

Hello, my name is Mike Barnes, the National Withdrawals Coordinator for the Bureau of Management and realty specialist by trade.

At the end of this training session you should be able to Given a proposed Land Management Action process a withdrawal application and subsequent Public Land Order by following Department and Bureau of Land Management Policy and Regulations.

I was asked recently, why are land withdrawals important to the Bureau of Land Management and/or United States Forest Service in managing their lands? Here is a typical scenario:

Your field manager comes to you and states that the BLM is about to undertake a site reclamation project along several miles of river to restore fisheries and wetland habitat on lands damaged as a result of intensive mining operations 50 plus years ago. The restoration will include streambed modifications and wetland restoration which should result improved water clarity, increased fish populations, and provide improved public access for camping and recreational use. The project complies with BLM's resource management plan and is estimated to cost around \$5 million dollars. Your job it to find a way to protect the BLM's restoration and recreational investment from future mining interests.

This is one of the reasons the land withdrawal program exists, to protect Federal investments in the management of public and National Forest System lands.

Before moving to develop an application I would like to review the Department of Interiors Policy and regulatory requirements.

All authority for any program affecting BLM activities is established in law. The withdrawal program and the Secretary of the Interior derive they're authority from section 204 of the Federal Land Policy and Management Act of 1976. Pursuant to section 204(a) we read that the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section. The Secretary may delegate this withdrawal authority only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate. This means that the withdrawal program is a department level program and BLM must comply with the Department's policy.

So how does the BLM get involved in processing withdrawals?

The BLM's authority comes from 603 Departmental Manual 1.2 B, which is a document you should become familiar with and is found in your tool box.

"B" Basically states "The Bureau of Land Management is responsible for processing all withdrawal related applications and making recommendations concerning them to the Asst. Secretary."

The BLM took its delegated responsibility and promulgated regulations found at 43 Code of Federal Regulations 2300. The requirements for filing a withdrawal application are found under 43 CFR 2310.1-

2(c). The format for developing an application are general and you may use the template provided from this course. Now let us begin developing a withdrawal.

I divided the withdrawal training into 4 phases to assist you in your learning experience and to help in processing your own withdrawal case. You may choose to view the entire 4 phases or each phase as you need to process your particular case.

The 4 phases include:

- Application Process
- Application Approval and Public Outreach
- Final Withdrawal Package Development
- Public Land Order Approval and Publication

Let's begin with the application process phase I:

In this segment I will describe the process for developing a new withdrawal which should provide you with a basic understanding of the data requirements under each of the 15 application entries required by the regulations at 43 CFR 2310. To assist with this discussion I will be using a California BLM withdrawal petition application.

Prior to filling out a withdrawal application BLM regulations require a pre-withdrawal consultation meeting. The primary purpose of the meeting is to determine the need for a withdrawal and consider any alternative methods to protect the lands for a particular purpose or use. Generally, the manager will assemble an ID team which should include a geologist, realty specialist, and any resources staff specialist whose resource is in need of protection.

A Geologist Determines mineral potential underlying lands to be withdrawn. Why is this important? The manager is going to make a recommendation to the Secretary to close the land to mineral entry and before that recommendation can be made the manager will need to know the potential mineralization underlying the land to assist in determining the best use of the land.

The Realty Specialist, The realty specialist generally leads the project and assists in the processing of the case because a withdrawal generally restricts the land title or may transfer administration to another Federal agency. The realty specialist will state the Department of Interiors Policy as described in 603 Departmental Manual 1.1, and describes potential alternatives. The alternative available includes

rights-of-ways for infrastructure developments such as recreation sites, communication sites, administrative sites, etc. The rights-of-way authority is found under Title V of the Federal Land Policy and Management Act. Another alternative may include an interagency agreement or memorandum of understanding. None of the alternatives however, provide segregation from mineral location but they do provide a right-in-time use superior to subsequent land users. Also, the alternatives provide for a land management prescription generally made by your Field Manager, District Manager, or Forest Supervisor by delegation of authority as opposed to requesting the Department of Interior to make the decision.

The realty specialist will also describe the withdrawal processing timeframes: By law the agency is provided a 2-year segregation from date of publication of notice in the FR. Generally that gives the field office 1 year to complete all of the necessary NEPA and supporting document reports to justify the withdrawal and one year for the State and WO to process the case thru the Department and get the Public Land Order published. You need to inform the manager that if the application is not processed within the 2-year timeframe, the segregation automatically terminates but the application may continue to be processed. The agency cannot make a new application to receive a new segregation.

Segregation: What level of segregation is required to protect the resource value. Generally the agency should only segregate the lands from location and entry under the U.S. mining laws. The lands should remain open to the general land laws and leasing under the mineral and geothermal leasing laws because the BLM and USFS have the authority to close lands to these uses under their land use planning provisions.

Benefitting Resource Specialist: This is the individual who is describing the resource to be protected and why the agency is unable to protect the resource value under, for example, the Endangered Species Act, the Antiquities Act., etc.

Manager: The manager is the person, who weighs the options, alternatives, application costs, processing time, assigns work, monitors and tracks progress. I need to point out that the cost to process a withdrawal rises exponentially to that of a rights-of-way because you would engage the State Office, Washington Office, and the Department. A rights-of-way can be authorized by the District or Forest Supervisors Office. Finally, the manager should determine if the withdrawal meets the standards stated in 603 DM 1.1?

Now we are going to take a look at a withdrawal application and demonstrate with an example. This slide is an established case application for a BLM withdrawal known as the Trinity River Proposed Withdrawal. Note the simplicity of the title.

The titles of each of the numbered entries line up with the requirements specifically stated in 43 CFR 2310.1-2(c) so please do not change the titles on your application.

1. Some of the entries are self-explanatory which I will not discuss in detail.

2 & 3. Under entries Number 2 and 3 for Interior agencies the entry is not applicable because the authority has not been delegated below the Assistant Secretary level. For Non-Interior agencies applicants will need to provide supporting documentation showing who has the authority to make withdrawals for that agency. I will display a USFS application later in this presentation and show the difference.

4. Under type of withdrawal the BLM uses a standard statement. Notice BLM is only requesting the lands be closed to location and entry under the U.S. mining laws (a non-discretionary law which gives mining claimants certain rights upon location of claims), and remains open to the mineral and geothermal leasing and Materials Act of 1947. The public land laws are all discretionary and provide applicants no rights for applying with the BLM meaning the BLM could reject the application if the proposed action interferes with the primary purpose for which the lands are to be withdrawn.

5. Under legal description the lands described must be written according to the Specifications for Descriptions of Land for Use in Land Orders, Executive Orders, and Proclamations. If the legal descriptions are lengthy, as the case of my example, it is recommended that they be written as Exhibit A. Once they are written they can be copied and pasted to your Federal Register notice and later on, the draft Public Land Order.

This section identifies any overlapping withdrawals that may exist. Once again if it is a lengthy legal land description develop them on a separate Exhibit. You can have overlapping withdrawals that withdraw for different purposes.

Purpose of the Withdrawal is a statement describing the purpose of the withdrawal. As we see in the example, the BLM noted the purpose and its relationship to existing planning along with the primary purpose of the withdrawal – to enhance recreation opportunities, maintains scenic qualities, protects and enhances the riparian habitat of endangered fish and wildlife populations, and protects key cultural resources.

This section relates to what is being segregated during the 2 year temporary segregation and what mineral development may be authorized over that period of time.

This section states what other discretionary land uses may be authorized consistent with planning and the primary purpose for which the lands are set aside for.

This section describes the alternatives as discussed earlier in the pre-consultation meeting.

11. The duration of a withdrawal is generally set at 20 years as a Departmental Policy. However, this is not specifically documented but eluded to in section 204(d) of the FLPMA.

12. Generally, this section is a standard statement unless an alternative site was considered and dropped. Please note the specific requirements under the regulations.

13. Once again a specific requirement is made by the regulations to identify whether or not water is needed for the proposed withdrawal. If water is needed did the office make appropriate water filings with the State affected.

14. The address normally placed in this section is the State Office as that office is generally the office of the official record.

15. The mineral potential report is needed to complete this section. Although the documentation is not mentioned in the regulations it is the BLM policy to summarize the mineral potential to allow the Secretary's office an opportunity to understand the concern for closing the lands to mineral location.

The application also includes photos of the affected lands preferably highlighting the specific features you want protected, along with maps indicating where the proposed withdrawal application is located. These photos and maps may be viewed from your toolbox. This represents an application for an Interior Agency - Now I am going to show you an example of a Non-Interior agency, USFS, application and highlight some of the differences.

Non DOI agencies need to submit their application through the appropriate officials. For the USFS the Department of Agriculture has delegated that authority down to the Regional Forester as noted in its application.

A USFS withdrawal usually originates at the local Forest Supervisors Office. It is then elevated to the Regional Office where the application is sent to the BLM State Office. The USFS should also be encouraged to provide the BLM with an electronic draft Notice for the Federal Register and a draft Federal Register Briefing Paper.

The cover memo to the application will at a minimum, contain a formal statement that the BLM is authorized to use the Agency's Billing Code as well as the actual code for costs associated with the Federal Register publications.

In addition to publishing the Notice of Proposed Withdrawal in the Federal Register, the notice will also need to be published in a Newspaper of Record. Periodically the Federal Register publishes the list of

newspapers that are considered the Newspaper of Record for each area. Since some BLM State Offices prefer to formulate and publish this notice themselves, you should include a list of the appropriate newspaper(s) in the cover letter. There are costs associated with this publication which are the responsibility of the requesting agency. Clearly state that any invoice should be sent to the requesting agency for payment. Include the name and address of the person charged with paying the bill.

Now that we have completed filling out an application, we are ready to move on to phase two application approval and public outreach.