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United States Department of the Interior

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January 13, 1995

Instruction Memorandum No. CA-95-47
Expires: 09/30/96

To: ACO's

From: State Director

Subject: Implementation of Section 707 of the California Desert Protection Act (DPA)
DD: 2/15/95

Attached is a copy of the subject section of the DPA that requires the Secretary to provide a list of lands under his jurisdiction that have been determined to be suitable for disposal for exchange, in the following priority order.

1. Lands with mineral interests, including geothermal . . . which have potential for commercial development.

2. Claims managed by the BOR that are no longer necessary for project purposes.

3. Any public lands in California that the Secretary has determined to be suitable for disposal through exchange.

My policy regarding the implementation of Section 707 of the act is that we will support the acquisition of the State Lands Commission (SLC) lands within the areas identified in the Act. To accomplish this effort we will supply the information requested below. This information will be complete and we will not withhold any information that may affect the cooperative effort specified in the act. If there is a question on whether to share information, we will share it and negotiate the use of the information with the SLC.

In our initial meetings with the SLC they have indicated a willingness to work with us in accomplishing their ultimate goal of conveying all of their lands within DPA park expansion or wilderness areas to the Department. They have also indicated they don't intend to prevent us from accomplishing programs critical to BLM public land management.

To initiate compliance with the Section 707 (b)(2)(C) of the act and to accomplish the direction provided in the act - **"until all State Lands Commission lands identified consistent with the act are acquired , . ".** - it is necessary for all Districts and Resource Areas to provide the following items:

A. A list of the lands within your administrative area which have been identified as suitable for disposal through existing planning documents.

Information to be supplied will include: A listing of the lands within your administrative area that are potentially suitable for disposal under existing planning documents **(Desert Plan, MFP, RMP)**. The legal descriptions should be to the Township, Range and Section level. Please provide BLM surface management quads with the suitable lands high-lited. Associated with this list provide copies of the documents that either allow or restrict disposal of the lands in your RAs.

Many of our existing documents identify lands as suitable for disposal subject to compliance with certain laws and regulations (ie., NEPA, Historic Preservation Act, etc.). Because the DPA requires compliance with section 206 of FLPMA, these "constraints" will be dealt with prior to any exchange being completed.

Any isolated parcels of land addressed in existing planning documents which don't provide specific direction on how they will be disposed will be provided. Indicate which lands identified for disposal have specific direction for resource values to be acquired. As an example, lands that are within the West Mojave Land Tenure Adjustment Plan Amendments, will not be part of the lands available to the SLC because we have made commitments to the military to complete acquisitions of lands within the plan amendment by exchange of specific public lands. Maps reflecting the planning commitments will be necessary. Lands committed to the Eagle Mountain Landfill project, or lands within the South Coast RMP, which were identified for exchange only if lands with Stephen's Kangaroo Habitat would be acquired will not be provided to the SLC.

B. A status report on active exchanges being processed in your Resource Areas as described below.

We will need a list of all active exchanges by legal description (T & R - section) of the public lands being exchanged. **Active exchanges for the purpose of this memo are those as of 10/31/94 where:**

a. Land exchanges being processed under the present exchange regulations which require an "agreement to initiate an exchange". The AGI must have been signed prior to the date of this memo.

b. Under the old regulations; if a Notice of Realty Action has been published which specifically **identifies the public lands to be exchanged and the specific private lands** to be acquired are described. NORAs published just to segregate the public lands under the old regulations don't qualify.

c. A signed commitment (including options) by BLM and/or a proponent to acquire private property by exchange within a project area. This documentation should identify the specific project and private lands involved. The exchanges identified to complete commitments made by the State Director under terms of Assembled Land Exchange Agreements (pooling agreements) are examples of commitments. The exchanges being completed in the West Mojave Land Tenure Adjustment project area are also examples.

d. Land exchanges with approved feasibility reports. Information about a land exchange from an approved feasibility report will be provided to the SLC. These exchanges will be evaluated by the SO to determine if we have been committed to using the public lands for the approved exchange. We have reviewed feasibility reports where the exchange is identified however the exchange has not progressed beyond the proposal stage due to things beyond our control.

In order to reduce the amount of typing and information formatting problems, all "active

exchanges" must be in ORCA. The information necessary for the SLC will be passed on by use of the serial register pages, or information taken from the serial pages. We will need: 1) Copies of all published NORAs, NOEPs or NODs for all existing land exchanges falling into the above categories. 2)BLM Surface Management quads identifying by exchange the public lands involved.

An exchange team, including the SLC will be assembled in February to consolidate and transmit the list of lands to the Congressional committees and the State Lands Commission. Please identify a representative from each District that can supply support in accomplishing this effort. The formulation of any further teams to complete exchanges under the Act will be dependant on the identification of lands for exchange. The CDD will need to provide a majority of the support to complete the exchanges.

We are in the process of noticing all other Federal agencies within California of the passage of the Act and its affect on the disposal of Federal lands or interests that they administer. Until a list of those lands is provided to the Secretary, we ask that you monitor all local publications for notification of disposal of lands or interests in lands by other Federal Agencies. The act also requires them to notify the Secretary of surplus property prior to disposal.

I am assigning Dave McIlnay the responsibility to coordinate all actions associated with implementing Section 707. These duties will also include coordination with all the field offices, WO, NPS, SLC, and other Federal Agencies.

If you have any questions regarding this memo or Section 707 of the DPA, please contact Dave McIlnay at (916) 979-2840.

Talk to Dave McIlnay before you do anything Ed Hastey

1 Attachment
Section 707 DPA (2PPS)

DISTRIBUTION:
WO-260, RM 1000, L St
WO-100, RM 5660, MIB

State Lands Commission
Attn Steve Sekelsky

Saundra Humphries
National Park Service

SEC. 707. CALIFORNIA STATE SCHOOL LANDS.

(a) NEGOTIATIONS TO EXCHANGE.—Upon request of the California State Lands Commission (hereinafter in this section referred to as the "Commission"), the Secretary shall enter into negotiations for an agreement to exchange Federal lands or interests therein on the list referred to in subsection (b)(2) for California State School lands or interests therein which are located within the boundaries of one or more of the wilderness areas or park system units designated by this Act (hereinafter in this section referred to as "State School lands."). The Secretary shall negotiate in good faith to reach a land exchange agreement consistent with the requirements of section 206 of the Federal Land Policy and Management Act of 1976.

(b) PREPARATION OF LIST.—Within six months after the date of enactment of this Act, the Secretary shall send to the Commission and to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives a list of the following:

(1) State School lands or interests therein (including mineral interests) which are located within the boundaries of the wilderness areas or park system units designated by this Act.

(2) Lands within the State of California under the jurisdiction of the Secretary that the Secretary determines to be suitable for disposal for exchange, identified in the following priority—

(A) lands with mineral interests, including geothermal, which have the potential for commercial development but which are not currently under mineral lease or producing Federal mineral revenues;

(B) Federal claims in California managed by the Bureau of Reclamation that the Secretary determines are not needed for any Bureau of Reclamation project; and

(C) any public lands in California that the Secretary, pursuant to the Federal Land Policy and Management Act of 1976, has determined to be suitable for disposal through exchange.

(3) Any other Federal land, or interest therein, within the State of California, which is or becomes surplus to the needs of the Federal Government. The Secretary may exclude, in the Secretary's discretion, lands located within, or contiguous to, the exterior boundaries of lands held in trust for a federally recognized Indian tribe located in the State of California.

(4) The Secretary shall maintain such list and shall annually transmit such list to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives until all of the State School lands identified in paragraph (1) have been acquired.

(c) DISPOSAL OF SURPLUS FEDERAL PROPERTY.—(1) Effective upon the date of enactment of this title and until all State School lands identified in paragraph (b)(1) of this section are acquired, no Federal lands or interests therein within the State of California may be disposed of from Federal ownership unless—

(A) the Secretary is notified of the availability of such lands or interest therein;

(B) the Secretary has notified the Commission of the availability of such lands or interests therein for exchange; and

(C) the Commission has not notified the Secretary within six months that it wishes to consider entering into an exchange for such lands or interests therein.

(2) If the Commission notifies the Secretary that it wishes to consider an exchange for such lands or interests therein, the Secretary shall attempt to conclude such exchange in accordance with the provisions of this section as quickly as possible.

(3) If an agreement is reached and executed with the Commission, then upon notice to the head of the agency having administrative jurisdiction over such lands or interests therein, the Secretary shall be vested with administrative jurisdiction over such land or interests therein for the purpose of concluding such exchange.

(4) Upon the acquisition of all State School lands or upon notice by the Commission to the Secretary that it no longer has an interest in such lands or interests therein, such lands or interests shall be released to the agency that originally had jurisdiction over such lands or interests for disposal in accordance with the laws otherwise applicable to such lands or interests.

(d) NO EFFECT ON MILITARY BASE CLOSURES.—The provisions of this section shall not apply to the disposal of property under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627; 10 U.S.C. 2687 note) or the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510; 104 Stat. 1808; 10 U.S.C. 2687 note).

SEC. 708. ACCESS TO PRIVATE PROPERTY.

The Secretary shall provide adequate access to nonfederally owned land or interests in land within the boundaries of the conservation units and wilderness areas designated by this Act which will provide the owner of such land or interest the reasonable use and enjoyment thereof.

SEC. 709. FEDERAL FACILITIES FEE EQUITY.

(a) POLICY STATEMENT.—It is the intent of Congress that entrance, tourism or recreational use fees for use of Federal lands and facilities not discriminate against any State or any region of the country.

(b) FEE STUDY.—The Secretary, in cooperation with other affected agencies, shall prepare and submit a report by May 1, 1996 to the Committee on Energy and Natural Resources of the United States Senate, the Committee on Natural Resources of the United States House of Representatives, and any other relevant committees, which shall—

(1) identify all Federal lands and facilities that provide recreational or tourism use; and

(2) analyze by State and region any fees charged for entrance, recreational or tourism use, if any, on Federal lands or facilities in a State or region, individually and collectively.

(c) RECOMMENDATIONS.—Following completion of the report in subsection (b), the Secretary, in cooperation with other affected agencies, shall prepare and submit a report by May 1, 1997 to the Committee on Energy and Natural Resources of the United States Senate, the Committee on Natural Resources of the United States House of Representatives, and any other relevant committees, which shall contain recommendations which the Secretary deems appropriate for implementing the congressional intent outlined in subsection (a).