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***PUBLIC OWNERSHIP OF LAND  
IN THE UNITED STATES  
AND ITS PRIVATE USE***

*by*

***DEAN T. MASSEY***

***September 1995***



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Terra Institute, Ltd., has provided technical assistance in Albania since 1994. Under both the Land Legislation and Policy Project (LLPP) and the Land Markets in Albania Project (LMAP), the Institute has archived almost 50 reports, papers, draft legislation, and commentaries on land legislation, land registration, land tenure, and other land market-related activities in Albania.

The report presented in this document “Public Ownership of Land in the United States and its Private Use,” by Dean T. Massey, was submitted to Terra Institute, Ltd., on 13 September 1995.

All views, interpretations, recommendations, and conclusions expressed in this paper are those of the author and not necessarily those of the supporting or cooperating institutions.

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# REPORT

## PUBLIC OWNERSHIP OF LAND IN THE UNITED STATES AND ITS PRIVATE USE

by

Dean T. Massey\*

### I. INTRODUCTION

The objective of the study for this Report is to determine how multiple and private uses may be made of land owned by various levels of government in the United States, particularly the right of public agencies to sell or auction land under their jurisdiction, as well as to lease it or give concessions to private interests. Land owned by the United States Government and under the jurisdiction of Federal agencies and lands owned by the State of Wisconsin and under the jurisdiction of state agencies will be used as examples. Most states in the United States have similar laws relating to the ownership of public land and its sale, lease and private use, as does Wisconsin. In addition, public ownership of land by local units of government in Wisconsin, such as counties, and the sale, lease and private use of such land will be examined.

There are both constitutional and statutory restrictions on the private use of publicly owned land, particularly on the purchase of such land for private use. Basically, privately owned land and other private property can be taken only for public use and then only after payment of just compensation. The United States Constitution provides that “no person shall be deprived of property without due process of law, nor shall private property be taken for public use, without just compensation.”<sup>1/</sup> Wisconsin’s Constitution provides that the “property of no person shall be taken for public use without just compensation.”<sup>2/</sup> Another provision in the Wisconsin Constitution states “no municipal corporation shall take private property for public use, against the consent of the owner, without the necessity thereof being first established in the manner prescribed by the legislature.”<sup>3/</sup> Wisconsin Statutes provide that necessity must be determined for taking any private land or interests in it by the state government, any of its department, local governments or public utilities.<sup>4/</sup>

The state government in Wisconsin or any of its departments, local governments or any of their boards or commissions, public utilities, quasi-governmental bodies and some private corporations performing public or governmental functions may acquire land by condemnation.<sup>5/</sup> Those powers are further set forth in the Constitution, that provides, “the state or any of its counties, cities, towns or villages may acquire by gift, dedication, purchase, or condemnation lands for establishing, laying out, widening, enlarging, extending, and maintaining memorial grounds, streets, highways, squares, parkways, boulevards, parks, playgrounds, sites for public buildings, and reservations in and about and along and leading to any or all of the same.”<sup>6/</sup> Excess or unnecessary property may be sold under the same constitutional provision providing, “after the establishment, layout, and completion of such improvement, may convey any such real estate thus acquired and not necessary for such improvements, with reservation concerning the future use and occupation of such real estate, so as to protect such public works and improvements, and their environs, and to preserve the view, appearance, light, air, and usefulness of such public works.”<sup>7/</sup> The purchase of land by local governments for housing,<sup>8/</sup> urban redevelopment,<sup>9/</sup> slum clearance projects,<sup>10/</sup> urban renewal projects<sup>11/</sup> and industrial redevelopment<sup>12/</sup> and its sale to private entities or leases with an option to renew them at minimum rent do not violate this provision of the constitution.<sup>13/</sup>

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## **II. LAND OWNED BY THE FEDERAL GOVERNMENT AND ITS PRIVATE USE**

### **A. FEDERAL OWNERSHIP OF LAND**

The total area of the 50 states in the United States is 2.3 billion acres. At various times in U.S. history, the Federal Government held title to about 80 percent of the Nation's total area. "Public domain" land, which originally comprised 1.8 billion acres, once stretched from the Appalachian Mountains to the Pacific Ocean. Up to the present time, title to approximately 1.1 billion acres or two-thirds of the public domain has been transferred by the Federal Government to individual citizens, businesses and corporations and to states and other non-Federal government organizations under legal authorities generally referred to as the "land laws." Substantial portions, amounting to 287 million acres, were removed from Federal ownership under the authority of the Homestead Laws, with another 328 million acres granted to states to help support public schools, develop transportation systems and promote general economic development.

Today, the Federal Government still owns about 650 million acres or about 29 percent of the country's total area and these lands are administered by various Federal civil and defense agencies. Some of those 650 million acres has been set aside or withdrawn from the "public domain" for national forests, fish and wildlife refuges, national parks, monuments and other public uses, leaving 270 million acres still in the public domain under the protection of the Bureau of Land Management. All Federally owned land is titled or registered in the name of the "United States of America" regardless of the Federal agency having jurisdiction for management.

Lands still owned by the Federal Government include portions of the "original public domain" plus acquired lands. The original public domain is the area of land and inland water acquired between 1781 by state cessions and the Alaska Purchase in 1867. Acquired lands are those areas acquired after 1867 by purchase, exchange, condemnation and gift.

As the Nation's principle conservation agency, the U.S. Department of the Interior has jurisdiction over and manages most of the Federally owned land and natural resources. That Department is responsible for: (1) the conservation and development of mineral and water resources; (2) the conservation, development and use of fish and wildlife resources; (3) the operation of recreational programs for Federal parks, refuges and public lands; (4) the preservation and administration of the Nation's scenic and historic areas; (5) the reclamation of arid lands in the West through irrigation; and (6) the administration of Native American lands and reservations with Tribal governments. In all, the Department of the Interior manages more than 440 million acres of Federal lands, including some 360 national parks, about 500 wildlife refuges and vast areas of multiple-use lands.

Agencies within the Department of the Interior that have jurisdiction over major Federal land holdings are the Bureau of Land Management; U.S. Fish and Wildlife Service; National Park Service and Bureau of Reclamation. Other Federal agencies having jurisdiction over major land holdings are the Department of Agriculture's National Forest Service and the Department of Defense's Corps of Engineers. About two percent of the Federal land is under the jurisdiction of various other agencies.

### **B. BUREAU OF LAND MANAGEMENT**

The Bureau of Land Management (BLM) has jurisdiction over 270 million acres of surface land, primarily located in the West, or about 42 percent of all Federally owned land, and an additional 300 million acres of subsurface mineral rights owned by the Federal Government on either Federally owned land or on such land sold to private persons where it retained mineral rights. It manages all Federally owned land not under the jurisdiction of any other agency and Federally owned mineral rights, including oil, gas and coal. Resources managed include wildlife habitats, timber, minerals, open space, wilderness areas, forage areas and recreational land. In addition, the BLM develops and implements national resource programs for renewable resource use and protection, including the management of forest land and rangeland, wild horses and burros, wildlife habitat, endangered species, watersheds, soil and water quality, rights-of-way and recreational and cultural programs. Land may be sold to individuals, organizations, local governments and other Federal agencies when such transfers are in the public interest. In addition, land may be leased to state and local government agencies and nonprofit organizations for certain purposes. The BLM also has responsibility to grant rights-of-way, in certain instances, for crossing Federal lands that are under the jurisdiction of other agencies.

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Two former Federal agencies, the General Land Office and the U.S. Grazing Service, were consolidated under a government reorganization plan to establish the Bureau of Land Management on July 16, 1946.<sup>14/</sup> The Federal Land Policy and Management Act of 1976 provides for the mission of the Bureau and establishes policy guidelines and criteria for the management of public lands and resources it administers.<sup>15/</sup> Public lands are to be managed under the principles of multiple-use and sustained-yield in accordance with land use plans developed by the Bureau.<sup>16/</sup> The Bureau is required to prepare and continuously maintain an inventory of all public lands and their resources, giving priority to areas of critical environmental concern.<sup>17/</sup> Also, the BLM is required to develop, with public involvement, and maintain land use plans that provide for uses of each tract or area of public land.<sup>18/</sup>

A tract of public land, with certain exceptions, may be sold to individuals and public entities at its fair market value under a competitive bidding procedure as a result of the previously prepared land use plans if: (1) such tract, because of its location or other characteristics, is difficult and uneconomical to manage as a part of the public lands; (2) such a tract was acquired for a specific purpose and is no longer required for that or any other Federal purpose; or (3) disposal of such a tract will serve important public objectives.<sup>19/</sup> The Bureau has authority to withdraw land from the public domain to protect resource value or to transfer it to another federal agency.<sup>20/</sup> Public lands may be sold or leased at a reduced price to state and local governments or to nonprofit groups to be used for public purposes on community projects.<sup>21/</sup> Rights-of-way on public lands may be granted to state and local governments and individuals for certain single uses, such as transmission lines, roads, telephone lines, communication sites for radio or other broadcast facilities, water and natural gas pipelines, hydropower facilities and drainage ditches.<sup>22/</sup>

Three laws, Taylor Grazing Act of 1934,<sup>23/</sup> Federal Land Policy and Management Act of 1976<sup>24/</sup> and Public Rangelands Improvement Act of 1978,<sup>25/</sup> authorize grazing on Federal lands. The principle objective of the Bureau's rangeland management program is to protect rangeland resources while managing the land for multiple uses, including livestock grazing. The BLM administers livestock grazing on 22,000 allotments comprising 170 million acres of public rangeland, mostly in 11 western states. In 1993 more than 19,000 permittees grazed livestock on BLM managed land. These permittees typically use a mix of private, state and public rangelands because of the West's patchwork pattern of land ownership. The importance of public lands in this mix is shown by the fact that about one-third of all beef cattle in 11 western states graze at least part of the year on public rangeland.

Under the Taylor Grazing Act of 1934, the Secretary of the Interior is authorized to establish grazing districts, add land to them or modify their boundaries, on vacant, unappropriated and unreserved lands from any part of the public domain, which are not in national forests, national parks, national monuments or Indian Reservations, that are chiefly valuable for grazing and raising forage crops to promote the highest use of the public lands pending its final disposal. No lands withdrawn or reserved for any other purpose shall be included in a district except with the approval of the head of the department having jurisdiction. A public hearing must be held in the state where the district is located before establishing a district.<sup>26/</sup> Permits for grazing livestock in districts may be issued to settlers or residents who are United States citizens and other stock owners, such as groups, associations or corporations authorized to conduct business under the state law where the district is located, upon an annual payment of reasonable fees fixed or determined from time to time in accordance with governing law.<sup>27/</sup> Permits are for a maximum of 10 years and are renewable.<sup>28/</sup>

The existing grazing fee formula was established by Congress in the Public Rangeland Improvement Act of 1978.<sup>29/</sup> Although the formula was set to expire at the end of 1985, it was extended by a Presidential Executive Order in 1986. The formula reflects changes in the livestock industry's economic conditions, specifically the cost of production, price of beef and forage values. Grazing fees rise under the formula when the livestock industry prospers and falls when the industry declines. The fee was \$1.86 per animal unit month (AUM) in 1993, down from \$1.92 in 1992.<sup>30/</sup>

## **C. U.S. FISH AND WILDLIFE SERVICE**

The United States Fish and Wildlife Service within the Department of the Interior, which operates the National Wildlife Refuge System, has jurisdiction over 504 refuges nationwide consisting of 92 million acres or 14 percent of the Federally owned land. First established as an independent agency in 1871, the Bureau of Fisheries was later placed in the Department of Commerce. A second predecessor agency, the Bureau of Biological Survey, was established in 1885 in the Department of Agriculture. The two bureaus and their functions were transferred to the Department of the Interior in 1939.<sup>31/</sup> They were consolidated into one agency designated as the Fish and Wildlife Service in the Department of the Interior in 1940.<sup>32/</sup> Further reorganization came in 1956 when the Fish and Wildlife Act created the United States Fish and Wildlife Service and provided for it to replace and succeed the Fish and Wildlife Service.<sup>33/</sup> The Act established two bureaus in the new Service, the Bureau of Commercial Fisheries

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and the Bureau of Sport Fisheries and Wildlife. In 1970, under Reorganization Plans 3 and 4, the Bureau of Commercial Fisheries was transferred to the Department of Commerce and the Bureau of Sport Fisheries and Wildlife remained in the Department of the Interior<sup>34/</sup> and was renamed by an Act of Congress in April 1974 as the United States Fish and Wildlife Service.<sup>35/</sup>

Responsibilities of the United States Fish and Wildlife Service include migratory birds, endangered species, certain marine mammals and inland sport fisheries. Its mission is to conserve, protect and enhance fish and wildlife and their habitat. Within this framework, the Service strives to foster an environmental stewardship ethic based on ecological principles and scientific knowledge of wildlife; works with states to improve the conservation and management of the Nation's fish and wildlife resources; and administers a national program providing opportunities to the public to understand, appreciate and wisely use these resources. In the area of resource management, the Service provides leadership for the protection and improvement of land and water environments that directly benefits the living natural resources and adds quality to human life.

Land may be added to the National Wildlife Refuge System by purchase,<sup>36/</sup> donations and gifts.<sup>37/</sup> Multiple-use of land in the Refuge System for nongovernmental activities is pretty well limited to recreational and educational opportunities. Many individual refuges permit hunting and fishing and have visitor centers, wildlife trails and environmental education programs.

#### **D. NATIONAL PARK SERVICE**

There are 83.3 million acres or 11 percent of the Federally owned land in the National Park System consisting of more than 365 units, including national parks, monuments of noteworthy natural and scientific value; scenic parkways, seashores, lakeshores, recreational areas and reservoirs; and historic sites associated with important movement events and past American personalities.<sup>38/</sup> The National Park Service, which administers the national parks, monuments, historic sites and recreation areas, was established within the Department of the Interior by the Organic Act on August 25, 1916.<sup>39/</sup> Objectives of the National Park Service are to administer the properties under its jurisdiction for the enjoyment and education of the citizens, protect the natural environment of the areas and assist states, local governments and citizens in the development of park areas, protection of the natural environment and preservation of historic properties. Each area within the National Park System is administered in accordance with provisions of statutes specifically applicable to that area.<sup>40/</sup> Very few multiple uses with private interests are permitted on land within the National Park System.

Several statutory provisions relate to adding land to the National Park System, but none relate to the disposition or sale of land within the System. Each year the Park Service investigates, studies and monitors the welfare of areas whose resources exhibit qualities of national significance and which may have potential for inclusion in the National Park System. A prioritized list of not less than 12 such areas is submitted to Congress each year for appropriations to purchase the additional land.<sup>41/</sup> Private lands already within a national park may be donated to the Park Service.<sup>42/</sup> Existing boundaries of individual park units may be exchanged to acquire additional land by purchase or condemnation to adequately protect and preserve natural, historic, cultural, scenic and recreational resources integral to the park unit.<sup>43/</sup>

The National Park Service may sell or dispose of timber in parks where cutting the timber is required to control the attacks of insects or disease or otherwise conserve the scenery or the natural or historic objects in the park, monument or reservation. Livestock grazing may be permitted within a national park, monument or reservation when it is not detrimental to the area's primary purpose. In addition, the National Park Service may grant 30-year leases or permits for using the land to accommodate visitors.<sup>44/</sup>

#### **E. BUREAU OF RECLAMATION**

The Reclamation Act of 1902<sup>45/</sup> authorizes the Secretary of the Interior to administer a reclamation program that provides the arid and semi-arid lands of the 17 contiguous western states a secure year-round water supply for irrigation. To perform this mission, the Reclamation Service was created within the United States Geological Survey. In 1907 the Reclamation Service was separated from the Survey and in 1923 it was renamed the Bureau of Reclamation.

The mission of the Bureau of Reclamation is to manage, develop and protect for the public welfare, water and related resources in the 17 western states in an environmental and economical manner. In addition to managing the Federal programs for water and power resource development in those states, the Bureau oversees municipal and

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industrial water supply, hydroelectric power generation, irrigation, flood control, water quality improvement, river regulations, fish and wildlife enhancement and outdoor recreation.

In fulfillment of its mission, the Bureau of Reclamation is responsible for the acquisition, administration and management of lands in the 17 western states associated with its water development projects. The Bureau through the Secretary of the Interior is authorized to acquire rights in land by purchase or condemnation.<sup>46/</sup> Reclamation project facilities presently in operation include 355 storage reservoirs, 69,400 miles of canals and other water conveyance and distribution facilities and 52 hydroelectric power plants. Ownership of the dams, reservoirs and land around the reservoirs is in the name of the Federal Government, not the Bureau of Reclamation. Even though the Bureau has jurisdiction over the lands around the reservoirs, it does not manage those lands. Under an agreement with the National Park Service it operates the police service and the Bureau has agreements with states for recreational purposes.

Various Federal statutes permit the Bureau of reclamation to dispose of excess or unneeded land that was purchased from private sources or public lands irrigated under a reclamation project. Whenever in the opinion of the Secretary of the Interior any lands acquired under the Reclamation Act<sup>47/</sup> for irrigation purposes contemplated by the Act that are not needed for the purpose for which they were acquired, the Secretary shall cause the land and improvements to be appraised by three disinterested persons appointed by him and sold at not less than the appraised value at a public auction to the highest bidder after giving public notice of the time and place of the sale.<sup>48/</sup> Land withdrawn from the “public domain” in connection with the construction or operation of a reclamation project and which has been improved at the expense of the reclamation fund and is no longer needed for the purpose for which it was withdrawn and improved may be sold to the highest bidder at a public auction after being appraised and a public notice of the auction given, provided no more than 160 acres may be sold to any one person.<sup>49/</sup> Public land that is irrigated under a proposed irrigation project is subject to entry under the Homestead Laws, provided the area is not less than 40 acres nor more than 160 acres.<sup>50/</sup> The Secretary of the Interior is authorized to dispose of vacant public land in connection with Federal irrigation projects that is temporarily or permanently unproductive to resident farmer owners or resident entrymen (homesteaders)<sup>51/</sup> private sales or public auctions at less than the price fixed by independent appraisers, provided the area is not more than 160 acres or an area which together with land already owned on the Federal irrigation project does not exceed 320 acres.<sup>52/</sup>

## **F. U.S. FOREST SERVICE**

The United States Forest Service, which is administered by the U.S. Department of Agriculture, has jurisdiction over 231.7 million acres or 11 percent of the Federally owned land. Of this amount, 191.6 million acres are in the National Forest System and 40.1 million acres are classified as “other acreage.” The National Forest System is defined as a nationally significant system of Federally owned units of forest, range and related land consisting of national forests, purchase units, national grasslands, land utilization project areas, experimental forest areas, experimental range areas, designated experimental areas, other land areas, water areas and interest in lands that are administered by U.S. Forest Service or designated for administration through the Forest Service. “Other acreage” is that land administered by the Forest Service outside the National Forest System.<sup>53/</sup> The Forest Service administers 155 national forests, consisting of 187.3 million acres, and 20 national grasslands, consisting of 3.8 million acres, within the National Forest System in 44 states, the Virgin Islands and Puerto Rico under the principles of multiple-use and sustained-yields. There is also 37.8 million acres of national forests and 404,000 acres of national grassland in the “other acreage” category. A national forest is an unit formally established and permanently set aside and reserved for national forest purposes. A national grassland is an unit designated by the Secretary of Agriculture and permanently held by the U.S. Department of Agriculture under Title III of the Bankhead-Jones Farm Tenant Act.<sup>54/</sup> There are 48 purchase units consisting of 2.2 million acres administered by the U.S. Forest Service with about 1.9 million of those acres in the “other acreage” category. A purchase unit is one designated by the Secretary of Agriculture or previously approved by the National Forest Preservation Commission for purposes of the Weeks Law of March 1, 1911, acquisition.<sup>55/</sup>

The National Forest System began with the Organic Act of June 4, 1897, which provided that all public lands designated and reserved prior to June 4, 1897, by the President as public forest reserves would remain so and public lands may hereafter be set aside and reserved as public forest reserves to improve and protect the forests within their boundaries, to secure favorable conditions of water flow and to furnish a continuous supply of timber; however, public lands may not be set aside for public forest reserves if they are more valuable for minerals or agricultural purposes than for forest purposes.<sup>56/</sup> Prior to June 4, 1897, the President was authorized under the Creative Act of

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March 3, 1891, to set aside and reserve any public domain land in a state or territory bearing forests as public forest reserves.<sup>57/</sup>

The U.S. Forest Service was created by the Transfer Act of February 1, 1905, which transferred the forest reserves and the responsibility for their management from the Department of the Interior to the Department of Agriculture.<sup>58/</sup> An Act of March 4, 1907, redesignated public forest reserves as national forests.<sup>59/</sup> Under the Weeks Act of March 1, 1911, the government was allowed to purchase and exchange land for national forests.<sup>60/</sup> One provision directed the Secretary of Agriculture to examine, locate and purchase, with the consent of the state in which the land is located, such forested cut-over or denuded lands within the watersheds of navigable streams as in his opinion may be necessary to regulate the flow of navigable streams or for the production of timber.<sup>61/</sup> Another provision permits the Secretary of Agriculture to accept title to land within the exterior boundaries of national forests and in exchange to convey by deed land not to exceed an equal value of such national forest land in the same state.<sup>62/</sup>

As set forth in several laws, the mission of the Forest Service is to achieve quality land management under the sustainable, multiple-use management concept to meet the diverse needs of people. Those laws include the Multiple-Use and Sustained-Yield Act of 1960,<sup>63/</sup> Forest and Rangeland Renewable Resource Planning Act of 1974<sup>64/</sup> and National Forest Management Act of 1976,<sup>65/</sup> which is actually an amendment to the Forest and Rangeland Renewable Resource Planning Act. Congress established a policy in the Multiple-Use and Sustained-Yield Act of 1960 that national forests are established and administered for outdoor recreation, range, timber, watershed and wildlife and fish purposes.<sup>66/</sup> The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of national forests for multiple-use and sustained-yield of their several products and services. Consideration is to be given to the relative values of the various resources in particular areas.<sup>67/</sup> Multiple-use is the management of all the various surface resources of the national forests so that they are utilized in a combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related surfaces over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.<sup>68/</sup> Sustained yield of the several products and services is the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land.<sup>69/</sup>

Under the Forest and Rangeland Renewable Resource Planning Act of 1974,<sup>70/</sup> as amended by the National Forest Management Act of 1976,<sup>71/</sup> the Secretary of Agriculture was to prepare a Renewable Resource Assessment by December 31, 1975, and update it during 1979 and every tenth year thereafter.<sup>72/</sup> The Assessment was to include, among other things, an analysis of present and anticipated uses, demand for and supply of the renewable resources, an inventory of present and potential renewable resources and an evaluation of opportunities for improving the yield of tangible and intangible goods and services and a description of Forest Service programs and responsibilities in research, cooperative programs and management of the National Forest System. Following preparation of the Assessment, the Secretary of Agriculture is to prepare a Renewable Resource Program and update it periodically that provides an appropriate detail for the protection, management and development of the National Forest System.<sup>73/</sup> One of the purposes of the Program is to set forth plans for each National Forest System unit on the type of harvesting, where on the unit timber may be harvested and the amount of harvest.<sup>74/</sup> Timber is sold by a bidding process for contracts to harvest on designated mapped areas after appraisal and advertisement.<sup>75/</sup>

The President of the United States is authorized under the Taylor Grazing Act of 1934<sup>76/</sup> to place under the Department of the Interior's administration any land within the National Forest System that is principally valuable for grazing. Such land is subject to all the laws administered by the Bureau of Land Management applicable to grazing districts.<sup>77/</sup> However, such land within the National Forest System may not be placed in a grazing district.<sup>78/</sup>

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### **III. WISCONSIN LAND OWNED BY THE STATE GOVERNMENT AND ITS PRIVATE USE**

#### **A. PUBLIC OWNERSHIP OF LAND IN WISCONSIN**

There were 5,484,340 acres of publicly owned land in Wisconsin used for conservation and recreation purposes as of December 31, 1994, or 15.32 percent of its gross area. The Federal Government owned 1,748,684 acres, consisting of 187,051 acres in fish and wildlife refuges, 1,519,325 acres in national forests and 42,308 acres in national parks. The Department of Natural Resources, which is the manager of the largest amount of state-owned land in Wisconsin, had 1,223,749 acres on December 3, 1995, used for forest and wild river purposes (543,435 acres), natural and park areas (143,613 acres), fisheries (90,629 acres) and wildlife refuges (446,072 acres). County parks and forests contained 2,355,650 acres or 43 percent of all the publicly owned land in the state. Wisconsin had 79,926 acres of Federally owned public domain or trust lands managed by the state as trustee. Other publicly owned conservation and recreation areas in the state consisted of 76,319 acres. None of the above areas include lands managed by the Department of Transportation or Department of Corrections or other state agencies. Such lands are irrelevant to this Report because they are seldom subject to multiple or private uses, except for the sale of excess land purchased or condemned for a particular project.

#### **B. PUBLIC CONSERVATION AND RECREATION LAND**

The Wisconsin Department of Natural Resources (DNR), which has jurisdiction over the largest amount of state-owned land, manages 1,223,749 acres of public conservation and recreation land. Approximately 500,000 acres of the land are in state forests, 112,000 acres in state parks, 460,000 acres in wildlife management refuges and 100,000 acres in fisheries. The state can acquire land by purchase, lease, agreement, gift, devise or condemnation for state forest to grow timber, demonstrate forestry methods, protect watersheds and provide recreation;<sup>79/</sup> for state parks to preserve scenic or historic values or natural wonders;<sup>80/</sup> for public hunting, trapping or fishing grounds;<sup>81/</sup> for fish hatcheries;<sup>82/</sup> and several other conservation, preservation and recreational purposes.<sup>83/</sup> Priorities for land acquisition are established depending upon the availability of funding;<sup>84/</sup> approval is required from the governor and legislative committees in certain instances.<sup>85/</sup> DNR can extend and consolidate land for conservation and recreation purposes by exchanging it for other land.<sup>86/</sup> In addition, DNR may acquire easements in the furtherance of public rights, including the right of access and use of land and water for hunting and fishing, and grant leases and easements to properties and other land under its management and control.<sup>87/</sup>

State forests in Wisconsin include all land granted to the state by the Federal Government for forestry purposes and land subsequently acquired by the state for forestry purposes.<sup>88/</sup> As previously indicated, the Department of Natural Resources may acquire land or interests in land by grant, devise, gift, condemnation or purchase within the boundaries of established state forests or purchase land outside such boundaries for forest nurseries, forestry research and demonstration and access to such property. Legislative approval is needed for condemnation of land.<sup>89/</sup> Land outside state forest boundaries may be sold by DNR<sup>90/</sup> at a public or private sale when the Natural Resources Board determines that the land in question is no longer necessary to the state's use for conservation purposes.<sup>91/</sup> Land within state forest boundaries may also be sold under the same condition of the Natural Resources Board's approval,<sup>92/</sup> but only after publishing a notice and holding a public hearing in the county in which the land is located.<sup>93/</sup> However, land within state forest boundaries may only be sold to a local unit of government when required for public use; to others to make land adjustments due to occupancy resulting from survey errors, convey good quality arable land, settle land title disputes and convey land no longer needed for conservation purposes; and to public utilities and cooperative associations for power or telecommunication purposes.<sup>94/</sup>

Right-of-way easements may be granted for public or private roads, public utility lines or flowage rights on state forest lands where the Department of Natural Resources finds that such use at the designated location does not conflict with the planned development of the forest. Easements for public roads are given at a nominal fee, while easements for other uses are given at the appraised value.<sup>95/</sup> Land within state forests may be leased to local government units for a term not to exceed 15 years for outdoor recreational purposes associated with spectator sports.<sup>96/</sup> State forest land may also be leased to private persons or corporations and licenses may be issued to permit prospecting for ore or minerals.<sup>97/</sup>

Trees in state forests marked or designated for cutting may be harvested and sold under contract. Where the value of the cut product or stumpage is \$1,000 or more a public notice of the sale must be given.<sup>98/</sup> All income from the sale of timber is paid to the state treasury and credited to the conservation fund.<sup>99/</sup>

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Wisconsin has a policy of acquiring, improving, preserving and administering land for a state park system.<sup>100/</sup> The Department of Natural Resources may acquire suitable land for state parks by purchase, lease, agreement or condemnation.<sup>101/</sup> An area may qualify as a state park by reason of its scenery, plant and wildlife, historical, archaeological or geological interest and the purpose of state parks is to provide areas for public recreation, conservation and nature study.<sup>102/</sup> There is not much opportunity for private use of state park land because of the restrictions placed on it for conservation and recreation purposes. However, parts or parcels of state park land may be leased or easements granted and DNR may give concession rights to private persons for furnishing services.<sup>103/</sup>

### **C. PUBLIC DOMAIN OR TRUST LAND**

Since statehood over 5.2 million acres of land have been granted to the state primarily through Federal land grants for school and university purposes. Today, there are only 79,937 acres of public domain or trust land left in Wisconsin to be managed by the Division of Trust Lands and Investments for the Board of Commissioners of Public Lands. Almost all of the remaining trust land is located in the state's northern tier of counties. The Board is authorized to accept land granted to it by the Federal Government, sell that land and invest the proceeds for the benefit of public schools, universities and libraries. In addition to the Division managing and selling the trust lands on behalf of the Board, it also manages the proceeds from those land sales and loans them to Wisconsin municipalities and school districts for public works. Every parcel of public land offered for sale or exchange must be appraised to determine its minimum price.<sup>104/</sup> Private sales or exchanges may take place only at public auctions with the appraised price established as the minimum. Land required for any governmental unit use may be sold at the appraised value without an auction or exchanged for land of approximately equivalent value with the governmental unit.<sup>105/</sup>

## **IV. WISCONSIN LAND OWNED BY COUNTIES AND ITS PRIVATE USE**

There were 2,355,650 acres of Wisconsin land in county parks and forests on December 31, 1994. Counties can take and hold land and acquire, lease or rent it for public purposes, including parks and forests.<sup>106/</sup> They may also lease, sell or convey county-owned land not required to be held for public purposes.<sup>107/</sup> Forest land is the only appropriate county-owned land for this Report as it is the only such land subject to multiple or private uses.

County forests include all land in the county designated as forests by the county board or forestry committee.<sup>108/</sup> Much of this forest land includes privately owned land designated as "Forest Croplands" that was participating in a program under Chapter 77 of the Wisconsin Statutes in October 1963 whereby property taxes are drastically reduced. A comprehensive county forest land use plan must be prepared for a 19-year period by the county forestry committee and approved by the county board and Wisconsin Department of Natural Resources. The plan includes land use designations, land acquisition, forest protection, annual allowable timber harvest, recreational developments, fish and game management activities, roads, silvicultural operations and operating policies and procedures, in addition to an inventory of the county forests that includes maps, records and priorities showing in detail the various projects to be undertaken during the plan period.<sup>109/</sup> An Annual work plan and budget based on the comprehensive plan is to be prepared by the county forestry committee and includes a schedule of areas to be harvested, a listing by location of management projects and other appropriate multiple-use projects for the forthcoming year.<sup>110/</sup>

The county forestry committee is authorized to sell merchantable timber through sales contracts. Any timber sale with an estimated value of more than \$1,000 must be by sealed bid or public auction after a notice is published in a local newspaper. Approval is required from the Secretary of the Department of Natural Resources if the value of the sale exceeds \$2,500.<sup>111/</sup> Leases may be entered into for terms not to exceed 10 years to explore and prospect for ore, minerals, gas or oil upon county forest lands.<sup>112/</sup> In addition leases may be entered into for the extraction of valuable deposits of ore, minerals, gas or oil; however, there is no limitation on the length of time for these leases.<sup>113/</sup> Individual members of the public are permitted to remove up to 10 standard cords of wood unsuitable for commercial sale without charge for individual home heating purposes.<sup>114/</sup>

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## V. ENDNOTES

- <sup>1/</sup> U.S. CONST., 5th Amend.
- <sup>2/</sup> WIS. CONST., Art. I, Sec. 13.
- <sup>3/</sup> Id., Art. XI, Sec. 2.
- <sup>4/</sup> WIS. STAT., Sec. 32.07 (1993-94).
- <sup>5/</sup> Id., Sec. 32.02 (1993-94).
- <sup>6/</sup> WIS. CONST., Art. XI, Sec. 3a.
- <sup>7/</sup> Id.
- <sup>8/</sup> WIS. STAT., Secs. 66.40 to 66.404 (1993-94).
- <sup>9/</sup> Id., Secs. 55.405 to 66.425 (1993-94).
- <sup>10/</sup> Id., Sec. 66.431 (1993-94).
- <sup>11/</sup> Id., Sec. 435 (1993-94).
- <sup>12/</sup> Id., Sec. 66.521 (1993-94).
- <sup>13/</sup> State ex rel. Hammermill Paper Co. vs. LaPlante, 58 Wis. (2d) 32, 205 N.W. (2d) 784.
- <sup>14/</sup> Reorganization Plan No. of 1946, Sec. 403; 5 U.S. CODE, Appendix (1994).
- <sup>15/</sup> Public Law No. 94-579, Oct. 21, 1976, 90 Stat. 2744; 43 U.S. CODE, Sec. 1701 t seq. (1988).
- <sup>16/</sup> 43 U.S. CODE, Sec. 1732 (a) (1988).
- <sup>17/</sup> Id., Sec. 1711 (a) (1988).
- <sup>18/</sup> Id., Sec. 1712 (a) (1988).
- <sup>19/</sup> Id., Sec. 1713 (1988).
- <sup>20/</sup> Id., Sec. 1714 (1988).
- <sup>21/</sup> Id., Sec., 1721 (1988).
- <sup>22/</sup> Id., Sec., 1761 to 1771 (1988).
- <sup>23/</sup> Act of June 28, 1934, Ch. 865, Sec. 1, 48 Stat. 1269; 43 U.S. CODE, Secs. 315 to 315q (1988).
- <sup>24/</sup> See Note 2.
- <sup>25/</sup> Public Law No. 95-514, Oct. 25, 1976, 90 Stat. 1346; 43 U.S. CODE, Sec. 1901 et seq. (1988).
- <sup>26/</sup> 43 U.S. CODE, Sec. 315 (1988).
- <sup>27/</sup> 43 U.S. CODE, Sec. 315b (1988). Grazing fees are established by the Public Rangeland Improvement Act of 1978. See U.S. CODE, Sec. 1905 (1988).
- <sup>28/</sup> 43 U.S. CODE, Sec. 315b (1988).
- <sup>29/</sup> Id. Sec. 1905 (1988).
- <sup>30/</sup> An AUM is the amount of forage consumed by a cow and her calf, one horse or five sheep for a month.
- <sup>31/</sup> Reorganization Plan No. II of 1940, Secs. 4(e), (f); U.S. CODE, Title 5, Appendix (1994).
- <sup>32/</sup> Reorganization Plan No. III of 1940, Sec. 3; U.S. CODE, Title 5, Appendix (1994).
- <sup>33/</sup> Act of Aug. 8, 1956, Ch. 1036, Sec. 3, 70 Stat. 1119; 16 U.S. CODE, Sec. 742a st seq. (1994).
- <sup>34/</sup> Reorganization Plan No. III of 1970 and Reorganization Plan No. IV of 1970, Sec. 1; U.S. CODE, Title 5, Appendix (1994).

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35/ Public Law No. 93-271, Sec. 1, 88 Stat. 92; 16 U.S. CODE, Sec. 742b (1994).  
36/ 16 U.S. CODE, Sec. 742a (1994).  
37/ Id., Sec. 742f(b) (1994).  
38/ Id., Sec. 1c(a) (1994).  
39/ Act of August. 25, 1916, Ch. 408, Sec. 1, 39 Stat. 535; 16 U.S.CODE, Sec. 1 (1994).  
40/ 16 U.S. CODE, Sec. 1c(b) (1994).  
41/ Id., Sec. 1a-5(a) (1994).  
42/ Id., Sec. 6 (1994).  
43/ Id., Sec. 1a-12 (1994).  
44/ Id., Sec. 3 (1994).  
45/ 43 U.S. CODE, sec. 371 et seq. (1988).  
46/ Id., Sec. 421 (1994).  
47/ See note 1.  
48/ See U.S. CODE, Sec. 374 (1988).  
49/ Id., Sec. 375 (1988).  
50/ Id., Secs. 432 & 434 (1988).  
51/ Id., Sec. 424 (1988).  
52/ Id., Sec. 424a (1988).  
53/ 16 U.S. CODE, Sec. 1609(a) (1994).  
54/ Act of July 22, 1937, Ch. 517, 50 Stat. 522; 7 U.S. CODE, Sec. 1000 et seq. (1994).  
55/ Act of Mar. 1, 1911, Ch. 186, 36 Stat. 961; 16 U.S. CODE, Secs. 480, 500, 513 to 519, 521, 552 & 563 (1994).  
56/ Act of June 4, 1897, Ch. 2, Sec. 1, 30 Stat. 34; 16 U.S. CODE, Sec. 475 (1994).  
57/ Act of Mar. 3, 1891, Ch. 561, Sec. 24, 26 Stat. 1095, 1103.  
58/ 16 U.S. CODE, Sec. 472 (1994).  
59/ Act of Mar. 4, 1907, Ch. 2907, 34 Stat. 1269.  
60/ See Note 2.  
61/ 16 U.S.CODE, Sec. 515 (1994).  
62/ Id., Sec. 516 (1994).  
63/ Public Law No. 86-517, June 12, 1960, 74 Stat. 215; 16 U.S. CODE, Secs. 528 to 531 (1994).  
64/ Public Law No. 93-378, Aug. 17, 1974, 88 Stat. 476; 16 U.S. CODE, Secs. 1600 to 1610 (1994).  
65/ Public Law No. 94-588, Oct. 22, 1976, 90 Stat. 2949; 16 U.S. CODE, Secs. 1600 to 1610 (1994).  
66/ 16 U.S. CODE, Sec. 528 (1988).  
67/ Id., Sec. 529 (1994).  
68/ Id., Sec. 531(a) (1994).  
69/ Id., Sec. 531(b) (1994).  
70/ See note 11.  
71/ See note 12.

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72/ 16 U.S. CODE, Sec. 1601(a) (1994).  
73/ Id., Sec. 1602 (1994).  
74/ Id., Sec. 1604 (1994).  
75/ Id., Sec. 472a (1994).  
76/ Act of June 28, 1934, Ch. 865, 48 Stat. 1274; 43 U.S. CODE, Secs. 315 to 315q (1988).  
77/ 43 U.S. CODE, Sec. 315(1) (1988).  
78/ Id., Sec. 315 (1988).  
79/ WIS. STAT., Secs. 23.09(2) (d)1 & 28.02(2) (1993-94).  
80/ Id., Secs. 23.09(2) (d)2 & 27.01(2) (a) (1993-94).  
81/ Id., Sec. 23.09(2) (d)3 (1993-94).  
82/ Id., Sec. 23.09(2) (d)4 (1993-94).  
83/ Id., Secs. 23.09(2)5 to 12 (1993-04).  
84/ Id., Sec. 23.09(2dm) (a) 1993-94).  
85/ Id., Secs. 23.09(2) (intro.) & 23.14 (1993-94).  
86/ Id., Sec. 23.09(2) (e) (1993-94).  
87/ Id., Sec. 23.09(10) (1993-94).  
88/ Id., Sec. 28.01(1) (1993-94).  
89/ Id., Sec. 28.02(2) (1993-94).  
90/ Id., Sec. 28.02(4)(a) (1993-94).  
91/ Id., Sec. 23.15(1) (1993-94).  
92/ Id.  
93/ Id., Sec. 28.02(4) (b) (intro.) (1993-94).  
94/ Id., Secs. 28.02(4) (b) 1 to 6 (1993-94).  
95/ Id., Sec. 28.02(5) (1993-94).  
96/ Id., Sec. 23.305 (1993-94).  
97/ Id., Sec. 26.08 (1993-94).  
98/ Id., Sec. 28.05 (1993-94).  
99/ Id., Sec. 28.08 (1993-94).  
100/ Id., Sec. 27.01(1) (1993-94).  
101/ Id., Sec. 27.01(2) (a) (1993-94).  
102/ Id., Sec. 27.01 (1993-94).  
103/ Id., Secs. 27.02(2) (f) & (g) (1993-94).  
104/ Id., Sec. 24.08 (1993-94).  
105/ Id., Sec. 24.09 (1993-94).  
106/ Id., Sec. 59.07(1) (a) (1993-94).  
107/ Id., Sec. 59.07(1) (b) (1993-94).  
108/ Id., Sec. 28.11(2) (1993-94).

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<sup>109/</sup> Id., Sec. 28.11(5) (a) (1993-94).

<sup>110/</sup> Id., Sec. 28.11(5) (b) (1993-94).

<sup>111/</sup> Id., Sec. 28.11(6) (1993-94).

<sup>112/</sup> Id., Sec. 28.11(3) (i) (1993-94).

<sup>113/</sup> Id., Sec. 28.11(3) (j) (1993-94).

<sup>114/</sup> Id., Sec. 28.11(3) (k) (1993-94).