

INTRODUCTION

This section addresses those aspects of SJPLC management relating to public land ownership and use. Special Use Permits, rights-of-way (ROW) grants, easements, and leases authorize the occupancy and use of public lands by government agencies, private individuals, or companies for a variety of activities (including roads, dams, and other private or commercial uses that cannot be accommodated on private land). Annually, the SJPLC administers approximately 980 non-recreational land use authorizations. (The use of public lands for utility corridors and communication sites is discussed in a separate section of this chapter.)

LEGAL AND ADMINISTRATIVE FRAMEWORK

LAWS

- Revised Statute 2477 (Act of July 26, 1866: 43 U.S.C 932;R.S. 2477): Portion of 1866 mining law that was a Homestead-era federal law in place from 1866 until 1976. It states that “the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.” States and local governments throughout the western United States used R.S. 2477 to construct the roads that are the foundation of the transportation infrastructure in many States. The statute allowed local governments to acquire a property interest in roads and other public highways they constructed across unreserved federal land. Statute was repealed by FLPMA in 1976.
- The General Mining Law of 1872: This act authorizes ROWs across public lands for ditches and roads.
- The Act to Repeal Timber-Culture Laws, 1891: This act authorizes ditch easements across public lands and forest reserves.
- The Organic Act of 1897: This act states that national forests are established “to improve and protect the forest within the boundaries, for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States.”
- The Transfer Act of 1905: This act transfers forest reserves to the Department of Agriculture.
- The General Exchange Act of 1922: This act authorizes land adjustments within USFS boundaries.
- The Federal Land Policy and Management Act of 1976: This act updates authority for management, provides general authority for use and occupancy, requires fair market value for use of public lands, and repeals sections of many previous acts.
- The Colorado Ditch Bill Act of 1986: This act provides for permanent easements for agricultural water systems in use before 1976 in relation to USFS lands.
- The Federal Land Exchange Facilitation Act of 1988: This act directs the Secretaries of Interior and Agriculture to identify and prioritize lands available for disposal and acquisition by the State.
- The Cabin User Fee Fairness Act of 2000: This act updates the application of fees and other management direction related to recreation residence permittees on USFS lands.

DESIGN CRITERIA

Management guidelines and design criteria describe the environmental protection measures that would be applied to all of the alternatives at the project level in order to protect, enhance, and, where appropriate, improve resources related to lands and special uses. Guidelines and design criteria are presented in Part 3 of Volume 2 of the DLMP/DEIS.

AFFECTED ENVIRONMENT

Existing Conditions and Trends

The SJPLC lands and realty management program is responsible for various aspects of ownership and management of the BLM- and USFS-administered lands. Within the planning area, the broad responsibilities of the program managing lands and special uses include:

- managing all aspects of land ownership (including surveying and monumenting land boundaries, acquiring and disposing of lands, protecting Federal lands from trespass, assuring that Federal resource programs do not trespass onto adjacent non-Federal lands, and recording and managing land ownership and title records);
- managing land use and access (including issuing and administering permits, ROWs, easements, and leases for various land uses, roads, trails, and facilities); and
- administering withdrawals and administrative closures of Federal land in relation to specific uses.

Land Ownership

Due to the many ways that land has been acquired historically, the San Juan Public Lands (SJPL) are a mixture of numerous ownerships: local, State, Native American tribal, Federal, and private. Tracts of non-Federal land occur throughout the SJPL; however, private tracts tend to concentrate in parks and along river valleys (where settlers homesteaded, and where towns were founded). Historic land adjustments sometimes concentrated areas of private land for agricultural or municipal purposes, which involved trading Federal land for other private holdings elsewhere, or selling Federal tracts where there was a public benefit to such action. Patenting of mining claims created complex patchworks of private lands in the Silverton, Dunton-Rico, La Plata Canyon and Dove Creek areas, leaving small isolated remnants of public lands between the private claims. Erroneous or improper surveying and monumenting of the many Federal-private land boundaries created abundant opportunities for accidental, as well as intentional, trespass occupancy and use.

Within the planning area, land exchanges (BLM and USFS), direct sale disposals (BLM), and Small Tracts Act sales (USFS) are used in order to improve land ownership patterns and to resolve trespass situations. Numerous parcels of BLM-administered land were identified for eventual disposal in the 1985 San Juan/San Miguel Resource Management Plan (RMP). The 1983 San Juan National Forest Land and Resource Management Plan contained a Land Ownership Adjustment Plan that identified several parcels of USFS lands for disposal or acquisition by land exchange.

Land acquisition may occur by purchase, exchange, or donation. Purchase is funded by the Land and Water Conservation Fund. Land exchanges require an equal exchange of values, in land or cash, and must result in a net public benefit. Donation must meet acceptable public land management purposes.

Public lands policy has trended away from the acquisition of land, except for specific project purposes. Policy has started to favor the disposal of public lands where isolation, adjacent use or development, or lack of public benefit makes the land unsuitable or unmanageable for public land purposes. In terms of land acquisitions, land exchange is the most likely process for both the USFS and the BLM.

Over the past 20 years, much of the private land within, and adjacent to, the SJPL has been subdivided for residential and commercial use. Faulty or poorly documented land surveys have left the location of many of these property boundaries in dispute (because these lands are surveyed by developers or owners, resulting in instances of trespass). Roads and trails constructed over the last 100 years may also deviate from their granted alignments, or they may lack proper easements where they cross private or Federal lands. As more boundary lines are resurveyed, more trespass situations may be discovered. Federal budget projections for the BLM and the USFS lands program may not be adequate to address the need.

Land Use and Access Authorizations

The occupancy and use of public lands by local, State, Native American tribal, and other Federal agencies; as well as by private industry and individuals, would require an authorization from the land management agency involved.

In 2005, there were 311 land use authorizations for the BLM and 672 Special Use Permits for the USFS. Currently, the USFS has 220 pending Colorado Ditch Bill applications (60 of these include assertions of rights under the General Mining Law of 1872). In order to eliminate the backlog, within the first several fiscal years of plan approval approximately 50 Colorado Ditch Bill applications are expected to be processed, and approximately 30 General Mining Law assertions are expected to be addressed annually.

Applications for both traditional land uses and for new uses are increasing. More people are making use of public lands, and adjacent private land is being developed, which, in turn, is driving up the demand. In addition, many authorizations that were issued under less strenuous environmental review regulations are being renewed, requiring increased analysis and review. New cost recovery programs would increase the revenue held by local public lands units from applicants in order to help off-set the increasing cost of the programs and the lengthy delays in processing applications for use.

Currently, there are 24 recreation residence cabins located on USFS-administered lands. (The BLM does not permit recreation residences.) Permits for recreation residences are issued for 20 years. Under the Cabin User Fee Fairness Act of 2000, policy is not to issue new permits. The policy is to reissue the existing permits when the current permit tenure expires at the end of 2008. There are no plans to designate new summer home groups on USFS-administered lands.

Lack of access to SJPLC lands is a growing concern, as adjacent landowners block public access. In addition, some landowners enjoy exclusive use of the public lands adjacent to their property, and do not wish to lose that effective ownership by granting access or engaging in land adjustment processes. ROW requests, and land exchanges and disposals, are often opposed for these reasons.

As former ranching, mining, and homesteading tracts are subdivided and developed, the new owners often want, and expect, a higher level of road access and maintenance than the public lands road system was designed to provide. This demand often includes requests for new roads across public lands in order to access individual private parcels.

Rapid development in the Silverton and Pagosa Springs areas is increasing road use, and, thereby, increasing associated maintenance and improvement costs. Across the SJPL, county road agencies are becoming overtaxed and, as a result, are reducing their contribution to the maintenance of these roads. They are also often unwilling to assume jurisdiction over what has effectively changed from a public lands access road to a subdivision or commercial development road. The SJPLC is not able to expend public funds in order to provide this improved access. Land managers must balance the access rights granted to in-holding owners (under the Alaska National Interest Lands Conservation Act of 1978) with their obligation to regulate road use and protect public investments and resources.

The U.S. Department of the Interior (USDOl) has issued a draft policy directing the BLM to resolve issues relating to R.S. 2477 that authorized counties to assert a claim of jurisdiction on some public lands roads. Some USFS roads are also subject to this issue if they were in use prior to formation of the National Forest. The use of public lands roads for non-public lands purposes, along with issues related to jurisdictional status and maintenance costs, would require substantial cooperation between local, State, and Federal agencies, as well as with private and commercial road users and landowners.

Withdrawals

Public lands may be closed to certain types of use through administrative action (closures) based on legal or resource concerns (including protecting T&E species and avoiding damage to important watersheds). In some cases, Federal law requires the closure of lands to specific uses, such as the withdrawal of designated Wilderness Areas from entry under the Mining Law of 1872 (which allows U.S. citizens to file mining claims). Other withdrawals protect certain resources, or reserve land use for Federal agencies or interests (including the withdrawal, under the Federal Energy Regulatory Agency, for rivers that could support hydroelectric facilities). The SJPLC lands and special uses program is responsible for administering these closures and withdrawals, and for periodically reviewing them for continued need or revocation.

ENVIRONMENTAL CONSEQUENCES

DIRECT AND INDIRECT IMPACTS

General Impacts

The environmental impacts related to land use authorizations and activities would result, primarily, from their impacts to the resources and values of the lands where the authorized activities or uses take place. Some activities may be temporary and localized in their impacts (including such activities as reunions, weddings, picnics, and other group gatherings); other activities may be effectively permanent, and may impact larger areas (including road systems, utility corridors, ski areas, and communication sites).

Impacts discussed in this section are quantified based on the number of acres of land that are restricted (requiring higher costs) or that are not available for land use authorizations under each of the alternatives. Future lands activity cannot be predicted as to specific location, scale, and timing; therefore, the most reasonable way to estimate the impacts of proposed alternatives on this potential future activity is to consider the amount of land that is restricted or unavailable for possible use. Table 3.23.1 summarizes the impacts on the SJPLC lands and special uses program by alternative.

Under all of the alternatives, the issuance and administration of land use authorizations would continue to provide for a variety of recreation and non-recreation activities. In general, most land uses may be compatible with most other resource activities; and most impacts to the lands program may be minimized by the use of appropriate design guidelines.

The USFS has limited opportunity for direct disposal of USFS lands; therefore, most land adjustments involving USFS-administered lands would be by land exchange. This is not expected to vary by alternative. The BLM would continue its land adjustment program with land exchanges, as well as with the sale or exchange of lands specifically identified for disposal. Most opportunities for disposal of BLM-administered lands would be in MA 2s and 7s. The disposal of BLM-administered lands is not expected to vary between Alternative B, C, or D. The disposal of BLM-administered lands under Alternative A would comply with the disposal tract identification included in the 1985 BLM RMP. The amount of potential, and opportunity for, land exchanges is not expected to vary by alternative. Under all of the alternatives, through cooperation with other landowners, the emphasis would be for improved landownership and access patterns that benefit private landowners and the public. The opportunities for ROW acquisitions would not change by alternative. Under all of the alternatives, the acquisition of access to the public lands would be identified in order to serve administrative purposes and public access, with the goal of enhancing the management of the public land resources.

Land withdrawals would not be the direct result of the implementation of any of the alternatives. Recommendations for future land closures and withdrawals are included in the overall DLMP/DEIS planning direction. These recommendations may, or may not, be implemented after separate analysis and decision processes. Therefore, potential impacts are not likely to vary predictably by alternative. This is because the recommendations must be acted upon individually by other authorities and agencies. SJPLC review and recommendations for continuation or revocation of existing withdrawals would also not be the direct result of implementation of any of the alternatives. Therefore, potential impacts are also not likely to vary by alternative.

Impacts Related to Wildlife and Fisheries Management

Impacts to the lands and special uses program related to wildlife and fisheries management may be higher costs for authorized uses and activities, and, in some situations, denial of discretionary land uses or land ownership adjustments. Wildlife management activities that trigger these impacts would be primarily related to management requirements under the ESA. No areas are proposed for withdrawal under any of the alternatives; however, protective measures applied to land uses may increase costs. The degree of the impacts would depend upon approved conservation strategies, critical habitat designations, and biological opinions that mandate specific management requirements for land uses. These requirements would not be known until specific project proposals are submitted and assessed.

With regard to wildlife and fisheries management, the measurable indicator of impacts would be the number of acres allocated to sage-grouse habitat, because this designation would impact an area of current solid mineral activity (the Slick Rock/Dove Creek uranium/vanadium area). However, its usefulness is as a comparative indicator of impacts, not as an absolute quantifier. For comparison purposes, alternatives that would allocate a greater number of acres to this designation may be considered to require a similar degree of restriction on land uses.

DLMP/DEIS Alternatives: Impacts to lands and special uses related to wildlife and fisheries management restrictions may be the greatest under Alternative C, followed by Alternatives D and B. Alternative A would propose no restrictions.

Impacts Related to Heritage Management

Requirements to protect heritage resources (including the protection of Native American rights of access and use) may preclude some uses and activities within the planning area, and, in some situations, may prevent discretionary land uses or land ownership adjustments. Required mitigation measures may increase the costs for authorized uses and activities.

With regard to heritage management, the measurable indicator of impacts would be the number of acres allocated to special areas, which may, in turn, limit or preclude non-complying land uses.

Table 3.23.1 – Environmental Impacts to Lands by Alternative

	Alternative A (No-Action Alternative)	Alternative B (Preferred Alternative)	Alternative C	Alternative D
Wildlife and Fisheries Sage Grouse Total Acres	0	9,528	29,234	9,528
Heritage Management Total Acres	4,597	19,582	19,582	4,597
Total All Acres	4,597	29,110	48,816	14,125

“Sage-Grouse” acres include lek sites and nesting habitat.

The impacts summarized in the table are not intended to be read as absolute numbers. They serve to indicate the relative restrictive nature of each alternative.

Summary of Direct and Indirect Impacts by Alternative

Based on the ability to mitigate most concerns related to heritage management and/or wildlife and fisheries management, impacts to lands and special uses may be moderate to minor under Alternative C, minor under Alternative B, and negligible under Alternatives A and D. This ranking is highly subject to site-specific project proposals and to their associated mitigation measures. It is valid only for general comparison purposes.

CUMULATIVE IMPACTS

Cumulative impacts related to the implementation of any of the alternatives may result from a continuation of the same policy and budget constraints that existed under the previous Plans (USFS 1983; BLM 1985), greater demand for uses by the public and other agencies, and the imposition of newer environmental laws and regulations on such uses. Past impacts related to multiple land ownership, poor survey and boundary monumentation, increasing demand for residential and commercial use and access, and increasing costs of processing and administering land use authorizations may be increased by future impacts. This is because most land uses do not disappear, once established, and new land uses would only complicate the situation. Table 3.23.1 summarizes the direct and indirect impacts by alternative; expected cumulative impacts would follow the same pattern by alternative.

Over the next 15 years (which is the timeframe for “reasonably foreseeable future” cumulative impacts), the annual level of applications for land authorizations within the planning area would be directly tied to demographic changes experienced and projected in southwestern Colorado. This is expected to increase over this timeframe, with most authorizations occurring in MA 2s (Silverton, HD Mountains), 3s, 5s, and 7s, consistent with current patterns of development.

Acquisition of new access routes would be limited by SJPLC budgets. The USFS has identified 15 priority cases needed to provide additional access to the planning area. Changing public use patterns and needs would add additional cases. There are no other anticipated reasonably foreseeable future actions specific to a particular alternative that would differ between the alternatives for land adjustments and/or ROW acquisitions. Cumulative impacts to lands and special uses related to heritage management, and/or wildlife and fisheries management restrictions may be minor under Alternative C, minor to negligible under Alternative B, and negligible under Alternatives A and D.