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American Jurisprudence, Second Edition

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Public Lands

63C Am Jur 2d Public Lands Summary

Public Lands Summary

**Scope:**

This article discusses the law relating to public lands, including public ownership and control, the powers and duties of administrative agencies that regulate the use of public lands, the alienation of public lands, actions and proceedings relating to public lands, and the rights and liabilities of grantees, patentees, and other persons claiming an interest in public lands.

This article provides extensive coverage of federal legislation governing the public lands of the United States. The article discusses the Department of the Interior and its powers and duties with respect to public lands, federal land policy and management, easements in public lands, grazing lands, desert-land entries, reservations and grants to states for public purposes, grants to states of swamps and overflowed lands, unlawful inclosures or occupancy of public lands, lands held under color of title, defective land claims, and federal penal provisions relating to public lands.

**Treated Elsewhere:**

Adverse possession of public lands, see Am. Jur. 2d, Adverse Possession §§ 135, 268 to 277

Boundaries, generally, see Am. Jur. 2d, Boundaries §§ 1 et seq.

Community property, land acquired from the government as, see Am. Jur. 2d, Community Property §§ 23, 46

Dedication of property for public use, see Am. Jur. 2d, Dedication §§ 1 et seq.

Deeds, construction of, see Am. Jur. 2d, Deeds §§ 192 to 208, 226, 241

Descent and distribution of interests in public lands, see Am. Jur. 2d, Descent and Distribution § 28

Drains and drainage districts, see Am. Jur. 2d, Drains and Drainage Districts §§ 1 et seq.

Ejectment suit of landowner against the government, see Am. Jur. 2d, Ejectment § 4

Eminent domain, see Am. Jur. 2d, Eminent Domain §§ 1 et seq.

Environmental impact statements prepared for federal actions involving public lands, see Am. Jur. 2d, Pollution Control §§ 105 to 108

Execution upon public property, see Am. Jur. 2d, Executions and Enforcement of Judgments §§ 167 to 173

Gas and oil, production of from public lands, see Am. Jur. 2d, Gas and Oil §§ 259 to 308

Highways, streets, and bridges, title and rights of public and abutting owners, see Am. Jur. 2d, Highways, Streets, and Bridges §§ 190 to 226

Homesteads, state law governing, see Am. Jur. 2d, Homestead §§ 1 et seq.

Hunting and fishing on public lands and waters, see Am. Jur. 2d, Fish, Game, and Wildlife Conservation §§ 8 to 21

Injuring public property, generally, see Am. Jur. 2d, Malicious Mischief § 2

Jurisdiction to prosecute criminal offense committed within a state on public land, see Am. Jur. 2d, Criminal Law § 445

Lakes and ponds, ownership and other rights in, see Am. Jur. 2d, Waters §§ 109 to 118

Land grants to colleges and universities, see Am. Jur. 2d, Colleges and Universities § 36

License legislation and procedure, generally, see Am. Jur. 2d, Licenses and Permits §§ 1, 5 to 9

Logging and forest conservation, see Am. Jur. 2d, Logs and Timber §§ 57 to 92

Mechanics' liens against public property, see Am. Jur. 2d, Mechanics' Liens §§ 31 to 35

Mines and minerals on public lands, and rights and interests in such lands, see Am. Jur. 2d, Mines and Minerals §§ 1 et seq.

National park system, see Am. Jur. 2d, Parks, Squares, and Playgrounds § 3

Native American lands, see Am. Jur. 2d, Indians; Native Americans §§ 57 to 99

Pipeline for gas or oil, right to place upon or over public land, see Am. Jur. 2d, Pipelines §§ 23 to 28

Railroads, granting of public lands to, see Am. Jur. 2d, Railroads §§ 34, 35

Reclamation of arid lands under the Federal Desert Lands Act, see Am. Jur. 2d, Irrigation §§ 95 to 105

State property, conveyance of, see Am. Jur. 2d, States, Territories, and Dependencies § 67

Submerged lands, see Am. Jur. 2d, Waters §§ 283 to 340

Trespass on public lands, generally, see Am. Jur. 2d, Trespass § 166

United States authority over territories under the Property Clause of United States Constitution, see Am. Jur. 2d, States, Territories, and Dependencies § 129

Waters, navigable or public, see Am. Jur. 2d, Waters §§ 122 to 173, 306 to 308

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Public Lands

I. In General

63C Am Jur 2d Public Lands § 1

§ 1 "Public lands;" "public land laws"

The term "public lands" generally refers to government lands that are open to public sale or other disposition under general laws n1  and that are not held back or reserved for a governmental or public purpose. n2  The phrase "public lands" is synonymous with "public domain." n3  Under the Federal Land Policy and Management Act, n4  public land is land or an interest in land that the United States owns within a state and that the Secretary of the Interior administers through the Bureau of Land Management. n5  In this context, it is not significant how the United States acquired ownership. n6  Explicitly excluded are lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos. n7  Under the Archaeological Resources Protection Act, n8  public land is: (1) land that the United States owns and administers as part of the national park system, the national wildlife refuge system, or the national forest system; and (2) all other land for which the United States holds the fee title, except for lands on the Outer Continental Shelf and lands under the jurisdiction of the Smithsonian Institution. n9

The term "public land laws" traditionally refers to statutes governing the alienating of public lands, as distinguished from both mining laws governing the mining of hard minerals on public lands and mineral leasing laws designating the leasing of public lands for gas and oil. n10

 **FOOTNOTES:**

n1 Kindred v. Union Pac. R. Co., 225 U.S. 582, 32 S. Ct. 780, 56 L. Ed. 1216 (1912); Humboldt County v. U.S., 684 F.2d 1276 (9th Cir. 1982); Western Nuclear, Inc. v. Andrus, 664 F.2d 234 (10th Cir. 1981), judgment rev'd on other grounds, 462 U.S. 36, 103 S. Ct. 2218, 76 L. Ed. 2d 400 (1983); U. S. v. Kipp, 369 F. Supp. 774 (D. Mont. 1974); Holz v. Lyles, 280 Ala. 521, 195 So. 2d 897 (1967); U.S. v. City and County of Denver, By and Through Bd. of Water Com'rs, 656 P.2d 1 (Colo. 1982); Berry v. City of Chesapeake, 209 Va. 525, 165 S.E.2d 291 (1969).

As to the disposal and sale of public lands, see §§ 40 to 67.

n2 Thompson v. U.S., 308 F.2d 628 (9th Cir. 1962); Western Nuclear, Inc. v. Andrus, 664 F.2d 234 (10th Cir. 1981), judgment rev'd on other grounds, 462 U.S. 36, 103 S. Ct. 2218, 76 L. Ed. 2d 400 (1983); U.S. v. City and County of Denver, By and Through Bd. of Water Com'rs, 656 P.2d 1 (Colo. 1982); State ex rel. Town of Crescent City v. Holland, 151 Fla. 806, 10 So. 2d 577 (1942); Reed v. State, 175 S.W.2d 473 (Tex. Civ. App. Eastland 1943); Berry v. City of Chesapeake, 209 Va. 525, 165 S.E.2d 291 (1969).

As to the withdrawal or reservation of public lands, see §§ 31 to 37.

As to an owner's dedication of his or her property interest to public use, see Am. Jur. 2d, Dedication § 5.

n3 Holz v. Lyles, 280 Ala. 521, 195 So. 2d 897 (1967).

As to eminent domain, see Am. Jur. 2d, Eminent Domain §§ 1 et seq.

n4 43 U.S.C.A. §§ 1701 to 1787.

n5 43 U.S.C.A. § 1702(e).

As to the authority of the Secretary of the Interior over public lands, generally, see § 10.

As to the Bureau of Land Management, see § 13.

n6 43 U.S.C.A. § 1702(e).

n7 43 U.S.C.A. § 1702(e).

n8 16 U.S.C.A. §§ 470aa to 470mm.

n9 16 U.S.C.A. § 470bb(3).

As to public forest lands, see §§ 82 to 86.

As to the national park system, generally, see Am. Jur. 2d, Parks, Squares, and Playgrounds § 3.

n10 Udall v. Tallman, 380 U.S. 1, 85 S. Ct. 792, 13 L. Ed. 2d 616 (1965).

As to extractive rights in gas and oil lands belonging to the United States, generally, see Am. Jur. 2d, Gas and Oil § 259.

As to rights in public mineral lands, generally, see Am. Jur. 2d, Mines and Minerals §§ 21 to 35.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]1, 4, 5

16 U.S.C.A. §§ 470aa to 470mm

43 U.S.C.A. §§ 1701 to 1787

A.L.R. Index, Public Lands and Property

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Public Lands

I. In General

63C Am Jur 2d Public Lands § 2

§ 2 Public lands distinguished from other lands

Not all real estate owned by the United States n1  or a state n2  is necessarily classified as public land. Public lands do not include, for example --

 -- land that has been held back or reserved for a governmental or public purpose. n3

 -- land to which the claims or rights of others have attached. n4

 -- lands granted under terms upon which Congress has not finally acted. n5

 -- streets and highways. n6

 -- tidelands n7  and lands under navigable waters below the ordinary high-water mark. n8

 -- lands covered by tax sale certificates held by a state for the nonpayment of taxes. n9

 -- Native American lands. n10

 -- unsurveyed lands. n11

 **FOOTNOTES:**

n1 Thompson v. U.S., 308 F.2d 628 (9th Cir. 1962).

n2 Lund v. Nichols, 1936 OK 385, 177 Okla. 65, 57 P.2d 592 (1936).

n3 § 1, defining public lands.

n4 Payne v. Central Pac. Ry. Co., 255 U.S. 228, 41 S. Ct. 314, 65 L. Ed. 598 (1921); Holz v. Lyles, 280 Ala. 521, 195 So. 2d 897 (1967); Hamerly v. Denton, 359 P.2d 121 (Alaska 1961); Board of County Com'rs of Cheyenne County v. Ritchey, 888 P.2d 298 (Colo. App 1994).

As to rights in public mineral lands, generally, see Am. Jur. 2d, Mines and Minerals §§ 21 to 35.

n5 Cameron v. U.S., 148 U.S. 301, 13 S. Ct. 595, 37 L. Ed. 459 (1893).

n6 Holz v. Lyles, 280 Ala. 521, 195 So. 2d 897 (1967); Berry v. City of Chesapeake, 209 Va. 525, 165 S.E.2d 291 (1969).

As to the nature and extent of the public interest in highways, see Am. Jur. 2d, Highways, Streets, and Bridges § 190.

n7 Baer v. Moran Bros. Co., 153 U.S. 287, 14 S. Ct. 823, 38 L. Ed. 718 (1894).

As to surveys of public lands bordering on water, see § 21.

n8 State ex rel. Town of Crescent City v. Holland, 151 Fla. 806, 10 So. 2d 577 (1942).

n9 State ex rel. Town of Crescent City v. Holland, 151 Fla. 806, 10 So. 2d 577 (1942).

n10 Am. Jur. 2d, Indians; Native Amercians § 57.

n11 U.S. v. Northern Pac. Ry. Co., 311 U.S. 317, 61 S. Ct. 264, 85 L. Ed. 210 (1940); Wheeler v. U.S., 770 F. Supp. 1205 (W.D. Mich. 1991), judgment aff'd, 967 F.2d 222 (6th Cir. 1992).

As to surveys of public lands, generally, see § 14.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]1, 4, 5

16 U.S.C.A. §§ 470aa to 470mm

43 U.S.C.A. §§ 1701 to 1787

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Public Lands

II. Early Land Grants

63C Am Jur 2d Public Lands § 3

§ 3 Generally

Title to lands in territory that is ceded to the United States passes to the federal government, n1  which takes proprietary title only to the lands that the ceding government held in a proprietary capacity. n2  Further, Congress, n3  federal courts, n4  or administrative agencies responsible for public lands n5  may establish the property rights of individuals in territories that are ceded or granted by a former sovereign. Property rights that vested prior to the cession of the land will be protected, n6  even if the United States claims the granted land for purposes of national defense. n7

Observation: Because a treaty of cession usually protects complete title in real property existing at the time of cession by a foreign government, n8  such title generally need not be presented for confirmation. n9

 **FOOTNOTES:**

n1 U.S. v. Gardner, 903 F. Supp. 1394 (D. Nev. 1995), judgment aff'd, 107 F.3d 1314 (9th Cir. 1997); Standard Oil Co. of California v. Johnson, 10 Cal. 2d 758, 76 P.2d 1184 (1938).

n2 State by Kobayashi v. Midkiff, 49 Haw. 456, 421 P.2d 550 (1966); Harris v. O'Connor, 185 S.W.2d 993 (Tex. Civ. App. El Paso 1944), writ refused w.o.m.

n3 Astiazaran v. Santa Rita Land & Min. Co., 148 U.S. 80, 13 S. Ct. 457, 37 L. Ed. 376 (1893); Martinez v. Rivera, 196 F.2d 192 (10th Cir. 1952).

n4 U.S. v. Coronado Beach Co., 255 U.S. 472, 41 S. Ct. 378, 65 L. Ed. 736 (1921); U.S. v. Hanson, 41 U.S. 196, 10 L. Ed. 935, 1842 WL 5731 (1842).

n5 Thompson v. Los Angeles Farming & Milling Co., 180 U.S. 72, 21 S. Ct. 289, 45 L. Ed. 432 (1901); More v. Steinbach, 127 U.S. 70, 8 S. Ct. 1067, 32 L. Ed. 51 (1888); Scull v. U.S., 98 U.S. 410, 25 L. Ed. 164, 1878 WL 18363 (1878).

n6 Carino v. Insular Government of Philippine Islands, 212 U.S. 449, 29 S. Ct. 334, 53 L. Ed. 594 (1909); Cinque Bambini Partnership v. State, 491 So. 2d 508 (Miss. 1986), judgment aff'd, 484 U.S. 469, 108 S. Ct. 791, 98 L. Ed. 2d 877 (1988).

n7 U.S. v. Coronado Beach Co., 255 U.S. 472, 41 S. Ct. 378, 65 L. Ed. 736 (1921).

n8 Tyler v. Magwire, 84 U.S. 253, 21 L. Ed. 576, 1872 WL 15335 (1872).

n9 Richardson v. Ainsa, 218 U.S. 289, 31 S. Ct. 23, 54 L. Ed. 1044 (1910).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]188 to 229

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Public Lands

II. Early Land Grants

63C Am Jur 2d Public Lands § 4

§ 4 Construction

In settling land claims involving the land of a superseded government, a court or tribunal is bound by the treaty under which the lands were ceded, international law, equitable principles, the decisions of the United States Supreme Court, and the laws, customs, and usages of the ceding nation. n1  An individual's rights in land granted by a foreign government are determined by the laws of the foreign government as they existed at the time of the grant of lands. n2  Any question as to restraints or restrictions upon the use of such land is, however, to be determined by the law of the state. n3

While the intention of the grantor is the paramount consideration in the interpretation of a land grant of a superseded government, n4  the conduct of the government that succeeded to the territory may also be considered in order to determine the limits of an ambiguous grant of a predecessor government. n5  Doubt as to the location and extent of a grant's boundaries may also sometimes be resolved by proof of juridical possession. n6

If ambiguous, the land grant of a sovereign is strictly construed against the grantee. n7  A grant from a sovereign to a town will, however, be liberally construed to effect its object. n8

 **FOOTNOTES:**

n1 Botiller v. Dominguez, 130 U.S. 238, 9 S. Ct. 525, 32 L. Ed. 926 (1889).

n2 Glover v. McFaddin, 205 F.2d 1 (5th Cir. 1953); State v. Superior Oil Co., 526 S.W.2d 581 (Tex. Civ. App. Corpus Christi 1975), writ refused n.r.e., (Apr. 7, 1976).

n3 Hart v. Gould, 119 Cal. App. 2d 231, 259 P.2d 49 (2d Dist. 1953).

n4 Strong v. Sunray DX Oil Co., 448 S.W.2d 728 (Tex. Civ. App. Corpus Christi 1969), writ refused n.r.e.

n5 Harris v. O'Connor, 185 S.W.2d 993 (Tex. Civ. App. El Paso 1944), writ refused w.o.m.

As to the construction of deeds, generally, see Am. Jur. 2d, Deeds §§ 192 to 269.

n6 Strong v. Sunray DX Oil Co., 448 S.W.2d 728 (Tex. Civ. App. Corpus Christi 1969), writ refused n.r.e.

As to surveys and boundaries of public lands, generally, see § 14.

n7 In re Site for Hunts Point Sewage Treatment Works, Borough of Bronx, City of New York, 281 A.D. 315, 119 N.Y.S.2d 391 (1st Dep't 1953); People v. Foote, 242 A.D. 162, 273 N.Y.S. 567 (2d Dep't 1934).

Royal grants are construed strictly, and it will not be presumed that the sovereign intended to part from any portion of the public domain, unless clear and especial words are used to denote it. Black v. Floyd, 280 Ga. 525, 630 S.E.2d 382 (2006).

n8 People v. Foote, 242 A.D. 162, 273 N.Y.S. 567 (2d Dep't 1934).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]188 to 229

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Public Lands

II. Early Land Grants

63C Am Jur 2d Public Lands § 5

§ 5 Validity of title

The validity of a land claim arising under a grant of a superseded or predecessor government may depend upon --

 -- whether the lands were subject to disposition by the granting power. n1

 -- whether the grant followed applicable law. n2

 -- the presentation of the claim within a specified period. n3

 -- sufficient evidence to support the claim of a grant. n4

 -- certainty as to the location or extent of the grant. n5

 -- whether the claim of a foreign grant covers land within ceded or acquired territory. n6

 -- whether the government, officer, or person had authority to make the grant. n7

 -- whether the grant was made before the territorial cession or transfer of governmental dominion. n8

 -- the performance of any conditions precedent annexed to the grant. n9

 **FOOTNOTES:**

n1 City of Mobile v. Emanuel, 42 U.S. 95, 1 How. 95, 11 L. Ed. 60, 1843 WL 5976 (1843).

n2 U.S. v. Green, 185 U.S. 256, 22 S. Ct. 640, 46 L. Ed. 898 (1902).

n3 U.S. v. Title Insurance & Trust Co., 265 U.S. 472, 44 S. Ct. 621, 68 L. Ed. 1110 (1924).

n4 Mobile Transp. Co. v. City of Mobile, 187 U.S. 479, 23 S. Ct. 170, 47 L. Ed. 266 (1903).

n5 Arivaca Land & Cattle Co. v. U. S., 184 U.S. 649, 22 S. Ct. 525, 46 L. Ed. 731 (1902).

n6 Foster v. Neilson, 27 U.S. 253, 7 L. Ed. 415, 1829 WL 3115 (1829) (overruled in part on other grounds by, U.S. v. Percheman, 32 U.S. 51, 8 L. Ed. 604, 1833 WL 4214 (1833)); Heard v. Town of Refugio, 129 Tex. 349, 103 S.W.2d 728 (1937).

n7 Whitney v. U.S., 181 U.S. 104, 21 S. Ct. 565, 45 L. Ed. 771 (1901).

n8 U.S. v. Lynde, 78 U.S. 632, 20 L. Ed. 230, 1870 WL 12866 (1870).

n9 Tiglao v. Insular Government of Philippine Islands, 215 U.S. 410, 30 S. Ct. 129, 54 L. Ed. 257 (1910).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]188 to 229

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Public Lands

II. Early Land Grants

63C Am Jur 2d Public Lands § 6

§ 6 Effect of confirmation of grant

The confirmation of a land claim arising under a grant of a superseded or predecessor government separates the lands owned by individuals from the public domain. n1  Recitals in a confirmation decree are generally conclusive as to title, n2  the specified boundaries, n3  and the validity, character, and nature of the grant. n4  A confirmation of title protects only the asserted claim and does not necessarily recognize the validity of the whole grant, n5  even if the claimed land is less than that covered in the original grant. n6  A confirmation decree is beyond collateral attack for mere error or irregularity n7  and, in the absence of extrinsic fraud, is binding on the courts, n8  the government, n9  grantees, n10  assignees, n11  and all parties who have acquiesced in the decree. n12  It does not, however, bind a person who was not a party to the proceedings culminating in the confirmation. n13

 **FOOTNOTES:**

n1 Meader v. Norton, 78 U.S. 442, 20 L. Ed. 184, 1870 WL 12846 (1870).

n2 U.S. v. Martinez, 184 U.S. 441, 22 S. Ct. 422, 46 L. Ed. 632 (1902); Mondragon v. Tenorio, 554 F.2d 423 (10th Cir. 1977).

n3 U.S. v. Hancock, 133 U.S. 193, 10 S. Ct. 264, 33 L. Ed. 601 (1890).

n4 Mondragon v. Tenorio, 554 F.2d 423 (10th Cir. 1977).

n5 Carr v. Quigley, 149 U.S. 652, 13 S. Ct. 961, 37 L. Ed. 885 (1893); Petersen v. U.S., 327 F.2d 219 (9th Cir. 1964).

n6 People v. Foote, 242 A.D. 162, 273 N.Y.S. 567 (2d Dep't 1934).

n7 U.S. v. Coronado Beach Co., 255 U.S. 472, 41 S. Ct. 378, 65 L. Ed. 736 (1921).

n8 U.S. v. Sepulveda, 68 U.S. 104, 17 L. Ed. 569, 1863 WL 6641 (1863).

n9 U.S. v. Covilland, 66 U.S. 339, 17 L. Ed. 40, 1861 WL 7667 (1861).

n10 Steinbach v. Stewart, 78 U.S. 566, 20 L. Ed. 56, 1870 WL 12835 (1870).

n11 Steinbach v. Stewart, 78 U.S. 566, 20 L. Ed. 56, 1870 WL 12835 (1870).

n12 Sanchez v. Deering, 270 U.S. 227, 46 S. Ct. 214, 70 L. Ed. 556 (1926).

n13 Rodrigues v. U.S., 68 U.S. 582, 17 L. Ed. 689, 1863 WL 6646 (1863).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]188 to 229

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Public Lands

III. Governmental Authority and Management

A. In General

63C Am Jur 2d Public Lands § 7

§ 7 Basis of governmental authority

Congress has constitutional authority under the Property Clause n1  to regulate and dispose of federal public lands. n2  This authority over federal lands, which Congress determines whether or not to exercise, n3  is plenary. n4  Until the issuance of a patent that conveys title, the United States has the fee of public lands n5  and has broad management authority. n6  Congress enjoys the powers of a proprietor of public lands n7  and may deal with such lands as a private individual would deal with his or her property. n8  It has also been observed, however, that the public lands of the United States are held by the federal government not as an ordinary individual or proprietor, but in trust for the people of all the states. n9  Under this "public trust" doctrine, the government has a duty to protect and preserve the land for the public. n10

Nonfederal land may also be regulated by Congress when reasonably necessary to protect adjacent federal property or navigable waters. n11

Where the United States obtains exclusive jurisdiction of lands within a state, the state retains only such jurisdiction as it reserves when land is ceded to the United States. n12

The power to manage federal lands may be delegated by Congress to the executive branch of government. n13

 **FOOTNOTES:**

n1 U.S. Const. Art. IV, § 3, cl. 2.

n2 Utah Div. of State Lands v. U.S., 482 U.S. 193, 107 S. Ct. 2318, 96 L. Ed. 2d 162 (1987); California Coastal Com'n v. Granite Rock Co., 480 U.S. 572, 107 S. Ct. 1419, 94 L. Ed. 2d 577 (1987); Duncan Energy Co. v. U.S. Forest Service, 50 F.3d 584 (8th Cir. 1995); U.S. v. Vogler, 859 F.2d 638 (9th Cir. 1988); Transwestern Pipeline Co. v. Kerr-McGee Corp., 492 F.2d 878 (10th Cir. 1974).

As to the Property Clause as a basis for the federal government's power over territories, see Am. Jur. 2d, States, Territories, and Dependencies § 129.

n3 Kirkpatrick Oil & Gas Co. v. U. S., 675 F.2d 1122 (10th Cir. 1982).

n4 Utah Div. of State Lands v. U.S., 482 U.S. 193, 107 S. Ct. 2318, 96 L. Ed. 2d 162 (1987); State of Nev. v. Watkins, 914 F.2d 1545 (9th Cir. 1990); Organized Fisherman of Florida v. Andrus, 488 F. Supp. 1351 (S.D. Fla. 1980).

n5 Schell v. White, 80 Ariz. 156, 294 P.2d 385 (1956).

As to the issuance of patents to public lands, see § 48.

n6 U.S. v. Campbell, 42 F.3d 1199 (9th Cir. 1994).

n7 State of Nev. v. Watkins, 914 F.2d 1545 (9th Cir. 1990).

n8 State of Alabama v. State of Texas, 347 U.S. 272, 74 S. Ct. 481, 98 L. Ed. 689 (1954); U.S. v. West, 232 F.2d 694 (9th Cir. 1956); State ex rel. Andrus v. Click, 97 Idaho 791, 554 P.2d 969 (1976).

As to criteria for selling public lands, generally, see § 41.

As to the withdrawal or reservation of public lands, generally, see § 31.

n9 Utah Power & Light Co. v. U.S., 230 F. 328 (C.C.A. 8th Cir. 1915), decision modified on other grounds, 242 F. 924 (C.C.A. 8th Cir. 1917); U.S. v. Ruby Co., 588 F.2d 697 (9th Cir. 1978); Davis v. Morton, 469 F.2d 593 (10th Cir. 1972).

n10 Sierra Club v. Block, 622 F. Supp. 842 (D. Colo. 1985); Schaller v. State, 537 N.W.2d 738 (Iowa 1995); Secretary of State v. Wiesenberg, 633 So. 2d 983 (Miss. 1994).

n11 Duncan Energy Co. v. U.S. Forest Service, 50 F.3d 584 (8th Cir. 1995); U.S. v. Lindsey, 595 F.2d 5 (9th Cir. 1979).

n12 Visicon, Inc. v. Tracy, 83 Ohio St. 3d 211, 1998-Ohio-115, 699 N.E.2d 89 (1998).

n13 Metropolitan Washington Airports Authority v. Citizens for Abatement of Aircraft Noise, Inc., 501 U.S. 252, 111 S. Ct. 2298, 115 L. Ed. 2d 236 (1991); Sierra Club v. Hickel, 433 F.2d 24 (9th Cir. 1970), judgment aff'd, 405 U.S. 727, 92 S. Ct. 1361, 31 L. Ed. 2d 636 (1972); City and County of Denver By and Through Bd. of Water Com'rs v. Bergland, 517 F. Supp. 155 (D. Colo. 1981), judgment aff'd in part, rev'd in part on other grounds, 695 F.2d 465 (10th Cir. 1982); U.S. v. Connery, 303 F. Supp. 828 (N.D. Fla. 1969); State of Utah v. Andrus, 486 F. Supp. 995 (D. Utah 1979).

As to the authority of the Secretary of the Interior with regard to public lands, see § 10.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]4 to 7

U.S. Const. Art. IV, § 3, cl. 2

5 U.S.C.A. App. 1

5 U.S.C.A. § 903 note

43 U.S.C.A. §§ 1451 to 1453a, 1457, 1701, 1702, 1731 to 1734, 1740, 1742

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Public Lands

III. Governmental Authority and Management

A. In General

63C Am Jur 2d Public Lands § 8

§ 8 Management to protect scientific, environmental, and other values

It is also the policy of the United States to manage public lands in a manner that protects the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water-resource, and archeological values. n1  A national need for domestic sources of minerals, food, timber, and fiber from the public lands has been recognized, n2  and public lands are also to be managed for outdoor recreation and human occupancy and use. n3  Further, it is the policy of the United States to develop regulations and plans for the protection of public land areas of critical environmental concern. n4  Areas of critical environmental concern are areas within the public lands that require special management attention in order to protect life and safety from natural hazards or to protect fish and wildlife resources, other natural systems or processes, and important historic, cultural, or scenic values, when the areas are developed or used or when no development is required. n5

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1701(a)(8).

n2 43 U.S.C.A. § 1701(a)(12).

n3 43 U.S.C.A. § 1701(a)(8).

n4 43 U.S.C.A. § 1701(a)(11).

n5 43 U.S.C.A. § 1702(a).

 **SUPPLEMENT:**

**Cases**

National Park Service (NPS) may capture and kill wild game within park under approved wildlife management plans. Western Watersheds Project v. Salazar, 766 F. Supp. 2d 1095 (D. Mont. 2011).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]4 to 7

U.S. Const. Art. IV, § 3, cl. 2

5 U.S.C.A. App. 1

5 U.S.C.A. § 903 note

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Public Lands

III. Governmental Authority and Management

A. In General

63C Am Jur 2d Public Lands § 9

§ 9 Preemption of state law

Federal lands within a state are subject to federal authority to control occupancy and use, to protect the lands from trespass and injury, and to prescribe the conditions upon which others may obtain rights in the lands, even if these functions involve customary police powers of states. n1  While congressional power over the public lands cannot be interfered with by state law, n2  and federal law overrides conflicting state law, n3  a state's police power may extend to public lands as to which Congress has not legislated. n4

 **FOOTNOTES:**

n1 Utah Power & Light Co. v. U.S., 243 U.S. 389, 37 S. Ct. 387, 61 L. Ed. 791 (1917); U.S. v. Holmes, 414 F. Supp. 831 (D. Md. 1976).

n2 Denee v. Ankeny, 246 U.S. 208, 38 S. Ct. 226, 62 L. Ed. 669 (1918); U.S. v. Montgomery, 155 F. Supp. 633 (D. Mont. 1957).

As to the source and nature of federal title to public lands, see § 7.

As to the jurisdiction of state courts in matters relating to public lands, see § 107.

As to the right of a state or city to take by eminent domain land owned by the United States and devoted to governmental uses, see Am. Jur. 2d, Eminent Domain § 89.

n3 California Coastal Com'n v. Granite Rock Co., 480 U.S. 572, 107 S. Ct. 1419, 94 L. Ed. 2d 577 (1987).

n4 California Coastal Com'n v. Granite Rock Co., 480 U.S. 572, 107 S. Ct. 1419, 94 L. Ed. 2d 577 (1987); State ex rel. Andrus v. Click, 97 Idaho 791, 554 P.2d 969 (1976); Mendiola v. Graham, 139 Or. 592, 10 P.2d 911 (1932).

As to the police power, generally, see Am. Jur. 2d, Constitutional Law §§ 313 to 384.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]4 to 7

U.S. Const. Art. IV, § 3, cl. 2

5 U.S.C.A. App. 1

5 U.S.C.A. § 903 note

43 U.S.C.A. §§ 1451 to 1453a, 1457, 1701, 1702, 1731 to 1734, 1740, 1742

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Public Lands

III. Governmental Authority and Management

A. In General

63C Am Jur 2d Public Lands § 10

§ 10 Secretary of Interior

As the head of the Department of the Interior, n1  the Secretary of the Interior is charged with the supervision of public business relating to public lands, the Bureau of Land Management, the National Park Service, and other subjects and agencies. n2  Having broad authority to manage federal lands, n3  the Secretary of the Interior carries out the law and ensures that the public domain is not wasted or disposed of to a party who is not entitled to it. n4  The Secretary of the Interior must issue regulations necessary to implement federal law relating to the management, use, and protection of the public lands, including property located on the lands. n5  In particular, the Secretary of the Interior must manage public lands under principles of multiple use and sustained yield and must regulate the use, occupancy, and development of public lands through easements, permits, leases, licenses, published rules, or other instruments. n6  Such use includes long-term leases permitting individuals to use public lands for habitation, cultivation, and the development of small trade or manufacturing concerns. n7

The Secretary of the Interior has continuing jurisdiction over public lands until a patent issues. n8

The Secretary of the Interior represents the government, which is a party-in-interest in every case involving the surveying and disposal of the public lands. n9

If sufficient search, rescue, and protection forces are unavailable, the Secretary of the Interior may, in cases of emergency, incur expenses that are necessary to search for, and to rescue, persons lost on public lands, protect or rescue, or cooperate in the protection and rescue of, persons or animals endangered by an act of God, and to transport deceased persons or seriously ill or injured persons to the nearest place where interested parties or local authorities are located. n10

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1451.

n2 43 U.S.C.A. § 1457.

The law also provides for the appointment of a Deputy Secretary of the Interior and Assistant Secretaries of the Interior. 43 U.S.C.A. §§ 1452, 1453, 1453a.

As to environmental impact statements prepared by federal agencies for certain actions, generally, see Am. Jur. 2d, Pollution Control §§ 105 to 108.

n3 Elephant Butte Irrigation Dist. of New Mexico v. U.S. Dept. of Interior, 269 F.3d 1158 (10th Cir. 2001).

n4 Best v. Humboldt Placer Min. Co., 371 U.S. 334, 83 S. Ct. 379, 9 L. Ed. 2d 350 (1963); State v. Nichols, 241 Iowa 952, 44 N.W.2d 49 (1950).

As to the Secretary of the Interior's duty to ensure that patents and leases are not procured fraudulently, see § 69.

n5 43 U.S.C.A. § 1733(a).

n6 43 U.S.C.A. §§ 1732(a), 1732(b).

As to "multiple use" and "sustained yield" as criteria of land-use planning, see § 29.

As to the sale of public lands, generally, see § 41.

As to the withdrawal or reservation of public lands, generally, see § 31.

n7 43 U.S.C.A. §§ 1732(a), 1732(b).

As to permits issued for grazing, see § 87.

n8 Ideal Basic Industries, Inc. v. Morton, 542 F.2d 1364 (9th Cir. 1976).

As to patents for public land, generally, see § 48.

n9 § 118.

n10 43 U.S.C.A. § 1742.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]4 to 7

U.S. Const. Art. IV, § 3, cl. 2

5 U.S.C.A. App. 1

5 U.S.C.A. § 903 note

43 U.S.C.A. §§ 1451 to 1453a, 1457, 1701, 1702, 1731 to 1734, 1740, 1742

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Public Lands

III. Governmental Authority and Management

A. In General

63C Am Jur 2d Public Lands § 11

§ 11 Rulemaking

The Secretary of the Interior must promulgate rules and regulations to carry out the law relating to public lands. n1  Such regulations are to be established after considering the views of the general public, and adjudication procedures must be structured to assure adequate third-party participation, objective administrative review of initial decisions, and expeditious decisionmaking. n2

 **FOOTNOTES:**

n1 43 U.S.C.A. §§ 1732(a), 1732(b), 1740.

As to the rulemaking of the Secretary of Agriculture with respect to the lands of the national forest system, see § 83.

As to administrative rulemaking authority, generally, see Am. Jur. 2d, Administrative Law § 130.

n2 43 U.S.C.A. § 1701(a)(5).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]4 to 7

U.S. Const. Art. IV, § 3, cl. 2

5 U.S.C.A. App. 1

5 U.S.C.A. § 903 note

43 U.S.C.A. §§ 1451 to 1453a, 1457, 1701, 1702, 1731 to 1734, 1740, 1742

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Public Lands

III. Governmental Authority and Management

A. In General

63C Am Jur 2d Public Lands § 12

§ 12 Fees, charges, and commissions

The Secretary of the Interior may establish reasonable filing and service fees, charges, and commissions with respect to applications and other documents relating to public lands. n1  The Secretary of the Interior also has authority to change or abolish such fees, charges, and commissions. n2  The Secretary is authorized to require a deposit of any payments intended to reimburse the United States for reasonable costs with respect to applications and other documents relating to such lands. n3  In determining whether costs are reasonable, the Secretary of the Interior may consider: n4

.the actual costs exclusive of management overhead

.the monetary value of the rights or privileges sought by the applicant

.the efficiency to the government processing involved

.the cost incurred for the benefit of the public interest, rather than for the exclusive benefit of the applicant

.the public service provided

.other factors relevant to the reasonableness of the costs

If a payment under a statute relating to the sale, lease, use, or other disposition of public lands was not required or exceeded the amount required by law or regulation, the Secretary of the Interior may refund the applicable funds upon an application or otherwise. n5  The Secretary of the Interior also has authority to require a deposit of any payments intended to reimburse the United States for reasonable costs with respect to applications and other documents relating to such lands. n6

The Recreational Fee Program authorizing the United States Forest Service to collect user fees for admission to a national forest does not violate equal protection, on the theory that it discriminates against people of low income and that an administrative pass exemption for nonrecreational activities within the program area discriminates against people who do not live or work in the vicinity of the area. n7

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1734(a).

n2 43 U.S.C.A. § 1734(a).

n3 43 U.S.C.A. § 1734(b).

n4 43 U.S.C.A. § 1734(b).

n5 43 U.S.C.A. § 1734(c).

n6 Colorado-Ute Elec. Ass'n, Inc. v. Watt, 533 F. Supp. 197 (D. Colo. 1982), judgment rev'd in part on other grounds, 711 F.2d 913 (10th Cir. 1983).

n7 U.S. v. Morow, 185 F. Supp. 2d 1135 (E.D. Cal. 2002).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]4 to 7

U.S. Const. Art. IV, § 3, cl. 2

5 U.S.C.A. App. 1

5 U.S.C.A. § 903 note

43 U.S.C.A. §§ 1451 to 1453a, 1457, 1701, 1702, 1731 to 1734, 1740, 1742

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Public Lands

III. Governmental Authority and Management

A. In General

63C Am Jur 2d Public Lands § 13

§ 13 Bureau of Land Management

The Secretary of the Interior carries out his or her functions relating to public lands through the Bureau of Land Management. n1  The director of the Bureau of Land Management performs the functions and duties that the Secretary of the Interior prescribes with respect to the management of public lands and resources. n2  The Bureau of Land Management has exclusive jurisdiction to issue patents to federal lands and to make binding determinations of fact with respect to conflicting claims for the issuance of patents. n3  The Bureau's authority to manage public lands does not depend on the issuance of formal regulations. n4

Observation: The General Land Office, the offices of the Commissioner of the General Land Office, and the Grazing Service in the Department of the Interior have been abolished, and their functions have been consolidated into the Bureau of Land Management within the Department of the Interior. n5  It should also be noted that some cases refer to the "Land Department of the United States" to signify the Secretary of the Interior, the Bureau of Land Management, or the now-abolished Commissioner of the General Land Office, and subordinate officials as a special tribunal that determines claims to public lands. n6

One mandate of the Bureau of Land Management under the Federal Land Policy and Management Act is to manage wilderness study areas so as not to impair the areas for preservation as wilderness. n7

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1731(b).

n2 43 U.S.C.A. § 1731(a).

n3 § 48.

n4 State of Utah v. Andrus, 486 F. Supp. 995 (D. Utah 1979).

The public administrative procedures of the Bureau of Land Management, generally, appear at 43 C.F.R. Group 1800.

n5 5 U.S.C.A. § 903 note, Reorg. Plan No. 3 of 1946, § 403; 5 U.S.C.A. App. 1, Reorg. Plan No. 3 of 1946, § 403.

n6 Best v. Humboldt Placer Min. Co., 371 U.S. 334, 83 S. Ct. 379, 9 L. Ed. 2d 350 (1963); King v. McAndrews, 111 F. 860 (C.C.A. 8th Cir. 1901); Park Dist. of City of Bismarck v. Bertsch, 152 N.W.2d 401 (N.D. 1967).

n7 Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55, 124 S. Ct. 2373, 159 L. Ed. 2d 137 (2004).

 **SUPPLEMENT:**

**Cases**

County water conservancy district lacked standing to challenge provisions of Bureau of Land Management's (BLM) management plan for national monument relating to water rights, despite district's contention that plan's water resource "exception criteria" were unlawful and impaired its water rights, where plan provisions addressing diversion of water to locations outside of monument expressly acknowledged district's existing water rights, and BLM had not yet ruled on district's request to expand its use of water from within monument. Kane County Utah v. Salazar, 562 F.3d 1077 (10th Cir. 2009).

Bureau of Land Management (BLM) had no duty under Federal Land Policy Management Act (FLPMA), prior to closing or managing any county roads on purported rights-of-way obtained within national monument prior to FLPMA's enactment, to conduct administrative determinations regarding validity of those purported rights-of-way, and thus counties claiming rights-of-way within national monument were not entitled under Administrative Procedure Act (APA) to order directing BLM to administratively adjudicate all outstanding claims as part of its management plan, where plan expressly recognized that counties might have valid rights-of-way and acknowledged that any such rights-of-way would be honored by BLM. Kane County Utah v. Salazar, 562 F.3d 1077 (10th Cir. 2009).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]4 to 7

U.S. Const. Art. IV, § 3, cl. 2

5 U.S.C.A. App. 1

5 U.S.C.A. § 903 note

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Public Lands

III. Governmental Authority and Management

B. Surveys, Boundaries, and Inclosures

63C Am Jur 2d Public Lands § 14

§ 14 Generally

Federal law provides for the surveying and establishment of boundary lines for public lands, n1  and, except in exceptional instances, public lands are disposed of according to these legal subdivisions. n2  A survey both ascertains or identifies boundaries and creates them. n3  The Secretary of the Interior directs the surveying of public lands, n4  and the accuracy of a survey of public lands, before its disposition is committed exclusively to the executive branch. n5

A grant of public lands must describe in the instrument itself the land to be conveyed, n6  and the claimed property must be severed from the public domain by either an actual survey or some ascertained limits or mode of separation recognized by competent authority. n7

The survey that the United States last accepted before divesting itself of title to public lands takes precedence. n8

 **FOOTNOTES:**

n1 43 U.S.C.A. §§ 52, 751 to 774.

As to boundaries, generally, see Am. Jur. 2d, Boundaries §§ 1 et seq.

n2 Southern Pac. R. Co. v. Fall, 257 U.S. 460, 42 S. Ct. 147, 66 L. Ed. 316 (1922); Santa Fe Pac. R. Co. v. Lane, 244 U.S. 492, 37 S. Ct. 714, 61 L. Ed. 1275 (1917).

n3 State v. Allen, 274 Ala. 600, 150 So. 2d 714 (1963); Verdi Development Co. v. Dono-Han Min. Co., 141 Cal. App. 2d 149, 296 P.2d 429 (4th Dist. 1956); State v. Phillips, 400 A.2d 299 (Del. Ch. 1979), judgment aff'd, 449 A.2d 250 (Del. 1982); State v. Ward, 314 So. 2d 383 (La. Ct. App. 3d Cir. 1975), writ denied, 319 So. 2d 440 (La. 1975).

As to the presumption of a survey's validity, see § 122.

n4 State v. Nichols, 241 Iowa 952, 44 N.W.2d 49 (1950).

n5 U.S. v. Hudspeth, 384 F.2d 683 (9th Cir. 1967); Texas Intern. Petroleum Corp. v. Delacroix Corp., 650 So. 2d 815 (La. Ct. App. 4th Cir. 1995), writ denied, 653 So. 2d 567 (La. 1995).

n6 Chinoweth v. Haskell's Lessee, 28 U.S. 92, 7 L. Ed. 614, 1830 WL 3863 (1830); Bloodsworth v. Murray, 138 Md. 631, 114 A. 575, 22 A.L.R. 1450 (1921).

n7 Lane v. Watts, 234 U.S. 525, 34 S. Ct. 965, 58 L. Ed. 1440 (1914); Washington Rock Co. v. Young, 29 Utah 108, 80 P. 382 (1905).

n8 U.S. v. Reimann, 504 F.2d 135 (10th Cir. 1974); Trustees of Internal Imp. Fund of State of Fla. v. Toffel, 145 So. 2d 737 (Fla. Dist. Ct. App. 2d Dist. 1962).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]19, 22 to 28

43 U.S.C.A. §§ 31, 31a, 52, 315 to 316o, 751 to 774, 1061, 1062, 1065, 1711

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]19, 22 to 28

Federal Procedure, L.Ed. §§ 66:463 to 66:467, 66:482 to 66:488

Proof of Accretion or Avulsion in Title and Boundary Disputes Over Additions to Riparian Land, 73 Am. Jur. Proof of Facts 3d 167

Am. Jur. Pleading and Practice Forms, Public Lands § 10

Federal Procedural Forms § 55:90

West's Key Number Digest, Public Lands [westkey]22 to 27

Am. Jur. Pleading and Practice Forms, Public Lands § 10 (Complaint in federal court -- Allegations in complaint to quiet title -- Land erroneously omitted from government survey)

Federal Procedural Forms § 55:90 (Allegations in complaint to quiet title -- Land erroneously omitted from government survey [28 U.S.C.A. §§ 1346(f), 2409a])

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Public Lands

III. Governmental Authority and Management

B. Surveys, Boundaries, and Inclosures

63C Am Jur 2d Public Lands § 15

§ 15 Survey as part of patent

In general, a survey of public lands is to be taken as part of the patent, n1  and the two must be construed together. n2  When lands are granted according to an official plat of the survey of the lands, the plat becomes a controlling part of the granting instrument as to the limits of the grant. n3  This rule does not apply, however, if the natural boundaries appearing in the survey did not exist at or near the place in controversy when the survey was made, or if there was no attempt to survey the land in controversy. n4

 **FOOTNOTES:**

n1 Harrison v. Grandison Co., 51 F. Supp. 768 (E.D. La. 1943); Grainger v. U. S., 197 Ct. Cl. 1018, 1972 WL 20796 (1972); Strong v. Sunray DX Oil Co., 448 S.W.2d 728 (Tex. Civ. App. Corpus Christi 1969), writ refused n.r.e.

As to patents to public lands, generally, see § 48.

n2 Lyon v. Fairbanks, 79 Wis. 455, 48 N.W. 492 (1891).

n3 Snake River Ranch v. U.S., 542 F.2d 555 (10th Cir. 1976); Fontenelle v. Omaha Tribe of Neb., 298 F. Supp. 855 (D. Neb. 1969), judgment aff'd, 430 F.2d 143 (8th Cir. 1970); File v. State, 593 P.2d 268 (Alaska 1979); Casad v. Qualls, 70 Cal. App. 3d 921, 139 Cal. Rptr. 243 (5th Dist. 1977); Bishop v. Johnson, 100 So. 2d 817 (Fla. Dist. Ct. App. 1st Dist. 1958); Kneeland v. Korter, 40 Wash. 359, 82 P. 608 (1905).

n4 Jeems Bayou Fishing & Hunting Club v. U.S., 260 U.S. 561, 43 S. Ct. 205, 67 L. Ed. 402 (1923); U.S. v. Zager, 338 F. Supp. 984 (E.D. Wis. 1972).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]19, 22 to 28

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Public Lands

III. Governmental Authority and Management

B. Surveys, Boundaries, and Inclosures

63C Am Jur 2d Public Lands § 16

§ 16 Boundaries ascertained in land-use planning

As part of land-use planning procedures, the Secretary of the Interior must ascertain the boundaries of public lands, provide the means of public identification of the boundaries, and furnish state and local governments with data from the inventory for the planning and regulation of the use of nonfederal lands in proximity to public lands. n1

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1711(b).

As to land-use planning for public lands, generally, see § 25.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]19, 22 to 28

43 U.S.C.A. §§ 31, 31a, 52, 315 to 316o, 751 to 774, 1061, 1062, 1065, 1711

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Public Lands

III. Governmental Authority and Management

B. Surveys, Boundaries, and Inclosures

63C Am Jur 2d Public Lands § 17

§ 17 Effect of private survey

A private survey does not sever land from the public domain n1  and does not bind the government. n2  An official survey of public lands controls a conflicting private survey. n3

 **FOOTNOTES:**

n1 Bissell v. Penrose, 49 U.S. 317, 8 How. 317, 12 L. Ed. 1095, 1850 WL 6857 (1850); Billingsley v. Bates, 30 Ala. 376, 1857 WL 385 (1857).

n2 Mackay v. Dillon, 45 U.S. 421, 4 How. 421, 11 L. Ed. 1038, 1846 WL 5715 (1846); Bishop v. Johnson, 100 So. 2d 817 (Fla. Dist. Ct. App. 1st Dist. 1958).

n3 Gleason v. White, 199 U.S. 54, 25 S. Ct. 782, 50 L. Ed. 87 (1905); Bishop v. Johnson, 100 So. 2d 817 (Fla. Dist. Ct. App. 1st Dist. 1958).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]19, 22 to 28

43 U.S.C.A. §§ 31, 31a, 52, 315 to 316o, 751 to 774, 1061, 1062, 1065, 1711

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63C Am Jur 2d Public Lands § 18

§ 18 Geological survey

Under the direction of the Interior Department, the Director of the United States Geological Survey classifies public lands and examines the geological structure, mineral resources, and products of the national domain. n1  Such studies are intended to expedite the production of a national geologic-map database for environmental protection, groundwater management, the conservation of natural resources, and land-use management, assessment, and use. n2

 **FOOTNOTES:**

n1 43 U.S.C.A. § 31(a).

n2 43 U.S.C.A. § 31a(b).

As to land-use planning for public lands, generally, see § 25.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]19, 22 to 28

43 U.S.C.A. §§ 31, 31a, 52, 315 to 316o, 751 to 774, 1061, 1062, 1065, 1711

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63C Am Jur 2d Public Lands § 19

§ 19 Resurvey

A resurvey is evidence, although not conclusive evidence, of the location of the original line. n1  By retracing the original survey in order to determine where the original survey found the boundary lines to be, n2  a resurvey is generally not meant to correct the original survey. n3  The Secretary of the Interior may order a resurvey or retracement of a public land survey when a full investigation indicates that doing so is essential to mark the boundaries of undisposed public lands properly. n4  The United States has the power to conduct resurveys of public lands whenever necessary, even if doing so involves the resurvey of contiguous private lands. n5

A resurvey or retracement may not impair the bona fide rights or claims of a claimant, entryman, or owner of lands affected by the resurvey or retracement. n6  When property rights have been acquired on the faith of an original survey of public land, the original survey controls over subsequent surveys that injure such rights. n7  Once a patent has issued, the rights of the patentees are fixed, n8  and the government has no power to interfere with such rights by a corrective survey. n9  If the government's correction of a survey would defeat or injure the rights of patentees, there must be a proceeding to allow patentees an opportunity to be heard as parties. n10  A conflict between the acreage described in a patent and the reduced acreage resulting from a resurvey will be resolved in favor of the latter, however, if the original surveyors' notes and reports were the basis of the resurvey. n11

In order to ascertain boundaries, the government may resurvey its own lands at any time, so long as doing so does not injure the rights of private owners outside the survey. n12

The abandonment of an independent resurvey in favor of a dependent resurvey is appropriate, if the surveyors are able to retrace part of the boundary of the original survey and if more is not necessary to resurvey the public land. n13

Federal law also provides for the resurvey or retracement of the lines of certain townships covered by public land surveys and for the setting of permanent corners and monuments in accordance with the laws and regulations governing the surveying and resurveying of public lands. n14

 **FOOTNOTES:**

n1 U.S. v. Hudspeth, 384 F.2d 683 (9th Cir. 1967); U.S. v. Doyle, 468 F.2d 633 (10th Cir. 1972); Bishop v. Johnson, 100 So. 2d 817 (Fla. Dist. Ct. App. 1st Dist. 1958).

n2 U.S. v. Hudspeth, 384 F.2d 683 (9th Cir. 1967); Wildeboer v. Hack, 97 So. 2d 29 (Fla. Dist. Ct. App. 2d Dist. 1957).

n3 Keller v. U.S., 6 Cl. Ct. 724 (1984); Trustees of Internal Imp. Fund of State of Fla. v. Toffel, 145 So. 2d 737 (Fla. Dist. Ct. App. 2d Dist. 1962).

n4 43 U.S.C.A. § 772.

n5 Koch v. U.S., 846 F. Supp. 913 (D. Colo. 1994).

n6 43 U.S.C.A. § 772.

n7 U.S. v. Doyle, 468 F.2d 633 (10th Cir. 1972); Bishop v. Johnson, 100 So. 2d 817 (Fla. Dist. Ct. App. 1st Dist. 1958); Savage v. Packard, 218 La. 637, 50 So. 2d 298 (1950); Pittsmont Copper Co. v. Vanina, 71 Mont. 44, 227 P. 46 (1924); Hickman v. Jones, 106 Neb. 466, 183 N.W. 980 (1921); Washington Rock Co. v. Young, 29 Utah 108, 80 P. 382 (1905).

n8 Casad v. Qualls, 70 Cal. App. 3d 921, 139 Cal. Rptr. 243 (5th Dist. 1977).

As to the issuance of patents to public lands, generally, see § 48.

n9 U.S. v. State Inv Co, 264 U.S. 206, 44 S. Ct. 289, 68 L. Ed. 639 (1924); U.S. v. Reimann, 504 F.2d 135 (10th Cir. 1974); State v. Nichols, 241 Iowa 952, 44 N.W.2d 49 (1950).

n10 U.S. v. State Inv Co, 264 U.S. 206, 44 S. Ct. 289, 68 L. Ed. 639 (1924); U.S. v. Zager, 338 F. Supp. 984 (E.D. Wis. 1972); Ashley v. Hill, 150 Colo. 563, 375 P.2d 337 (1962); Lamprey v. Mead, 54 Minn. 290, 55 N.W. 1132 (1893); Ashby v. Ringstaff, 464 S.W.2d 891 (Tex. Civ. App. Austin 1971), writ refused n.r.e.

n11 Sweeten v. U.S. Dept. of Agriculture Forest Service, 684 F.2d 679 (10th Cir. 1982).

n12 Lane v. Darlington, 249 U.S. 331, 39 S. Ct. 299, 63 L. Ed. 629 (1919); State v. Phillips, 400 A.2d 299 (Del. Ch. 1979), judgment aff'd, 449 A.2d 250 (Del. 1982); Trustees of Internal Imp. Fund of State of Fla. v. Toffel, 145 So. 2d 737 (Fla. Dist. Ct. App. 2d Dist. 1962); State v. Nichols, 241 Iowa 952, 44 N.W.2d 49 (1950).

n13 Keller v. U.S., 6 Cl. Ct. 724 (1984).

n14 43 U.S.C.A. § 773.

As to resurveys of townships 50% or more of which are privately owned, see Federal Procedure, L.Ed. §§ 66:463 to 66:467.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]19, 22 to 28

43 U.S.C.A. §§ 31, 31a, 52, 315 to 316o, 751 to 774, 1061, 1062, 1065, 1711

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63C Am Jur 2d Public Lands § 20

§ 20 Lands omitted by fraudulent survey

In retracing the original survey in order to determine where the original survey found the boundary lines to be, a resurvey is generally not meant to correct the original survey. n1  This rule does not apply, however, to lands omitted by a fraudulent survey, since such lands were by definition unsurveyed lands. n2

 **FOOTNOTES:**

n1 § 19.

n2 U.S. v. Ruby Co., 588 F.2d 697 (9th Cir. 1978).

As to the omission of an island in a navigable stream from a public lands survey, see Am. Jur. 2d, Waters § 340.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]19, 22 to 28

43 U.S.C.A. §§ 31, 31a, 52, 315 to 316o, 751 to 774, 1061, 1062, 1065, 1711

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63C Am Jur 2d Public Lands § 21

§ 21 Lands bordering waters

Absent special circumstances, patents of the United States to lands bordering navigable waters convey only to the high-water mark. n1  Whether the boundary is the high-water or lower mark, the law accepts the mean and not the extreme, and therefore tidelands lie between the lines of ordinary high tide and the mean low tide. n2  When the boundary is a nontidal n3  or nonnavigable n4  stream, the title traditionally goes to the thread of the stream, unless the terms manifest a different intention.

 **FOOTNOTES:**

n1 U.S. v. Pacheco, 69 U.S. 587, 17 L. Ed. 865, 1864 WL 6625 (1864); Confederated Salish and Kootenai Tribes v. Namen, 380 F. Supp. 452 (D. Mont. 1974), judgment aff'd, 534 F.2d 1376 (9th Cir. 1976); Fuller v. Shedd, 161 Ill. 462, 44 N.E. 286 (1896), aff'd, 177 Ill. 123, 52 N.E. 380 (1898), aff'd, 190 U.S. 508, 23 S. Ct. 685, 47 L. Ed. 1156 (1903).

As to navigable or public waters, generally, see Am. Jur. 2d, Waters §§ 122 to 173.

n2 Pearl Oyster Co. v. Heuston, 57 Wash. 533, 107 P. 349 (1910).

n3 Grand Rapids & I.R. Co. v. Butler, 159 U.S. 87, 15 S. Ct. 991, 40 L. Ed. 85 (1895); Hanlon v. Hobson, 24 Colo. 284, 51 P. 433 (1897); Fuller v. Shedd, 161 Ill. 462, 44 N.E. 286 (1896), aff'd, 177 Ill. 123, 52 N.E. 380 (1898), aff'd, 190 U.S. 508, 23 S. Ct. 685, 47 L. Ed. 1156 (1903); Butler v. Grand Rapids & I.R. Co., 85 Mich. 246, 48 N.W. 569 (1891), aff'd, 159 U.S. 87, 15 S. Ct. 991, 40 L. Ed. 85 (1895).

n4 Snake River Ranch v. U.S., 542 F.2d 555 (10th Cir. 1976).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]19, 22 to 28

43 U.S.C.A. §§ 31, 31a, 52, 315 to 316o, 751 to 774, 1061, 1062, 1065, 1711

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63C Am Jur 2d Public Lands § 22

§ 22 Meander lines of rivers and lakes

Used in surveying public land adjacent to a river or stream, meander lines are often run from one point to another along or near the bank or margin of the stream so as to leave a quantity of land between these lines and the thread or bank of the stream. n1  Generally, meander lines in original surveys of public lands are not boundaries, but are used to define the sinuosities of the banks of a stream or other body of water and to ascertain the quantity of land in the survey. n2  The boundary is the stream or other body of water and not the meander line as actually run on the ground. n3  The meander line does not necessarily signify that the tract on the other side of it is not surveyed or will not pass by a conveyance of the upland that borders on the lake or stream, and its immediate import may be only to indicate the contour of the lake or stream. n4  The latter may not, however, be true in some circumstances. n5  A meander line may constitute the boundary when intended to do so. n6  The meander line will also be treated as the true boundary of the tract if, as a result of fraud or error in the survey, there was a substantial amount of land between the survey line and the actual edge of the river at the time of the survey. n7  In such circumstances, title to the lands lying between the fraudulent or grossly erroneous meander line and the actual water line remains the property of the United States. n8

Whether the meander line is sufficiently in error so that it should be considered the boundary will be determined in accordance with the amount and proportion of acreage between the meander line and the shore. n9

If land is excluded from a survey through a surveyor's fraud or error in running a meander line on the false assumption of the existence of a body of water or lake, the government may survey the area excluded from the survey and lawfully dispose of it. n10  When omitted from a survey by the wrongful act or error of a surveyor and designated and meandered as a lake, agricultural land is as much public land after the survey as if its true character had been reported by the surveyor. n11

Under the Wild and Scenic Rivers Act, the National Park Service is not required to mark or post the boundaries of a scenic river area physically along the river; rather, the Act requires only that information concerning the location of the boundaries be made available for public inspection on maps in the offices of the administering agency. n12

 **FOOTNOTES:**

n1 Am. Jur. 2d, Boundaries § 23.

n2 Wackerli v. Morton, 390 F. Supp. 962 (D. Idaho 1975); U. S. v. Walton, 266 F. Supp. 257 (D. Wyo. 1967), judgment aff'd, 415 F.2d 121 (10th Cir. 1969); Grainger v. U. S., 197 Ct. Cl. 1018, 1972 WL 20796 (1972); Smith v. Long, 76 Idaho 265, 281 P.2d 483 (1955); Boekeloo v. Kuschinski, 117 Mich. App. 619, 324 N.W.2d 104 (1982); Weaver v. Knudson, 23 Wis. 2d 426, 127 N.W.2d 217 (1964).

n3 U.S. v. Lane, 260 U.S. 662, 43 S. Ct. 236, 67 L. Ed. 448 (1923); U.S. v. Ruby Co., 588 F.2d 697 (9th Cir. 1978); Pueblo of Taos v. Andrus, 475 F. Supp. 359 (D.D.C. 1979); U.S. v. Zager, 338 F. Supp. 984 (E.D. Wis. 1972); Albrecht v. U.S., 529 F. Supp. 135 (D. Wyo. 1981), judgment rev'd on other grounds, 831 F.2d 196 (10th Cir. 1987); Smith v. Long, 76 Idaho 265, 281 P.2d 483 (1955); Boekeloo v. Kuschinski, 117 Mich. App. 619, 324 N.W.2d 104 (1982); Security Land & Exploration Co. v. Burns, 87 Minn. 97, 91 N.W. 304 (1902), aff'd, 193 U.S. 167, 24 S. Ct. 425, 48 L. Ed. 662 (1904) and aff'd, 193 U.S. 188, 24 S. Ct. 431, 48 L. Ed. 674 (1904); Summerville v. Scotts Bluff County, 182 Neb. 311, 154 N.W.2d 517 (1967).

n4 Kean v. Calumet Canal & Improvement Co., 190 U.S. 452, 23 S. Ct. 651, 47 L. Ed. 1134 (1903); Carr v. Moore, 119 Iowa 152, 93 N.W. 52 (1903).

n5 Trustees of Internal Imp. Fund of State of Fla. v. Toffel, 145 So. 2d 737 (Fla. Dist. Ct. App. 2d Dist. 1962); Schultz v. Winther, 10 Wis. 2d 1, 101 N.W.2d 631 (1960).

n6 U.S. v. 295.90 Acres of Land, More or Less, in Lee County, State of Fla., 368 F. Supp. 1301 (M.D. Fla. 1974), aff'd, 510 F.2d 1406 (5th Cir. 1975) and aff'd, 510 F.2d 1406 (5th Cir. 1975); Wackerli v. Morton, 390 F. Supp. 962 (D. Idaho 1975); Strecker v. Goertzen, 128 Colo. 600, 265 P.2d 696 (1954); Trustees of Internal Imp. Fund of State of Fla. v. Toffel, 145 So. 2d 737 (Fla. Dist. Ct. App. 2d Dist. 1962); Schultz v. Winther, 10 Wis. 2d 1, 101 N.W.2d 631 (1960).

n7 U. S. v. Walton, 266 F. Supp. 257 (D. Wyo. 1967), judgment aff'd, 415 F.2d 121 (10th Cir. 1969).

n8 U.S. v. Ruby Co., 588 F.2d 697 (9th Cir. 1978); U.S. v. 295.90 Acres of Land, More or Less, in Lee County, State of Fla., 368 F. Supp. 1301 (M.D. Fla. 1974), aff'd, 510 F.2d 1406 (5th Cir. 1975) and aff'd, 510 F.2d 1406 (5th Cir. 1975).

n9 Schultz v. Winther, 10 Wis. 2d 1, 101 N.W.2d 631 (1960).

n10 Lee Wilson & Co. v. U. S., 245 U.S. 24, 38 S. Ct. 21, 62 L. Ed. 128 (1917); State v. Nichols, 241 Iowa 952, 44 N.W.2d 49 (1950).

n11 Gauthier v. Morrison, 232 U.S. 452, 34 S. Ct. 384, 58 L. Ed. 680 (1914); Strecker v. Goertzen, 128 Colo. 600, 265 P.2d 696 (1954).

n12 Sokol v. Kennedy, 210 F.3d 876 (8th Cir. 2000).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]19, 22 to 28

43 U.S.C.A. §§ 31, 31a, 52, 315 to 316o, 751 to 774, 1061, 1062, 1065, 1711

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63C Am Jur 2d Public Lands § 23

§ 23 Island boundaries

If the government has not made any reservations in its grant of public lands, a riparian owner on a navigable river cannot take title to islands in the river by way of his or her ownership of the riparian tract. n1  A riparian owner on a lake does, however, take title to any unsurveyed islands that fall within the area bounded by lines drawn from the edges of the riparian tract to the center of the lake, without regard to the lake's navigability. n2  If the government chooses not to survey an island, a riparian owner's title to that island is superior to anyone else's title, except perhaps that of the government. n3

If, under state law, a grant of land bounded by a navigable or nonnavigable stream carries to the center of the thread, a patent from the United States describing the land as bounded by the stream carries with it title to islands lying between the mainland and the thread of the current. n4  If the survey and a map made part of the survey expressly excluded an island within a bay that is almost covered at high tide, the island is not included in a patent for a private land claim, even if the exterior lines of the survey made under the decree of confirmation included the whole bay. n5  When the mainland and an island in a nonnavigable river are separately surveyed and sold to different persons, the grantees of the mainland do not acquire the island and can claim only to the center or thread of the stream. n6

Title to islands in unsurveyed navigable tidal waters remains in the United States, although ownership of the bed underlying those waters is determined according to state law. n7

 **FOOTNOTES:**

n1 Wheeler v. U.S., 770 F. Supp. 1205 (W.D. Mich. 1991), judgment aff'd, 967 F.2d 222 (6th Cir. 1992).

As to reservations in grants of public land, see § 31.

n2 Wheeler v. U.S., 770 F. Supp. 1205 (W.D. Mich. 1991), judgment aff'd, 967 F.2d 222 (6th Cir. 1992).

n3 Wheeler v. U.S., 770 F. Supp. 1205 (W.D. Mich. 1991), judgment aff'd, 967 F.2d 222 (6th Cir. 1992).

As to the omission of an island in a navigable stream from a public lands survey, see Am. Jur. 2d, Waters § 340.

n4 U.S. v. Chandler-Dunbar Water Power Co., 209 U.S. 447, 28 S. Ct. 579, 52 L. Ed. 881 (1908).

n5 De Guyer v. Banning, 167 U.S. 723, 17 S. Ct. 937, 42 L. Ed. 340 (1897).

As to the law of accretion as applied to islands, see Am. Jur. 2d, Waters § 320.

n6 Wiggenhorn v. Kountz, 23 Neb. 690, 37 N.W. 603 (1888).

n7 Wheeler v. U.S., 770 F. Supp. 1205 (W.D. Mich. 1991), judgment aff'd, 967 F.2d 222 (6th Cir. 1992).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]19, 22 to 28

43 U.S.C.A. §§ 31, 31a, 52, 315 to 316o, 751 to 774, 1061, 1062, 1065, 1711

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63C Am Jur 2d Public Lands § 24

§ 24 Unlawful inclosures

Inclosures of public lands are prohibited when made by persons who do not have a good faith claim or color of title, or who have not asserted a right to a claim or color of title in good faith with a view to entry of the right under federal law when making the inclosure. n1

An inclosure is unlawful when a person constructs a fence inclosing his or her own lands with the intention of inclosing public lands. n2  The free passage guaranteed by the statute is not limited to people. n3  Even an inclosure that restricts the passage of animals only is subject to a prohibition of inclosures. n4  A fence that does not obstruct other lawful uses of federal lands is not, however, an unlawful inclosure. n5

An owner of cattle who wishes merely to exercise the right of pasturing them on public lands suffers no special injury by a private citizen's wrongful fencing of the land and is not entitled to equitable relief. n6  It has also been noted that federal law relating to grazing lands n7  does not implicitly repeal that relating to the unlawful inclosure of public land. n8

Violations are subject to criminal prosecution n9  or a civil suit in the name of the United States. n10  Further, the President may take necessary measures to remove and destroy unlawful inclosures of public lands and may employ civil and military force as necessary for that purpose. n11

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1061.

n2 Potts v. U.S., 114 F. 52 (C.C.A. 9th Cir. 1902).

As to proceedings to enjoin unlawful inclosures on public lands, see Federal Procedure, L.Ed. §§ 66:482 to 66:488.

n3 U.S. ex rel. Bergen v. Lawrence, 848 F.2d 1502 (10th Cir. 1988).

n4 U.S. ex rel. Bergen v. Lawrence, 620 F. Supp. 1414 (D. Wyo. 1985), order aff'd, 848 F.2d 1502 (10th Cir. 1988).

As to grazing districts, generally, see § 87.

n5 U.S. ex rel. Bergen v. Lawrence, 848 F.2d 1502 (10th Cir. 1988).

n6 Anthony Wilkinson Live Stock Co. v. McIlquam, 14 Wyo. 209, 83 P. 364 (1905).

n7 43 U.S.C.A. §§ 315 to 316o.

As to grazing and pasturage rights, generally, see § 87.

n8 U.S. ex rel. Bergen v. Lawrence, 620 F. Supp. 1414 (D. Wyo. 1985), order aff'd, 848 F.2d 1502 (10th Cir. 1988) (referring to 43 U.S.C.A. §§ 1061 to 1066).

n9 § 109.

n10 43 U.S.C.A. § 1062.

n11 43 U.S.C.A. § 1065.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]19, 22 to 28

43 U.S.C.A. §§ 31, 31a, 52, 315 to 316o, 751 to 774, 1061, 1062, 1065, 1711

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III. Governmental Authority and Management

C. Land-Use Planning

63C Am Jur 2d Public Lands § 25

§ 25 Land-use plans

As a matter of policy, Congress has determined that the national interest is best served by addressing the present and future use of public lands through a land-use planning process coordinated with other federal and state planning efforts. n1  Accordingly, the Secretary of the Interior is required with public involvement to develop, maintain, and, when appropriate, revise land-use plans that provide by tracts or areas for the use of the public lands. n2  Land-use plans are to be developed regardless of whether the public lands involved have been classified, withdrawn, set aside, or otherwise designated for one or more uses. n3  The land-use planning process may review a classification of public lands, an existing land-use plan, and all public lands that may be included in a land-use plan. n4  Public lands are to be retained in federal ownership, unless it is determined, following the land-use planning procedure, that disposal of a particular parcel would serve the national interest. n5

A moratorium on development imposed during the process of devising a comprehensive land-use plan does not constitute a per-se taking of property requiring compensation under the Takings Clause. n6

Prior to authorizing a seismic petroleum exploration project, the Bureau of Land Management is required by the National Historic Preservation Act to identify on-site historic properties and the adverse effects of the project on those properties. n7

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1701(a)(2).

n2 43 U.S.C.A. § 1712(a).

As to land-use hearings, see § 27.

n3 43 U.S.C.A. § 1712(a).

As to the withdrawal of public lands, see § 31.

n4 43 U.S.C.A. § 1712(d).

As to boundaries ascertained in land-use planning, see § 16.

N5 § 40.

n6 Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302, 122 S. Ct. 1465, 152 L. Ed. 2d 517, 10 A.L.R. Fed. 2d 681 (2002).

n7 Southern Utah Wilderness Alliance v. Norton, 326 F. Supp. 2d 102 (D.D.C. 2004).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7 to 20

43 U.S.C.A. §§ 1701, 1702, 1711, 1712

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]7 to 20

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Public Lands

III. Governmental Authority and Management

C. Land-Use Planning

63C Am Jur 2d Public Lands § 26

§ 26 Inventory

Congress has determined, as a matter of policy, that it is in the national best interest to have a periodic, systematic inventory of public lands and their resources. n1  The Secretary of the Interior must continually prepare and maintain an inventory of all public lands and their resources and other values, including outdoor recreation and scenic values, and must give priority to areas of critical environmental concern. n2  In order to be kept current, the inventory should reflect changes in conditions and identify new, emerging resources and other values. n3  The preparation and maintenance of an inventory or the identification of areas should not alone change, or prevent the change of, the management or use of public lands. n4  Areas of critical environmental concern are areas within the public lands that require special management attention to protect life and safety from natural hazards and to prevent irreparable damage to fish and wildlife resources, other natural systems or processes, and important historic, cultural, or scenic values, when the areas are developed or used or when no development is required. n5

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1701(a)(2).

n2 43 U.S.C.A. § 1711(a).

n3 43 U.S.C.A. § 1711(a).

n4 43 U.S.C.A. § 1711(a).

n5 § 28.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7 to 20

43 U.S.C.A. §§ 1701, 1702, 1711, 1712

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III. Governmental Authority and Management

C. Land-Use Planning

63C Am Jur 2d Public Lands § 27

§ 27 Hearing; notice

"Public involvement" in the land-use planning process is defined as the opportunity of affected citizens to participate in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held near the affected lands, advisory mechanisms, or other procedures necessary to provide public comment in a particular instance. n1  The Secretary of the Interior is required to notify the public and federal, state, and local governments and also to afford an opportunity to participate in forming plans and programs relating to the management of public lands. n2

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1702(d).

n2 43 U.S.C.A. § 1712(f).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7 to 20

43 U.S.C.A. §§ 1701, 1702, 1711, 1712

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III. Governmental Authority and Management

C. Land-Use Planning

63C Am Jur 2d Public Lands § 28

§ 28 Criteria of land-use planning

Generally, the land-use planning procedure determines whether the disposal of particular parcels of land will serve the national interest. n1  Pursuant to the policy that goals and objectives are to be established by law as guidelines for public land-use planning, n2  certain criteria must be considered in developing and revising land-use plans. Specifically, the Secretary of the Interior must: n3

.use and observe the principles of multiple use and sustained yield n4

.use a systematic, interdisciplinary approach to achieve an integrated consideration of physical, biological, economic, and other sciences

.give priority to the designation and protection of areas of critical environmental concern

.rely on the inventory of public lands, resources on the lands, and other values to the extent available

.consider the present and potential uses of public lands

.consider the relative scarcity of the values involved and the availability of alternate means, including recycling, and sites for realizing those values

.weigh long-term benefits to the public against short-term benefits

.provide for compliance with applicable state and federal pollution control laws

.coordinate the land-use inventory, planning, and management activities of lands within the land-use planning and management programs of other federal departments and agencies, of the states and local governments where the lands are located, and of Native American tribes

In developing and revising land-use plans for lands in the National Forest System, the Secretary of Agriculture must coordinate with the land-use planning and management programs of, and for, Native American tribes by, among other things, considering the approved policies of tribal land resource management programs. n5

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1701(a)(1).

n2 43 U.S.C.A. § 1701(a)(7).

n3 43 U.S.C.A. § 1712(c).

As to the definition of areas of critical environmental concern, see § 26.

n4 § 29.

n5 43 U.S.C.A. § 1712(b).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7 to 20

43 U.S.C.A. §§ 1701, 1702, 1711, 1712

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]7 to 20

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III. Governmental Authority and Management

C. Land-Use Planning

63C Am Jur 2d Public Lands § 29

§ 29 Multiple use; sustained yield

In the development and revision of land-use plans, the Secretary of the Interior must use and observe the principles of multiple-use and sustained yield. n1  "Sustained yield" means perpetually achieving and maintaining a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use. n2  "Multiple use" means: n3

.managing public lands and their various resource values for use in the combination that best meets the present and future public needs

.making the most judicious use of the land for some or all of the resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use in order to conform to changing needs and conditions

.the use of some land for less than all of the resources

.a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historical values

.the harmonious and coordinated management of the various resources without permanently impairing the productivity of the land and the quality of the environment, in consideration of the relative values of the resources and not necessarily the combination of uses that will give the greatest economic return or the greatest unit output

However, not all resource uses on a given parcel of land need be permitted. n4

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1712(c)(1).

As to multiple-use objectives of forest management, see § 86.

n2 43 U.S.C.A. § 1702(h).

n3 43 U.S.C.A. 1702(c).

n4 Headwaters, Inc. v. Bureau of Land Management, Medford Dist., 914 F.2d 1174 (9th Cir. 1990).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7 to 20

43 U.S.C.A. §§ 1701, 1702, 1711, 1712

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III. Governmental Authority and Management

C. Land-Use Planning

63C Am Jur 2d Public Lands § 30

§ 30 Plan implementation; modification

Management decisions issued by the Secretary of the Interior to implement land-use plans may be reconsidered, modified, and terminated. n1  Congress may also review a reconsideration, modification, or termination that excludes one or more of the principal or major uses for two or more years with respect to a tract of land of 100,000 acres or more. n2

With some qualifications, management decisions may be carried out by a withdrawal. n3

In assessing potential deleterious effects of a management plan for a particular wildlife preserve, the anticipated deleterious effects cannot be answered by a general reliance on the broad mandate of the National Forest Management Act to protect overall diversity, because the specially designated species of game animals and birds in the Act creating that wildlife preserve might drop out in such a balancing of collective interest. n4

Where the implementation by the Forest Service of an historic preservation plan for an historic landmark amounts to a nonsignificant change to the forest plan, the Forest Service is not required to allow for meaningful public participation under the National Forest Management Act when considering implementation. n5

 **FOOTNOTES:**

n1 43 U.S.C.A. 1712(e)(1).

n2 43 U.S.C.A. § 1712(e)(2).

n3 § 31.

n4 Sierra Club-Black Hills Group v. U.S. Forest Service, 259 F.3d 1281 (10th Cir. 2001).

n5 Wyoming Sawmills, Inc. v. U.S. Forest Service, 179 F. Supp. 2d 1279 (D. Wyo. 2001), judgment aff'd, 383 F.3d 1241 (10th Cir. 2004).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7 to 20

43 U.S.C.A. §§ 1701, 1702, 1711, 1712

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Public Lands

III. Governmental Authority and Management

D. Withdrawal or Reservation of Public Lands

63C Am Jur 2d Public Lands § 31

§ 31 Generally

It is the policy of the United States that Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate federal lands for specified purposes, and furthermore that Congress delineate the extent to which the executive department may withdraw lands without legislative action. n1  Congress may withdraw public lands from sale or public acquisition n2  or reserve lands for public use, n3  and a grantee or patentee assumes title subject to any reservations. n4  Public land is withdrawn when the government withholds an area of federal land from settlement, sale, location, or entry under some or all of the general land laws in order to limit activities. n5  Such withdrawal maintains other public values in the area or reserves the area for a particular public purpose or program. n6  Withdrawal also occurs by the transfer of jurisdiction over an area of federal land, other than property governed by the Federal Property and Administrative Services Act, from one department, bureau, or agency to another department, bureau, or agency. n7  Patents for lands west of the 100th meridian must reserve a right of way for ditches or canals constructed by authority of the United States. n8

The Secretary of the Interior may make withdrawals and may delegate the withdrawal authority to persons in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate. n9  The Secretary of the Interior cannot make a withdrawal created by an act of Congress or make a withdrawal that can be made only by an act of Congress. n10

Land that has been reserved for the use of the United States or any of the states generally cannot be entered or sold. n11  If a tract of public land is lawfully withdrawn, reserved, or appropriated to a public purpose, a subsequent law or proclamation will be construed as not including the tract, even if no exception is made. n12

A Presidential proclamation designating a national forest as a national monument pursuant to the Antiquities Act does not withdraw the land from the national forest system and does not violate the National Forest Management Act. n13

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1701(a)(4).

As to congressional authority over public lands under the Property Clause of the United States Constitution, see § 7.

n2 Mason v. U.S., 260 U.S. 545, 43 S. Ct. 200, 67 L. Ed. 396 (1923); Lutzenhiser v. Udall, 432 F.2d 328 (9th Cir. 1970).

n3 State v. Gibbs, 234 N.C. 259, 66 S.E.2d 883 (1951).

As to the reservation of rights of way, see § 53.

As to extractive rights in gas and oil lands belonging to the United States, generally, see Am. Jur. 2d, Gas and Oil § 259.

As to the granting of oil and gas leases on submerged land of the Outer Continental Shelf, see Am. Jur. 2d, Gas and Oil §§ 281 to 290.

As to public lands available for mining, generally, see Am. Jur. 2d, Mines and Minerals §§ 21 to 27.

n4 Wiltbank v. Lyman Water Co., 13 Ariz. App. 485, 477 P.2d 771 (Div. 1 1970).

n5 43 U.S.C.A. § 1702(j).

A tract of public land lawfully withdrawn, reserved, or appropriated to any public purpose becomes severed from the mass of public lands. U.S. v. State of Minnesota, 270 U.S. 181, 46 S. Ct. 298, 70 L. Ed. 539 (1926).

n6 43 U.S.C.A. § 1702(j).

Management decisions may be carried out by a withdrawal, 43 U.S.C.A. § 1712(e)(3).

n7 43 U.S.C.A. § 1702(j).

n8 43 U.S.C.A. § 945.

n9 43 U.S.C.A. § 1714(a).

As to the federal regulations governing land withdrawals of the United States, see 43 C.F.R. Part 2300.

As to judicial review of a withdrawal decision, see § 131.

n10 43 U.S.C.A. § 1714(j).

n11 Federal Power Commission v. State of Or., 349 U.S. 435, 75 S. Ct. 832, 99 L. Ed. 1215 (1955); Opinion of the Justices, 308 A.2d 253 (Me. 1973).

n12 U.S. v. State of Minnesota, 270 U.S. 181, 46 S. Ct. 298, 70 L. Ed. 539 (1926); State v. City of Tampa, 88 Fla. 196, 102 So. 336 (1924).

n13 Tulare County v. Bush, 185 F. Supp. 2d 18 (D.D.C. 2001), aff'd, 306 F.3d 1138 (D.C. Cir. 2002).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7, 47 to 50

43 U.S.C.A. §§ 156, 945, 1701, 1702, 1712, 1714, 1768

43 C.F.R. Part 2300

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Public Lands

III. Governmental Authority and Management

D. Withdrawal or Reservation of Public Lands

63C Am Jur 2d Public Lands § 32

§ 32 Agency approval

With regard to lands under the administration of a department or agency other than the Department of the Interior, the Secretary of the Interior may make withdrawals only with the consent of the head of the department or agency concerned, except in the case of emergency withdrawals. n1

Uniform procedures for any disposal of public land require that each disposal be consistent with the prescribed mission of the department or agency involved and that it reserve to Congress the power to review disposals in excess of a specified acreage. n2

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1714(i).

As to emergency withdrawals, see § 36.

n2 § 40.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7, 47 to 50

43 U.S.C.A. §§ 156, 945, 1701, 1702, 1712, 1714, 1768

43 C.F.R. Part 2300

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Public Lands

III. Governmental Authority and Management

D. Withdrawal or Reservation of Public Lands

63C Am Jur 2d Public Lands § 33

§ 33 Hearing; notice of application or proposal

Within 30 days of receiving an application for withdrawal or whenever the Secretary of the Interior proposes a withdrawal, he or she must publish in the Federal Register a notice of the application or proposal and the extent to which the land is to be segregated, while the application is being considered. n1  Upon publication of the notice, the land is segregated from the operation of the public land laws to the extent specified in the notice. n2  The segregative effect of the application terminates upon the Secretary of the Interior's rejection of the application, the withdrawal of lands by the Secretary of the Interior, or the expiration of two years from the date of the notice. n3

Except for emergency withdrawals, all new withdrawals made by the Secretary of the Interior must be promulgated after a public hearing. n4

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1714(b)(1).

n2 43 U.S.C.A. § 1714(b)(1).

n3 43 U.S.C.A. § 1714(b)(1).

n4 43 U.S.C.A. § 1714(h).

As to emergency withdrawals, see § 36.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7, 47 to 50

43 U.S.C.A. §§ 156, 945, 1701, 1702, 1712, 1714, 1768

43 C.F.R. Part 2300

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Public Lands

III. Governmental Authority and Management

D. Withdrawal or Reservation of Public Lands

63C Am Jur 2d Public Lands § 34

§ 34 Modification, extension, or revocation; limitations

The Secretary of the Interior may modify, extend, or revoke withdrawals and may delegate such authority to persons in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate. n1  At the end of the specified withdrawal period, the Secretary of the Interior must review existing withdrawals n2  and extensions n3  and may grant a necessary extension or a further extension for the length of the original withdrawal period. n4  An extension is to be granted only to accomplish the purpose of the original withdrawal and cannot be granted to accomplish the purpose of a modification. n5  The Secretary of the Interior cannot modify or revoke a withdrawal created by an act of Congress or a withdrawal previously made under other specified federal statutes. n6  The Secretary of the Interior may not modify or revoke a withdrawal creating national monuments or adding lands to the National Wildlife Refuge System. n7  With regard to lands under the administration of a department or agency other than the Department of the Interior, the Secretary of the Interior may modify or revoke withdrawals only with the consent of the head of the department or agency concerned, except in the case of emergency withdrawals. n8

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1714(a).

n2 43 U.S.C.A. §§ 1714(f), (l).

n3 43 U.S.C.A. § 1714(f).

n4 43 U.S.C.A. § 1714(f).

As to the extension of emergency withdrawals, see § 36.

n5 State of N.M. v. Watkins, 969 F.2d 1122 (D.C. Cir. 1992).

n6 43 U.S.C.A. § 1714(j).

n7 43 U.S.C.A. § 1714(j).

n8 43 U.S.C.A. § 1714(i).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7, 47 to 50

43 U.S.C.A. §§ 156, 945, 1701, 1702, 1712, 1714, 1768

43 C.F.R. Part 2300

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III. Governmental Authority and Management

D. Withdrawal or Reservation of Public Lands

63C Am Jur 2d Public Lands § 35

§ 35 Congressional consent for withdrawals

The statutory procedure for withdrawals requires the approval of both the House and the Senate for aggregate withdrawals of 5,000 acres or more. n1  The Secretary of the Interior may make a withdrawal aggregating less than 5,000 acres on his or her own motion or upon request by a department or agency head. n2

The Department of Defense cannot withdraw from settlement, location, sale, or entry more than 5,000 acres of public land without congressional approval. n3

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1714(c).

n2 43 U.S.C.A. § 1714(d).

n3 43 U.S.C.A. § 156.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7, 47 to 50

43 U.S.C.A. §§ 156, 945, 1701, 1702, 1712, 1714, 1768

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III. Governmental Authority and Management

D. Withdrawal or Reservation of Public Lands

63C Am Jur 2d Public Lands § 36

§ 36 Emergency withdrawals

When an emergency situation requires that extraordinary measures be taken to preserve values that would otherwise be lost, the Secretary of the Interior must immediately make a withdrawal and file notice of it with House and Senate committees. n1  The determination that an emergency situation exists and that extraordinary measures are needed is made by the Secretary of the Interior or by notification to the Secretary of the Interior by specified congressional committees. n2  The withdrawal may not exceed three years and may be extended only as specified by law. n3  Such a withdrawal does not require the preparation of an environmental impact statement. n4

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1714(e).

n2 43 U.S.C.A. § 1714(e).

n3 43 U.S.C.A. § 1714(e).

n4 State of Alaska v. Carter, 462 F. Supp. 1155 (D. Alaska 1978).

As to environmental impact statements, generally, see Am. Jur. 2d, Pollution Control §§ 104 to 116.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7, 47 to 50

43 U.S.C.A. §§ 156, 945, 1701, 1702, 1712, 1714, 1768

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III. Governmental Authority and Management

D. Withdrawal or Reservation of Public Lands

63C Am Jur 2d Public Lands § 37

§ 37 Conveyance of lands subject to right of way

Lands covered in whole or in part by a right of way may be conveyed subject to the right of way. n1  If the Secretary of the Interior or the Secretary of Agriculture determines that federal control over the right of way is necessary: (1) to carry out the purposes of the statute; (2) to comply with the right of way's terms and conditions; or (3) to protect the lands, he or she must reserve to the United States the portion of the lands within the right of way or must convey the lands, including the portion within the right of way, subject to the right of way. n2  In such circumstances, there must also be a reservation of a federal right to enforce any terms and conditions of the right of way, including the right to collect rents and to renew or extend the right of way upon its termination. n3  The title covered by the conveyance remains subject to the right of way until the government specifically cancels the easement. n4

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1768.

n2 43 U.S.C.A. § 1768.

n3 43 U.S.C.A. § 1768.

n4 Southern Idaho Conference Ass'n of Seventh Day Adventists v. U. S., 418 F.2d 411 (9th Cir. 1969).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7, 47 to 50

43 U.S.C.A. §§ 156, 945, 1701, 1702, 1712, 1714, 1768

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Public Lands

III. Governmental Authority and Management

E. Federal Acquisition of Public Lands; Exchanges

63C Am Jur 2d Public Lands § 38

§ 38 Generally

Congress has the power to acquire land in aid of other congressional powers. n1  Further, the Secretary of the Interior has specific authorization to acquire lands or interests in lands by purchase, exchange, donation, or eminent domain. n2  The power of eminent domain may be exercised only to secure access to public lands, and the acquired lands must be confined to as narrow a corridor as is necessary to provide access. n3  Upon acceptance of title, lands and interests in land acquired by the Secretary of the Interior become public lands and remain public lands for the administration of public land laws. n4

Acquired lands or interests in land within a grazing district become a part of that district. n5  Within the National Forest System, such lands or interests in land may be transferred to the Secretary of Agriculture and then become National Forest System lands. n6  The Secretary of Agriculture is authorized to acquire access over nonfederal lands for access to units of the National Forest System. n7  Upon acceptance of title, lands and interests in lands acquired by the Secretary of Agriculture become National Forest System lands. n8  The Secretary of Agriculture also may acquire privately owned land within an area designated as wilderness, if the owner concurs in the acquisition or if Congress specifically authorizes the acquisition. n9

The Federal Land Transaction Facilitation Act provides for the identification and decisionmaking criteria regarding the disposal of public lands and identification and acquisition of inholdings and other land that would improve the resource management ability of land management agencies and adjoining landowners, while allowing for the least disruption of existing land and resource management programs. n10

 **FOOTNOTES:**

n1 Utah Div. of State Lands v. U.S., 482 U.S. 193, 107 S. Ct. 2318, 96 L. Ed. 2d 162 (1987).

n2 43 U.S.C.A. § 1715(a).

As to the federal regulations governing exchanges of land by the United States, see 43 C.F.R. Group 2200.

As to the right of a state or city to take by eminent domain land owned by the United States and devoted to governmental uses, see Am. Jur. 2d, Eminent Domain § 89.

As to eminent domain proceedings involving property devoted to public use, see Am. Jur. 2d, Eminent Domain §§ 103 to 109.

n3 43 U.S.C.A. § 1715(a).

n4 43 U.S.C.A. § 1715(c).

n5 43 U.S.C.A. § 1715(c).

As to the grazing and pasturage rights, generally, see § 87.

n6 43 U.S.C.A. § 1715(c).

As to forest lands, generally, see § 82.

n7 43 U.S.C.A. § 1715(a).

n8 43 U.S.C.A. § 1715(d).

n9 16 U.S.C.A. § 1134(c).

As to wilderness areas, generally, see § 77.

n10 43 U.S.C.A. §§ 2301 to 2306.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7

16 U.S.C.A. § 1134

43 U.S.C.A. §§ 1715 to 1717, 2301 to 2306

43 C.F.R. Part 2200

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A.L.R. Digest, Public Lands § 7

West's Key Number Digest, Public Lands [westkey]7

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Public Lands

III. Governmental Authority and Management

E. Federal Acquisition of Public Lands; Exchanges

63C Am Jur 2d Public Lands § 39

§ 39 Exchange of public land for nonpublic land

A tract of public land, or an interest in it, generally may be exchanged for nonfederal lands or interests in the same state. n1  Before making an exchange, the Secretary of the Interior must determine that the exchange will serve the public interest in light of federal, state, and local needs. n2  It also must be determined in advance that the public value of retaining the existing federal ownership of the public land does not outweigh the public value gained by acquiring the nonfederal land. n3  In addition, consideration must be given to improved federal land management and the needs of the state and its citizens. n4  The latter includes the need for land for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife. n5  With respect to land or a property interest within the National Forest System, the Secretary of Agriculture has authority equivalent to that to the Secretary of the Interior. n6

A cash payment may equalize a difference in the monetary values of the exchanged lands, as long as the payment does not exceed 25% of the value of the public land or the interests conveyed. n7

Uniform, statutory procedures for the exchange of public lands for nonfederal lands require that each exchange be consistent with the prescribed mission of the department or agency involved and that it reserve to Congress the authority to review disposals that exceed a specified acreage. n8  Public land may not be disposed of by exchange to a noncitizen or to a corporation that is not subject to state or federal law. n9  Further, appropriate state and local government units must be given 60 days' notice of any conveyance of public land. n10

State law and common-law principles may restrict a state's exchange of public lands. n11

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1716(a).

n2 43 U.S.C.A. § 1716(a).

n3 43 U.S.C.A. § 1716(a).

n4 43 U.S.C.A. § 1716(a).

n5 43 U.S.C.A. § 1716(a).

n6 43 U.S.C.A. § 1716(a).

As to forest lands, generally, see § 82.

n7 43 U.S.C.A. § 1716(b).

n8 43 U.S.C.A. § 1701(a)(10).

n9 43 U.S.C.A. § 1717.

n10 § 42.

n11 Tuten v. City of Brunswick, 262 Ga. 399, 418 S.E.2d 367 (1992).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]7

16 U.S.C.A. § 1134

43 U.S.C.A. §§ 1715 to 1717, 2301 to 2306

43 C.F.R. Part 2200

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Public Lands

III. Governmental Authority and Management

F. Disposal and Sale

1. In General

63C Am Jur 2d Public Lands § 40

§ 40 Disposal

In public lands law, "disposal" commonly refers to the final, irrevocable act by which the right of a person, purchaser, or grantee attaches and an equitable right becomes complete to receive legal title by patent or some other appropriate mode of transfer. n1  Under the Property Clause, Congress has the absolute right to prescribe the manner in which the federal government's property is transferred. n2  Congress may dispose of public lands by making a grant under federal law or by treaty. n3  Congress may divest the government of a portion of the public lands by transferring the portion to an individual or by making the issuance of a patent necessary to achieve that object. n4  An act of Congress making a grant is to be treated as both a law and a grant. n5  Executive power to convey any interest in public lands must be traced to some congressional delegation of authority. n6

It is the policy of the United States that any disposal of public land take place according to uniform statutory procedures that require each disposal to be consistent with the prescribed mission of the department or agency involved and that reserve to Congress the power to review disposals in excess of a specified acreage. n7  Generally, the land-use planning procedure determines whether the disposal of particular parcels of land will serve the national interest. n8  Public lands are to be retained in federal ownership, unless it is determined, following the land-use planning procedure, that disposal of a particular parcel would serve the national interest. n9

The Federal Land Transaction Facilitation Act provides for the identification and decisionmaking criteria regarding the disposal of public lands, and identification and acquisition of inholdings and other land that would improve the resource management ability of land management agencies and adjoining landowners, while allowing for the least disruption of existing land and resource management programs. n10

 **FOOTNOTES:**

n1 Assiniboine & Sioux Tribes v. Nordwick, 378 F.2d 426 (9th Cir. 1967).

As to patents for public lands, generally, see § 48.

As to grants of public lands to states and municipalities, generally, see § 56.

As to the granting of public land to railroads, see Am. Jur. 2d, Railroads §§ 34, 35.

n2 In re Supreme Beef Processors, Inc., 468 F.3d 248 (5th Cir. 2006).

n3 U.S. v. Winans, 198 U.S. 371, 25 S. Ct. 662, 49 L. Ed. 1089 (1905); Edwards v. Carter, 580 F.2d 1055 (D.C. Cir. 1978).

As to congressional authority with respect to public lands, generally, see § 7.

n4 Baker v. U.S., 27 F.2d 863 (C.C.A. 1st Cir. 1928); Boatner v. Ventress, 8 Mart. (n.s.) 644, 1830 WL 2417 (La. 1830).

n5 Wisconsin Cent. R. Co. v. Forsythe, 159 U.S. 46, 15 S. Ct. 1020, 40 L. Ed. 71 (1895); Leo Sheep Co. v. U.S., 570 F.2d 881 (10th Cir. 1977), judgment rev'd on other grounds, 440 U.S. 668, 99 S. Ct. 1403, 59 L. Ed. 2d 677 (1979).

n6 Donahue v. Butz, 363 F. Supp. 1316 (N.D. Cal. 1973).

n7 43 U.S.C.A. § 1701(a)(10).

As to the federal regulations governing the sale of public lands, see 43 C.F.R. Part 2710.

n8 § 28.

n9 43 U.S.C.A. § 1701(a)(1).

n10 43 U.S.C.A. §§ 2301 to 2306.

 **SUPPLEMENT:**

**Cases**

Whatever incidents or rights attach to the ownership of property conveyed by the federal government to railroads can be determined by the States, subject to the condition that their rules do not impair the efficacy of the grants or the use and enjoyment of the property by the grantee. Weiser v. Union Pacific R.R. Co., 2010 UT 4, 247 P.3d 357 (Utah 2010).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

43 C.F.R. Parts 2710, 2740, 2910

43 C.F.R. Subpart 2912

43 C.F.R. Part 2880

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Public Lands

III. Governmental Authority and Management

F. Disposal and Sale

1. In General

63C Am Jur 2d Public Lands § 41

§ 41 Criteria for selling public lands

Generally, a tract of public lands may be sold if the Secretary of the Interior determines from land-use planning that the sale of the tract meets certain criteria. n1  A sale may not concern land in units of the National Wilderness Preservation System, the National Wild and Scenic Rivers Systems, and the National System of Trails. n2  Otherwise, a tract generally may be sold upon a determination that: n3

.the tract is difficult or uneconomic to manage as part of the public lands and is unsuitable for management by another federal department or agency

.the tract was acquired for a specific purpose and is no longer needed for that, or any other, federal purpose

.disposal of the tract will serve important public objectives, including the expansion of communities and economic development, that cannot prudently or feasibly be achieved on nonpublic land and that outweigh the public values served by maintaining the tract in federal ownership

The size of the tract to be sold is determined on the basis of land-use capabilities and development requirements, except that tracts of land chiefly valuable for agriculture may not be larger than necessary to support a family-sized farm. n4

A patent or other document conveying public lands, with the exception of land exchanges, may include terms, covenants, conditions, and reservations that the Secretary of the Interior deems necessary to insure proper land use and to protect the public interest. n5  Such covenants and conditions remain subject to applicable federal, state, and local land-use plans and programs. n6

Public lands may be sold only to citizens or to corporations that are subject to federal or state law. n7  Federal law also prohibits officers, clerks, and employees of the Bureau of Land Management from directly or indirectly purchasing or becoming interested in the purchase of any of the public lands, n8  and there may be a similar prohibition under state law. n9

Observation: Repealing most of the federal homestead laws relating to entry on public lands, n10  the Federal Land Policy and Management Act of 1976 provides for the sale of tracts of public land pursuant to specified criteria and procedures. n11  The Act explicitly did not terminate any valid lease, permit, patent, right of way, or other land-use right or authorization existing prior to the Act's approval. n12

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1713(a).

As to land-use planning, generally, see § 25.

As to the sale of desert lands, see § 45.

n2 43 U.S.C.A. § 1713(a).

n3 43 U.S.C.A. § 1713(a).

n4 43 U.S.C.A. § 1713(e).

n5 43 U.S.C.A. § 1718.

As to patents for public lands, generally, see § 48.

As to land exchanges, see § 39.

n6 43 U.S.C.A. § 1718.

n7 43 U.S.C.A. § 1717.

n8 43 U.S.C.A. § 11.

n9 Williams v. State ex rel. Morrison, 83 Ariz. 34, 315 P.2d 981 (1957).

n10 Act Oct. 21, 1976, Pub. L. 94-579, Title VII § 702, 90 Stat. 2787.

As to a homestead as the privilege extended to family members to continue to live in their home against the claims of creditors, see Am. Jur. 2d, Homestead § 1.

n11 43 U.S.C.A. § 1713(a).

n12 Watt v. Western Nuclear, Inc., 462 U.S. 36, 103 S. Ct. 2218, 76 L. Ed. 2d 400 (1983).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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43 C.F.R. Subpart 2912

43 C.F.R. Part 2880

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Am. Jur. Legal Forms 2d § 212:9 (Application -- To purchase public lands)

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Am. Jur. Legal Forms 2d § 219:32 (Offer and application to purchase state land)

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Public Lands

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1. In General

63C Am Jur 2d Public Lands § 42

§ 42 Notice of contemplated sale to state and federal authorities

Before offering a tract of public land for sale, the Secretary of the Interior must give 60 days' notice to the governor of the state where the tract is located and to appropriate political subdivisions having land-use regulatory jurisdiction. n1  If the size of the tract exceeds 2,500 acres, the Secretary of the Interior must notify Congress of the designation of the tract for sale, and Congress may disapprove the sale within 90 days. n2

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1720.

n2 43 U.S.C.A. § 1713(c).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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Public Lands

III. Governmental Authority and Management

F. Disposal and Sale

1. In General

63C Am Jur 2d Public Lands § 43

§ 43 Sale of lands held in adverse possession; color of title

Although title to public property generally cannot be acquired by adverse possession, n1  public lands held in adverse possession may be purchased. n2  Specifically, the Secretary of the Interior must issue a patent for less than 160 acres of land upon the payment of $ 1.25 or more per acre, if a claimant or the claimant's ancestors or grantors have held a tract of public land in good faith and in peaceful, adverse possession under claim or color of title for more than 20 years, and if valuable improvements have been placed on the land or if some part of it has been reduced to cultivation. n3  If any of the latter conditions is not met, the Secretary of the Interior is not required to sell. n4  If the land concerned is less than 160 acres, the Secretary of the Interior may issue a patent upon the payment of $ 1.25 or more per acre, if a claimant or the claimant's ancestors or grantors have held a tract of public land in good faith and in peaceful, adverse possession under claim or color of title for a period commencing not later than January 1, 1901 and lasting to the date of application, and if they have paid taxes levied on the land by state and local governmental units during that time. n5  If the area held exceeds 160 acres, the Secretary of the Interior may determine which subdivisions not exceeding 160 acres may be patented. n6  Further, if an application to purchase the lands is filed and the required proof is made, the Secretary of the Interior must have the lands appraised. n7

A patent may not be issued for a tract for which there is a conflicting claim adverse to that of the applicant, until the claim is finally adjudicated in the applicant's favor. n8

 **FOOTNOTES:**

n1 Am. Jur. 2d, Adverse Possession § 268.

n2 43 U.S.C.A. § 1068.

As to color of title predicated on a patent for purposes of adverse possession, see Am. Jur. 2d, Adverse Possession § 135.

n3 43 U.S.C.A. § 1068.

n4 Lipscomb v. U.S., 906 F.2d 545 (11th Cir. 1990).

As to a purchaser's entitlement to an improvement on public lands, see § 46.

n5 43 U.S.C.A. § 1068.

n6 43 U.S.C.A. § 1068.

As to patents for public lands, see § 48.

As to extractive rights in gas and oil lands belonging to the United States, see Am. Jur. 2d, Gas and Oil §§ 259 to 306.

As to public lands available for mining, generally, see Am. Jur. 2d, Mines and Minerals §§ 21 to 27.

n7 43 U.S.C.A. § 1068a.

n8 43 U.S.C.A. § 1068.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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Federal Procedural Forms § 55:2 (Notice of pending sale)

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Public Lands

III. Governmental Authority and Management

F. Disposal and Sale

1. In General

63C Am Jur 2d Public Lands § 44

§ 44 Price; competitive bidding

It is the policy of the United States that the federal government should receive the fair market value of the use of the public lands and their resources, unless a statute provides otherwise. n1  The price of public lands may not be less than their fair market value as determined by the Secretary of the Interior. n2  While sales are ordinarily conducted by competitive bidding, the Secretary of the Interior may modify or omit competitive bidding procedures in order to assure an equitable distribution among purchasers or to favor certain potential purchasers or classes of purchasers, such as state or local government entities, adjoining landowners, or users of the land in question. n3  Contiguous landowners having a statutory preference right must be given a right of first refusal at the fair market value of the land. n4

Excess payments under federal law relating to the sale, lease, use, or other disposition of public lands may be refunded. n5

An unsuccessful bidder for the lease of state lands may obtain judicial review. n6

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1701(a)(9).

n2 43 U.S.C.A. § 1713(d).

n3 43 U.S.C.A. § 1713(f).

n4 43 U.S.C.A. § 1722(a).

n5 43 U.S.C.A. § 1735(c).

n6 Alyeska Ski Corp. v. Holdsworth, 426 P.2d 1006 (Alaska 1967).

As to judicial review in public lands cases, generally, see § 125.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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Federal Procedural Forms §§ 55:2, 55:29

West's Key Number Digest, Public Lands [westkey]33, 37

Am. Jur. Pleading and Practice Forms, Public Lands § 25 (Complaint, petition, or declaration -- Taxpayers' action -- To enjoin sale of lands by county commissioners below market price)

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Public Lands

III. Governmental Authority and Management

F. Disposal and Sale

1. In General

63C Am Jur 2d Public Lands § 45

§ 45 Sale of desert land having agricultural value

The Secretary of the Interior may sell desert land of agricultural value. n1

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1713(b).

As to entry on desert lands, generally, see § 80.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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Public Lands

III. Governmental Authority and Management

F. Disposal and Sale

1. In General

63C Am Jur 2d Public Lands § 46

§ 46 Improvements

While a purchaser of public lands from the government is generally entitled to an improvement on the premises, n1  title to an improvement may depend upon whether the improvement is a fixture. n2

 **FOOTNOTES:**

n1 Patterson v. Chaney, 24 N.M. 156, 173 P. 859, 6 A.L.R. 90 (1918).

As the property and estate conveyed by a patent, see § 49.

n2 McCullers v. Johnson, 104 S.W. 502 (Tex. Civ. App. 1907).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

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Am. Jur. Pleading and Practice Forms, Public Lands §§ 15, 16, 20, 23, 25, 26, 28

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F. Disposal and Sale

1. In General

63C Am Jur 2d Public Lands § 47

§ 47 Disclaimer of federal interest in land

The Secretary of the Interior may issue a recordable document disclaiming federal interest in a particular tract of land in order to help remove a cloud on the title to the land, if the Secretary determines that: (1) a record interest of the United States has terminated by operation of law or is invalid; n1  (2) the lands lying between the meander line shown on a plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States; or (3) accreted, relicted, or avulsed lands are not lands of the United States. n2

A person seeking a disclaimer must apply in writing to the Secretary of the Interior and pay the administrative costs involved in issuing the document. n3  The disclaimer may not be issued until at least 90 days after the application is published in the Federal Register. n4

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1745(a).

n2 43 U.S.C.A. § 1745(a).

As to surveys of public lands, see § 14.

n3 43 U.S.C.A. § 1745(b).

n4 43 U.S.C.A. § 1745(b).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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Public Lands

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2. Patents and Grants

63C Am Jur 2d Public Lands § 48

§ 48 Issuance

As the highest evidence of title, n1  a patent is a deed by which the government conveys title to public lands. n2

Definition: A "patent" is a grant made by the government that confers on an individual fee-simple title to public lands. n3

A patent must be issued in order for the fee to public lands to pass from the government. n4  A patent is intended to quiet title to, and to secure the enjoyment of, the land for the patentees and their successors. n5

All federal patents and other documents of conveyance relating to public lands are issued by the Secretary of the Interior. n6  There are requirements with respect to the certifying, sealing, engrossing, recording, and transmission of patents. n7

A "clear list," which is a government list of lands to which title has been cleared to a party, transfers title as effectively as a patent. n8

In a public grant of property, nothing passes by implication, and unless the grant is explicit with regard to the property conveyed, a construction will be adopted which favors the sovereign. n9  Because grants of public lands are instruments to serve the public welfare, they should in all cases receive a reasonable interpretation, consistent with common sense, and with a view to the objects and purposes sought to be accomplished. n10

 **FOOTNOTES:**

n1 Bagnell v. Broderick, 38 U.S. 436, 10 L. Ed. 235, 1839 WL 4293 (1839); File v. State, 593 P.2d 268 (Alaska 1979); Raestle v. Whitson, 119 Ariz. 524, 582 P.2d 170 (1978); Bustamante v. Sena, 92 N.M. 72, 582 P.2d 1285 (1978); Brown v. Northern Hills Regional R.R. Authority, 2007 SD 49, 732 N.W.2d 732 (S.D. 2007).

n2 Green v. Liter, 12 U.S. 229, 3 L. Ed. 545, 1814 WL 2391 (1814) (overruled in part on other grounds by, Inglis v. Trustees of Sailor's Snug Harbor, 28 U.S. 99, 7 L. Ed. 617, 1830 WL 3891 (1830)); Schell v. White, 80 Ariz. 156, 294 P.2d 385 (1956); Dugas v. Powell, 228 La. 748, 84 So. 2d 177 (1955); Ryczkowski v. Chelsea Title & Guaranty Co., 85 Nev. 37, 449 P.2d 261 (1969); Cagle v. Sabine Valley Timber & Lumber Co., 109 Tex. 178, 202 S.W. 942, 6 A.L.R. 1426 (1918).

As to estoppel by a deed of a state or the United States, see Am. Jur. 2d, Deeds § 280.

As to the conveyance of state property, generally, see Am. Jur. 2d, States, Territories, and Dependencies § 67.

n3 People ex rel. Brown v. Tehama County Bd. of Sup'rs, 149 Cal. App. 4th 422, 56 Cal. Rptr. 3d 558 (3d Dist. 2007), as modified, (Apr. 11, 2007).

n4 Johanson v. State of Washington, 190 U.S. 179, 23 S. Ct. 825, 47 L. Ed. 1008 (1903); Schell v. White, 80 Ariz. 156, 294 P.2d 385 (1956); Herrick & Stevens v. Sargent & Lahr, 140 Iowa 590, 117 N.W. 751 (1908), rev'd on other grounds, 221 U.S. 404, 31 S. Ct. 574, 55 L. Ed. 787 (1911); Ski Roundtop, Inc. v. Wagerman, 79 Md. App. 357, 556 A.2d 1144 (1989); Weaver v. Koontz, 1956 OK 256, 301 P.2d 1009 (Okla. 1956).

n5 Grainger v. U. S., 197 Ct. Cl. 1018, 1972 WL 20796 (1972).

As to the presumption in favor of a patent's validity, see § 122.

As to the effect of a patent, generally, see § 49.

n6 43 U.S.C.A. § 15.

As to the Bureau of Land Management, generally, see § 13.

n7 43 U.S.C.A. § 6.

n8 State of Or., By and Through Div. of State Lands v. Bureau of Land Management, Dept. of the Interior, U.S., 676 F. Supp. 1047 (D. Or. 1987), judgment aff'd in part, rev'd in part on other grounds, 876 F.2d 1419, 54 Ed. Law Rep. 430 (9th Cir. 1989).

n9 McFarland v. Kempthorne, 545 F.3d 1106 (9th Cir. 2008), cert. denied, 129 S. Ct. 1582 (2009).

n10 Neal v. Brown, 219 Ariz. 14, 191 P.3d 1030 (Ct. App. Div. 1 2008).

 **SUPPLEMENT:**

**Cases**

A "patent" is a government grant that confers on an individual fee simple title to public lands, or the official document of such a grant. Murphy v. Burch, 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289 (2009).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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West's Key Number Digest, Public Lands [westkey]110 to 117

Am. Jur. Pleading and Practice Forms, Public Lands § 16 (Complaint in federal court -- Contesting validity of defendant's claim to mineral rights in plaintiff's land)

Am. Jur. Pleading and Practice Forms, Public Lands § 20 (Answer in federal court -- Alleging invalidity of plaintiff's mining claim)

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2. Patents and Grants

63C Am Jur 2d Public Lands § 49

§ 49 Property and estate conveyed

As a quitclaim deed, a land patent conveys whatever interest the government has in the soil and the land. n1  However, if the actual number of acres in a patented or titled tract of land exceeds the acreage called for in the original survey upon which the patent was based, the excess acres still belong to the state. n2

A patent may convey fee simple ownership to the patentee, n3  with the exception of covenants and conditions that the Secretary of the Interior may include in a patent or other document conveying public lands. n4  Also excluded are lands and interests which are covered by a prior grant n5  or which have been reserved. n6  After the issuance of a land patent, the government has no more authority than an individual grantor of real property to limit or diminish the rights of the grantee, n7  except by a direct proceeding in a court of competent jurisdiction in which the patentee, as a party, is afforded due process of law. n8

The estate in land granted by the government may depend upon applicable statutory law. n9  In state or federal court, the issue of whether title to land that was once the property of the United States has passed must be resolved by the laws of the United States. n10  It has been held, however, that a state's settled, reasonable rule of construction affords an obvious guide in determining what impliedly passes to a grantee as an incident to land expressly granted by the United States within a state. n11

 **FOOTNOTES:**

n1 Rice v. Minnesota & N. W. R. Co., 66 U.S. 358, 17 L. Ed. 147, 1861 WL 7682 (1861); Energy Transp. Systems, Inc. v. Union Pac. R. Co., 435 F. Supp. 313 (D. Wyo. 1977), judgment aff'd, 606 F.2d 934 (10th Cir. 1979); City of Anchorage v. Nesbett, 530 P.2d 1324 (Alaska 1975); McCeney v. Thibadeau, 215 Md. 77, 137 A.2d 206 (1957); Drainage Dist. No. 48 of Dunklin County v. Small, 318 S.W.2d 497 (Mo. 1958).

As to quitclaim deeds, generally, see Am. Jur. 2d, Deeds §§ 10, 15, 223, 275.

As to the conveyance of state property, generally, see Am. Jur. 2d, States, Territories, and Dependencies § 67.

n2 Valdina Farms, Inc. v. Brown, Beasley & Associates, Inc., 733 S.W.2d 688 (Tex. App. San Antonio 1987).

n3 In re Johnson, 61 B.R. 858 (Bankr. D. S.D. 1986); Britt v. Federal Land Bank Ass'n of St. Louis, 153 Ill. App. 3d 605, 106 Ill. Dec. 81, 505 N.E.2d 387 (2d Dist. 1987).

n4 § 41.

n5 Chandler v. Calumet & Hecla Min. Co., 149 U.S. 79, 13 S. Ct. 798, 37 L. Ed. 657 (1893); Seaboard Air Line Ry. Co. v. Board of Bond Trustees of Special Road and Bridge Dist. No. 1 of Alachua County, 91 Fla. 612, 108 So. 689, 46 A.L.R. 870 (1926).

n6 Danforth's Lessee v. Thomas, 14 U.S. 155, 4 L. Ed. 59, 1816 WL 1778 (1816); Tetlin Native Corp. v. State, 759 P.2d 528 (Alaska 1988).

n7 Bustamante v. Sena, 92 N.M. 72, 582 P.2d 1285 (1978).

n8 Ashley v. Hill, 150 Colo. 563, 375 P.2d 337 (1962).

As to an action to cancel a patent, see § 68.

n9 Com. of Massachusetts v. State of New York, 271 U.S. 65, 46 S. Ct. 357, 70 L. Ed. 838 (1926); Johnson v. Selectmen of Salisbury, 120 Vt. 6, 132 A.2d 423 (1957).

n10 U.S. v. State of Oregon, 295 U.S. 1, 55 S. Ct. 610, 79 L. Ed. 1267 (1935); Cunningham v. Krutz, 41 Wash. 190, 83 P. 109 (1905).

n11 U.S. v. State of Oregon, 295 U.S. 1, 55 S. Ct. 610, 79 L. Ed. 1267 (1935).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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2. Patents and Grants

63C Am Jur 2d Public Lands § 50

§ 50 Relation-back

The policy of federal and state courts is to declare the title in the claimant from the time of entry. n1  When a patent issues to one who has previously made an entry on government land, the patent relates back for all purposes to the time of the original entry, n2  and the patent cuts off all intervening claimants. n3

 **FOOTNOTES:**

n1 Broadhurst v. American Colloid Co., 85 S.D. 65, 177 N.W.2d 261 (1970).

n2 Southern Pacific Transp. Co. v. Watt, 700 F.2d 550 (9th Cir. 1983); Board of County Com'rs of Cheyenne County v. Ritchey, 888 P.2d 298 (Colo. App 1994); Maryland Coal & Realty Co. v. Eckhart, 25 Md. App. 605, 337 A.2d 150 (1975); Broadhurst v. American Colloid Co., 85 S.D. 65, 177 N.W.2d 261 (1970); Walliker v. Escott, 608 P.2d 1272 (Wyo. 1980).

n3 Southern Pacific Transp. Co. v. Watt, 700 F.2d 550 (9th Cir. 1983).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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2. Patents and Grants

63C Am Jur 2d Public Lands § 51

§ 51 Impairment of contract by alteration of grant

A state unconstitutionally impairs an obligation of contract by altering the terms of a grant of public lands to the state, since the grant is viewed as a contract. n1  The "impairment of contracts" provision of the United States Constitution n2  is not violated, however, where --

 -- title to the thing granted was not in the grantor at the time of the grant. n3

 -- the substantial elements of a contract between the claimant and the state are lacking. n4

 -- a statute provides for the foreclosure of a land contract for the nonpayment of the purchase price and limits the defaulting purchaser's time for redemption. n5

 -- a statute merely changes the remedy for the purchaser's nonpayment. n6

 -- a statute accords priority according to date of recordation. n7

 **FOOTNOTES:**

n1 Blair v. City of Chicago, 201 U.S. 400, 26 S. Ct. 427, 50 L. Ed. 801 (1906).

n2 U.S. Const. Art. I, § 10, cl. 1.

n3 Rice v. Minnesota & N. W. R. Co., 66 U.S. 358, 17 L. Ed. 147, 1861 WL 7682 (1861).

n4 Banning Co. v. People of State of Cal., 240 U.S. 142, 36 S. Ct. 338, 60 L. Ed. 569 (1916).

n5 Aikins v. Kingsbury, 247 U.S. 484, 38 S. Ct. 558, 62 L. Ed. 1226 (1918).

n6 Waggoner v. Flack, 188 U.S. 595, 23 S. Ct. 345, 47 L. Ed. 609 (1903).

n7 Jackson ex dem. Hart v. Lamphire, 28 U.S. 280, 7 L. Ed. 679, 1830 WL 3869 (1830).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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2. Patents and Grants

63C Am Jur 2d Public Lands § 52

§ 52 Void patents

While a grant of public lands is presumed to be valid, n1  a void grant conveys nothing, n2  and a grant or patent that is void on its face may be collaterally attacked. n3  Specifically, a patent is void if --

 -- it is to a deceased person. n4

 -- it is directly contrary to governing law. n5

 -- the property is granted under a mistaken notion of the law and without authority. n6

 -- the government does not own the property. n7

 -- the land has previously been reserved, appropriated, or dedicated to uses that preclude its sale. n8

 -- the patent is issued without authority. n9

 -- the patent attempts to convey public property in which the whole people are interested. n10

 **FOOTNOTES:**

n1 § 122.

n2 Sampeyreac v. U.S., 32 U.S. 222, 8 L. Ed. 665, 1833 WL 4211 (1833).

n3 Rice v. Minnesota & N. W. R. Co., 66 U.S. 358, 17 L. Ed. 147, 1861 WL 7682 (1861); Bryant v. Long, 180 So. 2d 22 (La. Ct. App. 3d Cir. 1965); Money v. Wood, 152 Miss. 17, 118 So. 357 (1928).

As to the conveyance of state property, generally, see Am. Jur. 2d, States, Territories, and Dependencies § 67.

n4 Absentee Shawnee Tribe of Indians of Oklahoma v. State of Kan., 862 F.2d 1415 (10th Cir. 1988).

n5 U.S. v. 3.08 Acres of Land, More or Less, in Box Elder County, 209 F. Supp. 652 (D. Utah 1962).

n6 Morris v. U.S., 174 U.S. 196, 19 S. Ct. 649, 43 L. Ed. 946 (1899).

n7 Knight v. United Land Ass'n, 142 U.S. 161, 12 S. Ct. 258, 35 L. Ed. 974 (1891); Davis v. Wiebbold, 139 U.S. 507, 11 S. Ct. 628, 35 L. Ed. 238 (1891); Helton v. Day, 291 S.W.2d 535 (Ky. 1956).

n8 Burfenning v. Chicago, St. P., M. & O. Ry. Co., 163 U.S. 321, 16 S. Ct. 1018, 41 L. Ed. 175 (1896); Whitehill v. Victorio Land & Cattle Co., 18 N.M. 520, 139 P. 184 (1914).

n9 U.S. v. State of Wash., 233 F.2d 811 (9th Cir. 1956); Federal Land Bank of Jackson v. Kennedy, 662 F. Supp. 787 (N.D. Miss. 1987); Zinn v. Hampson, 61 N.M. 407, 301 P.2d 518 (1956).

n10 Heyward v. Farmers' Min. Co., 42 S.C. 138, 19 S.E. 963 (1894).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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3. Rights of Way

63C Am Jur 2d Public Lands § 53

§ 53 Generally

A right of way includes an easement, lease, permit, or license to occupy, use, or traverse public lands granted for an authorized purpose. n1  The Secretary of the Interior may grant, issue, or renew a right of way with respect to public lands for: n2

.reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other similar water facilities

.pipelines and other systems for the transportation or distribution of nonpetroleum gases and liquids

.pipelines, slurry, and emulsion systems, and conveyor belts for the transportation and distribution of solid materials and facilities for the storage of such materials in connection therewith

.systems for the generation, transmission, and distribution of electrical energy

.systems for the transmission or reception of radio, television, telephone, telegraph, or other electronic signals, and other means of communication

.certain roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation, except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System

.other systems or facilities that are in the public interest and that require rights of way over, upon, under, or through such lands

The Secretary of Agriculture has the same authority with respect to lands within the National Forest System. n3  A right of way may be granted, subject to any terms and conditions, by the Secretary of the Interior or the Secretary of Agriculture for access over, under, or through land administered by the relevant secretary. n4  When authority is sought before a federal department or agency other than the Department of the Interior or the Department of Agriculture for a project that involves a right of way through public land or National Forest System lands, the applicant must simultaneously apply to Secretary of the Interior or the Secretary of Agriculture, as is appropriate. n5

The Secretary of the Interior may provide for roads within and near public lands in the interest of maximum economy in harvesting timber. n6

In order to minimize the proliferation and adverse environmental impact of separate rights of way, the use of rights of way in common must be required to the extent practicable. n7  Each right of way must reserve the government's right to grant additional rights of way for compatible uses on, or adjacent to, granted rights of way. n8

The law relating to grazing districts generally does not restrict the acquisition, granting, or use of rights of way within grazing districts under existing law or restrict ingress and egress over public lands in grazing districts for all proper and lawful purposes. n9  Upon application by an owner of land adjacent to a grazing district, the Secretary of the Interior must grant a right of way over lands included in the district for stock-driving purposes as necessary for the owner's convenient access to marketing facilities or to lands not within the district owned by the person and upon which the person has stock-grazing rights. n10

Where the denial of a right-of-way permit merely withholds permission for the applicants to use the government's own land to exploit private water rights and does not physically appropriate or deny meaningful access to the applicants' water rights, the denial does not effect a physical taking of the applicants' property without just compensation. n11

When the United States granted a railroad a right of way under the General Railroad Right of Way Act of 1875, and subsequently patented the underlying land to the property owners' predecessor in interest, the United States did not retain a reversionary interest in the land underlying the right of way, such that when the railroad stopped using the right of way for railroad purposes, the United States as owner of that interest could convert the abandoned right of way into a trail for public recreational use. n12

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1702(f).

n2 43 U.S.C.A. § 1761(a).

As to the federal regulations governing rights of way over public lands, see 43 C.F.R. Group 2800.

As to the United States Attorney General's authority to grant easements or rights of way to states, see § 58.

As to rights of way granted for transporting oil or gas through public lands by a pipeline, see Am. Jur. 2d, Gas and Oil § 261.

As to rights of way relating to railroads, see Am. Jur. 2d, Railroads §§ 40 to 67.

n3 43 U.S.C.A. § 1761(a).

As to forest lands, generally, see § 82.

n4 43 U.S.C.A. § 1767.

n5 43 U.S.C.A. § 1771.

n6 43 U.S.C.A. § 1762(a).

n7 43 U.S.C.A. § 1763.

n8 43 U.S.C.A. § 1763.

n9 43 U.S.C.A. § 315e.

As to grazing rights, generally, see § 87.

n10 43 U.S.C.A. § 315.

n11 Washoe County, Nev. v. U.S., 319 F.3d 1320 (Fed. Cir. 2003).

n12 Beres v. U.S., 64 Fed. Cl. 403 (2005).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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Am. Jur. Pleading and Practice Forms, Public Lands §§ 15, 16, 20, 23, 25, 26, 28

Federal Procedural Forms §§ 55:2, 55:29

West's Key Number Digest, Public Lands [westkey]29

Am. Jur. Legal Forms 2d § 212:18 (Easement for private road over public lands)

Am. Jur. Pleading and Practice Forms, Public Lands § 15 (Petition or application -- For grant of right of way on public land)

Federal Procedural Forms § 55:29 (Application for right of way on public land)

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Public Lands

III. Governmental Authority and Management

F. Disposal and Sale

3. Rights of Way

63C Am Jur 2d Public Lands § 54

§ 54 Terms and conditions of grant or renewal

Rights of way over public lands are to be granted, issued, or renewed pursuant to the Federal Land Policy and Management Act. n1  Specifically, applicants for the issuance or renewal of a right of way must make certain disclosures that are reasonably related to the use or intended use of the right of way, including the effect of the use will have on competition. n2  For a new project that may have a significant impact on the environment, the applicant for a right of way must submit a plan of construction, operation, and rehabilitation for the right of way that complies with the stipulations or regulations issued by the secretary concerned. n3  The applicant must also have the technical and financial capability to construct the project for which the right of way is requested. n4  The boundaries of each right of way must be specified, and the appropriate federal department may permit the temporary use of additional lands that are reasonably necessary for the construction, operation, maintenance, or termination of the project or for access to it. n5

A right of way must be limited to a reasonable term in view of all circumstances, including the cost of the facility, the facility's useful life, and any public purpose that the facility serves. n6  It must also specify whether it is renewable and the applicable terms and conditions. n7

In addition to the statutory terms and conditions of an issued or renewed right of way, other terms and conditions may be included in a right of way as necessary to protect federal property and economic interests and other specified interests. n8  A right of way must contain terms requiring compliance with state standards for public health and safety, environmental protection, siting, construction operation, and the maintenance of or for rights of way for similar purposes if those standards are more stringent than applicable federal standards. n9

The Secretary of the Interior or the Secretary of Agriculture must issue regulations with respect to the terms and conditions to be included in a right of way. n10  The holder of a right of way may be required to furnish a bond or other security to secure obligations imposed by the terms and conditions of the right of way or a rule or regulation of the secretary concerned. n11

An administrative body's interpretation of the terms of a patent, if reasonable, is entitled to deference. n12

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1764(c).

As to the suspension or termination of a right of way, see § 74.

n2 43 U.S.C.A. § 1761(b).

n3 43 U.S.C.A. § 1764(d).

n4 43 U.S.C.A. § 1764(j).

n5 43 U.S.C.A. § 1764(a).

n6 43 U.S.C.A. § 1764(b).

n7 43 U.S.C.A. § 1764(b).

n8 43 U.S.C.A. § 1765(b).

n9 43 U.S.C.A. § 1765(a).

n10 43 U.S.C.A. § 1764(e).

n11 43 U.S.C.A. § 1764(i).

n12 Bolack Minerals Co. v. Norton, 370 F. Supp. 2d 161 (D.D.C. 2005).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

43 C.F.R. Parts 2710, 2740, 2910

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"Compliance with state standards" as requirement to granting right of way over federal public lands under § 505(a)(iv) of the Federal Land Policy and Management Act of 1976 (43 U.S.C.A. § 1765(a)(iv)), "Compliance with state standards" as requirement to granting right-of-way over federal public lands under sec. 505(a)(iv) of the Federal Land Policy and Management Act of 1976 (43 U.S.C.A. sec. 1765(a)(iv), 60 A.L.R. Fed. 386

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63C Am Jur 2d Public Lands § 55

§ 55 Payment for right of way

Generally, the holder of a right of way makes an annual, advance payment of the fair market value of the right of way. n1  Rights of way granted to federal or state agencies or nonprofit entities may, however, be granted or renewed at no charge or at a reduced charge, n2  and this exemption extends to administrative costs incurred in processing the application. n3  An applicant for, or a holder of, a right of way may also be required to reimburse the United States for reasonable administrative and other costs incurred in processing the application and in inspecting and monitoring the construction, operation, and termination of the facility pursuant to the right of way. n4  Such reasonable costs include the actual costs in processing an application for a right of way n5  and the costs of preparing an environmental impact statement. n6

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1764(g).

n2 43 U.S.C.A. § 1764(g).

n3 Beaver, Bountiful, Enterprise v. Andrus, 637 F.2d 749 (10th Cir. 1980).

n4 43 U.S.C.A. § 1764(g).

n5 Colorado-Ute Elec. Ass'n, Inc. v. Watt, 533 F. Supp. 197 (D. Colo. 1982), judgment rev'd in part on other grounds, 711 F.2d 913 (10th Cir. 1983).

n6 Nevada Power Co. v. Watt, 711 F.2d 913 (10th Cir. 1983).

As to environmental impact statements, generally, see Am. Jur. 2d, Pollution Control §§ 104 to 145.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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4. Grants to States, Municipalities, and Nonprofit Associations

a. In General

63C Am Jur 2d Public Lands § 56

§ 56 Generally

An act of Congress granting land to a state is to be treated both as a law and a grant, and the intent of Congress when ascertained is to control in the interpretation of the law n1  for various purposes and on various conditions. Public land has been granted as a water supply, n2  a reservoir for irrigation purposes, n3  for forestry purposes, n4  and for the erection of buildings at a state capital. n5

Following an application and hearing, the Secretary of the Interior may grant to states, territories, counties, municipalities, or nonprofit corporations or associations public lands for recreational or any legitimate public purpose. n6  Disposal may consist of leasing or selling under specified conditions. n7  There are also acreage limitations for conveyances made in any one calendar year. n8  Lands not subject to disposal in this way include national forests, national parks, national monuments, national wildlife refuges, Native American lands, lands set aside or held for the use or benefit of Native Americans, and other specified lands. n9  Furthermore, in some circumstances, the Secretary of the Interior may dispose of land for public or recreational purposes only with the consent of the governmental unit for which the lands were withdrawn. n10

The Secretary of the Interior may classify public lands in Alaska for disposition. n11  Lands so classified may not be appropriated under any other public land law unless the Secretary revises such classification or authorizes the disposition of an interest in the lands under other applicable law. n12  If an application has not been filed for the purpose for which the land has been classified within 18 months following the classification, the lands must be restored to appropriation under the law. n13

Unsurveyed islands on public lands may be conveyed to a state or state political subdivision by the Secretary of the Interior without regard to acreage limitations. n14  Such a conveyance may occur without a survey, although a survey may be made at the request of the applicant state or political subdivision. n15  The conveyance must be consistent with applicable state and local government land-use plans and programs. n16

The law makes special provision for the conveyance of public lands for the express purpose of solid-waste disposal or for the disposal, placement, or release of a hazardous substance. n17

 **FOOTNOTES:**

n1 Wisconsin Cent. R. Co. v. Forsythe, 159 U.S. 46, 15 S. Ct. 1020, 40 L. Ed. 71 (1895).

As to school land grants, see § 60.

As to grants of swamp and overflowed lands, see § 59.

n2 City and County of San Francisco v. U.S., 223 F.2d 737 (9th Cir. 1955).

n3 State ex rel. Interstate Stream Commission v. Reynolds, 71 N.M. 389, 378 P.2d 622 (1963).

As to land grants of desert lands to states for the purpose of reclaiming such lands by irrigation, see Am. Jur. 2d, Irrigation §§ 92 to 102.

n4 Tuttle v. State, 259 Wis. 183, 47 N.W.2d 736 (1951).

n5 Bryant v. Board of Examiners, 130 Mont. 512, 305 P.2d 340 (1956) (overruled in part on other grounds by, State ex rel. Morgan v. State Bd. of Examiners, 131 Mont. 188, 309 P.2d 336 (1957)).

n6 43 U.S.C.A. § 869(a).

As to the federal regulations governing sales and leases of public lands for public or recreational purposes, see 43 C.F.R. Part 2740, 2910.

As to the right to hunt and fish on public lands and waters, see Am. Jur. 2d, Fish, Game, and Wildlife Conservation §§ 8 to 21.

n7 43 U.S.C.A. § 869-1.

n8 43 U.S.C.A. § 869(b).

n9 43 U.S.C.A. § 869(c).

As to forest lands, see § 82.

As to the national park system, generally, see Am. Jur. 2d, Parks, Squares, and Playgrounds § 3.

N10 43 U.S.C.A. § 869(c).

n11 43 U.S.C.A. § 869(a).

n12 43 U.S.C.A. § 869(a).

n13 43 U.S.C.A. § 869(a).

n14 43 U.S.C.A. § 1721(a) (referring to 43 U.S.C.A. §§ 869 to 873).

As to the surveying of islands on public lands, see § 23.

n15 43 U.S.C.A. § 1721(a).

n16 43 U.S.C.A. § 1721(c).

n17 43 U.S.C.A. § 869-2(b).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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a. In General

63C Am Jur 2d Public Lands § 57

§ 57 Conditions attached to grant

Public land granted by the Secretary of the Interior to a state, territory, county, municipality, or nonprofit corporation or association must be used for an established or definitely proposed project, must not be of national significance, and must not exceed the size reasonably necessary for the proposed use. n1  If the land in question exceeds 640 acres, the appropriate state or local authority must adopt comprehensive land-use plans and zoning regulations applicable to the area. n2  The state is charged with knowledge of the extent of its ownership, n3  and conditions attached to a grant must be fulfilled. n4  If a grant is made for specific purposes, the property or its proceeds may not be devoted to other uses. n5  Restrictions on use contained in statutory grants are strictly construed. n6  Title reverts to the United States if, without the consent of the Secretary of the Interior, granted land is devoted to a use other than that for which it was conveyed. n7

 **FOOTNOTES:**

n1 43 U.S.C.A. § 869(a).

As to the reservation of public lands, generally, see § 31.

As to the reservation of mining interests on public lands, see Am. Jur. 2d, Mines and Minerals § 1.

As to state ownership of tidal and navigable waters, see Am. Jur. 2d, Waters § 287.

n2 43 U.S.C.A. § 869(a).

As to land-use planning, generally, see § 25.

n3 U.S. v. 2,899.17 Acres of Land, More or Less, in Brevard County, State of Fla., 269 F. Supp. 903 (M.D. Fla. 1967).

n4 City and County of San Francisco v. U.S., 223 F.2d 737 (9th Cir. 1955); Central and Southern Fla. Flood Control Dist. v. Dupuis, 123 So. 2d 34 (Fla. Dist. Ct. App. 3d Dist. 1960); Abolt v. City of Fort Madison, 252 Iowa 626, 108 N.W.2d 263 (1961).

n5 U.S. v. State of N.M., 536 F.2d 1324 (10th Cir. 1976); State ex rel. Interstate Stream Commission v. Reynolds, 71 N.M. 389, 378 P.2d 622 (1963).

n6 Payne v. Kassab, 468 Pa. 226, 361 A.2d 263 (1976).

n7 43 U.S.C.A. § 869-2.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

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a. In General

63C Am Jur 2d Public Lands § 58

§ 58 Easement or right of way granted to state

The United States Attorney General may grant to any state or to any state agency or political subdivision easements in, and rights of way over, federal lands supervised and controlled by the Attorney General. n1  Such a grant may be made whenever the Attorney General deems it advantageous to the government and upon terms and conditions that the Attorney General deems advisable. n2  The grant may include the use of such easements or rights of way by public utilities to the extent authorized by state laws relating to the use of public highways. n3

Partial, concurrent, or exclusive jurisdiction over the areas covered by a state's easement or right of way over public land may be ceded to the state when necessary or desirable. n4  If land is conveyed in exchange for any such easement or right of way, the Attorney General may accept or secure on behalf of the United States from the state any necessary or desirable jurisdiction over the acquired land. n5

 **FOOTNOTES:**

n1 43 U.S.C.A. § 931a.

As to rights of way over public lands, generally, see § 53.

As to the reservation of public lands, generally, see § 31.

As to the reservation of mining interests on public lands, see Am. Jur. 2d, Mines and Minerals § 1.

As to state ownership of tidal and navigable waters, see Am. Jur. 2d, Waters § 287.

n2 43 U.S.C.A. § 931a.

n3 43 U.S.C.A. § 931a.

n4 43 U.S.C.A. § 931a.

n5 43 U.S.C.A. § 931a.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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a. In General

63C Am Jur 2d Public Lands § 59

§ 59 Swampland and overflowed land

Under federal law providing for grants of swampland and overflowed land to states, n1  Congress has conveyed to the states almost all swampland and overflowed land within the states. n2  The United States may transfer an interest in swampland only so far as the land is part of the public domain and therefore subject to disposal by Congress. n3

Overflowed lands are lands that, covered by nonnavigable waters or subject to periodic or frequent overflows of water, require drainage, levees, or embankments to keep out the water and thereby to make the lands suitable for cultivation. n4  Swamplands, in contrast, require drainage to dispose of needless water or moisture on or in the lands, in order to make them fit for cultivation. n5  Swamplands and overflowed lands do not include tidelands. n6

Land may be proved to come within a swampland grant made by the United States to a state, even if the land was not listed or patented to the state by the Secretary of the Interior. n7  A federal court will follow state law as to whether a survey made by a state officer is a segregation survey of swampland and overflowed land as defined by the state legislature. n8

 **FOOTNOTES:**

n1 43 U.S.C.A. §§ 981 to 994.

As to the selection and patenting of swampland, see Federal Procedure, L.Ed. § 66:441.

n2 U.S. v. State of Minnesota, 270 U.S. 181, 46 S. Ct. 298, 70 L. Ed. 539 (1926); Diana Shooting Club v. Lamoreaux, 114 Wis. 44, 89 N.W. 880 (1902).

As to a state's power to dispose of swampland granted to it, see § 65.

n3 U.S. v. O'Donnell, 303 U.S. 501, 58 S. Ct. 708, 82 L. Ed. 980 (1938); Trustees of Schools v. Schroll, 120 Ill. 509, 12 N.E. 243 (1887).

n4 Heath v. Wallace, 138 U.S. 573, 11 S. Ct. 380, 34 L. Ed. 1063 (1891); State v. Gerbing, 56 Fla. 603, 47 So. 353 (1908).

n5 State v. Gerbing, 56 Fla. 603, 47 So. 353 (1908).

n6 State v. Gerbing, 56 Fla. 603, 47 So. 353 (1908).

n7 Irwin v. San Francisco Sav Union, 136 U.S. 578, 10 S. Ct. 1064, 34 L. Ed. 540 (1890).

n8 Heath v. Wallace, 138 U.S. 573, 11 S. Ct. 380, 34 L. Ed. 1063 (1891).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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b. School Land Grants

63C Am Jur 2d Public Lands § 60

§ 60 Generally

Congress has made grants of public lands for common school purposes to states upon their admission as states and at other times. n1  Title to lands in such a trust is granted to, and resides in, the state. n2  Only when the official survey is made and the plat is approved does the state's title to the school grant vest, n3  and prior to that time the land is subject to disposal by the United States. n4  Congress cannot grant school lands to a state on certain conditions and then later, after the conditions have been met and the lands have vested, upset settled expectations through a belated effort to render those conditions more onerous. n5

The state land commissioner has great discretion concerning the disposition of school trust lands and has authority to devise detailed plans for the sale, lease, and use of state land, and may legitimately consider alternate future uses of state land. n6  The state land department has the same fiduciary obligations as does any private trustee; that is, it must manage state school trust lands for the benefit of the trust and its beneficiaries. n7  The state land department's management responsibilities include granting rights of way over state school trust land. n8

 **FOOTNOTES:**

n1 Hill v. Thompson, 564 So. 2d 1, 61 Ed. Law Rep. 1458 (Miss. 1989).

n2 Hill v. Thompson, 564 So. 2d 1, 61 Ed. Law Rep. 1458 (Miss. 1989).

n3 U.S. v. State of Wyo., 331 U.S. 440, 67 S. Ct. 1319, 91 L. Ed. 1590 (1947); U.S. v. Southern Pac. Transp. Co., 601 F.2d 1059 (9th Cir. 1979); Terrebonne Parish School Bd. for Use and Benefit of Public Schools of Terrebonne Parish v. Texaco, Inc., 178 So. 2d 428 (La. Ct. App. 1st Cir. 1965), writ refused, 248 La. 465, 179 So. 2d 640 (1965).

As to the surveying of public lands, generally, see § 14.

As to the leasing of public land by a state, generally, see § 64.

n4 U.S. v. State of Wyo., 331 U.S. 440, 67 S. Ct. 1319, 91 L. Ed. 1590 (1947); U.S. v. Southern Pac. Transp. Co., 601 F.2d 1059 (9th Cir. 1979); State of Utah v. Bradley Estates, 223 F.2d 129 (10th Cir. 1955).

n5 ASARCO Inc. v. Kadish, 490 U.S. 605, 109 S. Ct. 2037, 104 L. Ed. 2d 696, 53 Ed. Law Rep. 384 (1989).

As to the construction of grants and patents, see § 135.

n6 Koepnick v. Arizona State Land Dept., 2009 WL 472727 (Ariz. Ct. App. Div. 1 2009).

n7 Koepnick v. Arizona State Land Dept., 2009 WL 472727 (Ariz. Ct. App. Div. 1 2009).

n8 Koepnick v. Arizona State Land Dept., 2009 WL 472727 (Ariz. Ct. App. Div. 1 2009).

 **SUPPLEMENT:**

**Cases**

Although courts normally construe federal land grants narrowly, there is an exception to this general rule where the land grant at issue was made pursuant to legislation of Congress designed to aid the common schools of the states; in such cases, the grants are to be construed liberally rather than restrictively. Lyon v. Gila River Indian Community, 626 F.3d 1059, 77 Fed. R. Serv. 3d 1369 (9th Cir. 2010).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

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b. School Land Grants

63C Am Jur 2d Public Lands § 61

§ 61 Indemnity lands

If granted sections of the public lands are not available due to settlement with a view to preemption or homestead, federal law indemnifies the states for the missing designated sections by allowing the state to select lands in an amount equal to, and in lieu of, the designated but unavailable land. n1  The Secretary of the Interior has broad discretion to decide whether to classify lands as available for indemnity selection by the states. n2  With some restrictions, lands may be selected from any unappropriated, surveyed, or unsurveyed public lands within a state where losses or deficiencies occur. n3

Even assuming that a state's selection of land satisfies all criteria for a proper selection of indemnity lands under the law, the Secretary of the Interior can properly exercise discretion to withhold the lands from classification as indemnity lands and to deny the selection. n4  It has been held, however, that classification of the land under federal grazing law by the Secretary of the Interior is not a prerequisite to the exercise of a state's school indemnity selection rights. n5

The Bureau of Land Management is permitted to use invalid transactions as a setoff against a state's entitlement to indemnity for school selections it never received, although the Bureau has the burden of proving that the transaction was erroneous before the transaction may be set off. n6

 **FOOTNOTES:**

n1 43 U.S.C.A. § 851.

As to an application for land selected in lieu of school land, see Federal Procedure, L.Ed. § 66:435.

n2 Andrus v. Utah, 446 U.S. 500, 100 S. Ct. 1803, 64 L. Ed. 2d 458 (1980).

n3 43 U.S.C.A. § 852.

n4 Occidental Oil Shale, Inc. v. State Bd. of Land Com'rs of Colorado, 692 P.2d 321, 22 Ed. Law Rep. 459 (Colo. 1984).

n5 State of Utah, By and Through Division of State Lands v. Kleppe, 586 F.2d 756 (10th Cir. 1978), judgment rev'd on other grounds, 446 U.S. 500, 100 S. Ct. 1803, 64 L. Ed. 2d 458 (1980).

n6 State of Or. By and Through Div. of State Lands v. Bureau of Land Management, Dept. of the Interior, U.S., 876 F.2d 1419, 54 Ed. Law Rep. 430 (9th Cir. 1989).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

43 C.F.R. Parts 2710, 2740, 2910

43 C.F.R. Subpart 2912

43 C.F.R. Part 2880

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West's A.L.R. Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

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b. School Land Grants

63C Am Jur 2d Public Lands § 62

§ 62 Lands excluded from school grant

Generally excluded from school land grants are --

 -- lands reserved for another public purpose prior to the approval of the school grant survey. n1

 -- lands subject to a prior right of occupation by Native Americans. n2

 -- lands upon which a bona fide settlement was made by one who thereby acquired a preferential right to the lands. n3

 -- mineral lands. n4

 **FOOTNOTES:**

n1 U.S. v. State of Oregon, 295 U.S. 1, 55 S. Ct. 610, 79 L. Ed. 1267 (1935).

As to rights of way over public lands, generally, see § 53.

As to the reservation of public lands, generally, see § 31.

As to the reservation of mining interests on public lands, see Am. Jur. 2d, Mines and Minerals § 1.

n2 Donnelly v. U.S., 228 U.S. 243, 33 S. Ct. 449, 57 L. Ed. 820 (1913).

n3 State of Minnesota v. Bachelder, 68 U.S. 109, 17 L. Ed. 551, 1863 WL 6624 (1863); State of Wyo. v. Udall, 379 F.2d 635 (10th Cir. 1967).

n4 Am. Jur. 2d, Mines and Minerals § 28.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

43 C.F.R. Parts 2710, 2740, 2910

43 C.F.R. Subpart 2912

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Am. Jur. Pleading and Practice Forms, Public Lands §§ 15, 16, 20, 23, 25, 26, 28

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b. School Land Grants

63C Am Jur 2d Public Lands § 63

§ 63 State as trustee; state administration

When Congress grants land to a state for the benefit of the common schools, the state takes title as a trustee administering the property for the support of the public schools. n1  The rule that a state takes title as a trustee for the benefit of the state's public school system applies with equal force to specific school lands granted or to the lands that the state selects as indemnity or lieu lands. n2  Claimants of school lands are charged with the knowledge of such a relationship. n3  As a trustee, the state must administer the trust estate under the law applicable to trustees acting in a fiduciary capacity. n4

Following a grant, the lands and the proceeds of the lands are under the control of the state, n5  which, through properly designated boards or officers, n6  may manage, n7  lease, n8  or otherwise dispose of the lands. n9  A state statute may prescribe the manner in which the lands and funds derived from them may be disposed of n10  and such a procedure must be followed, even in the disposition of such lands to state or local governmental agencies. n11  In order that the lands can be developed in a manner that provides funds for the common schools, a state must be allowed access through federal lands to state school trust lands, although the Bureau of Land Management can regulate the method and route of access to such lands. n12

 **FOOTNOTES:**

n1 State of Utah, By and Through Division of State Lands v. Kleppe, 586 F.2d 756 (10th Cir. 1978), judgment rev'd on other grounds, 446 U.S. 500, 100 S. Ct. 1803, 64 L. Ed. 2d 458 (1980); U.S. v. 78.61 Acres of Land in Dawes and Sioux Counties, Neb., 265 F. Supp. 564 (D. Neb. 1967); State v. University of Alaska, 624 P.2d 807 (Alaska 1981); Lambert v. State, 211 Miss. 129, 51 So. 2d 201 (1951); Gypsy-Highview Gathering System, Inc. v. Montana Dept. of State Lands, 231 Mont. 330, 753 P.2d 317, 46 Ed. Law Rep. 768 (1988); Bartels v. Lutjeharms, 236 Neb. 862, 464 N.W.2d 321, 65 Ed. Law Rep. 182 (1991); Oklahoma Ed. Ass'n, Inc. v. Nigh, 1982 OK 22, 642 P.2d 230, 3 Ed. Law Rep. 182 (Okla. 1982); Lancaster v. Gray County, 127 S.W.2d 385 (Tex. Civ. App. El Paso 1939); Plateau Min. Co. v. Utah Div. of State Lands and Forestry, 802 P.2d 720 (Utah 1990); Caffall Bros. Forest Products, Inc. v. State, 79 Wash. 2d 223, 484 P.2d 912 (1971); Frolander v. Ilsley, 72 Wyo. 342, 264 P.2d 790 (1953).

n2 State of Utah, By and Through Division of State Lands v. Kleppe, 586 F.2d 756 (10th Cir. 1978), judgment rev'd on other grounds, 446 U.S. 500, 100 S. Ct. 1803, 64 L. Ed. 2d 458 (1980); Turney v. Marion County Bd. of Educ., 481 So. 2d 770, 29 Ed. Law Rep. 1231 (Miss. 1985).

n3 Seidel v. City of Seward, 178 Neb. 345, 133 N.W.2d 390 (1965); State ex rel. Com'rs of Land Office v. Lamascus, 1953 OK 339, 263 P.2d 426 (Okla. 1953).

n4 Hill v. Thompson, 564 So. 2d 1, 61 Ed. Law Rep. 1458 (Miss. 1989); Anderson v. Board of Educational Lands and Funds, 198 Neb. 793, 256 N.W.2d 318 (1977); Oklahoma Ed. Ass'n, Inc. v. Nigh, 1982 OK 22, 642 P.2d 230, 3 Ed. Law Rep. 182 (Okla. 1982); Plateau Min. Co. v. Utah Div. of State Lands and Forestry, 802 P.2d 720 (Utah 1990).

As to trusts, generally, see Am. Jur. 2d, Trusts §§ 1 et seq.

n5 State v. University of Alaska, 624 P.2d 807 (Alaska 1981); Pike v. State Board of Land Com'rs, 19 Idaho 268, 113 P. 447 (1911); State ex rel. Patterson v. Buffalo Wood, Inc., 204 So. 2d 853 (Miss. 1967); Imperial Irr. Co. v. Jayne, 104 Tex. 395, 138 S.W. 575 (1911).

n6 Hill v. Thompson, 564 So. 2d 1, 61 Ed. Law Rep. 1458 (Miss. 1989).

n7 State v. Kidder, 173 Neb. 130, 112 N.W.2d 759 (1962); State ex rel. Com'rs of Land Office v. Lamascus, 1953 OK 339, 263 P.2d 426 (Okla. 1953).

n8 § 67.

n9 § 65.

n10 Arizona State Land Dept. v. R. H. Fulton, Inc., 118 Ariz. 404, 577 P.2d 255 (Ct. App. Div. 1 1978); Moon v. State Bd. of Land Com'rs, 111 Idaho 389, 724 P.2d 125, 34 Ed. Law Rep. 916 (1986).

n11 City of Sierra Vista v. Babbitt, 129 Ariz. 524, 633 P.2d 333 (1981).

n12 State of Utah v. Andrus, 486 F. Supp. 995 (D. Utah 1979).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

43 C.F.R. Parts 2710, 2740, 2910

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63C Am Jur 2d Public Lands § 64

§ 64 Generally

Generally, a state may convey public lands that it owns within the state's borders, n1  and state law will govern the granting and settlement of the lands. n2  Public lands of a state are generally controlled and disposed of by an officer, commission, or board that has powers and duties under the state constitution or state law. n3  As a trustee for the state in handling these lands, n4  an officer or board has a certain amount of discretion in controlling, managing, and disposing of state lands. n5

Issues that may arise with respect to state public lands include --

 -- the property that may be conveyed. n6

 -- the terms and conditions of the grant. n7

 -- the persons who may be grantees. n8

 -- the power of a state to dispose of unappropriated public lands. n9

 -- the procedure for acquiring rights in state lands that may ripen into title from the state, n10  including the application for purchase, n11  the conduct of the sale, n12  bidding, n13  the issuance of a certificate to purchase, n14  the payment of the purchase money, n15  and the location, survey, and settlement of the lands. n16

 -- the rescission of sales. n17

 -- the relinquishment, forfeiture, or loss of rights. n18

 -- the remedies and actions between claimants. n19

 **FOOTNOTES:**

n1 State ex rel. Attorney General v. Wilkinson, 283 Ala. 45, 214 So. 2d 321 (1968).

n2 State ex rel. Arizona Highway Dept. v. Lassen, 102 Ariz. 318, 428 P.2d 996 (1967); Burkley v. Jefferson County, 213 Miss. 836, 58 So. 2d 22 (1952); State ex rel. Strandberg v. State Bd. of Land Com'rs, 131 Mont. 65, 307 P.2d 234 (1957); Tulsledo Oil Co. v. State ex rel. Com'rs of Land Office, 1963 OK 233, 386 P.2d 161 (Okla. 1963); State v. Aransas Dock & Channel Co., 365 S.W.2d 220 (Tex. Civ. App. San Antonio 1963), writ refused, (June 5, 1963); Fransen v. Board of Natural Resources, 66 Wash. 2d 672, 404 P.2d 432 (1965).

n3 Sunray Mid-Continent Oil Co. v. State, 149 Colo. 159, 368 P.2d 563 (1961); Com. v. Henderson County, 371 S.W.2d 27 (Ky. 1963); State ex rel. Belker v. Board of Educational Lands and Funds, 184 Neb. 621, 171 N.W.2d 156 (1969), adhered to on reargument, 185 Neb. 270, 175 N.W.2d 63 (1970); Ballard v. Echols, 81 N.M. 564, 469 P.2d 713 (1970); Hostutler v. State ex rel. Com'rs of Land Office, 1956 OK 282, 302 P.2d 983 (Okla. 1956); Wofford v. Miller, 381 S.W.2d 640 (Tex. Civ. App. Corpus Christi 1964), writ refused n.r.e., (Jan. 13, 1965); McKnight v. State Land Bd., 14 Utah 2d 238, 381 P.2d 726 (1963).

n4 Pike v. State Board of Land Com'rs, 19 Idaho 268, 113 P. 447 (1911).

n5 Pike v. State Board of Land Com'rs, 19 Idaho 268, 113 P. 447 (1911); Caffall Bros. Forest Products, Inc. v. State, 79 Wash. 2d 223, 484 P.2d 912 (1971).

n6 Pierce v. Warren, 47 So. 2d 857 (Fla. 1950); Winkler v. State, 239 So. 2d 484 (La. Ct. App. 4th Cir. 1970); Blomquist v. Board of Educational Lands and Funds, 170 Neb. 741, 104 N.W.2d 264 (1960); Greene v. Esquibel, 58 N.M. 429, 272 P.2d 330 (1954); McCarthy v. Coos Head Timber Co., 208 Or. 371, 302 P.2d 238 (1956); Clevinger v. Bull Creek Coal Co., 199 Va. 216, 98 S.E.2d 670 (1957).

n7 Foxcroft v. Mallett, 45 U.S. 353, 4 How. 353, 11 L. Ed. 1008, 1846 WL 5684 (1846); Pike v. State Board of Land Com'rs, 19 Idaho 268, 113 P. 447 (1911); Matthews v. Linn, 78 S.D. 203, 99 N.W.2d 885 (1959).

n8 Fairfax's Devisee v. Hunter's Lessee, 11 U.S. 603, 3 L. Ed. 453, 1812 WL 1510 (1812); Williams v. State ex rel. Morrison, 83 Ariz. 34, 315 P.2d 981 (1957); McClendon v. Wall, 96 So. 2d 246 (La. Ct. App. 1st Cir. 1957); Davis v. Westland Development Co., 81 N.M. 296, 466 P.2d 862 (1970) (involving non-heirs); McBride v. Gulf Oil Corp., 292 S.W.2d 151 (Tex. Civ. App. Beaumont 1955), writ refused n.r.e.

n9 Com. of Massachusetts v. State of New York, 271 U.S. 65, 46 S. Ct. 357, 70 L. Ed. 838 (1926).

n10 Matthews v. Zane's Lessee, 9 U.S. 92, 3 L. Ed. 46, 1809 WL 1652 (1809); Burkley v. Jefferson County, 213 Miss. 836, 58 So. 2d 22 (1952); Magnolia Petroleum Co. v. State ex rel. Com'rs of Land Office, 1957 OK 176, 322 P.2d 188 (Okla. 1957); Landers v. Linn, 79 S.D. 97, 108 N.W.2d 340 (1961); State v. State Board of School Land Com'rs of Wyoming, 27 Wyo. 54, 191 P. 1073, 11 A.L.R. 539 (1920).

n11 U. S. Gypsum Co. v. Uhlhorn, 232 F. Supp. 994 (E.D. Ark. 1964), judgment aff'd, 366 F.2d 211 (8th Cir. 1966); State ex rel. Beauboeuf's Heirs v. Grace, 229 La. 76, 85 So. 2d 36 (1956).

n12 Murphy v. State, 65 Ariz. 338, 181 P.2d 336 (1947); State ex rel. Werner v. District Court of First Judicial Dist. In and For Lewis and Clark County, 142 Mont. 145, 382 P.2d 824 (1963).

n13 Bessey v. Board of Educational Lands and Funds, 185 Neb. 801, 178 N.W.2d 794 (1970); Caffall Bros. Forest Products, Inc. v. State, 79 Wash. 2d 223, 484 P.2d 912 (1971).

n14 Sledge v. Humble Oil & Refining Co., 340 S.W.2d 517 (Tex. Civ. App. Beaumont 1960).

n15 State ex rel. Robins v. Clinger, 72 Idaho 222, 238 P.2d 1145 (1951); Copenhaver v. Copenhaver, 1957 OK 215, 317 P.2d 756 (Okla. 1957).

n16 Matson v. Hord, 14 U.S. 130, 4 L. Ed. 53, 1816 WL 1763 (1816); Pierce v. Warren, 47 So. 2d 857 (Fla. 1950).

n17 Lancaster v. Gray County, 127 S.W.2d 385 (Tex. Civ. App. El Paso 1939).

n18 § 73.

n19 Bodley v. Taylor, 9 U.S. 191, 3 L. Ed. 75, 1809 WL 1625 (1809); Virginia Iron, Coal & Coke Co. v. Martin, 341 S.W.2d 589 (Ky. 1960); McKnight v. State Land Bd., 14 Utah 2d 238, 381 P.2d 726 (1963).

 **SUPPLEMENT:**

**Cases**

Implied easement that Arizona obtained from the federal government when the government conveyed a parcel of land to it as part of a school land grant was effectively conveyed to each subsequent purchaser of the parcel by language in deeds specifying that the purchaser received "all the rights, privileges, immunities and appurtenances of whatsoever nature," or similar language. Lyon v. Gila River Indian Community, 626 F.3d 1059, 77 Fed. R. Serv. 3d 1369 (9th Cir. 2010).

Conveyance of public land in exchange for other land, when the value is measured in monetary terms, may be considered an in-kind sale. Act June 20, 1910, § 10, 36 Stat. 557. State ex rel. King v. Lyons, 2011-NMSC-004, 248 P.3d 878 (N.M. 2011).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

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Am. Jur. Legal Forms 2d § 212:6 (Notice -- To potential bidders -- For sale of public lands)

Am. Jur. Legal Forms 2d § 212:12 (Agreement to purchase public lands)

Am. Jur. Pleading and Practice Forms, Public Lands § 23 (Complaint, petition, or declaration -- In land contest proceedings -- Contesting validity of defendant's purchase certificate)

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63C Am Jur 2d Public Lands § 65

§ 65 Disposition of land granted from federal government

Title conveyed by the government for public or recreational purposes may be transferred by the grantee or a successor only with the Secretary of the Interior's approval and to a transferee that would be a qualified grantee under the law. n1  Acreage limitations also apply in such circumstances. n2  Title to the lands reverts to the United States if the grantee or a successor attempts to transfer title to, or control over, the lands to another without the consent of the Secretary of the Interior. n3  The same is true if the lands are devoted to a use other than that for which the lands were conveyed. n4  While grants to the states in trust for public use, resort, and recreation can be made perpetually inalienable n5  or inalienable for private uses, n6  the grant is absolute if conditions or restrictions are not attached to it n7  and a state has the power to convey the land in accordance with its laws. n8

Swampland may be conveyed to a state as an absolute gift, with a direction that proceeds of the swampland are to be applied exclusively for reclaiming the lands as necessary. n9  Depending upon the terms of the grant, the state may have full power to dispose of the lands granted to it, and the application of the proceeds to the purposes of the grant may rest upon the good faith and discretion of the state. n10

The enabling legislation of the state may require that all trust lands be appraised at their true value and that no sale or other disposal is to be made for less than that ascertained value. n11

 **FOOTNOTES:**

n1 43 U.S.C.A. § 869-2(a).

Land that the United States had conveyed to the Arkansas Fish and Game Commission under the Swamp Land Act for fish and wildlife management reverted to the United States and could not end up in private hands for private hunting and fishing excursions. Flannigan v. Arkansas, 427 F. Supp. 2d 861 (E.D. Ark. 2006).

n2 43 U.S.C.A. § 869-2(a).

n3 43 U.S.C.A. § 869-2(a).

n4 43 U.S.C.A. § 869-2(a).

n5 In re Yosemite Valley, 82 U.S. 77, 21 L. Ed. 82, 1872 WL 15417 (1872).

n6 Abolt v. City of Fort Madison, 252 Iowa 626, 108 N.W.2d 263 (1961).

n7 Dailey v. City of Lawton, Okl., 425 F.2d 1037, 12 A.L.R. Fed. 956 (10th Cir. 1970).

n8 Dailey v. City of Lawton, Okl., 425 F.2d 1037, 12 A.L.R. Fed. 956 (10th Cir. 1970); U.S. v. 2,899.17 Acres of Land, More or Less, in Brevard County, State of Fla., 269 F. Supp. 903 (M.D. Fla. 1967).

n9 U.S. v. State of Louisiana, 23 Ct. Cl. 501, 127 U.S. 182, 8 S. Ct. 1047, 32 L. Ed. 66 (1888).

As to federal grants of swampland to states, see § 59.

n10 Cook County v. Calumet & C. Canal & Dock Co., 138 U.S. 635, 11 S. Ct. 435, 34 L. Ed. 1110 (1891); Seaboard Air Line Ry. Co. v. Board of Bond Trustees of Special Road and Bridge Dist. No. 1 of Alachua County, 91 Fla. 612, 108 So. 689, 46 A.L.R. 870 (1926).

n11 Fain Land & Cattle Co. v. Hassell, 163 Ariz. 587, 790 P.2d 242 (1990).

 **SUPPLEMENT:**

**Cases**

Conditions on power of Commissioner of Public Lands to sell or lease state trust land are that: (1) disposals of land are limited to the disposals described in the Enabling Act; (2) land can only be sold or leased at a public auction to the highest and best bidder; and (3) all sales and leases must yield at least the appraised value of the land. Act June 20, 1910, § 10, 36 Stat. 557. State ex rel. King v. Lyons, 2011-NMSC-004, 248 P.3d 878 (N.M. 2011).

Purpose of auction of public trust lands under Enabling Act is to obtain the highest financial return. Act June 20, 1910, § 10, 36 Stat. 557. State ex rel. King v. Lyons, 2011-NMSC-004, 248 P.3d 878 (N.M. 2011).

Enabling Act restricted authority of Commissioner of Public Lands to exchange public trust land with private parties to in-kind sales; Enabling Act's plain language was more than sufficient to establish absence of any implicit grant of land exchange power, proposed amendment to Constitution which essentially would have given Commissioner authority to enter into exchanges with private land owners, subject only to appraised value and without public auction, failed popular vote by substantial margin, and its failure attested to lack of Commissioner's legal authority to conduct unrestricted land exchanges with private entities under Enabling Act. Act June 20, 1910, § 10, 36 Stat. 557. State ex rel. King v. Lyons, 2011-NMSC-004, 248 P.3d 878 (N.M. 2011).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

43 C.F.R. Parts 2710, 2740, 2910

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63C Am Jur 2d Public Lands § 66

§ 66 Grants to United States

A state that makes a grant or conveyance to the United States has no further claim or jurisdiction over the territory from the time of doing so, except for any reservation in the granting instrument. n1  By the terms of the grant or by the conditions imposed by the law, a state may retain concurrent jurisdiction with the United States over tracts of land conveyed to the United States for a public use, as well as exclusive jurisdiction over a tract that ceases to be used by the United States for a public use. n2

 **FOOTNOTES:**

n1 Potomac Steamboat Co. v. Upper Potomac Steamboat Co., 109 U.S. 672, 3 S. Ct. 445, 27 L. Ed. 1070 (1884).

As to the withdrawal or reservation of public lands, generally, see § 31.

n2 Fay v. Locke, 201 Mass. 387, 87 N.E. 753 (1909).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

43 C.F.R. Parts 2710, 2740, 2910

43 C.F.R. Subpart 2912

43 C.F.R. Part 2880

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

Federal Procedure §§ 66:435, 66:441

Am. Jur. Legal Forms 2d §§ 212:6, 212:7, 212:9, 212:12, 212:13, 212:17, 212:18, 219:29

Am. Jur. Pleading and Practice Forms, Public Lands §§ 15, 16, 20, 23, 25, 26, 28

Federal Procedural Forms §§ 55:2, 55:29

West's Key Number Digest, Public Lands [westkey]45

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Public Lands

III. Governmental Authority and Management

F. Disposal and Sale

5. Grants and Leases By States

63C Am Jur 2d Public Lands § 67

§ 67 Leases

Statutes may authorize the leasing of public lands of a state. n1  Issues that may arise in relation to state leases of public lands include --

 -- the terms and conditions of a lease. n2

 -- the duration or term of leases n3  and the relationship and estate created. n4

 -- the boards or persons entitled to execute a lease. n5

 -- the persons entitled to be lessees. n6

 -- the title, rights, and liabilities of lessees. n7

 -- leasing procedures, such as bidding. n8

 -- the rent or amount to be paid for a lease. n9

 -- appraisals to determine the amount of compensation. n10

 -- the right to timber, n11  crops, n12  and improvements. n13

 -- the cancellation and termination of a lease. n14

 -- the renewal of a lease n15  and preferential renewal rights. n16

 -- the assignment of leases and subleases. n17

 -- the records kept by land boards with respect to leases. n18

 -- judicial review of the decisions of land officers and boards. n19

 -- state constitutional limitations on the leasing of public lands. n20

 **FOOTNOTES:**

n1 Alamo Land & Cattle Co., Inc. v. Arizona, 424 U.S. 295, 96 S. Ct. 910, 47 L. Ed. 2d 1 (1976); Aerojet-General Corp. v. Kirk, 318 F. Supp. 55 (N.D. Fla. 1970), judgment aff'd, 453 F.2d 819 (5th Cir. 1971); Dodds v. Sixteenth Section Development Corp., 232 Miss. 524, 99 So. 2d 897 (1958); State ex rel. Hughes v. State Bd. of Land Com'rs, 137 Mont. 510, 353 P.2d 331 (1960); Offutt Housing Co. v. Sarpy County, 160 Neb. 320, 70 N.W.2d 382 (1955), judgment aff'd, 351 U.S. 253, 76 S. Ct. 814, 100 L. Ed. 1151 (1956); Logan v. Armstrong, 694 S.W.2d 68, 26 Ed. Law Rep. 1286 (Tex. App. Corpus Christi 1985); Samsell v. State Line Development Co., 154 W. Va. 48, 174 S.E.2d 318 (1970).

n2 Alamo Land & Cattle Co., Inc. v. Arizona, 424 U.S. 295, 96 S. Ct. 910, 47 L. Ed. 2d 1 (1976); Aerojet-General Corp. v. Kirk, 318 F. Supp. 55 (N.D. Fla. 1970), judgment aff'd, 453 F.2d 819 (5th Cir. 1971).

n3 Medlock v. Board of Sup'rs of Hinds County, 242 Miss. 668, 137 So. 2d 908 (1962).

n4 Spaulding v. H. E. Fletcher Co., 124 Vt. 318, 205 A.2d 556 (1964); Howard v. Lindmier, 67 Wyo. 78, 214 P.2d 737 (1950).

n5 State ex rel. Strandberg v. State Bd. of Land Com'rs, 131 Mont. 65, 307 P.2d 234 (1957); Samsell v. State Line Development Co., 154 W. Va. 48, 174 S.E.2d 318 (1970).

n6 Pretzer v. Lassen, 13 Ariz. App. 553, 479 P.2d 430 (Div. 2 1971); McCarthy v. Coos Head Timber Co., 208 Or. 371, 302 P.2d 238 (1956); Risha v. Willadsen, 397 P.2d 803 (Wyo. 1964).

n7 Dallas v. Fitzsimmons, 137 Colo. 196, 323 P.2d 274, 66 A.L.R.2d 551 (1958); Willmut Gas & Oil Co. v. Covington County, 221 Miss. 613, 71 So. 2d 184 (1954); State v. Bardsley, 185 Neb. 629, 177 N.W.2d 599 (1970) (overruled in part on other grounds by, State v. Rosenberger, 187 Neb. 726, 193 N.W.2d 769 (1972)); Sproles v. McDonald, 70 N.M. 168, 372 P.2d 122 (1962); Mid-Continent Pipe Line Co. v. Blackburn, 1961 OK 99, 361 P.2d 845 (Okla. 1961); Howard v. Lindmier, 67 Wyo. 78, 214 P.2d 737 (1950).

n8 Alyeska Ski Corp. v. Holdsworth, 426 P.2d 1006 (Alaska 1967); Singh v. State Land Com'r, State Land Dept., 80 Ariz. 343, 297 P.2d 930 (1956); Hall v. Rosteet, 247 La. 45, 169 So. 2d 903 (1964); Delta & Pine Land Co. of Miss. v. Board of Sup'rs of Bolivar County, 228 So. 2d 893 (Miss. 1969); Anderson v. Board of Educational Lands and Funds, 198 Neb. 793, 256 N.W.2d 318 (1977); Knapp v. State ex rel. Com'rs of State Land Office, 1952 OK 93, 206 Okla. 363, 243 P.2d 660 (1952).

n9 Aerojet-General Corp. v. Kirk, 318 F. Supp. 55 (N.D. Fla. 1970), judgment aff'd, 453 F.2d 819 (5th Cir. 1971); Barber v. Turney, 423 So. 2d 133, 8 Ed. Law Rep. 219 (Miss. 1982); State ex rel. Strandberg v. State Bd. of Land Com'rs, 131 Mont. 65, 307 P.2d 234 (1957); State v. Bardsley, 185 Neb. 629, 177 N.W.2d 599 (1970) (overruled in part on other grounds by, State v. Rosenberger, 187 Neb. 726, 193 N.W.2d 769 (1972)).

n10 Jungman v. Coolidge, 157 Neb. 122, 58 N.W.2d 828 (1953); State ex rel. Land Office Com'rs v. Wall, 1951 OK 163, 204 Okla. 665, 232 P.2d 940 (1951).

n11 Tomlinson v. Oklahoma Gas & Elec. Co., 1956 OK 331, 305 P.2d 521 (Okla. 1956).

As to forest lands, generally, see § 82.

As to logging and lumber operations, see Am. Jur. 2d, Logs and Timber §§ 57 to 92.

n12 Bernard v. Board of Sup'rs, Jackson County, 216 Miss. 387, 62 So. 2d 576 (1953); Jessen v. Blackard, 160 Neb. 557, 71 N.W.2d 100 (1955).

n13 Hee Kee Chun v. U.S., 194 F.2d 176 (9th Cir. 1952); State v. Rosenberger, 187 Neb. 726, 193 N.W.2d 769 (1972) (overruled on other grounds by, Pettijohn v. State, Bd. of Educational Lands and Funds, 204 Neb. 271, 281 N.W.2d 901 (1979)).

As to improvements on public lands, generally, see § 46.

n14 § 71.

n15 Wilgus v. Horvath, 162 Ohio St. 75, 54 Ohio Op. 22, 120 N.E.2d 583 (1954); Application of Hagood, 356 P.2d 135 (Wyo. 1960).

n16 Medlock v. Board of Supervisors, Hinds County, 242 Miss. 668, 136 So. 2d 610 (1962), error overruled, 242 Miss. 668, 137 So. 2d 908 (1962); State v. Gardner, 156 Neb. 326, 56 N.W.2d 135 (1952); Tomlinson v. Oklahoma Gas & Elec. Co., 1956 OK 331, 305 P.2d 521 (Okla. 1956); Thompson v. Conwell, 363 P.2d 927 (Wyo. 1961).

n17 § 103.

n18 Howard v. Lindmier, 67 Wyo. 78, 214 P.2d 737 (1950).

n19 § 125.

n20 Furnams v. Santa Rosa Island Authority, 377 So. 2d 983 (Fla. Dist. Ct. App. 1st Dist. 1979), aff'd, 399 So. 2d 1142 (Fla. 1981).

 **SUPPLEMENT:**

**Cases**

District court's order, which determined that Bureau of Land Management (BLM) failed to conduct sufficient site-specific environmental analysis before auctioning leases for lands within the plan area and instructed the agency to conduct further assessment if it wished to execute a particular lease, was not an unreviewable administrative remand, but rather, a final order which was final and reviewable; BLM appeared in the district court as a traditional adversarial party, defending its own actions against challenges by the state and environmental organizations, rather than defending a ruling made by the agency in a controversy between parties appearing before it. New Mexico ex rel. Richardson v. Bureau of Land Management, 565 F.3d 683 (10th Cir. 2009).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]3, 29 to 33, 42, 45, 51 to 66, 110 to 117

U.S. Const. Art. I, § 10

43 U.S.C.A. §§ 6, 11, 15, 315, 315e, 851, 852, 869, 869-1, 869-2, 931a, 981 to 994, 1068, 1068a, 1701, 1702, 1713, 1717, 1718, 1720 to 1722, 1735, 1745, 1761 to 1765, 1767, 1771, 2301 to 2306

43 C.F.R. Parts 2710, 2740, 2910

43 C.F.R. Subpart 2912

43 C.F.R. Part 2880

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Federal Procedure §§ 66:435, 66:441

Am. Jur. Legal Forms 2d §§ 212:6, 212:7, 212:9, 212:12, 212:13, 212:17, 212:18, 219:29

Am. Jur. Pleading and Practice Forms, Public Lands §§ 15, 16, 20, 23, 25, 26, 28

Federal Procedural Forms §§ 55:2, 55:29

West's Key Number Digest, Public Lands [westkey]55

Am. Jur. Legal Forms 2d § 212:13 (Lease of public lands)

Am. Jur. Legal Forms 2d § 212:7 (Notice -- To potential bidders -- For lease of public lands)

Am. Jur. Pleading and Practice Forms, Public Lands § 26 (Complaint, petition, or declaration -- By prospecting permittee -- To compel issuance of state mineral lease)

Am. Jur. Pleading and Practice Forms, Public Lands § 28 (Complaint, petition or declaration -- Allegation -- Lease of public land wasting city's assets)

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Public Lands

III. Governmental Authority and Management

G. Cancellation or Forfeiture of Rights in Public Lands

63C Am Jur 2d Public Lands § 68

§ 68 Generally

The government may attack a patent in a direct proceeding, n1  which usually involves an allegation of fraud n2  or mistake. n3  Rights in state public lands may be terminated n4  or forfeited n5  by an action brought by the government. A state may prescribe a reasonable period of redemption by those in default of a contract to purchase public lands. n6

The validity of a deed or patent from the federal government generally may not be questioned in a suit brought by a third party against the grantee or patentee. n7  In some circumstances, a patent may be challenged by the holder of an interest in patented land that vested prior to the issuance of the patent. n8

Neither the Secretary of the Interior nor any other government officer may annul a patent ex parte. n9

 **FOOTNOTES:**

n1 Raestle v. Whitson, 119 Ariz. 524, 582 P.2d 170 (1978); Spar Consol. Mining & Development Co. v. Miller, 38 Colo. App. 249, 556 P.2d 1226 (App 1976), judgment rev'd on other grounds, 193 Colo. 549, 568 P.2d 1159 (1977); Carney v. Anderson, 214 Miss. 504, 58 So. 2d 13, 38 A.L.R.2d 981 (1952); Dredge Corp. v. Husite Co., 78 Nev. 69, 369 P.2d 676 (1962); Campbell v. State, 626 S.W.2d 91 (Tex. App. Corpus Christi 1981); Perry v. McConkie, 1 Utah 2d 189, 264 P.2d 852 (1953).

As to government actions to cancel patents, see Federal Procedure, L.Ed. §§ 66:473 to 66:476.

As to the statute of limitations for actions to cancel or annul patents, see § 114.

n2 § 69.

n3 § 70.

n4 Aerojet-General Corp. v. Kirk, 318 F. Supp. 55 (N.D. Fla. 1970), judgment aff'd, 453 F.2d 819 (5th Cir. 1971); Kipnis v. Maricopa County, 105 Ariz. 572, 468 P.2d 931 (1970); State v. Franc, 165 Colo. 69, 437 P.2d 48 (1968); State v. Texaco, Inc., 53 Haw. 567, 498 P.2d 631 (1972).

Only the state has the power to revoke a patent. Smith v. State, 153 A.D.2d 737, 545 N.Y.S.2d 203 (2d Dep't 1989).

n5 Chapman v. Harger, 9 Ariz. App. 347, 452 P.2d 128 (1969); Nash v. State Land Office Bd., 333 Mich. 149, 52 N.W.2d 639 (1952); State v. Kidder, 173 Neb. 130, 112 N.W.2d 759 (1962); Horany v. State ex rel. Com'rs of Land Office, 1962 OK 169, 375 P.2d 963 (Okla. 1962); Singleton v. Terrel, 727 S.W.2d 688 (Tex. App. Texarkana 1987).

n6 Aikins v. Kingsbury, 247 U.S. 484, 38 S. Ct. 558, 62 L. Ed. 1226 (1918).

n7 Raypath, Inc. v. City of Anchorage, 544 F.2d 1019 (9th Cir. 1976).

n8 Sledge v. Humble Oil & Refining Co., 340 S.W.2d 517 (Tex. Civ. App. Beaumont 1960).

As to the collateral attack of a patent, see § 137.

n9 Pan Am. Petroleum Corp. v. Pierson, 284 F.2d 649 (10th Cir. 1960); McIntyre v. U.S., 490 F. Supp. 830 (D. Alaska 1980).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]101, 102, 118 to 130

43 U.S.C.A. §§ 321 to 339, 1165, 1732, 1746, 1766

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]101, 102, 118 to 130

Federal Procedure, L.Ed. §§ 66:473 to 66:476

Am. Jur. Pleading and Practice Forms, Public Lands § 27

West's Key Number Digest, Public Lands [westkey]101, 102

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Public Lands

III. Governmental Authority and Management

G. Cancellation or Forfeiture of Rights in Public Lands

63C Am Jur 2d Public Lands § 69

§ 69 Fraud

The Secretary of the Interior must see that patents and leases are not procured fraudulently. n1  Further, although a fraudulently issued patent is not void, n2  the United States may maintain a suit to set aside a patent, grant, or confirmation improperly issued or fraudulently made. n3  Suit may be brought if the government has an interest in the remedy due to its interest in the land, if the fraud has been practiced on the government and operates to its prejudice, or the government is obligated to make good an individual's title by setting aside the fraudulent patent, or the duty of the government to the public requires such action. n4

When a patent for land is procured by fraud, the United States is entitled to the same remedy in setting aside or annulling the patent as an individual would have with regard to his or her own deed procured under similar circumstances. n5  The United States may affirm the transaction and sue for damages for the fraud or may alternatively disaffirm the patent and sue to cancel it. n6

The relief due to the federal government does not depend upon a return of the consideration paid. n7  If the purchase is set aside as having been made in violation of applicable laws and regulations, the public treasury may not be used to refund the purchase price of realty held in trust, and any restoration of consideration must come from the beneficial owners on whose behalf recovery is had. n8

 **FOOTNOTES:**

n1 Pan Am. Petroleum Corp. v. Pierson, 284 F.2d 649 (10th Cir. 1960).

As to the functions of the Department of the Interior regarding public lands, generally, see § 10.

n2 Smith v. Rabb, 95 Ariz. 49, 386 P.2d 649 (1963).

n3 State of Utah v. U.S., 284 U.S. 534, 52 S. Ct. 232, 76 L. Ed. 469 (1932); U.S. v. Southern Pac. Co., 251 U.S. 1, 40 S. Ct. 47, 64 L. Ed. 97 (1919); Hunt v. Plavsa, 103 Cal. App. 2d 222, 229 P.2d 482 (2d Dist. 1951); State v. Hyde, 88 Or. 1, 169 P. 757 (1918).

n4 U.S. v. State of Minnesota, 270 U.S. 181, 46 S. Ct. 298, 70 L. Ed. 539 (1926).

n5 U.S. v. Minor, 114 U.S. 233, 5 S. Ct. 836, 29 L. Ed. 110 (1885).

n6 U.S. v. Oregon Lumber Co., 260 U.S. 290, 43 S. Ct. 100, 67 L. Ed. 261 (1922).

As to the necessity of election of remedies, generally, see Am. Jur. 2d, Election of Remedies § 9.

n7 Pan-American Petroleum & Transport Co. v. U.S., 273 U.S. 456, 47 S. Ct. 416, 71 L. Ed. 734 (1927); State v. Hyde, 88 Or. 1, 169 P. 757 (1918).

n8 Siniscal v. U.S., 208 F.2d 406 (9th Cir. 1953).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]101, 102, 118 to 130

43 U.S.C.A. §§ 321 to 339, 1165, 1732, 1746, 1766

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]101, 102, 118 to 130

Federal Procedure, L.Ed. §§ 66:473 to 66:476

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Public Lands

III. Governmental Authority and Management

G. Cancellation or Forfeiture of Rights in Public Lands

63C Am Jur 2d Public Lands § 70

§ 70 Mistake; correction of errors

The Secretary of the Interior may correct errors in patents or documents of conveyance relating to the disposal of public lands. n1  Furthermore, if a clerical error has occurred in the entry of any public lands, the entry may be suspended, upon proper notification to the claimant, until the error has been corrected. n2

The courts have equitable authority to vacate and annul a land patent that was executed by the mistake or inadvertence of the government n3  or by mistake of law. n4  The United States is entitled to a reconveyance and remains the true owner of the land if a patent was issued by mistake. n5  If a segment of public lands is erroneously omitted from a survey through mistake, the United States is not divested of title to the lands. n6

If a patent was issued under a mistake of law to one not entitled to it, a court may correct the error by requiring a transfer of the legal title to the true owner. n7  A person may not, however, profit from a governmental mistake of which he or she must have known. n8

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1746.

n2 43 U.S.C.A. § 1165.

n3 Krueger v. U.S., 246 U.S. 69, 38 S. Ct. 262, 62 L. Ed. 582 (1918); McIntyre v. U.S., 490 F. Supp. 830 (D. Alaska 1980); Martinez v. Mundy, 61 N.M. 87, 295 P.2d 209 (1956) (overruled on other grounds by, Evans Financial Corp. v. Strasser, 99 N.M. 788, 664 P.2d 986 (1983)).

n4 Morris v. U.S., 174 U.S. 196, 19 S. Ct. 649, 43 L. Ed. 946 (1899).

n5 Northern Pac. Ry. Co. v. McComas, 250 U.S. 387, 39 S. Ct. 546, 63 L. Ed. 1049 (1919).

n6 U.S. v. Weyerhaeuser Co., 392 F.2d 448 (9th Cir. 1967); Trustees of Internal Imp. Fund of State of Fla. v. Toffel, 145 So. 2d 737 (Fla. Dist. Ct. App. 2d Dist. 1962).

n7 Duluth & I. R. R. Co. v. Roy, 173 U.S. 587, 19 S. Ct. 549, 43 L. Ed. 820 (1899).

n8 Gleason v. White, 199 U.S. 54, 25 S. Ct. 782, 50 L. Ed. 87 (1905).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]101, 102, 118 to 130

43 U.S.C.A. §§ 321 to 339, 1165, 1732, 1746, 1766

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]101, 102, 118 to 130

Federal Procedure, L.Ed. §§ 66:473 to 66:476

Am. Jur. Pleading and Practice Forms, Public Lands § 27

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G. Cancellation or Forfeiture of Rights in Public Lands

63C Am Jur 2d Public Lands § 71

§ 71 Breach of condition

The Secretary of the Interior must include in any instrument providing for the use, occupancy, or development of public lands a provision authorizing the revocation or suspension of the instrument after notice and hearing and upon a final administrative finding of a violation of an instrument's terms or conditions, such as those requiring compliance with public land regulations and with state or federal air or water quality standards or implementation plans. n1  Immediate, temporary suspensions for the protection of health, safety, or the environment may also be issued. n2

If a grant of public land is made on a condition precedent, n3  no title passes unless the condition is performed. n4  Under a grant on condition subsequent, the title passes at the time of the act, subject to a later forfeiture through appropriate judicial or legislative action for the nonperformance of the condition. n5  Rather than asserting a forfeiture, however, the government may grant additional time, n6  impose new conditions on the grant, n7  or grant additional lands on the same or new conditions. n8

Any forfeiture of a right to the land for breach of a condition on which the grant was made by Congress can be asserted only by the United States through a judicial proceeding or congressional action. n9  A condition that allegedly works a forfeiture of title to lands derived from the public domain will generally be strictly construed against the forfeiture of the grant. n10

Leases of state public lands can also be canceled for breach of condition. n11

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1732(c).

n2 43 U.S.C.A. § 1732(c).

n3 New Orleans P. Ry. Co. v. U.S., 124 U.S. 124, 8 S. Ct. 417, 31 L. Ed. 383 (1888).

n4 Interstate Land Co. v. Maxwell Land-Grant Co., 139 U.S. 569, 11 S. Ct. 656, 35 L. Ed. 278 (1891).

n5 Kern River Co. v. U.S., 257 U.S. 147, 42 S. Ct. 60, 66 L. Ed. 175 (1921).

As to covenants and conditions included in documents conveying public lands, see § 41.

n6 Doe v. Larmore, 116 U.S. 198, 6 S. Ct. 365, 29 L. Ed. 598 (1886).

n7 Oregon & C.R. Co. v. U.S., 238 U.S. 393, 35 S. Ct. 908, 59 L. Ed. 1360 (1915).

N8 § 7.

n9 U.S. v. Tennessee & C.R. Co., 176 U.S. 242, 20 S. Ct. 370, 44 L. Ed. 452 (1900); Elquest v. City of Phoenix, 68 Ariz. 277, 204 P.2d 1061 (1949); McPheeters v. Wright, 124 Ind. 560, 24 N.E. 734 (1890).

n10 New York Indians v. U.S., 170 U.S. 1, 18 S. Ct. 531, 42 L. Ed. 927 (1898).

n11 Winchell v. State, Dept. of State Lands, 241 Mont. 94, 785 P.2d 212 (1990).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]101, 102, 118 to 130

43 U.S.C.A. §§ 321 to 339, 1165, 1732, 1746, 1766

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]101, 102, 118 to 130

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Public Lands

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G. Cancellation or Forfeiture of Rights in Public Lands

63C Am Jur 2d Public Lands § 72

§ 72 Abandonment

A claim to public land may be lost by abandonment, n1  which brings the land within the category of public lands with reference to future public use. n2  One who abandons his or her possession of public land loses all right to possession after the land is occupied by another. n3

Caution: Repealing most of the federal homestead laws relating to entry on public lands, the Federal Land Policy and Management Act of 1976 provides for the sale of tracts of public land pursuant to specified criteria and procedures, while explicitly not terminating any valid lease, permit, patent, right of way, or other land-use right to authorization existing prior to the Act's approval. n4

The waiver or forfeiture of rights cannot be predicated on an involuntary absence from the land. n5  Abandonment of a claim requires not only the failure to proceed with the claim but an intent to abandon it. n6

The failure to file supplemental filings required by regulations enacted by the Secretary of the Interior under the statute, but not required by the latter, may not be considered an abandonment of a claim to public land if the Secretary of the Interior otherwise has notice of the claim. n7

By a principle akin to abandonment, a patentee or entering person may lose his or her rights to public lands by estoppel. n8

Timber rights in public lands may be abandoned by a long-standing failure to cut or remove timber or to pay taxes, and title to the timber reverts to the United States as owner of the fee. n9

 **FOOTNOTES:**

n1 U.S. v. Wheeler, 161 F. Supp. 193 (W.D. Ark. 1958); Hamerly v. Denton, 359 P.2d 121 (Alaska 1961).

n2 Hamerly v. Denton, 359 P.2d 121 (Alaska 1961).

n3 Sibley v. Jeffreys, 76 Ariz. 340, 264 P.2d 831 (1953).

n4 § 41.

n5 White's Guardian v. Martin, 2 Alaska 495, 1905 WL 352 (D. Alaska 1905); Gazzola v. Savage, 80 Ark. 249, 96 S.W. 981 (1906); Kuttner v. Haines, 135 Ill. 382, 25 N.E. 752 (1890); Way v. Scott, 118 Iowa 197, 91 N.W. 1034 (1902); Bealey v. Blake, 153 Mo. 657, 55 S.W. 288 (1900); Cook v. McCord, 1899 OK 94, 9 Okla. 200, 60 P. 497 (1899); Huffman v. Smyth, 47 Or. 573, 84 P. 80 (1906) (imprisonment).

n6 New York Indians v. U.S., 170 U.S. 1, 18 S. Ct. 531, 42 L. Ed. 927 (1898); U.S. v. Wheeler, 161 F. Supp. 193 (W.D. Ark. 1958); Huffman v. Smyth, 47 Or. 573, 84 P. 80 (1906).

n7 Topaz Beryllium Co. v. U.S., 649 F.2d 775 (10th Cir. 1981).

n8 § 113.

n9 U.S. v. Wheeler, 161 F. Supp. 193 (W.D. Ark. 1958).

As to forest lands, generally, see § 82.

As to logging and lumber operations, see Am. Jur. 2d, Logs and Timber §§ 57 to 92.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]101, 102, 118 to 130

43 U.S.C.A. §§ 321 to 339, 1165, 1732, 1746, 1766

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]101, 102, 118 to 130

Federal Procedure, L.Ed. §§ 66:473 to 66:476

Am. Jur. Pleading and Practice Forms, Public Lands § 27

West's Key Number Digest, Public Lands [westkey]101, 102

Am. Jur. Pleading and Practice Forms, Public Lands § 27 (Complaint, petition, or declaration -- By state -- To cancel mineral lease -- For failure to continue mining operations)

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63C Am Jur 2d Public Lands § 73

§ 73 Relinquishment

A relinquishment of rights in public land, which may be formal in character, is a renouncing or surrender of such rights. n1

Caution: Repealing most of the federal homestead laws relating to entry on public lands, the Federal Land Policy and Management Act of 1976 provides for the sale of tracts of public land pursuant to specified criteria and procedures, while explicitly not terminating any valid lease, permit, patent, right of way, or other land-sue right to authorization existing prior to the Act's approval. n2

A voluntary relinquishment restores the land to the public domain and opens it to selection by others. n3  The government is not required to accept, however, relinquishment deeds to base lands that may have imperfect titles. n4

A relinquishment operates only against the party making it and does not destroy any adverse rights for which there is a valid, existing record. n5

 **FOOTNOTES:**

n1 U.S. v. Central Illinois Public Service Co., 365 F.2d 121 (7th Cir. 1966).

n2 § 41.

n3 McClung v. Penny, 189 U.S. 143, 23 S. Ct. 589, 47 L. Ed. 751 (1903); Keane v. Brygger, 160 U.S. 276, 16 S. Ct. 278, 40 L. Ed. 426 (1895).

n4 Soda Flat Co. v. Hodel, 670 F. Supp. 879 (E.D. Cal. 1987).

n5 McClung v. Penny, 189 U.S. 143, 23 S. Ct. 589, 47 L. Ed. 751 (1903).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]101, 102, 118 to 130

43 U.S.C.A. §§ 321 to 339, 1165, 1732, 1746, 1766

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]101, 102, 118 to 130

Federal Procedure, L.Ed. §§ 66:473 to 66:476

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West's Key Number Digest, Public Lands [westkey]101, 102

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63C Am Jur 2d Public Lands § 74

§ 74 Suspension or termination of right of way

After notice and a hearing, a right of way may be suspended or terminated for an abandonment of the right of way or for noncompliance with a condition of the right of way, the statute relating to rights of way, or an applicable rule or regulation. n1  An administrative proceeding is not required, however, if the right of way by its terms terminates upon a fixed or agreed condition, event, or time. n2  Further, the Secretary of the Interior or the Secretary of Agriculture may abate activities relating to the right-of way prior to a hearing, if an immediate, temporary suspension of activities within a right of way for violation of its terms and conditions is necessary. n3

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1766.

As to terms and conditions of a grant or renewal of a right of way, see § 54.

n2 43 U.S.C.A. § 1766.

n3 43 U.S.C.A. § 1766.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]101, 102, 118 to 130

43 U.S.C.A. §§ 321 to 339, 1165, 1732, 1746, 1766

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]101, 102, 118 to 130

Federal Procedure, L.Ed. §§ 66:473 to 66:476

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West's Key Number Digest, Public Lands [westkey]101

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G. Cancellation or Forfeiture of Rights in Public Lands

63C Am Jur 2d Public Lands § 75

§ 75 Cancellation of desert lands entry; improper conveyance or assignment

Although the federal statutes relating to entries on desert lands n1  do not expressly provide for the cancellation of an entry or a patent for an allegedly improper assignment or conveyance of the entry or patent, entries onto desert lands may be canceled on a variety of grounds, such as fraud n2  or noncompliance with statutory requirements. n3  Cancellation is proper if, before the issuance of the patent, the applicant secretly conveys or assigns to another his or her entry or patent or the land covered by it. n4  The same is true if the applicant, after the issuance of the patent, conveys the patent or the land covered by it to a corporation that fraudulently induced the applicant to make the entry and to obtain the patent at the corporation's expense. n5  Canceling an entry is improper, however, if a person assigns or conveys to another person all rights in the land covered by the entry before the entry ripens into a patent and if the assignment or conveyance was made according to the statute. n6

 **FOOTNOTES:**

n1 43 U.S.C.A. §§ 321 to 339.

n2 Salina Stock Co. v. U.S., 85 F. 339 (C.C.A. 8th Cir. 1898).

n3 Morris v. Andrus, 593 F.2d 851 (9th Cir. 1978).

As to the assignment of an entry on desert lands, see § 103.

As to desert lands, generally, see § 80.

n4 Reed v. Morton, 480 F.2d 634, 25 A.L.R. Fed. 787 (9th Cir. 1973).

n5 Salina Stock Co. v. U.S., 85 F. 339 (C.C.A. 8th Cir. 1898).

n6 Sanders v. Dutcher, 168 Cal. 353, 143 P. 599 (1914).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]101, 102, 118 to 130

43 U.S.C.A. §§ 321 to 339, 1165, 1732, 1746, 1766

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]101, 102, 118 to 130

Federal Procedure, L.Ed. §§ 66:473 to 66:476

Am. Jur. Pleading and Practice Forms, Public Lands § 27

West's Key Number Digest, Public Lands [westkey]102

Cancellation of patent or entry under Desert Land Act (43 U.S.C.A. §§ 321 et seq.), because of attempts to improperly assign or convey, Cancellation of patent or entry under Desert Land Act (43 U.S.C.A. secs. 321 et seq.), because of attempts to improperly assign or convey, 25 A.L.R. Fed. 801

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H. Particular Types of Public Lands

1. In General

63C Am Jur 2d Public Lands § 76

§ 76 National trails system; scenic and historic trails

A national trails system has been established near urban areas, within scenic areas, and along historic travel routes. n1  National scenic and national historic trails have also been established by federal law. n2  If certain criteria are met, the Secretary of the Interior may establish and designate national recreation trails with the consent of the federal agency, state, or political subdivision that has jurisdiction over the lands. n3

In allowing railroad rights of way to be put to interim public use as recreational trails and to be maintained by state or local governments or private groups, the National Trails System Act does not withdraw a remedy otherwise afforded against the United States for the taking of property without just compensation under the Fifth Amendment of the United States Constitution. n4

 **FOOTNOTES:**

n1 16 U.S.C.A. § 1241.

As to highways, roads, and walkways in parklands, see Am. Jur. 2d, Parks, Squares, and Playgrounds § 21.

n2 16 U.S.C.A. § 1244.

n3 16 U.S.C.A. § 1243(a).

As to the condemnation of land in connection with national trails, see Am. Jur. 2d, Eminent Domain § 74.

n4 Preseault v. I.C.C., 494 U.S. 1, 110 S. Ct. 914, 108 L. Ed. 2d 1 (1990).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]17, 37, 49

Federal Procedure, L.Ed. § 66:204

Am. Jur. Legal Forms 2d § 212:16

Am. Jur. Pleading and Practice Forms, Irrigation § 10

Am. Jur. Pleading and Practice Forms, Public Lands §§ 3, 8

Federal Procedural Forms §§ 55:35, 55:46, 55:86

West's Key Number Digest, Public Lands [westkey]49

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H. Particular Types of Public Lands

1. In General

63C Am Jur 2d Public Lands § 77

§ 77 Wilderness areas

The complete power Congress has over public lands under the Property Clause of the United States Constitution necessarily includes the power to regulate and protect the wildlife living there. n1  Recognizing that increasing population, expanding settlement, and growing mechanization threaten the natural condition of federal land and possessions, federal law designates federal lands as wilderness areas under a National Wilderness Preservation System. n2

Observation: By placing the responsibility for wilderness classification on Congress, the statute removes the absolute discretion of the Secretary of Agriculture and the Forest Service to designate lands for protection and to determine the uses of such areas. n3

Wilderness areas are administered for: n4

.the public use and enjoyment in a manner that does not impair the areas' future use and enjoyment as wilderness

.the protection of the areas

.the preservation of the wilderness character of the areas

.the gathering and dissemination of information regarding the use and enjoyment of the areas as wilderness

Designed to supplement the purposes for which national forests and units of the national park and national wildlife refuge systems are established and administered, n5  the wilderness protection statute specifically prohibits certain uses of wilderness areas, including the building of roads and structures, the use of motor vehicles, and the landing of aircraft. n6  The Secretary of the Interior must manage lands under Wilderness Act review so as not to impair the suitability of such areas for preservation as wilderness. n7

When considered for designation as wilderness, primitive areas may be increased in size by the addition of contiguous lands upon action by the President and Congress. n8

The National Wilderness Preservation System does not preempt a state statute requiring that nonresident, big-game hunters who hunt in federal wilderness areas employ guides. n9

 **FOOTNOTES:**

n1 Kleppe v. New Mexico, 426 U.S. 529, 96 S. Ct. 2285, 49 L. Ed. 2d 34 (1976); Organized Fisherman of Florida v. Andrus, 488 F. Supp. 1351 (S.D. Fla. 1980).

As to congressional power over public lands, generally, see § 7.

n2 16 U.S.C.A. § 1131(a).

n3 Parker v. U.S., 309 F. Supp. 593 (D. Colo. 1970), judgment aff'd, 448 F.2d 793, 14 A.L.R. Fed. 497 (10th Cir. 1971).

n4 16 U.S.C.A. § 1131(a).

As to the federal regulations governing wilderness management, see 43 C.F.R. Part 6300.

n5 16 U.S.C.A. § 1133(a).

As to forest lands, generally, see § 82.

n6 16 U.S.C.A. § 1133(c).

n7 Getty Oil Co. v. Clark, 614 F. Supp. 904 (D. Wyo. 1985).

As to agency responsibilities under the National Environmental Policy Act, generally, see Am. Jur. 2d, Pollution Control §§ 97 to 145.

n8 16 U.S.C.A. § 1132(b).

n9 § 9.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

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West's A.L.R. Digest, Public Lands [westkey]17, 37, 49

Federal Procedure, L.Ed. § 66:204

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Am. Jur. Pleading and Practice Forms, Public Lands §§ 3, 8

Federal Procedural Forms §§ 55:35, 55:46, 55:86

West's Key Number Digest, Public Lands [westkey]49

Construction and application of Wilderness Act (16 U.S.C.A. secs. 1131 et seq.) providing for National Wilderness Preservation System, 14 A.L.R. Fed. 508

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H. Particular Types of Public Lands

1. In General

63C Am Jur 2d Public Lands § 78

§ 78 "Wilderness" defined

A wilderness is an area where the earth and its community of life are untrammeled by humans, where humans are visitors who do not remain. n1  Wilderness is further defined as an area of undeveloped federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which: (1) generally appears to have been affected primarily by the forces of nature, with the imprint of humans' work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least 5,000 acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value. n2  Wilderness includes primitive areas and the lands contiguous to them. n3

 **FOOTNOTES:**

n1 16 U.S.C.A. § 1131(c).

n2 16 U.S.C.A. § 1131(c).

n3 Wilson v. Block, 708 F.2d 735 (D.C. Cir. 1983).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

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H. Particular Types of Public Lands

1. In General

63C Am Jur 2d Public Lands § 79

§ 79 Recommendation for wilderness preservation; hearing

The Secretary of the Interior must review certain roadless areas identified as having wilderness characteristics and must recommend to the President the suitability or nonsuitability of each area or island for preservation as wilderness. n1  In reviewing potential wilderness areas, the Secretary of the Interior must follow certain requirements as to notice and public hearings. n2

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1782(a).

n2 Humboldt County v. U.S., 684 F.2d 1276 (9th Cir. 1982).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]17, 37, 49

Federal Procedure, L.Ed. § 66:204

Am. Jur. Legal Forms 2d § 212:16

Am. Jur. Pleading and Practice Forms, Irrigation § 10

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West's Key Number Digest, Public Lands [westkey]49

Construction and application of Wilderness Act (16 U.S.C.A. §§ 1131 et seq.) providing for National Wilderness Preservation System, Construction and application of Wilderness Act (16 U.S.C.A. secs. 1131 et seq.) providing for National Wilderness Preservation System, 14 A.L.R. Fed. 508

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H. Particular Types of Public Lands

1. In General

63C Am Jur 2d Public Lands § 80

§ 80 Desert lands; reclamation and entry

Except for timber and mineral lands, desert lands are lands that will not produce an agricultural crop without irrigation. n1  A United States citizen may formally declare an intention to reclaim a tract of desert land by conducting water upon it within three years of the declaration. n2  Such a declaration of intention may also be filed by a person of requisite age who may become a citizen and who has filed a declaration to become a citizen. n3  Except in Nevada, entry is furthermore limited to resident citizens of the state or territory where the land is located, n4  and only bona fide residents qualify. n5

The aggregate acreage of desert land that one person may enter is limited to 320 acres, n6  and a violation justifies canceling the entry. n7  Prior to the issuance of a patent, a person or association of persons may not hold more than this aggregate limit by assignment or otherwise. n8

As an exception to the general repeal of homestead acts by the Federal Land Policy and Management Act, n9  federal law providing for entry on public desert lands n10  applies only to public lands and not to lands that are reserved. n11

 **FOOTNOTES:**

n1 43 U.S.C.A. § 322.

As to the authority of the Secretary of the Interior to sell desert land of agricultural value, see § 45.

As to the sale of public lands, generally, see § 41.

n2 43 U.S.C.A. § 321.

As to the federal regulations governing desert land entries, see 43 C.F.R. Part 2520.

As to filing an application for federal public desert lands, see Federal Procedure, L.Ed. § 66:204.

n3 43 U.S.C.A. § 321.

n4 43 U.S.C.A. § 325.

n5 White v. Clifford, 45 Ariz. 120, 40 P.2d 749 (1935).

n6 43 U.S.C.A. § 321.

n7 § 75.

n8 43 U.S.C.A. § 329.

n9 § 41.

n10 43 U.S.C.A. §§ 321 to 339.

n11 Federal Power Commission v. State of Or., 349 U.S. 435, 75 S. Ct. 832, 99 L. Ed. 1215 (1955).

As to the withdrawal or reservation of public lands, generally, see § 31.

As to the assignment of desert entry rights, see § 103.

As to the Federal Desert Lands (Carey) Act, see Am. Jur. 2d, Irrigation §§ 95 to 101.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

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Am. Jur. Pleading and Practice Forms, Public Lands §§ 3, 8

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West's Key Number Digest, Public Lands [westkey]37

Am. Jur. Pleading and Practice Forms, Irrigation § 10 (Complaint in federal court -- For writ of mandamus -- By residents of irrigation district -- Against officials of Department of Interior -- To enforce residency requirements under Federal Reclamation Act as to use of irrigation water from Colorado River)

Am. Jur Pleading and Practice Forms, Public Lands § 8 (Complaint in federal court -- For writ of mandamus -- By residents of irrigation district -- Against officials of Department of Interior -- To enforce residency requirements under Federal Reclamation Act as to use of irrigation water)

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H. Particular Types of Public Lands

1. In General

63C Am Jur 2d Public Lands § 81

§ 81 Proof of entry

In order for a patent to be issued, a person entering public lands must prove the reclamation and cultivation of the land within four years after filing a declaration to reclaim desert land. n1  The period for presenting such proof may, however, be extended. n2  The Secretary of the Interior has the authority to make such an extension if the person entering shows by a corroborated affidavit that, due to unavoidable delay in the construction of irrigation works and without fault on the entering person's part, he or she is unable to prove the reclamation and cultivation of the land within the statutory period. n3

 **FOOTNOTES:**

n1 43 U.S.C.A. § 329.

As to patents, generally, see § 48.

n2 43 U.S.C.A. §§ 333 to 336.

n3 43 U.S.C.A. § 334.

As to judicial review of an extension of the period for proving the reclamation of desert land, see § 80.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

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Public Lands

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H. Particular Types of Public Lands

2. Forests

63C Am Jur 2d Public Lands § 82

§ 82 Congressional authority

Congressional power concerning forest lands of the United States is exclusive, and rights in such lands can be acquired only through congressional action. n1  In its control of federal property, Congress may establish public forest reservations on the public domain without the consent of the state where the land is located n2  or may delegate the power to the President and other executive officers. n3

Federal law provides for the establishment and administration of national forests, n4  the Forest Service, reforestation, and forest management. n5

The term "public domain," as used in the National Forest Management Act, refers to land available for sale or settlement under the homestead laws or other types of dispositions pursuant to land laws. n6

 **FOOTNOTES:**

n1 Utah Power & Light Co. v. U.S., 243 U.S. 389, 37 S. Ct. 387, 61 L. Ed. 791 (1917).

As to congressional authority over public lands, generally, see § 7.

n2 Light v. U.S., 220 U.S. 523, 31 S. Ct. 485, 55 L. Ed. 570 (1911).

n3 U.S. v. Grimaud, 220 U.S. 506, 31 S. Ct. 480, 55 L. Ed. 563 (1911); Young v. Anderson, 160 F.2d 225 (App. D.C. 1947).

n4 16 U.S.C.A. §§ 471a to 539m-12.

n5 16 U.S.C.A. §§ 551 to 583j-9.

As to liability for injury to, or conversion of, timber, see Am. Jur. 2d, Logs and Timber §§ 93, 94.

As to logging and forest conservation, see Am. Jur. 2d, Logs and Timber §§ 57 to 92.

n6 Tulare County v. Bush, 185 F. Supp. 2d 18 (D.D.C. 2001), aff'd, 306 F.3d 1138 (D.C. Cir. 2002).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

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43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

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West's A.L.R. Digest, Public Lands [westkey]17, 37, 49

Federal Procedure, L.Ed. § 66:204

Am. Jur. Legal Forms 2d § 212:16

Am. Jur. Pleading and Practice Forms, Irrigation § 10

Am. Jur. Pleading and Practice Forms, Public Lands §§ 3, 8

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West's Key Number Digest, Public Lands [westkey]49

Constitutionality of reforestation or forest conservation legislation, 13 A.L.R.2d 1095

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H. Particular Types of Public Lands

2. Forests

63C Am Jur 2d Public Lands § 83

§ 83 Regulation under Secretary of Agriculture

The Secretary of Agriculture must promulgate rules and regulations to carry out the law relating to the lands of the National Forest System, n1  must make provisions to protect the national forests against destruction by fire and depredations, n2  and may regulate the occupancy and use of the national forests and forest reservations. n3  In exercising regulatory powers both to preserve forests from destruction and to regulate the occupancy and use of forests, n4  the Secretary of Agriculture has extensive authority to control the commercial and recreational development of national forest lands. n5  in particular, it is permissible for the Secretary of Agriculture to promulgate regulations prohibiting the unauthorized grazing of livestock, n6  the use of motorized vehicles or aircraft in specified areas of the national forests, n7  the unauthorized cutting or removal of timber from the national forests, n8  and indecent conduct in certain national forests areas. n9

A regulation that allowed the Forest Service to attach any terms and conditions deemed necessary to protect the public interest to any special-use permit granted for noncommercial group use of national forest system land vested the Forest Service with unbridled discretion to deny expressive activity, and thus was unconstitutionally overbroad on its face. n10

The Secretary of the Interior and the Secretary of Agriculture are authorized to issue permits for the implementation of a plan for a large-scale, commercial-recreational development in a national forest and national park. n11

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1740.

n2 16 U.S.C.A. § 551.

n3 16 U.S.C.A. § 551.

As to criminal penalties for the violation of forest regulations, see § 109.

n4 McMichael v. U.S., 355 F.2d 283 (9th Cir. 1965); U.S. v. Reeves, 39 F. Supp. 580 (W.D. Ark. 1941).

n5 Sierra Club v. Hickel, 433 F.2d 24 (9th Cir. 1970), judgment aff'd, 405 U.S. 727, 92 S. Ct. 1361, 31 L. Ed. 2d 636 (1972); U.S. v. Hunt, 19 F.2d 634 (D. Ariz. 1927), modified on other grounds, 278 U.S. 96, 49 S. Ct. 38, 73 L. Ed. 200 (1928); Heath v. Aspen Skiing Corp., 325 F. Supp. 223, 15 Fed. R. Serv. 2d 401 (D. Colo. 1971).

n6 § 87.

n7 McMichael v. U.S., 355 F.2d 283 (9th Cir. 1965); U.S. v. Perko, 133 F. Supp. 564 (D. Minn. 1955); U.S. v. Gregg, 290 F. Supp. 706 (W.D. Wash. 1968).

n8 U.S. v. Wilson, 438 F.2d 525 (9th Cir. 1971).

n9 U.S. v. Hymans, 463 F.2d 615, 19 A.L.R. Fed. 485 (10th Cir. 1972).

n10 U.S. v. Linick, 195 F.3d 538 (9th Cir. 1999).

n11 Sierra Club v. Hickel, 433 F.2d 24 (9th Cir. 1970), judgment aff'd, 405 U.S. 727, 92 S. Ct. 1361, 31 L. Ed. 2d 636 (1972).

As to the National Park System, generally, see Am. Jur. 2d, Parks, Squares, and Playgrounds § 3.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

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Federal Procedure, L.Ed. § 66:204

Am. Jur. Legal Forms 2d § 212:16

Am. Jur. Pleading and Practice Forms, Irrigation § 10

Am. Jur. Pleading and Practice Forms, Public Lands §§ 3, 8

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2. Forests

63C Am Jur 2d Public Lands § 84

§ 84 Access to private property within forest lands

The Secretary of Agriculture must provide access to nonfederally owned land within the National Forest System in order to secure to the owner the reasonable use and enjoyment of his or her land, provided that the owner complies with the rules and regulations applicable to ingress and egress to or from the National Forest System. n1

Even if owners of property surrounded by national park have a valid right of way over the access road, their use of the road within the park is subject to reasonable regulation by the National Park Service. n2

 **FOOTNOTES:**

n1 16 U.S.C.A. § 3210.

As to rights of way over public lands, generally, see § 53.

n2 Hale v. Norton, 437 F.3d 892 (9th Cir. 2006).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

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Federal Procedure, L.Ed. § 66:204

Am. Jur. Legal Forms 2d § 212:16

Am. Jur. Pleading and Practice Forms, Irrigation § 10

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2. Forests

63C Am Jur 2d Public Lands § 85

§ 85 Trespass

In order to preserve the forests on public lands, the United States or any state may prohibit trespasses by persons or depredations of animals and may restrict any limited rights of ingress and egress. n1

 **FOOTNOTES:**

n1 Utah Power & Light Co. v. U.S., 243 U.S. 389, 37 S. Ct. 387, 61 L. Ed. 791 (1917); Light v. U.S., 220 U.S. 523, 31 S. Ct. 485, 55 L. Ed. 570 (1911).

As to trespass on federal lands, generally, see Am. Jur. 2d, Trespass § 166.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

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West's A.L.R. Digest, Public Lands [westkey]17, 37, 49

Federal Procedure, L.Ed. § 66:204

Am. Jur. Legal Forms 2d § 212:16

Am. Jur. Pleading and Practice Forms, Irrigation § 10

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Public Lands

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2. Forests

63C Am Jur 2d Public Lands § 86

§ 86 Resource management plans; multiple-use objectives

In coordination with the land and resource management planning processes of state and local government and other federal agencies, the Secretary of Agriculture must develop, maintain, and revise land and resource management plans for units of the National Forest System. n1  The Secretary of Agriculture is required to promulgate regulations that, among other things, provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives and to preserve the diversity of tree species similar to that existing in the region. n2  The Forest Service cannot ignore the requirements of a forest plan adopted pursuant to the National Forest Management Act. n3

The national forests are established for multiple uses, including outdoor recreation, as well as range, timber, watershed, and wildlife and fish purposes. n4  While "multiple use" is defined, n5  there is no indication as to the weight to be assigned to each value, and the proper mix of uses within an area is left to the discretion of the Forest Service. n6

The The Healthy Forests Restoration Act of 2003 n7  was enacted to: (1) reduce hazardous fuel on federal land to reduce the risk of wildfire; n8  (2) authorize grant programs to improve the commercial value of forest biomass; n9  (3) enhance efforts to protect watershed and address threats to forest and rangeland health, including catastrophic wildfire; n10  (4) promote systematic gathering of information to address the impact of insect and disease infestations on forest and rangeland health; n11  and (5) establish a healthy forests reserve program. n12

The National Forest Management Act does not require the Forest Service, in approving a project in a national forest, to always verify its methodology with an on-the-ground analysis. n13

 **FOOTNOTES:**

n1 16 U.S.C.A. § 1604(a).

As to land-use planning, generally, see § 25.

n2 16 U.S.C.A. § 1604(g)(3)(B).

As to multiple-use objectives of land-use planning, generally, see § 29.

As to environmental impact statements, generally, see Am. Jur. 2d, Pollution Control §§ 104 to 145.

n3 Sierra Club v. Martin, 168 F.3d 1 (11th Cir. 1999).

n4 16 U.S.C.A. § 528.

n5 16 U.S.C.A. § 531.

n6 Sierra Club v. Hardin, 325 F. Supp. 99 (D. Alaska 1971).

The Forest Service's decision to issue a special-use permit to a business to conduct helicopter skiing operations in two national forests was not inconsistent with the forest plans, as to violate the National Forest Management Act, where the environmental impact statement showed the forest plans required the Forest Service to balance a variety of recreational activities in the permit area, including, if possible, helicopter skiing, and interpreted the forest plans as redirecting the perspective of the Forest Service to recreational opportunities as a whole, with a due consideration for the effect of permit conditions on the proposed operations, and the Forest Service properly considered how the particular options would affect the range of recreational opportunities available in the forests and balanced the interests in a way it believed promoted multiple forest uses. Citizens' Committee to Save Our Canyons v. Krueger, 513 F.3d 1169 (10th Cir. 2008).

n7 16 U.S.C.A. §§ 6501 to 6591.

n8 16 U.S.C.A. §§ 6511 to 6518.

n9 7 U.S.C.A. § 6501(2), 16 U.S.C.A. § 6531.

n10 16 U.S.C.A. §§ 6541, 6542.

n11 16 U.S.C.A. §§ 6551 to 6556.

n12 16 U.S.C.A. §§ 6571 to 6578.

n13 The Lands Council v. McNair, 537 F.3d 981 (9th Cir. 2008).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

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Am. Jur. Pleading and Practice Forms, Irrigation § 10

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a. In General

63C Am Jur 2d Public Lands § 87

§ 87 Grazing districts

The use of the public domain for grazing or pasturing is within the exclusive control of Congress, which, while traditionally encouraging the public to use the public domain for grazing, n1  may prohibit such use or may regulate it by fixing terms and conditions. n2  Under federal law, the purpose of permitting grazing on public lands is to promote the highest use of the public lands pending their final disposal n3  and to stabilize the livestock industry. n4  The Secretary of the Interior must provide for the protection, administration, regulation, and improvement of grazing districts by necessary rules and regulations, n5  must permit free grazing of livestock kept for domestic purposes within grazing districts, n6  and must provide for cooperation with local associations of stock owners, state land officials, and official state agencies engaged in the conservation or propagation of wildlife and interested in the use of grazing districts. n7  The Secretary of the Interior also has specific authority to --

 -- establish certain grazing districts within vacant, unappropriated, and unreserved lands on parts of the public domain of the United States. n8

 -- issue permits for the grazing of livestock in grazing districts upon the annual payment of reasonable fees. n9

 -- lease public lands for grazing purposes. n10

 -- permit the construction of fences, wells, reservoirs, and other improvements necessary to the care and management of permitted livestock on public lands within a grazing district. n11

 -- cooperate with a government department in carrying out the law relating to grazing districts and in coordinating range administration. n12

 -- administer through the Bureau of Land Management public rangelands in the 16 contiguous western states on which there is domestic livestock grazing or which the Secretary determines may be suitable for domestic livestock grazing. n13

 -- make necessary rules and regulations. n14

Grazing-land regulations have the effect of law n15  and form part of a permit agreement as though expressed in the agreement. n16  A lease to graze cattle issued under the Taylor Grazing Act does not constitute a contract binding the United States. n17

There is no direct requirement, either in the text of the Taylor Grazing Act or in the implementing regulations, that the Bureau of Land Management inquire as a qualification to approving a grazing permit whether an applicant has an intent to graze; rather, only after the permit is granted does the Bureau's duty arise to ensure that the property is used for grazing. n18

 **FOOTNOTES:**

n1 Light v. U.S., 220 U.S. 523, 31 S. Ct. 485, 55 L. Ed. 570 (1911); Mendiola v. Graham, 139 Or. 592, 10 P.2d 911 (1932).

n2 Light v. U.S., 220 U.S. 523, 31 S. Ct. 485, 55 L. Ed. 570 (1911).

n3 43 U.S.C.A. § 315.

As to the federal regulations governing the administration of public lands for grazing, see 43 C.F.R. Group 4100.

As to the disposal of public lands, generally, see § 40.

n4 Faulkner v. Watt, 661 F.2d 809 (9th Cir. 1981); U.S. v. Fuller, 442 F.2d 504 (9th Cir. 1971), judgment rev'd on other grounds, 409 U.S. 488, 93 S. Ct. 801, 35 L. Ed. 2d 16 (1973); Chournos v. U.S., 193 F.2d 321 (10th Cir. 1951); Red Canyon Sheep Co. v. Ickes, 98 F.2d 308 (App. D.C. 1938).

n5 43 U.S.C.A. § 315a.

As to rights of way over public land, generally, see § 53.

n6 43 U.S.C.A. § 315d.

n7 43 U.S.C.A. § 315h.

The Bureau of Land Management carries out the functions and duties that the Secretary of the Interior prescribes with respect to the management of public lands and resources. § 13.

n8 43 U.S.C.A. § 315.

n9 43 U.S.C.A. § 315b.

The Secretary of the Interior has the authority to establish regulations regarding the mandatory qualifications for grazing permit holders. Stewart v. Kempthorne, 554 F.3d 1245 (10th Cir. 2009).

n10 § 89.

n11 43 U.S.C.A. § 315c.

n12 43 U.S.C.A. § 315k.

n13 43 U.S.C.A. § 1902(a).

The 16 contiguous western states are Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. 43 U.S.C.A. § 1902(1).

n14 43 U.S.C.A. § 315a.

n15 Hatahley v. U.S., 351 U.S. 173, 76 S. Ct. 745, 100 L. Ed. 1065 (1956); Buffalo Creek Co-op. State Grazing Dist. v. Tysk, 290 F. Supp. 227 (D. Mont. 1968); Wilkinson v. U.S., 189 F. Supp. 413 (D. Or. 1960).

n16 Wilkinson v. U.S., 189 F. Supp. 413 (D. Or. 1960).

n17 Colvin Cattle Co., Inc. v. U.S., 67 Fed. Cl. 568 (2005), aff'd, 468 F.3d 803 (Fed. Cir. 2006).

n18 Stewart v. Kempthorne, 554 F.3d 1245 (10th Cir. 2009).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

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Federal Procedural Forms § 55:35 (Establishment of grazing districts)

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a. In General

63C Am Jur 2d Public Lands § 88

§ 88 Grazing on forest land

As the officer who administers livestock grazing on the national forests, n1  the Secretary of Agriculture may make regulations with respect to grazing on national forests and other lands administered by the Department of Agriculture, n2  including those that call for trespassing livestock to be impounded. n3

The President may place any national forest lands that are principally valuable for grazing under the administration of the Department of the Interior, if such lands can best be administered under the laws relating to grazing districts. n4

 **FOOTNOTES:**

n1 Pankey Land & Cattle Co. v. Hardin, 427 F.2d 43 (10th Cir. 1970).

As to public forest lands, generally, see § 82.

As to the duration of grazing leases and permits, see § 94.

n2 Pankey Land & Cattle Co. v. Hardin, 427 F.2d 43 (10th Cir. 1970).

n3 McVay v. U.S., 481 F.2d 615 (5th Cir. 1973); Jones v. Freeman, 400 F.2d 383 (8th Cir. 1968).

n4 43 U.S.C.A. § 315l.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

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a. In General

63C Am Jur 2d Public Lands § 89

§ 89 Leasing for grazing purposes

With some restrictions, the Secretary of the Interior may lease for grazing purposes vacant, unappropriated, and unreserved public lands that are situated so as not to justify their inclusion within a grazing district. n1  The Secretary of the Interior also may lease any state, county, or privately owned lands that are chiefly valuable for grazing purposes and are located within the exterior boundaries of a grazing district, if the leasing of such lands would promote the orderly use of the district and would aid in conserving the forage resources of public lands. n2

 **FOOTNOTES:**

n1 43 U.S.C.A. § 315m.

n2 43 U.S.C.A. § 315m-1.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

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West's Key Number Digest, Public Lands [westkey]17

Construction and application of Taylor Grazing Act (43 U.S.C.A. secs. 315 et seq.), 42 A.L.R. Fed. 353

Am. Jur. Legal Forms 2d § 212:16 (License for grazing on public lands)

Am. Jur. Pleading and Practice Forms, Public Lands § 3 (Complaint in federal court -- To restrain interference with pasturage of plaintiff's livestock on public lands)

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3. Grazing Lands

a. In General

63C Am Jur 2d Public Lands § 90

§ 90 Grazing-capacity determination

The Secretary of the Interior has the task of determining grazing capacity, n1  and the Bureau of Land Management, which carries out the functions and duties that the Secretary of the Interior prescribes with respect to the management of public lands and resources, n2  determines the grazing capacity of public land, even when there is a joint federal-state grazing project. n3  The Secretary of the Interior may restrict livestock grazing on overgrazed land within established grazing districts, and the Bureau of Land Management may remove cattle from a district under such circumstances. n4

In some cases, an environmental impact statement must be prepared in order that the amount of allowed grazing in a district will be determined with due regard to environmental consequences. n5

 **FOOTNOTES:**

n1 Sellas v. Kirk, 200 F.2d 217 (9th Cir. 1952).

n2 § 13.

n3 Buffalo Creek Co-op. State Grazing Dist. v. Tysk, 290 F. Supp. 227 (D. Mont. 1968).

n4 American Horse Protection Ass'n, Inc. v. Frizzell, 403 F. Supp. 1206 (D. Nev. 1975).

n5 Natural Resources Defense Council, Inc. v. Morton, 388 F. Supp. 829 (D.D.C. 1974), aff'd, 527 F.2d 1386 (D.C. Cir. 1976) and aff'd, 527 F.2d 1386 (D.C. Cir. 1976).

As to environmental impact statements, generally, see Am. Jur. 2d, Pollution Control §§ 104 to 145.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

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Am. Jur. Pleading and Practice Forms, Irrigation § 10

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a. In General

63C Am Jur 2d Public Lands § 91

§ 91 Advisory boards

Advisory boards in each grazing district may provide the Secretary of the Interior with full information and advice concerning physical, economic, and other local conditions in the grazing district. n1

Caution: It has been held that the Secretary of the Interior had no obligation or authority to recharter an advisory board, as a result of the Federal Advisory Committee Act, which, among other things, terminated all advisory committees, except for those having a statutory duration or those renewed by the President or a federal officer. n2

 **FOOTNOTES:**

n1 43 U.S.C.A. § 315o-1(a).

n2 Carpenter v. Morton, 424 F. Supp. 603 (D. Nev. 1976) (referring to 5 U.S.C.A. Appx 14 and 43 U.S.C.A. § 315o-1).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

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West's A.L.R. Digest, Public Lands [westkey]17, 37, 49

Federal Procedure, L.Ed. § 66:204

Am. Jur. Legal Forms 2d § 212:16

Am. Jur. Pleading and Practice Forms, Irrigation § 10

Am. Jur. Pleading and Practice Forms, Public Lands §§ 3, 8

Federal Procedural Forms §§ 55:35, 55:46, 55:86

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Construction and application of Taylor Grazing Act (43 U.S.C.A. secs. 315 et seq.), 42 A.L.R. Fed. 353

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3. Grazing Lands

a. In General

63C Am Jur 2d Public Lands § 92

§ 92 Allotment management plans

"Allotment management plans" are documents prepared in consultation with lessees or permittees applying for livestock operations on public land. n1  Such plans prescribe the manner in which livestock operations will be conducted in order to meet multiple-use, sustained-yield, economic, and other needs and objectives. n2  They also describe range improvements to be installed and maintained and contain other provisions relating to livestock grazing and other objectives consistent with the law. n3  All permits and leases for domestic livestock grazing may incorporate an allotment management plan. n4  If such a plan is unnecessary or has not been completed, the permit or lease should specify the number of animals that will graze and the seasons of use. n5  It must also state that the condition of the range may be reexamined and that the amounts or other aspects of grazing use may be adjusted. n6  Lessees and permittees of grazing privileges may appeal from decisions specifying the terms and conditions of allotment management plans. n7

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1702(k).

n2 43 U.S.C.A. § 1702(k).

As to "multiple use" and "sustained yield" as criteria of land-use planning, generally, see § 29.

n3 43 U.S.C.A. § 1702(k).

n4 43 U.S.C.A. § 1752(d).

n5 43 U.S.C.A. § 1752(e).

n6 43 U.S.C.A. § 1752(e).

n7 43 U.S.C.A. § 1752(f).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]17, 37, 49

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Am. Jur. Pleading and Practice Forms, Irrigation § 10

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a. In General

63C Am Jur 2d Public Lands § 93

§ 93 Preferences in issuing leases and permits; renewal

In issuing grazing permits, the Secretary of the Interior generally must give preference to persons within or near a grazing district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights that such persons own, occupy, or lease. n1

In the leasing of certain lands for grazing purposes, preference must also be given to owners, homesteaders, lessees, or other lawful occupants of contiguous lands, to the extent necessary to permit the proper use of such lands. n2

Caution: Repealing most of the federal homestead laws relating to entry on public lands, the Federal Land Policy and Management Act of 1976 provides for the sale of tracts of public land pursuant to specified criteria and procedures, while explicitly not terminating any valid lease, permit, patent, right of way, or other land-use right or authorization existing prior to the Act's approval. n3

When public lands are restored from a withdrawal, the Secretary of the Interior may grant an appropriate preference right for a grazing lease, license, or permit to users of the land for grazing purposes under the authority of the agency that had jurisdiction over the lands immediately prior to the time of their restoration. n4

State preferences with respect to grazing rights on public lands are typically established by statute or by administrative action authorized by statute. n5  A lessee who sublets his or her grazing lease without having the sublease approved by the appropriate government agency may not be entitled to a preference upon applying to renew the lease. n6

The holder of an expiring domestic-livestock-grazing permit or lease must be given first priority for receipt of a new permit or lease, so long as: (1) the lands involved remain available for domestic livestock grazing; (2) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease; and (3) the permittee or lessee accepts the terms and conditions to be included in the new permit or lease. n7

A leaseholder who loses a leasehold interest in a part of the preference land loses priority to renew his or her grazing lease in proportion to the loss of the leasehold interest. n8

Further, a grazing permit may be renewed if the permittee has pledged his or her grazing unit as security for a bona fide loan. n9

 **FOOTNOTES:**

n1 43 U.S.C.A. § 315b.

n2 43 U.S.C.A. § 315m.

n3 § 41.

n4 43 U.S.C.A. § 315m.

As to the withdrawal or reservation of public lands, generally, see § 31.

n5 Burke v. South Phillips County Co-op. State Grazing Dist., 135 Mont. 209, 339 P.2d 491 (1959); Reese v. Bruegger Ranches, Inc., 463 P.2d 23 (Wyo. 1969).

n6 Skillman v. Department of State Lands, 188 Mont. 383, 613 P.2d 1389 (1980).

n7 43 U.S.C.A. § 1752(c).

n8 Garcia v. Andrus, 692 F.2d 89 (9th Cir. 1982) (referring to 43 U.S.C.A. §§ 315m and 1752(c)).

n9 43 U.S.C.A. § 315b.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

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Federal Procedure, L.Ed. § 66:204

Am. Jur. Legal Forms 2d § 212:16

Am. Jur. Pleading and Practice Forms, Irrigation § 10

Am. Jur. Pleading and Practice Forms, Public Lands §§ 3, 8

Federal Procedural Forms §§ 55:35, 55:46, 55:86

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a. In General

63C Am Jur 2d Public Lands § 94

§ 94 Duration of leases and permits

Permits and leases for the grazing of domestic livestock on public lands are generally for a 10-year term. n1  They may be issued for a shorter period if the disposal of the land is pending, if the land will be devoted to a public purpose within 10 years, or if sound land management requires a shorter term. n2  If a new grazing district has been established, the Secretary of the Interior also has implicit authority to promulgate rules for the issuance of temporary licenses until the implementation of the statutory 10-year permit structure. n3

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1752(a).

n2 43 U.S.C.A. § 1752(b).

As to land-use planning, generally, see § 25.

n3 Brooks v. Dewar, 313 U.S. 354, 61 S. Ct. 979, 85 L. Ed. 1399 (1941).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

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a. In General

63C Am Jur 2d Public Lands § 95

§ 95 Modification, suspension, revocation

The Secretary of the Interior has specific authority to partially or fully cancel, suspend, or modify a grazing permit or lease pursuant to its terms and conditions, as well as authority to cancel or suspend a grazing permit or lease for a violation of a grazing regulation. n1  Grazing privileges may be revoked or suspended for the willful violation of rules regulating the use of grazing districts. n2  The Secretary of Agriculture has the same authority with respect to grazing permits and leases within the national forests in western states. n3

The creation of a grazing district or the issuance of a grazing permit does not create a right, title, interest, or estate in or to the lands. n4  Accordingly, the use of public lands for stock grazing, either under the original regime of tacit consent or under the permit system, is seen as a privilege that is revocable at any time, n5  and the modification of a grazing permit is generally a matter of agency discretion. n6  Although a grazing permit from the federal government is a mere license, n7  grazing privileges may not be modified so as to diminish a permittee's preference rights under the law or regulations relating to grazing districts. n8  Further, even if permittees lack a right, title, interest, or estate in public land, they have a right that is entitled to protection from interference by the government. n9

Except in cases of emergency, there must be a two-year notification prior if a permit or lease for grazing domestic livestock is to be canceled in order to devote the lands to another public purpose. n10

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1752(a).

The decision of the United States Forest Service to cancel a grazing permit, based on a finding that the permittee's repeated violations of his permit were willful, was neither arbitrary nor capricious, such that the permittee was not entitled to notice or an opportunity to comply, under the Administrative Procedure Act. Stone v. U.S. Forest Service, 196 Fed. Appx. 512 (9th Cir. 2006).

n2 Holland Livestock Ranch v. U.S., 655 F.2d 1002 (9th Cir. 1981); Diamond Ring Ranch, Inc. v. Morton, 531 F.2d 1397, 42 A.L.R. Fed. 336 (10th Cir. 1976).

n3 43 U.S.C.A. § 1752(a).

n4 43 U.S.C.A. § 315b.

n5 Gardner v. Stager, 892 F. Supp. 1301 (D. Nev. 1995), decision aff'd, 103 F.3d 886 (9th Cir. 1996).

n6 Mollohan v. Gray, 413 F.2d 349 (9th Cir. 1969); Bedke v. Quinn, 154 F. Supp. 370 (D. Idaho 1957); Buffalo Creek Co-op. State Grazing Dist. v. Tysk, 290 F. Supp. 227 (D. Mont. 1968); American Horse Protection Ass'n, Inc. v. Frizzell, 403 F. Supp. 1206 (D. Nev. 1975) (involving the issuance or modification of grazing permits); Barton v. U.S., 468 F. Supp. 962 (D. Utah 1979), judgment aff'd, 609 F.2d 977 (10th Cir. 1979).

n7 Swim v. Bergland, 696 F.2d 712 (9th Cir. 1983); Tidwell v. State ex rel. Herman, 21 Ariz. App. 3, 514 P.2d 1260 (Div. 2 1973); Placer County Water Agency v. Jonas, 275 Cal. App. 2d 691, 80 Cal. Rptr. 252 (3d Dist. 1969); Mendiola v. Graham, 139 Or. 592, 10 P.2d 911 (1932).

n8 McNeil v. Seaton, 281 F.2d 931 (D.C. Cir. 1960).

As to preferences in the granting of permits and leases for grazing, see § 93.

n9 Oman v. U.S., 179 F.2d 738 (10th Cir. 1949).

As to trespass on a grazing district, see § 97.

n10 43 U.S.C.A. § 1752(g).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

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West's A.L.R. Digest, Public Lands [westkey]17, 37, 49

Federal Procedure, L.Ed. § 66:204

Am. Jur. Legal Forms 2d § 212:16

Am. Jur. Pleading and Practice Forms, Irrigation § 10

Am. Jur. Pleading and Practice Forms, Public Lands §§ 3, 8

Federal Procedural Forms §§ 55:35, 55:46, 55:86

West's Key Number Digest, Public Lands [westkey]17

Construction and application of Taylor Grazing Act (43 U.S.C.A. secs. 315 et seq.), 42 A.L.R. Fed. 353

Federal Procedural Forms § 55:86 (Complaint in district court -- For review of suspension of grazing lease or permit [5 U.S.C.A. § 703, 28 U.S.C.A. § 1331])

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a. In General

63C Am Jur 2d Public Lands § 96

§ 96 Compensability of administrative action affecting grazing privileges

Because the issuance of a grazing permit does not create a right, title, interest, or estate in the land, n1  the United States may withdraw the interest of one holding a grazing permit at any time without compensation, n2  regardless of whether compensation is sought, because the grazing district was condemned or otherwise eliminated or because damages resulted from denying a grazing permit to the plaintiff or the granting of a permit to another. n3  Unlike a grazing permit, a grazing lease represents a property interest, and its holder has a compensable interest when the land is condemned. n4

When, however, a permit or lease for grazing domestic livestock is fully or partially canceled in order to devote the lands to another public purpose, including disposal, the permittee or lessee is entitled to a reasonable compensation from the United States for the adjusted value of the permittee's or lessee's interest in authorized permanent improvements that the permittee or lessee placed or constructed on the lands covered by the permit or lease. n5  Generally, a claim for reasonable compensation by the government in the event of the cancellation of a grazing permit accrues on the date the permit is canceled, for purposes of the six-year statute of limitations on suits against the United States in the Court of Federal Claims; however, where the permit holders continue to use water, access, and forage rights after the permit is canceled, the claim accrues on the last date the district court permits the permit holders to graze cattle on the grazing allotments. n6  A claim for compensation under the foregoing statute is premature where the Forest Service only suspends a grazing permit and does not cancel the permit in whole, or in part, at any time, notwithstanding the permit holder's contention that the government actions amounted to a de facto cancellation of the permit. n7

In addition, whenever the use of public land for war or national defense prevents the land's use for grazing, a person holding a grazing permit or license will be paid a reasonable sum for the losses suffered due to the use; n8  rental payments may be made in advance in case of withdrawal of lands for was or national defense purposes. n9  The matter of compensation is committed to agency discretion. n10  Payment for cancellation, which is deemed full payment for the losses, does not create any additional liability on the part of the United States. n11

 **FOOTNOTES:**

n1 § 95.

n2 U. S. v. Fuller, 409 U.S. 488, 93 S. Ct. 801, 35 L. Ed. 2d 16 (1973); Swim v. Bergland, 696 F.2d 712 (9th Cir. 1983); McNeil v. Seaton, 281 F.2d 931 (D.C. Cir. 1960); U.S. v. 40,021.64 Acres of Land, More or Less, in Dona Ana Et Al., Counties, State of N. M., 387 F. Supp. 839 (D.N.M. 1975); Placer County Water Agency v. Jonas, 275 Cal. App. 2d 691, 80 Cal. Rptr. 252 (3d Dist. 1969); Mendiola v. Graham, 139 Or. 592, 10 P.2d 911 (1932).

n3 U.S. v. Morrell, 331 F.2d 498 (10th Cir. 1964); Kunzler v. U.S., 208 F. Supp. 79 (D. Utah 1961).

n4 U.S. v. Certain Parcels of Land in San Bernardino County, 296 F. Supp. 774 (C.D. Cal. 1969).

n5 43 U.S.C.A. § 1752(g).

Ranch owners were not entitled to compensation for the cancellation of their permit to graze cattle in a national forest, where the grazing permit was cancelled as a penalty for failure to comply with the terms of the permit, not for some other public purpose.

Walker v. U.S., 79 Fed. Cl. 685 (2008).

Ranch owners whose federal grazing permit was canceled were entitled to compensation under the statute authorizing government compensation for permanent improvements constructed by the permittee on lands covered by the permit when the permit has been canceled to devote the grazing lands to another public purpose, based on evidence that the lands in question were no longer being used for grazing but for recreational purposes and for an elk preserve. Estate of Hage v. U.S., 82 Fed. Cl. 202 (2008).

n6 Walker v. U.S., 69 Fed. Cl. 222 (2005), certified question answered, 2007-NMSC-038, 142 N.M. 45, 162 P.3d 882 (2007) (referring to 28 U.S.C.A. § 2401).

As to the statute of limitations on actions relating to public lands, generally, see § 114.

n7 Sacramento Grazing Ass'n, Inc. v. U.S., 66 Fed. Cl. 211 (2005).

n8 43 U.S.C.A. § 315q.

As to the withdrawal of lands, generally, see § 31.

n9 43 U.S.C.A. § 315r.

n10 Mollohan v. Gray, 413 F.2d 349 (9th Cir. 1969).

n11 43 U.S.C.A. § 315q.

 **SUPPLEMENT:**

**Cases**

Grazing permittees lacked property right to forage implicit in their vested water rights, under New Mexico law, as required to support any Fifth Amendment claim by permittees that United States Forest Service (USFS) deprived them of all economically viable use of their ranch by allegedly taking water, forage, and grazing lands and deprived them of reasonable investment-backed expectations from grazing on federal allotment. U.S.C.A. Const.Amend. 5. Sacramento Grazing Ass'n, Inc. v. U.S., 96 Fed. Cl. 175 (2010).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

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a. In General

63C Am Jur 2d Public Lands § 97

§ 97 Trespass on grazing district

The United States has sought to protect grazing lands and persons having grazing privileges by excluding from grazing districts persons who lack grazing permits. n1  The statutory and regulatory procedures concerning the removal of trespassing livestock must be strictly followed, n2  and a fine for civil contempt may be assessed for the breach of a consent decree enjoining trespass upon a grazing district. n3  In the absence of a statute to the contrary, an unfenced tract of public land is open for grazing, and an animal owner may allow animals to go upon any part of the land or may drive them there without interference. n4  One who raises livestock may not, however, pasture animals upon lands containing a national monument. n5

 **FOOTNOTES:**

n1 Brooks v. Dewar, 313 U.S. 354, 61 S. Ct. 979, 85 L. Ed. 1399 (1941); Powell v. United States, 233 F.2d 851 (10th Cir. 1956); U.S. v. Montgomery, 155 F. Supp. 633 (D. Mont. 1957).

As to trespass on federal lands, generally, see Am. Jur. 2d, Trespass § 166.

n2 Hatahley v. U.S., 351 U.S. 173, 76 S. Ct. 745, 100 L. Ed. 1065 (1956).

n3 U.S. v. Montgomery, 155 F. Supp. 633 (D. Mont. 1957).

n4 Johnson v. Johnson, 50 So. 2d 490 (La. Ct. App. 1st Cir. 1951).

n5 Hunter v. U.S., 388 F.2d 148 (9th Cir. 1967).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

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a. In General

63C Am Jur 2d Public Lands § 98

§ 98 Hearing

The Secretary of the Interior's classification of lands within a grazing district as more suitable for another purpose does not require a formal hearing at which witnesses can testify and be cross-examined. n1  It has been held, however, that the Secretary of the Interior, even if not required to give an applicant a hearing on his or her application, must afford an opportunity to be heard, if the agency's decision partly rests upon the applicant's failure to establish certain facts. n2

 **FOOTNOTES:**

n1 Noren v. Beck, 199 F. Supp. 708 (S.D. Cal. 1961).

n2 Richardson v. Udall, 253 F. Supp. 72 (D. Idaho 1966).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

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H. Particular Types of Public Lands

3. Grazing Lands

b. Effect of Land Classification on Other Rights

63C Am Jur 2d Public Lands § 99

§ 99 Generally

The Secretary of the Interior may examine and classify lands that are withdrawn under an executive order or within a grazing district and that are more valuable or suitable for certain purposes other than grazing. n1  Rights that may not be exercised upon withdrawn land that is better suited to another use include the right to exercise scrip or similar rights n2  and the allotment rights of Native Americans. n3

In adopting a policy of not approving applications that involve "grossly disparate values," the Secretary of the Interior does not abuse his or her discretion to classify lands within a federal grazing district as proper for school land indemnity selection by a state. n4  Further, if land has already been considered and found unsuitable for agriculture, the Secretary of the Interior need not reclassify the lands as suitable for agriculture upon a petition by a qualified applicant. n5

 **FOOTNOTES:**

n1 43 U.S.C.A. § 315f.

As to the withdrawal and reservation of public lands, generally, see § 31.

n2 Kale v. U.S., 489 F.2d 449 (9th Cir. 1973); Bronken v. Morton, 473 F.2d 790 (9th Cir. 1973); Carl v. Udall, 309 F.2d 653 (D.C. Cir. 1962); Shaw v. Udall, 264 F. Supp. 390 (D. Or. 1967).

n3 Pallin v. U.S., 496 F.2d 27 (9th Cir. 1974); Finch v. U.S., 387 F.2d 13 (10th Cir. 1967); Daniels v. U.S., 247 F. Supp. 193 (W.D. Okla. 1965).

n4 Andrus v. Utah, 446 U.S. 500, 100 S. Ct. 1803, 64 L. Ed. 2d 458 (1980).

As to school land grants, generally, see § 60.

n5 Faulkner v. Watt, 661 F.2d 809 (9th Cir. 1981).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]17, 37, 49

Federal Procedure, L.Ed. § 66:204

Am. Jur. Legal Forms 2d § 212:16

Am. Jur. Pleading and Practice Forms, Irrigation § 10

Am. Jur. Pleading and Practice Forms, Public Lands §§ 3, 8

Federal Procedural Forms §§ 55:35, 55:46, 55:86

West's Key Number Digest, Public Lands [westkey]17

Construction and application of Taylor Grazing Act (43 U.S.C.A. secs. 315 et seq.), 42 A.L.R. Fed. 353

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Public Lands

III. Governmental Authority and Management

H. Particular Types of Public Lands

3. Grazing Lands

b. Effect of Land Classification on Other Rights

63C Am Jur 2d Public Lands § 100

§ 100 Relationship to Native American land rights

With respect to conflicts concerning the grazing and other rights on federal lands that are subject to the aboriginal, statutory, or treaty rights of Native Americans, the Native American interest in the lands may coexist with the use of the lands as contemplated by the statute. n1  Native American claimants and the government may stipulate that Native Americans' aboriginal title to certain lands has been extinguished by the inclusion of the lands in a grazing district. n2

 **FOOTNOTES:**

n1 Hanson v. U.S., 153 F.2d 162 (C.C.A. 10th Cir. 1946); Hinton v. Udall, 364 F.2d 676 (D.C. Cir. 1966); Confederated Bands of Ute Indians v. U.S., 112 Ct. Cl. 123, 1948 WL 5025 (1948).

n2 U. S. v. Pueblo De Zia, 200 Ct. Cl. 601, 474 F.2d 639 (1973).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]17, 37, 49

Federal Procedure, L.Ed. § 66:204

Am. Jur. Legal Forms 2d § 212:16

Am. Jur. Pleading and Practice Forms, Irrigation § 10

Am. Jur. Pleading and Practice Forms, Public Lands §§ 3, 8

Federal Procedural Forms §§ 55:35, 55:46, 55:86

West's Key Number Digest, Public Lands [westkey]17

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3. Grazing Lands

b. Effect of Land Classification on Other Rights

63C Am Jur 2d Public Lands § 101

§ 101 Mining on grazing districts

Prospecting, locating, developing, mining, entering, leasing, or patenting the mineral resources of grazing districts may take place according to applicable law. n1  In addition, federal law concerning grazing districts does not prevent miners, prospectors for minerals, and others from using timber, stone, gravel, clay, coal, and other deposits for firewood, fencing, buildings, mining, prospecting, and domestic purposes. n2

 **FOOTNOTES:**

n1 43 U.S.C.A. § 315e.

n2 43 U.S.C.A. § 315d.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

43 C.F.R. Part 2520, 6300

43 C.F.R. Part 4100

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]17, 37, 49

Federal Procedure, L.Ed. § 66:204

Am. Jur. Legal Forms 2d § 212:16

Am. Jur. Pleading and Practice Forms, Irrigation § 10

Am. Jur. Pleading and Practice Forms, Public Lands §§ 3, 8

Federal Procedural Forms §§ 55:35, 55:46, 55:86

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Public Lands

III. Governmental Authority and Management

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3. Grazing Lands

b. Effect of Land Classification on Other Rights

63C Am Jur 2d Public Lands § 102

§ 102 State regulation

While a federal statute governing grazing rights and privileges supersedes and renders ineffective a conflicting state statute, n1  the law relating to federal grazing districts does not otherwise restrict a state's police power with regard to grazing on public lands. n2  A state may exercising its police power to enact reasonable statutes and regulations governing grazing that are consistent with federal enactments and regulations. n3  The administration of state grazing lands is generally committed to the discretion of a district, board, or commission. n4  In order to bind a party, a decision of a state land board or commission must be made either unequivocally in the party's presence or by a written record of the board's decision that is available to the public. n5

 **FOOTNOTES:**

n1 Hatahley v. U.S., 351 U.S. 173, 76 S. Ct. 745, 100 L. Ed. 1065 (1956); Ansolabehere v. Laborde, 73 Nev. 93, 310 P.2d 842 (1957).

n2 43 U.S.C.A. § 315n.

As to the police power, generally, see Am. Jur. 2d, Constitutional Law §§ 313 to 384.

n3 Ricca v. Bojorquez, 13 Ariz. App. 10, 473 P.2d 812 (Div. 1 1970); Mendiola v. Graham, 139 Or. 592, 10 P.2d 911 (1932).

n4 Matter of Kalfell Ranch, Inc., 269 Mont. 117, 887 P.2d 241 (1994).

n5 Rayburne v. Queen, 76 Wyo. 393, 303 P.2d 486 (1956).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]17, 37, 49

7 U.S.C.A. § 6501

16 U.S.C.A. §§ 471a to 539m-12, 551 to 583j-9, 1131 to 1133, 1241, 1243, 1244, 1604, 3210, 6501 to 6591

43 U.S.C.A. §§ 315, 315a to 315f, 315h, 315k, 315m, 315m-1, 315n, 315o-1, 315q, 315r, 321 to 339, 1702, 1740, 1752, 1782, 1902, 3151

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Am. Jur. Legal Forms 2d § 212:16

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Public Lands

IV. Transfer of Rights by Private Parties; Liens

63C Am Jur 2d Public Lands § 103

§ 103 Assignment of interest in public lands

In considering the validity of contracts that assign an interest in public lands, n1  the courts have commonly enforced contracts that do not violate the letter or spirit of a relevant statute. n2  Rights relating to public lands are generally assignable n3  upon compliance with statutory requirements. n4  A grazing permit from the federal government is not, however, a transferable or assignable right. n5  If a state has regularly sold public land, a purchaser's assignee in good faith is entitled to a patent lawfully issued upon compliance with all conditions of the purchase, n6  even if there is no express warranty or language manifesting an intent that the transferee is to have the land. n7

An entry onto desert lands may be assigned to an individual who is qualified to make the entry under the law. n8  An assignment may not be made, however, to a corporation or association. n9

 **FOOTNOTES:**

n1 Udall v. Battle Mountain Co., 385 F.2d 90 (9th Cir. 1967); Lade v. Udall, 295 F. Supp. 265 (D. Or. 1968), judgment aff'd, 432 F.2d 254 (9th Cir. 1970); Jay v. Dollarhide, 3 Cal. App. 3d 1001, 84 Cal. Rptr. 538 (5th Dist. 1970) (disapproved of on other grounds by, Morris v. Thogmartin, 29 Cal. App. 3d 922, 105 Cal. Rptr. 919 (5th Dist. 1973)).

n2 U.S. v. Biggs, 211 U.S. 507, 29 S. Ct. 181, 53 L. Ed. 305 (1909); Hafemann v. Gross, 199 U.S. 342, 26 S. Ct. 80, 50 L. Ed. 220 (1905); Phillips v. Carter, 135 Cal. 604, 67 P. 1031 (1902); Orrell v. Bay Mfg. Co., 83 Miss. 800, 36 So. 561 (1904); Murray v. White, 42 Mont. 423, 113 P. 754 (1911).

As to the validity of contracts relating to the acquisition of public lands, see § 52.

n3 U.S. v. Poland, 251 U.S. 221, 40 S. Ct. 127, 64 L. Ed. 236, 4 Alaska Fed. 858 (1920); Telfener v. Russ, 145 U.S. 522, 12 S. Ct. 930, 36 L. Ed. 800 (1892); Willis v. City of Valdez, 546 P.2d 570 (Alaska 1976); Linch v. Game & Fish Commission, 124 Colo. 79, 234 P.2d 611 (1951); McCarty v. Sauer, 64 Idaho 748, 136 P.2d 742 (1943); Churchill v. Morse, 23 Iowa 229, 1867 WL 309 (1867); Gilbert v. McDonald, 94 Minn. 289, 102 N.W. 712 (1905); Burkley v. Jefferson County, 213 Miss. 836, 58 So. 2d 22 (1952); Hanna v. Board of Educ. Lands and Funds of Neb., 154 Neb. 623, 48 N.W.2d 717 (1951); Rubenstein v. Weil, 75 N.M. 562, 408 P.2d 140 (1965); Cagle v. Sabine Valley Timber & Lumber Co., 109 Tex. 178, 202 S.W. 942, 6 A.L.R. 1426 (1918).

n4 Equitable Royalty Corp. v. State ex rel. Com'rs of Land Office, 1960 OK 20, 352 P.2d 365 (Okla. 1960).

n5 Fulton v. U.S., 825 F. Supp. 261 (D. Nev. 1993).

n6 Greenwood Cemetery Land Co. v. Routt, 17 Colo. 156, 28 P. 1125 (1892).

n7 Cagle v. Sabine Valley Timber & Lumber Co., 109 Tex. 178, 202 S.W. 942, 6 A.L.R. 1426 (1918).

n8 43 U.S.C.A. § 324.

As to the cancellation of a desert-lands' entry due to an improper conveyance, see § 75.

As to desert lands, generally, see § 80.

n9 43 U.S.C.A. § 324.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]33

43 U.S.C.A. § 324

A.L.R. Index, Public Lands and Property

A.L.R. Digest, Public Lands § 33

Am. Jur. Pleading and Practice Forms, Public Lands §§ 24, 33

West's Key Number Digest, Public Lands [westkey]33

Am. Jur. Pleading and Practice Forms, Public Lands § 24 (Complaint, petition, or declaration -- In land contest proceedings -- To prevent assignor of purchase certificate from obtaining duplicate certificate)

Am. Jur. Pleading and Practice Forms, Public Lands § 33 (Judgment or decree -- In land contest proceedings -- Ordering issuance of duplicate purchase certificate)

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Public Lands

IV. Transfer of Rights by Private Parties; Liens

63C Am Jur 2d Public Lands § 104

§ 104 Significance of patent's issuance

The validity of warranties and agreements to convey after title is acquired largely depends upon the character of the contract in relation to federal and state law and on the circumstances of the case. n1  It has been held in some cases that, after legal title has passed to a person entering public lands, the person may alienate the lands as he or she sees fit. n2  If a person conveys government land to which he or she has only an equitable claim, a patent subsequently issued to the person does not inure to the benefit of the grantee by force of law, unless the descriptions in the deed and patent describe the same land. n3

 **FOOTNOTES:**

n1 Frix v. Miller, 115 Ala. 476, 22 So. 146 (1897); Anderson v. Yoakum, 94 Cal. 227, 29 P. 500 (1892); Sweeney v. Sparling, 81 Iowa 433, 46 N.W. 1068 (1890); Pevey v. Jones, 71 Miss. 647, 16 So. 252 (1894); Bernardy v. Colonial & U.S. Mortg. Co., 17 S.D. 637, 98 N.W. 166 (1904).

n2 U.S. v. Budd, 144 U.S. 154, 12 S. Ct. 575, 36 L. Ed. 384 (1892); Stark v. Starr, 94 U.S. 477, 24 L. Ed. 276, 1876 WL 19527 (1876); Willis v. City of Valdez, 546 P.2d 570 (Alaska 1976); Gilkerson-Sloss Com'n Co. v. Forbes, 54 Ark. 148, 15 S.W. 191 (1891); S. S. Dale & Sons v. Griffith, 93 Miss. 573, 46 So. 543 (1908).

n3 Prentice v. Stearns, 113 U.S. 435, 5 S. Ct. 547, 28 L. Ed. 1059 (1885).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]33

43 U.S.C.A. § 324

A.L.R. Index, Public Lands and Property

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Am. Jur. Pleading and Practice Forms, Public Lands §§ 24, 33

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Public Lands

IV. Transfer of Rights by Private Parties; Liens

63C Am Jur 2d Public Lands § 105

§ 105 Liens

If title to public land has passed under federal law, the property is, like any other property in a state, subject to state law, including that relating to liens. n1  An owner of an equitable interest in land acquired from the government may create a lien by assigning part of the equitable interest as security for an obligation, and the lien may be enforced by foreclosure. n2  The lien of a default judgment is not, however, such a voluntary lien. n3

 **FOOTNOTES:**

n1 Paige v. Peters, 70 Wis. 178, 35 N.W. 328 (1887).

As to liens, generally, see Am. Jur. 2d, Liens §§ 1 to 10.

As to mechanics' liens against public property, see Am. Jur. 2d, Mechanics' Liens §§ 31 to 35.

n2 Walker v. Shrake, 75 Nev. 241, 339 P.2d 124 (1959).

n3 St. Marie v. Chester B. Brown Co., 84 Idaho 216, 370 P.2d 195 (1962).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]33

43 U.S.C.A. § 324

A.L.R. Index, Public Lands and Property

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Public Lands

V. Actions and Proceedings

A. Jurisdiction

63C Am Jur 2d Public Lands § 106

§ 106 Federal courts

Federal courts have jurisdiction over suits relating to federal actions concerning public lands n1  and have the function of determining conflicting claims as to title n2  or possessory interests in public lands. n3  A case that is based not on a federal question but on state law is not reviewable on a writ of error from the United States Supreme Court to a state court. n4  If both parties claim under a common grantor whose title from the United States is admitted, the Supreme Court has no jurisdiction to review the decision of the state court as to the title acquired by the several parties under their respective grants. n5  A land patent granted to a private party does not guarantee a continuing federal interest or access to federal court, because land thus conveyed is generally subject to state law. n6

Federal courts have original jurisdiction of actions between citizens of the same state claiming lands under grants from different states. n7

The fact that the plaintiff's title to the land originates from a patent or an act of Congress does not alone present a federal question. n8

A federal district court did not have jurisdiction under the Administrative Procedure Act to reach the merits of landowners' action seeking to compel the National Park Service to provide feasible access to their property, which was surrounded by a national park, where the permitting process, under which the landowners had sought to use a bulldozer on a road in the park, had not resulted in a final action at the time of the landowners' suit. n9

 **FOOTNOTES:**

n1 Wilson Cypress Co. v. Pozo, 236 U.S. 635, 35 S. Ct. 446, 59 L. Ed. 758 (1915); Logan v. Davis, 233 U.S. 613, 34 S. Ct. 685, 58 L. Ed. 1121 (1914).

n2 Park Dist. of City of Bismarck v. Bertsch, 152 N.W.2d 401 (N.D. 1967).

n3 Duguid v. Best, 291 F.2d 235 (9th Cir. 1961).

n4 O'Conor v. State of Texas, 202 U.S. 501, 26 S. Ct. 726, 50 L. Ed. 1120 (1906); Devine v. City of Los Angeles, 202 U.S. 313, 26 S. Ct. 652, 50 L. Ed. 1046 (1906).

n5 White v. Leovy, 174 U.S. 91, 19 S. Ct. 604, 43 L. Ed. 907 (1899); People of State of California ex rel. Hastings v. Jackson, 112 U.S. 233, 5 S. Ct. 113, 28 L. Ed. 712 (1884).

n6 Town of Greenhorn v. Baker County, Oregon, 596 F.2d 349 (9th Cir. 1979).

n7 Am. Jur. 2d, Federal Courts § 584.

n8 Los Angeles Farming & Milling Co. v. City of Los Angeles, 217 U.S. 217, 30 S. Ct. 452, 54 L. Ed. 736 (1910); Joy v. City of St. Louis, 201 U.S. 332, 26 S. Ct. 478, 50 L. Ed. 776 (1906).

n9 Hale v. Norton, 437 F.3d 892 (9th Cir. 2006).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]103(4), 119.1, 120(8), 121

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]103(4), 119.1, 120(8), 121

West's Key Number Digest, Public Lands [westkey]103(4), 119.1, 120(8), 121

What actions arise under the laws and treaties of the United States so as to vest jurisdiction of Federal courts, 14 A.L.R.2d 992

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Public Lands

V. Actions and Proceedings

A. Jurisdiction

63C Am Jur 2d Public Lands § 107

§ 107 State courts

The courts of a state must determine the validity of title to land within the state, even if the title emanates from the United States or if the controversy involves the construction of federal statutes. n1  State courts can determine between individuals the priority or validity of conflicting titles under different grants from the same antecedent source. n2  A state court may determine the equities between a land patentee and one with whom the patentee has dealt and may furthermore determine that the patentee holds the land in trust. n3

State court decisions respecting public lands should be in harmony with federal administrative rulings, n4  and a court may not interfere with pending proceedings within the Secretary of the Interior's jurisdiction. n5  A court may, however, act in aid of federal administrative jurisdiction n6  that is not exclusive n7  or has terminated, n8  if the remaining issues can be determined under state law. n9

When a second patent is issued by the United States pursuant to a resurvey covering land covered by a prior patent based on the original government survey, the question of which patent conveyed the title to the land covered by the later patent must be determined by the judgment of a court of competent jurisdiction. n10

 **FOOTNOTES:**

n1 Garland v. Wynn, 61 U.S. 6, 20 How. 6, 15 L. Ed. 801, 1857 WL 8609 (1857).

n2 California Powder Works v. Davis, 151 U.S. 389, 14 S. Ct. 350, 38 L. Ed. 206 (1894).

As to conflicting patents and rights, see § 135.

n3 Crowder v. Lyle, 225 Cal. App. 2d 439, 37 Cal. Rptr. 343 (5th Dist. 1964).

n4 Wilcox v. John, 21 Colo. 367, 40 P. 880 (1895); Fall Creek Sheep Co. v. Walton, 24 Idaho 760, 136 P. 438 (1913).

n5 Perry v. Erling, 132 N.W.2d 889 (N.D. 1965) (involving a pending proceeding for the issuance of a patent).

n6 Rupke v. Moran, 87 Neb. 316, 127 N.W. 127 (1910).

n7 Fulmele v. Camp, 20 Colo. 495, 39 P. 407 (1895); Wood v. Murray, 85 Iowa 505, 52 N.W. 356 (1892); Zimmerman v. McCurdy, 15 N.D. 79, 106 N.W. 125 (1906).

n8 Larkin v. Paugh, 276 U.S. 431, 48 S. Ct. 366, 72 L. Ed. 640 (1928).

n9 Larkin v. Paugh, 276 U.S. 431, 48 S. Ct. 366, 72 L. Ed. 640 (1928).

n10 Summerville v. Scotts Bluff County, 182 Neb. 311, 154 N.W.2d 517 (1967).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]103(4), 119.1, 120(8), 121

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Public Lands

V. Actions and Proceedings

A. Jurisdiction

63C Am Jur 2d Public Lands § 108

§ 108 Res judicata

A judgment in an action involving public lands is conclusive against the parties and persons in privity with them. n1  The judgment may not be conclusive, however, in the absence of an adjudication on the merits, n2  an identity of issues, n3  or an identity of parties and privies. n4  Neither is the judgment conclusive if the title as to which res judicata is urged was acquired after the judgment alleged to be res judicata. n5

As an administrative act, a decision of the Secretary of the Interior does not have the res judicata effect of a judgment. n6  A patent is not a judgment in terms of the rules respecting estoppel by judgment. n7

 **FOOTNOTES:**

n1 Chicago, M. & St. P. Ry. Co. v. U.S., 159 U.S. 372, 16 S. Ct. 26, 40 L. Ed. 185 (1895); Downs v. Hubbard, 123 U.S. 189, 8 S. Ct. 85, 31 L. Ed. 114 (1887).

As to res judicata, generally, see Am. Jur. 2d, Judgments §§ 463 to 654.

n2 Hughes v. U.S., 71 U.S. 232, 18 L. Ed. 303, 1866 WL 9485 (1866).

n3 U.S. v. Green, 185 U.S. 256, 22 S. Ct. 640, 46 L. Ed. 898 (1902).

n4 Brandon v. Ard, 211 U.S. 11, 29 S. Ct. 1, 53 L. Ed. 68 (1908); Ard v. Brandon, 156 U.S. 537, 15 S. Ct. 406, 39 L. Ed. 524 (1895).

n5 McCombs v. McKaughan, 195 S.W.2d 194 (Tex. Civ. App. Beaumont 1946), writ refused.

n6 West v. Standard Oil Co., 278 U.S. 200, 49 S. Ct. 138, 73 LED 265 (1929).

n7 Dickson v. Luck Land Co., 242 U.S. 371, 37 S. Ct. 167, 61 L. Ed. 371 (1917).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]103(4), 119.1, 120(8), 121

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Public Lands

V. Actions and Proceedings

B. Enforcement of Public Lands Law; Criminal Prosecutions

63C Am Jur 2d Public Lands § 109

§ 109 Generally

Under federal law, it is unlawful to use, occupy, or develop any portion of the public lands in a manner contrary to a regulation of the Secretary of the Interior or some other responsible authority or contrary to an order issued pursuant to a relevant regulation. n1  A knowing, willful violation of a regulation relating to the management, use, and protection of public lands, including property on public lands, is subject to the penalty of a fine, imprisonment, or both. n2  Federal law also provides for criminal prosecutions for certain prohibited conduct on public lands, such as the removal of coal, n3  the violation of rules and regulations relating to national forests, n4  the misuse of trees and timber, n5  unattended or unextinguished fires, n6  the destruction of fences, n7  the interference with surveys and survey marks, n8  misconduct relating to prospective purchasers n9  and bids at public land sales, n10  trespass on federal lands, n11  and hazardous or injurious devices on federal lands. n12  It is also a prosecutable offense to unlawfully inclose or obstruct public lands n13  or to conspire to acquire public lands through fraudulent and corrupt practices. n14  Further, any person who without permission appropriates, excavates, injures, or destroys an historic or prehistoric ruin or monument or an object of antiquity on public lands is subject to a fine, imprisonment, or both. n15  The general statutory prohibitions against stealing n16  and injuring n17  public property apply to public lands.

The manner and form of prosecuting offenses involving public lands may be prescribed specifically by statute or by necessary implication. n18

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1733(g).

n2 43 U.S.C.A. § 1733(a).

n3 18 U.S.C.A. § 1851.

As to public lands available for mining, generally, see Am. Jur. 2d, Mines and Minerals §§ 21 to 27.

n4 16 U.S.C.A. § 551.

As to public forest lands, generally, see § 82.

n5 18 U.S.C.A. §§ 1852 to 1855.

As to government regulation of logging and lumbering operations, generally, see Am. Jur. 2d, Logs and Timber §§ 61, 62, 93.

n6 18 U.S.C.A. § 1856.

n7 18 U.S.C.A. § 1857.

n8 18 U.S.C.A. §§ 1858, 1859.

As to surveys and boundaries, generally, see § 14.

n9 18 U.S.C.A. § 1861.

n10 18 U.S.C.A. § 1860.

As to bidding for public lands, see § 44.

n11 Am. Jur. 2d, Trespass § 166.

n12 18 U.S.C.A. § 1864.

This statute was held not void for vagueness, in violation of due process, as applied to defendants found guilty of violating the statute in connection with visible and unmodified ropes hung from trees above a proposed helicopter landing site; the statute provided fair warning to persons of common intelligence that it was a crime to hang ropes above a helicopter landing site with the intent to obstruct or harass the harvesting of timber. U.S. v. Wyatt, 408 F.3d 1257 (9th Cir. 2005), for additional opinion, see, 135 Fed. Appx. 16 (9th Cir. 2005).

n13 43 U.S.C.A. § 1064.

The federal statute criminalizing unlawful inclosure does not provide for a private cause of action. Crow Tribe of Indians v. Repsis, 866 F. Supp. 520 (D. Wyo. 1994), aff'd, 73 F.3d 982 (10th Cir. 1995).

As to unlawful inclosures on public lands, generally, see § 24.

n14 U.S. v. Davis, 231 U.S. 183, 34 S. Ct. 112, 58 L. Ed. 177 (1913); Hyde v. U.S., 225 U.S. 347, 32 S. Ct. 793, 56 L. Ed. 1114 (1912); Dealy v. U.S., 152 U.S. 539, 14 S. Ct. 680, 38 L. Ed. 545 (1894).

n15 16 U.S.C.A. § 433.

n16 Am. Jur. 2d, Larceny § 70.

As to real property as a subject of larceny, generally, see Am. Jur. 2d, Larceny § 55.

n17 Am. Jur. 2d, Malicious Mischief § 2.

n18 Krause v. U. S., 147 F. 442 (C.C.A. 8th Cir. 1906) (involving an indictment under 43 U.S.C.A. § 1064).

As to indictments and informations, generally, see Am. Jur. 2d, Indictments and Informations §§ 1 to 3.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]21, 94 to 100, 123 to 130

16 U.S.C.A. §§ 433, 551

18 U.S.C.A. §§ 1851 to 1861, 1864

43 U.S.C.A. §§ 1064, 1653, 1733, 1764

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West's A.L.R. Digest, Public Lands [westkey]21, 94 to 100, 123 to 130

Am. Jur. Pleading and Practice Forms, Public Lands § 3

West's Key Number Digest, Public Lands [westkey]103(4), 119.1, 120(8), 121

Validity, construction, and application of federal statute (16 U.S.C.A. § 551) and implementing regulations providing for protection of national forests and punishing violations of such regulations, Validity, construction, and application of federal statute (16 U.S.C.A. sec. 551) and implementing regulations providing for protection of national forests and punishing violations of such regulations, 19 A.L.R. Fed. 492

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Public Lands

V. Actions and Proceedings

B. Enforcement of Public Lands Law; Criminal Prosecutions

63C Am Jur 2d Public Lands § 110

§ 110 State and federal cooperation

In connection with the administration and regulation of the use and occupancy of the public lands, the Secretary of the Interior may cooperate with the regulatory and law enforcement officials of a state or its political subdivision in the enforcement of the laws or ordinances of the state or subdivision. n1  Such cooperation may include reimbursing a state or its subdivision for expenditures incurred by assisting in the administration and regulation of the use and occupancy of public lands. n2  Having determined that assistance is needed to enforce federal laws and regulations relating to public lands or their resources, the Secretary of the Interior must offer a contract to appropriate local officials in order to achieve the maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations. n3  Federal personnel or appropriate local officials also may be authorized to carry out the Secretary of the Interior's law enforcement responsibilities respecting public lands and their resources. n4

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1733(d).

n2 43 U.S.C.A. § 1733(d).

n3 43 U.S.C.A. § 1733(c)(1).

n4 43 U.S.C.A. § 1733(c)(2).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]21, 94 to 100, 123 to 130

16 U.S.C.A. §§ 433, 551

18 U.S.C.A. §§ 1851 to 1861, 1864

43 U.S.C.A. §§ 1064, 1653, 1733, 1764

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B. Enforcement of Public Lands Law; Criminal Prosecutions

63C Am Jur 2d Public Lands § 111

§ 111 Liability of holder of right of way

A holder of a right of way may be liable to the United States for injury or damage that the United States incurs as a result of the use and occupancy of the rights of way. n1  The extent to which such holders must indemnify or hold harmless the United States for liabilities, damages, or claims caused by the holder's use and occupancy of the right of way are specified by regulation. n2  Any regulation or stipulation imposing liability without fault must include a maximum damages limit that is commensurate with the foreseeable risks or hazards presented. n3  Ordinary rules of evidence will determine any liability for damage or injury that exceeds the maximum amount. n4

A holder of a pipeline right of way is generally strictly liable for damages in connection with activities along or in the pipeline's vicinity. n5  Liability is limited to environmental damage and does not include common personal injuries. n6  A state is not authorized to impose unrestricted liability upon an oil owner for remote economic losses caused by oil spills. n7

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1764(h)(1).

As to rights of way, generally, see § 53.

n2 43 U.S.C.A. § 1764(h)(1).

n3 43 U.S.C.A. § 1764(h)(2).

n4 43 U.S.C.A. § 1764(h)(2).

n5 43 U.S.C.A. § 1653(a).

n6 Heppner v. Alyeska Pipeline Service Co., 665 F.2d 868 (9th Cir. 1981).

n7 In re Glacier Bay, 865 F. Supp. 629 (D. Alaska 1991).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]21, 94 to 100, 123 to 130

16 U.S.C.A. §§ 433, 551

18 U.S.C.A. §§ 1851 to 1861, 1864

43 U.S.C.A. §§ 1064, 1653, 1733, 1764

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Public Lands

V. Actions and Proceedings

B. Enforcement of Public Lands Law; Criminal Prosecutions

63C Am Jur 2d Public Lands § 112

§ 112 Remedies; injunction

In order to protect or reclaim public lands, the United States may pursue the remedies that an individual could pursue in like circumstances in reference to his or her own lands. n1  The United States may, for example, sue for damages for the fraudulent acquisition of public lands n2  or may elect to sue for cancellation of a patent procured through fraud. n3

At the request of the Secretary of the Interior, the United States Attorney General may institute a civil action in a United States District Court for an injunction or other appropriate order to prevent a person from using public land in violation of regulations issued by the Secretary of the Interior. n4  The United States may also sue to enjoin --

 -- the setting up or making any claim to title by a person who has allegedly procured public lands by fraud through the intervention of a state. n5

 -- the unlawful pasturing of cattle upon lands within a national monument. n6

 -- the continued violation of the express conditions of the grant by a grantee of lands and rights of way in the public domain of the United States, notwithstanding equitable defenses and considerations of estoppel founded upon past interpretations of the grant and administrative rulings. n7

An individual who is inconvenienced or deprived by another's allegedly wrongful use of public lands may not sue to enjoin such use. n8  A lessee of government land may not enjoin an adjoining owner from closing an access road on his or her land that is not a public road. n9  In a proper case, however, a court may enjoin interference with possession under color of title. n10

Entities seeking a temporary restraining order and injunction against the United States Forest Service must demonstrate a likelihood of success on their claim. n11

 **FOOTNOTES:**

n1 Steele v. Walker, 115 Ala. 485, 21 So. 942 (1897).

As to trespass on federal lands, generally, see Am. Jur. 2d, Trespass § 166.

n2 Jones v. U.S., 258 U.S. 40, 42 S. Ct. 218, 66 L. Ed. 453 (1922); U.S. v. Whited & Wheless, 246 U.S. 552, 38 S. Ct. 367, 62 L. Ed. 879 (1918).

n3 § 136.

n4 43 U.S.C.A. § 1733(b).

n5 Independent Coal & Coke Co. v. U.S., 274 U.S. 640, 47 S. Ct. 714, 71 L. Ed. 1270 (1927).

n6 Hunter v. U.S., 388 F.2d 148 (9th Cir. 1967).

As to federal grazing districts, generally, see § 87.

n7 U.S. v. City and County of San Francisco, 310 U.S. 16, 60 S. Ct. 749, 84 L. Ed. 1050 (1940).

n8 Holz v. Lyles, 280 Ala. 521, 195 So. 2d 897 (1967).

n9 Stapp v. Nickels, 150 Mont. 220, 434 P.2d 141 (1967).

n10 Perry v. Erling, 132 N.W.2d 889 (N.D. 1965).

n11 League of Wilderness Defenders -- Blue Mountains Biodiversity Project v. U.S. Forest Service, 383 F. Supp. 2d 1276 (D. Or. 2005); Oregon Natural Resources Council Fund v. Goodman, 382 F. Supp. 2d 1201 (D. Or. 2004), aff'd, 110 Fed. Appx. 31 (9th Cir. 2004).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]21, 94 to 100, 123 to 130

16 U.S.C.A. §§ 433, 551

18 U.S.C.A. §§ 1851 to 1861, 1864

43 U.S.C.A. §§ 1064, 1653, 1733, 1764

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West's A.L.R. Digest, Public Lands [westkey]21, 94 to 100, 123 to 130

Am. Jur. Pleading and Practice Forms, Public Lands § 3

West's Key Number Digest, Public Lands [westkey]123 to 130

Am. Jur. Pleading and Practice Forms, Public Lands § 3 (Complaint in federal court -- To restrain interference with pasturage of plaintiff's livestock on public lands)

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63C Am Jur 2d Public Lands § 113

§ 113 Estoppel

In matters relating to the public lands, the United States is not estopped by the acts or statements of its officers or agents, n1  unless representations of the agent were clearly within the scope of the agent's authority. n2

By a principle akin to abandonment, a patentee or entering person may lose his or her rights to public lands by estoppel. n3  Estoppel may operate in favor of the United States and against a person claiming a right or interest in public land. n4  Merely clerical mistakes of an administrative agency do not, however, estop a patentee of public land as against other claimants, n5  nor is a bona fide claimant under a grant estopped by his or her mistake as to the land actually granted. n6  In addition, a government patentee claiming land as against a subsequent patentee who has exercised acts of ownership over the land is not estopped by nonclaim from asserting title as against persons who never had possession or any title of record. n7  In some circumstances, a plaintiff's delay in commencing an ejectment action following an adverse administrative decision does not work an estoppel against the plaintiff. n8

 **FOOTNOTES:**

n1 State of Utah v. U.S., 284 U.S. 534, 52 S. Ct. 232, 76 L. Ed. 469 (1932); Cramer v. U.S., 261 U.S. 219, 43 S. Ct. 342, 67 L. Ed. 622 (1923).

As to estoppel and waiver, generally, see Am. Jur. 2d, Estoppel and Waiver §§ 1 to 3.

n2 Fixel v. U.S., 26 Cl. Ct. 353, 1992 WL 126638 (1992).

n3 Hagan v. Ellis, 39 Fla. 463, 22 So. 727 (1897); Himmelberger-Harrison Lumber Co. v. Craig, 248 Mo. 319, 154 S.W. 73 (1913); Florence-Rae Copper Co. v. Iowa Min. Co., 105 Wash. 503, 178 P. 462 (1919).

As to the abandonment of rights in public lands, generally, see § 72.

n4 Bunker Hill & Sullivan Mining & Concentrating Co. v. U.S., 226 U.S. 548, 33 S. Ct. 138, 57 L. Ed. 345 (1913).

n5 Wirth v. Branson, 98 U.S. 118, 25 L. Ed. 86, 1878 WL 18359 (1878).

n6 Henshaw v. Bissell, 85 U.S. 255, 21 L. Ed. 835, 1873 WL 16062 (1873).

n7 Butler v. Grand Rapids & I.R. Co., 85 Mich. 246, 48 N.W. 569 (1891), aff'd, 159 U.S. 87, 15 S. Ct. 991, 40 L. Ed. 85 (1895).

n8 Wisconsin Cent. R. Co. v. Forsythe, 159 U.S. 46, 15 S. Ct. 1020, 40 L. Ed. 71 (1895).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]120(2), 121

28 U.S.C.A. § 2409a

43 U.S.C.A. §§ 1165, 1166

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]120(2), 121

Federal Procedure, L.Ed. § 66:476

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Estoppel of United States, state, or political subdivision by deed or other instrument, 23 A.L.R.2d 1419

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Public Lands

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C. Defenses

63C Am Jur 2d Public Lands § 114

§ 114 Statute of limitations

Generally, when appearing in a sovereign capacity as a litigant in an action relating to public lands, neither the United States nor a state is bound by a statute of limitations, unless a statute expressly so provides. n1  If the government is merely a nominal plaintiff and has no real interest in the litigation, however, the statute of limitations is available as a defense to the same extent as in suits between private individuals. n2  Federal law provides that a suit by the United States to annul or cancel a patent must be brought within six years after the issuance of the patent sought to be annulled. n3  The limitations period extinguishes any right the government may have in the land and vests a perfect title in the adverse holder after six years from the date of the patent. n4  The six-year limitations period for suits by the United States to vacate and annul patents for public land does not begin to run until the discovery of fraud concealed from the government by the wrongdoers. n5  The limitations period does not apply to suits to annul patents for government lands brought by the government on behalf of Native American wards, if the object of the suit is to extinguish any right the government may have. n6  An action to cancel original patent deeds issued to Native Americans will be barred by the statute of limitations period, however, if the action is essentially not on behalf of the Native Americans and attempts solely to recover land for the benefit of the government. n7  The statute of limitations does not bar an action by the United States to impose a constructive trust upon lands fraudulently obtained or to recover against the defrauder the value of public lands procured by fraud. n8

In a civil action to adjudicate a disputed title to real property in which the United States claims an interest other than a security interest or water rights, the action must commence within 12 years of the date upon which it accrued. n9  The latter period applies to actions by states involving public lands, n10  as well as to counties and cities in actions involving claims to rights of way over national forest lands. n11

States also have statutes of limitations applicable to actions relating to state public lands. n12  A state's failure to sue within the statutory period may operate as a passive confirmation of the title, which is thereafter unassailable n13  unless absolutely void. n14  A state statute of limitations may not be invoked in a proceeding for the disposal of public lands over which Congress has exclusive jurisdiction. n15  State statutes of limitations do not prevent the United States from suing to enforce a public right or to protect interests of Native Americans. n16

 **FOOTNOTES:**

n1 Am. Jur. 2d, Limitation of Actions §§ 82, 85.

n2 Curtner v. U S, 149 U.S. 662, 13 S. Ct. 1041, 37 L. Ed. 890 (1893); U. S. v. Beebe, 127 U.S. 338, 8 S. Ct. 1083, 32 L. Ed. 121 (1888).

n3 43 U.S.C.A. § 1166.

n4 U.S. v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977); Porter v. Buck, 335 So. 2d 369 (Fla. Dist. Ct. App. 1st Dist. 1976).

n5 U.S. v. Coronado Beach Co., 255 U.S. 472, 41 S. Ct. 378, 65 L. Ed. 736 (1921); U.S. v. Diamond Coal & Coke Co., 255 U.S. 323, 41 S. Ct. 335, 65 L. Ed. 660 (1921); U.S. v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977); Izaak Walton League of America v. St. Clair, 55 F.R.D. 139 (D. Minn. 1972), judgment aff'd, 497 F.2d 849 (8th Cir. 1974).

As to the cancellation of patents on the grounds of fraud, see § 136.

n6 Cramer v. U.S., 261 U.S. 219, 43 S. Ct. 342, 67 L. Ed. 622 (1923).

n7 U.S. v. Krause, 92 F. Supp. 756 (W.D. La. 1950).

n8 Izaak Walton League of America v. St. Clair, 497 F.2d 849 (8th Cir. 1974).

n9 28 U.S.C.A. § 2409a(g), providing, further, that such action will be deemed to have accrued on the date the plaintiff or the plaintiff's predecessor in interest knew or should have known of the claim of the United States.

n10 Block v. North Dakota ex rel. Bd. of University and School Lands, 461 U.S. 273, 103 S. Ct. 1811, 75 L. Ed. 2d 840 (1983).

n11 Park County, Mont. v. U.S., 626 F.2d 718 (9th Cir. 1980); City and County of Denver By and Through Bd. of Water Com'rs v. Bergland, 517 F. Supp. 155 (D. Colo. 1981), judgment aff'd in part, rev'd in part on other grounds, 695 F.2d 465 (10th Cir. 1982).

n12 California Co. v. Price, 225 La. 706, 74 So. 2d 1 (1953) (overruled on other grounds by, Gulf Oil Corp. v. State Mineral Bd., 317 So. 2d 576 (La. 1974)); McCombs v. McKaughan, 195 S.W.2d 194 (Tex. Civ. App. Beaumont 1946), writ refused.

n13 Miami Corp. v. State Mineral Bd., 122 F. Supp. 489 (W.D. La. 1954).

n14 Gulf Oil Corp. v. State Mineral Bd., 317 So. 2d 576 (La. 1974).

n15 Steves v. Carson, 42 F. 821 (C.C.D. Colo. 1890).

As to federal preemption of public lands law, generally, see § 9.

n16 U.S. v. State of Minnesota, 270 U.S. 181, 46 S. Ct. 298, 70 L. Ed. 539 (1926).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]120(2), 121

28 U.S.C.A. § 2409a

43 U.S.C.A. §§ 1165, 1166

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63C Am Jur 2d Public Lands § 115

§ 115 Challenging validity of public lands entry

Designed to protect bona fide purchasers of void patents, n1  the period for contesting the validity of an entry onto public lands is limited to two years from the issuance of a receiver's receipt upon final entry of the tract. n2  An entering person obtains "receipt upon final entry" by, among other things, paying the entire purchase price for the land and receiving the final receipt. n3  The limitations period refers only to entries in force when the statute was passed and not to those that had been previously canceled. n4

 **FOOTNOTES:**

n1 Huntington v. Donovan, 183 Cal. 746, 192 P. 543 (1920).

As to the rights of bona fide purchasers of public lands, see § 117.

n2 43 U.S.C.A. § 1165.

n3 Brandt-Erichsen v. U.S. Dept. of Interior, Bureau of Land Management, 999 F.2d 1376 (9th Cir. 1993).

n4 Pfund v. Valley Loan & Trust Co., 52 Neb. 473, 72 N.W. 480 (1897); Caldwell v. Bush, 6 Wyo. 342, 45 P. 488 (1896).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]120(2), 121

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C. Defenses

63C Am Jur 2d Public Lands § 116

§ 116 Laches

Laches is a defense if it would be inequitable to allow a right in public lands to be asserted following a long delay n1  or if the rights of innocent third parties have intervened during an unexplained or unjustifiable delay. n2  The defense of laches cannot be set up as a bar, however, when the government has a direct pecuniary interest in litigation relating to public lands. n3  It has nevertheless been held that laches may bar the government if the latter had a reasonable opportunity to discover fraud relating to public lands. n4  Furthermore, if the government is merely a nominal plaintiff and has no real interest in the litigation, laches is available as a defense to the same extent as in suits between private individuals. n5

 **FOOTNOTES:**

n1 Galliher v. Cadwell, 145 U.S. 368, 12 S. Ct. 873, 36 L. Ed. 738 (1892); Underwood v. Dugan, 139 U.S. 380, 11 S. Ct. 618, 35 L. Ed. 197 (1891); Schell v. White, 80 Ariz. 156, 294 P.2d 385 (1956).

n2 U.S. v. Martinez, 184 U.S. 441, 22 S. Ct. 422, 46 L. Ed. 632 (1902).

n3 Utah Power & Light Co. v. U.S., 243 U.S. 389, 37 S. Ct. 387, 61 L. Ed. 791 (1917); Lancaster v. Gray County, 127 S.W.2d 385 (Tex. Civ. App. El Paso 1939).

As to laches, generally, see Am. Jur. 2d, Equity §§ 107 to 173.

n4 U.S. v. Diamond Coal & Coke Co., 255 U.S. 323, 41 S. Ct. 335, 65 L. Ed. 660 (1921); U.S. v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977).

n5 Curtner v. U S, 149 U.S. 662, 13 S. Ct. 1041, 37 L. Ed. 890 (1893); U. S. v. Beebe, 127 U.S. 338, 8 S. Ct. 1083, 32 L. Ed. 121 (1888).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]120(2), 121

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C. Defenses

63C Am Jur 2d Public Lands § 117

§ 117 Rights of bona fide purchaser

A bona fide purchaser of public lands acquires his or her interest in good faith, for valuable consideration, and without notice of a violation of an administrative regulation. n1  A bona fide purchase for value from the owner of a patent is an affirmative defense, n2  which the grantee must establish in order to defeat the government's right to cancel a patent allegedly obtained by false and fraudulent proofs submitted in order to obtain public lands without the legal requirements. n3  The defense of a bona fide purchase for value and without notice is good when cancellation is sought solely on the grounds of fraud in securing the patent. n4

Persons who have been enjoined at the suit of the United States from setting up or making a claim to title to public lands that they procured by fraud through the intervention of a state cannot by any legal device subsequently acquire a title from the state free from the taint of the fraud. n5  The same rule applies to persons claiming under them with notice. n6

When title is acquired by a regular chain of transfer under a state patent acquired for value in good faith and without notice of any defect, the person holding title will not be denied the status of an innocent purchaser on the grounds that an assignment of the land certificate on which the patent was issued was forged, since the patent is voidable and not void in such circumstances. n7

 **FOOTNOTES:**

n1 U.S. v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977).

n2 Great Northern Ry. Co. v. Hower, 236 U.S. 702, 35 S. Ct. 465, 59 L. Ed. 798 (1915).

n3 Wright-Blodgett Co. v. U.S., 236 U.S. 397, 35 S. Ct. 339, 59 L. Ed. 637 (1915).

As to bona fide purchasers, see Federal Procedure, L.Ed. § 66:476.

As to the cancellation of patent rights, generally, see § 68.

n4 Colorado Coal & Iron Co. v. U.S., 123 U.S. 307, 8 S. Ct. 131, 31 L. Ed. 182 (1887); U.S. v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977).

n5 Independent Coal & Coke Co. v. U.S., 274 U.S. 640, 47 S. Ct. 714, 71 L. Ed. 1270 (1927).

n6 Independent Coal & Coke Co. v. U.S., 274 U.S. 640, 47 S. Ct. 714, 71 L. Ed. 1270 (1927).

n7 Hennessy v. Blair, 107 Tex. 39, 173 S.W. 871 (1915).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]120(2), 121

28 U.S.C.A. § 2409a

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V. Actions and Proceedings

D. Parties

63C Am Jur 2d Public Lands § 118

§ 118 Generally

A patent to public land issued by a state is subject to attack only by the state or by one who holds an interest prior to that of the person to whom the patent was issued, n1  and a private citizen has no enforceable right in public lands. n2  State land commissioners may be authorized to bring or defend suits on behalf of a state in all matters affecting the management and disposition of public lands of the state. n3  The general rule that the United States and states cannot be sued without consenting to the suit applies to actions relating to public lands n4  and prevents a state from bringing suit in the Supreme Court against a federal administrative agency to establish title to, and to restrain the disposition of, lands claimed by the state under federal statutes. n5

The Secretary of the Interior represents the government, which is a party-in-interest in every case involving the surveying and disposal of public lands. n6  While a suit for judicial review of an action of the Interior Department may properly be brought against the Secretary of the Interior, n7  the decisions are in conflict as to whether such a suit may be maintained against the United States, the Department of the Interior, or its subordinate officials. n8  The United States may be named a defendant in a civil action to adjudicate disputed title to real property in which United States claims an interest other than a security interest or water rights. n9

A state commissioner of public lands is a proper relator in a mandamus proceeding to prevent an alleged illegal diversion of trust funds produced by lands granted by Congress for specific purposes. n10  Only the United States, and not an objecting taxpayer, may exercise the right to forfeit a grant to a city on the grounds that the land is being used for a forbidden purpose. n11

A notice on which a court's jurisdiction on appeal depends must be addressed and framed so as to disclose unequivocally the party for whom it is intended and who is to be affected by the proceeding in which the notice is given. n12

For a party to demonstrate standing in an action under the National Environmental Policy Act, such party must demonstrate that he or she would suffer actual, particularized harm from the proposed action. n13

 **FOOTNOTES:**

n1 Singleton v. Terrel, 727 S.W.2d 688 (Tex. App. Texarkana 1987).

n2 State of Nev. ex rel. Nevada State Bd. of Agriculture v. U.S., 512 F. Supp. 166 (D. Nev. 1981), order aff'd, 699 F.2d 486 (9th Cir. 1983).

n3 State ex rel. Com'rs of Land Office v. Lamascus, 1953 OK 339, 263 P.2d 426 (Okla. 1953).

As to patents to public lands, generally, see § 48.

n4 Carr v. U.S., 98 U.S. 433, 25 L. Ed. 209, 1878 WL 18315 (1878); Utah Power & Light Co. v. U.S., 230 F. 328 (C.C.A. 8th Cir. 1915), decision modified on other grounds, 242 F. 924 (C.C.A. 8th Cir. 1917).

As to sovereign immunity, generally, see Am. Jur. 2d, Federal Courts §§ 942 to 948.

As to actions against a state, generally, see Am. Jur. 2d, States, Territories, and Dependencies §§ 92 to 121.

As to actions against the United States, generally, see Am. Jur. 2d, United States §§ 59 to 68.

n5 New Mexico v. Lane, 243 U.S. 52, 37 S. Ct. 348, 61 L. Ed. 588 (1917); State of Louisiana v. Garfield, 211 U.S. 70, 29 S. Ct. 31, 53 L. Ed. 92 (1908).

n6 Best v. Humboldt Placer Min. Co., 371 U.S. 334, 83 S. Ct. 379, 9 L. Ed. 2d 350 (1963); U.S. ex rel. McLennan v. Wilbur, 283 U.S. 414, 51 S. Ct. 502, 75 L. Ed. 1148 (1931); State v. Nichols, 241 Iowa 952, 44 N.W.2d 49 (1950).

As to surveys of public lands, generally, see § 14.

As to the disposal of public lands, generally, see § 40.

n7 Chournos v. U.S., 335 F.2d 918 (10th Cir. 1964).

n8 Adams v. Witmer, 271 F.2d 29, 1 Fed. R. Serv. 2d 345 (9th Cir. 1958); Chournos v. U.S., 335 F.2d 918 (10th Cir. 1964); MacDonald v. Best, 186 F. Supp. 217 (N.D. Cal. 1960).

n9 28 U.S.C.A. § 2409a(a).

As to a complaint in a quiet title action involving the government., see Federal Procedure, L.Ed. § 66:631.

n10 State ex rel. Shepard v. Mechem, 56 N.M. 762, 250 P.2d 897 (1952).

As to federal grants of public lands to states, generally, see § 56.

n11 Elquest v. City of Phoenix, 68 Ariz. 277, 204 P.2d 1061 (1949).

n12 McCarthy v. Coos Head Timber Co., 208 Or. 371, 302 P.2d 238 (1956).

n13 Western Land Exchange Project v. U.S. Bureau of Land Management, 315 F. Supp. 2d 1068 (D. Nev. 2004).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]120(10), 121

28 U.S.C.A. § 2409a

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]120(10), 121

Federal Procedure, L.Ed. § 66:631

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Public Lands

V. Actions and Proceedings

D. Parties

63C Am Jur 2d Public Lands § 119

§ 119 Indispensable parties

A court judgment involving public lands cannot bind the United States or affect its title or rights if the United States is not a party. n1  Officers and boards administering federal public lands may be indispensable parties in litigation involving their decisions. n2  In particular, the Secretary of the Interior should be made a party to any action concerning grazing privileges in grazing districts. n3

The United States has been held not to be an indispensable party when the only issue is the right of possession of persons claiming surface rights and the United States has no present right of possession. n4  The same is true when a suit seeks to enjoin a federal agency from casting a cloud upon the vested title to a grant n5  or when a state sues to enjoin the Secretary of the Interior from rejecting a state's claim to swamplands and overflowed lands. n6

A person who is entitled to a patent for a parcel of public land is a necessary party in a suit to enjoin government officials from issuing a patent, and it is immaterial that service cannot be had upon the person because he or she is outside the court's territorial jurisdiction. n7

In litigation between private parties concerning an assignment of interest that is enforceable between the parties with or without agency approval, the government is not an indispensable party. n8

 **FOOTNOTES:**

n1 Summerville v. Scotts Bluff County, 182 Neb. 311, 154 N.W.2d 517 (1967).

n2 Anderson v. McKay, 211 F.2d 798 (D.C. Cir. 1954); Sellas v. Kirk, 101 F. Supp. 237 (D. Nev. 1951), judgment aff'd, 200 F.2d 217 (9th Cir. 1952); Ballard v. Echols, 81 N.M. 564, 469 P.2d 713 (1970).

n3 Sellas v. Kirk, 200 F.2d 217 (9th Cir. 1952); Richman v. Beck, 257 F.2d 575 (10th Cir. 1958); Thomas v. Devilbiss, 408 F. Supp. 1357 (D. Ariz. 1973); Bedke v. Quinn, 154 F. Supp. 370 (D. Idaho 1957); Buffalo Creek Co-op. State Grazing Dist. v. Tysk, 290 F. Supp. 227 (D. Mont. 1968); Shaw v. Udall, 264 F. Supp. 390 (D. Or. 1967).

As to public grazing lands, generally, see § 87.

n4 Summerville v. Scotts Bluff County, 182 Neb. 311, 154 N.W.2d 517 (1967).

n5 Lane v. Watts, 234 U.S. 525, 34 S. Ct. 965, 58 L. Ed. 1440 (1914).

n6 Work v. State of Louisiana, 269 U.S. 250, 46 S. Ct. 92, 70 L. Ed. 259 (1925).

As to grants of swamplands and overflowed lands, generally, see § 59.

n7 Brady v. Work, 263 U.S. 435, 44 S. Ct. 168, 68 L. Ed. 375 (1924).

As to patents to public lands, generally, see § 48.

n8 Ballard v. Echols, 81 N.M. 564, 469 P.2d 713 (1970).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]120(10), 121

28 U.S.C.A. § 2409a

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Public Lands

V. Actions and Proceedings

E. Evidence

63C Am Jur 2d Public Lands § 120

§ 120 Generally

The original application for entry of public lands and the final proof of residence and cultivation are to be received in evidence in all courts of the United States and in state courts. n1  The same is true of any other original papers that are on file in the Bureau of Land Management and that are the basis for a patent, when properly authenticated by the Secretary of the Interior as the original papers on which a patent was issued. n2  The Secretary of the Interior must make rules and regulations to secure the return of such documents to the Bureau of Land Management after use in evidence, without cost to the United States. n3

Written evidence in cases involving rights in public lands includes letters, n4  grants n5  and copies of grants, n6  applications for a grant, n7  stamped notations on certificates, n8  patents n9  and records of patents, n10  surveys n11  and certified copies of the map and original field notes of a survey, n12  and administrative records n13  or authenticated copies of such records, books, or papers. n14

Expert opinion evidence is admissible in a proper case. n15

 **FOOTNOTES:**

n1 43 U.S.C.A. § 13.

n2 43 U.S.C.A. § 13.

n3 43 U.S.C.A. § 13.

n4 Watson v. Barnard, 155 Mont. 75, 469 P.2d 539 (1970).

n5 U.S. v. Vallejo, 66 U.S. 541, 17 L. Ed. 232, 1861 WL 7696 (1861); Strong v. Delhi-Taylor Oil Corp., 405 S.W.2d 351 (Tex. Civ. App. Corpus Christi 1966), writ refused n.r.e., (Jan. 18, 1967).

n6 U.S. v. Delespine's Heirs, 37 U.S. 654, 9 L. Ed. 1232, 1838 WL 3928 (1838).

As to grants to public lands, generally, see § 48.

n7 Williams v. Conger, 125 U.S. 397, 8 S. Ct. 933, 31 L. Ed. 778 (1888).

n8 U.S. v. Delta Development Co., 322 F. Supp. 121 (E.D. La. 1970), opinion aff'd, 447 F.2d 989 (5th Cir. 1971).

n9 Reichart v. Felps, 73 U.S. 160, 18 L. Ed. 849, 1867 WL 11163 (1867); Johnson v. Drew, 34 Fla. 130, 15 So. 780 (1894), aff'd, 171 U.S. 93, 18 S. Ct. 800, 43 L. Ed. 88 (1898).

n10 Campbell v. Laclede Gas-Light Co, 119 U.S. 445, 7 S. Ct. 278, 30 L. Ed. 459 (1886).

As to patents to public lands, generally, see § 48.

n11 Strong v. Delhi-Taylor Oil Corp., 405 S.W.2d 351 (Tex. Civ. App. Corpus Christi 1966), writ refused n.r.e., (Jan. 18, 1967).

As to surveys, generally, see § 14.

n12 Ayers v. Watson, 137 U.S. 584, 11 S. Ct. 201, 34 L. Ed. 803 (1891); Strong v. Delhi-Taylor Oil Corp., 405 S.W.2d 351 (Tex. Civ. App. Corpus Christi 1966), writ refused n.r.e., (Jan. 18, 1967).

n13 Carr v. Fife, 156 U.S. 494, 15 S. Ct. 427, 39 L. Ed. 508 (1895).

n14 Howard v. Perrin, 200 U.S. 71, 26 S. Ct. 195, 50 L. Ed. 374 (1906); Bennett v. Harkrader, 158 U.S. 441, 15 S. Ct. 863, 39 L. Ed. 1046, 1 Alaska Fed. 400 (1895).

n15 U.S. v. Fennell, 381 F. Supp. 2d 1312 (D.N.M. 2005).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]120(13) to 120(19), 121

43 U.S.C.A. § 13

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Public Lands

V. Actions and Proceedings

E. Evidence

63C Am Jur 2d Public Lands § 121

§ 121 Judicial notice

In cases involving public lands, courts have taken judicial notice of the actions of the Secretary of the Interior and the Director of the Bureau of Land Management, n1  historical facts, n2  state surveys, n3  and the range, townships, and sections in a county. n4  A court may refuse to take judicial notice of government files relating to public lands. n5  As to a country from which the forum state was formed, the laws of the mother country that were in existence at the time of the separation will be judicially noticed, such as the laws of Mexico in force in California prior to its conquest. n6

 **FOOTNOTES:**

n1 Jay v. Dollarhide, 3 Cal. App. 3d 1001, 84 Cal. Rptr. 538 (5th Dist. 1970) (disapproved of on other grounds by, Morris v. Thogmartin, 29 Cal. App. 3d 922, 105 Cal. Rptr. 919 (5th Dist. 1973)).

n2 State by Kobayashi v. Midkiff, 49 Haw. 456, 421 P.2d 550 (1966).

As to judicial notice, generally, see Am. Jur. 2d, Evidence §§ 24 to 170.

n3 McNitt v. Turner, 83 U.S. 352, 21 L. Ed. 341, 1872 WL 15334 (1872); Harrington v. Goldsmith, 136 Cal. 168, 68 P. 594 (1902); Fogg v. Holcomb, 64 Iowa 621, 21 N.W. 111 (1884); City Nat. Bank v. Goodloe-McClelland Commission Co., 93 Mo. App. 123, 1902 WL 1554 (1902).

As to surveys and boundaries, generally, see § 14.

n4 Bank of Lemoore v. Fulgham, 151 Cal. 234, 90 P. 936 (1907); Huxford v. Southern Pine Co., 124 Ga. 181, 52 S.E. 439 (1905); Zimmerman v. Brooks, 118 Ky. 85, 25 Ky. L. Rptr. 2284, 80 S.W. 443 (1904); Albert v. City of Salem, 39 Or. 466, 65 P. 1068 (1901).

As to the admissibility of evidence, generally, see Am. Jur. 2d, Evidence §§ 301 to 667.

n5 Great Northern Ry. Co. v. Steinke, 261 U.S. 119, 43 S. Ct. 316, 67 L. Ed. 564 (1923).

n6 Am. Jur. 2d, Evidence § 122.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]120(13) to 120(19), 121

43 U.S.C.A. § 13

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Public Lands

V. Actions and Proceedings

E. Evidence

63C Am Jur 2d Public Lands § 122

§ 122 Presumptions; surveys and patents

A survey of public lands is generally presumed to be correct. n1  Even if incorrect, n2  an original survey of public lands controls the location and length of boundaries of sections and the shape and size of tracts granted to patentees. n3  If possible to find or determine, the original corners are generally conclusive as to all persons owning or claiming to hold with reference to the survey and monuments placed by the surveyor, whether the corners were correctly located or not. n4  If no reservation is made of a right or interest that ordinarily would pass by law, and if no act indicates an intention to make such a reservation, the conveyance presumptively includes all that would pass by a private grant. n5

A patent is presumed to be valid and to pass the legal title. n6  It is presumptive evidence of the performance of every prerequisite to its issuance, n7  including the payment of the consideration, n8  and officers charged with executing land grants are presumed to have performed the acts required of them. n9  A patent that is regular in form and for whose issuance there is statutory authority is binding on the government, and a purchaser from the patentee need make no investigation as to the details of its issuance. n10

If the United States has prima facie good title to property, it is presumed that such title remains in the government in the absence of proof to the contrary. n11  Continuous peaceable possession of land, when accompanied by the usual acts of ownership, such as the payment of taxes, raises a presumption that the state has granted the land to the possessor. n12  When a person alleges that a patent was fraudulently issued, it may be conclusively presumed that the fraud was discovered at the time the patent was recorded. n13  It may not be assumed that Congress will execute its constitutional control over lands of the United States in such a way as to bring about injustice to a state, a state subdivision, or a person acting with the permission of a state. n14

 **FOOTNOTES:**

n1 Schraeder Min.& Manufacturing Co v. Packer, 129 U.S. 688, 9 S. Ct. 385, 32 L. Ed. 760 (1889); McKnight v. Broedell, 212 F. Supp. 45 (E.D. Mich. 1962); State v. Nichols, 241 Iowa 952, 44 N.W.2d 49 (1950); Kneeland v. Korter, 40 Wash. 359, 82 P. 608 (1905).

As to presumptions relating to official acts, duties, and proceedings, generally, see Am. Jur. 2d, Evidence § 219.

n2 U.S. v. Doyle, 468 F.2d 633 (10th Cir. 1972); U.S. v. Citko, 517 F. Supp. 233 (E.D. Wis. 1981); Grainger v. U. S., 197 Ct. Cl. 1018, 1972 WL 20796 (1972).

n3 Ames v. Irvine Co., 246 Cal. App. 2d 832, 55 Cal. Rptr. 180 (4th Dist. 1966); Verdi Development Co. v. Dono-Han Min. Co., 141 Cal. App. 2d 149, 296 P.2d 429 (4th Dist. 1956).

As to surveys and boundaries, generally, see § 14.

n4 U.S. v. Citko, 517 F. Supp. 233 (E.D. Wis. 1981); Everett v. Lantz, 126 Colo. 504, 252 P.2d 103 (1952).

n5 U.S. v. Wood, 466 F.2d 1385 (9th Cir. 1972); Stewart v. Lamm, 132 Colo. 484, 289 P.2d 916 (1955).

As to the withdrawal or reservation of public lands, generally, see § 31.

n6 State v. Nichols, 241 Iowa 952, 44 N.W.2d 49 (1950); Murray v. State, 226 Kan. 26, 596 P.2d 805 (1979); Vavoline Oil Co. v. Concordia Parish School Bd., 216 So. 2d 702 (La. Ct. App. 3d Cir. 1968); Smith v. Temple Lumber Co., 323 S.W.2d 172 (Tex. Civ. App. Beaumont 1959), writ refused n.r.e.

n7 U.S. v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977); State v. Nichols, 241 Iowa 952, 44 N.W.2d 49 (1950); Bustamante v. Sena, 92 N.M. 72, 582 P.2d 1285 (1978); State ex rel. Com'rs of Land Office v. Butler, 1987 OK 123, 753 P.2d 1334 (Okla. 1987); State v. Valmont Plantations, 346 S.W.2d 853 (Tex. Civ. App. San Antonio 1961), writ granted, (Nov. 29, 1961) and judgment aff'd, 163 Tex. 381, 355 S.W.2d 502 (1962).

n8 Weaver v. Koontz, 1956 OK 256, 301 P.2d 1009 (Okla. 1956).

n9 U.S. v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977); Richards v. W. M. Ritter Lumber Co., 158 N.C. 54, 73 S.E. 485 (1911), modified on reh'g on other grounds, 159 N.C. 455, 74 S.E. 1016 (1912).

n10 U.S. v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977).

n11 U.S. v. Gossett, 416 F.2d 565 (9th Cir. 1969).

As to presumptions, generally, see Am. Jur. 2d, Evidence §§ 198 to 300.

n12 Board of Trustees of Monroe County Bd. of Educ. v. Rye, 521 So. 2d 900, 45 Ed. Law Rep. 919 (Miss. 1988).

n13 Murray v. Quigley, 119 Iowa 6, 92 N.W. 869 (1902).

n14 U.S. v. State of Cal., 332 U.S. 19, 67 S. Ct. 1658, 91 L. Ed. 1889 (1947), opinion supplemented on other grounds, 332 U.S. 804, 68 S. Ct. 20, 92 L. Ed. 382 (1947).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]120(13) to 120(19), 121

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Public Lands

V. Actions and Proceedings

E. Evidence

63C Am Jur 2d Public Lands § 123

§ 123 Burden of proof

In cases involving public lands, the burden of proof generally rests upon the one who has the affirmative of an issue. n1

A party challenging the validity of a patent has the burden of maintaining his or her claim. n2  If a property owner in an inverse condemnation quiet-title action against a state for the taking of a portion of his or her land for highway purposes produces patents as proof of title, the state has the burden of proving that the patents were faulty and incomplete. n3  In a suit to cancel a patent for fraud, a person who claims as a bona fide purchaser without notice has the burden of proving that affirmative defense. n4  In addition, the burden of proof lies with one who alleges that --

 -- a vacancy exists. n5

 -- land was awarded. n6

 -- land was granted to one through whom the plaintiff claims title. n7

 -- there was an error in a meander line. n8

 -- a highway was located on public lands and was accepted by the public. n9

 -- a patentee held title in trust for an equitable owner whose title was superior to the patentee's legal title. n10

 -- the federal two-year statute of limitations for contesting the validity of an entry onto public lands applies. n11

 **FOOTNOTES:**

n1 State by Kobayashi v. Midkiff, 49 Haw. 456, 421 P.2d 550 (1966); Watson v. Barnard, 155 Mont. 75, 469 P.2d 539 (1970); Davis v. Westland Development Co., 81 N.M. 296, 466 P.2d 862 (1970); Harris v. O'Connor, 185 S.W.2d 993 (Tex. Civ. App. El Paso 1944), writ refused w.o.m.

As to the burden of proof, generally, see Am. Jur. 2d, Evidence §§ 171 to 197.

n2 Town of Moultonboro v. Bissonnette, 105 N.H. 210, 196 A.2d 703 (1963).

n3 State v. Crawford, 13 Ariz. App. 225, 475 P.2d 515 (Div. 2 1970).

n4 Curtis, Collins & Holbrook Co. v. U.S., 262 U.S. 215, 43 S. Ct. 570, 67 L. Ed. 956 (1923); U.S. v. Poland, 251 U.S. 221, 40 S. Ct. 127, 64 L. Ed. 236, 4 Alaska Fed. 858 (1920).

As to the rights of a bona fide purchaser, see § 117.

n5 Strong v. Sunray DX Oil Co., 448 S.W.2d 728 (Tex. Civ. App. Corpus Christi 1969), writ refused n.r.e.

n6 State by Kobayashi v. Midkiff, 49 Haw. 456, 421 P.2d 550 (1966).

n7 McBride v. Gulf Oil Corp., 292 S.W.2d 151 (Tex. Civ. App. Beaumont 1955), writ refused n.r.e.

n8 Schultz v. Winther, 10 Wis. 2d 1, 101 N.W.2d 631 (1960).

n9 Hamerly v. Denton, 359 P.2d 121 (Alaska 1961).

n10 Independent Coal & Coke Co. v. U.S., 274 U.S. 640, 47 S. Ct. 714, 71 L. Ed. 1270 (1927); Park Dist. of City of Bismarck v. Bertsch, 152 N.W.2d 401 (N.D. 1967).

n11 Park Dist. of City of Bismarck v. Bertsch, 152 N.W.2d 401 (N.D. 1967).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]120(13) to 120(19), 121

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Public Lands

V. Actions and Proceedings

E. Evidence

63C Am Jur 2d Public Lands § 124

§ 124 Parol evidence

In cases involving public lands, parol evidence has been used to identify lands, n1  to show that an official survey improperly related to the wrong tract, n2  to prove the character of lands, n3  and to show a want of power in officers who issued a patent. n4  If the actual grant of public lands cannot be produced, proof of the contents of the writing may be offered and may be as effective as if the writing had been produced. n5  Further, in the construction of a grant, parol evidence may be introduced as to the circumstances at the time the grant was made. n6

 **FOOTNOTES:**

n1 Pinkerton v. Ledoux, 129 U.S. 346, 9 S. Ct. 399, 32 L. Ed. 706 (1889); Jones v. Hickey, 80 Kan. 109, 102 P. 247 (1909).

As to parol or extrinsic evidence affecting writings, generally, see Am. Jur. 2d, Evidence §§ 1104 to 1116.

n2 Niswanger v. Saunders, 68 U.S. 424, 17 L. Ed. 599, 1863 WL 6635 (1863).

n3 McCormick v. Hayes, 159 U.S. 332, 16 S. Ct. 37, 40 L. Ed. 171 (1895).

n4 Sherman v. Buick, 93 U.S. 209, 23 L. Ed. 849, 1876 WL 19705 (1876).

n5 Harris v. O'Connor, 185 S.W.2d 993 (Tex. Civ. App. El Paso 1944), writ refused w.o.m.

n6 Cavazos v. Trevino, 73 U.S. 773, 18 L. Ed. 813, 1867 WL 11237 (1867).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]120(13) to 120(19), 121

43 U.S.C.A. § 13

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West's A.L.R. Digest, Public Lands [westkey]120(13) to 120(19), 121

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Admissibility of extrinsic evidence to identify person or persons intended to be designated by the name in which a contract is made, 80 A.L.R.2d 1137

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Public Lands

V. Actions and Proceedings

F. Appeal; Judicial Review

1. In General

63C Am Jur 2d Public Lands § 125

§ 125 Availability of review

It is the policy of the United States to provide by law for the judicial review of public land adjudication decisions. n1  In the absence of fraud or mistake, a decision of the Secretary of the Interior on a question of fact is conclusive if supported by the record. n2  Such questions of fact may concern, for example, the geological n3  or topographical characteristics n4  of specified lands or factual matters relating to town lot sites. n5  The rule also applies to mixed questions of law and fact. n6  The courts are not bound, however, by the Secretary of the Interior's construction of the law, n7  which the courts may determine without reference to the practice of the Department. n8  When administrative functions have ended, any errors of law committed with regard to proper parties in the administration of the public land laws may be corrected in the courts. n9  Administrative interpretations of federal law concerning public lands are entitled to great weight, n10  however, and a settled construction of federal law will be regarded favorably if there is doubt as to the interpretation of the law. n11

In the absence of a statute to the contrary, matters relating to public lands that are committed to a federal agency for regulation and decision are beyond the jurisdiction of a court while such matters are pending before the agency. n12

While the Administrative Procedure Act creates a presumption that judicial review of agency action will be available in a court specified by statute or of competent jurisdiction, the jurisdictional authority for judicial review is to be found outside the Act. n13  Absent a specific statute authorizing judicial review in a particular court, nonstatutory review is available in a federal district court under the general "federal question" jurisdictional statute. n14

Agency decisions that allegedly violate the National Environmental Policy Act and the Federal Land Policy and Management Act are reviewed under the Administrative Procedure Act and may be set aside if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. n15  A matter that does not constitute an "agency action" is not reviewable pursuant to the National Environmental Policy Act and the Endangered Species Act. n16

 **FOOTNOTES:**

n1 43 U.S.C.A. § 1701(a)(6).

As to judicial review of the administrative decisions of the Department of the Interior, see Federal Procedure, L.Ed. §§ 66:95 to 66:101.

As to judicial review of administrative decisions of Department of the Interior, see Federal Procedural Forms § 55:66.

n2 West v. Standard Oil Co., 278 U.S. 200, 49 S. Ct. 138, 73 LED 265 (1929); U.S. ex rel. Alaska Smokeless Coal Co. v. Lane, 250 U.S. 549, 40 S. Ct. 33, 63 L. Ed. 1135 (1919); Moseley v. Hickel, 442 F.2d 1030 (9th Cir. 1971); State v. Nichols, 241 Iowa 952, 44 N.W.2d 49 (1950); Spicer v. Gore, 219 Md. 469, 150 A.2d 226 (1959).

n3 Carter v. Thompson, 65 F. 329 (C.C.D. Mont. 1894); Matthews v. Goodrich, 102 Ind. 557, 1 N.E. 175 (1885); Rood v. Wallace, 109 Iowa 5, 79 N.W. 449 (1899).

n4 U.S. v. Chicago, M. & St. P. Ry. Co., 218 U.S. 233, 31 S. Ct. 7, 54 L. Ed. 1015 (1910).

n5 Johnson v. Riddle, 240 U.S. 467, 36 S. Ct. 393, 60 L. Ed. 752 (1916); White v. Whitcomb, 13 Idaho 490, 90 P. 1080 (1907), aff'd, 214 U.S. 15, 29 S. Ct. 599, 53 L. Ed. 889 (1909).

n6 Ross v. Day, 232 U.S. 110, 34 S. Ct. 233, 58 L. Ed. 528 (1914).

n7 U.S. v. Laughlin, 249 U.S. 440, 39 S. Ct. 340, 63 L. Ed. 696 (1919); Logan v. Davis, 233 U.S. 613, 34 S. Ct. 685, 58 L. Ed. 1121 (1914); De Cambra v. Rogers, 189 U.S. 119, 23 S. Ct. 519, 47 L. Ed. 734 (1903); Gage v. Gunther, 136 Cal. 338, 68 P. 710 (1902).

n8 Webster v. Luther, 163 U.S. 331, 16 S. Ct. 963, 41 L. Ed. 179 (1896); U.S. v. Healey, 160 U.S. 136, 16 S. Ct. 247, 40 L. Ed. 369 (1895); Tatro v. French, 33 Kan. 49, 5 P. 426 (1885).

n9 Lane v. U.S. of America ex rel. Mickadiet, 241 U.S. 201, 36 S. Ct. 599, 60 L. Ed. 956 (1916).

n10 U. S. v. Wharton, 514 F.2d 406 (9th Cir. 1975).

n11 Culpepper v. Ocheltree, 256 U.S. 483, 41 S. Ct. 579, 65 L. Ed. 1054 (1921); McLaren v. Fleischer, 256 U.S. 477, 41 S. Ct. 577, 65 L. Ed. 1052 (1921).

n12 Best v. Humboldt Placer Min. Co., 371 U.S. 334, 83 S. Ct. 379, 9 L. Ed. 2d 350 (1963); Northern Pac. Ry. Co. v. McComas, 250 U.S. 387, 39 S. Ct. 546, 63 L. Ed. 1049 (1919); U.S. v. Hammers, 221 U.S. 220, 31 S. Ct. 593, 55 L. Ed. 710 (1911); Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 F. 4 (C.C.A. 9th Cir. 1901), aff'd, 190 U.S. 301, 23 S. Ct. 692, 47 L. Ed. 1064 (1903), judgment modified on other grounds, 190 U.S. 301, 24 S. Ct. 860, 47 L. Ed. 1064 (1903) and aff'd, 190 U.S. 316, 23 S. Ct. 698, 47 L. Ed. 1073 (1903), judgment modified on other grounds, 190 U.S. 316, 24 S. Ct. 861, 47 L. Ed. 1073 (1903); Union Oil Co. of Cal. v. Udall, 289 F.2d 790 (D.C. Cir. 1961); Perry v. Erling, 132 N.W.2d 889 (N.D. 1965); Columbia Canal Co. v. Benham, 47 Wash. 249, 91 P. 961 (1907).

n13 Am. Jur. 2d, Administrative Law § 408.

n14 Am. Jur. 2d, Administrative Law § 410.

n15 Klamath Siskiyou Wildlands Center v. Boody, 468 F.3d 549 (9th Cir. 2006).

n16 Forest Guardians v. U.S. Forest Service, 370 F. Supp. 2d 978 (D. Ariz. 2004).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

43 U.S.C.A. §§ 1701

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

Federal Procedure, L.Ed. §§ 66:95 to 66:101, 66:477 to 66:479, 66:491, 66:493

Federal Procedural Forms §§ 55:66, 55:86, 55:90

West's Key Number Digest, Public Lands [westkey]104, 106, 116, 117

Federal Procedural Forms § 55:86 (Complaint in district court -- For review of suspension of grazing leas or permit)

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Public Lands

V. Actions and Proceedings

F. Appeal; Judicial Review

1. In General

63C Am Jur 2d Public Lands § 126

§ 126 Standing

Individuals or groups who are injured or who are aggrieved persons within the meaning of a public lands statute are entitled to seek judicial review of administrative decisions allegedly in violation of the statute. n1  If the question is particularly within the agency's competence, however, such review will be deferred until the proper administrative agency has had an opportunity to rule on the questions involved. n2

In order for a court to sustain a challenge to the legal sufficiency of a government land withdrawal, a party must show that it has standing and that the cause of action was filed within six years of the publication of the withdrawal in the Federal Register. n3

A right granted under the Appeals Reform Act to participate in United States Forest Service decisionmaking is not a "concrete interest" sufficient to confer standing upon an environmental organization that sues the Forest Service challenging the agency's refusal to consider untimely appeals of National Forest project decisions, because the right guaranteed by the Act is simply the right to participate in agency deliberations. n4

 **FOOTNOTES:**

n1 West Virginia Highlands Conservancy v. Island Creek Coal Co., 441 F.2d 232, 11 A.L.R. Fed. 549 (4th Cir. 1971); Parker v. U.S., 307 F. Supp. 685 (D. Colo. 1969).

n2 Izaak Walton League of America v. St. Clair, 497 F.2d 849 (8th Cir. 1974).

As to standing in environmental cases, generally, see Am. Jur. 2d, Pollution Control §§ 2013 to 2020.

n3 Shiny Rock Min. Corp. v. U.S., 906 F.2d 1362 (9th Cir. 1990).

As to the withdrawal or reservation of public lands, generally, see § 31.

As to statutes of limitations in public lands cases, see § 114.

N4 Bensman v. U.S. Forest Service, 408 F.3d 945 (7th Cir. 2005).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

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Federal Procedure, L.Ed. §§ 66:95 to 66:101, 66:477 to 66:479, 66:491, 66:493

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Public Lands

V. Actions and Proceedings

F. Appeal; Judicial Review

1. In General

63C Am Jur 2d Public Lands § 127

§ 127 Standard of review

In reviewing an administrative decision concerning public lands, a court will examine whether the proper legal standard was applied and whether the applicable rules and regulations were correctly interpreted in arriving at the ruling. n1  The agency's construction of the law will control unless plainly erroneous or inconsistent with regulations. n2  A court must defer to the agency's interpretation of its own regulations, so long as that interpretation is not plainly beyond the bounds of reason or authority. n3  A state agency's decision regarding public lands may be reviewed for a determination of whether the agency's action was arbitrary, capricious, or unlawful, and the reviewing court may not substitute its decision for that of the agency, n4  unless the law provides for a trial de novo on appeal. n5

In public lands cases, administrative action taken or not taken with respect to a matter of agency discretion will not be disturbed by a court unless the administrative decision was clearly wrong, n6  arbitrary, capricious, or an abuse of discretion. n7

An environmental assessment should be upheld if the agency took a "hard look" at the project, identified the relevant areas of environmental concern, and made a convincing statement for its finding of no significant impact. n8

The Court of Appeals upholds determinations of the Interior Board of Land Appeals so long as the Board engaged in reasoned decisionmaking and the decision is adequately explained and supported by the record. n9

 **FOOTNOTES:**

n1 Sainberg v. Morton, 363 F. Supp. 1259 (D. Ariz. 1973).

As to the scope and standard of review of Department of the Interior actions, see Federal Procedure, L.Ed. § 66:491.

n2 U.S. v. Coleman, 390 U.S. 599, 88 S. Ct. 1327, 20 L. Ed. 2d 170 (1968); Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639, 55 S. Ct. 888, 79 L. Ed. 1627 (1935) (disapproved of on other grounds by, Hickel v. Oil Shale Corp., 400 U.S. 48, 91 S. Ct. 196, 27 L. Ed. 2d 193 (1970)); Barrows v. Hickel, 447 F.2d 80 (9th Cir. 1971); Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); Sainberg v. Morton, 363 F. Supp. 1259 (D. Ariz. 1973); Roberts v. Morton, 389 F. Supp. 87 (D. Colo. 1975), judgment aff'd, 549 F.2d 158 (10th Cir. 1976); Pruess v. Udall, 286 F. Supp. 138 (D. Or. 1968), judgment aff'd, 410 F.2d 750 (9th Cir. 1969).

n3 Buch v. Morton, 449 F.2d 600 (9th Cir. 1971); Rocky Mountain Oil and Gas Ass'n v. Watt, 696 F.2d 734 (10th Cir. 1982); Udall v. Oelschlaeger, 389 F.2d 974 (D.C. Cir. 1968).

n4 Havasu Heights Ranch and Development Corp. v. Desert Valley Wood Products, Inc., 167 Ariz. 383, 807 P.2d 1119 (Ct. App. Div. 1 1990); Montierth v. State Land Dept., 84 Ariz. 100, 324 P.2d 228 (1958); Langen v. Badlands Co-op. State Grazing Dist., 125 Mont. 302, 234 P.2d 467 (1951); Mahoney v. L. L. Sheep Co., 79 Wyo. 293, 333 P.2d 712 (1958).

n5 Montierth v. State Land Dept., 84 Ariz. 100, 324 P.2d 228 (1958).

n6 LaRue v. Udall, 324 F.2d 428 (D.C. Cir. 1963); Hall v. Hickel, 305 F. Supp. 723 (D. Nev. 1969), judgment rev'd on other grounds, 473 F.2d 790 (9th Cir. 1973); Atlantic Richfield Co. v. Hickel, 303 F. Supp. 724 (D. Wyo. 1969), judgment aff'd, 432 F.2d 587 (10th Cir. 1970); Mason v. Mason, 3 Utah 2d 222, 282 P.2d 317 (1955).

The Forest Service's admitted misinterpretation of market demand for Tongass timber in its revision to the Tongass Land Management Plan was a clear error of judgment that rendered record of the decision arbitrary and capricious, and the market-demand error was not harmless because it had some bearing on the substance of the Forest Service's decision to adopt a particular alternative in its revised forest plan. Natural Resources Defense Council v. U.S. Forest Service, 421 F.3d 797 (9th Cir. 2005).

n7 Baker v. U.S., 613 F.2d 224 (9th Cir. 1980); Multiple Use, Inc. v. Morton, 504 F.2d 448 (9th Cir. 1974); Silverton Snowmobile Club v. U.S. Forest Service, 433 F.3d 772 (10th Cir. 2006); Pressentin v. Seaton, 284 F.2d 195 (D.C. Cir. 1960); Johnson v. Udall, 292 F. Supp. 738 (C.D. Cal. 1968); Umpleby v. Udall, 285 F. Supp. 25 (D. Colo. 1968); Burnham Chemical Co. v. Krug, 81 F. Supp. 911 (D. D.C. 1949), judgment aff'd, 181 F.2d 288 (D.C. Cir. 1950); Hinsdale Livestock Co. v. U.S., 501 F. Supp. 773 (D. Mont. 1980); Osborne v. Hammit, 377 F. Supp. 977 (D. Nev. 1964); Russell v. Peterson, 498 F. Supp. 8 (D. Or. 1980); Topaz Beryllium Co. v. U.S., 479 F. Supp. 309 (D. Utah 1979), judgment aff'd, 649 F.2d 775 (10th Cir. 1981); Geosearch, Inc. v. Andrus, 508 F. Supp. 839 (D. Wyo. 1981).

n8 Cold Mountain v. Garber, 375 F.3d 884 (9th Cir. 2004), as amended, (Aug. 9, 2004) (finding that the Forest Service took the requisite hard look); Sierra Club v. Bosworth, 352 F. Supp. 2d 909 (D. Minn. 2005).

In renewing special-use permits allowing snowmobiling and helicopter skiing in a national forest, the Forest Service did not act arbitrarily in deciding not to evaluate the impacts of each project in a single document; the Forest Service analyzed the actions collectively in each environmental assessment, providing a comprehensive evaluation of the cumulative impacts of the proposed and existing winter recreation activities. Methow Forest Watch v. U.S. Forest Service, 383 F. Supp. 2d 1263 (D. Or. 2005).

n9 Orion Reserves Ltd. Partnership v. Salazar, 553 F.3d 697 (D.C. Cir. 2009).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

43 U.S.C.A. §§ 1701

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Federal Procedure, L.Ed. §§ 66:95 to 66:101, 66:477 to 66:479, 66:491, 66:493

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Public Lands

V. Actions and Proceedings

F. Appeal; Judicial Review

1. In General

63C Am Jur 2d Public Lands § 128

§ 128 Scope of review

In matters involving public lands, judicial review is limited to consideration of the administrative record of the proceedings within the agency, and the courts will not undertake de novo review of questions passed upon in such proceedings. n1  It cannot be urged for the first time in a state supreme court that there was no certification of the record in an appeal from state land commissioners to a district court. n2

Even in the face of a legislative intent to foreclose review of matters of agency discretion, judicial review extends to constitutional issues, n3  and statutes, rules, and regulations governing grazing leases, rights, permits, and privileges n4  on the public domain have been upheld against a variety of constitutional objections. n5  Having established a system of administrative appeals, the Secretary of the Interior is constitutionally bound to administer the system consistently with established concepts of due process. n6

While an exercise of discretion by an agency does not itself prohibit judicial review in an appropriate case, n7  a decision of the Interior Department that rests on an exercise of discretion is generally not disturbed on appeal, n8  especially if the decision does not deprive a person of a vested property right. n9  The Secretary of the Interior n10  or a state board or officer n11  has a wide range of discretion in administering and managing public lands. If a rule or regulation requires the exercise of discretion by the Secretary of the Interior, summary action that occurs without exercising discretion is improper. n12  While executive officers generally cannot be compelled by injunction to perform, or to refrain from performing, discretionary duties with respect to public lands, n13  injunctive relief against such officers has been allowed in some instances. n14

 **FOOTNOTES:**

n1 Multiple Use, Inc. v. Morton, 504 F.2d 448 (9th Cir. 1974); Roberts v. Morton, 389 F. Supp. 87 (D. Colo. 1975), judgment aff'd, 549 F.2d 158 (10th Cir. 1976); Geosearch, Inc. v. Andrus, 508 F. Supp. 839 (D. Wyo. 1981).

In the absence of fraud or mistake, a decision of the Secretary of the Interior on a question of fact is conclusive if supported by the record, § 125.

As to the scope of appellate review, generally, see Am. Jur. 2d, Appellate Review §§ 618 to 653.

As to the scope and standard of review of Department of the Interior actions, see Federal Procedure, L.Ed. § 66:491.

n2 Rayburne v. Queen, 76 Wyo. 393, 303 P.2d 486 (1956).

n3 Hamel v. Nelson, 226 F. Supp. 96 (N.D. Cal. 1963).

n4 Langen v. Badlands Co-op. State Grazing Dist., 125 Mont. 302, 234 P.2d 467 (1951); Mahoney v. L. L. Sheep Co., 79 Wyo. 293, 333 P.2d 712 (1958).

n5 Omaechevarria v. State of Idaho, 246 U.S. 343, 38 S. Ct. 323, 62 L. Ed. 763 (1918); Sifers v. Johnson, 7 Idaho 798, 65 P. 709 (1901); Big Butte Horse & Cattle Ass'n v. Anderson, 133 Or. 171, 289 P. 503, 70 A.L.R. 399 (1930).

n6 Brandt v. Hickel, 427 F.2d 53 (9th Cir. 1970).

n7 Adams v. Witmer, 271 F.2d 29, 1 Fed. R. Serv. 2d 345 (9th Cir. 1958).

n8 Chapman v. Sheridan-Wyoming Coal Co., 338 U.S. 621, 70 S. Ct. 392, 94 L. Ed. 393 (1950); Pacific Oil Co. v. Udall, 406 F.2d 452 (10th Cir. 1969); Cobb v. U.S., 240 F. Supp. 574 (W.D. Ark. 1965).

n9 Lutzenhiser v. Udall, 432 F.2d 328 (9th Cir. 1970).

n10 Safarik v. Udall, 304 F.2d 944 (D.C. Cir. 1962); Atlantic Richfield Co. v. Hickel, 303 F. Supp. 724 (D. Wyo. 1969), judgment aff'd, 432 F.2d 587 (10th Cir. 1970).

n11 Williams v. Greene, 95 Ariz. 378, 390 P.2d 907 (1964); State ex rel. Thompson v. Babcock, 147 Mont. 46, 409 P.2d 808 (1966); Howard v. Lindmier, 67 Wyo. 78, 214 P.2d 737 (1950).

n12 Tagala v. Gorsuch, 411 F.2d 589 (9th Cir. 1969).

n13 State of Minnesota v. Lane, 247 U.S. 243, 38 S. Ct. 508, 62 L. Ed. 1098 (1918).

n14 Santa Fe Pac. R. Co. v. Payne, 259 U.S. 197, 42 S. Ct. 466, 66 L. Ed. 896 (1922); Payne v. Central Pac. Ry. Co., 255 U.S. 228, 41 S. Ct. 314, 65 L. Ed. 598 (1921); Lane v. Watts, 234 U.S. 525, 34 S. Ct. 965, 58 L. Ed. 1440 (1914); Noble v. Union River Logging R. Co., 147 U.S. 165, 13 S. Ct. 271, 37 L. Ed. 123 (1893).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

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Federal Procedure, L.Ed. §§ 66:95 to 66:101, 66:477 to 66:479, 66:491, 66:493

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Constitutionality of reforestation or forest conservation legislation, 13 A.L.R.2d 1095

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Public Lands

V. Actions and Proceedings

F. Appeal; Judicial Review

1. In General

63C Am Jur 2d Public Lands § 129

§ 129 Sufficiency of evidence

A court may consider on appeal whether there was an evidentiary basis for the administrative decision. n1  The issue of whether there is evidence sufficient to support the judgment of an inferior court has arisen in connection with various public lands claims, including those relating to swamplands and overflowed lands, n2  grazing rights, n3  rights of way, n4  the effect of continued vehicle use along a road in a national park on the riparian ecosystem, n5  and the confirmation of the existence of a valid grant or concession of lands from a government. n6

A conviction for destroying a public sign on public land in violation of a regulation must be supported by sufficient evidence. n7

The mere possession of a land certificate or domination over title papers does not show ownership of the land. n8

 **FOOTNOTES:**

n1 Verrue v. U.S., 457 F.2d 1202 (9th Cir. 1972); White v. Udall, 404 F.2d 334 (9th Cir. 1968); Pruess v. Udall, 359 F.2d 615 (D.C. Cir. 1965); Denison v. Udall, 248 F. Supp. 942 (D. Ariz. 1965); Foster v. Jensen, 296 F. Supp. 1348 (C.D. Cal. 1966); Roberts v. Morton, 389 F. Supp. 87 (D. Colo. 1975), judgment aff'd, 549 F.2d 158 (10th Cir. 1976); Hinsdale Livestock Co. v. U.S., 501 F. Supp. 773 (D. Mont. 1980); Osborne v. Hammit, 377 F. Supp. 977 (D. Nev. 1964); Converse v. Udall, 262 F. Supp. 583 (D. Or. 1966), judgment aff'd, 399 F.2d 616, 5 A.L.R. Fed. 553 (9th Cir. 1968).

In the absence of fraud or mistake, a decision of the Secretary of the Interior on a question of fact is conclusive if supported by the record. § 125.

n2 Buena Vista County v. Iowa Falls & S.C.R. Co., 112 U.S. 165, 5 S. Ct. 84, 28 L. Ed. 680 (1884).

As to swamplands and overflowed lands, generally, see § 59.

n3 Watson v. Barnard, 155 Mont. 75, 469 P.2d 539 (1970).

As to grazing lands, generally, see § 87.

n4 Sheeter v. Lifur, 113 Cal. App. 2d 729, 249 P.2d 336 (2d Dist. 1952).

n5 Southern Utah Wilderness Alliance v. National Park Service, 387 F. Supp. 2d 1178 (D. Utah 2005).

n6 Herrick v. Boquillas Land & Cattle Co., 200 U.S. 96, 26 S. Ct. 192, 50 L. Ed. 388 (1906); U.S. v. Ortiz, 176 U.S. 422, 20 S. Ct. 466, 44 L. Ed. 529 (1900).

As to early land grants, generally, see § 3.

n7 U.S. v. Patton, 771 F.2d 1240 (9th Cir. 1985).

As to criminal prosecution for violating public land regulations, generally, see § 109.

n8 Baumgarten v. Frost, 143 Tex. 533, 186 S.W.2d 982, 159 A.L.R. 428 (1945).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

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Public Lands

V. Actions and Proceedings

F. Appeal; Judicial Review

1. In General

63C Am Jur 2d Public Lands § 130

§ 130 Confirmation of early land grant

Congressional action with respect to the confirmation of a claim under a grant from a predecessor government is conclusive as to the validity and character of the grant and is not subject to review by the United States Supreme Court or any other judicial tribunal. n1  A court or tribunal that lacks authority to decide the merits of a claim under a foreign grant is limited to jurisdictional matters. n2

 **FOOTNOTES:**

n1 Reilly v. Shipman, 266 F. 852 (C.C.A. 8th Cir. 1920); Martinez v. Rivera, 196 F.2d 192 (10th Cir. 1952).

As to early land grants, generally, see §§ 3 to 6.

n2 U.S. v. Baca, 184 U.S. 653, 22 S. Ct. 541, 46 L. Ed. 733 (1902).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

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Federal Procedure, L.Ed. §§ 66:95 to 66:101, 66:477 to 66:479, 66:491, 66:493

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Public Lands

V. Actions and Proceedings

F. Appeal; Judicial Review

1. In General

63C Am Jur 2d Public Lands § 131

§ 131 Withdrawal decision

Whether to segregate public lands from settlement, location, sale, entry, lease, or other forms of disposal under the land laws is an administrative matter, which a federal court may not consider until administrative remedies have been exhausted. n1  It has been held, however, that an environmental organization seeking to challenge the Department of the Interior's land withdrawal review program does not fail to exhaust its administrative remedies by not appealing to the Interior Board of Land Appeals, if neither statutory law nor administrative regulations impose an exhaustion requirement. n2  When review occurs, the Secretary of the Interior's withdrawing of lands will be interfered with only if the order was an abuse of discretion. n3

 **FOOTNOTES:**

n1 U.S. v. Foresyth, 321 F. Supp. 761 (D. Colo. 1971).

n2 National Wildlife Federation v. Burford, 835 F.2d 305 (D.C. Cir. 1987).

As to the withdrawal and reservation of public lands, generally, see § 31.

n3 Udall v. Oelschlaeger, 389 F.2d 974 (D.C. Cir. 1968).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

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Public Lands

V. Actions and Proceedings

F. Appeal; Judicial Review

1. In General

63C Am Jur 2d Public Lands § 132

§ 132 Challenge to government survey

A court will ordinarily correct obvious inaccuracies in a survey of public lands in order to carry out the intentions of the locator. n1  Mistakes in the calls of a patent may be corrected by reference to the plat and certificate of the survey, which show the true position of the corners and will control, even if they vary from the description in the patent. n2  If the location of the line is uncertain, or if there is a confusion of boundaries due to interlocking grants, a court has equitable authority to examine the obliteration of marks, the intermixing of possession under different proprietors, and the effects of accident, fraud, or time. n3  Furthermore, if an erroneous survey line was first discovered long after the survey, and a private party has not relied on the line, the plat depicting the line surveyed as the boundary of the land is not binding on the courts or on any of the parties to the litigation involving the boundaries. n4  Boundaries that have long been acquiesced in will not be disturbed, however, and the parties' mistake as to the true location of the boundaries does not prevent the "practical" location from binding the parties. n5

A survey made by proper federal officers and confirmed by the Secretary of the Interior is generally not open to challenge by a collateral attack in the courts. n6  In disputes with or between private owners after disposition by the government, however, the factual questions of where the lines run by a survey lie on the ground and whether a particular tract is on one side or the other of the line are always open to judicial inquiry. n7

In some cases, there can be equitable relief against a threatened government survey. n8

 **FOOTNOTES:**

n1 Schraeder Min.& Manufacturing Co v. Packer, 129 U.S. 688, 9 S. Ct. 385, 32 L. Ed. 760 (1889).

As to the surveying of public lands, generally, see § 14.

n2 Coppin v. Manson, 144 Ky. 634, 139 S.W. 860 (1911).

n3 State of Rhode Island v. Com. of Massachusetts, 37 U.S. 657, 9 L. Ed. 1233, 1838 WL 3948 (1838).

n4 Pueblo of Taos v. Andrus, 475 F. Supp. 359 (D.D.C. 1979).

n5 Dupont v. Starring, 42 Mich. 492, 4 N.W. 190 (1880); Katz v. Kaiser, 154 N.Y. 294, 48 N.E. 532 (1897); O'Donnell v. Penney, 17 R.I. 164, 20 A. 305 (1890).

As to estoppel as a defense in actions involving public lands, generally, see § 113.

n6 Borax Consolidated v. City of Los Angeles, 296 U.S. 10, 56 S. Ct. 23, 80 L. Ed. 9 (1935); Security Land & Exploration Co. v. Burns, 193 U.S. 167, 24 S. Ct. 425, 48 L. Ed. 662 (1904); State v. Phillips, 400 A.2d 299 (Del. Ch. 1979), judgment aff'd, 449 A.2d 250 (Del. 1982); Kneeland v. Korter, 40 Wash. 359, 82 P. 608 (1905).

n7 U.S. v. Hudspeth, 384 F.2d 683 (9th Cir. 1967).

n8 Kirwan v. Murphy, 189 U.S. 35, 23 S. Ct. 599, 47 L. Ed. 698 (1903).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

43 U.S.C.A. §§ 1701

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

Federal Procedure, L.Ed. §§ 66:95 to 66:101, 66:477 to 66:479, 66:491, 66:493

Federal Procedural Forms §§ 55:66, 55:86, 55:90

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Federal Procedural Forms § 55:90 (Allegations in complaint to quiet title -- Land erroneously omitted from government survey [28 U.S.C.A. §§ 1346(f), 2409a])

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Public Lands

V. Actions and Proceedings

F. Appeal; Judicial Review

1. In General

63C Am Jur 2d Public Lands § 133

§ 133 Decisions relating to desert lands

A court may review the Secretary of the Interior's decision to extend the time for proof of entry on desert lands. n1  A decision that refuses an extension, despite the applicant's affidavit, must be supported by reasons, and the applicant must be given an opportunity to rebut the adverse decision. n2  Further, the Secretary of the Interior cannot treat an application as untimely if the delay resulted from the misleading representations of government officers. n3

A decision of the Secretary of the Interior that classifies land as suitable for entry under the Desert Land Act is a matter of agency discretion and not subject to judicial review. n4

 **FOOTNOTES:**

n1 Stickelman v. U.S., 563 F.2d 413 (9th Cir. 1977).

As to desert lands, generally, see § 80.

n2 Stickelman v. U.S., 563 F.2d 413 (9th Cir. 1977).

n3 U. S. v. Wharton, 514 F.2d 406 (9th Cir. 1975).

n4 Nelson v. Andrus, 591 F.2d 1265 (9th Cir. 1978).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

43 U.S.C.A. §§ 1701

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

Federal Procedure, L.Ed. §§ 66:95 to 66:101, 66:477 to 66:479, 66:491, 66:493

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Public Lands

V. Actions and Proceedings

F. Appeal; Judicial Review

1. In General

63C Am Jur 2d Public Lands § 134

§ 134 Mandamus

Generally, the courts cannot interfere by mandamus with the executive officers in the discharge of their official duties that relate to public lands and involve judgment or discretion. n1  Mandamus cannot be used, for example, to require a patent to be prepared, signed, countersigned, recorded, and issued when the merits of the case cannot be determined upon the record. n2  Mandamus is available to compel the Secretary of the Interior to issue a patent as a ministerial act. n3

 **FOOTNOTES:**

n1 U.S. ex rel. Hall v. Payne, 254 U.S. 343, 41 S. Ct. 131, 65 L. Ed. 295 (1920); U.S. ex rel. Alaska Smokeless Coal Co. v. Lane, 250 U.S. 549, 40 S. Ct. 33, 63 L. Ed. 1135 (1919); Mollohan v. Gray, 413 F.2d 349 (9th Cir. 1969).

As to mandamus under federal law, see Federal Procedure, L.Ed. § 66:493.

As to mandamus, generally, see Am. Jur. 2d, Mandamus.

n2 U.S. v. Commissioner of General Land Office, 72 U.S. 563, 18 L. Ed. 692, 1866 WL 9410 (1866).

As to patents for public lands, generally, see § 48.

n3 Wilbur v. U.S. ex rel. Krushnic, 280 U.S. 306, 50 S. Ct. 103, 74 L. Ed. 445 (1930) (disapproved of on other grounds by, Hickel v. Oil Shale Corp., 400 U.S. 48, 91 S. Ct. 196, 27 L. Ed. 2d 193 (1970)); Work v. U.S. ex rel. McAlester-Edwards Coal Co., 262 U.S. 200, 43 S. Ct. 580, 67 L. Ed. 949 (1923); Chapman v. Santa Fe Pac. R. Co., 198 F.2d 498 (D.C. Cir. 1951).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

43 U.S.C.A. §§ 1701

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Federal Procedure, L.Ed. §§ 66:95 to 66:101, 66:477 to 66:479, 66:491, 66:493

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Public Lands

V. Actions and Proceedings

F. Appeal; Judicial Review

2. Patents and Grants

63C Am Jur 2d Public Lands § 135

§ 135 Construction

Generally, patents and land grants are construed favorably to the government n1  and most strongly against the grantee. n2  Nothing passes by intendment or implication, n3  and the grant will cover only what is conveyed in clear language. n4  A grant from the government may be presumed, however, when the case involves possession dating to the colonial era n5  or when there is proof of an adverse, exclusive, and uninterrupted possession for 20 years. n6

Because Congress has plenary power to regulate and dispose of federal public lands under the United States Constitution's Property Clause, n7  it is not for the courts to determine how that trust is to be administered. n8  Once Congress has acted with regard to the administration and disposition of public lands, both courts and the executive agencies must follow strictly the plain meaning of the statute. n9  The court must search for the intent that the government had when issuing the patent n10  or what the intent would have been had no mistake been made. n11  The court must apply the true meaning of a binding expression in a patent, regardless of its location within the instrument. n12  In order to carry out the primary object the Congress had in view, the patent should, if possible, be construed so as to reconcile all its parts. n13

The view that a patent is subject to the same general rules of construction that apply to the conveyances of individuals has been rejected as overly broad. n14  Courts will be critical of a state's attempt to surrender valuable public resources to a private entity. n15  Unless clear and specific words state otherwise, terms are to be construed so as not to interfere with the public's dominant trust rights, for the presumption is that the sovereign did not intend to alienate such rights. n16

In the interpretation of the effect of a public grant, the law in effect at the time the grant was made governs. n17  Further, a state court must follow federal decisions on the same subject. n18  Unrestricted grants by the government bounded on streams or other waters are to be construed according to the laws of the state in which the lands lie. n19

Interests and rights that are reserved do not pass, n20  and exceptions intended to benefit the public are to be maintained and liberally construed. n21  In dealing with trust lands, all doubts must be resolved in favor of protecting and preserving trust purposes. n22  A land grant statute designed to aid state schools is to be construed liberally in favor of the states. n23

 **FOOTNOTES:**

n1 United States v. Grand River Dam Authority, 363 U.S. 229, 80 S. Ct. 1134, 4 L. Ed. 2d 1186 (1960); Humboldt County v. U.S., 684 F.2d 1276 (9th Cir. 1982); U. S. v. Union Oil Co. of Cal., 369 F. Supp. 1289 (N.D. Cal. 1973), judgment rev'd on other grounds, 549 F.2d 1271, 40 A.L.R. Fed. 799 (9th Cir. 1977); Albrecht v. U.S., 529 F. Supp. 135 (D. Wyo. 1981), judgment rev'd on other grounds, 831 F.2d 196 (10th Cir. 1987); American Water Development, Inc. v. City of Alamosa, 874 P.2d 352 (Colo. 1994); Cushing v. State, 434 A.2d 486 (Me. 1981); Barney v. Burlington Northern R. Co., Inc., 490 N.W.2d 726 (S.D. 1992) (overruled on other grounds by, Brown v. Northern Hills Regional R.R. Authority, 2007 SD 49, 732 N.W.2d 732 (S.D. 2007)).

As to patents, generally, see §§ 48 to 52.

n2 U. S. v. Union Oil Co. of Cal., 369 F. Supp. 1289 (N.D. Cal. 1973), judgment rev'd on other grounds, 549 F.2d 1271, 40 A.L.R. Fed. 799 (9th Cir. 1977); State of Utah v. Andrus, 486 F. Supp. 995 (D. Utah 1979); State v. Ashmore, 236 Ga. 401, 224 S.E.2d 334 (1976); Charles River Park, Inc. v. Boston Redevelopment Authority, 28 Mass. App. Ct. 795, 557 N.E.2d 20 (1990); DiCanio v. Incorporated Village of Nissequogue, 189 A.D.2d 223, 596 N.Y.S.2d 74 (2d Dep't 1993); Oregon Short Line R. Co. v. Murray City, 2 Utah 2d 427, 277 P.2d 798 (1954); Brody v. Long, 13 Wis. 2d 288, 108 N.W.2d 662 (1961).

n3 U.S. v. Union Pac. R. Co., 353 U.S. 112, 77 S. Ct. 685, 1 L. Ed. 2d 693 (1957); Albrecht v. U.S., 831 F.2d 196 (10th Cir. 1987); Kinscherff v. U.S., 586 F.2d 159 (10th Cir. 1978); American Water Development, Inc. v. City of Alamosa, 874 P.2d 352 (Colo. 1994); State v. Ashmore, 236 Ga. 401, 224 S.E.2d 334 (1976); DiCanio v. Incorporated Village of Nissequogue, 189 A.D.2d 223, 596 N.Y.S.2d 74 (2d Dep't 1993).

n4 U.S. v. Union Pac. R. Co., 353 U.S. 112, 77 S. Ct. 685, 1 L. Ed. 2d 693 (1957); Montello Salt Co. v. State of Utah, 221 U.S. 452, 31 S. Ct. 706, 55 L. Ed. 810 (1911); Burke v. Gulf, M. & O. R. Co., 465 F.2d 1206 (5th Cir. 1972); Southern Idaho Conference Ass'n of Seventh Day Adventists v. U. S., 418 F.2d 411 (9th Cir. 1969); Koch v. U.S., 846 F. Supp. 913 (D. Colo. 1994); State of Utah v. Andrus, 486 F. Supp. 995 (D. Utah 1979); Albrecht v. U.S., 529 F. Supp. 135 (D. Wyo. 1981), judgment rev'd on other grounds, 831 F.2d 196 (10th Cir. 1987); American Water Development, Inc. v. City of Alamosa, 874 P.2d 352 (Colo. 1994); Cushing v. State, 434 A.2d 486 (Me. 1981).

n5 Oaksmith's Lessee v. Johnston, 92 U.S. 343, 23 L. Ed. 682, 1875 WL 17807 (1875).

n6 U.S. v. Chaves, 159 U.S. 452, 16 S. Ct. 57, 40 L. Ed. 215 (1895).

As to the sale of lands held in adverse possession, see § 43.

n7 § 7.

n8 State of Nev. ex rel. Nevada State Bd. of Agriculture v. U.S., 512 F. Supp. 166 (D. Nev. 1981), order aff'd, 699 F.2d 486 (9th Cir. 1983).

n9 Kidd v. U.S. Dept. of Interior, Bureau of Land Management, 756 F.2d 1410 (9th Cir. 1985).

n10 Koch v. U.S., Dept. of Interior, 47 F.3d 1015 (10th Cir. 1995).

n11 Weaver v. Knudson, 23 Wis. 2d 426, 127 N.W.2d 217 (1964).

n12 Platt v. Union Pac. R. Co., 99 U.S. 48, 25 L. Ed. 424, 1878 WL 18272 (1878).

n13 Platt v. Union Pac. R. Co., 99 U.S. 48, 25 L. Ed. 424, 1878 WL 18272 (1878).

n14 Imperial Irr. Co. v. Jayne, 104 Tex. 395, 138 S.W. 575 (1911).

n15 Lake Michigan Federation v. U.S. Army Corps of Engineers, 742 F. Supp. 441, 62 Ed. Law Rep. 551 (N.D. Ill. 1990).

n16 RJR Technical Co. v. Pratt, 339 N.C. 588, 453 S.E.2d 147 (1995).

n17 Myers v. U. S., 180 Ct. Cl. 521, 378 F.2d 696 (1967).

n18 U.S. v. Boyd, 458 F.2d 1252 (6th Cir. 1972); Ritter v. Morton, 513 F.2d 942 (9th Cir. 1975); Seaboard Air Line Ry. Co. v. Board of Bond Trustees of Special Road and Bridge Dist. No. 1 of Alachua County, 91 Fla. 612, 108 So. 689, 46 A.L.R. 870 (1926).

As to conflict of laws, generally, see Am. Jur. 2d, Conflict of Laws §§ 1 to 8.

n19 Summerville v. Scotts Bluff County, 182 Neb. 311, 154 N.W.2d 517 (1967).

n20 Southern Idaho Conference Ass'n of Seventh Day Adventists v. U. S., 418 F.2d 411 (9th Cir. 1969); Myers v. U. S., 180 Ct. Cl. 521, 378 F.2d 696 (1967).

n21 Barden v. Northern Pac. R. Co., 154 U.S. 288, 14 S. Ct. 1030, 38 L. Ed. 992 (1894); Southern Idaho Conference Ass'n of Seventh Day Adventists v. U. S., 418 F.2d 411 (9th Cir. 1969).

As to the withdrawal and reservation of public lands, generally, see § 31.

n22 Kadish v. Arizona State Land Dept., 155 Ariz. 484, 747 P.2d 1183, 44 Ed. Law Rep. 701 (1987), judgment aff'd, 490 U.S. 605, 109 S. Ct. 2037, 104 L. Ed. 2d 696, 53 Ed. Law Rep. 384 (1989).

n23 State of Utah, By and Through Division of State Lands v. Kleppe, 586 F.2d 756 (10th Cir. 1978), judgment rev'd on other grounds, 446 U.S. 500, 100 S. Ct. 1803, 64 L. Ed. 2d 458 (1980) (referring to 43 U.S.C.A. §§ 851 to 873).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

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Federal Procedure, L.Ed. §§ 66:95 to 66:101, 66:477 to 66:479, 66:491, 66:493

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Public Lands

V. Actions and Proceedings

F. Appeal; Judicial Review

2. Patents and Grants

63C Am Jur 2d Public Lands § 136

§ 136 Cancellation of patent

While courts have equitable power to set aside, cancel, or correct patents or other evidence of title obtained from the United States by fraud or mistake, this can be done only if clear and convincing proof supports the specific averments of the fraud or mistake. n1  Cancellation of a patent may not be ordered upon a bare preponderance of evidence that leaves the issue in doubt. n2  The United States Supreme Court has reviewed cases involving the cancellation of patents under a "clearly erroneous" standard of review. n3

 **FOOTNOTES:**

n1 U.S. v. Southern Pac. Co., 251 U.S. 1, 40 S. Ct. 47, 64 L. Ed. 97 (1919); Diamond Coal & Coke Co. v. U.S., 233 U.S. 236, 34 S. Ct. 507, 58 L. Ed. 936 (1914); Murray v. Quigley, 119 Iowa 6, 92 N.W. 869 (1902).

As to standards of review in public lands cases, generally, see § 127.

As to a landowner's right to sue in ejectment against the government to determine the right to possession and title of land under a public right of way, see Am. Jur. 2d, Ejectment § 4.

As to pleading, generally, see Am. Jur. 2d, Pleading §§ 1 to 4.

n2 U.S. v. Hancock, 133 U.S. 193, 10 S. Ct. 264, 33 L. Ed. 601 (1890); Colorado Coal & Iron Co. v. U.S., 123 U.S. 307, 8 S. Ct. 131, 31 L. Ed. 182 (1887).

n3 Wright-Blodgett Co. v. U.S., 236 U.S. 397, 35 S. Ct. 339, 59 L. Ed. 637 (1915).

As to the "clearly erroneous" standard of review, generally, see Am. Jur. 2d, Appellate Review §§ 632 to 636.

As to the government's right to cancel a patent, generally, see § 68.

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

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Public Lands

V. Actions and Proceedings

F. Appeal; Judicial Review

2. Patents and Grants

63C Am Jur 2d Public Lands § 137

§ 137 Collateral attack of patent

While the jurisdiction of the Bureau of Land Management ceases with the issuance of a patent, and controversies relating to patented land become matters for the courts, final administrative decisions involving patents should be given full effect by the courts n1  and ordinarily may not be collaterally attacked in a judicial proceeding. n2  Although not a judgment in terms of the rules respecting estoppel by judgment, n3  a patent is not subject to collateral attack n4  and can be set aside only in a judicial proceeding instituted on behalf of the state or, in some jurisdictions, by the holder of an interest in patented land that vested prior to the issuance of the patent. n5  It has even been held that a patent is not open to collateral attack if it might have lawfully issued on any set of facts, regardless of whether land officers made mistakes of law or fact in issuing the patent or acted corruptly. n6

There is, however, authority allowing for collateral attack if the grant is void on its face, n7  was obtained on false and fraudulent proofs, n8  or was issued without authority or in violation of a statute. n9  The party attacking a patent collaterally has the burden of proving its invalidity. n10  A public lands patent that is not void on its face cannot, however, be collaterally questioned by a person who is not in privity with a common or paramount source of title. n11

Because a patent cannot affect a preexisting title, n12  a court may recognize an alleged equitable right that originated before the date of the patent. n13

 **FOOTNOTES:**

n1 Park Dist. of City of Bismarck v. Bertsch, 152 N.W.2d 401 (N.D. 1967).

n2 State v. Nichols, 241 Iowa 952, 44 N.W.2d 49 (1950); Park Dist. of City of Bismarck v. Bertsch, 152 N.W.2d 401 (N.D. 1967).

As to a collateral attack on the validity of a patent, see Federal Procedure, L.Ed. §§ 66:477 to 66:479.

n3 § 108.

n4 West v. Standard Oil Co., 278 U.S. 200, 49 S. Ct. 138, 73 LED 265 (1929); J.W. Frellsen & Co. v. Crandell, 217 U.S. 71, 30 S. Ct. 490, 54 L. Ed. 670 (1910); Sanford v. Sanford, 139 U.S. 642, 11 S. Ct. 666, 35 L. Ed. 290 (1891); Union Pacific Land Resources Corp. v. Moench Inv. Co., Ltd., 696 F.2d 88 (10th Cir. 1982); Raestle v. Whitson, 119 Ariz. 524, 582 P.2d 170 (1978); Hill v. Pipes, 236 La. 105, 107 So. 2d 409 (1958); Dredge Corp. v. Husite Co., 78 Nev. 69, 369 P.2d 676 (1962); Bustamante v. Sena, 92 N.M. 72, 582 P.2d 1285 (1978); McCarthy v. Coos Head Timber Co., 208 Or. 371, 302 P.2d 238 (1956); Hennessy v. Blair, 107 Tex. 39, 173 S.W. 871 (1915).

n5 § 68.

n6 Northern Pac. Ry. Co. v. McComas, 250 U.S. 387, 39 S. Ct. 546, 63 L. Ed. 1049 (1919); Moffat v. U.S., 112 U.S. 24, 5 S. Ct. 10, 28 L. Ed. 623 (1884); St. Louis Smelting & Refining Co. v. Kemp, 104 U.S. 636, 26 L. Ed. 875, 1881 WL 19933 (1881).

n7 St. Louis Smelting & Refining Co. v. Kemp, 104 U.S. 636, 26 L. Ed. 875, 1881 WL 19933 (1881); Rice v. Minnesota & N. W. R. Co., 66 U.S. 358, 17 L. Ed. 147, 1861 WL 7682 (1861); Whitehill v. Victorio Land & Cattle Co., 18 N.M. 520, 139 P. 184 (1914).

As to void patents, see § 52.

n8 Washington Securities Co. v. U.S., 234 U.S. 76, 34 S. Ct. 725, 58 L. Ed. 1220 (1914).

n9 Wright v. Roseberry, 121 U.S. 488, 7 S. Ct. 985, 30 L. Ed. 1039 (1887); Rice v. Minnesota & N. W. R. Co., 66 U.S. 358, 17 L. Ed. 147, 1861 WL 7682 (1861); Rice v. Minnesota & N. W. R. Co., 66 U.S. 358, 17 L. Ed. 147, 1861 WL 7682 (1861); Edwards v. Rolley, 96 Cal. 408, 31 P. 267 (1892); Whitehill v. Victorio Land & Cattle Co., 18 N.M. 520, 139 P. 184 (1914).

n10 State v. Crawford, 13 Ariz. App. 225, 475 P.2d 515 (Div. 2 1970).

As to the burden of proof in actions involving public lands, generally, see § 123.

n11 Burke v. Southern Pac. R. Co., 234 U.S. 669, 34 S. Ct. 907, 58 L. Ed. 1527 (1914); Frizzell v. Lowe, 174 Ark. 287, 294 S.W. 996 (1927); Johnson v. Drew, 34 Fla. 130, 15 So. 780 (1894), aff'd, 171 U.S. 93, 18 S. Ct. 800, 43 L. Ed. 88 (1898); Breen v. Morehead, 104 Tex. 254, 136 S.W. 1047 (1911).

n12 Mayor, Aldermen and Inhabitants of City of New Orleans v. De Armas, 34 U.S. 224, 9 L. Ed. 109, 1835 WL 3259 (1835).

n13 Brush v. Ware, 40 U.S. 93, 10 L. Ed. 672, 1841 WL 5025 (1841); Tonopah & G. R. Co. v. Fellanbaum, 32 Nev. 278, 107 P. 882 (1910), aff'd, 35 Nev. 249, 129 P. 308 (1913).

**REFERENCE:** West's Key Number Digest, Public Lands [westkey]104, 106, 109, 116, 117, 119.1

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Public Lands

V. Actions and Proceedings

F. Appeal; Judicial Review

2. Patents and Grants

63C Am Jur 2d Public Lands § 138

§ 138 Imposition of trust

The rule forbidding collateral attacks on patents n1  does not preclude a court from impressing a trust upon a patentee for the benefit of the owner of an equitable interest in the land. n2  One who obtains a patent for land from the United States through fraud or concealment will be regarded as a trustee for one who is equitably entitled to the land, n3  and the patentee must convey the legal title to the true owner. n4  In order to charge the holder of the legal title to land under the patent as a trustee of another, the claimant is required to show that he or she is entitled to the land and that an erroneous ruling upon the applicable law has caused the claimant to be refused the land; it is not sufficient merely to show that there may have been error in adjudging the title to the patentee. n5  When the claim is that a patentee holds as a trustee due to fraud or mistake, the claimant must precisely show what occurred and that the Bureau of Land Management relied on the fraud or mistake in its decision. n6

While the holder of a receipt or certificate of purchase from the state does not have title, n7  he or she is the equitable owner of the land and is indefeasibly entitled to a patent, and the receipt or certificate is inchoate evidence of an absolute title. n8  As the trustee of the legal title, the state must convey the legal title to the equitable owner on demand, and the state may not sell and convey the land to another thereafter. n9

 **FOOTNOTES:**

n1 § 137.

n2 Raestle v. Whitson, 119 Ariz. 524, 582 P.2d 170 (1978); Crowder v. Lyle, 225 Cal. App. 2d 439, 37 Cal. Rptr. 343 (5th Dist. 1964); Whaley v. Wotring, 225 So. 2d 177 (Fla. Dist. Ct. App. 1st Dist. 1969); Copenhaver v. Copenhaver, 1957 OK 215, 317 P.2d 756 (Okla. 1957); Johnson v. Riddle, 41 Okla. 759, 139 P. 1143 (1914), aff'd, 240 U.S. 467, 36 S. Ct. 393, 60 L. Ed. 752 (1916); McCarthy v. Coos Head Timber Co., 208 Or. 371, 302 P.2d 238 (1956).

n3 Daniels v. Johnston, 237 U.S. 568, 35 S. Ct. 748, 59 L. Ed. 1110 (1915); Kennedy v. Morrow, 77 Ariz. 152, 268 P.2d 326 (1954); Fearnow v. Jones, 1912 OK 542, 34 Okla. 694, 126 P. 1015 (1912); Loney v. Scott, 57 Or. 378, 112 P. 172 (1910).

n4 Monroe Cattle Co. v. Becker, 147 U.S. 47, 13 S. Ct. 217, 37 L. Ed. 72 (1893).

As to the cancellation of a patent due to fraud, see § 69.

n5 Fisher v. Rule, 248 U.S. 314, 39 S. Ct. 122, 63 L. Ed. 263 (1919); Small v. Rakestraw, 28 Mont. 413, 72 P. 746 (1903), aff'd, 196 U.S. 403, 25 S. Ct. 285, 49 L. Ed. 527 (1905); Loney v. Scott, 57 Or. 378, 112 P. 172 (1910).

n6 Park Dist. of City of Bismarck v. Bertsch, 152 N.W.2d 401 (N.D. 1967).

n7 Rudder v. Ponder, 156 Tex. 185, 293 S.W.2d 736 (1956).

n8 Hanner v. Moulton, 138 U.S. 486, 11 S. Ct. 408, 34 L. Ed. 1032 (1891); Lamprey v. Mead, 54 Minn. 290, 55 N.W. 1132 (1893).

n9 Lamprey v. Mead, 54 Minn. 290, 55 N.W. 1132 (1893).

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