

ANALYSIS

DUPLICATION OF AUTHORITY TO MAKE UTILIZATION
REVIEWS OF WITHDRAWN PUBLIC LANDS:
BUREAU OF LAND MANAGEMENT AND GENERAL
SERVICES ADMINISTRATION

00569

DIGEST.

Bureau of Land Management (BLM) has authority to make utilization reviews of withdrawn public lands; under recent Executive Order, GSA has similar authority. BLM's role under Executive Order is unclear.

BACKGROUND INFORMATION

The Secretary of the Interior plays a key role in Government land management. He has primary statutory responsibility for "public lands"--lands of the "public domain." "Public lands" are lands owned by the Federal Government that are open to public sale or that may be otherwise disposed of under general laws, such as by settlement, entry, or lease.

The Secretary is authorized to "withdraw" or "reserve" lands from the public domain. Generally, this procedure occurs when Government demonstrates that it needs those lands to facilitate one of its many programs. When lands are withdrawn from the public domain, they are no longer subject to sale or disposal under general land laws. For example, lands may be withdrawn for use as national parks, national forests, or for military uses.

In order to achieve maximum public benefit from public lands, Government land management policy requires that withdrawals be kept to a minimum. "Utilization review" is a method employed to ascertain which withdrawn lands are still needed by the Government, and which are still used by it. In theory, these annual reviews help realize the policy of minimal withdrawals by pointing out those withdrawn lands that are used to their fullest extent and those that are not. Those lands no longer needed, or not utilized fully, are to be returned in whole or in part to the public domain. Sources: 63 Am. Jur. 2d Public Lands (1972); 73 C.J.S. Public Lands (1951).

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QUESTION 1: Does the Bureau of Land Management (BLM), Department of the Interior, have the authority to make a utilization review of withdrawn public lands held by other agencies?

ANSWER: Yes.

Pursuant to the Pickett Act of 1910, 43 U.S.C. §141 (1970), Executive Order No. 10355, May 26, 1952; 43 U.S.C. §141 (1970), delegated to the Secretary of the Interior the authority to:

" * * * * withdraw or reserve lands of the public domain and other lands owned or controlled by the United States in the continental United States or Alaska for public purposes, including the authority to modify or revoke withdrawals and reservations of such lands heretofore or hereafter made."

In addition to conferring the power to withdraw public lands, the Order authorized the Secretary to redelegate that power and to:

" * * * * issue such rules and regulations, and to prescribe such procedures, as he may from time to time deem necessary or desirable for the exercise of the authority delegated to him by this order."

The Secretary of the Interior redelegated the authority given him to the Bureau of Land Management, as his "authorized agent." See, in this regard, 5 U.S.C. App. Reorg. Plan No. 3 of 1946, §403 (1970); 43 U.S.C. §1201 (1970); 43 C.F.R. §1725.0-1 (1974). The Secretary, by way of this redelegation, authorized BLM to make investigations and determinations in regard to withdrawal applications, and their subsequent approval or disapproval. See 43 C.F.R. §2351.4(c); §2351.5(a), (b).

These regulations follow closely the words and apparent intent of 43 U.S.C. §1362:

"The Secretary of the Interior may conduct investigations, studies and experiments, on his own initiative or in cooperation with

others, involving the improvement, management, use, and protection of the public lands and their resources under his jurisdiction."

The legislative history of this statute reveals an intent to authorize BLM to make investigations or surveys of the lands under its jurisdiction:

"[One of] the primary objectives of H.R. 7004, which was introduced following receipt of an Executive communication requesting that this be done, [was] * * * to extend to all public lands under the jurisdiction of the Bureau of Land Management certain types of authority for investigations, studies, cooperative agreements, * * *."

The Senate Committee on Interior and Insular Affairs further declared that the proposed legislation giving investigatory authority to BLM would make possible consistent and efficient public land administration. See S. Rep. No. 1755, 86th Cong., 2d Sess. in 1960 U.S. Code Cong. & Admin. News, at 3148.

It follows that public lands subject to BLM's withdrawal authority, or lands already withdrawn that may be returned by BLM to the public domain are under the jurisdiction of BLM. They are thus subject to "investigation."

We conclude that the Secretary of the Interior reasonably interpreted the term "investigation" to comprehend utilization reviews. This conclusion follows from the language of both E.O. 10355 and 43 U.S.C. §141 granting him authority to withdraw lands from the public domain, his regulatory discretion pursuant to that authority, and his authority to make investigations of public lands. We believe that BLM's authority to make utilization reviews of public lands held by other Federal agencies is consistent with the composite authority delegated to it, and with the express Government objective of efficient land management. See similar analysis in v. , 389 U.S. 1, 16, 17 (1965).

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QUESTION 2: Do both BLM and GSA have similar authority to make utilization reviews of withdrawn public lands; is there a duplication of authority?

ANSWER: The authorities for the reviews differ, but to some extent both provide for carrying out the same function.

Executive Order 11724, June 25, 1973, 40 U.S.C. §486, (Supp. IV, 1974), created the Federal Property Council. The President had a dual purpose for doing so:

"(1) develop and review Federal real property policies with respect to their relationship to other policies and to the objectives of the executive branch of the Government and recommend to the President such Federal real property policies or reforms of policies as it deems necessary; and

"(2) receive the reports made by the Administrator of General Services pursuant to section 3 of this order, as well as other reports relating to Federal real property requested by the Chairman, with particular attention to resolving conflicting claims on, and alternate uses for, any property described in those reports, and it shall make such reports and submit such recommendations to the President as may be appropriate."

The Order delegated to GSA a considerable responsibility as well:

"Sec. 3(a) The Administrator of General Services shall:

"(1) conduct surveys of real property holdings of executive agencies on a continuing basis and in a manner consistent with the needs of the Council, to identify properties which are not utilized, are underutilized, or are not being put to their optimum use; and

"(2) make reports to the President, through the Council, describing any property or portion

thereof which has not been reported excess to the requirements of the holding agency and which, in the judgment of the Administrator is either not utilized, is underutilized, or is not being put to the optimum use, and which he recommends should be reported as excess property."

Although E.O. 11724 uses the word "surveys" and BLM-related statutes and regulations use the word "investigations," the objective is nearly identical. The "investigations"/"surveys" conducted by BLM and GSA respectively are to identify that land which is not needed, not utilized, underutilized, or not put to optimum use. See BLM Manual, §1532.02 (Rel. 1-908, May 15, 1974); E.O. 11724, supra.

Insofar as BLM and GSA both conduct utilization reviews of land, there is a duplication of function.

However apparent it may be that BLM and GSA do much the same type of review, it does not follow that both conduct utilization reviews of the same lands. E.O. 10355 confers upon the Secretary of the Interior withdrawal jurisdiction over lands "of the public domain and other lands owned or controlled by the United States for public purposes." This authority, and by extension, BLM's authority to conduct utilization reviews, applies to all Federal agencies. See 43 C.F.R. §2351.1 (1974). GSA has jurisdiction over "real property" held by executive agencies. GSA's jurisdiction over "real property" consists of:

* * * fee-owned properties and supporting lease-holds and lesser interests located within the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands." FPMR §101-47.800 (March 1975).

GSA's jurisdiction does not include land withdrawn as national forests, national parks, or wildlife preserves. Excluded as well are lands suitable for disposition under public land mining and mineral leasing laws. See E.O. 11724, §4(b)(2); 40 U.S.C. §472(d)(1) (1970). On the other hand, BLM has no jurisdiction over leaseholds in land not owned or controlled by the Government, but would have authority over withdrawn lands owned by the United States

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In geographical areas other than those enumerated in FPMR §101-47.800 should such lands exist.

Moreover, under E.O. 11724, in cases where withdrawn land is no longer needed, GSA is to report only that excess property "missed" in other utilization reviews, and:

"* * * make reports to the President, through the Federal Property Council, describing any property or portion thereof which has not been reported excess to the requirements of the holding agency and which in the judgment of the Administrator is either not being put to optimum use and which he recommends should be reported as excess property." FPMR §101-47.800 (March 1975).

There are, therefore, areas of divergent jurisdiction under the utilization review authority of GSA and BLM, respectively. But despite these several differences there is a significant area of overlapping jurisdiction. Federal Regulations implementing E.O. 11724 expressly confer on GSA authority over withdrawn or reserved lands. See 34 C.F.R. §231.5 (1975). GSA thus has been ordered to conduct utilization reviews of withdrawn public lands in apparently the same manner as those conducted by BLM.

The duplication does not end there, however. In fact, all Federal agencies possess utilization review authority and responsibility. Reflecting the role of the Federal Property Council, regulations implementing E.O. 11724 mandate that:

"Federal agencies shall ensure that real property holdings under their control are being fully utilized and are being put to optimum use. Agencies shall conduct systematic, thorough reviews of their real property holdings, at least annually, to categorize and identify property which is not needed, is underutilized, or is not being put to optimum use; * * *" 34 C.F.R. §231.6 (1975).

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Similarly, Federal Property Management Regulations (FPMR) §101-47.802 (March 1975), also designed to implement E.O. 11724, require that:

"(a) Executive agency annual review. Each executive agency shall make an annual review of its property holdings, which review, to the extent of the properties covered by the review, also shall constitute compliance with the annual review requirements of Federal Management Circular FMC 73-5 (34 C.F.R. Part 231).

* * * * *

"(3) Each executive agency shall, as a result of its annual review, determine in its opinion, whether any portion of its property is not utilized, is underutilized, or is not being put to optimum use. * * *"

In short, each executive agency, each Federal agency, BLM, and GSA are all authorized to make utilization reviews of land.

Moreover, Federal Property Management Regulations (FPMR) §101-47.800 et seq., standardize utilization review procedures for all agencies. The Regulations also mandate cooperation between holding agencies and GSA when conducting utilization reviews. See FPMR §101-47.802(b)(3) (March 1975). BLM is to cooperate as well. BLM Manual §1532.41(A) and (B), recognizing GSA's role under E.O. 11724, directs BLM officials to:

"* * * cooperate fully with GSA in its conduct of the survey. Also, records and information pertinent to the property, such as (1) property records; (2) most recent utilization reviews; and (3) maps, plans, drawings, and plans for use must be made available for review."

Similarly, Part 603 of the Departmental Manual of the Department of the Interior directs BLM to develop and conduct:

* * * * in cooperation with other bureaus
and with other agencies, a withdrawal review
program, * * * * §603.1.2B (July 21, 1971).

But although the statutes and regulations, when read together, might theoretically intimate a cohesive and cooperative system of utilization reviews, we fail to find in E.O. 11724 or in the regulations promulgated to effectuate it, such an intent. Indeed, while the Order and GSA's regulations under it define a linear relationship between GSA and holding agencies, BLM is not mentioned at all. More specifically, it is unclear to us how E.O. 11724, issued in 1973, affects BLM's utilization review authority, authority that springs from legislation literally decades old. The newer regulations fail to define BLM's role, if any, in the present utilization review process spawned by E.O. 11724.

Accordingly, we foresee no legal objections to an audit report recommending that the present utilization review system be clearly defined, with particular focus upon BLM's role in view of E.O. 11724. While an administrative solution in the form of joint regulations issued by GSA and BLM might be desirable, we are without facts to determine the feasibility of such a solution. A legislative statement by the Congress, setting forth Federal land management policy in the area of utilization reviews of withdrawn public lands, and encompassing the relationships among BLM, GSA, and the holding agencies, also might prove to be a practical solution. Whatever approach you may choose to pursue, we would appreciate reviewing the agencies' responses to the views expressed in this memorandum, which, as you know, was written without benefit of the expertise of the agencies administering the utilization review programs. Their responses may have a bearing on the position the General Counsel would recommend to the Comptroller General.

SPECIAL STUDIES AND ANALYSIS

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Duplication of Authority to Make Utilization Reviews
of Withdrawn Public Lands: Bureau of Land Management
and General Services Administration (B-114815)

On July 12, 1976, Bettye Wilkinson of your staff asked two questions about the possible duplication of authority between the Bureau of Land Management (BLM) and the General Services Administration (GSA) to make utilization reviews of withdrawn public lands.

QUESTION 1: Does the Bureau of Land Management have authority to make a utilization review of withdrawn public lands held by other agencies?

ANSWER: Yes.

QUESTION 2: Do both BLM and GSA have similar authority to make utilization reviews of withdrawn public lands?

ANSWER: The authorities for the reviews differ, but to some extent both provide for carrying out the same function.

A detailed analysis supporting our conclusion is attached.

Attachment

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