A Rapid Assessment of the Senate's Proposal to Sell Off Public Lands
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June 25, 2025 (updated from June 18, 2025)

I. Introduction

As part of the budget reconciliation package that is pending in Congress, the Senate is proposing to sell off up to 1.2 million 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 original language was released by SENR on June 11, 2025.

A second version of the proposal emerged between June 14 and 15, 2025 and can be found here. An earlier version of this memo, which analyzed the second version of the language is available here. The Senate Parliamentarian subsequently ruled that the proposed mandatory sale of federal public land does not meet the criteria to be included in a budget reconciliation bill.

A third version of proposal was released on June 25, 2025 and can be found here. This memo specifically analyzes this third version of the proposed language.

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.

[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.

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 Department of Interior has 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 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 millions of acres of public land, which could be sold off to private interests. There are no meaningful restrictions that limit

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[2] Secretarial Order No. 3403 (Nov. 15, 2021).
[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.

the use of those lands for affordable housing. And there are no substantive criteria that limit the discretion of BLM 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 Bureau of Land Management a mandate to complete widespread sell-off of federal public lands with few if any meaningful criteria or 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 third version of the Senate proposal applies to lands managed by the Bureau of Land Management (BLM) (245 million acres). The bill would require (*i.e.*, mandate) BLM to sell off between .25% - .5% of lands managed by BLM within 5 years of the date of enactment of the Act. The proposal could therefore require the sale of up to 1.2 million acres of federal public land within 5 years.

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 BLM to sell off up to 1.2 million 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. The third version of the proposal includes updated language on land that would be excluded from sale as set forth below.

[9] 43 U.S.C. § 1701(a)(1), (8).

~~4) Federally protected land; valid existing rights; outside eligible states.—The Secretary concerned~~**(3) EXCLUDED LAND.—The Secretary** may not dispose of any tract of covered Federal land that is—

(A) federally protected land;

(B) ~~subject to valid existing rights; or~~ **as of the date of the nomination or identification of the tract of covered Federal land, subject to—**

(i) an existing grazing permit or lease; or

(ii) a valid existing right that is incompatible with the development of housing or any infrastructure and amenities to support local needs associated with housing;

(C) not located in an eligible State**; or**~~.~~

~~(5) Number of tracts.—~~**(D) not within 5 miles of the border of a population center.**

e. This language includes a new section stating that land is not eligible if it is "not within 5 miles of the border of a population center." This third version of the proposal does not define "population center," which creates significant uncertainty and ambiguity as to which public lands are excluded from sale under this language. It is likely that the Secretary of Interior would attempt to clarify this term through individual land sales and would have significant discretion in doing so. The third version of the proposal does not explain why 5 miles is used as the line of demarcation.

f. Land that is subject to an "existing grazing permit or lease" or "a valid existing right that is incompatible with the development of housing or any infrastructure and amenities to support local needs associated with housing" is not eligible for sale. The third version of the proposal amended this language and included reference to grazing permits and leases. The third version also included new language that modifies "valid existing rights," which is vague and unclear.

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

h. 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.

i. It is estimated that millions of acres of federal public land may be at risk under the third version of the Senate proposal although the revised language introduces significant confusion and uncertainty as to what lands are excluded from sale. Estimates of how much public land is at risk could change based on future amendments to the legislative language.

Uses of Land. The parcels that are sold are to be "used solely for the development of housing or to address any infrastructure and amenities to support local needs associated with housing." 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. In the third version of the proposal, this language was amended as reflected in the redlined version below.

"(1) USE.—A tract of covered Federal land disposed of under this section shall be used solely for the development of housing or to address ~~associated infrastructure to support local housing needs.~~ **any infrastructure and amenities to support local needs associated with housing.**"

a. This language does not define "infrastructure and amenities to support local needs associated with housing." "Amenities" are often associated with resort development and resort-style communities. For example, an "amenity" could include a golf course or clubhouse under the third version of the language but might not fall clearly within the definition of "infrastructure to support local housing needs" under the earlier version of the language. The addition of the term "amenities" therefore introduces greater risk that public land could be sold off and used for resorts or high-end developments. Parcels could also be bought to provide physical access or utility corridors for luxury homes, etc.

b. 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.

c. 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. Nor does it state how the covenants would be enforced.

d. The first 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. The first version also included an enforcement mechanism.

e. The section that requires a restrictive covenant therefore does not provide any long-term certainty regarding the use of the land. The third version of the language did not make any material amendments that would strengthen the language regarding restrictive covenants.

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.[10] 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.[11]

b. Under the Senate reconciliation proposal, 85% 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. 10% of the funds would be used for hunting, fishing, and recreation amenities on BLM land, and deferred maintenance on BLM lands in the state where tracts are located. This language was revised in the third version as reflected below:

> ~~(3) Deferred~~**(3) HUNTING, FISHING, AND RECREATIONAL AMENITIES; DEFERRED** MAINTENANCE BACKLOG.—Notwithstanding paragraph (1), ~~5~~ **10** percent of the gross proceeds from each sale of a tract of covered Federal land under this section shall be used by the ~~Secretary concerned to address the deferred maintenance backlog~~ **Secretary—**
> **(A) for hunting, fishing, and recreational amenities** on Bureau of Land Management land ~~or National Forest System land, as applicable,~~ **in the State in which the tract sold is located; and**
> **(B) to address the deferred maintenance backlog on Bureau of Land Management land** in the State in which the tract sold is located.

e. The land would be sold by way of sale, auction, or other methods "designed to secure not less than fair market value" for the tracts. The ENR proposal does not require any appraisals prior to selling off public land. The language also does not mandate that parcels be sold for fair market value, only that the processes be "designed to" secure

[10] 43 U.S.C. § 2305(a).
[11] 43 U.S.C. § 2305(c)(2)(A).

fair market value. This ambiguity increases the risk of collusion or other irregularities in the sale of parcels.

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.[12]

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.

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 Secretary of Interior 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 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 local housing needs (including housing supply and affordability) or any infrastructure and amenities .to support local needs associated with housing." The language in the third version was modified as set forth below.

[12] 43 U.S.C. § 1713(a).

(ii) the extent to which the development of the tract of Bureau of Land Management land ~~or National Forest System land~~ would address local housing needs (including housing supply and affordability) or any ~~associated~~ infrastructure **and amenities** to support local **needs associated with** housing ~~needs~~.

e. BLM 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 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 the Secretary of the Interior to provide "priority consideration" to tracts that are nominated by state or local governments, adjacent to existing developed areas, have access to existing infrastructure, are appropriate for residential housing, reduce checkerboard land patterns, or are isolated tracks. It is unclear what it means for the Secretary to provide "priority consideration," but this language is not drafted in a way that limits the Secretary's discretion in deciding which parcels are issued for sale. The priority consideration language was amended in the third version as set forth below:

(3) PRIORITY CONSIDERATION.—In selecting tracts of Bureau of Land Management land ~~and National Forest System land~~ for disposal under this section, the Secretary ~~concerned~~ shall give priority consideration to the disposal of tracts of Bureau of Land Management land ~~and National Forest System land~~ that, as determined by the ~~Secretary concerned —~~ **Secretary—**

(A) are nominated by States or units of local governments;

(B) are adjacent to existing developed areas;

(C) have access to existing infrastructure; ~~or~~

(D) are suitable for residential housing;~~.~~

(E) reduce checkerboard land patterns; or

(F) are isolated tracts that are inefficient to manage.

h. The Secretary 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 has 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. The most recent version of Senator Lee's proposal, while somewhat scaled back in size, would still mandate an unprecedented sell-off of up to 1.2 million acres of federal public lands. And those 1.2 million acres could be developed into luxury homes, vacation homes, or resort-style subdivisions, with no meaningful benefits for the affordability of housing in western communities.

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 this legacy at risk.