A Rapid Assessment of the Senate's Proposal to Sell Off Public Lands
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I. Introduction

As part of the budget reconciliation package that is pending in Congress, the Senate is proposing to sell off millions of acres of federal public lands to raise money for the general fund. The Chair of the Senate Energy and Natural Resources (SENR) Committee, Senator Mike Lee from Utah, is pushing the proposal, and its fate is uncertain.

The Senate proposal follows on the heels of the House reconciliation process. In the House, Rep. Mark Amodei from Nevada and Rep. Celeste Maloy from Utah introduced an amendment during a committee markup that would have mandated the sale of hundreds of thousands of acres of federal public lands in Utah and Nevada. The sell-off language passed through committee, but then public outcry over the proposal and the lack of public process led to it being stripped from the bill before it was considered by the full House. Now, however, the Senate has taken up an even more significant proposal to sell off federal public lands.

The current language of the Senate proposal can be found here. The original language was released by SENR on June 11, 2025. The most recent language emerged between June 14 and 15, 2025. The situation remains fluid and further changes could be made to the proposed language.[1]

In this urgent moment, it is critical to acknowledge that the reconciliation package would change long-standing federal policy regarding the retention and management of federal public lands. Public lands provide many irreplaceable benefits to the American public, including clean drinking water, recreational opportunities, scenic and cultural values, and habitat for fish and wildlife. Public lands also support vibrant rural economies and small businesses that depend on visitation and tourism.

Federal public lands hold special significance for Native American Tribes, which have a deep cultural and spiritual connection to these places as their ancestral territories. The Departments of Interior and Agriculture have recognized that the federal government is "charged with the highest trust responsibility to protect Tribal interests and further the nation-to-nation relationship with Tribes" in managing federal public lands.[2] Many Tribes have treaties in place

[1] The Getches-Wilkinson Center will update this white paper with new information, and the current version can be found on our website at https://www.colorado.edu/center/gwc/publications/research-and-publications.
[2] Secretarial Order No. 3403 (Nov. 15, 2021).

that guarantee off-reservation rights to fish and hunt on federal public lands and co-stewardship agreements with land management agencies.

In recognition of these many important values, Congress created the Public Land Law Review Commission in 1964 to perform a comprehensive review of the nation's laws and policies regarding federal public land. That historic Commission issued a report in 1970, concluding that the "policy of large-scale disposal of public lands * * * be revised and that future disposal should be of only those lands that will achieve maximum public benefit for the general public in non-federal ownership."[3] The Commission called for Congress to "establish national policy in all public land laws by prescribing the controlling standards, guidelines, and criteria for the exercise of authority delegated to executive agencies," including disposal of public lands.[4]

In 1976, following on the heels of the PLLC and its landmark report, Congress passed the Federal Land Policy and Management Act (FLPMA).[5] In the very first declaration of policy in FLPMA, Congress stated that it is the policy of the United States that "**the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest**."[6] Instead of disposal, Congress directed BLM to manage the public lands according to multiple use, sustained yield principles.[7] Sections 202 and 203 of FLPMA then provide detailed criteria and a public process that channels the discretion of the BLM to sell off federal public lands.[8] For the last 50 years, these policies for the retention of federal public lands have continued to benefit the American public.

If passed by Congress, the Senate reconciliation proposal would be the most significant change in public land law and policy since FLPMA was passed, one that has no parallel in the history of public land management in the United States. Whereas FLPMA resulted from a thoughtful and deliberate legislative process, the current changes are being considered on an expedited basis through a budget reconciliation process with little to no meaningful public or stakeholder engagement.

In sum, the current Senate reconciliation proposal puts at risk more than 258,000,000 acres of public land, which could be sold off to private interests. There are no meaningful restrictions that limit the use of those lands for affordable housing. And there are no substantive criteria that limit the discretion of BLM or USFS to sell off public lands.

While these risks are significant, the Senate proposal also threatens to fundamentally undermine and alter the very foundation of the laws and policies that govern the management of federal public lands in the United States. By giving the land management agencies a mandate to complete widespread sell-off of federal public lands with few if any meaningful criteria or

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[3] *One Third of the Nation's Land – A Report to the President and to the Congress by the Public Land Law Review Commission* at 1.
[4] *Id*. at 2.
[5] 43 U.S.C. § 1701 *et seq*.
[6] 43 U.S.C. § 1701(a)(1) (emphasis added).
[7] 43 U.S.C. § 1701(a)(7).
[8] 43 U.S.C. §§ 1712-13.

guardrails, this proposal reflects a historic change in the nation's policies for retaining public lands and managing them according to multiple use, sustained yield principles. It would set a dangerous precedent that would undermine the rule of law.

The Getches-Wilkinson Center for Natural Resources, Energy, and the Environment has published this white paper to provide the public and decisionmakers with a rapid assessment of the significant legal and policy implications of the Senate reconciliation proposal regarding the sale of federal public lands.

II. Summary of Reconciliation Language on the Sale of Federal Public Lands

Scope and Eligibility of Public Lands Available for Sale. The Senate proposal applies to lands managed by the Bureau of Land Management (BLM) (245 million acres) and the U.S. Forest Service (USFS) (162 million acres). The bill would require BLM and USFS to sell off between .5% - .75% of lands managed by those agencies within 5 years of the date of enactment of the Act. The proposal could therefore require the sale of up to 3 million acres of federal public land.

a. Existing national policy under FLPMA is that land be retained in federal ownership and managed according to multiple use, sustained yield principles.[9]

b. The Senate proposal would override this policy and replace it with a mandate for the agencies to sell off millions of acres of public land to raise revenue for the federal government.

c. Land is eligible to be sold in eleven western states, including: Alaska, Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Montana appears to have been excepted from this language in an effort to neutralize political opposition.

d. "Federally Protected Land" is not eligible for sale. Those lands include:

i. A National Monument;
ii. A National Recreation Area;
iii. A component of the National Wilderness Preservation System;
iv. A component of the National Wild and Scenic Rivers System;
v. A component of the National Trails System;
vi. A National Conservation Area;
vii. A unit of the National Wildlife Refuge System;
viii. A unit of the National Fish Hatchery System;
ix. A unit of the National Park System;
x. A National Preserve;
xi. A National Seashore or National Lakeshore;
xii. A National Historic Site;
xiii. A National Memorial;

[9] 43 U.S.C. § 1701(a)(1), (8).

xiv. A National Battlefield or Military Park; and
xv. A National Historic Park.

e. Lands that are eligible for sale include Wilderness Study Areas, Areas of Critical Environmental Concern, Inventoried Roadless Areas, Late Successional Reserves and other areas that protect mature and old-growth forests, and areas that provide critical habitat for threatened and endangered species.

f. It is estimated that more than 258,000,000 acres of federal public land may be at risk under the Senate proposal although this estimate could change based on future amendments to the legislative language.

g. Land that is subject to "valid existing rights" is not eligible for sale. In the previous version of the SENR language, "valid existing right" was defined to include grazing permits. The current version, which could be subject to additional changes, however, does not include a definition of "valid existing right," raising the likelihood that areas subject to a grazing permit could be available for sale. Grazing permits do not create "any right, title, interest or estate in or to the lands."[10] Based on this statutory language, federal courts have stated that grazing permits "are licenses rather than rights."[11] It is also possible that public land in and around ski permit areas could be sold to ski areas or other private parties for development of luxury or vacation homes.

Uses of Land. The parcels that are sold are to be "used solely for the development of housing or to address associated infrastructure to support local housing needs."

a. This language does not restrict the use to affordable housing. The parcels that are sold could therefore be used for the development of luxury homes, vacation rentals, second homes, and/or subdivisions.

b. This language does not define "associated infrastructure." Parcels could be bought to provide physical access or utility corridors for luxury homes, etc.

c. The conveyance of federal land shall include a restrictive covenant requiring that the land be used in accordance with the uses identified when the land is designated for sale.

d. This language does not require the restrictive covenant be permanent or in perpetuity. Nor does it prohibit the federal government from later agreeing to amend the covenant.

e. An earlier version of the Senate proposal stated that the duration of the covenant would be at least 10 years, but that language was removed in the more recent versions, providing the land management agencies with even less guidance.

[10] 43 U.S.C. § 315b.
[11] *See*, e.g., *Hage v. United States*, 51 Fed. Cl. 570, 586-87 (2002).

f. The restrictive covenant therefore does not provide any long-term certainty regarding the use of the land.

Valuation and Uses of Funds. A large majority of funds from the sale of federal public lands would be deposited in the general fund of the U.S. Treasury, which would be a significant change in federal policy.

a. Under current federal law - the Federal Land Transaction Facilitation Act (FLTFA) - proceeds from the sale of BLM lands must be deposited in the Federal Land Disposal Account.[12] Those funds must then be used to purchase lands with an emphasis on inholdings and lands that would provide recreational access to federal lands that are currently inaccessible or landlocked.[13]

b. Under the Senate reconciliation proposal, 90% of the proceeds would be deposited in the general fund of the U.S. Treasury, undermining the policies of the FLTFA.

c. 5% of the funds would be distributed to local governments to be used for local housing needs.

d. 5% of the funds would be used for deferred maintenance on BLM and USFS lands.

e. The land would be sold for not less than fair market value by competitive sale, auction, or other methods. The ENR proposal does not require any appraisals prior to selling off public land.

Existing Criteria for Disposal and Public Participation. Under FLPMA, current federal law provides mandatory, substantive criteria that channel the agency's discretion.

a. For example, BLM must determine that any "economic development" objectives associated with the sale of public lands must outweigh public values of retaining the land like recreation and scenic resources.[14]

b. Under Sections 202 and 203 FLPMA, BLM engages with the public through the resource planning process to identify lands that are appropriate for sale based on the above criteria. That resource management planning process includes robust public notice and comment and environmental review, which serves an important function in informing BLM's exercise of its authority under FLPMA.

c. Under FLPMA, Congress retains authority to review and disapprove any proposed sale of tracts larger than 2,500 acres.

[12] 43 U.S.C. § 2305(a).
[13] 43 U.S.C. § 2305(c)(2)(A).
[14] 43 U.S.C. § 1713(a).

d. The Senate proposal would bypass the substantive criteria, the planning process, and the public participation processes of FLPMA that currently govern BLM decisions to dispose of federal public lands.

e. The Senate proposal would also eliminate the ability for Congress to review and disapprove of proposed sales of large tracts.

New Nomination Process. In place of the existing criteria under FLPMA, the Senate proposal would create a new nomination process, which grants the Secretaries of Interior and Agriculture broad discretion in selecting parcels to sell to private parties and eliminates any binding criteria.

a. There are no mandatory criteria or required findings related to housing or any other substantive issues.

b. There are no public comment procedures in the Senate proposal.

c. BLM and USFS would publish a notice soliciting nominations from private parties, states, or local government of tracts to be sold.

d. The nomination should include a description of the planned use of the tract and "the extent to which development of the tract * * * would address housing needs or any associated infrastructure to support local housing needs."

e. BLM and USFS would then consult with the Governor of the State where the land is located, each applicable unit of a local government, and each applicable Indian Tribe.

f. BLM and USFS would then publish a list of all tracts to be sold, which could include parcels that have been nominated by interested parties or other parcels identified by the agencies.

g. The legislation directs BLM and USFS to provide priority consideration to tracts that are adjacent to existing developed areas, have access to existing infrastructure, or are appropriate for residential housing. It is unclear what it means to provide "priority consideration."

h. BLM and USFS may provide a right of first refusal to a State or local government (but not a Tribe). This provision is optional, meaning the agency is not required to provide this right to the State or local government.

i. Acknowledging that this new nomination process conflicts with existing laws in Sections 202 and 203 of FLPMA, the SENR proposal waives the requirements of existing law.

III. Conclusion

For the last 50 years, the management of the public lands has been governed by laws and policies that were carefully crafted by Congress to ensure that they were retained in federal ownership, managed according to multiple use and sustained yield principles, and sold off only in limited and carefully circumscribed situations that further the public interest in federal public lands. Those long-standing policies have benefitted the American public and contributed to the vitality of rural communities and the health and well-being of people across the country. Over those last 50 years, BLM and USFS have sold public lands in limited circumstances, and the proceeds of those sales have typically been reinvested into projects that benefit the American public by purchasing inholdings or improving recreational access. Public lands are wildly popular with the American public, and the existing laws and policies provide sufficient direction and discretion for land management agencies to make targeted adjustments to the federal estate where necessary.

In contrast, the current proposal in the Senate reconciliation package represents are a troubling break from existing laws and policies. If it passes, this would be the first time since FLPMA was enacted in 1976 that Congress would have mandated the sale of public lands simply to offset tax cuts and fund the federal government. Five years from now, many of our most cherished places may be sold to private interests, and current and future generations of Americans may lose forever the opportunity to benefit from and experience those special places. Congress enacted FLPMA 50 years ago to avoid this outcome and protect these places for the benefit of the public. The Senate reconciliation package places all of this at risk.