

**THE  
ENFORCEMENT PROVISIONS  
OF THE  
FEDERAL LAND POLICY  
AND  
MANAGEMENT ACT OF 1976**



**SEARCHING FOR MEANING  
AFTER 25 YEARS**

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Unless otherwise noted, all opinions expressed are those of the author, who, after 22 years of service with the BLM law enforcement program, has gained a great deal of knowledge and extensive experience with the enforcement provisions of the Federal Land Policy and Management Act (FLPMA) of 1976. This book was developed in commemoration of the 25<sup>th</sup> Anniversary of the FLPMA in the interest of passing on this knowledge to current and future BLM law enforcement officers and managers.

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## **The Situation Prior to the Enactment of the FLPMA**

The Bureau of Land Management (BLM) is a bureau of the United States Department of the Interior. The BLM's mission is the multiple use management of approximately 270 million acres of public land located throughout the United States, primarily in the West and Alaska. Although criminal law enforcement is not the primary mission of the BLM, the enforcement of criminal statutes and regulations that pertain to the public lands, resources, and visitors has become an integral part of BLM's management of the public lands.

One of the BLM's predecessor agencies, the General Land Office, employed special agents who investigated cases of fraudulent entry, unlawful enclosures, and timber depredations. The special agent force's origin traces back to the hiring of the first timber agents by the Department of the Treasury in 1831. This investigative force existed in varying forms for over 100 years.

The BLM was formed from the General Land Office and the Grazing Service in 1946. The Grazing Service philosophy of "home rule on the range" resulted in a downplay of the need for enforcement-type employees. The early BLM became an agency of specialists (i.e., range conservationists, foresters, and realty specialists), and each of these specialists was responsible for use supervision and trespass within their program area. The BLM entered a custodial era in which the emphasis was on preservation of the public land resources until the land was transferred to private ownership.

During the custodial era, the BLM did have some responsibilities for the protection of resources. The Taylor Grazing Act, The Antiquities Act, The Unlawful Enclosures Act, and various other Title 18 United States Code crimes provided both criminal penalties and protection for certain public land resources. However, authority to conduct law enforcement activities was not granted to the BLM through any of these acts. Also, the BLM was not staffed with specialists who focused on providing the public lands with a regular presence.

For many years, the BLM was successful in achieving compliance with early land management statutes. This was done primarily through use of administrative and civil remedies, which worked well for managing compliance with the traditional users of the public lands. Mining users were not subject to a high degree of regulation at the time, so intense compliance activities were not required. Grazing and timber users already had a contractual relationship with the BLM, and compliance could be managed through penalties and cost collection techniques available through such relationships.

However, some problems were becoming acute in the California Desert. To analyze and address these impacts, the California State Office, in conjunction with the National Park Service, conducted a study in 1968. The study recommended that the BLM "...recruit and train qualified individuals as uniformed rangers so that public services and surveillance are available on a seven-day basis."

One use that was having a major impact on desert resources was off-road vehicle recreation, which was increasing rapidly. In 1970, the California State Advisory Board to the BLM appointed an off-road vehicle advisory council. This council issued recommendations and

guidelines for the management of off-road vehicles on public land in California. Among these recommendations were that the BLM: (1) seek legislation to establish regulations with criminal penalties; (2) seek legislation to obtain law enforcement authority for Bureau personnel; and (3) establish a protection system, staffed with highly-qualified and selected personnel as a law enforcement unit in each BLM District. The document recommended that these law enforcement personnel be: (1) highly trained in law enforcement procedures, (2) distinctly uniformed, (3) designated as peace officers authorized to enforce both local and Federal laws, and (4) authorized to carry a sidearm.

The BLM had another need for a modern law enforcement program with the enactment of the Wild Free-Roaming Horse and Burro Act. This law was among the first that provided prohibited acts, criminal penalties, and authority to designate law enforcement officers in the BLM. When the BLM encountered its first resistance to compliance with this law, the assistance of the FBI was requested. The FBI declined to assist the BLM and recommended that the BLM create its own law enforcement force. That situation resulted in the staffing of the first BLM special agents in 1974. The authority to make arrests, carry firearms, and conduct law enforcement activities was granted pursuant to the Wild Free-Roaming Horse and Burro Act and the Sikes Act. However, these authorities could not be used to conduct general law enforcement on all public land areas because of the narrow focus of these statutes.

Just prior to the enactment of the FLPMA in October 1976, the BLM law enforcement program consisted of seven special agents and 23 desert rangers. The seven special agents had been delegated law enforcement authority pursuant to the Wild Free-Roaming Horse and Burro Act, the Sikes Act, and the Land and Water Conservation Fund Act. There were two of these special agents located in Washington, DC and one each in Arizona, California, Idaho, Montana and Utah. Their primary assignment was investigations of violations of the Wild Free-Roaming Horse and Burro Act among other things. In Southern California, about 23 desert rangers were hired and sent to the Riverside County Sheriff's Academy for basic law enforcement training. These rangers had not been granted any measure of law enforcement authority.

**A Comparison of the Language in the Enforcement Provisions of the Various Bills That Lead to the Enactment of the Federal Land Policy and Management Act of 1976**

<b>Date</b>	February 23, 1971
<b>Bill</b>	S 921 (as introduced by Senator Henry Jackson)
<b>Title</b>	Public Domain Lands Organic Act
<b>Proposed Enforcement Provisions</b>	<p>Sec. 112. Violations of the public land laws and regulations of the Secretary relating to protection of the public lands and the uses thereof shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than six months, or both. Any person charged with a violation of such laws and regulations may be tried and sentenced by any United States commissioner or magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.</p> <p>Sec. 113. The Secretary may authorize such persons who are employed in the Bureau of Land Management as he may designate to make arrests for the violation of the laws and regulations referred to in sections 114 and 116 of this Act. Upon sworn information by any competent person, any United States commissioner or magistrate in the proper jurisdiction shall issue a warrant for the arrest of any person charged with the violation of said laws and regulations, but nothing in here shall be construed as preventing the arrest by any officer of the United States, without warrant, of any person taken in the act of violating such laws and regulations.</p>
<b>Official Commentary</b>	The Bill was not acted upon, but was replaced by the Administration's version (S 2401) and re-introduced by Senator Jackson
<b>Analysis</b>	<ol style="list-style-type: none"> <li>1. Proposed rudimentary authority for criminal penalties for public land laws and regulations. The penalties proposed were at the "petty offense" level.</li> <li>2. Proposed basic authority for the Secretary to "designate" Bureau of Land Management employees to make arrests for violation of laws and regulations.</li> <li>3. Uses the term "public lands."</li> </ol>

<b>Date</b>	April 6, 1971
<b>Bill</b>	HR 7211 (as introduced by Congressman Aspinall)
<b>Title</b>	National Land Policy, Planning and Management Act
<b>Proposed Enforcement Provisions</b>	<p style="text-align: center;">ENFORCEMENT AUTHORITY</p> <p>Sec. 406. (a) Any violation of regulations issued by an agency head with respect to the public lands administered by him and property located thereon shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both. Any person charged with a violation of such regulations may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.</p> <p>(b) At the request of the agency head, the Attorney General may institute a civil action in any United States district court or the highest court in a United States territory for an injunction or other appropriate order to prevent any person from utilizing the public lands in violation of regulations issued under this act.</p> <p>(c) Each agency head may designate and authorize any employee of his agency to make arrests on lands administered by such agency without warrant for any misdemeanor or violation of any law or regulation committed in his presence or view, or for any felony if the arresting officer has probably cause to believe that the person arrested has committed or is committing such felony and a delay in obtaining a warrant would jeopardize the possibility of his apprehension. Such authorized employee may execute any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of the provisions of any Federal law or regulation. Such authorized employee, while engaged in carrying out his official duties, may carry firearms as are authorized by the agency head.</p> <p>(d) Upon the sworn information by a competent person, any United States magistrate or court of competent jurisdiction may issue process for the arrest of any person charged with a violation of law or regulations on the public lands. Nothing herein shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating a law or regulation.</p>

<p><b>Official Commentary</b></p>	<p>From page 1300 of the <i>Legislative History of the FLPMA</i>, Extracts from House Report of the Committee on Interior and Insular Affairs, Analysis of proposed legislation (HR 7211):</p> <p>This section (406) generally recommended as a part of the legislation submitted by the Executive branch, provides for fines of not more than \$1,000 and imprisonment of not more than one year or both for violation of regulations to protect the public lands. It authorizes application for an injunction "or other appropriate order" to prevent any person from utilizing the public lands in violation of the regulations.</p> <p>The section also authorizes public land management agency heads to designate employees to make arrests without warrant for any misdemeanor if it is committed in his presence or for any felony if there is probably cause to believe that there may otherwise be delay in apprehending the person arrested. Such employees are authorized to execute warrants or other process and to carry firearms.</p> <p>Finally, the section authorizes courts to issue process for arrest of persons charged with violation of law or regulations on the public lands, and it provides for arrest without process where a person is taken in the act of violating a law or regulation.</p> <p>This section clarifies the law enforcement arrest authority for serious offenses, covering the following types of crimes:</p> <ol style="list-style-type: none"> <li>1. A Federal crime on Federal land.</li> <li>2. A State crime or common law crime on Federal land;</li> <li>3. A Federal crime committed on non-Federal lands where the felon flees and is apprehended on Federal land;</li> <li>4. A State crime committed on non-Federal lands where the arrest is made on Federal land; and</li> <li>5. Arrest for probable cause without a warrant under circumstances where the delay in obtaining a warrant could jeopardize the apprehension of the person.</li> </ol> <p>The House did not take action on the Bill.</p>
<p><b>Analysis</b></p>	<ol style="list-style-type: none"> <li>1. Bill differs from S 921 in that the proposed imprisonment of one year is at the Class A misdemeanor level. Regulations may include not only the public lands but the "property located thereon."</li> <li>2. Bill differs from S 921 in that enforcement authority includes carrying firearms and other executing warrants.</li> <li>3. Uses the term "public lands."</li> </ol>

<b>Date</b>	August 3, 1971
<b>Bill</b>	S 2401 (as re-introduced by Senator Henry Jackson)
<b>Title</b>	National Resource Land Management Act of 1971
<b>Proposed Enforcement Provisions</b>	<p>Sec. 11. ENFORCEMENT AUTHORITY. – (a) Violations of regulations which may be adopted for the purpose of protecting the national resource lands, other public property, and the public health, safety, and welfare and identified by the Secretary as being subject to the sanctions provided for by this section shall be deemed to be a misdemeanor and shall be punishable by a fine of not more than \$10,000 or imprisonment for not more than one year, or both. Any person charged with the violation of such regulations may be tried and sentenced by any United States commissioner or magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.</p> <p>(b) At the request of the Secretary, the Attorney General may institute a civil action in a district court of the United States or the highest court in a United States territory for an injunction or other appropriate order to prevent any person from using the national resource lands in violation of regulations issued under this Act.</p> <p>(c) The Secretary may designate and authorize employees as special officers who may make arrests or serve citations for acts committed on the public lands which are in violation of regulations identified pursuant to subsection 11 (a).</p> <p>(d) Upon the sworn information by a competent person, any United States commissioner, magistrate or court of competent jurisdiction may issue process for the arrest of any person charged with a violation of law or designated regulations. Nothing herein shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating the law or the designated regulations.</p>
<b>Official Commentary</b>	The Bill was submitted to Senator Jackson by the Administration. The Bill was not acted upon.
<b>Analysis</b>	<ol style="list-style-type: none"> <li>1. Differs from S 921 in that the penalty is not only at the Class A misdemeanor level but the fine is increased from \$1,000 to \$10,000.</li> <li>2. Includes the provision from HR 7211 for injunctive relief.</li> <li>3. Differs from S 921 in that the Secretary may "designate special officers" to make arrests and serve citations without mention of carrying firearms or executing warrants.</li> <li>4. Uses both the terms "national resource lands" and "public lands". It adds the additional categories of "public property, and the public health, safety, and welfare."</li> </ol>

<b>Date</b>	January 18, 1973
<b>Bill</b>	S 424 (as introduced by Senator Henry Jackson)
<b>Title</b>	National Resource Lands Management Act of 1973
<b>Proposed Enforcement Provisions</b>	<p>Sec. 10. USE OF LANDS. – The use, occupancy, or development of any portion of the national resource lands contrary to any regulation of the Secretary issued pursuant to and in conformity with this Act or contrary to any order issued pursuant to any such regulations is unlawful and prohibited</p> <p>Sec. 11. ENFORCEMENT AUTHORITY. – (a) Violations of regulations which may be adopted for the purpose of protecting the national resource lands, other public property, and the public health, safety, and welfare and are identified in said regulations by the Secretary as being subject to the sanctions provided for by this section shall be deemed to be a misdemeanor and shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both. Any person charged with the violation of such regulations may be tried and sentenced by any United States commissioner or magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.</p> <p>(b) At the request of the Secretary, the Attorney General may institute a civil action in a district court of the United States or the highest court in a United States territory for an injunction or other appropriate order to prevent any person from utilizing the national resource lands in violation of regulations issued under this Act.</p> <p>(c) The Secretary may designate and authorize employees as special officers who may make arrests or serve citations for acts committed on the national resource lands which are in violation of regulations identified pursuant to subsection (a) of this section.</p> <p>(d) Upon the sworn information by a competent person, any United States commissioner, magistrate or court of competent jurisdiction may issue process for the arrest of any person charged with a violation of law or the designated regulations. Nothing herein shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating the law or designated regulations.</p>
<b>Official Commentary</b>	This S 424 was combined with the Administration submitted Bill S 1041 (February 28, 1973) and it became the re-introduced S 424. See the following page on S 1041 for further commentary.
<b>Analysis</b>	<ol style="list-style-type: none"> <li>1. Adds to previous bills the "use, occupancy, and development" without authorization prohibition.</li> <li>2. Criminal penalties for violation of regulations remain Class A misdemeanor with a \$1,000 fine.</li> <li>3. Uses the term "national resource lands" with no reference to "public lands."</li> </ol>

<b>Date</b>	February 28, 1973
<b>Bill</b>	S 1041 (as re-introduced by Senator Henry Jackson to conform the former S 424 with the Bill submitted by the Administration)
<b>Title</b>	National Resource Lands Management Act of 1973
<b>Proposed Enforcement Provisions</b>	<p>Sec. 309. UNAUTHORIZED USE. – The use, occupancy, or development of any portion of the national resource lands, contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation is unlawful and prohibited</p> <p>Sec. 310. ENFORCEMENT AUTHORITY. – (a) Any violation of regulations which the Secretary issues with respect to the management, protection, development, and sale of the national resource lands and property located thereon and which the Secretary identifies as being subject to this section shall be punishable by a fine of not more than \$500 or imprisonment for not more than six months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.</p> <p>(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from utilizing the national resource lands in violation of regulations issued under this Act.</p> <p>(c) The Secretary may designate and authorize any employee to make arrests on national resource lands without warrant for any misdemeanor or violation of any law or regulation committed in his presence or view, or for any felony if the arresting officer has probable cause to believe that the person arrested has committed or is committing such felony and a delay in obtaining a warrant would jeopardize the possibility of his apprehension. Such authorized employee may execute on the national resource lands any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of any Federal law or regulation. Such authorized employee, while engaged in carry out his official duties, may carry such firearms as are authorized by the Secretary. Such employees may also pursue and arrest outside national resource lands a person fleeing from national resource lands to avoid an arrest or service of process which the employee is authorized to make on national resource lands.</p> <p>Sec. 311. COOPERATION WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES. – In connection with administration and regulation of the use and occupancy of the national resource lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the national resource lands.</p>
<b>Official Commentary</b>	<p>From page 1605 of the <i>Legislative History of the FLPMA</i>, Extracts from Secretary of the Interior letter of February 27, 1973 transmitting the Administration’s proposed bill (S 1041):</p> <p>It would significantly enhance the management of the national resource lands by making violations of laws and regulations pertaining to them a crime and by vesting enforcement authority in certain designated Departmental employees. The Secretary would be authorized to cooperate with State and local law enforcement agencies and to reimburse the agencies for services on national resource lands.</p>

<b>Analysis</b>	<p>The proposed Bill submitted by the Administrative included several significant changes from the first S. 424:</p> <ol style="list-style-type: none"> <li>1. In the "Use of Lands" section is re-titled "Unauthorized Use" and deletes "issued pursuant to and in conformity with this act" and replaces it with "or other responsible authority." This would emphasize that even non-compliance with a locally issued "trespass notice" would carry the same degree of prohibition.</li> <li>2. Deletes the phrase "for the purpose of protecting the national resource lands, other public property, and the public health, safety and welfare" and replaces it with "with respect to the management, protection, development, and sale of the national resource lands and property located thereon."</li> <li>3. Replaces the Class A misdemeanor penalty and \$1,000 fine with a "petty offense" penalty and \$500 fine.</li> <li>4. Changes the entire subsection (c) that grants only arrest and citation authority only on "national resource lands" to a very broad all encompassing enforcement authority to include executing and serving warrants and carrying firearms. Uses the term "probable cause."</li> <li>5. Adds a section for cooperation with State and local law enforcement agencies. This includes ability to reimburse such agencies.</li> <li>5. Uses the term "national resource lands."</li> </ol>
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<b>Date</b>	July 8, 1974
<b>Bill</b>	S 424 (as passed by the Senate) 71 yea, 1 nay
<b>Title</b>	National Resource Lands Management Act of 1974
<b>Proposed Enforcement Provisions</b>	<p>Sec. 101. MANAGEMENT. ... (1) regulating, through permits, licenses, leases, or such other instruments as the Secretary deems appropriate, the use, occupancy, or development of the national resource lands not provided for by other laws; <i>Provided, however,</i> That no provision of this Act shall be construed as authorizing the Secretary to require any Federal permit to hunt or fish on the national resource lands; ....</p> <p>Sec. 306. UNAUTHORIZED USE. – The use, occupancy, or development of any portion of the national resource lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited</p> <p>Sec. 307. ENFORCEMENT AUTHORITY. – (a) Any violation of regulations which the Secretary issues with respect to the management, protection, development, acquisition, and conveying of the national resource lands and property located thereon and which the Secretary identifies as being subject to this section shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.</p> <p>(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from using the national resource lands in violation of laws or regulations relating to lands or resources managed by the Secretary.</p> <p>(c) For the specific purpose of enforcing any law or regulation relating to lands or resources managed by the Secretary, the Secretary may designate any employee to (i) carry firearms; (ii) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (iii) make arrest without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; (iv) search without warrant, or process any person, place, or conveyance as provided by law; and (v) seize without warrant or process any evidentiary item as provided by law.</p> <p>Sec. 308. COOPERATION WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES. – In connection with administration and regulation of the use and occupancy of the national resource lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the national resource lands.</p>

<b>Official Commentary</b>	<p>From page 1556 of the <i>Legislative History of the FLPMA</i>, Extracts from Senate Report of the Committee on Interior and Insular Affairs, Purpose and brief description (S 1041):</p> <p>The enforcement provisions include criminal penalties for violation of national resource lands regulations; arrest, search and seizure authority for departmental personnel to enforce laws and regulations relating to lands or resources managed by the Secretary of the Interior; and authority for the Secretary to contract with State and local officials to provide more general law enforcement on the national resource lands.</p> <p>From pages 1566-1567 of the <i>Legislative History of the FLPMA</i>, Extracts from Senate Report of the Committee on Interior and Insular Affairs, Section-by-section analysis:</p> <p><i>Section 101.</i> ... (1) Issuance of permits, licenses, leases, or other appropriate instruments to allow uses of land not provided by other laws. The Secretary could not, however, convey out of Federal ownership any land or interests in land under this authorization. Furthermore, the clause carries a proviso which insures that there can be no construing of an authority of the Secretary to require any permit to hunt or fish on the national resource lands. This proviso is reinforced by a clause in Section 501 which prevents construction of S. 424 as in any way affecting the jurisdiction or responsibilities of the States with respect to wildlife and fish in the national resource lands. In short, hunting and fishing will continue under state control and State licenses or permits. Of course, this does not fore close the Secretary's authority to limit access to national resource lands where necessary to protect the resources or users of the lands. This includes situations where there are fire hazards or where discharge of firearms would endanger human safety.</p> <p>From pages 1577-1580 of the <i>Legislative History of the FLPMA</i>, Extracts from Senate Report of the Committee on Interior and Insular Affairs, Section-by-section analysis:</p> <p><i>Section 307.</i> This section is one of the most important sections of S 424. Certainly there is a critical need to provide the Department of the Interior, through its Bureau of Land Management, with adequate enforcement authority on the national resource lands. Crimes against persons, vandalism and destruction of private and Federal property, thefts, and other unlawful acts are increasing rapidly on the national resource lands, and in many situations are "out of control" or nearly so. Presently, in most cases, the Bureau can protect the national resource lands from misuse only by "jawboning" the users of those lands.</p> <p>The Department of the Interior, in a submission to the Committee, described the "alarming situation" concerning lack of enforcement authority as follows:</p> <p>The Bureau's present capability to enforce the lawful use of the national resource lands which it administers is almost non-existent. Unlike other Federal agencies such as the National Park Service and the Forest Service, the Bureau generally lacks authority to require persons using its lands to follow the rules and regulations which have been issued for the proper use and management of these Federal lands. While the majority of users may follow the rules, an ever increasing number seem to delight in such "past-times" as tearing out toilet shelves and deodorizers, wrecking toilet doors and roofs, polluting springs and campground waters, cutting livestock fences, breaking guzzlers which supply water to wildlife, defacing archeological sites, painting rocks, cutting plastic water pipe, dynamiting petroglyphs, pulling out survey stakes and markers, burning signs, defacing trees, shooting water tanks, windmills, signs, garbage cans, livestock and wildlife, harassing other people, and similar acts of rowdiness. These problems are increasing at a faster rate than even the rapidly increasing use of the national resource lands.</p> <p>While basic law enforcement traditionally is a state problem and most major categories of public and private offenses are adequately covered by state law, such laws do not apply to the enforcement of special rules and regulations on Bureau administered lands. It is in this area that the most glaring deficiency exists in both state and Federal laws. As an example, in the State of California, there is a special section of the State code which covers specialty regulations, but this section is applicable only to state parks and recreation areas and cannot be applied to BLM lands.</p>
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<p><b>Official Commentary</b></p>	<p>To date, the Bureau's attempts to solve such problems by using the only tools available to it, persuasion, cooperation, and education, have not been successful. Every evidence indicates that without enforcement authority and authority to cooperate with State and local law enforcement agencies as spelled out in [S. 424], the Bureau's situation will continue to deteriorate. Some examples of past problems are shown below.</p> <p>It may not be known generally that the Charles Manson group involved in the Sharon Tate murders were apprehended on Bureau land.</p> <p>In the El Cajon are of California, a group of motorcyclists refused to obtain a permit for an ORV event and openly defied the Bureau personnel.</p> <p>Also in California, some visitors to a Bureau campground were engaged in unauthorized shooting. They were asked by the Bureau's maintenance man to desist. Not long thereafter, two \$1,500 concrete block toilets were dynamited, a picnic table was burned, three stoves were torn out, a cattle guard was torn down, signs were twisted out of shape, and garbage and trash were scattered throughout the campground. The investigating Sheriff's deputy who arrived later could not locate or identify the vandals and no arrest was made.</p> <p>Subsection (a) provides a maximum penalty of a \$1,000 fine or one-year imprisonment for any violations of regulations which the Secretary issues with respect to the management, protection, development, acquisition, and conveying of the national resource lands and property located on them. Further, it provides that any person charged with a violation of any of the regulations may be tried and sentenced by any United States magistrate, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.</p> <p>Subsection (b) authorizes the Attorney General, at the request of the Secretary, to institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from using the national resource lands in violation of laws or regulations relating to lands or resources managed by the Secretary.</p> <p>Subsection (c) provides authority to the Secretary to designate any employee to take any of five enforcement actions. None of these actions may be taken, however, for any purpose other than that of enforcing any law or regulation relating to lands or resources managed by the Secretary. The five enforcement actions are: (1) carry firearms; (2) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (3) make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; (4) search without warrant or process any person, place, or conveyance as provided by law; and (5) seize without warrant or process any evidentiary item as provided by law.</p> <p>First, this subsection authorizes enforcement for violations of all laws and regulations relating to the lands and resources managed by the Secretary, rather than only those laws relating to the national resource lands. Many laws relate to the national resource lands exclusively, many relate to other lands as well and most refer to "public lands" instead of national resource lands. Furthermore, authority to make arrests to enforce all Departmental laws and regulations will facilitate the coordination of law enforcement on all lands under the administrative jurisdiction of the Department of the Interior.</p> <p>The Committee is not, as the Administration requested, extending enforcement authority to any and all criminal activities. Some Committee members expressed concern about providing general law enforcement authority to Departmental personnel who lack the intensive training and the experience of state and local law enforcement personnel. Other members expressed concern that the law enforcement training required to permit general law enforcement by Departmental personnel would necessarily result in a diminution of time spent by that personnel in acquiring the necessary and more important resource management and protection skills. Instead, the Committee believes the better alternative is to authorize the Secretary to contract with state and local officials for general law enforcement on the national resource lands.</p>
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<p><b>Official Commentary</b></p>	<p>This authority is provided in section 308.</p> <p>Second, officials designated by the Secretary are given authority to carry firearms. Persons committing acts of vandalism on the national resource lands are often armed and dangerous. State and local governments do not expect their enforcement officials to make these arrests unarmed. Similarly, the Committee believes that the carrying of firearms is necessary both for the protection of Departmental personnel and for effective enforcement of the laws on the national resource lands.</p> <p>Third, there is an abundance of case law which defines the limits of valid searches and seizures under the Constitution. However, in spite of what is permissible under the Constitution, it is doubtful that law enforcement officials can make a search and seizure without a warrant unless specifically authorized by statute, <i>Aiuppa v. United States</i>, 338 F. 2d 146 (10<sup>th</sup> Cir., 1964). Therefore, the Committee decided to specifically include the authority to conduct searches and seizures in S. 424.</p> <p><i>Section 308.</i> This section confers on the Secretary authority to cooperate with State and local law enforcement agencies in enforcement of State and local laws on national resource lands. The State and Local Law Enforcement Act (16 U.S.C. Section 551a) gave similar authority to the Secretary of Agriculture with respect to national forest lands.</p> <p>Visitors and property on national resources lands are entitled to protection under State law; but, in the past, State and local officials have not policed the national resource lands with any degree of regularity. This is largely because these officials' constituents – the local citizenry – do not live on those lands. Furthermore, most State and local law enforcement programs suffer from a chronic shortage of funds and manpower. Most national resource lands are relatively extensive in size and sufficiently remote to make their policing expensive. Therefore, many State and local law enforcement officials reach these lands only during rescue operations or special calls.</p> <p>In order to make the policing of national resource lands more attractive to State and local law enforcement personnel, section 308 would provide the Secretary with the authority to contract (and thus pay for) it. Under this section, State and local law enforcement agencies would be reimbursed for extraordinary services. Normal law enforcement duties would continue to be supplied by State and local personnel on a nonreimbursable basis.</p> <p>From pages 1676-1677 of the <i>Legislative History of the FLPMA</i>, Extracts from Senate Report of the Committee on Interior and Insular Affairs, Significant problems with S. 1041 from U.S. Department of the Interior, Office of the Secretary dated November 20, 1973:</p> <p><i>Section 307(c)</i> authorizes the Secretary to designate employees to make arrests. The subsection is also intended to include such search and seizure authority as the Constitution allows any law enforcement officer. However, after an examination of search and seizure law, we are doubtful that searches and seizures made without a search warrant under this subsection could withstand a challenge as to statutory authority, as opposed to constitutional authority, <i>Aiuppa v. United States</i>, 338 F. 2d 146 (10<sup>th</sup> Cir., 1964). Committee Print #1 of the bill also omits authority to carry firearms. Because officers will encounter offenders on the national resource lands who are armed, and because they will be expected to apprehend suspected felons, authority to carry firearms is essential for self-protection, for protection of the public and for effective enforcement of the laws. The following is a new subsection recommended in lieu of 307 (c) in order to correct the problems explained above:</p> <p>(c)The Secretary may designate and authorize any employee to (i) carry firearms; (ii) execute and serve on the national resource lands any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of the provisions of any Federal law or regulation; (iii) make arrests on the national resource lands without warrant for any misdemeanor or violation of any Federal law or regulation he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; (iv) pursue and arrest outside the national</p>
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<p><b>Official Commentary</b></p>	<p>resource lands a person fleeing from the national resource lands to avoid and arrest or service of process which the employee is authorized to make on national resource lands; (v) when provided by law search any person, place, or conveyance on the national resource lands without warrant or process; and (vi) when provided by law seize any evidentiary item on the national resource lands without warrant or other process.</p> <p>From pages 1675 of the <i>Legislative History of the FLPMA</i>, Extracts from Senate Report of the Committee on Interior and Insular Affairs, Letter to Chairman from U.S. Department of the Interior, Office of the Secretary dated Feb 25, 1974:</p> <p><i>Section 101(1)</i> provides in part that the section shall not be construed to authorize the Secretary to require hunting and fishing permits. This provision may cause problems because the Secretary is intended to have the authority to close an area to hunting and fishing if necessary. Because the hunting and fishing permit provision is a very specific point inserted in general legislation, we recommend that it be deleted and, if necessary, explained in the Committee report.</p> <p>From pages 1679-1680 of the <i>Legislative History of the FLPMA</i>, Extracts from Senate Report of the Committee on Interior and Insular Affairs, Letter to Chairman from U.S. Department of the Interior, Office of the Secretary dated Feb 25, 1974:</p> <p>As to enforcement authority, the Subcommittee reported the bill with amendments to subsection 307(c) so that arrest authority would be limited to the enforcement of laws "relating to the management, protection, development, or sale of the national resource lands." In addition, the amended section omits authority for enforcement officials to make searches and seizures and to carry firearms. We oppose this limited enforcement authority. We would prefer arrest and search and seizure authority to enforce all laws relating to the Department as well as authority for enforcement officials to carry firearms. Below is our recommended substitute for subsection 307(c) followed by our reasons for the recommendation.</p> <p>(c) In order to enforce any law or regulation relating to lands or resources managed by the Secretary, the Secretary may designate any employee to (i) carry firearms; (ii) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (iii) make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; (iv) search without warrant or process any person, place, or conveyance as provided by law; and (v) seize without warrant or process any evidentiary item as provided by law.</p> <p>First, we would prefer that the section authorize arrest for violations of all laws and regulations relating to the lands and resources managed by the Secretary, rather than authorize arrests for violations of only those laws relating to the national resource lands. Many laws relate to the national resource lands exclusively, many relate to other lands as well as most refer to "public lands" instead of the "national resource lands." There would therefore be confusion as to whether a law applies to the national resource lands. Furthermore, authority to make arrests to enforce all Departmental laws and regulations will facilitate the coordination of law enforcement on all lands under our administrative jurisdiction.</p> <p>Second, we urge that enforcement officials be given authority to carry firearms, Our letter to Senator Haskell which is printed on page 60 of Committee Print #2 of the bill lists examples of vandalism committed on the national resource lands. Persons who have committed those acts are often armed and dangerous. State and local governments do not expect their enforcement officials to make these arrests unarmed. Similarly, we believe that the carrying of firearms is necessary both for the protection of the officials and for effective enforcement of the laws.</p> <p>Third, there is an abundance of case law which defines the limits of valid searches and seizures under the Constitution. However, in spite of what is permissible under the Constitution, it is doubtful that law enforcement officials can make a search and seizure without a warrant unless</p>
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<b>Official Commentary</b>	<p>specifically authorized by statute, <i>Aiuppa v. United States</i>, 338 F. 2d 146 (10<sup>th</sup> Cir., 1964). Since we believe that the Committee intends to authorize the conducting of searches and seizures permitted under the Constitution, we urge that the authority to conduct them, with and without warrants, be specifically included in the legislation.</p> <p>A task force, with the cooperation of representatives of the police forces of the National Park Service and the Bureau of Sport Fisheries and Wildlife, is presently preparing a report to advise on the training and use of enforcement officials on the national resource lands. The Department intends to implement a rigorous training program and to demand a high standard of work from these enforcement officials to insure that they exercise their duties in the most professional manner. The training will naturally include intensive instruction and experience in the use of firearms.</p> <p>From pages 1684 of the <i>Legislative History of the FLPMA</i>, Extracts from Senate Report of the Committee on Interior and Insular Affairs, Comments on Committee Print #2 from U.S. Department of the Interior, Office of the Secretary dated Feb 28, 1974:</p> <p>Finally, the Committee staff has expressed some concern that in section 307 a maximum penalty of a \$1,000 fine or 1 year imprisonment for violations of regulations may preclude trials before United States magistrates. The magistrates have statutory authority to try and sentence persons accused of violations for which those penalties may be posed, 18 U.S.C. § 3401 (a) and (f).</p>
<b>Analysis</b>	<p>The passed Bill several significant changes from the first S. 424:</p> <ol style="list-style-type: none"> <li>1. A new provision is added that provides for regulating use, occupancy, and development by permits and licensing. However, requiring permits for hunting and fishing is excluded. But commentary indicates that areas can be closed to hunting and fishing if necessary.</li> <li>2. The "Unauthorized Use" as a prohibition section is retained.</li> <li>3. The "property located thereon," phrase is retained with implication that Secretary may regulate the use and protection of all property present on the lands regardless of whether it is public or private.</li> <li>4. The Administration's proposal to decrease penalties from Class A misdemeanor (1 year imprisonment) to the "petty offense" level (6 months imprisonment) is rejected.</li> <li>5. Revises subsection (c) in conformity to the Administration's proposal. Enforcement authorities are for the purpose of all Departmental lands and resources rather than just "national resource lands."</li> <li>6. Enforcement authority to include executing and serving warrants and carrying firearms.</li> <li>7. The term "probable cause," has been replaced with "reasonable grounds."</li> <li>8. Retains a section for cooperation with State and local law enforcement agencies. This includes ability to reimburse such agencies.</li> <li>9. Despite the potential conflict identified by the Administration of the term "public lands" as opposed to "national resource lands," the bill continues to use the term "national resource lands," as it applies to regulatory penalties.</li> <li>10. The Bill passes by such a great margin with no floor debate on law enforcement issues that it implies general satisfaction with the enforcement authority provisions. But no action on it or any counterpart measure was taken by the House in this session of Congress.</li> </ol>

<b>Date</b>	January 30, 1975
<b>Bill</b>	S 507 (as introduced by Senator Haskell for Senator Jackson)
<b>Title</b>	National Resource Lands Management Act of 1975
<b>Proposed Enforcement Provisions</b>	<p>Sec. 101. MANAGEMENT. ... (1) regulating, through permits, licenses, leases, or such other instruments as the Secretary deems appropriate, the use, occupancy, or development of the national resource lands not provided for by other laws: <i>Provided, however,</i> That no provision of this Act shall be construed as authorizing the Secretary to require any Federal permit to hunt or fish on the national resource lands; ....</p> <p>Sec. 306. UNAUTHORIZED USE. – The use, occupancy, or development of any portion of the national resource lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited</p> <p>Sec. 307. ENFORCEMENT AUTHORITY. – (a) Any violation of regulations which the Secretary issues with respect to the management, protection, development, acquisition, and conveying of the national resource lands and property located thereon and which the Secretary identifies as being subject to this section shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.</p> <p>(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from using the national resource lands in violation of laws or regulations relating to lands or resources managed by the Secretary.</p> <p>(c) For the specific purpose of enforcing any law or regulation relating to lands or resources managed by the Secretary, the Secretary may designate any employee to (i) carry firearms; (ii) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (iii) make arrest without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; (iv) search without warrant, or process any person, place, or conveyance as provided by law; and (v) seize without warrant or process any evidentiary item as provided by law.</p> <p>Sec. 308. COOPERATION WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES. – In connection with administration and regulation of the use and occupancy of the national resource lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the national resource lands.</p>

<b>Official Commentary</b>	<p>From page 54 of the <i>Legislative History of the FLPMA</i>, Extracts from Congressional Record - Senate, January 30, 1975:</p> <p>Mr. HASKELL, In the vacuum created by the absence of this authority, the unnecessary waste and destruction of our country's most valuable resource – its land – is almost awesome in its dimensions. Vast areas are eroding from vehicular overuse and misuse priceless petroglyphs and other archeological treasures are dug up or literally blasted off of rock walls and carted off for sale in stores in Los Angeles, Salt Lake city, and other Western communities; BLM facilities are defaced, burned, or dynamited; significant, private land-locked tracts of national resource lands are serving as private reserves for a few select people in the absence of any means to obtain public access; destruction of the land and its facilities by users occurs without any requirement that those users restore them or post a security sufficient to insure their restoration.</p> <p>Mr. President, these and other examples of the degradation of our public domain land due to the fact that the BLM lacks an adequate statutory base to protect them make our continuing failure to enact the necessary legislation an embarrassment and, worse, a dereliction of duty. Certainly, there is no more fundamental responsibility of a public official than to husband public assets – be they land or money. Unless we promptly enact this legislation we will have failed that principal responsibility.</p> <p>From page 64 of the <i>Legislative History of the FLPMA</i>, Extracts from Congressional Record - Senate, January 30, 1975:</p> <p>Mr. JACKSON, Perhaps the most critical finding of the commission is the appalling absence of the enforcement authority so necessary for any land management agency.</p>
<b>Analysis</b>	<p>S 507 is introduced and the enforcement provisions are identical to those passed in the previous Senate as S 424.</p>

<b>Date</b>	March 19, 1975
<b>Bill</b>	HR 5224 (as introduced by Congressman Ruppe)
<b>Title</b>	National Resource Lands Management Act of 1975
<b>Proposed Enforcement Provisions</b>	<p>Sec. 101. ... (1) regulating, through permits, licenses, leases, or such other instruments as the Secretary deems appropriate, the use, occupancy, or development of the national resource lands not provided for by other laws; <i>Provided, however,</i> That no provision of this Act shall be construed as authorizing the Secretary to require any Federal permit to hunt or fish on the national resource lands; ....</p> <p>Sec. 306. UNAUTHORIZED USE. – The use, occupancy, or development of any portion of the national resource lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited</p> <p>Sec. 307. ENFORCEMENT AUTHORITY. – (a) Any violation of regulations which the Secretary issues with respect to the management, protection, development, acquisition, and conveying of the national resource lands and property located thereon and which the Secretary identifies as being subject to this section shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than twelve months, or both.</p> <p>(b) For the specific purpose of enforcing any law or regulation relating to lands or resources managed by the Secretary, the Secretary may designate any employee to (i) carry firearms; (ii) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (iii) make arrest without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.</p> <p>(c) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from using the national resource lands in violation of laws or regulations relating to lands or resources managed by the Secretary.</p> <p>Sec. 308. COOPERATION WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES. – In connection with administration and regulation of the use and occupancy of the national resource lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the national resource lands.</p>
<b>Official Commentary</b>	This bill represents the Administration's recommended version of S 507 as introduced as S 1292. No action was taken on this bill.
<b>Analysis</b>	This bill was the counterpart bill to S 507. The Administration obviously provided to the house the same language as used in S 1292. (See S 1292, March 21, 1975)

<b>Date</b>	March 21, 1975
<b>Bill</b>	S 1292 (as introduced by Senator Haskell for Senator Jackson)
<b>Title</b>	National Resource Lands Management Act of 1975
<b>Proposed Enforcement Provisions</b>	<p>Sec. 101. ... (1) regulating, through permits, licenses, leases, or such other instruments as the Secretary deems appropriate, the use, occupancy, or development of the national resource lands not provided for by other laws; <i>Provided, however,</i> That no provision of this Act shall be construed as authorizing the Secretary to require any Federal permit to hunt or fish on the national resource lands; ....</p> <p>Sec. 306. UNAUTHORIZED USE. – The use, occupancy, or development of any portion of the national resource lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited</p> <p>Sec. 307. ENFORCEMENT AUTHORITY. – (a) Any violation of regulations which the Secretary issues with respect to the management, protection, development, acquisition, and conveying of the national resource lands and property located thereon and which the Secretary identifies as being subject to this section shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than twelve months, or both.</p> <p>(b) For the specific purpose of enforcing any law or regulation relating to lands or resources managed by the Secretary, the Secretary may designate any employee, while within the national resource lands, to: (i) carry firearms; (ii) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (iii) make arrest without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.</p> <p>(c) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from using the national resource lands in violation of laws or regulations relating to lands or resources managed by the Secretary.</p> <p>Sec. 308. COOPERATION WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES. – In connection with administration and regulation of the use and occupancy of the national resource lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the national resource lands.</p>
<b>Official Commentary</b>	This bill represents the Administration's recommended version of S 507. No action was taken on this bill.
<b>Analysis</b>	<p>This bill differs from the previous S 507 in the following way:</p> <ol style="list-style-type: none"> <li>1. The authority for trial and sentencing by United States magistrates is removed.</li> <li>2. Sections 307 (b) and 307 (c) are reversed in their order.</li> <li>3. "Designated employees" have authority only "while within the national resource lands."</li> <li>4. The authority to execute searches and the authority to seize evidence are removed.</li> </ol>

<b>Date</b>	March 26, 1975
<b>Bill</b>	HR 5622 (as introduced by Congressman Seiberling)
<b>Title</b>	National Resource Lands Management Act of 1975
<b>Proposed Enforcement Provisions</b>	<p>Sec. 101. MANAGEMENT. ... (1) regulating, through permits, licenses, leases, or such other instruments as the Secretary deems appropriate, the use, occupancy, or development of the national resource lands not provided for by other laws: <i>Provided, however,</i> That no provision of this Act shall be construed as authorizing the Secretary to require any Federal permit to hunt or fish on the national resource lands; ....</p> <p>Sec. 306. UNAUTHORIZED USE. – The use, occupancy, or development of any portion of the national resource lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited</p> <p>Sec. 307. ENFORCEMENT AUTHORITY. – (a) Any person who violates –</p> <p>(1) any regulation issued by the Secretary with respect to the management, use, protection, development, acquisition, and conveying of the national resource lands, including the resources and property located thereon;</p> <p>(2) any provision of a permit, lease, license, or other document issued by the Secretary with respect to the use, occupancy, or development of such public lands; or</p> <p>(3) any provision of this Act;</p> <p>shall be fined of not more than \$1,000 or imprisoned for not more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.</p> <p>(b) For the specific purpose of enforcing any Federal law or regulation relating to those national resource lands or resources managed by him, the Secretary may designate an employee who has had specialized law enforcement training to (1) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (2) make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; (3) carry firearms (so long as the employee has been specifically trained to handle firearms, and then only to the extent necessary to carry out his responsibilities while actually on duty); (4) search without warrant, or process any person, place, or conveyance according to any law or rule of law; and (5) seize without warrant or process any evidentiary item as provided by law.</p> <p>(c) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from using the national resource lands in violation of laws or regulations relating to lands or resources managed by the Secretary.</p> <p>Sec. 308. COOPERATION WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES. – In connection with administration and regulation of the use and occupancy of the national resource lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the national resource lands.</p>
<b>Official Commentary</b>	This bill was introduced independent from the previous HR 5224. No action was taken on this bill.
<b>Analysis</b>	<p>It differs from HR 5224 by:</p> <ol style="list-style-type: none"> <li>1. Specifically providing criminal penalties for violating "any provision of a permit, lease, license, or other document."</li> <li>2. Adding statutory authority for searches and seizures.</li> <li>3. Adding to the carry firearms authority "so long as the employee has been specifically trained to handle firearms, and then only to the extent necessary to carry out his responsibilities while actually on duty."</li> </ol>

<b>Date</b>	December 15, 1975
<b>Bill</b>	S 507 (as introduced by Senator Haskell)
<b>Title</b>	National Resource Lands Management Act of 1975
<b>Proposed Enforcement Provisions</b>	<p>Sec. 101. MANAGEMENT. ... (1) regulating, through permits, licenses, leases, or such other instruments as the Secretary deems appropriate, the use, occupancy, or development of the national resource lands not provided for by other laws: <i>Provided, however</i>, That no provision of this Act shall be construed as authorizing the Secretary to require any Federal permit to hunt or fish on the national resource lands; ....</p> <p>Sec. 306. UNAUTHORIZED USE. – The use, occupancy, or development of any portion of the national resource lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited</p> <p>Sec. 307. ENFORCEMENT AUTHORITY. – (a) Any violation of regulations which the Secretary issues with respect to the management, protection, development, acquisition, and conveying of the national resource lands and property located thereon and which the Secretary identifies as being subject to this section shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.</p> <p>(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from using, occupying, or developing the national resource lands in violation of laws or regulations relating to lands or resources managed by the Secretary.</p> <p>(c) For the specific purpose of enforcing any law or regulation relating to lands or resources managed by the Secretary, the Secretary may designate any employee to (1) carry firearms; (2) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; and (3) make arrest without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.</p> <p>Sec. 308. COOPERATION WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES. – In the administration and regulation of the use, occupancy, and development of the national resource lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use, occupancy, and development of the national resource lands.</p>

<p><b>Official Commentary</b></p>	<p>From page 91 of the <i>Legislative History of the FLPMA</i>, Extracts from Senate Report of the Committee on Interior and Insular Affairs, Summary of Major provisions (S 507): This extract reads the same as that on page 1556 shown in Congressional commentary for S 424 (July 8, 1974).</p> <p>From page 122 - 125 of the <i>Legislative History of the FLPMA</i>, Extracts from Senate Report of the Committee on Interior and Insular Affairs, Section - by - section analysis (S 507): This extract reads the same as that on pages 1577 - 1580 shown in Congressional commentary for S 424 (July 8, 1974), except for the addition of following:</p> <p>Of course, the Committee expects that most violations of the Secretary's regulations can be resolved on an administrative basis without instituting criminal or civil action pursuant to subsections (a) and (b). This is particularly true in the case of minor violations, such as innocent trespass by individuals. While these provisions provide authority for legal action, they should not be viewed as a substitute for administrative procedures and remedies.</p> <p>Subsection (c) provides authority to the Secretary to designate any employee to take any of three enforcement actions. None of these actions may be taken, however, for any purpose other than that of enforcing any law or regulation relating to lands or resources managed by the Secretary. The three enforcement actions are: (1) carry firearms; (2) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (3) make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.</p> <p>From page 152 of the <i>Legislative History of the FLPMA</i>, Extracts from Senate Report of the Committee on Interior and Insular Affairs, Committee amendment (S 507):</p> <p>(8) <i>Section 307 (c)</i>. The committee deleted language authorizing warrantless searches and seizures in specified situations by designated Department employees. The authority to conduct such searches and seizures in certain circumstances exists in the common law, and is commonly exercised without a statutory basis by FBI and Treasury agents, for example. Therefore, there appeared no necessity to put into statutory form an authority which already exists in the common law, particularly when to do so might imply an unintended expansion or diminution of the authority.</p> <p>From page 156 and 158 of the <i>Legislative History of the FLPMA</i>, Extracts from Senate Report of the Committee on Interior and Insular Affairs, Letter to Chairman from U.S. Department of the Interior, Office of the Secretary dated Mar. 6, 1975: (S 507):</p> <p>It would significantly facilitate management of the national resource lands by making violation of laws and regulations pertaining to them a crime and by vesting enforcement authority in certain designated Departmental employees. In addition, the bill would authorize the Secretary to cooperate with State and local law enforcement agencies on national resource lands and to reimburse them for extraordinary services on national resource lands.</p> <p>S. 507 specifies in section 307 (b) that law enforcement officers of the Bureau of Land Management shall have the authority to conduct warrantless searches and seizures. The Administration proposal does not. This is a power which already exists in the common law in certain situations, and is commonly exercised without statutory codification by FBI and Treasury agents for example; it is felt that it is not necessary to put into statutory form an authority which already exists in the common law.</p>
<p><b>Analysis</b></p>	<ol style="list-style-type: none"> <li>1. The Administration version (S 1292) that did not provide the authority for trial and sentencing by United States magistrates was not adopted.</li> <li>2. The warrantless search and seizure authority proposed in previous versions was deleted pursuant to the Administration's recommendation. The Administration's recommendation was the exact opposite of what they recommended with S 424 (July 8, 1974) in this matter.</li> </ol>

<b>Date</b>	February 25, 1976
<b>Bill</b>	S 507 (as passed by Senate) 78 yea, 11 nay
<b>Title</b>	National Resource Lands Management Act of 1976
<b>Proposed Enforcement Provisions</b>	<p>Sec. 101. MANAGEMENT. ... (1) regulating, through permits, licenses, leases, or such other instruments as the Secretary deems appropriate, the use, occupancy, or development of the national resource lands not provided for by other laws including long term leases to permit individuals to utilize national resource lands for habitation, cultivation, and the development of small trade or manufacturing concerns; <i>Provided, however,</i> That no provision of this Act shall be construed as authorizing the Secretary to require any Federal permit to hunt or fish on the national resource lands; ....</p> <p>Sec. 306. UNAUTHORIZED USE. – The use, occupancy, or development of any portion of the national resource lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited</p> <p>Sec. 307. ENFORCEMENT AUTHORITY. – (a) Any violation of regulations which the Secretary issues with respect to the management, protection, development, acquisition, and conveying of the national resource lands and property located thereon and which the Secretary identifies as being subject to this section shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate judge designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.</p> <p>(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from using, occupying, or developing the national resource lands in violation of laws or regulations relating to lands or resources managed by the Secretary.</p> <p>(c) For the specific purpose of enforcing any Federal law or regulation relating to lands or resources managed by the Secretary, the Secretary may designate any employee to (1) carry firearms; (2) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; and (3) make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.</p> <p>Sec. 308. COOPERATION WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES. – In the administration and regulation of the use and occupancy of the national resource lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use, occupancy, and development of the national resource lands.</p>

<p><b>Official Commentary</b></p>	<p>From page 200 of the <i>Legislative History of the FLPMA</i>, Extracts from Congressional Record – Senate, February 23, 1976 (S 507):</p> <p>Mr. STEVENS. The commissioner of highways has also expressed concern with the part of the bill that gives BLM enforcement authority and states: This may be a problem on other States, but in Alaska they are exercising almost autonomous authority as it is.</p> <p>From page 205 of the <i>Legislative History of the FLPMA</i>, Extracts from Congressional Record – Senate, February 23, 1976 (S 507):</p> <p>The Senator from Wyoming (Mr. Hansen) proposes an amendment as follows: On page 85, line 22, insert the word "Federal" after the word "any", and immediately before the word, "law."</p> <p>Mr. HANSEN, Mr. President, what this amendment does is to make clear that, insofar as the powers of those persons charged with enforcing any law or regulation related to lands and resources managed by the Secretary, it shall be the Federal law or regulation that is to be interpreted. It is simply to clarify what the grant of authority and power is. There has been concern. I have letters from constituents in my State saying, "Are we going to make cops out of every single Bureau of Land Management employee?" It is not the intention in this section of the bill to do any such thing. I hope that the Senator from Colorado, the manager of the bill, might accept this amendment. It simply clarifies what the situation is.</p> <p>From page 212 of the <i>Legislative History of the FLPMA</i>, Extracts from Congressional Record – Senate, February 25, 1976 (S 507):</p> <p>Mr. JACKSON, Perhaps the most critical finding of the commission is the appalling absence of the enforcement authority so necessary for any land management agency. The National Resource Lands Management Act would provide the BLM with authority similar to that already possessed by the Park Service and the Forest Service.</p>
<p><b>Analysis</b></p>	<p>The following changes were made from the previous version:</p> <ol style="list-style-type: none"> <li>1. The phrase: "... including long term leases to permit individuals to utilize national resource lands for habitation, cultivation, and the development of small trade or manufacturing concerns" was added to the permits and licenses provision.</li> <li>2. The word "Federal" was added to the enforcement provisions pursuant to Senator Hansen's proposed amendment.</li> </ol>

<b>Date</b>	May 13, 1976
<b>Bill</b>	HR 13777(as introduced by Congressman Melcher) H.R. 13777, by Reps. Melcher, Skubitz, Johnson of California, Steiger of Arizona, Santini, Don H. Clausen, young of Alaska, Symms, Weaver, and Johnson of Colorado, is a "clean bill" representing the final version of the legislation as approved by the Committee. It was introduced immediately after the deliberations on H. R. 5224 by Rep. Ruppe (by request) were concluded and was ordered reported by the Committee on May 13, 1976. A similar bill, S 507, was approved by the Senate on February 25, 1976.
<b>Title</b>	Federal Land Policy and Management Act of 1976
<b>Proposed Enforcement Provisions</b>	<p style="text-align: center;">LAND USE PLANNING</p> <p>Sec. 202 (f)(1) In managing the public lands under a land use plan, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands: <i>Provided, ...</i> Nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National forest System and adjacent waters or as infringing on the responsibility and authority of the States for management of fish and resident wildlife. However, the Secretary concerned may designate areas of the public lands and of lands in the National Forest System where, and establish periods when, no hunting or fishing will be permitted for reasons of public safety. Except in emergencies, any regulations of the Secretary concerned relating to hunting and fishing pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. Nothing in this Act shall modify or change any Federal law relating to migratory birds.</p> <p style="text-align: center;">ENFORCEMENT AUTHORITY</p> <p>Sec. 302. (a) The Secretary may issue regulations necessary to implement the provisions of this Act with respect to the management, use, and protection of the public lands, including the property located thereon. Any person who knowingly and willfully violates any such regulation lawfully issued pursuant to this Act shall be fined no more than \$1,000 or imprisoned no more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18.</p> <p>(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from utilizing public lands in violation of regulations issued by the Secretary under this Act.</p> <p>(c)(1) When the Secretary determines that assistance is necessary to enforce any Federal law or regulation relating to the public lands or their resources he shall offer a contract to the regulatory and law enforcement officials of any State or political subdivision thereof with the view of achieving maximum feasible reliance upon such regulatory and law enforcement officials in administering such regulations and laws. The Secretary shall negotiate annually with such officials who have authority to enter into contracts for such purposes and offer them a reasonable contract under which such officials will enforce such Federal regulations and laws. In performance of their duties under such contracts, such officials and their agents are authorized to execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; make arrests without warrant or process for a misdemeanor he has</p>

<p><b>Proposed Enforcement Provisions</b></p>	<p>reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; search without warrant or process any person, place, or conveyance according to any Federal law or rule of law; and seize without warrant or process any evidentiary item as provided by Federal law. The Secretary shall reimburse such States or political subdivisions thereof for the expenditures incurred and liabilities assumed by them in rendering such service. The Secretary shall provide such law enforcement training as he deems necessary in order to carry out the contracted for responsibilities with the local law enforcement agency. While exercising the powers and authorities provided by such contract pursuant to this section, such local law enforcement officials and their officials and agents shall have all the immunities of Federal law enforcement officials and officers.</p> <p>(2) In those instances where State and local enforcement officials do not have authority to enter into contracts under this section, or where the Secretary offers a contract to State and local law enforcement officials as provided in this section and the offer of such contract is not accepted within the time specified by the Secretary, the Secretary may designate Federal personnel to carry out his enforcement responsibilities on the public lands. Such personnel shall receive the training and have the responsibilities and authority provided for in paragraph (1) of this subsection.</p> <p>(d) In connection with the administration and regulation of the use and occupancy of the public lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws or ordinances of such State or subdivision. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the public lands.</p> <p>(e) Nothing in this section shall prevent the Secretary from promptly establishing a uniformed desert ranger force in the California Desert Conservation Area established pursuant to section 401 of this Act for the purpose of enforcing Federal laws and regulations relating to the public lands and resources managed by him in such area. The officers and members of such ranger force shall have the same responsibilities and authority as provided for in paragraph (1) of this subsection.</p> <p>(f) Nothing in this Act shall be construed as reducing or limiting the enforcement authority vested in the Secretary by any other statute.</p>
<p><b>Official Commentary</b></p>	<p>From page 433 of the <i>Legislative History of the FLPMA</i>, Extracts from House Report of the Committee on Interior and Insular Affairs, Authority for the Bureau of Land Management (HR 13777):</p> <p>The authorities that would be granted to the Bureau of Land Management involve: ... (9) enforcement of laws and regulations; ...</p> <p>From page 436 of the <i>Legislative History of the FLPMA</i>, Extracts from House Report of the Committee on Interior and Insular Affairs, Section-by-section analysis (HR 13777):</p> <p>In Subsection (f) (1) the Secretary of the Interior is directed to regulate through permits, licenses, leases, published rules, or other documents, the use, occupancy and development of the public lands. The terms and conditions of his regulations would be subject to applicable law. The term "published rules" is used to make clear that individual authorizations are not required (such as for casual uses) where the law otherwise does not mandate that type or permission. This subsection will provide the Secretary with authority, under such terms and conditions as are found necessary and consistent with existing law, to authorize and regulate uses not otherwise specifically provided for by law. It provides that hunting and fishing will be permitted in accordance with Federal and State laws and that no Federal permits for hunting and fishing are authorized by this section. It permits the Secretary to close areas to hunting and fishing for reasons of public safety. The Secretaries are expected to use the authority granted by the bill to close areas only if essential to the public safety, and then only for the shortest</p>

<p><b>Official Commentary</b></p>	<p>periods needed to accomplish this purpose. Protection of the public safety including prevention and avoidance of hazards to persons, animals, and property. The authority granted is not in derogation of other authority granted by law for the protection of natural resources, including endangered species.</p> <p>From page 444 - 445 of the <i>Legislative History of the FLPMA</i>, Extracts from House Report of the Committee on Interior and Insular Affairs, Section-by-section analysis (HR 13777):</p> <p><i>Section 302 – Enforcement Authority</i></p> <p>Subsection (a) makes violators of regulations issued by the Secretary of the Interior pursuant to H.R. 13777 subject to fine (not more than \$1,000) and imprisonment (not longer than 12 months). It provides that such violators can be fined and sentenced by a United States magistrate. The boundaries of the public lands are poorly marked or not marked at all, making it difficult for members of the public to know when in fact they are on public lands. Rules and regulations for the public lands are numerous and not too well known generally. These make compliance with the rules and regulations a problem for both the Secretary of the Interior and the using public. The committee expects that the Secretary will use his law enforcement authority in a manner which will help the public abide by his rules and regulations, the objective being the preservation and protection of public resources and the public safety. Criminal prosecutions and penalties should be remedies of last resort. Emphasis should be given to the dissemination of information, the creation of a law enforcement presence which will advise the public, and administrative resolution of violations rather than prosecution in the courts.</p> <p>Subsection (b) authorizes the Attorney General to institute civil actions for an injunction or other appropriate order to prevent unlawful utilization of public lands.</p> <p>Subsection (c) provides the Secretary of the Interior with authority to enforce his regulations and for that purpose to execute and serve warrants, make arrests, and engage in search and seizure under prescribe conditions and rules. However, it directs the Secretary to rely to the maximum feasible degree on State and local law enforcement officials for enforcement under this section. To this end, he will offer mutually acceptable contracts to those officials willing and able to take on this work on a reimbursable basis. In the absence of such contracts, the Secretary will provide for law enforcement by Federal personnel. The Secretary is directed to provide adequate training to those upon whom he relies for law enforcement.</p> <p>Subsection (d) authorizes the Secretary of the Interior to cooperate with State and local officials, financially and otherwise, to assist in the enforcement of State and local laws and ordinances where such activities will assist in the administration and regulation of use and occupancy of the public lands. The Committee expects the Secretary of the Interior to construe this authority broadly, for the purpose is to provide financial assistance to States and their subdivisions where the existence of large areas of public lands deprives the government of adequate enforcement of laws and ordinances as they apply to the public lands.</p> <p>Subsection (e) authorizes the Secretary of the Interior to proceed promptly with the establishment of a uniformed desert ranger force for the California Desert National Conservation Area authorized by Section 401 of the bill. The subsection clothes such rangers with the law enforcement authority provided to the Secretary by this section.</p> <p>Subsection (f) preserves to the Secretary whatever other statutory law enforcement authority he now enjoys.</p> <p>From page 657 of the <i>Legislative History of the FLPMA</i>, Extracts from House Report of the Committee on Interior and Insular Affairs, Supplemental views of Congresswoman Shirley Pettis (HR 13777):</p> <p>At present, the Bureau of Land Management is unable to enforce federal laws and regulations relating to the public lands of the California Desert, or anywhere else for that matter. The California Desert Ranger Force created in this Act, as well as the law enforcement powers given to it, is a beginning. It seems to me that the law enforcement section of the Act, Section 302,</p>
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<p><b>Official Commentary</b></p>	<p>while meeting the initial needs of the desert, is inadequate. Local and state law enforcement officials have enough work to do now without having to also try to exercise authority of federal lands in behalf of the Bureau of Land Management. Other federal agencies have for many years had effective law enforcement capabilities on the lands for which they are responsible. There certainly should be some changes made in the law enforcement section of this Act to provide all of the nation's public lands under the jurisdiction of BLM the protection which is to be afforded to the California Desert.</p> <p>From page 660 - 661 of the <i>Legislative History of the FLPMA</i>, Extracts from House Report of the Committee on Interior and Insular Affairs, Dissenting views (HR 13777):</p> <p><i>Enforcement Authority – Sec. 302</i></p> <p>Although one of the most objectionable provisions of this section was partially cleaned up by the Committee – pertaining to enforcement of regulations by the Secretary – the section remains unworkable. At present, Bureau of Land Management employees have totally inadequate authority to enforce laws and regulations relating to the natural resources of the public lands, such as destruction of archeological sites, harassment of wildlife, destruction of land by off-road vehicles. Normally, the only remedy available for BLM officials is to make a citizen's arrest or call the local sheriff, who may be many miles distant and who also may be philosophically unsympathetic to Federal regulations.</p> <p>This bill does nothing to improve that situation. It directs the Secretary to offer "reasonable" contracts to state and local law enforcement officials whenever their help is needed to enforce Federal laws and regulations. <i>Only</i> if those authorities <i>refuse</i> such a contract can the Interior Department exercise enforcement authority. Thus BLM officials would <i>still</i> have to call the local sheriff.</p> <p>Furthermore, there is no assurance or requirement in the bill that the local enforcement authorities will have the necessary qualifications for carrying out these added responsibilities, especially for those concerning resource management. Indeed, the Secretary cannot even take into account past unsatisfactory performance as a reason for not offering the contract. Nor, in the draft of the Committee report which we reviewed, was there any definition of what a "reasonable" contract would consist of.</p> <p>For many years the National Park Service, U.S. Forest Service and Fish and Wildlife Service have had effective enforcement authority on the lands they manage. Curiously, the bill gives the necessary authority for the California Desert but does not do so for the rest of our public lands, where the same kinds of problems exist.</p>
<p><b>Analysis</b></p>	<p>The enforcement provisions of this bill represent several significant differences from the enforcement provisions provided in the counterpart bill (S 507) passed by the Senate by a significant margin. It can also be seen that there was significant opposition to these differences. Some of these differences (from S 507) are as follows:</p> <ol style="list-style-type: none"> <li>1. The provision for regulating hunting and fishing activity is significantly expanded in this version. This bill specifically includes in the statutory language much of the information previously contained in official commentary on this issue. The authority to close areas to hunting and fishing is specifically included, but only for public safety reasons. The provision continues to exclude any authority to require Federal hunting or fishing permits. This bill also makes the same provisions applicable to the National Forest System. With emergencies as an exception, the bill specifically requires consultation with the affected fish and game department prior to implementing any hunting and fishing closures.</li> <li>2. In all the proposed bills in the legislative history introduced thus far, this is the first that includes the principle of "maximum feasible reliance" on State and local officials for enforcing Federal laws and regulations.</li> <li>3. Combining all of the enforcement provisions into one section and re-numbering it as Section 302.</li> <li>4. Former Section 306 on Unauthorized Use was removed.</li> </ol>

<b>Analysis</b>	<p>5. The term "national resource lands" has been changed to "public lands" throughout.</p> <p>6. The phrase "with respect to the management, protection, development, acquisition, and conveying" has been changed to "with respect to the management, use, and protection."</p> <p>7. The phrase "knowingly and willfully" is added as a condition of when a violation of regulations will have the prescribed criminal penalties.</p> <p>8. The phrase "identifies as being subject to this section" is replaced with "lawfully issued pursuant to this Act."</p> <p>9. Former Subsection 307(c) is now broken into Subsections (c)(1) and (c)(2), with (c)(1) addressing use of State and local officials to enforce Federal laws and regulations and (c)(2) addressing Federal personnel enforcing Federal laws and regulations.</p> <p>10. The proposed (c)(1) requires that "when the Secretary determines assistance is necessary" for Federal enforcement on public lands that "maximum feasible reliance" is placed on contracting for this with State and local law enforcement agencies.</p> <p>11. The proposed (c)(1) requires offering such contracts annually.</p> <p>12. The proposed (c)(1) provides the specific federal authorities granted to such local officials under a contract.</p> <p>13. The list of law enforcement authorities granted to such local officials is the same as S 507, except the authority to carry firearms was removed.</p> <p>14. The proposed (c)(1) requires reimbursement of local officials under such contracts.</p> <p>15. The proposed (c)(1) requires the Secretary to provide training "he deems necessary" to such local officials under contracts.</p> <p>16. The proposed (c)(2) authorizes the Secretary to designate Federal personnel to carry out his law enforcement responsibilities, but only if State and local officials are not authorized to enter into a contract or refuse such contract.</p> <p>17. If Federal personnel are designated under proposed (c)(2) they are to have the same responsibilities and authorities identified for local officials under contract pursuant to proposed (c)(1).</p> <p>18. The former Subsection 308 is re-numbered as 302 (d) and the phrase "in connection with" is added as a preface to the first sentence.</p> <p>19. An entirely new Subsection 302(e) is added that requires the prompt establishment of a "desert ranger force" in the California Desert with the purpose of "enforcing Federal laws and regulations."</p> <p>20. An entirely new Subsection 302(f) is added that makes certain that any other enforcement authority the Secretary has from existing laws are not limited or reduced by this Act.</p>
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<b>Date</b>	July 22, 1976
<b>Bill</b>	HR 13777 (as amended and passed by the House) 169 yea, 155 nay
<b>Title</b>	Federal Land Policy and Management Act of 1976
<b>Proposed Enforcement Provisions</b>	<p style="text-align: center;">LAND USE PLANNING</p> <p>Sec. 202 (f)(1) In managing the public lands under a land use plan, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands:  <i>Provided, ...</i> Nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as infringing on the responsibility and authority of the States for management of fish and resident wildlife. However, the Secretary concerned may designate areas of the public lands and of lands in the National Forest System where, and establish periods when, no hunting or fishing will be permitted for reasons of public safety. Except in emergencies, any regulations of the Secretary concerned relating to hunting and fishing pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. Nothing in this Act shall modify or change any Federal law relating to migratory birds or to endangered or threatened species.</p> <p style="text-align: center;">ENFORCEMENT AUTHORITY</p> <p>Sec. 302. (a) The Secretary may issue regulations necessary to implement the provisions of this Act with respect to the management, use, and protection of the public lands, including the property located thereon. Any person who knowingly and willfully violates any such regulation lawfully issued pursuant to this Act shall be fined no more than \$1,000 or imprisoned no more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.</p> <p>(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from utilizing public lands in violation of regulations issued by the Secretary under this Act.</p> <p>(c)(1) When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations. The Secretary shall negotiate on reasonable terms with such officials who have authority to enter into such contracts to enforce such Federal laws and regulations. In the performance of their duties under such contracts such officials and their agents are authorized to execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; search without warrant or process any person, place, or conveyance according to any Federal law or rule of law; and seize without warrant or process any evidentiary item as provided by Federal law. The Secretary shall provide such law enforcement</p>

<p><b>Proposed Enforcement Provisions</b></p>	<p>training as he deems necessary in order to carry out the contracted for responsibilities. While exercising the powers and authorities provided by such contract pursuant to this section, such law enforcement officials and their agents shall have all the immunities of Federal law enforcement officials.</p> <p>(2) The Secretary may designate Federal personnel to carry out law enforcement responsibilities with respect to the public lands and their resources. Such designated personnel shall receive the training and have the responsibilities and authority provided for in paragraph (1) of this subsection.</p> <p>(d) In connection with the administration and regulation of the use and occupancy of the public lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws or ordinances of such State or subdivision. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the public lands.</p> <p>(e) Nothing in this section shall prevent the Secretary from promptly establishing a uniformed desert ranger force in the California Desert Conservation Area established pursuant to section 401 of this Act for the purpose of enforcing Federal laws and regulations relating to the public lands and resources managed by him in such area. The officers and members of such ranger force shall have the same responsibilities and authority as provided for in paragraph (1) of subsection (c) of this section.</p> <p>(f) Nothing in this Act shall be construed as reducing or limiting the enforcement authority vested in the Secretary by any other statute.</p>
<p><b>Official Commentary</b></p>	<p>From page 669 of the <i>Legislative History of the FLPMA</i>, Extracts from Congressional Record – House, July 22, 1976 (HR 13777):</p> <p>Mr. SEIBERLING. Mr. Chairman. While I generally support the concept of legislation to provide management authority for the Bureau of Land Management – BLM – there are specific provisions in H. R. 13777 which I do not consider in the public interest. Unless these provisions are substantially changed, I cannot support the legislation.</p> <p>Of particular concern are the provisions dealing with BLM’s law enforcement authority and withdrawals that are made to protect our public lands. Several amendments will be offered to make much needed improvements in these provisions. While I will speak in more detail on the amendments when they are offered, I would like to make general comments on some of them at this time.</p> <p>The BLM currently has very limited law enforcement authority, mainly related to the protection of certain animals and resources on the public lands. Yet with increased public use of these lands, crimes of all types are increasing – crimes against people as well as against natural resources. A BLM employee can witness a crime being committed, but the most he can do is either drive many miles to the local sheriff or else make a citizens arrest, which throws him into personal jeopardy, both legal and physical. In many cases it is extremely difficult to convince local officials to enforce Federal laws and regulations, since often there is no corresponding State laws and since the local officials do not have the immunities of a Federal officer.</p> <p>Except for the California desert, H. R. 13777 does very little to improve this situation. The bill would require the Interior Department to rely to the maximum practical extent on State and local police to enforce Federal laws and regulations. It requires the Secretary to annually negotiate and offer a reasonable law enforcement contract to State and local enforcement officials. Only if the officials lack authority to contract or decline the Secretary’s contract, could the Secretary designate Federal personnel to enforce Federal laws or regulations.</p>

<p><b>Official Commentary</b></p>	<p>I intend to offer an amendment that would clarify the Secretary's authority for law enforcement. It would still require the Secretary to achieve maximum feasible reliance upon local law enforcement officials, and would authorize him to offer contracts to appropriate local law enforcement officials. It would not require him to offer these contracts each and every year. It would, however, allow him to designate trained Federal personnel to carry out Federal law enforcement responsibilities, whether or not the local officials accept the contracts. And it would assure that our Federal laws are adequately enforced and that our public lands are fully protected.</p> <p>From page 673 of the <i>Legislative History of the FLPMA</i>, Extracts from Congressional Record – House, July 22, 1976 (HR 13777):</p> <p>Mrs. PETTIS. It is sad to say, but despite its jurisdiction over and responsibility for millions of acres of land, the BLM has no capability to be more than a custodial agency. This is especially true in the California Desert. Without police powers, BLM officials are unable to take action to protect the land and the users of the land. This problem is becoming increasingly serious as more and more people come to the desert to visit and live. ....</p> <p>Without the authority to enforce Federal laws and regulations, the new plan will not have much practical meaning. Already, unique desert plants and trees are being uprooted and taken to urban areas; animal and reptile habitat are being destroyed; prehistoric art is being vandalized and removed from the desert; large ORV events are resulting in long lasting damage to the desert "pavement" and other natural barriers to erosion.</p> <p>In the absence of an Organic Act and the law enforcement authorities provided the Desert Ranger Force in H. R. 13777, the BLM has had to resort to civil actions in court or, in some cases, stand by helplessly while individuals or companies misuse or abuse resources entrusted to BLM's care.</p> <p>From page 674 of the <i>Legislative History of the FLPMA</i>, Extracts from Congressional Record – House, July 22, 1976 (HR 13777):</p> <p>Mr. FORSYTHE. With respect to BLM's enforcement authority, it is important to note that crime of all types is increasing on the public lands, yet in most cases, BLM is now powerless to do anything about it. Except for a few specific statutes such as the Wild Horse Act, BLM does not have authority to make arrests for violations of laws and regulations relating to the land and its resources or to protect the ever-increasing number of visitors to those lands.</p> <p>Section 302(c) requires BLM to offer contracts to State and local officials to enforce Federal natural resource laws and regulations. Only if those officials do not have authority or refuse to sign such contracts can BLM itself enforce the law. Requiring BLM to defer to local agencies capabilities, is in my view unwise.</p> <p>Congressman SEIBERLING's amendment would provide BLM with necessary flexibility so that where necessary BLM could exercise enforcement authority and, additionally, could rely on State and local officials for assistance. The bill already provides such authority for the California Desert, and it seems only logical to provide similar authority for all BLM lands.</p> <p>Mr. DOWNEY. Last, I am deeply concerned with the weakened effect the law enforcement provision would have on the implementation of the act. In the absence of sufficient Bureau of Land Management legal authority and control, the regulatory efforts of the bill would be negligible. While local, State, Federal cooperation is desirable, the requirement that the Bureau of Land Management could only take over if local authorities refuse to, could only result in undue restrictions in the enforcement of public land laws. Local cooperation should be promoted, but this imposed cooperation only acts as a restraint on the circumstances under which the Bureau of Land Management, or the Department of the Interior, could utilize its own personnel for law enforcement purposes. I sincerely believe the act's purpose could only be effectuated if the enforcement provision is strengthened in the direction of greater Bureau autonomy.</p>
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<b>Official Commentary</b>	<p>From page 683 of the <i>Legislative History of the FLPMA</i>, Extracts from Congressional Record – House, July 22, 1976 (HR 13777):</p> <p>Mr. MELCHER. Mr. Chairman, I offer an amendment.</p> <p>The Clerk read as follows:</p> <p>Amendment offered by Mr. MELCHER: Page 17, lines 11 and 12, strike out present text and insert the following: "ment. Nothing in this Act shall modify or change any provision of Federal law relating to migratory birds or to endangered or threatened species. Except as provided in section".</p> <p>Mr. MELCHER: Mr. Chairman, the first amendment we are dealing with here is easy to understand. It is a declaration that the act shall not modify or change any provision of Federal law relating to migratory birds or to endangered or threatened species.</p> <p>From page 698-700 of the <i>Legislative History of the FLPMA</i>, Extracts from Congressional Record – House, July 22, 1976 (HR 13777):</p> <p>Mr. SEIBERLING. Mr. Chairman, I offer an amendment. The Clerk read as follows:</p> <p>Amendment offered by Mr. Seiberling: On pages 56 and 57, strike all of Subsection (c) and insert a new Subsection as follows:</p> <p>(c)(1) When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations. The Secretary shall negotiate on reasonable terms with such officials who have authority to enter into such contracts to enforce such Federal laws and regulations. In the performance of their duties under such contracts such officials and their agents are authorized to execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; search without warrant or process any person, place, or conveyance according to any Federal law or rule of law; and seize without warrant or process any evidentiary item as provided by Federal law. The Secretary shall provide such law enforcement training as he deems necessary in order to carry out the contracted for responsibilities. While exercising the powers and authorities provided by such contract pursuant to this section, such law enforcement officials and their agents shall have all the immunities of Federal law enforcement officials.</p> <p>(2) The Secretary may designate Federal personnel to carry out law enforcement responsibilities with respect to the public lands and their resources. Such designated personnel shall receive the training and have the responsibilities and authority provided for in paragraph (1) of this subsection.(2) The Secretary may authorize Federal personnel to carry out law enforcement responsibilities with respect to the public lands and their resources. Such designated personnel shall receive the training and have the responsibilities and authority provided for in paragraph (1) of this subsection.</p> <p>Mr. SEIBERLING (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.</p> <p>The CHAIRMAN. Is there objection to the request of the gentleman from Ohio? There was no objection.</p> <p>Mr. SEIBERLING. Mr. Chairman, this amendment would make some changes in the provisions on page 56 of the bill for law enforcement in public lands.</p> <p>Mr. Chairman, at present the Bureau of Land Management – BLM – custodian of 450-million acres of public lands, has totally inadequate authority to manage and protect those lands and their resources. My amendment to section 302 of H.R. 13777 would clarify the Secretary of the</p>
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<b>Official Commentary</b>	<p>Interior's authority for law enforcement on these lands. It would give the BLM authority to offer contracts to local law enforcement officials for enforcing Federal laws and regulations on public lands. It would also allow the Secretary to designate trained Federal personnel to carry out law enforcement responsibilities.</p> <p>As presently drafted, H. R. 13777 directs the Secretary to offer contracts to State and local law enforcement officials. However, only if those authorities refuse such a contract can the Interior Department exercise enforcement authority. Curiously, the bill gives the necessary authority for the California desert, but does not do so for the rest of our public lands, where similar problems exist.</p> <p>Except for a few specific statutes such as the Wild Horse and Burro Act, BLM officials have no power to make arrests for violations of natural resources laws and regulations, even if those violations are committed in the presence of BLM officials.</p> <p>BLM currently has only seven special agents, hired in the past year. They can make arrests for crimes against wild horses, but not for crimes against natural resources or people. They are authorized to investigate violations of natural resource laws such as land fraud, theft of timber and minerals, but once their investigation is complete, they have to call on another Federal agency to make the arrest. Or if there is an applicable State law, he can try and persuade State or local officials to make the arrest. But many States do not have specific laws protecting the diverse resources of the public lands, and enforcement of State laws is uneven, because of the variation in laws throughout the West.</p> <p>Although the FBI can sometimes assist, that agency cannot take on an interstate transportation of stolen property case unless it involves property valued at a minimum of \$50,000. In cases involving wildlife violations, the Fish and Wildlife Service has authority for migratory birds and endangered species, but its enforcement personnel are severely overburdened and thus not always able to assist BLM.</p> <p>Crimes of all types are increasing on the public lands. Theft of artifacts has become an increasing problem since such artifacts are highly treasured by collectors. Cactus are being dug up by the truckload from the desert areas and later sold as houseplants. Tons of lava rock have been plundered for sale as decoration. Trespassers have built structures on public lands. Off-road vehicles have ripped up huge areas, leaving scars on fragile lands that may last for generations. Sand and gravel have been taken from public lands to build roads.</p> <p>Last year, 50,000 Christmas trees were cut and stolen from BLM and forest Service lands in Utah. Even if one of BLM's seven special agents had been present at the time this theft occurred, he could not have arrested the thieves, unless he made a citizen's arrest, which is hazardous both personally and legally, since he would then be liable to a law suit.</p> <p>My amendment would help remedy this situation. It would still direct the Secretary to achieve "maximum feasible reliance" in using local law enforcement officials to enforce Federal laws and regulations. But he would also have the backup authority to designate trained Federal personnel to carry out these enforcement responsibilities when needed.</p> <p>Furthermore, my amendment does not change the language in subsection (d) which authorizes the Secretary to cooperate with State and local law enforcement officials, and to reimburse them, for enforcement of State or local laws. This will provide additional assistance for crimes against people, with reliance for enforcement left at the State and local level.</p> <p>Mr. SANTINI. Mr. Chairman, I rise in opposition to the amendment.</p> <p>Mr. Chairman, the consequence of the amendment would be the establishment of a Federal police force on the public lands. In my particular instance that would mean Federal police jurisdiction in 71 percent of my State. I know the great civil libertarian tendencies and inclinations of my distinguished colleague and eminent legal scholar from Ohio would find that somewhat offensive if he had to assume that burden and responsibility within the boundaries of his congressional district of Ohio.</p>
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<p><b>Official Commentary</b></p>	<p>But, I think there is an even more fundamental reason to support the committee language and to oppose the gentlemen’s amendment. That is the fact that we are asking our already beleaguered, undermanned and, in some instances, inefficient Bureau of Land Management entities to assume the responsibility of traffic policeman. It is inherently disastrous. One primary responsibility is resource management. The other primary responsibility is law enforcement. I submit that the examples of where this arrangement has been applied by the Forest Service apply here. When we use the local deputy sheriff or the local law enforcement entity to assume responsibility for protecting what he regards as his land, and that person is given the proper training – the person is far more efficient because that man or woman lives on that land. He or she is a trained law enforcement officer. That person is far more capable of meeting responsibilities of law enforcement than the graduate botanist. They are excellent resource managers. They are not law enforcement officers.</p> <p>We had tragic episodes in trying to pervert and convert the botanist into a law enforcement officer when he is confronted with resistance.</p> <p>I again urge my colleagues to recognize the particular sensitivities involved. Would you wish to invite within your jurisdiction a Federal police force responsible for the enforcement of criminal laws in your particular jurisdiction?</p> <p>It is unworkable, undesirable, and pernicious, I urge my colleagues to vote in opposition.</p> <p>Mr. SEIBERLING. Mr. Chairman, will the gentleman yield?</p> <p>Mr. SANTINI. I yield to the gentleman from Ohio.</p> <p>Mr. SEIBERLING. I thank the gentleman for yielding. The gentleman’s description of what is in this amendment bears no resemblance to the amendment.</p> <p>The amendment reads that when the Secretary determines that assistance is necessary, he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials. Does that sound like it is unworkable?</p> <p>Mr. SANTINI. Therein is a loophole one could drive 14 camels through if they wanted to have a desert patrol. That kind of language simply invites the Secretary’s judgement that he does not need to rely on local law enforcement, that he can rely instead on the mounties he has installed in the local jurisdiction.</p> <p>Mr. SEIBERLING. If the gentleman will yield further, then the gentleman ought to have his own amendment, because that language is substantially identical as to what is already in the bill.</p> <p>Mr. SANTINI. My language is conditioned, as the gentleman well knows, upon the requirement that the Secretary must first proceed to determine if local law enforcement is willing and able to assume the local law enforcement responsibility. If it is, it can, It is a matter of condition precedent.</p> <p>The CHAIRMAN. The time the gentleman from Nevada had has expired. (On request of Mr. Seiberling and by unanimous consent, Mr. Santini was allowed to proceed for 3 additional minutes.)</p> <p>Mr. SEIBERLING. Mr. Chairman, will the gentleman yield?</p> <p>Mr. SANTINI. I yield to the gentleman from Ohio.</p> <p>Mr. SEIBERLING. There is nothing in this amendment that says anything about a Federal mounted force.</p> <p>Mr. SANTINI. If they are going to walk across the sands of Nevada, they are in real trouble.</p> <p>Mr. SEIBERLING. Let me ask the gentleman, if he will yield, does the gentleman think the Secretary can do anything effective to develop any kind of Federal force if under the language of the present bill he has to annually offer a contract to local people, he can only then contract for his own staff 1 year at a time?</p> <p>Does that make any sense?</p>
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<p><b>Official Commentary</b></p>	<p>Mr. SANTINI. With respect to the gentleman's query, the remarkable thing is that we have demonstrable evidence with the examples of the forest service and their contractual arrangements with the local law enforcement that it can and does work.</p> <p>Mr. KETCHUM. Mr. Chairman, I move to strike the requisite number of words. (Mr. Ketchum asked and was given permission to revise and extend his remarks.)</p> <p>Mr. KETCHUM. Mr. Chairman, I take this time to ask the author of the amendment a question or two. On page 58, line 14, section (e), does the gentleman's amendment address itself to that section at all? This is the section that says: Nothing in this section shall prevent the Secretary from promptly establishing a uniformed desert ranger force.</p> <p>Mr. SEIBERLING. If the gentleman will yield, no, it has no effect on subsection (e) whatsoever.</p> <p>Mr. KETCHUM. As I understand the amendment – and please correct me if I am wrong – what the gentleman's amendment elects to do is to relive the Secretary of some of the problems that exist in the language of the bill. If he cannot contract, he can go right ahead and move in with a police force.</p> <p>Mr. SEIBERLING. All it does is eliminate the onerous and unworkable requirement of section 302 (c) (1) and (2) whereby the Secretary must negotiate annually with any State or political subdivisions. And I do not know how he can negotiate with any and all simultaneously, but that is what it says. Otherwise he cannot have his own force.</p> <p>Mr. KETCHUM. Mr. Chairman, I thank the gentleman. The gentleman answered my question when he used the word "annually." As long as it does not affect the subsection previously referred to, I can see no reason for not supporting the amendment.</p> <p>Mr. SEIBERLING. Mr. Chairman, if the gentleman will yield further, it extends the concept of subsection (e) and permits the Secretary to have law enforcement authority on all other public lands and not just the California desert.</p> <p>Mr. MELCHER. Mr. Chairman, will the gentleman yield?</p> <p>Mr. KETCHUM. I yield to the gentleman from Montana.</p> <p>Mr. MELCHER. Mr. Chairman, I thank the gentleman for yielding. I find that the amendment is drawn quite similarly to the provision the Forest Service now has. It has been workable with the Forest Service. I am not speaking for the committee, but I personally find no objection to the Seiberling amendment.</p> <p>Mr. STEIGNER of Arizona. Mr. Chairman, will the gentleman yield?</p> <p>Mr. KETCHUM. I yield to the gentleman from Arizona.</p> <p>Mr. STEIGNER of Arizona. Mr. Chairman, I would like to join my colleagues in supporting the amendment, and I urge its adoption.</p> <p>The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. Seiberling). The amendment was agreed to.</p>
<p><b>Analysis</b></p>	<p>Ultimately after debate, the amendment to Subsection 302 (c) was agreed to and H.R. 13777 passed the House. The amendment and subsequent debate of the issues provided several significant revisions and interpretations as follows:</p> <ol style="list-style-type: none"> <li>1. The provision on regulating hunting and fishing activities is further amended by adding the laws related to endangered and threatened species to migratory birds. This infers an expectation that compliance with such laws would be expected and enforced</li> <li>2. The Section from S 507 on unauthorized use is still not included in this bill.</li> <li>3. The principle of offering a contract "with the view of achieving maximum feasible reliance" on State and local agencies for enforcement of Federal laws and regulations was retained. However, the sentence retained is prefaced with the phrase "When the Secretary determines assistance is necessary." This implies that the Secretary would have discretion to determine if assistance is necessary and whether a contract with State and local agencies is feasible.</li> </ol>

<b>Analysis</b>	<p>4. This bill does not include the requirement that the Secretary negotiate contracts "annually" with State and local officials. In cases where the Secretary determines assistance is necessary and a contract is "feasible," it requires the Secretary to negotiate such contracts on reasonable terms.</p> <p>5. There is still no provision for authority to carry firearms.</p> <p>6. The absolute requirement to "reimburse" State and local agencies under such contracts was deleted.</p> <p>7. The condition of former Subsection 302 (c)(2) that the Secretary may designate Federal personnel only when the State or local agency does not have authority to enter into contracts or where the contract is refused was deleted. The revised subsection provides the Secretary complete discretion to designate Federal personnel to carry out law enforcement responsibilities with respect to the public lands and their resources without condition (as the previous condition was deleted). This intention is supported by Congressman Seiberling when he describes the purpose of his amendment in terms of how it extends the concept of subsection (e) and permits the Secretary to have law enforcement authority on all other public lands and not just the California desert.</p> <p>8. Subsection 302 (d) on cooperation with State and local agencies is retained and receives additional emphasis in the debate on the amendment to Subsection 302 (c).</p> <p>9. Subsection 302 (e) relating to the uniformed desert ranger force in the California desert is retained. It describes the purpose of such rangers as "enforcing Federal laws and regulations relating to the public lands and resources." Because Congressman Seiberling states that the purpose of his amendment is to extend the concept of subsection (e) on all other public lands, it implies that rangers used outside the California desert would have the same purpose and title.</p> <p>10. Subsection 302 (f) related to other enforcement authority vested in the Secretary not being limited or reduced is retained. In the commentary mention is given to existing BLM special agents having arrest authority from the Wild Horse and Burro Act. This Subsection reinforces the principle that the Secretary could continue to designate Federal personnel for law enforcement authority under such laws as the Wild Horse and Burro Act, the Sikes Act, and the Land and Water Conservation Act and these authorities would not be limited or reduced by the "maximum feasible reliance" principle.</p>
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<b>Date</b>	October 21, 1976 (conference occurred August 30, 1976)
<b>Bill</b>	PL 94-579
<b>Title</b>	Federal Land Policy and Management Act of 1976
<b>Enacted Enforcement Provisions</b>	<p style="text-align: center;">MANAGEMENT OF USE, OCCUPANCY, AND DEVELOPMENT</p> <p>Sec. 302 (b) In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns: ... <i>Provided further</i>, ... Nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife. However, the Secretary concerned may designate areas of the public lands and of lands in the National Forest System where, and establish periods when, no hunting or fishing will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law. Except in emergencies, any regulations of the Secretary concerned relating to hunting and fishing pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. Nothing in this Act shall modify or change any Federal law relating to migratory birds or to endangered or threatened species. ...</p> <p style="text-align: center;">ENFORCEMENT AUTHORITY</p> <p>Sec. 303.(a) The Secretary shall issue regulations necessary to implement the provisions of this Act with respect to the management, use, and protection of the public lands, including the property located thereon. Any person who knowingly and willfully violates any such regulation which is lawfully issued pursuant to this Act shall be fined no more than \$1,000 or imprisoned no more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate judge designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18.</p> <p>(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from utilizing public lands in violation of regulations issued by the Secretary under this Act.</p> <p>(c)(1) When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations. The Secretary shall negotiate on reasonable terms with such officials who have authority to enter into such contracts to enforce such Federal laws and regulations. In the performance of their duties under such contracts such officials and their agents are authorized to carry firearms; execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; search without warrant or process any person, place, or conveyance according to any Federal law or rule of law; and seize without warrant or process</p>

<p><b>Enacted Enforcement Provisions</b></p>	<p>any evidentiary item as provided by Federal law. The Secretary shall provide such law enforcement training as he deems necessary in order to carry out the contracted for responsibilities. While exercising the powers and authorities provided by such contract pursuant to this section, such law enforcement officials and their agents shall have all the immunities of Federal law enforcement officials.</p> <p>(2) The Secretary may authorize Federal personnel or appropriate local officials to carry out his law enforcement responsibilities with respect to the public lands and their resources. Such designated personnel shall receive the training and have the responsibilities and authority provided for in paragraph (1) of this subsection.</p> <p>(d) In connection with the administration and regulation of the use and occupancy of the public lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws or ordinances of such State or subdivision. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the public lands.</p> <p>(e) Nothing in this section shall prevent the Secretary from promptly establishing a uniformed desert ranger force in the California Desert Conservation Area established pursuant to section 1781 of this title for the purpose of enforcing Federal laws and regulations relating to the public lands and resources managed by him in such area. The officers and members of such ranger force shall have the same responsibilities and authority as provided for in paragraph (1) of subsection (c) of this section.</p> <p>(f) Nothing in this Act shall be construed as reducing or limiting the enforcement authority vested in the Secretary by any other statute.</p> <p>(g) The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited.</p>
<p><b>Official Commentary</b></p>	<p>From page 743 of the <i>Legislative History of the FLPMA</i>, Extracts from Congressional Record – Senate, July 30, 1976 (FLPMA):</p> <p>Mr. JACKSON. A number of the policies in the House bill, such as those concerning congressional review of withdrawals, establishment of grazing advisory boards, requiring reliance on local law enforcement officials, and continued application of the Homestead laws in Alaska, were considered in one form or another and rejected during committee markups over the last three Congresses.</p> <p>From page 744 of the <i>Legislative History of the FLPMA</i>, Extracts from Congressional Record – Senate, July 30, 1976 (FLPMA):</p> <p style="text-align: center;">ENFORCEMENT</p> <p>(a) The Senate bill provides for penalties of imprisonment of 12 months and a fine of \$1,000, or both, for violation of regulations for BLM lands which the Secretary identifies as subject to such penalties (Senate, sec. 307 (a)). The House bill provides for such penalties only where the violations are made "knowingly and willfully" (house, sec. 302 (a)).</p> <p>(b) The House bill requires "maximum feasible reliance" upon local law enforcement officials in enforcing Federal laws and regulations relating to BLM lands. Such reliance would be achieved through contracts with the local officials. The bill provides for training of such officials and grants them the immunities of Federal law enforcement officials (House, sec. 302 (c)(1)). The Senate bill permits contracting but does not require such reliance, authorize such training, or provide such immunities (Senate, sec.'s 307 and 308).</p> <p>(c) The House bill includes additional authority for State and Federal law enforcement officials (search and seizure without warrant or process as provided by Federal law) (House, sec. 302 (c)(1)) not provided in the Senate bill (Senate, sec. 307).</p>

<b>Official Commentary</b>	<p>From page 745 of the <i>Legislative History of the FLPMA</i>, Extracts from Congressional Record – Senate, July 30, 1976 (FLPMA):</p> <p>Mr. JACKSON. Mr. President, I move that the Senate disagree to the amendments of the House to S. 507 and request a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint conferees on the part of the Senate. The motion was agreed to.</p> <p>From page 745 of the <i>Legislative History of the FLPMA</i>, Explanatory Note from S. 507 Staff Recommendations to the Committee of Conference, September 9, 1976 (FLPMA):</p> <p>At its meeting on August 30, the Committee of Conference on S. 507 instructed staff of both Houses to analyze the differences in the two versions of S. 507 and to recommend to the committee an appropriate resolution of as many differences as possible. The text that follows is the staff response to that instruction.</p> <p>The portions of the text shown in italics were agreed upon by the staff as consistent with the objectives of the two Houses and as an appropriate resolution of issues involved.</p> <p>The portions of the text shown in bold face are provisions included in only one version of the bill for which staff identified no basis for a definitive recommendation.</p> <p>On page 794 of the <i>Legislative History of the FLPMA</i>, the phrase <i>administration, public use and enjoyment, or compliance with provisions of applicable law</i> (added after public safety) appears in italics.</p> <p>On page 796 of the <i>Legislative History of the FLPMA</i>, only the word <i>violates</i> (rather than knowingly and willfully violates) appears in italics.</p> <p>On page 797 of the <i>Legislative History of the FLPMA</i>, only the phrase <i>with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations</i> appears in italics.</p> <p>On page 797 of the <i>Legislative History of the FLPMA</i>, only the phrase <b>carry firearms</b> appears in bold face.</p> <p>On page 894 of the <i>Legislative History of the FLPMA</i>, Conference Report (September 29, 1976), proposed insertions for Sec. 303 (c)(1) included: <b>carry firearms</b>.</p> <p>On page 930 and 931 of the <i>Legislative History of the FLPMA</i>, Conference Report (September 29, 1976), Joint Statement of the Committee of Conference:</p> <p>17. The Senate bill and House amendments differed as to relation of BLM and the Forest Service management to State hunting and fishing for reasons of public safety, administration, and compliance with applicable law. The word "administration" authorizes exclusion of hunting and fishing from an area in order to maintain supervision. It does not authorize exclusions simply because hunting and fishing would interfere with resource-management goals.</p> <p>19. Both the Senate bill and the House amendments had similar provisions for law enforcement with some marked differences. The conferees acted on the differences as follows:</p> <p>(a) The conferees adopted the Senate mandatory requirement for law enforcement regulations.</p> <p>(b) The conferees adopted the House provisions that violations of regulations must be "knowing and willful" to invoke criminal penalties.</p> <p>(c) The conferees accepted the policy in the House amendments that the Secretary of the Interior seek maximum feasible reliance in his discretion upon local law enforcement officials in enforcing Federal laws and regulations. The Secretary is expected to keep this goal in mind, as well as his authority to assist local law enforcement officials in enforcing local laws and regulations, as he carries out his primary responsibility of assuring adequate law enforcement for the public land areas.</p> <p>(d) The conferees adopted the Senate's specific reference to the authority to carry firearms.</p>
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<p><b>Official Commentary</b></p>	<p>In granting the right to bear firearms, the conferees acted upon the full expectation that the Department of the Interior would retain as no less than its minimum standards those spelled out in Chapter 446.2 (dated December 20, 1974) of the Department of the Interior Manual. Those standards are as follows:</p> <p>2. <i>Standards.</i> The following standards will be incorporated into all bureau/office law enforcement programs, and shall be applied in all decision-making, administrative procedures and program development activities:</p> <p>A. All contracts for law enforcement services shall require contractor to maintain the same standards that are required of programs operated directly by the Department.</p> <p>B. Each law enforcement officer shall be specially identified as such and shall be individually authorized to make arrests and to carry firearms, and only employees assigned duties as law enforcement officers shall be authorized to carry firearms and to make arrests, except when firearms are necessary in the performance of other game management or resource protection duties.</p> <p>C. Uniforms, when worn, will positively identify the wearer as a law enforcement officer. Badge, name plate and bureau patch must be visible at all times. Uniforms of nonenforcement personnel shall be plainly distinguishable from the uniforms of law enforcement officers.</p> <p>D. Except in firearms training, each time a firearm is used for law enforcement purposes a report shall be filed with the superior of the officer who used the weapon. Whenever use of a weapon results in serious injury or death of any person, the officer shall be placed on administrative leave, or be assigned to strictly administrative duties, pending a thorough investigation of all circumstances surrounding the incident.</p> <p>E. Each bureau shall require its officers to maintain their shooting proficiency and fire for record at least twice a year at a recognized and approved firearms practice course. Firearms will not be issued to enforcement personnel until each has demonstrated his ability to properly use the weapon.</p> <p>F. Each bureau shall specify the type of firearms, ammunition and auxiliary equipment to be used by the law enforcement officers of that bureau.</p> <p>(e) The conferees adopted the House’s specific reference to search and seizures.</p> <p>(f) The conferees adopted the Senate’s bill’s declaration that use, occupancy, or development of public lands contrary to applicable regulations is unlawful and prohibited. This declaration does not expand the Secretary’s authority to establish criminal penalties but will support his effort for injunctive and other restraining action to prevent continuing violation of laws and regulations.</p> <p>From page 938 of the <i>Legislative History of the FLPMA</i>, Extracts from Congressional Record – House, September 30, 1976 (FLPMA):</p> <p>Mr. MELCHER. Mr. Speaker, most provisions of S. 507 and the House amendments were similar and some were identical. The conferees coordinated and harmonized these provisions, retaining the underlying objectives of both Houses. In addition, the conferees adopted most of the remaining House amendments, with some exceptions and adjustments. The more significant ones are as follows:</p> <p>Eighth. Hunting and fishing closures – The conferees recommend expanding authority for closures consistent with other existing law.</p> <p>Tenth. Law enforcement officials – The conferees recommend specific mention of the right to carry firearms.</p>
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<p><b>Official Commentary</b></p>	<p>Mr. SEIBERLING. Mr. Speaker, I have a question concerning the language in the conference report.</p> <p>The language concerning management of wildlife on BLM and Forest Service lands differed in the House and Senate versions of the Organic Act, and these differences were resolved in conference. Lands could be closed by the agencies to hunting or fishing for reasons of "public safety, administration, or compliance with provisions of applicable law."</p> <p>However, in attempting to define the term "administration," the conference report language confuses the issues and appears to remove administration as a reason for closure to hunting and fishing as follows:</p> <p style="padding-left: 40px;">The word "administration" authorizes exclusion of hunting and fishing from an area in order to maintain the ability of appropriate officials to maintain supervision. It does not authorize exclusions simply because hunting and fishing would interfere with resource-management goals.</p> <p>The second sentence quoted seems to negate the term "administration" and seems to be inherently consistent with the whole concept of administration, which among other things requires protection of threatened fish and game resources.</p> <p>I would like to ask the gentleman from Montana what his understanding of the term "administration" was. It certainly would include the proprietary right of agencies as a landlord to manage wildlife habitat, would it not?</p> <p>Mr. MELCHER. Yes. The intent of the bill and the intent of the conference report is to assure that wildlife habitat management, and wildlife itself, are included in the management on our Federal lands.</p> <p>We do not, however, intend to interfere with the States' prerogatives in setting the seasons for hunting of wildlife and wildfowl. On that score the Federal agencies go back to what has been left as State prerogatives, but the general management of wildlife habitat is expected, and also is a Federal responsibility.</p> <p>Mr. SEIBERLING. I would certainly concur with the gentleman on that. I would like to ask one further question: Would the gentleman agree that, consistent with the multiple-use policy of this legislation, management of wildlife habitat with that exception is a responsibility of the BLM and Forest Service on public lands.</p> <p>Mr. MELCHER. Yes, we view wildlife as part of the resources on our Federal lands.</p> <p>Mr. SEIBERLING. Therefore, I take it that the gentleman would agree that the BLM and the Forest Service could close lands under their jurisdiction to hunting and fishing for reasons related to the management of wildlife habitat?</p> <p>"Mr. MELCHER. Yes, I would agree to that, but we do expect to cooperate in all instances possible with the State Fish and Game Commissions to allow those authorities to set hunting seasons and to set requirements for hunting and fishing.</p>
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<p><b>Law Enforcement Related Case Law Under the FLPMA</b></p>	<p>Annotated under 43 U.S.C. 1732 – Hunting and Fishing: Under the "BLM Organic Act" the Secretary of the Interior has power to halt wolf hunt program by the State of Alaska on federally controlled land, as "administration" which this section lists as one of the purposes for which the Secretary may designate areas where no hunting will be permitted includes wildlife management, which gives the State right to control wildlife does not alter this result. State of Alaska v. Andrus, D.C. Alaska 1977, 429 F.Supp. 958, affirmed 591 F.2d 537.</p> <p>Annotated under 43 U.S.C. 1733 – Criminal actions: In prosecution for destruction of a public sign, trial court, which instructed that a public sign is a sign rightfully placed by public entity in a public location and designed to communicate information to the public, fairly and adequately defined the term "public sign" and did not commit plain error in failing to include a requirement that the Government prove it had title to, possession of, or control over the sign. U.S. v. Patton, C. A. 9 (Cal.) 1985, 771 F.2d 1240.</p> <p>Annotated under 43 U.S.C. 1733 – Civil actions: Standing of trade associations to maintain action claiming that this section violated right to be protected against unreasonable searches and seizures under U.S.C.A. Const. Amen. 4 hinged upon standing of members of association. Western Min. Council v. Watt, C. A. Cal. 1981, 643 F.2d 618, certiorari denied 102 S.Ct. 567, 454 U.S. 1031, 70 L.Ed.2d 474.</p> <p>Annotated under 43 U.S.C. 1733 – Enforcement actions: Where defendants did not have rightful claim to lands, United States was entitled to order directing defendants to remove themselves and their possessions from land and directing that if they did not do so by specified date, remaining structures would be deemed abandoned and property of the United States. U.S. v. Smith Christian Min. Enterprises, D.C. Or. 1981, 537 F.Supp. 57.</p>
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## **Mission of Bureau of Land Management Law Enforcement**

The BLM has had a long history and tradition of investigating violations of public land-related laws. This began with the special agents of the General Land Office, whose charge included investigating and seeking prosecution for fraudulent entries, depredations against public timber, and unlawful enclosures. Some of these activities go back to as early as 1831. Although, this rudimentary investigation and enforcement arm was never created or established by an "Organic Act" or other permanent statute authorizing its function and activities, it was often recognized and sanctioned by the Congress through annual appropriations bill language. In the decades immediately preceding the enactment of the FLPMA, the BLM used various "resource specialists" to conduct "trespass" activities in order to investigate and seek enforcement actions for violations.

Early in the legislative history and debate over potential enforcement provisions, the Congress recognized the need for permanent statutory provisions for a BLM law enforcement program. The mission of the future BLM law enforcement program began to emerge with the introduction of Senate Bill 2401 on August 3, 1971. In this bill the concept of "national resource lands" as a unique designation first appears. The previous bills used the phrase "public lands" which was generally intended to mean the "public domain" lands that were administered by the BLM. The bill went further to describe a mission focused on the "national resource lands" that included the additional categories of "public property, and the public health, safety and welfare."

The purpose of the enforcement provisions was provided further refinement with the introduction of Senate Bill 1041 on February 28, 1973. This Bill was a proposal by the Administration. The Administration stated in correspondence that the purpose of the enforcement provisions was to enhance management of the national resource lands by making violations of laws and regulations a crime, and vesting enforcement authority in certain designated Departmental employees.

Senate Bill 424 resulted in the first substantial testimony identifying the need for enforcement provisions. The section-by-section analysis of the bill included the following:

This section is one of the most important sections of S 424. Certainly, there is a critical need to provide the Department of the Interior, through its Bureau of Land Management, with adequate enforcement authority on the national resource lands. Crimes against persons, vandalism and destruction of private and Federal property, thefts, and other unlawful acts are increasing rapidly on the national resource lands, and in many situations are "out of control" or nearly so. Presently, in most cases, the Bureau can protect the national resource lands from misuse only by "jawboning" the users of those lands.

The analysis went on to describe many examples of crimes, violations, and outright destructive acts occurring on the public lands and the BLM's general lack of authority to do anything about it. It also described how State and local agencies were ill equipped to deal with public land enforcement issues.

In testimony for the introduction of Senate Bill 507 on January 30, 1975, Senator Haskell stated:

In the vacuum created by the absence of this authority, the unnecessary waste and destruction of our country's most valuable resource – its land – is almost awesome in its dimensions.

He provided several examples to illustrate this and concluded his remarks with.

Certainly, there is no more fundamental responsibility of a public official than to husband public assets – be they land or money. Unless we promptly enact this legislation we will have failed that principal responsibility.

The Senator seemed to imply that the valuable resources (assets) located on the public lands represented a vast unguarded treasury for which appropriate security should be provided. Senator Jackson enhanced this concept by discussing the various findings of the Public Land Law Commission and stating:

Perhaps the most critical finding of the commission is the appalling absence of the enforcement authority so necessary for any land management agency.

The BLM had for many years established a tradition of using administrative and civil remedies to rectify violations of laws and regulations, as those were the only authorities available to deal with enforcement issues. The Senate Committee on Interior and Insular Affairs discussed this in terms of whether the proposed enforcement provisions of Senate Bill 507 would alter this. The Committee included the following statement in their analysis:

Of course, the Committee expects that most violations of the Secretary's regulations can be resolved on an administrative basis without instituting criminal or civil action pursuant to subsections (a) and (b). This is particularly true in the case of minor violations, such as innocent trespass by individuals. While these provisions provide authority for legal action, they should not be viewed as a substitute for administrative procedures and remedies.

Just prior to Senate Bill 507 being passed (February 25, 1976) by the Senate with a significant margin (78 yeas, 11 nays), Senator Jackson drew a comparison of the purpose of the proposed enforcement provisions of the Bill with the enforcement missions of other land management agencies in the statement:

The National Resource Lands Management Act would provide the BLM with authority similar to that already possessed by the Park Service and the Forest Service.

Perhaps the intended mission of the future BLM law enforcement program was summed up best by the Section-by-Section Analysis prepared upon the introduction of House Bill 13777 on May 13, 1976, by the House Committee on Interior and Insular Affairs as follows:

The committee expects that the Secretary will use his law enforcement authority in a manner which will help the public abide by his rules and regulations, the objective being the preservation and protection of public resources and the public safety. Criminal prosecutions and penalties should be remedies of last resort. Emphasis should be given to the dissemination of information, the creation of a law enforcement presence which will advise the public, and administrative resolution of violations rather than prosecution in the courts.

In the debate that ensued over the language of House Bill 13777 that originally intended to restrict the authority for enforcement of Federal laws and regulations to law enforcement contracts with State and local law enforcement agencies, Congresswoman Pettis provided the following testimony:

It is sad to say, but despite its jurisdiction over and responsibility for millions of acres of land, the BLM has no capability to be more than a custodial agency. This is especially true in the California Desert. Without police powers, BLM officials are unable to take action to protect the land and the users of the land.

This thought was amplified by the testimony Congressman Seiberling as follows:

BLM currently has only seven special agents, hired in the past year. They can make arrests for crimes against wild horses, but not for crimes against natural resources or people. They are authorized to investigate violations of natural resource laws such as land fraud, theft of timber and minerals, but once their investigation is complete, they have to call on another Federal agency to make the arrest. Or if there is an applicable State law, they can try to persuade State or local officials to make the arrest. But many States do not have specific laws protecting the diverse resources of the public lands, and enforcement of State laws is uneven, because of the variation in laws throughout the West.

Congressman Seiberling's amendment to remove the proposed restriction on designating Federal personnel with law enforcement authority and leaving this matter to the discretion of the Secretary was agreed to, and House Bill 13777 was passed by the House (169 yeas, 155 nays) on July 22, 1976.

According to Paul B. Smyth in his 1979 Arizona Law Review article *Federal Law Enforcement on Public Lands: Reality or Mirage?* [hereinafter cited as *Reality or Mirage?*], the purpose of the enforcement provisions of the FLPMA is as follows:

Section 303 of FLPMA, which generally puts BLM on a par with these other agencies (National Park Service, Fish and Wildlife Service, Forest Service), was seen as a solution to growing problems of enforcement on public lands. These problems are documented in the report on Senate bill 507, which became FLPMA ...

The BLM issued its first law enforcement program manual on September 21, 1984. In that manual, the objective of the law enforcement program was described as follows:

The objective of this program is to seek voluntary compliance with Federal laws and regulations relating to public lands. When such compliance is not possible, law enforcement employees are responsible for enforcement of applicable laws and regulations as they relate to the use, management, and development of public lands and resources.

The BLM issued a revised and updated law enforcement program manual on September 23, 1996. In that manual, the objective of the law enforcement program was described as follows:

The objective of the law enforcement program is to ensure compliance with those Federal laws that relate to the public lands and/or their resources and regulations. The Bureau law enforcement program is responsible for implementing the protection aspects of the Bureau mission. Protection is accomplished through the enforcement of all Federal laws and regulations related to the use, management, and development of the public lands and their resources, including activities related to the administration of the public lands. It impacts all program functional areas. Bureau LEOs employ certain law enforcement actions such as warnings, citations, complaints, or arrests to ensure compliance with laws and regulations when voluntary compliance fails. Bureau LEOs take appropriate action to discover and investigate violations of applicable laws and regulations. Investigations continue until responsibility is established or until every reasonable lead has been exhausted.

The manual went on to describe the program implementation goals as:

1. Illegal activities are detected, reported, investigated, and/or referred to appropriate officials.
2. Critical resources are protected from being removed, damaged or destroyed without authorization or in violation of environmental requirements or restrictions, or pertinent laws, rules or regulations.
3. The lands and waters are free from illegal dumping or pollution.
4. The revenues owed the Government for authorized or unauthorized uses are collected.
5. Unauthorized use is prevented and discouraged through termination, investigation, and appropriate resolution.
6. Authorized or unauthorized users of the public lands/resources are held accountable for required repairs or reclamation.

## Hunting or Fishing Closures and Wildlife Law Enforcement

Specific statutory direction to the BLM related to hunting or fishing closures and wildlife law enforcement occurred rather late in the legislative history of the FLPMA. The issue first emerged with the Senate passing Senate Bill 424 on July 8, 1974. Proposed Section 101 of Senate Bill 424 was a provision granting the BLM authority to regulate use, occupancy, and development of the national resource lands through permits, licenses, leases, etc. However, it prohibited any requirement for a Federal permit to hunt or fish, and the section-by-section analysis of this issue included the following statement:

In short, hunting and fishing will continue under State control and State licenses or permits. Of course, this does not foreclose the Secretary's authority to limit access to national resource lands where necessary to protect the resources or users of the lands. This includes situations where there are fire hazards or where discharge of firearms would endanger human safety.

Regulating uses of the public lands obviously would include control of access to the point of issuing closures should they be necessary for specified purposes. This principle was recognized in the Section-by-section analysis. However, the Department of the Interior believed that the proviso prohibiting the requirement of Federal hunting and fishing permits tended to confuse the issues. The Department of the Interior had made the following recommendation on February 25, 1974:

This provision may cause problems because the Secretary is intended to have the authority to close an area to hunting and fishing if necessary. Because the hunting and fishing permit provision is a very specific point inserted in general legislation, we recommend that it be deleted and, if necessary, explained in the Committee report.

The Department's recommendation for deletion did not result in an amendment to the bill prior to passing. Further, the proviso found in Senate Bill 424 was included in the next 6 versions (S 507 [1-30-75], HR 5224, S 1292, HR 5622, S 507 [12-15-75], S 507 [2-25-76]) of the proposed legislation. A significant revision of this proviso occurred as a result of the introduction of HR 13777 on May 13, 1976. In HR 13777, additional statutory language was inserted that made the prohibition of requiring Federal permits to hunt and fish applicable to National Forest lands as well as public lands and further stated that the authority of the States for management of fish and wildlife not be infringed upon. Language was also provided that clearly stated the authority to bar hunting and fishing from certain public land and National Forest areas at certain times for reasons of public safety. However, unless there was an emergency situation, consultation with the State Fish and Game Department was required. The Section-by-section analysis provided further guidance as follows:

It provides that hunting and fishing will be permitted in accordance with Federal and State laws and that no Federal permits for hunting and fishing are authorized by this section. It permits the Secretary to close areas to hunting and fishing for reasons of public safety. The Secretaries are expected to use the authority granted by the bill to close areas only if essential to the public safety, and then only for the shortest periods needed to accomplish this purpose. Protection of the public safety including prevention and avoidance of hazards to persons, animals, and property. The authority granted is not in derogation of other authority granted by law for the protection of natural resources, including endangered species.

The statutory language of HR 13777 included a proviso that the Act does not modify or change any Federal law related to migratory birds. Then the last sentence of the Section-by-section analysis shown above implies the same thing for laws protection natural resources, including endangered species. Therefore, it seems that the reasons for closing to hunting and fishing could necessarily include the need to implement the provisions of other resource protections laws to specifically include the Migratory Bird Treaty Act and the Endangered Species Act. This implies that the BLM would be expected to enforce those laws as well. The first sentence of the Section-by-section analysis implies that the BLM should make certain all hunting and fishing is to occur in accordance with State laws also.

In the final version of HR 13777, as passed by the House on July 22, 1976, the statutory language was amended to add endangered and threatened species to the proviso of Federal laws that the Act shall not modify or change. Again, this seems to imply that these could be additional reasons for closing areas to hunting and fishing.

The language of the hunting and fishing proviso was further revised and amended for inclusion in the FLPMA. The FLPMA added to the reasons for which a hunting and fishing closure could be implemented. In addition to public safety, the language included "administration or compliance with provisions of applicable law." This addition appears to originate in the conference recommendation for expanding authority for closures consistent with other existing law. On September 30, 1976, there was considerable testimony on this issue. Congressman Seiberling wanted to clarify what the word "administration" meant. He asked if it would include the proprietary right of agencies as a landlord to manage wildlife habitat. Congress Melcher answered:

Yes. The intent of the bill and the intent of the conference report is to assure that wildlife habitat management, and wildlife itself, are included in the management on our Federal lands.

Congressman Seiberling further asked, with the exception of setting seasons for hunting and fishing, whether management of wildlife habitat is a responsibility of the BLM and Forest Service on public lands. Congressman Melcher answered:

Yes, we view wildlife as part of the resources on our Federal lands.

Congressman Seiberling then asked if the BLM and the Forest Service could close lands under their jurisdiction to hunting and fishing for reasons related to the management of wildlife habitat. Congressman Melcher answered:

Yes, I would agree to that, but we do expect to cooperate in all instances possible with the State Fish and Game Commissions to allow those authorities to set hunting seasons and to set requirements for hunting and fishing.

About a year after the FLPMA was enacted, the hunting and fishing proviso was put to a Court test. In the 1977 case *State of Alaska v. Andrus*, the Court found:

Under the "BLM Organic Act" the Secretary of the Interior has power to halt wolf hunt programs by the State of Alaska on federally controlled land, as "administration" which this section lists as one of the purposes for which the Secretary may designate areas where no hunting will be permitted includes wildlife management, which gives the State right to control wildlife does not alter this result.

On March 18, 1983, the Department of the Interior issued regulations (43 CFR Part 24) that describe the Department of the Interior fish and wildlife policy in terms of State-Federal relationships. The regulations specifically interpret and implement the provisions of the FLPMA as follows:

Congress, in the Federal Land Policy and Management Act of 1976, directed that non-wilderness BLM lands be managed by the Secretary under principles of multiple use and sustained yield, and for both wilderness and non-wilderness lands explicitly recognized and reaffirmed the primary authority and responsibility of the States for management of fish and resident wildlife on such lands. Concomitantly, the Secretary of the Interior is charged with the responsibility to manage non-wilderness BLM lands for multiple uses, including fish and wildlife conservation. However, this authority to manage lands for fish and wildlife values is not a preemption of State jurisdiction over fish and wildlife. In exercising this responsibility, the Secretary is empowered to close areas to hunting, fishing or trapping for specified reasons viz., public safety, administration, or compliance with provisions of applicable law. The closure authority of the Secretary is thus a power to close areas to particular activities for particular reasons and does not, in and of itself, constitute a grant of authority to the Secretary to manage wildlife or require or authorize the issuance of hunting and/or fishing permits or licenses.

The FLPMA does not prevent the operation of other Federal laws related to wildlife protection and management. Therefore the regulations go on to provide interpretation and policy on the authorities contained in the Sikes Act of 1974 as follows:

While the several States therefore possess primary authority and responsibility for management of fish and resident wildlife on Bureau of Land Management lands, the Secretary, through the Bureau of Land Management, has custody of the land itself and the habitat upon which fish and resident wildlife are dependent. Management of the habitat is a responsibility of the Federal Government. Nevertheless, Congress, in the Sikes Act, has directed the Secretary of the Interior to cooperate with the States in developing programs on certain public lands, including those administered by BLM and the Department of Defense, for the conservation and rehabilitation of fish and wildlife including specific habitat improvement projects.

The FLPMA (43 USC 1733[d]) also requires the BLM to cooperate with the regulatory and law enforcement officials of any State or political subdivision in the enforcement of the laws or ordinances of such State or subdivision. In furtherance of compliance with the various laws (FLPMA, Sikes Act, etc.), the regulations of 43 CFR Part 24 describe the BLM responsibility towards the States in fish and wildlife enforcement as follows:

Provide for public use of Federal lands in accordance with State and Federal laws, and permit public hunting, fishing, and trapping within statutory and budgetary limitations, and in a manner compatible with the primary objectives for which the lands are administered. The hunting, fishing, and trapping, and the possession and disposition of fish, game, and fur animals, shall be conducted in all other respects within the framework of applicable State and Federal laws, including requirements for the possession of appropriate State licenses or permits.

This implies that BLM law enforcement officers would routinely check to see that persons engaged in hunting, fishing, and trapping on public lands have in their possession the licenses and/or permits required by the particular State in which the activity is occurring. Enforcement of such a requirement as a Federal offense is dependent upon Federal regulation such as migratory bird hunting regulations (50 CFR Part 20), Alaska subsistence management regulations (50 CFR Part 100), or BLM regulations (see 43 CFR 9264.1[h]). BLM law enforcement officers would

not have any measure of the State's authority to enforce State offenses absent a specific granting of authority by a State or local official.

The Departmental regulations interpret and implement the authority to close public lands to hunting and fishing through the following policy:

For those Federal lands that are already open for hunting, fishing, or trapping, closure authority shall not be exercised without prior consultation with the affected States, except in emergency situations. The Bureau of Land Management may, after consultation with the States, close all or any portion of public land under its jurisdiction to public hunting, fishing, or trapping for reasons of public safety, administration, or compliance with provisions of applicable law.

The Departmental regulations encourages the BLM to continue to use cooperative agreement with the States for the coordination of fish and wildlife program. Law Enforcement is one of several purposes for which such agreements can be established.

## Scope of Law Enforcement Authority

The scope or extent to which the Congress expected the BLM to conduct law enforcement activities pursuant to the FLPMA have often been discussed and debated. The legislative history of this issue does provide some guidance as to intent. The first bill to be introduced was Senate Bill 921, which was entitled "Public Domain Lands Organic Act." The bill itself referred to violations of the public land laws and regulations. At the time this bill was introduced, "public domain" was generally those public land areas that had always been in the ownership of the Federal government that were not otherwise reserved or withdrawn for other Federal purposes. However, the bill included a definition of "public lands" that also includes "interests in lands" with the caveat that, after enactment of this Act, they would be known as "national resource lands." In that context, the scope of the proposed enforcement provisions would have been very narrow.

House Bill 7211 was introduced on April 6, 1971. This bill seemed to broaden the scope of the enforcement provisions. Section 406 (a) of the bill uses the term "public lands" without reference to "public domain" or "national resource lands." It further includes not only the lands but also the "property located thereon," without reference to whether the meaning is Federal property or private and/or other governmental property. Section 406(c) of the bill authorized the agency head to designate any employee with the authority to arrest, execute any warrant or process, and carry firearms. The analysis for this proviso was as follows:

This section clarifies the law enforcement arrest authority for serious offenses, covering the following types of crimes:

1. A Federal crime on Federal land.
2. A State crime or common law crime on Federal land;
3. A Federal crime committed on non-Federal lands where the felon flees and is apprehended on Federal land;
4. A State crime committed on non-Federal lands where the arrest is made on Federal land; and
5. Arrest for probable cause without a warrant under circumstances where the delay in obtaining a warrant could jeopardize the apprehension of the person.

Senate Bill 2401 was introduced on August 3, 1971. This bill, for the first time, used the phrase "national resource lands." It used this new phrase virtually interchangeably with "public lands," yet it seemed to imply that some new system or designation of lands may be intended. The only definition provided was for "national resource lands," and it seemed similar to "public lands," but included "renewable and nonrenewable resources." In the bill's language the phrase "national resource lands" was followed by "public property, and the public health, safety, and welfare." The additional phrase further broadened the scope of the enforcement provisions.

Senate Bill 1041 used the same definition for "national resource lands" as Senate Bill 2401, but added the phrase "and property located thereon" from House Bill 7211. So these combined phrases and definitions would have resulted in a scope that includes: lands, interests in lands, renewable and nonrenewable resources, and property located thereon." This is the basic scope that would continue for all the subsequent bills through enactment of the FLPMA.

The Senate Bill 424 that was overwhelmingly passed by the Senate (71 yeas, 1 nay) on July 8, 1974, contained additional guidance as to scope in the section-by-section analysis as follows:

First, this subsection authorizes enforcement for violations of all laws and regulations relating to the lands and resources managed by the Secretary, rather than only those laws relating to the national resource lands. Many laws relate to the national resource lands exclusively, many relate to other lands as well, and most refer to "public lands" instead of national resource lands. Furthermore, authority to make arrests to enforce all Departmental laws and regulations will facilitate the coordination of law enforcement on all lands under the administrative jurisdiction of the Department of the Interior.

This was in reference to Subsection 307 (c) use of the phrase "For the specific purpose of enforcing any law or regulations relating to lands or resources managed by the Secretary,..." Had this bill been enacted as introduced, employees designated pursuant to this "Act" would essentially be able to conduct law enforcement activities on all lands of the Department of the Interior such as BLM lands, National Park lands, Fish and Wildlife Refuge lands, and Bureau of Reclamation lands, etc. However, a counterpart bill was not introduced in the House. This broad scope of "enforcing any law or regulations" was carried forward into Senate Bill 507 (introduced on January 30, 1975) and House Bill 5224 (introduced on March 19, 1975). The broad scope was narrowed in the introduced of Senate Bill 1292 by adding the phrase: "while within the national resource lands." This implied that the intent was to enforce all the laws for which the Department of the Interior has responsibility, but only while on BLM lands.

House Bill 5622 (introduced March 26, 1975) refined the more narrow scope provided in Senate Bill 1292 through using the following phrase: "For the specific purpose of enforcing any Federal law or regulation relating to those national resource lands or resources managed by him (the Secretary)." However, Senate Bill 507 (introduced December 15, 1975) returned to the broader scope "any law or regulation." But before Senate Bill 507 passed on February 25, 1976, it was amended by inserting the word "Federal" with the following testimony from, Senator Hansen:

What this amendment does is to make clear that, insofar as the powers of those persons charged with enforcing any law or regulation related to lands and resources managed by the Secretary, it shall be the Federal law or regulation that is to be interpreted. It is simply to clarify what the grant of authority and power is. There has been concern. I have letters from constituents in my State saying, "Are we going to make cops out of every single Bureau of Land Management employee?" It is not the intention in this section of the bill to do any such thing.

House Bill 13777 (May 13, 1976) is the first version with the title of Federal Land Policy and Management Act. This version completely drops the use of the phrase "national resource lands" and replaces it with "public lands." This bill also uses the qualifying phrase "enforce any Federal law or regulation relating to the public lands or their resources" when law enforcement authority is applicable. The enforcement provisions of this bill also continue to use the phrase, "including the property located thereon." All three of these phrases are continued into the final enactment of the FLPMA.

An interpretation of the FLPMA enforcement provisions, in terms of whether the scope includes only Government or any "public" property, occurred in 1985. In *U.S. v. Patton*, the Court determined:

In prosecution for destruction of a public sign, trial court, which instructed that a public sign is a sign rightfully placed by public entity in a public location and designed to communicate information to the public, fairly and adequately defined the term "public sign" and did not commit plain error in failing to include a requirement that the Government prove it had title to, possession of, or control over the sign.

In addition to the FLPMA, three other laws provide the BLM with law enforcement authority. They are the Wild Free-Roaming Horse and Burro Act, the Sikes Act, and the Land and Water Conservation Act. Further, Executive Order 11644 requires the BLM to control and manage off-road (motorized) vehicles to protect resources, manage use, and provide for public safety. These provide a scope of law enforcement authority that includes wild horse and burros, wildlife resources, and recreation fee collection, respectively. The combined applicability of these laws with the FLPMA provides the BLM law enforcement program with a scope that includes:

1. Public lands
2. BLM administered interests in lands
3. Resources
  - Scientific, scenic, historical, ecological, environmental, air and atmospheric, water, archeological, fish and wildlife, recreational resources. (See FLPMA 43 USC 1701(a)(8)).
  - Timber, woodlands, cactus, and other vegetative resources
  - Rangelands
  - Oil and gas resources
  - Mineral materials
  - Cave and paleontological resources
  - Wilderness resources
4. Property located thereon
  - BLM owned property
  - Federal owned property
  - Other public property
  - Private property located on public lands through a BLM authorization for use, occupancy, and development (livestock, range improvements, communications sites, utilities, pipelines, etc.)
  - Private property owned by visitors to the public lands
5. Wild Horses and Burros

6. Fee Collection
7. Off-road (motorized) vehicles/public safety (see Executive Order 11644)

## Knowingly and Willfully Threshold

The knowing and willful requirement for implementing the criminal penalties provided for in the FLPMA did not emerge until late in the legislative history. Senate Bill 921 (February 23, 1971) required only that the laws and regulations be violated before invoking criminal penalties. This principle was carried forward into the next 11 versions. House Bill 13777 (May 13, 1976) was the first version to use the "knowingly and willfully" threshold for invoking criminal penalties. The section-by-section analysis of this bill included the following commentary on this issue:

The boundaries of the public lands are poorly marked or not marked at all, making it difficult for members of the public to know when in fact they are on public lands. Rules and regulations for the public lands are numerous and not too well known generally. These make compliance with the rules and regulations a problem for both the Secretary of the Interior and the using public.

House Bill 13777, amended and passed July 22, 1976, continued to include the "knowingly and willfully" threshold while the passed Senate Bill 507 (February 25, 1976) did not. The conferees adopted the House provisions that violations of regulations must be "knowing and willful" to invoke criminal penalties. The knowingly and willfully threshold was therefore included in the FLPMA.

According to Smyth in *Reality or Mirage*:

There are, however, a few stumbling blocks in section 303(a) that may impede effective enforcement. For example, section 303(a) requires that a regulation be knowingly and willfully violated before criminal penalties attach. As a result, in prosecutions brought under section 303(a) the intent of the defendant to commit the prohibited act will be an element of the offense. This element was absent in Senate bill 507. It originally appeared in House bill 13777 and was retained by the Conference Committee out of the fear that persons making inadvertent mistakes in applications for use of public lands or negligently committing minor violations would be subject to fine and imprisonment. Unfortunately, this language adds another impediment to enforcement not envisioned by the Conference Committee. The knowing and willful requirement arguably necessitates proof that the defendant knew he committed an unlawful act on public lands. Lack of surveys and marked boundaries in certain areas and the check-board nature of many tracts of intermingled private and public lands may make this requirement impossible to meet in many areas. It is interesting to note that there is no such element of proof for violation of the National Park Service or Forest Service regulations.

The "knowingly and willfully" threshold actually implements the intent of Congress to emphasize the dissemination of information and the creation of a law enforcement presence which will advise the public. It creates a goal for the BLM to keep the public land users and visitors well informed about the applicable regulations and restrictions. This goal is achieved through maps and brochures, the placement of regulatory signs, and pro-active visitor contact. It appears that the overall intent is that the inadvertent violator would not be subject to the criminal penalties of the FLPMA.

Not all violations would have to be preceded by a "warning" prior to a more affirmative enforcement action (citation or arrest). The FLPMA did not provide a statutory definition for "knowing and willful." Knowing is defined in *Black's Law Dictionary, 7th Edition* as: "having or showing awareness or understanding; well-informed or deliberate; conscious." *Black's* defines willful as: "voluntary and intentional, but not necessarily malicious." In other words, it is

not necessary that the violator know that the BLM specifically prohibits such conduct, but that the violator has a general understanding that such conduct is prohibited. The best example of this is trash dumping and littering. It is generally understood that dumping trash or throwing litter out onto the ground is unacceptable behavior and is against the law. A BLM law enforcement officer would not have to give a "warning" to a trash dumper prior to issuing a citation. Another example would be theft or larceny. The essential elements of a theft or larceny are the taking away of the goods or property of another without their consent. In the case of public land resources, it would not be necessary to prove that the violator knew that the BLM owned the property and prohibited its taking. All that would have to be proved was that the person deliberately took the property and that they had not obtained the consent (permit, authorization, etc.) of the BLM prior to the taking. These same principles would apply to such crimes as vandalism and destruction of property, features, and resources.

The "knowingly and willfully" threshold should not necessarily be confused with the well-established principles in trespass law of "innocent" or "willful." The primary purpose of these thresholds is for determining the amount of trespass damages to be collected in an administrative or civil enforcement action. An "innocent" trespass does imply that a related regulatory requirement was inadvertently violated and that such violation may not be subject to the criminal penalties of the FLPMA. However, if such "trespass" were really an unlawful taking (theft) of property without prior consent of the BLM, it may still be subject to FLPMA criminal penalties or the penalties applicable to general theft of Government property statute (18 USC 641). On the other hand, a "willful" trespass would, by its mere categorization, be subject to the criminal penalties of the FLPMA. A further discussion on how the BLM has come to integrate the use of traditional civil and administrative remedies with the application of criminal penalties is provided in the Civil Remedies section below.

The "knowingly and willfully" threshold is only applicable to the regulations issued pursuant to the FLPMA. The BLM enforces many different laws and regulations, many of which do not have a "knowingly and willfully" threshold. Examples of laws and regulations that have neither a "knowingly" or a "willfully" threshold are: the Land and Water Conservation Fund Act, the National Trails Act, the National Wild and Scenic Rivers Act, timber removed or transported, timber cut or injured, abandoned fires, and theft of government property.

## Lawfully Issued

The FLPMA applies criminal penalties to "any such regulation which is lawfully issued pursuant to this Act." The enforcement provisions provide for attaching criminal penalties to regulations. However, they do not generally contain the authorization and "how to" requirements for issuing such regulations. The first version of FLPMA, Senate Bill 921, contains only a straightforward statement on this issue as follows:

The Secretary is authorized to promulgate such rules and regulations as he deems necessary to carry out the purposes of this title.

Two months later, House Bill HR 7211 was introduced (April 6, 1971) with a rather complicated set of "how to" requirements as follows:

Notice of proposed rulemaking shall be furnished to the President of the Senate and Speaker of the House of Representatives and published in the Federal Register. The notice shall include as a minimum (1) a statement of the time, place, and nature of public rulemaking proceedings; (2) reference to the authority under which the rule is proposed; (3) either the terms or substance of the proposed rule or description of the subjects and issues involved including, in either event, the projected impact of the proposed rule on users, potential users, and the general public. In addition, when the proposed rule applies to specific lands, notice thereof shall be published in at least one newspaper of general circulation in the area.

This proposed language appears to illustrate an intent that the Congress and the public be kept informed of BLM rulemaking activity and be provided opportunity to participate in the rulemaking process. However, the proposed language was very close to the same language found in the Administrative Procedures Act (5 USC 553) concerning rulemaking procedure, with which the BLM would have had to comply anyway. However, the House did not take action on the bill.

In Senate Bill 2401 (August 3, 1971), the proposed rules and regulations language was as follows:

The Secretary is authorized to promulgate such rules and regulations as he deems necessary to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the Administrative Procedures Act (5 U.S.C. 553).

This language would have provided for the same intent of House Bill 7211, without having to repeat the requirements of the Administrative Procedures Act in the language of the bill. Senate Bill 2401 was amended on September 18, 1972 and the proposed language was revised to read as follows:

The Secretary is authorized to promulgate such rules and regulations as he deems necessary to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the Administrative Procedure Act (5 U.S.C. 553). Such rules and regulations shall include:

(1) criteria and standards for the preparation and execution of plans and programs for, and for the management, sale, conveyance, and acquisition of, national resource lands which shall embody all pertinent factors including, but not limited to environmental, recreational, scenic, and resource values, and;

(2) procedures, including public hearings, to give the Federal, State, and local governments and the public adequate notice and opportunity to comment upon such rules and regulations and significant actions of the Secretary of the Interior or any agency under his jurisdiction thereof concerning the national resource lands.

The Section-by-Section Analysis of Senate Bill 2401, as amended, was as follows:

Authorizes the Secretary to promulgate rules and regulations necessary to accomplish the purposes of the Act pursuant to the Administrative Procedure Act. Stipulates that rules and regulations promulgated pursuant to the Act must include criteria and standards necessary to accomplish the purposes of the Act and procedures include public hearings to guarantee ample opportunity for Federal, State and local government and the public to participate in decision making concerning the management of the national resource lands.

This proposed language appears to describe an intent to go beyond the public participation requirements of just the Administrative Procedures Act with specific criteria and requirements that would have to be met by the Secretary. However, the bill was not acted upon.

When Senate Bill 424 was introduced on January 18, 1973, the rules and regulations proposed language was identical to that of the previous Senate Bill 2401 as introduced on August 3, 1971. However, the Administration's version of the bill (Senate Bill 1041, February 28, 1973) did not include the second sentence that required such rules and regulations be governed by the Administrative Procedures Act. Further, the Administration required that the following statement be amended to the section: "Prior to the promulgation of such rules and regulations, the national resource lands shall be administered under existing rules and regulations concerning such lands."

The final version of Senate Bill 424, as passed by the Senate on July 8, 1974, was as follows:

The Secretary is authorized to promulgate such rules and regulations as he deems necessary to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the Administrative Procedure Act (5 U.S.C. 553). Prior to the promulgation of such rules and regulations, the national resource lands shall be administered under existing rules and regulations concerning such lands."

The Section-by-Section Analysis of Senate Bill 424 provided the following:

This section authorizes the Secretary to promulgate rules and regulations in accordance with the Administrative Procedure Act (5 U.S.C. 553). Although "public property" is exempt from the requirements of the APA, the Committee decided to place the promulgation of rules and regulations under the APA so as to provide the public with the public participation and access protection which the APA offers. If this were not done, S. 424, by necessity, would be burdened by detailed public participation, hearing, and access to information provisions. As the procedures for promulgation of rules and regulations will take time, this section provides that the national resource lands will be administered under existing rules and regulations until the new ones take effect.

It is interesting to note that the section-by-section analysis mentions the APA "public property" exemption and seems to imply an intent that the Secretary provide the public with the full public participation opportunities provided in the APA. However, the language in the APA did not bar the use of the "public property" exemption. Although Senate Bill 424 was passed by the Senate, a counterpart bill in the House was not introduced. However, the proposed language of the rules and regulations section remained the same in the next six versions (S 507, January 30, 1974; HR 5224, March 19, 1975; S1292, March 21, 1975; HR 5622, March 26, 1975; S 507, December 15, 1975; and S 507, February 25, 1976) of the bill. The introduction of House Bill 13777 (May 13, 1976) provided the next significant revision to this section. The proposed language of that bill was as follows:

The Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act, and other laws applicable to the public lands, and the Secretary of Agriculture, with respect to the lands within the National Forest System, shall promulgate rules and regulations to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the provisions of chapter 5 of title 5 of the United States code, without regard to section 553 (a)(2). Prior to the promulgation of such rules and regulations, the national resource lands shall be administered under existing rules and regulations concerning such lands."

This proposed language not only includes rulemakings pursuant to this bill, but also rulemakings pursuant to any other laws applicable to the public lands. It also made these rulemaking requirements applicable to the National Forests as well as the public lands. Further, it specifically eliminates the use of the "public property" exemption to the public participation requirements of the Administrative Procedure Act. The proposed language was carried forward without debate into the final version of House Bill 13777 that passed in the House on July 22, 1976. The language was further carried into the enactment of the FLPMA without debate.

The legislative history and final language of the rules and regulations section provides a clear intent that the Congress prefers the Secretary to utilize the full public participation provision of the Administrative Procedures Act in all of its rulemakings related to the public lands. These procedures at a minimum require a notice of proposed rulemaking with a public comment period of at least 30 days prior to final rulemaking. The only exception to this is "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. This exception most often would be used when there is a need to immediately close an area or restrict an activity due to some form of emergency conditions. All rulemakings that comply with the provisions of the Administrative Procedure Act are "lawfully issued" and enforceable by BLM law enforcement officers.

## **Class A Misdemeanor Penalties**

Senate Bill 921 was introduced on February 23, 1971. It included proposed language to make violations of public land laws and regulations subject to criminal penalties. These penalties included a maximum fine of \$1,000, or imprisonment of no more than six months, or both. The Federal government classifies offenses according to the maximum imprisonment sentence (see 18 U.S.C. 3559). In this case, up to six months is classified as a Class B misdemeanor or "petty" offense. However, the counterpart House Bill 7211 provided penalties that included a maximum fine of \$1,000, or imprisonment of no more than one year, or both. The elevation of the imprisonment penalty to the one-year level would classify the offense as a Class A misdemeanor. Then Senate Bill 2401, that was introduced on behalf of the administration, proposed penalties that included a maximum fine of \$10,000, or imprisonment of no more than one year, or both. These penalties would have not only resulted in Class A misdemeanor classification, but also have had a fine significantly higher than the original \$1,000 fine. However, none of these bills were acted upon, so the conflicts between the various provisions were never reconciled.

Senate Bill 424 was introduced on January 18, 1973, and included the Class A misdemeanor imprisonment (one year) and/or a \$1,000 fine. However, the Administration's version (Senate Bill 1041) included the Class B misdemeanor imprisonment (six months) and/or a \$500 fine. The Senate did not use the Administration's proposed language, but opted for the penalties contained in Senate Bill 424 as introduced. However, this was done with some degree of analysis as identified in the committee report of February 28, 1974, as follows:

The Committee staff has expressed some concern that in section 307 a maximum penalty of a \$1,000 fine or 1 year imprisonment for violations of regulations may preclude trials before United States magistrates. The magistrates have statutory authority to try and sentence persons accused of violations for which those penalties may be posed, 18 U.S.C. § 3401 (a) and (f).

This commentary was the first related to the potential conflict between the penalties provided and other Federal laws related to crimes and judicial procedures. The commentary recognized that 18 U.S.C. 3401 provides general jurisdiction to magistrates for the trial of misdemeanors. However, it failed to recognize that persons charged with offenses above the Class B level (in this case Class A) are entitled to elect trial by district judge rather than a magistrate. Further, there was not any consideration of the issue that the Federal rules of procedure for trials by magistrates did not at the time permit the use of Federal violation notices (citations) as charging instruments for offenses above the Class B level, which would potentially necessitate the actual arrest of offenders under the proposed bill. From this point on, these proposed penalties remained the same through the next eight versions of the bill and were included in the final enactment of the FLPMA without debate. This final language ultimately became an obstacle to the appropriate handling of enforcement actions against offenders. According to Smyth in *Reality or Mirage*:

Another stumbling block in the language of section 303(a) is the amount of the penalty provided. Violation of a regulation issued under section 303(a) is punishable by not more than a \$1,000 fine, or not more than twelve months imprisonment, or both. This makes the violation a minor offense. Under the Federal Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, only criminal actions involving petty offenses may be commenced by the issuance of a citation or violation notice, and only petty offenses may be disposed of by payment of a fixed sum in lieu of appearance at trial. Thus, cita-

cannot be issued for violations of section 303(a), making the physical arrest of a violator followed by arraignment and trial before a magistrate or judge the only effective means to bring about a conviction under section 303(a).

The disadvantages of this system are immense. Law enforcement officers observing a regulation violation under section 303(a) have limited options. They can arrest the violator and bring him before a magistrate or judge (who may be hundreds of miles away), jawbone the violator into ceasing the illegal activity, or simply ignore the activity.

The National Park Service and the Forest Service do not have this problem since any violation of their general criminal regulations is a petty offense. In fact, in 1962 the Forest Service sought and obtained an amendment to the stated penalties in its enforcement authority specifically to bring them within the petty offense category.

It has been incorrectly suggested that the Secretary could prescribe penalties meeting the petty offense definition in regulations promulgated under section 303(a). However, that option is not available to the Secretary because Congress fixed the penalty. Furthermore, since it is the maximum penalty, not the sentence actually imposed, which determines the classification of an offense, it does not matter that a person may be sentenced to less than the maximum penalty. Thus, the Secretary could not reclassify the offense by varying the sentence.

Some relief to this obstacle occurred in 1980, not due to Congressional action, but due to changes made in the Federal Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates. The 1980 rules included an Advisory Committee Note that stated:

A misdemeanor case above the petty offense level may be initiated by citation or violation notice, and such document will suffice if a plea of guilty or nolo contendere is entered; but if such a case is to go to trial, then a complaint, information, or indictment is necessary.

This revised rule opened the way for the BLM to develop its first collateral/bail schedule for FLPMA misdemeanor regulations, and enabled the BLM law enforcement officers to begin using the Federal violation notice procedures to take enforcement actions for violations occurring in their presence.

Nothing in the revised rules changed the fact that any person charged with a Class A misdemeanor offense under the FLPMA has the option of asking for a jury trial by district court judge. While this seems innocuous, it represents one more obstacle to the effective enforcement of the provisions of the FLPMA. When a person requests a trial by district court judge, it necessitates the magistrate judge forwarding the case to the district court. In this process, the U.S. Attorney must be involved in making the decisions on whether the case should go to trial. In the case of misdemeanors, the U.S. Attorney's office always has the authority to decline prosecution. The "minor" public land-related offenses seldom measure up against the major felony cases being typically handled by each U.S. Attorney's office. Some U.S. Attorneys have even established prosecutory guidelines that sometimes eliminate BLM offenses from being prosecuted. The net result is that when a BLM offender asks for jury trial, it may cause the case to be ultimately dismissed without any implication of penalties. Certainly that would not result in the deterrent effect that the Congress may have intended by making the penalty the greater Class A misdemeanor rather than the lesser Class B misdemeanor.

The BLM was successful for many years in implementing the Federal violation notice procedures. The issue became a problem once again when the 1990 Federal Rules of Criminal Procedure were issued. Specifically, Rule 58 provides: "The trial of a misdemeanor may proceed on an indictment, information, or complaint or, in the case of a petty offense, on a citation or violation notice." Some U.S. District Courts have interpreted this to imply that only in petty offenses can a citation or violation notice be used, throwing the issue back to the pre-1980 situation. Other U.S. District Courts have determined that the citation can be used when the defendant pays the collateral amount (fine) and terminates the proceedings, but, if a trial ensues, then an indictment, information, or complaint must be used to initiate the trial. However, the 1990 Advisory Committee Notes appended to this rule state, "The Committee envisions no major changes in the way in which the trial of misdemeanors and petty offenses are currently handled." This being the case, then the 1980 Advisory Committee Note that provides: "A misdemeanor case above the petty offense level may be initiated by citation or violation notice" is applicable as well. The problem arises because the 1980 Advisory notes were not re-published in the body of the 1990 Rules. The BLM has had to resort repeatedly to explaining this complicated sequence of events each and every time justice officials question the propriety of using Federal violation notices for charging instruments for FLPMA related Class A misdemeanor offenses.

There is little the BLM can do to remedy this issue. The BLM does have some opportunities to use the penalties of other Federal laws for some of its regulations. However, these laws have some limitations and do not always apply to all of the public plans. For example, the infraction-level penalties of the Taylor Grazing Act apply only to public lands within grazing districts, and the Class B misdemeanor level penalties of the National Wild and Scenic Rivers Act apply only to those public land areas designated by Congress as units of the Wild and Scenic Rivers System. Justice Department officials have often recommended that the BLM seek an amendment to the FLPMA to conform its criminal penalty provisions to the same level (Class B misdemeanor) as other land management agencies (National Park Service, U.S. Forest Service, etc.) It would certainly make sense to recommend such an amendment because it would serve to lessen the penalty jeopardy to potential offenders and streamline the process of criminal enforcement actions, which would be convenient to both the offender and the Government.

## Law Enforcement Regulations

Regulations issued by the Secretary of the Interior to implement the provisions of the FLPMA or other applicable laws that prescribe criminal penalties for violations are loosely referred to as law enforcement regulations. Prior to the enactment of the FLPMA, the BLM had very few public land regulations that prescribed criminal penalties and, so, was not in the general business of having law enforcement regulations. The BLM has actually had law enforcement regulations since enactment of the Taylor Grazing Act of 1934. This Act authorized the Secretary of the Interior to issue regulations necessary to regulate the occupancy and use and preserve the land in the grazing districts. The Act further provided for punishment by a criminal fine of not more than \$500, but did not provide an imprisonment penalty. This made violation of any Taylor Grazing Act regulations a infraction-level offense. The first regulations issued for this purpose have become historically known as the "range code." Eventually these became the prohibited acts section of the BLM range management regulations and remain enforceable to this day. The BLM also had many other regulations related to land use, but they did not carry criminal penalties. The BLM regulations evolved with the enactment of each new public land law or directive. Therefore, the BLM seemed to develop a set of regulations for each program to emerge such as: recreation, wild and scenic rivers, wildlife, mineral materials, etc.

Three laws in the 1960s created additional authority to issue law enforcement regulations that had limited applicability. Those laws were the Land and Water Conservation Fund Act of 1964, the National Trails Act of 1968, and the Wild and Scenic Rivers Act of 1968. Further, the Wild Free-Roaming Horse and Burro Act of 1971 authorized the issuance of law enforcement regulations to implement the provisions of that Act. Then in 1972, President Nixon issued Executive Order 11644, which ordered the BLM to issue regulations to designate areas of public lands where off-road vehicle use is permitted and where it is not permitted. Further, the regulations were for the purposes of protecting resource values, preserving public health, safety, and welfare, and minimizing use conflicts. The order stated that the agency head was to prescribe appropriate penalties for violations, where authorized by law. Although BLM issued their first off-road vehicle regulations, there was no law that authorized prescribing criminal penalties. This was one more impetus, among many, leading to the need for a comprehensive "organic act" for the BLM, that included the authority to issue law enforcement regulations necessary for the appropriate regulation of all uses and occupancies on the public lands.

Senate Bill 921 (February 23, 1971) provided only that such regulations should relate to the protection of the public lands and the uses thereof. House Bill 7211 (April 6, 1971) described such regulations in terms of the public lands and property located thereon. Senate Bill 2401 (August 3, 1971) described such regulations as those that would be adopted for the purpose of protecting the national resource lands, other public property, and the public health, safety, and welfare. But there was an additional requirement that such regulations would be only those specifically identified by the Secretary as being subject to the criminal sanctions. Senate Bill 424 (January 18, 1973) proposed language that was the same as Senate Bill 2401. Senate Bill 1041 (February 28, 1973) had a different approach by describing such regulations with respect to the management, protection, development, and sale of the national resource lands and property located thereon. The later Senate Bill 424, that was actually passed by the Senate on July 8, 1974, contained the same basic description with the exception of replacing the word sale with

the words acquisition and conveying. When, in fact, there would be little need to affix criminal penalties to any regulations issued for the activities of acquisition and conveying. The next six versions of the bill (S 507, January 30, 1975; HR 5224, March 19, 1975; S1292, March 21, 1975; HR 5622, March 26, 1975; S 507, December 15, 1975; and S 507, February 25, 1976) had the same language as Senate Bill 424. Included in that proposed language was the requirement that the Secretary specifically identify the regulations that are subject to the criminal sanctions.

House Bill 13777 (May 13, 1976) had language similar to the previous versions, but dropped all reference to development, acquisition or conveyance. The regulations were to be those with respect to the management, use, and protection of the public lands, including the property located thereon. The proposed language also had dropped any requirement for the Secretary to specifically identify those regulations that are subject to the criminal sanctions. The proposed language in this bill was carried forward into the amended House Bill 13777 (July 22, 1976) and ultimately into the FLPMA. However, House Bill 13777, as introduced and amended, stated that the Secretary "may issue regulations." The FLPMA states that the Secretary "shall issue regulations." The dropping of the "identifies as being subject" phrase and the deliberate use of the word "shall" imply that law enforcement regulations with criminal penalties are a mandatory requirement. This is corroborated by commentary found in the Conference Report of September 29, 1976, as follows:

The conferees adopted the Senate mandatory requirement for law enforcement regulations.

After enactment of the FLPMA, the BLM was suddenly confronted with a major change in its regulatory. It went from issuing regulations that were aimed at implementing only the requirements of specific public land laws to having general authority to regulate any public land activity with respect to the management, use, and protection of the public lands, including the property located thereon. This was a very broad grant of authority. According to Smyth in *Reality or Mirage*:

The language of section 303(a) is fairly broad, and an argument could be made that the Secretary in regulating the use of the public lands could make such crimes as theft, robbery, rape, and murder punishable under FLPMA. As a policy matter, it is unlikely that regulations relating to the protection of users of public lands will be written by this administration. State and local enforcement officers have traditionally policed these crimes, and despite the problems with State and local enforcement which preceded FLPMA, the Interior Department has been inclined to continue the traditional approach. Consequently, the Interior Department, as the Federal Government's leading conservation agency, will probably emphasize only the enforcement of laws protecting the resources of the public lands.

The Department of the Interior did indeed follow the "traditional approach" in issuing the first sets of FLPMA-related regulations. It had long been a traditional approach of the BLM that each individual BLM program issue its own sets of regulations. So the initial step in implementing the "law enforcement regulation" provision of the FLPMA was to amend the various program regulations currently in existence with the FLPMA criminal penalties provisions. The range management prohibited acts, the recreation management regulations, off-road vehicle regulations, closure regulations, and recreation use authorization regulations were all amended in this manner in the late 1970s. However, the closure regulations were not amended then by incorporating the FLPMA requirements related to fishing and hunting closures and the requirement to comply with the Administrative Procedure Act. This began the process of the

"law enforcement regulations" being fragmented and scattered throughout the various parts and subparts of title 43 of the Code of Federal Regulations.

An attempt was made in 1980 to begin a consolidation process for law enforcement regulations. This was done with the advice of Paul Smyth who was employed in the Department of the Interior Solicitor's Office in Washington, DC, and was the author of the aforementioned *Federal Law Enforcement on Public Lands: Reality or Mirage?* article in the Arizona Law Review. These were the first regulations referred to as "law enforcement regulations" to be issued officially. They were issued on May 12, 1980, with the objective of providing in a single Part a compilation of all criminal violations relating to public lands that appear throughout Title 43 of the Code of Federal Regulations. The supplementary information provided in the original rulemaking included the following:

- .... The new Part contains a compilation of all enforcement-related regulations applicable to public lands and resources....
- .... For the convenience of those public land visitors or users who are engaged in specific land use activities, enforcement provisions, such as those relating to prohibited acts, will also remain as a part of the regulations relating to specific land use activities....
- ....This rulemaking makes no substantive change in Title 43 of the Code of Federal Regulations. It is in the public interest that this compilation of existing provisions of regulations be published as a final rulemaking to be effective immediately....
- ....Any new enforcement provisions developed in the future for any specific public land use or activity will involve public participation. After adoption of any new enforcement regulations, Part 9260 will be amended to include those new provisions, without further public participation.....

Unfortunately, the BLM rulemaking activity has not often amended Part 9260 with new enforcement provisions or revision to provisions to reflect the changes made to regulations in other Parts of Title 43 of the Code of Federal Regulations. The BLM continued with its long traditional practice of each program revising and re-issuing its own sets of regulations with little amendment to Part 9260. The following are the regulations issued in the various parts of Title 43 of the Code of Regulations that were issued with criminal penalties:

<b>Year Issued</b>	<b>Subject Matter of Regulations</b>	<b>Location in CFR</b>	<b>Included or amended in Part 9260</b>
1978	Recreation Management	43 CFR 8360	Yes
1978	Range Management	43 CFR 4140	Yes
1978	Natural History	43 CFR 8200	Yes
1978	Management Areas	43 CFR 8350	Yes
1978	Recreation Permits	43 CFR 8370	Yes
1978	Closures	43 CFR 8340	Yes
1979	Off-road Vehicles	43 CFR 8360	Yes
1980	Off-road Vehicles (revision)	43 CFR 8340	No
1981	Fire Prevention	43 CFR 9210	No
1983	Recreation Rules of Conduct	43 CFR 8360	No
1984	Archeological Resources	43 CFR 7	No
1984	Recreation Permits (revised)	43 CFR 8340	No
1984	Range Management (revised)	43 CFR 4140	No
1985	Wilderness Areas	43 CFR 8560	No
1986	Wild Horses and Burros	43 CFR 4770	No
1987	Leases, Permits, and Easements	43 CFR 2920	Yes

1989	Rights-of-Way	43 CFR 2881	Yes
1995	Range Management (revised)	43 CFR 4140	No
1995	Forest Products (contracts, permits)	43 CFR 5460	Yes
1996	Mining Claim, Occupancy and Use	43 CFR 3715	No

The BLM has, in a few examples, issued regulations that relate to management, use, and protection of the public lands, including the property located thereon, that did not specifically prescribe the criminal penalties of the FLPMA. This happened despite the congressional intent of mandatory "law enforcement regulations." These examples are the Surface Management regulations and the Exploration and Mining, Wilderness Review Program regulations issued in 1980.

The evolution of BLM "law enforcement regulations" has led to a number of inconsistencies and a high degree of repetition and redundancy. The BLM started a project in 1990 to evaluate the current set of law enforcement regulations, determine future needs, eliminate repetition and redundancy, and, once again, consolidate BLM law enforcement regulations in a single part of the Code of Federal Regulations, in the same manner as the U.S. Forest Service and the National Park Service. Over the course of the next five years, field teams were formed, meetings held, and several working drafts developed. The final working draft was delivered to the BLM Washington Office Regulatory Management Group in 1995, where it underwent major editing and reformatting to meet the requirements for "regulation re-invention." The proposed rulemaking was issued on November 7, 1996, for public comment.

The public reaction to the proposed rulemaking was nothing less than hostile. Many saw this initiative as an attempt by the BLM to expand its law enforcement authority and prohibit additional activities. Even after over twenty years, many members of the public thought that the BLM was inventing its own law enforcement authority for the first time. Others thought that the prohibited acts in the proposed rulemaking were new. Yet most of the proposed regulations were prohibitions that had been issued in other regulations over the last twenty years. Many believed that the BLM had not been granted the congressional authority to have such regulations, let alone enforce them. Yet the FLPMA granted more than adequate authority. In one independent review of the proposed rulemaking by the Western States Foundation, the following commentary was provided:

Section 303 of the Federal Lands Policy and Management Act of 1976 (FLPMA) assigns very broad authority to the Secretary of Interior (as a practical matter, to BLM) to promulgate all regulations that can be deemed necessary or appropriate for management or protection of the public lands, and to enforce "knowing and willful" violation under criminal penalty.

As authority for most of the proposed regulations, BLM cites Section 303: "The Secretary shall issue regulations necessary to implement the provisions of this Act with respect to the management, use, and protection of the public lands, including the property located thereon...." This section of law provides the Secretary authority to enforce such regulations by criminal or civil procedures, and generally prescribes cooperation and agreements with local law enforcement agencies, and designation of federal personnel, to enforce the regulations on federal lands.

The agency's general authority on the public lands is primarily "proprietary". That is, BLM regulation is to focus on the management and protection of the land and federal property, and criminal law enforcement is

to remain primarily the responsibility of local and state authorities. While section 303 does direct BLM authority toward only those areas applicable to management and protection of the public lands, it does extend BLM authority beyond mere "proprietary" to rather broad police powers applicable to control and protection of the public lands. Section 303 appears to provide BLM considerable latitude, though not unlimited to preempt or duplicate state and local laws with its own law enforcement regulations.

The general finding was that the BLM had the authority to issue the proposed regulations and to enforce them when finalized. However, the BLM did not fully clarify the significant differences from existing regulations so that the public could more adequately understand and respond to the issues with which they were concerned. The entire proposed rulemaking project was subsequently canceled by the Secretary of the Interior and the BLM law enforcement officers merely continued to enforce the existing regulations, many of which are now well over twenty years old.

## Civil Remedies

The BLM and its predecessor agencies, the General Land Office and the Grazing Service, have always possessed the ability to seek civil remedies and damages concerning trespasses since the early days of public domain lands management. Therefore, the work related to the various trespasses on the public lands has a long tradition in the BLM. Prior to the enactment of the FLPMA, the BLM conducted this work under various sets of regulations, policy manuals, and handbooks. Most of these early procedures started with the administrative processes of notices, orders, bills for collection, and, in some cases, property impoundments. The Congress recognized that in some cases the administrative processes didn't always result in effective enforcement and protection of resources.

House Bill 7211 (April 6, 1971) was the first version of the Bill to specifically mention authority for injunctive relief as follows:

At the request of the agency head, the Attorney General may institute a civil action in any United States district court or the highest court in a United States territory for an injunction or other appropriate order to prevent any person from utilizing the public lands in violation of regulations issued under this act.

The official commentary on the bill provided as an explanation only that "it authorizes application for an injunction or other appropriate order to prevent any person from utilizing the public lands in violation of the regulations." The next eight versions of the bill included very similar language with some minor changes and re-codification. By the time (December 15, 1975) Senate Bill 507 was introduced, the proposed language was as follows:

At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from using, occupying, or developing the national resource lands in violation of laws or regulations relating to lands or resources managed by the Secretary.

The Section-by-Section Analysis of Senate Bill 507 provided the following commentary:

Of course, the Committee expects that most violations of the Secretary's regulations can be resolved on an administrative basis without instituting criminal or civil action pursuant to subsections (a) and (b). This is particularly true in the case of minor violations, such as innocent trespass by individuals. While these provisions provide authority for legal action, they should not be viewed as a substitute for administrative procedures and remedies.

Senate Bill 507 passed on February 25, 1976, with the same language. The proposed language in the counterpart House Bill 13777 was as follows:

At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from utilizing public lands in violation of regulations issued by the Secretary under this Act.

The proposed language was carried into the amended House Bill 13777 that passed the House on July 22, 1976. The proposed language was also carried into the FLPMA. There was no debate on the issue of these civil remedies.

Smyth in *Reality or Mirage* provides a most interesting discussion on the relationship between the civil remedies and criminal remedies granted through the FLPMA:

Unfortunately, the task of solving law enforcement problems by jawboning has not been successful and the law of civil trespass has presented unusual procedural and enforcement problems. For example, there is no general federal statute on trespass, and consequently state law applies. Hence, the same act committed in different states could lead to different civil monetary recoveries depending upon state laws concerning the measure of damages and mitigation of damages. These reasons and others led the Public Land Law Review Commission to recommend the following: "Statutes and administrative practices defining unauthorized use of public lands should be clarified and remedies available to the Federal Government should be uniform among land management agencies. Where necessary, statutory authority for policing by Federal agencies should be provided."

Sections 303(b) and 303(g) interrelate to provide the Secretary with additional authority to seek injunctive relief to prevent threatened or continuing violations of the regulations... The purpose of these sections is evident when one recognizes that an injunction is an extraordinary remedy and is granted sparingly. Courts generally will not enjoin an act prohibited by the criminal law. They view the existence of a criminal penalty as an effective deterrent. Thus, it is argued that the issuance of an injunction would be superfluous since an adequate remedy at law is available. Given the vast nature of the public domain, limited moneys for law enforcement, and other problems, such as proving a knowing and willful violation and the lack of citation authority, the foregoing assumption is not appropriate here.

An exception to this rule against injunctions exists where there is a specific statutory grant of power for an injunction. Such an exception exists in sections 303(b) and 303(g), and, in certain situations, it is an effective deterrent to regulation violations. For example, use of an injunction to prevent an unauthorized rally involving off-road vehicles is more effective in preserving the resource than criminal prosecution could be. Waiting until the rally has begun or is completed before taking action could result in permanent damage to vegetative and archeological resources. Similarly, an injunction prohibiting a rendering plant from slaughtering wild horses is more effective than criminal penalties.

These provisions were affirmed in the 1981 case, *U.S. v. Smith Christian Min. Enterprises*, in which the Court found:

Where defendants did not have rightful claim to lands, the United States was entitled to order directing defendants to remove themselves and their possessions from land and directing that if they did not do so by a specified date, remaining structures would be deemed abandoned and property of the United States.

To a great extent, the BLM has discretion to determine what remedies will be evoked in dealing with violations of laws and regulations. This is especially true for violations of FLPMA-related regulations in which the criminal penalties are set at the misdemeanor level. In this situation, the BLM can choose to evoke administrative, civil, and/or criminal remedies, depending on the circumstances. When it comes to trespasses related to certain consumptive uses such as timber, mineral materials, lands, and grazing, the BLM has followed its traditional methods and the intent of Congress in a preference to solving violations administratively. However, the BLM must also follow the other Federal laws that may have a part to play in this decision making. According to the misprision of felony statute (18 U.S.C. 4), the BLM must make known to the U.S. Attorney's office any violations that also constitute violation of a criminal statute. The primary statutes that come to play here are Theft of Government Property (18 U.S.C. 641) and Destruction of Government Property (18 U.S.C.1361). Under these statutes any theft or destruction of government property worth over \$1,000 is a felony. Therefore, any violations of

FLPMA regulations resulting in a value loss to the Government of greater than \$1,000 would require reporting and consultation with the affected U.S. Attorney's office prior to implementing any administrative remedies. The BLM has other possible felony statutes that also must be considered such as the Archeological Resources Protection Act (16 U.S.C. 470aa), the Native American Graves Protection and Repatriation Act (18 U.S.C. 1170), the Federal Cave Resources Protection Act (16 U.S.C.4306), the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1720), the Clean Water Act (33 U.S.C. 1319), the Resource Conservation and Recovery Act (42 U.S.C. 6928), and the Mineral Leasing Act (30 U.S.C. 195).

## Law Enforcement Contracts

Normally a contract could be defined as an agreement between two or more persons which creates an obligation to do or not to do a particular thing. In the case of providing law enforcement services to the public lands, this would apply to situations in which the BLM pays another entity to provide such services on behalf of the BLM. It appears that the Congress had the intent to provide the authority for this to the BLM throughout the various versions of the bills that would become the FLPMA. However, during the evolution of the enabling language, eventually a distinction was drawn between what a law enforcement contract would be, as opposed to a reimbursable law enforcement agreement. This emerged in that specific language was provided in two distinct yet inter-related sections of the enforcement provisions of the FLPMA.

Prior to the development of the several bills that would become the FLPMA, law enforcement on the public lands was largely dependent upon the willingness of State law enforcement agencies (eg. Fish and Game Departments, State Police, etc.) and of local county sheriffs. State and local law enforcement agencies have always been able to enforce their laws and ordinances on the public lands and the same remains true today. Unlike some exclusive Federal reservations (some National Parks, Indian Reservations, Military installations, etc.), the public lands are held by the Federal government in propriety jurisdiction. This means that the States may exercise their full police authority under the tenth amendment of the Constitution on the public lands. It also means that the Federal government may exercise its authority to protect U.S. Government property on the public lands under the Property Clause (Article IV, Section 3) of the Constitution.

The first four versions (S921, HR7211, S2401, S424) of the bill did not make any provisions for the principle of "contracting" of law enforcement services by State and local officials on the public lands. So the initial intent was to provide for law enforcement to be conducted by Federal personnel in a similar manner as the National Park Service, U.S. Forest Service, and the U.S. Fish and Wildlife Service. The first mention of "contracting" provisions is found in Senate Bill 1041.

The proposed language was as follows:

In connection with administration and regulation of the use and occupancy of the national resource lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the national resource lands.

This proposed language was almost identical to the authority granted to the U.S. Forest Service (16 U.S.C. 551a) in 1971. This implied an intent that the BLM have a "contracting" program similar to the U.S. Forest Service. This proposed language was carried into Senate Bill 424, which was passed by the Senate on July 8, 1974. In the section-by-section analysis, an intent was expressed for Department of the Interior personnel to focus on laws and regulations relating to the lands and resources, while leaving "general" law enforcement to State and local officials. The commentary was as follows:

The Committee is not, as the Administration requested, extending enforcement authority to any and all criminal activities. Some Committee members expressed concern about providing general law enforcement authority to Departmental personnel who lack the intensive training and the experience of state and local law enforcement personnel. Other members expressed concern that the law enforcement training required to permit general law enforcement by Departmental personnel would necessarily result in a diminution of time spent by that personnel in acquiring the necessary and more important resource management and protection skills. Instead, the Committee believes the better alternative is to authorize the Secretary to contract with state and local officials for general law enforcement on the national resource lands. This authority is provided in section 308.

It is important to note that the word "reimbursement" is used in the proposed language, yet the word "contract" is used in the commentary. This implies that at this point in the legislative history, the Senate intended this proposed language to be the primary provision for "contracting" with State and local officials. The proposed language was carried into the next five versions (S507, HR5224, S1292, HR5622, and S507) of the bill. The Section-by-Section Analysis of Senate Bill 507 provided the following:

It would significantly facilitate management of the national resource lands by making violation of laws and regulations pertaining to them a crime and by vesting enforcement authority in certain designated Departmental employees. In addition, the bill would authorize the Secretary to cooperate with State and local law enforcement agencies on national resource lands and to reimburse them for extraordinary services on national resource lands.

This commentary reaffirmed the principle that Departmental employees focus on national resource lands laws and regulations, while State and local officials provide "general" law enforcement. The commentary also provided that reimbursements would be for "extraordinary" services. The point had already been made that the State and local officials may exercise their full police authority on the public lands. The Federal government is a property owner within their jurisdiction. Any citizen who is using the public lands is entitled to the police protections offered by State and local officials. Further, the Federal government is entitled to the same police protections from the State as any other land owner. In fact, under the congressionally enacted Payment in Lieu of Taxes (PILT) program, specific payments are appropriated to local counties depending upon the amount of Federal land located within their boundaries. This means that a normal police response on the public lands to major crimes (murder, rape, robbery, theft, etc.) and missing persons is expected by both the citizens and the Federal government without further reimbursement. "Extraordinary" services are those services requested by the Federal government that go beyond this normal police response.

The introduction of the counterpart bill (HR 13777) to Senate Bill 507 would forever alter and perhaps confuse the original intent on the principle of "contracting" with State and local officials. While previous versions of the bill clearly separated the Federal and State law enforcement roles in two distinct sections, this bill mixed the two roles in a single section. House Bill 13777 included the following proposed language:

(c)(1) When the Secretary determines that assistance is necessary to enforce any Federal law or regulation relating to the public lands or their resources he shall offer a contract to the regulatory and law enforcement officials of any State or political subdivision thereof with the view of achieving maximum feasible reliance upon such regulatory and law enforcement officials in administering such regulations and laws. The Secretary shall negotiate annually with such officials who have authority to enter into contracts for such purposes and offer them a reasonable contract under which such officials will enforce such Federal

regulations and laws. .... The Secretary shall reimburse such States or political subdivisions thereof for the expenditures incurred and liabilities assumed by them in rendering such service. The Secretary shall provide such law enforcement training as he deems necessary in order to carry out the contracted for responsibilities with the local law enforcement agency. While exercising the powers and authorities provided by such contract pursuant to this section, such local law enforcement officials and their officials and agents shall have all the immunities of Federal law enforcement officials and officers.

(2) In those instances where State and local enforcement officials do not have authority to enter into contracts under this section, or where the Secretary offers a contract to State and local law enforcement officials as provided in this section and the offer of such contract is not accepted within the time specified by the Secretary, the Secretary may designate Federal personnel to carry out his enforcement responsibilities on the public lands.

This proposed language sets forth the requirements for a different kind of "contract" that is separate and distinct from the type of "contracts" provided for in previous versions. Further, it sets forth an absolute requirement for an annual negotiation of "reasonable contracts." It also provides that the Secretary may designate Federal personnel for enforcement responsibilities only when State and local officials do not have the authority to enter into a contract or when such contracts are not accepted. It also set forth a requirement for "achieving maximum feasible reliance" on this method of providing Federal law enforcement to the public lands. This requirement will be discussed in detail in the "achieving maximum feasible reliance" section of this document. The section-by-section analysis provided the following commentary:

Subsection (c) provides the Secretary of the Interior with authority to enforce his regulations and for that purpose to execute and serve warrants, make arrests, and engage in search and seizure under prescribe conditions and rules. However, it directs the Secretary to rely to the maximum feasible degree on State and local law enforcement officials for enforcement under this section. To this end, he will offer mutually acceptable contracts to those officials willing and able to take on this work on a reimbursable basis. In the absence of such contracts, the Secretary will provide for law enforcement by Federal personnel. The Secretary is directed to provide adequate training to those upon whom he relies for law enforcement.

Had this proposed language become law, it would have created a tremendous burden on the BLM considering that there are well over 200 counties in the Western United States having major blocks of public land, and the BLM would be required to negotiate annually with all of these counties. The BLM would have had to establish a special office just for law enforcement contracting.

After considerable debate (this debate will be discusses in the "achieving maximum feasible reliance" section), House Bill 13777 was amended prior to being passed on July 22, 1976. All language that required the Secretary to annually negotiate contracts was clearly and deliberately deleted in the amendments. Further, the requirement that either State and local officials not have the authority to contract or the State and local officials not accept the contract prior to designating Federal personnel was clearly and deliberately deleted in the amendments. Thus, in the amended proposed language, the Secretary has the discretion to designate Federal personnel as he or she sees fit. The amendments that provided for this were proposed by Congressman Seiberling. Mr. Seiberling gave the following testimony in regards to the purpose of his amendments:

Mr. Chairman, at present the Bureau of Land Management – BLM – custodian of 450-million acres of public lands, has totally inadequate authority to manage and protect those lands and their resources. My

amendment to section 302 of H.R. 13777 would clarify the Secretary of the Interior's authority for law enforcement on these lands. It would give the BLM authority to offer contracts to local law enforcement officials for enforcing Federal laws and regulations on public lands. It would also allow the Secretary to designate trained Federal personnel to carry out law enforcement responsibilities.

As presently drafted, H. R. 13777 directs the Secretary to offer contracts to State and local law enforcement officials. However, only if those authorities refuse such a contract can the Interior Department exercise enforcement authority. Curiously, the bill gives the necessary authority for the California desert, but does not do so for the rest of our public lands, where similar problems exist.

My amendment would help remedy this situation. It would still direct the Secretary to achieve "maximum feasible reliance" in using local law enforcement officials to enforce Federal laws and regulations. But he would also have the backup authority to designate trained Federal personnel to carry out these enforcement responsibilities when needed.

Furthermore, my amendment does not change the language in subsection (d) which authorizes the Secretary to cooperate with State and local law enforcement officials, and to reimburse them for enforcement of State or local laws. This will provide additional assistance for crimes against people, with reliance for enforcement left at the State and local level.

The proposed language as amended by Congressman Sieberling to provide the Secretary with discretion to designate Federal personnel was carried into the FLPMA. The order in which the provisions appear in the final law, with the "contracting" provision first, the designation of Federal personnel second, and law enforcement cooperation with and reimbursement to State and local officials third, continues to this day to render these provisions of the FLPMA to be among the most confused and misunderstood sections of the Act.

Smyth in *Reality or Mirage* provides the following discussion on this section:

Section 303(c)(1) authorizes the Secretary to contract with local officials for law enforcement services where the Secretary considers that assistance is necessary to enforce federal laws and regulations on public lands. The broad nature of this language makes clear that federal laws, in addition to regulations issued under section 303(a), may be enforced by local law enforcement personnel. The Secretary's authority to contract was intended, in part, as a financial inducement to local officials to provide law enforcement services on public lands.

...strict training requirements were written into the Conference Report. These standards and requirements were taken from the Department of the Interior Manual which controls law enforcement activities by Departmental personnel. Thus, the conferees ensured that local law officers enforcing federal laws on public lands have a minimum of 320 hours of intensive law enforcement training as is required of other departmental enforcement officers, such as National Park Police and Fish and Wildlife Service Agents.

The following table is meant to illustrate the actual differences between FLPMA law enforcement contracts and reimbursable agreements:

<b>Provision:</b>	Law Enforcement Contract	Reimbursable Law Enforcement Agreement
<b>Authority:</b>	FLPMA § 303(c)(1)[43 U.S.C. 1733(c)(1)]	FLPMA § 303(c)(1)[43 U.S.C. 1733(c)(1)]
<b>Enforcement Required:</b>	All Federal laws and regulations relating to the public lands and resources to the same extent as if he, a State/local officer, was a BLM law enforcement officer.	State laws and local ordinances only.

<b>Training Required:</b>	<u>Federal</u> law enforcement training at the Federal Law Enforcement Training Center.	State law enforcement training as required by State peace officer standards and training requirements.
<b>Threshold for Initiating:</b>	When the BLM determines that assistance is necessary for enforcement of <u>Federal</u> laws and regulations relating to the public lands and resources.	<ol style="list-style-type: none"> <li>1. When there is a public demand for "extraordinary" law enforcement or search and rescue services on the public lands. This is normally indicated by high levels of out-of-county visitation.</li> <li>2. When the BLM needs "extraordinary" services to regulate the use and occupancy of the public lands or to support BLM law enforcement operations.</li> </ol>
<b>Feasibility:</b>	<ol style="list-style-type: none"> <li>1. Availability of funding at the field office level. Contracts would normally be more expensive, as most sheriff's would expect reimbursement of salary for at least one full-time deputy and a patrol vehicle for same.</li> <li>2. State and local officials have authority and are willing to initiate contract.</li> <li>3. State and local officials accept the requirement to enforce <u>Federal</u> laws and submit their designated officer(s) to <u>Federal</u> training and a <u>Federal</u> background investigation.</li> </ol>	<ol style="list-style-type: none"> <li>1. Availability of funding at the field office level. Most agreements are for less than full-time services.</li> <li>2. State and local officials have authority and are willing to initiate agreement.</li> </ol>

## Law Enforcement Agreements

As presented above, the authority for law enforcement agreements did not emerge in the legislative history until the fifth version of the bill (S1041, February 28, 1973). The proposed language was as follows:

In connection with administration and regulation of the use and occupancy of the national resource lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the national resource lands.

This proposed language was carried into Senate Bill 424 and the Section-by-Section Analysis included the following commentary:

Visitors and property on national resources lands are entitled to protection under State law; but, in the past, State and local officials have not policed the national resource lands with any degree of regularity. This is largely because these officials' constituents – the local citizenry – do not live on those lands. Furthermore, most State and local law enforcement programs suffer from a chronic shortage of funds and manpower. Most national resource lands are relatively extensive in size and sufficiently remote to make their policing expensive. Therefore, many State and local law enforcement officials reach these lands only during rescue operations or special calls.

In order to make the policing of national resource lands more attractive to State and local law enforcement personnel, Section 308 would provide the Secretary with the authority to contract (and thus pay for) it. Under this section, State and local law enforcement agencies would be reimbursed for extraordinary services. Normal law enforcement duties would continue to be supplied by State and local personnel on a non-reimbursable basis.

The proposed language from Senate Bill 424 was carried forward into the next five versions (S507, HR5224, S1292, HR5622, S507) of the bill. The first revision to the proposed language occurred with the introduction of House Bill 13777 on May 13, 1976. In that revision, the phrase "national resource lands" was changed to "public lands" and the phrase "in the enforcement of the laws and ordinances of such State or subdivision" was inserted after the word "thereof." The section-by-section analysis provided the following commentary:

Subsection (d) authorizes the Secretary of the Interior to cooperate with State and local officials, financially and otherwise, to assist in the enforcement of State and local laws and ordinances where such activities will assist in the administration and regulation of use and occupancy of the public lands. The Committee expects the Secretary of the Interior to construe this authority broadly, for the purpose is to provide financial assistance to States and their subdivisions where the existence of large areas of public lands deprives the government of adequate enforcement of laws and ordinances as they apply to the public lands.

The proposed language for this section of House Bill 13777 was carried into the amended and passed House Bill 13777 and, ultimately, into the FLPMA. Further discussion on this section as provided by Smyth in *Reality or Mirage* is as follows:

Traditionally, basic law enforcement has been considered a function of state and local governments and, generally speaking, most major categories of public and private offenses are adequately covered by state law.

Moreover, public lands not being on local tax rolls, created a strong disincentive for local officials to expend their limited enforcement funds on protection of such lands.

Section 303(d) authorizes the Secretary to enter into cooperative agreements with state and local regulatory and law enforcement officials for the enforcement of state and local laws and ordinances. This section was intended to be somewhat of a relief measure for state and local officials ...

While Congress was deliberating on FLPMA, however, it took a broader step to remedy the problems surrounding the tax exempt nature of public lands by enacting the Payments in Lieu of Taxes Act. Accordingly, it appears that the emphasis will be on reimbursing state and local entities only for the extraordinary services of their law enforcement personnel on public lands, rather than for routine patrol services.

Section 303(d) is much easier to use than section 303(c). There is no training requirement under section 303(d) since the authority of such officers to carry firearms and to make arrests originates in state law rather than under federal statute. Unfortunately, enforcement is limited to state and local laws and ordinances. These laws fully cover person-to-person offenses but are generally weak in resource protection, which is the primary mission of the Interior Department.

This brings up the question whether federal personnel observing a violation of state law on public lands can make an arrest. Without some authority under state law, such action would be a citizen's arrest, thus expanding the employee's exposure to liability in the event of a false arrest. Cooperative agreements could be written under section 303(d) to allow deputization of federal personnel under state law.

The BLM has often used the authority granted by this section. The BLM has three types of law enforcement agreements in place with numerous State and local agencies. These three types of agreements are: reimbursable law enforcement agreements, non-reimbursable law enforcement agreements, and law enforcement agreements for obtaining State or local law enforcement authority.

**Reimbursable Law Enforcement Agreements:** The BLM has many attractive locations on the public lands. Some of the attractions are scenic and natural features, some are places designated for certain forms of recreation, like off-road vehicles, and some have been created through providing recreation facilities such as campgrounds, picnic areas, boat ramps, etc. In most cases, the visitors to these areas are from areas far removed from the counties in which the attractions are located. The visitors to these attractions often expect the typical police protection and services they are accustomed to in their home locations. However, they bring that expectation to counties where the local law enforcement agency (most often a sheriff's department) does not have an adequate tax support base to meet the workload requirements. In other situations, the BLM has law enforcement problems with which it needs assistance, such as marijuana cultivation, clandestine drug labs, timber theft, trash dumping, etc. The State or local agency can provide the necessary services to combat these problems. Further, the BLM may need specific support assistance such as radio dispatching or access to criminal justice systems that can be supplied by the State or local agency. The FLPMA (43 U.S.C. 1733(d)) gives the BLM authority to initiate agreements to reimburse the local agency for expenses incurred. "Expenses incurred" implies that reimbursement is provided after the "extraordinary" services are provided. To facilitate implementation of this authority, the BLM establishes written agreements that specify what services the BLM requires and the dollar amount that the BLM will reimburse after the service is rendered. The BLM generally requires submission of patrol logs, incident reports, and other documents to account for reimbursements provided. Current BLM reimbursable law

enforcement agreements vary from those that request very specific and seasonal services for a small dollar amount to those in which the dollar amount covers a full-time deputy for full-time services on public lands.

**Non-reimbursable Law Enforcement Agreements:** The BLM initiates non-reimbursable law enforcement agreements to service as memoranda of understanding between the BLM law enforcement program and State and local law enforcement officials. This most often is required in places where the BLM law enforcement program and a State and local agencies have overlapping responsibilities. The primary example of this is a "Sikes Act"-type agreement with a State Fish and Game agency. These agreements focus on whether Sikes Act stamps will be required for hunting and fishing on public lands, whether any joint regulations may apply to a habitat management area, and cooperative law enforcement. Another example may be the need for the BLM and a local agency to mutually acknowledge each agency's individual authorities and determine who would best supply certain in-demand, law enforcement-oriented services such as medical aid or search and rescue. It may also involve an agreement to work jointly on a specific project.

**Law Enforcement Agreements for Obtaining State or Local Law Enforcement Authority:** The BLM only has authority to authorize BLM law enforcement officers to enforce the Federal laws and regulations related to the public lands and resources. They cannot be authorized to enforce State laws and local ordinances in the State courts, absent the consent of appropriate State and local officials. In some BLM locations, the BLM and a State or local agency have found it mutually beneficial to enter into agreements granting some form of State law enforcement authority to BLM law enforcement officers operating within that specific jurisdiction. These type of law enforcement agreements require the following: (1) There must be a State law that authorizes the granting of authority; (2) The specified law enforcement official (usually the county sheriff) must be willing to grant the authority, and (3) The specified law enforcement official and the BLM enter into a written agreement to implement the granting of authority. Even though the specified law enforcement official may be willing to grant such authority without conditions, the scope of such authority for BLM law enforcement officers is always restricted to those activities that are in connection with administration and regulation of the use and occupancy of the public lands.

## **Achieving Maximum Feasible Reliance**

The first sentence of Section 303(c)(1) (43 U.S.C. 1733(c)(1) of the FLPMA that related to law enforcement contracts with State and local officials includes the phrase "with the view of achieving maximum feasible reliance upon local law enforcement officials." As discussed above, this language did not become a part of the legislative history until the thirteen version of the bill. The first thirteen versions of the bill primarily included provisions related to the designation of Department of Interior employees for law enforcement responsibilities. Several of the later versions also included authority for providing reimbursements to State and local officials for law enforcement services. The language in the first thirteen versions (S921, HR7211, S2401, S424, S1041, S424, S507, HR5224, S1292, HR5622, S507, and S507) contain enforcement authorities that were very similar to those that had historically been granted to the U.S. forest Service, the National Park Service, and the U.S. Fish and Wildlife Service. The introduction of House Bill 13777 would ultimately create language that would make the BLM's enforcement authority forever unique among the Federal land management agencies.

The language has its roots in the concerns and sensitivities of the Western States in regards to the use of Federal "police powers" on public lands that often constitute a large portion of the individual States. However, these concerns and sensitivities did not emerge in the legislative history of the various bills in the Senate. In fact, the Senate had passed two versions (S424, July 8, 1973; S 507, February 25, 1976) of the bill without any proposed language or testimony that illustrated such concern. The only commentary was provided in the Section-by-Section Analysis of Senate Bill 424 as follows:

The Committee believes the better alternative is to authorize the Secretary to contract with state and local officials for general law enforcement on the national resource lands. This authority is provided in section 308.

The general law enforcement referred to enforcement of the State laws and local ordinances rather than the Federal laws and regulations relating to the public lands and resources.

The first two sentences of the proposed language on this issue in house Bill 13777 was:

(c)(1) When the Secretary determines that assistance is necessary to enforce any Federal law or regulation relating to the public lands or their resources he shall offer a contract to the regulatory and law enforcement officials of any State or political subdivision thereof with the view of achieving maximum feasible reliance upon such regulatory and law enforcement officials in administering such regulations and laws. The Secretary shall negotiate annually with such officials who have authority to enter into contracts for such purposes and offer them a reasonable contract under which such officials will enforce such Federal regulations and laws.

The proposed language went further in section (c)(2) with an absolute requirement to negotiate contracts prior to designating Federal personnel as follows:

(2) In those instances where State and local enforcement officials do not have authority to enter into contracts under this section, or where the Secretary offers a contract to State and local law enforcement officials as provided in this section and the offer of such contract is not accepted within the time specified by the Secretary, the Secretary may designate Federal personnel to carry out his enforcement responsibilities on the public lands.

The section-by-section analysis provided the following:

Subsection (c) provides the Secretary of the Interior with authority to enforce his regulations and for that purpose to execute and serve warrants, make arrests, and engage in search and seizure under prescribe conditions and rules. However, it directs the Secretary to rely to the maximum feasible degree on State and local law enforcement officials for enforcement under this section. To this end, he will offer mutually acceptable contracts to those officials willing and able to take on this work on a reimbursable basis. In the absence of such contracts, the Secretary will provide for law enforcement by Federal personnel. The Secretary is directed to provide adequate training to those upon whom he relies for law enforcement.

The testimony provided on this issue in the House illustrated the concerns and sensitivities of Representatives from the Western States. It also illustrated the concerns of other Representatives that the proposed language would severely hamper the BLM's abilities to effectively enforce the related laws and regulations.

Among the dissenting views on the enforcement authority section were the following:

Although one of the most objectionable provisions of this section was partially cleaned up by the Committee – pertaining to enforcement of regulations by the Secretary – the section remains unworkable. At present, Bureau of Land Management employees have totally inadequate authority to enforce laws and regulations relating to the natural resources of the public lands, such as destruction of archeological sites, harassment of wildlife, destruction of land by off-road vehicles. Normally, the only remedy available for BLM officials is to make a citizen's arrest or call the local sheriff, who may be many miles distant and who also may be philosophically unsympathetic to Federal regulations.

This bill does nothing to improve that situation. It directs the Secretary to offer "reasonable" contracts to state and local law enforcement officials whenever their help is needed to enforce Federal laws and regulations. *Only* if those authorities *refuse* such a contract can the Interior Department exercise enforcement authority. Thus BLM officials would *still* have to call the local sheriff.

Furthermore, there is no assurance or requirement in the bill that the local enforcement authorities will have the necessary qualifications for carrying out these added responsibilities, especially for those concerning resource management. Indeed, the Secretary cannot even take into account past unsatisfactory performance as a reason for not offering the contract. Nor, in the draft of the Committee report which we reviewed, was there any definition of what a "reasonable" contract would consist of.

For many years the National Park Service, U.S. Forest Service and Fish and Wildlife Service have had effective enforcement authority on the lands they manage. Curiously, the bill gives the necessary authority for the California Desert but does not do so for the rest of our public lands, where the same kinds of problems exist.

Those who dissented to the section as drafted put together an amendment effort lead by Congressman Seiberling. He introduced in his remarks that he could not support the legislation unless the enforcement provisions are substantially changed. Specific to the enforcement issues he provided the following:

The BLM currently has very limited law enforcement authority, mainly related to the protection of certain animals and resources on the public lands. Yet with increased public use of these lands, crimes of all types are increasing – crimes against people as well as against natural resources. A BLM employee can witness a crime being committed, but the most he can do is either drive many miles to the local sheriff or else make a citizens arrest, which throws him into personal jeopardy, both legal and physical. In many cases it is

extremely difficult to convince local officials to enforce Federal laws and regulations, since often there are no corresponding State laws and since the local officials do not have the immunities of a Federal officer.

Except for the California desert, H. R. 13777 does very little to improve this situation. The bill would require the Interior Department to rely to the maximum practical extent on State and local police to enforce Federal laws and regulations. It requires the Secretary to annually negotiate and offer a reasonable law enforcement contract to State and local enforcement officials. Only if the officials lack authority to contract or decline the Secretary's contract, could the Secretary designate Federal personnel to enforce Federal laws or regulations.

I intend to offer an amendment that would clarify the Secretary's authority for law enforcement. It would still require the Secretary to achieve maximum feasible reliance upon local law enforcement officials, and would authorize him to offer contracts to appropriate local law enforcement officials. It would not require him to offer these contracts each and every year. It would, however, allow him to designate trained Federal personnel to carry out Federal law enforcement responsibilities, whether or not the local officials accept the contracts. And it would assure that our Federal laws are adequately enforced and that our public lands are fully protected.

Congressman Forsythe added to these remarks by saying, "Requiring BLM to defer to local agency capabilities is, in my view, unwise." He noted that the bill already provided unqualified law enforcement authority to the California Desert and stated, "... it seems only logical to provide similar authority for all BLM lands."

Congressman Downey provided the following remarks:

Last, I am deeply concerned with the weakened effect the law enforcement provision would have on the implementation of the act. In the absence of sufficient Bureau of Land Management legal authority and control, the regulatory efforts of the bill would be negligible. While local, State, Federal cooperation is desirable, the requirement that the Bureau of Land Management could only take over if local authorities refuse to, could only result in undue restrictions in the enforcement of public land laws. Local cooperation should be promoted, but this imposed cooperation only acts as a restraint on the circumstances under which the Bureau of Land Management, or the Department of the Interior, could utilize its own personnel for law enforcement purposes. I sincerely believe the act's purpose could only be effectuated if the enforcement provision is strengthened in the direction of greater Bureau autonomy.

Congressman Seiberling introduced his amendment as a revised section (c). The best examination of this amendment is to see exactly what language was deleted and what language was added as follows:

(c)(1) When the Secretary determines that assistance is necessary to enforce any in enforcing Federal laws or regulations relating to the public lands or their resources he shall offer a contract to the regulatory and law enforcement appropriate local officials of any State or political subdivision thereof having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon such regulatory and local law enforcement officials in administering such regulations and laws enforcing such laws and regulations. The Secretary shall negotiate annually on reasonable terms with such officials who have authority to enter into such contracts for such purposes and offer them a reasonable contract under which such officials will to enforce such Federal regulations and laws laws and regulations. In performance of their duties under such contracts, such officials and their agents are authorized to execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; search without warrant or process any person, place, or conveyance according to any Federal law or rule of law; and seize without warrant or process any

evidentiary item as provided by Federal law. ~~The Secretary shall reimburse such States or political subdivisions thereof for the expenditures incurred and liabilities assumed by them in rendering such service.~~ The Secretary shall provide such law enforcement training as he deems necessary in order to carry out the contracted for responsibilities with the local law enforcement agency. While exercising the powers and authorities provided by such contract pursuant to this section, such local law enforcement officials and their officials and their agents shall have all the immunities of Federal law enforcement officials ~~and officers.~~

(2) ~~In those instances where State and local enforcement officials do not have authority to enter into contracts under this section, or where the Secretary offers a contract to State and local law enforcement officials as provided in this section and the offer of such contract is not accepted within the time specified by the Secretary,~~ the Secretary may designate Federal personnel to carry out his enforcement responsibilities ~~on~~ with respect to the public lands and their resources. Such designated personnel shall receive the training and have the responsibilities and authority provided for in paragraph (1) of this subsection.

Congressman Seiberling closed by saying:

My amendment would help remedy this situation. It would still direct the Secretary to achieve "maximum feasible reliance" in using local law enforcement officials to enforce Federal laws and regulations. But he would also have the backup authority to designate trained Federal personnel to carry out these enforcement responsibilities when needed.

Furthermore, my amendment does not change the language in subsection (d) which authorizes the Secretary to cooperate with State and local law enforcement officials, and to reimburse them, for enforcement of State or local laws. This will provide additional assistance for crimes against people, with reliance for enforcement left at the State and local level.

After introduction of the amended language, some testimony was given in opposition to the amendment. Congressman Santini provided:

Mr. Chairman, the consequence of the amendment would be the establishment of a Federal police force on the public lands. In my particular instance that would mean Federal police jurisdiction in 71 percent of my State. I know the great civil libertarian tendencies and inclinations of my distinguished colleague and eminent legal scholar from Ohio would find that somewhat offensive if he had to assume that burden and responsibility within the boundaries of his congressional district of Ohio.

But, I think there is an even more fundamental reason to support the committee language and to oppose the gentlemen's amendment. That is the fact that we are asking our already beleaguered, undermanned and, in some instances, inefficient Bureau of Land Management entities to assume the responsibility of traffic policeman. It is inherently disastrous. One primary responsibility is resource management. The other primary responsibility is law enforcement. I submit that the examples of where this arrangement has been applied by the Forest Service apply here. When we use the local deputy sheriff or the local law enforcement entity to assume responsibility for protecting what he regards as his land, and that person is given the proper training – the person is far more efficient because that man or woman lives on that land. He or she is a trained law enforcement officer. That person is far more capable of meeting responsibilities of law enforcement than the graduate botanist. They are excellent resource managers. They are not law enforcement officers.

We had tragic episodes in trying to pervert and convert the botanist into a law enforcement officer when he is confronted with resistance. I again urge my colleagues to recognize the particular sensitivities involved. Would you wish to invite within your jurisdiction a Federal police force responsible for the enforcement of criminal laws in your particular jurisdiction? It is unworkable, undesirable, and pernicious, I urge my colleagues to vote in opposition.

In a later statement, Congressman Santini said, "the remarkable thing is that we have demonstrable evidence with the examples of the forest service and their contractual arrangements with the local law enforcement that it can and does work." Congressman Seiberling concluded with:

All it does is eliminate the onerous and unworkable requirement of section 302 (c) (1) and (2) whereby the Secretary must negotiate annually with any State or political subdivisions. And I do not know how he can negotiate with any and all simultaneously, but that is what it says. Otherwise he cannot have his own force.

Then the primary sponsor of House Bill 13777, Congressman Melcher, concluded the debate with:

I find that the amendment is drawn quite similarly to the provision the Forest Service now has. It has been workable with the Forest Service. I am not speaking for the committee, but I personally find no objection to the Seiberling amendment.

The amendment was agreed to and the revised language of the section was carried into the amended House Bill 13777 that was passed in the House on July 22, 1976. It is important to summarize here exactly what occurred in the amendment and debate on the issues.

1. The requirement to negotiate contracts annually was intentional deleted.
2. The requirement for determining that the local officials do not have authority to enter into a contract or do not accept a contract prior to designating Federal personnel for law enforcement responsibilities was intentional deleted.
3. The revised (c)(2) now placed designation of Federal personnel at the discretion of the Secretary without conditions.
4. The language for the Secretary to determine if assistance is necessary for enforcing Federal laws and regulation relating to the public lands or resources prior to offering a contract is retained. This means the Secretary has discretion whether or not to offer a contract.
5. The requirement for a "view of achieving maximum feasible reliance" was retained.
6. Those opposed to the amendment implied that they wanted the BLM to have a program of law enforcement contracts similar to the U.S. Forest Service.

The section (c)(2) on contracting for enforcement of Federal laws and regulations was retained and the Secretary was instructed to have a "view of achieving maximum feasible reliance" on this section. Yet the amendment and the testimony clearly seem to indicate an intent to achieve maximum feasible reliance on section (d) which authorizes reimbursements to State and local officials for enforcement of State laws and ordinances on public land. This is illustrated in the testimony by the reference given to the U.S. Forest Service as the appropriate way of "contracting." The Congressmen may have believed that the Forest Service was in the business of "contracting" Federal law enforcement responsibilities. Yet the Forest Service did not, nor do they now, have any authority similar to proposed language in section (c)(2) for contracting

Federal law enforcement responsibilities. They had only authority (16 U.S.C.) similar to the proposed language in section (d) for reimbursements for enforcing State laws and local ordinances. So the "achieving maximum feasible reliance" would also tend to apply to the authority in section (d) as well as (c)(1), but in both cases the determination of whether to offer a law enforcement contract or a reimbursable agreement is up to the Secretary.

The differences between Senate Bill 507 and amended House Bill 13777 had to be reconciled. The Committee of Conference found that the maximum feasible reliance language was consistent with the objectives of the two houses. The commentary on Senate Bill 424 supports this in the statement, "The Committee believes the better alternative is to authorize the Secretary to contract with State and local officials for general law enforcement on the national resource lands." However, "general" law enforcement meant the enforcement of State laws and local ordinances rather than Federal. So the proposed language from amended House Bill 13777 for section (c)(1), and (c)(2) was carried into the FLPMA with only three revisions as follows:

1. The authority to carry firearms was added to section (c)(1).
2. The phrase "may designate" was changed to "may authorize" in section (c)(2).
3. The phrase "or appropriate local officials" was added after the phrase "Federal personnel" in section (c)(2).

The commentary provided by the Committee of Conference was as follows:

The conferees accepted the policy in the House amendments that the Secretary of the Interior seek maximum feasible reliance in his discretion upon local law enforcement officials in enforcing Federal laws and regulations. The Secretary is expected to keep this goal in mind, as well as his authority to assist local law enforcement officials in enforcing local laws and regulations, as he carries out his primary responsibility of assuring adequate law enforcement for the public land areas.

The conferees adopted the Senate's specific reference to the authority to carry firearms. In granting the right to bear firearms, the conferees acted upon the full expectation that the Department of the Interior would retain, as no less than its minimum standards, those spelled out in Chapter 446.2 (dated December 20, 1974) of the Department of the Interior Manual.

The Committee of Conference referred to the "maximum feasible reliance" language as a goal to keep in mind rather than a mandatory requirement and once again implied that the Secretary has discretion to determine what form of law enforcement would be adequate for the public land areas. Despite the fact that the legislative history makes clear the discretion of the Secretary to determine whether to use Federal personnel, offer law enforcement contracts, or offer reimbursable agreements, the "maximum feasible reliance" language would confound interpretations of this section for many years to come. Further discussion on this section as provided by Smyth in *Reality or Mirage* is as follows:

Traditionally, basic law enforcement has been considered a function of state and local governments and, generally speaking, most major categories of public and private offenses are adequately covered by state law. Nevertheless, the situation on public lands tended to avoid state or local solution since such laws do not apply to the enforcement of special rules and regulation on BLM administered lands. There were also few federal laws to enforce on public lands, and state and local laws were generally not aimed at resource

protection. Further-more, many counties were, for political reasons, indisposed to protect the abundance of resources on public lands. These resources have often been viewed historically as the lawful property of the first person to appropriate them. There is also a strong western tradition of individual freedom and fear of government encroachment on individual lifestyles.

Although these problems were instrumental in bringing about section 303, its enactment was not accomplished without a fight. Strong feelings of many western citizens concerning enforcement of laws by BLM personnel created a highly sensitive political issue. This ultimately resulted in a watering down of the law enforcement provisions originally enacted by the Senate which would have encouraged BLM to establish a significant law enforcement presence on public lands using federal personnel. The House-Senate Conference Committee ultimately adopted the House language charging the Secretary with achieving "maximum feasible reliance" upon local law enforcement officials in enforcing federal law. This compromise was seen as a means of providing badly needed law enforcement while minimizing changes to existing methods of law enforcement.

Section 303(c)(1) authorizes the Secretary to contract with local officials for law enforcement services where the Secretary considers that assistance is necessary to enforce federal laws and regulations on public lands. The broad nature of this language makes clear that federal laws, in addition to regulations issued under section 303(a), may be enforced by local law enforcement personnel. The Secretary's authority to contract was intended, in part, as a financial inducement to local officials to provide law enforcement services on public lands. Moreover, section 303(c)(1) reflects a strong congressional preference that public lands be patrolled by local officers rather than federal personnel. The section establishes a policy of "maximum feasible reliance" upon local law enforcement officers in enforcing federal laws and regulations on public lands. Nevertheless, in section 303(c)(2) the Congress does provide the Secretary with power to vest in federal personnel the same responsibilities and authorities as local officers in enforcing federal law on public lands.

With the exception of the California Desert, reliance has been placed almost exclusively upon state and local law enforcement. But without the necessary training these officers cannot enforce even the existing federal laws. The result is the slightly increased enforcement of state laws and local ordinances by state and local officers due to an increased flow of federal money through section 303(d) cooperative agreements and payments in lieu of taxes.

The last paragraph was in reference to the status of the BLM law enforcement program at the time this article was written in 1979. It describes the very careful initial steps being taken by the BLM in implementing the enforcement provisions of the FLPMA because of the concern for complying with the policy of "maximum feasible reliance." In fact, the concern was so great that the BLM did not expand its law enforcement ranger program beyond the California Desert until August 1985, which was almost a full decade after the enactment of the FLPMA. The first step that the BLM took to explore the feasibility of using State and local agencies for the enforcement of Federal laws and regulations was to commission a survey of County Sheriff's located in the Western U.S. Rather than conducting the survey on its own and possibly be accused of a lack of objectivity, the BLM contracted with the National Sheriff's Association (NSA). The NSA at the time was the primary constituency organization for representing the views of Western sheriff's at the National level. The NSA completed *A Report on the Role of County Sheriffs in Law Enforcement on the Public Lands Owned and Under the Control of the Bureau of Land Management, U.S. Department of the Interior* in April 1979. Some of the discussion provided in the report was as follows:

The objective of the NSA project was primarily to determine the extent to which county sheriffs would or could provide law enforcement services on the public lands as contemplated in the Federal Land Policy and Management Act of 1976.

BLM recognized that to achieve the Congressional mandate to the Secretary of Interior to contract "to the maximum extent feasible" with local law enforcement agencies to provide law enforcement services, local law enforcement agencies must be capable of and willing to provide those services.

The role of the National Sheriffs' Association in this effort was to provide an opinion, independent of the BLM district analysis, concerning such capability and willingness. The analysis was confined to the western contiguous states.

Many sheriffs reported that they were unsure that federal contracts and cooperative service agreements would be permanent enough to justify adding department personnel.

In conducting personal interviews with sheriffs, the NSA staff found that there is little interest among sheriffs in contracting to enforce the federal laws and regulations. This is due primarily to three reasons:

- (1) To enter into such contracts would require most sheriffs to train their personnel in the specifics of the federal laws pertaining to resource protection. Most see no long-term payoff to such a training program. They reported that they do not have enough people now to be able to afford to spend the time on that kind of training.
- (2) To properly enforce the federal resource laws and regulations and to adequately investigate violations and participate in trial presentations, considerable training in federal criminal procedures would be required. Again, they view this as impractical in terms of time and cost.
- (3) Many stated very frankly that some resource protection statutes, especially the Wild Horse and Burro Act - those involving protection of endangered wildlife species, protection of Indian antiquities, and regulation on removal of vegetation - were met with considerable hostility by the residents of their counties. It would not be well advised to contract with BLM to enforce those laws.

Among the same group that expressed those reservations about enforcing federal laws and regulations, none of them wished to deny their responsibility to enforce state laws on the public lands.

Our interviews led to the conclusion that the federal government will have to provide adequate numbers of federal agents and rangers to enforce the federal resource protection laws. However, primary responsibility for enforcement of state laws on the public lands should be with the local unit of government.

Sheriffs generally support the policy stated in the Federal Land Policy and Management Act of 1976 that directs the Secretary of the Interior to utilize local law enforcement agencies to the maximum extent feasible to provide law enforcement services on the public lands.

Since county law enforcement agencies, in the western states particularly, are financed by taxes on real property, it is appropriate for the federal government - as a tax-exempt land owner - to reimburse counties for providing law enforcement services and investigating crimes on the public lands.

Nearly all western states sheriffs are willing to provide services through cooperative agreements to enforce state laws and provide public protection on federal lands, but need to be reimbursed for those services or to participate in the revenues from the Payments in Lieu of Taxes law.

Few sheriffs in the 11 western states are willing to enter into contracts with the BLM to enforce federal laws and regulations on the public lands.

BLM cooperative agreements with counties to provide law enforcement services on the public lands by county sheriffs should require that the BLM payments for those services be in addition to and not supplant county funds used to support the sheriffs' departments.

It appears that the Western sheriffs of the time had a strong preference that "maximum feasible reliance" be placed on reimbursable law enforcement agreements under FLPMA Section

303(d)(enforcement of State laws), rather than on FLPMA Section 303(c)(1)(enforcement of Federal laws). It follows that if the BLM places "maximum feasible reliance" on reimbursable law enforcement agreements for the enforcement of State laws and local ordinances on the public lands that the BLM would have to develop a capability to provide adequate enforcement of the Federal laws and regulations with its own personnel.

In further researching the issue of "maximum feasible reliance" for State and local agencies enforcing Federal laws and regulations. The BLM requested that the Department of Interior provide what standards would be required should the BLM choose to negotiate any such contracts. Such standards were provided as follows:

This memorandum responds to your request of May 8, 1981, for requirements of personnel engaged in contractual law enforcement services upon public lands administered by the Bureau of Land Management. The Federal Land Policy and Management Act conference report (house 94-1724) mandated that "all contracts for law enforcement services shall require contractor to maintain the same standards that are required of programs operated directly by the Department." This statement is also Departmental policy found in 446 DM 2.A.

All law enforcement officers under contract to the Department of the Interior must meet pre-contract requirements similar to those of Federal employees entering the law enforcement field. These requirements include a medical clearance and a full-field background investigation meeting the scope of FPM Chapter 736 and referred to DESM for evaluation. A basic police training course of at least 360 hours with successful firearm qualification is necessary for contract compliance.

In addition to pre-contract requirements, a minimum 40 hours of Bureau sponsored "in-service" law enforcement training must be completed annually, and a re-qualification of 70% or better with the service firearm is mandatory semi-annually. The contractor's level of first aid should be monitored on an annual basis, particularly CPR, which must be updated annually.

Since it would be impractical and burdensome for the contractor to assume the Federal jurisprudence normally provided in the Federal Law Enforcement Training Center basic curriculum, the Bureau will have to develop a special "follow-on" training for all non-Federal contractors. This training should be patterned to operational requirements and known contractor deficiencies. This Federal orientation should include, as a minimum, the Federal Court System and Procedures, Federal Law - U. S. Code and CFR, Tort Claims and Criminal Liability, and Departmental Firearms Policy.

The Department is concerned about problems which attend contractual arrangements for law enforcement.

1. When the Federal Government, by contract, authorizes a State or local law enforcement officer to enforce Federal law within the scope of a contract, responsibility for any acts of omission/commission become ours.
2. The Department is concerned about the image conveyed to visitors on Federal lands when they encounter a local police officer enforcing Federal law. His appearance and attitude cannot be controlled by contract and may reflect badly on the agency employing him. At the very least, the contract must demand the same training required for Federal employees engaged in law enforcement.
3. Generally, this Department has found that services rendered under law enforcement contractual arrangements have not been satisfactory. Local authorities are usually beholden to their constituent communities and, in cases of conflict, will side with them in the laws they enforce. Experience also indicates that generally the annual costs continue to escalate once dependence on the contractual arrangement is firmly established.

4. A local enforcement officer under contract to the Federal Government requires extensive training in the multiplicity of Federal laws applicable to a given location.
5. The State and local enforcement agent is limited in authority and restricted from crossing established areas of jurisdiction. A great volume of Federal enforcement work requires that the Federal employee move into two or more areas in following his leads, completing his investigations and coordinating with other authorities.

In summary, though contract enforcement has a place in some areas and can be of great assistance under certain conditions, it is suggested that serious consideration be given to broadening the base, numbers and authorities of our Federal Law Enforcement Officers and Rangers.

The sheriffs were generally unwilling to enter into contracts for the enforcement of Federal laws and regulations pursuant to the 1979 NSA report. It follows that if the same sheriffs were confronted with the stringent standards described by the Department of the Interior, they most likely would have been even more opposed to such contracts. This left the BLM with the continuing conclusion that it must develop a capability of its own to enforce the Federal laws and regulations relating to the public lands and resources. But before the BLM implemented this, the Assistant Secretary of the Interior for Land and Minerals Management asked for an interpretation of FLPMA Section 303 (c) from the Department of the Interior, Office of the Solicitor in 1984. The following is what was provided in answer to his request:

The Bureau of Land Management has prepared this Decision Memorandum for the Secretary on the expansion of the Bureau's Law Enforcement Ranger Program to areas outside of the California Desert Conservation Area. This memorandum raises a legal issue concerning the Secretary's authority to enforce federal laws and regulations on public lands with federal personnel without having offered contract to appropriate local officials for these law enforcement services.

Section 303 (c) (1) of the Federal Land Policy and Management Act of 1976, 43 U. S. C. 1733 (c) (1) (1976) (FLPMA), states in part that:

When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations.

On first impression, the use of the word "shall" suggests a mandatory duty to offer such contracts. However, the phrase "when the Secretary determines that assistance is necessary" suggests a measure of discretion in the Secretary. The two provisions are seemingly at odds with each other. Under this circumstance, the courts have recognized that " 'words are inexact tools at best,' . . . hence it is essential that we place the words of the statute in the proper context by resort to the legislative history." Tidewater Oil Company v. United States, 409 U. S. 151, 157 (1972) (citation omitted).

In resolving differences between the House and Senate revisions of FLPMA, the House-Senate conferees:

accepted the policy in the House amendments that the Secretary of the Interior seek maximum feasible reliance in his discretion upon local law enforcement officials in enforcing federal laws and regulations. The Secretary is expected to keep this goal in mind, as well as his authority to assist local law enforcement officials in enforcing local laws and regulations, as he carries out his primary responsibility of assuring adequate law enforcement for the public land areas.

See H. R. Rep. No. 1724, 94<sup>th</sup> Cong., 2d. Sess. 60 (1976) (emphasis added). Thus the legislative history suggests that Congress intended to grant the Secretary discretion in offering contracts to appropriate local law enforcement officials and that law enforcement on public lands is ultimately a federal responsibility.

Secretary of the Interior William Clark approved expansion of the BLM law enforcement ranger program on May 9, 1984. After that, ranger positions began to be established in areas beyond the California Desert. The BLM continued to find, through the years, a willingness on the part of some, though by no means all, sheriffs to enter into reimbursable law enforcement agreements pursuant to the FLPMA Section 303(d). These agreements do not require the enforcement of Federal laws and do not require the local officers to obtain any additional training. The BLM can also administer these agreements for less than full-time service, such as during busy tourist seasons. The BLM currently has a total of 44 paid law enforcement agreements with State and local law enforcement agencies and expended over \$1,103,000 on those agreements in 2000. The salaries of 112 State and local law enforcement officers are fully or partially funded by these agreements. Also, the BLM has kept its law enforcement force small through the years. There are only about 200 law enforcement officers in the BLM out of a total workforce of over 10,000 employees. Approximately 40 of these law enforcement officers make up the Desert Ranger Force mandated by FLPMA Section 303(e). By emphasizing cooperation with State and local law enforcement agencies, providing for reimbursable agreements in counties that receive heavy visitation and law enforcement workload, and keeping the BLM law enforcement force small, the BLM believes that it has achieved "maximum feasible reliance" on State and local law enforcement as required by FLPMA Section 303 (c)(1).

## Authorizing Federal Personnel

The authority to designate or authorize Federal personnel for Federal law enforcement responsibilities was a part of the enforcement provisions of all the various versions of the FLPMA. Only one bill (HR 13777) included any restriction on such a provision, and that restriction was removed with later amended language. The legislative history illustrates a clear intent that the authority to authorize Federal personnel for law enforcement duties is in the discretion of the Secretary of the Interior and/or the BLM Director as delegated by the Secretary. The first version, Senate Bill 921 (February 23, 1971), included a proposed provision that would have granted authority to the Secretary to designate BLM employees to make arrests for violations of laws and regulations. Authority was also granted to U. S. Magistrates to issue warrants for such violations. House Bill 7211 had similar language, but granted the authority to each agency head to authorize employees of their agency. This bill also expanded the language concerning arrests to include when arrests could be made without a warrant. The bill also began the use of the phrase "probable cause" as a threshold for arrests. It also specifically granted authority to those authorized to execute warrants and to carry firearms as authorized by the agency head.

Senate Bill 2401 (August 3, 1971) seems to have abandoned some of the previous language and had a proposed provision that merely granted authority to the Secretary to authorize employees as "special officers" to make arrests or serve citations. This same language was carried into Senate Bill 424 (January 18, 1973).

Senate Bill 1041 (February 28, 1973) recaptured the language of House Bill 7211, although it restricted the arrest authority to "on national resource lands," but further stated that arrests could be made outside national resource lands if a person is fleeing arrest or service of process for a violation committed on national resource lands.

Senate Bill 424, that was passed by the Senate on July 8, 1974, included very comprehensive language on what law authority would be granted as follows:

1. The purpose of the authority was for enforcing any law or regulation relating to lands or resources managed by the Secretary;
2. Carry firearms;
3. Execute and serve warrants and process;
4. Make arrests when there is "reasonable grounds;"
5. Search any person, place or conveyance as provided by law;
6. Seize evidentiary items.

Of interest in this version was the substitution of the phrase "reasonable grounds" for "probable cause." However, *Black's Law Dictionary* provides that when this term is used in reference to arrests without warrant it means "probable cause." The official commentary on this bill contained several references to the proposed provisions. The Purpose and Brief Description of this section was described as follows:

The enforcement provisions include criminal penalties for violation of national resource lands regulations; arrest, search and seizure authority for departmental personnel to enforce laws and regulations relating to

lands or resources managed by the Secretary of the Interior; and authority for the Secretary to contract with State and local officials to provide more general law enforcement on the national resource lands.

The reference concerning "general law enforcement" meant enforcement of State laws and ordinances on public land and referred to the provisions that authorized reimbursements for State and local agencies. However, that section did not detract from the clear authority to designate Federal employees for enforcing Federal laws and regulations. The discussion of these provisions was continued in the section-by-section analysis as follows:

While basic law enforcement traditionally is a state problem and most major categories of public and private offenses are adequately covered by state law, such laws do not apply to the enforcement of special rules and regulations on Bureau administered lands. It is in this area that the most glaring deficiency exists in both state and Federal laws.

Subsection (c) provides authority to the Secretary to designate any employee to take any of five enforcement actions. None of these actions may be taken, however, for any purpose other than that of enforcing any law or regulation relating to lands or resources managed by the Secretary. The five enforcement actions are: (1) carry firearms; (2) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (3) make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; (4) search without warrant or process any person, place, or conveyance as provided by law; and (5) seize without warrant or process any evidentiary item as provided by law.

This subsection authorizes enforcement for violations of all laws and regulations relating to the lands and resources managed by the Secretary, rather than only those laws relating to the national resource lands. Many laws relate to the national resource lands exclusively, many relate to other lands as well and most refer to "public lands" instead of national resource lands. Furthermore, authority to make arrests to enforce all Departmental laws and regulations will facilitate the coordination of law enforcement on all lands under the administrative jurisdiction of the Department of the Interior.

Officials designated by the Secretary are given authority to carry firearms. Persons committing acts of vandalism on the national resource lands are often armed and dangerous. State and local governments do not expect their enforcement officials to make these arrests unarmed. Similarly, the Committee believes that the carrying of firearms is necessary both for the protection of Departmental personnel and for effective enforcement of the laws on the national resource lands.

There is an abundance of case law which defines the limits of valid searches and seizures under the Constitution. However, in spite of what is permissible under the Constitution, it is doubtful that law enforcement officials can make a search and seizure without a warrant unless specifically authorized by statute, *Aiuppa v. United States*, 338 F. 2d 146 (10<sup>th</sup> Cir., 1964). Therefore, the Committee decided to specifically include the authority to conduct searches and seizures in S. 424.

The proposed language from Senate Bill 424 was carried into Senate Bill 507 (January 30, 1975). The same is true for HR5224 (March 19, 1975), except the provision on search and seizure was removed. S1292 (March 21, 1975) included language similar to HR5224 except the law enforcement authority was only granted "while within the national resource lands." HR5622 had similar language but had the search and seizure language re-inserted, and the designated employees could only be those who have had "specialized law enforcement training," and they could carry firearms "so long as the employee has been specifically trained to handle firearms, and then only to the extent necessary to carry out his responsibilities while actually on duty." The proposed language of this bill was becoming increasingly complicated by very detailed

exceptions. Senate Bill 507(December 15, 1975) dropped back to the simple language that was included in the previous version S424 of the bill, and this language was carried into S507 that was passed by the Senate on February 25, 1976.

The common theme provided in the various bills up to this point always included the authority to designate or authorize Federal personnel for the enforcement of Federal laws and regulations. The introduction of House Bill 13777 on May 13, 1976, represented a significant departure from this theme. This bill included the standards set of enforcement authorities, such as: (1) execute and serve warrants; (2) make arrest; (3) search; and (4) seize. It did not include authority to carry firearms. It also included language such that if the Secretary determines that assistance is necessary, to use contracts with State and local law enforcement officials rather than Federal personnel to enforce Federal laws and regulations. The provisions provided that the only exceptions to this policy would be: (1) when such State and local officials do not have authority to enter into such contracts; (2) such State and local officials refuse such contracts; or (3) in the California Desert. Because this language seemed to move away from providing the BLM sufficient authority to enforce the Federal laws and regulation on its own, a great deal of discussion and debate occurred. Some of this discussion as follows:

At present, the Bureau of Land Management is unable to enforce federal laws and regulations relating to the public lands of the California Desert, or anywhere else for that matter. The California Desert Ranger Force created in this Act, as well as the law enforcement powers given to it, is a beginning. It seems to me that the law enforcement section of the Act, Section 302, while meeting the initial needs of the desert, is inadequate. Local and state law enforcement officials have enough work to do now without having to also try to exercise authority of federal lands in behalf of the Bureau of Land Management. Other federal agencies have for many years had effective law enforcement capabilities on the lands for which they are responsible. There certainly should be some changes made in the law enforcement section of this Act to provide all of the nation's public lands under the jurisdiction of BLM the protection which is to be afforded to the California Desert.

For many years the National Park Service, U.S. Forest Service and Fish and Wildlife Service have had effective enforcement authority on the lands they manage. Curiously, the bill gives the necessary authority for the California Desert but does not do so for the rest of our public lands, where the same kinds of problems exist.

Based upon the significant differences between HR13777 and the bill passed by the Senate (S507), a process of amending HR13777 took place. Amended language was introduced by Congressman Seiberling that would serve to eliminate any absolute requirements to offer a contract to State and local officials for enforcement of Federal laws and regulations prior to being able to authorize Federal personnel for such enforcement. Congressman Seiberling explained his amended language as follows:

Mr. Chairman, this amendment would make some changes in the provisions on page 56 of the bill for law enforcement in public lands. Mr. Chairman, at present the Bureau of Land Management – BLM – custodian of 450-million acres of public lands, has totally inadequate authority to manage and protect those lands and their resources. My amendment to section 302 of H.R. 13777 would clarify the Secretary of the Interior's authority for law enforcement on these lands. It would give the BLM authority to offer contracts to local law enforcement officials for enforcing Federal laws and regulations on public lands. It would also allow the Secretary to designate trained Federal personnel to carry out law enforcement responsibilities.

As presently drafted, H. R. 13777 directs the Secretary to offer contracts to State and local law enforcement officials. However, only if those authorities refuse such a contract can the Interior Department exercise

enforcement authority. Curiously, the bill gives the necessary authority for the California Desert, but does not do so for the rest of our public lands, where similar problems exist.

Except for a few specific statutes such as the Wild Horse and Burro Act, BLM officials have no power to make arrests for violations of natural resources laws and regulations, even if those violations are committed in the presence of BLM officials.

BLM currently has only seven special agents, hired in the past year. They can make arrests for crimes against wild horses, but not for crimes against natural resources or people. They are authorized to investigate violations of natural resource laws such as land fraud, theft of timber and minerals, but once their investigation is complete, they have to call on another Federal agency to make the arrest. Or if there is an applicable State law, he can try and persuade State or local officials to make the arrest. But many States do not have specific laws protecting the diverse resources of the public lands, and enforcement of State laws is uneven, because of the variation in laws throughout the West.

After a considerable further debate, as described in the "maximum feasible reliance" section above, Congressman Seiberling's amended language was agreed to, and authorizing Federal personnel was then at the discretion of the Secretary. The amended HR13777 was passed by the House on July 22, 1976. The Committee of Conference did not make any substantial changes to the provisions granting authority to the Secretary to authorize Federal personnel or the specific grants of authority to such authorized personnel, except that they re-inserted the authority to carry firearms. Their reasoning was as follows:

The conferees adopted the Senate's specific reference to the authority to carry firearms. In granting the right to bear firearms, the conferees acted upon the full expectation that the Department of the Interior would retain as no less than its minimum standards, those spelled out in Chapter 446.2 (dated December 20, 1974) of the Department of the Interior Manual.

In summary, FLPMA Section 303 (c)(2) states:

The Secretary may authorize Federal personnel or appropriate local officials to carry out his law enforcement responsibilities with respect to the public lands and their resources. Such designated personnel shall receive the training and have the responsibilities and authority provided for in paragraph (1) of this subsection.

The specific authorities granted to the authorized Federal personnel in paragraph (1) are:

1. Carry firearms;
2. Execute or serve any warrant or process issued by a court or officer of competent jurisdiction;
3. Make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony;
4. Search without warrant or process any person, place, or conveyance according to any Federal law or rule of law; and
5. Seize without warrant or process any evidentiary item as provided by Federal law.

The authorities granted here are for the enforcement of Federal laws and regulations, and "court or officer of competent jurisdiction" refers to Federal courts and Federal warrants and process.

The same is true for search and seizure authority. Because the tenth amendment of the U.S. Constitution grants to the States all powers not delegated to the United States by the Constitution, this Act cannot serve to grant any measure of State law enforcement authority to the BLM. Therefore, absent such granting by a State or local jurisdiction, BLM law enforcement officers cannot enforce State laws in State Courts.

When first implementing a law enforcement program pursuant to the FLPMA, the BLM was subject to the law enforcement standards and policies of both the Office of Personnel Management and the Department of the Interior law enforcement manual. The BLM established a standard that only the following BLM employees would be authorized to perform law enforcement duties on behalf of the BLM:

1. Those hired as criminal investigators or law enforcement rangers.
2. Those employed on a full-time basis, and not part-time or seasonal employees.
3. Those who have successfully complete a full background investigation conducted by the OPM.
4. Those who have successfully completed a course of basic law enforcement at the Federal Law Enforcement Training Center, or equivalent, as evaluated by the Department of the Interior.
5. Those who maintain knowledge, skills, and proficiency through 40 hours of annual in-service training and qualified with firearms twice per year.

The total number of BLM law enforcement officers employed has an average of a little more than 200 out of a total BLM workforce of over 10,000. So the initial fear of the BLM authorizing every "graduate biologist" or creating a very large police presence on the public lands has never come true.

## Purpose of Rangers

The title "ranger" has become to mean many things to many people throughout the years. The first use of the title of "ranger" by a U.S. Government entity was pursuant to the initial protection of the Forest Reserves created by the Forest Management Act of 1897. The first "Forest Reserve Rangers" were hired in 1898. At that time, the Forest Reserves were assigned to be administered by the General Land Office (GLO), a predecessor agency of the BLM. In 1902, the GLO issued the *Forest Reserve Manual for the Information and Use of Forest Officers*. The manual provided for five types of forest officers: inspectors of forest reserves; superintendents; supervisors; head rangers; and ordinary rangers. The first duty identified for "rangers" was "Protective duty, guarding against fire and trespass, fighting fires and stopping trespass, as well as assisting the State authorities in the protection of game." An act of trespass was basically considered to be any unlawful using or taking of resources from the forest reserves without a permit. Guarding against and stopping trespass was therefore a law enforcement responsibility. These early Forest Reserve Rangers are the cadre of employees who would become the U.S. Forest Service rangers in 1905 and the National Park rangers in 1916.

Through the years, the title ranger has actually come to mean the same as manager in the U.S. Forest Service, and refers to any collection of national park-related duties in the National Park Service. It was from this tradition that the "ranger" concept emerged in modern times for the BLM. The BLM had a rudimentary ranger program in the California Desert prior to the enactment of the FLPMA. This program was initiated in response to an early California Desert study that recommended that the BLM, "...recruit and train qualified individuals as uniformed rangers so that public services and surveillance are available on a seven-day basis." About 23 of these "desert rangers" were hired and sent to the Riverside County Sheriff's Academy for basic law enforcement training. This illustrated an intent that one of the purposes of the rangers would be law enforcement duties. However, these rangers could not be granted any measure of law enforcement authority without an enabling Federal statute, and this consideration was included in much of the early testimony related to various versions of the FLPMA.

The first mention in any version of the FLPMA of the title "ranger" occurred with the introduction of House Bill 13777 on May 13, 1976. The proposed language of this bill required (although this requirement was later rescinded by amended language) a convoluted process of offering contracts for Federal law enforcement to State and local law enforcement agencies prior to being able to designate Federal employees. The primary exception to this requirement was in section 302 (e) as follows:

Nothing in this section shall prevent the Secretary from promptly establishing a uniformed desert ranger force in the California Desert Conservation Area established pursuant to section 401 of this Act for the purpose of enforcing Federal laws and regulations relating to the public lands and resources managed by him in such area. The officers and members of such ranger force shall have the same responsibilities and authority as provided for in paragraph (1) of this subsection.

The primary authors of this bill appeared to have been generally opposed to providing the BLM broad sweeping authority to designate Federal employees with law enforcement authority on all public lands. However, the impact of the existing testimony in regards to serious law enforcement problems in the California Desert appeared to be overwhelming. The authors may

have included the desert ranger exception in response to that testimony. The section-by-section analysis of the bill included:

Subsection (e) authorizes the Secretary of the Interior to proceed promptly with the establishment of a uniformed desert ranger force for the California Desert National Conservation Area authorized by Section 401 of the bill. The subsection clothes such rangers with the law enforcement authority provided to the Secretary by this section.

In support of this section, Congresswoman Pettis of Southern California offered the following testimony:

It is sad to say, but despite its jurisdiction over and responsibility for millions of acres of land, the BLM has no capability to be more than a custodial agency. This is especially true in the California Desert. Without police powers, BLM officials are unable to take action to protect the land and the users of the land. This problem is becoming increasingly serious as more and more people come to the desert to visit and live. .... Without the authority to enforce Federal laws and regulations, the new plan will not have much practical meaning. Already, unique desert plants and trees are being uprooted and taken to urban areas; animal and reptile habitat are being destroyed; prehistoric art is being vandalized and removed from the desert; large ORV events are resulting in long lasting damage to the desert "pavement" and other natural barriers to erosion. In the absence of an Organic Act and the law enforcement authorities provided the Desert Ranger Force in H. R. 13777, the BLM has had to resort to civil actions in court or, in some cases, stand by helplessly while individuals or companies misuse or abuse resources entrusted to BLM's care.

From that point on, the intent to establish a desert ranger force with law enforcement as its primary purpose became increasingly clear. A great deal of debate occurred on this bill concerning amended language that would remove to absolute requirement for contracting with State and local law enforcement agencies prior to designating Federal employees for law enforcement duties. In the debate, the testimony by Congressman Forsythe indicated that the intent of the amended language was to expand the concept provided for in section (e) to other areas of public land as follows:

The bill already provides such authority for the California Desert, and it seems only logical to provide similar authority for all BLM lands.

The amended language was agreed to, and the amended House Bill 13777 was passed by the House on July 22, 1976. The language of section (e) was carried into the FLPMA without revision. From this section it is clear that the purpose of rangers in the BLM is "enforcing Federal laws and regulations relating to the public lands and resources." This becomes a very important distinction considering the fact that Federal statutes seldom mention Federal employees by title below the level of cabinet officials or agency directors. The Federal employees who are specifically mentioned in the FLPMA are the Secretary of the Interior, the Director of the Bureau of Land Management, the Associate Director, Assistant Directors, and rangers. This special distinction makes BLM law enforcement rangers a unique creation of the FLPMA, and the BLM should not be generally inclined to misuse this title.

## **Federal Laws and Regulations Relating to the Public Lands or Their Resources**

Exactly what laws and regulations the BLM was expected to enforce has undergone a great deal of evolution with emerging authorities and prohibitions. As mentioned earlier, the BLM had a small cadre of special agents prior to enactment of the FLPMA. Each of these early special agents was given a specific letter of delegation of law enforcement authority that simply stated:

You are hereby authorized and directed to enforce the following natural resource laws and attendant regulations.

The Wild Horse and Burro Act of 1971

The Land and Water Conservation Fund Act of 1965.

The Sikes Act.

You are also authorized and directed to conduct investigations involving the protection of public lands and resources under the jurisdiction of the Bureau of Land Management in accordance with § 101 of the Public Land Administration Act of 1970.

It wasn't much, but it included all of the enforcement authority available to the BLM at the time. It was this deficiency of enforcement authority that led to the development of the various versions of the FLPMA. The first focus on which laws and regulations were intended to be enforced occurred with the introduction of Senate Bill 921 on February 23, 1971. That bill granted law enforcement authority for the laws and regulations referred to in sections 114 and 116 of the Act. Although the bill uses the phrase "public land laws," the identified sections only state that these would be "such rules and regulations as he (the Secretary) deems necessary to carry out the purposes of this title." This would have been a rather weak delegation of law enforcement authority.

House Bill 7211 (April 6, 1971) had a much broader approach in that the enforcement authority was for "any law or regulation" on lands administered by such agency. The analysis of the proposed legislation stated that the authority was for "serious offenses" that were either a Federal crime, a State crime, or a common law crime on Federal land. The House did not take action on this bill and such broad reaching authority would most likely have been rejected.

Senate Bill 2401 (August 3, 1971) dropped back to the concept of Senate Bill 921. Its enforcement authority was for acts on the public lands which are violations of regulations that are adopted for the protection of the national resource lands. This proposed language was carried into Senate Bill 424 (January 18, 1973).

Senate Bill 1041 (February 28, 1973) returned to the HR 7211 concept of violations of "any law or regulation" on national resource lands. This concept was more refined in Senate Bill 424 (July 8, 1974) by making the enforcement authority applicable to violations of any law or regulation relating to lands and resources managed by the Secretary. The Administration believed this language to be somewhat confining. A letter to Committee Chairman from the U.S. Department of the Interior, Office of the Secretary dated February 25, 1974, stated:

As to enforcement authority, the Subcommittee reported the bill with amendments to subsection 307(c) so that arrest authority would be limited to the enforcement of laws "relating to the management, protection, development, or sale of the national resource lands." ...We oppose this limited enforcement authority... We would prefer that the section authorize arrest for violations of all laws and regulations relating to the lands and resources managed by the Secretary, rather than authorize arrests for violations of only those laws relating to the national resource lands. Many laws relate to the national resource lands exclusively, many relate to other lands as well as most refer to "public lands" instead of the "national resource lands." There would therefore be confusion as to whether a law applies to the national resource lands. Furthermore, authority to make arrests to enforce all Departmental laws and regulations will facilitate the coordination of law enforcement on all lands under our administrative jurisdiction.

Despite the previous comments of the Department of the Interior, Senate Bill 507 (January 30, 1975) included the proposed language from S1041 without revision. The same proposed language was carried into House Bill 5224 (March 19, 1975). However, Senate Bill 1292 (March 21, 1975) provided that the enforcement authority was applicable to "any law or regulation relating to lands and resources managed by the Secretary," but the designated employees could only exercise the enforcement powers "while within the national resource lands."

House Bill 5622 (March 26, 1975) further refined this by making the enforcement authority applicable to "any Federal law or regulation relating to those national resource lands or resources." However, Senate Bill 507 (December 15, 1975) dropped back to the previous language of "any law or regulation relating to lands and resources." Senate Bill 507 that was passed by the Senate on February 25, 1976, included the same proposed language, except the word "Federal" was inserted in front of "law or regulation." Congressman Hansen introduced this amendment with the following:

Mr. President, what this amendment does is to make clear that, insofar as the powers of those persons charged with enforcing any law or regulation related to lands and resources managed by the Secretary, it shall be the Federal law or regulation that is to be interpreted. It is simply to clarify what the grant of authority and power is.

After years of back-and-forth revisions, the introduction of House Bill 13777 on May 13, 1976, brought forth proposed language on this issue that more or less would become the final language. This bill made the enforcement authority applicable to "any Federal law or regulation relating to the public lands or their resources." It also added a new section (f) that stated:

Nothing in this Act shall be construed as reducing or limiting the enforcement authority vested in the Secretary by any other statute.

These concepts were carried into the FLPMA with the final language on applicability of enforcement authority being, "Federal laws and regulations relating to the public lands or their resources." Further discussion on these concepts was provided by Smyth in *Reality or Mirage*, as follows:

Since few law enforcement regulations have been issued under section 303(a), there is the question of what laws they are to enforce. As mentioned earlier, enforcement officers deriving their power from FLPMA are not limited to enforcement of FLPMA. Moreover, section 303(f) makes clear that the Secretary's authority under section 303(a) does not preclude use of his other law enforcement authority. These authorities include the Wild Free-Roaming Horse and Burro Act of 1971, the Antiquities Act, the

Sikes Act, the Taylor Grazing Act, the National Trails System Act, the Endangered Species Act, and those portions of Title 18 of the United States Code pertaining to public lands.

Through the years, with the addition of new statutes, the BLM has developed a comprehensive list of the laws and regulations that it enforces. These laws and regulations are as follows:

Bureau LEOs are authorized to enforce all Federal laws and regulations relating to the public lands or their resources, including, but not limited to:

1. Archaeological Resources Protection Act (16 U.S.C. 470aa et seq.).
2. Wild Free-Roaming Horse and Burro Act (16 U.S.C. 1331-1340).
3. Land and Water Conservation Fund Act (16 U.S.C. 460 l-6a).
4. Federal Cave Resources Act (16 U.S.C. 4306).
5. Sikes Act (16 U.S.C. 670j).
6. Antiquities Act (16 U.S.C. 433).
7. National Trails System Act (16 U.S.C. 1241-1246).
8. Taylor Grazing Act (43 U.S.C. 315a).
9. Unlawful Inclosures of Public Land Act (43 U.S.C. 1061-1064).
10. Migratory Bird Act (16 U.S.C. 703).
11. Lacey Act (16 U.S.C. 3372).
12. Endangered Species Act (16 U.S.C. 1538).
13. Bald Eagle Act (16 U.S.C. 668(a)).
14. Native American Graves Protection and Repatriation Act (18 U.S.C. 1170)
15. Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701).
16. Clean Water Act (33 U.S.C. 1319).
17. Resource Conservation and Recovery Act (42 U.S.C. 6928(d)).
18. Mineral Leasing Act (30 U.S.C. 195).
19. Section 47, 111, 371, 372, 641, 1001, 1361, 1510, 1851-1861, 1864, and other sections of Title 18 U.S.C. as they relate to the use, management, and development of the public lands; protection of the property located thereon; or protection of any employee or volunteer of the Bureau of Land Management in the performance of their official duties.
20. Section 841 of Title 21 U.S.C. as it relates to public lands through cultivation of a controlled substance, creating a hazard, causing pollution, or using booby traps.
21. Oaths and Affidavits (43 U.S.C. 1466).
22. Title 43 CFR as it relates to public lands.
23. Title 50 CFR Part 20 as it relates to the taking of migratory birds on public lands, and Part 100 as it relates to the subsistence taking of fish and wildlife on public lands in Alaska.
24. Executive Order 11644 related to Off-road Vehicles.