

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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To: Field Managers, Nevada
From: State Director, Nevada
Subject: Management Issues for Lands Acquired by Purchase

Program Areas: Lands – Acquisitions, Minerals, Planning, NEPA

Purpose: This IM provides guidance on the administration of lands acquired by purchase.

Policy/Action: Acquisitions of land and interests in land using funds authorized under the Southern Nevada Public Land Management Act (SNPLMA) and the Federal Land Transaction Facilitation Act (FLTFA) are completed for special purposes and require special management considerations to protect the resource values on these lands. The management issues for such acquisitions, hereafter referred to as “purchased” lands, should be addressed throughout the acquisition process, beginning from its nomination to the administration of the acquisition. The following policies and guidance shall apply to purchased lands in Nevada acquired by the BLM under SNPLMA and FLTFA.

Nominations for Acquisition: Prior to expressing the willingness of the BLM to be the acquiring agency for proposed acquisitions, Field Managers should evaluate the necessity of the acquisition, short- and long-term management objectives for the acquisition and adjacent public lands, current and expected budgets, and workload capabilities. Field Managers should identify the long-term management, at least conceptually, of the purchased lands, and estimate the workload requirements and costs of that management, during the evaluation process. When evaluating a potential acquisition, it should be determined if there are factors, such as noxious weed infestations, that could cause unacceptably high management costs over the long-term. Consideration of land use planning and management of purchased lands should not be deferred until funding for acquisition is approved, and these factors shall be addressed when the BLM is evaluating nominations. For all nominations for which the BLM would be the acquiring agency, the “Acquiring Agency Authorized Officer Statement” shall include an analysis of the workload, cost, and timeframe to complete the land use planning, if necessary, and a commitment to initiate the planning within one year from acceptance of title. If the Field Office is unwilling or unable to make this commitment, the nomination should not be pursued, nor should an agency statement be submitted supporting the nomination.

Land Use Planning: Although a proposed acquisition may be in conformance with the acquisition criteria identified in the applicable Resource Management Plan (RMP) or Management Framework Plan (MFP), herein referred to collectively as Land Use Plans (LUPs), the LUP may not include management prescriptions to address the special management requirements and to protect the resource values on the purchased land. In those cases where planning guidance does not exist in the relevant LUP, a plan amendment will be necessary. Because it will not be known if a nominated property would be acquired with SNPLMA or FLTFA funds during the evaluation period, Field Offices should assume that land use planning would be necessary, unless the land use plan contains adequate guidance (criteria, prescriptions) on acquisition and management of the purchased lands, regardless of the funding source.

Management of Purchased Lands: Under Section 5(b) of the SNPLMA, purchased lands within a Congressionally-designated area automatically become part of the designated area without further action and shall be managed in accordance with the laws, regulations, and land use plans applicable to that area. This provision does not apply to purchased lands within BLM administratively-designated areas, such as Areas of Critical Environmental Concern (ACECs), identified through LUPs.

Under Section 206©(4)(D) of the FLTFA, purchased lands shall be managed as part of the unit within which they are contained, however, this is not necessarily automatic and does not exempt the need for land use planning or other actions for implementation. Unless the enabling legislation (for FLTFA purchases) or the existing LUP, and/or activity-level plan (for SNPLMA or FLTFA purchases) specify that purchased lands automatically become part of designated area within which they are located and are subject to the management prescriptions for that area, an LUP amendment shall be necessary to incorporate the purchased lands. Generally, the management prescriptions for the purchased lands would be the same as the existing designated area, but may need to include additional provisions to respond to conditions that have changed since the LUP or activity-level plan was approved.

Management of Purchased Lands Adjacent to or Outside of Designated Areas: If the purchased lands are not within a designated area, a LUP amendment must be initiated and an activity-level plan may be considered. All purchased lands shall be considered to be “environmentally sensitive” lands and it is appropriate that management of these lands reflect the special value placed to these lands by ensuring they are part of an existing designation or identified under a new designation.

Such plan amendments shall address the addition of the purchased lands to the adjacent designated area, if applicable, or the designation of the area as an ACEC or other appropriate special management designation. Any new plan amendments shall address the management of all resources and uses including, but not limited to, minerals management (locatable, leasable, and salable), land use authorizations, livestock grazing, and off-highway vehicle use. The protection of the resource values identified in the nomination for acquisition and for which the lands are being acquired shall be given priority, and other uses shall be allowed to the extent

compatible with the protection of those resources. Public notice in the Federal Register or other administrative actions may also be necessary to fully implement the management prescriptions.

The initiation of a LUP amendment and/or activity-level plan, if needed, shall be initiated within one (1) year from the date of acceptance of title by the Regional Solicitor. Any exception to the land use planning requirement and this timeframe must be approved by the State Director. Exceptions will generally not be considered unless an LUP revision or amendment is scheduled to be initiated within a reasonable time after acceptance of title and the purchased lands can be incorporated into that effort.

NEPA Compliance: NEPA compliance is required for all acquisitions. Unless the existing LUP and/or activity plan, and the accompanying NEPA documents, are sufficiently detailed, site-specific analysis and a distinct written decision shall be required for acquisitions funded under the authority of the SNPLMA and FLTFA. NEPA analysis shall be completed in an interdisciplinary manner and shall consider all relevant resource values and issues, such as threatened and endangered species, riparian values, cultural resources, and noxious weeds or invasive species. When preparing the NEPA document for an acquisition, the Field Office should consider incorporating the plan amendment process, if necessary, and analyzing the management actions that would be necessary to manage and protect the purchased lands.

Consideration of Appurtenant Interests: Field Offices must be able to justify that the lands and interests proposed for acquisition are necessary for long-term management. Special attention should be given to water rights and other appurtenant interests (e.g. access easements) to: 1) ensure the rights are transferable to the United States and are sufficient for planned future management, 2) determine the feasibility and requirements of any changes (e.g. change of use, point of diversion, etc.) needed for BLM's planned management and uses, 3) determine actions that may need to occur during acquisition processing, and 4) determine the actions necessary to maintain the interests to prevent "forfeiture" or "abandonment" under Nevada law after acquisition.

Consideration of Water Rights: Beneficial use is the limit and use of a water right. Because of the issues related to State-permitted water rights in Nevada, BLM shall not consider acquisition of more water rights than are needed for the long-term management of the purchased lands. A water right is considered real property and can be owned separate from the land. As there may be instances when all or some of the water rights would not have to be acquired by the United States to achieve management objectives, possible alternatives to acquisition of the water rights should be explored. For example, if the continuation of in-stream flows across the purchased lands is sufficient, it may be possible for the land owner to sever the water rights from the purchased lands and sell them separately to other parties, with the condition that the point of diversion would be changed to a location downstream from the purchased lands. Any such arrangements should be well-documented, including being a condition in the offer to purchase the lands, to ensure effects on values are properly considered and to prevent future misunderstandings with the future holders of the water rights. Water rights are an appurtenance to the property and are passed from seller to buyer unless the rights are specifically excluded or reserved on the deed.

Excluding Nevada Revised Statute 533.503, changes in the manner of use by the landowner, prior to acquisition by the United States, should be considered as a condition in the offer to purchase water rights. Because of the requirements under Revised Statute 533.503, BLM shall require, as a condition in the offer to purchase certain water, the owner obtain from the Nevada State Engineer, prior to completing the purchase transaction, a change in the manner of use for any permit or certificate granted for the purpose of stockwater offered for acquisition to the United States. Excluding Nevada Revised Statute 533.503, if changes in manner of use, places of use, or points of diversion for acquired water rights are needed after acquisition, applications for such changes should be submitted to the State Water Engineer within (1) year from the date of acceptance of title by the Regional Solicitor. For water rights already obtained by BLM, especially applicable to NRS 533.503, Nevada Field Offices should submit application(s) for change in the manner of use, place of use, or points of diversion to the Nevada State Engineer upon receipt of this policy for purposes of avoiding potential forfeiture or cancellation of BLM water rights believed held.

Land Use Authorizations: Any land use authorization (right-of-way, lease, or land use permit) shall be allowed only if it can be shown that no adverse affects to the resource values for which the land was acquired would occur, and highly restrictive stipulations would likely be necessary if granting of use authorizations would be considered. Authorizations, such as film permits, that are short term in nature and do not involve any surface disturbance, may be compatible with the management of purchased lands. Long-term land use permits, leases, and Recreation and Public Purposes (R&PP) leases would generally not be compatible with the management of purchased lands. Lands shall not be acquired for the purpose of leasing under the R&PP Act.

Non-Federal lands within areas having potential for energy-related development may not be appropriate for purchase to protect certain resource values. The management feasibility and conflicts that would result from such development on the nominated lands and surrounding lands, public or private, should be addressed. If there is known interest or pending applications for energy-related development in the vicinity of a nominated acquisition, deferring any action on the nomination until further analysis of the management objectives for the area can be completed should be considered. Some linear rights-of-way may be compatible with management of purchased lands, but area-type rights-of-way with extensive surface disturbance, such as wind energy projects, would generally not be acceptable. At a minimum, purchased lands shall be designated as right-of-way avoidance areas and designation as right-of-way exclusion areas should be considered. In those cases when water rights are not acquired and a change in point of diversion is a condition of purchase, as described above, purchased lands must be designated as right-of-way exclusion areas for water-related facilities. A LUP amendment may be necessary to implement the closure to, or limitations on, the future issuance of land use authorizations.

Mineral Activities: Mining related activities under the General Mining Law of 1872, as amended are usually incompatible with the management of purchased lands. The BLM shall not expend monies authorized under the SNPLMA and FLTFA to acquire title to lands and allow such lands to become open to mineral entry and potentially subject to conveyance out of Federal ownership under the mining law. If the purchased lands are not automatically withdrawn from entry under the mining law and the public land laws upon acquisition, a withdrawal segregating

the lands from such entries should be initiated. In accordance with Interior Board of Land Appeals decisions and Solicitor Opinions, purchased lands are not open to entry unless an opening order is published. Therefore, an opening order shall not be published for any purchased land pending the completion of processing of a withdrawal.

Mineral leasing and exploitation of salable minerals are discretionary management. Such activities would generally not be compatible with the management of purchased lands and shall only be allowed if it can be shown no adverse effects to the resource values for which the land was acquired would occur. A no surface occupancy stipulation or similar restrictions would likely be necessary if mineral leasing would be considered. Field Offices should consider the need for a LUP amendment to implement the closure to, or limitations on, leasable and salable mineral activities.

If applicable, the effects caused by split-estates must be addressed. If all, or a portion of the mineral estate is owned by a third party, consolidation of ownership prior to acquisition by the United States could be a condition of approval of the nomination. If minerals are reserved to the United States, the status (i.e., open or closed to mineral location) and the need for segregation or other actions, as described above, should be determined. It may be appropriate to initiate such actions when the Acquiring Agency Authorized Officer Statement is executed or during processing of the acquisition to preclude conflicts. A mineral report or other mineral evaluation may be necessary to determine the mineral potential of the nominated lands and the likelihood of development.

Sales, Exchanges, and other Title Transfers: The BLM shall not expend monies to acquire title to purchased lands, and then consider conveyance out of Federal ownership. Because withdrawals from the public land laws should be initiated and opening orders shall not be published pending the completion of the withdrawals, purchased lands shall not be considered for sale, exchange, R&PP conveyance, Desert Land Entry, Carey Act, Indian Allotments, or any other title transfer authority.

Timeframe: Effective immediately.

Budget Impact: None.

Coordination: This IM has been coordinated with WO-350, Nevada State Office Lands, Planning/NEPA and Minerals.

Contact: Additional questions should be directed to Jim Stobaugh, Lands Team Lead, Nevada State Office, at (775) 861-6478.

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