total, 13,900,000 acres of public lands were sold under this act.

Further public lands disposition also occurred through the verification of Mexican land grants in the Southwest that were acquired under the Treaty of Guadalupe Hidalgo. The treaty posed challenges, as numerous land claims had been granted by Mexico to its inhabitants prior to the lands becoming part of the United States. The original treaty specified that the United States would continue to recognize the validity of Mexican land grants, but this portion was removed from the final treaty. However, the federal government assured Mexico that it would uphold valid grants.[xl]

In 1854, Congress established the **Office of the Surveyor General of New Mexico** and directed the Surveyor General to base his conclusion about the validity of land grant claims on the "'laws, usages, and customs' of Spain and México and on more detailed instructions to be issued by Interior. These instructions, in turn, directed the Surveyor General to recognize land grants 'precisely as México would have done' and to presume that the existence of a city, town, or village at the time of the Treaty was clear evidence of a grant."[xli] At first, Congress tried to adjudicate the validity of these grants using special legislation. The House established a Committee on Private Land Claims. Still, there were difficulties in using a political body to adjudicate valid land grants through a legal verification process. Corruption resulted, and no claims could be proved as against the United States.[xlii]

To address these issues, Congress established a special court, the **Court of Private Land Claims, 1891-1904,** and charged it with assessing the legal status of land grants that the Mexican government had made to many individuals and communities before acquiring these lands after the Mexican-American War. Initially, the Court was to complete its work by the end of 1895, but due to the complexity of the cases, it was extended and operated until

1904. The court was given jurisdiction over previously unproven and affirmed land claims in the territories of New Mexico, Arizona and Utah, as well as in the states of Nevada, Colorado and Wyoming.[xliii] The court adjudicated title to over 35 million acres of land throughout its 13-year history.[xliv]

Alongside the public lands distributed through various land acts, such as the Homestead Act and the Railroad Grants, Western states also received land through enabling acts upon their admission to the Union. When Western states joined the Union, they relinquished their claims to federal public domain lands within their borders in exchange for receiving large tracts of public land. These lands, granted to the state, were to be leased or sold by the state to help raise funds for public schools, colleges, universities and other public institutions of the state.

New states received two central federal land grants: **quantity grant lands**, which allowed states to select land from the public domain within their borders, and **designated school sections** within each surveyed township.[xlv] The acreages of public domain transferred to Western States ranged from 2 million to 10 million acres, depending on the size of the state and the date of statehood. Over 77 million acres were transferred to the states for local schools, along with an additional 21.7 million acres for other public schools and institutions.[xlvi] Alaska, which did not become a state until 1959, was granted more than 104 million acres for other purposes.[xlvii]

In the Colorado Enabling Act of 1875, the Forty-Third Congress, 2nd Session provided lands for schools, public buildings, a state penitentiary and a state university and empowered the governor to select up to 12 salt springs with six sections of land adjoining each spring in contiguous sections of land for each. As part of these land grants, Congress stipulated:

> ...secondly, the people inhabiting said Territory do agree and declare that they forever disclaim all rights and titles to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to residents thereof, and that no taxes shall be imposed by the State on lands or property therein belonging to, or which may hereafter be purchased by the United States.[xlviii]

Similarly, Congress was clear that as part of the conditions of statehood, western states would disclaim or agree not to interfere in the primary disposal of the United States' public lands. For example, in the enactment legislation for the Western Interstate Region States (Arizona, California, Idaho, Montana, New Mexico, Nevada, North Dakota, Oregon, South

Dakota, Utah, Washington and Wyoming), similar provisions were enacted. For example, below is an example of the Utah Enabling Act of 1894.

FIFTY-THIRD CONGRESS. Sess. II. Ch. 138. 1894.

Renunciation of public lands.

Second. That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof; and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States: that the lands belonging to citizens of the United States resid-

Source: Utah's Enabling Act, FIFTY-THIRD CONGRESS, Sess. II, Chs. 137, 138. 1894. Retrieved from https://www.loc.gov/item/llsl-v28/

Western states were granted public land at the time of statehood while also agreeing to terms that limited future interference with disposition and relinquished their claims to unappropriated public lands. For example, in Oregon's 1859 enabling act:

> *Provided,* That the foregoing propositions, hereinbefore offered, are on the condition that the people of Oregon shall provide by an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof; and that in no case shall non-resident proprietors be taxed higher than residents.[xlix]

California's enactment legislation is similar to Oregon's in regard to noninterference. The Western states share similar language in their enabling legislation. However, there were differences with the establishment of Alaska and Hawaii. Alaska's enabling act included similar disclaiming language that:

> ...State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the state or its political subdivisions by or under the authority Act, the right to title to which is held by the United State or is subject to disposition by the United State, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives...[l]

The Act also permitted, within twenty-five years after the date of admission of Alaska, the selection of up to 400,000 acres of vacant and unappropriated National Forest land and another 400,000 acres of other non-appropriated public lands within the state to develop and expand communities. The original 25-year period was amended through several pieces of legislation that extended the amount of time for the state to select land. Further provisions in the enabling act allowed an additional selection of vacant, unappropriated and unreserved at the time of their selection of up to 102,550,000 acres for general use. Public lands grants included Block 32, which authorized the use of structures and improvements in the City of Juneau for a residence for the governor, a state museum, a park and recreational use. Additional territorial grants for schools, a university and mental health trust lands totaling 1.2 million acres were confirmed with statehood.[li]

Hawaii's statehood act differed fundamentally from those of the core Western States. In lieu of giving up further claims to public lands, the United States granted title to all the public lands and other public property within the boundaries of the state. Simultaneously the federal government reserved the ability to retain any lands, or other properties are set aside pursuant to law for the use of the United States under any act of Congress, executive order, proclamation of the president or proclamation of the Governor of Hawaii. The Act stipulated that these lands would remain the property of the United States subject only to the limitations imposed by these four procedures.[lii]

Disposition of the public domain, 1781 — 2023:

Type	Acres
Disposition by methods not classified elsewhere /a/	303,500,000
Granted or sold to homesteaders /b/	287,500,000
Total Unclassified and Homestead Dispositions	**591,000,000**
Granted to states for:	
Support of common schools	77,630,000
Reclamation of swampland	64,920,000
Construction of railroads	37,130,000
Support of miscellaneous institutions /c/	21,700,000
Purposes not classified elsewhere /d/	117,600,000
Canals and rivers	6,100,000
Construction of wagon roads	3,400,000
Total Granted to States	**328,480,000**
Granted to railroad corporations	94,400,000
Granted to veterans as military bounties	61,000,000
Confirmed as private land claims /e/	34,000,000
Sold under timber and stone law /f/	13,900,000
Granted or sold under timber culture law /g/	10,900,000
Sold under desert land law /h/	10,700,000
Total Miscellaneous Dispositions	**224,900,000**
Granted to State of Alaska:	
State conveyances /i/	99,391,378
Native conveyances /j/	44,311,238
Total Granted to State of Alaska	**143,702,616**
Grand Total	**1,288,082,616**

Source: Bureau of Land Management. *Public Land Statistics 2023*. U.S. Department of the Interior, https://www.blm.gov/national-office/public-room/data/public-land-statistics-2023.

The table above shows the disposition of Public Lands from 1781 to 2023. This information is regularly updated as progress continues to be made in the granting of lands to Alaska, with 99,332,525 million acres granted so far. Just over 95% of the entitlement for the State is complete, and another 44,285,342 million acres, 96.88% of the entitlement, for the Alaska Native Claims Settlement Agreement Act entitlements have been executed.[liii] The diversity of public lands disposal reflects the local needs of each state at the time of statehood, determined by local circumstances and by evolving public lands management policies enacted by Congress.

Throughout its history, the United States acquired about 1.8 billion acres, or 79.9% of the country's total acres, and has disposed of approximately 1.28 billion acres, or about 56% of the total area of the United States. Nearly two-thirds of the original 1.8 billion acres of public domain acquired by the United States were subsequently transferred to individuals, corporations and states. About 56 million acres are held in trust for Native American Tribes. Between 1781 and 2018, 1.29 billion acres of public domain land were transferred from federal ownership: 816 million acres became privately owned, 328 million acres went to states, and 143 million acres were transferred to Alaska. Almost all (97%) transfers to private ownership happened before 1940. The evolution of public lands, including their acquisition and disposition, is a pivotal and foundational aspect of creating intergovernmental relationships between federal, state, and county governments. Each significant period, including the original colony cessation, periods of land purchases, and disposition through land grants, drove evolving relationships within the intergovernmental landscape.[liv]

Scan to Read More About the History of Public Lands from the Congressional Research Service

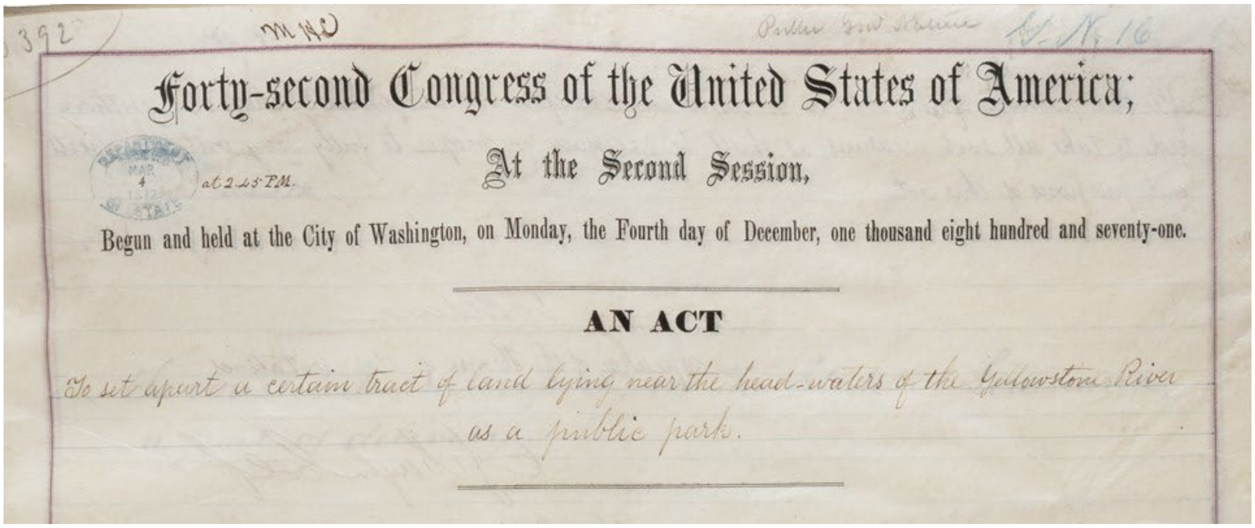
THE TRANSITION FROM THE DISPOSAL PARADIGM TO THE LAND MANAGEMENT PARADIGM

During the mid to late 1800s, Congressional policymaking pivoted from public lands disposal to management, responding to mounting problems of overuse and degradation. Rapidly expanding settlements, especially those near forests and their watersheds — vital for local water supplies—made active stewardship indispensable. This transition changed county relationships with the federal government as public lands became reserved for specific purposes and uses, impacting local economies. Issues included the poaching of wildlife and timber, the concentration of large enterprises and speculators profiting from the loose public lands disposition policies enacted to facilitate the settlement of the West.

As public lands shaped and were shaped by adjacent communities, Congress began to look at ways to manage resources to protect the public lands for future generations and ensure a balance between uses and the protection of adjacent communities.

A prelude to the management paradigm was the establishment of Yosemite Valley as a public park in 1864 through the **Yosemite Grant Act**, signed by President Lincoln during the Civil War. This was the first instance of a parkland set aside for preservation and public use by the federal government.[lv] The Act transferred the Yosemite Valley and the Mariposa Grove of Sequoias to the State of California. The Act stipulated "…said State shall accept this grant upon the express conditions that the premises shall be held for public use, resort, and recreation; shall be inalienable for all time; but leases not exceeding ten years may be granted for portions of said premises."[lvi] Eventually, this state park was returned to federal ownership in 1906 and later became a National Park.

In 1872, Congress passed the **Yellowstone National Park Protection Act**, designating Yellowstone National Park, in the territories of Montana and Wyoming, as the Nation's first National Park.[lvii] According to the Congressional Research Service, new laws in the late 1800s reflected the growing concern that rapid development threatened some of the Nation's scenic treasures and resources that would be needed for future use. A preservation and conservation movement evolved to champion the protection and management of public land and resources for future use.[lviii] The Yellowstone Act directed the Secretary of the Interior to "…provide against the wanton destruction of the fish and game found within said park and against their capture or destruction for the purposes of merchandise or profit."[lix] This land management in the world's first national park, Yellowstone, was initially conducted by the Army to protect resources from poachers of wildlife and timber.



Forty-second Congress of the United States of America;

At the Second Session,

Begun and held at the City of Washington, on Monday, the Fourth day of December, one thousand eight hundred and seventy-one.

AN ACT

To set apart a certain tract of land lying near the head-waters of the Yellowstone River as a public park.

Source: National Park Service. Yellowstone Protection Act of 1872. Accessed March 26, 2025. https://www.nps.gov/yell/learn/management/yellowstoneprotectionact1872.htm.

Establishing the United States Forest Service

As a result of land management concerns, in 1879, Congress established a **Public Lands Commission (1879–1883)** to address widespread abuse, speculation and corruption regarding the administration of western public lands. **John Wesley Powell,** who surveyed and reported on large areas of the West and its major rivers for the Geological Survey, served on this commission.[lx] Powell is known for his legacy in counties throughout the West, with many landmarks bearing his name.

The Commission examined public land laws and the classification of public lands and recommended the wise disposal and management of these lands.[lxi] The Commission proposed policies to address abuses in the disposal and management of public lands.[lxii] It proposed removing timber-rich public lands from sale or grants by designating sections of them as forest reserves. The Commission's report to Congress in 1880 significantly contributed to the passage of the **Forest Reserve Act** in 1891.[lxiii]

The public lands resource management paradigm that we know today began in 1891 with **the General Land Law Revision Act of 1891, also known as the Forest Reserve Act or the Creative Act of 1891,** which was the precursor to the creation of the National Forest System. However, the Act did not provide management direction for the reserves. Simply, Section 24 of the Act authorized the president to unilaterally set aside forest reserves from public lands.[lxiv]

Congress stated in Section 24:

> That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial

> value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof. [lxv]

The Act repealed the Timber Culture Act of 1873, which was subject to widespread abuse and created conditions that facilitated the consolidation of ownership of western landscapes by wealthy individuals and corporations.

The Congressional Research Service traces the evolution of concern related to conservation and sustainable management:

> Although several earlier laws had protected some lands and resources, such as salt deposits and certain timber for military use, new laws in the late 1800s reflected the growing concern that rapid development threatened some of the scenic treasures of the nation, as well as resources that would be needed for future use. A preservation and conservation movement evolved to ensure that certain lands and resources were left untouched or reserved for future use. [lxvi]

Using this authority, President Benjamin Harrison established the initial forest reserves, utilizing the Forest Reserve Act 17 times, setting aside more than 13 million acres, including the first, the **Yellowstone National Forest Reserve**. These reserves were managed by the Division of Forestry in the Department of the Interior's General Land Office. Harrison also signed the **Yosemite Reserve Act** to create Yosemite National Park. [lxvii]

At the start of his administration, President Cleveland initially set aside 5 million acres but paused to await Congressional direction on how to protect the reserves. However, Congressional action was not forthcoming. Instead, in February 1896, the **National Academy of Sciences** formed an investigative commission, the **Committee on the Inauguration of a Rational Forest Policy for the Forested Lands of the United States**. Its members included Charles S. Sargent, Henry Abbott, William H. Brewer, Alexander Agassiz and Gifford Pinchot. [lxviii] The commission recommended increasing the number and extent of the forest reserves. Cleveland responded by designating 13 new reserves, covering approximately 21 million acres, two weeks before the end of his presidency. President Cleveland set aside more than 26 million acres of forest reserves. Cleavland also signed the **Yellowstone Protection Act of 1894**, known as the **First Lacey Act**, which was the first federal wildlife protection law in the United States and provided for armed law enforcement.

By 1897, approximately 39 million acres of public lands were set aside as federal forest reserves, causing consternation in some western communities adjacent to the reserves. For example, Cleaveland pocket-vetoed appropriations legislation in his final hours of office, which would have revoked his forest reserve proclamation, setting the stage for incoming President McKinley to call a special session of Congress. [lxix]

Congress took action to provide management direction for the Forest Reserves in the **Organic Administration Act of 1897**:

> All public lands heretofore designated and reserved by the President of the United States under the provisions of the Act approved March third, eighteen hundred and ninety-one, the orders for which shall be and remain in full force and effect, unsuspended and unrevoked, and all public lands that may hereafter be set aside and reserved as public forest reserves under said Act, shall be as far as practicable controlled and administered in accordance with the following provisions:
>
> No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the Act, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.[lxx]

The Act provided the Secretary of the Interior with the authority to make rules and regulations and establish necessary services to ensure the regulation of their occupancy and use, to preserve the forests from destruction, while also promoting the supply of timber. The authorization granted the authority to punish violations. The Act authorized the selling of timber, at not less than the appraised value, with notification by the General Land Office in a newspaper of general circulation in the county in which the timber was located.

The management framework permitted the Secretary to establish regulations for using timber and stone on the forest reservation, free of charge, for settlers, miners, residents and prospectors for various purposes, including minerals, firewood, fencing, buildings, mining, prospecting and other domestic uses. Congressional direction stipulated no prohibition on the egress or ingress of settlers residing within the boundaries of the forest reserve. The Act permitted the construction of wagon roads and other improvements necessary to access settler homes and for the utilization of their properties. It also allowed land exchanges for "unperfected bona fide claim or by a patent" within the limits of a public forest reservation for settlers. The bill permitted settlers outside reserve boundaries to maintain schools and churches within the reserve, not exceeding two acres for each schoolhouse and one acre for a church.

Using this authority, **Secretary of Interior Ethan A. Hitchcock**, on June 30, 1897, issued a regulation stating: "The pasturing of livestock on public lands in forest reserves will not be interfered with, as long it appears that injury is not being done to the forest growth, and the rights of others are not thereby jeopardized. The pasturing of sheep is, however, prohibited in all forest reserves except those in Oregon and Washington."[lxxi]

There were considerable issues impacting grazing at the time, especially after a severe drought in 1886 in the Southwest. Forest Service (FS) history explains a general lack of technical knowledge about grazing science among those working the land. For example, "Timeless Heritage: A History of the FS in the Southwest" explains, "Numerous articles and books describe the changing rangelands in the Southwest….In 1893, the Governor of Arizona mentioned, 'In nearly all districts, owing to overstocking, many weeds have taken the place of the best grasses.'"[lxxii] There was extensive debate about grazing sheep on the early forest reserves and during the period of the early FS. A commission was formed in 1900 regarding sheep grazing in Arizona and included Gifford Pinchot, Chief of the Bureau of Forestry in the Department of Agriculture, Albert Potter and Frederick Coville, a USDA botanist. Working with President Theodore Roosevelt, Pinchot recommended allowing sheep grazing in the Southwest, but using management techniques. The FS reports that Cattle growers also recognized that grazing controls were needed. By the beginning of the twentieth century, drought, range deterioration and competition led to the fencing of private ranges and the end of open-range grazing on all but public lands. For example,

> "Federal control of grazing on the public domain was supported by a resolution of the Executive Committee of the National Live Stock Association, at its annual convention in Chicago in 1902. The resolution read in part, 'Resolved, that this association approves and endorses the general policy for the regulation of grazing within the national forest reserves…'"[lxxiii]

Administrative rules, promulgated by the Department of Interior's General Land Office, also provided direction regarding fire, establishing a misdemeanor crime for any person who shall build a fire without total extinguishment, punishable with a fine up to $1000 and imprisonment of up to a year or both. The regulation provided direction on fire: "Large areas of the public forests are annually destroyed by fire, originating in many instances through the carelessness of prospectors, campers, hunters, sheep herders, and others, while in some cases the fires are started with malicious intent. So great is the importance of protecting forest from fire, that this Department will make special effort for the enforcement of the law against all persons guilty of starting or causing the spread of forest fires in the reservations in violation of the above provisions."[lxxiv]

The 1897 bill and its administrative rules included directions regarding the use of water resources, permitting their use for domestic, mining, milling, or irrigation purposes under the laws of the state. President McKinley signed the Act, providing clearer direction and granting the Secretary of the Interior the power to develop rules and regulations for managing the reserves. The Act established the first national policy for using and managing national forests. After passage, President McKinley utilized the reserve act authority to create five additional forest reserves, setting aside an additional 7 million acres.[lxxv] The five forest reserves were the origins of the Los Padres National Forest along California's central coast, the precursor of the Prescott National Forest in Arizona, the Gallatin National Forest in south-central Montana, the Gila National Forest in southwestern New Mexico and the Tahoe National Forest in the central Sierra of California.[lxxvi] President McKinley's designations marked a turning point in the history of public lands management as these newly designated reserves fell under direct regulatory control of Department of the Interior rangers, required by the **1897 Organic Act**.

The first timber sale occurred on the Black Hills Forest Reserve in 1899, with the **Homestake Mining Company** contracted to cut 13 million board feet of Ponderosa Pine. The timber sale was known as **Timber Case No. 1.** It was completed in 1908. [lxxvii] The story of the Homestake Company and the Black Hills Reserve illustrates the growing consternation among adjacent communities and the national interests of the federal government. In 1894, Homestake was taken to court by the United States Government after its loggers violated the Secretary of the Interior's regulation forbidding the cutting from public lands of trees under eight inches in diameter. [lxxviii] The US Attorney's complaint alleged it had cut 6,828,160 trees from public land and sought $688,804 in damages plus interest. Attempts were made to move the case from the western part of the state to the eastern part, but efforts for a venue change failed. A judge ruled that the company had to pay $75,000. The General Land Office estimated that the value of the lumber that was taken was between $2 million and $3 million. [lxxix]

The creation of the forest reserves caused local concern due to the fear of disrupting the mining industry and local economies. For instance, apprehensions about a timber shortage in the Black Hills, resulting from the Black Hills Forest Reserve proclamation, coupled with the possibility of relying on costly imported lumber, made local mining companies increasingly protective and possessive of the region's timber resources. [lxxx] After the creation of the Black Hills reserve, the local mining industry secured an embargo prohibiting the shipment of green-cut timber from the national forest out of South Dakota. The embargo ended in 1912, the year Homestake completed its conversion to electricity, no longer relying on wood energy to power its operations. [lxxxi] Language in early FS appropriations bills contained language that allowed the Secretary of Agriculture to permit the cutting and removal of timber and other forest products from the National Forests, except the Black Hills National Forest. However, provisions were included to export dead and insect-infested timber from the Black Hills National Forest. [lxxxii]

While Congress was taking an active role in providing management direction of the forest reserves, it passed the **Mineral Springs Leasing Act**, or the **Act of February 28, 1899.** This Act established **recreational use** for the forest reserves and authorized the Secretary of the Interior to develop rules and regulations to rent or lease to persons or corporations portions of ground near or adjacent to mineral, medicinal or other springs within any forest reserve. The Act stipulated that the Secretary provide for the renting or leasing of lands:

> ...where the public is accustomed or desires to frequent, for health or pleasure, for the purpose of erecting upon such leased ground sanitariums or hotels, to be opened for the reception of the public. And he is further authorized to make such regulations, for the convenience of people visiting such springs, with reference to spaces and locations, for the erection of tents or temporary dwelling houses to be erected or constructed for the use of those visiting such springs for health or pleasure. [lxxxiii]

Congress provided substantial management direction during this time, implementing the multiple-use and sustained-yield principles that underpin contemporary public lands policy. Following President McKinley's assassination in 1901, Vice President Theodore Roosevelt ascended to the presidency. President Roosevelt established a **Public Lands Commission (1903 – 1905)** charged with "examining and reporting on 'the condition, operation and effect of the present land laws and on the use, condition, disposal and settlement of the public lands.'"[lxxxiv] When the commission was empaneled, the forest reserves had grown to 56 million acres. Investments were being made in the applied science of forestry, which Bernhard Fernow and Gifford Pinchot had gathered from European practices.[lxxxv]

Examples of issues driving the policy debates of the day include overgrazing, watershed protection and sustainable timber management, informed by European applied forestry science. For example, on the Wasatch plateau, clear-cutting and over-grazing were linked to flooding in Manti, Utah in 1902, causing concern within the community.

Source: "Paradise Lost," *Tall Forb Community of the Intermountain West*, U.S. Forest Service, accessed February 14, 2025, https://www.fs.usda.gov/wildflowers/beauty/Tall_Forb/lost.shtml

In 1905, Congress passed the **Transfer Act**, transferring the forest reserves under the jurisdiction of the U.S. Department of Agriculture (USDA). The Division of Forestry in the Department of the Interior's General Land Office was combined with the USDA's Bureau of Forestry. The administration of the existing 56 million acres of forest reserves was transferred to the USDA. Later, in 1905, the Bureau of Forestry was renamed the United States Forest Service. Gifford Pinchot was appointed as the new agency's first chief. [lxxxvi]

The **Appropriations Act of 1906** for the FS permitted 10 percent of all revenues received from each forest reserve to be paid by the Secretary of the Treasury to the state or territory in which the reserve was located to be expended by that territory or state's legislature for the benefit of public schools and public roads of the county or counties in which the forest reserve was situated. The Appropriations Act of 1907 continued this practice.

In 1907, Congress again took action, passing the **Fulton Amendment**, a rider on the annual agricultural appropriations bill. [lxxxvii] The amendment codified the United States Forest Service name and contained additional provisions that challenged Roosevelt's conservation agenda. The bill prohibited the president from creating future forest reserves in the six Western States of Washington, Oregon, Idaho, Montana, Wyoming and Colorado. The amendment read: "…*Provided further,* That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by Act of Congress." [lxxxviii] Appropriations were set for the FS at $2.4 million.

With the proposed bill removing the president's power to proclaim reserves established under the **Creative Act of 1891** and empowering Congress as the sole authority to establish reserves, President Roosevelt consulted with Chief Pinchot. They decided that before signing the bill on March 2 and 3, 1907, President Roosevelt would use his existing authority to establish 17 new or combined forest reserves, covering over 16 million acres, in six Western States. These included the Bear Lodge in Wyoming; Las Animas and Ouray in Colorado; Little Rockies and Otter in Montana; Cabinet, Lewis & Clark, Palouse and Port Neuf in Idaho; Colville and Rainier in Washington; and the Blue Mountains, Cascade, Coquille, Imnaha, Tillamook and Umpqua in Oregon. These proclamations are known as the "Midnight Reserves." [lxxxix] After proclaiming the reserves, President Roosevelt signed the bill, thereby removing his authority once he had already declared the additional reserves.

Throughout President Roosevelt's administration, he set aside approximately 230 million acres of public lands, encompassing 150 national forests, 51 federal bird reserves, four national game preserves, five national parks and 18 national monuments, utilizing the **1906 American Antiquities Act**. [xc]

The **1908 Appropriations Act** revised the 10 percent payments to 25 percent of all revenue received from each forest during any fiscal year to be expended as the state or territorial legislature may prescribe for the benefit of public schools and public roads of the county or counties in which the forest reserve is situated. In 1911, Congress passed the **Weeks Act**. The Act permitted the federal government, upon consent of the corresponding state legislature, to purchase “forested, cut-over or denuded” private land within navigable watersheds to regulate the flow of navigable streams or to produce timber. It authorized these lands to be included within the National Forest System. The Weeks Act permitted expansion of the FS System in the Eastern United States, and through this policy, the FS System became a truly national system.

Scan to Read More About the History of The Forest Service from the Congressional Research Service

National Monument Authority and Establishing the National Park Service

In 1906, Congress passed the **Antiquities Act,** authorizing the president to declare, through proclamation, historic landmarks, historic and prehistoric structures and other objects of historic or scientific interest on public lands as national monuments. According to the Congressional Research Service, the passage of the Act marked the culmination of a multiyear effort to provide the federal government with the power to take quick action to protect archaeological sites and objects of historical and scientific value from destruction. The act was passed in response to the destruction of prehistoric ruins and other archeological sites in the Western United States, often by amateur archaeologists and treasure hunters.[xci]

The 1880s saw a growing interest in prehistoric ruins and sites in the Western United States. Many of the ruins were discovered by ranchers and other prospectors in Colorado, New Mexico and Arizona.[xcii] As news of these discoveries spread, there was pervasive unregulated excavation of sites by antiquity seekers and treasure hunters from around the world. Large numbers of artifacts were removed and sold to exhibitors, museum curators and private collectors, often causing extensive damage to the ruins during the excavation process and disturbing sites that would inhibit careful study. The Congressional Research Service notes, "'one observer bemoaned that '[a] commercial spirit is leading to careless excavations for objects to sell, and walls are ruthlessly overthrown, buildings torn down in hope of a few dollars' gain.'"[xciii]

The Act was designed to limit the looting and vandalism of sites to protect the public lands' most treasured heritage. At the time, federal law did not exist to provide protection against the excavation or destruction of sites on public lands or to require permitting before excavation could commence.[xciv] The Congressional Research Service notes the **General Land Office** "...was authorized to 'withdraw specific tracts of land from sale or entry for a temporary period.'" The Forest Reserve Act allowed the President to create forest reserves and withdraw those lands from disposition and entry under the Homestead Act, but they were not protected from mining. Prior to the Antiquities Act's passage, no law existed to authorize the president to withdraw public lands for the purpose of preservation. The Act requires the amount of land to be reserved to be confined to the smallest area possible to ensure proper management.

Legislation to protect the nation's antiquities was first introduced in 1900. Policy proposals differed in their definitions and designations. Proposals at the time limited the number of acres and also placed the power to reserve public lands with the Secretary of the Interior. There was debate leading up to the passage of the Act regarding the size of the areas to be set aside. The Congressional Research Service reports that the **Record of the House Committee on Public Lands** indicates that the Chairman of the Committee, John Lacey, responded to questions about how much land would be taken off the market in the Western

States by the bill by saying "Not very much."[xcv] After more than half a decade of debate, the 59th Congress passed the Antiquities Act in 1906, following the introduction of companion legislation drafted by archaeologist and anthropologist Edgar Lee Hewett in both chambers.[xcvi]

The Act is composed of four sections. The first section, regardless of whether the president had established a monument under Section 2 of the Act, imposed punishments of up to $500 and/or up to 90 days in prison to anyone who "…shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquities" on public lands.[xcvii] The Congressional Research Service notes that because Antiquities Act proclamations under Section 2 are issued directly by the president, rather than by an executive agency, they are not subject to the current requirements of the **Administrative Procedure Act (APA)** or the **National Environmental Policy Act (NEPA).**

Importantly, the Antiquities Act does not specify what effect the establishment of a national monument has on the use of the objects and lands within the monument. Other acts, such as the Mineral Leasing Act, prohibit new mineral leasing within national monuments. A presidential proclamation may include additional restrictions on uses such as mining and mineral claims, oil and gas leases, timber harvesting, hunting, fishing and grazing. Today, monument management plans, developed by the agency responsible for managing the monument, contain use restrictions based upon the presidential proclamation. The Act also did not specify which federal agency is responsible for managing the monument once established. The Congressional Research Service notes that the National Park Service was most often selected for managing monuments, with every monument established between 1933 and 1978 assigned to the Park Service, while some presidents have tasked other agencies, such as the BLM, with management responsibility.[xcviii] Section 3 of the Act grants executive authority "…to issue permits for 'the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity' for the benefit of scientific or educational institutions in order to 'increas[e] the knowledge of such objects' and for their 'permanent preservation in public museums.'"[xcix] Section 4 of the Act provides executive authority to publish rules and regulations for the purposes of carrying out the Act.

President Theodore Roosevelt used the act 18 times to establish monuments. His first use of the Act was the proclamation of 1,152 acres for Devils Tower National Monument. While initially the acreages were relatively small, the 808,120 acres set aside as Grand Canyon National Monument was the largest of his 18 designations. The Congressional Research Service notes that President Roosevelt determined that the 0.8 million acres were necessary to protect the "object" in question – "the Canyon."[c]

Roosevelt also designated Petrified Forest National Park, Chaco Culture National Park, Gila Cliff Dwellings National Monument, Lassen Volcanic National Park, Tonto National Monument, Tumacacori National Historical Park and Olympic National Park.[ci] Of the 21 presidents since 1906, 18 have used authority under the Antiquities Act to establish, enlarge, diminish, or make other changes to proclaimed national monuments.[cii] After President Roosevelt, Presidents Taft and Wilson established 15 and 18 monuments, respectively. As of February 2025, the Congressional Research Service reports that presidents have proclaimed 168 monuments, including marine areas. Congress did not expressly authorize the president to modify or abolish national monuments established by earlier presidential proclamations, and no president has abolished a national monument.[ciii]

In 1950, Congress limited Antiquities Act authority after Franklin D. Roosevelt's proclamation of Jackson Hole National Monument (Grand Teton National Park) in Wyoming in 1943. Congress stipulated that no future establishments of National Monuments in Wyoming would occur unless Congress consented to the designation. President Carter's designations in Alaska in 1978 also led to Congress enacting statutory requirements for Congressional approval for National Monument withdrawals greater than 5,000 acres in Alaska.[civ]Approximately half of the current national parks were first designated as national monuments.[cv]

Scan to Read More About the Antiquities Act from the Congressional Research Service

The **National Park Service** (NPS) was created in 1916 to manage the growing number of park units established by Congress and monuments proclaimed by the president. According to the Library of Congress, the concept of a 'national park' is an American innovation that grew out of the conservation movement that began in the nineteenth century and was influenced by several writers associated with the national park movement including Clarence Dutton, Ferdinand V. Hayden, Clarence King, Nathaniel P. Langford, John Muir and John Wesley Powell.[cvi] During the same decade that saw the establishment of Yellowstone National Park, the Appalachian Mountain Club was formed in 1876 and authorized in 1894 to hold mountain and forest lands as historic sites in the eastern United States. The Geological Survey, charged with surveying and mapping public lands, was established in 1879.[cvii] The late 1800s saw public lands policy advance on various fronts and in response to the diverse needs of a growing nation.

Before the **1916 Organic Act's** passage, national parks were managed by the Secretary of the Interior. For example, President Roosevelt, working with Congress, established six National Parks: Crater Lake National Park, Wind Cave National Park, Sully Hill National Park, Platt National Park, Mesa Verde National Park and added land to Yosemite National Park.[cviii]

As the nation's parks grew and the need for a coordinated management approach became apparent, Congress passed the Organic Act of 1916, signed into law by President Woodrow Wilson. The Act created the NPS, placing the agency under the jurisdiction of the Department of the Interior. The Act stipulated:

> ...herein specifically enumerated unless previously authorized by law. The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.[cix]

There is inherent tension with the dual mandate of the NPS, expressed in the preamble to the Act, which directs the conservation of the scenery, objects and wildlife while simultaneously requiring the enjoyment, unimpeded, for future generations.[cx] This tension continues to impact policymakers engaged in the management of National Park public lands.

The Act placed under the charge of the director of the new agency the supervision, management and control of several national parks and national monuments already under the jurisdiction of the Department of the Interior, as well as the Hot Springs Reservation in Arkansas. The Act also included a provision permitting cooperation between the Secretaries of Agriculture and Interior for national monuments contiguous to national forests. Congress granted the Secretary of the Interior the authority to make and publish rules and regulations necessary or proper for the use and management of NPS parks, monuments and reservations. It authorized punishment for any violations of these rules and regulations. The Act permitted the disposal and selling of timber if it was used to control attacks of insects or diseases or conserve the scenery or natural or historic objects in the park, monument or reservation. Congress empowered the Secretary of the Interior to provide "...in his discretion for the destruction of such animals and of such plant life as may be detrimental to the use of said parks, monuments, or reservations."[cxi] The authorization permitted the Secretary to utilize rules and regulations to "...grant the privilege to graze livestock within any national park, monument, or reservation herein referred to when in his judgement such use is not detrimental to the primary purpose for which such park, monument or reservation was created, except that this provision shall not apply to the Yellowstone National Park."[cxii]

Similar to the **Mineral Springs Leasing Act of 1899**, Congress authorized the NPS director to grant privileges, leases and permits for the use of land for accommodation of visitors to the various areas in twenty-year increments. Congress also mandated that "no natural curiosities, wonders, or objects of interest shall be leased, rented, or granted to anyone on such terms as to interfere with free access to them by the public."

Secretary of the Interior **Franklin K. Lane** appointed **Stephen Tyng Mather** as the first Director of Parks (1915-29) to provide coordinated policy and leadership in the administration of the parks. Mather led the transformation of the poorly managed and underfinanced national parks and monuments into the centrally administered NPS. Through

Mather's leadership, Grand Canyon, Acadia, Bryce, Zion, Lassen, Hawaii and Mount McKinley National Parks were established, and he lobbied for enabling legislation for the future creation of additional parks, which involved the purchase from private landowners in the Eastern United States, such as Great Smokey Mountains, Shenandoah and Mammoth Cave.[cxiii]

The NPS would grow with new units. In 1933, a major reorganization was undertaken in which President Franklin Roosevelt signed two executive orders on August 10, 1933, which transferred the War Department's parks and monuments to the NPS Further, the NPS received all national monuments managed by the FS and assumed responsibility for the parks in Washington, DC. NPS history notes that this was one of the most significant reorganizations in the Park Service's history, as the agency assumed new responsibilities for historical areas and historic preservation became a primary mission.[cxiv]

In 1935, Congress passed the **Preservation of Historic Sites Act**, establishing a national policy to preserve for public use historic sites, buildings and objects of national significance. The Act gave broad power and duties to the Secretary of the Interior and the Park Service to conduct surveys of historic properties, research, restoration, preservation and direct maintenance of historic properties. The Act authorized the marking of properties and the establishment and maintenance of museums and provided interpretation for public education. The provision to include a historic site survey provided critical information to identify potential additions to the National Park System.[cxv]

The Park Service would continue to grow as federal policy evolved. In 1956, the agency would undertake **Mission 66,** a 10-year program to upgrade facilities, staffing and resource management throughout the system by the 50th anniversary of the service in 1966. Congress would continue to enact legislation that would impact and expand Park Service management functions, including **The Wilderness Act of 1964, the Land and Water Conservation Fund Act of 1965, The National Historic Preservation Act of 1966, the Wild and Scenic Rivers Act of 1968, The National Trails System Act of 1968** and more.

By January 2025, the National Park System had expanded to 433 units, encompassing more than 85 million acres of public land in the United States.[cxvi] About two-thirds of the Park Service's lands (54.6 million acres, or 64.2%) are in Alaska.

Scan to Read More About the History of The Park Service from the Library of Congress

Establishing the Fish and Wildlife Service

Before the National Wildlife Refuge System (NWRS) existed, the roots of today's U.S. Fish and Wildlife Service (FWS) can be traced to President Ulysses S. Grant's move to protect **Alaska's Pribilof Islands** as a sanctuary for northern fur seals. President Grant used executive authority in 1869 to protect this critical seal rookery, an action considered the first time an area of public lands was set aside for the protection of wildlife.[cxvii] Military and customs agents were deployed to safeguard the seal herds.[cxviii] Congress followed up on this executive action by passing the **An Act to Prevent the Extermination of Furbearing Animals in Alaska in 1870**.[cxix] The Act stipulated:

> …That it shall be unlawful to kill any fur-seal upon the islands of Saint Paul and Saint George or in the waters adjacent thereto, except during the months of June, July, September and October, in each year; and it shall be unlawful to kill such seals at any time by the use of fire-arms; or use other means tending to drive the seals from said islands: *Provided,* That the natives of said islands shall have the privilege of killing such young seals as may be necessary for their own food and clothing during other months, and also such old seals as may be required for their own clothing and for the manufacture of boats for their own use, which killing shall be limited and controlled by such regulations as shall be prescribed by the Secretary of the Treasury.[cxx]

In 1871 Congress passed a **Joint Resolution for the Protection and Preservation of the Food Fishes of the Coast of the United States** and authorized the president to hire a **Commissioner of Fish and Fisheries,** with the authority to prosecute investigations and inquiries to determine diminution in the number of food fishes of the coast and lakes of the United States.[cxxi] **Spencer Fullerton Baird** was appointed by President Grant in 1871 as the first Commissioner.

In the preamble to the resolution, Congress noted that "Whereas it is asserted that the most valuable food fishes of the coast and the lakes of the United States are rapidly diminishing in number, to the public injury, and so as materially to affect the interests of trade and commerce." Congress also authorized the Commissioner to determine whether any and what protective, prohibitory or precautionary measures should be adopted in the area of diminution. The work of the Commissioner would begin fish culture development and lead to the creation of the **National Fish Hatchery System.**

In 1872 Congress provided $15,000 for the Commissioner to provide for the introduction of shad into the "…the waters of the Pacific States, the Gulf States, and of the Mississippi valley, and of salmon, whitefish, and other useful food fishes into the water of the United States to which they are best adapted…"[cxxii] The first fish hatchery, the Baird Fish Hatchery, scouted by the Commissioner in 1872 on the McCloud River in California, was officially created on December 9, 1875, by President Ulysses S. Grant through executive order.[cxxiii]

Hatcheries would continue to be established; for example, in 1896, the Spearfish National Fish Hatchery was established in South Dakota. Today, known as the D.C. Booth Historic National Fish Hatchery and Archives, it is one of the oldest operating hatcheries in the country. Dedicated to fish culture and resource management, the hatchery was constructed to propagate, stock and establish trout populations in the Black Hills of South Dakota and Wyoming.[cxxiv]

At the same time that Congress was concerned with the Nation's fish and fisheries, it would provide funding related to wildlife and birds. Part of the public lands management policy issues influencing the establishment of Yellowstone National Park was the "wanton destruction" of wildlife. Wildlife destruction motivated further Administrative and Congressional action during the late 1800s.

The **Act of March 3, 1885** appropriated funds for the Entomological Division in the Department of Agriculture for the promotion of economic ornithology, the study of the interrelation of birds and agriculture and the investigation of the food, habitats and migration of birds in relation to both insects and plants. In 1885, **the Section of Economic Ornithology** was established within the Department of Agriculture, utilizing funds appropriated to the Division of Entomology.[cxxv] **Clinton Hart Merriam** served as its first chief.[cxxvi] In the **Agricultural Appropriations Act of March 3, 1885**, Congress provided funding for "and the promotion of economic ornithology, or the study of the interrelation of birds and agriculture, an investigation of the food, habits and migrations of birds in relation to both insects and plants..."[cxxvii]

In 1886, Congress appropriated $10,000 to the **Division of Economic Ornithology and Mammalogy** for the purposes of "...the promotion of economic ornithology and mammalogy; an investigation of the food-habits, distribution, and migrations of North American birds and mammals in relation to agriculture, horticulture and forestry; for publishing reports thereon; and for drawings and traveling and other expenses in the practical work of the division."[cxxviii]

In 1892, President Harrison, using Section 24 of the Forest Reserve Act, created the Afognak Island Forest and Fish Culture Reserve in Alaska, the first fish reserve. **Section 14** of the Act stipulated that:

> That none of the provisions of the last two preceding sections of this act shall be so construed as to warrant the sale of any lands belonging to the United States which shall contain coal or the precious metals, or any town site, or which shall be occupied by the United States for public purposes, or which shall be reserved for such purposes, or to which the natives of Alaska have prior rights by virtue of actual occupation, or which shall be selected by the United States Commissioner of Fish and Fisheries on the island Kadiak [*sic*] and Afognak for the purpose of establishing fish-culture stations. And all tracts of land not exceeding six hundred and forty acres

> in any one tract now occupied as missionary stations in said district of Alaska are hereby excepted from the operation of the last three proceding [*sic*] sections of this act. No portion of the islands of the Pribylov Group or the Seal Islands of Alaska shall be subject to, sale under this act; and the United States reserves, and there shall be reserved in all patents issued under the provisions of the last two preceding sections the right of the United States to regulate the taking of salmon and to do all things necessary to protect and prevent the destruction of salmon in all the waters of the lands granted frequented by salmon.[cxxix]

Section 14 Congressional direction indicates that wildlife concerns were a fundamental component at the time of designation. In the same year, the **Division of Economic Ornithology and Mammalogy** became known as the Division of Ornithology and Mammalogy until it would be changed to the Division of Biological Survey in 1896 and again changed in 1905 to the Bureau of Biological Survey, as the agency would be known until 1939.[cxxx] These changes reflected the growing role in examining the Nation's animals and plants and their geographic distribution.[cxxxi]

Similarly, the Fish Commission remained an independent agency until February 1903. The agency became part of the newly created **Department of Commerce and Labor** and was renamed the **Bureau of Fisheries**.[cxxxii] The Bureau of Fisheries assumed new responsibilities, in addition to the responsibilities of the Fish Commission, including management of the salmon fishery and fur-bearing animals in Alaska.[cxxxiii]

While these administrative changes were occurring, President Roosevelt established the first wildlife conservation area, which would eventually become part of the National Wildlife Refuge System. He designated the Pelican Island National Bird Reservation in Florida through an executive order signed on March 14, 1903 to protect egrets and other birds from extinction from plume hunting.[cxxxiv] Throughout President Roosevelt's administration, he established **51 Federal Bird Reserves** following the initial designation of the first federal bird reserve. These reserves evolved into today's national wildlife refuges, managed by the **United States Fish and Wildlife Service (FWS).** Today, there is a national wildlife refuge in every state, and North Dakota contains the most refuges of any state.[cxxxv]

The **Fish and Wildlife Service** was created on **June 30, 1940**, when the Department of the Interior merged the Bureau of Biological Survey and the Bureau of Fisheries to create the Fish and Wildlife Service.[cxxxvi]

Scan to Read More About the History of The Fish and Wildlife Service from the Congressional Research Service

Establishing the Bureau of Land Management

The history of the Bureau of Land Management (BLM) is deeply intertwined with the growth and development of the United States and its public lands. Although officially established in 1946, the BLM's roots stretch back to the Nation's early years, beginning with the creation of the **General Land Office in 1812**, established to oversee the survey and sales of public domain lands, and later the **Grazing Service in 1934,** established under the **Taylor Grazing Act**.

In response to worsening land conditions, advancing agricultural research and the need to provide western ranchers with reliable and predictable public lands management policy, Congress passed the **Taylor Grazing Act of 1934**, named after **Representative Edward Taylor of Colorado**. During the public lands disposition era, Western public rangelands were often overgrazed due to policies designed to promote the settlement of the West and a lack of understanding of how to manage these lands, fundamentally different from those east of the 100th meridian.[cxxxvii] The preamble to the Act states, "An Act to stop injury to the public 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, and for other purposes."[cxxxviii]

President Franklin Roosevelt signed the measure into law on June 28, 1934. It was the first legislative action to organize grazing management on public lands. The **Wyoming Historical Society** explains, "By the time the legislation was enacted, according to BLM historian Marion Clawson, 'a large part of the public lands had already suffered serious, accelerated erosion, largely (but not wholly) as a result of uncontrolled grazing.'"[cxxxix] According to the BLM the Taylor Grazing Act of 1934, signed by President Roosevelt, was intended to "stop injury to the public grazing lands [excluding Alaska] by preventing overgrazing and soil deterioration; to provide for their orderly use, improvement, and development; [and] to stabilize the livestock industry dependent upon the public range.'"[cxl]

The Wyoming Historical Society explains that prior to the Taylor Grazing Act, Wyoming cattle and sheep ranchers had grazed their stock for free on public land since the 1860s and that custom, not law, determined who could graze where on public land. The custom was based on a first-come, first-served model, and those ranchers who arrived at the ranges first and filed land claims on small plots near water were in control. This ultimately led to the Johnson County War, which was a range war between 1889 to 1893 in Johnson County, Wyoming, over disputes of who could graze where, pitting large cattle barons with thousands of head of cattle against small operators, mostly running enough cattle to support their families. Hired gunmen from Texas, working on behalf of the barons, often targeted homesteaders and small ranchers in the areas.[cxli]

The Act was created and implemented to mitigate these issues and empowered the Secretary of the Interior:

> …That in order to promote the highest use of the public lands pending its final disposition…is authorized, in his discretion, by order to establish grazing districts or additions thereto and/or to modify the boundaries thereof, not exceeding in the aggregate an area of eighty million acres of vacant, unappropriated, and unreserved lands from any part of the public domain of the United States, (exclusive of Alaska), which are not in national forests, national parks and monuments, Indian reservation, revested Oregon and California Railroad grant lands, or revested Coos Bay Wagon Road grant lands, an which in his opinion are chiefly valuable for grazing and raising forage crops: Provided, That, no lands withdrawn or reserved for any other purpose shall be included in any such district except with the approval of the head of the department having jurisdiction thereof."[cxlii]

The Act clearly specified that nothing shall be construed to diminish, restrict, or impair any right which has been theretofore or may hereafter be initiated under existing law validly affecting the public lands, and which is maintained pursuant to such law, except as otherwise expressly provided in the Act.[cxliii] The authorization also expressly stated that nothing in the Taylor Grazing Act shall be construed as limiting the authority or policy of Congress or the president to include national forests under the authority of the **Creative Act of 1891** and **1897 Organic Act**.

The bill stipulated that a hearing be held, with public notice, before a grazing district could be established and guaranteed that the Act would not alter or restrict the right to hunt or fish within a grazing district. It also authorized the Secretary to make rules and regulations and establish such service, "…To insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range." The policy also authorized the Secretary to continue to study erosion and flood control and to perform the work necessary to protect and rehabilitate the areas subject to the provisions of the Act.

The policy also permitted a fine of up to $500 for any willful violation of the provisions of the Act or rules and regulations. It also authorized the creation of a permitting system, upon payment of a reasonable annual fee. The Act limited grazing permits to citizens of the United States or those who have filed the necessary declarations to intend to become a citizen as required by the naturalization laws, as well as to groups, associations, or corporations authorized to conduct business under the laws of the state in which the grazing district is located.[cxliv]

The Act provided that grazing permits be prioritized for those within or near a district who are landowners engaged in livestock business, bona fide occupants or settlers, or owners of water or water rights. Permits were limited to a term of not more than ten years but could be renewed. The policy also included language to deal with emergency range depletion situations. The Act specifies "During periods of range depletion due to severe drought or other natural causes, or in case of a general epidemic of disease, during the life of the permit, the Secretary of the Interior is hereby authorized, in his discretion to remit, reduce, refund in whole or in part, or authorize postponement of payment of grazing fees for such depletion period so long as the emergency exists." The Act also recognized other uses and noted that nothing in the act shall be construed or administered in any way to "diminish or impair any right to the possession and use of water for mining, agriculture, manufacturing, or other purposes which has heretofore vested or accrued under existing law."[cxlv]

The Act noted that grazing on public lands was a privilege. Congress directed: "So far as consistent with the purposes and provisions of this Act, grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provisions of this Act shall not create any right, title, interest, or estate in or to the lands." The Taylor Act allowed for the construction of fences, wells, reservoirs and other improvements necessary for the care of permitted livestock in accordance with the provisions of the law of the state within the grazing district. The legislation permitted free grazing within the districts where livestock were kept for domestic purposes. The bill provided that "nothing herein contained shall prevent the use of timber, stone, gravel, clay, coal, and other deposits by miners, prospectors for mineral, bona fide settlers and residents, for firewood, fencing, buildings, mining, prospecting, and domestic purposes within areas subject to the provisions of this Act." The Secretary was empowered to examine and classify any lands within the grazing districts as more valuable and suitable to produce agricultural crops and to open those lands to homestead entry in tracts not exceeding three hundred and twenty acres. The bill also authorized land exchanges within the same state or within fifty miles of an adjoining state nearest to the lands.

The policy required cooperation with local associations of stockmen, state land officials and official state agencies engaged in the conservation or propagation of wildlife interested in the use of the grazing districts. The Secretary was empowered to accept contributions toward the administration, protection and improvement of the district. Funds were directed to be received by the Treasury as an appropriated special fund for payments of expenses to the administration, protection and improvement of the area. Congress noted that 25 percent of all monies, when approved by Congress, could be used for expenditures for the construction, purchase, or maintenance of range improvements. Congress also included a cost-share with the state, in which 50 percent of the money received from each grazing district shall be paid to the state in which the grazing district is situated, to be expended as the state legislature may prescribe for the benefit of the county or counties in which the grazing district is located. Similar to the 1908 Appropriations bill for the 25 percent timber payments, language was included to proportionally distribute this money if the district was in more than one state or county.

The policy also permitted 25 percent of all monies received from each grazing district on Indian lands ceded to the United States be made available for expenditure by the Secretary of the Interior for the construction, purchase, or maintenance of range improvements. In addition the policy stipulated that another 25 percent the money received from grazing during each fiscal year be paid at the end thereof by the Secretary of the Treasury to the state in which said lands are situated, to be expended as the state legislature may prescribe, for the benefit of public schools and public roads of the county or counties in which such grazing lands are situated. The remaining 50 percent of all money received from such grazing lands was to be deposited to the credit of Native Americans, pending final disposition under applicable laws, treaties or agreements.

The bill also encouraged coordination of range management across any department of the federal government. The bill permitted the president of the United States,

> ...to reserve by proclamation and place under national-forest administration in any State where national forests may be created or enlarged by Executive order any unappropriated public lands lying within watersheds forming a part of the national forests which, in his opinion, can best be administered in connection with existing national-forest administration units, and to place under the Interior Department administration any lands within national forests, principally valuable for grazing, which, in his opinion, can best be administered under the provisions of this Act...

In Section 14, Congress further authorized the Secretary to dispose of land through public auction:

> ...for not less than the appraised value, any isolated or disconnected tract or parcel of the public domain not exceeding seven hundred and sixty acres which, in his judgment, it would be proper to expose for sale after at least thirty days' notice by the land office of the district in which such land may be situated: *Provided,* That for a period of not less than thirty days after the highest bid has been received, any owner property or owners of contiguous land shall have a preference right to buy the offered lands at such highest bid price, and where two or more persons apply to exercise such preference right the Secretary of the Interior is authorized to make an equitable division of the land among such applicants, but in no case shall the adjacent land owner or owners be required to pay more than three times the appraised price.

Further, Congress allowed public land, of which the greater part was mountainous or too rough for cultivation to be sold, not exceeding 160 acres, to any person who owns land or holds a valid entry of lands adjoining the mountainous tract, even though such tract may not be isolated or disconnected. Congress, in Section 14, defined a person to include corporations, partnerships, and associations. In Section 15, Congress permitted the Secretary to lease public lands in isolated or disconnected tracts of 640 acres or more that would not be included in any grazing district to owners of lands contiguous thereto for grazing purposes. These provisions impacted grazing within counties and their adjacent public lands and had a profound impact on local economies.

The Taylor Grazing Act established the **Division of Grazing** within the Department of the Interior in response to large environmental concerns, especially in the context of the Dust Bowl of the 1930s. Originally, it applied to approximately 80 million acres of unreserved public lands, excluding those in Alaska. **Farrington Carpenter**, a rancher from Hayden, Colorado, was the first Director of the Grazing Division, which later became the **Grazing Service in 1939**. The Act of June 26, 1936, increased the acreage that could be included in grazing districts from 80 million to 142 million acres. Additional enlargement occurred through the **Act of May 28, 1954**, whereby Congress struck out the provision limiting the area which could be included in the grazing districts to 142 million acres.[cxlvi] The Service evolved into 59 grazing districts, with approximately 170 million acres of federal land and 100 million acres of private and state land.[cxlvii]

On May 16, 1946, the BLM was conceptualized when President Harry Truman submitted "Reorganization Plan 3" to Congress. The plan proposed merging the General Land Office and the U.S. Grazing Service into a single agency.[cxlviii] The Truman administration's rationale for merging the agencies included efficiency:

> The General Land Office and the Grazing Service now divide responsibility for major portion of the multiple-use Federally owned lands now held by the Department of the Interior. The lands under jurisdiction of the two agencies are comparable in character and in use. In some functions, the two agencies employ the same type of personnel and use the same techniques. Other functions are divided between the agencies so that both are engaged in management of various aspects of the same land. Consolidating these two agencies will permit the development of uniform policies and the integration of two organizations whose responsibilities now overlap. Integration of the activities of the two agencies will make possible greater utilization and thus more economic use of expert skills.[cxlix]

The merger occurred on July 16, 1946, three months after the proposal was submitted to Congress. The merger dissolved the General Land Office, which had started its work more than 130 years earlier, in 1812, and dissolved the U.S. Grazing Service, which had existed for just 12 years, since 1934.[cl] Beyond the merger, the plan also transferred mining and mineral leasing jurisdiction for USDA forest lands acquired under the **Weeks Act,** lands acquired in connection with the rural rehabilitation program and lands acquired by the USDA as part of the federal government's effort to retire submarginal lands to the Department of the Interior. The reorganization plan provided for the administration of mineral deposits on USDA lands by the Department of the Interior and clarified that the administration of mineral leasing on USDA lands by DOI would be carried forward "...subject to limitations necessary to protect the surface uses for which these lands were primarily acquired."[cli] The arrangement with the Department of the Interior, which manages subsurface mineral leasing on USDA FS lands, continues to this day.

1946

The new BLM logo unveiled in 1946

Source: Bureau of Land Management. *The Beginning of the BLM: How 486 Words Created the Nation's Largest Land Manager*. Accessed March 26, 2025. https://www.blm.gov/blog/2024-05-16/beginning-blm-how-486-words-created-nations-largest-land-manager.

Description: General Land Office Building, Main & Green Streets, Bodie, Mono County, CA

Source: Historic American Buildings Survey, C. & Dehaas, J. N., Partridge, R., photographer. (1933) *U. S. Land Office Building, Main & Green Streets, Bodie, Mono County, CA*. Bodie Mono County California, 1933.

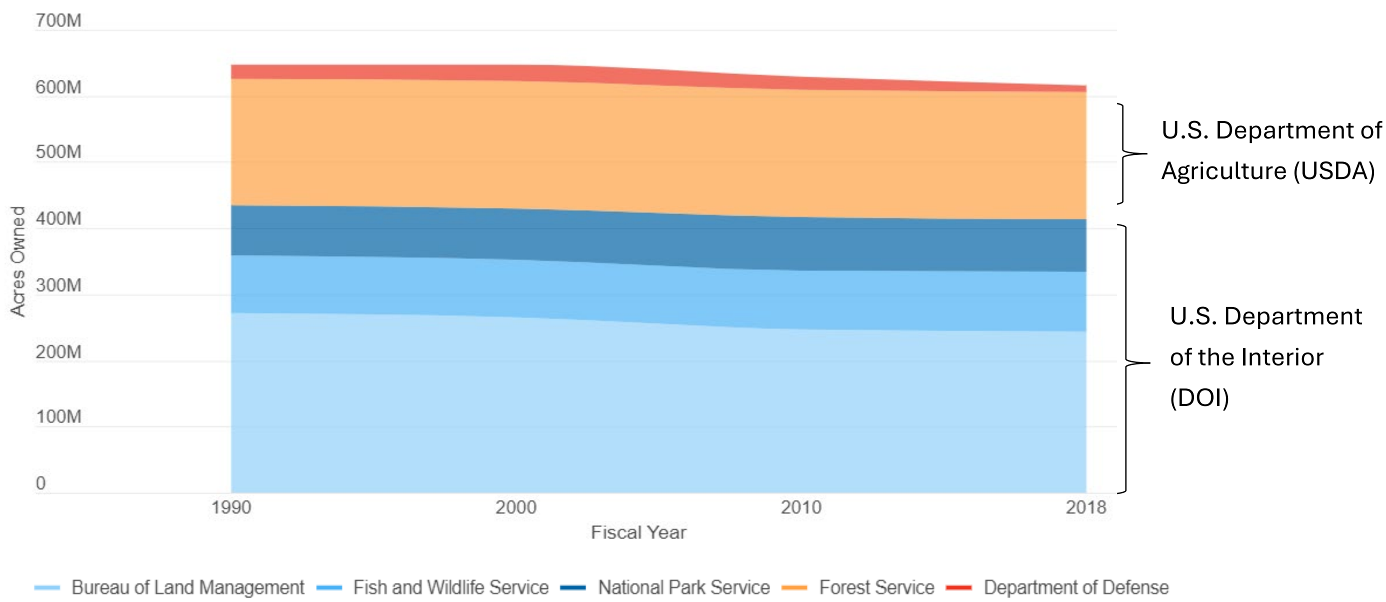
Documentation Compiled After. [Photograph] Retrieved from the Library of Congress, https://www.loc.gov/item/ca0360/.

Scan to Read More About the Federal Land Management Agencies from the Congressional Research Service

SITUATING FEDERAL PUBLIC LANDS AND THE COUNTY NEXUS

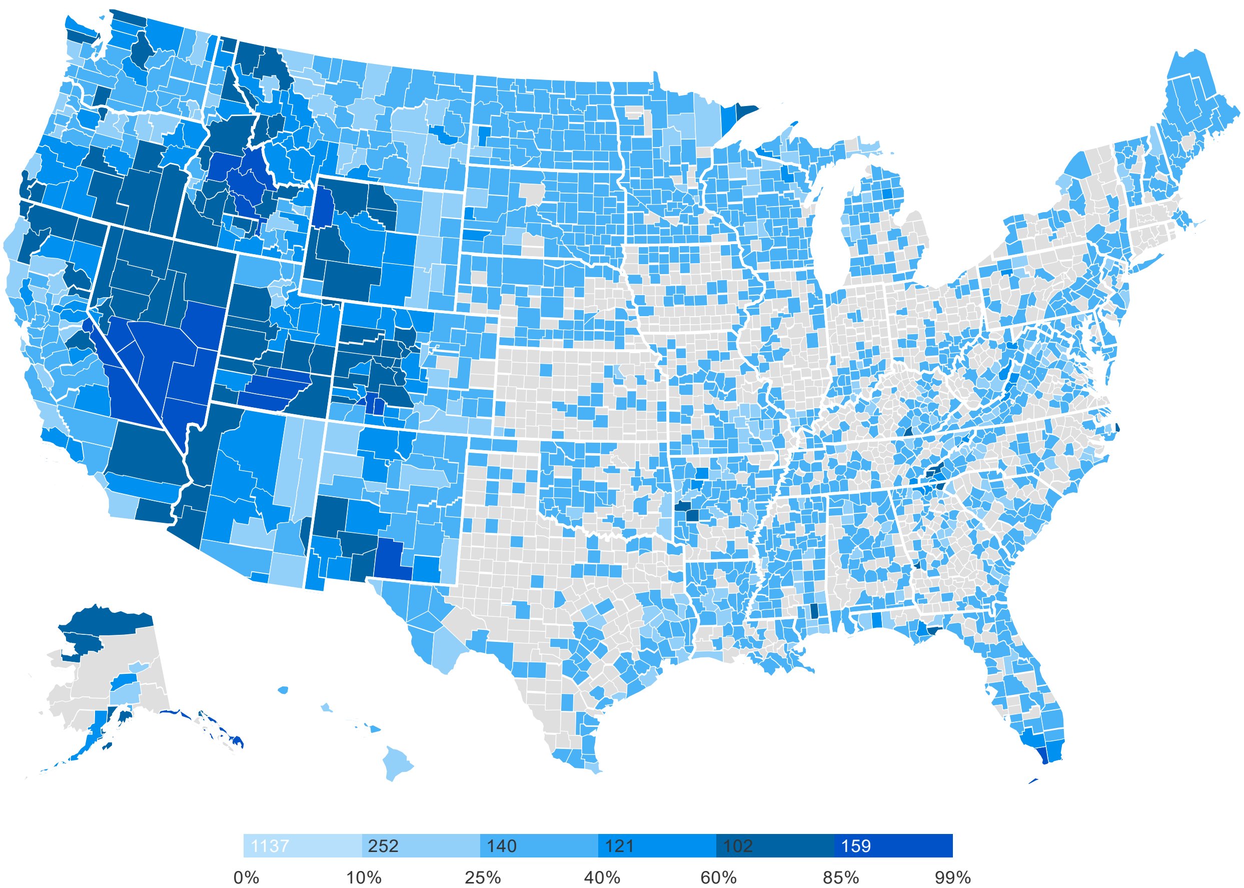
The course of public lands history and the formation of the Big Four land management agencies shaped the contemporary intergovernmental system, impacting county jurisdictions in multiple ways. Today, the federal government is the largest landholder in the country, owning 28% of all acres in the U.S. -- approximately 640 million acres. These acres are particularly concentrated in the Western United States, where nearly half (45.9% are federally owned).[clii] County governments cannot raise property tax revenues from these federal lands despite an increasing demand for county services amid complex and competing activities on these lands. Nearly two-thirds (62%) of counties have public lands in their jurisdiction.

FIVE MAJOR FEDERAL ENTITIES MANAGE AND OVERSEE PUBLIC LAND



Source: *Congressional Research Services (CRS)*

PERCENT OF COUNTY ACREAGE MANAGED BY THE FIVE MAJOR FEDERAL LAND-MANAGING AGENCIES, 2023



Source: *NACo Analysis of U.S. Geological Survey (USGS) Protected Areas Database, 2023.*

Counties navigate a complex landscape of federal land management, spanning multiple agencies with individual and sometimes conflicting objectives that intersect county jurisdictions. Counties often partner with five core entities for public land management and planning across the federal government. Each agency has a unique purpose and mission, and the partnership, alignment of goals and community benefit for counties vary accordingly.

Bureau of Land Management (BLM): 244.4 million acres

The BLM is the largest landholder, managing 244.4 million acres – roughly 40% of total federally owned land in the country. BLM land includes terrains like forests, deserts and mountains. The BLM primarily owns range and grazing land and administers most subsurface mineral estates on 700 million acres.[cliii] BLM categorizes their management as multiple use, sustained yield. BLM lands can be used for recreation, grazing, timber, energy and minerals, watershed, wildlife and fish and conservation.

Forest Service (FS): 192.9 million acres

The FS oversees forest land for forestry research and sustains its health and productivity, including recreation, livestock grazing and managing renewable resources for sustained yield.[cliv]

Fish and Wildlife Service (FWS): 89.2 million acres

The FWS focuses on conserving, managing and restoring fish, wildlife, plants and habitats. FWS primarily oversees wildlife refuges, fish hatcheries, monument areas, wetland management districts and conservation offices.[clv]

National Park Service (NPS): 79.9 million acres

The NPS oversees more than 400 sites, including parks, monuments, recreation areas, battlefields and preserves. The first national park, Yellowstone, established in 1872, predates the agency and is credited with starting the global national park movement. The NPS focuses on preserving natural assets for recreational, cultural and environmental purposes.[clvi]

U.S. Department of Defense (DOD): 8.8 million acres

Established in 1947 to consolidate various branches of the military, the DOD oversees over 4,500 defense sites, including military bases, installations and reservations for the purpose of national security.[clvii]

County leaders in public-lands-adjacent communities navigate complex federal requirements, restrictions and processes unique to the land-owning agencies with which they must partner to access and provide services on public lands. These services include education, solid waste disposal, law enforcement, search and rescue, health care, environmental compliance, firefighting, infrastructure construction and maintenance, emergency management, parks and recreation and public health (including emergency medical services—EMS). In many cases, counties are responsible for providing services on public lands to support federal efforts. At the same time, public lands are critical components of county communities, impacting local revenues, service delivery, commerce, employment opportunities, residents' quality of life and economic development. County services in support of public lands are critical not only for community residents but also for federal employees, their families, businesses, the public and users of these public lands.

Access to and use of public land are critical to county communities. Public lands can be a **significant driver of local economies**, supporting industries such as tourism, mining and logging, manufacturing, agriculture, ranching, wholesale trade activities, etc. Similarly, public lands within a community impact economic development decisions, most notably infrastructure investments in roads, bridges, trade facilities, small business development, healthcare access and demographic change. Although federal public lands are concentrated in the West, the impacts of federal land management ripple across the country and the national economy.

County officials coordinate land use planning and management with state, federal and tribal entities. To provide intergovernmental coordination, counties typically adopt resource and forest management plans (RMPs and FMPs, respectively) to guide local priorities related to federally managed lands. County RMPs and FMPs use data and evidence to outline the assets, statutory requirements, legal framework and the economic, cultural, historical and environmental intersections between federal lands and community needs.

Federal legislation such as the **Multiple-Use Sustained-Yield Act of 1960**, **National Environmental Policy Act (NEPA) of 1970,** the **Federal Land Policy and Management Act (FLPMA) of 1976** and the **National Forest Management Act (NFMA) of 1976** underpin the contemporary management of public lands and intergovernmental partnerships with counties. For example, FLPMA and NEPA require coordination between federal land management agencies and county officials. FLPMA stipulates that the BLM and other DOI agencies formulate RMPs and FMPs that are consistent with state and local plans while striking a balance between multiple uses and sustained yield.[clviii] Similarly, NEPA applies broadly to all projects or permits on federal lands, but not all actions are subject to NEPA.[clix] Many intergovernmental partnership projects between federal agencies and county governments require collaboration to achieve NEPA standards.

Multiple-Use Vs. Sustained-Yield

Multiple-Use is a concept wherein land is managed in a combination that best meets the public's present and future needs. Sustained-Yield is more rigid, seeking to maintain the land for high-level resource output in perpetuity. Often, these goals can have competing interests that must be balanced using local county input. Definitions of multiple-use and sustained-yield are not consistent across FLPMA and the Multiple-Use and Sustained-Yield Act. The interpretation and application of multiple-use and sustained-yield principles have a lasting and wide-reaching impact.

Scan to Learn More About Multiple-Use and Sustained-Yield

Scan to Learn More About Economic Trends in Public Lands Counties

FEDERAL INVESTMENTS IN ACTION TO SUPPORT COUNTY RESPONSIBILITIES

To compensate counties for their inability to tax public lands, Congress created the **Payment in Lieu of Taxes (PILT)** program. To account for declining timber harvest receipts under the 1908 Act, Congress established the **Secure Rural Schools (SRS)** program. Each program requires reauthorization each year, creating uncertainty for counties with heavy shares of public lands. Further, SRS and PILT are subject to sequestration, often resulting in reduced funding levels (e.g., by 5 percent in FY23) before payments reach counties. Although PILT and SRS funds are critical to public lands counties, it is often the case that funding through these programs accounts for only a fraction of the local land value (in the case of PILT) or potential timber receipts (in the case of SRS).

Payment in Lieu of Taxes Program (PILT)

Critical services are provided by the county government and supported by local county revenue. Counties are challenged because federally owned land is not taxable by local governments, and property taxes primarily drive county revenue. For public lands counties, not only is county revenue reduced due to nontaxable land, but the county must provide additional services to the land outside of routine county administration to meet demands stemming from activity on adjacent public lands. Considering the federal restriction on collecting property taxes on public lands, local governments are disadvantaged in raising revenue to support numerous responsibilities. A handful of programs exist to provide federal investment for counties to offset these losses partially, yet do not fully mitigate the costs — the most prominent being the **Payment in Lieu of Taxes (PILT)** and **Secure Rural Schools (SRS)** programs.

Roughly 610 million acres are eligible for federal investments through the Payment in Lieu of Taxes (PILT) program.[clx] The program, administered by the Department of the Interior, provides revenue offset for federally owned, tax-exempt lands. PILT comprises three separate payment mechanisms: Section 6902 – the broadest section – and Sections 6904 and 6905 in limited circumstances. Passed in 1976 to offset costs incurred by counties for services provided to public lands communities, annual funding levels remained static for many years. For two decades, the value of PILT payments did not match inflation; in 1995, an amendment to the PILT formula (P.L. 103-397) was enacted to adjust annual authorization levels for inflation. In contrast to other federal land payment programs, PILT funds are eligible for any use by the receiving county. Sequestration has reduced PILT payments to counties, despite growing service demands stemming from public lands activities within county jurisdictions.

The federal government established nine categories of public lands in the Payment in Lieu of Taxes (PILT) statute:[iii]

1. Lands in the National Park System (administered by the National Park Service, in DOI)

2. Lands in the National Forest System (administered by the U.S. Forest Service, in the U.S. Department of Agriculture (USDA))

3. Lands administered by the Bureau of Land Management (BLM)

4. Lands in the National Wildlife Refuge System (NWRS) that are withdrawn from the public domain (administered by the U.S. Fish and Wildlife Service, in DOI)

5. Lands dedicated to the use of federal water resources development projects

6. Dredge disposal areas under the jurisdiction of the U.S. Army Corps of Engineers

7. Lands located in the vicinity of Purgatory River Canyon and Piñon Canyon, Colo., that were acquired after December 31, 1981, to expand the Fort Carson military reservation

8. Lands on which are located semi-active or inactive Army installations used for mobilization and for reserve component training

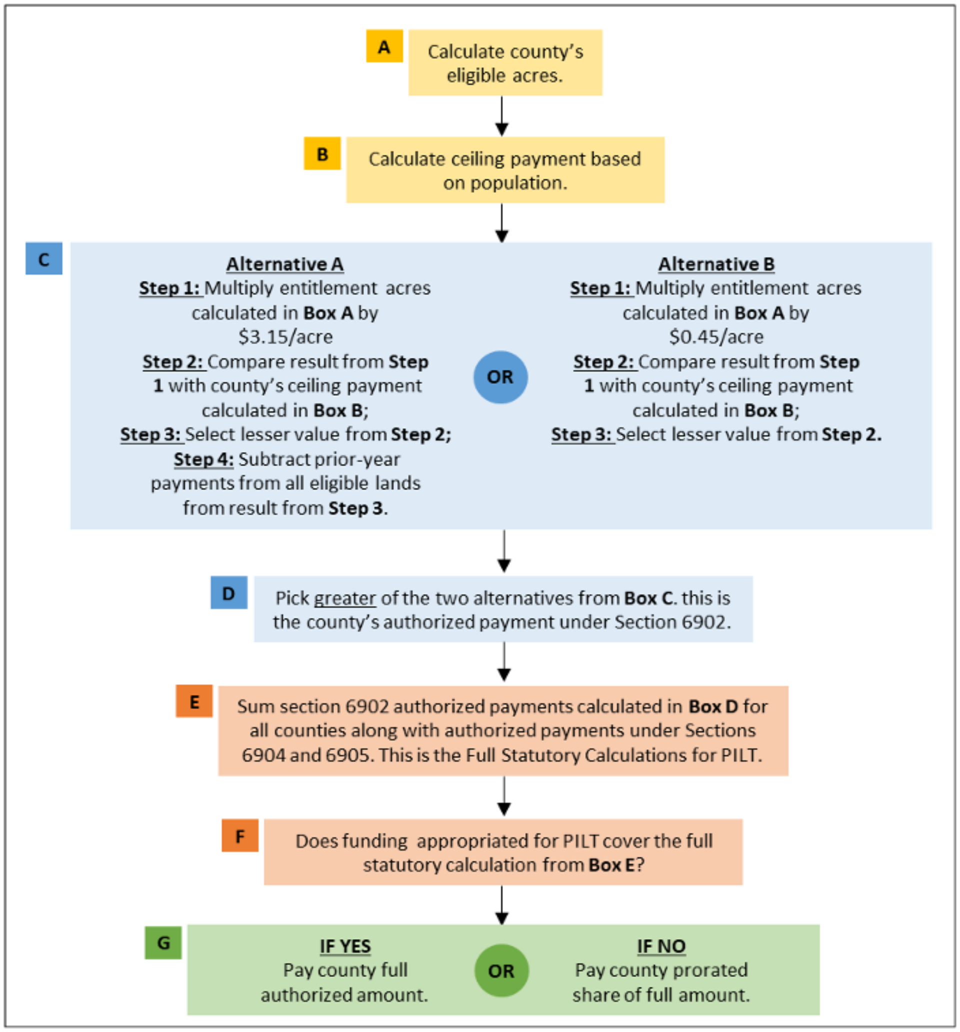
9. Certain lands acquired by DOI or the USDA under the Southern Nevada Public Land Management Act (P.L. 105-263)

Section 6902 payment calculations

Section 6902 payments are distributed to counties with any of these nine categories of federal land, including *most* land managed by the five major agencies. Funding is determined based on two multipart formulas (Alternatives A and B) using several factors; the greater of the two payment formulas is distributed to the county.

The PILT ceiling multiplier is based on population thresholds. Actual population numbers are used for counties with populations below 5,000. Counties with more than 5,000 residents are rounded to the nearest 1,000, and counties with over 50,000 residents are capped at 50,000 regardless of the actual population.

SECTION 6902 PAYMENT FORMULA



Source: *Congressional Research Services, Payment in Lieu of Taxes Program: An Overview, Report no. R46260, Based on PILT statute (31 U.S.C. §§6901-6907).*

Section 6904 and 6905 payments

Section 6904 authorizes PILT payments to land that the NPS or FS has recently acquired and was previously subject to local property taxes within the five-year period before acquisition. Payment is calculated as 1 percent of the fair market value when the land was acquired and does not exceed the levied property tax in the year before acquisition. Section 6905 authorizes payments to counties with federal land in Redwood National Park or the Lake Tahoe Basin. Payment is calculated based on the same formula as 6904 and continues for five years or until payments total 5 percent of the fair market value.

PILT in Action

Small Percent of Public Lands: Sedgwick County, Kansas

In Sedgwick County, Kans., PILT entitlement land makes up 0.2% of the acreage in their county. The county received $3,452 in PILT payments for FY24, or $3.35 per acre.

Large Percent of Public Lands: San Bernardino County, California

In San Bernardino County, Calif., PILT entitlement land makes up 65.9% of the acreage in the county. They received $4,140,532 in PILT payments for FY24, meaning they received $0.49 per acre.

A County Perspective on PILT: Commissioner Todd Devlin, Prairie County, Montana

In Prairie County, Mont., 38.4% of lands are entitled to PILT. Their FY24 PILT payment was $204,800.

Prairie County never relied on what is now a $176,000 PILT payment "because it was so minimal. But I looked at the counties that got 30 percent of their budget from PILT. If I was in their shoes, and I was relying on that payment year after year, I wouldn't want to change [the PILT formula]."

"At the time the PILT formula was discussed [by Congress in 1994 to adjust for inflation and alter the payment formula], the very rural counties weren't at the table because they couldn't afford to be there… Congress did not opt to prorate the payment per acre because of concern of losing support from senators and congressional districts in the East because they almost always had far less acres of federal lands." [clxi]

Scan to Read More About the Payment in Lieu of Taxes Program from the Congressional Research Service

Secure Rural Schools Program

The Secure Rural Schools (SRS) program aids rural counties and school districts affected by the decline in revenue from timber harvests on federal lands. Historically, rural communities and schools relied on a share of receipts from timber harvests to supplement local funding for education services and roads. During the 1980s, a combination of new national policies, a change in public preferences, changes in the economy and industry shifts caused a severe decline in timber sales. Although timber sales continue to occur today, the changes in the 1980s and subsequent years have diminished the revenue-generating activities in these forests. This decline, in turn, decreased rural counties and school districts' revenues from forest management activities through the **1908 25 percent payments**. In response to this decline, SRS was enacted in 2000 (P.L. 106-393) to stabilize payments to counties and to compensate for lost revenues.

Counties can elect to receive either the traditional projected 25% payment based on historical timber and gross activity receipts, or the new SRS payments allocated under three tranches: Title I, Title II and Title III.

Projected 25% Payment

Enacted in 1906, the Forest Service (FS) historically has paid counties (via a state pass-through) a share of gross receipts for timber harvests, recreation, grazing permits, land use rentals and other activities. In 1906 and 1907, the FS paid 10 percent of these receipts; Congress raised the payment to 25 percent in 1908. In 2008, the calculation was changed to 25 percent of the rolling average of the last seven years' gross receipts. Funds paid out under the projected 25 percent formula are eligible for use on roads and for schools. The funding distribution amounts between roads and schools are determined by the state legislatures and the authority granted by those legislatures to counties to determine the allocations.

SRS Titles I, II and III

To receive SRS funding, counties must opt out of the projected 25 percent payment method. For most counties, SRS funding is significantly higher than projected payments; however, a handful of counties still elect to receive timber receipt funding using the traditional calculation method. Depending on the community's needs, counties can elect to split the payments between three eligible uses, Titles I – III.

The SRS funding formula currently allocates funds to counties based on the three highest revenue-based payments between FY86 and FY99, the share of federal land acres and the relative income level for the county.

Most funding is allocated to **Title I** funds, which can be used for the same purposes as the projected 25 percent payments: roads and schools. **Title II** funds are held at the federal level by the BLM or FS for county-designated use on federal land properties. To use funds under Title II, the FS or BLM must create a **Resource Advisory Committee (RAC)** to approve projects and fund distribution. Ten percent of the Title II funds can be used to support the functions of the RAC, while 50 percent must be used for road maintenance, decommissioning of streams or watershed restoration. **Title III** funds are specifically set aside for community wildfire preparedness planning and related activities, emergency services reimbursement or training, or broadband expansion for educational purposes.

Counties with minor distributions (less than $100,000) can allocate all funding to Title I uses. Similarly, counties with major distributions (more than $350,000) can only allocate up to 7 percent of funding to Title III uses. Funds not allocated between the three titles are returned to the U.S. Department of the Treasury. Sequestration has reduced SRS payments to counties, despite increasing service demands stemming from public lands activities within county jurisdictions.

SRS in Action

Small Percent of National Forest Service Land: Sioux County, Nebraska

In Sioux County, Nebraska, National Forest Service land makes up 0.7% of the acreage in their county. They received $5,202 in PILT payments for FY23.

Large Percent of National Forest Service Land: Douglas County, Oregon

In Douglas County, Ore., National Forest Service land makes up 27% of the acreage in their county. They received $15.2 million in PILT payments for FY23.

A County Perspective on SRS: Chair of the Board of Supervisors, Patrice Horstman, Coconino County, Arizona

In Coconino County, 27.2% of the land is managed by FS. Their FY23 SRS payment was $2.8 million.

"SRS funding is critical to the safety and well-being of our community. SRS Title II funds enable us to carry out vital projects essential to safeguarding our community, such as the $497,175 Schultz Burn Rehabilitation project following the 2010 Schultz Fire. More recently, SRS funds provided $30,000 for community green waste cleanup sites to assist in reducing fire risks.

SRS funds help maintain hundreds of miles of FS roads, crucial for providing emergency access and search-and-rescue operations. SRS dollars directly support law enforcement operations on our public lands, including Forest patrols, which protect visitors and residents and **help** detect illegal campfires. Without SRS funding, the safety of our community and the protection of our natural resources would be in serious jeopardy."

PILT and SRS require reauthorization each year, creating uncertainty for counties with heavy shares of public lands. Further, SRS and PILT are subject to sequestration, often resulting in reduced funding levels (e.g., by 5 percent in FY 2023) before payments reach counties. Although PILT and SRS funds are critical to public lands counties, it is often the case that funding through these programs account for only a fraction of the local land value (in the case of PILT) or potential timber receipts (in the case of SRS).

Scan to Read More About the Secure Rural Schools Program from the Congressional Research Service

Oregon & California (O&C) and Coos Bay Wagon Road (CBWR) Payments

Eighteen Oregon counties have a unique set of public lands that receive payments from the federal government to offset the impact of revestment and removal of lands from local tax roles. The Oregon and California Railroad (O&C) lands are revested grant lands (2.6 million acres) that were intended to incentivize settlement and compensate the railroad for constructing a railway between Portland and Sacramento. Similarly, the Coos Bay Wagon Road Land (CBWR) lands (75,000 acres) are revested lands that were intended to compensate the Oregon and California Railroad Company to construct a military road between Roseburg and Coos Bay, Oregon. Congress authorized the granting of these lands in 1866 and 1869. Following these authorizations, the Oregon & California Railroad Company was accused of violating Congress's grants by selling tracts above the targeted price and temporarily halting timber sales from these lands to increase timber prices. Litigation ensued, and in 1915, the Supreme Court ruled that the railroad violated the terms of the O&C grant.

The Chamberlain-Ferris Act (CFA) of 1916 revested all unsold tracts of the O&C grant land back to the federal government, removing the lands from the local assessed property tax rolls of 18 Oregon counties. The CFA established timber production at 500 million board feet annual allowable sale quantity (ASQ), with periodic adjustments from these lands. To compensate counties for the railroad's unpaid 1913, 1914 and 1915 taxes, the policy authorized tax equivalency payments. Policy makers anticipated that these lands would generate enough revenue to reimburse the federal government for the costs of acquisition and the tax equivalency payments and pay remaining receipts to the state for schools (25%); to the counties for schools, roads, and port districts (25%); to the Reclamation Fund (40%); and to the Treasury (10%). However, revenues were insufficient to make any payment except to reimburse the cost of acquisition. In 1926, Congress passed the Stanfield Act, which reauthorized tax equivalency payments to the counties between 1916 and 1926 and changed the priority for the revenue receipts to first pay the counties equivalent payments into the future and second to reimburse the federal government for the remaining balance of past equivalent payments. Any additional revenue was to be distributed according to the CFA formula. Timber revenue continued to be insufficient to pay the entire tax burden.

Responding to these challenges, Congress passed the 1937 **Oregon and California Revested Lands Sustained Yield Management Act,** establishing policy directing the management of O&C lands for permanent timber production. Debate ensued over whether to enact tax equivalency payments or revenue sharing payments. The Association of O&C Counties supported tax equivalency payments, but the revenue-sharing payment model won. Upon enactment, O&C lands counties began receiving a revenue-sharing payment based on timber sales. The CRS notes, "Section 2(a) of the act allocated 50% of the revenue generated from the O&C lands from any source directly to the counties. Section 2(b) allocated 25 percent to the U.S. Treasury for accrued taxes under the Stanfield Act 'until such tax indebtedness as shall have accrued prior to March 1, 1938, is extinguished.'" [clxii] Congress directed that after the accrued taxes were paid, an additional 25 percent of the receipts would go to the counties. In 1952, the O&C counties began to receive 75 percent of the receipts, but that was short-lived. In 1953, Congress directed that one-third of the counties' share be "plow backed" to compensate the federal government for management of the O&C lands. Today, there is continued debate about the continuance of this 25 percent reduction from the original 75 percent revenue share that counties were to receive under the 1937 act. The O&C Act revenue payments to counties may be used for any governmental purpose.

Similarly, in 1919, Congress passed the **Coos Bay Wagon Road Revestment Act** revesting 93,063 acres of land granted for the Coos Bay Wagon Road after violations of its grant, removing these lands from Coos and Douglas counties. In Coos and Douglas Counties, these lands are known as the Coos Bay Wagon Road lands and are managed by the BLM. In 1939, Congress passed the Coos Bay Wagon Road Act, establishing an in-lieu tax payment program for the two counties. Seventy-five percent of receipts from today's 75,000 acres are paid to Coos and Douglas Counties and restricted for schools, roads, bridges, highways and ports.

Beginning with the revestments, O&C and CBWR land counties received at least a 50% share of timber harvest revenues to compensate for the loss in property taxes. Facing the same challenges that prompted the establishment of SRS, O&C and CBWR lands can now elect to receive a specific set-aside payment option equal to the average of three-year high payments (or maintain the 50 percent receipt revenue share). An ongoing issue for O&C counties is the coupling of the FS SRS payment and the BLM O&C Payment. O&C counties cannot choose to elect to receive the FS SRS payment and the 50 percent O&C Act revenue payment or vice versa. If they choose the SRS payment for one, they must accept the SRS payment for the other. SRS funds paid to counties for O&C and CBWR lands are subject to the same exact eligibility requirements as SRS FS payments, where counties can allocate payments between Titles I – III uses.

Table 1-5. AREA OF OREGON AND CALIFORNIA (O&C) REVESTED LANDS, FISCAL YEAR 2023

Oregon County	O&C Lands /a/	Converted O&C Lands /b/	Special Act O&C Lands /c/	Coos Bay Lands /d/	Total
	Acres	*Acres*	*Acres*	*Acres*	*Acres*
Benton	52,828	0	1,720	0	54,548
Clackamas	52,744	35,949	5,688	0	94,381
Columbia	10,960	0	0	0	10,960
Coos	94,438	23,002	0	59,914	177,354
Curry	36,681	56,735	0	0	93,416
Douglas	601,818	95,641	0	14,633	712,092
Jackson	396,434	25,332	20,971	0	442,737
Josephine	269,483	109,244	182	0	378,909
Klamath	46,199	20,962	0	0	67,161
Lane	277,253	95,293	0	0	372,546
Lincoln	8,773	0	0	0	8,773
Linn	85,748	520	0	0	86,268
Marion	20,753	0	0	0	20,753
Multnomah	4,208	0	0	0	4,208
Polk	40,491	0	1,160	0	41,651
Tillamook	40,775	0	0	0	40,775
Washington	11,616	0	0	0	11,616
Yamhill	33,045	0	0	0	33,045
Total	**2,084,247**	**462,678**	**29,721**	**74,547**	**2,651,193**

Table 1-5. AREA OF OREGON AND CALIFORNIA (O&C) REVESTED LANDS, FISCAL YEAR 2023–concluded

/a/ These lands are administered by the BLM. They include O&C timber on nonfederal land on 100 acres in Clackamas County, 160 acres in Columbia County, and 123 acres in Yamhill County.

/b/ Under the provisions of the Converted Lands Act of June 24, 1954 (68 Stat. 271), these lands were declared to be revested O&C railroad grant lands. They were placed under the jurisdiction of the Secretary of Agriculture to be administered with national forest lands, with all revenues derived from such lands to be handled in accordance with the provisions of Title II of the Oregon and California Revested Lands Sustained Yield Management Act of August 28, 1937 (50 Stat. 874), as amended by the act of June 24, 1954 (68 Stat. 271).

/c/ Certain O&C areas were set aside by various acts of Congress to be administered by the U.S. Forest Service without losing their O&C identity. The lands in Benton, Clackamas, Jackson, and Polk Counties are watershed lands, while the land in Josephine County is an administrative site.

/d/ Administered by the BLM; excludes Coos Bay Wagon Road timber on 87 acres of nonfederal land in Coos County.

Source: Bureau of Land Management. *Public Land Statistics 2023*. U.S. Department of the Interior, https://www.blm.gov/national-office/public-room/data/public-land-statistics-2023.

A County Perspective on the O&C Lands: Doug Robertson, Former County Commissioner, Douglas County, Oregon; Executive Director, Association of O&C Counties

Douglas County has 727,953 acres of O&C lands

"The culture, history, and economy of Douglas County has for more than a generation been directly linked to the management and production of timber receipts from the O&C lands (Oregon and California Grant lands). These timber receipts are unique because, unlike FS receipts, O&C receipts are discretionary and can be used where they are most needed. A dramatic reduction in management and timber production on the O&C lands has caused a significant reduction in County services and systematic layoffs in the County workforce. Secure Rural Schools payments expired in FY23 and, even if renewed, have been reduced to the extent that they cannot replace the revenue and economy historically generated by O&C timber receipts. Within a short period of time and without the restoration of O&C timber receipts, Douglas County will be unable to provide mandated services and may actually be on the brink of insolvency."

Scan to read more about the O&C Lands from the Congressional Research Service

TECHNICAL NOTES

All analyses are based on 3,069 counties with active county governments. Thus, Connecticut, Rhode Island and portions of Alaska and Massachusetts are excluded since they do not have active county governments. Independent cities in Virginia are also excluded from the analysis.

New York City is a consolidation of the five boroughs of the city of New York:

- Manhattan (New York County)
- The Bronx (Bronx County)
- Brooklyn (Kings County)
- Queens (Queens County)
- Staten Island (Richmond County)

The acreage of federally owned land by the agency is inputted using ArcGIS and thus considered estimated totals. The exact amount of land owned by various federal agencies is unknown due to various technical issues, as noted by the Congressional Research Service in report R42346.

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