

# Protecting our land, water, and culture

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How to use mineral withdrawals to  
safeguard public lands from mining  
*A mineral withdrawal primer for communities*

NOVEMBER 2024



EARTHWORKS

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November 2024

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Chetco River, Oregon, by Ann Vileisis

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## ABOUT EARTHWORKS

Earthworks is a nonprofit organization dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions. We work with communities and grassroots groups to reform government policies, improve corporate practices, influence investment decisions, and encourage responsible materials sourcing and consumption. We expose and aim to prevent the health, environmental, economic, social, and cultural impacts of mining and energy extraction through work informed by sound science.



EARTHWORKS

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# Acronyms and Glossary

<b>ACEC</b>	<b>Area of Critical Environmental Concern</b> A designation for federal lands where special management is needed to protect important resources and unique scenic landscapes, or to protect people and property from hazards. The designation is unique to the Bureau of Land Management.
<b>APA</b>	<b>Administrative Procedures Act</b> A federal law that governs how federal agencies make and enforce rules, and how they interact with the public.
<b>BLM</b>	<b>Bureau of Land Management</b> A federal agency within the Department of the Interior that manages public lands and subsurface resources.
<b>DOI</b>	<b>Department of the Interior</b> An executive department of the federal government that manages public lands and minerals, national parks and wildlife refuges.
<b>EA</b>	<b>Environmental Assessment</b> A document that helps federal agencies determine if a federal action could have a significant environmental impact.
<b>EIS</b>	<b>Environmental Impact Statement</b> A document that outlines the potential impacts of a proposed project on its surrounding environment. These documents are used by federal agencies to determine the significance of federal actions.
<b>FONSI</b>	<b>Finding of No Significant Impact</b> A FONSI is issued when environmental analysis during the Environmental Assessment (EA) process finds a project to have no significant impact on the quality of the environment.
<b>NEPA</b>	<b>National Environmental Policy Act</b> A federal law that requires federal agencies to analyze the potential social and environmental impacts of a federal action. It also provides an opportunity for public review and comment on these evaluations.
<b>FLPMA</b>	<b>Federal Land Policy Management Act</b> A federal law that governs the way in which federal public lands administered by the Bureau of Land Management are managed.
<b>ROD</b>	<b>Record of Decision</b> A formal document that outlines a government agency's decision on a project or action. It's often used in environmental impact assessments.
<b>MOU</b>	<b>Memorandum of Understanding</b> An agreement between two or more parties outlined in a formal document.
<b>ITEK</b>	<b>Indigenous Traditional Ecological Knowledge</b> A collection of knowledge, beliefs, and practices that Indigenous People have gained over time through direct contact with the environment.
<b>PLO</b>	<b>Public Land Order</b> Issued by the U.S. Secretary of the Interior to implement, modify, extend or revoke land withdrawals under the authority of the Federal Land Policy and Management Act (FLPMA). Signed orders are published in the Federal Register and can be viewed online.



# Introduction

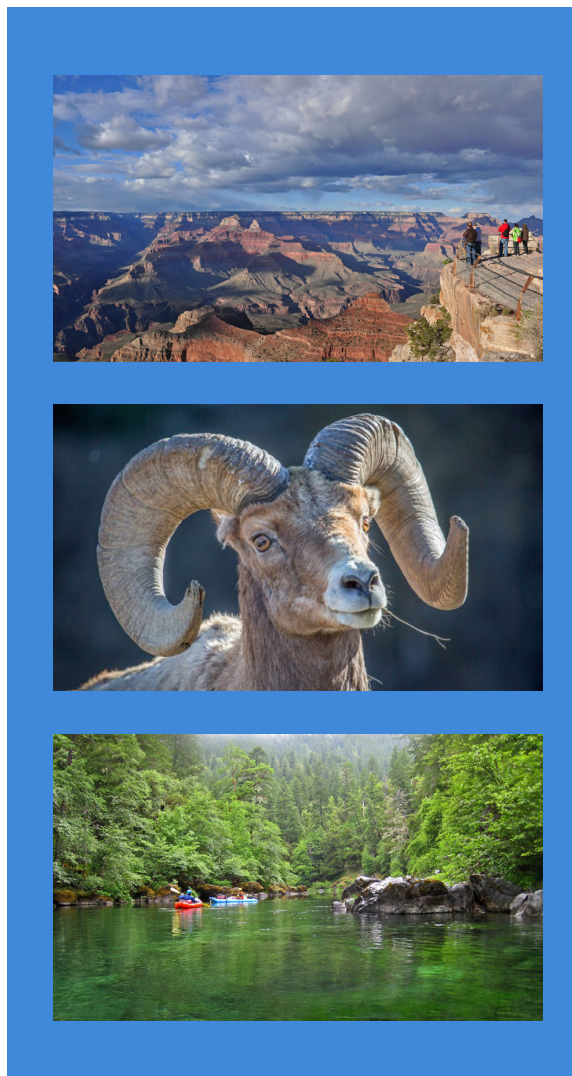
Metal mining on federal public lands throughout the American west is still governed by the 1872 Mining Law, enacted over 150 years ago under President Ulysses S. Grant. This outdated law allows individuals and mining companies to stake an unlimited number of mining claims, hold those claims for an indefinite period of time, and extract valuable minerals with no royalties paid to the federal government.

The 1872 Mining Law still prioritizes mining over all other land uses, jeopardizing many of the other vital land values that federal lands provide—including drinking water, cultural resources, critical fish and wildlife habitat, recreation and agriculture. Metal mining has been the leading source of toxic pollution in the United States for as long as the U.S. Environmental Protection Agency has kept records.<sup>1</sup>

Mineral withdrawals, areas of federally owned public land that have been withdrawn from mining activities, are an essential tool to protect sensitive and valuable public resources from the harmful effects of mining. At the request of Tribes, communities, conservation organizations and others, mineral withdrawals have been established to protect national treasures (such as federal lands around the Grand Canyon and Yellowstone National Park), cultural resources (such as Indian Pass in California), outstanding resource waters and valuable fisheries (such as the Chetco River and Siskiyou Region in Oregon), critical wildlife habitat, water and community values on Mt. Emmons in Colorado, and reclamation work at abandoned mines in the Little Rockies in Montana.

This primer provides the public with a resource to better understand mineral withdrawals, the process by which this powerful tool is initiated and implemented, recommendations for how to effectively promote and engage in the withdrawal process, and examples of where mineral withdrawals have been successfully used to protect some of our nation's most treasured public lands and resources.

**Mineral withdrawals have been used to safeguard natural treasures, cultural resources, and valuable fisheries.** Photos top-down: Grand Canyon National Park, National Park Service; Yellowstone National Park, Neal Herbert, National Park Service; Chetco River, Oregon, by Ann Vileisis.



# 1 | What is a Mineral Withdrawal?

A mineral withdrawal is a specific area of federally owned public land that has been withdrawn from certain mining activities in order to safeguard other public values in the area, such as scientific, scenic, historical, ecological or archeological resources, or for other special purposes.<sup>2</sup>

There are three types of mineral withdrawals: presidential, congressional and administrative. This report will focus on congressional and administrative withdrawals as the two types of withdrawals that are most commonly sought by communities to protect important resources.

## 1 Presidential withdrawals

The Antiquities Act of 1906 authorizes the president to proclaim national monuments on federal lands that contain historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest.<sup>3</sup> For example, President Obama first established the Bears Ears National Monument in Utah under the Antiquities Act, followed by additional action by President Biden to protect cultural resources within the monument.<sup>4</sup>

## 2 Congressional withdrawals

Congressional withdrawals are legislative actions initiated by Congress and signed by the president. This type of withdrawal is particularly important because congressional withdrawals offer permanent protection. For example, in 2019, Congress passed the Yellowstone Gateway Protection Act, establishing a permanent mineral withdrawal on 30,000 acres of federal lands at the north entrance to Yellowstone National Park to protect and preserve the scenic integrity, important wildlife corridors and high-quality recreation values contained in those lands.<sup>5</sup>

## 3 Administrative withdrawals

Administrative withdrawals are established by the Secretary of the Interior under the authority of the Federal Land Policy Management Act (FLPMA). The Federal Land Policy Management Act authorizes the Secretary of the Interior to establish mineral withdrawals on federal lands for a period of up to 20 years. This may include: small withdrawals of 5,000 acres or less, large withdrawals of 5,000 acres or more, and emergency withdrawals of any size. There are different requirements or constraints for each type. The Secretary of the Interior also has the authority to grant mineral withdrawals “in aid” of legislation, an administrative withdrawal specifically intended to give Congress time to consider legislation for a permanent withdrawal (see details on page 14).<sup>6</sup>

Mineral withdrawals can be established for many different types of minerals, including locatable and fuel minerals. Locatable minerals are “located” with a mining claim under the 1872 Mining Law.<sup>7</sup> Locatable minerals include many familiar metals, such as gold, copper, silver, platinum, zinc, and nickel. Locatable minerals may also include uncommon varieties of minerals. A determination that a variety is “uncommon” and subject to the 1872 Mining Law is made by the U.S. Bureau of Land Management (BLM) on a case-by-case basis. (See [Uncommon Minerals](#) on next page).



Mineral withdrawals may also be established for fuel minerals, which include oil, gas and geothermals that are managed under a leasing system, rather than a claim system. Withdrawals may also be established for more than one type of mineral (e.g., locatable and fuel). For example, in June, 2023, the Secretary of the Interior withdrew 336,404 acres of federal lands surrounding Chaco Culture National Historical Park from mining and leasing laws to protect the lands “from the potential impacts associated with oil and gas development and from the adverse effects of locatable mineral exploration and mining.”<sup>8</sup> Although this primer focuses primarily on mineral withdrawals for locatable minerals, the process is the same regardless of which minerals are underground.

The 1872 Mining Law governs mining on federal lands in the western United States. Mining activities on federal lands east of the Rockies and Black Hills, S.D., are largely managed by a leasing system under the Weeks Act, a federal law that authorized the Forest Service to acquire forested lands.<sup>9</sup> Mineral withdrawals for these lands involve withdrawing federal lands from mineral leasing, rather than withdrawing federal lands from the location of mining claims. A good example of this is the Boundary Waters mineral withdrawal, established in January 2023 to protect 225,504 acres of federal lands from mineral and geothermal leasing in the Boundary Waters Canoe Area Wilderness and the 1854 Ceded Territory of the Chippewa Bands in northeastern Minnesota.<sup>10</sup> The withdrawal was established due to concerns about the potential impacts of mining for copper and nickel.<sup>11</sup>



## UNCOMMON MINERALS?

Most mineral withdrawals are established to exclude federal lands from the extraction of well-known minerals, such as gold and copper. However, mineral withdrawals may also apply to minerals that are categorized as uncommon minerals. A 20-year mineral withdrawal to protect approximately 74,689 acres in the San Francisco Peaks at risk from pumice mining was established in July 2000 and renewed in 2020.<sup>12</sup> The pumice was considered an “uncommon” variety of locatable mineral because it was determined to have a distinct and special value for use in stonewashed jeans.<sup>13</sup> The mineral withdrawal in the San Francisco Peaks, known as Nuva’tukya’ovi to the Hopi, Hvehasahpatch or Huassapatch to the Havasupai, and Sunha K’hbchu Yalanne to the Zuni, was established with the support of Tribes to protect traditional cultural property and other values.<sup>14</sup>

Photo: San Francisco Peaks, Arizona, by National Park Service

## WHAT IS A MINING CLAIM AND HOW ARE THEY STAKED?

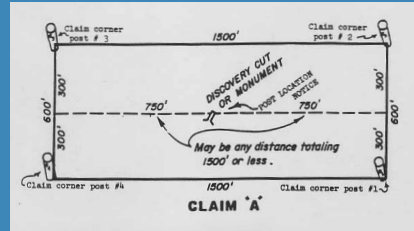
The General Mining Law of 1872 (the 1872 Mining Law) allows individuals to stake mining claims on any federal lands (e.g., Forest Service or BLM lands) that haven't been explicitly withdrawn from mineral location (claim staking) and entry. There are several types of mining claims: lode, placer and millsite.

→ **A LODE CLAIM** is used for minerals that are located in a vein or in large volume, but in low-grade disseminated deposits. The majority of large mining projects (including large open pits and those that are digging large underground tunnels to extract the ore) use lode claims. Lode claims are limited to a maximum size of 1,500 by 600 feet (roughly 20 acres). The claim boundaries must be clearly marked, often with wooden posts or PVC plastic pipe that are staked in the four corners. Large mining operations will often involve hundreds of lode claims.

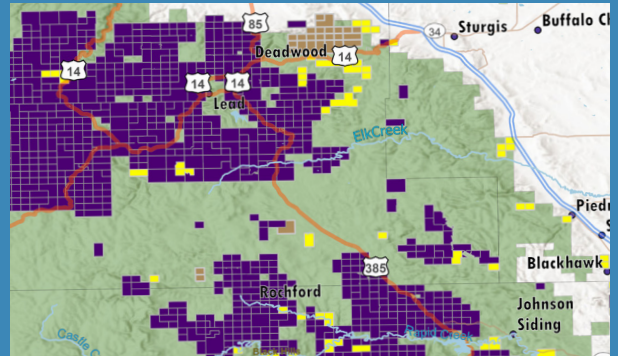
→ **A PLACER CLAIM** is used for mining the valuable minerals in loose material, like the sand and gravel found along and on the bottom of streams. Placer claims are used for suction dredge mining or placer mining, primarily for gold. Suction dredge mining is a type of mining that uses high powered floating vacuums to suck up the sand and gravel in stream or river bottoms. The gravels are then run through, where heavier minerals like gold can be recovered. Placer mining also uses water to separate heavier minerals like gold from sand or gravel, often using a sluice box or other similar equipment. The maximum placer claim size is 20 acres.

→ **A MILLSITE CLAIM** is a type of claim used for facilities that support mining operations, such as the location of the mill. Millsite claims must not be used to claim lands that contain valuable minerals. The maximum size is five acres.

To stake a mining claim, a person (referred to as the claimant) must physically locate a mining claim on the ground by staking the four corners, file a location notice with the County Recorder's Office in the county where the claim is located, and file the location notice with the BLM accompanied by the appropriate filing fee. To maintain the claims, the claimant must pay an annual fee of \$165 per claim.<sup>15</sup> As noted in [Chapter 4](#), a claim isn't considered valid unless the claimant can demonstrate that it meets the requirements of the 1872 Mining Law.



Mining claim drawing. Photo by the U.S. Forest Service.



Mining claims in the Black Hills, South Dakota. The yellow blocks are placer claims and the blue blocks are lode claims, illustrating big claim blocks. Courtesy of Black Hills Clean Water Alliance.



Lode claims are typically used to stake federal lands for large mining operations, such as this open pit gold mine. Photo by Ecoflight.



Suction dredge mining in Oregon uses hoses to vacuum up the sediments in search of gold. Suction dredge mining uses placer claims, rather than lode claims. Photo by KS Wild.





## 2 | How are Administrative Mineral Withdrawals Established?

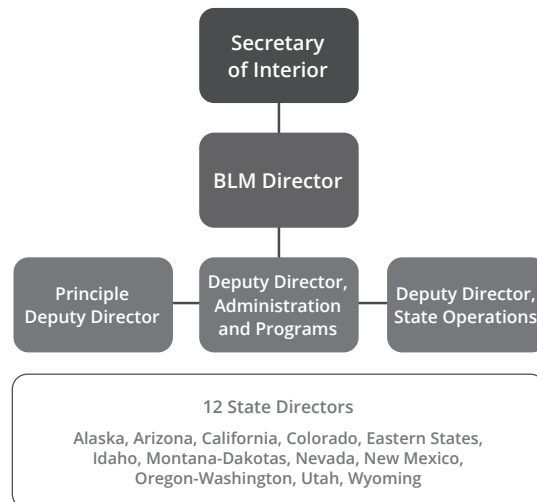
Administrative mineral withdrawals are entirely at the discretion of the Secretary of the Interior, who has authority under the Federal Land Policy Management Act to make, modify, extend or revoke withdrawals. However, the Secretary of the Interior must be convinced to use this important tool.

The formal process begins when one of the federal agencies, such as the Forest Service or the BLM, submits an application for a withdrawal, often at the request of communities, Tribes, conservation organizations or other entities that are concerned about the potential impacts of mining activities on important public resources (see [Chapter 7](#) for suggestions on how to engage).

The withdrawal application (see sample in [Appendix A](#)) must include the following:<sup>16</sup>

- The name of the federal agency applying for the withdrawal
- The type of withdrawal requested
- A legal description of the lands proposed to be withdrawn
- The purpose for the withdrawal
- Preliminary indication of mineral resources and other relevant information
- The extent to which the lands within the withdrawal will be withheld from settlement, sale, location or entry under public land laws, including mining laws
- The duration of the withdrawal
- A statement as to whether there are suitable alternative sites available for the proposed use(s) which the requested withdrawal action would displace
- A statement about whether water will be needed to fulfill the purpose of the withdrawal
- The place where records relating to the application can be examined by an interested person

Administrative withdrawal applications must go to the BLM to be processed under the agency's withdrawal regulations because the BLM manages the subsurface minerals found on all federal lands, including National Forests.<sup>17</sup> If requested by the Forest Service, the Chief of the Forest Service has delegated the authority to request withdrawals to the regional foresters and forest supervisors.<sup>18</sup> The Forest Service considers objectives outlined in Forest Service Manual 2700 Chapter



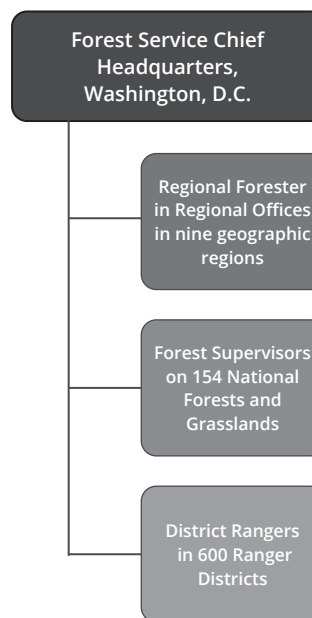
U.S. Bureau of Land Management organization chart.

2760 when evaluating whether to support a withdrawal on Forest Service lands.<sup>19</sup>

The Secretary of the Interior has the discretion to accept the withdrawal application and issue, through the BLM, a temporary withdrawal for two years while the agency considers whether to enact a longer withdrawal. This temporary withdrawal is known as a segregation period. If approved, a notice is published in the Federal Register for the proposed withdrawal, and a notice is placed in a newspaper of general circulation in the area where the lands are located. The BLM must publish a notice of proposed withdrawal within 30 days of the submission of an approved withdrawal application.<sup>20</sup>

This is an important first step. No new mining claims may be staked or new mining activity approved within the proposed mineral withdrawal area while the segregation period is in effect unless there are pre-existing valid mining claims (see [Chapter 4](#) for more information about valid claims).<sup>21</sup> This gives the federal agencies time to consider the potential social and environmental effects of the mineral withdrawal before the Secretary of the Interior makes a final decision.

The Federal Register notice will include information about the proposed withdrawal, including the initial steps for public review and comment, a website link for more information, and an agency contact.



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**IMPORTANT NOTE: The Federal Register Notice will include a website link for more information about the withdrawal. The website will include a sign-up option, where members of the public can enter an email address to receive regular email updates on the mineral withdrawal.**

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Administrative withdrawals are subject to public engagement requirements under FLPMA and the National Environmental Policy Act (NEPA). FLPMA requires a 90-day public comment period and a public hearing.<sup>22</sup> NEPA—the federal law that requires agencies to take a hard look at the potential impacts of an action before making a final decision—also requires public comment. In this case, the action under review is the proposed mineral withdrawal, not the proposed mining activity.

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**IMPORTANT NOTE: An agency can combine the FLPMA and NEPA public engagement requirements. In other words, the agency can announce a 90-day comment on the proposed withdrawal under FLPMA that also serves as the public scoping period required under NEPA. It may be useful to remind the agencies that the public comment requirements can run concurrently if the timeline for completing a mineral withdrawal is short.**

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The environmental review process under NEPA begins with “scoping.” This is an opportunity for the public to provide input on the scope of issues that the agency should consider in the review process. For example, scoping comments could ask the agency to consider the benefits of the proposed mineral withdrawal to maintain critical wildlife habitat, protect clean water or safeguard cultural resources that would be at risk from mineral exploration and development (see [Appendix B](#) for more information on scoping comments).

Scoping also helps the agency determine the likely significance of the proposed withdrawal, which helps the agency decide whether to require a briefer environmental assessment (EA) or a lengthier environmental impact statement (EIS).

Scoping comments may be written or oral. The Federal Register notice will provide directions for how the public can submit written comments, either through an agency website or by sending comments to a specified email address. It will also provide an opportunity for the public to provide oral comments through one or more public hearings in a local community near the proposed withdrawal. Agencies may also offer an opportunity to testify online at public hearings. If it isn't offered, a request for an online option can be made to the agency to make it easier for those who have difficulty with travel. Agencies often limit public testimony to just three minutes per person, so it's helpful to prepare oral comments in advance to maximize the limited time, and to submit more lengthy comments in writing.

Once scoping is complete, the agency will issue a scoping report that summarizes the issues raised by those who commented and determine if the proposed withdrawal is likely or unlikely to have a significant effect on the environment. If the agency determines that the withdrawal is unlikely to result in a significant impact or if the significance is uncertain, it will prepare an EA.

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***IMPORTANT NOTE: Even though a mineral withdrawal is a management tool to protect public lands and resources from the potential harmful effects of mining, the social and environmental effects of the withdrawal must be analyzed. This can be confusing because the environmental review process is typically used to consider the effects of proposals with potential harmful environmental effects. It is the withdrawal that is under analysis, not the proposed mining activity. It's important to include this information in outreach materials to help the public understand this process and accurately support the proposed mineral withdrawal in their comments and testimony.***

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It is also important to recognize that an EA may provide sufficient analysis and offer a more timely way to complete the review process during the two-year segregation period than a lengthier EIS, which may take longer and run up against the two-year limit of the segregation.

If the agency determines that a proposed withdrawal is likely to have a significant impact, an EIS is required. Typically the decision to conduct an EIS or EA is based, in part, on the size of the withdrawal, the complexity of the issues and the level of controversy surrounding the proposal. Mineral withdrawals that are less than 100,000 acres are often completed with an EA, whereas larger withdrawals (>500,000 acres) are often analyzed with an EIS.



When preparing the EIS or EA, a lead agency will be selected to prepare and coordinate the analysis. Other agencies may serve as cooperating agencies, providing input on the content. Federally recognized Tribes may also be eligible to serve as cooperating agencies (see [Chapter 5](#)).

The draft EIS will consider a wide range of issues, such as the potential impacts of the proposed mineral withdrawal to soils, vegetation, water, wildlife, threatened and endangered species, socioeconomic conditions, air, and cultural and historical resources. The agency is required to analyze and describe the direct, indirect and cumulative impacts of the proposed withdrawal to these resources. The draft EIS must also include a range of alternatives, including a “no action” alternative at a minimum (i.e., no mineral withdrawal). The EIS will also include a mineral potential report, which describes the type, value and potential availability of minerals in the area.<sup>23</sup>

The draft EA will consider similar topics, but in a much briefer analysis. Agencies may provide for public comment on the draft EA, typically they allow for 30 days. Federal law requires a minimum of 45 days on a draft EIS,<sup>24</sup> with an opportunity for a public hearing (as noted above). Public comment and testimony can emphasize the beneficial effects the withdrawal will have on the public lands and resources at risk, such as protecting cultural values, important fish and wildlife habitat, and local drinking water resources. Once the public comment period ends, the agency will revise the EIS or EA in response to comments received from the public and from other agencies.

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***IMPORTANT NOTE: Members of the public can request an extension of the public comment period by sending a letter or email to the agency staff person identified in the Federal Register notice.***

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For an EA, if BLM and the agency that applied for the withdrawal (if different from the BLM) determine that the proposed mineral withdrawal would not result in a significant impact, they will jointly prepare a Finding of No Significant Impact (FONSI). The FONSI will be sent to the Secretary of the Interior along with a recommendation from the authorized officer, either supporting or opposing the withdrawal.

For an EIS, the agencies have determined that the proposed withdrawal will have a significant impact, and it will issue a Final Environmental Impact Statement, including a response to public comment, and prepare a proposed Record of Decision (ROD) for the Office of the Secretary of the Interior. The proposed ROD will accompany the proposed Public Land Order or Notice of Denial, the authorized officer's recommendation(s), and other required documents.<sup>25</sup>

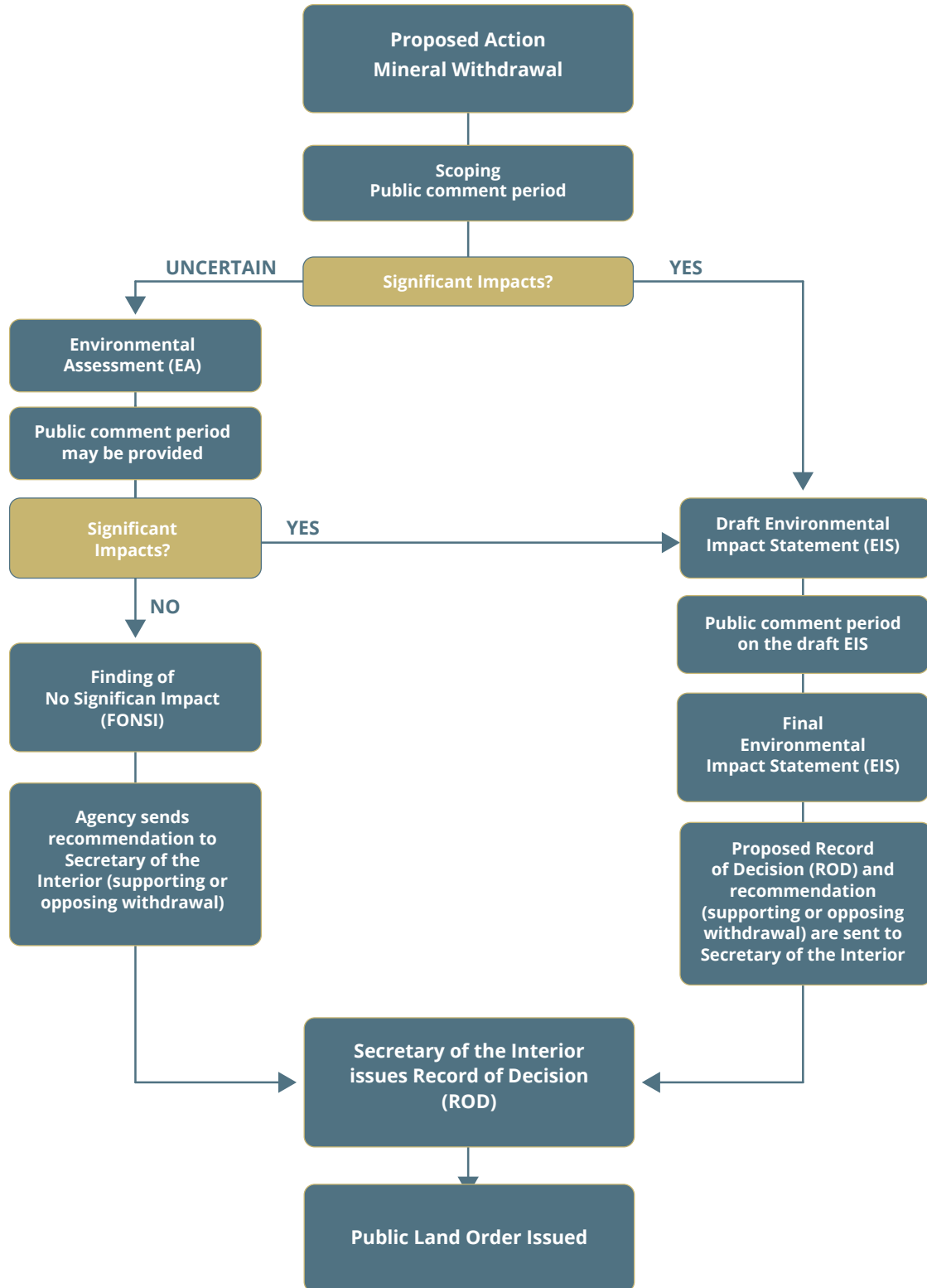
Based on the information provided, the Secretary of the Interior will then decide whether to approve or reject the proposed mineral withdrawal. The withdrawal must be approved by the Secretary of the Interior and signed by the Secretary or Assistant Secretary of the Interior. The secretary can withdraw lands under the jurisdiction of another agency, but only with the consent of that agency.<sup>26</sup> For example, a withdrawal located on Forest Service lands must also be approved by the Forest Service.

Once the secretary makes a decision either approving or denying the withdrawal, it must be published in the Federal Register.<sup>27</sup> Rejection of the withdrawal will open the land, once again, to claim-staking, mineral exploration and development.

The final step in establishing a mineral withdrawal is the issuance of a public land order (PLO), which formally withdraws the land for the specified period of time. The BLM maintains a list of PLOs established under FLPMA on its website.<sup>28</sup>



# MINERAL WITHDRAWAL PROCESS



## ADMINISTRATIVE WITHDRAWALS IN AID OF LEGISLATION

An administrative mineral withdrawal may also be initiated “in aid” of legislation.<sup>29</sup> In this case, the Department of the Interior (DOI) initiates an administrative withdrawal in response to legislation introduced in Congress. This option is important because it can provide interim protection from new mining activities for up to 20 years while Congress considers legislation for a permanent withdrawal. This option has been used in many mineral withdrawal efforts because it provides a short- and long-term strategy for public lands protection. (See the Yellowstone and Southwest Oregon withdrawals in [Chapter 8](#)).

Although a withdrawal “in aid” of legislation is processed in the same manner as all other administrative withdrawals (see above), the DOI initiates the administrative withdrawal at the request of the bill’s congressional sponsor(s). One advantage to this type of administrative withdrawal is the additional political influence that congressional members provide, which may make it easier to convince a federal agency to initiate a withdrawal. It’s important to note that legislation only needs to be introduced, but does not need to become law, before the secretary initiates the administrative withdrawal.

## EMERGENCY WITHDRAWALS

An emergency withdrawal is an administrative withdrawal, but with different requirements from other administrative withdrawals. It is initiated when the Secretary of the Interior believes that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost. This determination can be based on a notification from the Committee on Natural Resources of the House of Representatives or the Committee on Energy and Natural Resources of the Senate.<sup>30</sup> The secretary has the authority to immediately make an emergency withdrawal by filing notice of it with both of those committees.<sup>31</sup>

Within 90 days of an emergency withdrawal, the secretary must also provide those congressional committees certain information about the withdrawal.<sup>32</sup> FLPMA requires the secretary to provide 12 categories of information, including a clear explanation of the proposed use of the land involved which led to the withdrawal, an inventory and evaluation of current natural resource uses and values and how they will be affected by the proposed withdrawal, and an identification of present users of the land involved and how they will be affected.<sup>33</sup>

An emergency withdrawal may only be established for a period of up to three years, and it can’t be extended. In addition, public notice and opportunities for comment under conventional withdrawal procedures do not occur for emergency withdrawals.<sup>34</sup>

The emergency withdrawal provisions have rarely been used. One example involves a proposed mineral withdrawal for federal lands around the Grand Canyon. In 2011, the Secretary of the Interior announced an emergency mineral withdrawal of one million acres of land around Grand Canyon National Park from new mining claims for six months to give the DOI more time to complete an administrative withdrawal (see more details in [Chapter 8](#)).<sup>35</sup>



### 3 | How are Congressional Mineral Withdrawals Established?

A congressional withdrawal is initiated when a member of Congress introduces legislation to withdraw certain federal lands from mining. This could be stand-alone legislation, such as the North Fork Watershed Protection Act, which withdrew 383,267 acres of federal lands along the western edge of Glacier National Park from new mining. Sometimes, lawmakers will package mineral withdrawal legislation with similar conservation bills, protecting places prioritized by other members of Congress. For example, the Yellowstone Gateway Act and Methow Valley Headwaters Protection Act were added to the John D. Dingell Jr. Conservation Management and Recreation Act, a legislative package with more than 100 other public lands bills.<sup>36</sup> A congressional mineral withdrawal may also be part of more complex legislation that establishes Wilderness, National Parks or National Monuments.

The process for a congressional mineral withdrawal is the same as the process for passing any other bill. Legislation is drafted, introduced by the bill sponsor(s) and assigned to committee. The House Committee on Natural Resources and/or Senate Energy and Natural Resources Committee have jurisdiction for congressional mineral withdrawals. The respective committee chairs then decide whether or not to debate, amend and vote on the bill, often by first holding hearing(s) followed by a “markup,” when committee members consider the details of a bill and vote on amendments. If the bill (as amended by markup) passes a committee vote, it will be sent for a full vote of the House or Senate. If the bill passes one chamber of Congress, it goes to the other chamber to go through a similar process. If the identical bill passes both the House and Senate, the bill goes to the president for a signature or a veto. If the president vetoes the bill, Congress has the opportunity to override the veto by supermajority vote in each chamber.

The chances of passing a congressional mineral withdrawal vary based upon local (see [Chapter 7](#)) and national political factors. Typically, bipartisan (support from both political parties) and bicameral support (support from both the House and Senate), especially sponsorship from a retiring member of Congress, make it more likely that the mineral withdrawal will become law.

The hyperpartisanship of Congress has diminished the likelihood of passage for both stand-alone congressional mineral withdrawals as well as broader legislation that accomplishes the same goals. Yet, mineral withdrawal bills tend to have better chances where they have undergone congressional vetting, usually hearings (forums for congressional committee members to hear about the bill) and markups. Mineral withdrawal bills are also more likely to pass if they enjoy bipartisan, bicameral support and are packaged together with similar public lands priorities from others in Congress.



# 4 | What are the Effects of a Mineral Withdrawal on Existing Mining Claims?

Mineral withdrawals are powerful but imperfect tools to protect public lands from mining, because they are often initiated after mining claims have already been staked. The effects of a mineral withdrawal on pre-existing mining claims within the mineral withdrawal boundaries are often misunderstood. A mineral withdrawal prevents the location of new mining claims (claim staking). It also limits mining activities to pre-existing mining claims that can demonstrate valid existing rights. This means that mineral withdrawals do not automatically protect an area from the impacts of potential future mining if the individual that holds the mining claim (claimant) can establish that their claims were valid on the date of the segregation and withdrawal. As such, mineral withdrawals are much more effective at protecting areas when established proactively, before claims have been staked or exploration occurs.

A “valid” mining claim is one that’s been subject to a formal process to determine if there’s been a “discovery of a valuable mineral deposit” that was physically disclosed on the claim on the date of segregation and withdrawal,<sup>37</sup> and if the claim meets all other requirements of the law. To do this, the claimant must meet both the Prudent Man Rule and the Marketability Test.

The Prudent Man Rule determines value based on whether a person with ordinary good judgment would consider investing time and money to develop a potentially viable mineral deposit.<sup>38</sup> The Marketability Test requires the claimant to demonstrate that the mineral could be mined, removed and marketed at a profit.<sup>39</sup>

A valid existing mining claim is established if a mineral exam (validity exam), conducted by a Federal Certified Mineral Examiner, determines that the mineral is physically exposed on the surface, and both the Prudent Man Rule and the Marketability Test are met. A mineral exam typically includes a field examination of the claims, lab analysis of the exposed minerals, and economic analysis. Regulations require the claimant to pay the costs of a validity exam on mining claims where a new plan is proposed on withdrawn lands.<sup>40</sup>

“Valid existing rights,” therefore, only exist when a claimant can demonstrate that a reasonably prudent person would be justified in expending effort to further the actual development of the claim (as opposed to further exploration of it).<sup>41</sup> If the deposit requires additional exploration to determine if ore body and claim satisfy the Prudent Man/Marketability tests, a discovery has not been achieved, and there are no valid existing rights that would be exempted from the segregation/withdrawal.<sup>42</sup>

If the BLM determines that a mining claim on lands proposed for withdrawal is likely invalid because it cannot meet these two tests, the BLM will initiate formal proceedings to contest the claim, with an aim of declaring the claim null and void.<sup>43</sup> If the BLM determines that a claim is valid, the mineral withdrawal will have no effect on that claim. Mining activities may occur on valid existing claims as long as the claims are valid and the mining activities comply with the law.

**A mining claim must be supported by some evidence establishing discovery of a valuable mineral deposit as of the withdrawal date in order to be exempt from the withdrawal.**





A mining claim must be supported by some evidence establishing discovery of a valuable mineral deposit as of the withdrawal date in order to be exempt from the withdrawal.

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***IMPORTANT NOTE: Determining a mining or millsite claim's validity is a complicated process. However, it is important to note that a validity determination—the official process to determine whether a claim is valid—is only required when the individual or mining company with existing mining claims submits a proposal to conduct mining or exploration in a withdrawn area.***<sup>44</sup>

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If the BLM determines through a mineral exam that the pre-existing mining or millsite claim is invalid, and the claim is voided, those lands are protected by the withdrawal, and no new claims can be staked on those lands while the withdrawal is in effect. This means that even if there are existing mining claims, a mineral withdrawal will provide important protections if the existing claims are determined to be invalid, or by limiting new claim-staking in the area.



**The Joshua Tree forest at Conglomerate Mesa in California is threatened by exploratory drilling for gold.**

Photo: Friends of the Inyo



EARTHWORKS

PROTECTING OUR LAND, WATER, AND CULTURE  
*How to use mineral withdrawals to safeguard public lands from mining*  
[earthworks.org/how-to-mineral-withdrawal](http://earthworks.org/how-to-mineral-withdrawal)

## 5 | How can Tribes Engage in the Mineral Withdrawal Process?

There are a number of ways in which Tribes can engage in the mineral withdrawal process. The United States has a unique legal relationship with federally recognized Tribes established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders and judicial decisions.

The BLM is charged with engaging in regular and meaningful consultation and collaboration with federally recognized Tribes in the development of a proposed withdrawal on federal lands that may impact Tribal interests (e.g., subsistence resources, treaty rights, cultural resources).<sup>45</sup> Tribal consultation is required as part of the mineral withdrawal process under FLPMA. It is also required as part of the environmental review process under NEPA.<sup>46</sup>

Tribes also have the opportunity to receive cooperating agency status by filing a written request with the lead federal agency, usually the BLM or Forest Service. Cooperating agency status is granted, or not, at the discretion of the lead agency.<sup>47</sup> This allows Tribes to receive and share information earlier in the NEPA process, and potentially have more influence over the final decision. The lead agency also has discretion to allow Tribes to become joint lead agencies.

Under a Memorandum of Understanding (MOU), issued under the Biden administration, agencies are required to consider indigenous traditional ecological knowledge (ITEK) in the environmental review process.<sup>48</sup> ITEK can include observations, oral and written knowledge, practices, and beliefs that promote environmental sustainability and the responsible stewardship of natural resources through relationships between humans and environmental systems. Guidance for how ITEK is applied in federal decision-making is provided by a 2022 White House Memo.<sup>49</sup>



# 6

## Mineral Withdrawal Questions and Answers

### Q. What federal law, regulations or policies guide the establishment of a mineral withdrawal?

Administrative mineral withdrawals are governed by the Federal Land Policy Management Act and associated Bureau of Land Management regulations found at [43 CFR 2310](#). Forest Service locatable mineral withdrawal management direction is contained in [Forest Service Manual Title 2700, Chapter 2760 \(Withdrawals\)](#), and it is the policy of the Forest Service to be consistent with the Bureau of Land Management direction.

### Q. Are there differences between mineral withdrawals in the eastern and western U.S.?

No. The process for withdrawing federal lands from mining is the same, regardless of location or which law governs the mineral. Notably, the 1872 Mining Law governs public lands only in the western states. Metals mining on eastern public lands are largely managed by a leasing system under the Weeks Act.

### Q. Is recreational mining, such as gold panning, allowed within lands that have been segregated or withdrawn from locatable mineral activities?

No. Recreational mining, such as suction dredge mining and gold panning, are only allowed on mining claims with valid existing rights that pre-date the segregation or withdrawal and compliance with all applicable regulations are met. These requirements ensure the mining claims are being used for the intent of the mining law, to promote extraction of minerals, and not for self-appropriation of public land.<sup>50</sup>

According to the Bureau of Land Management, its regulations (43 CFR 8365.1-5(b)(2)) generally allow members of the public to collect reasonable amounts of nonrenewable resources such as rocks, mineral specimens and semiprecious gemstones for noncommercial purposes (e.g., “rock-hounding”) on BLM-managed public lands.<sup>51</sup> Such collection is generally not allowed, however, in certain areas, such as on developed recreation sites, where there are active mining claims or other authorized mineral uses, or on lands where the mineral estate is owned privately.



Grand Canyon National Monument signing by President Biden.

Photo: Department of the Interior



**Q. Can mineral withdrawals be established for other types of minerals, such as oil and gas?**

Yes, the Secretary of the Interior also has the authority to withdraw federal public lands from oil, gas, coal and geothermal leasing under the Mineral Leasing Act of 1920. These withdrawals are also subject to valid existing rights, meaning that the withdrawal would not affect pre-existing valid mineral leases or claims. In some cases, the Department of the Interior may withdraw lands from all mineral extraction. In others, it withdraws lands from mining, but not for oil, gas, coal, and geothermal minerals. The Federal Register notice specifies the proposed withdrawal's scope and the Department of the Interior must fully analyze their withdrawal decision.

**Q. Can a mineral withdrawal be established if it isn't recommended in the resource management plan?**

Yes. Federal agencies, such as the Bureau of Land Management and Forest Service, develop long-term management plans to provide guidance for how an area should be managed over a 20-30 year timeline. Administrative mineral withdrawals can be established through Federal Land Policy Management Act even if a withdrawal was not recommended or isn't consistent with the relevant resource management plan.<sup>52</sup>

**Q. What other federal land designations prohibit mining?**

Other federal land designations that withdraw public lands from mining include Wilderness Areas, National Parks, Wildlife Refuges, National Monuments and federal lands within the boundaries of the "wild" segment of Wild and Scenic rivers. As with other types of withdrawals, these designations are still subject to valid existing rights. In other words, mining activities may occur on valid mining claims staked before a Wilderness Area or National Park was established. Only Congress designates Wilderness Areas, National Parks and Wild and Scenic Rivers. Congress or the president may designate National Monuments.

**Q. Do land designations, such as Areas of Critical Environmental Concern, prohibit mining?**

The Bureau of Land Management has the authority to create an Area of Critical Environmental Concern, a public land unit that requires special management to protect specific resources, such as wildlife habitat, cultural, historical or scenic values, or to protect human health and safety.<sup>53</sup> An Area of Critical Environmental Concern designation by itself does not automatically prohibit or restrict other uses in the area. The Bureau of Land Management determines, as part of the land use planning process, whether restrictions should be put in place to protect the specific resources



After the Zortman Landusky Mine resulted in harmful water pollution, a mineral withdrawal was secured by the Fort Belknap Indian Community to protect 2,600 acres of their traditional lands in the Little Rocky Mountains of Montana from new mining.

Photo: Courtesy of the Fort Belknap Indian Community

for which the Area of Critical Environmental Concern was established. These can include restrictions on motorized access, off-trail recreation, and many other activities. The Bureau of Land Management can recommend that an Area of Critical Environmental Concern include a mineral withdrawal, but the agency must still complete the mineral withdrawal process under Federal Land Policy Management Act.

**Q. Can an administrative mineral withdrawal be renewed?**

With the exception of emergency withdrawals, administrative withdrawals may be renewed if the Secretary of the Interior determines that the purpose for which the withdrawal was first made requires the extension. The withdrawal renewal must be made available for public comment before the renewal is granted. There are no limits on the number of renewals. However, it is important that the secretary initiate a renewal before the previous withdrawal expires or the lands will be open to claim-staking during the lapse. For example, a 48-hour lapse in the renewal of a mineral withdrawal at the Zortman Landusky Reclamation Area in central Montana, which was established to protect reclamation work at an abandoned gold mine, allowed a mining company to stake new claims within the reclamation area, jeopardizing tens of millions of dollars in reclamation work to treat ongoing acid mine drainage at the defunct Zortman Landusky gold mines, which had caused extensive pollution to lands and waters in the region.<sup>54</sup>

**Q. Who coordinates the mineral withdrawal process?**

The Bureau of Land Management has dedicated regional and national mineral withdrawal coordinators who are tasked with monitoring and coordinating federal mineral withdrawal efforts. Contacts are located on the [Bureau of Land Management's webpage](#). These staff are useful contacts to determine the status of withdrawal requests, and they generally field questions about the mineral withdrawal process.

**Q. Do mineral withdrawals require Tribal consultation?**

Yes, Tribal consultation must be conducted, and an analysis of a proposed action's potential effect on Tribal lands, resources, or areas of historic significance must be included in the federal agency's decision-making process.

**Q. What happens if the segregation period ends before the withdrawal is final?**

If the Secretary of the Interior has not approved the withdrawal and signed the Record of Decision before the two-year segregation ends, the lands are no longer withdrawn and will be open to new claim staking.<sup>55</sup> The secretary also may issue a new order segregating the same lands, but for different stated purposes, in order to keep the land closed to mineral entry or exploration.<sup>56</sup>



**Other land designations, such as National Parks and National Monuments, withdraw public lands from mining, subject to valid existing rights. Bison calf in Yellowstone National Park.**

Photo: National Park Service

**Q. Can an administrative mineral withdrawal be challenged in court?**

The Secretary of the Interior’s decision to approve a mineral withdrawal may be challenged in court under the Administrative Procedure Act. Under the Administrative Procedure Act, the court may consider whether the secretary’s decision was “arbitrary and capricious.”<sup>57</sup> The court can reverse the secretary’s decision if the secretary has relied on factors which Congress had not intended the secretary to consider, entirely failed to consider an important aspect of the problem, or offered an explanation for a decision that runs counter to the evidence.<sup>58</sup> However, if the secretary provides reasonable documentation supporting their decision, the court is likely to uphold it.

**Q. Does Congress need to approve an administrative withdrawal?**

No. For mineral withdrawals over 5,000 acres, the Secretary of the Interior must notify the House of Representatives and the Senate on the effective date of the withdrawal.<sup>59</sup> In this notification, Federal Land Policy Management Act requires the secretary to provide 12 categories of information about the withdrawal to Congress.<sup>60</sup> Congress does not need to approve the administrative withdrawal, but it has the authority to terminate the withdrawal through legislation signed by the president.<sup>61</sup>

**Q. Do mineral withdrawals affect private property?**

No. Mineral withdrawals apply only to federal land. They have no effect on private property.

**Q. Can locatable mineral withdrawals apply to any other public use of federal land, such as hunting, grazing, recreating, etc.?**

No. Mineral withdrawals apply restrictions to mining only. They have no effect on any other activities, such as logging, grazing, hunting or recreational activities.

**Q. Are there specific requirements that apply to mineral withdrawals in Alaska?**

Section 1326 of the Alaska National Interest Lands Conservation Act, commonly called the “no more clause,” limits the ability of the pres-

ident or an agency to withdraw federal lands within Alaska over five thousand acres. Unless such a withdrawal is approved via a joint resolution of Congress, it will lapse after a year.

**Q. Does a mineral withdrawal require consultation under Section 106 of the National Historic Preservation Act?**

Yes. The agency is required to determine whether the proposed action has the potential to cause effects to individual undertakings and historic properties significant to a Tribe. The Bureau of Land Management is required to complete consultation before making a determination.<sup>62</sup> Bureau of Land Management Manual 1780 provides guidance for consultation.<sup>63</sup> In many cases, agencies have determined that a withdrawal of public land from location and entry under federal mining laws is not the type of undertaking that has the potential to cause effects on historic properties because, rather than authorizing specific actions to occur, a withdrawal has the effect of precluding certain surface disturbing activities that may have such effects from occurring.<sup>64</sup>

**Q. Will validity exams be completed on existing mining claims as part of the NEPA analysis?**

No. The claim validity review is not conducted under the NEPA, National Environmental Policy Act, process. It is a prerequisite for the federal agencies to consider the claim holder’s proposal for mining exploration or mining activities. If the claim holder files a notice of intent to conduct mine activities or a plan of operations is filed with the responsible federal official involving lands within the proposed mineral withdrawal area, then a validity exam would be necessary prior to the review or authorization of any mining activity. The expenses to conduct the exam would be the responsibility of the mining company or individual that is proposing to mine. As noted in [Chapter 4](#), validity exams would only be conducted on unpatented mining claims that were staked on the ground prior to segregation of withdrawal public notice in the Federal Register, which segregated the subject lands from entry, location and appropriations under the General Mining Act of 1872.



# 7 | Tips for Initiating and Engaging in the Withdrawal Process

Most mineral withdrawals are initiated by the federal government in response to concerns from Tribes, community groups, conservation organizations or others about the potential harmful impacts of mineral exploration and mining on important resources. Here are a few lessons learned and tips to engage in the mineral withdrawal process.

## 1 Start early

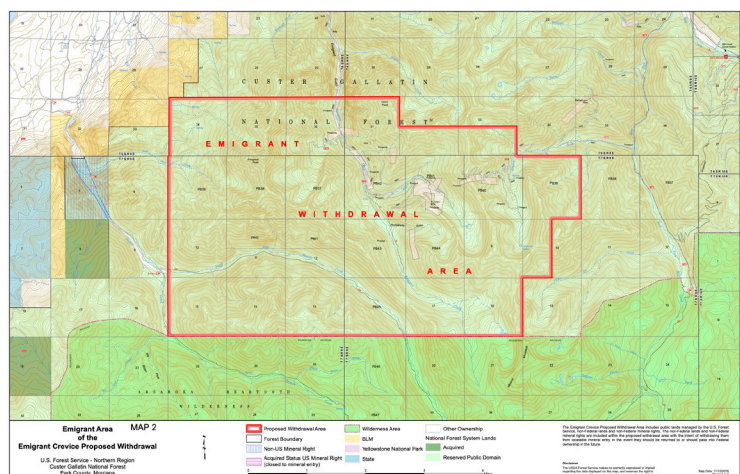
Mineral withdrawals are a powerful but imperfect tool to protect public lands from mining. Withdrawals are most effective when used proactively, before claim-staking and exploration have occurred. Yet mineral withdrawals are often not initiated by federal agencies until after mining claims have been filed and valuable public resources are at risk. The more time that the mining company has to conduct exploration on its claims before the segregation/withdrawal, the greater the likelihood that it could meet the requirements of a validity exam. With this in mind, it's important to advocate for a withdrawal as early as possible. The initiation of an administrative mineral withdrawal immediately triggers a two-year segregation period, which prohibits any new claim-staking and prevents new mining activities, except on valid existing rights, while the proposed mineral withdrawal is under consideration.

## 2 Create a map

A key first step is the creation of a map that outlines the boundaries of the proposed mineral withdrawal area, and provides a useful starting point for discussions with agency staff. In developing a map, it's useful to consider two key points:

Be mindful of size. It's tempting to request a large withdrawal that covers a broad area, but large withdrawals tend to be more complicated and take more time for the review and approval process. It's useful to minimize the size of the proposed mineral withdrawal to the extent possible, without sacrificing the withdrawal objective—protection for at-risk resources.

Keep it simple. It's also helpful to keep the withdrawal boundaries simple. The withdrawal boundaries should follow existing federal land management boundaries, watershed boundaries or other practical landmarks that are easy to explain, visualize and manage.



Mineral withdrawal boundary for one portion of the Emigrant/Crevice Mineral Withdrawal on federal lands near Yellowstone National Park. Map created by the U.S. Forest Service.

### 3 Describe the resources at risk

Mineral withdrawals are established to protect certain resources, such as scientific, scenic, historical, ecological or archeological resources. Before meeting with agency staff, it's important to prepare materials that document and describe the resources at risk, and emphasize the unique and national significance of the resources.

### 4 Meet with agency staff and congressional representatives

Mineral withdrawals take time and resources and many federal agency staff are not familiar with the process. It is helpful to provide agency staff with materials that describe the mineral withdrawal process, examples of similar withdrawals, and compelling support for the proposed withdrawal, including a map, a description of the resources at risk, and evidence of public support (e.g., letters of support, resolutions, etc.).

In general, it can be beneficial to meet with local agency staff first, followed by regional staff and national staff (Washington D.C. office). However, the decision about who to contact first should also be guided by identifying staff that will be objective and open to the proposal, and prioritizing those with whom there is a trusted relationship. If the local office isn't responsive or objective, the request should be elevated to higher offices. As sovereign nations, Tribal governments should engage in government-to-government meetings with the DOI.

Agency staff are often under-resourced and subject to political direction from the regional and Washington offices. It's helpful to ask the agency what information or resources would be beneficial and maintain regular contact to determine next steps and identify potential delays or pitfalls.

It is also important to meet with the state's congressional representatives to seek their support and to ask for their help in convincing federal agency staff to initiate a withdrawal. They may simply offer a public expression of support for the administrative withdrawal, or they may be interested in taking a more active role in championing the effort, such as a mineral withdrawal "in aid" of legislation, as described in [Chapter 2](#). They may also be interested in introducing legislation for a congressional withdrawal if the federal agencies aren't responsive to an administrative withdrawal. Even if the congressional representatives do not support the proposed withdrawal, it's important to understand the level of opposition and whether it can be addressed or mitigated. Congressional representatives include contact information on their websites. It can be useful to start by meeting with their staff in the local office and follow up with requests to meet directly with the senator or representative when they are in-state during congressional breaks. As with meetings with agency staff, it is important to be well prepared for these meetings with maps and supporting documents, and to show up with the "A" team, including those who are most knowledgeable on the topic and those that convey the most political influence.





## 5 Timing is critical

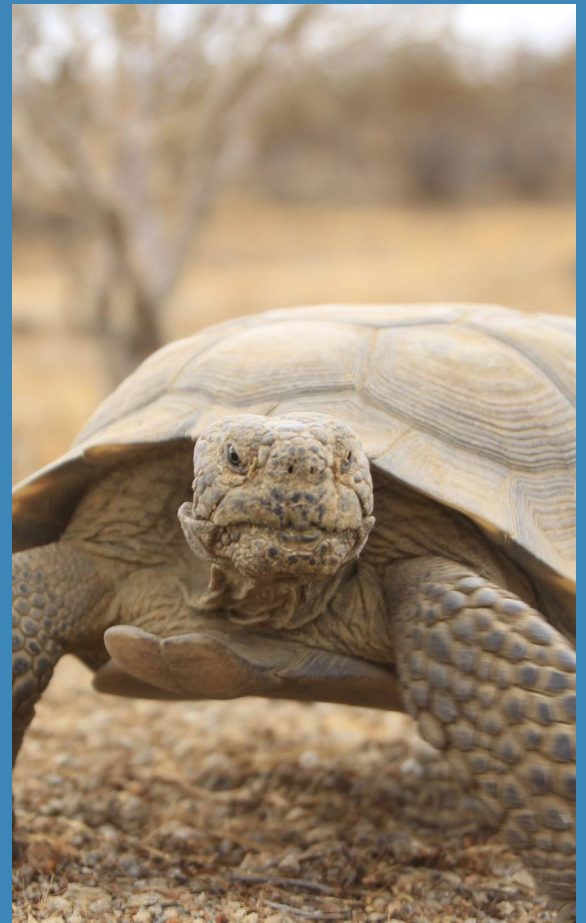
An agency's willingness to initiate a withdrawal may be determined by the number of other mineral withdrawal requests under consideration for that region, and it's helpful to request a mineral withdrawal as early as possible during a new presidential administration. Mineral withdrawals take considerable time. The process needs to move efficiently, so the NEPA review process is completed during the two-year segregation period, and a decision can be made by the Secretary of the Interior before the end of their term. New administrations often have other priorities, or may explicitly oppose the previous administration's policies, which typically result in the discontinuation of a proposed withdrawal (see Desert Renewable Energy Conservation Plan below).

It's particularly important to track the withdrawal process at the end of an administration (e.g., a new president has been elected), when federal agencies are faced with many pending final decisions and time is limited. The BLM's national mineral withdrawal coordinator is an important contact.

### TIMING IS CRITICAL: THE DESERT RENEWABLE ENERGY CONSERVATION PLAN MINERAL WITHDRAWAL

The Desert Renewable Energy Conservation Plan (DRECP), finalized in 2016, was a multi-agency, landscape-scale planning effort to balance renewable energy development with conservation goals on 22.5 million acres in the California desert. In September 2016, the BLM published a Record of Decision for the DRECP stating that within 60–90 days the BLM would publish notice of proposed mineral withdrawal for a subset of the California Desert National Conservation Lands (CDNCL). This would be the first of two withdrawals. In December 2016, BLM published a proposal to withdraw 1,337,904 acres of public lands located within the CDNCL from mining to “protect nationally significant landscapes with outstanding cultural, biological, and scientific values.”<sup>65</sup> This notice started a segregation period of up to two years and initiated a 90-day public scoping comment period for an EIS.<sup>66</sup>

However, the withdrawal was not finalized before the end of the Obama administration. Under the Trump administration, the BLM made the decision to cancel the withdrawal in February 2018. According to the BLM press release: “The BLM concluded that impacts of future mineral exploration and mining, subject to existing environmental regulations, do not pose a significant threat to the protection of cultural, biological and scientific values.”<sup>67</sup> The BLM also terminated preparation of the EIS.<sup>68</sup>



Mineral withdrawals may be used to protect habitat for threatened species, such as the desert tortoise. Photo by Bureau of Land Management.



It is their responsibility to track and coordinate the progression of administrative withdrawals and to make sure that the withdrawal paperwork is making its way to all of the relevant staff for review before final approval from the Secretary of the Interior. The Secretary (or Assistant Secretary) of the Interior must sign the ROD and the Public Land Order by January 20th, the final day before the new administration takes office. If the Public Land Order has been issued, it cannot be unilaterally terminated by the new administration without the required NEPA and other processes. The Public Land Order will remain in effect until it expires (up to 20 years for an administrative withdrawal).

## 6 Organize and demonstrate broad public support

Mineral withdrawals are discretionary, so it's essential to demonstrate broad public support for a withdrawal. This can come in the form of letters of support, resolutions or other tools to demonstrate support from key stakeholders, such as Tribes, businesses, local and state governments or government officials, civic groups, conservation organizations, recreation groups, churches, members of the public or others. In addition to sharing this information with the agencies and other decision-makers to encourage the initiation of a withdrawal, these documents should also be submitted during the formal public comment period, so they are included in the administrative record. Diverse interests can also create tension between stakeholders. It can be helpful to come together in the early stages of the withdrawal effort to identify the shared values and common goals that unite everyone.



**Carla Rae Marshall of the Black Hills Clean Water Alliance advocates for a mineral withdrawal to protect clean water and cultural resources from proposed gold mining in the Black Hills of South Dakota.**

Photo: Courtesy of the Black Hills Clean Water Alliance

## 7 Engage the public and media

The mineral withdrawal process will get media attention. It will be important to demonstrate that there is broad public support for the withdrawal, to visually inspire people to engage and to provide resources for public engagement at targeted times. Identify who will conduct interviews with reporters and prepare talking points ahead of time. Op-eds and letters to the editor are also useful tools for getting the message out.

Websites, Facebook pages, Instagram and other online and social media tools can provide easily accessible and quick information for members of the public to learn more about the issue, to stay informed and engaged. Yard signs, posters, videos, t-shirts and other materials can also provide effective visual support.

Communication experts recommend leading with the value that the campaign is working to protect. For example, the “Keep It Grand” slogan for the Grand Canyon protection campaign focused on protecting the majesty, wonder and cultural legacy of the Grand Canyon, with “no mining here” as the secondary message.

The old saying that “a picture is worth a thousand words” is good advice. High resolution photos that really capture the essence of the people and place are powerful tools in any campaign. And it’s important to highlight a diversity of voices to help win the hearts and minds of the public and decision-makers.

Slogan used to promote mineral withdrawal for federal lands around Grand Canyon National Park.



## 8 Provide strong supporting materials

Agencies are required to consider the best and latest scientific information and ITEK in the environmental review process. This is an important opportunity to submit studies, reports and documents, and for Indigenous Peoples to submit ITEK that describe the value of the area, the potential impacts of mining to the resources at risk or otherwise provide the agencies with information to support the proposed mineral withdrawal.

Mining projects are often characterized with a false “jobs versus the environment” dichotomy, without any acknowledgment of the tremendous value that natural and cultural resources provide. It can be particularly useful to prepare, or contract with an expert to prepare information on the economic, ecological or cultural value of the resources at risk. This information can be submitted during the NEPA process, to inform agency decisions and to share with the media.

## 9 Stay flexible and persistent

Efforts to establish a mineral withdrawal can take time and unexpected paths. It’s important to stay flexible and take advantage of political opportunities when they become available. For example, community efforts to secure an administrative mineral withdrawal for approximately 340,000 acres of federal lands in the Methow Valley in Washington ran into a significant hurdle when a new administration came into office. The mineral withdrawal was initiated at the tail end of the Obama administration, triggering the two-year segregation period. The two-year period expired without approval from the Secretary of the Interior under the Trump administration, leaving the area vulnerable to claim-staking once again. However, the effort had support from Senator Cantwell (WA-D), who had introduced legislation in support of a congressional withdrawal in 2016. In January 2019, a public lands package—containing multiple public lands bills—was introduced by Senators Cantwell and Murkowski (R-AK). Senator Cantwell pushed to ensure that the Methow Valley mineral withdrawal legislation was included in the package, which was signed into law in 2019.<sup>69</sup>

## 10 Say thank you!

If an administrative or congressional mineral withdrawal is approved, be prepared in advance to publicly thank the relevant decision-makers. A strong public thank you to the Secretary of the Interior, the administration and/or the congressional champions is critical.



## 8 | Examples of Specific Mineral Withdrawals

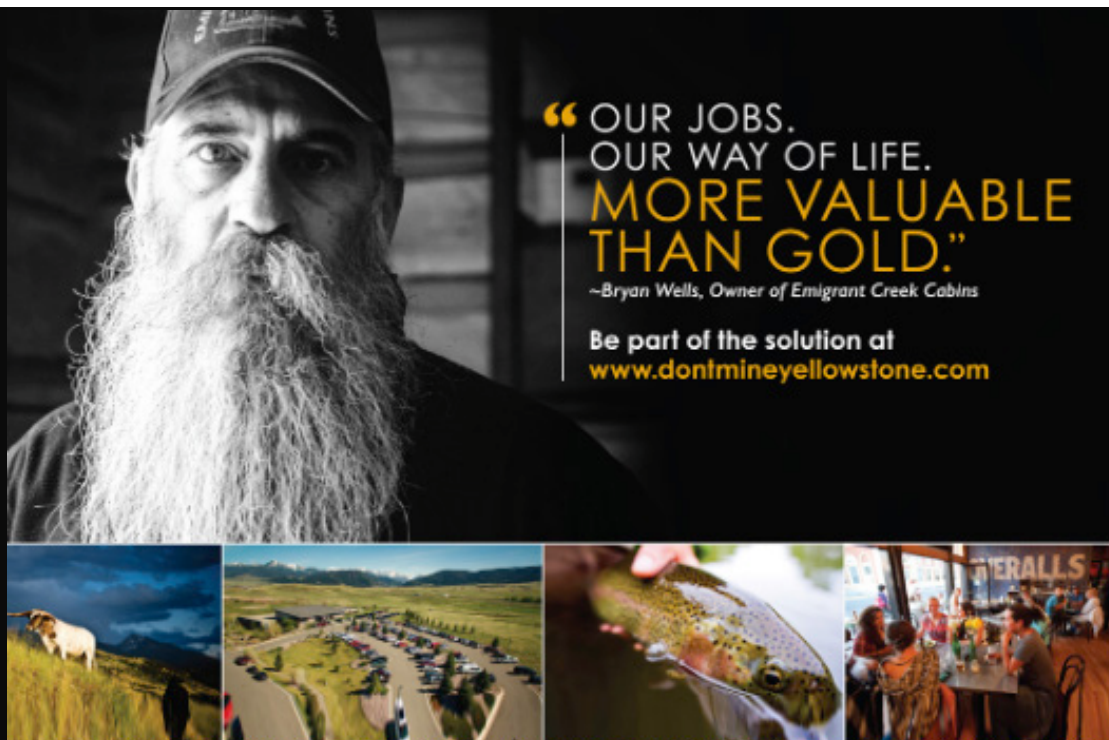
There are many examples of mineral withdrawals across the western states. These examples feature withdrawals of varying size, location, type and length, and they highlight some of the complexity and strategies associated with these efforts.

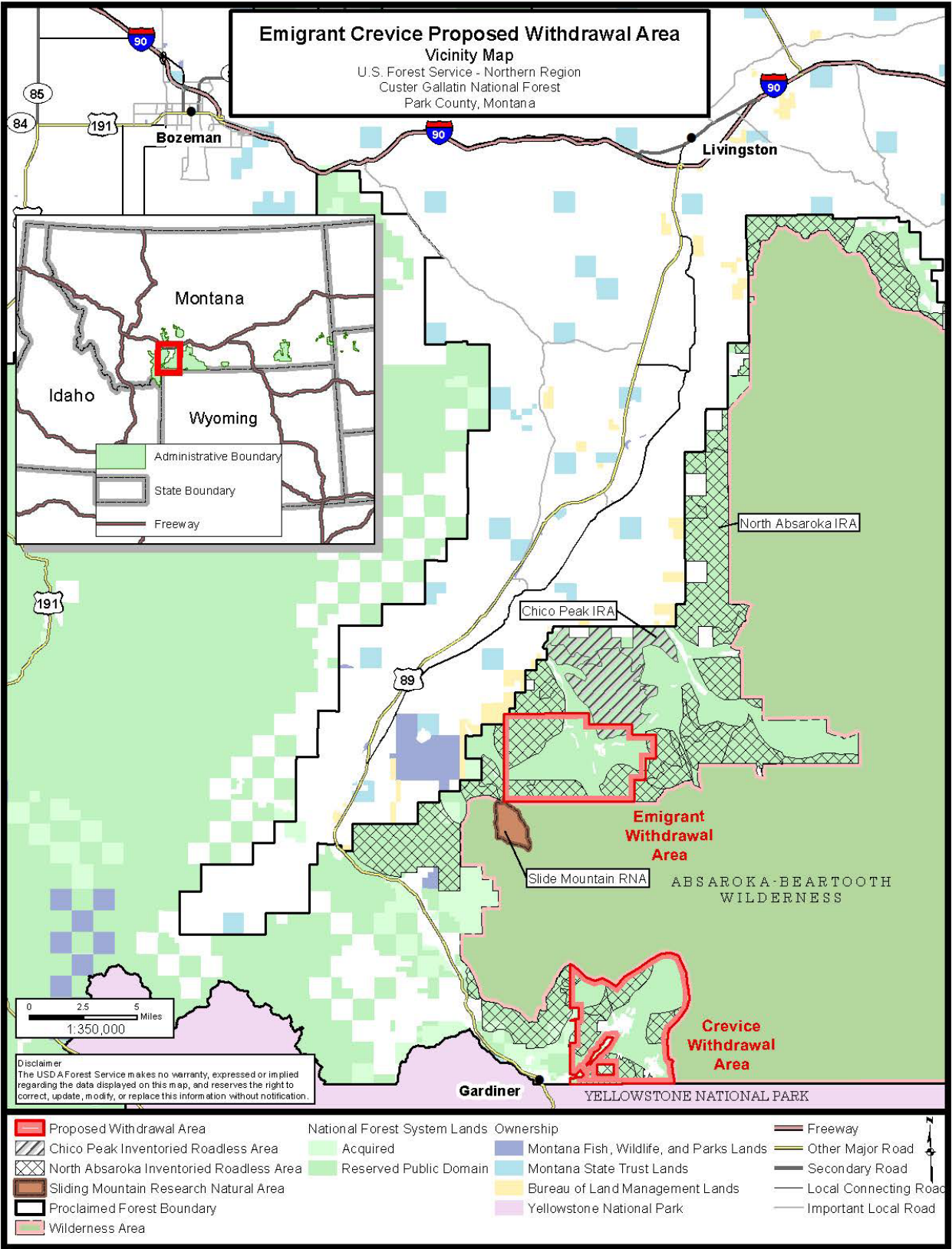
### Emigrant Crevice (Yellowstone) Mineral Withdrawal — Montana

- **Medium-sized withdrawal (30,000 acres)**
- **Forest Service lands**
- **Administrative withdrawal followed by congressional withdrawal**

In response to concerns about the potential effects of proposed gold mining operations near Yellowstone National Park, a coalition of conservation organizations, community groups, businesses and others urged the Forest Service to initiate an administrative mineral withdrawal. In October 2016, the Forest Service submitted an application to the Secretary of the Interior for a 20-year withdrawal to protect roughly 30,000 acres of federal lands. The BLM accepted this application and published notice in the Federal Register along with a segregation order on November 22, 2016. Publication of the Federal Register notice initiated a 90-day comment period, which also served as scoping under NEPA, and announced a public meeting.<sup>70</sup>

Images from the mineral withdrawal campaign that features local business owner. Photo courtesy of the Yellowstone Gateway Business Coalition.





After technical review by the Forest Service and BLM, the EA was released in 2018 for public review.<sup>71</sup> The BLM issued a Finding of No Significant Impact (FONSI) on May 30, 2018, which was followed by a recommendation letter from the Forest Service Regional Office to the BLM Montana State Director in September 2018.<sup>72</sup> On October 12, 2018, the Secretary of the Interior issued a notice in the Federal Register formalizing the Public Land Order finalizing the 20-year administrative withdrawal.<sup>73</sup>

Meanwhile, Senator Tester (MT-D) introduced congressional legislation, the Yellowstone Gateway Protection Act, to establish a permanent withdrawal for the area in April 2017.<sup>74</sup> After extensive lobbying by the community, businesses, conservation organizations and others, the legislation secured support from Representative Gianforte (MT-R), who introduced a companion bill in the House of Representatives. This gave the bill bipartisan support. Senator Daines co-sponsored the Senate bill in December 2018.

Local businesses played a particularly significant role in this mineral withdrawal effort. Due to the economic value of Yellowstone National Park to the region, businesses in gateway communities organized as the Yellowstone Gateway Business Coalition and made economics the centerpiece of their message to decision-makers and the public. They commissioned an economics report from the University of Montana, created a website, presented materials on the economic value of the region,<sup>75</sup> lobbied decision-makers, created multiple videos highlighting the economic values of protecting these public lands, hosted rallies, and distributed signs and other outreach and press materials.<sup>76</sup> These efforts were key to securing bipartisan support for the administrative withdrawal and the congressional legislation. After multiple hearings, and after reintroduction of the bill on January 18, 2019, the legislation passed out of Congress as part of a broad public lands bill, the John D. Dingell, Jr. Conservation, Management and Recreation Act. In 2019, it was signed by President Trump, formalizing the mineral withdrawal.

Yard sign in campaign to promote mineral withdrawal adjacent to Yellowstone National Park. Photo courtesy of the Yellowstone Gateway Business Coalition.



## Southwest Oregon Mineral Withdrawal — Oregon

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- **Medium size withdrawal (100,000 acres)**
- **Forest Service and BLM lands**
- **Withdrawal in aid of legislation**

In 2015, the Forest Service and BLM initiated an administrative mineral withdrawal that included 95,806 acres of National Forest lands on the Rogue River-Siskiyou National Forest and 5,216 acres of BLM lands. The withdrawal was initiated in aid of legislation (see [Chapter 2](#) on Withdrawals In Aid of Legislation on page 14), entitled the Southwest Oregon Watershed Protection Act of 2015, introduced by Representatives DeFazio (D-OR) and Huffman (D-CA) and Senators Wyden (D-OR) and Merkley (D-OR) in the 114th Congress.<sup>77</sup>

The withdrawal included two separate areas at the headwaters of several National and Scenic Wild Rivers: one at the divide between the Wild and Scenic North Fork Smith River and the Rough and Ready Creek that feeds the Wild and Scenic Illinois River, and another at the Hunter Creek and North Fork Pistol River Headwaters. These rivers are known for their wild salmon and steelhead populations and provide vital economic, recreation and natural resources to the area. The area is also a hotspot for biodiversity, with a high concentration of rare plants. The North Fork of the Smith River, which originates in the Kalmiopsis Wilderness and drains most of one withdrawal area, is also the headwaters of California's Smith River, which ultimately flows through Redwood National Park.

When the notice was posted in the Federal Register, it proposed a five-year withdrawal, rather than the 20-year maximum. In response to tremendous pressure from the local community, conservation groups and congressional champions during scoping, the Forest Service decided to include a 20-year withdrawal as an alternative in the EA.<sup>78</sup> This was critical. A 20-year withdrawal can't be approved by the Secretary of the Interior unless it has been analyzed as part of the NEPA process.



**Rough and Ready Creek in the South Kalmiopsis Roadless Area, Rogue River-Siskiyou National Forest, Oregon.**

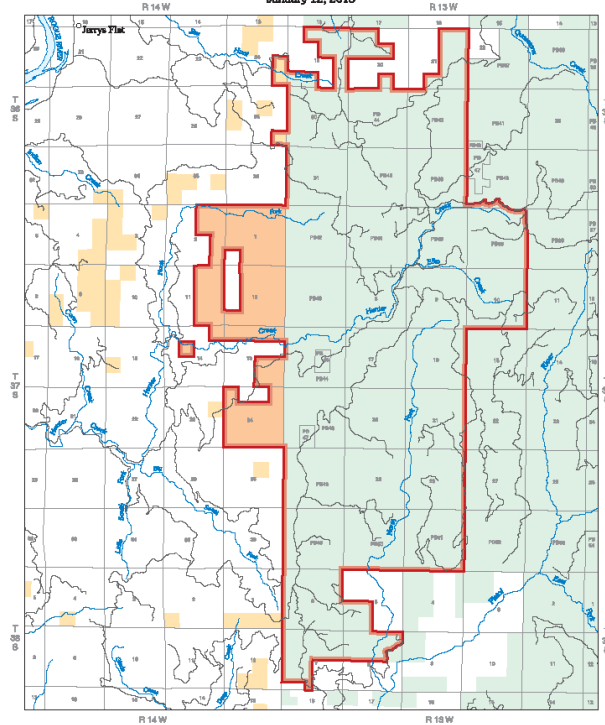
Photo: Courtesy of Barbara Ullian and Friends of the Kalmiopsis



## Hunter Creek and Pistol River Headwaters Withdrawal Proposal

Coos Bay District

This map prepared at the request of Senator Ron Wyden and Representative Peter DeFazio  
January 12, 2015



### LEGEND

- Road
- Proposed Hunter Creek and Pistol River Headwaters Mineral Withdrawal
- BLM Administered Land
- Area of Critical Environmental Concern
- US Forest Service Administered Land



## Rough and Ready and Baldface Creeks Mineral Withdrawal Proposal

Coos Bay District and Medford District

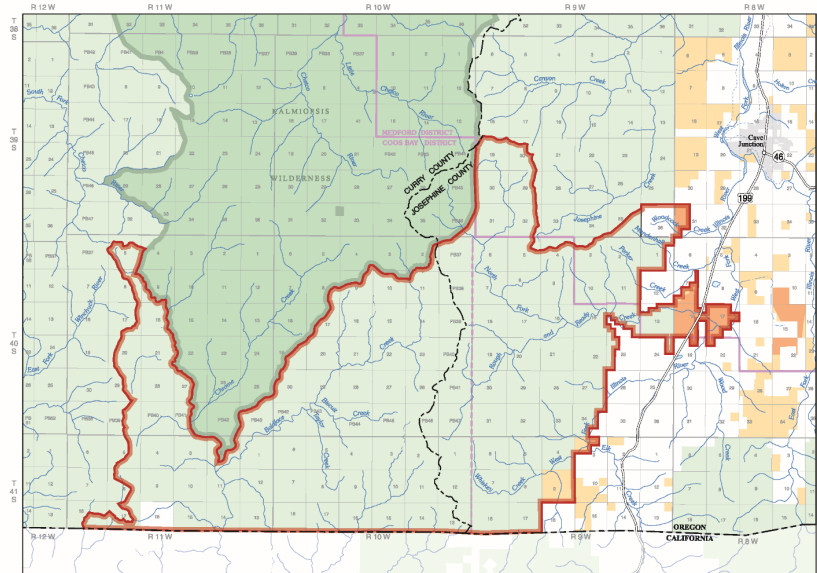
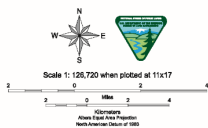
This map prepared at the request of Senator Ron Wyden and Representative Peter DeFazio  
January 12, 2015

### LEGEND

- Federal Highway
- State Highway
- State Boundary
- County Boundary
- BLM District Boundary
- BLM Resource Area Boundary
- Proposed Rough and Ready and Baldface Creeks Mineral Withdrawal
- BLM Administered Land
- Area of Critical Environmental Concern
- US Forest Service Administered Land



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A coalition of organizations and businesses rooted in different watersheds throughout the region worked diligently together to generate strong grassroots support during the public comment period, hosting public workshops on how to comment and organizing travel to public hearings. The two public meetings in September 2015 were attended by 200 to 250 people, according to the Forest Service:<sup>79</sup>

***Over 100 members of the public spoke at these two meetings and the verbal comments were overwhelmingly in favor of the proposed withdrawal. Only 2 people spoke in opposition. Roughly 23,000 comments were received, including 390 personalized emails included and 190 handwritten letters. Of all the comments received, 20 were opposed to the withdrawal.***<sup>80</sup>

Tribal consultation occurred in September 2015. Meetings were held with the Tolowa Dee-ni', the Confederated Siletz and the Elk Valley Rancheria Tribes, which expressed support for the mineral withdrawal proposal.<sup>81</sup> In addition to government-to-government consultation, letters in support of the withdrawal were submitted to the BLM State Director during the public comment period by the Confederated Tribes of the Siletz Indians and the Elk Valley Rancheria.

#### EXCERPT FROM THE DEL NORTE COUNTY BOARD OF SUPERVISORS LETTER

“

Thank you for the opportunity to comment on this very critical subject. The responsiveness of the Bureau of Land Management and the U.S. Forest Service to the request of our federal legislators for a five-year mineral withdrawal on lands that flow into our pristine watersheds is greatly appreciated. Del Norte County is home to the Smith River which is considered to be the prize of the California Wild and Scenic River System because of its unparalleled free-flowing status, large and abundant salmon and steelhead stock, and extraordinary botanical diversity. The river's recreation opportunities are abundant and it provides the indirect primary source of drinking water for the majority of Del Norte County's 28,000 residents. The value of a healthy Smith River to the vitality of Del Norte County is incalculable. While the California portion of the Smith River was afforded protection under the Smith River National Recreation Area Act and Wild and Scenic River designation, the upper reaches of the North Fork of the Smith River, which lie in Oregon, remain vulnerable to large scale strip mining operations.”

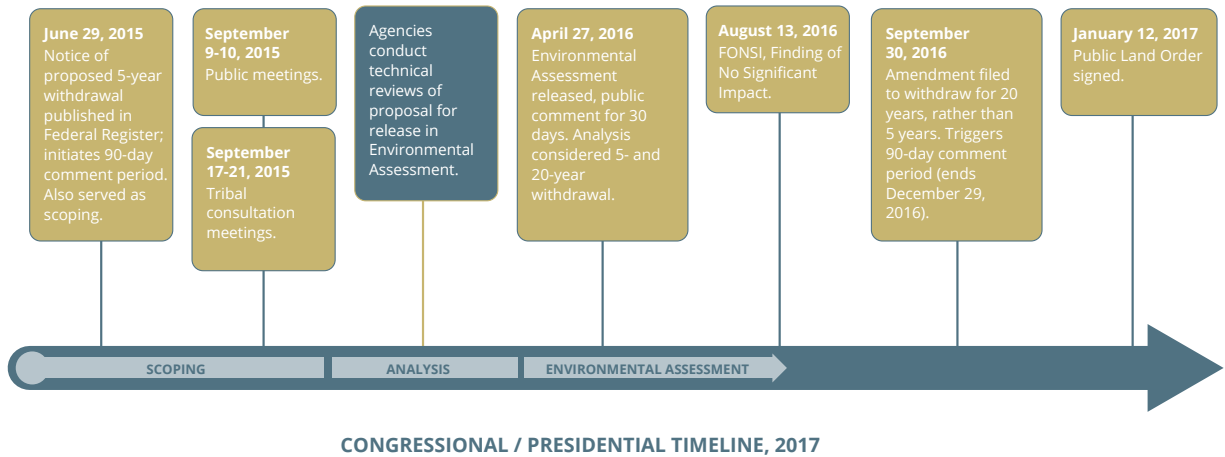
The EA was released on April 15, 2016, initiating a 30-day comment period. The coalition encouraged businesses and local government to contribute comments, including letters of support from the Pacific Coast Federation of Fishermen's Association,<sup>82</sup> the Cave Junction City Council,<sup>83</sup> and the Del Norte County Board of Supervisors.<sup>84</sup> It also encouraged dozens of scientists to weigh in on the ecological value and unique qualities of the region.

In August 2016, the Forest Service issued a Finding of No Significant Impact (FONSI).<sup>85</sup> This was important because no further analysis was required before the agency would issue a decision on the withdrawal.

After a final technical review by the Forest Service and BLM, the Pacific Northwest Regional Forester forwarded the recommendation and the supporting documentation to the BLM State Director. The BLM State Director prepared and delivered the case file, including the authorized officer's finding and recommendations to the BLM Director. The BLM Director reviewed the case file and recommendation and forwarded it to the Secretary of the Interior. Last, the Secretary of the Interior issued a Public Land Order executing the withdrawal. The 20-year administrative withdrawal was finalized,



and the Public Land Order went into effect on December 30, 2016<sup>86</sup>—less than a month before the new presidential administration took office on January 20, 2017. Due to the tight timeline, regular phone calls went into the BLM's national mineral withdrawal coordinator to track its progress within the Department of the Interior during the final weeks of the administration.



Process and timeline for the Southwest Oregon Withdrawal, an administrative withdrawal designated by the Secretary of the Interior.

Social media materials with local businesses thanking Senator Wyden, Senator Merkley and Representative DeFazio.



# Grand Canyon Withdrawal — Arizona

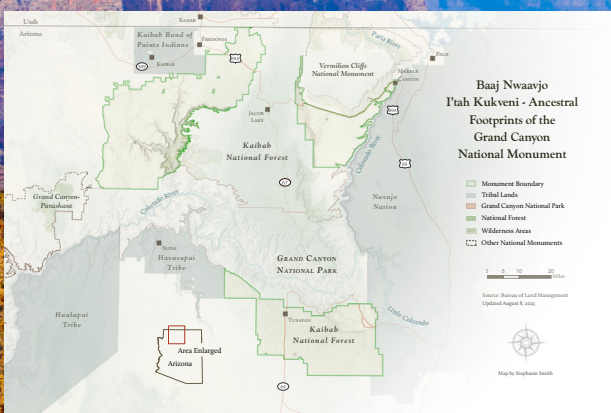
- BLM and Forest Service lands
- Large withdrawal (917,618 acres)
- Use of emergency withdrawal, congressional withdrawal, and administrative withdrawal legal challenges

Legislation to establish a congressional mineral withdrawal to permanently protect approximately one million acres in the Grand Canyon region from uranium mining was originally introduced by Arizona Congressman Raúl Grijalva in 2008.<sup>87</sup> The legislation was introduced in response to a spike in uranium prices that resulted in thousands of new mining claims on federal lands near the Grand Canyon. The legislation was reintroduced in 2009 and 2011.<sup>88</sup>

At the request and leadership of area Tribes, and in response to public support for a withdrawal, the Department of the Interior initiated a 20-year administrative mineral withdrawal for approximately the same area as the proposed legislation.<sup>89</sup> The 2009 Federal Register notice initiated the two-year segregation period while the BLM evaluated the withdrawal process through an EIS. The Draft EIS was released for public comment in February 2011.

Unfortunately, the two-year segregation period was set to expire before the Final EIS, Record of Decision and Public Land Order for the withdrawal were finalized, which would reopen the land to claim-staking. To prevent this, the Department of the Interior used its authority under FLPMA to initiate an emergency withdrawal on July 21, 2011, which segregated the lands for another six months to provide the BLM time to complete the withdrawal process.<sup>90</sup> In 2012, the Obama administration finalized the administrative mineral withdrawal on public lands around the Grand Canyon.<sup>91</sup>

In response to the withdrawal, mining companies filed a lawsuit, known as *Yount et al v. Jewell et al*, which challenged the withdrawal on many grounds, including alleged violations of the Administrative Procedure Act (APA) and alleged violations of various federal laws, including FLPMA and NEPA.<sup>92</sup> The District Court of Arizona denied the mining companies' claims, but the companies appealed to the



Map by Grand Canyon Trust. Photo by adobestock.com/Gary M. Smillie.

U.S. Court of Appeals for the Ninth Circuit. In December 2017, the Ninth Circuit affirmed the lower court's ruling and upheld the withdrawal.<sup>93</sup> Although the mining associations filed a petition to the U.S. Supreme Court challenging the Ninth Circuit's opinion, the Supreme Court declined to hear the matter.

Meanwhile, efforts to secure a permanent withdrawal through congressional legislation continued. The Grand Canyon Protection Act passed the House of Representatives many times, but the measure continued to stall in the Senate. Finally, the Biden administration used its authority under the Antiquities Act in August 2023 to designate the area as the Baaj Nwaavjo I'tah Kukveni—Ancestral Footprints of the Grand Canyon National Monument, formally withdrawing the area from mining in addition to adding a number of other non-mining protections.<sup>94</sup>

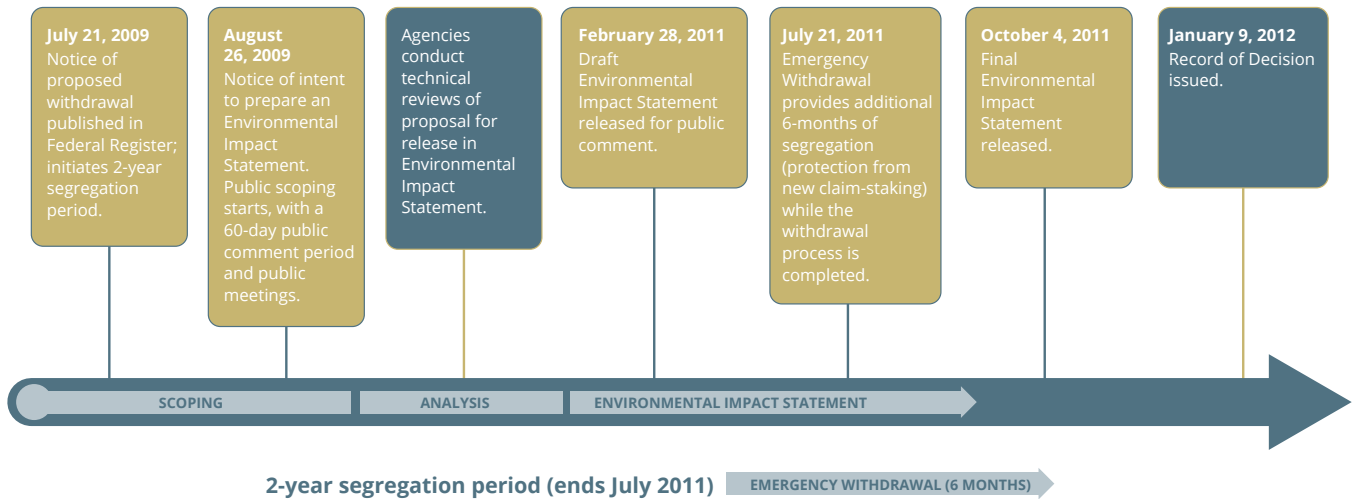
Indigenous leadership was central to the success of the administrative withdrawal and National Monument designation. Tribes intervened and submitted a number of amicus briefs to successfully defend the mineral withdrawal in court.<sup>95</sup> Amicus briefs are arguments submitted to an appeals court by someone who is not a party to the case. Indigenous leaders submitted op-eds,<sup>96</sup> supporting statements,<sup>97</sup> and congressional testimony;<sup>98</sup> met with Interior Secretary Haaland and other decision-makers;<sup>99</sup> distributed videos;<sup>100</sup> and undertook many more activities that led the effort to its successful conclusion. All 22 federally recognized Tribes in Arizona joined together to present unified support for National Monument designation.<sup>101</sup>

Another element of success was the coalition of local, state and national organizations that elevated the Tribes' call for a monument and helped to bring the issue to the nation's attention, mobilizing the American people in support of the withdrawal. From gathering written support from local and national businesses, local elected leaders and members of the public, to highlighting the supportive views of likely voters through polling, the broader coalition helped to make the very clear case that the majority of people from all walks of life supported the Tribes and wanted the president to take action.

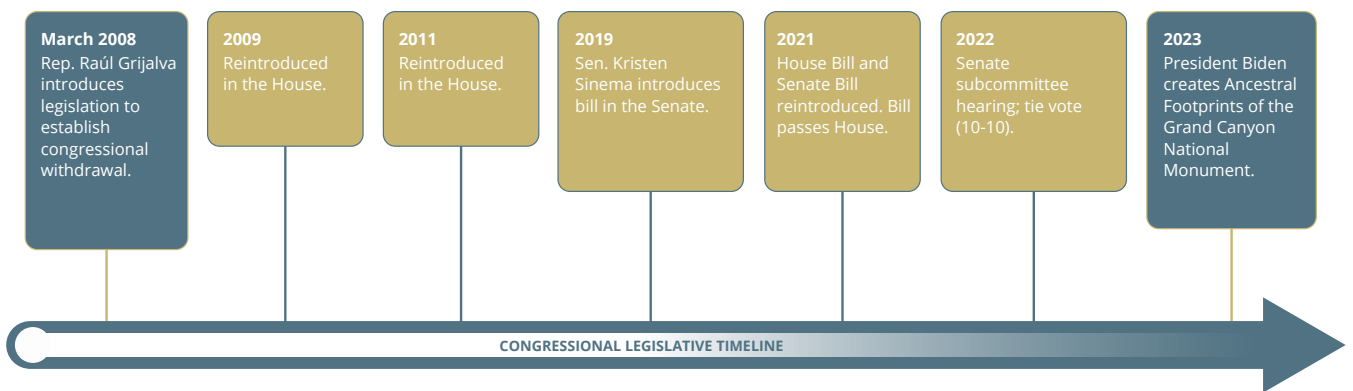
Despite these successful efforts, existing uranium operations and valid existing claims still exist in the area and present an ongoing threat to the region.<sup>102</sup> As noted before, mineral withdrawals are a powerful but imperfect tool for protecting treasured public lands against mining activities.



President Biden establishes Baaj Nwaavjo I'tah Kukveni—Ancestral Footprints of the Grand Canyon National Monument in northern Arizona. U.S. Department of Interior photo.



Process and timeline for Grand Canyon administrative withdrawal.



Process and timeline for congressional legislation and designation Baaj Nwaavjo I'tah Kukveni—Ancestral Footprints of the Grand Canyon National Monument.


## Indian Pass Withdrawal—California

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- Small withdrawal (9,360 acres)
- BLM lands
- Multiple administrations

In December 1994, Glamis Gold, a Canadian corporation, filed a proposed plan of operations with the BLM for a gold mine in Imperial County, California, on the traditional lands of the Fort Yuma Quechan Indian Tribe (also referred to as the Quechan Tribe). The 1,650-acre Glamis Imperial Gold Mine was proposed to be developed in the southeastern part of the 25-million-acre region designated by Congress in 1976 as the California Desert Conservation Area (CDCA).<sup>103</sup> The proposed gold mine also would have impacted the Indian Pass Area of Critical Environmental Concern (ACEC), designated in 1987 to protect and preserve cultural resources, including rock art and trail segments highly significant to the Quechan Tribe.<sup>104</sup> The proposed mine was opposed by the Quechan Tribe due to the irreparable harm it would cause to the Tribe's cultural heritage and religious practices.<sup>105</sup>

At the request and leadership of the Quechan Tribal Council, BLM proposed a mineral withdrawal in November 1998 for 9,360 acres of land, including the entire area of the Glamis project, to “protect the archaeological and cultural resources in the Indian Pass Area of Critical Environmental Concern and Expanded Management Area (collectively the ‘Indian Pass area’).”<sup>106</sup> Roughly 620 acres of the lands included in the proposed withdrawal were within the Indian Pass Area of Critical Environmental Concern (ACEC). The remaining 8,740-acre “expanded management area,” which includes the proposed Glamis project area, were outside the ACEC.<sup>107</sup>



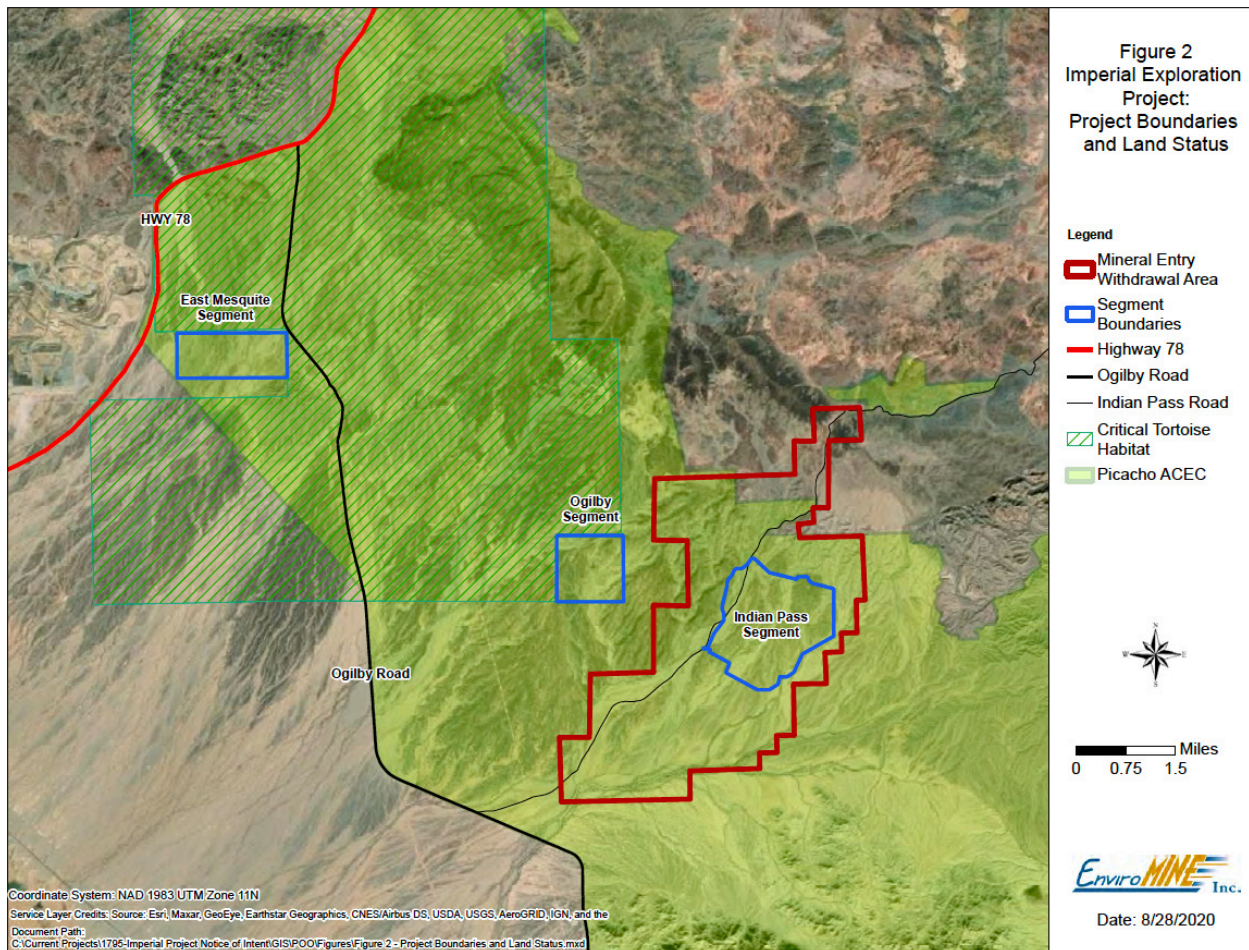
**The Indian Pass mineral withdrawal protects 9,360 acres of desert public lands near the Colorado River in California, including Tribal cultural resources of great importance to the Quechan Tribe.**

Photo: Ecoflight



EARTHWORKS

PROTECTING OUR LAND, WATER, AND CULTURE  
*How to use mineral withdrawals to safeguard public lands from mining*  
[earthworks.org/how-to-mineral-withdrawal](http://earthworks.org/how-to-mineral-withdrawal)



The red line is the mineral withdrawal boundary. Map by Imperial USA Corporation, October 2020. Exploration Plan of Operation for the Imperial Exploration Project.

Publication of a withdrawal notice initiated the two-year segregation period, segregating the lands from the operation of public lands laws. The proposed withdrawal segregated all of the designated acreage, both inside and outside the ACEC, subject to valid existing rights, from settlement, sale, location or entry under general land laws, including mining laws, for a period of two years.

On October 27, 2000, Interior Secretary Babbitt finalized the 20-year withdrawal for the Indian Pass area “to protect the Native American values, cultural resources, and visual quality of the Indian Pass area.”<sup>108</sup> However, the mineral withdrawal restrictions do not apply to any pre-existing mining claims that are determined to be valid (see “valid existing rights” in [Chapter 4](#)).

On January 17, 2001, Secretary Babbitt denied the mine’s proposed plan of operations in its signed Record of Decision, determining that the proposed mine would result in “undue degradation” to the environment. Glamis filed a legal challenge to that decision and the Indian Pass withdrawal.<sup>109</sup> When the Bush administration took office, it reversed the Babbitt decision.<sup>110</sup> However, the Bush administration did not issue the necessary permits for mining to proceed.

In 2019, the Indian Pass mineral withdrawal was made permanent upon enactment of the John D. Dingell, Jr. Conservation, Management and Recreation Act, a broad public lands bill, including the



Indian Pass mineral withdrawal, which passed both houses of Congress and was signed into law by President Trump in March 2019.<sup>111</sup>

Even with a permanent congressional withdrawal in place, Imperial USA Corporation (IUC), a subsidiary of Canadian KORE Mining, acquired the old Glamis mine claims. IUC submitted a plan of operations for exploratory drilling within the Indian Pass withdrawal area in 2021, arguing they had valid and existing rights.<sup>112</sup> The Quechan Tribe and conservation groups disputed this claim, and IUC amended the plan to exclude the Indian Pass withdrawal area and only explore at other nearby sites.<sup>113</sup> In May 2022, Imperial USA Corporation submitted another exploration plan that included drill sites within the withdrawal area. However, BLM stated that the plan of operations was deemed incomplete. Once a complete plan is submitted, BLM will not approve it until a mineral validity exam is conducted.<sup>114</sup> As of July 2024, there has been no completed application or validity exam, and so, no drilling could move forward.

The Quechan Tribe is now seeking permanent protection of a much larger area (390,000 acres), including the Indian Pass area and adjacent areas threatened by gold exploration, as part of the proposed Kw'tsán National Monument.<sup>115</sup>



**Quechan Tribal runners at the 2022 Indian Pass Spirit Run.**

Photo: Earthworks

# Appendix A.

## Sample Withdrawal Application



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
Washington, DC 20240  
<http://www.blm.gov>



In Reply Refer To:  
2310 (350)  
OROR-68370

### Memorandum

To: Janice M. Schneider  
Assistant Secretary – Land and Minerals Management

From: Neil Kornze  
Director

Subject: Petition/Application for Withdrawal, Southwestern Oregon Watershed and Salmon Protection Area, Oregon

We request your approval to file a petition/application to withdraw approximately 5,216.18 acres of public and Revested Oregon California Railroad Grant lands and 95,805.53 acres of National Forest System lands from settlement, sale, location, and entry under the public land laws including the United States mining laws, and operation under the mineral and geothermal leasing laws. The purpose of the proposed withdrawal is to protect the lands while the 114<sup>th</sup> Congress considers proposed legislation S. 346 and H.R. 682 identified as the “Southwestern Oregon Watershed and Salmon Protection Act of 2015.”

Your approval would temporarily segregate the lands for up to 2 years while various studies and analyses are prepared to support a final decision on the withdrawal application. Attached is the information required for submission of a petition/application. Your approval is recommended.

Attachment (4)

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_

\_\_\_\_\_  
Janice M. Schneider  
Assistant Secretary – Land and Minerals Management

\_\_\_\_\_  
Date

cc:  
ASLM(2):MIB, Rm. 6327  
LLM:350:MS 4th Floor MS:350 cf; 350 hold  
LLM:OR936: MLBarnes:3/17/2015:503-808-6155:Asst Sec Memo doc



PETITION/APPLICATION FOR WITHDRAWAL  
SOUTHWESTERN OREGON WATERSHED AND SALMON PROTECTION AREA  
WITHDRAWAL IN AID OF LEGISLATION  
CURRY AND JOSEPHINE COUNTIES, OREGON

Items required by 43 CFR 2310.1-2(c) and 43 CFR 2310.1-3 for a petition/application for withdrawal:

1. The name and address of the applicants are:

Bureau of Land Management  
Oregon State Office  
1220 SW 3<sup>rd</sup> Ave.  
Portland, Oregon 97208-2965

United States Forest Service  
Region 6  
1220 SW 3<sup>rd</sup> Ave.  
Portland, Oregon 97208-3623

2. Non-Interior Delegation of Authority:

The general delegation of authority from the Secretary of Agriculture to the Chief of the Forest Service is set forth at 7 CFR 2.60. The Chief of the United States Forest Service (USFS) has delegated the authority to request withdrawals to the Regional Foresters (FSM 2761.04). In Region 6, the Director or Deputy Director of Recreation, Lands, and Mineral Resources is delegated authority to sign reports and correspondence with the Bureau of Land Management (BLM) or other Federal agencies relating to withdrawals for National Forest System (NFS) lands and interests in lands (FSM 2761.04, R-6 Supplement 2700-95-2). Forest Supervisors have delegated authority to initiate withdrawal actions and to prepare applications and recommendations (FSM 2761.04).

3. Consent of Head of Non-Interior Agency:

Consent to file an application by the USFS with the Department of the Interior, BLM, is attached and signed by the individual delegated the authority to act on behalf of the USFS.

4. Type of Withdrawal:

This petition/application is for the making of a new withdrawal of public, Revested Oregon California Railroad Grant Lands (O&C), and NFS lands which would segregate the lands from settlement, sale, location, and entry under the public land laws including the United States mining laws, and operation under the mineral and geothermal leasing laws, subject to valid existing rights, to protect the Southwestern Oregon Watershed and Salmon Protection Area affecting lands located in Curry and Josephine Counties, Oregon. The purpose of the proposed withdrawal is to protect the lands while the 114<sup>th</sup> Congress considers proposed legislation S. 346 and H.R. 682 identified as the "Southwestern Oregon Watershed and Salmon Protection Act of 2015."

5. Legal Description:

The BLM manages approximately 5,216.18 acres of public and O&C lands and the USFS manages approximately 95,805.53 acres of NFS lands in Curry and Josephine Counties, Oregon. There are an additional 1,680.00 acres of Non-Federal lands within the exterior boundaries of the federally managed lands. Exhibit “A” describes the lands proposed for the withdrawal (attached).

6. Overlapping Withdrawals:

The proposed withdrawal would overlap the following withdrawals:

Public Land Order (PLO) No. 2775 (160 acres) USFS Recreation Site  
PLO No. 3395 (50 acres) USFS Recreation Site  
PLO No. 7556 (960 acres) North Fork Smith Wild and Scenic River

7. Purpose for Withdrawal:

The purpose of the withdrawal is to protect the lands identified in proposed legislation known as the “Southwestern Watershed and Salmon Protection Act of 2015” while the legislation, which would permanently withdraw the lands, is being considered. The lands described in the proposed legislation are within the Smith River, Baldface Creek, and Rough and Ready Creek watershed areas; and the Hunter Creek and Pistol River Headwaters area of the Coos Bay and Medford BLM Districts and the USFS Siskiyou National Forest.

8. Extent of Segregation:

The temporary segregation would operate to segregate the public, O&C, and NFS lands from settlement, sale, location, and entry under the public land laws including the United States mining laws, and operation under the mineral and geothermal leasing laws, while the BLM and USFS process the application and make final recommendations. The BLM requests the maximum 2-year temporary segregation allowed by 43 CFR 2310.2(a) to complete this process.

9. Temporary Land Uses Permitted During Segregation:

The BLM and USFS authorized officers may issue temporary land use authorizations during the period of temporary segregation including leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining laws.

10. Analysis of Alternatives:

The use of a right-of-way or cooperative agreement as an alternative to a formal withdrawal would not adequately constrain non-discretionary uses which could irrevocably impact or destroy the area, threaten public health and safety, and eliminate the usefulness of the lands to be preserved for watershed and salmon habitat protection.

11. Duration of Withdrawal:

The duration of the proposed withdrawal requested is 5 years. At the end of this period, the BLM and the USFS will re-evaluate the withdrawal concerning the desirability and justification for extending the withdrawal for an additional period.

12. Alternative Sites:

There are no alternative sites because the lands described are the lands identified in the proposed legislation.

13. Water Requirements:

No water rights are needed at this time.

14. Location of Records:

Bureau of Land Management  
Oregon State Office  
1220 SW 3rd Avenue  
Portland, Oregon 97204-2965

United States Forest Service  
Region 6  
1220 SW 3<sup>rd</sup> Avenue  
Portland, Oregon 97204-3623

15. Mineral Identification:

The Rough and Ready, Baldface Creek, and the Hunter Creek and Pistol River headwaters area are home to some of the most diverse, complex, and potentially economic geology in Oregon. Multiple deposits containing gold, silver, chrome, cobalt, nickel, platinum group elements, manganese, mercury, coal, limestone, and quarry rock exist within the area. The economic minerals, chromite, cobalt, copper, gold, silver, and nickel naturally occur in such distinguished amounts that multiple mining and exploration operations have occurred in both the past and present. This includes the Turner-Albright mine, a massive sulfide type deposit that has an estimated 2-4 million tons of ore remaining. Presently, the USFS has two exploration drilling plans of operations submitted by the Red Flat Nickel Corporation for the strategically important metal of nickel, and cobalt and chromium in the Pistol River headwaters area.

As of 2014, the United States has no active nickel mines and imports nickel for various uses, including the manufacture of stainless steel. The economics of metals consistently fluctuate depending on different components of the market such as the global supply, demand, import/export restrictions, and tariffs, among other factors. If the economic incentive behind nickel and other associated minerals such as cobalt, chrome, magnesium etc. was to increase, these areas could potentially be viable operations in the future. Other deposits within and near the proposal area include Eight Dollar Mountain, Woodcock

Mountain, Red Flats, Pine Flat, and Little Red Mountain which are estimated to contain a total of nearly 50 million tons of low grade nickel lateritic material. Withdrawal of these materials could substantially hinder economic mineral development in the future.



## Exhibit A

### **Willamette Meridian**

#### **Public Lands:**

- T. 36 S., R. 14 W.,  
sec. 24, E $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
sec. 25, SE $\frac{1}{4}$ SE $\frac{1}{4}$ .
- T. 37 S., R. 14 W.,  
sec. 1, lots 1 to 4, inclusive, S $\frac{1}{2}$ N $\frac{1}{2}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;  
sec. 2, lots 1 and 2, S $\frac{1}{2}$ NE $\frac{1}{4}$ , and E $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
sec. 11, E $\frac{1}{2}$ ;  
sec. 12, E $\frac{1}{2}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and S $\frac{1}{2}$ SW $\frac{1}{4}$ ;  
sec. 13, N $\frac{1}{2}$ N $\frac{1}{2}$  and SE $\frac{1}{4}$ ;  
sec. 14, NE $\frac{1}{4}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
sec. 23, SE $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
sec. 24, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ .
- T. 40 S., R. 8 W.,  
sec. 18, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ , and W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
sec. 19, NW $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
sec. 20, NW $\frac{1}{4}$ NW $\frac{1}{4}$ .
- T. 41 S., R. 9 W.,  
sec. 3, lots 2, 3, and 4, and S $\frac{1}{2}$ NW $\frac{1}{4}$ ;  
sec. 9.

The area described aggregates 4,235.61 acres in Josephine and Curry Counties.

#### **Revested Oregon California Railroad Grant Lands (O&C)**

- T. 39 S., R. 8 W.,  
sec. 31, un-numbered lots in the W $\frac{1}{2}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , and NE $\frac{1}{4}$ SW $\frac{1}{4}$ ;
- T. 40 S., R. 8 W.,  
sec. 7, lots 1 and 2, E $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , and SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
sec. 17, W $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ , and NW $\frac{1}{4}$ SE $\frac{1}{4}$ .

The area described aggregates 980.57 acres in Josephine and Curry Counties.

#### **National Forest System Lands:**

- T. 36 S., R. 13 W.,  
sec. 19, lots 2 to 6, 12, 13, 15, and 16, inclusive;

sec. 20, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , and SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
sec. 21, E $\frac{1}{2}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
sec. 29, NW $\frac{1}{4}$ ;  
sec. 30 and 31;  
Protraction Blocks 43 to 46, inclusive.

T. 37 S., R. 13 W.,  
secs. 8, 9, 10, 16, 17, 20, 21, 28, and 29;  
Protraction Blocks 39 thru 51, inclusive.

T. 38 S., R. 13 W.,  
sec. 5, SW $\frac{1}{4}$ ;  
sec. 6, lots 1 to 7, inclusive, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;  
sec. 7, lots 1, 2, 3, and 5, NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ,  
and SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
sec. 8, N $\frac{1}{2}$ .

T. 39 S., R. 9 W.,  
sec. 19,  
sec. 20, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , and W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
secs. 29 to 32, inclusive;  
sec. 35, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ .

T. 39 S., R. 10 W.,  
Protraction Block 46.

T. 40 S., R. 9 W.,  
sec. 1, un-numbered lots in the N $\frac{1}{2}$ NE $\frac{1}{4}$  and N $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , and  
W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
sec. 2, lots 1 to 7, inclusive, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , and W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
sec. 3, lots 1 and 2, S $\frac{1}{2}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ ;  
sec. 4, S $\frac{1}{2}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ ;  
sec. 5, lots 2, 3, and 4, S $\frac{1}{2}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ ;  
secs. 6 to 11, inclusive;  
sec. 13, NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ ;  
sec. 14, NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ ,  
SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , and SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
secs. 15 to 22, inclusive;  
sec. 23, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , and W $\frac{1}{2}$ SW $\frac{1}{4}$ ;  
secs. 27 to 33, inclusive;  
sec. 34, lots 1 to 8, inclusive, N $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , and NW $\frac{1}{4}$ SE $\frac{1}{4}$ .

T. 40 S., R. 10 W.,  
sec. 2, lot 1, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ , and SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
sec. 3, SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
sec. 4, SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;



sec 8, SE $\frac{1}{4}$ ;  
sec. 9, NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ ;  
sec. 10;  
sec. 11, NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;  
secs. 14, 15, and 16;  
sec. 17, E $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;  
sec. 19, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;  
secs. 20 to 23, and 26 to 30, inclusive;  
Protraction Blocks 37 to 47, inclusive.

T. 40 S., R. 11 W.,  
sec. 4, lots 3 and 4, and SW $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
sec. 5 and 8;  
sec. 9, SW $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
sec. 16;  
sec. 17, E $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , and S $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
sec. 20, E $\frac{1}{2}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , and SW $\frac{1}{4}$ ;  
sec. 21;  
sec. 27, W $\frac{1}{2}$ ;  
sec. 28;  
sec. 29, NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , and SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Protraction Blocks 39, 40, 41, and 43.

T. 41 S., R. 9 W.,  
secs, 4 to 8, inclusive;  
secs 17 and 18.

T. 41 S, R. 10 W.,  
secs. 1 to 18, inclusive.

T. 41 S., R. 11 W.,  
sec. 1;  
sec. 2, E $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;  
secs. 3 and 4;  
sec. 5, NE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;  
sec. 8, E $\frac{1}{2}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
secs. 9 to 15, inclusive;  
sec. 17, lots 1 to 4 inclusive, NE $\frac{1}{4}$ , and N $\frac{1}{2}$ S $\frac{1}{2}$ ;  
sec. 18, lots, 9, 10, 11, NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and N $\frac{1}{2}$ SE $\frac{1}{4}$ .

The areas described aggregate 95,805.53 acres of National Forest System lands in Josephine and Curry County.

**Non-Federal Lands:**

T. 37 S., R. 14 W.,

sec. 1, SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>;  
sec. 12, W<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub> and NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>;  
sec. 13, S<sup>1</sup>/<sub>2</sub>N<sup>1</sup>/<sub>2</sub>;  
sec. 24, NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> and NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>.

T. 39 S., R. 9 W.,  
sec. 36.

T. 41 S., R. 11 W.,  
sec. 16.

1,680.00 acres of non-Federal lands

5,216.18 acres of public and O&C lands in Josephine and Curry Counties.

95,805.53 acres of National Forest System lands in Josephine and Curry Counties.



**INFORMATION MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

FROM: Neil Kornze, Director – Bureau of Land Management

SUBJECT: Petition/Application for Withdrawal, Southwestern Oregon Watershed and Salmon Protection Area, Oregon

DATE: March 27, 2015

**I. INTRODUCTION**

The Bureau of Land Management (BLM) requests that the Assistant Secretary for Land and Minerals Management approve a petition to file an application to withdraw approximately 5,216.18 acres of public and Revested Oregon California Railroad Grant (O&C) lands, and 95,805.53 acres of National Forest System (NFS) lands from settlement, sale, location, and entry under the public land laws including the United States mining laws, and operation under the mineral and geothermal leasing laws, for a 5-year period to protect the watershed and salmon protection zones identified in the two proposed bills, S-362 and HR-682, being considered by the 114th Congress.

**II. BACKGROUND**

The BLM proposes to withdraw approximately 5,216.18 acres of public and O&C lands and 95,805.53 acres of NFS lands from settlement, sale, location, and entry under the public land laws including the United States mining laws, and operation under the mineral and geothermal leasing laws to protect the lands while under consideration by Congress. Subject to valid existing rights, approval by the Assistant Secretary would temporarily segregate the lands for up to 2 years while various studies and analyses are prepared to support a final decision on the withdrawal application.

**III. POSITION OF INTERESTED PARTIES**

The filing of the petition/application is the first step in processing a proposed Department of the Interior agency withdrawal. Upon approval of the petition/application by the Assistant Secretary, the BLM would publish a Notice of Proposed Withdrawal in the *Federal Register* and a newspaper of general circulation in the area where the lands are located. This notice invites public review of the proposed withdrawal and provides information on several public meetings to be announced at a later date. Approval of the petition/application would also allow the BLM to consult with Federal, State and local governmental organizations, tribal governments, and stakeholders and to complete an analysis relative to the need for the withdrawal.

**IV. LEGAL STATUS**

There is no litigation associated with this withdrawal petition/application.



## Federal Register Briefing Paper

1. State Office

Oregon State Office

2. What is the title of this notice?

Notice of Proposed Withdrawal and Notification of Public Meeting; Oregon

3. What are the key issues raised by the underlying decision documents for this notice?

The notice of proposed withdrawal would temporarily segregate 5,216.18 acres of public and Revested Oregon California Railroad Grant lands and 95,805.53 acres of National Forest System lands located in Curry and Josephine Counties, Oregon, from settlement, sale, location, and entry under the public land laws, including the United States mining laws, and operation under the mineral and geothermal leasing laws, for two years from date of publication of the notice in the *Federal Register*. The purpose of the proposed withdrawal is to protect the Southwestern Oregon Watershed and Salmon Protection Area identified in the two proposed legislative bills currently being considered by the United States Senate and Congress, S-346 and HR-682.

4. Who are the primary users affected by or parties interested in the underlying decisions or actions? What are their concerns?

The primary users of the lands identified in the application are the general public, recreational users, and mining claimants. The Bureau of Land Management (BLM) will publish this notice in both the *Federal Register* and a newspaper of general circulation within the vicinity of the subject lands and distribute by U.S. postal mailings copies of the notice to Federal, state, and local government agencies and constituents. The notice will invite comments from the public. A subsequent announcement informing interested parties of public meeting will be made at a later date. The announcement will identify the locations, dates, and times of the public meetings.

5. Is tribal consultation appropriate under E.O. 13175 or other authorities? Will the proposed action potentially impact tribes or tribal lands, or generate their interest? If so, what consultation or other communication/outreach are you planning?

The withdrawal application would have no effect on local tribes. The BLM and the U.S. Forest Service (USFS) will notify the appropriate tribes who may have interest in the proposed withdrawal lands.



6. Will this notice be controversial?

Yes, it will elevate the interest of the locatable mining claim community and the potential effect resulting from segregating lands with recorded mining claims. However, this is a notice of a proposed action in aid of proposed legislation. The BLM and the USFS will conduct a public meeting to solicit comments and respond to potential concerns raised by all interested parties to the proposed withdrawal.

7. What will the underlying decision or action change? (Summarize changes to policy, management practices, allowable uses, differences between draft and final, etc.)

The notice temporarily segregates the lands for up to two years while the BLM and the USFS conduct a public meeting and complete the necessary reports and recommendations for the Secretary of the Interior's consideration to withdraw the lands.

8. Will this notice need Communications Materials, e.g., a press release or a Communications Plan? If so, enclose these materials with the notice package submitted.

The BLM does not expect to need any additional communication materials beyond the *Federal Register* Notice and publication in a newspaper having a general circulation in the vicinity of the lands involved.

9. What are the reasons for the timing of the notice and the consequence, if any, of delaying or canceling the release?

The notice is the first step in the land withdrawal process after the Assistant Secretary for Land and Minerals Management approves a petition/application. Under 43 CFR 2310.3-1, a notice of proposed withdrawal is required to be published within 30 days of the submission of an approved withdrawal application. Once published, there is a 90-day comment period, after which, the BLM can finalize the necessary reports and recommendations for the Assistant Secretary, Land and Minerals Management to determine whether or not to withdraw the subject lands by issuing a Public Land Order.

10. How has this action been analyzed under the National Environmental Policy Act (NEPA)?

This notice does not require NEPA analysis, but the BLM jointly with the USFS will complete an analysis following expiration of the public comment period.

11. Is there any additional pertinent, descriptive information that reviewers need to know or would increase understanding?

No, there is not.



12. List the names and positions of the people who have prepared, reviewed, and approved the notice and the underlying decisions and documents.

Coos Bay District Office:

Patricia Burke  
District Manager

Oregon State Office

Michael Barnes  
Realty Specialist

Medford District Office:

Dayne Barron  
District Manager

Region 6, USFS

Candice Polisky  
Realty Specialist

Rogue River-Siskiyou National Forest

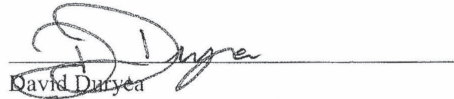
Robert MacWhorter  
Forest Supervisor

Region 6, USFS

Gordie Blum  
Director - Recreation, Lands, and Minerals

13. Authorizing signature of State Office or Center Budget Officer, or Washington Office Resource Advisor certifying that the cost code on the Federal Register notice is accurate and valid.

The cost code is provided by the Forest Service.



David Duryea  
Management and Program Analyst



# Appendix B.

## Sample Scoping Comments

Federal agencies are required to go through a public “scoping” process in order to determine the scope of issues that should be addressed in an Environmental Assessment (EA) or Environmental Impact Statement (EIS). Scoping also helps the agency determine the likely significance of an action’s impacts, and whether an EA or an EIS will be required. Scoping is an opportunity to tell an agency what should be included in its review and why. In the case of a mineral withdrawal, the agency must consider the potential impacts of the proposed mineral withdrawal (e.g., protecting the proposed lands from mineral location and entry). Here are a few guidelines for submitting scoping comments.

### 1. NAME/PURPOSE

Provide the agency with your name and the reason why you’re submitting comments. This may include that you live, work, recreate, hunt, fish, find spiritual solace or otherwise care about the lands that are part of the proposed mineral withdrawal. Say that you are concerned about the potential effects of mineral exploration and development on these lands and resources.

### 2. DESCRIBE THE RESOURCES AT RISK

Emphasize the value of the public lands and resources at risk, and, if appropriate, include personal or other information about these resources.

### 3. IMPACTS

When assessing potential impacts, the agency must look at the potential direct, indirect and cumulative impacts of the proposed mineral withdrawal.

**Direct impacts:** Those that are caused by the action and occur at the same time and place.

*Comment example: Please consider the benefits of the proposed mineral withdrawal in maintaining water quality and quantity in the rivers, streams and groundwater aquifers within and adjacent to the proposed withdrawal boundary.*

**Indirect impacts:** Those that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.

*Comment example: It is reasonable that mineral development in the area would result in roads, noise, dust and increased traffic that would contribute to habitat loss in the area. Please consider the benefits of a mineral withdrawal in maintaining wildlife habitat.*

**Cumulative impacts:** Those that result from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions, regardless of what agency or person undertakes such actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

*Comment example: Mining has already contributed to extensive habitat loss within the region. Please consider the potential benefits of protecting the remaining wildlife habitat within the proposed withdrawal from new exploration and/or development.*



#### 4. SUPPORTING INFORMATION

It is helpful to provide the agencies with information that documents the values at risk. This could include research or studies that describe the economic, ecological or social value of the public resource. It could include data, reports or research that demonstrate the ways in which mineral exploration and development can adversely affect those resources. While it is helpful to provide supporting materials, it is the agency's job to analyze and describe the potential effects of the proposed withdrawal.





# Endnotes

- 1 U.S. Environmental Protection Agency, Toxic Release Inventory, 2022 National Analysis, March 2024. [https://www.epa.gov/system/files/documents/2024-03/complete\\_2022\\_tri\\_national\\_analysis.pdf](https://www.epa.gov/system/files/documents/2024-03/complete_2022_tri_national_analysis.pdf)
- 2 For example, mineral withdrawals can be created to withdraw military lands from mining to support national defense requirements. Military withdrawals and reservations of 5,000 or more acres are authorized by Act of Congress; military withdrawals of less than 5,000 acres are by Secretarial Order by the Secretary of the Interior.
- 3 54 U.S.C. §§320301-320303
- 4 Federal Register, Bears Ears National Monument, October 8, 2021. <https://www.federalregister.gov/documents/2021/10/15/2021-22672/bears-ears-national-monument>
- 5 On March 12, 2019, President Trump signed the John D. Dingell Jr. Conservation, Management, and Recreation Act, a big public lands bill, which included the Yellowstone Gateway Protection Act (YGPA).
- 6 The term “in aid of legislation” doesn’t originate from FLPMA, but from a case decided by the United States Court of Appeals in 2007. The court defined a withdrawal “in aid of legislation” as a “specific use then under consideration by the Congress.”
- 7 Other locatable minerals include nonmetallic minerals (fluorspar, mica, certain limestones and gypsum, tantalum, heavy minerals in placer form and gemstones). See: <https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/about>
- 8 Federal Register, Vol. 8, No. 109. June 7, 2023. Public Land Order No. 7923 for Public Lands Withdrawal Surrounding Chaco Culture National Historical Park Boundary; San Juan, Sandoval, and McKinley Counties, New Mexico. <https://www.federalregister.gov/documents/2023/06/07/2023-12158/public-land-order-no-7923-for-public-lands-withdrawal-surrounding-chaco-culture-national-historical>
- 9 The Act of March 4, 1917, authorized the Secretary to issue regulations permitting mineral resource development on lands acquired under the Weeks Act. 16 U.S.C. § 520. Regulations issued under this provision authorized mineral removal subject to the payment of fees, rentals, and royalties commensurate with the value of the mineral resources. 36 C.F.R. § 251.6 (1938). Reorganization Plan No. 3 of 1946 transferred these responsibilities to the Secretary of Interior. 60 Stat. 1097, 1099-1100 (1946).
- 10 U.S. Department of Interior, Press Release “Biden Harris Administration Protects Boundary Waters Area Watershed,” January 26, 2023. <https://www.doi.gov/pressreleases/biden-harris-administration-protects-boundary-waters-area-watershed>
- 11 USDA, Forest Service, Rainy River Withdrawal Environmental Assessment, December 2022. [https://eplanning.blm.gov/public\\_projects/2022642/200540165/20071350/250077532/20221120\\_RevisedEA\\_FinalRevision-508.pdf](https://eplanning.blm.gov/public_projects/2022642/200540165/20071350/250077532/20221120_RevisedEA_FinalRevision-508.pdf)
- 12 Federal Register Notice, Public Land Order No. 7898; Extension of Public Land Order 7467 San Francisco Peaks/Mount Elden Recreation Area; Arizona, October 15, 2020. <https://www.federalregister.gov/documents/2020/10/15/2020-22975/public-land-order-no-7898-extension-of-public-land-order-7467-san-francisco-peaks-mount-elden>



- 13 U.S. Forest Service, Minerals and Energy Specialist report, Forest Plan Revision Draft Environmental Impact Statement, September 12, 2013. [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd657380.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd657380.pdf)
- 14 Tribes submitting letters supporting the Mineral Withdrawal were the Yavapai-Apache, Yavapai-Prescott, White Mountain Apache, San Carlos Apache, Havasupai, Pueblo of Zuni, Hualapai, and the Hopi. See USDA Forest Service, Environmental Assessment for the San Francisco Mountain/Mount Elden Mineral Withdrawal, April 2000. [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd795083.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd795083.pdf)
- 15 U.S. Bureau of Land Management webpage, Mining Claim Fees, April 9, 2024. <https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/locatable-minerals/mining-claims/fees>
- 16 43 CFR 2310.1-3
- 17 43 CFR subpart 231018 The general delegation of authority from the Secretary of Agriculture to the Chief of the Forest Service is set forth at 7 CFR 2.60. For delegation to regional foresters and forest supervisors see (FSM 2761.04)
- 19 Forest Service Manual, Chapter 2760 - Withdrawals, Effective date: June 01, 1990. <https://www.fs.usda.gov/about-agency/regulations-policies/manual/2760-withdrawals>
- 20 43 CFR 2310.3-1
- 21 No new mining activities may occur on existing claims, subject to valid existing rights.
- 22 43 CFR 2310.3-1(b)(2)
- 23 40 CFR 1501.5
- 24 40 CFR Section 1506.10(d)
- 25 U.S. Department of Interior, Bureau of Land Management, National Environmental Policy Act (NEPA) Review for Land Withdrawals, Instruction Memorandum IM 2015-119, June 30, 2015. <https://www.blm.gov/policy/im-2015-119>
- 26 43 U.S.C. § 1714 (i).
- 27 43 C.F.R. § 2310.3-3.
- 28 U.S. Bureau of Land Management website: Public Land Orders listed by year. <https://www.blm.gov/programs/lands-and-realty/land-tenure/withdrawals/public-land-orders>
- 29 The term “in aid of legislation” originates from a case decided by the United States Court of Appeals in 2007. The court defined a withdrawal “in aid of legislation” as a “specific use then under consideration by the Congress.”
- 30 43 U.S.C. 1714(e).
- 31 43 CFR 2310.5
- 32 43 U.S.C. 1714(c)(2)
- 33 43 U.S.C. 1714(c)(2).
- 34 43 CFR 2310.3-1(b)(2)(iv)-(v) and (c)



- 35 U.S. Department of the Interior, Record of Decision, Northern Arizona Withdrawal, January 9, 2012. Available at: [https://eplanning.blm.gov/public\\_projects/nepa/103221/149482/183513/N.\\_AZ\\_Record\\_of\\_Decision.pdf](https://eplanning.blm.gov/public_projects/nepa/103221/149482/183513/N._AZ_Record_of_Decision.pdf)
- 36 S.47 - John D. Dingell, Jr. Conservation, Management, and Recreation Act, 116th Congress (2019-2020). <https://www.congress.gov/bill/116th-congress/senate-bill/47/text>
- 37 43 C.F.R. §3809.100
- 38 The prudent person rule was first defined in *Castle v. Womble*, 19 L.D. 455 (1894). The Supreme Court affirmed that rule in its 1905 *Chrisman v. Miller* decision.
- 39 The Marketability Test was first defined by the Secretary of the Interior in Solicitor’s Opinion, *Layman v. Ellis*, 54 I.D. 294 (1933): “ ... a mineral locator or applicant, to justify his possession must show by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the deposit is of such value that it can be mined, removed, and disposed of at a profit.” It was refined by the Interior Department in the 1960s and affirmed by the Supreme Court in its *Coleman* decision in 1968.
- 40 43 CFR § 3809.5
- 41 See *Best v. Humboldt Min. Co.*, 371 U.S. 334, 335-36, (1963) (“[The] discovery must be of such a character that ‘a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.’” (quoting *Castle v. Womble*, 19 Pub. Lands. Dec. 455, 457 (1894)).
- 42 See *Converse v. Udall*, 399 F.2d. 616 (9th Cir. 1968) (“...if one has found only enough mineral to justify further ‘exploration,’ as yet he has not made a ‘discovery,’ but if he has found enough mineral to justify a ‘development,’ then a ‘discovery’ has been made.”)
- 43 43 C.F.R. § 3809.100(a). After the date on which the lands are withdrawn from appropriation under the mining laws, BLM will not approve a plan of operations or allow notice-level operations to proceed until BLM has prepared a mineral examination report to determine whether the mining claim was valid before the withdrawal and whether it remains valid. BLM may require preparation of a mineral examination report before approving a plan of operations or allowing notice-level operations to proceed on segregated lands. If the report concludes that the mining claim is invalid, BLM will not approve operations or allow notice-level operations on the mining claim. BLM will also promptly initiate contest proceedings.
- 44 43 C.F.R. § 3809.100(a). After the date on which the lands are withdrawn from appropriation under the mining laws, BLM will not approve a plan of operations or allow notice-level operations to proceed until BLM has prepared a mineral examination report to determine whether the mining claim was valid before the withdrawal and whether it remains valid. BLM may require preparation of a mineral examination report before approving a plan of operations or allowing notice-level operations to proceed on segregated lands. If the report concludes that the mining claim is invalid, BLM will not approve operations or allow notice-level operations on the mining claim. BLM will also promptly initiate contest proceedings.
- 45 Department of Interior Departmental Manual 512 DM 4 and BLM Manual MS 1780 outline their Tribal consultation obligations for all actions, including mineral withdrawal decisions. See <https://www.doi.gov/sites/doi.gov/files/512-dm-4-department-of-the-interior-policy-on-consultation-with-indian-tribes.pdf> and <https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf>
- 46 See 43 USC 1701 et seq. and 42 USC 4336a et seq. respectively



- 47 See 42 USC 4336a(1)(B)
- 48 Indigenous Traditional Ecological Knowledge is a body of observations, oral and written knowledge, practices, and beliefs that promotes environmental sustainability and the responsible stewardship of natural resources through relationships between humans and environmental systems. The White House has made a commitment to elevate ITEK in federal decision-making processes. See <https://www.whitehouse.gov/ceq/news-updates/2021/11/15/white-house-commits-to-elevating-indigenous-knowledge-in-federal-policy-decisions/>  
See also <https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf>
- 49 Executive Office of the President, Council on Environmental Quality, Memorandum for Heads of Departments and Agencies, Guidance for Federal Departments and Agencies on Indigenous Knowledge, November 30, 2022. <https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf>
- 50 US BLM, Placer Mining Claim Owners Guide For Validity Examinations on BLM Management Lands in Alaska, 2014. [https://www.blm.gov/sites/default/files/documents/files/PublicRoom\\_Alaska\\_Placer\\_Mining\\_Claim%20\\_Guide\\_Validity%20Examinations\\_BLM\\_Lands.pdf](https://www.blm.gov/sites/default/files/documents/files/PublicRoom_Alaska_Placer_Mining_Claim%20_Guide_Validity%20Examinations_BLM_Lands.pdf)
- 51 U.S. Department of the Interior website, “State Rockhounding Guides,” Reviewed on September 16, 2024 <https://www.blm.gov/programs/recreation/rockhounding>
- 52 See *Yount v. Salazar*, 2014 WL 4904423 (D. Az. 2014).
- 53 U.S. BLM, Areas of Critical Environmental Concern Fact Sheet, April 2024. <https://www.blm.gov/sites/default/files/docs/2024-04/Areas%20of%20Critical%20Environmental%20Concern%20Fact%20Sheet.pdf>
- 54 Fort Belknap Indian Community, Request for an investigation submitted to the Office of Inspector General, October 5, 2021. Available at: <https://img1.wsimg.com/blobby/go/d94bfdb9-dd85-49bd-94c2-4822ef04bf3b/downloads/OIG%20Complaint%20Letter%2010-05-2021.pdf?ver=1633457665237>
- 55 43 C.F.R. § 2310.2-1(d).
- 56 See *Mount Royal Joint Venture v. Kempthorne*, 477 F.3d 745, 748 (D.C. Cir. 2007), but cf. *Tetra Technologies, Inc.*, 184 IBLA 65, 68-69 (2013).
- 57 Administrative Procedure Act (APA), 5 U.S.C. § 706 (2012); see also *Pac. Legal Found. v. Watt*, 529 F. Supp. 982, 1005 (D. Mt. 1981) (“The scope and duration of [an emergency withdrawal] are within the sound discretion of the Secretary. . .”).
- 58 See *Mount Royal Joint Venture v. Kempthorne*, 477 F.3d at 753.
- 59 43 U.S.C. § 1714(c)(1)
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