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### Federal Land Policy Management Act: The Effect and Operation of the Bureau of Land Management Organic Act and Regulations Under It Relative to the Use of Public Lands for Resource Development

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OUTLINE

FEDERAL LAND POLICY MANAGEMENT ACT

THE EFFECT AND OPERATION OF THE BUREAU OF LAND  
MANAGEMENT ORGANIC ACT AND REGULATIONS UNDER IT  
RELATIVE TO THE USE OF PUBLIC LANDS FOR RESOURCE  
DEVELOPMENT

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FEDERAL LANDS, LAWS AND  
POLICIES AND THE DEVELOPMENT  
OF NATURAL RESOURCES

THE UNIVERSITY OF COLORADO SCHOOL OF LAW

## Introduction

Although entitled an organic act, FLPMA left in place much of the existing law of mining and mineral leasing and despite discussion in FLPMA's legislative history about amending the Mining Act of 1872 as well as the Mineral Lands Leasing Act, FLPMA must be seen as co-existing with these acts. Furthermore, section 102(b) of FLPMA requires that it be interpreted as supplemental to the purposes for which the public lands are administered under existing land law.

The Public Land Law Review Commission (PLLRC) appointed by President Kennedy reviewed all of the country's public land laws and came to several broad consensus conclusions in its report in 1970, One Third of the Nation's Lands (1970). It recommended:

(1) the previously accepted policy of large scale disposal of public lands should be reversed except for special circumstances in which disposal would serve the maximum benefit of the general public; and

(2) Congress should assert its constitutional authority and reserve to itself exclusive authority to withdraw or otherwise set aside public lands for specific limited purpose uses specifically limiting executive authority to withdraw.

The progeny of the PLLRC was the Federal Land Policy Management Act (FLPMA) enacted by Congress effective October 21, 1976. Congress stated its goals for FLPMA at the beginning of the Act. These include:

(1) Public lands be retained in federal ownership.

(2) The public lands and their resources be periodically inventoried.

(3) Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate federal lands for specified purposes and delineate the extent to which the executive may withdraw land without legislative action.

(4) The Secretary establish goals and objectives for public land use planning and manage those lands on the basis of multiple use and sustained yield.

### FIVE AREAS OF FLPMA WHICH HAVE PARTICULAR APPLICATION TO RESOURCE DEVELOPMENT:

1. Land use planning
2. Withdrawals
3. Wilderness

4. Rights of way
5. Recordation and abandonment of mining claims

## I. Land Use Planning

A. Inventory. Section 201(a) directs the Secretary to prepare and maintain a continuing inventory of all public lands and their resources to be kept current to reflect changing needs and emerging values and resources. Preparation and maintenance of the inventory is neither to change nor prevent change in the management or use of the lands.

This inventory process (except "wilderness inventory") apparently will entail no special BLM program but, is self-implementing and will simply collect material as part of the normal management plan and catalog material already available. 43 C.F.R. § 1601.5-3.

B. ACEC's. Sections 201 and 202(c)(3) require that the Secretary give priority to the protection of areas of critical environmental concern (ACEC's) defined in section 103(a) as areas within the public lands where special management attention is required to protect and prevent irreparable damage to important historical, cultural, or scenic values, or to protect life and safety from natural hazards. The regulations direct the Secretary to identify and consider ACEC's in the planning process, but identification shall not change or prevent changes in management. 43 C.F.R. § 1601.0-5(b) and 1601.6-7) (revised 44 Fed. Reg. 46386, August 7, 1979).

C. Land Use Planning. Land use planning for multiple use/sustained yield is a major goal of FLPMA, but a de facto management system was already in place when FLPMA was enacted.

Except for the Taylor Grazing Act, 43 Stat. 1269, U.S.C. § 315 which provided that public lands could not be withdrawn from mineral entry, BLM traditionally had no uniform act governing classification, disposal and retention of the public land. In 1964, concurrent with the establishment of PLLRC, Congress passed the Classification and Multiple Use Act of 1964, 43 U.S.C. §§ 1411-1418, and the Public Land Sale Act, 43 U.S.C. §§ 1421-1427. These acts, which expired in 1970, gave the BLM its first Congressional directive for multiple use/sustained yield management, and continued to be applied in practice by the BLM from 1970 until the passage of FLPMA in 1976. Land management practices were further shaped in the 1964-1976 period by judicial interpretation of NEPA which added a pronounced protectionist flavor to land management. Article II of FLPMA thus did not initiate BLM organic land management but instead adopted and modified an existing system.

Section 202 directs the Secretary to develop and maintain land use plans for the public land. Existing plans must be reviewed and revised if necessary. Plans must include:

1. a program of multiple use/sustained yield
2. designation and protection of ACEC's.

Title II also directs the Secretary in the acquisition, exchange and sale of public lands. (Sections 203, 205 through 209) Section 209 requires that unless 1) there are no known mineral values; 2) reservation would preclude or hinder non-mineral development for a more beneficial use, the United States must reserve to itself all interest in land including the right to explore for and mine the minerals. (Section 209(b)(1)).

## II. Withdrawal

### A. History

1. 1866 and 1872 General Mining Act (current version at 30 U.S.C. §§ 21-54 (1976) confirmed Congressional policy of disposition of public lands for mining purposes. Other Congressional Acts allowed disposition for homesteading, timber and stone removal, etc. Congressional policy of disposition ran counter to an increasing Executive policy of retention of lands. The Secretary of the Interior began countering instances of fraud in the disposition statutes by withdrawing from the scope of such acts large areas of land. (Examples include 1906 withdrawal of coal lands from operation of the Coal Lands Act of 1873, 1909 temporary petroleum withdrawal order No. 5 of President Taft, and others).
2. 1909 withdrawal caused President Taft to seek confirmation of this authority through introduction of what ultimately became the Pickett Act providing specific authority for the President to withdraw lands from settlement, sale, location or entry for examination and classification purposes and for the purpose of recommending new legislation to Congress respecting withdrawn lands. The Act authorized only temporary withdrawals and did not apply to metalliferous minerals.
3. In 1915, the Supreme Court in United States v. Midwest Oil Company, 236 U.S. 459, approved

the 1909 withdrawals, but left open the questions of whether the Pickett Act was the exclusive statement of Executive withdrawal power, or whether the Pickett Act and the implied powers of the President approved in Midwest existed co-extensively.

4. In 1920, the location system for oil, gas, coal and other similar substances was changed to a leasing process by the Mineral Lands Leasing Act of 1920. (Ch. 85, 41 Stat. 437, current version in scattered sections of 30 U.S.C.)
5. The Executive and Congress lost track of the overall impacts of withdrawals and classifications, and to this date it is not known what percentage of the public lands are withdrawn for what purposes.

B. Congressional Response to the Withdrawal Problem

1. In FLPMA, section 103(j) defines "withdrawal" to mean

withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or programs; or transferring jurisdiction over an area of Federal land, other than 'property' governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

2. Section 204 confirms the Secretary's authority to "make, modify, extend, or revoke withdrawals" but provided that such authority stems exclusively from the "provisions and limitations of this section."
3. Section 202(e)(2) makes "classification" the functional equivalent of withdrawal by specifying that "any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres

or more" must be made as specified in the section --involving a reporting to Congress for potential veto.

4. Section 202(e)(3) allows section 204 withdrawals to be used to carry out management decisions under section 202. The section reiterates that section 202 did not override section 204 and that the section 204 procedures must be followed.
5. Section 704(a) repeals a variety of withdrawal statutes and further attempts to extinguish the implied authority of the President with the following language: "Effective on and after the date of approval of this Act, the implied authority of the President to make withdrawals and reservations resulting from acquiescence of the Congress (U.S. v. Midwest Oil Company . . .) [is] repealed."

### C. Withdrawal Process

1. Section 204 provides a procedure for a party or governmental agency to apply to the Secretary for a withdrawal. Following application, the Secretary must publish notice in the Federal Register specifying the affected land and the extent of its segregation while the application is considered. Segregation terminates upon rejection of the application by the Secretary, withdrawal or expiration of two years from the date of the notice.

If the withdrawal does not aggregate 5,000 acres, it may be accomplished by the Secretary for the time specified if for a resource use, or for not more than 20 years for any other use, or for not more than 5 years to preserve the tract for a specific use then under consideration by the Congress.

Withdrawals of over 5,000 acres cannot be made for more than 20 years by the Secretary and he must notify both Houses of Congress explaining the proposed use, the inventory and evaluation of current uses, identification of present users, analysis of the effect of the withdrawal, alternatives to the withdrawal, statements of the length of the withdrawal, and other information. Proposed regulations under section 204 have been promulgated, specifying the procedure for withdrawal applications. 44 Fed. Reg. 69868, December 4, 1979 (43 C.F.R. §§ 2090, 2300,



2310, 2320, 2340 and 2350)

2. In section 202(e)(2) land management decisions excluding one or more of the principal or major uses (which is defined as a term of art in the statute), must be made only with a reporting to Congress. The reporting need not involve the detail of a withdrawal report, but is subject to Congressional veto.
3. Section 204(f) and (l) require the Secretary to review all past withdrawals and report to Congress upon their cumulative and individual effects by October 21, 1991.

D. Current Controversy Surrounding Withdrawals

1. Scope of Section 103(j) Definition. The Secretary contends that the definition of "withdrawal" in section 103(j) refers only to proposed user activities which would lead to alienation of all title by the U.S. Thus, no mineral leasing activities come within the withdrawal definition. Instead, the Secretary contends that he has the "discretionary" authority to lease or not lease any or all lands for any of the purposes covered by the Mineral Leasing Act. Thus, he is entitled to impose blanket moratoriums with respect to mineral leasing decisions over any amount of lands without reporting the action to Congress in any fashion.
2. Effect of Section 202(e)(2) on Secretarial Decision-Making. Were one to concede that Secretarial moratoriums do not come within the definition of "withdrawal," are those actions subject to the reporting requirements of section 202(e)(2)? To date, the Secretary has ignored this section, reporting no actions to Congress. He has not regarded his mineral leasing moratorium or military acquired lands moratorium as subject to the section, basing this conception on several theories, the most important of which is that the decision is not covered by the "land use plan" scope of Title II of Act.
3. Segregated Effect of Withdrawal Applications. In Section 204(b)(1) an application for withdrawal results in publication of a notice in the Federal Register and causes the land to be "segregated" from the operation of the public land laws to the

extent specified in the notice." The Secretary has affirmative responsibility when compiling the notice to determine the segregated effect of the application. Proposed Regulation 43 C.F.R. § 2310.2(a) changes the presumption of segregation by providing that the notice:

shall, unless otherwise specified in the notice, temporarily segregate the public lands described in the application or proposal from settlement, sale, location or entry under the public land laws, including the mining laws, for a period of two years from the date of publication. Action on all other applications, the allowance of which is discretionary, covering any public lands described in the withdrawal application or proposal, shall be suspended until final action on the withdrawal application has been taken.

4. Resurrection of Mid-West Oil Company Doctrine. Secretarial action in the wilderness and mineral leasing areas indicates that he feels free to accomplish the functional equivalent of withdrawals in conformance with his purported discretionary authority derived from a series of pre-FLPMA cases. His attitude indicates an intent to evade the Congressional attempt to reserve to itself exclusive authority to withdraw or otherwise set aside public lands for specific limited purposes. If successful, this policy will establish a corollary to the Mid-West Oil Company doctrine, a residual withdrawal authority independent from the Congressional authority, and will nullify section 704 of FLPMA.

E. Effect of Current Withdrawal Policies on Mining and Mineral Leasing

FLPMA section 204 appears likely to exert some restraint on mining withdrawals, if only by requiring time limitations on withdrawals and requiring the Secretary in some instances to specify the purposes for which the withdrawal is made.

To date, FLPMA withdrawal limitations have had no effect on mineral leasing decisions since the Secretary contends that these decisions are not subject to either sections 204 or 202.

The proposed withdrawal regulations raise the specter for allowing private parties to erect another

hurdle to mineral development plans. By proposing an application for withdrawal, it appears likely that such parties could work an automatic de facto two-year withdrawal. Although the procedure would be expensive and time consuming, it offers an alternative to traditional NEPA suits to accomplish delay or executive reconsideration of the issues raised.

### III. Wilderness Inventory and Review

The only section in FLPMA pertaining directly to wilderness review is section 603, but the interpretation given to it by the Secretary has had a profound effect upon resource development.

Section 603(a) requires that within 15 years after October 21, 1976, the Secretary shall review roadless areas of 5,000 acres or more and roadless islands which have been identified during the section 201(a) inventory as having wilderness characteristics.

The Secretary is then directed to report to the President his recommendation as to the suitability or nonsuitability of each such area for inclusion in the wilderness system.

A. Wilderness Inventory. The Secretary has set up a wilderness inventory program outside the section 201(a) inventory, composed of two parts: "initial inventory" and "intensive inventory." Commencing in the fall of 1978 all public lands administered by the BLM were initially inventoried. That inventory was completed in the fall of 1979 and certain of the public lands were excluded from further consideration. Forty-five million acres remained in so-called "intensive inventory" scheduled for completion on September 30, 1980.

During the wilderness inventory wilderness is the sole resource evaluated. Lands found by the inventory to have the appropriate size and wilderness characteristics are designated as Wilderness Study Areas (WSAs) and remain in this category until Congress acts upon the recommendations of the President to designate the areas as wilderness or to declare them free from wilderness management.

B. Section 603 Management. During inventory and wilderness review (WSA) the Secretary has imposed an overriding management directive: with limited exceptions, all lands will be managed so as not to impair their suitability for preservation as wilderness. The policy was devised by then Solicitor of DOI, Leo Krulitz, in a Solicitor's Opinion dated September 5, 1978 and subsequently amended. The Wilderness Inventory Handbook dictates the manner in which the "wilderness inventory" is to be

conducted and Draft and Final Interim Management Policy and Guidelines direct conduct of the wilderness review. (Final Guidelines (IMPS) issued December 12, 1979)

C. Current Controversy Surrounding Wilderness Review.

Section 603(c) reads in pertinent part that during the period of review and until Congress determines otherwise, the Secretary shall manage WSA's in a manner so as not to impair their suitability for preservation as wilderness, "subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on the date of approval of the Act" (October 21, 1976). The Secretary was further directed to prevent unnecessary or undue degradation of the lands and their resources, and to afford environmental protection.

Three other sections of FLPMA should be read in conjunction with Section 603 to have a full understanding of its legislative context.

Section 701(a) "Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act."

Section 701(f) "Nothing in this Act shall be deemed to repeal any existing law by implication."

Section 701(h) "All actions by the Secretary concerned under this Act shall be subject to valid existing rights."

FLPMA grants no authority for applying section 603(c) management to inventory areas. Section 201(a) prohibits change in management because of inventory and contains no authority to conduct an inventory for a single resource, (i.e., wilderness)

1. Effect of Section 603(c) on Mineral Leasing. The Solicitor's Opinion (and the IMPS) prohibit all activities upon a mineral lease of the public lands if those activities either singularly, or by cumulative effect, would impair the wilderness suitability of the land unless that lease had activity on the ground on October 21, 1976. This so-called "grandfather clause", excepting only activities on the ground, creates special rights in lessees who had the good fortune to be on the ground on October 21, 1976. For all other pre-FLPMA leases and leases issued after FLPMA all "impairing" activities are barred.

A pre-1973 lessee can apply for indeterminate suspension of the lease. Post 1973 leases are not entitled to suspension. There is no assurance to the operator entitled to a sus-

pension that the suspension will ever be lifted since Congress has no time limit upon its vote and should the area be designated as wilderness after 1984 the lease rights will probably be terminated outright. For the Ninth Circuit's opinion that an indefinite suspension of a lease amounts to a condemnation. See Union Oil Company v. Morton, 512 F.2d 743 (9th Cir. 1975)

A post-FLPMA lessee is issued what has been called a "ghost lease", i.e., a lease with no development rights whatsoever. FLPMA does not appear to have set up such a two-tiered leasing system, the second tier of which authorizes the issuance of a lease which is not a lease at all within MLLA.

The Secretary treats each request for permission to drill or to conduct exploratory activities on a case by case basis. Thus, an operator has no assurance that he will be permitted to develop or produce should he make a discovery. Therefore, although on any one given unit, limited exploration and perhaps drilling of one well may be permitted, under the guidelines full field oil and gas development will not be permitted upon an inventory unit or WSA.

This reading of Section 603(c) has the effect of voiding the valid existing rights of lessees. The IMP's state that leases with valid existing rights will be exempted from the non-impairment standard. Such a lease does not exist, however, and the BLM has refused to identify any criteria by which a lease would be judged to have such a valid existing right.

Suit has been filed, Rocky Mountain Oil and Gas Association v. Andrus, Civil Action No. C78-265 (D.C. Wyoming) challenging the Secretary's interpretation of section 603(c) as it pertains to oil and gas leases. A decision is expected in August.

2. Effect Upon Mining Operations. The interpretation of section 603 relating to mining appears to amend the Mining Act of 1872 by implication by stating that only existing mining uses in the manner and degree in which the same were being conducted on the date of approval of the Act are "grandfathered" and excepted from non-impairment.

"Mining uses" are only those uses actually taking place on the date of the passage of FLPMA.

Quantity of on the ground impacts may be increased by the logical pace and progression of the grandfathered use, but new impacts may not be of a different kind. See 43 C.F.R. 3800 (45 Fed. Reg., 13968, March 3, 1980) for Interim Rules pertaining to exploration and mining on inventory and WSA lands. The Secretary states that he will give recognition to valid existing rights pursuant to section 701(h). Mining claimants who located on or before October 21, 1976 and can demonstrate a discovery as of that date will be allowed to continue their mining operations to full development regardless of the non-impairment standard. The idea that discovery entitles a claimant to a right to go onto the claim and work it, whereas a claimant who has staked and done requisite development work but has not yet made a discovery has no such right appears, according to the BLM, to have its origins in the pedis possession valid rights dichotomy set out in cases such as Union Oil v. Smith, 249 U.S. 337 (1919). The BLM position is that pre-discovery, a claimant's rights do not rise to a level protected by section 701(h).

Even if excepted from non-impairment generally the proposed activity, may be "temporarily" disapproved by the Director. (IMPs paragraph 7(a)). Disapproval may be for a period not to exceed two years. We can find no authority in FLPMA for this position.

Inventory and WSA lands are nominally open to appropriation under the 1872 Mining Act but all new activities will be regulated to prevent their impacts from impairing wilderness suitability.

Access over intensive inventory or WSA lands will be granted to mining claims that had a valid discovery prior to October 21, 1976, i.e., have "valid existing rights" or if the access was a part of the use existing prior to October 21, 1976, i.e., is subject to the "grandfather clause." In all other instances access must be non-impairing or it will be prohibited.

State of Utah v. Andrus, and Andrus v. Cotter Corporation, Nos. C-79-0037 and C-79-0307, (D.C.Utah, 1979) was the first case construing § 603 management as it pertained to mining access. In this case private operators along with the

E. Current Controversies Regarding Rights-of-Way. A question has arisen whether the right-of-way regulations include authorizations for access to mining claims and to oil and gas leases.

Mining Claims. Right to ingress and egress for access roads authorized by the Mining Law of 1872 is recognized by the regulation. The BLM states that its authority derives from § 302(b) of FLPMA to prevent unnecessary or undue degradation and states that access will be authorized under 43 C.F.R. § 3809).

Mineral Leases. The regulations do not address the issue of whether a lessee must apply for a right-of-way under Title V in order to obtain access to a lease, but according to the Colorado BLM a right of way must be approved from the nearest road to the lease boundary.

Until very recently, a proposal was being given serious consideration by the BLM that a separate right-of-way permit would be required from the lease boundary to the smaller plan of operations area within the lease. We have been informed that the new Solicitor has rejected this idea and no separate right-of-way permit will be required within the lease.

#### V. Mining Recordation

Finally, FLPMA has changed the law of mining recordation to require that unpatented mining claims, mill sites and tunnel sites be recorded. For claims located prior to FLPMA's effective date the first filing must be on or before October 22, 1979 and then prior to December 30 of each following year. For claims located post-FLPMA the notice required by (2) below must be filed within 90 days of the date of location of the claim and the filing required by (1) must be on or before December 30 of each calendar year following year of location. (See Regulations at 43 C.F.R. § 3833) Each must file:

1. in the office where the location notice or certificate is recorded, a notice of intention to hold the claim or an affidavit of assessment work performed thereon.
2. in the office of the BLM designated by the Secretary, (state office except in Alaska) a copy of the official record of the notice or certificate of location including a description (map or narrative) of the location sufficient to locate the claimed lands on the ground.

State of Utah brought suit for access across federal lands to a state mining claims and to an unpatented claim upon federal land. Utah claimed that section 603 management denied access and interfered with the School land trust. The opinion seems to hold that the state is entitled to access to state lands subject to BLM regulation to protect the wilderness characteristics of the land so long as regulation is consistent with the state's right to economically develop the land. It also states, however, that section 603 amends the Mining Law of 1872 to subject access to an unpatented claim on federal land to the non-impairment standard so long as the denial does not "permanently deprive [claimant] of access to its claim."

#### IV. Rights-of-Way

Most existing right-of-way statutes were repealed by FLPMA, and Title V is a replacement for some of those acts. The Secretary is authorized to grant rights-of-way other than oil, natural gas, water, electricity and certain others and to enter into cost share agreements for financing their construction. Costs for special studies and environmental reports were found to be public benefits not chargeable to applicant in two U.S. District Court cases, Public Service Co. of Colorado v. Andrus, 433 F. Supp. 144 (D. Colo. 1977) and Alumet v. Andrus, No. 76-287, (D. Utah, March 10, 1978); however, the Alumet case was overturned by the Tenth Circuit, Alumet v. Andrus, 607 F.2d 911 (1979) holding that FLPMA is an express mandate that costs incurred by the Secretary in processing right-of-way applications, including costs of EIS's, shall be chargeable against the applicant.

Section 509(a) states that Article 5 shall not have the effect of terminating any right-of-way previously granted.

Right-of-way corridors are to be established pursuant to section 503 to minimize environmental impacts and the proliferation of separate rights of way, but they are strictly planning tools and confer no right of way.

Each application for a right-of-way must include a record of wilderness review, ACEC's and disclosure of plans and ownership. § 501(b)(1) and (2)

The IMPs provide that although rights-of-way corridors can be designated on WSAs, specific applications for a right-of-way permit must be made within designated corridors and these must comply with the nonimpairment standard. Regulations regarding rights of way have been promulgated by the secretary and are



"Copy" is defined as "a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim, mill or tunnel site which was or will be filed in the local jurisdiction where the claim or site is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim or site." 43 C.F.R. § 3833.0-5(i)

The regulations state that a certificate of location containing the information specified in § 3833.1-2(c) must be filed if state law does not require recordation of a notice or certificate of location. 43 C.F.R. § 3833.1-2(a)

Failure to file is deemed to be abandonment of the claim by the owner. Time limits set by the statute should be taken as absolute, and they apparently will not be waived.

#### A. Current Controversy

1. A practical problem has arisen with filing the "copy of the official record" with respect to claims located after October 21, 1976 because of the ninety-day requirement. One commentator has suggested this approach: If possible, file with the BLM the copy returned by the county showing recording data. A certified copy is unnecessary. If the county has not returned the copy promptly, the filing data and reception number should be obtained by phone and noted on the file. Obviously, if none of this is possible, file simultaneously since the filing deadline is paramount. See C. Outerbridge and D. Sherwood, Recordation and Filing of Unpatented Mining Claims and Sites with the Federal Government, 21 Ariz. L. Rev. 433 (1979).

2. Particular attention should be paid to the "date of location" upon post-FLPMA claims. The regulations define "date of location" and "located" as "the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill, or tunnel site is situated." 43 C.F.R. § 3833.0-5(h)

3. The BLM has a plan to computerize all recordation. As of last word they have not yet caught up to October 22, 1979. As a result, a statistical analysis of the effect of section 314 has not yet been possible. There has been speculation that because of the cost associated with the survey necessary to record the claim, the number of smaller prospectors is likely to diminish. As larger companies are forced to conduct surveys, they are likely to file on surrounding lands at the same time.