

PREFACE

Donald Salcito
Michael Scheurich

In October 1976, Congress passed the Federal Land Policy and Management Act of 1976 [FLPMA]. FLPMA changed the federal government's long-standing public land policy of disposal to one of retention and management. Although the change establishes a new policy for public land management, it is not without precedent. In the 1890's, for example, Congress instituted the policy of retention over national forest lands, and multiple use management became law in the 1920's. Moreover, the declaration of public land retention is not an absolute. A mineral developer may still acquire lands pursuant to a patent issued under the 1872 mining law which remains, for the present, untouched by the policy of retention despite the pleas of Commissioners Clark, Goddard, Hoff, and Udall of the Public Land Law Review Commission. Nevertheless, as this Symposium will demonstrate, FLPMA's changes and effects are far-reaching. The *Arizona Law Review* is devoting this Symposium to FLPMA in an effort to provide some insight into the Act's all-encompassing sections for the lawyer or scholar confronting them for the first time.

The authors included in the Symposium are among the nation's leading authorities and practitioners in public land law. Their backgrounds are varied and they were chosen to provide a well-balanced discussion which would represent the views of both the government and the developers.

In the introduction to the Symposium, Frank Gregg, the Director of the Bureau of Land Management [BLM], looks at some of the key policies in the Act and explains how the BLM will attempt to implement them.

Eleanor R. Schwartz, Chief of the Division of Legislation and Regulatory Management for the BLM, discusses the legislative history of the policies and provisions set forth in FLPMA. She traces the legis-

lative predecessors of the Act and the different approaches various Congresses have taken on public land legislation. Included in the Article is a list of key congressional members and a discussion of their efforts to shape and compromise some of FLPMA's provisions to accommodate differing interests.

Jérôme C. Muys, who was the Chief and Assistant General Counsel to the Public Land Law Review Commission, examines FLPMA's relation to the Public Land Law Review Commission [PLLRC].

Then the Symposium changes focus to explore specific sections of the Act. Charles Wheatly, author of the PLLRC's withdrawal study, begins this section with a general discussion of withdrawals under FLPMA. His Article is followed by David Dominick's and Daane Crooks' Article which overviews provisions on land acquisition and dispositions.

Section 603, wilderness study areas, is the subject of two Articles. Craig Hall, a staff assistant in the Office of the Assistant Secretary, analyzes the Solicitor's opinion interpreting section 603(c), the wilderness mandate, and the section's relation to the Wilderness Act. Mr. Hall concludes with a summary of the BLM's interim management policy. Attorneys Pamela Ray and Craig Carver focus their entire Article on the Solicitor's Opinion. The authors, upon examining the history of public land law, conclude that the Opinion is contrary to law and should be challenged. Denise Dragoo, Special Assistant Attorney General for the Utah Natural Resources Agencies, examines FLPMA's impact on statehood grants and indemnity land selections. Ms. Dragoo concludes that FLPMA's wilderness selection process will so seriously damage the states' public land selection rights that implementation of that portion of the Act must be suspended as to the states.

The state most concerned with FLPMA's wilderness selection process is Alaska, a state that is ninety-nine percent federal public land. This concern is addressed by Anchorage Attorney Paul DeStefano.

Don Sherwood and Cheryl Outerbridge address the mining recordings provisions of FLPMA and their BLM regulations. The authors emphasize the major differences between the original mining recordation regulations and their recent amendments.

Perry Hagenstein, former Assistant Chief and Senior Policy Analyst for the Public Land Law Review Commission, closes this section of the Symposium with his Article discussing FLPMA's treatment of environmental concerns and the land use planning provisions of Title II.

The administration of FLPMA is emphasized in the next group of articles. D. Michael Harvey, Chief Counsel for the Senate Committee on Energy and Natural Resources, opens the section with a discussion

of federalism and law enforcement under FLPMA. Mr. Harvey traces the legislative history of section 303 and explains the significance of state-federal cooperative enforcement of FLPMA. An Article by Paul Smyth, an attorney with the Solicitor's Office, analyzes section 303(a) of FLPMA. Mr. Smyth directs his attention to the BLM's new enforcement authority and the legislative intent behind this congressional grant of power. The author includes a general discussion of problems posed by section 303 and their possible solutions.

FLPMA requires the BLM to accommodate public participation in the Act's administration. While public participation in BLM decision-making is not new, FLPMA's mandate is a response to criticisms directed at the BLM's old procedures. Sally Fairfax and Gail Achterman describe the evolution of the new public involvement requirements of FLPMA, pointing out conflicts between the traditional approach and FLPMA's. The authors conclude with an examination of the alternative strategies available to the BLM for effectuating FLPMA's directive and review an analytical framework for courts to follow when reviewing new BLM participation decisions.

Chief Administrative Law Judge Newton Frishberg, along with Michael Hickey and James Kleiler, staff attorneys for the BLM's Office of Hearings and Appeals, end this section with an Article discussing FLPMA's effects on adjudication procedures and judicial review of the Department of Interior's decisions. Their Article traces the historical development of objective administrative review within the Department of the Interior. In addition, they discuss third party participation, notice, and opportunity for a hearing.

Marion Clawson, the well-publicized scholar of federal land laws, closes the Symposium with an Article written from a broad historical perspective. His thesis is that FLPMA is merely an armistice in a long continuing battle over public land management. While the Act provides some solutions to old problems, many more will inevitably arise.

The editors extend their gratitude to Desmond P. Kearns, Tucson attorney and Lecturer in Law at the University of Arizona College of Law, for his ready and insightful counsel on questions concerning public land law and policy. We are also indebted to Mr. Kearns and Robert Emmet Clark, member of the Public Land Law Review Commission and Professor of Law at the University, for putting us in touch with the preeminent authorities in this area of the law whose articles contributed to the success of this Symposium.

