

The Multiple Use Mandate: Framing Land Management Agency Discretion

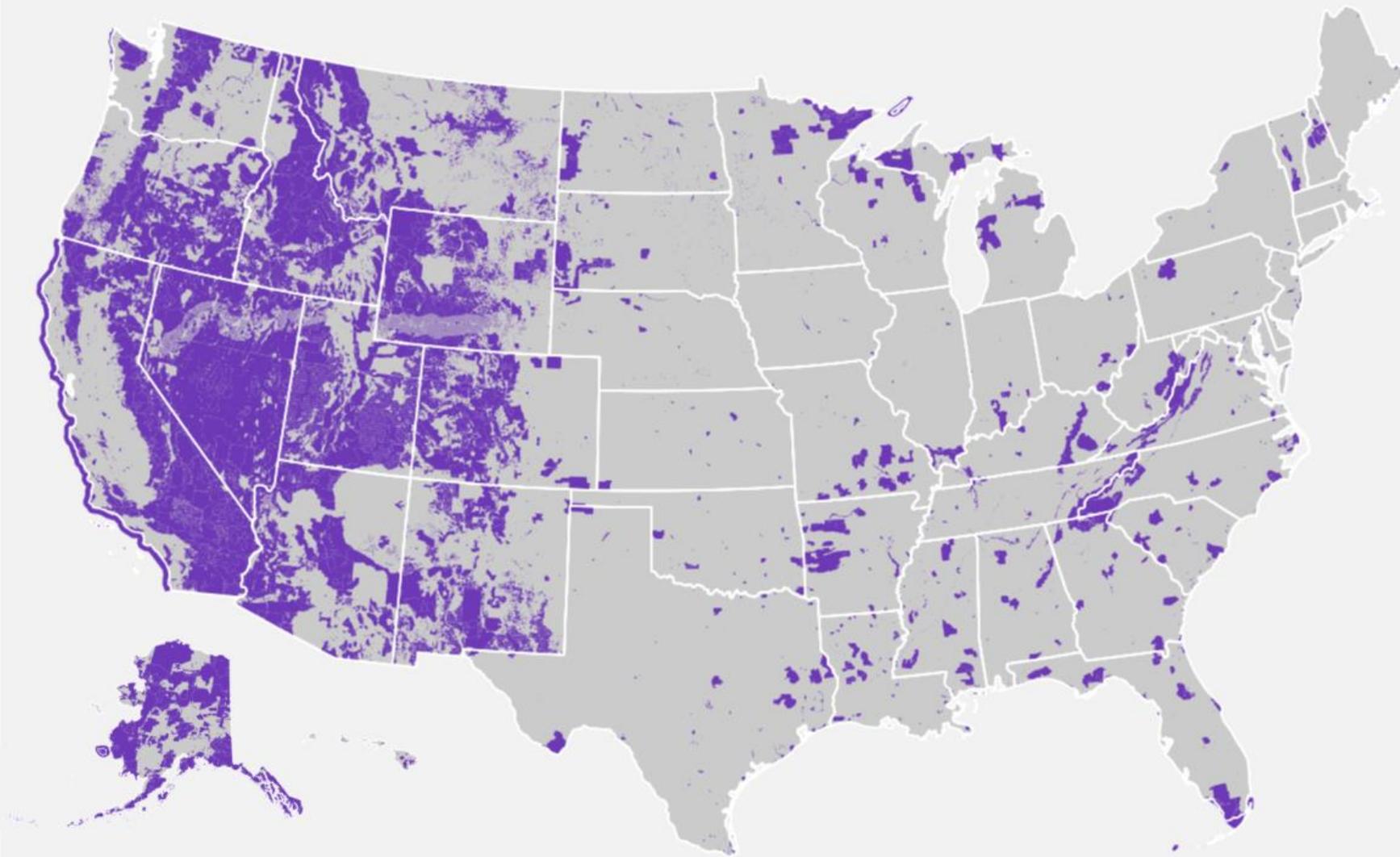
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Managing for Multiple Use in a Changing World
The Environmental Law Institute
May 29, 2019



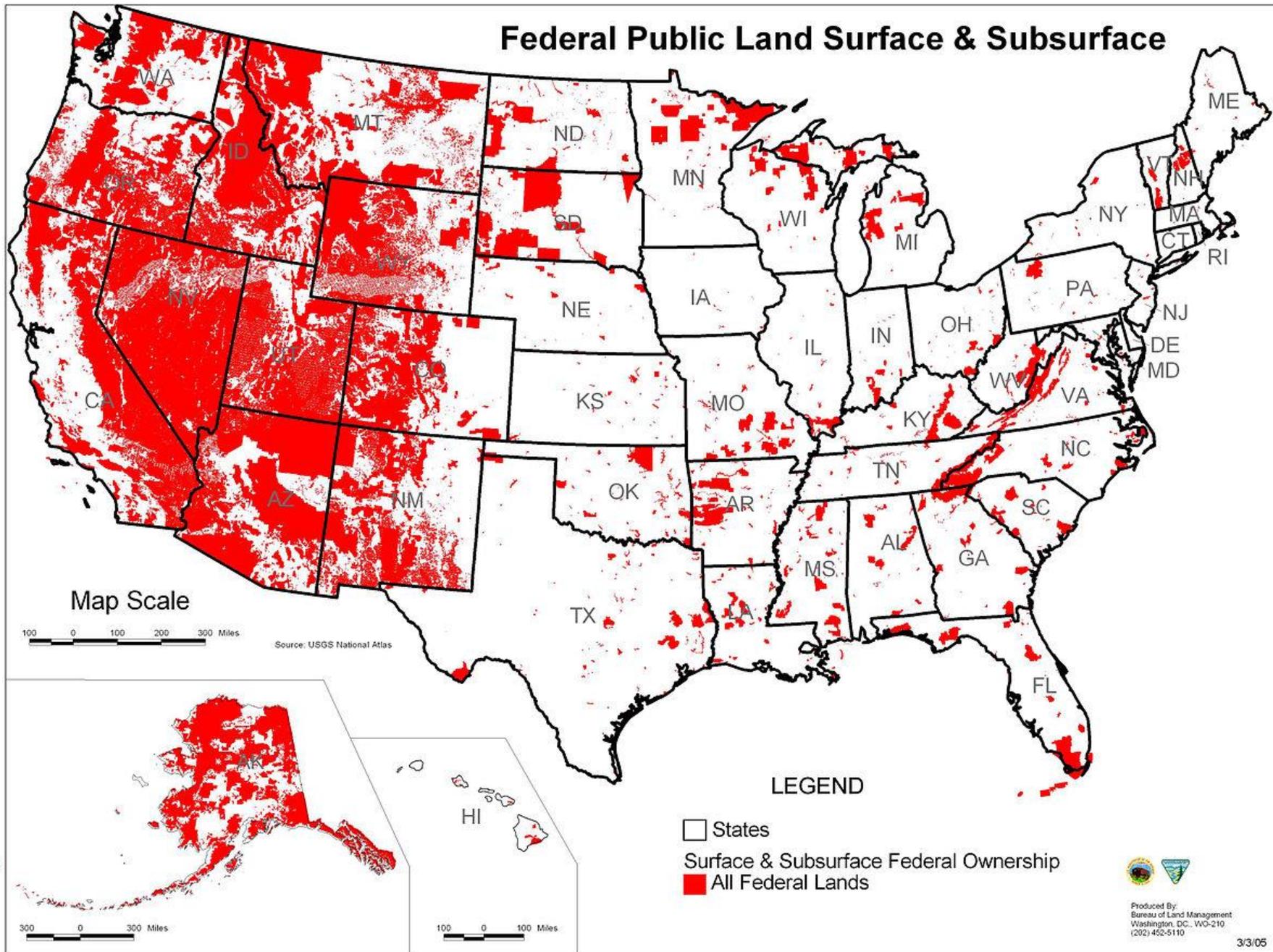
FEDERALLY OWNED LAND



SOURCE: United States Geological Survey

BUSINESS INSIDER

Federal Public Land Surface & Subsurface

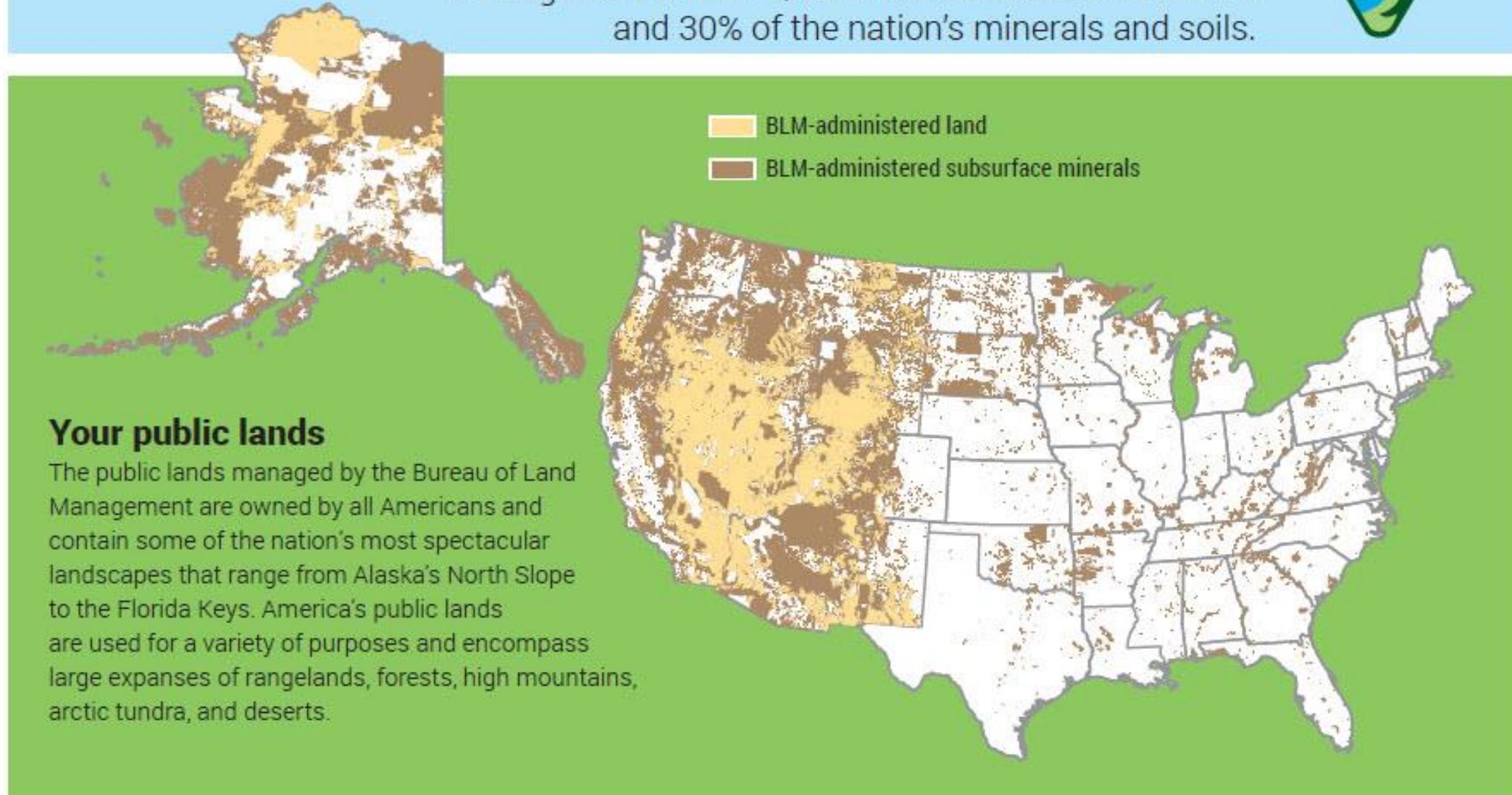


The Property Clause, U.S. Const. art. IV, § 2

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

The Bureau of Land Management

Manages more than 1/10 of the nation's surface area
and 30% of the nation's minerals and soils.

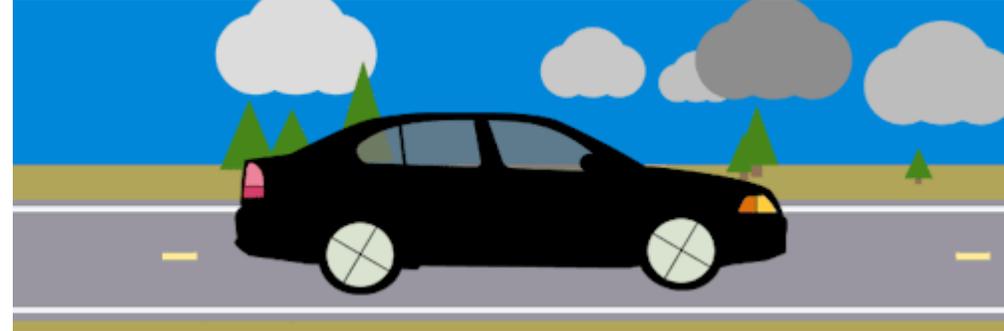


Your public lands

The public lands managed by the Bureau of Land Management are owned by all Americans and contain some of the nation's most spectacular landscapes that range from Alaska's North Slope to the Florida Keys. America's public lands are used for a variety of purposes and encompass large expanses of rangelands, forests, high mountains, arctic tundra, and deserts.

Road Map of Presentation

- I. Multiple use management by the U.S. Forest Service
- II. Multiple use management by the BLM
- III. The changing shape of multiple use management
 - A. Shifting policy priorities
 - B. The impacts of climate change

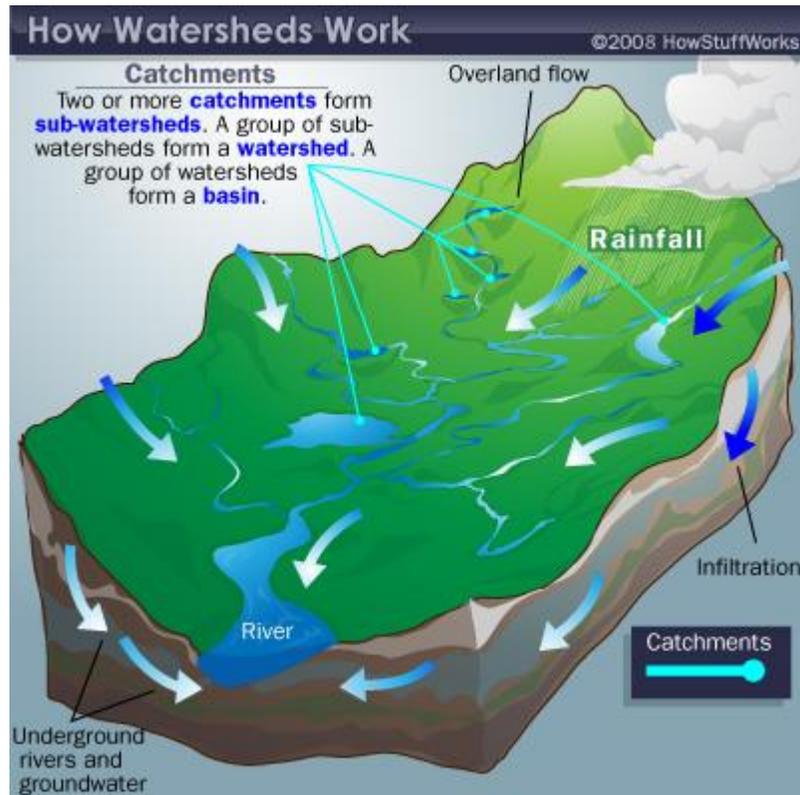


Authorized Multiple Uses under the National Forest Management Act

- Outdoor recreation
- Range
- Timber
- Watershed
- Wildlife and fish
- Wilderness (preservation)



Watershed as a Multiple Use



- Water quality protection and ecosystem stability
- Increased downstream water yield

What Is “Multiple Use”?

16 U.S.C. § 531(a)

“Multiple use” means:

The management of all the various renewable surface resources of the national forests so that they are utilized in **[1] the combination that will best meet the needs of the American people**; making the most judicious use of the land for some or all of these resources or related services over areas large enough to **[2] provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions**; that **[3] some land will be used for less than all of the resources**; and harmonious and coordinated management of the various resources, each with the other, **[4] without impairment of the productivity of the land**, with consideration being given to the relative values of the various resources, and **[5] not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.**

What Is Sustained Yield?

16 U.S.C. § 531(b)

“Sustained yield of the several products and services” means the achievement and maintenance in perpetuity of a high-level annual or **regular periodic output** of the various renewable resources of the national forests **without impairment of the productivity of the land.**



Arbitrary and Capricious Decisionmaking

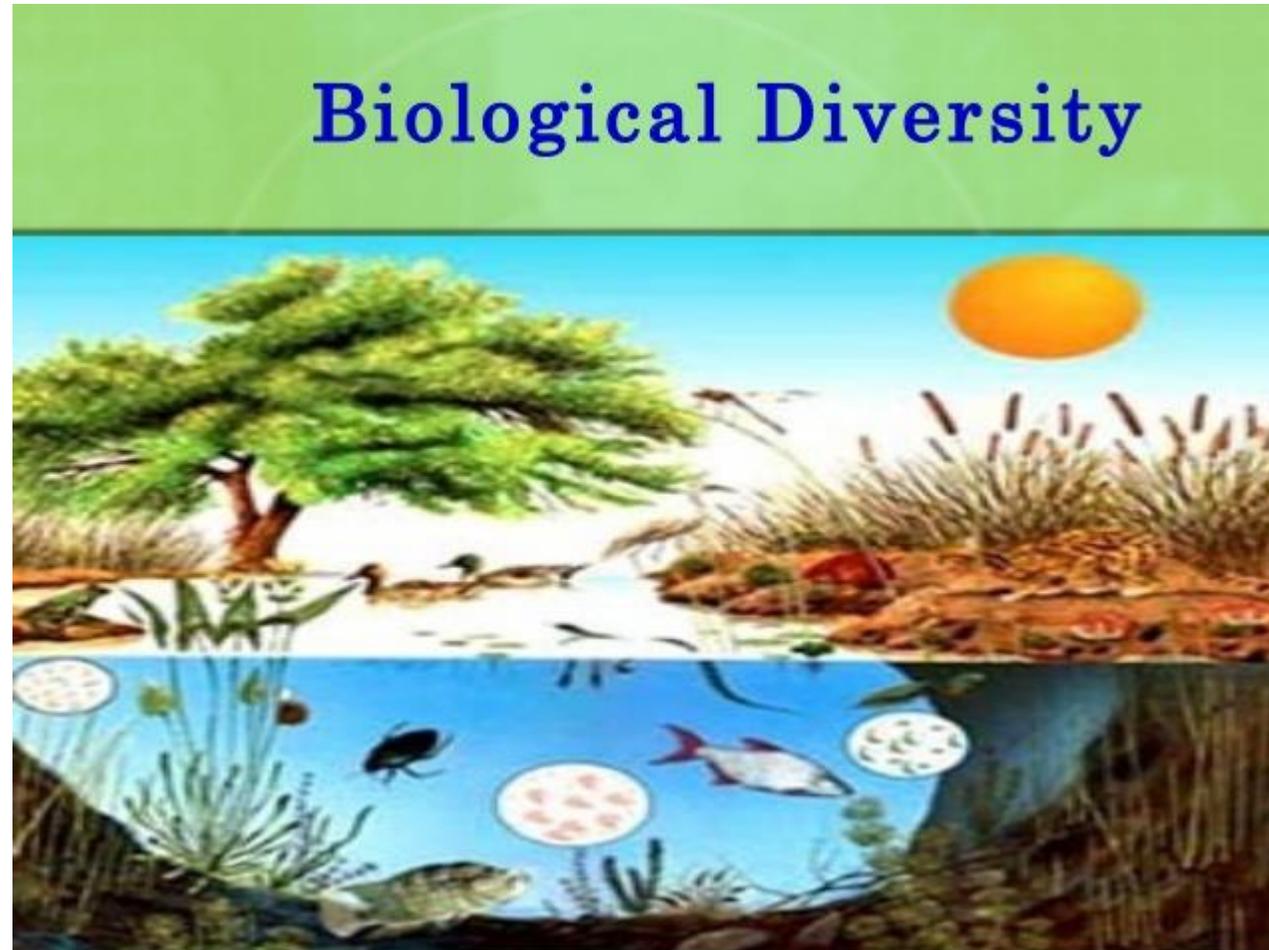
- Reliance on factors that are not relevant under the agency's organic statute;
- Failure to consider an important aspect of the problem;
- An explanation that runs counter to the evidence before the agency; or
- A decision that is so implausible that cannot be ascribed to a difference in view or the product of agency expertise.



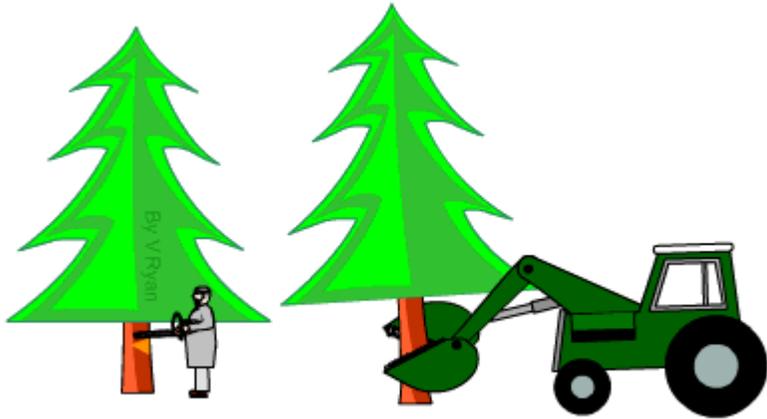
“Ultimately my decisions are based on logic.”

Diversity of Plant and Animal Communities

16 U.S.C. § 1604(g)(3)(B)



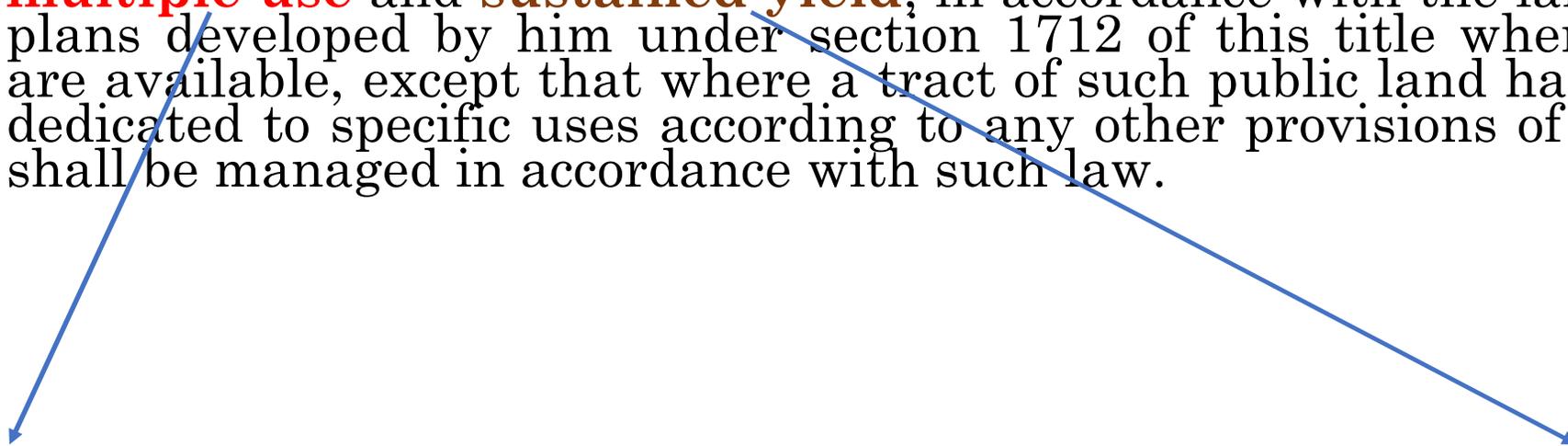
Clearcutting Restricted 16 U.S.C. § 1604(g)(3)(F)



FLPMA's Management Mandate

43 U.S.C. § 1732(a)

The [BLM] shall manage the public lands under principles of **multiple use** and **sustained yield**, in accordance with the land use plans developed by him under section 1712 of this title when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.



§ 1702(c): management of the public lands and their various resource values that results in “. . . a combination of balanced and diverse resource uses **that takes into account the long-term needs of future generations** for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, **and natural scenic, scientific and historical values**”

§ 1702(h): Sustained yield means “the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

“Sustained Yield” under NFMA and FLPMA

- NFMA: Sustained yield of the several products and services means “the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests **without impairment of the productivity of the land.**”
- FLPMA: Sustained yield means “the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands **consistent with multiple use.**”

FLPMA's "UUD" Standard 43 U.S.C. § 1732(b)

“In managing the public lands [the BLM] **shall**, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.”



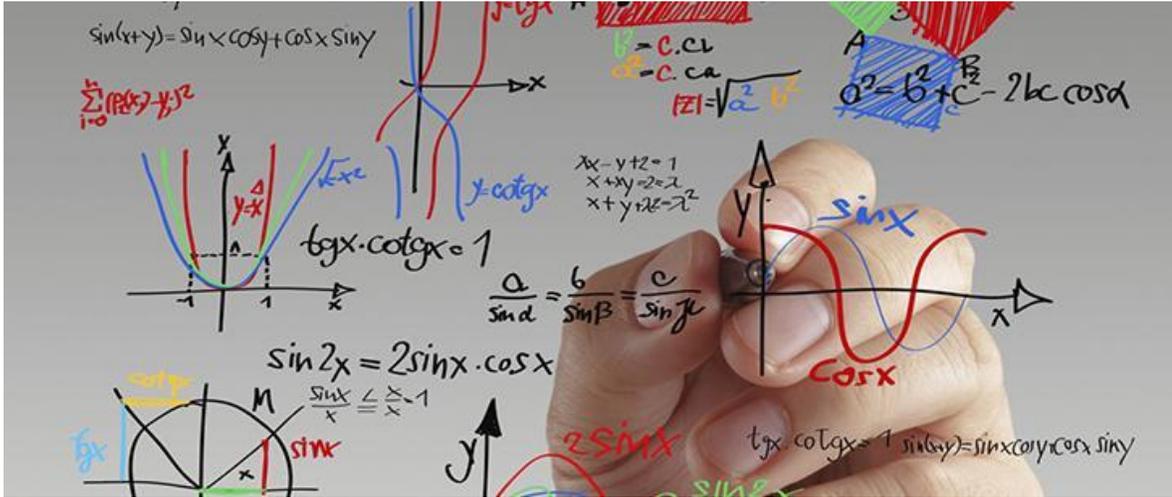
FLPMA's "UUD" Standard 43 U.S.C. § 1732(b)

“In managing the public lands [the BLM] **shall**, by regulation or otherwise, take any action necessary to prevent unnecessary **Or** undue degradation of the lands.”



Math 101

**Multiple use, sustained yield =
avoidance of unnecessary or undue
degradation**



A collection of hand-drawn mathematical notes and diagrams on a grey background. The notes include:

- Trigonometric identities: $\sin(x+y) = \sin x \cos y + \cos x \sin y$, $\sin 2x = 2 \sin x \cdot \cos x$, $\frac{a}{\sin A} = \frac{b}{\sin B} = \frac{c}{\sin C}$, $\frac{\sin x}{x} \leq \frac{x}{1}$, $\tan x \cdot \cot x = 1$, $\sin(x-y) = \sin x \cos y - \cos x \sin y$.
- Algebraic formulas: $\sum_{i=0}^n (n-x)^2$, $z = \sqrt{a^2 + b^2}$, $A^2 = b^2 + c^2 - 2bc \cos A$.
- Coordinate geometry: $y = x$, $y = \cot x$, $x - y + z = 1$, $x + y - z = 2$, $x + y + z = 2$.
- Diagrams: A coordinate plane with sine and cosine waves, a triangle with sides a, b, c and angles A, B, C, a unit circle with a point (x, y) and angle x, and a parabola $y = x^2$.

FLPMA § 1732

(a) Multiple use and sustained yield requirements applicable; exception

The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available

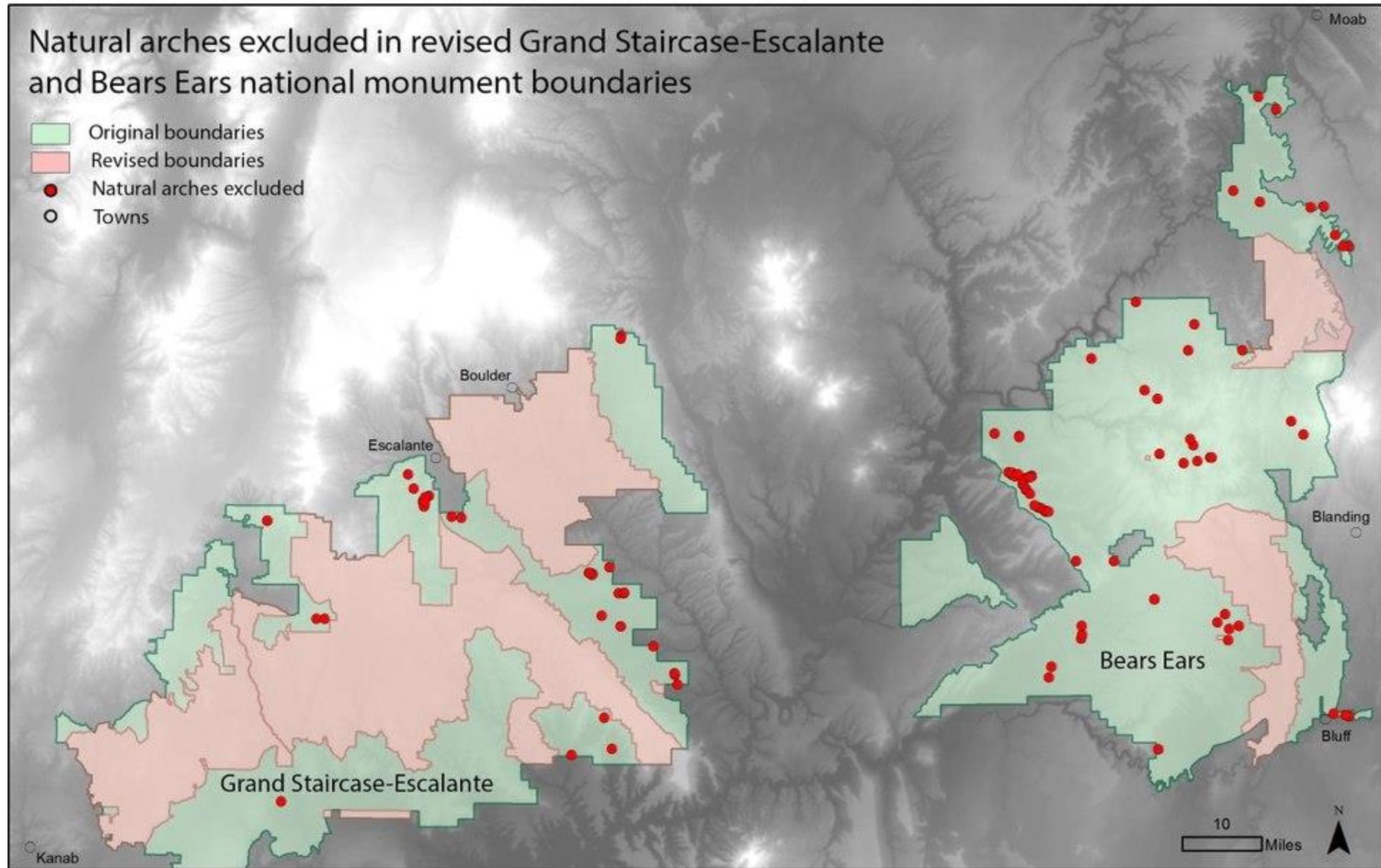
(b) . . . [A]pplicable statutory requirements

. . . In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.



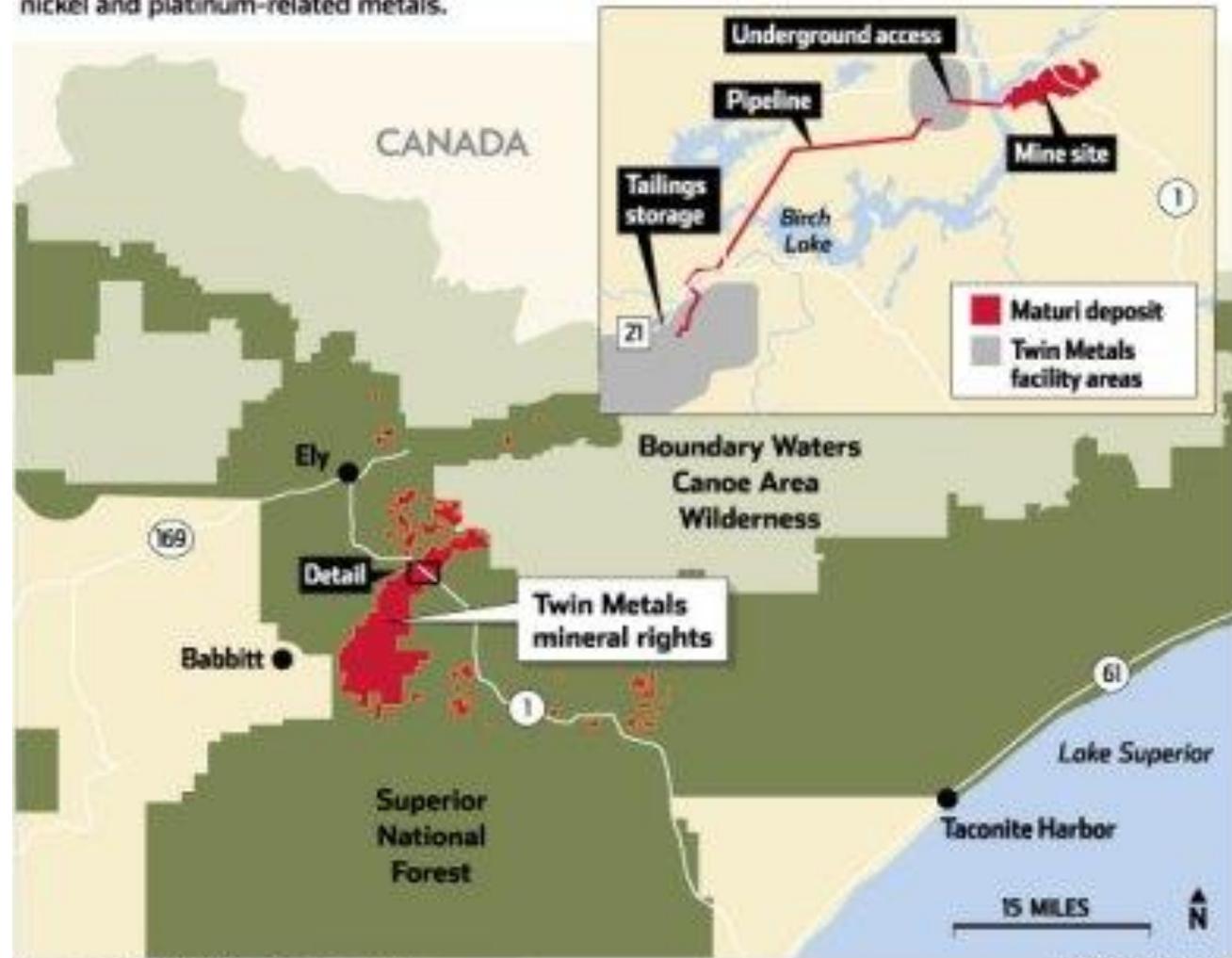
Natural arches excluded in revised Grand Staircase-Escalante and Bears Ears national monument boundaries

- Original boundaries
- Revised boundaries
- Natural arches excluded
- Towns



Twin Metals mine

Twin Metals is envisioning an underground mine in the Superior National Forest to extract copper, nickel and platinum-related metals.



Sources: Twin Metals, public documents

PIONEER PRESS

The BLM's Current Stated Priorities

1. Create a conservation stewardship legacy second only to Teddy Roosevelt.
2. Sustainably develop our energy and natural resources.
3. Restore trust and be a good neighbor.
4. Ensure tribal sovereignty means something.
5. Increase revenues to support the Department and national interests.
6. Protect our people and the border.
7. Strike a regulatory balance.
8. Modernize our infrastructure.
9. Reorganize the Department for the next 100 years.
10. Achieve our goals and lead our team forward.

BLM's Modified Press Releases

ARCHIVED MAY 9, 2019

The BLM manages more than 245 million acres of public land located primarily in 12 Western states, including Alaska. The BLM also administers 700 million acres of sub-surface mineral estate throughout the nation. The agency's mission is to sustain the health, diversity, and productivity of America's public lands for the use and enjoyment of present and future generations. Diverse activities authorized on these lands generated \$96 billion in sales of goods and services throughout the American economy in fiscal year 2017. These activities supported more than 468,000 jobs.

CURRENT

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